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Vol. 54 No. 20

federal register

Wednesday
February 1, 1989

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Wednesday
February 1, 1989

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WHO: The Office of the Federal Register.

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Presidential Documents

Title 3—

The President

Presidential Determination No. 89-10 of January 18, 1989

Determination To Authorize Assistance for the United Nations Peacekeeping Forces for Namibia and Angola

Memorandum for the Secretary of State

By virtue of the authority vested in me by Section 451 of the Foreign Assistance Act of 1961, as amended (the Act), I hereby:

(1) authorize the use of up to $10 million in funds made available under Chapter 4 of Part II of the Act in each of the Fiscal Years 1985 and 1986, and up to $5 million of funds made available under such chapter in Fiscal Year 1988, for emergency assistance to the United Nations Transition Assistance Group for Namibia and the United Nations Angola Verification Mission, in an aggregate amount not to exceed $25 million; and

(2) authorize the furnishing of such assistance in accordance with the provisions of Chapter 6 of Part II of the Act.

You are requested to report this determination to the Speaker of the House of Representatives and the Senate Committees on Foreign Relations and Appropriations immediately. The assistance provided herein shall be furnished only after such report has been made. This determination shall be published in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
Washington, January 18, 1989.

[FR Doc. 89-2502
Filed 1-30-89; 4:52 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 54, No. 20
Wednesday, February 1, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1

Administrative Regulations; Privacy Act Regulations

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) hereby amends 7 CFR 1.123 by adding one system of records to those exempted from certain sections of the Privacy Act of 1974 (5 U.S.C. 552a) pursuant to 5 U.S.C. 552a(k). Notice of the amendments, inviting public comments, was published as a proposed rule in the **Federal Register** on August 12, 1988, at 53 FR 30435. No public comments were received. The final rule, as published, is identical to the proposed rule, except for technical corrections.

DATE: The amendments are effective March 3, 1989.

FOR FURTHER INFORMATION CONTACT: Barbara S. Good, Office of the General Counsel, USDA (202) 447–3564.

SUPPLEMENTARY INFORMATION: These amendments are necessary to provide for exemption of a proposed new Privacy Act system of records entitled "FCIC Compliance Review Cases, USDA/FCIC–2."

A separate notice regarding USDA/FCIC–2 was published on December 23, 1988, at 53 FR 51867. The proposed new system will contain detailed information pertaining to cases in which the Federal Crop Insurance Corporation (FCIC) Office of Compliance is involved. The information is collected during the course of reviews and investigations conducted by the Office of Compliance and includes investigative notes, signed statements, affirmations and affidavits, correspondence, case history and status, contractual information, financial data and other related information, and reported findings by the Office of Compliance and other entities such as the Office of Inspector General, USDA.

The authority for maintenance of this system is found at 7 U.S.C. 1501–1520. That legislation authorizes FCIC to conduct compliance activities pertaining to the provision of crop insurance coverage and the adjustment and payment of claims thereon.

This rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order No. 12291 and has been determined not to be a "major rule" since it will not have an annual effect on the economy of $100 million or more.

In addition, it has been determined that these rules will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 1

Privacy.

For the reasons set out in the preamble, 7 CFR, Subtitle A, Part 1, Subpart G, § 1.123 of the Code of Federal Regulations is amended as set forth below:

PART 1—[AMENDED]

1. The authority citation for Part 1, Subpart G, continues to read as follows:

Authority: 5 U.S.C. 552a

§ 1.123 [Amended]

2. Part 1, Subpart G—Privacy Act Regulations, § 1.123 is amended by adding an entry for Federal Crop Insurance Corporation alphabetically to read as follows:

* * * * *

FEDERAL CROP INSURANCE CORPORATION

FCIC Compliance Review Cases, USDA/FCIC–2

* * * * *

Done this 26th day of January 1989, at Washington, D.C.

Peter C. Myers,

Acting Secretary of Agriculture.

[FR Doc. 89–2279 Filed 1–31–89; 8:45 am]

BILLING CODE 3410–14–M

Packers and Stockyards Administration

9 CFR Part 201

Regulations Under the Packers and Stockyards Act; Scales Accuracy and Accurate Weights

AGENCY: Packers and Stockyards Administration, USDA.

ACTION: Final rule.

SUMMARY: The action amends a regulation concerning scale accuracy and accurate weights, to update an incorporation by reference of a National Bureau of Standards Handbook, to refer to the latest edition thereof. The proposal will not require replacement of scales which comply with the previous requirements.

EFFECTIVE DATE: March 3, 1989.

FOR FURTHER INFORMATION CONTACT: Harold W. Davis, Director, Livestock Marketing Division, Room 3408—South Building, Packers and Stockyards Administration, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–6951.

SUPPLEMENTARY INFORMATION: The Packers and Stockyards Administration proposed a revision in the July 22, 1988 **Federal Register** (53 FR 27770) to incorporate the 1988 edition of the Handbook. No comments were received on the revision. The change which appears in this final rule is the same as that proposed, except that the 1989 edition, which has been issued in the meantime, is incorporated instead of the 1988 edition.

Section 201.71(a) of the regulations requires that all subject scales shall be installed, maintained and operated to insure accurate weights. This part of the regulation also incorporates, by reference, portions of the 1983 edition of the National Bureau of Standards Handbook 44, "Specifications, Tolerances and other Technical Requirements for Weighing and Measuring Devices." Handbook 44 is a product of the National Conference on Weights and Measures and is subject to change annually. It is adopted automatically by a majority of States and forms the basis for scale requirements for all State weights and measures jurisdiction in the United States. The 1989 edition of Handbook 44 contains provisions not included in the

1983 edition. These new provisions are being applied by State and local weights and measures jurisdictions. The amendment to regulation 201.71(a) to incorporate, by reference, the 1989 edition of Handbook 44 would make the requirements of the Packers and Stockyards Administration uniform with those applied by State and local weights and measures jurisdictions. Parts (b), (c) and (d) of the regulation will not be changed.

The major differences between the 1983 edition of Handbook 44 and the 1989 edition result from the adoption by the National Conference on Weights and Measures of a new scale code which became effective and enforceable on January 1, 1986. The new scale code is applicable to scales manufactured after January 1, 1986 for most classes of scales but is applicable in part to all livestock and motor vehicle scales. The new scale code requires that new devices be marked with accuracy classes and institutes a different concept in tolerance application. Under the new scale code, tolerances are based on incremental values depending on the number of scale divisions comprised in a specific test load. For livestock and motor vehicle scales, the basic tolerance is 1 scale division error for each 500 divisions of test load. This is equivalent to the old basic tolerance of 0.2% of test load but is applied in an incremental fashion rather than in a linear fashion as with the old relative value tolerance. This results in a slightly more liberal tolerance at the lower end of each 500 division segment on some mechanical scales. Device manufacturers and scale service agencies are held accountable for compliance with the accuracy class marketing requirement which they must meet in order for their devices to be accepted by the State weights and measures jurisdictions.

Executive Order 12291

It has been determined that the amendment relating to scale accuracy and accurate weights is not a "major" rule as defined by section 1(b) of E.O. 12291.

The rule will not have an annual effect on the economy of $100 million or more, will not result in major increases in cost or prices for consumers, individual industries, Government agencies or geographic regions, and will not have significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, regulatory impact analyses are not required.

Regulatory Flexibility Act

B.H. (Bill) Jones, Administrator, Packers and Stockyards Administration, has determined that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act of 1980

This rule does not impose any paperwork requirement.

List of Subjects in 9 CFR Part 201

Scales, Accurate weights.

Accordingly, 9 CFR Part 201 is amended as set forth below.

Done at Washington, DC this 26th day of January, 1989.

B. H. (Bill) Jones,

Administrator, Packers and Stockyards Administration.

PART 201—REGULATIONS UNDER THE PACKERS AND STOCKYARDS ACT

1. The authority citation for Part 201 is revised to read as follows:

Authority: 7 U.S.C. 222, 228(a), 7 CFR 2.17(e), 2.56.

2. Section 201.71(a) is revised to read as follows:

§ 201.71 Scales; accurate weights, repairs, adjustments or replacements after inspection.

(a) All scales used by stockyard owners, market agencies, dealers, packers, and live poultry dealers to weigh livestock, livestock carcasses, or live poultry for the purpose of purchase, sale, acquisition, or settlement shall be installed, maintained, and operated to insure accurate weights. Such scales shall meet applicable requirements contained in the General Code, Scale Code, and Weights Code of the 1989 edition of the National Bureau of Standards Handbook 44, "Specifications, Tolerances and Other Technical Requirements for Weighing and Measuring Devices", which is hereby corporated by reference. This incorporation by reference was approved by the Director of the Federal Register on January 11, 1989. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the **Federal Register**. Handbook 44 is subject to change annually. This handbook is for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. It is also available for inspection at the Office of the Federal Register Information Center, Room 8301, 1100 L Street NW., Washington, DC 20408.

* * * * *

[FR Doc. 89-2280 Filed 1-31-89; 8:45 am]

BILLING CODE 3410-KD-M

FARM CREDIT ADMINISTRATION

12 CFR Parts 615 and 618

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; General Provisions; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published final regulations under Parts 615 and 618, October 6, 1988 (53 FR 39229). The final regulations to Parts 615 and 618 establish minimum permanent capital standards for Farm Credit System institutions and require them to adopt capital adequacy plans that enable them to meet such standards. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is February 1, 1989.

EFFECTIVE DATE: February 1, 1989.

FOR FURTHER INFORMATION CONTACT:

William G. Dunn, Chief, Financial Analysis and Standards Division, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4402

or

Dorothy J. Acosta, Senior Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4020, TDD (703) 883-4444.

(**Authority:** 12 U.S.C. 2252(a)(9) and (10))

Dated: January 27, 1989.

David A. Hill,

Secretary, Farm Credit Administration.

[FR Doc. 89-2370 Filed 1-31-89; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM80-53]

Natural Gas Policy Act; Maximum Lawful Prices and Inflation Adjustment Factors

AGENCY: Federal Energy Regulatory Commission, DOT.

ACTION: Order of the Director, OPPR.

SUMMARY: Pursuant to the authority delegated by 18 CFR 375.307(c)(1), the Director of the Office of Pipeline and Producer Regulation revises and publishes the maximum lawful prices prescribed under Title I of the Natural Gas Policy Act (NGPA) for the months of February, March, and April, 1989. Section 101(b)(6) of the NGPA requires that the Commission compute and publish the maximum lawful prices before the beginning of each month for which the figures apply.

EFFECTIVE DATE: February 1, 1989.

FOR FURTHER INFORMATION CONTACT:

Garry L. Penix, (202) 357-8666.

SUPPLEMENTARY INFORMATION:

Order of the Director, OPPR

Issued January 27, 1989.

Section 101(b)(6) of the Natural Gas Policy Act of 1978 (NGPA) requires that the Commission compute and make available maximum lawful prices and inflation adjustments prescribed in Title I of the NGPA before the beginning of any month for which such figures apply.

Pursuant to this requirement and § 375.307(c)(1) of the Commission's regulations, which delegates the publication of such prices and inflation adjustments to the Director of the Office of Pipeline and Producer Regulation, the maximum lawful prices for the months of February, March, and April 1989 are issued by the publication of the price tables for the applicable quarter. Pricing tables are found in § 271.101(a) of the Commission's regulations. Table I of § 271.101(a) specifies the maximum lawful prices for gas subject to NGPA sections 102, 103(b)(1), 105(b)(3), 106(b)(1)(B), 107(c)(5), 108 and 109. Table II of § 271.101(a) specifies the maximum lawful prices for sections 104 and 106(a) of the NGPA. Table III of § 271.102(c) contains the inflation adjustment factors. The maximum lawful prices and the inflation adjustment factors for the periods prior to January 1989 are found in the tables in §§ 271.101 and 271.102.

List of Subjects in 18 CFR Part 271

Natural gas.

Kevin P. Madden,

Director, Office of Pipeline and Producer Regulation.

PART 271—[AMENDED]

The authority citation for Part 271 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717-717w (1982); Department of Energy Organization Act, 42 U.S.C. 7101-7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432 (1982).

§ 271.101 [Amended]

2. Section 271.101(a) is amended by adding the maximum lawful prices for February, March, and April, 1989 in Tables I and II.

TABLE I.—NATURAL GAS CEILING PRICES (OTHER THAN NGPA SECTIONS 104 AND 106(a))

Subpart of Part 271	NGPA section	Category of gas	Maximum lawful price per MMBtu for deliveries in—		
			Feb. 1989	Mar. 1989	Apr. 1989
B	102	New Natural Gas, Certain OCS Gas [1]	$5.165	$5.202	$5.239
C	103(b)(1)	New Onshore Production Wells [2]	3.384	3.398	3.412
E	105(b)(3)	Intrastate Existing Contracts	4.970	5.002	5.034
F	106(b)1(B)	Alternative Maximum Lawful Price for Certain Intrastate Rollover Gas [3]	1.935	1.943	1.951
G	107(c)(5)	Gas Produced from Tight Formations	6.768	6.796	6.824
H	108	Stripper Gas	5.530	5.569	5.609
I	109	Not Otherwise Covered [4]	2.802	2.813	2.824

[1] Commencing January 1, 1985, the price of natural gas finally determined to be new natural gas under section 102(c) was deregulated. (See Part 272 of the Commission's regulations.)

[2] Commencing January 1, 1985, and July 1, 1987, the price of some natural gas finally determined to be natural gas produced from a new, onshore production well under section 103 was deregulated. (See Part 272 of the Commission's regulations.) Thus, for all months succeeding June 1987 publication of a maximum lawful price per MMBtu under NGPA section 103(b)(2) is discontinued.

[3] Section 271.602(a) provides that for certain gas sold under an intrastate rollover contract the maximum lawful price is the higher of the price paid under the expired contract, adjusted for inflation or an alternative Maximum Lawful Price specified in this Table. This alternative Maximum Lawful Price for each month appears in this row of Table I. Commencing January 1, 1985, the price of some intrastate rollover gas was deregulated. (See Part 272 of the Commission's regulations.)

[4] The maximum lawful price for tight formation gas is the lesser of the negotiated contract price or 200% of the price specified in Subpart C of Part 271. The maximum lawful price for tight formation gas applies on or after July 16, 1979. (See § 271.703 and § 271.704.)

TABLE II.—NATURAL GAS CEILING PRICES: NGPA SECTIONS 104 AND 106(a) (SUBPART D, PART 271)

Category of natural gas	Type of sale or contract	Maximum lawful price per MMBtu for deliveries made in—		
		Feb. 1989	Mar. 1989	Apr. 1989
Post-1974 gas	All producers	$2.802	$2.813	$2.824
1973-1974 Biennium gas	Small producer	2.366	2.375	2.384
	Large producer	1.811	1.818	1.825
Interstate Rollover gas	All producers	1.040	1.044	1.048
Replacement contract gas or recompletion gas	Small producer	1.330	1.335	1.340
	Large producer	1.019	1.023	1.027
Flowing gas	Small producer	0.671	0.674	0.677
	Large producer	0.567	0.569	0.571
Certain Permian Basin gas	Small producer	0.793	0.796	0.799
	Large producer	0.700	0.703	0.706
Certain Rocky Mountain gas	Small producer	0.793	0.796	0.799
	Large producer	0.671	0.674	0.677
Certain Appalachian Basin gas	North subarea contracts dated after 10-7-69	0.637	0.640	0.643

TABLE II.—NATURAL GAS CEILING PRICES: NGPA SECTIONS 104 AND 106(a) (SUBPART D, PART 271)—Continued

Category of natural gas	Type of sale or contract	Maximum lawful price per MMBtu for deliveries made in—		
		Feb. 1989	Mar. 1989	Apr. 1989
Minimum rate gas [1]	Other contracts	$0.591	$0.593	$0.595
	All producers	0.350	0.351	0.352

[1] Prices for minimum rate gas are expressed in terms of dollars per Mcf, rather than MMBtu.
[2] This price may also be applicable to other categories of gas (see §§ 271.402 and 271.602).

§ 271.102 [Amended]

3. Section 271.102(c) is amended by adding the inflation adjustment for the month of February, March, and April 1989 in Table III.

TABLE III.—INFLATION ADJUSTMENT

Month of delivery 1989	Factor by which price in preceding month is multiplied
February	1.00399
March	1.00399
April	1.00399

[FR Doc. 89-2328 Filed 1-31-89; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 148 and 162

[T.D. 89-22]

Preclearance of Passengers and Baggage in a Foreign Country

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Interim rule; solicitation of comments.

SUMMARY: For many years the Customs Service has maintained stations at airports in certain foreign countries where advance clearance (preclearance) of passengers and their baggage is conducted. This clearance avoids delays and other inconveniences when a flight reaches the U.S. port of entry. Recent legislation provides a specific statutory basis for the preclearance program which had been previously based on various non-statutory authorities. In addition to clarifying that a preclearance program may be established, that Customs officers may be stationed at foreign locations, and that U.S. Customs and related laws are made applicable at those locations, the legislation provides that the Secretary of the Treasury may require persons processed at preclearance stations to comply with U.S. Customs and related laws which shall apply in the same manner as if the foreign station were a port of entry within the Customs territory of the United States.

EFFECTIVE DATE: February 1, 1989. Written comments must be received on or before April 3, 1989.

FOR FURTHER INFORMATION CONTACT: Robert J. Heiss, Office of Passenger Enforcement and Facilitation, (202) 566-5607.

SUPPLEMENTARY INFORMATION:

Background

The Customs Service has established facilities listed in § 101.5, Customs Regulations (19 CFR 101.5), at certain foreign airports for the preclearance of passengers and baggage in advance of the arrival of flights to the United States. This preclearance provides for faster and more efficient service to international travelers and the avoidance of delays and inconvenience at the port of arrival. The preclearance program, which has been in effect for over 35 years, has been based on various non-statutory authorities and executive agreements with the countries where the inspection stations are located (Canada, Bermuda, and The Bahamas).

Certain provisions of the Anti-Drug Abuse Act of 1986 (Pub. L. 99-570) found in 19 U.S.C. 1629 provide specific statutory authority for the preclearance program. That Act permits, when authorized by treaty or executive agreement, the stationing of Customs officers in foreign countries. It authorizes Customs officers so stationed to discharge their duties, the seizure and forfeiture or merchandise under U.S. law, and arrests. It also permits the Secretary to require compliance with Customs and related U.S. laws in the same manner as if the violation took place in the Customs territory of the United States.

Comments

Before adopting these interim regulations as a final rule, consideration will be given to any written comments (preferably in triplicate) timely submitted. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, Customs Service Headquarters, Room 2119, 1301 Constitution Avenue, NW., Washington, DC 20229.

Inapplicability of Notice and Delayed Effective Date Requirements

Inasmuch as these amendments implement already enacted statutory changes, it is deemed to be in the public interest to make the regulatory changes as soon as possible. Accordingly, the normal advance notice and public procedure are unnecessary pursuant to 5 U.S.C. 553(b)(B). For the same reasons, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

Executive Order 12291

Because this document will not result in a "major rule" as defined in E.O. 12291, a regulatory impact analysis is not required.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for interim regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), do not apply.

Drafting Information

The principal author of this document was James C. Hill, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 148

Airmen, Customs duties and inspections, Foreign officials, Government employees, Household goods, Imports, International organizations, Military personnel, Motor vehicles, Seamen, Tobacco, Taxes.

19 CFR Part 162

Administrative practice and procedure, Law enforcement, Penalties, Search warrants, Seizures and forfeitures, Reporting and recordkeeping requirements.

Amendments to the Regulations

Parts 148 and 162, Customs Regulations (19 CFR Parts 148, 162), are amended as set forth below.

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

1. The general authority citation for Part 148 remains unchanged and a new specific authority for § 148.22 is added. The citations of authority will read as follows:

Authority: 19 U.S.C. 66, 1496, 1624. The provisions of this part, except for Subpart C, are also issued under 19 U.S.C. 1202 (Gen. Headnote 11);

* * * * *

Section 148.22 also issued under 19 U.S.C. 1629.

* * * * *

2. Section 148.22 is amended by revising paragraph (a) to read as follows:

§ 148.22 Examination of air travelers' baggage in foreign territory.

(a) *Examination and surrender of declaration.* When places have been established in a foreign country where U.S. Customs officers have been stationed for the purpose of conducting Customs inspections and examinations (see §§ 101.5 and 162.6 of this chapter), persons destined to the United States on flights shall present themselves to those officers for inspection and examination of their baggage which may be passed in accordance with § 148.23 prior to boarding the flight. They shall comply with all U.S. Customs laws and other civil and criminal laws of the United States relating to importation of merchandise, including baggage, to the filing of false or fraudulent statements, and to the unlawful removal of merchandise from Customs custody, in the same manner as if the passengers, were arriving at an airport within the Customs territory of the United States. When baggage is examined in foreign territory, the baggage declaration shall be surrendered to the Customs officer at the airport of departure for the United States prior to boarding the flight.

* * * * *

PART 162—RECORDKEEPING, SEARCH, AND SEIZURE

1. The general authority citation for Part 162 remains unchanged and a specific authority for § 162.8 is added. The citation of authority will read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1624;

* * * * *

Section 162.8 also issued under 9 U.S.C. 1629.

* * * * *

2. Part 162 is amended by adding a new § 162.8 to read as follows:

§ 162.8 Preclearance inspections and examinations.

In connection with inspections and examinations conducted in accordance with § 148.22(a) of this chapter, United States Customs officers stationed in a foreign country may exercise such functions and perform such duties (including inspections, examinations, searches, seizures, and arrests), as may be permitted by treaty, agreement, or law of the country in which they are stationed.

Michael H. Lane,
Acting Commissioner of Customs.

Approved January 13, 1989.

Salvatore R. Martoche,
Assistant Secretary of the Treasury.

[FR Doc. 89-2309 Filed 1-31-89; 8:45 am]
BILLING CODE 4820-02-M

INTERNATIONAL TRADE COMMISSION

19 CFR Part 207

United States-Canada Free-Trade Agreement; Entry Into Force of U.S. International Trade Commission Regulations

AGENCY: U.S. International Trade Commission.

ACTION: United States-Canada Free-Trade Agreement; Entry into force of U.S. International Trade Commission regulations.

SUMMARY: In the publication of the interim regulations of the U.S. International Trade Commission concerning the implementation of the United States-Canada Free-Trade Agreement ("the Agreement"), the Commission stated that following the confirmation by the United States Trade Representative of the date of entry into force of the Agreement, the Commission would confirm the entry into force of its interim rules. 53 FR 53248 (Dec. 30, 1988). The Agreement, which was approved and implemented in the Pub. L. 100-449, the "United States-Canada Free-Trade Implementation Act," 102 Stat. 1851 ("the Act"), entered into force on January 1, 1989, notification of which was published by the Trade Representative in the Federal Register. 54 FR 505 (Jan. 6, 1989). This notice confirms the entry into force, as of January 1, 1989, of the Commission's interim rules.

FOR FURTHER INFORMATION CONTACT: Elizabeth Hafner, U.S. International Trade Commission, at (202) 252-1113.

By order of the Commission.

Issued: January 24, 1989.

Kenneth R. Mason,
Secretary.

[FR Doc. 89-2356 Filed 1-31-89; 8:45 am]
BILLING CODE 7020-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 892

[Docket Nos. 87P-0214/CP Through 87P-0214/CP0013]

Magnetic Resonance Diagnostic Device; Panel Recommendation and Report on Petitions for Magnetic Resonance Reclassification and Codification of Reclassification

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it has issued an order in the form of a letter to a petitioner reclassifying the magnetic resonance diagnostic device, from class III (premarket approval) into class II (performance standards). The order is being codified in the Code of Federal Regulations as specified herein.

EFFECTIVE DATES: The reclassification was effective July 28, 1988. The rule becomes effective March 3, 1989.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4874.

SUPPLEMENTARY INFORMATION: On July 28, 1988, FDA sent Thomson-CGR Medical Corp., Diasonics MRI Division, Fonar Corp., Biometric Research Institute, Inc., Resonex, Inc., Stuart Medical, Inc., Advanced NMR Systems, Inc., Bruker Medical Instruments, General Electric Co., Philips Medical Systems, Inc., Siemens Medical Systems, and NMR Imaging, Inc., a letter (order) reclassifying the magnetic resonance diagnostic device and substantially equivalent devices of this generic type, from class III into class II. Accordingly, as required by 21 CFR 860.134(b)(7) of the regulations, FDA is announcing the reclassification of the generic magnetic resonance diagnostic device from class III into class II. In addition, FDA is issuing a final regulation that codifies the reclassification of the device by adding § 892.1000.

After considering the economic consequences of approving this reclassification, FDA certifies that this final rule requires neither a regulatory impact analysis as specified in Executive Order 12291, nor a regulatory flexibility analysis as defined in the Regulatory Flexibility Act (Pub. L. 96–354). Approval of this petition will not have a significant economic impact on a substantial number of small entities. The petitioner and all future manufacturers of substantially equivalent magnetic resonance diagnostic devices will be relieved of the costs of complying with the premarket approval requirement in section 515 of the act (21 U.S.C. 360e).

There are no offsetting costs that the petitioner or other manufacturers would incur from reclassification into class II other than those associated with meeting a standard once established. The magnitude of the economic savings attributable to this petition is dependent upon the number of PMA studies that would have been required of the petitioners and other competitors had reclassification not occurred. This savings may not be reliably calculated to permit an accurate quantification of the economic savings.

List of Subjects in 21 CFR Part 892

Diagnostic devices, Medical devices, Radiation protection, X-rays.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Chapter I of Title 21 of the Code of Federal Regulations is amended in Part 892 to read as follows:

PART 892—RADIOLOGY DEVICES

1. The authority citation for 21 CFR Part 892 continues to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 522–559, 565–574, 576–577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

2. New § 892.1000 is added to Subpart B to read as follows:

§ 892.1000 Magnetic resonance diagnostic device.

(a) *Identification.* A magnetic resonance diagnostic device is intended for general diagnostic use to present images which reflect the spatial distribution and/or magnetic resonance spectra which reflect frequency and distribution of nuclei exhibiting nuclear magnetic resonance. Other physical parameters derived from the images and/or spectra may also be produced. The device includes hydrogen-1 (proton) imaging, sodium-23 imaging, hydrogen-1 spectroscopy, phosphorus-31 spectroscopy, and chemical shift imaging (preserving simultaneous frequency and spatial information).

(b) *Classification.* Class II.

Dated: January 10, 1989.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–2311 Filed 1–31–89; 8:45 am]

BILLING CODE 4160–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 61

[FRL–3512–7]

Standards of Performance for New Stationary Sources, National Emission Standards for Hazardous Air Pollutants, Supplemental Delegation of Authority to Alabama

AGENCY: Environmental Protection Agency.

ACTION: Delegation of authority.

SUMMARY: On October 7, 1988, the State of Alabama requested that EPA delegate authority for implementation and enforcement of additional categories of Standards of Performance for New Stationary Sources (NSPS), and National Emission Standards for Hazardous Air Pollutants (NESHAP). Since EPA's review of pertinent State laws, rules, and regulations showed them to be adequate for the implementation and enforcement of these Federal standards, the Agency has made the delegations as requested.

EFFECTIVE DATE: The effective date of the delegation of authority is December 2, 1988.

ADDRESSES: Copies of the requests for delegation of authority and EPA's letter of delegation are available for public inspection at EPA's Region IV Office, 345 Courtland Street, NE., Atlanta, Georgia 30365.

All reports required pursuant to the newly delegated standards (listed below) should be submitted to the following address: Mr. Richard E. Grusnick, Chief, Air Division, Alabama Department of Environmental Management, 1751 Congressman William L. Dickinson Drive, Montgomery, Alabama 36130.

FOR FURTHER INFORMATION CONTACT: Beverly T. Hudson, at the EPA Region IV address listed above, and phone (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: Section 301, in conjunction with sections 101, 111(c)(1) and 112(d)(1) of the Clean Air Act, authorizes EPA to delegate authority to implement and enforce the standards set out in 40 CFR Part 60, NSPS, and 40 CFR Part 61, NESHAP.

On August 5, 1976, EPA initially delegated the authority for implementation and enforcement of the NESHAP and NSPS programs to the State of Alabama. On October 7, 1988, Alabama requested a delegation of authority for implementation and enforcement of the following recently promulgated or revised NSPS categories found in 40 CFR Part 60:

1. Subpart Db: Industrial—Commercial—Institutional Steam Generating Units
2. Subpart K: Storage Vessels for Petroleum Liquids.
3. Subpart Ka: Storage Vessels for Petroleum Liquids [post—2/17/78].
4. Subpart Kb: Storage Vessels for Petroleum Liquids [post—7/23/84].
5. Subpart DD: Grain Elevators.
6. Subpart GG: Stationary Gas Turbines.
7. Subpart BBB: Rubber Tire Manufacturing.

On the same date, the State of Alabama also requested authority for the following recently revised NESHAP categories:

1. Subpart E: Mercury

After a thorough review of the request, the Regional Administrator determined that such a delegation was appropriate for these source categories with the conditions set forth in the original delegation letter of August 5, 1976. Alabama sources subject to the requirements of Subparts Db, K, Ka, Kb, DD, GG, & BBB of 40 CFR Part 60 and Subpart E of CFR Part 61, will now be under the jurisdiction of the State of Alabama.

Action

Since review of the pertinent Alabama laws, rules, and regulations showed them to be adequate for the implementation and enforcement of the aforementioned categories of NSPS and NESHAP, I delegated to the State of Alabama my authority for the source categories listed above on December 2, 1988.

The Office of Management and Budget has exempted this regulation from the requirements of section 3 of Executive Order 12291.

This notice is issued under the authority of sections 101, 111, 112, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7411, 7412, and 7601).

Dated: January 19, 1989.

Lee A. DeHihns, III

Acting Regional Administrator.

[FR Doc. 89–2275 Filed 1–31–89; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 180

[PP 5E3160/R1000; FRL–3510–7]

Pesticide Tolerance For Dimethyl Tetrachloroterephthalate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for the combined residues of the herbicide dimethyl tetrachloroterephthalate and its metabolites (referred to in this document as "DCPA") in or on the raw agricultural crop group *Brassica* (cole) leafy vegetables. This regulation to establish a maximum permissible level for residues of the herbicide in or on the commodities within the group was requested in a petition submitted by the Interregional Research Project No. 4 (IR–4).

EFFECTIVE DATE: February 1, 1989.

ADDRESS: Written objections, identified by the document control number, [PP 5E3160/R1000], may be submitted to: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Hoyt Jamerson, Emergency Response and Minor Use Section (TS–767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–2310.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the Federal Register of November 16, 1988 (53 FR 46098), in which it was announced that the Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition 5E3160 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project, and the Agricultural Experiment Station of Florida.

The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the combined residues of the herbicide dimethyl tetrachloroterephthalate (DCPA) and its metabolites monomethyl tetrachloroterephthalate (MTP) and tetrachloroterephthalic acid (TPA), all calculated as dimethyl tetrachloroterephthalate, in or on the raw agricultural crop group *Brassica* (cole) leafy vegetables, as defined in 40 CFR 180.34(f)(9)(v)(A), at 5.0 parts per million (ppm).

Tolerances are currently established for residues of the herbicide in or on the following raw agricultural commodities in the crop group *Brassica* (cole) leafy vegetables: Broccoli, Brussels sprouts, cabbage, and cauliflower at 1 ppm; collards and kale at 2 ppm; and mustard greens at 5 ppm. Broccoli, cabbage, and mustard greens are the representative commodities of the crop group. With the establishment of the crop group tolerance, tolerances are established at a uniform level for residues of the herbicide at 5 ppm in or on broccoli, Brussels sprouts, cabbage, cauliflower, collards, kale, and mustard greens and, additionally, in or on the remaining commodities within the crop group including kohlrabi, Chinese broccoli, Chinese cabbage, Chinese mustard cabbage, broccoli raab, and rape greens at 5 ppm. Although the crop group tolerance for residues at 5 ppm will apply to all members of the *Brassica* leafy vegetable crop group for purposes of uniformity, actual residues based on registered use patterns are not expected to exceed existing tolerances already established for the specific commodities listed above. The incremental risk resulting from the use of DCPA on the remaining commodities in the group will not significantly increase dietary risk.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and all other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 21, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.185(a) is amended by deleting the entries for the commodities broccoli, Brussels sprouts, cabbage, cauliflower, collards, kale, and mustard greens and by adding and alphabetically inserting the entry for the raw agricultural commodity crop group *Brassica* (cole) leafy vegetables, to read as follows:

§ 180.185 Dimethyl tetrachloroterephthalate; tolerances for residues.

* * * * *

(a) * * *

Commodities	Parts per million
* * * * *	
Vegetables, leafy, *Brassica* (cole)	5
* * * * *	

[FR Doc. 89-1936 Filed 1-31-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 7F3521/R953; FRL-3510-5]

Pesticide Tolerances for Tefluthrin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for the combined residues of the synthetic pyrethroid tefluthrin (2,3,5,6-tetrafluoro-4-methylphenyl)methyl-(1 *alpha*,3 *alpha*)-(*Z*)-(±)-3-(2-chloro-3,3,3trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate) and its metabolite, (*Z*)-3-(2-chloro-3,3,3-trifluoro-1-propenyl)2,2-dimethylcyclopropanecarboxylate, in or on the raw agricultural commodities corn, grain, field, and pop; corn, forage and fodder, field and pop. This regulation to establish the maximum permissible levels for residues of the chemical was requested pursuant to petitions by ICI Americas, Inc.

EFFECTIVE DATE: February 1, 1989.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: George LaRocca, Product Manager (PM) 15, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 200, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2400.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of August 5, 1987 (52 FR 29061), which announced that ICI Americas, Inc., Agricultural Products Group, Registration and Regulatory Affairs, Wilmington, DE 19897, had submitted pesticide petition (PP) 7F3521 proposing to establish tolerances in or on the raw agricultural commodities corn, grain (field and pop) at 0.01 part per million (ppm) for the residues of the insecticide tefluthrin (2,3,5,6-tetrafluoro-4-methylphenyl)methyl-(1 *alpha*,3 *alpha*)-(*Z*)-(±)-3(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate).

In the Federal Register of April 13, 1988 (53 FR 12188), EPA issued a notice which amended the petition by revising the proposed tolerance expression to include the combined residues of tefluthrin and its metabolites (*Z*)-3-(2-chloro-3,3,3-trifluoro-1-propenyl)2,2-dimethylcyclopropanecarboxylic acid (Ia) and 2,3,5,6-tetrafluoro-4-hydroxymethylbenzoic acid and increased the tolerances in or on corn, grain (field and pop) to 0.1 ppm and added proposed tolerances for corn forage and fodder at 0.1 ppm.

No comments were received in response to the notices of filing.

After further evaluation, the Agency has determined that tolerances should be established for the combined residues of tefluthrin, parent, and its metabolite Ia on corn, grain, field and pop, at 0.05 ppm and corn, forage and fodder, field and pop at 0.05 ppm.

In January 1989, the Agency issued a conditional registration for tefluthrin with a final expiration date of July 31, 1993. The registration was made conditional since certain data were lacking. In order to: (1) Evaluate the effects of tefluthrin on fish and aquatic organisms, (2) establish a permanent acceptable daily intake (ADI) and, (3) establish a crop rotation interval, several data requirements must be fulfilled during the period of conditional registration. Such requirements include an aquatic invertebrate life-cycle test (72-4) which is due by August 1989; a fish life-cycle study (72-5) which must be submitted to the Agency by August 1990; an aquatic residue monitoring study which must be submitted by March 1991; and a rotational crop study, field (165-2) which must be submitted by March 1993. In addition, unfulfilled data requirements in the area of toxicology comprise a 21-day feeding study and a 21-day dermal study, both in the rat and both designed to investigate serum electrolytes, including magnesium. These studies must be submitted to the Agency by April 1989. Without the results of the 21-day feeding study, a permanent ADI cannot be determined. Owing to the lack of these studies, the Agency is establishing the tolerances for this pesticide on corn, grain, field and pop, and corn forage and fodder, field and pop with an expiration date of July 31, 1994, to cover residues expected to be present during the period of conditional registration.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data considered in support of the tolerance include a 12-month oral toxicity study in dogs with a no-observed-effect level (NOEL) of 0.5 mg/kg/day; 24-month rat and mouse chronic feeding/oncogenicity studies with systemic NOELs of 1.1 mg/kg/day and 3.4 mg/kg/day with no oncogenic effects observed at dose levels up to and including 18.2 mg/kg/day and 54.4 mg/kg/day, the highest dose levels tested for rats and mice, respectively. In a teratology study with rats at dose levels of 1, 3, and 5 mg/kg/day, no teratogenic effects were observed in the test animals at dose levels up to and including 5.0 mg/kg/day, which is the level of significant maternal toxicity.

All of the six genotoxicity studies submitted were negative, including reverse mutation (Ames), TK locus, bone marrow cytogenetics, and unscheduled DNA synthesis.

In the multigeneration study the cats were fed tefluthrin at dietary levels equivalent to 0.75, 2.5, and 12.50 mg/kg/day during 3 months through premating, pregnancy, lactation, and weaning of two litters per generation for two generations. Dams showed lower body weight gains at the highest dose during pregnancy. At both the mid- and high-dose levels the parents of both generations displayed neurotoxic effects (abnormal gaits). Pup weight at the highest dose was reduced, and litter size was reduced.

The provisional acceptable daily intake (PADI), based on a NOEL of 0.75 mg/kg/day from a multigeneration reproduction study and a safety factor of 1,000, is 0.00075 mg/kg/body weight (bwt) day. The theoretical maximum residue contribution from the proposed tolerances is 0.00001 mg/kg/bwt/day: This is equivalent to about 1.4 percent of the PADI.

The metabolism of the chemical in plants for this corn use is adequately understood. An analytical method (gas liquid chromatography with an electron capture detector) is available for enforcement. Prior to its publication in the *Pesticide Analytical Manual*, Vol. II, the enforcement methodology is being made available in the interim to anyone who is interested in pesticide enforcement when requested from:

By mail: Public Docket and Freedom of Information Section (TS-757C), Field Operations Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-3262.

The tolerances established by amending 40 CFR Part 180 will be adequate to cover residues in or on corn, grain, field, and pop; and corn forage and fodder, field and pop.

There are currently no actions pending against the registration of this product. This pesticide is considered useful for the purpose for which the tolerances are sought.

Based on the above information and data considered, the Agency concludes that the tolerances would protect the public health. Therefore, the tolerances are established as set forth below with an expiration date of July 31, 1994. After receipt and evaluation of the data required to support the conditional registration of tefluthrin, the Agency will consider establishing permanent tolerances without an expiration date for residues of tefluthrin.

Any person adversely affected by this regulation may, within 30 days after the date of publication in the Federal Register, file written objections with the Hearing Clerk (address above). Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164 (5 U.S.C. 601-612)), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from the tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 13, 1989.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. New § 180.440 is added, to read as follows:

§ 180.440 Tefluthrin; tolerances for residues.

Tolerances, to expire July 31, 1994, are established for the combined residues of the insecticide tefluthrin (2,3,5,6 tetrafluoro-4-methylphenyl)methyl-(1 *alpha*, 3 *alpha*)-(*Z*)-(±)-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate and its metabolite (*Z*)-3-(2-chloro-3,3,3-trifluoro-1-propenyl)2,2-dimethylcyclopropanecarboxylic acid in or on the following commodities:

Commodities	Part per million
Corn, grain, field and pop	0.05
Corn, forage and fodder, field and pop	.05

[FR Doc. 89-1938 Filed 1-31-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 261

[SW-FRL-3512-9]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is granting a final exclusion from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32 for specified waste generated by VAW of America, Incorporated, St. Augustine, Florida. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 268, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.

EFFECTIVE DATE: February 1, 1989.

ADDRESSES: The public docket for this final rule is located at the U.S. Environmental Protection Agency, 401 M Street SW., (sub-basement), Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The reference number for this docket is "F-89-VWEF-FFFFF." The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information concerning this notice, contact Robert Kayser, Office of Solid Waste (OS-343), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-4536.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under 40 CFR 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained at 40 CFR 261.31 and 261.32. Petitioners must provide sufficient information to EPA to allow the Agency to determine (1) that the waste to be excluded is not hazardous based upon the criteria for which it was listed, and (2) that no other hazardous constituents are present in the wastes at levels of regulatory concern.

b. History of this Rulemaking

VAW of America (VAW), Incorporated, located in St. Augustine, Florida, petitioned the Agency to

exclude from hazardous waste control a specific waste that it generates.

After evaluating the petition, on April 29, 1988, EPA proposed to exclude VAW's waste from the lists of hazardous waste under 40 CFR 261.31 and 261.32 (see 53 FR 15417).

This rulemaking addresses public comments received on the proposal and finalizes the proposed exclusion.

II. Disposition of Petition

VAW of America, Incorporated, St. Augustine, Florida

1. Proposed Exclusion

VAW petitioned the Agency for an exclusion of its wastewater treatment sludge filter cake, presently listed as EPA Hazardous Waste No. F019. VAW based its petition on the claim that the constituents of concern, although present in the waste, were in an essentially immobile form. To support its claim that both the non-listed and listed constituents of concern are not present in the wastewater treatment sludge filter cake above health-based levels of concern, VAW submitted results from total constituent and EPA toxicity analyses for all the EP toxic metals, nickel and cyanide. These analyses were performed on representative samples of VAW's wastewater treatment sludge filter cake. See 53 FR 15417, April 29, 1988, for a more detailed explanation of why EPA proposed to grant VAW's petition for its wastewater treatment sludge filter cake.

2. Agency Response to Public Comments

The Agency received public comments on the proposed rule from three interested parties. One commenter opposed the Agency's proposed decision to exclude VAW's wastewater treatment sludge filter cake. The second commenter supported the Agency's proposed decision. The same commenter, however, believed that it was unlawful and inappropriate for the Agency to consider site-specific factors in its evaluation of delisting petitions. The third commenter believed that the Agency should modify its vertical and horizontal spread (VHS) model to take into account the physical and chemical properties of stabilized wastes. (VAW does not generate a stabilized waste.) The third commenter, however, did not object to the Agency's proposed use of the VHS model to evaluate VAW's waste. The comments made by the three interested parties are discussed below.

Petition-Specific Comments

One commenter opposed the Agency's proposal to grant VAW an exclusion for five reasons, four of which are discussed in turn below. The fifth reason concerns the inconsistencies between the Delisting program and the Land Disposal Restrictions Program and is discussed in a later section.

The commenter stated that the wastewater treatment sludge filter cake still exhibits one of the criteria for which it was listed—the presence of significant concentrations of the inorganic constituents of concern (*i.e.*, hexavalent chromium and complexed cyanide).

The Agency agrees that the presence in F019 wastes of significant total constituent concentrations of the inorganic constituents of concern was one of the reasons for listing F019 wastes as "T" (toxic) waste. See 40 CFR 261.11(a)(3)(ii) and "Background Document, Resource Conservation and Recovery Act, Subtitle C, Hazardous Waste Management, Section 3001, Identification and Listing of Hazardous Waste—Electroplating and Metal Finishing Operation," 1980. The Agency, however, believes that the generalized data presented in the Background Document are not always representative of the physical/chemical nature of specific conversation coating wastes (hydroxide sludges). Specifically, EPA believes it is reasonable to expect that, as the total constituent concentration of an unbound or loosely bound metal present in a waste increases, the potential for the metal to leach from the waste also increases (generally, the higher the total constituent concentration of an unbound or loosely bound metal, the higher the potential EP leachate concentration). Thus, wastes having significant total constituent concentrations of unbound or loosely bound metals are more likely to impact the underlying ground water than wastes having lower total constituent concentrations of unbound or loosely bound metals. In this case, the metals in VAW's waste are tightly bound within the waste matrix. Thus, the Agency believes that the elevated levels of metals present in VAW's waste should not pose a threat to either human health or the environment. The Agency's conclusion that the inorganic constituents of concern (both listed and unlisted) are bound in the waste matrix and thus are not available for leaching is supported by the results of the EP leachate analyses, which showed that only 0.18 mg/l of chromium would leach from VAW's waste under conditions similar to those found in municipal waste landfills.

EPA then evaluated the potential impact on human health using the maximum EP leachate concentration and the vertical and horizontal spread (VHS) model. For the relatively small volume of waste generated by VAW, the VHS model predicted a dilution factor of approximately 32.3. The VHS model analysis provides a conservative and reasonable worst-case evaluation of the behavior of the leachate from the waste in any underlying aquifer. The predicted compliance-point concentrations resulting from this conservative analysis were below the levels of concern used for delisting purposes. See 53 FR 15417, April 29, 1988, for a description of the modeling analysis of VAW's waste.

In delisting evaluations, EPA considers all the factors for which the waste was listed, as well as factors other than those for which the waste was originally listed, that could cause the waste to be hazardous. See 42 U.S.C. 6921(f). For this specific wastestream, based on the above discussion, EPA does not believe that any other factors, including elevated total constituent concentrations of the inorganic constitutents of concern, could cause this wastestream to present a hazard to human health and the environment.

The commenter also asserted that the Agency only considered the leachable levels of hazardous constituents and did not consider waterborne and airborne dispersal of the waste, especially airborne hexavalent chromium.

VAW's waste must be handled as a hazardous waste until it is treated. Thus, general environmental exposure should only result from direct contact with the treated material or surface waters receiving contaminated ground water, or from the consumption of drinking water (*i.e.*, ground water) contaminated with leachate derived from the treated material. VAW's treated waste has an average moisture content of 66.9 percent. Therefore, the Agency believes that direct contact from airborne exposure to hazardous contaminants from the treated waste is unlikely.

The VHS model analysis for this wastestream addresses consumption of contaminated ground water, leaving contaminated surface water as the only possible source of environmental exposure. The Agency acknowledges that it may be possible for surface water runoff to transport contaminants from the waste to a nearby surface water body. However, the Agency does not believe that such overland transport of contaminants is a reasonable exposure route for the petitioned waste for several reasons. First, as described in the proposed rule, the Agency believes that landfill disposal is a reasonable worst-case management scenario for VAW's waste. As such, the landfilled waste will most likely be covered daily (the standard operating procedure at most landfills) and the landfill itself most likely will be capped upon final closure. The Agency does not believe that "open-dumping" of the waste is a reasonable worst-case management scenario. Therefore, the waste is unlikely to be exposed to the weathering or erosion necessary for any appreciable amount of overland transport to occur.

Secondly, the Agency believes that the leachate derived from this waste will not directly enter a surface water body without first travelling through the saturated (subsurface) zone where dilution and attenuation of hazardous constituents may occur. The VHS model takes this saturated zone into account as it predicts the ultimate fate and transport of hazardous constituents. However, should either the leachate derived from this waste or the overland transported contaminants from this waste enter a surface water body, the Agency believes it reasonable to expect that the ensuing dilution with the surface water body would be significantly greater than the dilution which is currently predicted by the VHS model to occur in the underlying ground water due to the larger volume of liquid. As a result, the Agency continues to believe that under reasonable worst-case conditions, the disposal of this waste will not present a threat to either human health or the environment.

EPA believes the commenter's concern over possible exposure to hexavalent chromium is unjustified. Data were provided in the petition characterizing the total constituent and EP leachable concentrations of both chromium and hexavalent chromium. Although the Agency's notice or proposed rulemaking did not provide the results of the total constituent and EP leachate analyses for hexavalent chromium, these data were evaluated by the Agency, and are available in the RCRA public docket for public inspection. Results provided from the total constituent analyses for hexavalent chromium indicated that hexavalent chromium was not detected in any of the 11 analyzed samples (at a detection limit of 1 mg/kg). The chromium in VAW's waste, therefore, is at least 99.99 percent trivalent chromium. Trivalent chromium, which is a natural constituent of the earth's crust and is an essential human nutrient, is considered to be much less toxic than hexavalent chromium. See 53 FR 10206, March 29, 1988. As a result, the Agency does not believe that the chromium in VAW's even if airborne, could present a hazard to either human health or the environment.

The Agency also notes that 40 CFR 261.4(b)(6)(i)(A) specifically excludes from RCRA Subtitle C regulation, wastes listed solely for chromium, having chromium in exclusively (or nearly exclusively) trivalent form, even if the waste exhibits EP toxicity for chromium, as long as the waste does not exhibit any other of the characteristics of a hazardous waste (*i.e.*, ignitability, corrosivity, reactivity, or EP toxicity for any other constituent). This provision does not directly apply to VAW's waste (since it was listed as a "T" waste and for the presence of complexed cyanide). However, by analogy, a finding that VAW's waste is non-hazardous would be supported by this regulatory provision because (1) the chromium in VAW's waste is at least 99.99 percent trivalent chromium, (2) the waste does not contain any other hazardous constituent in concentrations of concern, and (3) the waste does not exhibit any of the characteristics of hazardous wastes.

The commenter was concerned whether VAW's treatment process could effectively reduce hexavalent chromium to trivalent chromium, because the proposed notice did not present data characterizing the effectiveness of VAW's treatment system. As was stated above, data were provided in the petition characterizing the total constituent and EP leachable concentration of both chromium and hexavalent chromium. As noted above, VAW's treatment process is capable of reducing at least 99.99 percent of the haxavalent chromium to trivalent chromium. Furthermore, the ability of VAW/s treatment system to effectively reduce all hexavalent chromium to trivalent chromium is continually monitored using an oxidation-reduction protential (ORP) indicator. The Agency, therefore, believes that the commenter's concerns are unfounded.

The same commenter also believed that the Agency did not address the possible presence of hexavalent chromium, and that EPA should set a conditional testing requirement for hexavalent chromium. The Agency disagrees with the commenter for two reasons: (1) As noted above, VAW's analyses did not detect any hexavalent chromium, and (2) EPA's hazard modeling analysis essentially treated the entire portion of the EPA leachable concentration of chromium as hexavalent chromium because the health-based standard used for chromium is based on the toxicity of the hexavalent species. See "Docket Report on Health-Based Regulatory Levels and Solubilities Used in the Evaluation of Delisting Petitions," June 8, 1988, located in the RCRA public docket. The analysis did not show a leaching potential for hexavalent chromium at a level of concern. Additionally, VAW analyzed 11 monthly samples for total constituent concentrations of hexavalent chromium and verified that its treatment system was capable of reducing at least 99.99 percent of all the hexavalent chromium to travalent chromium. Thus, the Agency believes that it is unnecessary to require VAW, as a condition of its exclusion, to continually test its waste for the presence of Hexavalent chromium.

EPA's Modeling Approach

One commenter supported EPA's proposed use of the VHS model as applied to VAW's petitioned waste, and strongly supported EPA's assertion that "it is inappropriate for the Delisting Program to consider extensive site-specific factors in its evaluation of delisting petitions." See 53 FR 15418 and 53 FR 15423. The commenter believed that it is unlawful and inappropriate for EPA to consider any site-specific factors in its evaluation of delisting petitions.

This comment does not pertain to this petition or affect the proposed decision since the Agency did not consider any site-specific factors in its evaluation of the petitioned waste. The Agency, therefore, will independently respond to this comment in terms of a separate rulemaking petition raising this issue with the Agency (filed by the Hazardous Waste Treatment Council).

Although VAW's waste is not stabilized, another commenter stated that the Agency has the discretion to adjust the VHS model to account for waste-specific factors, including increased reserve cation exchange capacity and reduction in waste permeability. Furthermore, the commenter asserted that the Agency should modify the VHS model to account for the physical and chemical properties of a stabilized waste. To support its claim, the commenter submitted analytical data from studies performed on its own stabilized waste. The same commenter, however, did not object to the Agency's proposed use of the VHS model to evaluate VAW's waste.

VAW does not have a stabilized waste. However, EPA proposed a delisting decision for Roanoke Electric Steel in the Federal Register on the same day as the proposed VAW delisting decision. See 53 FR 15422, April 29, 1988. Roanoke petitioned for exclusion of a stabilized waste. Therefore, the Agency believes the commenter intended to file this comment on the Roanoke proposal,

EPA will respond to this comment in the final Roanoke decision (to be published in the near future). If VAW had a stabilized waste, EPA would have responded to the comment in today's notice.

Inconsistencies Between the Delisting Program and the Land Disposal Restrictions Program

One commenter stated that there are inconsistencies between delisting levels proposed for VAW and the Land Disposal Restrictions Program's (LDRP) proposed best demonstrated available technology (BDAT) treatment levels for K061 wastes. See 53 FR 15417, April 29, 1988, and 53 FR 11742, April 8, 1988, respectively. (On August 17, 1988, the Agency promulgated BDAT treatment levels for K061 non-wastewater wastes. See 53 FR 31136.) Specifically, the commenter stated that, although EPA had not proposed BDAT treatment levels for F019 wastes, the total constituent concentration of chromium in VAW's wastewater treatment sludge filter cake substantially exceeded the BDAT treatment standards that EPA had proposed for K061 waste, which are also high in chromium. Furthermore, the commenter stated that, although EPA had not yet proposed a BDAT treatment standard for F019 wastes, it makes no sense for EPA to allow a waste that could not be legally disposed of in a landfill at a Subtitle C site—because it exceeds BDAT levels proposed for another chromium bearing waste (K061)—to be managed as a non-hazardous waste.

The Agency agrees with the commenter that there are differences in approach between some of the decision criteria used in individual delisting decisions and those used in the Land Disposal Restriction Program. However, these differences are appropriate given the separate functions of the two programs and their different regulatory coverage. The Delisting Program and the LDRP are fundamentally different in that the Delisting Program's standards are health-based and the LDRP's treatment standards are technology-based. See RCRA section 3001 (42 U.S.C. 6921) and RCRA section 3004 (42 U.S.C. 6924(m)), respectively. The Agency, however, believes that both the health-based and technology-based approaches of the Delisting Program and the LDRP, respectively, are protective of human health and the environment. Furthermore, even if BDAT treatment levels applied to delisted wastes, it would neither be accurate nor fair to compare BDAT treatment levels for one specific type of waste to a different waste, since BDAT standards are developed strictly on a waste-specific basis. (The Agency notes that the treatment technology and treatment standards for K061 wastes referred to by the commenter were only proposed at the time the comment was made. Subsequent to that proposal, the Agency revised and finalized the BDAT standards for K061 wastes based on an alternative treatment technology.)

3. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that VAW's wastewater treatment sludge filter cake should be excluded from hazardous waste control. The Agency, therefore, is granting a final exclusion to VAW of America, Incorporated, located in St. Augustine, Florida, for its wastewater treatment sludge filter cake described in its petition as EPA Hazardous Waste No. F019. The exclusion only applies to the processes covered by the original demonstration. The facility would require a new exclusion if its manufacturing or treatment processes are altered, and accordingly would need to file a new petition. The facility must treat waste generated from changed processes as hazardous until a new exclusion is granted.

Although management of the waste covered by this petition is relieved from Subtitle C jurisdiction, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

III. Limited Effect of Federal Exclusion

The final exclusion being granted today is being issued under the Federal (RCRA) delisting program. States, however, are allowed to impose their own, non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the State. Since a petitioner's waste may be regulated under a dual system (*i.e.*, both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact their State regulatory authority to determine the current status of their wastes under State law.

IV. Effective Date

This rule is effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this rule should be effective immediately upon promulgation. These reasons also provide a basis for making this rule effective immediately, upon promulgation, under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This rule to grant an exclusion is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling the facility to treat its waste as non-hazardous. There is no additional economic impact, therefore, due to today's rule.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations and is limited to one facility. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this final rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. Chapter 35) and have been assigned OMB Control Number 2050–0053.

List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Date: January 26, 1989.

Jeffery D. Denit,

Deputy Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

2. In Table 1 of Appendix IX, add the following wastestream in alphabetical order:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
•	•	•
VAW of America Incorporated	St. Augustine, Florida.	Wastewater treatment sludge filter cake (EPA Hazardous Waste No. F019) generated from the chemical conversion coating of aluminum. This exclusion was published on February 1, 1989.
•	•	•

[FR Doc. 89–2276 Filed 1–31–89; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 252

[Docket No. R–117]

RIN 2133–AA68

Operating-Differential Subsidy for Bulk Cargo Vessels Engaged in World-wide Services

AGENCY: Maritime Administration, DOT.

ACTION: Final rule.

SUMMARY: For more efficient operation, the Maritime Administration (MARAD) is issuing this final rule to amend the procedure by which subsidy for the operation of bulk cargo vessels in the foreign commerce of the United States is determined. The final rule permits the regression by one year of the U.S./foreign cost relationship used in the determination of wage subsidy rates, and adjusts the period of exchange rate experience used in wage rate calculations.

EFFECTIVE DATE: This rule is effective March 3, 1989, for application to the wage rate year beginning July 1, 1988, and the rate year from other items beginning January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Arthur B. Sforza, Director, Office of Ship Operating Assistance, Maritime Administration, Washington, DC 20590. Tel. (202) 366–2323.

SUPPLEMENTARY INFORMATION: On April 26, 1988, MARAD published in the **Federal Register** (53 FR 14821) a notice of proposed rulemaking (NPRM) to amend the regulation governing the procedure by which subsidy for the operation of bulk vessels in the foreign commerce of the United States is determined. The proposed amendment would permit the regression by one year of the U.S./foreign cost relationship used in the determination of wage subsidy rates, and would adjust the period of exchange rate experience used in wage rate calculations.

MARAD has recalled permanently its Foreign Maritime Representatives whose responsibilities included the collection of foreign wage cost information used in the calculation of wage subsidy rates. The elimination of MARAD's foreign posts delays the collection of foreign wage cost data applicable to the annual subsidy rate calculations.

To avoid potential delays in the finalization of wage subsidy rates while continuing to maintain a fair and reasonable determination of the U.S./foreign wage cost differential, MARAD is amending § 252.31(f) to provide for the comparison of U.S. and foreign wage costs as of January 1 of the fiscal year preceding the subsidized fiscal year. The percentage relationship of foreign to U.S. wage costs resulting from the comparison would be applied to the full U.S. wage costs determined as of January 1 of the subsidized fiscal year to derive the corresponding foreign wage amount used in the subsidy rate calculation. Foreign-flag competition would continue to be identified on the basis of data as of January 1 of the year preceding January 1 of the subsidized year.

MARAD is also amending § 252.3(f) to provide that the exchange rates used to convert the foreign wage cost estimates into U.S. dollars are the average end-month exchange rates for the period July through June that includes the January 1 for which the foreign costs are determined. The regulation presently provides a seven-month period for exchange rates to permit timely ODS rate calculations. However, the regression of the U.S./foreign wage cost comparison by one year would permit the use of exchange rates for a twelve-month period without delaying final rate calculations. MARAD considers the use of twelve months of exchange rates preferable to the shorter seven-month period.

The NPRM provided a period of public comment that expired on June 27, 1988. No written comments were received. Therefore, the proposed amendments are being published as a final rule. The final rule also includes a clarifying amendment with respect to data submission requirements for the determination of ODS rates for maintenance and repairs in § 252.32.

Analysis of Regulatory Impacts

This amendment has been reviewed under Executive Order 12291, and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of $100 million or more. There will be no increase in production costs or prices for consumers, individual industries, Federal, State or local governments, agencies, or geographic regions. Furthermore, it will not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This amendment is not significant within the definition in DOT's Regulatory Policies and Procedures, 49 FR 11034 (1979), in part because it does not involve any change in important

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Departmental policies. Because the economic impact should be minimal, further regulatory evaluation is not necessary. Moreover, the Maritime Administrator certifies that this amendment will not have a significant economic impact on a substantial number of small entities.

This amendment does not significantly affect the environment. An environmental impact statement is not required under the National Environmental Policy Act of 1969. It has also been reviewed under Executive Order 12612, Federalism, and it has been determined that it does not have sufficient implications for federalism to warrant preparation of a Federalism Assessment.

Finally, the amendment is exempt from the Paperwork Reduction Act because it does not include new information requirements.

List of Subjects in 46 CFR Part 252

Bulk commodities, bulk cargo vessels, ODS program, water transportation.

Accordingly, 46 CFR Part 252 is amended as follows:

PART 252—[AMENDED]

1. The authority citation for Part 252 is revised to read as follows:

Authority: Secs. 204(b), 603, 606 Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1114(b), 1173, 1176); 49 CFR 1.66

2. Section 252.31(f) introductory text, (f)(2) and (f)(3) introductory text are revised to read as follows:

§ 252.32 Wages of officers and crews.

* * * * *

(f) *Method of calculating foreign wage costs.* The foreign wage cost (FC) of the principal foreign-flag competitor and the comparable WC of the subsidized vessel are matched as of January 1 of the last fiscal year preceding the subsidized fiscal year for purposes of determining the wage cost of the principal foreign flags. The following procedures are used:

* * * * *

(2) *Method.* The method of calculating FC shall be the same as that used for WC, provided that it is possible to obtain foreign cost data on the same basis as wage cost data. Preference shall be given to pricing out for fixed costs and to cost experience for variable costs. Where applicable, foreign currencies shall be converted into U.S. currency equivalents by using the average of end-month exchange rates for the period July through June that includes the January 1 for which FC is calculated. The exchange rates shall be obtained from the publication, "International Financial Statistics", published monthly by the International Monetary Fund. If exchange rates for particular foreign currencies are not available in this publication, they shall be obtained from the United States Department of the Treasury.

(3) *Foreign wage costs.* The per diem composite foreign wage cost is determined by multiplying the per diem WC for the U.S. ship type, calculated as of January 1 of the subsidized fiscal year, by the ratio of FC to WC, calculated as of January 1 of the last fiscal year preceding the subsidized fiscal year. The following is a sample calculation of the foreign percentage.

* * * * *

3. Section 252.32(c)(2) is revised to read as follows:

§ 252.32 Wages of officers and crews

* * * * *

(c) * * *

(2) *Data submission requirement.* The operator is required to submit a Subsidy Repair Summary (Form MA–140) quarterly in accordance with 46 CFR Part 272. At MARAD's request the operator shall also provide a schedule indicating the date and site of the two most recent drydockings for each subsidized vessel.

By order of the Maritime Administrator.
Date: January 27, 1989.

James E. Saari,

Secretary, Maritime Administration.

[FR Doc. 89–2325 Filed 1–31–89; 8:45 am]

BILLING CODE 4910–81–M

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46 CFR Part 282

[Docket No. R–118]

RIN 2133–AA67

General Procedures for Determining Operating-Differential Subsidy for Liner Vessels

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: For more efficient operation, the Maritime Administration (MARAD) is issuing this final rule to amend the procedures for determining operating-differential subsidy (ODS) for liner vessels operated in the foreign commerce of the United States. The final rule permits the regression by one year of the U.S./foreign cost relationship used in the determination of wage subsidy rates, and adjusts the period of exchange rate experience used in wage rate calculations.

EFFECTIVE DATE: This rule is effective March 3, 1989, for application to the wage rate year beginning July 1, 1988, and the rate year for other items beginning January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Arthur B. Sforza, Director, Office of Ship Operating Assistance, Maritime Administration, Washington, DC 20590. Telephone (202) 366–2323.

SUPPLEMENTARY INFORMATION: On April 26, 1988, MARAD published in the **Federal Register** (53 FR 14822) a notice of proposed rulemaking (NPRM) to amend the regulation governing the procedures for determining ODS for liner vessels operated in the foreign commerce of the United States. The proposed amendment would permit the regression by one year of the U.S./foreign cost relationship used in the determination of wage subsidy rates, and would adjust the period of exchange rate experience used in wage rate calculations.

MARAD has recalled permanently its Foreign Maritime Representatives whose responsibilities included the collection of foreign wage cost information used in the calculation of wage subsidy rates. The elimination of MARAD's foreign posts delays the collection of foreign wage cost data applicable to the annual subsidy rate calculations.

To avoid potential delays in the finalization of wage subsidy rates while continuing to maintain a fair and reasonable determination of the U.S./foreign wage cost differential, MARAD is amending § 282.21(f) to provide for the comparison of U.S. and foreign wage costs as of January 1 of the fiscal year preceding the subsidized fiscal year. The percentage relationship of foreign to U.S. wage costs resulting from the comparison would be applied to the full U.S. wage costs determined as of January 1 of the subsidized fiscal year to derive the corresponding foreign wage amount used in the subsidy rate calculation. The foreign flags for which the wage cost determination are made would continue to be those flags identified on the basis of data from the penultimate calendar year preceding January 1 of the subsidized year.

MARAD is also amending § 282.21(f) to provide that the exchange rates used to convert the foreign wage cost estimates into U.S. dollars are the average end-month exchange rates for the period July through June that includes the January 1 for which the foreign costs are determined. The regulation presently provides a seven-month period for exchange rates to permit timely ODS rate calculations. However, the regression of the U.S./foreign wage cost comparison by one year would permit the use of exchange rates for a twelve-month period without delaying final rate calculations. MARAD considers the use of twelve months of exchange rates perferable to the shorter seven-month period.

The NPRM provided a period for public comment that expired on June 27, 1988. Written comments were received from one party, Matson Navigation Company, Inc. (Matson), on June 27, 1988. Matson is an unsubsidized carrier that operates exclusively in the domestic trades including a service from Hawaii to the U.S. West Coast. American President Lines, Ltd. (APL), a subsidized operator, has applied for service to and from Hawaii as part of the company's service from the U.S. West Coast to the Far East. A hearing has commenced under section 805(a), Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1223), in which Matson has intervened.

Matson focused its attention on the receipt of subsidy by ODS contractors operating subsidized vessels in "mixed voyages" in which cargo is carried in both domestic and foreign commerce. Matson's basic contention is that procedures currently followed in the administration of the ODS program allow payment of wage subsidy in excess of the amount required to place ODS operators on a cost parity with their principal foreign competitors and, therefore, create an unfair competitive advantage against the unsubsidized, exclusively domestic operators. Matson maintains that under certain conditions (a continually declining U.S. dollar *vis-a-vis* other foreign currencies) a nonsubsidized operator is further disadvantaged by a rate methodology which does not include current full-year exchange rates applied to current foreign wage cost data. Matson urges the return to a system that requires the use of current full-year exchange rates applied to current foreign wage cost data.

Matson's basic contention that procedures currently used for the calculation of ODS allow payment of wage subsidy in excess of parity refers to arguments that the operator put forth in Docket S–801, the section 805(a) hearing in which Matson intervened. Matson contends that the indexing system adopted in the 1970 amendments to the Merchant Marine Act, 1936, along with the 1986 regulations adopted by MARAD (46 CFR 282) which base ODS payments on estimates with periodic, prospective adjustments, creates a system in which operators may be paid ODS in excess of parity. This argument is used as a prelude to the specific complaints that Matson has with the proposed amendments. As Matson does not seek to argue the merits of the 1970 amendments or the 1986 regulations in this rulemaking proceeding, and inasmuch as these arguments are beyond the scope of this final rule, MARAD will not address those contentions.

However, Matson's specific objections to this final rule are directed at the very basis of the changes incorporated in this rule, and merit review. Matson's complaints are twofold: (1) That a twelve month cycle should be employed in the determination of a final exchange rate, as opposed to the seven month cycle that is now being used; and (2) that the full year employed to determine the final exchange rate should correspond to the current twelve month subsidy rate period, July to July, and that the exchange rates should be applied to foreign wage costs determined for that period.

MARAD's principal goal in adopting and implementing 46 CFR 282 in 1986 was to provide a means for determining and paying subsidy in a more timely and more predictable manner. This enables operators receiving ODS to budget and to plan more accurately. To accomplish a more timely determination of ODS, the current procedures in 46 CFR 282 reduced the period for analysis of end-month exchange rates from twelve months (July to July) to seven months (July to January). Exchange rates from the seven months are applied to the current foreign wage data to determine foreign wage costs. The regression of the U.S./foreign wage cost comparison by one year as proposed in the NPRM permits the use of exchange rates for a twelve-month period without delaying final rate determinations.

Matson agrees that MARAD should return to a twelve-month exchange rate cycle. However, Matson further urges a return to the procedure that MARAD formerly used, that is, the foreign wage costs used in the ODS rate calculation should be determined by applying the current year exchange rates to the current year foreign wage cost data.

Matson argues that by regressing data a full year, unsubsidized operators will be disadvantaged *vis-a-vis* ODS operators on "mixed voyages," in periods when the U.S. dollar is in a continual decline in comparison with foreign currencies. Under this scenario, the difference between U.S. and foreign wages continues to shrink. Therefore, the difference between the currencies and exchange rates is greater at the close of the regressed year than in the current year. The subsidy rate will also be greater at the close of the regressed year than during the rate year. This argument is correct, as far as it goes. However, Matson views the situation from only a single approach. While a declining U.S. dollar is the current economic scenario, historically the U.S. dollar has both increased and decreased *vis-a-vis* foreign currencies. In other words, the recent decline of the U.S. dollar should not be viewed as a permanent situation. In those situations where the U.S. dollar is strengthening, Matson's contention with respect to the ODS operator having an advantage would be reversed. Furthermore, it is difficult to imagine that a nonsubsidized operator could be seriously disadvantaged under any scenario. Section 605(a) of the Merchant Marine Act provides that for subsidized voyages having a domestic cargo leg, ODS for the entire voyage is reduced by the same ratio that the domestic cargo revenue bears to the gross revenue derived from the entire voyage.

The Merchant Marine Act, 1936, as amended, provides that ODS is based on a fair and reasonable estimate of foreign costs. The current procedures in 46 CFR Part 282 and the proposed procedures with respect to wage cost regression conform to that requirement. MARAD also does not believe that Matson's objections to the proposed rulemaking are sufficiently compelling to prevent MARAD from adopting the proposed procedures as a Final Rule.

Analysis of Regulatory Impacts

This amendment has been reviewed under Executive Order 12291, and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of $100 million or more. There will be no increase in production costs or prices for consumers, individual industries, Federal, State or local governments, agencies, or geographic regions. Furthermore, it will not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This amendment is not significant within the definition in DOT's Regulatory Policies and Procedures, 49 FR 11034 (1979), in part because it does not involve any change in important Departmental policies. Because the economic impact should be minimal, further regulatory evaluation is not necessary. Moreover, the Maritime Administrator certifies that this amendment will not have a significant

economic impact on a substantial number of small entities.

This amendment does not significantly affect the environment. An environmental impact statement is not required under the National Environmental Policy Act of 1969. It has also been reviewed under Executive Order 12612, Federalism, and it has been determined that it does not have sufficient implications for federalism to warrant preparation of a Federalism Assessment.

Finally, the amendment is exempt from the Paperwork Reduction Act because it does not include new information requirements.

List of Subjects in 46 CFR Part 282

Liner cargo vessels, ODS program, Water transportation.

Accordingly, 46 CFR Part 282 is amended as follows:

PART 282—[AMENDED]

1. The authority citation for Part 282 is revised to read as follows:

Authority: Secs. 204(b), 603, 606 Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1114(b), 1173, 1176); 49 CFR 1.66.

2. Section 282.21(f) introductory text, (f)(2), and (f)(3) introductory text are revised to read as follows:

§ 282.21 Wages of officers and crews.

* * * * *

(f) *Method of calculating foreign wage costs.* The foreign wage cost (FC) of the principal foreign-flag competitors and the comparable WC of the subsidized vessel are matched as of January 1 of the last fiscal year preceding the subsidized fiscal year for purposes of determining the wage cost of the principal foreign flags. The following procedures are used:

* * * * *

(2) *Method.* The method of calculating FC shall be the same as that used for WC, provided that it is possible to obtain foreign cost data on the same basis as wage cost data. Preference shall be given to pricing out for fixed costs and to cost experience for variable costs. Where applicable, foreign currencies shall be converted into U.S. currency equivalents by using the average of end-month exchange rates for the period July through June that includes the January 1 for which FC is calculated. The exchange rates shall be obtained from the publication, "International Financial Statistics," published monthly by the International Monetary Fund. If exchange rates for particular foreign currencies are not available in this publication, they shall be obtained from the United States Department of the Treasury.

(3) *Foreign wage costs.* The per diem composite foreign wage cost is determined by multiplying the per diem WC for the U.S. ship type, calculated as of January 1 of the subsidized fiscal year, by the ratio of FC to WC, calculated as of January 1 of the last fiscal year preceding the subsidized fiscal year. The following is a sample calculation of the foreign cost percentage.

* * * * *

By order of the Maritime Administrator.

Date: January 27, 1989.

James E. Saari,

Secretary, Maritime Administration.

[FR Doc. 89-2324 Filed 1-31-89; 8:45 am]

BILLING CODE 4910-81-M

Proposed Rules

Federal Register
Vol. 54, No. 20
Wednesday, February 1, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 89-009]

Importation of Birds

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of extension of comment period.

SUMMARY: We are extending the comment period for a proposed rule that would amend the regulations governing the importation of animals and animal products to allow birds that originate in the United States, and the offspring of those birds, to be imported under specified conditions from an approved closed breeding facility without quarantine in the United States. This extension will provide interested persons with additional time in which to prepare comments on the proposed rule.

DATES: Consideration will be given only to written comments that are postmarked or received on or before March 8, 1989.

ADDRESSES: Send an original and two copies of written comments to Helene R. Wright, Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 88-101. Comments received may be inspected at USDA, Room 1141, South Building, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Wade H. Ritchie, Staff Microbiologist, Import-Export Animals Staff, VS, APHIS, USDA, Room 764, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8590.

SUPPLEMENTARY INFORMATION: On December 6, 1988, we published in the **Federal Register** (53 FR 49193, Docket No. 88-101) a proposed rule that would amend the regulations in 9 CFR Part 92 governing the importation of animals and animal products. The proposed rule would establish provisions allowing birds to be imported into the United States without quarantine in the United States, if the birds are imported under specified conditions from a country free of viscerotropic velogenic Newcastle disease, from a closed breeding facilty containing only birds that originated in the United States and the offspring of those birds. Comments on the proposed rule were required to be postmarked or received on or before February 6, 1989.

We have received requests from several industry representatives to extend the comment period on the proposed rule. In response, we are extending the comment period so that we may consider all written comments postmarked or received on or before March 8, 1989. This action will allow the requestors and all other interested persons additional time to prepare comments.

Done at Washington, DC, this 26th day of January 1989

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-2278 Filed 1-31-89; 8:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

[Docket No. PRM-20-19]

GE Stockholders Alliance; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of receipt.

SUMMARY: The Commission is publishing for public comment a notice of receipt of a petition for rulemaking dated October 31, 1988, which was filed with the Commission by the GE Stockholders Alliance. The petition was docketed by the Commission on November 2, 1988, and has been assigned Docket No. PRM-20-19. The petitioner requests that the Commission amend its regulations to require that a detectable odor be injected into the emissions of nuclear power plants and other nuclear processes over which the NRC has jurisdiction.

DATE: Submit comments by April 3, 1989. Comments received after this date will be considered if it is practical to do so but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Submit written comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington DC 20555, Attention: Docketing and Service Branch.

For a copy of the petition, write the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

The petition and copies of comments received may be inspected and copied for a fee at the NRC Public Document Room, 2120 L Street, NW., Lower Level, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Acting Chief, Rules Review Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-8926 or Toll Free: 800-368-5642.

SUPPLEMENTARY INFORMATION: The petitioner requests that the NRC issue a regulation to require that a detectable odor be injected into the emissions of nuclear power plants and other nuclear processes over which the NRC has jurisdiction. The petitioner requests that the suggested requirement be imposed through an emergency rulemaking. The petition would require an amendment to the regulations contained in 10 CFR Part 20. Part 20 contains the Commission's Standards for Protection Against Radiation. A requirement of the type requested by the petitioner would result in the addition of the provision to § 20.106, "Radioactivity in Effluents to Unrestricted Areas."

The petitioner believes that compliance with the suggested requirement by Commission licensees would immeasurably improve the health and safety of the public by providing for early detection of radiation leaks. The

petitioner states that a detectable odor would give the public notice of the need to take health-protective measures.

The petitioner states that scientific studies prove that even the smallest amount of ionizing radiation may cause harmful health effects. The petitioner states that there is ample evidence that radiation causes increased infant mortality, genetic abnormalities, cancer, and a lowering of the immune system which makes the body more susceptible to disease. The petitioner states that records demonstrate that radiation plumes are erratic and unpredictable in their dispersion upon release because of varying weather and geo-physical characteristics of the terrain.

The petitioner also states that the natural gas industry observed the danger of odorless, colorless gas in its original state, and now requires inexpensive, non-toxic, recognizable odors to be injected into gas for commercial and domestic use. The purpose of the odor-additive is to help people detect gas leaks, and thereby provide confidence that the use of gas is safe.

Dated at Rockville, Maryland, this 27th day of January, 1989.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 89-2298 Filed 1-31-89; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 414

Trade Regulation Rule; Deception as to Transistor Count of Radio Receiving Sets, Including Transceivers

AGENCY: Federal Trade Commission.

ACTION: Advance Notice of Proposed Rulemaking (ANPR).

SUMMARY: The Federal Trade Commission announces its intention to begin a rulemaking proceeding for the trade regulation rule concerning deception as to transistor count of radio receiving sets, including transceivers ("Transistor Rule" or "Rule"). The proceeding will address whether the Transistor Rule should remain in effect without changes or should be repealed. The Commission invites public comment on how the Transistor Rule has affected consumers, business and others.

Because the Rule contains no information collection requirements, the Commission is not specifically seeking comments as to whether the Rule imposes unnecessary recordkeeping and disclosure requirements (Paperwork Reduction Act, 44 U.S.C. 3501-3518). Further, the Rule has not had significant economic impact on small entities so no comments are sought pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et. seq.*

DATES: Written comments will be accepted until March 3, 1989.

ADDRESS: Written comments should be addressed to the Secretary, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580. All comments should be captioned: "ANPR Comment—Transistor Rule."

FOR FURTHER INFORMATION CONTACT: Robert E. Easton, Esq., Special Assistant—Enforcement, (202) 326-3029, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Part A—Background Information

This notice is being published pursuant to section 18 of the Federal Trade Commission Act, 15 U.S.C. 57a *et seq.*, the provisions of Part 1, Subpart B of the Commission's Rules of Practice, 16 CFR 1.7, and 5 U.S.C. 551, *et seq.* This authority permits the Commission to promulgate, modify and repeal trade regulation rules that define with specificity acts or practices that are unfair or deceptive in or affecting Commerce within the meaning of section 5(a)(1) of the FTC Act, 15 U.S.C. 45.

The Transistor Rule declares that it is an unfair method of competition and an unfair or deceptive act or practice in connection with the sale of radio receiving sets including transceivers to represent directly or by implication that a radio set contains a specified number of transistors when the transistors counted do not function to detect, amplify or receive radio signals.

The Transistor Rule was adopted on May 14, 1968 and became effective on December 10, 1968.

Part B—Objectives

The objective of this rulemaking proceeding is to determine whether the Commission's Transistor Rule Should remain in effect without changes or be repealed. To assist the Commission in reaching its determination, the Commission will seek evidence on the following factual issues: (1) Whether there are any benefits from the Transistor Rule and, if so, whether they are greater than its costs; and (2) whether radio technology and marketing have changed so that the Rule is no longer needed.

The Commission is undertaking this rulemaking proceeding as part of the Commission's ongoing program of evaluating trade regulation rules to determine their current effectiveness and impact.

Part C—Alternative Actions

The Commission does not plan to consider alternatives to repealing the Transistor Rule or leaving it in effect as it is.

Part D—Request for Comments

Members of the public and invited to comment on any issues or concerns they believe are relevant or appropriate to the Commission's review of the Transistor Rule. A comment that includes the reasoning or basis for a proposition will likely be more persuasive than a comment without supporting information. The Commission requests that factual data upon which the comments are based be submitted with the comments. In this section, the Commission identifies a number of issues on which it solicits public comment. The identification of issues is designed to assist the public to comment on relevant matters and should not be construed as a limitation on the issues or the public comment.

Question

(1) Do manufacturers and retailers of radios and transceivers (walkie-talkies) currently use transistor counts as a means of marketing their products (this question does not apply to integrated circuits which are not covered by the Rule)?

(2) Are transistors currently used in radios and transceivers to detect, amplify or receive radio signals?

(3) Is the use of transistors in radios and transceivers considered "state of the art" technology?

(4) Is promotion of the number of transistors in radios or transceivers a useful marketing strategy?

(5) Is the number of transistors contained in a radio or transceiver customarily disclosed on the set itself or in promotional material such as advertisements?

(6) Are retail store sales personnel informed of the transistor count of radios and transceivers and/or instructed to mention such count to customers?

(7) What are the costs to manufacturers and sellers of radios and transceivers imposed by the Rule?

(8) What are the benefits to consumers from the Rule?

(9) Should the Rule be kept in effect or should it be repealed?

List of Subjects in 16 CFR Part 414

Transistors, Trade practices.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 89-2313 Filed 1-31-89; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 141 and 178

Withdrawal of Proposed Customs Regulations Amendment Relating to Entry of Consolidated Shipments

AGENCY: Customs Service, Treasury.

ACTION: Withdrawal of proposed rule.

SUMMARY: This document withdraws a proposal to amend the Customs Regulations relating to the entry procedures for consolidated shipments of imported merchandise.

Customs had proposed that in the case of consolidated shipments by common carrier, entry shall not be made by a broker appointed by the consignee named in the master bill of lading or master air waybill (master bills), if a consignee on any one of the individual bills of lading or individual air waybills (individual bills) which make up the master bills has designated that the entry will be made by another broker or by the actual owner or purchaser, or has specified that entry is to be made at a different port of entry. Customs had further proposed that if entry were made by a broker named in the master bill, he would be required to submit with the entry filed with Customs a signed statement that none of the stated conditions were specified in any of the individual bills. If this signed statement were not provided, separate entry was to be accomplished for each package in the consolidated shipment by the importer of record or its broker. The goal of the proposal was to provide Customs with a means to ensure that importers' specific instructions on their shipping documents were honored by carriers.

After analysis of the comments received in response to the proposal and further review of the matter it has been determined that Customs should not put itself in the position of refereeing contractual agreements between parties regarding the selection of a customs broker to make entry. Therefore, the proposal is being withdrawn.

DATE: Withdrawal effective February 1, 1989.

FOR FURTHER INFORMATION CONTACT: Michele Struzzieri, Entry Rulings Branch (202-566-5856).

SUPPLEMENTARY INFORMATION:

Background

On December 24, 1985, Customs published a notice in the **Federal Register** (50 FR 52532), proposing to amend § 141.11, Customs Regulations (19 CFR 141.11), relating to evidence of the right to make entry for importations by common carrier for consolidated shipments.

The proposal provided that in the case of consolidated shipments by common carrier, entry was not to be made by a broker appointed by the consignee named in the master bill of lading or master air waybill if (1) a consignee on any one of the individual bills of lading or individual air waybills which make up the master bill of lading or master bill of lading or master air waybill designated another broker to make entry, or (2) any one of the individual bills of lading or individual air waybills indicated that entry was to be made by the actual owner or purchaser.

The proposal further provided that if entry were to be made by a broker appointed by the consignee named in the master bill of lading or master air waybill, the broker would be required to submit with the entry filed with Customs a signed statement to the effect that none of the individual bills of lading or individual air waybills making up the master bill of lading or master air waybill (i) designated a broker, or a different broker from the one identified in the master bill of lading or master air waybill, or (ii) indicated that entry will be made by the actual owner or purchaser, or (iii) specified that entry is to be made at a different port of entry. If the signed statement were not submitted, separate entry would be required for each package in the consolidated shipment by the importer of record or its broker, as appropriate.

The purpose of the proposal was to ensure that importers' specific instructions on their shipping documents were honored by carriers. Customs was trying to support the wishes of consignees actually named in individual bills of lading to have entry made by brokers of their own choosing or at ports of entry of their choosing.

The proposed amendments did not apply to those aspects of express delivery operations, courier service operations, or similar delivery operations not involving consolidated shipments or delivery operations not using individual house bills of lading or air waybills. The proposed procedures also were not to apply to any shipment if the shipper contractually agreed that the carrier was to be the consignee and could appoint a broker of its own choosing to make entry.

Twenty-eight comments were received in response to the notice of proposal. It was apparent from the comments that the proposal was not completely understood by the public. Subsequently, Customs determined that the proposal be modified. The modified proposal was published in the **Federal Register** (52 FR 42310) on November 4, 1987, allowing for further opportunity for comment. After a request had been received to extend the comment period, a notice was published in the **Federal Register** (53 FR 30), on January 4, 1988, extending the time for comments until February 18, 1988.

Discussion of Comments

Sixteen comments were received and most were opposed to the proposal. The proposal was considered by many of the commenters as unnecessary and commercially burdensome. After careful consideration of all the comments received and further review of the matter, it has been determined that Customs should not be involved in refereeing contractual agreements between parties regarding the selection of a customs broker to make entry.

Conclusion

In accordance with the above discussion, Customs is withdrawing the proposal published in the **Federal Register** on November 4, 1987, to amend the Customs Regulations relating to the entry procedures for consolidated shipments of imported merchandise.

Drafting Information

The principal author of this document was Harold M. Singer, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

William von Raab,

Commissioner of Customs.

Approved: January 26, 1989.

Salvatore R. Martoche,

Assistant Secretary of the Treasury.

[FR Doc. 89-2310 Filed 1-31-89; 8:45]

BILLING CODE 4820-02-M

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 353

[Docket No. 90110-9010]

Antidumping Duties

AGENCY: International Trade Administration (Import Administration), Department of Commerce.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: The Department is considering initiating a rulemaking proceeding with respect to the so-called substantive provisions of its Antidumping Regulations. The overall objectives of this rulemaking proceeding would be to: (1) Change existing administrative practice in order to simplify and streamline the Department's administration of antidumping proceedings; (2) codify existing administrative practice, to the extent such codification is consistent with the first objective; and (3) resolve inconsistencies in the Department's administrative practice.

DATE: The Department will accept written comments until March 20, 1989.

ADDRESS: Send comments (five copies) to William D. Hunter, Deputy Chief Counsel for Import Administration, Room B-099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230. Comments should be addressed: Attention: Advance Notice of Proposed Rulemaking/Amendments to Antidumping Regulations.

FOR FURTHER INFORMATION CONTACT: William D. Hunter, (202) 377-1411.

SUPPLEMENTARY INFORMATION:

Background Information

The Department is considering initiating a rulemaking proceeding with respect to the so-called substantive provisions of its Antidumping Regulations. The overall objectives of this rulemaking proceeding would be to: (1) Change existing administrative practice in order to simplify and streamline the Department's administration of antidumping proceedings; (2) codify existing administrative practice, to the extent such codification is consistent with the first objective; and (3) resolve inconsistencies in the Department's administrative practice.

The substantive provisions of the Antidumping Regulations deal with the methods by which the Department calculates the existence and amount of dumping margins. These regulations, which currently are contained in Subpart A of the Antidumping Regulations, 19 CFR 353.2 to 353.24, for the most part reflect the administrative practice of the U.S. Department of the Treasury and its constituent unit, the U.S. Customs Service, prior to the transfer of responsibility for administration of the antidumping law to the Department in 1980.

Since the Department assumed responsibility for the antidumping law, the Department has engaged in two significant rulemaking proceedings. The first, completed in 1980, largely promulgated procedures conforming to the major procedural revisions enacted in the Trade Agreements Act of 1979 (Pub. L. 96-39; July 26, 1979) ("1979 Act"). The second rulemaking proceeding, which is nearing completion, also dealt largely with procedures, modifying the Antidumping Regulations to (1) conform to the provisions of Title VI of the Trade and Tariff Act of 1984 (Pub. L. 98-573; October 30, 1984) ("1984 Act"); and (2) incorporate needed improvements identified by the Department and others as a result of practical experience with the administration of the antidumping law, as amended by the 1979 Act.

With respect to antidumping methodology, however, the Department has developed its methodology largely through adjudication of individual cases. In part, this was an inevitable result of the Department's inexperience in administering the antidumping law. In addition, a certain amount of administrative flexibility has proven necessary in order to deal with the novel factual situations which continually arise. Nevertheless, the case-by-case approach has produced certain undesirable consequences.

First, as a result of the Department's eight years of adjudicating antidumping proceedings, there is now a substantial gloss on the existing Antidumping Regulations in the form of administrative practice. This administrative practice is not readily accessible to the public. One objective of a rulemaking proceeding would be to codify this practice in the form of regulations, thereby making the antidumping law and the Department's antidumping methodology more accessible to the public.

Another consequence of the adjudicative approach is that in some instances the Department has issued inconsistent determinations, a failing for which Congress chastised the Department in the legislative history of the Omnibus Trade and Competitiveness Act of 1988. H.R. Rep. No. 40, 100th Cong., 1st Sess. (pt. 1) 143 (1987). Therefore, another objective of rulemaking would be to codify and clarify the Department's antidumping methodology so as to avoid unwarranted inconsistencies in the future.

Finally, based upon its experience in administering the antidumping law, the Department is concerned that the substance and procedures of the law may have become so complicated as to reduce the usefulness of the antidumping law as a tool in combatting unfair foreign pricing practices. Therefore, the Department is seeking ways in which to streamline and simplify antidumping proceedings for all parties concerned (including the Department), without sacrificing substantive and procedural fairness.

The Department already has identified certain likely amendments which should be made to the Antidumping Regulations. However, before initiating a rulemaking proceeding, and in order to accomplish the objectives noted above, the Department invites public comment on proposed amendments to the Antidumping Regulations. Although the Department is most concerned with amending those provisions of the Antidumping Regulations dealing with the calculation of dumping margins, the Department also is interested in procedural suggestions which will help to streamline and simplify antidumping proceedings. In addition, while the Department intends to initiate a separate rulemaking proceeding to incorporate into the Antidumping Regulations certain of the statutory changes made to the antidumping law by the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418; August 23, 1988), commenters may, if they so desire, submit suggestions concerning the 1988 Act amendments as part of their response to this notice.

Rulemaking Procedures

If the Department determines that any amendment proposed in response to the Advance Notice of Proposed Rulemaking is appropriate, a notice of proposed rulemaking asking for public comment on a specific proposed amendment or amendments shall be published in the **Federal Register**.

Request for Comments

The Department has not reached any conclusions concerning any of the matters raised herein. The Department wishes to receive public comments on all aspects of the Department's administration of the antidumping law. The Department believes that such public comment would enhance its understanding of the issues and problems that need to be addressed. Therefore, interested persons are invited to address any issue of law, policy, or procedure, and to suggest appropriate amendments to the Antidumping Regulations which the Department should consider.

List of Subjects in 19 CFR Part 353

Business and industry, Foreign trade, Imports, Trade practices.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 89-2360 Filed 1-31-89; 8:45 am]

BILLING CODE 3510-DS-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3512-8]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Extension of public comment period.

SUMMARY: On November 23, 1988 (53 FR 47549), the USEPA proposed to approve a revision to the ozone portion of the Ohio State Implementation Plan for the Mansfield Products Company, Mansfield, Ohio.

At the time the proposed rulemaking, 30-day comment period was provided. The Ohio Environmental Protection Agency requested an extension of the public comment period. USEPA is extending the public comment period for an additional 30 days to January 23, 1989.

DATE: Comments must be postmarked on or before January 23, 1989.

ADDRESS: If possible please send an original and three copies of all comments. Comments should be submitted to: Gary Gulezian, Regulatory Analysis Section (5AR-26), Air and Radiation Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Maggie Greene, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6088.

Authority: 42 U.S.C. 7401-7642.

Dated: January 13, 1989.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 89-2274 Filed 1-31-89; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 11

Natural Resource Damage Assessments

AGENCY: Department of the Interior.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of the Interior (the Department) intends to begin the biennial review of the type A natural resource damage assessment regulations promulgated as a final rule on March 20, 1987, and codified at 43 CFR Part 11. The natural resource damage assessment regulations were developed pursuant to section 301(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA). Section 301(c)(3) of CERCLA requires that the regulations be reviewed by the Department every two years and revised as appropriate.

The Department has promulgated two types of assessment regulations: Standard procedures for simplified assessments requiring minimal field observation (type A procedures); and procedures for complex assessments (type B procedures). The March 20, 1987, final rule contains the type A procedure for use in coastal and marine environments. To meet the two-year review requirement of CERCLA, the Department is now requesting public comments on experience gained with the type A procedure and with the computer model, "Natural Resource Damage Assessment Model for Coastal and Marine Environments" (NRDAM/CME), incorporated by reference in the type A rule. If it is determined, after review of comments received in response to this Advanced Notice of Proposed Rulemaking, that the March 20, 1987, final type A rule containing the NRDAM/CME should be revised, a Notice of Proposed Rulemaking will be published in the **Federal Register**.

Comments submitted in response to this Notice should address only the type A procedure for coastal and marine environments and the NRDAM/CME. Any concerns with the general assessment process and the type B procedures, or the development of additional type A procedures will be handled in separate Notices published in the **Federal Register** (to date *see* 53 FR 15714 and 53 FR 20143, respectively).

DATE: Comments will be accepted through April 3, 1989.

ADDRESS: Office of Environmental Project Review, ATTN: NRDA Regulations, Room 4239, Department of the Interior, 1801 C Street NW., Washington, DC 20240. (Regular business hours 7:45 a.m. to 4:15 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: David Rosenberger or Linda Burlington (202) 343-1301.

SUPPLEMENTARY INFORMATION:

I. Background

Section 301(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601 *et seq.*, requires the promulgation of regulations for the assessment of damages for injury to, destruction of, or loss of natural resources resulting from a discharge of oil or a release of a hazardous substance for the purposes of CERCLA and section 311(f)(4) and (5) of the Clean Water Act (CWA), 33 U.S.C. 1251 *et seq.* (also known as the Federal Water Pollution Control Act).

Section 107 of CERCLA provides that, in addition to cost-recovery for response and cleanup actions, natural resource trustees may recover damages for injury to natural resources, including the reasonable costs of assessing such injury, plus any prejudgment interest. Federal and State natural resource trustees may bring an action for damages under sections 107(f) and 111(b) of CERCLA. Indian tribes may commence an action as natural resource trustees under section 126(d). Federal natural resource trustees are designated by Executive Order 12580 and the National Contingency Plan (NCP). They are, in general, those departments and agencies that have natural resources or land management responsibilities. State natural resource trustees are State officials designated by the Governors. These State designations are reported to the Administrator of the U.S. Environmental Protection Agency (EPA). Natural resources are defined by CERCLA to be: Land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed, by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established under the Magnuson Fishery Conservation and

Management Act of 1976), any State or local government, any foreign government, any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian tribe. The damages that may be sought by natural resource trustees are for the injury to, destruction of, or loss of natural resources resulting from a discharge of oil or a release of a hazardous substance.

Section 301(c), revised by the Superfund Amendments and Reauthorization Act of 1986 (SARA), calls for the natural resource damage assessment regulations in the following terms:

(c)(1) The President, acting through Federal officials designated by the national Contingency Plan published under Section 105 of this Act, shall study and, not later than two years after the enactment of this Act, shall promulgate regulations for the assessment of damages for injury to, destruction of, or loss of natural resources resulting from a release of oil or a hazardous substance for the purpose of this Act and section 311(f)(4) and (5) of the Federal Water Pollution Control Act. Notwithstanding the failure of the President to promulgate the regulations required under this subsection on the required date, the President shall promulgate such regulations not later than 6 months after the enactment of the Superfund Amendments and Reauthorization Act of 1986.

(2) Such regulations shall specify: (A) Standard procedures for simplified assessments requiring minimal field observation, including establishing measures of damages based on units of discharge or release or units of affected area, and (B) alternative protocols for conducting assessments in individual cases to determine the type and extent of short- and long-term injury, destruction, or loss. Such regulations shall identify the best available procedures to determine such damages, including both direct and indirect injury, destruction, or loss and shall take into consideration factors, including, but not limited to, replacement value, use value, and ability of the ecosystem or resource to recover.

(3) Such regulations shall be reviewed and revised as appropriate every two years.

Executive Order 12316 of August 14, 1981, replaced by Executive Order 12580 of January 23, 1987, delegated the responsibilities contained in section 301(c) to the Secretary of the Interior. On August 1, 1988 (51 FR 27674), the Department published a final rule that provides the general process for conducting natural resource damage assessments, and the alternative methodologies for conducting assessments in individual cases, otherwise known as the "Type B" procedures. A notice was issued on November 16, 1987 (52 FR 43763), announcing the availability of five final type B technical information documents that were prepared in conjunction with the development of the type B assessment procedures. On March 20, 1987 (52 FR 9042), the Department published a final rule that contains the standard procedures for simplified assessments, known as the "type A" procedures. The type A procedure in that rule is for use in coastal and marine environments and includes the use of a computer model called the Natural Resource Damage Assessment Model for Coastal and Marine Environments (NRDAM/CME). On February 22, 1988 (53 FR 5166), the Department published a final rule to amend 43 CFR Part 11 to conform with amendments to CERCLA brought about by SARA. Finally, on March 25, 1988, the Department published technical corrections to the NRDAM/CME (53 FR 9769). These rules together, codified at 43 CRF Part 11, comprise the natural resource damage assessment regulations called for by section 301(c) of CERCLA. Natural resource damage assessments performed by Federal or State trustees in accordance with these regulations are provided the legal evidentiary status of a rebuttable presumption in an administrative or judicial proceeding, as provided by section 107(f)(2)(C) of CERCLA.

II. Discussion

In order to carry out the statutory requirement of the two-year review of the type A natural resource damage assessment regulations, the Department is seeking public comment reflecting experience with the current type A procedure for use in coastal and marine environments.

Over the course of developing the type A rule, beginning with the Advance Notice of Proposed Rulemaking published in January of 1983 (see 48 FR 1084), the Department already has received many comments on the natural resource damage assessment regulations. Comments specific to the current type A procedure were received on the proposed type A rule published on May 5, 1986 (51 FR 16636). These comments were helpful in developing the current type A procedure for coastal and marine environments. The Department's response to these comments can be found in the preamble to the final type A published in March 1987 (see 52 FR at 9049). The Department is now asking for information based upon experiences with applications of the type A procedure for use in coastal and marine environments. Comments should focus on Subpart D and §§ 11.31(d) and 11.33 of Subpart C of 43 CFR Part 11, which pertain to the current type A procedure. The Department is also requesting technical information and data that would assist in updating the algorithms and databases contained within the NRDAM/CMA, and information drawn from any new technology or data not available when the NRDAM/CME was developed.

For reference in preparing comments to the above request, the Department is providing a brief overview of the natural resource damage assessment process. Specific discussion regarding the current type A procedure for use in coastal and marine environments is described within this overview. It should be noted that the natural resource trustee has the option of using the rules or of performing an assessment based on some other procedure. However, assessments performed in accordance with 43 CFR Part 11 will be given a rebuttable presumption in an action to recover damages. The discussion that follows describes the major phases in the assessment process and the progression of these phases through a type A assessment using the NRDAM/CME.

Upon notification or detection of a discharge or release, the natural resource trustee may begin the Preassessment phase. The purpose of the Preassessment phase is to establish that a CERCLA or CWA-covered incident has occurred and that resources of the trustee may have been affected. A Preassessment Screen Determination is required to determine whether to proceed with further assessment actions.

If the Preassessment Screen Determination indicates that further actions are warranted, the trustee may proceed to the Assessment Plan phase. The trustee must develop an Assessment Plan before initiating an assessment. The trustee is also required to coordinate with other co-trustees, to make reasonable efforts to identify and involve the potentially responsible party, and to offer the public an opportunity to review the Assessment Plan. For a type A natural resource damage assessment, the Assessment Plan must document the decision to conduct a type A assessment, as specified in § 11.33(a) and (b)(1). The Assessment Plan must also document the specific parameter values to be used as data inputs in the application of the NRDAM/CME, as required by § 11.31(d) and delineated in § 11.41(e). For the NRDAM/CME, these parameter values include, for example, the mass of the material spilled, depth of the water column, wind speed and direction, and quantity of material cleaned up. Other parameter values are also required that define the boundaries of the study area and its ecological characteristics.

After the trustee develops the Assessment Plan, he may proceed with the assessment phase, which is carried out by the NRDAM/CME, based upon the user input parameter values identified in the Assessment Plan and the interactive technical databases contined within the NRDAM/CME. A detailed explanation of the NRDAM/CME and its databases has been provided in the technical report "Measuring Damages to Coastal and Marine Natural Resources: Concepts and Data Relevant to CERCLA Type A Damage Assessments," Volumes I and II (referred to as the NRDAM/CME technical document), which is available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161; PB87-142485; ph: (703) 487-4650. Additional discussion of the NRDAM/CME, as well as its applications and limitations, has been given in the preamble to the final type A rule published on March 20, 1987 (at 52 FR 9042).

The NRDAM/CME consists of interactive physical fates, biological effects, and economic damages submodels. The physical fates submodel determines the transport of the substance through the water pathway. The fate of the substance in the water pathway incorporates such factors as evaporation/volatilization, spreading, entrainment, and settling. Various physical, chemical, and toxicological properties of each substance contained in the chemical database are provided to the physical fates submodel to enable computation of the substance's transport. The interaction of the physical fates and biological effects submodels determines injury.

The biological effects submodel quantifies the biological injuries that result from: (1) Direct mortality to adult, juvenile, and larval biota due to toxic concentrations of the spilled substance; and (2) indirect mortality to adult, juvenile, and larval biota due to a loss of foodstuff from the food web. The biological data base within the NRDAM/CME provides data on the biological populations within the ecological system of the NRDAM/CME study area. The submodel calculates losses to biological populations through the period of resource recoverability.

The economic damages submodel calculates dollar amounts for compensation for injuries based on use values. An economic data base is contained in the NRDAM/CME that uses market and nonmarket prices for the services provided by the natural resources. Damages are calculated in the NRDAM/CME for losses resulting from direct and indirect mortality to biota. The NRDAM/CME also calculates damages due to the closure of a fishing area, hunting area, or public beach due to the discharge or release. The extent of an area subject to closure is a data input made by the user of the NRDAM/CME, based upon the actual area closed due to the discharge or release.

Upon completion of the NRDAM/CME computations, the user is returned to the general natural resource damage assessment process. The NRDAM/CME provides a printed output that summarizes the mathematical computations performed to derive the damage amount. The printed output of the NRDAM/CME provides the documentation fo the results of the assessment and is to be included within the Report of Assessment.

When the natural resource damage assessment is complete, several post-assessment actions are required. A Report of Assessment is compiled that includes the documentation of all determinations made during the assessment, data collected, and test results. The Report of Assessment becomes the administrative record of the natural resource damage assessment. The trustee then presents a demand for damages to the potentially responsible party (PRP), and the PRP has the opportunity to respond to the demand. Any damage awards are to be placed in a separate account for use by the trustee to restore or replace the natural resources injured by the discharge or release. The trustee must develop a Restoration Plan to document the actions that are planned to restore or replace the injured resource. The Plan must be developed based on the amount of the damage award.

III. Conclusion

The Department is seeking comments based on experiences in applying the current type A procedure outlined in the rule, which is described above. Comments should address the following, although not necessarily be limited to these questions: (1) Where and how has the assessment process and the type A procedure been applied, for example, geographical location, environmental setting, etc.?; (2) how effective was the current type A procedure in these applications?; (3) in what type of situation has the type A rule or the NRDAM/CME been used, for example, in settlement negotiations, court actions, etc.?; and (4) what are recommendations for modification of the current type A procedure based on the applications mentioned above?

The Department is seeking technical information and data that may be available to aid in any necessary updating of the NRDAM/CME, its various submodels, or its databases. Technical comments should address, although not necessarily be limited to: (1) The general ease of use of the NRDAM/CME; (2) possible refinements of the algorithms within the submodels of the NRDAM/CME; (3) new modeling technologies or methodologies that were not available at the time of the development of the NRDAM/CME; and (4) current available information and data to update the chemical, biological, and economic databases used in the NRDAM/CME.

Although the NRDAM/CME was subjected to rigorous and numerous tests and evaluations (i.e., sensitivity runs) before being incorporated into the final type A rule, the Department recognizes that computer programs such as the NRDAM/CME or even commercial software applications programs are inherently complex and may not be completely free of coding errors ("bugs"). The Department, in fact, published technical corrections to the NRDAM /CME on March 25, 1988 (53 FR 9769), to correct several such errors that had been found after the final type A rule was published in March of 1987. The Department continues to request information concerning other possible coding errors that may have been identified by users of the model so that such coding errors may be corrected during this review periods.

Dated: January 26, 1989.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 89-2260 Filed 1-31-89; 8:45 am]

BILLING CODE 4310-RG-M

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Cardamine micranthera (Small-anthered Bittercress)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to list *Cardamine micranthera* (small-anthered bittercress), a perennial herb limited to three populations in North Carolina, as an endangered species under the authority of the Endangered Species Act of 1973, as amended (Act). *Cardamine*

micranthera is endemic to Stokes and Forsyth Counties, North Carolina, and is endangered by conversion of habitat for agricultural and silvicultural purposes, floods, stream channelization and impoundment, and encroachment of exotic plants.

This proposal, if made final, would implement Federal protection provided by the Act for *Cardamine micranthera*. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by April 3, 1989. Public hearing requests must be received by March 20, 1989.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Asheville Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Nora Murdock at the above address (704/259-0321 or FTS 672-0321).

SUPPLEMENTARY INFORMATION:

Background

Cardamine micranthera, first described by R. C. Rollins (1940) from material collected in North Carolina in 1939, is an erect, slender, perennial herb with fibrous roots and one (or rarely more) simple or branched stem growing 0.2 to 0.4 meter tall. Basal leaves are 1 to 2 centimeters (cm) long, 0.5 to 0.6 cm wide, crenate, with one (or rarely two) pair of small lateral lobes. The stem leaves are alternate and mostly unlobed, 1 to 1.5 cm long, crenate and cuneate. Flowers and fruits are borne in April and May. The flowers, subtended by leafy bracts, have four white petals, six stamens, and small, round anthers. The fruit is a silique 0.8 to 1.2 cm long and approximately 1 millimeter (mm) in diameter with a beak 1 to 1.2 mm long. The brown seeds are approximately 1 mm long. *Cardamine micranthera* can be distinguished from its most similar relative, *Cardamine rotundifolia*, by its much smaller, nearly orbicular (instead of oblong) anthers, smaller flowers, and more angulate leaves. In *Cardamine micranthera*, the anthers are about 0.5 mm long, and the petals are 1.2 to 2 mm wide; whereas in *Cardamine rotundifolia*, the narrowly oblong anthers measure from 1.2 to 1.6 mm long, and the petals are 2.5 to 3.5 mm wide. Growth habits of the two species differ as well; *Cardamine rotundifolia* has decumbent stems with proliferating branches arising both from the main axis and often from the inflorescences. *Cardamine micranthera* has erect or only basally decumbent stems with no proliferating branches. Also, the siliques and styles of *Cardamine micranthera* are only about half as long as those of *Cardamine rotundifolia* (Rollins 1940, Cooper *et al.* 1977, Radford *et al.* 1964).

Cardamine micranthera is endemic to seepages, streambanks, and moist woods along a few small streams in Stokes and Forsyth Counties, North Carolina. The single population in Forsyth County was destroyed when the site was converted to cattle pasture in the early 1960s. Repeated searches for the single population known at that time from Stokes County were unsuccessful, and the species was presumed extinct (Cooper *et al.* 1977). In 1985, nearly 30 years after the species had last been seen, it was again located in Stokes County by S. W. Leonard (1986). Subsequent searches by A. Weakley (North Carolina Natural Heritage Program) and N. Murdock (Service) resulted in the discovery of two more populations in Stokes County. All three remaining populations are located on privately owned lands. The continued existence of this species is threatened by conversion of its habitat to pasture, habitat destruction and/or desiccation associated with logging, encroachment by aggressive nonnative species such as Japanese honeysuckle (*Lonicera japonica* Thunberg), impoundment or channelization of the small stream corridors it occupies, and flooding and associated scouring of its streambank habitat.

The remaining populations are small in numbers of plants and extent of occupied habitat. The smallest population consists of only 3 plants; the largest, consisting of about 200 plants, occupies less than 1/10 of a mile of streambank. With all three remaining sites in private ownership, the species is extremely vulnerable to extirpation resulting from habitat alteration.

Federal government actions on this species began with section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document Number 94-51, was presented to Congress on January 9, 1975. The Service published a notice in the July 1, 1975, **Federal Register** (40 FR 27832) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act and of its intention thereby to review the status of the plant taxa named within. *Cardamine micranthera* was included in the July 1, 1975, notice of review. On December 15, 1980, the Service published a revised notice of review for native plants in the **Federal Register** (45 FR 82480). *Cardamine micranthera* was included in that notice as a category 1 species. Category 1 species are those species for which the Service currently has on file substantial information on biological vulnerability and threats to support proposing to list them as endangered or threatened. A revision of the 1980 notice that maintained *Cardamine micranthera* in this category was published on September 27, 1985 (50 FR 39526).

Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This is the case for *Cardamine micranthera* because of the acceptance of the 1975 Smithsonian report a petition. In October of 1983, 1984, 1985, 1986, 1987, and 1988, the Service found that the petitioned listing of *Cardamine micranthera* was warranted but precluded by other listing actions of a higher priority and that additional data on vulnerability and threats were still being gathered. Publication of this proposal constitutes the final 1-year finding that is required.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. The species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Cardamine micranthera* Rollins (small-anthered bittercress) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Three populations of *Cardamine micranthera* are known to exist in Stokes County, North Carolina. One other historically known population has been extirpated due to conversion of the habitat to cattle pasture. The three remaining populations are located on privately owned lands and are small and extremely vulnerable to extirpation. Activities that could further threaten the continued existence of *Cardamine micranthera*, if not undertaken in a manner consistent with protection of the species, include impoundment, channelization, conversion of the habitat to pasture, logging, encroachment of exotic species such as *Lonicera japonica*, and flooding (which will be discussed in detail under Factor E below).

B. *Overutilization for commercial, recreational, scientific, or educational purposes. Cardamine micranthera* is not currently a significant component of the commercial trade in native plants. However, because of its small and easily accessible populations, it is vulnerable to taking and vandalism that could result from increased specific publicity.

C. *Disease or predation.* Not applicable to this species at this time.

D. *The inadequacy of existing regulatory mechanisms. Cardamine micranthera* will soon be added as an endangered species to the State list of endangered species in North Carolina (R. Sutter, North Carolina Plant Protection Program, personal communication, 1988) and thus will be afforded legal protection in that State by North Carolina General Statutes, §§ 106-202.12 to 106-202.19 (Cum. Supp. 1985), which provide for protection from intrastate trade (without a permit), for monitoring and management of State-listed species, and prohibit taking of plants without written permission of landowners. State prohibitions against taking are difficult to enforce and do not cover adverse alterations of habitat, such as channelization, impoundment, or conversion for agricultural or silvicultural use. Section 404 of the Federal Water Pollution Control Act could potentially provide some protection for the habitat of *Cardamine micranthera*; however, most, if not all, of the sites where it occurs do not meet the wetlands criteria of the Federal Water Pollution Control Act. The Endangered Species Act would provide additional protection and encouragement of active management for *Cardamine micranthera*.

E. *Other natural or manmade factors affecting its continued existence.* As mentioned in the "Background" section of this proposed rule, the three remaining populations of this species are small in numbers of individual stems and in area covered by the plants. In some cases, aggressive exotic species such as *Lonicera japonica* have invaded adjacent areas and threaten to invade this species' habitat, which could result in the elimination of *Cardamine micranthera*. The natural habitat of this species consists of small streambank seeps and, secondarily, adjacent sandbars and stream edges. At one of the remaining populations, the original seep habitat can no longer be found, and the surviving plants now exist only in the streambed itself on two small sandbars. In this situation, the species is highly vulnerable to natural catastrophes such as floods, which could scour the streambed and eliminate the few remaining plants. In unaltered habitat, where most of the plants occupy the seepages above the actual stream channel, flooding and scouring of the streambed is not as potentially threatening to the species since scoured areas where plants have been eliminated are probably easily recolonized by the populations in the seeps.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Cardamine micranthera* as endangered. With only three populations remaining in existence and one having already been eliminated; and with all the remaining populations being small, highly vulnerable, and located on privately owned lands, the species definitely warrants protection under the Act. Endangered status seems appropriate because of the imminent serious threats facing the three remaining populations. Critical habitat is not being designated for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Cardamine micranthera* at this time. As discussed under Factor B in the "Summary of Factors Affecting the Species" section, *Cardamine micranthera* is threatened by taking and vandalism. Such activities are difficult to enforce against and only regulated by the Act with respect to plants in cases of (1) removal and reduction to possession from lands under Federal jurisdiction, or malicious damage or destruction on such lands; and (2) removal, cutting, digging up, or damaging or destroying in knowing violation of any State law or regulation, including State criminal trespass law. Publication of critical habitat descriptions would make the species even more vulnerable and increase State enforcement problems. All involved parties and landowners will be notified of the location and importance of protecting and managing this species' habitat.

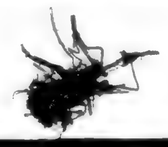
Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal activities that could impact *Cardamine micranthera* and its habitat in the future include, but are not limited to, channelization of streams, construction of impoundments, and issuance of permits for mineral exploration and mining. The Service will work with the involved agencies to secure protection and proper management of *Cardamine micranthera* while accommodating agency activities to the extent possible.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that



apply to all endangered plants. With respect to *Cardamine micranthera*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for listed plants the 1988 amendments to the Act (Pub. L. 100-478) prohibit (1) their malicious damage or destruction on Federal lands, and (2) their removal, cutting, digging, or damaging or destroying in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued, since *Cardamine micranthera* is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 27329, Central Station, Washington, DC 20038-7329 (202/343-4955).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Cardamine micranthera;*

(2) The location of any additional populations of *Cardamine micranthera* and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and,

(4) Current or planned activities in the subject area and their possible impacts on *Cardamine micranthera.*

Final promulgation of any regulation on *Cardamine micranthera* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed withing 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Asheville Field Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Cooper, J., S. Robinson, and J. Funderburg. 1977. Endangered and threatened plants and animals of North Carolina; proceedings of the symposium on endangered and threatened biota of North Carolina. North Carolina State Museum of Natural History, Raleigh, North Carolina. pp 101-102.

Leonard, S. 1986. Pursuing the small-anthered bittercress. North Carolina Wildflower Preservation Society, Spring Newsletter. pp 5-10.

Radford, A., H. Ahles, and C. Bell. 1964. Manual of the vascular flora of the Carolinas. University of North Carolina Press, Chapel Hill, pp. 507-508.

Rollins, R.C. 1940. A new *Cardamine* from North Carolina. Castanea 5(5):8777-88.

Author

The primary author of this proposed rule is Ms. Nora Murdock, Asheville Field Office , U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259-0321 or FTS 672-0321).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411; Pub. L. 100-478, 102 Stat. 2306 (16 U.S.C. 1531 *et seq.*); Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the family Brassicaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and Threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Brassicaceae—Mustard family						
Cardamine micranthera	Small-anthered bittercress	U.S.A. (NC)	E	NA	NA	

Dated: December 22, 1988.

Becky Norton Dunlop,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89-2314 Filed 1-31-89; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 54, No. 20
Wednesday, February 1, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Economic Research Service

National Agricultural Cost of Production Standards Review Board; Meeting

The National Agricultural Cost of Production Standards Review Board will meet at the Economic Research Service, U.S. Department of Agriculture, Washington, DC on February 9–10, 1989.

The purpose of this meeting is to discuss general issues related to USDA's estimation of enterprise costs of production. All meetings will be held in room 332, 1301 New York Avenue NW. The morning sessions on February 9–10 will convene at 9:00 a.m. and the afternoon sessions will convene at 1:30 p.m. Meetings will end at approximately 4 p.m. both days.

All sessions will be open to members of the public who wish to observe. Written comments may be submitted to Kenneth Deavers, Director, ARED–ERS–USDA, Room 314, 1301 New York Avenue, NW., Washington, DC 20250.

For further information, contact Diane Bertelsen at (202) 786–1808.

John E. Lee, Jr.,
Administrator.

[FR Doc. 89–2372 Filed 1–31–89; 8:45 am]
BILLING CODE 3410–18–M

Federal Grain Inspection Service

Designation Renewal of the Frankfort (IN), et al. Agencies

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of the Frankfort Grain Inspection, Inc. (Frankfort), Robert H. Jinks dba Jinks Grain Weighing Service (Jinks), and Robert R. Beals dba Paris Illinois Grain Inspection (Paris) as official agencies responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

EFFECTIVE DATE: March 1, 1989.

ADDRESS: James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced that Frankfort's, Jinks' and Paris' designations terminate on February 28, 1989, and requested applications for official agency designation to provide official services within specified geographic areas in the September 1, 1988, **Federal Register** (53 FR 33829). Applications were to be postmarked by October 3, 1988. Frankfort was the only applicant for designation in its area and applied for designation renewal in the entire area currently assigned to that agency. Jinks was the only applicant for designation in its area and applied for designation renewal in the area described below.

Bounded on the North by the Iroquois County line east to Illinois State Route 1; Illinois State Route 1 south to U.S. Route 24; U.S. Route 24 east into Indiana, to U.S. Route 41;

Bounded on the East by U.S. Route 41 south to the southern Fountain County line; the Fountain County line west to Vermillion County (in Indiana); the eastern Vermillion County line south to U.S. Route 36;

Bounded on the South by U.S. Route 36 west into Illinois, to the Douglas County line; the eastern Douglas and Coles County lines; the southern Coles County line; and

Bounded on the West by the western Coles and Douglas County lines; the western Champaign County line north to Interstate 72; Interstate 72 southwest to the Piatt County line; the western Piatt County line; the southern McLean County line west to a point 10 miles west of the western Champaign County line; a straight line running north to U.S. Route 136; U.S. Route 136 east to Interstate 57; Interstate 57 north to the Champaign County line; the northern Champaign County line; the western Vermilion (in Illinois) and Iroquois County lines.

There were two applicants for the Paris application: Paris applied for designation renewal in the entire area currently assigned to that agency; and Champaign-Danville Grain Inspection Departments, Inc., a neighboring official agency, applied for designation in the entire area currently assigned to Paris.

The Service announced the applicant names in the November 1, 1988, **Federal Register** (53 FR 44051) and requested comments on the applicants for designation. Comments were to be postmarked by December 16, 1988; no comments were received regarding Frankfort's and Jinks' designation renewal. A total of seven comments were received regarding the designation of an official agency in the Paris area. Three comments were received from grain firms recommending the designation renewal of Paris. Three comments, of which two represented the same firm, were received from grain firms recommending the designation of Champaign. These commentors cited dissatisfaction with Paris' service and included concerns regarding timeliness of service and issuance of certificates. One comment was also received from a neighboring official agency recommending the designation of Champaign. The Service has thoroughly reviewed and analyzed all aspects of Paris' operation. The concerns raised by the commentors were also identified by FGIS in its review and have been addressed by Paris. Further, the Service has not identified any other deficiencies that would indicate that Paris fails to meet any designation criteria that would serve as a basis for not renewing its designation.

The Service evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act. In accordance with section 7(f)(1)(B), the Service determined that Frankfort and Jinks are able to provide official services in the geographic area for which the Service is renewing their designations. Jinks did not apply for designation in the following locations, all in Illinois, outside of the above referenced contiguous geographic area: Moultrie Grain Association, Cadwell, Moultrie County; Tabor and Company, Weedman Grain Company, and Pacific Grain Company, all in Farmer City, Dewitt County; Moultrie Grain Association, Lovington, Moultrie County; Monticello Grain Company, Monticello, Piatt County; and Pittwood Grain Company, Pittwood, Iroquois County (located inside Decatur Grain Inspection, Inc.'s area). Since first designated to perform official weighing services on March 1, 1983, there have been no requests for such services at these locations. Therefore, the Service has determined that official weighing services are not needed at these locations at this time and will therefore not be included in the geographic area for which the Jinks designation is being renewed. In accordance with section 7(f)(1)(b) of the Act, the Service has also determined that Paris is better able than any other applicant to provide official services in the geographic area for which the Service is renewing its designation. Effective March 1, 1989, and terminating February 28, 1992, Frankfort is designated to provide official inspection and Class X or Y weighing functions, Jinks is designated to provide official Class X or Class Y weighing functions, and Paris is designated to provide official inspection functions, in their specified geographic areas, as previously described in the September 1 **Federal Register**, for Frankfort and Paris and as described above for Jinks.

Interested persons may obtain official services by contacting the agencies at the following telephone numbers: Frankfort at (317) 654–4602, Jinks at (217) 733–2714, and Paris at (217) 465–2755.

Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Date: January 26, 1989.

J.T. Abshier,
Director, Compliance Division.

[FR Doc. 89–2264 Filed 1–31–89; 8:45 am]
BILLING CODE 3410–EN–M

Request for Comments on Designation Applicants in the Geographic Area Currently Assigned to the Champaign (IL) and Springfield (IL) Agencies

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the geographic areas currently assigned to Champaign-Danville Grain Inspection Departments, Inc. (Champaign), and Glen Wallace dba Springfield Grain Inspection Department (Springfield).

DATE: Comments must be postmarked on or before March 20, 1989.

ADDRESS: Comments must be submitted in writing to Lewis Legakken, Jr., RM, FGIS, USDA, Room 0628 South Building, P.O. Box 96454, Washington, DC 20090–6454.

Telemail users may respond to [LLEBAKKEN/FGIS/USDA] telemail.

Telex users may respond as follows: To: Lewis Lebakken TLX: 7607351, ANS:FGIS UC.

All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 475–3428.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service requested applications for official agency designation to provide official services within specified geographic areas in the December 1, 1988, **Federal Register** (53 FR 48585). Applications were to be postmarked by January 1, 1989. Champaign and Springfield were the only applicants for designation in those areas and each applied for designation renewal in the entire area currently assigned to that agency.

This notice provides interested persons the opportunity to present their comments concerning the applicants for designation. Commenters are encouraged to submit reasons for support or objection to these designation actions and include pertinent data to support their views and comments. All comments must be submitted to the Resources Management Division, at the above address.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicants will be informed of the decision in writing.

Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Date: January 26, 1989.

J. T. Abshier,
Director, Compliance Division.

[FR Doc. 89–2265 Filed 1–31–89; 8:45 am]
BILLING CODE 3410–EN–M

Request for Designation Applicants To Provide Official Services in the Geographic Area Currently Assigned to the Eastern Iowa Grain Inspection and Weighing Service, Inc. Agency (IA)

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of one agency will terminate, in accordance with the Act, and requests applications from parties interested in being designated as the official agency to provide official services in the geographic area currently assigned to the specified agency. The official agency is the Eastern Iowa Grain Inspection and Weighing Service, Inc. (Eastern Iowa).

DATE: Applications must be postmarked on or before March 3, 1989.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647, South Building, P.O. Box 96454, Washington, DC 20090–6454. All applications received will be made available for public inspection at this address located at 1400 Independence Avenue SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of the Service is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Eastern Iowa, located at R.R. #1, Blue Grass, IA 52726, was designated under the Act as an official agency on August 1, 1986, to provide official inspection functions.

The official agency's designation terminates on July 31, 1989. Section

7(g)(1) of the Act states that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Eastern Iowa, in the States of Illinois and Iowa, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

The southern area:

Bounded on the North, in Iowa, by Interstate 80 from the western Iowa County line east to State Route 38; State Route 38 north to State Route 130; State Route 130 east to Scott County; the western and northern Scott County lines east to the Mississippi River;

Bounded on the East, from the Mississippi River, in Illinois, by the eastern Rock Island County line; the northern Henry and Bureau County lines east to State Route 88; State Route 88 south; the southern Bureau County line; the eastern and southern Henry County lines; the eastern Knox County line;

Bounded on the South by the southern Knox County line; the eastern and southern Warren County lines; the southern Henderson County line west to the Mississippi River; in Iowa, by the southern Des Moines, Henry, Jefferson, and Wapello County lines; and

Bounded on the West by the western and northern Wapello County lines; the western and northern Keokuk County lines; the western Iowa County line north to Interstate 80.

The northern area:

Bounded on the North, in Iowa, by the northern Delaware and Dubuque County lines; in Illinois, by the northern Jo Daviess, Stephenson, Winnebago, Boone, McHenry, and Lake County lines east to Interstate 94;

Bounded on the East by Interstate 94 south to Interstate 294; Interstate 294 south to Interstate 55; Interstate 55 southwest to the southern Dupage County line;

Bounded on the South by the southern Dupage, Kendall, Dekalb, and Lee County lines; and

Bounded on the West by the western Lee and Ogle County lines; by the southern Stephenson and Jo Daviess County lines; in Iowa, by the southern Dubuque and Delaware County lines; and the western Delaware County line.

The following location, outside of the above contiguous geographic area, is part of this geographic area assignment: Leland Farmers Company, Leland, LaSalle County, Illinois (located inside Kankakee Grain Inspection Bureau, Inc.'s area).

Exceptions to Eastern Iowa's assigned geographic area are the following locations inside Eastern Iowa's area which have been and will continue to be serviced by the following official agencies:

1. McGregor Grain Inspection and Weighing Corporation, Inc.: Paris and Sons Grain Elevator, Masonville, Delaware County, Iowa; and

2. Keokuk Grain Inspection Service: Continental Grain Co., Dallas City, and Lomax Grain Elevator, Lomax, both in Henderson County, Illinois.

Interested parties, including Eastern Iowa, are hereby given opportunity to apply for official agency designation to provide the official services in the geographic area, as specified above, under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in the specified geographic area is for the period beginning August 1, 1989, and ending July 31, 1992. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Date: January 26, 1989.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 89-2286 Filed 1-31-89; 8:45 am]

BILLING CODE 3410-EN-M

Forest Service

Douglas-Fir Tussock Moth Management; Lassen and Plumas National Forests, CA

AGENCY: Forest Service, USDA.

ACTION: Cancellation notice.

The Forest Supervisors have decided to prepare an Environmental Assessment and not an Environmental Impact Statement for management of the Douglas-fir tussock moth outbreak on the Lassen and Plumas National Forests.

The Notice of Intent, published in the Federal Register of November 18, 1988 on page 48640 is hereby rescinded.

FOR FURTHER INFORMATION CONTACT: Laurence Crabtree, District Planner, Lassen National Forest, Box 767, Chester, CA 96020; telephone 916-258-2141.

D. Keith Crummer,

Almanor District Ranger.

Date: January 12, 1989.

[FR Doc. 89-2288 Filed 1-31-89; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with §§ 353.53a or 355.10 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review

Not later than February 28, 1989, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in February for the following periods:

	Period
Antidumping Duty Proceeding:	
Austria: Railway Track Maintenance Equipment (A-433-064)	02/01/88-01/31/89
Canada: Racing Plates (A-122-050)	02/01/88-01/31/89
Japan: Birch 3-Ply Doorskins (A-588-053)	02/01/88-01/31/89
Japan: Carbon Steel Butt-Weld Pipe Fittings (A-588-602)	02/01/88-01/31/89
Japan: Melamine (A-588-056)	02/01/88-01/31/89
The People's Republic of China: Natural Bristle Paint Brushes (A-570-501)	02/01/88-01/31/89

	Period
Suspended Investigation:	
Mexico: Unprocessed Float Glass (C-201-015)	01/01/88-12/31/88
Mexico: Yarns of Polypropylene Fibers (C-201-008)	01/01/88-12/31/88
Countervailing Duty Proceeding:	
Peru: Cotton Sheeting and Sateen (C-333-001)	01/01/88-12/31/88
Peru: Cotton Yarn (C-333-002)	01/01/88-12/31/88
Saudi Arabia: Carbon Steel Wire Rod (C-517-501)	01/01/88-12/31/88

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230.

The Department will publish in the Federal Register a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by February 28, 1989.

If the Department does not receive by February 28, 1989 a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Date: January 26, 1989.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 89-2369 Filed 1-31-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-475-802]

Preliminary Determination of Sales at Less Than Fair Value; Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Italy

AGENCY: Import Administration, International Trade, Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that industrial belts and components and parts thereof, whether cured or uncured, (hereinafter referred to as industrial belts) from Italy are being, or are likely to be, sold in the United States at less than fair value. We also preliminarily determine that critical circumstances do not exist with respect to imports of industrial belts from Italy. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to suspend liquidation of all entries of industrial belts from Italy as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by April 11, 1989.

EFFECTIVE DATE: February 1, 1989.

FOR FURTHER INFORMATION CONTACT: Mary Martin or Charles Wilson, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-2830 or (202) 377-5288.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that industrial belts from Italy are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice. We also preliminarily determine that critical circumstances do not exist with respect to industrial belts from Italy.

Case History

Since the notice of initiation (53 FR 28041, July 26, 1988), the following events have occurred. On August 9, 1988, the ITC determined that there is a reasonable indication that imports of industrial belts from Italy are materially injuring a U.S. industry (USITC Pub. No. 2113, August 1988).

On August 19, 1988, the Department presented Section A of the antidumping duty questionnaire to Pirelli Trasmissioni Industriali, an Italian manufacturer of industrial belts (hereinafter referred to as Pirelli). Pirelli accounted for a substantial portion of exports from Italy to the United States during the period of investigation. On September 9, 1988, Pirelli filed a response to Section A, and supplemental responses on September 12, 1988 and September 19, 1988. The remaining sections of the questionnaire were issued on October 19, 1988.

On October 24, 1988, petitioner requested that the preliminary determination be postponed. On October 28, 1988, in accordance with section 733(c)(1)(A) of the Act, we postponed the preliminary determination to January 26, 1989 (53 FR 44511, November 3, 1988).

At the request of the respondent, response deadlines were extended several times with the final due date for responses being no later than December 1, 1988, for the narrative response and December 14, 1988, for the computer tape. Pirelli filed a narrative response on December 1, 1988, and computer tapes on December 16, 1988. The Department issued deficiency letters on December 16, 1988, December 22, 1988, January 4, 1989, and January 12, 1989. Pirelli submitted additional narrative responses on December 23, 1988, January 5, 1989, and January 10, 1989. Pirelli submitted revised computer tapes on January 3, 1989 and on January 10, 1989. On January 18, 1989, Pirelli withdrew the computer tapes it had filed for the purpose of making corrections to the data entered on the tapes.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date will be classified solely according to the appropriate HTS item numbers. The HTS numbers are provided for convenience and customs purposes. The written description remains dispositive.

The products covered by this investigation are industrial belts from Italy currently provided for under HTS item numbers 5910.00.10, 5910.00.90, 4010.10.10 and 4010.10.50.

The merchandise covered by this investigation includes certain industrial belts for power transmission. These include V-belts, synchronous belts, round belts and flat belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (i.e., closed loop) belts, or in belting in lengths or links. This investigation excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks.

Period of Investigation

The period of investigation is January 1, 1988, through June 30, 1988.

Fair Value Comparisons

To determine whether sales of industrial belts from Italy to the United States were made at less than fair value, we compared the United States price to the foreign market value. We used the best information available as required by section 776(c) of the Act because Pirelli has failed to provide the information requested in the questionnaire on a timely basis. Substantial deficiencies with both Pirelli's narrative response, and with the computer tapes submitted effectively preclude our ability to make a price-to-price comparison between foreign market value and U.S. prices. The data submitted on exporter's sales price transactions did not include foreign inland freight, foreign inland insurance, ocean freight, marine insurance, U.S. insurance, U.S. warehousing expenses, inventory carrying costs, indirect selling expenses, or technical expenses. In addition, no hardcopy printouts of the computer tapes were submitted, and the previously filed computer tapes were withdrawn on January 18, 1988. Because of the magnitude of the omissions and deficiencies in the responses, as best information available, we took the highest margin contained in the petition for each of the product types and averaged those figures to determine a single margin for the products under investigation.

United States Price

United States price was based on the U.S. price information provided in the petition.

Foreign Market Value

Foreign market value was based on home market prices provided in the petition.

Critical Circumstances

Petitioner alleges that "critical circumstances" exist with respect to imports of the subject merchandise from Italy. Section 733(e)(1) of the Act provides that critical circumstances exist if we determine that there is a reasonable basis to believe or suspect that:

(A) (i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for those account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 733(e)(1)(B), we generally consider the following factors in determining whether imports have been massive over a relatively short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

Since we do not find, based on the Department's import data, that there have been massive imports of industrial belts and components and parts thereof, whether cured or uncured, from Italy, we do not need to consider whether there is a history of dumping or whether importers of this merchandise knew or should have known that this merchandise was being sold at less than fair value. Therefore, we preliminarily determine that critical circumstances do not exist with respect to imports of industrial belts from Italy.

Because the Department's import data pertaining to the subject merchandise are based on *Tariff Schedules of the United States Annotated* basket categories, for purposes of the final determination, we have requested specific data on shipments of the subject merchandise as the most appropriate basis for our determination of critical circumstances. Furthermore, we believe that company-specific critical circumstances determinations better fulfill the objective of the critical circumstances provision of deterring specific companies that may try to increase imports massively prior to the suspension of liquidation. Therefore, we are asking respondent, Pirelli, to supply monthly volume shipment data from November 1987 through January 1989 in order for the Department to base its critical circumstance determination on company-specific data.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of industrial belts from Italy, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, in accordance with section 733(d)(1) of the Act. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from Italy exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice. Because no price quotations for the period of investigation were provided in the petition, we used the average of the highest margin for each of the product types listed in the petition prior to the period of investigation. The margins are as follows:

Manufacturer/producer/exporter	Margin percentage
Pirelli Trasmissioni Industriali	74.90
All others	74.90

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry before the later of 120 days after the date of the preliminary determination or 45 days after our final determination, if affirmative.

Public Comment

In accordance with 19 CFR 353.47, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:30 a.m. on March 23, 1989 at the U.S. Department of Commerce, Room 4830, 14th Street and Constitution Avenue NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Assistant Secretary for Import Administration, Room B-099, at the above address within ten days of the publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least ten copies must be submitted to the Assistant Secretary by March 16, 1989. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, at the above address, in at least ten copies, not less than 30 days before the date of the final determination, or, if a hearing is held, within seven days after the hearing transcript is available.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

January 26, 1989.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 89-2362 Filed 1-31-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-508-801]

Preliminary Determination of Sales at Less Than Fair Value; Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Israel

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that industrial belts and components and parts thereof, whether cured or uncured (hereinafter referred to as industrial belts) from Israel are being, or are likely to be, sold in the United States at less than fair value. We also preliminarily determine that critical circumstances do not exist with respect to imports of industrial belts from Israel. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to suspend liquidation of all entries of industrial belts from Israel as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by April 11, 1989.

EFFECTIVE DATE: February 1, 1989.

FOR FURTHER INFORMATION CONTACT: Mary Martin or Charles Wilson, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-2830 or (202) 377-5288.

SUPPLEMENTAL INFORMATION:

Preliminary Determination

We preliminarily determine that industrial belts from Israel are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated margin is shown in the "Suspension of Liquidation" section of this notice. We also preliminarily determine that critical circumstances do not exist with respect to industrial belts from Israel.

Case History

Since the notice of initiation (53 FR 28033, July 26, 1988), the following events have occurred: On August 9, 1988, the ITC determined that there is a reasonable indication that imports of industrial belts from Israel are materially injuring an industry in the United States (USITC Pub. No. 2113, August 1988).

On August 19, 1988, the Department presented Section A of the antidumping questionnaire to Magam United Rubber Industries, Ltd. (Magam), which accounted for a substantial portion of exports from Israel to the United States during the period of investigation. The response to section A of the questionnaire was received on September 7, 1988.

On October 24, 1988, petitioner requested that the preliminary determination be postponed. On October 28, 1988, in accordance with section 733(c)(1)(A) of the Act, we postponed the preliminary determination to January 26 1989 (53 FR 44511, November 3, 1988). On October 28, 1988, Magam informed the Department that it would no longer be participating in the investigation. Magam later withdrew its response to section A of the questionnaire.

Scope of the Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS) as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after that date will be classified solely according to the appropriate HTS item numbers. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The products covered by this investigation are industrial belts from Israel currently provided for under HTS item numbers 5910.00.10, 5910.00.90, 4010.10.10 and 4010.10.50.

The merchandise covered by this investigation includes certain industrial belts for power transmission. These include V-belts, synchronous belts, round belts and flat belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (i.e., closed loop) belts, or in belting in lengths or links. This investigation excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks.

Period of Investigation

The period of investigation is January 1, 1988 through June 30, 1988.

Fair Value Comparisons

To determine whether sales of industrial belts from Israel to the United States were made at less than fair value, we compared the United States price to the foreign market value. We used best information available as required by section 776(c) of the Act for the reasons stated in the "Case History" of this notice. As best information available, we took the highest margin contained in the petition for each of the product types for the period of investigation and averaged those figures to determine a margin for the products under investigation.

United States Price

United States price was based on the U.S. price information provided in the petition.

Foreign Market Value

Foreign market value was based on home market prices provided in the petition.

Critical Circumstances

Petitioner alleges that "critical circumstances" exist with respect to imports of the subject merchandise from Israel. Section 733(e)(1) of the Act provides that critical circumstances exist if we determine that there is a reasonable basis to believe or suspect that:

(A) (i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation; or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

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Pursuant to section 733(e)(1)(B), we generally consider the following factors in determining whether imports have been massive over a relatively short time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

Since we do not find that there have been massive imports of industrial belts and components and parts thereof, whether cured or uncured, from Israel, we do not need to consider whether there is a history of dumping or whether importers of these products knew or should have known that the merchandise was being sold at less than fair value. Therefore, we preliminarily determine that critical circumstances do not exist with respect to imports of industrial belts from Israel.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of industrial belts from Israel, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from Israel exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice. The average of the highest margin for each of the product types listed in the petition for the period of investigation is as follows:

Manufacturer/producer/exporter	Margin percentage
Magam	89.65
All others	89.65

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry before the later of 120 days after the date of the preliminary determination or 45 days after our final determination, if affirmative.

Public Comment

In accordance with 19 CFR 353.47, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:30 a.m. on March 17, 1989, at the U.S. Department of Commerce, Room 4830, 14th Street and Constitution Avenue NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Assistant Secretary for Import Administration, Room B-099, at the above address within ten days of the publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least ten copies must be submitted to the Assistant Secretary by March 10, 1989. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, at the above address, in at least ten copies, not less than 30 days before the date of the final determination, or, if a hearing is held, within seven days after the hearing transcript is available.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Jan W. Mares,

Assistant Secretary for Import Administration.

January 26, 1989.

[FR DOC. 89-2363 Filed 1-31-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-428-802]

Preliminary Determination of Sales at Less Than Fair Value; Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From the Federal Republic of Germany

AGENCY: Import Administration, International Trade, Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that industrial belts and components and parts thereof, whether cured or uncured, (hereinafter referred to as industrial belts) from the Federal Republic of Germany are being, or are likely to be, sold in the United States at less than fair value. We also preliminarily determine that critical circumstances do not exist with respect to imports of industrial belts from the Federal Republic of Germany. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to suspend liquidation of all entries of industrial belts from the Federal Republic of Germany as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by April 11, 1989.

EFFECTIVE DATE: February 1, 1989.

FOR FURTHER INFORMATION CONTACT: Mary Martin or Charles Wilson, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-2830 or (202) 377-5288.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that industrial belts from the Federal Republic of Germany are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673(b) (the Act). The estimated margin is shown in the "Suspension of Liquidation" section of this notice. We also preliminarily determine that critical circumstances do not exist with respect to industrial belts from the Federal Republic of Germany.

Case History

Since the notice of initiation (53 FR 28041, July 26, 1988), the following events have occurred: On August 9, 1988, the ITC determined that there is a reasonable indication that imports of industrial belts from the Federal Republic of Germany are materially injuring a U.S. industry (USITC Pub. No. 2113, August 1988).

On August 19, 1988, the Department presented Section A of the antidumping duty questionnaire to Arntz-Optibelt K.G. (Optibelt), which accounts for a substantial portion of exports from the Federal Republic of Germany to the United States during the period of investigation. On September 9, 1988, Optibelt informed the Department that it

would not be responding to the questionnaire.

On October 24, 1988, petitioner requested that the preliminary determination be postponed. On October 28, 1988 in accordance with section 733(c)(1)(A) of the Act, we postponed the preliminary determination to January 26, 1989 (53 FR 44511, November 3, 1988).

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date will be classified solely according to the appropriate HTS item numbers. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The products covered by this investigation are industrial belts from the Federal Republic of Germany currently provided for under HTS item numbers 5910.00.10, 5910.00.90, 4010.10.10 and 4010.10.50.

The merchandise covered by this investigation includes certain industrial belts for power transmission. These include V-belts, synchronous belts, round belts and flat belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (i.e., closed loop) belts, or in belting in lengths or links. This investigation excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks.

Period of Investigation

The period of investigation is January 1, 1988 through June 30, 1988.

Fair Value Comparisons

To determine whether sales of industrial belts from the Federal Republic of Germany to the United States were made at less than fair value, we compared the United States price to the foreign market value. We used the best information available as required by section 776(c) of the Act for the reasons stated in the "Case History" of this notice. As best information available, we took the highest margin contained in the petition for each of the product types for the period of investigation and averaged those figures to determine a margin for the products under investigation.

United States Price

United States price was based on the U.S. price information provided in the petition.

Foreign Market Value

Foreign market value was based on home market prices provided in the petition.

Critical Circumstances

Petitioner alleges that "critical circumstances" exist with respect to imports of the subject merchandise from the Federal Republic of Germany. Section 733(e)(1) of the Act provides that critical circumstances exist if we determine that there is a reasonable basis to believe or suspect that:

(A) (i) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation; or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 733(e)(1)(B), we generally consider the following factors in determining whether imports have been massive over a relatively short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

Since we do not find that there have been massive imports of industrial belts and components and parts thereof, whether cured or uncured, from the Federal Republic of Germany, we do not need to consider whether there is a history of dumping or whether importers of these products knew or should have known that the merchandise was being sold at less than fair value. Therefore, we preliminarily determine that critical circumstances do not exist with respect to imports of industrial belts from the Federal Republic of Germany.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of industrial belts from the Federal Republic of Germany, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from the Federal Republic of Germany exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice. The average of the highest margin for each of the product types listed in the petition for the period of investigation is as follows:

Manufacturer/Producer/Exporter	Margin percentage
Optibelt Corporation	100.60
All Others	100.60

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry before the later of 120 days after the date of the preliminary determination or 45 days after our final determination, if affirmative.

Public Comment

In accordance with 19 CFR 353.47, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:30 a.m. on March 22, 1989 at the U.S. Department of Commerce, Room 4830, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Assistant Secretary for Import Administration, Room B-099, at the above address within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants;

(3) the reasons for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least ten copies must be submitted to the Assistant Secretary by March 15, 1989. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, at the above address, in at least ten copies, not less than 30 days before the date of the final determination, or, if a hearing is held, within seven days after the hearing transcript is available.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Jan W. Mares,

Assistant Secretary for Import Administration.

January 26, 1989.

[FR Doc. 89-2361 Filed 1-31-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-412-802]

Preliminary Determination of Sales at Less Than Fair Value; Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From the United Kingdom

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that industrial belts and components and parts thereof, whether cured or uncured, (hereinafter referred to as industrial belts) from the United States at less than fair value. We also preliminarily determine that critical circumstances do not exist with respect to imports of industrial belts from the United Kingdom. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to suspend liquidation of all entries of industrial belts from the United Kingdom as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by April 11, 1989.

EFFECTIVE DATE: February 1, 1989.

FOR FURTHER INFORMATION CONTACT: Mary Jenkins or Charles Wilson, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1756 or (202) 377-5288.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that industrial belts from the United Kingdom are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice. We also preliminarily determine that critical circumstances do not exist with respect to industrial belts from the United Kingdom.

Case History

Since the notice of initiation (53 FR 28040, July 26, 1988), the following events have occurred: On August 9, 1988, the ITC determined that there is a reasonable indication that imports of industrial belts from the United Kingdom are materially injuring a U.S. industry (USITC Pub. No. 2113, August 1988).

On August 19, 1988, Section A of the questionnaire was presented to Arntz Belting Company (U.K.) Ltd. (Optibelt), who accounts for a substantial portion of exports from the United Kingdom to the United States during the period of investigation. On September 9, 1988, Optibelt informed the Department that it would not be responding to the questionnaire.

On September 1, 1988, J.H. Fenner and Company, Ltd. (Fenner) requested that it be included as a voluntary respondent in the investigation. On September 28, 1988, BTL, Ltd. (BTL) also indicated that it would be a voluntary respondent in this investigation. On October 18, 1988, questionnaires were presented to Fenner and BTL. We received replies to the questionnaire from Fenner on December 1, and December 9, 1988. BTL did not respond to the questionnaire. We sent a deficiency letter to Fenner on December 20. We received a response to the deficiency letter on December 31. Responses to all deficiency letters sent to Fenner were received by the Department prior to this determination.

On October 24, 1988, petitioner requested that the preliminary determination be postponed. On October 26, 1988 in accordance with section 733(c)(1)(A) of the Act, we postponed the preliminary determination to January 26, 1989 (53 FR 45111, November 3, 1988).

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS) as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date will be classified solely according to the appropriate HTS item numbers. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The products covered by this investigation are industrial belts from the United Kingdom currently provided for under HTS item numbers 5910.00.10, 5910.00.90, 4010.10.10 and 4010.10.50.

The merchandise covered by this investigation includes certain industrial belts for power transmission. These include V-belts, synchronous belts, round belts and flat belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (i.e., closed loop) belts, or in belting in lengths or links. This investigation excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks.

Period of Investigation

The period of investigation is January 1, 1988, through June 30, 1988.

Fair Value Comparisons

To determine whether sales of industrial belts from the United Kingdom to the United States were made at less than fair value, we compared the United States price to the foreign market value.

For Fenner we used sales information submitted by the respondent. Optibelt did not respond to the Department's questionnaire. In such cases, we assign to the non-replying company the higher of: (1) The average of the highest margins contained in the petition for each of the product types for the period of investigation for the non-responding company; or, (2) the highest weighted-average margin found for any company that did respond to the questionnaire. Following this policy, for this preliminary determination, we used the best information available as required by section 776(c) of the Act for the reasons stated in the "Case History" section of this notice. As best information available, we took the highest margin contained in the petition for each of the product types for the period of investigation and averaged those figures to determine the margin for the product under investigation.

United States Price

For Fenner, we based the United States price on exporter's sale price (ESP), in accordance with section 772(c) of the Act, because in each case the sale to the first unrelated purchaser took place after importation into the United States. We calculated exporter's sales price based on packed, f.o.b. seller's warehouse prices to unrelated purchasers in the United States. We made deductions, where appropriate, for commissions, credit in the United States, inland freight in the United Kingdom, air freight, brokerage, U.S. customs duty, sales processing, U.S. inland freight to warehouse, and (pursuant to section 772(e)(2) of the Act) indirect selling expenses incurred in the United States. For Optibelt, the United States price was based on the U.S. price information provided in the petition.

Foreign Market Value

For Fenner, we determined there were sufficient sales in the home market to serve as a basis for calculating foreign market value. In accordance with section 773 of the Act, for Fenner, we calculated foreign market value based on packed f.o.b. seller's warehouse to unrelated purchasers in the United Kingdom. We made deductions, where appropriate, for price discounts. We did not deduct credit expense in the home market because Fenner did not submit sufficient data to impute credit expense for all sales during the period of investigation. We did not allow an indirect selling expense offset on United Kingdom sales, in accordance with § 353.15(c) of the regulations, because Fenner did not submit the necessary response in a timely manner for inclusion in our preliminary determination.

For Optibelt, as best information available, we used home market prices provided in the petition.

Currency Conversion

Since all U.S. sales were exporter's sales price transactions, we used the official exchange rates in effect on the date of sale, in accordance with section 773(a)(1) of the Act. All currency conversions were made at rates certified by the Federal Reserve Bank of New York.

Critical Circumstances

On June 30, 1988, petitioner alleged that "critical circumstances" exist with respect to imports of the subject merchandise from the United Kingdom. Section 733(e)(1) of the Act provides that critical circumstances exist if we determine that there is a reasonable basis to believe or suspect that:

(A) (i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 733(e)(1)(B), we generally consider the following factors in determining whether imports have been massive over a relatively short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

Since we do not find, based on the Department's import data, that there have been massive imports of industrial belts and components and parts thereof, whether cured or uncured, from the United Kingdom, we do not need to consider whether there is a history of dumping or whether importers of these products knew or should have known that the merchandise was being sold at less than fair value. Therefore, we preliminarily determine that critical circumstances do not exist with respect to imports of industrial belts from the United Kingdom.

Because the Department's import data pertaining to the subject merchandise are based on *Tariff Schedules of the United States Annotated* basket categories, for purposes of the final determination, we have requested specific data on shipments of the subject merchandise as the most appropriate basis for our determinations of critical circumstances. Furthermore, we believe that company-specific critical circumstances determinations better fulfill the objective of the critical circumstances provision of deterring specific companies that may try to increase imports massively prior to the suspension of liquidation. Therefore, we are asking respondent, Fenner, to supply monthly volume shipment data from November 1987 through January 1989 in order for the Department to base the critical circumstance determinations on company-specific data.

Verification

We will verify the information used in making our final determination in accordance with section 776(b) of the Act.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of industrial belts from the United Kingdom that are entered or withdrawn from warehouse for consumption on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of industrial belts from the United Kingdom exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice. The margins are as follows:

Manufacturer/Producer/Exporter	Margin percentage
Optibelt Corporation	74.16
J.H. Fenner	10.72
All Others	73.90

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

The ITC will determine whether these imports are materially injuring, or threaten material injury to, a U.S. industry before the later of 120 days after the date of this determination, or 45 days after the final determination, if affirmative.

Public Comment

In accordance with 19 CFR 353.47, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:30 a.m. on March 20, 1989, at the U.S. Department of Commerce, Room 4830, 14th Street and Constitution Avenue NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Assistant

Secretary for Import Administration, Room B-099, at the above address within ten days of the publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least ten copies must be submitted to the Assistant Secretary by March 13, 1989. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, at the above address, in at least ten copies, not less than 30 days before the date of the final determination, or, if a hearing is held, within seven days after the hearing transcript is available.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673(f)).

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 89-2366 Filed 1-31-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-559-802]

Preliminary Determination of Sales at Less Than Fair Value: Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Singapore

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that industrial belts and components and parts thereof, whether cured or uncured (hereinafter referred to as industrial belts), from Singapore are being, or are likely to be, sold in the United States at less than fair value. We also preliminarily determine that critical circumstances do not exist with respect to imports of industrial belts from Singapore. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to suspend liquidation of all entries of industrial belts from Singapore as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by April 11, 1989.

EFFECTIVE DATE: February 1, 1989.

FOR FURTHER INFORMATION: Contact Louis Apple, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1769.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that industrial belts from Singapore are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated weighted-average margins are shown in the "Suspension of Liquidation" section of this notice. We also preliminarily determine that critical circumstances do not exist with respect to industrial belts from Singapore.

Case History

Since the notice of initiation (53 FR 28037, July 26, 1988), the following events have occurred: On August 9, 1988, the ITC determined that there is a reasonable indication that imports of industrial belts from Singapore are materially injuring a U.S. industry (USITC Pub. No. 2113, August 1988).

On August 19, 1988, section A of the questionnaire was presented to Mitsuboshi Belting (Singapore) Pte. Ltd. (MBS), which accounts for a substantial portion of exports of the subject merchandise to the United States during the period of investigation. On October 19, 1988, sections B and C of the questionnaire were presented to MBS.

We received replies to the questionnaire from MBS on September 12 and December 2, 1988, and on January 14, 1989. We sent a deficiency letter to MBS on December 21, 1988 and responses to all deficiency letters were received by the Department prior to this determination.

On October 14, 1988, petitioner requested that the Department calculate foreign market value using the special rule for certain multinational corporations under section 773(d) of the Act.

On October 24, 1988, petitioner requested that the preliminary determination be postponed. On October 28, 1988, in accordance with section 733(c)(1)(A) of the Act, we postponed the preliminary determination to January 26, 1989 (53 FR 44511, November 3, 1988).

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the *Harmonized Tariff Schedule* (HTS), as provided for in section 1201 et seq. of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s). The HTS numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The products covered by this investigation are industrial belts from Singapore currently provided for under HTS item numbers 5910.00.10, 5910.00.90, 4010.10.10 and 4010.10.50.

The merchandise covered by this investigation includes certain industrial belts for power transmission. These include V-belts, synchronous belts, round belts and flat belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) ot steel wire, cord or strand, and whether in endless (i.e., closed loop) belts, or in belting in lengths or links. This investigation excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks.

Period of Investigation

The period of investigation is January 1, 1988, through June 30, 1988.

Fair Value Comparisons

To determine whether sales of industrial belts from Singapore to the United States were made at less than fair value, we compared the United States price to the foreign market value, as specified below.

United States Price

For those sales by MBS that were made through a related sales agent in the United States to an unrelated purchaser prior to the date of importation, we used purchase price as the basis for determining United States price. For these sales, the Department determined that purchase price was the most appropriate indicator of United States price based on the following elements:

1. The merchandise in question was shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of the related selling agent;

2. This was the customary commercial channel for sales of this merchandise between the parties involved; and

3. The related selling agent located in the United States acted only as the processor of sales-related documentation and a communication link with the unrelated U.S. buyers.

Where all the above elements are met, we regard the routine selling functions of the exporter as having been merely relocated geographically from the country of exportation to the United States, where the sales agent performs them. Whether these functions are done in the United States or abroad does not change the substance of the transactions or the functions themselves.

In instances where merchandise is ordinarily diverted into the related U.S. selling agent's inventory, we regard this factor as an important distinction because it is associated with a materially different type of selling activity than the mere facilitation of a transaction such as occurs on a direct shipment to an unrelated U.S. purchaser. In situations where the related party places the merchandise into inventory, additional storage and financial carrying costs are commonly incurred. We use the inventory test because it can be readily understood and applied by respondents who must respond to Department questionnaires in a short period of time.

We calculated purchase price based on the packed, c.i.f. duty paid prices to unrelated purchasers in the United States. We made distinctions from the purchase price, where appropriate, for foreign inland freight, U.S. and foreign brokerage and handling charges, ocean freight, marine insurance, U.S. duty, and U.S. inland freight, pursuant to section 772(d)(2)(A) of the Act.

For those sales to an unrelated customer made after exportation, we based United States price on exporter's sales price (ESP), in accordance with section 772(c) of the Act. We calculated ESP based on packed, ex-warehouse or delivered prices to unrelated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight, U.S. and foreign brokerage and handling charges, ocean freight, marine insurance, U.S. duty, U.S. inland freight, discounts, rebates, repacking, commissions, credit expenses, and other U.S. selling expenses pursuant to section 772(e)(2) of the Act.

Foreign Market Value

The Department will not invoke the rule under section 773(d) of the Act, for calculating foreign market value for certain multinational corporations absent a sufficient allegation by a petitioner. Petitioner failed to meet this burden. The multinational provision allows foreign market value to be determined by reference to the foreign market value of "such or similar merchandise" sold by a related party in a country other than the country of exportation. Use of the provision requires the Department to determine that the following three conditions are met:

(1) The production facilities in the country of exportation are owned or controlled by a corporation which also owns or controls facilities for the production of such or similar merchandise located in another country or countries;

(2) Sales of such or similar merchandise in the country of exportation are nonexistent or inadequate as a basis of comparison with sales of the merchandise to the United States; and

(3) The foreign market value of such or similar merchandise produced in one or more facilities outside the country of exportation is higher than the foreign market value of such or similar merchandise produced in facilities in the country of exportation.

MBS is a subsidiary of Mitsuboshi in Japan, a producer of such or similar belts. Petitioner submitted evidence that the home market sales in Singapore are less than 5 percent of MBS' third country sales. Thus the first two conditions of 773(d) were met.

Because the home market was inadequate as a basis for comparison with sales of the merchandise to the United States, we determined that third country sales must be used. In this case, Canada was selected as the appropriate third country in accordance with § 353.5(c) of our regulations. The last criteria of section 773(d) instructs the Department to determine whether sales of "such or similar merchandise" produced in a facility outside the country of exportation (here Japan) are higher than the home market value (here sales to Canada). Petitioner did not provide sufficient information in support of the allegation with respect to the third condition. Where price comparisons were based on identical merchandise, export prices to Canada were significantly higher than the sales prices in Japan. With respect to non-identical merchandise, information submitted by the petitioner and the respondent indicate that the Japan-Canada price comparison was based on non "similar" merchandise. For these reasons, petitioner's request to initiate the multinational provision was denied.

As stated above, it was determined that Singapore's home market was not viable for comparison purposes. Therefore, in accordance with section 773(a) of the Act, we calculated foreign market value based on delivered, packed, third country (Canada) prices to unrelated purchasers. We made deductions, where appropriate, for Singapore and Canadian inland freight, Singapore and Canadian brokerage and handling charges, ocean freight, marine insurance, Canadian duty, discounts and rebates.

For U.S. purchase price sales we made adjustments under §353.15 of our regulations for differences in circumstances of sale for commissions and credit expenses in the U.S. and Canadian markets. Where we had commissions in only one market, we made adjustments for the differences in commissions in the applicable market and indirect selling expenses in the other market as an offset to the commissions, in accordance with §353.15(c) of our regulations.

For ESP sales, we also deducted credit expenses and commissions in accordance with § 353.15(c). We also deducted indirect selling expenses incurred on third country sales up to the amount of indirect selling expenses incurred on sales in the U.S. market, in accordance with § 353.15(c) of our regulations.

In order to adjust for differences in packing between the two markets, we deducted Canadian home market pricing costs from foreign market value and added U.S. packing costs.

Currency Conversion

For comparisons involving purchase price transactions, we used the official exchange rates in effect on the dates of sale, in accordance with § 353.56(a)(1) of our regulations. For comparisons involving ESP transactions, we used the official exchange rates in effect on the dates of the sale, in accordance with section 773(a)(1) of the Act, as amended by section 615 of the Trade and Tariff Act of 1984. All currency conversions were made at the rates certified by the Federal Reserve Bank of New York.

Verification

As provided in section 776(b) of the Act, we will verify all information used in reaching the final determination in this investigation.

Critical Circumstances

Petitioner alleges that "critical circumstances" exist with respect to imports of the subject merchandise from Singapore. Section 733(e)(1) of the Act provides that critical circumstances exist if we determine that there is a reasonable basis to believe or suspect that:

(A)(i) there is a history of dumping in the United States or elsewhere of the class or

kind of merchandise which is the subject of the investigation, or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 733(e)(1)(B), we generally consider the following factors in determining whether imports have been massive over a relatively short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

Since we do not find, based on the Department's imports data, that there have been massive imports of industrial belts and components and parts thereof, whether cured or uncured, from Singapore, we do not need to consider whether there is a history of dumping or whether importers of these products knew or should have known that it was being sold at less than fair value. Therefore, we preliminary determine that critical circumstances do not exit with respect to imports of industrial belts from Singapore.

Because the Department's import data pertaining to the subject merchandise are based on *Tariff Schedules of the United States Annotated* basket categories, for purposes of the final determination, we will request specific data on shipments of the subject merchandise as the most appropriate basis for our determination of critical circumstances. Furthermore, we believe that company-specific critical circumstances determines better fulfill the objective of the critical circumstances provision of deterring specific companies that may try to increase imports massively prior to the suspension of liquidation. Therefore, we are asking respondent MBS to supply monthly volume shipment data from November 1987 through January 1989.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of industrial belts from Singapore, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from Singapore exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Mitsuboshi Belting (Singapore) Pte. Ltd.	28.53
All others	28.53

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, the U.S. industries before the later of 120 days after the date of these preliminary determination or 45 days after our final determinations, if affirmative.

Public Comment

In accordance with 19 CFR 353.47, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary detemination at 9:30 a.m. on March 16, 1989, at the U.S. Department of Commerce, Room 4830, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Assistant Secretary for Import Administration, Room B-099, at the above address within ten days of the publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least ten copies must be submitted to the Assistant Secretary by March 9, 1989. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, at the above address, in at least ten copies, not less than 30 days before the date of the final determination, or, if a hearing is held, within seven days after the hearing transcript is available.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Jan W. Mares,

Assistant Secretary for Import Administration.

January 26, 1989.

[FR Doc. 89-2365 Filed 1-31-89; 8:45 am]

BILLING CODE 3510-AS-M

[A-583-804]

Preliminary Determination of Sales at Less Than Fair Value; Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Taiwan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that industrial belts and components and parts thereof, whether cured or uncured, (hereinafter referred to as industrial belts) from Taiwan are being, or are likely to be, sold in the United States at less than fair value. We also preliminary determine that critical circumstances do not exist with respect to imports of industrial belts from Taiwan. We have notified the United States International Trade Commission (ITC) of our determination and have directed the United States Customs Service to suspend liquidation of all entries of industrial belts from Taiwan as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by April 11, 1989.

EFFECTIVE DATE: February 1, 1989.

FOR FURTHER INFORMATION CONTACT: Louis Apple, Office of Antidumping Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-2830 or (202) 377-1769.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that industrial belts from Taiwan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated weighted-average margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the notice of initiation (53 FR 28041, July 26, 1988), the following events have occurred: On August 9, 1988, the ITC determined that there is a reasonable indication that imports of industrial belts from Taiwan are materially injuring a United States industry (USITC Pub. No. 2113, August 1988).

On August 24, 1988, section A of the questionnaire was presented to Hsing Kwo Rubber Mfg. Co., Ltd. (Hsing Kwo), which accounted for a substantial portion of exports from Taiwan to the United States during the period of investigation.

On October 18, 1988, sections B and C of the questionnaire was presented to Hsing Kwo.

We received replies to the questionnaire from Hsing Kwo on September 19, 1988 and November 30, 1988.

We sent deficiency letters to Hsing Kwo during the period from September 22, 1988 to January 10, 1989. Responses to all deficiency letters were received by the Department prior to this determination.

On October 24, 1988, petitioner rquested that the preliminary determination be postponed. On October 28, 1988, in accordance with section 733(c)(1)(A) of the Act, we postponed the preliminary determination to January 26, 1989 (53 FR 44511, November 3, 1988).

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the *Harmonized Tariff Schedule* (HTS) as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse for consumption on or after that date is now classified solely according to the appropriate HTS item number(s). The HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

The products covered by this investigation are industrial belts from Taiwan, currently provided for under HTS item numbers 5910.00.10, 5910.00.90, 4010.10.10 and 4010.10.50.

The merchandise covered by this investigation includes certain industrial belts for power transmission. These include V-belts, synchronous belts, round belts and flat belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (i.e., closed loop) belts, or in belting in lengths or links. This investigation excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks.

Period of Investigation

The period of investigation is January 1, 1988 through June 30, 1988.

Such or Similar Comparisons

For Hsing Kwo, pursuant to section 771(16)(B) of the Act, we established one category of "such or similar" merchandise: V-belts. All of Hsing Kwo's sales to the United States were used in our fair value comparisons.

Fair Value Comparisons

To determine whether sales of industrial belts from Taiwan to the United States were made at less than fair value, we compared the United States price to the foreign market value.

United States Price

For all sales by Hsing Kwo, we based United States price on exporter's sale price (ESP), in accordance with section 772(c) of the Act, because in each case the sale to the first unrelated purchaser took place after importation into the United States. We calculated exporter's sales price based on packed, f.o.b. seller's warehouse prices to unrelated purchasers in the United States. We made deductions, where appropriate, for Taiwan export duty, inland freight in Taiwan, ocean freight, marine insurance, United States customs duty and user's fees, customs brokerage, inland freight in the United States, technical service expenses, and, pursuant to section 772(e)(2) of the Act, indirect expenses and inventory carrying expenses incurred in both Taiwan and the United States. An addition was made, pursuant to section 772(d)(1)(B) of the Act, for import duties imposed by the country of exportation which have been rebated, or which have not been collected by reason of the exportation of the merchandise to the United States.

Foreign Market Value

We determined there were sufficient sales in the home market (Taiwan) to serve as the basis for calculating foreign market value. In accordance with section 773 of the Act, for Hsing Kwo, we calculated foreign market value based on f.o.b. seller's warehouse or delivered prices to unrelated purchasers in Taiwan. We made deductions, where appropriate, for inland freight in Taiwan, credit expenses, advertising expenses, and inspection expenses. We offset indirect selling expenses incurred on Taiwan sales up to the amount of selling expenses incurred on sales in the United States, in accordance with § 353.15(c) of our regulations.

We made adjustments, where applicable, for differences in the physical characteristics of the merchandise in accordance with § 353.16 of the regulations.

Hsing Kwo did not provide the cost of home market packing. Therefore, we have not adjusted for differences in packing between the two markets, and have added United States packing costs to the foreign market value.

Currency Conversion

Since all United States sales were exporter's sales price transactions, we used the official exchange rates in effect on the date of sale, in accordance with section 773(a)(1) of the Act, as amended by section 615 of the Trade and Tariff Act of 1984. All currency conversions were made at rates certified by the Federal Reserve Bank of New York.

Critical Circumstances

Petitioner alleges that "critical circumstances" exist with respect to imports of the subject merchandise from Taiwan. Section 733(e)(1) of the Act provides that critical circumstances exist if we determine that there is a reasonable basis to believe or suspect that:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation; or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 733(e)(1)(B), we generally consider the following factors in determining whether imports have been massive over a relatively short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of the domestic consumption accounted for by imports.

While we find, based on the Department's import data, that there have been massive imports of industrial

belts and components and parts thereof, whether cured or uncured, from Taiwan, we have not found a history of dumping, nor do we have reason to believe that importers of these products knew or should have known that it was being sold at less than fair value. Therefore, we preliminarily determine that critical circumstances do not exist with respect to imports of industrial belts from Taiwan.

Because the Department's import data pertaining to the subject merchandise are based on *Tariff Schedules of the United States Annotated* basket categories, for purposes of the final determination, we will request specific data on shipments of the subject merchandise as the most appropriate basis for our determinations of critical circumstances. Furthermore, we believe that company specific critical circumstances determinations better fulfill the objective of the critical circumstances provision of deterring specific companies that may try to increase imports massively prior to the suspension of liquidation. Therefore, we are asking respondent Hsing Kwo to supply monthly volume shipment data from November 1987 through January 1989 in order for the Department to base the critical circumstance determinations on company-specific data.

Verification

We will verify the information used in making our final determination in accordance with section 776(b) of the Act.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of industrial belts from Taiwan, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The United States Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from Taiwan exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

Manufacturer/Producer/ Exporter:	Weighted-average margin percentage
Hsing Kwo	7.91
All others	7.91

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, the United States industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination, if affirmative.

Public Comment

In accordance with 19 CFR 353.47, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on March 15, 1989 at the United States Department of Commerce, Room 4830, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Assistant Secretary for Import Administration, Room B-099, at the above address within ten days of the publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least ten copies must be submitted to the Assistant Secretary by March 8, 1989. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, at the above address, in at least ten copies, not less than 30 days before the date of the final determination, or, if a hearing is held, within seven days after the hearing transcript is available.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 89-2367 Filed 1-31-89; 8:45 am]
BILLING CODE 3510-DS-M

[A-588-807]

Preliminary Determination of Sales at Less Than Fair Value: Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Japan

AGENCY: Import Administration, International Trade, Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that industrial belts and components and parts thereof, whether cured or uncured, (hereinafter referred to as industrial belts) from Japan are being, or are likely to be, sold in the United States at less than fair value. We also preliminarily determine that critical circumstances do not exist with respect to imports of industrial belts from Japan. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to suspend liquidation of all entries of industrial belts from Japan as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by April 11, 1989.

EFFECTIVE DATE: February 1, 1989.

FOR FURTHER INFORMATION CONTACT: Contact Louis Apple, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1769.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that industrial belts from Japan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice. We also preliminarily determine that critical circumstances do not exist with respect to industrial belts from Japan.

Case History

Since the notice of initiation (53 FR 28036, July 26, 1988), the following events have occurred: On August 9, 1988, the ITC determined that there is a reasonable indication that imports of industrial belts from Japan are materially injuring a U.S. industry (USITC Pub. No. 2113, August 1988).

On August 19, 1988, Section A of the questionnaire was presented to Bando Chemical Industries, Ltd. (Bando), which accounts for a substantial portion of exports from Japan to the United States during the period of investigation. On September 20, 1988, Bando responded to section A.

On October 11, 1988, Nitta Industries (Nitta) requested that it receive a questionnaire so that it could submit a voluntary response. On October 18, 1988, we presented questionnaire sections B, C, and D to Bando and Nitta.

On October 24, 1988, petitioner requested that the preliminary determination be postponed. On October 28, 1988, in accordance with section 733(c)(1)(A) of the Act, we postponed the preliminary determination to January 20, 1989 (53 FR 44511, November 3, 1988).

On November 16, 1988, Bando advised the Department that it would not respond to the Department's questionnaire with regard to sections B, C, and D.

On December 1, 1988, we advised Bando that without a response to our questionnaire we may have to use best information available for our preliminary and final determinations. No further information was received from Bando.

No further information or correspondence was received from Nitta.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the *Harmonized Tariff Schedule* (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s). The HTS numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The products covered by this investigation are industrial belts from Japan currently provided for under HTS item numbers 5910.00.10, 5910.00.90, 4010.10.10 and 4010.10.50.

The merchandise covered by this investigation includes certain industrial belts for power transmission. These include V-belts, synchronous belts, round belts and flat belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (i.e., closed loop) belts, or in belting in lengths or links. This investigation excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks.

Period of Investigation

The period of investigation is January 1, 1988 through June 30, 1988.

Fair Value Comparisons

To determine whether sales of industrial belts from Japan were made at less than fair value, we compared the United States price to the foreign market value. We used the best information available as required by section 776(c) of the Act for the reasons stated in the "Case History" section of this notice. As best information available, we took the highest margin contained in the petition for each of the product types for the period of investigation and averaged those figures to determine a single margin for the products under investigation.

United States Price

United States price was based on the U.S. price information provided in the petition.

Foreign Market Value

Foreign market value was based on home market prices provided in the petition.

Critical Circumstances

Petitioner alleges that "critical circumstances" exist with respect to imports of the subject merchandise from Japan. Section 733(e)(1) of the Act provides that critical circumstances exist if we determine that there is a reasonable basis to believe or suspect that:

(A)(i) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short of period.

Pursuant to section 733(e)(1)(B), we generally consider the following factors in determining whether imports have been massive over a relatively short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

Since we do not find that there have been massive imports of industrial belts and components and parts thereof, whether cured or uncured, from Japan, we do not need to consider whether there is a history of dumping or whether importers of this merchandise knew or should have known that the merchandise was being sold at less than fair value. Therefore, we preliminarily determine that critical circumstances do not exist with respect to imports of industrial belts from Japan.

Suspension of Liquidation

In accordance with section 773(d)(1) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of industrial belts from Japan, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from Japan exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice. The margins are as follows:

Manufacturer/Producer/ Exporter:	Margin percentage
Bando Chemical Industries, Ltd.	93.16
All Others	93.16

ITC Notification

In accordance with section 773(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination, if affirmative.

Public Comment

In accordance with 19 CFR 353.47, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:30 a.m. on March 16, 1989 at the U.S. Department of Commerce, Room 4830, 14th Street and Constitution Avenue NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Assistant Secretary for Import Administration, Room B-099, at the above address within ten days of the publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least ten copies must be submitted to the Assistant Secretary by March 9, 1989. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, at the above address, in at least ten copies, not less than 30 days before the date of the final determination, or, if a hearing is held, within seven days after the hearing transcript is available.

This determination is published pursuant to section 773(f) of the Act (19 U.S.C. 1673b(f)).

January 26, 1989.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 89-1304 Filed 1-31-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-580-801]

Preliminary Determination of Sales at Less Than Fair Value; Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From South Korea

AGENCY: Import Administration, International Trade Administration.

ACTION: Notice.

SUMMARY: We preliminarily determine that industrial belts and components and parts thereof, whether cured or uncured, (hereinafter referred to as industrial belts) from South Korea are being, or are likely to be, sold in the United States at less than fair value. We also preliminarily determine that critical circumstances do not exist with respect to imports of industrial belts from South Korea. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to suspend liquidation of all entries of industrial belts from South Korea as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normaly, we will make a final determination by April 11, 1989.

EFFECTIVE DATE: February 1, 1989.

FOR FURTHER INFORMATION CONTACT: Contact Louis Apple, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-1769.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminary determine that industrial belts from South Korea are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the notice of initiation (53 FR 28038, July 26, 1988), the following events have occurred: On August 9, 1988, the ITC determined that there is a reasonable indication that imports of industrial belts from South Korea are materially injuring a U.S. industry (USITC Pub. No. 2113, August 1988).

On August 19, 1988, Section A of the questionnaire was presented to Dongil Rubber Belt Co., Ltd. (Dongil), which accounts for a substantial portion of exports from South Korea to the United States during the period of investigation. On September 16, 1988, Dongil informed the Department that it would not be responding to the Department's questionnaire in this investigation. Dongil submitted no further information.

On October 24, 1988, petitioner requested that the preliminary determination be postponed. On October 28, 1988, in accordance with section 733(c)(1)(A) of the Act, we postponed the preliminary determination to January 26, 1989 (53 FR 44511, November 3, 1988).

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the *Harmonized Tariff Schedule* (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s). The HTS numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The products covered by this investigation are industrial belts from South Korea currently provided for under HTS item numbers 5910.00.10, 5910.00.90, 4010.10.10 and 4010.10.50.

The merchandise covered by this investigation includes certain industrial belts for power transmission. These include V-belts, synchronous belts, round belts and flat belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (i.e., closed loop) belts, or in belting in lengths or links. This investigation excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks.

Period of Investigation

The period of investigation is January 1, 1988 through June 30, 1988.

Fair Value Comparisons

To determine whether sales of industrial belts from South Korea were made at less than fair value, we compared the United States price to the foreign market value. We used the best information available as required by section 776(c) of the Act for the reasons stated in the "Case History" section of this notice. As best information available, we took the highest margin contained in the petition for each of the product types for the period of investigation and averaged those figures to determine a single margin for the products under investigation.

United States Price

United States price was based on the U.S. price information provided in the petition.

Foreign Market Value

Foreign market value was based on home market prices provided in the petition.

Critical Circumstances

Petitioner alleges that "critical circumstances" exist with respect to imports of the subject merchandise from South Korea. Section 733(e)(1) of the Act provides that critical circumstances exist if we determine that there is a reasonable basis to believe or suspect that:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 733(e)(1)(B), we generally consider the following factors in determining whether imports have been massive over a relatively short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

Imports of the subject merchandise from South Korea are brought in under a basket category which includes industrial belts not subject to this investigation. Our minimum criterion for massive imports is that imports of the subject merchandise increase by more than 15 percent in the four months after the petition was filed compared to the prior four months. Since the basket category indicates that imports of belts exceeded by only one-half percent our minimum threshold for determining massive imports during the four-month period, we preliminarily determine that critical circumstances do not exist with respect to imports of industrial belts from South Korea.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of industrial belts from South Korea, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from South Korea exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice. The margins are as follows:

Manufacturer/Producer/ Exporter:	Margin percentage
Dongil Rubber Belt Co., Ltd	64.37
All others	64.37

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistance Secretary Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination, if affirmative.

Public Comment

In accordance with 19 CFR 353.47, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:30 a.m. on March 13, 1989 at the U.S. Department of Commerce, Room 4830, 14th Street and Constitution Avenue NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Assistant Secretary for Import Administration, Room B-099, at the above address within ten days of the publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least ten copies must be submitted to the Assistant Secretary by March 6, 1989. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, at the above address, in at least ten copies, not less than 30 days before the date of the final determination, or, if a hearing is held, within seven days after the hearing transcript is available.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

January 26, 1989.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 89-2366 Filed 1-31-89; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by the Asociacion de los Indios From an Objection by the Puerto Rico Planning Board

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of appeal.

On September 26, 1988, Anibal Irizarry, Esq., on behalf of the Asociacion de los Indios (Appellant), filed with the Secretary of Commerce a notice of appeal under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, 16 U.S.C. 1456(c)(3)(A), and the Department of Commerce's (Department) implementing regulations, 15 CFR Part 930, Subpart H. The appeal arises from an objection by the Puerto Rico Planning Board (State) to the Appellant's certification that its proposed projects to reconstruct a private road and to construct residential houses, landfills, piers and bulkheads in Salinas, Puerto Rico are consistent with Puerto Rico's coastal management program. The State's objection precludes the U.S. Army Corps of Engineers from issuing to the Appellant a permit to perform these activities pending the outcome of the Appellant's appeal.

If the Appellant perfects the appeal by filing the supporting data and information required by the Department's implementing regulations, public comments will be solicited by a notice in the **Federal Register** and a local newspaper.

FOR FURTHER INFORMATION CONTACT: Margo E. Jackson, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue NW., Suite 603, Washington, DC 20235, (202) 673-5200.

[Federal Domestic Assistant Catalog No. 11.419 Coastal Zone Management Program Assistance]

Date: January 20, 1989.

B. Kent Burton,

Assistant Secretary for Oceans and Atmosphere.

[FR Doc. 89-2295 Filed 1-31-89; 8:45 am]

BILLING CODE 3510-08-M

Coastal Zone Management; Federal Consistency Appeal by the New York Office of Mental Health From an Objection by the New York Department of State

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of dismissal.

On October 9, 1987, the New York Office of Mental Health (Appellant) filed with the Department of Commerce (Department) a notice of appeal under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1456(c)(3)(A), and implementing regulations, 15 CFR Part 930, Subpart H. The appeal arose from an objection by the New York Department of State (State) to the Appellant's certification that its proposal to stabilize with shoreline along the Hudson River at the site of the Hudson River Psychiatric Center in Poughkeepsie, New York would be consistent with New York's coastal management program.

By a letter dated September 26, 1988, the parties informed the Department that the State now concurs in the proposed project's consistency with New York's coastal management program. Accordingly, the Department dismissed the appeal on January 9, 1989 for good cause pursuant to 15 CFR 930.128. That dismissal bars the Appellant from filing another appeal from the State's objection to the aforementioned activities.

FOR FURTHER INFORMATION CONTACT: Sydney Anne Minnerly, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue NW., Suite 603, Washington, DC 20235, (202) 673–5200.

[Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance]

B. Kent Burton,
Assistant Secretary for Oceans and Atmosphere.

Date: January 25, 1989.

[FR Doc. 89–2290 Filed 1–31–89; 8:45 am]

BILLING CODE 3510-08-M

Caribbean Fishery Management Council; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearings and request for comments.

SUMMARY: The Caribbean Fishery Management Council (CFMC) will hold public hearings on a proposed regulatory amendment under the Fishery Management Plan for the Atlantic Swordfish Fishery (FMP). This regulatory amendment will establish a mandatory reporting requirement for those fish dealers and processors handling Atlantic swordfish. The amendment will be prepared and submitted to NOAA by the South Atlantic Fishery Management Council.

DATES: Written comments will be accepted until February 8, 1989. The schedule for the public hearings is as follows:

(1) Wednesday, February 1, 1989, 7:30 p.m., Conference Room, Legislature Building, Christiansted, St. Croix, U.S. Virgin Islands

(2) Thursday, February 2, 1989, 7:00 p.m., Conference Room, Hotel Pierre, De Diego Avenue, Santurce, Puerto Rico.

Interested persons are invited to attend and participate.

ADDRESSES: Written comments may be mailed to Mr. Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, Suite 1108 Banco de Ponce Building, Hato Rey, Puerto Rico, 00918–2577. For additional information, please contact Mr. Miguel A. Rolon at the same address above, telephone (809) 766–5926.

SUPPLEMENTARY INFORMATION: The FMP was approved by the Secretary of Commerce in 1985. At that time, voluntary reporting by dealers of the weight of individual swordfish landed was sufficient to provide reliable size-frequency data used for stock assessments. In recent years, voluntary cooperation from fishermen and dealers has declined, and the geographical range of the domestic longline fishery has expanded significantly. As a result, size-frequency catch data submitted voluntarily may no longer be representative of the swordfish landed by the fishery. In addition, it has become more important to collect data on other species caught and landed by the fishery in order to detemine directed fishing effort, total economic value of landings, and other parameters necessary to monitor the FMP.

Accurate data on total landings and size-frequencies of catch are critical for monitoring and assessing the status of the swordfish resource, and for determining economic conditions in the fishery. This information is needed by the Fishery Management Councils to ensure that management measures result in long-term productivity of the resource.

The proposed regulatory amendment would be prepared by the South Atlantic Fishery Management Council in cooperation with the Caribbean, Gulf of Mexico, Mid-Atlantic, and New England Councils. The regulatory amendment would change the regulations implementing the FMP to require mandatory reporting by dealers handling Atlantic swordfish. Dealers and processors would be required to provide NMFS with weight and price information for landed swordfish and related species, and pertinent information on landings. The required information to be reported would include: Name and address of dealer; date of receipt of swordfish; name and official number of the vessels from which swordfish were received; date(s) and port(s) of landings of the vessel(s); total carcass weights by market category for landed swordfish, and by other species caught incidentally; prices paid by market category for swordfish and by species for other incidentally caught species; and individual carcass weights for swordfish.

A special form would be available on which to report the necessary information, or a dealer or processor could provide copies of appropriate weigh-out sheets and sales receipts to the NMFS Regional Director of Science and Research or to a designated fishery port agent. This information would supplement, but not duplicate, information provided via fishermen's logbooks. Dealer's or processor's reports would provide individual carcass weights needed to determine size composition and total weight and value of the catch; logbooks provide data fishing effort and numbers of fish caught per longline set.

The reporting burden associated with the proposed dealer or processors reports should be minimal. The NMFS estimates that approximately 60 dealers are involved in the Atlantic swordfish fishery. The required weigh-out sheets and sales receipts are currently produced in the course of routine business practice throughout the industry. It is anticipated that most dealers and processors will simply photocopy their existing forms and submit them on a monthly basis. The estimated total annual reporting burden for all dealers or processors combined is 320 hours, and the associated total annual costs are estimated to be $3,104.

Since some dealers or processors were submitting this information on a voluntary basis, the actual increase in reporting burden is estimated to be 221 hours.

Dated: January 27, 1989.

Alan Dean Parsons,
Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–2358 Filed 1–27–89; 4:47 pm]

BILLING CODE 3510-22-M

Western Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council's advisory bodies will convene public meetings as follows:

Pelagics Plan Monitoring Team (PMT)—will convene on February 9, 1989, from 9 a.m. to noon, at the Honolulu Laboratory, National Marine Fisheries Service (NMFS), 2570 Dole Street, Honolulu, HI, to introduce new Team members, review the 1986–87 Pelagics Annual Report, discuss preparation of the 1988 report, review adequacies of existing data, and identify additional needs for stock assessment purposes. Other appropriate Team business also will be discussed.

Precious Corals PMT—will convene on February 10 from 1 p.m., to 3 p.m., at the Honolulu Laboratory (address above). The Precious Corals PMT will address the same issues, above, as the Pelagics PMT and, in addition, will review the Aukai Fishing Company's revised experimental fishing permit.

For further information contact Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813; telephone: (808) 523–1368.

Date: January 26, 1989.

Alan Dean Parsons,
Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–2357 Filed 1–31–89; 8:45 am]

BILLING CODE 3510-22-M

Copyright Royalty Tribunal

[CRT Docket No. 89–2–87CD]

Ascertainment of Whether Controversy Exists Concerning Distribution of 1987 Cable Royalty Fees

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1111 20th Street NW., Suite 450, Washington, DC 20036 (202) 653–5175.

SUMMARY: In accordance with 17 U.S.C. 111(d)(4)(B), the Copyright Royalty Tribunal directs that all claimants to royalty fees paid by cable operators for secondary transmissions during 1987 (Phase I and Phase II claimants) shall submit not later than March 23, 1989 any comments concerning whether a controversy exists with regard to the distribution of the 1987 royalty fees. All claimants intending to participate in the 1987 proceeding shall include with their comments a Notice of Intent to Participate. Any particular controversy, Phase I or Phase II, of which the Tribunal does not become advised by the end of the comment period will not be considered at a later date without a showing of good cause. Specifically for Phase II, each claimant must state each program category in which he or she has an interest which, by March 23, 1989, has not yet been satisfied by private agreement.

Edward W. Ray,
Chairman.

Dated: January 26, 1989.

[FR Doc. 89–2252 Filed 1–31–89; 8:45 am]

BILLING CODE 1410-09-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Date of Meeting: February 22, 1989.

Time of Meeting: 0800–1600 hours.

Place: Monroe, Louisiana.

Agenda: The Army Science Board Ad Hoc Subgroup for Tactical Explosive Systems (TEXS) will hold its seventh meeting. The Angus Chemical Company will brief. Specific topics are operations, demonstration of system components, high temperature test, and a tour of the Sterlington, LA plant. Additionally, the panel will review the draft reports prepared at the last meeting. Angus Chemical Company will be presenting proprietary data and therefore the meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695–3039 or 695–7046.

Sally W. Warner,
Administrative Officer, Army Science Board.

[FR Doc. 89–2261 Filed 1–31–89; 8:45 am]

BILLING CODE 3810-08-M

OS: Military Academy; Chief of Staff's Special Commission on Honor Code and Honor; Partially Closed Meeting

1. IAW AR 15–1 the following information is provided to SAGC.

a. Name: Chief of Staff's Special Commission to Review the Honor Code and Honor System at the U.S. Military Academy.

b. Time: 15–16 February 1989.

c. Place: 107 Cathedral of Learning, University of Pittsburgh, Pennsylvania.

d. Purpose: See agenda discussion items.

e. Summary of Agenda:

Date/Time	Open/closed to public	Discussion item
15 Feb/0900–1200.	Closed	Panels discuss findings and recommendations.
15 Deb/1330–1630.	do	Commission receives panel findings and recommendations.
16 Feb/0830–1000.	Open	Testimony from individuals.
16 Feb/1000–1200.	do	Ethics roundtable discussion.

f. The public may attend the meetings marked "Open".

g. The meetings on February 15, are closed to the public to preclude premature disclosure of Commission findings and recommendations.

h. The basis for the closed portions of the meeting is paragraph 9(B) of section 552b(c), Title 5, U.S. Code.

i. Point of contact is the executive secretary, LTC James O. Younts III, 965–1983.

John O. Roach II,
Army Liaison Officer With the Federal Register.

[FR Doc. 89–2284 Filed 1–31–89; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory

Committee Panel on Countermine Capabilities for Amphibious Operations will meet on February 14–15, 1989. The meeting will be held at the Center for Naval Analyses, 4401 Ford Avenue, Alexandria, Virginia. The meeting will commence at 8:30 a.m. and terminate at 4:30 p.m. on February 14, 1989; and commence at 8:30 a.m. and terminate at 5:00 p.m. on February 15, 1989. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefings for the panel members related to an assessment of the mine/countermine threat and current capabilities and limitations, and an evaluation of the technological approaches to detection, neutralization, marking and reporting problems. The agenda will include discussions on amphibious operations; threat; investment strategy; and technologies/systems. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive Order. The classifed and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander L.W. Snyder, U.S. Navy, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5000, Telephone Number: (202) 696–4870.

January 27, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89–2269 Filed 1–31–89; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF ENERGY

Determination To Establish Laboratory Evaluation Committee

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), I hereby certify that establishment of the Laboratory Evaluation Committee (LEC) is necessary and in the public interest in connection with the performance of duties imposed on the Department of Energy (DOE) by law. This determination follows consultation with the Committee Management Secretariat of the General Services Administration, pursuant to 41 CFR 101–6.10.

The purpose of LEC is to provide the Secretary of Energy with technical information, advice, and recommendations concerning DOE's laboratory scientific performance.

Further information regarding this Advisory Committee may be obtained from Elinor Donnelly (202–586–3448).

Issued in Washington, DC on January 27, 1989.

Howard H. Raiken,

Advisory Committee Management Officer.

[FR Doc. 89–2349 Filed 1–31–89; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award; Intention To Award Grant to the Massachusetts Institute of Technology

AGENCY: U.S. Department of Energy.

ACTION: Acceptance of an unsolicited application for grant award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.14, it intends to award based on an unsolicited action submitted by the Massachusetts Institute of Technology. The application is entitled "A Mathematical Model for Tar Release in Rapid Devolatilization of a Softening Bituminous Coal".

SCOPE: The intended grant award is to assist the Massachusetts Institute of Technology in a program concerned with developing an experimentally tested mathematical model to predict tar release from devolatilization of a softening bituminous coal for conditions pertinent to pulverized fuel combustion. The objectives include formulation of a model, testing the model for parametric effects, and assessing the model performance by comparing with pertinent existing experimental data. The applicant has developed unique capabilities and experience through research on aspects of coal pyrolysis and combustion. The applicant has extensive experience on the subjects of thermal devolatilization relevant to processes of coal conversion and combustion.

Previous work in this area has taken the approach of either embedding the physical release in the chemical Kinetic terms or by assuming a simplified transport process which varied slowly with time. The net result of this is that in actuality tar release is not a smoothly varing function of time but rather a "spike" or "burst". In the proposed work, this phenomenon will be modeled directly through the use of appropriate transport scale factors and is expected to yield results which are more representative of physical reality than previous attacks on this problem.

The term of the grant will be for a one-year period at an estimated value of $74,954.00.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, P.O. Box 10940, MS 921–165, Pittsburgh, Pennsylvania 15236, Telephone: (412) 892–5802.

Gregory J. Kawalkin,

Acting Director, Acquisition and Assistance Division, Pittsburgh Energy Technology Center.

[FR Doc. 89–2350 Filed 1–31–89; 8:45 am]

BILLING CODE 6450–01–M

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Brazil concerning Civil Uses of Atomic Energy, and the Agreement for Cooperation between the Government of the United States of America and the Government of Argentina concerning Civil Uses of Atomic Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the retransfer of 6,099.7 kilograms of heavy water from Brazil to Argentina for use in reactors subject to International Atomic Energy Agency (IAEA) safeguards.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: January 27, 1989.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 89–2348 Filed 1–31–89; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

High Energy Physics Advisory Panel; Renewal

Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act and in accordance with Title 41 of the Code of Federal Regulations, §101–6.1015, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the High Energy Physics Advisory Panel (HEPAP) has been renewed for a 2-year period ending on January 27, 1991. The Panel will continue to provide advice to the Secretary of Energy, through the Director, Office of Energy Research, on long-range planning and priorities in the national high energy physics program.

The renewal of the HEPAP has been determined essential to the conduct of the Department's business and in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Panel will continue to operate in accordance with the provisions of the Federal Advisory Committee Act, the Department of Energy Organization Act (Pub. L. 95–91), and rules and regulations issued in implementation of those Acts.

Further information regarding this Panel may be obtained from Elinor Donnelly (202) 586–3448.

Issued in Washington, DC, on January 27, 1989.

Howard H. Raiken,

Advisory Committee Management Officer.

FR Doc. 89–2351 Filed 1–31–89; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER89–17–000 et al.]

Cincinnati Gas & Electric Company et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

January 26, 1989.

Take notice that the following filings have been made with the Commission:

1. Cincinnati Gas & Electric Company

[Docket No. ER89–17–000]

Take notice that on January 5, 1989, Cincinnati Gas & Electric Company (Cincinnati) tendered for filing a response to the deficiency letter of December 6, 1988 regarding the First Supplemental Agreement dated as of October 1, 1988 to the Interconnection Agreement, dated August 4, 1961, between Cincinnati and the City of Hamilton, Ohio (Hamilton).

The new First Supplemental Agreement is for the transmission of electric power and energy to be obtained by Hamilton from the Power Authority of the State of New York. The First Supplemental Agreement was tendered for filing on October 20, 1988 and is proposed to become effective October 1, 1988.

Cincinnati states that the limitation found in Section 3 of the Interconnection Agreement is applicable to Exhibits A through E thereto but that said limitation does not affect Exhibit H of the First Supplemental Agreement which provides Hamilton with up to 8,000 kW of supplemental transmission service to enable Hamilton to obtain power and energy from the Power Authority of The State of New York. The supplemental transmission service is being provided in addition to the existing services available to Hamilton.

A copy of the filing was served upon the City of Hamilton and the Public Utilities Commission of Ohio.

Comment date: February 6, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Wisconsin Power & Light Company

[Docket No. ER89–151–000]

Take notice that on January 17, 1989, Wisconsin Power & Light Company (WP&L) tendered for filing a Certificate of Concurrence modifying the Interconnection Agreement between WP&L and Madison Gas and Electric.

Comment date: February 6, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Connecticut Light and Power Company

[Docket No. EL87–30–006]

Take notice that on December 21, 1988, Connecticut Light and Power Company (CL&P) tendered for filing its compliance filing pursuant to the Commission's order issued December 6, 1988.

Comment date: February 7, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–2326 Filed 1–31–89; 8:45 am]

BILLING CODE 6717–01

[Docket Nos. ER89–168–000 et al.]

Western Massachusetts Electric Company et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

January 27, 1989.

Take notice that the following filings have been made with the Commission:

1. Western Massachusetts Electric Company

[Docket No. ER89–168–000]

Take notice that Western Massachusetts Electric Company (WMECO) on January 19, 1989, tendered for filing an amendment to its FERC Electric Tariff Original Volume No. 1 (the "Tariff") (WMECO's FERC Rate Schedule 2F) under which it presently provides firm wholesale electric service to Fletcher Electric Light Company (Fletcher). WMECO provides similar firm wholesale electric service to Massachusetts Electric Company and New York State Electric Gas Company under the Tariff (WMECO's FERC Rate Schedule 2). WMECO states that the amendment to FERC Rate Schedule 2F decreases the demand rate charge to Fletcher. WMECO states that Fletcher has requested and that it has permitted Fletcher to elect to phase-in rates reflected in the rate schedule.

WMECO states that the proposed rate schedule amendment and the grant of permission to elect to phase in rates are required to give effect to an agreement between WMECO and Fletcher to reduce the demand rate and to permit Fletcher to comply with an order of the Connecticut Department of Public Utility Control (the "DPUC"). WMECO states that the DPUC Order requires that power purchase costs of Fletcher which relate to certain costs of the Millstone 3 nuclear electric generating plant be phased-in to Fletcher's retail rates.

WMECO proposes an effective date of October 1, 1988, in order to permit Fletcher to recover its costs of service pursuant to the DPUC order and

WMECO requests waiver of the Commission's notice requirements.

The company states that copies of the filing were served upon Fletcher, New York State Electric Gas Corp., Massachusetts Electric Company and the Department of Public Utilities of Massachusetts and the Department of Public Utility Control of Connecticut.

Comment date: February 13, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Iowa Public Service Company

[Docket No. ER89-186-000]

Take notice that Iowa Public Service Company (IPS) on January 16, 1989, tendered for filing and executed Peaking Capacity Sales Agreement dated October 1, 1988, whereby IPS will supply St. Joseph Light & Power Company (SJLP) with firm peaking capacity and associated energy, commencing October 1, 1988, and ending on April 30, 1995. IPS requests that the negotiated Agreement be made effective as of October 1, 1988.

Comment date: February 13, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. American Electric Power Service Corporation

[Docket No. ER84-348-010]

Take notice in accordance with ordering Paragraph (D) of the Commission's Opinion and Order Affirming in Part and Modifying in Part Initial Decision (Opinion No. 311) issued August 2, 1988, in docket No. ER84-348-001, American Electric Power Service Corporation (AEPSC) on behalf of Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, and Ohio Power Company and AEPSC, as Agent (ARP Companies), tendered for filing a Compliance Filing on January 12, 1989.

The purpose of the Compliance Filing is to incorporate the changes ordered by the Commission in Opinion No. 311 to a Transmission Agreement among the AEP Companies which provides for the equitable sharing among the parties of the cost of ownership and operation of the AEP Extra High Voltage (EHV) transmission system. The changes ordered by the Commission include: (1) The inclusion in the Agreement of certain additional transmission facilities of 138-kV and greater; (2) a reduction in the return on equity and the federal income tax rate; (3) prospective elimination of a phase-in feature of the Agreements; (4) recognition in the Agreement of the effects of the Investment Tax Credit; and (5) a provision for updating members' transmission investment for additions in excess of ten million dollars.

In accordance with Opinion No. 311, the changes are effective as of August 2, 1988.

Comment date: February 13, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Utah Power & Light Company

[Docket No. ER89-185-000]

Take notice that on January 17, 1989, Utah Power & Light Company (Utah) tendered for filing an Agreement for sale of Economy Energy (Economy Energy Agreement) and an Interconnection Agreement—Service Schedule A-3—Emergency Assistance (Emergency Assistance Agreement) between Utah and Arizona Public Service Company.

The Economy Energy Agreement provides that economy energy sales by Arizona to Utah shall be priced at one of the following rates: (a) A ceiling rate concept based in part on the fixed costs associated with facilities used to produce the required energy; (b) a "Split-the-savings" concept or (c) a selling price based on 120 percent of cost to produce such energy. The Emergency Assistance Agreement provides for the supply of emergency power and energy at the rate level specified in the Economy Energy Agreement.

Both agreements supersede similar such services currently provided pursuant to Utah Rate Schedule No. FPC 89.

Utah, in concurrence with Arizona, has requested waiver of the Commission's notice requirements to allow these agreements to become effective December 1, 1988 as agreed between the parties.

Copies of this filing are being served upon Arizona, the Arizona Corporation Commission, and the Public Service Commission of Utah.

Comment date: February 13, 1989, in accordance with Standard Paragraph E at the end of this document.

5. Delmarva Power & Light Company

[Docket No. ER89-173-000]

Take notice that Delmarva Power & Light Company (Delmarva) on January 9, 1989, tendered for filing proposed Supplement No. 11 to its FERC Rate Schedule No. 71. This Supplement, filed at the request of the Easton Utilities Commission and the Town of Easton (Easton), provides for an additional point of 69 kV interconnection at Substation No. 3 off Goldsborough Neck Road.

Copies of this filing were served upon Easton Utilities Commission, the Mayor of the Town of Easton and the Maryland Public Service Commission.

Comment date: February 13, 1989, in accordance with Standard Paragraph E at the end of this notice.

6. Pacific Gas and Electric Company

[Docket No. ER89-187-000]

Take notice that Pacific Gas and Electric Company (PG&E) tendered for filing, on January 19, 1989, a rate schedule change to Rate Schedule FERC No. 79, between PG&E and the Western Area Power Administration (WAPA).

The rate schedule change provides for a Interim Capacity Rate to be used for capacity sales to WAPA after WAPA's Capacity Account with PG&E reaches a zero balance. This interim rate shall be used until PG&E can calculate a rate pursuant to the language in Rate Schedule FERC No. 79. When the Interim Capacity Rate is superseded, capacity sold under the Interim Capacity Rate shall be rebilled at the new rate and adjustments shall be made with interest.

PG&E requests waiver of the Commission's notice requirements to allow an effective date of March 1, 1989, for the proposed rate schedule change.

Copies of this filing have been served upon WAPA and the California Public Utilities Commission. In addition, copies of this filing are available for public inspection at PE&G's General Office in San Francisco and at PG&E's Sacramento Valley Regional Office in Sacramento.

Comment date: February 13, 1989, in accordance with Standard Paragraph E at the end of this notice.

7. Orange and Rockland Utilities, Inc.

[Docket No. ER89-193-000]

Take notice that on January 23, 1989, Orange and Rockland Utilities, Inc. (Orange and Rockland) tendered for filing pursuant to the Federal Energy Regulatory Commission's order issued January 15, 1988 in Docket No. ER88-112-000, an executed Service agreement between Orange and Rockland and Mid Orange Correctional Facility (Mid-Orange).

Comment date: February 13, 1989, in accordance with Standard Paragraph E at the end of this notice.

8. New England Power Company

[Docket No. ER89-192-000]

Take notice that on January 23, 1989, New England Power Company (NEP) submitted for filing an executed Interconnection Agreement and Amendment to the Agreement with Lowell Cogeneration Company, a Delaware limited partnership ("LCCLP"). NEP has also filed the Transmission Service Agreement whereby NEP provides transmission service from LCCLP's facility in Lowell, Massachusetts to Commonwealth Electric Company ("Com Elec") headquartered in Wareham, Massachusetts.

Comment date: February 13, 1989, in accordance with Standard Paragraph E at the end of this notice.

9. Washington Water Power Company

[Docket No. ER89-190-000]

Take notice that on January 23, 1989, The Washington Water Power Company (Washington) tendered for filing copies of a service schedule applicable to what Washington refers to as a Letter Agreement between Washington and Southern California Edison (SCE). Washington states that the energy will be made available to SCE during the month of October with recall provision available between the two companies.

Washington requests that the requirements of prior notice be waived and the effective date be made retroactive to October 1, 1988.

Comment date: February 13, 1989, in accordance with Standard Paragraph E at the end of this notice.

10. Consumers Power Company

[Docket No. ER89-184-000]

Take notice on January 17, 1989, Consumers Power Company (Consumers Power) tendered for filing proposed changes in its FERC Electric Service Tariff, First Revised Volume No. 1. Consumers Power states that the following wholesale customers in the State of Michigan would be affected by the changes: City of Eaton Rapids, City of Charlevoix, Edison Sault Electric Company, City of Harbor Springs, City of Petoskey, Village of Chelsea, City of Portland, City of St. Louis, Wolverine Power Supply Electric Cooperative, Inc., City of Bay City, Southeastern Michigan Rural Electic Cooperative, Alpena Power Company, City of Lowell, and City of Hart.

Consumers Power states that the proposed changes would increase annual revenues from jurisdictional sales and service by approximately $9,350,000 annually (33% for wholesale customers served at 138 kV and 26% for wholesale customers served at 46 kV) based on the 12-month test period ending December 31, 1989. The filing provides for: (1) Three new Paragraphs In Rate "WR", i.e. Paragraph 15 ("Capacity Reservation"), Paragraph 16 ("Definition of Customer Voltage Level") and Paragraph 17 ("Service Conversion Charge" for customers converting from wholesale sales to transmission service); and (2) various working changes largely to clarify provisions governing the application of the Maximum Demand, On-Peak Billing Demand, Metering Adjustment, Substation Ownership, and Transmission Charge for Service from the Delivery Point to Additional Metering Points as well as various rules in the Standard Rules and Regulations Applicable to Wholesale for Resale Electric Service.

Consumers Power states that the increase in rates is necessary to recover increased operating costs, fixed costs including a reasonable return on investment, and fifty percent of its prudent investment in its abandoned Midland nuclear plant consistent with the formula prescribed in Opinion No. 295.

Copies of the filing were served upon Consumer Power's jurisdictional customers and on the Michigan Public Service Commission.

Comment date: February 13, 1989, in accordance with Standard Paragraph E at the end of this notice.

11. Citizens Energy Corporation

[Docket No. ER89-179-000]

Take notice that Citizens Energy Corporation (Citizens) on January 19, 1989, tendered for filing a Power Sales Agreement (Agreement) with the City of Pasadena (Pasadena) as a rate schedule. The Agreement provides that Citizens shall sell energy to Pasadena on a firm basis between prescribed minima and maxima. Service under the Agreement commenced on October 1, 1988 and will terminate on March 31, 1989 unless the period of delivery is extended or abbreviated by mutual agreement.

Pasadena has been served with a copy of this filing.

Citizens requests the Commission's notice requirements be waived and that October 1, 1988 be allowed as the effective date of the filing.

Comment date: February 13, 1989, in accordance with Standard Paragraph E at the end of this notice.

12. Iowa Public Service Company

[Docket No. ER89-191-000]

Take notice that Iowa Public Service Company on January 23, 1989, tendered for filing Assignments for Capacity Schedules dated October 18, 1988, whereby Iowa-Illinois Gas and Electric Company, Corn Belt Power Cooperative, Bancroft Municipal Utilities, Coon Rapids Municipal Utilities, Laurens Municipal Light & Power Plant, and the City of Webster City have assigned a Capacity Schedule of seven (7) megawatts to the Municipality of Waverly commencing October 1, 1988. The Assignments of Capacity Schedules of seven (7) megawatts is taken from the Louisa Generating Unit, entering Lehigh-Webster Transmission at the Lehigh Terminal, and exiting Lehigh-Webster Transmission at the Webster Terminal.

Comment date: February 13, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2327 Filed 1-31-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-673-000 et al.]

Texas Gas Transmission Corporation et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Texas Gas Transmission Corporation

[Docket Nos. CP89-673-000]

January 26, 1989.

Take notice that on January 19, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-673-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Nevamar Corporation (Nevamar), under Texas Gas' blanket certificate issued in Docket No. CP88-686-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Pursuant to a gas transportation agreement executed on October 26, 1988,

Texas Gas Requests authorization to transport natural gas for Nevamar from various existing points of receipt located along Texas Gas' system to a single point of delivery located at a point of interconnection with Columbia Gas Transmission Corporation in Warren County, Ohio. Texas Gas states that the service would be provided on a month-to-month basis and could be terminated upon thirty (30) days written notice by either party. The peak day, average day, and annual transportation quantities are expected to be 1,700 MMBtu, 1000 MMBtu, and 365,000 MMBtu, respectively. Texas Gas advises that it began transporting gas for Nevamar on December 1, 1988, as reported in Docket No. ST89–1388–000, pursuant to § 284.223(a) of the Commission's Regulations.

Comment date: March 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Panhandle Eastern Pipe Line Company

[Docket No. CP89–633–000]

January 27, 1989.

Take notice that on January 17, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–633–000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport natural gas for Amgas, Inc. (Amgas), a shipper and marketer of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86–585–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle proposes to transport up to 150 dekatherms (dkt) of natural gas equivalent per day on an interruptible basis on behalf of Amgas pursuant to a transportation agreement dated November 15, 1988, between Panhandle and Amgas. Panhandle would receive the gas at various existing points of receipts on its system in Texas, Oklahoma, Kansas, Colorado, Wyoming and Illinois and deliver equivalent volumes, less fuel used and unaccounted for line loss, to Central Illinois Light Company in Tazewell County, Illinois.

Panhandle states that the estimated daily and annual quantities would be 60 dkt and 21,900 dkt, respectively. Service under § 284.223(a) commenced on December 1, 1988, as reported in Docket No. ST89–1635–000.

Comment date: March 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Williams Natural Gas Company

[Docket No. CP89–668–000]

January 27, 1989.

Take notice that on January 19, 1989, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89–668–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas for Amoco Energy Trading Company (Amoco), a marketer, under the blanket certificate issued in Docket No. CP86–631–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport on an interruptible basis for Amoco up to 2,000,000 MMBtu of natural gas on a peak day, approximately 2,000,000 MMBtu on an average day, and 730,000,000 MMBtu on an annual basis. Williams states that it would transport this gas from various receipt points in Kansas, Missouri, Oklahoma, Texas and Wyoming to various delivery points on Williams' system in Kansas, Missouri, Oklahoma, Texas and Wyoming. Williams explains that service commenced under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89–1680–000.

Comment date: March 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. United Gas Pipe Line Company

[Docket No. CP89–617–000]

January 27, 1989.

Take notice that on January 13, 1989, United Gas Pipe Line Company (United) P.O. Box 1478, Houston, Texas 77251–1478 filed in Docket No. CP89–617–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of LaSu Marketing Company (LaSu) under the certificate issued in Docket No. CP88–6–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United States that it proposes to transport for LaSu 618,000 MMBtu on a peak day, 618,000 MMBtu on an average day and 74,160,000 on an annual basis. United also states that pursuant to a Transportation Agreement dated October 1, 1988 as amended on October 25, 1988 between United and LaSu (Transportation Agreement) proposes to transport natural gas for LaSu from points of receipt located in various counties in Louisiana. The points of delivery and ultimate points of delivery are located in multiple states.

United further states that it commenced October 25, 1988, as reported in Docket No. ST89–1496–000.

Comment date: March 13, 1989, in accordance with Standard Paragraph G at the end of the notice.

5. Texas Gas Transmission Corporation

[Docket No. CP89–681–000]

January 27, 1989.

Take notice that on January 23, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89–681–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Total Minatome Corporation (Total), for the ultimate end use by Alabama-Tennessess Natural Gas Co., under Texas Gas' blanket certificate issued in Docket No. CP86–686–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Gas requests authorization to transport, on an interruptible basis, up to a maximum of 100,000 MMBtu of natural gas per day for Total from receipt points located in offshore Texas to delivery points located in offshore Texas. Texas Gas anticipates transporting, on an average day 10,000 MMBTu and an annual volume of 3,650,000 MMBtu.

Texas Gas states that the transportation of natural gas for Total commenced December 9, 1988, as reported in ST89–1399–000, for a 120-day period pursuant to Section 284.223(a) of the Commission's Regulations and the blanket certificate issued to Texas Gas in Docket No. CP88–686–000.

Comment date: March 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Trunkline Gas Company

[Docket No. CP89–682–000]

January 27, 1989.

Take notice that on January 23, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642 Houston, Texas 77251–1642 filed in Docket No. CP89–682–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued Docket No. CP86–586–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Trunkline proposes to transport natural gas for GasTrak Corporation (GasTrak), a marketer, pursuant to a transportation agreement dated December 15, 1988. Trunkline explains that service commenced January 1, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–1783. Trunkline further explains that the peak day quantity would be 15,000 dekatherms, the average daily quantity would be 15,000 dekatherms, and that the annual quantity would be 5,475,000 dekatherms. Trunkline explains that it would receive natural gas for GasTrak's account at points of receipt in Illinois, Louisiana, Tennessee, Texas and offshore Louisiana. Trunkline states that it would transport and redeliver the natural gas to Panhandle Eastern Pipe Line Company in Douglas County, Illinois.

Comment date: March 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP89–685–000]

January 27, 1989.

Take notice that on January 23, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP89–685–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of American Central Gas Marketing Company (American), under Northern's blanket certificate issued in Docket No. CP86–435–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern requests authorization to transport, on an interruptible basis, up to a maximum of 200,000 MMBtu of natural gas per day for American, a marketer of natural gas, from receipt points located in Oklahoma, Texas, Kansas, New Mexico, Iowa, South Dakota, Nebraska, to delivery points located in New Mexico, Texas, Minnesota, Michigan, and Kansas. Northern anticipates transporting, on an average day 150,000 MMBtu and an annual volume of 73,000,000 MMBtu.

Northern states that the transportation of natural gas for American commenced December 13, 1988, as reported in Docket No. ST89–1647–000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Northern in Docket No. CP86–435–000.

Comment date: March 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. Colorado Interstate Gas Company

[Docket No. CP89–684–000]

January 27, 1989.

Take notice that on January 23, 1989, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP89–684–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide interruptible transportation service for Colorado Gasmark, Inc. (Colorado Gasmark), a marketer, under the blanket certificate issued in Docket No. CP86–589–000, *et al.*, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

CIG states that pursuant to a transportation agreement dated October 1, 1988, under its Rate TI–1, it proposes to transport up to 7,800 Mcf per day of natural gas for Colorado Gasmark. CIG states that it would receive the gas at an existing point on its system located in Wyoming, and that it would transport and redeliver the gas, less fuel gas and lost and unaccounted-for gas, in Hutchinson County, Texas.

CIG advises that service under Section 284.223(a) commenced October 1, 1988, as reported in Docket No. ST89–345–000. CIG further advises that it would transport 7,000 Mcf on an average day and 2,500 MMcf annually.

Comment date: March 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. Arkla Energy Resources, a division of Arkla, Inc.

[Docket No. CP89–672–000]

January 27, 1989.

Take notice that on January 19, 1989, Arkla Energy Resources, a division of Arkla, Inc. (AER), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP89–672–000 a request pursuant to §§ 157.205, 157.212 and 157.216 of the Commission's Regulations for authorization to establish two new town border stations and to abandon and transfer to Arkansas Louisiana Gas Company (ALG), also a division of Arkla, Inc., existing facilities downstream of such new town border stations, under the blanket certificate issued in Docket Nos. CP82–384–000 and CP82–384–001 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

AER specifically requests authorization to construct and operate a new 6-inch town border station on AER's Line AM–39 that would be known as AER's Magnolia Central T.B.S., and to abandon and transfer to ALG existing facilities downstream of such town border station. It is stated that these existing facilities would include approximately 10,050 feet of 6-inch pipeline (a portion of AER's Line AM–39), approximately 140 feet of 2-inch pipeline (AER's Line AM–133), and four existing town border stations located thereon. AER states that the facilities that it proposes to transfer would still be used in the retail delivery of natural gas.

AER also requests authorization to construct and operate a new 2-inch skid-Mounted town border station at the interconnection of AER's Line L–1–K and Line AM–102 that would be designated Magnolia East Side T.B.S., and to abandon and transfer ALG approximately 15,192 feet of 4-inch pipeline (AER's Line AM–102), two town border stations, and two taps used for delivery of gas to ALG rural extension lines. It is stated that these facilities that AER proposes to transfer would still be used in the retail delivery of natural gas.

AER states that the operation of its pipeline system would be enhanced by the rearrangement of certain facilities used to deliver natural gas to ALG in and around Magnolia which is located in Columbia County, Arkansas. AER indicates that no change in the level of deliveries to consumers in Magnolia is expected to result from the granting of the requested certificate and, thus, there would be no impact on AER's gas supply. It is indicated that the facilities that AER proposes to abandon and transfer were certificated in Docket No. G–10887. AER states that the proposed abandonment would have no effect on service to existing customers and that all of the consumers served by gas delivered into the lines that AER proposes to abandon are and would continue to be served by ALG. AER estimates that the proposed rearrangement and construction would cost $130,605.

Comment date: March 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

BEST COPY AVAILABLE

10. Williams Natural Gas Company

[Docket No. CP89-669-000]

January 27, 1989.

Take notice that on January 19, 1989, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-669-000, a request pursuant to § 157.205 (18 CFR 157.205) of the Commission's Regulations under the Natural Gas Act for authorizaton to provide firm transportation service for Ag Processing, Inc. (Ag Processing), an end-user, under Williams blanket transportation certificate issued May 10, 1988, in Docket No. CP86-631-000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Williams states it will receive the gas at various supply sources in Kansas and transport the gas to various delivery points on Williams' system in Missouri.

Williams proposes to transport up to 200 MMBtu of gas per day on a peak day or approximatley 73,000 MMBtu of gas annually. Williams states that the transportation service commenced under the 120-day automatic authorization of § 284.223(a)(i) of the Commission's Regulations on December 1, 1988, pursuant to a transportation agreement dated December 1, 1988. Williams notified the Commission of the commencement of the transportation service in Docket No. ST89-1681-000 on January 10, 1989.

Comment date: March 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. Williams Natural Gas Company

[Docket No. CP89-667-000]

January 27, 1989.

Take notice that on January 19, 1989, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-667-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide transportation for Pawnee Pipeline and Marketing Company, Inc. (Pawnee), a marketer, under WNG's blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

WNG requests authorization to transport, on an interruptible basis, up to a maximum of 500 MMBtu equivalent of natural gas per peak day for Pawnee from various receipt points in Kansas to various delivery points on WNG's pipeline system located in Kansas. WNG anticipates transporting 500 MMBtu equivalent of natural gas on an average day and 182,500 MMBtu equivalent of natural gas on an annual basis.

WNG states that the transportation of natural gas for Pawnee commenced on December 1, 1988, as reported in Docket No. ST89-1682, for a 120-day period pursuant to § 284.223(a)(1) of the Commission's Regulations and the blanket certificate issued to WNG in Docket No. CP86-631-000. WNG proposes to continue this service in accordance with §§ 284.221 and 284.223 of the Commission's Regulations.

Comment date: March 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. Northern Natural Gas Company

[Docket No. CP89-669-000]

January 27, 1989.

Take notice that on January 23, 1989, Northern Natural Gas Company (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-669-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on an interruptible basis on behalf of Chevron USA, Inc. (Chevron), a producer of natural gas, under its blanket certificate issued in Docket No. CP86-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern states that it proposes to transport natural gas on behalf of Chevron between a point of receipt in Ward County, Texas and points of delivery located in Winkler and Yoakum Counties, Texas.

Northern further states that the maximum daily, average and annual quantities that it would transport of behalf of Chevron would be 200,000 MMBtu equivalent of natural gas, 150,000 MMBtu equivalent of natural gas and 73,000,000 MMBtu equivalent of natural gas, respectively.

Northern indicates that in Docket No. ST89-1759, filed with the Commission on January 17, 1989, it reported that transportation service on behalf of Chevron had begun under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: March 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. Trunkline Gas Company

[Docket No. CP89-683-000]

January 27, 1989.

Take notice that on January 23, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-683-000 a request pursuant to §§ 157.205 and 284.223(2)(b) of the Commission's Regulations under the Natural Gas Act for authorization to provide transportation for Hadson Gas Systems, Inc. (Hadson Gas), a shipper and marketer of natural gas, under Trunkline's blanket certificate issued in Docket No. CP88-586-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Trunkline requests authorization to transport, on an interruptible basis, up to a maximum of 50,000 Dt of natural gas per day for Hadson Gas. Trunkline proposes to receive gas from various existing points of receipt on its system in Louisiana, Texas, Illinois and Tennessee. Trunkline would then transport and redeliver subject gas, less fuel and unaccounted for line loss, to Panhandle Eastern Pipe Line Company in Douglas County, Illinois. The receipt points and end-users are listed in the December 6, 1988 transportation agreement which provides for this service. Trunkline states that it anticipates transporting 23,000 Dt on an average day and 8,395,000 Dt on an annual basis.

Trunkline states that the transportation of natural gas for Hadson Gas commenced on January 1, 1989, as reported in Docket No. ST89-1800-000, for a 120-day period pursuant to § 284.223(a)(1) of the Commission's Regulations and the blanket certificate issued to Trunkline in Docket No. CP88-586-000. Trunkline proposes to continue this service in accordance with §§ 284.221 and 284.223 of the Commission's Regulations. Trunkline further states that no new facilities nor expansion of existing facilities are required to provide this transportation service.

Comment date: March 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraph

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest if filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2332 Filed 1-31-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD89-02897T]

Designation of Tight Formation Hidalgo County, Texas, Texas-43; Tight Formation Determination (January 26, 1989.

Take notice that on December 12, 1988, the Railroad Commission of Texas (Texas) submitted to the Commission its determination that the McAllen Ranch (Guerra) Field located in Hidalgo County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The application includes the Railroad Commission's order issued November 21, 1988, finding that the formation meets the requirements of the Commission's regulations set forth in 18 CFR Part 271.

Any person desiring to be heard or to protest Texas' determination should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Rules of Practice and Procedure (18 CFR 385.211, 385.214 (1988)). All such comments should be filed within 10 days after publication of this notice in the **Federal Register.** Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2345 Filed 1-31-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TM89-3-20-002; TM89-6-20-001; and TM89-7-20-000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

January 26, 1989.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on January 23, 1989, tendered for filing proposed changes in its FERC Gas Tariff, Second Revised Volume No. 1 as set forth in the revised tariff sheets:

Rate Schedule F-2, proposed to be effective January 1, 1989
Thirty-first Revised Sheet No. 203
Alternate Thirty-first Revised Sheet No. 203
Rate Schedule F-3, proposed to be effective January 1, 1989
Second Substitute Twenty-third Revised Sheet No. 204
Rate Schedule F-4, proposed to be effective February 1, 1989
Substitute Twenty-fourth Revised Sheet No. 205
Alternate Substitute Twenty-fourth Revised Sheet No. 205
Rate Schedule SS-III, proposed to be effective February 1, 1989
Alternate Fifteenth Revised Sheet No. 214

Algonquin states that on December 30, 1988 in Docket No. TQ89-2-22-000, Algonquin's pipeline supplier, CNG Transmission Corporation ("CNGT") made an out-of-cycle Purchased Gas Adjustment filing to flow through increases in its cost of purchased gas. In its filing CNGT submitted both primary and alternate rates for reasons set forth in CNGT's filing. Pursuant to Section 7 of Rate Schedule F-2, Algonquin is filing Thirty-first Revised Sheet No. 203 ("Primary Sheet 203") and Alternate Thirty-first Revised Sheet No. 203 ("Alternate Sheet 203") to concurrently track those rate changes made by CNGT in the service underlying Algonquin's Rate Schedule F-2. Primary Sheet 203 represents increases of 7.5 cents per MMBtu in the Demand componnent and 6.77 cents per MMBtu in the Commodity component. Alternate Sheet 203 reflects increases of 14. 5 cents per MMBtu in the Demand component and 14.72 cents per MMBtu in the Commodity component.

Algonquin states that on December 30, 1988 in Docket No. TF89-1-16-000, Algonquin's pipeline supplier, National Fuel Gas Supply Corporation ("National") made an Interim Purchased Gas Adjustment to reflect a decrease from the rates contained in National's 30-day update to its annual PGA filed on December 1, 1988 in Docket No. TA89-1-16 *et al.* Pursuant to section 7 of Rate Schedule F-3, Algonquin is filing Second Substitute Twenty-third Revised Sheet No. 204 to concurrently track the rate change made by National in the service underlying Algonquin's Rate Schedule F-3. The change in rate represents a decrease of 11.94 cents in the commodity component from the revise rate filed by National on December 1, 1988.

Algonquin states that on December 30, 1988, in Docket No. TA89-1-17, *et al.*, Algonquin's pipeline supplier, Texas Eastern Transmission Corporation ("Texas Eastern") filed primary and alternate rates to revise its gas cost projection made in Texas Eastern's December 2, 1988 annual PGA filing as more fully set forth in Texas Eastern's filing. Pursuant to section 7 of Rate Schedule F-4, Algonquin is filing Substitute Twenty-fourth Revised Sheet No. 205 ("Primary Sheet 205") and Alternate Substitute Twenty-fourth Revised Sheet No. 205 ("Alternate Sheet 205") under Rate Schedule F-4 to concurrently track those changes made by Texas Eastern in the rates for the services underlying Algonquin's Rate Schedule F-4. Alternate Fifteenth Revised Sheet No. 214 ("Alternate Sheet 214") is being filed pursuant to Section 9 of Rate Schedule SS-III to concurrently track those changes made by Texas Eastern in the rates for the service underlying Algonquin's Rate Schedule SS-III as shown in Texas Eastern's Alternate rate sheets.

Algonquin states that under Rate Schedule F-4, Primary Sheet 205 reflects a decrease of 17.88 cents per MMBtu in the Demand component and an increase of 30.36 cents per MMBtu in the Commodity component. Alternate Sheet 205 for Rate Schedule F-4 reflects a decrease in the Demand Component of $1.202 per MMBtu and an increase of 30.23 cents per MMBtu in the Commodity component.

Algonquin states that under Rate Schedule SS-III, Alternate Sheet 214 reflects a decrease in the Non-Firm Withdrawal charge of 0.98 cents per MMBtu.

Algonquin notes that copies of this filing were served upon the affected parties and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 3, 1989. Protests will be considered by the Commisson in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2330 Filed 1-31-89; 8:45 am]

BILLING CODE 6717-01-M

Consumers Power Co.; Intent To File an Application for a New License

[Project No. 2468; Michigan]

January 30, 1989.

Take notice that on December 16, 1988, Consumers Power Company, the existing licensee for the Croton Hydroelectric Project No. 2468, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2468 was issued effective April 1, 1962, and expires December 31, 1993.

The project is located on the Muskegon River in Newaygo County, Michigan. The principal works of the Croton Project include a 55-foot-high, 700-foot-long earth and concrete dam; a reservoir of 1,378 acres at elevation 722.5 feet m.s.l.; a powerhouse with an installed capacity of 9,000 kW; a 700-foot-long, 7.2/138-kV circuit connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 1945 West Parnall Road, Jackson, MI 49201, Attn: R.J. Ford, telephone (517) 788-0156.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2337 Filed 1-31-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2452; Michigan]

Consumers Power Co.; Intent To File an Application for a New License

January 30, 1989.

Take notice that on December 16, 1988, Consumers Power Company, the existing licensee for the Hardy Hydroelectric Project No. 2452, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2452 was issued effective April 1, 1962, and expires December 31, 1993.

The project is located on the Muskegon River in Mecosta and Newaygo Counties, Michigan. The principal works of the Hardy Project include a 3,000-foot-long earth dam with a concrete core wall; a reservoir of 3,971 acres at elevation 822.5 feet m.s.l.; a powerhouse with an installed capacity of 30,000 kW; a substation and a 5-mile-long, 138-kV transmission line; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 1945 West Parnall Road, Jackson, MI 49201, Attn: R. J. Ford, telephone (517) 788-0156.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2338 Filed 1-31-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2453; Michigan]

Consumers Power Co.; Intent To File an Application for a New License

January 30, 1989.

Take notice that on December 16, 1988, Consumers Power Company, the existing licensee for the Five Channels Hydroelectric Project No. 2453, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2453 was issued effective April 1, 1962, and expires December 31, 1993.

The project is located on the Au Sable River in Iosco County, Michigan. The principal works of the Five Channels Project include a 36-foot-high, 770-foot-long sand fill and concrete dam; a reservoir of 250 acres at elevation 714.42 feet m.s.l.; a powerhouse with an installed capacity of 6,000 kW; a substation and transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 1945 West Parnall Road, Jackson, MI 49201, Attn: R. J. Ford, telephone (517) 788-0156.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2339 Filed 1-31-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2451; Michigan]

Consumers Power Co.; Intent To File an Application for a New License

January 30, 1989.

Take notice that on December 16, 1988, Consumers Power Company, the existing licensee for the Rogers Hydroelectric Project No. 2451, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2451 was issued effective April 1, 1962, and expires December 31, 1993.

The project is located on the Muskegon River in Mecosta County, Michigan. The principal works of the Rogers Project include an 800-foot-long earth and concrete dam; a reservoir of 610 acres at elevation 886.0 feet m.s.l.; a powerhouse with an installed capacity of 6,000 kW; a substation and a 140-foot-long, 46-kV circuit connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 1945 West Parnall Road, Jackson, MI 49201, Attn: R. J. Ford, telephone (517) 788-0156.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2340 Filed 1-31-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2450; Michigan]

Consumers Power Co.; Intent To File an Application for a New License

January 30, 1989.

Take notice that on December 16, 1988, Consumers Power Company, the existing licensee for the Cooke Hydroelectric Project No. 2450, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2450 was issued effective April 1, 1962, and expires December 31, 1993.

The project is located on the Au Sable River in Iosco County, Michigan. The principal works of the Cooke Project include two earthfill dam sections, about 864 feet long; a reservoir of 1,800 acres; a powerhouse with an installed capacity of 9,000 kW; a substation and transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 1945 West Parnall Road, Jackson, MI 49201, Attn: R. J. Ford, telephone (517) 788-0156.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2341 Filed 1-31-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2447; Michigan]

Consumers Power Co.; Intent To File an Application for a New License

January 30, 1989.

Take notice that on December 16, 1988, Consumers Power Company, the existing licensee for the Alcona Hydroelectric Project No. 2447, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2447 was issued effective April 1, 1962, and expires December 31, 1993.

The project is located on the Au Sable River in Alcona County, Michigan. The principal works of the Alcona Project include a 67-foot-high, 4,820-foot-long earth dam with concrete corewalls; a reservoir of 1,075 acres at elevation 829.67 feet m.s.l.; a powerhouse with an installed capacity of 8,000 kW; a 400-foot-long, 4.8-kV line to a substation and 4.8/138-kV transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 1945 West Parnall Road, Jackson, MI 49201, Attn: R. J. Ford, telephone (517) 788-0156.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary

[FR Doc. 89-2342 Filed 1-31-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2448; Michigan]

Consumers Power Co.; Intent To File an Application for a New License

January 30, 1989.

Take notice that on December 16, 1988, Consumers Power Company, the existing licensee for the Mio Hydroelectric Project No. 2448, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2448 was issued effective April 1, 1962, and expires December 31, 1993.

The project is located on the Au Sable River in Oscoda County, Michigan. The principal works of the Mio Project include a 2,120-foot-long earth dam with a concrete corewall; a reservoir of 860 acres at elevation 963.37 feet m.s.l.; a powerhouse with an installed capacity of 5,000 kW; a substation and transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 1945 West Parnall Road, Jackson, MI 49201, Attn: R. J. Ford, telephone (517) 788-0156.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary

[FR Doc. 89-2343 Filed 1-31-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2580; Michigan]

Consumers Power Co.; Intent To File an Application for a New License

January 30, 1989.

Take notice that on December 16, 1988, Consumer Power Company, the existing licensee for the Tippy Hydroelectric Project No. 2580, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2580 was issued effective April 1, 1962, and expires December 31, 1993.

The project is located on the Manistee River in Manistee County, Michigan. The principal works of the Tippy Project include an 80-foot-high, 630-foot-long earthfill dam; a reservoir of 1,540 acres at elevation 687.5 feet m.s.l.; a powerhouse with an installed capacity of 20,000 kW; a 138-kV substation and 1,000 feet of 138-kV transmission line connecting to a 138-kV switching station; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE, Washington, DC 20426. The above information as described in the rule is now available from the licensee at 1945 West Parnall Road, Jackson, MI 49201, Attn: R. J. Ford, telephone (517) 788-0156.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2344 Filed 1-31-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-54-000]

Columbia Gas Transmission Corp. and Columbia Gulf Transmission Co.; Petition for Limited Waiver

January 26, 1989.

Take notice that on January 17, 1989, Columbia Gas Transmission Corporation (Columbia Gas) and Columbia Gulf Transmission Company (Columbia Gulf) filed a petition for a limited waiver of 18 CFR 161.3(b). Columbia requests a limited one-time waiver of § 161.3(b) to the extent necessary to permit Columbia to waive transportation imbalance penalties which would otherwise be imposed under section 6 of Columbia Gas' FTS and ITS Rate Schedules, and section 6 of Columbia Gulf's FTS-1, FTS-2, ITS-1, and ITS-2 Rate Schedules for imbalances existing as of October 31, 1988. Columbia alleges that which the Commission previously stated that Columbia is not required to obtain specific authorization to waive Part 284 transportation penalties, the promulgation of § 161.3(b) places Columbia in an uncertain position with respect to this recent offer to waive imbalance penalties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such motions or protests should be filed on or before February 3, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2334 Filed 1-31-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-23-002]

Northern Natural Gas Co.; Compliance Filing

January 26, 1989.

Take notice that on January 18, 1989, Northern Natural Gas Company, Division of Enron Corporation (Northern) filed Substitute Second Revised Sheet No. 52c.9 to its FERC Gas Tariff, Third Revised volume No. 1, to be effective December 15, 1988.

Northern states that in compliance with the Commission's order of December 14, 1988, Ordering Paragraph (c), this tariff sheet corrects a drafting error in section 12 of its Rate Schedule IT-1.

Northern requests waiver of the fifteen (15) day compliance period prescribed in Ordering Paragraph (c) of the above-mentioned order. Northern states that the compliance period coincided with the holiday season and Northern's office personnel was reduced due to the holidays.

Northern states that copies of this compliance filing have been served on all parties to the proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such motions or protests should be filed on or before February 3, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2335 Filed 1-31-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI89-223-000]

ProGas U.S.A., Inc.; Application for a Blanket Certificate With Pregranted Abandonment

January 26, 1989.

Take notice that on January 12, 1989, ProGas U.S.A., Inc. (ProGas) of 1620 SunLife Plaza, 144 Fourth Avenue, SW., Calgary, Alberta, Canada T2P 3N4, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket with pregranted abandonment authorization, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 15, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for ProGas to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2346 Filed 1-31-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-43-001]

Valero Interstate Transmission Co.; Tariff Filing

January 27, 1989.

Take notice that on January 23, 1989, Valero Interstate Transmission Company ("Vitco") tendered for filing the following Tariff Sheet as part of its FERC Gas Tariff, Original Volume No. 2:

Second Revised Sheet No. 95: Vitco states that this tariff sheet is to restate Vitco's tariff to incorporate the requirements of Ordering Paragraph (B) of the Commission Order in the above-referenced proceeding issued January 4, 1989. On December 5, 1988, Vitco filed tariff sheets to permit Valero to flow through its take-or-pay costs in accordance with Order No. 500. The tariff sheets were accepted, to become effective January 5, 1989, subject to refund and to the conditions in the January 4, 1989 Order. Paragraph B ordered Vitco to file revised tariff sheets to provide for an optional extended amortization period of no less than 36 months for customer payments.

Vitco states that in compliance with Ordering Paragraph B, 2nd Revised Sheet No. 95 provides customers an optional extended amortization period of up to 36 months, unless the customer contract expires with the 36 month period in which case the then current unpaid balance becomes due.

Vitco requests that the tariff sheet be accepted for filing to be made effective January 5, 1989, subject to the same conditions as set forth in the January 4, 1989 Order, and that waiver be granted of any Commission order or regulation that would prohibit such filing and effectiveness.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 3, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Vitco's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2329 Filed 1-31-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-196-007]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

January 26, 1989.

Take notice that Transwestern Pipeline Company (Transwestern) on January 18, 1989 tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Effective December 1, 1988

Substitute 50th Revised Sheet No. 5
1st Substitute Original Sheet No. 5C
1st Substitute 32nd Revised Sheet No. 6
1st Substitute 2nd Revised Sheet No. 8
1st Substitute 1st Revised Sheet No. 9
1st Substitute Original Sheet No. 9A
1st Substitute 2nd Revised Sheet No. 14
1st Substitute 1st Revised Sheet No. 15
Substitute 1st Revised Sheet No. 19
Substitute 1st Revised Sheet No. 20
Substitute 1st Revised Sheet No. 20A
Substitute 1st Revised Sheet No. 20B
Substitute 1st Revised Sheet No. 21
Substitute 1st Revised Sheet No. 22
1st Substitute 2nd Revised Sheet No. 37
1st Substitute Original Sheet No. 87
1st Substitute Original Sheet No. 88
1st Substitute Original Sheet No. 89
1st Substitute Original Sheet No. 90

Effective January 1, 1989

Substitute 51st Revised Sheet No. 5
Substitute 52nd Revised Sheet No. 5

Transwestern states these tariff sheets are filed in compliance with the Commission's December 16, 1988 Order (Order) in Docket No. RP88-196-004, -005 approving, subject to refund and conditions, Transwestern October 17, 1988 compliance filing to implement one of the Commission's Order 500 recovery options for take-or-pay buyout and contract reformation costs (Transition Costs). Such Transition Costs included in the instant filing are take-or-pay buyout and contract reformation costs actually incurred through September 1, 1988.

Transwestern states that pursuant to the Order, it has computed interest on its settlement balances commencing December 1, 1988 and revised the tariff language contained in the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1 to further define Transition Costs and to clarify the language concerning parties which challenge the prudency of the settlement costs.

Transwestern, herein, respectively requests that the Commission grant any and all waivers of its rules, regulations and orders as may be necessary so as to permit the above listed tariff sheets to become effective December 1, 1988, with the remaining tariff sheets to be effective January 1, 1989.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 3, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2331 Filed 1-31-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-121-002]

Tennessee Gas Pipeline Co.; Filing of Changes in Rates

January 26, 1989.

Take notice that on January 19, 1989, Tennessee Gas Pipeline Company (Tennessee) tendered for filing changes in its FERC Gas Tariff pursuant to the Commission's orders in the referenced proceeding. *Tennesee Gas Pipeline Company*, 45 FERC ¶ 61,031, *reh'g granted in part*, 45 FERC ¶ 61,470 (December 20, 1988). The revised tariff sheets are to be effective January 1, 1989.

Tennessee states that the revised tariff sheets reflect the following changes:

1. A 100 load factor rate for interruptible sales under Rate Schedule R.

2. The Opinion No. 352, single centroid Mcf-mile method of allocation of mileage-related transmission costs.

3. A one-part rate based on an imputed load factor of 60% for full

requirements customers purchasing under Rate Schedule GS.

4. The use of peak-day deliveries to allocated downstream commodity transmission costs to storage services.

Further, Tennessee states that these revisions were incorporated in its filing of December 30, 1988 in Docket No. RP88-228 to establish new base tariff rates to be effective February 1, 1989. However, in order to reflect sequential pagination of tariff sheets, Tennessee is refiling certain of those tariff sheets.

Although Tennessee does not believe any waivers are necessary for the Commission to accept the revised tariff sheets to be effective as proposed, Tennessee requests that the Commission grant any waivers it deems necessary.

And person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regultory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 3, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2336 Filed 1-31-89; 8:45 am]

BILLING CODE 6717-01-M

Western Area Power Administration

Cooperative Agreement; Financial Assistance Award to 13 States Within the Western Regional Biomass Energy Program

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of restricted eligibility financial assistance application for cooperative agreement awards.

SUMMARY: Western Area Power Administration, DOE, is giving notice of plans to award 9-month Cooperative Agreements to the 13 States included in the Western Regional Biomass Energy Program. The total amount of the award will not exceed $130,000 with $10,000 targeted for each State. Funding is authorized in the Act of Oct. 30, 1986, Pub. L. 99-591, 100 Stat. 3341. Under Cooperative Agreements, each State will perform a resource assessment of available biomass product and waste that can be converted to energy. Pursuant to 10 CFR 600.7(b), which provides for restricted eligibility in a DOE solicitation, a determination has been made that restricted eligibility applies. The 13 States in the program have the expertise and data required to undertake the project. With this assistance from DOE, the States will be able to analyze their data to determine available biomass resources that can be converted to energy. Results from the resource assessment will be used to determine funding of energy projects that can use biomass in a commercially viable cost-shared venture. Cooperative Agreements will be negotiated with:

1. Arizona Solar Energy Office, Department of Commerce, 1700 West Washington, Phoenix, AZ 85007, Contact: Frank P. Mancini.
2. California Energy Commission, 1516 9th Street, Sacramento, CA 95814, Contact: Charles Imbrecht.
3. Colorado Office of Energy Conservation, 112 East 14th Avenue, Denver, CO 80203, Contact: Janet Hartsfield.
4. Kansas State University, Cooperative Extension Service, Engineering Extensions Program, Ward Hall, Manhattan, KS 66506, Contact: Richard B. Hayter.
5. Nebraska Energy Office, State Capitol Building, Lincoln, NE 68509-5085, Contact: Larry Pearce.
6. Nevada State Conservation Commission, 505 East King Street, Capitol Complex, Carson City, NV 89710, Contact: Chris Freeman.
7. New Mexico Research and Development Institute, 1220 South St. Francis Drive, Suite 358, Santa Fe, NM 87501, Contact: Larry Icerman.
8. State of North Dakota, Office of Intergovernmental Assistance, 14th Floor—State Capitol, Bismarck, ND 58505, Contact: Shirley R. Dykshoorn.
9. State of Oklahoma, Office of the Governor, 212 State Capitol, Oklahoma City, OK 73105, Contact: Glen E. Robards, Jr.
10. South Dakota Energy Office, 217½ West Missouri, Pierre, SD 57501, Contact: Steven M. Wegman.
11. State of Texas, Energy Management Center, Governor's Office of Budget and Planning, 201 East 14th, Capitol Station, Austin, TX 78711, Contact: Judith Carroll.
12. Utah State University, Contracts and Grants Department, Logan, UT 84322, Contact: Michael Lewis.
13. State of Wyoming, Office of the Governor, Capitol Building, Cheyenne, WY 82002, Contact: Mike Sullivan.

FOR FURTHER INFORMATION CONTACT: Linda Puttmann, A1523, Contract Specialist, U.S. Department of Energy, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401, Telephone: (303) 231-7287, Solicitation Number: DE-RP65-89WA-04966.

Issued at Golden, Colorado, January 24, 1989.

William H. Clagett,

Administrator.

[FR Doc. 89-2352 Filed 1-31-89; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

National Air Pollution Control Techniques Advisory Committee; Request for Suggestions for List of Candidates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of preparation of list of candidates.

SUMMARY: The EPA is preparing a list of candidates from which nominees will be selected for the National Air Pollution Control Techniques Advisory Committee (NAPCTAC). The EPA invites all interested persons to suggest qualified individuals whose names may be added to this list of candidates. The NAPCTAC was established to advise the Agency on the latest available technology and economic feasibility of alternative methods to prevent and control air pollution to be published in air quality control techniques documents. It also advises on information documents regarding air pollution control techniques and testing and monitoring methodology for stationary source categories and air pollutants subject to the provisions of Sections 111 and 112 of the Clean Air Act, as amended.

DATE: Submit suggestions for the list of candidates no later than March 3, 1989.

ADDRESS: Submit suggestions for the list of candidates to: Jack R. Farmer, Director, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

FOR FURTHER INFORMATION CONTACT: Jack R. Farmer, Director, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, (919) 541-5572.

SUPPLEMENTARY INFORMATION: The Charter for the NAPCTAC which describes the authority, organization, and functions of the Committee is available upon request. Individuals whose names are offered should have education or experience in the scientific, engineering, or economic aspects associated with the sources of air pollution and the control of emissions from the sources. Individuals should be resident in universities, State and local governments, research institutions, public interest organizations, or industry.

Any interested person or organization may submit the names of qualified persons. Suggestions for the list of candidates should be identified by name, occupation, position, address, and telephone number; a resume of the individual's background, experience, and qualifications should be included.

Persons selected for membership on the NAPCTAC will receive per diem compensation for travel and nominal daily compensation while attending meetings.

Suggestions for the list of candidates should be submitted no later than March 3, 1989. The Agency will not formally acknowledge or respond to suggestions.

Date: January 24, 1989.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 89-2271 Filed 1-31-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL 3513-2]

Proposed Determination To Prohibit the Use of Big River, Mishnock River, Their Tributaries and Adjacent Wetlands as Disposal Sites; Kent County, RI

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of proposed section 404(c) determination.

SUMMARY: Section 404(c) of the Clean Water Act (Act) authorizes the Environmental Protection Agency (EPA) to prohibit or restrict the discharge of dredge or fill material at defined sites in the waters of the United States (including wetlands) whenever it determines, after notice and opportunity for hearing, that use of such sites for disposal would have an unacceptable adverse impact on various resources, including wildlife. EPA Region I proposes under section 404(c) of the Act to prohibit use of Big River, Mishnock River, their tributaries and adjacent wetlands in Kent County, Rhode Island, as disposal sites for dredged or fill material in connection with construction of Big River Reservior, a 3400 acre water supply project. The Big River proposal would directly eliminate approximately 550 acres of valuable wetlands and impact an additional 500 to 600 acres of wetland habitat. There have been proposals to construct the project either by the State alone or as a joint venture with the U.S. Army Corps of Engineers (Corps). EPA Region I believes that filling and inundating the wetlands and waters of the site may have an unacceptable adverse effect on wildlife habitat and fisheries.

Purpose of Public Notice: EPA seeks comments on this proposed determination to prohibit the disposal of dredged or fill material into Big River, Mishnock River, their tributaries and adjacent wetlands. See Solicition of Comments, at the end of this public notice, for further details.

Public Comment: Comments on or requests for additional copies of the proposed determination should be submitted to the EPA Region It's designated Record Clerk, Virginia Laszewski, U.S. EPA, JFK Federal Building, WWP-1900, Boston, MA 02203-2211.

EPA seeks comments concerning the issues enumerated under the Soliciation of Comments at the end of the document. Copies of all comments submitted in response to this notice, as well as the administrative record for the proposed determination, will be available for public inspection during normal working hours (9:00 a.m. to 5:00 p.m.) at the EPA Region I office.

In accordance with EPA regulations at 40 CFR 231.4, the Regional Administrator has decided that a hearing on this proposed 404(c) determination would be in the public interest. A separate public notice will be published in the **Federal Register** and local newspapers to announce the date, time and location of this hearing and describe the hearing procedures. Notice will be given at least 30 days in advance of the hearing. Written comments may be submitted prior to the hearing, and both oral and written comments may be presented at the hearing.

Because of the large scale of the proposed project, the complexity of issues, and the large volume of information which exists about this project, the Regional Administrator hereby determines that good cause exists to establish a comment deadline of July 31, 1989. This will also provide an opportunity for people to visit the site and make their own observations if they they wish to do so, and for the State and others to submit information about project need and alternatives. Neither the Corps nor the State plans to build this project within the next year; therefore, the extended comment period would not disadvantage the project proponents.

FOR FURTHER INFORMATION CONTACT: Mr. Mark J. Kern, EPA Water Quality Branch, JFK Federal Building, WWP-1900, Boston, MA 02203-2211. (617) 565-4421.

SUPPLEMENTARY INFORMATION:

Background

I. Section 404(c) Procedure

The Clean Water Act, 33 U.S.C. 1251 *et seq.*, prohibits the discharge of pollutants, including dredged or fill material, into the waters of the United States, including wetlands, except in compliance with, among other things, section 404. Section 404 establishes a federal permit program to regulate the discharge of dredged or fill material subject to environmental regulations developed by EPA in conjunction with the Department of the Army. The Corps may issue permits authorizing dredged and fill material discharges into waters and wetlands if they comply with, among other things, EPA's 404(b)(1) guidelines, except as provided in section 404(c). Section 404(c) authorizes EPA, after providing notice and opportunity for hearing, to prohibit or restrict filling waters of the United States where it determines that such use would have an unacceptable adverse effect on wildlife or other specified environmental interests. EPA can exercise 404(c) to "veto" a permit the Corps had decided to issue or, as here, to protect valuable aquatic areas in the absence of any specific permit decision.

Regulations published in 40 CFR Part 231 establish the procedures to be followed by EPA in exercising its section 404(c) authority. Whenever the Regional Administrator has reason to believe that use of a site may have an unacceptable adverse effect on one or more of the pertinent resources, he may begin the process by notifying the Corps of Engineers and the applicant that he intends to issue a proposed determination under section 404(c). Unless the applicant or the Corps persuades the Regional Administrator within 15 days that no unacceptable adverse effects will occur, the Regional Administrator publishes a notice in the **Federal Register** of his proposed determination, soliciting public comment and offering an opportunity for a public hearing. Today's notice represents this step in the process.

Following the public hearing and the close of the comment period, the Regional Administrator either withdraws the proposed determination or prepares a recommended determination. (A decision to withdraw may be reviewed at the discretion of the Assistant Administrator for Water at EPA Headquarters.) If the Regional Administrator prepares a recommended

determination, he then forwards it and the complete administrative record compiled in the Region to the Assistant Administrator for Water at EPA Headquarters. The Assistant Administrator makes the final decision affirming, modifying, or rescinding the recommended determination.

II. Project Description and History

The Big River Reservoir has at different times been proposed as a State or federal project. The State of Rhode Island has proposed building a water supply reservoir; the Corps has proposed building a reservoir for water supply, flood control, and recreation purposes. The project dimensions, site characteristics, and impacts are essentially the same for both proposals. This proposed 404(c) action applies to both proposals.

The Big River Reservoir project, mostly located south of exit 6 on I-95, would involve the discharge of dredged and fill material into Big River to construct a dam and reservoir to create a 3,400 acre reservoir. The reservoir would produce between 27 and 36 million gallons a day (MGD) of potable water (State versus Corps estimates). The dam would be 70' high while the average water depth would be about 25' deep. To contain the water within the basin, a slurry wall would be built down to bedrock in the northeast portion of the proposed reservoir to intercept approximately 8 MGD of groundwater that now leaves the site and enters Mishnock Lake and Swamp. Mishnock Lake and Swamp, which are not part of the Big River watershed, are located approximately ½ mile northeast of the proposed reservoir.

A treatment plant would be built adjacent to the proposed reservoir on 51 acres of land a 96' diameter rock tunnel would transport water approximately 6 miles to an existing distribution system. Additional site preparation would destroy approximately 2,800 acres of terrestrial forest and relocate 10 roadways, 300 structures, numerous graveyards, and several dump sites.

According to State estimates, the project would cost at least $282 million, not including costs for environmental studies and mitigation. The federal government would construct less than half of the project and fund less than 50% of the initial cost. Most of that expenditure would be reimbursed by the State, resulting in a federal share of approximately 2%–5%.

In the 1960's the State of Rhode Island acquired over 8,000 acres of land at the Big River reservoir site in anticipation of building a reservoir. In 1976, having failed several times to secure funding to complete engineering studies, Rhode Island asked the Corps to consider constructing the reservoir as part of a federal flood control project. The Corps completed an Environmental Impact Statement (EIS) on the reservoir project in 1981, which concluded that environmental impacts would be significant. As early as 1982, EPA alerted the Corps that because of the adverse wetland impacts, EPA believes the project could not comply with section 404(b)(1) Guidelines, the primary federal regulations that protect wetlands.

Congress authorized the project as part of the Omnibus Water Resources Development Act of 1986, but ordered additional wildlife mitigation studies to be completed no later than November 17, 1987. These additional studies have not been completed.

In 1986, the State informed the Corps that it again wished to pursue the reservoir as a state project and subsequently applied for a federal section 404 permit. The Corps in 1987 informed the State that a supplemental EIS would be required to address alternatives, mitigation, and a number of other unresolved issues surrounding the project. For example, the 1981 EIS indicated that 570 acres of wetland habitat would be lost if the dam were constructed. New information now suggests that the total acreage of wetlands at risk exceeds 1000 acres, including Mishnock Swamp and the riverine wetlands along the South Branch of the Pawtuxet River. Moreover, the EIS did not address downstream water quality impacts, an important factor since the Pawtuxet River currently violates Rhode Island's water quality standards for dissolved oxygen and toxic chemicals.

During 1987 and 1988, EPA voiced its concerns about the adverse environmental impacts of the reservoir proposal and alerted the State that the project could not comply with section 404 requirements. EPA also emphasized the need for the State to thoroughly analyze the need for and alternatives to the project. The most recent State needs analysis for this project is over 20 years old. In a June 6, 1988 letter EPA urged the Corps to deny the permit because the project would cause significant degradation of the aquatic environment which could not be adequately mitigated.

In a July 1, 1988 letter to Rhode Island's Governor DiPrete, the Corps stated that the project as proposed would cause significant impacts to the aquatic environment, would not comply with the section 404(b)(1) Guidelines, and probably could not receive a federal 404 permit. However, during a August 11, 1988 meeting, the Corps indicated to Governor DiPrete that the Big River reservoir might again become a federal project.

In an August 24, 1988 letter, EPA's Regional Administrator informed the Rhode Island Water Resources Board, the Governor, and the Corps of his intention to begin a 404(c) action, based on his belief that the project may have unacceptable adverse impacts to wildlife and fisheries. Pursuant to 40 CFR 231.3, a 15-day opportunity for consultation ensued, which ended on September 9, 1988. Neither the State nor the Corps chose to consult with EPA. Instead Governor DiPrete officially asked the Corps, on September 1, 1988, to build the dam. The Water Resources Board withdrew its section 404 permit application to the Corps in late September, 1988.

The Corps New England Office has asserted that if it builds the reservoir project, it would be exempt from section 404(c) of the Clean Water Act. Normally, Corps civil works projects, including those authorized by Congress, must comply with the Clean Water Act and other federal and state requirements. In the Big River reservoir case, however, the Corps claims the project is exempt under section 404(r) of the Act.

EPA has concluded that the project is not exempt because the Corps did not follow the substantive and procedural requirements of section 404(r). The Act plainly requires an agency seeking an exemption under section 404(r) to submit an EIS to Congress before either project authorization or appropriation of funds. The Corps failed to submit the Big River reservoir EIS to Congress before authorization. Even if the EIS had been submitted to Congress, the project does not qualify for an exemption for several other reasons. These reasons include the manner of project financing, deficiencies in the NEPA record and an improper analysis of compliance with the EPA 404(b)(1) guidelines. EPA explained its position relative to the exemption issue in a December 7, 1988 letter to the Corps New England Division.

III. Characteristics and Functions of the Site

Big River, located in central Rhode Island, is part of the 29.7 square mile Big River Watershed. On a larger scale, the water drains to Narragansett Bay as part of the Pawtuxet River Basin. The wetlands along Big River and the Mishnock Swamp form the largest wetland complex in the 228-square mile Pawtuxet River Basin. The diverse habitats associated with the Big River

site support a large number of wildlife species. According to the 1981 EIS, 221 species of birds, 55 species of mammals, and 39 species of reptiles and amphibians can reasonably be expected to inhabit the site.

Along Big River and its tributaries the wetland habitats are unaltered by development or other human intrusions. As such, they provide high quality, diverse habitat for fish and wildlife, a travel corridor for upland and wetland wildlife, food web production for on-site and downstream biological communities, nutrient and pollutant uptake and assimilation, floodwater storage, and flow moderation. Additionally, they serve as an environment for fishing, hunting, and other recreational activities.

The wetlands which would be lost by constructing the dam and reservoir are part of an intact, functioning system specifically adapted to the hydrologic regime of Big River and its tributaries. Most of the large wetlands border finger-like stream channels scattered throughout the site. Thus, natural topographic changes in the landscape create a variety of interspersed wetland and upland habitats. This mixture of vegetation types allows the ecosystem to support a broad range of aquatic, semi-aquatic, and terrestrial wildlife communities. Vertical stratification of the forest canopy, sub-canopy, and ground cover also contributes to habitat diversity. Hence, fish and wildlife use the area as a resting, breeding, rearing, and feeding area as well as a travel corridor to nearby undeveloped habitat.

Leaf biomass produced by the trees and shrubs supports diverse fish and wildlife communities both at the project site and downstream. Numerous mammals at the site include white-tailed deer, red and gray fox, muskrat, cottontail rabbits and snowshoe hare, woodchuck, and raccoon. Extensive rodent populations and aquatic vertebrates at the site provides a significant food source for numerous predators. Thus, many valuable fur-bearing mammals such as long-tailed weasel, mink, otter and possibly bobcat inhabit the site. Of the 55 species of mammals cited in the EIS, the Rhode Island Heritage Program lists bobcat as a State threatened species (occurring at less than 5 locations in the State).

The large prey population also supports a variety of raptors, such as red-tailed hawk, red-shouldered hawk, sparrow hawk, and great-horned owl. Additional bird species known to inhabit the site include osprey, belted kingfisher, flycatchers, swallows, and woodpeckers. Populations of spring and fall migratory birds, especially various woodland warblers, flourish at the site. The EIS lists 221 species of birds potentially using the site, and the Rhode Island Heritage Program has identified 104 species of birds which nest in the Big River area. The State classifies two species, Cooper's hawk and upland sandpiper, as threatened species.

Extensive conifers at the site not only provide food and cover for deer and other mammals but also supply winter food for bird species, such as the crossbill, which feed extensively on seeds of softwoods. The marshes of the proposed Big River site harbor breeding waterfowl such as black duck, mallard, and wood duck, while migratory species include green winged teal, shovelers, and ringnecked ducks. Shore birds, rails, and coots also frequent the marshes along with wading birds such as great-blue heron and bittern. Other species of concern to the Rhode Island Natural Heritage Program at the Big River site include four-toed salamander, eastern ribbon snake, buck moth, and barrens bluet damselfly. Vernal pools, created during spring runoff, provide especially productive habitat for many species of amphibians and reptiles.

Wetlands along Big River help to maintain and/or improve water quality, as well as regulate water quantity. Pollutants entering the watershed are trapped, assimilated, or transformed within the diverse substrate provided by the wetlands. During the summer, the shading effects of the forest canopy cools water temperatures in the river and tributaries, providing favorable conditions for native brook trout. Wetland trees and shrubs retard floodwater, decreasing downstream flood stages. The basal flow contribution from Mishnock Swamp to the South Branch of the Pawtuxet River during summer stress conditions provides water at the most important time of year.

Big River and its tributaries support self-sustaining cold water fisheries. Over 20 miles of free flowing streams within the site support more than 15 species of fish including brook trout, white suckers, and redfin pickerel.

IV. Basis of the Proposed Determination

A. Section 404(c) Criteria

The CWA requires that exercise of the final section 404(c) authority be based on a determination of "unacceptable adverse effect" to municipal water supplies, shellfish beds, fisheries, wildlife or recreational areas. EPA's regulations define "unacceptable adverse effect" at 40 CFR 231.2(e) as:

> Impact on aquatic or wetland ecosystem which is likely to result in significant degradation of municipal water supplies or significant loss of or damage to fisheries, shellfishing, or wildlife habitat or recreation areas. In evaluating the unacceptability of such impacts, consideration should be given to the relevant portions of the Section 404(b)(1) Guidelines (40 CFR Part 230).

One of the basic functions of section 404(c) is to police the application of the section 404(b)(1) guidelines. Those portions of the Guidelines relating to less environmentally damaging practicable alternatives, water quality impacts, and significant degradation of waters of the United States are particularly important in the evaluation of unacceptability of environmental impacts in this case. The guidelines forbid the discharge of dredged or fill material into waters of the United States if there is a less environmentally damaging practicable alternative, if it would cause or contribute to a violation of a State water quality standard or if it would cause or contribute to significant degradation of waters of the United States.

B. Adverse Impacts of the Proposed Project

Constructing the dam, and impounding Big River to create an artificial lake, would inundate 3,400 acres of wildlife habitat including 550 acres of productive wetlands. This loss represents approximately 50% of the total wetlands in the Big River watershed. Moreover, if Mishnock Swamp becomes dewatered because of the dam and slurry wall, over 500 additional acres of prime wetland would be adversely affected. Virtually all of the diverse forested habitat that now exists in the 3,400 acre site would be destroyed. The proposed dam would eliminate all of the forest-stream-pool habitat and adjacent floodplain community which has adapted to periodic flooding.

Based on the annual planned flow releases from the impoundment, Flat River Reservoir would receive 45% less water; the South Branch of the Pawtuxet, 34% less water; and the Pawtuxet River, 15% less water. As a result, the dam would also partially dewater extensive riverine wetlands along the South Branch of the Pawtuxet River, further adding to the wetland habitat loss. Further, reduced basal flow contributions from Mishnock River to the South Branch of the Pawtuxet, during summer months, could worsen the already poor water quality of the Pawtuxet, during summer months, could worsen the already poor water quality of the Pawtuxet River.

The dam would transform a diverse ecosystem, harboring a wide variety of wildlife, into a shallow lake about 25 feet deep that benefits only a few species, primarily warm water fish and bottom dwelling organisms. The cold water fisheries, including native brook trout, will be destroyed. The Big River site potentially supports over 50 species of mammals, over 35 species of reptiles and amphibians, and over 200 species of birds, including over 100 which nest at the site. The State considers at least 13 species which inhabit the Big River site to be threatened or of special state interest. Another 10–20 species require large tracts of habitat for survival.

Wildlife currently living on the site or migrating through it will either die or be forced into adjacent upland habitat less suited to their needs. If they survive dislocation, they will have to compete for available food and habitat with the existing upland animal communities. Many species of wildlife at the site either require wetland habitat for survival, or depend upon wetlands for a major portion of their life cycle. Thus, the dam would drastically reduce both the total numbers of individuals, and the diversity of species in the Big River area. In addition, the dam will permanently block the Big River site for use as a travel corridor. This would disrupt movement patterns of animals forcing them to cross highways and other exposed areas.

EPA does not believe that the Pawtuxet River, Flat River Reservoir, and Big River would achieve state water quality standards if the dam is built. The Pawtuxet River now violates the Class C standard of 5 mg/1 of dissolved oxygen during summer months. In addition, the standards require that normal seasonal and diurnal variations of dissolved oxygen above 5 mg/1 be maintained. Impounding Big River would likely worsen dissolved oxygen levels during all seasons by reducing flows in the Pawtuxet River by 15%. The Pawtuxet River historically supported large runs of anadromous fish including shad, alewives, and Atlantic Salmon. A further reduction in flow and increased concentration of pollutants may destroy any future plans for restoration.

The impoundment of the Big River and its tributaries would convert cold water fisheries to a warm water lake, and would violate antidegradation requirements in the Rhode Island water quality standards. Rhode Island has very few remaining cold water fisheries, while warm water fisheries are common throughout the State. The Pawtuxet River Basin, for example, has 34 ponds greater than 10 acres in size primarily suited for warm water species, but virtually no other cold water fisheries.

Flat River Reservoir provides the best warm water fisheries in the Pawtuxet River Basin, but it is showing some signs of eutrophication. Water from Big River, which provides over half of the water budget to Flat River Reservoir, will be reduced from an annual average flow of 60 cubic feet per second (cfs) to 6 cfs. This loss of water would increase eutrophication and adversely impact the fisheries and recreation of Flat River Reservoir, and could violate anti-degradation provisions of the Rhode Island water quality standards, which require existing water uses to be maintained and protected.

C. Project Need and Alternatives

1. *Current Information.* EPA believes that environmentally acceptable alternatives to the Big River reservoir, to supply potable water, have not adequately addressed.[1] EPA does not believe the need for additional potable water is established, given the paucity of data about basic user information and the lack of water conservation practices in the State. In addition, there appears to be a variety of ways to meet whatever need actually exists without threatening over 1000 acres of wetlands and downstream water quality.

Despite the long history of the Big River proposal, there is a lack of basic information regarding the supply and demand for water in Rhode Island. There appears at present to be no method in the state for distinguishing between industrial, commercial and residential users. Therefore, there is no information, for example, on how much water different types of industry use. EPA does not believe that an accurate need forecast can be developed without first conducting a thorough water audit, lacking in the 1981 EIS and other studies.

The record developed to date serves to underscore EPA's doubts about the need for a new water supply reservior. The State has not completed a basic water use forecast for over 20 years. A new reservoir is needed, according to the State, primarily because the Scituate reservoir is approaching its "safe yield". However, estimates of what constitutes the Scituate's safe yield vary by up to 15 mgd—approximately half the water that Big River could supply. Moreover, the state Water Resources Board acknowledges that it has no comprehensive policy to conserve water through public education, pricing policies, leak repair, drought planning or other such measures. The Corps, in the 1981 EIS, did not examine the State's water supply practices to determine potential water savings, did not gather any user-specific information particular to Rhode Island water users, and used population projection which time has shown in inaccurate. Currently, the Corps agrees that a new analysis of water supply demands should be done.

If a need for additional water is established, EPA believes that there are alternatives (or combinations of alternatives) to the Big River proposal to supply potable drinking water. Management alternatives include education, leak detection and repair, plumbing changes for new construction, and drought planning. Conserving drinking water from power generation, irrigation, commercial and industrial use can also increase potable water supplies by matching the quality of water with its intended use. Not all industrial and commercial activities need potable water for their operations. Similarly, existing water supplies that drop below drinking water standards could be maintained to meet non-potable needs rather than abandoned. In addition, a thorough analysis of alternatives would also include investigation into groundwater supplies, less environmentally damaging surface water sources, improved protection of existing water sources, and desalinization. Preliminary investigations, for instance, indicate that 5–10 mgd of potable water is available from the aquifer at the Big River site at a fraction of the cost of a new reservoir.

2. *Additional studies.* In recent discussions with EPA, the State has indicated that it is undertaking an updated analysis of water supply needs in Rhode Island as well as an evaluation of all alternatives, including conservation, to meet the future demand for drinking water in the State. In order to seek an objective view of the issues involved, the State has said it will retain an independent consultant to conduct the studies. The State has proposed that the scoping and oversight of the studies will be overseen by an inter-agency committee established by the Governor and that interested parties and EPA will be given opportunity to comment on the progress of the work.

[1] Water supply is the sole purpose of the State proposal. The Corps characterizes its project as multi-purpose, i.e., water supply, flood control and recreation. According to the EIS, construction of the dam would not be economically justified for flood control or recreation alone. Therefore, EPA is focusing its attention on alternatives to satisfy the primary purpose of water supply. EPA believes insofar as the Big River project provides benefits of flood control and recreation, they could be achieved through less environmentally damaging measures.

D. Mitigation

The State did not submit a mitigation plan with its permit application. The Corps, in its 1981 EIS, proposed several structural and nonstructural measures to mitigate adverse impacts including management of forests adjacent to the reservoir, reclaiming a mined area and putting up birdhouses. The Corps proposed to mitigate the loss of wetlands chiefly by constructing "subimpoundments" in the upper reaches of the reservoir in an attempt to enhance or create wetland habitat. If fully successful, these subimpoundments would contain about 90 acres of wetlands.

EPA does not believe the adverse environmental impacts of the reservoir proposal can be mitigated. To even attempt meaningful replacement of the full spectrum of existing wetland values would require a mitigation plan so complex as to be infeasible from both a scientific and practical standpoint. Even if a plan could be devised which theoretically replaced wetlands values, EPA doubts it could be relied upon to prevent the potentially unacceptable adverse environmental impacts of this project given the inherent risks associated with mitigation.

Recent studies in New England and elsewhere point to a number of scientific and practical difficulties associated with mitigation. The scientific base is too incomplete to support assertions that artificial wetlands will provide the functions of natural wetlands, let alone replace the diverse values of the 500–1000 acres of wetlands that would be lost at this site. Some wetland functions, such as flood storage, can normally be replicated successfully. Attempt to mitigate wildlife habitat losses have met with mixed success, and benefit only a few select species. There has been little demonstrated ability to recreate on a broad scale other wetland values such as groundwater discharge and recharge or the complex interactions of water, soil and plants involved in the uptake and transformation of nutrients and pollutants.

After considering the project's impacts, unprecedented in New England, and the poor track record of wetland creation and enhancement projects to compensate for projects involving much less severe impacts, EPA Region I has concluded that the adverse effects of the Big River project cannot be adequately mitigated. In any case, the mitigation scheme briefly described in the 1981 EIS would not compensate for the severe impacts to wildlife and other wetland values which the Big River project would cause. Even if 90 acres of subimpoundments could be successfully created and maintained, they would largely involve manipulation of existing wetland habitat. This would increase the value of these areas for select wildlife species at the expense of others. It would not begin to balance the impacts associated with the loss of 500 to 1000 acres of diverse, natural wetlands. Moreover, most of the wetlands destroyed by the project are forested. The subimpoundments would provide little or no value for the many species adapted to life in the forested systems.

V. Proposed Determination

The Regional Administrator proposes to recommend that the discharge of dredged or fill material into Big River, Mishnock River, and their tributaries and adjacent wetlands be prohibited for the purpose of constructing the proposed Big River reservoir and ancillary facilities. Based on current information, the Regional Administrator has reason to believe that the adverse impacts of the Big River reservoir would likely be unacceptable. Moreover, these impacts may be partly or entirely unnecessary or avoidable.

This proposed determination is based primarily on the adverse impacts to wildlife and fisheries. EPA has already concluded that the project would cause or contribute to significant degradation of waters of the United States and violate the § 404(b)(1) guidelines. It would directly destroy approximately 550 acres of wetlands and has the potential to degrade an additional 500–600 acres of wetlands through groundwater starvation and reduced downstream river flows. In addition to these impacts, EPA is concerned about the lack of basic information about future water supply needs and the absence of a rigorous analysis of water supply alternatives. In light of existing information, EPA believes that there are likely to be feasible and less environmentally damaging alternatives to building the Big River reservoir.

VI. Solicitation of Comments

EPA solicits comments on all issues discussed in this notice. In particular, we request information on the likely adverse impacts to wildlife and other functional values of the rivers, streams, and wetlands at the Big River site and at Mishnock Swamp. We also seek information pertaining to flora, fauna and hydrology of the Big River site, Mishnock Swamp, and adjacent lands. All studies, knowledge of studies, or informal observations is of importance for this notice. Information on species or communities of regional and or statewide importance would be especially useful.

While the significant loss of wildlife habitat serves as EPA's main basis for this proposed 404(c) determination, EPA Region I has additional concerns with the proposed project including water quality impacts, fisheries, alternatives, project need and mitigation. As discussed above in *Additional Studies*, the State plans to conduct additional evaluations of the need for drinking water and alternatives to meet that need. The State intends, during the comment period, to submit the information compiled in these studies for EPA's consideration during the 404(c) process. EPA also solicits comments on the following aspects of the project:

(1) The potential for violations of State water quality standards to occur, especially in the Pawtuxet River, the Flat River Reservoir and Narragansett Bay;

(2) Information about fisheries at the Big River site, and the impacts to fisheries if the reservoir is built. Also the likelihood of maintaining cold water fisheries at the site if the Big River reservoir were built;

(3) The potential for wetland losses, and their associated values and functions, along the South Branch of the Pawtuxet and in Mishnock Lake, Swamp and River if the dam were built and operated as proposed;

(4) Information about recreational use of the area;

(5) The need for additional drinking water and the current data base for making projections of need and alternatives, as well as what new information must be gathered to make reasonably accurate projections on how much water can be saved or produced by other alternatives;

(6) Information on the availability of less environmentally damaging practicable alternatives to satisfy the basic project purpose—drinking water supply—taking into account cost, technology, and logstics;

(7) In the absence of the need for additional water supply, information about environmentally acceptable alternatives for the secondary purposes of flood control and recreation.

(8) Information on the potential for mitigation to replace the functions and values of the 500–1100 acres at risk at the Big River site.

The record will remain open for comments until July 31, 1989. All comments will be fully considered in reaching a decision to either withdraw the proposed determination or forward to EPA Headquarters a recommended determination to prohibit or restrict the

use of Big River, its tributaries, and adjacent wetlands as a disposal site for construction of Big River Reservoir.

For further information contact: Mr. Mark J. Kern, U.S. E.P.A., JFK Federal Building, WWP–1900, Boston, MA 02203–2211, (617) 565–4421.

Michael R. Deland,

Regional Administrator, Region I.

[FR Doc. 89–2272 Filed 1–31–89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL HOME LOAN BANK BOARD

[No. 89–67]

Finance Subsidiaries of Federal Associations

Date: January 26, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The public is advised that the Federal Home Loan Bank Board ("Board") has submitted for extension, without revision, an information collection request, "Finance Subsidiaries of Federal Associations," to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

This information is required from FSLIC insured institutions to receive approvals before establishing a Finance Subsidiary in order to determine that such a transaction is within applicable laws and regulations. We estimate it will take approximately .75 hours per respondent to complete the information collection.

DATES: Comments on the information collection request are welcome and should be received on or before February 16, 1989.

ADDRESS: Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Request for copies of the proposed information collection requests and supporting documentation are obtainable at the Board address given below: Director, Information Services Division, Office of Secretariat, Federal Home Loan Bank Board, 801 17th Street NW., Washington, DC 20552, Phone: 202–653–2751.

FOR FURTHER INFORMATION CONTACT: Leon R. Pleasants, Office of General Counsel, 202–377–6414, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

By The Federal Home Loan Bank Board.

John F. Ghiszoni,

Assistant Secretary.

[FR Doc. 89–2253 Filed 1–31–89; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL LABOR RELATIONS AUTHORITY

Senior Executive Service; Performance Review Board

AGENCY: Federal Labor Relations Authority.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the Performance Review Board.

DATE: February 1, 1989.

FOR FURTHER INFORMATION CONTACT: Orinda R. Nelson, Acting Director of Personnel, Federal Labor Relations Authority, 500 C Street SW., Washington, DC 20424, (202) 382–0751.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C. requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations, to the appointing authority relative to the performance of the senior executive.

The following persons will serve on the FLRA's Performance Review Board:

Cynthia A. Metzler, Office of the Acting Chairman, FLRA,

Michael D. Nossaman, Office of General Counsel, FLRA,

Johnny J. Butler, Equal Employment Opportunity Commission,

Paul D. Mahoney, Merit System Protection Board,

Peter J. Basso, National Endowment for the Arts.

Orinda R. Nelson,

Acting Director of Personnel.

[FR Doc. 89–2277 Filed 1–31–89; 8:45 am]

BILLING CODE 6727-01-M

FEDERAL MARITIME COMMISSION

[Docket No. 89–02]

Matson Navigation Co., Inc., Transportation of Cargoes Between Ports and Points Outside Hawaii and Islands Within the State of Hawaii; Filing of Petition for Declaratory Order

Notice is given that a petition for declaratory order has been filed by Matson Navigation Company, Inc. ("Matson") requesting that the Federal Maritime Commission ("Commission") resolve an ongoing controversy between Matson and Young Brothers, Limited ("Young Bros.") involving interstate barge carriers operating in Hawaii. The controversy between Matson and Young Bros. concerns Commission jurisdiction over certain ocean cargo movements from ports and points outside the State of Hawaii to ports within the State of Hawaii, via Honolulu.

The instant petition is similar to a petition filed by Matson on September 24, 1987 (52 FR 36467, September 29, 1987). The Commission, by Order of June 7, 1988, in Docket No. 87–18, denied that petition without prejudice. The Commission made it quite clear that "Matson may file a new petition, properly focused and supported, at any time."

The petition now before the Commission was served on Young Bros. and its counsel, the Public Utilities Commission of the State of Hawaii, and the United States Department of Transportation. Those parties may file a reply to the petition with the Secretary, Federal Maritime Commission, Washington, DC 20573–0001 on or before March 1, 1989. An original and fifteen copies of such reply shall be submitted and a copy thereof served on Stephen T. Rudman, Esq., Senior Counsel, Law Department, Matson Navigation Company, Inc., Post Office Box 7452, San Francisco, California 94120; and C. Jonathan Benner, Esq., Haight, Gardner, Poor & Havens, 1401 New York Avenue NW., Washington, DC 20005. Replies shall contain the complete factual and legal presentation of the replying party as to the desired resolution of the petition.

Interested persons may inspect and obtain a copy of the petition at the Washington Office of the Federal Maritime Commission, 1100 L Street NW., Room 11101. Participation by persons other than those named above will be permitted only upon grant of a petition to intervene by the Commission pursuant to Rule 72 (46 CFR 502.72). Petitions for leave to intervene shall be submitted on or before the reply date

and shall be accompanied by intervenor's complete reply including its factual and legal presentation in the matter.

Joseph C. Polking,

Secretary.

[FR Doc. 89–2305 Filed 1–31–89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Adrian Building Corp., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 22, 1989.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Adrian Building Corporation,* Adrian, Minnesota; to engage *de novo* in leasing activities pursuant to § 225.25(b)(5) of the Board's Regulation Y. These activities will be conducted in Adrian, Minnesota.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *First Financial Bancorp,* Lodi, California; to engage in lending activities to accommodate all legitimate consumers, commercial and real estate loan applications that meet established credit criteria pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 26, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–2254 Filed 1–31–89; 8:45 am]

BILLING CODE 6210-01-M

CB&T Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 22, 1989.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *CB&T Bancshares, Inc.,* Columbus, Georgia; to merge with International City Bancorp, Inc., Warner Robins, Georgia, and thereby indirectly acquire International City Bank, Warner Robins, Georgia.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Financial Services Corporation of the Midwest,* Rock Island, Illinois; to acqurie at least 50.1 percent of the voting shares of Henry County Bank, Green Rock, Illinois.

2. *West Michigan Financial Corporation,* Hudsonville, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Hudsonville, Hudsonville, Michigan.

Board of Governors of the Federal Reserve System, January 26, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–2255 Filed 1–31–89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Malcolm Deisenroth, Jr.; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 88–29695) published at page 52488 of the issue for Wednesday, December 28, 1988.

Under the Federal Reserve Bank of Kansas City, the entry for Malcolm Deisenroth, Jr. is amended to read as follows:

1. *Malcolm Deisenroth, Jr.* and Malcolm Deisenroth, Jr., KEOGH Account for Malcolm Deisenroth, Jr.; to acquire an additional 22.33 percent of the voting shares of Tulbancorp, Inc., Tulsa, Oklahoma, and thereby indirectly acquire Bank of Tulsa, Tulsa, Oklahoma.

Comments on this application must be received by February 15, 1989.

Board of Governors of the Federal Reserve System, January 26, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–2257 Filed 1–31–89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies; Dr. Robert F. Tobin

The notificant listed below has applied under the Change in Bank Conrol Act (12 U.S.C. 1817(j)) and section 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are

set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 15, 1989.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Dr. Robert F. Tobin,* St. Joseph, Missouri; to acquire an additional 1.3 percent of the voting shares of Galleria Bank, Overland Park, Kansas.

Board of Governors of the Federal Reserve System, January 26, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-2256 Filed 1-31-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

National Institute for Occupational Safety and Health, Mine Health Research Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control (CDC) announces the following National Institute for Occupational Safety and Health (NIOSH) committee meeting:

Name: Mine Health Research Advisory Committee (MHRAC).

Date: February 9-10, 1989.

Place: Conference Room C, National Institute for Occupational Safety and Health, Alice Hamilton Laboratory, 5555 Ridge Avenue, Cincinnati, Ohio 45226.

Time and Type of Meeting : Open 8:30 a.m.-4:00 p.m. February 9. Closed 4:00 p.m.-5:00 p.m. February 9. Open 8:30 a.m.-12 noon, February 10.

Contact Person: Melvin L. Myers, Executive Secretary, MHRAC, NIOSH, CDC, Bldg. 1, Room 3120, D-37, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Telephone: Commercial: (404) 639-3901.

FTS: 236-3901.

Purpose: The Committee is charged with advising the Secretary of Health and Human Services on matters involving or relating to mine health research, including grants and contracts for such research.

Agenda: Agenda items for the meeting will include announcements; consideration of minutes of the previous meeting and future meeting dates; a review of programs in pathology, pulmonary functions testing, and x-ray surveillance; consideration of research needs in the prevention of silicosis and of noise-induced hearing loss; and consideration of the educational requirements of practicing physicians for the recognition of occupational diseases. Beginning at 4 p.m., February 9, the Committee will discuss certain matters cover under sections 552b(c)(6) and/or 552b(c)(9)(B) of Title 5 US Code. Therefore, pursuant to said provisions and the determination of the Director, Centers for Disease Control, this portion of the meeting will not be open to the public.

Agenda items are subject to change as priorities dictate.

The portion of the meeting so indicated is open to the public for observation and participation. Anyone wishing to make an oral presentation should notify the contact person listed above as soon as possible before the meeting. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the presentation. Oral presentations will be scheduled at the discretion of the Chairperson and as time permits. Anyone wishing to have a question answered by a scheduled speaker during the meeting should submit the question in writing, along with his or her name and affiliation, through the Executive Secretary to the Chairperson. At the discretion of the Chairperson and as time permits, appropriate questions will be asked of the speakers.

(a) A roster of members and other relevant information regarding the meeting may be obtained from the contact person listed above.

Due to difficulties in scheduling, the agenda could not be finalized in time to meet the 15-day publication requirement.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 89-2403 Filed 1-31-89; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

[Docket No. 82M-0072]

Shiley Infusaid, Inc.; Premarket Approval of the Infusaid 100, 200, 400, and 500 Dual Catheter 400 Implantable Pump, and Intraspinal Catheter Kit

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the supplemental application by Shiley Infusaid, Inc. (formerly Intermedics Infusaid), Norwood, MA, for premarket approval, under the Medical Device Amendments of 1976, of the Infusaid 100, 200, 400, and 500 Dual Catheter 400 Implantable Pump, and Intraspinal Catheter Kit. After reviewing the recommendation of the General Hospital and Personal Use Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of November 4, 1988, of the approval of the supplemental application.

DATE: Petitions for administrative review by March 3, 1989.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard Williams, Center for Devices and Radiological Health (HFZ-420), Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, MD 20910, 301-427-7750.

SUPPLEMENTARY INFORMATION: On December 16, 1986, Shiley Infusaid, Inc. (formerly Intermedics Infusaid), 1200 Providence Highway, Norwood, MA 02062, submitted to CDRH a supplemental application for premarket approval of the Shiley Infusaid 100, 200, 400, and 500 Dual Catheter 400 Implantable Pump, and Intraspinal Catheter Kit. This device is indicated for the delivery of preservative-free morphine sulfate approved for continuous epidural administration for the treatment of severe or unremitting pain in cancer patients who are unresponsive to conventional forms of analgesia.

On April 7, 1987, the General Hospital and Personal Use Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On November 4, 1988, CDRH approved the supplemental application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Richard Williams (HFZ-420), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place the review will occur, and other details.

Petitioners may, at any time on or before March 3, 1989, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360(h))) and under authority delegated to the Commissioner of Food and Drug (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: January 24, 1989.

Walter E. Gundaker,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 89-2312 Filed 1-31-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88M-0398]

Abbott Laboratories; Premarket Approval of Murine® Sterile Saline Spray

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Abbott Laboratories, Columbus, OH, for premarket approval, under the Medical Device Amendments of 1976, of Murine® Sterile Saline Spray. The device is to be manufactured under an agreement with Applied Laboratories, Inc., Columbus, IN, which has authorized Abbott Laboratories to incorporate information contained in its approved premarket approval application for the Applied Laboratories Sterile Saline Solution. FDA's Center For Devices and Radiological Health (CDRH) notified the applicant, by letter of November 8, 1988, of the approval of the application.

DATE: Petitions for administrative review by March 3, 1989.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, MD 20910, 301-427-7940.

SUPPLEMENTARY INFORMATION: On August 9, 1988, Abbott Laboratories, Columbus, OH 43215, submitted to CDRH an application for premarket approval of Murine® Sterile Saline Spray. The device is indicated for use in the rinsing, heat disinfection, and storage of soft (hydrophilic) contact lenses. The application includes authorization from Applied Laboratories, Inc., Columbus, IN 47201, to incorporate information contained in its approved premarket approval application for the Applied Laboratories Sterile Saline Solution.

On November 8, 1988, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ-460), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before March 3, 1989, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under

authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53.)

Dated: January 24, 1989.

Walter E. Gundaker,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 89-2270 Filed 1-31-89; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[ORD-61-N]

Medicare and Medicaid Programs; Health Care Financing Research and Demonstration; Availability of Funds for Cooperative Agreements and Grants

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: General notice.

SUMMARY: This notice announces the availability of HCFA funding under cooperative agreements and grants for projects which will focus on major issues in the financing and delivery of health care under the Medicare and Medicaid programs. This notice contains information about the subject areas for cooperative agreements and grants that will be given priority, project requirements, application procedures, and other pertinent information.

DATES: Closing dates for submission of letters of intent and cooperative agreement and grant applications are presented in sections IV and VII, respectively, of this preamble.

ADDRESSES:

Application Kits: Standard application forms and related instructions are available from, and must be formally submitted to: Paul McKeown, Health Care Financing Administration, Office of Budget and Administration, Division of Procurement Services, Room 364 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207–5187, (301) 966–5157.

Mr. McKeown is also available to answer questions and to provide guidance concerning the completion of the application forms.

FOR FURTHER INFORMATION CONTACT: Michael Spodnik, Health Care Financing Administration, Office of Research and Demonstrations, Research and Demonstration Program Support Branch, 2–D–6 Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207–5187, (301) 966–6637.

SUPPLEMENTARY INFORMATION:

Payments for health care services, primarily through the Medicare and Medicaid programs, constitute one of the largest single segments of Federal and State budgets. Because of increases in expenditures, the Federal Government must reassess current methods of payment for publicly-financed health care programs and look for innovative methods for paying for health care services in the future, while ensuring access to medically necessary and effective care.

HCFA supports the conduct of research and demonstration projects principally through two award mechanisms: procurements (contracts) and assistance awards (grants and cooperative agreements). This notice solicits applications for projects that will be awarded as grants and cooperative agreements. Announcements of planned procurement awards are made through notices published in the Commerce Business Daily. The purpose of the projects being solicited under this notice will be to advance knowledge in health care delivery/financing and quality/effectiveness of care, and to develop ways of applying that knowledge to improve the administration of health care programs and to ensure access to quality and effective health care. We believe this assistance will have a long term and vital public purpose: to increase the efficiency and effectiveness of the entire health care system by improving the ways in which health care is financed, reimbursed, and delivered.

The notice describes the application procedures, general policy considerations, criteria to be used in reviewing applications, and selection criteria for HCFA cooperative agreements and grants. This notice replaces the notice previously published in the **Federal Register** on September 10, 1987 (52 FR 34394).

HCFA is also requiring a letter of intent, 30 days prior to closing dates, from all organizations intending to submit an application in response to this solicitation (see section IV.A Application Procedures).

This statement reflects our current priorities and emphasizes our primary interest in the following six areas:

1. Continued access to quality care under Medicare and Medicaid and improved methods for measuring quality and effectiveness of care;

2. Refinement of the current Medicare physician payment methodology through the study of the causes for the growth in Medicare outlays for physician services and the development of cost-effective approaches to controlling such growth;

3. Increased competition and consumer choice and continued growth of Medicare capitated systems;

4. Continued improvement to the current Medicare hospital prospective payment system, and the study of the outpatient delivery system;

5. Analysis of other Medicare and Medicaid program services and issues leading to increased efficiency in health care delivery and financing, particularly in program areas that have a significant impact on program and beneficiary expenditures (high-cost, high-volume services), including such areas as clinical laboratories, home health and long-term care (LTC), and treatment of acquired immunodeficiency syndrome (AIDS); and

6. Refinement of the current long-term care delivery and payment systems under Medicare and Medicaid.

We will be continuing our efforts in response to specific congressionally-mandated studies in these and other priority areas. We also are interested in expanding our current efforts in each of these areas as they relate to the financing and delivery of care in rural and urban inner city areas.

This notice differs in several respects from previous general solicitations for HCFA-sponsored research and demonstrations. First, while one of our highest priorities is in the area of refining the current physician payment system, particularly under Medicare, previous solicitations for applications in this area have generally not resulted in the submission of a large number of quality applications focusing on the major problems and issues facing the Medicare programs in controlling the escalating expenditures for physician services. Our goal has been to stimulate the development of new and innovative research efforts designed to help us better understand and address the major factors influencing the growth in Medicare outlays for physician services and to encourage new organizations to develop expertise in this area and submit applications to us. Given the importance of these issues to the efficient and effective operation of the health care system, we are reassessing our current process for soliciting applications in this area. We intend to announce in the near future our specific project needs in this area. In the current notice, we have stated general areas of research interest. We would strongly encourage organizations with new and innovative approaches to addressing these issues to submit applications in response to this notice.

Second, we published in the December 14, 1988 **Federal Register** (53 FR 50293) a notice soliciting applications to respond to the series of congressional mandates in the recently enacted Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100–360). One of the principal areas included in that solicitation was long-term care. We are examining currently our needs for additional research on long-term care issues not reflected in the December 14, 1988 notice. Therefore, as in the case of physician payment research, we are strongly encouraging organizations with new and innovative approaches to addressing the long-term care issues we have identified to submit applications in response to this notice.

Based on our examination of research needs in the long-term care area, we may issue a separate solicitation focusing specifically on long-term care issues.

Section 4403 of the Omnibus Budget Reconciliation Act of 1987 mandates that HCFA target 10 percent of its research budget in each of fiscal years 1988–1990 for projects substantially or exclusively related to rural health care issues. In response to that mandate, we have expanded our emphasis on rural research issues in this solicitation. We also convened on October 27 a panel of experts on rural health care issues. Papers prepared by these experts will be used to formulate a future rural research and demonstration agenda for HCFA.

This notice also announces the new closing dates for cooperative agreements and grants for FY 1989. (While we have retained a separate waiver-only cycle, we reserve the right to defer consideration of applications received for this cycle until the next general solicitation for grant and cooperative agreement applications.) The schedule is as follows:

April 3, 1989 (Close of Business (C.O.B.)): Waiver-only applications and applications requesting discretionary funds.

Monday, August 7, 1989 (C.O.B.): Waiver-only applications.

You should be aware that, in the future, the mailing list which the Office of Research and Demonstrations maintains of organizations interested in receiving announcements of solicitations for grants and cooperative agreements will serve as the principal mechanism for targetting such solicitations. Therefore, any organization not currently included on this mailing list but wishing to be notified of future solicitations for grant/cooperative agreements should submit a letter stating this desire and identifying any specific areas of topical interest. This letter should be addressed as follows: ORD Mailing List (GRANTS), Health Care Financing Administration, Office of Research and Demonstrations, 2–E–6 Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207–5187.

I. Current Priorities for HCFA Funding of New Grants and Cooperative Agreements

The statement of fiscal year 1989 funding priorities for HCFA research and demonstration grant and cooperative agreement applications is as follows:

A. Quality and Effectiveness of Care

The Social Security Amendments of 1983 (Pub. L. 98–21) mandated that we study and report on the impact of the hospital prospective payment system on Medicare beneficiaries. A major aspect is the impact of prospective payment on the quality of care provided to beneficiaries. The decreased inpatient hospital resource utilization resulting from this system has raised concerns as to whether the quality of care provided has been adversely affected; or whether access to needed levels of care has been limited. The rapid changes in other Medicare and Medicaid program areas make it even more critical that we ensure that the level of care provided under Medicare and Medicaid is a high quality.

1. Effectiveness Initiative

One major area in which we will be placing increased effort is the Effectiveness Initiative. This initiative was undertaken in response to a growing concern on the part of HCFA and the Department, the Congress, organized medicine, and the beneficiary population about the need to structure a system that facilitates the development of knowledge about the effectiveness of services provided to Medicare and Medicaid beneficiaries. A multi-year agenda is being designed to build upon current efforts and coordination underway within HCFA and the Public Health Service. Overall, the goal of this coordinated agenda is to move toward a more rational, scientific, and empirically-based process for determining which treatments and surgical procedures are effective at improving the health status of Medicare and Medicaid beneficiaries. Specifically, the objectives are to improve our current monitoring systems for examining outcomes and effectiveness of care received by beneficiaries, and to use the results of this enhanced monitoring system to identify needed studies of effectiveness to improve the overall quality of care provided under the Medicare and Medicaid programs.

The planned agenda builds on the efforts begun in 1987–88 (the Medicare hospital mortality data release, the expanded reseach effort designed to develop other valid quality of care outcome measures, and the convening of experts in the quality and effectiveness of care field to help shape the future agenda of this area).

In fiscal year 1989, we are specifically interested in projects which develop and refine methodologies for examining the safety, efficacy, and cost-effectiveness of specific medical or surgical interventions (such as bypass surgery, carotid endarterectomy) for the Medicare population. We are particularly interested in studies which use or combine routinely collected Medicare data, or investigate methods of combining these data with other primary or secondary clinical data.

The Health Care Financing Administration has used a variety of administrative data for quality of care research and demonstrations. However, administrative data are limited with regard to beneficiary health and socio-demographic characteristics. Other data sets, supported by private and public initiatives, may have the potential, at low cost, to enhance HCFA's data bases, especially if they can be linked to administrative data. We are, therefore, interested in receiving proposals that would carry out epidemiologic and other quality of care and effectiveness research using linked administrative data sets. We are also interested in proposals that would develop methodologies to collect and maintain risk factor information, as well as, health and functional status information on beneficiaries. Because of the large cost often associated with data collection, we are primarily interested in proposals that take advantage of data that could be collected and maintained on an ongoing basis for a relatively low cost.

2. Alternative Outcome Measures and Their Use

Little advancement has been made in the development of additional measures of patient outcomes that can be used in quality of care studies. Most studies currently use mortality or rehospitalization rates. Research is needed to develop reliable and valid measures of patient outcome that are sensitive to variations in the quality of care. Of critical interest are projects that directly test the relationships between the process of medical care and the resultant outcomes of care. Such studies

are needed to understand the usefulness of outcome data for quality of care monitoring.

3. Quality Issues in Long Term Care, Physician Care, Ambulatory Care, and Capitated Systems

We are interested in developing and refining reliable and valid quality of care measures for different payment systems and different treatment settings. Therefore, we are interested in the following:

a. Projects that develop, demonstrate, and evaluate quality of care outcome measures and monitoring systems for nursing homes, outpatient care, and physician services.

b. Projects that develop an overall approach to quality standards, monitoring, and improvement in the area of ambulatory care (including both surgical and non-surgical services). Such an approach should be designed to move toward minimum quality standards applicable across the various ambulatory care settings and across various payment mechanisms. We are interested in projects that also focus on specific issues related to the quality of ambulatory care, including the appropriateness of services provided for specific conditions.

c. Development and demonstration of monitoring systems and outcome measures for assessing the quality of care in managed care and capitated payment environments.

4. Hospital Care

We continue to be interested in studies that address the issue of access to hospital care and the quality of care while in the hospital. Proposed studies in these areas should emphasize how they expand upon current work underway in these areas.

a. *Access to hospital care.* The reduction in Medicare and Medicaid overall admissions has put pressure on providers to cut back on available beds, consolidate resources and in some cases may even result in hospital closings. In terms of the entire health care system, these changes probably reflect improvements in efficiency. However, it is possible that certain groups of beneficiaries may have difficulty in getting needed inpatient care. We are interested in studies examining the extent to which beneficiary access to hospital care may have changed as a result of the prospective payment system, particularly whether there has been a differential impact on access in rural versus urban area hospitals, and what the impact is of hospital closures on access to care and health status of the population in the hospital catchment area.

b. *Quality of care while in the hospital.* Quality of inpatient care could be greatly affected by prospective payment system incentives, particularly in light of shortened lengths of stay, personnel reductions, and incentives to reduce ancillary services. We are interested in studies addressing the following:

(1) Any measurable changes or trends in the structural characteristics of hospitals, such as staffing or other inputs, that are attributable to prospective payment and the impacts of these changes on quality of care.

(2) The many changes taking place in the provision of medical care that are outside of the hospital setting, yet could impact on the assessment of quality of care in the hospital. One is the movement of many surgical procedures to the outpatient setting. A second is a trend toward moving terminal patients from a hospital setting into LTC facilities and home settings (for example, hospices). Studies are needed that examine the impacts these and other health care delivery trends have on the provision of inpatient care and the assessment of that care.

B. Physician Payment

Program expenditures continue to climb at double-digit rates, despite numerous legislative, regulatory and administrative endeavors for containment of payments for physician services. Hence, we are interested in conducting projects designed to identify, explain, develop or test effective refinements or alternative payment approaches to counteract the rising costs of physician care, while maintaining access to a high quality of care.

Previous solicitations for applications in this area have generally not resulted in the submittal of a large number of high quality applications focusing on topics of major interest to us. Our goal has been to stimulate the development of new and innovative research efforts designed to help us better understand and address the major factors influencing the growth in Medicare outlays for physician services and to encourage new organizations and individuals to develop expertise in this area and submit applications to us. Given the importance of these issues to the efficient and effective operation of the health care system, we are expanding our current approaches for soliciting applications/proposals in this area. We intend to announce in the near future our specific project needs in this area, as well as the award mechanism we will be using (for example, contract or grant/cooperative agreement).

Listed below are the general areas of current research interest. While the solicitation planned for announcement in the near future will likely focus on the same general set of issues outlined below, that announcement will discuss specific types of projects HCFA needs to have conducted. The purpose of the current solicitation is to encourage innovative and new thinking on the part of individuals and organizations about the types of research that should be conducted to address these major program issues. Therefore, we would strongly encourage individuals and organizations with new and innovative approaches to addressing these issues to submit applications in response to this notice.

Submission of grant/cooperative agreement applications in response to the current notice does not preclude individuals and organizations from responding to the planned solicitation when it is announced.

Major areas of research interest include the following:

- Analyze the causes and forces driving expenditure increases for physician services.
- Identify and quantify the behavioral responses of physicians to changes in payment levels, methods, requirements, or volume controls which are intended to constrain program expenditures or patient out-of-pocket costs.
- Develop new conceptual groupings of physician procedures and services that might serve as a practical basis for determination of payments for physician care.
- Examine private sector approaches for controlling physician service volume and intensity to determine their effectiveness and their potential for use by Medicare or Medicaid.

C. Alternative Payment Systems

Our overall goal is to identify, develop, demonstrate, and evaluate effective alternative health care delivery or payment systems to control costs and offer expanded consumer choices under the Medicare and Medicaid programs. At the same time, we wish to ensure continued access to quality health care and to move towards payment systems based on capitation and competition in the marketplace. In general, projects should have the prospect of reducing costs in either the short or long term; at a minimum, they must be budget neutral.

As part of this effort, we are interested in supporting research and demonstration projects that develop and test payment systems that provide incentives to Medicare and Medicaid beneficiaries to be more informed purchasers of health care plans and services, including payment systems based on capitation and competition in the marketplace. We also are interested in consumer information projects that support such systems. Specific examples of these types of projects are as follows:

1. Alternative Provider Arrangements

We are interested in projects that examine the applicability of private-sector practices to control health care costs, with emphasis on selected high volume/cost Medicare services and areas, while also ensuring quality of care. Such projects should focus on private-sector initiatives that use alternative market-oriented methods of pricing and/or utilization management for hospital or physician services. Both research and demonstration projects are encouraged. We are particularly interested in projects that examine the cost-effectiveness and feasibility of applying these alternative provider arrangements in a fee-for-service setting for Medicare beneficiaries.

Demonstration applications should delineate provider and beneficiary incentives for participation, as well as the structured elements which would generate savings for the Medicare trust funds. Individual beneficiary participation must be voluntary. However, these alternative provider arrangements may reduce or waive coinsurance and deductible requirements or offer other acceptable incentives (such as increased benefits or reduced Medigap premium rates) to encourage beneficiary participation.

Potential demonstration applicants should be aware that HCFA previously issued separate solicitations for demonstration projects of Part B preferred provider organizations and designated heart bypass centers, and is pursuing development of the concept of designated cataract providers. Therefore, we strongly recommend that you contact HCFA before submitting and application.

2. Long-Term Effects on Competition

It has been argued that competition among health plans will reduce cost. However, lack of understanding of the effects of patient switching among plans, of possible biased selection of low cost plans by healthy persons, and of exactly how HMOs/CMPs achieve their savings, makes it difficult to estimate the long-term effects of competition. We are interested in analyses of the competitive process among health plans to understand better what a competitive environment might lead to in terms of costs, provider behavior, organization of health services, and impact on Medicare and Medicaid beneficiaries. For example, we are interested in economic analyses of the behavior of health plans within the context of the local market for health care. Competitive behavior in terms of pricing, benefits, marketing, expansion, and mergers also are areas of interest.

3. Medicaid Capitation Rates

Capitated arrangements are becoming more prevalent as a mechanism for States to purchase or finance health care under the Medicaid program. Such arrangements may be with counties, health insuring organizations, or other prepaid organizations. One area of particular interest is coverage of joint Medicare and Medicaid beneficiaries under Medicare-qualified capitated HMOs and CMPs. The equity of the rate-setting methodology is critical, particularly as more capitation arrangements are established. A variety of rate-setting methodologies have been employed, and we are interested in discerning the factors and the methodologies that result in fair and accurate capitation rates. We also are interested in testing refinements in the capitation payment models developed by States.

4. Impact of State Systems

A number of States have implemented managed care programs which restrict beneficiaries' nominal freedom to choose their physicians. The desirability and impact of limiting beneficiaries' choice of physicians is a major issue associated with such systems, particularly section 1915(b) programs. Consideration of this policy issue would be facilitated with information that would allow us to assess, through an operational measure, the actual availability of an access to physicians and physician services under mandatory managed care programs versus fee-for-service systems, across geographic settings.

D. Hospital Payment

During the past few years, the Medicare prospective payment system for inpatient services has undergone continuous adjustment through regulatory and legislative changes. Other areas of hospital reimbursement, including reimbursement for capital costs and reimbursement for care provided in excluded units, also have been changed through regulatory and legislative action. We will be giving particular priority to studies of the factors underlying variations in changes in wages indices and further analyses of medical education payments to hospitals. To the extent that they offer new or innovative contributions to our knowledge, we also are interested in studies and demonstration projects to improve the system of inpatient hospital payment under Medicare, along with studies of the potential for paying for other services (for example, outpatient services) under a prospective payment method.

1. PPS Impact

In 1985, HCFA awarded a 3-year contract to evaluate the impact of PPS on beneficiaries, providers, and other segments of the health care delivery and financing system. A follow-up contract to extend this area of research was awarded in 1988. We have continued to augment the work of these contracts with grants and cooperative agreements that focus on particularly important topics and that bring particular expertise to the study of these topics. Applications submitted in this area should emphasize how the proposed research expands upon the work previously done or currently underway in this area.

a. *Financial Impact of the Prospective Payment System and Other Payer Systems on Hospitals.* We are interested in studies of the financial status of hospitals prior to and during the implementation of the prospective payment system. The studies should address the impact of the Medicare prospective payment system on different types of hospitals with the analysis using such variables as hospital size, market share, occupancy rates, rural/urban status, teaching status, and disproportionate share status. We also are interested in studies analyzing the impact of the prospective payment system on hospital revenues and any resultant cost-shifting dynamics, particulary as they relate to the incidence and cost of administratively necessary days, facility conversions, patient transfers to swing beds or excluded units, and business arrangements of provider affiliations. Such analysis also should consider the effect that private and other public (non-medicare) payors have on a hospital's financial status. To the extent possible, non-inpatient services revenues and costs should be included in the study.

b. *Analysis of the Determinants of Hospital Costs Under Prospective Payment and the Components of Hospital Cost Increases.* Public debate about the appropriate annual update for the PPS payment level often centers on the rate of increase in hospitals' costs. Many hospitals maintain that PPS pays too little to cover their Medicare costs.

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Others argue that the rate of increase in costs is unjustifiable. However, the PPS payment level may influence hospital strategies that affect the level of costs that are incurred. For example, it has been argued that under PPS hospitals have concentrated on expending services to enhance market share rather than adopting measures to control costs. We are interested in research that addresses the circumstances under which hospitals will pursue cost control strategies and the factors that determine the success of such strategies.

c. *Analyses of Hospital Case-Mix.* HCFA has supported research and demonstration projects that would improve case-mix measurement and test alternative case-mix measurement systems for prospective payment of inpatient hospital care or other health care providers and test alternative case-specific payment systems for Medicare or other payors. We are especially interested in examining the impact of care-mix growth variation on different types of hospitals (for example, urban/rural hospitals, teaching hospitals, and large/small hospitals).

d. *Analysis of Rural and Urban Inner City Hospital Issues.* In general, we are interested in developing a better understanding of how rural and urban inner city hospitals function, what can be done to assist them, and whether new types of facilities or services should be developed to replace or supplement them. Some areas of particular interest to us are:

(1) Studies to examine the impact of the prospective payment system on access to care in rural and urban inner city areas. In particular, studies that examine changes in occupancy rate, diagnosis-related group (DRG) use, hospital referrals, patient transfers, and posthospital care since the inception of the prospective payment system.

(2) Studies to examine the financial status of various classes of rural and urban inner city hospitals to identify those that have done well under the prospective payment system and those that have not and to determine the factors contributing to both.

(3) Studies to examine the impact on population health status (particularly for the elderly and poor) where rural and urban inner city residents may have limited access to care. The analysis of utilization patterns across providers in areas in which, or near which, a hospital has closed is also of great interest.

2. Prospective Payment System Refinement

a. *Refinement of Specific Prospective Payment Factors.* We are interested in studies that address refinement of the current prospective payment system, such as the outlier payment policy, systems that examine severity of illness within a given DRG, and other areas of potential refinement (such as development of alternative non-labor input price adjustment).

b. *Hospital Capital Payments.* We plan to continue to study capital investment patterns of different types of hospitals. We are interested in better understanding the capital positions and investent patterns (including an analysis of interest, principal, and depreciation) of different hospitals (by type, region, size, ownership, occupancy level, and utilization level). In addition, we are intested in studies to identify which capital investments have the most positive impact on operating margins, occupancy rates, and utilization. We are intrested also in analysis of the amount other insurers pay for hospital capital expenditures, and in understanding how hospitals finance different types of capital investments.

c. *Analysis of Medical Education Payments.* We are interested in better understanding the underlying factors that relate to the indirect medical education (IME) adjustment factor and its interaction with other Medicare payment adjustments. We are interested particularly in analysis which assist us in assessing the justifiability of an indirect medical education add-on, and the extent to which all teaching hospitals need IME payments to maintain financial viability and the quality of their medical education programs. Also of interest is a study of the extent to which services of residents and interns substitute for care and services of other physicians.

d. *Analysis of Factors Wage and Other Input Costs.* We are interested in economic analyses designed to assist in better understanding the factors underlying the cross-section variations and changes over time in wages and other input costs. We particularly are interested in studies that would examine potential refinements to the hospital wage index and the hospital market basket index.

e. *Prospective Payment Systems for Excluded Hospitals.* We remain interested in projects directed at developing an implementable prospective payment system for categories of excluded hospitals: Rehabilitation, psychiatric, and children's hospitals. Such applications should build upon work done previously in these areas and should address units of service, bundles of services, levels of payment, implementation problems for providers and payors, data adequacy, secondary effects, etc.

3. Outpatient Care

a. *Analysis of Hospital Outpatient Care.* We are interested in projects that will help us better understand the rapid growth in hospital outpatient costs. Specifically, we are interested in the following:

(1) Analyzing the increase in the volume of procedures provided in outpatient departments prior to and during the prospective payment system, with emphasis on clinical laboratory, radiology, and ambulatory surgical procedures.

(2) Studying the shift of Medicare cases from inpatient to outpatient departments prior to and during prospective payment system.

(3) Examining the business arrangements between hospital outpatient departments and health practitioners and suppliers who deliver care or goods used in hospital outpatient departments.

b. *Alternative Payment Methodolgies for Outpatient/Ambulatory Services.* We are interested in projects that will assist us in working toward prospective payment for ambulatory services provided in hospital outpatient and other ambulatory care settings. Although we currently have several projects that are working toward the development of prospective payment for ambulatory surgery, we would consider additional innovative projects that might propose new and innovative concepts in this area.

We are particularly interested in projects that address nonsurgical services (such as emergency services, general medical services, and other clinic services typically utilized by Medicare patients) provided in a hospital outpatient setting. Among the issues that need to be addressed are: Refinement and application of existing patient classification system; the possibility of applying payment limits; determining the appropriate bundles of services for payment; identification of justifiable cost differences between hospitals and across all ambulatory care settings for similar care; and innovative prospective payment methodologies.

E. Program Efficiencies, Analyses, and Refinements

In the past few years, several legislative and regulatory changes have been implemented that were directed at improving the effectiveness and efficiency of the Medicare and Medicaid programs. In other sections of this grants solicitation, the major programmatic changes in the hospital and physician sector have been treated as priority areas. In this priority section, we address certain other facets of the Medicare and Medicaid programs that have undergone change.

1. Acquired Immunodeficiency Syndrome (AIDS)

We are interested in studies to determine the implications of AIDS for Medicare and Medicaid outlays. Specifically, we are interested in studies of the incidence and prevalance of AIDS among Medicare and Medicaid patients, and the utilization and cost of services for the treatment of beneficiaries with AIDS.

2. Home Health and Skilled Nursing Facility Services

We are interested in analyses that examine changes in Medicare and non-Medicare payments and utilization in the home health care and skilled nursing facility markets. Utilization and expenditures for these services vary widely across States. We are interested in exploring the differences in Medicare payment and utilization by geographic area, and how differences in market characteristics (demographics, numbers and types of providers, etc.) influence utilization of these services. Studies in this area should include time series analyses of Medicare's market share for these services.

3. International Health Care Systems Studies

We are interested in studies to develop and analyze data to assist in evaluating financing and delivery arrangements found in other countries, where these arrangements have relevance and potential application for the United States. These studies should permit the analysis of disaggregate and comparable international data, and should focus on the following areas of priority discussed elsewhere in this notice:

a. Systems and methodologies to measure and monitor quality and effectiveness of care.

b. Payment systems for physician services.

c. Innovative payment systems that promote competition and provide opportunities for consumer choice.

d. Alternative systems for the financing and delivery of long-term care services.

4. Managed Care Studies

We are interested in a study of private sector approaches to managed health care; specifically, how the private sector:

a. Manages and treats high-cost cases;

b. Selects, monitors, evaluates, and compensates providers;

c. Reviews and controls utilization and costs;

d. Provides incentives (to both patients and providers); and

e. Evaluates and measures the cost-effectiveness of private sector managed care programs and their effect on patient and provider behavior and quality of care.

We are also interested in studies to develop methodologies for rigorous assessment of the cost-effectiveness of managed care interventions, such as case-management for high-cost cases and utilization management controls.

F. Prevention

Section 4071 of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-208) mandated the conduct of a demonstration program to determine the cost-effectiveness of including influenza vaccine as a covered service under the Medicare program. In response to that mandate, the Center for Disease Control, Public Health Service, under funding from HCFA, solicited and awarded sites in 1988 to participate in the demonstration. Unfortunately, there was an insufficient number of awarded sites to be able to fully respond to the congressional mandate. HCFA, therefore, plans to be soliciting shortly for additional sites to participate in the demonstration project as part of the 1989 flu season. Eligible applicants will be the official public health agencies of States, political subdivisions of States, the District of Columbia, the Commonwealth of Puerto Rico, and any other public or nonprofit private entity. Entities interested in receiving the program announcement soliciting applications to participate in this demonstration should notify HCFA in writing by February 10 in order to be included on the mailing list to receive application materials.

Information may be obtained on this demonstration by contacting John Meitl, Office of Demonstrations and Evaluations, Office of Research and Demonstrations, Health Care Financing Administration, Room 2308 Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207, (301) 966-6617.

Potential applicants should direct their requests to be placed on the mailing list to the above address.

G. Sub-Acute and Long Term Care

Medicare Long-Term Care Issues

HCFA published in the December 14, 1988 Federal Register (53 FR 50293) a notice soliciting applications to respond to the series of congressional mandates in the recently enacted Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100-360). One of the principal areas included in that solicitation was long-term care. We are examining currently our needs for additional research on long-term care issues not reflected in the December 14, 1988 notice. We have identified below our general areas of current research interest. We are interested in new and innovative thinking on the part of individuals and organizations about the types of research that should be conducted to address these major program issues. Therefore, we would strongly encourage individuals and organizations with new and innovative approaches to addressing these issues to submit applications in response to this notice.

Based on our examination of research needs in the long-term care area, we also may issue a separate solicitation focusing specifically on long-term care issues.

- Analyses that examine geographic variations between Medicare and non-Medicare payments and utilization in the home health care and skilled nursing facility markets.
- Studies that assess the impact of recent Medicare coverage policy clarifications for skilled nursing facility services.
- Examination of cost-effective alternative approaches to the delivery and payment for sub-acute care.

Medicaid Long-Term Care Issues

Medicaid is a principal source of funding for long term care in the United States. Between 1973 and 1984, long term care expenditures under Medicaid increased from $3.0 to $17.5 billion. This growth rate is the fastest for any health service area and is expected to continue to increase in the future, due in part to demographic trends. The Medicaid program is operated and funded in part by States. The Federal Government shares in the funding of the Medicaid program through the Federal matching percentage rate established for each State. Since we share in the financing of this program, and in view of the anticipated growth in costs, we share the States' interest in projects that would provide a better understanding of the current long term care delivery and financing systems under Medicaid, the subpopulations served by the program, and projects that would design and test alternatives to these systems.

We have identified below our general areas of current research interest. We are interested in new and innovative

thinking on the part of individuals and organizations about the types of research and demonstrations that should be conducted to address these major program issues. Therefore, we would strongly encourage individuals and organizations with new and innovative approaches to addressing these issues to submit applications in response to this notice.

Major areas of interest include the following:

- Examine innovative, alternative approaches to cost-effective delivery of and payment for long term care services, including innovative managed care systems.
- Better understand the factors affecting State and local area variations in patient utilization of long term care services and how these factors and variations affect total expenditures for long term care services under Medicaid.
- Develop more sensitive predictors (including functional assessment measures) of future need for and use of nursing home and sub-acute services, particularly among the disabled elderly.

II. Agreements and Grants

A. General

A review of the requirements for existing projects and our expected FY 1989 budget indicates that approximately $1.5 million may be available to HCFA's Office of Research and Demonstrations to fund new cooperative agreements and grants for research and demonstration projects in the priority areas listed in section I.

Applications for cooperative agreements and grants may be submitted to HCFA by private or public non-profit agencies or organizations, including State agencies that administer the Medicaid program. Private for-profit organizations may apply for cooperative agreements and grants (discretionary funds) under section 1110(a)(1) of the Social Security Act, section 402(a)(1) of the Social Security Amendments of 1967 (Pub. L. 90–248), as amended, and section 222(a) of the Social Security Amendments of 1972 (Pub. L. 92–603), as amended.

B. Authorities

Our authority for making these awards is based on the following:

1. The Social Security Act, section 1110, 42 U.S.C. 1310, "Cooperative Research or Demonstration Projects" and section 1115(a), 42 U.S.C. 1315(a), "Demonstration Projects";
2. The Social Security Act, section 1875, 42 U.S.C. 139511, "Studies and Recommendations"—for cooperative agreements only—and section 1881(f), 42 U.S.C. 1395rr(f), "End Stage Renal Disease Experiment and Pilot Projects";
3. Section 402 of the Social Security Amendments of 1967 (Pub. L. 90–248), as amended, 42 U.S.C. 1395b–1, "Experiments and Demonstration Projects"; and
4. Section 222(a) of the Social Security Amendments of 1972 (Pub. L. 92–603), as amended, 42 U.S.C. 1395b–1 (note), "Experiments and Demonstration Projects".

In the discussion below, we refer to the Social Security Act simply as "the Act".

C. Regulations

General policies and procedures that govern the administration of all Department of Health and Human Services (HHS) cooperative agreements and grants are located in Title 45 of the Code of Federal Regulations (CFR), Parts 74 and 92. Applicants are urged to review the requirements contained in those regulations.

D. Number and Size of Projects

Most awards range from $75,000 to $300,000 per year. We also may award some projects for larger amounts. The number of cooperative agreements and grants depends on the availability of funds; needs of projects that are continuing from prior years; priority interest areas established by HCFA; and technical quality of applications.

E. Duration of Funding

We fund projects for a period of one year at a time and may continue funding on a non-competitive basis, generally for up to three years, if we made the original award as a multiple year project. Continuation funding is contingent on the availability of future year funds, the applicant's ability to meet prior year project objectives, and the continued relevance of the project to HCFA.

We treat applications that seek to continue a project for a longer period of time than that stated in the original award as new projects. Thus, they must compete for available funds, and we will review these applications competitively along with all other new applications.

III. Cooperative Agreements and Grants Subject Matter

A. General Considerations

The cooperative agreements and grants we award are intended to assist in the resolution of major health financing issues or in developing new methods for the administration of HCFA programs.

The HCFA cooperative agreement and grants program focuses primarily on analyses, experiments, pilot projects and demonstrations that provide information useful for the Medicare and Medicaid programs. For FY 1989, we have identified a number of areas where specific information or operational experience is necessary to improve program effectiveness or guide decisions anticipated in the near future. A detailed description of these priority areas is set forth in section I.

Applications for priority area cooperative agreements and grants should be limited to one priority. Applications that fit one of the priority areas will be considered as solicited.

B. Cooperative Agreements and Grants

The principal purpose of HCFA's cooperative agreements and grants program is to stimulate and support statutorily authorized research and demonstration projects.

All cooperative agreements will include an explicit statement of the nature, character, and intent of anticipated Federal programmatic involvement to ensure that the responsibilities of both parties are understood. Each cooperative agreement will incorporate the requirements of 45 CFR Part 74 or 92 or both, as applicable, among its terms and conditions.

Cooperative agreements will not be awarded to a State Medicaid agency for section 1115 projects in which only waivers of Federal regulations or costs not otherwise matchable under section 1115(a)(2) are approved to carry out a demonstration. The instrument to be used for such an award will be a grant (without discretionary funds) of waivers and cost authorized under section 1115(a)(2).

Cooperative agreements may be awarded for section 1115 projects with discretionary funds, even if waivers and costs under section 1115(a)(2) also are involved. In such cases, the cooperative agreement conditions will apply to the entire operation and management of the project. Cooperative agreements may be used for projects awarded under all other authorities listed in section II.B.

HCFA may suspend or terminate any cooperative agreement or grant in whole, or in part, at any time before the date of expiration, whenever it determines that the awardee has materially failed to comply with the terms of the cooperative agreement or grant. HCFA will promptly notify the awardee in writing of the determination and the reasons for the suspension or termination together with the effective date. In addition, HCFA reserves the right to withdraw waivers at any time if it determines that continuing the waivers would no longer be in the public interest. If a waiver is withdrawn, HCFA will be liable only for normal close-out costs.

C. Waivers

Researchers who wish to conduct demonstrations that would require Medicaid rules to be waived must coordinate their applications with the appropriate State Medicaid agency. State of private agencies that wish to aks for Medicaid of Medicare waivers are strongly encouraged to coordinate with researchers of research firms in order to ensure that the experimental design and evaluation protocol are of the highest quality.

1. Section 1115(a) Projects. Under section 1115(a)(1) of the Act, compliance with statutory Medicaid State plan requirements (section 1902 of the Act) may be waived in order to enable a State Medicaid agency to carry out a demonstration project that will further the general objectives of the Medicaid program.

Under section 1115(a)(2) of the Act, we may consider costs a section 1115(a) project that otherwise would not properly be included as expenditures under the State plan and thus subject to Federal financial participation.

Unless they are specifically waived, all requirements of the Act, the Code of Federal Regulations, and other issuances that pertain to the Title XIX program apply to a project approved under section 1115(a).

If a State Medicaid agency applies for a section 1115(a) project, it should give special attention to the preparation of the budget. The agency must provide estimates of the cost or savings attributable to the demonstration project, contrasted with the normal Federal program costs. That is, the agency must furnish the estimated yearly cost before waivers, and after waivers, for both service costs and administrative costs. These budgets are substantially more extensive than the budget for other applications (see HCFA–PGX–11A, Instructions for Completion of Federal Assistance Application, for HCFA–PG–11). (See paragraph 3 below for methodology for estimating costs.)

If the application is approved, the quarterly expenditures must be reported to the Office of Research and Demonstrations (ORD), HCFA, in the form to be designated in the special terms and conditions of approval.

2. Other Waivers. Waivers of the requirements of titles XVIII and XIX of the Act, and of corresponding HCFA regulations, may be requested for project conducted under section 222(a) of the Social Security Amendments of 1972, as amended, and section 402 of the Social Security Amendments of 1967, as amended. The waivers requested must relate to an experimental or demonstration project that involves changes in the benefit package or method of payment. In applying for these waivers or changes in reimbursement or Federal financial participation, the applicant must provide sufficient budgeting information to permit estimates of the likely cost or savings of the project compared to the normal Federal program costs. That is, the application must furnish the estimated yearly cost, before waivers and after waivers, for both program and administrative costs. (See paragraph 3 below for methodology for estimating costs.)

If the application is approved, the awardee must furnish quarterly expenditures in the manner designated by ORD, HCFA in the special terms and conditions of the cooperative agreement or grant.

3. Methodology for Estimating Gross Cost of Projects Involving Waivers. HCFA will define the methodology to be used in estimating gross and net waiver costs. A description of this methodology may be obtained by contacting the individuals named at the beginning of this notice. This methodology is subject to change and applicants are therefore instructed to ensure they are using the most current methodology for future solicitations.

IV. Application Procedures

A. Letter of Intent

To receive full consideration, potential applicants must submit a letter, stating their intent to file an application, 30 days prior to the closing date of each cycle (see VII, Closing Date and Times). At a minimum, this letter must contain each of the following:

1. Identification of the priority area to which the application responds.
2. Title of the project.
3. A 2–3 page abstract summarizing the objectives of the proposal, the hypotheses and the data to be used.
4. A statement as to whether waivers will be required.

Failure to submit a letter of intent may result in the application receiving less than full consideration.

B. Application Forms

Each application must be limited to one priority area. The application must include, in the project title block, the priority area title to which the applicant is responding. The priority area designation also must be clearly marked on the outside of the package or envelope. If we determine a different priority area is a more appropriate area for consideration of a proposal, HCFA reserves the right to change priority area designation without notifying the applicant.

C. Criteria for Screening and Reviewing Applications

1. Screening Requirements

In order for an application to be in conformance, it must meet all of the following requirements:

a. Length. The applicant should provide a brief (1 or 2 paragraph) abstract summarizing the objectives of the proposal. A summary, not to exceed 5 pages, of the proposed project must be included. This summary should discuss the project objectives, hypotheses to be examined, data to be used and its source(s), model type(s) and structure(s) to be used in analyses, resources available to conduct the project, and amount and duration of support requested. The narrative portion of the application should be typewritten single-sided, double-spaced, and should not exceed 50 (for a research proposal) or 80 (for a demonstration proposal) double-spaced pages, exclusive of resumes, forms, etc. Applications should neither be unduly elaborative nor contain voluminous or unnecessary documentation.

b. Number of copies. An original signed application and 14 copies must be submitted. Medicaid State agencies are required to submit an original signed application and 2 copies.

c. HCFA Priorities: Those projects which specifically address a priority area/topic stated in this announcement will receive preference. Applications which are determined by the review panel to be unrelated to the announced HCFA priorities will not generally be considered for funding.

d. Title XIX Demonstration Proposals: Demonstration proposals involving the Medicaid program must be submitted by the single State agency responsible for administration of the Medicaid program in that State.

Applications that do not meet these screening requirements will not be considered for funding/approval by the review panels.

2. Evaluation Criteria

Applications which meet the screening criteria will be reviewed by a technical review panel composed of at least three individuals. Reviewers will score the applications, basing their scoring decisions and approval

recommendations on the following criteria. Relative weights are shown in parentheses.

a. *Project Methodology/Design: (40 Points).* The application describes specific plans for conducting the project in terms of the tasks to be performed. It includes relevant information about: (i) Hypotheses to be tested (if applicable); (ii) concise and clear statement of goals and measurable/achievable objectives; (iii) what the project will do and how it relates to similar work done in the area; (iv) how the project will be conducted; (v) data to be collected (including specification of data sources); (vi) plan for data analysis; (vii) milestones/phases in the progress of the project.

Specifically, the proposal should contain the following:

(1) A clear, quantifiable statement of the project goals and objectives.

(2) An explicit description of the research design, including the questions to be addressed and the methods and data to be used. The methodology must be well defined and scientifically valid.

(3) If the project is a demonstration proposal, the applicant should include separate sections on both the research design and the evaluation design. The research design section should include a detailed description of the reimbursement methodology and other programmatic changes. The evaluation section should provide an indication of the applicant's understanding of the evaluation issues and the various approaches to them. Should an award be made, the applicant may be required to collect data in a standardized manner to facilitate evaluation efforts. HCFA will have the option of determining whether the applicant or HCFA will be responsible for the evaluation.

(4) Demonstrations must contain a phase-down/phase-out plan that: (a) Ensures that Medicare and Medicaid beneficiaries, as well as any other project participants, are phased out of any special programs which were initiated and exist as reimbursable or covered health services only under the auspices of the project, or ensures that plans are in effect to provide other care for the project participants by the date the project is scheduled to end; and (b) ensures that any new payment methods initiated by the project will cease to apply at the scheduled end of the project, (that is, the project in and of itself cannot commit the Medicare or Medicaid programs to an indefinite use of the payment methodology beyond the scheduled end of the project).

(5) The tasks and milestones must clearly described and schedules and must include a schedule of reports to be submitted to HCFA.

(Progress and Financial Reports as required by 45 CFR Parts 74 and 92)

(6.) The application must contain information specifying the availability of the data to be used, if data are to be collected. The discussion must describe the nature of the data sought, the sample design and size, controls and comparisons (if any), and the problems that might be encountered in collection. Data that are collected under a HCFA cooperative agreement or grant must be available to HCFA or its agents. However, the applicant must ensure the confidentiality of any personally identifiable information collected under the auspices of any HCFA cooperative agreement or grant. The application must contain detailed plans to protect the confidentiality of all information that identifies individuals under the project. The plan must specify that such information is confidential, that it may not be disclosed directly or indirectly except for purposes directly connected with the conduct of the project, and that in all cases where disclosure takes place, the informed written consent of the individual must be obtained.

(7.) Projects that require waivers (for example, those under section 1115(a) of the Act, section 222(a) of the Social Security Amendments of 1972, as amended, and section 402(a), of the Social Security Amendments of 1967, as amended) must define the services, list the waivers, discuss the implications if such waivers are granted, and state the effect on Federal, State, and local laws as well as the effect (beneficial or adverse) on individuals enrolled in the project.

If the project involves both Medicare and Medicaid waivers, a request for Medicaid waivers from the State agency administering the Medicaid program must be included with the application. Applicants should contact HCFA for further information if questions arise in these cases.

b. *Knowledge/Experience/Capability in Area: (20 Points).* The application describes the applicant's prior experience in the area, or in related areas. The principal investigator and other key staff are qualified and possess the experience in this or related areas and the variety of skills required to produce final results that are readily comprehensible and usable. The application should provide evidence of understanding and knowledge of prior and ongoing work in the area. Specific information also must be provided concerning how the personnel are to be organized in the project, to whom they will report, and how they will be used to accomplish specific objectives or portions of the project.

c. *Level of Effort: (20 Points).* The resources that will be needed to conduct the project are specified, including personnel, time, budget, and facilities. The staffing pattern clearly links responsibilities/levels of efforts to project tasks. The project's costs are reasonable in view of the anticipated results. Any collaborative effort (including subcontracts) with other organizations is clearly identified and written assurances included. A description by category (personnel, travel, consultants, etc.) of the total of the Federal funds required is included. Funds are specified for each budget period.

Specifically, the application should contain the following:

(1) Information specifying the availability of adequate facilities and equipment for the project or clearly state how these are to be obtained.

(2) The budget must be developed in detail with justifications and explanations for the amounts requested. The estimated costs must be reasonable considering the anticipated results.

(3) Applicants are expected to contribute towards the project costs. Generally, 5 percent of the total costs is considered acceptable. No demonstration project will be awarded that covers 100 percent of the project's costs. The budget may not include costs for construction or remodeling, or for project activities that take place before the applicant has received official notification of HCFA approval of the project.

(4) For demonstration projects involving waivers, budget estimates for the administrative and service costs must be prepared in accordance with the methodology specified in III.C.3.

Waiver-only applications also must contain estimates, prepared in accordance with the methodology specified in section III.C.3. of this notice, of the amount of program and administrative expenditures that will occur under the waivers and a comparison of these expenditures to those that are projected to occur in the programs in the absence of the waivers.

(5) Each application must include a statement that if the project is awarded, the awardee will furnish quarterly expenditures for administrative and program costs (and, for demonstration projects involving waivers, for service costs) for the project within the approved budget, in the format to be specified under special terms and conditions in the cooperative agreement or grant.

d. *Project Objectives and Expected Outcomes: (20 points).* How closely do the project objectives fit those of the solicitation? What is the intrinsic merit of the research/study? The need for the project is discussed in terms of the importance of the issues to be addressed and the particular project proposed, as well as how the proposed project builds on and expands previous work in the area. The potential usefulness of the anticipated results and expected benefits to HCFA and other target groups. the application should discuss plans for utilization of the project's results.

V. Other Consideration

A. Selection Criteria for Funding New Projects

Although the recommendations of the technical review panels are a major factor in making the decision about an application, review scores and recommendations are not the only factors. The compatibility of applications to HCFA priorities as judged by HCFA Senior Staff, the availability of HCFA resources, and the comments of other HCFA and Department staff are considered in making funding decisions.

B. Other Requirements

1. While HCFA does not require review under Executive Order 12372, Intergovernmental Review of Federal Programs (published on July 16, 1982, 47 FR 30959), all applicants must, nevertheless, determine whether review by the appropriate State and area-wide clearinghouse is required.

2. Applications approved by HCFA for funding will contain a specific set of special terms and conditions that must be approved by the applicant as a condition of award. These include the following:

a. The HCFA Project Officer shall be notified prior to formal presentation of any report or statistical or analytical material based on information obtained through this cooperative agreement. Formal presentation includes papers, articles, professional publications, speeches, and testimony. In the course of this research, whenever the Principal Investigator determines that a significant new finding has been developed, he or she will immediately communicate it to the HCFA Project Officer before formal dissemination to the general public.

The final report of the project may not be released or published without permission from the HCFA Project Officer within the first 4 months following the receipt of the report by the HCFA Project Officer. The final report will contain a disclaimer that the opinions expressed are those of the awardee and do not necessarily reflect the opinions of HCFA.

b. At any phase of the project, including the project's conclusion, the awardee, if requested by HCFA, must submit the analytic data file(s), with appropriate documentation, representing the data developed/used in end-product analyses generated under the award. The analytic file(s) may include primary data collected, acquired or generated under the award and/or data furnished by HCFA. The content, format, documentation, and schedule for production of the data(s) will be agreed upon by the principal investigator and the HCFA Project Officer. The negotiated Format(s) could include both file(s) that would be limited to HCFA internal use and file(s) which HCFA could make available to the general public.

c. At any phase of the project, including at the project's conclusion, the awardee, if so requested by HCFA, must deliver to HCFA any materials, systems, or other items developed, refined or enhanced in the course of or under the award. The awardee agrees that HCFA shall have royalty-free nonexclusive and irrevocable rights to reproduce, publish or otherwise use and to authorize others to use the items for Federal Government purposes.

d. Additional specific project requirements may be included in special cooperative agreement or grant solicitations.

3. Final Reports

When a project is completed, the awardee must submit a final report. As a minimum, the report must contain the following:

a. Identification of the project director, principal investigator, cooperative agreement or grant number, awardee, and title of the project.

b. Acknowledgement of the support received from HCFA, and a disclaimer to the effect that the findings do not necessarily reflect the opinions or policies of HCFA.

c. An executive summary (one or two pages) that provides an overview of the project and highlights significant findings.

d. A description of the initial hypotheses, objectives, and scope of the project.

e. An explanation of the study methodology.

f. A discussion of significant findings and demonstration or research results (and the implications of these results, if any).

On a semi-annual basis during the course of the project, the awardee must provide a list and copies of all papers presented, and of all articles, reports, and other types of publications that result from the project, for inclusion in a subject bibliography system maintained by the ORD, HCFA. It is further requested that the awardee continue to provide the updated information for 2 years after the project's completion.

The ORD Author's Guidelines for Cooperative Agreements, Grants, and Contracts should be used in preparing the final report. This document is available on request from the ORD Publications Coordinator, Room I–C–9 Oak Meadows, 6325 Security Boulevard, Baltimore, MD, 21207, (301) 966–6585.

C. Multiple Applications

The applicant must indicate when the same or a similar application is submitted to another HHS agency; for example, the Social Security Administration, the Office of Human Development Services, or to one of the Public Health Service programs.

D. Cooperative Agreement and Grant Policies

Projects are funded through a competitive process and chosen from among the applications submitted in response to this notice. In the case of demonstration projects, all awardees are expected to share directly in the costs of the projects. Normally, this sharing must be at least 5 percent of the total project costs. For section 1115(a) projects, the amount that the single States agency will be expected to provide generally must be at least 5 percent of the special Federal project funds. This amount may not be in-kind contributions.

If, following review of a proposed activity, HCFA determines that a research or demonstration project presents a danger to the physical or mental well-being of a participant of the project, then Federal funds will not be made available for that project without the written, informed consent of each participant.

Other policies including responsibilities, awarding and payment procedures, special provisions, and assurances may be found in 45 CFR Parts 74 and 92.

It is a national policy to place a fair share of purchases with small, minority-owned, and woman-owned business firms (45 CFR Part 74, appendices G and H). DHHS is strongly committed to the objectives of this policy and encourages all recipients of its cooperative agreements and grants to take affirmative steps to ensure such

fairness. In particular, recipients should—

1. Place small, minority-owned, and woman-owned business firms on bidders' mailing lists;
2. Solicit these firms whenever they are potential sources of supplies, equipment, construction, or services;
3. Where feasible, divide total requirements into smaller needs, and set delivery schedules that will encourage participation by these firms; and
4. Use the assistance of the Monority Business Development Agency of the Department of Commerce, the Office of Small and Disadvantaged Business Utilization, DHHS, and similar available State and local governmental agencies.

VI. Review of Applications

An independent review will be conducted by a panel of not less than three experts. The panel will include experts from both DHHS and the private sector.

In some cases, there will be at least one independent review panel for each priority area. An ORD chairperson will coordinate the panel's review but will not vote. The chairperson will also prepare the panel's recommendation (summary statement) to the Director, ORD. The panel's recommendation will contain numerical ratings (based on the rating criteria specified in section IV), ranking of all applications, and a written assessment of each application. These will be summarized in a ranking and approval list and a matrix will be prepared for each application. Where the panel determines that an application is unrelated to the announced funding priorities, numerical ratings will not generally be assigned to the application, and the application will generally not be considered for funding.

Applicants may request in writing a copy of the summary statement on the review of their application after they have received from HCFA the letter announcing approval or disapproval. Summary statements will be made available subject to the applicable limitations of the Freedom of Information Act (5 U.S.C. 552), the Federal Advisory Committee Act (5 U.S.C. App. I.), the Privacy Act (5 U.S.C. 552a), and 45 CFR Parts 5, 5b, and 11.

VII. Closing Date and Times

We will process cooperative agreement and grant applications once a year and make award announcements approximately five to six months after the closing date. (While we have retained a separate waiver-only cycle, we reserve the right to defer consideration of applications received for this cycle until the next general solicitation for grant/cooperative agreement applications.) The following closing dates apply for cooperative agreement and grant applications:

April 3, 1989. (C.O.B.)

(Waiver-only and discretionary funds awards)

Monday, August 7, 1989 (C.O.B.):

Waiver-only applications

Applications mailed through the U.S. Postal Service or a commercial delivery service will be "on time" if they are received on or before the closing date, or sent on or before the closing date and received in time for submission to the independent review group (see section VI, Review of Applications). Applicants are cautioned to request a legible U.S. Postal Service postmark or to obtain a legibly dated receipt from the commercial carrier or the U.S. Postal Service. Privately metered postmarks will not be acceptable as proof of timely mailing.

Applications that do not meet the above criteria will be considered late applications. Those submitting late applications will be notified that the applications were not considered in the current competition.

(Sec. 1110, 1115(a), 1875, and 1861(f) of the Social Security Act (42 U.S.C. 1310, 1315(a), 1395ll, 1395rr(f); section 222(a) of the Social Security Amendments of 1972, as amended (42 U.S.C. 1395b–1 (note)); section 402 of the Social Security Amendments of 1967, as amended (42 U.S.C. 1395b–1); section 603 of the Social Security Amendments of 1983 (Pub. L. 98–21); section 606(b) of the Social Security Amendments of 1983 (42 U.S.C. 1395x(v)(1)(E)(note))

(Catalog of Federal Domestic Assistance Programs No. 13.766 Health Financing Research, Demonstrations and Experiments)

Dated: January 25, 1989.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 89–2243 Filed 1–31–89; 8:45 am]

BILLING CODE 4120–01–M

National Institutes of Health

National Cancer Institute; Meeting of the Board of Scientific Counselors, Division of Cancer Biology and Diagnosis

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, Division of Cancer Biology and Diagnosis, National Cancer Institute, February 21, 1989, Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, Maryland 20814.

The entire meeting will be open to the public on February 21 from 8 p.m. to adjournment for discussion and review of proposed upgrade of the supercomputer in the Laboratory of Mathematical Biology. Attendance by the public will be limited to space available.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summary minutes of the meeting and roster of committee members.

Dr. Ihor J. Masnyk, Deputy Director, Division of Cancer Biology and Diagnosis, National Cancer Institute, Building 31, Room 3A03, National Institutes of Health, Bethesda, Maryland 20892 (301/496–3251) will provide substantive program information.

Dated: January 18, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–2258 Filed 1–31–89; 8:45 am]

BILLING CODE 4140–01–M

National Center for Nursing Research; Meeting of the National Center for Nursing Research: Steering Committee for the National Nursing Research Agenda (Subcommittee of the National Advisory Council for Nursing Research)

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Steering Committee for the National Nursing Research Agenda, National Advisory Council for Nursing Research, National Center for Nursing Research, February 16, 1989, from 7:30 p.m. to 9:30 p.m. at the Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, Maryland 20814. The specific meeting room will be noted on the meeting announcement board in the hotel lobby.

The meeting will be open to the public. The Agenda to be discussed will include an update on the National Nursing Research Agenda.

Attendance by the public will be limited to space available.

Dr. Doris Bloch, Executive Secretary, Steering Committee of the National Nursing Research Agenda, National Center for Nursing Research, National Institutes of Health, Building 31, Room B1C02, Bethesda, Maryland 20892, (301) 496–0207, will provide a summary of the meeting, roster of steering committee members, and substantive program information upon request.

Dated: January 18, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–2259 Filed 1–31–89; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Alcohol, Drug Abuse, and Mental Health Administration; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HM, Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (39 FR 1654, January 11, 1974, as amended most recently by 52 FR 26187, July 13, 1987), as amended to reflect the reorganization of the National Institute on Drug Abuse, ADAMHA.

The reorganization accomplishes the following: (1) Modifies the functional statement of the immediate Office of the Director to include science policy, support for the National Advisory Council on Drug Abuse, minority concerns, and AIDS coordination, planning, and oversight functions transferred from the Office of Science and Division of Clinical Research respectively; and to transfer the workplace initiatives, community support systems and financing drug abuse services from the Office of the Director; (2) establishes the Office of Policy and External Affairs to perform the functions of external relations with professional associations, the public, the medical and scientific community, legislative groups, and international activities transferred from the immediate Office of the Director and Office of Planning and Resource Management respectively; and (3) retitles the Office of Science to the Office of Extramural Program Review and modifies the functional statement to transfer the science policy functions to the immediate Office of the Director; (4) establishes the Division of Applied Research to perform the workplace initiative, community support systems, and financing of drug abuse services functions transferred from the immediate Office of the Director; (5) modifies the functional statement of the Division of Clinical Research to transfer the prevention research functions to the Division of Epidemiology and Prevention Research; (6) modifies the functional statement of the Office of Planning and Resources Management to reflect the transfer of the legislation function to the Office of Policy and External Affairs and to include the information resources management functions of applications programming, operations, and computer training transferred from the Division of Epidemiology and Statistical Analysis; (7) retitles the Division of Epidemiology and Statistical Analysis to the Division of Epidemiology and Prevention Research and modifies the functional statement to transfer the applications programming, operations, and computer training functions to the Office of Planning and Resources Management and to include the prevention research activities being transferred from the Division of Clinical Research.

Under Section HMH, Organization and Functions, is amended as follows:

Under the heading Office of the Director (HMH1), delete the statement and substitute the following: (1) Provides leadership, direction, and policy in the development of Institute goals, priorities, policies and programs (including science advisory and National Advisory Council on Drug Abuse functions); (2) conducts and coordinates Institutes interagency activities; (3) provides support to the Institute in equal employment opportunity; (4) provides controlled correspondence services for the Institute and (5) plans, coordinates, and monitors all AIDS activities.

Under the heading Office of Science (HMH12) delete the title and statement and substitute the following:

Office of Extramural Program Review (HMH12) (1) Provides advice and guidance to the Director regarding the Institute's peer and objective review process; (2) provides scientific analyses of the Institute's extramural research program, assessing the breadth and scope of the Institute's research activities; (3) administers the peer and objective review of all extramural grant applications; (4) administers the concept and peer review of all contract proposals; (5) administers the program of scientific and technical reviews and publications describing the scientific discoveries and state-of-the-art reports on drug abuse research; (6) coordinates and assures the development of program policies and rules relating to the Institute's extramural activities including Institute responsibility for inquiries and investigations into misconduct in science; (7) coordinates Institutes activities under the Privacy Act including supervision of issuance of Confidentiality Certificates; and (8) administers Institute committee management function under the National Advisory Council Act.

Add the functional statement for the Office of Policy and External Affairs (HMH14) (1) Provides leadership for the conduct of the Institute's international program; (2) conducts Institute activities for international and domestic scheduling for psychoactive drugs; (3) collaborates with other Federal agencies for physician prescribing practices; (4) prepares briefing materials and testimony for Congressional hearings, and serves as liaison with Congress, White House and other significant Federal and governmental agencies; (5) prepares reports, develops responses, and provides information on legislative efforts, responds to Congressional inquiries, and analyzes legislative proposals for the Director; (6) advises the Director on national drug abuse policy issues, develops and coordinates policy and position papers relevant to the Institute's mission; (7) conducts relevant public affairs activities, writes scientific articles, deals with press, media and related efforts, collaborates with a variety of agencies public and private to further knowledge and awareness of the Institute, its programs and findings; and (8) provides liaison with professional groups and private organizations, coordinates technical assistance to other governmental agencies, and coordinates analytic studies requested by other governmental agencies.

Under the heading Office of Planning and Resource Management (HMH19) delete the functional statement and substitute the following:

Office of Planning and Resource Management (HMH19) (1) Provides all administrative and management support services to the Institute in such areas as: (1) Financial planning, analysis, and management, (b) administrative services, (c) personnel management, (d) information resources management, (e) grants and contracts management, operational planning, and (f) management analysis; (2) develops, implements, and monitors administrative management policies, procedures; and guidelines; (3) develops and monitors the implementation of program policies and plans, and evaluates progress in meeting established Institute objectives; (4) develops data requirements pertinent to short- and long-range program planning and develops Institute's program evaluation policy; (5) administers the Institute's performance appraisal system for all Institute employees; and (6) responsible for all management and administrative policy studies, reports, analyses, and program objectives.

Add the following functional statement for the Division of Applied Research (HMHE) (1) Conducts research and evaluation studies on drug abuse in the workplace, with emphasis upon determining the nature, extent, consequences, and remediation of drug abuse within the workplace, and the science and technology of drug detection methodologies; (2) develops and disseminates research results and scientific and technical materials, guidelines, and related activities for the public and private sectors including model programs and policies for Drug Free Workplace including drug testing and Employee Assistance Programs components; (3) provides oversight to all Federal agency Drug Free Workplace activities, manages the national laboratory certification program, provides technical assistance to public and private entities on drug abuse in the workplace; (4) develops and oversees a program of research and demonstration projects for the workplace and communities, including intervention approaches, outreach activities, training, educational materials, information dissemination, resource identification, technical assistance, innovative techniques and strategies to reduce drug abuse and related disorders (AIDS) in the workplace and at the community level; (5) coordinates and conducts research, demonstration, and evaluation studies on the organization, structure, and financing of drug treatment programs and delivery systems, and on the cost benefits and cost effectiveness of drug abuse treatment; (6) coordinates the development and implementation of data strategies for applied research management and related policy development; and (7) publishes and disseminates applied research findings and provides information on financing and coverage policies for drug treatment.

Under the heading Division of Clinical Research (HMHC) delete items (1) and (3), and add items (1) and (3) as follows: (1) Plans, stimulates, develops, and supports a broad extramural program of basic and applied research focusing on drug abuse treatment; and (3) supports clinical and other applied research designed to assess the efficacy of new and existing treatment techniques to meet the needs of both active and prospective drug abuse treatment clients.

Add the following functional statement for the Division of Epidemiology and Prevention Research (HMHD): (1) Plans, conducts, and supports epidemiological field studies, population based research and surveys on nature and extent of drug abuse, consequences of drug abuse, and monitors emerging trends in drug abuse; (2) plans, stimulates, develops, and supports a broad based epidemiology research program which includes field studies, surveys, and other population based studies; (3) plans, stimulates, develops, and supports a broad based research program on prevention, early intervention, and evaluation; (4) conducts ongoing surveys and develops analytic and assessment methodologies for surveillance and prevention research areas; (5) works cooperatively with States, federal, and other governmental agencies and private organizations to encourage sharing of drug abuse epidemiology information and prevention models; and (6) provides consultation and technical assistance, in the areas of epidemiology field studies, surveys, and prevention research issues.

Date: January 24, 1989.

Robert E. Windom,

Assistant Secretary for Health.

[FR Doc. 89-2317 Filed 1-31-89; 8:45 am]

BILLING CODE 4160-20-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-010-09-4320-10]

Worland District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the Worland District Grazing Advisory Board.

SUMMARY: This notice sets forth the schedule and agenda of a meeting of the Worland District Grazing Advisory Board.

DATE: March 23, 1989, 10:00 a.m..

ADDRESS: Bureau of Land Management, Conference Room, 101 South 23rd Street, Worland, Wyoming.

FOR FURTHER INFORMATION CONTACT: Darrell Barnes, District Manager, Worland District Bureau of Land Management, P.O. Box 119, Worland, Wyoming 82401, (307) 347-6871.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include:

1. Discussion of the Grazing Advisory Board Charter
2. Election of a Chairperson and a Vice Chairperson
3. Update on range improvement project planning.
4. Review of FY 1988 range improvement projects.
5. Review of current Allotment Management Plan development.
6. Discussion and recommendations for proposed FY 1990 and 1991 range improvement projects.
7. Review of District policy for coordination with Grazing Permittees/Lessees.
8. Range Program Update for resource areas.
9. Opportunity for the public to present information or make comments.

The meeting is open to the public, interested pesons may make oral statements to the Board during the public comment period, or file written statement's for the Board's consideration. Anyone wishing to make an oral statement should notify the District Manager, at the above address by March 20, 1989.

Darrell Barnes,

District Manager.

January 19, 1989.

[FR Doc. 89-2282 Filed 1-31-89; 8:45 am]

BILLING CODE 4310-22-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 21, 1989. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by February 16, 1989.

Carol D. Shull,

Chief of Registration, National Register.

COLORADO

Pueblo County

Sacred Heart Church, 1025 N. Grand Ave., Pueblo, 89000037
Sacred Heart Orphanage, 2316 Sprague St., Pueblo, 89000038

CONNECTICUT

Hartford County

Engine Company 1 Fire Station (Firehouses of Hartford MPS), 197 Main St. and 36 John St., Hartford, 89000025
Engine Company 15 Fire Station (Firehouses of Hartford MPS), 8 Fairfield Ave., Hartford, 89000023
Engine Company 16 Fire Station (Firehouses of Hartford MPS), 636 Blue Hills Ave., Hartford, 89000021
Engine Company 2 Fire Station (Firehouses of Hartford MPS), 1515 Main Sts., Hartford, 89000022

Engine Company 6 Fire Station (Firehouses of Hartford MPS), 34 Huyshope Ave., Hartford, 89000020
Engine Company 9 Fire Station (Firehouses of Hartford MPS), 655 New Britain Ave., Hartford, 89000024

FLORIDA

Washington County

South Third Street Historic District, S. Third St. between Wells Ave. and South Blvd., Chipley, 89000045

GEORGIA

Greene County

Union Manufacturing Company, 500 Sibley Ave., Union Point, 89000026

KENTUCKY

Mercer County

US Post Office—Harrodsburg (Mercer County MRA), 105 N. Main St., Harrodsburg, 89000019

LOUISIANA

Madison Parish

Madison Parish Courthouse, Jct. of US 80 and US 65, Tallulah, 89000044

MASSACHUSETTS

Bristol County

Donaghy, Thomas, School, 66 South St., New Bedford, 89000041

Franklin County

Orange Center Historic District, Roughly bounded by N. Main, E. Main, E. River, S. Main, W. River, and W. Main Sts., Orange, 89000057

Hampden County

Belle and Franklin Streets Historic District, 77-103 Belle St. and 240-298 Franklin St., Springfield, 89000039

Plymouth County

Franklin Block, 1102-1110 Main St., Brockton, 89000042

Worcester County

Prescott Town House, MA 32, Petersham, 89000043

MONTANA

Hill County

Fort Assiniboine, County Rd. 82nd Ave. West, .5 mi. of SE of US 87, Havre vicinity, 89000040

NEVADA

Churchill County

Harmon School, Jct. Kirn Rd. and Harmon Rd., Fallon vicinity, 89000055

NEW YORK

Delaware County

Pakataken Artists Colony Historic District, NY 28 at jct. with Dry Brook Rd., Arkville, 89000046

NORTH CAROLINA

Henderson County

Aloah Hotel (Hendersonville MPS), 201 3rd Ave. West, Hendersonville, 89000036
Cedars, The (Hendersonville MPS), 219 7th Ave. West, Hendersonville, 89000033
Chewning House (Hendersonville MPS), 755 N Main St., Hendersonville, 89000034
Clarke-Hobbs-Davidson House (Hendersonville MPS), 229 5th Ave. West, Hendersonville, 89000031
Kings—Waldrop House (Hendersonville MPS), 103 S. Washington St., Hendersonville, 89000030
Main Street Historic District (Hendersonville MPS), Main St. between Sixth Ave. East and First Ave. East, Hendersonville, 89000028
Seventh Avenue Depot District (Hendersonville MPS), Seventh Ave. between Grove and Ash, Hendersonville, 89000029
Smith-Williams-Durham Boarding House (Hendersonville MPS), 247 5th Ave. West, Hendersonville, 89000032
Waverly, The (Hendersonville MPS), 783 N. Main St., Hendersonville, 89000035

OREGON

Baker County

St. Elizabeth Hospital (Old), 2365 Fourth St., Baker, 89000047

Crook County

Elliott, Marion Reed, House, 305 W. First St., Prineville, 89000049

Gilliam County

Barker, S. B., Building, 333 S. Main St., Condon, 89000053

Lake County

Watson, John N. and Cornelia, House, 5 M. H St., Lakeview, 89000051

Marion County

St. Pierre, Edward W., House, 2425 Eola Dr., Salem vicinity, 89000050

Multnomah County

Gaston, Joseph, House, 1980 S.W. Sixteenth Ave., Portland, 89000052

Polk County

Independence Historic District, Roughly bounded by Butler, Main, G, and Ninth Sts., Independence, 89000048
Sherman, Eleanor, House, 175 N. Craven St., Monmouth, 89000054

VERMONT

Windsor County

Sumner, David, House, US 5, Hartland, 89000027

WISCONSIN

Kewaunee County

Saint Lawrence Catholic Church, Jct. of WI 163 and County Hwy. J, Stangelville, 89000058

[FR Doc. 89-2320 Filed 1-31-89; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-279]

Certain Plastic Light Duty Screw Anchors; Issuance of General Exclusion Order

AGENCY: U.S International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has issued a general exclusion order under 19 U.S.C. 1337(d) to prevent the unauthorized importation into the United States of certain plastic light duty screw anchors, or packaging and literature for such screw anchors, that infringe claim 1 of U.S. Letters Patent 3,651,734 (the '734 patent) or U.S. Trademark Registration No. 1,248,999 (the '999 trademark).

ADDRESSES: Copies of the Commission's general exclusion order, the Commission Opinion on remedy, the public interest, and bonding, and all other nonconfidential documents on the record of the above-captioned investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202-252-1000.

FOR FURTHER INFORMATION CONTACT: Mitchell W. Dale, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1087. Hearing-impaired individuals are advised that information on the aforesaid general exclusion order and the subject investigation can be obtained by contacting the Commission's TDD terminal on 202-252-1805.

SUPPLEMENTARY INFORMATION: As a result of the subject investigation, the Commission determined that the unauthorized U.S. importation and sale of the subject plastic light duty screw anchors violates section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). *See* FR 2298 (Jan. 27, 1988); 53 FR 20190 (June 2, 1988); 53 FR 40138 (Oct. 13, 1988); 53 FR 51328 (Dec. 21, 1988). The Commission accordingly solicited written submissions from the parties to the investigation, other Federal agencies, and interested members of the public on the issues of remedy, the public interest, and bonding. *See* 53 FR 51328 (Dec. 21, 1988). The only submissions the Commission received were those filed by the parties. After considering the

parties' submissions and examining the record developed during the investigation, the Commission determined that the appropriate remedy for the violation of section 337 found in this investigation consists of a general exclusion order prohibiting the importation of plastic light duty screw anchors which infringe claim 1 of the '734 patent, except where such importation is licensed by the patent owner, and the importation of packaging (whether or not such packaging contains plastic light duty screw anchors) and literature containing depictions which infringe the '999 trademark, except where such importation is licensed by the trademark owner. The Commission also determined that the public interest considerations listed in subsection (d) of section 337 do not preclude issuance of a general exclusion order and that while the order is under review by the President pursuant to subsection (j) of the Tariff Act of 1930 as amended by the Omnibus Trade and Competitiveness Act of 1988 (102 Stat. 1213 (Aug. 23, 1988)), the excluded articles will be entitled to enter the United States under a bond in the amount of 365 percent of the articles' entered value.

The authority for the aforesaid Commission determinations and the general exclusion order is contained in subsection (d) of the Tariff Act of 1930 (19 U.S.C. 1337(d)), and in subsection (j) of section 337 of the Tariff Act of 1930, as amended by the Omnibus Trade and Competitiveness Act of 1988 (102 Stat. 1213 (Aug. 23, 1988)), and in interim § 210.56 of the Commission's Interim Rules of Practice and Procedure (53 FR 33072, Aug. 29, 1988).

By order of the Commission.

Issued: January 27, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-2354 Filed 1-31-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-292 (Final) and 731-TA-400 and 402-404 (Final)]

Thermostatically Controlled Appliance Plugs And Internal Probe Thermostats Therefor From Canada, Japan, Malaysia, and Taiwan

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission unanimously determines, pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) and section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Canada, Japan, Malaysia, and Taiwan of thermostatically controlled appliance plugs and/or internal probe thermostats provided for in subheadings 9032.10.00, 9032.20.00, 9032.89.60, 9032.90.60, and 9033.00.00 of the Harmonized Tariff Schedule of the United States (these products were previously provided for in item 711.78 of the Tariff Schedules of the United States), that have been found by the Department of Commerce to be subsidized and sold in the United States at less than fair value (LTFV).

Background

The Commission instituted these investigations effective July 22, 1988, and September 28, 1988, following preliminary determinations by the Department of Commerce that imports of thermostatically controlled appliance plugs and internal probe thermostats from Taiwan were being subsidized within the meaning of section 701 of the act (19 U.S.C. 1671) and that such products from Canada, Japan, Malaysia, and Taiwan were being sold at LTFV within the meaning of section 731 of the act (19 U.S.C. 1673). Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notices in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notices in the **Federal Register** of August 17, 1988 (53 FR 31115) and of October 19, 1988 (53 FR 40973). The hearing was held in Washington, DC, on December 15, 1988, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on January 25, 1989. The views of the Commission are contained in USITC Publication 2152 (January 1989), entitled "Thermostatically Controlled Appliance Plugs and Internal Probe Thermostats Therefor from Canada, Japan, Malaysia and Taiwan: Determinations of the Commission in Investigations Nos. 701-TA-292 (Final) and 731-TA-400 and 402-404 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: January 27, 1989.

[FR Doc. 89-2355 Filed 1-31-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. TA-131(b)-14]

Probable Economic Effect on U.S. Industries And Consumers of Modification of U.S. Tariffs And Modification or Removal of Certain U.S. Nontariff Measures

AGENCY: United States International Trade Commission.

ACTION: Notice of receipt of list of articles from the U.S. Trade Representative (USTR) which may be considered for U.S. duty modification; clarification of advice requested by the USTR on certain U.S. imports from LDDC's and CBERA countries; cancellation of the Commission's public hearings in New Orleans, LA and Miami, FL and change in location of the hearing in New York City.

SUMMARY: In his letter to the Commission of January 11, 1989, the USTR provided notification of articles which may be considered in international trade negotiations and for which the Commission would provide the advice to the President requested in the USTR's letter to the Commission of December 22, 1988. The USTR published notice of such articles in the **Federal Register** of January 17, 1989 (54 FR 1610). As noted in the USTR notice, the dutiable articles listed in annex A, for which the existing rate of duty is not more than 5 percent ad valorem (or ad valorem equivalent), may be considered for continuance, reduction, or elimination of existing United States duties, whereas all other dutiable articles may be considered for continuance or reduction of existing duties. Upon request, a copy of both USTR letters, including enclosures thereto, and an annotated Commission list of the dutiable articles of 5 percent or less included in annex A (showing for each of the HTS subheadings the applicable column one ad valorem rates of duty, or its ad valorem equivalent, and a brief product description) may be obtained from the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436 (202-252-1000).

The original notice of the Commission's institution of investigation and scheduling of public hearings was published in the **Federal Register** on December 30, 1988 (53 FR 53077).

The Commission's original notice indicated that the Commission would not provide advice with respect to the effect of providing immediate duty-free treatment for textiles and apparel of LDDC's as a group and CBERA countries as a group. The Commission will provide such advice.

The public hearings scheduled for New Orleans, LA on February 1, 1989, and Miami, FL on February 3, 1989, have been cancelled. Also, the location of the public hearing to be held Monday, March 13, 1989, in New York, NY, has been moved to One World Trade Center, 106th Floor, New York, NY 10048.

In his letter of December 22, 1988, the USTR indicated that he would request advice on the modification or removal of certain U.S. nontariff measures (NTM's) which have been requested informally by other governments in the context of work in the Uruguay Round Negotiating Group on Nontariff Measures. The USTR indicated that he would provide a list of such measures to the Commission inb the near future. In his letter of January 11, 1989, the USTR stated that the list of NTM's will require further evolution in the negotiations and that USTR officials will be in contact with the Commission at a later date concerning these NTM's. Upon notification to the Commission of the list of NTM's, the Commission will issue in the **Federal Register** an appropriate notice of such action.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: January 26, 1989.

[FR Doc. 89-2267 Filed 1-31-89; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-290 (Sub-No. 49X)]

Central of Georgia Railroad Co.; Abandonment Exemption of Rail Line Between Hurtsboro and Troy, AL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by Central of Georgia Railroad Company of 45.96 miles of rail line, between Hurtsboro and Troy, AL, and additionally, 4.53 miles of side track, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on March 6, 1989. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by February 13, 1989 petitions to stay must be filed by February 21, 1989, and petitions for reconsideration must be filed by March 3, 1989. Requests for a public use condition must be filed by February 13, 1989.

ADDRESSES: Send pleadings, referring to Docket No. AB-290 (Sub-No. 49X), to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioner's representative: Richard W. Parker, Norfolk Southern Corporation, One Commercial Place, Norfolk, VA 23510-2191.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245.

[TDD for hearing impaired: (202) 275-1721]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275-1721.]

Decided: January 24, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89-2283 Filed 1-31-89; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31321]

Pocono Northeast Railway, Inc.;—Acquisition And Operation of Certain Property of Air Products and Chemicals, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts under 49 U.S.C. 10505 from the prior approval requirements of 49 U.S.C. 11343, *et seq.*, the acquisition and operation by Pocono Northeast Railway, Inc. of a 0.6-mile line of railroad between milepost 0.0 and milepost 0.6 in Wilkes Barre, PA, subject to standard labor protective conditions.

DATES: This exemption will be effective on March 3, 1989. Petitions to stay must be filed by February 13, 1989, and petitions for reconsideration must be filed by February 21, 1989.

ADDRESSES: Send pleadings referring to Finance Docket No. 31321 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioner's representative: R. Lawrence McCaffery, Jr., Weiner, McCaffery, Broadsky & Kaplan, P.C., 1350 New York Avenue, NW., Suite 800, Washington, DC 20005-4797.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245.

[TDD for hearing impaired: (202) 275-1731]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275-1721].

Decided: January 23, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89-2282 Filed 1-31-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 88-40]

Lou's Pharmacy, Philadelphia, PA; Hearing

Notice is hereby given that on January 13, 1988, the Drug Enforcement Administration, Department of Justice, issued to Lou's Pharmacy, an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AL3041706, and deny any pending applications for renewal.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration,

[1] The record is defined in § 207.2(j) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(j)).

[1] *See Exempt. of Rail Line Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164, (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 49440-49446).

notice is hereby given that a hearing in this matter will be held on Tuesday, February 7, 1989, commencing at 10:00 a.m., at the Federal Mine Safety and Health Review Commission, 1730 K Street, NW., 6th Floor Courtroom, Washington, DC.

Dated: January 26, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89-2302 Filed 1-31-89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 87-58]

Donald Morton Stevens, M.D., Alexandria, KY; Hearing

Notice is hereby given that on June 15, 1987, the Drug Enforcement Administration, Department of Justice, issued to Donald Morton Stevens, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AS3014660, and deny any pending applications for renewal.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, February 7, 1989, commencing at 10:00 a.m., at the Federal Energy Regulatory Commission, Courtroom E, Second Floor, 825 N. Capitol Street, NE, Washington, DC.

Dated: January 26, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89-2303 Filed 1-31-89; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings; Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786-0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which would significantly frustrate implementation of proposed agency; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

(1) *Date:* February 17, 1989.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications submitted to the Access and Tools category in the fields of Linguistics and Lexicography, submitted to the Division of Research Programs, for projects beginning after July 1, 1989.

(2) *Date:* February 23, 1989.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Elementary and Secondary Education, submitted to the Division of Education Programs, for projects beginning after July 1, 1989.

(3) *Date:* February 27, 1989.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review Interpretive Research/Projects applications for U.S. History and Political Science, submitted to the Division of Research Programs, for projects beginning after July 1, 1989.

(4) *Date:* February 28, 1989.
Time: 8:30 a.m. to 5:00 p.m.
Room: 316.
Program: This meeting will review applications for Elementary and Secondary Education, submitted to the Division of Education Programs, for projects beginning after July 1, 1989.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 89-2319 Filed 1-31-89; 8:45 am]

BILLING CODE 7536-01-M

Meeting; Literature Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Audience Development Section) to the National Council on the Arts will be held on February 16-17, 1989 from 9:00 a.m.-5:30 p.m., and February 18, 1989 from 10:00 a.m.-12:00 p.m. in Room M-14 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on February 18, 1989 from 10:00 a.m.-12:00 p.m. The topics for discussion will be guidelines and policy issues.

The remaining sessions of this meeting on February 16-17, 1989 from 9:00 a.m.-5:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

January 27, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-2322 Filed 1-31-89; 8:45 am]

BILLING CODE 7537-01-M

Meeting; Visual Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (GSA Art and Architecture Section) will be held on February 16, 1989, from 10:00 a.m.-12:00 noon at the Federal Building, 300 N. Los Angeles, Room 3134, Los Angeles, CA 90012.

This meeting will be open to the public on a space available basis. The topics for discussion will be artists proposals for the Los Angeles Federal Building Project.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202-682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

January 27, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-2323 Filed 1-31-89; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee on Safety and Research Program; Meeting

The ACRS Subcommittee on Safety Research Program will hold a meeting on February 8, 1989, Room P-114, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows: *Wednesday, February 8, 1989—8:30 a.m. until 1:00 p.m.*

The Subcommittee will discuss the ongoing and proposed NRC Safety Research Program and budget.

Oral statements may be presented by members of the public with concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Staff member named below as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS Staff member, Mr. Sam Duraiswamy (telephone 301/492-9522) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: January 25, 1989.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 89-2299 Filed 1-31-89; 8:45 am]

BILLING CODE 7590-01-M

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from December 30, 1988 through January 12, 1989. The last biweekly notice was published on January 11, 1989 (54 FR 1018).

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 3, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance

with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: July 11, 1988

Description of amendment request: The proposed changes revise the titles listed in the index section of the Technical Specifications to be consistent with the titles shown in the text. The changes also revise two titles provided in the text for consistency with Technical Specifications between the two units. All changes are considered administrative changes and are described in Enclosure 4 of the request letter. *Basis for proposed no significant hazard consideration determination:* The Commission has provided standards for determining whether a no significant hazard consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has reviewed the proposed changes and has determined the requested amendment does not involve a significant hazards consideration for the following reasons:

1. The proposed amendment is purely administrative in nature and does not change the functions or design of any equipment. Its sole purpose is to provide consistency between the text and the indices of the Technical Specifications. Therefore, it does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not change the design or function of any equipment and has no impact on any accident analyses. The changes are being made for consistency only and can clearly be classified as administrative. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not impact any safety analyses because it is purely administrative in nature. No modification or change to equipment is involved. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The staff has reviewed the licensee's determination and is in agreement with them. Accordingly, the Commission proposes to determine that these changes do not involve a significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: August 23, 1988

Description of amendments: The proposed amendment would revise Technical Specification Table 3.3.5.7-1 to change the type of fire detection instruments required for the diesel generator building.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Carolina Power & Light Company (CP&L or the licensee) provided the following analysis to support the finding that the proposed changes do not involve a significant hazards consideration:

1. The fire detection system is designed for detection and mitigation of accidents involving fires but does not affect the probability of those accidents. The proposed change involves the use of a more effective fire detection instrument arrangement based on the fire hazards associated with the diesel generator cells. The new heat and flame detectors will provide an enhanced means of detecting the major fire hazard (a fuel oil fire) expected to result in significant damage to the diesel generators. This enhancement will provide equivalent limitations on the consequences of this type of fire. Based on this reasoning, CP&L has determined that the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The accidents analyzed in Chapter 15 of the Updated FSAR are not affected by the proposed change in detector types. The change in detectors will not affect the fire detection system's ability to perform its intended function. The new flame and heat detectors are more suited for the fire hazard involved than the present smoke detectors. Since the fire detection system, including the detection instruments, affect [SIC] only the detection and subsequent mitigation of a fire, CP&L has determined that the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change provides an enhanced capability of detecting a severe fuel oil fire in the diesel generator cells. This type of fire hazard was evaluated to have the greatest impact on the continued availability of the diesel generators. The new flame and heat detectors are more suited for the rapid detection of this type of fire. The present smoke detectors are better suited for detecting a fire with a long incipient or smoldering stage, which generally involves burning of ordinary combustible materials. It has been determined that this type of fire will not likely result in damage to safety related equipment located in the diesel generator cells. Therefore, the proposed amendment does not involve a significant reduction in the margin of safety.

Based on the above, the licensee has determined that the proposed amendment does not involve a significant hazards consideration. The NRC staff has reviewed the licensee's analysis and agrees with the determination. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: November 30, 1988

Description of amendment request: The request would amend the Technical Specifications (TS) to increase the minimum inventory of diesel generator fuel at the H. B. Robinson Steam Electric Plant, Unit No. 2 (HBR-2), site. The existing diesel fuel storage capacity is sufficient to meet the requirements of the proposed TS amendment. The proposed TS would correct an inconsistency between the TS and the HBR-2 updated Final Safety Analysis Report.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Carolina Power & Light Company (CP&L) has reviewed the Technical Specifications change request in accordance with the standards set forth in 10 CFR 50.92 and concluded that this change does not constitute a significant hazards consideration based upon the following:

1. Operation of the facility, in accordance with the proposed amendment, would not involve a significant increase in the probability or consequences of an accident previously analyzed because increasing the required fuel oil inventory increases the length of time the diesels can function before resupply is necessary. The change to administratively maintain an increased minimum fuel oil inventory in the Unit 1 tank does not impact the combustible loading for the Unit 2 Fire Hazard Analysis. Since no change in plant system's configuration is required to achieve the inventory increases, nor does any fuel oil storage system contribute to any previously analyzed accident sequence, the proposed change cannot increase the probability or

consequences of previously analyzed accidents.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated because this change places administrative controls on fuel oil inventory. No unanalyzed accidents can result from this change. No change in plant system's configuration is required, therefore, no new accident or different kind of accident than previously evaluated can be introduced.

3. Operation of the facility, in accordance with the proposed amendment, would not involve a significant reduction in a margin of safety because this increase in minimum diesel fuel inventory improves margins of safety by assuring seven days operation of one diesel at its rated design capacity. Additional fuel oil inventory adds to the margin of safety. This results from providing sufficient fuel oil to allow the diesels to be operated to their rated design capacity without limiting operation to only minimum required safety features.

The staff has reviewed CP&L's evaluation and agrees with its analysis. Accordingly, the Commission proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P.O. Box 1551 Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units Nos. 1 and 2, LaSalle, County, Illinois

Date of application for amendments: October 5, 1988

Description of amendments request: This amendment would delete Figure 6.1-1, "Corporate Organization," and Figure 6.1-2, "Station Organization," from the Technical Specifications (TS) and would revise Section 6 to require inclusion of these organization charts in the QA Topical Report. However, the NRC will continue to be notified of licensee organization changes through other regulatory controls. In accordance with 10 CFR 50.34(b)(6)(i), the applicant's organizational structure is required to be included in the Final Safety Analysis Report (FSAR). Chapter 13 of the FSAR provides a description of the station organization and detailed organization chart. Updates to the FSAR are required by 10 CFR 50.71(e) to be submitted annually to the NRC. Even though Figures 6.1-1 and 6.1-2 would be deleted from TS, Section 6 of the TS would be revised to require inclusion of these organization charts in the CECo QA Topical. Whereupon, Appendix B to 10 CFR Part 50, and 10 CFR 50.4(b)(7), will govern any changes made to the organization as it is described in the Quality Assurance (QA) Program. Finally, it is CECo's normal practice to inform the NRC of organization changes affecting their nuclear facilities prior to implementation.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards in 10 CFR 50.92(c) for determining whether a significant hazards consideration exists. A proposed amendment to an Operating License for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) involve a significant increase in the probability of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. CECo evaluated the proposed TS changes and determined, and the NRC staff agrees that:

(1) The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because deletion of the organization charts from the TS does not affect plant operation, nor does it involve any physical modification of the plant. Furthermore, the aforementioned administrative and regulatory controls remain in force to ensure that organizational changes are reviewed by the NRC.

(2) The proposed amendment does not create the possibility of a new or different kind of accident than previously evaluated because the proposed change is administrative in nature; and does not physically alter any systems or components, or the way they are operated.

(3) The proposed amendment does not involve a significant reduction in a margin of safety because CECo through its Quality Assurance programs, and its commitment to maintain only qualified personnel in positions of responsibility, and other required controls, assures that safety-related operations will be performed at a high level of competence. Furthermore, this amendment does not change any setpoints or operating parameters. Consequently, removal of organization charts from the Technical Specifications will not affect the margin of safety. The NRC staff has reviewed the licensee's evaluation related to the proposed changes and concurs with their conclusions.

In addition, the associated editorial TS changes proposed by CECo are considered representative of example (i) in the Commission's guidance (51 FR 7751) for examples of no significant hazards, which is defined as "purely administrative change to TS; for example a change to achieve consistency throughout the Technical Specifications, correction of an error, or change in nomenclature."

Therefore the NRC staff proposes to determine that this amendment request does not involve significant hazards considerations based upon a preliminary review of the application, the licensee's evaluation of no significant hazards, and NRC guidance.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

Attorney to licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Daniel R. Muller

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: September 23, 1988

Description of amendment request: The proposed amendment would change the Technical Specifications (TS) and associated Bases dealing with "Reactor Coolant System Leakage and Leakage into the Containment Free Volume," as follows:

(1) TS 3.1.F and the associated Basis would receive minor editorial changes including the repagination of text for increased spatial uniformity, the correction of minor typographical errors.

(2) TS 3.1.F.1.b.(6) would be modified to require grab sample analysis upon inoperability of either (rather than both) of the radioactivity monitoring systems required by TS 3.1.F.1.a.(6).

(3) The TS 3.1.F Basis, TS page 3.1.F-4, paragraph a, would be revised to state that the containment air particulate monitor would meet "the recommended sensitivity guidelines of Regulatory Guide 1.45." Paragraph "b" would be revised to remove the activity levels stated (1E-2 uc/cc and 1E-7 uc/cc).

(4) The associated Technical Specification 3.1.F Basis would remove statements that the containment air particulate monitor is sensitive to 0.025 gpm to greater than 10 gpm so that an increase in reactor coolant system leakage of 1 gpm would be detectable within one minute after it occurs and the containment radiogas monitor is less sensitive than the air particulate monitor.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee provided the following analysis of the proposed changes:

In accordance with the requirements of 10 CFR 50.92, the proposed Technical Specification change is deemed to involve no significant hazards considerations because operation of Indian Point Unit No. 2 in accordance with this change would not:

1. Involve a Significant Increase In The Probability of Consequences of An Accident Previously Evaluated:

The proposed changes to TS 3.1.F (Reactor Coolant System Leakage and Leakage into Containment Free Volume) merely make the Indian Point Unit 2 leakage detection system requirements for the containment radioactivity monitors consistent with those of Regulatory Guide 1.45.

This Regulatory Guide has been endorsed by the staff on a generic basis, and it is now applied to IP-2. The analysis supporting the application of Regulatory Guide 1.45 to IP-2 has been provided to the staff in the [Leak Before Break] LBB application submittal on May 23, 1988. It is apparent, therefore, that this change does not involve a significant increase in the probability or the consequences of an accident previously evaluated, but applies an accepted standard (Regulatory Guide 1.45) to substantiate the basis of this TS. This TS as written is unnecessarily restrictive and does not provide any additional safety benefits. The proposed change to the LCO action statement, 3.1.F.1.b.(6), imposes additional requirements on containment radioactivity monitors and does not increase the probability or consequences of an accident previously evaluated.

The additional changes requested are purely administrative in nature and only change typographical errors, make minor editorial changes for consistency, repaginate the document and delete pertinent portions of the IP-2 Technical Specification that are no longer effective or have been previously approved for deletion, therefore these changes do not increase the probability or consequences of an accident previously evaluated.

2. Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated:

The request to amend the TS merely allows conformance to Regulatory Guide 1.45 and imposes more restrictive requirements on the containment radioactivity monitors; it does not affect the reliability or the adequacy of the leakage detection system currently at IP-2, nor does it affect the design basis as described in the FSAR, in and of itself. The related submittal, which requests authorization for the use of the LBB methodology as specified in the final rule, also does not alter the existing plant design, but merely eliminates the necessity of considering the dynamic effects of Double Ended Guillotine Break (DEGB) on the primary system. Neither [these] TS changes nor the basis for these changes (LBB/Regulatory Guide 1.45) creates the possibility of a new or different kind of accident, because the design itself is not being changed by this TS. The TS is merely being updated to include current accepted standards.

The additional changes requested are purely administrative in nature and only change typographical errors, make minor editorial changes for consistency, repaginate the document and delete pertinent portions of the IP-2 Technical Specification that are no longer effective or have been previously approved for deletion, therefore these changes do not create the possibility of a new or different kind of accident.

3. Involve a Significant Reduction in Margin of Safety:

Revising the LCO action and basis for the radioactivity monitors has a negligible effect on the margins of safety. The purpose of the containment air particulate monitors is to detect sufficiently small amounts of reactor coolant leakage to indicate an unacceptable plant condition, e.g., pipe cracks or excessive valve or seal leakage. The accepted level of sensitivity sought by the staff is as set forth in Regulatory Guide 1.45, and this TS change will allow IP-2 to conform to this accepted guidance. The IP-2 TS basis as set forth at present is based on optimum instrument function, not safety requirements, and thus is far too restrictive. Changing the TS to conform with Regulatory Guide 1.45 will not involve a significant reduction in the margin of safety.

The additional changes requested are purely administrative in nature and only change typographical errors, make minor editorial changes for consistency, repaginate the document and delete pertinent portions of the IP-2 Technical Specification that are no longer effective or have been previously approved for deletion, therefore these changes do not involve a significant reduction in the margin of safety.

The staff agrees with the licensee's analysis. Therefore, based on the above, the staff proposes that the proposed amendment will not involve a significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003

NRC Project Director: Robert A. Capra, Director

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: December 23, 1988

Description of amendment request: The proposed amendment would change the Technical Specifications to correct the terminology of control room isolation for toxic gas protection action.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for the application of criteria for no significant hazards consideration determination by providing examples of amendments that are considered not likely to involve a significant hazards consideration (51 FR 7751). These examples include "(i). A purely administrative change to technical specifications: for example... correction of an error...". The proposed change is directly related to this example in that the Technical Specifications currently reference a recirculation mode for the toxic gas event and recirculation means pressurizing the control room with outside air. In the toxic gas event, outside air is not permitted in the control room and the proper reference should be isolation. In making the change to the Technical Specification, nothing will change and only the Technical Specification word is corrected.

Based on the above, the staff proposes to determine that the change involves no significant hazards consideration.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N St., NW., Washington, DC 20037

NRC Project Director: Jose A. Calvo

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: December 23, 1988

Description of amendment request: The proposed amendment would change the Technical Specifications to incorporate the correct operating range for the Containment Area Radiation Monitors and clarify the radiation

background setpoint for containment purge and exhaust isolation.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The Technical Specifications list the operating range for the four containment radiation monitors for isolation of purge and exhaust in the unlikely event of an accident inside containment. These ranges were derived from the Combustion Engineering Standard Technical Specifications and from Generic Letter 82-16 which used counts per minute. The original numbers were proposed for the monitors and the licensee has determined that at the lower end of the range requirements (per the Technical Specification), the monitors are not accurate or reliable and would be called inoperable. This places the plant in an unwarranted position in some modes and penalizes operation. The setpoint is set at twice background for isolation of purge and exhaust but background at the low end of the range may be below the monitor capability to measure. The monitor reliability and accuracy begins at 20 mR/hr and goes up to $5x10^5$ mR/hr. The licensee proposes to incorporate this accurate range in the Technical Specifications and to isolate purge and exhaust at readings twice the lowest accurate reading or twice background whichever is the highest. Exceeding the setpoint will initiate the logic for the Containment Purge Isolation Signal (CPIS). CPIS is also initiated by monitors in the exhaust stack which is the referenced operation in the Off-Site Dose Calculation Manual (ODCM). The exhaust stack monitors and the ODCM are not changed by the proposed amendment.

The licensee has provided an analysis of the hazards consideration of the proposed change.

CPIS guards against fuel handling accidents because the inside-the-containment accident ranks highest in off-site dose consequences, excepting LOCAs. Large radioactive releases into containment from LOCAs cause a Safety Injection Actuation Signal (SIAS) and Containment Isolation Actuation Signal (CIAS) to protect the public. The maximum differential pressure expected during accident conditions dictates the minimum time to isolate the purge butterfly-valves. Raising the operating range of the containment area radiation monitors... does not change the ability of the area radiation monitors (i.e., CPIS) to protect against fuel handling accidents in containment. Further, the change does not affect the plant stack monitors which also cause CPIS. The probability and consequences of a fuel handling accident remain as currently analyzed.

Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

The containment radiation area monitoring machines do not change because of this request. The ability for them to measure the operating range remains unchanged. The alarm/trip setpoint still happens at twice the background level the machine can detect (i.e., 40 mR/h or higher). The analysis of the fuel handling accident without containment isolation meets 10 CFR 100 criteria while using an assumed containment air dose rate much larger than the new 20 mR/h low range number. The new setpoint does not affect the SIAS and CIAS logics protecting the public during a LOCA. The area radiation monitor machines remain unchanged by this request so no new or different failure modes exist.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The Operability of the radiation monitoring channels ensure that: (1) the radiation levels are continually measured in the areas served by the individual channels; (2) the alarm or automatic action is initiated when the radiation level trip setpoint is exceeded; (3) sufficient information is available on selected plant parameters to monitor and assess these variables following an accident.

The new operating range for the containment area monitors retains the bases of its specification. The area radiation monitors measure radiation levels in their locations within the capability of the machines. The monitors still "trip" upon reaching the licensee determined setpoint. Action Statements for Table 3.3-6 ensure sufficient radiation field information exists after an accident. Regulatory Guide 1.97 requires the lowest containment area radiation monitor reading to be 0.1 R/h (100 mR/h). Therefore, the new operability range provides personnel protection no different than before because Waterford used the same machines, plus fulfilling regulatory requirements for containment area radiation monitoring.

Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussions, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N St., NW., Washington, DC 20037

NRC Project Director: Jose A. Calvo

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: November 22, 1988

Description of amendment request: This amendment request would amend sections of the Maine Yankee Atomic Power Station Technical Specifications by extending the testing intervals of the Main Steam Excess Flow Check Valves and Turbine Valves. Since both of these tests involve power reductions, Maine Yankee Atomic Power Company (the licensee) is proposing to perform these tests at the same interval to minimize power reductions.

First, the proposed amendment would modify Technical Specification 4.6, "Periodic Testing" by extending the specified surveillance testing interval for Main Steam Excess Flow Check Valves from once every six weeks to once every three months.

Main Steam Excess Flow Check Valves (EFCVs), designed to limit an excessive reactor coolant system cooldown rate and resultant reactivity insertion following a main steam break incident, are tested to ensure that the valves are not mechanically prevented from closing when needed.

Second, the proposed amendment would modify Technical Specification 4.2, "Equipment and Sampling Tests," by extending the surveillance requirements for turbine stop, governor, reheater and intercept valves, from once per month to once per three months, consistent with the proposed interval for the EFCVs.

Turbine valves are periodically tested to ensure they are operable and are designed to protect the turbine from excessive overspeed. An evaluation of turbine overspeed and missile generation probability considering turbine valve test interval has been performed by the licensee.

Basis for proposed no significant hazards consideration: The proposed changes to the Technical Specifications have been evaluated by the licensee to determine whether they constitute a significant hazards consideration as required by 10 CFR Part 50, Section 50.91 using standards provided in Section 50.92. That analysis is provided below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change is expected to have an insignificant impact on plant and public safety.

After 15 years of operation and approximately 225 Main Steam Excess Flow Check Valve partial stroke tests, the licensee has never had a valve fail to stroke as required. Furthermore, the mechanical binding checked for in this test is one potential failure mechanism of the valve. Changing from a six week to a three month test interval is expected to have little or no impact on the probability of finding a mechanically stuck EFCV during a test and will have no effect at all on any of the other potential failure mechanisms. In other words, this change is expected to have a small effect on a fraction of the valves' total failure probability. Therefore, the proposed amendment to increase the Main Steam Excess Flow Check Valve partial stroke test interval does not involve a significant increase in the probability or consequences of an accident previously evaluated.

An analysis as reported in the Westinghouse report, WCAP-11525 provides an evaluation of the probability of turbine missile ejection for the purpose of justifying a reduction in the frequency of turbine valve testing. In a letter to Westinghouse Electric Corporation dated February 2, 1987 (C. E. Rossi, USNRC to J. A. Martin, Westinghouse), the Commission established acceptable criteria for the probability of generating a turbine missile from the unfavorably oriented turbine (acceptable probability of missile generation is less than 1.0×10^{-5}). The licensee's evaluation in WCAP-11525 shows that the probability of a missile ejection incident for turbine valve test intervals of up to one year is significantly less than the established acceptance criteria. The small change in the probability of generating a turbine missile with longer turbine valve testing intervals does not represent a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed amendment changes the frequency at which Turbine Valves and Main Steam Excess Flow Check Valves are tested. Changing the frequency of testing does not result in a change in the failure modes of the Turbine Valves or Excess Flow Check Valves. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

As noted in 1 above, this change to the Maine Yankee Technical Specification will not result in a significant reduction in the margin of safety for Main Steam Excess Flow Check Valve failure. The increased test interval will have a small impact on just one contributor to the overall Excess Flow Check Valve failure probability. Furthermore, the overall effect will be an increase in the plant's margin of safety due to fewer test-induced plant transients and reduced valve unavailability due to testing. The probability of Maine Steam Excess Flow Check Valve failure remains acceptably small and the proposed amendment will not involve a significant reduction in the margin of safety.

As noted above, and as shown in WCAP-11525, this change to the Maine Yankee Technical Specification will not result in a significant reduction in the margin of safety for missile ejection. The probability of missile ejection remains acceptably small and within guidelines established by the NRC Staff.

The Commission has provided guidance concerning the application of the standard in 10 CFR 50.92 for determining whether a significant hazards consideration exists by providing certain examples of amendments that will likely be found to involve no significant hazards considerations. The changes to the Maine Yankee Technical Specifications proposed in this amendment request are similar to NRC examples (iv) and (vi). Example (iv) relates to the granting of a relief from an operating restriction upon demonstration of acceptable means of operation. This assumes that acceptable operating criteria have been established and that it is satisfactorily shown that the criteria have been met. Example (vi) relates to a change which either may result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a margin of safety, but where the results of the change are clearly within all transient analysis acceptance criteria and within the limits of 10 CFR Part 50.46 and Appendix K to Part 50. The Commission has established an acceptance criteria for the turbine missile ejection accident of 1.0E-5. The probability of a turbine missile ejection incident presented in WCAP-11525 ranges from 3.98E-6 with a turbine valve inspection interval of one month to 9.21E-6 with a turbine valve inspection interval of one year. This demonstrates that the probability of a turbine missile ejection accident for the Maine Yankee plant is well within accepted NRC criteria.

Based on this guidance and the reasons discussed above, the licensee has concluded that the proposed change does not involve a significant hazards consideration. The Commission agrees with this conclusion.

Local Public Document Room location: Wiscasset Public Library, High Street, P. O. Box 367, Wiscasset, Maine 04578.

Attorney for licensee: J. A. Ritsher, Esq., Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02210.

NRC Project Director: R. Wessman.

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: December 28, 1988.

Description of amendment request: This amendment request would modify the Technical Specifications to reflect the operating limits for the Cycle 11 operation at a power level of 2700 MWth.

Basis for proposed no significant hazards consideration: The proposed changes to the Technical Specifications have been evaluated by the licensee to determine whether they constitute a significant hazards consideration as required by 10 CFR Part 50, Section 50.91 using standards provided in Section 50.92. That analysis is provided below:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated.

The Cycle 11 power upgrade to 2700 MWth does not modify the number of fuel assemblies, fuel assembly design, or fuel assembly placement from that previously approved for the Cycle 11 reload core. Of the 217 assemblies currently residing in the Maine Yankee core, 208 are fabricated by Combustion Engineering and nine (9) are fabricated by Advanced Nuclear Fuels (Exxon). All fuel assemblies used in the Cycle 11 core are not significantly different from those previously used at Maine Yankee. As in previous reload cores at Maine Yankee and other facilities, the NRC found the fuel design to be acceptable. The Control Element Assembly (CEA) pattern for Cycle 11 operation at 2700 MWth is identical to that used in both Cycle 10 and the 2630 MWth operation of Cycle 11. Also, the thermal, thermal-hydraulic, and physics characteristics for Cycle 11 2700 MWth operation are not significantly different from those of Cycle 11 at 2630 MWth operation. Therefore, these proposed changes which support the operation of Maine Yankee for Cycle 11 at a power level of 2700 MWth do not increase the probability of an accident previously evaluated.

The Cycle 11 design at 2700 MWth operation has been evaluated to demonstrate the acceptability of events previously evaluated in the Maine Yankee Final Safety Analysis Report (FSAR). The acceptance criteria for the evaluation are identical to those which were employed for the approved Cycle 11 reload. Furthermore, the analytical methods used to demonstrate conformance of the Cycle 11 power update design are identical to those used in both Cycle 10 and the approved Cycle 11 reload.

For those transients where the parameters for Cycle 11 operation at 2700 MWth are not bounded by previous safety analyses, a new or revised analysis was performed. These transients are:

(1) Boron Dilution
(2) Excess Load
(3) Seized RCP Rotor
(4) CEA Withdrawal

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(5) Loss of Feedwater
(6) Loss of Coolant Flow
(7) Steam Line Rupture
(8) Large Break LOCA
(9) CEA Drop
(10) Loss of Load
(11) CEA Ejection

Other transients that required a partial reanalysis of review included:

(1) Steam Generator Tube Rupture
(2) Small Break LOCA
(3) Containment Overpressure

In each case the reanalysis demonstrated that the applicable acceptance criteria for the accident or transient continue to be met. For the transients requiring a partial reanalysis or review, the parameters were bounded by previously approved safety analyses and therefore are not adversely affected by the power upgrade.

In summary, our evaluation of accidents previously analyzed in the FSAR has demonstrated that all applicable acceptance criteria continue to be met. Therefore, the proposed Technical Specification changes for Cycle 11 operation at 2700 MWth do not significantly increase the consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

The core for Cycle 11 operation at 2700 MWth is similar in fuel design, CEA placement, thermal, thermal-hydraulic, and physics characteristics to that of both Cycle 10 and Cycle 11 at 2830 MWth operation. We have concluded that Cycle 11 operation at 2700 MWth does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety.

The design of Cycle 11 at 2700 MWth is similar to both Cycle 10 and Cycle 11 at 2830 MWth operation. The methods used to analyze Cycle 11 operation at 2700 MWth are the same as were used for both Cycle 10 and Cycle 11 at 2830 MWth operation which have been previously approved by the NRC staff. Additionally, the safety analysis acceptance criteria for operation at 2700 MWth during Cycle 11 have not changed from that used in previous reload submittals. We have demonstrated that these acceptance criteria continue to be met. We have therefore concluded that Cycle 11 operation at a rated power level of 2700 MWth does not involve any significant reduction in a margin of safety.

Based on the reasons discussed above, the licensee has concluded that the proposed changes to Technical Specifications do not involve a significant hazards consideration as defined by 10 CFR 50.92. The Commission agrees with this conclusion.

Local Public Document Room location: Wiscasset Public Library, High Street, P. O. Box 367, Wiscasset, Maine 04575.

Mississippi Power & Light Company, System Energy Resources, Inc., South Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: September 23, 1988, as supplemented November 30, December 16 and December 21, 1988.

Description of amendment request: The amendment would change the Technical Specifications (TS) by adding a plant service water radiation monitor in TS 3/4.3.7.1, "Radiation Monitoring Instrumentation," and adding two valves in TS 3/4.8.4.2, "Motor Operated Valves Thermal Overload Protection." These new TS are proposed for an alternate decay heat removal system (ADHRS) to be installed for use during refueling outages when the residual heat removal (RHR) system is out of service for maintenance or inspection. The proposed ADHRS would use plant service water (PSW) in the ADHRS heat exchangers to remove decay heat from reactor cooling water. The service water radiation monitor would detect heat exchanger tube leakage. The ADHRS would consist of two pumps and two heat exchangers in parallel with a common suction line connected to the existing RHR suction line and a common discharge line connected to one of the low pressure coolant injection (LPCI) lines. The two valves added to TS 3/4.8.4.2 would be used to isolate the ADHRS from the RHR and the LPCI lines during plant operation. The ADHRS would not be a safety related system.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee's analysis of the proposed amendment against the three standards in 10 CFR 50.92 is reproduced below.

1. These changes would not significantly increase the probability or consequences of an accident previously evaluated.

(a) The ADHRS (including operating requirements) has been found not to significantly increase the probability of previously evaluated accidents and events as discussed below.

The nature of the ADHRS and its interconnections with existing plant systems results in specific consideration of the following events for possible increases in probability:

o Pipe break or leak
o Loss of coolant accident (LOCA)/inadvertent reactor vessel drainage
o Internally generated missiles
o Reactor coolant pressure boundary (RCPB) overpressure
o Fire
o Loss of electrical power
o Offsite radioactive release

Other events/accidents are excluded from detailed consideration because there are not identified functional (physical connections or controls interface) relationships and because the ADHRS has been designed to preclude any adverse spatial or environmental interactions. Examples of such events include secondary plant transients, loss of instrument air, reactivity control failures, and fuel handling accidents.

Pipe Break or Leak

The ADHRS will not significantly increase the probability of a pipe break or leak in existing systems, and the probability of failure of the ADHRS fluid components is no greater than existing systems, as presently analysed [SIC] in UFSAR Section 3.6.

The design of the ADHRS is such that stress loadings due to the attachment of ADHRS piping equipment to existing plant fluid systems does not cause applicable stress allowables on existing components to be exceeded. This is documented by calculations that employed methodologies, assumptions, loading combinations, and other criteria the same or equivalent to those contained in UFSAR Section 3.9.

Evaluated were mechanical loadings imposed by the ADHRS, changes in the design pressure and temperature of existing piping, and fatigue considerations. Attachment loadings were evaluated at the suction and discharge connections of the ADHRS to the RHR and PSW systems, at valves E12F066A and B due to the addition of motor operators to these valves, loads imposed by the new valve added to the vertical leg of the RHR suction line from the spent fuel pool, and at locations where lead wrap pipe shielding was added. Existing piping and supports were verified to be adequate or supports are to be modified and/or new supports added as applicable to achieve acceptable conditions.

The added ADHRS piping handling reactor coolant is designated as safety-related, ASME Section III, Class 2 and Class 3, and Seismic Category I. In addition, PSW piping inside the RHR "C" pump room and up to the isolation valves at the existing supply and return headers and air handling unit is designated as safety-related, ASME Section III, Class 3, and Seismic Category I. Other piping is B31.1 and designed for SSE loads. The design and analysis of this piping is to the same standards, criteria, and methodology as existing plant piping. Damage to the ADHRS piping and components due to over-pressure is prevented by design of the system for the highest pressure possible from ADHRS operation (pump shutoff head plus maximum static head at the pump suction), and providing for system isolation from higher pressure sources (i.e., RHR "C" pump discharge). The portion of the system that cannot be isolated from RHR "C" (downstream of the ADHRS isolation valves) is designed for RHR "C" design pressure. Thermal relief valves are provided in the ADHRS for overpressure protection when the system is isolated and for minor leakage that may occur across the boundary valves. Adequate vents and drains are included in the design to provide for complete filling and venting prior to pump start. This provision will preclude the possibility of a waterhammer event during startup of the system.

Materials (mostly carbon steel) used in the ADHRS pressure boundary are compatible with those used in connected systems and will not induce a degradation of existing piping. The ADHRS does not employ any stainless steel pressure boundary components other than instrument connections. Reactor coolant chemistry is controlled to prevent failure of stainless steel components due to intergranular stress corrosion cracking. On the reactor coolant side of the ADHRS, no features are provided that would alter reactor coolant chemistry.

Erosion of existing and new piping is not expected to occur based on flow velocities and expected usage times. Specified nominal corrosion allowances for new piping are the same as for existing piping, and excessive corrosion during lengthy inactive periods is to be precluded by wet layup of the reactor water side (the same as currently performed for the existing RHR system), and layup of the PSW side.

Adequate protection from overpressurization of piping is provided by the inclusion of appropriate isolation capability at system interfaces.

Consequently, the ADHRS modification does not significantly increase the probability of a break in existing piping and the probability of a break in the new piping is no higher than in existing piping.

LOCA/Inadvertent Vessel Drainage

Such events as a consequence of the presence or use of the ADHRS can only occur during operational conditions 4 or 5 (cold shutdown or refueling), since in all other operational conditions the ADHRS is required to be physically isolated from other systems.

The probability of a pipe break outside containment is not significantly increased by the addition of the ADHRS. Per UFSAR Section 3.6, postulating a pipe failure when the ADHRS is aligned or operating is not required. Specifically, UFSAR Section 3.6A.1.1c states that "Pipe breaks or cracks were postulated to occur during normal plant operation (i.e., reactor startup, operation at power, hot standby or reactor cooldown to cold shutdown)." These conditions do not apply to operational conditions 4 or 5 when the ADHRS would be in operation.

To the extent that the criteria cited in Section 3.6 implicitly assume adequate piping design, the ADHRS satisfies this assumption. As for a pipe break inside containment, the only piping involved is the RHR "C" LPCI injection line to the reactor vessel. This line was evaluated for an increased fatigue usage factor arising from a longer operating time for this pipe (albeit at a lower flow rate) due to ADHRS operation and determined to remain within code limits. Therefore, addition of the ADHRS will not significantly increase the probability of failure of this pipe.

Relative to a LOCA caused by inadvertent drainage of the reactor vessel (i.e., a system alignment that allows either gravity or pumped flow from the vessel via an existing isolation point), the ADHRS design and its accompanying procedural requirements make this a no more probable event than that associated with existing plant systems.

The probability of a LOCA type event is not significantly increased by the addition of the ADHRS.

Internally Generated Missiles

The ADHRS does not pose any additional hazards in this regard as a source of missiles. The ADHRS is not postulated to be a source of pressurized component missiles, and potential rotating component missiles (from the pumps and air handling unit fan) are also not required to be postulated.

Reactor Coolant Pressure Boundary Overpressure

When in operation, the ADHRS pumps reactor coolant to the reactor vessel. The only time when ADHRS could be operated that reactor pressure could potentially increase is in operational condition 4 with the reactor vessel head installed. However, the maximum discharge pressure of the ADHRS is well below reactor vessel design pressure. The ADHRS otherwise will not interfere with vessel overpressure protection functions so that the probability of an event of this kind is not increased.

Fire

The ADHRS does not involve the addition of any combustible loading in excess of that assumed in the FHA to the areas in which it is located as contained in the GGNS Fire Hazards Analysis Report and thus does not contribute to the increased probability of a fire.

Loss of Electrical Power

The only Class 1E electrical loads involved with the ADHRS design are the motor operators for valves E12F066A and B. These power supplies are designed in accordance with the various Class 1E criteria described in UFSAR Section 8. The power supplies to these motors are adequate for the additional loading. Thus, there is no additional potential for loss of Class 1E power. The added non-Class 1E loads have been designed to standards consistent with the existing design for the type of load. Therefore, to the extent that loss of non-Class 1E power might initiate a plant transient, no greater probability is indicated.

Offsite Radioactive Release

The ADHRS design provides a boundary, within the ADHRS heat exchangers, between radioactively contaminated reactor coolant and the PSW system which can discharge to the environment. The boundary (heat exchanger tubes) is designed and constructed to ASME Section III, Class 3 standards and to Seismic Category I criteria. As such the probability of its failure is no greater than other plant systems containing radioactive fluids.

Inadvertent Operation of RHR Shutdown Cooling

This event is discussed in UFSAR Section 15.1.6 and relates to a slow decrease in moderator temperature leading to an increase in reactor power, when the reactor is critical or near critical. The only cause for this event cited in the UFSAR is misoperation of the cooling water controls for the RHR heat exchanger.

Inasmuch as the cooling water controls for the ADHRS are no more prone to failure than those of the RHR (both are manually operated with no automatic activation or automatic control), and there would be no reason for greater operator error, the ADHRS would not significantly increase the probability of this event.

(b) The ADHRS design (including operating requirements) does not significantly increase the consequences of an accident previously evaluated in the UFSAR as discussed below.

The assessment relative to consequences results in specific consideration of the following events for significant increases in consequences.

o External high wind/tornado, tornado missile, and flooding events.
o Seismic events
o Pipe break or leak
o Internally generated missiles
o LOCA
o Hydrodynamic events
o Loss of electrical power or instrument air
o Fire
o Offsite radioactive release

Other events/accidents are excluded from detailed consideration since there are no identified functional interactions or spatial/environmental interactions.

External high wind/tornado missile and flooding

Components added and employed by the ADHRS are completely housed within existing safety-related portions of the plant (Auxiliary Building) and as such are not subject to damage or other consequences of these extreme environmental effects which are discussed in UFSAR Sections 3.3, 3.4 and 3.5.

Seismic Events

The ADHRS and its components (including existing plant equipment used for the ADHRS) are designed or analyzed for safe shutdown earthquake (SSE) design basis loads in order to preserve the pressure integrity of safety-related components, the operability of the motor operators and conduit for valves E12F066A and B, and to ensure that non-safety related components of the ADHRS do not pose a hazard to safety-related plant components during a seismic event. Existing components connected to the ADHRS have been re-evaluated for the new attachment loadings. This re-evaluation also includes assurance of continued operability of any affected active safety-related components (e.g., motor operated valves) during or after the seismic event as may be required.

The structural integrity of the Auxiliary Building due to loads imposed by the ADHRS is adequate. The major ADHRS components are located on the building basement at El. 93', and there is no appreciable effect on structural seismic response. Loads imposed on walls, beams, or other structural elements in the ADHRS design are acceptable.

Pipe Break/Leak

The ADHRS does not present hazards (pipe whip, jet impingement, etc.) from high energy line breaks (HELB) and is not subject to damage from HELBs in other plant systems.

The ADHRS safety functions are not impacted by spray or flooding from moderate energy pipe cracks in other plant systems (no such events are required to be postulated during operational conditions 4 and 5 when the ADHRS is in operation). The ADHRS also does not pose a hazard to other safety-related plant components due to spray effects of a pipe crack. Existing drainage and detection capabilities are adequate for any flooding that may be involved in the event of an ADHRS line crack or break.

Therefore, the addition of the ADHRS does not significantly increase the consequences of pipe break as discussed in UFSAR Section 3.6.

Internally Generated Missiles

The potential for damage to the ADHRS, and therefore increased accident consequences due to internally generated missiles (valve stems, rotating equipment, etc.) or turbine missiles has been assessed in accordance with UFSAR Sections 3.5.1.3 and 3.5.1.4. No additional consequences were determined to occur.

LOCA

Postulations concerning a LOCA in reactor operational conditions 4 and 5 are not contained in the UFSAR, and such an event is not analyzed (UFSAR Sections 6.2 and 15.6 deal with the design basis LOCA occurring during reactor operation).

However, to the extent that the ADHRS could either interfere with the mitigation of such an event or be the cause of the event, no increased consequences have been identified.

The controls interaction and system interaction evaluation completed for the ADHRS indicate that no interference by the ADHRS in emergency core cooling system (ECCS) functions or vessel level detection functions would occur. Protection against inadvertent drainage during operation of ADHRS is equivalent to that provided for existing plant systems through the use of interlocks and restricting operating procedures. Additionally, a failure of the ADHRS (i.e., a moderate energy pipe crack) is not required to be postulated during times when it is conveying reactor coolant (UFSAR Section 3.6A.1.1.C).

On the above basis, the ADHRS modification would not significantly increase the consequences of a LOCA.

Hydrodynamic Load Events

Such events include LOCAs (UFSAR Section 15.6), inadvertent SRV opening (UFSAR 15.1.4), and safety-relief valve operation incident to other transients or accidents. While the ADHRS would not be in operation during such events (as there is no reactor pressure source in operational conditions 4 or 5), it is nevertheless designed for such loads. Also connecting equipment was reanalyzed to the extend that these loads may be transmitted to the ADHRS, to ensure that the ADHRS would not be a hazard and thereby increase the consequences of such events.

Loss of Electrical Power or Instrument Air

The ADHRS has no safety-related function relevant to the loss of AC power as discussed in UFSAR Section 15.2.6 or instrument air as discussed in UFSAR Section 15.2.10 and no reliance on electrical power or instrument air is made by ADHRS for other plant events or accidents to ensure that consequences are not increased beyond those already evaluated.

Fire

The existing fire detection and suppression equipment is adequate for any potential fire originating within the ADHRS or incident to its presence.

Other than the motor-operators for valves E12F066A and B, and associated power and control cable, the interlock for valve E12F004C, and the pump start permissive bypass switches for valves E12F066A and B no other safety-related components are susceptible to damage by fire. To the extent that the functional capability of the E12F066A or B operators may be lost due to a fire, no increase in accident consequences is indicated. This is because the events for which they are provided (e.g., LOCAs) are not postulated to occur coincident with a fire, as indicated in the GGNS Fire Hazards Analysis Report and 10 CFR Part 50 Appendix R. The isolation function of the valves is only required during operational conditions 4 and 5. As such the ability to bring the plant to a cold shutdown condition in the event of a fire is unaffected by their operability.

Fire-induced failure of the added interlock between valve E12F004C and RHR "C" pump may prevent the RHR "C" pump from starting. This is not a concern, however, as the RHR "C" train is not required for safe shutdown of the plant incident to a fire (it provides a LPCI function only in mitigation of a LOCA). Failure of the added RHR "A" and/or "B" pump start permissive bypass switches for valves E12F066A and B due to a fire may prevent the RHR "A" and/or "B" pump from operating with suction from the spent fuel pool. This is also not a concern since the associated spent fuel pool cooling assist mode of operation of the RHR system is not required for safe shutdown of the plant incident to a fire.

The installation requirements for the ADHRS preserve the integrity of fire barriers and penetration seals so existing plant fire containment features are unaffected.

On the basis of the above, no significantly increased consequences of a fire are indicated by installation of the ADHRS.

Offsite Radioactive Release

The potential consequences of an offsite release of radioactively contaminated water due to an ADHRS heat exchanger tube failure have been shown to be within regulatory guidelines and limits and less than comparable events evaluated in the UFSAR, Section 15.7.2.

Inadvertent Operation of RHR Shutdown Cooling

As discussed in UFSAR Section 15.1.6, the effect of inadvertent operation of RHR is to slowly decrease reactor coolant temperature. Since the heat removal capacity of the RHR system is greater than that of ADHRS, the ADHRS cannot produce a greater effect. The mitigation of the event is a high neutron flux reactor scram, which would be unaffected by the installation or use of the ADHRS.

(c) The function of the PSW discharge line radiation monitor is to detect substantial intersystem leakage of reactor coolant into the PSW system. This monitor and its associated alarm performs no automatic accident mitigation function or safety-related function. The PSW radiation monitor is not required to function in order to prevent accidental offsite doses from being exceeded. The design and installation of the PSW radiation monitor will be done in accordance with appropriate codes and standards to ensure that interfacing system requirements are not compromised.

(d) Currently, valves E12F066A and B perform no accident mitigation function and are not required to open or close in order to bring the plant to cold shutdown conditions. The function of the two new motor operated valve thermal overload protection devices is to protect the motor operators under overload conditions. These motor operators perform no automatic or remote-manual accident mitigation function. The failure of the motor operators will have no functional effect on ECCS system operation. The ECCS system is capable of delivering required system flow rates with E12F066A and B failed in the open position. The failure of the motor operator to close or to be closed would prevent the establishment of an ASME Section III Class 2 pressure boundary for ECCS. However, the ECCS system has been evaluated with the failure of these valves in the open position and was found to be capable of continuing to deliver the required ECCS system flow rates. In addition, the piping beyond valves E12F066A and B is designed for process conditions that would occur in the LPCI mode. The only function of the motor operators is to allow remote-manual operation of the valves from the control room. The addition of the motor operators and the thermal overload devices will not change or affect the valves' present function or performance.

Therefore, the addition of the ADHRS and its associated PSW radiation monitor and thermal overload devices for valves E12F066A and B would not significantly increase the probability or consequences of an accident previously evaluated.

II. These changes would not create the possibility of a new or different kind of accident from any previously evaluated.

(a) Based on the functional interactions of the ADHRS, the following potential events have been evaluated with respect to the creation of a new or different type of accident from any previously evaluated:

o Loss of fuel pool cooling/fuel pool water inventory

o Offsite radioactive release

Loss of Fuel Pool Cooling/Fuel Pool Water Inventory

The ADHRS can be connected to the spent fuel pool either in a flush/fill mode or as a suction source for cooling when the reactor cavity/upper containment pool is filled. The ADHRS is not specifically designed for or otherwise expected to assume heat loads imposed by the spent fuel pool. Additionally, the loss or failure of the ADHRS cannot prevent the RHR system from operating in the fuel pool cooling mode. Thus, loss of the ADHRS cannot involve a loss of spent fuel pool cooling.

The operation of the ADHRS with suction on the spent fuel pool will not cause a loss of spent fuel pool cooling system, as described in UFSAR Section 9.1. There are no mechanical, controls, or electrical interconnections between the two systems and hydraulic-type effects have been evaluated and concluded to be non-interfering.

When connected to the spent fuel pool there is potential for leakage from the pool due to a failure in ADHRS piping. This piping is designed and qualified per the applicable criteria including new operating conditions for existing piping and is no more susceptible to a break or leak than existing piping. The potential for inadvertently draining the spent fuel pool when the ADHRS is taking suction from it has been evaluated. The ADHRS uses an existing suction point on the spent fuel pool. As explained in UFSAR Section 9.1, all connections to the pool are designed to preclude drainage below a level sufficient for adequate shielding. The ADHRS use of this existing line would not interfere with this feature. Hydraulic operation effects that could lower the spent fuel pool level have been evaluated and found not to present a potential hazard relative to the shielding function of the fuel pool inventory.

The drainage potential and hydraulic effects of ADHRS operation on the spent fuel pool are consistent with those existing when operating the RHR system in the fuel pool cooling assist mode. Since the ADHRS configuration offers no less protection in this regard, it is concluded that a new or different accident type is not created.

Offsite Radioactive Release

The ADHRS design provides a boundary, within the ADHRS heat exchangers, between radioactively contaminated reactor coolant and the PSW system which can discharge to the environment. The boundary (heat exchanger tubes) is designed and constructed to ASME Section III and Seismic Category I requirements. As such the probability of an ADHRS boundary failure is no greater than other plant systems containing radioactive fluids (e.g. FPCCU, RWCU, or radwaste tanks).

The GGNS UFSAR Section 15.7.2 addresses a postulated unexpected and uncontrolled release of radioactivity due to a radioactive liquid waste system failure. The postulated gross failure of the ADHRS pressure boundary and the UFSAR Section 15.7.2 event are considered similar kinds of accidents in that both are unexpected and uncontrolled releases of radioactive material to the offsite boundary.

(b) The PSW radiation monitor will perform no automatic accident mitigation function and will initiate no safety-related or nonsafety-related systems. The function of the radiation monitor is to detect substantial intersystem leakage of reactor coolant into the PSW system. The design and installation of the PSW radiation monitor will be done in accordance with appropriate codes and standards to ensure interfacing system requirements are not compromised.

(c) The addition of the motor operators and the thermal overload protection devices on valves E12F066A and B does not change the valves [SIC] original function. These valves will continue to perform no safety-related function other than serving as system code boundary classification break. The failure of E12F066A or B to close or to be closed by the operator defeats the establishment of an ASME Section III Class 2 pressure boundary for ECCS as recommended in Regulatory Guide 1.29 and committed to in UFSAR Section 3.2. However, this failure has no functional effect on the operation of ECCS. The ECCS systems have been evaluated with the failure of these valves in the open position and was [SIC] found to be capable of continuing to deliver the required ECCS flow rates. In addition, the piping beyond these valves is safety-related (Class 3), Seismic Category I and designed for the process conditions that would occur in the LPCI mode.

Therefore, the addition of the ADHRS and its associated PSW radiation monitor and thermal overload devices for valves E12F066A and B would not create the possibility of a new or different kind of accident from any previously evaluated.

III. These changes would not involve a significant reduction in the margin of safety.

(a) The ADHRS provides an improved alternate method of decay heat removal and coolant mixing as required by the bases for Technical Specification 3/4.4.9. Since the ADHRS is specifically designed to maintain the average reactor coolant temperature less than or equal to 200° F in cold shutdown and less than or equal to 140° F in refueling, the margin of safety to fulfill the requirements of Technical Specification 3/4.4.9 and Table 1.2 is maintained.

(b) The ADHRS is designed and constructed to ASME Section III, Class 2 and Class 3 standards and to Seismic Category I criteria. As such, the margin of safety this system provides is equal to or greater than other comparable plant systems containing radioactive fluids (e.g. FPCCU, RWCU, etc.). The ADHRS and its associated PSW radiation monitor will have no direct or indirect impact on existing safety-related or nonsafety-related systems and thus will not affect operation of any equipment required to mitigate an accident.

(c) The addition of the motor operators and associated thermal overload protection devices to valves E12F066A and B will not affect the operation or intended function of these valves. As previously noted, these valves perform no accident mitigation function. The current function of these valves is to align RHR "A" or "B" loops in the spent fuel pool cooling assist modes and to serve as code boundary classification breaks between ASME Section III Class 2 and Class 3 piping. The failure of these valve actuators will have no functional effect on the ECCS system.

Therefore, the addition of the ADHRS and its associated PSW radiation monitor and thermal overload devices for valves E12F066A and B would not involve a significant reduction in the margin of safety.

The licensee has concluded that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards consideration.

The NRC staff has made a preliminary review of the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154

Attorney for licensee: Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036

NRC Project Director: Elinor G. Adensam

Mississippi Power & Light Company, System Energy Resources, Inc., South Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: December 2, 1988

Description of amendment request: The amendment would change the Technical Specifications (TS) by changing the surveillance requirements in TS 3/4.9.6.3, "Fuel Handling Platform," to accommodate the addition of a new auxiliary hoist. This new hoist will be used for handling control rods in the spent fuel pool.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided an analysis of no significant hazards considerations in its request for a license amendment. The licensee's analysis of the proposed

amendment against the three standards in 10 CFR 50.92 is reproduced below.

1. No significant increase in the probability or consequences of an accident previously evaluated results from this change.

a. The accident previously evaluated is a Fuel Handling Accident. The probability of a Fuel Handling Accident is not significantly increased because the components being lifted would be lifted by the monorail auxiliary hoist if there were not an auxiliary hoist. The auxiliary hoist is designed, manufactured and installed with the same appropriate criteria as the monorail auxiliary hoist. Additionally the auxiliary hoist for the FHP [fuel handling platform] is the same design, manufacture and installation as the auxiliary hoist on the [refueling platform] RP.

b. The consequences of a fuel handling accident are not increased due to the fact that no new loads or lifting heights are introduced with the addition of the auxiliary hoist on the FHP. Additionally the Fuel Handling Accident fuel damage bounds the scenario of a load dropping from the auxiliary hoist on the FHP.

c. The proposed changes in the Surveillance Requirements provide clarification to allow performance of the appropriate surveillance on the correct hoist. Thus there is not a significant increase in the probability or consequences of an accident previously evaluated involved in this change.

2. This change would not create the possibility of a new or different kind of accident from any previously, evaluated.

a. The fuel handling accident is the only accident possible. The fuel handling accident has been previously evaluated and bounds the fuel damage resulting from a load drop from the auxiliary hoist on the FHP.

b. The RP currently has an auxiliary hoist of the same manufacture, design and installation. The FHP auxiliary hoist will not move spent fuel or new fuel. The RP and FHP auxiliary hoist load is limited to less than the load used in the fuel handling accident and the load lift height is limited to the height of the lift allowed for the RP auxiliary hoist. The load drop from the auxiliary hoist of the FHP is bounded in fuel damage by the Fuel Handling Accident.

c. The proposed changes in the Surveillance Requirements will ensure that the correct hoist has the appropriate surveillance performed.

d. Therefore this change will not create the possibility of a new or different kind of accident from any previously evaluated.

3. This change would not involve a significant reduction in the margin of safety.

a. The design, manufacture, installation, load limits, up travel hoist limit, fuel handling exclusion and applicable interlocks define the margin of safety for the auxiliary hoist on the Fuel Handling platform. Since the FHP auxiliary hoist and the RP auxiliary hoist are not significantly different in these respects this change does not involve a significant reduction in the margin of safety.

b. The proposed change ensures that the appropriate surveillance is performed on the correct hoist. This will verify that the redundant load limits for both the auxiliary hoists on the FHP and the load override switch on the monorail auxiliary hoist are operable and are in the correct position.

The licensee has concluded that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards consideration.

The NRC staff has made a preliminary review of the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154

Attorney for licensee: Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036

NRC Project Director: Elinor G. Adensam

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of amendment request: October 13, 1988

Description of amendment request: The proposed amendment to the Technical Specifications (TS) will add a paragraph which is currently included in Bases 3.6.I to TS Section 4.6.I.1. This paragraph provides clarifying information for determining required inspection intervals and establishes criteria for snubbers that may be exempted from being counted as inoperable.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c).

The licensee has determined and the NRC staff agrees that the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of any accident previously evaluated.

The requirements for visual inspections of safety-related snubbers are not being changed.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

The existing requirements for snubber surveillance are not being changed.

3. Involve a significant reduction in a margin of safety.

The level of safety provided in the existing Technical Specifications will be maintained.

Accordingly, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Northeast Nuclear Energy Company, et al., Docket No. 50-245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of amendment request: December 2, 1988

Description of amendment request: The proposed amendment to the Technical Specifications will reflect the implementation of modifications related to degraded grid protection for Class 1E power systems. These modifications are scheduled to be completed during the 1989 refueling outage.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c).

The licensee has determined and the NRC staff agrees that the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of any accident previously evaluated. The impact of the change on design basis accidents (DBAs) which assume loss of off-site power has been reviewed by the licensee and has been determined to be unaffected by the change. The proposed changes, in general, provide for more conservatism in that the operability requirements for the on-site emergency buses and their associated control circuits are more restrictive than the existing requirements. These changes to the Technical Specifications do not impact the failure probability of the associated electrical system, rather they increase the probability that a train of emergency electrical power is available following an accident. The probability of occurrence or the consequences of the DBAs are unchanged.

2. Create the possibility of a new or different kind of accident from any previously evaluated. There are no new failure modes associated with the proposed changes since they involve more restrictive requirements on the operability of the electrical power systems. No new accident is created because the same equipment is assumed to perform in the same manner as before.

3. Involve a significant reduction in a margin of safety. The protective boundaries are not impacted because the consequences of the DBA are not affected. Since the protective boundaries are not affected, the safety limits are also not affected. The proposed change maintains the basis of the Technical Specifications in assuring electrical power operability.

The existing 345 KV loss of normal power (LNP) sensing inputs are not in the Technical Specifications. Technical Specification for the new 4160 volt bus undervoltage/timing relay input circuits will be added. The existing Technical Specification for the bus voltage permissive and the LNP actuation circuits are being modified to provide additional detail and clarification.

Accordingly, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: December 31, 1988.

Description of amendment request: This proposed amendment would revise the Technical Specifications (TS) to change the minimum operating requirements for the Raw Water Pumps to allow operation with one inoperable raw water pump when river water temperature is below 60° F.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee addressed the above three standards in the amendment application.

With regard to the three standards, the licensee states that operation of the facility in accordance with this amendment would not:

(a) Involve a significant increase in the probability or consequences of an accident previously evaluated. This change decreases the consequences of a loss of coolant accident or main steam line break event with concurrent loss of off-site power and failure of a diesel generator by ensuring that the closed cooling water heat exchangers have sufficient heat removal capacity to maintain the containment below the design basis maximum pressure.

(b) Create the possibility of a new or different kind of accident from any accident previously evaluated. This change does not propose new or different modes of operation for the plant. The continued use of the same Technical Specification administrative controls prevents the possibility of a new or different kind of accident.

(c) Involve a significant reduction in a margin of safety. This change increases the minimum operability requirements of the raw water and containment cooling system and, therefore, will not cause any reduction in the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the analysis. In addition, the Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing examples (51 FR 7751) of amendments that are considered not likely to involve significant hazards consideration. The proposed change to minimum operating requirements for the raw water pumps is an additional restriction to the allowable minimum requirements presently in the Technical Specifications and is, thus, similar to the example of changes which constitute an additional limitation, restriction, or control not presently included in the technical specifications.

Accordingly, the staff proposes to determine that the proposed changes to the Technical Specification do not involve a significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1333 New Hampshire Avenue, NW., Washington, DC 20036

NRC Project Director: Jose A. Calvo

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of amendment request: September 9, 1988

Description of amendment request: The proposed amendment revises the Emergency Diesel Generator (EDG) Technical Specifications (TS) 3.8.1.1, 3.8.1.2 and BASES. The proposed changes represent the recommendations of the diesel generator manufacturer and are consistent with the appropriate recommendations provided in the Commission's Generic Letter 84-15, "Proposed Staff Actions to Improve and Maintain Diesel Generator Reliability", dated July 2, 1984. The proposed changes will improve the reliability of the EDGs and reduce the risk from possible station blackout.

Generic Letter 84-15 discussed the need to assure that the reliability of the EDGs is maintained at an acceptable level. This would be accomplished in part by reducing the number of "cold fast starts" or demonstrating starting capabilities from ambient conditions with full electrical loads without the considerations of prelubrication or prewarming prior to the test. The staff concluded that cold fast starts cause unnecessary premature diesel engine degradation and that some testing techniques for EDGs did not take into consideration their manufacturers recommended preparatory actions such as prelubrication of moving parts and warm-up procedures prior to starting.

Specifically the licensee proposes to change the TS to:

(A) Specify prelubrication and prewarming of EDGs prior to preplanned EDG starts. Prelubrication/prewarming would decrease the wear and stress on the EDGs and would increase reliability and availability.

(B) Provide for gradual acceleration and gradual electrical load increases to an indicated load range during EDG testing in accordance with manufacturers recommendations in order to decrease the stresses inherent with rapid acceleration, sudden large electrical load changes and routine overloading.

(C) Revise the surveillance starting/testing frequency in order to limit the incremental wear and stress on the EDGs.

(D) Revise the accelerated starting test frequency program. The program will be based upon the number of failures in the last 20 demands in lieu of the failures in the last 100 valid tests in order to maintain increased EDG

reliability without excessive and damaging surveillance cold fast starts.

(E) Allow EDG maintenance inspections (18 month tear down) while at power, rather than "during shutdown", in order to decrease outage time used for maintenance tear down and allow more time for inspection in lieu of the requirement for tear down inspections only under a limited outage schedule.

(F) Incorporate the 184 day starting surveillance into Surveillance 4.8.1.1.2.h, allowing this new paragraph for prelubrication and prewarming of the EDGs with electrical loading to an indicated range within 200 seconds.

(G) Eliminate from Specification 4.8.1.1.2.a the need for a staggered test basis.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee has provided an analysis as to whether the proposed amendment involves a significant hazards consideration. The licensee's analysis is summarized as follows:

(1) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes only revise surveillance test methods and schedules. The proposed changes incorporate the recommendations of the diesel generator manufacturer and the appropriate recommendations provided in Generic Letter 84-15 to improve the reliability and availability of the EDGs. These changes do not modify or add any initiating parameters that would significantly increase the probability or consequences of any previously analyzed accident. In fact, the proposed changes would reduce the unnecessary wear and stress on the EDGs and would provide the capability to perform various surveillance requirements during operation.

(2) The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

As discussed in Item (1) above, the proposed changes only revise surveillance test methods and schedules that will improve the reliability and availability of the EDGs. The operation and/or design of the onsite emergency power system is not being changed and no physical plant modification is involved. As such, the plant initial conditions utilized for the design basis accident analysis remain valid and no new or different kind of accident is created.

(3) The proposed changes do not involve a significant reduction in a margin of safety.

As discussed in Item (1) above, decreasing the harsh and potentially damaging manner of testing of the EDGs would lead to greater reliability and availability. The proposed surveillance testing and frequency would continue to ensure the availability of the EDGs consistent with the previous Commission guidance and thus will not involve a reduction in the margin of safety.

The staff has reviewed the licensee's submittal and significant hazards consideration analysis and concurs with the licensee's determination that the proposed amendment does not involve a significant hazards consideration. Therefore, the staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of amendment request: December 14, 1988

Description of amendment request: The proposed amendment would change the Technical Specifications (TSs) to permit removal of the Rod Sequence Control System (RSCS) and to reduce the Rod Worth Minimizer (RWM) low power setpoint.

Basis for proposed no significant hazards consideration determination: The Rod Sequence Control System restricts rod movement to minimize the individual worth of control rods to lessen the consequences of a Rod Drop Accident (RDA). Control rod movement is restricted through the use of rod select, insert, and withdrawal blocks. The Rod Sequence Control System is a hardwired (as opposed to a computer controlled), redundant backup to the Rod Worth Minimizer. It is independent of the Rod Worth Minimizer in terms of inputs and outputs but the two systems are compatible. The RSCS is designed to monitor and block when necessary operator control rod selection, withdrawal and insertion actions, and thus assist in preventing significant control rod pattern errors which could lead to a control rod with a high reactivity worth (if dropped). A significant pattern error is one of several abnormal events all of which must occur to have a RDA which might exceed fuel energy density limit criteria for the event. It was designed only for possible mitigation of the RDA and is active only during low power operation (currently generally less than 20 percent power) when a RDA might be significant. It provides rod blocks on detection of a significant pattern error. It does not prevent a RDA. A similar pattern control function is also performed by the RWM, a computer controlled system. All reactors having a RSCS also have a RWM.

In response to a topical report submitted by the BWR Owner's Group, on December 27, 1987 we issued a letter with a supporting safety evaluation approving (1) elimination of the RSCS while retaining the RWM to provide backup to the operator for control rod pattern control and (2) lowering the setpoint for turnoff of RWM to 10% of rated thermal power from its current 20% level. [Letter, A. C. Thadani, NRC to J. S. Charnley, GE, Subject: Acceptance for Referencing of Licensing Topical Report NEDE-24011-P-A, "General Electric Standard Application for Reactor Fuel," Revision 8, Amendment 17.)

The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: 1) involve a significant increase in the probability or consequences of an accident previously evaluated; 2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee's analysis contained in their December 14, 1988 letter states the following in response to the three NRC criteria referenced above:

Deletion of the RSCS and reduction of the RWMS low power set point from 20% to 10% does not involve a significant hazards consideration because it does not:

1. Significantly increase the probability of occurrence or the consequences of an accident or malfunction of equipment related to safety as previously evaluated in the FSAR.

The nonsafety-related RSCS and RWM are not required for nor do they support the proper operation of other systems. Hence, deleting the RSCS and changing the low power set point on the RWM has no effect one way or the other on the probability of equipment malfunction in other systems or within the RWM.

The probability of occurrence of an accident is not affected by this change. These changes impact only the rod drop accident (RDA) analyses. The probability of an RDA is dependent only on the control rod drive system and mechanisms themselves, and not in any way on the RSCS or RWM.

The consequence of an RDA as evaluated in the LGS FSAR will not be affected by this modification. An extensive probabilistic study was performed by the NRC staff (letter and enclosure from B. C. Rusche, NRR, to R. Fraley, ACRS, dated June 1, 1976, "Generic Item II A-2 Control Rod Drop Accident (BWRs)"). This study indicated that there was not a need for the RSCS. Furthermore, improved methodologies in the RDA analysis methods (e.g. BNL-NUREG 28109, "Thermal Hydraulic Effects on Center Rod Drop Accident in a BWR," October 1980) indicated that the peak fuel enthalpies resulting from an RDA are significantly lower than previously determined by less refined methodologies.

The RSCS duplicates the function of the RWM. So long as the RWM is operable, the RSCS is not needed since the RWM prevents control rod pattern error. In the event the RWM is out of service, after the withdrawal of the first 12 control rods, the proposed Technical Specifications require that control rod movement and compliance with the prescribed control rod pattern be verified by a second licensed operator or technically qualified member of the technical staff. The verification process is controlled procedurally to ensure a high quality, independent review of control rod movement. In addition, to further minimize control rod movement at low power with the RWM out of service, the proposed Technical Specifications will permit only one plant start-up per calendar year with the RWM out of service prior to or during the withdrawal of the first twelve control rods. All the above taken together demonstrates consistency and applicability to those conclusions reached in the referenced SER, and substantiate the conclusion that there will be no increase in the consequences of an RDA as evaluated in the FSAR as a result of eliminating the RSCS.

There will also be no increase in the consequences of an RDA as evaluated in the FSAR due to lowering the RWM set point from 20% to 10%. The effects of an RDA are more severe at low power levels and are less severe as power level increases. Although the original calculations for the RDA were performed at 10% power, the NRC required that the generic BWR Technical Specifications be written to require operation of the RWM below 20% power in order to ensure conservatism. However, GE continued to perform the RDA analyses at and below 10% power because these produced more conservative analytical results. Recently, more refined calculations by BNL have shown that even with the maximum single control rod position error, and most multiple control rod error patterns, the peak fuel rod enthalpy reached during an RDA from these control rod patterns would not exceed the NRC limit of 280 cal/gm for RDAs above 10% power, confirming the original GE analyses. Hence, lowering the RWM set point from 20% to 10% will not result in an increase in the consequences of an RDA as evaluated in the FSAR. The previously referenced NRC SER has concluded this RWM set point reduction to be acceptable.

2. Create the possibility for an accident or malfunction of a different type than any evaluated in the FSAR.

Operation of the RSCS and RWM cannot cause or prevent an accident. They function to minimize the consequences of an RDA. The RDA is already evaluated in the FSAR, and the effect of this proposed change on the analyses is discussed in Item 1 above.

Elimination of the RSCS and lowering the RWM set point will have no impact on the operation of any other systems, and hence would not contribute to a malfunction in any other equipment nor create the possibility for an accident to occur which has not already been evaluated.

3. Involve a significant reduction in the margin of safety.

Elimination of the RSCS will not lower the margin of safety for the reasons discussed in Item 1 above and summarized below:

(a) An extensive NRC study has determined that the possibility of an RDA resulting in unacceptable consequences is so low as to negate the requirement for the RSCS.

(b) Recent calculations have determined that the consequences of an RDA are acceptable above 10% power.

(c) The RSCS is redundant in function to the RWM. Eliminating the RSCS does not eliminate the control rod pattern monitoring function performed by the RWM.

(d) To ensure that the RWM will be in service when required, the proposed RWM Technical Specification will be revised to allow only one startup per calendar year with the RWM out of service prior to or during the withdrawal of the first twelve control rods. If the RWM is out of service below 10% power, control rod movement and compliance with prescribed control rod patterns will be verified by a second licensed operator or technically qualified member of the technical staff. This situation is controlled by a station procedure which specifically requires the following:

* Plant Management approval is required in order for the operator to bypass the inoperable RWM.

* A second operator or technically qualified staff member, with no other duties, is required to verify the first operator's actions while the first operator performs rod movements.

* The startup and the shutdown sequences with their respective signoff sheets are provided for verification by the second operator for each step and rod movement made by the first operator.

* The operators are provided with shutdown instructions that would allow a shutdown sequence that would result in a control rod pattern which would agree with RWM pattern if that system were not bypassed and was controlling. These instructions identify, for the operator, the RWM shutdown step to be initiated for further rod insertion below the RWM low power setpoint (i.e. 10% reactor power).

There is no significant reduction in the margin of safety resulting from lowering the RWM set point from 20% to 10% because calculations by GE and BNL have shown that even with the maximum single control rod position error, and most multiple error patterns, the peak fuel rod enthalpy during an RDA from these patterns would not exceed the NRC limit (280cal/gm) above 10% power.

In summary GE has provided technical justification for the proposed changes in the Topical Report NEDE-24011-P-A and associated references which justify the acceptability of the proposed changes.

The NRC has reviewed and accepted the GE analysis and provided guidelines for licensees wanting to make the changes proposed in NEDE-24011-P-A and approved in the NRC SER issued December 27, 1987 to J. S. Charnley of General Electric.

The proposed changes are consistent with those approved in the NRC SER and the guidelines setforth therein. Therefore, there is no significant reduction in a margin of safety.

The staff has reviewed the licensee's submittal and significant hazards analysis and concurs with the licensee's determination as to whether the proposed amendment involves a significant hazards consideration. Therefore, the staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: December 8, 1988

Description of amendment request: The licensee has provided the following description:

Technical Specification 3.4.B provides that if the requirement of three operable auxiliary feedwater pumps cannot be met within 72 hours, the reactor shall be in hot shutdown within the next 12 hours. This wording renders the specification applicable to all possible conditions, independent of the number of the inoperable auxiliary feedwater pumps. The Westinghouse Standard Technical Specifications provide LCOs which are dependent on the number of inoperable auxiliary feedwater pumps. The proposed change will revise Technical Specification 3.4 to reflect the applicable LCOs provided by the Westinghouse Standard Technical Specifications.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possiblity of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has made the following analysis:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response

The proposed amendment involves a revision to the current LCO for the auxiliary feedwater pumps to reflect the applicable LCOs provided by the Westinghouse Standard Technical Specifications. The proposed amendment will provide a LCO based on the number of inoperable pumps. The proposed LCOs for the situations of one and two pumps inoperable are equivalent or more stringent than the existing LCO. The proposed LCO for the situation of three pumps inoperable reflects the fact that continued plant operations with three inoperable auxiliary feedwater pumps is a safer mode of operation than commencing plant shutdown in such a condition. As such, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response

The proposed amendment does not involve any physical alteration to the auxiliary feedwater system or to any other plant system or structure. The change does not affect the operation of any plant system. Hence, the possibility of a new or different kind of accident from any accident previously evaluated is not created by this change.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response

The proposed amendment involves a revision to the current LCO for the auxiliary feedwater pumps to reflect the applicable LCOs provided by the Westinghouse Standard Technical Specifications. The proposed amendment will provide a LCO based on the number of inoperable pumps. The proposed LCOs for the situations of one and two inoperable pumps are equivalent or more stringent than the existing LCO. The proposed LCO for the situation of three inoperable auxiliary feedwater pumps is a safer mode of operation than commencing plant shutdown in such a condition. As such, the proposed amendment does not involve a significant reduction in a margin of safety.

Based on the above, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra, Director

Public Service Company of Colorado, Docket No. 50-267, Fort St. Vrain Nuclear Generating Station, Weld County, Colorado

Date of amendment request: December 19, 1988

Description of amendment request: As reported in LER 88-012-01, dated September 21, 1988 (P-88345), an error had been discovered by General Atomics in their computer program code utilized in the development of the environmental qualification profiles for the Fort St. Vrain (FSV) equipment qualification (EQ) program. The error resulted in generating nonconservative building temperatures for a variety of smaller high energy line break (HELB) sizes. Reanalyses of the HELB scenarios confirmed that a number of smaller HELB sizes resulted in higher delayed building temperature peaks than previously analyzed. To reduce those peaks, a modification to the Steamline Rupture Detection/Isolation Setpoint was required. The new Fixed High Temperature Trip Setpoint is based on an Analysis Value of 180 degrees fahrenheit. This trip will allow automatic isolation of those HELBs which do not produce a building temperature rate-of-rise rapid enough to cause a trip of SLRDIS. The Fixed High Temperature Trip Setpoint enhances equipment qualification by reducing the magnitude of the delayed building temperature peaks for smaller HELBs and permits timely operator access to perform any manual actions which may be required. The final EQ composite temperature profile used for future equipment qualification incorporates the new Fixed High Temperature Trip Setpoint in addition to the existing Rate-of-Rise Trip Setpoint as submitted in P-88344 dated September 28, 1988.

This change to the Technical Specifications implements this Fixed High Temperature Trip Setpoint by modifying LCO 4.41 and SR 5.4.1.

Basis for proposed no significant hazards consideration determination: The licensee submitted the following evaluation of significant hazards considerations for this amendment request:

The proposed Amendment does not involve a significant hazards consideration because operation of the Fort St. Vrain Nuclear Generating Station in accordance with this proposed modification would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

Recent reanalyses determined that certain postulated HELBs could result in temperatures in excess of the original composite temperature profile used in the Environmental Qualification Program. While the initial peak temperatures were reduced, a variety of smaller breaks resulted in higher delayed temperatures. The addition of a new Fixed High Temperature Trip Setpoint will enable SLRDIS to automatically detect and isolate a number of the smaller HELBs which do not produce a temperature rate-of-rise rapid enough to cause a SLRDIS Rate-of-Rise Trip. This trip would significantly mitigate the delayed temperature peaks, thus enhancing equipment qualification and ensuring that the resultant temperatures will not prevent timely building access. The electrical equipment per 10 CFR 50.49 remains qualified with the new composite profile. The consequences of a SLRDIS actuation are addressed in FSAR Section 7.3.10.4. The consequences of SLRDIS actuations are no different than previously analyzed for the Rate-of-Rise Trip Setpoint.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The required function of SLRDIS is to isolate both primary and secondary coolant loops in the event of a HELB, resulting in an interruption of forced circulation cooling (IOFC). The consequences of a SLRDIS actuation have been evaluated in the FSAR. The added Fixed High Temperature Trip Setpoint adds a new point in the elevation of bulk building average temperature at which SLRDIS will trip.

Since the new trip results only in changing the programming, all previous failure modes and malfunctions remain unchanged. Recovery following a SLRDIS actuation may be accomplished by one of three methods: (1) normal keyboard commands provided that the ambient temperature sensed by at least 3 of the 4 sensors has returned below the trip setpoint; or (2) manipulating the SLRDIS detection rack bypass key switch; or (3) removal of the SLRDIS XCR's (control relays) in control board 93-1-10.

3. Involve a significant reduction in a margin of safety.

The basis for SLRDIS in LCO 4.4.1 states that detection of steam leaks is required for environmental qualification of safe shutdown cooling systems. The detection system utilizes a pre-trip fixed temperature alarm to initiate manual operator actions to isolate the steam leak and a Rate-of-Rise Trip Setpoints to initiate an automatic isolation. Both detection points ensure that the resultant harsh environment from a postulated steam leak is limited such that the safe shutdown

systems will be capable of performing their safety function under the environmental conditions and permit timely building access. Adding a new Fixed High Temperature Trip Setpoint enhances the required detection and resultant protective actions to limit the harsh environment. The same system accuracy and setpoint uncertainty methodology were applied to calculate the new Fixed High Temperature Allowable Value and Trip Setpoint. The added trip setpoint neither causes any new single failure points nor compromises the system detection. The operability requirements as defined in the Technical Specifications remain unchanged for the new HELB analyses and SLRDIS Fixed High Temperature Trip Setpoint.

No single failure can result in the actuation of the SLRDIS safety function or preclude the safety function from occurring. EE-EQ-0033, Rev. C has been updated to conservatively reflect the impact of a prolonged loss of HVAC condition on SLRDIS actuation with the new Fixed High Temperature Trip Setpoint. The temperature in either the reactor building or turbine building will not cause a SLRDIS actuation for a loss of HVAC condition of less than or equal to 6 hours. Prior to 6 hours, corrective action, if required, could be implemented to reduce building temperatures. The new trip setpoint is slightly higher than the existing reactor building high temperature scram setpoint of 161 degrees F, which has not actuated in the past and would not be expected to actuate except during a HELB or Design Basis Accident No. 2. Therefore, it is concluded that the probability for inadvertent actuation of SLRDIS is not increased by the 171 degrees F. Fixed High Temperature Trip Setpoint.

The staff has reviewed the licensee's evaluation and agrees with its conclusions. Therefore, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Greeley Public Library, City Complex Building, Greeley, Colorado

Attorney for licensee: J. K. Tarpey, Public Service Company Building, Room 900, 550 15th Street, Denver, Colorado 80202

NRC Project Director: Jose A. Calvo

Rochester Gas and Electric Corporation, Docket No. 50-244, R.E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: October 10, 1988 as supplemented on December 22, 1988

Description of Amendment: The proposed amendment would modify the Technical Specifications to reflect the appropriate titles for corporate positions having responsibility for overall plant safety, and to modify the PORC membership.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. Accordingly, the Commission proposes to determine that this revision does not involve a significant hazard.

Proposed revisions to the Technical Specifications include an additional member of the Plant Operations Review Committee, Maintenance Planning/Scheduling Manager, and changes to the following titles: Senior Vice President to Vice President, Training Coordinator to Division Training Manager, Shift Foreman to Shift Supervisor, Plant Health Physicist to plant Health Physicist, and Electric and Steam Production to Production and Engineering. The license also requests addition of the position of Plant Manager, Ginna Station. This position has the responsibility for overall onsite operations of Ginna Station and replaces the titles of Superintendent, Ginna Production; and Station Superintendent, except that the position of Superintendent, Ginna Production continues as chairman of the Plant Operations Review Committee (PORC).

The changes are administrative in nature because they do not change the physical aspects of the plant, equipment, or previously approved operations, and they do not involve a significant increase in the probability or consequences of an accident previously evaluated; or create the possibility of a new or different kind of accident from any accident previously evaluated; or involve a significant reduction in the margin of safety. Accordingly, the Commission proposes to determine that this revision does not involve a significant hazard.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Attorney for licensee: Harry Voigt, Le Boeuf, Lamb, Leiby and McRae, Suite 110, 1133 New Hampshire Avenue, NW., Washington, DC 20036.

Tennessee Valley Authority, Dockets Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment requests: December 9, 1988 (TS 262)

Description of amendment requests: The proposed amendment would change the BFN Technical Specifications (TS) for Units 1, 2, and 3 to add requirement 1.0.MM.6 to the Definitions Section. This requirement would ensure that an Inservice Inspection Program for piping identified in NRC Generic Letter 88-01 be performed in accordance with developed NRC positions.

Specifically, this proposed change would require the implementation of a program to monitor piping made of austenitic stainless steel meeting the operational requirements outlined in Generic Letter 88-01 for any indications of IGSCC. This proposed change has been reviewed and approved by the BFN Plant Operations Review Committee and the Nuclear Safety Review Board.

Basis for proposed no significant hazards consideration determination: The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

NRC has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not 1) involve a significant increase in the probability of consequences of an accident previously evaluated, 2) create the possibility of a new or different kind of accident from an accident previously evaluated, or 3) involve a significant reduction in a margin of safety.

1. The proposed change does not involve a significant increase in the probability or consequence of any accident previously evaluated.

BFN Final Safety Analysis Report (FSAR) Chapter 14 provides analysis of Design Basis Accidents (DBA) in which BFN was analyzed and licensed. In reviewing these DBA's the one closest to the IGSCC issue would be the Loss of Coolant Accident (LOCA) discussed in FSAR Section 14.6.3. In that analysis, it is assumed that the reactor is operating at the most severe condition at the time the recirculation pipe breaks, which would maximize the parameter of interest: primary containment response, fission product release or Core Standby Cooling System requirements. In addition, the recirculation loop pipeline is assumed to be instantly severed. This results in the most rapid coolant loss and depressurization with coolant discharged from both ends of the break.

The IGSCC concern of the staff results from various BWR Plants identifying that

they have experienced some cracking in weldments of austenitic stainless steel piping. The proposed TS would require an inspection program be performed in accordance with NRC guidelines to ensure that the potential of pipe weldment cracking be minimized. This TS would apply to all BWR piping made of austenitic stainless steel that is four inches or larger in nominal diameter and contains reactor coolant at a temperature above 200° F during power operation regardless of Code Classification. Implementation of this TS would ensure that weldment cracking would be detected and fixed before a pipe would rupture. As a result, the proposed TS would provide added assurance of not exceeding any assumptions or results for the LOCA analysis stated above.

In Generic Letter 88-01, the Commission stated that unless appropriate remedial actions are taken, BWR plants may not be in compliance with their current design and licensing bases, including 10 CFR 50, Appendix A, General Design Criteria (GDC) 4, 14, and 31. NRC proposes a TS, in which BFN is hereby proposing, which will ensure implementation of a NRC approved program for IGSCC. This program provides appropriate remedial actions, therefore, providing added assurance that BFN is within its design bases and appropriate 10 CFR 50 Appendix A GDC's.

2. The proposed change does not change or modify the operation or design of any safety-related equipment currently installed at BFN. This proposed TS would enhance the overall plant integrity through the implementation of a program that would provide added assurance that the pressure boundary piping integrity would be maintained. This proposed TS change is administrative in nature and does not introduce any new conditions which would create a new or different accident that has been previously analyzed.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change is administrative in nature and in fact enhances the margin of safety at BFN. Implementation of a program in accordance with Generic Letter 88-01 requires an ISI program to monitor specific piping that may be susceptible to IGSCC. This program would assist in detection of weldment cracking in austenitic stainless steel piping as outlined in the subject letter. The addition of this program provides added assurance that any cracking would be detected and fixed therefore, eliminating any added potential of a pipe rupture. The implementation of this TS enhances the overall integrity and safety of BFN. This proposed change also supports the design and licensing bases of BFN, in addition to supporting 10 CFR 50, Appendix A, GDC 4, 14, and 31.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Suzanne Black

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment requests: December 22, 1988 (TS 264)

Description of amendment requests: The Tennessee Valley Authority (TVA or the licensee) proposes to amend the Browns Ferry Technical Specifications (TS) by adding surveillance requirements to the Reactor Protection System (RPS) power monitoring system. In response to a NRC directive, the licensee installed RPS power monitoring system circuit protectors. The proposed surveillance requirements relate to these modifications.

Basis for proposed no significant hazards consideration determination: The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

1. The proposed change does not involve a significant increase in the probability or consequence of any accident previously evaluated.

A modification was made to install redundant class 1E circuit protection devices between the non-class 1E RPS power supplies and the class 1E RPS power supplies. These circuit protective devices consist of a contractor which will open by (1) an overvoltage relay with a trip level setting of less than or equal to 126.5 Vac, (2) an undervoltage relay with a trip level setting of greater than or equal to 113.4 Vac for the MG sets, (3) an undervoltage relay with a trip level setting of greater than or equal to 111.8 Vac for alternate supply, and (4) an underfrequency relay trip level setting of greater than or equal to 57 Hz on all devices.

The cabinets and conduits for each RPS power monitoring system are located in the control building, which is a seismic category 1 structure.

This structure will provide protection from effects of tornadoes, tornado missiles, and external floods. The components of each monitoring system are also seismically qualified for class 1E application as required by GDC 2.

In order to comply to GDC 21, there are two physically independent and fully redundant circuit interrupters provided for each RPS bus, including alternate supply. This redundancy provides single failure protection in case one circuit does not function properly. This also provides sufficient reliability to ensure the RPS performs its intended safety function.

The BFN Final Safety Analysis (FSAR) Section 7.2.3.2 states that the power to each of the two reactor protection trip systems is supplied, via a separate bus, by its own high-inertia, a-c motor generator set. The high inertia is provided by a flywheel. The inertia is sufficient to maintain voltage and frequency within 275% of rates values for at least 1.0 second following total loss of power to the MG set. In applying this to Section 14.5.4.4.b of the FSAR accident analysis, loss of auxiliary power assumes the RPS MG set coastdown time until loss of MG generator output voltage to be 5.0 seconds. Thus the upper and lower bounds for voltage output and time delay are identified as significant performance parameters expected from the MG set design. The RPS power monitoring system installed is designed by the MG sets to provide no time delay. Consequently, the trip level settings for the RPS power monitor must be outside the expected operating range of the MG set. For a nominal 120 Vac MG output voltage, the 5% regulation band (114 to 126 volts) is within the technical specification trip level setting of 113.4 to 126.5 Vac. This will allow the MG set to function within its intended and designed time and voltage range before the RPS power monitoring system trips. These settings support the design and function of the high-inertia MG sets, and therefore, support the assumptions made in the BFN FSAR.

Therefore, the design, trip level settings, and intended function of the RPS power monitoring system are both bounded and support the current BFN FSAR accident analysis.

2. The proposed amendment will not create the possibility of a new or different kind of accident.

The proposed change does not affect the operation or intended function of any currently installed safety related equipment. If all the protective circuits in one MG fail to open, the redundant train of RPS systems is still available to mitigate any design basis accident. The RPS power monitoring system does not perform any specific safety function therefore, failure would, at worst case, be bounded by the current BFN Final Safety Analysis.

3. The proposed amendment will not involve a significant reduction in a margin of safety.

The additional surveillance requirements resulting from the subject modification, enhance to overall dependability of the RPS system. By specifying overvoltage, undervoltage, and underfrequency values ensures that the RPS power monitoring system will protect the RPS components so they perform their intended function.

This system provides no direct safety function. It provides isolation between the non-class 1E RPS power supplies and the class 1E power distribution buses. It functions to isolate the RPS power distribution buses upon detection of overvoltage, undervoltage, and underfrequency on the RPS power supplies thereby preventing possible adverse operation of the class 1E RPS components outside their designed voltage and current ranges.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Suzanne Black

The Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: November 28, 1988 as amended December 29, 1988.

Description of amendment request: The proposed amendment would increase the minimum critical power ratio (MCPR) in the Technical Specifications (TS) from 1.06 to 1.07 to account for additional uncertainties which normally occur in the second and subsequent operating cycles. It also would add two limiting lattice MAPLHGR (most-limiting average planar linear heat generation rate) curves to the TS to account for two new GE8X8EB fuel types being used this cycle and delete the MAPLHGR curve for the natural uranium bundles which are being totally removed during the refueling outage. The limiting conditions for operation and action statements for the APLHGR would be revised to reflect the lattice-dependent MAPLHGR limits in the GESTAR analysis and the default limits in TS figures for hand calculations. The TS would be reworded to clarify how power-dependent MAPLHGR factors ($MAPFAC_p$) are applied to the lattice MAPLHGR's and reflect NRC guidance in the GESTAR safety evaluation report. Figures and pages would also be renumbered and reordered. The extrapolated value for $MCPR_f$ (figure 3.2.2-1 of the TS) (the calculated MCPR at a given point of core flow) is being corrected by the factor of [1.0 +0.0032 (40-F)] where F = percent of rated core flow, to provide additional conservatism at lower core flows (below 40% of rated flow). Additionally, the flow dependent MAPLHGR factor ($MAPFAC_f$) curve (figure 3.2.1-4) is being extended down to the 20% rated core flow line to account for core flow shortfalls which were demonstrated during the startup testing program. (This figure is also being renumbered, the new number will be 3.2.1-1).

The proposed amendment would also delete two curves (A-A' and B-B') from the current set of MCPR parametric ($MCPR_p$) curves (those curves which specify the power-dependent MCPR limit at reduced feedwater temperatures for various core average exposures and core flows). Thermal margin during the second cycle will be maintained using curve C-C' as the limit and the C-C' designation will be removed. Additionally, the TS related to the LHGR (linear heat generation rate or heat-generation-per-unit-length of fuel rod) would be revised to reflect the higher LHGR associated with the new fuel. The definition of critical power ratio would be generalized by changing GEXL to a GE critical power correlation. The associated bases would also be changed.

Basis for proposed no significant hazards consideration determination: The standards used to arrive at a determination that a request for amendment requires no significant hazards consideration are included in the Commission's Regulations, 10 CFR 50.92(c), which states that the operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The licensees have provided the following analysis concerning the above three factors:

1. The proposed changes would not involve a significant increase in the consequences of an accident previously evaluated because MCPR, $MCPR_p$, LHGR, $MAPFAC_f$ and MAPLHGR core operating limits are provided to establish bounds on normal reactor operations which ensure core conditions are maintained within the assumptions and scope of accident analyses. New MAPLHGR and $MAPFAC_f$ curves and LHGR, MCPR and $MCPR_f$ limits are provided to reflect changes in the reactor fuel configuration and design assumptions. Operation within these limits will assure the consequences of affected transients and accidents will remain within the results and bounds of the safety analyses. MAPLHGR, $MAPFAC_p$, $MCPR_f$ and MCPR curves/limits were generated using analytical methods previously approved by the NRC.

The Safety Limit MCPR is determined using a statistical model that combines uncertainties in operating parameters with uncertainties used to calculate the critical power. For reload cores, some of the uncertainties used in the determination of the Safety Limit MCPR are larger than for initial cores. The higher Safety Limit MCPR for reload cores accounts for these increased uncertainties. The Safety Limit MCPR for reload cores has received previous NRC approval and is documented within the Updated Safety Analysis Report (USAR) and in GESTAR.

The critical power ratios in the transient analyses were calculated using the improved critical power correlation, GEXL-Plus. This correlation has been approved by the NRC (SER to Amendment 15 of GESTAR). Its predecessor GEXL was used for the initial core analysis.

The LHGR limit for GE8X8EB fuel was calculated using the GESTR-MECHANICAL code (a fuel rod thermal-mechanical performance model accepted by the NRC in GESTAR). Results from GESTR-MECHANICAL demonstrate that compliance with the new LHGR limit (in concert with appropriate MAPLHGR curves) will further ensure fuel design basis criteria are satisfied for GE8X8EB fuel.

Extended operating domains and modes of operation have been analyzed by GE (using NRC-approved methods) to determine applicable operating restrictions. GE demonstrated that the consequences of changes to the allowable operating region are bounded by the proposed values for MCPR and MAPLHGR. Furthermore, the probability of an accident is not increased because operation in the expanded region does not significantly alter the normal operation of the equipment, for which failures have been previously analyzed.

2. The proposed changes would not create the possibility of a new or different kind of accident from any accident previously evaluated because proposed MCPR, $MCPR_p$, MAPLHGR, $MAPFAC_f$ and LHGR limits do not directly affect the operation or function of any system or component but instead set fuel or core thermal limits so that operation within these limits will maintain the analyzed margins of safety.

The Safety Limit MCPR was adjusted in the conservative direction because of calculational uncertainties associated with reload cores to maintain the margin of safety. MAPLHGR limits are provided for each bundle type to ensure that the requirements of 10 CFR 50.46 and Appendix K are maintained. The limits are results of the reload transient and Emergency Core Cooling System (ECCS) analyses and are designed to maintain the same margins of safety. Therefore, this change would not create the possibility of an accident different than previously evaluated.

Expanded operating regions represent changes to the core power and flow distribution, but do not significantly affect the operation or function of any system or component. Operating limits were

established by analyses to bound all combinations of specified expanded operating domains and equipment out of service within acceptable analyzed conditions to ensure fuel integrity and ECCS criteria. Consequently, there is no significant impact on or addition to any system or equipment whose failure could initiate an accident.

3. The proposed changes would not involve a significant reduction in the margin of safety because all of the proposed changes have been analyzed to the same governing criteria as before and demonstrate that the consequences of transients or accidents are not increased beyond those already evaluated by the NRC for the Perry Nuclear Power Plant.

The Safety Limit MCPR is set at the point at which no fuel damage is expected to occur as discussed in GESTAR. The Safety Limit MCPR is combined with the most limiting transient change to the critical power ratio to establish the operating limit MCPR. The Safety Limit MCPR and the change resulting from the most limiting transient have been calculated by methods described in GESTAR. These methods have received previous NRC approval.

MAPLHGR's are determined by analysis to ensure the acceptance criteria of 10 CFR 50.46 are met and establish the margins of safety for fuel and the ECCS. Calculations using NRC-approved models described in GESTAR yield results within these acceptance criteria.

Furthermore, the fuel used in Cycle 2 is very similar to that used in the previous cycle and the core will be operated using NRC-approved methods.

The staff has reviewed the licensees' no significant hazards consideration determination. With respect to operation in the extended operating domains, the staff notes that the licensees have implemented procedures, in response to NRC Bulletin 88-07 dated June 15, 1988, which require scramming the plant immediately following a dual recirculation pump trip. Further, while in the maximum extended operating domain region, core flow will be maintained above 45%. These measures significantly reduce the possibility of power oscillations while in the extended operating domain. Given these considerations, the staff concurs with the licensees' no significant hazards determination. Therefore, the staff proposes to determine that the proposed amendment involves no significant hazards considerations.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Commonwealth Edison Company, Docket No. 50-237, Dresden Nuclear Power Station, Unit No. 2, Grundy County, Illinois

Date of application for amendments: August 15, 1988

Brief description of amendments: The amendment revises the Technical Specifications to support: (1) reload reviews for Cycle 12 by Commonwealth Edison Company in accordance with 10 CFR 50.59; (2) changes resulting from analyses performed to allow equipment out-of-service; and (3) changes provided for clarification or as administrative changes. The amendment also revises the Section 3.F of the license to delete a condition requiring a Safety Evaluation for coastdown operation with abnormal feedwater temperature.

Date of issuance: January 6, 1989

Effective date: January 6, 1989 and to be implemented within 60 days.

Amendment No.: 104

Provisional Operating License No. DPR-19.: The amendment revises the Technical Specifications and the license.

Date of initial notice in **Federal Register:** October 5, 1988 (53 FR 39166). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 6, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

Commonwealth Edison Company, Docket No. 50-374, LaSalle County Station, Unit No. 2, LaSalle County, Illinois

Date of application for amendment: September 14, 1988

Brief description of amendment: This amendment provides revised Technical Specifications which incorporate new Cycle 3 reload fuel operating limits, and expands operating domains (including operation with equipment out-of-service).

Date of issuance: January 6, 1989

Effective date: January 6, 1989

Amendment No.: 41

Facility Operating License No. NPF-18. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 16, 1988 (53 FR 46140). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 6, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: December 2, 1986, and December 14, 1987.

Brief description of amendment: This amendment modified paragraph 3.F of the license to require compliance with the amended Physical Security Plan. This Plan was amended to conform to the requirements of 10 CFR 73.55. Consistent with the provisions of 10 CFR 73.55, search requirements must be implemented within 60 days and miscellaneous amendments within 180 days from the effective date of this amendment.

Date of issuance: January 5, 1988

Effective date: January 5, 1988

Amendment No.: 120

Provisional Operating License No. DPR-20. The amendment revises the license.

Date of initial notice in **Federal Register:** May 4, 1988 (53 FR 15909). The Commission's related evaluation of the amendment is contained in a letter to Consumers Power Company dated January 5, 1988 and a Safeguards Evaluation Report dated January 5, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423

Dairyland Power Cooperative, Docket No. 50-409, La Crosse Boiling Water Reactor, La Crosse, Wisconsin

Date of application for amendment: December 21, 1987 as revised February 22, 1988 and October 13, 1988.

Brief description of amendment: This amendment revises the Technical Specifications (TS) for radiological environmental monitoring to delete requirements for sampling and analysis of Iodine-131. Iodine-131 is a fission product produced during reactor operations which has an 8.04 day half life and is no longer present at La Crosse since the reactor has been shut down since April 30, 1987.

Date of issuance: December 22, 1988

Effective Date: December 22, 1988

Amendment No.: 64

Possession-Only License No. DPR-45. This Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 8, 1988 (53 FR 11718). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 22, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: La Crosse Public Library, 800 Main Street, La Crosse, Wisconsin 54601.

Duke Power Company, et al., Docket No. 50-413, Catawba Nuclear Station, Unit 1, York County, South Carolina

Date of application for amendment: August 12, 1986, as supplemented December 14, 1987, March 1 and April 18, 1988

Brief description of amendment: The amendment substituted the standard fire protection license condition for the existing license condition.

Date of issuance: January 3, 1989

Effective date: January 3, 1989

Amendment No.: 57

Facility Operating License No. NPF-35. Amendment revised the Operating License.

Date of initial notice in **Federal Register:** November 30, 1988 (53 FR 48328). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 3, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: April 15, 1988

Brief description of amendments: The amendments modified the Technical Specifications to add one containment penetration conductor overcurrent protective device to Table 3.8-1A for Unit 1 and one to Table 3.8-1B for Unit 2.

Date of issuance: January 3, 1989

Effective date: January 3, 1989

Amendment Nos.: 58 and 51

Facility Operating License Nos. NPF-35 and NPF-52. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 30, 1988 (53 FR 48329). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 3, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: October 6, 1988

Brief description of amendments: The amendments revised the Technical Specifications to reflect a modification to the pumphouse pit level instrumentation of the Nuclear Service Water System.

Date of issuance: January 10, 1989

Effective date: January 10, 1989

Amendment Nos.: 59 and 52

Facility Operating License Nos. NPF-35 and NPF-52. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 16, 1988 (53 FR 46143). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 10, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application for amendments: February 28, 1986, as supplemented September 25 and December 23, 1986, and December 15, 1988

Brief description of amendments: The amendments extended the expiration dates for the operating licenses.

Date of issuance: December 30, 1988

Effective date: December 30, 1988

Amendment Nos.: 159 and 97

Facility Operating License Nos. DPR-57 and NPF-5. Amendments revised the Operating Licenses.

Date of initial notice in **Federal Register:** April 23, 1986 (51 FR 15397). Because the September 25 and December 23, 1986, and December 15, 1988, submittals clarified certain aspects of the original request, the substance of the changes noticed in the **Federal Register** and the proposed no significant hazards determination were not affected.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 30, 1988

No significant hazards consideration comments received: No.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-424, Vogtle Electric Generating Plant, Unit 1, Burke County, Georgia

Date of application for amendment: October 25, 1988

Brief description of amendment: The amendment modified the Technical Specifications to add reference clarifications to Section 6.

Date of issuance: January 4, 1989

Effective date: January 4, 1989

Amendment No.: 15

Facility Operating License No. NPF-68: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 30, 1988 (53 FR 48331). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 4, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of application for amendment: May 4, 1988

Brief description of amendment: Revises the listing of components subject to 10 CFR Part 50, Appendix J leak testing to conform to recent piping modifications made on containment penetration No. 417.

Date of Issuance: January 3, 1989

Effective date: January 3, 1989

Amendment No.: 148

Facility Operating License No. DPR-50. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 30, 1988 (53 FR 48331). The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated January 3, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket No. 50-498, South Texas Project, Unit 1, Matagorda County, Texas

Date of amendment request: November 7, 1988

Brief description of amendment: The amendment changed the Technical Specifications for Unit 1 to the Combined Technical Specifications for Units 1 and 2, added the positive displacement pump in a lock-out condition during cold overpressurization, added a reactor coolant pump seal isolation header pressure interlock, and made minor changes to the administrative section of the Technical Specifications.

Date of issuance: December 29, 1988.

Effective date: December 29, 1988.

Amendment No.: 4

Facility Operating License No. NPF-76. Amendment revised the Technical Specification.

Date of initial notice in **Federal Register:** November 22, 1988 (53 FR 47283). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 29, 1988.

No significant hazards consideration comments received: No.

Local Public Document Rooms Location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488 and Austin Public Library, 810 Guadalupe Street, Austin, Texas 78701.

Illinois Power Company, Docket No. 50-461, Clinton Power Station, Unit 1, DeWitt County Illinois

Date of application for amendment: October 30, 1987

Description of amendment request: The proposed changes will achieve consistency with a previously approved change and clarify an existing requirement.

Date of issuance: January 5, 1989

Effective date: January 5, 1989

Amendment No.: 17

Facility Operating License No. NPF-62. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 27, 1988 (53 FR 2318). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 5, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: October 26, 1988

Brief description of amendment: Removes the offsite and facility organizational charts from the technical specifications.

Date of issuance: January 3, 1989

Effective date: January 3, 1989

Amendment No.: 106

Facility Operating License No. DPR-36: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 30, 1988 (53 FR 48333). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 3, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578.

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: October 18, 1988

Brief description of amendment: The change modifies the Technical Specification 4.2, "Equipment and Sampling Tests," which provides testing requirements for selected plant equipment. The proposed change modifies the specified surveillance interval for the Control Element Assembly (CEA) partial movement test in Table 4.2-2 from performance once every two weeks to monthly to agree with the Combustion Engineering standard technical specifications.

Date of issuance: January 4, 1989

Effective date: Immediately

Amendment No.: 109

Facility Operating License No. DPR-36. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 30, 1988 (53 FR 48332). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 4, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Wiscasset Public Library, High Street, Wiscasset, Maine 04578.

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: September 13 and September 30, 1988

Brief description of amendment: The amendment revises Technical Specification (TS) 4.4.5.1.4.a.8 to allow the inspection of steam generator tubes by insertion of the probe from the cold leg side of the steam generator tube. In addition, the amendment revises TS 3.4.6.1, "Reactor Coolant System Leakage," to decrease the allowable primary-to-secondary leakage (through any one steam generator) from 0.15 to 0.10 gpm.

Date of issuance: January 3, 1989

Effective date: January 3, 1989

Amendment No.: 138

Facility Operating License No. DPR-65. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 2, 1988 (53 FR 44253) concerning the September 13, 1988 application and November 2, 1988 (53 FR 44254) concerning the September 30, 1988 application. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 3, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: July 21 and September 2, 1988

Description of amendment request: The amendment deletes the following tables, identifying electrical equipment and containment isolation valves, from the Millstone Unit 3 Technical Specifications (TS):

* Table 3.8-1 - "Containment Penetration Conductor Overcurrent Protective Devices"
* Table 3.8-2 - "Motor-Operated Valves Thermal Overload Protection Bypassed Only Under Accident Conditions"
* Table 3.8-2b - "Motor-Operated Valves Thermal Overload Protection Not Bypassed Under Accident Conditions"
* Table 3.6-2 - "Containment Isolation Valves"

The references to the above TS Tables, in their respective TS, are also deleted.

Date of issuance: December 19, 1988

Effective date: December 19, 1988

Amendment No.: 28

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 7, 1988 (53 FR 34609) concerning the July 21, 1988 application and October 19, 1988 (53 FR 40993) concerning the September 2, 1988 application. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 19, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Northern States Power Company, Dockets Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Units Nos. 1 and 2, Goodhue County, Minnesota

Date of application for amendments: November 24, 1986, September 4, 1987 and November 30, 1987.

Brief description of amendments: The amendments modified paragraphs 2.C.(3) of the licenses to require compliance with the amended Physical Security Plan. This Plan was amended to conform to the requirements of 10 CFR 73.55. Consistent with the provisions of 10 CFR 73.55, search requirements must be implemented within 60 days and miscellaneous amendments within 180 days from the effective date of these amendments.

Date of issuance: January 5, 1989

Effective date: January 5, 1989

Amendments Nos.: 85 and 78

Facility Operating Licenses Nos. DPR-42 and DPR-60. These amendments revised the licenses.

Date of initial notice in **Federal Register:** April 6, 1988 (53 FR 11375). The Commission's related evaluation of the amendments is contained in a letter to Northern States Power Company dated January 5, 1989 and a Safeguards Evaluation Report dated January 5, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Technology and Science Department, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of application for amendment: May 11, 1988

Brief description of amendment: This amendment revised the Technical Specifications to (1) add new valves and controls to the existing list of containment isolation valves which require periodic surveillance and (2) delete Note 28 from Table 3.6.3-1 since it was no longer applicable. The amendment also deleted conditions 2.C.10 and 2.C.11 from License NPF-39 since the requirements have been fully satisfied.

Date of issuance: January 10, 1989

Effective date: January 10, 1989

Amendment No.: 13

Facility Operating License No. NPF-39. This amendment revised the Technical Specifications and License.

Date of initial notice in **Federal Register:** October 19, 1988 (53 FR 40994). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 10, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19454.

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of application for amendment: September 29, 1988

Brief description of amendment: The amendment changed the Technical Specifications (TSs) to (1) delete the primary containment isolation valves and instrumentation associated with the permanent removal of the reactor vessel head spray piping and (2) modify the reportability requirements for seismic monitor XR-VA-151 whenever the reactor vessel head is removed.

Date of issuance: January 11, 1989

Effective date: 60 days after date of issuance.

Amendment No.: 14

Facility Operating License No. NPF-39. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 16, 1988 (53 FR 46150). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 11, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: April 14, 1988

Brief description of amendment: The amendment resolves inconsistencies between the technical specification limits and the Bases concerning maximum permissible recirculation flow imbalance when the recirculation pumps are operating at the same speed.

Date of issuance: December 28, 1988

Effective date: December 28, 1988

Amendment No.: 121

Facility Operating License No. DPR-59: Amendment revised the Technical Specification and Bases.

Date of initial notice in **Federal Register:** November 16, 1988 (53 FR 46152). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 28, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: August 5, 1987 as supplemented by letter dated October 20, 1988 (TS 87-27)

Brief description of amendments: The amendments modify the Sequoyah, Units 1 and 2 Technical Specifications. The changes revise Surveillance Requirement 4.5.2.d.1 for both units. The changes reduce the setpoint, where the automatic isolation and interlock action of the residual heat removal system is verified to act, from a reactor coolant system pressure of above 750 psig to above 700 psig.

Date of issuance: December 29, 1988

Effective date: December 29, 1988

Amendment Nos.: 92, 82

Facility Operating Licenses Nos. DPR-77 and DPR-79. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 30, 1987 (52 FR 49233). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 29, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: June 21, 1988 (TS 88-23)

Brief description of amendments: The amendment changes the expiration date for Sequoyah Nuclear Plant (SQN), Operating License DPR-77 (Unit 1) from May 27, 2010 to September 17, 2020 and for SQN Operating License DPR-79 (Unit 2) from May 27, 2010 to September 15, 2021.

Date of issuance: December 29, 1988

Effective date: December 29, 1988

Amendment Nos.: 93, 83

Facility Operating Licenses Nos. DPR-77 and DPR-79. Amendments revised the license.

Date of initial notice in **Federal Register:** October 5, 1988 (53 FR 39178). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 29, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: November 17, 1987 (TS 87-40)

Brief description of amendments: The amendments revise the Sequoyah Nuclear Plant (SQN) Units 1 and 2 Technical Specifications. The revisions are to increase, in the conservative direction, the auxiliary feedwater (AFW) suction pressure-low trip setpoint and the allowable value of Table 3.3-4, Item 6.g, for both units for the turbine-driven AFW pump.

Date of issuance: December 29, 1988

Effective date: December 29, 1988

Amendment Nos.: 94, 84

Facility Operating Licenses Nos. DPR-77 and DPR-79. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 10, 1988 (53 FR 3960). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 30, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Virginia Electric and Power Company, et al., Docket No. 50-338, North Anna Power Station, Unit No. 1, Louisa County, Virginia

Date of application for amendment: September 30, 1988

Brief description of amendment: This amendment revised license condition 2.D.3(d) to the NA-1 Facility Operating License No. NPF-4 to state: "VEPCO may use two (2) fuel assemblies containing fuel rods clad with an advanced zirconium base alloy cladding material as described in the licensee's submittals dated February 20, 1987 and September 30, 1988." These two fuel assemblies meet the guidelines for lead test fuel assemblies and are enveloped by the existing NA-1 reload design and safety analysis limits.

NA-1 is currently operating with two (2) assemblies containing fuel rods clad with an advanced zirconium based material as approved by NRC in Amendment No. 94 for NA-1 Facility Operating License No. NPF-4 issued on May 13, 1987. The two fuel assemblies presently in place also meet the guidelines for lead test fuel assemblies and are enveloped by the existing NA-1 reload design and safety analysis limits. This amendment also granted an exemption from the requirements of 10 CFR 50.46. The evaluation of the granting of this exemption is contained in the Safety Evaluation issued with this amendment.

Date of issuance: January 3, 1989

Effective date: January 3, 1989

Amendment No.: 111

Facility Operating License No. NPF-4: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 30, 1988 (53 FR 48338). The Commission's related evaluation of the amendment is contained in an Environmental Assessment dated December 9, 1988, and in a Safety Evaluation dated January 3, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Virginia Electric and Power Company, et al., Docket No. 50-338, North Anna Power Station, Unit No. 1, Louisa County, Virginia

Date of application for amendment: June 17, 1987 (Partial)

Brief description of amendment: This amendment revised the Technical Specifications (TS) in accordance with Virginia Electric and Power Company's Statistical DNBR Evaluation Methodology for a less restrictive negative moderator temperature coefficient for the remainder of the current NA-1 operating Cycle No. 7 only.

Date of issuance: January 3, 1989

Effective date: January 3, 1989

Amendment No.: 112

Facility Operating License No. NPF-4: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 30, 1988 (53 FR 48339). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 3, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Virginia Electric and Power Company, et al., Docket No. 50-338, North Anna Power Station, Unit No. 1, Louisa County, Virginia

Date of application for amendment: October 19, 1988

Brief description of amendment: This amendment allowed a one-time extension of 6 months for test intervals for certain surveillance tests specified in the NA-1 TS. This one-time extension is necessary to compensate for the NA-1 unscheduled steam generator tube rupture repair outage from July 15, 1987 to October 13, 1987. This unscheduled outage, together with additional time allowed for optimum fuel burnup before the next refueling outage, has resulted in a 6-month deferral of the next refueling outage for NA-1.

Date of issuance: January 9,1989

Effective date: January 9, 1989

Amendment No.: 113

Facility Operating License No. NPF-4: Amendment revised the License.

Date of initial notice in **Federal Register:** November 16, 1988 (53 FR 46159). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 9, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION

During the period since publication of the last biweekly notice, individual notices of issuance of amendments have been issued for the facilities as listed below. These notices were previously published as separate individual notices. They are repeated here because this biweekly notice lists all amendments that have been issued for which the Commission has made a final determination that an amendment involves no significant hazards consideration.

In this case, a prior Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing was issued, a hearing was requested, and the amendment was issued before any hearing because the Commission made a final determination that the amendment involves no significant hazards consideration.

Details are contained in the individual notice as cited.

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of application for amendments: September 21, 1988

Brief description of amendments: These amendments revised Section 3.1.2 of the Technical Specifications (TS) by incorporating modified pressure and temperature (P/T) limits for the reactor coolant system and pressurizer. The revised P/T limits are applicable up to 20 effective full power years (EFPY); the previous P/T limits expired after 10 EFPY. The amendments also revised the applicable "Bases" discussion to be consistent with the new limits, and reformatted the TS to be consistent with more recent standard TS.

Date of issuance: January 10, 1989

Effective date: January 10, 1989

Amendment Nos.: 134 and 128

Facility Operating Licenses Nos. DPR-31 and DPR-41: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 19, 1988 (53 FR 40988)

Dated at Rockville, Maryland, this 24th day of January, 1989.

For the Nuclear Regulatory Commission

Gus C. Lainas,

Acting Director, Division of Reactor Projects-I/II Office of Nuclear Reactor Regulation

[Doc. 89-2195 Filed 1-31-89; 8:45 am]

BILLING CODE 7590-01-D

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a revision to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Revision 2 to Regulatory Guide 3.44, "Standard Format and Content for the Safety Analysis Report for an Independent Spent Fuel Storage Installation (Water-Basin Type)," has been revised to conform with recent changes to 10 CFR Part 72, "Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste" (53 FR 31651). This guide identifies the information needed by the NRC staff in its evaluation of the Safety Analysis Report for an independent spent fuel storage installation and suggests a format for presenting this information.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082, telephone

(202) 275–2060 or (202) 275–2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

(5 U.S.C. 552(a)).

Dated at Rockville, Maryland this 24th day of January 1989.

For the Nuclear Regulatory Commission.

Eric S. Beckjord,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 89–2300 Filed 1–31–89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–206]

Southern California Edison L. Co. and San Diego Gas and Electric Co., San Onofre Nuclear Generating Station, Unit No. 1; Denial of Amendment to Provisional Operating License and Opportunity For a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied in part a request by the licensees for amendment to Provisional Operating License No. DRP–13, issued to Southern California Edison Company and San Diego Gas and Electric Company (the licensees), for operation of San Onofre Nuclear Generating Station, Unit No. 1 (the facility), located in San Diego County, California.

The application for amendment was dated March 20, 1987 as supplemented July 22, 1988. Notice of Consideration of Issuance of Amendment was published in the **Federal Register** on September 7, 1988 (53 FR 34611).

The amendment as proposed by the licensees, would consist of the following changes to the Technical Specifications (Appendix A to Provisional Operating License No. DPR–13):

1. Editorial changes to the test pressure and schedule for Type B containment air lock leak rate testing.

2. A modified requirement to test the air lock prior to establishing containment integrity only if maintenance has been performed on the air lock which could affect the sealing capability, and

3. A change to the reduced pressure test for the air lock from 10 psig to 3 psig.

The portion of the application which would change the reduced pressure test from 10 psig to 3 psig has been denied. The licensee's supplemental letter of July 22, 1988 stated that test data to support this change would be available and provided to the NRC staff by September 30, 1988. To date this information has not been provided.

The licensees were notified of the Commission's denial of this request by letter dated January 20, 1989. The other changes requested by the application have been approved by the issuance of Amendment No. 118.

By March 3, 1989 the licensees may demand a hearing with respect to the denial described above and any persons whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for a hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, by the above date.

A copy of the petition should also be sent to the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, and to Charles R. Kocher, Assistant General Counsel and James Beoletto, Esq., Southern California Edison Company, P.O. Box 800, Rosemead, California 91770, attorneys for the licensees.

For further details with respect to this action, see (1) the application for amendment dated March 20, 1987, as supplemented July 22, 1988, and (2) the Commission's letter and Safety Evaluation issued with Amendment No. 118 to DPR–13 dated January 20, 1989. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713. Single copies of Item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 20th day of January, 1989.

For the Nuclear Regulatory Commission.

Charles M. Trammell,

Senior Project Manager, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–2301 Filed 1–31–89; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–26492; File No. SR–DTC–88–18]

Self Regulatory Organizations; Depository Trust Company; Order Extending Temporary Approval of a Proposed Rule Change Concerning the International Institutional Delivery System

On October 26, 1988, the Depository Trust Company ("DTC") filed a proposed rule change (File No. SR–DTC–88–18) with the Commission pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The proposal established a pilot program for DTC's International Institutional Delivery ("IID") System. The Commission published notice of the proposal in the **Federal Register** on November 10, 1988.[2]

On December 20, 1988, the Commission temporarily approved the proposed rule change through January 31, 1989.[3] DTC has requested that the pilot program be extended through February 28, 1989.[4] The extension will give DTC more time to gain experience with the IID System. For the reasons expressed in Securities Exchange Act Release No. 26374, the Commission believes the proposal is consistent with the Act, and is therefore extending temporary approval of the proposed rule change through February 28, 1989. The Commission understands that, when DTC has gained sufficient experience operating the pilot program for the IID System, DTC will file another proposed rule change requesting approval of the IID System as a full service.

It is therefore ordered, pursuant to section 19(b) of the Act, that DTC's proposed rule change (File No. SR–DTC–88–18) be, and it hereby is, approved temporarily through February 28, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 26, 1989.

Jonathan Katz,

Secretary.

[FR Doc. 89–2280 Filed 1–31–89; 8:45 am]

BILLING CODE 8010-01-M

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[1] 15 U.S.C. 78(b)(1).

[2] Securities Exchange Act Release No. 26249 (November 3, 1988), 53 FR 49637.

[3] Securities Exchange Act Release No. 26374 (December 20, 1988), 53 FR 51253.

[4] *See* letter from Karen Lind, Associate Counsel, DTC, to Sandra Sciola, Special Counsel, Commission, dated January 26, 1989.

[Release No. 34–26490; File No. SR–NYSE–88–43]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange, Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 30, 1988, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Item I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.[1]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is instituting increases affecting selected sales practices fees including the Annucal Branch Office Fee and the Annual Maintenance Fee per Registered Person, to be effective January 1, 1989.

The Exchange is instituting price increases affecting most of its facility and equipment fees. This price increase includes booths, posts, odd-lot system fees, equipment and other related floor fees. These increases will be effective January 1, 1989.

The Exchange has established a new feature within its Automated Bond System. The Multi-Bond Display. This optional feature enable subscribers to monitor trading in up to 15 bonds on a display "page" over many pages on ABS. The Exchange is revising its ABS subscriber fees to include a charge for the Multi-Bond Display of $50.00 per month per terminal. This new fee will be charged commencing April 1, 1989 to those subscribers who choose to receive the Multi-Bond Display.

In addition, the Exchange is revising its Equity Transaction Charges. This charge currently is based on both commissions and shares transacted and will not be solely based on shares transacted. This revision will be effective for all transactions reported for January 1989.

[1] Copies of the specific fee increases can be found at the NYSE or the Commission's Public Reference Section.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in section (A), (B), and (C) below of the most significant aspect of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) *Purpose*—The purpose of increasing the Exhange's branch offices and registered persons maintenance fees is to offset in part its increased costs in the oversight of member organizations' sales practices activities. The costs include manpower, systems, and other costs associated with providing such services.

It is necessary to increase facility and equipment fees in view of the investment the Exchange has made in capital and software to respond to the increasing demands on its trading floor capacity.[2] The Exchange will begin charging a fee for its new Multi-Bond Display service. This new fee will enable the Exchange to begin to recover some of its development and operating costs related to this feature.

The purpose of the transaction charge revision is to eliminate the Exchange's sensitivity to commission rates which vary from firm to firm. The current transaction charge is based upon both volume and member firm commissions. Under the revised transaction charge, member firm commissions will no longer be used as a partial basis for such charge. Charges per share will be increased to compensate for the loss of commission related revenue.

Although the proposed transaction charge schedule is revenue neutral to the Exchange, it will affect individual firms differently. To minimize the impact in 1989, no firm's charges will increase more than 4% of what it would have been under the current schedule, nor will any firm's charges decrease more than 5% below current rates.

[2] The NYSE states that recent enhancements to Exchange systems include improvements to the Limit Order System, Intermarket Trading System and the SuperDot System. The number of specialists electronic display books has doubled in the past year. In addition, the odd-lot order pricing and reporting system has been completely replaced.

(2) *Basis Under the Act for the Proposed Rule Change.* The basis under the Act for the proposed rule change is section 6(b)(4) permitting the rules of an Exchange to provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its services.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments from members or other interested parties regarding the rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Act and subparagraph (c) of Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such action if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC

BEST COPY AVAILABLE

20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-88-43 and should be submitted by February 22, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 25, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-2287 Filed 1-31-89; 8:45am]

BILLING CODE 8010-01-M

[Release No. 34-26489; File No. SR-PHLX-88-06]

Self-Regulatory Organizations; Filing and Immediate Effectiveness Of Proposed Rule Change of the Philadelphia Stock Exchange Relating to Foreign Currency Options Trading Hours

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 19, 1989, the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("PHLX" or the "Exchange") pursuant to Rule 19b-4 of the Securities Exchange Act of 1934 ("Act"), submits a proposed rule change notifying the commission of specific hours for trading of PHLX foreign currency options.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regualtory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

On September 16, 1988, the Commission approved SR-PHLX-88-25, a proposed rule change modifying the hours that trading of foreign currency options may be conducted on the Exchange. The rule provides flexibility for the Exchange to establish specific hours on the condition, among others, that the Exchange apprise the Commission of any changes in hours via a rule change filed pursuant to section 19(b)(3)(A) under the Act. Accordingly, the Exchange hereby notifies the Commission that commencing on January 20, 1989, trading of foreign currency options will start at 4:30 a.m. Eastern Time rather than 6:00 a.m. Eastern Time. In no other manner will hours of trading be changed.

The proposed rule change is consistent with section 6(b)(5) of the Act in that it is designed to further promote the mechanism of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organizations Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commision's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 22,1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 25, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-2288 Filed 1-31-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16782; (811-3144)]

EGT Money Market Trust; Application

January 26, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregisration under the Investment Company Act of 1940 (the "1940 Act").

Applicant: EGT Money Market Trust.

Relevant 1940 Act Section: Section 8(f) and Rule 8f-1 thereunder.

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Date: The application was filed on January 3, 1989, and a letter correcting a typographical error was submitted on January 23, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on February 21, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicant, Federated Investors Tower, Pittsburgh, PA 15222-3779.

FOR FURTHER INFORMATION CONTACT: Paul J. Heaney, Financial Analyst (202) 272-3420, or Brion R. Thompson, Branch Chief (202) 272-3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch in person, or the SEC's commercial copier, (800) 231-3282 (in Maryland, (301) 258-4300).

Applicant's Representations

1. On February 17, 1981, Applicant filed Form N-8A to register under the 1940 Act as an open-end, diversified management investment company. On February 17, 1981, Applicant also filed Form N-1 pursuant to the Securities Act of 1933, which registration statement became effective on April 28, 1981, the date upon which the initial public offering of Applicant's shares commenced. Applicant was organized as a Massachusetts business trust.

2. On August 26, 1988, the Applicant's Board of Trustees approved its Agreement and Plan of Acquisition (the "Plan") and recommended its submission to Applicant's shareholders. At a special meeting held on November 29, 1988, a majority of Applicant's shareholders approved the Plan. Pursuant to the Plan, on December 10, 1988, the Applicant transferred all of its assets and liabilities to Princor Cash Management Fund, Inc. (the "Fund"). The Fund was registered under the 1940 Act on October 31, 1982 (File No. 811-3585). Applicant's net asset value on the implementation date of the Plan was $28,435,906 or $1.00 per share, and each shareholder of Applicant received in exchange an equal number of shares of the Fund which also maintains a net asset value of $1.00 per share. Thus, the merger of Applicant into the Fund was effectuated on the basis of their relative net asset values per share. No portfolio securities were sold and no brokerage commissions were paid during the implementation of the Plan. The adviser to the Fund assumed all of the fees and expenses associated with implementing the Plan.

3. Applicant has no shareholders, assets or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged, nor does it propose to engage in any business activities other than those necessary to wind up its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-2289 Filed 1-31-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16780; (812-7190)]

Equus Capital Partners, L.P. et al.; Application

January 25, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: Equus Capital Partners, L.P. ("Partnership") and Equus Capital Corporation ("ECC").

Relevant 1940 Act Sections: Exemption requested pursuant to section 6(c) from the provisions of sections 2(a)(19) and 2(a)(3)(D).

Summary of Application: Applicants seek an order determining that (i) the Independent General Partners (as hereinafter defined) of the Partnership are not "interested persons" of such Partnership or of ECC by reason of being general partners of the Partnership and co-partners with ECC and (ii) persons who become limited partners ("Limited Partners") of the Partnership who own less than 5% of the limited partnership interests in such Partnership will not be "affiliated persons" of the Partnership or any of its other partners solely by virtue of their status as Limited Partners.

Filing Dates: The application was filed on December 7, 1988, and amended on January 18, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on February 21, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicants, 1600 First Interstate Bank Plaza, 1000 Louisiana, Houston, Texas 77002, Attention: John T. Unger, Esq.

FOR FURTHER INFORMATION CONTACT: Thomas Mira, Staff Attorney (202) 272-3047, or Brion R. Thompson, Branch Chief (202) 272-3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. The Partnership is a recently formed Delaware limited partnership. The Partnership has elected to be a business development company and, thus, will be subject to sections 55 through 65 of the 1940 Act and to those sections of the 1940 Act made applicable to business development companies by section 59 thereof. The Partnership will terminate no later than December 31, 1999, or 9 years from the final closing, if later, unless extended for up to four additional one-year periods.

2. The Partnership filed a registration statement under the Securities Act of 1933 with respect to an aggregate offering of up to 150,000 units of limited partners' interests in the Partnership ("Units"). Equus Securities Incorporated will act as the selling agent for the Units on a "best efforts" basis.

3. The General Partners of the Partnership will consist initially of three Independent General Partners (defined to be individuals who are natural persons and who are not "interested persons" of such Partnership within the meaning of the 1940 Act) and ECC, as managing general partner. A majority of the General Partners must be Independent General Partners. The Partnership Agreement provides that if at any time the number of Independent General Partners is less than a majority of the General Partners, then within 90 days thereafter, the remaining Independent General Partners shall designate and admit one or more Independent General Partners so as to restore the number of Independent General Partners to a majority of the General Partners.

4. ECC will be responsible, subject to the supervision of the Independent General Partners, for approving the Partnership's investments, assisting portfolio companies in arranging debt financing, providing managerial assistance to portfolio companies and for the admission of additional or

assignee Limited Partners to the Partnership. Equus Capital Management Corporation ("ECMC") will act as the management company to the Partnership pursuant to an agreement ("Management Agreement") with the Partnership. Under the Management Agreement, ECMC will be responsible for the identification of all investments to be made by the Partnership and will perform other functions carried out by an investment adviser to a business development company. Pursuant to a separate agreement, ECMC will also provide certain administrative services to the Partnership. ECC and ECMC are registered investment advisers under the Investment Advisers Act of 1940 ("Advisers Act")

5. The Partnership will be managed solely by the Independent General Partners thereof, except with regard to those specific activities of such Partnership for which ECC, in its capacity as the managing general partner of the Partnership, will be responsible. The Independent General Partners of the Partnership will provide overall guidance and supervision of Partnership operations and will perform the same functions as directors of a corporation. The Independent General Partners will assume the responsibilities and obligations imposed by the 1940 Act and the regulations thereunder on the non-interested directors of a registered investment company formed as a corporation.

6. The Limited Partners of the Partnership have no right to control the Partnership's business, but may exercise certain rights and powers under the Partnership Agreement, including voting rights and the giving of consents and approvals provided for in the Partnership Agreement. Limited Partners will be afforded all voting rights required by the 1940 Act. It is the opinion of counsel to the Partnership, which is relying on the opinion of Delaware counsel, that the existence of these voting rights does not subject the Limited Partners to liability as general partners under the Revised Uniform Limited Partnership Act of the State of Delaware. In addition, the Partnership Agreement will obligate the General Partners of the Partnership to take all action which may be necessary or appropriate to protect the limited liability of the Limited Partners. An insurance policy to provide coverage to persons who become Limited Partners in the Partnership has not been obtained. The Independent General Partners of the Partnership will review periodically the question of the appropriateness of obtaining an errors and omissions insurance policy for the Partnership.

Applicants' Legal Analysis

1. Applicants request that the Partnership and the Independent General Partners of the Partnership be exempted from section 2(a)(19) of the 1940 Act to the extent that the Independent General Partners would be deemed "interested persons" of the Partnership or of ECC within the meaning of that Section because they are general partners of the Partnership and "co-partners" with ECC. Section 2(a)(19) of the 1940 Act excludes from the definition of "interested persons" of an investment company formed as a corporation those individuals who would be "interested persons" solely because they are directors of such investment company, but there is no equivalent exception for partners of an investment company formed as a partnership.

2. Applicants further requests an exemption from section 2(a)(3)(D) of the 1940 Act to the extent it makes any Limited Partner an "affiliated person" of the Partnership, any other Limited Partner, any of the Independent General Partners or ECC solely because such Limited Partner is a partner of the Partnership. Limited Partners have no exclusion under the 1940 Act comparable to that provided under section 2(a)(3) to shareholders owning less than 5% of the shares of an investment company in corporate form.

3. Applicants believe that the requested relief will place investments in the Partnership on a footing more equal with investment in business development companies organized as corporations. Applicants submit that the request for an order exempting the Independent General Partners of the Partnership from section 2(a)(19) and Limited Partners who own less than 5% of the Units from section 2(a)(3)(D), is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

Applicants' Conditions

If the requested order is granted, Applicants expressly consent to the following conditions:

1. The Partnership will be structured so that the Independent General Partners are the functional equivalent of the non-interested directors of an incorporated investment company registered under the 1940 Act.

2. Under the Partnership Agreement, the Partnership is authorized to make in-kind distributions of its portfolio securities to its partners. However, the Partnership agrees not to make any in-kind distributions of portfolio securities to its partners until obtaining either a "no-action" letter from the staff of the SEC confirming the Partnership's interpretation of section 205 of the Advisers Act (i.e., that realized gains or losses attributable to securities distributed in-kind to partners are properly deemed realized upon such distribution) or an exemption from section 205 of the Advisers Act by a SEC order issued pursuant to section 206A of the Advisers Act permitting the Partnership to deem such gains or losses to be realized upon in-kind distributions.

3. Applicants will obtain an opinion of counsel satisfactory to the Independent General Partners that the distributions and allocations to ECMC can be paid in accordance with section 205 of the Advisers Act. Applicants do not request SEC review or approval of such opinion.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-2290 Filed 1-31-89; 8:45am]

BILLING CODE 8010-01-M

[Rel. No. IC-16783; (812-7202)]

Kagan Media Partners, L.P., et al.; Application

January 26, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: Kagan Media Partners, L.P. ("Partnership"), Kagan Media Capital inc. ("Investment Adviser") and Paine Webber Media Inc. ("Administrative General Partner").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from provisions of sections 2(a) (19) and 2(a)(3)(D) of the 1940 Act.

Summary of Application: Applicants seek an order determining that (1) the Independent General Partners (as hereinafter defined) are not "interested persons" of the Partnership, the Investment Adviser or the Administrative General Partner within the meaning of section 2(a) (19) of the 1940 Act solely by reason of their status as partners of the Partnership and (2) the limited partners who own less than a 5% limited partnership interest in the Partnership will not be deemed "affiliated persons" of the Partnership or its partners within the meaning of section 2(a)(3)(D) of the 1940 Act solely by virtue of their status as limited partners of the Partnership.

Filing Dates: The application was filed on December 20, 1988, and amended on January 23, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this Application, or ask to be notified if a hearing is ordered. Any requests for a hearing must be received by the SEC by 5:30 p.m., on February 21, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicants, c/o Peter F. Olberg, Esq., Battle Fowler, 280 Park Avenue, New York, NY 10017.

FOR FURTHER INFORMATION CONTACT: Thomas Mira, Staff Attorney (202) 272-3047, or Brion Thompson, Branch Chief (202) 272-3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. The Partnership is a newly formed limited partnership organized under Delaware law which will be governed by an Amended and Restated Agreement of Limited Partnership (the "Partnership Agreement"). The Partnership will elect to operate as a business development company under the 1940 Act and, therefore, will be subject to sections 55 through 65 of the 1940 Act and to those sections of the 1940 Act made applicable to business development companies by section 59 thereof. The Partnership will have a term of twelve years from the date of the initial closing for units representing beneficial interest in the Partnership ("Units").

2. The Partnership has been designed to provide individuals the opportunity to participate in the financing or acquisition of existing cable television systems and radio and broadcast television stations ("Media Properties"). On November 17, 1988, the Partnership filed a registration statement with respect to an aggregate offering by the Partnership of up to 3,000,000 Units. The initial public offering price will be $20.00 per Unit, with a maximum aggregate offering price of $60,000,000. PaineWebber Incorporated will act the selling agent for the Partnership of a "best efforts" basis.

3. The General Partners of the Partnership will consist of the Investment Adviser, the Administrative General Partner (collectively the Investment Adviser and the Administrative General Partner are referred to as the "Operating General Partners") and three natural persons who would not, but for their status as partners, be "interested persons" of the Partnership, as that term is defined in the 1940 Act ("Independent General Partners"). A majority of the General Partners must be Independent General Partners.

4. The Investment Adviser will be a registered investment adviser under the Investment Advisers Act of 1940 ("Advisers Act") and will act as the investment adviser to the Partnership pursuant to an investment advisory contract between the Partnership and the Investment Adviser ("Advisory Agreement"). The Investment Adviser will be solely responsible for locating and proposing the investments for the Partnership. If a proposed investment is within the investment guidelines approved by the Independent General Partners, the investment may be made if it is approved by both Operating General Partners, or, by the Investment Adviser and a majority of the Independent General Partners; if it is not within such guidelines, it may be made only if it is approved by both Operating General Partners and a majority of the Independent General Partners. In addition, the Investment Adviser will have ongoing responsibility for the day to day operation and management of the Partnership's investments, including the provision of "significant managerial assistance" (as that term is defined in section 2(a)(48)) to Media Property operators.

5. The administrative General Partner will have overall responsibility for the discharge of all necessary Partnership administrative functions and will assist the Investment Adviser in structuring investments and borrowings of the Partnership. The Administrative General Partner will be solely responsible for the coordination of investor relations with the Partnership.

6. The Independent General Partners will provide overall guidance and supervision with respect to the operations of the Partnership, including supervision of the compensation arrangements between the Partnership and the Operating General Partners, annual approval of the Advisory Agreement and relevant portions of the Partnership Agreement and the right to approve the investment guidelines for the Partnership. The Independent General Partners will act by majority vote, will perform essentially the same functions as directors of a corporation and will, in addition, assume the responsibilities and obligations imposed by the 1940 Act, and the regulations thereunder, with respect to non-interested directors of an incorporated business development company.

7. The limited partners cannot participate in the management or control of the Partnership. However, the limited partners will be afforded all voting rights required by the 1940 Act. In addition, the Partnership Agreement provides that limited partners will have the right to approve certain specified matters, including the admission of persons as general or limited partners, the amendment of the Partnership Agreement, the dissolution of the Partnership, the election or removal of General Partners, the initial approval or disapproval of the Advisory Agreement and the approval of the sale of substantially all of the Partnership's assets. It is the opinion of counsel for the Partnership that the existence or exercise of these voting rights by the limited partners does not subject them to liability as general partners under the Revised Uniform Limited Partnership Act of the State of Delaware. In addition, the Partnership Agreement will obligate the General Partners to take all actions as may be necessary or appropriate to protect the limited liability of the limited partners.

8. The Partnership has considered the possibility of obtaining errors and omissions insurance. In light of the view of the staff of the SEC that substantial insurance coverage is appropriate in view of the special problems of using the limited partnership form for registered investment companies, the General Partners will periodically review the question of the appropriateness of obtaining an errors and omissions insurance policy for the Partnership.

Applicants' Legal Analysis

1. Applicants request that the Partnership and the Independent General Partners of the Partnership be exempted from the provisions of section 2(a)(19) of the 1940 Act to the extent that the Independent General Partners would otherwise be deemed to be "interested

persons" of the Partnership, the Investment Adviser and the Administrative General Partner by reason of their status as partners of the Partnership. Section 2(a)(19) of the 1940 Act excludes from the definition of "interested persons" of an investment company those individuals who would be "interested persons" solely by reason of their status as directors of an incorporated investment company. There is no equivalent exception for partners of an investment company formed as a partnership.

2. Applicants further request that limited partners owning less than a 5% interest of the Units not be deemed to be "affiliated persons" of the Partnership, any other limited partner, any of the Independent General Partners, the Investment Adviser or the Administrative General Partners within the meaning of section 2(a)(3)(D) of the 1940 Act solely because such limited partners are partners of the Partnership as well as each other limited partner and the General Partner. Section 2(a)(3) of the 1940 Act exempts from the definition of "affiliated person" shareholders of an incorporated investment company who own less than a 5% interest in such corporation. There is no comparable exception for partnerships.

3. Applicants submit that the requested relief will place investments in the Partnership on a more equal footing with investments in business development companies organized as corporations. Applicants further submit that granting the requested exemptions from provisions of sections 2(a)(19) and 2(a)(3)(D) of the 1940 Act is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Applicants' Conditions

If the requested order is granted, Applicants agree to the following conditions:

1. The Partnership will be structured so that the Independent General Partners will be the functional equivalents of non-interested directors of an incorporated investment company under the 1940 Act.

2. The Partnership will not make any in-kind distributions of portfolio securities to the General Partners of the Partnership unless and until the Partnership has obtained either a "no-action" letter from the SEC staff or, alternatively, an order of exemption pursuant to section 206A of the Advisers Act permitting such distributions.

3. The Partnership will obtain an opinion of counsel satisfactory to the Independent General Partners that the distributions and allocations to the Operating General Partners can be paid in accordance with section 205 of the Advisers Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-2291 Filed 1-31-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16778; (812-7150)]

Merrill Lynch Institutional Fund, Inc., et al.; Application

January 25, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Amendment of Order of Exemption under the Investment Company Act of 1940 (the "Act").

Applicants: Merrill Lynch Institutional Fund Inc., Merrill Lynch Government Fund Inc., Merrill Lynch Institutional Tax-Exempt Fund, Merrill Lynch Institutional Intermediate Fund, Merrill Lynch Funds for Institutions Series, Merrill Lynch Institutional Index Series, and each open-end management investment company to be established, advised or managed in the future by Merrill Lynch Asset Management, Inc. ("MLAM") or Fund Asset Management, Inc. ("FAMI"), or to be distributed by Merrill Lynch Funds Distributor, Inc. ("MLFD") (all of the foregoing being referred to as the "Applicants").

Relevant 1940 Act Section: Exemption is requested under section 6(c) of the Act from the provisions of section 2(a)(19) of the Act.

Summary of Application: Applicants seek an order amending a prior order dated May 24, 1984 (Investment Company Act Release No. 13962) ("1984 Order"). The requested amended order will declare that Charles C. Cabot, Jr., a director/trustee of the Applicants, shall not be deemed an "interested person" of the Applicants or their investment adviser, MLAM or FAMI, or their principal underwriter, MLFD by reason of his being a partner of the law firm of Sullivan & Worcester.

Filing Dates: The Application was filed on October 14, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on February 16, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, Merrill Lynch Asset Management, Inc., P.O. Box 9011, Princeton, New Jersey 08543-9011.

FOR FURTHER INFORMATION CONTACT: Bibb L. Strench, Staff Attorney (202) 272-2856 or Karen L. Skidmore, Branch Chief (202) 272-3023, Office of Investment Company Regulation.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicants are diversified, open-end management investment companies registered under the Act. Applicants are designed primarily for institutional investors. Each Applicant has entered into or will enter into an investment advisory or management agreement with MLAM or FAMI and a Distribution Agreement with MLFD. FAMI is a wholly owned subsidiary of MLAM, which is a wholly owned subsidiary of Merrill Lynch & Co., Inc., a publicly held corporation. MLAM and FAMI have substantially the same identity with the same directors and executive officers and insofar as investment company operations, the same employees.

2. An applicantion was filed with the Commission on March 8, 1984 ("1984 Application") requesting an order pursuant to section 6(c) of the Act that Charles C. Cabot, Jr. shall not be deemed an "interested person" by reason of his being a partner of the law firm Sullivan & Worcester within the meaning of section 2(a)(19) of the Act of Merrill Lynch Institutional Fund Inc., Merrill Lynch Government Fund Inc., Merrill Lynch Institutional Tax-Exempt Fund, FAMI or MLFD ("Prior Applicants"). An Order granting the requested relief was issued on May 24, 1984 (Investment Company Act Release No. 13911). The order was conditioned on Sullivan & Worcester not acting as legal counsel to the Prior Applicants.

3. In the 1984 Application, the Prior Applicants represented that Sullivan & Worcester had performed certain limited legal services for Merrill Lynch & Co., Inc. and its wholly owned subsidiaries Merill Lynch, Pierce, Fenner & Smith ("MLPFS"), and Government Securities Inc. These legal services primarily involved litigation conducted on behalf of MLPFS and Sullivan & Worcester had on occasion acted as counsel for the underwriters of municipal bond or note issues with respect to which MLPFS served as one of the underwriters in the selling syndicate. They further represented that Mr. Cabot had never participated in Sullivan & Worcester's representation of MLPFS or any of its affiliates except with respect to the bond and note issues mentioned above.

4. Applicants seek to amend the 1984 Order to declare that Mr. Cabot shall not be deemed an "interested person" of the Applicants or their investment adviser, MLAM or FAMI, or their principal underwriter, MLFD, by reason of his being a partner of the law firm of Sullivan & Worcester.

5. Applicants note that since the issuance of the 1984 Order described above, Mr. Cabot has joined the Board of Trustees of Merrill Lynch Institutional Intermediate Fund, Merrill Lynch Funds for Institutions Series and Merrill Lynch Institutional Index Series, all of which have been named additional applicants. Futhermore, MLAM, rather than FAMI, acts as investment adviser to the recently formed applicants.

6. In addition to the legal services referred to in the 1984 Application, Sullivan & Worcester has recently served as counsel to MLPFS with respect to certain investment banking services provided by MLPFS in connection with a proposed leverage buyout. Applicants represent that from time to time, Sullivan & Worcester has performed, continues to perform, and may in the future perform, certain legal services described in the application to Merrill Lynch & Co., Inc. and its wholly owned subsidiaries, including MLPFS ("Merrill Lynch Entities"). Mr. Cabot has informed the Applicants that the annual income to Sullivan & Worcester for providing such services continues to represent less than 1 percent of the firm's total annual income.

7. Applicants state that Mr. Cabot has had no professional or business relationships with any Merrill Lynch Entities other than his position as director/trustee of Applicants and that since the issuance of the 1984 Order, he has not participated personally in Sullivan & Worcester's representation of Merrill Lynch Entities. Other than the additional applicants and investment adviser, and a slight difference in the types of services currently being provided by Sullivan & Worcester to MLPFS, there has been no change in the arrangements described in the application filed in connection with the 1984 Order issued by the Commission.

Applicants' Legal Conclusion

Applicants state that because of the legal services provided by Sullivan & Worcester to Merrill Lynch Entities, Mr. Cabot may be deemed an interested person of the Applicants, MLAM, FAMI and MLFD within the meaning of section 2(a)(19) of the Act, although Mr. Cabot does not fall within the express terms of section 2(a)(19) because neither he nor Sullivan & Worcester has ever provided legal services to the Applicants, MLAM, FAMI or MLFD.

Applicants' Condition

The Applicants agree that any order granted in connection with the Application will be conditioned on Sullivan & Worcester and Mr. Cabot not providing any legal services to the Applicants MLAM, FAMI or MLPFS.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-2292 Filed 1-31-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16781; 812-6555]

Principal Mutual Life Insurance Company, et al.; Application

January 25, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: Principal Mutual Life Insurance Company ("PMLIC"), Princor Government Securities Income Fund, Inc. ("Fund"), and Principal Mutual, Inc. ("PIMC").

Relevant 1940 Act Sections: Order requested under sections 6(c) and 17(b).

Summary of Application: Applicants seek an order to permit the Fund, subject to certain conditions, to purchase mortgage-backed securities guaranteed by the Government National Mortgage Association ("GNMA Certificates") from PMLIC at prices which will be 1/64 of a dollar less than the prices at which PMLIC would sell such securities to dealers.

Filing Date: The application was filed on December 9, 1988, with amendments filed on April 5, 1988 and December 27, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m., on February 21, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. PMLIC, Fund and PIMC, 711 High Street, Des Moines, Iowa 50309.

FOR FURTHER INFORMATION CONTACT: Jeremy N. Rubenstein, Staff Attorney, at (202) 272-2847, or Stephanie M. Monaco, Branch Chief, at (202) 272-3030 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. PMLIC is a mutual life insurance company originally incorporated under the laws of the State of Iowa in 1879. The Fund is a corporation organized under the laws of Maryland on September 5, 1984, and is registered under the 1940 Act as an open-end diversified management company. PIMC, incorporated under the laws of Iowa in 1969, is an indirect wholly-owned subsidiary of PMLIC and is the investment manager and dividend disbursing and transfer agent for the Fund.

2. The investment objective of the Fund is to obtain a high level of current income consistent with liquidity and safety of principal. The Fund seeks to achieve its objective through the purchase of certain types of securities issued or guaranteed by the United States Government or its agencies. The Fund purchased approximately $23,000,000 of GNMA Certificates in 1985, $84,000,000 in 1986 and $13,000,000

in 1987, which purchases represented approximately 95% of the Fund's total investments (other than short-term cash instruments) for each of those years.

3. PMLIC is an approved issuer of GNMA Certificates. In connection with its residential mortgage loan operation, PMLIC routinely forms pools of mortgages and applies to GNMA for approval of the issuance of GNMA Certificates for such pools. The aggregate annual volume of GNMA Certificates issued by PMLIC was appropriately $348,000,000 for 1985, $549,000,000 for 1986 and $586,000,000 for 1987. In the past, PMLIC has sold GNMA Certificates to buyers in the open market. These buyers, normally securities dealers, in turn sell the GNMA Certificates to investors with a mark-up generally of twenty/one-hundredths to fifty/one-hundredths of a percent.

4. Since its inception, the Fund has purchased GNMA Certificates only from a limited group of creditworthy dealers which maintain inventories of such securities. The fund now seeks to be able to buy GNMA Certificates from PMLIC under conditions designed to ensure that the Fund receives prices more favorable than it would otherwise receive from dealers in GNMA Certificates.

5. Applicants propose that in managing the portfolio of the Fund, PIMC may, when deeded appropriate for the Fund, purchase original issue GNMA Certificates representing underlying pools of recently closed loans for the Fund directly from PMLIC rather than in the market, subject to compliance with the conditions listed below. The Fund will be not knowingly purchase any GNMA Certificates from PMLIC which represents an interest in a pool of mortgage loans that includes a loan to any affiliated person of PMLIC, the Fund, PIMC, or any affiliated person of those persons. All GNMA Certificates sold to the Fund by PMLIC will be issued directly to the Fund by PMLIC during the initial distribution period, and no secondary trading in GNMA Certificates will transpire between PMLIC and the Fund.

6. PMLIC will sell GNMA Certificates to the Fund at a price 1/64 of a dollar better (for the Fund) than the prices at which it would sell such certificates to a dealer in the open market. Thus, any markup in the price of the certificates will be eliminated, and in fact the Fund will purchase GNMA Certificates from PMLIC at a better price than would be paid by dealers who would expect to resell those securities at a mark-up. As a result, the Fund will receive a higher yield on those GNMA Certificates than if it were to purchase them from dealers.

7. The Fund will effect purchases and deliveries in the same manner as it currently does with any broker/dealer. It will give PMLIC delivery instructions and those instructions will be given to the Fund's custodian, Northwest Bank, for receipt of the purchased securities versus payment. PMLIC will give notice to its custodian, Bankers Trust, for delivery to the Fund versus payment. Transfer and delivery will occur in the regular course of business for both the Fund and PMLIC.

8. Applicants request exemption from section 17(a) of the 1940 Act only to the extent necessary to permit the transactions with respect to GNMA Certificates issued by PMLIC outlined in paragraphs 5 through 7 above.

Applicants' Legal Conclusions

1. Applicants submit that the terms of the proposed transactions are reasonable and fair and do not involve overreaching on the part of any person concerned. PMLIC will offer its GNMA Certificates to the Fund at a price 1/64 of a dollar better than the price at which it could sell them to unaffiliated dealers in the open market. The purchase price to the Fund would accordingly be less than the price it would otherwise have to pay to purchase GNMA Certificates from dealers, which would involve mark-ups. To determine that the price to the Fund will always be no more than the price obtainable by PMLIC in the market, PMLIC will obtain current (up to the minute) quotes from two or three dealers, selected on a rotating basis from those dealers to whom PMLIC regularly sells GNMA Certificates, before setting the price. The Fund's purchases from PMLIC will be reviewed no less frequently than quarterly by the Board of Directors of the Fund, which has a majority of disinterested directors.

2. Applicants assert that the proposed transactions are consistent with the general purposes of the 1940 Act. Section 1(b)(2) of the 1940 Act declares that the public interest and interest of investors are adversely affected when an investment company is organized and managed in the interest of affiliated persons thereof, rather than in the interest of the company's security holders. While PMLIC, as an organizer of the Fund and potential supplier of GNMA Certificates, will have an interest in the proposed transactions, that interest will not be adverse to the interests of the Fund's shareholders. PMLIC will be offering to the Fund only GNMA Certificates which it could otherwise sell in the market at a better price than that paid by the Fund. On the other hand, the Fund and its shareholders will benefit through purchases at prices which do not include dealer mark-up and which are better than the prices that would be paid by a dealer.

3. Applicants further assert that the proposed transactions are necessary or appropriate in the public interest. Failure to obtain the relief requested would result in the Fund's foregoing the opportunity of obtaining an enhanced return from purchasing GNMA Certificates at a price that more than eliminates dealer mark-up. Applicants know of no other way for the Fund to purchase GNMA Certificates at such a favorable price. Issuers of GNMA Certificates do not maintain inventories of those securities as do dealers.

Applicants' Conditions

Applicants agree that the order granting the application may be expressly conditioned upon their compliance with the following:

1. Before any purchase is effected from PMLIC, PMLIC personnel responsible for executing orders for the Fund will check with at least two dealers in GNMA Certificates to obtain competitive quotations to insure that the prices to be paid by the Fund to PMLIC will be better than the price available from independent dealers. To satisfy this test, the PMLIC price offered to the Fund must be at least 1/64th of a dollar better than the lowest bid price of the independent dealers. The dealers selected will be rotated among those dealers to whom PMLIC ordinarily sells GNMA Certificates.

2. No more than 20% of the Fund's GNMA Certificate purchases in a given fiscal year (measured by dollar amount) may be from PMLIC. No more than 20% of PMLIC's sales of GNMA Certificates in a given fiscal year (measured by dollar amount) may be to the Fund.

3. The Fund will maintain and preserve pursuant to the requirements of Rule 31a–2(a)(2) under the 1940 Act records with respect to its purchases from PMLIC, including documentation of the competitive quotations obtained from dealers, and those records will be available to SEC representatives upon request. In addition, the Fund will file a schedule of its transactions with PMLIC as an Exhibit to each Form N–SAR.

4. PMLIC's law department will prepare and draft guidelines and submit them to the Board of Directors of the Fund for approval, including approval by a majority of the directors who are not interested persons of the Fund. The law department will then circulate to PIMC and PMLIC personnel whose responsibilities may relate to the transactions described in the application the guidelines in the form so approved and information relating to the appropriate implementation thereof to insure that such personnel are thoroughly familiar with the constraints imposed in respect of such transactions. The law department also will periodically monitor the Fund's transactions with PMLIC to make certain that the requirements of these guidelines are strictly adhered to.

5. The Fund's independent auditors will annually review transactions and activities relating thereto to determine compliance with the requirements of the exemptive order and guidelines. The auditors will issue a special report in accordance with Generally Accepted Auditing Standards consistent with SAS No. 14 and SAS No. 35, as appropriate, reporting on compliance with the guidelines. That special report will be filed by the Fund as an exhibit to the Form N–SAR filed after the end of the Fund's fiscal year.[1]

6. The Board of Directors of the Fund or a committee thereof (including a majority of the directors who are not interested persons of the Fund or PMLIC) at least quarterly will review all transactions between the Fund and PMLIC to insure compliance with the Exemptive Order and that all requirements of the guidelines of the Fund with respect to such transactions have been observed and, at least annually, will review the special report prepared by the Fund's independent auditors and the appropriateness of continuing the policy of purchasing GNMA Certificates from PMLIC.

7. The proposed transactions will only be effected provided PMLIC has maintained a claims-paying rating in one of the top two categories of at least one nationally recognized rating organization.

Applicants submit that the foregoing conditions provide assurance that the requested relief will be consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–2293 Filed 1–31–89; 8:45 am]

BILLING CODE 8010–01–M

[1] By letter dated January 25, 1989, Counsel for Applicants informed the Division of Investment Management that, at a minimum, the procedures to be employed by the Fund's independent auditors in connection with the preparation of the special report will include the following: (a) Review of the application; (b) obtaining a schedule of purchases of GNMA Certificates for the applicable year; (c) agreeing (*i.e.*, comparing) the pool number, interest rate, maturity date, principal amount and purchase price of each listed certificate with the Fund's owned, sold and acquired listing; (d) examining the documentation from the security file supporting the price and dealer identity for each competitive bid; (e) comparing the purchase price to the lowest competitive bid to determine whether such price is at least 1/64 of a dollar lower than this competitive bid, and (f) tracing each purchase to approval in the minutes of the meetings of the Fund's Board of Directors on the date indicated.

[Rel. No. 35–24808]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

January 26, 1989.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by February 21, 1989 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the manner. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Jersey Central Power & Light Company (70–7603)

Jersey Central Power & Light Company ("JCP&L"), Madison Avenue at Puch Bowl Road, Morristown, New Jersey 07960, a wholly owned subsidiary of General Public Utilities Corporation, a registered holding company, has filed an application pursuant to section 6(b) of the Act and Rule 50(a)(5) thereunder.

JCP&L proposes to issue and sell from time to time through December 31, 1990 up to: $500 million of first mortgage bonds ("New Bonds"); (2) $500 million of medium-term securities as either unsecured notes or first mortgage bonds ("MTNs"); and (3) a stated value of $100 million of Cumulative Preferred Stock ("New Preferred Stock"), provided that the total principal amount of all such securities to be issued and sold does not exceed $500 million.

The New Bonds and any MTNs issued as first mortgage bonds are to be issued under JCP&L's Mortgage and Deed of Trust ("Mortgage"). The New Bonds will have a term of not less than one and not more than 35 years but will be subject to earlier redemption or retirement upon the occurrence of certain events. In addition, the New Bonds may be subject to optional redemption in whole or in part, by JCP&L beginning not earlier than one year after issuance thereof, at various premiums above the principal amount thereof. The New Bonds may also be entitled to mandatory sinking fund provisions.

Unsecured MTNs would be issued under an indenture between JCP&L and a trustee to be selected. JCP&L will publicly offer the MTNs from time to time through one or more agents. The MTNs will be sold primarily based on their credit ratings with interest rates negotiated at the time of sale based on spreads over comparable maturity U.S. Treasury securities. The maturity dates of the MTNs will range from 9 months to 10 years to be determined by agreement between JCP&L and the respective purchasers. The MTNs will not be redeemable by JCP&L except that MTNs with a maturity in excess of five years will be redeemable at JCP&L's option five years after issuance.

The New Preferred Stock will be similar to JCP&L's outstanding series of cumulative preferred stock, i.e. (1) the New Preferred Stock will have a stated value of not in excess of $100 per share; (2) the dividend rate and redemption prices of the New Preferred Stock will be determined either by competitive bidding or negotiation with underwriters; (3) the New Preferred Stock will contain a refunding limitation providing that the New Preferred Stock may not be redeemed for a period less than ten years from the date if issuance; and (4) the New Preferred Stock may be entitled to a mandatory sinking fund.

JCP&L proposes to issue and sell the New Bonds and the New Preferred Stock either on a competitive basis, subject to the requirements of Rule 50(b) and (c), or under an exception from Rule 50 pursuant to Rule 50(a)(5). JCP&L proposes to issue and sell the MTN's under an exception from Rule 50 persuant to Rule 50(a)(5). JCP&L has requested that it be authorized to begin negotiations with potential agents to

place the New Bonds, the New Preferred Stock and MTN's. It may do so.

Alabama Power Company (70–7609)

Alabama Power Company ("Alabama"), 600 North 18th Street, Birmingham, Alabama 35291, an electric utility subsidiary of The Southern Company, a registered holding company, has filed a declaration pursuant to section 12(d) of the Act and Rule 44 thereunder.

Alabama proposes to sell an 8.16% undivided ownership interest ("Undivided Interest") in Units No. 1 and 2 of Alabama's James H. Miller, Jr. Steam Electric Generating Plant and related facilities ("Miller Units 1 and 2"), to Alabama Electric Cooperative, Inc. ("AEC"), a generating and transmitting cooperative, pursuant to a Purchase and Ownership Agreement. It is proposed that the sale will be closed on or after January 1, 1991 and no later than June 1, 1992.

The purchase price to be paid by AEC for the Undivided Interest in Miller Units 1 and 2 will be calculated at the time of sale in accordance with a formula contained in the Purchase and Ownership Agreement. This formula generally provides that the purchase price will be equal to Alabama's net book value of the facilities being sold, plus construction work in progress and an amount representing taxes, if any, incurred by Alabama as a result of the sale. The purchase price which would be produced currently by the formula would be approximately $50 million.

Alabama and AEC have entered into a separate operating agreement providing that Alabama will be solely responsible for the operation and maintenance of Miller Units 1 and 2 and that payments for the operation and maintenance will be provided by Alabama and AEC equal to their respective ownership interests in Miller Units 1 and 2.

Appalachian Power Company (70–7620)

Appalachian Power Company ("APCo"), 40 Franklin Road, Roanoke, Virginia 24022, an electric public utility subsidiary of American Electric Power Company, Inc., a registered holding company, has filed a declaration pursuant to section 12(d) of the Act and Rule 44 promulgated thereunder.

APCo proposes to sell to its industrial customer, Virginia Polytechnic Institute and State University ("VPI–SU"), certain transformation and other related equipment ("Facilities") located at APCo's Blacksburg 69/12 KV Station in Blacksburg, Virginia, for a purchase price of $450,000 in cash, which represents the original cost less accumulated depreciation. The Facilities are situated on real property owned by VPI–SU in Blacksburg, Virginia and are now employed by APCo for providing service exclusively to VIP–SU. It is stated that the Facilities are not adaptable, at that location, for use in serving any other customer.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–2294 Filed 1–31–89; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Areas #2327 and 2328; Amdt. #1]

Missouri and Contiguous Counties in the State of Arkansas; Declaration of Disaster Loan Area

The above-numbered Declaration (54 FR 1834) is hereby amended to authorize physical disaster assistance to victims located in all counties contiguous to Barry County, Missouri. All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on March 6, 1989, and for economic injury until the close of business on October 4, 1989.

The number assigned to this disaster for physical damage for contiguous counties in the State of Arkansas is 232812.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: January 18, 1989.

James Abdnor,

Administrator.

[FR Doc. 89–2307 Filed 1–31–89; 8:45 am]

BILLING CODE 8025–01–M

Region VI Advisory Council; Public Meeting

The U.S. Small Business Administration, Region VI Advisory Council, located in the geographical area of New Orleans will hold a public meeting scheduled at 9:00 a.m. on Thursday, February 9, 1989, at the Small Business Administration Office, 1661 Canal Street, Suite 2000, New Orleans, Louisiana, to discuss such matters as may be presented by members, staff of the U. Small Business Administration, or others present.

For further information, write or call Abby H. Carter, District Director, U.S. Small Business Administration, 1661 Canal Street, Suite 2000, New Orleans, Louisiana 70112–2890, 504/589–2744.

Jeannette M. Paull,

Acting Director, Office of Advisory Councils.

January 26, 1989.

[FR Doc. 89–2306 Filed 1–31–89; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; San Jose, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Santa Clara County, California.

FOR FURTHER INFORMATION CONTACT: D.L. Eyres, District Engineer, Federal Highway Administration, P.O. Box 1915, Sacramento, California 95812–1915, Telephone: (916) 551–1314.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation and the City of San Jose, will prepare an Environmental Impact Statement (EIS) on a proposal to upgrade existing State Route 87 (Guadalupe Parkway) in San Jose, California. The proposed improvement would involve construction of additional lanes, grade separations, and interchanges on Route 87 between Julian Street and U.S. Route 101, a distance of approximately 3.1 miles.

Locations on Route 87 being considered for grade separations are West Hedding Street and Airport Parkway. Locations on Route 87 being considered for interchanges are West Taylor Street, Skyport Drive, and Airport Parkway. No interchange between Route 87 and I–880 is being proposed as a part of this project. Alternatives under consideration include (1) taking no action; and (2) various designs and locations for the proposed grade separations and interchanges.

The action is being proposed to provide for the existing and projected traffic demand resulting from overall growth, growth of downtown San Jose, and expansion of the adjacent San Jose International Airport.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public meetings and workshops will be held in the project area; public notice will be given of the time and place of these meetings and workshops. In addition, a formal scoping meeting will be held at 7:00 p.m. on Thursday, February 16, 1989 in the City Council Chambers, San Jose City Hall, 801 North First Street, San Jose.

The draft EIS will be available for public and agency review prior to a public hearing on the project.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties including the views of agencies which may have knowledge about historic reources potentially affected by the proposal or interested in the effect of the project on historic properties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided on page 1 of this document.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: January 24, 1989.

David L. Eyres,

District Engineer, Sacramento, California.

[FR Doc. 89–2263 Filed 1–31–89; 8:45 am]

BILLING CODE 4910–22–M

Federal Railroad Administration

[FRA Waiver Petition Docket Number PB–88–4]

Public Hearing on Association of American Railroads' Waiver Petition on Air Flow System

In accordance with 49 CFR 211.41, notice is given that the Federal Railroad Administration (FRA) will hold a public hearing on the Association of American Railroads' (AAR) petition for a waiver of compliance with certain provisions of FRA's power brake regulations, in order to use the air flow method (AFM) for train brake qualification as an alternate to the leakage test. This proceeding is identified as FRA Waiver Petition Docket Number PB–88–4.

AAR's specific request is for relief from certain provisions of the power brake regulations set forth in 49 CFR 232.12 and 232.13 relative to leakage tests. AAR seeks this waiver on behalf of its member railroads; all railroads owned by, controlled by or affiliated with its member railroads; and all railroads owned by, controlled by, or affiliated with its other member companies. (For further details, see FRA notice published at 43 FR 36935–36936, September 22, 1988).

The Railway Labor Executives' Association, Brotherhood of Locomotive Engineers, and Alabama Public Service Commission have protested AAR's application and requested a hearing. After examining AAR's petition, the protests and hearing requests, and the available facts, FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 10 a.m. on March 7, 1989, in Room 2230 at 400 Seventh Street SW., Washington, DC 20590.

The hearing will be an informal, nonadversary proceeding and will be conducted by a representative designated by FRA. Strict rules of evidence will not apply, and cross-examination will be somewhat limited. The FRA representative will make an opening statement outlining the scope of the hearing. Then each person in attendance will be permitted to make an initial statement. After each initial statement is completed, the hearing officer, the technical panel, and the audience will be allowed to question the witness. After all the initial statements are completed, those persons who wish to make brief rebuttal statements will be given the opportunity to do so, in the same order in which they made their initial statements. In addition, written statements or other documents may be submitted at the hearing for inclusion in the record of this proceeding. If practical, eight copies of each written statement or other document should be submitted. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC on January 13, 1989.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 89–2251 Filed 1–31–89; 8:45 am]

BILLING CODE 4910–06–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 2–89]

Treasury Notes, Series V–1991

January 26, 1989.

The Secretary announced on January 25, 1989, that the interest rate on the notes designated Series V–1991, described in Department Circular—Public Debt Series—No. 2–89 dated January 19, 1989, will be 9 percent. Interest on the notes will be payable at the rate of 9 percent per annum.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 89–2306 Filed 1–31–89; 8:45 am]

BILLING CODE 4810–40–M

VETERANS' ADMINISTRATION

Scientific Advisory Committee to the National Vietnam Veterans Readjustment Study; Meeting

In accordance with Pub. L. 92–463, the Veterans' Administration gives notice that a meeting of the Scientific Advisory Committee to the National Vietnam Veterans Readjustment Study will be held at the Stouffer Concourse Hotel, 2399 Jefferson Davis Highway, Arlington, Virginia, on February 23, 1989, beginning at 9 a.m. The purpose of this meeting is to review publication policies and evaluate further analysis of the National Vietnam Veterans Readjustment Study, mandated by Pub. L. 98–160.

The meeting will be open to the public (to the seating capacity of the room) until noon during which time the committee will cover administrative matters, discuss the general status of the study, and review publication policies. During the closed session, beginning at 1 p.m. the Committee will be further analyzing the study. Disclosure of this discussion, including specific survey techniques, could serve as a source of sample contamination that could invalidate the total research effort. Thus, the closing is in accordance with section 552b, subsection (c)(9)(B), 5 U.S.C., and the determination of the Administrator of Veterans Affairs under section 10(d) of Pub. L. 92–463 as amended by section 5(c) of Pub. L. 94–409.

Due to the limited seating capacity of the room, those who plan to attend the open session should contact Dr. Thomas L. Murtaugh, Project Officer, National Vietnam Veterans Readjustment Study, 1521 A South Edgewood St., Baltimore, MD 21227 (Phone—301/646–5604) at least 5 days before the meeting.

Dated: January 27, 1989.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 89–2359 Filed 1–31–89; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 20
Wednesday, February 1, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL COMMUNICATIONS COMMISSION

Deletion of Agenda Item from January 30th Open Meeting

January 30, 1989.

The following item has been deleted from the list of agenda items scheduled for consideration at the January 30, 1989 Open Meeting and previously listed in the Commission's Notice of January 23, 1989.

Agenda, Item No., and Subject

Common Carrier—1—Title: In the Matter of Policy and Rules concerning Rates for Dominant Carriers, CC Docket No. 87-313. Summary: The Commission will consider further actions regarding the regulation of rates for dominant carrier interstate basic service offerings (price caps). Issued: January 30, 1989.

Additional information concerning this meeting may be obtained from Audrey Spivack, Office of Public Affairs, telephone number (202) 632-5050.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-2446 Filed 1-30-89; 2:27 pm]

BILLING CODE 6712-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

January 26, 1989.

TIME AND DATE: 10:00 a.m., Thursday, February 2, 1989.

PLACE: Room 600, 1730 K Street NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Possible revisions to Commission Procedural Rules 45 & 46, and 56-60, 29 CFR §§ 2700.45 and 2700.46, and 2700.56-2700.60.

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653-5629/(202) 566-2673 for TDD relay.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 89-2413 Filed 1-30-89; 11:20 am]

BILLING CODE 6735-01-M

DEPARTMENT OF JUSTICE

Parole Commission

Pursuant to the Government in the Sunshine Act (Pub. L. 94-409) [5 U.S.C. 552b]

DATE AND TIME: Tuesday, February 7, 1989, 2:00 a.m., Eastern Standard Time.

PLACE: 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

STATUS: Open—Meeting.

MATTERS TO BE CONSIDERED: Due to a legal opinion from the Assistant Attorney General, Criminal Division of the Department of Justice, received on January 27, 1989, the following matter has been added to the agenda for the open Parole Commission meeting:

Proposal to modify the language of 28 CFR 2.57 for automatic forfeiture of street time in special parole term revocation cases.

AGENCY CONTACT: Linda Wines Marble, Director, Case Operations and Program Development, United States Parole Commission, (301) 492-5952.

Dated: January 30, 1989.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 89-2444 Filed 1-30-89; 1:50 pm]

BILLING CODE 4410-01-M

Corrections

Federal Register
Vol. 54, No. 20
Wednesday, February 1, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the United Mexican States

Correction

In notice document 88-29770 beginning on page 52461 in the issue of Wednesday, December 28, 1988, make the following correction:

1. On page 52462, in the first page-column, in the second table-column, the 12th entry should read "1,202,020 kilograms".

2. On the same page, in the same page-column, in the first table-column, the 14th entry should read "369-U[12]".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 704

[OPTS-82013C; FRL-3368-1]

Comprehensive Assessment Information Rule

Correction

In rule document 88-26445 beginning on page 51698 in the issue of Thursday, December 22, 1988, make the following corrections:

1. On page 51709, in the table, in the first table-column, the first entry should read "EPA/OTS/ECAD[2]".

2. On the same page, in the fourth table-column, the fifth entry was omitted and should read "1".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPP-240063; FRL-3477-6]

State Registration of Pesticides

Correction

In notice document 88-26431 beginning on page 46112 in the issue of Wednesday, November 16, 1988, make the following corrections:

1. On page 46113, in the third column, under **Georgia**, in the third line, "Relex" should read "Reflex".

2. On the same page, in the same column, under **Georgia**, in the second paragraph, in the first line, "SLNB" should read "SLN".

3. On the same page, in the same column, under **Hawaii**, in the first line, "Rohn" should read "Rohm".

4. On page 46114, in the second column, under **Mississippi**, in the fourth line, "fames" should read "forms".

5. On the same page, in the same column, under **Nebraska**, in the third line, "arious" should read "various".

BILLING CODE 1505-01-D

DEPARTMENT CF THE TREASURY

Customs Service

19 CFR Part 152

Dutiability of Quota Charges; Solicitation of Comments

Correction

FR Doc. 89-1447, extending the comment period on the dutiability of quota charges, published at page 3443 in the issue of Tuesday, January 24, 1989, incorrectly appeared in the Rules section. It should have appeared in the Proposed Rules section.

BILLING CODE 1505-01-D

federal register

Wednesday
February 1, 1989

Part II

Department of the Treasury

Customs Service

Notice That Entry/Entry Summary Required for Importation of Hong Kong Textiles; Change of Effective Date

DEPARTMENT OF THE TREASURY

Customs Service

Notice That Entry/Entry Summary Required for Importation of Hong Kong Textiles; Change of Effective Date

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of Change of Effective Date.

SUMMARY: Customs published a notice in the **Federal Register** (54 FR 349) on January 5, 1989, stating that Customs will require the filing of an entry/entry summary ("live" entry) for all textiles and textile articles of Hong Kong origin which have a textile category number. The effective date set for the requirement stated in that notice was February 1, 1989. A determination has been made to delay the effective date of the requirement until April 1, 1989.

EFFECTIVE DATE: April 1, 1989.

FOR FURTHER INFORMATION CONTACT: Dick Crichton, Office of Trade Operations, (202) 566-9443.

SUPPLEMENTARY INFORMATION: On January 5, 1989, Customs published a document in the **Federal Register** (54 FR 349) stating that Customs will require the filing of an entry/entry summary ("life" entry) for all textiles and textile articles of Hong Kong origin which have a textile category number. The effective date set for the requirement stated in that notice was February 1, 1989. A correction document for that notice was published on January 17, 1989 (54 FR 1844).

A decision has been made by Customs to delay the effective date of the entry/entry summary requirements for Hong Kong textiles and textile articles until April 1, 1989. This document is notice of the delayed effective date.

Michael H. Lane,

(Acting) Commissioner of Customs.

Dated: January 30, 1989.

[FR Doc. 89-2506 Filed 1-31-89; 10:19 am]

BILLING CODE 4820-02-M

federal register

Wednesday
February 1, 1989

Part III

United States Information Agency

Culturally Significant Objects Imported for Exhibition; Determination; Notice

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Treasurers from the Fitzwilliam Museum" (see list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the National Gallery of Art in Washington, DC, beginning on or about March 19, 1989, to on or about June 18, 1989, at the Kimbell Art Museum in Fort Worth, Texas, beginning on or about July 15, 1989, to on or about October 8, 1989, at the National Academy of Design in New York, NY, beginning on or about November 5, 1989, to on or about January 28, 1990, at the High Museum of Art in Atlanta, Georgia, beginning on or about February 20, 1990, to on or about May 6, 1990, and at the Los Angeles County Museum of Art in Los Angeles, California, beginning on or about June 21, 1990, to on or about September 9, 1990, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**.

R. Wallace Stuart,

Acting General Counsel.

Date: January 31, 1989.

[FR Doc. 89–2518 Filed 1–31–89; 11:04 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is 202–485–7979, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547.

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Reader Aids

Federal Register

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FEDERAL REGISTER PAGES AND DATES, FEBRUARY

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CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

Last List November 30, 1988

The **List of Public Laws** will be resumed when bills are enacted into public law during the first session of the 101st Congress, which convened on January 3, 1989. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

TABLE OF EFFECTIVE DATES AND TIME PERIODS—FEBRUARY 1989

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
February 1	February 16	March 3	March 20	April 3	May 2
February 2	February 17	March 6	March 20	April 3	May 3
February 3	February 21	March 6	March 20	April 4	May 4
February 6	February 21	March 8	March 23	April 7	May 8
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February 8	February 23	March 10	March 27	April 10	May 9
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February 22	March 9	March 24	April 10	April 24	May 23
February 23	March 10	March 27	April 10	April 24	May 24
February 24	March 13	March 27	April 10	April 25	May 25
February 27	March 14	March 29	April 13	April 28	May 30
February 28	March 15	March 30	April 14	May 1	May 30

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2-2-89
Vol. 54 No. 21

federal register

Thursday
February 2, 1989

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2-2-89
Vol. 54 No. 21
Pages 5207-5404

federal register

Thursday
February 2, 1989

Briefings on How To Use the Federal Register—
For information on briefings in Washington, DC, and Austin, TX, see announcement on the inside cover of this issue.

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Part 305

Recommendations of the Administrative Conference Regarding Administrative Practice and Procedure

AGENCY: Administrative Conference of the United States.

ACTION: Recommendations.

SUMMARY: The Administrative Conference of the United States, at its Thirty-eighth Plenary Session, adopted three recommendations.

Recommendation 88-9, Presidential Review of Agency Rulemaking, endorses continuation of presidential review of agency rulemaking with certain guidelines as to its implementation that are set forth in the recommendation. The term "presidential review" is used in the recommendation to refer to a program of systematic oversight and dialogue that involves coordinating agency actions where conflicts exist, and probing the agency's fact and policy judgments with the purpose of ensuring that the agency considers factors of importance to the President's policies to the extent permitted by law. However the term "presidential review" does not include displacement of responsibilities placed in the agency by law or the use of factors not otherwise permitted by law. In addition, the Conference does not address review of agency rulemaking of an ad hoc nature pursuant to the President's constitutional authority.

Recommendation 88-10, Federal Use of Computers in Acquiring and Releasing Information, is intended to guide agencies in addressing the questions that will arise when an agency considers whether to acquire or release information in electronic form. The recommendation suggests an analytical framework for assessing options when electronic acquisition or release of information may facilitate performance of the agency's mission or may be helpful in fulfilling agency obligations under the Freedom of Information Act. Relevant factors identified in the recommendation include costs and benefits as well as the appropriate roles of the public and private sectors. The Conference also urges agencies to experiment with electronic means of providing public participation in administrative proceedings.

Recommendation 88-11, Encouraging Settlements by Protecting Mediator Confidentiality, suggests several steps intended to ensure appropriate confidentiality to information divulged to mediators and other neutrals in the course of settlement negotiations involving a statute, rule or policy administered by a federal agency. The recommendation covers agency use of contracts, policy statements and procedural rules to ensure confidentiality of information in appropriate situations, and it contains a model rule that agencies may adopt to govern confidentiality of communications with mediators.

Recommendations of the Administrative Conference are published in full text in the Federal Register upon adoption. Complete lists of recommendations, together with the texts of those deemed to be of continuing interest, are published in the Code of Federal Regulations (1 CFR Part 305).

DATES: These recommendations were adopted December 8-9, and issued January 27, 1989.

FOR FURTHER INFORMATION CONTACT: Jeffrey S. Lubbers, Research Director (202-254-7065).

SUPPLEMENTARY INFORMATION: The Administrative Conference of the United States was established by the Administrative Conference Act, 5 U.S.C. 571-576. The Conference studies the efficiency, adequacy, and fairness of the administrative procedures used by federal agencies in carrying out administrative programs, and makes recommendations for improvements to the agencies, collectively or individually, and to the President, Congress, and the Judicial Conference of the United States (5 U.S.C. 547[1]).

At its Thirty-eighth Plenary Session, held December 8-9, 1988, the Assembly of the Administrative Conference of the United States adopted three recommendations, the texts of which are set out below. These texts will be transmitted to the affected agencies and, if so directed, to the Congress of the United States. The Administrative Conference of the United States has advisory powers only, and the decision on whether to implement the recommendations must be made by each body to which the various recommendations are directed.

The transcript of the Plenary Session will be available for public inspection at the Conference's offices at Suite 500, 2120 L Street, NW., Washington, DC.

List of Subjects in 1 CFR Part 305

Administrative Practice and Procedure, Presidential review of agency rulemaking, Use of computers in acquiring and releasing information, Alternative dispute resolution, Mediator confidentiality.

PART 305—RECOMMENDATIONS OF THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1. The authority citation for Part 305 continues to read as follows:

Authority: 5 U.S.C. 571-576.

2. The table of contents to Part 305 of Title 1 CFR is amended to add the following new sections:

Sec.
305.88-9 Presidential review of agency rulemaking (Recommendation No. 88-9).
305.88-10 Federal agency use of computers in acquiring and releasing information (Recommendation No. 88-10).
305.88-11 Encouraging settlements by protecting mediator confidentiality (Recommendation No. 88-11).

3. New §§ 305.88-9 through 305.88-11 are added to Part 305, to read as follows:

§ 305.88-9 Presidential review of agency rulemaking (Recommendation 88-9).

Federal regulation has grown in both scope and complexity in recent decades. Among its wide variety of national goals are: Ensuring competitive markets, spurring economic growth, checking inflation, reducing unemployment, protecting national security, assuring equal opportunity, increasing social security, protecting the environment, ensuring safety, and improving energy sufficiency. Policies implementing these goals compete for scarce resources and sometimes conflict with one another. Thus, a central task of modern democratic government is to make

wise choices among the courses of action that pursue one or more of these goals.

While Congress establishes the goals, it seldom legislates the details of every action taken in pursuit of these goals or makes the balancing choices that these decisions require. It has assigned this task to the regulatory agencies. Each regulatory agency, however, usually is given a set of primary goals, without specific regard for whether proposed actions in pursuit of those goals might conflict with the pursuit of other goals by other agencies. An effective mechanism is needed to coordinate agency decisions with the judgments of officials having a broader perspective, such as the President and Congress.[1]

Some form of presidential review of agency rulemaking has been the practice since at least 1971. Like its predecessors, the current program is established by presidential executive order.[2] The responsible officer (the Administrator, Office of Information and Regulatory Affairs, in the Office of Management and Budget) is appointed by the President, subject to Senate confirmation.

The Conference believes that there is sufficient experience under these executive orders to warrant continuing such review with certain guidelines as to its implementation. The Recommendation below sets forth standards that should be followed whether review is governed by executive order or by a general statute. It also assumes that the President has the authority to enunciate principles to guide agency rulemaking, even though the programmatic responsibilities are by statute delegated to agencies. In addressing the presidential review process, the Conference recognizes that some of the issues are analogous to congressional involvement in agency rulemaking, but it does not address this latter subject at this time.

Recommendation

The Conference recommends that the following principles should guide any program of presidential review [3] of agency rulemaking.

1. General Applicability

Presidential review should apply generally to federal rulemaking. Such review can improve the coordination of agency actions and resolve conflicts among agency rules and assist in the implementation of national priorities. However, not all agency rules or categories of rules may be appropriate for such presidential review. Exempt categories include formal rulemaking, ratemaking, and rulemaking that resolves conflicting private claims to a valuable privilege.

2. Applicability to Independent Regulatory Agencies

As a matter of principle, presidential review of rulemaking should apply to independent regulatory agencies to the same extent it applies to the rulemaking of Executive Branch departments and other agencies.

3. Timeliness of Review

The process of presidential review of rulemaking, including agency participation, should be completed in a timely fashion by the reviewing office and, when so required, by the agencies, with due regard to applicable administrative, executive, judicial and statutory deadlines.

4. Public Disclosure of Documents

(a) *Proposed or Final Rules.* Where an agency submits a draft proposed or final rule for presidential review, the agency submission and any additional formal analyses [4] submitted for presidential review should be made available to the public when the proposed or final rule to which they pertain is published. If a decision is made to terminate a rulemaking after a notice of proposed rulemaking has been published, agency submissions to the office responsible for presidential review and any additional formal analyses submitted for review should be made available to the public when the decision to terminate is announced.

(b) *Review of Agendas or Other Summaries or Schedules of Agency Rulemaking Actions.* Where an agency submits agendas or other summaries or schedules of pending or planned rulemakings for presidential review, the agency submission and any supporting documents submitted for presidential review should be made available to the public once the agenda or other summary or schedule is made known to the public in an official publication.

5. Executive Branch Communications Relating to Presidential Review of Rulemaking

(a) *Policy Guidance.* An agency engaged in informal rulemaking should be free to receive guidance concerning that rulemaking at any time from the President, members of the Executive Office of the President, and other members of the Executive Branch, without having a duty to place these communications in the public file of the rulemaking unless otherwise required by law. However, official written policy guidance from the officer responsible for presidential review of rulemaking should be included in the public file of the rulemaking once a notice of proposed rulemaking or final rule to which it pertains is issued or when the rulemaking is terminated without issuance of a final rule.[5]

(b) *Factual Information.* When an agency engaged in rulemaking receives a communication from the office responsible for presidential review which contains factual information relating to the substance of the rulemaking that is not already in the public file, the agency should promptly place the communication (or if oral, a summary) in the public file of the rulemaking.[6]

(c) *Communications Transmitting Outside Comments.* When an agency receives a communication from the office responsible for presidential review which transmits any factual submissions or the views or positions of persons outside the government, the agency should promptly place the communication (or if oral, a summary) in the public file of the rulemaking.[7]

6. Responsibility of the Reviewing Office Regarding Outside Comments

The officer responsible for presidential review of rulemaking should not allow the process of review to serve as a conduit to the rulemaking agency for unrecorded communications from persons outside the government. To guard against such occurrence, the responsible officer should take appropriate steps—and the following should be considered:

(a) Identifying any communications to the rulemaking agency that transmit the views or positions of persons outside the government;

(b) Promptly transmitting written communications received by the office responsible for presidential review from persons outside the government relating to the substance of a proposed agency rule to the rulemaking agency for inclusion in the public file of the rulemaking;

(c) Maintaining a list identifying the time and general topic of oral communications that pertain to the substance of an agency rule under review with persons outside the government and making such list available to the rulemaking agency for inclusion in the public file; and

(d) Inviting a representative of the rulemaking agency to attend any meetings between the reviewing office and persons outside the government which pertain to any agency rulemaking under review by that office. The agency representative attending any such meeting should prepare an appropriate summary of the discussion and promptly place it in the public file of the rulemaking.

7. Not Judicially Reviewable

The presidential review process should be designed to improve the internal management of the federal government and should not create any substantive or procedural rights enforceable by judicial review.

§ 305.88–10 Federal agency use of computers in acquiring and releasing information (Recommendation 88–10).

The rapid evolution of computer technology raises many economic and policy issues that affect the acquisition and release of information by government agencies. New information technologies can improve public access to public information and reduce paperwork burdens. They can also impose significant economic burdens, however, and they may stimulate competition between government agencies and established electronic information enterprises.

The essential role of information in a democratic system underscores the need to examine with care the opportunities that electronic information storage and transmission provide for improving the flow of information between government agencies and the public.

The following recommendations are intended to guide agencies in addressing the questions that will arise when an agency considers whether to acquire or release information in electronic form, either to facilitate performance of the agency's mission or to fulfill requirements established by the Freedom of Information Act (FOIA) or other laws.[1]

At the present stage in the evolution of government electronic information policy, the most one can do is to suggest an analytical framework within which agency electronic system designers, policy makers, and budget planners can assess their opinions. The process and substance of decisionmaking within this framework should, of course, conform with general principles of administrative law.

Because experience is now relatively limited and information technology is subject to rapid evolution, when Congress sets policy it should do so on as broad a basis as possible. Because changes in electronic information capability occur at a different pace in different sectors of the society, transitional arrangements will be necessary to ensure that electronic acquisition and release do not disadvantage major segments of the population.

The pertinent considerations depend on the context in which electronic acquisition or release of information is addressed. For example, the factors relevant to the release of information in electronic form in response to discrete FOIA requests differ from those that bear on discretionary agency decisions to release information broadly through electronic publishing. As a further example, resolution of issues pertaining to the acquisition of information in electronic form might depend on such factors as the technological capacity of the private parties from whom electronic filing is to be requested.

Recommendation A addresses the Freedom of Information Act. The FOIA was written with paper records in mind. The problem is to apply the Act to information maintained in electronic form. This recommendation does not seek to provide comprehensive guidance but does address in general terms such matters as whether electronic records should be deemed records subject to the FOIA and whether an agency should be expected to write new computer programs for the purpose of responding to a FOIA request.

Recommendations B and C discuss principles applicable to electronic acquisition and release of information, respectively. Recommendation D offers principles for defining the appropriate roles of the public and private sectors in the provision of electronic acquisition and release systems.

Recommendations C and D envision a three-step process for evaluating possible new electronic information products. The first step in the evaluation process is to identify the current level of release of the information that would be contained in a new electronic information product. There are in general terms three possible levels of agency activity in releasing information: (i) "dissemination" or "publishing", leading to the broadest availability of information; (ii) "disclosure", involving wholesaling to private information suppliers or providing electronic release capability in public reference rooms; and (iii) "access", involving ad hoc release in response to discrete requests. For the special meaning of these and other related terms used in this recommendation, it is important to refer to the appended glossary.

The second step is to identify the benefits and costs of replacing or supplementing existing means of release with various levels of electronic release. An agency should not offer an electronic information product unless the cost-benefit analysis demonstrates that the electronic alternative analyzed is likely to be superior to existing means. The third step is to define the most desirable public and private sector roles, applying principles described in Recommendation D.

Deciding to "promote" electronic publishing does not necessarily mean a direct, retail, electronic publishing and distribution role for the government, if private sector electronic publishing activities and commitments are more cost effective (see Recommendation D). Electronic publishing contemplated by this recommendation also can occur through depository libraries. In some cases it may be appropriate to retain both paper and electronic versions of the same information, even though costs almost certainly will be higher than for either form alone.

Recommendation E identifies cost and benefit categories that should be considered in applying Recommendations B, C and D. Recommendations F through J deal with discrete questions of policy and technology: For example, the use of private telecommunications systems, the undesirability of exclusive private or public control of information, and the need to stay abreast of developing technologies.

These recommendations do not address such important issues as protection of trade secrets or privileged commercial information, invasion of personal privacy, or the need for Congress and agencies to consider allocating budgetary resources so that FOIA staffs will include persons skilled in using electronic databases. Nor do they address in detail the security of electronic databases. These subjects deserve separate investigation.

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[1] The need for greater coordination of federal regulation was recognized in 1979 by the American Bar Association's Commission on Law and the Economy.

[2] Exec. Orders Nos. 11,821, 11,949 (President Ford), Exec. Order 12,044 (President Carter), Exec. Orders Nos. 12,291, 12,498 (President Reagan). For a thorough analysis of the experince under the executive orders, *see* National Academy of Public Administration, Presidential Management of Rulemaking in Regulatory Agencies (Jan. 1987).

[3] Presidential review, as used in this Recommendation, refers to a program of systematic executive oversight and dialogue that involves coordinating agency actions where conflicts exist, and in all cases probing the agency's fact and policy judgments, with the purpose of ensuring that the agency considers factors of importance to the President's policies to the extent permitted by law. Such review does not displace responsibilities placed in the agency by law nor authorize the use of factors not otherwise permitted by law. Other review of an ad hoc nature by the President (or the President's delegates) of agency rulemaking pursuant to the President's constitutional authority is not within the scope of this Recommendation.

[4] See ACUS Recommendation 85–2, Agency Procedures for Performing Regulatory Analysis of Rules, 1 CFR 305.85–2.

[5] The Conference's position on the public availability of official written policy guidance stated in this Recommendation modifies its earlier position in Recommendation 80–6, Intragovernmental Communications in Informal Rulemaking Proceedings, 1 CFR 305.80–6, ¶1.

[6] Agencies also should place factual information received from other sources in the public file of the rulemaking, *see* Recommendation 80–6, ¶2.

[7] This reaffirms the Conference's position on the handling of comments by persons outside the government stated in Recommendation 80–6, ¶2.

[1] OMB Circular A–130 (50 FR 52730, Dec. 24, 1985) provides a general framework for management of federal information resources. The relationship between parts of this recommendation and provisions of the OMB Circular is as follows. Recommendation A reflects the same policy as Paragraph 7(g) of the Circular, but provides additional detail. Recommendation B deals with electronic acquisition, a subject addressed in proposed OMB guidelines, but not in detail in the existing version of Circular A–130. Recommendation C suggests a cost-benefit approach to defining agency electronic dissemination activities essentially consistent with that prescribed by the Circular, but offers a finer level of analytical detail to guide agency selection among three different levels of release. Recommendation D suggests defining the boundary between public and private sectors based on a cost-benefit analysis; this is endorsed by Paragraph 7(e) of Circular A–130, but Recommendation D defers less to private sector activities than the Circular. Recommendation E lists more specific cost and benefit categories to be considered than does the Circular. Recommendation F reflects the same policy as that set forth in Appendix IV to Circular A–130 (discussing paragraph 11(a)). Recommendations G and H have no counterparts in the Circular. Recommendation I discusses the role and limits of governmentwide policy; Circular A–130 is an example of such a policy. Recommendation J is consistent with Paragraph 9(c) of the Circular.

The recommendations also do not address issues pertaining to automation of internal agency functions including important questions of records retention, evidentiary use of electronic records, and program administration. Rather the recommendations assume that an agency has automated or will automate an identifiable portion of its activities and therefore is confronted with the questions of whether and how to establish interfaces between internal electronic information systems and the outside world.

Recommendation

A. Freedom of Information Act

1. In interpreting the Freedom of Information Act, agencies should recognize that a "record" includes information maintained in electronic form.

2. Agencies using electronic databases rather than paper records should not deny access to the electronic data on the grounds that the electronic data are not "records," that retrieval of the electronic information is equivalent to creation of a "new" record, or that programming is required for retrieval. In responding to FOIA requests, agencies should provide electronic information in the form in which it is maintained or, if so requested, in such other form as can be generated directly and with reasonable effort from existing databases with existing software. Agencies, however, should not be obligated under the FOIA to create large new databases for private advantage, thus using agency resources for private purposes. Agencies should use a standard of reasonableness in determining the nature and extent of the programming that provides an appropriate search for and retrieval of records in responding to FOIA requests, and in determining the extent to which FOIA requesters may ask the agency to produce data organized in formats other than those used by the agency in the regular course of its operation.[2]

3. Differences in technologies and database structures used by individual agencies make it necessary, for the near term, to define FOIA obligations on a case-by-case basis. Further experience with electronic information systems is a prerequisite to the formulation of general rules applicable to such controversies under the Act as how requesters must identify the records sought, how much programming, if any, an agency must do, and how costs shall be borne. The concept of reasonableness applied to searches for paper information made in response to FOIA requests should provide a useful guideline for resolving controversies over the application of FOIA to electronically maintained data.

B. Acquisition of Information in Electronic Form

1. Agencies should acquire information in electronic form when they use, or will use, the information in that form and when most information submitters already maintain information electronically, or have ready access to intermediaries who will prepare and submit it in electronic form. When agencies sponsor electronic acquisition programs, they should make clear their intention that all information required will eventually be available to them in electronic form, either by strictly administering exceptions to mandatory programs, or by undertaking the conversion of paper submissions into electronic form themselves.

2. When most providers of information ("filers") are technologically sophisticated, it is appropriate for agencies to require electronic filing of information, after developing standard formats in consultation with the filer community, and after appropriate testing and transition periods.

3. In determining whether to require or permit electronic filing of information and in designing the particulars of an electronic acquisition program, agencies should carefully weigh the costs and benefits of electronic acquisition of information. The analysis should address the factors identified in Recommendation D together with other considerations made relevant by the agency's mandate.

4. Agencies initiating electronic acquisition programs should take steps to facilitate electronic filing by entities having limited technological capacity (without raising the costs for sophisticated entities), including the optional use of "smart forms." When a significant proportion of the filer community is technologically unsophisticated, electronic acquisition may be feasible only through intermediaries. In such cases, agencies should create economic incentives for electronic filing rather than mandating it. Part of the economic incentive to file electronically under voluntary electronic acquisition programs can be the imposition of a fee on technologically sophisticated filers who choose to file on paper, assuming the statutory authority to do so exists.

C. Release of Information in Electronic Form

1. Electronic information release policies should depend on such factors as (a) whether the desired level of release consists of electronic publishing, electronic disclosure, or electronic access in response to FOIA requests (see the glossary for definitions of these terms); (b) the agency's policies in releasing like information maintained in paper records; and (c) the costs and benefits of replacing or supplementing an existing paper medium with an electronic medium.

2. When a statute or agency policy mandates the publishing of information, the agency should itself electronically publish the information or facilitate its electronic publication by others, unless the cost-benefit analysis suggests the desirability of restricting publishing to the paper medium, possibly accompanied by a lower level of electronic release.[3] If the agency publishes the information only on paper, it should consider electronic publication of the availability of the paper information products. Where an agency publishes information electronically, it should consider the feasibility of providing dial-up access.

3. When a statute mandates public reference room disclosure, or paper products presently are made available through a public reference room, agencies should provide electronic disclosure in public reference rooms of information already in electronic form. Such agencies should consider the costs and benefits of upgrading from electronic disclosure to electronic publishing. Agencies should also make information disclosed electronically available to any requester in an electronic form that would be easily usable by information resellers.

4. In those instances where an agency maintaining information in electronic form has no mandate to release information other than in response to FOIA requests, the agency should consider upgrading release of appropriate parts of this information to electronic disclosure through public reference rooms and wholesaling in electronic bulk form to private sector requesters.[4]

[2] Agencies should be able to recover the costs of complying with FOIA requests, including programming costs, in a manner consistent with the Freedom of Information Reform Act of 1986, 100 Stat. 3207, 3207–48 (1986), amending 5 U.S.C. 552(a)(4)(A), and related OMB guidance, 52 FR 10012, 10017 (1987).

[3] When a statute mandates electronic publishing, the agency would not have discretion to restrict publication to a paper medium or to a lower level of electronic release.

[4] The prices for such electronic information would be determined under the general user fee statute, 31 U.S.C. 9701, or under the FOIA. See OMB's user fee guidelines, restated in App. IV to OMB Circular A–130, 50 FR 52748 (1985).

D. Allocation of Responsibilities Between Public and Private Sectors

1. Agencies that have decided under Recommendations B and C to acquire or release information in electronic form should define the appropriate roles of the public and private sectors in providing that information and related products (including telecommunications facilities, indexes and retrieval software as well as raw data). That choice should depend on the relative costs and benefits of privately versus publicly provided information products.

2. When choosing between publishing and a lower level of electronic release of information, an agency should determine whether private sector providers are willing to supply electronic products having features (e.g., user-friendly menus) that will give the public greater benefits or lower costs than would electronic publishing by the agency. When an agency relies on the private sector for electronic publishing of agency information, the agency should seek to establish by contract the nature of the products to be provided.

3. When an agency determines that its mission warrants new electronic means of acquisition or release of information and the private sector will not commit to provide them at appropriate prices, the agency should provide them, if clearly identified non-economic and economic benefits outweigh the capital and marginal costs. Agencies should recognize, however, that there may be circumstances where the costs to an agency would suggest the wisdom of creating incentives for the private provision of the desired electronic information product—for example, the free use of agency-developed software.

E. Determination of Costs and Benefits

1. Agencies should take into account the following costs in the decisionmaking processes suggested in Recommendations B, C and D:

(a) Capital costs to the agency of establishing the product, and the probable economic life and other uses over which the costs should be allocated;

(b) Capital costs to information consumers and information providers to utilize the product, and the probable economic life and other uses over which these costs should be allocated;

(c) The marginal costs to the agency of user access;

(d) Marginal costs to users for obtaining the information;

(e) Marginal costs to electronic information providers of updating the electronic information;

(f) Unrecovered costs associated with existing government or private sector capital that would be made obsolete by the new product;

(g) The costs of updates and upgrades in service levels or capacity necessary to permit intended benefits to be realized at levels of demand expected over the long term; and

(h) Costs of changing to standard formats or of handling different formats.

2. Agencies should take into account the following benefits in decisionmaking processes suggested in Recommendations B, C and D:

(a) Savings associated with eliminating the cost of producing and maintaining existing paper products;

(b) Savings to agencies and consumers associated with upgrading the level of information release from ad hoc FOIA disclosure to electronic disclosure in a public reference room;

(c) Savings to agencies and consumers associated with upgrading paper public reference room disclosure to electronic publishing;

(d) Increase in the number of interested persons having access to information;

(e) Improvements in the utility of information for its intended purpose because of improved organization and retrieval capabilities; and

(f) Reductions in delays associated with transferring information from an agency to eventual consumers.

3. Cost-benefit analyses should take into account FOIA obligations, including obligations to protect trade secrets and other exempt information. In designing electronic databases, agencies should consider the types of FOIA requests likely to be received for data in the database, consulting with representative users when feasible. Insofar as it is consistent with agency mission performance, databases should be designed so as to facilitate reponses to FOIA requests. A proper rule of thumb is that it should not be any more difficult to obtain information under the FOIA after automation than before.

4. In some cases, effective design may require some sacrifices in electronic FOIA retrieval capability. In these cases, agency designers of electronic databases and retrieval software should consider how FOIA requests can be satisfied consistent with the spirit of the Act. For example, an agency might choose to make raw data available to requesters in computer-readable form along with retrieval software, so that requesters can effect their own retrievals. In other situations, new electronic information products may reduce costs of FOIA requests, to both requesters and agencies. This would occur, for example, if information were published or otherwise made accessible electronically in a public reference room, rather than provided only on paper in response to FOIA requests.

F. Exclusive Control of Public Information

An agency generally should not grant a private party exclusive control of its electronic information or of the acquisition or release thereof. Nor should the agency itself as a general matter maintain such control in the absence of a compelling public purpose. Where an agency has, and wishes to exercise, authority to enter into an exclusive arrangement providing a private sector vendor with a preferential right to electronic information, the agency should first consider whether the analysis suggested in Recommendations B, C, D and E demonstrates that efficiencies can be achieved through such an arrangement. The agency should also guard against the possibility that the arrangement may be inconsistent with its responsibilities under the FOIA or may impair the ability of the agency and the public to benefit from subsequent technological developments.

G. Technology Issues

1. Agencies should use proven technologies in their electronic acquisition and release systems. They should stay abreast of the state-of-the-art in all matters related to the electronic acquisition and release of information and should be particularly alert to the need for up-to-date and effective access control and other techniques required to maintain an appropriate level of security.

2. Agencies should seek to base electronic information formats on existing standards efforts such as American National Standards Institute standards on Electronic Business Data Interchange [5] before developing their own distinctive format definitions.[6]

3. Whenever possible, agencies should use public data networks rather than developing their own communications links for public filers or consumers.

4. Agencies should consider conducting demonstration projects to experiment with evolving electronic information technology.

[5] These standards are currently designated as "X.12".

[6] Cf. Recommendation 78–4, Federal Agency Interaction with Private Standard-setting Organizations in Health and Safety Regulation, 1 CFR 305.78–4.

H. Electronic Participation in Administrative Proceedings

Agencies should experiment with electronic means of providing public participation in rulemaking, adjudication and other administrative proceedings, while retaining a means of effective participation for persons who lack the means to access the electronic information system.

I. Government-wide Policy on Electronic Information

1. A government-wide policy on electronic information is desirable to afford guidance to agencies. Such a policy should articulate goals consistent with those expressed in the foregoing recommendations.

2. Congress should formulate the larger value judgments necessary for a government-wide policy on electronic information.[7] These include the roles of public and private sectors; who ought to pay for increased information utility; and the level of funding to be provided by the government.

3. Because agencies often are in the best position to apply the considerations identified in this recommendation, Congess should normally defer to agency judgment in selecting methods to implement congressionally enacted policies when the agencies have offered rational justifications for their electronic information program decisions.

J. National Institute of Standards and Technology

The National Institute of Standards and Technology should continue to work with the U.S. Patent and Trademark Office to advance electronic data storage and transmission technology, as, for example, its work with high-capacity storage technology, and should inform agencies about commercially available products and services to facilitate electronic acquisition and communications.

Glossary

Bulk form: Large quantities of data in nearly raw form, with little formatting information or other added value, usually maintained and transferred on magnetic tape or cassettes or high capacity optical or magnetic disks.

Data product: A specific form of electronic information, sometimes including data structures, indices, retrieval software, and telecommunications links.

Database: A body of information maintained in electronic form, from which parts can be retrieved electronically.

Dial-up: A form of electronic dissemination through which anyone with a computer, a modem, and access to an ordinary telephone line can retrieve information from an electronic database.

Electronic access: The lowest level of electronic release; the ability to obtain agency information; communicating information to consumers.

Electronic acquisition: Obtaining information from the public electronically; includes electronic filing; submitting information to an agency in electronic form.

Electronic disclosure: An intermediate level of electronic release; making information available electronically to the public at one or only a few places.

Electronic dissemination: The highest level of electronic release; using electronic means to make information widely available to the public at places where it is used; same as electronic publishing.

Electronic publishing: Same as electronic dissemination.

Electronic release: Communicating information to users in electronic form; a generic term that includes access, disclosure, and dissemination.

Hardware: Computers and associated peripherals.

Public data networks: Communications common carriers that aggregate small volume data communications and thereby reduce the cost of high-quality transmission of data.

Retailing: Providing information in a format different from that used by the government, or with accompanying analysis, aggregation or segregated subsets, enhanced search or retrieval capabilities, or otherwise tailored to be of value to specialized or individual end users; also may include distribution components of electronic release.

Retrieval: Extracting a part of a database and presenting it to the requestor in a form understandable by humans.

Smart forms: Interactive computer data acquisition programs that guide the filer in answering questions.

Software: Computer programs or data.

Wholesaling: Providing resellers or large end users information only in the form used by the government or only in bulk form.

[7] See, e.g., U.S. Congress, Office of Technology Assessment, *Informing the Nation: Federal Information Dissemination in an Electronic Age* (October 1988).

§ 305.88–11 Encouraging settlements by protecting mediator confidentiality (Recommendation 88–11).

The resolution of issues through negotiations among the affected parties has long been recognized as an essential ingredient of the administrative process.[1] Settlements bring to bear parties' experience, foster creative solutions, and result in faster decisions requiring fewer resources than formal litigation. Most settlements now occur simply through ad hoc negotiations among the lawyers for the parties, generally on the eve of hearing. The Administrative Conference has recommended that agencies adopt alternative means of dispute resolution ("ADR") to enhance negotiations and stimulate the possibility of reaching agreement expeditiously within the confines of the agency's authority and policy.[2]

This recommendation seeks to encourage agency use of alternative means of dispute resolution by affording appropriate protection to communications between the parties and the neutral in settlement negotiations. The Conference, of course, recognizes the principle that decisions affecting the public welfare ought to be made in the open and subject to public and judicial scrutiny. Nevertheless, since settlements are essential to administrative agencies, a careful balance must be struck between the openness required for the legitimacy of many agency agreements and the confidentiality that is critical if sensitive negotiations are to yield agreements. This recommendation attempts to strike that balance, without thwarting open decisionmaking.

Most ADR techniques, including mediation, non-binding arbitration, factfinding and minitrials,[3] involve a neutral third party who aids the parties in reaching agreement that resolves the issues in controversy. A skillful mediator can speed negotiations and increase chances for agreement by holding separate confidential meetings with the parties, where each party may give the mediator a relatively full and candid account of its own interests

[1] As the influential Attorney General's *Manual on the Administrative Procedure Act* explained in 1947:

[T]he settlement of cases and issues by informal methods is nothing new in Federal administrative procedure. In its Final Report, the Attorney General's Committee on Administrative Procedure pointed out * * * that "even where formal proceedings are fully available, informal procedures constitute the vast bulk of administrative adjudication and are truly the lifeblood of the administrative process."

[2] The Conference has repeatedly recommended that agencies employ ADR. Recommendation 86–3 calls on agencies to make greater use of mediation, facilitation, negotiation, minitrials, and other "ADR" methods to reduce the delay and contentiousness that accompany many agency decisions. *E.g., Agencies' Use of Alternative Means of Dispute Resolution*, 1 CFR 305.86–3; *Alternatives for Resolving Government Contract Disputes*, 1 CFR 305.87–11; *Procedures for Negotiating Proposed Regulations*, 1 CFR 305.82–4, 85–5; *Negotiated Cleanup of Hazardous Waste Sites Under CERCLA*, 1 CFR 305.84–4; *Resolving Disputes under Federal Grant Programs*, 1 CFR 305.82–2.

[3] For brief definitions of these terms, see the Appendix to Conference Recommendation 86–3, *supra*.

(rather than its litigating position), discuss what it would be willing to accept, and consider alternative approaches. The mediator, armed with this information but avoiding premature disclosure of its details, can then help to shape the negotiations in such a way that they will proceed most directly to their goal. The mediator may also carry messages between the parties, launch "trial balloons," and act as an agent of reality to reduce the likelihood of miscalculation. This structure can make it safe for the parties to talk candidly and to raise sensitive issues and creative ideas. In non-binding arbitration, minitrials and factfinding, the neutral may play a different role from that of a mediator, because he may issue a tentative decision that is then used as a basis for negotiations, but all of these neutrals have the common characteristic of helping the parties negotiate an agreement.

With all of these neutrals, many of the benefits of ADR can be achieved only if the proceedings are held confidential. Confidentiality assures the parties that what is said in the discussions will be limited to the negotiations alone so they can be free to be forthcoming. This need extends to the neutral's materials, such as notes and reports, which are produced solely to assist the neutral in the negotiation process and which others could misconstrue as indicating a bias against some party or interest. This is why many mediators routinely destroy their personal notes and drafts and return all other materials to the parties. Moreover, if the neutral were to testify in a subsequent proceeding as to what went on during the negotiations, his neutrality might be destroyed. The ADR process could be jeopardized because one party or another is likely to feel disadvantaged. Also, the parties could justifiably feel their confidences might be threatened. All this would certainly inhibit future participation by parties and neutrals.

Limited protection for settlement negotiations and work product developed in preparation for litigation is provided by Rule 408 of the Federal Rules of Evidence and Rule 26(b)(3) of the Federal Rules of Civil Procedure. However, uncertainties as to their application—not to mention the effects on confidentiality of the Freedom of Information Act—may raise obstacles to protecting communications with ADR neutrals in federal agencies' disputes. As a result, many statutes, rules, and guidelines have explicitly provided for some degree of confidentiality of mediation and similar materials.

The Administrative Conference takes the view that maintaining confidentiality of settlement discussions is consistent with the principles underlying the FOIA, Rule 408 of the FRE, Rule 26(b)(3) of the FRCP, and the work product doctrine. To encourage the use of ADR in negotiations, the recommendation contains a model rule seeking to protect the communications between the neutral and the parties or other participants in the course of the negotiations as well as the neutral's own notes and impressions. It does so in recognition that the mediator will virtually *never* have information or evidence that is not shared by at least one other person, excepting of course the neutral's own notes, recollections, and judgments. The rule does not address (1) when meetings or negotiations should be held in public session, (2) what justification should be prepared to support any agreement reached, or (3) what information should be available from a party to the negotiations. The rule covers oral communications or actions that are related to a settlement proceeding, as well as documents that are created specifically for the negotiations or other, previously existing documents that are furnished to the neutral in confidence by a participant in the negotiation. The restrictions on the neutral's disclosing information from the negotiation are not categorically absolute, being subject to several narrow exceptions that deal with extraordinary cases. Finally, the model rule does not attempt to impose its terms on all parties for all issues; they would be free to vary the terms for their particular negotiations.

Recommendation

1. Agencies that use the services of neutrals in settlement proceedings:

(a) Should explicitly indicate that as a matter of policy they will not seek to discover or otherwise force disclosure of a neutral's notes, memoranda or recollections or of documents provided to the neutral in confidence in the course of settlement negotiations;

(b) In arranging with an individual or organization to serve as a neutral in settlement proceedings, should include a provision in any agreement with the neutral that (i) the agency makes no claim to the neutral's notes, memoranda or recollecitons or to documents provided to the neutral in confidence in the course of the settlement negotiations and (ii) that such material is outside the scope of the agency's right to any data developed pursuant to the agreement; and

(c) Should adopt a procedual rule, consistent with the model rule contained in the appendix below, for all cases where the agency itself is a party to the negotiations or where private parties are negotiating the resolution of an issue in controversy concerning a statute, regulation, or policy administered by the agency.

2. The neutral, including a neutral (as defined in the model rule) who serves as a presiding officer,[4] should carefully segregate, and identify as settlement documents, all materials received or developed during the course of a settlement proceeding, including any retained following its conclusion, so they will be used solely to assist the neutral in working to settle the issues in controversy.

3. Agencies should interpret the FOIA, Rule 408 of the Federal Rules of Evidence, Rule 26(b)(3) of the Federal Rules of Civil Procedure, and the work product doctrine to avoid disclosure of settlement communications by neutrals serving in administrative settlement proceedings.

[4] *See, e.g.*, Recommendation 86–5, *Agency Use of Settlement Judges*, 1 CFR 305.86–5.

Appendix

Model Rule

§ xxx.1 Introduction; Encouraging Settlement; ADR Techniques.

(a) To facilitate a vigorous enforcement program and expeditious administrative decisionmaking, [the agency] encourages the resolution of issues in controversy through negotiations among the affected parties. Voluntary settlement processes within [the agency's] statutory mandates and existing policies can produce decisions more efficiently than traditional procedures, and often yield decisions that are more effective than those reached without the concurrence of persons with firsthand involvement. Settlement agreements thereby enable the agency and the parties to accomplish their goals with expenditure of fewer resources.

(b) In addition to unassisted negotiations among the affected interests, alternative means of dispute resolution ("ADR") can aid the parties in reaching agreement in appropriate cases. These techniques include facilitation, mediation, minitrials, factfinding, and non-binding arbitration. In each, a neutral third party helps the parties reach a voluntary agreement. [The agency] encourages the use of these ADR processes as part of its policy favoring settlements.

(c) The voluntary settlement of issues in controversy through a dispute resolution process requires integrity, objectivity, and fairness on the part of the neutral and of the process itself. Moreover, the parties must feel free to discuss the dispute with the neutral without fear of being disadvantaged by the negotiations. [The agency] takes the position that the public policy favoring voluntary resolution of disputes therefore requires that the neutral not reveal, either voluntarily or through legal compulsion, information learned in confidence during the negotiations. To encourage the parties to negotiate, this rule enunciates an agency policy seeking to protect the confidentiality of settlement negotiations involving the neutral.

§ xxx.2 Definitions.

As used in this rule:

(a) "Issue in controversy" means a question that is material to a decision involving a statute, regulation, or policy

administered by [the agency] about which persons who would be substantially affected or the agency disagree.

(b) "Settlement proceeding" means any process, such as facilitation, mediation, minitrial, factfinding, or non-binding arbitration, that is used to resolve issues in controversy by agreement of the parties in which a neutral serves, whether or not administrative or judicial proceedings have been instituted.

(c) "Neutral" means an individual who with respect to the issues in controversy—

(1) Is not a party;

(2) Does not have any official, financial, or personal conflict of interest unless such interest has been fully disclosed in writing and all parties agree that the individual may nevertheless serve as a neutral; and

(3) Works to aid the parties in arriving at settlement of the issues in controversy through agreement.

(d) "Settlement communication" means any oral or written communication or conduct made in confidence and in connection with a settlement proceeding by any party, neutral, non-party participant, or other source of information relevant to the proceeding.

(e) "Settlement document" means any written material that is—

(1) Prepared for the purpose of, in the course of, or pursuant to a settlement proceeding, including memoranda, notes, and work product of the neutral and the parties, or

(2) Provided to the neutral in confidence for purposes of the settlement proceeding.

An agreement reached as a result of a settlement proceeding is not a settlement document unless the parties agree in writing, and the law allows, that it shall be regarded as such.

(f) "In confidence" means with the expressed desire of the source that the information be kept confidential or provided under circumstances that would create the reasonable expectation that it will not be disclosed.

(g) "Party" means a person or entity whose dispute is the subject of the settlement proceeding, including representatives of such a party.

(h) "Non-party participant" means a person or entity who is not a party to the dispute but who participates in the settlement proceeding, such as by providing information, analysis, advice, or views.

§ xxx.3 Applicability of the Rule.

(a) This rule applies to any settlement proceeding whether or not [the agency] is a party if the parties communicate with the neutral under circumstances that reasonably imply that the parties expect that the communications will be held confidential. Prior to beginning substantive negotiations, the parties may (1) agree that this rule does not apply to their negotiations or (2) modify the terms of this rule by agreement in which case that agreement will prevail to the extent it is authorized by law or is otherwise consistent with this rule. So that the neutral can decide whether he wishes to serve under those conditions, the parties shall so inform the neutral otherwise prior to commencing settlement proceedings. If they fail to do so, this rule shall apply.

(b) The provisions of the rule take effect when—

(1) A person has been specifically requested or accepted by at least one party to (i) serve as the neutral in the settlement proceeding, or (ii) discuss the potential of conducting a settlement proceeding, or (iii) contact other potential parties to determine whether it would be appropriate to convene a settlement proceeding to resolve the issues in controversy;

(2) The other parties with whom the neutral has contact knows that he or she is occupying the role of a neutral; and

(3) They communicate with the neutral in that capacity.

(c) The rule does not address—

(1) The extent to which a party may disclose settlement documents and communications either voluntarily or in response to discovery or legal process; or,

(2) The information that is required to support a decision or agreement reached in a settlement proceeding.

§ xxx.4 Neutral Impartiality and Confidentiality of Settlement Negotiations.

(a) A neutral shall not voluntarily or through compulsory process disclose or testify concerning settlement communications or settlement documents, unless—

(1) All parties to the settlement proceeding and the neutral consent in writing, and if the settlement communication or document was provided by a non-party participant, that participant also consents in writing;

(2) The request is for a settlement document that was provided to the neutral in a public meeting or is otherwise already in the public domain;

(3) The settlement document is required by law to be made public, but only if it is not available from the person who prepared it or from any other source;

(4) A court determines that there is a need for such testimony or disclosure. The agency takes the position that any such determination should be pursuant to a finding that the need for disclosure to—(i) prevent a manifest injustice, (ii) reveal a violation of law, or (iii) protect the public health or safety is of sufficient magnitude in the particular case to outweigh the integrity of settlement proceedings in general by reducing the confidence of parties in future cases that their communications will remain confidential; or

(5) The settlement document or communication is relevant to the resolution of a dispute between the neutral and a party or participant, but only to the extent that the document or communication is used for purposes of resolving that dispute and not any issue in controversy in the settlement proceeding.

(b) If a demand, by way of discovery request or other legal process, is made for disclosure by the neutral of a settlement document or communication, the neutral shall make reasonable efforts to notify the parties and any affected non-party participant so that countermeasures may be taken if desired.

§ xxx.5 Agency Records.

(a) The agency makes no claim of control or ownership over the notes, memoranda, and other work product prepared by a neutral or by his or her staff in connection with a settlement proceeding.

(b) The agency takes the position that settlement documents and communications are not agency records solely on account of their having been received by the neutral during a settlement proceeding; a document or other material that is otherwise an agency record remains as such.

Michael W. Bowers,

Deputy Research Director.

Dated: January 27, 1989.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87-AAL-2]

Establishment of Big Lake and Petersburg, AK, Transition Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes two transition areas, one with a base 700 feet above the surface at Big Lake, AK, (lat. 61°32'10" N., long. 149°48'42" W.) and one with a base 1,200 feet above the surface at Petersburg, AK, (lat. 56°48'04" N., long. 132°55'28" W.). A public instrument approach procedure has been developed at each location and a transition area is needed to provide protected airspace for the approach/departure and missed approach procedures.

EFFECTIVE DATE: 0901 u.t.c., June 1, 1989.

FOR FURTHER INFORMATION CONTACT: Robert C. Durand, Operations, Procedures, and Airspace Branch, (AAL-536), Federal Aviation Administration, Air Traffic Division, 222 West 7th Avenue, Box #14, Anchorage, Alaska 99513-7587; telephone: (907) 271-5903.

SUPPLEMENTARY INFORMATION:

History

On May 6, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish two transition areas, one with a base of 700 feet above the surface at Big Lake, AK, (lat. 61°32'10" N., long. 149°48'42" W.) and one with a base of 1,200 feet above the surface at Petersburg, AK, (lat. 56°48'07" N., long. 132°56'36" W.) (52 FR 16856). A public instrument approach procedure has been developed at each location and a transition area is needed to provide protected airspace for the approach/departure and missed approach procedures. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes and correction of the true bearings/coordinates at Petersburg, and length/width of Big Lake transition area, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations establishes a transition area with a base of 700 feet above the surface at Big Lake, AK, and a transition area with a base of 1,200 feet above the surface at Petersburg, AK, to provide protected airspace for approach/departure and missed approach procedures.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, transition areas.

Adoption of the Amendments

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Big Lake, AK [New]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Big Lake Airport (lat. 61°32'10" N., long. 149°48'42" W.); within 4.5 miles on the northeast and 9.5 miles on the southwest side of the Big Lake VORTAC (lat. 61°34'12" N., long. 149°57'54" W.) 296°T (271°M) radial, extending from the 5-mile radius area to 18.5 miles northwest of the Big Lake VORTAC.

Petersburg, AK [New]

That airspace extending upward from 1,200 feet above the surface within 5 miles west and 5 miles east of the Petersburg localizer 004°T (337°M) radial extending from 5 miles south to 16.5 miles north of the Petersburg localizer (lat. 56°48'06" N., long. 132°55'28" W.); from a point where the Fredericks Point (FPN) NDB (lat. 56°47'33" N., long. 132°49'09" W.) 347°T (320°M) bearing crosses the 004°T (337°M) radial from the Petersburg localizer, 18 miles northwest on a heading of 307°T (280°M) and 5 miles southwest and 5 miles northeast of the 307°T (280°M) heading.

Issued in Anchorage, Alaska, on January 20, 1989.

Henry A. Elias,

Manager, Air Traffic Division.

[FR Doc. 89-2378 Filed 2-1-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-ASW-30]

Removal of Transition Areas; Paragould, AR, and Jonesboro, AR

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Final rule.

SUMMARY: This amendment will remove the transition area located at Paragould, AR, and will revise the transition area located at Jonesboro, AR. The development of a VOR RWY 4 standard instrument approach procedure (SIAP) to the Paragould Municipal Airport, utilizing the Jonesboro Very High Frequency Omnidirectional Radio Range/Tactical Air Navigation (VORTAC), has made a revision to the existing Paragould, AR, Transition Area necessary. The intended effect of this revision is to provide adequate controlled airspace for aircraft executing all SIAP's now serving both the Jonesboro and Paragould Municipal Airports and to simplify the legal description of this controlled airspace.

EFFECTIVE DATE: 0901 u.t.c., April 6, 1989.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Department of Transportation, Fedcral Aviation Administration, Fort Worth, TX 76193-0530, telephone (817) 624-5561.

SUPPLEMENTARY INFORMATION:

History

On September 27, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by removing the transition area located at Paragould, AR, and by revising the transition area located at Jonesboro, AR (53 FR 40073).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 17.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D, dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations will remove the transition area located at Paragould, AR, and will revise the transition area located at Jonesboro, AR. The development of a new VOR RWY 4

SIAP to the Paragould Municipal Airport, utilizing the Jonesboro VORTAC, has necessitated the need to expand the existing Paragould, AR, Transition Area. In addition, a review of the types of aircraft now using the Jonesboro Municipal Airport revealed a change in the category and size of aircraft, thus necessitating the need to expand the existing Jonesboro, AR, Transition Area. However, the proximity of the two transition areas and the need to revise both areas have intertwined the two transition areas to the extent that it is no longer possible to separate the two areas on the sectional aeronautical chart. The intended effect of the amendment is to provide adequate controlled airspace for aircraft executing all SIAP's now serving both the Jonesboro and Paragould Municipal Airports and to simply the legal description of the controlled airspace. The status of the Jonesboro and Paragould Municipal Airports will remain IFR.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Paragould, AR [Removed]

3. Section 71.181 is amended as follows:

Jonesboro, AR [Revised]

That airspace extending upward from 700 feet above the surface within a 12-mile radius of the Jonesboro Municipal Airport (latitude 35°49'52"N., longitude 90°38'47"W.), and within 3.5 miles each side of the 048° radial of the Jonesboro VORTAC (latitude 35°52'29"N., longitude 90°35'18"W.), extending from the 12-mile radius area to 21.5 miles northeast of the Jonesboro VORTAC; and within a 6.5-mile radius of the Paragould Municipal Airport (latitude 36°03'36"N., longitude 90°30'34"W.), and within 2.5 miles each side of the 247° bearing of the Walcott NDB (latitude 36°01'48"N., longitude 90°35'49"W.), extending from the 6.5-mile radius area to 11 miles southwest of the Walcott NDB.

Issued in Fort Worth, TX, on January 12, 1989.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 89-2379 Filed 2-1-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-ASW-06]

Revision of Transition Area: Center, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will revise the transition area located at Center, TX. A standard instrument approach procedure (SIAP) to the Center Municipal Airport was canceled many years ago, but the transition area was never removed. However, since then a new SIAP to Runway 16 at the Center Municipal Airport has been developed, utilizing the Amason Nondirectional Radio Beacon (NDB), requiring that the existing transition area be modified. The intended effect of this revision is to provide adequate controlled airspace for aircraft executing the new SIAP. The status of the airport still remains instrument flight rules (IFR).

EFFECTIVE DATE: 0901 u.t.c., April 6, 1989.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone (817) 624-5561.

SUPPLEMENTARY INFORMATION:

History

On September 15, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by revising the transition area located at Center, TX (53 FR 36025).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D, dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations will revise the transition area located at Center, TX. The development of a new NDB RWY 16 SIAP to the Center Municipal Airport has necessitated this revision. The existing transition area was developed for a SIAP which was canceled years ago; however, the transition area was never removed. The intended effect of this revision is to modify the existing transition area in order to provide adequate controlled airspace for aircraft executing the new SIAP. The status of the Center Municipal Airport will remain IFR.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, Transition Areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Center, TX [Revised]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Center Municipal Airport (latitude 31°49'40" N., longitude 94°09'22" W.) and within 4.5 miles each side of the 320° bearing of the Amason NDB (latitude 31°50'10" N., longitude 94°08'59" W.), extending from the 6.5-mile radius area to 9 miles northwest of the Amason NDB.

Issued in Fort Worth, TX, on January 13, 1989.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 89-2381 Filed 2-1-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-ASW-27]

Removal of Transition Area; La Pryor La Paloma Ranch Airport, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will remove the transition area located at La Pryor La Paloma Ranch Airport, TX. This revision is necessary since the only standard instrument approach procedure (SIAP) to the La Paloma Ranch Airport has been canceled, thus negating the need for the 700-foot transition area. The intended effect of this revision is to return that controlled airspace no longer required for aircraft executing the old SIAP. Coincident with this revision, the airport status will change from instrument flight rules (IFR) to visual flight rules (VFR).

EFFECTIVE DATE: 0901 u.t.c., April 6, 1989.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone (817) 624-5561.

SUPPLEMENTARY INFORMATION:

History

On September 20, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by removing the transition area located the La Pryor La Paloma Ranch Airport, TX. (53 FR 36314).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D, dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations will remove the transition area located at La Pryor La Paloma Ranch Airport, TX. The cancellation of the only SIAP serving the La Paloma Ranch Airport, thus negating the need for a 700-foot transition area, has necessitated this revision. The intended effect of this revision is to return that controlled airspace no longer required for aircraft executing the old SIAP. Coincident with this revision is the changing of the airport status from IFR to VFR.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

La Pryor La Paloma Ranch Airport, TX [Removed]

Issued in Fort Worth, TX, on January 12, 1989.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 89-2382; Filed 2-1-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-ASW-38]

Revision of Transition Area: McAllen, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This revision will revise the transition area located at McAllen, TX. The development of a new RNAV (Area Navigation) RWY 13 standard instrument approach procedure (SIAP) to the Mid Valley Airport, Weslaco, TX, has made this revision necessary. The intended effect of this revision is to provide adequate controlled airspace for aircraft executing the new SIAP to the Mid Valley Airport. Coincident with this revision will be the changing of the status of the airport from visual flight rules (VFR) to instrument flight rules (IFR).

EFFECTIVE DATE: 0901 u.t.c., April 6, 1989.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone (817) 624-5561.

SUPPLEMENTARY INFORMATION:

History

On October 10, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by revising the transition area located at McAllen, TX (53 FR 41352).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D, dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations will revise the transition area located at McAllen, TX. The development of a new RNAV RWY 13 SIAP to the Mid Valley Airport, Weslaco, TX, has necessitated this revision. The intended effect of this revision is to provide adequate controlled airspace for aircraft executing the new SIAP. Coincident with this revision will be the changing of the status of the Mid Valley Airport from VFR to IFR.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

McAllen, TX [Amended]

By adding to the end of the legal description: "and within a 6.5-mile radius of the Mid Valley Airport (latitude 26°10'37"N., longitude 97°58'20"W.)."

Issued in Fort Worth, TX, on January 13, 1989.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 89-2364 Filed 2-1-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-ACE-4]

Alteration of VOR Federal Airways—KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of several Federal Airways located in the vicinity of Salina, KS. The Salina Very High Frequency Omni-Directional Radio Range and Tactical Air Navigational Aid (VORTAC) has been relocated approximately 2.6 nautical miles to the north. The FAA did not renew the lease on the current VORTAC site and this action alters the descriptions of all airways affected by the VORTAC's relocation.

EFFECTIVE DATE: 0901 u.t.c., April 6, 1989.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On July 15, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of VOR Federal Airways V-4, V-307, V-508, and V-532 that were affected by the relocation of the Salina, KS, VORTAC (52 FR 26489). The FAA will not renew the current VORTAC land lease site and has relocated the VORTAC 2.6 nautical miles north to coordinates lat. 38°55'35"N., long. 97°37'15"W. This action amends the descriptions of all airways affected by this relocation. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the descriptions of VOR Federal Airways V-4, V-307, V-508, and V-532 that were affected by the relocation of the Salina, KS, VORTAC. The FAA will not renew the current VORTAC land lease site and has relocated the VORTAC 2.6 nautical miles north to coordinates lat. 38°55'35"N., long. 97°37'15"W. This action amends the descriptions of all the airways affected by this relocation.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. § 71.123 is amended as follows:

V-4 [Amended]

By removing the words "INT Hill City 097° and Salina, KS, 284° radials; Salina;" and substituting the words "Salina, KS;"

V-307 [Amended]

By removing the words "Pawnee City, NE, 193° radials;" and substituting the words "Pawnee City, NE, 194° radials;"

V-508 [Amended]

By removing the words "INT Salina 080°" and substituting the words "INT Salina 082°"

V-532 [Amended]

By removing the words "Salina, KS, 167° radials;" and substituting the words "Salina, KS, 168° radials;"

Issued in Washington, DC, on January 25, 1989.

William C. Davis,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-2380 Filed 2-1-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-ASW-20]

Alteration of VOR Federal Airway V-583; Texas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the description of VOR Federal Airway V-583 located in the vicinity of Leona, TX. This action extends V-583 from Leona very high frequency omni-directional radio range and tactical air navigational aid (VORTAC) to Austin, TX, VORTAC via College Station, TX. This action improves the flow of traffic to and from the Austin terminal area, improves flight planning and reduces controller workload.

EFFECTIVE DATE: 0901 U.T.C. April 6, 1989.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On July 11, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the description of Federal Airway V-583 located in the vicinity of Leona, TX (53 FR 26087). This action extends V-583 from Leona to Austin, TX. This action improves the flow of traffic in the Austin terminal area and reduces controller workload. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the description of V-583 by extending that airway from Leona VORTAC via College Station VORTAC to Austin VORTAC. The Houston Air Route Traffic Control Center (ARTCC) requested this extension be considered for implementation. Currently, aircraft inbound to Austin must be given a very detailed and lengthy clearance. This action provides controlled airspace routing to and from the Austin terminal area in an area where radar vectors are now utilized, thereby reducing controller workload and improving flight planning.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-583 [Revised]

From Austin, TX; College Station, TX; Leona, TX; Frankston, TX; to Quitman, TX.

Issued in Washington, DC, on January 24, 1989.

William C. Davis,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-2383 Filed 2-1-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket Nos. RM88-14-002 and RM88-15-001]

Interpretation of, and Regulations Under, Section 5 of the Outer Continental Shelf Lands Act (OCSLA); Order Granting Rehearing Solely for the Purpose of Further Consideration

Issued: January 27, 1989.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order granting rehearing solely for the purpose of further consideration.

SUMMARY: The Federal Energy Regulatory Commission (Commission) issued a final rule (Order No. 509) on December 9, 1988, that established regulations to implement section 5 of the Outer Continental Shelf Lands Act (OCSLA). In addition, the Commission also revised its interpretative rule on section 5 of the OCSLA, Order No. 491, 53 FR 14922 (April 26, 1988).

The Commission received timely requests for rehearing and is granting rehearing of Order No. 509 solely for the purpose of further consideration. This action does not constitute a grant or denial of the requests on their merits in whole or in part.

EFFECTIVE DATE: January 27, 1989.

FOR FURTHER INFORMATION CONTACT: Roger E. Smith, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-9231.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this

BEST COPY AVAILABLE

document in the Federal Register, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357–8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this order will be available on CIPS for 10 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

Before Commissioners: Martha O. Hesse, Chairman; Charles G. Stalon, Charles A. Trabandt, Elizabeth Anne Moler, and Jerry J. Langdon.

Issued: January 27, 1989.

On December 9, 1988, the Federal Energy Regulatory Commission (Commission) issued Order No. 509, 53 FR 50925 (December 19, 1988), that established regulations to implement section 5 of the Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. 1334 (1982)). In addition, the Commission also revised its interpretative rule on section 5 of the OCSLA, Order No. 491, 53 FR 14922 (April 28, 1988). Pursuant to 18 CFR 18 385.713 (1988), the Commission has received timely requests for rehearing in this proceeding. In order to review more fully the arguments raised, the Commission grants rehearing of the order solely for the purpose of further consideration. This order is effective on the date of issuance. This action does not constitute a grant or denial of the requests on their merits in whole or in part.

Pursuant to Rule 713(d) of the Commission's Rule of Practice and Procedure (18 CFR 385.713(d) (1988)), no answers to the requests for rehearing will be entertained by the Commission.

By the Commission. Commissioner Trabandt concurred with a separate statement attached.

Lois D. Cashell,

Secretary.

TRABANDT, Commissioner, *concurring*:

I concur in granting rehearing of Order No. 509 solely for the purpose of further consideration, with one major reservation.

The Final Rule in these dockets in Order No. 509 requires that all jurisdictional OCS pipelines must hold a single open season to facilitate the voluntary reallocation of firm transportation capacity and a separate open season for voluntary and involuntary reallocation of interruptible transportation capacity, both beginning no later than March 1, 1989. The rule also requires the OCS pipelines to file no later than March 1, 1989, rate schedules conforming to the requriements of Section 284.7, 284.8(d) and 284.9(d), or—in the alternative—rate schedules which would continue the existing approved rates of those pipelines.

Many parties in their rehearing petitions have protested this approach to the allocation of firm and interruptible transportation capacity for a variety of legal and policy reasons. For example, the Indicated Producers pointed out that an OCS pipeline's open access transportation rates will not become final until they have been fully litigated in a rate proceeding, which cannot occur as a practical matter for a number of months after the now-scheduled March 1 open seasons. They state, at page 10,

Because of the timing of the exclusive open season, prospective firm shippers may be compelled to decide whether to request firm capacity on pipelines that do not have existing applicable tariffs without knowing how much that capacity will ultimately cost. Thus, it will be difficult for potential shippers and purchasers of OCS gas to evaluate sources of supply and alternate transportation routes * * *. In addition, the total firm capacity available on OCS pipelines for the winter heating season beginning October 1989 will not be known until September of that year, at the conclusion of the offshore pipeline construction season. If uncommitted and voluntarily relinquished capacity is to be reallocated in an open season after the OCS pipelines begin operating under their blanket certificates, that reallocation should take place in September 1989, when the total firm capacity available to shippers is known.

I also would note that the grandfathering mechanism for the existing interruptible transportation in the interruptible capacity open season depends directly on the existing interruptible shipper agreeing to match the highest price paid by any other shipper. As I discussed at length in my concurring opinion to Order No. 509, it will be similarly difficult for those existing shippers to know what that maximum rate will be until the individual pipeline rate cases (with new Part 284 rates or existing rates filed in the alternative) have been fully litigated. Thus, grandfathered existing interruptible shippers, as well as new interruptible shippers, would also be compelled to request interruptible capacity or agree to pay the highest price paid by any other shipper, as the case may be, without knowing how much that capacity will ultimately cost.

In my concurring opinion, I urged all interested parties to carefully consider the scheduling of the open seasons no later than March 1, 1989, particularly in light of the very short time frame for the Commission to act on rehearing. My colleagues indicated that they were interested in the views of interested parties as to the workability of the Final Rule and would act to make adjustments, if necessary, prior to the March 1 date for the open seasons and the rate filings. It is quite clear that the "jury is now in" as to the need for an immediate delay of the March 1 open seasons and a thorough reconsideration of the mechanics of the involuntary blanket certificates and the capacity allocation process. Consequently, it is imperative that the Commission act on rehearing as soon as possible and prior to the March 1 date, at least to delay the open seasons until the rate filings have been processed. Other important issues should also be addressed as soon as possible.

For these reasons, I concur.

Charles A. Trabandt,

Commissioner.

[FR Doc. 89–2473 Filed 2–1–89; 8:45 am]

BILLING CODE 6717–01–M

INTERNATIONAL TRADE COMMISSION

19 CFR Part 207

Investigations of Whether Injury to Domestic Industries Results From Imports Sold at Less Than Fair Value or From Subsidized Exports to the United States

AGENCY: U.S. International Trade Commission.

ACTION: Interim rules and request for comments.

SUMMARY: The Commission is amending Part 207 on an interim basis to address concerns which have arisen relating to the interim amendments which appeared at 53 FR 33039 (Aug. 29, 1988) and which were issued to conform with the Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100–418 (Aug. 23, 1988).

The amendments to Part 207 provide, in particular, for changes in the procedure for release and service of business proprietary (formerly confidential business) information under administrative protective order.

DATES: The interim rules are effective on February 2, 1989. Comments on the interim rules will be considered if received on or before March 20, 1989.

ADDRESS: A signed original and 14 copies of each set of comments, along with a cover letter addressed to Kenneth R. Mason, Secretary, should be sent to the U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: Paul R. Bardos, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–252–1102.

SUPPLEMENTARY INFORMATION: Section 335 of the Tariff Act of 1930 (19 U.S.C. 1335) authorizes the Commission to adopt such reasonable procedures and rules and regulations as it deems necessary to carry out its functions and duties.

On August 23, 1988, the Omnibus Trade and Competitiveness Act of 1988 ("the 1988 Act") became effective. This new trade legislation contains provisions which, *inter alia*, amend Title VII of the Tariff Act of 1930 (19 U.S.C. 1671 *et seq.*). The Commission's rules concerning Title VII practice and procedure were amended to conform to the new legislation. 53 FR 33039 (Aug. 29, 1988).

Commission rules ordinarily are promulgated in accordance with the rule making provisions of section 553 of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) (APA), which entails the following steps: (1) Publication of a notice of proposed rule making; (2) solicitation of public comment on the proposed rules; (3) Commission review of such comments prior to developing final rules; and (4) publication of the final rules thirty days prior to their effective date. *See* 5 U.S.C. 553. That procedure has not be utilized in this instance because the problems addressed in this interim rulemaking needed immediate resolution.

The Commission thus determined to adopt *interim* rules that will go into effect immediately and will remain in effect until the Commission can adopt final rules promulgated in accordance with the usual notice, comment, and advance publication procedure.

The Commission's authority to adopt interim rules without following all steps listed in section 553 of the APA is derived from two sources: (1) Section 335 of the Tariff Act of 1930 (19 U.S.C. 1335) and (2) provisions of section 553 of the APA which allow an agency to dispense with various steps in the prescribed rule making procedure under certain circumstances.

Section 335 of the Tariff Act of 1930 authorizes the Commission "to adopt such reasonable procedures and rules and regulations as it deems necessary to carry out its functions and duties." 19 U.S.C. 1335. The Commission determined that the need for interim rules is clear in this instance. The 1988 Act made substantial changes in the procedure of Title VII investigations and required the issuance of interim rules within a short time. Problems have arisen in the use of the interim rules which the Commission found require immediate resolution.

An agency may dispense with publication of a notice of proposed rule making when the proposed rules are interpretive rules, general statements of policy, or rules of agency organization, procedure or practice. 5 U.S.C. 553(b). An agency may also dispense with the publication of a notice of final rules thirty days prior to their effective date if (1) the rules are interpretive rules or statements of policy or (2) the agency finds that "food cause" exists for not meeting the advance publication requirement and that finding is published along with the rule. 5 U.S.C. 553(d)(3).

In this instance, the Commission determined that the requisite circumstances existed for dispensing with the notice, comment, and advance publication procedure that ordinarily precedes the adoption of Commission rules. For purposes of invoking the section 553(b) exemption from publishing a notice of proposed rule making which solicits public comment, the Commission found that the interim rules are "agency rules of procedure or practice." For the purpose of invoking the section 553(d)(3) exemption from publishing advance notice of the interim rules thirty days prior to their effective date, the Commission found that the need to immediately address the problems associated with administrative protective order procedures constituted "good cause" for the Commission not to comply with that requirement.

The Commission recognizes that interim regulations should not respond to anything more than the exigencies created by the new legislation and expects that the more comprehensive final rules to follow will emerge as a result of the Congressionally-mandated policy of affording public participation in the rule making process.[1] More comprehensive final rules will be issued at a later date in accordance with the usual notice, public comment, and advance publication procedure.

The Commisson has determined that these interim rules do not constitute a major rule for the purposes of Executive Order 12291 (46 FR 13193, Feb. 19, 1981) because they do not meet the criteria described in section 1(b) of the EO. The Amendments, as interim rules, are not subject to the filing requirement of section 3(c)(3) of the EO. Moreover, in accordance with the Regulatory Flexibility Act (5 U.S.C. 601 note), the Commission hereby certifies pursuant to 5 U.S.C. 605(b) that the interim rules set forth in this notice are not likely to have a significant economic impact on a substantial number of small business entities. The Commission has determined that the interim rules' provisions for clarification of coverage and procedure, a procedure for seeking exemption from service requirements, faster service of briefs, and a deadline for service of certain documents neither impose a significant burden nor confer a significant benefit on small business entities.

Explanation of the Interim Amendments to 19 CFR Part 207

Section 207.3 is amended to require that mail service of briefs in preliminary investigations and of posthearing briefs in final investigations be by overnight mail or its equivalent. Service by hand remains an appropriate alternative. This amendment is intended to allow parties having access to business proprietary information the maximum time practicable to comment on such information when it is presented in such briefs.

Section 207.7 is amended to modify the procedure for obtaining confidential business information, now termed business propertary information, under administrative protective orders. Paragraph (a)(1) is amended to make clear that business proprietary information submitted by a nonparty in an investigation initiated before the effective date of the 1988 Act but instituted after such date will only be released under administrative protective order with the consent of the submitter.

Paragraph (a)(2) of § 207.7 is amended to make clear that an application for release of business proprietary

[1] *See* American Federation of Government Employees, AFL–CIO v. Block, 655 F.2d 1153, 1157–1158 (D.C. Cir. 1981). *See also* United States v. Garner, 767 F.2d 104, 120 (5th Cir. 1985) (*quoting* American Federation of Government Employees, AFL–CIO v. Block).

information under administrative protective order must be filed no later than the deadline for filing an entry of appearance, but need not be filed simultaneously with the entry of appearance. The paragraph is also amended to permit later application on behalf of an interested party which is a party up to three days before the deadline for filing posthearing briefs in the investigation, or the deadline for filing briefs in a preliminary investigation, providing that one of such party's representatives files an application by the deadline for filing entries of appearance.

Paragraph (a)(3) of § 207.7 is amended to make clear that only a representative of an interested party which is a party can be an authorized applicant.

Paragraph (b) of § 207.7 is amended to make clear to whom business proprietary information may be divulged under administrative protective order.

Paragraph (c) of § 207.7 is amended to conform to other amendments by replacing "attorney" and "confidential information" with "authorized applicant" and "business proprietary information."

Paragraph (f) of § 207.7 is amended to provide a procedure for determining whether particular information is subject to the service requirement set out in the paragraph. This amendment is not intended to broaden the narrow grounds for exemption from the service requirement, but merely to provide a procedure for seeking such an exemption. Paragraph (f) is also amended to provide that, in the event a document containing business proprietary information is filed with the Commission before the Secretary issues the list described in paragraph (a)(4) of § 207.7, the document must be served within two business days of the issuance of the list.

Section 207.10 is amended to provide a deadline for the service of the business proprietary version of the petition on authorized applicants whose application for access to business proprietary information under administrative protective order has been granted. This provision for service of the business proprietary version of the petition is intended to apply only to investigations initiated after the effective date of the 1988 Act.

List of Subjects in 19 CFR Part 207

Administrative practice and procedure, Investigations, Imports.

19 CFR Chapter II, Part 207 is amended as set forth below:

PART 207—[AMENDED]

1. The authority citation for Part 207, Subparts A–F, continues to read as follows:

Authority: Secs. 303, 332, 335, and 701–779 of the Tariff Act of 1930 (19 U.S.C. 1303, 1332, 1335, 1671–1677h); sec. 603 of the Trade Act of 1974 (19 U.S.C. 2482); secs. 2, 103–107, 1001, and 1002 of the Trade Agreements Act of 1979; and secs. 1311–1337 of the Omnibus Trade and Competitiveness Act of 1988.

2. Section 207.3 is revised to read as follows:

§ 207.3 Certification and service of documents

Any person submitting factual information on behalf of the petitioner or any other interested party for inclusion in the record, and any person submitting a response to a Commission questionnaire, must certify that such information is accurate and complete to the best of the submitter's knowledge. Any party submitting a document for inclusion in the record of the investigation shall, in addition to complying with § 201.8 of this Chapter, serve a copy of each such document on all other parties to the investigation in the manner prescribed in § 201.16 of this Chapter. Notwithstanding § 201.16 of this Chapter, briefs filed pursuant to § 207.15 and briefs filed pursuant to § 207.24 shall be served, if served by mail, by overnight mail or its equivalent. Failure to comply with the requirements of this rule may result in removal from status as a party. The Commission shall make available to all parties to the investigation a copy of each document, except transcripts of conferences and hearings and responses to requests under § 201.6(b) (confidential business information) of this Chapter and § 207.7 (documents under protective order), placed in the record of the investigation by the Commission.

3. Section § 207.7 is amended by revising paragraphs (a)(1), (a)(2), (a)(3), (b), (c), and (f) to read as follows:

§ 207.7 Limited disclosure of certain business proprietary information under a protective order.

(a)(1) *Disclosure.* Upon receipt of a timely application filed by an authorized applicant, as defined in paragraph (a)(3) of this section, which (i) describes in general terms the information requested, and (ii) sets forth the reasons for the request (*e.g.*, all business proprietary information properly disclosed prusuant to this section for the purpose of representing an interested party in proceedings pending before the Commission) the Secretary will make available all business proprietary information contained in Commission memoranda and reports and in written submissions filed with the Commission at any time during the investigation (except privileged information, classified information, and specific information of a type which there is a clear and compelling need to withhold from disclosure, *e.g.*, trade secrets) to the authorized applicant under a protective order described in paragraph (b) of this section. The term "business proprietary information" as used in this section has the same meaning as the term "confidential business information" as defined in § 201.6 of this Chapter, except that, in the case of an investigation initiated before August 23, 1988, but instituted after such date, the term "business proprietary information" does not cover business proprietary information that is submitted by a nonparty unless the submitter has consented to have such information released under administrative protective order.

(2) *Application.* An application under paragraph (a)(1) of this section must be made by an authorized applicant on a form adopted by the Secretary or by certification that the authorized applicant agrees to be bound by the terms of the protective order entered pursuant to paragraph (b) of this section. An application must be made no later than the time that an entry of appearance is due pursuant to § 201.11 of this Chapter. In the event that two or more authorized applicants represent one interested party who is a party to the investigation, such authorized applicants may select one of their number to be lead authorized applicant, whose application must be filed no later than the time that an entry of appearance is due, and who, providing the application is accepted, will be served with business proprietary information pursuant to paragraph (f) of this section. The other authorized applicants representing the same party may file their applications after the deadline for entries of appearance but must file at least three business days before the deadline for filing posthearing briefs in the investigation, or the deadline for filing briefs in a preliminary investigation, and will not be served with business proprietary information.

(3) *Authorized applicant.* Only an authorized applicant may file an application under this subsection. An authorized applicant is:

(i) An attorney, excepting in-house corporate counsel, for an interested party which is a party to the investigation.

(ii) An in-house corporate attorney for an interested party which is a party to the investigation, if the attorney is not involved in competitive decisionmaking as defined in *U.S. Steel Corp. v. United States*, 730 F.2d 1465 (Fed. Cir. 1984).

(iii) A consultant or expert under the direction and control of a person under paragraph (a)(3) (i) or (ii) of this section.

(iv) A consultant or expert who appears regularly before the Commission and who represents an interested party which is a party to the investigation.

(v) An interested party which is a party to the investigation, if such interested party is not represented by counsel.

A person under paragraph (a)(3) (iv) or (v) of this section will be given access to the business proprietary information in the record under such terms and conditions as required to assure its use is limited to the current investigation and that the recipient is not involved in competitive decisionmaking as defined in *U.S. Steel Corp. v. United States, supra.*

* * * * *

(b) *Protective order.* The protective order under which information is made available to the authorized applicant shall require him to submit to the Secretary a personal sworn statement that, in addition to such other conditions as the Secretary may require, he will:

(1) Not divulge any of the information so obtained and not otherwise available to him, to any person other than

(i) Personnel of the Commission concerned with the proceeding,

(ii) The person or agency from whom the information was obtained,

(iii) An authorized applicant participating in the proceeding whose application has been granted, and

(iv) those persons employed or supervised by the authorized applicant having a need thereof in connection with the proceeding and who have furnished a similar statement;

(2) Use such information solely for the purposes of the Commission proceeding then in progress or for judicial or Commission review thereof;

(3) Not consult with any person not described in paragraph (b)(1) of this section concerning such business proprietary information without first having received the written consent of the Secretary and the attorney of the party from whom such business proprietary information was obtained;

(4) Not copy or otherwise reproduce any business proprietary material obtained under the protective order except in accordance with procedures to be established by the Secretary; and

(5) Report promptly to the Secretary any breach of the protective order.

(c) *Final disposition of material released under protective order.* Upon completion of a proceeding, or at such other date as the Secretary may determine appropriate for particular data, the security of business proprietary information shall be protected by the return of all copies of materials released to authorized applicants pursuant to this section and all other materials containing the business proprietary information, such as charts or notes based on any such information recieved under protective order, accompanied by a certificate from the authorized applicant to whom the material was disclosed attesting to his personal, good faith belief that no other copies of such materials have been made available to the party he represents or any other person to whom disclosure was not specifically authorized.

* * * * *

(f) *Service.* (1) Any party filing written submissions which include business proprietary information with the Commission during an investigation shall at the same time serve complete copies of such submissions upon all authorized applicants appearing on the list established by the Secretary pursuant to paragraph (a)(4) of this section. In the event that such a submission if filed before the Secretary's list is established, the submission shall be served within two business days of the establishment of the list. All such submissions must be accompanied by a certificate attesting that complete copies of the submission have been properly served. The Secretary shall not accept for filing into the record of a proceeding any such submission not accompanied by such a certificate of service.

(2) A party may seek an exemption from the service requirement of paragraph (f)(1) of this section for a particular submission by filing a request for exemption with the reasons therefor along with the submission. The Secretary shall not accept the submission into the record but shall hold the submission until the request has been granted or denied. The Secretary shall promptly respond to the request. If a request is granted, the Secretary shall accept the submission into the record. If a request is denied, the party shall serve the submission within two business days of the denial and file a certificate of service in the form described in paragraph (f)(1) of this section, and the Secretary shall then accept the submission into the record. All submissions which include business proprietary information must be accompanied by a certificate attesting either (1) that complete copies of the submission have been properly served, or (2) that a request for exemption has been filed with the submission.

(3) The Secretary shall not accept submissions filed without a proper certificate of service. Failure to comply with paragraph (f) of this section may result in denial of party status and such sanctions as the Commission deems appropriate. Business proprietary information in submissions must be clearly marked as such when submitted, and must be segregated from other material being submitted.

4. Section 207.10 is amended by revising paragraph (b) to read as follows:

§ 207.10 Filing of petition with the Commission.

* * * * *

(b) *Service of the petition.* A copy of the petition, or a version thereof omitting business proprietary information, shall be served by petitioner on those persons enumerated in 19 CFR 353.36 (a)(6) and (a)(11) or in 19 CFR 355.26 (a)(6) and (a)(10), as appropriate. A copy of the petition including all business proprietary information shall be served by petitioner on those persons enumerated on the list established by the Secretary pursuant to § 207.7(a)(4) within two business days of the establishment of the Secretary's list. Service shall be attested by a certificate of service as required in § 201.16(c)(2).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: January 30, 1989.

[FR Doc. 89–2499 Filed 2–1–89; 8:45 am]

BILLING CODE 7020–02–M

RAILROAD RETIREMENT BOARD

20 CFR Part 204

Employment Relation

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) hereby revises Part 204 of its regulations by removing obsolete material, simplifying the language therein, and by adding definitions of employment relation in connection with certain subjects which are not in the current regulations. Addition of those references should render the explanation of employment relation in Part 204 complete.

EFFECTIVE DATE: February 2, 1989.

ADDRESS: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, General Attorney, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4513 (FTS 386–4513).

SUPPLEMENTARY INFORMATION: Section 3(i)(1) of the Railroad Retirement Act (Act) provides that in determining years of service only years subsequent to 1936 are counted. However, section 3(i)(3) provides that an individual who has less than 30 years of post-1936 service may have his service prior to 1937 counted so as to be credited with 30 years of service if he was actually working for a railroad employer on August 29, 1935, or was in an employment relation with such an employer on that date. Service by an individual to a local lodge or division of a railway labor organization is creditable under the Act only if preceded by actual service or an employment relation to a railroad on or after August 29, 1935 (see Part 203 of this chapter). Present Part 204 defines employment relation for purposes of crediting prior service and for establishing that service to a local lodge or division of a railway labor organization is creditable under the Act. These provisions are extremely detailed. The Board has removed unnecessary detail in these provisions and added a separate § 204.7 dealing with service to a local lodge or division of a railway labor organization.

An employment relation is also necessary for crediting pay for time lost under § 211.3 of the regulations and for crediting deemed service under § 210.3 of the regulations. The Board also adds definitions of employment relation for those situations. See §§ 204.5 and 204.6.

These regulations were published as a proposed rule on September 14, 1988 (53 FR 35515–35516). The Board invited comments to be received by October 14, 1988. Although no comments were received the Board has determined that certain minor revisions should be made to the proposed rule.

First, § 204.3, Employment relation—general rules, has been retitled "Employment relation—prior service" to make it clearer to the reader that the rules under this section relate primarily to the prior service determinations referred to above.

Secondly, § 204.5, Employment relation—deemed service, was modified to make it clearer that an employment relation with an employer ceases once an individual becomes entitled to an annuity under the Railroad Retirement Act. The last sentence of § 204.6 was reworded to parallel similar language in § 204.5.

Finally, a new section, § 204.7, Employment relation—service to a local lodge or division of a railway labor organization, has been added to make it clearer to the reader how the concept of employment relation relates to this type of railroad service.

The Board has determined that this is not a major rule for purposes of Executive Order 12291. Therefore no regulatory impact analysis is required by the Regulatory Flexibility Act (5 U.S.C. 601–611). In addition, no requirements for the collection of information within the meaning of the Paperwork Reduction Act of 1980 are imposed.

List of Subjects in 20 CFR Part 204

Railroad employees.

For the reasons set out in the preamble, Title 20, Chapter II of the Code of Federal Regulations is amended by revising Part 204 as follows:

PART 204—EMPLOYMENT RELATION

Sec.
- 204.1 Introduction.
- 204.2 Employment relation—determination by the Board.
- 204.3 Employment relation—prior service.
- 204.4 Conditions which preclude an employment relation.
- 204.5 Employment relation—deemed service.
- 204.6 Employment relation—pay for time lost.
- 204.7 Employment relation—service to a local lodge or division of a railway labor organization.

Authority: 45 U.S.C. 231f.

§ 204.1 Introduction.

In order for an individual to receive credit under the Railroad Retirement Act (Act) for railroad service prior to 1937, he or she must establish that he or she was actively working for an employer under the Act on August 29, 1935, or was in an employment relation to an employer on that date. Section 204.3 of this part defines employment relation for purposes of establishing prior service. It is also necessary to establish an employment relation to an employer for any month in which an individual wishes to receive a deemed service month, as provided for in § 210.3 of this chapter, and to receive credit for pay for time lost as provided for in § 211.3 of this chapter. This part defines employment relation for these purposes. See §§ 204.5 and 204.6. In addition, in order for an individual to have his or her service to a local lodge or division of a railway labor organization considered as creditable service under the Act, he or she must establish that he or she was working for a railroad or in an employment relation to a railroad on or after August 29, 1935, and that such employment or employment relation preceded his or her service to the local lodge or division. Section 204.7 defines employment relation for this purpose.

§ 204.2 Employment relation—determination by the Board.

The existence or non-existence of an employment relation, as defined in this part, is a conclusion which must be reached by the Board or its authorized officers or employees upon the basis of the evidence before the agency. The employer and the employee are the principal sources of evidence with respect to a determination whether an employment relation existed, but the Board will not be bound by the mere conclusion of the employer or the employee that the employee had or did not have an employment relation.

§ 204.3 Employment relation—prior service.

An individual shall have an employment relation to an employer on August 29, 1935, for purposes of crediting service prior to January 1, 1937, if:

(a) He or she was in the service of an employer on that date; or

(b) He or she was on that date on leave of absence expressly granted by the employer or by a duly authorized representative of such employer, but only if such leave of absence was established to the satisfaction of the Board before July 1947; or

(c) He or she was in the service of an employer after that date and before January 1946, in each of six calendar months, whether or not consecutive; or

(d) Before that date he or she did not retire and was not retired or discharged from the service of the last employer by whom he or she was employed, but solely by reason of a physical or mental disability he or she ceased before August 29, 1935, to be in the service of such employer and thereafter remained continuously disabled until he or she attained age sixty-five or until August 1945; or

(e) Solely for the reason stated in paragraph (c) of this section an employer by whom he or she was employed before August 29, 1935, did not on or after August 29, 1935, and before August 1945, call him or her to return to service, or if he or she were called to return to service he or she for such reason was unable to render service in six calendar months as provided in paragraph (b) of this section; or

(f) He or she was on August 29, 1935, absent from the service of an employer by reason of a discharge which, within one year after the effective date thereof, was protested to an appropriate labor representative or to the employer, as wrongful, and which was followed within ten years of the effective date thereof by his or her reinstatement in good faith to his or her former service with all his or her seniority rights.

§ 204.4 Conditions which preclude an employment relation.

(a) An individual shall not have been on August 29, 1935, an employee by reason of an employment relation if, during the last payroll period in which he or she rendered service to an employer prior to that date, such service was rendered outside of the United States to an employer not conducting the principal part of its business in the United States.

(b) An individual may not acquire an employment relation solely by virtue of service to a local lodge or division of a railway labor organization.

§ 204.5 Employment relation—deemed service.

For the purpose of crediting deemed service months as provided in § 210.3(b) of this chapter, an individual must have maintained an employment relation to one or more employers in the month or months to be deemed. For that purpose an employment relation exists with respect to any month in which an individual, although not in the active service of an employer, is on furlough subject to recall by an employer, is on a bona fide leave of absence, has not been retired or discharged but was by reason of continuous disability unable to return to service, or was not in active service because of a discharge later determined to be wrongful. However, an employment relation with respect to an employer ceases after an individual has resigned or relinquished his or her rights to return to the service of that employer or after the individual becomes entitled to receive an annuity under the Railroad Retirement Act.

§ 204.6 Employment relation—pay for time lost.

For the purpose of crediting pay for time lost as provided in § 211.3 of this chapter, an individual must have maintained an employment relation to one or more employers in the month or months to be credited with pay for time lost. For that purpose an employment relation exists with respect to any month in which an individual, although not in the active service of an employer, is on furlough subject to recall by an employer, is on a bona fide leave of absence, has not been retired or discharged but was by reason of continuous disability unable to return to service, or was not in active service because of a discharge later determined to be wrongful. However, an employment relation with respect to an employer ceases after an individual has resigned or relinquished his or her rights to return to the service of that employer.

§ 204.7 Employment relation—service to a local lodge or division of a railway labor organization.

Service by an individual to a local lodge or division of a railway labor organization shall be creditable under the Railroad Retirement Act only if, prior to such service, and on or after August 29, 1935, such individual performed compensated service for a carrier employer under Part 202 of this chapter or was in an employment relation to such a carrier employer under the rules set forth in § 204.3 of this part.

By Authority of the Board.

Dated: January 26, 1989.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 89-2395 Filed 2-1-89; 8:45 am]

BILLING CODE 7905-01-M

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20 CFR Part 235

Payment of Social Security Benefits

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) hereby amends its regulations by adding a new Part 235 to explain the Board's role in paying social security benefits. The new part explains why, when and under what circumstances the Board pays social security benefits.

EFFECTIVE DATE: February 2, 1989.

ADDRESS: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Stanley Jay Shuman, General Attorney, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4566 (FTS 386–4566).

SUPPLEMENTARY INFORMATION: Pursuant to the Railroad Retirement Act the Board is authorized to pay social security benefits on behalf of the Social Security Administration to certain individuals. Part 235 identifies those individuals and explains, in general, how the Board pays social security benefits.

The Board published this part as a proposed rule on October 6, 1988 (53 FR 39315–39316), and invited comments by December 5, 1988. No comments were received.

The Board has determined that this is not a major rule for purposes of Executive Order 12291. Therefore, no regulatory impact analysis is required. In addition, this part does not impose any requirement for the collection of information within the meaning of the Paperwork Reduction Act of 1980.

List of Subjects in 20 CFR Part 235

Railroad employees, Railroad retirement, Social security.

For the reasons set out in the preamble, Chapter II, Title 20 of the Code of Federal Regulations is amended by adding a new Part 235 to read as follows:

PART 235—PAYMENT OF SOCIAL SECURITY BENEFITS BY THE RAILROAD RETIREMENT BOARD

Sec.
- 235.1 Basis and purpose.
- 235.2 Other regulations related to this part.
- 235.3 Who is paid social security benefits by the Board.
- 235.4 How the Board pays social security benefits.

Authority: 45 U.S.C. 231f.

§ 235.1 Basis and purpose.

Effective January 1, 1975, the Railroad Retirement Act of 1974 (Act) requires the Railroad Retirement Board (Board) to provide for the payment of monthly social security benefit payments on behalf of the Social Security Administration to certain individuals as described in § 235.3 of this part. However, any such individual who was receiving benefits from the Social Security Administration prior to January 1, 1975, will continue to receive benefits from that agency unless he or she becomes eligible for a different type of social security benefit after that date and files a new application with the Social Security Administration for that benefit. Benefits under the new entitlement will be paid by the Board. The Act provides an offset in the railroad retirement benefits of individuals who are also eligible for social security benefits. Because the Board is required to make this offset, the payment of social security benefits by the Board is authorized for the purpose of convenience in the administration of the Act.

§ 235.2 Other regulations related to this part.

This part is related to a number of other parts in this chapter:

(a) Part 216 describes when a person is eligible for an annuity under the Railroad Retirement Act.

(b) Part 222 defines family relationships (for example, who is the wife or widow of an employee) for use when it is necessary to establish such a relationship in order to receive a benefit under the Railroad Retirement Act.

§ 235.3 Who is paid social security benefits by the Board.

The following individuals, if entitled to social security benefits, are paid such benefits by the Board:

(a) A railroad employee who has been credited with at least 120 months of railroad service;

(b) A wife or husband of a railroad employee who has been credited with at least 120 months of railroad service;

(c) A divorced wife or husband of a railroad employee who has been credited with at least 120 months of railroad service, but only if the divorced wife or husband is claiming social security benefits based upon the railroad employee's social security wages;

(d) A survivor of a railroad employee, including a surviving divorced spouse, remarried widow(er), surviving divorced mother or father, who is entitled, or upon application would be entitled, to an annuity under the Railroad Retirement Act;

(e) Any other person entitled to benefits under Title II of the Social Security Act based on the social security wages of a railroad employee who has been credited with at least 120 months of railroad service, except survivors of a railroad employee when the Social Security Administration has jurisdiction for survivor benefits. See Part 221 of this title.

§ 235.4 How the Board pays social security benefits.

(a) When an individual described in § 235.3 of this part is determined by the Social Security Administration to be entitled to social security benefits, the Social Security Administration certifies such benefits to the Board for payment by the Board. Once social security entitlement is certified to the Board, the Board then certifies the amount of the social security benefit to the Department of the Treasury for payment and makes any necessary adjustments in the individual's railroad retirement benefit.

(b) The Board has no authority with respect to the adjudication of the benefit to be paid under the Social Security Act. Entitlement to and the computation of such benefits is a matter solely within the jurisdiction of the Social Security Administration.

Dated: January 26, 1989.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 89-2396 Filed 2-1-89; 8:45 am]

BILLING CODE 7905-01-M

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20 CFR Parts 302 and 337

Railroad Unemployment Insurance Benefits

AGENCY: Railroad Retirement Board.

ACTION: Final rule; removal.

SUMMARY: The Railroad Retirement Board (Board) hereby removes Part 302, Reduction in Unemployment and Sickness Benefits, and Part 337, Rate of Railroad Unemployment, because these parts are now obsolete.

EFFECTIVE DATE: This regulation is effective February 2, 1989.

ADDRESS: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, General Attorney, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4513, (FTS) 386-4513.

SUPPLEMENTARY INFORMATION: Under section 10(d) of the Railroad Unemployment Insurance Act (RUIA) (45 U.S.C. 360(d)), the Board has the authority to require the Secretary of the Treasury to transfer as a loan from the Railroad Retirement Account to the credit of the railroad unemployment insurance account such funds which in the estimate of the Board are necessary to pay benefits under the RUIA if the funds in the railroad unemployment insurance account are insufficient before such transfer to pay such benefits.

Section 302 of Pub. L. 98-76, August 12, 1983, 97 Stat. 411, 432, prohibited such transfers after September 30, 1985, for purposes of paying benefits and refunds due after such date. By subsequent amendments this date was extended to December 19, 1985.

Part 302 was added at 50 FR 36870, September 10, 1985, effective October 1, 1985, to describe how the Board would continue to pay benefits under the RUIA at a reduced rate following the repeal of the borrowing authority referred to above. At 50 FR 3993, October 1, 1985, the effective date was deferred until further notice and the regulation has never become effective. Section 13302 of Pub. L. 99-272, April 7, 1986, 100 Stat. 82, 327, restored the Board's authority under section 10(d) of the RUIA and thus Part 302 is no longer needed.

Section 2(h)(1) of the RUIA provides for an extended benefit period during which an employee, with less than 10 years of service, may continue to receive unemployment benefits after he or she has exhausted his or her normal rights to benefits in a benefit year pursuant to section 2(c) of the RUIA. This extended benefit period begins with a period of high unemployment as defined in section 2(h)(2). This section in turn defines high unemployment with reference to a national rate of unemployment as indicated by a national "on" and "off" indicator provided for in section 203(d) of the Federal-State Extended Unemployment Insurance Compensation Act of 1970, Pub. L. 91-373, August 10, 1970, 84 Stat. 695. However, the national indicator in section 203(d) was repealed by section 2401 of Pub. L. 97-35, August 13, 1981, 95 Stat. 356, 874. Consequently, section 2(h) of the RUIA is now inoperative. Part 337 was added at 42 FR 29486, June 9, 1977, to describe how the Board, on a monthly basis, would make determinations of high unemployment under section 2(h). Thus, Part 337 is now obsolete.

Because this rule simply removes regulations which are now clearly out of date, public comment was not considered necessary and thus, this rule was not published in proposed form.

The Board has determined that this is not a major rule under Executive Order 12291. Therefore no regulatory impact analysis is required. There are no information collections associated with this rule.

List of Subjects

20 CFR Part 302

Railroad employees, Unemployment compensation.

20 CFR Part 337

Railroad employees, Unemployment compensation.

For the reasons set forth in the preamble, and in accord with the authority provided in 45 U.S.C. 362l, Chapter II, Title 20 of the Code of Federal Regulations is amended as follows:

PART 302—[REMOVED AND RESERVED]

1. Part 302, consisting of §§ 302.1 through 302-5, is hereby removed and reserved.

PART 337—[REMOVED AND RESERVED]

2. Part 337, consisting of §§ 337.1 through 337.4, is hereby removed and reserved.

By Authority of the Board.

Dated: January 26, 1989.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 89-2408 Filed 2-1-89; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 211

[Docket No. 88N-0027]

Tamper-Resistant Packaging Requirements for Certain Over-the-Counter (OTC) Human Drug Products

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its current tamper-resistant packaging regulation for over-the-counter (OTC) drug products. Under the final rule, manufacturers of two-piece, hard gelatin capsules must package their products using at least two tamper-resistant packaging features. Where the capsules themselves are sealed by a suitable tamper-resistant technology, the standard OTC tamper-resistant packaging requirement of a minimum of one tamper-resistant feature is sufficient. The new requirement applies only to hard gelatin capsules, and has no applicability to soft capsules (also known as soft gels). The revisions apply to all OTC human drug products, except dermatologics, dentifrices, insulin, and throat lozenges. This rule is part of agency efforts to improve consumer protection from the the threat of product tampering.

EFFECTIVE DATE: February 2, 1990.

FOR FURTHER INFORMATION CONTACT: Diane P. Goyette, Center for Drug Evaluation and Research (HFD-362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8049.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of May 5, 1988 (53 FR 16150), FDA proposed to amend the tamper-resistant packaging regulation for certain OTC drug products (21 CFR 211.132). FDA is now adopting these proposed requirements in a final rule.

The final rule requires that OTC drug products, marketed in two-piece, hard gelatin capsules, be packaged using a minimum of two tamper-resistant packaging features. However, where capsules have been sealed by a tamper-resistant technology such as gelatin-banding, a single additional tamper-resistant packaging feature is sufficient. This action is taken as part of the agency's continuing review of the potential public health threat posed by product tampering.

Although tamper-resistant features on OTC packages have been widely and effectively used since first required in 1982, more recent cases of product contamination show that two-piece, hard gelatin capsules remain vulnerable to malicious tampering. The agency believes that the requirement of two tamper-resistant features for these products will provide a necessary additional measure of consumer protection. Many manufacturers have already voluntarily taken measures that are consistent with the new rule. By amending the regulation, the agency intends to ensure that all manufacturers of this dosage form provide the increased level of protection.

II. Comments on Proposed Rule

Interested persons were given 60 days to comment on the proposed rule. FDA received three comments. One comment from a major pharmaceutical manufacturer, and another comment from a national trade association that represents manufacturers of OTC drug products, expressed agreement and support for the amendment. The third comment asked for inclusion of a particular tamper-resistant packaging technology in the amended regulation and in the related Compliance Policy Guide (CPG 7132a.17).

The agency believes that the tamper-resistant packaging regulation is not the appropriate place to include a description or listing of specific packaging designs. Section 211.132 defines acceptable technology by describing, in general, consumer protection standards that must be met by a tamper-resistant package. Specific examples are given only to illustrate the general requirements of the regulation. Manufacturers and packagers are free to use any packaging systems that meet these tamper-resistant standards. This allows for innovation and flexibility in choosing the best packaging system for a product.

The comment also requested that the specific form of tamper-resistant packaging be included in the agency's Compliance Policy Guide 7132a.17 ("Tamper-Resistant Packaging Requirements for Certain Over-the-Counter (OTC) Human Drug Products"). The availability of this CPG, recently updated to reflect changes in tamper-resistant technology, was announced in the **Federal Register** of May 5, 1988 (53 FR 16192). At this time, FDA is considering the issue of including new packaging systems in this CPG.

In the proposed rule, FDA specifically invited comments on certain aspects of the amendment, including its impact on State and local regulations and the costs to industry of implementing the new requirements. No comments were received on these or other issues. FDA is therefore adopting the amendment as proposed.

III. Economic Impact

FDA previously analyzed the potential economic effects of this rule, finding the projected cost to be less than $100 million annually and less than one-tenth of 1 percent of manufacturers' sales of OTC drug products. The agency thus determined that the rule is not a major rule as defined by Executive Order 12291, and a regulatory impact analysis is not required. As mentioned earlier, the agency has not received any new information that would alter its previous determination.

The costs of this regulation are not expected to pose a significant economic impact on small manufacturers. Therefore, in accordance with the Regulatory Flexibility Act (Pub. L. 96-543), the agency certifies that this rule will not have a significant impact on a substantial number of small entities.

IV. Executive Order 12612: Federalism

Executive Order 12612 requires that Federal agencies carefully examine regulatory actions to determine if they would have significant federalism implications. As stated in the preamble to the proposed rule (May 5, 1988; 53 FR 16150 at 16152), FDA believes that the amendment provides adequate safeguards to protect consumers from tampering of OTC drug products utilizing two-piece, hard gelatin capsules, and the amendment, therefore, should eliminate the need for additional action at the State or local level. FDA invited comments on the adequacy of the agency's amendment in this regard and received no comments. Thus, the agency concludes that no assessment under Executive Order 12612 is necessary.

V. Environmental Impact

The agency has determined under 21 CFR 25.24(a) (10) and (11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Effective Date

To allow sufficient time for necessary manufacturing and packaging changes, manufacturers are given until February 2, 1990 to comply with the new requirements. The effective date applies to products subject to this final rule and initially introduced or initially delivered for introduction into interstate commerce.

List of Subjects in 21 CFR Part 211

Drugs, Labeling, Laboratories, Manufacturing, Packaging and containers, Prescription drugs, Reporting and recordkeeping requirements, Warehouses.

Therefore, under the Federal Food, Drug, and Cosmetic Act, Part 211 is amended as follows:

PART 211—CURRENT GOOD MANUFACTURING PRACTICE FOR FINISHED PHARMACEUTICALS

1. The authority citation for 21 CFR Part 211 is revised to read as follows:

Authority: Secs. 201(p), 501, 502, 505, 506, 507, 701 (21 U.S.C. 321(p), 351, 352, 355, 356, 357, 371); 21 CFR 5.10, 5.11.

2. Section 211.132 is revised to read as follows:

§ 211.132 Tamper-resistant packaging requirements for over-the-counter (OTC) human drug products.

(a) *General.* The Food and Drug Administration has the authority under the Federal Food, Drug, and Cosmetic Act (the act) to establish a uniform national requirement for tamper-resistant packaging of OTC drug products that will improve the security of OTC drug packaging and help assure the safety and effectiveness of OTC drug products. An OTC drug product (except a dermatological, dentifrice, insulin, or throat lozenge product) for retail sale that is not packaged in a tamper-resistant package or that is not properly labeled under this section is adulterated under section 501 of the act or misbranded under section 502 of the act, or both.

(b) *Requirement for tamper-resistant package.* Each manufacturer and packer who packages an OTC drug product (except a dermatological, dentifrice, insulin, or throat lozenge product) for retail sale shall package the product in a tamper-resistant package, if this product is accessible to the public while held for sale. A tamper-resistant package is one having one or more indicators or barriers to entry which, if breached or missing, can reasonably be expected to provide visible evidence to consumers that tampering has occurred. To reduce the likelihood of successful tampering and to increase the likelihood that consumers will discover if a product has been tampered with, the package is required to be distinctive by design (e.g., an aerosol product container) or by the use of one or more indicators or barriers to entry that employ an identifying characteristic (e.g., a pattern, name, registered trademark, logo, or picture). For purposes of this section, the term "distinctive by design" means the packaging cannot be duplicated with commonly available materials or through commonly available processes. For purposes of this section, the term "aerosol product" means a product which depends upon the power of a liquified or compressed gas to expel the contents from the container. A tamper-resistant package may involve an immediate-container and closure system or secondary-container or carton system or any combination of systems intended to provide a visual indication of package integrity. The tamper-resistant feature shall be designed to and shall remain intact when handled in a reasonable manner during manufacture, distribution, and retail display.

(1) For two-piece, hard gelatin capsule products subject to this requirement, a minimum of two tamper-resistant packaging features is required, unless the capsules are sealed by a tamper-resistant technology.

(2) For all other products subject to this requirement, including two-piece, hard gelatin capsules that are sealed by a tamper-resistant technology, a minimum of one tamper-resistant feature is required.

(c) *Labeling.* Each retail package of an OTC drug product covered by this section, except ammonia inhalant in crushable glass ampules, aerosol products as defined in paragraph (b) of this section, or containers of compressed medical oxygen, is required to bear a statement that is prominently placed so that consumers are alerted to the specific tamper-resistant feature of the package. The labeling statement is also required to be so placed that it will be unaffected if the tamper-resistant feature of the package is breached or missing. If the tamper-resistant feature chosen to meet the requirement in paragraph (b) of this section is one that uses an identifying characteristic, that characteristic is required to be referred to in the labeling statement. For example, the labeling statement on a bottle with a shrink band could say "For your protection, this bottle has an imprinted seal around the neck."

(d) *Request for exemptions from packaging and labeling requirements.* A manufacturer or packer may request an exemption from the packaging and labeling requirements of this section. A request for an exemption is required to be submitted in the form of a citizen petition under § 10.30 of this chapter and should be clearly identified on the envelope as a "Request for Exemption from Tamper-Resistant Rule." The petition is required to contain the following:

(1) The name of the drug product or, if the petition seeks an exemption for a drug class, the name of the drug class, and a list of products within that class.

(2) The reasons that the drug product's compliance with the tamper-resistant packaging or labeling requirements of this section is unnecessary or cannot be achieved.

(3) A description of alternative steps that are available, or that the petitioner has already taken, to reduce the likelihood that the product or drug class will be the subject of malicious adulteration.

(4) Other information justifying an exemption.

(e) *OTC drug products subject to approved new drug applications.* Holders of approved new drug applications for OTC drug products are required under § 314.70 of this chapter to provide the agency with notification of changes in packaging and labeling to comply with the requirements of this section. Changes in packaging and labeling required by this regulation may be made before FDA approval, as provided under § 314.70(c) of this chapter. Manufacturing changes by which capsules are to be sealed require prior FDA approval under § 314.70(b) of this chapter.

(f) *Poison Prevention Packaging Act of 1970.* This section does not affect any requirements for "special packaging" as defined under § 310.3(l) of this chapter and required under the Poison Prevention Packaging Act of 1970.

(Information collection requirements approved by the Office of Management and Budget under OMB control number 0910-0149)

Frank E. Young,
Commissioner of Food and Drugs.
Otis R. Bowen,
Secretary of Health and Human Services.

Dated: January 18, 1989.

[FR Doc. 89-2409 Filed 2-1-89; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Parts 556 and 558

Animal Drugs, Feeds, and Related Products; Maduramicin Ammonium

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by American Cyanamid Co. The application provides for the use of maduramicin ammonium 1 percent Type A medicated articles to make Type C medicated feeds for the prevention of coccidiosis in broiler chickens.

EFFECTIVE DATE: February 2, 1989.

FOR FURTHER INFORMATION CONTACT: Diane T. McRae, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.

SUPPLEMENTARY INFORMATION: American Cyanamid Co., Berdan Ave., Wayne, NJ 07470, is the sponsor of NADA 139-075 for maduramicin ammonium 1 percent Type A medicated articles for making Type C medicated broiler feeds. The Type C medicated feeds are for broiler chickens for the prevention of coccidiosis caused by *Eimeria acervulina, E. tenella, E. brunetti, E. maxima, E. necatrix,* and *E. mivati.* The NADA is approved, 21 CFR 558.4 is amended, and new 21 CFR 558.340 is added to reflect the approval. Additionally, the tolerance for residues of maduramicin ammonium in the edible tissues of chickens is established in 21 CFR 556.375.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 556

Animal drugs, Foods, Residues.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts 556 and 558 are amended as follows:

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

1. The authority citation for 21 CFR Part 556 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. New § 556.375 is added to read as follows:

§ 556.375 Maduramicin ammonium.

A tolerance is established for residues of maduramicin ammonium in chickens as follows:

(a) A tolerance for maduramicin ammonium (marker residue) in chickens is 0.38 parts per million in fat (target tissue). A tolerance refers to the concentration of marker residues in the target tissue used to monitor for total drug residues in the target animals.

(b) The safe concentrations for total maduramicin ammonium residues in uncooked edible chicken tissues are: 0.24 parts per million in muscle; 0.72 parts per million in liver; 0.48 parts per million in skin; and 0.48 parts per million in fat. A safe concentration refers to the total residue concentration considered safe in edible tissues.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

3. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

4. Section 558.4 is amended in paragraph (d) in the table entitled "Category II" by alphabetically adding a new entry "Maduramicin ammonium" to read as follows:

§ 558.4 Medicated feed applications.

* * * * *

(d) * * *

CATEGORY II

Drug	Assay limits, percent [1] Type A	Type B maximum (100x)	Assay limits, percent [1] type B/C [2]
*	*	*	*
Maduramicin ammonium.	90-110	54.5 g/ton (.006%).	80-120
*	*	*	*

[1] Percent of labeled amount.
[2] Values given represent ranges for either Type B or Type C medicated feeds. For those drugs that have two range limits, the first set is for a Type B medicated feed and the second set is for a Type C medicated feed. These values (ranges) have been assigned in order to provide for the possibility of dilution of a Type B medicated feed with lower assay limits to make a Type C medicated feed.

* * * * *

5. New § 558.340 is added to read as follows:

§ 558.340 Maduramicin ammonium.

(a) *Approvals.* Type A medicated articles: 4.54 grams per pound to 010042 in § 510.600(c) of this chapter.

(b) *Tolerances.* See § 556.375 of this chapter.

(c) *Conditions of use. (1) Amount.* 4.54 to 5.45 grams per ton (5 to 6 parts per million) (1 to 1.2 pounds per ton).

(2) *Indications for use.* For prevention of coccidiosis caused by *Eimeria acervulina, E. tenella, E. brunetti, E. maxima, E. necatrix, and E. mivati.*

(3) *Limitations.* For broiler chickens only. Feed continuously as sole ration. Do not feed to laying hens. Withdraw 5 days before slaughter.

Dated: January 27, 1989.

Gerald B. Guest,
Director, Center for Veterinary Medicine.

[FR Doc. 89-2463 Filed 2-1-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Parts 500 and 515

Foreign Assets Control Regulations and Cuban Assets Control Regulations

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTIONS: Final rule; amendments.

SUMMARY: This rule makes three sets of parallel amendments to the Foreign

Assets Control Regulations, 31 CFR Part 500, and the Cuban Assets Control Regulations, 31 CFR Part 515 (hereinafter referred to jointly as the "Regulations"), together with conforming amendments. The first set of amendments terminates restrictions on the importation and exportation of publications and other tangible informational materials to bring the Regulations into conformity with section 2502(a) of the Omnibus Trade and Competitiveness Act, Pub. L. No. 100-418, 102 Stat. 1107 (the "Trade Act"). The second set of amendments sets forth the Treasury Department's long-standing interpretation that the existing general licenses unblocking certain trust and estate assets held by U.S. nationals apply only to trusts created by gift, donation, or bequest, and not to trusts such as "sinking funds" established by issuers of securities. The third set of amendments provides for the issuance of specific licenses unblocking estate assets of deceased designated nationals under certain circumstances to heirs who are not designated nationals. A set of conforming amendments incidental to the trusts and estates licensing amendments provides, in §§ 500.505 and 515.505, that persons who have never been designated nationals of an embargoed country and who are resident in, or organized under the laws of, the United States or the authorized trade territory are licensed as "unblocked nationals." A further set of conforming provisions amends the definition of "authorized trade territory" in §§ 500.322 and 515.322 to expressly include Australia and New Zealand, in accordance with long-standing Treasury policy.

EFFECTIVE DATE: February 2, 1989.

FOR FURTHER INFORMATION CONTACT: William B. Hoffman, Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220. Tel. (202) 376-0408.

SUPPLEMENTARY INFORMATION: Section 2502(a)(1) of the Trade Act amends the Trading With the Enemy Act, 50 U.S.C. App. 5(b) ("TWEA"), to remove the authority of the President to regulate or prohibit, directly or indirectly, the importation from any country, or the exportation to any country, whether commercial or otherwise, of informational materials which are not otherwise controlled for exports for national security reasons under section 5 of the Export Administration Act of 1979, 50 U.S.C. 2401-2419, or with respect to which no acts are prohibited by Chapter 37 of Title 18 of the United States Code, dealing with espionage and censorship.

Financial and other transactions directly related to the physical importation and exportation of tangible informational materials are authorized. Transactions relating to the dissemination of informational materials are also authorized, such as copying, dubbing, and translating. Transactions relating to the substantive enhancement or alteration of informational materials, however, remain prohibited.

Under section 2502(a)(2) of the Trade Act, the new limitation on the President's authority under TWEA applies to existing and future sanctions programs. This rule makes revisions to the Regulations necessary to conform them to this new limitation on Presidential authority under TWEA.

The rule also revises sections 500.524 and 515.524 of the Regulations, which are identical provisions authorizing, among other things, payment of distributive shares of principal and interest due under certain blocked trusts and estates of infants and incompetents to unblocked beneficiaries. This revision is for purposes of clarification only, deemed necessary in the wake of a court decision, *Cuellar v. Secretary of the Treasury, et al.*, Civ. Action No. 87-1611 (S.D. Fla., March 18, 1988), misconstruing § 515.524 to apply to a sinking fund established by the Republic of Cuba. The revision sets forth the Treasury Department's long-standing interpretation that §§ 500.524 and 515.524 apply only to trusts created by gift, donation, or bequest, and not to business or commercial trusts, such as sinking funds established by an issuer of securities. The latter security arrangements are established in order to ensure the availability of funds to pay off installments of interest or principal as the securities mature. Treasury distinguishes such sinking funds, intended to obtain financing for business and public or private commercial activities, from trusts established in order to make a gift of funds or other assets to a specific person or class of persons. Thus, under the Treasury Department's long-standing interpretation of these provisions, sinking funds and other similar arrangements are not eligible for individual unblockings under these general licenses.

Third, this rule modifies current licensing policy regarding blocked estate assets of deceased designated nationals. Formerly, a deceased designated national (*i.e.* a national of an embargoed country at the time of his death) was treated as retaining an interest in his estate. The estate assets remained blocked, therefore, even if the heirs were not designated or specially designated nationals and no other nexus to the designated foreign country existed.

Under the new licensing policy announced in this rule, specific licenses will be issued to allow the unblocking of estate assets of deceased designated nationals under circumstances where the following conditions are met: (1) The assets have passed by intestate succession or by testamentary disposition; (2) the heir is a permanent resident of the United States or the authorized trade territory and is not a specially designated national; and (3) the heir can establish by documentary evidence the death of the decedent and his own heirship and residence in the United States or the authorized trade territory. License applications to unblock particular estate assets inherited by designated nationals, or in which an unblocked heir and a designated national share in undivided interest, will be denied. Provisions already in effect authorizing certain transactions with regard to blocked estates will continue in effect as to those assets remaining blocked under this rule.

Since the Regulations involve a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply. Because the Regulations are issued with respect to a foreign affairs function of the United States, they are not subject to Executive Order 12291 of February 17, 1981, dealing with Federal regulations.

This rule is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in this rule have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget ("OMB") under control number 1505-0075.

The collections of information in this regulation are in §§ 500.557, 500.568, 515.552, and 515.568 of Title 31 of the Code of Federal Regulations. Submission of the information required under these sections is necessary in order for the Office of Foreign Assets Control to evaluate the merits of a license application seeking to unblock

frozen estate assets of deceased designated nationals, a transaction that would otherwise be prohibited under the Regulations. The likely respondents are individuals.

The estimated total annual reporting burden is 500 hours. The estimated average annual burden hours per respondent is five hours. The estimated number of respondents is 100. Comments concerning the collection of information and the accuracy of this burden estimate, and suggestions for reducing this burden should be directed to the Office of Information and Regulatory Affairs, attention: Desk Officer for the Office of Foreign Assets Control, U.S. Department of the Treasury, or the Paperwork Reduction Project (1505-0075), of the Office of Management and Budget, Washington, DC 20503, with copies to the Office of Information Resources Management, Department of the Treasury, 15th & Pennsylvania Avenue, NW., Washington, DC 20220. Such comments should be submitted by April 3, 1989.

List of Subjects in 31 CFR Parts 500 and 515

Australia, Cambodia, Cuba, Exports, Foreign Assets Control, Imports, Informational materials, New Zealand, North Korea, Publications, Securities, Trusts and Estates, Vietnam.

For the reasons set forth in the preamble, Title 31, Chapter V of the Code of Federal Regulations, is amended as follows.

31 CFR Part 500 is amended as set forth below:

PART 500—FOREIGN ASSETS CONTROL REGULATIONS

1. The authority citation for Part 500 continues to read as follows:

Authority: 50 U.S.C. App. 5(b), as amended; E.O. 9193, 7 FR 5205, 3 CFR 1938-1943 Cum. Supp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR 1943-1948 Comp., p. 748.

Subpart B—Prohibitions

2. Section 500.206 is added to read as follows:

§ 500.206 Exemption of informational materials.

(a) The importation from any country, and the exportation to any country, whether commercial or otherwise, of informational materials, as defined in § 500.332, are exempt from the prohibitions and regulations of this part.

(b) All transactions of common carriers incident to the importation or exportation of mail or informational materials between the United States and any foreign country designated under § 500.201 are exempt from the prohibitions and regulations of this part.

(c) This section does not authorize transactions related to informational materials not fully created and in existence at the date of the transaction, or to the substantive or artistic alteration or enhancement of informational materials, or to the provision of marketing and business consulting services by a person subject to the jurisdiction of the United States. Such prohibited transactions include, without limitation, payment of advances for informational materials not yet created and completed, provision of services to market, produce or co-produce, create or assist in the creation of informational materials, and payment or royalties to a designated national with respect to income received for enhancements or alterations made by persons subject to the jurisdiction of the United States to informational materials imported from a designated national.

(d) This section does not authorize transactions incident to the exportation of restricted technical data as defined in § 799 of the Export Administration Regulations, 15 CFR Parts 768-799, or to the exportation of goods for use in the transmission of any data. The exportation of such goods to designated foreign countries is prohibited, as provided in § 500.201 of this part and § 785.1 of the Export Administration Regulations.

Example #1: A U.S. publisher ships 500 copies of a book to Vietnam directly from San Francisco aboard a chartered aircraft, and receives payment by means of a letter of credit issued by a Vietnamese bank and confirmed by an American bank. These are permissible transactions under this section.

Example #2: A Vietnamese party exports a single master copy of a Vietnamese motion picture to a U.S. party and licenses the U.S. party to duplicate, distribute, show and exploit in the United States the Vietnamese film in any medium, including home video distribution, for five years, with the Vietnamese party receiving 40% of the net income. All transactions relating to the activities described in this example are authorized under this section or § 500.550.

Example #3: A U.S. recording company proposes to contract with a Vietnamese musician to create certain musical compositions, and to advance royalties of $10,000 to the musician. The music written in Vietnam is to be recorded in a studio that the recording company owns in the Bahamas. These are all prohibited transactions. The U.S. party is prohibited under § 500.201 from contracting for the Vietnamese musician's services, from transferring $10,000 to Vietnam to pay for those services, and from providing the Vietnamese with production services through the use of its studio in the Bahamas. No informational materials are in being at the time of these proposed transactions. However, the U.S. recording company may contract to purchase and import preexisting recordings by the Vietnamese musician, or to copy the recordings in the United States and pay negotiated royalties to Vietnam under this section or § 500.550.

Example #4: A Vietnamese party enters into a subpublication agreement licensing a U.S. party to print and publish copies of a musical composition and to sub-license rights of public performance, adaptation, and arrangement of the musical composition, with payment to be a percentage of income received. All transactions related to the activities described in this example are authorized under this section and § 500.550, except for synchronization, adaption, and arrangement, which constitute artistic enhancement of the Vietnamese composition. Payment to the Vietnamese party may not reflect income received as a result of these enhancements.

Subpart C—General Definitions

§ 500.307 [Amended]

3. Section 500.307 is amended by adding the phrase "pursuant to § 500.505" after "Any person licensed * * * ."

4. Paragraph (a)(3) of § 500.322 is revised to read as follows:

500.322 Authorized trade territory; member of the authorized trade territory.

(a) * * *

(3) Australia and Oceania, including Indonesia, New Zealand, and the Philippines;

* * * * * *

5. Section 500.332 is added to read as follows:

§ 500.332 Informational materials.

(a) For purposes of this part, the term "informational materials" means information recorded in tangible form, *i.e.*, publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, and other tangible informational articles.

(b) The term "informational materials" does not include:

(1) Items that are controlled for export under section 5 of the Export Administration Act of 1979, or with respect to which acts are prohibited by chapter 37 of title 18 of the United States Code; and

(2) Intangible items, such as telecommunications transmissions.

Subpart D—Interpretations

§ 500.407 [Amended]

6. Section 500.407 is amended by adding the words ", and § 500.568 which authorizes the unblocking by specific license of estate assets to certain heirs under certain circumstances." to the end of the last sentence.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

7. Section 500.505 is amended by redesignating existing paragraphs (a) (1) and (2) as paragraphs (a) (2) and (3) and by adding a new paragraph (a)(1) to read as follows:

§ 500.505 Certain persons unblocked.

(a) * * *

(1) Any person resident in, or organized under the laws of a jurisdiction in, the United States or the authorized trade territory who or which has never been a designated national;

* * * * *

8. Section 50.523 is amended by adding a new paragraph (a)(4), and concluding text to paragraph (a), and by revising paragraph (b)(3) to read as follows:

§ 500.523 Transactions incident to the administration of decedents' estates.

(a) * * *

* * * * *

(4) Any transfer of title pursuant to a valid testamentary disposition.

This paragraph does not authorize any unblocking or distribution of estate assets to a designated national.

(b) * * *

* * * * *

(3) The assets are unblocked under a specific license issued pursuant to § 500.568.

9. Paragraph (a) of § 500.524 is revised to read as follows, and a new paragraph (d) is added:

§ 500.524 Payment from, and transactions in the administration of, certain trusts and estates.

(a) Any bank or trust company incorporated under the laws of the United States, or of any State, territory, possession, or district of the United States, or any private bank subject to supervision and examination under the banking laws of any State of the United States, acting as trustee of a trust created by gift, donation or bequest and administered in the United States, or as legal representative of an estate of an infant or incompetent administered in the United States, in which trust or estate one or more persons who are designated nationals have an interest, beneficial or otherwise, or are co-trustees or co-representatives, is hereby authorized to engage in the following transactions:

* * * * *

(d) The application of this section to trusts is limited to trusts established by gift, donation, or bequest from individuals or entities to benefit specific heirs, charitable causes, and similar beneficiaries. This section does not apply to trusts established for business or commercial purposes, such as sinking funds established by an insurer of securities in order to secure payment of interest or principal due on such securities.

§ 500.525 [Amended]

10. Section 500.525 is amended by removing the word "limited" from the first sentence of paragraph (b) and by adding ", § 500.568," after "§ 500.523".

Appendix to § 500.536 [Removed]

11. The Appendix to § 500.536 is removed.

12. Section 500.550 is revised to read as follows:

§ 500.550 Transactions related to informational materials.

(a) All financial and other transactions directly incident to the physical importation or exportation of informational materials are authorized.

(b) Transactions relating to the dissemination of informational materials are authorized, including remittance of royalties paid for informational materials that are reproduced, translated, subtitled, or dubbed. This section does not authorize the remittance of royalties or other payments relating to works not yet in being, or for marketing and business consulting services, or artistic or other substantive alteration or enhancements to informational materials, as provided in § 500.206(c).

13. Section 500.557 is revised to read as follows:

§ 500.557 Proceeds of insurance policies.

(a) Specific licenses are issued authorizing payment of the proceeds of blocked life insurance policies issued on the life of a North Korean, North Vietnamese, Cambodian, or South Vietnamese national, who died in one of those countries after the applicable effective date to certain beneficiaries licensed as unblocked nationals pursuant to § 500.505, as follows:

(1) The applicant is a permanent resident of the United States or the authorized trade territory and is not a specially designated national; and

(2) No interest on the part of a designated national not licensed as an unblocked national exists in that portion of the funds to which the applicant is entitled.

(b) Applications for specific licenses under this section must include all of the following information:

(1) Proof of permanent residence in the United States or the authorized trade territory, to be established by the submission of documentation issued by relevant government authorities that must include at least two of the following documents: (i) passport; (ii) voter registration card; (iii) permanent resident alien card; or (iv) national identity card. Other documents tending to show residency, such as income tax returns, may also be submitted in support of government documentation, but will not suffice in and of themselves; and

(2) Proof of entitlement under the insurance policy to be established by a copy of the policy and an affidavit from an appropriate officer of a recognized insurance company acknowledging the legitimacy of the beneficiary's claim and the amount of the payment.

(c) Any document provided pursuant to this section that is not written in the English language must be accompanied by a translation into English, as well as a certification by the translator that he is not an interested party to the proceeding, is qualified to make the translation, and has made an accurate translation of the document in question.

§ 500.562 [Removed and reserved]

14. Section 500.562 is removed and reserved.

15. Section 500.563 is amended by removing paragraph (b) and redesignating paragraphs (c) as (b), (d) as (c) and (e) as (d), and by revising paragraph (a)(3) to read as follows:

§ 500.563 Certain transactions incident to travel to and in North Korea, North or South Vietnam, or Cambodia.

(a) * * *

(3) The purchase in any foreign country designated under § 500.201 of this part, and importation as accompanied baggage, of merchandise with a foreign market value not to exceed $100 per person for personal use only. Such merchandise may not be resold. This authorization may be used only once in every six consecutive months. As provided in § 500.206 of this part, informational materials are exempt from this restriction.

* * * * *

16. Section 500.568 is added to read as follows:

§ 500.568 U.S. assets of blocked decedents.

(a) Specific licenses may be issued unblocking the net pro rata shares of certain heirs of designated nationals in U.S.-located estate assets, after deducting the total debt due creditors for claims that accrued prior to the effective date, in cases where all of the following conditions are met:

(1) The applicant is a permanent resident of the United States or the authorized trade territory and is not a specially designated national; and

(2) No interest on the part of a designated national not licensed as an unblocked national pursuant to § 500.505 exists in that portion of the assets to which the applicant is entitled.

(b) Applications for specific licenses under this section must include all of the following information:

(1) Proof of permanent residence in the United States or the authorized trade territory, to be established by the submission of documentation issued by relevant government authorities that must include at least two of the following documents: (i) passport; (ii) voter registration card; (iii) permanent resident alien card; or (iv) national identity card. Other documents tending to show residency, such as income tax returns, may also be submitted in support of government documentation, but will not suffice in and of themselves;

(2) Proof of death of the designated national to be established by a death certificate;

(3) Proof of heirship, to be established by a copy of the decedent's duly executed will certified by a probate court, a court decree determining the heirs, or, failing the availability of such documents, copies of certificates establishing the relationship of the heir to the deceased, *e.g.*, birth or marriage certificates; and

(4) A description of the assets involved, including interest due on blocked funds since April 1, 1979, the name and address of the institution in which the assets are held, the account or safe deposit box number, the name in which the assets are held and a statement of all known encumbrances or claims against them.

(c) Any document provided pursuant to this section that is not written in the English language must be accompanied by a translation into English, as well as a certification by the translator that he is not an interested party to the proceeding, is qualified to make the translation, and has made an accurate translation of the document in question.

31 CFR Part 515 is amended as set forth below:

PART 515—CUBAN ASSETS CONTROL REGULATIONS

1. The authority citation for Part 515 continues to read as follows:

Authority: 50 U.S.C. App. 5(b), as amended; 22 U.S.C. 2370(a); Proc. 3447, 27 FR 1085, 3 CFR 1959–1963 Comp. p. 157; E.O. 9193, 7 FR 5205, 3 CFR 1938–1943 Cum. Supp. p. 1174; E.O. 9989, 13 FR 4891, 3 CFR 1943–1948 Comp. p. 748.

Subpart B—Prohibitions

2. Section 515.206 is added to read as follows:

§ 515.206 Exemption of informational materials.

(a) The importation from any country, and the exportation to any country, whether commercial or otherwise, of informational materials, as defined in § 515.332, are exempt from the prohibitions and regulations of this part.

(b) All transactions of common carriers incident to the importation or exportation of mail or informational materials between the United States and any foreign country designated under § 515.201 are exempt from the prohibitions and regulations of this part.

(c) This section does not authorize transactions related to informational materials not fully created and in existence at the date of the transaction, or to the substantive or artistic alteration or enhancement of informational materials, or to the provision of marketing and business consulting services by a person subject to the jurisdiction of the United States. Such prohibited transactions include, without limitation, payment of advances for informational materials not yet created and completed, provision of services to market, produce or co-produce, create or assist in the creation of informational materials, and payment of royalties to a designated national with respect to income received for enhancements or alterations made by persons subject to the jurisdiction of the United States to informational materials imported from a designated national.

(d) This section does not authorize transactions incident to the transmission of restricted technical data as defined in section 779 of the Export Administration Regulations, 15 CFR Parts 768–799, or to the exportation of goods for use in the transmission of any data. The exportation of such goods to designated foreign countries is prohibited, as provided in § 515.201 of this part and § 785.1 of the Export Administration Regulations.

(e) This section does not authorize transactions related to travel to Cuba when such travel is not otherwise authorized under § 515.560 or by specific license.

Example #1: A U.S. publisher ships 500 copies of a book to Cuba directly from Miami aboard a chartered aircraft, and receives payment by means of a letter of credit issued by a Cuban bank and confirmed by an American bank. These are permissible transactions under this section.

Example #2: A Cuban party exports a single master copy of a Cuban motion picture to a U.S. party and licenses the U.S. party to duplicate, distribute, show and exploit in the United States the Cuban film in any medium, including home video distribution, for five years, with the Cuban party receiving 40% of the net income. All transactions relating to the activities described in this example are authorized under this section or § 515.550.

Example #3: A U.S. recording company proposes to contract with a Cuban musician to create certain musical compositions, and to advance royalties of $10,000 to the musician. The music written in Cuba is to be recorded in a studio that the recording company owns in the Bahamas. These are all prohibited transactions. The U.S. party is prohibited under § 515.201 from contracting for the Cuban musician's services, from transferring $10,000 to Cuba to pay for those services, and from providing the Cuban with production services through the use of its studio in the Bahamas. No informational materials are in being at the time of these proposed transactions. However, the U.S. recording company may contract to purchase and import preexisting recordings by the Cuban musician, *or* to copy the recordings in the United States and pay negotiated royalties to Cuba under this section or § 515.550.

Example #4: A Cuban party enters into a subpublication agreement licensing a U.S. party to print and publish copies of a musical composition and to sub-license rights of public performance, adaptation, and arrangement of the musical composition, with payment to be a percentage of income received. All transactions related to the activities described in this example are authorized under this section and § 515.550, except for synchronization, adaptation, and arrangement, which constitute artistic enhancement of the Cuban composition. Payment to the Cuban party may not reflect income received as a result of these enhancements.

Subpart C—General Definitions

§ 515.307 [Amended]

3. Section 515.307 is amended by adding the phrase "pursuant to § 515.505" after "Any person licensed * * *."

4. Paragraph (a)(3) of § 515.322 is revised to read as follows:

§ 515.322 Authorized trade territory; member of the authorized trade territory.

(a) * * *

* * * * * *

(3) Australia and Oceania, including Indonesia, New Zealand, and the Philippines;

* * * * * *

5. Section 515.332 is added to read as follows:

§ 515.332 Informational materials.

(a) For purposes of this part, the term "informational materials" means:

(1) Publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, and other

informational articles, including tangible items described in the following:

(2) 15 CFR 799.1, Control List, Group 5, CL No. 7599I: microfilm that reproduces the content of certain publications, and similar materials;

(3) 15 CFR 799.1, Control List, Group 9, CL No. 7999I: certian publications and related materials; and

(4) 15 CFR 779.3, General License GTDA, technical data available to all destinations;

(b) The term "informational materials" does not include:

(1) Items that are controlled for export under § 5 of the Export Administration Act of 1979, or with respect to which acts are prohibited by chapter 37 of title 18 of the United States Code; and

(2) Intangible items such as telecommunications transmissions.

Subpart D—Interpretations

§ 515.407 [Amended]

6. Section 515.407 is amended by adding the words ", and § 515.568 which authorizes the unblocking by specific license of estate assets to certain heirs under certain circumstances." to the end of the last sentence.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

7. Section 515.505 is amended by redesignating existing paragraphs (a) (1) and (2) as paragraphs (a) (2) and (3) and by adding a new paragraph (a)(1) to read as follows:

§ 515.505 Certain persons unblocked.

(a) * * *

(1) Any person resident in, or organized under the laws of a jurisdiction in, the United States or the authorized trade territory who or which has never been a designated national;

* * * * * *

8. Section 515.523 is amended by adding a new paragraph (a)(4), and concluding text to paragraph (a), and by revising paragraph (b)(3) to read as follows:

§ 515.523 Transactions incident to the administration of decedents' estates.

(a) * * *

(4) Any transfer of title pursuant to a valid testamentary disposition.

This paragraph does not authorize any unblocking or distribution of estate assets to a designated national.

(b) * * *

(3) The assets are unblocked under a specific license issued pursuant to section 515.568.

9. Paragraph (a) of § 515.524 is revised to read as follows, and a new paragraph (d) is added:

§ 515.524 Payment from, and transactions in the administration of, certain trusts and estates.

(a) Any bank or trust company incorporated under the laws of the United States, or of any State, territory, possession, or district of the United States, or any private bank subject to supervision and examination under the banking laws of any State of the United States, acting as trustee of a trust created by gift, donation or bequest and administered in the United States, or as legal representative of an estate of an infant or incompetent administered in the United States, in which trust or estate one or more persons who are designated nationals have an interest, beneficial or otherwise, or are co-trustees or co-representatives, is hereby authorized to engage in the following transactions:

* * * * * *

(d) The application of this section to trusts is limited to trusts established by gift, donation, or bequest from individuals or entities to benefit specific heirs, charitable causes, and similar beneficiaries. This section does not apply to trusts established for business or commercial purposes, such as sinking funds established by an issuer of securities in order to secure payment of interest or principal due on such securities.

§ 515.525 [Amended]

10. Section 515.525 is amended by removing the word "limited" from the first sentence of paragraph (b) and by adding ", § 515.568," after "§ 515.523".

Appendix to § 515.536 [Removed]

11. The Appendix to § 515.536 is removed.

12. Section 515.545 is revised to read as follows:

§ 515.545 Transactions related to informational materials.

(a) All financial and other transactions directly incident to the physical importation or exportation of informational materials are authorized.

(b) Transactions relating to the dissemination of informational materials are authorized, including remittance of royalties paid for informational materials that are reproduced, translated, subtitled, or dubbed. This section does not authorize the remittance of royalties or other payments relating to works not yet in being, or for marketing and business consulting services, or artistic or other substantive alteration or enhancements to informational materials, as provided in § 515.206(c).

§ 515.546 [Removed and reserved]

13. Section 515.546 is removed and reserved.

§ 515.550 [Removed and reserved]

14. Section 515.550 is removed and reserved.

15. Section 515.551 is amended by removing the third sentence and revising the second sentence of paragraph (a)(3) to read as follows:

§ 515.551 Joint bank accounts.

(a) * * *

(3) * * * However, if 50 percent of the account has been unblocked under that policy, and the spouse who is the blocked Cuban national subsequently dies, the surviving spouse may be entitled to a license unblocking the remainder of the assets under § 515.568.

* * * * * *

16. Section 515.552 is revised to read as follows:

§ 515.552 Proceeds of insurance policies.

(a) Specific licenses are issued authorizing payment of the proceeds of blocked life insurance policies issued on the life of a Cuban national who died in Cuba after July 8, 1963, to certain beneficiaries licensed as unblocked nationals pursuant to § 515.505, as follows:

(1) The applicant is a permanent resident of the United States or the authorized trade territory and is not a specially designated national; and

(2) No interest on the part of a designated national not licensed as an unblocked national exists in that portion of the funds to which the applicant is entitled.

(b) Applications for specific licenses under this section must include all of the following information:

(1) Proof of permanent residence in the United States or the authorized trade territory, to be established by the submission of documentation issued by relevant government authorities that must include at least two of the following documents: (i) Passport; (ii) voter registration card; (iii) permanent resident alien card; or (iv) national identity card. Other documents tending to show residency, such as income tax returns, may also be submitted in support of government documentation, but will not suffice in and of themselves;

(2) Proof of entitlement under the insurance policy to be established by a copy of the policy and an affidavit from an appropriate officer of a recognized insurance company acknowledging the legitimacy of the beneficiary's claim and the amount of the payment; and

(c) Any document provided pursuant to this section that is not written in the English language must be accompanied by a translation into English, as well as a certification by the translator that he is not an interested party to the proceeding, is qualified to make the translation, and has made an accurate translation of the document in question.

17. Paragraphs (c) (3) and (5) of § 515.560 are revised to read as follows, and paragraph (e) of § 515.560 is removed and reserved:

§ 515.560 Certain transactions incident to travel to and within Cuba.

* * * * * *

(c) * * *

(3) The purchase in Cuba, and importation as accompanied baggage, of merchandise with a foreign market value not to exceed $100 per person for personal use only. Such merchandise may not be resold. This authorization may be used only once in every six consecutive months. As provided in § 515.206 of this part, informational materials are exempt from this restriction.

* * * * * *

(5) All transactions concerning aircraft or vessels incidental to their nonscheduled flights or voyages to, from, or within Cuba. This paragraph does not authorize the carriage of any merchandise to and from Cuba, except accompanied baggage, informational materials as defined in § 515.332, and merchandise authorized by paragraph (c)(3) of this section.

* * * * * *

18. Section 515.568 is added to read as follows:

§ 515.568 U.S. assets of certain Cuban decedents.

(a) Specific licenses may be issued unblocking the net pro rata shares of certain heirs of designated nationals in U.S.-located estate assets, after deducting the total debt due creditors for claims that accrued prior to the effective date, in cases where all of the following conditions are met:

(1) The applicant is a permanent resident of the United States or the authorized trade territory and is not a specially designated national; and

(2) No interest on the part of a designated national not licensed as an unblocked national pursuant to § 515.505 exists in that portion of the assets to which the applicant is entitled.

(b) Applications for specific licenses under this section must include all of the following information:

(1) Proof of permanent residence in the United States or the authorized trade territory, to be established by the submission of documentation issued by relevant government authorities that must include at least two of the following documents: (i) passport; (ii) voter reigstration card; (iii) permanent resident alien card; or (iv) national identity card. Other documents tending to show residency, such as income tax returns, may also be submitted in support of government documentation, but will not suffice in and of themselves;

(2) Proof of death of the designated national to be established by a death certificate;

(3) Proof of heirship, to be established by a copy of the decedent's duly executed will certified by a probate court, a court decree determining the heirs, or, failing the availability of such documents, copies of certificates establishing the relationship of the heir to the deceased, *e.g.*, birth or marriage certificates;

(4) A description of the assets involved, including interest due on blocked funds since April 1, 1979, the name and address of the institution in which the assets are held, the account or safe deposit box number, the name in which the assets are held and a statement of all known encumbrances or claims against them; and

(c) Any document provided pursuant to this section that is not written in the English language must be accompanied by a translation into English, as well as a certification by the translator that he is not an interested party to the proceeding, is qualified to make the translation, and has made an accurate translation of the document in question.

Date: January 9, 1989.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: January 23, 1989.

Salvatore R. Martoche,

Assistant Secretary (Enforcement).

[FR Doc. 89-2373 Filed 1-30-89; 11:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 286b

Privacy Program

AGENCY: Department of Defense.

ACTION: Final rule; suspension of date.

SUMMARY: The Department of Defense published an amendment to 32 CFR Part 286b on January 19, 1989 (54 FR 2101). In the last sentence of the **DATE** paragraph reading "All outstanding IG, DoD-related Privacy Act requests remaining on file with the Office of the Secretary of Defense will be transferred January 3, 1989.", the date "January 3, 1989" is suspended to "April 3, 1989".

EFFECTIVE DATE: February 2, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Cragg, OSD Privacy Act Officer, Records Management Division, The Pentagon, Washington, DC 20301-1100, telephone 202-697-2501 or AUTOVON 227-2501.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 26, 1989.

[FR Doc. 89-2240 Filed 2-1-89; 8:45 am]

BILLING CODE 3810-01-M

VETERANS ADMINISTRATION

38 CFR Part 3

Evidence Suitable To Establish Dependents

AGENCY: Veterans Administration.

ACTION: Final Regulatory Amendment.

SUMMARY: The Veterans Administration (VA) has amended its regulation regarding the acceptability of proofs to establish dependents or verify a death. The Department of the Army requested an expansion of the current regulation to permit its civilian, as well as military, personnel to authenticate photocopies of marriage, birth and death certificates. The effect of the change will be to facilitate processing by the military services, improving assistance to claimants for VA benefits.

EFFECTIVE DATE: March 6, 1989.

FOR FURTHER INFORMATION CONTACT: Robert M. White, Chief, Regulations Staff, Compensation and Pension Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-3005.

SUPPLEMENTARY INFORMATION: On pages 36586-87 of the **Federal Register** of September 21, 1988, the VA published a proposed regulatory amendment on acceptability of photocopied evidence. Interested persons were invited to submit comments, suggestions or objections by October 21, 1988. Since no

comments, suggestions or objections were received, the amendment is adopted as proposed.

The Administrator hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Administrator has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program numbers are 64.101, 64.104, 64.105, 64.109 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: January 24, 1989.

Thomas E. Harvey,
Acting Administrator.

PART 3—[AMENDED]

In 38 CFR Part 3, Adjudication, § 3.204 is amended by revising paragraph (c)(2)(iii) to read as follows:

§ 3.204 Evidence other than evidence of service.

* * * * *

(c) *Acceptability of photocopies.* * * *
(2) * * *

(iii) Military or civilian personnel appointed on orders for this purpose by the commander of a military installation.

* * * * *

(Authority: 38 U.S.C. 210(c))

[FR Doc. 89–2418 Filed 2–1–89; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3508–6]

Approval and Promulgation of Implementation Plans; Disapproval of Three Architectural Coatings Rules in California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final rulemaking.

SUMMARY: This notice takes final action to disapprove three volatile organic compound (VOC) control rules which were submitted by the California Air Resources Board (CARB) as revisions to the California State Implementation Plan (SIP). The rules concern architectural coatings requirements in Placer County, Sutter County, and the South Coast Air Quality Management District and were submitted to EPA on November 12, 1985, and February 10, 1986. EPA is disapproving the rules because they are unjustified relaxations from existing SIP requirements in nonattainment areas. The rules are inconsistent with the Clean Air Act (CAA), 40 CFR Part 51, and EPA policy.

EPA proposed to disapprove these revisions in the May 11, 1988, Federal Register (53 FR 16732). No comments were received during the public comment period. EPA is therefore taking final action to disapprove these revisions.

DATE: This action is effective March 6, 1989.

ADDRESSES: Copies of the submitted rules and EPA's evaluation of the submittals are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rules are also available at the following locations:

California Air Resources Board, General Projects Section, Technical Support Division, 1131 S Street, Sacramento, CA 95814.
Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460.
Placer County Air Pollution Control District, 11484 B Avenue, Auburn, CA 95603.
Sutter County Air Pollution Control District, 142 Garden Way, Yuba City, CA 95991.
South Coast Air Quality Management District, 9150 Flair Drive, El Monte, CA 91731.

FOR FURTHER INFORMATION CONTACT: John Ungvarsky, State Implementation Plan Section (A–2–3), Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974–7639; (FTS) 454–7639.

SUPPLEMENTARY INFORMATION:

Background

CARB submitted the following rules for the control of VOC emissions on the dates indicated:

November 12, 1985

South Coast Air Quality Management District

Rule 1113—Architectural Coatings.

February 10, 1986

Placer County Air Pollution Control District

Rule 218—Architectural Coatings.

Sutter County Air Pollution Control District

Rule 3.15—Architectural Coatings.

On May 11, 1988, EPA published in the **Federal Register** a proposal to disapprove the rule revisions and solicited public comments on the disapproval. Copies of EPA's detailed evaluations, including policy memoranda, were made available for public inspection at EPA's Region 9 office. No public comments were received regarding the proposed disapproval.

EPA Evaluation

EPA has evaluated the architectural coatings rules listed above for consistency with the CAA, 40 CFR Part 51, and EPA policy. EPA has also evaluated the rules to determine whether they weaken or strengthen the existing federally approved SIP.

Revised South Coast Rule 1113: (1) Extends the final limit compliance date for non-flat, non-specialty coatings to September 2, 1989; (2) adds interim VOC content limits for certain types of industrial maintenance primers and topcoats; and (3) effects labeling requirements for industrial maintenance coatings on January 1, 1986. Overall, and individually, the revisions to Rule 1113 represent a significant relaxation of the existing SIP in an area which has not attained the National Ambient Air Quality Standards (NAAQS) for ozone. EPA is disapproving the rule because it is inconsistent with the requirements of the CAA, 40 CFR Part 51, and EPA policy.

Placer County Rule 218 and Sutter County Rule 3.15 have been revised and restructured to: (1) Establish interim and final VOC content limits for a number of specialty coatings; and (2) extend the final compliance date for non-flat, non-specialty coatings to September 1, 1989. Overall and individually, the revisions to Placer Rule 218 and Sutter Rule 3.15

represent significant relaxations of the existing SIP. They cannot be approved because they are inconsistent with the requirements of the CAA, 40 CFR Part 51, and EPA policy.

EPA Requirements

EPA's requirements governing proposed SIP revisions are contained in the CAA, section 110 and Part D, 40 CFR Part 51, and various EPA policy memoranda. Section 110(a)(2)(A) and 172(a)(1) of the CAA, 40 CFR 51.110 (formerly 51.10), and EPA policy require that SIPs provide for the attainment of the NAAQS "as expeditiously as practicable." Section 110(a)(2)(B) of the CAA, 40 CFR 51.110 (formerly 51.12 and 51.13), and EPA policy require that SIPs also insure maintenance of the NAAQS. Section 110(a)(3)(A) of the CAA and 40 CFR 51.104 (formerly 51.6) extend the SIP requirements in Section 110 and 40 CFR Part 51 to SIP revisions.

EPA cannot approve a SIP or a SIP revision without a demonstration that the SIP or SIP revision is adequate to attain and maintain the standards. EPA's policy is that the burden of proof is on the State to provide an adequate demonstration. If the State fails to provide an adequate demonstration, EPA must disapprove the submission for failure to satisfy the requirements of the Act.

Section 172 of the Clean Air Act requires states to adopt regulations which reflect reasonably available control technology (RACT), at a minimum, in order to attain and maintain the NAAQS. Although the existing EPA approved rules may require controls more stringent than RACT, these controls are necessary for the attainment and maintenance of the ozone standard. The revised rules would allow increased emissions in areas which have not demonstrated attainment of the ozone standard. EPA is therefore disapproving the revisions because they fail to satisfy the requirements of section 172 of the Act.

In this case, the State of California has failed to demonstrate that the submitted architectural coatings rule revisions will provide for attainment and maintenance of the NAAQS. The State has also not demonstrated that it would be unreasonable to continue to impose the existing SIP limits on the subject sources. EPA has evidence which indicates that at least forty companies have certified compliance with the limits for non-flat, non-specialty coatings which these revisions would relax. In an additional survey, fourteen out of fifteen companies indicated having a compliant oil-based coating. Therefore, both water-based and oil-based coatings are available which meet the limits currently in the SIP. However, no comments were received in response to EPA's disapproval indicating that compliance with the existing rules could not be achieved. EPA will continue to accept additional information regarding quality, price, and performance of the non-flat architectural coatings affected by this rule.

Final Action

Under Section 110 and Part D of the CAA, EPA is taking final action to disapprove amended South Coast Rule 1113, Placer County Rule 218, and Sutter County Rule 3.15 because they weaken the existing California SIP and are inconsistent with the CAA, 40 CFR Part 51, and EPA Policy.

Regulatory Process

Under Executive Order 12291, today's action is not "Major." It has been submitted to the Office of Management and Budget for review.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 3, 1989. This action may not be challenged after the expiration of the 60 day period (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and Recordkeeping requirements.

Date: January 18, 1989.

Lee M. Thomas,
Administrator.

Subpart F of Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart F—California

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.229 is amended by adding paragraph (b)(2)(iii) to read as follows:

§ 52.229 Control strategy and regulations: Photochemical oxidants (hydrocarbons), Metropolitan Los Angeles Intrastate Region.

* * * * *

(b) * * *
(2) * * *

(iii) Rule 1113, Architectural Coatings, adopted on August 2, 1985 and submitted to EPA on November 12, 1985. The version of this rule by the same number and title submitted on July 10, 1984 and approved by EPA on January 24, 1985 is retained.

3. Section 52.269 is amended by adding paragraphs (b)(2)(ii) and (b)(2)(iii) to read as follows:

§ 52.269 Control strategy and regulations: Photochemical oxidants (hydrocarbons) and carbon monoxide.

* * * * *

(b) * * *
(2) * * *

(ii) Placer County APCD.

(A) Rule 218, Architectural Coatings, adopted on May 20, 1985 and submitted to EPA on February 10, 1986 is disapproved. The version of this rule by the same number and title submitted on July 19, 1983 and approved by EPA on May 3, 1984 is retained.

(iii) Sutter County APCD.

(A) Rule 3.15, Architectural Coatings, adopted on October 15, 1985 and submitted to EPA on February 10, 1986 is disapproved. The version of this rule by the same number and title submitted on January 1, 1981 and approved by EPA on May 3, 1982 is retained.

* * * * *

[FR Doc. 89–1786 Filed 2–1–89; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 81

[FRL–3513–9]

Designation of Areas for Air Quality Planning Purposes; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Section 107(d) of the Clean Air Act, as amended, provides for the designation of areas as either attainment, nonattainment, or unclassified with respect to the National Ambient Air Quality Standards (NAAQS). Today, EPA takes final action to redesignate Des Moines and Lee Townships in Polk County, Iowa, attainment with respect to the NAAQS for carbon monoxide (CO). After this action, all areas of Polk County and the state of Iowa become attainment for CO. This action is in response to a request from the Iowa Department of Natural Resources (IDNR). EPA is acting on this request using the direct-to-final procedure.

DATES: The effective date of this rulemaking is April 3, 1989 unless EPA receives a notice that someone wishes to make adverse or critical comments by March 6, 1989.

ADDRESSES: Comments should be sent to Robert J. Chanslor, Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101. Copies of the state's submittal are available for inspection during normal business hours at the above address; at the Iowa Department of Natural Resources, 900 East Grand, Des Moines, Iowa 50319; and the Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Robert J. Chanslor at (913) 236-2893; FTS 757-2893.

SUPPLEMENTARY INFORMATION: In response to section 107(d) of the Clean Air Act, as amended, EPA and the state of Iowa have designated all areas of the state as attaining the NAAQS, not attaining the NAAQS, or having insufficient data to make a determination. An attainment area is one having air quality equal to or better than an NAAQS. A nonattainment area is one having air quality worse than an NAAQS. An unclassified area is one for which there is insufficient air quality data upon which to determine whether an area is attainment or nonattainment. The attainment status of areas of the state is identified at 40 CFR Part 81, Subpart C.

On March 3, 1978, EPA designated Des Moines and Lee Townships in Polk County, Iowa, nonattainment for CO (43 FR 8996). The remainder of Polk County was designated attainment for CO. In response to the requirements of Part D of the Clean Air Act, as amended in 1977, the state of Iowa submitted a plan showing attainment of the CO NAAQS in Des Moines and Lee Townships (Des Moines). The attainment demonstration was approved on March 6, 1980 (45 FR 14561).

EPA's redesignation policy for CO requires the most recent eight consecutive quarters of air quality data with no standard violations and an approved State implementation plan (SIP). Alternatively, the state may submit four quarters of the most recent air quality data plus modeling which projects continued attainment in the future in lieu of the most recent eight consecutive quarters.

On April 26, 1988, the IDNR submitted a request that EPA redesignate Des Moines, Iowa, attainment for CO. The state's request is supported by air quality data for 1985, 1986, and 1987 showing no violations of the CO NAAQS. Additionally, the state's submittal contains modeling results which project continued attainment through 1990. The state submittal identifies transportation control measures (TCM) instituted in Des Moines which are believed to have significantly contributed to the reduced concentrations of CO.

The model used was the EPA-approved CALINE 3 with emission factors developed using EPA's MOBILE-3 model. The state's results project continuing attainment through 1990. There are no significant stationary sources of CO in Des Moines; for that reason, the approved control strategy demonstration relied upon TCMs. Thus, stack heights are not an issue concerning CO in Des Moines.

The state has demonstrated that the CO control strategy has been carried out, and that no CO standard exceedances have been measured during the most recent 12 consecutive quarters (1985 through 1987). The modeling demonstration projects continued attainment at least through 1990. EPA believes that the CO redesignation policy is satisfied.

EPA believes that redesignating Des Moines and Lee Townships in Polk County, Iowa, is noncontroversial. For that reason, EPA is using the direct-to-final procedure for this action. The public should be advised that this action will be effective 60 days from today. However, if notice is received within 30 days that someone wishes to make adverse or critical comments, this action will be withdrawn and two subsequent notices will be published prior to the effective date. One notice will withdraw final action and another will begin a new rulemaking by announcing a proposal of action and establishing a comment period.

Action: EPA approves the Iowa request to redesignate Des Moines (Des Moines and Lee Townships) attainment for CO.

The Office of Management and Budget has exempted this redesignation from the requirements of section 3 of Executive Order 12291.

Under 5 U.S.C. 605(b), I certify that redesignations do not have a significant impact on a substantial number of small entities. (See 46 FR 8709.)

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from date of publication). This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Date: January 20, 1989.

John A. Moore,

Acting Administrator.

40 CFR Part 81, Subpart C, is amended as follows:

Subpart C—Iowa

PART 81—[AMENDED]

1. The authority citation for Part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

§ 81.316 [Amended]

2. Section 81.316, Iowa, is amended by revising the attainment status designation table for CO to read as follows:

IOWA—CO

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
Entire state		X

[FR Doc. 89-3421 Filed 2-1-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations; California et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations will be used in calculating flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

DATES: The effective dates for these modified base flood elevations are indicated on the following table and amend the Flood Insurance Rate Map(s) (FIRM) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed on the following table.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of modified flood elevations for each community listed. These modified elevations have been published in newspaper(s) of local circulation and ninety (90) days have elapsed since that publication. The Administrator, has resolved any appeals resulting from this notification.

Numerous changes made in the base (100-year) flood elevations on the FIRMs for each community make it administratively infeasible to publish in this notice all of the changes contained on the maps. However, this rule includes the address of the Chief Executive Officer of the community, where the modified base flood elevation determinations are available for inspection.

These modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968, (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR 65.4.

For rating purposes, the revised community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities.

These modified base flood elevations shall be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

The changes in the base flood elevations are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains.

The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

§ 65.4 [Amended]

Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Georgia: DeKalb (Docket No. FEMA-6940).	Unincorporated areas	Sept. 22, 1988, and Sept. 29, 1988, *Decatur-DeKalb News/Era.*	The Hon. Manuel J. Maloof, chief executive officer, DeKalb County, 556 N. McDonough, Decatur, GA 30030.	Sept. 13, 1988	130065
Maryland: Prince Georges (FEMA docket No. 6933).	Unincorporated areas	Aug. 2, 1988, and Aug. 9, 1988, *Prince Georges Journal.*	The Hon. Parris N. Glendening, county executive, Prince Georges County, County Administrative Bldg., Upper Marlboro, MD 20772.	July 22, 1988	245208
Massachusetts: Bristol (FEMA docket No. 6936).	City of New Bedford	Aug. 26, 1988, and Sept. 2, 1988, *New Bedford Standard Times.*	The Hon. John K. Bullard, mayor of the City of New Bedford, 113 William St., New Bedford, MA 02740.	Aug. 12, 1988	255216 B
New Jersey: Bergen (FEMA docket No. 6933).	Borough of Ramsey	July 29, 1988, and Aug. 5, 1988, *Ramsey-Mahwah Reporter.*	The Hon. Nicholas Seros, Ramsey Borough Administrator, 33 North Central Ave., Ramsey, NJ 07446.	July 22, 1988	340064 B

Harold T. Duryee,

Administrator, Federal Insurance Administration.

Issued: January 26, 1989.

[FR Doc. 89-2416 Filed 2-1-89; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 65

[Docket No. FEMA-6947]

Changes in Flood Elevation Determinations; Georgia et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Interim rule.

SUMMARY: This rule lists those communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) elevations for new buildings and their contents and for second layer insurance on existing buildings and their contents.

DATES: These modified elevations are currently in effect and amend the Flood Insurance Rate Map (FIRM) in effect prior to this determination.

From the date of the second publication of notice of these changes in a prominent local newspaper, any person has ninety (90) days in which he can request through the community that the Administrator, reconsider the changes. These modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base (100-year) flood elevation determinations are available for inspection at the office of the Chief Executive Officer of the community, listed in the fifth column of the table. Send comments to that address also.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency

BEST COPY AVAILABLE

Management Agency, Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The numerous changes made in the base (100-year) flood elevations on the FIRM(s) make it administratively infeasible to publish in this notice all of the modified base (100-year) flood elevations contained on the map. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection.

Any request for reconsideration must be based on knowledge of changed conditions, or new scientific or technical data.

These modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) and are in accordance with the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 65.4.

For rating purposes, the revised community number is listed and must be used for all new policies and renewals.

These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

These elevations, together with the floodplain management measures required by 60.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time, enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities.

The changes in the base (100-year) flood elevations listed below are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains.

The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

§ 65.4 [Amended]

Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

State and County	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
California: Riverside	Unincorporated areas	February 13, 1989 and February 20, 1989, *Press Enterprise.*	The Honorable Kay Ceniceros, Chairperson, Riverside County Board of Supervisors, 4080 Lemon Street, 14th Floor, Riverside, California 92501.	Jan. 9, 1989	060245B
Florida: Manatee	Unincorporated areas	December 9, 1988 and December 16, 1988, *The Bradenton Herald.*	The Honorable Kent G. Chetlain, Chairman, Board of County Commissioners, Manatee County, P.O. Box 1000, Bradenton, Florida 33506.	Nov. 29, 1988	120153
Maryland: Queen Anne's	Unincorporated areas	January 4, 1989 and January 11, 1989, *Queen Anne's County Record-Observer.*	The Honorable Robert Sallitt, Queen Anne's County Administrator, 208 North Commerce Street, Centreville, Maryland 21617.	Dec. 21, 1988	240054C
Tennessee: Shelby	City of Germantown	December 22, 1988 and December 29, 1988, *Germantown News.*	The Honorable Warner Hodges III, Mayor, City of Germantown, 1930 South Germantown Road, P.O. Box 38809, Germantown, Tennessee 38183-0809.	December 12, 1988.	470053

Issued: January 26, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89–2415 Filed 2–1–89; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

Final Flood Elevation Determinations; California et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing modified base flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below:

ADDRESSES: See table below:

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal the proposed determination to or through the

community for a period of ninety (90) days has been provided.

The Agency has developed criteria for floodplain management in flood-prone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been proposed. It does not involve any collection of information for purposes of The Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood Insurance, Floodplains.

PART 67—[AMENDED]

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The modified base flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
CALIFORNIA	
Perris (city), Riverside County (FEMA Docket No. 6935)	
San Jacinto River:	
Approximately 1,600 feet upstream of Ethanac Road	*1,416
At the confluence of Mountain Avenue Wash	*1,419
Approximately 2,000 feet upstream of Goetz Road	*1,419
At Case Road and the Atchison, Topeka and Santa Fe Railway	*1,420
Approximately 2,400 feet upstream of the confluence with Perris Valley Storm Drain	*1,420
Maps are available for inspection at Civic Center, 101 North D Street, Perris, California 92370.	
San Jose (city), Santa Clara County (FEMA Docket No. 6943)	
Upper Penitencia Creek Overflow:	
Intersection of Cornish Lane and Berryessa Road	*79
Approximately 400 feet south of intersection of Berryessa Road and Western Pacific Railroad	*81
Approximately 900 feet west of confluence of Upper Penitencia Creek with Coyote Creek	*81
Intersection of Cornish Lane and Berryessa Road	*79
Approximately 800 feet west of the King Road crossing of Upper Penitencia Creek	#1
Area bounded by King Road, Mabury Road and Penitencia Creek	#1
Approximately 200 feet north of westernmost crossing of Mabury Road and Upper Penitencia Creek	#2
Approximately 250 feet west of easternmost crossing of Mabury Road and Upper Penitencia Creek	#2
Approximately 350 feet west of intersection of Mossdale Way and Jackson Avenue	#1
Approximately 400 feet south of intersection of Berryessa Road and Park Way	#1
Approximately 500 feet south of intersection of Jackson Avenue and Bluejacket Way	#2
Approximately 1,450 feet north of intersection of Lava Drive and Jackson Avenue	#1
Heatherfield Lane extended 150 feet south from intersection with Penitencia Creek Road	#1
Upper Penitencia Creek Overflow North of Penitencia Creek:	
Approximately 1,000 feet west of intersection of Trimble Road and Ringwood Avenue	#1
Intersection of Lundy Avenue and Trimble Road	#1
Area north of Ramstree Drive to Four Oaks Road	#1
Intersection of Old Stone Way and Olive-Stone Way	#1
Intersection of Old Post Way and Battaglia Circle	*121
Intersection of Old Gate Place and Battaglia Circle	*129
Intersection of Old Manor Place and Battaglia Circle	#2
Approximately 200 feet west of intersection of Capitol Avenue and Moorbrook Drive	#1
Approximately 700 feet south of intersection of Capitol Avenue and Moorbrook Drive	#1
Approximately 400 feet south of intersection of Capitol Avenue and Moorbrook Drive	#2
Approximately 1,200 feet south of intersection of Berryessa Road and Capitol Avenue	#2
Intersection of Penitencia Creek and Capitol Avenue	#2
Upper Penitencia Creek Overflow South of Penitencia Creek:	
Area along Sinclair Freeway from approximately 700 feet south of Alum Rock Avenue north to McKee Road	*100
Approximately 1,600 feet north of junction of McKee Road and Sinclair Freeway	#1
Approximately 1,600 feet south of intersection of Mabury Road and Capitol Avenue	#2
Approximately 1,200 feet south of intersection of Mabury Road and Capitol Avenue	#2
Intersection of Capitol Avenue and Baton Rouge Drive	#1
Intersection of Williford Road and Gilchrist Drive	#2
Area bounded by Gilchrist Drive, Capitol Avenue and Williford Drive	#2
Approximately 800 feet northwest of intersection of Capitol Avenue and Mabury Road along Capitol Avenue	#2
Approximately 200 feet west of intersection of Gilchrist Drive and Capitol Avenue	#2
Approximately 1,400 feet south of intersection of Penitencia Creek Road and Capitol Avenue	#2
San Francisco Bay:	
At confluence of Guadalupe Slough and Coyote Creek	*3
At crossing of Southern Pacific Railroad and Alviso Slough	*3
Maps are available for review at the City of San Jose Engineering Department, 801 North First Street, San Jose, California.	
Santa Clara County (unincorporated areas) (FEMA Docket No. 6943)	
Upper Penitencia Creek Overflow:	
Approximately 300 feet west of intersection of Western Pacific Railroad and Cornish Lane	*81
Approximately 200 feet east of intersection of Cornish Lane and Western Pacific Railroad	#1
Approximately 700 feet east of intersection of Cornish Lane and Western Pacific Railroad	#1
Approximately 250 feet north of Upper Penitencia Creek at Jackson Avenue crossing	#1
Approximately 4,200 feet west of Mabury Road and Sinclair Freeway	#1
Approximately 200 feet northeast of intersection of Berryessa Road and Flickinger Avenue	#2
Approximately 1,150 feet south of intersection of Hostetter Road and Capitol Avenue	#2
Approximately 1,000 feet west of intersection of Sierra Road and Capitol Avenue	#2
Intersection Old Post Way and Capitol Road	#121
Intersection of Berryessa Road and Capitol Road	#1
Area between Capitol Road and Sinclair Freeway from 700 feet north of Upper Penitencia Creek to 100 feet north of Upper Penitencia Creek	#2
Approximately 2,700 feet north of intersection of McKee Road and Wood Road	#2

Source of flooding and location	#Depth in feet above ground. ²Elevation in feet (NGVD). Modified
Approximately 1,300 feet south of intersection of Baton Rouge Drive and Capitol Avenue	#2
Approximately 800 feet south of intersection of Baton Rouge Drive and Capitol Drive	#1
Approximately 200 feet west of intersection of Capitol Road and Baton Rouge Drive	#1
Approximately 400 feet north of intersection of Sinclair Freeway and Maybury Road	#2
Approximately 400 feet west of intersection of Maybury Road and Capitol Avenue	#2
Approximately 200 feet west of Pentencia Creek at Sinclair Freeway crossing	#2
At Confluence of Guadalupe Slough and Coyote Creek	*8
At crossing of Southern Pacific Railroad and Alviso Slough	*9
Approximately 800 feet northwest of San Tomas Aquino Creek from Coffin Road crossing	*9
Maps are available for review at the Santa Clara County Department of Land Use and Development, Central Permit Office, 70 West Hedding Street, San Jose, California.	
GEORGIA	
Clayton (city), Rabun County (FEMA Docket No. 6935)	
Stekoa Creek:	
1,100 feet downstream of Camper Corral Bridge	²1,862
Confluence of Scott Creek	²1,872
Confluence of Needy Creek	²1,877
Scott Creek:	
At mouth	²1,872
Just upstream of South Main Street	²1,873
Saddle Gap Branch:	
At mouth	²1,875
Just downstream of Duggan Hill Road	²1,875
Maps available for inspection at the City Clerk's Office, Attention Mary Ann Hollifield, P.O. Box 702, Clayton, Georgia.	
MICHIGAN	
Vassar (city), Tuscola County (FEMA Docket No. 6929)	
Cass River:	
About 1,000 feet downstream of Chesapeake and Ohio Railway	*634
Just upstream of Tuscola and Saginaw Bay Railway Company	*637
About 1.1 miles upstream of Tuscola and Saginaw Railway Company	*639
Maps available for inspection at the City Hall, 287 East Huron Avenue, Vassar, Michigan.	
OKLAHOMA	
Moore (city), Cleveland County (FEMA Docket No. 6934)	
North Fork River:	
Approximately 1,050 feet downstream of N.E. 12th Street	*1,211
Approximately 100 feet upstream of N.E. 12th Street	*1,220
Stream D:	
Approximately 5,118 feet upstream of S.E. 19th Street	*1,196
Approximately 10 feet upstream of N.W. 3rd Street	*1,239
Tributary of Stream D:	
At the confluence with Stream D	*1,233
At the Limit of Detail Study	*1,240
Maps available for inspection at the Department of Community Development, 301 North Broadway, Moore, Oklahoma.	
Rogers County, unincorporated areas (FEMA Docket No. 6934)	
Cat Creek: Backwater for a Tributary of Cat Creek 2,000 feet south of Lowry and west of Owalla Road	*611
Maps available for inspection at the Rogers County Courthouse, 219 S. Missouri, Suite 1-102, Claremore, Oklahoma.	
TENNESSEE	
Dayton (city), Rhea County (FEMA Docket No. 6935)	
Broyles Branch:	
Just downstream of Blythes Ferry Road	*691
About 250 feet upstream of U.S. Route 27	*721
Unnamed Tributary to Broyles Branch:	
Mouth at Broyles Branch	*721
About 650 feet upstream of mouth	*722
Maps available for inspection at the City Hall, Building Inspector's Office, P.O. Box 226, Dayton, Tennessee.	
TEXAS	
Bandera (city), Bandera County (FEMA Docket No. 6929)	
Medina River:	
Approximately 0.9 mile downstream of State Route 173	*1,218
Approximately 0.4 mile upstream of Sixth Street Extension	*1,252
Maps available for inspection at the City Hall, 503 Main Street, Bandera, Texas.	
Benbrook (city), Tarrant County (FEMA Docket No. 6934)	
Stream 26:	
Downstream corporate limits	*594
Upstream corporate limits	*602
Maps available for inspection with the Director of Community Development, City Hall, 911 Winscott Road, Benbrook, Texas.	
Bexar County (unincorporated areas) (FEMA Docket No. 6930)	
Balcones Creek:	
At confluence with Cibolo Creek	*1,271
Approximately 1.8 miles upstream of confluence with Cibolo Creek	*1,290
Cibolo Creek:	
At Interstate Route 10/U.S. Route 90	*521
Approximately 1.5 miles upstream of Schaeffer Road	*590
Approximately 2,000 feet downstream of Missouri-Kansas-Texas Railroad	*760
Approximately 3.4 miles upstream of Missouri Pacific Railroad	*830
Approximately 6.8 miles upstream of Missouri Pacific Railroad	*900
Approximately 4,150 feet upstream of FM 1863	*970
Approximately 1.9 miles downstream of U.S. Route 281	*1,040
Approximately 450 feet downstream of confluence of Kelley Creek	*1,110
Approximately 1.0 mile upstream of confluence of Kelley Creek	*1,127
Approximately 1.15 miles downstream of Ralph Fair Road	*1,232
Approximately 1,200 feet upstream of confluence of Balcones Creek	*1,272
Huebner Creek: Approximately 200 feet upstream of corporate limits and Ingram Road	*763
Leon Creek:	
Approximately 650 feet upstream of Ingram Road	*765
Approximately 1,275 feet upstream of Ingram Road	*766
Approximately 6,500 feet downstream of Bandera Road	*813
Approximately 75 feet upstream of Bandera Road	*836
Approximately 700 feet upstream of West Prue Road	*892
Approximately 50 feet downstream of Babcock Road	*917
Medio Creek:	
Upstream face of U.S. Highway 90 (Limit of Detailed Study)	*703
Approximately 3.07 miles upstream of U.S. Highway 90	*743
Slick Ranch Creek:	
Approximately 6,500 feet downstream of Potranco Road (FM 1957)	*758
Approximately 1,000 feet downstream of Potranco Road (FM 1957)	*766
Approximately 3,000 feet upstream of Potranco Road (FM 1957)	*793
Salado Creek:	
At the upstream corporate limits	*850
Approximately 1.8 miles (9,400 feet) downstream of Blanco Road	*902
West Fork Olmos Creek:	
Approximately 325 feet downstream of Red Maple Wood Lane	*938
Approximately 2,330 feet upstream of Red Maple Wood Lane	*962
Maps available for inspection at the Bexar County Courthouse, Commissioners Court, Suite 101, San Antonio, Texas.	
Corpus Christi (city), Nueces and Kleberg Counties (FEMA Docket No. 6930)	
Oso Bay Tributary No. 2:	
Approximately 1,000 feet downstream of Rodd Field Road	*11
Approximately 100 feet downstream of Wooldridge Road	*15
Maps available for inspection at the City Hall, 1201 Leopard Street, Corpus Christi, Texas.	

Source of flooding and location	#Depth in feet above ground. ²Elevation in feet (NGVD). Modified
Irving (city), Dallas County (FEMA Docket No. 6922)	
West Fork of Trinity River: Confluence with Trinity River	*424
Elm Fork of Trinity River:	
Confluence with Trinity River	*424
At State Highway 482	*426
Approximately 400 feet upstream of State Highway 348	*430
At confluence of Grapevine Creek	*439
At Beltline Road	*442
Hackberry Creek: Confluence with Elm Fork of Trinity River	*431
Cottonwood Branch: Confluence with Hackberry Creek	*431
Grapevine Creek:	
Confluence with Elm Fork of Trinity River	*439
Approximately 1,700 feet downstream of MacArthur Boulevard	*440
Maps available for inspection at the Department of Public Works, 825 West Irving Boulevard, Irving, Texas.	
Wylie (city), Collin, Dallas and Rockwall Counties (FEMA Docket No. 6935)	
Rush Creek:	
Approximately 550 feet upstream of East Stone Road	*476
Approximately 80 feet downstream of East Brown Street	*492
Maps available for inspection at the City Hall, 2000 N. Highway 78, Wylie, Texas.	
VIRGINIA	
Norton (city), Independent City (FEMA Docket No. 6930)	
Powell River:	
At corporate limits	²2,015
Approximately .76 mile upstream of State Route 610	²2,037
Maps available for inspection at the Municipal Building, 618 Virginia Avenue, Norton, Virginia.	
WEST VIRGINIA	
Raleigh County (unincorporated areas) (FEMA Docket No. 6929)	
Soak Creek:	
Confluence with Piney Creek	²2,263
Approximately 1.3 miles upstream of Church Street	²2,357
Maps available for inspection at the County Commission Offices, 116½ N. Heber Street, Beckley, West Virginia.	

Harold T. Duryee,

Administrator, Federal Insurance Administration.

Issued: January 26, 1989.

[FR Doc. 89-2417 Filed 2-1-89; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-148; RM-6033, RM-6101]

Radio Broadcasting Services; Ariton, AL, and Bonifay, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 249C1 at Bonifay, Florida, and modifies the Class A license of Mary Lake Communications, Inc. for Station WTBB-FM, as requested, to specify operation on the higher class channel. This document also dismisses the rule making petition of Patsy Nance Marsh and Rickey Earl Nance for an allotment of Channel 249A to Ariton, Alabama, as the area's first local service, for lack of a timely expression of interest in the allotment. Reference coordinates for Channel 249C1 are 30-41-57 and 85-37-15. With this action, the proceeding is terminated.

EFFECTIVE DATE: March 16, 1989.

FOR FURTHER INFORMATION CONTACT: Michael Ruger, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-148, adopted December 22, 1988, and released January 30, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Florida, is amended by revising the entry for Bonifay by removing Channel 249A and adding Channel 249C1.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-2455 Filed 2-1-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 85-376; RM-4988 and RM-5378]

Radio Broadcasting Services; Ponte Vedra Beach, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants a petition for reconsideration filed by General Broadcasting of Florida, Inc., licensee of Station WCAT-FM, Leesburg, Florida, directed against the *Report and Order* in MM Docket No. 85-376 which allotted Channel 293A to Ponte Vedra Beach. A Channel 293A allotment at Ponte Vedra Beach precludes a grant of an application to maintain full Class C status at Station WCAT-FM. Accordingly, this action substitutes Channel 227A in lieu of Channel 293A at Ponte Vedra Beach. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 13, 1989.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order*, MM Docket No. 85-376, adopted December 14, 1988, and released January 27, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Florida

by removing Channel 293A and adding Channel 227A at Ponte Vedra Beach.

Federal Communications Commission.

Bradley P. Holmes,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-2456 Filed 2-1-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-473; RM-5954]

Radio Broadcasting Services; Sylvester, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 291A to Sylvester, Georgia, as a second local FM service at the request of Thomas W. Lawhorne, Sr. Channel 291A can be allotted to Sylvester, Georgia in compliance with the minimum distance separation requirements, with a site restriction. The coordinates for Channel 291A are 31-28-02 and 83-52-57 with a site restriction. With this action, this proceeding is terminated.

DATES: Effective March 13, 1989. The window period for filing applications will open on March 14, 1989, and close on April 13, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-473, adopted December 7, 1988, and released January 27, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended for Sylvester, Georgia by adding Channel 291A.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-2457 Filed 2-1-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-172; RM-6249]

Radio Broadcasting Services; Brandon, VT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 270A to Brandon, Vermont, as that community's first FM service, at the request of James G. Kirkpatrick. The allotment can be made consistent with the Commission's minimum spacing requirements at reference coordinates 43-47-54 and 73-05-30. With this action, this proceeding is terminated.

DATES: Effective March 13, 1989. The window period for filing applications will open on March 14, 1989, and close on April 13, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-173, adopted November 30, 1988, and released January 27, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. § 73.202(b), the Table of FM Allotments is amended under Vermont, by adding Channel 270A at Brandon.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-2458 Filed 2-1-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-523; RM-6027]

Radio Broadcasting Services; Vancouver, WA; Coos Bay and Corvallis, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 290C2 to Vancouver, Washington, as a first local FM service at the request of P-N-P Broadcasting, Inc. This action also substitutes Channel 290C2 for Channel 293C2 at Corvallis, Oregon and Channel 292C for Channel 291C at Coos Bay, Oregon and modifies the licenses of Stations KFAT(FM) and KYNG-FM, respectively. Applicants for Channel 290C2 at Vancouver will be required to reimburse both Stations KFAT(FM) and KYNG-FM for changing their facilities. The allotment of Channel 290C2 can be made at the city's reference coordinates, which are 45-37-30 and 122-40-12. Concurrence of the Canadian government has been obtained. With this action, this proceeding is terminated.

DATES: Effective March 13, 1989. The window period for filing applications on Channel 290C2 at Vancouver, Washington, will open on March 14, 1989, and close on April 13, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-523, adopted December 13, 1988, and released January 27, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Washington by adding Channel 290C2 at

Vancouver; and under Oregon, by deleting Channel 293C2 and adding Channel 290C2 at Coos Bay and deleting Channel 291C and adding Channel 292C at Corvallis.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-2459 Filed 2-1-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-176; RM-6218]

Radio Broadcasting Services; Albin, WY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 297C2 to Albin, Wyoming, as that community's first FM service, at the request of Alton Lewis. A site restriction of 23.5 kilometers (14.6 miles) north of the community is required at coordinates 41-40-00 and 104-11-38. With this action, this proceeding is terminated.

DATES: Effective March 13, 1989. The window period for filing applications will open on March 14, 1989, and close on April 13, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-176, adopted December 21, 1988, and released January 27, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Wyoming, by adding Albin, Channel 297C2.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-2460 Filed 2-1-89; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 54, No. 21
Thursday, February 2, 1989

The section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88-AGL-31]

Proposed Alteration of Transition Area—Austin, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the Austin, MN, transition area to accommodate a new VOR RWY 18 Standard Instrument Approach Procedure (SIAP) and a new VOR RWY 36 SIAP to Austin Municipal Airport, Austin, MN. The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions in controlled airspace.

DATE: Comments must be received on or before March 10, 1989.

ADDRESS: Send comments on the proposal in triplicate to: Federal Aviation Administration, Regional Counsel, AGL-7, Attn: Rules Docket No. 88-AGL-31, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Harold G. Hale, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-AGL-31". The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM'S

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Section 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the designated transition area airspace near Austin, MN.

The present transition area is being modified to accommodate a new VOR RWY 18 SIAP and a new VOR RWY 36 SIAP to Austin Municipal Airport, Austin, MN. The modifications will consist of increasing the 5 mile radius of the transition area to an 8.5 mile radius; and, increasing the lengths and widths of the north and south transition area extensions.

The development of the SIAPS requires that the FAA alter the designated airspace to insure that the procedures will be contained within controlled airspace. The minimum descent altitude for the procedures may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined areas which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, Transition Areas

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Austin, MN [Revised]

That airspace extending upward from 700 feet above the surface within an 8.5 mile radius of the Austin Municipal Airport (lat. 43°40'00" N., long. 92°36'00" W.); within 4.25 miles each side of the Austin VOR 355 radial extending from the 8.5 mile radius to 15 miles north of the Austin Municipal Airport; and, within 4.25 miles each side of the Austin VOR 175 radial extending from the 8.5 mile radius to 15 miles south of the Austin Municipal Airport; excluding that portion which overlies the Rochester, MN, transition area.

Issued in Des Plaines, Illinois, on January 19, 1989.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 89-2385 Filed 2-1-89; 8:45 am]

BILLING CODE 4910-13-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-1-FRL-3514-3]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Reasonably Available Control Technology for Cranston Print Works Company, Webster Division Facility, Webster, MA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision establishes and requires the use of reasonably available control technology (RACT) to control volatile organic compound (VOC) emissions from Cranston Print Works Company, Webster Division Facility located in Webster, Massachusetts. The intended effect of this action is to propose approval of a source-specific RACT determination made by the Commonwealth of Massachusetts in accordance with commitments made in its ozone attainment plan approved by EPA on November 9, 1988 (48 FR 51480). This action is being taken under section 110 of the Clean Air Act.

DATES: Comments must be received on or before March 6, 1989.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air Management Division, Room 2311, JFK Federal Bldg., Boston, MA 02203. Copies of Massachusetts' submittal and EPA's Technical Support Document prepared for this revision are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2311, JFK Federal Bldg., Boston, MA 02203; and the Department of Environmental Quality Engineering, Division of Air Quality Control, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Lynne A. Hamjian, (617) 565-3246; FTS 835-3246.

SUPPLEMENTARY INFORMATION: EPA approved Regulation 310 CMR 7.18(17), "Reasonably Available Control Technology (RACT)," on November 9, 1988 (48 FR 51480) as part of the Commonwealth of Massachusetts' 1982 ozone attainment plan. This regulation requires the DEQE to determine and impose RACT on all facilities with potential to emit one hundred tons per year (TPY) or more of VOC that are not already subject to Massachusetts' regulations developed pursuant to the EPA Control Techniques Guideline (CTG) documents. In a November 17, 1982 letter to EPA, the DEQE committed to submit each of the individual RACT determinations to EPA as source-specific SIP revisions. On November 9, 1988, EPA codified at 40 CFR 52.1123(b) that DEQE must submit each RACT determination made under 310 CMR 7.18(17) to EPA as a SIP revision in order to incorporate the limitations into the SIP. EPA's rationale for requiring DEQE to submit each RACT determination as a single-source SIP revision is that emission limits and reduction measures imposed by states on existing stationary sources in nonattainment areas do not constitute RACT until and unless EPA approves them as RACT via rulemaking.

On February 4, 1988 and February 29, 1988, the Massachusetts Department of Environmental Quality Engineering (DEQE) submitted a SIP revision for parallel processing. This revision is composed of two Massachusetts plan approvals dated March 21, 1975 and February 29, 1988 (CM-74-IF-025 and CR-88-IF-002) which define VOC control requirements for Cranston Print Works Company, Webster Division Facility (Cranston) located in Webster, Massachusetts. Cranston is a fabric printing company. It is not subject to either the Massachusetts' fabric coating regulation (which applies to facilities which administer a uniform layer of coating across the entire width of the substrate) or to the Massachusetts' graphic arts regulation (which applies to flexographic printing facilities and packaging and publication rotogravure printing facilities). Therefore, Cranston is subject to 310 CMR 7.18(17), "Reasonably Available Control Technology," as a non-CTG source with the potential to emit 100 TPY or more of VOCs.

Cranston prints fabrics which are used primarily in the high-fashion apparel industry. Its VOC emissions result from two processes, the acid ager process and the fabric printing process. The acid ager process treats the fabric. The fabric printing process employs six roller and three rotary screen printing machines. The source of VOC emissions from this process is the mineral spirits print paste used on its roller printers. Cranston uses 9 print pastes; only one contains mineral spirits. The majority of VOCs are emitted when the printed fabric is dried on steam dry cans. A description of Cranston's non-CTG processes, DEQE's plan approvals, and the amendments necessary to secure final EPA approval of those plan approvals is provided below.

The Acid Ager Process

A scrubber controls the VOC emissions (acetic acid) from the acid ager line. The scrubber controls VOC emissions to 0.6 lb/hr at an overall efficiency of 99%. The scrubber reduces VOC emissions from 280 tons per year (TPY) 2.6 TPY. The waste-water stream from the scrubber is neutralized prior to discharge by mixing it with other on-site waste streams that are basic. The DEQE issued Cranston a plan approval on March 21, 1975 (#CM-74-IF-025) requiring that it operate the acid ager line with a scrubber. The DEQE specifically determined RACT for the acid ager line as a scrubber with 99% overall efficiency as required by the March 21, 1975 plan approval. In addition, the DEQE has imposed daily recordkeeping and compliance testing requirements for this line in a February 29, 1988 RACT plan approval (#CR-88-IF-002) which was also issued to Cranston pursuant to 310 CMR 7.18(17).

EPA has reviewed the two plan approvals and supporting documentation which were submitted as a SIP revision for parallel processing. EPA generally concurs with the DEQE's RACT determination for the acid ager process. The proposed plan approvals

must however be amended, as explained below, to include additional recordkeeping, monitoring, and other enforceable provisions necessary to ensure that the RACT requirements will be enforceable as a practical matter prior to being formally submitted as SIP revisions by the DEQE. These amendments must be made in order for EPA to take final action to approve the plan approvals as a revision to the SIP.

Amendments to Plan Approvals for the Acid Ager Process

The DEQE must make the following revisions to the March 21, 1975 plan approval (#CM–74–IF–025) and to the February 29, 1988 plan approval (#CR–88–IF–002) for the acid ager process:

1. The March 21, 1975 plan approval must require that Cranston maintain an overall scrubber efficiency greater than or equal to 99% at all times.

2. The March 21, 1975 plan approval must specifically require that the acid ager emissions shall not exceed 0.6 lb/hr.

3. The March 21, 1975 plan approval must contain additional operating limitations, monitoring provisions, and recordkeeping requirements to indicate whether the 99% efficiency is being maintained.

Specifically, the plan approval should contain a minimum water inlet flow rate, a maximum operating temperature of the air inlet, and a maximum wet air flow rate derived either from a compliance test which demonstrated compliance with the 99% efficiency or, if compliance test results are not available, from the scrubber design. In addition, the plan approval must specify a maximum pressure drop across the scrubber which is based on the compliance test or scrubber design. The plan approval must require Cranston to monitor and record the pressure drop once per day. Further, the plan approval must require that Cranston continuously monitor and record the temperature of the air inlet, the inlet air flow rate, and the inlet water flow rate to confirm that the 99% efficiency is being met. The plan approval also must contain a contingency plan for when monitored parameters are not maintained at the values specified in the plan approval.

4. As an alternative to No. 3 above, the March 21, 1975 plan approval could require Cranston to continuously monitor with some hydrocarbon detection device and record the amount of VOC in the inlet and outlet gas to confirm that the 99% efficiency is being met.

5. The DEQE must formally submit an approvable revision to the SIP's VOC test method regulation requiring non-CTG sources subject to 310 CMR 7.18(17) to use EPA-approved test methods, or specify the use of EPA-approved test methods in both the March 21, 1975 plan approval (#CM–74–IF–025) and the February 29, 1988 plan approval (#CR–88–IF–002).

In addition, the DEQE did not provide the opportunity for public comment on the March 21, 1975 plan approval. The DEQE must publish a public notice and hold a public hearing on this plan approval, or certify that its requirements are a "reasonable outgrowth" of the RACT proposal in the plan approval that went to public hearing on October 7, 1986.

For further details on these requirements refer to the Technical Support Document prepared for this revision which may be obtained from the EPA Regional Office listed in the **ADDRESSES** section of this notice.

The Fabric Printing Process

Cranston has reduced VOC emissions (mineral spirits) from its fabric printing operations by reformulating one of its print pastes, changing production schedules, and by replacing roller printers with screen printers. Cranston has reduced its actual annual VOC emissions from fabric printing operations from 819 TPY in 1980 to 412 TPY in 1987. This is a 50% annual reduction. The DEQE issued the fabric printing operations a plan approval on February 29, 1988 (#CR88–IF–002) which imposes a short term emission rate of 82.5 lb VOC/1000 lb fabric printed (averaged over 24 hours) and an annual emissions cap of 412 TPY. This plan approval also imposes daily recordkeeping, quarterly reporting, and compliance testing requirements for the fabric printing process. The DEQE has determined that a 50% annual reduction in VOC emissions from Cranston's fabric printing operations is RACT for this process.

EPA has reviewed the February 29, 1988 plan approval and supporting documentation which DEQE submitted as a SIP revision for parallel processing and has concluded that further documentation, as detailed below, is necessary to support the emission rate of 82.5 lb VOC/1000 lb fabric printed (averaged over 24 hours) as RACT for the fabric printing process. Cranston's emission rate in 1980 was 89.8 lb VOC/1000 lb fabric printed. The emission rate included in the plan approval is 82.5 lb VOC/1000 lb fabric printed (averaged over 24 hours). This is only an 8% reduction in VOC emissions on a daily basis.

EPA considers fabric printing similar to graphic arts printing because both processes print substrates using engraved intaglio rollers. Therefore, the DEQE must clearly document, in the SIP submittal, why Cranston cannot achieve a 65% reduction with add-on control technology, or cannot use print pastes with equivalent formulations as those set forth in Massachusetts' Regulation 310 CMR 7.18(12) which was developed in accordance with EPA's graphic arts CTG (EPA–450/2–78–033). For EPA to approve this SIP revision, the DEQE must submit the following additional documentation to support that 82.5 lb VOC/1000 lb fabric printed (averaged over 24 hours) is RACT:

1. Why Cranston cannot achieve a 65% overall reduction with add-on control technology as in the Massachusetts Graphic Arts Regulation. Specifically, why add-on controls are not technically or economically feasible for each line. Documentation must include cost analyses and technical documentation for carbon adsorption, incineration (catalytic and thermal), and ducting emissions to existing boilers. Further, the DEQE's documentation must include why Cranston cannot duct the exit gas of each line to add-on control equipment, and why Cranston cannot adjust the existing ventilation system to accommodate add-on controls.

2. Why Cranston cannot use print pastes with equivalent formulations as those set forth in the Massachusetts Graphic Arts Regulation. Specifically, why Cranston cannot achieve a higher percent reduction via reformulation or switching to screen printing.

In addition, it is not clear whether the 82.5 lb VOC/1000 lb fabric printed (as averaged over 24 hours) emission limit is being met on a line-by-line or via cross-line averaging. If Cranston is achieving compliance with this emission limit via cross-line averaging, then the plan approval must require that Cranston meet all of the requirements of EPA's Emissions Trading Policy published on December 4, 1986 (51 FR 43814).

Finally, DEQE must amend the February 29, 1988 plan approval itself, as summarized below, to include additional testing, enforceable emission rates and other provisions to ensure that the limitations are enforceable prior to being formally submitted as a SIP revision by the DEQE. These amendments must be made in order for EPA to take final action and incorporate the plan approval into the SIP.

Amendments to the Plan Approval for the Fabric Printing Process

The DEQE must make the following revisions to the February 29, 1988 plan approval (#CR–88–IF–002) for the fabric printing process:

1. DEQE must first submit adequate documentation to justify that the 82.5 lb VOC/1000 lb fabric printed (averaged over 24 hours) is RACT. If this limit is being met by cross-line averaging, then the DEQE must amend the plan approval to require Cranston to comply with EPA's Emissions Trading Policy.

2. The DEQE must formally submit an approvable revision to the SIP's VOC test method regulation requiring non-CTG sources subject to 310 CMR 7.18(17) to use EPA-approved test methods, or specify the use of EPA-approved test methods in the plan approval.

3. The plan approval must require Cranston to record the density of the mineral spirits on a daily basis. Alternatively, the plan approval could require that Cranston make this information readily accessible with the VOC records.

For further details on these requirements refer to the Technical Support Document prepared for this revision which may be obtained from the EPA Regional Office listed in the **ADDRESSES** section of this notice.

EPA is proposing to approve two Massachusetts plan approvals as a revision to the SIP provided that Massachusetts makes the changes described in this notice, and is soliciting public comments. These comments will be considered before taking final action. Interested parties may participate in the Federal Rulemaking procedure by submitting written comments to the Region I office listed in the addresses section of this notice. In addition, prior to final rulemaking, EPA is requiring that the DEQE submit additional documentation to support the proposed RACT determination for the fabric printing process. EPA will provide the opportunity for comment on the additional documentation submitted by the DEQE prior to final approval of this revision.

This revision is being processed under a procedure called "parallel processing" (47 FR 27073). If the proposed revision is substantially changed, in areas other than required by this notice, EPA will evaluate those changes and may publish another notice of proposed rulemaking. If no substantial changes were made to the proposed revision, EPA will publish a final rulemaking notice. The final rulemaking action by EPA will occur only after the final plan approvals for Cranston have been issued by the DEQE and have been formally submitted to EPA for incorporation into the SIP.

Proposed Action: EPA is proposing to approve the Massachusetts Plan Approvals dated March 21, 1988 and February 29, 1988 (#CM–74–IF–025 and #CR–88–IF–002) imposing RACT on Cranston Print Works Company as a revision to the Massachusetts SIP. EPA is proposing approval with the understanding that the DEQE will revise the plan approvals and submit additional documentation as outlined in this notice prior to formal submittal of the plan approvals for incorporation into the SIP. If the DEQE's formal SIP revision request does not incorporate the requirements outlined in this notice, EPA will withdraw this proposed action and take action to disapprove DEQE's SIP revision request.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

The Administrator's decision to approve or disapprove the plan revision will be based on whether it meets the requirements of section 110(a)(2)(A)–(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7404–7642.

Date: September 27, 1988.

Michael R. Deland,

Regional Administrator, Region I.

[FR Doc. 89–2423 Filed 2–1–89; 8:45 am]

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40 CFR Part 52

[A–1–FRL–3514–1]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Reasonably Available Control Technology for Monsanto Polymer Products Co., Indian Orchard, MA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a proposed State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision establishes and requires the use of reasonably available control technology (RACT) to control volatile organic compound (VOC) emissions from Monsanto Polymer Products Company in Indian Orchard, Massachusetts. The intended effect of this action is to propose approval of a source specific RACT determination made by the Commonwealth of Massachusetts in accordance with commitments of its approved 1982 ozone attainment plan. This action is being taken under section 110 of the Clean Air Act.

DATES: Comments must be received on or before March 6, 1989.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air Management Division, Room 2313, JFK Federal Bldg., Boston, MA 02203. Copies of the State submittal and EPA's Technical Support Document are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2313, JFK Federal Bldg., Boston, MA 02203 and the Department of Environmental Quality Engineering, Division of Air Quality Control, One Winter Street, 8th floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Lorenzo Thantu, (617) 565–3250; FTS 835–3250.

SUPPLEMENTARY INFORMATION: EPA approved Regulation 310 CMR 7.18(17), "Reasonably Available Control Technology (RACT)," on November 9, 1983 (48 FR 51480) as part of the Commonwealth of Massachusetts' 1982 ozone attainment plan. This regulation requires the Commonwealth of Massachusetts Department of Environmental Quality Engineering (DEQE) to determine and impose RACT on all stationary sources with the potential to emit one hundred tons per year (TPY) or more of VOCs that are not already subject to RACT under Massachusetts' regulations developed pursuant to the EPA Control Techniques Guideline (CTG) documents. In a November 17, 1982 letter to EPA, the DEQE committed to submit each of the individual RACT determinations to EPA for incorporation into the Massachusetts SIP. One November 9, 1983, EPA codified at 40 CFR 52.1123 that the DEQE must submit each RACT determination made under 310 CMR 7.18(17) to EPA as a SIP revision in order to incorporate the limitations imposed on each non-CTG source into the SIP. EPA's rationale for requiring the DEQE to submit each RACT determination as a single source SIP revision is that emission limits and reduction measures imposed by States on existing stationary sources in nonattainment areas do not

constitute RACT unless and until EPA approves them as RACT via federal rulemaking.

The Monsanto Polymer Products Company (Monsanto) in Indian Orchard, Massachusetts is a one hundred TPY non-CTG VOC source subject to RACT under Massachusetts' Regulation 310 CMR 7.18(17). On February 4, 1988, EPA received a request from the DEQE to parallel-process a proposed SIP revision imposing RACT on Monsanto's non-CTG processes. This revision includes the DEQE's proposed Plan Approval, dated December 23, 1987, issued under 310 CMR 7.18(17) to Monsanto.

Description of the RACT Determination

Monsanto primarily produces polymers and plastics at its Indian Orchard plant. Originally, Monsanto had eleven processes subject to RACT. With the shutdown of the Phenol/Formaldehyde Resins Process and the Polyvinyl Alcohol Process, and the sale of the Polystyrene Resins Process, the Indian Orchard plant now has *eight* non-CTG processes that are subject to RACT requirements under 310 CMR 7.18(17):

The Formaldehyde Process;
The Polyvinyl Butyral Sheeting Process;
The Polyvinyl Butyral-South Process;
The Melamine and Urea/Formaldehyde Resins Process;
The Polyvinyl Formal Process;
The Polyvinyl Acetate Products Process;
The Polyvinyl Acetate Multipolymer Solutions Process; and
The Polyvinyl Butyral-East Process.

The proposed Plan Approval imposes requirements which the DEQE has determined to constitute RACT for these eight processes in order to reduce VOC emissions.

In the course of its technical RACT determination, the DEQE determined that Monsanto's control of VOC emissions for the Formaldehyde Process, the Polyvinyl Acetate Products Process, and the Polyvinyl Acetate Multipolymer Solutions Process already constituted RACT. A description of the VOC controls for these processes is contained in the Technical Support Document prepared on today's action. It is available at the EPA Regional Office listed in the **ADDRESSES** section of this notice. For these *three* processes, the DEQE has imposed certain compliance/enforcement requirements in the proposed Plan Approval to insure that the emissions do not exceed those RACT levels. For the remaining *five* processes, the DEQE has imposed specific RACT requirements on Monsanto. In addition, the DEQE has imposed a general Leak Detection and Repair Program on Monsanto to control fugitive VOC emissions. This general Leak Detection and Repair Program is applicable to the entire plant with the exception of the Polyvinyl Butyral Sheeting Process and part of the Polyvinyl Butyral-East Process. These RACT measures and the resulting emission reductions are detailed below:

Polyvinyl Butyral Sheeting Process: Through a process change, Monsanto phased out the use of toluene resulting in a seventeen TPY reduction.

Polyvinyl Butyral-South Process: Monsanto installed: (a) mechanical seals on the hydrolysis reactors resulting in a 30.0 TPY reduction, (b) a packed-tower scrubber on the dryer, resulting in a 165.1 TPY reduction, and (c) a chilled condensation system on eleven storage tanks, resulting in a 22.2 TPY reduction.

Melamine and Urea/Formaldehyde Resins Process: Monsanto installed a packed-bed scrubber on one kettle used for "spill over" production, resulting in a 0.52 TPY reduction.

Polyvinyl Formal Process: Monsanto redesigned the venting systems from the soak tanks, resulting in a 23.9 TPY emission reduction.

Polyvinyl Butyral-East Process: In an earlier version of the Plan Approval, dated April 29, 1986, the DEQE required Monsanto to meet a schedule for the installation of a packed-tower scrubber on the dryer in order to achieve a 51.3 TPY VOC emission reduction. That Plan Approval also required Monsanto to meet a schedule for the implementation of an intensive Leak Detection and Repair Program on two process units, the Acetalization/Hydrolysis unit and the Wash Tank. This intensive Leak Detection and Repair Program is to insure that the engineering fixes (e.g. the installation of mechanical seals on agitator shafts) imposed in the proposed Plan Approval achieve a 98.6 TPY VOC emission reduction (a 56% reduction) as part of Monsanto's RACT determination. This intensive Leak Detection and Repair Program is specific to these two units of the Polyvinyl Butyral-East Process and should not be confused with the general Leak Detection and Repair Program that is being imposed on Monsanto's Indian Orchard facility including the remainder of the Polyvinyl Butyral-East Process.

Monsanto did not comply with the schedule imposed in the April 29, 1986 Plan Approval. Accordingly, the DEQE issued a Consent Agreement and Order dated December 5, 1986 with a forty thousand dollar penalty to Monsanto. That Order required Monsanto to comply with all the provisions of the April 29, 1986 Plan Approval for the Polyvinyl Butyral-East Process as soon as practical but in no case later than April 30, 1987. Further, the Order imposed additional requirements on the Polyvinyl Butyral-East Process which included an increase in the monitoring frequency of the *general* Leak Detection and Repair Program from quarterly to monthly, and the installation of a chilled fluid condensation system by June 30, 1987 on four slurry tanks (vents #111P181, #111P182, #111P183, and #111P184). The December 5, 1986 Order is part of the DEQE's December 23, 1987 proposed Plan Approval which is the subject of today's action.

General Leak Detection and Repair Program: In addition to the process-specific intensive Leak Detection and Repair Program discussed in the previous paragraph, the DEQE has imposed a general Leak Detection and Repair Program to control fugitive VOC emissions from Monsanto's Indian Orchard facility. The December 23, 1987 proposed Plan Approval states that the test methods and the recording/reporting requirements of that general Leak Detection and Repair Program must meet the requirements of Massachusetts SIP Regulation 310 CMR 7.18(19), Synthetic Organic Chemical Manufacture. The DEQE adopted Regulation 310 CMR 7.18(19) pursuant to EPA's CTG, *Control of Volatile Organic Compound Leaks From Synthetic Organic Chemical and Polymer Manufacturing Equipment* (EPA–450/3–83–006). The general Leak Detection and Repair Program applies to the entire plant except for the part of the Polyvinyl Butyral-East Process where the process-specific intensive Leak Detection and Repair Program is imposed and the Polyvinyl Butyral Sheeting Process. The DEQE did not subject the Polyvinyl Butyral Sheeting Process to the general Leak Detection and Repair Program because the only VOC utilized in this process is a heavy liquid as defined in 310 CMR 7.18(19) and in the above referenced CTG. Processes utilizing only heavy liquids are not subject to quarterly monitoring requirements for leak detection under 310 CMR 7.18(19). Therefore, the DEQE has imposed these requirements of the general Leak Detection and Repair Program for Monsanto, a non-CTG source, consistent with leak detection and repair programs required by 310 CMR 7.18(19) for CTG-subject sources.

Process Shutdowns: In addition to the requirements imposed on the five processes and the general Leak Detection and Repair Program as discussed above, the DEQE's proposed Plan Approval also includes the reductions achieved by shutting down the Polyvinyl Alcohol Process as part of the RACT determination for the Indian Orchard facility. In the course of its technical RACT determination, the DEQE had found 5.8 pounds of VOC per 100 pounds of product to be RACT for this process. Implementation of *that* RACT determination would have resulted in an emission reduction of 601 TPY. However, Monsanto shutdown this process in 1986. The DEQE's December 23, 1987 proposed Plan Approval requires that the shutdown be permanent, and the DEQE considers *all* of the emission reductions achieved by this shutdown to be RACT. This shutdown resulted in 827.2 TPY reduction.

The Phenol/Formaldehyde Resins Process was shutdown in 1984. The DEQE did not quantify the resulting emission reductions and did not count them toward the percent reduction achieved by its RACT determination. The DEQE does consider the 1984 shutdown of this process to be permanent and enforceable. Should Monsanto opt to restart this process, it would be subject to the Massachusetts SIP's new source review regulation located at 310 CMR 7.02.

EPA's Evaluation of the RACT Determination

As a result of VOC emission reduction measures imposed on Monsanto's active processes and the shutdown of the Polyvinyl Alcohol Process, Monsanto's Indian Orchard facility has achieved a plantwide emission reduction of approximately 76% (a 1222.8 TPY reduction), comparing 1985 emission levels with emission levels after RACT. The year 1985 was used as the baseline year to determine the percent reduction achieved by imposing RACT rather than the 1980 baseline year of the SIP. In 1985, Monsanto conducted an extensive refinement of its annual Source Registration Database. EPA and the DEQE determined that use of the 1985 update to calculate Monsanto's pre-RACT VOC emissions provided for a more accurate comparison to post-RACT emissions than the use of the baseline year of the 1982 SIP. This 76% reduction in VOC emissions does not include the reductions in fugitive emissions achieved by Monsanto's general Leak Detection and Repair Program to control fugitive VOC emissions. As previously stated, this 76% reduction in VOC emissions does not include the reductions achieved in 1984 by the shutdown of the Phenol/Formaldehyde Resins Process. Most importantly, this 76% reduction is greater than the reduction projected for Monsanto in the *Massachusetts 1982 State Implementation Plan for Ozone and Carbon Monxide; August 1982.*

EPA has reviewed the proposed Plan Approval and supporting documents submitted as a SIP revision and generally coucurs with the DEQE's RACT determination. For more details on EPA's evaluation of the DEQE's RACT determination and the baseline used to calculate the RACT percent reduction, please refer to the Technical Support Document available at the EPA Regional Office listed in the **ADDRESSES** section of this notice.

For Monsanto's eight processes that are subject to 310 CMR 7.18(17), the DEQE's proposed Plan Approval sets forth compliance/enforcement requirement. The purpose of these requirements, as specified in the December 23, 1987 proposed Plan Approval, is to insure that Monsanto is meeting each RACT requirement on a continuous basis.

However, EPA finds that several of the RACT requirements, as currently written in the proposed Plan Approval, are not clearly enforceable. Therefore, EPA and the DEQE cannot insure that the RACT emission reductions will actually occur.

Before EPA will conduct final rulemaking approving this SIP revision, the DEQE must add the requirements listed below to Monsanto's Plan Approval to remedy these enforceability problems:

Formaldehyde Process

1. The final Plan Approval must require Monsanto to operate the chilled condensation system such that the vented exhaust is at a temperature of 40 degrees F or less, and install and maintain indicators to monitor compliance on a continuous basis.

2. The final Plan Approval must specifically require boiler No. 6 to be in a concurrent operation, i.e., in a firing mode, whenever the absorbers are in operation because their process off-gas is ducted and directed to boiler No. 6 for destruction.

3. The final Plan Approval must specify a percent removal efficiency for the scrubber used for tank truck loading. This specific percent removal efficiency should be written into the final Plan Approval such that it is met whenever the scrubber is in operation.

Polyvinyl Butyral Sheeting Process

For the printing process step, the Plan Approval's current language, "press not used", is unclear and does not appear to impose a duty on Monsanto and therefore is not legally enforceable. Consequently, the language should be revised to read "the rotogravure printing press shall not be used at any time."

Polyvinyl Butyral-South Process

1. The final Plan Approval must indicate a *correct* number of reactor agitators on the four hydrolysis reactors for which RACT has been defined as a Leak Detection and Repair Program (covered under Monsanto's general Leak Detection and Repair Program).

2. The final Plan Approval must specify the reduction efficiency to the packed-tower scrubber installed on the dryer as a continuous requirement (i.e., Monsanto shall operate the scrubber at a removal efficiency of at least 85.0 percent at all times).

3. The proposed Plan Approved contains a provision for the chilled condensation system installed on the solvent recovery process unit which reads "that Monsanto operate the chilled condensation system regardless of the outside ambient temperature unless Monsanto can demonstrate to the Department that operation results in no significant VOC reductions compared to non-operation." The final Plan Approval should specify the size of the "significant" VOC reduction for the purposes of comparing the operation of the system with the shutdown of the system. The formal SIP revision submittal from the DEQE to EPA should describe the procedure by which the DEQE would authorize the system shutdown and issue an amended Plan Approval to Monsanto. In addition, the final Plan Approval must state the chilled fluid temperature as an enforceable operating parameter (i.e., Monsanto must maintain the temperature of the chilled fluid supplying the chilled condensers at 40 degrees F or less at all times).

Melamine and Urea/Formaldehyde Resins Process

The final Plan Approval must define the specific overall reduction efficiency that must be continuously met for the two-stage scrubbing system, i.e., venturi scrubber and packed-tower scrubber, for this process. In addition, the final Plan Approval should clarify that a "no flow" condition of the induced draft fan for the packed-tower scrubber must sound an alarm in the control room.

Polyvinyl Acetate Products Process

The DEQE imposed an operating restriction of 750 hours per year on the 75 gallon dissolving tank which is used to make Polyvinyl Butyral-East windshield grade products. This operating restriction, as written in the December 23, 1987 proposed Plan

Approval, is not considered enforceable in practice by EPA. If compliance with the operating restriction is based on the total annual operating hours, there may be considerable time lag before a violation can be determined and documented as a continuing violation. Therefore, the final Plan Approval must require Monsanto to comply with the annual 750 hour/year cap on a rolling monthly basis for any twelve consecutive months. In addition, an effective date must be specified in the final Plan Approval for this operating restriction of no later than December 31, 1990.

Polyvinyl Butyral-East Process

1. The final Plan Approval must specify the reduction efficiency for the packed-tower scrubber installed on the dryer as a continuous requirement (i.e. "Monsanto shall operate the scrubber at a removal efficiency of at least 90% at all times).

2. The final Plan Approval must require Monsanto to install and maintain indicators to monitor that the vented exhaust temperature of the chilled condensation system does not exceed 40 degrees F. In addition, the final Plan Approval must state the chilled fluid temperature as an enforceable operating parameter (i.e. "Monsanto must maintain the temperature of the chilled fluid supplying the chilled condensers at 40 degrees F or less at all times.").

3. The December 23, 1987 proposed Plan Approval imposes a process-specific intensive Leak Detection and Repair Program on the Acetilization/Hydrolysis and Wash Tank process units of the Polyvinyl Butyral-East Process. As previously stated, this intensive Leak Detection and Repair Program is to insure that the engineering fixes (e.g. installation of mechanical seals on agitator shafts) achieve the 50% RACT reduction in fugitive VOC emissions from these subject process units. The fugitive VOC emissions from the Acetilization/Hydrolysis and Wash Tank process unit areas are exhausted via elephant trunks to vent No. 820 and vent No. 821 respectively. The DEQE's December 23, 1987 proposed Plan Approval states that Monsanto will demonstrate that the 50% RACT reduction in VOC emissions has occurred by monitoring the exhaust from vent No. 820 and vent No. 821 *daily* with an organic vapor analyzer (OVA). Further, that proposed Plan Approval states that compliance would be based on the quarterly average of all readings. The DEQE proposes that quarterly averaged OVA reading of 35 parts per million (ppm) for the vent No. 820 and 23 ppm for vent No. 821 would represent compliance with RACT.

However, EPA does not concur that compliance with RACT for these two processes units should be determined solely by monitoring vents No. 820 and 821. The proposed Plan Approval must be amended to subject all of the engineering fixes and process modifications which achieve the 50% reduction in fugitive VOC emissions to the intensive Leak Detection and Repair Program. The final Plan Approval must require Monsanto to monitor each of these fugitive VOC emission points (e.g. agitator shafts, manhole covers, sampling points, etc.) of the Acetilization/Hydrolysis and Wash Tank process units. Further, the final Plan Approval must specify a frequency for conducting such monitoring. In no event may the monitoring frequency be less than on a quarterly basis.

4. The DEQE's December 5, 1986 Consent Agreement and Order (which is part of the December 23, 1987 proposed Plan Approval) also requires Monsanto to conduct its *general* Leak Detection and Repair Program, applicable to the remainder of the Polyvinyl Butyral-East Process, on a monthly basis instead of on a quarterly basis beginning on January 1, 1987 until such time that Monsanto can demonstrate to the satisfaction of the DEQE that a less frequent interval provides equivalent VOC emission reduction. The formal SIP revision submitted by the DEQE to EPA should describe the procedure by which the DEQE would authorize a change in intervals for leak checks and issue an amended Plan Approval.

5. With regard to the chilled fluid condensation system installed on the four slurry tanks as required by the December 5, 1986 Consent Agreement and Order, the final Plan Approval must require that Monsanto: (a) maintain the temperature of the vented exhaust at or below a specified temperature in accordance with the design efficiency of the control system; and (b) monitor and record the temperature of the vented exhaust stream or set up an alram and recording system similar to the one Monsanto has already implemented for its control equipment (i.e., scrubbers and chilled condensation systems). If the alarm and recording system approach is taken, the final Plan Approval must require that this system be designed so that the alarm will sound in the process control room if the temperature of the chilled fluid supplying the condensers exceeds a *specified* value.

General Leak Detection and Repair Program

The DEQE's December 23, 1987 proposed Plan Approval contains a footnote regarding the general Leak Detection and Repair Program which reads "Intervals subject to change based upon Department review of leak checking and repair data gathered by Monsanto." The formal SIP revision submitted by the DEQE to EPA should describe the procedure by which the DEQE would authorize a change in intervals for leak checks and issue an amended plan approval.

Compliance Schedule

The DEQE's December 23, 1987 proposed Plan Approval does not specify final compliance dates for the RACT requirements for Monsanto's Formaldehyde Process, Polyvinyl Butyral Sheeting Process, and Polyvinyl Acetate Products Process. The final Plan Approval must specify final compliance dates of no later than December 31, 1988 for all RACT requirements for these processes.

Miscellaneous

The December 23, 1987 proposed Plan Approval interchangeably uses commercial names as well as trade names for Monsanto's non-CTG processes. The final Plan Approval should specifically state the trade name that corresponds to each commercial name for Monsanto's non-CTG processes.

EPA is soliciting public comments on issues discussed in this notice. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the address above.

This revision is being proposed under a procedure called "parallel processing" (47 FR 27073). If the proposed revision is substantially changed, in areas other than those required in this notice, EPA will evaluate those changes and may publish a revised NPR. If no substantial changes are made other than those areas cited in this notice, EPA will publish a Final Rulemaking Notice on the revision. Final rulemaking action by EPA will occur after a final Plan Approval for Monsanto has been issued by the DEQE and has been formally submitted to EPA for incorporation into the SIP.

Proposed Action

EPA is proposing to approve Commonwealth of Massachusetts' proposed Plan Approval dated December 23, 1987 as a revision to the Massachusetts SIP Final EPA approval is contingent upon the DEQE amending that proposed Plan Approval as outlined in this notice prior to its formal submittal to EPA for incoporatin into the SIP.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

The Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of sections 110(a)(2)(A)–(k) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirementss.

Authority: 42 U.S.C. 7401–7642.

Date: July 5, 1988.

Micael R. Deland,

Regional Administrator, Region I.

Editorial Note: This document was received at the Office of the Federal Register on January 30, 1989.

[FR Doc. 89–2422 Filed 2–1–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

46 CFR Part 550

[Docket No. 89–03]

Tariff Filing Notice Periods—Exemption

AGENCY: Federal Maritime Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Maritime Commission proposes to amend its regulations governing the publishing, filing and posting of tariffs in domestic offshore commerce pursuant to the Shipping Act, 1916. This proposed amendment of Part 550 would add a new exemption for carriers providing port-to-port service in the Hawaiian domestic offshore trade. The proposed rule would permit such carriers to publish on one day's notice reductions in existing individual commodity rates, and rates on new tariff items.

DATES: Comments (original and 15 copies) are due on or before March 6, 1989.

ADDRESS: Send comments to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT:

Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5740.

Robert G. Drew, Director, Bureau of Domestic Regulation, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5796.

SUPPLEMENTARY INFORMATION: In a separate Order issued this date in Petition No. P5–88, *Matson Navigation Company, Inc.—Application for Section 35 Exemption*, the Federal Maritime Commission ("FMC" or "Commission") has granted to Matson Navigation Company ("Matson"), pursuant to section 35 of the Shipping Act, 1916 ("1916 Act"), 46 U.S.C. app. 833a, an exemption from certain requirements of the Intercoastal Shipping Act, 1933 ("1933 Act"), *id.* 843 *et seq.* Matson is an ocean common carrier providing port-to-port service in the Hawaiian domestic offshore trade ("Trade"). The Commission's Order in Petition No. P5–88 permits Matson to put into effect on one day's notice reductions in existing individual commodity rates, and rates on new tariff items. Under the 1933 Act, such tariff actions ordinarily are subject to thirty days' notice. *Id.* 844.

By this Notice, the Commission proposes a rule that would extend the same exemption to all FMC-regulated carriers in the Trade.

Section 35 of the 1916 Act authorizes the Commission to grant exemptions from any requirement of the 1933 Act, if "such exemption will not substantially impair effective regulation * * *, be unjustly discriminatory, or be detrimental to commerce." 46 U.S.C. app. 833a. The exemption granted to Matson resulted from the division in jurisdiction over the domestic offshore ocean trades between the FMC, which regulates all-water, port-to-port services pursuant to the 1933 Act, and the Interstate Commerce Commission ("ICC"), which regulates joint intermodal services originating at or destined to interior mainland points. While the 1933 Act requires thirty days' notice for new or reduced all-water rates, the ICC by regulation permits new or reduced motor/water rates to go into effect on one day's notice. 49 CFR 1312.39(h)(1). Matson's chief competitor for westbound container traffic, Sea-Land Service, Inc. ("Sea-Land"), maintains tariffs only at the ICC. As a result, Sea-Land has been able to put its rates into effect more quickly even when Matson had taken the initiative in reducing a particular rate.

In granting the exemption sought by Matson, the Commission observed that Matson merely would be permitted to engage in rate competition with Sea-Land under equal notice requirements, and that shippers would benefit from being able to utilize new or reduced rates more quickly. We found that there was no basis to conclude that allowing new rates and individual rate decreases to go into effect on one day's notice would impair effective regulation or otherwise transgress the standards of section 35. The Commission cautioned that section 35 may not be used to essentially deregulate a particular trade or the operations of a particular carrier, but found that these concerns did not apply to Matson's exemption, which does not alter the notice requirements imposed by the 1933 Act on general rate decreases, "across-the-board" decreases, or rate increases of any kind.

Comments in support of Matson's request for an exemption had been filed by Sause Bros. Ocean Towing Co., Inc. ("Sause Bros."), which provides tug-and-barge service in the Trade pursuant to FMC port-to-port tariffs. Sause Bros. claimed that, like Matson, it is competitively disadvantaged as a result of the different notice periods, and asked that the exemption sought by Matson be made applicable to all FMC-regulated carriers in the Trade. Although Matson stated that it had no objective to Sause Bros.'s request, the question of a trade-wide exemption had not been included in the **Federal Register** notice of Matson's original application and, consequently, interested parties had had no opportunity to comment on that specific issue. The Commission thus could not properly consider a trade-wide exemption in the context of Matson's application.

Because Sause Bros. and the other FMC-regulated carriers besides Matson are relatively small operators, there appears to be a rational basis to conclude that application on a trade-wide basis of the exemption already granted to Matson would not impair effective regulation or be detrimental to commerce within the meaning of section 35. Furthermore, it appears that a trade-wide exemption would eliminate the possibility of unjust discrimination against carriers other than Matson, remove any remaining artificial barriers to equitable rate competition, and extend the benefits of accelerated rate decreases to all shippers in the Trade. We reiterate, however, that this is a limited exemption designed to remedy a discrete problem. It should not be taken

as an indication that the Commission will engage in wide-scale deregulation of the Trade as a result of the division in jurisdiction between this agency and the ICC. As affirmed by our Order in Petition No. P5–88, the section 35 exemption procedure may not be used to "repeal or substantially amend" the "clear and definite statutory scheme of regulation" prescribed by the 1933 Act. *Amendment of Certain Regulations Governing Common Carriers by Water in the Domestic Offshore Commerce of the United States*, ___ F.M.C. ___, 22 S.R.R. 1195, 1199 (1984).

The Federal Maritime Commission has determined that the proposed rule, if adopted, is not a "major rule" as defined in Executive Order 12291 dated February 17, 1981, because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Federal Maritime Commission certifies that the proposed rule will not, if adopted, have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small government jurisdictions.

List of Subjects in 46 CFR Part 550

Maritime carriers, Reporting and recordkeeping requirements.

Therefore, pursuant to 5 U.S.C. 553, sections 18, 35 and 43 of the Shipping Act, 1916, 46 U.S.C. app. 817, 833a and 841a, and section 2 of the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 844, Part 550 of Title 46, Code of Federal Regulations, is proposed to be amended as follows:

PART 550—[AMENDED]

1. The authority citation for Part 550 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 812, 814, 815, 817, 820, 833a, 841a, 843, 844, 845, 845a, 845b, and 847.

2. In § 550.1, the introductory text is redesignated as paragraph (a), paragraphs (a) through (i) are redesignated as paragraphs (a)(1) through (a)(9) respectively, old paragraphs (c)(1) through (3) are redesignated as new paragraphs (a)(3)(i) through (iii), and a new paragraph (b) is added reading as follows:

§ 550.1 Exemptions.

* * * * *

(b) Carriers providing all-water transportation between the continental United States (including Alaska and the District of Columbia) and Hawaii may publish new individual commodity rates, or reductions in existing individual rates, on one day's notice, and to that extent are exempted from the notice requirements of the Act and the rules of this part.

* * * * *

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 89–2304 Filed 2–1–89; 8:45 am]

BILLING CODE 6730–01–M

Notices

Federal Register
Vol. 54, No. 21
Thursday, February 2, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Special Committee on Ethics in Government; Meeting

ACTION: Special Committee on Ethics in Government; Notice of Public Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Special Committee on Ethics in Government of the Administrative Conference of the United States. The committee has scheduled the meeting to continue its discussion of draft reports on (1) the Ethics in Government Act's financial reporting requirements and (2) conflict-of-interest rules for federal advisory committee members. Requests for copies of these draft reports may be made to the Office of the Chairman at the address and telephone number given below.

DATE: Friday, February 17, 1989 at 9:30 a.m.

Location: Library of the Administrative Conference, 2120 L Street, N.W., Suite 500, Washington, DC.

Public Participation: The committee meeting is open to the interested public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days prior to the meeting. The committee chairman may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

FOR FURTHER INFORMATION CONTACT: Michael W. Bowers, Office of the Chairman, Administrative Conference of the United States, 2120 L Street N.W., Suite 500, Washington, DC 20037. Telephone: (202) 254–7065.

Dated: January 27, 1989.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 89–2401 Filed 2–1–89; 8:45 am]

BILLING CODE 6110–01–M

Committee on Governmental Processes and Working Group on Model Rules; Public Meetings

Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given of meetings of the Committee on Governmental Processes and the Working Group on Model Rules of the Administrative Conference of the United States.

Committee on Governmental Processes

Date: Thursday, February 16, 1989.

Time: 12:15 p.m.—2:30 p.m.

Location: Covington and Burling, 1201 Pennsylvania Avenue NW., Washington, DC (Conference Center West, 11th floor).

Agenda: The committee will meet to discuss a study of the federal personnel complaint, appeal, and grievance processes conducted by Professor William V. Luneburg of the University of Pittsburgh School of Law.

Contact: David M. Pritzker, 202–254–7065.

Working Group on Model Rules

Date: Friday, March 10, 1989.

Time: 12:00 p.m.

Location: Administrative Conference of the United States Library, 2120 L Street NW., Suite 500, Washington, DC.

Agenda: The committee will meet as part of an ongoing effort to develop model rules of practice and procedure which can be used by Federal agencies in formal adjudications.

Contact: Gary J. Edles 202–254–7020.

Public Participation

Attendance at the committee meetings is open to the public, but limited to the space available. Persons wishing to attend should notify the contact person at least three days in advance of the meeting. The committee chairmen may permit members of the public to present oral statements at meetings. Any member of the public may file a written statement with a committee before, during, or after a meeting. Minutes of the meetings will be available on request to the contact persons. The contact persons' mailing address is: Administrative Conference of the United States, 2120 L Street NW., Suite 500, Washington, DC 20037.

Jeffrey S. Lubbers,

Research Director.

January 30, 1989.

[FR Doc. 89–2503 Filed 2–1–89; 8:45 am]

BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

January 27, 1989.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) an indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Revision

• Agricultural Marketing Service
7 CFR Part 59, Regulation Governing the Inspection of Eggs and Egg Products
PY–36, PY–76, PY–155, PY–156, PY–214, PY–222, PY–240, PY–518–1
Recordkeeping; On occasion; Monthly; quarterly, Semi-annually; Annually; Daily
State or local governments; Businesses or other for-profit; Small businesses or organizations; 50,243 responses; 31,439 hours; not applicable under section 3504(h)
Merlin L. Nichols, Jr., (202) 447–3506

• Animal and Plant Health Inspection Service
9 CFR Part 85 Pseudorabies
None
Recordkeeping; On occasion; Quarterly
Farms; Businesses or other for-profit; 75,200 responses; 76,550 hours; not applicable under section 3504(h)
Robert R. Ormiston, (301) 436–8378

• Agricultural Stabilization and Conservation, Personnel Division
Application for County Employment and Supplemental Qualifications Statement
ASCS–650 and ASCS–675
On Occasion
Individuals or households; Federal agencies or employees; 15,000 responses; 16,000 hours; not applicable under section 3504(h)
Don Samuels, (202) 447–7517

• Agricultural Marketing Service
7 CFR Part 70, Regulations for Voluntary Grading of Poultry Products and U.S. Classes, Standards, and Grades
PY–32, PY–33
On occasion; Monthly
State or local governments; Businesses or other for-profit; Small businesses or organizations; 441 responses; 3,123 hours; not applicable under section 3504 (h)
Merlin L. Nichols, Jr., (202) 447–3506

Extension

• Agriculture Research Service
Taxonomic Data Input Forms—Beetle genus and species
ARS 125, ARS 126
On Occasion
State or local governments; Federal agencies or employees; 10 responses; 800 hours; not applicable under section 3504(h)
Robert D. Gordan, (202) 382–1702

• Food and Nutrition Services
Child Nutrition Labeling Program
None
On occasion
Businesses or other for-profit; Federal agencies or employees; Small businesses or organizations; 5,700 responses; 4,275 hours; not applicable under section 3504(h)
Lori Hornfeck, (703) 756–3556

• Food and Nutrition Service
7 CFR Part 220—School Breakfast Program
None
Recordkeeping; Annually
State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 37,900 responses; 5,368,344 hours; not applicable under section 3504 (h)
Marian Stroud, (703) 756–3600

• Foreign Agricultural Service
Export Sales of U.S. Agricultural Commodities
FAS–97, 98, 99, 100
On occasion; Weekly; Quarterly
Businesses or other for-profit; 39,550 responses; 21,753 hours; not applicable under section 3504(h)
Thomas B. McDonald Jr., (202) 447–3273

• Rural Electrification Administration
Certification of Authority
REA Form 675
On occasion
Small businesses or organizations; 200 responses; 20 hours; not applicable under section 3504(h)
Archie W. Cain, (202) 382–1900

New Collection

• Forest Service
Wilderness in the South: The Relationship Between the Visitor and Resource
None
One Time Only
Individuals or households; 1,400 responses; 0 hours; not applicable under section 3504 (h)
Dr. Alan E. Watson, (406) 721–5694

Jane A. Benoit,
Departmental Clearance Officer.
[FR Doc. 89–2414 Filed 2–1–89; 8:45 am]
BILLING CODE 3410–01–M

Soil Conservation Service

Town Creek Subwatershed, Mississippi; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (7 CFR Part 650); U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for Town Creek Subwatershed, a portion of North Tillatoba-Hunter Creek Watershed in Tallahatchie County, Mississippi.

FOR FURTHER INFORMATION CONTACT: L. Pete Heard, State Conservationist, Soil Conservation Service, Suite 1321, A.H. McCoy Federal Building, 100 West Capitol Street, Jackson, Mississippi 39269, telephone (601) 965–5205.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Pete Heard, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for flood protection in a predominantly urban watershed. The planned works of improvement include approximately 0.7 miles of concrete lined urban channel and 0.6 miles of rock riprap lined channel, a major grade control structure and minor grade control structures. Planned measures will be installed jointly by the Corps of Engineers and the Soil Conservation Service as a component of a Demonstration Erosion Control Project.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting L. Pete Heard.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of EO 12372 which requires intergovernmental consultation with state and local officials.)

Date: January 19, 1989.

L. Pete Heard,
State Conservationist, SCS, Jackson, Mississippi.
[FR Doc. 89–1912 Filed 2–1–89; 8:45 am]
BILLING CODE 3410–16–M

COMMISSION ON CIVIL RIGHTS

Florida Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights (CCR), that a meeting of the Florida Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:00 p.m. on February 23, 1989, at the Inter-Continental Hotel, 100 Chopin Plaza, Miami, Florida 33131. The purpose of the meeting is to discuss the status of the Commission and the recent Regional SAC Chairs Conference in which the Florida Committee was represented; to hear a report on Civil Rights progress and/or problems in the state; and to plan a project for Fiscal Year 1989.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Michael Moorhead, (904/342–2211) or Bobby Doctor, CCR staff at (202/523–5571). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact Mr. Doctor at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 24, 1989.

Melvin L. Jenkins,
Acting Staff Director.
[FR Doc. 89–2467 Filed 2–1–89; 8:45 am]
BILLING CODE 6335–01–M

Louisiana Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Louisiana Advisory Committee to the Commission will convene at 2:00 p.m. and adjourn at 5:00 p.m., on Friday, February 24, 1989, at the Hilton Hotel, 5500 Hilton Avenue, Baton Rouge, Louisiana. The purpose of the meeting will be to review Committee projects, discuss civil rights issues of current concern in the State, and plan future projects. Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Michael R. Fontham, or William F. Muldrow, Acting Director of the Central Regional Division (816) 426–5253, (TDD 816/426–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 24, 1989.

Melvin L. Jenkins,
Acting Staff Director.
[FR Doc. 89–2468 Filed 2–1–89; 8:45 am]
BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration.
Title: Marine Debris Education Program Evaluation.
Form Number: None.
Type of Request: New collection.
Burden: 400 respondents, 100 reporting hours. Average hours per response is .25 hours.
Needs and Uses: This survey will evaluate the effectiveness of NOAA's marine debris education program, which is aimed at ocean and shoreline users. The information will be used to evaluate and improve the program. West coast shippers, charterboat operators, and commercial fishermen will be sampled.
Affected Public: Individuals, Businesses and other for-profit, Small businesses or organizations.
Frequency: One-time.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Francine Picoult, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: January 27, 1989.

Edward Michals,
Departmental Clearance Officer, Office of Management and Organization.
[FR Doc. 89–2466 Filed 2–1–89; 8:45 am]
BILLING CODE 3510–CW–M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration.
Title: Application for Duplicate License.
Form Number: Export Administration Regulations, Section 372.10, OMB–0694–0031.
Type of Request: Extension of the expiration date of a currently approved collection.
Burden: 280 respondents; 145 reporting/recordkeeping hours. Average hours per respondent is one-half hour.
Needs and Uses: This collection of information is necessary to identify export licenses of respondents who request duplicate export licenses for lost or destroyed licenses and provides information needed to issue the duplicate license.
Affected Public: Businesses or other for-profit institutions; small business or organizations.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: Francine Picoult, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC 20503.

Dated: January 27, 1989.

Edward Michals,
Departmental Clearance Officer, Office of Management and Organization.
[FR Doc. 89–2467 Filed 2–1–89; 8:45 am]
BILLING CODE 3510–CW–M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration

Title: Humanitarian License
Form Number: Agency—EAR 773.5; OMB—0694–0033
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 4 respondents; 32 reporting/recordkeeping hours—Average hours per respondent—8 hours
Needs and Uses: In response to a provision of the Export Administration Amendments Act of 1985 exempting foreign policy controls on exports of donations, BXA established a "Humanitarian License." This license allows multiple shipments of donations to be sent to embargoed destinations—Libya, North Korea, Cuba, Vietnam, and Cambodia. The items exported can only be those required to meet basic human needs such as medical supplies, food, clothing and shelter. The information provided is used to issue a license. Records must also be maintained on the shipments and can be used for audit purposes.
Affected Public: Non-profit institutions
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Francine Picoult, (202) 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: January 27, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–2468 Filed 2–1–89; 8:45 am]

BILLING CODE 3510–CW–M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA)
Title: Licenses for Private Remote-sensing Space Systems.
Form Number: None.
Type of Request: Request for extension of a currently approved collection.
Burden: 1 respondent; 16 reporting hours; average hours per response—16 hours.
Needs and Uses: Persons under U.S. jurisdiction who wish to operate a private remote-sensing space system must obtain a license from NOAA. The information provided in the application is used by NOAA and other Federal agencies to ensure that U.S. security is protected, that international obligations are met, and that the unenhanced data obtained will be made available on a nondiscriminatory basis.
Affected Public: Business or other for-profit.
Frequency: On occasion.
Respondent's obligation: Required to obtain a benefit.
OMB Desk Officer: Francine Picoult, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: January 27, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–2469 Filed 2–1–89; 8:45 am]

BILLING CODE 3510–CW–M

National Technical Information Service

Government-Owned Inventions; Notice of Availability for Licensing

January 30, 1989.

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

Department of Agriculture

SN 7–177,226 Interleukin-2 Encapsulated In And/Or Bound To A Carrier Erythrocyte.
SN 7–229,420 Agents for Non-Formaldehyde Durable Press Finishing and Textile Products Therefrom.

Department of Commerce

SN 7–035,211 (4,789,779) Heat Pipe Oven Molecular Beam Source.

Department of Health and Human Services

SN 6–913,575 (4,786,181) 5-Substituted-2',3'-Dideoxycytidine Compounds With Anti-HTLV–III Activity.
SN 7270,096 Parvovirus Capsids.
SN 7–282,562 Chromatographic Assay of Protein Kinases with Peptide Substrates.
SN 7–283,739 Novel Inhibitor of HIV Infection.
SN E–193–88 Apparatus and Methods for Determining In Vivo Response To Thermal Stimulation In An Unrestrained Subject.
SN E–205–88 Novel Serine Protease Inhibitors and Genes Encoding Same.
SN E–240–88 Horizontal Flow-Through Coil Planet Centrifuge With Multilayer Plural Coils in Eccentric Synchronous Rotation, Suitable For Countercurrent Chromatography.
SN E–281–87 Method For Producing High Quality Chemical Structure Diagrams.

Department of the Interior

SN 7–248,220 Microbial Production of Ultrafine-Grained Magnetite.
SN 7–258,955 Soapfilm Flowmeter Device for Measuring Gas Flow Rates.
SN 7–265,109 Apparatus for Water Desalination and Drip Irrigation of Row Crops.

Tennessee Valley Authority

SN 7–037,492 (4,762,546) Production of High-Grade Nitrogen-Sulfur Suspension Fertilizers.
SN 7–127,029 (4,758,261) Diammonium Phosphate Produced With A High-Pressure Pipe Reactor.

[FR Doc. 89–2386 Filed 2–1–89; 8:45 am]

BILLING CODE 3510–04–M

Intent to Grant Exclusive Patent License; Bordo Citrus Products Cooperative

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Bordo Citrus Products Cooperative, having a place of business in Winter Haven, FL 33882–1152, an exclusive license the United States to practice the invention entitled "Method of Preparing Citrus Fruit Sections With Fresh Fruit Flavor and Appearance" U.S. Patent 4,284,651. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments, and other materials relating to the proposed license must be submitted to Douglas J. Campion, Associate Director, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

A copy of the instant patent may be purchased from the U.S. Patent and Trademark Office.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 89–2441 Filed 2–1–89; 8:45 am]

BILLING CODE 3510–04–M

Intent to Grant Exclusive Patent License; Medtech Laboratories Inc.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Medtech Laboratories Inc., having a place of business in Jackson, WY 83001–1106, an exclusive right in the United States to practice the invention embodied in U.S. Patent 4,393,048, "Protective Gel Composition for Wounds." The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing an will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments, and other materials relating to the proposed license must be submitted to Charles Bevelacqua, Director, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

A copy of the instant patent may be purchased from the U.S. Patent and Trademark Office.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 89–2442 Filed 2–1–89; 8:45 am]

BILLING CODE 3510–04–M

Intent to Grant Exclusive Patent License; ORFA Corp. of America

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to the ORFA Corporation of America, having a place of business in Cherry Hill, NJ 08002, an exclusive license in the United States to practice the invention embodied in U.S. Patent No. 3,814,240, "Separation of Thermaplastic Film and Wastepaper." The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments, and other materials relating to the intended license must be submitted to Charles A. Bevelacqua, Director, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

A copy of the instant patent application may be purchased from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 89–2483 Filed 2–1–89; 8:45 am]

BILLING CODE 3510–04–M

Intent to Grant Exclusive Patent License; Southern Research Institute

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Southern Research Institute, having a place of business in Birmingham, AL 35255–5305, an exclusive license in the United States to practice the invention entitled "Electrostatic Precipitating System" U.S. Patent 4,518,401. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing an will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments, and other materials relating to the proposed license must be submitted to Charles Bevelacqua, Director, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

A copy of the instant patent may be purchased from the U.S. Patent and Trademark Office.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 89–2443 Filed 2–1–89; 8:45 am]

BILLING CODE 3510–04–M

National Telecommunications and Information Administration

[Docket No. 90124–9024]

Competitiveness of U.S. Telecommunications Industry and Effects of Foreign Telecommunications Policies and Practices

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice of inquiry.

SUMMARY: As required by section 1381 of the Omnibus Trade and Competitiveness Act of 1988, NTIA and the International Trade Administration (ITA), U.S. Department of Commerce, will jointly conduct a comprehensive study of the competitiveness of the U.S. telecommunications industry and the effects of foreign telecommunications policies and practices on this industry. This report will provide assistance to the President and Congress in determining what actions might be necessary to preserve the

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competitiveness of the U.S. telecommunications industry.

DATE: Comments in response to this request should be submitted not later than April 3, 1989, to receive full consideration.

ADDRESS: Interested parties should submit comments to: Honorable Alfred C. Sikes, Assistant Secretary for Communications and Administration, NTIA, Room 4898, U.S. Department of Commerce, 14th and Constitution Ave., NW., Washington, DC 20230. Please submit four copies of your comments.

FOR FURTHER INFORMATION CONTACT: Joseph F. Kellagher, Telecommunications Policy Analyst, Office of Policy Analysis and Development, NTIA, Room 4725, U.S. Department of Commerce, Washington, DC 20230, (202) 377–1880 or John Henry, Commodity Industry Specialist, Office of Telecommunications, ITA, (202) 377–4466.

SUPPLEMENTARY INFORMATION:

Purpose and Scope of Inquiry

NTIA and ITA seek comments on all factors relating to the competitiveness of the U.S. telecommunications industry. In particular, we are interested in views on the telecommunications industry's current competitive position in the U.S. and international markets; the criteria that should be used to evaluate competitiveness; the impact of foreign policies, regulations, and practices that affect competition; and the actions that can be taken by the U.S. Government to enhance this industry's competitiveness.

The study will encompass all segments of the telecommunications equipment industry (*i.e.*, network, customer premises, and transmission equipment including microwave, mobile radio, and satellite/earth stations). It will also include value-added or enhanced services, and international telecommunications service. Comments are requested on the appropriateness of these industry segments and on whether there are other segments that should be covered by the study.

We intend to address questions including:

- What criteria should be used to evaluate the competitiveness of the U.S. telecommunications industry?
- What is the competitive position of U.S. telecommunications firms in both the U.S. market and in world markets?
- In what technologies and product markets (equipment or services) do U.S. telecommunications companies maintain a competitive edge?
- What recent industry developments have positively or negatively affected the ability of U.S companies to compete in both the U.S and world markets?
- How and to what degree have (and will) foreign practices affect the competitiveness of this industry: industrial policies, financing, subsidies, trade barriers, investment restrictions, distribution systems, etc.?
- To what extent do macroeconomic developments specifically influence the competitive position of U.S. telecommunications companies, as distinguished from developments which influenced U.S industry in general?
- What options are available to the U.S. Government that will increase the competitiveness of U.S. telecommunications equipment and service providers? What existing policies should be changed?

Authority: Omnibus Trade and Competitiveness Act of 1988, Sec. 1381, Pub. L. 100–418, 102 Stat. 1107, 1224 (1988).

Date: January 26, 1989.

Alfred C. Sikes,

Assistant Secretary of Commerce for Communications and Information.

[FR Doc. 89–2374 Filed 2–1–89; 8:45 am]

BILLING CODE 3510-60-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Changes in Visa Arrangements To Coincide With Implementation of the Harmonized Tariff Schedule; Correction

January 30, 1989.

In the **Federal Register** notice published on December 28, 1988 (53 FR 52464), make the following corrections:

India

At 53 FR 52467, 2nd column, Category 465, add HTS numbers 5701.10.2010 and 5701.10.2090.

Mexico

At 53 FR 52468, 3rd column, Category 369–O, change HTS number 5601.10.0000 to 5601.10.1000.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–2364 Filed 2–1–89; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Army

Military Traffic Management; Defense Transportation Tracking System

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice only.

SUMMARY: The Department of Defense (DOD) is developing a computer based system called the Defense Transportation Tracking System (DTTS) to electronically track the transportation of munitions. DTTS will receive electronic position and status reports on sensitive cargo movements by a service termed Satellite Motor Surveillance Service (SM).

ADDRESS: Military Traffic Management Command, ATTN: MT–SS, 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Jones or CPT Carol Sheffler, HQMTMC, 5611 Columbia Pike, Falls Church, VA 22041–5050, (703) 756–1089.

SUPPLEMENTARY INFORMATION: The purpose of this article is to serve notice to vendors wishing to provide electronic tracking service to DOD.

Due to the potential lethality of DOD munitions shipments, DOD is in the process of instituting a transportation protective service SM. SM is used by DTTS to obtain reports on position and transportation status changes on selected shipments via data link.

SM vendors will be employed by commercial carriers approved by DOD to transport munitions. Vendors will maintain a separate mail box/transfer file to hold DTTS message traffic. On a continuing basis, the vendor will provide the DTTS central computer facility with up-to-date information on status of all commercial carrier vehicles transporting certain specified DOD munitions under SM.

Formats and data element requirements for SM are spelled out in a DOD standard rules publication. A copy of the SM rule may be obtained from HQs, Military Traffic Management Command, Directorate of Inland Traffic, ATTN: MT–INNG, 5611 Columbia Pike, Falls Church, VA 22041–5050.

Two way communication between the driver and the carrier's dispatcher will be required by January 1990. It is recommended the carrier take this into consideration in acquisition of satellite services and equipment. Carriers are encouraged to voluntarily use two way communication as it becomes available by their SM vendor.

John O. Roach II,

Army Liaison Officer with the Federal Register.

[FR Doc. 89–2406 Filed 2–1–89; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement; Chattahoochee River

This Notice announces the preparation of a Draft Environmental Impact Statement (DEIS) on the existing and proposed expansion of commercial sand and gravel mining operations in the Chattahoochee River within the bounds of the Chattahoochee River National Recreation Area (CRNRA). The CRNRA extends south along the Chattahoochee River from Buford Dam approximately 48 miles to Peachtree Creek near Atlanta in Gwinnett, Forsyth, Fulton, and Cobb Counties, Georgia. The mining of sand and gravel from the Chattahoochee River within CRNRA requires Department of the Army authorization pursuant to Section 10 of the Rivers and Harbors Act of 1899. Any discharge into waters of the United States associated with the mining also requires authorization pursuant to Section 404 of the Clean Water Act.

Agency: U.S. Army Corps of Engineers, DOD.

Cooperating Agency: National Park Service, DOI.

Action: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

Summary:

1. *Proposed Action:* Several commercial sand and gravel mining firms currently have Department of the Army permits to mine sand within CRNRA. They have expressed an interest in expanding these existing operations. Also, several inquiries have been made concerning the opening of new mining operations in CRNRA.

2. *Alternatives:* The DEIS will address the proposed continued expansion of commercial sand and gravel mining in CRNRA, several modified plans, and the No Action Alternative.

3. *Scoping Process:* a. In December, 1985, three workshops were held in the metropolitan Atlanta area. The purpose of these workshops was to discuss the impacts of sand mining on the Chattahoochee River and CRNRA. The Cross-Impact Assessment Process (CAP) was used to format the workshops. Attendees at these workshops consisted of representatives of several Federal, State and local agencies, sand miners, and conservation groups. The workshops resulted in the formulation of a list of 35 important variables that should be considered in preparation of the DEIS.

b. Major issues to be addressed in the DEIS include the impacts the continued expansion of sand mining would have on water quality, recreation, fisheries, and aesthetics.

c. No formal assignments have as yet been planned for input into the DEIS for all interested agencies and individuals.

d. A minimum of a 45-day review period for the DEIS will be allowed for all interested agencies and individuals.

4. *Scoping Meetings:* As of the present date, no further scoping meetings are planned.

5. *DEIS:* The DEIS should be available to the public by June, 1989.

6. *Address:* Questions concerning the proposed action and the DEIS can be answered by: Mr. David L. McCullough, Archeologist, Environmental Resources Branch, Planning Division, U.S. Army Engineer District, Savannah, Post Office Box 889, Savannah, Georgia 31402–0889, Telephone: (912) 944–5840 (commercial).

Dated: January 24, 1989.

Ralph V. Locurcio,

Colonel, U.S. Army District Engineer.

[FR Doc. 89–2387 Filed 2–1–89; 8:45 am]

BILLING CODE 3710-HP-M

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Folsom Dam and Reservoir Reoperation Study, CA

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a DEIS.

SUMMARY: The action being taken is a study to identify and assess the significance of potential measures to provide interim flood protection to the Sacramento Metropolitan area. Measures to be investigated include reservation of greater flood storage space within the Folsom Reservoir. Interim flood control measures could be implemented for approximately an eight to ten year period, until a long term solution is constructed.

FOR FURTHER INFORMATION CONTACT: Questions regarding this DEIS should be addressed to Mr. Steve Peterson, Planning Division, Corps of Engineers, 650 Capitol Mall, Sacramento, California, 95814–4794, telephone (916) 551–1858.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

The Corps of Engineers is conducting an investigation to identify and assess alternative measures of providing increased flood control to the Sacramento Metropolitan Area until a long term flood protection plan is implemented. Prior investigations have revealed that the area has significantly less flood protection along the American River than previously believed (only 63-year versus 120-year level of protection). Current investigations being conducted by the Corps of Engineers and the Bureau of Reclamation would not result in a long term solution being implemented for eight to ten years. Economic issues and concerns for the safety of residents of the Sacramento Metropolitan Area have precipitated this investigation to identify potential interim flood control measures that can provide some measure of short term increased flood protection. Information obtained in this investigation will be summarized in the draft and final report and provided to the Congress and responsible flood control agencies for their information.

2. Alternatives

Alternatives which have been identified at this stage are discussed in the following paragraphs.

a. No Action. The Sacramento Metropolitan Area would continue with less than FEMA level of protection along the American River.

b. Reoperation of the Existing Flood Control Storage in Folsom Reservoir. This alternative would investigate if changes in the current operations of Folsom Dam and Reservoir could be implemented to increase the level of flood protection for Sacramento.

c. Reservation of more flood control storage within Folsom Reservoir. This alternative would alter the amount of space allocated for seasonal flood control in Folsom Lake. A range of increased flood control storage from 400,000 to 650,000 acre feet would be analyzed. Above 650,000 AF of storage structural modifications would be required to Folsom Dam.

d. Rebuilding a Cofferdam at the site of the Bureau of Reclamation's Auburn Dam Project. This alternative would consider reconstruction of a cofferdam at the site of the previous cofferdam on the North Fork of the American River near the City of Auburn.

e. Utilization of Small, Existing Reservoirs in the upper American River Watershed. This alternative would investigate the use of small water supply

and power generation reservoirs for interim flood control storage.

3. Scoping Process

a. Close coordination is being maintained with Federal, state and local agencies, environmental organizations and concerned individuals and groups. This is being accomplished through inter-agency coordination meetings, fact sheets and information brochures, public meetings and workshops, and informal information sessions with civic and community groups. Through this Notice of Intent, all segments of the affected public and agencies are invited to participate in the investigation process. DEIS scoping meeting notices will be distributed.

b. Significant issues that will be discussed in the DEIS include degree of protection offered by the alternatives, impacts on fish and wildlife resources, recreation, endangered species, vegetation (riparian and upland), esthetics, wild and scenic rivers, lost revenues to hydropower and water supply interest and cumulative impacts of other projects in the area.

c. The U.S. Fish and Wildlife Service will provide a Fish and Wildlife Coordination Act Report to accompany the DEIS.

d. A 45-day review period will be allowed for all interested agencies and individuals to review and comment on the DEIS. All interested persons are encouraged to respond to this notice and provide a current address if you wish to be contacted about the DEIS.

4. Meeting Schedule

Three public information meetings and two scoping workshops will be conducted jointly with the American River Watershed Investigation. The meeting schedule is as follows:

Information Meeting No. 1, 7 February 1989, 7:00 to 9:00 pm, Sacramento Convention Center, El Dorado Room, 1100 14th Street, Sacramento, CA 95814

Information Meeting No. 2, 8 February 1989, 7:00 to 9:00 pm, American Lakes Elementary School, 2800 Stonecreek Drive, Sacramento, CA 95833

Information Meeting No. 3, 9 February 1989, 7:00 to 9:00 pm, Rocklin Community Center, 5480 5th Street, Rocklin, CA 95677

Scoping Workshop No. 1, 14 February 1989, 7:00 to 10:00 pm, Sacramento Convention Center, El Dorado Room, 1100 14th Street, Sacramento, CA 95814

Scoping Workshop No. 2, 15 February 1989, 7:00 to 10:00 pm, Rocklin Community Center, 5480 5th Street, Rocklin, CA 95677

5. Availability

The DEIS is scheduled to be available for public review and comment in September 1989.

Date: January 18, 1989.

Jack A. Le Cuyer,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 89-2494 Filed 2-1-89; 8:45 am]

BILLING CODE 3710-GN-M

Intent To Prepare a Draft Environmental Impact Statement (EIS) for Gulf Intracoastal Waterway (GIWW) Louisiana-Texas Section Feasibility Study

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent to prepare a draft EIS.

SUMMARY: The action is being taken to determine whether to widen, deepen, provide alternate routes, or taken no action along that portion of the GIWW located between the Mississippi River at New Orleans, Louisiana, and the Houston Ship Channel near Galveston, Texas. The reason for this action is to determine if there is an opportunity for improving navigation in this section of the GIWW. The intended effect of any action would be to increase navigational efficiency along the entire route and to relieve vessel congestion in the vicinity of Houma, Louisiana.

FOR FURTHER INFORMATION CONTACT: Questions regarding the proposed action should be addressed to Mr. Stan Green, (504) 862-1486; questions regarding the Draft EIS should be addressed to Mr. Larry Hartzog (504) 862-2524. U.S. Army Corps of Engineers, Planning Division (CELMN-PD-RE) P.O. Box 60267, New Orleans, Louisiana 70160-0267.

SUPPLEMENTARY INFORMATION:

1. Authority

Authority for this study is contained in Congressional resolutions adopted by the Committee on Public Works of the U.S. Senate on 29 September 1972, the Committee on Public Works of the U.S. House of Representatives on 12 October 1972, and the Committee on Public Works of the U.S. Senate on 23 August 1974. The first and second resolutions contain the authority for a Corps review of reports on the GIWW (La.—Texas Section) to determine the advisability of deepening and widening the existing channel while the August 1974 resolution contains authority to study the feasibility of providing erosion protection on the GIWW.

2. Proposed Action

The study will determine the advisability of implementing a number of improvements on the GIWW between the Mississippi River and the Houston Ship Channel. The improvements under study include enlarging the existing channel for the purpose of improving the efficiency of navigation on the waterway, the feasibility of constructing a bypass channel around the city of Houma to relieve vessel congestion, and providing erosion protection at three pilot sites on the GIWW.

3. Alternatives

Three alternatives for enlarging the existing 12-foot by 125-foot GIWW channel are being considered. The first alternative assumes a 16-foot by 150-foot channel from the Mississippi River to the Houston Ship Channel except for the reach from the Atchafalaya River to the Sabine River where the channel would be enlarged to 16 feet by 200 feet. A second alternative involves a 12- by 230-foot channel, which would permit two-way traffic of tows configured with two barges abreast. The third alternative has the same channel width as the second alternative, but with a depth of 16 feet.

There are 4 different alignments for plans involving a bypass around the city of Houma. All of the alignments would pass south of the city. Each of these alignments is being considered with three different channel sizes: 12 by 125 feet, 16 by 150 feet, and 12 by 230 feet.

Three additional plans have been developed to include a hurricane protection levee with a bypass channel south of Houma. An intermediate alignment would begin at Larose, Louisiana, and continue to the south of Cocodrie, Louisiana where the alignment would make a northward turn and rejoin the GIWW, then the levee portion would continue north to the town of Labadieville. A more southerly alignment would again begin at Larose and rejoin the GIWW near the Wax Lake Outlet west of the town of Morgan City, Louisiana. The third and most northerly alternative would begin at Larose and rejoin the GIWW west of Houma and would share the same alignment as the most southerly bypass only alternatives.

4. Scoping Process

a. The study was initiated in 1975, and public meetings where held on 12 November, 16 November, and 17 November in Lafayette, Louisiana; Galveston, Texas; and New Orleans, Louisiana; respectively. A reconnaissance report was completed in January 1979.

b. Public input for scoping will be achieved throught the distribution of a notice to all segments of the public having an interest in the project. In addition, a news release will be issued to the local media. The notice and release will request submission of views on alternatives and any other project related issues considered significant. The basis for significant issues to be addressed in the EIS will consist of the responses to the public notice and news release. Through this notice of intent and the public notice, all segments of the affected public, including Federal, state, and local agencies, and other interested organizations and individuals will be invited to participate in the planning process.

c. Significant issues that will be discussed in the EIS include business and industrial activity, displacement of people, employment, navigation, tax revenues, property values and services, esthetics, noise, community cohesion, endangered species, wildlife resources, fishery resources, marsh, forest resources, wildlife refuges and management areas, Louisiana natural and scenic streams and bayous, National Register sites, and other cultural resources.

d. The U.S. Department of the Interior will provide a Fish and Wildlife Coordination Act Report to accompany the EIS. Coordination will be maintained with the U.S. Fish and Wildlife Service on endangered species. The Louisiana Department of Natural Resources will be consulted regarding consistency with the Louisiana Coastal Zone Management Act. The Louisiana Department of Wildlife and Fisheries will be contacted regarding any impacts to natural and scenic streams. Coordination will be maintained with the State Historic Preservation Officer.

e. A 45-day period will be allowed for all interested agencies and individuals to review and comment on the draft report and EIS.

5. Meeting Schedule

Public meetings for the specific purpose of scoping are not being considered. A "Scoping Input Request" will be prepared and circulated to interested parties. This request will contain a brief information packet consisting of a description of the proposal, a general list of impacts, alternatives, maps, and drawings. The scoping input will be analyzed and a Scoping Document summarizing the comments will be provided to all respondents. The pertinent issues brought up during scoping will be incorporated into the EIS.

6. Availability

The draft EIS is scheduled to be available to the public in January 1990.

Date: January 10, 1989.

Harold E. Mansel, Jr.,

Major, Corps of Engineers, Temporary District Engineer.

[FR Doc. 89-2492 Filed 2-1-89; 8:45 am]

BILLING CODE 3710-KK-M

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Proposed Flood Protection Project Along the Snake and Gros Ventre Rivers, Jackson Hole, Teton County, WY

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a DEIS.

SUMMARY: The Walla Walla District Corps of Engineers is studying the feasibility of a flood protection project along the Snake and Gros Ventre Rivers in Jackson Hole, Wyoming. The project will protect and maintain Federal and non-Federal levees which have been constructed along the rivers. This project was authorized by the Water Resources Development Act of 1986, Pub. L. 99-662.

FOR FURTHER INFORMATION CONTACT: Comments concerning the project and DEIS should be addressed to Chief, Environmental Resources Branch, Corps of Engineers, Walla Walla District, Walla Walla, Washington 99362-0265. Comments or questions can be telephoned to Ms. Sandra Shelin at (509) 522-6626.

SUPPLEMENTARY INFORMATION:

1. This project is located along the Snake and Gros Ventre Rivers in Jackson Hole, Teton County, Wyoming. Land use in this area has been changing from primarily livestock grazing to recreational and residential development. The Snake and Gros Ventre Rivers in the area are highly braided and tend to spread out during high flows, causing flooding. To prevent flood damage, the Corps of Engineers and state and local entities built during 1957 to 1975, a series of levees along the Snake River from River Mile 961.5 (on the opposite side of the river from Grand Teton National Park) to River Mile 944 and along the Gros Ventre River from the mouth upstream to the Grand Teton National Park boundary.

The Water Resources Development Act of 1986 authorized the Corps of Engineers to take over responsibility for operation and maintenance of the Jackson Hole levees project. The Corps is currently preparing a document that will allow a decision as to how the Corps will implement that authorization.

2. Alternatives to be investigated in the Environmental Impact Statement (EIS) include:

A—No action—The Corps will not carry out a levee maintenance project. The Corps will continue to perform emergency levee repair for levees that are economically justifiable and flood fighting as needed.

B—The Corps will include all Federal and non-Federal levees in the flood protection project, regardless of whether or not the levees are economically justifiable. Maintenance activities will include replacement of eroded riprap material and periodic debris removal from the river channels. A quarry will be developed to provide riprap material.

C—The Corps will include all economically justifiable Federal and non-Federal levees in the levee maintenance project. Maintenance activities will be as described in B above.

D—The Corps will raise in-place selected levees or sections of levees. Federal levees will be raised up to 2 feet. Non-Federal levees will be raised up to 5 feet. Maintenance activities will be as described in B above.

3. Significant issues to be addressed in the DEIS include effects of the alternatives on fisheries, wildlife, endangered species, socioeconomics, and cultural resources. The project will be reviewed under all applicable Federal, state, and local statutes.

4. Affected Federal, state, and local agencies, affected Indian tribes, and interested organizations are invited to participate in scoping for the DEIS. A formal scoping meeting is planned for January 31, 1989 at the Teton County Courthouse in Jackson, Wyoming at 1:00 p.m.

5. The DEIS should be available on or about June 1, 1989.

Dated: January 19, 1989

Donald P. Kurkjian,

Major, CE, Acting Commander.

[FR Doc. 89-2493 Filed 2-1-89; 8:45 am]

BILLING CODE 3710-GC-M

DEPARTMENT OF EDUCATION

[CFDA No. 84.165]

Notice Inviting Applications for New Awards under the Magnet Schools Assistance Program [MSAP] for fiscal year (FY) 1989

Purpose: Provides grants to eligible local educational agencies to support projects in magnet schools that are part of approved desegregation plans.

Deadline for Transmittal of Applications: March 17, 1989.

Deadline for Intergovernmental Review: May 16, 1989.

Applications Available: February 17, 1989.

Available Funds Anticipated: $113,620,000.

Estimated Average Award: $1,959,000.

Estimated Number of Awards: 58.

Project Period: 24 months.

Applicable Regulations: The Magnet Schools Assistance Program Regulations, 34 CFR Part 280, as proposed to be amended (53 FR 45874–45878), and (b) the Education Department General Administrative Regulations, 34 CFR Parts 75, 77, 79, 80 and 85.

SUPPLEMENTARY INFORMATION: It is the policy of the Department of Education not to solicit applications before the publication of final regulations. However, in this case, it is essential to solicit applications based on the notice of proposed rulemaking (NPRM). In reauthorizing this program under Public Law 100–297, Congress directed the Secretary to make awards by June 30 of each fiscal year, to the extent practicable. In order for applicants to have sufficient time to prepare and submit their applications, and for the Department to evaluate the applications, review the required desegregation plans, and make grant awards as quickly as possible, the Secretary must solicit applications before publication of the final regulations.

The closing date for comments on the NPRM was December 29, 1988. The Secretary did not receive a large number of comments. After carefully reviewing these comments, the Secretary does not anticipate making changes in the regulations, as proposed in the NPRM, that would affect the content or evaluation of applications. However, there is one provision of the proposed regulations that appeared to result in both concern and misunderstanding by some persons commenting on the NPRM.

The Magnet Schools Assistance Act requires an applicant to certify that it will "provide a description of the manner in which the local educational agency will continue the magnet schools program after assistance under [the Act] is no longer available." The Secretary interprets this provision as requiring that an applicant provide this description in its application. Accordingly, under proposed § 280.31(g), the Secretary would base part of the evaluation of an application on this description. In making this assessment, the Secretary would look for information that shows the applicant's "commitment to the magnet schools program" and "plan for the gradual assumption of program costs."

The proposed regulation should not be interpreted to mean that an applicant is expected to develop an itemized plan for how it will assume each cost of operating its magnet schools program. The applicant is not expected to prepare a revenue study or otherwise locate all non-MSAP sources of funding for its magnet schools program. One-time costs such as the acquisition of equipment need not be discussed. However, the Secretary is interested in information that shows that the applicant has considered how it could use other resources to continue supporting a magnet schools program and that it is committed to continuing the program. The Secretary believes that the reference to a plan for gradual assumption of program costs is consistent with the statutory language, since it would not be possible for a local educational agency to "describe the manner" in which it will continue the magnet schools program without describing how it will pay for it when it no longer is receiving funds from this program.

All of the comments will be fully addressed in the preamble to the final regulations. If there are any changes in the final regulations, applicants will be given an opportunity to revise or resubmit their applications.

For Applications or Information Contact: Annie R. Mack, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 2059, FOB–6, Washington, D.C. 20202–6440. Telephone: (202) 732–4358.

Program Authority: 20 U.S.C. 3021–3032.

Dated: January 23, 1989.

Beryl Dorsett,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 89–2471 Filed 2–1–89; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No. 84–031]

Strengthening Institutions Program; Notice Inviting Applications for New Awards for Fiscal Year 1989

Purpose of Program: Provide grants to eligible institutions of higher education to improve their academic quality, institutional management, and fiscal stability to enable institutions to become self-sufficient.

Deadline for Transmittal of Applications: April 17, 1989.

Applications Available: Applications will be mailed by March 1, 1989, to the Office of the President of all institutions that are designated eligible to apply for a grant under the Strengthening Institutions Program.

Available Funds: $23,000,000.

Estimated Range of Awards: $20,000 to $25,000 for planning grants; $125,000 to $500,000 for development grants.

Average Size of Awards: $23,000 for planning grants; $185,000 for one- in three-year development grants; $450,000 for four- and five-year development grants.

Project Period: Up to 12 months for planning grants; up to 60 months for development grants.

Estimated Number of Awards: 12 planning grants and 89 development grants.

Special Funding Considerations: In tie-breaking situations described in § 607.23 of the Strengthening Institutions Program regulations, 34 CFR 607.23, the Secretary awards additional points under §§ 607.21 and 607.22 to an application from an institution which has an endowment fund of which the current market type, per FTE student, is less than the average, per FTE student, at similar type institutions: or which has library expenditures,. per FTE student, which are less than the average, FTE student, at similar type institutions. For the purposes of these funding considerations, an applicant must be able to demonstrate that the current market value of its endowment fund, per FTE student, or library expenditures, per FTE student, is *less* than the following national average for base year 1985–86.

	Average market value of endowment fund, per FTE	Average library expenditures, per FTE
Two-year public institution	$26	$120
Two-year nonprofit, private institutions	321	105
Four-year public institutions	109	306
Four-year nonprofit, private institutions	955	360

Applicable Regulations: (a) The Education Department General Administrative Regulations, 34 CFR Parts 74, 75, and 77; and (b) the Strengthening Institutions Program Regulations, 34 CFR Part 607.

For Information Contact: Dr. Louis J. Venuto, U.S. Department of Education, 400 Maryland Avenue S.W., Room 3042, ROB–3, Washington, D.C. 20202–5335. Telephone: (202) 732–3314.

Program Authority: 20 U.S.C. 1057.

Dated: January 27, 1989.

Kenneth D. Whitehead,

Assistant Secretary for Postsecondary Education.

[FR Doc. 89–2472 Filed 2–1–89; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Proposed Consent Order With Thos. P. Reidy, Inc.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of proposed consent order and opportunity for public comment.

SUMMARY: The Economic Regulatory Administration (ERA) announces a proposed Consent Order between the Department of Energy (DOE) and Thos. P. Reidy, Inc. ("Reidy"). The agreement proposes to resolve matters relating to Reidy's compliance with the federal petroleum price and allocation regulations for the period January 1, 1973 through January 27, 1981. If this Consent Order is made final, Reidy would pay to the DOE five million two hundred thousand dollars ($5,200,000) within thirty (30) days of the effective date of the Consent Order; waive its rights to make any claims in refund proceedings conducted pursuant to 10 CFR Part 205, Subpart V; and assign to DOE and waive Reidy's rights to approximately one hundred seventy thousand dollars ($170,000) currently on deposit on Reidy's behalf resulting from its participation in a prior refund proceeding which distributed moneys received from Gulf Oil Corp.

DOE's Office of Hearings and Appeals (OHA) will be petitioned to implement Special Refund Procedures for distributing moneys received from Reidy. Any persons who claim to have suffered injury from Reidy's alleged overcharges would have the opportunity to submit claims for payment in such proceedings.

Pursuant to 10 CFR 205.199J, ERA will receive written comments on the proposed Consent Order for thirty (30) days following publication of this Notice. ERA will consider all comments received from the public in determining whether to accept the settlement and issue a final Order, renegotiate the agreement and issue a modified agreement as a final Order, or reject the settlement. DOE's final decision will be published in the **Federal Register**, along with a summary and analysis of the significant written comments, as well as any other considerations that were relevant to the final decision.

FOR FURTHER INFORMATION CONTACT: Dorothy Hamid, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4167.

SUPPLEMENTARY INFORMATION:

I. Resolution of Regulatory Issues.

II. Determination of Reasonable Settlement Amount.

III. Terms and Conditions of the Consent Order.

I. Resolution of Regulatory Issues

Reidy is a product reseller-retailer subject to the audit jurisdiction of ERA to determine compliance with the Federal Petroleum Price and Allocation Regulations. During the period covered by this proposed Order (January 1, 1973 through January 27, 1981), Reidy engaged in, among other things, the sale of motor gasoline, No. 2 fuel oil, No. 6 high sulphur fuel oil, and No. 6 low sulphur fuel oil. On May 3, 1982, ERA issued a Proposed Remedial Order (PRO) to Reidy alleging overcharges in sales of premium gasoline, No. 2 fuel oil, No. 6 high sulphur fuel oil, and No. 6 low sulphur fuel oil. On April 1, 1988, the Department of Energy's Office of Hearings and Appeals (OHA) issued the PRO as a Remedial Order (RO) for $6,342,789.21, plus interest. The RO is currently on appeal before the Federal Energy Regulatory Commission. A second PRO was issued to Reidy on November 1, 1984, for $1,620,210.35, plus interest, alleging overcharges in sales of regular gasoline. This matter is currently pending before the OHA. Reidy's total potential liability is approximately $27 million, including interest.

II. Determination of Reasonable Settlement Amount

To discharge in full Reidy's potential liability for its obligations under the price and allocation regulations, the settlement calls for Reidy to pay $5.2 million, and to assign refunds of approximately $170,000, including accrued interest, which were awarded to Reidy in refund proceedings in *Gulf Oil Corp./Thos. P. Reidy, Inc.*, 15 DOE ¶ 84,154 (1986).[1] As well, Reidy will waive its rights to make any claims for refunds in all other proceedings conducted pursuant to 10 CFR Part 205, Subpart V (Subpart V). Under the terms of the proposed Consent Order the ERA would petition the OHA to implement Special Refund Procedures for disposition of (including the funds assigned to DOE by Reidy) settlement funds pursuant to Subpart V. ERA has preliminary agreed to the settlement amount after considering the factual aspects related to the various issues, assessing the litigation risks associated with establishing the alleged overcharges, and considering the benefit to the public from a significant settlement of numerous issues which would take years of continued litigation to resolve.

The inherent risks in litigation make success on all of the issues problematic, and the necessity for the government to prevail on all of the issues in order to maximize overcharge and interest recovery was an important consideration in ERA's preliminary determination that Reidy's agreement to the terms of a proposed Consent Order constitutes a settlement which is in the public interest.

III. Terms and Conditions of the Consent Order

If the Consent Order is made final, Reidy will pay DOE $5.2 million within thirty (30) days of the effective date of the Consent Order. Reidy will assign its rights to DOE and waive whatever rights Reidy has to moneys as determined in OHA's refund proceeding in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), which were granted in *Gulf Oil Corp./Thos. P. Reidy, Inc.*, 15 DOE ¶ 84,154 (1986). Additionally, Reidy will waive any claims for refunds in all other Subpart V proceedings.

ERA will petition OHA to implement Special Refund Procedures under the provisions of Subpart V of the regulations. In these proceedings, OHA would develop procedures for the receipt and evaluation of applications for refund in order to distribute the settlement moneys. To ensure that OHA has sufficient information to evaluate the claims, the proposed Consent Order requires that Reidy provide customer

[1] Because of the overcharge claims pending against Reidy, OHA ordered that Reidy's refund be retained in escrow.

identification and purchase volume information to OHA upon request.

Reidy and DOE mutually release each other from claims and actions arising under the subject matters covered by the proposed Consent Order. The proposed Order does not affect the right of any other party to take action against Reidy, or of Reidy or the DOE to take action against any other party.

Submission of Written Comments

The proposed Consent Order cannot be made effective until the conclusion of the public review process, of which this Notice is a part.

Interested parties are invited to submit written comments concerning this proposed Consent Order to: Reidy Consent Order Comments, RG–30, Economic Regulatory Administration, 1000 Independence Avenue, SW., Washington, DC 20585. All comments received by the thirtieth day following publication of this Notice in the **Federal Register**, will be considered before determining whether to adopt the proposed Consent Order as a final Order. Any modifications of the proposed Consent Order which significantly alter its terms or impact will be published for additional comments. If, after considering the comments it has received, ERA determines to issue the proposed Consent Order as a final Order, the proposed Order will be made final and effective by publication of a Notice in the **Federal Register.**

Any information or data considered confidential by the person submitting it must be identified as such in accordance with the provisions of 10 CFR 205.9(f).

Issued in Washington, DC, on January 27, 1989.

Milton C. Lorenz,

Chief Counsel for Enforcement Litigation, Economic Regulatory Administration.

I. Introduction

101. This Consent Order is entered into between Thos. P. Reidy, Inc. ("Reidy") and the United States Department of Energy ("DOE"). Except as otherwise provided herein, this Consent Order settles and finally resolves all civil and administrative claims and disputes, whether or not heretofore asserted, between the DOE, as hereinafter defined, and Reidy, as hereinafter defined, relating to Reidy's compliance with the federal petroleum price and allocation regulations, as hereinafter defined, during the period January 1, 1973, through January 27, 1981 (all the matters settled and resolved by this Consent Order are referred to hereinafter as "the matters covered by this Consent Order").

II. Jurisdiction, Regulatory Authority and Definitions

201. This Consent Order is entered into by the DOE pursuant to the authority conferred upon it by sections 301 and 503 of the Department of Energy Organization Act ("DOE Act"), 42 U.S.C. 7151 and 7193, Executive Order No. 12009, 42 FR 46267 (1977); Executive Order No. 12038, 43 FR 4957 (1978); and 10 CFR 205.199J.

202. The Economic Regulatory Administration ("ERA") was created by section 206 of the DOE Act, 42 U.S.C. 7136. In Delegation No. 0204–4, the Secretary of Energy delegated responsibility for the administration of the federal petroleum price and allocation regulations to the Administrator of the ERA. In Delegation No. 0204–4A, the Administrator delegated to the Special Counsel authority to audit compliance with the federal petroleum price and allocation regulations and to take appropriate enforcement actions based upon such audits.

203. For purposes of this Consent Order, the phrase "federal petroleum price and allocation regulations" means all statutory requirements and administrative regulations and orders regarding the pricing and allocation of crude oil, refined petroleum products, natural gas liquids, and natural gas liquid products, including the entitlements and mandatory oil imports programs, administered by the DOE. The federal petroleum price and allocation regulations include (without limitation) the pricing, allocation, reporting, certification, and recordkeeping requirements imposed by or under the Economic Stabilization Act of 1970, the Emergency Petroleum Allocation Act of 1973, the Federal Energy Administration Act of 1974, Presidential Proclamation 3279, all applicable DOE regulations codified in 6 CFR Parts 130 and 150 and 10 CFR Parts 205, 210, 211, 212, and 213, and all rules, rulings, guidelines, interpretations, clarifications, manuals, decisions, orders, notices, forms, and subpoenas relating to the pricing and allocation of petroleum products. The provisions of 10 CFR 205.199J and the definitions under the federal petroleum price and allocation regulations shall apply to this Consent Order except to the extent inconsistent herewith. Reference herein to "DOE" includes, besides the Department of Energy, the Cost of Living Council, the Federal Energy Office, the Federal Energy Administration, the Office of Special Counsel (OSC), the Economic Regulatory Administration and all predecessor and successor agencies. References in this Consent Order to "Reidy" shall include: (1) Thos. P. Reidy, Inc. and all of its subsidiaries and affiliates, Ramada Oil & Gas Corporation as a successor to Thos. P. Reidy, Inc., (2) all of Reidy's petroleum-related activities as reseller, retailer, or otherwise, and (3) except for purposes of Article IV, *infra*, Reidy's directors, officers, and employees and stockholders.

III. Facts

The stipulated facts upon which this Consent Order is based are as follows:

301. During the period covered by this Consent Order, Reidy was a "reseller-retailer" as that term is defined in the federal petroleum price and allocation regulations and was subject to the jurisdiction of the DOE. Reidy engaged in, among other things, the sale of residual fuel oil, motor gasoline, middle distillates, aviation fuel, propane, and other refined petroleum products.

302. DOE conducted an audit to determine Reidy's compliance with the federal petroleum price and allocation regulations. During the course of the DOE's audit, the enforcement proceedings instituted by the DOE and the negotiations that led to this Consent Order, the DOE raised certain issues with respect to Reidy's application of the federal petroleum price and allocation regulations. The DOE has taken various administrative enforcement actions against Reidy, including the issuance of Notices of Probable Violation, Proposed Remedial Orders and a Remedial Order. Reidy maintained, however, that it had calculated its costs, determined its prices, sold its petroleum products, and operated in all other respects in accordance with the federal petroleum price and allocation regulations. The DOE and Reidy have disagreed in several respects concerning the proper application of the federal petroleum price and allocation regulations to Reidy's activities with respect to the matters covered by the Consent Order, and each has asserted its belief that its respective legal and factual positions on the matters resolved by this Consent Order are meritorious. These positions were emphasized in the intensive review and exchange of information conducted during the audit and subsequent settlement negotiation process. However, in order to avoid the expense of protracted and complex litigation and the disruption of its orderly business functions, Reidy has agreed to enter into this Consent Order. The DOE believes this Consent Order constitutes a satisfactory resolution of the matters covered herein and is in the public interest.

IV. Remedial Provisions

401. In full and final settlement of all matters covered by this Consent Order and in lieu of all other remedies which have been or might be sought by the DOE against Reidy for such matters under 10 CFR 205.199I or otherwise: (a) Reidy shall pay to the DOE five million two hundred thousand dollars ($5,200,000) within thirty (30) days of the effective date of this Consent Order; and (b) Reidy assigns its rights to DOE and waives whatever rights Reidy has to monies currently on deposit on Reidy's behalf resulting from its participation in OHA's refund proceeding established under *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), which were granted in *Gulf Oil Corp./Thos. P. Reidy, Inc.*, 15 DOE ¶ 85,154 (1986).

402. The payment pursuant to paragraph 402 shall be by certified or cashier's check made payable to the United States Department of Energy and delivered to the Office of the Comptroller, Office of Washington Financial Services, Cash Management Division, P.O. Box 500, Germantown, Maryland 20874–0550. Concurrent with the settlement payment, Reidy shall send a copy of the payment check to:

Jay F. Thompson, Office of Management and Information Systems, Economic Regulatory Administration, U.S. Department of Energy, 1000 Independence Avenue, SW., Room 5B–148, RG–10, Washington, DC 20585.

403. Payments made by Reidy pursuant to paragraph 401(a) of this Consent Order, as well as those monies currently on deposit as described in paragraph 401(b), shall be distributed by the DOE pursuant to the special refund procedures prescribed by 10 CFR Part 205, Subpart V.

V. Issues Resolved

501. All pending and potential civil and administrative claims, whether or not known, demands, liabilities, causes of action or other proceedings by the DOE against Reidy regarding Reidy's compliance with and obligations under the federal petroleum price and allocation regulations during the period covered by this Consent Order, whether or not heretofore raised by an issue letter, Notice of Probable Violation, Notice of Proposed Disallowance, Proposed Remedial Order, Remedial Order, action in court or otherwise, are resolved and extinguished as to Reidy by this Consent Order.

502. (a) Except as otherwise provided herein, compliance by Reidy with this Consent Order shall be deemed by the DOE to constitute full compliance for administrative and civil purposes with all federal petroleum price and allocation regulations for matters covered by this Consent Order. In consideration for performance as required under this Consent Order by Reidy, the DOE hereby releases Reidy completely and for all purposes from all administrative and civil judicial claims, demands, liabilities or causes of action, including without limitation claims for civil penalties, that the DOE has asserted or might otherwise be able to assert against Reidy before or after the date of this Consent Order for alleged violations of the federal petroleum price and allocation regulations with respect to matters covered by this Consent Order. The DOE will not initiate or prosecute any such administrative or civil judicial matter against Reidy or cause or refer any such matter to be initiated or prosecuted, nor will the DOE or its successors directly or indirectly aid in the initiation of any such administrative or civil judicial matter against Reidy or participate voluntarily in the prosecution of such actions. The DOE will not assert voluntarily in any administrative or civil judicial proceeding that Reidy has violated the federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order or otherwise take any action with respect to Reidy in derogation of this Consent Order. However, nothing contained herein shall preclude the DOE from defending the validity of the federal petroleum price and allocation regulations.

(b) The DOE will not seek or recommend any criminal fines or penalties based on information or evidence presently in its possession for the matters covered by this Consent Order, provided, however, that nothing in this Consent Order precludes the DOE from (1) seeking or recommending such criminal fines or penalties if information subsequently coming to its attention indicates, either by itself or in combination with information or evidence presently known to DOE, that a criminal violation may have occurred or (2) otherwise complying with its obligations under law with regard to forwarding information of possible criminal violations of law to appropriate authorities. Nothing contained herein may be construed as a bar, estoppel or defense against any criminal or civil action brought by any agency of the United States other than the DOE under (i) section 210 of the Economic Stabilization Act of 1970 or (ii) any statute or regulation other than the federal petroleum price and allocation regulations. Finally, this Consent Order does not prejudice the rights of any third party or Reidy in any private action, including an action for contribution by or against Reidy.

(c) Reidy releases the DOE completely and for all purposes from all administrative and civil judicial claims, liabilities, or causes of action that Reidy has asserted or may otherwise be able to assert against the DOE relating to the DOE's administration of the federal petroleum price and allocation regulations. This release, however, does not preclude Reidy from asserting any factual or legal position or argument as a defense to any action, claim, or proceeding brought by the DOE, the United States, or any agency of the United States. Nor does it preclude Reidy from asserting a defense, counterclaim or offset to any action, claim or proceeding brought by any other person.

(d) Reidy hereby releases any and all claims that Reidy may have for refunds pursuant to any special refund procedures implemented pursuant to 10 CFR Part 205, Subpart V. Such proceedings include, but are not limited to, those proceedings implemented for the purpose of distributing consent order funds received from Gulf Oil Corporation, Exxon Corporation and Texaco Inc, as well as refund proceedings implemented to distribute remedial order proceeds or other funds held or to be held by DOE for distribution to purchasers of refined petroleum products or crude oil.

503. (a) Within fifteen (15) days after the Effective Date of this Consent Order, Reidy and the DOE will file or cause to be filed appropriate pleadings and will take all other steps necessary to withdraw all claims and dismiss with prejudice all proceedings covered by this Consent Order then pending before the DOE's Office of Hearings and Appeals or the Federal Energy Regulatory Commission, and to dismiss with prejudice any court proceeding then pending or subsequently filed involving an appeal from or seeking review of a decision by the OHA or the FERC in any such proceeding.

(b) Within ten (10) days of the effective date of this Consent Order, the DOE shall request the Department of Justice to withdraw formally its letters sent in August 1988 to Reidy relating to Reidy's compliance with the regulations during the period of price controls.

504. Execution of this Consent Order constitutes neither an admission by

Reidy nor a finding by the DOE of any violation by Reidy of any statute or regulation. The DOE has determined that it is not appropriate to seek to impose civil penalties for the matters covered by this Consent Order, and the DOE will not seek any such civil penalties. None of the payments or expenditures made by Reidy pursuant to this Consent Order are to be considered for any purpose as penalties, fines, or forfeitures or as settlement of any potential liability for penalties, fines or forfeitures.

505. Notwithstanding any other provision herein, with respect to the matters covered by this Consent Order, the DOE reserves the right to initiate an enforcement proceeding or to seek appropriate penalties for any newly discovered regulatory violations committed by Reidy, but only if Reidy has concealed facts relating to such violations. The DOE also reserves the right to seek appropriate judicial remedies, other than full rescission of this Consent Order, for any misrepresentation of fact material to this Consent Order during the course of the audit or the negotiations that preceded this Consent Order or upon discovery of information that is materially inconsistent with the information which has been furnished by Reidy upon which this agreement is based.

VI. Recordkeeping, Reporting and Confidentiality

601. Reidy shall maintain such records as are necessary to demonstrate compliance with the terms of this Consent Order. To assist DOE in the distribution of the monies paid pursuant to this Consent Order, Reidy shall also retain sales volume data and customers' names and addresses regarding its sales of crude oil and refined petroleum products for the transactions covered by this Consent Order until thirty (30) days after final distribution by DOE of such monies. If requested, Reidy shall make such information available to DOE. Except as otherwise provided in this paragraph, upon timely payment to DOE of the amount required to be paid under paragraph 402 of this Consent Order, Reidy is relieved of its obligation to comply with the recordkeeping requirements of the federal petroleum price and allocation regulations relating to the matters settled by this Consent Order.

602. Except for formal request for information regarding other firms subject to the DOE's information gathering and reporting authority, Reidy will not be subject to any audit requests, report orders, subpoenas, or other administrative discovery by DOE relating to Reidy's compliance with the federal petroleum price and allocation regulations relating to the matters settled by this Consent Order.

603. The DOE will treat sensitive commercial and financial information provided by Reidy pursuant to negotiations which were conducted with respect to this Consent Order or obtained by the DOE in its audit of Reidy and related to matters covered by this Consent Order as confidential and proprietary and will not disclose such information unless required to do so by law, including a request by a duly authorized committee or subcommittee of Congress. If a request or demand for release of any such information is made pursuant to law, the DOE will claim any privilege or exemption reasonably available to it. The DOE will provide Reidy with ten (10) days actual notice, if possible, of any pending disclosure of such information, unless prohibited or precluded from doing so by law or request of Congress. The DOE will retain the audit information which it has acquired during its review of Reidy's compliance with the federal petroleum price and allocation regulations in accordance with the DOE's established records retention procedures. Notwithstanding the otherwise confidential treatment afforded such information by the terms of this Consent Order, the DOE will make such information available to the Department of Justice ("DOJ") in response to a request pursuant to the DOJ's statutory authority by a duly authorized representative of the DOJ. If requested by the DOJ, the DOE shall not disclose that such a request has been made. Nothing in this paragraph shall be deemed to waive or prejudice any right Reidy may have independent of this Consent Order regarding the disclosure of sensitive commercial and financial information.

VII. Contractual Undertaking

701. It is the understanding and express intention of Reidy and the DOE that this Consent Order constitutes a legally enforceable contractual undertaking that is binding on the parties and their successors and assigns. Notwithstanding any other provision herein, Reidy (and its successors and assigns) and the DOE each reserves the right to institute a civil action in an appropriate United States district court, if necessary, to secure enforcement of the terms of this Consent Order, and the DOE also reserves the right to seek appropriate penalties and interest for any failure to comply with the terms of this Consent Order. The DOE will undertake the defense of the Consent Order, as made effective, in response to any litigation challenging the Consent Order's validity in which the DOE is named a party. Reidy agrees to cooperate with the DOE in the defense of any such challenge.

VIII. Final Order

801. Upon becoming effective, this Consent Order shall be a final order of DOE having the same force and effect as a remedial order issued pursuant to Section 503 of the DOE Act, 42 U.S.C. 7193, and 10 CFR 205.199B. Reidy hereby waives its right to administrative or judicial review of this Order, but Reidy reserves the right to participate in any such review initiated by a third party.

IX. Effective Date

901. This Consent Order shall become effective as a final order of the DOE upon notice to that effect being published in the **Federal Register**. Prior to that date, the DOE will publish notice in the **Federal Register** that it proposes to make this Consent Order final and, in that notice, will provide not less than thirty (30) days for members of the public to submit written comments. The DOE will consider all written comments to determine whether to adopt the Consent Order as a final order, to withdraw agreement to the Consent Order, or to attempt to renegotiate the terms of the Consent Order.

902. Until the Effective Date, the DOE reserves the right to withdraw consent to this Consent Order by written notice to Reidy, in which event this Consent Order shall be null and void. If this Consent Order is not made effective on or before the one hundred fiftieth (150th) day following execution by Reidy, Reidy may, at any time thereafter until the Effective Date, withdraw its agreement to this Consent Order by written notice to the DOE, in which event this Consent Order shall be null and void.

I, the undersigned, a duly authorized representative of Reidy, hereby agree to and accept on behalf of Reidy the foregoing Consent Order.

Thomas P. Reidy,

President and Chief Executive Officer, Ramada Oil & Gas Corporation.

Dated: December 27, 1988.

I, the undersigned, a duly authorized representative of DOE, hereby agree to and accept on behalf of the DOE the foregoing Consent Order.

Milton C. Lorenz,

Chief Counsel, Economic Regulatory Administration.

Dated: January 13, 1989.

[FR Doc. 89-2501 Filed 2-1-89; 8:45am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER89-154-000 et al.]

Mississippi Power & Light Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

January 30, 1989.

Take notice that the following filings have been made with the Commission:

1. Mississippi Power & Light Company

[Docket No. ER89-154-000]

Take notice that Mississippi Power & Light Company (MP&L), on December 28, 1988, tendered for filing an extension of a letter agreement for sale of transmission service to Cajun Electric Power Cooperative, Inc.

MP&L requests an effective date of January 1, 1989, for the extension of the letter agreement, and therefore requests waiver of the Commission's notice requirements.

Comment date: February 13, 1989, in accordance with Standard Paragraph E at the end of this document.

Southwestern Electric Company

[Docket No. ER89-165-000]

January 30, 1989.

Take notice that on December 30, 1988, Southwestern Electric Power Company (SWEPCO) tendered for filing an amendment (Amendment), dated December 5, 1988, to a letter agreement, dated November 17, 1987, between SWEPCO and City Utilities of Springfield, Missouri (Springfield). The Amendment provides for the continued exchange of replacement energy between SWEPCO and Springfield beyond the original December 31, 1988 termination date.

SWEPCO requests an effective date of January 1, 1989 to assure that there is no break in service to Springfield and, accordingly, requests waiver of the Commission's notice requirements. Copies of the filing were served upon Springfield, the Arkansas Public Service Commission, the Louisiana Public Service Commission, the Missouri Public Service Commission and the Public Utility Commission of Texas.

Comment date: February 31, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2474 Filed 2-1-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-696-000 et al.]

Transwestern Pipeline Co. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Transwestern Pipeline Company

[Docket No. CP89-696-000]

January 26, 1989.

Take notice that on January 25, 1989, Transwestern Pipeline Company (Transwestern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP 89-696-000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Chevron U.S.A., Inc. (Chevron), a producer, under the blanket certificate issued in Docket No. CP88-133-000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Transwestern states that pursuant to a transportation agreement dated October 24, 1988, under its Rate Schedule ITS-1, it proposes to transport for Chevron up to 150,000 MMBtu per day equivalent of natural gas. Transwestern states that it would receive the gas at existing receipt points in New Mexico, Texas and Oklahoma, and that it would transport and deliver the gas in California, New Mexico, Oklahoma and Texas.

Transwestern advises that service under § 284.223(a) commenced November 1, 1988, as reported in Docket No. ST89-1865 (filed January 23, 1989). Transwestern further advises that it would transport 112,500 MMBtu on an average day and 54,750,000 MMBtu annually.

Comment date: March 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Columbia Gas Transmission Corporation

[Docket No. CP89-639-000]

January 27, 1989.

Take notice that on January 17, 1989, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP89-639-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing firm natural gas sales service to Virginia Natural Gas, Inc. (Virginia Natural), a new wholesale customer, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Columbia proposes to initiate firm natural gas sales service to Virginia Natural of 5,000 dekatherm per day of contract demand under Columbia's contract demand service rate schedule, commencing December 1, 1989. The seasonal entitlement associated with such service would be 1,095,000 dekatherm per year.

It is alleged that Columbia would deliver such natural gas to Commonwealth Gas Pipeline Corporation (Commonwealth) for the account of Virginia Natural, at an existing interconnection between Columbia and Commonwealth at Bickers, Virginia. Commonwealth would transport such natural gas for Virginia Gas to existing points of delivery between Commonwealth and Virginia Gas.

It is claimed that no additional facilities are required by Columbia in order to render the proposed service. Columbia has been advised by Commonwealth and Virginia Gas that no new or additional facilities would be constructed to effectuate the proposed service.

Columbia estimates that the non-gas revenues associated with proposed service to be $614,960 annually.

Comment date: February 17, 1989, in accordance with Standard Paragraph F at the end of this notice.

3. Commonwealth Gas Pipeline Corporation

[Docket No. CP89-657-000]

January 27, 1989.

Take notice that on January 17, 1989, Commonwealth Gas Pipeline Corporation (Commonwealth), 800 Moorefield Park, Richmond, Virginia

23236, filed in Docket No. CP89–657–000 an application pursuant to § 284.224 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing the transportation of natural gas, all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that Commonwealth agrees to comply with the conditions set forth in § 284.222(e) and understands that any transaction authorized under a blanket certificate shall be subject to the same rates and charges, terms, conditions and reporting requirements that would apply if the transactions were authorized for an intrastate pipeline by subparts C, D and E of Part 284 of the Commission's Regulations.

Comment date: February 17, 1989, in accordance with Standard Paragraph F at the end of this notice.

4. Southern Natural Gas Company

[Docket No. CP89–700–000]

January 27, 1989.

Take notice that on January 25, 1989, Southern Natural Gas Company (Southern) filed in Docket No. CP89–700–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to provide interruptible transportation services for Sonat Marketing Company (Sonat), a marketer, under its blanket certificate issued in Docket No. CP88–316–000 under Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern proposes to transport natural gas for Sonat on an interruptible basis under Southern's Rate Schedule IT. Southern states that it would transport up to 4,200 MMBtu of natural gas on a peak day, 800 MMBtu of natural gas on an average day, and 292,000 MMBtu of natural gas on an annual basis. Southern asserts that no new facilities are required to implement the proposed transportation service.

Southern states that it commenced the transportation service pursuant to the 120-day self-implementing provision of § 284.223(a)(1) of the Commission's Regulations on December 1, 1988, as reported in Docket No. ST89–1542.

Comment date: March 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Williams Natural Gas Company

Docket No. CP89–670–000]

January 27, 1989.

Take notice that on January 19, 1989, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89–670–000, a request pursuant to §§157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86–631–000, pursuant to section 7 of the Natural Gas Act for Union Pacific Resources Company (Union Pacific), all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport up to a maximum of 15,000 MMBtu of natural gas per day for Union Pacific from various receipt points in Wyoming to various delivery points on Williams' pipeline system in Kansas. Williams anticipates transporting up to 15,000 MMBtu on a peak day and average day, and up to 5,475,000 MMBtu annually for Union Pacific. Williams explains that service commenced December 1, 1988 under Section 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–1654–000.

Comment date: March 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

Columbia Gas Transmission Corporation

[Docket No. CP89–636–000]

January 27, 1989.

Take notice that on January 17, 1989, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP89–636–000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities to render firm sales service to North Carolina Natural Gas Corporation (NCN), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Columbia would provide firm natural gas sales service to NCN of 25,000 dekatherms per day of contract demand under its contract demand service rate schedule with a seasonal entitlement of 5,475,000 dekatherm per year commencing on December 1, 1989. To provide such service for NCN, Columbia proposes to construct and operate the following facilities.

(1) 7.5 miles of 16-inch pipeline extending from a proposed interconnection with Commonwealth Gas Pipeline Corporation (Commonwealth) in Greensville County, Virginia to a proposed interconnection with NCN in Northampton County, North Carolina;

(2) Three 400 horsepower compressor units at the new Pleasant Hill Compressor station in Northampton County;

(3) Measuring and regulating station facilities in Northampton County; and

(4) Initiate compression service for NCN.

It is asserted that Columbia would deliver its sales quantities to Commonwealth at an existing interconnection of the facilities of Columbia and Commonwealth located at Bickers in Greene County, Virginia for transportation under section 284.224 of the Commission's Regulations and redelivery to Columbia at a proposed interconnection of Commonwealth's facilities and the subject facilities. It is alleged that Commonwealth is a Hinshaw pipeline subject to the jurisdiction of the Virginia Corporation Commission. The 7.5 miles of 16-inch pipeline proposed by Columbia would extend from Commonwealth's system in Virginia to NCN's facilities in North Carolina. Columbia would deliver its sales quantities to NCN at the outlet side of the metering and regulating facilities to be installed at the interconnection.

It is claimed that in recent years, NCN has experienced substantial load growth in its market areas. NCN is served only by Transcontinental Gas Pipe Line Corporation (Transco). It is asserted that Transco is the only interstate gas pipeline currently serving North Carolina distribution companies. NCN must rely upon Transco for all of NCN's natural gas service, be it for sales service or transportation service. It is alleged that the North Carolina Public Service Commission is encouraging the local distribution companies subject to its jurisdiction to acquire natural gas supplies from alternative interstate gas pipelines in order to provide diversification of gas supples for the state of North Carolina.

The proposed facilities are estimated to cost $7,141,000, including the Commission's filing fees. Columbia states that it would finance the construction of the proposed facilities with funds generated from internal sources. Columbia estimates that the non-gas revenues associated with its proposal would be approximately $3,248,048 and the cost of service associated is approximately $2,184,133 resulting in the non-gas revenues exceeding the cost of service by approximately $1,063,915.

Comment date: February 17, 1989, in accordance with Standard Paragraph F at the end of this notice.

Panhandle Eastern Pipe Line Company

Docket No. CP89–598–000]

January 30, 1989.

Take notice that on January 12, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas, 77251, filed in Docket No. CP89–598–000, an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to partially abandon sales service to Southeastern Michigan Gas Company (SEMCO), an existing jurisdictional sales customer, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle states that SEMCO has elected under § 284.10 of the Commission's Regulation's to convert a portion of its daily Contract Demand (CD) to firm transportation effective as of November 1, 1988. Panhandle explains that the firm transportation would be rendered under the terms and conditions of its Rate Schedule PT-Firm.

The proposed abandonment, it is said, would reduce the annualized total CD from 14,251,455 Mcf to 13,333d,845 Mcf.

Comment date: February 21, 1989, in accordance with Standard Paragraph F at the end of this notice.

Southern Natural Gas Company

Docket No. CP89–698–000]

January 30, 1989.

Take notice that on January 25, 1989, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35302, filed n docket No. CP89–698–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88–316–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southern proposes to transport natural gas for Chevron U.S.A., Inc. (Chevron) pursuant to Rate Schedule IT. Southern explains that service commenced December 1, 1988, under Section 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–3228. Southern explains that the peak day quantity would be 35,000 MMBtu, the average daily quantity would be 30,000 MMBtu, and that the annual quantity would be 10,950,000 MMBtu. Southern explains that it would receive natural gas for Chevron's account at receipt points in Eugene Island Blocks 64 and 74, offshore Louisiana, for delivery to a point of interconnection between Southern and United Gas Pipe Line Company in Eugene Island Block 51, offshore Louisiana.

Comment date: March 16, 1989, in accordance with Standard Paragraph G at the end of the notice.

9. Algonquin Gas Transmission Company

[Docket No. CP89–656–000]

January 30, 1989.

Take notice that on January 17, 1989, Algonquin Gas Transmission Company (Applicant), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP89–656–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing a new firm transportation service to an existing resale customer and the construction and operation of facilities to implement the services, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant requests authorization to initiate a firm transportation service for Providence Gas Company (Providence) of 21,063 MMbtu per day under Applicant's proposed Rate Schedule AFT–3. In order to implement the proposed service, Applicant proposes to construct (1) 2.0 miles of 36-inch pipeline loop in Mansfield and Chaplin, Connecticut, (2) 1.6 miles of 24-inch pipeline loop on its existing G–12 System in East Providence, Rhode Island, (3) 2.1 miles of 16-inch pipeline loop on its existing G–3 System near New Bedford, Massachusetts, (4) 3.6 miles of new 12-inch pipeline lateral from its G–1 System to the new North Portsmouth, Rhode Island meter station on Aquidneck Island and (5) a new meter station on Aquidneck Island which would be designated as the North Portsmouth Meter Station. Applicant estimates the cost to construct the proposed facilities to be $17,677,000. Applicant proposes to finance the construction costs with bank financing equal to 75 percent of the total costs and equity contributions equal to 25 percent of the total costs.

Applicant states that it would receive the quantities of natural gas on behalf of Providence at a proposed point of interconnection with Columbia Gas Transmission Company (Columbia) in Morris County, New Jersey. Applicant states that Columbia has requested the proposed interconnection in the pending Docket No. CP88–163–000 currently on file with the Commission.[1] From this point of receipt, Applicant would transport and deliver the quantities of natural gas to Providence at either the existing Dey Street, East Providence Meter Station or at the proposed new meter station in North Portsmouth, Rhode Island; it is stated. It is further explained that the transportation would be implemented in two phases. The first phase of 10,000 MMBtu would commence on November 1, 1989 with deliveries at the existing Dey Street Meter Station and the second phase of 11,063 MMBtu to the proposed North Portsmount Meter Station.

Since the proposed firm transportation service under Rate Schedule AFT–3 requires the construction of facilities, Applicant states that it would design a firm demand charge to recover its investment in the proposed facilities and the annual cost of operating the proposed facilities on an incremental basis. Applicant explains that it will file an initial rate after the proposed facilities are constructed and actual costs are determined. No term for the requested Rate Schedule AFT–3 service was proposed by Applicant.

Comment date: February 21, 1989, in accordance with Standard Paragraph F at the end of this notice.

10. Columbia Gas Transmission Corporation

[Docket Nos. CP88–129–003 and CP88–163–001]

January 30, 1989

Take notice that on January 13, 1989, Columbia Gas transmission Corporation (Applicant), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket Nos. CP88–129–003 and CP88–163–001 an amendment to its pending applications filed in Docket Nos. CP88–129–000, CP88–129–001, CP88–129–002 and CP88–163–000 pursuant to Section 7(c) of the Natural Gas Act to permit it to construct and operate a 20-inch pipeline and appurtenant facilities in lieu of the 16-inch pipeline previously proposed and to provide firm services to three customers all as more fully set forth in the amendment on file with the Commission and open to public inspection.

In Docket Nos. CP88–129–000, CP88–129–001, CP88–129–002 and CP88–163–000, Applicant requested authorization

[1] Columbia is requesting authority in Docket No. CP88–163–000 to provide 50,000 MMBtu per day of firm service to Providence. By this application, Applicant seeks to render up to 21,063 MMBtu of firm service on behalf of Providence. In order to enable Providence to receive the full 50,000 MMBtu per day, Applicant states that Providence has requested to convert 28,937 MMBtu per day of its existing entitlements under Applicant's Rate Schedule WS–1 to firm transportation service. Applicant explains that it would make a subsequent filing to implement such conversion in the future.

to initiate firm sales services to New Jersey Natural Gas Company (NJN) of up to 10,000 dekatherms (dt) per day and to Providence Gas Company (Providence) of up to 10,000 dt per day both to be implemented under Applicant's Rate Schedule CDS. Therein Applicant stated that Elizabethtown Gas Company (Elizabethtown) had requested firm natural gas transportation service under Applicant's Rate Schedule FTS of up to 20,000 dt per day and an interruptible transportation service under Rate Schedule ITS of up to 2,200 Mdt annually. In addition, Applicant stated that Providence had requested a firm natural gas transportation service under Rate Schedule FTS of up to 40,000 dt per day. Applicant noted that all the transportation services would be self-implemented under its Order Nos. 436 and 500 blanket transportation certificate. In order to provide the requested services, Applicant proposed to extend its main transmission system from a point located near Hellertown, Northampton County, Pennsylvania, to Morris County, New Jersey where it would interconnect with the facilities of Algonquin Gas Transmission Company. The proposed extension would have consisted of the construction of approximately 57.5 miles of 16-inch pipeline and four interconnecting measuring facilities at a total estimated cost of $42,170,000.

Applicant's amending application, Docket Nos. CP88–129–003 and CP88–162–001, proposes a change to the size of the pipeline from 16-inch line to a proposed 20-inch pipeline. Applicant alleges the increased size is more efficient in terms of deliverability and cost; further Applicant alleges that the environmental impact of constructing a 20-inch is similar to that of the installation of a 16-inch pipeline. Applicant estimates that the total cost to construct the proposed 20-inch pipeline is $51,507,100, an increase of approximately $9.3 million over the previously proposed 16-inch. Applicant states that it would finance the proposed construction of facilities through internally generated funds or through existing credit agreements.

Comment date: February 21, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

11. Distrigas Corporation Distrigas of Massachusetts Corporation.

[Docket No. CP89–675–000]

January 30, 1989.

Take notice that on January 17, 1989, Distrigas Corporation (Distrigas), 950 Winter Street, Waltham, Massachusetts 02254–9073 and Distrigas of Massachusetts Corporation (DOMAC), Two Oliver Street, Boston, Massachusetts 02109, jointly filed an application for authority to abandon service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Distrigas seeks authority to abandon its sales service to DOMAC undertaken pursuant to the terms of Distrigas' Special Rate Schedule No. 1 Distrigas stated that new sales authority granted Distrigas by the Commission's December 16, 1988, Order in Docket No. CP88–587–000 makes Distrigas Special Rate Schedule No. 1 no longer necessary. Additionally, Distrigas stated that no further sales of LNG under Special Rate Schedule No. 1 are contemplated.

It is further stated the DOMAC seeks authority to abandon the services described in its Rate Schedules GS–1, TS–1, I–1 and SS–1, and seeks authority to cancel those Rate Schedules and related tariff sheets set out at Exhibit X to its Application. DOMAC stated that those services authorized by the Commission's December 16, 1988, Order in Docket No. CP88–587–000. DOMAC stated that the old services are no longer utilized and that DOMAC's former customers under those rate schedules support the request for abandonment.

It is alleged that Distrigas and DOMAC have requested expedited treatment of this application pursuant to Rules 801 and 802 of the Commission's Rules of Practice and Procedure. Distrigas and DOMAC have waived the intermediate decision procedure and, if their request for shortened procedure is granted, have waived the right to oral hearing and the right to file exceptions to the decision of the Commission.

Comment date: February 21, 1989, in accordance with Standard Paragraph F at the end of this notice.

12. Panhandle Eastern Pipe Line Company

[Docket No. CP89–596–000]

January 30, 1989.

Take notice that on January 12, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas, 77251, filed in Docket No. CP89–596–000, an application pursuant to Section 7(b) of the Natural Gs Act for permission and approval to partially abandon sales service to Citizens Gas Fuel Company (Citizens), an existing jurisdictional sales customer, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle states that Citizens has elected under Section 284.10 of the Commission's Regulations to convert a portion of its daily Contract Demand (CD) to firm transportation effective as of October 1, 1988. Panhandle explains that the firm transportation would be rendered under the terms and conditions of its Rate Schedule PT–Firm.

The proposed abandonment, it is said, would reduce the annualized total CD from 4,398,810 Mcf to 4,115,570 Mcf.

Comment date: February 21, 1989, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraph

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be necessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be tested as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 2475 Filed 2–1–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP89–53–000]

Canadian Petroleum Association; Petition for Expedited Declaratory Order

January 30, 1989.

Take notice that on January 17, 1989, the Canadian Petroleum Association (CPA) filed a petition for a declaratory order interpreting 18 CFR 154.303(e) of the Commission's Regulations to determine the date by which Great Lakes Gas Transmission Company (Great Lakes) must file tariff sheets establishing new base tariff rates (BTRs) in a general rate case pursuant to section 4(e) of the Natural Gas Act.

CPA states that Great Lakes filed revised tariff sheets in its last general rate case on December 31, 1985 in Docket No. RP86–35–000. On January 30, 1986, the Commission issued an order suspending the effectiveness of Great Lakes' proposed rates until July 1, 1986. *Great Lakes Gas Transmission Co.*, 34 FERC ¶ 61,113 (1986). CPA states that in compliance with the Commission's order of January 30, 1986, Great Lakes filed revised tariff sheets to implement the rate determination methodology for certain of Great Lakes' Rate Schedules. The Commission, on April 2, 1986, accepted Great Lakes' revised tariff sheets, to become effective July 1, 1986. *Great Lakes Gas Transmission Co.*, 35 FERC ¶ 61,013 (1986).

On July 15, 1986, Great Lakes filed a Stipulation and Agreement (First Stipulation and Agreement) in settlement of certain issues, reserving others for hearing. On May 5, 1987, the Commission issued an order modifying and approving Great Lakes' First Stipulation and Agreement. *Great Lakes Gas Transmission Co.*, 39 FERC ¶ 61,118, *reh'g. den.* 40 FERC ¶ 61,011 (1987). CPA states that on August 17, 1987, however, Great Lakes filed a letter advising the Commission that it would not accept the First Stipulation and Agreement because of a modification imposed by the Commission concerning the effective date of any changes later found appropriate for Great Lakes' minimum commodity bill.

On December 14, 1987, Great Lakes filed a new Stipulation and Agreement in Settlement of Rate Proceedings (Second Stipulation and Agreement).[1] The tariff sheets submitted with this agreement had an effective date of August 1, 1987. CPA states that the Second Stipulation and Agreement is silent on the issue of when a new 36-month period commences. However, it notes that Article XII provides that the Agreement shall be effective as of July 1, 1986, and "shall terminate on the date that a subsequent base tariff rate change filing by Great Lakes under Section 4 of the Natural Gas Act is made effective or on the effective date of any change in Great Lakes' base tariff rates resulting from a rate proceeding subsequently instituted by the Commission with respect to Great Lakes' rates, whichever shall first occur."

CPA states that Great Lakes alleges it need not file a new general rate case until a date required to allow new rates to become effective on August 1, 1990. CPA states that this is within 36 months from the effective date of the tariff sheets submitted with the Second Stipulation and Agreement rather than 36 months from the effective date of the Second Stipulation and Agreement (July 1, 1989).

CPA states that the issue presented is when must Great Lakes file its next general rate case? This decision requires interpretation of § 154.303(e) of the Commission's regulations which states that pipelines electing to use purchased gas adjustment provisions must file their base tariff rates and supporting comprehensive, updated cost studies at least every three years. Specifically, an interpretation of § 154.303(e)(ii)(C)(2) is required, to determine what date triggers the 36-month filing requirement for Great Lakes: the July 1, 1986 date when its rates became effective pursuant to the Commission's suspension order or the August 1, 1987 date when settlement rates took effect?

CPA states that the urgency of interpreting § 154.303(e) is best revealed by the statistic that, in 1987, Great Lakes' return on equity approximated 40.5 percent and that the magnitude of Great Lakes' return on equity—when compared to the FERC authorized return on equity of 15.5 percent through July 31, 1987, and 13.5 percent for the balance of the settlement, is *prima facie* evidence that the rates generating such a return do not comport with the "just and reasonable" standard of the Natural Gas Act.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such motions or protests should be filed on or before February 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–2476 Filed 2–1–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RE84–3–001]

Nevada Power Co.; Application for Exemption

January 30, 1989.

Take notice that Nevada Power Company filed an application on December 23, 1988 for exemption from requirements of Part 290 of the Federal Energy Regulatory Commission's (FERC) regulations concerning collection and reporting of cost of service information under section 133 of the Public Utility Regulatory Policies Act (PURPA). Order No. 48 (44FR58687, October 11, 1979). Exemption is sought from the requirement to file on or prior to June 30, 1990 and biennially thereafter, information on the costs of providing electric service as specified in Subparts B, C, D, and E of Part 290.

Copies of the application for exemption are on file with FERC and are available for public inspection. FERC's regulations require that said utility also apply to any state regulatory authority having jurisdiction over it to have the application published in any official

[1] The Second Stipulation and Agreement was approved by the Commission on April 6, 1988. Great Lakes Gas Transmission Co., 43 FERC ¶ 61,313 (1988).

state publication in which electric rate change applications are usually noticed, and that the utility publish a summary of the application in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW, Washington, DC 20426, on or before 45 days following the date this notice is published in the **Federal Register**. Within that 45 day period, such person must also serve a copy of such comments on: Mr. Connell Marsden, Vice President, Rates and Regulations, 6226 West Sahara Ave., Las Vegas, Nevada 89151.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2477 Filed 2-1-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RE90-57-002]

Oklahoma Gas & Electric Co.; Application for Exemption

January 30, 1989.

Take notice that Oklahoma Gas & Electric Company filed an application on December 21, 1988 for exemption from requirements of Part 290 of the Federal Energy Regulatory Commission's (FERC) regulations concerning collection and reporting of cost of service information under Section 133 of the Public Utility Regulatory Policies Act (PURPA), Order No. 48 (44FR58687, October 11, 1979). Exemption is sought from the requirement to file on or prior to June 30, 1990 and biennially thereafter, information on the costs of providing electric service as specified in Subparts B, C, D, and E of Part 290.

Copies of the application for exemption are on file with FERC and are available for public inspection. FERC's regulations require that said utility also apply to any state regulatory authority having jurisdiction over it to have the application published in any official state publication in which electric rate change applications are usually noticed, and that the utility publish a summary of the application in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street NW, Washington, DC 20426, on or before 45 days following the date this notice is published in the **Federal Register**. Within that 45 day period, such person must also serve a copy of such comments on: Mr. William L. Wylie, Manager of Rates & Contracts, Oklahoma Gas & Electric Company, 321 North Harvey, P.O. Box 321, MC226, Oklahoma City, Oklahoma 73101.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2478 Filed 2-1-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EC88-2-004]

Utah Power & Light Co., PacifiCorp, PC/UP&L Merging Corp.; Compliance Filing

Issued January 27, 1989.

Before Commissioners: Martha O. Hesse, Chairman; Charles G. Stalon and Charles A. Trabandt.

On January 6, 1989, Utah Power & Light Company, PacifiCorp, and PC/UP&L Merging Corporation (collectively referred to as Applicants) made a compliance filing pursuant to Opinion No. 318.[1]

In Opinion No. 318, the Commission conditionally granted approval of the merger application filed by the Applicants pursuant to section 203 of the Federal Power Act. The Commission stated that within 60 days of the issuance of Opinion No. 318, the Applicants shall make their compliance filing.[2] We further stated that if any requests for rehearing were pending at the expiration of the 60-day period, the compliance filing shall be made within 15 days of the date the Commission disposes of such request[s].[3]

Although the Applicants did not seek rehearing of opinion No. 318, various other entities have requested rehearing. Those requests are now pending before the Commission. Since we intended that a compliance filing would be made only after requests for rehearing had been addressed, we will take no action on the compliance filing until we have disposed of the rehearing requests.[4] The Applicants will have 15 days from the date of the order on rehearing to amend or refile their compliance filing. Comments will be due 30 days from the date of the amended or refiled compliance filing.

In Opinion No. 318, the Commission also stated that the merged company was required to identify, as part of its compliance filing, that portion of its total transfer capacity that could be used for firm deliveries by wheeling customers at particular points of delivery.[5] This capacity was designated Remaining Existing Capacity (REC).[6] The Applicants announced the REC in their compliance filing.[7] They requested that the 90-day period for utilities seeking status as Qualifying Entities[8] in the allocation of the REC begin upon publication of notice of that announcement. We will reject that request. As discussed above, we are requiring that the Applicants amend or refile their compliance filing. Since the designation of REC is part of that compliance filing, the 90-day period has not begun. Moreover, it will not begin until the Commission issues an order setting forth when it will begin.

The Commission Orders

(A) The Applicants are hereby directed to amend or refile their compliance filing in this proceeding within 15 days after the issuance of an order disposing of the pending requests for rehearing. Comments on the amended or refiled compliance filing shall be due 30 days from the date of such amendment or refiling.

(B) The Secretary is hereby directed to publish a copy of this order in the **Federal Register**.

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[1] Utah Power & Light Company, PacifiCorp and PC/UP&L Merging Corporation, Opinion No. 318, 45 FERC ¶ 61,095 (1988).

[2] 45 FERC at 61,309.

[3] *Id.*

[4] The Applicants filed an offer of settlement in this proceeding on January 9, 1989. Since the issues raised in the offer of settlement bear upon the issues raised in the requests for rehearing, we will address the offer of settlement in the rehearing order. Moreover, the offer of settlement cannot be addressed in this order since, pursuant to the Commission's Rule of Practice and Procedure, comments and reply comments on the offer of settlement are not due until January 30, 1989 and February 8, 1989, respectively. 18 C.F.R. § 385.602 (1988).

[5] 45 FERC at 61,291.

[6] *Id.*

[7] Notice of the announcement of Remaining Existing Capacity (Announcement) was published in the **Federal Register** with comments due on or before January 31, 1989. 54 FR 3122 (1989), *errata issued* January 23, 1989. Various entities filed requests to extend the comment period beyond January 31, 1989. *See, e.g.*, Answer of Sierra Pacific Power Company, filed January 23, 1989. As discussed above, however, we have extended the period for comments on the compliance filing to 30 days from the date the compliance filing is amended or refiled. Since the Announcement is part of that compliance filing, the extension of time for comments applies to the Announcement as well. Thus, we will deny as moot the request to extend the comment period.

[8] As set forth in Opinion No. 318, during the 90-day period, any entity announcing an executed contract for use of the merged company's transmission system shall be designated a "Qualifying Entity" for purposes of the allocation process.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2479 Filed 2-1-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-44524; FRL-3513-4]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on hydroquinone (CAS No. 123-31-9) and dichlorobenzenes (CAS Nos. 95-50-1 and 106-46-7), submitted pursuant to final test rules under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received.

I. Test Data Submissions

Test data for hydroquinone were submitted by the Chemical Manufacturers Association pursuant to a test rule at 40 CFR 799.2200. They were received by EPA on January 12, 1989. The submissions describe a range finding study to evaluate toxicity of hydroquinone in the pregnant rabbit and a developmental toxicity study in rabbits with hydroquinone. Developmental toxicity testing is required by this test rule. Hydroquinone is produced in a photographic grade for use as a developing agent and in a technical grade which is primarily used as a chemical intermediate in the production of rubber chemicals.

Test data for dichlorobenzenes were submitted by the Chemical Manufacturers Association pursuant to a test rule at 40 CFR 799.1052. They were received by EPA on January 23, 1989. The submissions describe an inhalation two-generation reproduction study in rats with orthodichlorobenzene and a two-generation reproduction study of inhaled para-dichlorobenzene in Sprague-Dawley rats. Reproductive and fertility effects testing is required by this test rule. Dichlorobenzenes are used as organic and dye intermediates and in solvents, fumigants and insecticides.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submission.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS-44524). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603

Dated: January 24, 1989.

Joseph J. Merenda,

Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 89-2428 Filed 2-1-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-010896-002.

Title: Maryland Port Administration Terminal Agreement.

Parties: Maryland Port Administration (MPA), Moller Steamship Company, Inc. (Maersk).

Synopsis: The agreement provides that MPA will grant Maersk a discount of $50.00 per loaded container moved by Maersk into and out of the Port of Baltimore (the Port) and drayed to and from either CSX or CONRAIL railheads in Baltimore. The $50 discount is restricted to containers moving between the Port and Louisville, Kentucky or Chicago, Illinois or Detroit, Michigan and will expire May 31, 1989.

Agreement No.: 224-010968-002.

Title: Mayland Port Administration Terminal Agreement.

Parties: Maryland Port Administration (MPA), Hapag-Lloyd AG/Atlantic Division (HL).

Synopsis: The agreement provides that MPA will grant HL a discount of $50.00 per loaded container moved by HL into and out of the Port of Baltimore (the Port) and drayed to and from either CSX or CONRAIL railheads in Baltimore. The $50 discount is restricted to containers moving between the Port and Louisville, Kentucky or Chicago, Illinois or Detroit, Michigan.

Agreement No.: 224-011032-001.

Title: Port of Seattle Terminal Lease Agreement.

Parties: Port of Seattle, Stevedoring Services of America (SSA).

Synopsis: The basic Agreement is amended to reflect that SSA's terminal area has been shifted southward to include 4 acres adjacent to the South premises line while relinquishing 4 acres of other terminal area to accommodate the construction of an entry gate for Terminal 42. The shift does not change SSA's number of leased acres (approximately 25 acres) including preferential use of approximately 2 acres of ship berthage.

Agreement No.: 224-200214.

Title: San Francisco Terminal Agreement.

Parties: City of San Francisco (SF), China Ocean Shipping Company (COSC).

Synopsis: The Agreement provides that COSC will use the Port of San Francisco as its regularly scheduled California port of call and pay SF reduced charges for dockage and wharfage. It also provides that in consideration of these reduced terminal charges, COSC will guarantee SF an annual minimum of 31 vessel calls and 6,501 full twenty-foot equivalent units. Breakbulk cargo will be assessed wharfage at $2.42 per 1,000 kilos or per cubic meter.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: January 27, 1989.

[FR Doc. 89-2376 Filed 2-1-89; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-003935-002.
Title: South Carolina State Ports Authority Terminal Agreement.
Parties: South Carolina State Ports Authority, Puerto Rico Maritime Shipping Authority.

Synopsis: The Agreement adjusts the annual minimum wharfage guarantee and throughput agreement and berth guarantee. It allows for acreage reduction under certain conditions, and revises the preferential berthing schedule.

Agreement No.: 224-010951-002.
Title: Maryland Port Administration Terminal Agreement.
Parties: Maryland Port Administration (MPA), Polish Ocean Lines, Inc. (POL).

Synopsis: The agreement provides that MPA will grant POL a discount of $50.00 per loaded container moved by POL into and out of the Port of Baltimore (the Port) and drayed to and from either CSX or CONRAIL railheads in Baltimore. The $50 discount is restricted to containers moving between the Port and Louisville, Kentucky or Chicago, Illinois or Detroit, Michigan.

Agreement No.: 224-200073-002.
Title: Maryland Port Administration Terminal Agreement.
Parties: Maryland Port Administration (MPA), Clark Maryland Terminals, Inc. (Clark).

Synopsis: The agreement provides that MPA will grant Clark a discount of $50.00 per loaded container moved by Clark into and out of the Port of Baltimore (the Port) and drayed to and from either CSX or CONRAIL railheads in Baltimore. The $50 discount is restricted to containers moving between the Port and Louisville, Kentucky or Chicago, Illinois or Detroit, Michigan and will expire May 31, 1989.

Agreement No.: 224-200215.
Title: New York and New Jersey Terminal Agreement.
Parties: Port Authority of New York and New Jersey (Authority), COSCO North America, Inc. (COSCO).

Synopsis: The Agreement provides for the Authority to make payments to COSCO of $25 per import and $50 per export container loaded to or unloaded from COSCO's vessels at a marine terminal in the Port of New York and New Jersey.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: January 27, 1989.

[FR Doc. 89-2375 Filed 2-1-89; 8:45 am]

BILLING CODE 6730-01-M

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the commission regarding a pending agreement.

Agreement No.: 202-010776-041
Title: Asia North America Eastbound Rate Agreement
Parties: American President Lines, Ltd., Kawasaki Kisen Kaisha, Ltd., A.P. Moller-Maersk Line, Mitsui, O.S.K. Lines Ltd., Neptune Orient Lines, Ltd., Nippon Liner System, Ltd., Nippon Yusen Kaisha Line, Orient Overseas Container Lines, Inc., and Sea-Land Service, Inc.
Synopsis: The proposed modification would clarify the members' authority to interact with the presently effective Transpacific Discussion Agreement, and at such time as it becomes effective, the pending Transpacific Stabilization Agreement.

Agreement No.: 232-011229
Title: HKIL/ANZDL Space Charter and Sailing Agreement
Parties: Hong Kong Islands Line America S.A. Australia New Zealand Direct Line

Synopsis: The proposed Agreement would permit the parties to discuss, exchange information, establish common rates, rules and conditions of service, rationalize sailings, and cross-charter space on the parties' vessels opeating in the trade between ports on the West Coast of North America and inland and coastal points served via such ports, and ports in Australia and New Zealand and inland and coastal points served via such ports.

By Order of the Federal Maritime Commission

Dated: January 30, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-2466 Filed 2-1-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

January 27, 1989.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following reports, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received on or before February 24, 1989.

ADDRESS: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the request for clearance (SF 83), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822).

Proposal to approve under OMB delegated authority the extension without revision of the following report:

1. *Report Title:* Notification of Foreign Branch Status.
Agency Form Number: FR 2058.
OMB Docket Number: 7100-0069.
Frequency: Event-generated.
Reporters: State member banks, Edge and Agreement Corporations, and bank holding companies.
Annual Reporting Hours: 29.
Estimated Average Hours per Response: 0.25.
Number of Respondents: 116.
Small business are affected.

General Description of Report:

This information collection is mandatory (12 U.S.C. 321, 601, 602, 615, and 1844(c)) and is not given confidential treatment.

This report notifies the Federal Reserve of the opening, closing, or relocation of a foreign branch of state member banks, Edge and Agreement corporations, or bank holding companies. This information enables the Federal Reserve to ensure the safety and soundness of the U.S. banking system.

Board of Governors of the Federal Reserve System, January 27, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-2397 Filed 2-1-89; 8:45 am]

BILLING CODE 6210-01-M

Citizens Dimension Bancorp, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than February 24, 1989.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Citizens Dimension Bancorp, Inc.*, Muskogee, Oklahoma; to acquire an additional 2.73 percent of the voting shares of Charter Bancshares, Inc., Oklahoma City, Oklahoma and thereby indirectly acquire Charter National Bank, Oklahoma City, Oklahoma.

Board of Governors of the Federal Reserve System, January 27, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-2398 Filed 2-1-89; 8:45 am]

BILLING CODE 6210-01-M

First Brundidge Bankshares, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 17, 1989.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *First Brundidge Bankshares, Inc.*, Brundidge, Alabama; to engage *de novo* through its subsidiary, First Brundidge Insurance Agency, Inc., Brundidge, Alabama, in insurance activities pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y. These activities

will be conducted in the city of Brundidge, Alabama.

Board of Governors of the Federal Reserve System, January 27, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-2289 Filed 2-1-89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies; Richard F. Hogle, et al.

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 16, 1989.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Richard F. Nogle* and Beverly J. Nogle, jointly, both of Chanute, Kansas; to acquire 100 percent of the voting shares of Fall River Bankshares, Inc., Fall River, Kansas, and thereby indirectly acquire Fall River State Bank, Fall River, Kansas.

B. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Douglas MacDonald,* Laredo, Texas; to acquire 9.36 percent of the voting shares of Southshares, Inc., Laredo, Texas, and thereby indirectly acquire South Texas National Bank, Laredo, Texas.

Board of Governors of the Federal Reserve System, January 27, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-2400 Filed 2-1-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Immunization Practices Advisory Committee; Meeting

Action: Notice of meeting.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control announces the following Committee meeting:

Name: Immunization Practices Advisory Committee.

Time and Date:
February 21, 1989, 8:30 a.m.-5 p.m.
February 22, 1989, 8:30 a.m.-1 p.m.

Place: Conference Room 207, Centers for Disease Control, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Status: Open.

Purpose: The Committee is charged with advising on the appropriate uses of immunizing agents.

Matters To Be Discussed: The Committee will discuss Hepatitis B, pneumococcal, influenza, and other vaccines; ACIP statement on mumps; implications of the new ACIP recommendations on measles; adult immunization; and will consider other matters of relevance among the Committee's objectives. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Cheryl Counts, Staff Assistant, Centers for Disease Control (1-2047), 1600 Clifton Road, NE., Mailstop D22, Atlanta, Georgia 30333, Telephones: FTS: 236-3701; Commercial: (404) 639-3701.

Dated: January 27, 1989.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 89-2401 Filed 2-1-89; 8:45 am]

BILLING CODE 4160-18-M

Health Resources and Services Administration

Emergency Medical Services for Children Demonstration Grants

AGENCY: Health Resources and Services Administration, PHS, HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that up to $2 million is available for grants under section 1910 of the Public Health Service (PHS) Act, 42 U.S.C. 300w-9, which authorizes the Department to make grants to States or accredited schools of medicine in States to support demonstration projects for the expansion and improvement of emergency medical services (EMS) for children. Up to four awards will be made under this notice. HRSA, through this notice, invites eligible applicants to apply for these grants. Funds were appropriated by Pub. L. 100-436.

DATE: To receive consideration, applications for the EMS for Children grants must be received by the close of business April 18, 1989, by the Grants Management Officer, at the address listed below. Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. Postmarked on or before the deadline date, and received in time for submission to the review group. A legibly dated receipt from a commerical carrier or the U.S. Postal Service will be accepted in lieu of postmark. private metered postmarks shall not be acceptable as proof of timely mailing. Applications received after the deadline will be considered late applications and will be returned to the applicant.

ADDRESS: Grant applications (PHS form 5161-1, with revised facesheet HHS Form 424, approved under OMB #0348-0006) and additional information regarding business, administrative or fiscal issues related to the awarding of grants under this notice may be obtained from: Mr. Waddell Avery, Grants Management Officer, Bureau of Maternal and Child Health and Resources Development (BMCHRD), Health Resources and Services Administration (HRSA), Room 11A-18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, 301-443-1440.

FOR FURTHER INFORMATION CONTACT: Requests for technical or programmatic information should be in writing and directed to the Director, Office of Maternal and Child Health, Bureau of Maternal and Child Health and Resources Development, Health Resources and Services Administration, Room 9-11, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, 301-443-2170.

SUPPLEMENTARY INFORMATION: The Emergency Medical Services for Children statute (section 1910 of the PHS Act, as amended), establishes a program of grants to States and accredited medical schools for demonstration projects for the expansion and improvement of EMS for children who need treatment for critical illnesses and injuries. For purposes of this grant program, the term "State" includes the

50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, The Northern Mariana Islands, Guam, American Samoa, the Republic of Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia. The term "school of medicine" for purposes of this program is defined as having the same meaning set forth in section 701(4) of the PHS Act (42 U.S.C. 292a(4). "Accredited" in this context has the same meaning set forth in section 701(5) of the PHS Act (42 U.S.C. 292a(5).

By statute, the grant period is for up to two years, subject to annual evaluation by the Secretary. Also, by statute no more than one grant can be made within a State—either to the State or an accredited medical school—in any given year. Another statutory provision limits the total number of grants which may be made in any fiscal year to four.

It is the intent of this grant program to stimulate the initiation or expansion of ongoing efforts in the States to reduce the problems of life-threatening pediatric trauma and critical illness. The Department does not intend to award demonstration grants which would duplicate grants previously funded under the Emergency Medical Services Systems Act of 1972 or which would be used simply to increase the availability of EMS funds allotted to the State under the Preventive Health Services Block grants.

Eligible Applicants

Applications for funding under section 1910 will be accepted from States and accredited schools of medicine. Applicants are encouraged to seek the participation and support of interested entities within the State, such as local government and health and medical organizations in the private sector, in developing the proposed demonstration project.

Application Evaluation Criteria

An appliction will be evaluated by consideration of the following factors:

(1) The adequacy of the applicant's description of the problem of pediatric trauma and critical illness in the State. The adequacy of sections of the application devoted to the special problems of (a) handicapped children and families; and (b) minority children and families (including Native Americans).

(2) The appropriateness of project outcome objectives in relation to the specific nature of the problems identified by the applicant.

(3) The soundness (in relation to the state of the art), appropriateness, comprehensiveness, cost effectiveness and responsiveness of the proposed methodology for achieving project goals and outcome objectives.

(4) The soundness of the plan for evaluating progress in achieving project outcome objectives.

(5) The extent of collaboration and coordination with other appropriate organizations involved in emergency medical services (EMS), health care, and public health and safety (e.g., injury prevention activities, the State EMS agency, the State Maternal and Child Health program, highway safety, rehabilitation programs) and the degree of involvement of the "community" (e.g., private sector, voluntary organizations).

(6) The soundness of the proposal, as set forth in the application, in terms of fiscal management, effective use of personnel, and ability to complete the proposal within the granted period.

(7) The extent to which the applicant's work under the grant is likely to demonstrate approaches to the reduction of the consequences of the pediatric life-threatening trauma and critical illness that will be useful and broadly applicable in other communities.

(8) The extent to which the applicant proposes to employ products and expertise of Emergency Medical Services for Children (EMSC) programs in other States, especially of current and former grantees of the Federal FMSC program. Such resources include, but are not limited to, technical assistance and consultation.

Allowable Costs

The basis for determining the allowability and allocability of costs charged to PHS grants is set forth in 45 CFR 92.22. The five separate sets of cost principles prescribed for grant recipients are: (1) OMB Circular A-87 for State and local governments; (2) OMB Circular A-21 for institutions of higher education; (3) 45 CFR Part 74, Appendix E for hospitals; (4) OMB Circular A-122 for nonprofit organizations; and (5) 48 CFR chapter 1, subpart 31.2 for for-profit (commercial) organizations.

Reporting Requirements

A successful applicant under this notice will submit reports in accordance with the provisions of the general regulations which apply under 45 CFR Part 74, Subpart J—Monitoring and Reporting of Program Performance, and Part 92.40 which applies to State and local governments.

Executive Order 12372

This program is subject to the provisions of Executive Order 12372; Intergovernmental Review of Federal Programs, 45 CFR Part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application packages to be made available under this notice will contain a listing of States which have chosen to set up such a review system and will provide a point of contact in those States for the review. Applicants should promptly contact their State single point of contact (SPOC) and follow their instructions prior to the submission of an application. The SPOC has 60 days after the deadline date to submit its review comments.

OMB Catalog of Federal Domestic Assistance

The OMB Catalog of Federal Domestic Assistance number is 13.127.

Date: December 20, 1988.

John H. Kelso,

Acting Administrator.

[FR Doc. 89-2410 Filed 2-1-89; 8:45 am]

BILLING CODE 4160-15-M

Public Health Service

National Toxicology Program; Chemicals (6) Nominated for Toxicological Studies, Formamide, etc.; Request for Comments

SUMMARY: On December 1, 1988, the Chemical Evaluation Committee (CEC) of the National Toxicology Program (NTP) met to review six chemicals nominated for toxicology studies and to recommend the types of studies to be performed, if any. With this notice, the NTP solicits public comments on the six chemicals.

FOR FURTHER INFORMATION CONTACT: Dr. Victor A. Fung, Chemical Selection Coordinator, National Toxicology Program, Room 2B55, Building 31, Natioinal Institutes of Health, Bethesda, Maryland 20892, (301) 496-3511.

SUPPLEMENTARY INFORMATION: As part of the chemical selection process of the National Toxicology Program, nominated chemicals which have been reviewed by the NTP Chemical Evaluation Committee (CEC) are published with request for comment in the Federal Register. This is done to encourage active participation in the NTP chemical evaluation process, thereby helping the NTP to make more informed decisions as to whether to select, defer or reject chemicals for toxicology study. Comments and data submitted in response to this request are reviewed and summarized by NTP technical staff, are forwarded to the

BEST COPY AVAILABLE

NTP Board of Scientific Counselors for use in their evaluation of the nominated chemicals, and then to the NTP Executive Committee for decision-making. The NTP chemical selection process is summarized in the **Federal Register**, April 14, 1981 (46 FR 21828), and also in the NTP FY 1988 *Annual Plan*, pages 16–19.

On December 1, 1988, the CEC met to evaluate six chemicals nominated to the NTP for toxicological studies. The following table lists the chemicals, their Chemical Abstract Service (CAS) registry numbers, and the types of toxicological studies recommended by the CEC at the meeting.

Chemical	CAS registry No.	Committee recommendations
Formamide	75-12-7	Carcinogenicity. Reproductive effects.
N-Methylformamide.	123-39-7	*Salmonella* assay.
Dimethylformamide.	68-12-2	Reproductive effects.
Indium phosphide.	22398-80-7	Stability studies. Toxicity including immunotoxicity. Carcinogenicity.
N-Methylpyrrolidone.	872-50-4	Quantitative dermal absorption studies. Reproductive effects. Carcinogenicity.
Tremolite (non-asbestiform).	14567-73-8	Carcinogenicity.

Three of the six chemicals have been previously selected for other types of toxicology studies by the NTP. Formamide was non-mutagenic in *Salmonella*, and negative for sex-linked recessive lethal mutations in Drosophila. Dimethylformamide was non-mutagenic in *Salmonella*, positive in the mouse lymphoma assay in one study and non-mutagenic in two other independent studies, and negative for chromosomal aberrations and sister chromatid exchanges in Chinese hamster ovary cells. Dimethylformamide was previously selected by NTP for inhalation carcinogenicity studies in rats and mice. N-Methylpyrrolidone was non-mutagenic in *Salmonella*.

Asbestos tremolite was negative in NTP feeding carcinogenicity studies in male and female rats.

Interested parties are requested to submit pertinent information. The following types of data are of particular relevance:

(1) Modes of production, present production levels, and occupational exposure potential.

(2) Uses and resulting exposure levels, where known.

(3) Completed, ongoing and/or planned toxicologic testing in the private sector including detailed experimental protocols and results, in the case of completed studies.

(4) Results of toxicological studies of structurally related compounds.

Please submit all information in writing by March 6, 1989. Any submissions received after the above date will be accepted and utilized where possible.

Dated: January 26, 1989.

David P. Rall,

Director, National Toxicology Program.

[FR Doc. 89-2407 Filed 2-1-89; 8:45 am]

BILLING CODE 4140-01-M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Penicillin VK

The HHS' National Toxicology Program today announces the availability of the Technical Report describing the toxicology and carcinogenesis studies of penicillin VK, a widely used antibiotic for treatment of gram-positive coccal infections.

Two-year toxicology and carcinogenesis studies were conducted by administering penicillin VK in corn oil by gavage to 50 rats of each sex and 50 mice of each sex at doses of 0, 500 or 1,000 mg/kg 5 days per week for 104 weeks.

Under the conditions of these 2-year gavage studies, there was no evidence of carcinogenic activity [1] of penicillin VK for F344/N rats or for B6C3F$_1$ mice administered 500 or 1,000 mg/kg penicillin VK in corn oil by gavage, 5 days per week for 2 years. Nonneoplastic lesions were seen in the glandular stomach of dosed mice. Decreased survival of low and high dose male rats and of high dose female rats reduced the sensitivity of the studies for determining the presence or absence of a carcinogenic response in this species.

The study scientist for these studies is Dr. June K. Dunnick. Questions or comments about the contents of this Technical Report should be directed to Dr. Dunnick at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541-4811; FTS: 629-4811.

[1] The NTP uses five categories of evidence of carcinogenic activity to summarize the strength of the evidence of carcinogenicity observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"); one category for no observable effects ("no evidence"); and one category for experiments that cannot be evaluated because of major flaws ("inadequate study").

Copies of *Toxicology and Carcinogenesis Studies of Penicillin VK in F344/N Rats and B6C3F$_1$ Mice (Gavage Studies)* (TR 336) are available without charge from the NTP Public Information Office, MD B2-04, P.O. Box 12233, Research Triangle Park, NC 27709. Telephone: (919) 541-3991; FTS: 629-3991.

Dated: January 25, 1989.

David P. Rall,

Director.

[FR Doc. 89-2406 Filed 2-1-89; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-967-4230-15; AA-8447-B; AA-8447-A2]

Alaska Native Claims Selection; Eyak Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613a, will be issued to The Eyak Corporation for approximately 3,820 acres. The lands involved are in the vicinity of Eyak, Alaska.

Copper River Meridian, Alaska

T. 15 S., R. 2 W. (Partially Surveyed)
Secs. 3 to 6;
Secs. 8 and 9.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the CORDOVA TIMES. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until March 6, 1989 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Terry R. Hassett,

Chief, Branch of KCS Adjudication.

[FR Doc. 89-2500 Filed 2-1-89; 8:45 am]

BILLING CODE 4310-JA-M

[ES-970-09-4120-04; ALES 38333]

Coal Exploration License; Alabama

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of invitation.

SUMMARY: Coal Exploration License Application ALES 38333. Members of the public are hereby invited to participate with River King Energy Company in a program for the exploration of coal deposits owned by the United States of America in the following described lands located in Jefferson County, Alabama;

Huntsville Meridian, Alabama

T. 17 S., R. 6 W.
Sec. 28, S½SE¼.

Total acres: 80.00 more or less.

Any party electing to participate in this exploration program shall notify, in writing, both the State Director, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304; and River King Energy Company, Inc., P.O. Box 1101, Jasper, Alabama 35502. Such written notice must refer to serial number ALES 38333 and must be received no later than 30 calendar days after publication of this Notice in **Federal Register**. This Notice will be published once a week for 2 consecutive weeks. The proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management. Copies of the exploration plan as submitted by River King Energy Company, Inc. may be examined during normal business hours at the Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia.

ADDRESS: Inquiries should be sent to: State Director, Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304.

FOR FURTHER INFORMATION CONTACT: Ms. Frances Javes, Branch of Minerals Adjudication at (703) 461-1455.

G. Curtis Jones,

State Director.

[FR Doc. 89-2427 Filed 2-1-89; 8:45 am]

BILLING CODE 4310-GJ-M

Fortymile River Final Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to section 102(2)c of the National Environmental Policy Act of 1969, as amended, the Department of the Interior, Bureau of Land Management (BLM) prepared a final environmental impact statement (FEIS) covering placer mining within the drainage of the Fortymile National Scenic and Recreational River.

The drainage area is located approximately 120 miles southeast of Fairbanks, Alaska, and encompasses nearly 3.1 million acres of land.

Primarily, the issues addressed are the cumulative impacts of multiple mining operations on the environment (particularly water quality), subsistence uses in and around the study area, and BLM permitting and monitoring procedures under the Alaska National Interest Lands Conservation Act.

Comments on the draft EIS have been considered in the preparation of this document. A proposed action and four alternatives present management options ranging from emphasis on enforcement of regulations under 43 CFR Part 3809 to a "no mining" alternative. The proposed action has been modified from the draft document to include enforcement of water quality standards of the Environmental Protection Agency and the State of Alaska, and to emphasize reclamation. The environmental consequences of all the alternatives are analyzed and presented.

DATES: The 30-day waiting period for the FEIS will begin on the day that the Environmental Protection Agency publishes its Notice of Availability.

FOR FURTHER INFORMATION CONTACT: Howard Levine, Project Manager, U.S. Bureau of Land Management, Alaska State Office, Section 918, 222 West 7th Avenue, #13, Anchorage, Alaska 99513, or at (907) 271-3114.

Lester K. Rosenkrance,

Acting State Director.

[FR Doc. 89-2404 Filed 2-1-89; 8:45 am]

BILLING CODE 4310-JA-M

[CA-940-09-4212-10-CACA 22929]

Conveyance of Mineral Interests in California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Segregative Effect—Conveyance of the Reserved Mineral Interests.

SUMMARY: This notice will describe lands inadvertently omitted from the land description in a conveyance of mineral interest application.

FOR FURTHER INFORMATION CONTACT: Judy Bowers, BLM California State Office, 2800 Cottage Way, Room E-2841, Federal Office Building, Sacramento, California 95825 (916) 978-4815.

The land description for serial No. CACA 22929 53 FR 39352, October 6, 1988, is hereby corrected by adding the following lands which total 80 acres:

T. 4 S., R. 16 E., Mount Diablo Meridian,
Sec. 36, NE¼SE¼, SW¼SE¼.

Date: January 25, 1989

Nancy J. Alex

Chief, Lands Section, Branch of Adjudication & Records.

[FR Doc. 89-2486 Filed 2-1-89; 8:45 am]

BILLING CODE 4310-40-M

[CA-067-09-4333-10]

Route of Travel Designations for West Mesa Limited Use Area; Imperial County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Designation of routes of travel.

SUMMARY: The purpose of these route designations is to provide for the management and protection of public land resources, persons and property using the public lands, and to minimize conflicts among the various uses of those lands. The "California Desert Conservation Area Plan" (1980) calls for vehicle access that avoids or minimizes damage or degradation of the natural, cultural, and aesthetic values of the desert. The Plan also states that the Bureau of Land Management (BLM) should provide a reasonable network of "routes of travel" which meet the needs of desert users, including commercial users, private landowners, and other public land managing agencies in the California Desert Conservation Area.

The West Mesa area of the El Centro Resource Area was brought under BLM management through a 1985 amendment to the California Desert Plan and an associated cooperative agreement between the BLM, the Bureau of Reclamation, and the U.S. Navy. This area was designated either "Open" or "Limited Use" by the 1985 Plan amendment and an "Area of Critical Environmental Concern" (ACEC) by amendment to the Plan in 1987. The designation of a portion of the West Mesa area as "Limited Use" is due to its importance as habitat for a Federal candidate II threatened wildlife species

(Flat-tailed horned lizard) and because of sensitive archaeological resources. The West Mesa Limited Use Area will be a zone in which motor vehicle travel is restricted to a system of approved routes and where all uses in the designated area will be compatible with the management and protection of the significant natural and cultural resources present.

A public comment period on the draft route designations was held between June 27, 1988 and August 10, 1988. Public input and BLM resource inventory data was utilized in making preliminary final route of travel decisions.

Public comments on preliminary final route decisions ended December 23, 1988. All comments received on the preliminary final decisions supported the decisions. The majority of routes in the West Mesa Limited Use Area are approved for use. However, some routes have been closed to all motorized vehicle use to protect public safety by limiting access to active Navy target zones, and manage sensitive wildlife and cultural resources. These routes are described in detail in "West Mesa Vehicle Route Designation Decisions/ Rationale" and "Preliminary Final Decisions for West Mesa Limited Use Area Route of Travel Designations." These documents include detailed maps of these routes and are available for public review in the El Centro Resource Area Office and the California Desert District Office in Riverside, California.

EFFECTIVE DATE: These route designations will be effective February 15, 1989 and will remain in effect until rescinded or modified by the authorized officer. Enforcement of these decisions will be implemented as routes are signed and information made available to the public.

FOR FURTHER INFORMATION CONTACT: Greg Hill, Outdoor Recreation Planner, Bureau of Land Management, El Centro Resource Area, 333 South Waterman Avenue, El Centro, California 92243, (619) 352-5842 (FTS 895-6616).

SUPPLEMENTARY INFORMATION: The authority for establishing vehicle route designations are provided in the Federal Land Policy and Management Act (43 U.S.C. 1701 *et seq.*), Executive Order 11644 (Use of Off-Road Vehicles on the Public Lands), and 3 CFR 74.332 as amended by Executive Order 11989, 42 FR 26959 (May 25, 1977).

Any person who violates or fails to comply with vehicle route designations as governed by 43 CFR Part 8341, is subject to arrest, conviction, and punishment pursuant to appropriate laws and regulations. Such punishment may be a fine of not more than $1,000.00 and/or imprisonment for not longer than twelve months.

Date: January 25, 1989.

Wesley T. Chambers,

District Manager.

[FR Doc. 89-2388 Filed 2-1-89; 8:45 am]

BILLING CODE 4310-40-M

[WY-920-09-4111-15; WYW103575]

Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

January 26, 1989.

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW103575 for lands in Washakie County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW103575 effective August 1, 1988, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 89-2389 Filed 2-1-89; 8:45 am]

BILLING CODE 4310-22-M

[NV-930-09-4212-11; N-41952]

Realty Action; Lease or Sale of Public Land for Recreation and Public Purposes; Douglas County, NV

AGENCY: Bureau of Land Management.

ACTION: Notice of realty action classifying public land.

SUMMARY: The following described 10 acres of public land have been examined and identified as suitable to be classified for lease or sale under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869, et seq.):

Mount Diablo Meridian, Nevada

T. 11 N., R. 21 E.,
Sec. 17, W½W½NW¼NW¼.

A 5-year lease with the option to renew or to purchase upon substantial development will be offered to Douglas County. The 10 acres of land would be used for expansion of the China Spring Youth Camp for juvenile offenders. It would be used for the Camp director and staff quarters, expansion of the existing vegetable gardens and development of livestock corrals and animal pens.

The land is not required for federal purposes. Classification and issuance of a lease is consistent with Bureau planning for this area and would be in the public interest.

The lease and/or patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior.

Detailed information concerning this action is available for review at the Bureau of Land Management Carson City District Office.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including location under the general mining laws, but not the Recreation and Public Purposes Act, the mineral leasing laws, and material sales. The segregative effect will terminate as specified in an opening order to be published in the **Federal Register**.

For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89706. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this notice will become effective 60 days from the date of publication in the **Federal Register**.

Dated: January 13, 1989.

James W. Elliott,

District Manager.

[FR Doc. 89-2462 Filed 2-1-89; 8:45 am]

BILLING CODE 4310-HC-M

[CA-010-09-4212-13; CA 23982]

Realty Action; Exchange of Public and Private Lands in El Dorado, Nevada, Placer, San Diego, Tuolumne, Yuba and Mono Counties, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Amendment of notice of realty action; exchange of public and private lands (CA 23982).

SUMMARY: This document amends the Notice of Realty Action (CA 23982) published in Vol. 54, No. 2, pages 192 and 194, January 4, 1989. The subject heading was incorrect and should read as set forth above. Nevada refers to a county in California. The above notice is further amended to include additional public lands that are being considered for exchange; the additional (selected) public lands are described as follows:

Nevada County, California

T. 16 N., R. 7 E., M.D.M.
Sec. 25, SE¼.
T. 16 N., R. 8 E., M.D.M.
Sec. 19, S½NE¼;
Sec. 29, All public land in S½SW¼;
Sec. 30, All public land;
Sec. 31, All public land in NE¼.
T. 16 N., R. 9 E., M.D.M.
Sec. 8, Lot 1 and mineral survey 2861.

Aggregating approximately 930.00 acres, more or less.

SUPPLEMENTARY INFORMATION: Publication of this notice in the **Federal Register** segregates the above described public lands from settlement, location and entry under the public land laws and the mining laws for a period of two (2) years from the date of first publication.

DATE: On or before March 20, 1989, interested parties may submit comments to the District Manager, c/o Area Manager, Folsom Resource Area Office, 63 Natoma Street, Folsom, California 95630.

FOR FURTHER INFORMATION CONTACT: Mike Kelley, Folsom Resource Area Office, (916) 985-4474, or at the address listed above.

Date: January 24, 1989.

Simotha Vickers,

Acting District Manager.

[FR Doc. 89-2432 Filed 2-1-89; 8:45 am]

BILLING CODE 4310-40-M

[CA-010-09-4212-13; CA 22479]

Realty Action; Termination of Proposed Exchange of Public Lands in Placer and Yuba Counties, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; termination of proposed exchange of public lands (CA 22479).

SUMMARY: This Notice is to advise the public that the proposed exchange of public lands (CA 22479) is terminated.

SUPPLEMENTARY INFORMATION: The publication of a notice of realty action in the **Federal Register** on May 19, 1988, Vol. 53, No. 97, page 17984, proposed the exchange of public lands in Placer and Yuba Counties, California. The Notice segregated the public lands from settlement, location and entry under the public land laws and the mining laws. The proposed exchange has been terminated and the segregation of the land no longer serves a purpose. Upon publication of this Notice the segregation imposed by this proposed exchange (CA 22479) will be terminated for the following described lands:

Placer County, California

T. 15 N., R. 10 E., M.D.M.
Sec. 14, Lot 1, N½NE¼;
Sec. 23, S½S½NE¼, N½SE¼, SW¼SE¼, NW¼SE¼SE¼;
Sec. 26, Lots 1,2,6,9,11, W½NW¼SW¼, SW¼SW¼, S½SE¼SW¼;
Sec. 5, W½NE¼, N½N½NW¼, SW¼NW¼NW¼, W½SW¼NW¼.

Yuba County, California

T. 19, N., R. 6 E., M.D.M.
Sec. 13, Lots 1-7, inclusive, NW¼NW¼.

Containing 643.61 acres, more or less.

The above described lands are currently segregated by another exchange (CA 23982) and the status of the land, insofar as its availability for appropriation under the general land laws, will not be changed.

At 10:00 a.m. March 3, 1989, the following described lands will be open to the public land laws generally, subject to valid existing rights, the provision of existing withdrawals and the requirements of applicable law. These lands will also be opened to mineral location under the United States mining laws. The lands have been and continue to be open to application and offers under the mineral leasing laws.

Placer County, California

T. 15 N., R. 10 E., M.D.M.
Sec. 22, E½SE¼, SW¼SE¼.

Containing 120.00 acres, more or less.

All valid applications received at or prior to 10:00 a.m. on March 3, 1989, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

FOR FURTHER INFORMATION CONTACT: Michael G. Kelley, Realty Specialist, Bureau of Land Management, Folsom Resource Area, 63 Natoma Street, Folsom, California 95630: (916) 985-4474.

Date: January 24, 1989.

Simotha Vickers,

Acting District Manager.

[FR Doc. 89-2433 Filed 2-1-89; 8:45 am]

BILLING CODE 4310-40-M

[CO-942-09-4520-12]

Colorado; Filing of Plats of Survey

January 27, 1989.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 a.m., January 27, 1989.

The plat representing the dependent resurvey of portions of the west boundary and subdivisional lines and the subdivision of sections 17, 19, and 20, T. 14 S., R. 93 W., Sixth Principal Meridian, Colorado, Group No. 842, was accepted January 9, 1989.

This survey was executed to meet certain administrative needs of this Bureau.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of sections 22, 23, and 27, T. 2 S., R. 90 W., Sixth Principal Meridian, Colorado, Group No. 840, was accepted November 25, 1988.

The plat representing the dependent resurvey of a portion of the subdivision of section 8 and a metes-and-bounds survey in section 8, T. 5 S., R. 80 W., Sixth Principal Meridian, Colorado, Group No. 904, was accepted December 30, 1988.

These surveys were executed to meet certain administrative needs of the U.S. Forest Service.

The plat representing the corrective dependent resurvey of a portion of the subdivisional lines, T. 36 N., R. 7 W., New Mexico Principal Meridian, Colorado, Group No. 869, was accepted January 10, 1989.

This survey was executed to comply with the Interior Board of Land Appeals approval of the settlement agreement: *Peter Paul Groth*, 99 IBLA 99 104 (1987).

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215.

Jack A. Eaves,

Chief, Cadastral Surveyor for Colorado.

[FR Doc. 89-2392 Filed 2-1-89; 8:45 am]

BILLING CODE 4310-JB-M

[ID-030-09-4212-13; I-25586]

Realty Action; Private Exchange Involving Public Lands in Jefferson County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Private exchange involving public lands in Jefferson County, Idaho.

The surface estate of the following described public land has been found suitable for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2756, 43 U.S.C. 1716):

Boise Meridian, Idaho

T. 7 N., R. 37 E.
Sec. 17, SE¼NW¼;
Sec. 18, NE¼SE¼.

The area described contains 80 acres, more or less.

The publication of this notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. The segregative effect will terminate upon issuance of patent to the State of Idaho or upon expiration of two years from the effective date, or by publication of a Notice of Termination by the Authorized Officer, whichever comes first.

In exchange for these lands the United States will acquire the following described lands in Fremont and Jefferson Counties, Idaho from Dyle Robertson:

Boise Meridian, Idaho

T. 7 N., R. 37 E.
Sec. 28, NE¼SW¼;
T. 8 N., R. 39 E.
Sec. 18, SE¼NW¼.

The area described contains 80 acres, more or less.

This exchange is consistent with BLM and local planning for the lands involved. The public interest will be well served by completing the exchange.

The value of the lands to be exchanged is equal.

The patent, when issued, will contain the following reservation to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890, (26 Stat. 391; 43 U.S.C. 945).

Detailed information concerning the exchange, including the environmental assessment is available for review at the Idaho Falls District, Bureau of Land Management, 940 Lincoln Road, Idaho Falls, Idaho 83401.

For a period of 45 days from the date of publication of this notice, interested parties may submit comments to the District Manager, Idaho Falls District, at the above address. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Dated: January 24, 1989.

Lloyd H. Ferguson,

District Manager.

[FR Doc. 89-2424 Filed 2-1-89; 8:45 am]

BILLING CODE 4310-GG-M

[ID-942-09-4730-12]

Idaho; Filing of Plats of Survey

The plat of survey of the following described land, was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 10:00 a.m., January 27, 1989.

The plat representing the dependent resurvey of a portion of the subdivisional lines and a portion of the restored original meanders of the left bank of the Snake River; the subdivision of section 16 and the survey of certain irregular lots in section 16, T. 3N., R. 41 E., Boise Meridian, Idaho, Group 696, was accepted January 23, 1989.

This survey was executed to meet certain administrative needs by this Bureau.

All inquiries about this land should be sent to the Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

January 27, 1989.

[FR Doc. 89-2393 Filed 2-1-89; 8:45 am]

BILLING CODE 4310-GG-M

[CA-940-09-4214-10; CACA 18158 and CACA 24047]

Cancellation of Withdrawal Application and Proposed Withdrawal; California

January 27, 1989.

SUMMARY: The Bureau of Land Management has cancelled its application CACA 18158 to withdraw 8,320 acres of public land from appropriation under the public land laws, including the mining laws, to provide a security zone to protect the highly classified Sea Site I electronic warfare installation at the Naval Weapons Center, China Lake. The lands are included in the China Lake Unification withdrawal application which is presently under consideration by the Congress. The segregation imposed by application CACA 18158 terminated January 17, 1988, by operation of law. The U.S. Department of the Navy has filed an application for the same land for a temporary withdrawal in aid of legislation in conjunction with and a part of the aforesaid military withdrawal application. The withdrawal is requested for a period of 5 years pending Congressional action. This notice closes the lands for up to 2 years from appropriation under the public land laws, including the mining laws. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: February 2, 1989.

ADDRESS: Comments should be sent to the California State Director, BLM, 2800 Cottage Way, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, BLM California State Office, 916-978-4815.

SUPPLEMENTARY INFORMATION: Withdrawal application CACA 18158 is hereby cancelled. The Notice of Proposed Withdrawal and Opportunity for a Public Hearing was published in the **Federal Register** on January 17, 1986 (51 FR 2585).

1. The segregative effect imposed by application CACA 18158 terminated on January 17, 1988, as to the following described land:

Mount Diablo Meridian

T. 27 S., R. 43 E.,
Secs. 31 to 34, inclusive.
T. 28 S., R. 43 E.,
Secs. 4 to 9, inclusive;
Secs. 17 to 19, inclusive.

The area described contains 8,320 acres in San Bernardino County.

2. On January 6, 1989, the U.S. Department of the Navy filed an application to withdraw the land described in paragraph 1 from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Public meetings were held in Ridgecrest, California, on February 6 and 16, 1984, and in Lancaster, California, on November 15, and 16, 1984, in connection with the China Lake Unification withdrawal application.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. No type of temporary land use will be permitted during this segregative period.

The temporary segregation of the lands in connection with this withdrawal application shall not affect the administrative jurisdiction over the lands, and the segregation shall not have the effect of authorizing any use of the lands by the Department of the Navy.

Nancy J. Alex,

Chief, Lands Section, Branch of Adjudication and Records.

[FR Doc. 89-2390 Filed 2-1-89; 8:45 am]

BILLING CODE 4310-40-M

[CO-930-09-4220-10; COC-49496]

Proposed Withdrawal; Opportunity for Public Meeting; Colorado

January 25, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of Energy has requested withdrawal of public land near Gunnison, Colorado, for 5 years. The land is proposed as a permanent disposal site for radioactive uranium mill tailings. If this site is designated for permanent disposal, Administrative Jurisdiction will be transferred to Department of Energy for management. This notice will segregate the land from operation of the public land laws, including location and entry under the mining laws for up to 2 years. The land will continue to be open to mineral leasing.

DATE: Comments on this proposed withdrawal or requests for a public meeting must be received on or before May 3, 1989.

ADDRESS: Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius at (303) 236-1768.

SUPPLEMENTARY INFORMATION: The Department of Energy filed application on January 6, 1989, to withdraw the following described public land from settlement, sale, location or entry under the public land laws, including the mining laws, subject to valid existing rights, pursuant to the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714:

New Mexico Principal Meridian

Landfill Site

T. 49 N., R. 1 E.,
Sec. 10, E½SE¼SW¼, SW¼SE¼;
Sec. 14, S½SW¼NW¼, N½NW¼SW¼;
Sec. 15, W½NE¼NE¼, W½NE¼, SE¼NE¼, E½E½NW¼, NE¼NE¼ SW¼, N½N½SE¼.

The area described aggregates approximately 330 acres in Gunnison County, Colorado.

The purpose of this withdrawal is to segregate the land and provide for protection until requirements are completed for a permanent transfer of administrative jurisdiction to the Department of Energy under the authority of the Uranium Mill Tailings Radiation Control Act of 1978; 92 Stat. 3021, 42 U.S.C. 7901, as amended.

Effective on the date of publication, these lands are segregated from all forms of appropriation under the public land laws, including the mining laws. The lands remain open to mineral leasing subject to concurrence by the Department of Energy, the Nuclear Regulatory Commission, and the Department of the Interior. The lands will remain open to surface uses which are compatible with the project until the withdrawal is final and until construction is started.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with this proposed withdrawal. If the authorized officer determines that a meeting should be held, the meeting will be scheduled and conducted in accordance with the Bureau of Land Management Manual, section 2351.16B.

All persons who desire to submit comments, suggestions, or objections, or who desire a public meeting for the purpose of being heard on this proposed action must submit a written request to the Colorado State Director within 90 days of the publication of this notice.

This application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated from operation of the public land laws as specified above unless the application is denied or cancelled or the transfer of administrative jurisdiction takes place prior to that date.

The temporary segregation of this land in connection with the application shall not affect the administrative jurisdiction over the land and will not authorize any use of the land by the Department of Energy.

Jenny Saunders,

Acting Chief, Branch of Realty Programs.

[FR Doc. 89-2391 Filed 2-1-89; 8:45 am]

BILLING CODE 4310-JB-M

Bureau of Reclamation

Proposed Milltown Hill Dam and Reservoir, Elk Creek Division, Umpqua River Project, OR

AGENCY: Bureau of Reclamation (USBR), Interior.

ACTION: Notice of intent to prepare a draft environmental impact statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Bureau of Reclamation (Reclamation) proposes to prepare a draft environmental impact statement (EIS) on the proposed Milltown Hill Dam and Reservoir, Elk Creek Division, Umpqua River Project, Oregon. Reclamation and Douglas County, Oregon, propose to develop a dam, reservoir, powerhouse, and related facilities within the Elk Creek basin. The purpose of the project is to provide municipal, rural, domestic, and industrial water supplies; to provide full and supplemental irrigation service for commercial and small tract irrigation for about 5,300 acres; to provide instream flows and other habitat improvements to enhance anadromous fish production; and to provide flood control to lands and improvements along the flood plain. The project will also provide increased recreation opportunities and enhance certain wildlife values.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Prange, Environmental Specialist, Bureau of Reclamation (Code: PN-150), Federal Building and U.S. Courthouse, Box 043, 550 West Fort Street, Boise, ID 83724; Telephone: (208) 334-1208.

SUPPLEMENTARY INFORMATION: Previous studies performed by Douglas County in the Elk Creek basin indicated that a dam and reservoir near the Milltown Hill site provided the most cost effective method for meeting the basin's water needs. Various dam sizes are being considered at two sites near Milltown Hill. The proposal involves a 36,000 acre-foot reservoir impounded by a dam at a site about 480 feet downstream of the Walker Creek confluence (SE1/4 of Sec. 4, T. 23 S., R. 4 W., W.M.). As presently conceived, the dam would have a crest elevation of 803 feet and a structural height of about 215 feet. The crest length would total about 1,065 feet. Implementing this alternative would require acquisition of about 2,360 acres of dryland pasture now in private ownership.

Two alternatives, involving smaller reservoirs, will also be considered in the EIS. These alternatives would eliminate commercial irrigation to the Yoncalla

Valley area yielding a total irrigated area of about 2,800 acres and would reduce the amount of water available for instream flows. One alternative would result in a reservoir sized at about 13,000 acre-feet at the same location as the preferred alternative. The second alternative would result in a reservoir of about 15,000 acre-feet at site 3,000 feet upstream. The second alternative would require more storage due to a loss of inflow from Walker Creek. Implementing either of these alternatives would require acquisition of about 1,000 acres of dryland pasture now in private ownership. A no action alternative will also be included in the EIS.

The draft EIS is expected to be completed and available for review and comment by the end of 1989.

The present investigation began in late 1985. Since that time, Douglas County and Reclamation have held public meetings to discuss study progress with interested individuals. Douglas County and Reclamation have also maintained coordination with resource management agencies having an interest in the study. Douglas County sponsored a field trip in August 1988 for interested environmental groups and agencies. Additional public meetings will be scheduled to encourage public and agency involvement in the study and the environmental analysis. This process has provided and will continue to provide considerable opportunity for addressing the alternatives and related environmental issues. Therefore, no formal scoping meetings are planned in connection with preparation of the draft EIS.

Anyone interested in more information concerning the study or who has suggestions as to significant environmental issues should contact Mr. Richard Prange at the above address.

Joe D. Hall,

Deputy Commissioner.

[FR Doc. 89-2405 Filed 2-1-89; 8:45 am]

BILLING CODE 4310-09-M

Minerals Management Service

Development Operations Coordination Document; Mark Producing

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Mark Producing has submitted a DOCD describing the activities it proposes to conduct on Leases OCS–G 7660 and 7661, Blocks 282 and 283, respectively, East Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on January 20, 1989. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. W. Williamson; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2874.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: January 23, 1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89-2437 Filed 2-1-89; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Walter Oil & Gas Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Walter Oil and Gas Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 5547, Block 160, Ship Shoal Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on January 26, 1989. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: January 20, 1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89-2394 Filed 2-1-89; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Chesapeake and Ohio Canal National Historical Park Commission; Meeting

Notice is hereby given in accordance with Federal Advisory Committee Act that a meeting of the Chesapeake and Ohio Canal National Historical Park Commission will be held Saturday, March 11, 1989, at the YMCA in Brunswick, Maryland.

The Commission was established by Pub. L. 91-664 to meet and consult with the Secretary of the Interior on general policies and specific matters related to the administration and development of the Chesapeake and Ohio Canal National Historical Park.

The members of the Commission are as follows:

Mrs. Sheila Rabb Weidenfeld, Chairman, Washington, DC
Mrs. Dorothy Tappe Grotos, Arlington, Virginia
Mr. Samuel S.D. Marsh, Bethesda, Maryland
Mr. Keith A. Kirk, Hancock, Maryland
Mr. James F. Scarpelli, Sr., Cumberland, Maryland
Ms. Elise B. Heinz, Arlington, Virginia
Professor Charles P. Poland, Jr., Chantilly, Virginia
Captain Thomas F. Hahn, Shepherdstown, West Virginia

Colonel Ralph Albertazzie, Martinsburg, West Virginia
Mr. Rockwood H. Foster, Washington, DC
Mr. Barry A. Passett, Washington, DC
Mrs. Jo Reynolds, Potomac, Maryland
Ms. Nancy C. Long, Glen Echo, Maryland
Mrs. Minny Pohlmann, Dickerson, Maryland
Dr. James H. Gilford, Frederick, Maryland
Mr. Edward K. Miller, Hagerstown, Maryland
Mrs. Sue Ann Sullivan, Williamsport, Maryland
Mrs. Josephine L. Beynon, Cumberland, Maryland
Mr. Robert L. Ebert, Cumberland, Maryland

Matters to be discussed at this meeting include:

1. Old and new business
2. Superintendent's report
3. Committee reports, Plans and Projects Committee, Recreation Policies and Issues Committee, Resource Protection Committee
4. Public comments

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Richard L. Stanton, Superintendent, C&O Canal National Historical Park, P.O. Box 4, Sharpsburg, Maryland 21782.

Minutes of the meeting will be available for public inspection six (6) weeks after the meeting at Park Headquarters, Sharpsburg, Maryland.

Date: January 20, 1989.

Robert Stanton,

Regional Director, National Capital Region.

[FR Doc. 89-2485 Filed 2-1-89; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-234 (Final—Court Remand)]

Carbon Steel Structural Shapes From Norway; Court Remand

AGENCY: United States International Trade Commission.

ACTION: Remand proceedings.

SUMMARY: The Commission hereby gives notice that is staying the remand proceedings in Carbon Steel Structural Shapes from Norway, Inv. No. 731-TA-234 (Final) in accordance with the United States Court of International Trade's (CIT) order dated December 22, 1988. The Commission began these remand proceedings on November 30, 1988 (53 FR 52513, December 28, 1988) pursuant to CIT order granting the Commission 75 days from November 30, 1988, in which to reach a remand determination consistent with *Chaparral Steel Company* v. *United States*, Slip Op. 88-129 (September 28, 1988). On December 22, 1988, however, the CIT amended its order remanding the case to the Commission in order to allow for an immediate appeal to the U.S. Court of Appeals for the Federal Circuit (Federal Circuit), and stayed all further proceedings before the Commission and the CIT pending the Federal Circuit's resolution of the controlling question of law or its denial of permission for interlocutory appeal. Accordingly, the Commission is staying these remand proceedings in conformity with the CIT order.

EFFECTIVE DATE: December 22, 1988.

FOR FURTHER INFORMATION CONTACT: Craig McKee (202–252–1117), Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

Authority: This investigation, conducted under authority of the Tariff Act of 1930, title VII, is stayed by order of the CIT. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR § 207.20).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: January 30, 1989.

[FR Doc. 89-2497 Filed 2-1-89; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-290; Sub-50X]

Central of Georgia Railroad Co.; Discontinuance Exemption for Operations Between Griffin and Senoia, GA

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to discontinue service over its 12.7-mile line of railroad between milepost C–257.4 near Griffin and milepost C–270.1 at Senoia, GA.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years and that overhead traffic has been rerouted; and (2) no formal complaint filed by a user of rail service on the line (or a State or local governmental entity acting on behalf of such user) regarding cessation of service

over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the discontinuance shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment-Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been recieved, this exemption will be effective March 4, 1989 (unless stayed pending reconsideration). Petitions to stay regarding matters that do not involve environmental issues [1] and formal expressions of inent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [2] must be filed by February 13, 1989. Petitions for reconsideration, must be field by February 22, 1989 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with Commission should be sent to applicant's representative: Roger A. Peterson, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510—2191.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this discontinuance.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by February 7, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275–7316. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental conditions will be imposed, where appropriate, in a subsequent decision.

Decided: January 27, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–2428 Filed 2–1–89; 8:45 am]

BILLING CODE 7035-01-M

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[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on evnironmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C.2d 400 (1988). Any entity seeking a stay involving enviroemental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 *I.C.C. 2d 164 (1987), and final rules published in the* **Federal Register** on December 22, 1987 (52 FR 48440–48446).

[Finance Docket No. 31400]

Chicago and North Western Transportation Co.; Trackage Rights Exemption; Burlington Northern Railroad Co.

Burlington Northern Railroad Company has agreed to grant overhead trackage rights to Chicago and North Western Transportation Company over its line between milepost 203.12 at Casper, WY and milepost 134.61 at Orin, WY. The trackage rights became effective on or after January 20, 1989.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with th Commission and served on: Mack H. Shumate, Jr., Chicago and North Western Transportation Company, One North Western Center, Chicago, IL 60606.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: January 25, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–2429 Filed 2–1–89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Federal Water Pollution Control Act; Jacquin Florida Distilling Co.

In accordance with Justice Department policy, 28 CFR 50.7, notice is hereby given that on December 6, 1988, a proposed Consent Decree in *United States v. Jacquin Florida Distilling Company*, Civil Action No. 87–1209–CIV–T–150 was lodged with the United States District Court, Middle District of Florida. The proposed Consent Decree concerns Jacquin's violations of its National Pollution Discharge Elimination System (NPDES) permit. Under the Consent Decree, Jacquin is required to pay a penalty of $120,000, and come into full compliance with the Federal Water Pollution Control Act. Stipulated penalties are provided for in the event Jacquin fails to comply with the terms of the Consent Decree. The Consent Decree terminates when the Jacquin fulfills all the conditions of the Decree, including payment of the civil penalty and any stipulated penalties which may be due, and has been in compliance with all the terms and conditions of the Consent Decree for a period of one year.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to Jacquin Florida Distilling Company, D.O.J. 90–5–1–1–2760.

The proposed Consent Decree may be examined at the office of the United States Attorney, Middle District of Florida, United States Courthouse, Tampa, Florida and at the Region IV, Office of the Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.40 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–2490 Filed 2–1–89; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 88–92]

Kissena Pharmacy, Inc., Flushing, NY; Hearing

Notice is hereby given that on September 1, 1988, the Drug Enforcement Administration, Department of Justice, issued to Kissena Pharmacy, Inc., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AK8695148 and deny any pending applications for renewal.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Friday, February 3, 1989, commencing at 10:00 a.m., at the United States Court of Appeals for the Federal Circuit, Courtroom 2, 717 Madison Place NW., Washington, DC.

Dated: January 27, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89–2411 Filed 2–1–89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88–83]

Jay Blaine Sorenson, D.D.S., Salt Lake City, UT; Hearing

Notice is hereby given that on August 30, 1988, the Drug Enforcement Administration, Department of Justice, issued to Jay Blaine Sorenson, D.D.S., an Order to Show Cause as to why the Drug Enforcement Administration should not deny your application for a DEA Certificate of Registration.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Thursday, February 23, 1989, commencing at 9:30 a.m., at the State Court, Metropolitan Hall of Justice, Courtroom 301, 240 East, 400 South, Salt Lake City, Utah.

Dated: January 26, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89–2412 Filed 2–1–89; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (89–04)]

NASA Advisory Council (NAC), Aerospace Medicine Advisory Committee (AMAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aerospace Medicine Advisory Committee.

DATE AND TIME: February 8, 1989; 8:30 a.m. to 5 p.m., February 9, 1989, 8:30 a.m. to 5 p.m., and February 10, 1989, 8:30 a.m. to 12 noon.

ADDRESS: NASA Headquarters, Room 226A, 600 Independence Avenue, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Janis Stoklosa, Code EBM, National Aeronautics and Space Administration, Washington, DC 20546 (202/453–1540).

SUPPLEMENTARY INFORMATION: The Aerospace Medicine Advisory Committee consults with and advises the NASA Office of Space Science and Applications (OSSA) on long range planning of aerospace medicine research. The Committee will meet to discuss the Extended Duration Orbiter, Extended Duration Crew Operations, Life Sciences Subcommittee Working Group activities, and Space Science and Applications Advisory Committee activities. The Committee is chaired by Dr. Harry C. Holloway and is composed of 24 members. The meeting will be open to the public up to the seating capacity of the room (approximately 40 people including members of the Subcommittee). It is imperative that the meeting be held on these dates, February 8, 9, and 10, 1989, to accommodate the scheduling priorities of the key participants.

Type of Meeting: Open.

Agenda

Wednesday, February 8

8:30 a.m.—Opening Remarks.
9:15 a.m.—Charge to AMAC.
10:30 a.m.—Extended Duration Orbiter (EDO) Overview and Discussion.
5 p.m.—Adjourn.

Thursday, February 9

8:30 a.m.—Extended Duration Crew Operations (EDCO) Overview and Discussion.
2 p.m.—Life Sciences Subcommittee Working Group Activities.
3 p.m.—Life Sciences Program Plan.
4 p.m.—Office of Aeronautics and Space Technology Investment in Life Sciences.
5 p.m.—Adjourn.

Friday, February 10

8:30 a.m.—NASA Advisory Council Activities.
9:15 a.m.—Space Science and Applications Advisory Committee Activities.
10:00 a.m.—Life Support Management Working Group Activities.
10:45 a.m.—Wrap-Up Discussion.
12:00 noon—Adjourn.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 89–2377 Filed 2–1–89; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATE: Comments on this information collection must be submitted by March 6, 1989.

ADDRESSES: Send comments to Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3002, Washington, DC 20503; (202–395–7316). In addition, copies of such comments may be sent to Mrs. Anne C. Doyle, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5401).

FOR FURTHER INFORMATION CONTACT: Mrs. Anne C. Doyle, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests a review of the

revision of a currently approved collection. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: FY 90/91 Advancement Program Application Guidelines

Frequency of Collection: One-time

Respondents: Non-profit institutions

Use: Guideline instructions and applications elicit relevant information from non-profit organizations applying for funding under specific Program categories. This information is necessary for fair, thorough and in-depth consideration of competing proposals in the peer review process.

Estimated Number of Respondents: 150

Average Burden Hours per Response: 32

Total Estimated Burden: 4,800

Anne C. Doyle,

Administrative Services Division National Endowment for the Arts.

[FR Doc. 89-2484-Filed 2-1-89; 8:45am]

BILLING CODE 7537-01-M

Institute of Museum Services Professional Services Program; Availability of Funds

AGENCY: Institute of Museum Services, NFAH.

ACTION: Notice of availability of funds, types of projects encouraged for Fiscal Year 1989.

SUMMARY: For fiscal year 1989, $250,000 is available through the Professional Services Program of the Institute of Museum Services. The deadline for submission of applicable proposals is April 7, 1989.

Nature of Program: Through the Professional Services Program, the IMS offers cooperative agreements to private, non-profit professional museum services related organizations which submit proposals for projects that will benefit and strengthen services of the museum community at large. Section 206(b), Title II of the Museum Services Act, Pub. L. 94-462 contains authority for this program. (20 U.S.C. 965).

SUPPLEMENTARY INFORMATION: For the fiscal year 1989 Professional Services award cycle, along with other applications under the program, IMS is particularly interested in receiving from professional museum organizations proposals designed to enhance the effectiveness of museum trustees. In light of policy guidance from the National Museum Services Board and other information, IMS concludes that there is a need among museums generally to enhance the vital role of museum trustees in the provision of museum services. IMS believes that sound proposals under the Professional Services Program to strengthen that role would help to serve this need and would promote the purposes of that program and of the Museum Services Act generally. Proposals for projects that would enhance the interaction and working relationships between museum trustees and museum administrators and would increase trustees' understanding of the mission and functions of the museum and their responsibilities in regard to those functions are encouraged among others. Proposals designed to stimulate a mentorship approach to the strengthening of the museum trustee role are encouraged.

While IMS invites the submisson of applications involving such proposals, applicants are advised that, under current regulations, these proposals must be reviewed, along with other applications, in accordance with the procedures and criteria applicable to the Professional Services Program found in 45 CFR 1180.77 (53 FR 31336, Aug. 18, 1988) and cannot receive special consideration in the review process or in funding decisions. IMS interprets the regulations in § 1180.77 as permitting the submission of groups applications by professional museum organizations.

Deadline Date for Transmittal of Applications: An application for a cooperative agreement must be mailed or hand-delivered by Friday, April 7, 1989.

Applications Delivered by Mail: An application sent by mail must be addressed to the Insitute of Museum Services, 1100 Pennsylvania Avenue, NW., Room 609, Washington, DC 20506.

An applicant must be prepared to show one of the following as proof of timely mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other dated proof of mailing acceptable to the Director of IMS.

If any application is mailed through the U.S. Postal Service, the Director does not accept either of the following as proof of mailing: (1) A private metered postmark; or (2) a mail receipt that is not date-cancelled by the U.S Postal Service.

Applications Delivered by Hand: An application that is hand-delivered must be taken to the Institute of Museum Services, Old Post Office Building, 1100 Pennsylvania Avenue, NW., Room 609, Washington, DC 20506.

IMS will accept a hand-delivered application between 9:00 a.m. and 4:00 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand-delivered will not be accepted after 4:30 p.m. on the deadline date.

Program Information and Applicable Regulations: Program information is contained in the following: final regulations published August 18, 1988 in **Federal Register** vol. 53, no. 160, pages 31336-31339.

Available Funds: $250,000 is available for FY 1989. IMS makes matching Professional Services cooperative agreements of no more than $50,000 in Federal funds. In exceptional circumstances applicable to a particular applicant, the Director, upon consultation with the Board, may waive the matching requirement.

APPLICATION FORMS: IMS mails application forms and program information in a PSP Application Packet to museum services organizations on its mailing list. Applicants may obtain Application Packets by writing or telephoning the Institute of Museum Services, 1100 Pennsylvania Avenue, NW., Room 609, Washington, DC 20506, (202/786-0539).

FURTHER INFORMATION: For further information contact Rebecca W. Danvers, Institute of Museum Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Telephone: (202) 786-0536.

Dated: January 30, 1989.

(Catalogue of Federal Domestic Assistance No. 45.301 Institute of Museum Services)

Lois Burke Shepard,

Director, Institute of Museum Services.

[FR Doc. 89-2470 Filed 2-1-89; 8:45 am]

BILLING CODE 7036-01-M

NUCLEAR REGULATORY COMMISSION

Applications for Licenses To Export Nuclear Facilities or Materials

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application", please take notice that the Nuclear Regulatory Commission has received the following application for an export license. A copy of the application is on file in the Nuclear Regulatory Commission's Public Document Room located at 2120 L Street, NW., Washington, DC.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant; the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of applications for licenses to export production or utilization facilities, special nuclear materials or source material, noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility or material to be exported. The table on the following page lists the new major application.

For the Nuclear Regulatory Commission.

Dated this 27th day of January 1989 at Rockville, Maryland.

Marvin R. Peterson,

Assistant Director for International Security, Office of Governmental and Public Affairs.

NRC Export Application

	Description of item to be exported	Country of destination
Name of applicant: Washington Public Power Supply System Date of application: 01/20/89 Date received: 01/25/89 Application Number: XR151	Civilian nuclear power plant—1300 MWe	People's Republic of China.

[FR Doc. 89-2447 Filed 2-1-89; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on February 9-11, 1989, in Room P-114, 7920 Norfolk Avenue, Bethesda, Md. Notice of this meeting was published in the **Federal Register** on January 26, 1989.

Thursday, February 9, 1989

8:30 A.M.-8:45 A.M.: Comments by ACRS Chairman (Open)—The ACRS Chairman will report briefly regarding items of current interest.

8:45 A.M.-10:15 A.M.: Decay Heat Removal (Open)—Briefings and discussion regarding proposed NRC staff resolution of Generic Issue 99, "Improved Reliability of RHR Capability in PWRs."

10:30 A.M.-12:00 Noon: NRC Severe Accident Policy (Open)—Briefing by NRC Staff regarding status of implementation for future LWRs.

1:00 P.M.-2:30 P.M.: Quantitative Safety Goals (Open)—Discuss proposed ACRS report regarding the proposed implementation plan for this matter.

2:45 P.M.-4:15 P.M.: Resolution of Generic Issues 70, "PORV Reliability" and 94, "Low Temperature Overpressure Protection." (Open)—Meeting with NRC Staff representatives to hear and discuss proposed resolution of these generic issues.

4:15 P.M.-5:00 P.M.: NRC Safety Research Program (Open)—Discuss proposed ACRS annual report to the U.S. Congress regarding the NRC safety research program and budget.

5:00-6:00 P.M.: Containment Design Criteria (Open)—Discuss proposed ACRS action regarding development of design criteria for nuclear power plant containments.

Friday, February 10, 1989

8:30 A.M.-10:30 A.M.: Human Factors (Open)—Briefing by NRC Staff regarding revised human factors research program plan.

10:45 A.M.-12:00 Noon: NRC Safety Goal Policy (Open)—Discuss proposed ACRS report regarding the proposed implementation plan for this matter.

1:00 P.M.-1:45 P.M.: Application of Leak Before Break Concept (Open)—Briefing and discussion as appropriate of proposed NRC position regarding the scope of application of the leak before break concept.

1:45 P.M.-2:15 P.M.: Anticipated ACRS Activities (Open)—Discuss anticipated subcommittee activities and items proposed for consideration by the full Committee.

2:30 P.M.-4:00 P.M.: Standardization and Licensing Reform (Open)—Review proposed NRC rule and statement of considerations regarding 10 CFR Part 52, Early Site Permits; Standard Design Certifications; and Combined Licenses for Nuclear Power Plants (tentative).

4:00 P.M.-4:45 P.M.: Appointment of ACRS Members (Open/Closed)—Discuss status of appointment of new member(s) and reappointment of current member(s).

Portions of this session will be closed as appropriate to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

4:45 P.M.-6:00 P.M.: NRC Regulatory Process (Open)—Discuss proposed ACRS consideration of the NRC regulatory process.

Saturday, February 11, 1989

8:30 A.M.-12:00 Noon: Preparation of ACRS Reports (Open)—Discuss proposed reports to NRC regarding items considered during this meeting and the annual research report to the U.S. Congress.

1:00 P.M.-2:00 P.M.: ACRS Subcommittee Reports (Open/Closed)—Hear and discuss reports of designated subcommittee chairmen and members regarding the status of recent activities.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to the matters being discussed.

1:00 P.M.-3:30 P.M.: Miscellaneous (Open)—Complete discussion of items considered during this meeting.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 27, 1988 (53 FR 43487). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS

Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Pub. L. 92-463 that it is necessary to close portions of this meeting as noted above to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy [5 U.S.C. 552b(c)(6)] and to discuss Proprietary Information applicable to the matters being considered [5 U.S.C. 552b(c)(4).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 301/492-8049), between 8:15 A.M. and 5:00 P.M.

Date: January 30, 1989.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 89-2448 Filed 2-1-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-320]

Meeting of the Advisory Panel for the Decontamination of Three Mile Island, Unit 2; GPU Nuclear Corp.

Notice is hereby given pursuant to the Federal Advisory Committee Act that the Advisory Panel for the Decontamination of Three Mile Island, Unit 2 (TMI-2) will be meeting on February 16, 1989 from 7:00 p.m. to 10:00 p.m. at the Holiday Inn, 23 S. Second Street, Harrisburg, Pennsylvania. The meeting will be open to the public.

At this meeting, the Panel will receive a status report on the progress of defueling from the licensee, GPU Nuclear Corporation. The licensee will also describe the processed water disposal system and discuss the cleanup schedule and proposed funding for the remainder of the cleanup. Members of the public will be given the opportunity to address the Panel.

Further information on the meeting may be obtained from Dr. Michael T. Masnik, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-1373.

Dated at Rockville, Maryland, this 30th day of January 1989.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 89-2449 Filed 2-1-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-456]

Gulf States Utilities; Withdrawal of Applications for Amendments to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the December 12, 1988 request of Nebraska Public Power District (the licensee), to withdraw portions of its July 10, 1987 and March 4, 1988 applications for proposed amendments to Facility Operating License No. DPR-46, which authorizes operation of the Cooper Nuclear Station, located in Nemaha County, Nebraska.

The proposed amendments would have revised the Cooper Nuclear Station Technical Specifications to make Fire Area Barrier and Penetration Fire Seals Limiting Conditions for Operation and Surveillance Requirements applicable only to those seals and barriers which form the boundary of fire areas. The Commission has considered the December 12, 1988 letter and has determined that permission to withdraw portions of the July 10, 1987 and March 4, 1988 applications for amendments should be granted.

For further details with respect to this action, see (1) the applications for amendments dated July 10, 1987 and March 4, 1988; and (2) the Nebraska Public Power District letter dated December 12, 1988 withdrawing portions of the July 10, 1987 and March 4, 1988 applications for license amendment. The above documents are available for public inspection at the Commission Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at the Auburn Public Library, 118 15th Street, Auburn Nebraska 68305.

Dated at Bethesda, Maryland, this 24th day of January 1989.

For the Nuclear Regulatory Commission.

Paul W. O'Connor,

Project Manager Project Directorate—IV Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-2450 Filed 2-1-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-498]

Houston Lighting & Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-76, issued to Houston Lighting & Power Company (the licensee), for operation of the South Texas Project, Unit 1, located in Matagorda County, Texas.

The proposed amendment would revise the Unit 1 Technical Specifications to incorporate the Unit 1/Unit 2 Combined Technical Specifications which are to be issued with the Unit 2 full power license. At the time Unit 2 receives an operating license, Houston Lighting & Power Company (HL&P) will receive Technical Specifications that are applicable for both units, i.e., Combined Technical Specifications. To implement the Combined Technical Specifications on Unit 1, the Unit 1 license requires an administrative change.

The Commission has provided guidance for the application of criteria for no significant hazards consideration determination by providing examples of amendments that are considered not likely to involve significant hazards considerations (51 FR 7751). These examples include example (i), A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error or a change in nomenclature.

The proposed changes for the Combined Technical Specifications are administrative in nature, and, therefore, are within the scope of the example. Since the changes are encompassed by an example for which no significant hazards consideration exists, the staff has made a proposed determination that this section of the amendment involves no significant hazards consideration.

The staff has reviewed the proposed amendment and the licensee's no significant hazards consideration determination. Based on the review of the proposed areas of change and the above discussions, the staff proposes to determine that the proposed amendment does not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resource Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room P-216, Philips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 8:15 am to 4:00 pm. Copies of written comments may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC 20555. The fillings of requests for hearing and petitions for leave to intervene is discussed below.

By March 6, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license, and any person whose interest may be affected by this proceeding and who wishes to participates as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene must be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board Panel will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene must set forth with particularity the interest of the petitoner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitoner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitoner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitoner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which the petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, the petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and state comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Jose A. Calvo: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel-Rockville, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, NW., Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated January 17, 1989 which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Wharton Junior College Library, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488 and Austin Public Library, 810 Gudalupe Street, Austin, Texas 78701.

Dated at Rockvile, Maryland, this 19th day of January 1989.

For the Nuclear Regulatory Commission.

Jose A. Calvo,

Director, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-2451 Filed 2-1-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-267]

Public Service Co. of Colorado (Fort St. Vrain Nuclear Generating Station); Exemption

I

Public Service Company of Colorado (the licensee) is the holder of Facility Operating License No. DPR-34 that authorizes operation of the Fort St. Vrain Nuclear Generating Station. The license provides, among other things, that it is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

II

On November 10, 1988, the Nuclear Regulatory Commission (NRC) published in the **Federal Register** (53 FR 45447) a final rule amending 10 CFR Parts 2, 70 and 73. These amendments dealt with physical protection and security personnel performance regulations and its design basis threat for fuel facilities possessing formula quantities of strategic special nuclear material (SSNM) to require protection equivalent to that in place at comparable Department of Energy (DOE) fuel facilities. These changes have been prompted by a recent study that compared NRC's security requirements for SSNM with DOE's recently upgraded security system. The changes are also supported by findings from reviews of safeguards event reports, Regulatory Effectiveness Reviews, and inspection reports. The amendments provide greater assurance that physical protection measures at these fuel facilities can protect against theft. It was the NRC's intent that these amendments to its physical protection regulations only apply to licensed fuel facilities possessing formula quantities of SSNM: These facilities are: General Atomics, La Jolla, California; Nuclear Fuel Services, Erwin, Tennessee; Babcock and Wilcox, Lynchburg, Virginia; and United Nuclear Corporation, Montville, Connecticut. Although the Fort St. Vrain reactor (Colorado) uses high enriched uranium fuel, it is not subject to these upgrades because of the extensive processing required to yield weapons usable material and because of the weight of the fuel elements and their low concentration of uranium. In issuing this amendment, the NRC stated: "Pursuant to 10 CFR 73.5, the Commission will initiate an exemption from the new requirements for Fort St. Vrain."

III

Pursuant to 10 CFR Part 73.5, "The Commission may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest."

The purpose of the proposed amendments was to assure that SSNM in NRC licensed fuel facilities are provided with a comparable level of protection to DOE facilities. To achieve this objective, reviews have been conducted periodically by joint NRC/DOE review teams. The findings from the most recent review (1988) indicated that DOE has placed increased emphasis on guard weaponry, training, and tactical response exercises and has upgraded some physical security measures. To maintain comparability with DOE as well as to repond to recent NRC security reviews, the NRC has amended its physical protection regulations for SSNM to include the following: (1) Security system performance evaluation through tactical response exercises, (2) night firing qualification for guards using all assigned weapons; (3) search of 100 percent of entering personnel and packages (for explosives, firearms, and incendiary devices), (4) posting of armed guards at control points, (5) providing two separate physical personnel barriers around the protected area, and (6) revision of the design basis threat at these fuel facilities to include land vehicle use by adversaries attempting to commit theft and require the implementation of countermeasures to prevent forcible vehicle entry into the protected area. These amendments will provide greater assurance that security systems and security force capabilities at these facilities are comparable to those used by DOE.

However, situation at the Fort St. Vrain Nuclear Generating Station was found to be substantially different. Fuel elements containing 93.15% enriched uranium fuel at Fort St. Vrain are located in the core or in storage. Only fresh fuel in storage is important to this physical protection requirements. Fresh fuel elements are stored in a substantial building, located within the reactor protected area, that is locked and protected by alarms and guards. The fuel elements are hexagonal right prisms approximately 14 inches across and 31 inches high, each weighing about 250 pounds. The fuel consists of particles composed of uranium and thorium dicarbides coated with several highly retentive layers of carbon and silicon carbide. The particles are bonded with a carbonaceous matrix into rods, which are sealed in the fuel holes of the elements. The fuel for each element consists of 120 fuel rods, and each fuel element contains up to 0.9 kg of uranium. The fuel elements are designed to retain their integrity at temperatures up to 5000 °F. The end result is that the fissile material is highly diluted by graphite and other materials. Recovery of the fissile material is made difficult by the inert and refractory nature of the carbon and silicon carbide coatings and by the presence of thorium. Therefore, due to the fuel element weight and to the extensive processing needed to yield weapons usable material, the fuel is unattractive from a theft point of view.

With respect to the revised design basis threat which allows adversaries use of a land vehicle for transport, additional measures to protect against use of a vehicle are not needed for the following reasons. Since a single fuel element contains, at most, about 0.9 kg of high enriched uranium, it follows that an adversary seeking a formula quantity would have to gain control over and load onto his vehicle a number of fuel elements. In view of current requirement for armed responders at Fort St. Vrain, the Commission believe that the response force could regain control of the fuel elements before an adversary team could identify and load a formula quantity of uranium contained in fuel elements onto a vehicle and escape.

Therefore, it is appropriate to grant an exemption under 10 CFR 73.5 from the revision to Part 73 covered in the November 10, 1988 rulemaking.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 73.5 that an exemption as described in Section III is authorized by law, will not present an undue risk to public health and safety, and is consistent with the common defense and security, and are otherwise in the pubic interest.

Therefore, the Commission hereby grants the following exemption.

Public Service Company of Colorado is exempt from the increased requirements of 10 CFR Part 73 as amended November 10, 1988 at 53 FR 45447, concerning safeguards requirements for fuel facilities possessing formula quantities of strategic special nuclear materials.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact.

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 19th day of January 1989.

Gary M. Holahan,

Acting Director Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-2452 Filed 2-1-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-327]

Tennessee Valley Authority, Sequoyah Nuclear Plant, Unit 1; Exemption

I

The Tennessee Valley Authority (the licensee) holds Facility Operating License Nos. DPR 77 and DPR-79, which authorize operation of the Sequoyah Nuclear Plant, Units 1 and 2 (the facility, Units 1 and 2). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility consists of two pressurized water reactors located on the licensee's site in Hamilton County, Tennessee.

II

Section 50.46(a)(1) to 10 CFR Part 50 requires, in part, that for a pressurized light-water reactor, its plant-specific ECCs cooling performance shall be calculated in accordance with an acceptable evaluation model and for plant operating conditions. Furthermore. § 50.46(b)(1) requires that the calculated maximum fuel element cladding temperature or peak clad temperature (PCT) from the ECCS performance during design basis accidents shall not exceed 2200°F.

In its application for relief, the licensee stated that it was requesting an exemption from 10 CFR 50.46 for the operating Cycle 4 for Units 1 and 2. The request was for the licensee not to have to submit for operating Cycle 4 a calculated ECCS cooling performance analysis, using an approved Upper Head Injection (UHI) model and Cycle 4 plant operating conditions. The licensee would submit, for the beginning of operating Cycle 5, a calculated ECCS cooling performance using approved non-UHI models and Cycle 5 and beyond plant conditions for both units. The UHI system is presently planned to be removed during the Cycle 4 refueling outage, prior to operating Cycle 5, for both units.

By letter dated October 26, 1988, the Commission granted the licensee a temporary exemption until May 31, 1989 for Sequoyah Unit 1, from the above requirement in 10 CFR 50.46(a)(1) for a plant-specific calculated ECCS cooling performance analysis for operating Cycle 4. The licensee, in its request for this temporary exemption dated September 19, 1988 and the supporting documentation submitted in letters dated August 15 and September 21, 1988, informed the Commission that the existing ECCS cooling performance calculations using the UHI calculation model for Unit 1, as discussed in Section 15.4 of the Final Safety Analysis Report (FSAR), were no longer representative of the plant conditions for operating Cycle 4 for Unit 1. The licensee also stated that there were corrections needed for the UHI model. The licensee requested this temporary exemption to allow Unit 1 to operate in Cycle 4 until it could submit a plant-specific ECCS cooling performance based on plant operating conditions and with an approved UHI model but no later than May 31, 1989. The Commission granted this temporary exemption until May 31, 1989.

Since being granted the temporary exemption for Unit 1, the licensee has reevaluated the resources needed to perform the analysis of ECCS performance for operation with UHI. The licensee estimated that the cost of performing the UHI/ECCS analysis is more than $1.1 million. The licensee states that resources of this magnitude are inconsistent with its plan to remove UHI at Units 1 and 2 in their respective Cycle 4 refueling outage. This outage follows the operating Cycle 4 for each unit.

Because both units will still have the UHI system in operation during the operating Cycle 4, the ECCS performance for both units for Cycle 4 would have to include an approved UHI calculation model without errors to be in conformance with 10 CFR 50.46(a)(1). Therefore, this required ECCS performance analysis with an approved UHI calculation model would be needed for one operating cycle if UHI is removed in the Cycle 4 refueling outage.

Operating Cycle 4 for Unit 1 began in November 1988 and for Unit 2 is currently scheduled to begin on or about March 31, 1989. The Cycle 4 refueling outage for each unit will begin approximately 18 months later.

The licensee stated that the cost of an non-UHI/ECCS analysis would be about $670,000. The licensee stated that the expenditure of resources for the UHI/ECCS analysis would delay the availability of resources needed to support removal of UHI from each unit and could, therefore, delay the present schedule for removing UHI in the Cycle 4 refueling outage for each unit.

The licensee further stated that the performance of the UHI/ECCS analysis would be a poor utilization of its resources, as well as NRC resources in reviewing the UHI/ECCS analysis, because of the age of the UHI model. The UHI evaluation model is not currently available for use and would require extensive resources to verify and validate on the current Westinghouse Corporation computer system and, therefore, resources directed at the UHI/ECCS analysis would be directed toward "old" methodologies and technologies. The licensee further stated that Sequoyah is the last commercial plant utilizing the UHI design in this country and this would force the licensee to bear by itself the full burden for these resource expenditures.

The licensee discussed the safety significance of removing UHI from each unit. The removal of UHI will result in significant operation/maintenance improvements. During refueling outages, approximately four days of critical path work is required for disassembling, reassembling, and testing of UHI connections to the reactor vessel head. Deletion of this work would also result in decreased personnel exposure (approximately 59 person-rem each outage). The removal of UHI would also provide operation/maintenance improvement by the deletion of the surveillance requirements associated with UHI operability. UHI removal will also provide a safety benefit by removing the potential for injecting nitrogen into the reactor coolant system. Although injected nitrogen could occur only if multiple failures prevented the automatic isolation system from functioning properly, injected nitrogen could form voids in the reactor coolant system that might impede natural circulation and core cooling.

The licensee, in its letters dated November 3 and December 5, 1988, provided an assessment demonstrating the safe operation of Units 1 and 2 without the additional analysis required by 10 CFR 50.46(a)(1). The large break loss-of-coolant (LOCA) ECCS analysis for Unit 1, as documented in FSAR Section 15.4.1, was performed with the Westinghouse 1974 Evaluation Model. It

resulted in a PCT of 2113°F. This analysis was based on a heat flux hot channel factor ($F_Q(z)$) of 2.32, a discharge coefficient (Cd) of 0.6, and a lower bounding value of UHI water volume delivery of 900 cubic feet (ft^3).

In a TVA Condition Adverse to Quality Report (CAQR), the licensee identified that the current level switches used in the UHI system for both units potentially may allow more water to be injected during a postulated accident than the analytical limit of 1,130.5 ft^3. The over injection of water can result in the accidental injection of nitrogen into the reactor coolant system. Nitrogen in the reactor coolant system could result in the restriction of heat removal from the fuel cladding. TVA implemented two corrective actions to resolve the above mentioned CAQR. Specifically, the first is a proposed actual reduction in the total amount of water injected by the UHI system from the current minimum requirement of 900 ft^3, thereby, decreasing the probability of over injecting water from the UHI system. The reduction of the lower bounding value for UHI water volume delivery changes some of the original assumptions of the ECCS analysis. The second CAQR corrective action calls for the replacement of the level switches with modified switches whose characteristics present less instrument setpoint drift.

The licensee has performed a sensitivity assessment of the impact of delivering 50 ft^3 less of UHI water for the existing analysis to demonstrate that the PCT would remain below the regulatory limit of 2200°F. This assessment was provided to the Commission by submittals dated August 15 and 17[1], and December 2, 1988, for Units 1 and 2, respectively. These submittals requested a change in Units 1 and 2 Technical Specifications (TS) on the UHI accumulator level switch setpoint. These requested TS changes proposed a reduction in the total amount of water injected by the UHI system discussed below. The sensitivity assessment of delivering 50 ft^3 less UHI water was submitted also to support the requested TS changes.

The licensee stated that the magnitude of errors in the sensitivity studies is no more than those introduced through the use of the UHI evaluation model computer code. The sensitivities were determined from multiple runs of the UHI model. The multiple runs were performed to determine the effects on PCT on varying input parameters such as delivered UHI water volume, heat flux hot channel factor, and steam generator tube plugging. Therefore, because the sensitivities were determined directly from the UHI evaluation model, the error associated with them is inherent to the computer code.

Additionally, the license pointed out that confidence in the available PCT margin can be drawn from the new Appendix K rule to 10 CFR Part 50, "ECCS Evaluation Models" and from the loss-of-fluid test (LOFT) results. A summary of the rule changes as printed in the September 16, 1988, **Federal Register** acknowledged that " . . . the existing evaluation models are known to contain a large degree of overall conservatism . . . ." The LOFT results indicated that PCT margin on the order of hundreds of degrees existed between predicted and experimentally measured PCTs.

The calculations showed that the new PCT was 2196°F. To provide assurance that Unit 1 is below the PCT Limit of 2200°F, the licensee has limited the heat flux hot channel factor, $F_Q(z)$, by administrative control, to a value of 2.15, and lowered the steam generator tube plugging limit from 10 to 5 percent. The licensee has stated that these two changes result in lowering the PCT to 109°F below the limit of 2200°F. The licensee has proposed a reduction in the current $F_Q(z)$ limit in the Units 1 and 2 Technical Specifications from 2.237 to 2.15 in submittals dated September 21 and December 2, 1988, respectively, for Units 1 and 2.

The licensee, therefore, contends that the performance of the confirmatory UHI/ECCS analysis will provide no significant benefit and its resources could be better utilized if directed at discretionary operation/maintenance improvements. Such discretionary improvements include the deletion of the boron injection tank (BIT) as discussed in Generic Letter 85–16. The licensee is also investigating discretionary operation/maintenance improvements associated with the ice condenser. These include reduced ice weight analyses and increased ice weighing intervals. The implementation of standardized, improved, and restructured technical specifications at SQN is also a discretionary operation/maintenance improvement. Many factors could affect the availability of funds for discretionary projects; for example, the recent Unit 1 forced outage to repair the United 1 main generator will alter the priorities placed on discretionary improvements.

Based on the above discussion, and the licensee's assessment of the impact on the calculated PCT with 5 percent steam generator tube plugging and reduction of $F_Q(z)$ to a value of 2.15, the staff finds that an exemption is justified. This is a one-time temporary exemption from the requirement of 10 CFR 50.46(a)(1) for both Units 1 and 2 regarding having a calculated plant specific ECCS cooling performance evaluation using plant operating conditions and an acceptable evaluation model for operating Cycle 4. The ECCS cooling performance analysis requfred by 10 CFR 50.46(a)(1) would be a confirmatory analysis that the PCT for both units are below the regulatory limits. The basis for this exemption does not apply beyond operating Cycle 4 because the existing analysis for both units are for operation with UHI and the licensee will be removing the UHI system in the Cycle 4 refueling outage. The staff also finds acceptable the licensee's schedule for completing and submitting the ECCS re-analysis for operating Cycle 5.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(ii), are present justifying the exemption; namely, that the application of the regulation in the particular circumstances for operating Cycle 4 for both units would not serve and is not necessary to achieve the underlying purpose of the rule. The application of the regulation is not necessary, during operating Cycle 4 for each unit, to assure the integrity of the fuel cladding in the event of a postulated design basis LOCA because the operational restrictions to be imposed on the units by the licensee will assure that the PCT for the units remain below the limit of 2200°F set forth in 10 CFR 50.46(b). Compliance with the rule would result in the expenditure of resources which are not consistent with the licensee's long term plans for the units and which could be better utilized elsewhere for safety improvements to the units.

Accordingly, the Commission hereby grants an exemption from 10 CFR Part 50.46(a)(1) for Sequoyah Units 1 and 2 for operating Cycle 4 as described above, provided:

1. Heat flux hot channel factor, $F_Q(z)$ shall not exceed 2.15.

2. Steam Generator Tube Plugging shall not exceed five percent.

3. The licensee shall complete a plant-specific ECCS analysis for Units 1 and 2 and shall submit the results of such an analysis for each unit before the unit enters its operating Cycle 5.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the environment.

For further details with respect to this action, see the request for exemption dated November 3, 1988, and the supporting information submitted in letters dated December 2 and 5, 1988, which are available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, D.C., and the Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

This Exemption is effective upon issuance.

Dated at Rockville, Maryland, this 26th day of January, 1989.

For the Nuclear Regulatory Commission.

B.D. Liaw, Director,

TVA Projects Division, Office of Nuclear Reactor Regulation.

[FR Doc. 89–2453 Filed 2–1–89; 8:45 am]

BILLING CODE 7590-01-M

[1] The submittal dated August 17, 1988, is a duplicate of the submittal dated August 15, 1988.

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 2330]

Declaration of Disaster Loan Area; California

Los Angeles County, and the contiguous counties of Kern, Orange, San Bernardino, and Ventura, in the State of California, constitute a disaster area as a result of damages from severe winds and fires which occurred between December 7 and December 9, 1988. Applications for loans for physical damage as a direct result of these fires may be filed until the close of business on March 27, 1989, and for economic injury as a direct result of these fires until the close of business on October 26, 1989, at the address listed below: Disaster Area 4 Office, Small Business Administration, P.O. Box 13795, Sacramento, CA 95853–4795, or other locally announced locations.

The interest rates are:

	Percent
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Businesses and Non-Profit Organizations (EIDL) Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	9.125

The number assigned to this disaster is 233005 for physical damage and for economic injury the number is 671100.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: January 26, 1989.

James Abdnor,

Administrator.

[FR Doc. 89–2462 Filed 2–1–89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice CM–8/1254]

U.S. Organization for International Telegraph and Telephone Consultative Committee (CCITT) Study Group C; Meeting

The Department of State announces that Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet February 17, 1989 at 3:00 p.m. at the Sheraton Orlando North (formerly Sheraton Maitland), Florida. The time, date and site was chosen to coincide with the ANSI T1X1 meeting taking place at same location.

This meeting will deal with fiber optic systems issues related to the Synchronous Digital Hierarchy that are of mutual interest between T1X1 and Study Group XV. Specific contributions prepared for Study Group XV by T1X1 are anticipated. It will not cover fiber and fiber cable issues. Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. Prior to the meeting, persons who plan to attend should so advise Miss Cindy Perfumo, AT&T Telephone: (201) 234–4047.

Date: January 19, 1989.

Earl S. Barbely,

Director, Office of Telecommunications and Information Standards; Chairman U.S. CCITT National Committee.

[FR Doc. 89–2438 Filed 2–1–89; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM–8/1256]

The U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) Study Group D; Meeting

The Department of State announces that Study Group D of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on February 23, 1989 at 10:00 a.m. in Room 1912, Department of State, 2201 C Street NW., Washington, DC.

Study Group D deals with data communications.

The purpose of the meeting will be to review and approve U.S. Contributions and consider nomination of delegates to the upcoming meeting of Study Group XVII, scheduled to begin on March 13, 1989. The meeting may also consider contributions available for the first meeting of Study Group VIII, beginning 12 April 1989, and contributions for the Study Group VII meeting in July, 1989 as well as any other issues related to Study Group D interests.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl Barbely, State Department, Washington, DC., telephone (202) 647–5220. All attendees must use the C Street entrance to the building.

Date: January 23, 1989.

Earl S. Barebely,

Director, Office of Telecommunications and Information Standards; Chairman U.S. CCITT National Committee.

[FR Doc. 89–2439 Filed 2–1–89; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM–8/1255]

Shipping Coordinating Committee, Subcommittee on Safety of Navigation; Meeting

The Working Group on Safety of Navigation of the Subcommittee on Safety of Life at Sea (SOLAS) will hold an open meeting at 9:30 a.m. on Wednesday, February 22, 1989, in room 6103 at Coast Guard Headquarters, 2100 Second Street SW., Washington, DC.

The purpose of the meeting is to report on the progress of the

Subcommittee on Safety of Navigation of the International Maritime Organization, at its 35th session (January 23–27, 1989) and begin preparing U.S. positions for the 36th session of the Subcommittee. Items of principal interest on the agenda are:

—Decisions of other IMO bodies
—Routing of ships
—Reconsideration of Rule 10(d) of the Collision Regulations
—Infringement of safety zones around offshore structures
—World-wide navigation system
—Electronic chart display systems
—Navigational aids and related equipment including:

1. guidelines on the use of radar transponders on ships for safety purposes;
2. coding scheme for radar beacons and transponders;
3. unification of ARPA symbols; and
4. revision of resolution A.223(VII)—Performance standards for radio direction-finding systems

—Revision of resolution A.530(13)
—Officer of the navigational watch acting as the sole look-out
—Ship reporting systems and reporting requirements
—Work programme
—Any other business.

Members of the general public may attend up to the seating capacity of the room.

For further information contact Mr. Edward J. LaRue, Jr., U.S. Coast Guard (G–NSR–3), Washington, DC 20593–0001, Telephone: (202) 267–0416.

Thomas J. Wajda,
Chairman, Shipping Coordinating Committee.
Dated: January 13, 1989.
[FR Doc. 89–2440 Filed 2–1–89; 8:45 am]
BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 25790; Notice No. 89–3]

Aircraft Fleet Modernization

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request for public comment.

SUMMARY: The Federal Aviation Administration (FAA) requests comments, suggestions, and information for updating its 1986 Report to Congress, *Alternatives Available to Accelerate Commercial Aircraft Fleet Modernization.* Specific comment is sought regarding options and alternatives for phasing out operations of Stage 2 aircraft and replacing them with Stage 3 aircraft.

DATES: Comments must be received on or before March 6, 1989.

ADDRESS: Written comments must be mailed or delivered, in duplicate, to the Federal Aviation Administration, Office of Chief Counsel, ATTN: Rules Docket (AGC–10), Room 915G, Docket No. 25790, 800 Independence Avenue, SW., Washington, DC 20591. Comments must be marked "Docket No. 25790." The comments may be reviewed in Room 915G between 8:30 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Tony Fazio, Office of Environment, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, Telephone, (202) 267–3564.

SUPPLEMENTARY INFORMATION:

Background

The Appropriations Committee of the U.S. House of Representatives, in its oversight of the FAA's discharge of its environmental responsibilities, included the following statement in House Report 100–891.

In H. Rept 99–256, accompanying the fiscal year 1986 Appropriations Act, the Committee requested FAA to report on various alternative policy options that might accelerate the modernization of the commercial aircraft fleet so as to reduce aircraft noise levels still adversely affecting many metropolitan areas. FAA's report, dated April 11, 1986, listed a number of options that could encourage or require replacement of noisier Stage 2 aircraft with quieter, more modern Stage 3 aircraft but offered no recommendation as to whether the federal government should take steps to achieve that objective:

A number of events occurred in the two years since that report. *Alternatives Available to Accelerate Commercial Aircraft Fleet Modernization,* was completed that suggest that it should now be updated. Technology for the reengining of Stage 2 aircraft to Stage 3 noise levels has been advanced and additional communities have felt the need to impose local noise regulations in the absence of any national program of noise relief. Most importantly, debate as to the appropriate "useful life" of Stage 2 transport aircraft for noise or safety reasons has been reopened by the recent Aloha Airlines incident involving an older B–737 aircraft.

The committee directs the FAA to update its past report within nine months and, after consultation with interested parties, to discuss whether public policy in both aircraft noise abatement and aviation safety might be advanced by imposing a deadline, to be determined through rulemaking, for operations of older Stage 2 aircraft in the fleet.

In response to this direction, the FAA has decided to open a public docket to afford all interested parties an opportunity to present their views on the subject.

Issues: The FAA seeks information on workable and practical alternatives (and combinations thereof) to best achieve the ends described by the Committee. The FAA also invites the submission of any available corroborative data which demonstrates the efficacy of these alternatives.

No reasonable linkage between limiting operation, for noise abatement purposes, of Stage 2 airplanes with the safety of aging airplanes has been established. Inspection and structural repair and replacement actions are being implemented to assure safety of aging aircraft without imposing useful life limits, but the FAA is also continuing to study the aging aircraft issue and may be developing further programs and recommendations on this matter.

Among the alternatives that might be considered are those described in the following paragraphs. They are included only to stimulate consideration of a wide range of possible alternative actions and, as such, do not themselves represent proposals or suggestions from the FAA. The public is invited to submit additional alternatives.

Possible Alternative Areas for Consideration

Policy Options. Should a national program to accelerate the phase out of Stage 2 aircraft be developed? If so, should the program be linked to a program which bars further limitations on Stage 2 aircraft operations during the phase-out period at:

All U.S. airports?
All international airports?
All non-noise-sensitive airports?

How should the accelerated phase-out be coordinated with the restrictions on operational limitations?

Technology Options. What is the economic and technical feasibility of retrofit and/or re-engining programs for various current Stage 2 airplanes? What progress has been made in the development of noise abatement technology, and could that technology support aircraft noise standards more stringent than Stage 3?

Regulatory Options. If a policy were adopted for limiting further operation of Stage 2 aircraft, how might such regulations be crafted? For instance, such actions might include setting age limits for specific aircraft or engine types, limiting the number of operating cycles, or simply setting one or more specific date(s) for cessation of operations. Other regulatory options might include limitations on future production or import (registration). If further study shows a need for more costly inspection and maintenance programs to assure safety of older aircraft, how would the economics of those programs affect decisions on early phase out of Stage 2 aircraft?

Financial Options. Should any financial incentives be considered to support accelerating the conversion of U.S. fleets? If so, would incentives, such as, depreciation or investment tax credits for quite Stage 3 aircraft, Federal or local noise fees and surcharges, or establishment of a Noise Trust Fund to underwrite new aircraft purchases be appropriate? Under what conditions would the economies of operation of Stage 3 aircraft compensate for the added capital cost of early replacement?

J.E. Densmore,
Director, Office of Environment.
[FR Doc. 89–2498 Filed 1–30–89; 5:08 pm]
BILLING CODE 4910-13-M

Saint Lawrence Seaway Development Corporation

Advisory Board; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463); 5 U.S.C. App. I) notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation, to be held at 1:00 p.m., March 1, 1989, at the Corporation's Washington, DC Office at 400 7th Street SW., Washington, DC. The agenda for this meeting will be as follows: Opening Remarks, Consideration of Minutes of Past Meeting; Review of Programs; Business, Closing Remarks.

Attendance at meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact not later than February 22, 1989, Paul A. Maroun, Advisory Board Liaison, Saint Lawrence Seaway Development Corporation, 400 Seventh Street SW., Washington, DC 20590; 202/366–0091.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC, on January 25, 1989.

Paul A. Maroun,
Advisory Board Liaison.
[FR Doc. 89–2489 Filed 2–1–89; 8:45 am]
BILLING CODE 4910-61-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: January 30, 1989.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220. (This submission is a correction to FR Doc. 88–26575 Filed 11–16–88.)

Internal Revenue Service

OMB Number: 1545–0013
Form Number: 56
Type of Review: Revision
Title: Notice Concerning Fiduciary Relationship
Description: Form 56 is used to inform IRS that a person is acting for another person in a fiduciary capacity so that IRS may mail to the fiduciary tax notices concerning the person for whom the fiduciary is acting. The data is used to ensure that the fiduciary relationship is established or terminated and to mail or discontinue mailing designated tax notices to the fiduciary.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 25,000
Estimated Burden Hours Per Response/Recordkeeping:
Recordingkeeping, 8 minutes
Learning about the law of the form, 32 minutes
Preparing the form, 46 minutes
Copying, assembling and sending the form to IRS, 15 minutes
Frequency of Response: On occasion
Estimated Total Recordkeeping/Reporting Burden: 292,000 hours
Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 89–2480 Filed 2–1–89; 8:45 am]
BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: January 27, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0112
Form Number: 1099–INT
Type of Review: Extension
Title: Statement for Recipients of Interest Income
Description: This form is used for reporting interest income paid, as required by sections 6049 and 6041 of the Internal Revenue Code. It is used to verify that payees are correctly reporting their income.
Respondents: Individuals or households, State or local governments, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations
Estimated Number of Respondents: 747,973
Estimated Burden House Per Response: 11 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 57,001,483 hours

OMB Number: 1545–0117
Form Numbers: 1099–OID
Type of Review: Extension
Title: Statement for Recipients of Original Issue Discount
Description: The form is used for reporting original issue discount as

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required by section 6049 of the Internal Revenue Code. It is used to verify that income earned on discount obligations is properly reported by the recipient.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 5,122
Estimated Burden House Per Response: 10 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 429,660 hours

OMB Number: 1545-0742
Form Numbers: None
Type of Review: Extension
Title: Public Inspection of Exempt Organizations' Returns
Description: Section 6104(b) authorizes the Service to make available to the public the returns required to be filed by exempt organizations. The information requested in Treasury Reg. §301.6104(b)-1 (b)(4) is necessary in order for the Service not to disclose confidential business information furnished by businesses which contribute to exempt black lung trusts.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 22
Estimated Burden House Per Response: 1 hour
Frequency of Response: Annually
Estimated Total Reporting Burden: 22 hours
Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 89-2481 Filed 2-1-89; 8:45 am]
BILLING CODE 4810-35-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 21
Thursday, February 2, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMISSION ON CIVIL RIGHTS

January 31, 1989.

PLACE: 1121 Vermont Avenue, NW., Room 516, Washington, DC 20425.
DATE AND TIME: Friday, February 10, 1989, 9:00 a.m.-5:00 p.m.
STATUS OF MEETING: Open to the public.
MATTERS TO BE CONSIDERED:
I. Aproval of Agenda
II. Approval of Minutes of January Meeting
III. Announcements
IV. SAC Reports and Interim Appointments
Implementation in Colorado of the Immigration Reform and Control Act
Legal Assistance Available to Minority Prisoners in Delaware
Civil Rights Issues in Maine
Arkansas SAC Interim Appointments
Nebaska SAC Interim Appointments
Wisconsin SAC Interim Appointments
V. Discussion and Action—Program Planning for FY '89-'90
VI. Commission Subcommittee Reports
VII. Commission Reorganization
VIII. Staff Director's Report
IX. Future Agenda Items

PERSON TO CONTACT FOR FURTHER INFORMATION: John Eastman, Press and Communications Division, (202) 376-8312.

William H. Gillers,
Solicitor.
[FR Doc. 89-2545 Filed 1-31-89; 12:43 pm]
BILLING CODE 6335-01-M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, February 7, 1989, 10:00 a.m.
PLACE: 999 E. Street, NW. Washington, DC.
STATUS: This meeting will be closed to the public.
ITEMS TO BE DISCUSSED:
Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.
* * * * *
DATE AND TIME: Thursday, February 9, 1989, 10:00 a.m.
PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).
STATUS: This meeting will be open to the public.
MATTERS TO BE CONSIDERED:
Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Certification for Payment of 1988 Primary Matching Funds.
Advisory Opinion 1987-31 (Reconsideration) Terry Claassen on behalf of the Chicago Board Options Exchange
Administrative Matters
* * * * *
PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Marjorie W. Emmons,
Secretary of the Commission.
[FR Doc. 89-2523 Filed 1-31-89; 10:52 am]
BILLING CODE 6715-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of February 6, 1989.

A closed meeting will be held on Tuesday, February 7, 1989, at 2:30 p.m. Open meeting will be held on Wednesday, February 8, 1989, at 9:30 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Cox, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, February 7, 1989, at 2:30 p.m., will be:

Institution of injunctive actions.
Settlement of administrative proceeding of an enforcement nature.
Institution of administrative proceedings of an enforcement nature.
Opinion.

The subject matter of the open meeting scheduled for Wednesday, February 8, 1989, at 9:30 a.m., will be:

Consideration of a rule proposal that would impose suitability and written agreement requirements on broker-dealers who solicit purchases of certain securities that are not registered on a national securities exchange or authorized for quotation in the NASDAQ system (the "Penny Stock Fraud Rule"). For further information, please contact Dan Gray at (202) 272-2848.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Karen Burgess at (202) 272-2000.

Jonathan G. Katz,
Secretary.
January 27, 1989.
[FR Doc. 89-2570 Filed 1-31-89; 2:42 pm]
BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 54, No. 21
Thursday, February 2, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[FRL-3501-9]

Standards of Performance for New Stationary Sources; Polypropylene, Polyethylene, Polystyrene, and Polyethylene terephthalate) Manufacturing Industry; Revisions to the Basis of the Proposed Standards for Polypropylene and Polyethylene Manufacturing

Correction

In proposed rule document 89-140 beginning on page 890 in the issue of Tuesday, January 10, 1989, make the following corrections:

1. On page 890, in the 2nd column, the 10th line from the bottom should read "contact EPA by January 20, 1989.".

2. On page 891, in the first column, in the ninth line from the bottom, "polypropylene" was misspelled.

3. On the same page, in the second column, in the 17th and 18th lines from the top, "polyethylene" was misspelled.

4. On page 893, in the second column, in the ninth line from the top, "lower" should read "lowering".

5. On the same page, below the table 1a heading, under "A. Exemptions", in item 1, "steams" should read "streams"; in the first column of the table, in item 4, "rate" should read "range"; in the second column, items 1 and 2 should appear in the third column under item 2; and in the third column, item 1, in the second line insert a comma before "control".

6. On page 894, in Table 1b, in the second column, the second item should read "5.5<20"; in the third column, in the first item 2, in the second line, "scfjm" should read "scfm" and in the third item 2, in the first line, insert a comma affter "Mg/yr.".

7. On page 895, in the first column, in the last line insert a comma after "construction".

8. On page 901, in the 3rd column, in the 1st complete paragraph, in the 31st line insert "percent" after "weight".

9. On page 902, in the 1st column, in the 2nd complete paragraph, in the 21st line, "international" should read "intentional".

10. On page 905, in the first column, in the first complete paragraph, in the seventh line, "calculate" should read "calculated".

11. On the same page, in the third column, in the sixth line from the top, "control" should read "decontrol".

§ 60.560 [Corrected]

12. On page 906, in the second column, in § 60.560(a)(1)(ii), in the first line, "law" should read "low".

13. On the same page, in table 1, in the 3rd column, the 4th entry should read "1.57[b]"; the 26th entry should read "1.80[b,i,j]"; and the 27th entry should read "3.92[b,i,k]".

14. On the same page, under the table in the footnote section, in footnote i, "Includes" was misspelled.

15. On page 907, in the heading of table 2, remove "(Date of Proposal in Federal Register)" and insert January 10, 1989".

16. On page 908, in Table 3, each item 2 in the fourth column should be aligned to correspond with each item 2 in the third column.

17. On page 909, in Table 4, in the second column, the first entry should read "5.5 < 20"; and in the fourth column, the last entry should read "§ 60.562-1(a)(1)(i), (ii) or (iii)".

18. On the same page, in the second page column, in the second table column, the first entry should read as follows: 47 + 30(0.6 − weight percent VOC).

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6695

[CO-930-09-4214-10; C-48465]

Withdrawal of Public Lands and Reserved Minerals for Protection of Scenic and Recreational Values in the Ruby Canyon of the Colorado River; Colorado

Correction

In rule document 89-14 beginning on page 124 in the issue of Wednesday, January 4, 1989, make the following corrections:

1. On page 124, in the second column, under **SUMMARY**, in the eighth line, "Regulation" should read "Designation".

2. On the same page, in the third column, under T. 10 S., R. 103 W., the ninth line should read "W½NE¼NE¼".

3. On the same page, in the same column, under T. 10 S., R. 103 W., the fifteenth line should read "Sec. 19, lots 1,3,4, NW¼NE¼, NW½SW¼NE¼".

4. On the same page, in the same column under **Sixth Principal Meridian**, the 22nd line should read "T. 10 S., R. 104 W".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88N-0432]

Animal Drug Export; Melatonin Implants for Mink

Correction

In notice document 88-29216 appearing on page 51321 in the issue of Wednesday, December 21, 1988, make the following corrections:

1. In the second column, under **FOR FURTHER INFORMATION CONTACT**, in the second line, "(HFVM142)" should read "(HFV-142)"

2. In the same column, under **SUPPLEMENTARY INFORMATION**, in the 26th line, "8963" should read "8938".

3. In the same column, in the last line, "January 21, 1989" should read "January 3, 1989".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88N-0335]

Drugs Containing Sulfamethazine, Sulfaquinoxaline, Sulfamerazine, Sulfathiazole, Sulfapyridine, or Sulfanilamide for Oral, Injectable, Intrammary, or Intrauterine Use in Food-Producing Animals; Opportunity for Hearing

Correction

In notice document 88-26344 beginning on page 46050 in the issue of Tuesday, November 15, 1988, make the following corrections:

1. On page 46050, in the first column, under **DATES**, in the fouth line "February 13, 1989" should read "January 17, 1989".

2. On the same page, in the third column, in the ninth line, "64" should read "65".

3. On page 46053, in the table, under **C. Sulfaquinoxaline Alone or in Combination With Other Sulfa Products**, in the 4th column, the entry should read "1,2,3,5,6B (Ref. 57)"; and in the 3rd column, in the 15th line "sulfathiazole" was misspelled.

4. On the same page, in the table, under **E. Sulfapyridine Alone or in Combination With Other Sulfa Products**, under the second entry there should be a separate entry that should appear as follows: "099-976 Quality Plus Essar Corp.....Sulfapyridine Solution Injectable....1,2,3,5,6B (Ref. 64)".

5. On the same page, in the same section of the table, in the 4th column, the 3rd entry should read "1,2,3,5,6B (Ref. 65)"; and in the 3rd column, in the 22nd, 23rd, 26th and 27th lines remove the word "sodium".

6. On the same page, in the same section of the table, in the 3rd column, the 29th line should read "Sulfa-Plex, Triple Sulfa Solution, Oral 12.5%, Sulfamethazine sodium,".

7. On page 46054, in the table, in the third column, the first entry should read "Tri-Metha Bolus, Sulfanilamide,Sulfathiazole, Sulfamethazine".

8. On the same page, in the table, in the 3rd column, under **G. New Animal Drugs Containing Sulfonamides in Combination With Nutrients or Other Drugs**, in the 27th line, "Sulfanilamide" was misspelled; and the 28th line should read "Sulfathiazole Uterine, Boluses, Sulfathiazole, Urea".

9. On the same page, in the same section of the table, in the same column, the 34th line should read "Sulfapyridine-Iodine, Boluses, Sulfapyridine, Ethylenediamine dihydroio-"; and in the 45th line "Sulfathiazole" was misspelled.

10. On the same page, in the same section of the table, in the same column, in the 49th line, "Sulfamethazine" was misspelled; in the 51st line, "subcarbonate" was misspelled; and the 60th line should read "Metzol Calf Size, Boluses, Sulfamethazine, Electrolytes".

11. On page 46055, in the same section of the table, in the 4th column, in the 2nd entry, "(Ref. 10)" should read "(Ref. 120)"; and the 15th entry should read "1,2,3,4,5 (Ref. 133)".

12. On the same page, in the same section of the table, in the first column, the third entry should read "099-967".

13. On the same page, in the same section of the table, in the 2nd column, in the 19th line, "Bolettes" should read "Powder".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

29 CFR Part 530

Employment of Homeworkers in Certain Industries

Correction

In proposed rule document 89-2237 beginning on page 4836 in the issue of Tuesday, January 31, 1989, make the following correction:

On page 4836, in the third column, in the **SUMMARY**, in the second line, "declined" should read "decided".

BILLING CODE 1505-01-D

Employment Standards Administration

Wage and Hour Division

Office of the Secretary

29 CFR Parts 1 and 5

Procedures for Predetermination of Wage Rates; Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction and to Certain Nonconstruction Contracts

Correction

In rule document 89-1987 beginning on page 4234, in the issue of Friday, January 27, 1989, make the following corrections:

1. On page 4235, in the first column, in the first complete paragraph, in the seventh line, "classification" should read "journeyman".

2. On page 4236, in the 1st column, in the 13th line, "under the" should read "under this".

3. On the same page, in the 3rd column, in the 1st complete paragraph, in the 25th line, "not be" should read "be not".

3. On page 4242, in the 2nd column, in the 24th line, "With rate" should read "With rare".

BILLING CODE 1505-01-D

federal register

Thursday
February 2, 1989

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 405 et al.

Medicare and Medicaid; Requirements for Long Term Care Facilities; Final Rule with Request for Comments

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 442, 447, 483, 488, 489, and 498

[BERC-396-FC]

Medicare and Medicaid; Requirements for Long Term Care Facilities

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: These final regulations with comment period revise and consolidate the requirements that facilities furnishing long term care are required to meet to participate in both the Medicare and Medicaid programs. They contain revisions to our proposal of October 16, 1987 (52 FR 38582) based on comments submitted by the public.

Long term care facilities include both skilled nursing facilities (SNFs) and intermediate care facilities (ICFs) and, as of October 1, 1990, nursing facilities (NF) created by the Omnibus Budget Reconciliation Act of 1987 (OBRA '87). Under these regulations, one set of requirements replaces the existing separate ones for SNFs participating in the Medicare program, and for SNFs and ICFs participating in the Medicare program. (After October 1, 1990, SNFs, and ICFs participating in the Medicaid program will be known as nursing facilities (NFs).) Although some essential distinctions imposed by the statute remain, these new requirements reflect common needs in SNFs and ICFs. These regulations do not apply to ICFs for the mentally retarded or persons with related conditions.

DATES: *Effective Date:* These regulations are effective August 1, 1989, except when specified otherwise. State agencies have until 90 days after receipt of a revised State plan preprint to submit their plan amendments and required attachments. We will not hold a State to be out of compliance with the requirements of these final regulations if it submits the necessary plan material by that date.

Comment Date: To be considered, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by 5:00 p.m. on May 3, 1989.

ADDRESSES: Mail comments to the following address:

Health Care Financing Administration,
Department of Health and Human Services,
Attention: BERC-396-FC,
P.O. Box 26676,
Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building,
200 Independence Avenue, SW.,
Washington, DC, or,
Room 132, East High Rise Building,
6325 Security Boulevard,
Baltimore, Maryland.

In commenting, please refer to file code BERC-396-FC. Comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in Room 309-G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

Organizations and individuals desiring to submit comments on the reporting requirements discussed under the section on "Reporting Requirements" of this preamble should direct them to the Health Care Financing Administration at one of the addresses cited above, and to the Office of Information and Regulatory Affairs, Att.: Allison Herron, Office of Management and Budget, New Executive Office Building (Room 3208), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Samuel W. Kidder, (301) 966-4620.

SUPPLEMENTARY INFORMATION:

I. Background

Prior Rulemaking Activity

On October 16, 1987 (52 FR 38582), we published a proposed rule (NPRM) that would establish consistent requirements for SNFs under Medicare and SNFs and ICFs under Medicaid. The purpose of the revisions is to focus on actual facility performance in meeting residents' needs in a safe and healthful environment, rather than on the capacity of facility to provide appropriate services. The result of this change in focus is to enforce requirements from the perspective of quality of care and life for long term care residents, not only under Medicare and Medicaid, but generally, since most of these requirements pertain to all the residents of an SNF, ICF or NF. We expect that these revisions will simplify Federal enforcement procedures by using a single set of requirements, which apply to those activities common to all facilities.

In the background discussion in the preamble to the NPRM, we traced the development of different statutes and regulations that established requirements for SNFs and ICFs under Medicare and Medicaid leading to the development of the existing regulations, which were proposed in 1974. Key elements of that discussion are:

- The emphasis of current rules is on process, not outcomes. Consequently the potential to furnish quality care, rather than actual rendition of care is emphasized, with undue reliance placed on staff qualifications.
- Medicaid SNFs must meet Medicare SNF requirements. Questions have been raised whether rules established primarily for post-hospital care are still relevant, considering changes in health care delivery.
- A single facility may include both SNF and ICF beds with differing levels of care and patients transferring from more intensive to less intensive care. Current rules are too inflexible to recognize such changes.
- Current rules are difficult to administer, requiring multiple surveys because State program needs differ from Federal program needs.
- Some requirements are detailed and some are not.

In 1983, we contracted with the Institute of Medicine (IoM), a group chartered by the National Academy of Sciences, to study Federal regulations that might enhance the ability of the regulatory system to assure that residents receive satisfactory care. The study concluded in 1986 with a report that stressed the need to develop new regulations that focus on actual delivery of care and the results of that care. Based on those findings, we developed proposed regulations revising the SNF and ICF requirements. Our proposals largely reflected acceptance of the 1986 Institute of Medicine study, findings and recommendations. We accepted virtually all the IoM recommendations that could be implemented under existing provisions of the Act.

Legislative Revisions

On December 22, 1987, the Omnibus Budget Reconciliation Act of 1987 (OBRA '87), Pub. L. 100-203, was enacted, which included extensive revisions to the Medicare and Medicaid statutory requirements for nursing facilities. These revisions were based on the IoM recommendations that we used in developing the NPRM. These revisions were made with knowledge of HCFA's rulemaking activities and followed extensive discussions with HCFA staff and other interested parties. The new statutory provisions are considerably more detailed than the previous provisions, reflecting the intent

of the Congress to specify in detail, effective October 1, 1990, requirements that the previous law left to the discretion of the Secretary. These new provisions are of two types. Some of them simply elaborate on existing law, while others institute entirely new requirements.

Response to NPRM

We received more than 5,500 comments in response to our October 16, 1987 NPRM. Virtually every association or organization representing nursing homes, and the various medical and other professional employees on their staffs submitted comments. Individual States and major third party payers submitted comments and a significant number of comments were received from or on behalf of individual patients, including numerous petitions and form letters.

Principles for Developing Final Regulations

In this final regulation we intend to implement the provisions in our NPRM (revised as appropriate) and, when possible, the new requirements contained in OBRA '87 that are effective October 1, 1990. When elements of OBRA '87 are significantly different from what appeared in our proposed rule, we are making them effective on October 1, 1990. It is our intention that the final regulations reflect, to the extent possible, the comments on the NPRM and the requirements of OBRA '87.

In implementing OBRA '87, we plan to publish other, related regulations in addition to this final rule. One of the regulations will implement sections 4202, 4203, 4212, and 4213 of OBRA '87, dealing with the survey and certification and enforcement processes. It will specify the tools to be used in enforcing the facility requirements. Another regulation will contain certain newly-created OBRA '87 requirements that are not self-implementing and must be published as a proposed rule.

As discussed in the preamble to the proposed rule (52 FR 38582), our NPRM reflected the recommendations of the IoM. OBRA '87 was written with both the recommendations of the IoM and our NPRM as a model. The new statute departs from previous Congressional practice by specifying many details which current law leaves to the authority of the Secretary. It also contains entirely new requirements which are also specified in detail.

In drafting the final regulation we have attempted to adapt the language of our proposals to reflect the language used in OBRA '87 in all cases in which we believe that the requirements in question are supportable under current law and reasonably flow from proposals published in the October 16, 1987 NPRM. We have done this because we have had comments on the NPRM that have recommended this course of action. We agree with the commenters and with a number of the sponsors of the legislation that it makes the most sense administratively to assure that the final requirements we put into effect now provide a bridge to the new requirements of OBRA '87 that are effective in 1990 and that our requirements be as consistent as possible with similar requirements in OBRA '87 to avoid needless disruption of nursing facilities in making the transition in 1990.

Whenever possible, therefore, this final regulation contains single provisions effective now or in 1990. Only when current law and our NPRM differ significantly from the requirements of OBRA '87 are there separate provisions, one effective August 1, 1989, and the other effective on October 1, 1990. Of course, some provisions appeared only in OBRA '87 and are not reflected in any of the provisions effective before October 1, 1990. These provisions are appearing in final form because they are only restatements of the exact language of the statute.

As a result of comments and the legislative changes, we are making numerous revisions to our NPRM. In addition to numerous technical revisions made by OBRA '87, in this final rule, we are incorporating the following major OBRA '87 requirements:

- Assuring residents' privacy rights with regard to accommodations, medical treatment, personal care, visits, telephone communications, and meetings with resident and family groups;
- Maintaining confidentiality of personal and clinical records;
- Guaranteeing facility access and visitation rights;
- Issuing a notice of rights at the time of admission;
- Implementing admissions policy requirements;
- Assuring proper use of physical restraints and psychoactive drugs;
- Protecting resident funds being managed by a facility;
- Ensuring transfer and discharge rights,and issuing notices required of a facility;
- Providing twenty four-hour licensed nursing services, and services of a registered nurse at least 8 hours a day, 7 days a week, subject to waivers;
- Furnishing comprehensive assessments and being subject to civil money penalties for falsification of an assessment;
- Requiring minimum training of nurse aides, competency evaluation programs, and regular in-service education;
- Prohibiting admission to SNFs and NFs of individuals with mental illness and mentally retardation, except when they need SNF and NF services and have been prescreened by a State authority of mental illness or retardation;
- Providing or obtaining routine and emergency dental services;
- Employing a full time social worker if a facility has more than 120 beds; and
- Meeting disclosure of ownership requirements.

Enforcement

The condition of participation (COP) format traditionally used by Medicare and Medicaid consists of condition level statements. It has been based on the principle that each condition level statement would be a statutory requirement while standard level statements would be lesser requirements. A facility could be found to have deficiencies at the standard level and be making efforts to correct them while it continued to participate in the Medicare program but was subject to termination if it failed to meet a condition level (i.e., statutory) requirement. Regardless of the significance of the requirement, that is, whether the requirement was a COP or a standard within a condition, the facility was responsible for fully complying with all requirements.

Notwithstanding this long standing agency policy, we wish to be certain that the public realize that all requirements for certification must be met by nursing facilities if they are to avoid some measure of adverse action. We believe that, to the extent that Federal requirements were set forth in what appeared to be a qualitative hiearchy, that there might be some misunderstanding that violations of the "lesser" requirements would not be subject to Federal enforcement.

Additionally, the OBRA '87 requirements have recast substantive requirements so as not to use the traditional "conditions" and "standards" terminology.

Accordingly, in this final rule, we have attempted where appropriate to retain the organization of the various proposed requirements, but have revised the terminology. Thus, those requirements that previously were identified as conditions of participation (appearing as individual sections within

a subpart) are now designated as level A requirements. Those requirements that previously were identified as standards (appearing as individual paragraphs within a section) are now designated as level B requirements. These designations are intended to communicate that all of the nursing facility requirements are binding and are not part of a qualitative hierarchy, while at the same time recognizing that violations of these requirements (depending on their type or severity) may be remedied through the different enforcement mechanisms available to the Department.

In light of the revised nomenclature of these regulations, it is our expectation that it will be the Department's enforcement regulations that will be the vehicle to describe the manner in which we will choose among the various enforcement devices available under the statute to remedy the different kinds of violations of Federal certification requirements that can occur in nursing facilities. We would be interested in hearing from the public on the manner in which the Department should approach this task as well as on any restructuring of these final regulations that might be needed to accommodate this program objective.

The comprehensive changes in the enforcement procedures in the Medicare and Medicaid programs necessitated by OBRA '87 will not be implemented until the full rulemaking process has been completed. Therefore, existing enforcement authorities under both programs must continue to be used from the effective date of this rule until the OBRA '87 final enforcement regulation is published and effective. We have made conforming technical changes to Parts 442, 488, 489, and 498 (dealing with certification, provider agreements, and appeals) to reflect the revised terminology for SNFs and ICFs used in this rule.

II. Provisions of the Proposed Rule and Public Comments

Commenters on the NPRM focused their attention primarily on the proposed conditions of participation, and the standards that would be applied to determine compliance with those conditions. There were no substantive comments on § 483.1, Basis and Scope and § 483.5, Definitions, hence, with the exception of adding updating changes required by OBRA '87, these sections are incorporated in this final rule as they were proposed.

Following, we present in order a brief summary of the provisions as proposed, the comments and our responses for those areas of major concern. Many commenters, while agreeing substantially with a standard, as proposed, suggested the standard be used to determine compliance with a different condition. We have accepted many of these comments, which has the effect of significantly reorganizing the NPRM. For general information, we have prepared a table, which appears at the end of this preamble, that relates the requirements in this final rule to the correlative NPRM section from which it evolved. Where OBRA '87 provisions resulted in significant change, we so identify OBRA '87 as the source. This table is intended merely to assist parties who may be interested in comparing specific provisions as proposed or in OBRA '87 to those of the final rule. It does not supplant the more detailed discussion in this preamble.

Comments and Responses

General Comments

Comment: Several commenters urged that we develop a separate set of requirements for specialized facilities such as swing-bed hospitals and hospital-based SNFs, arguing that the basically long-term, residential orientation of the proposed regulations is inappropriate for the particular circumstances of these types of facilities. They noted that these facilities generally are Medicare-only and serve a more acutely ill, shorter-stay patient population than do freestanding facilities. They cited several specific requirements in the proposed regulations as being problematic: allowing up to 14 days from admission to conduct a comprehensive assessment would place the assessment near the end of the typical hospital-based SNF patient's stay; resident participation in the resident group and in facility decisionmaking would lack continuity due to the relatively rapid turnover; the proposed physician visit schedule is too infrequent for this type of patient. Two other commenters expressed the concern that the proposed requirements do not adequately address the special care needs of mentally ill individuals, and the special circumstances of those facilities involved in the treatment of alcoholism.

Response: We acknowledge that certain aspects of individual requirements in the proposed regulations may be more characteristic of long-term, residential settings than of those serving a short-stay, relatively acute care population. However, we believe that developing an entire separate set of regulations for the latter type of facility would be inconsistent with the fundamental concept embodied in the IoM recommendation that, to the extent possible, there should be a single, uniform set of requirements applicable to all SNFs and ICFs. This basic objective of the IoM report is further supported by OBRA '87—which by statute, as of October 1, 1990, will combine the existing Medicaid requirements for SNFs and ICFs into a single set of nursing facility requirements. We also note that, to some extent, the concerns of the commenters are addressed by changes we are making to various individual provisions based on other comments on the proposed rule. For example, we are reducing the maximum timeframe for conducting a comprehensive assessment from 14 days to 4 days effective October 1, 1990. Also, we are reducing the maximum allowable interval between required physician visits in ICFs from that proposed (which permitted visits as infrequently as yearly) to no longer than 90 days.

With regard to the treatment of mental illness, we note that OBRA '87 includes requirements for preadmission screening and annual resident review, which focus, in part, on the special treatment needs of mentally ill individuals. These requirements are designed to direct mentally ill individuals to other settings when appropriate, and to ensure that when mentally ill individuals reside in nursing facilities, all of their treatment needs (including those relating to their mental illness) are fully met. For these reasons, we do not plan to adopt a separate set of requirements for specialized facilities.

Section 483.10 Resident Rights Requirement

We proposed in § 483.10 that the resident has a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility. Also, we proposed that the facility must assert, protect, and facilitate the exercise of these rights. Under present rules, resident rights are categorized as an individual provision within a condition (i.e., a level B requirement).

Over one hundred commenters offered general comments on the introductory statement or on the requirement as a whole. Nearly half of these general comments stated that they strongly supported elevation of resident rights to the status of a condition of participation. Since we do not use the "condition of participation" or "standard" terminology any longer, and we are committed to enforcement of all requirements equally, we do not think

the title used to describe resident rights will bring about less or greater enforcement.

General Comments on the Resident Rights Requirement as a Whole.

Comment: Comments both supported and objected to the change of the term "patient" to "resident." Several commenters applauded the use of the term "resident" rather than "patient" because it recognizes the fact that for many individuals the nursing home is indeed their home. Opponents believed it fosters a false perception of a nursing home patient for those persons who, due to illness and infirmity generally, are unable to assert a variety of rights, engage in a variety of meaningful activities, and cannot be taken care of with minimal resources, i.e., at a relatively low cost.

Response: Our use of the term "resident" is based upon the IoM's recommendation to emphasize the concept of a nursing home as a place of residence for its clients. Additionally, OBRA '87 (Section 4201-Medicare Program and Section 4211-Medicaid Program) amended the Act by defining a skilled nursing facility as an "institution or a distinct part of an institution that is primarily engaged in providing to residents skilled nursing care and related services for residents who require medical or nursing care * * *" We agree that at any given time a number of the residents may be in need of considerable medical care; however, we believe that the term "resident" rather than "patient" as a general term of reference better describes the nursing home clients who reside there to obtain long-term care.

Comment: Another group of commenters suggested structural reorganization of the regulation. Several commenters found the division between resident rights and quality of life blurred and expressed concern that this confusion would lead to either dilution of significant findings or multiple citations by State agency surveyors for the same underlying problem. Some commenters remarked that concepts such as quality of life and quality of care are difficult, if not impossible, to define in isolation from other requirements.

A related criticism of the requirement, cited by commenters who did not realize that the statement of rights at § 483.10 had a parallel section concerning facility responsibilities under the administration requirement at § 483.75, was that the rights section had been weakened by couching the statements in terms of "the resident has a right to * * *". They felt it was quite another thing to say "the facility must do * * * to ensure these rights." They wanted facilities to be actively and meaningfully involved in the process of ensuring resident rights and requested specificity as to how the facility is supposed to assert, protect and facilitate the resident's exercise of these rights. Otherwise, the commenters believed that the requirement could not be used successfully to initiate non-compliance findings.

Response: We are responding to the concerns of these commenters by relocating certain provisions that place responsibilities upon facilities for ensuring rights from the Administration requirement to a new requirement at § 483.12, entitled, Admission, transfer and discharge rights. The individual provisions in this requirement include transfer and discharge, notice of bed hold policy and readmission, equal access to quality care, and admissions policy.

We are also consolidating other parts of the proposed Administration condition, augmented by OBRA '87 requirements, with certain provisions in § 483.10. These are notice of rights and services, access and visitation rights, notification of changes, and protection of resident funds.

To emphasize the importance of monitoring the manner in which nursing facilities manage resident behavior, we are creating a new requirement at § 483.13, entitled, Resident behavior and facility practices, that includes provisions related to resident abuse, the use of physical and psychoactive drugs, and staff treatment of residents.

To reflect the emphasis of the new quality of life requirement, § 483.15, on residents' effective interaction with their environment, we are relocating certain individual provisions from § 483.10 to § 483.15. These provisions are dignity, participation in resident and family groups, participation in other activities, self-determination and participation, and accommodation of needs.

Comment: Some commenters noted that residents do not understand their rights and hence, must rely on strong enforcement of this provision. Several commenters suggested that we develop detailed indicators to be used in the survey process to ensure compliance with this requirement. Still other commenters, stating that the majority of facilities use verbatim texts of rights statements in the materials they provide to residents, expressed appreciation that the language of this rights section had been simplified and made more understandable for residents. On the other hand, several commenters were concerned that the simplified language of the proposed rights section was too vague and open to interpretation. Other commenters felt that the approach taken to resident choice reflected unrealistic assumptions regarding resident capabilities.

Response: In order to reduce subjectivity and vagueness, we have added more specificity to a number of the individual provisions in this requirement, often by relying on the greater detail contained in the current SNF and ICF regulations. These changes are highlighted in the paragraph-by-paragraph discussions below.

We do not agree that these regulations are based on unrealistic assumptions concerning resident capabilities. Our regulations closely follow the recommendations of the IoM study which directly related resident health to the exercise of rights. Below, we address additional comments dealing with rights, since the requirement had numerous provisions involving specific rights.

Paragraph (a): Exercise of rights

We proposed at § 483.10(a) that: (1) The resident has the right to exercise his or her rights as a resident of the facility, and as a citizen or resident of the United States, including the right to file complaints; (2) the resident has the right to be free of coercion or reprisal from the facility in exercising his or her rights; and (3) An individual appointed under State law may exercise a resident's rights when a resident has been adjudicated to be incompetent.

Comment: Comments are summarized as follows. Commenters—

- Reported that language lacked specificity;
- Noted that the regulation failed to address the case of a resident who is clearly incompetent, but has not been determined incompetent by a judge;
- Charged that requiring a judicial determination of incompetency before a relative or representative can exercise the resident's rights would result in expensive and time consuming legal action, and would overburden the courts;
- Noted that the proposed requirement for a judicial determination of incompetency before a representative can exercise a resident's rights conflicts with State laws in some cases. Some States have authorized non-judicial designation of legal surrogates, such as durable powers of attorney, living wills or natural death laws (so-called advance directive mechanisms). If these mechanisms are ruled out, our regulations would restrict, rather than enhance a resident's right to self-determination;

• Requested that we retain provisions of existing regulations that allow physicians to make determinations concerning incompetence because such a determination may serve as a basis for State authorized non-judicial designations of surrogates.

Response: We have changed the wording of § 483.10 to accommodate commenters' views. In paragraph (f), we are using wording that specifies that a resident has the right to voice complaints and file grievances with respect to treatment or care, and the right to prompt efforts by the facility to resolve grievances. In the interpretive guidelines, we will explain that resident and family groups may serve as an effective vehicle for resolution of many resident grievances, particularly when they involve differences of opinion or a conflict of individual rights among residents. However, residents also have the right to take individual action to express their complaints.

Because of the variance in State laws concerning resident rights, we have also accepted commenters' recommendations that we defer entirely to State law on this matter in § 483.10(a)(3). In this final rule, to satisfy commenters, we are adopting wording concerning adjudicated cases that takes into account the fact that gradations of incapability exist to which the States have adopted or can adopt graduated remedies.

Paragraph (b): Right To Be Informed

We proposed at § 483.10(b)(1) that the resident has the right to be informed of his or her rights and the rules of the facility upon admission, in the language that he or she understands.

Comment: Summary of comments.

• A strong majority of commenters urged that we retain the concept of resident responsibilities as a counterbalance to resident rights;

• Commenters also asked that we retain the current requirements for written notification and acknowledgement of receipt of information of rights and responsibilities by residents;

• Some commenters also wanted us to specify, as in the current regulations, that this notification be made prior to or at the time of admission as well as during the stay; and

• Commenters requested clarification of the right to be informed of his or her rights "in the language that he or she understands."

Response: We agree with commenters and are including a requirement for written acknowledgement from the resident and periodic review of information pertaining to rights. We are retaining the requirement that the resident assume certain responsibilities relative to other residents and the facility.

We are also placing in § 483.10(b)(9) a provision that requires facilities to prominently display written information and provide oral information to residents and potential residents about how to apply for Medicare and Medicaid benefits.

"In language that the resident understands" means that communication of information concerning rights and responsibilities must be both clear and understandable to the resident and, if the resident's knowledge of English is inadequate for comprehension, in the foreign language familiar to the resident. For foreign languages commonly encountered in the facility locale, the facility must have written translations of its statement of rights and responsibilities, and should make the services of an interpreter available. In the case of less commonly encountered foreign languages, however, a representative of the resident may sign that he has interpreted the statement of rights to the resident prior to the resident's acknowledgement of receipt. For hearing impaired residents who communicate by signing, the facility would similarly be expected to provide an interpreter. Large print texts of the facility's statement of resident rights and responsibilities should also be available for the many residents who need them.

Comment: We proposed at § 483.10(b)(2) that the resident has a right to inspect his or her records on request.

• Many commenters supported our deletion of the "unless medically contraindicated" qualifier to a number of important rights that exist in the current SNF and ICF regulations, while others took a less favorable view of the deletion;

• Commenters suggested that most residents could not understand the medical terminology used in the records, and wanted us to require physician approval or the presence of a qualified staff person or a physician during the resident's inspection of records;

• Commenters requested that we provide that family members and other representatives also have the right to inspect residents' records on request.

• Commenters asked for clarification of the term, "on request," and recommended that requests for inspection of records be made in writing, and facilities be given 48 hours to respond.

• Commenters suggested that the right to inspect records include the right to photocopy records at prevailing community rates; and

• Commenters suggested that records be defined to include all of a resident's records.

Response: Because of the commenters' strong support for not limiting exercise of resident rights due to medical contraindications in general, we are not imposing this qualifier even though some commenters requested it here at § 483.10(b)(2) and also at (b)(3). We do not believe that residents should be shielded from medical facts. However, we also believe that it would be unreasonable to require the presence of a staff member to interpret records for the resident. In most cases, this would require a nurse, and we believe that scarce nurse resources should be used to provide nursing services, not medical education. The resident may permit inclusion of a staff member familiar with the record, however, if he or she so chooses. Likewise, the resident might wish to have family members or other representatives present. As for allowing other representatives or family members to exercise rights of inspection for the resident, rather than with the resident, we defer entirely to State law in this matter for residents, including those who are judicially determined to be incompetent, as dealt with in § 483.10(a)(3).

Partly to facilitate the inclusion of family or other representatives, as well as to allow the facility to coordinate requests for records with their medical records staff, we are revising the regulations to require written requests from residents and up to 48 hours for the facility to respond to the requests.

We believe the right to photocopy records is an integral aspect of the resident's right to employ the assistance of others in exercising his or her rights since some persons with whom the resident might wish to consult might not be able to be physically present at an inspection of the records. The interpretive guidelines will specify, however, that residents may be charged for this service at prevailing community rates. As explained under the requirement on privacy and confidentiality at § 483.10(e), we are defining records to include all records pertaining to the resident.

Comment: We proposed at § 483.10(b)(3) that the resident has the right to be informed of his or her medical condition, and to have an opportunity to participate in planning his or her medical treatment.

Commenters who responded to this provision wanted:

• Substitution of broader terms, such as health status and total plan of care, for the more restrictive terms of medical condition and medical treatment;

• More resident input into assessment and care planning;

• More informed consent by residents through fuller explanation and discussion of treatment options in language that the resident can understand;

• Inclusion of family members or representatives in the care planning process; and

• A requirement that every resident be informed of the name, specialty, and way of contacting the physician responsible for his or her care.

Response: As noted under § 483.10(b)(2), we believe that the resident should not be shielded from medical facts. We agree with the recommendations of commenters who suggested broader resident involvement in the care planning process and have revised § 483.10(b) to include commenters' suggestions. In the interpretive guidelines, we will explain that the resident should be involved in the assessment and care planning process, including the discussion of diagnoses, treatment options, risks and prognoses. These discussions should be presented in language that the resident can be expected to understand, and the resident must be allowed to make choices based upon the information provided.

Consistent with commenters' requests for a broader interpretation of a resident's right to be informed about his or her condition, we are expanding notification of changes, § 483.10(b)(10).

Comment: We proposed at § 483.10(b)(4) that the resident has a right to refuse treatment, and to refuse to participate in experimental research. The large number of comments we received on this issue are summarized as follows:

• Residents should not have the right to refuse food and liquids; some commenters saw such a refusal of treatment as a form of suicide, which they do not condone;

• Commenters requested that we clarify how a resident's right to refuse treatment can be reconciled with a facility's obligation to provide care and treatment;

• Commenters suggested that the act of refusal of treatment be well-defined, and that the facility inform the resident of the consequences of refusal; and

• Commenters requested that residents not be allowed to refuse to participate in research projects that involve only observation.

Response: As part of the quality of care requirements at § 483.25 (i) and (j), we are requiring that residents receive a nutritious diet and adequate liquids. When invasive procedures are necessary to accomplish this end, however, the courts have generally held that these procedures constitute treatments that residents or their representatives may refuse just as they may refuse any other medical treatment.

We are aware that this is a controversial issue, and for this reason, must defer to the courts and to the States which have responsibility for resolving the underlying legal issues. "The right to die," and particularly withholding of artificial feeding, has received considerable debate since 1976 with the Quinlan verdict and when California passed the nation's first natural death or living will law. Since that time, 38 States and the District of Columbia have adopted such laws. Six States explicitly include artificial feeding among treatments that the resident may refuse, thereby approving withdrawal of nutrition and hydration, while 7 States explicitly exclude such procedures from the definition of treatment, thereby prohibiting the withholding of artificial feeding. Among the remaining States, 14 are silent on the issue and 12 contain ambiguous references to comfort of the patient. Because the right to refuse treatment is protected by law, some believe the right to refuse artificial feeding exists even if a State's living will law has restrictive language excluding artificial feeding from the definition of treatment which may be refused. Such State-imposed restrictions are, therefore, subject to judicial challenge. So far, every trial court decision holding that artificial feeding is unlike other treatments and cannot be refused has been reversed upon appeal. Indeed, in 3 of the 7 States with restrictive language, court challenges to such restrictions have been successful. Because of the discrepancies among State laws and the need for a judicial resolution of this issue, we are leaving the wording of this statement concerning the resident's right to refuse treatment unqualified, as presented in the NPRM. The use of the advance directives, such as living wills, is dealt with under the statement on competency at § 483.10(a)(3).

We believe that a resident's refusal of treatment must be persistent and consistently documented in the resident's record. Refusals of treatment should also be countered by discussions with the resident of the health and safety consequences of the refusal and the availability of any therapeutic alternatives that might exist. With regard to the use of restraints, refusals may be dealt with in the care planning process in which the resident is to be involved, as provided for at § 483.10(d)(3) and through which treatment to reduce dependency upon the use of restraints is to be offered, as proposed under § 483.10(d). If a resident consistently refuses all treatment, discharge on the grounds that the resident's welfare cannot be met in the facility may be the ultimate solution. Transfer and discharge rights are dealt with under § 483.12.

Section 483.75(d) makes reference to general Departmental regulations concerned with the protection of human subjects of research. We also plan to clarify that experimental research must respect the privacy of the resident. Any direct observation or use of client-specific data requires the resident's consent. Non-resident-specific data, however, may be used for studies without obtaining permission of the individual clients.

Comment: We proposed at § 483.10(b)(5) that the resident has the right to information on Federal, State and local agencies concerned with enforcement of skilled and intermediate care rules, and agencies acting as client advocates, and must be afforded the opportunity to contact these agencies.

Comments are summarized as follows:

• Commenters asked that the rights information provided to residents in facilities include the name, address and phone number of all enforcement agencies, all local ombudsman programs, legal services programs, and citizen advocacy groups;

• Commenters suggested that facilities display the most recent Medicare or Medicaid survey reports and statements of deficiencies; and

• Commenters suggested that "agencies acting as client advocates" be deleted from the list of organizations about which the facility must provide information because most facilities do not have this information.

Response: We have concluded that the intent of this proposed provision is met by other requirements related to resident rights including the facility making available to residents and the public written policies on rights and responsibilities; providing space, privacy, and staff support for resident and family advisory groups; permitting access to Federal, State, and local enforcement agents and ombudsmen; and posting in a location accessible to residents information concerning Federal, State, and local enforcement and advocacy agencies, the State or local legal services agency, and

notification of the results of surveys and plans of correction. For this reason, we have chosen to eliminate proposed § 483.10(b)(5).

Comment: We proposed at § 483.10(b)(6) that the resident has a right to be informed of his or her responsibility for charges, services available, changes in rates, and changes in itemized forms.

Commenters—

- Found the wording of this element, as proposed, confusing, particularly the mention of itemized forms;
- Wanted the regulation to be more specific;
- Wanted the resident to be fully informed in advance of all charges for which he or she would be held responsible;
- Asked that facilities notify residents of charges in writing prior to or upon admission and that copies be provided to resident representatives or family members;
- Requested that facilities notify residents in advance of changes; and
- Thought that residents should have a right to receive information about services available under Medicaid and Medicare, eligibility rules, and the application process.

Response: Most concerns of the commenters regarding the wording of the proposal have been resolved by the revised § 483.10(b) (5) and (6). We believe that the revised § 483.10(b) (5) and (6) will provide residents with the knowledge of which items and services are paid for by Medicaid or Medicare, and for which other items and services the resident can expect to be billed. Also, private pay residents should be able to determine which items and services are included in the facility's per diem rate and which are ancillary items or services for which he or she will be billed separately.

Since neither current law and regulations nor the new OBRA '87 provisions give us the authority to require that residents be given advance notice of changes in services or charges, we cannot incorporate this recommendation into this rule. Whenever possible, however, we believe that advance notification should be given in order to be consistent with the intent of the law, which is to allow residents to be fully informed of what they owe the facility.

With regard to commenters who suggested that we require a facility to provide information on how to apply for Medicare and Medicaid benefits, we are using OBRA '87 wording at § 483.10(b)(9), effective on October 1, 1990. As for comments urging us to require that copies of bills be sent to all relevant parties, we also refer readers to § 483.10(b) and § 483.10(e), concerning the right to be informed and the right to privacy and confidentiality of records. These rights place limits on who may receive copies of a resident's financial records.

Paragraph (c): Resident Finances

We proposed at § 483.10(c) that the resident has the right to manage his or her financial affairs. A corresponding provision on resident finances under the administration requirement at § 483.75(j) proposed that the facility must establish and maintain a system that assures a full and complete accounting of the resident's personal funds entrusted to the facility on the resident's behalf. We have consolidated proposed §§ 483.10(c) and 483.75(j) into a single provision addressing resident finances.

Comment: Commenters—

- Requested a requirement that the facility issue quarterly statements to the resident or to his or her representative (this was the most frequently expressed request);
- Believed that residents should have the option to delegate the responsibility of managing funds to the facility, in which case, facilities should be required to accept responsibility;
- Wanted clarification that the resident is under no obligation to deposit funds with the facility; and
- Apparently alluding to State laws concerning incompetency and exercise of rights, which are discussed in § 483.10(a)(3), suggested that we qualify the statement that the resident has the right to manage his or her financial affairs by the phrase, "unless otherwise determined by State law."

Response: We have expanded upon the right of the resident to manage his own financial affairs or, if he or she so chooses, to designate another party to manage them for him or her. Unless determined incompetent under State law by a judge, the resident has the right to manage his or her own financial affairs, and is under no obligation to deposit personal funds with the facility. However, if the resident chooses, the facility must manage the resident's funds. In managing the funds, the facility must keep them in separate accounts, maintain a system that assures a full and complete and separate accounting, and affords the resident or legal representative reasonable access to the record. With regards to commenters' requests for quarterly reports, we proposed and made final, in § 483.10(c)(4)(ii), the requirement that the financial record be made available "on request" to the resident or his or her legal representative.

Paragraph (d): Restraints

We proposed at § 483.10(d) that the resident has the right to be free from unnecessary drugs and physical restraints, and is provided treatment to reduce dependency on drugs and physical restraint.

Comments: In summary, commenters—

- Wanted clarification or elaboration of the language;
- Indicated a preference for the existing regulations, especially with regard to the requirements for a physician's order specifying duration and circumstances for use of restraints;
- Suggested we add a statement that the purpose of restraints is to protect the resident from injury to self or others, and add provisions for emergency use on a one-time only basis;
- Proposed a ban on use of restraints for staff convenience or disciplinary purposes, while others suggested that we require review by an interdisciplinary team and documentation of attempts to use less restrictive methods;
- Commended the inclusion of the statement requiring treatment to reduce drug dependency;
- Found this requirement unsafe or inappropriate for some residents;
- Suggested that it be left up to the physician to reduce the use of restraints;
- Objected to the use of the term "unnecessary drugs" as vague, subjective or unenforceable. Some commenters proposed substituting "chemical restraints" for the term, "unnecessary drugs;" and
- Requested that we implement the OBRA '87 provisions concerning restraints and psychopharmacological drugs immediately.

Response: Because the area of behavioral management of nursing facility residents has both residents' rights and quality of care dimensions, we are placing proposed § 483.10(d), Restraints, and § 483.10(e) Abuse, in a new requirement, Resident behavior and facility practices, § 483.13.

In response to comments, we are providing in § 483.13(a) on the use of physical restraints and drugs for the purpose of discipline or convenience to staff that "The resident has the right to be free of and the facility must ensure freedom from physical restraints imposed or drugs administered for purposes of discipline or convenience, and not required to treat the resident's medical symptoms." We have chosen not to use the OBRA '87 term "chemical restraint." This term is often used in a pejorative sense to mean drugs used without appropriate indications, in excessive doses, for excessive periods of time, or for a combination of all three of these reasons. Many drugs are, in fact, designed to restrain certain behaviors. They only become "chemical restraints" when used without proper indications for use, in excessive doses or for excessive periods of time.

In a forthcoming rule, we will propose specific requirements for the administration of drugs and the application of physical restraints in emergency and nonemergency situations. This will address many of the commenters' other concerns. Generally, we plan to follow the provisions of the conditions of participation for intermediate care facilities for the mentally retarded published as a final rule in the **Federal Register** on June 3, 1988 at 53 FR 20448.

We have chosen not to implement this OBRA '87 provision concerning the use of psychopharmacological drugs in this final rule, but will address this requirement in a forthcoming proposed rule.

In addition, the term "unnecessary drugs" is defined in this preamble under the "Quality of care requirement, Paragraph: (i) Drug Therapy" and has been relocated to § 483.25(l)

Paragraph (e): Abuse

We proposed at § 483.10(e) that the resident has the right to be free of physical, psychological, or sexual abuse or punishment.

Comment: Commenters—

- Applauded inclusion of this right;
- Recommended that resident management programs not be considered abuse when the programs are described in the plan of care in response to an identified problem, developed by the professional team and approved by the attending physician;
- Requested a definition of abuse or interpretation of such terms as psychological or sexual abuse within the regulation;
- Requested inclusion of verbal abuse and involuntary seclusion (isolation) as forms of punishment; and
- Suggested adding a right to information about how to report abuse, neglect, or mistreatment.

Response: We agree with the commenters' recommendations. We are creating a new requirement at § 483.13 which includes provisions on restraints and abuse, and we are adding verbal and sexual abuse in response to comments. We do not believe, however, that we can exclude all behavior management techniques that might be employed within a plan of care from possible consideration as abuse. We plan to define through example for our surveyors terms such as physical, psychological, sexual, and verbal abuse. We believe that the resident's right to information about agencies to which abuse or neglect should be reported is adequately addressed in § 483.10(k), as revised.

We are also placing in § 483.13(c), a requirement related to the staff treatment of residents reflecting a facility's responsibilities to prevent abuse through assuring that persons who have been convicted of abusing individuals are not employed and allegations of abuse are fully investigated.

Paragraph (f): Privacy and Confidentiality

We proposed at § 483.10(f) that the resident has the right to personal privacy and confidentiality of his or her records.

Comment: Commenters—

- Urged expansion of the right to personal privacy to include privacy regarding accommodations, treatment, personal care, visits, and meetings, whether of resident or family groups or with selected individuals such as ombudsmen, lawyers, and clergy;
- Requested addition of specific requirements that residents be treated with consideration and respect, and be accorded the right not to have one's condition or care discussed with family members without the resident's inclusion or expressed permission;
- Requested retention of all or parts of the more specific language on confidentiality used in the current SNF and ICF regulations. Most frequently, commenters wanted the regulation to specify that a resident has the right to approve or refuse the release of his or her records to any individual outside the facility, except those required to be released by law or third party payment contract; and
- Wanted the statement to specify that confidentiality extends to a resident's medical, social, and financial records so that the right cannot be interpreted to mean only medical records.

Response: To accommodate the many requests for a more specific definition of privacy rights, we have revised § 483.10(e) to discuss privacy explicitly in terms of accommodations, medical treatment, personal care, visits, and meetings of family and resident groups. The clause following new section 1919(c)(1)(A)(xi), added by OBRA '87, specifies that privacy with regard to accommodations does not require a private room. Under the physical environment requirement at § 483.70(d), we are defining privacy with regard to accommodations as full visual privacy around beds. We are interpreting the right to privacy to mean that the resident has the right to privacy with whomever the resident wishes to be private and that this privacy should include full visual, and to the extent possible, auditory privacy. Privacy space may be created flexibly and need not be dedicated solely for visitation purposes. For example, privacy for visitation or meetings might be arranged by using a dining area between meals; a vacant chapel, office or room; or an activities area when activities are not in progress. Arrangements for private space could be accomplished through cooperation between the facility's administration and resident or family groups so that private space is provided for those requesting it without infringement on the rights of other residents.

Under proposed paragraph § 483.10(f)(1), we have not accommodated the request of some commenters that we retain provisions of the current SNF and ICF regulations which require that the resident be treated with consideration, respect, and full recognition of his or her dignity and individuality because we believe this requirement will be addressed under the Quality of life requirement, § 483.15(a).

In proposed paragraph § 483.10(f)(2), as requested by commenters, we provide generally that the resident may approve or refuse the release of personal and clinical records outside the facility. This change found at § 483.10(e)(2) serves to continue the more specific requirements from the current SNF or ICF regulations as well as incorporates OBRA '87 wording, which requires confidentiality of personal and clinical records. We will interpret this in subsequent guidelines to include all types of records the facility might keep on a resident, whether they be medical, social, financial, automated, or other. We have also revised § 483.10(e) by adding a new paragraph (3) to include the explanation of conditions under which the resident does not have control over release of his records. These include transfer to another health care institution, and record release required by law or third-party payment contract.

Paragraph (g): Work

We proposed at § 483.10(g) that the resident has the right to not perform services for the facility, and to be compensated for services voluntarily performed, unless informed prior to performing the services that the services

are of a voluntary nature and will not be compensated.

Comment: Comments are summarized as follows:

- Many commenters found this requirement confusing, or even self-contradictory, and indicated a preference for the wording of the current SNF regulation which states that "The resident is not required to perform services for the facility that are not included for therapeutic purposes in his plan of care;"
- A large majority of commenters urged retention of the concept of work as therapy;
- A majority of commenters also requested that the rule state that the resident has the right to perform voluntary services for the facility just as much as he or she has the right not to perform any services; and
- Commenters objected to having the facility placed in a position of open-ended liability for payment anytime it neglects to inform a resident before performing a service that the service was voluntary.

Response: In the final rule, in § 483.10(h) we are acknowledging both the right not to work and the right to do work, as matters of resident choice. We have restored the concept of work as therapy by requiring that all resident work, whether of a voluntary or paid nature, be done through the plan of care. Documenting a resident's need or desire for work in the plan of care makes the work assignment reviewable and prevents the impression that every resident is expected to work. We believe a resident's desire for work is subject to discussion of medical appropriateness. As part of the plan of care, a therapeutic work assignment must be formally agreed to by the resident. The resident also has the right to refuse such treatment at any time that he or she wishes. At the time of development or review of the plan, the voluntary or paid nature of the work can be negotiated. The resident, thus, is able to negotiate while, at the same time, the facility is freed of the open-ended liability that many commenters criticized.

Paragraph (h): Mail

We proposed at § 483.10(h) that the resident has the right to send and receive mail that is not opened.

Comment: Commenters all strongly supported this right and usually requested more detailed protections of the right. A majority of commenters objected to delays, for one reason or another, in the delivery of mail. Because delaying mail may be used as a form of retaliation or retribution, some commenters proposed adding the phrase "without interference." Another group of commenters urged requiring distribution on a Monday through Saturday basis or on the same day as the mail is received by the facility. Several commenters also requested that we add, "the resident shall have access, at his or her own expense, to writing instruments, stationery, and postage." One commenter proposed that we adopt the broader provisions of OBRA '87, requiring, "privacy in written communications." Finally, as a way of protecting staff from misinterpretation of assistance as an invasion of privacy, two commenters proposed adding that "facility staff may assist the resident in sending or receiving personal mail if the resident requests it."

Response: We have expanded this requirement by incorporating some of the qualifiers suggested by commenters. In § 483.10(i), we are requiring that mail be sent from and delivered to residents "promptly," which will mean delivery to the resident writing within 24 hours of arrival in the facility and delivery to the postal service within 24 hours. More specific requirements concerning mail distribution might prove burdensome to facilities. While we require access to materials, we have not placed the responsibility for provision of these items directly on the facility. We take the view that within each facility a resident group or similar group could work with the facility's administration to make the most appropriate arrangements for their situation. In that residents have the right to request assistance in the exercise of all their rights, we do not believe that any particular staff protections are necessary.

Paragraph (i): Access to Facility

We proposed at § 483.10(i) that the resident has the right to receive visitors at any reasonable hour, and by arrangements at other times.

Comment: A sizeable majority of commenters, usually representing facilities, wanted "at any reasonable hour" defined in the regulation, qualified by "as determined by facility policy," or deleted in favor of "during visiting hours." Resident advocates proposed that "reasonable" be defined as at least eight hours per day, that "by arrangements at other times" be clarified to specify between whom the arrangements are to be made, and that facilities be required to take into consideration circumstances such as out-of-town visitors and working schedules of relatives and friends. Some commenters asked us to implement immediately all or parts of the OBRA '87 provisions pertaining to access to the facility, particularly the one allowing immediate access to the resident by members of the resident's family.

Response: We accept the comments requesting that facilities be responsible for granting access to visitors at any reasonable hour and are revising § 483.10(j) to provide that, until October 1, 1990, the resident has the right to receive visitors, and the facility must allow visitors to have access to the resident at any "reasonable hour." In the interpretive guidelines, we will define "at any reasonable hour" to mean at least eight hours per day, arranged in such a way that daytime, evening and weekend visitation times are available to meet most potential health practitioners and non-family visitors' schedules. Effective October 1, 1990, in § 483.10(k) (vii) and (viii), we are implementing the OBRA '87 requirement that residents have the right to "immediate" access from family, other relatives and friends. Section 411(l) of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100-360, makes certain provisions of OBRA '87 effective July 1, 1988, including immediate access to representative of the Secretary, the State, the residents individual physician, State ombudsmen, and agencies responsible for the protection and advocacy system for developmentally disabled and mentally ill. We are including these provisions in § 483.10(k) (i), (ii), (iii), (iv), (v), and (vi).

Paragraph (j): Telephone

We proposed at § 483.10(j) that the resident have the right to have access to the private use of a telephone.

Comment: The vast majority of respondents commended the addition of this provision to the statement of resident rights. A few commenters objected to the phrase "private use of a telephone" on the grounds that facilities would incur costs by having to provide a phone room or private lines in all patient rooms. On the other hand, several commenters asked that we incorporate additional requirements such as wheel-chair accessibility, provision of adaptive equipment for the hearing-impaired, regular access to a phone as opposed to "by request to the staff" and provision of a private line for resident use.

Response: In regard to the provision requiring privacy in telephone conversations, as well as adaptive equipment for the hearing-impaired, we note that section 504 of the Rehabilitation Act of 1973 already establishes the basic right to communication for handicapped individuals. Many residents of nursing homes are hearing-impaired, and cannot effectively exercise their right to communication by telephone without adaptive equipment. Under these circumstances, we believe that the Rehabilitation Act of 1973 already requires the provision of privacy during telephone conversations and adaptive equipment and, therefore, it is not necessary to revise the regulations specifically to require this. In our enforcement of the privacy right, we will seek to determine if residents are afforded privacy in telephone conversations, by whatever means, and hold the facility responsible for the ultimate outcome.

Paragraph (k): Self-Determination and Participation

We proposed at § 483.10(k) that the resident has the right to participate in normal social, religious, and community group activities and to make choices about significant aspects of his or her life in the facility.

Comment: Commenters responded to this provision and to the closely related one under the Administration requirement at § 483.75(u) which requires the facility to ensure resident participation in the facility's policy and operational decision-making. We are discussing both provisions in this section. Commenters on the administration requirement overwhelmingly opposed direct resident participation in comprehensive policy and operational decision-making. A strong majority of commenters, while not opposed to resident involvement, wanted resident input channeled through resident groups and limited to those areas which directly pertain to resident care. Most of these commenters urged inclusion, under this resident rights section, of a right to organize and participate in a resident or family group through which recommendations concerning policies and operations could be made. A minority of commenters, however, asked us to go a step further and require the existence of such group.

Other Comments are summarized below:

- Commenters criticized the vagueness and unenforceability of the words "normal" group activities and "significant" aspects of a resident's life in the facility;
- Resident advocates noted that the important decisions affecting a resident's life in the facility such as when to eat, whom to share a room with, what to wear, or when to go to bed are usually out of the resident's control;
- Commenters cited the need for transportation to outside activities and residents' desire to have some choice in the selection of, or changes in, roommates.

Response: Because of the strong support of commenters for the right to organize and participate in resident and family groups, we have included a new provision, titled Participation in resident and family groups. Furthermore, because this provision explicitly addresses residents' social interactions and involvement in group activities, we have decided to place it at § 483.15(c) as part of the quality of life requirement. This provision implements section 1919(c)(1)(A)(vii) of the Act.

We are not mandating that resident and family groups exist because we do not believe we have statutory authority, even udner OBRA '87, to do so. We are providing that when residents or their families wish to organize, facilities must allow such organizations to exist, and must provide them with space and privacy for meetings and staff support and liaison with the nursing facility's administration.

In response to commenters' requests, we are deleting the word "normal" in describing the resident's right to participate in (normal) social, religious, or community activities, as some commenters requested. We are placing a provision, titled Participation in other activities, at § 483.15(d) in the quality of life requirement, as it also reflects the ability of residents to engage in personally meaningful social behavior.

Finally, we are placing a provision, titled Accommodation of needs, in the quality of life requirement, § 483.15(e). This provision provides the resident with a guarantee of reasonable accommodation of individual needs and preferences. At the request of several commenters, we are incorporating a provision concerning the right to receive notice of changes in room or roommate in this paragraph.

Paragraph (l): Personal Property.

We proposed at § 483.10(l) that the resident has the right to retain and use personal possessions and appropriate clothing, within space allocated by the facility, unless to do so would infringe upon the rights or security of other residents.

Comment: Summarized below are the comments on this paragraph.

- Commenters supported the deletion of the "unless medically contraindicated" qualifier to many of the rights in current regulations;
- Several commenters were concerned that the way the proposed provision was expressed, it gave too much discretion to the facility to curtail a resident's retention of, access to, or use of his or her personal property. They proposed changing the phrase, "within space allocated by the facility," which was taken from the current SNF regulations to the more neutral, "as space permits;"
- Other commenters wanted facilities to have more authority to approve or disapprove of which personal possessions a resident may retain, usually on the grounds of safety;
- Commenters suggested that some record and response should be required of the facility in cases of lost or damaged personal property, such as maintaining a written inventory of possessions, investigating incidences of loss, and reporting suspected theft to police;
- Commenters proposed that facilities be required to provide each resident with locked storage space in his or her room and to assist residents in arrangement of stored possessions, particularly seasonal clothing;
- Another commenter proposed that resident councils be identified as the vehicle for establishing procedures for resolving disputes between residents in the exercise of their rights to use personal property; and
- Another respondent asked that furniture be explicitly included among the personal possessions a resident may retain because having their own furnishings may aid in orientation of many residents suffering from Alzheimer's disease or other dementias.

Response: In view of the IoM recommendations that residents' environment be as homelike as possible and that residents retain as much control over their lives as possible, we are following the prevailing view of commenters that the right to have and use personal possessions should not be subject to medical contraindications. We have also substituted "as space permits" for the phrase, "within space allocated by the facility", thus removing the facility from the role of sole arbiter of which possessions a resident may retain. In order to accommodate the legitimate safety concerns of facilities, we have also substituted "the health and safety" for the "security" of other residents.

Facility responsibility for lost or damaged personal property of residents, we believe, should be limited to reasonable preventive measures and investigation of incidents of loss or damage.

The right to participate in resident groups and the roles ascribed to such groups are dealt with in § 483.15(c).

Participation in resident and family groups and § 483.15(b), Self-determination and participation. We believe that resident and family groups are appropriate channels for resolving many types of grievances among residents, and between residents and the facility's administration over the exercise of property rights. We believe that a facility's role in protecting a resident's rights extends to investigation of incidents of loss or damage and taking appropriate legal action where it is warranted. Finally, since large numbers of residents suffer from mental confusion, we have included "some furnishings" among personal possessions which a resident may retain.

Paragraph (m): Married Couples

We proposed at § 483.10(m) that the resident has the right to privacy during visits by his or her spouse, and to share a room with his or her spouse, when married residents live in the same facility.

Comment: Nearly two-thirds of these comments addressed deletion of the "unless medically contraindicated" qualifier to many of the rights contained in the current regulations, with a strong majority of commenters applauding the deletion of the phrase. The minority that favored retention of the qualifer wanted to preserve some flexibility for facilities that encountered cases of verified verbal or physical spousal abuse, or that wanted to not accommodate a request when spouses required different levels of care. Several other commenters mentioned level of care problems without proposing retention of the phrase as a solution. In States which have adopted case-mix based prospective payment systems such as resource utilization groups, commenters were particularly concerned about the cost implications of implementing this right.

Several commenters raised the question of which spouse's right should prevail in cases where only one spouse wanted to share a room. Most of these commenters urged that consent of both spouses be required. Another sizable group of commenters wanted the right to share a room expanded to "consenting adults". Some of the commenters urged that facilities be required to state their room sharing policies "up front" in their written policies on resident rights. Finally, some commenters requested privacy with any visitor with whom the resident wished to be private.

Response: Because a number of commenters on this provision and the one on privacy and confidentiality at § 483.10(e) supported this expanded right to privacy during visitation, we have revised § 483.10(e) to provide for a general right to privacy. As originally proposed, § 483.10(m)(1) implied that only married couples were entitled to privacy. We are also revising § 483.10(n) to provide that a resident has the right to share a room with his or her spouse when married residents live in the same facility and both spouses consent to the arrangement.

In light of the strong support for our deletion of medical contraindications as a qualifier of the right of couples to share a room, we have maintained this deletion. The thrust of this entire rights section is to enable residents to make choices for themselves. If a couple wishes to share a room, they should be allowed to do so without a physician making the decision for them that to do so would be unwise or unsafe. We do believe, however, that the consent of both spouses should be required, and we are revising paragraph (n), accordingly. We believe that in cases of documented spousal abuse, the facility should use its staff to either resolve difficulties or encourage the abused spouse to withdraw consent to the room sharing.

In regard to level of care problems that may arise with room sharing, OBRA '87 mandates the end to the current SNF and ICF distinction by October 1, 1990. In States that currently certify beds simultaneously for both levels of care, no barrier exists to accommodating a couple's wish to share a room, even though they may require differing levels of care. Until October 1, 1990 when the OBRA provision takes effect, level of care problems will continue to arise in those States that certify individual beds or wings as either ICF or SNF, because under current law, a resident may not occupy a bed certified for a level of care for which he or she is not approved. The number of couples who have simultaneous stays in the same facility is, however, relatively small; and the number of such spouses who require different levels of care is smaller still. For the interim period until the statute's SNF and ICF distinction is abolished, level of care requirements must take precedence over this right in those relatively infrequent cases that may emerge in affected States. Elsewhere currently, and everywhere after October 1, 1990, a request by both spouses to share a room must be honored, even if case-mix or other classification groups vary widely. The incidence of such cases is low enough, we believe, that facilities will not incur inordinate financial loses by facilitating this right of married couples.

At this time, we do not believe that we should require that facilities grant the same right to "consenting adults" that we require they accord to married couples by virtue of their legal status. In interpretive guidelines, however, we will require facilities to explain their policies on room sharing requests to prospective residents prior to admission. We believe that most facilities attempt to accommodate residents' wishes and perferences in roommates whenever possible. Nevertheless, the guidelines will encourage such accommodation of residents' individual preferences.

Summary of Changes to § 483.10

The following is a summary of the major changes we are making to § 483.10 in response to comments. The organization has been changed from the proposed rule due to adding individual Level B requirements or moving them to other Level A requirements.

- In paragraph (a), we are adding provisions on exercise of a resident's rights by the resident's representative when a resident is adjudicated incompetent under State law.
- In paragraph (b), Notice of rights and services, we are requiring that a resident be fully informed of rights both orally and in writing in the language he or she understands.
- In paragraph (b)(5), we specify that a resident has the right to be fully informed in writing of all services available in the facility and of charges for those services.
- In paragraph (b)(2), we are requiring that a resident has the right to inspect and photocopy his or her records upon written request to the facility. The facility is allowed 48 hours to respond to a request.
- In paragraph (c), Protection of resident funds, we specify that a resident is not required to deposit personal funds with the facility, and the resident may designate another party to manage his or her finances. We are placing all requirements concerning protection of resident funds in paragraph (c).
- In paragraph (d), Free choice, we specify that a resident has the right to choose an attending physician, be informed in advance of care and treatment, and to participate in development of his or her plan of care.
- In paragraph (e), Privacy and confidentiality, we are adding a resident's right to privacy in accommodations, medical treatment, personal care, visits and meetings with family and resident groups. Paragraph (e) also provides that a resident has the right to refuse the release of personal and clinical records to any individual outside the facility, except when required to release to another health care institution by law, or third party payment contract.
- We are creating two Level B requirements, abuse and restraints, and placing them in a new Level A requirement, § 483.13, Resident behavior and facility practices. In § 483.13(b), Abuse, we specify that a resident has the right to be free of verbal, mental, sexual or physical abuse and involuntary seclusion.
- In paragraph (f), Grievances, we are adding wording that supports commenters views that a resident has the right to voice complaints and file a grievance with respect to treatment or care, and the right to prompt efforts by the facility to resolve a grievance.
- In paragraph (h), Work, we are adding the resident's right to perform services for the facility when the need or desire for work is documented in the plan of care. Details of the services to be performed and compensation for services must be specified in the plan of care.
- In paragraph (i), Mail, we specify that a resident has the right to send and receive mail promptly that is unopened.
- In paragraph (j), Access to facility, we are revising the provisions on access to the facility to specify that a resident has a right to receive immediate family members or other relatives at any hour, and other visitors at a reasonable hour by arrangement with the facility.
- We are revising paragraph (l), Telephone, to provide that a resident has the right to the private use of a telephone.
- We have created several separate requirements from the proposed paragraph (p), Self-determination and participation, reflecting resident's rights concerning activities, interaction with members of the community, accommodation of individual needs and preference, notice before a change in room or roommate, and organization of, and participation in resident and family groups. We have placed these provisions in a revised quality of life requirement § 483.15(b), (c), (d) and (e).
- To paragraph (m), Personal property, we are adding a resident's right to retain and use personal possessions "as space permits."
- To paragraph (n), Married couples, we are adding a resident's right to share a room in a facility when both spouses consent to the arrangement.

Section 483.12 Admission Transfer and Discharge Rights Requirement

In this final rule, we are creating a new Level A requirement called Admission transfer and discharge rights, § 483.12, based on wording from OBRA '87 provisions. The provisions included in this new requirement appear in the following paragraphs:

(a) Transfer and discharge (proposed as § 483.75(r) (3), (4) and (5)).

(b) Notice of bed-hold policy and readmission (OBRA '87 effective 10/1/90).

(c) Equal access to quality care (OBRA '87 effective 10/1/90).

(d) Admissions policy (OBRA '87 effective 10/1/90).

We are responding to comments on transfer and discharge provisions at the location at which they appeared in the proposed rule. We are adding as paragraph (b), Notice of bed-hold policy and readmission, effective October 1, 1990, which largely incorporates OBRA '87 provisions in new section 1919(c)(2)(D) of the Act. This paragraph requires that facilities provide written information to the resident and a family member or legal representative that specifies the duration of the bed-hold policy, if any, under the State plan, and the facility's policies on bed hold periods before a resident is transferred to a hospital or for therapeutic leave, and at the time of transfer.

In paragraph (c), Equal access to quality care, we are implementing the OBRA '87 provision in new section 1919(c)(4) of the Act, which provides that, effective October 1, 1990, a facility must establish and maintain identical policies and practices regarding transfer, discharge, and the provision of services under the State plan for all individuals regardless of source of payment.

Paragraph (d), Admissions policy, incorporates OBRA '87 provisions in section 1919(c)(5) of the Act, effective October 1, 1990, which prohibit facilities from—

- Requiring a third party guarantee of payment as a condition of admission, expedited admission, or continued stay in the facility; and
- Charging, soliciting, accepting or receiving, in addition to any amount required to be paid under the State plan, any gift, money, donation or other consideration as a condition of admission, expedited admission or continued stay in the facility.

Note.—Even though this regulation does not take effect until the effective date of OBRA '87, the identical provisions are already in effect as a result of section 1128B of the Act.

Effective October 1, 1990, a facility must not—

- Require residents or potential residents to waive their rights to Medicare or Medicaid, and
- Require oral or written assurance that residents or potential residents are not eligible, or will not apply for, Medicare or Medicaid benefits. These provisions are intended to prevent discrimination against individuals entitled to Medicaid benefits.

Section 483.15 Quality of Life Requirement

In the Quality of Life requirement at § 483.15 we proposed that the facility must ensure that residents receive care in a manner and in an environment that maintains or enhances their quality of life without abridging the safety and rights of others by (a) treating each resident with dignity and respect and (b) maintaining each resident's privacy.

Comment: A commenter noted that the Quality of Life requirement is too vague and its individual provisions should be integrated into other existing requirements. For example, provisions dealing with Choice (483.15(c)) and Dignity (483.15(a)) should be within the Residents Rights requirement (483.10), and the provision on Environment should be placed within the Physical Environment requirement at § 483.70. The commenters reasoned that integrating the Quality of Life provisions within other specific existing requirements would decrease the risk that this requirement will be subjectively evaluated by surveyors.

Response: Quality of life is a complex concept reflecting the characteristics of an individual's relationship to his social and physical environment. Quality of life has both residents' rights and physical environment dimensions. It reflects the relationship between the resident and the physical and human environment in which he or she lives. After examining comments received on the proposed quality of life requirement and on the proposed resident rights requirements, we have chosen to reorganize the proposed quality of life requirement to include those provisions that best reflect an individual's ability to influence, and be influenced by, his or her physical and social environments and to participate fully in these environments to the full extent of his or her functional abilities.

The revised provisions of the quality of life requirement appear in the following paragraphs:

§ 483.15(a) Dignity
§ 483.15(b) Self-determination and participation
§ 483.15(c) Participation in resident and family groups
§ 483.15(d) Participation in other activities
§ 483.15(e) Accommodation of needs
§ 483.15(f) Activities
§ 483.15(g) Social services

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§ 483.15(h) Environment

Paragraphs (b), (c), (d), and (e) of § 483.15 have already been discussed under revisions to the proposed rights requirement.

Comment: Several commenters objected to the use of the word "ensure" in the requirement that "the facility must ensure that residents receive care * * * that maintains or enhances their quality of life * * *", as well as in other parts of the proposed regulations, because it implies guarantees, and it creates an unrealistic burden on the facility.

Response: We agree that when used in certain contexts, the word "ensure" could inappropriately be construed as imposing on the facility an absolute responsibility to achieve a prescribed result, without allowing for factors that are clearly beyond its ability to control. In these final regulations, we are attempting to address this concern, either by limiting the use of the word "ensure" to factors for which the facility appropriately can be held responsible (such as the conduct of its own employees), or by allowing for exceptions when warranted by external circumstances that the facility cannot reasonably be expected to control (see the subsequent preamble discussion of this issue in connection with resident care outcomes under the Quality of Care requirement).

Comment: A commenter noted that § 483.15(a), Dignity, requires that the facility treat each resident with dignity and respect, and suggested adding, "in full recognition of his or her individuality." Other commenters requested that we specify that residents must be examined or be treated by physicians or other consultants in a private area, examination room or other room.

Response: We are modifying the wording of paragraph (a), Dignity, by adding, "in full recognition of his or her individuality." With regard to assuring resident privacy during treatment or examination, we believe we have addressed this issue adequately within the resident rights requirement at § 483.10(e)(1), which provides that "the resident has the right to personal privacy with regard to accommodations, medical treatment, personal care, visits, and meetings of family and resident groups."

Paragraph (b): Environment

Proposed § 483.15(b) requires the facility to provide a clean, comfortable, homelike environment, housekeeping and maintenance service, clean bed linens and secure and private closet space in each resident's room.

Comment: Many commenters questioned the meaning of the term "homelike," and either wanted it clarified, defined or deleted. One commenter noted that, while a facility may be cheerful, warm and colorful, for example, a truly homelike environment is incompatible with accepted safety and sanitation parameters. One commenter suggested adding to § 483.15(b)(1), "a safe, clean, comfortable homelike, and least restrictive environment." Another suggested that there should be a therapeutic environment which maximizes functional independence.

Response: We wish to retain the reference to homelike environment as one that deemphasizes the institutional character of the setting, to the extent possible, and allows the resident to use those personal belongings that support a homelike environment. This is in accordance with the proposed requirement at § 483.10(m) on personal property, and with section 1919(c)(1)(A)(v) of the Act, added by OBRA 87, which establishes the resident's right to "reside and receive services with reasonable accommodations of individual needs and preferences." In this final rule we have relocated this provision as § 483.15(h), Environment, under the Quality of life requirement.

In regard to the comment requesting requirements for architectural safeguards to accommodate a "least restrictive environment," or a "therapeutic environment, which maximizes functional independence," we do not believe these terms would be more descriptive or go any further in assisting the surveyor in identifying non-compliant facilities than the term "homelike."

Comment: A commenter recommended structural requirements, (e.g., room size and furnishings) since the immediate environment has a direct bearing on the quality of the resident's life. Another commenter recommended American National Standards Institute (ANSI) standards in making facilities accessible to the handicapped to produce an environment that encourages independence. Some commenters provided specific suggestions as to requirements for room size, room temperatures, ventilation, lighting and sound levels, furniture arrangement (non-institutional in arrangement), and adaptable call systems (i.e., a call system that can be used by the physically handicapped or the vision impaired).

Response: The commenters' concerns regarding structural requirements relative to room size and furnishings are addressed in the revised physical environment requirement. Section 483.70(d)(1)(ii) requires that the bedrooms measure at least 80 square feet per resident in multiple resident bedrooms and at least 100 square feet per resident in single resident rooms; and § 483.70(d)(2)(iv) requires the facility to provide each resident with functional furniture appropriate to the resident's needs. Specific requirements for ventilation and lighting levels also are addressed at § 483.70(g), which requires the facility to provide a comfortable environment for residents.

With regard to the comment that we include provisions requiring that facilities be accessible to the handicapped, we believe the administration requirement at § 483.75 is a more appropriate place for this concern. In revised § 483.75(d), relationship to other HHS regulations, we are referencing applicable provisions of other HHS regulations that facilities are obliged to meet, including but not limited to those pertaining to nondiscrimination on the basis of handicap. With regard to adapting call systems to the special needs of the physically handicapped or vision impaired, we believe the Rehabilitation Act of 1973 provides that residents with handicaps must be provided with a means to summon staff when necessary.

Comment: Proposed § 483.15(b)(3) requires the facility to provide clean bed linens. Many of the commenters wanted an expansion of this language to include bath linen that are in good condition. One commenter suggested the inclusion of a requirement for "linen handling techniques."

Response: We believe that this comment can best be accommodated by expanding the environment requirement at §483.15(h)(3) to read "clean bed and bath linen that are in good condition". We do not believe it necessary to include a requirement for linen handling technique because this is covered within the infection control requirement at § 483.65(c), which provides that personnel must handle, store, process and transport linens so as to prevent the spread of infection.

Comment: Proposed § 483.15(b)(4) requires the facility to provide secure and private closet space in each resident's room. Many commenters wanted clarification of the word "secure" as some believed a locked space without appropriate facility access could have potentially adverse results if a resident stores food or other items inconsistent with accepted health and safety practices. One commenter suggested adding, "the facility may inspect and monitor and clean out as necessary." Another commenter recommended deletion of "secure" and "each," as often it is financially infeasible to provide "each" resident with a "secure" and private closet space, thus making this requirement difficult to meet.

Response: We agree with commenters that "secure" storage would be difficult to define short of actually specifying "locked" storage which would be prohibitively expensive. We have, however, retained the word "private" and will expect providers to respect the privacy of residents in this regard. The recommendation that we allow the facility routinely "to inspect and monitor and clean out as necessary" residents' closet space, would conflict with the IoM's recommendation for increased privacy for residents. However, in guidelines we will allow a facility to inspect a resident's storage space when the facility has documented sound reason to believe that stored items pose a threat to the health and safety of residents.

Comment: Proposed § 483.15(b)(5) requires the facility to "provide for a pest control program to ensure that the facility is free of rodents and pests." A few commenters suggested deleting from § 483.15(b)(5) the phrase "to ensure that the facility is free of rodents and pests". They believe that, although the facility should provide a pest control program, the facility cannot ensure that it is free from rodents and pests with daily deliveries of food and other supplies. One commenter suggested adding the word "effective" before pest control program.

Response: We recognize that it is difficult to maintain an absolutely pest free environment and have deleted the word "ensure." However, the facility must maintain an effective pest control program that keeps the physical plant as free of pests as is possible. These changes appear at § 483.70(h)(4).

Paragraph (c): Choice

Proposed § 483.15(c) requires the facility to permit residents to choose activities, schedules and health care, consistent with their interests, assessments and plans of care, and permit residents to interact with members of the community both inside and outside the facility.

Comment: Section 483.15(c) requires the facility to permit residents to choose activities, schedules and health care, consistent with their interests, assessments and plans of care, and permit residents to interact with members of the community both inside and outside the facility. A commenter noted that in large facilities it would be chaotic to have residents on different schedules and expect quality care to be given, particularly since nurse staffing differs on each shift. A number of the commenters objected to the use of the word "permit." One suggested instead the use of "encourage" or "motivate" as the word "permit" gives the facility total authority, and other commenters suggested that the word be deleted.

Response: We are deleting this requirement because it is covered in the Quality of life requirement at § 483.15(d), Participation in other activities, § 483.10(d) Free choice and § 483.15(b) Self-determination and participation.

Comment: A few commenters recommended that choices be limited to "reasonable" choices consistent with facility schedule as a facility must be operated within some organizational constraints. Within this context, a commenter suggested modifying this language to "permit residents to participate in making choices" rather than allowing full control, since this may be medically contraindicated.

Response: Since the emphasis of these regulations is on the resident's quality of life, and the sense of control over their lives is a major part of this emphasis, we chose not to limit the resident's choices consistent with the facility's schedule. With respect to residents' making choices which may be medically contraindicated, we believe the resident's plan of care would provide the proper constraints necessary. In § 483.15(b), Self-determination and participation, we provide that residents have the freedom to choose activities, schedules and health care consistent with their interests, assessments, and plans of care.

Comment: Some commenters suggested expansion of § 483.15(c) to ensure residents' opportunity to exercise choices in all areas significant to them, including not only activities, schedules and health care, but food and diet, room decor, association (choice of roommate, physician and direct caregivers), resident appearance, clothes and use of personal funds.

Response: The residents rights requirement, in general, addresses all issues listed by the commenter except that of association (specifically choice of roommate). We believe residents may more appropriately exercise choice in areas indicated by the commenters through resident groups found at § 483.15(c).

Paragraph (d): Food

This provision requires the facility to prepare food by methods that conserve nutritive value; flavor and appearance; serve attractive food at proper temperatures; and provide food that meets individual needs and offer substitutes of similar nutritive value to residents who refuse food served. Many comments in this area were commingled with those on our dietary services requirement (proposed § 483.35), so the following discussion deals with common issues.

Comment: A commenter recommended modifying the dietary services requirement, § 483.35 under the provision concerning frequency of meals at paragraph (d)(3), to read, "Provide food 'prepared in a form designed' to meet individual needs." The intent of this change would be to clarify that foods must not only be nutritionally adequate, but must also be served in a form that the resident is capable of ingesting.

Response: We are modifying the requirement on dietary services, § 483.35(d)(3) according to the commenter's recommendation to include the phrase, "prepared in a form designed" to meet individual needs.

Comment: Several commenters recommended that we define proper food temperatures, and distinguish between holding temperatures on a tray line and acceptable temperatures at the point of delivery. They recommended 140 degrees Fahrenheit or above as holding temperatures on a tray line for hot foods, but 110 degrees Fahrenheit as safe and acceptable when food reaches the point of delivery. Commenters suggested 45 degrees or below for cold foods.

Response: We do not believe that it is necessary to define temperature limits in regulations, but we intend to issue guidelines to ensure that the food is served at the proper temperature and under sanitary conditions.

Comment: Proposed § 483.15(d)(4) requires the facility to offer substitutes of similar nutritive value to residents who refuse food. A commenter suggested that we permit a resident who does not have an identified nutritional problem, and a resident with a diagnosed nutritional problem who has the approval of the attending physician, to select food substitutes that are not necessarily nutritionally similar to those in regular or therapeutic diets.

Response: With regard to allowing residents to select food substitutes that are not nutritionally similar, we emphasize that the facility is ultimately responsible for the health of the residents. Thus, the facility must ensure that the resident is provided with a nutritionally adequate diet. There may

be occasions when residents might request substitutes that are not nutritionally similar, but these occasions should not interfere with residents' long term nutritional status.

Comment: A commenter suggested that in § 483.15(d)(4), we replace, "Offer substitutes of similar nutritive value to residents who refuse food served" with, "must provide at least one alternative at every meal." Another commenter suggested that we provide that residents must be consulted in advance in the planning of all menus.

Response: We believe that it is necessary to retain paragraph (d)(4) of § 483.15, as proposed, so that the resident be provided some choice when a personally unacceptable food is served. However, we have moved this provision on food to § 483.35(d), under the Dietary services requirement. We would not want to prescribe how many alternatives the facility must provide because the resident already has the opportunity to request a substitute that serves the same purpose. We believe that it would not be practical for a facility to consult in advance with residents in the planning of all menus, but residents may certainly participate in meal planning through recommendations to their resident group, when one exists.

Comment: A commenter recommended that we add an additional requirement to proposed § 483.15(d) to read, "Where appropriate, have seasonings, condiments and beverages available for residents."

Response: We believe this recommendation is too prescriptive. We believe that, generally, facilities would be receptive to reasonable requests from residents as long as the items requested are not medically contraindicated, but that facilities should be allowed to determine what items are available.

Comment: A commenter suggested the addition of the following requirement on dining areas: "Dining areas should be clean, comfortable and attractive, and there should be sufficient staff to assist residents and promote independence in living. Assistive devices should be available and utilized to promote independence in living."

Response: We believe it is redundant to add a provision on dining areas under this requirement since this already is addressed in the physical environment requirement at § 483.70(g), Dining and resident activities. Section 483.70(g) provides that the facility must provide one or more rooms designated for resident dining, and paragraph (h) provides that a facility must provide a functional, sanitary and comfortable environment for residents. We are making a change in § 483.35 under the dietary services requirement. We are adding a new paragraph (b), Sufficient staff, that requires that the facility employ sufficient support personnel competent to carry out the functions of the dietary service. Assistive devices, addressed in the NPRM at § 483.35(e), Assistive devices, has been redesignated as § 483.35(g) in this final rule, and provides that the facility must provide special eating equipment and utensils for residents who need them.

Paragraph (e): Activities

Proposed § 483.15(e) provides that the facility must provide for an ongoing program of activities appropriate to residents' needs and interests designed to promote opportunities for engaging in normal pursuits, including religious activities of their choice. The current requirement at § 405.1131 (Patient Activities) requires the facility to provide an ongoing activity program appropriate to the needs and interests of each patient and approved as not in conflict with the plan of treatment. It designates a member of the facility's staff as responsible for the activities program, who, if not a qualified patient activities coordinator, functions with frequent regularly scheduled consultation from a person so qualified.

Comment: The majority of commenters opposed the proposal to delete the current requirement that a professionally qualified individual be responsible for the activities program, or requested retention of the current requirement at § 405.1131. Commenters recommended that we delineate qualifications for this individual to be included within the staffing qualifications at § 483.75(k)(2), and suggested including therapeutic recreation specialists, therapeutic recreation assistants, and occupational therapists, or occupational therapist assistants. Many of these commenters also wanted to add another category—a person who has attained or who is eligible to attain certification from the National Certification Council for Activity Professionals. They reasoned that a professionally qualified individual should be responsible for the direction of the activities program, which is vital to the life of the residents in a long term care facility. They expressed particular concern about the present activities provision being lowered from an A-level to a B-level requirement as they believed this significantly diminishes the importance of the activities program. Many of them noted that, although volunteers are important to these programs, they did not believe that volunteers should be used in lieu of a trained staff, nor could volunteers be effective without the leadership of a qualified activity director.

Response: In accordance with IoM's recommendation, and in recognition of the importance of resident's sense of life satisfaction, we created a new requirement on Quality of Life, which includes a provision on activities. Since activities has a strong relationship to the quality of life, we believe it is important that it remain as a part of this requirement. Also, based upon OBRA '87 provisions, we are requiring an on-going program of activities, directed by a qualified professional, designed to meet the interests and the physical, mental, and psychological well-being of each resident. In doing so, we are accommodating the overwhelming number of commenters who objected to the deletion of the patient activities coordinator and the qualifications for this individual found in current regulations at § 405.1101(o). We are providing that an activities program must be directed by a qualified professional who:

- Is a qualified therapeutic recreation specialist, licensed or registered, if applicable, by the State in which practicing, and eligible for certification as a therapeutic recreation specialist by a recognized accrediting body; or
- Has 2 years of experience in a social or recreational program within the last 5 years, 1 of which was full-time in a patient activities program in a health care setting; or
- Is a qualified occupational therapist or occupational therapy assistant.

Any organization which alleges competency as an accrediting body for this discipline may ask the Secretary for recognition in this regard.

Comment: Many of the commenters who requested that we retain the current requirement at § 405.1131, recommended adding another to it which would contain three types of therapeutic activities:

- Supportive-activities that provide stimulation or solace to residents who cannot generally benefit from either maintenance or empowerment activities, as defined below;
- Maintenance-activities that provide a schedule of events that promote physical, cognitive, social and emotional health; and
- Empowerment-activities that promote increased self-respect by providing opportunities for self-expression, personal responsibility and choice.

Response: We agree that these objectives are sound and should be a part of any activities program. However,

we do not believe they need to be a necessary part of a regulation. As a guide to our surveyors, we will present this material in the interpretive guidelines.

Summary of Changes to § 483.15

In summary, the changes we are making to § 483.15 are as follows: We are:

- Deleting proposed paragraph (c), Choice;
- Relocating paragraph (d), Food, to Dietary services § 483.35(d);
- Including in paragraph (f), Activities, qualifications for an activities professional to direct the activities program;
- Adding social services as new paragraph (g), having relocated the content from proposed § 483.50; and
- Revising requirements included in paragraph (h), Environmental quality of life.

Section 483.20 Resident Assessment Requirement

In § 483.20, we proposed that a facility must conduct initially and periodically thereafter a comprehensive, accurate assessment of each resident's medical, functional and psychosocial needs.

Comment: Summarized below are the major issues and concerns raised by commenters:

Time frames—Some commenters believe that the requirement that a facility complete a preliminary assessment within 48 hours of admission and a comprehensive assessment within 14 days was insufficient time; others thought the time allowed was too long.

Preliminary assessment—Commenters thought—

- The assessment should be completed by a nurse;
- It is unrealistic to require a physician to come to a facility to complete a medical evaluation at the time of admission;
- Preliminary assessments are duplicative of other assessments;
- Rehabilitation potential should be evaluated not only by a physician at the preliminary assessment but by an interdisciplinary team;
- When a resident is admitted to a facility, there should be admission orders by the attending physician, which address medications, treatment and diet.

Comprehensive assessment—Commenters stated—

- Dietitians should be part of the assessment team;
- Assessments for ICF residents should not be as extensive as for SNF residents;
- We should define "significant change requiring a reevaluation of the comprehensive assessment" in § 483.20(b)(2)(ii);
- We should institute a standard, uniform resident assessment instrument;
- In the comprehensive assesement, we should include dental condition, activities potential, rehabilitation potential, drug therapy, and cognitive status.

Accuracy of assessments—Commenters recommended that we delete the requirement that assessments be an accurate representation of a resident's status.

Comprehensive care plans—Commenters recommended that comprehensive care plans be developed by an interdisciplinary team.

Response: Timeframes: Although several commenters suggested that 14 days to complete the first comprehensive assessment is far too long, there was no clear mandate from commenters regarding the timeframe. We therefore are leaving the timeframe in the final rule at 14 days. Section 1919(b)(3)(C) of the Act, as added by OBRA '87, establishing a 4-day period for completion of the assessment, effective October 1, 1990, which we are implementing in § 483.20(b)(4)(ii). Until October 1, 1990, in § 483.20(b)(4)(i), we are requiring an assessment no later than 14 days after the date of admission, which allows providers a transition period in which to gradually move toward the shorter timeframe.

Since the comprehensive assessment must be completed within 4 days of admission, effective October 1, 1990, we are not making final the proposed requirement that within 40 hours of admission, a facility must complete a preliminary assessment of each resident.

Preliminary assessment: Based on our evaluation of comments, we are revising the final rule to include the following:

- We are adding the requirement that at the time each resident is admitted, the facility must have physician orders for the resident's immediate care. This appears as a new paragraph (a), Admission orders, under this requirement and was proposed at § 483.20(a)(1).
- We are eliminating the requirement for a preliminary assessment. In the NPRM, we did not designate specific facility personnel to perform the assessment.
- The need to assess rehabilitation potential has been placed under the comprehensive assessment, which is completed by an interdisciplinary team including a physician.

Comprehensive assessment: We respond to commenters concerns as follows:

- We agree with commenters that the comprehensive assessment should also include dental condition, activities potential, rehabilitation potential and cognitive status, and drug therapy and are modifying requirements accordingly.
- Consistent with comments, we are requiring that a comprehensive care plan be prepared by appropriate health professionals. Beginning October 1, 1990, each assessment must be conducted or coordinated by a registered nurse who signs and certifies the completion of the assessment.
- Consistent with the proposed rule at § 483.20(b)(2)(i) and section 1919(b)(3)(C)(ii) of the Act, we are retaining the requirement that facilities review the resident no less frequently than once every 3 months, and promptly after a significant change in the resident's physical or mental condition to assure the continuing accuracy of the assessment.
- We will develop an operational definition of "significant changes" requiring a review of the resident as part of constructing the resident assessment instrument and guidelines for its use prior to the effective implementation date of October 1, 1990.
- Effective October 1, 1990, section 1919(b)(3)(E) of the Act, as added by OBRA 1987, provides that assessments should be coordinated with State-required preadmission screening programs to the maximum extent practicable to avoid duplicative testing.
- In accordance with section 1919(f)(6) of the Act, added by OBRA 1987, the Secretary must specify a minimum data set of core elements and common definitions for facilities to use in conducting comprehensive assessments by January 1, 1989. Further OBRA 1987 requires the Secretary to designate one or more resident assessment instruments for conducting the assessments based on the minimum data set by April 1, 1990. By July 1, 1990, States must designate the resident assessment instrument facilities must use; either the assessment instrument developed by the Secretary or one that has been approved by the Secretary as including the minimum data set.
- In accordance with section 1919(b)(3)(F) of the Act, we are requiring that a facility not admit, on or after January 1, 1989, an individual with mental illness or mental retardation unless the individual requires the level of services provided by the nursing facility.

In place of the NPRM's requirement that assessments be an accurate representation of a resident's status, we are requiring that each individual who

completes a portion of the assessment must sign and certify the accuracy of that portion of the assessment.

Summary of Revisions to § 483.20

In addition to technical revisions, we are making the following changes to § 483.20.

- In § 483.20, we are adding a new paragraph (a), Admission orders, to require that the facility have physician orders for the resident's immediate care when a resident is admitted.
- We are eliminating the proposed requirement that a preliminary assessment be conducted within 48 hours of admission.
- In paragraph (b), Comprehensive assessments, we are requiring that each assessment must be conducted or coordinated with the appropriate participation of health professionals, and effective October 1, 1990, by a registered nurse who conducts or coordinates the completion of the assessment.
- In paragraph (b), we are including dental condition, activities and rehabilitation potential, drug therapy, and cognitive status among the required elements of a comprehensive assessment.
- In paragraph (c), Accuracy of assessments, we require that each individual who completes a portion of the assessment must sign and certify the accuracy of that portion of the assessment.
- In paragraph (d), Comprehensive care plans, we require that the comprehensive care plan be prepared by an interdisciplinary team which after October 1, 1990 includes the resident, the resident's family or legal representative, a physician, a registered nurse, and other staff in disciplines determined by the resident's needs.
- In new paragraph (f), Requirements relating to preadmission screening for mentally ill and mentally retarded individuals, we provide that, on or after January 1, 1989, a facility must not admit an individual with mental illness or mental retardation unless the State mental health authority or the State mental retardation or developmental disability authority has determined that the individual requires the level of care furnished by the facility.

Section 483.25 Quality of care requirement

In § 483.25, we proposed that each resident must receive the necessary nursing, medical and psychosocial services to attain and maintain the highest possible mental and physical functional status, as defined by the comprehensive assessment and plan of care.

Comment: Commenters—

- Objected to the regulation's purpose of removing structural requirements in favor of outcome requirements; and
- Recommended that the quality of care and quality of life provisions be incorporated into, for example, nursing, physician, dietary, requirements, which would eliminate unnecessary duplication of deficiencies and cross referencing.

Response: We have considered these comments and, in this final rule, we are restoring some structure and process requirements. Specifically, we are reinstating qualifications for dietitians, social workers, and activities coordinators. We recognize that overlap exists between the quality of care and medical and nursing requirements. We have intentionally shifted emphasis on certain resident outcomes that are included in the quality of care requirement, even though those resident outcomes could fit into a specific medical or nursing area. However, the resident outcome provisions are not duplicative and only appear in the quality of care requirement.

Comment: We proposed a number of requirements that hold the facility responsible for "ensuring" that residents receive the proper care and treatment and do not decline "unless reasonable justification is documented." Most of the comments on this section concerned the phrase "the facility must ensure." Commenters emphasized that a facility cannot control or be responsible for all variables surrounding the deterioration or diminished capacity of residents. Twenty commenters objected to the phrase, "reasonable justification is documented," because the proposed regulation does not make it clear who will provide the documentation, documentation is no substitute for care, and the heavy emphasis on documentation is already a problem area and goes against the intent of the regulation to look at patient outcomes.

Response: We recognize that a facility cannot ensure that the treatment and services will result in a positive outcome since outcomes can depend on many factors, including a resident's cooperation (i.e., the right to refuse treatment), and disease processes. However, we believe that it is reasonable to require the facility to ensure that "treatment and services" are provided, since the basic purpose for residents being in the facility is for "treatment and services" and that is why the Medicare or Medicaid program makes payment on the residents' behalf. We also think it is reasonable to require the facility to ensure that the resident does not deteriorate within the confines of a resident's right to refuse treatment and within the confines of recognized pathology and the normal aging process. We are restating the opening statement of this requirement to reflect this emphasis.

We agree with the commenters that the terminology, "unless reasonable justification is documented," could result in a focus on paperwork instead of the resident. Therefore, we have replaced that language in the several places where it was proposed (§ 483.25(a)(1), (c)(1), (f)(1), (g)(1), and (h)(2)) with, "unless the individual's clinical condition demonstrates that" the resident care outcome (e.g., pressure sore) was "unavoidable." This wording will permit the facility to direct surveyor attention to any evidence (the resident or the resident's clinical record) in order to show that a negative resident care outcome was unavoidable.

Paragraph (a): Activities of Daily Living

We proposed that a resident's ability to ambulate, dress, feed, groom, bathe, toilet, transfer (i.e., from bed to chair) does not diminish unless reasonable justification is documented.

Comment: Comments are summarized as follows:

- Commenters asked that each of the resident's activities be broken out as separate statements since activities of daily living require different interventions to maintain an appropriate level of functioning.
- One commenter asked that foot care be included in § 483.25, since foot care is a concern for the resident population and residents should be afforded the same access to care as for vision and hearing.

Response: Summary of responses:

- We have decided to break out the activities of daily living to accommodate commenters, and we are including the ability to use speech, language, or other functional communication systems; and
- We have added podiatric care to the list of special needs in § 483.25(k);

Paragraph (b): Vision and Hearing

We proposed that a facility must, if necessary, assist the resident in making appointments and arranging for transportation to and from a medical practitioner specializing in the treatment of vision and hearing impairments or vision or hearing assistive devices.

Comment: Several commenters wanted assurance that staff time and transportation is paid for under the Medicaid and Medicare programs. Commenters argued that making appointments and arranging transportation will not assure residents proper assistive devices since many of the residents have no means to pay for such devices. This provision will only assure that the residents are assessed.

Response: The intent of this provision is to require a facility to assist residents in gaining access to vision and hearing services by making appointments and arranging for transportation. In accordance with section 1902(a)(13)(A) of the Act, States are required to provide reasonable and adequate reimbursement to meet the costs incurred in order to provide care and services in conformity with State and Federal laws and regulations. Thus making appointments and providing transportation to obtain vision and hearing services are among the services the rates must be designed to cover. These costs should be included in a facility's reimbursement rate. Vision, dental and hearing assistive devices are optional Medicaid benefits, which are covered by some, but not all jurisdictions. Based on a recent survey of Medicaid services, 75 percent of all jurisdictions provide dental services, 84 percent provide for eyeglasses, and 59 percent cover speech, hearing and language disorders.

Paragraph (c): Decubitus Ulcers (Pressure Sores)

We proposed at § 483.25(c) that a facility must ensure that a resident entering a facility without decubitus ulcers does not develop decubitus ulcers unless a physician certifies they were not reasonably avoidable, and a resident having decubitus ulcers receives necessary treatment and services to promote healing, prevent infection and prevent new uclers from developing.

Comment: A majority of commenters objected to the proposed requirement in § 483.25(c) that a physician certify that decubitus ulcers were not reasonably avoidable, since physicians are not fully aware of the condition and don't consider themselves responsible for documenting and certifying that decubitus ulcers were not reasonably avoidable. Several commenters asked that "medical and nutritional" treatment and services be specified in the regulation for residents having decubitus ulcers. Commenters objected to the term "decubitus ulcers" since it is no longer the accepted nomenclature.

Response: In response to comments regarding the term "decubitus ulcers," we have renamed them and this paragraph "pressure sores." We agree with the comments in regard to a physican certification of unavoidable pressure sores, and have revised § 483.25(c)(1) to specify, "A resident who enters the facility without pressure sores does not develop pressure sores unless the individual's clinical condition demonstrates that pressure sores were unavoidable." The requirement in § 483.25(c)(2) that a resident receive treatment and services include medical, nutritional, or nursing services depending on the circumstances of the resident. Consequently, we have not changed paragraph (c)(2) to include all the possible disciplines that might conceivably have input to these problems.

Paragraph (d): Antipsychotic Drugs

In § 483.25(d) we proposed to require that a physician certify that the use of antipsychotics was necessary to treat a specific condition, and to require that residents who use antipsychotics receive gradual dose reductions, drug holidays and behavioral programming in an effort to discontinue these drugs.

Comment: About 25 commenters expressed views on this proposal. Many wanted a definition of antipsychotic drugs. Others objected because they felt this was a duplication of the basic objective of the drug regimen review requirement of proposed § 483.60(e). A significant number of the commenters objected to the requirement for gradual dose reduction, drug holidays and behavioral programming because such interventions are the prerogative of the physician, or because these interventions are a disservice to residents who need these drugs to control psychotic symptoms.

Response: We have relocated this provision to § 483.25(1), Drug therapy. The term antipsychotic drug includes the drugs from the following chemical classes: phenothiazines, butyrophenones, and thioxanthenes. In addition, the individual drugs loxapine and molindone are included. This group of drugs does not include certain phenothiazines when used in the treatment of nausea, and vomiting or itching. These drugs are commonly used to treat psychotic disorders, and typically induce depressed initiative, decreased affect, disinterest in surroundings, suppression of complex behavior and spontaneous movements, decreased aggressiveness and impulsivity, and decreased psychotic symptoms. These drugs can also cause significant, sometimes irreversible side effects such as involuntary movements of the eyes, face, mouth, tongue, toes, as well as a shuffling gait, and tremors at rest.

With regard to the commenters that thought the drug regimen review requirement should adequately address the problem of inappropriate antipsychotic drug use, we point out that the drug regimen review cannot modify the fundamental diagnosis made by the physician upon which antipsychotic drug use is predicated. Certain authors estimate that a significant number of the elderly in nursing homes are improperly labeled as having organic brain syndrome or senile dementia of the Alzheimers type and many of these residents are treated with antipsychotics. Fundamentally, this is why we have modified the final rule by deleting the requirement that a "physician certify" that a resident needs these drugs for a specific condition. Instead, the regulations simply require that antipsychotic drugs are not given to residents "unless they are necessary to treat a specific condition." Enforcement of this requirement will rely primarily on the determination of the State mental health authority as to whether the resident is mentally ill and in need of active treatment. If the resident does not need active treatment for a mental illness, the long term use of antipsychotics will be viewed with considerable skepticism. Section 1919(b)(3)(F)(i), added by OBRA '87, requires that a determination be made on each resident as to whether he or she is mentally ill and in need of active treatment for that mental illness. The decision to use an antipsychotic drug will still be the prerogative of the individual physician but he or she will be aided by the judgment of experts in the field of mental illness in the diagnostic decision. With regard to those commenters who wanted to apply the provision to a broader category of psychopharmacologic drugs, we cannot agree. The term psychopharmacologic drugs includes antidepressants and antianxiety drugs that do not have the significant side effects of antipsychotic drugs.

Paragraph (e): Urinary Incontinence

We proposed at § 483.25(e) that a facility ensure that a resident who is incontinent of bladder receive the appropriate treatment and services to restore normal bladder functioning; a resident is not catheterized unless ordered by a physician; and a resident who uses a urinary catheter receives appropriate treatment to prevent infections.

Comment: Commenters questioned the need for a physician to certify the medical necessity of a urinary catheter since in most States a urinary catheter cannot be used unless ordered by a physician. Several other commenters

asked that this provision stipulate that restoration of normal bladder function be related to each resident's potential since not all residents will be able to completely restore bladder function. Finally, commenters suggested that the provision require that the resident grant informed consent before the facility uses a urinary catheter.

Response: We concur with comments concerning physician certification and have removed this requirement from § 483.25(e) (redesignated as paragraph (d)). However, we note that unlike other quality of care requirements, this provision does not emphasize discouraging the use of urinary catheters if the resident is not catheterized at the time of admission. Thus, in accordance with changes made in other quality of care requirements, we are revising new paragraph (d) to read, "a resident who enters the facility without a urinary catheter is not catheterized unless the resident's clinical condition demonstrates that catheterization was necessary." We have added the phrase, "to restore as much normal bladder function as possible," to § 483.25(d)(3) to address commenters' concerns regarding the difficulty in restoring total bladder function. We believe the issue of a resident's informed consent for a urinary catheter is addressed in the resident rights requirement at §483.10(b)(3), which establishes the resident's right to be informed of his or her medical condition and, in paragraph (b)(4), the right to refuse treatment.

Paragraph (f): Contractures (Range of Motion)

§ 483.25(f), we proposed that a facility must ensure that a resident who enters a facility without contractures does not experience an unpredictable reduction in range of motion without justifiable cause, and a resident with contractures receives appropriate treatment to increase range of motion and prevent further decrease in range of motion.

Comment: Six commenters suggested rewording paragraph (f)(2) as follows: "A resident who has contractures receives treatment and services consistent with professional nursing standards and designed to increase range of motion or to maintain existing range of motion." The commenters believe that this rewording is clearer, more positive and recognizes that a facility will not be able to maintain or increase range of motion on every resident who has contractures. Three commenters asked that a more specific definition of "contractures" be included in this provision and asked if arthritis could be considered a contracture if a reduction in range of motion occurs.

Response: Because we believe that appropriate treatment encompasses both professional nursing standards and physical therapy principles, we do not wish to narrow this concept to nursing standards only. We have renamed this provision, Range of motion, as it more accurately reflects the subject matter, and redesignated it as § 483.25(e). We are including in it any condition leading to a reduction in a resident's "range of motion," thereby eliminating the need to define "contracture."

Paragraph (g): Psychosocial Functioning

We proposed that a facility must ensure that a resident who displays psychosocial adjustment difficulty receives appropriate treatment and services to achieve remotivation and reorientation, and a resident whose assessment did not reveal a psychosocial adjustment difficulty does not display a pattern of decreased social interaction or increased withdrawn, angry or depressive behavior without justifiable cause.

Comment: Six commenters opposed the requirement to achieve "remotivation and reorientation". Some commenters suggested that we rephrase § 483.25(g)(1) to specify that a resident who displays psychosocial adjustment difficulty, receives appropriate treatment and services "if possible," to achieve remotivation and reorientation. Other commenters recommended adding the phrase, "as indicated by the plan of care." Still other commenters believed that reality orientation and remotivation are not appropriate for all residents and that the plan of care, not the regulation, should state what each resident should achieve.

Response: We agree with commenters and recognize that not all patients will achieve remotivation and reorientation.

Therefore, we have added "as possible" to paragraph (1) of this provision, now redesignated as § 483.25(f). As with all other provisions in this requirement, we have deleted from new § 483.25(f)(2) the phrase "unless reasonable justification is documented" and replaced it with "unless the resident's clinical condition demonstrates that such a pattern was unavoidable."

Paragraph (h): Naso-Gastric Tubes

We proposed that a facility must ensure that a resident who has been able to feed or partially feed himself or herself is not fed by naso-gastric tube unless reasonable justification is documented, and receives appropriate treatment and services to prevent complications and to restore normal feeding function.

Comment: Five commenters asserted that, in § 483.25(h), many of the conditions requiring the use of naso-gastric tubes are conditions that are not reversible. Three commenters suggested that the title of the provision be changed to "Special Feeding Techniques" since naso-gastric tubes are not the only enteral feeding tubes being used in facilities. Nine commenters objected to the narrow definition of complications and one commenter asked that pneumonia be specified as aspiration pneumonia. Seven commenters suggested that "medical, nursing and nutritional" be used to modify "treatment and services" for residents with naso-gastric tubes.

Response: We agree that not all residents may have restorative potential and we are revising paragraph (h), (now redesignated as § 435.25(g)) at paragraph (g)(2) to provide that a resident who is fed by nasogastric tube receives the "appropriate treatment and services * * * to restore normal feeding function if possible." We have studied the issue of including other feeding techniques, gastrostomy, and parenteral feeding. Although we agree with commenters that parenteral feeding could be include here, the intent of this provision is to include issues and circumstances that are indicative of abuse. We do not believe that parenteral feeding is a usual sign of neglect or abuse, and consequenlty, have not made any revisions in response to these comments. We agree that aspiration pneumonia is a more accurate term and have included this in § 483.25(g)(2). Finally, we believe that medical, nursing and nutritional practices are implicit when we refer to "treatment and services" for residents with naso-gastric tubes; therefore, no change is needed.

Paragraph (i): Drug Therapy (Unnecessary Drugs)

We proposed that the facility must ensure that each resident's drug regimen is free of unnecessary drugs, unnecessary dose levels, undue adverse consequences, and significant medication errors or significant medication error rates.

Comment: About 20 commenters objected to § 483.25(i). Some wanted us to define "significant" and "unnecessary." A majority objected because the facility could not ensure these outcomes because the physician has ultimate control over drug use. These commenters advocated deleting entirely the provisions relating to unnecessary drugs, unnecessary dose levels, and undue adverse consequences and suggested moving the provision for medication errors to the pharmacy requirement.

Response: We do not agree that provisions regarding "unnecessary drugs" should be deleted and are redesignating this provision as paragraph (1). Increasing public attention is being focused by the media on the problem of treating behavioral problems with drug therapy, which extinguishes normal affect in the resident and causes undue adverse consequences to the extent that additional nursing staff is necessary to provide care. For example, excessive use of psychoactive drugs can cause a resident to become bedfast or chairfast and become more subject to pressure sores and contractures.

"Unnecessary drugs" are drugs that are given in excessive doses, for excessive periods of time, without adequate monitoring, or in the absence of a diagnosis or reason for the drug. An unnecessary drug is a drug for which monitoring data, or undue adverse consequences indicate that the drug should be reduced or discontinued entirely. An unnecessary drug is also one which is prescribed only in anticipation of an adverse consequence of another prescribed drug.

We are deleting the requirement that the resident's drug regimen remain free of unnecessary dose levels and undue adverse consequences, since we are defining unnecessary drugs in terms of these factors.

Paragraph (j): Accidents.

There were no comments on this proposed provision. It is being redesignated as § 483.25(h) due to removal of prior provisions.

Paragraph (k): Nutrition

We proposed that a facility must ensure that a resident does not lose weight after entering the facility without justifiable cause and receives a special therapeutic diet when there is a nutritional problem.

Comment: Twenty seven respondents commented on the weight loss requirement in § 483.25(k). Several commenters suggested changing the requirement to include measurable parameters of nutritional status with weight being one indicator. Other commenters recommended that the weight standard be based on a 10% loss of body weight within six months or less. The majority of commenters asked that, based on the comprehensive assessment of the resident, the facility ensure the resident's weight is appropriate for age, sex and medical status. Two commenters asked that a sentence be added reflecting a resident's right of refusal to eat or be fed.

Response: We agree with the commenters who suggest that the regulation include other parameters of malnourishment besides weight loss. However, we do not think it would be appropriate to list all these parameters in a regulation. Instead we have modified this provision, now redesignated as § 483.25(i), to require the facility to maintain acceptable parameters of nourishment unless the resident's clinical condition demonstrates that this is not possible. Acceptable parameters of nourishment include weight loss as well as other indices such as clinical signs and symptoms of malnourishment and laboratory tests indicating malnourishment (e.g., serum albumin levels). We do not anticipate that there will be many circumstances in which the facility could allege that the maintenance of nutritional parameters was not possible. The resident's right to refuse to eat or to be fed is included under right to refuse treatment in § 483.10(b)(4).

Comments: Two commenters asked that we add to the opening paragraph of § 483.25(k), a statement that facility action is "based on the comprehensive assessment of a resident."

Response: We agree that the nutrition provision must be based on a comprehensive assessment and have revised it as the commenters suggested.

Paragraph (l): Dehydration (Hydration)

We proposed that the facility must ensure that each resident is provided with sufficient fluid intake and electrolytes to maintain proper hydration and health.

Comments: The majority of commenters addressing this provision questioned the inclusion of electrolytes.

Responses: We did not intend to imply that replacing electrolytes is a medical intervention. We have deleted "electrolytes" from the provision redesignated as § 483.25(j) and refer only to sufficient fluid intake, to make our intent clearer. We are also changing the title of the provision to "hydration" as suggested by commenters. The rights of a resident to refuse treatment is addressed in § 483.10(b)(4).

Paragraph (m): Special Needs

We proposed that a facility must ensure that residents receive proper treatment and care for the following special needs: injections; parenteral fluids, colostomy or ileostomy care; tracheostomy care; tracheal suctioning, and respiratory therapy.

Commenters: Five commenters wanted the paragraph rewritten to reflect the fact that the facility must provide proper treatment and care when it accepts residents having those special care needs. The commenters believed that this is necessary since the intent of the proposal is not to require all nursing homes to provide all services.

Response: This provision does not require that facilities admit residents with these special needs. Therefore, we believe there is no need for this change. However, we must emphasize that a facility may not discriminate against handicapped individuals as defined by section 504 of the Rehabilitation Act of 1973.

Comment: Several commenters suggested that we add podiatric care to the list of special needs.

Response: We are adding podiatric care to the list of special needs in redesignated paragraph (k).

Paragraph (n): Staff Treatment of Residents

We proposed that a facility must develop and implement written policies and procedures that prohibit mistreatment, neglect or abuse of residents.

Comments: Commenters asked that § 483.24(n) include requirements for training of facility staff to make them aware of their responsibilities and orient them to the policies and procedures regarding mistreatment of residents. Commenters suggested deleting the introductory paragraph and paragraph (1), and moving the remainder to the administration requirement. Still other commenters stated this provision was unnecessary since it is covered under the resident's bill of rights and State abuse laws.

Response: We will implement nursing aide training in October 1990 as required by section 4211 of OBRA '87, and this will include abuse and neglect issues. We agree that the residents' bill of rights establishes the rights of residents. This provision directs the staff behavior to assure that those rights are enforced. As part of our effort to restructure these regulations logically, we are relocating this provision to § 483.13(c), Resident behavior and facility practices.

Note: Section 483.13(c)(2) requires the facility to investigate all alleged violations of abuse, mistreatment, neglect and injuries of unknown source and report the results of this investigation to the administrator or other officials.

We invite comment on the advisability of and additional provisions that would require the facility to report any convictions growing out of such investigations to the Office of Inspector General for possible exclusion

action in accordance with regulations at 42 CFR Part 1001.

Summary of Changes to § 483.25

In summary, the major changes we are making to § 483.25 as proposed are as follows:

- In the opening statement, we are replacing the phrase, "highest possible mental and physical functional status" with "highest practicable physical, mental and psychosocial well being";
- In renamed paragraph (c), Pressure sores, we are replacing the term "decubitus ulcers" with "pressure sores," and removing the requirement that the physician certify that pressure sores were reasonably avoidable;
- We are retaining the substance of paragraph (d), Antipsychotic drugs, but relocating it to paragraph (1), Drug therapy;
- We are redesignating proposed paragraph (e), Urinary incontinence, as (d), linking the use of catheters to a resident's comprehensive assessment, and removing the physician certification requirement;
- We are redesignating proposed paragraph (f), Contractures, as paragraph (e), revising the title to "Range of motion," and eliminating the documentation requirement;
- Paragraph (g) Psychosocial functioning, and paragraph (j), Accidents, are redesignated as paragraphs (f) and (h), respectively, with only minor editorial clarifications;
- We are eliminating the documentation requirement in paragraph (h), Nasogastric tubes, redesignating it as paragraph (g), and replacing it with the requirement that clinical conditions demonstrate that use of a nasogastric tube was unavoidable;
- We are redesignating proposed paragraph (i), Drug therapy, as paragraph (l) to include three regulatory requirements—use of unnecessary drugs, use of antipsychotic drugs, and drug administration;
- We are redesignating proposed paragraph (k), Nutrition, as paragraph (i) and replacing reliance on weight loss with reliance on maintaining acceptable parameters of nutritional status;
- We are redesignating paragraph (m), Special needs, as paragraph (k) and adding podiatric care and prosthetics to the special needs for which residents must receive proper treatment; and
- We are relocating proposed paragraph (n), Staff treatment of residents, to § 483.13(c), Resident behavior and facility practices.

Section 483.30 Nursing services requirement

We proposed three alternatives with regard to nursing services. In the first alternative, we proposed to require all facilities to meet 24 hour nurse staffing requirements comparable to those currently required for SNFs, including a registered nurse (RN) on duty on the day shift at least 8 hours a day, 7 days a week. This would be an increase in requirements for ICFs.

In the second alternative, we proposed to retain the current SNF requirements for SNFs, and retain essentially the current, ICF requirements for ICFs. ICFs would be required to have an RN or a licensed practical nurse (LPN) or licensed vocational nurse on duty full time on the day shift, 7 days a week.

In the third alternative, we proposed to adapt the current SNF staffing requirements to both SNFs and ICFs, but provide for a waiver of the requirements when an ICF can provide appropriate nursing care with a lower level of staffing.

We also proposed in all three alternatives that, unless prohibited in writing by the attending physician, the facility may permit each resident to retain his or her drugs at bedside, and self-administer those drugs.

Paragraphs (a) Director of nursing services, (b) Charge nurse, and (c) Sufficient staff.

Comment: Concerning proposed § 483.30(c), dealing with sufficiency of nursing staff, of the commenters that expressed a preference for a specific alternative, the majority favored alternative I, as best meeting the increasingly intensive and complex care needs of the nursing home population. Alternative I would retain essentially the current staffing requirements in SNFs and extend them to ICFs. A significant number of commenters supported Alternative II, which leaves in place the existing requirements in SNFs and ICFs, respectively, as being the most realistic option in view of existing nurse shortages and cost constraints. A small minority of commenters expressed support for Alternative III, but suggested that the waiver period be the period for which the facility is certified, rather than 6 months. A common concern expressed by many of the commenters was that HCFA has not ensured the funding to pay for costly changes such as nurse staffing upgrades that were required in the proposed rule.

Response: Since each of the three nurse staffing alternatives that we proposed would essentially leave unchanged the existing nurse staffing requirements for SNFs, most of the comments on this provision focused on the various proposals' potential effect on facilities that are currently ICFs. We believe that valid points were raised in connection with each of he proposed alternatives. We agree with the commenters who favored alternative I (imposing the current, higher SNF staffing requirements on ICFs), that nurse staffing requirements must take into account the increasingly sophisticated medical needs of ICF residents. However, the advocates of alternative II (retaining the existing ICF staffing requirements) also are correct in pointing out that meeting more stringent nurse staffing requirements may sometimes be difficult for ICFs in view of existing shortages of qualified nursing personnel.

In passing OBRA '87, Congress also considered these factors. It recognized the need for upgraded nurse staffing, by requiring nursing facilities (including those currently licensed as ICFs), effective October 1, 1990, to "* * * provide 24-hour licensed nursing services which are sufficient to meet the nursing needs of its residents * * *" and to "* * * use the services of a registered professional nurse for at least 8 consecutive hours a day, 7 days a week" (section 1919(b)(4)(C)(i) of the Act). At the same time, Congress indicated its intent that certain nursing facilities would be treated differently in terms of nurse staffing requirements, by creating differing waiver provisions relating to nurse staffing for Medicare SNFs and for Medicaid nursing facilities.

Of the three proposed alternatives, we believe that alternative III (which, like alternative I, would impose the current SNF staffing requirements on ICFs, but would also allow for waiver of those requirements under certain circumstances) comes the closest to achieving an acceptable balance between the commenters' two major concerns: upgrading staffing requirements to address residents' increasingly complex medical needs, while making necessary allowances for existing nurse shortages in a manner that does not compromise resident health and safety. However, while some commenters indicated support for the general concept of staffing waivers, they expressed concern about individual aspects of the specific waiver mechanism that was proposed under alternative III. For example, they indicated that the proposed 6 month duration of the waiver should be changed, and suggested that the availability of prompt physician or nurse response in an emergency should be considered in granting a waiver.

We believe that these commenters' concerns can be addressed by adopting a waiver provision for nursing facilities consistent with the one contained in OBRA '87. This provision contains an annually-reviewed State waiver mechanism under which either the 24-hour licensed nursing requirement or the daily RN requirement (but not both) can be waived for a given nursing facility. In deciding whether to grant (or renew) a waiver, the State must consider such factors as a facility's efforts to recruit appropriate personnel, the health and safety of the facility's residents, and the immediate availability of physician or RN response to a telephone request by the facility. Therefore, we are responding to commenters on the nurse staffing provision by essentially adopting alternative III, with a modification of that alternative's waiver mechanism. This means that we will:

- Retain the existing nurse staffing requirements for SNFs, and apply them to ICFs as well. These requirements include provisions for an RN on the day shift 7 days a week, and an RN or LPN as charge nurse on each tour of duty.
- Retain the existing waiver mechanism for SNFs under Medicare (i.e., under the conditions described in regulations at 42 CFR 405.1911, the daily RN requirement can be waived to the extent that it would require an RN in the SNF for more than 40 hours per week). Until October 1, 1990, this waiver mechanism will also apply to Medicaid SNFs.
- Adopt a waiver mechanism for ICFs, under which either the 24-hour licensed nursing requirement or the daily RN requirement (but not both) can be waived for a given facility. In deciding whether to grant (or renew) a waiver, the State would consider such factors as a facility's efforts to recruit appropriate personnel, the health and safety of its residents, and the immediate availability of physician or RN response to the facility's telephone requests. When the OBRA '87 provisions take effect on October 1, 1990, this waiver mechanism will apply to all Medicaid nursing facilities, including those facilities that previously participated in the program as ICFs or as Medicaid SNFs.

In addition, we are incorporating in the opening statement the OBRA '87 requirement that a facility have sufficient nursing staff to provide nursing services "to attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident."

We have also considered comments which indicated that States would have difficulty obtaining additional funding under Medicaid necessary to pay the cost of additional nurse staffing in intermediate care facilities, and comments that nursing facilities would have difficulty in recruiting nurses on short notice. Accordingly, we have elected to make the new requirements effective on October 1, 1990. Until that date, current SNF and ICF nurse staffing requirements will remain in effect. (We are relocating the SNF requirements in § 405.1124 to new § 483.28, and the ICF requirements in §§ 442.302 and 442.339 to new § 483.29.) On October 1, 1990, the full range of OBRA '87 requirements will take effect. After that date, 24-hour nursing will be required in all facilities. OBRA '87 will simultaneously create a change in the status of facilities with respect to nurse staffing waivers, with Medicare SNFs subject to one set of requirements and Medicaid NFs (regardless of whether they have been ICFs or SNFs) subject to another set of requirements.

Regarding the concern for availability of adequate funding to finance implementation of the upgraded staffing requirements, we note that section 1902(a)(13) of the Act currently requires State Medicaid agencies to use payment rates that are "* * * reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable State and Federal laws, regulations, and quality and safety standards * * *" We believe that this provision requires that States reasonably reflect the cost of the mandated staffing upgrades in their ICF payment rates when they become effective. Congress has reinforced this requirement in section 4211(b) of OBRA '87 by adding a provision specifically directed at payment for nursing facility services, effective for fiscal years beginning on or after October 1, 1990. Under this provision, a State must submit for the Secretary's approval a State plan amendment for each fiscal year, specifically establishing the appropriateness of its payment rates for nursing facility services.

Comment: Most commenters expressed support for requiring 24-hour nursing coverage by RNs; others recommended 24-hour coverage by licensed personnel. Commenters indicated that since the implementation of diagnosis related group (DRG) payments in hospitals, nursing home residents tend to be discharged from hospitals sooner, and require a higher level of care. Under these circumstances, they argue, merely requiring 24-hour coverage by LPNs and unspecified "other" personnel, as proposed in our three nurse staffing alternatives, is inadequate. Other commenters suggested that the requirement be clarified by requiring 24-hour coverage by nurses and other nursing personnel.

Response: While we recognize that the intensity of nursing home residents' care needs have generally increased in recent years, we believe that requiring 24-hour RN coverage may not be feasible in view of the existing nurse shortage. However, we note that Congress in section 4211 of OBRA '87, has attempted to address this concern by requiring 24-hour coverage by licensed personnel in long-term care facilities. We believe that the OBRA provision represents an acceptable balance between the commenters' requests for upgraded nursing staff requirements and the current availability of nursing personnel and, therefore, we are incorprating it in these final regulations in § 483.30(a).

Comment: Three commenters noted that actual, hands-on care is furnished primarily by nurse aides rather than by RNs or LPNs. One suggested that the regulations specify aide-patient ratios rather than nurse-patient ratios.

Response: As noted above, we are amending the regulations to clarify that the requirement in § 483.30(a) for sufficient staff refers to licensed nurses and other nursing personnel, which includes nurse aides. We prefer not to rely on nurse-resident ratios because the number and skills of nursing staff depend on the severity of the residents' condition. The severity or case-mix of the resident population is a much better determinant of sufficiency of nursing staff.

Comment: Eighteen commenters indicated that we should require in paragraph (a), Director of nursing services, that an RN serve as the director of nursing (DON) in ICFs as well as SNFs. Another commenter suggested that the regulations require a DON in the ICF seven days a week. One commenter expressed support for allowing an LPN to serve as the DON in an ICF.

Response: In response to the comments, we are restructuring § 483.30, and in new paragraph (b), we require that facilities designate an RN to serve as the DON in NFs and have a full time DON. We expect that the DON would act as a manager of the nursing staff; and envision that in all instances the DON can also serve as the RN on the

day shift at least 5 of the 7 days per week.

Comment: In proposed § 483.30(b), which allows a DON to serve as charge nurse in small facilities, one commenter supported this provision as proposed. Others suggested that it be modified to incorporate a waiver mechanism, or to reflect such factors as the level of care that residents require or the facility's past compliance with the quality of care and quality of life requirements. Still others opposed allowing the DON to function as a charge nurse at all.

Response: We are retaining this requirement as proposed, redesignated as § 483.30(b)(3) in this final rule, because we believe that the necessity for facilities to comply with quality of care and sufficency of nursing staff requirements that are in these regulations should be enough to ensure that this provision is not used in inappropriate situations.

Comment: Some commenters stressed that nurse staffing waivers should not be granted unless a facility is in compliance with the requirements for quality of life and quality of care, as determined by the previous survey. Another commenter argued that emphasis should be placed on eliminating the nurse shortage, rather than accommodating it by scaling back facility standards through waivers.

Response: We believe that these concerns are adequately addressed by the waiver mechanism contained in section 4211 of OBRA '87 which, in part, precludes a State from granting a nurse staffing waiver unless it determines that the nursing facility has made diligent efforts to recruit appropriate personnel, and that the waiver will not endanger the health or safety of individuals staying in the facility. Therefore, we are including the OBRA '87 provision on nurse staffing waivers.

Paragraph (d): Self-Administration of Drugs

The proposed rule, at § 483.30(d), would allow residents to self-administer drugs without a physician's authorization as long as they could securely store these drugs and maintain a record of administration.

Comment: The majority of those who commented on this provision opposed it, maintaining that the vast majority of residents in nursing homes were not mentally or physically capable of drug self-administration. They also maintained that this practice would be dangerous because residents would be too free to take each others' drugs and the staff would have more opportunity to pilfer drugs from residents. Other commenters were concerned because the proposed regulation would require a physician to document why each resident could not self-administer drugs. Assuming that most residents are incapable of this task, the documentation by physicians would result in a large paperwork burden. Of the commenters that supported the concept, many said that safeguards must be in place, such as physician authorizations, nurse supervision and facility oversight of storage and recordkeeping.

Response: The commenters point out some very special problems with allowing residents to self-medicate, but we remain committed to the principle of allowing residents as much independence and self-control as possible.

As a consequence, we have revised proposed § 483.30(e) to preserve the right of residents to self-administer drugs. This right may only be withdrawn by the facility's interdisciplinary team, and may only be withdrawn on a case by case basis when self-administration is considered unsafe for the particular resident or other residents.

If a drug self-administering resident makes an error in drug administration, the facility should reassess that resident's capability. We will instruct our State agency surveyors who detect such errors that this should not count against the facility as a medication error, but calls into question the judgment made by the facility in allowing self-administration for that resident.

As noted above, we have placed § 483.30(e) under the revised Resident rights requirement, § 483.10(o), Self administration of drugs.

Summary of Changes to § 483.30

The major changes to § 483.30 are as follows:

- We are adding and reorganizing material to improve clarity;
- In paragraph (a), Sufficient staff (redesignated from proposed (c)), we adopt the proposed requirement that a facility provide services by a sufficient number of licensed nurses and other personnel on a 24-hour basis. We also require in paragraph (b) that, except when waived under paragraph (c), a facility must designate a licensed nurse to serve as charge nurse;
- In new paragraph (b), Registered nurse, we provide that, unless waived under paragraph (c) or (d), a facility must use the services of a registered nurse at least 8 hours a day, 7 days a week. Except when waived under paragraph (c) or (d), a facility must designate a registered nurse to serve as director of nursing on a full time basis; and the director of nursing may serve as charge nurse only when the facility has an average occupancy of 60 or fewer residents;
- In new paragraph (c), Nursing facilities: Waiver of requirement to provide licensed nurses on a 24-hour basis, we provide for waiver of the requirement that a facility provide a registered nurse for at least 8 hours a day, 7 days a week, or licensed nurses on a 24-hour basis;
- In new paragraph (d), SNFs: Waiver of the requirement to provide services of a registered nurse for more than 40 hours a week, we provide for waiver of the requirement to provide services of a registered nurse for more than 40 hours a week;
- The proposed paragraph (d), Drug administration, has been placed at § 483.10(o), Self-administration of drugs. We are providing that a facility must permit residents to Self-administer a drug when the facility determines, in accordance with the comprehensive assessment, that a resident is a good candidate, when the resident demonstrates that he or she can securely store, safely administer and accurately record the administration of drugs, and the facility reassesses the resident's ability to self-administer drugs at least every 3 months.
- Also at § 483.60(a)(2), we provide that the facility may permit unlicensed personnel to administer drugs if State law permits, but only under the general supervision of a licensed nurse.

§ 483.35 Dietary Services Requirement

In § 483.35, we proposed that a facility must provide each resident with a nourishing, palatable, well-balanced diet including modified and specially prescribed diets.

Paragraph (a): Staff Qualifications

Comment: Comments on staff qualifications are summarized below. Commenters—

- Objected to the absence of qualifications for the individual responsible for food management or nutrition, and suggested that we specify qualifications for dietitians and dietary supervisors.
- Urged us to maintain existing regulatory requirements at § 405.1125(a) applicable to a skilled nursing facility. These requirements are that the facility maintain a full-time qualified dietetic service supervisor, who, if not a registered dietitian, functions with frequent, regularly scheduled consultation from a person so qualified;
- Requested that we define dietitian and dietary service supervisor under the proposed staffing qualifications provision at § 483.75(k);
- Stated the belief that only a qualified dietitian can ensure an adequate diet for residents in these facilities;
- Asserted that, with shorter average hospital stays under the prospective payment system, residents entering nursing homes require greater care and have more complicated dietary needs;
- Suggested adding a requirement that the facility employ sufficient support personnel competent to carry out the functions of the dietetic service and require that food service personnel be on duty daily over a period of 12 or more hours, as specified in existing § 405.1125(a).

Response: The Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, which clarifies the intent of sections 4201 and 4211 of OBRA '87, stated that the Secretary must ensure that the requirements for dietary services be at least as stringent as those in effect prior to OBRA '87. (Conference Report on the Medicare Catastrophic Coverage Act of 1988. H.R. Rep. 100–661, 100th Congress, 2nd Sess., page 269.) As a result of this, and the significant adverse response to the dietary staffing proposal, we are providing in paragraph (a) that the facility must employ a qualified dietitian on a full-time, part-time, or consultant basis. We are eliminating professional qualifications and credential requirements from the administration requirement, § 483.75(k), and instead, at § 483.35(a), we are providing that a qualified dietitian is one who is eligible for registration by the Commission on Dietetic Registration of the American Dietitic Association, or who is qualified on the basis of education, training, or experience in identification of dietary needs, planning and implementation of dietary programs.

We agree with the commenters that the sufficient staff requirement should be restored, and we are adding this as a new paragraph (b), Sufficient staff. We did not, however, restore the requirement for personnel to be on duty 12 hours per day. We believe this is basically a process requirement that can inhibit the facility's ability to innovate and manage.

The 14 hour time span between meals requirement in proposed § 483.35(d), Frequency of meals (redesignated as paragraph (f) in this final rule), should be sufficient to guarantee that residents do not go hungry for long periods of time.

Paragraphs (b): Menus and nutritional adequacy; and (c): Therapeutic diets

Comment: In summary, commenters—

- Objected to the requirement that menus must meet the nutritional needs of residents, be prepared in advance and be followed;
- Suggested retention of the language at existing § 405.1125(b), which specifies that menus are planned and followed in accordance with the recommended dietary allowances (i.e., the Four Basic Food Groups) of the Food and Nutrition Board of the National Research Council, National Academy of Sciences. They maintained that there must be a nationally recognized standard to follow in order to maintain cost effectiveness and ensure nutritional adequacy;
- Suggested maintaining menus (with correction of any change) on file for 30–60 days for the purpose of resolving food complaints both for individuals, families and resident groups, as they provide a source of useful documentation when comparing what residents say was served with what the menu stated. A few suggested that the menus be posted in a conspicuous place so the residents as well as visitors could see what is served; and
- Commenters suggested that, in addition to being prescribed by a physician, therapeutic diets should be planned with supervision or consultation from the dietitian; also, the facility should have readily available a current therapeutic diet manual approved by the dietitian.

Response: In response to comments, we are expanding proposed § 483.35(b)(1) to provide that menus must meet the nutritional needs of residents "in accordance with the recommended dietary allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences." Since we are relying on the facility to furnish an adequate diet for each resident, we believe that this is an important national standard upon which the facility must rely. This requirement has been redesignated as § 483.35(c)(1).

We consider requirements to maintain a record of menus for a period of 30–60 days or to post meals in advance as overly burdensome on facilities. If the facility wishes to do either, we believe that it should be voluntary and not as the result of a regulation. Perhaps a resident group, if one exists, could work with the facility to bring about this objective if it were mutually agreeable.

Our objective is to focus on the outcome of a physician-prescribed therapeutic diet, and in doing so, avoid specificity in how the facility achieves the outcome. We do not want to prescribe what resources must be used in order to accomplish the physician's diet order, but rather look to the facility to use whatever appropriate resources it deems necessary to implement the therapeutic diet prescribed by the physician. Therefore, we are not making the suggested changes.

Paragraphs (d): Frequency of meals; and (e): Assistive devices

Comment: In summary, commenters—

- Were concerned that the proposed 14 to 16 hour time span between the evening meal and breakfast the following day is too long a period. The alternatives suggested by commenters ranged from a minimum of 12 hours up to a maximum of 15 hours;
- Suggested that we define "snack" to ensure that it is nutritionally adequate to allow an additional 2 hours between the evening meal and breakfast;
- Objected to our requirement that snacks require the physician's permission;
- Suggested that the nursing department, rather than the dietary department, should have primary responsibility for providing special eating equipment and utensils, and assisting residents;
- Suggested that we include requirements that the staff be trained to assist residents in using special eating equipment.

Response: In the frequency of meals provision, redesignated as § 483.35(f) in this final rule, we are retaining the proposed time span of 14 hours between the evening meal and the subsequent morning meal since the commenters' suggestions for changing this provision did not provide a consensus. In response to commenters' concerns, whenever a nourishing snack is served at bed time, we are allowing up to 16 hours between a substantial evening meal and breakfast the following day if agreed to by the resident group.

The comments convince us that, unless it is medically contraindicated, residents should be able to have snacks without a physician's order whenever they choose, and we are deleting the reference to the physician's permission. In revised § 483.35(f)(3), we are requiring that the facility "offer" snacks instead of "serve" snacks because this is more in keeping with our intent to provide a homelike atmosphere, which respects residents' discretion to accept or decline such foods.

The assistive devices requirement, redesignated as § 483.35(g) in this final rule, does not specify the facility staff required to assist residents. We do not believe it is necessary to include such detail in regulation as long as the devices are provided. As noted under § 483.25(a), Activities of Daily Living,

based on the comprehensive assessment of the resident, the facility must ensure that a resident is given the appropriate treatment and "services" to maintain or improve his or her ability to eat.

Paragraph (f): Sanitary conditions

Comment: Commenters recommended reinstating the requirements of existing § 405.1125(f), that dietary service personnel are free from communicable diseases and practice hygienic food handling techniques. When food service employees are assigned duties outside the dietary service, these duties must not interfere with the sanitation, safety or time required for dietary work assignments.

Response: In an effort to eliminate prescriptive requirements, we chose to eliminate the language suggested by commenters concerning food service employees when they are assigned duties outside the dietary service. However, we are retaining the language in proposed § 483.35(f), redesignated as paragraph (h), regarding sanitary conditions as they relate to food. We are also including a provision at revised § 483.65(b)(2), Infection control (redesignated from proposed § 483.75(e)(4), Administration), which prohibits employees with a communicable disease or infected skin lesions from direct contact with residents' food, if direct contact will transmit the disease.

Summary of Changes to § 483.35

In summary, we are making the following changes from the proposed rule:

- We are revising staffing in paragraph (a) to provide that a facility must employ a qualified dietitian either full-time, part-time, or on a consultant basis. A qualified dietitian is defined as one who is eligible for registration by the Commission on Dietetic Registration of the American Dietetic Association, or who is qualified on the basis of education, training, or experience in identification of dietary needs, planning and implementation of dietary programs.
- We are establishing a new paragraph (b), Sufficient staff, that requires a facility to employ sufficient support personnel competent to carry out the functions of the dietary service.
- In proposed paragraph (b), Menus and nutritional adequacy, redesignated as (c), we retain the existing requirement that menus be in accordance with the recommended dietary allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences.
- We are establishing a new requirement on food preparation and service as paragraph (d). The content of this provision was originally proposed to be under the quality of life requirement as § 483.15(d).
- In proposed paragraph (d), Frequency of meals, redesignated as (f), we have modified the 16-hour period between evening meal and breakfast the following day when a nourishing snack is provided, and replaced it with the option for a resident group to make judgments concerning the meal span and what constitutes a nourishing snack.
- We are eliminating proposed § 483.35(f)(4) since we want to reduce paperwork burden and adherence to State and local laws is adequately addressed at § 483.75(b), Compliance with Federal, State, or local laws.

Section 483.40 Physician Services Requirement

We proposed that a physician must personally approve a recommendation that an individual be admitted to a facility, and that each resident must remain under the care of a physician, and if possible, designate a personal physician.

Comment: In summary, commenters—

- Suggested that we clearly state in the opening statement that it is always a resident's right to designate a personal physician;
- Suggested that the opening statement include a requirement that the physician be granted access to any facility within the State in which the physician is licensed;
- Indicated that it is unfair to hold the facility responsible for compliance with requirements involving activities that must be performed by the physician, over whom the facility has little control;
- Suggested that the facility be required to notify the Federal or State agency with jurisdiction over the physician's licensing when a physician repeatedly fails to meet the provisions of this requirement;
- Suggested that the regulations require the facility to express to the physician any concerns it has about orders that it considers questionable, since the facility can be held accountable for the consequences of following the physician's orders.

Response: We agree that the resident always has the right to designate a personal physician. This right is implicit in the resident rights requirement at § 483.10(d), which provides that the resident has the right to choose a personal physician. In § 483.40, the phrase, "and if possible, designate a personal physician" in the opening statement is not intended to be a requirement (i.e., the resident is not required to designate a personal physician) but simply to permit designation of one if he or she chooses to do so. Therefore, we are deleting the words "and, if possible, designate a personal physician" from the opening statement, since it is more appropriately placed in interpretive guidelines than in regulations.

As amended by OBRA '87, section 1819(c)(3)(A) of the Act (for Medicare SNFs) and section 1919(c)(3)(A) of the Act (for Medicaid nursing facilities) require that all participating facilities grant the resident's individual physician immediate access to the resident. We believe that this provision addresses the commenter's concern, and we are incorporating it in the final regulations in the new resident rights requirement, § 483.10(k).

Regarding the issue of facility responsibility for requirements that involve performance by a physician, the nature of the survey and certification process is such that our enforcement mechanism is primarily through the facility itself rather than through the individual practitioners that serve the facility's residents. When a physician gives orders that the facility considers questionable, the facility's responsibility is to ensure that these concerns are, in fact, raised with the physician. We believe that the individual staff members' business and professional codes already require them to question any orders which they believe to be inappropriate. OBRA '87 reinforces this responsibility, by adding new sections 1819(d)(4)(A) (for Medicare) and 1919(d)(4)(A) (for Medicaid) to the Act. These sections require the facility to comply not only with applicable Federal, State and local requirements, but also with "accepted professional standards and principles which apply to professionals providing services in such a facility." We are modifying the applicable portions of the Administration requirement, § 483.75 (b) and (c), to reflect this. We will look to the written statements and codifications of recognized professional organizations when it is necessary to establish that a particular professional standard or principle is, in fact, "accepted."

Paragraphs (a): Physician supervision and (b): Physician visits

Comment: Commenters—

- Argued that a facility resident should not be required to be under the care of a physician if he or she chooses to be under the care of a nonphysician health care professional in lieu of physician care;

- Expressed support for physician review of the resident's total program of care, but noted that it is impractical to require the physician to review the total program of care at each visit, since a resident's condition may sometimes require visits in addition to those normally required. They suggested that we require review of the total plan of care only during those visits required under the physician visit schedule in paragraph (c);
- Suggested that we require the physician to date, as well as sign progress notes and orders at each visit;
- Stated that unless we explicitly require the physician to have face-to-face contact with the resident when he or she reviews the program of care, the physician might merely stop by the facility to review the resident's records without actually seeing the resident.

Response: Under the provisions of section 1861(j)(4)(A) of the Act, every resident must be provided care under the supervision of a physician. We believe this indicates a Congressional intent that there be physician involvement in the care of all residents in the facility.

Based on the comments, we are revising paragraph (b) to require that the physician review the total plan of care at each visit required in § 483.40(c), and to require that the physician sign and date progress notes at each visit. Since proposed paragraph (c) specifies that the resident "must be seen" by a physician at prescribed time intervals, we do not believe other changes are needed.

Paragraphs (c): Frequency of Physician Visits, and (d): Availability of Physicians for Emergency Care

Comment: In summary, commenters—

- Suggested eliminating the requirement to record the prescribed frequency of physician visits in the resident's comprehensive care plan, since it is already specified in the regulations;
- Argued for flexibility in time periods between visits by using terms such as "monthly" and "every two months" or, alternatively, allowing a variance of several days;
- Opposed the ICF physician visit schedule proposed in § 483.40(c)(2). One commenter supported it, while forty-four felt that 6 to 12 months between visits is too infrequent, particularly for unstable residents;
- Noted that the proposed visit schedule does not coincide with the physician recertification schedule;
- Argued that physician visits should be based on an actual patient need, request, or significant change in condition rather than on compliance with a prescribed set of time intervals or the licensure of the facility (SNF versus ICF) in which the resident is located;
- Suggested that we require a medical evaluation and physical examination within 48 hours of admission, as well as a physician visit at the time of admission; and
- Expressed support for the provision on availability of physicians for emergency care, but suggested that we define what is meant by "availability," and require the facility to contact an absent physician's designated referral physician before assuming the responsibility of assigning a physician.

Response: After evaluating comments and taking into account changes made by OBRA '87, we are revising paragraph (c). As commenters suggest, we are eliminating the proposed requirement at § 483.40(c) to record physician visit requirements in the plan of care. We are also revising paragraph (c)(3) to provide that "a physician visit is considered timely if it occurs not later than 10 days after the date the visit was otherwise required" to provide an element of flexibility.

With respect to the comment concerning consistency of the visit schedules with the physician recertification requirements of section 1903(g)(6) of the Act, we note that this requirement has been repealed by OBRA '87. Section 1919(b)(3)(C)(ii) of the Act, as added by OBRA '87, will require a review of the resident's assessment no less frequently than every three months for nursing facility residents. In order to accommodate the commenters' concerns, and to make this requirement consistent with OBRA '87 resident assessment provisions, we are requiring, in § 483.40(c)(2), physician visits for ICF residents at least once every 30 days for the first 90 days and at least once every 90 days thereafter, with a ten-day variance, as specified in § 483.40(c)(3). However, we do not agree that the scheduling of the maximum time between physician visits should be done in accordance with criteria such as resident need, resident request, or significant resident change, because these concepts are subjective and not definable for regulatory purposes. Finally, we note that, under the provisions of OBRA '87, the Medicaid SNF–ICF distinction will cease as of October 1, 1990. In the interim, we will continue to base the applicable physician visit schedule on the certification of the facility (SNF or ICF) in which the resident is located.

We believe that the comment regarding "availability" of physicians for emergency care is valid, but would be more appropriately incorporated in guidelines. Therefore, we will include it in guidelines when they are issued.

Paragraph (e): Physician Delegation of Tasks

Comment: In proposed § 483.40(e), we would permit physician delegation to physician extenders, i.e., physician assistants and nurse practitioners, of tasks that the regulations do not otherwise require to be performed by the physician personally. An overwhelming majority of commenters expressed general support for permitting the delegation of tasks to physician extenders; however, other commenters expressed specific concerns about this provision. In summary, commenters—

- Were concerned about the interaction of this provision with proposed paragraph (b), which requires the physician personally to sign all orders, and with proposed paragraph (c), which requires the physician personally to perform physician visits at the prescribed time intervals. The regulations as proposed would effectively preclude these tasks from being delegated to physician extenders. Supporters of delegation recommended—
  - —The physician extender be allowed to sign orders, leaving to individual State law the issue of personal countersignature by the physician;
  - —The delegation be limited in scope, and adequately supervised by the physician;
  - —Permitting physician visits to be delegated to physician extenders, arguing that studies have demonstrated that allowing physician extenders to perform routine visits may actually increase physician involvement, since the physician typically will give considerable weight to the physician extender's determination that a personal physician visit is warranted in a particular instance;
  - —Including clinical nurse specialists (who are now permitted by section 4218 of OBRA '87 to perform the required certifications and recertifications for Medicaid nursing home residents) in the physician delegation provision.
- Opposed allowing any delegation of tasks to physician extenders whatsoever, claiming that it would represent a degradation in the quality and amount of care given;
- Asked that we revise proposed § 483.40(e)(1)(iii) to clarify that physician supervision of a physician extender need not be direct, on-site supervision;

• Interpreted the language in § 483.40(e)(2), regarding required tasks that a physician must "personally" perform, as nevertheless permitting such tasks to be delegated to others, and merely requiring that the physician document the record on those occasions when he or she actually does perform the task personally; and

• Noted that the requirement in proposed § 483.75(k)(2)(ii) for a physician extender to have a current license or certification to practice in the State is too restrictive, and would preclude the use of many qualified individuals.

Response: We believe that, to the extent feasible, the regulations should be written in a manner that allows for the effective utilization of physician extenders in the nursing home setting. For this reason, we are withdrawing our proposed requirement in § 483.40(b) that all orders be signed by the physician personally. This means that under § 483.40(e)(2), requirements concerning physician signature or countersignature of orders are determined by individual State law and facility policy. We are also deleting the words "responsibility for" from § 483.40(e)(2). This is to clarify that this provision involves delegating the actual performance of tasks; however, the ultimate responsibility for delegated tasks remains with the physician, as indicated in § 483.40(e)(1)(iii).

We also believe that the regulations should be revised to permit at least some measure of delegation to physician extenders of the physician visit function. We remain concerned, however, that at least a minimal degree of direct personal contact between physician and patient should be maintained, both at the point of admission to the facility and periodically during the course of the resident's stay. Therefore, in § 483.40(c)(4) we require that the physician perform the initial visit personally, and in § 483.40(c)(5), allow the physician the option of alternating with the physician extender in making subsequent required visits.

Under § 483.40(e)(1)(iii), as proposed, we require that the physician extender be under supervision, not under the "direct" supervision, of the physician. Hence, this provision permits supervision by a physician who need not be on-site. However, contrary to one commenter's interpretation of the provision in § 483.40(e)(2), this provision requires that when personal performance of a particular task by a physician is specified in the regulations, performance of that task cannot be delegated to anyone else.

We agree that the qualifications specified in the proposed Administration requirement § 483.75 at paragraph (k), Staff qualifications, go beyond those required in the existing regulatory definitions of physician assistants and nurse practitioners at 42 CFR 491.2 (to which paragraph (e) cross-refers). We are not including proposed § 483.75(k)(2)(ii) in these final regulations, and leave in place paragraph (e)'s cross-reference to the existing definitions.

Regarding the clinical nurse specialist authority conferred by section 4218 of OBRA '87, we note that the authority that Congress extended to clinical nurse specialists under this provision is specifically limited to the Medicaid program, and includes only the required certification and periodic recertifications, and the establishment and review of the plan of care. Congress chose not to authorize clinical nurse specialists to perform other physician functions under Medicaid, such as making required physician visits or writing orders, or to perform any physician functions whatsoever under Medicare. Further, the authority for clinical nurse specialists to perform Medicaid certifications and recertifications is itself time-limited, and applies only during the period from July 1, 1988, to October 1, 1990. We do not believe that the current limited scope of the clinical nurse specialist provision in OBRA '87 provides sufficient basis for including clinical nurse specialists in the physician delegation provision.

Summary of Revisions to § 483.40

We are making the following changes to § 483.40:

• In paragraph (b), Physician visits, the physician must write, sign and date progress notes at each visit;

• We are not including in paragraph (c), Frequency of physician visits, the proposed requirement that a facility record in the resident's comprehensive care plan how often a physician must visit a resident;

• We are revising the physician visit schedule for ICFs in paragraph (c) so that a resident must be seen by a physician at least once every 30 days for the first 90 days after admission, and at least every 90 days thereafter. A physician visit is considered timely if it occurs not later than 10 days after the date the visit was required;

• Also in paragraph (c), with certain stated exceptions, all required physician visits must be made by the physician personally. At the physician's option, required visits after the initial visit may alternate between personal visits by the physician and visits by a physician assistant or nurse practitioner in accordance with the delegation provision in paragraph (e).

Section 483.45 Specialized rehabilitative services requirement

We proposed at § 483.45 that facilities that provide rehabilitative services must either furnish them directly or arrange to obtain them from a provider of rehabilitative services. We included requirements dealing with provision of services and qualifications.

Comments: A large number of commenters asked that we specify that a facility must not retain a resident at the facility if a need for rehabilitative services develops and the facility will not provide or obtain the services. The NPRM had only prohibited the admission of residents in this situation. A few commenters further suggested that we require that all long-term care facilities provide rehabilitative services.

Several commenters suggested that we retain the current requirements for written administrative and patient care policies and progress reports.

Many commenters recommended that we delete the section in the proposed regulation that refers to the requirements for outpatient physical therapy providers since this subject is not pertinent to this regulation. Others commented that the title of this section is inappropriate. One commenter pointed out that the term "speech pathology" has been replaced by the term "speech-language pathology."

Response: In revised § 483.45, we are clarifying that a facility must provide or obtain rehabilitative services to every resident it admits. This is required by current law (section 1861(j)(1)), as well as by OBRA '87 (sections 1819(b)(4)(A)(i) and 1919(b)(4)(A)(i) of the Act). We are also describing the services included in this category (physical therapy, speech-language pathology and occupational therapy) and we are specifying that they must be provided under the written order of a physician, by qualified individuals. Finally, we are deleting the references to the requirements for outpatient physical therapy providers.

We are not reinstating requirements in existing regulations for written policies and progress reports because we do not believe that these are appropriate regulatory requirements under an outcome-oriented approach. We are requiring that all residents whose comprehensive assessment indicates rehabilitation potential receive, and the facility provide or obtain, appropriate rehabilitative services.

Summary of Revisions to § 483.45

We are making the following changes from the proposed rule:

• We are revising the opening statement to provide that a facility that admits or retains residents who require rehabilitative services, such as physical therapy, speech-language pathology, and occupational therapy, must provide or obtain these services;

• In the opening statement, for clarity, we are explaining that "rehabilitative services" include "physical therapy, speech-language pathology, and occupational therapy;" and

• We are revising paragraph (b) to provide that specialized rehabilitative services must be provided under the written order of a physician by qualified personnel.

Section 483.50 Social Services Requirement

We proposed at § 483.50 to require facilities to provide or arrange for services to meet the psychosocial needs of residents as identified in each resident's comprehensive assessment. We also proposed that the facility must establish liaison with community resources, which can assist in meeting those needs.

Comments: Many commenters said that it is much more effective to have psychosocial services provided by facility employees than by consultants or community agencies because consultants lack authority to assure that needed services are provided by the facility and may not devote ongoing attention to resolve problems as they arise. Many commenters pointed out that the proposed requirement is in conflict with the recommendation made by the IoM that facilities with 100 beds or more employ at least one full-time social worker and the similar requirement in section 1819(b)(7) of the Act, added by OBRA '87 for facilities with more than 120 beds. Commenters acknowledged the necessity of using consultants or agencies for social services in small and rural facilities and noted that this is reflected in the IoM study and in OBRA '87.

Many commenters recommended that the regulations specify the credentials required of those providing social services and that we designate the individual responsible for provision and coordination of social services. Most commenters who discussed credentials said that it was not necessary for a social worker to have a master of social work (MSW) but indicated that a professional with a bachelor's degree in social work or in another applied human services field would be sufficient. Commenters expressed concern that if credentials are not specified, social services duties would be relegated to an ancillary part of another job. Several commenters stated that nurses are already overburdened and could not assume this responsibility. In addition, commenters noted that social services provided by unqualified personnel could have negative outcomes.

Many commenters suggested that we specify the duties of social workers, such as assessment, treatment and planning as well as training support staff and other facility staff to facilitate provision of social services.

Few comments were received in response to our invitation in the preamble to the proposed rule for public comment as to whether a separate requirement for social services should be included in the final regulation or whether these functions should be entirely integrated with other requirements. One commenter suggested that we integrate social services functions with other requirements. Another commenter said that we could put social services under the resident's rights requirement. The other commenters that responded to this issue were strongly in favor of retaining social services as a separate requirement to assure that the quality of life and quality of care requirements are met. These commenters also indicated that we should require that a social worker provide these services.

In the preamble we also asked what types of specific outcome measures might be used to evaluate this type of care. A number of commenters submitted lists of possible outcome criteria.

Response: After considering comments, we are relocating social services as paragraph (a) under § 483.15, Quality of Life, along with resident activities. Commenters convinced us that these services have similar objectives of supportive, maintenance and empowerment services and we reasoned that these were important quality of life issues. (See preamble discussion of § 483.15(e), Activities)

While existing section 1861(j)(15) of the Act states that the Secretary cannot require that medical social services be furnished in a SNF, a provision in OBRA '87 requires that SNFs with more than 120 beds employ at least one full-time social worker effective October 1, 1990. Consequently, we have included separate provisions in this final regulation that will be effective before and after October 1, 1990, the effective date of the OBRA '87 provision. We are providing that, before October 1, 1990, SNFs are not required to furnish social services directly, but must meet the social service needs of its residents either by obtaining the services from an outside source or by employing a social worker. We will not require social work services in ICFs before October 1, 1990.

In this rule, we are specifying that a social worker must have a bachelors degree, or two years supervised experience in a health care setting, or similar professional qualifications. This requirement is consistent with IoM recommendations and with OBRA '87 requirements that will become effective on October 1, 1990. In the meantime, we invite public comment on how we should define the meaning of the statutory requirement "or similar professional qualifications" as it pertains to a bachelors degree in social services. We plan to publish a final rule on this subject before October 1, 1990.

Summary of changes to proposed § 483.50

We are withdrawing the social services requirement as proposed, making the following changes, and relocating social services as paragraph (g) under § 483.15, Quality of life.

• In § 483.15(g), we are requiring that social services be provided by a qualified individual defined as an individual with a bachelors degree in social work or two years experience in a health care setting working directly with patients or clients, or similar professional qualifications.

• We are providing that before October 1, 1990, a SNF is not required to furnish social services directly, but must meet the social services needs of its residents by either obtaining social services from an outside source, or providing the services directly.

• Effective October 1, 1990, all facilities with more than 120 beds must employ a qualified social worker on a full-time basis.

Section 483.55 Dental services requirement

In § 483.55, we proposed that facilities assist residents in obtaining routine and emergency dental care, and ensure that a dentist is available in an advisory role to the nursing staff. The facility must have an agreement with a dentist to provide dental services, maintain a list of available dentists, and, if necessary, assist the resident in making appointments and in arranging for transportation to and from the dentist's office.

Comment: In summary, commenters had the following concerns. Commenters suggested that—

• We reinstate the current requirement that an advisory dentist participate in staff development training for nursing personnel;

• Advisory dentists should conduct mouth assessments;

• Dental referral lists should include only dentists willing to treat nursing facility residents, and those willing to accept Medicaid payment;

• We require prompt replacement of lost or damaged dentures; and

• Emergency dental care should be available on a 24 hour basis.

Response: For the interim period up to October 1, 1990, when the applicable OBRA '87 provisions become effective, we are making final the dental services regulations as proposed, and adding a provision requiring facilities to refer residents with lost or damaged dentures promptly to a dentist.

Under section 4201 of OBRA '87, which was enacted after the NPRM was published, section 1819(b)(4)(A)(vi) of the Act was added to require that effective October 1, 1990, Medicare SNFs provide or obtain "* * * routine and emergency dental services to meet the needs of each resident" and specified that the SNF will not be required to furnish such services without additional charge. Section 4211 of OBRA '87 added section 1919(b)(4)(A)(vi) to the Act, which, effective October 1, 1990, requires Medicaid nursing facilities to provide or obtain "* * * routine dental services (to the extent covered under the State plan) and emergency dental services to meet the needs of each resident."

We are implementing these provisions in revised regulations that will become effective on October 1, 1990. The effect of these changes is that currently effective regulations require merely that a facility assist its residents in obtaining dental services on their own. However, effective October 1, 1990, facilities will become directly responsible for the dental care needs of their residents, as specified in OBRA '87.

Summary of Revisions to § 483.55

In addition to technical revisions, we are revising § 483.55 to—

• Include, for the interim period beginning with the effective date of these regulations up to October 1, 1990, the dental services requirements as proposed in the NPRM, with an additional provision regarding referral of residents with lost or damaged dentures; and

• Implement, effective October 1, 1990, the OBRA '87 provisions under which facilities are responsible for meeting the dental care needs of their residents, as specified in the law.

§ 483.60 Pharmacy services requirement

This provision requires a facility to provide routine and emergency drugs and biologicals to its residents.

Comment: The opening statement of the proposed rule states that the requirement that a facility have methods and procedures for dispensing and administering drugs and biologicals is based on a requirement of section 1861(j)(7) of the Act for skilled nursing facilities (SNFs). Several commenters wrote in to say that they were confused which requirements applied to SNFs and which to ICFs.

Response: We are retaining reference to section 1861(j)(7) of the Act dealing with methods and procedures for dispensing and administering drugs and biologicals. This provision will be effective for skilled nursing facilities until October 1, 1990. There is and will be no similar provision for ICFs until October 1, 1990. After that date, we will use the wording of OBRA '87 which deals with assuring the "accuracy" of pharmaceutical service, and this provision will apply to both skilled nursing and nursing facilities.

Comment: Existing SNF pharmacy and nursing services regulations at § 405.1124(i), contain requirements for labeling and storage of drugs, which were deleted in the proposed rule because we thought that these issues were adequately addressed by State law. Six commenters did not agree with that, and maintained that the laws in their States did not adequately address these issues.

Response: In response to these comments, we are establishing new § 483.60(f), Labeling of drugs and biologicals, which reinstates existing requirements that drug labeling be in accordance with currently accepted professional principles, and that labeling include appropriate accessory and cautionary instructions and expiration date. Note that existing regulations only require an expiration date "when applicable." Since the Food and Drug Administration now requires expiration dates on virtually all legend drugs, we have deleted the modifier "when applicable."

We are also reinstating current provisions that require the facility to lock all drugs and to separately lock schedule II Controlled Drugs listed in the Comprehensive Drug Abuse Prevention and Control Act of 1970. We note that residents who self-administer drugs in accordance with these requirements will also have to store their drugs in locked compartments, but would not have to separately lock Schedule II controlled drugs.

Comment: Existing regulations for skilled nursing facilities at § 405.1127(d) require a pharmaceutical services committee. The function of this committee is to develop written policies and procedures for safe and effective drug therapy distribution, control and use. Regulations governing ICFs do not have a provision for this committee. In the proposed rule, we deleted requirements for this committee and approximately 30 commenters expressed opposition. These commenters maintained that this committee is essential to the coordination of the inter-disciplinary task of prescribing, dispensing, distributing and administering drugs and biologicals in long-term care facilities.

Response: Existing section 1861(j)(7) of the Act requires the facility to develop "methods and procedures for dispensing and administering drugs and biologicals." Section 1919(b)(4)(A)(iii), added by OBRA '87, requires "procedures that assure the accurate acquiring, receiving, dispensing and administering of all drugs and biologicals" effective October 1, 1990.

Since commenters expressed a desire to have a formally established committee to develop these procedures, we are reinstating the existing provisions providing for this committee in § 483.60 as a new paragraph (c), Pharmaceutical services committee. We note, however, that OBRA '87 also requires the facility to have a "Quality Assessment and Assurance Committee." When the regulations implementing this OBRA '87 provision become effective in October, 1990 (see revised § 483.75(r)), we expect the functions of the pharmaceutical services committee to be assumed by the quality assessment and assurance committee, which would act as a "committee of the whole."

Paragraph (a): Methods and Procedures.

Committee: Under § 483.60(a)(2) of the proposed rule, unlicensed personnel may administer drugs if State law permits this practice, thus continuing a similar requirement currently in SNF regulations at § 405.1124(g). Comments ranged from opposition to the idea of unlicensed personnel administering drugs, on the belief that only a registered nurse should perform this task, to recommendations for adequate training to administer drugs and supervision by licensed personnel.

Response: We continue to believe that the task of administering solid form oral doses is largely routine and mechanized, and valuable licensed nurse resources

can be better utilized in making direct resident care assessment and judgments and providing care. We agree, however, that general supervision by a licensed nurse when unlicensed personnel are administering drugs is desirable and are making this revision. We are retaining the provision allowing unlicensed personnel to administer drugs if State law permits. We are relocating this provision to § 483.10(o), Self administration of drugs.

Paragraph (c): Drug regimen review

Proposed 483.60(c) requires a pharmacist to conduct a monthly drug regimen review and report any irregularities to the attending physician.

Comment: Commenters were concerned about who should receive the pharmacists' reports of irregularities. They wanted reports to be sent to either the director of nursing, who could correct irregularities relating to drug administration; the physician because only he could resolve issues dealing with drug prescriptions; the administrator and the medical director because they ultimately are responsible, or share responsibility for potential drug therapy problems.

Response: We agree that the pharmacist's reports should go to the attending physician and the director of nursing, since they have direct resident care responsibilities.

We also believe that the director of nursing or the attending physician, or both, must act on the recommendations of the pharmacist, especially with regard to psychopharmacologic drug use, since the ultimate goal of the drug regimen review process is to optimize drug use in facilities and that can only happen if action is taken, either to accept or reject recommendations made by the pharmacist. This provision is in accordance with the spirit of section 1919(c)(1)(D) of the Act, added by OBRA '87, which strongly emphasizes efforts to control the abuse of psychopharmacologic drugs as chemical restraints. We are modifying the provision, designated as paragraph (e) in this final rule, accordingly.

We believe it would be too prescriptive to require explicitly that drug review reports go to the administrator and medical director. The facility may develop its own policy regarding whether these reports should be reviewed by these individuals.

Note: We plan to issue a proposed rule to implement the OBRA '87 provision prohibiting the use of psychopharmacologic drugs except under certain circumstances (physician's order, plan to reduce or eliminate symptoms and annual review by an outside consultant).

Summary of revisions to § 483.60

In addition to minor editorial revisions, we are revising proposed § 483.60 as follows:

• We are relocating the requirement that a facility may permit unlicensed personnel to administer drugs if State law permits from paragraph (a), Methods and procedures, to the requirement concerning nursing services, § 483.10 under paragraph (o), Drug administration;

• In new paragraph (c), Pharmaceutical services committee, we are requiring facilities to have a pharmaceutical services committee which develops written policies and procedures for safe and effective drug therapy, distribution and control;

• We are renaming the supervision of services requirement. Its new name is Service Consultation. This term more accurately describes the role pharmacists play in these facilities. This provision is now located at § 483.60(d).

• In paragraph (e), Drug regimen review, redesignated from (c), we require that the drug regimen of each resident be reviewed at least once a month by a licensed pharmacist, and any irregularities be reported by the pharmacist to the attending physician or the director of nursing, or both;

• In new paragraph (f), we provide that the facility must label drugs and biologicals in accordance with currently accepted professional principles.

• We are placing proposed § 483.30(d)(2) regarding storage of self-administered drugs and biologicals in a new provision at § 483.10(o).

483.65 Infection control requirement

The provision requires that the facility provide a sanitary environment.

Paragraph (a): General requirements

Comment: Existing infection control regulations at § 405.1135 contain provisions for an infection control committee composed of representative professional staff with responsibility for overall infection control in the facility. Section 405.1135 requires the committee to establish policies and procedures for investigating, controlling, and preventing infections in the facility, and monitors staff performance to ensure that the policies and procedures are executed. We deleted these provisions in the proposed rule because the emphasis we wanted to place was on the actual performance of a facility in providing care rather than on its capacity to perform. Twenty-six commenters thought that the infection control committee should be retained.

Response: After review of the comments, we are creating a requirement for an infection control program, under which the facility is responsible for establishing policies and procedures for investigating infections in the facility. We note that sections 1819(b)(1)(B) (for Medicare) and 1919(b)(1)(B) (for Medicaid), as added by OBRA '87, require that each nursing facility have a quality assurance committee, effective October 1, 1990 (see revised § 483.75(r)). To avoid requirements for an excessive number of limited purpose committees, we are removing the requirement for a separate infection control committee. The quality assurance committee will become a committee of the whole and carry out the functions of the infection control program.

We are also introducing a requirement at § 483.65(b)(3) for handwashing by staff with direct resident contact when indicated by accepted professional practice. Our purpose in doing so is to state in more specific terms the basic intent of a requirement that we originally proposed at § 483.65(a)(5). This provision, as proposed, would have required all personnel to follow aseptic and isolation techniques in accordance with acceptable professional practice. We are revising this requirement to focus on handwashing by staff with direct resident contact when indicated by accepted professional practice, in view of recent studies that have identified such handwashing as one of the basic, essential measures for preventing the spread of infection in nursing homes. We will use the Guideline for Handwashing and Hospital Environmental Control, 1985, published by the Centers for Disease Control of the Public Health Service, as the standard for accepted professional practice in this area.

Comment: Proposed § 483.65(a)(4) requires that residents with infectious diseases be isolated in single rooms that are vented to the outside, with a private toilet and handwashing facilities, and identified by precautionary signs. Eleven commenters believed that not all infectious diseases require isolation and that the regulations should be revised so that facilities are not required to isolate patients unless their disease requires this precautionary measure.

Response: We agree with these comments. As noted in the previous response, we are reinstating the existing requirement for an infection control program, under which the facility has responsibility for overall infection control. One of these responsibilities is to determine what form isolation should take given the resident's infection. Not all infections require isolation in single

rooms vented to the outside, with a private toilet and handwashing facilities. thus we have deleted these requirements at § 483.65(b).

Comment: Proposed § 483.65 requires that the facility maintain a record of incidents and corrective actions related to infections. Eight commenters thought that this language was not clear enough and that we should define the words "incidents" and "corrective actions".

Response: The requirement has been made a function of the infection control program. We do not wish to institute prescriptive regulatory requirements, but intend to elaborate further in interpretive guidelines. A facility should, for example, maintain a separate record on infections that identifies each resident with an infection, gives the date of infection, the causative agent, the organ or site of infection, and describes what precautionary measures were taken to prevent the spread of the infection within the facility. This log or record of infection will assist the facility in determining patterns of infection and potential correction measures.

Summary of Changes to § 483.65

We are making the following changes from the proposed rule:

- We are replacing proposed paragraph (a), general requirements, with a new paragraph (a): Infection control program. We require a facility to establish an infection control program under which it investigates, controls and prevents infections, decides on isolation procedures, and maintains a record of incidents and corrective actions related to infections.
- In paragraph (b)(1), we are not specifying what isolation procedures should be followed.
- Paragraph (b)(2) (redesignated from proposed § 483.75(e)(4)) requires that a facility prohibit employees with symptoms or signs of a communicable disease or infected skin lesions from direct contact with residents or their food, if such direct contact will transmit the disease.
- Paragraph (b)(3) provides that a facility must require staff to wash their hands in accordance with accepted professional practice.
- Proposed paragraph (b), Linens, is redesignated as paragraph (c).

Section 483.70 Physical Environment Requirement

Proposed § 483.70 requires that the facility must be constructed, equipped and maintained to protect the health and ensure the safety of residents, personnel and the public.

Comment: The comments on physical environment are summarized below. Commenters—

- Were opposed to permitting waivers of certain life safety code provisions;
- Had a number of specific suggestions with regard to such environmental factors as temperature levels, pest control, smoke-free rooms, smoke detectors, fire drills, emergency power, and resident call systems;
- Recommended a variety of additional structural changes, including room size and furnishings, and accessibility to the handicapped;
- Suggested that resident rooms accommodate no more than two beds per room;
- Suggested that physical plant changes not be required in existing facilities;
- Requested clarification of the term, "secure," in regard to closet space;
- Asked that we retain the existing SNF requirement that generally prohibits the placement of blind, nonambulatory residents above the street level floor if the facility is 2 or more stories and has a waiver of construction type or height, or is not of fire resistant construction;
- Objected to the requirement for full visual privacy, stating that many facilities have privacy curtains that extend only to the end of the bed, and this is sufficient for privacy; others thought an outcome oriented approach to privacy would give facilities more flexibility in meeting this requirement;
- Objected to the term "homelike," and asked that it be clarified or deleted since "homelike" may be incompatible with acceptable safety and sanitation measures.

Response: In responding to the comments we made changes to the regulations that are consistent with the Act and discussions of the issues that appeared in OBRA '87. Our responses to comments are summarized below.

- Waivers of certain life safety code provisions are permitted by section 1861(j)(13) of the current Act, and by sections 1919(d)(1)(B)(i) and 1819(d)(1)(B)(i) of the Act, as amended by OBRA '87. We do not have the authority, therefore, to preclude the potential for waivers when appropriate.
- The requirements for quarterly fire drills and smoke detectors in facility corridors are included in the life safety code of the National Fire Protection Association. § 483.70(a) requires that facilities meet the provisions of this code, in accordance with the Social Security Act. On April 7, 1988, we published final regulations at 53 FR 11504, which incorporate by reference the 1985 edition of the National Fire Protection Association's Life Safety Code.
- We are revising the Emergency power requirement to include the requirement that the emergency electrical power system must supply power adequate at least for lighting all entrances and exits, equipment to maintain fire detection, alarm and extinguishing systems, and life support systems when the normal electrical supply is interrupted.
- In the Dining and resident activities requirement, we are revising the regulation to require that nonsmoking areas be identified.
- In the Resident call system provision, we are eliminating the requirement for a call system from common resident areas because commenters objected to the expense of installing a system, and misunderstood the intent of the proposal.
- We are not requiring that rooms accommodate only two beds because this would be too costly. Moreover, we believe that the general provision for privacy and the specific provision for privacy curtains on newly certified facilities ameliorates the need to limit the number of beds per room.
- We are also requiring that, in facilities initially certified after the effective date of these regulations—

—The temperature range must be 71–81° Fahrenheit. As discussed below, this has been relocated to § 483.15(h)(6); and

—Each bed must have ceiling suspended curtains that extend around the bed sufficiently to provide total visual privacy. We believe this is supported under current law and section 1919(c)(1)(A)(iii) of the Act as added by OBRA '87.

We plan to allow temperatures that exceed the upper range of 81 degrees Fahrenheit for facilities in geographic areas of the country (primarily at the northernmost latitudes) where that temperature is exceeded only during rare, brief episodes of unseasonably hot weather. This interpretation would apply in cases where it does not adversely affect resident health and safety, and would enable facilities in areas of the country with relatively cold climates to avoid the expense of installing air conditioning equipment that would only be needed very infrequently.

- We agree that facilities must provide handicapped accessibility and have added it under the Administration requirement at § 483.75(d).
- With regard to the commenter who requested that physical plant changes not be required in existing buildings, we emphasize that fire safety regulations for all Medicare and Medicaid facilities have grandfather clause provisions that address that issue.
- We do not agree with commenters who suggested amending the regulations to specify that a facility may routinely inspect, monitor or clean out the resident's closet space, because this would be in conflict with IoM recommendations on privacy. However, we will permit facilities to inspect the area when the facility has reason to believe that the items stored in the closet are a threat to the health and safety of other residents.
- With regard to a provision prohibiting facilities from placing handicapped residents above street level, we believe that specific regulatory provisions are unnecessary because a waiver of the LSC may be granted only if it does not affect the health and safety of all residents.
- We are retaining the reference to a "homelike" environment because it deemphasizes the institutional setting by allowing residents to use personal belongings, and is consistent with a resident's right to receive services with reasonable accommodations of individual needs and preferences, as specified in the Resident rights requirement, § 483.15(h).
- We are relocating proposed requirement, Pest control program, from § 483.15(b)(5) to § 483.70(h), Other Environmental conditions.
- We are relocating proposed requirements in § 483.70(h)(1)(2) and (3) to the Environmental quality of life provision, § 483.15(h).
- We are reorganizing proposed § 483.70(h) to include the following regulatory requirements:

(1) Establish procedures to ensure that water is available to essential areas when there is a loss of normal water supply.

(2) Have adequate outside ventilation by means of windows, or mechanical ventilation or a combination of the two;

(3) Equip corridors with firmly secured handrails on each side; and

(4) Establish an effective pest control program in order to maintain the facility free of pests and rodents.

- We are not deleting the proposed requirement for a facility to ensure that the premises are free of pests and rodents because we believe that the facility is accountable for maintaining sanitary conditions, and to eliminate this requirement would jeopardize residents' health and safety.

Summary of Changes to § 483.70

In addition to technical changes discussed above, we are making the following revisions to proposed § 483.70

- We are specifying in paragraph (b), Emergency power, that the emergency electrical power system must supply adequate power at least for lighting entrances and exits, fire detection equipment, alarms and extinguishing systems, and life support systems when the normal electrical supply is interrupted;
- We are revising § 483.70 to provide that in facilities initially certified after the effective date of these regulations.

—Each bed must have ceiling suspended curtains, which provide total visual privacy (paragraph (d)(v)); and

—Now located at § 483.15(h)(6) temperature range of 71–81° Fahrenheit must be maintained. We will specify in guidelines exceptional circumstances under which a facility may exceed the upper limit briefly;

- In paragraph (g), Dining and resident activities, we require that nonsmoking areas be identified;
- We are adding new paragraph (h), Environment, which was originally proposed as § 483.15(b).

Section 483.75 Administration requirement

In § 483.75, we proposed a Level A requirement consisting of 22 Level B requirements, 7 of which are required by the Act. The major comments are as follows:

Paragraph (a): Licensure

In § 483.75(a), we proposed that an SNF must be licensed in accordance with State or local law, or approved by the State or local agency responsible for licensing such institutions. An ICF must be licensed under State law to provide, on a regular basis, health-related care and services to individuals who do not require the degree of care that a hospital or SNF provides. This paragraph is closely related to paragraphs (b) and (c), Compliance with Federal, State and local laws. (See the discussion of the Physician services requirement (§ 483.40) and the discussion of proposed paragraph (j) of this section (use of outside resources) regarding revisions made in paragraph (c) to reflect OBRA language on compliance with professional standards.)

Comment: One commenter suggested that we include a description of the new nursing facility (NF) level of care introduced in OBRA 1987. Other commenters disagreed with the description of ICF care as limited to that type of care that can be furnished only through institutional facilities.

Response: OBRA 1987, in defining NF care, simply incorporates the existing statutory language defining SNF care and ICF care into a single definition, without altering the basic wording. Thus, in effect, the existing regulatory definitions of SNF care and ICF care, when taken together, already constitute a description of NF care. Since the "nursing facility" category created by OBRA 1987 does not become operative as such until October 1, 1990, we are retaining the current paragraph (a) distinction between SNF and ICF care for use in the interim period. The description of ICF care of § 483.75(a)(2) is verbatim to what section 1905(c)(1) of the Act provides and essentially is included in the OBRA 1987 definition of nursing facility care.

Paragraph (c): Governing Body

We proposed that a facility must have a governing body or designated person functioning as a governing body that is legally responsible for establishing, implementing and making available to residents and the public written policies regarding management and operation of the facility. The governing body appoints the administrator who is licensed by the State, and is responsible for management of the facility. The proposed provision contained detailed requirements concerning access to ombudsmen or others who assist residents, including resident advisory councils.

Comment: Commenters suggested that we define the qualifications of the administrator, and specify the number of hours the administrator is employed in a facility.

Response: Since we are emphasizing resident care outcomes and deleting unnecessarily prescriptive requirements, we chose not to specify in detail the responsibilities of the administrator nor the exact amount of hours he or she should be employed but rather allow the facility to determine how the facility should be managed. We note, however, that if a facility is substantially out-of-compliance with program requirements, it is ultimately the responsibility of the administrator of the facility.

Based upon sections 1819(f)(4) and 1919(f)(4) of the Act, added by OBRA 1987, we are developing a separate rule containing proposed standards for the qualifications of administrators of skilled nurisng facilities and nursing facilities.

Comment: Commenters were opposed to the requirement that would allow a facility to restrict access within State

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law to a designated ombudsman, and to authorized employees and agents of public agencies to normal visiting hours.

Response: We agree with commenters, and note that Congress has dealt with this issue in OBRA 1987, which creates a new section 1819(c)(3) of the Act (for Medicare) and a new section 1919(c)(3) (for Medicaid), dealing with access and visitation rights. These provisions distinguish between certain categories of individuals, who must be granted immediate access to residents, and other categories that are to be allowed reasonable access. Because we believe that these issues are within the scope of current law, as well as OBRA 1987, we are incorporating the OBRA 1987 provisions in these final regulations, and we are relocating these provisions on access to § 483.10, the requirement for protection of resident rights at paragraph (k), access to the facility.

Comment: Commenters did not object to the requirement that the governing body make available to residents information on Federal, State and local agencies responsible for enforcement of nursing home rules and advocacy for residents, the results of Federal and State surveys, and the name, address and phone number of State survey office, ombudsman office and legal service office. However, commenters noted that posting these notices detracts from a "homelike" environment, and they suggested that the facility should simply be required to post a notice that these documents are available for review.

Response: We agree with commenters, and in the final rule, we are providing that a resident has the right to examine the results of Federal and State surveys, and plans of correction, upon reasonable request. Since the issue concerns resident rights, we are relocating this provision to § 483.10 at paragraph (g), Examination of survey results.

Comment: Concerning our proposed requirement that a facility provide space, privacy, and a designated staff person to provide assistance, for resident advisory and family groups, commenters—

- Suggested permitting the staff advisory person to attend council meetings;
- Asked us to require facilities to facilitate establishment of resident councils, to submit proposed policies affecting resident life to the council for review, and to respond to formal council recommendations within 2 weeks.

Response: We do not require that facilities organize these groups, merely that when residents or family members desire such groups, the facility provide assistance. Because residents' need for assistance may vary from one facility to another, we have altered the wording of this requirement to indicate that staff or visitors may attend only at the group's pleasure. This change should preserve the privacy right of group participants without necessitating issuance of a formal invitation anytime assistance is needed. On the other hand, in situations where residents do not need or desire the presence of a staff person for assistance, they have the right to organize and conduct meetings on their own and invite of include whomever they wish. The interpretive guidelines will explain that normally the designated staff person responsible for such assistance and liasion between the group and the facility's administration would be the only staff person present during resident or family group meetings—and only if the group requests such assistance.

At § 483.15(c), under the Participation in resident and family groups provision of the quality of life requirement, in reponse to comments, we are implementing in essence the OBRA '87 provision that grants residents the right to organize and participate in resident groups in the facility and the right of the resident's family to meet in the facility. In order to facilitate this right, we believe the facility must allow these groups to exist and provide space, privacy and staff support.

Paragraph (d): Institutional Planning

Comment: The proposed regulations at § 483.75(d) require each facility to have an institutional plan and budget, and give detailed requirements for their content. Several commenters felt that these requirements were burdensome to facilities and could be deleted.

Response: The content of proposed paragraph (d) (redesignated as (f)) is required by section 1861(z) of the Act. Since the provision is based on a statutory requirement, we cannot simply delete it. However, as of October 1, 1990 this requirement will be repealed in accordance with OBRA '87 provisions.

Paragraph (e): Personnel Policies and Procedures

In § 483.75(e), we proposed that the facility must maintain current records for each employee to support placement in an assigned position, ensure a safe and sanitary environment for residents and employees, provide or refer employees for periodic health examinations, and prohibit employees with symptoms of communicable disease from direct contact with residents and food.

Comment: Commenters suggested—

- Retaining the existing requirements for written personnel policies;
- Retaining the requirement for quarterly staffing reports;
- Including personnel training records or screening procedures in employee records; and
- Clarification of terms or deletion of requirements for periodic health examination of employees.

Response: After reviewing the requirements contained in this provision, we have determined that certain requirements are already addressed elsewhere in the regulations and, therefore, can be deleted, with other requirements are more appropriately placed in other sections of the regulations. We are deleting, therefore, the entire provision and replacing some of the requirements in other sections of Part 483 as follows:

- The requirements of paragraph (e)(1), maintenance of sufficient information to support an employee's assigned placement, are already contained in § 483.75(h), which requires a demonstration of job competency by nurse's aides, and § 483.25, which prescribes a series of quality care outcomes that require general staff competency.
- The requirements of paragraph (e)(2), a safe and sanitary environment, are contained in § 483.70(h), which requires a "functional, sanitary and comfortable environment". We are adding the word "safe" to § 483.70(h). Accident prevention requirements are already contained in § 483.25(h).
- We are deleting the requirements of paragraph (e)(3), periodic health exams for employees, since we believe that § 483.65(b) already addresses reasonable measures that facilities should take to prevent the transmission of communicable diseases by employees.
- The requirements of paragraph (e)(4), which prohibits employees with symptoms of communicable disease from resident or food contact, are now incorporated into the infection control requirement, § 483.65(b).

We note that the IoM report specifically recommended that the requirement for quarterly staffing report be eliminated. Therefore, we are not reinstating this requirement.

With regard to employee training records or applicant screening procedures, we believe that the nurse aide training requirements introduced in OBRA '87 will, along with the survey process, assure the continued competence of nurse aides; the competence of professional and technical personnel is addressed in licensure requirements.

Paragraph (f): Nurse Aide Training

Comment: Proposed section 483.75(f) requires that the facility provide 80 hours of training for untrained aides before they are allowed to care for patients without direct supervision. The majority of respondents approved of the requirement for nurse aide training, while a minority thought that the regulation should be more specific with regard to the content of the training and emphasized that the training should combine theory and clinical experience. Commenters—

- Suggested allowing aides to work before they have completed 80 hours of training;
- Argued that training should be provided only in State approved courses or State accredited institutions;
- Suggested that training take place in facilities that have an acceptable compliance history; and
- Suggested that training be directed by a registered nurse.

Response: OBRA '87 contains extensive provisions on nurse aide training, including the provision that a nurse aide cannot work in a facility on or after January 1, 1990 for more than 4 months unless the individual has completed a training and competency evaluation program, or a competency evaluation program approved by the State.

We have decided to delete our proposed requirement and to include the OBRA '87 provisions in this final rule, with the effective date specified in OBRA '87, January 1, 1990. To do otherwise would force facilities to come into compliance with one set of rules now and another set of rules in January of 1990. We expect that facilities will begin immediately to prepare to meet the OBRA '87 requirements and that this activity will have a positive effect on the quality of aide services during the interim.

We are also including in this final rule the following OBRA '87 provisions, generally effective January 1, 1990 which are essentially self-executing due to their explicit requirements:

- Effective July 1, 1989, a facility must provide a competency evaluation program for currently employed nurse aides approved by the State;
- A facility may not use any individual as a nurse aide for more than 4 months unless the individual:

(1) Has completed a training and competency evaluation program, or a competency program approved by the State, and

(2) Is competent to provide nursing and nursing related services;

- Nurse aides who have not performed paid services for a continuous period of 24 months since the most recent completion of a training and competency evaluation program must undergo required retraining; and
- Nurse aides must participate in required regular in-service education by a facility.

In this final rule, proposed paragraph (f) is being redesignated as paragraph (g).

Paragraph (h): Notification of Changes

We proposed at § 483.75(h) that, except in an emergency, a facility must notify promptly a resident's physician or other responsible person when there is an accident or a significant change in a resident's physical, mental or emotional status.

Comment: Commenters—

- Recommended that only accidents that result in injury should be reported;
- Suggested that abuse and neglect be included among the conditions that must be reported;
- Noted that often no third party exists to be notified;
- Requested clarification of terms or modifications of language; and
- Suggested that accidents must be reported within 24 hours; changes in billings within 72 hours and 10–30 days' notice of transfer or discharge in non-emergency cases.

Response: As a result of these and other comments, as discussed above, we have moved paragraph (h), Notification of changes.

- At § 483.10(b)(10), we located the requirement that the facility notify the resident's physician and any known legal representative or family member within 24 hours of an accident or a significant change in the resident's physical or psychological status;
- At § 483.12(a)(4), we located the requirement that the facility notify the resident and his or her family or representative at least 30 days before the resident is transferred or discharged in non-emergency cases, except when—

—The health or safety of individuals in the facility would be endangered;

—The resident's health improves sufficiently to permit a more immediate transfer;

—Immediate transfer or discharge is required by a resident's urgent medical needs; or

—A resident has not resided in the facility for 30 days.

Paragraph (i): Resident Care Policies

In § 483.75(i), we proposed that a facility must have written resident care policies that govern the continuing nursing care, and medical or other services furnished by the facility.

Comments: Commenters—

- Suggested that the regulations be more specific;
- Requested that a social work staff member be included on the policies development team;
- Suggested that the provision not require physician involvement in purely nursing policies; and
- Suggested that resident care policy development and review apply to ICFs as well SNFs.

Response: The SNF requirement that resident care policies be developed by a group of professionals is repealed by OBRA '87 effective October 1, 1990. We have retained this current statutory requirement (found at section 1861(j)(2) of the Act) but will terminate it on the effective date of the OBRA '87 provision, October 1, 1990.

(j) Paragraph: Resident Finances

We proposed at § 483.75(j) that a facility establish and maintain a system that assures a full and complete accounting of the resident's personal funds entrusted to the facility on the resident's behalf. Further, the system must preclude any commingling of resident funds with the funds of any person other than another resident. The individual financial record must also be available on request to the resident or the legal representative.

Comment: Commenters—

- Requested retention of the requirement in the current SNF regulations that facilities issue quarterly statements in addition to allowing the resident or his or her representative to inspect the record upon request;
- Requested a full and complete accounting of all transactions according to generally accepted accounting principles;
- Suggested retention of the prohibition, contained in the current regulations, against commingling of a resident's funds with any other funds of the facility, as well as with those of any person other than another resident;
- Wanted no commingling of a resident's funds whatsoever, thus, requiring individual accounts for every resident rather than separate accounting of each resident's funds within a pooled account;
- Contended that facilities are not required to accept management of residents' personal funds but agreed that, if they do accept management responsibilities, Federal standards are appropriate;

• Wanted the family to have access to the resident's financial records, as permitted under the current ICF regulations;

• Asked us to implement the OBRA '87 requirements concerning management of personal funds and requirements for facilities to post surety bonds and adhere to conveyance-upon-death requirements; and

• Asked that we prohibit facilities from charging, other than through their basic rate, for management of personal funds.

Response: In these final regulations, we are revising the financial management requirements placed on facilities and relocating them to § 483.10(c), Protection of resident funds. We are including OBRA '87 provisions requiring that the facility maintain a full and complete and separate accounting of each resident's personal funds entrusted to the facility, and make this accounting available to the resident or legal representative. This provision is effective on the effective date of these regulations because we have authority to implement it under existing law. We are also implementing those provisions of OBRA '87 that deal with residents' right to control their funds if they so choose. Full implementation of OBRA '87 resident funds provisions will begin on October 1, 1990. We are not implementing a requirement for quarterly accounting of financial transactions because we did not propose this as a rule, it is not an OBRA '87 requirement, and, although this requirement did appear in the regulations at one time, as commenters noted, its effective date was stayed indefinitely.

Paragraph (k): Staff Qualifications

We proposed at § 483.75(k) to require staff qualifications for a number of staff categories.

Comment: We received 128 comments on this issue, many of which suggested qualifications for activities and dietary professionals. These specialties are discussed elsewhere in this preamble. The comments ranged from objections to Federal requirements on the basis that they may conflict with State laws, to suggestions for further licensing requirements.

Response: We are convinced by the comments that we should defer to State law concerning professional qualifications. The IoM also concluded that it is inappropriate to prescribe detailed staffing standards. Therefore, we are eliminating from § 483.75(i) (redesignated from (k)) the detailed credential requirements for nursing facility staff.

Instead, we are requiring that all professional staff be licensed, certified or registered in accordance with applicable State laws.

Paragraph (l): Use of Outside Resources

In proposed § 483.75(l), a facility that does not employ a qualified person to furnish a service must arrange with an outside person or agency to provide that service. We proposed that the facility must assume responsibility for the quality and timeliness of the services furnished by an outside resource.

Comment: In summary, commenters—

• Objected to the requirement that a facility assume responsibility for the quality of services furnished to its residents by an outside resource.

• Suggested that we use existing language from § 405.1121(i) requiring the facility to assume professional and administrative responsibility for services furnished by an outside resource.

• Suggested that we require that the outside resource meet the same standards that would be required of a facility employee.

Response: We believe that the facility must be responsible for the quality of services furnished to its residents by an outside resource. If a facility does not believe it can assure the quality of services obtained from a particular outside resource, it may obtain services from a different source whose quality it can assure, or it may furnish the services itself. Regarding the qualifications of outside resources, we note that OBRA '87 requires that services provided by the facility, as well as services that the facility obtains from an outside source, must meet professional standards of quality. We are modifying paragraph (2) of this provision to incorporate this requirement. In this final rule, paragraph (l) has been redesignated as paragraph (j).

Paragraph (m): Medical Director

In § 483.75(m), we proposed that a facility must designate a physician, registered nurse or other medical staff member to serve as medical director. The medical director is responsible for implementation of resident care policies, development and coordination of the resident treatment plan, and care delivered to each resident.

Comment: Summarized below are the major issues raised by commenters concerning the medical director. Commenters—

• Objected to a nonphysician serving as medical director on the basis that only a physician can educate facility staff on the care of specific problems, and serve as a link between the facility and the larger health care community;

• Recommended that the position be abolished or required only in SNFs;

• Recommended that the position be required only in those ICFs with over 120 beds; and

• Expressed concern over possible conflict in terms of duties between the medical director and the resident's primary physician (as well as other trained professionals responsible for managing specific disciplines within the facility), and suggested that the medical director coordinate care provided by attending physicians, but not develop treatment plans or provide care.

Response: In response to comments, we are making the following revisions to §483.75(k) (redesignated from (m)). We are—

• Requiring that only a physician serve as medical director;

• Retaining the requirement for both SNFs and ICFs to have a medical director since, under the final rule the Medical distinction between SNF and ICF services will be eliminated effective October 1, 1990. It is clearly our intent, and in keeping with the IoM report, to eliminate as many distinctions between SNF and ICF requirements as possible.

• Not retaining the proposed requirement that the medical director be responsible for development and coordination of the resident treatment plan, and care delivered to each resident. Instead, we are requiring that the medical director be responsible for implementation of resident care policies, and the coordination of medical care in the facility.

Paragraph (n): Laboratory Services

We proposed that SNFs must provide or obtain clinical laboratory services to meet the needs of their residents.

Comment: Proposed paragraph (n) also required that when a SNF provides its own laboratory services, the services must meet the applicable conditions for coverage of the services furnished by independent laboratories specified in 42 CFR Part 405, Subpart M. Some commenters thought that it would be more reasonable for facilities to meet the conditions of participation for hospital laboratories specified in § 482.27.

Response: We are unable to make the change suggested by commenters because we interpret section 1861(s)(11) of the Act as requiring a SNF that furnishes its own laboratory services to meet the requirements for certification as an independent laboratory. We are, however, developing proposed regulations for laboratory services that would be uniform for all providers.

Comment: In proposed paragraph (n) (redesignated as (1) in this final rule), we also provided that a facility that does not provide laboratory services must have an agreement to obtain those services from a physician's office, a participating hospital, SNF, or independent laboratory, which is approved to provide these services under the Medicare program. Seven commenters objected to allowing physicians' offices to do laboratory testing because they are not required to be certified for participation in the Medicare program.

Response: We share the commenters' concerns, and are revising the redesignated paragraph (1) to read as follows: "If the facility does not provide laboratory services on site, it must have an agreement to obtain these services only from a laboratory that is approved for participation in the Medicare program either as a hospital or as an independent laboratory."

Paragraph (p): Medical records (clinical records)

Proposed § 483.75(p) requires a facility to maintain medical records on each resident in accordance with accepted professional standards and practices. Generally, the facility must keep confidential all information in a resident's records, and must permit each resident to inspect his or her records on request and provide copies on request.

Comment: Summarized below are the major comments we received on medical records.

Commenters—

• Suggested that the resident's physician be allowed to limit a resident's access to his or her medical record on the basis of medical contraindications;

• Suggested we add reasonable timeframes for a facility to comply with a resident's request to inspect or provide photocopies of records;

• Recommended retention of current medical record staff credential requirements in § 405.1132(a);

• Recommended retention of existing requirements in § 405.1132 (c) and (g), which describe the contents and the indexing of medical records, respectively;

• Recommended that an exception to confidentiality be made in the case of authorized State and Federal representatives who require resident information for State surveys;

• Suggested that we include information in the medical record to determine progress on meeting care plan goals.

Response: In response to comments, in redesignated paragraph (n) we are—

• Not limiting a resident's access to his or her records because that would be inconsistent with the resident's right to be fully informed of his or her health status, as provided in the resident's rights requirement, § 483.10(b)(3);

• Requiring that a facility provide a resident with a photocopy of records within 48 hours after a written request;

• Not specifying qualifications for medical records personnel, to be consistent with our approach to defer to State law;

• Not adding further requirements for the contents of medical records or indexing so that facilities are left with some discretion in this area;

• Not providing in this section for release of information of Federal and State representatives, since this is already addressed in 42 CFR Part 405, Subpart S;

• Substituting the term "clinical records" for "medical records". This is a technical change that also happens to be consistent with OBRA '87.

• Adding to paragraph (n)(6) the requirement that the clinical record contain progress notes, as well as the results of any preadmission screening conducted by the State.

Paragraph (q): Disaster Preparedness

Proposed § 483.75(q) requires that the facility have written plans and procedures to meet all potential emergencies and disasters, and that the facility train employees in emergency procedures.

Comment: Commenters suggested that we clarify training procedures for emergencies, while others argued that training should focus on frequently encountered types of emergencies. One commenter suggested that we require monthly fire drills, and add labor strikes to the list of emergencies.

Response: We believe that training procedures are more appropriately placed in guidelines rather than regulations. This list of emergencies is not intended to be an all-inclusive list, but rather examples: therefore, we have not included labor strikes. Fire drills are already addressed in the National Fire Protection Association standards, which require quarterly drills on each shift. These provisions are incorporated by reference in the Physical environment requirement, § 483.70(a).

Paragraph (r): Transfer Agreement

Proposed § 483.75(r) requires that a facility have in effect a written transfer agreement with one or more hospitals approved for participation under Medicare and Medicaid. The facility must ensure that residents are not involuntarily discharged or transferred to another facility except under specified circumstances, and must notify a resident's representative and physician of the tranfer.

We also proposed that a facility must ensure that the resident is not involuntarily discharged or transferred to another facility unless—

—A physician certifies that it is medically necessary;

—The facility determines that it is necessary for the resident's welfare or the welfare of other residents;

—The facility is going out of business; or

—Except as prohibited by the Medicare and Medicaid programs, the resident's bill has been unpaid.

The facility must notify the resident and any representatives in writing—

—At least 3 days before the end of a bed hold period; and

—Except in emergencies, 4 days before discharge or transfer from the facility.

Comment: Regarding the portion of this provision on transfer agreements, the majority of commenters requested that we delete the requirement that a facility and the transfer hospital exchange information for determining whether the resident can be adequately cared for in a less expensive setting than either the facility or the hospital. They argued that transferring personnel can only assure that the receiving facility is licensed to furnish the appropriate level of care, and lack the expertise to analyze the cost structure of the transfer setting.

Response: While we agree that this particular provision should not be the primary mechanism for ensuring appropriateness of placement, we note that this requirement cannot simply be deleted, as it is taken directly from section 1861(l)(2) of the Act, which currently applies only to SNFs. However, section 1919(a)(2) of the Act, as added by OBRA '87, extends that section's applicability to nursing facilities which, in addition to Medicaid SNFs, will also encompass those facilities currently categorized as ICFs. While the proposed regulation appears to require that this type of information be exchanged every time a transfer occurs, the wording of the statutory provision allows more flexibility. Therefore, we are revising this provision to clarify that information relating to whether care can be adequately furnished in a less expensive setting need be exchanged only when the transferring facility deems it

appropriate. Paragraph (r) is being redesignated as (p).

Comment: In summary, commenters on the transfer and discharge portion of this provision—

- Urged that transfer and discharge requirements be relocated to the resident rights requirement;
- Complained that the time allowed for notification of transfer and discharge was too short and proposed instead 30 days for nonemergency cases;
- Suggested that verbal or phone notification followed by written notification, would be more practical;
- Noted that Medicare policy may not permit a 4-day notice, as, for example, transfer or discharge must be completed within 3 days when there is a determination that skilled level of care is no longer necessary;
- Suggested that the facility provide notification of the State's bed hold policy at the beginning of a bed hold period rather than at the end;
- Requested clarification of terms and editorial changes;
- Requested that we require notice of inter-facility transfers also;
- Suggested documentation of the need for transfer or discharge in the clinical record;
- Suggested that concern for the welfare of others in the facility should be a legitimate cause for transfer or discharge;
- Asked that we incorporate Medicare and Medicaid due process of law protections; and
- Requested that we clarify to whom a resident may appeal.

Response: In response to comments, we are—

- Establishing transfer and discharge requirements as paragraph (a) under § 483.12, Admission, transfer and discharge rights;
- Retaining the language of the proposed rule, which requires that a resident be notified 4 days prior to transfer and discharge. The 30 day notice requested by commenters would be too costly for providers at this time. We will implement the OBRA '87 requirement for 30 days advance notice on October 1, 1990;
- Requiring documentation of the reason for transfer or discharge in the clinical record, in accordance with public comment;
- Requiring that the attending physician determine that transfer or discharge is necessary when the resident's medical needs or general welfare is involved;
- Requiring that a facility physician may determine that transfer or discharge is necessary when the health of individuals in the facility is endangered;
- Requiring written notice to a resident before a facility transfers or discharges a resident;
- Requiring that a facility notify a resident and his or her representatives of the State's bed hold policy, if any, before transfers to a hospital or for therapeutic leave;
- Addressing notification of a change in room assignment under the quality of life requirement in § 483.15(e), Accommodation of needs; and
- Planning to implement a State appeals process for transfers and discharges in a separate regulation.

Paragraph (r): Quality Assessment and Assurance Committee

Sections 1819(b)(1)(B) and 1919(b)(1)(B) of the Act, as amended by OBRA '87, require a quality assessment and assurance committee. Paragraph (r) implements this section of the law on October 1, 1990. In addition to the committee's statutory responsibility to oversee the quality of services in the facility, we expect it to act as a committee of the whole and assume the responsibilities of the pharmaceutical services committee at § 483.60(c), the utilization review committee at § 483.75(q), whose existence will be terminated September 30, 1990, and the infection control program at § 483.65.

Paragraph (s): Utilization Review

Proposed § 483.75(s) requires that a SNF have in effect a utilization review (UR) plan that provides for the review of the medical necessity of services.

Comment: Many commenters recommended elimination of UR as a needless paperwork burden. Others requested clarification of various areas, such as the review of extended duration stays.

Response: We note that in OBRA '87, Congress has eliminated the UR requirement from the Act, as it pertains to SNFs. However, until repeal of the SNF UR requirement becomes effective on October 1, 1990, the existing statutory UR requirement at sections 1861(j)(8) and 1861(k) of the Act remains in effect for Medicare and Medicaid SNFs. While we are sympathetic to the concerns of those commenters who suggest that this provision should be eliminated immediately from the regulations, we believe that until the OBRA '87 repeal of the SNF UR requirement becomes effective, the regulations must continue to reflect at least those requirements that are contained in existing law. Paragraph (s) is redesignated as (q).

Regarding the suggestion to increase the maximum time interval permitted in the regulations for review of extended duration stays, we note that section 1861(k) of the Act does not prescribe a specific duration of stay that must be subject to review; therefore, we are revising the regulations to allow each facility to make its own determination of what is appropriate in this regard.

Paragraph (t): Disclosure of Ownership

Proposed § 483.75(t) requires facilities to comply with the disclosure requirements of 42 CFR 420.206, Disclosure of persons having ownership, financial, or control interest.

Comment: One commenter suggested that we revise paragraph (t) to reflect the disclosure of ownership requirements contained in OBRA '87, while another suggested that the provision be deleted.

Response: Sections 4201 and 4211 of OBRA '87 amend the Act by adding new section 1819(d)(1)(B) (for Medicare) and section 1919(d)(1)(B) (for Medicaid) dealing with disclosure of ownership requirements. We have revised paragraph (s) (redesignated from (t)) to reflect these requirements, effective October 1, 1990. In summary, revised paragraph (s) will require facilities to notify at the time of change the State agency when there are changes in—

- Individuals with ownership or control interest;
- Officers, directors, agents or managing employees;
- The corporation, association or other company responsible for management of the facility; or
- The facility's administrator or director of nursing.

Paragraph (u): Resident Participation

We proposed that the facility must ensure resident participation in the facility's policy and operational decision making.

Comment: Commenters—

- Almost unanimously opposed this provision because, in their opinions, many residents are too sick or mentally confused to sit through long board or staff meetings, and most are usually uninformed of the issues;
- Noted that discussions concerning other residents would violate confidentiality requirements; and
- Supported the use of resident and family councils as the vehicle for involving residents in decisions affecting their care and life in the facility.

Response: We acknowledge that many of the points made by commenters call into question the ability to implement this broadly stated requirement. Nonetheless, we feel it important that participation rights be

available. We are revising this provision and including it under the quality of life requirement at § 483.15(c), to clearly give residents the right to organize and participate in resident and family groups. We require of the facility that it allow such groups to exist, and, where they exist, to provide them with meeting space, privacy, and staff support. We believe this requirement is consistent with OBRA '87, which includes the right of the resident and family to organize and participate in resident and family groups. The facility must also consult with, listen to, and act upon the recommendations of these groups.

Paragraph (v): Independent Medical Evaluation and Audit

Proposed § 483.75(v) requires that a SNF cooperate in an effective program providing for independent medical evaluation and audit of the residents in the facility, including medical evaluation of each resident's need for SNF care.

Comment: Two commenters suggested that we restore the provisions on medical care evaluation studies in existing regulations at 42 CFR 405.1137(c). Another suggested that this provision incorporate the inspection of care process.

Response: OBRA '87 removes the statutory basis for this provision, section 1861(j)(12) of the Act, effective October 1, 1990. Therefore, we do not believe it is appropriate to augment this provision by adding specific requirements beyond those contained in the proposed regulations. Paragraph (v) is redesignated as (t).

Summary of revisions to § 483.75

The following is a summary of the major changes to our proposal that we are making to § 483.75 in response to comments.

- We are making extensive revisions to proposed paragraph (c), Governing body, paragraphs (4) and (5), to incorporate OBRA '87 provisions concerning facility access, and relocating these provisions in the Protection of resident rights requirement, § 483.10, paragraph (k), Access to the facility.
- In proposed paragraph (c)(6), we are providing that a resident has the right to examine the results of Federal and State surveys and plans of correction upon reasonable request, and relocating this provision to the resident rights requirement, § 483.10, paragraph (g), Examination of survey results.
- We are not making final proposed paragraph (e), Personnel Policies and Procedures, and relocating requirements concerning communicable diseases of employees to the Infection control requirement, § 483.65, paragraph (b), Infection control program.
- In proposed paragraph (h), Notification of changes, we are making certain revisions suggested by commenters, and relocating the contents to the resident rights requirement, § 483.10, paragraph (b)(10), Notification of changes.
- In proposed paragraph (i), Resident care policies, we are removing the specific SNF requirements in accordance with OBRA '87 provisions, and relocating the contents in the requirement for Protection of resident rights, § 483.12, paragraph (e), Resident care policies.
- In proposed paragraph (j), Resident finances, we are adding the requirement that accounting be done "according to generally accepted accounting principles," and relocating this provision to the resident rights requirement, § 483.10, paragraph (c), Protection of resident funds.
- We are removing the specific staff qualifications and credential requirements from proposed § 483.75(k), (redesignated as paragraph (j)), and requiring instead that professional staff be licensed, certified or registered in accordance with State law.
- We are requiring, in proposed paragraph (m), Medical director (redesignated as paragraph (k)), that only a physician serve as medical director of a facility; and requiring that the medical director be responsible for implementation of resident care policies and the coordination of medical care in the facility.
- In proposed paragraph (n), Laboratory services (redesignated as paragraph (l)), we are requiring that if a facility does not provide laboratory services on site, it must have an agreement to obtain these services only from a laboratory that is approved for participation in the Medicare program either as a hospital or as an independent laboratory.
- In proposed paragraph (p), Medical records (Clinical records redesignated as paragraph (n)), we are requiring that a facility furnish a resident with a photocopy of requested records within 48 hours after a resident's written request, and replacing the term, "medical records" with "clinical records." We are also adding the requirement that the clinical record contain progress notes.
- We are revising proposed paragraph (r), Transfer and discharge, clauses (3), (4), and (5) to incorporate OBRA '87 provisions including 30 day notice before transfer or discharge, effective October 1, 1990, and a 4 day notice as of the effective date of these regulations, and relocating the contents to the Admission, transfer and discharge rights requirement, § 483.12 paragraph (a), Transfer and discharge.
- We are redesignating the paragraphs within proposed paragraph (s), Utilization review (redesignated as paragraph (q)), and revising redesignated paragraph (q)(2) to clarify when the facility must complete the extended duration review.
- In proposed paragraph (t), Disclosure of ownership (redesignated as paragraph (s)), we are adding OBRA '87 requirements, effective October 1, 1990, concerning a facility's obligation to notify the State agency when certain changes in ownership and management occur.
- In proposed paragraph (u), Resident participation, we are incorporating OBRA '87 provisions on the right of residents and family groups to organize and participate, and relocating this provision to the quality of life requirement, § 483.15, paragraph (c), Participation in resident and family groups.

Payment Provisions

Section 4211(b)(1) of OBRA '87 amends section 1902(a)(13) of the Act to require a State to submit an assurance to the Secretary that its payment rates to nursing facilities:

> take into account the costs of complying with subsections (b) (other than paragraph (3)(f) thereof), (c), and (d) of section 1919 and provide (in the case of a waiver under section 1919(b)(4)(C)(ii)) for an appropriate reduction to take into account the lower costs (if any) of the facility for nursing care.

Section 1919(b)(3)(f) in the above quote refers to preadmission screening for mentally ill and mentally retarded individuals.

Section 4211(b)(2) of OBRA '87 further provides certain timing requirements for State plan amendments to take into account the new provisions of section 1919 of the Act, which are effective October 1, 1990. The Act provides that each State must submit an amendment not later than April 1, 1990, to provide for an appropriate adjustment in payment amounts for nursing facility services to be furnished during the year beginning October 1, 1990. The Act requires that the Secretary review each of the amendments and, by September 30, 1990, approve or disapprove each of them. If an amendment is disapproved, the State is required to submit a revised amendment meeting the requirements. The absence of approval does not relieve the State or a nursing facility of any obligation or requirement under the Medicaid program.

Section 4211(b)(1) of OBRA '87 also requires that the State provide for procedures to make available to the public the data and methodology used in establishing payment rates for nursing facilities. Consequently, we are revising § 447.253(b)(1) to require that the methods and standards used by the Medicaid agency to establish payment rates for nursing facility services take into account the costs of complying with the requirements of Part 483 Subpart B (except for preadmission screening of individuals with mental illness and mental retardation under § 483.20(f). Section 1903(a)(2)(C) of the Act provides that 75 percent Federal financial participation is available for these costs under section 1919(e)(7) of the Act, and these are considered Medicaid administrative costs and reimbursed as such). The methods and standards must also provide for an appropriate reduction to take into account the lower costs (if any) of the facility for nursing care under a waiver of the requirement to provide licensed nurses on a 24-hour basis, under § 483.30(c). The agency must also establish procedures under which the data and methodology used in establishing payment rates are made available to the public.

We believe most States will need to submit amendments to their plans to meet the requirements in § 447.253(b)(1)(iii)(A). For example, a State that calculates prospective rates for long-term care facilities by trending forward a prior year cost base could not, we believe, provide a satisfactory assurance concerning its current plan, since the State could not demonstrate how the additional costs of section 1919's requirements (e.g., increased staffing or new resident assessment programs) would be accounted for under the present methodology. Moreover, a number of States' plans currently contain provisions that permit additional reimbursement or rate recalculation in order to recognize cost increases associated with compliance with revised Fedeal or State standards. We expect that for such a State to provide a satisfactory assurance, it must specify in its plan precisely how the additional costs will be taken into account in setting rates.

III. Crosswalk to Proposed Rule

Due to the extensive rearrangement of the regulations from that originally proposed, and the addition of numerous OBRA '87 provisions, we are including the following chart as a general guide to readers in identifying the source of the requirements in the final rule. The derivation table in Part VI of this preamble relates provisions of this final rule to existing regulations.

Final regulations	Source
§ 483.10 Residents rights:	
(a) Exercise of rights	§ 483.10(a)
(b) Right to be informed, includes notices of rights and services, and Admissions policy, Apply/Use Medicare/Medicaid benefits, and notification of changes.	§ 483.10(b) OBRA '87 OBRA '87 OBRA '87
(c) Protection of resident funds.	§ 483.10(c) OBRA '87
(d) Free choice	§ 483.15(c)
(e) Privacy and confidentiality	§ 483.10(f)
(f) Grievances	OBRA '87
(g) Examination of survey results.	OBRA '87
(h) Work	§ 483.10(g)
(i) Mail	§ 483.10(h)
(j) Visitation Rights includes access to facility and visitation rights.	§ 483.10(i) OBRA '87
(k) Telephone	§ 483.10(j)
(l) Personal property	§ 483.10(l)
(m) Married couples	§ 483.10(m)
(n) Self Administration of Drugs.	§ 483.30(e)
§ 483.12 Admission, Transfer and Discharge Rights:	
(a) Transfer and discharge	OBRA '87 and § 483.75(r)
(b) Notice of bed-hold policy and readmission.	OBRA '87
(c) Equal access to quality of care.	OBRA '87
(d) Admissions policy, other than informing about Medicare and Medicaid application and use.	OBRA '87
(e) Resident care policies	§ 483.12(k)
§ 483.13 Resident behavior and facility practices:	
(a) Restraint	§ 483.10(d) and OBRA '87
(b) Abuse	§ 483.10(e)
(c) Staff treatment of residents.	§ 483.25(n)
§ 483.15 Quality of life:	
(a) Dignity	§ 483.15(a)
(b) Self-determination and participation.	§ 483.10(k)
(c) Participation in resident and family groups.	§ 483.10(k) and § 483.75(u)
(d) Participation in other activities.	§ 483.10(k)
(e) Accommodation of needs	OBRA '87
(f) Activities	OBRA '87 and § 483.15(e)
(g) Social Services	OBRA '87 and § 483.50
(h) Environmental quality of life.	§ 483.15(b) and § 483.70(h)
§ 483.20 Resident assessment:	
(a) Admission orders	OBRA '87 and § 483.20(a)
(b) Comprehensive assessment.	OBRA '87 and § 483.20(b)
(c) Accuracy of assessments	OBRA '87 and § 483.20(c)
(d) Comprehensive care plans.	OBRA '87 and § 483.20(d)
(e) Discharge summary	§ 483.20(e)
(f) Preadmission screening for mentally ill and mentally retarded individuals.	OBRA '87
§ 483.25 Quality of care:	
(a) Activities of daily living	§ 483.25(a)
(b) Vision and hearing	§ 483.25(b)
(c) Pressure sores	§ 483.25(c)
(d) Urinary incontinence	§ 483.25(e)
(e) Range of motion	§ 483.25(f)
(f) Psychosocial functioning	§ 483.25(g)
(g) Naso-gastric trubes	§ 483.25(h)
(h) Accidents	§ 483.25(j)
(i) Nutrition	§ 483.25(k)
(j) Hydration	§ 483.25(l)
(k) Special needs	§ 483.25(m)
(l) Drug therapy, includes:	
Unnecessary drugs	§ 483.25(i)
Antipsychotic Drugs	OBRA '87
Drug administration	§ 483.30(d)
§ 483.26 Nursing services—SNFs.	§ 405.1124
§ 483.28 Nursing services—ICFs	§ 442.302 and § 442.339
§ 4833.28 Nursing services:	
(a) Sufficient staff	OBRA '87
(b) Registered nurse	OBRA '87
(c) Waiver of requirement to provide licensed nurses on 24-hr basis.	
(d) NFs: Waiver of requirement to provide services of an RN for more than 40 hours/week.	OBRA '87
(e) SNFs: Waiver of requirement to provide services of an RN for more than 40 hours/week.	OBRA '87
§ 483.35 Dietary services:	
(a) Staffing	OBRA '87 and § 483.35(a)
(b) Sufficient staff	Comments
(c) Menus and Nutritional adequacy.	§ 483.35(b)
(d) Food	§ 483.15(d)
(e) Therapeutic diets	§ 483.35(c)
(f) Frequency of meals	§ 483.35(d)
(g) Assistive devices	§ 483.35(e)
(h) Sanitary conditions	§ 483.35(f)
§ 483.40 Physician services:	
(a) Physician supervision	§ 483.40(a)
(b) Physician visits	§ 483.40(b)
(c) Frequency of physicians visits.	OBRA '87
(d) Availability of physicians for emergency care.	§ 483.40(d)
(e) Physician delegation of tasks.	§ 483.40(e)
§ 483.45 Specialized rehabilitative services:	
(a) Provision of services	§ 483.45(a)
(b) Qualifications	§ 483.45(b)
§ 483.55 Dental services:	
(a) Advisory dentist	§ 483.50(a)
(b) Outside services	§ 483.50(b)
(c) Skilled nursing facilities	OBRA '87
(d) Nursing facilities	OBRA '87
§ 483.60 Pharmacy services:	
(a) Methods and procedures	
(b) Procedures	§ 483.60(a)
(c) Pharmaceutical services committee.	OBRA '87
(d) Service consultation	§ 483.60(b)
(e) Drug regimen review	§ 483.60(c)
(f) Labeling of drugs and biologicals.	§ 483.60(e)
(g) Storage of drugs and biologicals.	§ 483.30(d)(2)
§ 483.65 Infection control:	
(a) Infection control program	§ 483.65(a)
(b) Prevention spread of infection.	§ 483.55(a)
(c) Linens	§ 483.65(b)
§ 483.70 Physical environment:	
(a) Life safety from fire	§ 483.70(a)
(b) Emergency power	§ 483.70(b)
(c) Space and equipment	§ 483.70(c)
(d) Resident rooms	§ 483.70(d)
(e) Toilet facilities	§ 483.70(e)
(f) Resident call system	§ 483.70(f)
(g) Dining and resident activities.	§ 483.70(g)
(h) Other environmental conditions.	§ 483.70(h) and § 483.15(b)
§ 483.75 Administration:	
(a) Licensure	§ 483.75(a)
(b) Compliance with Federal State and locals laws before 10/1/90.	§ 483.75(b)
(c) Compliance with Federal State and local laws effective 10/01/90.	OBRA '87
(d) Relationship to other HHS regulations.	Comments
(e) Governing body	§ 483.75(c)
(f) Institutional plan and budget.	§ 483.75(d)
(g) Required training of nurse aides.	OBRA '87
(h) Proficiency of nurse aides	OBRA '87 and § 483.75(g)
(i) Staff qualifications	§ 483.75(k)
(j) Use of outside resources	§ 483.75(l)
(k) Medical director	§ 483.75(m)
(l) Laboratory services	§ 483.75(n)
(m) Radiology and other diagnostic services.	§ 483.75(o)
(n) Clinical records	§ 483.75(p)
(o) Disaster preparedness	§ 483.75(q)
(p) Transfer agreement	OBRA '87
(q) Utilization review	OBRA '87 and § 483.75(s)
(r) Quality assessment and assurance.	OBRA '87
(s) Disclosure of ownership	OBRA '87
(t) Independent Medical evaluation and audit.	§ 483.75(v)

Waiver of Proposed Rulemaking

We ordinarily publish notices of proposed rulemaking in the Federal Register, and offer the public an opportunity to comment on proposed rules. Such notices include a statement of the nature of the rulemaking proceeding, reference to the legal authority under which the rule is proposed, and the terms or substance of the proposed rule or a description of the subjects and issues involved. However, this requirement can be waived when we find good cause that such a notice and comment procedure is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and its reasons in the rule issued.

With regard to the provisions of OBRA '87 that are self-executing, identified earlier in the preamble, we believe that issuance of these legislative changes for notice and comment would be unnecessary and contrary to the public interest since they are being incorporated into these regulations as they appear in the statute and are given an effective date as specified in OBRA '87, unless the provisions are otherwise authorized under current law. Therefore, we find good cause to waive the proposed rulemaking procedure with respect to these provisions.

Regulatory Impact Statement

A. Introduction

Executive Order (E.O.) 12291 requires us to prepare and publish a final regulatory impact analysis for any final rule that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in: an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or, significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, we generally prepare a final regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a final regulation would not have significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all Medicare and Medicaid long term care providers as small entities. States and individuals are not small entities.

The provisions contained in this rule are not expected to result in an annual economic impact of $100 million or more. However, the provisions will affect a number of small and new providers. Those providers that would find it difficult to compete under the final rule may view our final rule as having a significant adverse effect on competition. Therefore, we have prepared the following analysis, which is intended to conform to the objectives of E.O. 12291 and the RFA.

In preparing this analysis, we found it difficult to anticipate all the potential impacts of these regulations. In the proposed rule published October 16, 1987 (52 FR 38562), we explained that, in general, the following observations of the IoM study on the cost implications of their recommendations applied also to the proposed rule. We believe that these observations apply to this final rule as well.

The effects of the recommendations on the costs of regulation and on the costs of providing care to residents are not easily calculated for two reasons: (1) The quantitative and qualitative changes in behavior of the various actors in the system, and the effects on efficiency of the regulatory agencies and nursing homes, cannot be predicted on the basis of current data; (2) current data about staffing and costs in nursing homes and in state regulatory agencies are not available in sufficient detail; and (3) some immediate costs are likely to produce long-term savings that cannot be estimated. Given these uncertainties, any estimates made—even with the assistance of a very elaborate cost model—would have to present a wide range of costs to account for interactions of varying assumptions.—(Page 214)

Subsequent to the publishing of the proposed rule, OBRA '87 was passed by Congress and signed into law on December 22, 1987. This legislation covered many of the provisions that appeared in the proposed rule. Therefore, many of the provisions that we are adopting in this final rule are now legislative provisions.

For example, nurse aide training requirements which are expected to substantially increase costs, are a direct result of this legislation rather than the regulations. However, we believe that the increased training of personnel will result in healthier residents, which will reduce costs in the long run.

The final changes for nursing services conform the regulations to many of the legislative provisions that will be in effect. For the most part, costs would be incurred regardless of the promulgation of these regulations.

These final regulations, however, do generate one area of cost in the requirement under the resident rooms provision that each bed must have ceiling suspended curtains, which extend around the bed sufficiently to provide total visual privacy. The cost involved in this requirement has been substantially minimized by the fact that the requirement refers only to those facilities initially certified after the effective date of these regulations.

B. Affected Entities

As of September 1987, there were nearly 15,000 long term care facilities participating in either the Medicare or Medicaid program. Of this total, 7,148 were participating in both Medicare and Medicaid. In addition to the 7,148 long term care facilities, 1,977 SNFs were participating in Medicaid only. A total of 5,600 ICFs were participating in Medicaid.

C. Effects on SNFs

SNFs are currently required to meet the majority of the requirements included in this final rule and therefore should have very little increased costs.

D. Effects on ICFs

There are several categories of ICFs: the hospital-based ICF; the ICF with some SNF-certified beds; and the freestanding ICF that is usually a separate entity financially and

physically. These rules will result in a greater cost increase for freestanding ICFs than for SNFs because many of the final requirements are not currently in effect for ICFs. ICFs that also maintain SNF residents should not be as adversely affected because many of these final requirements must already be met for those SNF residents.

The heaviest costs experienced by long term care facilities are staff costs, especially for nurses. The final requirements will significantly affect ICFs that currently are relatively lightly staffed.

In the proposed rule, we estimated costs for ICFs under Alternative 1, which required ICFs to meet nurse staffing requirements comparable to SNFs, to be approximately $100 million for increased nursing services. We were unable to determine costs for Alternatives 2 and 3. However, we would expect those costs to be somewhat lower, since Alternative 1's increased ICF staffing requirements would either not be imposed (under Alternative 2) or could be waived under certain circumstances (under Alternative 3).

In response to comments, we have adopted the essential elements of Alternative 3; that is, upgraded staffing requirements for ICFs that can be waived when circumstances warrant. The resulting provision is similar to that of OBRA 87 which becomes effective for fiscal years beginning on or after October 1, 1990. This regulatory requirement reads in part that the facility must have sufficient nursing staff to provide services to meet the needs of all residents in the facility as determined by resident assessments and individual plans of care. Specifically, some of the more costly requirements are that facilities must provide services by a sufficient number of licensed nurses and other nursing personnel on a 24 hour basis; and must use the services of a registered professional nurse at least 8 consecutive hours a day, 7 days a week. Further, a facility must designate a licensed nurse as charge nurse; and must designate a registered nurse to serve as the director of nursing seven days a week. The director of nursing may serve as a charge nurse only when the facility has an average occupancy of 60 or fewer residents.

Although these requirements will be costly for some facilities, we believe that the inclusion of a waiver in these final provisions will offset many of these costs.

E. Effect on States

To the extent that these final rules result in higher costs in providing long term care services, they will tend to increase State Medicaid expenditures for those services. However, we believe there will be little or no increased cost for State certification activities. Rather, these rules should benefit State certification agencies in that their reviews of SNFs and ICFs will be simplified. Combining two reviews into one should result in a more cost-effective review system. The recently implemented Long-Term Care Survey Process has already intensified the focus on outcomes. The incremental changes flowing from this final rule will have minimal effects on States.

F. Comments and Responses

Comments: Undoubtedly the major area of concern related to increased cost was our estimate of $100 million for Alternative 1 under § 483.30, concerning nursing services. The general comment was that we had grossly underestimated this amount and that we needed to guarantee increased allocations to cover these costs.

Response: We have, in accordance with comments, adopted Alternative 3 which requires a facility to provide 24-hour licensed nursing services that are sufficient to meet the nursing needs of its residents and to use the services of a registered nurse for at least 8 consecutive hours a day, 7 days a week. As discussed in this preamble under the Response to Comments concerning § 483.30, we believe that section 4211(b) of OBRA regarding payment for nursing facility services will assure the appropriateness of payment rates. Furthermore, we believe that the waiver provision in this final rule will reduce substantially our original cost estimates.

Comment: Three commenters determined the costs to provide cubicle curtains under the physical environment requirement to be about $50 million. This cost was estimated at $50–100 per bed for 500,000 beds; the number of beds without full curtains being estimated to be about 50 percent of the total number of beds to fall under these requirements.

Response: This final rule requires only facilities that are newly certified on or after the effective date of these regulations to meet this requirement. This change from the proposed rule substantially reduces the estimated cost which was based on current beds without full visual enclosure.

G. Conclusion

Many persons commenting on costs recommended that we eliminate Alternative 1 of the proposed rules in favor of some other, less costly approach. We believe that these final provisions accomplish the goal of limiting costs, through the provision of a waiver for nursing services under certain limited conditions. We also believe that the total impact on residents will result in improved quality of life and care. Further, we believe that the initial increased costs for facilities will be balanced by the increased quality of care resulting from the implementation of this final rule.

Reporting Requirements

Sections 483.10(b), 483.12 (a), (b), (c) and (e), 483.20 (a), (b), (d) and (e), 483.40(b), 483.45(b), 483.55(b), 483.60 (c) and (d), 483.65(a), 483.75 (f), (j), (l), (m), (n), (o), (p), (q), and (s) of this final rule contain information collections that are subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980. Long term care facilities must provide documentation to assure compliance with the requirements in order to receive Federal funds for Medicare and Medicaid. Public reporting burden for this collection of information is estimated to be 1,167,500 hours annually for approximately 15,000 facilities. (Comparable reporting burden for information collection requirements in existing regulations is 2,585,300 hours annually.) A notice will be published in the **Federal Register** when approval for the reduced burden is obtained. Other organizations and individuals desiring to submit comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should send comments to the agency officials specified in the "**ADDRESS**" section of this preamble.

IV. Derivation Table

The following table identifies requirements in rules that these final rules supercede that are most closely related to the new requirements of Part 483.

Subject	Part 483	Current Part 405	Current Part 442
Basis, Scope Definition	483.1 (a) and (b)		442.300
	483.5	405.1101	

Subject	Part 483	Current Part 405	Current Part 442
Resident Rights	483.10(a)(1)	405.1121(k)(5)	442.311(d)
	483.10(a)(3)	405.1121(k) following (14)	442.312
	483.10(b)(1)	405.1121(k)(1)	442.311(a)(1) – (3)
	483.10(b)(2)	405.1121(k)(8)	442.310
	483.10(b)(3)	405.1121(k)(3)	442.311(b)
	483.10(b)(5)	405.1121(k)(2)	442.311(a)(4)
	483.10(b)(6)	do	Do.
	483.10(b)(7)	405.1121(m)	442.311(e)
	483.10(b)(10)	405.1121(j)	442.313
	483.10(c)	405.1121(k)(6)	442.311(e)
	483.10(d)	405.1121(k)(3)	442.311(b)
	483.10(e)	405.1121(k)(8)	442.311(g)
	483.10(f)	405.1121(k)(5)	442.311(d)
	483.10(h)	405.1121(k)(10)	442.311(h)
	483.10(i)	405.1121(k)(11)–(12)	442.311(i)(2)
	483.10(j)	do	442.311(i)(1)
	483.10(m)	405.1121(k)(13)	442.311(k)
	483.10(n)	405.1121(k)(14)	442.311(g)(5)
Admission, Transfer and Discharge Rights	483.12(a)	405.1121(k)(4)	442.311(c)
	483.12(b)		
	483.12(c)		
	483.12(d)		
	483.12(e)	405.1121(l)	442.305
Resident Behavior and Facility Practices	483.13(a) + (b)	405.1121(k)(7)	442.311(f), 442.308
	483.13(c)	do	442.311(f)
Quality of Life	483.15(a)	405.1121(k)(9)	442.311(g)
	483.15(b) + (d)	405.1121(k)(12)	442.311(j)
	483.15(f)	405.1131	442.345(a), (b) and (d)
	483.15(g)	405.1130	442.344
	483.15(h)	405.1134(j)	
Assessment	483.20(a)–(b)	405.1123(a), 405.1123(b), 405.1124(d), 405.1126(b), 405.1130.	442.319, 442.341, 442.343, 442.344, 442.345
	483.20(e)	405.1337(h)	
	483.20(d)(3)		
Quality of Care	483.25	405.1124(c)	442.342
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List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing Homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 442

Grant programs-health, Health facilities, Health professions, Health records, Medicaid, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Part 447

Accounting, Administrative practice and procedure, Grant programs-health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, Rural areas.

42 CFR Part 483

Grant programs-health, Health facilities, Health professions, Health records, Medicaid, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Part 488

Health facilities, Medicare, Reporting and recordkeeping requirements

42 CFR Part 489

Health facilities, Medicare

42 CFR Part 498

Administrative practice and procedure, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Chapter IV is amended as follows:

A. The heading of Subchapter B is revised to read as follows:

SUBCHAPTER B—MEDICARE PROGRAM

B. Part 405 is amended as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

1. The table of contents is amended by removing and reserving Subpart K.

Subpart K—[Removed and Reserved]

2. Subpart K (§§ 405.1101 through 405.1137) is removed and reserved.

SUBCHAPTER C—MEDICAL ASSISTANCE PROGRAMS

PART 442—STANDARDS FOR PAYMENT FOR SKILLED NURSING AND INTERMEDIATE CARE FACILITY SERVICES

C. Part 442 is amended as follows:

1. The authority citation for Part 442 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

2. The table of contents is amended by removing and reserving Subparts D, E, and F.

§ 442.2 [Amended]

2a. In Subpart A, § 442.2, in the definition of "immediate jeopardy," the phrase "(for ICFs/MR) or level A requirements (for SNFs and ICFs)" is substituted for the phrase "(for SNFs) or standards (for ICFs and ICFs/MR)."

§ 442.13 [Amended]

2b. In § 442.13(b)(1), the phrase "or level A requirements (for SNFs and ICFs)" is added after the term "standard."

3. In Subpart B, § 442.30 is amended by revising paragraph (a)(1) to read as follows:

Subpart B—Provider Agreements

§ 442.30 Agreement as evidence of certification.

(a) * * *

(1) The survey agency failed to apply the applicable certification requirements under Subparts B and D of Part 483, which sets forth the conditions of participation for ICFs/MR;

* * * * *

4. Section 442.101 is amended by revising paragraph (d)(1) to read as follows:

§ 442.101 Obtaining certification.

* * * * *

(d) The notice must indicate that one of the following provisions pertains to the facility:

(1) The facility meets the applicable requirements:

(i) A SNF meets the requirements in each of the conditions of participation in Part 483, Subpart B of this chapter.

(ii) A ICF meets the requirements in Suparts E and F of this part.

(iii) A ICF/MR meets the requirements of Subpart E of this part and each of the conditions of participation in Part 483, Subpart D of this chapter.

* * * * *

5. Section 442.105 is amended by revising the section heading and introductory text to read as follows:

§ 442.105 Certification with deficiencies: General provisions.

If a survey agency finds a facility deficient in meeting the standards and level B requirements (for SNFs and ICFs) specified under Subparts B and D of Part 483, the agency may certify the facility for Medicaid purposes under the following conditions:

* * * * *

§ 442.105 [Amended]

5a. In § 442.105 (c)(1) and (d)(1), the phrase "(for ICFs/MR) and level B requirements (for SNFs and ICFs)" is added after the term "standards."

§ 442.117 [Amended]

5b. In § 442.117(a), the phrase "(for ICFs/MR) or level A requirements (for SNFs and ICFs)" is substituted for the phrase "(for SNFs) or standards (for ICFs and ICFs/MR)."

§ 442.118 [Amended]

5c. In § 442.118(a), the phrase "(for ICFs/MR) or level A requirements (for SNFs and ICFs)" is substituted for the phrase "(for SNFs) or standards (for ICFs and ICFs/MR)."

5d. In § 442.118(b)(1), the phrase "(for ICFs/MR) or the level A requirements (for SNFs and ICFs)" is substituted for the phrase "(for SNFs) or the standards (for ICFs)."

5e. In § 442.118(b)(3)(i), the phrase "(for ICFs/MR) or level A requirements (for SNFs and ICFs)" is substituted for the phrase "(for SNFs and ICFs/MR) or standards (for ICFs)."

§ 442.119 [Amended]

5f. In § 442.119, paragraphs (a)(1) and (b)(1) are amended by removing the phrase "conditions of participation (for SNFs and ICFs/MR)" and adding in its place the phrase "level A requirements (for SNFs and ICFs) and conditions of participation (for ICFs/MR)"; and by removing the phrase "or standards for ICFs."

Subpart D—[Removed and reserved]

6. Subpart D (§§ 442.200 through 442.202) is removed and reserved.

Subpart E—[Removed and reserved]

7. Subpart E (§§ 442.250 through 442.254) is removed and reserved.

Subpart F—[Removed and reserved]

8. Subpart F (§§ 442.300 through 442.346) is removed and reserved.

PART 447—PAYMENTS FOR SERVICES

D. Part 447 is amended as follows:

1. The authority citation for Part 447 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

Subpart C—Payment for Inpatient Hospital and Long-Term Care Facility Services

Payment Rates

2. In Subpart C, § 447.251 is amended by revising the definition of "long term care facility services" as follows:

§ 447.251 Definitions.

* * * * *

"Long-term care facility services" means skilled nursing facility (SNF) services and intermediate care facility (ICF) services, including intermediate care facility services for the mentally retarded (ICF/MR), and nursing facility (NF) services.

* * * * *

3. Section 447.253 is amended by adding a new paragraph (b)(1)(iii) and republishing the introductory text to paragraph (b) to read as follows:

§ 447.253 Other requirements.

* * * * *

(b) *Findings.* Whenever the Medicaid agency makes a change in its methods and standards, but not less often than annually, the agency must make the following findings:

(1) * * *

(iii) With respect to nursing facility services—

(A) Except for preadmission screening for individuals with mental illness and mental retardation under § 483.20(f) of this Chapter, the methods and standards used to determine payment rates take into account the costs of complying with the requirements of Part 483 Subpart B of this Chapter;

(B) The methods and standards used to determine payment rates provide for an appropriate reduction to take into account the lower costs (if any) of the facility for nursing care under a waiver of the requirement in § 483.30(c) of this Chapter to provide licensed nurses on a 24-hour basis;

(C) The State establishes procedures under which the data and methodology used in establishing payment rates are made available to the public.

4. Section 447.255 is amended by revising paragraph (a) and republishing the introductory text to read as follows:

§ 447.255 Related information.

The Medicaid agency must submit, with the assurances described in § 447.253(a), the following information:

(a) The amount of the estimated average proposed payment rate for each type of provider (hospital, SNF, ICF, ICF/MR, or nursing facility), and the amount by which that estimated average rate increased or decreased relative to the average payment rate in effect for each type of provider for the immediately preceding rate period;

* * * * *

5. Section 447.272 is amended by revising paragraphs (a) and (b) to read as follows:

§ 447.272 Application of upper payment limits.

(a) *General rule.* Except as provided in paragraph (c) of this section, aggregate payments by an agency to each group of health care facilities (that is, hospitals, SNFs, ICFs, ICFs for the mentally retarded (ICFs/MR, and nursing facilities) may not exceed the amount that can reasonably be estimated would have been paid for those services under Medicare payment principles.

(b) *State operated facilities.* In addition to meeting the requirement of paragraph (a) of this section, aggregate payments to each group of State-operated facilities (that is, hospitals, SNFs, ICFs, ICFs/MR, and nursing facilities) may not exceed the amount that can reasonably be estimated would have been paid under Medicare payment principles.

* * * * *

SUBCHAPTER E—STANDARDS AND CERTIFICATION

E. Part 483 is amended as follows:

1. The authority citation for Part 483 is revised to read as follows:

Authority: Sec. 1102, 1819 (a)–(d), 1861 (j) and (1), 1863, 1871, 1902(a)(28), 1905 (a) and (c), and 1919 (a)–(d) of the Social Security Act (42 U.S.C. 1302, 1395(i)(3) (a)–(d), 1395x (j) and (1), 1395hh, 1396a(a)(28), and 1396d(c) and 1396r (a)–(d)), unless otherwise noted.

2. The heading of Part 483 is revised to read as follows:

PART 483—CONDITIONS OF PARTICIPATION AND REQUIREMENTS FOR LONG TERM CARE FACILITIES

3. Subpart B is added to read as follows:

Subpart B—Requirements for Long Term Care Facilities

Sec.

483.1 Basis and scope.
483.5 Definitions.
483.10 Level A requirement: Resident rights.
483.12 Level A requirement: Admission, transfer and discharge rights.
483.13 Level A requirement: Resident behavior and facility practices.
483.15 Level A requirement: Quality of life.
483.20 Level A requirement: Resident assessment.
483.25 Level A requirement: Quality of care.
483.28 Level A requirement: Nursing services—Skilled nursing facilities.
483.29 Level A requirement: Nursing services—Intermediate care facilities.
483.30 Level A requirement: Nursing services.
483.35 Level A requirement: Dietary services.
483.40 Level A requirement: Physician services.
483.45 Level A requirement: Specialized rehabilitative services.
483.55 Level A requirement: Dental services.
483.60 Level A requirement: Pharmacy services.
483.65 Level A requirement: Infection control.
483.70 Level A requirement: Physical environment.
483.75 Level A requirement: Administration.

Subpart B—Requirements for Long Term Care Facilities

§ 483.1 Basis and scope.

(a) *Basis in legislation.* (1) Section 1861(j) of the Act provides that—

(i) Skilled nursing facilities participating in Medicare must meet certain specified requirements; and

(ii) The Secretary may impose additional requirements if they are

necessary for the health and safety of individuals to whom services are furnished in the facilities.

(2) Section 1902(a)(28) of the Act provides that skilled nursing facilities participating in Medicaid must meet the requirements contained in section 1861(j) of the Act, except for the exclusion of institutions which are primarily for the care and treatment of mental diseases.

(3) Section 1905(c) of the Act provides that—

(i) Intermediate care facilities participating in Medicaid must meet certain specified requirements; and

(ii) The Secretary may impose additional standards necessary for the proper provision of care.

(4) Section 1919 (a)–(d) of the Act creates a new term, "nursing facility" in the Medicaid program, which replaces the terms skilled nursing facility and intermediate care facility effective October 1, 1990.

(b) *Scope.* The provisions of this part contain the requirements that an institution must meet in order to qualify to participate as a SNF in the Medicare program, and, before October 1, 1990, as a SNF or ICF in the Medicaid program, and, effective October 1, 1990, as a nursing facility in the Medicaid program. They serve as the basis for survey activities for the purpose of determining whether a facility meets the requirements for participation in Medicare and Medicaid.

§ 483.5 Definitions.

For purposes of this subpart—

"Facility" means, unless otherwise indicated, a skilled nursing facility (SNF), an intermediate care facility (ICF) or a nursing facility (NF). "Facility" may include a distinct part of a facility as specified in § 440.40 or § 440.150 of this chapter, but does not include an institution for the mentally retarded or persons with related conditions described in § 440.150(c) of this chapter. For Medicare, a SNF may not include any institution that is for the care and treatment of mental diseases (see Sec. 1861(j)(15) of the Act.) For Medicaid, a facility may not include any institution that is for the care and treatment of mental diseases except for services furnished to individuals age 65 and over. This restriction does not apply to Medicaid SNFs and ICFs before October 1, 1990 (see § 1902(a)(28) of the Act).

§ 483.10 Level A requirement: Resident rights.

The resident has a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility. A facility must protect and promote the rights of each resident, including each of the following rights:

(a) *Level B requirement: Exercise of rights.* (1) The resident has the right to exercise his or her rights as a resident of the facility and as a citizen or resident of the United States.

(2) The resident has the right to be free of interference, coercion, discrimination, or reprisal from the facility in exercising his or her rights.

(3) In the case of a resident adjudged incompetent under the laws of a State by a court of competent jurisdiction, the rights of the resident are exercised by the person appointed under State law to act on the resident's behalf.

(b) *Level B requirement: Notice of rights and services.* (1) The facility must inform the resident both orally and in writing in a language that the resident understands of his or her rights and all rules and regulations governing resident conduct and responsibilities during the stay in the facility. Such notification must be made prior to or upon admission and during the resident's stay. Receipt of such information, and any amendments to it, must be acknowledged in writing;

(2) The resident has the right to inspect and purchase photocopies of all records pertaining to the resident, upon written request and 48 hours notice to the facility;

(3) The resident has the right to be fully informed in language that he or she can understand of his or her total health status, including but not limited to, his or her medical condition;

(4) The resident has the right to refuse treatment, and to refuse to participate in experimental research; and

(5) The facility must—

(i) Inform each resident who is entitled to Medicaid benefits, in writing, at the time of admission to the nursing facility or, when the resident becomes eligible for Medicaid of—

(A) The items and services that are included in nursing facility services under the State plan and for which the resident may not be charged;

(B) Those other items and services that the facility offers and for which the resident may be charged, and the amount of charges for those services; and

(ii) Inform each resident when changes are made to the items and services specified in paragraphs (5)(i)(A) and (B) of this section.

(6) The facility must inform each resident before, or at the time of admission, and periodically during the resident's stay, of services available in the facility and of charges for those services, including any charges for services not covered under Medicare or by the facility's per diem rate.

(7) The facility must furnish a written description of legal rights which includes—

(i) A description of the manner of protecting personal funds, under paragraph (c) of this section; and

(ii) A statement that the resident may file a complaint with the State survey and certification agency concerning resident abuse, neglect, and misappropriation of resident property in the facility.

(8) The facility must inform each resident of the name, specialty and way of contacting the physician responsible for his or her care.

(9) Effective October 1, 1990, the facility must prominently display in the facility written information, and provide to residents and potential residents oral and written information about how to apply for and use Medicare and Medicaid benefits, and how to receive refunds for previous payments covered by such benefits.

(10) *Notification of changes.* (i) Except in a medical emergency or when a resident is incompetent, a facility must consult with the resident immediately and notify the resident's physician, and if known, the resident's legal representative or interested family member within 24 hours when there is—

(A) An accident involving the resident which results in injury;

(B) A significant change in the resident's physical, mental, or psychosocial status;

(C) A need to alter treatment significantly; or

(D) A decision to transfer or discharge the resident from the facility as specified in § 483.12(a).

(ii) The facility must also promptly notify the resident and, if known, the resident's legal representative or interested family member when there is—

(A) A change in room or roommate assignment as specified in § 483.15(e)(2); or

(B) A change in resident rights under Federal or State law or regulations as specified in § 483.10(b)(1).

(iii) The facility must record and periodically update the address and phone number of the resident's legal representative or interested family member.

(c) *Level B requirement: Protection of Resident Funds.* (1) The resident has the right to manage his or her financial affairs and the facility may not require residents to deposit their personal funds with the facility.

(2) *Management of personal funds.* Effective October 1, 1990, upon written authorization of a resident, the facility must hold, safeguard, manage and account for the personal funds of the resident deposited with the facility, as specified in paragraphs (c)(3)–(8) of this section.

(3) *Deposit of funds.* Effective October 1, 1990—

(i) *Funds in excess of $50.* The facility must deposit any resident's personal funds in excess of $50 in an interest bearing account (or accounts) that is separate from any of the facility's operating accounts, and that credits all interest earned on the resident's account to his or her account.

(ii) *Funds less than $50.* The facility must maintain a resident's personal funds that do not exceed $50 in a non-interest bearing account or petty cash fund.

(4) *Accounting and records.* Effective on [effective date of regulation], the facility must establish and maintain a system that assures a full and complete and separate accounting, according to generally accepted accounting principles, of each resident's personal funds entrusted to the facility on the resident's behalf.

(i) The system must preclude any commingling of resident funds with facility funds or with the funds of any person other than another resident.

(ii) The individual financial record must be available on request to the resident or his or her legal representative.

(5) *Notice of certain balances.* Effective October 1, 1990, the facility must notify each resident that receives Medicaid benefits—

(i) When the amount in the resident's account reaches $200 less than the SSI resource limit for one person, specified in section 1611(a)(3)(B) of the Act, and

(ii) That, if the amount in the account, in addition to the value of the resident's other nonexempt resources, reaches the SSI resource limit for one person, the resident may lose eligibility for Medicaid or SSI.

(6) *Conveyance upon death.* Effective October 1, 1990, upon the death of a resident with a personal fund deposited with the facility, the facility must convey promptly the resident's funds, and a final accounting of those funds, to the individual administering the resident's estate.

(7) *Assurance of financial security.* Effective October 1, 1990, the facility must purchase a surety bond, or provide self-insurance to assure the security of all personal funds of residents deposited with the facility.

(8) *Limitation on charges to personal funds.* Effective October 1, 1990, the facility may not impose a charge against the personal funds of a resident for any item or service for which payment is made under Medicaid or Medicare.

(d) *Level B requirement: Free choice.* The resident has the right to—

(1) Choose a personal attending physician;

(2) Be fully informed in advance about care and treatment and of any changes in that care or treatment that may affect the resident's well-being; and

(3) Unless adjudged incompetent or otherwise found to be incapacitated under the laws of the State, participate in planning care and treatment or changes in care and treatment.

(e) *Level B requirement: Privacy and confidentiality.* The resident has the right to personal privacy and confidentiality of his or her personal and clinical records.

(1) Personal privacy includes accommodations, medical treatment, written and telephone communications, personal care, visits, and meetings of family and resident groups, but this does not require the facility to provide a private room;

(2) Except as provided in paragraph (e)(3) of this section, the resident may approve or refuse the release of personal and clinical records to any individual outside the facility;

(3) The resident's right to refuse release of personal and clinical records does not apply when—

(i) The resident is transferred to another health care institution; or

(ii) Record release is required by law or third-party payment contract.

(f) *Level B requirement: Grievances.* A resident has the right to—

(1) Voice grievances with respect to treatment or care that is, or fails to be furnished, without discrimination or reprisal for voicing the grievances; and

(2) Prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents.

(g) *Level B requirement: Examination of survey results.* A resident has the right to—

(1) Examine the results of the most recent survey of the facility conducted by Federal or State surveyors and any plan of correction in effect with respect to the facility. The results must be posted by the facility in a place readily accessible to residents; and

(2) Receive information from agencies acting as client advocates, and be afforded the opportunity to contact these agencies.

(h) *Level B requirement: Work.* The resident has the right to—

(1) Refuse to perform services for the facility;

(2) Perform services for the facility, if he or she chooses, when—

(i) The facility has documented the need or desire for work in the plan of care;

(ii) The plan specifies the nature of the services performed and whether the services are voluntary or paid;

(iii) Compensation for paid services is at or above prevailing rates; and

(iv) The resident agrees to the work arrangement described in the plan of care.

(i) *Level B requirement: Mail.* The resident has the right to privacy in written communications, including the right to—

(1) Send and receive mail promptly that is unopened; and

(2) Have access to stationery, postage and writing implements at the resident's own expense.

(j) *Level B requirement: Access to Facility.* (1) Until October 1, 1990, the resident has the right to receive visitors and the facility must allow access to the resident for such visitors at any reasonable hour.

(2) Provisions in paragraphs (k)(vii) and (viii) of this section apply effective October 1, 1990.

(k) *Level B requirement: Access and Visitation Rights.* (1) The resident has the right and the facility must provide immediate access to any resident by the following:

(i) Any representative of the Secretary;

(ii) Any representative of the State;

(iii) The resident's individual physician;

(iv) The State long term care ombudsman (established under section 307(a)(12) of the Older Americans Act of 1985);

(v) The agency responsible for the protection and advocacy system for developmentally disabled individuals (established under part C of the Developmental Disabilities Assistance and Bill of Rights Act);

(vi) The agency responsible for the protection and advocacy system for mentally ill individuals (established under the Protection and Advocacy for Mentally Ill Individuals Act);

(vii) Effective October 1, 1990, subject to the resident's right to deny or withdraw consent at any time, immediate family or other relatives of the resident; and

(viii) Effective October 1, 1990, subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, others who are visiting with the consent of the resident.

(2) The facility must provide reasonable access to any resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time.

(3) The facility must allow representatives of the State Ombudsman, described in paragraph (k)(1)(iv) of this section, to examine a resident's clinical records with the permission of the resident or the resident's legal representative, and consistent with State law.

(l) *Level B requirement: Telephone.* The resident has the right to have regular access to the private use of a telephone.

(m) *Level B requirement: Personal property.* The resident has the right to retain and use personal possessions, including some furnishings, and appropriate clothing, as space permits, unless to do so would infringe upon the rights or health and safety of other residents.

(n) *Level B requirement: Married couples.* The resident has the right to share a room with his or her spouse when married residents live in the same facility and both spouses consent to the arrangement.

(o) *Level B requirement: Self-Administration of Drugs.* Each resident has the right to self-administer drugs unless the interdisciplinary team, as defined by § 483.20(d)(2)(ii), has determined for each resident that this practice is unsafe.

§ 483.12 Level A requirement: Admission, transfer and discharge rights.

(a) *Level B requirement: Transfer and discharge—(1) Transfer and discharge requirements.* The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless—

(i) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;

(ii) The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;

(iii) The safety of individuals in the facility is endangered;

(iv) The health of individuals in the facility would otherwise be endangered;

(v) The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid; or

(vi) The facility ceases to operate.

(2) *Documentation.* When the facility transfers or discharges a resident under any of the circumstances specified in paragraphs (a)(1) (i) through (v) of this section, the resident's clinical record must be documented. The documentation must be made by—

(i) The resident's physician when transfer or discharge is necessary under paragraph (a)(1)(i) or paragraph (a)(1)(ii) of this section; and

(ii) A physician when transfer or discharge is necessary under paragraph (a)(1)(iv) of this section.

(3) *Notice before transfer.* Before a facility transfers or discharges a resident, the facility must—

(i) Notify the resident and, if known, a family member or legal representative of the resident of the transfer or discharge and the reasons;

(ii) Record the reasons in the resident's clinical record; and

(iii) Include in the notice the items described in paragraph (a)(5) of this section.

(4) *Timing of the notice.* (i) Except when specified in paragraph (a)(4)(ii) of this section, the notice of transfer or discharge required under paragraph (a)(3) of this section must be made by the facility at least—

(A) Effective on August 1, 1989, 4 days before the resident is transferred or discharged; and

(B) Effective October 1, 1990, 30 days before the resident is transferred or discharged.

(ii) Notice may be made as soon as practicable before transfer or discharge when—

(A) The safety of individuals in the facility would be endangered, under paragraph (a)(1)(iii) of this section;

(B) The health of individuals in the facility would be endangered, under paragraph (a)(1)(iv) of this section;

(C) The resident's health improves sufficiently to allow a more immediate transfer or discharge, under paragraph (a)(1)(ii) of this section;

(D) An immediate transfer or discharge is required by the resident's urgent medical needs, under paragraph (a)(1)(i) of this section; or

(E) A resident has not resided in the facility for 30 days.

(5) *Contents of the notice.* For nursing facilities, the written notice specified in paragraph (a)(3) of this section must include the following:

(i) For transfers or discharges occurring on or after August 1, 1989—

(A) The reason for transfer or discharge;

(B) The effective date of transfer or discharge; and

(C) The location to which the resident is transferred or discharged.

(ii) For transfers or discharges occurring on or after October 1, 1989, a statement that the resident has the right to appeal the action to the State agency designated by the State for such appeals.

(iii) For transfers or discharges occurring on or after October 1, 1990—

(A) The name, address and telephone number of the State long term care ombudsman;

(B) For nursing facility residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under part C of the Developmental Disabilities Assistance and Bill of Rights Act; and

(C) For nursing facility residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act.

(6) *Orientation for transfer or discharge.* A facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

(b) *Level B requirement: Notice of bed-hold policy and readmission. (Effective October 1, 1990)—(1) Notice before transfer.* Before a facility transfers a resident to a hospital or allows a resident to go on therapeutic leave, the facility must provide written information to the resident and a family member or legal representative that specifies—

(i) The duration of the bed-hold policy under the State plan, if any, during which the resident is permitted to return and resume residence in the facility; and

(ii) The facility's policies regarding bed hold periods, which must be consistent with paragraph (b)(3) of this section, permitting a resident to return.

(2) *Notice upon transfer.* At the time of transfer of a resident to a hospital or for therapeutic leave, a nursing facility must provide written notice to the resident and a family member or legal representative, which specifies the duration of the bed hold policy described in paragraph (b)(1) of this section.

(3) *Permitting resident to return to facility.* A nursing facility must establish and follow a written policy under which a resident whose hospitalization or therapeutic leave exceeds the bed-hold period under the State plan, is readmitted to the facility immediately upon the first availability of a bed in a semi-private room if the resident—

(i) Requires the services provided by the facility; and

(ii) Is eligible for Medicaid nursing facility services.

(c) *Level B requirement: Equal access to quality care (Effective October 1, 1990).* (1) A facility must establish and maintain identical policies and practices regarding transfer, discharge, and the provision of services under the State plan for all individuals regardless of source of payment;

(2) The facility may charge any amount for services furnished to non-Medicaid residents consistent with the notice requirement in § 483.10(a)(5)(i) describing the charges; and

(3) The State is not required to offer additional services on behalf of a resident other than services provided in the State plan.

(d) *Level B requirement: Admissions policy (Effective October 1, 1990).* (1) The facility must—

(i) Not require a third party guarantee of payment to the facility as a condition of admission, or expedited admission, or continued stay in the facility;

(ii) Not charge, solicit, accept, or receive, in addition to any amount otherwise required to be paid under the State plan, any gift, money, donation or other consideration as a precondition of admission, expedited admission or continued stay in the facility.

(2) A facility must—

(i) Not require residents or potential residents to waive their rights to Medicare or Medicaid;

(ii) Not require oral or written assurance that residents or potential residents are not eligible for, or will not apply for, Medicare or Medicaid benefits.

(3) States or political subdivisions may apply stricter admissions standards under State or local laws than specified in paragraphs (d)(1) and (2) of this section, to prohibit discrimination against individuals entitled to Medicaid benefits.

(4) A facility may require an individual who has legal access to a resident's income or resources available to pay for facility care, to sign a contract, without incurring personal financial liability, to provide facility payment from the resident's income or resources.

(5) A nursing facility may charge a resident who is eligible for Medicaid for items and services the resident has requested and received, and that are not specified in the State plan as included in the term "nursing facility services."

(6) A nursing facility may solicit, accept or receive a charitable, religious or philanthropic contribution from an organization or from a person unrelated to the resident, or potential resident, but only to the extent that the contribution is not a condition of admission, expedited admission, or continued stay in the facility.

(e) *Level B requirement: Resident care policies.* Until October 1, 1990, the facility must have written resident care policies that govern the continuing nursing care, and medical or other services furnished by the facility.

§ 483.13 Level A requirement: Resident behavior and facility practices.

(a) *Level B requirement: Restraints.* The resident has the right to be free from any physical restraints imposed or psychoactive drug administered for purposes of discipline or convenience, and not required to treat the resident's medical symptoms.

(b) *Level B requirement: Abuse.* The resident has the right to be free from verbal, sexual, physical or mental abuse, corporal punishment, and involuntary seclusion.

(c) *Level B requirement: Staff treatment of residents.* The facility must develop and implement written policies and procedures that prohibit mistreatment, neglect or abuse of residents.

(1) The facility must—

(i) Not use verbal, mental, sexual, or physical abuse, including corporal punishment, or involuntary seclusion; and

(ii) Not employ individuals who have been convicted, of abusing, neglecting or mistreating individuals.

(2) The facility must ensure that all alleged violations involving mistreatment, neglect or abuse, including injuries of unknown source, are reported immediately to the administrator of the facility or to other officials in accordance with State law through established procedures.

(3) The facility must have evidence that all alleged violations are thoroughly investigated, and must prevent further potential abuse while the investigation is in progress.

(4) The results of all investigations must be reported to the administrator or his designated representative or to other officials in accordance with State law within 5 working days of the incident, and if the alleged violation is verified, appropriate corrective action is taken.

§ 483.15 Level A requirement: Quality of life.

A facility must care for its residents in a manner and in an environment that promotes maintenance or enhancement of each resident's quality of life.

(a) *Level B requirement: Dignity.* The facility must promote care for residents in a manner and in an environment that maintains or enhances each resident's dignity and respect in full recognition of his or her individuality.

(b) *Level B requirement: Self-determination and participation.* The resident has the right to—

(1) Choose activities, schedules, and health care consistent with his or her interests, assessments and plans of care;

(2) Interact with members of the community both inside and outside the facility; and

(3) Make choices about aspects of his or her life in the facility that are significant to the resident.

(c) *Level B requirement: Participation in resident and family groups.* (1) A resident has the right to organize and participate in resident groups in the facility;

(2) A resident's family has the right to meet in the facility with the families of other residents in the facility;

(3) The facility must provide a resident or family group, if one exists, with private space;

(4) Staff or visitors may attend meetings at the group's invitation;

(5) The facility must provide a designated staff person responsible for providing assistance and responding to written requests that result from group meetings;

(6) When a resident or family group exists, the facility must listen to the views and act upon the grievances and recommendations of residents and families concerning proposed policy and operational decisions affecting resident care and life in the facility.

(d) *Level B requirement: Participation in other activities.* A resident has the right to participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility.

(e) *Level B requirement: Accommodation of needs.* A resident has the right to—

(1) Reside and receive services in the facility with reasonable accommodation of individual needs and preferences, except when the health or safety of the individual or other residents would be endangered; and

(2) Receive notice before the resident's room or roommate in the facility is changed.

(f) *Level B requirement: Activities.* (1) The facility must provide for an ongoing program of activities designed to meet, in accordance with the comprehensive assessment, the interests and the

physical, mental, and psychosocial well-being of each resident.

(2) The activities program must be directed by a qualified professional who—

(i) Is a qualified therapeutic recreation specialist who is—

(A) Licensed or registered, if applicable, by the State in which practicing; and

(B) Eligible for certification as a therapeutic recreation specialist by a recognized accrediting body on August 1, 1990; or

(ii) Has 2 years of experience in a social or recreational program within the last 5 years, 1 of which was full-time in a patient activities program in a health care setting; or

(iii) Is a qualified occupational therapist or occupational therapy assistant; or

(iv) Has completed a training course approved by the State.

(g) *Level B requirement: Social Services.* (1)— The facility must provide medically-related social services to attain or maintain the highest practicable physical, mental or psychosocial well-being of each resident.

(2) *Skilled nursing facilities.* (i) Until October 1, 1990, the facility must meet the social service needs of its residents by either obtaining social services from an outside source or by furnishing the service directly; and

(ii) Effective October 1, 1990, a facility with more than 120 beds must employ a full-time qualified social worker.

(3) *Nursing facilities.* Effective October 1, 1990, a facility with more than 120 beds must employ a qualified social worker on a full-time basis.

(4) *Qualifications of social worker.* A qualified social worker is an individual with—

(i) A bachelor's degree in social work; or

(ii) Two years of social work supervised experience in a health care setting working directly with individuals; or

(iii) Similar professional qualifications.

(h) *Level B requirement: Environment.* The facility must provide—

(1) A safe, clean, comfortable and homelike environment, allowing the resident to use his or her personal belongings to the extent possible;

(2) Housekeeping and maintenance services necessary to maintain a sanitary, orderly and comfortable interior;

(3) Clean bed and bath linens that are in good condition;

(4) Private closet space in each resident room, as specified in § 483.70(d)(2)(iv) of this section;

(5) Adequate and comfortable lighting levels in all areas;

(6) Comfortable and safe temperature levels. Facilities initially certified after [the effective date of these regulations] must maintain a temperature range of 71–81 °F; and

(7) For the maintenance of comfortable sound levels.

§ 483.20 Level A requirement: Resident assessment.

The facility must conduct initially and periodically a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity.

(a) *Level B requirement: Admission orders.* At the time each resident is admitted, the facility must have physician orders for the resident's immediate care.

(b) *Standard: Comprehensive assessments.*

(1) The facility must make a comprehensive assessment of a resident's needs, which—

(i) Effective October 1, 1990, is based on a uniform data set specified by the Secretary and uses an instrument that is specified by the State; and

(ii) Describes the resident's capability to perform daily life functions and significant impairments in functional capacity.

(2) The comprehensive assessment must include at least the following information:

(i) Medically defined conditions and prior medical history;

(ii) Medical status measurement;

(iii) Functional status;

(iv) Sensory and physical impairments;

(v) Nutritional status and requirements;

(vi) Special treatments or procedures;

(vii) Psychosocial status;

(viii) Discharge potential;

(ix) Dental condition;

(x) Activities potential;

(xi) Rehabilitation potential;

(xii) Cognitive status; and

(xiii) Drug therapy.

(3) [Reserved]

(4) *Frequency.* Assessments must be conducted—

(i) For individuals admitted on or after [effective date of regulation], no later than 14 days after the date of admission;

(ii) For individuals admitted on or after October 1, 1990, no later than 4 days after the date of admission;

(iii) For current residents of a facility, not later than October 1, 1991;

(iv) Promptly after a significant change in the resident's physical or mental condition; and

(v) In no case less often than once every 12 months.

(5) *Review of assessments.* The nursing facility must examine each resident no less than once every 3 months, and as appropriate, revise the resident's assessment to assure the continued accuracy of the assessment.

(6) *Use.* The results of the assessment are used to develop, review, and revise the resident's comprehensive plan of care, under paragraph (d) of this section.

(7) *Coordination.* Effective October 1, 1990, the facility must coordinate assessments with any State-required preadmission screening program to the maximum extent practicable to avoid duplicative testing and effort.

(c) *Level B requirement: Accuracy of assessments.* (1) *Coordination.* (i) Each assessment must be conducted or coordinated, with the appropriate participation of health professionals.

(ii) Effective October 1, 1990, each assessment must be conducted or coordinated by a registered nurse who signs and certifies the completion of the assessment.

(2) *Certification.* Each individual who completes a portion of the assessment must sign and certify the accuracy of that portion of the assessment.

(3) *Penalty for Falsification.* Effective October 1, 1990, an individual who willfully and knowingly certifies (or causes another individual to certify) a material and false statement in a resident assessment is subject to civil money penalties. The implementing regulations for this statutory authority are located in Part 1003 of this chapter.

(4) *Use of independent assessors.* Effective October 1, 1990 if a State determines, under a survey or otherwise, that there has been a knowing and willful certification of false statements under paragraph (c)(3) of this section, the State may require (for a period specified by the State) that resident assessments under this paragraph be conducted and certified by individuals who are independent of the facility and who are approved by the State.

(d) *Level B requirement: Comprehensive care plans.* (1) The facility must develop a comprehensive care plan for each resident that includes measurable objectives and timetables to meet a resident's medical, nursing and psychosocial needs that are identified in the comprehensive assessment.

(2) A comprehensive care plan must be—

(i) Developed within 7 days after completion of the comprehensive assessment;

(ii) Prepared by an interdisciplinary team, that effective October 1, 1990, includes the attending physician, a registered nurse with responsibility for the resident, and other appropriate staff in disciplines as determined by the resident's needs, and with the participation of the resident, the resident's family or legal representative, to the extent practicable; and

(iii) Periodically reviewed and revised by a team of qualified persons after each assessment.

(3) The services provided or arranged by the facility must—

(i) Meet professional standards of quality; and

(ii) Be provided by qualified persons in accordance with each resident's written plan of care.

(e) *Level B requirement: Discharge summary.* When the facility anticipates discharge, a resident must have a discharge summary that includes—

(1) A recapitulation of the resident's stay;

(2) A final summary of the resident's status to include items in paragraph (b)(2) of this section, at the time of the discharge that is available for release to authorized persons and agencies, with the consent of the resident or legal representative; and

(3) A post-discharge plan of care that developed with the participation of the resident and his or her family, which will assist the resident to adjust to his or her new living environment.

(f) *Level B requirement: Preadmission screening for mentally ill individuals and individuals with mental retardation.* (1) A nursing facility must not admit, on or after January 1, 1989, any new resident with—

(i) Mental illness as defined in paragraph (f)(2)(i) of this section, unless the State mental health authority has determined, based on an independent physical and mental evaluation performed by a person or entity other than the State mental health authority, prior to admission, whether—

(A) Because of the physical and mental condition of the individual, the individual requires the level of services provided by a nursing facility; and

(B) If the individual requires such level of services, the individual requires active treatment for mental illness; or

(ii) Mental retardation, as defined in paragraph (f)(2)(ii) of this section, unless the State mental retardation or developmental disability authority has determined prior to admission whether—

(A) Because of the physical and mental condition of the individual, the individual requires the level of services provided by a nursing facility; and

(B) If the individual requires such level of services, the individual requires active treatment for mental retardation.

(2) *Definition.* For purposes of this section—

(i) An individual is considered to have "mental illness" if the individual has a primary or secondary diagnosis of mental disorder (as defined in the Diagnostic and Statistical Manual of Mental Disorders, 3rd edition) and does not have a primary diagnosis of dementia (including Alzheimer's disease or a related disorder).

(ii) An individual is considered to be "mentally retarded" if the individual is mentally retarded or a person with a related condition as described in 42 CFR 435.1009.

§ 483.25 Level A requirement: Quality of care.

Each resident must receive the necessary nursing, medical and psychosocial services to attain and maintain the highest possible mental and physical functional status, as defined by the comprehensive assessment and plan of care. Each resident must receive and the facility must provide the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, in accordance with the comprehensive assessment and plan of care.

(a) *Level B requirement: Activities of daily living.* Based on the comprehensive assessment of a resident, the facility must ensure that—

(1) A resident's abilities in activities of daily living do not diminish unless circumstances of the individual's clinical condition demonstrate that diminution was unavoidable. This includes the resident's ability to—

(i) Bathe, dress and groom;

(ii) Transfer and ambulate;

(iii) Toilet;

(iv) Eat; and

(v) To use speech, language or other functional communication systems.

(2) A resident is given the appropriate treatment and services to maintain or improve his or her abilities specified in paragraph (a)(1) of this section; and

(3) A resident who is unable to carry out activities of daily living receives the necessary services to maintain good nutrition, grooming, and personal and oral hygiene.

(b) *Level B requirement: Vision and hearing.* To ensure that residents receive proper treatment and assistive devices to maintain vision and hearing abilities, the facility must, if necessary, assist the resident—

(1) In making appointments; and

(2) By arranging for transportation to and from the office of a medical practitioner specializing in the treatment of vision or hearing impairment or the office of a professional specializing in the provision of vision or hearing assistive devices.

(c) *Level B requirement: Pressure sores.* Based on the comprehensive assessment of a resident, the facility must ensure that—

(1) A resident who enters the facility without pressure sores does not develop pressure sores unless the individual's clinical condition demonstrates that they were unavoidable; and

(2) A resident having pressure sores receives necessary treatment and services to promote healing, prevent infection and prevent new sores from developing.

(d) *Level B requirement: Urinary Incontinence.* Based on the resident's comprehensive assessment, the facility must ensure that—

(1) A resident who is incontinent of bladder receives the appropriate treatment and services to restore as much normal bladder functioning as possible;

(2) A resident who enters the facility without an indwelling catheter is not catheterized unless the resident's clinical condition demonstrates that catheterization was necessary; and

(3) A resident who is incontinent of bladder receives appropriate treatment and services to prevent urinary tract infections and to restore as much normal bladder function as possible.

(e) *Level B requirement: Range of motion.* Based on the comprehensive assessment of a resident, the facility must ensure that—

(1) A resident who enters the facility without a limited range of motion does not experience reduction in range of motion unless the resident's clinical condition demonstrates that a reduction in range of motion is unavoidable; and

(2) A resident with a limited range of motion and/or receives appropriate treatment and services to increase range of motion to prevent further decrease in range of motion.

(f) *Level B requirement: Psychosocial functioning.* Based on the comprehensive assessment of a resident, the facility must ensure that—

(1) A resident who displays psychosocial adjustment difficulty, receives appropriate treatment and services to achieve as much remotivation and reorientation as possible; and

(2) A resident whose assessment did not reveal a psychosocial adjustment difficulty does not display a pattern of decreased social interaction and/or increased withdrawn, angry, or depressive behaviors, unless the resident's clinical condition demonstrates that such a pattern was unavoidable.

(g) *Level B requirement: Naso-gastric tubes.* Based on the comprehensive assessment of a resident, the facility must ensure that—

(1) A resident who has been able to eat enough alone or with assistance is not fed by naso-gastric tube unless the resident's clinical condition demonstrates that use of a naso-gastric tube was unavoidable; and

(2) A resident who is fed by a naso-gastric or gastrostomy tube receives the appropriate treatment and services to prevent aspiration pneumonia, diarrhea, vomiting, dehydration, metabolic abnormalities, and nasal-pharyngeal ulcers and to restore, if possible, normal feeding function.

(h) *Level B requirement: Accidents.* The facility must ensure that—

(1) The resident environment remains as free of accident hazards as is possible; and

(2) Each resident receives adequate supervision and assistive devices to prevent accidents.

(i) *Level B requirement: Nutrition.* Based on a resident's comprehensive assessment, the facility must ensure that a resident—

(1) Maintains acceptable parameters of nutritional status, such as body weight and protein levels, unless the resident's clinical condition demonstrates that this is not possible; and

(2) Receives a therapeutic diet when there is a nutritional problem.

(j) *Level B requirement: Hydration.* The facility must provide each resident with sufficient fluid intake to maintain proper hydration and health.

(k) *Level B requirement: Special needs.* The facility must ensure that residents receive proper treatment and care for the following special services:

(1) Injections;

(2) Parenteral and enteral fluids;

(3) Colostomy, ureterostomy or ileostomy care;

(4) Tracheostomy care;

(5) Tracheal suctioning;

(6) Respiratory care;

(7) Podiatric care; and

(8) Prostheses.

(l) *Level B requirement: Drug Therapy.*—(1) *Unnecessary drugs.* Each resident's drug regimen must be free from unnecessary drugs.

(2) *Antipsychotic Drugs.* Based on a comprehensive assessment of a resident, the facility must ensure that—

(i) Residents who have not used antipsychotic drugs and are not given these drugs unless antipsychotic drug therapy is necessary to treat a specific condition; and

(ii) Residents who use antipsychotic drugs receive gradual dose reductions, drug holidays or behavioral programming, unless clinically contraindicated in an effort to discontinue these drugs.

(m) *Level B requirement: Medication Errors.* The facility must ensure that—

(1) It is free of significant medication error rates; and

(2) Residents are free of any significant medication errors.

§ 483.28 Level A requirement: Nursing services-skilled nursing facilities.

The requirements of this section are effective through September 30, 1990. The skilled nursing facility provides 24-hour service by licensed nurses, including the services of a registered nurse at least during the day tour of duty 7 days a week. There is an organized nursing service with a sufficient number of qualified nursing personnel to meet the total nursing needs of all patients in the facility. (See § 405.1911(a) regarding waiver of the 7-day registered nurse requirement.)

(a) *Level B requirement: Director of nursing services.* The director of nursing services is a qualified registered nurse employed full-time who has, in writing, administrative authority, responsibility, and accountability for the functions, activities, and training of the nursing services staff, and serves only one facility in this capacity. If the director of nursing services has other institutional responsibilities, a qualified registered nurse serves as her assistant so that there is the equivalent of a full-time director of nursing services on duty. The director of nursing services is responsible for the development and maintenance of nursing service objectives, standards of nursing practice, nursing policy and procedure manuals, written job descriptions for each level of nursing personnel, scheduling of daily rounds to see all patients, methods for coordination of nursing services with other patient services, for recommending the number and levels of nursing personnel to be employed, and nursing staff development (see § 405.1121(h)).

(b) *Level B requirement: Charge nurse.* A registered nurse, or a qualified licensed practical (vocational) nurse, is designated as charge nurse by the director of nursing services for each tour of duty, and is responsible for supervision of the total nursing activities in the facility during each tour of duty. The director of nursing services does not serve as charge nurse in an facility with a average daily total occupancy of 60 or more patients. The charge nurse delegates responsibility to nursing personnel for the direct nursing care of specific patients during each tour of duty, on the basis of staff qualifications, size and physical layout of the facility, characteristics of the patient load, and the emotional, social, and nursing care needs of patients.

(c) *Level B requirement: Twenty-four-hour nursing service.* The facility provides 24-hour nursing services which are sufficient to meet total nursing needs and which are in accordance with the patient care policies developed as provided in § 405.1121(1). The policies are designed to ensure that each patient receives treatments, medications, and diet as prescribed, and rehabilitative nursing care as needed; receives proper care to prevent decubitus ulcers and deformities, and is kept comfortable, clean, well-groomed, and protected from accident, injury, and infection, and encouraged, assisted, and trained in self-care and group activities. Nursing personnel, including at least one registered nurse on the day tour of duty 7 days a week, licensed practical (vocational) nurses, nurse aides, orderlies, and ward clerks, are assigned duties consistent with their education and experience and based on the characteristics of the patient load. Weekly time schedules are maintained and indicate the number and classifications of nursing personnel, including relief personnel, who worked on each unit for each tour of duty.

§ 483.29 Level A requirement: Nursing services—intermediate care facilities.

The requirements of this section are effective through September 30, 1990.

(a) The ICF must have staff on duty 24 hours a day sufficient in number and qualifications to carry out the policies, responsibilities, and programs of the ICF.

(b) The ICF must have a registered nurse or a licensed practical or vocational nurse to supervise the ICF's health services full time, 7 days a week, on the day shift.

(c) The nurse must have a current license to practice in the State.

(d) If the ICF employs a licensed practical or vocational nurse to supervise health services, the ICF must have a formal contract with a registered nurse to consult with the licensed practical or vocational nurse at regular intervals, but not less than 4 hours each week.

(e) To be qualified to serve as a health services supervisor, a licensed practical or vocational nurse must—

(1) Be a graduate of a State-approved school of practical nursing;

(2) Have education or other training that the State authority responsible for licensing practical nurses considers equal to graduation from a State-approved school of practical nursing; or

(3) Have passed the Public Health Service examination for waivered licensed practical or vocational nurses.

(f) The ICF may employ as charge nurse an individual who is licensed by the State in a category other than registered nurse or licensed practical or vocational nurse if—

(1) The individual has completed a training program to get the license that included at least the same number of classroom and practice hours in all nursing subjects as in the program of a State-approved school of practical or vocational nursing; and

(2) The State agency responsible for licensing the individual submits a report to the Medicaid agency comparing State licensed practical nurse or vocational nurse course requirements with those for the program completed by the individual.

§ 483.30 Level A requirement: Nursing services.

Effective October 1, 1990, the facility must have sufficient nursing staff to provide nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care.

(a) *Level B requirement: Sufficient staff.* (1) The facility must provide services by sufficient numbers of each of the following types of personnel on a 24-hour basis to provide nursing care to all residents in accordance with resident care plans:

(i) Except when waived under paragraph (c) of this section, licensed nurses; and

(ii) Other nursing personnel.

(2) Except when waived under paragraph (c) of this section, the facility must designate a licensed nurse to serve as a charge nurse on each tour of duty.

(b) *Level B requirement: Registered nurse.* (1) Except when waived under paragraph (c) or (d) of this section, the facility must use the services of a registered nurse for at least 8 consecutive hours a day, 7 days a week.

(2) Except when waived under paragraph (c) or (d) of this section, the facility must designate a registered nurse to serve as the director of nursing on a full time basis.

(3) The director of nursing may serve as a charge nurse only when the facility has an average daily occupancy of 60 or fewer residents.

(c) *Level B requirement: Nursing facilities: Waiver of requirement to provide licensed nurses on a 24-hour basis.* A facility may request a waiver from either the requirement that a nursing facility provide a registered nurse for at least 8 consecutive hours a day, 7 days a week, as specified in paragraph (b) of this section, or the requirement that a nursing facility provide licensed nurses on a 24-hour basis, including a charge nurse as specified in paragraph (a) of this section, if the following conditions are met:

(1) The facility demonstrates to the satisfaction of the State that the facility has been unable, despite diligent efforts (including offering wages at the community prevailing rate for nursing facilities), to recruit appropriate personnel;

(2) The State determines that a waiver of the requirement will not endanger the health or safety of individuals staying in the facility;

(3) The State finds that, for any periods in which licensed nursing services are not available, a registered nurse or a physician is obligated to respond immediately to telephone calls from the facility;

(4) A waiver granted under the conditions listed in paragraph (c) of this section is subject to annual State review; and

(5) Effective October 1, 1990, in granting or renewing a waiver, a facility may be required by the State to use other qualified, licensed personnel.

(d) *Level B requirement: SNFs: Waiver of the requirement to provide services of a registered nurse for more than 40 hours a week.* (1) The Secretary may waive the requirement that a SNF provide the services of a registered nurse for more than 40 hours a week, including a director of nursing specified in paragraph (b) of this section, if the Secretary finds that the facility—

(i) Is located in a rural area and the supply of skilled nursing facility services in the area is not sufficient to meet the needs of individuals residing in the area;

(ii) Has one full-time registered nurse who is regularly on duty at the facility 40 hours a week; and

(iii) Either—

(A) Has only patients whose physicians have indicated (through physicians' orders or admission notes) that they do not require the services of a registered nurse or a physician for a 48-hour period; or

(B) Has made arrangements for a registered nurse or a physician to spend time at the facility, as determined necessary by the physician, to provide necessary skilled nursing services on days when the regular full-time registered nurse is not on duty.

(2) A waiver of the registered nurse requirement under paragraph (d)(1) of this section is subject to annual renewal by the Secretary.

§ 483.35 Level A requirements: Dietary Services.

The facility must provide each resident with a nourishing, palatable, well-balanced diet that meets the daily nutritional and special dietary needs of each resident.

(a) *Level B requirement: Staffing.* The facility must employ a qualified dietitian either full-time, part-time, or on a consultant basis.

(1) If a qualified dietitian is not employed full-time, the facility must designate a person to serve as the director of food service.

(2) A qualified dietitian is one who is qualified based upon either registration by the Commission on Dietetic Registration of the American Dietetic Association, or on the basis of education, training, or experience in identification of dietary needs, planning and implementation of dietary programs.

(b) *Level B requirement: Sufficient staff.* The facility must employ sufficient support personnel competent to carry out the functions of the dietary service.

(c) *Level B requirement: Menus and nutritional adequacy.* Menus must—

(1) Meet the nutritional needs of residents in accordance with the recommended dietary allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences;

(2) Be prepared in advance; and

(3) Be followed.

(d) *Level B requirement: Food.* Each resident receives and the facility provides—

(1) Food prepared by methods that conserve nutritive value, flavor and appearances;

(2) Food that is palatable, attractive, and at the proper temperature;

(3) Food prepared in a form designed to meet individual needs; and

(4) Substitutes offered of similar nutritive value to residents who refuse food served.

(e) *Level B requirement: Therapeutic diets.* Therapeutic diets must be prescribed by the attending physician.

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(f) *Level B requirement: Frequency of meals.* (1) Each resident receives and the facility provides at least three meals daily, at regular times comparable to normal mealtimes in the community.

(2) There must be no more than 14 hours between a substantial evening meal and breakfast the following day, except as provided in (4) below.

(3) The facility must offer snacks at bedtime daily.

(4) When a nourishing snack is provided at bedtime, up to 16 hours may elapse between a substantial evening meal and breakfast the following day if a resident group agrees to this meal span and a nourishing snack is served.

(g) *Level B requirement: Assistive devices.* The facility must provide special eating equipment and utensils for residents who need them.

(h) *Level B requirement: Sanitary conditions.* The facility must—

(1) Procure food from sources approved or considered satisfactory by Federal, State, or local authorities;

(2) Store, prepare, distribute, and serve food under sanitary conditions; and

(3) Dispose of garbage and refuse properly.

§ 483.40 Level A requirement: Physician services.

A physician must personally approve a recommendation that an individual be admitted to a facility. Each resident must remain under the care of a physician.

(a) *Level B requirement: Physician supervision.* The facility must ensure that—

(1) The medical care of each resident is supervised by a physician; and

(2) Another physician supervises the medical care of residents when their attending physician is unavailable.

(b) *Level B requirement: Physician visits.* The physician must—

(1) Review the resident's total program of care, including medications and treatments, at each visit required by paragraph (c) of this section;

(2) Write, sign and date progress notes at each visit; and

(3) Sign all orders.

(c) *Level B requirement: Frequency of physician visits.* Physician visits must conform to the following schedule:

(1) For skilled nursing facilities, the resident must be seen by a physician at least once every 30 days for the first 90 days after admission, and at least once every 60 days thereafter.

(2) For nursing facilities (and for intermediate care facilities until October 1, 1990), the resident must be seen by a physician at least once every 30 days for the first 90 days after admission, and at least once every 90 days thereafter.

(3) A physician visit is considered timely if it occurs not later than 10 days after the date the visit was required.

(4) Except as provided in paragraph (c)(5) of this section, all required physician visits must be made by the physician personally.

(5) At the option of the physician, required visits after the initial visit may alternate between personal visits by the physician and visits by a physician assistant or nurse practitioner in accordance with paragraph (e) of this section.

(d) *Level B requirement: Availability of physicians for emergency care.* The facility must provide or arrange for the provision of physician services 24 hours a day, in case of an emergency.

(e) *Level B requirement: Physician delegation of tasks.* (1) Except as specified in paragraph (e)(2) of this section, a physician may delegate tasks to a physician assistant or nurse practitioner who—

(i) Meets the applicable definition in § 491.2 of this chapter;

(ii) Is acting within the scope of practice as defined by State law; and

(iii) Is under the supervision of the physician.

(2) A physician may not delegate a task when the regulations specify that the physician must perform it personally, or when the delegation is prohibited under State law or by the facility's own policies.

§ 483.45 Level A requirement: Specialized rehabilitative services.

A facility must provide or obtain rehabilitative services, such as physical therapy, speech-language pathology, and occupational therapy, to every resident it admits.

(a) *Level B requirement: Provision of services.* If specialized rehabilitative services are required in the resident's comprehensive plan of care, the facility must—

(1) Provide the required services; or

(2) Obtain the required services from an outside resource in accordance with § 483.75(j) of this part, from a provider of specialized rehabilitative services.

(b) *Level B requirement: Qualifications.* Specialized rehabilitative services must be provided under the written order of a physician by qualified personnel.

§ 483.55 Level A requirement: Dental services.

The facility must assist residents in obtaining routine and 24-hour emergency dental care.

(a) *Level B requirement: Advisory dentist.* Until October 1, 1990, the facility must ensure that a dentist is available in an advisory role to the nursing staff.

(b) *Level B requirement: Outside services.* Until October 1, 1990, the facility must—

(1) Have an agreement, which meets the requirements of § 483.75(j) of this part, with a dentist to provide dental services;

(2) Maintain a list of available dentists for residents who do not have a private dentist;

(3) If necessary, assist the resident—

(i) In making appointments; and

(ii) By arranging for transportation to and from the dentist's office; and

(4) Promptly refer residents with lost or damaged dentures to a dentist.

(c) *Level B requirement: Skilled nursing facilities.* (1) Effective October 1, 1990, the facility must provide or obtain from an outside resource, in accordance with § 483.75(j) of this part, routine and emergency dental services.

(2) An SNF may charge a resident an additional amount for emergency dental services.

(d) *Level B requirement: Nursing facilities.* Effective October 1, 1990, the facility must provide or obtain from an outside resource, in accordance with § 483.75(j) of this part, the following dental services to meet the needs of each resident:

(1) Routine dental services (to the extent covered under the State plan); and

(2) Emergency dental services.

§ 483.60 Level A requirement: Pharmacy services.

The facility must provide routine and emergency drugs and biologicals to its residents, or obtain them under an agreement described in § 483.75(j) of this part.

(a) *Level B requirement: Methods and procedures.* (1) Until October 1, 1990, skilled nursing facilities must establish methods and procedures for dispensing and administering drugs and biologicals.

(2) The facility may permit unlicensed personnel to administer drugs if State law permits; but only under the general supervision of a licensed nurse.

(b) *Level B requirement: Procedures.* Effective October 1, 1990, a facility must provide pharmaceutical services (including procedures that assure the accurate acquiring, receiving, dispensing, and administering of all drugs and biologicals) to meet the needs of each resident.

(c) *Level B requirement: Pharmaceutical services committee.* (1) Until October 1, 1990, the facility must have a pharmaceutical services committee (or its equivalent), which develops written policies and procedures for safe and effective drug therapy, distribution, control, and use.

(2) The committee is comprised of at least the pharmacist, the director of nursing services, the administrator, and one physician.

(3) The committee oversees pharmaceutical service in the facility, makes recommendations for improvement, and monitors the service to ensure its accuracy and adequacy.

(4) The committee meets at least quarterly and documents its activities, findings, and recommendations.

(d) *Level B requirement: Service consultation.* The facility must employ or obtain the services of a licensed pharmacist who

(1) Provides consultation on all aspects of the provision of pharmacy services in the facility;

(2) Establishes a system of records of receipt and disposition of all controlled drugs in sufficient detail to enable an accurate reconciliation; and

(3) Determines that drug records are in order and that an account of all controlled drugs is maintained and periodically reconciled.

(e) *Level B requirement: Drug regimen review.* (1) The drug regimen of each resident must be reviewed at least once a month by a licensed pharmacist.

(2) The pharmacist must report any irregularities to the attending physician or the director of nursing, or both, and these reports must be acted upon.

(f) *Level B requirement: Labeling of drugs and biologicals.* The facility must label drugs and biologicals in accordance with currently accepted professional principles, and include the appropriate accessory and cautionary instructions, and the expiration date.

(g) *Level B requirement: Storage of drugs and biologicals.* (1) In accordance with State and Federal laws, the facility must store all drugs and biologicals in locked compartments under proper temperature controls, and permit only authorized personnel to have access to the keys.

(2) The facility must provide separately locked, permanently affixed compartments for storage of controlled drugs listed in Schedule II of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and other drugs subject to abuse, except when the facility uses single unit package drug distribution systems in which the quantity stored is minimal and a missing dose can be readily detected.

§ 483.65 Level A requirement: Infection control.

The facility must establish and maintain an infection control program designed to provide a safe, sanitary, and comfortable environment in which residents reside and to help prevent the development and transmission of disease and infection.

(a) *Level B requirement: Infection control program.* The facility must establish an infection control program under which it—

(1) Investigates, controls and prevents infections in the facility;

(2) Decides what procedures, such as isolation, should be applied to an individual resident; and

(3) Maintains a record of incidents and corrective actions related to infections.

(b) *Level B requirement: Preventing spread of infection.* (1) When the infection control program determines that a resident needs isolation to prevent the spread of infection, the facility must isolate the resident.

(2) The facility must prohibit employees with a communicable disease or infected skin lesions from direct contact with residents or their food, if direct contact will transmit the disease.

(3) The facility must require staff to wash their hands after each direct resident contact for which handwashing is indicated by accepted professional practice.

(c) *Level B requirement: Linens.* Personnel must handle, store, process, and transport linens so as to prevent the spread of infection.

§ 483.70 Level A requirement: Physical environment.

The facility must be designed, constructed, equipped and maintained to protect the health and safety of residents, personnel and the public.

(a) *Level B requirement: Life safety from fire.* Except as provided in paragraph (a)(1) or (a)(3) of this section, the facility must meet the applicable provisions of the 1985 edition of the Life Safety Code of the National Fire Protection Association (which is incorporated by reference). Incorporation of the 1985 edition of the National Fire Protection Association's Life Safety Code (published February 7, 1985; ANSI/NFPA) was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51 that govern the use of incorporations by reference.[1]

(1) A facility is considered to be in compliance with this requirement as long as the facility—

(i) On November 26, 1982, complied, with or without waivers, with the requirements of the 1967 or 1973 editions of the Life Safety Code and continues to remain in compliance with those editions of the Code; or

(ii) On May 9, 1988, complied, with or without waivers, with the 1981 edition of the Life Safety Code and continues to remain in compliance with that edition of the Code.

(2) After consideration of State survey agency findings, HCFA, or in the case of intermediate care facilities, the State survey agency may waive specific provisions of the Life Safety Code which, if rigidly applied, would result in unreasonable hardship upon the facility, but only if the waiver does not adversely affect the health and safety of residents or personnel.

(3) The provisions of the Life Safety Code do not apply in a State where HCFA finds, in accordance with applicable provisions of section 1861(j)(13) of the Act, that a fire and safety code imposed by State law adequately protects patients, residents and personnel in long term care facilities.

(b) *Level B requirement: Emergency power.* (1) An emergency electrical power system must supply power adequate at least for lighting all entrances and exits, equipment to maintain the fire detection, alarm and extinguishing systems, and life support systems in the event the normal electrical supply is interrupted.

(2) When life support systems are used, the facility must provide emergency electrical power with an emergency generator (as defined in NFPA 99, Health Care Facilities) that is located on the premises.

(c) *Level B requirement: Space and equipment.* The facility must—

(1) Provide sufficient space and equipment in dining, health services, recreation, and program areas to enable staff to provide residents with needed services as required by these standards and as identified in each resident's plan of care; and

(2) Maintain all essential mechanical, electrical, and patient care equipment in safe operating condition.

(d) *Level B requirement: Resident rooms.* Resident rooms must be designed

[1] The Code is available for inspection at the Office of the Federal Register Information Center, Room 8301, 1110 L Street NW., Washington, DC. Copies may be obtained from the National Fire Protection Association, Batterymarch Park, Quincey, Mass. 02269. If any changes in this code are also to be incorporated by reference, a notice to that effect will be published in the Federal Register.

and equipped for adequate nursing care, comfort and privacy of residents.

(1) Bedrooms must—

(i) Accommodate no more than four residents;

(ii) Measure at least 80 square feet per resident in multiple resident bedrooms, and at least 100 square feet in single resident rooms;

(iii) Have direct access to a corridor;

(iv) Be designed or equipped to assure full visual privacy for each resident;

(v) In facilities initially certified after August 1, 1989, each bed must have ceiling suspended curtains, which extend around the bed to provide total visual privacy, in combination with adjacent walls and curtains;

(vi) Have at least one window to the outside; and

(vii) Have a floor at or above grade level.

(2) The facility must provide each resident with—

(i) A separate bed of proper size and height for the convenience of the resident;

(ii) A clean, comfortable mattress;

(iii) Bedding appropriate to the weather and climate; and

(iv) Functional furniture appropriate to the resident's needs, and individual closet space in the resident's bedroom with clothes racks and shelves accessible to the resident.

(3) HCFA, or in the case of a facility participating as a skilled nursing facility under Medicaid only or as an intermediate care facility, or a nursing facility after Octoer 1, 1990, the survey agency may permit variations in requirements specified in paragraphs (d)(1) (i) and (ii) of this section relating to rooms in individual cases when the facility demonstrates in writing that the variations—

(i) Are required by the special needs of the residents; and

(ii) Will not adversely affect residents' health and safety.

(e) *Level B requirement: Toilet facilities.* Each resident room must be equipped with or located near toilet and bathing facilities.

(f) *Level B requirement: Resident call system.* The nurse's station must be equipped to receive resident calls through a communication system from—

(1) Resident rooms; and

(2) Toilet and bathing facilities.

(g) *Level B requirement: Dining and resident activities.* The facility must provide one or more rooms designated for resident dining and activities. These rooms must—

(1) Be well lighted;

(2) Be well ventilated, with nonsmoking areas identified;

(3) Be adequately furnished; and

(4) Have sufficient space to accommodate all activities.

(h) *Level B requirement: Other environmental conditions.* The facility must provide a safe, functional, sanitary and comfortable environment for residents, staff and the public. The facility must—

(1) Establish procedures to ensure that water is available to essential areas when there is a loss of normal water supply;

(2) Have adequate outside ventilation by means of windows, or mechanical ventilation or a combination of the two; and

(3) Equip corridors with firmly secured handrails on each side.

(4) Maintain an effective pest control program so that the facility is free of pests and rodents.

§ 483.75 Level A requirement: Administration.

A facility must be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident.

(a) *Level B requirement: Licensure.* (1) A skilled nursing facility must be—

(i) Licensed in accordance with State or local law if that law requires it; or

(ii) Approved by the State or local agency responsible for licensing such institutions, as meeting the applicable licensing standards.

(2) Until October 1, 1990, an intermediate care facility must be licensed under State law to provide, on a regular basis, health-related care and services to individuals who do not require the degree of care and treatment which a hospital or skilled nursing facility is designed to provide, but who because of their mental or physical condition require care and services (above the level of room and board) which can be made available to them only through institutional facilities.

(b) *Level B requirement: Compliance with Federal, State and local laws.* Until October 1, 1990, the facility must be in compliance with all applicable provisions of Federal, State and local laws, regulations and codes pertaining to health, safety, sanitation, and research.

(c) *Level B requirement: Compliance with Federal, State and local laws and professional standards, effective October 1, 1990.* The facility must operate and provide services in compliance with all applicable Federal, State, and local laws, regulations and codes, and with accepted professional standards and principles that apply to professionals providing services in such a facility.

(d) *Level B requirement: Relationship to other HHS regulations.* In addition to compliance with the regulations set forth in this subpart, facilities are obliged to meet the applicable provisions of other HHS regulations, including but not limited to those pertaining to nondiscrimination on the basis of race, color, or national origin (45 CFR Part 80), nondiscrimination on the basis of handicap (45 CFR Part 84), nondiscrimination on the basis of age (45 CFR Part 91), protection of human subjects of research (45 CFR Part 46), and fraud and abuse (42 CFR Part 455). Although these regulations are not in themselves considered requirements under this part, their violation may result in the termination or suspension of, or the refusal to grant or continue payment with Federal funds.

(e) *Level B requirement: Governing body:* (1) The facility must have a governing body, or designated persons functioning as a governing body, that is legally responsible for establishing and implementing policies regarding the management and operation of the facility; and

(2) The governing body appoints the administrator who is—

(i) Licensed by the State; and

(ii) Responsible for management of the facility.

(f) *Level B requirement: Institutional plan and budget:* Until October 1, 1990, skilled nursing facilities must develop an overall plan and budget that meets the following requirements:

(1) Provides for an annual operating budget which includes all anticipated income and expenses, but need not include an item-by-item identification of the components of each type of anticipated expenditure or income;

(2) Provides for a capital expenditures plan for at least a 3-year period, including the year to which the operating budget described in paragraph (1) of this section is applicable. This plan must identify in detail the anticipated sources of financing for, and the objectives of, each anticipated expenditure in excess of $600,000, or such lesser amount as may be established by the State in which the SNF is located, related to the acquisition of land, the improvement of land, buildings, and equipment, and the replacement, modernization, and expansion of the buildings and equipment which would, under generally accepted accounting principles, be considered capital items;

(3) Provides that the plan is submitted to the State agency designated under section 1122(b) of the Act, or if no such agency is designated, to the appropriate health planning agency in the State, except when a facility is exempt from section 1122 review under section 1122(j) of the Act (see 42 CFR Part 100);

(4) Is reviewed and updated by the facility at least annually; and

(5) Is prepared, under the direction of the governing body of the institution by a committee consisting of representatives of the governing body, the administrative staff, and the medical staff of the institution.

(g) *Level B requirement: Required training of nurse aides*—(1) *General rule.* Effective January 1, 1990, a facility must not use any individual working in the facility as a nurse aide for more than 4 months, on a full-time, temporary, per diem, or other basis, unless:

(i) That individual has completed a training and competency evaluation program, or a competency evaluation program approved by the State, and

(ii) That individual is competent to provide nursing and nursing related services.

(2) *Competency evaluation programs for current employees.* Effective July 1, 1989, a facility must provide, for individuals used as nurse aides, a competency evaluation program approved by the State, and preparation necessary for the individual to complete the program by January 1, 1990.

(3) *Competency.* Effective January 1, 1990, a facility must permit an individual to serve as a nurse aide or provide services of a type for which the individual has not demonstrated competence only when—

(i) The individual is in a training and competency evaluation program or a competency evaluation program approved by the State; and

(ii) The facility has asked and not yet evaluated a reply from the State registry for information concerning the individual.

(4) *Required retraining.* Effective January 1, 1990, when an individual has not performed paid nursing or nursing-related services for a continuous period of 24 consecutive months since the most recent completion of a training and competency evaluation program, the facility must require the individual to complete a new training and competency evaluation program.

(5) *Regular in-service education.* Effective January 1, 1990, the facility must provide regular performance review and regular in-service education to ensure that individuals used as nurse aides are competent to perform services as nurse aides. In-service education must include training for individuals providing nursing and nursing-related services to residents with cognitive impairments.

(6) *Definition of nurse aide.* For purposes of this section, the term, "nurse aide," means any individual providing nursing or nursing-related services to residents in a facility. This definition does not include an individual who volunteers to provide such services without pay.

(h) *Level B requirement: Proficiency of Nurse aides.* The facility must ensure that nurse aides are able to demonstrate competency in skills and techniques necessary to care for residents' needs, as identified through resident assessments, and described in the plan of care.

(i) *Level B requirement: Staff qualifications.* (1) The facility must employ on a full time, part time, or consultant basis those professionals necessary to carry out the provisions of these conditions of participation.

(2) Professional staff must be licensed, certified or registered in accordance with applicable State laws.

(j) *Level B requirement: Use of outside resources.* (1) If the facility does not employ a qualified professional person to furnish a specific service to be provided by the facility, the facility must have that service furnished to residents by a person or agency outside the facility under an arrangement described in section 1861(w) of the Act or an agreement described in paragraph (j)(2) of this section.

(2) Arrangements or agreements pertaining to services furnished by outside resources must specify in writing that the facility assumes responsibility for—

(i) Obtaining services that meet professional standards and principles that apply to professionals providing services in such a facility; and

(ii) The timeliness of the services.

(k) *Level B requirement: Medical director.* (1) The facility must designate a physician to serve as medical director.

(2) The medical director is responsible for—

(i) Implementation of resident care policies; and

(ii) The coordination of medical care in the facility.

(l) *Level B requirement: Laboratory services.* (1) The facility must provide or obtain clinical laboratory services to meet the needs of its residents. The facility is responsible for the quality and timeliness of the services.

(i) If the facility provides its own laboratory services, the services must meet the applicable conditions for coverage of the services furnished by independent laboratories specified in Subpart M of Part 405 of this chapter;

(ii) If the facility provides blood bank and transfusion services, it must meet the applicable conditions for—

(A) Independent laboratories specified in Subpart M of Part 405 of this chapter; and

(B) Hospitals specified in § 482.27(d) of this subchapter;

(iii) If the laboratory chooses to refer specimens for testing to another laboratory, the referral laboratory must be approved for participation in the Medicare program either as a hospital or an independent laboratory;

(iv) If the facility does not provide laboratory services on site, it must have an agreement to obtain these services only from a laboratory that is approved for participation in the Medicare program either as a hospital or as an independent laboratory.

(2) The facility must—

(i) Provide or obtain laboratory services only when ordered by the attending physician;

(ii) Promptly notify the attending physician of the findings;

(iii) Assist the resident in making transportation arrangements to and from the source of service, if the resident needs assistance.

(iv) File in the resident's clinical record signed and dated reports of clinical laboratory services.

(m) *Level B requirement: Radiology and other diagnostic services.* (1) The skilled nursing facility must provide or obtain radiology and other diagnostic services to meet the needs of its residents. The facility is responsible for the quality and timeliness of the services.

(i) If the facility provides its own diagnostic services, the services must meet the applicable conditions of participation for hospitals contained in § 482.26 of this subchapter.

(ii) If the facility does not provide diagnostic services, it must have an agreement to obtain these services from a provider or supplier that is approved to provide these services under Medicare.

(2) The facility must—

(i) Provide or obtain radiology and other diagnostic services only when ordered by the attending physician;

(ii) Promptly notify the attending physician of the findings;

(iii) Assist the resident in making transportation arrangements to and from the source of service, if the resident needs assistance; and

(iv) File in the resident's clinical record signed and dated reports of x-ray and other diagnostic services.

(n) *Level B requirement: Clinical records.* (1) The facility must maintain

clinical records on each resident in accordance with accepted professional standards and practices that are—

(i) Complete;

(ii) Accurately documented;

(iii) Readily accessible; and

(iv) Systematically organized.

(2) Clinical records must be retained for—

(i) The period of time required by State law; or

(ii) Five years from the date of discharge when there is no requirement in State law; or,

(iii) For a minor, three years after a resident reaches legal age under State law.

(3) The facility must safeguard clinical record information against loss, destruction, or unauthorized use;

(4) The facility must keep confidential all information contained in the resident's records, regardless of the form or storage method of the records, except when release is required by—

(i) Transfer to another health care institution;

(ii) Law;

(iii) Third party payment contract; or

(iv) The resident.

(5) The facility must—

(i) Permit each resident to inspect his or her records on request; and

(ii) Provide copies of the records to each resident no later than 48 hours after a written request from a resident, at a photocopying cost not to exceed the amount customarily charged in the community.

(6) The clinical record must contain—

(i) Sufficient information to identify the resident;

(ii) A record of the resident's assessments;

(iii) The plan of care and services provided; and

(iv) Effective October 1, 1989, the results of any preadmission screening conducted by the State; and

(v) Progress notes.

(o) *Level B requirement: Disaster and emergency preparedness.* (1) The facility must have detailed written plans and procedures to meet all potential emergencies and disasters, such as fire, severe weather, and missing residents.

(2) The facility must train all employees in emergency procedures when they begin to work in the facility, periodically review the procedures with existing staff, and carry out staff drills using those procedures.

(p) *Level B requirement: Transfer agreement.* (1) In accordance with section 1861(l) of the Act, the facility must have in effect a written transfer agreement with one or more hospitals approved for participation under the Medicare and Medicaid programs that reasonably assures that—

(i) Residents will be transferred from the facility to the hospital, and ensured of timely admission to the hospital when transfer is medically appropriate as determined by the attending physician; and

(ii) Medical and other information needed for care and treatment of residents, and, when the transferring facility deems it appropriate, for determining whether such residents can be adequately cared for in a less expensive setting than either the facility or the hospital, will be exchanged between the institutions.

(2) The facility is considered to have a transfer agreement in effect if the facility has attempted in good faith to enter into an agreement with a hospital sufficiently close to the facility to make transfer feasible.

(q) *Level B requirement: Utilization review.* Before October 1, 1990, a skilled nursing facility must have in effect a utilization review plan that applies to services furnished by the facility to individuals entitled to Medicare benefits.

(1) The plan must provide for the review, on a sample or other basis, of the medical necessity of the services, to promote the most efficient use of available health facilities and services. The facility must include reviews of—

(i) Admissions to the institutions;

(ii) Duration of stays for a continuous period of extended duration, to be specified by the facility; and

(iii) Professional services, including drugs and biologicals furnished.

(2) The extended duration review must be made as promptly as possible after each day specified under paragraph (q)(1)(ii) of this section, and in no event later than one week following such day.

(3) The review committee must be composed of—

(i) A staff committee of the institution composed of two or more physicans, of which at least two must be physicians as defined in § 410.20(b) of this chapter, with or without participation of other professional personnel; or

(ii) A group outside the facility, which is similarly composed and which is—

(A) Established by the local medical society and some or all of the SNFs in the locality; or

(B) If no such group exists, a group that is approved by HCFA.

(4) If it is impracticable for a facility to have a properly functioning utilization review committee because of the small size of the institution or because of lack of an organized medical staff, then the review committee must be composed as described in paragraph (3)(ii) of this section rather than paragraph (3)(i).

(5) HCFA will require that the facility use Medicaid utilization review procedures instead of the procedures specified in this section if HCFA determines that the Medicaid utilization review procedures are superior in effectiveness to the Medicare procedures.

(6) Before a finding that any further stay in the facility is not medically necessary, the review committee must consult with the individual's attending physician.

(7) When the review committee finds that any further stay in the facility is not medically necessary, the committee must notify promptly—

(i) The institution;

(ii) The individual; and

(iii) the individual's attending physician.

(r) *Level B requirement: Quality assessment and assurance.* (1) Effective October 1, 1990, a facility must maintain a quality assessment and assurance committee consisting of—

(i) The director of nursing services;

(ii) A physician designated by the facility; and

(iii) At least 3 other members of the facility's staff.

(2) The quality assessment and assurance committee—

(i) Meets at least quarterly to identify issues with respect to which quality assessment and assurancé activities are necessary; and

(ii) Develops and implements appropriate plans of action to correct identified quality deficiencies.

(s) *Level B requirement: Disclosure of ownership.*

(1) The facility must comply with the disclosure requirements of §§ 420.206 and 455.104 of this chapter.

(2) Effective October 1, 1990, the facility must provide written notice to the State agency responsible for licensing the facility at the time of change, if a change occurs in—

(i) Persons with an ownership or control interest, as defined in §§ 420.201 and 455.101 of this chapter;

(ii) The officers, directors, agents, or managing employees;

(iii) The corporation, association, or other company responsible for the management of the facility; or

(iv) The facility's administrator or director of nursing.

(3) The notice specified in paragraph (s)(2) of this section must include the identity of each new individual or company.

(t) *Level B requirement: Independent medical evaluation and audit.* Before October 1, 1990, a SNF must cooperate in an effective program which provides for a regular program of independent medical evaluation and audit of the residents in the facility to the extent required by the programs in which the facility participates (including medical evaluation of each resident's need for SNF care).

PART 488—SURVEY AND CERTIFICATION PROCEDURES

F. Part 488 is amended as follows:

1. The authority citation for Part 488 continues to read as follows:

Authority: Secs. 1102, 1814, 1861, 1865, 1866, 1871, 1880, 1881 and 1883 of the Social Security Act (42 U.S.C. 1302, 1395f, 1395x, 1395bb, 1395cc, 1395hh, 1395qq, 1395rr and 1395tt).

§ 488.1 [Amended]

1a. In § 488.1, in the definition of "certification," the phrase ", requirements (for SNFs and ICFs)," is added after the phrase "conditions of participation."

§ 488.3 [Amended]

1b. In § 488.3, the phrase "and requirements for SNFs and ICFs" is added to the heading of the section after the phrase, "Conditions for coverage".

1c. In § 488.3(a)(2), the phrase "or level A requirements (for SNFs)" is added after the phrase "applicable conditions."

§ 488.18 [Amended]

2. In § 488.18, paragraph (a), the phrase "or requirements (for SNFs and ICFs)" is added after the phrase "conditions of participation,".

3. In § 488.18, paragraph (a), the phrase "or level A requirements (for SNFs and ICFs)" is added after the phrase "conditions of participation".

3a. In § 488.18, paragraphs (a) and (b), the phrase "or level A requirements (for SNFs and ICFs)" is added after the phrase "compliance with the conditions" wherever it appears.

§ 488.20 [Amended]

4. In § 488.20, paragraphs (a) and (c), the phrase "or requirements (for SNFs and ICFs)" is added after the phrase "conditions of participation."

§ 488.24 [Amended]

5. In § 488.24, paragraphs (a) and (b), the phrase "or level A requirements (for SNFs and ICFs)" is added after the phrase "conditions of participation."

§ 488.26 [Amended]

6. In § 488.26 paragraph (a), the phrase "or level A requirements (for SNFs and ICFs)" is added after the phrase "conditions of participation."

6a. In § 488.26, paragraph (a), the phrase "and requirements (for SNFs and ICFs)" is added after the phrase "various standards within each condition."

§ 488.28 [Amended]

7. In § 488.28, paragraph (a), the phrase "or Level B requirements (for SNFs and ICFs)" is added after the phrase "standards in the conditions of participation".

8. In § 488.28, paragraph (b), the phrase "or Level B requirements (for SNFs and ICFs)" is added after the term "standards."

§ 488.50 [Amended]

9. In § 488.50, paragraph (a), introductory text, the phrase "Level B requirements" is substituted for the term "standards."

10. In § 488.50, paragraph (b), the phrase "Level B requirements(s)" is substituted for the term "standard(s)."

11. In § 488.50, paragraphs (d) introductory text and (e), the phrase "Level B requirements" is substituted for the term "standards" and the phrase "Level B requirement" is substituted for the term "standard."

PART 489—PROVIDER AGREEMENTS UNDER MEDICARE

G. Part 489 is amended as follows:

1. The authority citation for Part 489 continues to read as follows:

Authority: Secs. 1102, 1861, 1862(h), 1864, 1866, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395y(h), 1395aa, 1395cc, and 1395hh) and sec. 602(k) of Pub. L. 98–21 (42 U.S.C. 1395ww note).

§ 489.3 [Amended]

2. In Subpart A, § 489.3, in the definition of "immediate jeopardy," the phrase "level A requirements" is substituted for the term "conditions of participation."

§ 489.10 [Amended]

3. In § 489.10, paragraphs (a)(1) and (b), the phrase "or requirements (for SNFs)" is added after the phrase "conditions of participation."

§ 489.13 [Amended]

3a. In § 489.13, paragraph (a), the phrase "conditions of participation or level A requirements (for SNFs)" is substituted for the term "standards."

§ 489.15 [Amended]

4. In § 489.15, paragraphs (b) and (d)(2)(ii), the phrase "level A requirements" is substituted for the term "conditions of participation."

§ 489.53 [Amended]

5. In Subpart E, § 489.53, paragraph (a)(3), the phrase "or requirements (for SNFs and ICFs)" is added after the phrase "conditions of participation."

6. In § 489.53, paragraph (b)(1), the phrase "level A requirement" is substituted for the phrase "condition of participation."

§ 489.60 [Amended]

7. In Subpart F, § 489.60, paragraph (a) introductory text, the phrase "level A requirement" is substituted for the term "condition of participation."

§ 489.62 [Amended]

8. In § 489.62, paragraph (a), the term "requirements" is substituted for the phrase "conditions of participation."

9. In § 489.62, paragraph (c), the phrase "level A and level B requirements" is substituted for the phrase "the conditions of participation or standards."

§ 489.64 [Amended]

9a. In § 489.64, paragraphs (a)(1) and (b)(1), the phrase "level A requirements" is substituted for the phrase "the conditions of participation."

PART 498—APPEALS PROCEDURES FOR DETERMINATIONS THAT AFFECT PARTICIPATION IN THE MEDICARE PROGRAM

H. Part 498 is amended as follows:

1. The authority citation for Part 498 continues to read as follows:

Authority: Secs. 205(a), 1102, 1869(c) 1871, and 1872 of the Social Security Act (42 U.S.C. 405(a), 1302, 1395ff(c), 1395hh and 1395ii, unless otherwise noted).

§ 498.3 [Amended]

2. In Subpart A, § 498.3, paragraphs (d)(1) and (2), the phrase "or level A requirements (for SNFs and ICFs)" is added after the phrase "conditions of participation."

2a. In § 498.3, paragraph (d)(10), the phrase "or a level A requirement (for SNFs and ICFs)" is added after the phrase "a condition of participation."

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare Hospital Insurance, No. 13.774, Medical Assistance Program.)

Dated: December 7, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: January 18, 1989.

Otis R. Bowen,

Secretary.

[FR Doc. 89–1697 Filed 1–27–89; 12:10 pm]

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Thursday
February 2, 1989

Part III

Department of Energy

10 CFR Part 710

Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Significant Quantities of Special Nuclear Material; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 710

Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Significant Quantities of Special Nuclear Material

AGENCY: Office of Safeguards and Security, Department of Energy.

ACTION: Proposed rule.

SUMMARY: The Department of Energy (DOE) is issuing a proposed rule for the Personnel Security Assurance Program (PSAP), which is a special access authorization program for positions that afford direct access to Category I quantities of special nuclear material (SNM) or have direct responsibility for transportation or protection of Category I quantities of SNM; that are identified as nuclear material production reactor operators; or with the potential for causing unacceptable damage to national security. The proposed rule sets forth the criteria for determining eligibility for this access authorization program, which includes supervisory review, medical assessment, management evaluation, and security review and clearance determination. This access authorization, called a PSAP clearance, is a security review and determination and is conducted by DOE personnel security specialists.

DATE: Comments must be submitted on or before March 6, 1989.

ADDRESSES: Send comments to Director, Office of Safeguards and Security, DP-34, Department of Energy, Germantown, Room E-369, Washington, DC 20545, (301) 353-5106.

FOR FURTHER INFORMATION CONTACT: Martin Hershkowitz (Program Manager, Personnel Security Assurance Program), (301) 353-5671, or Stephen P. Smith (Principal Attorney), (202) 586-6618.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

The protection of certain of the Department's security interests, with the potential, if misused, of causing unacceptable damage to the national security, requires the implementation of a program designed to assure that individuals occupying positions affording access to certain material, facilities, and programs meet the highest standards of reliability. This objective is accomplished under the PSAP through a system of continuous evaluation which identifies those individuals whose judgment may be impaired by physical and/or emotional disorders, the use of controlled substances, or the use of alcohol habitually to excess. The PSAP involves four components: supervisory review, medical assessment, management evaluation, and security determination. In order for an individual to be placed or continued in a PSAP position, he or she must successfully complete all reviews required and be granted (or have continued) a PSAP access authorization. A determination to grant initially and to continue annually the PSAP access authorization is based upon a DOE security assessment of any information of security concern developed in the course of the supervisory review, medical assessment, management evaluation, and security review. In the event of a question regarding eligibility for a PSAP access authorization, the procedures contained in the current 10 CFR Part 710 shall be used (the current 10 CFR Part 710 will become 10 CFR Part 710, Subpart A after this proposed regulation is final). PSAP positions include those positions: (a) That afford direct access to Category I quantities of SNM or have direct responsibility for transportation or protection of Category I quantities of SNM; (b) that are identified as nuclear material production reactor operators; and (c) with the potential for causing unacceptable damage to national security.

II. Amendment to 10 CFR Part 710

The present content of this part is entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Significant Quantities of Special Nuclear Material." This amendment proposes to take the entire content of 10 CFR Part 710 and restate it as 10 CFR Part 710, Subpart A, and then add a Subpart B entitled "Criteria and Procedures for Establishment of Personnel Security Assurance Program (PSAP) and Determination of Individual's Eligibility for Access to a PSAP Position," as set forth below.

III. Opportunity for Public Comment

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments, with respect to the proposal set forth in this notice. Comments should be submitted to the address indicated in the Addresses section of this notice and should be identified on the envelope with the designation, "Rulemaking Comment". Six copies should be submitted. All written comments received on or before the date specified in the beginning of this notice and all other relevant information will be considered by DOE before taking final action on this rule. All written comments received on the proposed rule will be available for public inspection in the DOE Freedom of Information Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday. Any person submitting information which that person believes to be confidential and which may be exempt by law from public disclosure should submit 1 complete copy, as well as 6 copies from which the information claimed to be confidential has been deleted. DOE reserves the right to determine the confidential status of the information or data and treat it according to its determination. This procedure is set forth in 10 CFR 1004.11.

IV. Procedural Requirements

A. Executive Order 12291

Under Executive Order 12291 agencies are required to determine whether proposed rules are major rules as defined in the Order. DOE has reviewed this proposed rule and has determined that it is not a major rule because: Implementing the additional security requirements proposed in this rule will not have an annual effect on the economy of $100 million or more; will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises.

B. Regulatory Flexibility Act

In accordance with section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., DOE finds that sections 603 and 604 of said Act do not apply to this rule because, if promulgated, the rule will affect only DOE contractors operating Government-owned facilities, their subcontractors, and selected DOE Federal operations, and will not affect small entities.

C. National Environmental Policy Act

There is no impact on the human environment under this proposed rule. It is a personnel security clearance effort and deals only with a determination to grant, deny, or suspend a PSAP access authorization. Accordingly, preparation of neither an environmental assessment nor an environmental impact statement is required.

D. Paperwork Reduction Act

The proposed regulation has been reviewed in accordance with the Paperwork Reduction Act and has been determined to contain no collection of information requirements.

E. Federalism Effects

DOE has reviewed this proposed rule under the provisions of Executive Order 12612. The principal impacts of this regulation will be on DOE employees and contractors. DOE finds that this regulation raises no Federalism implications and therefore no Federalism assessment is required.

List of Subjects in 10 CFR Part 710

Access authorization, suspension, revocation, Administrative practice and procedure, Classified information, Government contracts, Government employees, nuclear materials, access, Security measures, Personnel Security Assurance Program, PSAP position, Category I Quantities of Special Nuclear Material, PSAP access authorization.

Issued in Washington, DC, on January 19, 1989.

Troy E. Wade II,

Acting Assistant Secretary for Defense Programs.

In consideration of the foregoing, it is proposed to amend Part 710 of Title 10 of the Code of Federal Regulations, as set forth below.

PART 710—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO CLASSIFIED MATTER OR SIGNIFICANT QUANTITIES OF SPECIAL NUCLEAR MATERIAL

1. The authority citation for Part 710 continues to read as follows:

Authority: Sec. 145, 68 Stat. 942, as amended (42 U.S.C. 2165); sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201). E.O. 10450, 3 CFR 1949-1953 Comp., p. 936, as amended; E.O. 10865, 3 CFR 1959-1963 Comp., p. 398, as amended. 3 CFR. Chap. IV; sec. 104(c), 38 Stat. 1237 (42 U.S.C. 5814); sec. 105(a), 88 Stat. 1238 (42 U.S.C. 5815).

Subpart A—General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Significant Quantities of Special Nuclear Material.

§§ 710.1 through 710.399 and Appendix A [Designated as Subpart A]

2. Part 710 is amended by designating §§ 710.1 through 710.39 and Appendix A in their entirety as Subpart A, and by adding a subpart heading to read as set forth above.

3. Part 710 is amended by adding Subpart B to read as set forth below:

General Provisions

Sec.
710.50 Purpose.
710.51 Scope.
710.52 References.
710.53 Policy.
710.54 Definitions.
710.55 Designations of PSAP positions.
710.56 Program process.
710.57 Supervisory review.
710.58 Medical assessment.
710.59 Management evaluation.
710.60 DOE security review and clearance determinations.

Subpart B—Criteria and Procedures for Establishment of Personnel Security Assurance Program (PSAP) and Determinations of Individual's Eligibility for Access to a PSAP Position

General Provisions

§ 710.50 Purpose.

(a) This part establishes the policies and procedures for implementing a Department of Energy (DOE) personnel security assurance program (PSAP) for individuals in positions which afford direct access to or have direct responsibility for transportation or protection of Category I quantities of special nuclear materials (SNM), which are identified as nuclear material production reactor operators, or with the potential for causing unacceptable damage to national security.

(b) The DOE personnel security assurance program is designed to establish the procedures for DOE and DOE contractors to utilize in the selection and continuing evaluation of individuals for assignment to the identified PSAP positions. Individuals selected for assignment to PSAP positions must be granted a PSAP access authorization in accordance with the procedures and requirements set forth in Subparts A and B of this part.

§ 710.51 Scope.

The criteria and procedures establishing a personal security assurance program shall apply to:

(a) Those employees of, and applicants for employment with, DOE who either occupy or make application for PSAP positions.

(b) Those employees of, and applicants for employment with, contractors and agents of the DOE who either occupy or make application for PSAP positions.

§ 710.52 References.

(a) Atomic Energy Act of 1954, as amended, Section 11, "Definitions"; Section 141, "Policy"; Section 143, "Department of Defense Participation"; Section 145, "Restriction"; Section 161.b, "General Provisions"; which provide statutory authority for establishing and implementing a DOE security program for controlling access to Restricted Data and special nuclear material. Copies of selected provisions appear as Appendix A to Subpart A of this part.

(b) Executive Orders 10450, April 29, 1953, "Security Requirements for Government Employment," 10865, February 20, 1965, "Safeguarding Classified Information Within Industry," and 12564, September 15, 1986, "Drug-Free Federal Workplace," all as amended.

(c) 53 FR 11970, "Department of Health and Human Services; Mandatory Guidelines for Federal Workplace Drug Testing Programs" of 4-11-88, which contains requirements for conducting drug testing.

(d) Implementing directives (DOE Orders) which provide Departmental guidance on the PSAP and related areas are available from the U.S. Department of Energy, Washington, DC 20585.

§ 710.53 Policy.

The protection of certain of the Department's security interests, with the potential, if misused, of causing unacceptable damage to the national security, requires the implementation of a program designed to assure that individuals occupying positions affording access to certain material, facilities, and programs meet the highest standards of reliability. This objective is accomplished under the PSAP through a system of continuous evaluation which identifies those individuals whose judgment may be impaired by physical and/or emotional disorders, the use of controlled substances, or the use of alcohol habitually to excess. This process will reduce the risk resulting from the potential threat represented by such employees to an acceptable level. The determination to grant initially and to continue annually the access authorization to a PSAP position is based upon a DOE security assessment of any information of security concern developed in the course of an initial and annual security review process.

§ 710.54 Definitions.

As used in this part:

"Direct Access" means access to Category I quantities of SNM which would permit an individual to remove or misuse that material in spite of any controls that have been established to prevent such unauthorized actions.

"Illegal Drugs," means a controlled substance included in Schedule I or II, as defined by Section 802(6) of Title 21 of the United States Code, the possession of which is unlawful under Chapter 13 of that Title. The term

"illegal drugs" does not apply to the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.

"Nuclear Material Production Reactor Operator" means an individual certified by DOE contractor management to operate (manipulate the controls of) a DOE-owned nuclear material production reactor.

"PSAP Approving Official" means a senior DOE official with direct personnel security responsibilities appointed by an operations office manager to review all relevant information, including DOE F 5631.35, "PSAP Management, Medical, and Security Report" as part of the DOE security review process, and who is responsible for granting or continuing the PSAP access authorization, or determining that an individual be processed under the provisions of Subpart A of this part.

"PSAP Position" means a position that affords direct access to or has direct responsibility for transportation or protection of Category I quantities of SNM, nuclear material production reactor operators, or with the potential to cause unacceptable damage to national security.

"Security Concern" means the presence of information regarding an individual applying for or holding a PSAP position that may be considered derogatory under the criteria in Subpart A of this part.

"Unacceptable Damage" means an incident that could result in a nuclear explosive detonation, a major environmental release from a nuclear material production reactor, or an interruption of nuclear weapons production with a significant impact on national security.

Procedures

§ 710.55 Designation of PSAP positions.

PSAP positions shall be designated by the cognizant Operations Office Manager in accordance with the following criteria:

(a) Positions that afford direct access to Category I quantities of SNM or have direct responsibility for transportation or protection of Category I quantities of SNM.

(b) Positions that are identified as nuclear material production reactor operators.

(c) Positions with the potential for causing unacceptable damage to national security which are not included in paragraph (a) or (b) of this section, and are approved by the Director, Office of Safeguards and Security, DOE.

§ 710.56 Program process.

(a) Individuals selected for assignment to PSAP positions must be granted a PSAP access authorization in accordance with the procedures and requirements set forth in this part.

(b) The PSAP involves four (4) components: supervisory review, medical assessment, management evaluation, and security determination. A DOE determination to grant initially and to continue annually an individual's PSAP access authorization is based upon a DOE security assessment of any information of security concern developed in the course of the supervisory review, medical assessment, management evaluation, and security review.

(c) DOE shall make its decision as to a PSAP access authorization in accordance with the criteria in § 710.11 of this part. The intent of the PSAP is to establish a more comprehensive security evaluation of individuals applying for or occupying PSAP positions, on a more frequent basis, to determine whether they meet, or continue to meet, the criteria under Subpart A, § 710.11 of this part.

§ 710.57 Supervisory review.

(a) The supervisory review shall be performed on all applicants for PSAP positions, transferees to PSAP positions, individuals occupying PSAP positions but not yet holding a PSAP access authorization, and PSAP-cleared employees.

(b) The initial SF–86, OMB Control No. 3206.007, "Questionnaire for Sensitive Positions" of an applicant for a PSAP position and an annual update of the "Questionnaire for Sensitive Positions," including a completed Part II, of each incumbent in a PSAP position shall be completed and forwarded to the appropriate PSAP Approving Official.

(c) Before being considered for a PSAP position, all applicants must undergo a thorough preemployment check covering the past 10 years, which includes validation of the applicant's educational history; verification of the applicant's employment record; a credit check; a local agency criminal records check for the locations of interest, as permitted by state or local law; and contact with all references.

(d) Each applicant being considered for a PSAP position and each individual occupying a PSAP position but not yet holding a PSAP access authorization shall execute the appropriate PSAP releases, acknowledgments, and waivers. The request for a PSAP access authorization shall not be further processed until these documents are completed. Failure of an individual occupying a PSAP position but not yet holding a PSAP access authorization to complete these documents shall result in their reassignment from PSAP duties and an effort be made to reassign the individual to a position that does not require a PSAP access authorization.

(e) Each applicant for a PSAP position and each individual occupying a PSAP position but not yet holding a PSAP access authorization shall undergo testing for the use of illegal drugs in accordance with the provisions of the DOE drug testing program. A determination of the use of illegal drugs based on a drug test shall result in the termination of consideration for the PSAP access authorization. An employee who has been determined to be a user of illegal drugs based on drug test shall be immediately reassigned from the PSAP duties and processed under the provisions of Subpart A of this part.

(f) The supervisor (or selecting official) shall report any security concerns resulting from his or her review to the appropriate management official.

(g) *Annual Review.* Each PSAP-cleared employee shall have an annual PSAP review conducted by the supervisor during which the supervisor shall evaluate relevant information of security interest. The supervisor shall report any security concerns resulting from his or her review to the appropriate management official following the annual review of each PSAP-cleared employee.

(h) *Recognition of Security Concerns and Unusual Conduct.* In order to facilitate early recognition of an individual who represents a possible security concern, individuals who in the judgment of the responsible supervisor exhibit unusual conduct shall be referred to the site Occupational Medical Director who may arrange for the PSAP-cleared employee to be examined by the appropriate medical staff. Information indicating a possible security concern shall be reported immediately to the appropriate management official and PSAP Approving Official.

(i) *Temporary Reassignment to non-PSAP Duties.* Where an individual has demonstrated a possible security concern or a condition which may temporarily affect his or her reliability, the individual with the recommendation and approval of the site Occupational Medical Director or the PSAP Approving Official may be temporarily reassigned to non-PSAP duties. In the event that a PSAP-cleared employee is temporarily reassigned to non-PSAP duties, the supervisor, jointly with the site Occupational Medical Director and/or the PSAP Approving Official, as appropriate, may determine the temporary restrictions to be placed on the employee. The PSAP Approving Official shall be notified immediately upon the decision to temporarily reassign the employee to non-PSAP duties and the reason for such action, and upon the decision to reinstate such employee. If the reason for the temporary reassignment was based upon a security concern, the PSAP Approving Official must approve the request for reinstatement.

§ 710.58 Medical assessment.

(a) *The medical examination.* The purpose of the PSAP medical examination is to ensure that an application for, or incumbent in, a PSAP position does not represent a security concern or have a condition which may prevent the individual from performing PSAP duties in a reliable and safe manner. The examination shall include an evaluation to determine the presence of any physical or mental condition that causes or may cause a significant defect in the judgment or reliability of the individual, including that which may result from the use of illegal drugs or the use of alcohol habitually to excess.

(b) *When performed.* The medical assessment is performed initially upon applicants for PSAP positions and employees occupying PSAP positions who have not yet received a PSAP access authorization. The medical assessment shall be performed annually, or more often as may be required by the site Occupational Medical Director, for PSAP-cleared employees.

(c) *Contents of medical assessment.* The medical assessment shall include: a comprehensive medical examination; an examination for use of alcohol habitually to excess; a psychological assessment and/or psychiatric evaluation as provided for in any applicable DOE medical standards for personnel reliability programs, and as permitted by Federal regulations; and an examination for the cause of any reported unusual conduct.

(d) *Examination for use of alcohol habitually to excess.* The use of alcohol habitually to excess represents a potential threat to national security and is inconsistent with access to a PSAP position. Accordingly, the medical assessment shall include:

(1) *Diagnosis.* Individuals in, or applying for, a PSAP position shall be examined for the use of alcohol habitually to excess. Such individuals diagnosed currently to use alcohol habitually to excess shall be temporarily reassigned to non-PSAP duties and the PSAP Approving Official shall be notified immediately.

(2) *Rehabilitation.* Individuals reinstated to PSAP duties following treatment leading to rehabilitation from the use of alcohol habitually to excess shall be required to undergo evaluation as prescribed by the site Occupational Medical Director in order to ensure continued rehabilitation. Such evaluation shall be consistent with appropriate Departmental substance abuse programs.

(e) *Examination for the cause of reported unusual conduct.* Upon referral of an PSAP-cleared employee by a supervisor for unusual conduct, the site Occupational Medical Director may arrange for the employee to be examined by appropriate specialists.

(f) *Report of Occupational Medical Director.* Upon completion of the medical assessment, the site Occupational Medical Director shall report any security concerns resulting from the medical assessment to the appropriate management official.

(g) *Temporary restriction on a PSAP position.* In the event that a condition or circumstance develops that may affect the judgment or reliability of a PSAP-cleared employee, the site Occupational Medical Director may recommend restrictions. The site Occupational Medical Director shall report immediately these restrictions in writing to the appropriate management official who shall notify immediately the appropriate PSAP Approving Official. Removal of the restrictions requires notification in writing to both the management official and the PSAP Approving Official by the site Occupational Medical Director.

(h) *Sick leave from a PSAP position.* PSAP-cleared employees who have been on sick leave for five (5) or more consecutive work days are required to report in person to the site Occupational Medical Driector before being allowed to return to normal duties. The site Occupational Medical Director shall provide a recommendation to the appropriate management official regarding the employee's return to work. A PSAP-cleared employee may in certain circumstances also be required to report to the site Occupational Medical Director for written approval to return to normal duties after any period of sick leave.

§ 710.59 Management evaluation.

(a) *Evaluation components.* A management evaluation based upon a careful review of the results of the supervisory review, medical assessment, and drug testing of an individual in, or applying for, a PSAP position is required before that individual can be considered for an initial or the continuance of a PSAP access authorization. The appropriate manager of an organization having PSAP positions (management official) shall evaluate the information in these reports and forward his or her recommendation, including any security concern, to the PSAP Approving Official.

(b) *Drug testing component.*—(1) *Program requirements.* DOE's drug testing program for the use of illegal drugs shall be established in accordance with the Department of Health and Human Services' "Mandatory Guidelines for Federal Workplace Drug Testing Programs," that will test all individuals in, or applying for, a PSAP position. The program shall include unannounced drug testing and testing for cause or reasonable suspicion. A PSAP-cleared individual who has been determined to be a user of illegal drugs based on a drug test shall be reassigned immediately to non-PSAP duties, and the PSAP Approving Official shall be notified immediately.

(2) *Rehabilitation.* Individuals reinstated to PSAP duties following treatment leading to rehabilitation from use of illegal drugs shall be required to undergo evaluation and testing as prescribed by the site Occupational Medical Director or other designated official, as appropriate, in order to ensure continued rehabilitation.

(3) *Corporate Policy.* Nothing in this part is intended to interfere with or prohibit a contractor of the Department from conducting medical and other evaluations, including testing for illegal drugs, as a matter of corporate policy.

§ 710.60 DOE security review and clearance determination.

(a) *When performed.* The final components of the PSAP process is a security review and clearance determination performed by the PSAP Approving Official upon receipt of the management evaluation and recommendation.

(b) *Review for initial PSAP access authorization.* An initial PSAP access authorization requires a special 15-year background investigation completed within the last five (5) years. The adjudication and determination for a PSAP access authorization shall be based upon a review of security information, including the results of the background investigation and the information provided by management and medical sources.

(c) *The criteria.* The PSAP access authorization and adjudications shall be

conducted in accordance with the criteria and procedures contained in Subparts A and B of this part.

(d) *Annual PSAP access authorization continuance.* Once an employee has received the PSAP access authorization, he or she shall thereafter undergo an annual security evaluation by the PSAP Approving Official. The evaluation shall include a credit check and national and local criminal records check, where available, review of the individual's DOE personnel security file, and an updated SF–86, OMB Control No. 3206.007, "Questionnaire for Sensitive Positions," including completed Part II. The PSAP-cleared employees shall undergo a limited background investigation at least every five (5) years. The determination to continue the PSAP access authorization shall be based upon a review and adjudication of the information resulting from the annual security evaluation, and the information provided by management and medical sources, in accordance with the criteria and procedures contained in Subparts A and B of this part.

(e) *Processing Under 10 CFR Part 710, Subpart A.* Any matters of security concern raised to the attention of the PSAP Approving Official, such as confirmed use of illegal drugs or use of alcohol habitually to excess, shall be evaluated in accordance with the criteria under Subpart A, § 710.11 of this part.

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Part IV

Department of Transportation

Maritime Administration

46 CFR Part 221

Documented Vessels and Other Maritime Interests; Regulated Transactions; Interim Final Rule

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 221

[Docket No. R-125]

RIN 2133-AA79

Regulated Transactions Involving Documented Vessels and Other Maritime Interests

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Interim final rule.

SUMMARY: The Maritime Administration ("MARAD") is issuing this interim final rule to conform its regulations to reflect significant changes in the law that became effective on January 1, 1989. These changes impose statutory requirements or standards that are either at variance with MARAD's existing regulations or require regulatory clarification to implement legislative intent. The legislative history of the new law clearly anticipates the need for contemporaneous regulatory guidelines implementing the statute to allow uniform application of underlying policy and to provide guidance to the public on that policy as of the effective date.

DATES: This interim final rule is effective February 2, 1989. The period for public comment will expire April 3, 1989.

ADDRESS: Send an original and two copies of comments to the Secretary, Maritime Administration, Room 7300, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. To expedite review of the comments, the agency requests, but does not require, submission of an additional ten (10) copies. All comments will be made available for inspection during normal business hours at the above address. Commentors wishing MARAD to acknowledge receipt of comments should enclose a stamped, self-addressed envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Robert J. Patton, Jr., Deputy Chief Counsel, Maritime Administration, Washington, DC 20590, tel. (202) 366-5711.

SUPPLEMENTARY INFORMATION:

Background

The amendment and codification of the former Ship Mortgage Act, 1920, in new 46 U.S.C. Ch. 313, Subch. II, which is contained in section 102 of Pub. L. 100-710 (enacted November 23, 1988), introduces significant changes that are at variance with the present law and existing regulations of the Maritime Administration ("MARAD"). For example, the codification expands the categories of persons that can be mortgagees of preferred mortgages on documented vessels to include federally insured depository institutions, whether or not the entity is a "citizen of the United States" as defined in section 2 of the Shipping Act, 1916 (46 App. U.S.C. 802). The Secretary of Transportation ("the Secretary") is also given broad authority to prescribe criteria for approval of a trustee, without regard to citizenship, for a mortgage held by a noncitizen that cannot qualify as a preferred mortgagee. The codification also removes restrictions on who may hold a preferred mortgage on documented vessels operated only as a fishing vessel, a fish processing vessel, a fish tender vessel or a vessel operated only for pleasure.

Pub. L. 100-710 also contains an amendment to section 9 of the Shipping Act, 1916 (46 App. U.S.C. 808), to reflect established administrative and judicial interpretation of the present law that requires, among other things and with new exceptions, the Secretary's approval of transfer to noncitizens of "control" of citizen-owned documented vessels. The legislative history of this amendment further directs that "the Secretary prescribe guidelines so there will be a uniform application of policy (as to what constitutes 'control') and to advise the public as to the types of transfer for which the Secretary has concern."

The provisions of Pub. L. 100-710 that require changes in MARAD's regulations became effective on January 1, 1989. While there is no statutory mandate that these regulations be in place when the law becomes effective, MARAD has concluded that it is imperative in the interest of all concerned to publish revised regulations as an interim final rule, effective on publication, to permit implementation of the new law without hiatus. This interim final rule is intended to minimize transitional uncertainty, while allowing subsequent fine-tuning of these regulations based on the opportunity for considered evaluation of comments from interested parties before adopting a final rule.

Apart from the substantive provisions implementing Pub. L. 100-710, MARAD has taken this opportunity to revise 46 CFR Part 221 in the interest of a more coherent and orderly statement of its regulatory responsibilities with respect to transactions involving citizen-owned documented vessels, including an explanation of certain policy guidelines in response to specific directions of the Congress contained in the legislative history of Pub. L. 100-710.

Whenever reference is made in these regulations to forms prescribed by MARAD for applications or other filing requirements, the format of such forms in effect prior to the effective date of these regulations may be used pending revision and issuance of new forms approved by The Office of Management and Budget. To the extent necessary to reflect statutory requirements, any form submitted may be modified or supplemented to facilitate processing, but until publication of new forms has been approved these regulations do not require more extensive paperwork or reporting requirements than exist under the present MARAD regulations. Indeed, with the exemptions provided herein those requirements should be less burdensome in the aggregate. Any additional burden imposed at this time in particular circumstances is a function of statutory, not regulatory, requirements.

Discussion of Rulemaking Text

Subpart A Introduction

Section 221.1 Purpose

Section 221.1, Purpose, is self-explanatory.

Section 221.3 Definitions

Section 221.3, Definitions, is intended to provide convenient reference to the meaning of significant terminology used in Part 221, based principally on statutory derivation.

Paragraph (a), "*Charter,*" identifies arrangements other than conventional charter parties that have been found through past applications to involve sufficient interest in or control of a documented vessel under 46 App. U.S.C. 808 to warrant inclusion in this regulation. These include contracts of affreightment, space charters and leases. Although § 221.17(c) of this part provides for general approval of most charters for periods of six months or less, views are solicited on whether certain contracts of affreightment, space charters or leases in excess of six months should be accorded similar treatment. For example, some space charters may allow the use of less than a majority of a vessel's total capacity. Should such space charters nevertheless require approval under 46 App. U.S.C. 808?

Some contracts of affreightment provide for transportation of cargo on an as-needed basis, without a named vessel dedicated to the contract. Should such contracts of affreightment nevertheless require approval under 46 App. U.S.C. 808 for the owner's fleet, or only those contracts where identified vessels have been dedicated under the contract?

Paragraph (b), "*Citizen of the United States,*" is derived from 46 App. U.S.C. 802, 803, and includes a "controlling interest" test not found in the definition of "citizen of the United States" for purposes of U.S. Coast Guard documentation (46 U.S.C. 2101(3a), 1201).

Paragraph (c), "*Documented vessel,*" includes a vessel for which a registry has been issued pursuant to 46 U.S.C. 12105, reflecting long-standing interpretation of the documentation laws by the Coast Guard. Also consistent with long-standing interpretation of those laws by the Coast Guard, a documented vessel retains that status, with attendant rights and obligations, until officially removed from the documentation rolls. Both interpretations are incorporated into this definition for purposes of these regulations.

Paragraph (d), "*Federally insured depository institution,*" implements 46 U.S.C. 31322(a)(1)(d)(iii), introducing a new class of authorized mortgagees that may or may not be citizens of the United States. Many foreign banking institutions have noncitizen branches or agencies in the United States. So long as they are corporations or associations organized and doing business under the laws of the United States or of a State, are authorized by such law to accept deposits from the public, and are insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation or the National Credit Union Administration, those entities are now eligible to be a mortgagee of preferred mortgages on documented vessel unless disapproved by MARAD.

Paragraph (e), "*Fishing vessel,*" is derived from 46 U.S.C. 2101(11a).

Paragraph (f), "*Fish processing vessel,*" is derived from 46 U.S.C. 2101(11b).

Paragraph (g), "*Fish tender vessel,*" is derived from 46 U.S.C. 2101(11c).

Paragraph (h), "*Mortgagee,*" is derived from 46 U.S.C. 31322(a)(1)(d).

Paragraph (i), "*Noncitizen,*" is the excluded residuum of persons not satisfying the definition of "citizen of the United States" contained in paragraph (b).

Paragraph (j), "*Person,*" is derived from section 1 of the Shipping Act, 1916 (46 App. U.S.C. 801), modified expressly to include individuals and joint ventures and to reflect the fact that "United States," as defined in paragraph (o), already includes the separate geopolitical entities referred to in that statutory definition.

Paragraph (k), "*Person who qualifies as a citizen of the United States under 46 App. U.S.C. 802,*" reflects long-standing MARAD interpretations of who is a citizen within the meaning of 46 App. U.S.C. 802. In order to be a citizen, a person must not be subject to control by any means whatsoever by a noncitizen. This definition incorporates the legal principles articulated in *Mecham Corp.* v. *United States,* 207 F.2d 535, 543 (4th Cir., 1953), that the determination requires examination beyond the exterior structure of an entity to discover who has the actual beneficial interest or control.

Paragraph (l), "*Pleasure vessel,*" is derived from 46 U.S.C. 2101(25), modified to reflect the exclusive use requirement for exemption of such vessels from the authorized mortgagee requirements of 46 U.S.C. 31322(a)(1)(D) and from the foreign transfer restrictions of section 9(c)(1) of the Shipping Act, 1916, as contemplated by Pub. L. 100-710. Although Pub. L. 100-710 requires exemption solely for "a vessel operated only for pleasure," it is believed that the broader definition in this regulation is warranted in view of the fact that the statutory exemption is predicated upon the use to which the vessel is put rather than upon ownership by the person using the vessel. The definition, however, makes clear that a bareboat-chartered pleasure vessel must be under the command of an individual who is a citizen of the United States for the entire charter period, consistent with 46 U.S.C. 12110(d).

Paragraph (m), "*State,*" is derived from 46 U.S.C. 30101(6).

Paragraph (n), "*Trustee,*" is derived from 46 U.S.C. 31328(a).

Paragraph (o), "*United States,*" is derived from 46 U.S.C. 30101(8), and has been included to ensure parallelism between use of that term in the codified provisions of the former Ship Mortgage Act, 1920, and its use for purposes of section 9 of the Shipping Act, 1916, both as amended by Pub. L. 100-710.

Paragraph (p), "*United States Government,*" is self-explanatory.

Section 221.5 Citizenship Declarations

Section 221.5, Citizenship Declarations, implements 46 U.S.C. 31306 (a) and (b), *vice* section 40 of the Shipping Act, 1916 (46 App. U.S.C. 838), repealed. The filing of Form MA-899 with the Coast Guard incident to presentation for filing or recording of any instrument transferring an interest in a documented vessel is for the purpose of demonstrating that the transaction is not in violation of section 9 of the Shipping Act, 1916 (46 App. U.S.C. 808). This requirement is carried forward from present law and regulations.

Section 221.7 Applications and Fees

Section 221.7, Applications and Fees, is self-explanatory. The fee amounts are the same as those specified in present 46 CFR 221.14 and 221.16. These fees are intended to recover the cost to the government of processing applications for the specified transactions and have not changed for many years. MARAD is reviewing the amount of the fees, and they may be adjusted upon publication of this rule in final form. Comment on this issue is specifically invited.

Subpart B, Transfers to Noncitizens or to Registry or Authority of a Foreign Country Under 46 App. U.S.C. 808

Section 221.11 Required Approvals

Paragraph (a) recites the statutory restrictions on transactions that generally require prior approval of the Maritime Administrator. The statutory exclusion for certain fishing vessels, fish processing vessels, fish tender vessels and pleasure vessels is dealt with in § 221.15(b)(1), and blanket approvals for other transactions are contained in § 221.17.

Paragraph (b) of this section contains a statement of the circumstances under which the Maritime Administrator will find that a transaction will result in a documented vessel being operated "under the authority of a foreign country." This constraint is mandated by the express statutory language of Pub. L. 100-710, but the legislative history provides no guidance as to its intended scope. The intent of the regulatory definition is to encompass any circumstances under which a documented vessel may be subjected voluntarily to requisition, forfeiture, taking or impairment of freedom of navigation in derogation of the rights and obligations of the owner, operator or master under the laws of the United States.

Section 221.13 Transfer of Control

This provision has been included in response to the House Merchant Marine and Fisheries Committee's statement of intent that—

> The Secretary prescribe guidelines so there will be a uniform application of policy [concerning what constitutes "control"] and to advise the public as to the types of transfer for which the Secretary has concern. For example, a privately held corporation in which all of the stock is owned by U.S. citizens may be able to transfer 49 percent of that stock to foreign citizens without losing control over the vessel. However, a publicly traded corporation, in which the stock is

diluted among many stockholders, may have control transferred with only a 15 percent stock sale to foreign citizens. The guidelines prescribed by the Secretary should allow many normal business transactions to occur, while placing restrictions on those cases of real concern. The touchstone of any analysis in this area is who, in fact, exercises control and not the form of how a transaction is structured * * *.

H.R. Rept. No. 100-918, 100th Cong., 2d Sess. 25 (1988).

It is MARAD's intention that this section of the final regulations will comply fully with that directive, which clearly contemplates concepts of "control" that may go well beyond the majority equity interest/voting power/fiduciary obligations that have been the usual indicia. Paragraph (a), *Criteria*, addresses presumptions, both conclusive and rebuttable, in administration of this regulation. Paragraph (a)(1) reiterates indicia that have been the principal determinates of "control" for purposes of 46 App. U.S.C. 808 analysis prior to enactment of Pub. L. 100-710. Paragraph (a)(2) suggests new presumptive criteria. For example, under paragraph (a)(2)(i), covenants in loan agreements frequently provide restrictions on the borrower's financial transactions, sale of corporate assets, new business undertakings or abandonment of existing activities, either by prior approval or veto. To the extent such covenants are applicable to or may affect documented vessels owned by the borrower, they could be indicia of control of the vessels. Other contractual undertakings may give noncitizens an immediate or contingent right to exercise direct authority over operations of a documented vessel, such as powers contained in a mortgage to an approved noncitizen mortgagee authorizing, in the event of default, operation of the vessel by or on behalf of the noncitizen mortgagee, seizure of physical possession and/or sale of the vessel by the mortgagee under a power of attorney. Implicit in the House Committee's mandate is also the need to consider criteria of "control" that are applied by other Federal agencies, to the extent they may be relevant to a more realistic assessment of "control" by MARAD for purposes of 46 App. U.S.C. 808, and this is provided for in paragraph (a)(1)(ii). The legislative intent of Pub. L. 100-710 indicates that such direct control provisions, if they fall within the noncitizen "control" restrictions of 46 App. U.S.C. 808, would require explicit MARAD approval even though the noncitizen might hold a preferred mortgage on that vessel.

Paragraph (a)(3), attributing transfer to or acquisition of control to a noncitizen if a parent or person that directly or indirectly controls the transferee or acquiring person is a noncitizen, is consistent with present MARAD policy.

Paragraph (b), *Voting Interest*, addresses, *inter alia*, the subject of convertible non-voting instruments, which has also been included in response to the House Committee's mandate that MARAD explicate policy guidelines concerning its approach to "control" determinations for purposes of 46 App. U.S.C. 808, as amended by Pub. L. 100-710.

Notwithstanding the foregoing, and mindful of the House Committee's injunction that the guidelines should not unnecessarily intrude on "normal business transactions" that are not "of real concern," the Maritime Administration does not intend to depart significantly at this time from the jurisdictional precedents under 46 App. U.S.C. 808 that are well-known to the maritime and financial communities, absent extenuating circumstances, until such time as the there has been full opportunity for interested persons to express their views on precisely what would accommodate the Committee's invitation for a more expansive view of "control" in "cases of real concern" without, perforce, more intrusive interference with legitimate business transactions.

Section 221.15 Unrestricted Transfers

Paragraph (a) reflects the statutory exclusion from MARAD approval of transactions under 46 App. U.S.C. 808 if the owner of a documented vessel is not a citizen of the United States within the meaning of 46 App. U.S.C. 802.

Paragraph (b) implements the conditional statutory exemption from prior approval by MARAD for transfer to noncitizens of vessels that have been operated only as a fishing vessel, fish processing vessel, fish tender vessel or vessels that have been operated only for pleasure. Statutory use of the restrictive language, "have been operated only," bespeaks an intent that there have been a continuum of exclusive use of vessel for one or more of the designated purpose for the exemption to be applicable. Accordingly, this paragraph reflects this stringent test, but makes provision for the fact that vessels can be converted or adapted from prior non-qualifying use to a qualifying use and allows exclusion of such vessels so long as they have been exclusively operated with *bona fides* for any of the qualifying uses for a period of not less than twelve (12) consecutive months prior to the date of transfer. Nevertheless, in either event, exclusive use is a requisite for the exemption. Many documented vessels that operate in the geographic ambit of the coastwise trade hold dual or multiple licenses or endorsements. For example, fish tender vessels holding a fisheries license or endorsed registry may also hold a coastwise license or endorsed registry for transport of commercial or proprietary cargo between points in the United States as an adjunct to primary usage of the vessels. Since the clear statutory exclusion applies solely to vessels that *have been operated only* as a fish tender vessel, the exclusion would not apply to such a vessel if it has also been operated for other purposes under the coastwise license or endorsed registry.

Accordingly, paragraph (c) conditions availability of the exemptions of this section on filing of Form MA-899 with the Coast Guard accompanying surrender for the certificate of documentation or registry, as required by law.

Section 221.17 General Approval

In paragraph (a), *All Transactions*, MARAD grants administrative approval for all transactions with respect to certain categories of vessels that, under the 46 App. U.S.C. 808 transfer-of-control authority, would not otherwise be exempt by statute from the approval requirements. MARAD is granting general approval relating to such transfers because, at the present time, there is deemed to be insufficient national interest to require prior MARAD approval for transactions, other than those excluded in the preamble, involving documented vessels that are: (1) Self-propelled vessels under 1,000 gross tons; (2) vessels located on inland lakes or waters from which there is no navigable exit; and (3) non-self-propelled vessels under 1,000 gross tons, other than LASH and SEABEE barges. Any noncitizen acquiring a vessel, or an interest in or control of, a vessel pursuant to this general exemption would, perforce, be precluded from using that vessel in the coastwise trade. However, a "Bowaters" corporation has, by special legislation (46 App. U.S.C. 883-1), a limited waiver, for proprietary carriage, of the Jones Act requirement that coastwise privileges are available only to a vessel owned by a person who qualifies as a citizen of the United States under 46 App. U.S.C. 802. Because "Bowaters" corporations have that dispensation for access to the Jones Act trade, MARAD is of the view that any acquisition of vessels or interests in or control of vessels by such corporations (other than by purchase, as permitted by this special legislation) should be

subject to regulatory scrutiny to ensure conformity with the limited operational purpose and intent of the statute. Accordingly, the preamble to this paragraph excepts "Bowaters" corporations from the general exemption from 46 App. U.S.C. 808 approval for transactions involving the stated categories of vessels.

In paragraph (b), *Mortgages*, blanket approval is given for mortgages to noncitizens under certain circumstances. Paragraph (b)(1) grants approval for mortgages of documented vessels to noncitizen federally insured depository institutions that have complied with the requirements of § 221.45(a) of this part, in accordance with 46 U.S.C. 31322(a)(1)(D)(iii).

Paragraph (b)(2) grants approval for mortgages to any noncitizen of vessels specified in § 221.17(a) of this part.

In paragraph (c), *Charters*, MARAD's present policy concerning charters generally is reiterated.

Paragraph (d), *Charters for Trade with the USSR*, reiterates present policy concerning charters by a citizen of the United States to a noncitizen for trade with the USSR and is carried forward with no intended change.

Section 221.19 Prohibited Transactions

Section 221.19, Prohibited Transaction, replicates the restrictions under present MARAD regulations concerning transactions with nationals of interdicted foreign political entities.

Section 221.21 Requests for Waiver of Required Documentation or Approval of Use

Paragraph (a) implements 46 U.S.C. 31329(a), which permits foreclosure sale of a documented vessel by order of a district court to a person eligible to own a documented vessel or to a mortgagee of the vessel. The statute also provides that a purchaser of the vessel, pursuant to order of a district court or from an intervening noncitizen mortgagee-purchaser, must document the vessel under the laws of the United States, unless that requirement is waived by MARAD. Although decisions concerning documentation of vessels is a Coast Guard function, MARAD has responsibility under 46 App. U.S.C. 808 for regulating the transfer of documented vessels to noncitizens or to foreign registry or authority. Since 46 U.S.C. 31329 contemplates that a vessel sold by order of a district court will continue to be operated and documented only under the laws of the United States, a requirement for express administrative permission for departure from that legislative intent is within the ambit of MARAD's statutory responsibilities.

Paragraph (b) provides that in order to be considered for a waiver, a written request must be submitted to MARAD. Such request must contain the present and former name(s) and official number of the vessel; present and former owner(s) of the vessel; vessel type; vessel gross tonnage; and the intended country of registry.

Paragraph (c) implements 46 U.S.C. 31329(b)(1) and (c). If the purchaser-mortgagee at the court-ordered sale is not eligible to document the vessel, the vessel must be held for resale only and may be operated by the mortgagee only with MARAD approval.

Subpart C, Preferred Mortgages on Doncumented Vessels: Mortgagees and Trustees

Section 221.41 Purpose

Section 221.41, Purpose, is self-explanatory.

Section 221.43 General Approval of Mortgagees

Section 221.43, General Approval of Mortgagees, reflects exercise by the Maritime Administrator of the discretion contained in new 46 U.S.C. 31322(a)(1)(D)(vi) to approve persons other than those specifically identified in the statute to be mortgagees of preferred mortgages on documented vessels.

In paragraph (a)(1), blanket approval is granted to certain federally insured depository institutions to hold preferred mortgages on documented vessels, pursuant to authority of 46 U.S.C. 31322(a)(1)(D)(iii), notwithstanding that they are not citizens of the United States. The statute authorizes such institutions to be mortgagees, unless disapproved. For purposes of these interim final regulations MARAD has determined that the appropriate criteria for regulatory approval of a noncitizen federally insured depository institution as a mortgagee should be the same as those for statutory qualification of an institutional trustee, except for (1) the requirement that the institution have trust powers and (2) the option between supervision or examination by a State, rather than a Federal, official, as established in an application evidencing compliance with the requisite criteria. Relief from the general disapproval of such institutions in paragraph (a)(2) will be granted only upon receipt of an application pursuant to paragraph (a)(1). This is new ground, and should be tilled cautiously at the outset.

Paragraph (b)(1) provides general approval for noncitizens to be mortgagees of vessels that are exempt from foreign transfer restrictions under these regulations: However, Paragraph (b)(2) limits this approval to mortgages that contain no provisions allowing noncitizens to operate the vessel without MARAD's approval, or to exercise control over the owner, charterer or management of the vessel. The term "control" is defined to mean the ability, present or prospective, through any means or device whatsoever, to influence in any manner business decisions affecting the vessel.

Notwithstanding the general approvals granted in paragraphs (a) and (b), paragraph (c) states that they are inapplicable where the mortgagee has direct or indirect ties to certain interdicted countries.

Section 221.45 Permitted Mortgages and Trusts

Paragraph (a) provides that where the United States Government or a State is the mortgagee of a documented vessel or trustee for the benefit of a person not qualifying as a citizen of the United States, issuance of the note or other evidence of indebtedness secured by the mortgage does not require MARAD approval.

Paragraph (b) makes clear that, unless a person is a mortgagee or trustee approved by MARAD, a note or other evidence of indebtedness secured by a mortgage on a documented vessel may not be issued, assigned, transferred to, or held in trust for the benefit of a noncitizen, by that person to a person who does not qualify as a citizen of the United States under 46 App. U.S.C. 802 without specific approval of MARAD.

Paragraph (c) provides that if the approval of a mortgagee or trustee lapses while the mortgage or trust is in effect, the former mortgagee or trustee is liable for curing the lapse by timely substitution of a successor with MARAD approval.

Section 221.47 Approval of Corporate Citizen Trustee

Section 221.47, Approval of Corporate Citizen Trustee, reflects the statutory criteria of 46 U.S.C. 31328(b)(1)-(4) for approval of a corporate trustee that is a citizen of the United States.

Section 221.49 Approval of Noncorporate Citizen Trustee

Section 221.49, Approval of Noncorporate Citizen Trustee, adapts the criteria of 46 App. U.S.C. 31328(b)(1)-(4) to noncorporate business entities that are citizens of the United States.

Section 221.51 Approval of Noncitizen Trustee

Paragraphs (a) and (b) implement 46 U.S.C. 31328 (a)(4) and (b)(5) to permit a federally insured depository institution that is not a citizen of the United States to serve as an approved trustee if it otherwise meets the criteria of 46 U.S.C. 31328(b)(1)–(4) either as a corporation or an association and files an application to that effect with MARAD.

Paragraph (c), consistent with the exclusion of fishing vessels, fish processing vessels, fish tender vessels and pleasure vessels from the restrictions on who may hold a preferred mortgage under 46 U.S.C. 31322(a)(2), grants approval for any noncitizen, other than an individual, to serve as a trustee of such mortgages.

Paragraph (d) provides that all other noncitizens, including a noncitizen federally insured depository institution that has not submitted the requisite application, are excluded from the general approval granted under this section, but may be considered for approval upon application to the Maritime Administrator.

Section 221.53 Application for Approval as Mortgagee or Trustee

Section 221.53, Application for Approval as Mortgagee or Trustee, establishes the procedure for such applications. General approvals of mortgagees or trustees are confirmed for one year, subject to annual renewal pursuant to § 221.55, and a list of such generally approved mortgagees and trustees will be published in the **Federal Register** from time to time. Specific approval of a mortgagee or trustee for a particular transaction is, of course, valid for the period stated in the approval.

Section 221.55 Renewal of General Approval as Mortgagee or Trustee

Section 221.55, Renewal of General Approval as Mortgagee or Trustee, is self-explanatory.

Subpart D, Transactions Involving Maritime Interests in Time of War or National Emergency Under 46 App. U.S.C. 835

This Subpart reserves for later implementation regulations concerning foreign transfer of interests in or control of vessels or maritime facilities under the captioned circumstances.

Subpart E, Penalties

This subpart will be published as part of the final rule. The penalties will be those provided by statute, which are applicable in any event, but such publication will make the regulation more informative and self-contained.

Subpart F, Other Transfers Involving Documented Vessels

This subpart preserves the unaltered text of present 46 CFR 221.13 as 221.90, pending determination whether this provision should be retained, repositioned elsewhere in 46 CFR Ch. II, revised or revoked.

Appendix to Part 221

This appendix carries forward the present statement of procedures and conditions for approval of transfers of documented vessels to foreign ownership or registry, which will also be applicable to operation of documented vessels under the authority of a foreign country as mandated by Pub. L. 100–710.

Summary

This revision of 46 CFR Part 221 is being published as an interim final rule in order to implement recently-enacted legislation concerning vessel financing and foreign transfer of documented vessels, effective January 1, 1989. The issues involved in transition from the present regime to the new statutory mandate are complex, and absence of immediate guidance would almost certainly occasion serious disruption in the business planning of the maritime and financial communities that are affected by this legislation. Public comment is solicited, and will provide the input necessary for MARAD to formulate and publish a final rule that is consistent with the expressed congressional intent concerning national interest.

Because of the need to avoid uncertainty that could jeopardize complex maritime financial transactions presently in progress or contemplation, MARAD finds that good cause exists for making this rule effective on publication.

Analysis of Regulatory Impact

This rulemaking has been reviewed under Executive Order 12291, and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of $100 million or more. There will be no increase in production costs or prices for consumers, individual industries, Federal, State or local governments, agencies, or geographic regions. Furthermore, it will not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

While this rulemaking does not involve any change in important Departmental policies, it is considered significant because it implements statutory changes that will substantially effect the regulation of transactions involving U.S.-documented vessels, and may be expected to generate significant public interest. However, because the economic impact should be minimal, further regulatory evaluation is not necessary. Moreover, the Maritime Administrator certifies that this amendment will not have a significant economic impact on a substantial number of small entities.

This rulemaking does not significantly affect the environment. An environmental impact statement is not required under the National Environmental Policy Act of 1969. It has also been reviewed under Executive Order 12612, Federalism, and it has been determined that it does not have sufficient implications for federalism to warrant preparation of a Federalism Assessment.

Finally, this rulemaking contains reporting requirements that either have previously been approved by the Office of Management and Budget (Approval No. 2133–0006), or are being submitted for its approval, pursuant to provision of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Use of present Maritime Administration forms will be continued pending approval of proposed revisions.

List of Subjects in 46 CFR Part 221

Maritime administration, Maritime carriers.

Accordingly, 46 CFR Part 221 is revised to read as follows:

PART 221—REGULATED TRANSACTIONS INVOLVING DOCUMENTED VESSELS AND OTHER MARITIME INTERESTS

Subpart A—Introduction

Sec.
221.1 Purpose.
221.3 Definitions.
221.5 Citizenship declarations.
221.7 Applications and fees.

Subpart B—Transfers to Noncitizens or to Registry or Authority of a Foreign Country Under 46 App. U.S.C. 808

221.11 Required approvals.
221.13 Transfer of control.
221.15 Unrestricted transfers.
221.17 General approval.
221.19 Prohibited transactions.
221.21 Requests for waiver of required documentation or approval of use.

Subpart C—Preferred Mortgages on Documented Vessels: Mortgagees and Trustees

221.41 Purpose.
221.43 General approval of mortgages.
221.45 Permitted mortgages and trusts.
221.47 Approval of corporate citizen trustee.
221.49 Approval of noncorporate citizen trustee.
221.51 Approval of noncitizen trustee.
221.53 Application for approval as mortgagee or trustee.
221.55 Renewal of general approval as mortgagee or trustee.

Subpart D—Transactions Involving Maritime Interests in Time of War or National Emergency Under 46 App. U.S.C. 835 [Reserved]

Subpart E—Penalties [Reserved]

Subpart F—Other Transfers Involving Documented Vessels

221.90 Uniform Bareboat Charter of a Government-owned dry-cargo vessel under section 705 of the Merchant Marine Act, 1936, as amended, "Form No. 705."

Appendix—to Part 221

Authority: Secs. 2, 9, 37, 41 and 43, Shipping Act, 1916, as amended, and Secs. 204(b) and 705, Merchant Marine Act, 1936, as amended (46 App. U.S.C. 705, 802, 803, 808, 835, 839, 841a, 11149(b), 1195); 49 CFR 1.66.

Subpart A—Introduction

§ 221.1 Purpose.

This part implements statutory responsibilities of the Secretary of Transportation (the "Secretary") with respect to:

(a) Approval of mortgagees and trustees of preferred mortgages on vessels documented under the laws of the United States pursuant to 46 U.S.C. ch. 313, subch. II, contained in section 102 of Pub. L. 100–710, amending and codifying provisions of the former Ship Mortgage Act, 1920;

(b) The regulation of transactions involving transfers of vessels documented under the laws of the United States to noncitizens or to the registry or authority of foreign countries under 46 App. U.S.C. 808, as amended by section 104 of Pub. L. 100–710; and

(c) Transactions involving maritime interests in time of war or national emergency under 46 App. U.S.C. 835.

Those responsibilities have been delegated by the Secretary to the Maritime Administrator (49 CFR 1.66). Accordingly, statutory references to "the Secretary" have been modified herein to refer to the "Maritime Administrator," to reflect that delegation for regulatory purposes.

§ 221.3 Definitions.

For the purpose of this part:

(a) "Charter" means any agreement, contract, lease or commitment whereby possession, use, or services of a vessel are obtained. The term includes all bareboat, time and voyage charters as well as contracts of affreightment, space charters, drilling contracts and leases.

(b) "Citizen of the United States" means any person who qualifies as a citizen of the United States under 46 App. U.S.C. 802 (hereinafter defined), including receivers and trustees and successors or assignees of such persons pursuant to 46 App. U.S.C. 803.

(c) "Documented vessel" means a vessel documented under chapter 121, title 46, United States Code, including a vessel for which a registry has been issued pursuant to section 12105 of that title. A vessel shall be deemed to be documented until such time as surrender of the Certificate of Documentation or Certificate of Registry has been officially accepted by the United States Coast Guard.

(d) "Federally insured depository institution" means a corporation or association organized and doing business under the laws of the United States or of a State, authorized by such law to accept deposits from the public and whose deposit accounts are insured by any of the following agencies:

(1) Federal Deposit Insurance Corporation (FDIC);

(2) Federal Savings and Loan Insurance Corporation (FSLIC); and

(3) National Credit Union Administration (NCUA).

(e) "Fishing vessel" means a vessel that commercially engages in the catching, taking, or harvesting of fish or an activity that can reasonably be expected to result in the catching, taking, or harvesting of fish.

(f) "Fish processing vessel" means a vessel that commercially prepares fish or fish products other than by gutting, decapitating, gilling, skinning, shucking, icing, freezing, or brine chilling.

(g) "Fish tender vessel" means a vessel that commercially supplies, stores, refrigerates, or transports fish, fish products, or materials directly related to fishing or the preparation of fish to or from a fishing vessel, fish processing vessel, or fish tender vessel or a shoreside fish processing facility.

(h) "Mortgagee" means

(1) A State;

(2) The United States Government;

(3) A federally insured depository institution that has not been disapproved by the Maritime Administrator;

(4) An individual who is a citizen of the United States;

(5) Any other person who qualifies as a citizen of the United States; or

(6) Any other person approved by the Maritime Administrator to whom a documented vessel is mortgaged.

(i) "Noncitizen" means a person who is not a citizen of the United States within the meaning of paragraph (b) of this section.

(j) "Person" includes, in addition to individuals, corporations, partnerships, joint ventures and associations, existing under or authorized by the laws of the United States or of a State or, unless the context indicates otherwise, of any foreign country.

(k) "Person who qualifies as a citizen of the United States under 46 App. U.S.C. 802" means a person that, in both form and substance, satisfies the following requirements—

(1) An individual who is a citizen by birth, naturalization or as otherwise authorized by law;

(2) A corporation organized under the laws of the United States or of a State, the controlling interest of which is owned by citizens of the United States and whose president or chief executive officer and chairman of the board of directors are each a citizen of the United States, the majority of a quorum of the board of directors is composed of citizens of the United States and the controlling interest of which is owned by citizens of the United States, but the interest owned by citizens of the United States shall be not less than 75 percent in the event of direct or indirect ownership of a vessel engaging in the coastwise trade;

(3) A partnership organized under the laws of the United States or of a State, if all the general partners are citizens of the United States, a majority of the partnership interests are owned by citizens of the United States and if entitlement to a majority of the proceeds or benefits of the partnership accrue to citizens of the United States, but not less than 75 percent of the partnership interests must be owned by citizens of the United States in the event of direct or indirect ownership of a vessel engaging in the coastwise trade;

(4) An association organized under the laws of the United States or of a State, whose president or other chief executive officer and chairman of the board of directors (or equivalent committee or body) are citizens of the United States, the majority of a quorum of the board of directors, or equivalent, are citizens of the United States, and a majority of the members entitled to vote are citizens of the United States, but not less than 75 percent of the members entitled to vote shall be citizens if in the event of direct or indirect ownership of a vessel engaging in the coastwise trade; or

(5) A joint venture organized under the laws of the United States or of a State, if each coventurer is a citizen of the United States, but not less than a 75

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percent interest in each coventurer must be owned by citizens of the United States in the event of direct or indirect ownership of a vessel engaging in the coastwise trade.

(l) "Pleasure vessel" means a vessel that has been issued a recreational vessel license pursuant to 46 U.S.C. 12109 and—

(1) Is operated by the owner only for pleasure; or

(2) Is bareboat chartered by or on behalf of the owner to another person and operated only for that person's pleasure, subject to compliance throughout the period of the charter with the requirement of 46 U.S.C. 12110(d) that a documented vessel may be placed under the command only of a citizen of the United States.

(m) "State" means a State of the United States, Guam, Puerto Rico, the Virgin Islands, American Samoa, the District of Columbia, the Northern Mariana 'slands, and any other territory or possession of the United States.

(n) "Trustee" means:

(1) A State;

(2) The United States Government;

(3) A citizen of the United States approved by the Maritime Administrator; or

(4) Any other person approved by the Maritime Administrator.

(o) "United States," when used in the geographic sense, means the States of the United States, Guam, Puerto Rico, the Virgin Islands, American Samoa, the District of Columbia, the Northern Mariana Islands, and any other territory or possession of the United States; when used in other than the geographic sense, it means the United States Government.

(p) The term "United States Government" means the Federal government acting by and through any of its departments or agencies.

§ 221.5 Citizenship declarations.

(a) When an instrument transferring an interest in a documented vessel is presented to the United States Government for filing or recording, the person filing shall submit therewith a written declaration on Maritime Administration Form No. MA–899 (available from the Coast Guard Documentation Officer at the home port of the vessel or from the Vessel Transfer and Disposal Officer (MAR–745.1), Maritime Administration, United States Department of Transportation, Washington, DC 20590), that the transferee is a citizen of the United States, is an authorized mortgagee or trustee under 46 U.S.C. 31322 or 31328 or is exempt from the approval requirement of section 9 of the Shipping Act, 1916, as amended (46 App. U.S.C. 808) in accordance with § 221.15(b)(1) or § 221.17(a) of this part.

(b) A declaration filed by any person other than an individual shall be signed by its president, secretary, treasurer, or other official authorized by the entity to execute the declaration.

§ 221.7 Applications and fees.

(a) *Applications.* Whenever approval of the Maritime Administrator is required under § 221.11 of this part, or pursuant to a Maritime Administration contract or Transfer Order, an application on Maritime Administration Form MA–29 or MA–29B giving full particulars of the proposed transaction shall be filed with the Vessel Transfer and Disposal Officer (MAR–745.1), Maritime Administration, United States Department of Transportation, Washington, DC 20590.

(b) *Fees.* Applications for approval of any of the following transactions shall be accompanied by the specified fee.

(1) Transactions requiring approval under § 221.11:

(i) Sale and delivery to a noncitizen, or transfer to foreign registry of, or foreign governmental authority over, a documented vessel, per vessel—

(A) Of 3,000 gross tons and	325
(B) Of less than 3,000 gross tons	170
(ii) Mortgage, or transfer of any interest in, or control of, a documented vessel to a noncitizen, per vessel	250
(iii) Charter of a documented vessel to a noncitizen, per vessel	250
(iv) Sale or transfer of stock in a corporation that is a citizen of the United States and owns any documented vessel, if by such sale or transfer the controlling interest or a majority of the voting power of the corporation is vested in, or for the benefit of, any noncitizen	325
(v) An application for approval to act as mortgagee or trustee for an indebtedness secured by a preferred mortgage on a documented vessel, and all required annual renewal applications	215

(2) Transactions requiring approval pursuant to a Maritime Administration contract:

(i) Transfer of ownership or registry, or, both, of a contract vessel, per vessel	260
(ii) Sale or transfer to a noncitizen of stock in the foreign corporate owner of the contract vessel	235
(iii) Charter of a contract vessel to a noncitizen, per vessel	240
(iv) Transfer of title to a vessel subject to a mortgage in favor of the United States and to have the mortgage assumed by a new mortgagor, per vessel	400

(c) *Modification of applications or prior approvals.* An application for modification of any approval sought, or of an outstanding Maritime Administration contract or Transfer Order, shall be accompanied by the fee established for the original application.

(d) *Reduction or Waiver of fees.* The Maritime Administrator, in appropriate circumstances, and upon a written finding, may reduce any fee imposed by paragraph (b) or (c) of this section to conform the fee charged more closely with administrative costs, or may waive the fee entirely in extenuating circumstances where the best interest of the United States Government would be served.

Subpart B—Transfers to Noncitizens or to Registry or Authority of a Foreign Country Under 46 App. U.S.C. 808

§ 221.11 Required approvals.

(a) Except as provided in §§ 221.15(b)(1) and 221.17(a) of this part, a person may not, without the written approval of the Maritime Administrator:

(1) Sell, mortgage, lease, charter, deliver, or in any manner transfer, or agree to sell, mortgage, lease, charter, deliver, or in any manner transfer to a noncitizen, any interest in or control of a documented vessel owned by a citizen of the United States; or

(2) Place a documented vessel under foreign registry or operate that vessel under the authority of a foreign country.

(b) For purposes of this part, operation of a documented vessel "under the authority of a foreign country" means any agreement, undertaking or device by which a documented vessel is voluntarily subjected to any restriction or requirement, actual or contingent, under the laws or regulations of a foreign country or instrumentality thereof that is or may be in derogation of the rights and obligations of the owner, operator or master of the vessel under the laws of the United States, unless such restriction or requirement is of general applicability or uniformly imposed by such country or instrumentality in exercise of its sovereign prerogatives with respect to public health, safety or welfare, or in implementation of accepted principles of international law regarding cabotage or safety of navigation.

§ 221.13 Transfer of control.

(a) *Criteria.* (1) A conclusive presumption that a transfer of control of a documented vessel has taken, or will take, place will arise if the legal or beneficial owner of the vessel ceases to be a person who qualifies as a citizen of the United States under 46 App. U.S.C. 802, as defined for purposes of these regulations.

(2) A rebuttable presumption that a transfer of control of a documented vessel has taken, or will take, place will arise if the legal or beneficial owner is a citizen of the United States and:

(i) Through any means or device whatsoever a noncitizen acquires the ability, present or prospective, to control in any manner the business decisions of the owner affecting the vessel; or

(ii) There is an acquisition of control, as defined by the United States Government, of the vessel owner by, or imputed to, a noncitizen.

(3) For purposes of this section, transfer of control to, or acquisition of control by, a noncitizen includes any noncitizen parent or other person that directly or indirectly controls the transferee or the acquiring person.

(b) *Voting interest.* In determining whether a transfer of control of the owner of a documented vessel has taken or will take place, consideration will usually be limited to voting interests or their equivalent. Non-voting interests, including *bona fide* limited partnership interests, are generally excluded. However, for convertible instruments, the following guidelines will be followed in determining whether a voting interest exists:

(1) Instruments that may be converted solely at the option of the holder (*e.g.*, debentures or preferred stock convertible to common shares) are deemed voting instruments from the date of acquisition;

(2) Instruments that specify a date or condition(s) for convertibility are deemed voting instruments from the release date; and

(3) Instruments that are convertible solely at the option of or with concurrence by the issuer are deemed voting instruments from the date convertibility is authorized.

§ 221.15 Unrestricted transfers.

(a) None of the transactions specified in § 221.11(a)(1) of this part shall require approval if the owner of a documented vessel is not a person who qualifies as a citizen of the United States under 46 App. U.S.C. 802, and that owner is not otherwise required to obtain approval pursuant to a Maritime Administration contract.

(b) None of the transactions specified in § 221.11(a)(1) of this part shall require approval of the Maritime Administrator if the vessel has been operated exclusively and with *bona fides*, for one or more of the following uses, under the appropriate license or endorsed registry and no other, since initial documentation following construction or transfer from foreign registry; or if converted to such use from a prior use, has been exclusively so operated for a period of not less than twelve (12) consecutive months prior to the date of transfer:

(1) A fishing vessel;

(2) A fish processing vessel;

(3) A fish tender vessel; or

(4) A pleasure vessel.

(c) Entitlement to either of the exemptions specified in this section shall be established by filing Maritime Administration Form MA–899 with the Coast Guard at the time of surrender of the Certificate of Documentation or of Registry, stating with particularity compliance with the grounds for exemption.

§ 221.17 General approval.

(a) *All transactions.* Except when the transferee of a vessel or an interest in or control of a vessel is a corporation holding a Certificate of Compliance issued under 46 App. U.S.C. 883–1, the Maritime Administrator grants prior approval for each of the transactions described in § 221.11(a)(1) of this part, subject, to the conditions specified below, for the following documented vessel types:

(1) A self-propelled vessel under 1,000 gross tons;

(2) A vessel operating on inland lakes or waters from which there is no navigable exit; and

(3) A non-self-propelled vessel under 1,000 tons, excluding LASH and SEABEE type barges.

(b) *Mortgages.* The Maritime Administrator grants general approval for the following mortgages of documented vessels to noncitizens:

(1) A mortgage to a noncitizen federally insured depository institution that has complied with the requirements of § 221.45(a) of this part; and

(2) A mortgage to any noncitizen of a vessel specified in § 221.17(a) of this part.

(c) *Charters.* The Maritime Administrator approves, subject to the conditions specified below, charters of a documented vessel by citizens of the United States to noncitizens, not to exceed six months. The respective dates for commencement and termination of a charter, as set forth in its provisions, shall be accepted as *prima facie* evidence of the dates of the events. This approval excludes and does not apply to the following charters:

(1) Demise or bareboat charters, other than the charter of vessel types described in §§ 221.15(b) and 221.17(a) of this part, subject (i) to the conditions therein and (ii) to submission of a copy of the charter party to the Maritime Administrator not later than 30 days following execution;

(2) Charters for the carriage of cargoes of any kind to or from the USSR (except as provided in paragraph (d) of this section), Latvia, Lithuania, Estonia, Libya, Iran, Czechoslovakia, Bulgaria, Albania, North Korea, German Democratic Republic (including East Berlin), Laos, Kampuchea, Vietnam, Outer Mongolia or Cuba [1]; and

(3) (i) Any charter to a non-citizen providing for a duration that is or may be for a period in excess of six (6) months, other than the charter of vessel types described in §§ 221.15(b) and 221.17(a) of this part. The Maritime Administrator shall consider the charter period to include any extension period, irrespective of the inclusion of a provision in the agreement that either makes any charter period extension beyond six (6) months subject to the approval of the Maritime Administrator or permits the substitution of another vessel, including other than a documented vessel. For such a charter, the vessel owner shall submit the charter party to the Maritime Administrator for approval prior to the commencement date of the first six (6) months period; and

(ii) Any new charter of a vessel to a noncitizen that is executed within thirty (30) days after the date of any charter approved under this with the same noncitizen charterer, shall be considered to be a renewal or extension of the original charter. If the cumulative period of time of the charters exceeds six (6) months, the new charter shall be submitted for approval. This requirement shall apply, notwithstanding any provision in a new charter that permits the substitution of another vessel, including other than a documented vessel.

(d) *Charters for trade with the USSR.* The Maritime Administrator hereby approves charters to noncitizens of documented bulk cargo vessels engaged in carrying bulk raw and processed agricultural commodities from the United States to ports in the USSR, or to other permissible ports of discharge for transshipment to the USSR, pursuant to an operating-differential subsidy agreement that is consistent with the requirements of part 252 of this chapter.

[1] This list of countries is subject to change from time to time. Information concerning current restrictions may be obtained from the official identified in § 221.07 of this part.

§ 221.19 Prohibited transactions.

(a) Transactions that are otherwise unrestricted or approved under § 221.15 and 221.17 (a) through (c) of this part are prohibited if the transferee or a person with a controlling interest in the transferee is a citizen or operates under the laws of any country identified in § 221.17(c)(2) of this part, unless:

(1) Such transferee is an individual who has been lawfully admitted into, and resides in the United States, and expressly undertakes under surety bond, in an amount and form and substance satisfactory to the Maritime Administrator, not to cause or allow removal of the vessel from the territorial limits of the United States, or

(2) Such transferee is a citizen of the USSR, but only for the purposes of § 221.17(d) of this part.

(b) No approval shall be granted if the vessel is to be transferred to or placed under the registry, or operated under the authority, of any such country.

§ 221.21 Requests for waiver of required documentation or approval of use.

(a) A documented vessel may be sold by order of a district court only to a person eligible to own a documented vessel or to a mortgagee of the vessel and, unless waived by the Maritime Administrator, a person purchasing the vessel pursuant to court order or from an intervening noncitizen mortgagee-purchaser must document the vessel under chapter 121 of Title 46, United States Code, unless that requirement is waived by the Maritime Administrator.

(b)(1) A purchaser wishing to obtain such a waiver of that documentation requirement must submit a written application to the official identified in § 221.7(a) of this part.

(2) The application must identify the present and former name(s) and Official Number of the vessel; present and former owner(s) of the vessel; vessel type; vessel gross tonnage; and the intended country of registry.

(c) A mortgagee not eligible to document a vessel shall not operate, or cause to be operated, in commerce a vessel purchased by order of a district court unless approved by the Maritime Administrator. An application for such approval shall be submitted in the manner prescribed in paragraph (b)(2).

Subpart C—Preferred Mortgages on Documented Vessels: Mortgagees and Trustees

§ 221.41 Purpose.

The purpose of this subpart is to implement responsibilities of the Maritime Administrator with respect to approving mortgagees and trustees of preferred mortgages on documented vessels pursuant to Pub. L. 100-710.

§ 221.43 General approval of mortgagees.

(a)(1) The Maritime Administrator will approve as a preferred mortgagee of documented vessels a federally insured depository institution that is a noncitizen if it shall first have filed with the Maritime Administrator an application, executed by the chief executive officer or other authorized official, establishing that it—

(i) Is organized and doing business in and under the laws of the United States or of a State;

(ii) Has a combined capital and surplus (as stated in its most recent published report of condition) of at least $3,000,000;

(iii) Is federally insured by an agency identified in § 221.03(c) of this part and is subject to examination by an official of the United States Government.

(2) The Maritime Administrator hereby disapproves any federally insured depository institution as a preferred mortgagee that is a noncitizen unless and until it shall have complied fully with the reqtirements of paragraph (a)(1).

(b)(1) Except as provided below in paragraph (b)(2), the Maritime Administrator grants approval for persons who do not meet the requirements of 46 U.S.C. 31322(a)(1)(D)(i)–(v) to be mortgagees of preferred mortgages on the types of documented vessels identified in §§ 221.15(b) and 221.17(a) of this part.

(2) To qualify for this approval, at the time the mortgage is executed, and at all times thereafter, the mortgage on such vessels shall contain no provisions allowing persons, including the mortgagee, who are not citizens of the United States: (i) To operate the vessel without the consent of the Maritime Administrator; (ii) exercise control over the vessel owner; (iii) excercise control over any charterer of the vessel; or (iv) exercise control over the management of the vessel. The term "control" as used herein means the ability, present or prospective, through any means or device whatsoever, to influence in any manner business decisions affecting the vessel.

(c) The approvals granted in this section shall not apply if the mortgagee is a person who is a citizen, or whose parent is organized and existing under the laws, or who is subject, directly or indirectly to control, of any country identified in § 221.17(c)(2) of this part.

§ 221.45 Permitted mortgages and trusts.

(a) An instrument or evidence of indebtedness secured by a mortgage on a documented vessel may be issued to the United States Government or to a State acting in the capacity of mortgagee or of trustee for the benefit of a person not qualifying as a citizen of the United States. No application to, approval by or notice to the Maritime Administrator is required on the part of the United States Government or such State, or on the part of the mortgagor.

(b) As to all other persons, an instrument or evidence of indebtedness secured by a mortgage on a documented vessel may be issued, assigned, transferred to, or held in trust by a trustee for the benefit of a person not qualifying as a citizen of the United States under 46 App. U.S.C. 802 only if the mortgagee or trustee has been approved by the Maritime Administrator under this part, in which event no further application to, approval by or notice to the Maritime Administrator is required for a particular transaction.

(c) If an approved mortgagee or trustee at any time shall no longer qualify to serve in such capacity under this part:

(1) The mortgagee or trustee shall notify immediately the official identified in § 221.7 of this part;

(2) The Maritime Administrator shall issue a disapproval notice and order and promptly serve the vessel owner with a copy; and

(3) The vessel owner shall promptly nominate a successor mortgagee or trustee to assume the mortgage or trust, which assumption shall be effected within thirty days receipt of the notice given pursuant to paragraph (c)(2) subject to approval of the Maritime Administrator.

§ 221.47 Approval of corporate citizen trustee.

A corporate trustee shall be approved under 47 U.S.C. 31328(b) if it—

(a) Is a person who qualifies as a citizen of the United States;

(b) Is organized as a corporation, and is doing business, under the laws of the United States or of a State;

(c) Is authorized under those laws to exercise corporate trust powers;

(d) Is subject to supervision of examination by an official of the United States Government or of a State; and

(e) Has a combined capital and surplus (as stated in its most recent published report of condition) of at least $3,000,000.

§ 221.49 Appoval of noncorporate citizen trustee.

A noncorporate trustee may be approved under 46 U.S.C. 31328(a)(4) if it—

(a) Is a person who qualifies as a citizen of the United States;

(b) Is otherwise organized and doing business under the laws of the United States or of a State;

(c) Is authorized under those laws to exercise trust powers;

(d) Is subject to supervision or examination by an official of the United States Government or of a State; and

(e) Has a combined capital and surplus or the equivalent (as stated in its most recently published report of condition) of at least $3,000,000.

§ 221.51 Approval of noncitizen trustee.

(a) No federally insured depository institution that is not a citizen of the United States may serve as a trustee unless it shall first have filed with the Maritime Administrator an application, executed by the chief executive officer or other authorized official, establishing that it—

(1) Is organized under the laws of the United States or of a State and is doing business in the United States;

(2) Is authorized under those laws to exercise trust powers;

(3) Has a combined capital and surplus (as stated in its most recent published report of condition) of at least $3,000,000;

(4) Is federally insured and is subject to examination by an official of the United States Government.

(b) Pursuant to 46 U.S.C. 31328 (a)(4) and (b)(5), a noncitizen federally insured depository institution that complies with the requirements of paragraph (a) of this section may act as a trustee without specific transactional approval of the Maritime Administrator.

(c) There are no restrictions on who may serve as a mortgagee of preferred mortgages on documented vessels that meet the criteria of §§ 221.15(b) or 221.17(a) of this part. Accordingly, any noncitizen is hereby approved as a trustee of such mortgages.

(d) Except as provided in paragraph (c) of this section, all other noncitizens, including a federally insured depository institution that has not complied with the filing requirement of paragraph (a) of this section, are hereby disapproved as trustees, subject to consideration on a case-by-case basis upon application for approval on Maritime Administration Form MA–29.

§ 221.53 Application for approval as mortgagee or trustee.

(a) Each applicant for specific approval as a mortgagee in a particular transaction shall submit a completed Maritime Administration Form MA–29 to the official identified in § 221.7 of this part. Each applicant for general approval as a mortgagee or as a trustee shall submit a completed Maritime Administration Form MA–579 to that official.

(b) Each approval of an application to be an approved mortgagee or trustee shall be in writing and an original copy shall be provided by the Maritime Administrator to the approved mortgagee or trustee.

(c) Each general approval of a mortgagee or trustee shall be effective for a period of one (1) year from the date of issuance, subject to renewal for additional annual periods upon satisfaction of the provisions of § 221.55.

(d) A list of generally approved mortgagees and trustees will be published from time to time in the **Federal Register.**

§ 221.55 Renewal of general approval of mortgagee or trustee.

(a) Upon filing of a complete and acceptable Maritime Administration Form MA–580, approval of a general mortgagee or trustee continuing to meet the requirements of this subpart will be extended for an additional period of one (1) year.

(b) The form shall be submitted to the official identified in § 221.7 of this part, not later than the last business day of, and not earlier than the thirtieth (30th) calendar day before expiration of, the one (1) year period then in effect.

Subpart D—Transactions Involving Maritime Interests in Time of War or National Emergency Under 46 App. U.S.C. 835 [Reserved]

Subpart E—Penalties [Reserved]

Subpart F—Other Transfers Involving Documented Vessels

§ 221.90 Uniform Bareboat Charter of a Government-owned dry-cargo vessel under section 705 of the Merchant Marine Act, 1936, as amended, "Form No. 705."

(a) On July 16, 1956, the United States Department of Commerce, through the Maritime Administration, approved and authorized publication of a standard form of bareboat charter for use in the chartering, under section 705 of the Merchant Marine Act, 1936, as amended, of Government-owned dry-cargo vessels, which are subject to Title VII of said act. The chartering of such vessels is subject to competitive bidding procedures as prescribed under section 706 of said act.

(b) Except as otherwise authorized, the form of such charter shall be substantially as follows:

Form No. 705 (7–56)..... Contract No. _____

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D	Ports and Dates of Delivery.
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F	Rate of Basic Charter Hire.
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	A. Charter Hire and Bond
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6	Surveys.
7	Inventory.
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12	Drydocking.
13	Inspections.
14(a)	Redelivery, Port or Place of.
(b)	Redelivery Conditions.
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16	Owner's Representatives.
17	Employment of Affiliates, etc.; Rental of Office Space.
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20	Development of American-flag Merchant Marine.
21	Services Rendered Vessel(s).
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27	General and Particular Average.
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40	Termination Upon Default.
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42	Cancellation or Modification by Mutual Consent.
43	Warranty Against Contingent Fees.
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Maritime Administration—Bareboat Charter Agreement

This Charter Party Agreement (hereinafter called the "Agreement") dated as of _____, 19____, between the United States of America, acting by and through the Department of Transportation (Maritime Administration) (hereinafter called the "Owner") and _____ (hereinafter called the "Charterer"), whose address is _____. Witnesseth:

Whereas:

1. The Owner, acting pursuant to authority vested in it by the Merchant Marine Act, 1936, as amended (herein referred to as the "Act"), and particularly Title VII thereof, issued under date of _____, 19____, its Invitation for Sealed Bids for the bareboat charter of certain Vessel(s) [1] for operation in a service determined to be essential, as provided by section 221 of the Act.

2. Bids received pursuant to such Invitation were opened on _____, 19____, and the Charterer stated in its bid for the charter of said Vessel(s) that such Vessel(s) would be operated in the service hereinafter described, which has heretofore been determined to be essential, as provided in Section 211 of the Act, and established to the satisfaction of the owner its qualifications as a bidder (including the sufficiency of its capital, credit, and experience), and its compliance with the terms and conditions for the award of a charter of said Vessel(s) as set forth in said Invitation.

3. The Owner accepted the bid of the Charterer for the bareboat charter of said Vessel(s) for operation in the service described in said bid, and awarded a charter to the Charterer for the period and upon the terms and conditions herfeinafter set forth.

Now therefore, in consideration of the premises, the parties hereto agree as follows:

Part I

Clause A. *Uniform terms.* This Agreement consists of two parts, this Part I and Part II. Unless otherwise in this Part I expressly provided, all of the provisions of said Part II shall be part of this Agreement as though fully set forth in this Part I. In the event of a conflict between the provisions of Parts I and II, the provisions of Part I shall govern to the extent of such conflict.

Clause B. *Agreement of the parties.* The Owner hereby agrees to let and the Charterer agrees to hire, the _____ for the carriage of lawful merchandise and passengers during the period and upon the terms and conditions hereinafter set forth.

Clause C. *Period of charter.* Subject to termination as provided in this Clause and in Section F, Part II, hereof, the period of this Agreement shall be as follows:

Provided, That whenever the President shall proclaim that the security of the national defense makes its advisable, or during any national emergency declared by proclamation of the President, or after a declaration of war or of national emergency made by the Congress, the Owner may terminate this Agreement without cost to the United States, upon such notice to the Charterer as the President or Congress shall determine.

Clause D. *Place and date of delivery.* The Vessel shall be delivered by the Owner to the Charterer at a safe berth in the port or place, hereinafter designated, on or about the delivery date tentatively scheduled.

Vessel name	Place of delivery	Estimated delivery date

Clause E. *Service.* The Charterer shall maintain and operate the Vessel in service or services on the following described trade route and not otherwise:

Clause F. *Rate of basic charter hire.* Basic charter hire at the rate of $_____per calendar month for each Vessel or prorata of any portion thereof, shall be paid by the Charterer to the Owner in accordance with Clause I, Part II of this Agreement.

Clause G. *Amount of insurance.* The Charterer shall at all times during the period of the Vessel's use under this Agreement carry and maintain on each Vessel policies of insurance in the manner and form prescribed in Clause 25, Part II, in the minimum amounts as follows:

Marine hull and machinery.	$_____	
War risk hull and machinery.	$_____	
Marine P & I	$_____	per GRT
War risk P & I	$_____	per GRT
Marine excess, general average, salvage, and collision liability.	$_____	
War risk excess, general average, salvage, and collision liability.	$_____	

together with such additional amounts of P & I and excess liability insurance as the owner may require from time to time.

The insertion of the amount of Marine and War Risk Hull and Machinery insurance shall be for the purpose of (a) fixing the minimum amount for the placing of insurance as prescribed in Clause 25, Part II, and (b) constituting the replacement or total loss value of the Vessel as between the Charterer and the Owner, but for no other purpose. The Charterer shall also at all times during the period of the Vessel's use under this Agreement carry and maintain such crew insurance as is required by the Charterer's current bargaining agreements.

Clause H. *Amount of bond.* The Charterer, at or before delivery of each Vessel under this Agreement, shall furnish the Owner with a bond in the amount of $_____ for each Vessel, in the manner prescribed in Clause 3, Part II of this Agreement.

Clause I. *Special provisions.*

In witness whereof, this Agreement has been executed in triplicate by the Owner on the _____ day of _____, ____ and by the Charterer on the ____ day of _____, 19____.

[1] The term "Vessels" as used in the plural in either Part I or Part II of this Agreement also refers to any single Vessel, whenever appropriate, and similarly the term "Vessel" as used in the singular refers to all Vessels within the Agreement whenever appropriate.

United States of America,
Department of Transportation

(Maritime Administration)
By: _____
(corporate seal)

Attest:
By: _____
Secretary _____

PART II—GENERAL PROVISIONS

A. Charter hire and bond

Clause 1. *Basic charter hire.* The Charterer shall pay the Owner the basic charter hire at the monthly rate provided for in Part I hereof from the day and hour of delivery of the Vessel until and including the day and hour of redelivery to the Owner pursuant to the terms of this Agreement; or if any Vessel shall be lost, hire shall continue until the time of such loss, if known, or if the time of loss be uncertain, then up to and including the time last heard from. Payment of such basic charter hire shall be made to the Owner at Washington, D.C., on delivery of each Vessel for the remainder of the calendar month in which delivery is made, and thereafter monthly in advance of the first day of each month.

Clause 2. *Additional charter hire.* (a) if, at the end of the calendar year in which this agreement becomes effective, or any subsequent calendar year or at the termination of this Agreement, the cumulative net voyage profit (after the payment of the basic charter hire hereinabove specified and payment of the Charterer's fair and reasonable overhead expenses applicable to operation of the Vessel(s)) shall exceed 10 per centum per annum on the Charterer's capital necessarily employed in the business of the Vessel(s) (all as herein after defined), the Charterer shall pay over to the Owner at Washington, DC., within thirty (30) days after the end of such year or other period, as additonal charter hire for such year or other period, an amount equal to one-half of such cumulative net voyage profit in excess of 10 per centum per annum on the Charterer's capital necessarily employed in the business of the Vessel(s). Such cumulative net profit so accounted for shall not be included in any calculation of cumulative net profit in any subsequent year or period.

For purposes of calculating "cumulative net voyage profit" it is agreed by the parties that at the end of each accounting period any net voyage losses and/or any unearned portion of the aforesaid allowable return of 10% per annum on capital necessarily employed, may be carried forward into the next accounting period, but that in no event shall profits in excess of 10% per annum on capital employed, at the end of any accounting period, be carried forward into the next accounting period; such profits being subject to distribution at the end of each accounting period as herein provided.

(b) The Charterer agrees to make preliminary payments to the Owner on account of such additional charter hire at such time and in such manner and amounts as may be required by the Owner; provided, however, that such payment of additional charter hire shall be deemed to be preliminary and subject to adjustment either at the time of the rendition of preliminary statements or upon the completion of each final audit by the Owner, at which times such payments will be made to the Owner as such preliminary statements or final audit may show to be due, or such overpayments refunded to the Charterer as may be required.

Clause 3. *Bond.* The Charterer, at or before delivery of each Vessel under this Agreement, shall furnish the Owner with a bond with sufficient surety, in the amount specified in Part I hereof, such bond to be approved by the Owner, both as to form and sufficiency of the sureties, and to be conditioned upon the true and faithful performance of all and singular the covenants and agreements of the Charterer contained in this Agreement, including, but not limited to, the Charterer's obligation to pay charter hire and damages and to indemnify against liens. The Charterer may, in lieu of furnishing such bond, pledge United States Government securities in the par value of the required amount under an agreement satisfactory in form and substance to the Owner.

B. Condition of Vessel(s) Equipment and Stores

Clause 4. *Condition of vessel(s) on delivery.* Each Vessel on delivery shall be in Class A-1 American Bureau of Shipping or equivalent, with all required certificates, including but not limited to marine inspection certificates of the Coast Guard, Treasury Department, and so far as due diligence can make her so, tight, staunch, strong and well and sufficiently tackled, appareled, furnished and equipped, and in every respect seaworthy and in good running condition and repair, with clean swept holds and in all respects fit for service.

Clause 5. *Surveys.* (a) Each Vessel shall be jointly surveyed before delivery and before redelivery under this Agreement to determine and state the condition of the Vessel. Such surveys shall include drydocking to determine and state the condition of the underwater parts, unless, at Owner's option, the drydocking in connection with delivery is postponed, in which event the cost and time (including Vessel expenses) of any damage to underwater parts found either upon delivery or during the period of the Vessel's use under this Agreement shall be for Owner's account unless such damage is established, from the basis of all evidence, to have occurred during the period of the Vessel's use under this Agreement. The cost and time of such delivery survey shall be for account of the Owner, and similarly the cost and time of such redelivery survey shall be for the account of the Charterer. Each party shall bear the cost of surveyors appointed by it in connection with both delivery and redelivery surveys.

(b) Except as to items sighted prior to delivery and noted on the delivery survey report as defective, which shall be for the Owner's account, including cost and time (inclusive of Vessel expenses) the delivery of each Vessel by the Owner and the acceptance thereof by the Charterer shall constitute full performance by the Owner of all the Owner's obligations under this Clause with respect to such Vessel, and thereafter the Charterer shall not be entitled to make or assert any claim against the Owner on account of any agreements, representations or warranties, expressed or implied with respect to the condition of such Vessel; provided, however, that the Owner shall nevertheless be responsible for the cost and time (exclusive of Vessel expenses) of repairs or renewals occasioned by latent defects in such Vessel, her machinery or appurtenances or defects due to locked-in stresses in such Vessel existing at the time of delivery, not recoverable under the terms and conditions of the American Hull form of policy (American Institute Time (Hulls) December, 1955) containing no deductible average clause.

Clause 6. *Determination of class.* For the purpose of this Agreement a Vessel chartered hereunder shall be deemed to be in class, whether or not any requirements or recommendations of the Classification Society are outstanding at the time of delivery or redelivery, as the case may be, unless the time limit for the accomplishment of any such requirements or recommendations, including any extension or period of grace allowed, shall have expired.

Clause 7. *Inventory.* A complete inventory of each Vessel's entire outfit, equipment, furniture, furnishings, appliances, spare and replacement parts and of all unbroached consumable stores, subsistence stores, slop chest, containers, and bunker fuel shall be jointly taken and mutually agreed upon as to items and quantities, at the time of

delivery, by representatives of the Charterer and the Owner. The parties may agree, however, to accept any suitable prior inventory which may have been taken before the delivery of the Vessel under this Agreement. Such delivery inventory of consumable and subsistence stores, slop chest, containers, and bunker fuel shall be priced by the Charterer at the current market price prevailing at the port and time of delivery. At redelivery a complete inventory of each Vessel's entire outfit, equipment, furniture, furnishings, appliances and spare and replacement parts shall, also, be jointly taken and mutually agreed upon as to items and quantities by representatives of the Charterer and the Owner. In addition, a complete inventory of all broached and unbroached consumable stores, subsistence stores, slop chest, containers, and bunker fuel shall be taken by the Charterer immediately prior to the redelivery. Such inventory shall be priced by the Charterer at the current market price prevailing at the port and time of performance of Charterer's redelivery obligations, and the Owner shall be furnished with three certified copies of such inventory, together with an affidavit certifying as to its correctness.

Clause 8. *Consumable stores and fuel.* The Charterer shall accept and pay for any unbroached consumable stores, subsistence stores, slop chest, returnable containers, and bunker fuel furnished by the Owner or on board at the time of delivery at the market prices current at the time and place of repairs and outfitting. The Owner shall have no obligation upon redelivery to accept or pay for consumable stores (either broached or unbroached), subsistence stores, slop chest, or returnable containers, and shall accept and pay for bunker fuel only in such minimum amounts as the Owner may determine. (Bunkers accepted by the Owner shall be paid for at the current market price prevailing at the port and time of redelivery, or, in event of redelivery at a Reserve Fleet site, at the current market price at the port and time of redelivery repairs.) Prior to redelivery, such items shall be removed from the Vessels by the Charterer in accordance with the provisions of NSA Order No. 64, as revised from time to time, and the fair and reasonable cost of such removal shall be charged in the Vessel's voyage accounts for the last voyage prior to redelivery. With respect to the aforesaid items, there shall be taken into account in the determination of additional charter hire, in accordance with Clause 2, Part II, of this Agreement, (a) the current market value thereof at the port and time of redelivery, in the event redelivery is effected at a redelivery port, or, in the event redelivery is effected at a Reserve Fleet site, the current market value at the port and time of redelivery repairs, or (b) the net proceeds from the disposition thereof, in the event the Charterer elects to dispose of the removed goods and notifies the Owner of such intention prior to redelivery. The manner of, time of and determination of net proceeds from such disposition of the items shall be subject to approval of the Owner.

Clause 9. *Use of equipment.* The Charterer shall have the use of all outfit, equipment, furniture, furnishings, appliances, spare and replacement parts on board the Vessel at the time of delivery under this Agreement without extra cost and the same shall be returned to the Owner upon redelivery in good order and condition. Any such items damaged or so worn in service as to be unfit for use or lost or destroyed shall be replaced or made good by the Charterer in kind at or before redelivery, or at Owner's option, the Charterer shall pay for said items at the current market prices at the port and time of performance of Charterer's redelivery obligations, based upon the condition of the items at the time of delivery. The Owner shall have a right, but not an obligation, to accept any overages on the Vessel at redelivery. Any overages accepted by the Owner shall be paid for at the current market prices at the port and time of performance of Charterer's redelivery obligations, based upon the condition of the items at the time of redelivery. Overage and shortage statements shall be prepared and priced by the Charterer, subject to review and adjustment by the Owner.

Clause 10. *Maintenance.* The Charterer, except as otherwise provided in Clause 4, shall, at its own expense, maintain each Vessel, her machinery, boilers, appurtenances, and spare parts during the period of the Vessel's use under this Agreement in good state of repair and in efficient operating condition and in accordance with good commercial maintenance practices and shall keep each Vessel in such condition as will entitle the Owner at all times to all required Certificates, including, without limitation, the highest classification and rating for vessels of the same age and type in the American Bureau of Shipping and with unexpired marine inspection certificates of the Coast Guard, Treasury Department.

Clause 11. *Structural changes.* The Charterer shall make no structural changes in the Vessel(s) and shall make no changes in the machinery, boilers, appurtenances or spare parts thereof, without in each instance first securing the written approval of the Owner.

Clause 12. *Drydocking.* The Charterer shall drydock each Vessel and clean and paint the underwater parts, when necessary, but not less than once in about every nine (9) months from date of delivery. The Charterer shall give the Owner reasonable notice of the time and place of drydocking and if practicable fifteen (15) days in advance thereof and afford the Owner an opportunity to inspect the Vessel(s) while drydocked. The Charterer shall also promptly notify the Owner sufficiently in advance to enable its respresentative to be present at repairs or surveys of the Vessel(s), and shall furnish the Owner with copies of reports made pursuant to such surveys.

Clause 13. *Inspections.* The Owner shall have the right at any time, without notice, to inspect or survey the Vessels at its own expense, to ascertain their condition and to satisfy itself that the Vessels are being properly repaired and maintained in accordance with good commercial maintenance practices, but such inspections shall be held at such time and in such manner as to not interfere with Vessels' schedule. The Charterer shall make all such repairs, at its own expense, as such inspection or survey may show to be required in compliance with the Charterer's obligations under this Agreement. The Charterer shall also permit the Owner to inspect the Vessels' logs whenever requested, and shall furnish the Owner upon request with full information regarding any casualties or other accidents or damage to the Vessels.

Clause 14. *Redelivery of vessel(s).* (a) *Port or place of redelivery.* The port of redelivery shall be the port of delivery or such other port as may be mutually agreed, *Provided,* that the Owner shall have the option of requiring the Charterer to place the Vessel(s) in layup at a Reserve Fleet site designated by the Owner, on the same coast as the port of redelivery, in the manner and on the basis provided for in subparagraph (d) of this Clause. In the event the Owner exercises this option, the Owner shall have the right to designate the port at which Charterer's redelivery obligations under this Clause will be performed.

(b) *Redelivery conditions.* Each Vessel, unless lost, shall be redelivered to the Owner, pursuant to the terms of this Agreement, in the same good order and condition as that in which she was delivered, unless the lack of good order and condition is due solely to ordinary wear and tear, and with valid classification and Coast Guard certificates, whether or not classification or Coast Guard repairs are due wholly or in part to ordinary wear and tear. At the redelivery survey provided for in Clause 6, surveyors appointed by the Charterer and surveyors appointed by the Owner, shall be present, who shall determine and state the repairs or work necessary to place each Vessel on the date of redelivery in the condition and class required under this Clause, which findings shall include all repairs and work required to be performed at the time of redelivery by the Classification Society and all other regulatory bodies, and all repairs and work which are necessary to place each Vessel on the date of redelivery in the good order and condition required by this Clause. The Charterer, before redelivery, shall make all such repairs and do all such work so found to be necessary at its expense and time, or at Owner's option, the Charterer shall, on Owner's request, discharge such obligation by payment to the Owner of an amount sufficient to place each Vessel in such class, order and condition and to provide for the foregoing work and repairs at the prices current at the time of redelivery, which amount shall also include compensation at the rate of basic hire payable under this Agreement for the time reasonably required under then existing conditions to complete such work or repairs and compensation for all other expenses (including insurance), reasonably required incident to such work or repairs. In the event the Owner exercises this option, the Charterer's redelivery repair obligations shall be limited to the amount of Marine Hull and Machinery insurance required by the provisions of Part I hereof. The Charterer shall not be required to make any repairs which were for Owner's account under Clause 4 of this Agreement, but if such repairs were made after delivery under this Agreement and paid for by the Owner, they shall be considered as having been made at the time of delivery for the purpose of determining the Charterer's obligations under this Clause 14.

(c) *Disputes.* Should any dispute arise between the Owner and the Charterer with respect to responsibility for repairs, renewals, replacements, or condition of the Vessel(s), at the time of redelivery, the Charterer shall, without prejudice to its contentions, make and pay for such disputed repairs, renewals, or replacements, or any part thereof, before redelivery, and may recover the cost from the Owner, together with Vessel expenses and charter hire during the period required for the performance of such work over and above the time required to perform the Charterer's redelivery repairs, in event Owner's liability therefor is established.

(d) *Vessel layup.* In the event that the Owner exercises its option under subparagraph (a) of this Clause to require the Charterer to place the Vessel(s) in layup following completion of Charterer's normal redelivery obligations, the Charterer shall perform and pay for all work required in connection with the preparation for layup and movement of the Vessel(s) to the Reserve Fleet site designated by the Owner, as prescribed in NSA Order No. 64, as revised from time to time. In such event, (i) basic charter hire shall cease as of completion of Charterer's normal redelivery obligations, and (ii) all reasonable costs incurred by the Charterer during the period of the stripping and layup of the Vessel(s) as aforesaid, including but without limitation, cost of insurance, shall, to the extent authorized and approved by the Owner, be taken into account as voyage expense in the determination of additional charter hire under Clause 2.

C. Operation of the Vessel(s)

Clause 15. *Charterer to man, etc.* During the period of this Agreement, the Charterer shall, at its own expense, and by its own procurement, man, victual, navigate, operate, supply, fuel and, except as otherwise expressly provided in Clause 4 of this Agreement, repair each Vessel and pay all charges and expenses of every kind and nature whatsoever incident to the use and operation of the Vessel(s) under this Agreement. The Owner reserves the right to require the removal of the Master(s) or the Chief Engineer(s) if it shall have reason to be dissatisfied with their conduct or if it considers their employment to be prejudicial to the interests of the United States. Except as otherwise expressly provided in this Clause and Clause 40 of this Agreement, the Charterer and not the Owner shall have exclusive possession, control and command of the Vessel(s) during the entire period of use under this Agreement.

Clause 16. *Owner's representatives.* The Charterer agrees that, at its expense, it will furnish transportation on each Vessel, during the period of this Agreement, for not more than five officers and/or employees of the Federal Maritime Board—Maritime Administration, travelling on official business, who shall be given full, free and complete access at all reasonable times to all parts of such Vessel, and shall have full opportunity to observe and inspect the working of such Vessel in all of its parts, but without any directing or controlling power over such Vessel's operations. The Charterer also agrees to cooperate with such representatives in the making of any inspection or investigation which the Owner may deem desirable and to prepare and furnish full and complete reports, records or other data pertaining to such Vessel's operation, as requested by the Owner. It is mutually understood and agreed that the transportation of such Owner's representatives, shall be on the basis of not more than one round-trip per calendar year per Vessel, upon the written request of the Maritime Administrator.

Clause 17. *Employment of affiliates, etc., rental of office space.* (a) Unless granted an exemption upon such terms and conditions and for such specific period of time as the Owner shall determine pursuant to Section 803 of the Act, the Charterer shall not employ any person or concern performing or supplying stevedoring, ship-repairs, ship-chandler, towboat, or kindred services to supply such services to the chartered Vessel(s) if the Charterer or any subsidiary company, holding company, affiliate company, or associate company of the Charterer, or any officer, director, or employee of the Charterer, such subsidiary company, holding company, affiliate company, or associate company of the Charterer, or any member of the immediate family of the Charterer, or of such officer, director, or employee of the Charterer, or any member of the immediate family of any officer, director, or employee of such subsidiary company, holding company, affiliate company, or associate company of the Charterer owns any pecuniary interest, directly or indirectly, in the person or concern supplying such services to the chartered Vessel, or receives any payment or other things of value, directly or indirectly, as a result of such employment of services.

(b) Without prior approval of the Owner granted upon such terms and conditions as the Owner may prescribe, the Charterer shall not rent office space owned by the Charterer or by any subsidiary, holding company, affiliate or associate company of the Charterer, or by any officer, director, or employee of the Charterer, or any member of the immediate family of the Charterer, or of such officer, director, or employee of the Charterer, or any member of the immediate family of any officer, director, or employee of such subsidiary, holding company, affiliate, or associate company of the Charterer.

Clause 18. *Efficient operation.* The Charterer agrees to conduct its business and its operations with respect to each Vessel in an economical and efficient manner.

Clause 19. *Use of United States goods.* Whenever practicable, the Charterer shall use only articles, materials, and supplies of the growth, production, and manufacture of the United States, as defined in Section 505(a) of the Act, except when it is necessary to purchase supplies and equipment outside the United States to enable a Vessel to continue and complete a voyage, and the Charterer shall perform repairs to the Vessel(s) within the continental limits of the United States, except in an emergency.

Clause 20. *Development of American-flag merchant marine.* The Charterer shall cooperate with the Owner and with other American-flag companies in the development of the American-flag merchant marine as a whole, and, whenever practicable, the Charterer shall favor American-flag companies in transshipping of cargo, in selecting foreign domestic agents or other representatives, and in the rental of terminal and other facilities and in related matters.

Clause 21. *Services rendered vessel(s).* The Charterer, if and when requested by the Owner, shall file with the Owner rates and schedules covering any services rendered the Vessel(s) under this Agreement by any individual, firm or corporation.

Clause 22. *No transfer or assignment.* The Charterer shall not, without the Owner's written or telegraphic consent, sell, transfer, or assign this Agreement or any interest therein, or time charter or subcharter the Vessel(s), or make any arrangement whereby the maintenance, management, or operation of the Vessel(s) is to be performed by any other person.

Clause 23. *Preference and conference agreements.* (a) The Charterer shall not unjustly discriminate in any manner so as to give preference, directly or indirectly, in respect to cargo in which the Charterer has a direct or indirect ownership or purchase or vending interest. If the Charterer carries any cargo on its own behalf or for its own account or on behalf or for the account of any associate, affiliate, subsidiary, parent or holding company, the Charterer shall not discriminate in its own favor, or in favor of any such associate, affiliate, subsidiary, holding or parent company in regard to rates charged or service rendered. The Charterer shall also hold confidential and shall not reveal to any such associate, affiliate, subsidiary, holding or parent company any information whatsoever, except such information as is generally made available to the public in the regular course of the steamship business in regard to cargo of similar kind or nature which the Charterer may at any time carry for any other interests or otherwise.

(b) The Charterer agrees not to continue as a party to or to conform to any agreement with another carrier or carriers by water, or to engage in any practice in concert with another carrier or carriers by water, which is unjustly discriminatory or unfair to any other citizen of the United States who operates a common carrier by water exclusively employing vessels registered under the laws of the United States on any established trade route from and to a United States port or ports.

Clause 24. *Libels.* Neither the Charterer nor the Master of the Vessel(s) nor any other person shall have the right, power, or authority to create, incur, or permit to be placed upon the Vessel(s) any liens whatsoever other than for crew's wages or salvage. The Charterer agrees to carry a properly certified copy of this Agreement with the ship's papers on board each Vessel and agrees to exhibit the same to any person having business with such Vessel and agrees also to exhibit the same to any representative of the Owner on demand.

The Charterer agrees to notify any person furnishing repairs, supplies, towage, or other necessaries to the Vessel(s) that neither the Charterer nor the Master has any right to create, incur, or permit to be imposed upon the Vessel(s) any liens whatsoever, except for crew's wages and salvage. Such notice as far as may be practicable shall be in writing. The Charterer further agrees to fasten in each Vessel in a conspicuous place, and to maintain during the charter period, a notice reading as follows:

This Vessel is the property of the United States of America. It is under charter to:

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and by the terms of the charter neither the Charterer nor the Master has any right, power, or authority to create, incur, or permit to be imposed upon the Vessel any lien whatsoever, except for crew's wages and salvage.

The Owner shall indemnify and hold harmless and defend the Charterer against any liens, claims or liabilities of whatsoever nature upon the Vessel(s) at the time of delivery under this Agreement. The Charterer shall indemnify and hold harmless and defend the Owner against any liens of whatsoever nature upon the Vessel(s) and against any claims against the Owner arising out of the operation of the Vessel(s) by the Charterer, or out of any act or neglect of the Charterer, in relation to the Vessel(s) or the operation thereof, except insofar as such liens or claims arise out of any matter covered by the insurance procured and in force, as provided herein. If a libel should be filed against the Vessel(s) or if the Vessel(s) is/are otherwise levied against or taken in custody by virtue of legal proceedings in any court because of any liens or claims arising out of the operation of the Vessel(s) by the Charterer, the Charterer shall at its own expense within fifteen (15) days thereof cause the Vessel(s) to be released and the lien to be discharged.

Clause 25. *Insurance.* (a) The Charterer shall, at all times during the period of the Vessels' use under this Agreement, carry on each Vessel policies of insurance covering all marine and war risk hull and marine and war risk protection and indemnity risks, and all other hazards and liabilities in the amounts set out in Part I hereof, in such form and with such insurance companies, underwriters or funds as the Owner shall require and approve. All insurance required under the terms of this Agreement to be carried by the Charterer shall include the United States of America as an assured, without recourse against the United States for payment of premiums, or for assessments under any mutual form of policy. The underwriters shall have full rights of subrogation against the United States of America to the extent of any loss paid for which any assured other than the United States of America could bring suit against the United States of America, under the Suits in Admiralty, Public Vessels or Tucker Acts to recover for such loss, and, notwithstanding the fact that the United States of America may be named as an assured and as payee in the policy, such loss shall be considered to have been paid to and sustained by any assured other than the United States of America, in the first instance.

(b) All losses under the policies of insurance carried on the Vessels, except those payable under crew insurance policies, shall be made payable to the Owner for distribution by it to itself and the Charterer as their interests may appear, provided, however, that in the absence of specific instructions to the contrary, P and I insurance claims in amounts not exceeding $10,000 may be payable directly to the Charterer. Charterer shall at Charterer's expense keep the Vessels entered in the Marine Index Bureau, Inc. The originals of all cover notes or binders and policies, except those for crew insurance, shall be delivered promptly to the Owner for its custody and approval.

(c) In the event that any of the insurance hereinbefore provided for shall not, by reason of any act, omission, or negligence of the Charterer, be kept in full force and effect, or for any reason, including but without limitation the existence of any deductible average, franchise provisions, or other exclusion contained therein, but excluding insolvency of the underwriters, does not cover in full all losses, damages, claims or demands, the Charterer shall indemnify and hold harmless and defend the Owner against all such losses, claims and demands.

(d) No tender of abandonment as a constructive total loss shall be made without the prior approval of the Owner, provided, however that in the event the Owner refuses to approve such tender or fails to act thereon within twenty (20) days after receipt of Charterer's request, then charter hire shall cease as of the date of such refusal or at the expiration of such twenty (20) day period, as the case may be, and provided further that charter hire shall cease only in the event that, but for the refusal of the Owner to agree to tender of abandonment, the amount which would have been recoverable from the hull insurance underwriters would have squalled or exceeded the amount set forth in Part I hereof.

Clause 26. *Bills of lading or voyage charters.* All bills of lading or voyage charters issued under this Agreement shall contain directly or by reference substantially the following clauses:

(i) *Clause paramount.* This bill of lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of United States, approved April 16, 1936, which shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the Carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under said Act. If any term of this bill of lading be repugnant to said Act to any extent, such term shall be void to that extent but no further.

(ii) *General average clause.* General average shall be adjusted, stated, and settled, according to York-Antwerp Rules, 1950, exclusive of Rule 22, at such port or place in the United States as may be selected by the Carrier, and as to matters not provided for by these Rules, according to the laws and usages at the port of New York. In such adjustment, disbursements in foreign currencies shall be exchanged into United States money at the rate prevailing on the dates made and allowances for damage to cargo claimed in foreign currency shall be converted at the rate prevailing on the last day of discharge at the port or place of final discharge of such damaged cargo from the ship. Average agreement or bond and such additional security, as may be required by the carrier, must be furnished before delivery of the goods. Such cash deposit as the carrier or his agents may deem sufficient as additional security for the contribution of the goods and for any salvage and special charges thereon, shall, if required, be made by the goods, shippers, consignees, or owners of the goods to the carrier before delivery. Such deposit shall, at the option of the carrier, be payable in United States money, and be remitted to the adjuster. When so remitted the deposit shall be held in a special account at the place of adjustment in the name of the adjuster pending settlement of the general average and refunds or credit balances, if any, shall be paid in United States money.

(iii) *Amended "Jason" clause.* In the event of accident, danger, damage, or disaster before or after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or act, for which or for the consequence of which the carrier is not responsible by statute, contract, or otherwise, the goods, shippers, consignees, or owners of the goods shall contribute with the carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the goods. If a salving ship is owned or operated by the carrier, salvage shall be paid for as fully as if the salving ship or ships belong to strangers.

(iv) *Liberties clauses.* In any situation whatsoever and wheresoever occurring and whether existing or anticipated before commencement of or during the voyage, which in the judgment of the carrier or master is likely to give rise to risk of capture, seizure, detention, damages, delay or disadvantage to or loss of the ship or any part of her cargo, or to make it unsafe, imprudent, or unlawful for any reason to commence or proceed on or continue the voyage or to enter or discharge the goods at the port of discharge, or to give rise to delay or difficulty in arriving, discharging at or leaving the port of discharge or the usual place of discharge in such port, the carrier may before loading or before the commencement of the voyage, require the shipper or other person entitled thereto to take delivery of the goods at port of shipment and upon their failure to do so, may warehouse the goods at the risk and expense of the goods; or the carrier or master, whether or not proceeding toward or entering or attempting to enter the port of discharge or reaching or attempting to reach the usual place of discharge therein or attempting to discharge the goods there, may discharge the goods into depot, lazaretto, craft or other place; or the ship may proceed or return, directly or indirectly to or stop at any such port or place whatsoever as the master or the carrier may consider safe or advisable under the circumstances, and discharge the goods, or any part thereof, at any such port or place; or the carrier or the master may retain the cargo on board until the return trip or until such time as the carrier or the master thinks advisable and discharge the goods at any place whatsoever as herein provided; or the carrier or the master may discharge and forward the goods by any means at the risk and expense of the goods. The carrier or the master is not required to give notice of discharge of the goods or the forwarding thereof as herein provided. When the goods are discharged from the ship, as herein provided, they shall be at their own risk and expense; such discharge shall constitute complete delivery and performance under this contract and the carrier shall be freed from any further responsibility. For any service rendered to the goods as herein provided the carrier shall be entitled to a reasonable extra compensation.

The carrier, master, and ship shall have liberty to comply with any orders or directions as to loading, departure, arrival, routes, ports of call, stoppages, discharge, destination, delivery or otherwise howsoever given by the Government of any nation or department thereof or any person acting or purporting to act with the authority of such government or of any department thereof, or by any committee or person having under the terms of the war risk insurance on the ship, the right to give such orders or directions. Delivery or other disposition of the goods in accordance with such orders or directions shall be a fulfillment of the contract voyage. The ship may carry contraband, explosives, munitions, warlike stores, hazardous cargo, and may sail armed or unarmed and with or without convoy.

In addition to all other liberties herein the carrier shall have the right to withhold delivery of, reship to, deposit or discharge the goods at any place whatsoever, surrender or dispose of the goods in accordance with any direction,

condition or agreement imposed upon or exacted from the carrier by any government or department thereof or any person purporting to act with the authority or either of them. In any of the above circumstances the goods shall be solely at their risk and expense and all expenses and charges so incurred shall be payable by the owner or consignee thereof and shall be a lien on the goods.

Clause 27. *General and particular average.* Average adjusters shall be appointed by the Charterer from a list of adjusters satisfactory to the Owner, who shall attend to the settlement and collection of both general and particular average losses subject to customary charges. The Charterer agrees to assist the adjuster in preparing the average statement and to take all other possible measures to protect the interests of each Vessel and the Owner.

Clause 28. *Salvage.* Earned salvage shall be prorated 25% to the Owner and 75% to the Charterer, after deducting Owner's and Charterer's expenses, Master's and Crew's shares, and legal and other expenses incident to the salvage, provided, however, that hire of the Vessel(s) shall not be considered an item of the Charterer's expense hereunder. Salvage earned by the Charterer shall be considered gross income as defined in Clause 38(a). Settlement of such claims for earned salvage shall be subject to the approval of both Owner and Charterer, Provided, that the amount of awards for the salving of vessels of which the United States, or any department or agency thereof, is the Owner or Owner pro hac vice, or for the cargoes and freights on such vessels, shall be approved by the Owner.

D. Management—Other Activities of Charterer

Clause 29. *Mergers, business not related to shipping.* The Charterer agrees that during the charter period it will not, without the prior written approval of the Owner, (1) effect any merger, consolidation or substantial acquisition or disposition of assets not in the ordinary course of business, or (2) directly or indirectly embark upon any new enterprise or business activity not directly connected with the business of shipping.

Clause 30. *Coastwise or intercoastal service.* Neither the Charterer nor any holding company, subsidiary, affiliate, or associate of the Charterer nor any officer, director, agent, or executive thereof shall, without the permission of the Owner granted pursuant to Section 805(a) of the Act, directly or indirectly, own, operate, or charter any vessel or vessels engaged in the domestic intercoastal or coastwise service, or own any pecuniary interest, directly or indirectly, in any person or concern that owns, charters or operates any vessel or vessels in the domestic intercoastal or coastwise service; Provided that, if such permission is or has been granted, none of the persons mentioned in this Clause shall divert, directly or indirectly, any moneys, property, or other thing of value, used in foreign trade operation, for which a subsidiary is paid by the United States, into any such coastwise or intercoastal operations; Provided further, that where such permission is or has been granted pursuant to the Proviso clause of the first paragraph of Section 805(a) of the Act, in the event of substantial change in the character or extent of such operations over those conducted during 1935, the foregoing permission to continue such operations may be limited or terminated by the Owner, after notice to the Charterer and opportunity for hearing, with respect to any or all of the operations thus permitted.

Clause 31. *Supervision of employment.* Whenever the Charterer receives an operating-differential subsidy and is in default with respect to any mortgage, note, purchase contract or other obligation to the Owner, or has not maintained, in a manner satisfactory to the Owner, all of the reserves provided for in the Act, the Owner shall have the right to supervise the number and compensation of all officers and employees of the Charterer, and the Charterer shall then comply with all instructions of the Owner with respect thereto.

Clause 32. *Salaries and fees.* No salary for personal services in excess of $25,000 per annum paid to a director, officer, or employee by the Charterer, its affiliates, subsidiary, or associates, directly or indirectly, shall be taken into account under this Agreement. The terms "director," "officer," or "employee" shall be construed in the broadest sense to include, but not to be limited to, managing trustee or other administrative agent. The term "salary" shall include wages and allowances or compensation in any form for personal services which will result in a director, officer, or employee receiving total compensation for his personal services from such sources exceeding in amount or value $25,000 per annum.

Clause 33. *Employment of managing agent.* The Charterer shall not without the prior consent of the Owner employ any other person or concern as the managing or operating agent of the Charterer.

Clause 34. *Members or Delegates of Congress.* The Charterer shall not employ any Member of Congress, either with or without compensation, as an attorney, agent, officer, or director. Except to the extent permitted by law, no Member of or Delegate to Congress or any Resident Commissioner is or shall be admitted to any share or interest in this Agreement, or any benefit that may arise therefrom.

Clause 35. *Rescission provision.* Upon determination by the Owner that any willful violation of any provision of Clauses, 30, 31, 32, 33 or 34 has occurred, the Owner shall have the right to rescind the Agreement, and upon such rescission, the Owner shall be relieved of all further liability under this Agreement.

Clause 36. *Foreign-flag vessels.* Neither the Charterer, nor any holding company, subsidiary, affiliate, or associate of the Charterer, nor any officer, director, agent or executive thereof shall, directly or indirectly, own, charter, act as agent or broker for, or operate any foreign-flag vessel which competes with any American-flag vessel service which may be determined by the Owner to be essential pursuant to Section 211 of the Act, except as the Owner in its discretion and for a specific period of time may otherwise permit in accordance with the provisions of the Act.

E. Accounting—Definitions

Clause 37. *Accounting, report and supervision.* (a) The Charterer and, to the extent required by the Owner, every affiliate, domestic agent, subsidiary, or holding company connected with, or directly or indirectly controlling or controlled by the Charterer:

(1) Shall keep its books, records and accounts relating to the management, operation, conduct of the business of and maintenance of the Vessel(s) covered by this Agreement in accordance with the "Uniform System of Accounts for Maritime Carriers" prescribed by the Maritime Administration, U.S. Department of Transportation, in General Order 22, Revised, (Issue of 1950) effective January 1, 1951, and under such regulations as may be prescribed by the Owner; *Provided,* That notwithstanding the provisions of said General Order 22, Revised, such reserves as may be specifically authorized by the Owner shall be taken into account in the determination of "Net Voyage Profit" hereunder or the expenses to provide for which such reserves are so authorized shall be distributed over the period of use hereunder of the Vessel involved in such manner as will accomplish the same result as though such reserves were established, all pursuant to regulations prescribed by the Owner; and *Provided further,* That if the Charterer is subject to the jurisdiction of the Interstate Commerce Commission, the Owner shall not require the duplication of books, records, and accounts required to be kept in some other form by that Commission; and

(2) Shall file, upon notice from the Owner, balance sheets, profit and loss statements, and such other statements of financial operations, special reports, memoranda of any facts and transactions, which in the opinion of the Owner affect the financial results in, the performance of, or transactions or operations under, this Agreement. The Owner reserves the right to require that all or any of such statements, reports and memoranda shall be certified by independent certified public accountants acceptable to the Owner. Specific reporting requirements subsequently prescribed will be subject to the approval of the Bureau of the Budget pursuant to the Federal Reports Act of 1942.

(b) The Owner is hereby authorized to examine and audit the books, records and accounts of all persons referred to above in this Clause whenever it may deem it necessary or desirable, including an analysis of the surplus and all supporting accounts. The Charterer agrees to allow any and all auditors, inspectors, attorneys, and other employees, designated by the Owner, full, free and complete access at all reasonable times, to the Vessel when in port or undergoing repairs, and to all books, records, papers, memoranda or other documents of the Charterer wherever located or of any holding company, subsidiary company or affiliated company of the Charterer pertaining to any activities relating in any way to the Vessel(s), and further agrees to permit the making of photostatic or other copies of any such books, records, papers, memoranda or other documents and to furnish without charge adequate office space and other facilities reasonably required by such auditors, attorneys, or inspectors in the performance of their duties. The Charterer further agrees to establish and maintain from time to time such checks upon or systems of control of expenditures or revenues in connection with the operation of the Vessel(s) as the Owner may request.

(c) Upon the willful failure or willful refusal of any person described in this Clause to comply with the above provisions of this Clause, the Owner shall have the right to rescind this Agreement, and upon such rescission, the Owner shall be relieved of all further liability under this Agreement.

Clause 38. *Definitions.* The terms "net voyage profit," "fair and reasonable overhead expenses," and "capital necessarily employed" as used herein with respect to the operations of the Vessel(s) and services incident thereto are hereby defined for the purpose of this Agreement only, as follows:

(a) "Net voyage profit" shall be determined by deducting from gross income, as hereinafter defined, such direct vessel operating expenses, terminal and other auxiliary operating expenses, overhead expenses, interest expense, amortization of deferred charges, depreciation on property utilized in the operation of the Vessel(s), and all other charges which are customarily made in accordance with sound accounting practice in determining net profits before provision for federal income taxes, all as the Owner may deem fair and reasonable, provided, that in instances where the Charterer engages in other activities in addition to the operation of the Vessel(s) covered by this Agreement, such charges, other than those directly and exclusively allocable to the operation of the Vessel(s) shall be prorated between these activities on such basis as the Owner may determine to be fair and reasonable.

"Gross income" shall include such items as revenue earned from the carriage of cargo, passengers, and mail, terminal and other auxiliary operations and miscellaneous profits and losses, such as those arising from pooling agreements, advance and prepaid beyond items, bar and slop chest, and such other transactions as the Owner may determine are properly included. "Gross income" shall include also interest earned, dividends received, and other non-operating income, as well as all accruals, if any, to the Charterer as an operating-differential subsidy. If the Charterer engages in any other activities in addition to the operation of the Vessel(s), the revenues and miscellaneous income, other than those exclusively applicable to the operation of the Vessel(s), shall be prorated between these activities on such basis as the Owner may determine to be fair and reasonable.

Income consisting of capital gains and expenses consisting of capital losses shall in no event be included in the computation of "Net Voyage Profit," as above defined.

Income from and expenses attributable to assets, other than the Vessel(s), excluded in the computation of "Capital Necessarily Employed," as hereinafter defined, shall not be included in the computation of "Net Voyage Profit," as above defined.

In determining "Net Voyage Profit," as above defined, all profits of persons performing services or supplying facilities to the Charterer which are required to be included in the earnings of the Charterer under section 803 of the Act shall be taken into account.

(b) "Fair and reasonable overhead expenses" shall include those expenses actually and necessarily incurred in the conduct of the business of operating the Vessel(s), such as salaries of officers; wages of employees; legal and accounting fees and expenses; rent, heat, light, and power; communciation expenses; office supplies, stationery, and printing; membership dues and subscriptions; entertaining and solicitation; traveling expenses; insurance and bond premiums; postage; maintenance of office equipment; and miscellaneous administrative and general expenses, all as the Owner may determine to be fair and reasonable and properly included, provided, that there shall be deducted from the total of such expenses, agency fees, commissions, brokerage, and such other miscellaneous earnings as the Owner may determine to be properly deductible.

"Fair and reasonable overhead expenses" shall include also freight, passenger, and other expenses incident to advertising the Vessel(s) and the route served; taxes, other than Federal income taxes; and management and operating commissions, but only if and in the cases where the express written consent of the Owner has been given the Charterer to employ any other person or concern as the managing or operating agent of the Charterer; all as the Owner may determine to be fair and reasonable and properly included.

If the Charterer engages in other activities in addition to the operation of the Vessel(s), the "Fair and Reasonable Overhead Expenses" other than those directly and exclusively allocable to the Operation of the Vessel(s) shall be prorated between such activities on such basis as the Owner may determine to be fair and reasonable.

(c) Except in instances where the Charterer is granted an operating-differential subsidy (which is covered by the last paragraph of this subsection (c)), "Capital necessarily employed" shall be determined upon the basis of the net worth reported by the Charterer in its balance sheet as of the close of the month preceding the date of delivery of the first vessel under this Agreement (or in the last previous balance sheet deemed by the Owner to fairly present

the financial position of the Charterer, but adjusted to take into account subsequent changes in net worth and such other changes as the Owner may deem essential to a proper determination of "Capital Employed" as at the end of such month), and as at each succeeding December 31st during the effective period of the Agreement, adjusted as hereinafter provided. For the purpose of this determination, net worth, as stated in the balance sheet of the Charterer, shall be deemed to include capital stock, surplus and such subdivisions thereof as capital surplus, earned surplus, and accounts of like nature. Net worth, as thus stated, shall be adjusted in such manner as the Owner may determine to be fair and reasonable, including the elimination of appreciation, adequate statement of the liabilities, and such other adjustments as are consistent with sound accounting principles. In the computation of "Capital Necessarily Employed," good will, intangibles not actually purchased and paid for, and stock held in treasury shall be excluded.

Property and other assets utilized in the operation of the Vessel(s) shall be valued at cost, including betterments and reconditioning costs, to the present owner or to any former owner at any time affiliated or associated directly or indirectly with the present owner, whichever is the lower, less depreciation; provided, that the cost of acquisition of assets acquired in exchange for capital share or other securities of the Charterer from other than holding, subsidiary, affiliated, or associated companies, shall not be in excess of the fair value of such property at the date of acquisition.

Additional capital, in the form of cash or tangible property paid in during the charter period, shall be included in the computation of "Capital Necessarily Employed" from the date paid in. Conversely, any withdrawals of capital shall be deducted from the date withdrawn; provided, however, that no capital shall be withdrawn and no share capital shall be converted into debt without the prior written approval of the Owner. Earnings and capital gains (or losses) for any accounting period subsequent to the last day of the month preceding the month during which delivery of the first Vessel is made hereunder to the Charterer by the Owner shall not be included in the computation of the "Capital Necessarily Employed" for the year or other accounting period in which realized (or sustained). Dividends paid out of earnings that have not been included in "Capital Employed" shall not be deducted from "Capital Employed."

If the Charterer engages in other activities in addition to the operation of the Vessel(s), the Owner shall determine the proper allocation of capital as between such activities. The amount so allocated to the operation of the Vessel(s) shall be deemed to be the "Capital Necessarily Employed."

In the event the Charterer is granted an operating-differential subsidy, "Capital Necessarily Employed" in the business of the Vessel(s) chartered hereunder shall be determined upon the bases provided by the United States Maritime Commission with respect to subsidized vessels in its General Order No. 71 as adopted by its successors, the Federal Maritime Board and Maritime Administration, and amended from time to time, excepting inapplicable provisions of that Order (such as those relating to (1) ship equities, (2) deposits in the Special Reserve Fund, (3) deposits in the Capital Reserve Fund, and (4) progress payments on vessels under construction) as determined by the Owner.

F. Termination—Miscellaneous

Clause 39. *Events of default.* The following shall constitute events of default under this Agreement:

(a) The failure of the Charterer to pay the charter hire on each Vessel as and when the same shall be due under the terms of this Agreement.

(b) The failure of the Charterer to operate each Vessel as required by Clause E, Part I, or the operation of the Vessel(s) on some other route without the prior written approval of the Owner.

(c) Any material misrepresentation by the Charterer in connection with this Agreement whether before or after execution hereof and whether made in an application, report or otherwise, or any wilful failure by the Charterer to disclose information necessary to cause any material representation by it not to be misleading.

(d) The occurrence of any event causing the Charterer to be ineligible for charter of the Owner's vessels.

(e) A voluntary sale by the Charterer of this Agreement or any interest therein, or any assignment, transfer, agreement or any other arrangement whereby the maintenance, management or operation of the above described service, route, or Vessel(s) shall pass out of the direct control of the Charterer without the consent of the Owner.

(f) The filing of a petition in bankruptcy by the Charterer or the entry of an order, upon petition against the Charterer, adjudicating the Charterer a bankrupt, or the making of a general assignment for the benefit of creditors, or the Charterer losing its charter by foreiture or otherwise, or the appointment of a receiver or receivers of any kind whatsoever, whether appointed or not in Admiralty, Bankruptcy, Common Law or Equity proceedings, and whether temporary or permanent, for the property of the Charterer, or the filing of a petition by the Charterer for reorganization under the Bankruptcy Act, or the filing of such a petition by creditors and the same approved by the court, or the approval of the court of a reorganization of the Charterer under said Act, whether proposed by a creditor, a stockholder or any other person whomsoever.

(g) Any breach by the Charterer of its obligations under this Agreement (including but without limitation, the obligation to maintain a Performance Bond as required by Clause 3) or any agreement executed in connection therewith (including but not limited to any operating-differential subsidy agreement with respect to the Vessel), or any ship mortgage given to construction agreement made with the United States.

(h) Failure by the Charterer to comply with any applicable provision of the Merchant Marine Act, 1936, as amended, or of any law relating to the operation of the Vessel(s).

(i) Failure by any subsidiary company, holding company, affiliate company or associate company of the Charterer, or failure by any person performing services or supplying facilities to the Charterer subject to the provisions of section 803 of the Act, to conform to the provisions of this Agreement.

Clause 40. *Termination upon default.* (a) The Owner may terminate this Agreement in whole or in part without notice to the Charterer in case any event of default specified in paragraph (a), (b), (c), (d), (e) or (f) of the preceding Clause 39 shall occur, or if any other default specified in paragraph (g), (h) or (i) of said Clause shall occur and shall continue for a period of 30 days after notice thereof has been mailed or telegraphed by the Owner to the Charterer.

(b) Upon termination, the Owner may, at its option, retake the Vessel(s), wherever the same may be found, whether upon the high seas or in any port, harbor, or other place, without prior demand and without legal process and for that purpose may enter upon any dock, pier, or other premises where the Vessel(s) may be and may take possession thereof, or may require the Charterer to redeliver such Vessel(s) in accordance with terms of this Agreement immediately upon the receipt of a notice demanding such redelivery.

(c) The rights conferred upon the Owner by this Clause are cumulative and in addition to any rights which it may have at law or in equity or by virtue of the terms of the Agreement.

Clause 41. *Termination of business.* Upon termination of this Agreement, the Charterer shall turn over to the Owner, at such time and at such place as the Owner may direct, each Vessel and all property of whatsoever nature which the Owner may theretofore have delivered to the Charterer or to which the Owner is entitled under the terms of this Agreement, and the Charterer shall at its own expense make to the owner such accounting as the Owner may require of all matters arising out of the operation of the Vessel(s) and this Agreement, and shall adjust, settle, and liquidate such accounts, provided, however, that the Owner may collect directly all freight moneys or other debts remaining unpaid and apply any moneys collected on any unpaid balance due from the Charterer to the Owner. All expenses of such collection shall be for the account of the Charterer.

Clause 42. *Cancellation or modification by mutual consent.* This Agreement may be terminated, modified, or amended at any time by mutual consent.

Clause 43. *Warranty against contingent fees.* The Charterer warrants that no person or agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial agencies maintained by the Charterer for the purpose of securing business. For breach or violation of this warranty, the Owner shall have the right to annul this contract without liability or in its discretion to require the Charterer to pay, in addition to the charter hire, the full amount of such commission, percentage, brokerage, or contingent fee.

Clause 44. *Renegotiation.* This Agreement shall be deemed to contain all the provisions required by section 104 of the Renegotiation Act of 1951, as amended and extended. The Contractor (which term as used in this sentence in the Bareboat Charterer Agreement, means the Bareboat Charterer, and, as used in this sentence in related sub-contracts shall mean the party contracting to perform the work or furnish the materials required under such sub-contract) shall, in compliance with said section 104, insert the provisions of this Clause in each sub-contract and purchase order made or issued in carrying out this Agreement.

Clause 45. *Citizenship.* The Charterer hereby warrants and represents that it is and at all time during the period of this Agreement will continue to be a citizen of the United States within the meaning of section 2 of the Shipping Act of 1916, as amended.

Clause 46. *Officers and crew.* The Charterer agrees, with respect to the Vessel(s) that during the period of this Agreement:

(a) Insofar as is practicable, officers' living quarters shall be kept separate and apart from those furnished for members of the crew; the Charterer shall comply with all rules and regulations promulgated by the appropriate agencies of the United States.

(b) Licensed officers and unlicensed members of the crew shall be entitled to make complaints or recommendations to the Owner, providing they file such complaint or recommendation directly with the Owner or with their immediate superior officer, who shall be required to forward such complaint or recommendation with his remarks to the Owner, or with the authorized representative of the respective collective bargaining agencies.

(c) Licensed officers who are members of the United States Naval Reserve shall wear on their uniforms such special distinguishing insignia as may be approved by the Secretary of the Navy; officers being those men serving under licenses issued by the United States Coast Guard or its successor.

(d) The uniform stripes, decoration, or other insignia shall be of gold braid or woven gold or silver material, to be worn by officers, and no member of the ship's crew other than licensed officers shall be allowed to wear any uniform with such officer's identifying insignia.

(e) No discrimination shall be practiced against licensed officers who are otherwise qualified, because of their failure to qualify as members of the United States Naval Reserve.

(f) The Charterer shall comply with all laws governing the citizenship of licensed officers and crews, including section 302 of the Act.

Clause 47. *Nondiscrimination in employment.* In connection with the performance of work under this Agreement, the Charterer agrees not to discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The aforesaid provision shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Charterer agrees to post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the Owner setting forth the provisions of the nondiscrimination clause.

The Charterer further agrees to insert the foregoing provisions in all sub-contracts hereunder, except sub-contracts for standard commercial supplies or raw materials.

Clause 48. *Notices.* Unless otherwise provided in this Agreement or mutually agreed upon, all payments, notices and communications from the Owner to the Charterer, pursuant to the terms of or in connection with this Agreement, shall be made or addressed to the Charterer at the address provided herein, and all payments, notices and communications from the Charterer to the Owner, pursuant to the terms of or in connection with this Agreement, shall be made or addressed to the Owner at its offices in Washington, District of Columbia.

Clause 49. *Headnotes.* The use of headnotes at the beginning of the clauses of this Agreement is for the purpose of description only and shall not be construed as limiting or in any other manner affecting the substance of the clauses themselves.

(c) The charterer's books, records, and accounts, required to be kept and maintained under Clause 37(1), Part II, of Form No. 705 charter, shall be retained by the charterer for a period of three (3) years after a release or final settlement is completed between the Maritime Administration and the charterer.

Appendix to Part 221

I. Transfer of Documented Vessels to Foreign Registry or Ownership, or Both

Each application for the transfer to foreign registry or ownership or both or to the authority of a foreign country (hereinafter referred to as a "foreign transfer") of any vessel of 3,000 gross tons and over will be evaluated on its individual merits with consideration being given to the following:

(1) The type, size, speed, general condition, and age of the vessel;

(2) The acceptability of the foreign buyer and country of registry; and

(3) The need to retain the vessel under U.S. flag or ownership and control for the purposes of national defense, maintenance of an adequate merchant marine, foreign policy of the United States, and the national interest.

II. Conditions of Approval

The Maritime Administrator's approval of foreign transfer of vessels of 3,000 gross tons and over, under section 9 or 37 or both of the Shipping Act, 1916, as amended (46 App.

U.S.C. 808 and 835), whether such transfer is for operation or scrapping, shall be subject to the terms and conditions hereinafter stated.

If the vessel is being transferred for foreign flag operation, the terms and conditions shall run with the title to the vessel and shall remain in effect for the period of the remaining economic life of the vessel or for the duration of a national emergency proclaimed by the President, whichever period is longer. The economic life of a vessel for the purpose of this statement of policy is 25 years from the date the vessel was delivered by the shipbuilder. This period will be extended another five years, or such other period of time approved by the Maritime Administrator, if the vessel is converted or jumboized. The terms and conditions are as follows:

A. Transfer of Existing Vessels of 3,000 Gross Tons or Over to Either Foreign Registry or Ownership, or Both, or to the Authority of a Foreign Government

(1) *Ownership.* (a) Without the prior approval of the Maritime Administrator, there shall be no transfer in the ownership or change in the registry of such vessel.

(b) Without the prior approval of the Maritime Administrator, there shall be no transfer of stock interest in the foreign corporate contractor to persons not citizens of the United States (within the meaning of section 2 of the Shipping Act, 1916, as amended (46 App. U.S.C. 802)). However, transfers of such stock or changes in ownership resulting from the death of any stockholder or owner are not subject to this condition. Notification of any such transfer of stock or ownership occurring by reason of death shall be filed with the Maritime Administrator within 60 days from the date of the transfer of stock or change of ownership.

(2) *Availability.* The vessel shall, if requested by the United States or any qualified department or agency thereof, be sold or chartered to the United States on the same terms and conditions upon which a ship owned by a citizen of the United States could be requisitioned for purchase or charter, as provided for in section 902 of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1242). If the foreign transfer of the vessel is to the flag of a country that is a member of the North Atlantic Treaty Organization (NATO), the Administrator will consider this condition satisfied if the vessel upon request is made available to a NATO country

(3) *Trade.* (a) The vessel shall not be chartered to aliens on a demise or bareboat basis without the prior approval of the Maritime Administrator; and,

(b) There shall be no charter or other foreign transfer to a non-citizen for carriage of cargoes of any kind to or from the USSR, Latvia, Lithuania, Estonia, Czechoslovakia, Bulgaria, Albania, North Korea, Poland, German Democratic Republic (including East Berlin), Laos, Kampuchea, Vietnam, Outer Mongolia Manchuria, Libya, Iran or Cuba, without the prior approval of the Maritime Administrator. This list of countries shall be subject to change periodically to conform to the laws and foreign policy of the United States.

(4) *Default.* In the event of default under conditions 1 or 2 or 3 above, the vessels approved for foreign transfer shall be subject to the penalties imposed by section 41 of the Shipping Act, 1916, as amended (46 App. U.S.C. 839). Pursuant to the provisions of section 30 of the Shipping Act, 1916, as amended (46 App. U.S.C. 836), the Maritime Administrator may remit the forfeiture of the vessel provided for in section 41 of the Shipping Act, 1916, as amended (46 App. U.S.C. 839), upon such conditions as may be required under the circumstances of the particular case, including the payment of a sum in lieu of forfeiture and the execution of a new agreement containing substantially the same conditions set forth above which will be applicable to the vessel for the remaining period of the original agreement. In order to secure the payment of any such sum of money, a foreign contractor owned or controlled by foreign citizens shall agree by way of a contract approved as to form by the Chief Counsel of the Maritime Administration to comply with the above conditions and to provide a United States commercial surety bond or other surety acceptable to the Maritime Administrator for an amount ranging from $25,000 to $250,000 depending upon the type, size and condition of the vessel. "Other surety" may be any one of the following:

(a) An irrevocable letter of credit directly issued by a United States bank;

(b) United States Government securities;

(c) The written guarantee of a friendly government of which the foreign person is a national; or

(d) A written guarantee or penal bond by a United States corporation which is found to be financially qualified to service the undertaking to pay the stipulated amount.

If the foreign person is owned or controlled by U.S. citizens, the foreign person and its principal U.S. citizen owners shall agree in form satisfactory to the Chief Counsel, Maritime Administration, to pay an amount ranging from $25,000 to $250,000, such agreement to be secured by the written guarantee of said parties, or other form of guarantee, as may be required by the Maritime Administrator.

B. Sale of U.S. Documented Vessels of 3,000 Gross Tons and Over to Foreign Buyers for Scrapping Abroad

(1) *Ownership.* The vessel or any interest therein shall not be sold without the prior written approval of the Maritime Administration.

(2) *Time within which to be scrapped.* Within a period of 18 months from the date of approval of the sale, the hull of the vessel shall be completely scrapped, dismantled, dismembered, or destroyed in such manner and to such extent as to prevent the further use thereof, or any part thereof, as a ship, barge, steamship, or any other means of transportation.

(3) *Distribution of scrap material.* The scrap resulting from the demolition of the hull of the vessel, the engines, machinery, and major items of equipment shall not be sold to, or utilized by, any noncitizen of the United States residing in the Soviet Union, Latvia, Lithuania, Estonia, Poland, Czechoslovakia, Hungary, Rumania, Bulgaria, Albania, North Korea, German Democratic Republic (including East Berlin), Manchuria, Libya, Iran, Vietnam, Laos, Kampuchea, Outer Mongolia, or Cuba. Such scrap shall not be exported to these countries. In addition, the engines, machinery and major items of equipment shall not be exported to destinations within the United States.

(4) *Default.* In the event of default under any or all of (1), (2), and (3) above, the contractor shall pay to the Maritime Administration, Department of Transportation, without prejudice to any other rights which the United States may have, as liquidated damages and not as a penalty, the sum of not less than $25,000, depending upon the size, type and condition of the vessel. This payment shall be secured by a surety company bond or other guarantee satisfactory to the Maritime Administration. "Other guarantee" may be one of those set out in section A(4) of this statement of policy.

(5) *Evidence of scrapping and destination of scrap materials.* There shall be filed with the Maritime Administrator a certificate or other evidence satisfactory to its Chief Counsel, duly attested and authenticated by a United States Consul, that the scrapping of the vessel (hull only) and disposal or utilization of the resultant scrap, the engines, machinery and major items of equipment have been accomplished in the manner prescribed by this section.

C. Resident Agent in the United States to Accept Service of Process for Foreign Transferee

All foreign transferees, whether corporate entities, associations, companies, partnerships, individuals, or joint ventures, which or who have been granted approval by the Maritime Administration pursuant to section 9 or 37 or both of the Shipping Act, 1916, as amended (46 App. U.S.C. 808 and 835), shall, prior to the issuance and delivery of the Transfer Order covering the vessel or vessels to be transferred, appoint and designate a resident agent in the United States to receive and accept service of process or other notice in any action or proceeding instituted by the United States of America relating to any claim arising out of the approved transaction. This appointment and designation of the resident agent shall not be terminated, revoked, amended or altered without the prior written consent and approval of the Maritime Administrator. The resident agent designated and appointed by the foreign transferee shall be subject to approval by the Maritime Administrator. To be acceptable, the resident agent must maintain a permanent place of business in the United States, shall be a banking or lending institution or a ship operating or shipowning company incorporated under the laws of the United States, or another U.S. corporation which is satisfactory to the Maritime Administrator. No individual and no foreign business entity will be accepted as a resident agent.

The foreign transferee shall file with the Maritime Administrator a written copy of the appointment of the resident agent, which copy shall be fully endorsed by the resident agent that it accepts the appointment, that it will act thereunder and that it will notify in writing the Maritime Administrator in the event it is disqualified from so acting by reason of any legal restrictions. Service of process or notice upon any officer, agent, or employee of the resident agent at its permanent place of business shall constitute effective service on, or notice to, the foreign transferee.

The subsequent transfer of ownership or registry of vessels which have been transferred to either foreign ownership or registry or both or to authority of a foreign government subject to Maritime Administration contractual control, as set forth above, will be subject to substantially the same Maritime Administration policy that governed the original transfer and sale, including such changes or modifications that have subsequently been made and continued in effect. Approval of these subsequent transfers will be subject to the same terms and conditions governing the foreign transfer at the time of the previous transfer.

The completion of all approved transactions, either by virtue of sections 9, 37 and 41 of the Shipping Act, 1916, as amended (46 App. U.S.C. 808, 835 and 839), or the Maritime Administration's contract with the foreign person, will be authorized by notification in the form of a Transfer Order to all interested parties, upon the receipt of the executed contract, the required bond or other surety, and other supporting documents required by said contract.

In order that the Maritime Administration's records may be maintained on a current basis, the transferor and transferee of the vessel are required to notify the Maritime Administrator of the date and place where the approved transaction was completed, and the name of the vessel, if changed. This information relating to the completion of the transaction and any change in name shall be furnished to the Maritime Administrator as soon as possible, but not later than ten days after the same has occurred.

III. Vessels Under 3,000 Gross Tons

Generally, the Maritime Administrator will grant approvals required by section 9 or 37 or both of the Shipping Act, 1916, as amended, (46 App. U.S.C. 808 and 835), of vessels of under 3,000 gross tons provided the vessel is not needed for reasons of national defense and provided also that the foreign person and country of registry are acceptable to the Maritime Administration. Except an unusual circumstances, no conditions will be imposed.

Dated: January 30, 1989.

By Order of the Maritime Administrator.

James E. Saari,

Secretary, Maritime Administration.

[FR Doc. 89-2496 Filed 2-1-89; 8:45 am]

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Federal Register
Vol. 54, No. 22
Friday, February 3, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV-89-004]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Dancy Tangerine Minimum Size Relaxation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting without modification as a final rule an interim final rule, which temporarily relaxed the minimum size requirements for domestic shipments of Florida Dancy tangerines from size 176 (2⁹⁄₁₆ inches in diameter) to size 210 (2⁴⁄₁₆ inches in diameter). The size composition, maturity level, and current and prospective market demand conditions for the 1988–89 season Dancy tangerine crop warrants this action.

EFFECTIVE DATE: February 3, 1989.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 475–3918.

SUPPLEMENTARY INFORMATION: This final rule is issued under the Marketing Agreement and Marketing Order No. 905, as amended (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 100 shippers of Florida oranges, grapefruit, tangerines, and tangelos subject to regulation under the Florida citrus marketing order. In addition, there are approximately 13,000 orange, grapefruit, tangerine, and tangelo producers in Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. A minority of these shippers and a majority of the producers may be classified as small entities.

Grade and size requirements for Florida citrus fruit covered under this marketing order are specified in § 905.306 *Orange, Grapefruit, Tangerine, and Tangelo Regulation 6* (7 CFR 905.306). Section 905.306 is effective on a continuing basis subject to modification, suspension, or termination by the Secretary.

An interim final rule amending paragraph (a) of § 905.306 was issued November 18, 1988, and was published in the **Federal Register** (53 FR 47660, November 25, 1988). That rule provided that interested persons could file written comments through December 27, 1988. No comments were received.

The interim final rule amended paragraph (a) of § 905.306, temporarily relaxing the minimum size requirements for domestic shipments of Florida Dancy tangerines from size 176 (2⁹⁄₁₆ inches in diameter) to size 210 (2⁴⁄₁₆ inches in diameter) for the period November 21, 1988, through August 20, 1989. The relaxation is only for 1988–89 season Dancy tangerine shipments. Tighter minimum size requirements (size 176) will resume for Dancy tangerines effective August 21, 1989, as provided in § 905.306. The tighter minimum size requirements are for 1989–90 season shipments and are based upon the maturity, size, quality, and flavor characteristics of Florida Dancy tangerines early in the shipping season.

The Citrus Administrative Committee (committee), which administers the program locally, recommended that size 210 Dancy tangerines be released effective November 21, 1988, at its meeting of October 18, 1988. The committee recommended this action based on the projected maturity and flavor levels and size composition of the tangerine crop remaining for shipment at that time. Relaxing the minimum size requirements follows the practice of prior years of lowering such requirements when the crop has reached an acceptable level of flavor and maturity. The maturity and flavor of size 210 tangerines is adequate to foster strong sales in fresh market channels for the remainder of the season. Florida Dancy tangerine shipments normally start in November and peak in December.

The committee meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Florida oranges, grapefruit, tangerines, and tangelos. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews committee recommendations and information submitted by the committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

Some Florida tangerine shipments are exempt from the minimum grade and size requirements effective under the marketing order. Handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day under a minimum quantity exemption provision. Also, handlers may ship up to two standard packed cartons of fruit per day in gift packages which are individually addressed and not for resale, under the

current exemption provisions. Fruit shipped for animal feed is also exempt under specific conditions. In addition, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base is not subject to the handling requirements.

The relaxation of the minimum size requirements applicable to Dancy tangerines was designed to maximize fresh domestic shipments and permit shipments to meet buyer needs. The relaxation is meeting these objectives. Therefore, the Department's view is that the impact of this action upon producers and shippers will be beneficial because it will enable shippers to continue to provide Dancy tangerines consistent with buyer requirements. The application of minimum size requirements to Dancy tangerines over the past several years has resulted in fruit of acceptable size, maturity, and flavor being shipped to fresh markets.

Based on the above, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other available information, it is found that the rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action maintains relaxed minimum size requirements currently in effect for Florida Dancy tangerines; (2) Florida Dancy tangerine shippers are aware of this action which was recommended by the committee at a public meeting and they are prepared to continue operating in accordance with the relaxed requirements; (3) shipment of the 1988–89 season Florida Dancy tangerine crop is currently underway; (4) the interim final rule provided a 30-day comment period, and no comments were received; and (5) no useful purpose would be served by delaying the effective date until 30 days after publication.

List of Subjects in 7 CFR Part 905

Marketing agreements and orders, Florida, Grapefruit, Oranges, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR Part 905 is amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR Part 905 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 905.306 [Amended]

2. Accordingly, the interim final rule amending the provisions of § 905.306, which was published in the **Federal Register** (53 FR 47662, November 25, 1988), is adopted as a final rule without change.

Note.—This section will appear in the Code of Federal Regulations.

Dated: January 31, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-2590 Filed 2-2-89; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 907

[Navel Orange Reg. 686]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 686 establishes the quantity of California-Arizona Navel oranges that may be shipped to market during the period February 3 through February 9, 1989. Such action is needed to balance the supply of fresh navel oranges with the demand for such oranges during the period specified due to the marketing situation confronting the orange industry.

DATES: Regulation 686 (§ 907.986) is effective for the period February 3, 1989, through February 9, 1989.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2528–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order 907 (7 CFR Part 907), as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 125 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order, and approximately 4,065 producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

This action is consistent with the marketing policy for 1988–89 adopted by the Navel Orange Administrative Committee (Committee). The Committee met publicly on January 31, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended by a 9 to 2 vote, a quantity of navel oranges deemed advisable to be handled during the specified week. The Committee reports that the demand for navel oranges is fair.

Based on consideration of supply and market conditions, and the evaluation of alternatives to the implementation of prorate regulations, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. To effectuate the declared purposes of the Act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Arizona, California, Marketing agreements and orders, Navel Oranges.

For the reasons set forth in the preamble, 7 CFR Part 907 is amended as follows:

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

1. The authority citation for 7 CFR Part 907 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.986 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 907.986 Navel Orange Regulation 686.

The quantity of navel oranges grown in California and Arizona which may be handled during the period February 3, 1989, through February 9, 1989, are established as follows:

(a) District 1: 1,479,000 cartons;
(b) District 2: 221,000 cartons;
(c) District 3: unlimited cartons;
(d) District 4: unlimited cartons.

Dated: February 1, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-2667 Filed 2-2-89; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 910

[Lemon Reg. 651]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 651 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 285,466 cartons during the period February 5 through February 11, 1989. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 651 (§ 910.951) is effective for the period February 5 through February 11, 1989.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriquez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2,500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601–674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1988–89. The Committee met publicly on January 31, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that demand for lemons is fair.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which the regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an opening meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.951 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.951 Lemon Regulation 651.

The quantity of lemons grown in California and Arizona which may be handled during the period February 5, 1989, through February 11, 1989, is established at 285,466 cartons.

Dated: February 1, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-2666 Filed 2-2-89; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 981

[FV-88-126FR]

Almonds Grown in California; Administrative Rules and Regulations Concerning Handler Reporting Requirements and Deadlines for Ordering Sample Almond Packages

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule changes administrative rules and regulations established under the Federal marketing order for California almonds to require handlers of California almonds to: (1) File no later than September 1 of each year ABC Form 42, a handler information sheet, listing the handler's name, address, phone number, ownership or corporate information, and acknowledgement of receipt of almond marketing order program information; and (2) place written orders for sample packages of almonds with the Almond Board of California (Board) no later than February 1 of any crop year (or August 15 of any crop year, when a 40 percent deferment provision contained in the order is used) to receive credit against their assessment obligations for that year. The Board is the agency responsible for local administration of the almond marketing order.

The first change will provide Board management with certain organizational information regarding almond handlers regulated under the order. This information is needed by Board management and the U.S. Department of Agriculture (USDA) to improve compliance under the almond marketing order. The second change will give the Board additional time to arrange for the production of sample packages. Additional time is necessary due to greatly increased handler demand for such packages.

EFFECTIVE DATE: March 6, 1989.

FOR FURTHER INFORMATION CONTACT: Allen Belden, Marketing Specialist, Marketing Order Administration Branch, Room 2525, South Building, F&V, AMS, USDA, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under marketing agreement and Order No. 981 (7 CFR Part 981), both as amended (order), regulating the handling of almonds grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, this regulation has small entity orientation and compatibility.

There are an estimated 115 handlers of almonds subject to regulation under the marketing order for California almonds during the current season. There are approximately 7,500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers, producers, and accepted users of California almonds may be classified as small entities.

This action amends the rules and regulations established under the marketing order for California almonds to specify requirements for handlers of California almonds. Based on a unanimous recommendation of the Board at its July 20, 1988, meeting, a new § 981.474(e) is added to the Administrative Rules and Regulations, requiring that each handler file no later than September 1 of each year ABC Form 42, a handler information sheet, listing the handler's name, address, telephone number, ownership or corporate information and acknowledgement of receipt of marketing order program information. The type of entity would have to be specified (i.e., a sole proprietorship, a partnership, or a corporation) with the names and addresses of the owner, partners, or corporate officers, as appropriate.

The rationale to require this information sheet is based on the research of the Board's Administrative and Finance Committee and the recommendation of the Board, which anticipates improved compliance operations under the marketing order through the use of these records. It is estimated that the handler information sheet, as recommended by the Board, will take less than five minutes to complete, and thus will present no significant burden to the estimated 115 handlers subject to regulation under the California almond marketing order.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the information collection provisions contained in this final rule have been approved by the Office of Management and Budget (OMB) and assigned OMB Control No. 0581-0071.

Under § 981.441(d)(1)(i), handlers may receive credit for distributing sample almond packages purchased from the Board containing one-half ounce or less of almonds, to charitable or educational outlets. The second change adds a new paragraph (F) to § 981.441(d)(1)(i), requiring that handlers place written orders for sample packages with the Board no later than February 1 of any crop year, except to the extent handlers use the deferment provision found in paragraph (b) of § 981.441. Handlers using the deferment provision pursuant to paragraph (b) will be required to place written orders for sample packages with the Board no later than August 15 of any crop year. In order to provide ample time for handlers to place written orders for sample packages with the Board for this crop year, handlers would be required to place written orders no later than March 15, 1989, instead of the February 1 date.

These new deadlines by which handlers must place orders with the Board for sample almond packages are needed because of the greatly increased volume of generic package sales to handlers. Orders need to be placed 16 to 20 weeks in advance in order to provide adequate time to prepare the large volume of packages requested. The deadlines will help ensure an adequate supply of the sample almond packs for use by handlers in promoting California almonds, which may further benefit the industry through subsequently increased sales of almonds in the marketplace.

Due to the addition of the above paragraph (F) to § 981.441(d)(1)(i), the present paragraph (F) will be redesignated as paragraph (G).

Notice of a proposal to add new §§ 981.441(d)(1)(i)(F) and 981.474(e) was published in the September 27, 1988, issue of the **Federal Register** (53 FR 37586). Comments on the proposed rule were invited from interested persons until October 27, 1988. No comments were received.

Based on the above, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board and other available information, it is found that this final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 981

Almonds, California, Marketing agreements and orders.

For the reasons set forth in the preamble, 7 CFR Part 981 is amended as follows:

Note.—These sections will appear in the annual Code of Federal Regulations.

PART 981—[AMENDED]

1. The authority citation for 7 CFR Part 981 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Amend § 981.441 by redesignating paragraph (d)(1)(i)(F) as (d)(1)(i)(G) and adding a new paragraph (d)(1)(i)(F) to read as follows:

§ 981.441 Crediting for marketing promotion including paid advertising.

* * * * *

(d) * * *

(1) * * *

(i) * * *

(F) Handlers must place written orders for sample packages with the Board no later than February 1 of any crop year except to the extent that handlers use the deferment provision found in paragraph (b) of this section: *Provided*, That for the 1988-89 crop year, handlers must place written orders no later than March 15, 1989. Handlers must place written orders for sample packages with the Board no later than August 15 of any crop year to receive credit for up to 40 percent of their creditable assessment obligations when using the deferment provision pursuant to paragraph (b) of this section.

* * * * *

3. Amend § 981.474 by adding a new paragraph (e) to read as follows:

§ 981.474 Other reports.

* * * * *

(e) *Handler information reports.* Each handler shall file no later than September 1 of each year ABC Form 42, a Handler Information Sheet, listing the handler's name, address, phone number, ownership or corporate information and acknowledging receipt of marketing order program information.

Dated: January 31, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-2591 Filed 2-2-89; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1980

Revision of Guaranteed Farmer Program Loan Regulations

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule; correction.

SUMMARY: The Farmers Home Administration (FmHA) corrects a final rule published January 13, 1989 (54 FR 1534) to Exhibit E to Subpart B of Part 1980 of its regulations. An error was made which changes the intended implementation of this exhibit. The intended effect of this action is to correct this error.

EFFECTIVE DATE: February 3, 1989.

FOR FURTHER INFORMATION CONTACT: Randy Tingler, Guaranteed Loan Making Branch, Farmers Home Administration, USDA, Room 5439, Washington, DC 20250. Telephone: (202) 475-4022.

SUPPLEMENTARY INFORMATION: On January 13, 1989, FmHA published a final rule to implement the changes to its regulations necessary to implement the Agricultural Credit Act of 1987. Exhibit E to 7 CFR Part 1980, Subpart B implements the demonstration project between the Farm Credit System and Farmers Home Administration for the purchase of certain Farm Credit System acquired farm land. Errors made in Exhibit E changed the meaning and intent of the exhibit.

The following corrections are made to 54 FR on page 1595 dated January 13, 1989:

PART 1980—GENERAL

1. The authority citation for Part 1980 continues to read as follows.

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480, 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart B—General

Exhibit E to Subpart B—Demonstration Project for Purchase of Certain Farm Credit System Acquired Farm Land

2. Paragraph III E is corrected by adding a new last sentence to read as follows: "Except the reserve requirement as outlined in § 1980.106(b)(17)(iii) of this subpart may be from 0 up to 10 percent."

3. Paragraph IV J is corrected by removing the phrase: "as defined in § 1980.106(b)(17) of this subpart".

Date: January 26, 1989.

Roland R. Vautour,

Under Secretary for Small Community and Rural Development.

[FR Doc. 89-2532 Filed 2-2-89; 8:45 am]

BILLING CODE 3410-07-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 62

Criteria and Procedures for Emergency Access to Non-Federal and Regional Low-Level Waste Disposal Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is issuing this rule to establish criteria and procedures for fulfilling its responsibilities associated with acting on requests by low-level radioactive waste generators, or State officials on behalf of those generators, for emergency access to operating, non-Federal or regional, low-level radioactive waste disposal facilities under section 6 of the Low-Level Radioactive Waste Policy Amendments Act of 1985. Grants of emergency access may be necessary if a generator of low-level radioactive waste is denied access to operating low-level radioactive waste disposal facilities and the lack of this access results in a serious and immediate threat to the public health and safety or the common defense and security.

EFFECTIVE DATE: March 6, 1989.

ADDRESS: Copies of comments received on the proposed rule and the regulatory analysis may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC 20555.

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I. Introduction and Background

On December 15, 1987, NRC published in the Federal Register (52 FR 47587) a proposed new Part 62 to 10 CFR in order to implement its emergency access responsibilities under section 6 of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (Pub. L. 99-240, January 15, 1986), "the Act." The proposed Part 62 set forth the criteria and procedures that the Commission intended to use to determine if emergency access to non-Federal and regional low-level waste (LLW) disposal facilities should be granted. The public comment period for the proposed rule expired on February 12, 1988. The NRC received twenty-one (21) comment letters from ten concerned citizens and environmental groups, six State governments, two LLW compact Commissions, two industries and one nuclear information service.

The Act directs the States to develop their own low-level radioactive waste (LLW) disposal facilities or to form Compacts and cooperate in the development of regional LLW disposal facilities so that the new facilities will be available by January 1, 1993. The Act establishes procedures and milestones for the selection and development of the LLW disposal facilities. The Act also establishes a system of incentives for meeting the milestones, and penalties for failing to meet them, which is intended to ensure steady progress toward new facility development.

The major incentive offered by the Act is that the States and regional Compacts that meet the milestones will be allowed to continue to use the existing disposal facilities until their own facilities are available, which is to be no later than January 1, 1993. If united States or Compact regions fail to meet key milestones in the Act, the States or Compact Commissions with operating non-Federal or regional LLW disposal facilities are authorized to demand additional fees for wastes accepted for disposal, and ultimately to deny the LLW generators in the delinquent State or Compact region further access to their facilities.

Section 6 of the Act provides that the Nuclear Regulatory Commission (NRC) can determine to grant a generator "emergency access" to non-Federal or regional low-level radioactive waste (LLW) disposal facilities if access to those facilities has been denied and access is necessary in order to eliminate an immediate and serious threat to the public health and safety or the common defense and security. The Act also requires that NRC determine whether the threat can be mitigated by any alternative consistent with the public health and safety, including ceasing the activities that generate the waste. NRC must be able, with the information provided by the requestor, to make both determinations prior to granting emergency access. The purpose of this regulation is to set forth the criteria and procedures that will be used by the Commission to determine if emergency access to a LLW facility should be granted.

II. Legislative Requirements

In addition to directing the NRC to grant emergency access as discussed in the Background section, the Act further directs NRC to designate the operating LLW disposal facility or facilities where the waste will be sent for disposal if NRC determines that the circumstances warrant a grant of emergency access. NRC is required to notify the Governor (or chief executive officer) of the State in which the waste was generated that emergency access has been granted, and to notify the State and Compact which will be receiving the waste that emergency access to their LLW disposal facility is required. The Act limits NRC to 45 days from the time a request is received to determine whether emergency access will be granted and to designate the receiving facility.

The Act provides that NRC can grant emergency access for a period not to exceed 180 days per request. To ensure that emergency access is not abused, the Act allows that only one extension of emergency access, not to exceed 180 days, is to be granted per request. An extension can be approved only if the LLW generator who was originally granted emergency access and the State in which the LLW was generated have diligently, though unsuccessfully, acted during the period of the initial grant to eliminate the need for emergency access.

The Act also provides that requests for emergency access shall contain all information and certifications that NRC requires to make its determination.

"Temporary emergency access" to non-Federal or regional LLW disposal facilities may be granted at the Commission's discretion because of a serious and immediate threat to the public health and safety or the common defense and security, pending a Commission determination as to whether the threat could be mitigated by suitable alternatives. The grant of temporary emergency access expires 45 days after it is granted.

The Act does not require NRC to develop a rule to carry out its section 6 responsibilities. However, NRC is issuing this rule to establish the criteria and procedures that will be used in making the required determinations for emergency access. Although Congress provided NRC the statutory responsibility for implementing section 6 of the Act and gave the Commission authority to decide whether access will be provided, emergency access decisions are likely to be controversial. By setting out the criteria and procedures for making emergency access decisions in a rule that reflects public comment, NRC intends to add predictability to the decisionmaking process and to help ensure that the NRC will be able to make its decisions on emergency access requests within the time allowed by the Act.

III. Legislative History

The legislative history of the Act emphasizes the Congressional intent that emergency access be used only in very limited and rare circumstances and that it was not intended to be used to circumvent other provisions of the Act. Congress believed it was important for the successful implementation of the Act that emergency access not be viewed by the united States as an alternative to the pursuit of the development of new LLW disposal capacity. The legislative history indicates that Congress believed that with the various management options available to LLW generators, including, for example, storage or ceasing to generate the waste, that instances where there was no alternative to emergency access would be unlikely. Congress expected that responsible action from the generators and the States/Compacts should resolve most access problems thus precluding the necessity for involving the Federal sector in granting emergency access. Section 6 was included to provide a mechanism for Federal involvement as a vehicle of last resort.

In developing the emergency access rule, NRC tried to be consistent both with the actual text of section 6 of the Act and with the intent expressed by Congress regarding decisions made pursuant to section 6. The rule sets strict requirements for granting emergency access and should serve to encourage potential requesters to seek other means for resolving the problems created by denial of access to LLW disposal facilities. The rule places the burden on the party requesting emergency access to demonstrate that the criteria in the rule have been met and emergency access is needed. Applicants for emergency access will have to provide clear and convincing evidence that they have exhausted all other options for managing their waste. By establishing strict requirements for approving requests for emergency access, NRC intends to reinforce the idea that problems with LLW disposal are to be worked out to the extent practical among the States, and that emergency access to existing LLW facilities will not automatically be available as an alternative to developing that capacity. NRC believes this interpretation is consistent with a plain reading of the Act and the supporting legislative history.

Section 6(g) of the Act requires the NRC to notify the Compact Commission for the region in which the disposal facility is located of any NRC grant of access "for such approval as may be required under the terms of its compact." The Compact Commission "shall act to approve emergency access not later than fifteen days after receiving notification" from the NRC. The purpose of this provision is to—

- Ensure that the Compact Commission is aware of the NRC's grant of emergency access and the terms of the grant,
- Allow the Compact Commission to implement any administrative procedures necessary to carry out the grant of access, and
- Ensure that the limitations on emergency access set forth in section 6(h) of the Act have not been exceeded.

However, it is clear from the legislative history of the Act that section 6(g) should not be construed as providing the Compact Commission with a veto over the NRC's grant of emergency access. The basic purpose of the section 6 emergency access provision is to ensure that LLW disposal sites that have denied access to certain States under provisions of the Act will be made available to receive waste in situations posing a serious and immediate threat to the public health and safety. A Compact Commission veto would frustrate the purpose of the emergency access provision and would be generally contrary to the legislative framework established in the Act. As emphasized in the House Committee on Interior and Insular Affairs Report on the Act, ratification of a Compact should be conditioned on the Compact's acting in accord with the provisions of the Act. If the Compact refuses to provide, under its own authorities, emergency access under section 6, Congressional ratification of that Compact would be null and void. H.R. REP. No. 314, 99th Cong., 1st Sess., pt. 1, at 2907 (1985).

IV. NRC Approach

In developing this rule, the NRC's approach was to:

1. Ensure that all of the principal provisions of section 6 of the Act are addressed in the regulation.
2. Identify the information and certifications that will have to be submitted with any request for emergency access in order for NRC to make the necessary determinations.
3. Ensure that the criteria and procedures that are established in 10 CFR Part 62 can be implemented within 45 days after NRC receives a request as specified in the Act.
4. Establish criteria and procedures for designating a site to receive the waste that are fair and equitable and that are consistent with the other provisions of the Act, including the limits on the amount of waste that can be disposed of at each operating facility.
5. Establish requirements for granting emergency access that are stringent enough to discourage the united States and regions from viewing emergency access as an alternative to diligent pursuit of their own disposal capability, and yet flexible enough to allow NRC to respond appropriately in situations where emergency access is genuinely needed to protect the public health and safety or the common defense and security.

V. Assumptions

NRC made several assumptions in developing this rule.

NRC assumed that the wastes requiring disposal under the emergency access provision will be the result of unusual circumstances. The nature of routine LLW management is such that it is difficult to conceive of situations where denial of access to disposal would create a serious and immediate threat to the public health and safety or the national security. In most cases generators should be able to safely store routinely generated LLW or employ other options for managing the waste without requiring emergency access. Thus, if all the LLW generators in a State were denied access to LLW disposal facilities, NRC would not expect to receive a blanket request for emergency access for all of the LLW generated in that State, or for all of the LLW generated by a particular kind of generator since the need for emergency access would be different in each case.

NRC has also assumed that requests for emergency access will not be made for wastes that would otherwise qualify for disposal by the Department of Energy (DOE) under the unusual volumes provision of the Act (Section 5(c)(5)). This means that NRC does not intend to consider requests for emergency access for wastes generated by commercial nuclear power stations as a result of unusual or unexpected operating, maintenance, repair, or safety activities. Section 5(c)(5) of the Act specifically sets aside 800,000 cu ft of disposal capacity above the regular reactor allocations through 1992 to be used for those wastes. With this space reserved for wastes qualifying for the "unusual volumes allocation," NRC believes emergency access should be reserved for other LLW, until the 800,000 cu ft allocation is exceeded.

NRC considered basing its decisions for granting emergency access solely on quantitative criteria, but decided against that approach. While NRC has identified some of the wastes and the scenarios which would create a need for emergency access, it is unlikely that all possibilities can be predicted or anticipated. Largely, because of the uncertainty associated with identifying all of the circumstances under which emergency access may be required, NRC has avoided establishing criteria with absolute thresholds. Instead, the rule contains a combination of qualitative and quantitative criteria with generic applicability. NRC believes this combination provides maximum flexibility in considering requests for emergency access on a case-by-case basis.

VI. The Final Rule

The final rule contains four Subparts, A, B, C, and D. These Subparts set out the requirements and procedures to be followed in requesting emergency access and in determining whether or not requests should be granted. Each Subpart is summarized and discussed here.

Subpart A—General Provisions

Subpart A contains the purpose and scope of the rule, definitions, instructions for communications with the Commission, and provisions relating to interpretations of the rule. Subpart A states that the rule applies to all persons

as defined by this regulation who have been denied access to existing commercial LLW disposal facilities and who submit a request to the Commission for an emergency access determination under section 6 of the Low-Level Radioactive Waste Policy Amendments Act of 1985. Subpart A also emphasizes that the emergency access rule applies only to those subclasses of LLW for which the States have disposal responsibility under Section 3(1)(a) of the Act.

Subpart B—Request for a Commission Determination

Subpart B specifies the information that must be submitted and the procedures that must be followed by a person seeking a Commission determination on emergency access.

Specifically, Subpart B requires the submission of information on the need for access to LLW disposal sites, the quantity and type of material requiring disposal, impacts on health and safety or common defense and security if emergency access were not granted, and consideration of available alternatives to emergency access. This information will enable the Commission to determine:

(a) Whether a serious and immediate threat to the public health and safety or the common defense and security might exist,

(b) Whether alternatives exist that could mitigate the threat, and

(c) Which non-Federal disposal facility or facilities should provide the required disposal.

In addition, Subpart B also sets forth procedures for the filing and distribution of a request for a Commission determination. It provides for publishing in the Federal Register a notice of receipt of a request for emergency access to inform the public that Commission action on the request is pending. Although comment is not required by the Act or the Administrative Procedure Act, Subpart B provides for a 10-day public comment period on the request for emergency access.

In the event that the case for requesting emergency access is to be based totally or in part on the threat posed to the common defense and security, Subpart B specifies that upon receiving such a request, NRC will consult with the Department of Energy (DOE) and or the Department of Defense (DOD) to ascertain the importance to the common defense and security of the activities producing the LLW for which emergency access is requested.

Subpart C—Issuance of a Commission Determination

For the NRC to grant emergency access, the Commission must first conclude that there is a serious and immediate threat to the public health and safety or the common defense and security, and second that there are no available mitigating alternatives. Subpart C sets out the procedures to be followed by the Commission in considering requests for emergency access, for granting extensions of emergency access, and for granting temporary emergency access; establishes the criteria and standards to be used by the Commission in making those determinations; and specifies the procedures to be followed in issuing them.

Subpart C provides that NRC, in determining whether there is a serious and immediate threat to the public health and safety, will consider: (1) The nature and extent of the radiation hazard that would result from the denial of access including consideration of the standards for radiation protection contained in 10 CFR Part 20, any standards governing the release of radioactive materials to the general environment that are applicable to the facility that generated the low-level waste, and any other Commission requirements specifically applicable to the facility or activity which is the subject of the emergency access request and, (2) the extent to which essential services such as medical, therapeutic, diagnostic, or research activities will be disrupted by the denial of emergency access.

In determining whether there is a serious and immediate threat to the common defense and security, Subpart C provides that the Commission will consider whether the activity generating the LLW is necessary to protect the common defense and security and whether the lack of access to a disposal site would result in a significant disruption in that activity that would seriously threaten the common defense and security. Subpart C also specifies that the Commission will seek and consider DOD and DOE viewpoints on the importance of the activities responsible for generating the LLW to the common defense and security.

Under Subpart C, if the Commission makes either of the above determinations in the affirmative, then the Commission will consider whether alternatives to emergency access are available to the requestor. The Commission will consider whether the person submitting the request has identified and evaluated the alternatives available which could potentially mitigate the need for emergency access. The Commission will consider whether the person requesting emergency access has considered all factors in the evaluation of alternatives including state-of-the-art technology and the impacts of the alternatives on the public health and safety. For each alternative, the Commission will also consider whether the requestor has demonstrated that the implementation of the alternative is unreasonable because of adverse effects on the public health and safety or the common defense and security, because it is technically or economically beyond the capability of the requestor, or because the alternative could not be implemented in a timely manner.

Of particular concern to Congress was the possibility that ceasing the activity responsible for generating the waste could lead to the cessation or curtailment of essential medical services. Section 62.25 of the rule provides that the Commission will consider the impact on medical services from ceasing the activity in making its determination that there is a serious and immediate threat to the public health and safety. The Commission is also concerned as to whether the implementation of other alternatives may have a disruptive effect on essential medical services. Section 62.12 specifically requests information on these impacts as part of a request for emergency access so they can be considered by the Commission in its overall determination about reasonable alternatives.

According to the procedures set out in Subpart C, the Commission will only make an affirmative determination on granting emergency access if the available alternatives are found to be unreasonable. If an alternative is determined by NRC to be reasonable, then the request for emergency access will be denied.

If the Commission determines that there is a serious and immediate threat to the public health and safety or the common defense and security which cannot be mitigated by any alternative, then the Commission will decide which operating non-Federal LLW disposal facility should receive the LLW approved for emergency access disposal.

Subpart C sets out that in designating a disposal facility or facilities to provide emergency access disposal, the Commission will first consider whether a facility should be excluded from consideration because: (1) The LLW does not meet the license criteria for the site; (2) the disposal facility meets or exceeds its capacity limitations as set out in the Act; (3) granting emergency access would delay the planned closing of the facility; or (4) the volume of the waste requiring disposal exceeds 20 percent of the total volume of the LLW accepted for disposal at the site in the previous calendar year. If the designation cannot be made on these factors alone, then the Commission will consider the type of waste, previous disposal practices, transportation requirements, radiological effects, site capability for handling the waste, volume of emergency access waste previously accepted at each site, and any other information the Commission deems necessary.

In making a determination regarding a request for an extension of emergency access, Subpart C provides that the Commission will consider whether the circumstances still warrant emergency access and whether the person making the request has diligently acted during the period of the initial grant to eliminate the need for emergency access.

In making a determination that temporary emergency access is necessary, the Commission will have to consider whether the emergency access situation falls within the criteria and examples in the Commission's policy statement on abnormal occurrences, but will not have to reach a determination regarding mitigating alternatives.

Subpart D—Termination of Emergency Access

Subpart D establishes that the NRC may terminate a grant of emergency access if the requestor or the type of waste do not meet the conditions established by NRC pursuant to this part. It also establishes that the Commission may terminate emergency access when it determines that emergency access is no longer necessary to protect the public health and safety or the common defense and security from a serious and immediate threat.

VII. Rationale for Criteria

This rule establishes the criteria for making the emergency access determinations required by the Act. The rationale for these decisions is discussed below.

(a) Determination that a Serious and Immediate Threat Exists

Establishing the criteria to be used in determining that a serious and immediate threat exists to the public health and safety or the common defense and security is key to NRC's decisions to grant emergency access. Neither the Act nor its legislative history provide elaboration regarding Congressional intent for what would constitute "a serious and immediate threat."

(1) To the Public health and safety—

The criteria in this rule for determining whether a serious and immediate threat to the public health and safety exists, address three situations. Section 62.25(b)(i) addresses the situation where the lack of access would result in a radiation hazard at the facility that is generating the LLW. Section 62.25(b)(ii) addresses the situation where the threat to public health and safety would result from disruption of the activity that generates the waste, for example, an essential medical service. Section 62.25(c) addresses the criteria for granting temporary emergency access.

The criteria used in this rule for determining whether a serious and immediate threat to the public health and safety exists is qualitative in nature in order to provide the Commission with the flexibility necessary to consider a wide range of potential factual situations. However, in making this qualitative determination, the criteria require the Commission to consider several existing quantitative standards. These consist of the Commission's standards for radiation protection in 10 CFR Part 20, any standards on the release of radioactive materials to the general environment that are applicable to the facility that generated the LLW, and any other Commission requirements specifically applicable to the facility or activity which is the subject of the emergency access request. This latter category would include license provisions, orders, and similar requirements.

The Congressional concern in enacting section 6 of the Act was to ensure that a serious and immediate threat to the public health and safety did not result from a denial of access. In addressing this concern, the Commission will evaluate the request for emergency access in its entirety, i.e., the threat to public health and safety and the alternatives to emergency access that may be available to mitigate that threat. In other words, in determining what constitutes a serious and immediate threat to public health and safety, the Commission must consider what threat would be unacceptable assuming that no alternatives are available. In the Commission's judgment, any situation that would result in exceeding the occupational dose limits or basic limits of public exposure upon which certain requirements in 10 CFR Part 20 are founded would be an unacceptable threat to the public health and safety, and should be considered for emergency access.

The legislative history of section 6 of the Act does not provide any illustrations of a situation where a serious and immediate threat to the public health and safety would be created at the facility at which the waste is stored, although it is clear that Congress was concerned over the potential radiation hazard that might result at a particular facility that was denied access to LLW disposal. The Commission does not anticipate any situation where the lack of access would create a serious and immediate threat to the public health and safety. However, in order to be able to respond to the unlikely, but still possible, situation where a serious threat to the public health and safety might result, this rule establishes criteria to address this possibility. Under its normal regulatory responsibilities and authority, the Commission would act immediately to prevent or mitigate any threat to the public health and safety, including shutting down the facility. However, there may be circumstances where a potential safety problem would still exist, after the facility was shut down or the activity stopped, if the low level waste could not be disposed of because of denial of access. In this situation, emergency access may be needed. The Commission would emphasize, first, that it is extremely unlikely that a serious and immediate threat to the public health and safety will ever result at the generator's facility from the lack of access to a disposal facility, and, second, if such a situation does exist, the Commission will move immediately to eliminate the threat.

If the Commission does receive a request for emergency access based on the above circumstances, the Commission will evaluate the nature and extent of the radiation hazard. If there is no violation of the Commission's generic or facility-specific radiation protection standards, no serious and immediate threat would exist from the waste itself. This is separate from a finding that a serious and immediate threat to the public health and safety would exist if the activity were forced to shut down.

Section 6(d) of the Act allows the Commission to grant temporary emergency access for a period not to exceed 45 days solely upon a finding of a serious and immediate threat to the public health and safety. In order to grant temporary emergency access, the Commission is not required to evaluate

the availability of alternatives to emergency access that would mitigate the threat. The Commission believes that grants of temporary emergency access should be reserved for the most serious threat to public health and safety, and has accordingly established criteria for granting temporary emergency access that require the consideration of more serious events. For purposes of granting temporary emergency access under § 62.23, the Commission will consider the criteria and examples contained in the Commission's Policy Statement (45 FR 10950, February 24, 1977) for determining whether an event at a facility or activity licensed or otherwise regulated by the Commission is an abnormal occurrence within the purview of section 208 of the Energy Reorganization Act of 1974. This provision requires the Commission to keep Congress and the public informed of unscheduled incidents or events which it considers significant from the standpoint of public health and safety. Under the criteria established in the Commission's policy statement, an event will be considered an abnormal occurrence if it involves a major reduction in the degree of protection provided to public health and safety. Such an event could include—

a. Moderate exposure to, or release of, radioactive material;

b. Major degradation of safety related equipment; or

c. Major deficiencies in design, construction, use of, or management controls for licensed facilities or activities.

In deciding whether to grant temporary emergency access, the Commission will evaluate whether the emergency access situation falls within the criteria in the Commission's policy statement on abnormal occurrences.

(2) To the common defense and security—

Although NRC is required by the Act to determine that there is either a serious and immediate threat "to the public health and safety," or to "the common defense and security," realistically NRC cannot make the latter judgement without some information from DOD and DOE which will assist NRC in identifying those situations involving the denial of access to LLW disposal which constitute a serious and immediate threat to the national defense and security, or the importance of a particular LLW generator's activities in maintaining those objectives. While NRC has the Congressional mandate for this determination, the staff believe it necessary to consider DOD and DOE information as part of the decisionmaking process.

NRC considered several approaches for involving DOD and DOE in the process of determining whether requests for emergency access should be granted on the basis of a serious and immediate threat to the common defense and security. In the proposed rule NRC decided that the best way to provide such interaction would be to require that requests filed with NRC for emergency access on the basis of a serious and immediate threat to the common defense and security, would have to include appropriate certification from DOE and or DOD substantiating the requestor's claim that such a threat would result if emergency access is not granted. NRC proposed that the necessary certification in the form of a statement of support should be acquired by the requestor prior to applying to NRC for emergency access so the statement of support could be a part of the actual petition.

Discussions with DOD and DOE regarding the proposed arrangement have led NRC to include a modified procedure in the final rule. A generator whose request for emergency access is based in whole or in part on a serious and immediate threat to the common defense and security is no longer required to include a DOD and or DOE statement of support for that claim in the request package submitted to NRC. Rather, NRC will consult with DOD and or DOE directly to ascertain the importance of the activities responsible for generating the LLW to the common defense and security. In reaching a determination as to whether emergency access should be granted in order to protect the common defense and security, the NRC will consider whether DOE and or DOD support the generator's claim regarding the strategic importance of the activity.

Negotiations with DOD and DOE regarding this procedure were underway in parallel with the development of the final rule. Letters of intent between the NRC and DOD and DOE that establish the process for obtaining the DOD and DOE recommendations on the importance of the requestor's activities to the common defense and security are expected by the time the rule is published. DOD and DOE staffs are aware of the 45 day response time imposed on NRC to make the emergency access determinations and the agreement will provide for expeditious action by DOD and DOE.

Congress deliberately gave the NRC the responsibility for making the common defense and security determination rather than leaving the determination with DOD or DOE. So while the Commission intends to give the DOD and DOE statements of support and recommendations full consideration in evaluating requests for emergency access, the Commission will not treat them as conclusive.

(b) Determination on Mitigating Alternatives

As directed by section 6 of the Act, even if a situation exists which poses a serious and immediate threat to the public health and safety or the common defense and security, emergency access is not to be granted if alternatives are available to mitigate the threat in a manner consistent with the public health and safety. Requestors for emergency access are required to demonstrate that they have explored the alternatives available and that the only course of action remaining is emergency access. Only after this has been demonstrated to NRC will the Agency proceed with a grant of emergency access.

Alternatives which, at a minimum, a requestor will have to evaluate are set out in section 6(c)(1)(B) of the Act. They include (1) storage of LLW at the site of generation or in a storage facility, (2) obtaining access to a disposal facility by voluntary agreement, (3) purchasing disposal capacity available for assignment pursuant to section 5(c) of the Act, and (4) ceasing the activities that generate the LLW.

While section 6(c)(1)(B) of the Act sets these out as possible alternatives which a generator must consider before requesting emergency access, NRC has identified other possible alternatives to emergency access which should be considered, as appropriate, in any requests for emergency access. These additional alternatives are discussed below.

Section 5(c)(5) of the Act, "Unusual Volumes," provides owners and operators of commercial nuclear reactors with special access to disposal in the event that unusual or unexpected operating, maintenance, repair or safety activities produce quantities of waste which cannot be otherwise managed or disposed of under the Act. NRC does not consider that Congress intended that disposal under the emergency access provision was to apply to the section 5(c)(5) wastes unless the capacity required for disposals under the unusual volume provision would exceed the 800,000 cubic feet allocated for those purposes. Thus, NRC has taken the position in this rule that as long as unusual volumes disposal capacity is available for LLW which qualifies for such disposal, emergency access should not be requested. Applications for emergency access for wastes which NRC determines would otherwise be

eligible for disposal under the unusual volumes provision, will be denied.

Another alternative applies only to Federal or defense related generators of LLW. NRC will expect that generators of LLW falling into either of these categories will attempt to arrange for disposal at a Federal LLW disposal facility prior to requesting access to non-Federal facilities under the emergency access provision.

The Commission fully intends that the States and Compacts whose generators have been denied access to LLW disposal will share in the responsibility for identifying and providing alternatives to emergency access. NRC's expectation is that the States and appropriate Compacts, as well as the generator, will each exhaust their options before emergency access will be requested. A request for emergency access is to include a discussion of the consideration given to any alternatives available to the requestor. To NRC, this includes State/Compact options as well as those available to the individual generator. NRC expects that any request would address the alternatives explored by each of these, and the actions taken.

For all the alternatives that are considered, NRC is requiring detailed information from the requestor regarding the decision process leading to a request for emergency access. The requestor will be expected to: (1) Demonstrate that all pertinent alternatives have been considered; (2) provide a detailed analysis comparing all of the alternatives considered; (3) demonstrate that consideration has been given to combining alternatives in some way or in some sequence either to avoid the need for emergency access, or to resolve the threat, even on a temporary basis, until other arrangements can be made; (4) evaluate the costs, economic feasibility, and benefits to the public health and safety of the potential alternatives, and (5) incorporate the results into the request.

(c) Designation of Site

In deciding which of the operating, non-Federal or regional LLW disposal facilities will receive the LLW requiring emergency access, NRC will determine which of the disposal facilities would qualify under the limitations set out in section 6(h) of the Act. According to those limitations, a site would be excluded from receiving emergency access waste if (1) the LLW does not meet the license criteria for the site; (2) the disposal facility meets or exceeds its capacity limitations as set out in the Act; (3) granting emergency access would delay the planned closing of the facility; or (4) the volume of the waste requiring disposal exceeds 20 percent of the total volume of the LLW accepted for disposal at the site in the previous calendar year.

If NRC cannot designate a site using the limitations in the Act alone, the Commission will consider other factors including the type of waste, previous disposal practices, transportation requirements, radiological effects of the waste, the capability for handling the waste at each site, the volume of emergency access waste previously accepted by each site, and any other information that would be necessary in order to come to a site designation decision.

Within the requirements of the above criteria, the NRC will, to the extent practical, attempt to distribute the waste as equitably as possible among the available operating, non-Federal or regional LLW disposal facilities. To the extent practicable, NRC intends to rotate the designation of the receiving site, and, for the three currently operating facilities, to allocate emergency access disposal in proportion to the volume limitations established in the Act. In most cases, NRC would expect that the designation of a single site will minimize handling of and exposure to the waste and best serve the interest of protecting the public health and safety. However, if the volume of waste requiring emergency access disposal is large, or if there are other unusual or extenuating circumstances, NRC will evaluate the advantages and disadvantages of designating more than one site to receive waste from the same requestor.

In addition to the above, NRC will also consider how much waste has been designated for emergency access disposal to each site to date (both for the year and overall), and whether the serious and immediate threat posed could best be mitigated by designating one site or more to receive the waste.

In order for NRC to make the most equitable site designation decisions, the Agency will have to be well informed regarding the status of disposal capacity for each of the commercially operating waste disposal facilities. NRC is currently in the process of developing a system to provide this information.

It should be noted that in setting out the site designation provision for section 5, Congress assumed there would always be a site deemed appropriate to receive the emergency access waste. However, this may not be the case if all sites are eliminated by application of the limitations provision set forth in the Act. It is not clear what options Congress intended NRC to consider if all sites are deemed inappropriate to receive the LLW. This may have to be addressed by Congress at some time in the future.

(d) Volume Reduction Determination

Section 6(i) of the Act requires that any LLW delivered for disposal as a result of NRC's decision to grant emergency access "should be reduced in volume to the maximum extent practicable." NRC will evaluate the extent to which volume reduction methods or techniques will be or have been applied to the wastes granted emergency access in order to arrive at a finding in regards to this provision.

NRC may receive a request for emergency access where the application of volume reduction techniques may be sufficient to mitigate the threat posed to the public health and safety. As a result, NRC plans to evaluate the extent to which waste has been reduced in volume as a part of its mandated evaluation of the alternatives considered by the generator. From that evaluation, the NRC could reach a finding on whether the waste has been reduced in a manner consistent with section 6(i).

As is so for the other determinations NRC will have to make pursuant to section 6, volume reduction determinations will be made on a case-by-case basis. The optimal level of volume reduction will vary with the waste, the conditions under which it is being processed or stored, the administrative options available, and whether volume reduction processing creates new wastes requiring treatment or disposal. In evaluating whether the wastes proposed for emergency access have been reduced in volume to the maximum extent practicable, NRC will consider the characteristics of the wastes (including: Physical properties, chemical properties, radioactivity, pathogenicity, infectiousness, and toxicity, pyrophoricity, and explosive potential); condition of current container; potential for contaminating the disposal site; the technologies or combination of technologies available for treatment of the waste (including incinerators; evaporators-crystallizers; fluidized bed dryers; thin-film evaporators; extruders evaporators; and Compactors); the suitability of volume reduction equipment to the circumstances (specific activity considerations, actual volume reduction factors, generation of secondary wastes, equipment contamination, effluent releases, worker exposure, and equipment availability); and the administrative controls which could be applied.

VIII. Terms and Conditions for Emergency Access Disposal

LLW granted emergency access disposal pursuant to this rule is subject to the general requirements for LLW disposal as established in the Act, as well as those requirements which specifically address emergency access. This means that LLW granted emergency access shall be processed, treated and disposed of in a manner consistent with any other LLW which is eligible for disposal at operating non-federal or regional LLW disposal facilities under the Act. The disposal of waste by grant of emergency access should not preclude the implementation of any specific conditions, regulations, requirements, fees, surcharges or taxes prescribed by the disposal facility that may be in effect at the time of the Commission's determination to grant emergency access. However, while generators whose LLW is granted emergency access are subject to the special fees and surcharges specified in the Act for emergency access disposal, they should not otherwise be subject to fees or requirements that are not customarily charged or imposed for routine LLW disposal.

IX. Analysis of Public Comments

The Commission received twenty-one (21) comment letters for the proposed rule. Ten (10) of the comment letters came from concerned citizens, six (6) from the governments of potentially affected States, two (2) from low-level waste compacts, two (2) from the industry and one (1) from a nuclear information service. A detailed analysis of each of the comments was prepared and used to revise the proposed rule. The major comments are discussed here. Copies of the comment letters and the detailed analysis of comments are available for public inspection and copying for a fee at the NRC Public Document Room, 2120 L Street NW., Washington, DC 20555.

In general, commentors expressed support for NRC's issuance of a rule for its emergency access decisions and indicated changes that would improve it from their perspective. Only one commentor, representing a lobbying group, expressed opposition to the issuance of the rule. That commentor indicated that the rule should be withdrawn because granting emergency access would infringe on the States' right to manage their LLW. The Act established the statutory framework for the management of LLW including the allocation of management responsibility between the Federal government and the States. The emergency access rule merely implements part of the existing statutory framework, so the rule itself does not infringe on the rights of the States.

Clarification of LLW Eligible for Emergency Access

By far the most common concern expressed by commentors was that emergency access would be used to force operating non-Federal or regional LLW disposal facilities to accept LLW they are either clearly not responsible for under the Act, or have specifically chosen to exclude from their facility. Fourteen of the commentors in almost half of the comments expressed concern that emergency access would be granted to wastes that were not typically to be considered eligible for disposal at non-Federal or regional LLW disposal facilities. Specifically, the commentors stated that Federal wastes, particularly those generated by DOE and DOD, or wastes that are classified as greater-than-Class-C, should not be granted emergency access. Many of the commentors indicated that States and Compacts are not designing their facilities to provide safe disposal for these types of LLWs. Most of the commentors who expressed concern about which wastes would be granted emergency access were concerned that LLWs determined to be ineligible for routine disposal under the Act, could gain access to disposal at State or regional facilities under the emergency access provision.

Throughout the development of Part 62, the NRC assumed that its mandate was to grant emergency access only to LLW that would otherwise be eligible for routine disposal at State or regional LLW disposal facilities according to the terms and conditions set out in the Act. More specifically, the NRC believes that only those LLWs designated by Section 3(a)(1) of the Act to be the disposal responsibility of the States could be eligible for a grant of emergency access disposal.

Under Subsection 3(a)(1)(A), the States are mandated to provide disposal for commercially generated LLW classified as A, B and C. They are not required to provide disposal for greater-than-Class-C wastes. Thus, the NRC would expect to deny any request for emergency access received for greater-than-Class-C waste. The same is true for the Federally generated LLW which is excluded from State disposal responsibility under section 3(a)(1)(B). Under that subsection, the States are assigned the responsibility for disposing of "LLW generated by the Federal government except that which is owned or generated by DOE, by the Navy as a result of decommissioning of vessels, or as a result of any research, development, testing, or production of any atomic weapons." NRC does not expect to grant emergency access to any wastes that are exempted from State responsibility by section 3(a)(1)(B).

The NRC has no intentions of granting emergency access to LLW which are ineligible for LLW disposal under section 3(a)(1) of the Act. However, the Commission did not state its intentions in the proposed rule. The Commission assumed that it would be clear that the limitations established in the Act for routine LLW disposal would also apply for disposal resulting from a grant of emergency access. Apparently, that was not the case. To clarify the NRC's understanding and intent regarding the scope of wastes which the NRC considers to be potentially eligible for emergency access, the NRC added a new provision, (c) to § 62.1, "Purpose and Scope" of the final rule. The new provision states that "The regulations in this Part apply only to the LLW's which the States have disposal responsibility for pursuant to section 3(a)(1) of the Act." The NRC believes the addition of this clarification to the final rule should resolve any questions regarding a particular LLW's eligibility for emergency access consideration as well as the Commission's intended application of the final rule.

Reciprocal Access

Several of the commentors pointed out that the proposed rule omitted any reference to, or discussion of, section 6(f) of the Act, which addresses reciprocal access. Section 6(f) provides that the Regional Compact or State receiving the emergency access waste is entitled to reciprocal access at any subsequent facility that serves the Compact region or State in which the emergency access waste was generated. It further provides that the Regional Compact or State that receives the emergency access waste shall designate, for reciprocal access, "an equal volume of Low-level radioactive waste having similar characteristics to that provided emergency access."

Most of the States and Regional Compact Commissions who submitted comments on the proposed Part 62 indicated that reciprocal access should be addressed in the final rule. Most of the commentors who raised reciprocal access concerns believed the NRC should broker reciprocal access arrangements to ensure that reciprocal access will be available to a State or Compact whose LLW disposal facility is designated to receive emergency access

waste. Several of them emphasized that the reciprocal access provision of the Act is a significant one that cannot be ignored in the NRC process of granting emergency access and designating a disposal facility. They stated that reciprocal access is of particular concern because a receiving Regional Compact or State has virtually no leverage or role to play in the emergency access process and a guarantee of reciprocal access would make the situation more acceptable. They indicated reciprocity is an integral part of section 6 and should be part of the rule.

One commentor indicated that even if the NRC did not wish to be involved in brokering the arrangements, it "must ensure that the right to reciprocal access is recognized and its implications are considered." The commentor indicated that a formal reciprocal access acknowledgement should be extracted from the Compact Region or State in which the emergency access waste was generated before any determination for granting emergency access is made. They indicated that such an acknowledgement should be required by the NRC as part of the contents of a request for emergency access (§ 62.12) and should include some indication of when the reciprocal access would be provided. The acknowledgement could then be included as part of the § 62.22 notification provided to the receiving state and, if appropriate, the Compact Commission."

The NRC recognizes that the commitment to reciprocal access is an integral part of the emergency access process, particularly for the States with the operating LLW disposal facilities which will be designated by NRC to receive emergency access waste. Staff considered reciprocal access during the development of the proposed rule. At that time, the NRC made a decision not to address reciprocal access as part of the rule on emergency access. As NRC staff read section 6(f), arranging for reciprocal access is an obligation between States/Compacts unrelated to the Commission's responsibility to protect public health and safety and the common defense and security and thus is outside the scope of NRC's responsibility to implement section 6. Thus, Staff believed it would be inappropriate for the NRC to assume the role of enforcing reciprocal access arrangements.

The NRC reconsidered its position on reciprocal access in light of the comments received on the proposed rule, but made no changes to the final rule The NRC's mandate under section 6 is to grant requests for emergency access in order to protect the public health and safety and the common defense and security from a serious and immediate threat. If the NRC were to require a formal promise of reciprocal access as a necessary condition for considering a request for emergency access, under certain circumstances, actions necessary to protect the public health and safety could be delayed or compromised. Thus, the NRC continues to believe that an enforcement role regarding reciprocal access is inappropriate for the NRC. The Commission also believes that any role regarding reciprocal access, even of a brokering nature, could be in conflict with the Commission's basic mandate to make emergency access decisions. The NRC maintains that arranging for reciprocal access in response to grants of emergency access is the responsibility of the States and Compacts involved. The NRC believes that the promise of reciprocal access desired by the commentors could be initiated during the 15 day period required by the Act under section 6(g) for the receiving Compact Commission's approval of the NRC's LLW disposal facility designation.

As noted above, section 6(f) entitles any Compact or State that provides emergency access to a disposal facility within its borders to reciprocal access to any subsequently operating disposal facility that serves the State or compact region in which the LLW granted emergency access was generated. The Commission anticipates that any Compact or State that provides emergency access would take action to enforce this statutory right if the State or Compact in which the emergency access waste was generated does not accept an equal volume of low-level radioactive waste having similar characteristics at some future date.

Compact Approval of Grants of Emergency Access

Three of the commentors representing States or Compact Commissions indicated that the NRC had been remiss in not including a provision in the proposed rule which would require the NRC to seek approval for its decision to grant emergency access from the Compact Commission of the region in which the designated site is located. The commentors also wanted the rule to state that "no grant of emergency access under this Part shall be effective prior to 15 days from receipt of a request for approval from the Commission," in order to establish that Compact Commission approval would be necessary before the NRC's decision would be considered final. The resolution of the issue raised by these comments is fundamental to the successful implementation of Congressional intent for the emergency access provision of the Act.

The basis for these comments is the language in section 6(g) of the Act. It states that "any grant of access under this Section shall be submitted to the Compact Commission for the region in which the designated disposal facility is located for such approval as may be required under the terms of its Compact." The commentors interpretation of this provision is that Congress intended for the Compact Commission of the designated site to have the final say regarding the acceptance of emergency access wastes. They believe Congress intended that a receiving Compact Commission could reject the NRC's emergency access determination—essentially that Congress intended the compacts to have the power to veto the NRC's decision. The commentors wanted the NRC to acknowledge this interpretation of section 6(g) by incorporating a veto/approval provision in the final rule.

While the commentors were correct in noting that the proposed rule did not include a specific mechanism for implementing the section 6(g) provision of the Amendments Act, the NRC's position on this issue was addressed in Section III, Legislative History of the Supplementary Information portion of the proposed rule and is reiterated in the same section of the final.

Section 6(g) of the Act requires the NRC to notify the Compact Commission for the region in which the disposal facility is located of any NRC grant of access "for such approval as may be required under the terms of the Compact." However, section 6(g) also requires that the Compact Commission "shall act to approve emergency access not later than 15 days after receiving notification from the NRC." NRC believes the purpose of this provision is to (1) ensure that the Compact Commission is aware of the NRC's grant of emergency access and the terms of the grant; (2) allow the Compact Commission to implement any administrative procedures necessary to carry out the grant of access, and (3) ensure that the limitations on emergency access set forth in section 6(h) of the Act have not been exceeded.

Contrary to what several of the commentors believe, the NRC believes that disapproval is not really an option for the Regional Compact Commission in which the designated emergency access disposal facility would be

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located. This position is derived from the legislative history for both section 6 of the Act and the Omnibus Low-Level Radioactive Waste Interstate Compact Act which was passed by Congress as part of the Act. It is clear from the legislative history that the basic purpose of the section 6 emergency access provision is to ensure that LLW disposal sites which have denied disposal access to certain States under provisions of the Act will be made available to receive LLW in situations posing a serious and immediate threat to the public health and safety. A Compact Commission veto of the NRC's decision would frustrate the purpose of the emergency access provision and would be generally contrary to the legislative framework established in the Act. As emphasized in the House Committee on Interior and Insular Affairs Report on the Act, ratification of a Compact should be conditioned on the Compact's acting in accord with the provisions of the Act. If the Compact refuses to provide, under its own authorities, emergency access under section 6, Congressional ratification of that Compact would be null and void. (H.R. Rep. No. 314, 99th Cong., 1st Sess., pt. 1, at 2997 (1985).)

While disapproval may not be an option under the Act, clearly the Act intended the receiving Compact Commission to be fully informed regarding the emergency access decision made by the NRC. The Commission believes the Notification procedures under § 62.22 of the proposed rule provided the Compact Commission of the designated disposal facility with information consistent with the specifications in the Act. Section 62.22 of the proposed rule provided that the NRC will notify the Compact Commission of the State in which the designated disposal facility is located that emergency access is required. It further provides that "the notifications must set forth the reasons that emergency access was granted and specifically describe the low-level radioactive waste as to source, physical and radiological characteristics, and the minimum volume and duration (not to exceed 180 days) necessary to alleviate the immediate and serious threat to the public health and safety or the common defense and security.

In response to this comment, the NRC has made a change to the final rule. New language has been added to § 62.22 which states that the Commission will make notification of the final determination in writing to the appropriate Compact Commission "for such approval as is specified as necessary in Section 6(g) of the Act."

Applicable Terms and Conditions for Emergency Access

A number of the commentors expressed concern that LLW granted emergency access to disposal by the NRC should be required to meet any conditions of the site designated, as well as any fees, or taxes prescribed by that facility. Other commentors stated that LLWs granted emergency access disposal should not have to pay any special fees, beyond those specifically mandated by the Act. In both cases the commentors wanted assurances incorporated into the rule that in making emergency access site designation determinations, the NRC would protect both the health and safety interests and the financial interests of either the disposal facility designated to receive the LLW, or the person requesting emergency access. In addition, they wanted assurances included in the rule that the NRC would consider the fees, taxes, etc. in designating a site to receive any waste granted emergency access.

The NRC's response to these concerns is simple, and is much like the earlier discussion about the response to comments concerning which wastes are eligible for emergency access. As previously stated, the Commission believes that Congress intended emergency access only to be granted for waste which would routinely qualify for LLW disposal under the terms of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (the Act). To the Commission, it is quite clear from section 6(h) of the Act that Congress intended that the LLW granted emergency access would meet all of the general requirements and regulations of the disposal facility designated to receive the wastes by the NRC. Section 6(h) states that "No State shall be required to provide emergency access or reciprocal access to any regional disposal facility within its borders for low-level radioactive waste not meeting criteria established by the license or license agreement of such facility. * * *"

To ensure that the designated site is suitably matched to the LLW granted emergency access, the NRC included a provision in the proposed rule which stated that a LLW disposal site will be excluded from consideration to receive emergency access waste if the waste does not meet the criteria established by the license or licensee agreement for the facility § 62.28(b)(1). The license or licensee agreements incorporate the regulations and requirements that affect each particular facility. Taken with the other information in § 62.28, which the NRC will consider before designating a site, the Commission believes § 62.28 as it appeared in the proposed rule adequately addresses the NRC's responsibility to designate a site which does not preclude "the implementation of any specific regulations, and requirements at the designated disposal facilities."

Regarding fees, taxes and other conditions that several commentors believed the NRC should consider in designating a site, the NRC believes that Congress intended for generators who are granted emergency access to pay all the normal LLW disposal fees as well as the additional fees or surcharges specifically applicable to emergency access waste and established under section 5 of the Act. However, the Commission does not agree that such information can or should be used by the NRC in making its site designation decision.

The Commission recognizes the importance of conditions to ensure the implementation of emergency access decisions once they are made by the Commission. In response to the comments, the NRC added a new Section "VIII" to the Supplementary Information portion of the final rule titled, "Terms and Conditions for Emergency Access Disposal." It sets out the responsibilities regarding the disposition of emergency access for both the generator of the LLW granted emergency access and the operating disposal site or sites which have been designated to receive the waste. The new section reaffirms the NRC's understanding of Congressional intent that whatever conditions or terms normally apply to LLW disposal apply for emergency access, except where specifically stated otherwise in the Act.

Conditions of Termination

Four of the commentors suggested the addition of a new section or subsection to the rule to address the conditions under which emergency access could be terminated. The Commission agrees that terms and conditions should be established in the final rule for termination of grants of emergency access. The NRC has added a new Subpart D to the final rule which incorporates some of the suggested conditions for termination as recommended by the commentors. The Subpart is entitled, "Termination of Emergency Access." This new Subpart D is discussed under Section VI.(D) of the Supplementary Information for this rule. It establishes that the Commission may terminate a grant of emergency access if an applicant has failed to

comply with the conditions established by the NRC pursuant to this Part. It also establishes that the Commission may terminate a grant of emergency access if it determines that emergency access is no longer needed.

Response to Specific Request for Comments

In the proposed rule, the NRC specifically requested comments on certain parts or assumptions made by the NRC. Under Section VIII of the proposed rule, the NRC expressed an interest in receiving comments on—

(1) What scenarios are envisioned where emergency access would be required?

(2) What are the potential problems with the NRC's approach to determining an immediate and serious threat to the public health and safety?

(3) What are the potential problems with the arrangement proposed for making the determination of serious and immediate threat to the common defense and security?

(4) What are the potential difficulties with the proposed approach for designating the receiving site? and

(5) What should the NRC do if no site is found to be suitable for waste requiring emergency access?

Two of the commentors specifically addressed this request for comments, offering partial responses to some of the questions. One of the commentors offered possible scenarios for emergency access and both of the commentors suggested that a Federal facility should be developed to accommodate emergency access wastes. The comments did not reveal any new perspectives for the NRC to consider so the final rule was not affected by the comments received.

In the proposed rule, the NRC specifically requested comments on the initial regulatory flexibility analysis from small businesses, small organizations, and small jurisdictions in order to determine if the final regulations should be modified such that less stringent requirements could be imposed on small entities while still adequately protecting the public health and safety. None of the comments received on the proposed rule addressed the impact of the regulation on small entities or the adequacy of the NRC's regulatory flexibility analysis. As a result, it was not necessary to change the final rule to accommodate the special needs of small business.

X. Finding of No Significant Environmental Impact: Availability

This rule establishes criteria and procedures for a Commission determination under section 6 of the Act that emergency access to an operating non-Federal LLW disposal facility is necessary to avert a serious and immediate threat to the public health and safety or the common defense and security. For the most part, the final rule is an administrative action which serves to codify the criteria and procedures in the Act. The adoption of such implementing criteria and procedures by promulgation of a final rule does not have an environmental effect.

Therefore, the Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule is not a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required.

The environmental assessment forming the basis for this determination is contained in the regulatory analysis prepared for this regulation. The availability of the regulatory analysis is noted in Section XIII of this rule.

XI. Paperwork Reduction Act Statement

The final rule adds information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget Approval Number 3150–0143.

Public reporting burden for this collection of information is estimated to average 680 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Records and Reports Management Branch, Division of Information Support Services/IRM, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Paperwork Reduction Project (3150–0143), Office of Management and Budget, Washington, DC 20503.

XII. Regulatory Analysis

The Commission has prepared a regulatory analysis on this final regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection, copying for a fee, at the NRC Public Document Room, 2120 L Street NW., Washington, DC 20555. Single copies of the analysis may be obtained from Janet Lambert, Nuclear Regulatory Commission, NLS–260, Washington, DC 20555, telephone (301) 492–3857.

XIII. Regulatory Flexibility Certification

NRC is using this final rule to implement the statutory requirements for granting emergency access to non-Federal or regional LLW disposal facilities under section 6 of the Act. Based upon the information available and in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that this rule will not have a significant economic impact upon a substantial number of small entities.

The rule has the potential to affect any generator of LLW as well as any existing LLW disposal facility. None of the LLW disposal facilities would be considered to be a small entity. The generators of LLW are nuclear power plants, medical and academic facilities, industrial licensees, research and development facilities, radiopharmaceutical manufacturers, fuel fabrication facilities, and government licensees. Of these categories, all but the power plants, fuel fabrication facilities, and government licensees could potentially include small entities.

Although these categories may contain a "substantial number of small entities," the Commission does not believe that there will be a significant economic impact to these generators because the Commission does not anticipate that many generators will be affected by the rule. In order for the requirements of the rule to be imposed on a generator, the generator must initiate the action by requesting a grant of emergency access from NRC. This would occur only because the generator has been denied access to LLW disposal. The impact of the recordkeeping requirements on any affected licensees should be minimal since the information that must be provided if a generator requests emergency access would most likely be collected and assembled as part of any process to decide a course of action if necessary access to LLW disposal was not going to be available.

The Commission is required by statute to make emergency access determinations. Since a grant of emergency access is intended to correct the problems LLW generators may encounter because of lack of access to LLW disposal, the provision of emergency access will benefit any generator of LLW, including small entities.

Establishing criteria and procedures for requesting and granting emergency access through a rule will also benefit small and large generators. This Part provides guidance to the generator on what information will be required for making requests for emergency access and provides an orderly framework for making those requests. Also, the rule will enable generators to better plan to avoid LLW disposal access problems, thus providing the certainty required for economic growth and development.

XIV. Backfit Statement

The provisions of 10 CFR 50.109 on Backfitting do not apply to this rulemaking because this regulation is not applicable to production and utilization facilities licensed under 10 CFR Part 50.

List of Subjects in 10 CFR Part 62

Administrative practice and procedure, Denial of access, Emergency access to low-level waste disposal, Low-level radioactive waste, Low-level radioactive waste policy amendments act of 1985, Low-level radioactive waste treatment and disposal, Nuclear materials, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, and the Low-Level Radioactive Waste Policy Amendments Act of 1985, the NRC is adopting a new 10 CFR Part 62.

1. A new Part 62 is added to 10 CFR to read as follows:

PART 62—CRITERIA AND PROCEDURES FOR EMERGENCY ACCESS TO NON-FEDERAL AND REGIONAL LOW-LEVEL WASTE DISPOSAL FACILITIES

Subpart A—General Provisions

Sec.

62.1 Purpose and scope.
62.2 Definitions.
62.3 Communications.
62.4 Interpretations.
62.5 Specific exemptions.
62.8 Information collection requirements: OMB approval.

Subpart B—Request for a Commission Determination

62.11 Filing and distribution of a determination request.
62.12 Contents of a request for emergency access: General information.
62.13 Contents of a request for emergency access: Alternatives.
62.14 Contents of a request for an extension of emergency access.
62.15 Additional information.
62.16 Withdrawal of a determination request.
62.17 Elimination of repetition.
62.18 Denial of request.

Subpart C—Issuance of a Commission Determination

62.21 Determination for granting emergency access.
62.22 Notice of issuance of a determination.
62.23 Determination for granting temporary emergency access.
62.24 Extension of emergency access.
62.25 Criteria for a Commission determination.
62.26 Criteria for designating a disposal facility.

Subpart D—Termination of Emergency Access

62.31 Termination of emergency access.

Authority: Secs. 81, 161, as amended, 68 Stat. 935, 948, 942, 950, 951, as amended. (42 U.S.C. 2111, 2201); secs. 201, 209, as amended, 88 Stat. 1242, 1248, as amended (42 U.S.C. 5841, 5849); secs. 3, 4, 5, 6, 90 Stat. 1843, 1844, 1845, 1846, 1847, 1848, 1849, 1850, 1851, 1852, 1853, 1854, 1855, 1856, 1857. (42 U.S.C. 2021c, 2021d, 2021e, 2021f).

Subpart A—General Provisions

§ 62.1 Purpose and scope.

(a) The regulations in this part establish for specific low-level radioactive waste:

(1) Criteria and procedures for granting emergency access under section 5 of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (42 U.S.C. 2021) to any non-Federal or regional low-level radioactive waste (LLW) disposal facility or to any non-Federal disposal facility within a State that is not a member of a Compact, and

(2) The terms and conditions upon which the Commission will grant this emergency access.

(b) The regulations in this part apply to all persons as defined by this regulation, who have been denied access to existing regional or non-Federal low-level radioactive waste disposal facilities and who submit a request to the Commission for a determination pursuant to this part.

(c) The regulations in this part apply only to the LLW that the States have the responsibility to dispose of pursuant to section 3(1)(a) of the Act.

§ 62.2 Definitions.

As used in this part:

"Act" means the Low-Level Radioactive Waste Policy Amendments Act of 1985 (Pub. L. 99-240).

"Agreement State" means a State that—

(1) Has entered into an agreement with the Nuclear Regulatory Commission under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021); and

(2) Has authority to regulate the disposal of low-level radioactive waste under such agreement.

"Commission" means the Nuclear Regulatory Commission or its duly authorized representatives.

"Compact" means a Compact entered into by two or more States pursuant to the Low-Level Radioactive Waste Policy Amendments Act of 1985.

"Compact Commission" means the regional commission, committee, or board established in a Compact to administer such Compact.

"Disposal" means the permanent isolation of low-level radioactive waste pursuant to the requirements established by the Nuclear Regulatory Commission under applicable laws, or by an Agreement State if such isolation occurs in that Agreement State.

"Emergency access" means access to an operating non-Federal or regional low-level radioactive waste disposal facility or facilities for a period not to exceed 180 days, which is granted by NRC to a generator of low-level radioactive waste who has been denied the use of those facilities.

"Extension of emergency access" means an extension of the access that had been previously granted by NRC to an operating non-Federal or regional low-level radioactive waste disposal facility or facilities for a period not to exceed 180 days.

"Low-level radioactive waste" (LLW) means radioactive material that—

(1) Is not high-level radioactive waste, spent nuclear fuel, or byproduct material (as defined in section 11e(2) of the Atomic Energy Act of 1954, (42 U.S.C. 2014(e)(2))); and (2) the NRC, consistent with existing law and in accordance with paragraph (a), classifies as low-level radioactive waste.

"Non-Federal disposal facility" means a low-level radioactive waste disposal facility that is commercially operated or is operated by a State.

"Person" means any individual, corporation, partnership, firm, association, trust, State, public or private institution, group or agency who is an NRC or NRC Agreement State licensed generator of low-level radioactive waste within the scope of § 62.1(c) of this part; any Governor (or for any "State" without a Governor, the chief executive officer of the "State") on behalf of any NRC or NRC Agreement State licensed generator or generators of low-level radioactive waste within the scope of § 62.1(c) of this part located in his or her "State"; or their duly authorized representative, legal successor, or agent.

"Regional disposal facility" means a non-Federal low-level radioactive waste disposal facility in operation on January 1, 1986, or subsequently established and operated under a compact.

"State" means any State of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

"Temporary emergency access" means access that is granted at NRC's discretion under § 62.23 of this part upon determining that access is necessary to eliminate an immediate and serious threat to the public health and safety or the common defense and security. Such access expires 45 days after the granting and cannot be extended.

§ 62.3 Communications.

Except where otherwise specified, each communication and report concerning the regulations in this part should be addressed to the Director, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, or may be delivered in person to the Commission's offices at 2120 L Street NW., Washington, DC, or 11555 Rockville Pike, Rockville, Maryland.

§ 62.4 Interpretations.

Except as specifically authorized by the Commission in writing, no interpretation of the meaning of the regulations in this part by any officer or employee of the Commission other than a written interpretation by the General Counsel will be considered binding on the Commission.

§ 62.5 Specific exemptions.

The Commission may, upon application of any interested person or upon its own initiative, grant an exemption from the requirements of the regulations in this part that it determines is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest.

§ 62.8 Information collection requirements: OMB Approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). OMB has approved the information collection requirements contained in this part under control number 3150-0143.

(b) The approved information collection requirements contained in this part appear in §§ 62.11, 62.12, 62.13, 62.14, and 62.15.

Subpart B—Request for a Commission Determination

§ 62.11 Filing and distribution of a determination request.

(a) The person submitting a request for a Commission determination shall file a signed original and nine copies of the request with the Commission at the address specified in § 62.3 of this part, with a copy also provided to the appropriate Regional Administrator at the address specified in Appendix D to Part 20 of this chapter. The request must be signed by the person requesting the determination or the person's authorized representative under oath or affirmation.

(b) Upon receipt of a request for a determination, the Secretary of the Commission will cause to be published in the Federal Register a notice acknowledging receipt of the request which will require that public comment on the request be submitted within 10 days of the date of the notice. A copy of the request will be made available for inspection or copying in the Commission's Public Document Room, Washington, DC. The Secretary of the Commission will also transmit a copy of the request to the U.S. Department of Energy, to the Governors of the States of the Compact region where the waste is generated, to the Governors of the States with operating non-Federal low-level radioactive waste disposal facilities, to the Compact Commissions with operating regional low-level radioactive waste disposal facilities, and to the Governors of the States in the Compact Commissions with operating disposal facilities.

(c) Upon receipt of a request for a determination based on a serious and immediate threat to the common defense and security, the Commission will notify DOD and/or DOE and provide a copy of the request as needed for their consideration.

(d) Fees applicable to a request for a Commission determination under this part will be determined in accordance with the procedures set forth for special projects under category 12 of § 170.31 of this chapter.

(e) In the event that the allocations or limitations established in section 5(b) or 6(h) of the Act are met at all operating non-Federal or regional LLW disposal facilities, the Commission may suspend the processing or acceptance of requests for emergency access determinations until additional LLW disposal capacity is authorized by Congress.

§ 62.12 Contents of a request for emergency access: General information.

A request for a Commission determination under this part must include the following information for each generator to which the request applies:

(a) Name and address of the person making the request;

(b) Name and address of the person(s) or company(ies) generating the low-level radioactive waste for which the determination is sought;

(c) A statement indicating whether the generator is basing the request on the grounds of a serious and immediate threat to the public health and safety or the common defense and security;

(d) Certification that the radioactive waste for which emergency access is requested is low-level radioactive waste within § 62.1(c) of this part;

(e) The low-level waste generation facility(ies) producing the waste for which the request is being made;

(f) A description of the activity that generated the waste;

(g) Name of the disposal facility or facilities which had been receiving the waste stream of concern before the generator was denied access;

(h) A description of the low-level radioactive waste for which emergency access is requested, including—

(1) The characteristics and composition of the waste, including, but not limited to—

(i) Type of waste (e.g. solidified oil, scintillation fluid, failed equipment);

(ii) Principal chemical composition;

(iii) Physical state (solid, liquid, gas);

(iv) Type of solidification media; and

(v) Concentrations and percentages of any hazardous or toxic chemicals, chelating agents, or infectious or biological agents associated with the waste;

(2) The radiological characteristics of the waste such as—

(i) The classification of the waste in accordance with 61.55;

(ii) A list of the radionuclides present or potentially present in the waste, their concentration or contamination levels, and total quantity;

(iii) Distribution of the radionuclides within the waste (surface or volume distribution);

(iv) Amount of transuranics (nanocuries/gram);

(3) The minimum volume of the waste requiring emergency access to eliminate the threat to the public health and safety or the common defense and security;

(4) The time duration for which emergency access is requested (not to exceed 180 days);

(5) Type of disposal container or packaging (55 gallon drum, box, liner, etc.); and

(6) Description of the volume reduction and waste minimization techniques applied to the waste which assure that it is reduced to the maximum extent practicable, and the actual reduction in volume that occurred;

(i) Basis for requesting the determination set out in this part, including—

(1) The circumstances that led to the denial of access to existing low-level radioactive waste disposal facilities;

(2) A description of the situation that is responsible for creating the serious and immediate threat to the public health and safety or the common defense and security, including the date when the need for emergency access was identified;

(3) A chronology and description of the actions taken by the person requesting emergency access to prevent the need for making such a request, including consideration of all alternatives set forth in § 62.13 of this part, and any supporting documentation as appropriate;

(4) An explanation of the impacts of the waste on the public health and safety or the common defense and security if emergency access is not granted, and the basis for concluding that these impacts constitute a serious and immediate threat to the public health and safety or the common defense and security. The impacts to the public health and safety or the common defense and security should also be addressed if the generator's services, including research activities, were to be curtailed, either for a limited period of time or indefinitely;

(5) Other consequences if emergency access is not granted;

(j) Steps taken by the person requesting emergency access to correct the situation requiring emergency access and the person's plans to eliminate the need for additional or future emergency access requests;

(k) Documentation certifying that access has been denied;

(l) Documentation that the waste for which emergency access is requested could not otherwise qualify for disposal pursuant to the Unusual Volumes provision (Section 5(c)(5) of the Act) or is not simultaneously under consideration by the Department of Energy (DOE) for access through the Unusual Volumes allocation;

(m) Date by which access is required;

(n) Any other information which the Commission should consider in making its determination.

§ 62.13 Contents of a request for emergency access: Alternatives.

(a) A request for emergency access under this part must include information on alternatives to emergency access. The request shall include a discussion of the consideration given to any alternatives, including, but not limited to, the following:

(1) Storage of low-level radioactive waste at the site of generation;

(2) Storage of low-level radioactive waste in a licensed storage facility;

(3) Obtaining access to a disposal facility by voluntary agreement;

(4) Purchasing disposal capacity available for assignment pursuant to the Act;

(5) Requesting disposal at a Federal low-level radioactive waste disposal facility in the case of a Federal or defense related generator of LLW;

(6) Reducing the volume of the waste;

(7) Ceasing activities that generate low-level radioactive waste; and

(8) Other alternatives identified under paragraph (b) of this section.

(b) The request must identify all of the alternatives to emergency access considered, including any that would require State or Compact action, or any others that are not specified in paragraph (a) of this section. The request should also include a description of the process used to identify the alternatives, a description of the factors that were considered in identifying and evaluating them, a chronology of actions taken to identify and implement alternatives during the process, and a discussion of any actions that were considered, but not implemented.

(c) The evaluation of each alternative must consider:

(1) Its potential for mitigating the serious and immediate threat to public health and safety or the common defense and security posed by lack of access to disposal;

(2) The adverse effects on public health and safety and the common defense and security, if any, of implementing each alternative, including the curtailment or cessation of any essential services affecting the public health and safety or the common defense and security;

(3) The technical and economic feasibility of each alternative including the person's financial capability to implement the alternatives;

(4) Any other pertinent societal costs and benefits;

(5) Impacts to the environment;

(6) Any legal impediments to implementation of each alternative, including whether the alternatives will comply with applicable NRC and NRC Agreement States regulatory requirements; and

(7) The time required to develop and implement each alternative.

(d) The request must include the basis for:

(1) Rejecting each alternative; and

(2) Concluding that no alternative is available.

§ 62.14 Contents of a request for an extension of emergency access.

A request for an extension of emergency access must include:

(a) Updates of the information required in §§ 62.12 and 62.13; and

(b) Documentation that the generator of the low-level radioactive waste granted emergency access and the State in which the low-level radioactive waste was generated have diligently, though unsuccessfully, acted during the period of the initial grant to eliminate the need for emergency access. Documentation must include:

(1) An identification of additional alternatives that have been evaluated during the period of the initial grant, and

(2) A discussion of any reevaluation of previously considered alternatives, including verification of continued attempts to gain access to a disposal facility by voluntary agreement.

§ 62.15 Additional information.

(a) The Commission may require additional information from a person making a request for a Commission determination under this part concerning any portion of the request.

(b) The Commission shall deny a request for a Commission determination under this part if the person making the request fails to respond to a request for additional information under paragraph (a) of this section within ten (10) days from the date of the request for additional information, or any other time that the Commission may specify. This denial will not prejudice the right of the person making the request to file another request for a Commission determination under this part.

§ 62.16 Withdrawal of a determination request.

(a) A person may withdraw a request for a Commission determination under this part without prejudice at any time prior to the issuance of an initial determination under § 62.21 of this part.

(b) The Secretary of the Commission will cause to be published in the **Federal Register** a notice of the withdrawal of a request for a Commission determination under this part.

§ 62.17 Elimination of repetition.

In any request under this part, the person making the request may incorporate by reference information contained in a previous application, Statement, or report filed with the Commission provided that these references are updated, clear, and specific.

§ 62.18 Denial of request.

If a request for a determination is based on circumstances that are too remote and speculative to allow an informed determination, the Commission may deny the request.

Subpart C—Issuance of a Commission Determination

§ 62.21 Determination for granting emergency access.

(a) Not later than (45) days after the receipt of a request for a Commission determination under this part from any generator of low-level radioactive waste, or any Governor on behalf of any generator or generators located in his or her State, the Commission shall determine whether—

(1) Emergency access to a regional disposal facility or a non-Federal disposal facility within a State that is not a member of a Compact for specific low-level radioactive waste is necessary because of an immediate and serious threat—

(i) To the public health and safety or

(ii) The common defense and security; and

(2) The threat cannot be mitigated by any alternative consistent with the public health and safety, including those identified in § 62.13.

(b) In making a determination under this section, the Commission shall be guided by the criteria set forth in § 62.25 of this part.

(c) A determination under this section must be in writing and contain a full explanation of the facts upon which the determination is based and the reasons for granting or denying the request. An affirmative determination must designate an appropriate non-Federal or regional LLW disposal facility or facilities for the disposal of wastes, specifically describe the low-level radioactive waste as to source, physical and radiological characteristics, and the minimum volume and duration (not to exceed 180 days) necessary to eliminate the immediate threat to public health and safety or the common defense and security. It may also contain conditions upon which the determination is dependent.

§ 62.22 Notice of issuance of a determination.

(a) Upon the issuance of a Commission determination the Secretary of the Commission will notify in writing the following persons of the final determination: The person making the request, the Governor of the State in which the low-level radioactive waste requiring emergency access was generated, the Governor of the State in which the designated disposal facility is located, and if pertinent, the appropriate Compact Commission for such approval as is specified as necessary in section 6(g) of the Act. For the Governor of the State in which the designated disposal facility is located and for the appropriate Compact Commission, the notification must set forth the reasons that emergency access was granted and specifically describe the low-level radioactive waste as to source, physical and radiological characteristics, and the minimum volume and duration (not to exceed 180 days) necessary to alleviate the immediate and serious threat to public health and safety or the common defense and security. For the Governor of the State in which the low-level waste was generated, the notification must indicate that no extension of emergency access will be granted under § 62.24 of this part absent diligent State and generator action during the period of the initial grant.

(b) The Secretary of the Commission will cause to be published in the **Federal Register** a notice of the issuance of the determination.

(c) The Secretary of the Commission will make a copy of the final determination available for inspection in the Commission's Public Document Room, 2120 L Street NW., Washington, DC.

§ 62.23 Determination for granting temporary emergency access.

(a) The Commission may grant temporary emergency access to an appropriate non-Federal or regional disposal facility or facilities provided that the determination required under § 62.21(a)(1) of this part is made;

(b) The notification procedures under § 62.22 of this part are complied with; and

(c) The temporary emergency access duration will not exceed forty-five (45) days.

§ 62.24 Extension of emergency access.

(a) After the receipt of a request from any generator of low-level waste, or any Governor on behalf of any generator or generators in his or her State, for an extension of emergency access that was initially granted under § 62.21, the Commission shall make an initial determination of whether—

(1) Emergency access continues to be necessary because of an immediate and serious threat to the public health and safety or the common defense and security;

(2) The threat cannot be mitigated by any alternative that is consistent with public health and safety; and

(3) The generator of low-level waste and the State have diligently though unsuccessfully acted during the period of the initial grant to eliminate the need for emergency access.

(b) After making a determination pursuant to paragraph (a) of this section, the requirements specified in §§ 62.21(c) and 62.22 of this part, must be followed.

§ 62.25 Criteria for a Commission determination.

(a) In making the determination required by § 62.21(a) of this part, the Commission will determine whether the circumstances described in the request for emergency access create a serious and immediate threat to the public health and safety or the common defense and security.

(b) In making the determination that a serious and immediate threat exists to the public health and safety, the Commission will consider, notwithstanding the availability of any alternative identified in § 62.13 of this part:

(1) The nature and extent of the radiation hazard that would result from the denial of emergency access, including consideration of—

(i) The standards for radiation protection contained in Part 20 of this chapter;

(ii) Any standards governing the release of radioactive materials to the general environment that are applicable to the facility that generated the low level waste; and

(iii) Any other Commission requirements specifically applicable to the facility or activity that is the subject of the emergency access request; and

(2) The extent to which essential services affecting the public health and safety (such as medical, therapeutic, diagnostic, or research activities) will be disrupted by the denial of emergency access.

(c) For purposes of granting temporary emergency access under § 62.23 of this part, the Commission will consider the criteria contained in the Commission's Policy Statement (45 FR 10950, February 24, 1977) for determining whether an event at a facility or activity licensed or otherwise regulated by the Commission is an abnormal occurrence within the

purview of section 208 of the Energy Reorganization Act of 1974.

(d) In making the determination that a serious and immediate threat to the common defense and security exists, the Commission will consider, notwithstanding the availability of any alternative identified in § 62.13 of this part:

(1) Whether the activity generating the wastes is necessary to the protection of the common defense and security, and

(2) Whether the lack of access to a disposal site would result in a significant disruption in that activity that would seriously threaten the common defense and security.

The Commission will consider the views of the Department of Defense (DOD) and or the Department of Energy (DOE) regarding the importance of the activities responsible for generating the LLW to the common defense and security, when evaluating requests based all, or in part, on a serious and immediate threat to the common defense and security.

(e) In making the determination required by § 62.21(a)(2) of this part, the Commission will consider whether the person submitting the request—

(1) Has identified and evaluated any alternative that could mitigate the need for emergency access; and

(2) Has considered all pertinent factors in its evaluation of alternatives including state-of-the-art technology and impacts on public health and safety.

(f) In making the determination required by § 62.21(a)(2) of this part, the Commission will consider implementation of an alternative to be unreasonable if:

(1) It adversely affects public health and safety, the environment, or the common defense and security; or

(2) It results in a significant curtailment or cessation of essential services, affecting public health and safety or the common defense and security; or

(3) It is beyond the technical and economic capabilities of the person requesting emergency access; or

(4) Implementation of the alternative would conflict with applicable State or local or Federal laws and regulations; or

(5) It cannot be implemented in a timely manner.

(g) The Commission shall make an affirmative determination under § 62.21(a) of this part only if all of the alternatives that were considered are found to be unreasonable.

(h) As part of its mandated evaluation of the alternatives that were considered by the generator, the Commission shall consider the characteristics of the wastes (including: physical properties, chemical properties, radioactivity, pathogenicity, infectiousness, and toxicity, pyrophoricity, and explosive potential); condition of current container; potential for contaminating the disposal site; the technologies or combination of technologies available for treatment of the waste (including incinerators; evaporators-crystallizers; fluidized bed dryers; thin-film evaporators; extruders, evaporators; and Compactors); the suitability of volume reduction equipment to the circumstances (specific activity considerations, actual volume reduction factors, generation of secondary wastes, equipment contamination, effluent releases, worker exposure, and equipment availability); and the administrative controls which could be applied, in making a determination whether waste to be delivered for disposal under this part has been reduced in volume to the maximum extent practicable using available technology.

§ 62.26 Criteria for designating a disposal facility.

(a) The Commission shall designate an appropriate non-Federal or regional disposal facility if an affirmative determination is made pursuant to §§ 62.21, 62.23, or 62.24 of this part.

(b) The Commission will exclude a disposal facility from consideration if:

(1) The low-level radioactive wastes of the generator do not meet the criteria established by the license agreement or the license agreement of the facility; or

(2) The disposal facility is in excess of its approved capacity; or

(3) Granting emergency access would delay the closing of the disposal facility pursuant to plans established before the receipt of the request for emergency access; or

(4) The volume of waste requiring emergency access exceeds 20 percent of the total volume of low-level radioactive waste accepted for disposal at the facility during the previous calendar year.

(c) If, after applying the exclusionary criteria in paragraph (b) of this section, more than one disposal facility is identified as appropriate for designation, the Commission will then consider additional factors in designating a facility or facilities including—

(1) Type of waste and its characteristics,

(2) Previous disposal practices,

(3) Transportation

(4) Radiological effects,

(5) Site capability for handling waste,

(6) The volume of emergency access waste previously accepted by each site both for the particular year and overall, and

(7) Any other considerations deemed appropriate by the Commission.

(d) The Commission, in making its designation, will also consider any information submitted by the operating non-Federal or regional LLW disposal sites, or any information submitted by the public in response to a **Federal Register** notice requesting comment, as provided in paragraph (b) of § 62.11 of this part.

Subpart D—Termination of Emergency Access

§ 62.31 Termination of emergency access.

(a) The Commission may terminate a grant of emergency access when emergency access is no longer necessary to eliminate an immediate threat to public health and safety or the common defense and security.

(b) The Commission may terminate a grant of emergency access if an applicant has provided inaccurate information in its application for emergency access or if the applicant has failed to comply with this part or any conditions set by the Commission pursuant to this part.

Dated at Rockville, MD, this 31st day of January, 1989.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 201 and 381

[Docket No. RM88-28-000; Order No. 506-A]

Revision of Filing Fees for Natural Gas Rate and Tariff Filings

Issued January 30, 1989.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final Rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is clarifying and issuing as final regulations on filing fees for natural gas rate and tariff filings made pursuant to §§ 381.204 and 381.205 adopted in an interim rule, Order No. 506 (53 FR 44182 (November 2, 1988)). Under the regulations, the Commission will not charge a filing fee for rate and tariff filings made in response to an order requiring compliance issued by the Commission to a specifically identified pipeline with respect to a specific tariff previously filed by the pipeline. Also, the regulations provide a sixty percent categorical reduction for rate and tariff filing fees made by natural gas companies other than major natural gas companies pursuant to §§ 381.204 and 381.205. The Commission is adopting this rule partially in response to the U.S. Court of Appeals' decision and remand in *Raton Gas Transmission Co.* v. *FERC.*

EFFECTIVE DATE: January 30, 1989.

FOR FURTHER INFORMATION CONTACT: Julia Lake White, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8530.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357-8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this order will be available on CIPS for 10 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

Before Commissioners: Martha O. Hesse, Chairman; Charles G. Stalon, Charles A. Trabandt, Elizabeth Anne Moler and Jerry J. Langdon.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is clarifying and issuing as final regulations on filing fees for natural gas rate and tariff filings made pursuant to §§ 381.204 and 381.205 adopted in an interim rule, Order No. 506.[1] Under the regulations, the Commission will not charge a filing fee for rate and tariff filings made in response to an order requiring compliance issued by the Commission to a specifically identified pipeline with respect to a specific tariff previously filed by the pipeline. Also, the regulations provide a sixty percent categorical reduction for rate and tariff filing fees made by natural gas companies other than major natural gas companies[2] pursuant to §§ 381.204 and 381.205.[3] The Commission is adopting this rule partially in response to the U.S. Court of Appeals' decision and remand in *Raton Gas Transmission Co. v. FERC (Raton).*[4]

II. Background

On July 29, 1988, the U.S. Court of Appeals for the District of Columbia Circuit remanded *Raton.* The case involved an attempt by Raton to obtain relief from a fee charged by the Commission for processing a six-page "'Purchased Gas Adjustment" (PGA) filing made by Raton pursuant to § 154.38 of the Commission's regulations.[5] The Court noted that the Independent Offices Appropriation Act of 1952 (IOAA) requires fees assessed for agency service to be cost-justified and fair, and questioned whether the Commission's current fees for PGA filings continue to be cost-justified. The Court also questioned whether the uniform application of the fees to all pipelines may be substantially unfair to smaller pipelines. The Court required the Commission to reconsider its decision to charge Raton the full fee and to supply a fuller explanation of its result. The Court also suggested that the Commission may want to reevaluate the situation to determine whether it is time to devise a new fee schedule better assuring fairness of the fees charged to small pipelines.[6]

In response to the Court's mandate in *Raton,* and in consideration of its experience implementing filing fees for gas rate filings during the four years since the present fee structure was adopted in Order No. 361,[7] the Commission issued Order No. 506, an interim rule which: (1) Eliminated all filing fees for gas rate and tariff filings that respond to a specific order requiring compliance issued by the Commission to a specifically identified pipeline with respect to a specific tariff previously filed by that pipeline; and (2) provided a categorical reduction of sixty percent of the fees for rate and tariff filings made by nonmajor natural gas companies pursuant to §§ 381.204 and 381.205.[8]

The Commission explained in Order No. 506 that its experience in implementing the fees schedule adopted in Order No. 361 indicated that compliance filings do not take a significant amount of time to process. The time-consuming analysis was performed in processing the original rate filing; the compliance filing merely implemented the result of that analysis. Additionally, the Commission noted that compliance filing fees generate numerous complaints and waiver requests and, in fact, discourage natural gas companies from making compliance filings. The Commission concluded that eliminating filing fees for compliance filings would largely end these complaints and would encourage companies to make these filings. This revision was made effective prospectively from October 27, 1986, the issuance date of the order.

Responding to the Court's remand in *Raton,* the Commission decided that a reduction in fees for nonmajor natural gas companies[9] to less than full cost

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[1] Revision of Filing Fees for Natural Gas Rate and Tariff Filings, Interim Rule, 53 FR 44182 (Nov. 2, 1988), III FERC Stats. & Regs. ¶ 30,536 (Oct. 27, 1988).

[2] The term "major" is defined in Part 201, General Instructions, of the Commission's accounting regulations, to mean each natural gas company as defined in the Natural Gas Act whose combined gas sold for resale and gas transported or stored for a fee exceeds 50 million Mcf at 14.73 psi (60° F) in each of the three previous calendar years. The term "nonmajor" is defined in Part 201, General Instructions, of the Commission's accounting regulations, as including natural gas companies that are not classified as a "major company" and that had total gas sales of volume transactions exceeding 200,000 Mcf at 14.73 psi (60° F) in each of the three previous calendar years. *See* Uniform System of Accounts Prescribed for Natural Gas Companies, General Instructions. 18 CFR Part 201, General Instructions (1988). *See also* the discussion, *infra,* clarifying the term "nonmajor" as defined in Part 201.

[3] 18 CFR 381.204 and 381.205 (1988). Section 381.204 establishes the fee for a tariff filing for general changes in rates and for changes other than rates. Section 381.205 establishes the fee for tariff filings that track certain costs.

[4] 852 F.2d 612 (DC Cir. 1988). The sixty percent categorical reduction in gas rate filing fees for nonmajor pipelines is in response to the Court's remand in *Raton.* That change, as well as the elimination of filing fees for certain gas rate and tariff compliance filings (which is peripherally related to the issues in Raton) have been under internal consideration for several years.

[5] *See* 18 CFR 154.38 (1988). On November 10, 1987, the Commission revised its Purchased Gas Adjustment regulations in Order No. 483, 52 FR 43854 (Nov. 17, 1987); III FERC Stats. & Regs. ¶ 30,778 (1987), codified at 18 CFR 154.301-154.310 (1988).

[6] 852 F.2d at 619.

[7] 49 FR 5063 (Feb. 10, 1984); FERC Stats. & Regs. [Regulations Preambles 1982-1985] ¶ 30,543 (Feb. 6, 1984).

[8] *See* note 3.

[9] Raton Gas Transmission Company is a nonmajor natural gas company within the meaning of Part 201 of the Commission's regulations. *See* 18 CFR Part 201, General Instructions (1988).

recovery was necessary in order to prevent a disproportionate economic impact on nonmajor pipelines.[10] The Commission concluded that a categorical reduction of sixty percent of the fees for rate and tariff filings made by nonmajor natural gas companies pursuant to §§ 381.204 and 381.205 would be appropriate. The Commission also stated that the sixty-percent categorical reduction was a policy judgment representing its best estimate of the magnitude of reduction necessary to avoid a disproportionate economic impact on nonmajor companies.[11] In Order No. 506, the Commission specifically applied the sixty-percent categorical reduction to Raton's tariff filing at issue in the *Raton* decision. Additionally, the interim rule applied the sixty-percent categorical reduction retroactively to any rate or tariff filing made by nonmajor companies on or after July 29, 1988, the date of the Court's decision in *Raton*.

The Commission amended its regulations in Order No. 506 on an interim basis because it believed that a prompt response to the Court's remand in *Raton* would alleviate the industry's uncertainty about the status of the Commission's gas rate fees schedule as it applies to smaller natural gas companies. The Commission also sought comments on its changes.

III. Discussion

Seven natural gas companies filed comments.[12] The commenters generally support the Commission's actions in Order No. 506. In addition, the majority of the commenters request that the Commission apply the sixty-percent categorical reduction to all filing fees paid by nonmajor natural gas companies.[13] Alabama-Tennessee requests that the Commission also address an alleged lack of fairness in the Commission's treatment of major and nonmajor natural gas companies in assessing annual charges.[14] The Commission declines at this time to apply the sixty-percent categorical reduction to all other filing fees made by nonmajor natural gas companies. An evaluation of the Commission's entire filing fees structure is beyond the scope of this rulemaking docket and would unduly delay final action to correct the inequities that were brought to our attention in *Raton*. The Commission may address further revisions in the filing fees structure in the future.

The Commission also believes that it would be more appropriate to address Alabama-Tennessee's concerns in the context of the annual charges rulemaking proceeding.[15] The annual charges rule is currently under review in the U.S. Court of Appeals for the District of Columbia Circuit in *Interstate Natural Gas Association of America v. FERC*, No. 87-1570, and in the U.S. Supreme Court in *Burnley v. Mid-America Pipeline Co.*, No. 87-2098. Thus, it would be inappropriate to address the concerns raised in the comments in this docket until the court review of the annual charges rule has been resolved.

Pelican Interstate Gas System (Pelican) requests that the Commission clarify the term "nonmajor" as defined in Part 201, General Instructions of the Commission's accounting regulations and as applied in the interim rule. Pelican argues that the definition contains a typographical error and that it should read "total gas sales *or* volume transactions exceeding 200,000 Mcf." The Commission's regulations currently read "total gas sales *of* volume transactions exceeding 200,000 Mcf."[16]

The Commission agrees and is revising the definition of the term "nonmajor" in Part 201, General Instructions of its accounting regulations to correct this typographical error. This will make the definition consistent with Order No. 390, the rule that promulgated these definitions.[17]

Pelican also claims that the definition of nonmajor and exempt natural gas companies appears to exclude the smallest natural gas companies (*i.e.*, those companies that are not major companies and have total volumes of 200,000 Mcf or less in each of the three previous calendar years). Pelican argues that excluding the smallest natural gas companies from the benefits of reduced fees is inconsistent with the Commission's stated policy to reduce the filing fee burden on small pipelines.

Order No. 390 exempted from the accounting, filing, and reporting requirements of Part 201 those gas companies that have gas sales or volume transactions at or below the 200,000 Mcf level used to define "nonmajor" gas companies. Therefore, those companies do not fall within the definition of "nonmajor" in Part 201. However, these smallest companies do make filings that require fees under §§ 381.204 and 381.205, and using the term "nonmajor" to define those eligible for the categorical reduction would exclude them from the benefits of reduced fees. This was not our intent in adopting the interim rule. Accordingly, in the final rule, we adopt a definition that applies the categorical reduction to natural gas companies other than "major" natural gas companies as defined in Rule 201.

IV. Effective Date

This final rule is effective January 30, 1989. This will ensure that there is no gap in the transition from an interim rule to a final rule.

V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA)[18] generally requires a description and analysis of rules that will have a significant economic impact on a substantial number of small entities.

The revised fees adopted in the rule may have a significant impact on a substantial number of small entities. In effect, the Commission's rule will lessen the economic impact of its fees on small natural gas companies. The Commission believes this rule will have a beneficial impact on small entities rather than a negative impact. The Commission concludes, therefore, that this impact will not be "significant" within the meaning of the RFA. Accordingly, the Commission certifies that this rule will not have a "significant economic impact on a substantial number of small entities".

VI. Environmental Statement

The Commission concludes that promulgating this rule does not represent a major Federal action having a significant adverse effect on the human environment under the Commission's regulations implementing the National Environmental Policy Act.[19] This rule is procedural in nature and therefore falls within the categorical exemptions provided in the Commission's regulations. Consequently, neither an environmental impact statement nor an environmental assessment is required.[20]

List of Subjects

18 CFR Part 201

Natural gas, Reporting and recordkeeping requirements, Uniform System of Accounts.

18 CFR Part 381

Natural gas, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Parts 201 and 381, Chapter I, Title 18 of the Code of Federal Regulations as set forth below.

By the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

PART 201—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR NATURAL GAS COMPANIES SUBJECT TO THE PROVISIONS OF THE NATURAL GAS ACT

1. The authority citation for Part 201 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142.

2. In Part 201, under "General Instructions," paragraph (1)(A), the term *Nonmajor* is revised to read as follows:

General Instructions

1. *Classification of utilities.*

A. * * *

* * * * *

Nonmajor—Natural gas companies that are not classified as a "major company" (as defined above), and had total gas sales or volume transactions exceeding 200,000 Mcf at 14.73 psi (60 °F) in each of the three previous calendar years.

* * * * *

PART 381—FEES

3. The authority citation for Part 381 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Natural Gas Act, 15 U.S.C. 717–717w (1982); Federal Power Act, 16 U.S.C. 791–828c (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982); Interstate Commerce Act, 49 U.S.C. 1–27 (1976).

4. Section 381.204 is revised to read as follows:

§ 381.204 Pipeline tariff filings for general changes in rates and for changes other than in rates.

(a) Except as provided in paragraphs (b) and (c), the fee established for a tariff filing for general changes in rates and for changes other than rates is $4,320.

(b) *Categorical reduction.* Effective July 29, 1988, with respect to natural gas companies other than major natural gas companies, as defined in Part 201, General Instructions, of this chapter, the fee established for a tariff filing for general changes in rates and for changes other than rates is $1,720.

(c) There is no fee for a tariff filing that responds to an order requiring compliance issued by the Commission to a specifically identified pipeline with respect to a specific tariff previously filed by that pipeline.

5. Section 381.205 is revised to read as follows:

§ 381.205 Pipeline tariff filings that track certain costs.

(a) *General rule.* Except as provided in paragraphs (b) and (c), the fees established for tariff filings that track costs are:

(1) $4,440 for an annual filing under § 154.305;

(2) $910 for a quarterly filing under § 154.308;

(3) $910 for an interim adjustment filing under § 154.309; and

(4) $910 for any other tariff filing that tracks costs.

(b) *Categorical reduction.* Effective July 29, 1988, with respect to natural gas companies other than major natural gas companies, as defined in Part 201, General Instructions, of this chapter, the fees established for tariff filings that track costs are:

(1) $1,770 for an annual filing under § 154.305;

(2) $360 for a quarterly filing under § 154.308;

(3) $360 for an interim adjustment filing under § 154.309; and

(4) $360 for any other tariff filing that tracks costs.

(c) There is no fee for a tariff filing that responds to an order requiring compliance issued by the Commission to a specifically identified pipeline with respect to a specific tariff previously filed by that pipeline.

[FR Doc. 89-2583 Filed 2-2-89; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 122 and 178

[T.D. 89-24]

Customs Regulations Amendments Concerning Overflight Exemptions for Private Aircraft

AGENCY: U.S. Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document sets forth amendments to the Customs Regulations that modify the overflight exemption program for private aircraft. The regulations provide for more stringent controls of the overflight program by requiring: Additional information on applications for overflight exemptions; overflight aircraft to operate at minimum altitudes which will facilitate tracking by radar; and overflight aircraft to be equipped with altitude reporting transponders. These regulations will simplify the tracking and sorting of general aviation aircraft, reduce the possibility of air-drop or touch-and-go smuggling activities by overflight aircraft and generally improve our drug interdiction efforts.

EFFECTIVE DATE: March 6, 1989.

FOR FURTHER INFORMATION CONTACT: Glenn Ross or Sam McLinn, Office of Passenger Enforcement and Facilitation (202-566-5607).

SUPPLEMENTARY INFORMATION:

Background

As part of Customs effort to combat the problem of drug smuggling by air, the Customs Regulations were amended in 1975 to add a new § 6.14 (19 CFR 6.14), that provided in part that private aircraft arriving in the U.S. via the

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[10] The Commission cited as precedent Order No. 380, 49 FR 8089 (Feb. 10, 1984); FERC Stats. & Regs. [Regulations Preambles 1982–1985] ¶ 30,543 (Feb. 6, 1984) and Order No. 395, 49 FR 36368 (Sept. 7, 1984); FERC Stats. & Regs. [Regulations Preambles 1982–1985] ¶ 30,502 (Aug. 31, 1984).

[11] Unlike the reallocation of rate filing fees to eliminate the fees for compliance filings, the sixty-percent categorical reduction for nonmajor companies is not based on reevaluation of the cost of processing particular types of filings. Rather, it is based on potential hardship to the small companies. The Commission's experience is that the average time required to process the rate filings of nonmajor companies is not significantly lower than the average time required to process the rate filings of major companies. Hence, there will be no change in the rate filing fees for major pipelines (although the effect of the sixty-percent categorical reduction for nonmajor companies will be reflected in the amount of money to be recovered through the Commission's annual charges).

[12] Alabama-Tennessee Natural Gas Company; Carnegie Natural Gas Company; Eastern Shore Natural Gas Company; Lone Star Gas Company; Poinsett Pipeline Company; Pelican Interstate Gas Systems; and Raton Gas Transmission Company.

[13] *See, e.g.*, Carnegie Natural Gas Company; Eastern Shore Natural Gas Company; Lone Star Gas Company; Poinsett Pipeline Company; and Raton Gas Transmission Company.

[14] Annual charges under the Omnibus Budget Reconciliation Act of 1985, Order No. 472, 52 FR 21263 (June 5, 1987); III FERC Stats. & Regs. ¶ 30,745 (May 29, 1987); *clarified*, 52 FR 23650 (June 24, 1987); III FERC Stats. & Regs. ¶ 30,756 (June 17, 1987); *reh'g granted in part and denied in part*, 52 FR 30013 (Sept. 25, 1987); III FERC Stats. & Regs. ¶ 30,767 (Sept. 16, 1987).

[15] In its comments, Raton Gas Transmission Company requested that a differential in the annual fees be made between short haul and long haul natural gas pipelines. The Commission believes this proposal also should be addressed in the annual charges rulemaking docket and not in this rule.

[16] *See* note 2.

[17] Revisions to Public Utility and Natural Gas Company Classification Criteria, Uniform Systems of Accounts, Form Nos. 1, 1-F, 2 and 2-A and Related Regulations, Order No. 390, 49 FR 32496 (Aug. 14, 1984); FERC Stats. & Regs. [Regulations Preambles 1982–1985] ¶ 30,588 (Aug. 3, 1984).

[18] 5 U.S.C. 601–612 (1982).

[19] 52 FR 47897 (Dec. 17, 1987). III FERC Stats. & Regs. ¶ 30,783 (Dec. 10, 1987) (codified at 18 CFR Part 381).

[20] *See* 18 CFR 380.4(a)(1) (1988).

U.S.-Mexican border must provide a notice of intended arrival with Customs (T.D. 75–201, 40 FR 33203). The section further provided that these private aircraft must land at any one of the designated airports near the U.S.-Mexican border. The purpose of this regulation was to provide Customs with increased enforcement efficiency by providing tight control over air traffic arriving from the direction of countries that are major sources of illegal drugs destined for the U.S.

In our diligence to fight the national epidemic of illegal drugs, Customs amended § 6.14, Customs Regulations, several times since 1975. Amendments included extending coverage to private aircraft arriving via the Pacific, Gulf of Mexico, or Atlantic coasts (T.D. 83–192; 48 FR 41361); expanding coverage by modifying the definition of private aircraft (T.D. 84–236; 49 FR 46685); and extending the coverage to include some flights arriving from Puerto Rico and all flights arriving from the U.S. Virgin Islands, increasing from 15 minutes to one hour the minimum time required for notice to be given prior to penetrating U.S. air space, and requiring aircraft seeking exemption from landing requirements to be equipped with functioning transponders (T.D. 86–72; 51 FR 10004).

More recently Customs amended § 6.14(g) by removing San Diego International Airport (Lindbergh Field) from the list of designated airports. Customs discovered that smugglers were taking advantage of Lindbergh Field's location 15 miles from the U.S.-Mexican border to engage in smuggling after crossing the border, but before reporting for inspection at Lindbergh Field. (T.D. 86–146; 51 FR 27836).

On March 30, 1987, Customs again amended § 6.14 by publishing in the Federal Register (51 FR 10047) T.D. 87–42 which set forth interim amendments modifying the overflight exemption program contained in paragraph (f). These exemptions allow private aircraft arriving in the U.S. from foreign countries in the Western Hemisphere south of the U.S. to overfly a Customs designated airport along the southern border and proceed to another, typically more interior, airport where Customs inspectional services are available.

Customs was of the opinion that the existing overflight exemption program constituted an unnecessary loophole in our drug interdiction efforts. The principal source of cocaine and cocaine products is South America, and the principal mode of transportation used to smuggle such contraband into the U.S. is general aviation aircraft. By enhancing the overflight exemption program, Customs sought to tighten control over air traffic coming from the direction of major drug source countries and thereby increase our effectiveness in combating the epidemic of illegal drugs afflicting the U.S. When aircraft are allowed to bypass Customs inspection at or very near the border, smugglers have excessive opportunity to engage in illegal activities between the border and more interior inspectional sites.

Smugglers can take advantage of an overflight exemption and engage in "touch and go" or air drop smuggling of illegal drugs and contraband. "Touch and go" smuggling involves aircraft crossing the U.S. border and landing and quickly unloading illegal drugs or contraband before flying to the airport at which they will report for inspection. Air drop smuggling involves flying very low over some point between the border or coastline and the airport at which they will report for inspection, pushing illegal drugs or contraband out of the aircraft to be retrieved on the ground or sea, and continuing on to the airport.

The interim amendments to the overflight exemption program consisted of several changes:

(1) The application procedure for overflight exemptions was modified to allow only U.S.-based companies or individuals to apply. This was considered necessary to enable Customs to thoroughly investigate the background of all applicants as Customs only has access to detailed information on those that are U.S.-based.

(2) Each general overflight application was required to be accompanied by individual applications from each pilot or crewmember intended to participate in the overflight.

(3) Applications were only considered from applicants flying aircraft equipped with mode C transponders able to conduct overflights at a minimum altitude of 12,500 feet mean sea level. These transponders enable accurate radar identification and tracking of overflight aircraft.

These modifications of the overflight exemption program were designed to benefit Customs in four principal ways. (1) Tracking of general aviation aircraft was simplified by requiring those crossing the southern border to make an initial landing for inspection at the designated airports before proceeding to their destination. (2) Parties holding an overflight exemption would no longer have a potential advantage in smuggling through the use of their overflight exemptions to air-drop illegal drugs and contraband or to "touch-and-go" before reporting for Customs inspection. (3) Customs would be able to concentrate its specialized aircraft inspection resources at the designated airports. (4) Customs would save a considerable number of man-hours per year now spent processing overflight exemption applications since the modified overflight program would result in fewer applications. The time saved by Customs officers in not processing applications could be reallocated to interdicting narcotics smugglers.

Comments on the interim amendments were solicited for consideration before any final determination was to be made concerning the modifications to the overflight exemption program. It should be noted that the interim amendments, originally set forth in § 6.14(f), Customs Regulations (19 CFR 6.14(f)), in T.D. 87–42 now appear in § 122.25, Customs Regulations (19 CFR 122.25), pursuant to a revision of the Customs Regulations relating to air commerce, published in the Federal Register (53 FR 8282) as T.D. 88–12 on March 22, 1988.

Discussion of Comments

Several commenters offered support for the changes to the overflight exemption program and expressed backing of our drug interdiction efforts. Other comments and Customs responses follow.

Comment: Three law firms representing Mexican firms expressed dissatisfaction with the inability of a foreign based/registered aircraft to obtain an overflight exemption. They felt Customs was discriminating against these types of aircraft.

Response: The interim regulations provided that only U.S.-based companies or individuals could apply for overflight exemptions because Customs ability to perform background investigations of applicants to assure the validity of an overflight exemption is greatly enhanced when the records are U.S.-based. However, it has come to our attention that the interim rule may not be consistent with U.S. obligations under the Chicago Convention on International Civil Aviation in that it may discriminate against non-U.S.-based applicants. Accordingly, the final regulation (§ 122.25(a)) will be changed to allow any company or individual, regardless of where it is based, to apply for an overflight exemption. However, each applicant, regardless of nationality or registration, must demonstrate fully its fitness to receive an exemption.

Comment: One respondent complained that the granting of an overflight exemption should be based on the previous records of crew and passengers, not on a cost estimate to the operator. Further, transponders should be employed to track aircraft operating under an overflight exemption.

Response: Overflight exemption applications are not judged solely on a cost estimate to the operator. Several pieces of information are reviewed and judged collectively when evaluating an application. Some of those include: The previous history of the applicant, pilot(s), and passenger(s); the number of foreign arrivals in the past year; aircraft country of registration; and the ability of an aircraft to fly at a certain altitude operating under Instrument Flight Rules (IFR).

Aircraft which utilize an overflight exemption must be equipped with an operating mode C transponder throughout the duration of their flights.

Comment: Another commenter complained of the overflight exemption application procedure and stated that this only adds to the restrictions currently in place against pilots.

Response: Customs must be assured that the applicant will use the privilege of an overflight exemption in a responsible manner. Detailed information is required to help insure that this privilege will not be abused.

Comment: A complaint was received which stated that those aircraft which have been granted an overflight exemption are not the ones on which Customs should be concentrating its efforts.

Response: By granting an overflight exemption to those entities and aircraft meeting application guidelines, Customs will be better able to eliminate and sort overflight aircraft from those posing a greater threat of being involved in some type of criminal activity.

Comment: Two commenters noted the lack of guidelines in handling applications for air ambulance aircraft.

Response: Customs does not intend for the stringency of its regulations to unnecessarily delay people needing medical care from getting into the U.S. to receive their treatment. Therefore, the final regulations will provide in § 122.25(a) that air ambulance type operations and other flights involving the non-emergency transport of persons for medical treatment in the U.S. may be granted single overflight exemptions. Applicants must provide, if possible, all the necessary information normally required for an overflight exemption. If time permits, Customs shall be notified at least 24 hours prior to departure. If this cannot be accomplished, Customs will accept the overflight exemption application up to departure time. In cases of extreme medical emergency, Customs will except overflight exemption requests in flight through a Federal Aviation Administration Flight Service Station.

Comment: Two commenters questioned whether Customs will take into account problems such as poor weather and heavy air traffic when an overflight exemption is granted.

Response: Pilots of private aircraft operating under an overflight exemption may, at times, be directed to divert to an alternate airport by the FAA. Customs will accept this as long as the pilot was directed to divert by the FAA or was forced to divert because of circumstances beyond the pilot's control.

Comment: It was noted that instrument flight plans may be filed with other authorities than the Federal Aviation Administration for international flights.

Response: Customs agrees. Accordingly, the words "or equivalent foreign aviation authority" are added to § 122.25(d)(3) to reflect the international nature of overflights.

Determination

After consideration of all the comments received in response to publication of the interim regulations, and further review of the matter, it has been determined to adopt the regulations in final form with the modifications discussed.

Executive Order 12291

This is not a major rule as defined in section 1(b) of E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Regulatory Flexibility Act

Under the provision of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that these amendments will not have a signifiant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1515–0153. The estimated average burden associated with the collection(s) of information in this final rule is 18 minutes per respondent or recordkeeper.

Comments concerning the accuracy of this burden estimate and suggestion for reducing this burden should be directed to the Regulations and Disclosure Law Branch, Room 2119, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for U.S. Customs.

List of Subjects

19 CFR Part 122

Customs duties and inspection, Imports, Air Carriers, Aircraft, Airports.

19 CFR Part 178

Reporting and recordkeeping requirements, Paperwork requirements, Collections of information.

Amendments to the Regulations

Parts 122 and 178, Customs Regulations (19 CFR Parts 122 and 178) are amended as set forth below:

PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for Part 122 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1433, 1436, 1448, 1590, 1594, 1624, 1644; 49 U.S.C. App. 1509.

2. Section 122.25 is revised to read as follows:

§ 122.25 Exemption for special landing requirements.

(a) *Request.* Any company or individual in the U.S. that has operational control over an aircraft required to give advance notice of arrival under § 122.23 may request an exemption from the landing requirements in § 122.24. Single overflight exemptions may be granted to entities involved in air ambulance type operations when emergency situations arise and in cases involving the non-emergency transport of persons seeking medical treatment in the U.S. All approvals of requests for overflight exemptions and the granting of authority to be exempted from the landing requirements are at the discretion of the district director. Exemptions may allow aircraft to land at any airport in the U.S. staffed by Customs. Aircraft traveling under an exemption shall continue to follow advance notice and general landing rights requirements.

(b) *Procedure.* An exemption request shall be made to the district director at the airport at which majority of Customs overflight processing is desired by the applicant. Except for air ambulance operations and other flights involving the non-emergency transport of persons seeking medical treatment in the U.S., the requests shall be signed by an officer of the company or by the requesting individual and be notarized or witnessed by a Customs officer. The requests shall be submitted:

(1) At least 30 days before the anticipated first arrival, if the request is for an exemption covering a number of flights over a period of one year, or

(2) At least 15 days before the anticipated arrival, if the request is for a single flight, or

(3) In cases involving air ambulance operations when emergency situations arise and other flights involving the non-emergency transport of persons seeking medical treatment in the U.S., if time permits, at least 24 hours prior to departure. If this cannot be accomplished, Customs will allow receipt of the overflight exemption application up to departure time. In cases of extreme medical emergency, Customs will accept overflight exemption requests in flight through a Federal Aviation Administration Flight Service Station.

(c) *Content of request.* All requests for exemption from special landing requirements, with the exception of those for air ambulance operations and other flights involving the non-emergency transport of persons seeking medical treatment in the U.S., shall include the following information. Requests for exemptions for air ambulance operations and other flights involving the non-emergency transport of persons for medical treatment in the U.S. shall include the following information except for paragraphs (c)(5) and (c)(6) of this section:

(1) Aircraft registration number(s) and manufacturer's serial number(s) for all aircraft owned or operated by the applicant that will be utilizing the overflight exemption;

(2) Identification information for each aircraft including class, manufacturer, type, number, color scheme, and type of engine (e.g., turbojet, turbofan, turboprop, reciprocating, helicopter, etc.);

(3) A statement that the aircraft is equipped with a functioning mode C (altitude reporting) transponder which will be in use during overflight, that the overflights will be made in accord with instrument flight rules (IFR), and that the overflights will be made at altitudes above 12,500 feet mean sea level (unless otherwise instructed by Federal Aviation Administration controllers);

(4) Name and address of the applicant operating the aircraft, if the applicant is a business entity, the address of the headquarters of the business (include state of incorporation if applicable), and the names, addresses, Social Security numbers (if available), and dates of birth of the company officer or individual signing the application. If the aircraft is operated under a lease, include the name, address, Social Security number (if available), and date of birth of the owner if an individual, or the address of the headquarters of the business (include state of incorporation if applicable), and the names, addresses, Social Security numbers, and dates of birth of the officers of the business;

(5) Individual, signed applications from each usual or anticipated pilot or crewmember for all aircraft for which an overflight exemption is sought stating name, address, Social Security number (if available), Federal Aviation Administration certificate number (if applicable), and place and date of birth;

(6) A statement from the individual signing the appliation that the pilot(s) and crewmember(s) responding to paragraph (c)(5) of this section are those intended to conduct overflights, and that to the best of the individual's knowledge, the information supplied in response to paragraph (c)(5) of this section is accurate;

(7) Names, addresses, Social Security numbers (if applicable), and dates of birth for all usual or anticipated passengers. An approved passenger must be on board to utilize the overflight exemptions.

Note.—Where the Social Security number is requested, furnishing of the SSN is voluntary. The authority to collect the SSN is 19 U.S.C. 66, 1433, 1459 and 1624. The primary purpose for requesting the SSN is to assist in ascertaining the identity of the individual so as to assure that only law-abiding persons will be granted permission to land at interior airports in the U.S. without first landing at one of the airports designated in § 122.24. The SSN will be made available to Customs personnel on a need-to-know basis. Failure to provide the SSN may result in a delay in processing of the application;

(8) Description of the usual or anticipated baggage or cargo if known, or the actual baggage or cargo;

(9) Description of the applicant's usual business activity;

(10) Name(s) of the airport(s) of intended first landing in the U.S. Actual overflights will only be permitted to specific approved airports;

(11) Foreign place or places from which flight(s) will usually originate; and

(12) Reasons for request for overflight exemption.

(d) *Procedure following exemption.* (1) If a private aircraft is granted an exemption from the landing requirements as provided in this section, the aircraft commander shall notify Customs at least 60 minutes before:

(i) Crossing into the U.S. over a point on the Pacific Coast north of 33 degrees north latitude; or

(ii) Crossing into the U.S. over a point of the Gulf of Mexico or Atlantic Coast north of 30 degrees north latitude; or

(iii) Crossing into the U.S. over the Southwestern land border (defined as the U.S.-Mexican border between Brownsville, Texas, and San Diego, California). Southwestern land border crossings must be made while flying in Federal Aviation Administration published airways.

(2) The notice shall be given to a designated airport specified in § 122.24. The notice may be furnished directly to Customs by telephone, radio or other means, or may be furnished through the Federal Aviation Administration to Customs. If notice is furnished pursuant to this paragraph, notice pursuant to §§ 122.23 and 122.24 is unnecessary.

(3) All overflights must be conducted pursuant to an instrument flight plan filed with the Federal Aviation Administration or equivalent foreign aviation authority prior to the commencement of the overflight.

(4) The owner or aircraft commander of a private aircraft granted an exemption from the landing requirements must:

(i) Notify Customs of a change of Federal Aviation Administration or other (foreign) registration number for the aircraft;

(ii) Notify Customs of the sale, theft, modification or destruction of the aircraft;

(iii) Notify Customs of changes of usual or anticipated pilots or crewmembers as specified in paragraph (c)(5) of this section. Every pilot and crewmember participating in an overflight must have prior Customs approval either through initial application and approval, or through a supplemental application submitted by the new pilot or crewmember and approved by Customs before commencement of the pilot's or crewmember's first overflight.

(iv) Request permission from Customs to conduct an overflight to an airport not listed in the initial overflight application as specified in paragraph (c)(10) of this section. The request must be directed to the district director who approved the initial request for an overflight exemption.

(v) Retain copies of the initial request for an overflight exemption, all supplemental applications from pilots or crewmembers, and all requests for additional landing privileges as well as a copy of the letter from Customs approving each of these requests. The copies must be carried on board any aircraft during the conduct of an overflight.

(5) The notification specified in paragraph (d)(4) of this section must be given to Customs within 5 working days of the change, sale, theft, modification, or destruction, or before a flight for which there is an exemption, whichever occurs earlier.

(e) *Inspection of aircraft having or requesting overflight exemption.* Applicants for overflight exemptions must agree to make the subject aircraft available for inspection by Customs to determine if the aircraft is capable of meeting Customs requirements for the proper conduct of an overflight. Inspections may be conducted during the review of an initial application or at any time during the term of an overflight exemption.

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 178 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 1624, 44 U.S.C. 3501 *et seq.*

§ 178.2 [Amended]

2. Section 178.2 is amended by removing "§ 6.1a", "6.12a", and "§ 6.14" under the column headed "19 CFR Section" and the corresponding entries under the columns headed "Description" and "OMB control No."

3. Section 178.2 is further amended by inserting "Part 122" in numerical order under the column headed "19 CFR Section", inserting in the corresponding column headed "Description" the words "Air commerce regulations" and in the corresponding column headed "OMB control No." the number "1515–0153".

Drafting Information

The principal author of this document was Harold M. Singer, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

Michael H. Lane,

Acting Commissioner of Customs.

Approved January 11, 1989.

Salvatore R. Martoche,

Assistant Secretary of the Treasury.

[FR Doc. 89–2576 Filed 2–2–89; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs Not Subject to Certification; Nystatin, Neomycin, Thiostrepton, and Triamcinolone Acetonide Ointment

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) sponsored by Biomed Laboratories. The NADA provides for the use of nystatin, neomycin, thiostrepton, and triamcinolone acetonide ointment on dogs and cats for the treatment of acute and chronic otitis, interdigital cysts, dermatologic disorders, and for dogs for the treatment of anal gland infections.

EFFECTIVE DATE: February 3, 1989.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3420.

SUPPLEMENTARY INFORMATION: Biomed Laboratories, 438 West Arrow Highway, San Dimas, CA 91773, has filed NADA 140–810 which provides for the use of a nystatin, neomycin, thiostrepton, and triamcinolone acetonide ointment on dogs and cats for the treatment of acute and chronic otitis of varied etiologies, interdigital cysts, anal gland infections in dogs, and for the management of dermatologic disorders characterized by inflammation and dry or exudative dermatitis, particularly those caused, complicated, or threatened by bacterial or candidal (*Candida albicans*) infections. It is also of value in eczematous dermatitis, contact dermatitis, and seborrheic dermatitis, and as an adjunct in the treatment of dermatitis due to parasitic infestation. The NADA is approved and 21 CFR 524.1600a is amended in paragraph (b) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 524 is amended as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 524 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 524.1600a [Amended]

2. Section 524.1600a *Nystatin, neomycin, thiostrepton, and triamcinolone acetonide ointment* is amended in paragraph (b) by removing the phrase "See Nos. 025463 and 053501" and adding in its place "See Nos. 025463, 051259, and 053501".

Dated: January 24, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89–2568 Filed 2–2–89; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Part 529

Certain Other Dosage Form New Animal Drugs Not Subject to Certification; Formalin Solution

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Argent Chemical Laboratories, providing for safe and effective use of formalin solution (aqueous solution of formaldehyde gas) to control external protozoa and monogenetic trematodes on salmon, trout, catfish, largemouth bass, and bluegill and to control fungi on salmon, trout, and esocid eggs.

EFFECTIVE DATE: February 3, 1989.

FOR FURTHER INFORMATION CONTACT: Charles E. Haines, Center for Veterinary Medicine (HFV–133), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3410.

SUPPLEMENTARY INFORMATION: Argent Chemical Laboratories, 8702 152d Ave. NE., Redmond, WA 98052, has filed NADA 140–831 which provides for addition of formalin solution (aqueous solution of 37 percent by weight of formaldehyde gas) to: (1) Tanks, raceways, and earthen ponds to control the protozoa *Ichthyophthirius* spp., *Chilodonella* spp., *Costia* spp., *Scyphidia* spp., *Epistylis* spp., and *Trichodina* spp.; and the monogenetic trematodes *Cleidodiscus* spp., *Gyrodactylus* spp., and *Dactylogyrus* spp. on salmon, trout, catfish, largemouth bass, and bluegill; and (2) incubation tanks to control fungi of the family Saprolegniaceae on salmon, trout, and esocid eggs. The NADA is approved and the regulations are amended in 21 CFR 529.1030(b) to reflect this approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 529

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 529 is amended as follows:

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 529 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 529.1030 [Amended]

2. Section 529.1030 *Formalin solution* is amended in paragraph (b) by revising the phrase "See No. 049968" to read "See Nos. 049968 and 051212".

Dated: January 24, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89–2507 Filed 2–2–89; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100 and 165

[CGD 88–004]

Safety and Security Zones

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary rules issued.

SUMMARY: This document gives notice of temporary safety zones, security zones, and local regulations. Periodically the Coast Guard must issue safety zones, security zones, and special local regulations for limited periods of time in limited areas. Safety zones are established around areas where there has been a marine casualty or when a vessel carrying a particularly hazardous cargo is transiting a restricted or congested area. Special local regulations are issued to assure the safety of participants and spectators or regattas and other marine events.

DATES: The following list includes safety zones, security zones, and special local regulations that were established between October 1, 1988 and December 31, 1988 and have since been terminated. Also included are several zones established earlier, but inadvertently omitted from the published list.

ADDRESS: The complete text of any temporary regulation may be examined at, and is available on request from Executive Secretary, Marine Safety Council (G–LRA–2), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Novak, Executive Secretary, Marine Safety Council at (202) 267–1477.

SUPPLEMENTARY INFORMATION: The local Captain of the Port must be immediately responsive to the safety needs of the waters within his jurisdiction; therefore, he has been delegated the authority to issue these regulations. Since events and emergencies usually take place without advance notice or warning, timely publication of notice in the **Federal Register** is often precluded. However, the affected public is informed through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is frequently provided by Coast Guard patrol vessels enforcing the restrictions imposed in the zone to keep the public informed of the regulatory activity. Because mariners are notified by Coast Guard officials on scene prior to enforcement action, **Federal Register** notice is not required to place the special local regulation, security zone, or safety zone in effect. However, the Coast Guard by law must publish in the **Federal Register** notice of substantive rules adopted. To discharge this legal obligation without imposing undue expense on the public, the Coast Guard publishes a periodic list of these temporary special local regulations, security zones, and safety zones. Permanent safety zones are not included in this list. Permanent zones are published in their entirety in the **Federal Register** just as any other rulemaking. Temporary zones are also published in their entirety if sufficient time is available to do so before they are placed in effect or terminated. Non-major safety zones, special local regulations, and security zones have been exempted from review under E.O. 12291 because of their emergency nature and temporary effectiveness. The following regulations were placed in effect temporarily during the period October 1, 1988 through December 31, 1988 unless otherwise indicated.

Docket number and location	Type	Date
1–88–093—Triboro Bridge, East River, NY	Safety zone	15 Sep. 88
1–88–085—East River, New York Harbor, NY	Security zone	26 Sep. 88
1–88–083—East River, New York Harbor, NY	Security zone	3 Oct. 88
1–88–084—East River, New York Harbor, NY	Security zone	4 Oct. 88
1–88–89—Hempstead Harbor, Long Island Sound, NY	Safety zone	5 Oct. 88
1–88–095—Kill Van Kull, NY, NJ	Safety zone	8 Oct. 88
COTP Boston, MA, Reg. 88–92—Boston Inner Harbor, Boston, MA	Safety zone	9 Oct. 88

Docket number and location	Type	Date
1–88–090—Hudson River, New York, NY	Safety zone	16 Oct. 88
1–88–096—East River, New York, NY	Safety zone	16 Oct. 88
1–88–091—East River, New York, NY	Safety zone	22 Oct. 88
1–88–097—Beach Channel, Jamaica Bay, New York, NY	Safety zone	27 Oct. 88
1–88–101—Arthur Kill, Staten Island, NY	Safety zone	29 Nov. 88
1–88–102—New York Harbor, NY	Security zone	7 Dec. 88
1–88–103—East River, New York, NY	Safety zone	7 Dec. 88
1–88–104—East River, New York Harbor, NY	Security zone	7 Dec. 88
1–88–105—East River, New York, NY	Safety zone	31 Dec. 88
COTP Providence, RI, Reg. 88–107—New Bedford Harbor, MA	Safety zone	31 Dec. 88
COTP St. Louis, MO, Reg. 88–07—St. Louis, MO, Upper Mississippi River, Mile 160.5 to Mile 160.7.	Safety zone	8 Jun. 88
COTP Huntington, WV, Reg. 88–07—Kanawha River, Mile 57.0 to Mile 58.0.	Safety zone	4 Jul. 88
COTP St. Louis, MO, Reg. 88–08—St. Louis, MO, Upper Mississippi River, Mile 125.0.	Safety zone	27 Jul. 88
COTP St. Louis, MO, Reg. 88–09—St. Genevieve, MO, Upper Mississippi River, Mile 126.0.	Safety zone	27 Jul. 88
COTP St. Louis, MO, Reg. 88–10—St. Louis, MO, Missouri River, Mile 0.0 to Mile 0.5.	Safety zone	21 Jul. 88
COTP St. Louis, MO, Reg. 88–11—St. Louis, MO, Upper Mississippi River, Mile 166.0 to Mile 168.6.	Safety zone	3 Aug. 88
COTP Paducah, KY, Reg. 88–04—Ohio River, Mile 962.6 to Mile 975	Safety zone	9 Aug. 88
COTP Memphis, TN, Reg. 88–16—Lower Mississippi River, Memphis Harbor, Wolf River Chute.	Safety zone	15 Aug. 88
COTP Louisville, KY, Reg. 88–11—Louisville, KY	Safety zone	19 Aug. 88
COTP St. Louis, MO, Reg. 88–12—St. Louis, MO, Upper Mississippi River, Mile 160.6.	Safety zone	23 Aug. 88
COTP Pittsburgh, PA, Reg. 88–05—Monongahela River from Mile 34.0 to Mile 34.4.	Safety zone	25 Aug. 88
2–88–07—New Richmond Rivertest	Special local regulation	27 Aug. 88
COTP Memphis, TN, Reg. 88–18—Lower Mississippi River Mile 505	Safety zone	31 Aug. 88
COTP Louisville, KY, Reg. 88–13—Louisville, KY	Safety zone	4 Sep. 88
COTP St. Louis, MO, Reg. 88–13—St. Louis, MO, Upper Mississippi River, Mile 179.2 to Mile 180.0.	Safety zone	4 Sep. 88
COTP Huntington, WV, Reg. 88–12—Ohio River, Mile 355.0 to Mile 357.5.	Safety zone	4 Sep. 88
COTP Louisville, KY, Reg. 88–12—Louisville, KY	Safety zone	9 Sep. 88
2–88–06—USDBA/Florence, AL, World Finals	Special local regulation	10 Sep. 88
2–88–09—Ohio River, Mile 170.8 to Mile 171.9	Safety zone	10 Sep. 88
2–88–08—Ohio River Steamwheel Festival	Special local regulation	11 Sep. 88
COTP St. Louis, MO, Reg. 88–14—St. Louis, MO; Missouri River, Mile 0.0 to Mile 0.5.	Safety zone	20 Sep. 88
COTP Memphis, TN, Reg. 88–19—Mississippi River, Mile 734.8 to Mile 736.7.	Safety zone	24 Sep. 88
COTP Huntington, WV, Reg. 88–13—Kanawha River, Mile 41.7 to Mile 45.5.	Safety zone	25 Sep. 88
COTP Memphis, TN, Reg. 88–20—Mississippi River, Memphis Harbor, McKellar Lake.	Safety zone	2 Oct. 88
COTP Louisville, KY, Reg. 88–15—Louisville, Ky	Safety zone	7 Oct. 88
COTP Paducah, KY, Reg. 88–06—Cumberland River, Mile 190.6 to Mile 191.1.	Safety zone	8 Oct. 88
COTP Louisville, KY, Reg. 88–16—Louisville, KY	Safety zone	9 Oct. 88
COTP Huntington, WV, Reg. 88–14—Kanawha River, Mile 41.7 to Mile 45.5.	Safety zone	9 Oct. 88
COTP Louisville, KY, Reg. 88–14—Cincinnati, OH	Safety zone	13 Oct. 88
2–88–10—Tall Stacks Weekend	Special local regulation	14 Oct. 88
COTP St. Louis, MO, Reg. 88–16—St. Louis, MO, Upper Mississippi River, Mile 77.0 to Mile 95.0.	Safety zone	2 Nov. 88
COTP Louisville, KY, Reg. 88–17—Louisville, KY	Safety zone	5 Nov. 88
COTP Memphis, TN, Reg. 88–21—Mississippi River, Memphis Harbor, McKellar Lake.	Safety zone	11 Nov. 88
COTP St. Louis, MO, Reg. 88–18—St. Louis, MO, Upper Mississippi River, Mile 150.6 to Mile 152.1.	Safety zone	29 Nov. 88
COTP St. Louis, MO, Reg. 88–15—St. Louis, MO, Upper Mississippi River, Mile 184.0.	Safety zone	10 Dec. 88
COTP St. Louis, MO, Reg. 88–17—St. Louis, MO, Upper Mississippi River, Mile 0.0 to Mile 185.0.	Safety zone	12 Dec. 88
5–88–72—For Head of the Delaware 12th Annual Ship Shield Regatta, Delaware River, Burlington, NJ.	Special local regulation	1 Oct. 88
COTP Baltimore, MD, Reg. 88–10—Upper Chesapeake Bay and Baltimore Harbor.	Safety zone	6 Oct. 88
COTP Philadelphia, PA, Reg. 88–02—Marcus Hook Anchorage (Anchorage 7), Mantua Creek Anchorage (Anchorage 9), and Deepwater Point Anchorage (Anchorage 6).	Safety zone	14 Nov. 88
COTP Philadelphia, PA, Reg. 88–03—Marcus Hook Anchorage (Anchorage 7), Mantua Creek Anchorage (Anchorage 9), and Deepwater Point Anchorage (Anchorage 6).	Safety zone	17 Nov. 88
COTP Philadelphia, PA, Reg. 88–04—Marcus Hook Anchorage (Anchorage 7), Mantua Creek Anchorage (Anchorage 9), and Deepwater Point Anchorage (Anchorage 6).	Safety zone	22 Nov. 88

Docket number and location	Type	Date
5-88-88—For Holidays in the City Boat Parade and Fireworks Display, Elizabeth River, Norfolk, Va.	Special local regulation	26 Nov. 88
7-88-034—1988 Columbus Day Regatta	Special local regulation	8 Oct. 88
7-88-24—1988 Key West/NPBA Offshore World Series Race	Special local regulation	11 Oct. 88
7-88-25—1988 Key West/NPBA World Series Kiis Run	Special local regulation	13 Oct. 88
7-88-033—Holidayfest and Boat Parade	Special local regulation	2 Dec. 88
7-88-039—Christmas Boat Parade	Special local regulation	3 Dec. 88
7-88-040—Winter Reflections on the Bay	Special local regulation	9 Dec. 88
7-88-038—Winterfest Boat Parade	Special local regulation	10 Dec. 88
COTP Port Chs, SC, Reg. 88-166.T0717—Charleston Harbor, Charleston, SC.	Safety zone	10 Dec. 88
7-88-044—Pompano Beach 26th Annual Christmas Boat Parade	Special local regulation	11 Dec. 88
7-88-041—Winter Fantasy on the Waterway	Special local regulation	17 Dec. 88
7-88-042—Great South Florida Rubber Duckie Race	Special local regulation	17 Dec. 88
COTP New Orleans, LA, Reg. 88-06—One-quarter mile above and below the I-10 Jordan River Bridge, Mile 4.5 Jordan River Bay, St. Louis, MS.	Safety zone	23 Aug. 88
COTP New Orleans, LA, Reg. 88-06—Lower Mississippi River Mile 347 to Mile 356.	Safety zone	9 Sep. 88
COTP C. Christi, TX, Reg. 88-11—Brownsvill, Ship Channel, TX	Safety zone	21 Nov. 88
COTP Mobile, AL, Reg. 88-09—In the Waters of Mobile Bay Encompassing a 3,000 yard radius from the Shoreline At Great Point Clear, AL.	Security zone	22 Nov. 88
COTP Mobile, AL, Reg. 88-10—In the Waters of Mobile Bay Encompassing a 5,000 yard radius from the Shoreline At Great Point Clear, AL.	Safety zone	22 Nov. 88
COTP C. Christi, TX, Reg. 88-12—Brownsville Ship Channel, TX	Safety zone	23 Nov. 88
COTP C. Christi, TX, Reg. 88-13—Brownsville Ship Channel, TX	Safety zone	29 Nov. 88
COTP C. Christi, TX, Reg. 88-14—Brownsville Ship Channel, TX	Safety zone	10 Dec. 88
8-88-21—Houston Ship Channel from San Jacinto Monument to Todd Shipyard, Galveston.	Safety zone	13 Dec. 88
COTP Chicago, IL, Reg. 88-08—Lake Michigan Waters Offshore at Chicago Harbor, Burnham Park Harbor, and Chicago River, South Branch, Chicago, IL.	Security zone	30 Sep. 88
COTP Cleveland, OH, Reg. 88-07—Lake Erie	Safety zone	7 Oct. 88
COTP Cleveland, OH, Reg. 88-10—Lake Erie	Safety zone	29 Oct. 88
COTP LA/LB, CA, Reg. 88-23—Ports of Los Angeles/Long Beach, CA	Safety zone	4 Oct. 88
COTP San Diego, CA, Reg. 88-32—San Diego Bay, CA, Pacific Ocean	Safety zone	6 Oct. 88
COTP San Diego, CA, Reg. 88-33—San Diego Bay, CA, Pacific Ocean	Safety zone	7 Oct. 88
COTP San Diego, CA, Reg. 88-34—LaJolla, CA, Pacific Ocean	Security zone	14 Oct. 88
COTP San Francisco, CA, Reg. 88-06—San Francisco Bay, CA	Security zone	15 Oct. 88
COTP LA/LB, CA, Reg. 88-24—Ports of Los Angeles/Long Beach, CA	Safety zone	31 Oct. 88
COTP LA/LB, CA, Reg. 88-01—Ports of Los Angeles/Long Beach, CA	Security zone	7 Nov. 88
11-88-13—Parker Mini-Boat Enduro-Parker, AZ	Special local regulation	19 Nov. 88
COTP San Diego, CA, Reg. 88-35—San Diego Bay, CA, Pacific Ocean	Safety zone	22 Nov. 88
COTP San Diego, CA, Reg. 88-36—San Diego Bay, CA, Pacific Ocean	Safety zone	22 Nov. 88
COTP San Diego, CA, Reg. 88-37—San Diego Bay, CA, Pacific Ocean	Safety zone	28 Nov. 88
COTP San Diego, CA, Reg. 88-38—San Diego Bay, CA, Pacific Ocean	Safety zone	30 Nov. 88
COTP San Diego, CA, Reg. 88-40—Coronado Roads, San Diego, CA, Pacific Ocean.	Safety zone	14 Dec. 88
COTP San Diego, CA, Reg. 88-41—San Diego Bay, CA, Pacific Ocean	Safety zone	20 Dec. 88
13-88-18—Columbia River Cross Channel Swim	Special local regulation	5 Sep. 88
COTP Honolulu, HI, Reg. 88-07—Papawai Point, Maui, HI	Safety zone	2 Dec. 88
COTP Honolulu, HI, Reg. 88-08—Manele Bay, Oahu, HI	Security zone	15 Dec. 88

Date: January 27, 1989.

Bruce P. Novak,

Executive Secretary, Marine Safety Council.

[FR. Doc. 89-2539 Filed 2-2-89; 8:45 am]

BILLING CODE 4910-14-M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1190

Minimum Guidelines and Requirements for Accessible Design

AGENCY: United States Architectural and Transportation Barriers Compliance Board (ATBCB).

ACTION: Final rule.

SUMMARY: The Architectural and Transportation Barriers Compliance Board is amending its Minimum Guidelines and Requirements for Accessible Design (MGRAD) by deleting §§ 1190.40 through 1190.230 of Subpart D—Technical Provisions and in their stead incorporating by reference (with some exceptions) sections 4.2 through 4.32 and the Appendix of the 1986 edition of the American National Standards Institute Standard ANSI A117.1, "American National Standard for Buildings and Facilities—Providing Accessibility and Usability for Physically Handicapped People." This final rule minimizes the differences between MGRAD and UFAS and follows the format that is most widely used in non-federally funded and constructed facilities. It also makes conforming technical amendments and adds provisions to Subpart E, which was reserved when MGRAD was published.

DATES: Effective February 3, 1989. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 3, 1989.

FOR FURTHER INFORMATION CONTACT: Ruth Hall Lusher, ATBCB, 1111 18th Street, NW., Suite 501, Washington, DC 20036, (202) 653-7848 (v/TDD). This is not a toll-free number. This final rule is available on cassette at the above address.

SUPPLEMENTARY INFORMATION:

I. Background

The Architectural and Transportation Barriers Compliance Board (ATBCB) was established by section 502 of the Rehabilitation Act of 1973, as amended (Pub. L. 93-112, 29 U.S.C. 792), to insure compliance with standards prescribed pursuant to the Architectural Barriers Act of 1968, as amended (Pub. L. 90-480, 42 U.S.C. 4151-4157) (the Act). The Act is intended to insure that certain buildings financed with Federal funds are designed, constructed, altered, and leased in accordance with standards issued by four Federal agencies to provide ready access to and use of such buildings to physically handicapped people. The four agencies authorized to issue standards for all design, construction, alteration, and leasing subject to the Act are the Department of Defense (DOD) for its buildings and facilities; the Department of Housing and Urban Development (HUD) for residential structures; the U.S. Postal Service (USPS) for its buildings and facilities; and the General Services Administration (GSA) for all other buildings and facilities.

A 1978 amendment to section 502 of the Rehabilitation Act, Pub. L. 95-602, authorized the Board to issue minimum guidelines and requirements (MGRAD) for these standards. The MGRAD now in effect was published on August 20, 1982 (47 FR 33862), and is codified at 36 CFR Part 1190. On August 4, 1984, the four standard-setting agencies issued the Uniform Federal Accessibility Standards (UFAS), which was based on the ANSI format. (47 FR 33862).

Throughout the development of MGRAD, the ATBCB considered the specifications contained in the American National Standards Institute's "Specifications for Making Buildings and Facilities Accessible to and Usable by Physically Handicapped Persons" (ANSI A117.1-1980 or ANSI). The American National Standards Institute (ANSI) is a private, national organization that publishes recommended standards on a wide variety of subjects. ANSI's standards for barrier-free design are developed by a committee made up of 52 organizations representing associations of handicapped people, rehabilitation professionals, design professionals, builders, and manufacturers. ANSI's standards are developed using the consensus process. The original ANSI A117.1, adopted in 1961, formed the technical basis for the first accessibility standards adopted by the Federal Government and most State governments. The 1980 edition of that standard was based on research funded by the U.S. Department of Housing and Urban Development. It was generally accepted by the private sector and was recommended for use in State and local building codes by the Council of American Building Officials. Recognizing the widespread application of the ANSI standard and the desirability of uniformity, the ATBCB in MGRAD included provisions that were consistent with the technical specifications of ANSI A117.1-1980 wherever it was deemed appropriate.

In reviewing the ANSI technical requirements during MGRAD development, however, the ATBCB found that in some cases, with regard to some subjects, there was not sufficient research and/or field experience to support a Federal requirement at the time. Those provisions were reserved in MGRAD. The reserved provisions include external door opening force limits; requirements for accessible windows; the use of detectable warnings at locations other than doors leading to hazardous areas; all provisions dealing with signage; and opening time requirements for elevator doors.

Following the publication of MGRAD as a final rule, the four standard-setting agencies under the Act initiated the development of uniform accessibility standards to be used by all Federal agencies. The objective of the effort was to publish uniform standards which would, wherever possible, be consistent with the ANSI A117.1-1980 standard while complying with MGRAD.

In keeping with the agencies' objective to secure uniformity between Federal requirements and those commonly used in the private sector or by state and local governments, the UFAS followed ANSI A117.1-1980 in format. Departures from the ANSI technical provisions were made only where necessary in order to comply with MGRAD, or where the agencies found differing or additional requirements to be appropriate due to the nature of certain buildings and facilities subject to the Act or which were in the interests of improved safety or access for handicapped people.

An integral part of the ANSI process is the requirement for each ANSI standard to be reviewed at five-year intervals and then either reaffirmed or revised. When the ANSI A117.1 review began in 1984, differences between UFAS and the 1980 ANSI standard were prime candidates for revision in the new edition. The provisions that had been reserved in MGRAD were also reviewed to determine whether they should be retained, revised, or deleted in the new ANSI standard. The ANSI Committee found no justification for deleting these requirements, and thus retained all of the provisions that were reserved in MGRAD. However, revisions were made in some of the sections that reflected findings of ATBCB research on MGRAD reserved areas. Many of the features of UFAS not previously in the ANSI standard were adopted in the 1986 ANSI, which was approved by ANSI on February 5, 1986.

In the period since completion of MGRAD, the ATBCB has sponsored research in the areas of detectable warnings, signage and other environmental information systems, alarms, and hand anthropometrics, among other topics, and has participated with the standard-setting agencies in their development of UFAS. ATBCB has also assisted the ANSI A117 Committee in the development of the 1986 edition of that standard. Based on these experiences, as discussed more fully below, the ATBCB is completing the formerly reserved sections of MGRAD. The technical requirements being added to MGRAD are based primarily on the standards now promulgated by ANSI and the four standard-setting agencies, with findings from ATBCB research providing additional information and support.

II. Discussion of the General Comments

The notice of proposed rulemaking initiating this proceeding was published on September 16, 1987 (52 FR 34955) and allowed a period of sixty days for the submission of comments. A total of forty-five comments, including late comments, were received in response to the notice. In addition, fifty comments on the issue of detectable warning surfaces were received in response to the Board's February 11, 1987 notice of proposed rulemaking which addressed leased facilities as well as detectable warning surfaces. (52 FR 4352). These comments on detectable warning surfaces were incorporated into the record of this proceeding in accordance with the Board's decision of July 1987.

Nine comments expressed general support for the proposal including comments by the President's Committee on Employment of the Handicapped, the New York State Advocate for the Disabled, the Southern Building Code Congress International, Inc., the National Easter Seal Society and the Chairman of the ANSI A117.1 Committee.

Six comments expressed general opposition to the proposal. The stated grounds for opposition to the proposal were that it would weaken accessibility

standards, that the ANSI standards which it incorporates into MGRAD are inadequate, and that it is simply "a means of rationalizing poor and inappropriate UFAS provisions". Another questioned the appropriateness of the Board "turn[ing] over its responsibility for defining what constitutes accessible design to ANSI". This comment stated that ANSI, unlike the Board, does not have the goal of maximizing accessibility as its primary goal. Finally, this comment stated that the Board was delegating its rulemaking authority to a private organization and must therefore comply with the Administrative Procedure Act and the Federal Advisory Committee Act.

While as described below, the Board has decided against several of the proposed provisions, the Board has concluded, following careful review of all the comments received in response to the notice of proposed rulemaking, to issue this final rule. The Board disagrees with the assertion that this action weakens accessibility. On the contrary, taking this action achieves several important goals all of which serve to promote accessibility. It completes MGRAD after five years of study and lessons learned in the development of other standards. It makes comparisons and future revisions of UFAS and MGRAD simpler. Finally, it moves significantly closer to the long-standing goal of uniformity in accessibility requirements for both the public and private sectors. This has the benefit of simplifying accessibility compliance by removing duplicative layers of technical specifications that are a confusing and complicating factor for designers and builders as well as lay persons concerned with promoting accessibility.

The Board rejects the assertion that it has in effect delegated its standard setting responsibilities to ANSI such that ANSI should be subject of the requirements of the Administrative Procedures Act and the Advisory Committee Act. The Board's decision to incorporate certain provisions of the ANSI standard into MGRAD has not been a process of uncritical blanket acceptance of the ANSI standard. Not only is it true that not all provisions of the standard have been adopted but some provisions were not even proposed for adoption. Furthermore, the adoption of other provisions has come only with significant exceptions. Further yet, to the extent that ANSI has been adopted, it has occurred in the context of a public rulemaking proceeding with full opportunity for public participation and an administrative decision which is rational and supported on the record of that proceeding. The Board is not in any sense utilizing the ANSI committee as an advisory committee. No advice is being obtained other than through a public rulemaking in full conformity with all applicable legal requirements. The Board is adopting specified provisions of the 1986 ANSI standard. This does not necessarily imply the adoption of future versions of that standard.

Another comment opposing the proposed action stated that before any changes are made to MGRAD, a single national standard for all buildings, whether public or private should be developed. The Board is in agreement with the commenter's basic theme that increased uniformity in accessibility standards is desirable and believes that the final rule advances this objective. However, as recognized by the comment, the jurisdiction of the Architectural Barriers Act is limited and the scope of MGRAD is limited commensurately.

Several comments of a general nature addressed what can be called stylistic matters. A comment from a representative of a Federal Department stated that references to ANSI section numbers without, in every case, full citation to "ANSI A117.1 (1986)" "may be confusing" because citations in the proposal such as "ANSI 4.3" might be mistaken for a reference to an ANSI standard by that number. Some changes have been made in the final rule for purposes of clarity. The introductory text in the regulation clearly identifies the ANSI standard to all readers and it would be needlessly redundant to restate the full citation in every incidence in which a reference to the ANSI standard occurs. Moreover, MGRAD is intended to be the minimum guideline for UFAS. Therefore, it is the four standard setting agencies which will be the primary users of MGRAD. The Board has concluded that the personnel in these agencies responsible for standard setting activities are sufficiently familiar with ANSI and MGRAD to prevent any confusion in this regard.

A representative of another Federal agency urged that for ease of use and prevention of confusion, UFAS incorporate the language of ANSI provisions into it rather than merely referencing ANSI section numbers. The Board considers this comment to be well taken and notes that UFAS is a self-contained document. The Board urges the standard setting agencies to assure that UFAS continues to be an entirely self-contained document for ease of use by persons interested in compliance with the ABA.

Another comment asserted that incorporation of portions of the ANSI Standard effectively substitutes "standard" language for mandatory "regulatory" language in such a manner as to leave doubt about its compulsory nature. The comment stated that the ANSI language does not indicate that the provisions of the standard are mandatory. As noted above, MGRAD is intended to be the minimum guideline for UFAS. The standard-setting agencies are well aware of the legal effect of MGRAD so that further clarification is unnecessary. Moreover, the 1986 edition of the ANSI standard is phrased in regulatory language by virtue of its use of the word "shall" throughout its provisions. In the event that UFAS, the "regulatory" standard under the ABA, ultimately uses the same or substantially the same language as ANSI, the regulatory effect of the standard is made clear by section 1 of UFAS ("Purpose") as well as by the ABA itself.

The remaining comments in the rulemaking docket pertain to particular provisions of the proposed rule and are discussed in the following sections.

III. Section-By-Section Analysis

A section-by-section description of the amendments, the comments received on the proposed amendments (where applicable) and the Board's response follows:

A. Section 1190.2, Applicability

This section is amended by deleting paragraph (e), which describes the reserved status of Subpart E, Special Building and Facility Types, and places certain requirements on the Department of Housing and Urban Development until such time as the subpart is completed. Because this rulemaking completes the housing requirements (*See*, e.g., new § 1190.31(u)) and removes the "reserved" status of the subpart, paragraph (e) is no longer necessary or appropriate.

B. Section 1190.3, Definitions

This final rule substitutes the ANSI definitions of "adaptability," "common use," and "physically handicapped person" for those now appearing in MGRAD. In the case of the first two terms, the ANSI definitions are more clear and are consistent with the intent of MGRAD definitions. The ANSI definition of "physically handicapped person" is the same definition used in UFAS. It was accepted by the ATBCB when UFAS was developed as being appropriate for purposes of standards issued under the Architectural Barriers Act, which relate strictly to accessibility and usability of buildings and facilities. By incorporating this definition, uniformity in defining the term among all three documents is achieved.

In addition, this final rule adds definitions for several terms that are used in the ANSI A117.1 standard but were not used in MGRAD. These terms are "detectable," "detectable warning," "dwelling unit," "housing," "marked crossing," "service entrance," and "sleeping accommodations." The definition for "tactile warning," a term that is no longer used, is deleted in this final rule.

C. Sections 1190.7, 1190.8, and 1190.9 and Subpart B

The final rule makes a technical correction by deleting section numbers unused in the current MGRAD and redesignates the remaining sections accordingly. Thus § 1190.9, Severability, is redesignated as § 1190.7, and Subpart C, Scope, is redesignated as Subpart B.

D. Subpart C—Scope

This subpart is redesignated as Subpart B and is amended wherever reference is made to sections of the current Subpart D—Technical Provisions. Those references are replaced by incorporating the appropriate references to corresponding provisions of the ANSI A117.1–1986 standard.

In addition, some new provisions are added to incorporate requirements currently found in Subpart D—Technical Provisions that are not included in the ANSI standard. These provisions have been added to this section when the requirements were considered to be a scoping rather than a technical provision. (The ANSI standard contains no scoping provisions, but rather relies on the adopting authority to establish those requirements.)

Amendments to Subpart C are made in each of its three sections, § 1190.31, Accessible buildings and facilities: New construction; § 1190.32, Accessible buildings and facilities: Additions, and § 1190.33, Accessible buildings and facilities: Alterations.

(1) Egress

Section 1190.31(a)(2) is amended by the final rule to incorporate a provision now found in § 1190.50(h), Egress (and in UFAS 4.3.10) which requires more than one accessible means of egress wherever fire code provisions require more than one means of egress from any space or room. Two of the three comments on this issue, including one from a paralyzed veterans organization, stated that the proposal was infeasible due to engineering and cost considerations and should not be interpreted to require two elevators as a means of vertical access. Another commenter from the National Park Service said that the proposal did not go far enough. For example, according to the comment, designers often fail to provide more than one accessible entrance and those that are provided are separate from those used by able-bodied persons.

Signs in multi-storied buildings direct people to use stairs in emergencies but fail to provide directions for disabled persons. Visual alarms are not provided for hearing impaired persons. Although several comments maintain that the proposal is infeasible, in fact the provision has been in effect for a number of years without apparent difficulty. Furthermore, elevators are not routes of egress; consequently the provision does not require multiple elevators. It does provide that an accessible place of refuge meets the requirement for an accessible means of egress. In response to the National Park Service comment, the Board points out that visual alarms are already addressed in MGRAD (See § 1190.160). Furthermore, the Board is conducting research on emergency egress and visual alarms which may lead to more definitive specifications.

(2) Platform Lifts

The Final Rule makes an addition to § 1190.31(g) which notes that platform lifts should facilitate unassisted entry and exit from the lift. This provision is under § 1190.110 in the current MGRAD.

(3) Detectable Warnings

Section 1190.31(j) was reserved when MGRAD was published. Subsequently, the ATBCB funded research on detectable tactile surface treatments. However, the findings from this study did not support mandatory Federal requirements in this area. Therefore the ATBCB proposed not to require detectable warnings, other than knurled surfaces on hardware of doors leading to hazardous areas. However, in recognition of the desire of some designers and builders to provide detectable warnings the Board proposed amendments to MGRAD that would refer users to ANSI 4.27. This proposal was contained both in the September 16, 1987 NPRM and, as noted previously, in an earlier notice of proposed rulemaking of February 11, 1987. (52 FR 4352). Comments from the February notice were incorporated into the record of this proceeding.

With the exception of one comment simply stating that this proposal did not go far enough on the issue, the September NPRM elicited no comments on this issue. However, fifty-two comments addressed proposed § 1190.196 on detectable warning surfaces in response to the February notice.

a. Comments Favoring Proposed Action. One comment filed by a visually impaired commenter supported the proposed action on the basis that sufficient cues are already present in the physical environment to enable him to avoid danger. He stated that most visually impaired people who travel require longer canes and more rigorous mobility training. The comment stated that blind people should be given the tools to make their own way rather than having their way made for them. It also noted that detectable warnings can be dangerous to people with other disabilities such as persons who use crutches.

Another commenter who supported the proposed action asserted that he was communicating the views of a state chapter of the National Federation of the Blind. The commenter stated that detectable warnings are unnecessary and counterproductive and enclosed a paper to that effect written for a class. Moreover, according to the paper, detectable warnings create and perpetuate misconceptions and attitudinal barriers about visually impaired people to the effect that they are less competent than sighted individuals, and draw public attention away from what the commenter asserted are the real problems of the blind (inadequate training, discrimination, high unemployment and less-than-minimum wages) to "illusory problems of physical accessibility."

A state chapter of a national advocacy organization expressed general approval of the proposed action. A state advocacy office commented in favor of the proposed action stating that the reference to ANSI will assist interested designers or builders in obtaining necessary information and that any subsequent construction with these surfaces will aid visually impaired persons.

b. Comments in Support of More Definitive Action. Twenty-eight visually impaired individuals filed identical comments opposing the proposed action and stating the importance of detectable warnings on transit platforms, curb cuts, and unenclosed stairways. These comments stated that detectable warnings should be required and that further research should be done so that

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adequate specifications for such warnings can be developed. Four visually impaired individuals filed identical comments stating that detectable warnings enable visually impaired individuals to travel more safely and requested that the proposed action be reconsidered. A visually impaired person commented that detectable warnings are critical to the safety of visually impaired and blind people. Therefore, MGRAD's provisions on the subject should be mandatory and not advisory. This comment stated that further research should be done if available information is inconclusive, but in the meantime, the MGRAD section should remain reserved.

A Ph.D. "orientation and mobility specialist" commented that the ANSI requirements that would be referenced under the proposal are not appropriate. According to the comment, more suitable and useful designs and materials have been tested and shown to be effective. The comment requested reconsideration of the proposal in light of this information.

Eighteen individuals signed a comment recommending the use of the Pathfinder Tactile Tiles and Edge Protection System. The comment stated that although widespread installation of the tiles would be costly, it would enable greater numbers of visually impaired people to enter the workforce.

A statewide organization of visually impaired people recommended the use of Astro-turf as a warning surface.

One state's advocacy office noted that the issue of detectable warnings is a difficult one and noted that the proposal would leave it up to the designer or builder to choose whether to use warning surfaces.

In separate comments, four advocacy offices of the same state filed comments in opposition to the proposed action. They maintained that warning surfaces are necessary for subway platforms, bus platforms, stairways and curb cuts. These comments stated that the fact that ATBCB-sponsored research has not identified the optimally discriminable material does not mean that warning surfaces are not useful. Several of these comments called for the immediate promulgation of research-based guidelines for detectable warnings and recommended the use of the Pathfinder system assertedly used successfully in the Bay Area Rapid Transit (BART) System.

A comment from the psychology department of a college opposed the proposed deletion of the reserved section. The comment stated that research conducted by the college demonstrated the detectability of two surfaces not tested in the ATBCB sponsored research. Further, according to the comment, the history of use of these surfaces in the BART system demonstrates them to have no adverse effect on people with other disabilities. The comment stated that referring MGRAD readers to the ANSI standard or the ATBCB report on *Detectable Surface Treatments* (DST) is inadequate. In support of this assertion, the comment stated that there are warning systems meeting ANSI which have been shown by both research and experience in use to be undetectable. Further, the DST report's recommendation that warning surfaces may consist of any common walkway material will result in a "plethora of common materials having varied assigned meanings." It is the ATBCB's responsibility, according to the comment, to fund the necessary research to support specifications for detectable warnings.

A comment from a transit authority opposed the proposed action stating that the ANSI provision on detectable warnings is inadequate. It urged the ATBCB to consider UMTA sponsored research by Boston College on the warning systems used in the BART System. The comment urged the Board to evaluate the ANSI standard on the basis of experience in use as well a test results and issue generic specifications based on experience with products in actual use.

A comment received from a city government urged the Board to retain its current MGRAD provisions on this subject. A late filed comment from another city urged the promulgation of uniform standards on detectable warning systems as quickly as possible and with the involvement of visually impaired people in the standards development process.

A comment from a manufacturing company called for the standardization of warning systems as a means of promoting safety and minimizing liability expenses.

A manufacturer of tactile warning systems commented that the ANSI standards are inadequate and the proposed MGRAD note will give it further legitimacy and "justify [a] detectable (sic) warning that will meet the standard without meeting the need." The comment urged the Board to concentrate its efforts with regard to detectable warnings on high risk situations such as platforms, doorways and stairwells, and leave the realm of academic research to make decisions based on real-life experience. It noted that the warning system used in the BART system was developed after the ATBCB sponsored research concluded that no acceptable system existed.

c. Response to the Comments. The Board considers the overwhelming support for detectable warnings expressed on the record of this proceeding to validate the general thrust of its proposal to provide encouragement and guidance to designers and builders who wish to incorporate detectable warnings into their work. While there may be negative aspects associated with these warnings as noted by the commenters opposed to mandatory detectable warnings, the overwhelming sense of the record is that they should be required as soon as possible, particularly on transit platforms. However, as indicated by the preamble to the final rule, the available data does not support the imposition of definitive requirements at the present time. The Board has considered the additional data submitted to the record, much of which is anecdotal or endorsed specific commercial products, and remains convinced that the action being taken in this final rule is the maximum that can be supported at the present time, particularly in light of the concerns raised on the record about possible detrimental effects on persons with other types of handicaps. Given the absence of data to support a definitive standard on the issue, the proposed action, referencing the ANSI standard in MGRAD for guidance and offering additional technical assistance through the Board Staff, is the best available direction that can be provided to the public at this time. Any deficiencies in ANSI can, to some degree, be compensated for by advice from the Board staff which will include other cues not currently addressed by ANSI such as sound and resiliency. The Board is currently undertaking additional research on this issue which will evaluate a range of detectable surfaces to determine which permutations of materials are more or less detectable and under what circumstances.

The findings from this research will be considered by the Board for future rulemaking.

d. Signage. Section 1190.31(p), Signage, was reserved in response to comments on an early MGRAD rulemaking that included provisions on signage. The ATBCB has funded two research projects in this area since that time, one specifically on signage and the second on signage and other information systems for low-vision persons. UFAS included the signage requirements of the 1980 ANSI standard because it was considered essential to provide standards for signage in Federal buildings while the ATBCB continued its consideration of the issue. The 1986 ANSI standard incorporated the principal undisputed findings from the ATBCB signage research. This final rule adopts the technical provisions of the 1986 ANSI and provides scoping requirements consistent with the intent of UFAS requirements. Several comments were submitted by designers and industry groups unhappy that they had not received individualized notifications of the NPRM. These comments did not present substantive comments on the proposed provision. A briefing on the proposal was held at the request of one of the principal industry groups interested in the matter. The group questioned whether tactile signs are actually used by visually impaired persons. In the Board's experience, visually impaired persons do use tactile signage; particularly room numbers of classrooms and tactile floor indicators on elevator door jambs.

e. Housing and Health Care Facility Scoping. A new § 1190.31(u) is added to provide scoping requirements for housing. No housing provisions were included in MGRAD when it was published in 1982; the rulemaking noted that housing was among the special building and facility types that would be the subject of later rulemakings to complete the reserved Subpart E. UFAS adopted the ANSI requirements for dwelling units, with some amendments, along with scoping provisions for housing. This rulemaking adds in subsection (u), scoping provisions for housing varying from those in UFAS and references the technical specifications in the 1986 ANSI, which incorporate the UFAS amendments to the 1980 standard. The Assistant Attorney General, Civil Rights Division, filed a comment noting that the Department of Housing and Urban Development (HUD) was in the process of developing a final regulation implementing section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, to prohibit discrimination in programs receiving financial assistance from HUD. The comment said that the final HUD rule might be different in some respects, including possibly some scoping and definition provisions, from MGRAD and UFAS. The comment noted the importance of consistency between MGRAD and the section 504 regulations due to their overlapping coverage and expressed the intent to suggest appropriate harmonizing modifications to the relevant MGRAD provisions. In response to this comment, alterations have been made to harmonize this rule with the HUD section 504 rule published on June 2, 1988. (53 FR 20216). Specifically, the definition of "multifamily dwelling" has been modified, with the term renamed "multifamily housing"; and the Board has deleted provisions that would, based on a local needs assessment, allow deviations from the requirement that five percent of the dwelling units or sleeping accommodations in a project be accessible.

A veteran's group commented that the proposed 5% scoping provision for adaptable housing was too low and that other jurisdictions have enacted higher percentages. The comment suggested a requirement for 100% adaptable housing in elevator buildings and 25% adaptable units in non-elevator buildings. After review of this issue the Board has decided to retain the 5% provision to avoid inconsistency with the HUD section 504 regulations.

A new § 1190.31(v), would be added to provide scoping requirements for health care facilities. This is one of the special building and facility types for which Subpart E was reserved.

E. Section 1190.32

Amendments have also been made to § 1190.32, Accessible buildings and facilities: Additions, and § 1190.33, Accessible buildings and facilities: Alterations. Conforming amendments would be made to § 1190.32 to reference corresponding ANSI provisions where MGRAD section numbers are now cited. Also, the reserved "Signage" paragraph would be deleted. Signage in additions to existing buildings would comply with the same requirements as in new construction.

F. Section 1190.33

Similar amendments have been made in § 1190.33, Accessible buildings and facilities: Alterations. Additional amendments have been made to § 1190.33 to provide special technical provisions for certain situations in alteration projects. These amendments are consistent with provisions now in effect in UFAS. Specifically, the rule permits:

(a) Omitting the requirement for an automatic elevator door reopening device where an existing elevator has a safety door edge. This exception is found at § 1190.100(c)(3)(i) in the current MGRAD.

(b) Reducing the minimum car dimensions to 4' x 4' where it is structurally impracticable to comply with the elevator car size required for new construction projects. This exception currently is found at § 1190.100(d)(1)(i) in MGRAD.

(c) Adding one accessible "unisex" toilet per floor, adjacent to existing toilet facilities, where it is structurally impracticable to make existing toilet facilities for each sex accessible. This exception is found at § 1190.150(a)(1) in MGRAD now in effect.

(d) Providing special technical provisions for stair hand rails and door features in alterations projects.

(e) Providing certain exceptions for assembly areas.

These proposals stimulated a number of comments. Three comments were submitted in opposition to the proposal to permit elevator car floor dimensions of less than 4' x 4' under limited circumstances. Two comments objected on the grounds that wheelchair users would not be able to face the elevator controls. It appears possible that the commenters did not understand the limited nature of the exception or the fact that this provision has existed elsewhere in MGRAD for years without difficulties. The Board has issued this provision of the final rule as proposed but emphasizes that it applies only where larger elevator car sizes are structurally impracticable and, in the rare cases in which the exception does apply, authorizes the minimum necessary reduction in car floor area.

G. Subpart D—Technical Provisions

This subpart is redesignated as Subpart C and is amended to incorporate 4.2 through 4.32 and the Appendix of ANSI A117.1–1986 in lieu of the corresponding technical provisions now found in MGRAD 1190.40 through 1190.240.

Incorporation of the ANSI provisions completes the reserved MGRAD sections. These are: (1) All provisions related to signage requirements, now found at MGRAD §§ 1190.60(f), 1190.100(e)(2), 1190.100(h)(2)(iii), 1190.100(j)(2), 1190.150(d), and 1190.200; (2) all provisions related to detectable warnings, now found at MGRAD 1190.70(e)(9), 1190.80(f), and 1190.190; (3) MGRAD 1190.140, Windows; (4) MGRAD 1190.100(e)(2), elevator door open-time requirement, and (5) MGRAD 1190.130(h)(2)(i), exterior door opening force requirement.

Most ANSI provisions are identical in effect and intent with the corresponding MGRAD provisions. However, as noted in the notice of proposed rulemaking, in some instances the Board has deemed it appropriate to make exceptions in MGRAD to the ANSI provisions. These exceptions, which are consistent with UFAS, are:

(1) MGRAD § 1190.100 (d)(3)(iv) and (f)(1)(iv) and UFAS 4.10.3 and 4.10.12,

require elevator car control and hall call buttons to be either raised or flush. ANSI permits recessed, raised, or flush buttons. The ATBCB has concluded that problems with recessed buttons are sufficient to outweigh any asserted justification for their use. See §§ 1190.31(f), 1190.31(u)(1)(i) and 1190.33(a)(3). For example, persons with upper limb amputations or any disability that would require use of a fist or elbow to activate the button cannot use a recessed button.

(2) Paragraphs 4.7.7 Warning Textures and 4.7.12 Uncurbed Intersections of ANSI 4.7 Curb Ramps require detectable warning surfaces at curb ramps and uncurbed intersections. As discussed earlier, this final rule does not propose to require detectable warnings at any location and therefore is making an exception to these provisions.

(3) MGRAD § 1190.150(f)(5)(i) and UFAS 4.21.5 permit the installation of a fixed shower head in lieu of a hand held shower head in unmonitored facilities where vandalism is a consideration. ANSI provides advisory language to this effect in its Appendix. Although the ATBCB has in this final rule adopted the ANSI Appendix as well as the technical provisions, in order to avoid any potential questions about the validity of the fixed-shower-head exception in UFAS, this provision is specifically listed in this rulemaking as an exception to the ANSI technical provisions. See § 1190.3(k).

(4) MGRAD § 1190.150(f)(7) and UFAS 4.21.7 permit a maximum height of ½ inch (13 mm) for curbs in shower stalls that are 36 inches by 36 inches (915 mm by 915 mm). ANSI permits a 4-inch curb height, the standard height for curbs in prefabricated shower stalls. This final rule contains an exception which retains the requirement for the lower curb because it increases accessibility for people with paralysis of the legs who cannot lift their legs over a 4-inch curb when transferring.

(5) UFAS 4.30.6 specifies mounting heights and locations for interior signage. (There is no corresponding provision in MGRAD because all signage requirements are reserved.) This requirement is not included in ANSI provisions on signage that are incorporated by this rulemaking. The ATBCB has concluded that the UFAS requirement is appropriate and useful in assuring that tactile signage can be located by people with impaired vision. In addition to the ANSI technical provisions, this final rule specifies that such signage be mounted between 54 inches and 66 inches above the floor on the latch side of the door.

(6) UFAS 4.33.3 contains an exception to the ANSI requirements on placement of wheelchair locations in assembly areas. This final rule includes a provision which parallels the UFAS provision and provides an exception to the ANSI provisions. MGRAD, UFAS, and ANSI all require dispersal of wheelchair locations throughout the seating area of a facility such as an auditorium or a theatre. The exception to MGRAD made by this final rule (§ 1190.31(a)(1)) permits clustered wheelchair seating in bleachers and other areas with sight lines requiring slopes greater than 5 percent, or to permit equivalent positions on levels with accessible egress. There was considerable opposition to this proposal among the commenters and no support for it. It seems likely that the commenters misunderstood the limited scope of the exception. The opposition was based on perceived limitations of choice for wheelchair users in terms of seat price, location and the ability to sit with friends and family. The inability of friends and family to sit with wheelchair users to provide assistance in the event of emergency, and the prospect of unassisted wheelchair users blocking the egress of each other and other patrons was seen as a hazardous condition. In response to the commenter's concerns, the Board points out that this is a narrowly limited exception to the general rule of dispersed seating which by its express terms makes provision for egress needs. Moreover, the identical provision has been in effect in UFAS for several years with no complaints having been received. In all likelihood, it is the limited scope of the provision which has prevented complaints from arising.

The remaining differences between the ANSI and MGRAD specifications, and the ATBCB determination on each, are as follows:

(1) MGRAD § 1190.50(i)(3)(iv) permits carpet tile to have a maximum combined thickness of pile, cushion and backing of ⅛ inch. The section recommends that carpet meet this requirement but permits carpet to have a pile height up to ½ inch, exclusive of the thickness of pad or backing. The restriction on carpet tile thickness was incorporated in UFAS due to the MGRAD requirement. The 1980 ANSI, in paragraph 4.5.3, permits a maximum pile height of ½ inch and does not distinguish between carpet and carpet tile. In developing the 1986 standard, the ANSI committee considered the disparity between the standards but did not revise the existing ANSI provision because committee members did not consider it appropriate to place a different requirement on carpet tile than on carpet. The ATBCB has reviewed this issue and concluded that the difference in the MGRAD requirement and the ANSI requirement is not significant, and further agrees that there is no evidence to support continuing the different requirement for carpet tile than for carpet. Therefore the final rule incorporates 4.5.3 as it appears in ANSI.

(2) MGRAD § 1190.60, Parking and passenger loading zones, differs from the corresponding ANSI provisions, 4.6 Parking Spaces and Passenger Loading Zones, in the areas noted below. This final rule incorporates all of the ANSI provisions with the changes noted below.

(a) MGRAD § 1190.60(c)(2)(i) provides advisory specifications for accessible van parking spaces, although such spaces are not required. UFAS 4.6.3 incorporates the same specifications as advisory standards. ANSI refers the user of the A117.1 standard to the appendix for dimensions for accessible van spaces. Since this final rule incorporates the ANSI appendix by reference, the ATBCB does not consider it necessary to restate the advisory specifications elsewhere in MGRAD.

(b) MGRAD § 1190.60(c)(5) requires that accessible parking spaces and access aisles have surface slopes not exceeding 1:48 in all directions. The same requirement is applied to passenger loading zones under § 1190.60(d)(3). UFAS 4.6.3 and 4.6.5 incorporate a similar requirement. The 1986 ANSI standard reviewers considered this specification, but did not incorporate it in section 4.6. ANSI 4.3.7 Slope (under 4.3 Accessible Route) requires that the cross slope of an accessible route can never exceed 1:50, which is essentially the same as the 1:48 MGRAD requirement. Since ANSI 4.6.3 states that the access aisle of a parking space or passenger loading zone is part of the accessible route from the space or zone, the cross slope requirement clearly applies. It is therefore not necessary for the final rule to repeat the requirement in this section.

(c) MGRAD § 1190.60(d)(1) and UFAS 4.6.5 require that the access aisle at accessible passenger loading zones be 5 feet wide, the same width as the access aisle at accessible parking spaces. ANSI 4.6.3 requires a 4-foot-wide access aisle. In the notice of proposed rulemaking, the Board proposed to amend MGRAD to adopt the narrower dimension contained in the ANSI standard. Three comments opposed this proposal on the grounds that the use of side-mounted van lifts would be prevented and the resultant increased use of rear-mounted lifts would expose wheelchair users to more traffic hazards. Upon further consideration of the safety aspects of the issue, the Board finds these comments convincing and has amended the ANSI provision to retain the five foot access aisle. See § 1190.31(b)(1).

(d) MGRAD § 1190.60(e) and UFAS 4.6.6 require vertical clearances of 114 inches at accessible passenger loading zones and along vehicle access routes to such areas from site entrances. ANSI 4.6.3 requires a vertical clearance of 108 inches. In its notice of proposed rulemaking, the Board proposed to adopt the lower ANSI ceiling. The proposal to reduce the loading zone vertical clearance requirement from 114" to 106" was opposed on the grounds that raised-roof vans could not be accommodated. One commenter stated that the 114" limit should remain the rule with exceptions for lower clearances available in special cases. No comments supported the proposed action. The Board finds these comments convincing and has amended the ANSI provision to retain the 114" clearance requirement. See § 1190.31(b)(1).

(3) MGRAD § 1190.70, Ramps and curbs, provides at paragraph (e), Curb ramps, that flared sides are required if any part of a path crosses any part of a curb ramp not protected by guardrails. UFAS includes this requirement at 4.7.5. ANSI 4.7.5 requires that curb ramps located where pedestrians must walk across them shall have flared sides. Since handrails or guardrails are not, in fact, generally used nor desirable for curb ramps (where they could impede pedestrian movement), the ANSI approach of requiring flared sides is a more satisfactory solution and is therefore incorporated into MGRAD through this amendment.

(4) MGRAD § 1190.90, Handrails, differs from the corresponding ANSI provisions 4.8.5, 4.9.4 and 4.26 in the areas noted below. This proposal would incorporate all of the ANSI provisions without change.

(a) MGRAD § 1190.90, Handrails, requires, as did the 1980 ANSI standard, that handrails be no more than 1¼ inch in outside diameter. Subsequently, ANSI received comments from industry spokesmen noting that pipes used for handrails are generally designated by inside diameter sizes, and that the typical pipe size specified is the 1¼ inch pipe which has an outside diameter of 1.9 inches. This final rule incorporates the ANSI provision into MGRAD.

(b) MGRAD § 1190.90, Handrails, includes in paragraph (e) requirements on load-bearing capacity of handrails and specifies that handrails shall not rotate within their fittings. The 1986 ANSI did not incorporate these requirements because they were deemed to be safety issues covered appropriately by sections of building codes dealing with handrail safety requirements. The ATBCB concurs in this determination and this final rule deletes these requirements from MGRAD.

(c) MGRAD § 1190.90, Handrails, also requires in paragraph (f) that ends of handrails be returned smoothly to wall, floor or post. UFAS incorporated this requirement at 4.8.5 (for rails at ramps) and 4.9.4 (for rails at stairs). ANSI 4.9.4 includes a requirement that stairway handrail extensions must comply with 4.4, Protruding Objects, which would provide the same protection afforded by the MGRAD requirement. The Board considered the ANSI provisions on handrails to be sufficient despite the absence therein of explicit prohibitions on protruding ends and proposed to adopt it. One comment stated that designers may not draw the inference that this prohibition in another section of the ANSI standard requires handrail ends to return smoothly. The Board has re-examined this matter in light of the comment and issued the rule as proposed. In addition to the prohibition in ANSI 4.4, which is sufficient to guard against the anticipated danger, building code safety provisions require that handrail ends return to wall or post. Consequently, an explicit requirement in the handrail provision of ANSI would be doubly redundant not only of other provisions of the ANSI standard, but of existing building code provisions. It is anticipated that UFAS will continue to provide the more explicit requirement in both sections and the Board may recommend that ANSI consider adopting consistent language at its next revision.

(5) MGRAD § 1190.100, Elevators, contains five specifications that differ somewhat from the ANSI provisions in 4.10, Elevators. MGRAD also reserves the provision on elevator door timing for which ANSI provides a requirement at 4.10.8. The final rule's provision regarding one of these provisions for elevator car controls and hall call buttons, was noted above. In addition, this final rule adopts the ANSI 4.10.8 requirement for a three-second open time for elevator doors.

The other differences are as follows:

(a) MGRAD provisions explicitly require that objects mounted beneath lobby call buttons shall not project into the elevator lobby by more than 4 inches. The ANSI Committee considered adding this requirement to 4.10 but determined that the provisions of 4.25, Operating Controls and Mechanisms, and 4.4, Protruding Objects, precluded such placement and therefore an explicit statement in 4.10 was redundant. The ATBCB accepted this reasoning, and proposed to adopt the ANSI provision. One comment stated that these provisions would not prohibit the placement of an ashtray under the call button. The Board has re-examined the issue in light of the comment and concludes that ANSI 4.4 and 4.25.2 would indeed address this problem. ANSI 4.25.2, which requires clear floor space around controls, and 4.4 address objects protruding more than 4". The final rule is unchanged with regard to this proposal.

(b) MGRAD § 1190.100(d)(3)(ii) requires that car control buttons be mounted no higher than 48 inches above the floor, unless that height causes a substantial increase in cost, in which case special provisions apply. The ANSI committee considered this approach to be inappropriate for a technical specification and determined that where the number of floors or other factors mandated higher buttons (up to the 54-inch maximum), then the elevator car should be required to permit side

approach. The ATBCB agrees that this is an appropriate way to assure accessibility of elevator controls and this final rule incorporates this provision into MGRAD. The same consideration applies to mounting height of emergency communication equipment (ANSI 4.10.14, MGRAD § 1190.100(j)(1)).

(c) MGRAD § 1190.100(f)(1)(i) requires that hall call buttons be mounted with centerlines 48 inches above the floor. ANSI 4.10.3 specifies a mounting height of 42 inches. This difference is not considered by the Board to be significant and, in any event, the lower height specified by ANSI should increase ease of access. Therefore, the final rule adopts the ANSI specifications.

(6) MGRAD § 1190.130(a)(3) states that revolving doors and turnstiles are not accessible and therefore shall not be the only means of access at any accessible entrance or on any accessible route, and further requires that an accessible door be provided adjacent to the revolving door or turnstile and be designed to facilitate the same use pattern. The ANSI Committee reviewed the turnstile/revolving door issue and found that accessible turnstiles and revolving doors are now available on the market. For that reason, ANSI 4.13.2 was revised in 1986 to permit revolving doors or turnstiles that meet all the requirements for accessible doors and to prohibit inaccessible turnstiles or revolving doors as the only means of passage at an accessible entrance or along an accessible route. The final rule incorporates this approach into MGRAD. Additional language in MGRAD § 1190.130(a)(3) which is no longer necessary since the ANSI provision clearly requires an accessible door at any accessible entrance has been deleted. The further requirement that the adjacent door be subject to the same use patterns as the inaccessible revolving door or turnstile is required by MGRAD in the definition of "accessible" at § 1190.3, which states that, "accessible elements and spaces of a building or facility including doors provided adjacent to a turnstile or a revolving door, shall be subject to the same use patterns as other elements and spaces of the building or facility."

(7) MGRAD § 1190.130(f) requires that no door hardware be mounted higher than 48 inches above the floor. ANSI 4.13.9 provides that all door operating hardware be mounted within the reach ranges specified in 4.2. The ANSI provision recognizes that there may be door operating hardware other than door opening devices (e.g., special safety locks) that may be mounted at other than standard doorknob heights, and would assure that no such devices are mounted outside acceptable ranges for lower as well as higher reaches. The final rule amends MGRAD to adopt this provision.

(8) MGRAD § 1190.150(e)(2)(ii) and UFAS 4.17 require that toilet stalls in new construction be 60" wide. Both provisions include an exception which permits alternate stall sizes with widths of 48" or 36" in alteration projects if it is structurally impracticable to provide the 60" stall. ANSI 4.17 permits stalls of all three sizes in new construction, although the 60" stall is specified as the "standard" stall and the more narrow stalls are designated "alternate stalls." After careful review of the issue, the ATBCB proposed to adopt ANSI and permit the use of the more narrow stalls because of earlier comments it had received to the effect that the 36" wide stall is the most usable for people with some disabilities (for example, for crutch or cane users) who need support on both sides when moving to or rising from a seated position. In its notice of proposed rulemaking the Board solicited comment on how best to accommodate the needs of all users in establishing the dimensions of accessible toilet stalls.

This was the aspect of the September proposal which generated the greatest number of comments, all of which were opposed to the proposed action. Twenty-five comments opposed the proposed action. Many commenters stated that the smaller stalls would make side transfers, the only form of transfer possible for many of the commenters, impossible. It was also pointed out that the smaller sizes do not accommodate mechanized wheelchairs or the presence of attendants. Concern was expressed that other agencies would follow the lead of the Federal government on this issue. The proposal would also reduce employment and consumer opportunities, according to the comments. A number of the comments considered the proposal to be discriminatory. Many of the comments recommended the use of movable grab bars or a requirement that one of the standard stalls in a toilet room be equipped with grab bars for crutch users in lieu of eliminating the requirement for the 60" stall which is the only stall that will accommodate some users.

Despite the express invitation for comment on the point, no comments were filed in support of the proposed action on the grounds that it would assist persons using crutches or other users. In addition, a cost impact analysis of the proposed action prepared for the Board under contract concluded that the proposed amendment would not result in significant savings.

The Board has found the comments convincing and has amended the ANSI provision to provide that 60" wide stalls must be provided. See § 1190.31(k). The Board does not consider that it has sufficient information at the present time to require grab bars in normal size toilets or to require movable grab bars. However, the Board notes that there is an appropriate role for the 36" wide stall in certain cases and that many persons with handicaps are able to use these facilities. The Board encourages the placement of the narrower accessible stalls in large toilet rooms where there is already a 60" wide stall present to serve the needs of additional users. In making this recommendation, the Board emphasizes that a 60" wide stall must also be present for those users who cannot use any other stalls.

(9) MGRAD § 1190.180(c) permits visual alarms with a flash frequency "less than 5 [Hertz] Hz." The ANSI standard, at 4.26.3, requires a flashing frequency of approximately 1 Hertz. The ANSI provision was designed to avoid the possibility of triggering seizures for individuals sensitive to rapidly flashing lights. The final rule incorporates the ANSI requirement into MGRAD.

(10) MGRAD § 1190.210 specifies requirements for telephones. Equivalent requirements are provided in ANSI section 4.29. The ANSI provisions include a requirement not found in MGRAD for signage indicating the location of telecommunications devices for deaf persons where such equipment is provided. The ATBCB considers this to be an appropriate requirement that will benefit hearing-impaired people without imposing a significant burden on the provider, and therefore the final rule incorporates it into MGRAD.

H. Subpart E—Special Building or Facility Types or Elements

The final provision of this final rule completes the reserved MGRAD subpart on special building or facility types—Subpart E in the current MGRAD, redesignated Subpart D by the final rule. In MGRAD as currently in effect, § 1190.2(e) explains that Subpart E is reserved for future development of minimum guidelines and requirements for special building and facility types, specifically including housing. However, in incorporating ANSI by reference, MGRAD like UFAS incorporates dwelling unit specifications in the basic technical provisions. Therefore the final rule completes the reserved subpart by incorporating sections 5 through 9 of the UFAS. These sections provide specifications for restaurants, cafeterias, health care facilities, mercantile facilities, libraries and postal facilities. The ATBCB participated with the standard-setting agencies in developing these specifications and approved them before their publication as final standards.

As need arises for specifications on other special building or facility types, the ATBCB may issue additional guidelines under this subpart. These recommendations will be considered for future rulemaking.

IV. Comments On Other Provisions of MGRAD

A. Scoping Provisions for Toilet Stalls

One comment stated that improved scoping provisions for accessible stalls are needed for large facilities such as auditoriums and coliseums. MGRAD § 1190.3l(k) currently provides that at least one accessible fixture of each type provided must be present in public and common use restrooms. The comment suggested that 20% of the stalls in toilet rooms of large facilities be required to be accessible. Another comment urged "further study" on the issue of scope noting that ANSI lacks scoping provisions. This comment also called for accessibility of all restrooms in public buildings whether intended for the public or not.

While this issue is worthy of examination, the Board has concluded that the scanty evidence in the rulemaking record does not provide the basis for meaningful evaluation of the existing provisions or, if warranted, to establish the proper level at which to set a new requirement. In the coming year the Board will undertake a systematic examination of scoping in State, local and foreign codes. Necessary changes in scoping provisions, if any, will be considered by the Board at that time.

With respect to the comment on making public and private restrooms accessible, the Board points out that MGRAD currently requires all newly constructed restrooms to be accessible or adaptable. (See § 1190.31(k)). Specifically, all common use restrooms (see definition in § 1190.3) must be accessible whether "public" or "private". Restrooms assigned to individuals need not be accessible if not needed; but they must be adaptable for future users who may need them.

In addition, as described above, the Board is encouraging the installation of 36" accessible stalls in addition to the required 60" stall present in large toilet rooms to encourage the provision of more than one accessible stall.

B. Water Fountain or Cooler Dimensions

A manufacturer of water fountains and coolers, responded to the NPRM by reiterating a request it had previously made to the ATBCB staff for amendment to UFAS Figure 27(a). That figure includes a maximum 6" dimension restricting the degree by which the bottom of water fountain cabinets may protrude. The MGRAD drawing on this issue (Figure 16.1) is apparently erroneous showing the dimension as a *minimum*. In 1981 the commenter demonstrated its product to the ATBCB Technical Committee to apparent favorable response, according to the comment. On April 5, 1985 Board staff mistakenly informed the commenter that an error had been made in the UFAS drawing which showed the dimension as a maximum as does ANSI.

A maximum dimension, as specified in UFAS and ANSI, is necessary to assure ankle clearance for wheelchair users. Although the comment is correct that the technical committee responded favorably to the company's demonstration of the foundation, the favorable response was to the *concept* of a foundation with a cooler underneath provided there was adequate floor clearance. The drawing in MGRAD was intended to reflect acceptance of this concept while utilizing standard clearance dimensions used throughout MGRAD. Under this final rule, MGRAD incorporates ANSI 4.15 which includes the 6" maximum dimension in Figure 27a.

V. Other Information

This final rule has been submitted to the Office of Management and Budget and reviewed under procedures established in Executive Order 12291. This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order 12291 on Regulations. This rulemaking would not establish significant new Federal requirements, but rather is adopting language used in existing standards which has the same effect and intent as the provisions being replaced. Where new provisions are adopted to complete reserved sections, Federal requirements in those areas already exist in the Uniform Federal Accessibility Standards, with only minor exceptions which would have minimal cost impact.

The ATBCB has determined, as required by the National Environmental Policy Act of 1969, 42 U.S.C. 4332, that the proposal will not have any significant impact on the environment.

Pursuant to the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the ATBCB certifies that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 36 CFR Part 1190

Buildings, Handicapped, Leasing, Transportation. Incorporation by reference.

Accordingly, 36 CFR Part 1190 is amended as set forth below.

By vote of the Board on May 11, 1988.

William J. Tangye,

Chair, Architectural and Transportation Barriers Compliance Board.

PART 1190—MINIMUM GUIDELINES AND REQUIREMENTS FOR ACCESSIBLE DESIGN

1. The authority citation for 36 CFR Part 1190 is revised to read as follows:

Authority: Sec. 502(b), Rehabilitation Act of 1973 (29 U.S.C. 792(b)(7)), as amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Sec. 119, Pub. L. 602, 92 Stat. 2982, and the Rehabilitation Act Amendments of 1986 (Pub. L. 99-506, 100 Stat. 1801).

§ 1190.2 [Amended]

2. Section 1190.2 is amended by removing paragraph (s).

3. Section 1190.3 is amended by:

a. Revising the definition of "Adaptability" to read:

§ 1190.3 Definitions.

* * * * *

"Adaptability" means the capability of certain building spaces and elements, such as kitchen counters, sinks and grab bars, to be altered or added to so as to accommodate the needs of persons with or without disabilities, or to accommodate the needs of persons with different types or degrees of disability.

* * * * *

b. Revising the definition of "Common use areas" to read:

* * * * *

"Common use areas" means those interior and exterior rooms, spaces or elements that are made available for the use of a restricted group of people (for example, residents of an apartment building, the occupants of an office building, or the guests of such residents or occupants).

* * * * *

c. Revising the definition of "Physically handicapped person" to read:

* * * * *

"Physically handicapped person" means an individual who has a physical impairment, including impaired sensory, manual, or speaking abilities, which results in a functional limitation in access to and use of a building or facility.

* * * * *

d. Adding the following definitions:

1. After the definition of "Curb ramp" and before the definition of "Egress," insert—

* * * * *

"Detectable" means perceptible by one or more of the senses.

"Detectable warning" means a standardized surface texture applied to or built into walking surfaces or other elements to warn visually impaired people of hazards in the path of travel.

"Dwelling unit" means a single unit of residence that provides a kitchen or food preparation area, in addition to rooms and spaces for living, bathing, sleeping, and the like.

A single family home is a dwelling unit, and dwelling units are to be found in such housing types as townhouses and apartment buildings.

* * * * *

2. After the definition of "Guidelines and requirements" and before the definition of "Operable part", insert—

* * * * *

"Housing" means a building, facility, or portion thereof, excluding inpatient health care facilities, that contains one or more dwelling units or sleeping accommodations. Housing may include, but is not limited to, one-family and two-family dwellings, multifamily dwellings, group homes, hotels, motels, dormitories, and mobile homes.

"Marked crossing" means a crosswalk or other identified path intended for pedestrian use in crossing a vehicular way.

"Multifamily housing" means a project containing five or more dwelling units.

* * * * *

3. After the definition of "Section 502 of the Rehabilitation Act" and before the definition of "Shall," insert,

* * * * *

"Service entrance" means an entrance intended primarily for delivery or service.

* * * * *

4. After the definition of "Site improvements" and before the definition of "Space," insert,

* * * * *

"Sleeping accommodations" means rooms in which people sleep (for example, dormitory and hotel or motel guest rooms).

* * * * *

e. Removing the definition "Tactile warning".

§§ 1190.7 and 1190.8 [Removed]

§§ 1190.9 [Redesignated as new § 1190.7]

4. Remove §§ 1190.7 and 1190.8, and redesignate § 1190.9 as new § 1190.7.

Subpart C [Redesignated as Subpart B]

5. Remove "Subpart B [Reserved]" and redesignate Subpart C, consisting of §§ 1190.30 through 1190.34, as Subpart B.

§ 1190.31 [Amended]

6. Amend § 1190.31 Accessible buildings and facilities: New construction, as follows:

a. The introductory text is revised to read:

§ 1190.31 Accessible buildings and facilities: New construction.

Except as otherwise provided in this part, all new construction of buildings and facilities shall comply with the minimum requirements set forth below. The citations beginning with "ANSI" in the provisions which follow refer to the sections of the American National Standard, ANSI A117.1–1986, "Providing Accessibility and Usability for Physically Handicapped People" by the American National Standards Institute, Inc. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from the American National Standards Institute, Inc., 1430 Broadway, New York, N.Y. 10018. Copies may be inspected at the office of the U.S. Architectural and Transportation Barriers Compliance Board, 1111 18th Street, NW., Suite 501, Washington, DC or at the Office of the Federal Register, 1100 L Street, NW., Room 8301, Washington, DC.

* * * * *

b. Section 1190.31(a) is revised to read:

* * * * *

(a) Accessible route. At least one accessible route shall comply with ANSI A117.1–1986, section 4.3, Accessible Routes (Incorporated by reference, see § 1190.31(a).)

(1) Required accessible route(s) shall connect an accessible building entrance with:

(i) Transportation facilities located within the property line of a given site, including passenger loading zones, public transportation facilities, taxi stands, and parking;

(ii) Public streets and sidewalks;

(iii) Other accessible buildings, facilities, elements, and spaces that are on the same site; and

(iv) All accessible spaces, rooms, and elements within the building or facility.

(2) Where fire code provisions require more than one means of egress from any space or room, then more than one accessible means of egress complying with ANSI A117.1–1986, section 4.3.10 shall be provided for handicapped people and shall be arranged so as to be readily accessible from all accessible rooms and spaces (Incorporated by reference, see § 1190.31(a).)

* * * * *

c. Section 1190.31(b) is amended by:

1. Removing "§ 1190.60, Parking and passenger loading zones", wherever it appears and inserting in lieu thereof, "ANSI A117.1–1986 section 4.6 Parking Spaces and Passenger Loading Zones (Incorporated by reference, see § 1190.31(a))";

2. Adding the following after the table in § 1190.31(b)(1): "Passenger loading zones shall provide an access aisle at least 60 in (1525 mm) wide and 20 ft (60 mm) long adjacent and parallel to the vehicle pull-up space. If there are curbs between the access aisle and the vehicle pull-up space, then a curb ramp complying with ANSI A117.1–1986, section 4.7 shall be provided. A minimum vertical clearance of 114 in (3.45 m) shall be provided at accessible passenger loading zones and along vehicle access routes to such areas from site entrances."; and

3. Removing the reference to § 1190.60(c)(2)(a) in the last sentence of § 1190.31(b)(1).

d. Section 1190.31(c) is amended by:

1. Removing "§ 1190.70, Ramps and curb ramps."; and

2. Inserting in lieu thereof "ANSI A117.1–1986, section 4.7 Curb Ramps or 4.8 Ramps, as appropriate (Incorporated by reference, see § 1190.31(a).)"

e. Section 1190.31(d) is amended by removing "§ 1190.80, Stairs." and inserting in lieu thereof "ANSI A117.1–1986, section 4.9, Stairs." (Incorporated by reference, see § 1190.31(a).)"

f. Section 1190.31(e) is amended by removing the text which follows "as required in" and inserting in lieu thereof, "ANSI A117.1–1986, sections 4.8 Ramps and 4.9 Stairs, respectively. (Incorporated by reference, see § 1190.31(a).)"

g. Section 1190.31(f) is amended by:

1. Removing "§ 1190.100, Elevators" wherever it appears and inserting in lieu thereof "ANSI A117.1–1986, section 4.10, Elevators (Incorporated by reference, see § 1190.31(a))";

2. Adding a new sentence at the end of the introductory text of paragraph (f) which reads: "All elevator control buttons shall be at least ¾ in (19mm) in their smallest dimension. They shall be raised or flush."; and

3. Removing "§ 1190.70 Ramps and curb ramps, and § 1190.110, Platform lifts" in paragraph (f)(2) and inserting in lieu thereof, "ANSI A117.1–1986, section 4.8 Ramps and ANSI A117.1–1986, section 4.11 Platform Lifts (incorporated by reference, see § 1190.31(a))".

h. Section 1190.31(g) is amended by removing "§ 1190.100, Platform lifts" and inserting in lieu thereof "ANSI A117.1–1986, section 4.11 Platform Lifts (incorporated by reference, see § 1190.31(a)), and should facilitate unassisted entry and exit from the lift."

i. Section 1190.31(h) is amended by removing "§ 1190.120, Entrances" wherever it appears and inserting in lieu thereof "ANSI A117.1–1986, section 4.14, Entrances (incorporated by reference, see § 1190.31(a))".

j. Section 1190.31(i) is amended by:

1. Removing "§ 1190.130, Doors" wherever it appears and inserting in lieu thereof "ANSI A117.1–1986, section 4.13, Doors (incorporated by reference, see § 1190.31(a))"; and

2. Removing "§ 1190.50(h), Egress" in paragraph (i)(3) and inserting in lieu thereof "ANSI A117.1–1986, section 4.3.10, Egress (incorporated by reference, see § 1190.31(a))".

k. Section 1190.31(j) is added to read as follows:

(j) *Windows.* If operable windows are provided, they shall comply with ANSI A117.1–1986, section 4.12 Windows. (Incorporated by reference, see § 1190.31(a).)"

l. Section 1190.31(k) is revised to read as follows:

* * * * *

(k) *Toilet and bathing facilities.* If toilet and bathing facilities are provided, then each public and common use toilet room shall comply with ANSI A117.1–1986, section 4.22, Toilet Rooms, Bathrooms, Bathing Facilities and Shower Rooms (incorporated by reference, see paragraph (a) of this section. Other toilet rooms shall be adaptable. If bathing facilities are provided, then each public and common use bathing facility shall comply with ANSI A117.1–1986, section 4.22. In each such facility where any of the fixtures and accessories specified in ANSI A117.1–1986, section 4.16, Water Closets; ANSI A117.1–1986, section 4.17, Toilet Stalls; ANSI A117.1–1986, section 4.18, Urinals; ANSI A117.1–1986, section 4.19, Lavatories, Sinks and Mirrors; ANSI A117.1–1986, section 4.20, Bathtubs; and ANSI A117.1–1986, section 4.21, Shower Stalls, are provided, at least one accessible fixture and accessory of each type provided shall comply with the provisions in the subsection applicable to that fixture or accessory. The size and arrangement of toilet stalls shall comply with ANSI Fig. 30(a). Toilet stalls with a minimum depth of 56 in (1420 mm) (see ANSI Fig. 30(a)) shall have wall-mounted closets. If the depth of toilet stalls is increased at least 3 in (75 mm), then a floor mounted water closet may be used. Arrangements shown for toilet stalls may be reversed to allow either a left-hand or right-hand approach. Installation of a fixed shower head may be permitted in lieu of an adjustable height or hand-held shower head in unmonitored facilities where vandalism is a concern. Curbs in shower stalls that are 36 in by 36 in (915 mm by 915 mm) shall have a maximum height of ½ in (13 mm). Bathrooms in dwelling units required to be accessible shall comply with ANSI A117.1–1986, section 4.32.4, Bathrooms. For special use situations, refer to Subpart E, Special Building or Facility Types or Elements.

m. Section 1190.31(l) is amended by removing "§ 1190.160, Drinking fountains and water coolers," and "§ 1190.160" the other two times it appears, and inserting in lieu thereof "ANSI A117.1–1986, section 4.15, Drinking Fountains and Water Coolers," (incorporated by reference, see § 1190.31(a)), and "ANSI A117.1–1986, section 4.15" respectively.

n. Section 1190.31(m) is amended by removing "§ 1190.170, Controls and operating mechanisms" and inserting in lieu thereof, "ANSI A117.1–1986, section 4.25, Controls and Operating Mechanisms. (Incorporated by reference, see § 1190.31(a).)"

o. Section 1190.31(n) is amended by:

1. Removing "§ 1190.180, Alarms" and inserting in lieu thereof, "ANSI A117.1–1986, section 4.28, Alarms (incorporated by reference, see § 1190.31(a))"; and

2. Adding at the end of the paragraph the following:

* * * * *

(n) * * * In facilities with sleeping accommodations, the sleeping accommodations required to be accessible shall have an alarm system complying with ANSI A117.1–1986, section 4.28.4, Auxiliary Alarms. Emergency warning systems in health care facilities may be modified to suit standard health care alarm design practice.

* * * * *

p. Section 1190.31(o) is revised to read:

* * * * *

(o) *Detectable warnings.* Detectable warnings complying with ANSI A117.1–1986, section 4.27.3, Tactile Warnings on Doors to Hazardous Areas (incorporated by reference, see § 1190.31(a)), shall be provided on the hardware of all doors leading to hazardous areas. Such warnings shall not be used at emergency exit doors. Detectable warnings are not required at locations other than doors to hazardous areas by this part. If detectable warnings are provided, the specifications at ANSI A117.1–1986, section 4.27 may be used as guidance. Note—The ATBCB has funded research in the area of detectable tactile surface treatments. The research findings were inconclusive and, therefore, recommended no mandatory requirements at this time. Further information is being developed through additional research on detectable materials and fact-finding on current applications, particularly on transit platforms. Technical assistance materials including information about additional detectable cues (sound and resiliency) not discussed in ANSI are available from the ATBCB, 1111 18th Street, NW, Suite 501, Washington, DC 20036, (202) 653–7834 (voice or TDD).

* * * * *

q. Section 1190.31(p) is revised to read as follows:

* * * * *

(p) *Signage.* Signage shall comply with ANSI A117.1–1986, section 4.28, Signage (incorporated by reference, see § 1190.31(a)). Permanent signage that identifies rooms and spaces shall also comply with ANSI A117.1–1986, section 4.28.4. Exception: The provisions of ANSI A117.1–1986, section 4.28.4 are not mandatory for temporary information on room and space signage, such as current occupant's name, provided the permanent room or space identification complies with ANSI A117.1–1986, section 4.28.4.

* * * * *

r. Section 1190.31(q) is amended by removing "§ 1190.210, Telephones" wherever it appears and inserting in lieu thereof "ANSI A117.1–1986, section 4.29, Telephones (incorporated by reference, see § 1190.31(a))".

s. Section 1190.31(r) is amended by removing "§ 1190.220, Seating, tables and work surfaces." and inserting in lieu thereof "ANSI A117.1–1986, section 4.30, Seating, Tables and Work Surfaces. (Incorporated by reference, see § 1190.31(a).)"

t. Section 1190.31(s) is amended by:

1. Removing "§ 1190.230, Assembly areas" and "§ 1190.230" and inserting in lieu thereof "ANSI A117.1–1986, section 4.31, Auditorium and Assembly Areas (incorporated by reference, see 1190.31(a))" and "ANSI A117.1–1986, section 4.31," respectively;

2. Removing "§ 1190.50, Walks, floors and accessible routes" and inserting in lieu thereof "ANSI A117.1–1986, section 4.3, Accessible Routes"; and

3. Adding the following after the table in § 1190.31(s)(1): "Accessible viewing positions may be clustered in bleachers, balconies, and other areas that have sight lines requiring slopes greater than 5 percent or to permit equivalent accessible viewing positions to be located on levels having accessible egress."

u. Section 1190.31(t) is amended by removing "§ 1190.240, Storage" wherever it appears and inserting in lieu thereof "ANSI A117.1–1986, section 4.23, Storage. (Incorporated by reference, see § 1190.31(a).)"

v. A new § 1190.31(u) is added to read as follows:

* * * * *

(u) *Housing.* Accessible housing shall:

(1) Comply with the requirements of this section as it applies to public use and common use areas and areas where handicapped persons may be employed, except as follows:

(i) Elevators: Where provided, elevators shall comply with ANSI A117.1–1986, section 4.10 (incorporated by reference, see 1190.31(a)). All elevator control buttons shall be at least ¾ in (19 mm) in their smallest dimension. They shall be raised or flush. Elevators or other accessible means of vertical movement are not required in residential facilities when:

(A) No accessible dwelling units are located above or below the accessible grade level; and

(B) At least one of each type of common area and amenity provided for use of residents and visitors is available at the accessible grade level.

(ii) Entrances: Entrances complying with ANSI 4.14 shall be provided as necessary to achieve access to and egress from buildings and facilities. EXCEPTION: In projects consisting of one-to-four family dwellings where accessible entrances would be extraordinarily costly due to site conditions or local code restrictions, accessible entrances are required only to those buildings containing accessible dwelling units.

(iii) Common Areas: At least one of each type of common area and amenity in each project shall be accessible and shall be located on an accessible route to any accessible dwelling unit.

(2) Provide dwelling units or sleeping accommodations complying with ANSI 4.32, Dwelling Units, in accordance with the following table:

Facilities	Application
Hotels, motels, boarding houses.	5 percent of the total units, or at least one, whichever is greater.
Multifamily housing (including apartment houses) Federally assisted.	5 percent of the total, or at least one unit, whichever is greater in multifamily housing projects.
Federally owned	5 percent of the total, or at least one unit, whichever is greater in multifamily housing projects.
Dormitories	5 percent of the total, or at least one unit whichever is greater.
One and two family dwelling Federally assisted, rental.	5 percent of the total, or at least one unit, whichever is greater, in multifamily housing projects.
Federally assisted homeownership.	To be determined by home buyer.
Federally owned	5 percent of the total, or at least one unit, whichever is greater in multifamily housing projects.

* * * * *

w. A new § 1190.31(v) is added to read as follows:

* * * * *

(v) *Health care facilities.* Accessible health care facilities shall:

(1) Comply with the requirements of this § 1190.31 as it applies to public use and common use areas and areas where handicapped persons may be employed; and

(2) Provide patient rooms and patient toilet rooms complying with Part 6 of UFAS in accordance with the following table:

Facilities	Application
Long term care facilities (including skilled nursing facilities, intermediate care facilities, bed and care, and nursing homes).	At least 50 percent of patient toilets and bedrooms.
Outpatient facilities	All patient toilets and bedrooms.
Hospital:	
General purpose hospital	At least 10 percent of patient toilets and bedrooms.
Special purpose hospital (hospitals that treat conditions that affect mobility).	All patient toilets and bedrooms.

§ 1190.32 [Amended]

7. Section 1190.32, Accessible buildings and facilities: Additions, is amended as follows:

a. In paragraph (a), by removing "§ 1190.12, Entrances" and inserting in lieu thereof "ANSI A117.1–1986, section 4.14, Entrances. (The citations beginning with "ANSI" in this section refer to the sections of the American National Standard, ANSI A117.1–1986, "Providing Accessibility and Usability for Physically Handicapped People" by the American National Standards Institute, Inc. which has been approved for incorporation by reference as set forth in § 1190.31(a)."

b. In paragraph (b), by removing "§ 1190.50, Walks, floors and accessible routes," and inserting in lieu thereof, "ANSI A117.1–1986, section 4.3, Accessible Route (incorporated by reference, see § 1190.31(a)).".

c. In paragraph (c), by removing "§ 1190.150, Toilet and bathing facilities" and inserting in lieu thereof "ANSI A117.1–1986, section 4.22, Toilet Rooms, Bathrooms, Bathing Facilities and Shower Rooms. (Incorporated by reference, see § 1190.31(a).)"

d. By removing paragraph (f).

§ 1190.33 [Amended]

8. Section 1190.33, Accessible buildings and facilities: Alterations, is amended as follows:

a. At paragraph (a)(1), by changing the period at the end thereof to a comma, and adding, "except as noted in paragraph (a)(2) of this section."

b. By removing paragraph (a)(4), redesignating (a) (2) and (3) as (a) (3) and (4), and adding a new paragraph (a)(2) as follows:

(a) * * *

(2) Exceptions to the requirements for (a)(1) of this section for existing buildings or facilities are:

(i) *Stairs.* Full extension of stair handrails shall not be required in alterations where such extensions would be hazardous or impossible due to plan configuration.

(ii) *Elevators.* (A) If a safety door edge is provided in existing automatic elevators, then the automatic door reopening devices may be omitted (see ANSI A117.1–1986 section 4.10.6). (The citations beginning with "ANSI" in this section refer to the sections of the American National Standard, ANSI A117.1–1986, "Providing Accessibility and Usability for Physically Handicapped People" by the American National Standards Institute, Inc. which has been approved for incorporation by reference as set forth in § 1190.31(a).

(B) Where existing shaft or structural elements prohibit strict compliance with ANSI A117.1–1986, section 4.10.9 (incorporated by reference, see § 1190.31(a)), then the minimum floor area dimensions may be reduced by the minimum amount necessary, but in no case shall they be less than 48 in by 48 in (1220 mm by 1220 mm).

(iii) *Doors.* (A) Where existing elements prohibit strict compliance with the clearance requirements of ANSI 4.13.5, a projection of 5/8 in (16 mm) maximum will be permitted for the latch side door stop. (The citations beginning with "ANSI" in this section refer to the sections of the American National Standard, ANSI A117.1–1986, "Providing Accessibility and Usability for Physically Handicapped People" by the American National Standards Institute, Inc. which has been approved for incorporation by reference as set forth in § 1190.31(a).)

(B) If existing thresholds measure ¾ in (19 mm) high or less, and are beveled or modified to provide a beveled edge on each side, then they may be retained.

(iv) *Toilet rooms.* Where alterations to existing facilities make strict compliance with ANSI A117.1–1986, sections 4.22 and 4.23 (incorporated by reference, see § 1190.31(a)) structurally impracticable, the addition of one "unisex" toilet per floor containing one water closet complying with ANSI A117.1–1986, section 4.16 and one lavatory complying with ANSI A117.1–1986, section 4.19, located adjacent to existing toilet facilities, will be acceptable in lieu of making existing toilet facilities for each sex accessible.

(v) *Assembly areas.* (A) In alterations where it is structurally impracticable to disperse seating throughout the assembly area, seating may be located in collected areas as structurally feasible. Seating shall adjoin an accessible route that also serves as a means of emergency egress.

(B) In alterations where it is structurally impracticable to alter all performing areas to be on an accessible route, then at least one of each type shall be made accessible.

c. In newly redesignated paragraph (a)(3), by removing "§ 1190.70, Ramps and curb ramps; § 1190.100, Elevators; or § 1190.110, Platform lifts," and inserting in lieu thereof, "ANSI A117.1–1986, section 4.8, Ramps; ANSI A117.1–1986, section 4.10, Elevators; or ANSI A117.1–1986, section 4.11, Platform Lifts (incorporated by reference, see § 1190.31(a))" and by adding the following to the end of that paragraph: "All elevator control buttons shall be at least ¾ in (19 mm) in their smallest dimension. They shall be raised or flush."

d. In paragraph (c)(1), by removing "§ 1190.50, Walks, floors and accessible routes" and inserting in lieu thereof, "ANSI A117.1–1986, section 4.3, Accessible Routes (incorporated by reference, see § 1190.31(a))".

e. In paragraph (c)(2), by removing "§ 1190.120, Entrances" and inserting in lieu thereof, "ANSI A117.1–1986, section 4.14, Entrances (incorporated by reference, see § 1190.31(a).)"

f. In paragraph (c)(3), by removing "§ 1190.150, Toilet and bathing facilities" wherever it appears and inserting in lieu thereof, "ANSI A117.1–1986, section 4.22, Toilet Rooms, Bathrooms, Bathing Facilities, and Shower Rooms (incorporated by reference, see § 1190.31(a))".

g. By revising paragraphs (c)(6) (i) through (vi) and adding (c)(6)(vii) as follows:

* * * * *

(c) * * *

(6) * * *

(i) ANSI A117.1–1986, sections 4.6, Parking Spaces and Passenger Loading Zones, as modified by § 1190.31(a)(1);

(ii) ANSI A117.1–1986, section 4.15, Drinking Fountains and Water Coolers;

(iii) ANSI A117.1–1986, section 4.23, Storage;

(iv) ANSI A117.1–1986, section 4.26, Alarms;

(v) ANSI A117.1–1986, section 4.29, Telephones;

(vi) ANSI A117.1–1986, section 4.30, Seating, Tables and Work Surfaces;

(vii) ANSI 4.31, Auditorium and Assembly Areas, as modified by § 1190.31(a)(1). (Incorporated by reference, see § 1190.31(a).)

* * * * *

Subpart D—[Redesignated as Subpart C and Revised]

9. Subpart D—Technical Provisions, consisting of §§ 1190.40 through 1190.240, is redesignated as Subpart C, consisting of §§ 1190.40 and 1190.50, and is revised to read as follows:

Subpart C—Technical Provisions

Sec.

1190.40 Technical specifications.

1190.50 Exceptions.

Subpart C—Technical Provisions

§ 1190.40 Technical specifications.

Features, elements and spaces required to be accessible by § 1190.31, § 1190.32, or § 1190.33 shall meet the technical requirements specified in the provisions of sections 4.2 through 4.32 of ANSI A117.1–1986, "American National Standard for Buildings and Facilities—Providing Accessibility and Usability for Physically Handicapped People," which is incorporated herein by reference, except as noted herein. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from the American National Standards Institute, Inc., 1430 Broadway, New York, N.Y. 10018. Copies may be inspected at the office of the U.S. Architectural and Transportation Barriers Compliance Board, 1111 18th Street, NW., Suite 501, Washington, DC or at the Office of the Federal Register, 1100 L Street, NW., Room 8301, Washington, DC.

§ 1190.50 Exceptions.

(a) In addition to ANSI A117.1–1986, section 4.10 (incorporated by reference, see § 1190.31(a)), Elevators, the following requirement is added: Hall call buttons provided under ANSI A117.1–1986, section 4.10.3 shall be raised or flush.

(b) Under ANSI A117.1–1986, section 4.7 (incorporated by reference, see § 1190.31(a)), Curb Ramps, and ANSI 117.1–1986, section 4.7.7, Warning Textures, and ANSI 117.1–1986, section 4.7.12, Uncurbed Intersections, shall not apply.

(c) In addition to ANSI A117.1–1986, section 4.28, Signage (incorporated by reference, see § 1190.31(a)) , there is added the requirement that interior tactile signage identifying rooms and spaces be located alongside the door on the latch side and be mounted at a

height between 54 in and 66 in (1370 mm and 1675 mm) above the finished floor.

Subpart E—[Redesignated as Subpart D]

10. Subpart E—Special Building or Facility Types or Elements is redesignated as Subpart D, and § 1190.60 is added to read as follows:

§ 1190.60 Special building or facility types.

The requirements specified in the Uniform Federal Accessibility Standards (UFAS) in sections 5, Restaurants and Cafeterias; 6, Health Care; 7, Mercantile; 8, Libraries; and 9, Postal Facilities, are deemed to satisfy minimum guidelines and requirements of the ATBCB for accessibility standards for those building and facility types.

[FR Doc. 89-2435 Filed 2-2-89; 8:45 am]

BILLING CODE 6820-BP-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3495-6]

Approval and Promulgation of Air Quality Implementation Plans; California State Implementation Plan Revision; Six Air Pollution Control Districts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today's notice takes final action to approve several revisions to the California State Implementation Plan (SIP) consisting of rules adopted by six air pollution control districts: The Bay Area Air Quality Management District (AQMD), the Imperial County Air Pollution Control District (APCD), the Monterey Bay Unified APCD, the South Coast AQMD, the Tulare County APCD, and the Ventura County APCD. California submitted these revisions to EPA on June 9, 1987 and September 1, 1987 for inclusion in the SIP. These submittals generally involve clarifications of existing rules, and either strengthen or retain existing emission control requirements. EPA has reviewed these revisions and has determined that they are consistent with the Clean Air Act, 40 CFR Part 51, and EPA policy, and should be approved under section 110 of the Clean Air Act.

DATES: This action will become effective on April 4, 1989, unless notice is received by March 6, 1989, that someone wishes to submit adverse or critical comments.

ADDRESSES: Comments may be sent to: Regional Administrator, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, Attn: Air Management Division, State Implementation Plan Section (A-2-3).

Copies of the rules and of EPA's Evaluation Report for each rule are available for public inspection during normal business hours at the EPA Region 9 office in San Francisco. All of the rules are also available at the Air Resources Board address listed below. Rules for specific districts are available at the districts which adopted them. The addresses are given below.

California Air Resources Board, SIP Section, 1131 S Street, Sacramento, CA 95812.
Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.
Imperial County Air Pollution Control District, 150 South Ninth Street, El Centro, CA 92243-2801.
Monterey Bay Unified Air Pollution Control District, 1164 Monroe Street, Suite 10, Salinas, CA 93906.
South Coast Air Quality Management District, 9150 Flair Drive, El Monte, CA 91731.
Tulare County Air Pollution Control District Administration Building, County Civic Center, 2800 West Burrel Street, Visalia, CA 93291.
Ventura County Air Pollution Control District, 800 South Victoria Avenue, Ventura, CA 93009.
Public Information Reference Unit, Environmental Protection Agency, 401 "M" Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, State Implementation Plan Section (A-2-3), Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974-7636; FTS 454-7636.

SUPPLEMENTARY INFORMATION:

Background

On June 9, 1987 and September 1, 1987 the State of California submitted to EPA a series of revisions to its SIP. This notice addresses some of those revisions. Others are being addressed in separate notices.

A brief description of each of the regulations by submittal date and district is provided below. EPA's evaluation and final action regarding these rules follow the description of the regulations.

Description of Regulations

June 9, 1987 submittal

Bay Area AQMD

Rule 2-1-401.6—Permits, General Requirements, Persons Affected
Rule 2-1-401.7—Permits, General Requirements, Persons Affected

Imperial County APCD

Rule 102—Public Records
Rule 105—Enforcement
Rule 108—Inspections
Rule 110—Stack Monitoring
Rule 113—Circumvention
Rule 115—Legal Application and Incorporation of Other Regulations
Rule 203—Transfer
Rule 204—Applications
Rule 205—Cancellation of Applications
Rule 210—Denial of Applications
Rule 401—Opacity of Emissions
Rule 402—Exceptions
Rule 403—Quantity of Emissions
Rule 420—Livestock Feed Yards
Rule 421—Open Burning—Non Agricultural
Rule 422—Open Burning of Wood Waste
Rule 423—Exceptions

Monterey Bay Unified APCD

Rule 201—Sources Not Requiring Permits

Tulare County APCD

Rule 110—Arrests and Notices to Appear
Rule 202—Exemptions
September 1, 1987

South Coast AQMD

Rule 212—Standards for Approving Permits

Ventura County APCD

Rule 12—Statement by Application Preparer

Evaluation

Under section 110 of the Clean Air Act and 40 CFR Part 51, EPA is required to approve or disapprove these regulations as SIP revisions. The majority of the rules addressed in this notice concern general permitting requirements. The remaining rule revisions concern open burning, livestock feed yards, inspections, and opacity regulations. These rules generally involve minor changes which clarify existing rules. Some of these revisions are recodifications, or involve wording changes to add specificity to existing rules. All of the revisions either strengthen or retain existing emission control requirements.

Imperial County APCD Rule 110 contains a minor typographical error involving a reference to the Code of Federal Regulations (CFR). Sections (G)(1) through (G)(6) of this rule refer to 40 CFR Part 51, Appendix P and 40 CFR Part 60, Appendix B. However, section (G)(3) refers to Part 60, Appendix P; the reference should instead be Part 51. In fact, the existing federally approved version of Rule 110 contains this same typographical error. EPA has received a commitment from the Imperial County APCD that this error will be corrected in a future submittal of Rule 110. Since the newly amended rule is, in all other respects, fully approvable, EPA is approving this revised rule under section 110 of the Clean Air Act.

EPA has evaluated the rules listed above and determined that the revisions are consistent with the Clean Air Act, 40 CFR Part 51, and EPA policy. EPA's detailed evaluation of the submitted rules is available at the Region 9 office in San Francisco.

Final Action

Under section 110 of the Clean Air Act, EPA approves the rule revisions listed above and incorporates them into the California SIP. EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. This action will be effective April 4, 1989, unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective April 4, 1989.

Regulatory Process

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted these rules from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 4, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Note.—Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Date: December 15, 1988.

Lee M. Thomas,

Administrator.

Subpart F of Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart F—California

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.220 is amended by adding paragraphs (c) (173) and (174) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(173) Revised regulations for the following APCD's were submitted on June 9, 1987 by the Governor's designee.

(i) Incorporation by reference.

(A) Bay Area AQMD.

(*1*) New Rules 2-1-401.6 and 2-1-401.7, adopted January 7, 1987.

(B) Imperial County APCD.

(*1*) New or amended Rules 102, 105, 108, 110, 113, 115, 203, 204, 205, 210, 401, 402, 403, 420, 421, 422, and 423, adopted November 19, 1985.

(C) Monterey Bay Unified APCD.

(*1*) Amended Rule 201 (introductory paragraph and subparagraphs (1) through (8.6)), adopted December 17, 1986.

(D) Tulare County APCD.

(*1*) Amended Rules 110 and 202 (introductory paragraph and subparagraphs (a) through (d.7)), adopted May 13, 1986.

(174) Revised regulations for the following APCD's were submitted on September 1, 1987 by the Governor's designee.

(i) Incorporation by reference.

(A) South Coast AQMD.

(*1*) Amended Rule 212, adopted May 1, 1987.

(B) Ventura County APCD.

(*1*) Amended Rule 12, adopted June 16, 1987.

[FR Doc. 89-2520 Filed 2-2-89; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[FRL-3501-8]

Approval and Promulgation of Implementing Plans; Ohio

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: In an October 27, 1987, Federal Register (52 FR 41310) notice of proposed rulemaking, USEPA proposed to disapprove a site-specific revision to the Ohio State Implementation Plan (SIP) for ozone. This revision is a request by Ohio for monthly averaging for volatile organic compound (VOC) emissions for an architectural aluminum extrusion coating line (K001) at J&S Aluminum Corporation (J&S). This facility is located in Mahoning County, Ohio.

In today's Final Rulemaking, USEPA is disapproving this SIP revision because the State has not adequately documented and demonstrated (1) that the major supplier to J&S was unable to develop acceptable complying coatings and that coatings from other suppliers were tested and found to be unacceptable, and (2) that a monthly averaging period is the shortest averaging time practicable.

EFFECTIVE DATE: This final rulemaking becomes effective on March 6, 1989.

ADDRESSES: Copies of the SIP revision, public comments on the notice of proposed rulemaking and other materials relating to this rulemaking are available for inspection at the following addresses. (It is recommended that you telephone Uylaine E. McMahan, (312) 886-6031, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.
Ohio Environmental Protection Agency, Office of Air Pollution Control, 1800 WaterMark Drive, Columbus, Ohio 43216.

A copy of today's revision to the Ohio SIP is available for inspection at: U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886-6031.

SUPPLEMENTARY INFORMATION: On February 28, 1986, the Ohio Environmental Protection Agency (OEPA) submitted a revision to its ozone

SIP requesting monthly averaging for an architectural aluminum extrusion coating line (K001). This operation is located at the J&S facility in Mahoning County, Ohio, a nonattainment area for ozone.[1]

On April 17, 1986, USEPA notified OEPA that the February 28, 1986, submittal requesting monthly averaging for J&S was deficient as stated in USEPA's technical support document (TSD) dated April 5, 1988. OEPA submitted supplemental information on July 2, 1986, and August 18, 1986, to support this revision.

Existing SIP Requirements

Under the existing federally approved SIP, the architectural aluminum extrusion coating line (K001) is subject to the control requirements contained in Ohio Administrative Code (OAC) Rule 3745-21-09(U)(1)(a)(iii) which limits the VOC content of extreme performance coatings to 3.5 pounds of VOC per gallon of coating, minus water. OAC Rule 3745-21-04(C)(28) requires compliance with the limit by December 31, 1982. Compliance is determined on a 24-hour basis. USEPA approved these rules as meeting the reasonably available control technology (RACT)[2] requirement of the Clean Air Act on October 31, 1980 (45 FR 72122), and June 29, 1982 (47 FR 28097).

Extended Averaging Time Criteria

USEPA's January 20, 1984, policy memorandum, subject "Averaging Times for Compliance With VOC Emission Limits", contains the following criteria for evaluating VOC requests for extended averaging:

Criterion 1

Extended averaging can be permitted where the source operations are such that daily VOC emissions cannot be determined, or where the application of RACT for each emission point is not economically or technically feasible on a daily basis.

[1] OEPA submitted a request to revise the attainment status designation, at 40 CFR 81.336, for Mahoning County from nonattainment to attainment for the ozone national ambient air quality standard (NAAQS). Mahoning County, at this time is designated a nonattainment area. However, there have been no measured violations of the ozone NAAQS from 1982 through 1985.

[2] A definition of RACT is contained in a December 9, 1976, memorandum from Roger Strelow, former Assistant Administrator for Air and Waste Management. RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility.

Criterion 2

The area must not lack an approved SIP, and there must not be any measured violations of the ozone standard. Real reductions in actual emissions must be achieved, consistent with the RACT control level specified in the SIP.

Criterion 3

A demonstration must be made that the use of long-term averaging (greater than 24-hour averaging) will not jeopardize either attainment and maintenance of the ambient standards attainment or the Reasonable Further Progress (RFP) plan for the area. This must be accomplished by showing that the maximum daily increase in emissions associated with monthly averaging is consistent with the approved ozone SIP.

Criterion 4

Averaging times must be as short as practicable, and in no case longer than 30 days.

In an October 27, 1987, **Federal Register** (52 FR 41310) notice, USEPA proposed to disapprove a revision to Ohio's ozone SIP, which would allow monthly averaging for J&S Aluminum, for the following reasons:

1. J&S Aluminum did not adequately document that its major supplier was unable to develop acceptable complying coatings and that coatings from other suppliers were tested and found to be unacceptable.

2. J&S Aluminum did not demonstrate that a monthly averaging period is the shortest averaging time practicable.

Comments on this notice of proposed rulemaking were received from J&S Aluminum on December 15, 1987, and from the OEPA on December 30, 1987. These comments and USEPA's response are provided below.

J&S Aluminum Comment: J&S requested monthly averaging so that when it uses noncomplying coatings it will not have to adjust production to meet a daily average. J&S believes that this would be costly, time-consuming and wasteful. Additionally, J&S indicated that 1-week or 2-week averaging period could be considered as a possible alternative.

OEPA Comment: J&S meets the four criteria set down by USEPA in a January 20, 1984, memorandum on "Averaging Times for Compliance with VOC Emission Limits."

Criterion 1—It is not technically and economically feasible for J&S to comply on a daily basis. Discontinuing the use of noncomplying coatings may cause J&S to lose additional customers and possibly close down.

Criterion 2—The Youngstown area has not had any measured violations of the ozone standard for five years. A request for redesignation has been submitted to USEPA.

Criterion 3—The use of long-term averaging will not jeopardize either ambient standards attainment or the reasonable further progress (RFP) plan for the area.

Criterion 4—Averaging times must be as short as practicable, and in no case longer than 30 days. J&S wishes to average on a 30-day basis. Although it has been complying on 30-day averages and shorter time period averages, J&S business does vary greatly and it could foresee possible times and situations where it might not be able to comply using less than 30-day average.

USEPA Response: J&S has not met all of the criteria contained in the January 20, 1984, policy memorandum. Although the State alleges that it is technically and economically infeasible to meet the SIP limit on a daily basis, this has not been adequately demonstrated. In particular, the State has not demonstrated that complying coatings are unavailable. The State must demonstrate that J&S is not able to reformulate a sufficient number of its non-complying coatings to comply with the SIP limit on a daily basis. Although the State's original submittal contained documentation from only one coating supplier concerning one type of coating for high performance architectural coatings, USEPA has information indicating that a complying formulation for these coatings is not currently available. However, no information was provided concerning the other (non-high performance) coatings used by J&S. Neither the State nor J&S provided any additional information during the public comment period concerning the availability of complying formulation for these coatings.

In addition, the State still has not demonstrated that a 30-day average is as short an averaging time as practicable. In fact, OEPA indicated that J&S has been in compliance using a shorter averaging time.

Finally, a January 20, 1987, memorandum from G.T. Helms, Chief of the Control Programs Operations Branch, provides further guidance concerning long term averaging. This memorandum emphasizes that USEPA views long-term averaging primarily as a remedy for insurmountable recordkeeping problems and that if the rquirements of the June 20, 1984, policy memorandum are not met, "adjustments should be made in the RACT number, not in the averaging time." J&S has made no demonstration that daily recordkeeping is an insurmountable problem. USEPA will consider rulemaking on alternative RACT for coatings for which a demonstration is made that no acceptable means of compliance is available. Further discussion of the type of demonstration required can be found in the Appendix to the notice of proposed rulemaking for Essco Aluminum published on November 9, 1988 at 53 FR 45285.

Conclusion

USEPA is disapproving this SIP revision for J&S because the deficiencies cited in the notice of proposed rulemaking were not corrected.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 4, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Under Executive Order 12291, today's action is not "Major." It has been submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to USEPA, and any USEPA response, are available for public inspection at the USEPA Region V office listed above.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Carbon monoxide, Hydrocarbon, Intergovernmental Offices.

Dated: December 27, 1988.

Lee M. Thomas,

Administrator.

[FR Doc. 89-2514 Filed 2-2-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 280

[FRL-UST-3513-1]

Underground Storage Tanks Containing Petroleum; Financial Responsibility Requirements

AGENCY: Environmental Protection Agency.

ACTION: Notice of modification of certification compliance date.

SUMMARY: EPA is modifying the compliance date by which owners and operators of underground storage tanks (USTs) containing petroleum must have certain documentation in order to meet recently promulgated financial responsibility requirements. In connection with these requirements, the Attorney(s) General of the state(s) in which USTs are located must have submitted a written statement to the implementing agency that a guarantee or surety bond executed as described in the regulations is a legally valid and enforceable instrument in that state before a guarantee or safety bond may be used by an owner or operator of an UST in that state to demonstrate financial responsibility. This notice modifies the date when such certifications must have been received from state Attorney(s) General from January 24, 1989, to July 24, 1989, and allows owners and operators to use a guarantee or surety bond to demonstrate financial responsibility during the period from January 24, 1989, to July 24, 1989, even if no state Attorney General's certification has yet been received by the implementing agency in that state.

EFFECTIVE DATE: January 24, 1989.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline at (800) 424-9346 (toll free) or (202) 382-3000 in Washington, DC.

SUPPLEMENTARY INFORMATION: Today's notice delays by six months the time when Attorney General certifications will be required before owners or operators of underground storage tanks containing petroleum may use a guarantee or surety bond to demonstrate financial responsibility. The Agency believes that six months is sufficient time to obtain Attorney General certifications. In addition, in the event that Attorney(s) General choose not to provide such certifications, owners and operators will have sufficient time to secure other mechanisms that do meet the provisions of the financial responsibility regulations.

On October 26, 1988, EPA published a final rule establishing financial responsibility requirements for all owners and operators of petroleum USTs (53 FR 43322). That rule requires that by January 24, 1989, all petroleum marketing firms owning 1,000 or more USTs and all other UST owners that report a tangible net worth of $20 million or more to the U.S. Securities and Exchange Commission (SEC), Dun and Bradstreet, the Energy Information Administration, or the Rural Electrification Administration are required to comply with the financial responsibility requirements of 40 CFR Part 280, Subpart H (40 CFR 280.91(a)). Subpart H provides that certain financial mechanisms, which are listed in that subpart, are allowable mechanisms to demonstrate financial responsibility. Section 280.94(b) provides, however, that an owner or operator may use a guarantee or surety bond to establish financial responsibility only if the Attorney(s) General of the state(s) in which the underground storage tanks are located has (have) submitted a written statement to the implementing agency that a guarantee or surety bond executed as described in this section is a legally valid and enforceable obligation in that state.

Therefore, those owners and operators required to demonstrate financial responsibility by January 24, 1989, would be precluded from using guarantees or surety bonds unless the necessary Attorney General certifications had been obtained. Once the Attorney General of a state has issued a certification, that certification is valid for all owners and operators using a guarantee or surety bond for USTs located in that state. There is no requirement that each individual owner or operator obtain a separate written statement from the Attorney General.

The Agency adopted the requirement for Attorney(s) General certification to ensure that the mechanisms satisfy necessary contractual formalities or requirements of a state's law (53 FR 43322, 43339, Oct. 26, 1988). EPA remains convinced that such review by state Attorney(s) General is desirable and will provide a valuable assessment of the validity and enforceability of the guarantee and surety bond mechanisms under the laws of particular states.

Since publication of the final rule, however, it has become apparent that additional time after January 24, 1989, will be necessary for state implementing agencies to contact their state Attorneys General and for the Attorneys General to conduct their review of the guarantee and surety bond mechanisms and respond in writing to the implementing agencies. EPA has taken steps to expedite and assist the Attorney General certification process by providing sample documents to the state implementing agencies. However, it appears that in fact the necessary reviews cannot reasonably be completed by January 24, 1989.

The Agency therefore is modifying the compliance date in § 280.91(a). Demonstration of financial responsibility by the category of owners subject to § 280.91(a) continues to be

required by January 24, 1989. However, EPA is modifying § 280.91(a) to specify that the compliance date for the certification in § 280.94(b) is July 24, 1989. Between January 24, 1989, and July 24, 1989, owners and operators will be allowed to demonstrate financial responsibility with guarantees or surety bonds even if the state Attorney(s) General of the state(s) in which the USTs are located have not provided written statements that the guarantee or surety bonds are valid and enforceable in that state. After July 24, 1989, such written statements will be necessary before the guarantee and surety bond may be used to demonstrate financial responsibility.

To the extent this is a "rule" under section 553 of the Administrative Procedure Act, EPA believes that there is "good cause" for making this technical modification of the recently promulgated financial responsibility rule without additional public comments. This modification is for a very short time period, does not change any substantive requirements under the rule, and is necessitated by the imminent compliance deadline which the Agency has only recently discovered may be unreasonable in lieu of the status of state Attorney General certifications.

List of Subjects in 40 CFR Part 280

Administrative practice and procedure, Environmental protection, Hazardous materials insurance, Surety bonds, Underground storage tanks.

Dated: January 25, 1989.

Jonathan Cannon,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

The following changes are made in FRL–UST–3, 3419–3, the Underground Storage Tanks Containing Petroleum—Financial Responsibility Requirements published in the **Federal Register** on October 26, 1988 (50 FR 43322).

PART 280—[AMENDED]

1. The authority citation for Part 280 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991, 6991(a), 6991(b), 6991(c), 6991(d), 6991(e), 6991(f), and 6991(h).

§ 280.91 [Amended]

2. Section 280.91(a) is amended by revising "24, 1989." to read "24, 1989, except that compliance with § 280.94(b) is required by: July 24, 1989."

[FR Doc. 89–2273 Filed 2–2–89; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 433

[BOC–88–F]

Medicaid Program; Refunding of Federal Share of Overpayments Made to Medicaid Providers

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final regulations.

SUMMARY: This rule amends the Medicaid regulations to specify the requirements and procedures under which States are allowed 60 days following the date of discovery of an overpayment to a Medicaid provider to recover or attempt to recover the overpayment before the Federal share must be credited to HCFA. The Federal Government will share in any overpayments that the State documents it is unable to recover because the debts of the provider have been discharged in bankruptcy or the provider is out of business.

The regulations implement section 9512 of the Consolidated Omnibus Budget Reconciliation Act of 1985.

DATE: These regulations are effective on April 4, 1989. States are not required to comply with the information collection and reporting requirements listed in the preamble under the heading "Paperwork Reduction Act" until the Office of Management and Budget approves them.

FOR FURTHER INFORMATION CONTACT: David Greenberg, (301) 966–3278.

SUPPLEMENTARY INFORMATION:

Background

Federal grants to the States are authorized under title XIX (Medicaid) of the Social Security Act (the Act) to provide financial sharing in medical assistance to certain needy individuals. Medicaid programs are financed jointly with Federal and State funds and are administered by the States. A State administers its Medicaid program in accordance with a State Medicaid plan approved by the Administrator of HCFA.

In carrying out the Medicaid program, the State Medicaid agency pays institutional providers of services (e.g., hospitals and long-term care facilities) and noninstitutional providers of services (e.g., clinics, laboratories, and physicians) for medical assistance furnished to eligible Medicaid recipients. HCFA pays the Federal share of expenditures for the Medicaid program to the State on a quarterly basis according to the percentages described in section 1903 and the formula described in section 1905(b) of the Act. In general, the State estimates its funding requirements prior to the start of each quarter of a fiscal year. HCFA reviews this projection and grants the State a sum to cover the Federal share of estimated allowable payments to be made by the State to providers in accordance with the State plan. This sum is referred to as Federal financial participation (FFP).

Within 30 days after the end of each quarter, each State submits an accounting report (Form HCFA–64, Quarterly Statement of Expenditures) showing its actual expenditures during the quarter that has ended. After deferring the Federal share of questioned expenditures and disallowing the Federal share of unallowable expenditures, HCFA compares allowable FFP to the amount previously advanced to the State for that quarter. Any adjusting of amounts owed HCFA or the State is reflected in a subsequent grant award.

Improper payments occur from time to time in any large claims processing system. Under Medicaid, some improper State payments during a quarter may not be detected by the Federal Government or the State until after the State has submitted its expenditure report for that quarter to HCFA. Consequently, the Federal Government unknowingly participates in overpayments made by the State agency, as these amounts are included in the expenditures reported to HCFA prior to discovery of the overpayments.

Federal laws provide for the recovery of the Federal share of Medicaid overpayments. The Federal Claims Collection Act of 1966 (FCCA), 31 U.S.C. 3711, as amended by the Debt Collection Act of 1982, requires each Federal agency to attempt to collect money owed the Federal Government from claims generated through agency activities. This requirement of the FCCA is implemented in regulations at 45 CFR Parts 30 and 101 through 105. In addition, section 1903(d)(2)(A) of the Social Security Act specifically requires that FFP for Medicaid be reduced or increased to the extent of any overpayment or underpayment that the Secretary determines was made to a State in any prior quarter. Section 1903(d)(3) of the Act provides that the Secretary must consider the pro rata Federal share of the net amount recovered during any quarter by a State to be an overpayment, which must be adjusted under the provisions of section 1903(d)(2) of the Act. Under section

1903(d)(2) of the Act, HCFA adjusts FFP for the quarter in which any overpayment is reported. This offset is contingent upon a State notifying HCFA of an improper payment to a provider, or upon discovery of overpayments through HCFA, HHS, or GAO review and audit processes. Before enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985 (discussed in detail in the next section of this document), if a State reported an overpayment or if an overpayment was discovered in a Federal review, the Federal share of the overpayment amount was subject to immediate refund by the State through the grant award process under the provisions of section 1903 of the Act.

Legislative Changes

Section 9512 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), Pub. L. 99–272, enacted on April 7, 1986, amended section 1903(d) of the Social Security Act to change the refund requirements for overpayments made to Medicaid providers. Section 9512 added section 1903(d)(2)(C) to the Act to provide that a State has 60 days from discovery of an overpayment to a person or other entity to recover or attempt to recover that overpayment before the Federal share of the overpayment must be refunded to HCFA through an adjustment in its FFP payment. Sections 1903(d)(2) (C) and (D) of the Act further provide that an adjustment to the FFP payment to the State must be made at the end of the 60-day period, whether or not the overpayment has been recovered by the State, unless the State has been unable to recover the overpayment because the overpayment is a debt that has been discharged in bankruptcy or is otherwise uncollectable from a provider. (We have interpreted "otherwise uncollectable" to mean that the provider is out of business, as explained in detail later in this document.) Section 9512 of COBRA is effective for all overpayments identified for quarters beginning on or after October 1, 1985. These final regulations implement section 9512 of COBRA.

Notice of Proposed Rulemaking

On December 21, 1987, we published in the **Federal Register** a notice of proposed rulemaking (NPRM) to implement section 9512 of COBRA (52 FR 48290). We received six pieces of correspondence from State agencies commenting on the NPRM. A summary of the comments received, our responses, and any changes made in these final regulations as a result of the comments on the proposed regulations are presented later in this document.

Discussion and Provisions of the Regulations

Definition of Overpayment

For purposes of implementing section 9512 of COBRA, we have defined an overpayment in these regulations as the amount which is paid by the State Medicaid agency to a person or other entity in excess of the amount that is proper under section 1902 of the Act and which is required to be refunded to HCFA under section 1903 of the Act. (In this document, "person or other entity" is referred to as a "provider" in accordance with the definition at 42 CFR 400.203 of the Medicaid regulations.) Some examples of situations that may constitute overpayments are: Duplicate payments; payments for noncovered services; payments to the wrong provider; and payments at incorrect rates.

Situations involving excessive provider reimbursement attributable to rate-setting methods or aggregate payments that are higher than the Medicare upper payment limit also may be considered overpayments. However, determining whether an amount paid to an institutional provider under any rate-setting system is considered an overpayment for which the Federal share must be refunded according to these regulations depends on the manner in which the State pursues recovery of the excess amounts. If an overpayment to an institutional provider for a prior year's reported costs is discovered and the State recovers that overpayment solely through a reduction in the provider's per diem rate for a subsequent year, that overpayment is not subject to the requirements of these regulations. In this case, no refund of the Federal share explicitly related to the original overpayment is required. Because overpayments recovered solely by reducing a current year per diem rate are not subject to the refund requirements of these regulations, refund of the Federal share does not occur until the State claims expenditures at the reduced rate. However, if, in addition to or instead of reducing the current per diem rate, the State chooses to recover any excess amounts perviously paid by a lump sum repayment, by an installment repayment plan, or by withholding a portion of future payments to the provider, an overpayment subject to these regulations exists and the Federal share of that amount must be refunded according to the provisions of sections 1903(d) (2) and (3) of the Act. Therefore, we will consider excessive provider payments attributable to rate-setting systems as overpayments subject to these regulations only if recovery is pursued for discrete amounts (and not if recovery is pursued by reducing future per diem rates). We have established this policy because it would not be administratively feasible for States to adjust properly for unallowable costs under the provisions of the regulations where a State pursues recovery of those amounts solely through reductions in current per diem rates.

For purposes of these regulations, we will consider depreciation payments as overpayments if a State requires their recapture in a discrete amount(s) upon gain on the sale of assets. We consider depreciation payments as overpayments in this situation because they satisfy our definition of an overpayment in these regulations. They involve both costs found to be estimated incorrectly as well as an attempt to recover excessive payments from the provider (unless the buyer assumes the seller's debts).

Cases involving third party liability are not subject to these regulations since these situations do not constitute overpayments as defined in these regulations. They represent payments that would be allowable had another payer not been legally responsible for them. In fact, the statute clearly distinguishes third party liability situations from overpayments subject to section 1903(d)(2)(C) of the Act. Section 1903(d)(2)(B) of the Act provides that a refund to the Federal Government is not due until the State has been reimbursed by the liable third party. Section 1903(d)(2)(C) requires the State to refund the Federal share of a provider overpayment following a 60-day period, whether or not recovery has been made. Likewise, probate collections from the estates of deceased Medicaid recipients are not subject to these regulations, as they represent the recovery of payments properly made from resources later determined to be available to the State.

The Conference Report accompanying COBRA refers only to overpayments made to providers (H. Rep. No. 453, 99th Cong., 1st Sess., 548 (1985)). In view of this Congressional intent and our past practice not to consider overpayments due to recipient eligibility errors to be overpayments to providers, we have not made these regulations applicable to eligibility-related overpayments. The Federal share of overpayments involving recipients must be refunded immediately following discovery, as required under section 1903(d)(2)(A) of the Act, if the overpayment occurs during a period for which Medicaid

Quality Control (MQC) systems are not in effect. For periods during which these systems are in effect, the Federal Government recoups recipient overpayment dollars exclusively on the basis of MQC penalties and States are not required to refund these amounts in accordance with section 1903(d)(2)(A) of the Act. These regulations also do not apply to overpayments involving administrative costs. Therefore, the Federal share of all overpayments involving administrative costs must be refunded immediately following discovery, as required by section 1903(d)(2)(A) of the Act.

Discovery of Overpayments

Overpayments are discovered in various ways: The State or a provider may recognize upon a routine review that a payment error has occurred or a Federal review may discover an overpayment that a State should have discovered but has not.

Section 1903(d)(2)(C) of the Act allows a State 60 days from the date of discovery of an overpayment to recover or attempt to recover the overpayment from a provider before the State must refund the Federal share of the overpayment to HCFA. Since discovery signifies the date on which the 60-calendar day recovery period commences, it is necessary to establish rules of discovery.

In these regulations, we specify that discovery of overpayments resulting from situations other than fraud or abuse (including excessive depreciation payments defined as overpayments) occurs on the earliest of the following: (1) The date on which any State Medicaid agency official or other State official first notifies a provider in writing of an overpayment, according to State policies and procedures, and specifies a dollar amount that is subject to recovery; (2) the date on which a provider initially acknowledges a specific overpaid amount to the State in writing; or (3) the date any State official or fiscal agent of the State initiates a formal action to recoup a specific overpaid amount from a provider without having first notified the provider in writing.

In the definition of discovery, we specify that initiating a formal recoupment action substitutes for written notification by the State or provider indicating the existence of an overpayment. Some States or their fiscal agents maintain negative (credit) balance reports listing individual Medicaid providers and the amounts they owe the State (i.e., accounts receivable). Sometimes a State will initiate recoupment of an overpayment by reducing a future payment to a provider without having first given notice of its intent to do so, especially if the overpayment amount is small. The statutory purpose of discovery is to establish the starting date for an overpayment recovery period. Therefore, if an overpayment amount has been entered on a negative balance report for the purpose of initiating recoupment without prior notice to the provider, the 60-day recovery period may be said to have begun with the negative balance report entry.

Discovery of overpayments resulting from fraud or abuse situations occurs on the date of the final written notice of an overpayment that the State sends to the provider specifying a dollar amount subject to recovery. Fraud or abuse situations are distinguished from other overpayments because of the need to consider not only the appropriateness of the individual payment but also the intent or past billing practices of the provider. Discovery in fraud or abuse cases does not occur until final written notification to the provider in order to permit State officials adequate time to conduct the necessary investigations and to resolve the legal issues peculiar to these situations.

If a Federal review at any time reveals that a State has failed to discover an overpayment or has discovered an overpayment amount but failed to either (1) send written notice of the overpayment to the provider specifying a dollar amount subject to recovery under the applicable standard State policies and procedures, or (2) initiate a formal recoupment action against the provider without prior notice, under these regulations discovery is deemed to have occurred on the date the Federal official first notifies the State of the overpayment in writing and specifies a dollar amount that is subject to recovery. This provision reflects our belief that failure of the State, for any reason, to discover an overpayment and either notify the provider in writing of the overpayment or initiate a formal action to recoup a specific overpaid amount from a provider without such notice does not relieve the State of its liability to refund the Federal share of the overpayment. The State must refund the Federal share of the overpayment at the end of the 60-day period after discovery by the Federal official, unless the State notifies HCFA that the debt has been discharged in bankruptcy or the provider is out of business.

We are not prescribing the details of the form that the State's notice to the provider must take if the State notifies the provider in writing rather than initiates a formal recoupment action without prior notice. Written notification may indicate either a tentative or final overpayment amount to be recovered. This notification may or may not constitute a formal demand for repayment or mention any appeal rights. The mention or availability of appeal rights does not under any circumstances extend the date of discovery. However, regardless of the form of the State's notice, under these regulations written notification occurs at the point where the State documents its communication by giving the provider written notice regarding a specific dollar amount subject to recovery. Similarly, the form of the notice is not prescribed when the provider prompts discovery by initiating contact with the State agency. What is significant is that the State Medicaid agency has been notified in writing of the specific overpayment subject to recovery or the provider has acknowledged a specific overpaid amount.

We believe the changes to section 1903(d) of the Act made by section 9512 of COBRA support interpretation of the term "discovery" to mean the date on which any State official first specifies an overpayment amount for purposes of internal review and followup. However, under this interpretation, discovery could significantly pre-date written communication of the overpayment amount to the provider or initiation of a formal recoupment action without prior notice and might not afford the State sufficient time for the overpayment to be verified and the notice to be processed within the State agency or for a negative balance report entry to be made before the 60-day period begins.

A State's partial collection of an overpayment amount from a provider during the 60-day recovery period does not extend the 60-day time limit following discovery allowed the State for seeking to recover the total outstanding balance. The outstanding balance is still due to HCFA upon expiration of the 60-day recovery period.

Sometimes, during the 60-day recovery period, a State makes a downward or upward adjustment to the overpayment amount originally communicated between the State and the provider. If these adjustments are made in accordance with the approved State plan, Federal Medicaid law and regulations, and the appeals resolution processes specified in State administrative policies and procedures, these adjustments are subject to specific conditions: Downward adjustment to the original overpayment amount, while reducing the total dollar amount subject to State recovery, does not change the 60-day recovery period for the outstanding balance. Upward adjustment to the original overpayment amount also does not change the 60-day period for recovery of the original amount. However, the incremental amount is subject to its own 60-day recovery period beginning on the date of the State's written notice to the provider regarding the additional overpayment amount.

Adjustments to Federal Payment

Section 1903(d)(2)(C) of the Act, as added by section 9512 of COBRA, specifies that an adjustment in the FFP payment to the State reflecting the Federal share of the overpayment must be made at the end of the 60-day recovery period following discovery. In accordance with sections 1903(d)(2) (A) and (B) of the Act (which contain language unaffected by COBRA), States report their Medicaid expenditures quarterly (on the Form HCFA-64 Quarterly Statement of Expenditures) and FFP payments to States are adjusted through the HCFA grant award process. The HCFA-64 Quarterly Statement of Expenditures is due to HCFA 30 days after the end of each quarter. Consequently, we are requiring States to credit HCFA with the Federal share of overpayments on the Form HCFA-64 submitted for the quarter in which the 60-day period following discovery ends. However, we are not requiring States to refund the Federal share of overpayments in this manner if the State reports the Federal share of a collection or submits an expenditure claim reduced by a discrete amount to recover an overpayment prior to the end of the 60-day period following discovery.

The statute does not require States to credit HCFA with interest on the Federal share of overpayments due at the end of the 60-day period following discovery. However, if a State assesses the provider interest in recovering an overpayment, regulations under 45 CFR 74.47(a) require States to credit HCFA with the Federal share of that assessment at the time the refund of the Federal share of the overpayment amount collected is made.

Requiring the credit of the Federal share of overpayments on the expenditure statement submitted for the quarter in which the 60-day period ends, rather than requiring an immediate refund, assures consistent application of the statute and simplifies the administrative process. In some cases, it also results in allowing a State more than 60 days after discovery to pursue recovery and credit HCFA with the refund. For example, if the overpayment is discovered on April 1 (the first day of the third quarter of the Federal fiscal year), the 60-day period would end May 30. However, the Form HCFA-64 for the third quarter covers the period extending to June 30. In this instance, the State would actually have 90 days after discovery before crediting HCFA with the Federal share of the overpayment. If, for example, discovery is made on May 2, the 60-day period would end on July 2 and the Federal share of the overpayment amount would not have to be reported until the submission of the expenditure statement for the fourth quarter, which ends September 30, or nearly 150 days after discovery. (Since an expenditure statement is due to HCFA 30 days after the end of each quarter, the State would, in fact, have an additional 30 days beyond the timeframes cited in the examples before actually crediting HCFA with the Federal share of the overpayment amounts.) As stated earlier, we believe this procedure is the most administratively feasible alternative which remains consistent with the requirements of the Act for submittal of quarterly expenditure statements and subsequent adjustment of the FFP payment through the grant award process.

On occasion, it may be necessary for States to submit claims for FFP to adjust the Federal share of overpayment amounts previously credited to HCFA because of downward adjustments to the original overpayment amount based on the approved State plan, Federal Medicaid law and regulations, and the appeals resolution processes specified in State administrative policies and procedures. Under these regulations, we are requiring States to submit these retroactive claims for FFP on the Form HCFA-64. The normal 2-year filing limit for retroactive claims does not apply to these adjustments, as downward adjustments to overpayment amounts are not retroactive claims but merely reflect the reclaiming of costs previously claimed.

These regulations do not contemplate States refunding more than the amount due the Federal Government. Therefore, States should not report on the Form HCFA-64 any collections made on overpayment amounts for which the Federal share has been previously refunded. In addition, if a State has refunded the Federal share of an overpayment as required by these regulations and the State subsequently makes recovery by reducing future provider payments by a discrete amount, the State should not reflect that reduction in its claim of Federal financial participation.

For purposes of adjusting the FFP payment, the changes made to section 1903(d)(2) by section 9512 of COBRA do not require us to consider whether the State is able to recover the overpayment by the end of the 60-day period, except for uncollectible amounts discussed in the following section of this preamble. We recognize that the overpayment debt collection process followed by the State is sometimes prolonged and legally complicated. However, the plain wording of sections 1903(d)(2) (C) and (D) does not permit the Federal Government to delay adjustment to FFP by allowing the State a recovery period of more than 60 days while the State awaits the exhaustion of provider appeals or judicial review, or the execution of repayment plans. (Regulations under 45 CFR 201.66 do permit repayment of Federal funds by an installment plan in limited situations where the amount of the repayment exceeds 2½ percent of the estimated annual State share for the program. Our regulations in this document do not alter the provisions of § 201.66 and are compatible with that section.) In addition, as explained previously, States usually will have longer than the 60 days after discovery because of the additional 30 days allowed following the end of each quarter before the mandatory Form HCFA-64 expenditure statements are due.

It has been HCFA's longstanding position that the Federal Government's responsibility to participate financially in State Medicaid expenditures does not encompass FFP for excessive or erroneous State Medicaid expenditures. Consequently, the Federal share of overpayments must be returned to the Federal Government within the statutorily defined timeframe because the overpayments represent excessive claims for Federal reimbursement. The Medicaid statute does not contemplate that the Federal Government absorb or share in any loss resulting from payments not made in accordance with the approved State plan, except as provided under section 1903(d)(2)(D) in cases where the overpayment is a debt that cannot be collected because the provider has gone bankrupt or the debt is otherwise uncollectible because the provider is out of business.

Overpayments Involving Providers Who Are Bankrupt or Out of Business

Section 1903(d)(2)(D) of the Act, as added by section 9512 of COBRA, provides that a State is not required to refund the Federal share of overpayments that constitute debts that

be made, and recordkeeping requirements.

Changes to the regulation text of the NPRM include (1) incorporation of definitions of "fraud" and "abuse" that are consistent with definitions of these terms in the Medicaid program integrity regulations under Part 455 (§ 433.304); (2) clarification that appeal rights extended to providers do not extend the date of discovery (§ 433.316(h)); and clarification that transfer of ownership does not constitute an out-of-business situation unless State law provides otherwise (§ 433.316(d)(3)).

Summary of and Response to Public Comments on NPRM

As stated earlier, we received comments from six State agencies on the December 21, 1987 NPRM. Our responses to those comments are as follows:

Comment: Two States objected to our interpretation of the statutory language that the recovery provisions under COBRA are effective for all overpayments "identified for quarters beginning on or after October 1, 1985" to mean overpayments that "occur and are discovered" for quarters beginning on or after October 1, 1985. One State maintained that a plain reading of the statutory language suggests that only overpayments "identified" on or after October 1, 1985 are subject to these rules. The other State requested that the proposed regulations be revised to permit States to base the effective date on either date of service or date of discovery.

Response: The statute states that the amendments made by section 9512 of COBRA shall apply to overpayments identified for quarters beginning on or after October 1, 1985. The words "identified for quarters" indicate that the date of payment is the controlling factor in establishing the applicability of the regulations. We believe that the use of the word "identified" is incidental and that Congress was referring to overpayments made on or after October 1, 1985. This interpretation is supported by the Conference Committee Reports accompanying COBRA, which omits the word "identified" altogether in stating that the statute "applies to overpayments for quarters * * *." (H.R. Rep. No. 453, 99th Cong., 1st Sess. 548 (1985).)

Comment: One State suggested that recapture of depreciation on gain on sale of assets should not be considered an overpayment for purposes of these regulations because this action represents "recovery of portions of payments properly made from resources later determined to be available to the State Medicaid program." The commenter maintained that recapture of depreciation is analogous to the third party liability (TPL) and probate situations. The commenter suggested that, in all three situations, the payment to the provider is not excessive, erroneous, or inconsistent with the State plan when made; recovery is attempted only because resources are later found to be available to the State.

Response: In the preamble to the NPRM, we described overpayments as being improper payments which occur routinely in large claims processing systems and which are typically discovered at some point after the provider receives payment from the State. We included payments at incorrect rates in our examples of situations that may constitute overpayments.

When a facility is sold, the State performs a final cost settlement to determine the allowability of costs reported by the seller. All components of the facility's current per diem rate established on the basis of estimated costs, including depreciation costs, are compared against actual costs. The State then issues a final cost settlement report and pursues recovery of any excessive costs identified. We stated in the preamble of the NPRM that, to the extent the State pursues recovery of any unallowable costs in an institutional provider's per diem rate by a lump sum repayment or by withholding a portion of future State payments to the provider, an overpayment exists. Unallowable depreciation costs which are identified and for which recapture is attempted in the manner described by the commenter constitute an overpayment consistent with these scenarios.

We do not consider depreciation analogous to TPL or probate. In the NPRM, TPL and probate situations were distinguished from overpayments in that the former involve the attempt to recover correct payment amounts from resources other than the provider. Because depreciation payments involve costs found to be incorrectly estimated and an attempt to recover from the provider (unless the buyer assumes the seller's debts), we consider depreciation payments as overpayments for purposes of these regulations if a State requires their recapture in a discrete amount(s) upon gain on the sale of assets, and have clarified this in our discussion earlier of the definition of an overpayment. In Decision 969, the Grant Appeals Board upheld a HCFA disallowance on this issue in affirming that depreciation payments constitute overpayments subject to section 1903(d)(2) of the Act if the State determined them to be excessive and subject to recovery.

Recapture overpayments are particularly difficult for a State to collect because they normally will be due from the seller. For this reason, some State plans require advance notification of the intent to sell to provide time to determine if amounts are due from the seller. Under these plans, failure to provide advance notice could result in the liability being assumed by the new owner. Such a policy facilitates recovery from the provider in States which recapture depreciation.

Comment: Two States suggested that the date of discovery should be redefined to conform with State audit policies and procedures. They stated that defining discovery as the date of a State's first written notice to the provider is contrary to proper audit procedures. One State cited Departmental Grant Appeals Board Decision 810 as concluding that amounts cited in draft audit reports are only an interim step in the discovery process, and any amounts contained in these reports are not properly subject to recovery. Both States agreed that the date of discovery should be defined as the date of the final written notice to the provider of an overpayment determination. One State suggested that an alternative discovery point for sample-based audit findings would be the date upon which the pre-extrapolated audit overpayment amount is established; the pre-extrapolated sample would be considered the discovered amount.

Response: The establishment of a uniform definition of discovery is essential to implementing the statute because discovery is the event which begins the 60-day period after which the State must refund the Federal share of the overpayment. The statute contemplates that discovery be based on documented actions which specify an overpayment amount and indicate that the State is beginning its recovery efforts. We believe that the issuance of a draft audit report could establish initial discovery if the State notified a provider in writing of a specific amount subject to recovery. If discovery does occur through identification of an overpayment in a draft audit report, the regulations allow the State to reclaim the Federal share of the overpayment that was refunded to the extent that the State subsequently makes a downward adjustment based on the approved State plan, Federal Medicaid law and regulations, and the appeals resolution process specified in State administrative policies and procedures.

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have been discharged in bankruptcy or that are otherwise uncollectible.

Under Federal law, a debtor who files a bankruptcy petition receives an automatic stay from demands from creditors as of the day he or she files the bankruptcy petition in Federal court. Therefore, the State is prevented, as of the filing date of the bankruptcy petition, from any recovery unless the court at a later date denies the bankruptcy petition or some portion of the debt is recovered later through a court-approved discharge of bankruptcy. Because of this automatic stay and the State's inability to recover during the period between the filing of the provider's bankruptcy petition and the court's adjudication of that petition, we are not requiring States to refund the Federal share of overpayments made to a provider declaring bankruptcy as of the date the bankruptcy petition is filed with the Federal court, provided the State is also noted as a creditor on the bankruptcy petition in the amount of the Medicaid overpayment. However, States must credit HCFA with the Federal share of any overpayment amounts that they recover under a court-approved discharge of bankruptcy on the first Form HCFA-64 filed after receipt of those funds. Further, States are required to credit HCFA with the Federal share of any overpayments made to a provider whose petition for bankruptcy is denied in Federal court on the later of the next Form HCFA-64 submission following the date of the court decision or the Form HCFA-64 submission for the quarter in which the 60-day period following discovery of the overpayment ends.

On the basis of the explicit wording in the Conference Committee Report on COBRA (H.R. Rept. No. 453, 99th Cong., 1st Sess., 548 (1985)), we have defined debts as "otherwise being uncollectible" for purposes of these regulations strictly as debts of providers who are "out of business." A State would not be liable for the refund of the Federal share of an overpayment if the provider is out of business and the overpayment is not collectible under State law and administrative procedures. In asserting that a provider is out of business, the State must document its efforts to located the party and its assets. These efforts must be consistant with applicable State law, policies, and procedures and must include pursuit of the party and its assets across State lines in an attempt to recover the overpayment if this action is permitted under applicable State law and administrative procedures. The State also must provide an affidavit or certification from the appropriate State legal authority establishing that the provider is out of business and that the overpayment cannot be collected under State law and procedures and the effective date of that determination under State law. The provider then will be considered certifiably out of business. Transfer of ownership within the State does not exempt a State from the requirement to refund the Federal share of an overpayment, unless State law and procedures deem a provider who has transferred ownership to be out of business and preclude collection of the overpayment from the provider.

In situations in which a State is not liable for refunding the Federal share of an overpayment because the provider is either bankrupt or out of business, the State still is required to notify the provider that an overpayment exists. If the provider files a bankruptcy petition or is certifiably out of business before the 60-day recovery period following discovery ends, the State is not required to refund the Federal share of the overpayment on its subsequent Form HCFA-64 unless the court has denied the bankruptcy petitions. If the 60-day recovery period ends before the provider files the bankruptcy petition or is certifiably out of business, the State is required to credit HCFA with the Federal share of the overpayment on the next HCFA-64 submission. The State could reclaim FFP for any unrecovered amount, citing section 1903(d)(2)(D) of the Act as authority, if, at a later date, the provider files for bankruptcy or goes out of business and the State has not been able to make complete recovery. A State could reclaim overpayments credited to HCFA only if, prior to the date on which the provider files the bankruptcy petition or the date on which the provider is declared certifiably out of business, the State vigorously pursues recovery without complete success, according to its standard policy as prescribed in applicable State law and administrative procedures.

Effective Date of Legislative Provisions

COBRA was enacted on April 7, 1986. Nonetheless, section 9512 specifies that the provisions for the recovery of the Federal share of overpayments apply to overpayments that are identified for quarters beginning on or after October 1, 1985. Based on the language of the Conference Committee report, we have interpreted overpayments that are "identified for quarters" to mean overpayments that "occur and are discovered" during any quarter beginning on or after October 1, 1985. The date upon which an overpayment occurs is the date upon which a State, using its normal method of reimbursement for a particular class of provider (e.g., check, interfund transfer), makes the payment involving unallowable costs to a provider. Two time periods are involved in implementing the overpayment recovery policy:

The Federal share of overpayments that occurred in quarters before October 1, 1985 but are discovered after October 1, 1985, and for which the Federal share has not been refunded to HCFA, must be credited on the Form HCFA-64 submission that is due to HCFA immediately following discovery.

The Federal share of all overpayments that occur and are discovered in quarters beginning on or after October 1, 1985 must be credited to HCFA on the Form HCFA-64 for the quarter in which the 60-day period following discovery ends. For the period between October 1, 1985 (the effective date of section 9512 of COBRA) and April 4, 1989 (the effective date of these regulations), States have been instructed, through an issuance in section 2853 of the *State Medicaid Manual*, on this method of crediting HCFA with the Federal share of overpayments for which the 60-day recovery period has ended in accordance with section 1903(d)(2)(C) of the Social Security Act. A State may be found not liable for refund of the Federal share only if the provider is found to be bankrupt or certifiably out of business (provided that the State has pursued collection without complete success according to its standard policy and can document these efforts).

Regulation Changes

Except in three instance, we have adopted the proposed regulations issued on December 21, 1987, as final regulations. We have amended the Medicaid regulations to add a new Subpart F to 42 CFR Part 433, State Fiscal Administration, to incorporate the provisions of section 1903(d)(2) of the Act as added by section 9512 of COBRA. In addition, we have included a provision for recordkeeping requirements in accordance with established policy and procedures for the Medicaid program under 45 CFR Part 74, Subpart D. Specifically, the new subpart includes definitions and specifies the applicability of the requirements, when discovery of an overpayment occurs, the requirements for refunds to HCFA, the exceptions to the refund requirements for overpayments to providers who are bankrupt or are out of business, how adjustments to the FFP payment are to

In Decision 810, the Grant Appeals Board cited Decision 448 in stating that "the Board has held that in instances where HCFA relies on State documentation, HCFA can recover the Federal share only when the State itself could act to recover the overpayment from a provider." In Decision 810, however, the Board also indicated that "HCFA could resolve by regulation the controversy over the use of State audit findings to identify overpayments." The Board said, further, that such a regulation could "clarify at what stage State determinations should be used as a basis for adjusting Federal financial participation." This regulation represents our efforts to define that stage.

With regard to sample-based audit findings, section 9512 of COBRA did not contemplate the establishment of different discovery dates for the pre-extrapolated sample amount and the post-extrapolated sample amount. The State that suggested this approach indicated that the State "after making an overpayment finding through an audit * * * mails the provider a Notice of Overpayment which states the amount of the overpayment and requires repayment of that amount." Even though this initial amount may be subsequently revised downward, repayment has been requested and it is, therefore, proper to consider issuance of the Notice of Overpayment as signifying discovery and initiating the 60-day recovery period.

Comment: One State maintained that our proposed definition of discovery was internally inconsistent in that it allows discovery for fraud or abuse situations to be established as of the date of the "final" written notice to the provider.

Response: Our discussions with State Medicaid officials in developing the proposed regulations established that fraud or abuse situations were unique because they require extensive coordination between State Medicaid staff and legal staff. Also, we believe that fraud or abuse situations are distinguished from other overpayments because of the need to consider not only the appropriateness of the individual payment but also the intent or past billing practices of the provider. The additional time allowed States in these situations to establish "discovery" recognizes the need for extensive legal investigation to establish the context of the overpayment.

Comment: One State suggested that an overpayment not be considered discovered until all administrative and judicial appeals are completed or waived. At this point, the existence and amount of the overpayment would be established definitively.

Response: Based on the statute, we have established that discovery occurs at the point at which the State agency or provider gives notice that an overpayment has been made and recovery is expected. Section 9512 of COBRA does not provide for postponing this date pending the exhaustion of appeals. However, we have indicated in the regulations that the Federal share of an overpayment that has been refunded to HCFA may be reclaimed based on legitimate downward adjustments to the overpayment amount.

Comment: One State suggested that States should not be required to refund the Federal share of an overpayment if the costs of collection exceed the amount the State alleges has been overpaid to the provider. The commenter suggested that requiring the Federal share to be refunded within 60 days of discovery is unnecessarily harsh and could be a disincentive to the State's pursuit of recovery. Further, the commenter maintained that States should not be required to refund the Federal share of discovered overpayments prior to recovery if good faith efforts have been made to pursue recovery.

Response: Section 9512 of COBRA does not provide for exempting States from refunding the Federal share of discovered overpayments based on the cost effectiveness of pursuing recovery. Section 9512 also does not provide for a delay in refunding the Federal share until recovery of the overpayment if there is a good faith effort by the State to recover. The length of the recovery period before a refund is due is fixed in the statute and may not be modified at our discretion. The administrative vehicle for refunding the Federal share is the HCFA–64 Quarterly Statement of Expenditures, which is due to HCFA 30 days after the end of the quarter, although, in practice, States are allowed at least 90 days before the share actually is refunded to HCFA, as explained earlier in this preamble.

Comment: One State suggested that HFCA permit downward adjustments to overpayment amounts in settled and litigated cases if adjustment is not inconsistent with the State Medicaid plan, Federal law, and State policies and procedures.

Response: The NPRM provided that the Federal share of an overpayment refunded by the State can be reclaimed based on downward adjustments after the Federal share has been refunded if the State subsequently determined that the original amount was incorrectly computed. Reclaiming the Federal share is not permitted if the State and provider simply negotiate a settlement to resolve a recovery effort. Such an arrangement between the State and a provider does not alter the amount of Federal funds originally claimed improperly.

Comment: One State maintained that our reliance on the Conference Committee Report to restrict the definition of "otherwise being uncollectable" debts to out-of-business providers was unfounded. The commenter suggested that, if the statute clearly expresses Congressional intent, extrinsic aids should not be consulted.

Response: In interpreting statutory provisions, we frequently refer to the history of the legislative provisions when there can be various meanings attached to a certain provision. The language of the Conference Committee report clarified the intended scope of the statutory phrase "otherwise being uncollectable". The substitution of the term "out of business" for the phrase "otherwise being uncollectable" is included twice in the Conference Committee's explanation of the statutory provision.

Comment: Two States described situations that might not involve providers who are technically out of business but that ought to be exempted from the refund requirements of the regulation. One State cited the example of a provider that exists only as a shell corporation as a situation in which the State cannot claim the out-of-business exemption but is effectively barred from recovery. Another cited several examples: State law protects the provider from recovery while the debt is under appeal; the State grants the provider an extended repayment schedule; no documentation exists to prove that the provider is out of business but the provider and its assets cannot be found and the provider no longer submits claims; the provider is not out of business but the debt has been discharged by the State Board of Control; recovery of the debt is precluded because the provider has transferred ownership; all of the provider's operations are out of State and it no longer participates in the State's Medicaid program or Medicare.

Response: With regard to the case of the shell corporation, the test of out-of-business status is the State's legal certification that the providr is out of business and documentation of the State's recovery efforts. Only to the extent that this test is met can an exemption be granted under the COBRA provision. Debts under appeal, discharged by a State Board, or being recovered through repayment schedules represent administrative actions that do not involve providers that are bankrupt or out of business and, thus, are not exempt from the COBRA refund requirements. If State law considers a provider that cannot be located or that has transferred ownership to be out of business, exemptions from the refund requirements may be claimed. If a provider operates exclusively out of State, an exemption may be claimed if the provider is considered out of business under State law and the State is legally precluded from pursuing recovery across State lines. We believe that allowing States to define out-of-business situations using State law furnishes sufficient flexibility in applying the refund provision.

Comment: Two States considered unnecessary the requirement that the State legal authority provide an affidavit or certification to establish that a provider is out of business. They regarded documentation of State recovery efforts as sufficient evidence of the provider being out of business.

Response: The proposed regulations attempted to accommodate differing State definitions of out-of-business situations and barriers to recovery. However, a legal determination based on objective consideration of available evidence is necessary to establish that a provider is out of business under State law and to what extent the State agency's attempts to make recovery are constrained by State laws regarding pursuit across State lines and transfer of ownership.

Comment: One State requested that we clarify the out-of business exemption to indicate that the Federal share of an overpayment need not be refunded if the provider went out of business before the date of discovery. The commenter maintained that the NPRM only indicated an exemption would be granted if the provider was out of business on the date of discovery of went out of business during the 60-day period.

Response: For purposes of these regulations, States are not required to refund the Federal share of overypayments if recovery is precluded because the provider goes out of business before the 60-day period ends. Under this provision, States would be exempt from this refund requirement if the provider went out of business *before* or after an overpayment is identified (discovered), so long as the provider remains out of business through the end of the 60-day recovery period.

Comment: One State suggested that, if a provider files for bankruptcy after the Federal share of an overpayment is refunded, HFCA should be required to return the refunded amount pending resolution of the bankruptcy petition.

Response: We believe we have addressed the reclaiming of refunds adequately. The regulations state that, if a provider declares bankruptcy after the Federal share of an overypayment has been refunded, the State may reclaim the refund as long as the State has pursued recovery until the provider files the bankruptcy petition. If the bankruptcy petition is later denied, the State would again be required to refund the Federal share of HCFA.

Regulatory Impact Analysis

Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish an initial regulatory impact analysis for any regulations that are likely to meet the criteria for a "major rule." A major rule is one that would result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or any geographic regions; or (3) significant adverse effects on competiton, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

These regulations conform the Medicaid regulations to the amendments to section 1903(d)(2) of the Social Security Act made by section 9512 of COBRA, which are already in effect.

We have determined that these regulations are not a major rule. However, there will be minimal administrative costs to State Medicaid agencies in terms of developing a tracking system for identifying overpayments made to Medicaid providers and refunding the Federal share of those overpayments in a timely manner, in accordance with the provisions of the regulations.

Regulatory Flexibility Act

We prepare and publish an initial regulatory flexibility analysis, consistent with the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 through 612) for rules unless the Secretary certifies that the rule would not have a significant economic impact on a substantial number of small entities. We have determined, and the Secretary certifies, that these regulations will not have a significant economic impact on a substantial number of small entities. The regulations will affect State agencies, which are not considered small entities, in that they are required to refund the Federal share of overpayments made to Medicaid providers. Medicaid providers will be affected indirectly by the regulations in that States will be vigorously pursuing them during the 60 days following discovery of overpayments to obtain refunds of overpaid amounts, the Federal share of which the State must refund to HCFA at the end of the 60 days. Therefore, a regulatory flexibility analysis has not been prepared.

Paperwork Reduction Act

Sections 433.316, 433.318, 433.320, and 433.322 of these regulations contain information collection and recordkeeping requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. We have submitted the regulations to OMB. A notice will be published in the Federal Register when approval is obtained.

List of Subjects in 42 CFR Part 433

Administrative practice and procedure, Claims, Grant programs—health, Medicaid, Reporting and recordkeeping requirements.

PART 433—[AMENDED]

42 CFR Part 433 is amended as set forth below:

1. The authority citation for Part 433 is revised to read as follows:

Authority: Secs. 1102, 1902(a)(4), 1902(a)(18), 1902(a)(25), 1902(a)(45), 1903(a)(3), 1903(d)(2), 1903(d)(5), 1903(o), 1903(p), 1903(r), 1912, and 1917 of the Social Security Act (42 U.S.C. 1302, 1396a(a)(4), 1396a(a)(18), 1396a(a)(25), 1396a(a)(45), 1396b(a)(3), 1396b(d)(2), 1396b(d)(5), 1396b(o), 1396b(p), 1396b(r), 1396k, and 1396(p).

2. The authority statements preceding Subpart B and following §§ 433.112 and 433.116 are removed.

3. The table of contents for Part 433 is amended by adding a new Subpart F, consisting of §§ 433.300 through 433.322, to read as follows:

PART 433—STATE FISCAL ADMINISTRATION

* * * * *

Subpart F—Refunding of Federal Share of Medicaid Overpayment to Providers

Sec.

433.300 Basis.
433.302 Scope of subpart.
433.304 Definitions.
433.310 Applicability of requirements.
433.312 Basic requirements for refunds.
433.316 When discovery of overpayment occurs and its significance.
433.318 Overpayments involving providers who are bankrupt or out of business.

Sec.
433.320 Procedures for refunds to HCFA.
433.322 Maintenance of records.
* * * * *

4. A new Subpart F, consisting of §§ 433.300 through 433.322, is added to read as follows:

Subpart F—Refunding of Federal Share of Medicaid Overpayments to Providers

§ 433.300 Basis.

This subpart implements—

(a) Section 1903(d)(2)(A) of the Act, which directs that quarterly Federal payments to the States under title XIX (Medicaid) of the Act are to be reduced or increased to make adjustment for prior overpayments or underpayments that the Secretary determines have been made.

(b) Section 1903(d)(2) (C) and (D) of the Act, which provides that a State has 60 days from discovery of an overpayment for Medicaid services to recover or attempt to recover the overpayment from the provider before adjustment in the Federal Medicaid payment to the State is made; and that adjustment will be made at the end of the 60 days, whether or not recovery is made, unless the State is unable to recover from a provider because the overpayment is a debt that has been discharged in bankruptcy or is otherwise uncollectable.

(c) Section 1903(d)(3) of the Act, which provides that the Secretary will consider the pro rata Federal share of the net amount recovered by a State during any quarter to be an overpayment.

§ 433.302 Scope of subpart.

This subpart sets forth the requirements and procedures under which States have 60 days following discovery of overpayments made to providers for Medicaid services to recover or attempt to recover that amount before the States must refund the Federal share of these overpayments to HCFA, with certain exceptions.

§ 433.304 Definitions.

As used in this subpart—

"Abuse" (in accordance with § 455.2) means provider practices that are inconsistent with sound fiscal, business, or medical practices, and result in an unnecessary cost to the Medicaid program, or in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care.

"Discovery" (or "discovered") means identification by any State Medicaid agency official or other State official, the Federal Government, or the provider of an overpayment, and the communication of that overpayment finding or the initiation of a formal recoupment action without notice as described in § 433.316.

"Fraud" (in accordance with § 455.2) means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person. It includes any act that constitutes fraud under applicable Federal or State law.

"Overpayment" means the amount paid by a Medicaid agency to a provider which is in excess of the amount that is allowable for services furnished under section 1902 of the Act and which is required to be refunded under section 1903 of the Act.

"Provider" (in accordance with § 400.203) means any individual or entity furnishing Medicaid services under a provider agreement with the Medicaid agency.

"Recoupment" means any formal action by the State or its fiscal agent to initiate recovery of an overpayment without advance official notice by reducing future payments to a provider.

"Third party" (in accordance with § 433.138) means an individual entity, or program that is or may be liable to pay for all or part of the expenditures for medical assistance furnished under a State plan.

§ 433.310 Applicability of requirements.

(a) *General rule.* Except as provided in paragraphs (b) and (c) of this section, the provisions of this subpart apply to—

(1) Overpayments made to providers that are discovered by the State;

(2) Overpayments made to providers that are initially discovered by the provider and made known to the State agency; and

(3) Overpayments that are discovered through Federal reviews.

(b) *Third party payments and probate collections.* The requirements of this subpart do not apply to—

(1) Cases involving third party liability because, in these situations, recovery is sought for a Medicaid payment that would have been made had another party not been legally responsible for payment; and

(2) Probate collections from the estates of deceased Medicaid recipients, as they represent the recovery of payments properly made from resources later determined to be available to the State.

(c) *Unallowable costs paid under rate-setting systems.* (1) Unallowable costs for a prior year paid to an institutional provider under a rate-setting system that a State recovers through an adjustment to the per diem rate for a subsequent period do not constitute overpayments that are subject to the requirements of this subpart.

In such cases, the State is not required to refund the Federal share explicitly related to the original overpayment in accordance with the regulations in this subpart. Refund of the Federal share occurs when the State claims future expenditures made to the provider at a reduced rate.

(2) Unallowable costs for a prior year paid to an institutional provider under a rate-setting system that a State seeks to recover in a lump sum, by an installment repayment plan, or through reduction of future payments to which the provider would otherwise be entitled constitute overpayments that are subject to the requirements of this subpart.

(d) *Recapture of depreciation upon gain on the sale of assets.* Depreciation payments are considered overpayments for purposes of this subpart if a State requires their recapture in a discrete amount(s) upon gain on the sale of assets.

§ 433.312 Basic requirements for refunds.

(a) *Basic rules.* (1) Except as provided in paragraph (b) of this section, the Medicaid agency has 60 days from the date of discovery of an overpayment to a provider to recover or seek to recover the overpayment before the Federal share must be refunded to HCFA.

(2) The agency must refund the Federal share of overpayments at the end of the 60-day period following discovery in accordance with the requirements of this subpart, whether or not the State has recovered the overpayment from the provider.

(b) *Exception.* The agency is not required to refund the Federal share of an overpayment made to a provider when the State is unable to recover the overpayment amount because the provider has been determined bankrupt or out of business in accordance with § 433.318.

(c) *Applicability.* (1) The requirements of this subpart apply to overpayments made to Medicaid providers that occur and are discovered in any quarter that begins on or after October 1, 1985.

(2) The date upon which an overpayment occurs is the date upon which a State, using its normal method of reimbursement for a particular class of provider (e.g., check, interfund transfer), makes the payment involving unallowable costs to a provider.

§ 433.316 When discovery of overpayment occurs and its significance.

(a) *General rule.* The date on which an overpayment is discovered is the beginning date of the 60-calendar day period allowed a State to recover or seek to recover an overpayment before a refund of the Federal share of an overpayment must be made to HCFA.

(b) *Requirements for notification.* Unless a State official or fiscal agent of the State chooses to initiate a formal recoupment action against a provider without first giving written notification of its intent, a State Medicaid agency official or other State official must notify the provider in writing of any overpayment it discovers in accordance with State agency policies and procedures and must take reasonable actions to attempt to recover the overpayment in accordance with State law and procedures.

(c) *Overpayments resulting from situations other than fraud or abuse.* An overpayment resulting from a situation other than fraud or abuse is discovered on the earliest of—

(1) The date on which any Medicaid agency official or other State official first notifies a provider in writing of an overpayment and specifies a dollar amount that is subject to recovery;

(2) The date on which a provider initially acknowledges a specific overpaid amount in writing to the edicaid agency; or

(3) The date on which any State official of fiscal agent of the State initiates a formal action to recoup a specific overpaid amount from a provider without having first notified the provider in writing.

(d) *Overpayments resulting from fraud or abuse.* An overpayment that results from fraud or abuse is discovered on the date of the final written notice of the State's overpayment determination that a Medicaid agency official or other State official sends to the provider.

(e) *Overpayments identified through Federal reviews.* If a Federal review at any time indicates that a State has failed to identify an overpayment or a State has identified an overpayment but has failed to either send written notice of the overpayment to the provider that specified a dollar amount subject to recovery or initiate a formal recoupment from the provider without having first notified the provider in writing, HCFA will consider the overpayment as discovered on the date that the Federal official first notifies the State in writing of the overpayment and specifies a dollar amount subject to recovery.

(f) *Effect of changes in overpayment amount.* Any adjustment in the amount of an overpayment during the 60-day period following discovery (made in accordance with the approved State plan, Federal law and regulations governing Medicaid, and the appeals resolution process specified in State administrative policies and procedures) has the following effect on the 60-day recovery period:

(1) A downward adjustment in the amount of an overpayment subject to recovery that occurs after discovery does not change the original 60-day recovery period for the outstanding balance.

(2) An upward adjustment in the amount of an overpayment subject to recovery that occurs during the 60-day period following discovery does not change the 60-day recovery period for the original overpayment amount. A new 60-day period begins for the incremental amount only, beginning with the date of the State's written notification to the provider regarding the upward adjustment.

(g) *Effect of partial collection by State.* A partial collection of an overpayment amount by the State from a provider during the 60-day period following discovery does not change the 60-day recovery period for the original overpayment amount due to HCFA.

(h) *Effect of administrative or judicial appeals.* Any appeal rights extended to a provider do not extend the date of discovery.

§ 433.318 Overpayments involving providers who are bankrupt or out of business.

(a) *Basic rules.* (1) The agency is not required to refund the Federal share of an overpayment made to a provider as required by § 433.312(a) to the extent that the State is unable to recover the overpayment because the provider has been determined bankrupt or out of business in accordance with the provisions of this section.

(2) The agency must notify the provider that an overpayment exists in any case involving a bankrupt or out-of-business provider and, if the debt has not been determined uncollectable, take reasonable actions to recover the overpayment during the 60-day recovery period in accordance with policies prescribed by applicable State law and administrative procedures.

(b) *Overpayment debts that the State need not refund.* Overpayments are considered debts that the State is unable to recover within the 60-day period following discovery if the following criteria are met:

(1) The provider has filed for bankruptcy, as specified in paragraph (c) of this section; or

(2) The provider has gone out of business and the State is unable to locate the provider and its assets, as specified in paragraph (d) of this section.

(c) *Bankruptcy.* The agency is not required to refund to HCFA the Federal share of an overpayment at the end of the 60-day period following discovery, it—

(1) The provider has filed for bankruptcy in Federal court at the time of discovery of the overpayment or the provider files a bankruptcy petition in Federal court before the end of the 60-day period following discovery; and

(2) The State is on record with the court as a creditor of the petitioner in the amount of the Medicaid overpayment.

(d) *Out of business.* (1) The agency is not required to refund to HCFA the Federal share of an overpayment at the end of the 60-day period following discovery if the provider is out of business on the date of discovery of the overpayment or if the provider goes out of business before the end of the 60-day period following discovery.

(2) A provider is considered to be out of business on the effective date of a determination to that effect under State law. The agency must—

(i) Document its efforts to locate the party and its assets. These efforts must be consistent with applicable State policies and procedures; and

(ii) Make available an affidavit or certification from the appropriate State legal authority establishing that the provider is out of business and that the overpayment cannot be collected under State law and procedures and citing the effective date of that determination under State law.

(3) A provider is not out of business when ownership is transferred within the State unless State law and procedures deem a provider that has transferred ownership to be out of business and preclude collection of the overpayment from the provider.

(e) *Circumstances requiring refunds.* If the 60-day recovery period has expired before an overpayment is found to be uncollectable under the provisions of this section, if the State recovers an overpayment amount under a court-approved discharge of bankruptcy, or if a bankruptcy petition is denied, the agency must refund the Federal share of the overpayment in accordance with the procedures specified in § 433.320.

§ 433.320 Procedures for refunds to HCFA.

(a) *Basic requirements.* (1) The agency must refund the Federal share of

overpayments that are subject to recovery to HCFA through a credit on its Quarterly Statement of Expenditures (Form HCFA–64).

(2) The Federal share of overpayments subject to recovery must be credited on the Form HCFA–64 report submitted for the quarter in which the 60-day period following discovery, established in accordance with § 433.316, ends.

(3) A credit on the Form HCFA–64 must be made whether or not the overpayment has been recovered by the State from the provider.

(b) *Effect of reporting collections and submitting reduced expenditure claims.* (1) The State is not required to refund the Federal share of an overpayment when the State reports a collection or submits an expenditure claim reduced by a discrete amount to recover an overpayment prior to the end of the 60-day period following discovery.

(2) The State is not required to report on the Form HCFA–64 any collections made on overpayment amounts for which the Federal share has been refunded previously.

(3) If a State has refunded the Federal share of an overpayment as required under this subpart and the State subsequently makes recovery by reducing future provider payments by a discrete amount, the State need not reflect that reduction in its claim for Federal financial participation.

(c) *Reclaiming overpayment amounts previously refunded to HCFA.* If the amount of an overpayment is adjusted downward after the agency has credited HCFA with the Federal share, the agency may reclaim the amount of the downward adjustment on the Form HCFA–64. Under this provision—

(1) Downward adjustment to an overpayment amount previously credited to HCFA is allowed only if it is properly based on the approved State plan, Federal law and regulations governing Medicaid, and the appeals resolution processes specified in State administrative policies and procedures.

(2) The 2-year filing limit for retroactive claims for Medicaid expenditures does not apply. A downward adjustment is not considered a retroactive claim but rather a reclaiming of costs previously claimed.

(d) *Expiration of 60-day recovery period.* If an overpayment has not been determined uncollectable in accordance with the requirements of § 433.316 at the end of the 60-day period following discovery of the overpayment, the agency must refund the Federal share of the overpayment to HCFA in accordance with the procedures specified in paragraph (a) of this section.

(e) *Court-approved discharge of bankruptcy.* If the State recovers any portion of an overpayment under a court-approved discharge of bankruptcy, the agency must refund to HCFA the Federal share of the overpayment amount collected on the next quarterly expenditure report that is due to HCFA for the period that includes the date on which the collection occurs.

(f) *Bankruptcy petition denied.* If a provider's petition for bankruptcy is denied in Federal court, the agency must credit HCFA with the Federal share of the overpayment on the later of—

(1) The Form HCFA–64 submission due to HCFA immediately following the date of the decision of the court; or

(2) The Form HCFA–64 submission for the quarter in which the 60-day period following discovery of the overpayment ends.

(g) *Reclaim of refunds.* (1) If a provider is determined bankrupt or out of business under this section after the 60-day period following discovery of the overpayment ends and the State has not been able to make complete recovery, the agency may reclaim the amount of the Federal share of any unrecovered overpayment amount previously refunded to HCFA. HCFA allows the reclaim of a refund by the agency if the agency submits to HCFA documentation that it has made reasonable efforts to obtain recovery.

(2) If the agency reclaims a refund of the Federal share of an overpayment—

(i) In bankruptcy cases, the agency must submit to HCFA a statement of its efforts to recover the overpayment during the period before the petition for bankruptcy was filed; and

(ii) In out-of-business cases, the agency must submit to HCFA a statement of its efforts to locate the provider and its assets and to recover the overpayment during any period before the provider is found to be out of business in accordance with § 433.318.

(h) *Supporting reports.* The agency must report the following information to support each Quarterly Statement of Expenditures Form HCFA–64:

(1) Amounts of overpayments not collected during the quarter but refunded because of the expiration of the 60-day period following discovery;

(2) Upward and downward adjustments to amounts credited in previous quarters;

(3) Amounts of overpayments collected under court-approved discharges of bankruptcy;

(4) Amounts of previously reported overpayments to providers certified as bankrupt or out of business during the quarter; and

(5) Amounts of overpayments previously credited and reclaimed by the State.

§ 433.322. Maintenance of records.

The Medicaid agency must maintain a separate record of all overpayment activities for each provider in a manner that satisfies the retention and access requirements of 45 CFR Part 74, Subpart D.

(Catalog of Federal Domestic Assistance Program No. 13.714—Medical Assistance Program)

Dated: October 6, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: November 9, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 89–2572 Filed 2–2–89; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6823]

List of Communities Eligible for the Sale of Flood Insurance; Maryland et al.

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities were required to adopt floodplain management measures compliant with the NFIP revised regulations that became effective on October 1, 1986. If the communities did not do so by the specified date, they would be suspended from participation in the NFIP. The communities are now in compliance. This rule withdraws the suspension. The communities' continued participation in the program authorizes the sale of flood insurance.

EFFECTIVE DATE: As shown in last column.

ADDRESS: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: P.O. Box 457, Lanham, Maryland 20706, Phone: (800) 638–7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646–2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding.

In addition, the Director of FEMA has identified the Special Flood Hazard Areas in these communities by publishing a Flood Insurance Rate Map. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the Special Flood Hazard Area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, FEMA, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities.

This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on these participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et. seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, the suspension for each listed community has been withdrawn. The entry reads as follows:

§ 64.6 List of eligible communities.

State and community name	County	Community No.	Effective date
Maryland:			
Unincorporated areas	Allegany	240001	Dec. 2, 1986. Suspension Withdrawn.
Annapolis, city of	Anne Arundel	240008	Do.
Baltimore, city of	Independent city	240057	Do.
Eldorado, town of	Dorchester	240105	Do.
Havre De Grace, city of	Harford	240043	Do.
Hurlock, town of	Dorchester	240112	Do.
Salisbury, city of	Wicomico	240080	Do.
West Virginia:			
Ansted, town of	Fayette	540027	Dec. 16, 1986.
Mt. Hope, city of	Fayette	540280	Do.
Oak Hill, city of	Fayette	540031	Do.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89–2529 Filed 2–2–89; 8:45 am]

BILLING CODE 6718-21-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

Refugee Resettlement Office

45 CFR Part 400

Refugee Resettlement Program; Refugee Cash Assistance; Requirements for Employability Services, Job Search, and Employment; Refugee Medical Assistance; and Refugee Social Services

AGENCY: Refugee Resettlement Office, Family Support Administration (FSA), HHS.

ACTION: Final Rule.

SUMMARY: This regulation sets forth requirements governing refugee cash assistance; employability services, job search, and employment on the part of recipients of refugee cash assistance (RCA); refugee medical assistance; and refugee social services.

A proposed rule was published in the **Federal Register** of January 30, 1986 (51 FR 3918). Substantial changes have been made in this final regulation after consideration of the written comments received and a consultation on the proposals.

This regulation completes the issuance of comprehensive regulations covering the basic operation of the State-administered Refugee Resettlement Program (RRP). It implements Chapter 2 of title IV of the Immigration and Nationality Act, added by section 311(a)(2) of the Refugee Act of 1980 (Pub. L. 96–212) and amended by the Refugee Assistance Amendments of 1982 (Pub. L. 97–363) and the Refugee Assistance Extension Act of 1986 (Pub. L. 99–605).

EFFECTIVE DATE: July 1, 1989.

ADDRESS: Office of Refugee Resettlement, Family Support Administration, Department of Health and Human Services, 370 L'Enfant Promenade, SW., Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: Philip A. Holman, (202) 252–4563.

SUPPLEMENTARY INFORMATION:

Background

The Refugee Act of 1980 amended the Immigration and Nationality Act to revise procedures for the admission of refugees and to establish a uniform base for the provision of assistance and services to refugees in the United States regardless of their country of origin. Previously, refugees in the U.S. had been aided under separate programs for (1) Cuban refugees, (2) Indochinese refugees, and (3) Soviet and other non-Cuban, non-Indochinese refugees. Those programs were regarded as temporary, and, therefore, the issuance of program instructions to the States through Action Transmittals, rather than regulations, was considered appropriate. With the enactment of comprehensive authority in 1980, the Department began the issuance of formal regulations at 45 CFR Part 400, the first of which was published on September 9, 1980 (45 FR

50323), covering State plan and reporting requirements. Subsequent regulations covered cash and medical assistance and Federal funding, published March 12, 1982 (47 FR 10841). Regulations covering grants to States, child welfare services (including services to unaccompanied minors), and Federal funding for State expenditures were published January 30, 1986 (51 FR 3904).

Regulatory Procedures

Under Executive Order 12291, we must judge whether a regulation is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. This regulation does not meet the definition of a "major" regulation contained in the Executive Order since it does not create new costs. To the contrary, the regulation is intended to reduce costs by aiding refugees in achieving earlier employment and self-support.

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 604(b)), the Secretary certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. The rule will indirectly affect small entities because some services funded in the RRP are provided by not-for-profit institutions under contract with the States. However, nothing in the rule imposes a significant burden on these small entities, and the rule therefore does not meet the threshold for regulatory flexibility analysis.

Sections 400.11, 400.55, 400.64, 400.79, 400.82, 400.94, and 400.147 of this rule contain collection-of-information requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980 and 5 CFR 1320.13, we submitted a copy of this rule to the Office of Management and Budget (OMB) for its review of the reporting and recordkeeping requirements.

Statutory Authority

Section 412(a)(9) of the Immigration and Nationality Act authorizes the Secretary of HHS to issue regulations needed to carry out the program.

Discussion of Changes

The Department received approximately 250 comments, signed by about 500 persons, on the proposed regulations. The commenters included State and local governments, national and local voluntary refugee resettlement agencies, refugee mutual assistance associations, State refugee advisory committees, refugee service providers, employers of refugees, and individual refugees.

On May 12, 1987, the Office of Refugee Resettlement held a consultation on the proposals, to which all persons who had provided written comments were invited. Approximately 50 commenters, principally State refugee coordinators, participated. The views and recommendations expressed in that consultation, as well as the written recommendations received previously, were taken into consideration in reaching the decisions reflected in this final regulation. Major changes have been made as a result of the comments.

The principal changes made in this final regulation, as compared with the proposed rule published January 30, 1986, are as follows:

1. The proposal (in § 400.11(b) of the proposed rule) that States submit administrative costs budgets as part of annual applications for grants for cash and medical assistance (CMA grants) and for social services has been eliminated from this final regulation.

In this section we have also revised the date by which a State submits its annual plan for social services from the proposed "45 days prior to the beginning of the [Federal] fiscal year" to "45 days prior to the beginning of the State's annual planning cycle for social services." This change provides a more realistic date and greater flexibility for the States. As part of this revision, ORR also plans to delete from its State estimate form (Form ORR–1) the projections currently required on social services.

2. The proposed requirement (in § 400.55(b)(3)) that States count in-kind assistance in the program of refugee cash assistance (RCA) has been modified to require a State to count in-kind assistance only if it counts in-kind assistance in its AFDC program.

3. We have deleted the proposals (§ 400.63) that would have required States (a) to combine into a single filing unit all RCA applicants and recipients who live in a single household and (b), in determining eligibility for and amount of RCA, to take into consideration the needs, resources, and income of all other persons living in the household. In lieu thereof, this final rule requires a State to prorate allowances for shelter, utilities, and similar needs among RCA recipients living in the same household if the State prorates such allowances in its AFDC program. (The regulation would not change the current policy of permitting a State to combine RCA recipients in the same household into a single filing unit, if the State so decides.)

4. The proposed rule (§ 400.64) that would have required monthly reporting by RCA recipients during their receipt of RCA has been revised to require monthly reporting only after an RCA recipient has been in the United States more than 6 months.

5. The proposed rule (§ 400.79(a)) would have required an employability plan to be developed for both applicants for and recipients of RCA. The final regulation requires this only for recipients of RCA.

6. The proposed rule (§ 400.80) would have required applicants for and recipients of RCA to carry out a continuing program of job search beginning at the time the refugee applied for RCA and comprising at least 20 hours of employer contacts per week. The final regulation makes several revisions: Job search will not be required for an RCA applicant; it will be required of an RCA recipient only after the recipient has been in the United States more than 6 months; it will be required to continue for 8 consecutive weeks; and the State will determine the amount of time (or employer contacts) required.

7. The proposal (§ 400.81(d)) which, with a few exceptions, would have prohibited the scheduling of services at times that would have interfered with the previously proposed job search requirements, has been deleted. This change, together with the revisions in the job search requirements, will provide States with the flexibility to develop the individual service and job search plans that can be most effective in enabling RCA recipients to be placed in jobs as soon as possible after their arrival in the United States.

8. Under the proposed rules (§ 400.82(b)(3)), failure or refusal of RCA recipients to meet requirements for participation in employability services, carrying out job search, and acceptance of job offers would have resulted in the application of sanctions to the entire household filing unit. In this final regulation, the sanctioning requirement (§ 400.82(b)(3)) has been changed to apply only to the individual RCA recipient who fails to meet requirements. With this change, the application of sanctions in RCA will be comparable to the sanctioning provisions in the basic AFDC program.

9. The proposed rule (§ 400.104) would have extended the medical assistance coverage of an RMA recipient who would otherwise become ineligible solely because of increased earnings from employment. The period of extension under the proposal would have been for 9 months or until the refugee reached the end of his or her period of time-eligibility for RMA, whichever occurred first. After consideration of the comments received and further analysis of the differences between this proposal and the AFDC policy from which it was derived (at section 402(a)(37) of the Social Security Act), we have decided to revise § 400.104 to continue the current RMA policy of providing for a 4-month extension of RMA (or as much of such extension as is within the RMA time-eligibility period) if the recipient loses RCA eligibility because of increased earnings from employment. This provision is more closely comparable to Medicaid regulations at 42 CFR 435.112. (See further discussion, below, in section on comments received, "Comments on Subpart G.")

10. The proposed rule (§ 400.146) would have continued the policy, which has been in effect during recent years, of requiring States to use at least 85 percent of their refugee social service funds for employability services. We have revised this policy to make it apply only to those States in which 55 percent or more of the State's population of "time-eligible" refugees is receiving cash assistance. "Time-eligible" refers to refugees whose cash assistance and medical assistance, if they were to qualify for such assistance, would be funded in whole or in part with Federal refugee funds. Under current funding, this population is refugees who have been in the U.S. less than 24 months. Fifty-five percent was selected because it has been approximately the national mean average dependency rate of time-eligible refugees during the last few years.

If a State is successful in reducing the dependency rate to less than 55 percent, this requirement will no longer apply.

11. The proposed rule (§ 400.147 (a)) would have required a State to use "an appropriate portion of [its social service] funds, based on population," to provide services to new and recently arrived refugees. We have revised the wording slightly to provide that such portion be "based on population and service needs, as determined by the State." This change is intended to make clear that the portion need not be based solely on numbers of persons and that it is the State which determines what the appropriate portion is.

12. The proposed rule (§ 400.147(c)) would have restricted the use of social service funds to refugees who have been in the U.S. less than 36 months, except for emergency services and for extreme and unusual needs that a State justified in its annual services plan. We have removed this proposed 36-month restriction.

13. The proposed rule (§ 400.156(a)) would have prohibited States from using their social service funds to provide orientation services to "familiarize refugees with Western culture or to provide basic local orientation since this responsibility rests with the resettlement agency which sponsors a refugee." We have removed this paragraph in order (a) to avoid the implication that additional specific types of orientation not covered by the resettlement agencies could not be provided and (b) to permit local orientation for refugees who have migrated from their initial resettlement site. A general prohibition on duplication of services remains in § 400.156(b) (numbered § 400.156(c) in the proposed rule).

Four additional changes have been made in this final regulation in order to reflect changes made by the Refugee Assistance Extension Act of 1986 (Pub. L. 99–605) which was enacted November 5, 1986:

1. Language has been included in § 400.75(a) of this final regulation to reflect the requirement added by section 9(a) of the 1986 Amendments that assistance be terminated if an RCA recipient: (a) Refuses an offer of employment which has been determined to be appropriate either by the resettlement agency responsible for the initial resettlement of the refugee or by the appropriate State or local employment service; (b) refuses to go to a job interview which has been arranged through such agency or service; or (c) refuses to participate in a social service or targeted assistance program which such agency or service determines to be available and appropriate.

2. Section 400.82(b)(1), referring to sanctions of RCA recipients who fail to meet requirements, has been revised to eliminate the requirement that the sanction begin "with the month in which such failure or refusal occurred." The 1986 Amendments removed this timing requirement, which had been added by the 1982 Amendments. We have also provided, in § 400.82(b)(3)(B)(iii) of this final regulation, for a conciliation period of up to 30 days before the imposition of a sanction; this conciliation provision follows procedures which are applicable to AFDC recipients and which were in effect in the refugee program prior to the 1982 Amendments.

3. Language has been included in § 400.146(a), regarding the percent of funds which a State whose dependency rate is over 55 percent must use for employability services, to reflect the following language added by section 6 of the 1986 Amendments: "(C) Any limitation which the Director establishes on the proportion of [social service] funds allocated to a State * * * that the State may use for purposes other than [employment-related services, English-as-a-second-language training (in nonwork hours where possible), and case-management services] * * * shall not apply if the Director receives a plan (established by or in consultation with local governments) and determines that the plan provides for the maximum appropriate provision of employment-related services for, and the maximum placement of, employable refugees consistent with performance standards established under section 106 of the Job Training Partnership Act." (This statutory provision is also reflected in ORR's notice of social service allocations for FY 1987 (52 FR 16283).)

4. In § 400.11(b)(2), we have changed the reference to an annual "application" for grants for refugee social services to an annual "plan" in order to reflect the use of the term "plan" in section 6 of the 1986 Amendments.

We have also made one technical change in the terminology used in these regulations: We have used the term "social services" rather than "support services," which was used in the proposed rule. "Social services" has continued to be the term used in the authorizing legislation for the refugee program, including the 1986 Amendments. It is also the term in general use in the refugee resettlement field.

Description of the Regulation

This regulation restates some current policies and modifies or augments others. The changes in policy which are made here have one central aim: To aid refugees in achieving earlier employment as a step toward self-support.

Throughout the Nation there is wide variation in the extent to which, and rapidity with which, refugees find employment. In some States, this occurs relatively quickly; in others, a substantial portion of the refugee population may spend its first 24 months in the United States—the period during which Federal refugee funding is currently provided to States for cash and medical assistance to refugees—receiving fully federally funded welfare assistance and, after the completion of that period, may continue on assistance, usually financed by a combination of Federal and State funds and sometimes by local funds as well.

Refugee dependency rates, as measured by the portion of the refugee population who had been in this country less than 31 months as of September 30, 1987 (the period of Federal refugee funding prior to the reduction to 24

months on February 1, 1988), and who were receiving cash assistance, ranged from a high of over 70 percent in three States to less than 20 percent in several other States. These wide differences among States do not appear to be fully explainable by differences in the employment situation in various States, or by differences in the scope and benefit levels of existing welfare programs, or by differences in the background, training, and work experience of the refugees themselves.

At the same time, there are substantial differences in the ways in which different States carry out the RRP. In some States, for example, refugee services (such as English language training) are widely available outside normal working hours, refugees are referred to job opportunities soon after their arrival in the U.S., become employed, and are able to continue their language or vocational training. In other States, refugee services tend to be available only during working hours, refugees are enrolled for services and training on a relatively long-term basis and are not required to seek employment, and referrals to job opportunities do not occur until much later.

This regulation attempts to address these problems by including more specific requirements for the way in which the RRP is to be carried out by States which have relatively high dependency rates, by allowing greater flexibility than current policy in States which have lower than average dependency rates, and by placing additional employment-related requirements on refugees who are receiving refugee cash assistance (RCA).

Thus a new Subpart F, Requirements for Employability Services, Job Search, and Employment, requires employable adult RCA recipients who have been in the U.S. more than 6 months to carry out an 8-week program of job search. At the same time, flexibility is provided to the States to determine the details of such a job search program so that each State can design the specific program which will be most effective in placing refugees in jobs.

A new Subpart I, Refugee Social Services, regroups the designation of social services to fit in with the requirements of Subpart F. It also removes most of the specific eligibility requirements for particular services (as currently set forth in Action Transmittals SSA–AT–79–33, August 24, 1979; ORR–AT–80–1, March 26 1980; and ORR–AT–80–2, April 28, 1980), simplifying the administration of the social service program for States and service providers.

Subpart I also provides greater flexibility than current policy for States with lower-than-average dependency rates by removing the current requirement (most recently contained in ORR's notice of FY 1987 social service allocations at 52 FR 18283, May 14, 1987) that 85 percent of their social service funds must be used for employment services, English language training, and case management—identified herein as "employability services."

Other changes which this regulation makes are described in the sections which follow on the several subparts.

Subpart A—Introduction

Section 400.2

Two changes are made in the list of definitions in § 400.2: A definition of "case management services" is inserted in the definitions in § 400.2, and these services are further addressed in §§ 400.154(j) and 400.155(g) of Subpart I. The definition of "refugee medical assistance" is updated to include references to the appropriate sections of Subpart G.

Subpart B—Grants to States for Refugee Resettlement

Sections 400.11 and 400.13

Section 400.11(a) is revised to conform with ORR's present policy, begun in fiscal year 1985, of issuing two types of basic grants to States for the operation of the State-administered refugee program: (1) CMA grants, covering funding for cash assistance, medical assistance, the program for refugee unaccompanied minors, and related State administrative costs; and (2) social services grants to fund the activities identified in Subpart I.

Section 400.11(b) is revised to require a State to submit an annual State social services plan. This requirement will help to assure that appropriate efforts and funds will be devoted to address the major Congressional intent of placing refugees on jobs as soon as possible after their arrival in the United States.

A new § 400.13 is added on cost allocation. This provision places in regulatory form the basic requirements of ORR's current cost-allocation guidelines which were issued after consultation with the States. A principal purpose of the guidelines is to assure that costs are correctly allocated between the RRP and other programs administered by the State and, within the RRP, among the CMA, social services, and any other RRP grants. Paragraph (c) of this section continues to permit certain overall management costs to be charged against the CMA grant. Paragraph (d) identifies the circumstances under which certain case management costs may be charged against the CMA grant, again reflecting current policy. Section 400.13 does not change the current guidelines, which continue in effect.

Subpart C—General Administration

Section 400.27

A new paragraph (c) is added to § 400.27, "Safeguarding and sharing of information," to clarify, that information concerning persons who have applied for or received assistance or services under the RRP may be released for any of the same purposes as are permissible under the AFDC program, as set forth in 45 CFR 205.50(a). Such purposes include: Any investigation, prosecution, or criminal or civil proceeding in connection with the administration of the program; any other Federal or federally assisted, needs-based assistance or service program; any audit or similar activity; and the location or apprehension of a fugitive felon.

Subpart E—Refugee Cash Assistance

Sections 400.50 through 400.64

Subpart E contains rules governing refugee cash assistance (RCA). The term "refugee cash assistance" refers specifically to cash assistance to needy refugees who do not meet all eligibility requirements for the programs of aid to families with dependent children (AFDC) and supplemental security income (SSI) for the aged, blind, and disabled. The provisions of this subpart do not govern the receipt of assistance by refugees who qualify for AFDC or SSI; they must meet the requirements of those programs which apply to refugees and nonrefugees alike.

Current regulations at 45 CFR 400.62 set forth the basic policies with respect to the provision of refugee cash assistance (RCA) and the extent and duration of Federal refugee program funding for RCA and other cash assistance programs for which refugees may qualify. These regulations do not change those rules.

A change in this subpart is the application of certain additional AFDC provisions to the RCA program (§ 400.64).

A. Recovery of Overpayments and Correction of Underpayments (Section 400.52)

Section 400.52 confirms current practice by applying AFDC rules when overpayments or underpayments occur.

B. Applications, Determinations of Eligibility, and Furnishing Assistance (Sections 400.55 through 400.57)

Under current policy, when a refugee applies for cash assistance a State must first determine his or her eligibility under other federally aided public assistance programs (i.e., AFDC, SSI, or—in Guam, Puerto Rico, and the Virgin Islands—old age assistance (OAA), aid to the blind (AB), aid to the aged, blind, and disabled (AABD), or aid to the permanently and totally disabled (APTD)).

If a refugee is eligible under one of the above programs, a State must provide assistance to that refugee under the appropriate program. If a refugee does not meet the categorical requirements of these other public assistance progams (i.e., family composition, the presence of children, age, disability, etc.), the State must determine eligibility for RCA.

In determining RCA eligibility, a State is required to contact an applicant's sponsor or the resettlement agency to determine the amount of assistance, if any, being provided to the refugee and to inquire whether the applicant has voluntarily quit employment or refused to accept an offer of employment within 30 consecutive days immediately prior to the date of application. This requirement ensures that States verify at the time of application that a refugee has not refused to accept an offer of employment within 30 days prior the date of application for assistance, in accordance with current policy contained in § 400.77(a).

Section 400.55(d) requires a State to distinguish clearly, in its notices to applicants and recipients, between RCA, AFDC, and GA. The purpose of this requirement is to assure that clients are appropriately informed of their eligibility or ineligibility and receive information sufficiently specific to enable them to exercise their right to appeal if they wish to do so.

Conditions of Eligibility for Refugee Cash Assistance (Sections 400.60 through 400.64)

Under current policy, refugees who are ineligible for AFDC, SSI, OAA, AB, AABD, or APTD, but who meet the AFDC need standard in their State of residence, after consideration of income and resources in accordance with 45 CFR 233.20(a) (3) through (11) (except that the two earned income disregards of $30 and of $30 plus one-third at § 233.20(a)(11)(ii)(B) are not applied), are eligible for refugee cash assistance if they have resided in the U.S. less than 18 months following their initial entry into this country. In determining financial eligibility, a State may not consider income and resources of refugee's sponsor which are not contributed to the refugee, or a refugee's resources which are not readily accessible to the refugee—e.g., resources in the refugee's country of origin. A State may not apply to applicants for or recipients of refugee cash assistance the rule under the AFDC-Unemployed Parents (AFDC–UP) program at 45 CFR 233.100(a)(1) that generally defines unemployment as employment less than 100 hours a month. Eligible refugees receive benefits and services at levels equivalent to those provided under the State's AFDC program. This regulation continues the current policy.

Section 400.60(a)(5) adds a requirement that a refugee provide the name of the resettlement agency which was responsible for his or her resettlement. This information is needed to enable the State to verify any assistance being provided and to determine whether the refugee has quit or refused employment, as required under § 400.55(b) (3) and (4). Section 400.60(a)(5) places on the refugee the responsibility for providing the name of the resettlement agency by making this a condition of eligibility. This requirement does not apply to asylees since persons granted asylum under section 208 of the Act usually do not have a sponsoring resettlement agency.

D. Proration of Shelter, Utilities, and Similar Needs (Section 400.63)

Section 400.63 requires a State to prorate allowances for shelter, utilities, and similar needs among RCA and AFDC filing units residing in the same household if it prorates such allowances in its AFDC program. This requirement will help to assure equal treatment between the RCA and AFDC programs in a State.

E. Other AFDC requirements applicable to refugee cash assistance (Section 400.64)

This section formalizes the applicability of certain additional AFDC requirements to the RCA program with respect to budgeting methods, determining eligibility, computing the assistance payment, recovering overpayments and correcting underpayments, and identifying and dealing with fraud.

This section also applies to RCA recipients who have been in the U.S. for at least 6 months and AFDC requirements regarding monthly reporting. Monthly reporting is especially applicable to caseloads in which changes in employment and income are likely to occur—such as the RCA caseload which excludes the aged, blind, and disabled who are covered under SSI and the one-parent families which are covered under AFDC. A State may also require monthly reporting by RCA recipients who have been in the U.S. less than 6 months, if it so decides.

Subpart F—Requirements for Employability Services, Job Search, and Employment

Refugees who apply for or receive refugee cash assistance (RCA) must meet the requirements in Subpart F of these rules. These rules are based on requirements of the Refugee Act, as amended. The rules in Subpart F apply to RCA applicants and recipients. Refugees who receive AFDC must meet the requirements of that program rather than Subpart F.

A. Arrangements for Employability Services (Section 400.72)

Section 400.72 of the regulation allows States to make certain arrangements with appropriate agencies to provide refugees with required employability services as defined in §400.71. It also formalizes a requirement that an agency providing employability services, in order to qualify to receive referrals of employable refugees by the State agency, must agree to advise the State agency whenever a refugee fails or refuses to participate in the required services or to accept an offer of employment.

B. Registration for Employment Services, Participation in Employability Service Programs, and Acceptance of Offers of Employment (Section 400.75)

Section 400.75 generally reflects section 412(e)(2)(A) of the Immigration and Nationality Act, which, except for good cause shown, conditions the receipt of cash assistance by an employable refugee on that refugee's registration with an agency offering employment services specifically designed to assist refugees in attaining economic self-sufficiency. If no such agency is available, the refugee must register with the State or local employment service. Section 412(e)(2)(A) of the Act also conditions receipt of cash assistance on the participation of employable refugees in available and appropriate social service and targeted assistance programs, funded under section 412(c) of the Act, which provide job or language training.

Section 400.75 clarifies the registration requirement by specifying that an "appropriate agency providing employment services" means (as defined in § 400.71) an agency whose services must include "an established program of job referral to, and job placement with, private employers" and

"must be determined acceptable by the State." Previous studies have shown that some referrals for employment services were being made to agencies whose services did not include job referral and placement.

This section also requires that an employable refugee participate in a program of job search, described subsequently in § 400.80.

These requirements are intended to encourage early employment.

C. Criteria for Exemption from Registration (Section 400.76)

Section 400.76 exempts certain individuals from registration for employment services and required social services because of age, full-time attendance at school or training, illness, incapacity, responsibility for the care of a child or another member of the household, or being in the third trimester of pregnancy. These exemptions, which are followed in current policy, are modeled after exemptions which apply to AFDC recipients.

Inability to communicate in English does *not* exempt a refugee from registration.

D. Effect of Nonparticipation in Services and of Quitting Employment (Section 400.77)

Under current policy, employable refugees may not, without good cause, within 30 consecutive days prior to the date of application, or at any time when receiving refugee cash assistance, have voluntarily quit employment or refused to accept an appropriate offer of employment services, training, or employment. Section 400.77 formalizes these requirements.

E. Service Requirements for Employed RCA Recipients (Section 400.78)

A recipient of refugee cash assistance who is employed less than 30 hours a week must accept appropriate part-time English language training or other employment-related training if available and determined appropriate by the State.

Under current policy, a State may encourage but not require part-time English or other employment-related training if a recipient is employed full time. Section 400.78(b) expands this policy to permit a State to require part-time training in this circumstance. We believe that providing this flexibility to a State is in keeping with the objective of full self-support since such training can aid a refugee who is partially supported by cash assistance to acquire additional skills which may lead to advancement, higher income, and full self-support.

Language has also been included to provide that employed recipients may not be required to accept services which interfere with their jobs.

F. Development of an Employability Plan (Section 400.79)

Section 400.79 formalizes current practice in the refugee program by requiring the State agency, or its designee, to develop an employability plan for each registrant if such a plan has not been developed by the resettlement agency.

Section 400.79 clarifies current practice by requiring that the employability plan be designed to lead to the earliest possible employment and contain a definite employment goal that would be attainable in the shortest possible time period consistent with a refugee's employability and the local job market. This requirement reflects the statutory intent, contained in section 412(a)(1)(B) of the Immigration and Nationality Act, that "employable refugees should be placed on jobs as soon as possible after their arrival in the United States".

Section 400.79 also imposes a new requirement, by providing that the employability plan must enable the individual to meet the job search requirements of § 400.80.

We believe that this focus is essential to promoting early employment. Information has shown that, under existing practices, employability plans are often constructed which defer job search and employment for all or nearly all of the period of potential eligibility for RCA.

G. Job Search Requirements (Section 400.80)

Although current policy emphasizes early employment and self-support and requires registration for employment services and acceptance of job offers, it does not contain specific requirements for a job search program to be carried out by RCA recipients.

Section 400.80 specifically requires an employable recipient of refugee cash assistance who has been in the U.S. more than 6 months to carry out an 8-week job search program. The specific requirements and procedures of the job search program—such as the amount of time or number of employer contacts per week—are left up to the States in order to provide each State with the flexibility to develop the most effective programs possible in order to achieve job placements and reduced dependency.

The requirement for job search is intended to reflect the primary emphasis of the resettlement program on early employment and, together with other requirements which RCA recipients must meet, to result in a focused program consisting of the services and activities necessary to achieve early job placement: Employability assessment and planning; employment services to provide the orientation, information, and guidance necessary for effective job search; referrals to employment opportunities; and contacts with potential employers.

H. Criteria for Appropriate Employability Services and Employment (Section 400.81)

Section 412(e)(2)(B) of the Act conditions receipt of refugee cash assistance (RCA), except for good cause shown, on a refugee's acceptance of appropriate offers of employment. Under current policy, criteria and standards adapted from regulations governing WIN (45 CFR 224.34), and referenced in § 400.81, are used by the State agency or its designee to determine if a particular job or training opportunity is appropriate. In order to allow greater flexibility, § 400.81(a) permits a State, if approved by the Director of ORR, to use comparable criteria applied in an alternate program for AFDC recipients.

Existing policy does not require an RCA recipient to accept a job if he or she is receiving training as part of an employability plan approved by the welfare agency. Section 400.81(c) changes current policy by requiring a refugee to accept an appropriate job offer even if it interrupts participation in a program of services except for a program in progress of on-the-job training, vocational training, or professional recertification.

I. Failure or Refusal To Carry Out Job Search or To Accept Employability Services or Employment (Sections 400.82 and 400.83)

Under current policy, if an employable recipient of cash assistance refuses to register for or to accept or continue an employment or training opportunity without good cause, the State agency must terminate assistance with the month of such refusal. This sanction remains in effect for 3 payment months in the first instance, and for 6 payment months in any subsequent instance. Current policy also includes a provision for hearings, as contained in § 400.83.

Under existing policy for RCA, as in the basic AFDC program, only the individual who fails to meet the employment and service requirements is sanctioned. That policy is continued under these regulations. However, the inclusion of failure or refusal to carry out job search as a basis for sanction is a change from current policy, reflecting the addition of job search requirements by § 400.80. Failure to go to a job interview is also newly identified as a basis for sanction, reflecting a requirement added at section 412(e)(2)(C)(ii) of the Immigration and Nationality Act by the Refugee Assistance Extension Act of 1986.

Subpart G—Refugee Medical Assistance

A State must provide a program of refugee medical assistance (RMA) in accordance with the rules in Subpart G.

A. Applications, Determinations of Eligibility, and Furnishing Assistance (Sections 400.93 and 400.94)

Under current policy, a State must first determine the eligibility of each applicant for Medicaid under its State plan, complying with regulations governing applications, determinations of eligibility, and furnishing Medicaid under 42 CFR Part 435, Subpart J (in the States and the District of Columbia), and 42 CFR Part 436, Subpart J (in Guam, Puerto Rico, and the Virgin Islands). A State with a medically needy program under 42 CFR Part 435, Subpart D, must also determine a refugee's eligibility under that program.

A State must provide Medicaid to eligible refugees. If a refugee is determined ineligible for Medicaid, the State must determine eligibility for refugee medical assistance (RMA).

As set forth in the definition under § 400.2 of this part, the term "refugee medical assistance" (RMA) refers specifically to medical assistance to refugees who do not meet all eligibility requirements for Medicaid, to services provided under § 400.106 to refugees who are eligible either for RMA or for Medicaid, and to services provided under § 400.107.

Section 400.93(d) requires a State to distinguish clearly, in its notices to applicants for and recipients of medical assistance, between RMA and Medicaid. This is parallel to the notice requirement concerning cash assistance at § 400.55(d).

B. Conditions of Eligibility for Refugee Medical Assistance (Sections 400.100 through 400.104)

Under current policy, a State must determine eligibility for refugee medical assistance of refugees who are ineligible for Medicaid. Recipients of refugee cash assistance (RCA) are eligible for refugee medical assistance (RMA). Also, refugees who meet the eligibility requirements for but are not receiving refugee cash assistance are eligible for refugee medical assistance, and States may not require them to actually receive or apply for refugee cash assistance as a condition of eligibility for refugee medical assistance. Medicaid categorical eligibility requirements (family composition, age, disability, or blindness) are not applied to applicants for refugee medical assistance.

In States with Medicaid medically needy programs, to determine financial eligibility for refugee medical assistance a State must use the State's medically needy financial eligibility standards under Medicaid regulations at 42 CFR Part 435, Subpart I, and regulations governing the determination of income eligibility in 42 CFR 435.831, in accordance with the State's approved title XIX State Medicaid plan.

In States without medically needy programs, to determine financial eligibility for refugee medical assistance a State must use the State's AFDC need standard established under 45 CFR 233.20(a)(2) and regulations governing consideration of income and resources under the AFDC program in 45 CFR 233.20(a)(3) through (11) except that the two earned income disregards of $30 and of $30 and one-third do not apply. In addition, under § 400.103 of this regulation, if an applicant for refugee medical assistance in a State without a medically needy program does not meet the State's AFDC need standard, the State must allow the applicant to "spend down" to the AFDC need standard using methods for deducting incurred medical expenses in 42 CFR 435.831(c). This means that an applicant with income in excess of the AFDC need standard may deduct from his or her countable income certain incurred medical expenses, thereby lowering the amount of countable income to the AFDC need standard and potentially qualifying the applicant for refugee medical assistance.

Section 400.100(a)(4) has been included to make clear that a State may not determine a refugee to be eligible for medical assistance if the eligibility of the refugee for cash assistance has been terminated because of failure or refusal to meet the requirements of subpart F. We do not believe it would be appropriate to continue RMA eligibility if RCA eligibility has been terminated because of failure or refusal to carry out employment-related requirements.

Section 400.104 extends the medical assistance eligibility of an RMA recipient who would otherwise become ineligible solely because of increased earnings from employment. The period of extension, which is based on a provision applicable to the Medicare program, is for 4 months or until the refugee reaches the end of his or her period of time-eligibility for RMA, whichever occurs first.

C. Scope of Medical Services (Sections 400.105 through 400.107)

A State must provide refugees eligible for refugee medical assistance at least the same services in the same manner and to the same extent as are provided under the State's Medicaid program. If refugees need medical services which are beyond the scope of the State's Medicaid program but which are available to destitute U.S. citizens in the State through public facilities, such as county hospitals, the State agency may provide such services to eligible refugees through public facilities in order to avoid refugees becoming a burden on publicly funded local facilities.

Section 400.107 clarifies current policy with respect to health assessments of newly arrived refugees by specifically permitting such assessments as part of the scope of services of the RMA program if they are provided in accordance with requirements established by, and with the approval of, the Director. If such an assessment is done during a refugee's first 90 days in the United States, it can be provided as part of the RMA program without prior determination of the refugee's eligibility for RMA or Medicaid and without regard to whether the refugee is subsequently determined eligible for either RMA or Medicaid.

Subpart I—Refugee Social Services

A State must provide refugee social services in accordance with the rules in subpart I.

A. Applications, Determinations of Eligibility, and Provision of Services; Funding and Service Priorities; and Purchase of Services (Sections 400.145 through 400.148)

Under current practices, States follow procedures established for their social service programs under title XX of the Social Security Act with respect to providing refugees with the opportunity to apply for services, determining eligibility, and providing services. States currently purchase services for refugees from public and private service providers or provide services directly. The rule does not change these current practices.

Section 412(a)(6)(B) of the Immigration and Nationality Act authorizes the Director to develop, and require States to meet, "Standards, goals, and priorities * * * which assure the effective resettlement of refugees and which promote their economic self-sufficiency as quickly as possible and the efficent provision of services." Under this authority, the Director

previously established as a priority "the provision of English language training and employment services" (§ 400.1(c) of the existing regulations, unchanged in this rule). In addition, section 412(a)(6)(A)(ii) of the Act requires that plans submitted by States contain "a description of how the State will insure that language training and employment services are made available to refugees receiving cash assistance" (reflected in § 400.5(c) of the existing regulations).

In light of the intent of the Act, the number of refugees dependent on cash assistance, and the limited funds available for training and services, §§ 400.146 and 400.147 establish funding and service priorities.

Section 400.146 represents a change in current policy. Previously, States were required to use at least 85 percent of their social service grants to provide employability services (now specified by § 400.154) and not more than 15 percent to provide other services (now specified by § 400.155) unless the Director of ORR waived this requirement.

This policy has been established in a statement of program goals, priorities, and standards issued to States—first in August 1982 and with revisions in March 1984—the Director set as objectives that 85 percent of ORR social service funds be targeted for employment services and English language training and that services be focused on the earliest possible movement of refugees from cash assistance to self-support. Subsequently, this was established as a requirement, after consideration of public comments, by notices in the **Federal Register** regarding the annual allocations of social service funds (first at 50 FR 6194, February 28, 1985, and most recently at 52 FR 18283, May 14, 1987) after consideration of public comments.

As a result of comments on the proposed rule published January 30, 1986, we have revised this requirement in order to provide greater flexibility to States which have lower-than-average cash assistance dependency rates. As revised, the 85-percent requirement applies only to States whose cash assistance dependency rate, as described elsewhere in this preamble and in the regulation, exceeds 55 percent. This is approximately the national mean average dependency rate experienced in recent years.

Section 400.147 also makes revisions in current policy:

Section 400.147(a) requires that a State's social service program use an appropriate portion of funds to provide services to newly arriving and recently arrived refugees, based on population and service needs, as determined by the State. This is intended to avoid a situation, which has sometimes occurred, in which employment-directed services are concentrated on refugees around the time that their time-eligibility for RCA or for fully federally funded AFDC or Medicaid expires rather than at or near the time of their arrival.

Section 400.147(b) requires a state, in providing employability services, to give priority to refugees who are receiving cash assistance which is funded in whole or in part with Federal refugee funds. This emphasis is important to achieving early employment and reducing both Federal assistance costs and State/local assistance costs that occur after the period of full Federal funding has terminated if employment has not previously been attained.

Section 400.147(c) required that if a State intends to provide services to refugees who have been in the U.S. more than 36 months, the State must specify and justify the portion proposed to be used to meet the needs of these refugees as part of its annual social services plan under § 400.11(b)(2).

B. Conditions of Eligibility for Refugee Social Services (Sections 400.150 through 400.152)

Under existing policy, a refugee who meets immigration status and documentation requirements may receive any social service permissible under a State's title XX program. In addition, certain specific services are identified as "refugee social services" and may be provided in accordance with eligibility criteria based on receipt of cash assistance, family income, age, and employment status. The existing criteria are as follows:

—The following refugee social services may be provided to refugees who are 16 years of age or older and who are not full-time students in elementary or secondary school, without regard to other criteria: English language training; career counseling; job orientation; and job placement and followup.
—In addition to the age/nonstudent criterion previously stated, refugees who are unemployed or receiving cash assistance may receive the following services: Employability assessment; development of an individual employability plan.
—In addition to the age/nonstudent criterion previously stated, refugees who are within the family income limit (not more than 90 percent of a State's median family income) or receiving cash assistance (but not necessarily unemployed) may receive the following services: Job development; vocational training; and skills recertification.
—To receive the following services, refugees must be within the family income limit or receiving cash assistance (but other criteria do not apply): Day care; transportation; and translation/interpreter services.
—The following services may be provided to refugees without regard to any of the above eligibility criteria: Outreach; social adjustment.

Under the present rule, employability services § 400.154 continue to be limited to persons 16 years of age or older who are not full-time students in elementary or secondary school, except that employment services could be provided to enable a student to obtain part-time or summer work or full-time permanent employment upon completion of schooling. In addition, title XX social services provided under § 400.155(b) are subject to whatever limitations apply under a State's title XX program.

The requirements for all other specific eligibility limitations are removed (i.e., receipt of cash assistance, unemployment, and income limitations). We believe that this change will improve the focus of social services and at the same time provide greater flexibility to, and less complexity for, States in designing and implementing their programs in order to achieve the most effective outcomes in terms of increased employment and reduced dependency.

For States which have higher-than-average dependency rates, this change—when combined with the requirements that 85 percent of social service funds be used for employability services, that an appropriate portion be used for newly arriving and recently arrived refugees, that priority be given to cash assistance recipients, and that States specify and justify any funds intended to meet the needs of refugees who have been in the U.S. longer than 36 months—can improve the focus of social services while at the same time offering greater flexibility and less complexity in serving high-priority refugees.

C. Scope of Refugee Social Services (Sections 400.154 and 400.155)

Under current policy, refugees may receive any service which is permissible under a State's title XX program. In addition, refugees may receive any of a specified list of refugee social services which a State may provide regardless of whether these services are included in the State's title XX program.

Under this rule, the scope of allowable services remains unchanged from current policy. In addition, "case management services" has been added to the list, recognizing an already allowable service not previously specifically identified.

However, the allowable services have been regrouped and in some instances slightly redefined in accordance with the employment objective of the program: Section 400.154, "Employability services," identifies and defines those services directed toward refugee employment, for which 85 percent of social service funds must be used in a State whose dependency rate exceeds 55 percent. Section 400.155, "Other services," identifies and defines those services not necessarily specifically directed toward employment.

D. Limitations and Restrictions (Section 400.156)

Under current guidance, States have been instructed to avoid duplication of services and to provide English language training generally outside normal working hours. Section 400.156 formalizes the existing guidance.

Section 400.156(a) formalizes the requirement that English language instruction be provided to the fullest extent feasible outside normal working hours and applies the same requirement to vocational training. This will be beneficial to refugees in becoming employed and continuing their training.

Under existing practices, many training courses are offered during daytime hours, making it difficult for refugees to accept employment without having to terminate their participation in English or other training. Resettlement workers have frequently cited this as a basic problem. In addition, in the Refugee Assistance Amendments of 1982, Congress made clear its intent that English language training should be provided "in nonwork hours where possible" and that "employable refugees should be placed on jobs as soon as possible after their arrival in the United States" (section 412(a)(1) of the Act as amended by section 3(a) of the 1982 Amendments). This regulation helps to address these requirements.

Paragraph (b) of this section requires a State to take into account services which a resettlement agency is required to provide for a refugee and not to duplicate those services through its social service program.

Subpart J—Federal Funding

A new § 400.206 is added in Subpart J to cover funding for social services, and a new § 400.220 is added to clarify the calculation of refugee time-eligibility. Both of these sections reflect existing policy.

Discussion of Comments Received

As noted earlier, the Department received approximately 250 comments, signed by about 500 persons, on the proposed regulations. The views and recommendations expressed both in the written comments and in the consultation which ORR held on May 12, 1987, were taken into consideration in reaching the decisions reported below.

The major comments and our responses to them are as follows:

Comments on Subpart A—Introduction (Section 400.2)

Comment: Several commenters recommended expanding the definition of case management to emphasize the need for the case manager to be more proactive in helping refugees attain self-sufficiency.

Response: The definition of "case management" proposed in the regulation is identical to the one used in ORR's cost allocation guidelines. The guidelines went into effect in 1985 after thorough consultation with the States. We believe that the case management definition in the regulation permits case managers to promote the earliest possible employment of refugees—which is the major objective of the program—and have decided not to change this definition which has been working well in practice for the past 2 years.

Comments on Subpart B—Grants to States for Refugee Resettlement (Sections 400.11 and 400.13)

Comment: Several commenters objected to the requirement in § 400.11(b) that States include an administrative costs budget as part of an annual application for Federal refugee grants for cash and medical assistance and social services. Commenters cited the administrative burden involved.

Response: We have concluded that the burden would exceed the value of the information and have eliminated the requirement.

Comment: Regarding § 400.13, several commenters suggested that a number of elements which are contained in ORR's cost-allocation guidelines also be made part of the regulatory language. For example, several commenters asked that the reference in the guidelines to "core staff" be included in the regulation, and a few commenters requested clarification on the treatment of direct and indirect costs.

Response: The regulatory language establishes the basic framework for cost-allocation policies in the refugee program. The regulation is not intended to supplant the more extensive cost-allocation guidelines which have been in effect since 1985 and will continue to apply after the regulation goes into effect. We have added language in the preamble to indicate more clearly that the existing cost-allocation guidelines remain in effect, and we have also made some technical revisions in § 400.13(d) to make the wording conform more closely with that used in the guidelines.

Comments on Subpart E—Refugee Cash Assistance (Sections 400.50–400.64)

Comment: Several commenters disagreed with the proposal in § 400.56(b)(3) to require that in-kind assistance received by an applicant for or recipient of refugee cash assistance (RCA) be counted in determining RCA eligibility. Commenters cited the difficulties of determining in-kind contributions and their value. They also referred to the special initial needs of refugees when they arrive in the United States without resources and to the time-limited responsibilities of the voluntary refugee resettlement agencies under their cooperative agreements with the Department of State for initial reception and placement services.

Response: We have considered the points raised by the commenters—including the fact that the counting of in-kind income is permissible but not mandatory in the program of aid to families with dependent children (AFDC)—and have revised this proposal to require that the State count in-kind contributions only if it counts in-kind contributions in its AFDC program.

Comment: Proposed paragraphs (b)(3), (b)(4), and (c) of § 400.55 required that, in determining eligibility for RCA, the State must verify with the applicant's sponsor or resettlement agency the amount of financial assistance being provided to the refugee, must contact the sponsor or resettlement agency about whether the refugee has refused a job offer, and must notify the resettlement agency whenever a refugee applies for cash assistance. A few commenters objected to these provisions, with most recommending that the requirements be limited to a refugee's first 90 days—a resettlement agency's current period of responsibility under its agreement with the Department of State.

Response: These requirements reflect long-standing policies of the refugee program. In addition, the requirement of § 400.55(c)—that the State notify the resettlement agency (or its local affiliate) whenever a refugee applies for

assistance—reflects the language of the statute.

Although the current cooperative agreements of voluntary resettlement agencies with the Department of State provide for a 30-day period of providing food, clothing, and shelter and a 90-day period of other responsibilities, resettlement agencies and sponsors may go beyond these periods in assisting refugees. Also, under the voluntary agency matching-grant program, administered by ORR, the resettlement agency responsibility typically extends through at least the fourth month after a refugee's arrival in the U.S.

Given these facts, plus the limited duration of the RCA program itself—to which these requirements apply—we have concluded that it is appropriate to continue these long-standing policies.

Comment: Seven commenters objected to § 400.55(d) which requires that a State clearly distinguish in its notices to applicants and recipients as to which programs the refugee has been determined to be eligible or ineligible for. The commenters felt that such distinctions would be confusing to clients and would create an administrative burden for States.

Response: Some of the commenters felt that this requirement would be burdensome by requiring a revision of State application forms. We wish to clarify that the preamble to the proposed regulation was in error in referring to "requiring a State to distinguish clearly, in its applications and notices to recipients * * *." The provision does not refer to application forms, but only to notices to applicants and to recipients of determinations of eligibility and ineligibility. With this clarification, we believe the requirement will be seen as less burdensome. While we agree with the commenters that a refugee may find references to the various public assistance programs confusing, we believe that it is essential that applicants and recipients be provided with notices which clearly advise them what programs they have been determined eligible or ineligible for.

Comment: A large number of commenters, including a majority of States, objected to the proposal, contained in § 400.63, that eligibility for RCA and assistance under RCA be based on a household filing unit that took into account the needs, income, and resources of all persons living in the household. Commenters most often cited the following reasons: The frequently changing composition of refugee households with the arrival of new refugees from overseas and the moving of recent refugees from temporary to more permanent accommodations; the possibility that the provision would discourage sponsorship by making sponsors responsible for all aid to sponsored refugees while living in the sponsors' household; the difficulty or impossibility of obtaining income and resource information from unrelated nonapplicants in the same household; problems of verifying household composition; and legal questions about imposing sanctions on persons who have no relationship of legal responsibility with the individual whose failure or refusal to meet requirements leads to sanctions.

Response: We have found several of the points raised by the commenters to be persuasive and have removed the proposal for use of a household filing unit. Instead, we have substituted a requirement that if a State prorates allowances for shelter, utilities, and similar needs in a household in its AFDC program, it must prorate such allowances in the same manner in its RCA program.

Comment: Section 400.64 proposed to apply certain AFDC requirements to the RCA program. Six commenters recommended that monthly reporting to the State welfare agency not be required of RCA recipients. One commenter recommended that it be optional with small States with low dependency rates; another commenter recommended that it apply only to those RCA cases in which changes in employment and income could be expected to occur; and one commenter supported the requirement.

Response: The RCA program is comprised of the types of cases that are not eligible for AFDC or for the program of supplemental security income (SSI) for the aged, blind, and disabled. Thus RCA consists of single adults, married couples without minor children, and two-parent families with minor children which do not qualify for AFDC either because they are in a State which does not have an AFDC-Unemployed Parent (AFDC–UP) program or because they do not meet all of the requirements for an existing AFDC–UP program. In general, RCA recipients are the most potentially employable of the types of refugee cases receiving cash assistance since they do not include one-parent families with minor children, who qualify for AFDC, or persons who qualify for SSI. We continue to believe, therefore, that monthly reporting is an important requirement for the RCA program.

At the same time, we recognize that monthly reporting creates an administrative workload for the State as well as a requirement that may be confusing to refugees during their initial period in the United States. Therefore we have revised this requirement to provide that monthly reporting not be required in the RCA program until a refugee has been in the United States for at least 6 months. Since refugees remain on RCA for only a short period of time in many States, this revision will mean that monthly reporting will not have to be required of many RCA recipients who are placed in jobs and go off assistance before the 6-month threshold is reached.

States may continue to require monthly reporting before the 6-month point is reached if they so decide.

Comments on Subpart F—Requirements for Employability Services, Job Search, and Employment (Sections 400.70–400.83)

Comment: Two commenters objected to the description of an "employability plan" in § 400.71 as "intended to result in the earliest possible employment of the refugee."

Response: We see this as reflecting the statement of Congressional intent in section 412(a)(1)(B) of the Immigration and Nationality Act that "It is the intent of Congress that in providing refugee assistance under this section * * * employable refugees should be placed on jobs as soon as possible after their arrival in the United States".

Comment: Several commenters objected to the provision in § 400.76(b) that would consider an RCA recipient to be employable even if he or she does not know English. A major concern expressed by commenters was the inability to carry out the proposed job search activities without a knowledge of English.

Response: The policy of not considering a person to be exempt from training and employment requirements because of lack of English has been in effect in the refugee program for more than a decade. However, the specific job search requirements that were proposed were new. After considering these and other comments related to job search, we have made major changes in the job search requirements (described below with reference to § 400.80) which we believe help to address the concerns expressed by these commenters.

At the same time, we have decided not to change the long-standing policy of the refugee program, expressed in § 400.76(b), of considering a refugee to be employable even if he or she does not know English. Many refugees have been successful in obtaining employment with little or no knowledge of English, an initial step toward self-support in the United States.

Comment: A few commenters pointed to difficulties in implementing a proposed requirement in § 400.79(a) that employability plans be developed for applicants for—as distinguished from recipients of—RCA. The commenters noted that an applicant might be found ineligible for RCA.

Response: We concur and have revised the requirement to apply only to recipients.

Comment: Seven commenters noted an error in § 400.79(b) of the proposal in referring to a requirement that voluntary resettlement agencies develop employability plans, a requirement that was contained in proposed legislation but not enacted at the time the proposed rules were published.

Response: We have revised § 400.79(b) to state that if an individual employability plan has been developed by a resettlement agency, the State agency may accept it if it determines it to be appropriate. Section 412(b)(7)(D) of the Immigration and Nationality Act, referred to in the proposed rule, was subsequently enacted as part of the Refugee Assistance Extension Act of 1986 and, in part, calls for the resettlement agency "to develop and implement a resettlement plan including the early employment of each refugee resettled and to monitor the implementation of such plan."

Comment: Section 400.80 of the proposal would have required RCA applicants and recipients to carry out a continuing job search of at least 20 hours of employer contacts per week. Only a few services, directly related to employment, could be counted toward meeting the job search requirements under the proposal.

This proposal was objected to by nearly all commenters, including a majority of States. The major objections were that many new refugees are not ready to begin job search upon arrival in the U.S.; that job placements are currently being made in a more effective manner than the proposed job search requirement would yield; that in smaller communities with limited job opportunities the effect of continuous job search would be a burden on employers and would not result in increased placements; that the proposal was too prescriptive to permit adaptation to the needs of individual refugees; and, in general, that the proposal would create a major administrative burden on States. The major recommendation by the commenters was that each State be allowed to determine how best to design and implement a program of job search.

Response: In response to the comments, we have made major changes in the job search proposal by not requiring RCA recipients to carry out job search until they have been in the U.S. 6 months (while still allowing a State to require job search sooner), by shortening the mandatory period of job search to 8 weeks (rather than the continuing job search originally proposed), and by allowing each State to determine the amount of time which the recipient must devote to job search each week or the number of employer contacts which the recipient must make per week and the procedures the State will follow to assure fulfillment of its job search requirements.

The 8-week mandatory period of job search does not preclude a State from requiring job search at other times.

Comment: A number of commenters recommended that changes be made in § 400.81(c) of the proposed regulations which would have required that an appropriate job offer be accepted even if it interrupted a service program unless the services were being provided on evenings or weekends. The objections centered around the evenings and weekends requirement but also reflected a view that at least some types of training should not be interrupted.

Response: We have revised this provision to remove the reference to evenings and weekends and to specifically exempt on-the-job training and vocational training.

Comment: A few commenters recommended that the proposed requirement in § 400.82(a) for a 90-day deregistration of voluntary registrants for employability services be revised to allow the State to determine whether to apply a deregistration period.

Response: We concur and have revised the wording accordingly.

Comment: A few commenters recommended that we revise the procedures in § 400.82(b)(2) for sending notices of intended termination of RCA to follow AFDC procedures.

Response: We agree and have revised this paragraph to follow AFDC procedures.

Comments on Subpart G—Refugee Medical Assistance (Sections 400.90–400.107)

Comment: Several commenters disagreed with the proposal in § 400.100(a)(4) to remove an entire household filing unit from RMA if the filing unit was sanctioned because of failure to meet RCA requirements for services and employment. The most frequent recommendations were either to remove the RMA sanction or to apply it only to the RCA recipient who failed to meet requirements.

Response: We have revised the sanction so that it applies only to the individual who fails to meet requirements.

Comment: Several commenters indicated their support for § 400.104 of the proposal which would have provided up to 9 months of additional RMA coverage when RMA eligibility would otherwise have been terminated as a result of increased earnings from employment. A few commenters disagreed with the proposal, stating that the extension period should conform to the 4-month Medicaid extension (at 42 CFR 435.112) that results when AFDC is terminated because of increased earnings rather than the 9-month extension (at 45 CFR 233.20(a)(14)) that results from the termination of an AFDC income disregard since the $30 and one-third AFDC income disregards do not apply in the RCA program. The vast majority (nearly 80 percent) of the 250 comments received omitted any reference to the 9-month proposal.

Response: After consideration of the comments received and further analysis, the Department has concluded that the 9-month Medicaid extension that results from the loss of a disregard cannot appropriately be applied to RMA since the RCA/RMA program does not include the Medicaid disregards on which the extension is based. In addition, the 9-month extension, as proposed, would have extended RMA for all recipients whereas the 9-month Medicaid extension applies to only a small percentage of cases whose loss of eligibility is directly the result of the termination of a disregard. Therefore we have decided that it is more appropriate to continue in RMA the 4-month Medicaid extension that is related to increased earnings. We have not included the requirement (at 42 CFR 435.112(a)), applicable to the 4-month extension in the Medicaid program, that the recipient must have received cash assistance for at least 3 months out of the preceding 6-month period since this could serve as a disincentive to early employment of refugee cast assistance recipients. We consider it essential that eligibility for a 4-month extension of refugee medical assistance not be contingent on a refugee's having received refugee cash assistance for a longer, rather than shorter, period of time after arrival in the U.S.

Comments on Subpart I—Refugee Social Services (Sections 400.140–400.156)

Comment: A number of commenters objected to the proposals in §§ 400.146 and 400.147 to continue the current policy of generally requiring States to

use 85 percent of their refugee social service funds for employability services, to prescribe the amount of funds to be used for serving new and recently arrived refugees, and to restrict the use of social service funds to refugees who have been in the U.S. less than 36 months.

Commenters felt that the 85-percent requirement is inappropriate for States in which refugee use of cash assistance is relatively low and employment high and that ORR's existing policy for granting waivers is cumbersome. One recommendation was that the 85-percent requirement be retained only for States with above-average dependency rates.

With reference to the proposed 36-month limitation, the commenters felt that the proposal would prevent the provision of necessary services to refugees with longer term needs such as some Hmong refugees and refugee women who need services but may not be ready for them initially when principal attention is focused on the male head of household.

Response: In response to the comments, we have revised the 85-percent requirement (in § 400.148) so that it applies only to States whose cash assistance dependency rate of time-eligible refugees exceeds 85 percent—approximately the national mean average. (The national mean average is calculated by dividing the total number of time-eligible refugees receiving cash assistance by the total time-eligible refugee population of the U.S. and multiplying by 100.) We believe that, in these States, the importance of effective employment-related services for time-eligible refugees receiving cash assistance, for which 100 percent of the cost is being paid from Federal funds, is so great that available resources must be focused on this group in order to try to meet the statutory intent of early employment. When a State succeeds in reducing its dependency rate, these requirements will no longer apply.

We have removed the proposal which, with certain exceptions, would have prohibited the use of social service funds for refugees who have been in the U.S. more than 36 months (in § 400.147(c)). If a State intends to provide services to this population, the regulation requires that the State must specify and justify the portion of its social service funds proposed to be used to meet the needs of these refugees as part of its annual social services plan under § 400.11(b)(2).

With respect to the proposed priority on serving new and recently arrived refugees (in § 400.147(a)), we have revised the wording slightly to make clear that the State determines how to meet this need, taking into account both the size of this population and the estimated needs for services.

Comment: Several commenters objected to the prohibition on provision of orientation services which was contained in § 400.156(a) of the proposed regulations. The commenters said that the prohibition, which was intended to avoid duplication of the efforts of voluntary resettlement agencies, did not take into account the many specific types of local orientation needed which went beyond the responsibilities of the resettlement agencies or the needs of secondary migrants who have left their localities of initial resettlement and need orientation to their new communities.

Response: We have deleted the proposed paragraph since the question of duplication is more generally addressed in § 400.156(b) of this regulation (previously designated § 400.156(c) in the proposed rule).

Comment: Section 400.156(b) of the proposed rules required English language and vocational training to be provided to the fullest extent feasible outside normal working hours. Many commenters objected to this proposal, especially since it was combined with proposed provisions requiring the interruption of weekday services and the avoidance of conflict with a continuing program of job search. Commenters pointed to a number of problems with scheduling services at night—among them, the fear of refugees in some neighborhoods of going out at night, inability of refugees to provide for child care at night, and the inability of service providers to retain staff for night and weekend schedules. The recommendation of most commenters was to allow greater flexibility and permit hours which would allow the widest participation of new and recently arrived refugees.

Response: We have retained the working of the proposed § 400.156(b) (redesignated as § 400.156(a)). However, as discussed previously, we have made extensive changes in related provisions regarding job search and the noninterruption of certain services provided on weekdays. We believe that these changes provide the flexibility recommended by the commenters while retaining the concept that services be offered outside normal working hours in order to promote the early employment of refugees and to provide the opportunity for employed refugees to benefit from services they need and want.

List of Subjects in 45 CFR Part 400

Grant programs—Social programs, Health care, Public assistance programs, Refugees, Reporting and Record keeping requirements.

Dated: June 28, 1987.

Wayne A. Stanton,
Administrator, Family Support Administration.

Approved: June 6, 1988.

Otis R. Bowen,
Secretary of the Department of Health and Human Services.

Editorial Note: This document was received at the Office of the Federal Register on January 26, 1989.

45 CFR Part 400 is amended as follows:

1. The authority citation for Part 400 continues to read as follows:

Authority: Sec. 412(a)(6), Immigration and Nationality Act (8 U.S.C. 1522(a)(6)).

2. The table of contents is revised to read as follows:

PART 400—REFUGEE RESETTLEMENT PROGRAM

Subpart A—Introduction

Sec.
400.1 Basis and purpose of the program.
400.2 Definitions.
400.3 [Reserved]

Subpart B—Grants to States for Refugee Resettlement

The State Plan

400.4 Purpose of the plan.
400.5 Content of the plan.
400.6 [Reserved]
400.7 Submittal of the State plan and plan amendments for Governor's review.
400.8 Approval of State plans and plan amendments.
400.9 Administrative review of decisions on approval of State plans and plan amendments.
400.10 [Reserved]

Award of Grants to States

400.11 Award of grants to States.
400.12 Adverse determinations concerning State grants.
400.13 Cost allocation.

Subpart C—General Administration

400.20 [Reserved]
400.21 [Reserved]
400.22 Responsibility of the State agency.
400.23 Fair hearings.
400.24 [Reserved]
400.25 Residency requirements.
400.26 [Reserved]
400.27 Safeguarding and sharing of information.
400.28 Maintenance of records and reports.

Subpart D—Immigration Status and Identification of Refugees

400.40 Scope.
400.41 Definitions.

Documentation of Refugee Status

400.43 Requirements for documentation of refugee status.
400.44 Restriction.

Subpart E—Refugee Cash Assistance

400.50 Basis and scope.
400.51 Definitions.
400.52 Recovery of overpayments and correction of underpayments.

Applications, Determinations of Eligibility, and Furnishing Assistance

400.55 Opportunity to apply for cash assistance.
400.56 Determination of eligibility under other programs.
400.57 Emergency cash assistance to refugees.

Conditions of Eligibility for Refugee Cash Assistance

400.60 General eligibility requirements.
400.61 Consideration of income and resources.
400.62 Need standards and payment levels.
400.63 Proration of shelter, utilities, and similar needs.
400.64 Other AFDC requirements applicable to refugee cash assistance.

Subpart F—Requirements for Employability Services, Job Search, and Employment

400.70 Basis and scope.
400.71 Definitions.
400.72 Arrangements for employability services.

General Requirements

400.75 Registration for employment services, participation in employability service programs and targeted assistance programs, going to job interviews, and acceptance of appropriate offers of employment.
400.76 Criteria for exemption from registration for employment services, participation in employability service programs, and acceptance of appropriate offers of employment.
400.77 Effect of quitting employment or failing or refusing to participate in required services.
400.78 Service requirements for employed recipients or refugee cash assistance.
400.79 Development of an employability plan.

Job Search Requirements

400.80 Job search requirements.

Criteria for Appropriate Employability Services and Employment

400.81 Criteria for appropriate employability services and employment.

Failure or Refusal to Carry Out Job Search or to Accept Employability Services or Employment

400.82 Failure or refusal to carry out job search or to accept employability services or employment.
400.83 Hearings.

Subpart G—Refugee Medical Assistance

400.90 Basis and scope.
400.91 Definitions.

Applications, Determinations of Eligibility, and Furnishing Assistance

400.93 Opportunity to apply for medical assistance.
400.94 Determination of eligibility for Medicaid.

Conditions of Eligibility for Refugee Medical Assistance

400.100 General eligibility requirements.
400.101 Financial eligibility standards.
400.102 Consideration of income and resources.
400.103 Coverage of refugees who spend down to AFDC need standard.
400.104 Transitional coverage of recipients who receive increased earnings from employment.

Scope of Medical Services

400.105 Mandatory services.
400.106 Additional services.
400.107 Health assessments.

Subpart H—Child Welfare Services

400.110 Basis and scope.
400.111 Definitions.
400.112 Child welfare services for refugee children.
400.113 Duration of eligibility.
400.114 [Reserved]
400.115 Establishing legal responsibility.
400.116 Services for unaccompanied minors.
400.117 Provision of care and services.
400.118 Case planning.
400.119 Interstate movement.
400.120 Reporting requirements.

Subpart I—Refugee Social Services

400.140 Basis and scope.
400.141 Definitions.

Applications, Determinations of Eligibility, and Provision of Services

400.145 Opportunity to apply for services.

Funding and Service Priorities

400.146 Use of funds.
400.147 Priority in provision of services.

Purchase of Services

400.148 Purchase of services.

Conditions of Eligibility for Refugee Social Services

400.150 General eligibility requirements.
400.152 Limitations on eligibility for specific services.

Scope of Refugee Social Services

400.153 Title XX social services.
400.154 Employability services.
400.155 Other services.
400.156 Limitations and restrictions.

Subpart J—Federal Funding

400.200 Scope.

Federal Funding in Expenditures for Determining Eligibility and Providing Assistance and Services

400.202 Extent of Federal Funding.
400.203 Federal Funding for cash assistance.
400.204 Federal Funding for medical assistance.
400.205 Federal Funding for assistance and services for unaccompanied minors.
400.206 Federal Funding for social services.
400.207 Federal Funding for administrative costs.
400.208 Claims involving filing units which include both refugees and nonrefugees.
400.209 Claims involving filing units which include refugees who have been in the United States more than 36 months.
400.210 Time limit for filing of State claims.
400.220 Counting time-eligibility of refugees.

Subpart K—Waivers

400.300 Waivers.

§ 400.2 [Amended]

3. Section 400.2 is amended by alphabetically adding the definitions for the terms "case management services" and "time-eligibility" and by revising paragraph (b) of the definition of the term "Refugee medical assistance" to read as follows:

"Case management services" means the determination of which service(s) to refer to a refugee to, referral to such service(s), and tracking of the refugee's participation in such service(s).

* * * * *

"Refugee medical assistance" * * *
(b) services provided in accordance with §§ 400.106 and 400.107 of this part.

* * * * *

"Time-eligibility" means the period for which FF (Federal funding) is provided under §§ 400.203(a) and 400.204(a) of this part, after applying the limitation "[s]ubject to the availability of funds" in accordance with § 400.202.

* * * * *

4. Section 400.11 is amended by revising paragraphs (a) and (b)(1), by redesignating existing paragraph (b)(2) as (b)(3), and by adding a new paragraph (b)(2) to read as follows:

§ 400.11 [Amended]

(a) *Quarterly grants.* Subject to the availability of funds (and in accordance with the limitations of Subpart J of this part), ORR will make two types of quarterly grants to eligible States:

(1) *Grants for cash assistance, medical assistance, and related administrative costs ("CMA grants"),* for the following purposes: Cash assistance provided by a State or local public agency under the program of aid to families with dependent children

(AFDC) under part A of title IV of the Social Security Act, under the adult assistance programs (AABD, AB, APTD, or OAA) in the territories, or under section 412(e) of the Immigration and Nationality Act; foster care maintenance provided under part E of title IV of the Social Security Act; State supplementary payments under section 1616(a) of the Social Security Act or section 212 of the Pub. L. 93-66; medical assistance under title XIX of the Social Security Act or under section 412(e) of the Immigration and Nationality Act; assistance and services to unaccompanied minors under section 412(d)(2)(B) of the Immigration and Nationality Act; and cash or medical assistance provided under a public assistance program established under authority other than Federal law and under which such assistance is generally available to needy individuals or families in similar circumstances within the State; and

(2) *Grants for social services, as set forth in this part.* ORR will compute the amount of the quarterly awards based on documents submitted by the State agency in accordance with this section and such other pertinent facts as the Director may find necessary.

(b) *Form and manner of State application for grant award*—(1) *CMA grants.* For quarterly grants for cash assistance, medical assistance, and related administrative costs, including assistance and services to unaccompanied minors ("CMA grants"), a State must submit to the Director, or designee, yearly estimates for reimbursable costs for the fiscal year, identified by type of expense, and a justification statement in support of the estimates no later than 45 days prior to the beginning of the fiscal year on a form prescribed by the Director.

(2) *Grants for refugee social services.* For quarterly grants for refugee social services, a State must submit to the Director, or designee, an annual plan no later than 45 days prior to the beginning of the State's annual planning cycle for social services on a form prescribed by the Director.

* * * * *

5. A new § 400.13 is added in Subpart B, to read as follows:

§ 400.13 Cost allocation.

(a) A State must allocate costs, both direct and indirect, appropriately between the RRP and other programs which it administers.

(b) Within the RRP, a State must allocate costs appropriately among its CMA grant, social services grant, and any other RRP grants which it may receive, as prescribed by the Director.

(c) Certain administrative costs incurred for the overall management of the State's refugee program (e.g., development of the State plan, overall program coordination, and salary and travel costs of the State Refugee Coordinator), as identified by the Director, may be charged to the CMA grant. All other costs must be allocated among the CMA grant, social services grant, and any other RRP grants.

(d) Costs of case management services, as defined in § 400.2, may not be charged to the CMA grant except where all of the following criteria are met:

(1) The case management activities are targeted to time-eligible cash/medical assistance recipients and applicants for the purpose of assisting such recipients and applicants to obtain or retain employment;

(2) Such case management activities are provided under formal and functional linkages with the appropriate local welfare agency and employment service providers; and

(3) Such linkages include required reporting to the welfare agency when a refugee is offered a job, is placed in a job, or fails to participate in the required employability services.

Subpart C—General Administration

6. A new paragraph (c) is added to existing § 400.27, to read as follows:

§ 400.27 Safeguarding and sharing of information.

* * * * *

(c) The disclosure of information for any purpose set forth in § 205.50(a) of this title shall be considered undertaken for a purpose directly connected with, and necessary to, the administration of the program.

7. Subpart E is revised and new Subparts F, G, and I are added to read as follows:

Subpart E—Refugee Cash Assistance

§ 400.50 Basis and scope.

This subpart sets forth requirements concerning grants to States under section 412(e) of the Act for refugee cash assistance (RCA).

§ 400.51 Definitions.

For purposes of this subpart—

"Filing unit" means the individual or individuals whose needs are considered in determining eligibility for, and the amount of, an assistance payment for which FF [Federal funding] is claimed under this part.

"Household" means the individual or individuals living in a housing unit.

§ 400.53 Recovery of overpayments and correction of underpayments.

The State agency must comply with regulations at § 233.20(a)(13) of this title governing recovery of overpayments and correction of underpayments in the AFDC program.

Applications, Determinations of Eligibility, and Furnishing Assistance

§ 400.55 Opportunity to apply for cash assistance.

(a) A State must provide any individual wishing to do so, an opportunity to apply for cash assistance and must determine the eligibility of each applicant.

(b) In determining eligibility for cash assistance, the State must—

(1) Comply with regulations at Part 206 of this title governing applications, determinations of eligibility, and furnishing assistance under public assistance programs, as applicable to the AFDC program;

(2) Determine eligibility for other cash assistance programs in accordance with §400.56 of this part;

(3) Verify with the applicant's sponsor or the resettlement agency the amount of financial assistance which the sponsor or resettlement agency is actually providing to the applicant and count any such assistance, provided in cash and, if the State counts in-kind assistance in its AFDC program, in kind, in considering income and resources of applicants under §400.61 of this part; and

(4) Contact the applicant's sponsor or the resettlement agency concerning offers of employment and inquire whether the applicant has voluntarily quit employment or has refused to accept an offer of employment within 30 consecutive days immediately prior to the date of application, in accordance with §400.77(a) of this part.

(c) Notwithstanding any other provision of law, the State must notify promptly the agency (or local affiliate) which provided for the initial resettlement of a refugee whenever the refugee applies for cash assistance.

(d) In providing notice to an applicant or recipient to indicate that assistance has been authorized or that it has been denied or terminated, the State must specify the program(s) to which the notice applies, clearly distinguishing between refugee cash assistance and other programs such as AFDC and GA. For example, if a refugee applies for assistance, is determined ineligible for AFDC but eligible for refugee cash assistance, the notice to the applicant must specify clearly the determinations with respect both to AFDC and to refugee cash assistance. Similarly, if a recipient of refugee cash assistance is notified of termination because of reaching the time limit on such assistance, and the State reviews the case file to determine possible eligibility for AFDC or GA, the notice to the recipient must indicate the result of that determination as well as the termination of refugee cash assistance.

§ 400.56 Determination of eligibility under other programs.

(a) *AFDC.* (1) The State must determine eligibility under the AFDC program for refugees who apply for cash assistance.

(2) A State must provide cash assistance under the AFDC program to all refugees who apply for and are eligible under that program.

(3) If the appropriate State agency determines that the refugee applicant is not eligible for cash assistance under the AFDC program, the State must determine eligibility for refugee cash assistance in accordance with §400.60.

(b) *Cash assistance to the aged, blind, and disabled*—(1) *SSI.* (i) The State agency must refer refugees who are 65 years of age or older, or who are blind or disabled, promptly to the Social Security Administration, HHS, to apply for cash assistance under the SSI program.

(ii) If the State agency determines that a refugee who is 65 years of age or older, or blind or disabled, is eligible for refugee cash assistance, it must furnish such assistance until eligibility for cash assistance under the SSI program is determined, provided the conditions of eligibility for refugee cash assistance continue to be met.

(2) *OAA, AB, APTD, or AABD.* In Guam, Puerto Rico, and the Virgin Islands—(i) Eligibility for cash assistance under the OAA, AB, APTD, or AABD program must be determined for refugees who are 65 years or older, or who are blind or disabled; and

(ii) If a refugee who is 65 years of age or older, or blind or disabled, is determined to be eligible for refugee cash assistance, such assistance must be furnished until eligibility for cash assistance under the OAA, AB, APTD, or AABD program is determined, provided the conditions of eligibility for refugee cash assistance continue to be met.

§ 400.57 Emergency cash assistance to refugees.

If the State agency determines that a refugee has an urgent need for cash assistance, it should process the application for cash assistance as quickly as possible and issue the initial payment to the refugee on an emergency basis.

Conditions of Eligibility for Refugee Cash Assistance

§ 400.60 General eligibility requirements.

(a) Eligibility for refugee cash assistance is limited to those who—

(1) Are ineligible for cash assistance under the AFDC, SSI, OAA, AB, APTD, and AABD programs but meet refugee cash assistance need standards;

(2) Meet immigration status and identification requirements in Subpart D of this part or are the dependent children of, and part of the same filing unit as, individuals who meet the requirements in Subpart D, subject to the limitation in § 400.208 of this part with respect to nonrefugee children;

(3) Meet eligibility requirements and conditions in this subpart;

(4) Meet the requirements contained in Subpart F of this part;

(5) Provide the name of the resettlement agency which resettled them; and

(6) Are not full-time students in institutions of higher education, as defined by the Director, except where such enrollment is approved by the State, or its designee, as part of an individual employability plan for a refugee under § 400.79 of this part.

(b) A refugee may be eligible for refugee cash assistance under this subpart during the 18-month period beginning with the first month the refugee entered the United States.

§ 400.61 Consideration of income and resources.

(a) In considering the income and resources of applicants for and recipients of refugee cash assistance, the State agency must apply the regulations at § 233.20(a)(3) through (11) of this title for considering income and resources of AFDC applicants, except that the State agency may not apply the earned income disregard of $30 plus one-third of the remainder of the earnings or the disregard of $30 set out in § 233.20(a)(11)(ii)(B) of this title.

(b) The State agency may not consider any resources remaining in the applicant's country of origin to be accessible to an applicant for or recipient of refugee cash assistance.

(c) The State agency may not consider a sponsor's income and resources to be accessible to a refugee solely because the person is serving as a sponsor.

§ 400.62 Need standards and payment levels.

(a) In determining need for refugee cash assistance, a State agency must use the State's AFDC need standards established under § 233.20(a)(1) and (2) of this title.

(b) In determining the amount of the refugee cash assistance payment to an eligible refugee who meets the standards in paragraph (a) of this section and applying the consideration of income and resources in § 400.61, a State must pay 100 percent of the payment level which would be appropriate for an eligible filing unit of the same size under the AFDC program.

§ 400.63 Proration of shelter, utilities, and similar needs.

If a State prorates allowances for shelter, utilities, and similar needs in its AFDC program under § 233.20(a)(5) of this title, it must prorate such allowances in the same manner in its refugee cash assistance programs.

§ 400.64 Other AFDC requirements applicable to refugee cash assistance.

In administering the program of refugee cash assistance, the State agency must also apply the following AFDC regulations in this title:

233.31 Budgeting methods for AFDC.
233.32 Payment and budget months (AFDC).
233.33 Determining eligibility prospectively for all payment months (AFDC).
233.34 Computing the assistance payment in the initial one or two months (AFDC).
233.35 Computing the assistance payment under retrospective budgeting after the initial one or two months (AFDC).
233.36 Monthly reporting (AFDC)—which shall apply to recipients of refugee cash assistance who have been in the United States more than 6 months.
233.37 How monthly reports are treated and what notices are required (AFDC).
235.110 Fraud.

Subpart F—Requirements for Employability Services, Job Search, and Employment

§ 400.70 Basis and scope.

This subpart sets forth requirements for applicants for and recipients of refugee cash assistance concerning registration for employment services, participation in social services or targeted assistance, and acceptance of appropriate employment under section 412(e)(2)(A) of the Act. A refugee who is an applicant for or recipient of refugee cash assistance must comply with the requirements in this subpart. (A refugee who is an applicant for or recipient of AFDC must meet the requirements of the AFDC program instead of the requirements in this subpart; a refugee who is an applicant for or recipient of

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GA must meet the requirements of the GA program instead of the requirements in this subpart.)

§ 400.71 Definitions.

For purposes of this subpart and Subpart I—

"Appropriate agency providing employment services" means an agency providing services specified under § 400.154(a) of this part which are specifically designed to assist refugees in becoming employed, which must include an established program of job referral to, and job placement with, private employers, and which must be determined acceptable by the State.

"Designee," when referring to the State agency's designee, means an agency designated by the State agency for the purpose of carrying out the requirements of § 400.72(a) of this subpart.

"Employability plan" means an individualized written plan for a refugee registered for employment services that sets forth a program of services intended to result in the earliest possible employment of the refugee.

"Employability services" means services, as specified in § 400.154 of this part, designed to enable an individual to obtain employment and to improve the employability or work skills of the individual.

"Employable" means not exempt from registration for employment services under § 400.76 of this part.

"Employment services" means the services specified in § 400.154(a) of this part.

"Registrant" means an individual who has registered for employment services under § 400.75 of this part.

§ 400.72 Arrangements for employability services.

(a) The State agency must make such arrangements as are necessary to enable refugees to meet the requirements of, and receive the employability services specified in, this subpart.

(b) If a State agency makes such arrangements with another agency or agencies, it must retain responsibility for meeting the requirements in this subpart.

(c) In order for an agency to qualify to receive referrals from the State agency of refugees required to register for employability services, such agency must agree to advise the State agency whenever such a refugee fails or refuses to participate in the required services or to accept an offer of employment.

General Requirements

§ 400.75 Registration for employment services, participation in employability service programs and targeted assistance programs, going to job interviews, and acceptance of appropriate offers of employment.

(a) As a condition for receipt of refugee cash assistance, a refugee who is not exempt under § 400.76 of this subpart must, except for good cause shown—

(1) Register with an "appropriate agency providing employment services," as defined in § 400.71, and participate in the employment services provided by such agency, as defined in § 400.154(a) of this part.

(2) Carry out job search, as provided for in § 400.80.

(3) Go to a job interview which is arranged by the State agency or its designee.

(4) Accept at any time, from any source, an offer of employment, as determined to be appropriate by the State agency or its designee.

(5) Participate in any employability service program which provides job or language training in the area in which the refugee resides, which is funded under section 412(c) of the Act, and which is determined to be available and appropriate for that refugee; or if such a program funded under section 412(c) is not available or appropriate in the area in which the refugee resides, any other available and appropriate program in such area.

(6) Participate in any targeted assistance program in the area in which the refugee resides, which is funded under section 412(c) of the Act, and which is determined to be available and appropriate for that refugee.

(7)(i) Accept an offer of employment which is determined to be appropriate by the resettlement agency which was responsible for the initial resettlement of the refugee or by the appropriate State or local employment service;

(ii) Go to a job interview which is arranged through such agency or service; and

(iii) Participate in a social service or targeted assistance program which such agency or service determines to be available or appropriate.

(b) The State agency must permit, but may not require, the voluntary registration for employment services of an applicant or recipient who is exempt under § 400.76 of this part.

§ 400.76 Criteria for exemption from registration for employment services, participation in employability service programs, and acceptance of appropriate offers of employment.

(a) The State agency must consider an applicant for or recipient of refugee cash assistance to be employable and require him or her to meet the requirements of § 400.75(a) unless the applicant or recipient is—

(1) Under age 16.

(2) Under age 18 and a full-time student (as defined by the State for its AFDC program); or (if the State's AFDC program extends coverage to this group) age 18 and a full-time student in secondary school or in the equivalent level of vocational or technical training (as defined by the State for its AFDC program) and reasonably expected to complete the program before reaching age 19.

(3) Ill, when determined by the State agency on the basis of medical evidence or on another sound basis that the illness or injury is serious enough to temporarily prevent entry into employment or training.

(4) Incapacitated, when determined by a physician or licensed or certified psychologist and verified by the State agency, that a physical or mental impairment, by itself or in conjunction with age, prevents the individual from engaging in employment or training.

(5) 65 years of age or older.

(6) Caring for another member of the household who has a physical or mental impairment which requires, as determined by a physician or licensed or certified psychologist and verified by the State agency, care in the home on a substantially continuous basis, and no other appropriate member of the household is available.

(7) A parent or other caretaker relative of a child under age 6 who personally provides full-time care of the child with only very brief and infrequent absences from the child.

(8) Working at least 30 hours a week in unsubsidized employment expected to last a minimum of 30 days. This exemption continues to apply if there is a temporary break in full-time employment expected to last no longer than 10 workdays. Or

(9) Pregnant if it has been medically verified that the child is expected to be born in the month in which such registration would otherwise be required or within the next 3 months.

(b) Inability to communicate in English does not exempt a refugee from registration for employment services, participation in employability service programs, carrying out job search, and acceptance of appropriate offers of employment.

§ 400.77 Effect of quitting employment or failing or refusing to participate in required services.

(a) As a condition of eligibility for refugee cash assistance, an employable applicant may not, without good cause, within 30 consecutive calendar days immediately prior to the application for assistance (or such longer period required by § 400.82(b)(3)(ii), if applicable), have voluntarily quit employment or have refused to accept an offer of employment determined to be appropriate by the State agency or its designee, using criteria set forth in § 400.81.

(b) As a condition of continued receipt of refugee cash assistance, an employable recipient may not, without good cause, voluntarily quit employment or fail or refuse to meet the requirements of § 400.75(a).

§ 400.78 Service requirements for employed recipients of refugee cash assistance.

(a) As a condition of continued receipt of refugee cash assistance, a recipient who is not exempt under § 400.76 of this part and who is employed less than 30 hours a week must accept part-time employability services, as available and as determined to be appropriate, using criteria set forth in § 400.81 of this part, provided that such services must not interfere with the recipient's job.

(b) A State agency may, but is not required to, require part-time employability services if a recipient of refugee cash assistance is employed at least 30 hours a week, provided that such services must not interfere with the recipient's job.

§ 400.79 Development of an employability plan.

(a) An individual employability plan must be developed for each recipient of refugee cash assistance who is not exempt under § 400.76 of this part.

(b) If such a plan has been developed by the resettlement agency which sponsored the refugee, or its designee, the State agency, or its designee, may accept this plan if it determines that the plan is appropriate for the refugee and meets the requirements of this subpart.

(c) The employability plan must—

(1) Be designed to lead to the earliest possible employment and not be structured in such a way as to discourage or delay employment or job-seeking;

(2) Contain a definite employment goal, attainable in the shortest time period consistent with the employability of the refugee in relation to job openings in the area; and

(3) Enable the individual to meet the job search requirements of § 400.80 of this part.

Job Search Requirements

§ 400.80 Job search requirements.

(a) An employable recipient of refugee cash assistance must carry out a job search program beginning at any time required by the State. The State agency shall require such job search program to begin:

(1) No later than 6 months after the refugee entered the United States or

(2) At the time the refugee is determined eligible for refugee cash assistance if the refugee has completed at least 6 months in the United States at the time of such determination.

(b) Such job search program shall continue for at least 8 consecutive weeks and shall meet such requirements as the State agency determines appropriate, including the amount of time to be devoted to employer contacts per week or the number of employer contacts required per week.

(c) The State agency must determine and carry out the procedures it considers necessary to ensure that requirements for participation in job search are met.

Criteria for Appropriate Employability Services and Employment

§ 400.81 Criteria for appropriate employability services and employment.

The State agency or its designee must determine if employability services and employment are appropriate in accordance with the following criteria:

(a) The services or employment must meet the following criteria, or, if approved by the Director, the comparable criteria applied by the State in an alternative program for AFDC recipients:

(1) All assignments must be within the scope of the individual's employability plan. The plan may be modified to reflect changed services or employment conditions.

(2) The services or employment must be related to the capability of the individual to perform the task on a regular basis. Any claim of adverse effect on physical or mental health must be based on adequate medical testimony from a physician or licensed or certified psychologist indicating that participation would impair the individual's physical or mental health.

(3) The total daily commuting time to and from home to the service or employment site must not normally exceed 2 hours, not including the transporting of a child to and from a child care facility, unless a longer commuting distance or time is generally accepted in the community, in which case the round trip commuting time must not exceed the generally accepted community standards.

(4) When child care is required, the care must meet the standards normally required by the State in its work and training programs for AFDC recipients.

(5) The service or work site to which the individual is assigned must not be in violation of applicable Federal, State, or local health and safety standards.

(6) Assignments must not be made which are discriminatory in terms of age, sex, race, creed, color, or national origin.

(7) Appropriate work may be temporary, permanent, full-time, part-time, or seasonal work if such work meets the other standards of this section.

(8) The wage shall meet or exceed the Federal or State minimum wage law, whichever is applicable, or if such laws are not applicable, the wage shall not be substantially less favorable than the wage normally paid for similar work in that labor market.

(9) The daily hours of work and the weekly hours of work shall not exceed those customary to the occupation. And

(10) No individual may be required to accept employment if:

(i) The position offered is vacant due to a strike, lockout, or other bona fide labor dispute; or

(ii) The individual would be required to work for an employer contrary to the conditions of his existing membership in the union governing that occupation. However, employment not governed by the rules of a union in which he or she has membership may be deemed appropriate.

(11) In addition to meeting the other criteria of this paragraph, the quality of training must meet local employers' requirements so that the individual will be in a competitive position within the local labor market. The training must also be likely to lead to employment which will meet the appropriate work criteria.

(b) If an individual is a professional in need of professional refresher training and other recertification services in order to qualify to practice his or her profession in the United States, the training may consist of full-time attendance in a college or professional training program, provided that such training: Is approved as part of the individual's employability plan by the State agency, or its designee; does not exceed one year's duration (including

any time enrolled in such program in the United States prior to the refugee's application for assistance); is specifically intended to assist the professional in becoming relicensed in his or her profession; and, if completed, can realistically be expected to result in such relicensing.

(c) A job offered, if determined appropriate under the requirements of this subpart, is required to be accepted by the refugee without regard to whether such job would interrupt a program of services planned or in progress unless:

(1) The refugee is currently participating in a program *in progress* of on-the-job training (as described in § 400.154(c)) or vocational training (as described in § 400.154(e)) which meets the requirements of this part and which is being carried out as part of an approved employability plan; or

(2) The refugee is enrolled full-time in a professional recertification program which meets the requirements of paragraph (b) of this section.

Failure or Refusal To Carry Out Job Search or to Accept Employability Services or Employment

§ 400.82 Failure or refusal to carry out job search or to accept employability services or employment.

(a) *Voluntary registrant.* When a voluntary registrant—i.e., a recipient of refugee cash assistance who is exempt from registration under § 400.76 of this part—has failed or refused to participate in appropriate employability services, to carry out job search, or to accept an appropriate offer of employment, the State agency, or its designee, may deregister the individual for up to 90 days from the date of determination that such failure or refusal has occurred, but the individual's cash assistance may not be affected.

(b) *Mandatory registrant*—(1) *Termination of assistance.* When, without good cause, a mandatory registrant—i.e., an employable recipient of refugee cash assistance who is not exempt from registration under § 400.76 of this part—has failed or refused to meet the requirements of § 400.75(a) or has voluntarily quit a job, the State must terminate assistance, in accordance with paragraphs (b)(2) and (3) of this section.

(2) *Notice of intended termination.* (i) In cases of proposed action to terminate, discontinue, suspend, or reduce assistance, the State agency must give timely and adequate notice, following the same procedures as those used in its AFDC program under § 206.10(a)(7) of this title.

(ii) The written notice must include—

(A) An explanation of the reason for the action and the consequences of such failure or refusal; and

(B) Notice of the registrant's right to a hearing under § 400.83 of this part.

(3) *Sanctions.* (i) If the sanctioned individual is the only member of the filing unit, the assitance shall be terminated. If the filing unit includes other members, the State shall not take into account the sanctioned individual's needs in determining the filing unit's need for assistance.

(ii) The sanction applied in paragraph (b)(3)(i) of this section shall remain in effect for 3 payment months for the first such failure and 6 payment months for any subsequent such failure.

(iii) A conciliation period prior to the imposition of sanctions must be provided for in accordance with the following time-limitations: The conciliation effort shall begin as soon as possible, but no later than 10 days following the date of failure or refusal to participate, and may continue for a period not to exceed 30 days. Either the State or the recipient may terminate this period sooner when either believes that the dispute cannot be resolved by conciliation.

§ 400.83 Hearings.

The State must provide an applicant for or recipient of refugee cash assistance an opportunity for a hearing, using the same procedures and standards set forth in § 206.10(a) of this title, to contest a determination concerning employability, or failure or refusal to carry out job search or to accept an appropriate offer of employability services or employment, resulting in denial or termination of assistance.

Subpart G—Refugee Medical Assistance

§ 400.90 Basis and scope.

This subpart sets forth requirements concerning grants to States under section 412(e) of the Act for refugee medical assistance (RMA), as defined at § 400.2 of this part.

§ 400.91 Definitions.

For purposes of this subpart—

"Medically needy" means individuals who are eligible for medical assistance under a State's approved Medicaid State plan in accordance with section 1902(a)(10)(C) of the Social Security Act.

"Spend down" means to deduct from countable income incurred medical expenses, thereby lowering the amount of countable income to a level that meets financial eligibility requirements in accordance with 42 CFR 435.831 (or, as applicable to Guam, the Virgin Islands, and Puerto Rico, 42 CFR 436.831).

Applications, Determinations of Eligibility, and Furnishing Assistance

§ 400.93 Opportunity to apply for medical assistance.

(a) A State must provide any individual wishing to do so an opportunity to apply for medical assistance and must determine the eligibility of each applicant.

(b) In determining eligibility for medical assistance, the State agency must comply with regulations governing applications, determinations of eligibility, and furnishing Medicaid (including the opportunity for fair hearings) in the States and the District of Columbia under 42 CFR Part 435, Subpart J, and in Guam, Puerto Rico, and the Virgin Islands under 42 CFR Part 436, Subpart J, and 42 CFR Part 431 Subpart E.

(c) Notwithstanding any other provision of law, the State must notify promptly the agency (or local affiliate) which provided for the initial resettlement of a refugee whenever the refugee applies for medical assistance.

(d) In providing notice to an applicant or recipient to indicate that assistance has been authorized or that it has been denied or terminated, the State must specify the program(s) to which the notice applies, clearly distinguishing between refugee medical assistance and Medicaid. For example, if a refugee applies for assistance, is determined ineligible for Medicaid but eligible for refugee medical assistance, the notice must specify clearly the determinations with respect both to Medicaid and to refugee medical assistance.

§ 400.94 Determination of eligibility for Medicaid.

(a) The State must determine Medicaid eligibility under its Medicaid State plan for refugees who apply for medical assistance.

(b) A State that provides Medicaid to medically needy individuals in the State under its State plan must determine a refugee applicant's eligibility for Medicaid as medically needy.

(c) A State must provide medical assistance under the Medicaid program to all refugees eligible under its State plan.

(d) If the appropriate State agency determines that the refugee applicant is not eligible for Medicaid under its State plan, the State must determine the applicant's eligibility for refugee medical assistance.

Conditions of Eligibility for Refugee Medical Assistance

§ 400.100 General eligibility requirements.

(a) Eligibility for refugee medical assistance is limited to those refugees who—

(1) Are ineligible for Medicaid but meet the financial eligibility standards under § 400.101;

(2) Meet immigration status and identification requirements in Subpart D of this part or are the dependent children of, and part of the same filing unit as, individuals who meet the requirements in Subpart D, subject to the limitation in § 400.208 of this part with respect to nonrefugee children;

(3) Meet eligibility requirements and conditions in this subpart;

(4) Have not been denied, or terminated from, refugee cash assistance under § 400.82 of this part;

(5) Provide the name of the resettlement agency which resettled them; and

(6) Are not full-time students in institutions of higher education, as defined by the Director, except where such enrollment is approved by the State, or its designee, as part of an individual employability plan for a refugee under § 400.79 of this part or a plan for an unaccompanied minor in accordance with § 400.112.

(b) A refugee may be eligible for refugee medical assistance under this subpart during the 18-month period beginning with the first month the refugee entered the United States.

(c) The State agency may not require that a refugee actually receive or apply for refugee cash assistance as a condition of eligibility for refugee medical assistance.

(d) All recipients of refugee cash assistance are eligible for refugee medical assistance.

§ 400.101 Financial eligibility standards.

In determining eligibility for refugee medical assistance, the State agency must use—

(a) In States with medically needy programs under 42 CFR Part 435, Subpart D, the State's medically needy financial eligibility standards established under 42 CFR Part 435, Subpart I, and as reflected in the State's approved title XIX State Medicaid plan; and

(b) In States without a medically needy program, the State's AFDC need standards established under § 233.20(a)(2) of this title.

§ 400.102 Consideration of income and resources.

(a) Except as specified in paragraph (b) of this section, in considering financial eligibility of applicants for refugee medical assistance, the State agency must use—

(1) In States with medically needy programs, the standards governing determination of income eligibility in 42 CFR 435.831, and as reflected in the State's approved title XIX State Medicaid plan; and

(2) In States without medically needy programs, the standards governing consideration of income and resources of AFDC applicants in § 233.20(a) (3) through (11) of this title, except as specified in § 400.61(a) of this part.

(b) The State may not consider in-kind services and shelter provided to an applicant by a sponsor or resettlement agency in determining eligibility for and receipt of refugee medical assistance.

§ 400.103 Coverage of refugees who spend down to AFDC need standard.

In States without a medically needy program, if an applicant for refugee medical assistance does not meet the appropriate AFDC need standard, the State agency must allow that individual to spend down to the AFDC need standard using the methods for deducting incurred medical expenses set forth in 42 CFR 435.831(c).

§ 400.104 Transitional coverage of recipients who receive increased earnings from employment.

If a refugee who is receiving refugee medical assistance becomes ineligible solely by reason of increased earnings from employment, the refugee's medical assistance eligibility shall be extended by a period of four months or until the refugee reaches the end of his or her time-eligibility period for refugee medical assistance, in accordance with § 400.100(b), whichever comes first.

Scope of Medical Services

§ 400.105 Mandatory services.

In providing refugee medical assistance to refugees, a State must provide at least the same services in the same manner and to the same extent as under the State's Medicaid program, as delineated in 42 CFR Part 440.

§ 400.106 Additional services.

If a State or local jurisdiction provides additional medical services beyond the scope of the State's Medicaid program to destitute residents of the State or locality through public facilities, such as county hospitals, the State may provide to refugees who are determined eligible under §§ 400.94 or 400.100 of this part the same services through public facilities.

§ 400.107 Health assessments.

(a) As part of its refugee medical assistance program, a State may provide a health assessment to a refugee provided—

(1) The assessment is in accordance with requirements prescribed by the Director, or his or her designee; and

(2) Written approval for the assessment program or project has been provided to the State by the Director, or designee.

(b) If such assessment is done during the first 90 days after a refugee's initial date of entry into the United States, it may be provided without prior determination of the refugee's eligibility under §§ 400.94 or 400.100 of this part.

Subpart I—Refugee Social Services

§ 400.140 Basis and scope.

This subpart sets forth requirements concerning grants to States under section 412(c) of the Act for refugee social services.

§ 400.141 Definitions.

For purposes of this subpart—

"Refugee social services" means any title XX social service as defined below or any service set forth in §§ 400.154 or 400.155 of this subpart.

"Title XX social services" means any service which is permissible in the State under the State's annual pre-expenditure report under title XX of the Social Security Act.

Applications, Determinations of Eligibility, and Provision of Services

§ 400.145 Opportunity to apply for services.

(a) A State must provide any individual wishing to do so an opportunity to apply for services and determine the eligibility of each applicant.

(b) Except as otherwise specified in this subpart, a State must determine eligibility for and provide refugee social services specified in §§ 400.154 and 400.155 in accordance with the same procedures which it follows in its social service program under title XX of the Social Security Act with respect to determining eligibility, acting on applications and requests for services, and providing notification of right to a hearing.

Funding and Service Priorities

§ 400.146 Use of funds.

(a) If a State's dependency rate, as defined in paragraph (b) of this section, is 55 percent or more, as determined by the Director, the State must use at least 85 percent of its social service grants to

provide employability services as set forth in § 400.154 of this subpart. This limitation shall not apply if the annual social services plan which the Director receives from the State, in accordance with § 400.11(b)(2) of this part, was established by or in consultation with local governments, and the Director determines that the plan provides for the maximum appropriate provision of employability services for, and the maximum placement of, employable refugees consistent with performance standards established under section 106 of the Job Training Partnership Act.

(b) "Dependency rate" means the result of the following calculation:

(1) The number of refugees receiving cash assistance funded in whole or in part under this part,

(2) Divided by the Director's estimate of the State's population of refugees who have been in the United States less than the number of months for which funding for cash assistance is provided under this part, and

(3) Multiplied by 100.

§ 400.147 Priority in provision of services.

(a) A State must plan its social service program and allocate its social service funds in such a manner that an appropriate portion of funds, based on population and service needs, as determined by the State, is used to provide services to newly arriving refugees and to other refugees who have been in the United States less than one year. The portion proposed for such use must be specified and justified as part of the State's plan under § 400.11(b)(2) of Subpart B.

(b) In providing employability services, a State must give priority to a refugee who is receiving cash assistance which is funded, in whole or in part, under this part.

(c) If a State intends to provide services to refugees who have been in the United States for more than 36 months, the State must specify and justify, as part of its plan under § 400.11(b)(2) of Subpart B, the portion of service funds which it proposes to use to provide services to those refugees.

Purchase of Services

§ 400.148 Purchase of services.

A state may provide services directly or it may purchase services from public or private service providers.

Conditions of Eligibility for Refugee Social Services

§ 400.150 General eligibility requirements.

Eligibility for refugee social services is limited to those refugees who—

(a) Meet immigration status and identification requirements in Subpart D of this part;

(b) Meet the other eligibility requirements and conditions in this subpart.

§ 400.152 Limitations on eligibility for specific services.

(a) A State may provide the social services defined in § 400.154 to refugees who are 16 years of age or older and who are not full-time students in elementary or secondary school, except that such a student may be provided services under § 400.154 (a) and (b) in order to obtain part-time or temporary (e.g., summer) employment while a student or full-time permanent employment upon completion of schooling.

(b) A State may provide the social services defined in § 400.155 to refugees without eligibility limitations, except for such limitations as may apply to title XX services provided under § 400.155(h).

Scope of Refugee Social Services

§ 400.153 Title XX social services.

A State may provide the same services in the same manner and to the same extent as are permissible under the State's title XX social service program to refugees who meet the eligibility requirements applicable to services under that program.

§ 400.154 Employability services.

A State may provide the following employability services—

(a) *Employment services,* including development of an individual employability plan, world-of-work and job orientation, job clubs, job workshops, job development, referral to job opportunities, job search, and job placement and followup.

(b) *Employability assessment services,* including aptitude and skills testing.

(c) *On-the job training,* when such training is provided at the employment site and is expected to result in full-time, permanent, unsubsidized employment with the employer who is providing the training.

(d) *English language instruction,* with an emphasis on English as it relates to obtaining and retaining a job.

(e) *Vocational training,* including driver education and training when provided as part of an individual employability plan.

(f) *Skills recertification,* when such training meets the criteria for appropriate training in § 400.81(b) of this part.

(g) *Day care,* when necessary for participation in an employability service or for the acceptance or retention of employment.

(h) *Transportation,* when necessary for participation in an employability service.

(i) *Translation and interpreter services,* when necessary in connection with employment or participation in an employability service.

(j) *Case management services,* as defined in § 400.2 of this part, for refugees who are considered employable under § 400.76 and for recipients of AFDC and GA who are considered employable, provided that such services are directed toward a refugee's attainment of employment as soon as possible after arrival in the United States.

Note: Under circumstances specified in § 400.13(d), a State may, but is not required to, charge certain case managment services to its CMA grant rather than its social services grant.)

§ 400.155 Other services.

A State may provide the following other services—

(a) *Information and referral services.*

(b) *Outreach services,* including activities designed to familiarize refugees with available services.

(c) *Social adjustment services,* including:

(1) *Emergency services,* as follows: Assessment and short-term counseling to persons in a perceived crisis; referral to appropriate resources; and the making of arrangements for necessary services.

(2) *Health-related services,* as follows: Information; referral to appropriate resources; assistance in scheduling appointments and obtaining services; and counseling to individuals or families to help them understand and identify their physical and mental health needs and maintain or improve their physical and mental health.

(3) *Home management services,* as follows: Formal or informal instruction to individuals or families in management of household budgets, home maintenance, nutrition, housing standards, tenants' rights, and other consumer education services.

(d) *Day care,* when necessary for participation in a service other than an employability service.

(e) *Transportation,* when necessary for participation in a service other than an employability service.

(f) *Translation and interpreter services,* when necessary for a purpose other than in connection with employment or participation in an employability service.

(g) *Case management services,* when necessary for a purpose other than in connection with employment or participation in employability services.

(h) *Title XX social services,* which may be provided in the same manner and to the same extent as are permissible under the State's title XX social service program to refugees who meet the eligibility requirements applicable to services under that program.

§ 400.156 Limitations and restrictions.

(a) In order to avoid interference with refugee job search and employment, English language instruction and vocational training funded under this part must be provided to the fullest extent feasible outside normal working hours.

(b) In planning and providing services under §§ 400.154 and 400.155, a State must take into account those services which a resettlement agency is required to provide for a refugee whom it sponsors and not duplicate the provision of such services to such refugee.

8. Section 400.206 is added in Subpart J to read as follows:

§ 400.206 Federal funding for social services.

Federal funding is available for refugee social services as set forth in Subpart I of this part, including the reasonable and necessary identifiable administrative costs of providing such services, in accordance with allocations determined by the Director.

9. A new § 400.220 is added in Subpart J to read as follows:

§ 400.220 Counting time-eligibility of refugees.

A State may calculate the time-eligibility of a refugee under this part in either of the following ways: (a) On the basis of calendar months, in which case the month of arrival in the United States must count as the first month; or (b) on the basis of the actual date of arrival, in which case each month will be counted from that specific date.

[FR Doc. 89-2197 Filed 2-2-89; 8:45 am]
BILLING CODE 4150-04-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[FCC 88-359]

Modification of Space Station Authorizations of GE American Communications, Inc.; Domestic Fixed-Satellite Service

AGENCY: Federal Communications Commission (FCC).

ACTION: Final rule; policy statement.

SUMMARY: This action disposes of a modification request made by GE American Communications, Inc. (GE) seeking authority to operate its 12/14 GHz K–3 satellite from 85° W.L. with transponders capable of operating either with 27 MHz or 54 MHz of usable bandwidth with 60 watt instead of 45 watt traveling wave tube amplifiers. This Order establishes the creation of a bifurcated orbital arc segment to which higher power density satellite such as the K–3 satellite may be assigned. Specifically, the 75–79 W.L. and 132°–136° W.L. Segments are designated as the high power density arc segments. However, because GE asserts it will not operate outside of the 85°–106° W.L. orbital arc, the FCC also denies GE's modification request to operate a high power density satellite at 85° W.L.

EFFECTIVE DATE: December 29, 1988.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Wilbert E. Nixon Jr. at (202) 634–1624.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order in the matter of the applications of GE American Communications, Inc., File Nos. 1970–1971–DSS–MP/ML–86 and 1972–DSS–MP–86, adopted November 3, 1988 and released November 29, 1988.

The full text of this document is available for inspection and copying during normal business hours in the Domestic Facilities Division Public Reference Room (Room 6220), 2025 M Street NW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Memorandum and Opinion and Order

1. This order addresses reponses to the Commission's *Tentative Decision,* 53 FR 3056 (February 3, 1988) concerning the modification request of GE American Communications, Inc. (GE) to redesign and operate its K–3 satellite at 85° W.L. and redesign its K–4 ground spare satellite with 60 watt traveling wave tube amplifiers. This proceeding had its origins in 1986 when GE filed its modification request. Several satellite operators objected to the GE request, asserting that K–3's proposed operation would cause unacceptable interference into neighboring lower power density satellites. Because the affected operators and GE could not reach agreement, the Commission developed the proposal in the Tentative Decision which entailed establishing an orbital arc segment from 87°–93° W.L. to which high power density satellites could be assigned. Consequently, this meant that Satellite Transponder Leasing Corporation's SBS–4 was to be relocated from 91° W.L. to 85° W.L. The Commission also proposed to require adjacent satellite cross-polarization and to space the 13¾14 GHz satellites in the high power density arc with 1.5° separations to increase the number of satellites that could be accommodated.

2. Generally, the Tentative Decision commenters expressed reservations regarding the tentative proposal. The comments can be grouped into three categories: (1) Those that oppose the proposal because it requires relocating SSB–4, (2) those that specifically oppose the use of the 87°–93° W.L. arc because they believe that it precludes the operation of traditional lower power density satellites and services from a prime orbital arc segment, and (3) those that support the concept or arc segmentation but not the Commission's proposal to impose 1.5° separation within the high power density segment.

3. In light of these comments and a change in circumstances since the Tentative Decision—i.e., the relinquishment of several domestic satellite licenses in the past several months—the Commission adopts an approach suggested by several of the commenters. Specifically, in this order, we designate an eastern segment at 75°–79° W.L. and a western segment at 132°–136° W.L. as the high power density arcs. Because GE asserts it will not operate its K–3 satellite outside of the 85°–106° W.L. orbital arc, we deny GE's modification request to operate a high power density satellite at 85° W.L. SBS–4 can therefore remain at its current 91° W.L. location. Finally, the Commission maintains 2° separations in the high power density arc segment and therefore will not require adjacent high power density 13¾14 GDz satellites to be cross-polarized.

Order Clauses

4. Accordingly, it is ordered that GE American Communication, Inc.'s request to modify the technical parameters of its Satcom K–3 and K–4 satellites, Application File No. 1970–DSS–MP/ML–86, is denied.

5. It is further ordered that Application File No. 1971–DSS–MP/ML–86 is granted and GE American Communications, Inc. is authorized to offer all the transponders on its Satcom K–3 satellite on a non common carrier basis.

6. It is further ordered that Application File No. 1979–DSS–MP–86 is granted and the schedule for implementation of the Satcom K–3 satellite specified in RCA American Communications, Inc., 94 FCC 2d 441 (1983), is modified as follows:

SATCOM K–3—

Construction completed, April 1989.
Launch no later than October 1989.

7. It is further ordered that Assignment of Orbital Locations, 50 FR 35228 (August 30, 1985), as modified in Comsat General Corporation, 2 FCC Rcd 4570 (1987) and Comsat General Corporation, 3 FCC Rcd 4071 (1988), is modified to reassign the GSTAR III satellite from 136° W.L. to 124° W.L. effective 30 days from the release of this Order.

8. It is further ordered that the orbital assignment policies regarding the establishment of a bifurcated high power density arc described herein are adopted.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–2454 Filed 2–2–89; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

48 CFR Parts 204 and 219

Department of Defense Federal Acquisition Regulation Supplement; Small Business Competitiveness Demonstration Program; Correction

AGENCY: Department of Defense.

ACTION: Interim rule and request for comments; correction.

SUMMARY: This document corrects an interim rule on Small Business Competitiveness Demonstration Program which was published in the **Federal Register** on Friday, January 27, 1989 (54 FR 4246). The action is necessary to make technical corrections to reporting requirements contained in the rule.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretry, DAR Council, (202) 697–7266.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Accordingly, the Department of Defense is correcting 48 CFR Part 204 as follows:

PART 204—ADMINISTRATIVE MATTERS

1. On page 4246, section 204.671–5 is corrected by designating in paragraph (e) the introductory text in unlettered paragraph "Item E2" as paragraph (i), adding a sentence to the designated paragraph (i) and adding paragraphs (ii) through (iv); by revising in paragraph (e) the unlettered paragraph "Code Y" of the unlettered paragraph "Item E2"; by changing in pargraph (e) in the table of Codes following the text in the unlettered paragraph "Item E3" Code F between Code F and Code M to read "Code G"; by adding in paragraph (e) in the first sentence of the unlettered paragraph "Item E4" between the word "the" and the word "designated" the word "four"; and by adding in paragraph (e) in the unlettered paragraph "Code Y" in the unlettered paragraph "Item E4" between the word "contractor" and the word "is" the words "represents that it"; to read as follows:

204.671–5 Instructions for Completion of DD Form 350.

* * * * *

Item E2, Small Business Competitiveness Demonstration Program Test.

(i) The Small Business Competitiveness Demonstration Program is set forth in FAR 19.10. Supplies and services subject to the program are set forth in FAR 19.1005, as supplemented (see 219.1006(b)).

(ii) If Item B–13 is coded 1 through 4, or A, code this item in accordance with the instructions below.

(iii) If Item B–13 is coded 5 or B through G, code this item with the same code used to report the original contract governing this action.

(iv) If Item B–13 is coded 6, 7, or 8, use Code N.

Code Y—Enter this code for any action awarded to a U.S. business concern under the Small Business Competitiveness Demonstration Program for either the four designated industry groups or the ten targeted industry categories.

204.672–5 (Corrected)

2. On page 4247, the amendatory language in paragraph 5 is corrected by substituting at the end of the text the words "most appropriate subline." in lieu of the words "code which is appropriate for the set-aside methods used."

3. On page 4247, section 204.675–3 is corrected by revising the first sentence of paragraph (b) to read as follows:

204.675–3 Instructions for Completion of the DD Form 350.

* * * * *

(b) Leave Items B4, B5B, B5E, B5F, B5G, B10, B11, B12B, B12C, C4, C6, C11, C12, D2, D3, D4E, D5, D7, D8, and E1 blank. * * *

PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

4. On page 4247, section 219.1071 is corrected by substituting in the first sentence of paragraph (a) between the word "the" and the word "at" the word "provision" in lieu of the word "clause"; by substituting in paragraph (b)(1) between the word "the" and the word "at" the word "provision" in lieu of the word "clause".

[FR Doc. 89–2505 Filed 2–2–89; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. PS–96, Amdt. 192–60A]

[RIN 2137–AB19]

Exception From Pressure Testing; Non-Welded Tie-In Joints

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Response to petitions for reconsideration; final rule.

SUMMARY: RSPA has received 16 petitions for reconsideration of a final rule requiring leak testing of welded joints that tie in pressure-tested segments of pipeline. RSPA is persuaded by the petitions that because these joints are generally subject to nondestructive testing and because the need for leak testing has not been adequately demonstrated, the requirement lacks an adequate safety basis. Therefore, RSPA is deleting the requirement from the rule.

EFFECTIVE DATE: This final rule takes effect as of October 17, 1988, the effective date of the original final rule.

FOR FURTHER INFORMATION CONTACT: Bernard Liebler, (202) 366–2392, regarding the content of this notice.

SUPPLEMENTARY INFORMATION: RSPA recently published a final rule (53 FR 36028, September 16, 1988) excepting from the pressure test requirements of Subpart J non-welded joints that tie in pressure tested segments of pipeline, provided such tie-in joints are leak tested at not less than the operating pressure of the pipeline (Amendment 192–60; 53 FR 36028, September 16, 1988). Amendment 192–60 also imposed the leak test requirement on similar welded tie-in joints. Until Amendment 192–60 was published, welded joints used to tie in pressure-tested segments of pipeline were excepted from all of the pressure test requirements of Subpart J. Believing that leak testing of both welded and non-welded tie-in joints is a simple, prudent, and common safety procedure, RSPA adopted the requirement for leak testing welded tie-in joints without opportunity for public comment.

Fourteen operators and two trade associations have petitioned RSPA to reconsider and withdraw the requirement to leak test welded tie-in joints. The petitioners contend that all welded tie-in joints are nondestructively tested, and such testing of a joint should obviate the need for a leak test. They assert further that leak testing would be both costly and impractical, because contrary to usual practice, the joint would have to be left uncovered after construction for an indefinite time until the line is pressurized. They also argue that it was improper to have adopted the requirement to leak test welded tie-in joints without notice or opportunity for comment by interested parties.

RSPA recognizes that nondestructive testing of a welded tie-in joint provides greater assurance that the joint will not leak than a leak test at operating pressure. However, under § 192.241(b) welded tie-in joints may be placed in service without nondestructive testing on certain low stress level lines and in certain cases where the weld is approved by a qualified welding inspector. Although the petitions indicate many operators may voluntarily be nondestructively testing these joints, RSPA does not have data that demonstrate a need for leak testing such joints in the absence of nondestructive testing.

Given the superiority of nondestructive testing and the lack of information indicating a need to leak test those welded tie-in joints that are not nondestructively tested, it appears now that there was not an adequate safety basis to require leak testing of welded tie-in joints. Furthermore, on reconsideration, RSPA believes that it should not have issued the requirement without prior notice and an opportunity for public comment. Therefore, RSPA grants the petitions and by this document is modifying § 192.503(d) to remove welded tie-in joints from the leak test requirement.

Several petitioners also noted some confusion regarding the requirement to leak test tie-in joints "at not less than * * * operating pressure," since the term "operating pressure" is not defined in Part 192. The intent is to require a leak test at the pressure at which the operator intends to place the pipeline into service, even though this pressure may be below the MAOP of the pipeline or a future operating pressure of the same pipeline.

Impact Assessment

This final rule is considered to be nonmajor under Executive Order 12291 and is not significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). Since welded tie-in joints were not previously required to be leak tested, the rule will have a minimal effect on the economy, and further evaluation of this effect is unnecessary. Based on the facts available concerning the impact of this rulemaking action, I certify pursuant to section 605 of the Regulatory Flexibility Act that the action will not have a significant economic impact on a substantial number of small entities. RSPA has analyzed this action in accordance with the principles and criteria contained in E.O. 12612, and has determined that it does not have sufficient federalism implications to warrant preparing a Federalism Assessment. Because this rule change in response to petitions for reconsideration removes a requirement established without adequate procedure and returns welded, tie-in joints to their prior status under § 192.503(d), notice and public procedures are unnecessary, and the change may be issued as final.

List of Subjects in 49 CFR Part 192

Pipeline safety, Test, Tie-in, Joint.

In view of the foregoing, RSPA amends 49 CFR Part 192 as follows:

PART 192—[AMENDED]

1. The authority citation for Part 192 continues to read as follows:

Authority: 49 App. U.S.C. 1672 and 1804; and 49 CFR 1.53.

2. Section 192.503(d) is revised to read as follows:

§ 192.503 General requirements.

* * * * *

(d) Each joint used to tie in a test segment of pipeline is excepted from the specific test requirements of this subpart, but each non-welded joint must be leak tested at not less than its operating pressure.

Issued in Washington, DC, on January 31, 1989.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

[FR Doc. 89–2541 Filed 2–2–89; 8:45 am]

BILLING CODE 4910–60–M

Federal Railroad Administration

49 CFR Part 218

[FRA Docket No. RSOR–10, Notice No. 2]

RIN 2130–AA55

Prohibiting Tampering With Safety Devices

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Final rule.

SUMMARY: FRA is amending its existing rules concerning railroad operating practices to prohibit tampering with safety devices and operational monitoring devices installed on locomotives. The amendments also make it unlawful to operate any train on which safety devices have been unlawfully disabled. FRA is issuing this final rule to deter the disabling of safety devices because of the grave risks posed by disabled devices on trains.

EFFECTIVE DATE: This rule becomes effective March 6, 1989.

FOR FURTHER INFORMATION CONTACT: Lawrence I. Wagner, Trial Attorney, Office of Chief Counsel, FRA, Washington, DC (telephone 202–366–0628).

SUPPLEMENTARY INFORMATION:

Historical Background

There are approximately 25,000 locomotives in service on the nation's railroads. Many are equipped with one or more devices intended either to record data concerning the unit's operation or to directly improve the safety of its operation. Within this latter category of devices, the range of equipment extends from devices designed to audibly alert a person at the controls to changing conditions to

devices that automatically impose sanctions if the operator fails to take appropriate responsive action. FRA has historically exercised some degree of regulatory control over nearly all of the presently available devices under the provisions of either its locomotive safety standards or its signal safety standards.

Public attention focused on the tampering issue when, during the investigation of the January 4, 1987, Amtrak/Conrail accident at Chase, Maryland, FRA found evidence indicating that the effectiveness of a critical safety device installed on the Conrail locomotive had been impaired. An alerter whistle, designed to warn the operator of a need to respond to a more restrictive signal aspect, had been muted by the use of tape. In FRA's view, disabling of the alerter whistle was a principal cause of that tragedy.

Chase was not the only recent accident in which there is reason to suspect that the disabling of a critical safety device was a causal factor. On February 8, 1986, a collision occurred at Hinton, Alberta, in which a Canadian National freight train struck a VIA Rail passenger train. The Canadian Transport Commission report of investigation contains information suggesting there is evidence to support a conclusion that a "deadman pedal" on the freight train failed to function, because it had been improperly nullified. On March 21, 1988, two Chicago & North Western freight trains collided at Dixon, Illinois. In this accident there is preliminary evidence to suggest that one of the automatic train control devices had been improperly nullified.

Following discovery of the taped whistle at Chase, FRA initiated several nationwide spot checks to determine whether the evidence found at Chase represented an isolated instance or a widespread problem. During those inspections, FRA inspectors reported more than 100 instances in which they found evidence of deliberate action to negate the proper functioning of one of the identified safety devices.

Initial Response to the Problem

These findings prompted FRA to initiate civil penalty action in approximately 70 cases and to make its preliminary information available to Congress, which was then considering adoption of rail safety legislation. The following is a summary of what occurred in both contexts.

Those inspectors who had observed instances of what they believed to be "tampering" reduced their observations to writing and filed violation reports with FRA's Office of Chief Counsel recommending assessment of civil penalties against the relevant railroads. Subsequent detailed review of the reports led FRA to conclude that some 70 observations warranted further action because the available evidence supported a conclusion that FRA could establish at least a prima facie case of noncompliance with an FRA rule.

In each of these instances, FRA instituted legal action to impose a civil penalty against the railroad that had operated or permitted to be operated a locomotive with a device in noncompliance with its existing rules. Since, at that time, FRA lacked authority to impose any sanctions against an individual for either operating a train with a disabled device or actually disabling the device, FRA took the indirect approach of holding the principal, the railroad, responsible for the conduct of its employees and relied on the railroad to take disciplinary action against the individual.

Concluding that FRA's legal authority to respond to such situations should be enhanced, Congress passed the Rail Safety Improvement Act of 1988 granting FRA enforcement authority over individuals. With that authority, FRA can now assess civil penalties against individuals for willful violations of FRA rules. FRA has recently issued final rules and a policy statement detailing the manner in which it will implement this new civil penalty authority. These changes became effective on January 1, 1989. (See the December 29, 1988 and July 28, 1988, issues of the **Federal Register**; 53 FR 52918 and 53 FR 28594.)

The Subsequent Response

Section 21 of the RSIA requires that FRA adopt regulations addressing three related but distinct aspects of the problem. It requires that FRA make it unlawful for (i) any individual to willfully tamper with or disable a device; (ii) any individual to operate or permit to be operated a train with a tampered or disabled device; and (iii) any railroad to operate such a train. FRA recently published in the **Federal Register** an NPRM proposing to explicitly prohibit tampering with locomotive mounted safety devices. See the August 31, 1988 issue of the **Federal Register** (53 FR 33786).

Commenter Views

In response to that notice, FRA received written views from the Railway Labor Executives Association (RLEA), the Brotherhood of Locomotive Engineers (BLE), the Association of American Railroads (AAR), the Consolidated Rail Corporation (Conrail), the Monongahela Railway Company (MGA), the Railway Progress Institute (RPI), and the National Railroad Passenger Corporation (Amtrak). In addition, FRA held a public hearing on September 8, 1988 and received oral statements concerning this proposal. Significant changes to the proposed rule have been made in response to these views and comments.

While condemning individuals who act to unlawfully nullify the effect of locomotive-mounted safety devices, commenters voiced concern over several aspects of the proposed rule. These concerns can generally be grouped under three headings: (1) What equipment should be covered by this rule? (2) how does the proposed rule relate to FRA's existing locomotive and signal regulations? and (3) what actions to determine the functional status of such devices are necessary to comply with this rule?

(1) Scope of the Rule Concerns

Since many locomotives are equipped with one or more devices intended either to directly improve operational safety or to record data concerning the unit's operation, FRA proposed to employ a functional description for the devices covered by the rule. FRA explained in the NPRM that the described category included equipment ranging from devices designed to audibly alert a person at the controls concerning changing conditions to devices that automatically impose sanctions if the operator fails to take appropriate responsive action. FRA stated that the devices of concern in this proceeding include equipment known as "event recorders," "alerters," "deadman controls," "automatic cab signals," "cab signal whistles," "automatic train stop equipment," and "automatic train control equipment."

Two commenters expressed the concern that a functional description could permit the universe of devices to be interpreted so broadly as to include such items as fans used to circulate air within the locomotive cab or interior cab lighting. One commenter suggested that FRA specify the types of devices covered by this rule, rather than using a functional definition, and furnished a list of devices for consideration. That list included several kinds of equipment that clearly fall outside the announced scope of this rulemaking, including radios and traditional audible warning devices such as airhorns and bells.

A major concern for many commenters was FRA's proposal to cover event recorders in this rule. Several commenters urged that FRA delay implementation of any rule on

event recorder tampering until FRA conducts its separate regulatory examination of whether rules requiring event recorders are necessary. Commenters argued that some new locomotives are being equipped with computerized diagnostic capabilities intended to aid in maintaining these units. To the degree that such computers store data about a locomotive's performance, they could be considered "event recorders" even though the data may relate to fuel consumption or engine cylinder temperatures. A more pressing problem in the eyes of the commenters was how an individual would inspect a recording device to determine that it was functioning. The testimony suggested that the design and installation of some recorders simply will not permit anyone other than a skilled technician to ascertain whether it is functioning. At least one commenter suggested that FRA could create a disincentive to the continued installation of event recorders if it issues a rule containing onerous requirements concerning such recorders.

(2) Relationship of This Proposal to Existing Rules

After reviewing the comments, FRA believes that much of the concern over this aspect of the current proposal was caused by misunderstanding or misinterpretation of both FRA's existing rules and FRA's proposal to prohibit tampering. These provisions must address three distinct situations: (1) Where a device is inoperative because FRA permits it to be deactivated; (2) where the device is inoperative because it is defective; and (3) where the device is inoperative because it has been tampered with. FRA's existing rules concerning locomotives and signal systems already address the first two situations, and this proceeding addresses the third.

Although nothing in FRA's proposal suggested altering the existing regulatory schemes, many commenters expressed concern that FRA's proposal appeared to ignore legitimate occasions when functional devices should be deactivated. In several instances, this concern was coupled with concern and apparent misunderstanding of the liability of individuals for noncompliance with the inspection or remedial action provisions of the existing rules.

(3) Actions Required for Compliance

Commenters expressed concern that FRA's proposal for identifying when culpability should attach or commence for subsequent operators of disabled devices was not practical. The commenters apparently believe that under FRA's proposal they would either have to accept significant delays for train operations, while trains crews examined the devices, or they would have to devise and implement ways to seal such devices so as to preclude tampering.

FRA's Final Rule

(1) Identification of Devices

FRA is responding to commenter concern over proper identification of the devices that are within the scope of this rule in several ways. First, FRA is moving the definitional language that identifies the devices to the section on scope and purpose. FRA is retaining the functional description originally proposed because that wording effectively identifies existing equipment and is sufficiently expansive to cover equipment that may appear in the future (particularly those associated with advanced train control systems currently undergoing research testing). The latter consideration is an important one; it would clearly serve no public purpose to require this agency to conduct new regulatory proceedings every time a new warning or monitoring device appears on the market. FRA disagrees with commenter arguments that this definition is so broad and ambiguous as to be confusing. However, for clarity, FRA has specified in the preamble the equipment that it considers to be within the scope of this rule, along with examples of the type of equipment that is not covered. In addition, FRA is ready and willing to respond in writing to any inquiry about any other devices.

Normally, FRA would only place illustrative examples in the preamble to a rule, since that is sufficient for resolving future interpretive questions. In this instance, FRA has decided to include such illustrations in an Appendix B to this rule to aid both comprehension and compliance.

For reader convenience, it should be noted that FRA has not, at this time, included the following equipment within the coverage of this rule: Monitors for end-of-train devices; bells or whistles that are not connected to alerters, deadman pedals, or signal system devices; fans for controlling interior temperature of locomotive cabs; and locomotive performance monitoring devices, unless they record data such as train speed and air brake operations. Radios have not been included in this proceeding because they are the subject of a parallel proceeding now in process.

Although such devices are beyond the scope of the proceeding, this does not imply that FRA condones the disabling of these devices. It is simply a reflection of the fact that the record does not disclose any history of tampering with these particular devices. FRA will not hesitate to include such devices should instances of tampering be discovered.

(2) Relationship of This Proposal to Existing Rules

After reviewing the comments, FRA believes that much of the concern over the current proposal was caused by misunderstanding or misinterpretation of both FRA's existing rules and FRA's proposal to prohibit tampering. FRA's regulatory program must address three distinct situations: (i) Where a device is inoperative because FRA permits it to be deactivated; (ii) where the device is inoperative because it is defective; and (iii) where the device is inoperative because it has been tampered with. FRA's existing rules concerning locomotives and signal systems already address the first two situations, and this proceeding addresses the third. Because these rules have complementary, yet slightly different, purposes and distinct underlying legal bases, they contain different standards of culpability for corporations and individuals reflecting the relative responsibilities of each group.

(i) Permissible Deactivation of Functional Devices

When FRA permits a functional device to be inoperative, there is no issue of corporate or individual liability, provided the conditions placed by FRA on the use of the locomotive containing the deactivated device are met. Current FRA rules permit safety devices connected to the signal system to be deactivated [i.e., "cut-out"] in several instances. For example, FRA permits a locomotive not being used as the controlling locomotive to operate with its automatic train control system deactivated, even though that unit is operating in automatic train control territory. Similarly, FRA permits the deactivation of on-board signal equipment, such as cab signals, when the locomotive is operating in territory that is not equipped with the roadbed infrastructure necessary to operate them. By waiver, FRA also permits deactivation of locomotive-mounted signal equipment during some switching operations.

Alerters, deadman controls, and event recorders are not currently mandated by FRA. However, when installed, they are subject to the locomotive safety standards under the provisions of § 229.7 because they are

"appurtenances" under both that section and the underlying statute. Consequently, such devices, when present, must be in proper condition and safe to operate.

Nothing in FRA's proposal or this final rule alters these existing regulatory schemes. Commenter concerns that FRA's proposal appeared to ignore legitimate occasions when functional devices should be deactivated are therefore essentially misplaced. Because of the expressed concern, however, FRA has made changes to the final rule to clearly sanction deactivation of alerters, deadman pedals, and event recorders in appropriate circumstances. FRA's action to allay such concerns is discussed more extensively in the section-by-section analysis.

(ii) Defective Devices

Although FRA's rules essentially require that these safety devices be in proper condition, the rules also recognize that such equipment occasionally becomes inoperative for reasons that have nothing to do with human intervention. The NPRM in this proceeding did not propose any change in the provisions concerning that eventuality. If an alerter, deadman control, or event recorder is found to be defective, the locomotive may be moved in accordance with § 229.9. Essentially, § 229.9 provides that if the defective condition is discovered during the daily inspection required by 229.21, the defective locomotive can be moved to a repair facility only as a lite locomotive or dead in the train. Such movement must be preceded by a qualified person's determination that it is safe to move the unit. If the defect is discovered while the locomotive is enroute, the defective unit can remain in service for a limited period, provided that a similar determination is made prior to permitting continued use of the locomotive.

FRA's signal rules contain an analogous structured response to defective equipment. A locomotive with a defective automatic cab signal system, automatic train stop, or automatic train control system can be moved to a repair facility as a non-controlling unit when the defect is discovered during the daily or predeparture inspection. Defects encountered enroute can be moved under § 236.567, which requires a determination by a qualified person that it is appropriate to continue the movement with the imposition of operational safeguards to compensate for the defective condition. These existing rules for the movement of defective equipment have not been modified by the current rulemaking.

With the enactment of the Rail Safety Improvement Act of 1988 (Pub. L. 100-342) (RSIA), individuals as well as railroad companies became responsible for such defective equipment. The RSIA amended the penalty provisions of the railroad safety statutes to make them applicable to any "person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad)" who fails to comply with the regulations or statutes (e.g., section 3 of the RSIA amending section 209 of the Federal Railroad Safety Act of 1970).

The RSIA provides that civil penalties may be assessed against individuals, but "only for willful violations." Since both the locomotive and signal rules were originally written to impose requirements only on railroads, FRA amended those rules effective August 1, 1988, to make clear that any individual who willfully violates their requirements may be held liable for a civil penalty. In addition, FRA recently amended all of its safety regulations to reflect the initial assessment amounts for violations of specific regulations. (See the December 29, 1988 and July 26, 1988, issues of the **Federal Register**; 53 FR 52918 and 53 FR 28594).

This final rule does not effect the liability of individuals for noncompliance with the inspection or remedial action provisions of the existing rules. Moreover, no question of corporate or individual liability will arise if defective equipment is handled in accordance with FRA's existing rules for remedial action.

If an undetected defective condition existed or if a defective locomotive were not being operated in compliance with FRA provisions for moving defective equipment, FRA would have to be able to prove that the individual involved was acting "willfully" before it could establish liability for a civil penalty. Prior to any discussion of what that term means in this context, it is necessary to point out that action to seek the imposition of civil penalties against an individual is only one of a number of steps an inspector could take to ensure compliance. Inspectors have a wide array of options, ranging from issuance of informal warnings, to initiation of a civil penalty action against an individual, to recommending that FRA pursue a disqualification proceeding. As has traditionally been the case with respect to acts of noncompliance, FRA field inspectors will exercise discretion in deciding which situations call for a civil penalty assessment as the best method of ensuring compliance.

If an inspector decides to recommend institution of a civil penalty action against an individual, FRA will have to determine the threshold question of whether that alleged violation was "willful." FRA has previously published an extensive discussion of what it considers to be a "willful" violation. (53 FR 52918, December 29, 1988). With respect to FRA's existing rules, simple negligence cannot support a finding of a "willful" violation. The misgivings expressed by several commenters appear to stem from a misunderstanding on this point.

(iii) Prohibiting Tampering

FRA's proposal in this proceeding was designed to address the situation in which an individual acts to impair or nullify a functional safety device that cannot permissibly be rendered inoperative. In order to deter such action, FRA proposed to (a) make it unlawful for any person to tamper with such devices; (b) make it unlawful for subsequent operators of locomotives to ignore the impaired devices; and (c) make it unlawful for railroads to operate trains hauled by locomotives with such impaired devices. Reflecting the provisions of section 21 of the RSIA, FRA is adopting regulations addressing the three related but different aspects of the problem by employing three different standards of culpability.

Many commenters apparently read FRA's proposal as overriding its existing regulations permitting functional devices to be rendered inoperative in appropriate circumstances as well as those that sanction limited use of a locomotive when it develops a defect while enroute. As previously noted, that is not the case. Similarly, at least two commenters concluded that one aspect of FRA's proposal, designed to ensure that train crew members would have a reasonable opportunity to determine the status of their equipment, would implicitly require a new set of inspections and testing that would be in addition to those currently required by FRA rules.

Several commenters suggested that FRA devise a way to authorize people to approve decisions to render devices inoperative and then make instances in which unauthorized action was taken the subject of regulatory sanctions. While this approach has some appeal, it contains serious limitations. It would require that the FRA identify those who will have such power and it would demand either some form of written evidence that authority had been granted or a mechanism for resolving disputes about whether such authority had been granted. Furthermore, it introduces a degree of ambiguity into a

situation that cries out for clarity and precision.

FRA has decided to take the essence of the commenters' suggestions and reorient the rule to clearly identify the situations that serve to "authorize," by operation of law, action that renders such devices inoperative. Restructuring the rule, to reflect the fact that there are lawful reasons why a functional device might have been rendered inoperative and why a locomotive with a defective device might still be in service, requires that FRA significantly reformat this subpart and substantially modify the proposed wording of nearly every section. For example, since there are some unique reasons why alerters, deadman pedals, and event recorders might be legitimately rendered inoperative, and since these reasons are not currently evident on the face of FRA's locomotive regulations, FRA will state them in this rule, at least until the locomotive rules are revised. The definitional approach originally proposed by FRA becomes both unworkable and redundant under this approach for resolution of the commenters' concerns and has been deleted from the final rule.

(3) Actions Necessary to Comply With This Rule

The restructured rule addresses the third major issue raised by the commenters—the actions necessary to be reasonably assured of the functional status of such devices—through the addition of new Appendix. Although commenters urged that FRA consider sanctioning the use of locks or seals as indicative that safety devices guarded by such protective devices are not disabled, FRA has decided to employ a civil penalty enforcement policy, predicated on a showing of actual knowledge on the part of subsequent operators, to ameliorate concerns about the need to provide additional seals or inspections.

Section-by-Section Analysis

Section 218.51

FRA has renumbered, restructured, and reworded all of the proposed sections. The definitions that were proposed as additions to existing § 218.5 have not been adopted. The concepts they expressed have been incorporated in the altered language for the substantive provisions. Proposed § 218.101 has become § 218.51 in the final rule. Paragraph (a) of this section continues to address the purpose of this subpart, but paragraph (b) now contains the cross references to the other FRA rules that sanction deactivation of these safety devices. It is this provision that directly responds to commenter confusion over whether FRA was indirectly abolishing the substantive provisions of its rules, particularly its signal rules.

It should be noted that FRA has included in paragraph (b) a parallel notification requirement to that found in § 236.567 of the signal rules for enroute equipment failures. Under paragraph (b), when an alerter, deadman pedal, or event recorder becomes defective enroute, it will be necessary to notify a designated person of that condition in the same manner that is required for enroute failures of signal equipment in order to make such deactivation "lawful" for the purpose of this rule.

Section 218.53

Section 218.53 in the final rule essentially contains the same wording FRA proposed in paragraph (b) of proposed § 218.101. As noted earlier, although FRA has retained the functional definition it originally proposed, it has responded to commenter concern by illustrating in its Appendix on enforcement policy the types of devices intended to be included and excluded by the definition. Although FRA does not normally include such examples, it has done so here for the convenience of the regulated community.

Section 218.55

Section 218.55 contains the basic prohibition against tampering that FRA proposed to have in § 218.103. This section now contains an additional paragraph to more precisely identify the prohibited conduct. Section 218.55 contains the substantive provision that addresses the first of the statutory objectives: Prohibiting conduct that nullifies the effectiveness of these safety devices. It is structured to preclude all actions or inactions that would result in a device's not functioning as intended, such as removing recording tapes from event recorders, taping alerter whistles so as to mute them, unplugging or disconnecting wires that result in signal-related devices not activating brake systems, or not activating a device when activation was required by FRA regulation.

This provision contains the statutory formulation of culpability for such conduct: An individual must be engaged in "willful" conduct before liability for a civil penalty can arise. As FRA previously stated in its policy statement (see the July 28, 1988 issue of the **Federal Register**), FRA considers a "willful" act to be one that is an intentional, voluntary act committed either with knowledge of the relevant law or with reckless disregard for whether the act violated the requirements of the law. Accordingly, a showing of neither evil purpose (as is sometimes required in criminal law) nor actual knowledge of the law is necessary before FRA can prove that the conduct constitutes a violation. However, a level of culpability higher than simple negligence must be demonstrated. In summary, to assess a civil penalty, FRA would need proof that the individual had intended to disable one of these devices, had acted voluntarily, had in fact disabled the device, and either had knowledge of the law or had recklessly disregarded the law.

This provision gives FRA an effective way to respond to those individuals who consciously place themselves and others at risk by defeating the very safety devices that were installed to improve the safety of all concerned. FRA anticipates that as a matter of policy it will seek to have the responsible individual disqualified from holding any safety-sensitive function if it encounters situations where there is clear evidence of tampering. The message that the individual is now placing his or her employment in railroad operations on the line, in addition to placing his or her life on the line by such conduct, should help deter such conduct in the future. FRA reserves the right both to disqualify those who willfully tamper with safety devices and to impose a civil penalty for such conduct.

Section 218.57

Section 218.57 is the most extensively changed section of FRA's original proposal. It contains a totally new approach to the concepts originally proposed in § 218.105 and the proposed definition, "operate a train." As restructured, § 218.57 addresses the second situation identified in the statute: Instances in which one individual has tampered with a device and a second individual knowingly operates a train or permits it to be operated, notwithstanding the presence of the disabled or tampered-with unit. The most common occurrence addressed by this provision is the situation in which a train crew encounters a locomotive with a safety device that has been tampered with prior to the crew's assuming responsibility for the locomotive.

Under the relevant statutory standard set forth in the RSIA ("knowingly operates or permits to be operated a train on which such devices have been tampered with or disabled by another person")—now incorporated into the regulatory wording of this provision—

individuals could be held to a simple negligence standard of conduct, i.e., a standard of reasonable care under the circumstances. FRA's conclusion about the proper interpretation of the word "knowingly" stems from both normal canons of statutory construction and analysis of decisional law concerning the use of similar statutory constructs in the civil penalty context. It is also consistent with other Departmental interpretations of the word as used in similar contexts. (See 49 CFR 107.299, defining "knowingly" under the Hazardous Materials Transportation Act, 49 App. U.S.C. 1801 et seq.)

Under the statutory language, the responsible members of the crew could be culpable if either (1) due to their failure to exercise reasonable care, they failed to determine that the safety device was not functioning, or (2) having ascertained that the device was not functioning, still elected to operate the train. Similarly, railroad supervisors who permit or direct that a train with a disabled device be operated after having learned that the safety device is not functioning or after having failed to use reasonable care in the performance of their duties could also be subject to sanction.

However, as a matter of enforcement policy, application of a negligence standard in this particular context appears unwarranted. We have seen no evidence of an employee's negligent failure to detect another employee's tampering having caused a safety problem. Were a negligence standard applied, crew members would have an understandable sense of personal obligation to carefully examine each controlling locomotive in order to ascertain the condition of the safety devices, regardless of each employee's actual responsibility for the proper functioning of such devices or whether efficient operation of the railroad permits such an inspection. Such inspections take time and can have significant economic implications for both the train crew and the railroad. For example, when a relief crew boards a moving locomotive while the preceding crew alights, there is no practical opportunity for the relief crew to inspect the safety devices on the locomotive without seriously disrupting operations. There is no safety reason to require an inspection under such circumstances. The potential for substantial systemic operational delays occasioned by such inspections, which were clearly perceived by the commenters, could have the effect of impinging on a railroad's ability to offer competitive rail service.

FRA can effectively attack the known dimensions of the tampering problem by employing an enforcement policy that limits its enforcement actions to situations where individuals had actual knowledge of the disabled device and operated the train notwithstanding that knowledge. As explained in Appendix B, added by the final rule, FRA will not take enforcement action against an individual under § 218.57 absent a showing of such actual knowledge of the facts. However, should FRA receive evidence indicating that a stricter enforcement policy is necessary to address the tampering problem, it will revise its enforcement policy to permit enforcement actions based only on a showing of the individual's negligence, as the RSIA permits it to do now. Any such change in enforcement policy will become effective only after publication of a revised Appendix B.

In selecting this enforcement policy approach for resolving commenter concerns over this issue, FRA considered a restructuring of this provision that was directly based on commenter suggestions. But commenter recommendations would have created a regulatory structure that was based on two legal presumptions. The first of these would have employed an existing concept in FRA's signal rules that is relevant in this proceeding: the use of seals or locks. FRA currently requires the use of locks and seals under its signal rules to guard against unauthorized actions to cut out signal devices (see §§ 236.3 and 236.553). If such seals or locks are in place it is reasonable to infer that the equipment is in proper working order, at least until there is some evidence to the contrary. Some railroads have extended this practice to other equipment such as event recorders.

As suggested by the commenters, FRA considered building on this concept and creating a presumption that when an individual encounters a sealed or locked safety device the individual may infer that the sealed or locked device has not been tampered with. FRA rejected this approach because it had the indirect effect of requiring all railroads to retrofit all devices with such seals, something clearly not warranted by the known facts. Such an approach would also have required FRA to delay the effective date of the rule for a considerable period, which is not in the public interest.

The second presumption FRA considered was oriented toward providing individuals with an opportunity to determine that the safety devices have not been tampered with. Since there are operational practices described elsewhere that result in train crews commencing to operate a train with no opportunity to determine the status of equipment before the train gets underway, FRA considered prescribing the moment in time when the crew's responsibility for the condition of the devices would commence. FRA initially proposed to solve this dilemma by defining what would constitute "operating a train." The proposed definition contemplated that train crew responsibility would not arise until after operational events had dictated that an airbrake test be performed. Since such tests require that the train be stopped for a reasonable period of time, FRA believed that crewmembers in the controlling locomotive would have adequate opportunity to determine the condition of the safety devices. Several commenters construed this definition as requiring that additional brake tests be performed and vigorously objected to this proposal.

FRA also considered responding to commenter concerns by creating a presumption that unless the crew had been present during an airbrake test they not be considered to have knowledge of the condition of the train's safety devices. Such a presumptive approach was rejected because it did not directly address the legal and personal responsibility crews would likely feel to inspect the equipment.

Under FRA's enforcement policy solution, there is no need real or imagined to conduct any inspection other than those historically required by FRA regulations. This rule does not require, or provide a basis for anyone else requiring, that any new inspection be performed.

FRA has decided not to delay mandatory compliance with the subsequent operator provisions. Although FRA did receive requests for delay in the effective date, those requests were based on a perceived need to alter the railroad's operating practices to achieve compliance with this rule.

Although the procedural rules for employee disqualification are not in effect and will be the subject of a different rulemaking proceeding, FRA wants all concerned parties to be aware that it reserves the right to use its authority to disqualify individuals who willfully violate this rule. As a matter of policy, if FRA encounters situations where there is clear evidence that an individual willfully operated a train after some other person had unlawfully nullified a safety device, FRA will consider disqualifying that individual from holding a safety-sensitive function on the railroad.

Section 218.59

FRA proposed in § 218.007 to address the third situation identified by the statute: Instances in which a railroad operates a train with a locomotive equipped with a device, disabled as a consequence of tampering. In a restructured format, § 218.59 of the final rule will make the railroad strictly liable for the conduct of its employees when they operate a train with a disabled device. Under such a strict liability standard of conduct, FRA will not be obligated to prove any level of knowledge or intent on the part of the railroad. Once FRA can prove that a train with a disabled device operated on that railroad, FRA has a legal basis for imposing a civil penalty for that conduct. As in all other cases, of course, inspectors retain discretion to determine whether imposition of a civil penalty is the most appropriate means to assure future compliance.

Section 218.61

Section 218.61 of the final rule does not have a counterpart in the proposed rule. It is intended to more directly address the special situations in which a railroad could legitimately assert that the functioning of a device has become a distraction and hence a detriment to safety. FRA has encountered this argument in situations where alerter or deadman controls have been nullified while the locomotive was used exclusively to perform yard switching service. All commenters who addressed this issue appear to support FRA sanctioning such limited deactivation. FRA has provided four distinct situations that will permit deactivation of an otherwise functioning alerter or deadman pedal. In addition to the switching operation problem identified in the NPRM, FRA is permitting these two devices to be disabled or "cut-out" in three instances where it would be either impractical or unsafe to attempt to keep such equipment functioning. FRA also identified one situation where it would be either impossible or impractical to keep event recorders functioning and is permitting them to be deactivated or "cut-out" in that setting.

The final rule in this proceeding includes a revised penalty schedule for Part 218 reflecting the higher maximum penalties now available and adding entries for the new sections being adopted herein. See the recent revisions to the penalty provisions and penalty schedule of Part 218 required by the RSIA published in the **Federal Register** initially on July 28, 1988 (53 FR 28594). Although FRA's penalty schedules are statements of policy and notice and comment are not required to revisions of those schedules (see 5 U.S.C. 553(b)(3)(A)), FRA solicited views on what penalties may be appropriate. FRA did not receive any expression of opinion on what the appropriate penalties should be, but did receive requests that it fully explore the issue of how it will employ its disqualification authority. Since the rulemaking proceeding on disqualification is imminent, FRA believes that it is premature to discuss how this authority will be exercised in this limited context. Consequently, all that FRA has done in this regulation is to specifically place all interested parties on notice that noncompliance may serve as basis for invoking that power.

Public Participation

Several parties took note of the limited period of time that FRA provided for submitting comments in this proceeding. Section 21 of the Rail Safety Improvement Act of 1988 (Pub. L. 100–342) requires that these regulations be issued by September 20, 1988. Due to the complexity of developing a notice of proposed rulemaking, FRA was not able to publish a proposal more than 30 days prior to the statutory limit. However, the proposal was placed on public display at the office of the Federal Register as early as possible, and a substantial comment period was provided. In consideration of the statutory limit of September 20, FRA found that good cause existed to publish this notice with a comment period of less than 30 days.

FRA appreciates the prompt response of the commenters to this proposal and recognizes the effort that making such a rapid response entails. As noted earlier, FRA has decided not to delay or stagger the mandatory compliance with certain provisions as requested by several commenters. FRA's restructured rule does not impose directly or indirectly any need to modify equipment or operating practices to accommodate these new requirements.

Regulatory Impact

E.O. 12291 and DOT Regulatory Policies

This rule has been evaluated in accordance with existing policies and procedures. The rule is considered to be non-major under Executive Order 12291 but significant under the Department's policies and procedures (44 FR 11034, February 26, 1979).

The rule will not have any direct or indirect economic impact because it does not impose any additional regulatory burden on either railroads or individuals. To the degree that potential imposition of a civil penalty serves as a deterrent to individuals who might contemplate disabling one of these devices, the rule might serve to reduce expenses by avoidance of exposure to accidents that can be prevented or minimized by a functioning device.

Regulatory Flexibility Act

These regulations will not have any economic impact on small entities. FRA, therefore, certifies that this rule will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

These regulations do not contain directly or indirectly any information collection requirements.

Environmental Impact

These rules will not have any identifiable environmental impact.

Federalism Implications

These rules will not have a substantial effect on the states, on the relationship between the states and the national government, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

List of Subjects in 49 CFR Part 218

Railroad safety, Railroad operating practices.

The Rule

In consideration of the foregoing, FRA is amending Part 218, Title 49, Code of Federal Regulations as follows:

PART 218—[AMENDED]

1. The authority citation for Part 218 continues to read as follows:

Authority: 45 U.S.C. 431 and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49(m).

2. By amending the table of contents to add new Subpart D as follows:

Subpart D—Prohibition Against Tampering With Safety Devices

Sec.
218.51 Purpose.
218.53 Scope and definitions.
218.55 Tampering prohibited.
218.57 Responsibilities of individuals.
218.59 Responsibilities of railroads.
218.61 Authority to deactivate safety devices.

3. Add Subpart D, consisting of §§ 218.51 through 218.61.

Subpart D—Prohibition Against Tampering With Safety Devices

§ 218.51 Purpose.

(a) The purpose of this subpart is to prevent accidents and casualties that can result from the operation of trains when safety devices intended to improve the safety of their movement have been disabled.

(b) This subpart does not prohibit intervention with safety devices that is permitted:

(1) Under the provisions of § 236.566 or § 236.567 of this chapter;

(2) Under the provisions of § 218.61 of this part; or

(3) Under the provisions of § 229.9 of this chapter, provided that when a locomotive is being operated under the provision of § 229.9(b) a designated officer has been notified of the defective alerter, deadman pedal, or event recorder at the first available point of communication.

§ 218.53 Scope and definitions.

(a) This subpart establishes standards of conduct for railroads and individuals who operate or permit to be operated locomotives equipped with one or more of the safety devices identified in paragraph (c) of this section.

(b) "Disable" means to unlawfully render a device incapable of proper and effective action or to materially impair the functioning of that device.

(c) "Safety device" means any locomotive-mounted equipment that is used either to assure that the locomotive operator is alert, not physically incapacitated, aware of and complying with the indications of a signal system or other operational control system or to record data concerning the operation of that locomotive or the train it is powering. See Appendix B to this part for a statement of agency policy on this subject.

§ 218.55 Tampering prohibited.

Any individual who willfully disables a safety device is subject to a civil penalty as provided in Appendix A of this part and to disqualification from performing safety-sensitive functions on a railroad if found unfit for such duties under the procedures provided for in 49 CFR Part 209.

§ 218.57 Responsibilities of individuals.

Any individual who knowingly operates a train, or permits it to be operated, when the controlling locomotive of that train is equipped with a disabled safety device, is subject to a civil penalty as provided for in Appendix A of this part and to disqualification from performing safety-sensitive functions on a railroad if found to be unfit for such duties. See Appendix B to this part for a statement of agency enforcement policy concerning violations of this section.

§ 218.59 Responsibilities of railroads.

Any railroad that operates a train when the controlling locomotive of a train is equipped with a disabled safety device is subject to a civil penalty as provided for in Appendix A of this part.

§ 218.61 Authority to deactivate safety devices.

(a) For the purpose of this chapter, it is lawful to temporarily render a safety device incapable of proper or effective action or to materially impair its function if this action is taken as provided for in paragraphs (b) or (c) of this section.

(b) If a locomotive is equipped with a device to assure that the operator is alert or not physically incapacitated, that device may be deactivated when:

(1) The locomotive is not the controlling locomotive;

(2) The locomotive is performing switching operations and not hauling cars in a manner that constitutes a train movement under Part 232 of this chapter;

(3) The locomotive is dead-in-tow; or

(4) The locomotive is a mid-train slave unit being controlled by radio from a remote location.

(c) If a locomotive is equipped with a device to record data concerning the operation of that locomotive and/or the train it is powering, that device may be deactivated only when that locomotive is being hauled dead-in-tow.

4. Amend Appendix A by adding the following:

Appendix A—Schedule of Civil Penalties [1]

Section		Violation	Willful violation
*	* * * * *		
218.55	Tampering		7,500
218.57	(i) Knowingly operating or permitting operation of disabled equipment	2,500	
	(ii) Willfully operating or permitting operation of disabled equipment		5,000
218.59	Operation of disabled equipment	2,500	5,000

[1] Except as provided for in § 218.57, a penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $20,000 for any violation where the circumstances warrant. See 49 CFR Part 209, Appendix A.

5. By adding a new Appendix B to read as follows:

Appendix B—Statement of Agency Enforcement Policy

The Rail Safety Improvement Act of 1988 (Pub. L. 100-342, enacted June 22, 1988) ("RSIA") raised the maximum civil penalties available under the railroad safety laws and made individuals liable for willful violations of those laws. Section 21 of the RSIA requires that FRA adopt regulations addressing three related but distinct aspects of problems that can occur when safety devices are tampered with or disabled. It requires that FRA make it unlawful for (i) any individual to willfully tamper with or disable a device; (ii) any individual to knowingly operate or permit to be operated a train with a tampered or disabled device; and (iii) any railroad to operate such a train.

Because the introduction of civil penalties against individuals brings FRA's enforcement of the rail safety laws into a new era and because the changes being introduced by this regulation are so significant, FRA believes that it is advisable to set forth the manner in which it will exercise its enforcement authority under this regulation.

Safety Devices Covered by This Rule

FRA has employed a functional description of what constitutes a safety device under this rule. FRA's wording effectively identifies existing equipment and is sufficiently expansive to cover equipment that may appear in the future, particularly devices associated with advanced train control systems currently undergoing research testing.

FRA has been advised by portions of the regulated community that its functional definition has some potential for confusing people who read the rule without the benefit of the preamble discussions concerning the meaning of this definition. Since this rule is specifically intended to preclude misconduct by individuals, FRA wants this rule to be easily comprehended by all who read it. To achieve that clarity, FRA has decide to specify which types of equipment it considers to be within the scope of this rule and provide some examples of equipment that is not covered. In addition, FRA is ready and willing to respond in writing to any inquiry about any other devices that a party believes are treated ambiguously under this rule. This regulation applies to a variety of devices including equipment known as "event recorders," "alerters," "deadman controls," "automatic cab signals," "cab signal whistles," "automatic train stop equipment," and "automatic train control equipment." FRA does not consider the following equipment to be covered by this rule: Radios; monitors for end-of-train devices; bells or whistles that are not connected to alerters, deadman pedals, or signal system devices; fans for controlling interior temperature of locomotive cabs; and locomotive performance monitoring devices, unless they record data such as train speed and air brake operations. Although FRA considers such devices beyond the scope of the regulation, this does not imply that FRA condones the disabling of such devices. FRA will not hesitate to include such devices at a later date should instances of tampering with these devices be discovered. FRA does not currently perceive a need to directly proscribe tampering with such devices because there is no history of these devices being subjected to tampering.

Subsequent Operators of Trains With Disabled Devices

Section 218.57 addresses instances in which one individual has tampered with a safety device and a second individual (a "subsequent operator") knowingly operates a train or permits it to be operated, notwithstanding the presence of the disabled or tampered-with unit. The most common occurrence addressed by this provision is the situation in which a train crew encounters a locomotive with a safety device that has been tampered with prior to the crew's assuming responsibility for the locomotive. FRA has structured this provision and its attendant enforcement policy to reflect the fact that instances in which one individual encounters a locomotive that someone else has tampered with are relatively infrequent occurrences.

FRA's regulatory prohibition for subsequent operator conduct reflects the legal standard for individual culpability set forth in the RSIA. Under the relevant statutory standard ("knowingly operates or permits to be operated a train on which such devices have been tampered with or disabled by another person")—now incorporated into § 218.57—individuals could be held to a simple negligence standard of conduct, i.e., a standard of reasonable care under the circumstances. FRA's conclusion about the proper interpretation of the word "knowingly" stems from both normal canons of statutory construction and analysis of decisional law concerning the use of similar statutory constructs in the civil penalty context. It is also consistent with other Departmental interpretations of the word as used in similar contexts. (See 49 CFR 107.298, defining "knowingly" under the Hazardous Materials Transportation Act, 49 App. U.S.C. 1801 *et seq.*)

Under that statutory language, the responsible members of the crew could be culpable if either (1) due to their failure to exercise reasonable care, they failed to determine that the safety device was not functioning, or (2) having ascertained that the device was not functioning, still elected to operate the train. Similarly, railroad supervisors who permit or direct that a train with a disabled device be operated after having learned that the safety device is not functioning or after having failed to use reasonable care in the performance of their duties could also be subject to sanction.

However, as a matter of enforcement policy, application of a negligence standard in this particular context presently appears unwarranted. We have seen no evidence of an employee's negligent failure to detect another employee's tampering having caused a safety problem. FRA can effectively attack the known dimensions of the tampering problem by employing an enforcement policy that limits its enforcement actions to situations where individuals clearly had actual knowledge of the disabled device and intentionally operated the train notwithstanding that knowledge.

Therefore, FRA will not take enforcement action against an individual under § 218.57 absent a showing of such actual knowledge of the facts. Actual, subjective knowledge need not be demonstrated. It will suffice to show objectively that the alleged violator must have known the facts based on reasonable inferences drawn from the circumstances. For example, it is reasonable to infer that a person knows about something plainly in sight on the locomotive he is operating. Also, unlike the case where willfulness must be shown (see FRA's statement of policy at 49 CFR Part 209, Appendix A), knowledge of or reckless disregard for the law need not be shown to make out a violation of § 218.57. The knowledge relevant here is knowledge of the facts constituting the violation, not knowledge of the law.

Should FRA receive evidence indicating that a stricter enforcement policy is necessary to address the tampering problem, it will revise its enforcement policy to permit enforcement actions based only on a showing of the subsequent operator's negligent failure to detect the tampering, as the relevant provision of the RSIA permits it to do now. Any such change in enforcement policy will become effective only after publication of a revised version of this appendix.

Issued in Washington, DC, on January 31, 1989.

John H. Riley,

Federal Railroad Administrator.

[FR Doc. 89-2579 Filed 2-2-89; 8:45 am]

BILLING CODE 4910-06-M

Proposed Rules

Federal Register
Vol. 54, No. 22
Friday, February 3, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 550

Pay Administration (General)

AGENCY: Office of Personnel Management.

ACTION: Notice of withdrawal of proposed regulations.

SUMMARY: The Office of Personnel Management (OPM) is withdrawing proposed regulations that were issued to clarify the method of calculating overtime pay under title 5, United States Code, for employees on certain unusual work schedules. The proposed regulations, published May 12, 1987 (52 FR 17762), would have separated overtime worked on a daily basis into two distinct types—(1) overtime work in excess of 8 hours in a day *outside* the basic 40-hour workweek, and (2) overtime work in excess of 8 hours in a day *within* the basic 40-hour workweek. The proposed regulations also would have made it clear that only the daily overtime hours *outside* the basic workweek are to be excluded in the calculation of weekly overtime hours. The intent of the proposed regulations was to prevent inconsistent application of Governmentwide pay administration policies.

FOR FURTHER INFORMATION CONTACT: Edward Magee, (202) 632–5056.

SUPPLEMENTARY INFORMATION: Comments received on the proposed regulations were mostly unfavorable. After reviewing these comments, we have determined that the proposed regulations would further complicate overtime pay computations under title 5 and would not contribute to clarity. Consequently, to avoid burdening agencies unnecessarily with additional regulations that apply in a limited set of circumstances, OPM is withdrawing these proposed regulations.

Agencies are reminded, however, that employees covered by both title 5 and the Fair Labor Standards Act (FLSA) are entitled to receive pay under whichever law provides the greater benefit. Therefore, two separate pay computations must be made. Our regulations in 5 CFR Part 551 on pay administration under the FLSA require computations on a workweek basis and provide for a comparison of *overtime pay* entitlements under title 5 and the FLSA to determine the greater benefit. We believe that so long as overtime pay is properly computed under title 5 and the FLSA, comparing these two entitlements will ensure that employees receive the greater total benefit.

U.S. Office of Personnel Management.
Constance Horner,
Director.
[FR Doc. 89–2504 Filed 2–2–89; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[TB–88–105]

Tobacco Inspection; Flue-Cured and Burley Tobacco; User Fee Increase

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Dairy and Tobacco Adjustment Act of 1983, as amended (Pub. L. 99–198), section 1161, prohibits the importation of flue-cured and burley tobacco which contains prohibited pesticide residue(s) and establishes related certification and testing requirements. This proposal would increase the user fees charged to importers. The increased user fees are necessary in order to recover the Department's costs of providing services under the Act.

DATE: Comments are due on or before March 6, 1989.

ADDRESS: Send comments to the Director, Tobacco Division, Agricultural Marketing Service (AMS), United States Department of Agriculture (USDA), Room 502 Annex Building, P.O. Box 96456, Washington, DC 20090–6456. Comments will be available for public inspection at this location during regular business hours.

FOR FURTHER INFORMATION CONTACT: Director, Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, Room 502 Annex Building, P.O. Box 96456, Washington, DC 20090–6456, telephone—(202) 447–2567.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Department proposes to amend the regulations governing the inspection and grading of imported flue-cured and burley tobacco to increase the fees collected for testing of imported tobacco. The fees would as nearly as possible cover the cost of providing services, including administrative and supervisory costs. The authority for these regulations is contained in the Dairy and Tobacco Adjustment Act of 1983, as amended (Pub. L. 99–198), section 1161 (the Act).

User fees are assessed on imported flue-cured and burley tobacco to cover the cost of sampling and testing under current regulations. The fee for sampling and testing imported flue-cured and burley tobacco in accordance with these regulations would be raised from $.001 per pound to $.0035 per pound. The additional fee for sampling and testing imported flue-cured and burley tobacco not accompanied by a certification that it is free of prohibited pesticide residues would be raised from $.003 per pound to $.0035 per pound. However, a minimum fee of $162.00 would be established for each lot.

These fees were determined after a thorough review of the procedures currently being used, the average volume sampled and tested and the number of staff hours necessary to provide and supervise the testing service. The costs actually incurred by this relatively new program have been closely monitored. Based on this review and analysis, it has been determined that the cost of testing tobacco samples has risen by 35 percent since the program was instituted. It has been found that, for small lots, the fees per pound do not cover the cost of testing a sample. Accordingly, this proposed rule would increase the per-pound fees and establish a minimum fee per lot.

These proposed rules have been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation 1512–1 and have been determined to be "nonmajor" because they do not meet any of the criteria established for major rules under the Executive Order.

Additionally, in conformance with the provisions of Pub. L. 96–354, the Regulatory Flexibility Act, full consideration has been given to the potential economic impact on small business of this proposed rule. Few, if any, of the firms which would be affected by these proposed regulations meet the definition of small business because of their individual size. The Administrator, Agricultural Marketing Service, has determined that these actions would have no significant economic impact upon any entity, small or large, and would not substantially affect the normal movement of the commodity in the marketplace.

All persons who desire to submit written data, views, or arguments for consideration in connection with these proposals may file them with the Director, Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, Room 502 Annex Building, P.O. Box 96456, Washington, DC 20090–6456, not later than March 6, 1989.

For the reasons set forth in the preamble, it is proposed that the regulations in 7 CFR Part 29, Subpart B, be amended as follows:

PART 29—[AMENDED]

1. The authority citation for Part 29, Subpart B, continues to read as follows:

Authority: 7 U.S.C. 511m and 511r.

Subpart B—Regulations

6. In § 29.500, paragraph (b) is revised to read as follows:

§ 29.500 Fees and charges for inspection and testing of imported tobacco.

* * * * * *

(b) The fee for sampling, testing and certification of imported flue-cured and burley tobacco for prohibited pesticide residues is $.0035 per pound, and shall be paid by the importer. The fee for testing imported flue-cured and burley tobacco not accompanied by a certification that it is free of prohibited pesticide residues shall be an additional $.0035 per pound. The minimum fee assessed pursuant to this paragraph shall be $162.00 per lot. Fees for services rendered shall be remitted by check or draft in accordance with a statement issued by the Director, and shall be made payable to "Agricultural Marketing Service."

Dated: January 31, 1989.
Kenneth C. Clayton,
Acting Administrator.
[FR Doc. 89–2533 Filed 2–2–89; 8:45 am]
BILLING CODE 3410–02–M

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Regulation CC; Docket No. R–0639]

Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of intent regarding proposed effective date.

SUMMARY: The Board is giving public notice that should the Board adopt an amendment to its Regulation CC, Availability of Funds and Collection of Checks (12 CFR Part 229) restricting the delayed disbursement of teller's checks, such an amendment would not be effective April 1, 1989, as published in the Board's proposed rule (53 FR 24093, June 27, 1988). The Board is providing this notice to allay the concerns of commenters that a final rule will be adopted with an insufficient lead time for implementation.

FOR FURTHER INFORMATION CONTACT: Louise L. Roseman, Assistant Director (202/452–3674), Gayle Thompson, Program Leader (202/452–2934), Division of Federal Reserve Bank Operations; Oliver Ireland, Associate General Counsel (202/452–3625), Stephanie Martin, Attorney (202/452–3198), Legal Division; for the hearing impaired *only*: Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION: On June 27, 1988, the Board published for comment a proposed amendment to its Regulation CC (12 CFR Part 229) as part of its regulatory responsibility for the payments system as provided in the Expedited Funds Availability Act (53 FR 24093). The proposed rule would prohibit certain delayed disbursement practices by setting out requirements for the issuance of teller's checks. The Board proposed an effective date for the rule of April 1, 1989.

The Board has received over 230 written comments from the public, and Board staff has had numerous informal conversations with industry representatives regarding the effects of the proposal. Over 70 percent of the commenters supported the Board's objective to restrict the delayed disbursement of teller's checks; however, commenters indicated that the proposed rule was ambiguous and would be difficult to administer. As of this date, the Board is still in the process of evaluating alternative methods of dealing with delayed disbursement practices relating to teller's checks. Many commenters have expressed concern that if a final rule is adopted, the April 1 effective date would not provide the industry adequate time to make conforming changes in teller's check service arrangements. In response to the commenters' concerns, the Board is giving notice that if and when a final rule restricting the delayed disbursement of teller's checks is adopted, the effective date will *not* be April 1, 1989, and the Board will allow such lead time as it determines to be reasonable for the industry to implement any necessary changes.

(Title VI of Pub. L. 100–86, 101 Stat. 552, 635, 12 U.S.C. 4001 *et. seq.*)

By order of the Board of Governors of the Federal Reserve System, January 30, 1989.
William W. Wiles,
Secretary of the Board.
[FR Doc. 89–2507 Filed 2–2–89; 8:45 am]
BILLING CODE 6210–01–M

12 CFR Part 229

[Docket R–0657]

Regulation CC; Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed interpretation.

SUMMARY: The Board is publishing for comment a proposed official Board interpretation concerning a preemption determination under its Regulation CC, Availability of Funds and Collection of Checks (12 CFR Part 229), with respect to the law of Wisconsin. The Expedited Funds Availability Act provides standards for determining whether state law governing funds availability supersedes, or is preempted by federal law. Under Regulation CC, the Board will issue preemption determinations upon request.

DATES: Comments must be submitted on or before March 3, 1989.

ADDRESSES: Comments, which should refer to Docket R–0657, may be mailed to the Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551, Attention: Mr. William W. Wiles, Secretary; or may be delivered to Room B–2223 between 8:45 a.m. and 5:00 p.m. All comments received at the above

address will be made available to the public, and may be inspected at the Freedom of Information Office, Room B-1122 between 8:45 a.m. and 5:15 p.m.

FOR FURTHER INFORMATION CONTACT: Louise L. Roseman, Assistant Director (202/452-3874) or Gayle Thompson, Program Leader (202/452-3934), Division of Federal Reserve Bank Operations, or Oliver Ireland, Associate General Counsel, Legal Division (202/452-3625); for the hearing impaired *only:* Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION: On May 13, 1988, the Board adopted Regulation CC to carry out the provisions of the Expedited Funds Availability Act (the "Act"). The regulation requires banks to make funds available to their customers within specified time frames and to disclose their funds availability policies to their customers. A number of states have also enacted laws governing funds availability. The Act (section 608) and Regulation CC (§ 229.20) provide that any provision of state law in effect on or before September 1, 1989, that provides for a shorer hold for a category of checks than is provided under federal law will supersede the federal provision.

Provisions of state law governing funds availability that permit a bank to make funds available for withdrawal in a longer period than permitted under Regulation CC are considered inconsistent, and are preempted by Regulation CC. In addition, state disclosure and notice requirements concerning funds availability related to accounts covered by Regulation CC are preempted by the federal disclosure scheme. Regulation CC provides for Board determinations of whether state law related to the availability of funds is preempted by federal law upon the request of a state, bank, or other interested party.

Generally, federal law preempts the Wisconsin funds availability requirements. Wisconsin law supersedes Regulation CC, however, with respect to in-state checks that are defined as nonlocal under the federal law, and with respect to state and local government checks, to the extent that fewer conditions to prompt availability are required under the state law. Wisconsin law continues to apply to the extent that it covers accounts or deposits not subject to the federal rules.

List of Subjects in 12 CFR Part 229

Banks, Banking, Federal Reserve System.

For the reasons set out in the preamble, 12 CFR Part 229 is proposed to be amended as follows:

PART 229—[AMENDED]

1. The authority citation for Part 229 continues to read as follows:

Authority: Title VI of Pub. L. 100-86, 101 Stat. 552, 635, 12 U.S.C. 4001 *et seq.*

2. Appendix F is amended by adding a preemption determination for the state of Wisconsin alphabetically to read as follows:

Appendix F—Official Board Interpretations

* * * * *

Wisconsin

Background

The Board has been requested, in accordance with § 229.20(d) of Regulation CC (12 CFR Part 229), to determine whether the Expedited Funds Availability Act ("the Act") and Subpart B (and in connection therewith, Subpart A) of Regulation CC preempt the provisions of Wisconsin law concerning availability of funds. This preemption determination specifies those provisions of the Wisconsin funds availability law that are not preempted by the Act and Regulation CC. (See also the Board's preemption determination regarding the Uniform Commercial Code, section 4-213(5), pertaining to availability of cash deposits.)

Wisconsin Statutes § 404.213(4m) requires Wisconsin banks to make funds deposited in accounts available for withdrawal within specified time frames. Generally, checks drawn on the U.S. Treasury, the State of Wisconsin, or on a local government located in Wisconsin must be made available for withdrawal by the second banking day following deposit. In-state and out-of-state checks must be made available for withdrawal within five banking days and eight banking days following deposit, respectively. Exceptions are provided for new accounts and reason to doubt collectibility. In addition, Wisconsin Statutes § 404.103 permits these availability requirements to be varied by agreement.

Coverage

Wisconsin law defines account as "any account with a bank and includes a checking, time, interest or savings account" (Wisconsin Statutes § 404.104(1)(a)). The federal preemption of state funds availability requirements only applies to "accounts" subject to Regulation CC, which generally consist of transaction accounts. Regulation CC does not affect the Wisconsin law to the extent that the state law applies to deposits in savings, time, and other accounts (including transaction accounts where the account holder is a bank, foreign bank, or the U.S. Treasury) that are not "accounts" under Regulation CC. (Note, however, that under § 229.19(e) of Regulation CC, *Holds on Other Funds*, the federal availability schedules may apply to savings, time, and other accounts not defined as "accounts" under Regulation CC, in certain circumstances.)

The Wisconsin statute applies to "items" deposited in accounts. This term encompasses instruments that are not defined as "checks" in Regulation CC (§ 229.2(k)), such as nonnegotiable instruments, and are therefore not subject to Regulation CC's provisions governing funds availability. Those items that are subject to Wisconsin law but are not subject to Regulation CC will continue to be covered by the state availability schedules and exceptions.

Availability Schedules

Temporary schedule. The Wisconsin statute requires that in-state nonlocal checks be made available for withdrawal not later than the fifth banking day following deposit. (Wisconsin Statutes § 404.213(4m)(b)(1)). This time period is shorter than the seventh business day availability required for nonlocal checks under § 229.11(c) of Regulation CC, although it is not shorter than the schedules for nonlocal checks set forth in § 229.11(c)(2) and Appendix B-1 of Regulation CC. Thus, the state schedule for in-state nonlocal checks supersedes the federal schedule to the extent that it applies to an item payable by a Wisconsin bank that is defined as a nonlocal check under Regulation CC, and is not subject to reduced schedules under § 229.11(c)(2) and Appendix B-1.

Permanent Schedule. Under the federal permanent availability schedule, nonlocal checks must be made available for withdrawal not later than the fifth business day following deposit. The fifth banking day availability requirement for in-state items in the Wisconsin statute supersedes the Regulation CC time period adjustment for withdrawal by cash or similar means in the permanent schedule, to the extent that the in-state checks are defined as nonlocal under Regulation CC.

Next-day availability. Under the Wisconsin statute, the proceeds of state and local government checks must be made available for withdrawal by the second banking day following deposit, if the check is indorsed only by the person to whom it was issued. (Wisconsin Statutes § 404.213(4m)(b)(1)) Regulation CC requires next-day availability for these checks, if they are deposited in an account of a payee of the check, deposited in person to an employee of the depositary bank, and deposited with a special deposit slip, if the depositary bank informed its customers that use of such a slip is a condition to next-day availability. Under the federal law, if a state or local government check is not deposited in person to an employee of the depositary bank, but meets the other conditions set forth in § 229.10(c)(1)(iv), the funds must be made available for withdrawal not later than the second business day following deposit. The Wisconsin statute supersedes Regulation CC to the extent that it does not permit the use of a special deposit slip as a condition to receipt of second-day availability.

Exceptions to the schedules. Wisconsin law provides exceptions to the state availability schedules for new accounts (those opened less than 90 days) and reason to doubt collectibility (Wisconsin Statutes § 404.213(4m)(b)). The state law also permits variation by agreement (Wisconsin Statutes § 404.103(1)). In all cases where the federal availability schedule preempts the state schedule, only the federal exceptions apply. For deposits that are covered by the state availability schedule (e.g., in-state nonlocal checks), the state exceptions may be used to extend the state availability schedule up to the federal availability schedule. Once the deposit is held up to the federal availability limit under a state exception, the depositary bank may further extend the hold under any federal exception that can be applied to the deposit. Any time a depositary bank invokes an exception to extend a hold beyond the time periods otherwise permitted by law, it must give notice of the extended hold to its customer in accordance with § 229.13(g) of Regulation CC.

Business day/banking day. The definitions of "business day" and "banking day" in the Wisconsin statutes are preempted by the Regulation CC definition of those terms. For determining the permissible hold under the Wisconsin schedules that supersede the Regulation CC schedule, deposits are considered made on the specified number of "business days" following the "banking day" of deposit.

Wisconsin law considers funds to be deposited, for the purpose of determining when they must be made available for withdrawal, when an item is "received at the proof and transit facility of the depository." For the purposes of this preemption determination, funds are considered deposited under Wisconsin law in accordance with the rules set forth in § 229.19(a) of Regulation CC.

Disclosures

The Wisconsin statute does not require disclosure of a bank's funds availability policy. The state does require, however, that a bank give notice to its customer if it extends the time wtihin which funds will be available for withdrawal due to the bank's doubt as to the collectibility of the item (Wisconsin Statutes § 404.213(4m)(b)).

Regulation CC preempts state disclosure requirements concerning funds availability that relate to "accounts" that are inconsistent with the federal requirements. The state requirement is different from, and therefore inconsistent with, the federal disclosure rules (§ 229.20(c)(2)). Thus, the Wisconsin statute is preempted by Regulation CC to the extent that this notice requirement applies to "accounts" as defined by Regulation CC. The Wisconsin requirement would continue to apply to accounts, such as savings and time accounts, not governed by the Regulation CC disclosure requirements.

By order of the Board of Governors of the Federal Reserve System, January 30, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-2506 Filed 2-2-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 399

[OST Docket No. 45884; Notice 89-1]

Statement of Enforcement Policy on Rebating

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice of extension of comment period.

SUMMARY: Comments in response to the notice of proposed rulemaking, Notice 88-5, dated October 21, 1988, (53 FR 41353) were originally due on December 20, 1988. By letter, the Italian Embassy has asked the Department to extend the comment period until mid-February 1989, because it was unable to meet the original deadline. We are granting this requirement and extending the comment period until February 21, 1989.

DATE: Comments should be received by February 21, 1989.

ADDRESSES: Comments should be sent to Docket Clerk, C-55, Docket 45884, Department of Transportation, Room 4107, 400 7th Street SW., Washington, DC 20590. Comments will be available for review by the public at this address from 9:00 a.m. through 5:00 p.m. Monday through Friday. Persons wishing acknowledgement of their comments should include a stamped, self-addressed postcard with their comments. The docket clerk will time- and date-stamped the card and return it to the commenter.

FOR FURTHER INFORMATION CONTACT: Samuel Podberesky, Assistant General Counsel for Aviation Enforcement and Proceedings, C-70, Department of Transportation, 400 7th Street SW, Room 4116, Washington, DC 20590, (202) 366-0342, or Betsy Wolf, an attorney in his office.

Issued in Washington, DC on January 30, 1989.

Mimi Weyforth Dawson,

Deputy Secretary of Transportation.

[FR Doc. 89-2578 Filed 2-2-89; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 630

[Docket No. 85N-0053]

Additional Standards for Viral Vaccines; Measles Virus Vaccine Live, Mumps Virus Vaccine Live, Rubella Virus Vaccine Live, and Measles Live and Smallpox Vaccine

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the biologics regulations governing clinical trials for three viral vaccines: Measles Virus Vaccine Live, Mumps Virus Vaccine Live, and Rubella Virus Vaccine Live. The proposed amendments would eliminate the requirements that the lots of vaccine used in clinical trials be consecutively manufactured and show satisfactory results in all prescribed tests. These proposed amendments are identical to changes made previously in the requirements for Poliovirus Vaccine Live Oral. They are intended to make the testing requirements for these viral vaccines more flexible and consistent with current scientific knowledge. The proposed amendment would also eliminate one of the safety tests for Mumps Virus Vaccine from the standards because the remaining tests provide adequate assurance of safety. FDA is also proposing to remove additional standards for Measles Live and Smallpox Vaccine. All licenses are revoked and no future licenses are expected. In addition, FDA is proposing to remove reference to the use of Measles Virus Vaccine Live with gamma globulin.

DATES: Comments by April 4, 1989. FDA is proposing that any final rule based on this proposal be effective 30 days after its date of publication in the **Federal Register.**

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: JoAnn M. Minor, Center for Biologics Evaluation and Research (HFB-130), Food and Drug Administration, 8800

BEST COPY AVAILABLE

Rockville Pike, Bethesda, MD 20892, 301–295–8188.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 1, 1984 (49 FR 23004), FDA amended 21 CFR 630.11 of the regulations governing clinical trials for Poliovirus Vaccine Live Oral. The clinical trials are performed to determine the antigenicity of that vaccine and must be completed satisfactorily to qualify the vaccine for licensure. The agency amended § 630.11 by eliminating the requirement that the five lots of oral poliovirus vaccine used in clinical trials be consecutively manufactured. The agency eliminated the requirement because it provided no additional assurances of safety, purity, and potency of the vaccine; it resulted in wasted effort and material by manufacturers conducting clinical studies; and it needlessly denied manufacturers flexibility in scheduling clinical trials. In addition without the requirement FDA may accept clinical studies performed in other countries as part of the basis of approval for U.S. licensure. Under that revised regulation, any five lots of poliovirus vaccine manufactured with the same methodology, regardless of the sequence of manufacture, would be appropriate for use in clinical trials to demonstrate antigenicity for approval of the license application.

In the **Federal Register** of June 1, 1984, FDA also amended § 630.11 by removing the provision that the five lots of oral poliovirus vaccine used in clinical trials each show satisfactory results in all prescribed tests. As explained in that final rule, this revision was prompted by questions concerning the proper interpretation of clinical data used in the early 1960's as part of the basis for licensure of the oral poliovirus vaccine currently licensed in the United States. FDA also noted that the change would facilitate FDA's ability to rely on clinical studies performed in other nations in support of an application for a license in the United States. Thus, the agency amended § 630.11 to eliminate the requirement that the five lots of oral poliovirus vaccine used in the required clinical trials each show satisfactory results in all prescribed tests. By eliminating this requirement, alternative methods in laboratory test procedures are permitted as long as they continue to ensure the safety and effectiveness of the vaccine.

Further, in the final rule of June 1, 1984 FDA stated that it would propose to revise the additional standards for other viral vaccines, consistent with amendments made to § 630.11. Accordingly, FDA is now proposing to amend the regulations governing clinical trials for three other viral vaccines: Measles Virus Vaccine Live, Mumps Virus Vaccine Live, and Rubella Virus Vaccine Live.

The agency is proposing to eliminate the requirement that the lots of these vaccines used in clinical trials be consecutively manufactured because the requirement is unnecessary to ensure the safety, purity, and potency of the vaccines and is an unnecessary burden on manufacturers conducting clinical studies. Any five lots of vaccine manufactured with the same methodology, regardless of the sequence of manufacture, would be appropriate for use in clinical trials to demonstrate antigenicity.

The agency is also proposing to eliminate the requirement for clinical trials that each lot of the vaccine show satisfactory results in all prescribed tests. The elimination of this requirement would permit the use of alternative methods in laboratory test procedures as long as the tests continue to ensure the safety and effectiveness of the vaccine.

FDA emphasizes that eliminating the requirement for clinical trials that each lot show satisfactory results in all prescribed tests would not compromise the safety, purity, or potency of these three vaccines. Under the applicable requirements of FDA's investigational new drug regulations (21 CFR Part 312), FDA will continue to require that all investigational vaccines have been shown by appropriate methods to be suitable for administration to humans before permitting their use in clinical trials in the United States. In addition, 21 CFR 601.2 of the regulations requires that, to obtain a license, manufacturers must submit "data derived from nonclinical laboratory and clinical studies which demonstrate that the manufactured product meets prescribed standards of safety, purity, and potency * * *."

Thus, FDA is proposing to amend the regulation for Measles Virus Vaccine Live in § 630.31 by removing the word "consecutive" and the phrase "each of which has shown satisfactory results in all prescribed tests." FDA is also proposing to amend § 630.30(c)(1) by removing the reference to § 630.31. For years Measles Virus Vaccine Live was administered with human gamma globulin. Currently licensed Measles Virus Vaccine Live is no longer administered with human gamma globulin. Accordingly, FDA is proposing to remove the phrase—i.e., either with or without human gamma globulin—in § 630.31.

Because the regulations at § 630.51 *Clinical trials to qualify for license* of Mumps Virus Vaccine Live and § 630.61 *Clinical trials to qualify for license* of Rubella Virus Vaccine Live require manufacturers to "* * * follow the procedures prescribed in § 630.31 * * *," there is no need to amend these regulations. FDA is proposing to amend § 630.50(c)(1) by removing the reference to § 630.51 and § 630.60(e)(1) by removing the reference to § 630.61.

FDA emphasizes that the proposed amendments will not affect FDA's regulatory requirements for the consistency of manufacture for commercial use of the three licensed vaccines subject of this proposal.

FDA is also proposing to amend § 630.31 of the regulations to permit the use in clinical trials of "suitable route of administration" of the viral vaccine to replace the current requirement that the vaccine be administered by subcutaneous injection. This proposed amendment would permit use of alternative routes of administration. Other routes of administration such as by aerosol have been used experimentally and in the future one or more of these routes may be found as effective or possibly more effective as administration by injection.

FDA is also proposing to amend the regulation for Mumps Virus Vaccine Live in § 630.55(a)(4) by removing the phrase "and in chick embryo liver" from the second sentence. The safety tests performed in chick embryo kidney, in addition to the remaining safety tests in § 630.55(a), provide adequate assurances of safety. FDA believes that testing in chick embryo liver is unnecessary and provides no additional assurance of the safety of the product.

FDA is also proposing to amend the regulation for Rubella Virus Vaccine Live in § 630.82(a) by inserting the phrase "or in a cell line found by the Director, Center for Biologics Evaluation and Research, to meet the requirements of § 610.18(c) of this chapter." This change adds flexibility to the regulation by providing for changes consistent with scientific knowledge. The proposed regulation would provide for the propagation of rubella virus in cell lines if approved by the Director, Center for Biologics Evaluation and Research.

On March 12, 1987, the remaining product license for the Measles Live and Smallpox Vaccine was revoked at the request of the licensed manufacturer (License No. 2; Merck, Sharp, and Dohme). FDA does not believe any licenses will be issued for this product in the future. Accordingly, FDA is proposing to remove the additional standards for Measles Live and Smallpox Vaccine in §§ 630.80 through 630.86 (21 CFR 630.80 through 630.86), inclusive.

The agency has determined under 21 CFR 25.24(c)(10) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

The agency has examined the economic impact of this proposed rule and has determined that it does not require either a regulatory impact analysis, as specified in Executive Order 12291, or a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96–354). The proposed rule removes unnecessary restrictions in the regulations governing clinical trials of three viral vaccines; no additional burdens are imposed upon manufacturers. Therefore, the agency concludes that this proposed rule is not a major rule as defined in Executive Order 12291. Further, the agency certifies that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act. Also, this proposed rule does not impose any additional recordkeeping or reporting requirements on the regulated industry. The reporting and recordkeeping requirements of this proposed rule are governed by the current good manufacturing practice for finished pharmaceuticals regulations in 21 CFR Part 211 (OMB Control No. 0910–0139).

Interested persons may, on or before April 4, 1989, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 630

Biologics, Labeling.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that Part 630 be amended as follows:

PART 630—ADDITIONAL STANDARDS FOR VIRAL VACCINES

1. The authority citation for 21 CFR Part 630 is revised to read as follows:

Authority: Secs. 201, 502, 505, 701, 52 Stat. 1040–1042 as amended, 1050–1053 as amended, 1055–1056 as amended (21 U.S.C. 321, 352, 355, 371); sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262); 21 CFR 5.10.

2. Section 630.30 is amended by revising the introductory text of paragraph (c)(1) to read as follows:

§ 630.30 Measles virus vaccine live.

* * * * * *

(c) *Neurovirulence safety test of the virus seed strain in monkeys*—(1) *The test.* A demonstration shall be made in monkeys of the lack of neurotropic properties of the seed strain of attenuated measles virus used in the manufacture of measles virus vaccine. For this purpose, vaccine from each of the five consecutive lots used by the manufacturer to establish consistency of manufacture of the vaccine shall be tested separately in the following manner:

* * * * * *

3. Section 630.31 is revised to read as follows:

§ 630.31 Clinical trials to qualify for license.

To qualify for license, the antigenicity of the vaccine shall have been determined by clinical trials of adequate statistical design, by a suitable route of administration of the product. Such clinical trials shall be conducted with five lots of measles virus vaccine which have been manufactured by the same methods. There shall be a demonstration under circumstances wherein adequate clinical and epidemiological surveillance of illness has been maintained to show that the measles virus vaccine, when administered as recommended by the manufacturer is free of harmful effect upon administration to approximately 1,000 susceptible individuals, in that there were no detectable neutralizing antibodies before vaccination and there was serological conversion after vaccination. The five lots of vaccine shall be distributed as evenly as possible among the 1,000 individuals tested. Demonstration shall be made of immunogenic effect by the production of specific measles neutralizing antibodies (i.e., sero-conversion from less than 1:4 to 1:8 or greater) in at least 90 percent of each of five groups of measles susceptible individuals, each having received a virus vaccine dose which is not greater than that which was demonstrated to be safe in field studies (§ 630.30(b)) when used under comparable conditions. Such clinical trials shall be conducted in compliance with Part 56 of this chapter unless exempted under § 56.104 or granted a waiver under § 56.105, and with the requirements for informed consent set forth in Part 50 of this chapter.

4. Section 630.50 is amended by revising the introductory text of paragraph (c)(1) to read as follows:

§ 630.50 Mumps Virus Vaccine Live.

* * * * * *

(c) *Neurovirulence safety test of the virus seed strain in monkeys*—(1) *The test.* A demonstration shall be made in monkeys of the lack of neurotropic properties of the seed strain of attenuated mumps virus used in the manuacture of mumps vaccine. For this purpose, vaccine from each of the five consecutive lots used by the manufacturer to establish consistency of manufacture of the vaccine shall be tested separately in monkeys shown to be serologically negative for mumps virus antibodies in the following manner:

* * * * * *

5. Section 630.55 is amended by revising paragraph (a)(4) to read as follows:

§ 630.55 Test for safety.

(a) * * *

(4) *Inoculation of other cell cultures.* The mumps virus pool shall be tested for adventitious agents in the volume and following the procedures prescribed in § 630.35(a)(3), in rhesus or cynomolgus monkey kidney, in whole chick embryo, and in human cell cultures. In addition, each vizus pool shall be tested in chick embryo kidney in the same manner except that the volume tested in each cell culture shall be equivalent to 250 human doses or 25 milliliters, whichever represents a greater volume. The mumps virus pool is satisfactory only if results equivalent to those in § 630.35(a)(3) are obtained.

* * * * * *

6. Section 630.60 is amended by revising the introductory text of paragraph (e)(1) to read as follows:

§ 630.60 Rubella Virus Vaccine Live.

* * * * * *

(e) *Neurovirulence safety test of the virus seed strain in monkeys*—(1) *The test.* A demonstration shall be made in monkeys of the lack of neurotropic properties of the seed strain of attenuated rubella virus used in the manufacture of rubella vaccine. For this purpose, vaccine from each of the five consecutive lots used by the manufacturer to establish consistency of manufacture of the vaccine shall be tested separately in monkeys shown to be serologically negative for rubella

virus antibodies in the following manner:

* * * * *

7. Section 630.62 is amended by revising paragraph (a) to read as follows:

§ 630.62 Production.

(a) *Virus cultures.* Rubella virus shall be propagated in duck embryo cell cultures, rabbit renal cell cultures, or in a cell line found by the Director, Center for Biologics Evaluation and Research, to meet the requirements of § 610.18(c) of this chapter.

* * * * *

§§ 630.80 through 630.86 [Removed]

8. Part 630 is amended by removing §§ 630.80 through 630.86.

Dated: December 27, 1988.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 89-2566 Filed 2-3-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

29 CFR Part 530

Employment of Homeworkers in Certain Industries

AGENCY: Wage and Hour Division, Employment Standards Administration, Department of Labor.

ACTION: Revised schedule of public hearings.

SUMMARY: This notice is to revise the schedule and locations of public hearings on the employment of homeworkers in the women's apparel industry. Public hearings previously scheduled for San Antonio, Texas, for March 2–3, 1989, and Chicago, Illinois, for March 8–9, 1989, will be held as planned. The public hearing in Miami, Florida, has been rescheduled for March 15–16, 1989, and additional hearings have been scheduled in Los Angeles, California, for March 22–23, 1989, and in New York, New York, for March 29–30, 1989. The purpose of these hearings is to gather information about the characteristics of this industry and the kinds of enforcement mechanisms appropriate for a new regulation governing women's apparel homework.

DATES: The public hearings will be held in San Antonio, Texas, on March 2–3, 1989, Chicago, Illinois, on March 8–9, 1989, Miami, Florida, on March 15–16, 1989, Los Angeles, California, on March 22–23, 1989, and New York, New York, on March 29–30, 1989. The hearings will begin at 9:30 am. local time. Interested parties who wish to testify in person should so notify the Wage and Hour Administrator in writing no later than February 17, 1989. Oral testimony will be kept to a maximum of twenty minutes unless different arrangements are made in advance with the Administrator. However, persons testifying are free to submit more extensive written statements for inclusion in the hearing record. Also, such persons are asked to advise the Administrator on their need, if any, if translators.

All interested parties are invited to submit written comments on this matter to the Administrator on or before April 14, 1989.

ADDRESSES: The locations for the public hearings are as follows:

Institute of Texan Cultures, 601 South Bowie, Hemisfair Plaza, San Antonio, Texas 78206

2525 Ceremonial Courtroom, Everett McKinley Dirksen Federal Building, 219 South Dearborn, Chicago, Illinois 60604

Riverfront South Hall, City of Miami Riverfront Hall, Miami Convention Center, 400 S.E. 2nd Avenue, Miami, Florida 33131

State Building, Room 1138, 107 S. Broadway, Los Angeles, California 90012

U.S. Court of International Trade, Ceremonial Courtroom, 2nd Floor, 1 Federal Plaza, New York, New York 10007

FOR FURTHER INFORMATION CONTACT: Paula V. Smith, Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523-8305. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: On December 30, 1988, the Department of Labor published in the **Federal Register** an advance notice of proposed rulemaking and notice of hearings on regulations at 29 CFR Part 530. (See 53 FR 53344.) These regulations prohibit the employment of homeworkers in the women's apparel industry. That notice advised the public of hearings scheduled for Miami, Florida, San Antonio, Texas, and Chicago, Illinois. On January 31, 1989, the Department published another notice in the **Federal Register** advising the public that additional hearings would be scheduled for New York City and Los Angeles. In addition, that notice indicated that the Miami hearing would be rescheduled for a later date as a result of the workload in arranging for these two hearings. Finally, the notice revised the date for persons to notify the Administrator of their desire to testify and the date for filing comments on the advance notice of proposed rulemaking. (See 54 FR 4836.)

Persons who do not advise the Administrator that they wish to testify at the hearings will be heard as time permits following those who have been scheduled, but they may be limited to ten minutes each for their presentation.

This document was prepared under the direction and control of Paula V. Smith, Administrator, Wage and Hour Division, U.S. Department of Labor.

Signed at Washington, DC on this 1st day of February, 1989.

Alan C. McMillan,

Acting Assistant Secretary for Employment Standards.

Paula V. Smith,

Administrator, Wage and Hour Division.

[FR Doc. 89-2568 Filed 2-3-89; 8:45 am]

BILLING CODE 4510-27-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-3512-8]

Texas; Final Authorization of State Hazardous Waste Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: The State of Texas has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). Environmental Protection Agency (EPA) has reviewed the Texas application and has made a tentative determination, subject to public review and comment, and a legislative change which would allow Texas to implement the permitting portion of its program, that the Texas hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA proposes to approve the Texas hazardous waste program revisions. The Texas application for program revision is available for public review and comment.

DATES: Comments on the Texas program revision application must be received by the close of business on March 6, 1989. A public hearing will be held on Tuesday, February 28, 1989, in Room 116 of the Stephen F. Austin Office Building at 1700 North Congress in Austin, Texas at 7 p.m. to allow interested members of the public to express their views on the program revision application.

ADDRESSES: Copies of the Texas program revision application are available from 8:30 a.m. to 4:00 p.m. Monday through Friday at the following addresses for inspection and copying: Texas Water Commission (TWC), Library, Fifth Floor, Stephen F. Austin State Office Building, 1700 North Congress, Austin, Texas 78711, Phone (512) 463-7834; U.S. EPA Region VI, Library, 12th Floor, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, Phone (214) 655-6444; and U.S. EPA Headquarters, Library, PM 211A, 401 M Street SW., Washington, DC 20460, Phone (202) 382-5926. Written comments should be sent to Ms. Lynn Prince, State Programs Section (6H-HS), Hazardous Waste Programs Branch, U.S. EPA Region VI, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, Phone (214) 655-6760.

FOR FURTHER INFORMATION CONTACT: Ms. Lynn Prince, State Programs Section (6H-HS), Hazardous Waste Programs Branch, U.S. EPA Region VI, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, Phone (214) 655-6760.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under Section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act") 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations to 40 CFR Parts 260–266 and 124 and 270.

B. Texas

The State of Texas initially received final authorization in a notice published on December 12, 1984, and effective December 26, 1984. Texas received authorization for revisions to its program in notices published in the **Federal Register** on March 26, 1985, October 4, 1985, January 31, 1986, and December 18, 1986. On November 12, 1987, Texas submitted a program revision application for additional program approvals.

Today, Texas is seeking approval of its program revision in accordance with § 271.21(b)(4) for the non-HSWA revisions to the Federal RCRA program that were published in the **Federal Register** through July 3, 1986. These revisions include such changes as the interim status standards for land fills and the regulation of radioactive mixed waste.

EPA has reviewed the Texas application, and has made a tentative determination, subject to public review and comment, and a legislative change which would allow Texas to implement the permitting portion of its program, that the Texas hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA has made the tentative determination to grant Texas final authorization for the additional program modifications once the EPA concerns are satisfactorily addressed by the State.

Texas passed Article 7 of the Texas Department of Commerce Act (Tex. Rev. Civ. Stat. Ann. art. 4413(301) section 7.003(a) (Vernon Supp. 1988)), in July of 1987, and it became effective September 1, 1987. Section 7.003(a) of the act is not specific to environmental permits, but applies to all permits issued by a Texas State Agency or political subdivision. It states in part:

> The approval, disapproval, or conditional approval of an application for a permit shall be considered by each regulatory agency solely on the basis of * * * requirements in effect at the time the original application for the permit is filed. If a series of permits is required for a project, the * * * requirements in effect at the time the original application for the first permit in that series is filed, shall be the sole basis for consideration of all subsequent permits required for the completion of the project.

Federal regulations require that EPA approve or disapprove RCRA State program revisions based on the requirements of 40 CFR Part 271 (40 CFR 271.21(b)(2)). One of these requirements, § 271.14, concerns permitting. All State RCRA programs must have legal authority to implement the conditions in § 270.32 (40 CFR 271.14(k)). Section 270.32(b)(1) states that each RCRA permit shall include conditions necessary to achieve compliance with the regulations including the applicable requirements of the regulations (40 CFR 270.32(b)(1)). For a State-issued permit, an applicable requirement is a State statutory or regulatory requirement which takes effect prior to final administrative disposition of a permit (40 CFR 270.32(c)).

Texas regulations are equivalent to these regulations. They require that any statutory or regulatory requirement which takes effect prior to final administrative disposition of a permit application shall be included in the permit (31 TAC 305.127(4)(b)). However, in July 1987, the Texas Department of Commerce Act was passed and, as noted above, it requires that State agencies use solely those regulations in effect at the time of permit filing when processing a permit. Because statutory authority prevails over regulatory authority, the provisions of 31 TAC 305.127(4)(b) may be considered to have been legislatively pre-empted. Therefore, Texas does not currently have equivalent regulations for 40 CFR 270.32, nor does Texas have the authority to carry out the conditions in 40 CFR 270.32 as required by 40 CFR 271.14.

The next regularly scheduled session of the Texas legislature is in January, 1989. The Governor of the State of Texas indicated by letter to the Regional Administrator of Region VI, dated August 22, 1988, that the executive branch of the State government is committed to taking steps to ensure that the legislature passes an amendment to the Department of Commerce Act which would exclude permitting under the RCRA program from the requirements of the act.

When a legislative amendment becomes effective, Texas' program will satisfy all the requirements necessary for final authorization. EPA proposes that Texas be granted final authorization for its revised RCRA program once a satisfactory amendment to the Department of Commerce Act becomes effective. EPA will provide subsequent notice once the amendment is adopted by the legislature, and the Final Authorization will become effective only after the effective date of the amendment. If the amendment is not adopted by the end of the next regular legislative session in 1989, then EPA will commence proceedings under the regulations at 40 CFR 271.23(b) to

withdraw approval of the authorized Texas program. The criteria for withdrawing approval of State programs is found in 40 CFR 271.22.

The public may submit written comments on EPA's tentative determination until March 6, 1989. Copies of the Texas application for program revision are available for inspection and copying at the locations indicated in the "ADDRESSES" section of this notice.

The Final Determination will be published in the Federal Register.

The Texas program revisions include changes to the base program as well as changes to the subsequent post-base program. The Texas Water Commission adopted permanent revisions in 31 TAC Chapters 281, 301, 305, 335, and 337. The State's new regulations pick up changes in the Federal RCRA program through the July 14, 1986, publication of the Federal Register. The State of Texas has also picked up some of the provisions of HSWA although the State is not seeking HSWA authorization. For example, Texas does not seek authorization of the availability of information provisions contained in section 3006(f) of RCRA.

EPA can authorize those Texas rules which are more stringent than the Federal program. Since Texas' regulations include many more stringent "HSWA-type" requirements, EPA plans to authorize these regulations as more stringent provisions of the Texas authorized RCRA program. The "HSWA-type" requirements will not be authorized for HSWA purposes at this time, and EPA, therefore, will retain its responsibilities to carry out the HSWA provisions in Texas.

The Texas provisions incorporating the Federal HSWA provisions concerning research, development, and demonstration permits for authorization cannot be considered as equivalent, or more stringent, RCRA (pre-HSWA) requirements. Texas has not applied, nor is it required at this time to apply, for authorization of these Federal HSWA requirements. Therefore, Subchapter K of 31 Texas Administrative Code Chapter 305 (as amended July 14, 1987) is not being considered as part of the authorized State program.

Although these new provisions are not as stringent as RCRA permitting requirements, they may be equivalent to, or more stringent than, the newer and more flexible permitting authorities for research, development and demonstration facilities that HSWA provides.

EPA will consider these provisions when Texas applies for HSWA authorization.

The State also submitted revisions to the Program Description, Attorney General's Statement and the Memorandum of Agreement between the State of Texas and EPA, Region VI. Three executed Memoranda of Understanding (MOUs) were also submitted. The first MOU is between the Railroad Commission of Texas, TWC and the Texas Department of Health (TDH). That document addresses the jurisdictional division among the agencies over wastes that result from activities associated with the exploration, development, and production of oil or gas and the refining of oil. The second MOU between TWC and TDH concerned the regulation and management of radioactive mixed wastes. The third MOU between TWC and the Attorney General of Texas concerned public participation in the State hazardous waste enforcement process.

The State of Texas is not seeking authority over activities on Indian lands.

C. Codification in Part 272

EPA will use Part 272 for codification of the decision to authorize the Texas program and for incorporation by reference of those provisions of the Texas statutes and regulations that EPA will enforce under sections 3008, 3013, and 7003 of RCRA. Therefore, EPA is proposing to amend Part 272, Subpart SS. A separate notice will be published for the proposed codification.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization does not create any new requirements but simply approves requirements which are already State law. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials, Transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of Sections 1006, 2002(a), and 3006 of the Solid Waste Disposal Act as amended, 42 U.S.C. 6905, 6912(a) and 6926.

Dated: September 16, 1988.

Joseph D. Winkle,

Acting Regional Administrator.

[FR Doc. 89-2184 Filed 2-2-89; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[OPP-300195; FRL-3513-8]

Acrylonitrile-Butadiene Copolymer, FD&C Yellow No. 6 Aluminum Lake, 2-(2'-Hydroxy-5'-Methylphenyl) Benzotriazole, and Octadecyl 3,5-Di-Tert-Butyl-4-Hydroxyhydrocinnamate; Tolerance Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that acrylonitrile-butadiene copolymer (CAS Reg. No. 9003-18-3), FD&C Yellow No. 6 aluminum lake (CAS Reg. No. 15790-07-5), 2-(2'-hydroxy-5'-methylphenyl) benzotriazole (CAS Reg. No. 2440-22-4), and octadecyl 3,5-di-tert-butyl-4-hydroxyhydrocinnamate (CAS Reg. No. 2082-79-3) be exempted from the requirement of a tolerance when used as inert ingredients (components of ear tags and similar slow-release devices) in pesticide formulations applied to animals. This proposed regulation was requested by Y-Tex Corp.

DATE: Written comments, identified by the document control number [OPP-300195], must be received on or before February 21, 1989.

ADDRESS: By mail, submit comments to: Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Registration Support Branch, Registration Division (TS-767C), Environmental Protection Agency, Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 246 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Kerry B. Leifer, Registration Support Branch, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Registration Support Branch, Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-7700.

SUPPLEMENTARY INFORMATION: At the request of Y-Tex Corp., the Administrator proposes to amend 40 CFR 180.1001(e) by establishing an exemption from the requirement of a tolerance for acrylonitrile-butadiene copolymer, FD&C Yellow No. 6 aluminum lake, 2-(2'-hydroxy-5'-methylphenyl)benzotriazole, and octadecyl 3,5-di-tert-butyl-4-hydroxyhydrocinnamate when used as inert ingredients (components of ear tags and similar slow-release devices in pesticide formulations applied to animals.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting and spreading agents; and propellants in aerosol dispensers and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

Preambles to proposed rulemaking documents of this nature include the common or chemical name of the substance under consideration, the name and address of the firm making the request for the exemption, and toxicological and other scientific bases used in arriving at a conclusion of safety in support of the exemption.

Name of inert ingredients. Acrylonitrile-butadiene copolymer (CAS Reg. No. 9003-18-3), FD&C Yellow No. 6 aluminum lake (CAS Reg. No. 15790-07-5), 2-(2-hydroxy-5-methylphenyl) benzotriazole (CAS Reg. No. 2440-22-4), and octadecyl 3,5-di-tert-butyl-4-hydroxycinnamate (CAS Reg. No. 2082-79-3).

Name and address of requestor. Y-Tex Corporation, P.O. Box 1450, 1825 Big Horn Avenue, Cody, WY 82414

Bases for approval

Acrylonitrile-butadiene copolymer—

1. Because of their high-average molecular weight, insoluble form, and solid nature, butadiene copolymers are not expected to result in residues in meat and milk or to be bioavailable.

2. Toxicity data for the major monomer, acrylonitrile, were extensively reviewed by the U.S. Food and Drug Administration (FDA) (49 FR 36635; September 19, 1984). FDA concluded that the worst-case exposure to this monomer would result in an upper daily lifetime oncogenic risk of less than 1.2×10^{-7}, based on a daily lifetime consumption of 1,060 grams of soft drinks contained in acrylonitrile/styrene plastic beverage bottles (from which the monomer might be expected to migrate) with acrylonitrile monomer concentrations not exceeding 80 ppm.

3. Residues of acrylonitrile or 1,3-butadiene are not expected to be present at toxicologically significant levels in meat and milk based upon the maximum concentrations of these monomers (0.5 ppm acrylonitrile, 0.005 ppm 1,3-butadiene) in the devices per se.

4. Acrylonitrile-butadiene copolymers are cleared under 21 CFR 181.32 as prior-sanctioned substances used in certain articles intended to contact food. Listed articles include films (21 CFR 181.32(a)(1)(ii)—no restriction), coatings on paper and paperboard products in contact with meat and lard only (21 CFR 181.32(a)(2)(i)—blended with polyvinyl chloride (PVC)), coatings on conveyor belts used with fresh fruits, vegetables, and fish (21 CFR 181.32(a)(2)(ii)—blended with PVC mixed with neoprene), and extruded pipe (21 CFR 181.32(a)(3)(iii)—blended with PVC).

5. Acrylonitrile copolymers may be safely used on an interim basis as articles or components of articles intended for use in contact with food subject to certain prescribed limitations on acrylonitrile monomer extraction under 21 CFR 180.22.

FD&C Yellow No. 6 aluminum lake—

1. Residues of FD&C Yellow No. 6 aluminum lake in meat and milk are not expected to be of sufficient magnitude to warrant toxicological concern.

2. FD&C Yellow No. 6 is permanently listed for general use as a color additive in foods, drugs, cosmetics, and medical devices under 21 CFR Parts 74, 81, 82, and 201.

3. Lakes of FD&C Yellow No. 6 are provisionally listed as color additives under 21 CFR 81.1, and specifications are given under 21 CFR 82.51 and 21 CFR 82.706.

2-(2'-Hydroxy-5'-methylphenyl) benzotriazole—1. Residues of 2-(2'-hydroxy-5'-methylphenyl)benzotriazole in milk and meat are not expected to be of sufficient magnitude to warrant toxicological concern.

2. 2-(2'-Hydroxy-5'-methylphenyl) benzotriazole is cleared under 21 CFR 178.2010 as an antioxidant and/or stabilizer in polymers used in the manufacture of articles or components of articles intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food.

Octadecyl 3,5-di-tert-butyl-4-hydroxyhydrocinnamate—1. Residues of octadecyl 3,5-di-tert-butyl-4-hydroxyhydrocinnamate in milk and meat are not expected to be of sufficient magnitude to warrant toxicological concern.

2. Octadecyl 3,5-di-tert-butyl-4-hydroxyhydrocinnamate is cleared under 21 CFR 177.1010 as an antioxidant and stabilizer in resinous and polymeric coatings used as the food-contact surface of articles intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food.

3. Octadecyl 3,5-di-tert-butyl-4-hydroxyhydrocinnamate is cleared under 21 CFR 178.2010 as an antioxidant and/or stabilizer in polymers used in the manufacture of articles or components of articles intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food.

EPA has initiated new review procedures for tolerance exemptions for inert ingredients. Under these procedures the Agency conducts a review of the data base supporting any prior clearances, the data available in the scientific literature, and any other relevant data. Based on a review of such data, the Agency has determined that no additional test data will be required to support this regulation.

Based on the above information and review of its use, it has been found that when used in accordance with good agricultural practices these ingredients are useful and do not pose a hazard to humans or the environment. In conclusion, the Agency has determined that the proposed amendments to 40 CFR Part 180 will pose no hazard to the public health. It is therefore proposed that the regulation be established as set forth below.

Any person who has registered or submitted an application for registration

of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, that contains these inert ingredients may request within 15 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating both the subject and the petition and document control number [OPP–300195]. All written comments filed in response to this proposal will be available for inspection in the Registration Support Branch at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: January 23, 1989.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.1001(e) is amended by adding and alphabetically inserting the inert ingredients, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(e) * * *

Inert ingredients	Limits	Uses
* * *	* * *	*
Acrylonitrile-butadiene copolymer (CAS Reg. No. 9003–18–3) conforming to 21 CFR 180.22.		Carrier in animal tag and similar slow-release devices.
* * *	* * *	*
FD&C Yellow No. 6 aluminum lake (CAS Reg. No. 15790–07–5).	Not more than 2% by weight of pesticide formulation.	Pigment in animal tag and similar slow-release devices.
* * *	* * *	*
2-(2'-Hydroxy-5'-methylphenyl) benzo-triazole (CAS Reg. No. 2440–22–4).	Not more than 0.5% by weight of pesticide formulation.	Ultraviolet light absorber/stabilizer in animal tag and similar slow-release devices.
* * *	* * *	*
Octadecyl 3,5-di-tert-butyl-4-hydroxyhydrocinnamate (CAS Reg. No. 2082–79–3).	Not more than 0.5% by weight of pesticide formulation.	Thermal stabilizer/antioxidant in animal tag and similar slow-release devices.
* * *	* * *	*

[FR Doc. 89–2424 Filed 2–2–89; 8:45 am]

BILLING CODE 6560–50–M

COMMISSION ON CIVIL RIGHTS

45 CFR Part 704

Implementation of Freedom of Information Reform Act

AGENCY: United States Commission on Civil Rights.

ACTION: Proposed rule.

SUMMARY: The United States Commission on Civil Rights proposes to amend its Information Disclosure regulations to incorporate the recent changes to the Freedom of Information Act (FOIA) regarding requests for law enforcement records and the establishment and waiver of fees to be charged for search, review and duplication of records in response to FOIA requests. These proposed rules follow guidance issued by the Office of Management and Budget.

DATE: Comments on these proposed rules must be received on or before March 6, 1989.

ADDRESS: Written comments should be submitted to: William H. Gillers, Solicitor, U.S. Commission on Civil Rights, 1121 Vermont Avenue, NW., Room 606, Washington, DC 20425, (202) 376–8514.

FOR FURTHER INFORMATION CONTACT: William H. Gillers, Solicitor, U.S. Commission on Civil Rights, 1121 Vermont Avenue, NW., Room 606, Washington, DC 20425, (202) 376–8514.

SUPPLEMENTARY INFORMATION: The Freedom of Information Reform Act of 1986 (FOIRA) (Pub. L. 99–570) amended the Freedom of Information Act (FOIA) (5 U.S.C. 552) by modifying the terms of exemption 7 and by supplying new provisions relating to the charging and waiving of fees. The purpose of these proposed rules is to implement the changes mandated by the FOIRA. These proposed changes to the Commission's Information Disclosure regulations at 45 CFR Part 704 are in accordance with guidelines published by the Office of Management and Budget (OMB) at 52 FR 10012 (March 27, 1987).

The FOIRA established three levels of fees that may be charged depending on the identity of the requester and the anticipated use of the requested information. These proposed rules provide for the charging of fees as follows: (1) Representatives of the news media as well as educational and noncommercial scientific institutions—document duplication alone; (2) commercial use requesters—duplication, search and review time; and (3) all other requesters—duplication and search time. Those requesters subject to search and/or duplication fees, with the exception of commercial use requesters, will not be charged for the first two hours of search time or the first 100 pages duplicated.

These proposed rules also implement the FOIRA provisions regarding fee waivers or reductions. Fee waivers will be warranted if the requester can satisfactorily demonstrate that the disclosure of requested information is in the public interest because it is likely to contribute significantly to the public's understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

The Commission's rule concerning exemption 7 of the FOIA is being revised to reflect the new standard promulgated by the FOIRA. The general thrust of the revised standard is to broaden the scope of the exemption on law enforcement records or information. Exemption 7 is rarely used by the Commission in processing FOIA requests.

These proposed regulations would also update the Commission's current regulations. The revised authority section omits reference to a superseded Commission authorizing statute. Additionally, the charge for certification

of copies has been raised from $1.00 to $3.00, and the charge for duplication of paper records has been raised from $.03 to $.20. Finally, the provision granting appeal from the Solicitor's decision on fee waivers or reductions has been eliminated.

These rules do not constitute "major rules" within the meaning of Executive Order No. 12291. The requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b), do not apply.

List of Subjects in 45 CFR Part 704

Freedom of information.

Therefore, for the reasons set forth above, the Commission proposes to amend its Information Disclosure rules, 45 CFR Part 704, as follows:

PART 704—[AMENDED]

1. The authority citation for Part 704 is revised to read as follows:

Authority: 42 U.S.C. 1975–1975(f); 5 U.S.C. 552.

2. Section 704.1 paragraphs (e), (f)(1)(vii) and (f)(2) are revised to read as follows:

§ 704.1 Material available pursuant to 5 U.S.C. 552.

* * * * *

(e) Fees—(1) Definitions. The following definitions apply to the terms when used in this section:

(i) "Direct costs" means those expenditures which the Commission actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a request made under § 704.1(d) of this Part. Direct costs include, for example, the salary of the employee(s) performing the work (the basic rate of pay for the employee(s) plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(ii) "Search" means all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification within documents. However, an entire document will be duplicated if this would prove to be a more efficient and less expensive method of complying with a request than a more detailed manner of searching. "Search" is distinguished from "review" of material in order to determine whether the material is exempt from disclosure.

(iii) "Duplication" means the process of making a copy of a document necessary to respond to a request for disclosure of records. Such copies can take the form of paper or machine readable documentation (e.g., magnetic tape or disk), among others.

(iv) "Review" means the process of examining documents located in response to an information request to determine whether any portion of any document is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(v) "Commercial use request" means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In deciding whether a requester properly belongs in this category, the Solicitor will determine the use to which a requester will put the documents requested. When the Solicitor has reasonable cause to doubt such intended use, or where such use is not clear from the request itself, the Solicitor will seek additional clarification before assigning the request to a specific category.

(vi) "Educational institution" means a school, an institution of higher education, an institution of professional education or an institution of vocational education, which operates a program or programs of scholarly research.

(vii) "Noncommercial scientific institution" means an institution that is not operated on a commercial basis and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(viii) "Representative of the news media" means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. News media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. "Freelance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it.

(2) Costs to be included in fees. The direct costs included in fees will vary according to the following categories of requests:

(i) Commercial use requests. Fees will include the Commission's direct costs for searching for, reviewing, and duplicating the requested records.

(ii) Educational and noncommercial scientific institution requests. The Commission will provide documents to requesters in this category for the cost of duplication alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made under the auspices of a qualifying institution and that the records are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a noncommercial scientific institution) research.

(iii) Requests from representatives of the news media. The Commission will provide documents to requesters in this category for the cost of duplication alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category a requester must meet the criteria in paragraph (e)(1)(viii) of this section.

(iv) All other requests. The Commission will charge requesters who do not fit into any of the categories in paragraphs (e)(2) (i) through (iii) of this section fees which cover the direct costs of searching for and duplicating records that are responsive to the requests, except for the first two hours of search time and the first 100 pages duplicated. However, requests from persons for records about themselves will continue to be treated under the fee provision of the Privacy Act of 1974 and § 705.10 of this chapter.

(3) Fee calculation. Fees will be calculated as follows:

(i) Manual search. At the salary rate (basic pay plus 16 percent) of the employee(s) making the search.

(ii) Computer search. At the actual direct cost of providing the search, including computer search time directly attributable to search for records responsive to the request, runs, and operator salary apportionable to the search.

(iii) Review (commercial use requests only). At the salary rate (basic pay plus 16 percent) of the employee(s) conducting the review. Only the review necessary at the initial administrative level to determine the applicability of any exemption, and not review at the administrative appeal level, will be included in the fee.

(iv) Duplication. At 20 cents per page for paper copy. For copies of records prepared by computer (such as tapes or

printouts), the actual cost of production, including operator time, will be charged.

(v) Additional services; certification. Express mail and other additional services that may be arranged by the requester will be charged at actual cost. The fee for certification or authentication of copies shall be $3.00 per document.

(vi) Assessment of interest. The Commission may begin assessing interest charges on the 31st day following the day the fee bill is sent. Interest will be at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of billing.

(vii) No fee shall be charged if the total billable cost calculated under paragraphs (e) (2) and (3) of this section is less than $10.00.

(4) Waiver or reduction of fees. (i) Documents will be furnished without charge, or at a reduced charge, where disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(ii) Whenever a waiver or reduction of fees is granted, only one copy of the record will be furnished.

(iii) The decision of the Solicitor on any fee waiver or reduction request shall be final and unappealable.

(5) Payment procedures. (i) Fee payment. Payment of fees shall be made by cash (if delivered in person), check or money order payable to the United States Commission on Civil Rights.

(ii) Notification of fees. No work shall be done that will result in fees in excess of $25.00 without written authorization from the requester. Where it is anticipated that fees will exceed $25.00, and the requester has not indicated in advance a willingness to pay fees as high as are anticipated, the requester will be notified of the amount of the projected fees. The notification shall offer the requester an opportunity to confer with the Solicitor in an attempt to reformulate the request so as to meet the requester's needs at a lower cost. The administrative time limits prescribed in 5 U.S.C. 552(a)(6) will not begin until after the requester agrees in writing to accept the prospective charges.

(6) Advance payment of fees. When fees are projected to exceed $250.00, the requester may be required to make an advance payment of all or part of the fee before the request is processed. If a requester has previously failed to pay a fee in a timely fashion (i.e. within 30 days of the billing date), the requester will be required to pay the full amount owed plus any applicable interest, and to make an advance payment of the full amount of the estimated fee before a new or pending request is processed from that requester. The administrative time limits prescribed in 5 U.S.C. 552(a)(6) will not begin until after the requester has complied with this provision.

(7) Other provisions. (i) Charges for unsuccessful search. Charges may be assessed for time spent searching for requested records, even if the search fails to locate responsive records or the records are determined, after review, to be exempt from disclosure.

(ii) Aggregating requests to avoid fees. Multiple requests shall be aggregated when the Solicitor reasonably determines that a requester or group of requesters is attempting to break down a request into a series of requests to evade fees.

(iii) Debt Collection Act. The Debt Collection Act, including disclosure to consumer reporting agencies and use of collection agencies, will be used to encourage payment where appropriate.

(f) Exemptions (5 U.S.C. 552(b)).

(1) * * *

(vii) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(A) Could reasonably be expected to interfere with enforcement proceedings,

(B) Could deprive a person of a right to a fair trial or an impartial adjudication,

(C) Could reasonably be expected to constitute an unwarranted invasion of personal privacy,

(D) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis,

(E) Could disclose techniques and procedures for all enforcement investigations or prosecutions, or could disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or

(F) Could reasonably be expected to endanger the life or physical safety of any individual;

* * * * *

(2) Investigatory records or information. (5 U.S.C. 552(b)(7)). (i) Among the documents exempt from disclosure pursuant to § 704.1(f)(1)(vii) shall be records or information reflecting investigations which either are conducted for the purpose of determining whether a violation(s) of legal right has taken place, or have disclosed that a violation(s) of legal right has taken place, but only to the extent that production of such records or information would fall within the classifications established in paragraph (f)(1)(vii)(B) through (F) of this section.

(ii) Among the documents exempt from disclosure under paragraphs (f)(1)(vii)(D) and (f)(2)(i) of this section concerning confidential sources shall be documents which disclose the fact or the substance of a communication made to the Commission in confidence relating to an allegation or support of an allegation of wrongdoing by certain persons. It is sufficient under this subsection to indicate the confidentiality of the source if the substance of the communication or the circumstances of the communication indicate that investigative effectiveness could reasonably be expected to be inhibited by disclosure.

(iii) Whenever a request is made which involves access to records described in paragraph (f)(1)(vii)(A) of this section and the investigation or proceeding involves a possible violation of criminal law; and there is reason to believe that the subject of the investigation or proceeding is not aware of its pendency, and disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the Commission may, during only such time as that circumstance continues, treat the records as not subject to the requirements of 5 U.S.C. 552 and this section.

* * * * *

§ 704.1 [Amended]

3. Section 704.1(g)(1) is amended by removing the word "either" and the phrase "or denied waiver or reduction of fees under § 704.1(e)(2) or (3)."

4. Section 704.1(g)(2) is amended by removing the words "and (e)(2) or (3)" and "or waiver/reduction of fees."

Dated: January 31, 1989.

William H Gillers,

Solicitor.

[FR Doc. 89-2544 Filed 2-3-89; 8:45 am]

BILLING CODE 6335-01-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 550, 580, and 581

[Docket No. 88-4]

Equipment Interchange Agreements; Tariff Publication of Free Time and Detention Charges

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to amend its domestic offshore tariff, foreign tariff and service contract filing regulations pertaining to the publication of free time and detention charges applicable to carrier equipment interchanged with shippers or their agents. This proposal is intended to simplify the filing of equipment interchange agreemments. The proposed rule provides guidelines for filing equipment interchange agreement tariffs and eliminates the necessity of filing a complete copy of an equipment interchange agreement that makes limited changes to the standard agreement. With respect to service contracts, procedures are established for the inclusion of equipment interchange provisions.

DATE: Comments due on or before March 20, 1989.

ADDRESS: Comments (Original and fifteen (15) copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: Robert G. Drew, Director, Bureau of Domestic Regulation, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523-5796.

SUPPLEMENTARY INFORMATION: The Commission published a Final Rule with respect to equipment interchange agreements ("EIA") in the **Federal Register** on February 26, 1988, with an effective date of March 28, 1988 (53 FR 5770). This Final Rule, issued in Docket No. 85-19–*Tariff Publication of Free Time and Detention Charges Applicable to Carrier Equipment Interchanged with Shippers or Their Agents*, amended the Commission's domestic offshore and foreign tariff filing rules to require common carriers to publish in their tariffs the terms and conditions (including free time allowed and detention or similar charges assessed) governing the use of carrier-provided equipment (including cargo containers, trailers and chassis) by shippers or persons acting on the shippers' behalf. The Final Rule requires common carriers to file a copy of each EIA they have with shippers or their agents. Under the Final Rule, the agreements must be published in the rules section of a carrier's EIA tariff in accordance with 46 CFR 550.5(b)(8)(xvii) (domestic trades) and 46 CFR 580.5(d)(21) (foreign trades).

On March 9, 1988, a petition was filed by several conferences of ocean common carriers requesting a 90-day stay of the effective date of the Final Rule. The purpose of the request was to allow additional time for compliance with the new regulations. The Commission granted that request, extending the effective date of the Final Rule to June 26, 1988 (53 FR 9629, March 29, 1988).

Because of continuing difficulties faced by the industry, the Commission granted a further 90-day extension of the Rule's effective date to September 30, 1988 (53 FR 23632, June 23, 1988). On August 30, 1988 (53 FR 33139), the Commission issued an indefinite stay of the effective date of the Final Rule to permit resolution of a number of remaining issues regarding compliance with various aspects of the EIA filing requirements.

The Final Rule in Docket No. 85-19 requires carriers and conferences to file each EIA *in its entirety*, if it differs from the carrier's standard terms and conditions. This would necessitate a number of nearly identical filings, as many EIA's differ only in minor respects, such as in their "free days and charges" provisions.

The rule proposed in this proceeding is intended to supplement the regulations issued in Docket No. 85-19 and simplify their implementation by easing tariff filing requirements. It does not affect the exemptions granted in Docket No. 85-19 for EIA's which do not affect the rates of the carrier. The overall purpose of the proposed rule is to provide a tariff filing methodology available to all carriers and conferences. This should facilitate compliance with the regulation and avoid the imposition of unnecessary and costly burdens on the industry with respect to the printing and filing of tariff pages. The proposed rule also clarifies the relationship of the EIA filing requirement to service contracts, guidelines which were not included in the Final Rule in Docket No. 85-19.

This proposed rule would: (1) Require publication of a separate EIA tariff only in those instances where an individual EIA differs from the carrier's standard EIA; (2) allow carriers to publish separately the free days or charges provisons in those instances where those provisions of an individual EIA differ from the standard; (3) permit the cross-referencing of foreign rate tariffs; (4) permit conferences to cross-reference an individual member's EIA tariff; and (5) clarify the filing requirements for service contracts. In those instances where non-standard EIA's differ from the standard EIA only with respect to the number of free days and/or charges, the proposed rule would provide that only the minimal EIA information required by the prescribed Section 1 of the EIA tariff be provided. (*See* Attached Exhibit Nos. 3 and 6, Domestic and Foreign respectively). Where the difference is in other provisons of the EIA, the entire EIA would have to be published in tariff format set forth in prescribed Section 2. (*See* Attached Exhibit Nos. 4 and 7, Domestic and Foreign respectively). In additon, an index to Section 2 would be required to include the name of the inland carrier; location of the free days and/or charges; equipment subject to the agreement; number of free days and/or charges; tariffs subject to the charges; and the tariff page where the agreement can be located.

The provisions of the proposed rule are applicable to vessel operating common carriers and non-vessel-operating common carriers. Furthermore, because the Docket No. 85-19 regulations on the use of carrier equipment apply to free time practices in foreign countries, carriers or conferences must comply with the EIA publication requirements with respect to foreign port operations.

Commenting parties are encouraged to submit, along with any comments, draft language for any changes suggested. The Commission is inviting comments only to the rule proposed in this proceeding. The Commission is not soliciting, nor will it entertain or consider, comments on issues raised and disposed of in Docket No. 85-19. The Commission further advises that by providing a procedure for the identification and publication of EIA's which vary from the standard, the Commission is not passing upon the legality of such variations under the anti-discrimination provisions of the Shipping Act 1916, 46 U.S.C. app. 801 *et seq.* or the Shiping Act of 1984, 46 U.S.C. app. 1701 *et. seq.*

The stay in Docket No. 85-19 will remain in effect pending completion of this proceeding.

The Commission has determined that this proposed rule is not a "major rule" as defined in Executive Order 12291 dated February 27, 1981, because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Commission also finds that the rule proposed in this proceeding is exempt from the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601. Section 601(2) of that Act excepts from

its purview any "rule of particular applicability to rates or practices relating to such rates * * *." As the proposed rule relates to particular application of rates and rate practices, the Regulatory Flexibility Act requirements are inapplicable.

The collection of information requirements contained in this proposed rule have been submitted to the Office of Management and Budget for review under section 3503(h) of the Paperwork Reduction Act, 44 U.S.C. 3504(h). Public reporting burden for this collection of information is estimated to average 20 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This represents a reduction in burden from the rule as stated in Docket 85-19. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to John Robert Ewers, Director, Bureau of Administration, Federal Maritime Commission, Washington, DC 20573, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

List of Subjects in 46 CFR Parts 550, 580 and 581

Maritime carriers, Rates and fares, Service contracts, Reporting and recordkeeping requirements.

Therefore, pursuant to 5 U.S.C. 553; secs. 8, 9, 10 and 17 of the Shipping Act of 1984, 46 U.S.C. app. 1707, 1708, 1709 and 1716; secs. 18(a) and 43 of the Shipping Act, 1916, 46 U.S.C. app. 817(a) and 841(a), and sec. 2 of the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 844, the Federal Maritime Commission proposes to amend Parts 550, 580 and 581 of Title 46 of the Code of Federal Regulations as follows:

PART 550—[AMENDED]

1. The authority citation for Part 550 continues to read:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 812, 814, 815, 817(a), 820, 833a, 841, 843, 845a and 847.

2. Section 550.5 is amended by revising paragraph (b)(8)(xvii) as follows:

§ 550.5 Contents of tariffs.

* * * * *

(b) * * *

(8) * * *

(xvii) *Use of carrier equipment.* (A) The standard agreement terms and conditions (including free time allowed and detention or similar charges assessed) governing the use of carrier-provided equipment (including cargo containers, trailers, and chassis) by shippers shall be published in tariff format (*see* Exhibit 5). Equipment Interchange Agreements (EIA's) that vary from the published standard terms and conditions governing the use of carrier-provided equipment, (*e.g.*, free time and charges or other agreement provisions), shall be included in a separately filed EIA tariff as provided in section 550.20. In these instances, Rule 17 in the rate tariff shall contain only a cross-reference to the EIA tariff.

(B) When an EIA tariff is filed, the applicable rate tariff shall make reference to the FMC number of the governing EIA tariff as permitted by § 550.14(a)(1). EIA's shall make reference to the tariffs to which they apply. Conferences shall cross-reference individual carrier EIA tariffs.

* * * * *

3. Section 550.14 is amended by revising paragraph (a)(1) to read as follows:

§ 550.14 Governing tariffs.

(a)(1) Rules, bills of lading/contracts of affreightment and EIA's may be separately published as a "rules tariff", "bill of lading tariff" or "Equipment Interchange Agreement Tariff" as provided in §§ 550.5(a)(8), (b)(7) and (b)(8)(xvii). For the purposes of this rule, classifications of freight, equipment registers, hazardous cargo rules and similar lengthy tariff matters are considered "rules tariffs."

* * * * *

4. A new § 550.20 is added which reads as follows:

§ 550.20 Equipment Interchange Agreement Tariffs.

(a)(1) EIA tariffs shall be filed as provided in §§ 550.5(b)(8)(xvii) and 550.14(a)(1) and in accordance with the other tariff filing requirements of Part 550 except as provided herein. Those EIA's that differ from the standard EIA as set forth in § 550.5(b)(8)(xvii) are to be included. When the difference is limited to the free time and/or charges, only the information set forth in Exhibit 3 is required. If the difference includes other provisions, the entire agreement shall be published in the governing tariff and an index of participating inland carriers shall be listed as set forth in Exhibit 4.

(2) The EIA tariff shall be arranged in the following order:

- Title Page
- Check Sheet (optional)
- Table of Contents
- Explanation of Symbols, Abbreviations and Reference Marks
- Tariff Rules and Regulations
- Free Time and Charges—List of Participating Inland Carriers That Differ From Rule 17
- Agreements—Index of Participating Inland Carriers With Equipment Interchange Agreements That Differ From Rule 17

(b) The rules section of the EIA tariff shall include Rules 1 (Scope, § 550.5(b)(8)(i)) and 17 (Use of Carrier Equipment, § 550.5(b)(8)(xvii)). A rule listing Governing Publications shall also be included as required by § 550.14. Rules 2 through 16 shall be noted as "Not Applicable." Free time and charges shall be included as the last item in Rule 17 and shall be arranged as set forth in Exhibit 5. Technical terms included in Rule 17 shall be defined.

5. Part 550 is amended by adding new Exhibits 3, 4 and 5 to follow § 550.20 reading as follows:

BILLING CODE 6730-01-M

EXHIBIT 3

EQUIPMENT INTERCHANGE TARIFF PAGE
SECTION 550.20(a)

CAN MARINE LINES CO. EQUIPMENT INTERCHANGE TARIFF - FMC-F NO. 1							ORIG/REV ORIGINAL CANCELS / PAGE
BETWEEN: PORTS IN THE U.S. GULF (SPECIFIED IN RULE 1)			AND: PORTS IN THE COMMONWEALTH OF PUERTO RICO				EFFECTIVE DATE OCTOBER 30, 1988
SECTION 1 FREE TIME AND CHARGES LIST OF PARTICIPATING INLAND CARRIERS THAT DIFFER FROM RULE 17							
INLAND CARRIER (CONCURRENCE)	EIA NO.	LOCATION	EQUIPMENT	FREE DAYS	CHARGE	RATE TARIFF(S) FMC NO.	REPLACEMENT EIA
[1]	[2]	[3]	[4]	[5]	[6]	[7]	[8]

NOTES

1. NAME OF INLAND CARRIERS ALPHABETICALLY ARRANGED.
2. CARRIER ASSIGNED EQUIPMENT INTERCHANGE AGREEMENT NUMBER.
3. LOCATION WHERE THE FREE DAYS AND CHARGES APPLY.
4. EQUIPMENT WHICH IS APPLICABLE TO THE FREE DAYS AND CHARGES.
5. NUMBER OF FREE DAYS ALLOWED.
6. CHARGE FOR EQUIPMENT NOT RETURNED.
7. RATE TARIFFS SUBJECT TO THE FREE DAYS AND CHARGES.
8. NUMBER OF THE REPLACEMENT EQUIPMENT INTERCHANGE AGREEMENT WHEN A NEW AGREEMENT IS NEGOTIATED.

FOR EXPLANATION OF ABBREVIATIONS, REFERENCE MARKS AND SYMBOLS, SEE PAGE

EXHIBIT 4

EQUIPMENT INTERCHANGE TARIFF PAGE
SECTION 550.20(a)

CAN MARINE LINES CO. EQUIPMENT INTERCHANGE TARIFF - FMC-F NO. 1	ORIG/REV ORIGINAL / PAGE CANCELS
BETWEEN: PORTS IN THE U.S. GULF AND: PORTS IN THE COMMONWEALTH OF PUERTO RICO (SPECIFIED IN RULE 1)	EFFECTIVE DATE OCTOBER 30, 1988

SECTION 2
AGREEMENTS
INDEX OF PARTICIPATING INLAND CARRIERS THAT DIFFER FROM RULE 17

INLAND CARRIER (CONCURRENCE)	EIA NO.	LOCATION	EQUIPMENT	RATE TARIFF(S) FMC NO.	TARIFF PAGE NUMBER	REPLACEMENT EIA NO.
[1]	[2]	[3]	[4]	[5]	[6]	[7]

NOTES

1. NAME OF INLAND CARRIERS ALPHABETICALLY ARRANGED.
2. CARRIER ASSIGNED EQUIPMENT INTERCHANGE AGREEMENT NUMBER.
3. LOCATION WHERE THE FREE DAYS AND CHARGES APPLY.
4. EQUIPMENT WHICH IS APPLICABLE TO THE FREE DAYS AND CHARGES.
5. RATE TARIFFS SUBJECT TO THE FREE DAYS AND CHARGES.
6. TARIFF PAGE NUMBER WHERE THE EQUIPMENT INTERCHANGE AGREEMENT BEGINS.
7. NUMBER OF THE REPLACEMENT EQUIPMENT INTERCHANGE AGREEMENT WHEN A NEW AGREEMENT IS NEGOTIATED.

FOR EXPLANATION OF ABBREVIATIONS, REFERENCE MARKS AND SYMBOLS, SEE PAGE

EXHIBIT 5

EQUIPMENT INTERCHANGE TARIFF PAGE
SECTION 550.20(b)

CAN MARINE LINES CO. EQUIPMENT INTERCHANGE TARIFF - FMC-F NO. 1	ORIG/REV ORIGINAL / PAGE CANCELS
BETWEEN: PORTS IN THE U.S. GULF AND: PORTS IN THE COMMONWEALTH OF PUERTO RICO (SPECIFIED IN RULE 1)	EFFECTIVE DATE OCTOBER 30, 1988

RULE NUMBER	RULES AND REGULATIONS
RULE 17	USE OF CARRIER EQUIPMENT - (INSERT STANDARD EQUIPMENT INTERCHANGE AGREEMENT)

PORTS:

EQUIPMENT TYPE	FREE DAYS	CHARGE

FOR EXPLANATION OF ABBREVIATIONS, REFERENCE MARKS AND SYMBOLS, SEE PAGE

BILLING CODE 6730-01-C

PART 580—[AMENDED]

6. The authority citation for Part 580 continues to read:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1702–1705, 1707, 1709, 1712, 1714–1716 and 1718.

7. Section 580.5 is amended by revising paragraph (d)(21) and adding paragraph (g)(5) as follows:

§ 580.5 Tariff contents.

* * * * *

(d) * * *

(21) *Use of carrier equipment.* The standard agreement terms and conditions (including free time allowed and detention or similar charges assessed) governing the use of carrier-provided equipment (including cargo containers, trailers, and chassis) by shippers shall be published in tariff format (see Exhibit 8). Equipment Interchange Agreements (EIA's) that vary from the published standard terms and conditions governing the use of carrier-provided equipment, (*e.g.*, free time and charges or other agreement provisions), shall be included in a separately filed EIA tariff as provided in § 580.17. In these instances, Rule 21 in the rate tariff shall contain only a cross reference to the EIA tariff. A carrier is not precluded from publishing a separate EIA tariff even though it utilizes a standard EIA. When a separate EIA tariff is filed, the applicable rate tariff shall make reference to the FMC number of the governing EIA tariff as permitted by § 580.13(a). EIA tariffs shall make reference to the tariffs to which they apply. Conferences shall cross reference individual carrier EIA tariffs.

* * * * *

(g) * * *

(5) Reference may be made to an EIA tariff for free time allowed and detention or similar charges, if applicable.

8. Section 580.6 is amended by the addition of a sentence to paragraph (m)(1) as follows:

§ 580.6 Statement of rates and charges.

* * * * *

(m)(1) * * *. Conferences shall cross reference individual carrier EIA tariffs pursuant to section 580.17.

9. In § 580.13, the first sentence of paragraph (a) and paragraph (b) are revised to read as follows:

§ 580.13 Governing tariffs.

(a) Rules, bills of lading/contracts of affreightment and EIA's may be separately published as a "rules tariff", "bill of lading tariff" or "Equipment Interchange Agreement Tariff" as provided in § 580.5(c)(10), (d)(8) and (d)(21). * * *

(b) Except for EIA tariffs, no rate tariff shall refer to or be governed by another rate tariff.

* * * * *

10. A new § 580.17 is added which reads as follows:

§ 580.17 Equipment Interchange Agreement tariffs.

(a)(1) EIA tariffs shall be filed as provided in §§ 580.5(d)(21) and 580.13(a). They shall be filed in accordance with the tariff filing requirements of Part 580 except as provided herein. Those agreements that differ from the standard agreement as set forth in Rule 21 are to be included. When the difference is limited to the free time and/or charges, only the information set forth in Exhibit 6 is required. If the difference includes other provisions, the entire agreement shall be published in the governing tariff and an index of participating inland carriers shall be included as set forth in Exhibit 7.

(2) The tariff shall be arranged in the following order:

- Title page
- Check Sheet (optional)
- Table of Contents
- Explanation of Symbols, Abbreviations and Reference Marks
- Tariff Rules and Regulations
- Free Time and Charges—List of Participating Inland Carriers That Differ From Rule 21
- Agreements—Index of Participating Inland Carriers with Equipment Interchange Agreements That Differ From Rule 21

(b) The rules and regulations section of the EIA tariff shall include Rules 1 (Scope, § 580.5(d)(1)) and 21 (Use of Carrier Equipment, § 580.5(d)(21)). A rule listing Governing Publications shall also be included as required by § 580.13. Required Rules 2 through 20 shall be noted as "Not Applicable." Free time and charges shall be included as the last item in Rule 21 and shall be arranged as set forth in Exhibit 6. Technical terms included in Rule 21 that differ in meaning from their normally accepted meaning or are not usually associated with the shipping industry shall be defined.

11. Part 580 is amended by adding new Exhibits 6, 7 and 8 reading as follows:

BILLING CODE 6730-01-M

EXHIBIT 6

EQUIPMENT INTERCHANGE TARIFF PAGE
SECTION 580.17(a)

CARLETON STEAMSHIP LINE
EQUIPMENT INTERCHANGE TARIFF - FMC NO. 1

ORIG/REV: ORIGINAL 1 | PAGE: CANCELS | EFFECTIVE DATE: OCTOBER 30, 1988

BETWEEN: PORTS AND POINTS IN THE U.S. GULF (SPECIFIED IN RULE 1) AND: PORTS AND POINTS IN FOREIGN COUNTRIES

SECTION 1
FREE TIME AND CHARGES
LIST OF PARTICIPATING INLAND CARRIERS THAT DIFFER FROM RULE 21

INLAND CARRIER (CONCURRENCE)	EIA NO.	LOCATION	EQUIPMENT	FREE DAYS	CHARGE	RATE TARIFF(S) FMC NO.	REPLACEMENT EIA
[1]	[2]	[3]	[4]	[5]	[6]	[7]	[8]

NOTES

1. NAME OF INLAND CARRIERS ALPHABETICALLY ARRANGED. .
2. CARRIER ASSIGNED EQUIPMENT INTERCHANGE AGREEMENT NUMBER.
3. LOCATION WHERE THE FREE DAYS AND CHARGES APPLY.
4. EQUIPMENT WHICH IS APPLICABLE TO THE FREE DAYS AND CHARGES.
5. NUMBER OF FREE DAYS ALLOWED.
6. CHARGE FOR EQUIPMENT NOT RETURNED.
7. RATE TARIFFS SUBJECT TO THE FREE DAYS AND CHARGES.
8. NUMBER OF THE REPLACEMENT EQUIPMENT INTERCHANGE AGREEMENT WHEN A NEW AGREEMENT IS NEGOTIATED.

FOR EXPLANATION OF ABBREVIATIONS, REFERENCE MARKS AND SYMBOLS, SEE PAGE

EXHIBIT 7

EQUIPMENT INTERCHANGE TARIFF PAGE
SECTION 580.17(a)

CARLETON STEAMSHIP LINE
EQUIPMENT INTERCHANGE TARIFF - FMC NO. 1

ORIG/REV: ORIGINAL | PAGE:
CANCELS
EFFECTIVE DATE: OCTOBER 30, 1988

BETWEEN: PORTS AND POINTS IN THE U.S. GULF AND: PORTS AND POINTS IN FOREIGN COUNTRIES
(SPECIFIED IN RULE 1)

SECTION 2
AGREEMENTS
INDEX OF PARTICIPATING INLAND CARRIERS THAT DIFFER FROM RULE 21

INLAND CARRIER (CONCURRENCE)	EIA NO.	LOCATION	EQUIPMENT	RATE TARIFF(S) FMC NO.	TARIFF PAGE NUMBER	REPLACEMENT EIA NO.
[1]	[2]	[3]	[4]	[5]	[6]	[7]

NOTES

1. NAME OF INLAND CARRIERS ALPHABETICALLY ARRANGED.
2. CARRIER ASSIGNED EQUIPMENT INTERCHANGE AGREEMENT NUMBER.
3. LOCATION WHERE THE FREE DAYS AND CHARGES APPLY.
4. EQUIPMENT WHICH IS APPLICABLE TO THE FREE DAYS AND CHARGES.
5. RATE TARIFFS SUBJECT TO THE FREE DAYS AND CHARGES.
6. TARIFF PAGE NUMBER WHERE THE EQUIPMENT INTERCHANGE AGREEMENT BEGINS.
7. NUMBER OF THE REPLACEMENT EQUIPMENT INTERCHANGE AGREEMENT WHEN A NEW AGREEMENT IS NEGOTIATED.

FOR EXPLANATION OF ABBREVIATIONS, REFERENCE MARKS AND SYMBOLS, SEE PAGE

EXHIBIT 8

EQUIPMENT INTERCHANGE TARIFF PAGE
SECTION 580.17(b)

CARLETON STEAMSHIP LINE
EQUIPMENT INTERCHANGE TARIFF - FMC NO. 1

ORIG/REV: ORIGINAL | PAGE:
CANCELS
EFFECTIVE DATE: OCTOBER 30, 1988

BETWEEN: PORTS AND POINTS IN THE U.S. GULF AND: PORTS AND POINTS IN FOREIGN COUNTRIES
(SPECIFIED IN RULE 1)

RULE NUMBER	RULES AND REGULATIONS	EQUIPMENT TYPE	FREE DAYS	CHARGE
RULE 21	USE OF CARRIER EQUIPMENT - (INSERT STANDARD EQUIPMENT INTERCHANGE AGREEMENT)			
	USA PORTS:			
	FOREIGN PORTS: COUNTRY A			
	COUNTRY B			

FOR EXPLANATION OF ABBREVIATIONS, REFERENCE MARKS AND SYMBOLS, SEE PAGE

BILLING CODE 6730-01-C

PART 581—[AMENDED]

12. The authority citation for Part 581 continues to read:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1702, 1706, 1707, 1709, 1712, 1714–1716 and 1718.

13. Section 581.4 is amended by the deletion of "and" at the end of paragraph (a)(2)(i) and the addition of a new paragraph (a)(2)(iii) as follows:

§ 581.4 Form and manner.

(a) * * *

(2) * * *

(iii) If the terms and conditions (including free time allowed for detention or similar charges assessed) governing the use of carrier-provided equipment (including cargo containers, trailers, and chassis) by shippers or their agents are fully set forth in the tariff of general applicability, the service contract and essential terms publication need only identify the tariff. If the terms differ from those set forth in the tariff of general applicability, such terms must be set forth in the carrier's EIA tariff, identifying the service contract to which they apply, and must be incorporated by reference in the service contract and related essential terms publication.

* * * * *

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 89–2509 Filed 2–2–89; 8:45 am]

BILLING CODE 6730–01–M

GENERAL SERVICES ADMINISTRATION

48 CFR Part 505

[GSAR Notice No. 5–223]

General Services Administration Acquisition Regulation; Publicizing and Response Times

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Proposed rule.

SUMMARY: This notice invites comments on a proposed change to the General Services Administration Acquisition Regulation (GSAR) that would revise section 505.203 to establish the same minimum requirement for publicizing in local newspaper acquisitions of leasehold interests in real property as is currently provided for acquisitions of real property appraisal services and to establish for leasehold interests in real property a minimum response time of 30 calendar days between issuance of the solicitation and receipt of initial offers. The Administrator of General Services has made a determination under section 18(c)(3) of the Office of Federal Procurement Policy Act that publicizing acquisitions of leasehold interests in real property and real property appraisal services in local newspapers is more appropriate than synopsizing in the *Commerce Business Daily*. The requirement to publicize leasehold interests in real property applies to blocks of space of 10,000 square feet or more (GSAR 505.101).

DATE: Comments are due in writing on or before March 6, 1989.

ADDRESS: Comments should be addressed to Ms. Marjorie Ashby, Office of GSA Acquisition Policy Regulations (VP), 18th and F, NW., Room 4026, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Linfield, Office of GSA Acquisition Policy and Regulations, (202) 566–1224.

SUPPLEMENTARY INFORMATION: The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. This exemption applies to this proposed rule. The GSA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. The rule would simply amend the GSAR to provide internal operating procedures for GSA contracting activities responsible for publicizing acquisitions for real property appraisal services and leases of real property and to provide guidance for offerors concerning the limitations on response time for receipt of offers. Therefore, no regulatory flexibility analysis has been prepared. This rule does not contain any information collection requirements that require OMB approval under the Paperwork Reduction Act.

List of Subjects in 48 CFR Part 505

Government procurement.

PART 505—[AMENDED]

1. The authority citation for 48 CFR Part 505 continues to read as follows:

Authority: 40 U.S.C. 486(c).

Subpart 505.2—Synopsis of Proposed Contracts

2. Section 505.203 is revised to read as follows:

§ 505.203 Publicizing and response time.

When publicizing acquisitions of real property appraisal services and leasehold interests in real property (see 505.101 and 505.202, the notice must appear in local newspapers at least 3 calendar days before issuance of the solicitation. The solicitation must be issued at least: (a) 10 calendar days before the date established for receipt of initial offers for real property appraisal services; or (b) 30 calendar days before the date established for receipt of initial offers for leasehold interests in real property.

Dated: January 24, 1989.

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy.

[FR Doc. 89–2511 Filed 2–2–89; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 392 and 393

[FHWA Docket No. MC–89–4]

RIN 2125–AC–26

Parts and Accessories Necessary for Safe Operation; Emergency Warning Devices

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The FHWA is requesting public comment on several issues relating to the appropriate use of emergency warning devices, as well as the type allowed, for commercial motor vehicles. First, the FHWA requests public comment on the appropriate use of fusees as an alternative or supplement to bidirectional emergency reflective triangles. This action is required by section 9106 of the Truck and Bus Safety and Regulatory Reform Act of 1988 (Title IX, Subtitle B, of the Anti-Drug Abuse Act of 1988, Pub. L. 100–690, 102 Stat. 4181).

Second, the FHWA requests comments on the elimination of 49 CFR 392.22(b)(2)(iii) which exempts drivers from the general requirement to place warning devices when the motor vehicle is stopped upon the traveled portion of a highway or the shoulder thereof if the vehicle is within a business or residential area during times when lighting is not required, or where lighting is sufficient to make a vehicle clearly discernable at a distance of 500 feet to persons on the highway. This action is being taken in response to a petition for a rulemaking change by Police Officer Thomas J. Magnan, Traffic Safety Division, Motor Carrier Safety Assistance Program (MCSAP) Grant Coordinator, Metropolitan Police Department, St. Louis, Missouri.

Third, the FHWA is requesting comments on all aspects of emergency warning devices, including the types allowed, and exemptions, and/or conditions for use.

DATE: Comments must be received on or before March 20, 1989.

ADDRESS: Submit written, signed comments to FHWA Docket No. MC–89–4, Room 4232, HCC–10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Commenters may, in addition to submitting "hard copies" of their comments, submit a floppy disk (either 1.2Mb or 360Kb density) in a format that is compatible with either word processing programs, Word Perfect or Wordstar. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m. ET, Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas P. Kozlowski, Office of Motor Carrier Standards, (202) 366–2981, or Mr. Charles Medalen, Office of the Chief Counsel, (202) 366–1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: Section 9106 of the Truck and Bus Safety Regulatory Act of 1988 (the Act) requires the Secretary, not later than 60 days after the enactment, to "initiate rulemaking proceedings for the purpose of determining the appropriate use, as emergency warning devices for commercial motor vehicles, of fusees as an alternative or supplement to bidirectional emergency reflective triangles." Section 9106 farther requires the Secretary to complete such rulemaking proceeding by October 31, 1989.

The current requirements regarding the use of fusees in the Federal Motor Carrier Safety Regulations (FMCSRs) are in §§ 393.95 and 392.22. Paragraph (f)(1)(i) of § 393.95, Emergency equipment on all power units, states that vehicles equipped with warning devices before January 1, 1974, may use until replacements are necessary: "Three liquid burning emergency flares which satisfy the requirements of SAE J597 'Liquid Burning Emergency Flares,' and three fusees and two red flags;" or other devices as specified in paragraphs (f)(1)(ii) thru (v). Paragraph (f)(2)(ii), Vehicles equipped with warning devices on and after January 1, 1974, states, "Fusees, liquid-burning emergency flares, and red electric lanterns that conform to paragraph (f)(1) of this section may be used to supplement the emergency reflective triangles required in paragraph (f)(2)(i) of this section."

Section 393.95(g), Flame producing devices prohibited on certain vehicles, states that, "Liquid-burning emergency flares, fusees, oil lanterns, or any signal produced by a flame shall not be carried on any motor vehicle transporting explosives, Class A or Class B; any cargo tank motor vehicle used for the transportation of flammable liquids or flammable compressed gas whether loaded or empty; or any motor vehicle using compressed gas as a motor fuel."

Section 393.95(j), Requirements for fusees, states that, "Each fusee shall be adequate, reliable, capable of burning at least 15 minutes and shall comply with the specifications of the Bureau of Explosives, Association of American Railroads * * * dated February 1969. Each fusee shall be marked to show that it complies with the specifications of the Bureau of Explosives."

Paragraph (b)(2)(i), special rules—fusees of § 392.22, Emergency signals; stopped vehicles, states, "The driver of a vehicle equipped with liquid burning flares (pot torches) shall first place a fusee at the location specified in paragraph (b)(1)(ii) of this section before he places the liquid-burning flares as specified in paragraph (b)(1) of this section." Paragraph (b)(2)(iii), Business or residential districts, further states, "The placement of warning devices is not required within the business or residential district of a municipality, except during the time lighted lamps are required and when street or highway lighting is insufficient to make a vehicle clearly discernable at a distance of 500 feet to persons on the highway."

Police Officer Magnan states in his petition that, "When responding to accident calls or calls of stalled vehicles, it is most frustrating for commercial vehicles to be stalled in the center lane of an interstate highway or in the traffic lane of a busy street, and the driver is making no effort to warn the public that the vehicle is stalled. Many times these vehicles have no power, so the four way flashing signal lights cannot be used."

The petitioner further states that during rush hour traffic, it is difficult to determine if a vehicle in a traffic lane on a busy street or on an interstate highway is moving or parked. He also states, that with the "Federal Commercial Zones having been eliminated effective November 15, 1988, * * * this change will also enhance the safety of all the motoring public, and * * * there will be no unnecessary burden on the motor carrier industry."

Comments on the appropriate use of fusees as emergency warning devices is requested, in particular whether fusees should be used as an alternative or as a supplement to the bidirectional emergency reflective devices. Comments are further requested as to whether the exemption from the requirement to place warning devices when drivers are within a business or residential district during the time when lighted lamps are not required, should be revised.

Comments are also requested on all aspects of the use of emergency warning devices. The FHWA encourages commenters to submit suggested proposed regulatory language and enforcement activities with supporting information. Information on the costs and benefits of such proposals is especially requested. The FHWA would also appreciate comments on any documentation or other paperwork requirements needed to enforce regulations that may be issued to implement section 9106 of the Act or revisions to the existing requirements.

Below are several specific questions to which the FHWA would appreciate responses. Commenters should not limit their responses to these questions.

(1) Should fusees be authorized as an alternative to bidirectional emergency reflective triangles, or other emergency warning devices?

(2) Should fusees or other warning devices be restricted to supplemental use with bidirectional emergency reflective triangles only, as currently required?

(3) Are the current manufacturing standards for fusees adequate?

(4) Is the required minimum burning time of 15 minutes adequate?

(5) Should the use of fusees and/or other warning devices be required whenever a commercial vehicle is stalled or inoperative, whether or not it is in a residential or business district, or without reference to lighting conditions?

(6) Should the use of fusees or other warning devices within a business or residential area be required only in the event where the stalled vehicle is without power sufficient to activate its emergency signal lamps?

(7) What is the average time period for a vehicle to be stopped in the roadway or shoulder and require an emergency warning device?

BEST COPY AVAILABLE

Regulatory Impact

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the DOT. It is anticipated that the economic impact of this rule on all individuals will be minimal.

For the foregoing reasons and under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Parts 382 and 383

Highway safety, Highways and roads, Motor carriers, Drivers, Reporting and recordkeeping requirements, and Motor vehicle safety.

(Catalog of Federal Domestic Assistance Program Number 20.217, motor carrier safety.)

Issued on: January 23, 1989.

Robert E. Farris,

Federal Highway Administrator.

[FR Doc. 89-2522 Filed 2-2-89; 8:45 am]

BILLING CODE 4910-22-M

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49 CFR Part 396

[FHWA Docket No. MC-89-3]

RIN 2125-AC-25

Inspection, Repair and Maintenance; Brake Inspection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The FHWA is requesting public comment concerning the development and implementation of Federal standards or methods to ensure that the brakes and brake systems of commercial motor vehicles are properly maintained and inspected. This action is required by section 9110 of the Truck and Bus Safety and Regulatory Reform Act of 1988 (Title IX, Subtitle B, of the Anti-Drug Abuse Act of 1988, Pub. L. 100-690, 102 Stat. 4181).

DATE: Comments must be received on or before April 4, 1989.

ADDRESS: Submit written, signed comments to FHWA Docket No. MC-89-3, Room 4232, HCC-10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Commenters may, in addition to submitting "hard copies" of their comments, submit a floppy disk (either 1.2Mb or 360Kb density) in a format that is compatible with either word processing programs, Word Perfect or Wordstar. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m. ET, Monday through Friday, except legal holidays. Those desiring notification or receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas P. Kozlowski, Office of Motor Carrier Standards, (202) 366-2981, or Mr. Charles Medalen, Office of the Chief Counsel, (202) 366-1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: Section 9110 of the Truck and Bus Safety and Regulatory Reform Act of 1988 (the Act) requires the Secretary, not later than December 31, 1990, to "issue regulations for the purpose of adopting improved standards or methods to ensure that the brakes and brake systems of commercial motor vehicles are properly maintained and inspected by appropriate employees. At a minimum, such regulations shall establish minimum training requirements and qualifications for employees responsible for maintaining and inspecting such brakes and brake systems."

The FHWA believs that section 9110 applies only to persons who are employees of motor carriers. Section 9110 amends the Motor Carrier Safety Act of 1984 (MCSA) (49 U.S.C. App. 2501-2520) by adding at the end thereof a new section entitled "Maintenance and Inspection of Brake Systems." This action makes the definition of "employee" (contained in section 204 of the MCSA) aplicable to the term "employee" as used in section 9110 of the Act. Section 204 defines an employee as "(A) an operator of a commercial motor vehicle (including an independent contractor while in the course of operating a commercial motor vehicle); (B) a mechanic; (C) a freight handler; and (D) any individual other than an employer, who is employed by an employer and who in the course of his or her employment directly affects commercial motor vehicle safety, but such term does not include an employee of the United States, any State, or any political subdivision of a State who is acting within the course of such employment." "Employer" is also defined in section 204 of the MCSA as, "Any person engaged in a business affecting interstate commerce who owns or leases a commercial vehicle in connection with that business, or assigns employees to operate it, but such terms dose not include the United States, any State, any political subdivision of a State, or any agency established under a compact between States approved by the Congress of the United States." Therefore, the FHWA believes that persons who *are not* employees of motor carriers but who may inspect or maintain the brakes or brake systems of commercial motor vehicles *are not* covered by section 9110 and any subsequent regulations implementing that section. An example of this would be independent garage owners and their mechanics.

The FHWA also believes that this section does not apply to governmental inspectors at any level of government because the definitions of "employee" and "employer" in section 204 of the MCSA specifically exclude governmental employees.

Comments concerning the applicability of section 9110 of the Act are required. The FHWA is especially interested in comments regarding motor carriers' and their drivers' (both employee drivers and leased/contractor drivers) responsibilities under section 9110.

The FHWA is also interested in comments regarding the definition of the employee "responsible" for maintaining and inspecting brake systems. Should FHWA interpret this to mean the "mechanic" who performs the work or the "Chief Mechanic" or "supervisor" who is directly responsible for the mechanic and his/her work? The interpretation of "responsible" employee would have a major impact on the number of individuals covered by any regulations and the type of training they would receive.

Comments are requested on all aspects of section 9110 of the Act. The FHWA encourages commenters to submit suggested regulatory language and enforcement activities. The FHWA would also appreciate comments on any documentation and/or other paperwork requirements needed to implement and ensure compliance with any regulations that would be issued under section 9110 of the Act.

Below are several questions to which the FHWA would appreciate responses. However, commenters should not limit their responses to these questions.

1. What type of training is currently provided to brake inspectors and mechanics? How do employers determine the qualifications of these employees, i.e., what criteria or job performance standards are used?

2. Is there an established certification program for brake inspectors or mechanics? Please provide information on such programs, i.e., purpose, scope, criteria, program sponsor and results.

3. Should there be multiple levels of inspector/mechanic qualifications depending on the "approved" type of work allowed, e.g., adjust brakes, replace and maintain complete brake systems, mechanic helpers, master mechanics?

4. How should new technologies be reflected in qualifications, training standards, and methods?

5. How often should qualifications be reviewed?

6. Should a certification program be mandated or established as recommended practice? If so, who should administer it—industry, States, Federal Government?

7. Should there be a grandfather provision? If so, how should it be structured and whom should it include?

8. What type of training/experience should be allowed/required to meet the minimum qualifications?

9. Should drivers be allowed to meet the qualifications without any additional qualifications or proof (other than being a qualified driver)?

10. Should the persons covered by this section be required to meet qualifications similar to those applicable to drivers regarding performance and knowledge testing, employment verification and physical qualifications, including being tested for use of controlled substances?

The FHWA is also interested in any information on the number of persons who would potentially be affected and the costs and benefits (qualified, if possible) associated with any regulation implementing this section of the Act.

Regulatory Impact

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the DOT. It is anticipated that the economic impact of this rulemaking action on all individuals will be minimal.

For the foregoing reasons and under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 398

Highway safety, Highways and roads, Motor carriers, Drivers, Reporting and recordkeeping requirements, and Motor vehicle safety.

(Catalog of Federal Domestic Assistance Program Number 20.217, motor carrier safety.)

Issued on: January 23, 1989.

Robert E. Farris,

Federal Highway Administrator.

[FR Doc. 89-2521 Filed 2-2-89; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

49 CFR Part 544

[Docket No. T86-01; Notice 7]

RIN 2127-AC32

Motor Vehicle Theft Prevention; Reporting Requirements for Motor Vehicle Rental and Leasing Companies

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the requirements for annual theft data reports to be filed with this agency by self-insured rental and leasing companies with fleets of 20 or more motor vehicles. Those requirements currently provide that *all* such companies must file these reports annually. NHTSA estimates that there are approximately 4,000 rental and leasing companies currently subject to the reporting requirements.

However, the agency has learned of additional information that it believes will allow it to exempt most rental and leasing companies from these reporting requirements. This notice proposes to require theft reports only from rental and leasing companies with combined fleets of 50,000 or more vehicles. This proposed criteria would result in only 19 rental and leasing companies being required to file theft reports, instead of the approximately 4,000 companies currently required to file such reports. NHTSA has tentatively determined that reports from the 19 largest rental and leasing companies would provide the agency with a representative sampling of the theft experience of rental and leasing companies, while reducing an unnecessary burden on small rental and leasing companies.

DATE: Comments on this notice must be received by this agency not later than March 20, 1989.

ADDRESS: Comments should refer to Docket No.T86-01; Notice 7, and be submitted to: Docket Section, NHTSA, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. (Docket hours are 8:00 a.m. to 4:00 p.m. Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Kurtz, Office of Market Incentives, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Kurtz's telephone number is (202) 366-4808.

SUPPLEMENTARY INFORMATION:

The Motor Vehicle Theft Law Enforcement Act of 1984

The Motor Vehicle Theft Law Enforcement Act of 1984 (Pub. L. 98-547; Theft Act) added Title VI to the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2021 *et seq.*; Cost Savings Act). Section 612 of the Cost Savings Act requires the submission of annual reports by insurers to NHTSA and specifies minimum content requirements for those reports. Section 612(b) requires NHTSA to periodically compile and publish the information set forth in the insurer reports, in a form that will be helpful to the public, including Federal, State, and local police and the Congress.

The required contents of the insurer reports are set forth in section 612(a)(2) of the Cost Savings Act. That section specifies that the reports include among other matters: Theft and recovery data; rating rules and plans used by insurers to establish premiums for comprehensive insurance coverage for motor vehicles; and actions taken to reduce premiums.

Section 612 defines the term "insurers" very broadly, and requires all such parties to file annual reports with NHTSA unless exempted by the agency. There are two groups which fall within that term. First, every person engaged in the business of issuing passenger motor vehicle insurance policies is an insurer under section 2(12) of the Cost Savings Act (15 U.S.C. 1901), regardless of the size of the business. Second, section 612(a)(3) specifies that, for the purposes of section 612, the term "insurer"

includes any person, which has a fleet of 20 or more motor vehicles (other than any governmental entity) which are used primarily for rental or lease and which are not covered by theft insurance policies issued by insurers of passenger motor vehicles. Congress recognized that it is possible for the agency to draw valid conclusions about the anti-theft program based on data gathered from only a representative sample of insurers. Two provisions in section 612 authorize the agency to exempt certain insurers, particularly the smaller ones, from these reporting requirements.

Issuers of Motor Vehicle Insurance Policies

The first provision in section 612 that authorizes the agency to exempt smaller insurers from the reporting requirements is set forth in section 612(a)(5) (15 U.S.C. 2032(a)(5)). This section gives the agency authority to exempt *only* issuers of motor vehicle insurance policies from the reporting requirements, and only those issuers of motor vehicle insurance policies whose market share is less than a given percentage of the total market. NHTSA can exempt such insurers if it "finds that such exemption will not significantly affect the validity or the usefulness of the information collected and compiled under [section 612], nationally or State-by-State."

NHTSA identified 31 insurance groups that were not eligible for exemptions under section 612(a)(5), in the final rule establishing the insurer reporting requirements (52 FR 59; January 2, 1987). Because reports from these 31 insurance groups would represent a significant percentage of the national and individual State insurance premiums, NHTSA concluded that the reports of these 31 groups would provide NHTSA with representative data, both nationally and on a State-by-State basis, and that these data would be sufficient for the agency to carry out its activities and responsibilities under Title VI of the Cost Savings Act. Based on these conclusions, NHTSA exempted from the reporting requirements every issuer of motor vehicle insurance policies that was statutorily eligible for an exemption.

NHTSA used the data vountarily supplied by insurance companies to A.M. Best to determine the market shares nationally and in each State for the insurance groups. The agency determined that these data are both accurate and timely. Appendices A and B to Part 544 list those insurance groups that are required to file annual reports with NHTSA. Since eligibility for an exemption from the reporting requirements may vary annually with fluctuations in the market shares of the respective insurance groups, the NHTSA updates Appendices A and B annually, to reflect changes in market share reported by A.M. annually, to reflect changes in market share reported by A.M. Best. This procedure allowed the agency to exempt all eligible issuers of motor vehicle insurance policies from the reporting requirements.

Rental and Leasing Companies

The second provision in section 612 that allows NHTSA to exempt smaller insurers from the reporting requirements is set forth in section 612(a)(4). Exemptions under this section are statutorily available to all insurers, both issuers of motor vehicle insurance policies and any person that has a fleet of more than 20 vehicles used primarily for rental and lease and not covered by theft insurance policies issued by an insurer. For convenience, this latter group is referred to in this notice as "rental and leasing companies." Section 612(a)(4) authorizes NHTSA to exempt any insurer from these reporting requirements if the agency determines that:

(1) The cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer, *and*

(2) The insurer's report will not significantly contribute to carrying out the purposes of Title VI.

NHTSA believed that reports from a representative sample of rental and leasing companies would provide the agency with the necessary information to allow it to fulfill all its obligations under Title VI of the Cost Savings Act. Hence, NHTSA did not need additional information for it to find that reports by the many smaller rental and leasing companies would not significantly contribute to carrying out the purposes of Title VI. A representative sample of rental and leasing companies would provide NHTSA with the information it needed to carry out Title VI, and would avoid an unnecessary burden on the vast majority of the approximately 4,000 rental and leasing companies subject to the reporting requirements.

However, NHTSA did not have sufficient information to allow it to make the other statutory determination; i.e., that the cost of preparing furnishing such reports is excessive in relation to the size of the business of the insurer. Absent such information, NHTSA was unable to exempt rental and leasing companies from the reporting requirements, because the agency could not make the required statutory determinations.

Before issuing the notice of proposed rulemaking (NPRM) for the insurer reporting requirements, NHTSA tried to obtain from trade associations representing rental and leasing companies the information needed to structure a blanket exemption for all but the largest rental and leasing companies, similar to the blanket exemption proposed for all but the 31 largest insurance groups. However, each trade association contacted by the agency indicated that the market share data sought by NHTSA for rental and leasing companies either was not available or would not be disclosed to the agency. Title VI of the Cost Savings Act does not give NHTSA authority to require these trade associations to disclose market share information, and NHTSA knew of no other source from which to obtain such market share information.

Accordingly, the NPRM for the insurer reporting requirements that was published June 25, 1986 (51 FR 23095) proposed that all rental and leasing companies that satisfied the statutory definition of "insurer" be required to file annual reports. The NPRM expressly stated that NHTSA wanted to exempt the smaller rental and leasing companies from this reporting requirement and sought information from the public that would allow NHTSA to make the necessary statutory determinations to exempt smaller rental and leasing companies from these reporting requirements. Specifically, the agency asked the public to provide information on the number of rental and leasing companies subject to the reporting requirements, the size of the rental and leasing fleets operated by those companies, the costs of preparing and filing the annual reports, and the criteria the agency should use in deciding whether those costs were "excessive" in relation to the size of the business.

The commenters submitted a number of recommendations, ranging from exempting all rental and leasing companies or exempting all car dealers to requiring reports only from those rental and leasing companies that have a fleet of 20,000 or more vehicles. However, none of the commenters provided the information requested in the preamble to the NPRM, so the agency was unable to structure a blanket exemption for the smaller rental and leasing companies, as was done for the smaller insurance companies.

Therefore, the final rule published on January 2, 1987 (52 FR 59) required all of the approximately 4,000 rental and leasing companies subject to the reporting requirements to file annual reports with the agency. Nevertheless, the following language appeared at 52 FR 63:

> However, NHTSA has no desire to impose an unnecessary burden on the smaller rental and leasing companies. Just as the agency believes it will obtain a representative sample of insurance companies by requiring reports only from large insurance companies, the agency believes that it would obtain a representative sample of rental and leasing companies by requiring reports only from the large rental and leasing companies. The agency has tried to obtain the necessary information to allow it to exempt these companies twice, before publishing the NPRM and in the NPRM itself. In neither instance has the agency been successful.
>
> Absent this information, this final rule must apply to all rental and leasing companies with 20 or more vehicles in their fleet. However, the agency will again try to obtain from the rental and leasing companies and their trade associations the information needed to exempt the smaller rental and leasing companies from this regulation before January 31, 1987. If NHTSA is successful in this effort and the information allows NHTSA to make the determinations required under section 612 to exempt rental and leasing companies, the agency will publish a rule exempting the small rental and leasing companies from this reporting requirement before January 31, 1987.
>
> The agency was unsuccessful in its third effort to obtain the necessary information. Consequently, all rental and leasing companies subject to the statutory definition of "insurer" are presently required to file annual theft reports with NHTSA.
>
> NHTSA received 145 petitions for exemption from the reporting requirements. Several petitions were filed by franchisees and licensees of large rental and leasing companies, such as Hertz and National Car Rental. Most of the petitions were filed by smaller rental and leasing companies, those that the agency had repeatedly tried to exempt from the reporting requirements. A recurring theme in the petitions was that NHTSA would not benefit from the petitioner's reports because zero to a few thefts would be reported, or that the companies had a small fleet size. Additionally, the petitioners alleged that the time, labor, and costs involved in preparing and furnishing annual insurer reports were not justified. Therefore, the petitioners concluded that their reports would not significantly contribute to carrying out the purposes of Title VI of the Cost Savings Act.

The Information Discovered by NHTSA and the Proposed Exemptions

In response to these petitions, NHTSA again sought information that would allow it to structure a blanket exemption from the reporting requirements for smaller rental and leasing companies. Although the trade associations representing the rental and leasing companies offered no more cooperation than they had previously, the agency was able to obtain information on the size of the fleets of rental and leasing companies and the market share for these companies. NHTSA learned that such data for the motor vehicle rental and leasing companies are voluntarily supplied to and tabulated by two national publications: *Automotive Fleet Magazine* (for both rental and leasing companies) and *Travel Trade Business Travel News* (for rental companies only).

Since 1984, *Automotive Fleet* has published an annual Fact Book which contains statistics, market analysis, and advertising for rental and leasing companies. Data for only rental companies have been tabulated since 1985 in the Annual Business Travel Survey published by *Travel Trade Business Travel News*. The survey ranks top rental companies in the United States by revenue, vehicles per company, States of operations, and number of locations.

Within the rental and leasing community, both publications are regarded as the most accurate data sources available for those businesses. However, NHTSA is aware that data from the two sources may differ because the companies reporting to these periodicals may inflate the size of their fleet for competitive marketing purposes. Thus, these sources may be the most accurate data sources available for rental and leasing companies, but they are not as accurate as the A.M. Best data for insurance companies. Notwithstanding this somewhat lesser degree of reliability, NHTSA has tentatively concluded that these sources are sufficiently accurate to determine which rental and leasing companies should be exempted from the theft reporting requirements. The public is invited to comment on this tentative conclusion, and asked to explain why the commenter agrees or disagrees with NHTSA's tentative conclusion.

From these two data sources, NHTSA learned that in 1987 more than 7,096,000 vehicles (not including government vehicles) were reported as rented or leased. For that same year, the 39 largest companies rented or leased about 2.6 million vehicles (about 37 percent of all vehicles in rental and leasing fleets). Of these 2.6 million vehicles, 55 percent were rented or leased by the 8 largest rental and leasing companies. The fleets for these companies ranged from 100,000 vehicles to 420,000 vehicles. The remaining 45 percent of these 2.6 million vehicles was broken down as follows: 29 percent was operated by 11 companies whose fleets ranged from 50,000 to 99,000 vehicles, 9 percent was operated by 8 companies with fleets of 20,000 to 49,000 vehicles, and 6 percent was operated by 12 companies with fleets of 10,000 to 19,000 vehicles. The remaining 4.5 million vehicles in rental and leasing fleets in 1987 were operated by about 3,961 companies, all of whom had fleets of fewer than 10,000 vehicles.

Furthermore, the data from these two sources suggest that the 39 largest rental and leasing companies (those with fleets of 10,000 or more vehicles) were a relatively stable grouping. That is, 26 of these 39 companies have been included in the list of the largest 39 companies for the three most current years for which data are available (1984, 1985 and 1987). Thus, the core group of companies that compose the largest 39 rental and leasing companies has remained stable, with other companies moving in and out of the 39 largest rental and leasing companies. This situation is similar to that of the insurance companies required to file annual reports, where some companies are added to or removed from the listing of companies required file annual reports, but the core group of insurance companies subject to the reporting requirements has remained relatively constant.

With this new information, NHTSA again considered the question of proposing a blanket exemption for smaller rental and leasing companies, similar to that which has been established for the smaller insurance companies. The structure of the rental and leasing companies is significantly different from that of the insurance companies. The rental and leasing industry is operated predominantly by purchase of franchises or issuance of licenses. According to the U.S. Department of Commerce, franchising is a form of licensing by which the owner (franchisor) of a product, service, or method obtains distribution through affiliated distributors (franchisees). In order to maintain the distinctiveness and uniformity of the service, the franchisor usually exercises some degree of continuing control over the operations of franchisees, and requires them to meet stipulated standards of quality. The extent of such control varies. In some cases, franchisees are required to conduct every step of their operation in strict conformity with a manual furnished by the franchisor.

Because of this structure, the agency was presented with the threshhold question of whether the franchisees and

licensees should be treated as separate rental and leasing companies or whether the franchisor or licensor should be treated as a single rental and leasing company, responsible for gathering the required data from its franchisees or licensees. The agency has tentatively concluded that franchisors or licensors should be treated as a single rental and leasing company, for two reasons.

First, NHTSA believes this tentative conclusion is consistent with the Congressional intent underlying section 612. The House Report on section 612 included the following sentence: "The Committee urges the [NHTSA] to devise a reporting system for insurance information with an eye toward imposing requirements which will be low cost and of minimal burden to the industry, but which will provide all the data required by this section." H.R. Rep. No. 1067, 98th Cong., 2d Sess., at 21 (1984). Applying this guidance, the agency has concluded that the most costly and burdensome requirement would be one that required every franchisee of the large rental and leasing companies to report directly to NHTSA on its theft experience. On the other hand, a requirement that franchisors report on the theft experience of all their franchisees would require a single report to the submitted to this agency. The franchisees generally submit periodic reports to the franchisor in any case. It would seem to be relatively simple to expand the existing reports to the franchisor to include information about the franchisees' theft experience. Accordingly, the agency has tentatively concluded that a requirement for franchisors to report on behalf of all their franchisees is consistent with the Congressional intent that these reporting requirements should impose the minimal burden on reporting parties.

Second, practical considerations oblige the agency to treat franchisors or licensors as a single entity. The two available data sources treat franchisors or licensors as a single entity. NHTSA has no data on the size of all franchisees and licensees, so the agency would be unable to propose any exemptions for the rental and leasing companies if it were to treat each franchisee or licensee as a separate rental and leasing company.

Commenters are invited to discuss this tentative decision to treat a franchisor and all of its franchisees as a single entity. Those commenters that disagree with this decision are asked to discuss how the agency could obtain information on the number and fleet size of franchisees, and to discuss whether the agency could structure an exemption from these reporting requirements for small rental and leasing companies while requiring reports from all franchisees of large franchisors. NHTSA is also interested in receiving any additional information the public can provide on the structure and procedures used by franchise operations in the car rental business.

Having reached the tentative conclusion that franchise operations should be treated as a single entity, the agency proceeded to consider how to structure an exemption from the reporting requirements for smaller rental and leasing companies. From the information in *Automotive Fleet Magazine* and *Travel Trade Business Travel News*, NHTSA learned that the 19 largest rental and leasing companies (those with 50,000 or more vehicles in their fleet) had 31 percent of the total vehicles in rental and leasing fleets. Of these companies, 9 were primarily leasing companies. These leasing companies typically do business in all 50 States out of one central location. Thus, the experience of these leasing companies would be geographically representative, since it would represent experience every State. Additionally, NHTSA has no reason to believe that the theft experience of the largest leasing companies would be significantly different from the theft experience of the smaller leasing companies. The data for companies that are primarily rental companies shows that ten of those companies had fleets of 50,000 or more vehicles. Of these ten companies, seven do business in at least 48 of the 50 States. Moreover, these ten companies have approximately 9,000 locations located in areas ranging from large metropolitan areas to rural areas. The information provided by these ten companies should, therefore, be geographically representative of the theft experience of rental companies throughout the United States. Again, the agency has no reason to believe that the theft experience of these rental companies would be significantly different from the theft experience of small rental companies.

Another point to be considered is that section 612 of the Cost Savings Act explicitly requires insurer reports to include information about vehicles other than passenger cars; i.e. information on trucks, multipurpose passenger vehicles, and motorcycles is required to be included in these reports. The two data sources NHTSA has tentatively chosen to use to determine fleet sizes of rental and leasing companies do not define the fleet composition very clearly. Vehicle types in the fleets are identified as either passenger cars or trucks. Passenger cars account for about 80 percent of the rental and leasing fleets. The other 20 percent of the vehicles are identified only as "trucks." If the agency is to exempt any rental and leasing companies from these reporting requirements, the agency must determine that the reports it receives from the non-exempted rental and leasing companies will provide a representative sample of the theft experience for "trucks" in rental and leasing fleets.

The available information leads the agency to tentatively determine that it will get a representative sample of the theft experience of vehicles other than passenger cars if it receives reports only from companies with fleets of 50,000 or more vehicles. The two best-known rental companies for vehicles other than passenger cars are U-Haul and Ryder with fleet sizes of 65,000 vehicles and 50,000 vehicles, respectively. Therefore, the reports from rental and leasing companies would include the theft experience of the two largest fleets of vehicles other than passenger cars in the rental and leasing industry. Additionally, rental and leasing companies with fleets of 50,000 or more vehicles are more likely to include vehicles other than passenger cars than are smaller rental and leasing fleets, many of which operate fleets of only passenger cars. Accordingly, NHTSA has tentatively concluded that requiring reports only from rental and leasing companies with 50,000 or more vehicles in their fleet will provide NHTSA with representative data on all vehicle types.

After considering these factors, NHTSA tentatively concludes that the theft experience of rental and leasing companies with 50,000 or more vehicles in their fleet would be sufficiently representative of the theft experience of all rental and leasing companies that theft reports by the smaller leasing companies would not significantly contribute to carrying out the purpose of Title VI of the Cost Savings Act. This is one of the statutory determinations the agency must make in order to exempt any rental and leasing companies from the theft reporting requirements. The other statutory determination NHTSA must make to exempt rental and leasing companies from the theft reporting requirements is that "the cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer." In its previous considerations of this question, NHTSA stated that it did not have adequate information about the probable costs of preparing and filing such reports or about the size of the business involved to make a determination that the costs would be "excessive."

With the information available from the two data sources proposed to be used to determine the fleet size of rental and leasing companies, the agency now has a basis for making the second statutory determination. NHTSA has tentatively determined that reports by rental and leasing companies with fleets of fewer than 50,000 vehicles are *not* needed to ensure that NHTSA obtains a representative sample of the theft experience of rental and leasing companies, nor are these reports necessary to allow the agency to carry out any other of its responsibilities under Title VI of the Cost Savings Act. Thus, such reports would not provide NHTSA with valuable information or insights into the theft experience of rental and leasing companies, nor would such reports otherwise further the purposes of Title VI of the Cost Savings Act.

The agency does not have enough information to determine the likely costs to rental and leasing companies with fewer than 50,000 vehicles in their fleet to prepare and furnish NHTSA with annual theft reports. However, regardless of what those costs are, NHTSA has tentatively concluded that those costs are excessive in relation to the size of the company's business, because reports by the smaller rental and leasing companies will not benefit the agency by providing further information or insights into the theft problem for rental and leasing companies. Further, the thousands of reports required by smaller rental and leasing companies will not otherwise further the purposes of Title VI of the Cost Savings Act. Any costs are "excessive" within the meaning of section 612 if those costs are incurred to prepare a report that will not in any way aid the agency in carrying out its responsibilities under Title VI.

NHTSA invites public comment on these tentative determinations, and is particularly interested in the reasons why commenters agree or disagree with these tentative determinations. Those commenters who disagree with NHTSA's tentative determination that the costs of preparing and furnishing such reports for smaller rental and leasing companies are excessive are asked to explain why they believe the purposes of Title VI are furthered by such reports.

In light of its tentative determinations that the costs of preparing and filing theft reports are excessive in relation to the size of the business of rental and leasing companies with fewer than 50,000 vehicles in their fleet and that such reports will not significantly contribute to carrying out the purposes of Title VI of the Cost Savings Act, NHTSA proposes to exempt all rental and leasing companies with fewer than 50,000 vehicles in their fleet (as reported by *Automotive Fleet Magazine* and *Travel Trade Business Travel News*) from the insurer reporting requirements. However, if there should be conflicting fleet size data reported, the agency will use *Automotive Fleet Magazine* as the principal source.

To implement this proposal NHTSA would use a structure similar to that which is already used for insurance companies. Appendix A to Part 544 consists of an annually updated listing of insurance companies that are subject to the reporting requirements in Part 544 for each State in which they do business. Appendix B to Part 544 consists of an annually updated listing of insurance companies that are subject to the reporting requirements in Part 544 only for the State or States identified in Appendix B. This notice proposes to add a new Appendix C to Part 544, which would consist of an annually updated listing of the rental and leasing companies that are subject to the reporting requirements in Part 544. All rental and leasing companies not listed in Appendix C would *not* be required to file a theft report under Part 544.

The list of rental and leasing companies included in proposed Appendix C in this notice was derived from the information in *Automotive Fleet Magazine* and *Travel Trade Business News* for the 1987 calendar year, the most recent year for which such data are available. The listed rental and leasing companies are the only rental and leasing companies that would be required to file reports under Part 544 in October 1989, reporting on theft experience in the 1988 calendar year. However, any final rule exempting rental and leasing companies from the reporting requirements will not be published before the 1987 theft reports are due from rental and leasing companies, in October 1988. Therefore, all rental and leasing companies were still required to file an annual report in October 1988, covering 1987 calendar year theft experience. After this report, NHTSA hopes to have a final rule in place that will exempt most rental and leasing companies from these reporting requirements.

The agency proposes to update Appendix C annually, to reflect changes in fleet size for the rental and leasing companies. A rental and leasing company that was not formerly subject to these reporting requirements and whose name is added to Appendix C by virtue of its fleet being reported as 50,000 or more vehicles would have to file a theft report in the year following the year in which its name was added to the Appendix. For example, if a rental and leasing company's name is added to Appendix C in November 1989, the company would have to file a report under Part 544 in October 1990. The annual updates to Appendix C would be made in the same notice that proposes the updates to Appendices A and B.

Part 544 limits the information that rental and leasing companies must provide in their theft reports, for the reasons explained in the final rule establishing Part 544 (52 FR 59, at 75; January 2, 1987). No changes are proposed to those requirements. The only changes proposed to the existing language of Part 544 are to make clear that the rule applies only to rental and leasing companies listed in Appendix C.

Regulatory Impacts

1. Costs and Other Impacts

NHTSA has analyzed this proposal and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. If adopted as a final rule, the agency estimates the costs of these reporting requirements for applicable rental and leasing companies will be reduced from less than 4 million dollars (in the regulatory evaluation of Part 544) to less than $550,000 in the first year and lesser amounts in succeeding years. The agency believes that the data provided by those companies with over 50,000 vehicles will allow NHTSA to adequately evaluate the effect of the standard on rental and leasing companies. This is well below the threshold of $100 million for classifying a rulemaking action as "major" under the Executive Order. The agency believes that it will be better able to assess the effectiveness of the theft prevention standard as a result of exempting all but 19 motor vehicle rental and leasing companies from theft reporting requirements. However, NHTSA cannot provide a quantified estimate of those benefits. A full regulatory evaluation was prepared for the final rule establishing 49 CFR Part 544. Copies of that evaluation have been placed in Docket No. T86-01; Notice 2. A copy of this evaluation may be obtained by any interested person by writing to: NHTSA Docket Section, Room 5109, 400 Seventh Street SW., Washington, DC

20590, or by calling the Docket Section at (202) 428-2768.

Public comment is invited on the likely costs and benefits that would be associated with these reporting requirements. The agency is also interested in receiving suggestions about some means by which the agency could better estimate these costs and benefits.

2. Small Business Impacts

The agency has also considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). I certify that this proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The rationale for this certification is that this proposed rule would substantially reduce from approximately 4,000 to 10 (including licensees and franchisees) the number of affected motor vehicle rental and leasing companies, many of which are small businesses, required to file theft reports.

3. Environmental Impacts

In accordance with the National Environmental Policy Act of 1969, the agency has considered the environmental impacts of this proposed rule and determined that, if adopted as a final rule, it would not have a significant impact on the quality of the human environment.

4. Paperwork Reduction Act

The proposed requirement that motor vehicle rental and leasing companies report certain information annually to this agency is an information collection requirement, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1320. Accordingly, these proposed requirements are being submitted to the OMB for this approval, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Comments on this proposed information collection requirement should be submitted to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for NHTSA. It is requested that comments sent to the OMB also be sent to the NHTSA rulemaking docket shown above for this proposed action.

5. Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Public Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 544

Crime insurance, Insurance, Insurance companies, Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, it is proposed that 49 CFR Part 544 be amended to read as follows:

PART 544—[AMENDED]

1. The authority citation for Part 544 would continue to read as follows:

Authority: 15 U.S.C. 2002; delegation of authority at 49 CFR 1.50.

2. Section 544.3 would be revised to read as follows:

§ 544.3 Application.

This part applies to the issuers of motor vehicle insurance policies listed in Appendices A or B, and to the persons (including licensees and franchisees) who have a fleet of 20 or more motor vehicles used primarily for rental or lease and not covered by theft insurance policies issued by an insurer of motor vehicles listed in Appendix C.

3. Section 544.6(a)(2) would be revised to read as follows:

§ 544.6 Contents of insurer reports.

(a) * * *

(2) In the case of the motor vehicle rental and leasing companies (including licensees and franchisees) listed in Appendix C, provide the information specified in paragraphs (c), (d)(2)(iv), and (g) of this section for each vehicle type listed in paragraph (b) of this section, for each State in which the insurer, including any licensee, franchisee, or subsidiary, did business during the reporting period.

* * * * *

4. A new Appendix C would be added to Part 544, to read as follows:

Appendix C—Motor Vehicle Rental and Leasing Companies (Including Licensees and Franchisees) Subject to the Reporting Requirements of Part 544

Alamo Rent-A-Car, Inc.
AMERCO
(U-Haul International, Inc.)
American International
Rent A Car Corp.
Automotive Rentals, Inc.
Avis, Inc.
Avis Car Leasing-USA
Avis Rent A Car System, Inc.
Budget Rent A Car Corp.
Dollar Rent-A-Car Systems Inc.
Enterprise Leasing Co.
Enterprise Fleets, Inc., and Rent A Car Co.
GE Capital Fleet Services
Hertz Corporation
Hertz Rent-A Car
Hertz Penske Truck Leasing, Inc.
Lease Plan, USA
Lend Lease
McCullagh Leasing, Inc.
National Car Rental System, Inc.
Peterson, Howell & Heather, Inc.
Ryder Truck Rental (both rental and leasing operations)
Security Pacific Credit Corp.
United States Fleet Leasing Inc. (Subsidiary of Hertz Corp., Leasing)
Wheels, Inc.

Issued on: January 31, 1989.

Barry Felrice,
Associate Administrator for Rulemaking.

[FR Doc. 89-2577 Filed 2-2-89; 8:45 am]
BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 54, No. 22
Friday, February 3, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

1989 Common Program Provisions for Wheat, Feed Grains (Corn, Sorghum, Barley, Oats, and Rye), Rice, Upland and Extra Long Staple (ELS) Cotton Programs and 1989 Wheat Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of determination of 1989 Common Program Provisions for Wheat, Feed Grains, Rice, Upland and ELS Cotton, and 1989 Wheat Program.

SUMMARY: The purpose of this notice is to affirm the determinations made by the Secretary of Agriculture in accordance with the Agricultural Act of 1949, as amended (the "1949 Act"), and the Commodity Credit Corporation Charter Act, as amended (the "Charter Act"), with respect to the 1989 Price Support and Production Adjustment Programs.

EFFECTIVE DATE: February 2, 1989.

ADDRESS: Bruce R. Weber, Director, Commodity Analysis Division, USDA–ASCS, Room 3741, South Building, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Bradley Karmen, Commodity Analysis Division, USDA–ASCS, Room 3741, South Building, P.O. Box 2415, Washington, DC 20013 or call (202) 447–4835.

The Final Regulatory Impact Analysis describing the options considered in developing this notice of determination will be available on request from the above-named individual.

SUPPLEMENTAL INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been designated as "major." It has been determined that these program provisions will result in an annual effect on the economy of $100 million or more.

The titles and numbers of the federal assistance programs, as found in the catalogue of Federal Domestic Assistance, to which this notice applies are:

Titles:	Numbers
Commodity Loans and Purchases	10.051
Cotton Production Stabilization	10.052
Feed Grains Production Stabilization	10.055
Wheat Production Stabilization	10.056
Rice Production Stabilization	10.065
Grain Reserve	10.067

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

It has been determined by environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

General Information

General descriptions of the statutory basis for the determinations that are set forth in this notice are set forth in the **Federal Register** Vol. 53, No. 75, Page 12880; No. 130, Page 25516; No. 135, Page 26619; and No. 194, Page 39322.

Comments received during the specified comment period are summarized below for the 1989 Wheat Program and for provisions which are common to the 1989 Wheat, Feed Grain, Rice, Upland and ELS Cotton Programs.

Common Program and Wheat Comments. A total of 83 respondents commented on the 1989 Common Program and Wheat determinations. Thirty-eight of the respondents were individual producers and twenty were producer organizations.

Common Program Provisions

With respect to the specific comments for the common program provisions of the 1989 crops of Wheat, Feed Grains, Rice and Upland and ELS Cotton, the following are noted:

(a) *Approved Nonprogram Crops (ANPC) and Haying and Grazing on Acreage Conservation Reserve (ACR) and Conserving Use (CU) Acres.* Forty-three respondents opposed the authorization of ANPC on ACR and CU acres and 14 favored such action. Thirty-two respondents opposed haying and grazing on ACR and CU acreage and 34 favored such action. Planting of ANPC and haying of ACR and CU acreage will not be permitted, except under emergency conditions, because of the otherwise adverse economic effect such a determination would have on producers who already grow such crops. However, the haying prohibition may be waived if it is determined by the State Agricultural Stabilization and Conservation (ASC) committee that the additional haying will not have an adverse economic effect. Grazing of ACR and CU is permitted except during any 5-consecutive-month period between April 1 and October 31 as designated by the State ASC committees.

(b) *Cross Compliance.* Twenty respondents favored the implementation of limited cross compliance requirements and 5 respondents opposed such action, including 2 respondents who opposed limited cross compliance for ELS cotton. Limited compliance was implemented for wheat, corn, sorghum, barley, upland cotton and rice in order to ensure that desired levels of stocks for all program commodities are attained. Oats and extra-long staple cotton were exempted from limited cross compliance because those commodities are in short supply.

(c) *Offsetting Compliance.* Twelve respondents opposed the implementation of offsetting compliance requirements and 4 favored such action. These compliance requirements will not be implemented due to: (1) The statutory prohibition of such actions relative to rice and upland cotton and (2) the likely decrease in the level of program participation that otherwise would have occurred under the wheat, feed grains, and ELS cotton programs. The higher level of participation achieved by not

requiring offsetting compliance will likely result in greater overall program effectiveness.

(d) *Farm Acreage Base (FAB) Adjustment.* Twenty respondents favored the implementation of the 10 percent FAB adjustment provision and 5 opposed such adjustments. The FAB adjustment provision will not be implemented because: (1) Significant budget increases would occur as producers would be discouraged from reacting to appropriate market signals and instead seek to capitalize on favorable Government programs and (2) additional excess production would be stimulated in those commodities with favorable payment programs.

(e) *Advance Recourse Loans.* Four respondents favored the authorization of advance loans and 6 opposed the use of such loans. Advance recourse loans will not be offered because: (1) Sufficient operating funds are available for the 1989 crop and (2) such a program could place unnecessary encumbrances upon crops that have not been produced, resulting in increased financial stress for producers.

(f) *Multiyear Set-Aside Program.* Ten respondents favored the implementation of the multiyear set-aside program and 3 opposed such a program. This program will not be implemented because the expected acres idled under the Acreage Reduction Program (ARP), Paid Land Diversion (PLD), and Conservation Reserve Program (CRP) are considered adequate for the purpose of supply management of program commodities.

(g) Twenty-six comments were received that related to issues for which comments were not requested.

With respect to the specific comments for the 1989 Wheat Program the following are noted:

(a) *Acreage Reduction Program.* Twenty-eight respondents favored an acreage reduction level of less than 20 percent and 25 favored an ARP of 20 percent or more. The announced ARP level of 10 percent is 10 percentage points below the statutory maximum. The 1949 Act provides that an ARP of less than 20 percent may be implemented if it is determined that a carryin of less than 1 billion bushels of wheat will exist on June 1, 1989. When the ARP was announced, it had been determined that this carryover would be 796 million bushels. Based upon this estimate it was determined that an ARP of 10 percent would result in little change in carryover stocks while export demand could still be met.

(b) *Paid Land Diversion (PLD) Program.* Nine respondents favored a PLD and 7 opposed such a program. A PLD will not be implemented because the ARP level was determined to be sufficient to adequately manage stock levels.

(c) *Marketing Loan.* Five respondents favored the implementation of a marketing loan program and 3 opposed its implementation. A marketing loan will not be implemented because: (1) The loan rate was determined capable of maintaining competitive marketing positions and (2) implementation would have greatly increased program costs with only a marginal increase in export demand.

(d) *Inventory Reduction Program (IRP).* Two respondents opposed the implementation of the IRP and no respondent favored its implementation. Implementation of the IRP is dependent upon implementation of a marketing loan program. Because a marketing loan will not be implemented, the IRP will not be implemented.

This notice affirms the following determinations previously made and announced by the Secretary, beginning May 25, 1988, with respect to the 1989 Wheat Program and for provisions which are common to the 1989 Wheat, Feed Grain, Rice, Upland and ELS Cotton Programs.

Determinations

I. Common Program Provisions

1. *Haying and Grazing/Production of Approved Nonprogram Crops.* In accordance with sections 107D(c)(1), 107D(f)(4), 105C(c)(1), 105C(f)(4), 103A(c)(1), 103A(f)(3), 101A(c)(1), and 101A(f)(3) of the 1949 Act, it has been determined that haying of acreage designated as ACR on CU will not be allowed except under emergency conditions unless it is determined that based upon information submitted by a State ASC committee, haying will not result in an adverse economic effect in the State. Grazing of acreage designated as ACR and CU will be permitted except during any 5-consecutive-month period between April 1 and October 31 that is established for a State by the State ASC committee.

Haying and grazing of CRP acreage is prohibited. The Secretary has further determined that production of crops, program or nonprogram, will not be permitted on ACR or CU acreage.

2. *Cross and Offsetting Compliance.* In accordance with sections 107D(n)(2), 105C(n)(2), 103A(n)(2), and 101A(n)(2) of the 1949 Act, it has been determined that limited cross compliance will be required as a condition of eligibility for program benefits for wheat, feed grains (excluding oats), rice and upland cotton. The imposition of limited cross compliance will not apply for the 1989 crop of ELS cotton. In accordance with sections 107(D)(i), 105C(i), 103A(n)(1), and 103(h)(13) of the 1949 Act, it has been determined that offsetting compliance by wheat, feed grain and ELS cotton program participants will not be required as a condition of eligibility for program benefits. Sections 101A(n)(1) and 103A(n)(3) prohibit imposition of offsetting compliance for rice and upland cotton program participants.

3. *Establishment of Acreage Bases and Adjustments.* In accordance with section 503 of the 1949 Act, FABs will be established for the 1989 crop-year. Adjustments in crop acreage bases for the 1989 program as provided in section 505 will not be allowed.

In accordance with section 504 of the 1949 Act, it has been determined that limited adjustments in crop acreage bases may be approved when producers need to change cropping practices to carry out conservation compliance requirements on highly erodible land.

4. *Advance Recourse Commodity Loans.* In accordance with section 424 of the 1949 Act, it has been determined that advance recourse price support loans shall not be made available to producers since advance deficiency payments for wheat, feed grains, rice and cotton will substantially augment private lending to producers and, therefore, ease producer credit problems. Further, implementing this program could encourage producers to place additional encumbrances upon crops yet to be produced which could result in increased financial stress for producers after harvest.

5. *Multiyear Set-Aside Program.* In accordance with section 1010 of the Food Act of 1985 (the 1985 Act), it has been determined that there will be no multiyear set-aside program. It has been determined that the CRP and wetland conservation provisions protect the Nation's natural resources and provide program benefits to participants to carry out approved conservation practices.

6. *Establishment of Program Payment Yields.* In accordance with section 508 of the 1949 Act, it has been determined that the actual yield per harvested acre for the 1989 crop and subsequent crop years of wheat, feed grains, rice and upland cotton will not be considered in establishing subsequent year farm program payment yields.

7. *Advance Deficiency Payments.* In accordance with section 107C of the 1949 Act, the Secretary will make available to producers advance deficiency payments for the 1989 crop of wheat, feed grains, upland cotton, and rice. Producers may request 40 percent

of their projected deficiency payments when they enroll in the 1989 Wheat and Feed Grain Programs. Upland cotton and rice producers may request 30 percent of their projected deficiency payments when they enroll in the 1989 program. No advance deficiency payments will be offered to ELS cotton producers.

8. *Binding Contracts.* Contracts signed by program participants will be considered binding at the end of the signup period and will provide for liquidated damages if producers do not comply with contractual obligations. It has been determined that binding contracts will ensure a high level of compliance by those producers enrolling in the program and will also result in a more effective program.

9. *Cost Reduction Options.* In accordance with section 1009 of the 1985 Act it has been determined that the Secretary will reserve the right to initiate cost reduction options if subsequent changes occur in supply and demand conditions.

II. Wheat

1. *Loan and Purchase Level for Wheat.* In accordance with section 107D(a)(1) of the 1949 Act, the price support loan and purchase level per bushel shall be $2.06 for wheat.

2. *Established (Target) Price for Wheat.* In accordance with section 107D(c)(1)(G) of the 1949 Act, the established ("target") price per bushel shall be $4.10 for wheat.

3. *Acreage Reduction/Paid Land Diversion Program for Wheat.* In accordance with section 107D(f)(1)(D) of the 1949 Act, the ARP has been established with respect to the 1989 crop of wheat at 10 percent. Accordingly, producers will be required to reduce their 1989 acreage of wheat for harvest from the crop acreage base established for wheat for a farm by at least this established percentage in order to be eligible for wheat price support loans, purchases, and payments.

4. *Set-Aside for Wheat.* In accordance with sections 107D(f)(1) and (3) and 105C(f)(1) and (3) of the 1949 Act, it has been determined that there will be no set-aside program for the 1989 crop of wheat.

5. *Marketing Loan for Wheat.* In accordance with section 107D(a)(5) of the 1949 Act, it has been determined that a marketing loan will not be implemented for the 1989 crop of wheat. The price support loan and purchase levels applicable to wheat have been lowered to the maximum extent possible and it has been determined that this action is sufficient to maintain a competitive market position. Also, the implementation of a marketing loan program for wheat would greatly increase program costs while program benefits would be minimal.

6. *Loan Deficiency Payment.* In accordance with section 107D(b) of the 1949 Act, it has been determined that, with respect to the 1989 crop of wheat, a loan deficiency payment will not be available. Since the marketing loan program is not being implemented, loan deficiency payments will not be available.

7. *Inventory Reduction Program.* In accordance with section 107D(g) of the 1949 Act, it has been determined that the IRP will not be implemented for the 1989 crop of wheat. Since the marketing loan program is not being implemented, inventory reduction payments will not be available.

8. *Farmer-Owned Reserve Program (FOR) for Wheat.* In accordance with section 110 of the 1949 Act, it has been determined that there will be no immediate entry into the FOR program for the 1989 crop of wheat. The lower limit on the size of the reserve for wheat is established at 300 million bushels. Actions to encourage participation in the program will be taken if reserve quantities fall below the minimum level and farm prices fall below 140 percent of the loan rate for wheat.

Authority: Secs. 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, 62 Stat. 1070, as amended, 1072 (7 U.S.C. 714b and 714c); Secs. 101, 101A, 103A, 103(h), 105B, 107C, 107D, 107E, 109, 110, 401, 424, 504, and 505 of the Agricultural Act of 1949, as amended, 63 Stat. 1051, as amended, 99 Stat. 1419, as amended, 1407, as amended, 1395, as amended, 1446, 1383, as amended, 1448, 91 Stat. 950, as amended, 951, as amended 63 Stat. 1054, as amended, 99 Stat. 1461, as amended, 1462 (7 U.S.C. 1433c, 1441, 1441-1, 1444-1, 1444-b, 1445b-2, 1445b-3, 1445b-4, 1445d, 1445e, 1421, 1464 and 1465). Section 1009 of the Food Security Act of 1985, as amended, 49 Stat. 1453, as amended (7 U.S.C. 1308a).

Signed at Washington, DC on January 30, 1989.

Milton J. Hertz,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 89-2531 Filed 2-2-89; 8:45 am]

BILLING CODE 3410-05-M

1989 Feed Grains Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of determination of 1989 Feed Grains Program.

SUMMARY: The purpose of this notice is to affirm the determinations made by the Secretary of Agriculture in accordance with the Agricultural Act of 1949, as amended (the "1949 Act"), the Food Security Act of 1985 (the "1985 Act"), and the Commodity Credit Corporation Charter Act, as amended (the "Charter Act"), with respect to the 1989 Feed Grains Price Support and Production Adjustment Programs.

EFFECTIVE DATE: February 2, 1989.

ADDRESS: Bruce R. Weber, Director, Commodity Analysis Division, USDA-ASCS, Room 3741, South Building, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Philip W. Sronce, Commodity Analysis Division, USDA-ASCS, Room 3748, South Building, P.O. Box 2415, Washington, DC 20013 or call (202) 447-7924.

The Final Regulatory Impact Analysis describing the options considered in developing this notice of determination will be available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512-1 and has been designated as "major." It has been determined that these program provisions will result in an annual effect on the economy of $100 million or more.

The titles and numbers of the federal assistance programs, as found in the catalogue of Federal Domestic Assistance, to which this notice applies are:

Titles:	Numbers
Commodity Loans and Purchases	10.051
Feed Grains Production Stabilization	10.055

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

It has been determined by environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

General Information

General descriptions of the statutory basis for the determinations that are set forth in this notice are set forth in the **Federal Register** No. 130, Page 25516.

Comments received during the specified comment period are summarized below for the 1989 Feed Grains Program.

Comments

A total of 6 respondents commented on the 1989 Feed Grains Program. Four of the respondents were trade organizations and two were producer organizations.

(a) *Target Price.* Three respondents favored setting the corn target price at its statutory minimum. One respondent favored increasing the target price and one respondent favored a target price of $3.03 per bushel for corn. The target price for corn is set at its statutory minimum. This target level ($2.84 per bushel) is well above the projected U.S. 1989-crop average variable cash cost of production ($1.06 per bushel), thereby ensuring program participants an adequate safety net for farm income. The target prices for sorghum ($2.70/bu.), barley ($2.43/bu.), and oats ($1.50/bu.) are determined on the basis of being fair and reasonable in relation to that for corn.

(b) *Acreage Reduction Program (ARP).* Two respondents favored an ARP of less than 5 percent. One respondent favored an ARP between 10 and 20 percent. One respondent favored an ARP of 12.5 percent and one respondent favored an ARP of 20 percent. Two respondents favored eliminating the ARP for barley. One respondent favored a 0 percent ARP for oats. The ARP for corn, sorghum and barley is set at 10 percent and for oats, 5 percent, the statutory maximum. The stock level for corn is below the statutory target carryover level (2 billion bushels), thus authorizing the Secretary to implement an ARP between 0 and 12.5 percent. The 1988 drought raised several concerns when making the 1989 ARP decision: (1) Corn production is down by about 40 percent from pre-drought estimates; and (2) crop quality is unknown, especially regarding aflatoxin mold. After taking into consideration these concerns it has been determined that a 10 percent ARP for corn, grain sorghum and barley and a 5 pecent ARP for oats will maintain the U.S. competitive posture in the export market, provide adequate feed and food supplies for domestic and foreign utilization, and support farm income.

(c) *Optionol Paid Land Diversion (PLD).* One respondent favored a 10 percent PLD. One respondent favored the PLD payment being made in cash. One respondent opposed a bid procedure and one respondent opposed a PLD for barley. Because of the substantial reduction in the 1988/89 feed grain supplies it has been determined that an additional 10 percent PLD for corn, sorghum and barley is not necessary to maintain an adequate supply of corn, sorghum, and barley during the 1989/90 marketing year.

(d) *Marketing Loan and Loan Deficiency Payments.* One respondent opposed implementing a marketing loan program. Marketing loans for feed grains have not been authorized because (1) their respective loan and purchase rates are determined to be capable of maintaining competitive market positions, and (2) implementation of marketing loans would increase program costs, while increases in export demand would only be marginal.

(e) *Inventory Reduction Program (IRP).* No comments were received. Since the marketing loan program is not being implemented, inventory reduction payments will not be available.

(f) *Inclusion of Corn Grain Equivalent in Loans and Purchases Program.* No comments were received. Loans and purchases will not be made available to producers of corn silage, since the costs associated with such an option outweigh any benefits which may exist.

Determinations

1. *Loan and Purchase Level for Feed Grains.* In accordance with section 105C(a) of the 1949 Act, the price support loan and purchase level per bushel shall be $1.65 for corn, $1.57 for sorghum, $1.34 for barley, $0.85 for oats, and $1.40 for rye. These levels were selected because they will allow for the maintenance of competitive market positions for feed grains and the loan and purchase rates are well above the projected U.S. 1989 crop average variable cash costs of production. These costs are $1.06 per bushel for corn, $0.94 per bushel for grain sorghum, $0.90 per bushel for barley, and $0.60 per bushel for oats.

2. *Established (Target) Price for Feed Grains.* In accordance with section 105C(c)(1) of the 1949 Act, the established ("target") price per bushel shall be $2.84 for corn, $2.70 for sorghum, $2.43 for barley, and $1.50 oats.

3. *Acreage Reduction/Paid Land Diversion Program for Feed Grains.* In accordance with section 105C(f)(1) of the 1949 Act, the ARP has been established with respect to the 1989 crops of corn, sorghum, and barley at 10 percent and of oats at 5 percent. In accordance with section 105C(f)(5) an optional 10 percent PLD will not be offered. Accordingly, producers will be required to reduce their 1989 acreage of feed grains for harvest from the crop acreage base established for feed grains for a farm by at least the respective established percentage in order to be eligible for feed grain price support loans, purchases, and payments.

4. *Marketing Loan and Loan Deficiency Payments for Feed Grains.* In accordance with sections 105C(a) and 105C(b) of the 1949 Act, it has been determined that the marketing loan provision will not be implemented and loan deficiency payments will not be available for the 1989 crop of feed grains.

5. *Inventory Reduction Program (IRP).* In accordance with section 105C(g) of the 1949 Act, it has been determined that the IRP will not be implemented for the 1989 crop of feed grains.

6. *Inclusion of Corn Silage Grain Equivalent in Loans and Purchases Program.* In accordance with section 403 of the 1985 Act, it has been determined that loans and purchases will not be made available to producers of corn silage.

7. *Eligibility of Barley Under the Feed Grains Program and ARP Requirements for Producers of Malting Barley.* In accordance with section 105C of the 1949 Act, it has been determined that barley will be included in the 1989 feed grains program and that malting barley producers will not be excluded from ARP requirements. ARP requirements for barley and not excluding malting barley producers from ARP requirements will improve the effectiveness of the production adjustment program and help to balance 1989/90 marketing year barley supply with demand.

Authority: Secs. 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, 62 Stat. 1070, as amended, 1072 (7 U.S.C. 714b and 714c); Secs. 101, 105C, 107C, 107E, 401, 424, 504, and 505 of the Agricultural Act of 1949, as amended, 63 Stat. 1051, as amended, 99 Stat. 1395, as amended 1446, as amended, 1448, 63 Stat. 1054, as amended, 99 Stat. 1461, as amended, 1462 (7 U.S.C. 1441, 1444e, 1445b-2, 1445b-4, 1421, 1464 and 1465).

Signed at Washington, DC, on January 25, 1989.

Milton J. Hertz,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 89-2530 Filed 2-2-89; 8:45 am]

BILLING CODE 3410-05-M

Forest Service

Saddle Timber Sale; Plumas National Forest, Plumas County, CA; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service will prepare an environmental impact statement to disclose the environmental consequences of the proposed Saddle Timbie Sale.

The Saddle Timber Sale is on the Oroville Ranger District, near Quincy, Plumas County, California. Quincy is approximately seventeen air miles to the east. The Bucks Lake Wilderness boundary is approximately 1 air mile north and 3 air miles east of the sale area boundary. The Bucks Lake drainage forms the southern boundary and Forest Service roads 24N24 and 24N35 form the northern boundary of the sale area. The sale is located in T.24N., R.6E., all or portions of sections 13, 14, 23, and 24, Mount Diablo Meridian.

The proposed actions would use helicopter and tractor yarding systems to harvest approximately 14.9 MMBF of timber. The silvicultural prescription would be designed for uneven-aged management, as specified in the Plumas National Forest Land and Resource Management Plan. This prescription would consist of single tree selection and small group selection with openings up to two acres, and with occasional openings of five acres. Approximately 1,100 acres would be treated. No new road construction would be required. However, 1.25 miles of road may require reconstruction.

A range of alternatives will be considered. One of these will consider skyline yarding versus helicopter yarding. Another would be helicopter yarding but with more intensive fuels treatment than the Proposed Action. We will also consider the no action alternative.

We invite other Federal agencies, state and local agencies, and interested individuals to participate in the scoping process. This process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a previous environmental review.

Mary J. Coulombe, Forest Supervisor, Plumas National Forest, Quincy, California, is the responsible official

The analysis is expected to take about 5 months. The draft environmental impact statement should be available for public review by July 1989. The final environmental impact statement is scheduled to be completed by November 1989.

Written comments and suggestions concerning the analysis should be sent to Dewey Riscioni, District Ranger, Oroville Ranger District, 875 Mitchell Avenue, Oroville, CA 95965, by February 28, 1989. Questions about the proposed action and environmental impact statement should also be directed to him. The telephone number is (916) 534-6500.

John E. Palmer,

Deputy Forest Supervisor, Plumas National Forest.

January 25, 1989.

[FR Doc. 89-2512 Filed 2-3-89; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Kentucky Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Kentucky Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 6:30 p.m., on March 14, 1989 at the Capitol Plaza Hotel, #405 Wilkerson Road, Frankfort, Kentucky. The purpose of the meeting will be to conduct a community forum to receive information identifying issues, developments and programs concerning the principles of nondiscrimination and equal opportunity with regard to the employment of minorities and women in Kentucky State government.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Porter G. Peeples, Sr., or William F. Muldrow, Acting Director of the Central Regional Division (816) 426-5253, (TDD 816-426-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 30, 1989.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 89-2543 Filed 2-2-89; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: June 1989 Fertility Supplement
Form Number: CPS-1, CPS-260
Agency Approval Number: 0607-0610
Type of Request: Reinstatement
Burden: 484 hours
Number of Respondents: 29,000
Avg Hours per Response: Approximately 1 minute
Needs and Uses: The data collected in this Current Population Survey supplement will be used mainly by government and private analysts to establish socioeconomic profiles of mothers with newborn children, analyze fertility trends, and make policy decisions.
Affected Public: Individuals or households
Frequency: Annual
Respondent's Obligation: Voluntary
OMB Desk Officer: Francine Picoult, 395-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: January 31, 1989

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-2585 Filed 2-2-89; 8:45 am]

BILLING CODE 3510-07-M

Estimates of the Voting Age Population for 1988

Under the requirements of the 1976 amendment to the Federal Election Campaign Act, 2 U.S.C. 441(e), I hereby give notice that the estimates of the voting age population for July 1, 1988, for each state, the District of Columbia, the Commonwealth of Puerto Rico, and the Territories of American Samoa, Guam, and the Virgin Islands are as shown in the following table.

I have certified these estimates to the Federal Election Commission.

Dated: January 27, 1989.

Donna Tuttle,

Acting Secretary of Commerce.

ESTIMATES OF THE POPULATION OF VOTING AGE FOR EACH STATE, THE DISTRICT OF COLUMBIA AND SELECTED OUTLYING AREAS: JULY 1, 1988

[in thousands]

Area	Population 18 and over
United States Total	181,952
Alabama	3,012
Alaska	346
Arizona	2,514
Arkansas	1,771
California	20,678
Colorado	2,421
Connecticut	2,462
Delaware	484
District of Columbia	462
Florida	9,581
Georgia	4,824
Hawaii	806
Idaho	595
Illinois	8,542
Indiana	4,114
Iowa	2,120
Kansas	1,834
Kentucky	2,740
Louisiana	3,123
Maine	903
Maryland	3,497
Massachusetts	4,539
Michigan	6,845
Minnesota	3,186
Mississippi	1,848
Missouri	3,827
Montana	583
Nebraska	1,178
Nevada	794
New Hampshire	822
New Jersey	5,888
New Mexico	1,060
New York	13,543
North Carolina	4,889
North Dakota	460
Ohio	8,048
Oklahoma	2,379
Oregon	2,056
Pennsylvania	9,179
Rhode Island	765
South Carolina	2,544
South Dakota	518
Tennessee	3,865
Texas	11,796
Utah	1,061
Vermont	414
Virginia	4,527
Washington	3,430
West Virginia	1,406
Wisconsin	3,585
Wyoming	330

ESTIMATES OF THE POPULATION OF VOTING AGE FOR EACH STATE, THE DISTRICT OF COLUMBIA AND SELECTED OUTLYING AREAS: JULY 1, 1988—Continued

[in thousands]

Area	Population 18 and over
Outlying Areas	
Puerto Rico	2,038
Guam	79
Virgin Islands	61
American Samoa	20

[FR Doc. 89-2519 Filed 2-2-89; 8:45 am]

BILLING CODE 3510-BP-M

Bureau of Export Administration

[Docket No. 90126-9026]

Sputtering Equipment; National Security Override Negotiations

AGENCY: Office of Foreign Availability, Bureau of Export Administration, Commerce.

ACTION: Notice of the retention of U.S. export controls on sputtering equipment.

SUMMARY: This notice advises that negotiations conducted pursuant to section 5(f)(4) of the Export Administration Act of 1979, as amended (EAA), have eliminated until May 31, 1989, the availability from foreign countries to controlled countries of magnetically-enhanced sputtering equipment, the export of which is controlled under the EAA for national security reasons. Accordingly, the export of such equipment remains subject to the licensing requirements in the Export Administration Regulations, and no rulemaking is required at this time.

FOR FURTHER INFORMATION CONTACT: John Pastore, Office of Foreign Availability, Department of Commerce, Washington, DC 20230 (Telephone (202) 377-8074).

SUPPLEMENTARY INFORMATION:

Background

The Office of Foreign Availability (OFA) is required by sections 5 (f) and (h) of the Export Administration Act of 1979, as amended (EAA), to review claims of foreign availability on items controlled for national security purposes.

Under section 5(f)(1), if the Secretary determines that there is foreign availability to a controlled country, the Secretary may not require a validated license for the export of such goods or technology, unless the President determines that the absence of the export control would prove detrimental to the national security of the United States. Such a determination is a National Security Override.

Pursuant to section 5(f)(4), in any case in which the President decides to retain the export control on an item notwithstanding a determination of foreign availability, the President is to actively pursue negotiations with the government of any country that is a source of the item for the purpose of eliminating such availability. Initially, the President has six months to pursue the negotiations, and the President can extend the negotiations for an additional 12 months. At the conclusion of the negotiations, the Department of Commerce can control the item only to the extent that the foreign availability has been eliminated.

In 1986, OFA completed an assessment on, and found foreign availability for, magnetically-enhanced sputtering equipment controlled under ECCN 1355A. (See paragraph (b)(1)(vi) of the "List of Equipment Controlled by ECCN 1355A" of the Commodity Control List (Supplement No. 1 to 15 CFR 799.1).)

On June 24, 1987, notwithstanding the determination of foreign availability, in conformance with the National Security Override provision of the EAA, the President determined that the absence of export controls on sputtering equipment would be detrimental to the national security of the United States. Therefore, the President directed the Secretary of Commerce to maintain the controls on magnetically-enhanced sputtering equipment. The President also directed the Secretary of State to negotiate with the government of any country which the Department of Commerce identified as a source of availability.

As directed, the Secretary of State initiated the negotiations which continued for six months. Pursuant to the June 24, 1987, Presidential determination, on December 24, 1987, the negotiations were extended for an additional 12 months, with the negotiating period to expire on December 24, 1988, and the Under Secretary of Commerce for Export Administration so notified Congress.

The negotiations resulted in a temporary removal of foreign availability, at least until May 31, 1989. Therefore, at present, the Secretary of Commerce will not make any changes to the export controls for magnetically-enhanced sputtering equipment. However, at the expiration of the period of temporary removal of foreign

availability, the Secretary of Commerce will make the appropriate changes, if any, to the export controls reflecting the foreign availability of magnetically-enhanced sputtering equipment at that time.

Dated: January 23, 1989.

Paul Freedenberg,

Under Secretary for Export Administration.

[FR Doc. 89-2206 Filed 2-2-89; 8:45 am]

BILLING CODE 3510-DT-M

Foreign-Trade Zones Board

[Order No. 426]

Resolution and Order Approving the Application of the Natrona County International Airport Board of Trustees for a General-Purpose Foreign-Trade Zone in the Casper, WY, Area

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Natrona County International Airport Board of Trustees, filed with the Foreign-Trade Zones Board (the Board) on November 2, 1987, and amended on March 22, 1988, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in Natrona County, Wyoming (Casper area), at the Natrona County International Airport, a Customs User Fee Airport, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations would be satisfied if approval is initially given for a restricted period until the issue of reimbursability at Customs user fee airports is resolved, approves the application for one year from the date of activation, subject to extension upon application to the Board.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to § 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish, Operate, and Maintain a Foreign-Trade Zone in the Casper, WY, Area

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Natrona County International Airport Board of Trustees (the Grantee) has made application (filed November 2, 1987, FTZ Docket 30-87, 52 FR 43780, and amended March 22, 1988, 53 FR 10136) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone in Natrona County, Wyoming (Casper area), at the Natrona County International Airport, a Customs User Fee Airport;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) would be satisfied if approval is initially given subject to the time limit in the resolution accompanying this action;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 157, at the location mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, the one-year time limit in the resolution accompanying this action, and also the following express conditions and limitations:

Operation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from federal, state, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone site in the performance of their official duties.

The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 19th day of January 1989, pursuant to Order of the Board.

Foreign-Trade Zones Board.

C. William Verity,

Chairman and Executive Officer.

Attest:

John J. DaPonte, Jr.,

Executive Secretary.

[FR Doc. 2515 Filed 2-2-89; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-583-803]

Final Determination of Sales at Less Than Fair Value; Light-Walled Welded Rectangular Carbon Steel Tubing From Taiwan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that light-walled welded rectangular carbon steel tubing (LWRT) from Taiwan is being, or is likely to be, sold in the United States at less than fair value. The U.S. International Trade Commission (ITC) will determine, within 45 days of the publication of this notice, whether these imports are materially injuring, or threatening material injury to, a United States industry.

EFFECTIVE DATE: February 3, 1989.

FOR FURTHER INFORMATION CONTACT: Barbara Williams or Kathleen McNamara, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-0405 (Williams) or 377-3434 (McNamara).

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that LWRT from Taiwan is being, or is likely to be, sold in the United States at less than fair value, pursuant to section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The estimated weighted-average margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

On November 14, 1988, we made an affirmative preliminary determination (53 FR 46900, Nov. 21, 1988). The following events have occurred since the publication of that notice.

We verified the questionnaire response from Ornatube Enterprise Inc., Ltd. (Ornatube) in Taiwan between December 5 and 8, 1988.

On January 4, 1989, the Department held a public hearing. Interested parties also submitted comments for the record in their pre-hearing briefs of December 28, 1988 and in their post-hearing briefs of January 11, 1989. Interested members of the public submitted additional comments dated December 28, 1988, December 29, 1988, and January 5, 1989 regarding China Steel Corporation's two-tier pricing policy.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted from the *Tariff Schedules of the United States, Annotated* (TSUSA) to the *Harmonized Tariff Schedule* (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption, on or after that date is now classified solely according to the appropriate HTS item number(s). As with the TSUSA numbers, the HTS numbers are provided for convenience and customs purposes. The written product description remains dispositive.

The products covered by this investigation are light-walled welded carbon steel pipes and tubes of rectangular (including square) cross-section, having a wall thickness of less than 0.156 inch, which are currently provided for under HTS item number 7306.60.5000.

Period of Investigation

The period of investigation for LWRT from Taiwan extends from January 1, 1988 through June 30, 1988.

Fair Value Comparisons

To determine whether Ornatube's sales in the United States of LWRT from Taiwan were made at less than fair value, we compared United States price with foreign market value, using the data provided in Ornatube's responses.

To determine whether Yieh Hsing's or Vulcan's sales in the United States of LWRT from Taiwan were made at less than fair value, we compared United States price, based on the best information available, with foreign market value, also based on the best information available. We used the best information available for Yieh Hsing and Vulcan, as required by section 776(c) of the Act, because appropriate responses were not submitted.

United States Price

For Ornatube, we based United States price on purchase price (PP), in accordance with section 772(b) of the Act, because the merchandise was sold to unrelated purchasers in the United States prior to its importation. We calculated purchase price based on the C&F, C&F&C, CIF, or CIFC packed prices to U.S. customers. We made deductions from purchase price for ocean freight, marine insurance, brokerage, port charges and discounts, where appropriate. We then added to this adjusted U.S. price value-added taxes incurred on merchandise sold in the home market which are rebated, or which are not collected, by reason of the exportation of the merchandise to the United States. We then made a deduction from the tax-inclusive price for inland freight.

We disallowed a claimed duty drawback for the China Steel rebate on the cost of steel coils. Instead, we accounted for this payment to Ornatube as a circumstance-of-sale adjustment (*see* adjustments to foreign market value). We disallowed a claimed "waiting charge" adjustment to inland freight charges on export sales, because we were unable to verify to which sales, or to how many, this waiting charge applied.

Since neither Yieh Hsing nor Vulcan responded to our questionnaire, we did not have specific data as to the quantities and prices of the subject merchandise sold to the United States by the two companies. Therefore, we used the price information provided in the petition as the best information available, pursuant to section 776(c) of the Act. We used the U.S. purchase price in the United States as specified in the petition and made deductions for freight, insurance, handling charges, and U.S. customs duty.

Foreign Market Value

In accordance with section 773(a)(1)(A) of the Act, we calculated Ornatube's foreign market value (FMV) based on delivered C&F packed prices to unrelated purchasers in Taiwan. We made a deduction from these prices for inland freight. In order to adjust for any differences in packing between the two markets, we deducted Taiwanese packing costs from FMV and added U.S. packing costs, using packing costs submitted in Ornatube's questionnaire response and information received during verification.

In accordance with 19 CFR 353.15 of our regulations, we made circumstance-of-sale adjustments to FMV for differences in credit expenses and commissions. During verification, Ornatube was not able to provide adequate documentation for the home-market credit expenses it reported in its response. Therefore, we made no deduction from FMV for home-market credit expenses. We added to FMV the full amount of credit and banking expenses incurred on U.S. sales. We added U.S. commissions and deducted indirect selling expenses (adjusted to reflect verified salesmen's salaries) incurred on home market sales up to the amount of any commission expense incurred on sales to the United States, in accordance with 19 CFR 353.15(c) of our regulations. With respect to the indirect selling expenses used as an offset to U.S. commissions, we disallowed the portion of these expenses attributable to sales management salaries, because we consider management costs part of general and administrative expenses. We verified that the job duties of sales management personnel include responsibility for foreign sales as well as administrative functions unrelated to sales in the home market.

In addition, we made circumstance-of-sale adjustments to FMV for expenses incurred in purchasing "free" allotment for exports to the United States and for the rebate Ornatube received from China Steel on its purchases of raw material used in LWRT exported to the United States. We prorated this rebate to reflect the fact that Ornatube uses imported steel (not subject to the rebate)

as well as coils from China Steel in the production of LWRT.

We adjusted FMV for the estimated value-added tax burden on U.S. sales.

We did not make any difference-in-merchandise adjustment because, although Ornatube based its price comparisons in some cases on merchandise with slightly different physical characteristics, it did not specify any cost differences between the merchandise.

Finally, we disallowed an adjustment to inland freight expenses for split shipments.

As we did not have specific data with respect to the quantities and prices of the subject merchandise sold in Taiwan by Yieh Hsing and Vulcan, we used the constructed value of the merchandise provided in the petition as the best information available, in accordance with section 776(c) of the Act. The constructed value calculated in the petition was based on domestic production costs adjusted for differences in manufacturing costs in Taiwan, with the statutorily mandated addition of 10 percent of the cost of manufacture for general expenses and 8 percent of the cost of manufacture and general expenses for profit.

Currency Conversions

For comparisons involving purchase price transactions, we used the official exchange rates in effect on the dates of sale, in accordance with 19 CFR 353.56(a)(1) of the Commerce regulations. All currency conversions were made at the rates certified by the Federal Reserve Bank of New York.

Verification

As provided in section 776(b) of the Act, we verified all information used in reaching the final determination in this investigation. We used standard verification procedures, including examination of relevant accounting records and original source documents provided by Ornatube.

Critical Circumstances

Petitioner alleges that "critical circumstances" exist with respect to imports of LWRT from Taiwan. Under section 735(a)(3) of the Act, the Department must determine if:

(A)(i) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation; or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 735(a)(3)(B), we generally consider the following factors in determining whether imports have been massive over a relatively short period of time: (1) The volume and value of imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

Based on our analysis of the Department's import data, we find that imports of LWRT from Taiwan have not been massive over a relatively short period of time and there has been no substantial increase in imports following the initiation of this investigation.

Although imports decreased over the prefiling period and increased subsequent to the filing, a similar pattern is observed in 1987. It is also true that aggregate imports for the post-filing period exceed imports of LWRT for the same period in 1987. However, the same relationship is evident for the pre-filing period in 1988 and the same period one year earlier. Thus it appears this trend is one of year-to-year increase in imports of LWRT from Taiwan and is unrelated to the filing of the petition. Moreover, imports in the five months following the initiation of this investigation exceed imports in the five months previous to the filing by only 4.11 percent. For these reasons, we determine that the requirements of section 735(a)(3)(B), and thus of section 735(a)(3), are not met. Critical circumstances do not exist with respect to imports of LWRT from Taiwan.

Interested Party Comments

General Comments

Comment 1: Both petitioner and respondent argue that the dumping margin we calculated for purposes of our preliminary determination for all other manufacturers, producers, and exporters was incorrect. Petitioner argues that the margin should not be based solely on Ornatube's margin, but rather on the weighted average of the margins for Ornatube, Vulcan, and Yieh Hsing. Respondent argues that the "all other" margin should be based not on Ornatube's margin, but on the highest margin found in the investigation (*i.e.*, the margin for Yieh Hsing and Vulcan).

DOC Position: We agree with petitioner that a weighted average should be used to calculate the rate for all other manufacturers, producers, and exporters. Normally, the Department uses this methodology to calculate a margin for all other manufacturers, producers, and exporters. However, as there is no information on the record in this investigation which would allow us to reasonably calculate a weighted average, we have used a straight average of the respondents' margins for "all others."

Comment 2: Ornatube states that a circumstance-of-sale adjustment should be made for the steel coil price rebate Ornatube receives from China Steel Corporation upon the export of merchandise produced from steel purchased from China Steel. Respondent argues that circumstance-of-sale adjustments for similar rebate programs have been made in previous LTFV determinations, and that there has been no recent proliferation of two-tiered pricing schemes to warrant reevaluation by the Department of its treatment of such programs. In fact, respondent states, the courts have sustained the authority of the Department to make adjustments for such rebates in the past. Ornatube asserts that the rebate is received only on proof of export and that the rebate is directly related to each particular export transaction. Further, respondent states that the economic effect of the rebate is identical to the economic effect of a duty drawback, a program for which we would make an adjustment.

Petitioner argues that the rebate is not a circumstance of sale, but rather a difference in production costs for the products in the two markets. Petitioner argues further that granting the circumstance-of-sale adjustment for this rebate would undermine the policies underlying the antidumping and countervailing duty laws, and DOC's regulations. Petitioner asserts that DOC's authority to grant this adjustment is discretionary, and that DOC should exercise this discretion and disallow the adjustment.

The Department has allowed circumstance-of-sale adjustments for similar input price rebates in the past. *See Certain Welded Carbon Steel Standard Pipe and Tube From India, Final Determination of Sales At Less Than Fair Value*, 52 FR 9089, March 17, 1987. At the time of the preliminary determination, the Department had become concerned that allowing such circumstance-of-sale adjustments might indirectly facilitate the maintenance of barriers to trade that give rise to such two-tiered pricing schemes. For that reason, we announced our intention to reconsider this practice, and requested comments from interested parties. We received several comments on this issue from interested members of the public. Interested parties state that the legislative history of the circumstance of sale provision makes clear that the intent of Congress in enacting this provision was that circumstance-of-sale adjustments would be made only for expenses or services that are a direct result of selling the product. They contend that export payments such as receipt of a lower price in a two-tiered pricing system, unlike the specific kinds of circumstances of sale enumerated in the Commerce regulations, do not reflect differences in selling expenses. The interested parties assert that export payments are additional revenues or benefits to exporters and do not affect the terms of the transactions between the seller and its customers. They contend the rebate is intrinsically a part of the seller-supplier relationship, rather than the seller-buyer relationship. Further, they state that counting the rebate as a circumstance of sale will only serve to encourage trade barriers which protect domestic industries and distort trade. For these reasons, interested members of the public state that the Department should exercise its discretionary authority (an authority upheld in the past by the Court of International Trade, *see Sawhill Tubular Div., Cyclops Corp. v. United States*, 666 F. Supp. 1550 (CIT 1987)) and disallow the rebate from China Steel as a circumstance of sale.

DOC Position: After considering the arguments presented by the parties and other interested persons, we are not persuaded that we should depart from the precedent in *Sawhill Tubular Div., supra*, 666 F. Supp. 1550. The export rebate received by Ornatube is directly related to and, in fact, directly contingent upon the export sale of the merchandise. Therefore, we have made a circumstance-of-sale adjustment to FMV for the steel coil price rebate, in accordance with 19 CFR 353.15 of our regulations.

The Department is aware of the argument that the granting of a circumstance-of-sale adjustment in this type of situation could encourage higher foreign tariffs and two-tier pricing. However, at this time, administrative consistency requires granting the adjustment. Other fora and other legal processes, such as the rulemaking currently contemplated by the Department, exist to address the issue of whether, in fact, adjustments in this and similar situations are appropriate.

Comment 3: Petitioner and respondent both note that the Department should correct certain errors made in its calculations of the margins in the preliminary determination. These errors involve the gross home market price and gross U.S. price used in our calculations, the calculation of commissions on U.S. sales and indirect selling expenses on home market sales, and the calculation of the credit costs on U.S. sales.

DOC Position: We agree with all but one of these comments and have corrected these calculations in the final determination. Regarding respondent's comment that we incorrectly converted indirect selling expenses to New Taiwan dollars, these expenses were in fact converted to U.S. dollars.

Comment 4: Respondent claims that circumstance-of-sale adjustments should not be made for interest charges reported as "credit expenses" in the response and miscellaneous bank charges reported as "direct expenses" which were incurred on sales in the United States. Ornatube asserts that these expenses were not incident to bringing the merchandise to the place of delivery and, therefore, no adjustment should be made for such expenses. Petitioner asserts that the adjustment for credit expenses is correct because the charges are directly related to the sale of the merchandise.

DOC Position: We consider these expenses to be directly related to the sale of LWRT to the United States. Therefore, we have included them in our circumstance-of-sale adjustments.

Comment 5: Respondent states that if the Department makes a circumstance-of-sale adjustment using credit expenses on U.S. sales, it should use the credit expenses as reported in the response, rather than an allocation formula. Respondent states that it reported actual expenses for each sale and that the method used in calculating those expenses were verified. Therefore, there is no justification for imputing costs.

Petitioner contends that the U.S. credit expenses reported by Ornatube do not appear to account properly for imputed credit expenses between the date of shipment and the date of payment. Petitioner states that the Department's credit methodology used in the preliminary determination properly accounted for actual and imputed credit expenses, using the interest rate provided by Ornatube.

DOC Position: We verified that the credit expenses claimed on U.S. sales as reported in the response were accurate. Therefore, we have made a circumstance-of-sale adjustment using credit expenses incurred on U.S. sales as they are reported in the response, rather than using imputed credit expenses.

Comment 6: Petitioner states that Ornatube's home market indirect selling expense claim improperly includes the salaries of sales management personnel in addition to salesmen's salaries. Petitioner argues that expenses for sales management personnel should be considered general expenses and, therefore, should be not be included as an offset to U.S. market commissions. Ornatube asserts that the Department should use the amount reported in the response for indirect selling expenses. This amount includes both salaries of sales management personnel and salesmen's salaries.

DOC Position: We agree with petitioner and have disallowed sales management salaries as an adjustment. We consider management expenses to be general and administrative expenses which should not be included in indirect selling expenses.

Comment 7: Petitioner states, with regard to critical circumstances, that the requirements of section 735(a)(3)(B) of the Act are met. Petitioner contends that there has been a substantial increase in the volume of imports of LWRT from Taiwan within a relatively short period. Respondent argues that there have not been massive imports and that any increase in the second half of 1988 is a seasonal effect and not a surge connected with this investigation.

DOC Position: We agree with respondent that the requirements of section 735(a)(3)(B) of the Act are not met. There was no substantial surge in imports of this material from Taiwan during the period subsequent to the initiation of this investigation.

Comment 8: Petitioner states that the requirements of section 735(a)(3)(A)(ii) of the Act are met with regard to critical circumstances. Petitioner argues that even if margins are below 25 percent in this case, a finding of critical circumstances is still justified because the Department has found in two previous investigations that LWRT from Taiwan was sold at LTFV in the United States. While neither investigation resulted in a final affirmative injury determination, petitioner argues that these cases still provided imputed knowledge to importers that LWRT from Taiwan was being sold at LTFV in the United States.

Respondent states that critical circumstances do not exist in this case because the requirements of subsections 735(a)(3)(A) (i) or (ii) of the Act are not met. Respondent argues that prior findings of sales at less than fair value (LTFV) do not satisfy section 735(a)(3)(A)(i); rather, there must be prior findings of dumping, *i.e.*, both sales at LTFV and injury. Regarding subsection (ii), Ornatube contends that,

because the International Trade Commission found no injury in previous investigations of this merchandise from Taiwan, importers had no reason to believe that the subject merchandise was being sold injuriously at LTFV in the United States.

DOC Position: The Department has found that the requirements of section 735(a)(3)(B) of the Act are not met. Accordingly, critical circumstances do not exist in this case.

Petitioner's Comments

Comment 9: Petitioner argues that we should disallow the credit expense claimed on home market sales. Petitioner contends that the respondent bears the burden of substantiating any claimed adjustments to FMV, and in this case, the Department was unable to verify home market credit expenses. According to petitioner, Ornatube's company-wide accounts receivable figures are not accurate indicators of Ornatube's home market credit expenses and, therefore, should not be used as "best information available" to determine credit expenses incurred on LWRT sold in the home market.

DOC Position: We agree. During verification, the Department realized that Ornatube was unable to *determine* and document *which* home market sales incurred credit expense. Furthermore, Ornatube claimed that up to half of its home market sales were on a cash basis. Consequently, the use of any average expense for all sales would have been highly distortive.

Comment 10. Petitioner argues that we incorrectly calculated the indirect tax burden for U.S. sales. Petitioner notes that, under 19 U.S.C. 1677a(d)(1)(C), an adjustment is to be made only for those indirect taxes that the exported merchandise would have borne if sold in the home market, and asserts that, if the merchandise had been sold in the home market, it would not have incurred movement charges.

DOC Position: The Department's position is the VAT tax should be applied to exported merchandise in exactly the same way that it is applied to goods sold in the home market. Under the Taiwanese law, merchandise is taxed at the gross price to the customer, inclusive of all services and expenses, such as inland freight. We agree with petitioner, however, that offshore movement charges could not have been incurred in a home market sale. We have adjusted our calculation by subtracting ocean freight, marine insurance, brokerage and port charges from U.S. price before determining the estimated tax burden. We did not deduct inland freight before determining the tax-inclusive price, because inland freight expenses can be incurred on a home market sale.

Comment 11: Petitioner states that the Department should deny Ornatube's request that split shipment and waiting charges be added to inland freight expenses for sales to Central Taiwan. Petitioner argues that the company's request should be denied because Ornatube was not able to provide documentation on which shipments, if any, incurred these extra charges.

DOC Position: We agree. We have disallowed any addition to inland freight expenses for split shipment and waiting charges.

Comment 12: Petitioner asserts that if the Department decides to make a circumstance-of-sale adjustment for China Steel's two-tiered pricing of coil, then to be consistent it must also make a circumstance-of-sale adjustment for expenses incurred through the buying of "free" allotment. (Under the Taiwan export licensing program, an approved applicant may pay a specified amount to the Taiwan Steel and Iron Industry Association to be allowed to export additional tonnage of certain steel products, above and beyond the company's regular allotment for steel exports. During the period of investigation, Ornatube participated in this program and paid for the ability to export additional tonnage of steel pipe under the "free" allotment provision of the program.)

DOC Position: We agree. In our calculations, we made a circumstance-of-sale adjustment for the expense incurred in buying "free" allotment for exports to the United States.

Comment 13: Petitioner states that total salesmen's salaries should be allocated over total home market sales of all products, not just home market LWRT sales.

DOC Position: We verified that sales personnel responsible for LWRT sales in the home market also sell water pipe in the home market. Additional salesmen are responsible for selling other products in the home market. Therefore, in our calculations, we allocated salesmen's salaries over both LWRT and water pipe in the home market.

Ornatube's Comments

Comment 14: With regard to section 735(a)(3)(A)(ii) of the Act, Ornatube argues that the Department's use of the 25 percent dumping margin as a test of importers' knowledge of LTFV sales is an abuse of its discretionary powers. Respondent states that it is unrealistic to expect importers to know that the exporter is selling the subject merchandise in the United States at LTFV when the importer has no knowledge of the exporter's home market prices. Respondent points to errors in the Department's preliminary determination calculations of dumping margins as evidence of the difficulty of determining whether LTFV sales exist.

DOC Position: Section 735(a)(3)(A)(ii) of the Act requires us to determine whether importers knew or should have known that the merchandise was being sold at less than fair value. For purposes of consistency, the Department's practice has been to consider estimated margins of 25 percent or greater to be sufficient to impute knowledge of dumping.

Comment 15: Ornatube asserts that in its calculations the Department should use the verified packing expenses as reported in the response, rather than another method of calculation.

DOC Position: We agree.

Comment 16: Ornatube contends that the proper amount for credit expense on transaction #3 in the verification report is the amount reported for the sale in the response. The company asserts that an extra charge included on verification documents is not associated with the particular sale and, therefore, should not be included as a credit expense.

DOC Position: We verified that the credit expenses incurred were as stated in Ornatube's response.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of LWRT from Taiwan that are entered or withdrawn from warehouse, for consumption, on or after November 21, 1988, the date of publication of the preliminary determination in the **Federal Register**. The Customs Service shall continue to require a cash deposit or posting of bond equal to the estimated amounts by which the foreign market value of the merchandise subject to this investigation exceeds the United States price, as shown below. This suspension of liquidation will remain in effect until further notice.

The margins are as follows:

Manufacturer/producer/exporter	Margin (percent)
Ornatube Enterprise	5.51
Vulcan Industrial Corp	40.97
Yieh Hsing Industries, Ltd	40.97
All Other Manufacturers/Producers/Exporters	29.15

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all securities posted as a result of suspension of liquidation will be refunded. However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officers to assess an antidumping duty on LWRT from Taiwan as defined in the "Scope of Investigation" section of this notice, entered or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the U.S. price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Jan W. Mares,

Assistant Secretary for Import Administration.

January 30, 1989.

[FR Doc. 89-2584 Filed 2-2-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-122-807]

Initiation of Countervailing Duty Investigation; Fresh, Chilled, and Frozen Pork From Canada

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether producers or exporters in Canada of fresh, chilled, and frozen pork as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) of this action, so that it may determine whether imports of fresh, chilled, and frozen pork from Canada materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, we will make our preliminary determination on or before March 31, 1989.

EFFECTIVE DATE: February 3, 1989.

FOR FURTHER INFORMATION CONTACT: Roy Malmrose or Barbara Tillman, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-5414 and (202) 377-2438.

SUPPLEMENTARY INFORMATION:

The Petition

On January 5, 1989, we received a petition in proper form from the National Pork Producers Council, 13 state pork producer associations, the National Pork Council Women, ConAgra Red Meats, Inc., Dakota Pork Industries, Inc., Farmstead Foods, IBP, Inc., Illinois Pork Corporation, Thorn Apple Valley and Wilson Foods, Inc. This petition is filed on behalf of the U.S. industry producing fresh, chilled, and frozen pork. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that producers and exporters of fresh, chilled, and frozen pork in Canada receive subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act).

Since Canada is a "country under the Agreement" within the meaning of section 701(b) of the Act, Title VII of the Act applies to this investigation, and the ITC is required to determine whether imports of the subject merchandise from Canada materially injure, or threaten material injury to, the U.S. industry.

Petitioners have alleged that they have standing to file the petition. Specifically, petitioners have alleged that they are an interested party as defined under section 771(9)(G) of the Act and that they have filed the petition on behalf of the U.S. industry producing the products that are subject to this investigation. If any interested party as described under paragraphs (C), (D), (E), (F), or (G) of section 771(9) of the Act wishes to register support of or opposition to this petition, please file written notification with the Commerce official cited in the **"FOR FURTHER INFORMATION CONTACT"** section of this notice.

On January 25, 1989, we received additional information concerning some of the programs alleged in the petition. We did not have sufficient time to take this submission into account for purposes of our initiation. We will examine this submission and take appropriate action.

Initiation of Investigation

Under section 702(c) of the Act, we must make the determination on whether to initiate a countervailing duty proceeding within 20 days after a petition is filed. Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition, on behalf of an industry, that (1) alleges the elements necessary for the imposition of a duty under section 701(a), and (2) is accompanied by information reasonably available to the petitioner supporting the allegations. We have examined the petition on fresh, chilled, and frozen pork from Canada and have found that most of the programs alleged in the petition meet these requirements. Therefore, we are initiating a countervailing duty investigation to determine whether Canadian producers, or exporters of fresh, chilled, and frozen pork, as described in the "Scope of Investigation" section of this notice, receive subsidies. However, we are not initiating an investigation for certain programs because the petition failed to allege the elements necessary for the imposition of a duty or in some instances failed to provide the necessary supporting information. If our investigation proceeds normally, we will make our preliminary determination on or before March 31, 1989.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to this Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after this date will be classified solely according to the appropriate HTS item number(s).

The products covered by this investigation are fresh, chilled, and frozen pork, currently provided for under TSUSA item numbers 106.4020 and 106.4040, and currently classifiable under HTS item numbers 0203.11.00, 0203.12.90, 0203.19.40, 0203.21.00, 0203.22.90, and 0203.29.40. Specifically excluded from this investigation are any processed or otherwise prepared or preserved pork products such as canned hams, cured bacon, sausage and ground pork.

Allegations of Subsidies

Petitioners list a number of practices by the Government of Canada and the ten provincial governments which allegedly confer subsidies on producers or exporters of fresh, chilled, and frozen pork. In this regard, pursuant to section 771B of the Act, any subsidies found to be provided to either producers or processors of the product shall be

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deemed to be provided with respect to the manufacture, production, or exportation of the processed product if (1) the demand for the prior stage product is substantially dependent on the demand for the latter stage product, and (2) the processing operation adds only limited value to the raw commodity. The petition in this case provides evidence which indicates that the economic relationship of hog producers and pork packers satisfies the requirements of section 771B. During the course of this investigation, we will determine whether these requirements are met. If so, any subsidies found to be provided to either producers or processors of the product shall be deemed to be provided with respect to the manufacture, production, or exportation of the processed product. We are initiating an investigation of the following programs:

A. *Federal Program*
   Agricultural Stabilization Act
B. *Joint Federal-Provincial Program*
   1. Canada/Alberta Subsidiary Agreement on Agriculture Processing and Marketing
   2. Canada/British Columbia Agri-Food Regional Development Subsidiary Agreement
C. *Provincial Programs*
   1. British Columbia Swine Producers Farm Income Plan
   2. Manitoba Hog Income Stabilization Plan
   3. New Brunswick Hog Price Stabilization Program
   4. Newfoundland Hog Price Support Program
   5. Nova Scotia Pork Price Stabilization Program
   6. Prince Edward Island Price Stabilization Program
   7. Quebec Farm Income Stabilization Insurance Program
   8. Saskatchewan Hog Assured Returns Program
   9. New Brunswick Swine Assistance Program
   10. New Brunswick Livestock Incentives Program
   11. New Brunswick Hog Marketing Program
   12. Nova Scotia Swine Herd Health Policy
   13. Nova Scotia Transportation Assistance
   14. Ontario Farm Tax Reduction Program
   15. Ontario (Northern) Livestock Improvement and Transportation Assistance Programs
   16. Prince Edward Island Hog Marketing and Transportation Subsidies
   17. Prince Edward Island Swine Development Program
   18. Prince Edward Island Interest Payment on Assembly Yard Loan
   19. Quebec Meat Sector Rationalization Program
   20. Saskatchewan Livestock Investment Tax Credit Program
   21. Quebec Productivity Improvement and Consolidation of Livestock Production
   22. Quebec Regional Development Assistance
   23. Nova Scotia Improved Sire Policy
   24. Newfoundland Grants to Regional Slaughter Facilities
   25. Newfoundland Weanling Bonus Incentive Policy
   26. Newfoundland Hog Stabilization Programs
   27. Newfoundland Hog Production Subsidies
   28. Ontario Pork Industry Improvement Plan
   29. Ontario Export Sales Aid
   30. Ontario Marketing Assistance Program for Pork
   31. Ontario Small Food Processors Assistance Program
   32. Saskatchewan Livestock Facilities Tax Credit Program
   33. British Columbia Food Industry Development Program
   34. Prince Edward Island Swine Incentive Policy
   35. British Columbia Feed Grain Market Development Program
   36. New Brunswick Swine Assistance Policy on Boars

We are not initiating an investigation of the programs listed below. Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition on behalf of an industry that (1) alleges the elements necessary for the imposition of a duty under section 701(a) and (2) is accompanied by information reasonably available to the petitioner supporting the allegations. All the programs listed below were alleged to confer domestic subsidies. The elements which must be alleged for a domestic subsidy program are (1) specificity (i.e., the program is limited to a specific enterprise or industry or group of enterprises or industries) and (2) provision of a countervailable benefit (i.e., a subsidy paid or bestowed directly or indirectly on the manufacturer, producer or exporter of any class or kind of merchandise). For upstream subsidies, the initiation threshold is higher. Under section 701(e) of the Act, the Department must have reasonable grounds to believe or suspect that an upstream subsidy, as defined in section 771A of the Act, is being paid or bestowed upon merchandise under investigation. For the programs listed below, the requirements of section 702(b) or 701(e) of the Act were not fulfilled in the petition.

We have divided the programs listed below into four groups. Before each group we have provided the specific reasons why the programs in that group have not met the statutory standard for initiating an investigation.

Petitioners allege that the following general agricultural programs provide benefits to pig producers. We have previously determined that programs which benefit all of agriculture are not limited to a specific enterprise or industry or group of enterprises or industries. (See *Final Negative Countervailing Duty Determination: Fresh Asparagus from Mexico*, 48 FR 21618, May 13, 1983). We are not initiating on the programs below because petitioners have not made a sufficient allegation or provided evidence in the exhibits to the petition which indicates that these programs benefit a specific enterprise or industry or group of enterprises or industries.

1. Federal Agricultural Products Board Act Programs
2. Alberta Marketing of Agricultural Production Act Programs
3. Ontario Soil Conservation and Environmental Protection Assistance Program

We are not initiating on the following programs because the petitioners have not made a sufficient allegation with respect to how the programs provide a quantifiable benefit on the production or exportation of the subject merchandise. Furthermore, supporting documentation submitted by petitioners do not clearly demonstrate how these programs benefit the production or exportation of the subject merchandise.

1. Alberta Semen and Embryo Producers' Assistance Program
2. National Workshop on Hog Marketing Alternatives Study/ Programs
3. New Brunswick Agricultural Fairs Grants Policy
4. New Brunswick Assistance to Livestock Exhibitors at the Royal Agricultural Winter Fair
5. Nova Scotia Breeders' Guarantee Policy
6. Newfoundland Swine Breeding Stations Program
7. Prince Edward Island Assistance to Livestock Exhibitors to Out-of-Province Exhibitions
8. Prince Edward Island Assistance to Livestock Breed Associations
9. Ontario Swine Sales Assistance Policy
10. Ontario Livestock Shows Assistance Program
11. Ontario Transportation of Livestock Exhibits Assistance Program
12. Ontario (Northern) Agricultural Development Programs
13. Alberta Livestock Shows and Congress Assistance Program
14. British Columbia Livestock Financial Assistance Program
15. British Columbia Exhibitions and Fall Fairs Programs
16. Alberta Competitiveness Assistance Initiatives
17. Canada/Nova Scotia Miscellaneous Pork Grants
18. Canada/Ontario Canadian Western Agribition Livestock Transportation Assistance Program
19. Canada/Alberta Swine Herd Improvement Research Study
20. Special Canada Grains Program
21. Canada/Newfoundland Livestock Feed Initiative
22. Canada/Prince Edward Island Livestock Feed Initiative

Petitioners allege that the following programs provide benefits to growers of various feedgrains. Petitioners do not allege that these programs directly provide benefits to producers of pigs. We believe that any benefit received by the producers of pigs under these programs would be in the nature of an upstream subsidy under section 701(e) of the Act, because they do not meet the standards of section 771B. We are not initiating on these programs because petitioners have not made an upstream subsidy allegation.

1. Federal Prairie Grain Advance Payments Act Program
2. Federal Canadian Wheat Board Act Initial Payments Program
3. Federal Western Grain Stabilization Act Program
4. Federal Western Grain Transportation Act Programs
5. Federal Feed Freight Assistance Program
6. Agriculture Canada Livestock Feed Board Programs
7. Alberta Crow Benefit Offset Program

We are not initiating on the following programs because they were previously found not countervailable. (See *Final Affirmative Countervailing Duty Determination: Live Swine and Fresh, Chilled, and Frozen Pork Products from Canada*, 50 FR 25097, June 17, 1985, and *Live Swine from Canada: Final Results of Countervailing Duty Administrative Review*, 54 FR 651, January 9, 1989). Petitioners have not provided any new evidence nor alleged changed circumstances with respect to these programs.

1. Quebec Special Credits for Hog Producers
2. Saskatchewan Financial Assistance for Livestock and Irrigation
3. Saskatchewan Livestock Cash Advance Program
4. Record of Performance Program

Notification of ITC

Section 702(d) of the Act requires us to notify the ITC of this action, and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will also allow the ITC access to all privileged and business proprietary information in our files, provided it confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by February 20, 1989, whether there is a reasonable indication that imports of fresh, chilled, and frozen pork materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, this investigation will terminate; otherwise, this investigation will continue according to the statutory procedures. This notice is published pursuant to section 702(c)(2) of the Act.

Timothy N. Bergan,
Acting Assistant Secretary for Import Administration.
January 25, 1989.
[FR Doc. 89-2510 Filed 2-2-89; 8:45 am]
BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

New England Fishery Management Council; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearings and request for comments.

SUMMARY: The New England Fishery Management Council (Council) will hold a series of hearings to solicit input on (1) two proposed measures to be included in a regulatory amendment to the regulations implementing the Sea Scallop Fishery Management Plan (FMP) and (2) six proposals for possible inclusion in Amendment 3 to the FMP. Individuals may comment in writing to the Council if they are unable to attend the hearings.

DATES: See **"SUPPLEMENTARY INFORMATION"** for dates, time, and locations of the hearings. The public comment period for the proposed regulatory amendment will close February 26, 1989. The comment period for the other six proposals for possible inclusion in Amendment 3 will close March 18, 1989.

ADDRESS: All written comments and requests for hearing documents should be addressed to Chairman, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906.

FOR FURTHER INFORMATION CONTACT: Douglas G. Marshall, Executive Director, New England Fishery Management Council, 617-231-0422.

SUPPLEMENTARY INFORMATION: A proposed regulatory amendment to the FMP would include (1) a mandatory call-in requirement at least 12 hours prior to landing, and (2) a twelve-hour time window for landing sea scallops. The Council also seeks input from the public on six proposals made by industry organizations and individuals for possible inclusion in Amendment 3 to the FMP. Common elements to several proposals include an annual declaration by each vessel to enter the Sea Scallop fishery, trip catch limits and limited layover days. Other proposals advocate a moratorium on any new vessels entering the fishery, continuation of the current meat count/ shell height standard, a minimum size for landed scallops, a seasonal closure, and a minimum participation of 3 months per year.

The dates, time, and locations of the public hearings are scheduled as follows:

February 13, 1989, 7:00 p.m. to 11:00 p.m., Holiday Inn, High Street, Ellsworth Maine.
February 14, 1989, 7:00 p.m. to 11:00 p.m., Skipper Inn, 110 Middle Street, Fairhaven, Massachusetts.
February 16, 1989, 7:00 p.m. to 11:00 p.m., Grand Hotel, Oceanfront and Philadelphia Avenue, Cape May, New Jersey.
February 17, 1989, 7:00 p.m. to 11:00 p.m., Norfolk International Airport, Conference Room A, Norfolk, Virginia.
February 18, 1989, 10:00 a.m. to 1:00 p.m., Beaufort County Courthouse, 112 West Second Street, Superior Court Room, 2nd Floor, Washington, North Carolina.

Dated: January 31, 1989.

Alan Dean Parsons,
Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.
[FR Doc. 89-2596 Filed 2-2-89; 8:45 am]
BILLING CODE 3510-22-M

Western Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council and the Council's advisory entities will convene public meetings at the Ala Moana Hotel, 410 Atkinson Drive, Honolulu, HI, as follows:

Council—at its 54th meeting on February 16–17, 1989, at 9 a.m., will hear routine fisheries reports from State, Territorial and Federal Government representatives on the Council, as well as from private sector Council members from Hawaii, Guam, American Samoa, and from the Commonwealth of the Northern Mariana Islands. The status of fishery management plans (FMPs) for crustaceans, bottomfish, seamount groundfish, and precious corals will be discussed. It is anticipated that the Council will review an application for an experimental fishing permit (EFP) to dredge for precious coral, and make a recommendation on whether the application should be approved, approved with conditions, or denied.

The Council will also be briefed on: (1) The status of the annual report requirement of the FMP covering the fisheries for pelagic species; (2) composition and percentage of bycatches in the rapidly growing Hawaii longline fishery for tunas; (3) recent status of the South Pacific fisheries (troll and gillnet) for albacore tuna; (4) review program planning activities with regard to a five-year program of data and research needs; (5) general administrative matters; (6) discuss reauthorization of the Magnuson Fishery Conservation and Management Act, and (7) discuss other routine Council business.

Fishermen's Forum—Also, during the Council's 54th public meeting, a Council-sponsored Fishermen's Forum will begin at 3:15 p.m., on February 16, 1989. Subjects of discussion will be: (1) Applicability of the 1988 amendments to the Marine Mammal Protection Act to Hawaii's commercial fisheries; (2) the national policy of observer coverage of domestic fishing vessels; (3) drift gillnet fisheries in the Pacific; (4) Hawaii's tuna longline transshipment operation, and (5) petition of recreational fishermen in Hawaii regarding bycatches of billfish and other species in the domestic longline fishery.

Standing Committees—The Council's Standing Committees will convene on February 15, 1989, at 9 a.m.

Scientific and Statistical Committee (SSC)—The Council's SSC will convene its 44th public meeting on February 13–14, 1989, at 9 a.m. The SSC will review the status of programmatic projects in support of the FMPs for bottomfish, crustaceans, precious corals, and pelagic species, will also review reports of the Plan Monitoring Team for each FMP, and formulate recommendations for the Council. In particular the SSC will: (1) Review the status of the limited entry program for bottomfish; (2) review an application for an EFP for dredging for precious corals; (3) review the status of annual reports covering the fisheries for pelagics species, and (5) discuss "frameworking" the FMP for crustaceans.

The SSC also will begin working on a five-year plan regarding data and research needs for the FMPs, and discuss implications of the FMP planning process resulting from changes to National Standards 1 and 2.

For further information contact Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813; telephone: (808) 523–1368.

Date: January 31, 1989.

Alan Dean Parsons,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–2597 Filed 2–3–89; 8:45 am]

BILLING CODE 3510–22–M

Endangered Species; Issuance of Permit; State of New Hampshire, Fish and Game Department (P422)

On August 16, 1988, notice was published in the **Federal Register** (53 FR 30856) that an application had been filed with the National Marine Fisheries Service by the State of New Hampshire, Fish and Game Department, Douglas E. Grout and John I. Nelson, 37 Concord Road, Durham, NH 03824, for a permit to take shortnose sturgeon (*Acipenser brevirostrum*) for scientific purposes.

Notice is hereby given that on January 27, 1989, and as authorized by the provisions of the Endangered Species Act of 1973 (16 U.S.C. 1531–1407), the National Marine Fisheries Service issued a Scientific Purposes Permit for the above taking to State of New Hampshire, Fish and Game Department, Douglas E. Grout, and John I. Nelson subject to certain conditions set forth therein.

Issuance of this Permit, as required by the Endangered Species Act of 1973, is based on the finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of the Permit; and (3) will be consistent with the purposes and policies set forth in section 2 of the Act.

The Permit is available for review in the following Offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Hwy., Room 7324, Silver Spring, Maryland 20910; and

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Bldg., Gloucester, Massachusetts 01930.

Date: January 27, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89–2561 Filed 2–3–89; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Issuance of Permit: The National Aquarium in Baltimore (P261C)

On September 8, 1988, notice was published in the **Federal Register** (53 FR 34806) that an application had been filed by the National Aquarium in Baltimore for a permit to take nine (9) Atlantic bottlenose dolphin (*Tursiops truncatus*) for public display.

Notice is hereby given that on January 27, 1989, as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) the National Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this permit is based on a finding that the proposed taking is consistent with the purposes and policy of the Marine Mammal Protection Act. The Service has determined that the National Aquarium in Baltimore offers an acceptable program for education or conservation purposes. The Baltimore facilities are open to the public on a regularly scheduled basis and access to the facilities is not limited or restricted other than by the charging of an admission fee.

The Permit is available for review by interested persons in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Room 7324, Silver Spring, Maryland 20910;

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930; and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Date: January 27, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89–2562 Filed 2–2–89; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Permit Modification; Ringling Bros.-Barnum and Bailey Circus (P384)

Modification No. 1 to Permit No. 567

Notice is hereby given that pursuant to the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Public Display Permit No. 567 issued to the Ringling Bros.-Barnum and Bailey Circus, 3201 New Mexico Ave., NW., Washington, DC 20014, on October 15, 1986 (51 FR 37623) is modified as follows:

Section B.1 is changed to read:

B.1 The animals authorized in Section A.1 shall be imported, exported to Japan and reimported into the United States as described in the application and the authorization request of December 20, 1988.

Section B.4 is changed to read:

B.3. The authority to import and maintain the marine mammals authorized herein, shall extend from the date of issuance through December 31, 1989. The terms and conditions of this Permit (Sections B and C) shall remain in effect as long as one of the marine mammals taken hereunder is maintained in captivity under the authority and responsibility of the Permit Holder.

This modification becomes effective on January 1, 1989.

Documents pertaining to the Permit and modification are available for review in the following Offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Hwy., Room 7324, Silver Spring, Maryland 20910.

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, Florida 33702;

Director, Northeast Region, National Marine Fisheries Service, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115; and

Director, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, Federal Building, Juneau, Alaska 99802.

Dated: January 30, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89–2563 Filed 2–3–89; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

January 31, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: February 7, 1989.

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–6828. For information on embargoes and quota re-openings call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current bilateral textile agreement between the Governments of the United States and the People's Republic of China establishes a sublimit under Category 651–B. A copy of the agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 50276, published on December 14, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 31, 1989.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 6, 1988 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable five textiles and textile products, produced or manufactured in the People's Republic of China and exported during the period which began on January 1, 1989 and extends through December 31, 1989.

Effective on February 7, 1989, the directive of December 6, 1988 is being amended to establish a level of 104,500 dozen [1] for man-made fiber textile products in Category 651–B [2], a sublimit of Category 651.

Imports charged to Category 651–B for the period January 1, 1989 through December 31, 1989 shall be charged against the level of restraint to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisons 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–2559 Filed 2–2–89; 8:45 am]

BILLING CODE 3510–DR–M

Announcing 1989 Agreement Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend, and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Hong Kong; Correction

January 31, 1989.

On page 46911 of the **Federal Register** notice published on November 21, 1988 (53 FR 46910), make the following changes:

In column 1, the description for Categories 338/339 should read "shirts

[1] The limit has not been adjusted to account for any imports exported after December 31, 1988.

[2] In Category 651–B, only HTS numbers 6107.22.0015 and 6108.32.0015.

and blouses, other than tops, including tank tops, knit."

In column 1, the description for Categories 338/339(1) should read "tops, including tank tops, knit."

In column 2, footnote,[8] add 6114.20.0005 and 6114.20.0010.

In column 2, footnote,[9] change 6103.42.2020 to 6103.42.2025 and add 6203.42.2090 and 6211.32.0025.

In column 3, footnote,[8] add 6203.43.2090, 6203.49.1090 and 6211.33.0017.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-2558 Filed 2-2-89; 8:45 am]

BILLING CODE 3510-DR-M

Permitting Entry of Certain Textile Products Exported from Brazil

January 30, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs permitting entry of certain shipments.

EFFECTIVE DATE: February 1, 1989.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Goods produced or manufactured in Brazil and exported from Brazil during the period February 1-28, 1989 shall be permitted entry if accompanied by the old visa issued by the Government of the Federative Republic of Brazil prior to February 1, 1989.

See 49 FR 21974, published on May 24, 1984; and 54 FR 456, published on January 6, 1989.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee For The Implementation of Textile Agreements

January 30, 1989.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: To facilitate implementation of the export visa arrangement established under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated September 15, 1988 and September 19, 1988, between the Governments of the United States and the Federative Republic of Brazil, I request that, effective on February 1, 1989, you permit entry of textiles and textile products, produced or manufactured in Brazil and exported from Brazil during the period February 1, 1989 through February 28, 1989 which are accompanied by either the old or new visa provided the old visa is issued prior to February 1, 1989.

Goods produced or manufactured in Brazil and exported from Brazil on and after March 1, 1989 must be accompanied by either the new visa or a visa waiver.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-2560 Filed 2-2-89; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1989; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1989 services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: March 6, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On September 23 and November 28, 1988, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (53 FR 37024 and 47850) of proposed additions to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018).

No comments were received concerning the proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified workshops to provide the services at a fair market price and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities listed.

c. The actions will result in authorizing small entities to produce the commodities procured by the Government.

Accordingly, the following services are hereby added to Procurement List 1989:

Grounds Maintenance, Naval Weapons Station, Areas 13-22, Yorktown, Virginia
Janitorial/Custodial, Naval Amphibious Base, Except Building 3504, Little Creek, Norfolk, Virginia.

Beverly L. Milkman,

Executive Director.

[FR Doc. 89-2574 Filed 2-2-89; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1989; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Committee additions to Procurement List.

SUMMARY: The Committee has received proposals to add to Procurement List 1989 a commodity to be produced and services to be provided by workshops for the blind or other severely handicapped.

DATES: Comments must be received on or before March 6, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodity and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodity and services to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018):

Commodity

Tarpaulin, 8340-00-465-3012

Services

Grounds Maintenance, Hill Air Force Base, Utah

Janitorial/Custodial, U.S. Army Reserve Centers at the following locations:
500 West 24th Street, Chester, Pennsylvania
6th and Kedron Avenue, Folsom, Pennsylvania
Huntingdon, Pennsylvania
7 West Delaware Avenue, Marcus Hook, Pennsylvania
1522-24 Wingohocking Street, Philadelphia, Pennsylvania
200 Wissahickon Avenue, Philadelphia, Pennsylvania
State College, Pennsylvania

Beverly L. Milkman,

Executive Director.

[FR Doc. 89-2575 Filed 2-2-89; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency Advisory Board; Closed Meeting

AGENCY: Defense Intelligence Agency Advisory Board, DOT.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of Subsection (d) of section 10 of Pub. L. 92-463, as amended by section 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of a panel of the DIA Advisory Board has been scheduled as follows:

DATES: Tuesday and Wednesday, February 28 and March 1, 1989, 9:00 a.m. to 5:00 p.m. each day.

ADDRESS: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John E. Hatlelid, USAF, Executive Secretary, DIA Advisory Board, Washington, DC 20340-1328 (202 373-4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552(b)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on intelligence support systems.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 31, 1989.

[FR Doc. 89-2569 Filed 2-2-89; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Follow on Forces Attack (FOFA); Closed Meetings

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Follow on Forces Attack (FOFA) will meet in closed session on March 14, 1989 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will continue to review, in detail, classified material associated with conventional military capabilities in NATO to include special targeting requirements.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c) (1) (1982), and that accordingly this meeting will be closed to the public.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 31, 1989.

[FR Doc. 89-2566 Filed 2-2-89; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Defense Procurement With a Global Technology Base; Closed Meeting

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force and Defense Procurement with a Global Technology Base will meet in closed session on February 27, 1989 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will address the management, technology transfer, and program acquisition issues associated with balancing national security and international trade in the mutual interests of the DoD and the defense industrial base.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

January 31, 1989.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-2567 Filed 2-2-89; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on National Space Launch Strategy; Closed Meeting

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on National Space Launch Strategy will meet in closed session on March 2-3, 1989 at Science Applications International Corp., Falls Church, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will review the US national security space launch strategy.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Dated: January 31, 1989.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-2536 Filed 2-2-89; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

January 30, 1989.

The USAF Scientific Advisory Board Logistics Cross-Matrix Panel will meet on March 1, 1989, from 8:00 a.m. to 5:00 p.m., at Delta Airlines, Atlanta, Georgia and on March 2-3, 1989, from 8:00 a.m. to 5:00 p.m., at the Warner Robins Air Logistics Center, Robins AFB, Georgia.

The purpose of this meeting will be to obtain information on their Damage Tolerance Analysis/Certification Program. The meeting at Warner Robins Air Logistics Center will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be close to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89-2535 Filed 2-2-89; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

January 30, 1989.

The USAF Scientific Advisory Board Logistics Cross-Matrix Panel will meet on March 22-23, 1989, from 8:00 a.m. to 5:00 p.m., at the Oklahoma City Air Logistics Center, Tinker AFB, Oklahoma.

The purpose of this meeting will be to obtain information on their Damage Tolerance Analysis/Certification Program. The meeting at Oklahoma City Air Logistics Center will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at [202] 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89-2536 Filed 2-2-89; 8:45 am]

BILLING CODE 3910-01-M

Corps of Engineers, Department of the Army

Public Meeting; Draft Feasibility Study for Remediation of Landfill, Hamilton Air Force Base, Novato, CA

The US Army Corps of Engineers will conduct a public meeting on February 17, 1989, to receive comments on the Draft Feasibility Study for Remediation of Landfill 26, Hamilton Air Force Base, Novato, California. The meeting will begin at 1:00 p.m. in the base theater, Bldg. 507, Palm Drive, Hamilton Field. A two hour recess is planned at 5:00 p.m. with the meeting resuming at 7:00 p.m. to allow interested people unable to attend the daytime meeting the opportunity to provide their comments on the feasibility study. Scheduled Federal attendees at the public meeting include Congressional Representative Barbara Boxer, Deputy Assistant Secretary of the Army for Environment, Safety and Occupational Health, Lewis D. Walker, representatives from the Presidio of San Francisco who manage Hamilton Field and representatives from the Corps of Engineers.

Public tours of the landfill and other areas of interest at Hamilton are scheduled by the Corps of Engineers February 14 and 15 at 9:00 a.m., 10:30 a.m., 1:00 p.m., and 2:30 p.m. Anyone interested in going on the one-hour tour should call the Installation Manager, Mr. Larry Gallagher at Hamilton Field (415) 561-5849/(415) 883-3734.

The feasibility study, released January 9th, specifically describes and addresses possible remedial alternatives to clean up the sale property landfill. The landfill was identified in the 1987 remedial investigation at Hamilton AFB as a site containing soil and refuse that, in some locations, exceeds criteria developed by the State of California for identification of hazardous waste.

The Draft Feasibility Study major findings include:

Landfill 26 presents insignificant health risks (both toxic and carcinogenic effects) to persons currently living or working at Hamilton AFB.

Left in its current condition, Landfill 26 will continue to pose no threat to human health. Development of Landfill 26 for residential or other purposes may require extensive remediation within guidelines determined by Federal and State regulatory agencies to assure protection of human health.

The Draft Feasibility Study describes eight remedial alternatives for addressing contamination in the soil/refuse. These alternatives range from no action (requiring continued groundwater monitoring) to excavation and disposal of contaminated soil/refuse in appropriate commercial landfills and range in costs from $2.8 million to $53.5 million.

Remediation of soil/refuse will subsequently require localized groundwater remediation at the landfill. The Draft Feasibility Study describes six groundwater remedial alternatives utilizing various processes ranging in cost from $4.7 million to $18 million.

The Corps of Engineers has been conducting environmental investigation of the sale property at Hamilton AFB since May, 1985. To date, clean up actions on the sale propery have included removal of containerized hazards (1985) and removal of 65 underground fuel structures (1986). Total cost expenditure for the Hamilton AFB cleanup and investigations to date has been $13.8 million.

Copies of the Draft Feasibility Study for Landfill 26 may be obtained by calling the Sacramento District Corps of Engineers, (916) 551-2254, or by writing the Sacramento District Corps of Engineers, ATTN: CESPK-ED-M, 650 Capitol Mall, Sacramento, California 95814-4794. A limited number of copies of the study will also be available at the Hamilton Army Airfield Installation Manager's Office, Building No. 501, Hamilton Army Airfield.

Due to its large size, the remedial investigation report for the landfill referenced in the feasibility study is available for review by the public at the following locations:

Marin County Library, Civic Center, San Rafael, California

Santa Rosa City Library, Main Branch, Santa Rosa, California

Building 501, Hamilton Army Airfield, Novato, California

6th Army Public Affairs Office, Bldg. 38, Presidio of San Francisco, San Francisco, California

Presidio of San Francisco Public Affairs Office, Bldg. 37, Presidio of San Francisco, San Francisco, California.

All interested individuals, organizations, and agencies are invited to attend the meeting and present their comments orally or in writing. Written comments may also be mailed to the Corps of Engineers' Sacramento address. Comments received by 10 March will become part of the official record of the meeting.

Timothy P. Mason,

Corps of Engineers, Deputy District Engineer.

[FR Doc. 89-2033 Filed 2-2-89; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Award Based on Acceptance of an Unsolicited Application; University of the District of Columbia

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The Department of Energy (DOE), Chicago Operations Office, announces that pursuant to the DOE Financial Assistance Rules 10 CFR 600.14, it intends to award a grant to the University of the District of Columbia based on an unsolicited application submitted by that institution. The objective of the research to be supported under this grant is to provide information on water quality and planning with a knowledge of the fate of triphenyltin compounds. This advanced information will enable those making decisions about water quality to better assess the potential impact of these hazardous chemicals on the environment allowing for better regulation of the use of these chemicals.

FOR FURTHER INFORMATION CONTACT: Dan E. Stamer, U.S. Department of Energy, Chicago Operations Office, Technology Management Division, 9800 South Cass Avenue, Argonne, Illinois 60439, (312) 972-2381.

SUPPLEMENTARY INFORMATION: Funding for this effort is provided through DOE's Historically Black Colleges and Universities (HBCU) Program in support of Executive Order 12320. The research capability of this HBCU will be strengthened and student research opportunities will be stimulated as a result of this award. This unsolicited application was accepted because of its unique and innovative approach to researching the speciation of triphenyltin compounds. Mossbauer spectroscopy, a tool not generally used in routine environmental research, will be employed to examine the amount of triphenyltin species residing in sediment samples. By using Mossbauer spectroscopy, the original organotin species can be studied rather than derivative species, which possibly could prevent the masking of the species.

The project period for the grant will cover a three year period beginning in February 1989. DOE plans to provide the University of the District of Columbia with approximately $282,199 for the project period and the university intends to cost share an additional $49,800 for the project period.

Issued in Chicago, Illinois on January 24, 1989.

Timothy S. Crawford,

Assistant Manager for Administration.

[FR Doc. 89-2592 Filed 2-2-89; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Special Research Grant Program Notice 89-3; Nuclear Engineering Research

AGENCY: Department of Energy (DOE), Idaho Operations Office.

ACTION: Notice inviting grant applications.

SUMMARY: DOE's Office of Energy Research announces its interest in receiving applications from colleges and universities for Special Research Grants that will support research efforts aimed at advancing the state-of-the-art in the field of nuclear engineering. University investigations who are no more than five years beyond the receipt of their doctoral degrees are especially encouraged to apply. Applications should be directed to state-of-the-art research that contributes to the following areas: applied nuclear sciences, advanced conventional reactors, nuclear reactor materials and operations, reactor neutronics, nuclear thermal hydraulics and non-conventional reactor applications. The research to be supported should be innovative and revolutionary rather than evolutionary. Incremental improvements in technologies related to conventional light water reactor (LWR) technologies or research typically supported by the Nuclear Regulatory Commission will not be supported.

(1) The *applied nuclear sciences* include research applications of radiation and research reactors, including improved instrumentation or measurement techniques for health physics or biomedical research and the use of research reactors for fundamental studies.

(a) Improved instrumentation for health physics or biomedical applications focuses on the development of dosimetry techniques for monitoring of radiation exposures due to neutrons and other radiation in medical application of radiation sources.

(b) The use of research reactors for fundamental studies focuses on the development of novel research capabilities using research reactors or the application of radiation from reactors to probe matter in pursuit of basic knowledge in areas such as condensed matter physics, chemical kinetics, or biotechnology.

(2) *Advanced conventional reactor* research includes advanced research for Liquid Metal Reactors (LMR), including the Integral Fast Reactor (IFR), Light Water Reactors (LWR) and High Temperatures Gas Reactors (HTGR).

(a) LMR research focuses primarily on breakthroughs in technology leading to significant cost and/or safety improvements. Research on the Integral Fast Reactor (IFR) concept should focus on improvements in ternary metal fuel (U-Pu-Zr) performance, blanket or reprocessing technology development, or automated control and diagnostic systems, as related to passively safe response to upsets.

(b) LWR research focuses on innovative design concepts, systems or components with the potential of improved performance and safety, particularly "passive" or "inherent" safety. Also included would be improvements in design of safety systems or components related to improved seismic performance of plants.

(c) HTGR research focuses on improved instrumentation and materials for high temperature operation, typically above 850-900 degrees Celsius.

(3) *Nuclear reactor materials and operations* research includes innovative application of engineering sciences to improvements in the safety and reliability of nuclear reactor operation, including, but not limited to advances in reactor control and instrumentation, improved materials for plant life extension, advances in real-time instrumentation for multiphase flow or to detect the onset of embrittlement and the modeling of corrosion and erosion in the radiation environment.

(a) Advances in reactor control and instrumentation includes the application of human factors engineering and/or expert systems to improve monitors and displays for the control room environment and the application of real-time signal analysis and processing to improve fault detection in reactor instrumentation and components.

(b) Improved materials for plant life extension includes research in the development of materials with resistance to degradation during service in the high temperature and radiation reactor environment.

(c) Advances in real-time instrumentation includes improvements in the measurement of multiphase flow conditions and the development of nuclear or non-nuclear methods to detect in real time the radiation embrittlement of nuclear reactor vessel materials.

(d) The modeling of corrosion and erosion in the radiation environment focuses on degradation of materials due to the presence of coolant materials, and may include evaluation of the effects of biocorrosion.

(4) *Reactor neutronics* focuses on improvements in reactor computational methodologies in the light of continuing dramatic improvements in computational hardware. Research focus will be on improvements in core neutronics, reactor kinetics, radiation transport, fission product behavior, nuclear fuel management and fuel cycle optimization.

(5) *Nuclear thermal hydraulics* focuses on improvements of models and analysis of thermal hydraulic behavoir in a nuclear reactor system, including applications to multiphase flow, convective and conductive heat transport, degraded core cooling and emergency coolant flow.

(6) *Non-conventional reactor applications* focuses on research related to the identification and application of nuclear reactor concepts which do not fall under category 2. This includes, but is not limited to, research focusing on advanced converter reactors, concepts for nuclear materials generation, and non-power or non-terrestrial applications of nuclear reactors. Areas of emphasis for applications of nuclear reactors in space include the following:

(a) New materials developments applicable to high temperature space reactors.

(b) Advanced fuels technologies for space nuclear applications, including code development and modeling activities.

(c) Advanced technologies which could significantly enhance space power developments in any of the following areas: Safety, cost, survivability, reproducibility, and mass minimization.

(d) Power converter technologies leading to significant cost, performance or survivability advantages for thermoelectrics, thermionics, Brayton, and Stirling conversion systems.

DATES: To permit timely consideration for awarding during FY 1989, applications submitted in response to this notice should be received by the Idaho Operations Office, Contracts Management Division by March 27, 1989.

ADDRESS: Applications should be forwarded to: U.S. Department of Energy, Idaho Operations Office, Contracts Management Division, 785 DOE Place, Idaho Falls, Idaho 83402, ATTN: Nuclear Engineering Research.

FOR FURTHER INFORMATION CONTACT: Ms. Trudy A. Thorne, R&D Contracts Branch, Idaho Operations Office, USDOE, Idaho Falls, Idaho 83402.

SUPPLEMENTARY INFORMATION: It is anticipated that approximately $2M will be available for grant awards during FY 1989, and that awards will range from $50K to $250K per year, with a typical requested project duration of two to three years. However, note that future fiscal year awards will be subject to the availability of funds.

General information about development and submission of applications, eligibility, limitations, evaluations and selection processes, and other policies and procedures are contained in the OER Special Research Grant Application Kit and Guide and in 10 CFR Part 605. The application kit and Guide is available upon written request from the U.S. Department of Energy, Idaho Operations Office (see address above). It is specifically requested that the "Detailed Description of Research Work Proposed" section of the proposal not exceed fifteen double-spaced pages. The Catalog of Domestic Assistance Number for this program is 81.049.

In accordance with the recommendation in the conference report of the Energy and Water Development Appropriation Act, 1988, eligibility for this solicitation is limited to university nuclear engineering programs.

Issued in Idaho Falls, Idaho, on January 12, 1989.

H. Brent Clark,

Director, Contracts Management Division, Idaho Operations Office, U.S. Department of Energy.

[FR Doc. 89-2582 Filed 2-2-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CP89-688-000]

Colorado Interstate Gas Co.; Request Under Blanket Authorization

January 30, 1989.

Take notice that on January 23, 1989, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado, 80944, filed in Docket No. CP89-688-000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for Wyoming Gasmark, Inc., a marketer, under CIG's Blanket certificate issued in Docket No. CP88-589, *et al.*, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CIG proposes to transport up to 1,000 Mcf per day, for Wyoming Gasmark, Inc., pursuant to a Transportation Service Agreement dated October 1, 1988, between CIG and Wyoming Gasmark, Inc. CIG would receive gas from an existing point of receipt in Wyoming, and redeliver the subject gas, less fuel gas and lost and unaccounted-for gas, for the account of Wyoming Gasmark, Inc., in Wyoming.

CIG further states that the estimated average daily and annual quantities would be 900 Mcf and 328 MMcf, respectively. Service under § 284.223(a) commenced on October 1, 1988, as reported in Docket No. ST89-346-000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2580 Filed 2-2-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER88-343-000]

Northern States Power Co.; Filing

January 30, 1989.

Take notice that on December 20, 1988, Northern States Power Company (NSP) amended its filing in this docket by filing signed settlement agreements with various of its customers concerning its rates at issue in this docket. The signed settlement agreements also apply to the proceedings in Docket No. EL88-17-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 8, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2581 Filed 2-2-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-1-38-001]

Ringwood Gathering Co.; Proposed Changes in FERC Gas Tariff

January 30, 1989.

Take notice that on January 23, 1989, Ringwood Gathering Company (Ringwood), 4828 Loop Central Drive, Loop Central Three, Suite 850, Houston, Texas 77081, filed Substitute Forty-Sixth Revised Sheet No. PGA-1 to its FERC Gas Tariff reflecting certain technical corrections to its current quarterly PGA effective for the period January 1, 1989 through March 31, 1989, pursuant to 18 CFR 154.308 and 154.310, computed in accordance with technical suggestions by the Commission Staff, including correction in the manner of display of Ringwood's surcharge adjustment.

Copies of the filing were served upon Ringwood's jurisdictional customers and interested state agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.215, 385.211). All such motions or protests should be filed on or before February 2, 1989. Protests will be considered by the Commission in determining the appropriate action to the taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2582 Filed 2-2-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3514-5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared January 16, 1989 through January 20, 1989 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the Federal Register April 22, 1988 (53 FR 13318).

Draft EISs

ERP No.: D-AFS-K70004-CA, Rating EC1, Mono Basin National Forest Scenic Area, Comprehensive Management Plan, Implementation, Inyo National Forest, Mono County, CA.

SUMMARY: EPA expressed environmental concerns that the preferred alternative may not adequately protect wetlands and fisheries from adverse grazing impacts.

ERP No.: D-BLM-J02014-WY, Rating EC2, Amoco Carbon Dioxide Projects, Construction and Operation, Plan Approval, Big Horn, Carbon, Fremont, Hot Springs, Lincoln, Natrona, Park, Washakie and Sweetwater Counties, WY.

SUMMARY: EPA requested that the final EIS include site specific geologic date pertaining to pipeline routes and wellfield reinjection sites, additional aquifer mapping and hydrologic information, additional information on potential groundwater impacts associated with the pipeline cathodic protection system and additional information on air emissions/modelling for expected plant upset.

ERP No.: D-FHW-D40239-MD, Rating EC2, US 1 Improvements, Sliver Spring Road to MD-152, Funding and 404 Permit, Baltimore and Harford Counties, MD.

SUMMARY: EPA believes that the Four Lane Alternative should be presented in comparison to the selected alternative, and that Kingsveille Option E appears to be the most environmentally sound. Potential sites for wetland mitgation should also be identified in the final EIS.

ERP No.: D-FHW-E40717-FL, Rating EC2, US 19/FL-55 Upgrading, FL-694/Gandy Boulevard to FL-595/Alternate US 19, Funding, Pinellas and Pasco Counties, FL.

SUMMARY: EPA has concerns with potential noise impacts, lack of mitigation to minimize noise impacts, and the lack of a detailed wetland mitigation plan for unavoidable wetland losses.

ERP No.: D-MMS-L01007-AK, Rating EO2 1989 Norton Sound Outer Continental Shelf (OCS) Lease Sale, Placer Mining Program, Implementation and Leasing Offerings, AK.

SUMMARY: EPA has environmental objectives to the lease alternatives. This document concludes that mining in the lease sale area will result in violation of Federal water quality criteria for trace metals, especially mercury. EPA has no additional data to refute this conclusion. The water quality data used in the analyses in this document are limited and erroneous. EPA is not aware of any operational modification or alternative mining technology that would allow mining to occur without violating Federal water quality criteria. Based on the analyses in the draft EIS, EPA's issuance of a permit for discharges from the mining dredge is unlikely.

Final EISs

ERP No.: F-AFS-K65063-00, Lake Tahoe Basin Management Unit National Forest, Land and Resource Management Plan, Implementation, El Dorado, Placer and Alpine Counties, CA and Washoe and Douglas Counties, NV.

SUMMARY: Review of the final EIS was not deemed necessary. No formal comments were sent to the agency.

ERP No.: F-BLM-L76701-AK, Birch Creek Watershed, Placer Mining Management Plan, Approval and 404 Permit, Implementation, Steese National Conservation Area, Yukon-Tanana, AK.

SUMMARY: EPA requested that the Record of Decision include more detail on uniform performance standards or criteria to be used in developing specific mitigation requirements.

ERP No.: F-COE-C36062-00, Passaic River Basin Flood Control Plan, Implementation, Passaic, Bergen, Morris, Essex and Hudson Counties, NJ and Rockland and Orange Counties, NY.

SUMMARY: EPA has resolved its concerns about the project's impact to aquatic ecosystems, groundwater, hazardous waste sites and water quality. Due to outstanding concerns regarding adequate mitigation for unavoidable wetlands impacts, EPA signed a memorandum of agreement with the U.S. Army Corps of Engineers that addresses the wetlands mitigation issue. Therefore, EPA is confident that concerns about this issue will be addressed.

ERP No.: FS–DOI–A90065–00, Undeveloped Coastal Barriers, Coastal Barrier Resources System Proposed Changes, Implementation, ME, MA, RI, CT, NY, MS, AL, DE, SC, TX, VA, GA, LA, NC and FL.
SUMMARY: EPA supports additions of aquatic habitat, including wetlands, to the Coastal Barrier Resources System; however, EPA remains concerned about conclusions regarding the lack of requirements for Federal consistency with the Coastal Barrier Resources Act, the methodology and rationale for delineation of boundary lines and recommended deletions from the system.

Amended Notices

ERP No.: DS–AFS–L65101–OR, Rating EC2, Deschutes National Forest, Land and Resource Management Plan, Additional Alternative and Specific Management Requirements Analysis, Implementation, Klamath, Deschutes, Jefferson and Lake Counties, OR.
SUMMARY: EPA is concerned that the No Change Alternative does not include specific standards and guidelines for water quality protection.

Correction—The above summary published in January 23, 1989 FR Notice should read No Change Alternative.

Dated: January 31, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89–2599 Filed 2–3–89; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3514–4]

Environmental Impact Statements: Availability

Responsible Agency:

Office of Federal Activities, General Information (202) 382–5076 or (202) 382–5075.

Availability of Environmental Impact Statements Filed January 23, 1989 Through January 27, 1989 Pursuant to 40 CFR 1506.9.

EIS No. 890016, Final, EPA, LA, Houma Navigation Canal, Ocean Dredged Material Disposal Site Designation, Terrebone Parish, LA, Due: March 6, 1989, Contact: Norm Thomas (214) 655–2280.

EIS No. 890017, Draft, COE, NC, West Onslow Beach and New River Inlet Beach (Topsail Beach), Erosion Control and Hurricane Wave Protection Plan, Implementation, Pender and Onslow Counties, NC, Due: March 20, 1989, Contact: John A. Baden (919) 251–4754.

EIS No. 890018, Draft, COE, MI, Village of Ontonagon Flood Control Plan, Implementation, Ontonagon Counties, MI, Due: March 20, 1989, Contact: William J. Patrick (202) 274–3232.

EIS No. 890020, Draft, FHW, IL, FAP–413 Construction, I–270 at the Northern Terminus of I–255 to IL–267, Funding and 404 Permit, Madison County, IL, Due: March 23, 1989, Contact: Jay W. Miller (217) 492–4600.

Amended notices

EIS No. 880416, Final, FHW, GA, SC, Bobby Jones Expressly Extension, Old Savannah Road in Augusta to US 1, Funding, 404 Permit and Coast Guard Permit, Richaramond County, GA and Aiken County, SC, Due: February 3, 1989, Contact: Louis Papet (404) 347–4751.

Published FR 12–23–88–Review period extended.

Dated: January 31, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89–2599 Filed 2–3–89; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3514–7]

Science Advisory Board; Research and Development Program Assessment Subcommittee of the Research Strategies Advisory Committee; Open Meeting on February 16, 1989

Under Pub. L. 92–463, notice is hereby given that a meeting of the Research and Development Program Assessment Subcommittee of the Research Strategies Advisory Committee of the Science Advisory Board will be held on February 16, 1989 in the Conference Room #906, West Tower, 401 M Street SW., Washington, DC 20460. This meeting will start at 9:00 a.m. and will adjourn no later than 5:00 p.m. and is open to the public.

The main purpose of this meeting will be to review and prepare a report on the Environmental Protection Agency (EPA) Research and Development Program as reflected in the Fiscal Year 1990 President's Budget.

An Agenda for the meeting is available from Mary L. Winston, Staff Secretary, Science Advisory Board (A101F), U.S. EPA, 499 South Capitol Street SW., Washington, DC 20460. Members of the public desiring additional information should contact Mr. Samuel Rondberg, Executive Secretary, Research and Development Program Assessment Subcommittee, by telephone at (202) 382–2552, or by mail to the SAB (A–101F) U.S. EPA, 499 South Capitol Street SW., Washington, DC 20460 no later than c.o.b. February 13, 1989. Anyone wishing to make a presentation at the meeting should forward a written statement to Mr. Rondberg by the date noted above. The SAB expects that the public statements presented at its meetings will not be repetitive of previously submitted written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes.

Dated: February 1, 1989.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 89–2587 Filed 2–3–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. DS–189; DA 89–32]

Home Box Office Inc.; Petition for Reconsideration of Commission's Order Denying GE American Communications, Inc.'s Modification Request for its K–3 Satellite

January 25, 1989.

On December 30, 1988, Home Box Office, Inc. (HBO) filed a petition for reconsideration of this Commission's Order in the matter, GE American Communications, Inc., 3 FCC Rcd 6871 (GE American Order). GE American Communications, Inc. (GE American) and HBO formed Crimson Satellite Associates (CSA) to provide various video programming services to its subscribers including direct-to home users. GE Americom proposed to operate its 12/14 GHz K–3 satellite from the 85° W.L. geostationary orbital location with 60 watt traveling wave tube amplifiers, half CONUS (contiguous U.S.), concentrated transmission beams and transponders capable of operating with 27 MHz or 54 MHz of usable bandwidths. It also proposed to co-locate a modified K–4 satellite at 85° W.L. at a future date. In response to considerable opposition and comment from the satellite industry regarding this proposal, the Commission released the GE Americom Order which resolved the dispute by creating a bifurcated high power density arc—an eastern segment at 75° W.L.–79° W.L. and western segment between 132° W.L.–136° W.L. Because GE Americom asserted that it would not operate its proposed high power density satellite outside of the 85° W.L.–105° W.L. orbital arc, the Commission denied its modification request to operate its high power density satellite at 85° W.L. HBO now petitions the Commission to reconsider its decision in the GE Americom Order asserting that the K–3/K–4 satellite combination at 85° W.L. would not cause unacceptable levels of interference to adjacent and neighboring satellites according to GE Americom's technical analysis.

Parties wishing to file oppositions or comments to HBO's petition should do so at the Commission no later than February 21, 1989. Reply comments should be filed no later than March 7, 1989.

Parties are requested to serve copies of the comments upon International Transcription Services, Inc. at their offices in Room 246, 1919 M Street, NW., Washington, DC 20554, and upon Cecily Holiday, Chief, Satellite Radio Branch, Room 6324, 2025 M Street, NW., Washington, DC 20554.

Copies of the petition and related documents may be obtained from International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20036, (202) 857–3800. The documents are also available for public inspection and copying in Room 6218, 2025 M Street, NW., Washington, DC 20554.

For further information, contact Wilbert E. Nixon at (202) 634–1624.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–2461 Filed 2–2–89; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

Forms Submitted to the Office of Management and Budget for Clearance

The Family Support Administration (FSA) will publish on Fridays information collection packages submitted to the Office of Management and Budget (OMB) for clearance, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). No prior information collection packages were published directly by FSA. (Previous packages were done collectively by the Department.)

Following is the first Federal Register submission by FSA:

(For a copy of package, call the FSA, Reports Clearance Officer on 202–252–5507.)

Interim Final Rule on Targeting in Income and Eligibility Verification System (IEVS)—NEW—allows States administering AFDC and Aid to Aged, Blind, or Disabled programs of the Social Security Act, to allocate their resources to those categories of information items which are most cost-effective for follow-up and establishes procedures for submitting follow-up plans for approval. Respondents: State or local governments; Number of Respondents: 54; Frequency of Response: 1; Average Burden per Response: 40; Estimated Burden: 2,160 hours.

OMB Desk Officer: Justin Kopca

Written comments and recommendations for the proposed information collection should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3201, 1725 17th Street, NW., Washington, DC 20503.

Date: January 31, 1989.

Naomi B. Marr,

Associate Administrator, Office of Management and Information Systems, FSA.

[FR Doc. 89–2585 Filed 2–3–89; 8:45 am]

BILLING CODE 4130–04–M

Food and Drug Administration

[Docket No. 89N–0034]

Human Health Risks Associated With the Subtherapeutic Use of Penicillin or Tetracyclines in Animal Feed; Availability of Report

AGENCY: Food and Drug Administration.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a report from the National Academy of Sciences (NAS)/Institute of Medicine (IOM) entitled "Human Health Risks with the Subtherapeutic Use of Penicillin or Tetracyclines in Animal Feed."

DATE: Comments by May 4, 1989.

ADDRESS: Written requests for copies of the report should be submitted to the Industry Information Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. (Send two self-addressed adhesive labels to assist the Staff in processing your request.) The report is available for public examination in the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday. Written comments should be submitted to the Dockets Management Branch (address above).

FOR FURTHER INFORMATION CONTACT: Paul D. Lepore, Division of Compliance Policy (HFC–230), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2380.

SUPPLEMENTARY INFORMATION: On September 30, 1987, FDA contracted with the NAS/IOM to examine currently available data with respect to the potential human health consequences of feeding subtherapeutic levels of penicillin and the tetracyclines to food-producing animals and to prepare a formal, quantitative risk assessment. To address the public health issues which have been raised, the NAS/IOM was charged with validating reports of data on human health consequences of subtherapeutic uses of penicillin and the tetracyclines and identifying any factors resulting from this use that affect human health, as well as sources of uncertainty inquantifying such factors, in arriving at a documented and justified estimate of risk.

The NAS/IOM study has now been completed and a report entitled "Human Health Risks with the Subtherapeutic Use of Penicillin or Tetracyclines in Animal Feed" has been submitted.

The report summarizes the available data and presents a risk model from which estimates are derived. FDA is making the NAS/IOM report available to the public on request, and is soliciting comments on the report. The agency will consider the comments it receives in assessing the report and the need for any future actions based on an evaluation of the public health issues involved.

A copy of the report is available for review at the Dockets Management Branch (address above). Requests for individual copies of the report should be addressed to the Industry Information Staff (address above).

Interested persons may, on or before May 4, 1989 submit to the Dockets Management Branch (address above) written comments regarding the report. Two copies of any comments should be submitted, except that individuals may submit one copy. Comments and other information on this topic have been placed on file and may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 1, 1989.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–2662 Filed 2–2–89; 2:45 pm]

BILLING CODE 4160–01–M

[Docket No. 89E-0009]

Determination of Regulatory Review Period for Purposes of Patent Extension; Voltaren®

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Voltaren® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESS: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) generally provides that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under that act, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Voltaren® (diclofenac sodium) which is indicated for acute and chronic treatment of the signs and symptoms of rheumatoid arthritis, osteoarthritis, and ankylosing spondylitis. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Voltaren® (U.S. Patent No. 3,652,762) from Ciba-Geigy Corp., and requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Voltaren® is 3,062 days. Of this time, 1,399 days occurred during the testing phase of the regulatory review period, while 1,683 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* February 21, 1980. The applicant claims that the investigational new drug application (IND) for the drug became effective on January 22, 1980. However, FDA records indicate that the IND did not become effective until February 21, 1980. (See 21 CFR 312.40(b).)

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* December 20, 1983. The applicant claims that the new drug application (NDA) for Voltaren® (NDA 19-201) was initially submitted December 19, 1983. However, FDA did not receive the application until December 20, 1983. (See 21 CFR 60.22(d).)

3. *The date the application was approved:* July 28, 1988. FDA has verified the applicant's claim that NDA 19-201 was approved July 28, 1988.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 730 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before April 4, 1989, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before August 2, 1989, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41-42, 1984.)

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document.

Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 30, 1989.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 89-2569 Filed 2-2-89; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

Consensus Development Conference on Therapeutic Endoscopy and Bleeding Ulcers; Meeting

Notice is hereby given of the NIH Consensus Development Conference on "Therapeutic Endoscopy and Bleeding Ulcers," sponsored by the National Institute of Diabetes and Digestive and Kidney Diseases in collaboration with the NIH Office of Medical Applications of Research. The conference will be held on March 6-8, 1989, in the Masur Auditorium of the Warren Grant Magnuson Clinical Center (Building 10) at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

Upper gastrointestinal bleeding remains a common cause of emergency hospitalizations in the United States. It has been estimated that more than 100,000 patients a year bleed from peptic ulcer disease. Upper GI bleeding is a major clinical problem with significant morbidity and mortality despite improvements in surgical and medical care in the past two decades. Fiberoptic endoscopy provides direct access to bleeding lesions and opportunity for treatment. Other techniques that show promise include laser photocoagulation, electrical coagulation, thermal coagulation with heater probe, and injection sclerotherapy.

There is a great deal of controversy about which of these techniques is most appropriate in the management of bleeding ulcers. This conference will review the data on these treatment modalities in an effort to reach a consensus on the most appropriate ways to manage hemostasis of bleeding ulcers.

This conference will bring together gastroenterologists, surgeons, internists, nurses, family practitioners, pharmacists, other health care professionals, and the public.

Following a day and a half of presentations by medical experts and discussion by the audience, a Consensus Panel will weigh the scientific evidence and write a draft statement in response to the following key questions:

- Which bleeding ulcer patients are at risk for rebleeding and thus emergency surgery?
- How effective is endoscopic/hemostatic therapy?
- How safe is endoscopic/hemostatic therapy?
- Which bleeding patients should be treated?
- What further research is required?

On the final day of the meeting, the Consensus Panel chairman will read the draft statement to the conference audience and invite comments and questions.

Information on the program may be obtained from: Susan Wallace, Prospect Associates, 1801 Rockville Pike, Suite 500, Rockville, Maryland, (301) 468-6555.

Dated: January 24, 1989.

James B. Wyngaarden,

Director, NIH.

[FR Doc. 89-2513 Filed 2-2-89; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on January 27, 1989.

(Call Reports Clearance Officer on 202-245-2100 for copies of package)

1. St. George, Utah, Cancer Screening and Detection Project —0925-0280—The data is required to carry out research mandated under Pub. L. 98-558 in the development of cancer screening and research project on the over 40 population in St. George, Utah. Data will be used to determine attitudes and practices related to cancer patients and to follow up and track patients with suspicious or positive findings. Respondents: Individuals or households, small businesses or organizations, businesses or other for-profit.

	Number of respondents	Number of hours per response	Number of responses per respondent
Participant forms	12,000	.14	1.2
Physician forms	55	.075	178

Total annual burden—2,684 hours.

2. *National Library of Medicine Reader Service Document Request Form—0925-0169*—Each request form transmits essential bibliographic identification information for each document that a requestor desires to see or obtain from the National Library of Medicine. Requestors consist of health professionals, practitioners, educators, researchers, and other members of the public who visit the Library. Respondents: Individuals or households, State or local governments, small businesses or organizations, businesses or other for-profit, Federal agencies or employees, non-profit institutions; Number of Respondents: 25,000; Number of Responses Per Respondent: 12; Average Burden Per Response: .03 hours; Estimated Annual Burden: 9,000 hours.

3. *Huntington's Disease Research Roster—0925-0280*—A research roster of Huntington's Disease patients and their families will be maintained and expanded. The Roster was essential for the identification of the Huntington's Disease gene marker and was essential for the identification of the gene itself, and other research to prevent or cure Huntington's Disease. Respondents: Individuals or households; Number of Respondents: 2,347; Number of Responses Per Respondent: 1; Average Burden Per Response: .94 hours; Estimated Annual Burden: 2,209 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Written comments and recommendations for the proposed information collections should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Date: January 30, 1989.

Steven A. Grossman,

Deputy Assistant Secretary for Health (Planning and Evaluation).

[FR Doc. 89-2527 Filed 2-2-89; 8:45 am]

BILLING CODE 4160-17-M

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Public Health Service (PHS) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program ("the Program"), as required by section 2112(b)(2) of the PHS Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Claims Court is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program generally, contact the Clerk, United States Claims Court, 717 Madison Place, NW., Washington, DC 20005, (202) 633-7257. For information on the Public Health Service's role in the Program, contact the Administrator, Vaccine Injury Compensation Program, Parklawn Building, 5600 Fishers Lane, Room 4-101, Rockville, MD 20857, (301) 443-6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa-10 *et seq.*, provides that those seeking compensation are to file a petition with the U.S. Claims Court and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated his responsibility under the Program to PHS. The Claims Court is directed by statute to appoint special masters to take evidence, conduct hearings as appropriate, and to submit to the Court proposed findings of fact and conclusions of law. A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table set forth at section 2114 of the PHS Act. This table lists for each covered childhood vaccine the conditions which will lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the table and for conditions that are manifested after the time periods

specified in the table, but only if the petitioner shows that the condition was caused by one of the listed vaccines. Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that the Secretary publish in the **Federal Register** a notice of each petition filed. Set forth below is a list of petitions received by PHS from January 1 through January 25, 1989. Section 2112(b)(2) also provides that the special master "shall afford all interested persons an opportunity to submit relevant, written information" relating to the following, which quote the statute:

1. Any allegation in a petition that the petitioner either:

(a) "sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table (see section 2114 of the PHS Act) but which was caused by" one of the vaccines referred to in the table, or

(b) "sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine" referred to in the table and

2. The existence of evidence "that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition.

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Claims Court at the address listed above (under the heading "For Further Information Contact"), with a copy to PHS addressed to Director, Bureau of Health Professions, 5600 Fishers Lane, Room 8–05, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission.

Chapter 35 of Title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

List of Petitions Received

1. William D. and Dixie Little, III on Behalf of William Kerry Little, Lindale, Texas, Claims Court Docket Number 89–01 V
2. Shelly Wiggins on Behalf of Michael Wiggins, Crystal Falls, Michigan, Claims Court Docket Number 89–02 V
3. Regina and Michael McClarrinon on Behalf of Jessica Lynn McClarrinon, Sacramento, California, Claims Court Docket Number 89–03 V
4. Rickey T. Anderson and Deborah Anderson Rochester on Behalf of Gaylene L. Anderson, Sacramento, California, Claims Courts Docket Number 89–04 V
5. Elizabeth B. and Michael B. Rodee on Behalf of Andrew Glen Rodee, Wichita, Kansas, Claims Courts Docket Number 89–05 V
6. Tom and Diane King on Behalf of Jesse Thomas King, Tonganoxie, Kansas, Claims Courts Docket Number 89–06 V

Dated: January 31, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89–2565 Filed 2–2–89; 8:45 am]

BILLING CODE 4160–15–M

Health Resources and Services Administration

National Vaccine Injury Compensation Program; Delegation of Authority; Director, Bureau of Health Professions

Notice is hereby given that in furtherance of the delegation of authority of December 28, 1988, from the Assistant Secretary for Health to the Administrator, Health Resources and Services Administration, the Administrator has redelegated the authorities delegated to him under Part A (42 U.S.C. 300aa–10 *et seq.*) and Part D (42 U.S.C. 300aa–31 *et seq.*), Subtitle 2 of Title XXI of the Public Health Service Act, as amended, to the Director, Bureau of Health Professions, Health Resources and Services Administration.

Redelegation

This authority may be redelegated.

Effective Date

This delegation became effective on December 28, 1988.

Date: December 28, 1988.

John H. Kelso,

Acting Administrator, Health Resources and Services Administration.

[FR Doc. 89–2526 Filed 2–2–89; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Preparation of a Settlement Roll of Indians of the Reservation; Correction

January 19, 1989.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice; correction.

SUMMARY: This document is to correct errors in the notice, published in the **Federal Register** on Friday, December 9, 1988 (53 FR 49795), that the Superintendent of the Northern California Agency of the Bureau of Indian Affairs is preparing a settlement roll of Indians of the Reservation pursuant to section 5 of the Hoopa-Yurok Settlement Act of October 31, 1988.

The deadline date for filing application forms for inclusion on the settlement roll of Indians of the Reservation which appeared under the headings of **DATE** and **SUPPLEMENTARY INFORMATION** is corrected by changing "March 29, 1989," to "April 10, 1989," on page 49795, second column, line 6 and page 49796, first column, lines 29 and 30, respectively. Application forms are to be filed with the Superintendent, Northern California Agency, Bureau of Indian Affairs, P.O. Box 494879, Redding, California 96049, and must be postmarked, if mailed, or received, if delivered, no later than close of business on April 10, 1989. Application forms filed after April 10, 1989, will be rejected for failure to file on time regardless of whether the applicant otherwise meets the qualifications for eligibility, except that plaintiffs determined to be an "Indian of the Reservation" in the *Short* cases, will, if they otherwise meet the requirements of the Act, be included on the roll.

Under the heading of **SUPPLEMENTARY INFORMATION,** on page 49796, first column, lines 44 and 48, Part "62" is corrected by changing to Part "61". To provide procedures for BIA personnel to follow, a rulemaking document amending Part 61 of Title 25 of the Code of Federal Regulations will be published at a later date in the **Federal Register.**

Also, under the heading of **SUPPLEMENTARY INFORMATION,** on page 49795, second column, line 36, "Charline" is corrected by changing to "Charlene".

W.P. Ragsdale,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 89–2525 Filed 2–2–89; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[CO–010–9–4121–12]

Final Environmental Impact Statement for the Northwest Colorado Coal Preference Right Lease Applications

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Availability of the final Environmental Impact Statement (EIS) for the Northwest Colorado Coal Preference Right Lease applications and plan amendment.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, notice is hereby given that the Bureau of Land Management has prepared a final EIS on two coal preference right lease applications (PRLAs) in northwest Colorado. This final EIS also serves as a proposed plan amendment for the White River Resource Area Management Framework Plan.

DATES: The final EIS will be available on or before March 6, 1989. Comments on the final EIS should be submitted to: Roger Wickstrom, Project Coordinator, Bureau of Land Management, White River Resource Area, P.O. Box 928, Meeker, Colorado 81641; telephone (303) 878–3601.

Protests to the proposed land use planning decision amendment must be filed within 30 days of the publication of the Notice of Availability by the U.S. Environmental Protection Agency in the **Federal Register.** Protests should be sent to Director (760), Bureau of Land Management, Premier Building, Room 906, 1725 I Street, NW., Washington, DC 20240.

Availability: Single copies of the abbreviated final EIS and the draft EIS are available at the White River Resource Area Office (address and phone number are listed above).

FOR FURTHER INFORMATION CONTACT: Roger Wickstrom, Project Coordinator, Bureau of Land Management, White River Resource Area, Meeker, Colorado 81641; telephone (303) 878–3601.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management has prepared an abbreviated final EIS on two coal Preference Right Lease Applications, Chapman-Riebold C–0125366 north of Rangely, Colorado and Jensen-Miller C–4275 northeast of Meeker, Colorado. The abbreviated final EIS must be read in conjunction with draft EIS to constitute a full final document. The final EIS also serves as the analysis for amending the White River Resource Area Management Framework Plan by applying the unsuitability criteria (43 CFR Part 3460) to the project areas.

Formal section 7 Consultation has been initiated with the U.S. Fish and Wildlife Service concerning threatened and endangered fish in the Upper Colorado River Basin.

Tom Walker,

Associate State Director.

Date: January 20, 1989.

[FR Doc. 89–2161 Filed 2–2–89; 8:45 am]

BILLING CODE 4310–JB–M

[CA–050–09–4410–10]

Intent To Prepare Resource Management Plan; Redding Resource Area, CA; Change in Dates

AGENCY: Bureau of Land Management, Interior.

ACTION: Change in December 15 notice of intent to prepare Resource Management Plan.

SUMMARY: The notice of intent published in the December 15, 1988 **Federal Register** listed dates for public scoping meetings and comment period. These dates have been changed.

Comment Period: Comments relating to the identification of issues and planning criteria will be accepted until March 31, 1989.

Meeting Dates: Meetings to determine the scope of the Resource Management Plan, and to obtain input on issues and planning criteria will be held in Redding, at the Red Lion Inn at 7:00 p.m. on February 13, 1989; in Red Bluff, at the City Council Chambers at 7:00 p.m. on February 15, 1989; in Chico, at the Holiday Inn, at 7:00 p.m. on February 21, 1989; in Yreka, at the Community Center Theatre, at 7:00 p.m. on February 23, 1989; and in Weaverville, at Lowden Part Recreation Hall, at 7:00 p.m. on February 27, 1989.

FOR FURTHER INFORMATION CONTACT: Mark Morse, Area Manager, or Barron Bail, Chief of Lands and Resources, Redding Resource Area, (916) 246–5325.

Date: January 20, 1989.

Mark T. Morse,

Area Manager.

[FR Doc. 89–2510 Filed 2–2–89; 8:45 am]

BILLING CODE 4310–40–M

Fish and Wildlife Service

Request for Information on African Elephant Conservation Programs and Ivory Trading Practices

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The African Elephant Conservation Act directs the Secretary of the Interior (Secretary) to request information on the African elephant conservation program of each ivory producing country, in order to determine whether each should be subject to a moratorium on ivory exports to the United States. It also establishes provisions for moratoria on ivory exports from intermediary countries to the United States.

The Service requests submission of information by all interested parties pertaining to African elephant conservation programs and compliance of ivory producing and intermediary nations with the provisions of the Act.

DATES: Comments must be received on or before June 5, 1989.

ADDRESSES: Comments and materials concerning this notice should be mailed to the Office of Management Authority, Arlington Square—4th Floor, U.S. Fish and Wildlife Service, 18th and C Streets, NW., Washington, DC 20240. Comments and materials may be delivered directly to the same office, Room 3024, Main Interior Department Building, 18th and C Streets, NW., Washington, DC, between the hours 8:00 AM and 4:00 PM, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For Management Authority issues, Mr. Marshall P. Jones, Chief, Office of Management Authority, at the above address, telephone (202) 343–4968 until 10 March 1989, or (202) 343–4646 after that date. For Scientific Authority issues, Dr. Charles W. Dane, Office of Scientific Authority at (703) 358–1708.

SUPPLEMENTARY INFORMATION: On October 7, 1988, the President signed into law the African Elephant Conservation Act (Act), Title II of the Endangered Species Act of 1973, Appropriations Authorizations for Fiscal Years 1988–1992 (Pub. L. 100–478, 102 Stat. 2306). Section 2004 establishes that it is the policy of the United States to assist in the conservation and protection of the African elephant by supporting the conservation programs of African countries and the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Pursuant to section 2201(b), the U.S. Fish and Wildlife Service (Service) must review the conservation program of each ivory producing country and determine whether it meets the following criteria:

(A) The country is a party to CITES and adheres to the CITES Ivory Control System.

(B) The country's elephant conservation program is based on the best available information, and the country is making expeditious progress in compiling information on the elephant habitat condition and carrying capacity, total population and population trends, and the annual reproduction and mortality of the elephant populations within the country.

(C) The taking of elephants in the country is effectively controlled and monitored.

(D) The country's ivory quota is determined on the basis of information referred to in subparagraph (B) and reflects the amount of ivory which is confiscated or consumed domestically by the country.

(E) The country has not authorized or allowed the export of amounts of raw ivory which exceed its ivory quota under the CITES Ivory Control System.

Pursuant to section 2202(a), if the Service determines that an ivory producing country fails to meet any one of these criteria it must declare a moratorium on import of ivory from that country into the United States. Any moratorium established by the Service is subject to being suspended under section 2203(c) if subsequent information reveals that the country meets all the criteria.

The Act defines "ivory producing country" to mean any African country within which is located any part of the range of a population of African elephants. The Service has determined that the following countries meet this definition: Angola, Benin, Botswana, Burkina Faso, Cameroon, Central African Republic, Chad, Congo, Cote D'Ivoire, Equatorial Guinea, Ethiopia, Gabon, Ghana, Guinea, Kenya, Liberia, Malawi, Mauritania, Mozambique, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, Somalia, South Africa, Sudan, Tanzania, Togo, Uganda, Zaire, Zambia, and Zimbabwe.

Through this notice the Service requests detailed information relative to each ivory producing country on:

1. The amount of available elephant habitat; its condition and carrying capacity, including:

a. Present extent of habitat, categorized according to the relative value of the habitat and degree of protection for elephants, to the extent possible (maps would be helpful);

b. Habitat trends, rate of increase or decrease, and factors affecting future carrying capacity;

c. Programs and future plans for habitat protection and enhancement;

d. Size of present populations in relation to habitat carrying capacity (relate to habitat categories used in response to question 1a. above), areas of overpopulation and effects on the habitat, and areas of underpopulation;

e. Ongoing and future plans for research/investigations into habitat and carrying capacity.

2. Present population and population trends, including:

a. Best estimate of past and present populations and likely trends over the near future, categorized according to habitat categories and degree of protection afforded used in response to question 1a. above;

b. Census methods, reliability, and completeness (for each of the estimates in 2a. above);

c. Percent and/or number of elephants under effective protection within and outside of preserve;

d. Distribution of elephant populations, noting size of separate herds, management programs for each herd and protection afforded each herd;

e. Long range goal for population levels related to human problems;

f. Present and future research on elephant population status.

3. Annual reproduction and mortality, including:

a. Present rate of reproduction;

b. Present and future trend in rate of mortality;

c. Age and sex structures of present populations;

d. Extent of annual mortality, categorized according to natural, illegal, and legal, including sport hunting, culling (designed to stabilize a herd within its habitat), cropping (controlled harvest for economic reasons), and control hunting (to protect lives and property);

e. Methods and reliability of data;

f. Present and planned studies to assess the rate of reproduction and mortality.

4. Status of efforts to control poaching, including:

a. Present rate and trend of illegal kill;

b. Magnitude of movement of illegal ivory across the frontiers;

c. Source of the poachers, whether local or from outside the country;

d. Number of rangers assigned to elephant protection, annual expenditures for protection, problems with protection, and present and future plans;

e. Estimated loss of revenue due to poaching;

f. Reliability of data on illegal kill.

5. Basis for ivory quotas, as reported to the CITES Ivory Control System:

a. Amount of ivory exported in 1986, 1987, 1988, and the anticipated 1989 export;

b. Whether the quota is part of the country's elephant conservation program;

c. Whether the amount of illegal harvest is considered in the establishment of export quotas;

d. What proportion of the legal ivory obtained during the last two years, is from trophy hunting, found from natural mortality, culling, cropping, and control hunting;

e. To what extent the quota is based on other factors, including present and future desired elephant population levels, expected confiscations, stocks on hand, and interception of illegal ivory coming across the borders;

f. What the disposition is of raw ivory, including:

(1) Internal consumption,

(2) Converted to worked ivory for export,

(3) Exported as raw ivory,

g. Whether funds derived from any elephant harvest are used for conservation and management of elephants and other wildlife;

h. What the trend is in ivory consumption and expected change in the ratios of (1)(2) and (3) above.

This list is not necessarily all inclusive and the Service is requesting any information that will assist it in determining whether a moratorium on the importation of ivory from a producing country must be established. Section 2201(b)(1) requires the Secretary to make such determination for each country no later than October 7, 1989. However, section 2201(b)(2) allows a delay until December 31, 1989, if the Service determines that additional information is required.

The Department of the Interior, through the Department of State, is requesting by letter the above information from each of the ivory producing countries. Information will also be requested from the Secretariat of CITES.

In addition, the Act has provisions relating to intermediary countries, defined as countries which export raw or worked ivory originating in another country (an ivory producing nation may thus also be an intermediary country in some cases). Section 2202(b) requires the establishment of a moratorium on any intermediary country which:

1. Is not a party to CITES;

2. Does not adhere to the CITES Ivory Control System;

3. Imports raw ivory from a country that is not an ivory producer;

4. Imports raw or worked ivory from a country not a party to CITES;

5. Imports raw or worked ivory that originates in an ivory country in violation of the laws of that ivory producer;

6. Substantially increases its imports of raw or worked ivory from a country that is subject to moratorium during the first 3 months of that moratorium; or

7. Imports raw or worked ivory from a country subject to a moratorium after the first 3 months of that moratorium, unless that ivory is imported by vessel during the first 6 months of that moratorium and is accompanied by shipping documents which show that it was exported before the establishment of that moratorium.

The Service has established a moratorium under section 2201(b)(1)(A) and 2202(b)(1) on import of ivory from all countries which are not parties to CITES. That moratorium became effective on December 27, 1988 (53 FR 52242). The Service is now seeking information from all interested parties on whether any intermediary country should be considered for establishment of a moratorium under the other provisions of section 2202(b). The Service contemplates rapid action to establish appropriate moratoria, if such information is received confirming that one or more of the criteria have not been met, in order to maximize the effects of these provisions on control of illegal trade in ivory.

This notice was prepared by Frank McGilvrey, U.S. Fish and Wildlife Service, Office of Management Authority.

Date: January 30, 1989.

Frank Dunkle,

Director.

[FR Doc. 89-2564 Filed 2-2-89; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Concession Contract Negotiations; Genet Expeditions Inc.

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public Notice is hereby given that the National Park Service proposes to negotiate a concession permit with Genet Expeditions, Inc. authorizing it to continue to provide mountaineering guide services for the public at Denali National Park and Preserve, Alaska for a period of four (4) years from January 1, 1989, through December 31, 1992.

EFFECTIVE DATE: April 4, 1989.

ADDRESS: Interested parties should contact the National Park Service, Alaska Regional Office, Concessions Division, 2525 Gambell Street, Anchorage, Alaska 99503, (907) 257-2595 for information as to the requirements of the proposed permit.

SUPPLEMENTARY INFORMATION: This permit renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing permit which expires by limitation of time on December 31, 1988, and therefore pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit as defined in 36 CFR 51.1.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice in the **Federal Register** to be considered and evaluated.

Date: December 14, 1988.

Boyd Evison,

Regional Director, Alaska Region.

[FR Doc. 89-2571 Filed 2-2-89; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31366]

Logansport & Eel River Short-Line Co., Inc.; Acquisition and Operation Exemption; the Logansport & Eel River Railroad Museum, Inc.

Logansport & Eel River Short-Line Co., Inc. (Logansport), a non-carrier, has filed a notice of exemption to acquire by purchase and to operate approximately 2.2 miles of rail line of The Logansport & Eel River Railroad Museum, Inc. (Museum). The line to be acquired extends from the Van Tower on the west side of Logansport, IN to a point 110 feet west of the Horney Creek Bridge on the east side of Logansport, IN. The transaction is expected to be consummated on or before January 31, 1989.

This transaction will also involve the issuance of securities by Logansport, which will be a Class III carrier. The issuance of these securities will be an exempt transaction under 49 CFR 1175.1.

This notice is related to Finance Docket No. 31367 in which Logansport has filed a petition seeking exemption under 49 U.S.C. 10505 from the requirements of Subtitle IV of Title 49 in connection with its acquisition and operation of the 2.2-mile line.

Any comments must be filed with the Commission and served on: Wayne Jackson, R.R. #4, Logansport, IN 46947 and James M. Prickett, Beers, Mallers, Backs, Salin & Larmore, 1100 Fort Wayne National Bank Building, Fort Wayne, IN 46802.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: January 25, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-2431 Filed 2-2-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-276)]

CSX Transportation, Inc.; Abandonment Between Beam and Kane in Marion, Nelson, Larue and Taylor Counties, KY; Findings

The Commission has issued a certificate authorizing CSX Transportation, Inc. to abandon its 55.26-mile rail line from milepost LC-33.22 at Beam (near Lebanon Jct.) to milepost LC88.63 at or near C&O Jct.; and from milepost LI-67.77 at or near C&O Jct. to the end of the line, milepost LI-67.62, at or near Kane, in Nelson, Larue, Marion, and Taylor Counties, KY. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail section, AB-OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail

service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

Noreta R. McGee,

Secretary.

[FR Doc. 89-3430 Filed 2-2-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS Number: 1031-89]

Verification of Immigration Status of Aliens Applying for Benefits Under Certain Programs

AGENCY: Immigration and Naturalization Service (INS), Justice.

ACTION: Amends September 8, 1987 Public Notice of INS procedures for verifying an alien's immigration status for various federal benefit programs, funds and services.

SUMMARY: This final notice provides technical amendments to the September 8, 1987 Public Notice describing the Systematic Alien Verification for Entitlements (SAVE) Program as it relates to section 121 of the Immigration Reform and Control Act of 1986 (IRCA) which requires immigration status verification of alien applicants under certain federally subsidized entitlement programs. Section 121 required the establishment of a centralized data base specifically designed to capture information contained in INS records which when used by the entitlement issuing authority will allow it to verify the alien's immigration status. This verification will assist the federal or state issuing authority in determining the eligibility of the alien applicant to receive federally subsidized benefits.

EFFECTIVE DATE: September 1, 1988.

FOR FURTHER INFORMATION CONTACT: Neville W. Cramer, Deputy Assistant Commissioner, Employer and Labor Relations/SAVE Branch, Immigration and Naturalization Service, 425 "I" Street NW., Room 7025, Washington, DC 20536, Telephone: (202) 633-2317.

SUPPLEMENTARY INFORMATION: On November 6, 1986, the President signed into law the Immigration Reform and Control Act, Pub. L. 99-603 ("IRCA"). This legislation, the most comprehensive reform of our immigration laws since the enactment in 1952 of the Immigration and Nationality Act, 66 Stat. 166, reflects a resolve to control illegal immigration. One of the themes in this legislation is to reduce incentives for aliens to come and remain in the United States illegally. Aside from the deterrence created by employer sanctions, illegal aliens must also be prevented from obtaining public assistance while in the United States. Section 121 of IRCA, "Verification of Immigration Status of Aliens Applying for Benefits Under Certain Programs," provides for the establishment and implementation of a system to verify the status of aliens applying for federally funded entitlements.

The Systematic Alien Verification for Entitlements (SAVE) Program is an intergovernmental information-sharing initiative designed to prevent unentitled aliens from receiving federally subsidized entitlement benefits. The INS has been operating long-term SAVE pilots throughout the United States and its territories for several years, and estimates that billions of dollars in benefits are granted to aliens who are either in the United States illegally or, by reason of their status, are unentitled to the benefits.

The Administration strongly supports efforts to curb waste, fraud, and abuse within federally funded entitlement programs. Section 121 of IRCA mandates that the INS develop a cost-effective alien status verification system for use by entitlement agencies. Agencies that already have effective systems will be allowed to request and/or receive a waiver from this provision of IRCA in accordance with paragraph (c)(4) "Use of Verification System Not Required for a Program in Certain Cases" of section 20 "Payment for Implementation of Immigration Status Verification System." SAVE allows federal and state eligibility workers to verify both alien documentation and status within seconds of accessing the data base, and should prove to be a strong deterrent to those aliens attempting to gain benefits illegally.

Introduction to Public Comments

The INS wishes to express its appreciation for the numerous comments received in response to the Public Notice on the Systematic Alien Verification for Entitlements (SAVE) system. Commentators included representatives of governmental entities at the federal, state, and local level; advocacy groups; and INS regional and district offices. This publication which includes the revised procedures should clarify several concerns expressed by these commentators.

For further information relating to the Systematic Alien Verification for Entitlements Program, a manual has been created that explains how to obtain access to the data base, estimated costs per access method and a familiarization of the primary and secondary functions of the system. The manual is available upon request from Neville W. Cramer, (202) 633-2317.

Comments Received

Since publication on September 8, 1987, of the Public Notice, INS has received several public comments expressing the opinion that it was unduly cumbersome and duplicative to have five federal agencies publishing their own separate regulations on the use of SAVE. The five federal agencies and the INS agree that the INS has no statutory authority to issue policy for implementation of verification requirements for programs administered by the affected agencies under section 121 of IRCA. However, the INS has implied statutory authority as IRCA amends federal statues pertaining to the designated agencies; for example, the statutory program authority of the Social Security Act for the AFDC, Medicaid and the territorial assistance programs, as well as the statutes of other agencies. With this notice, the INS has issued a description of SAVE procedures, not a policy statement. The statute requiring verification of immigration documentation is contained in section 121 of the Immigration and Nationality Act (INA).

Some comments reflect the fear that SAVE will be used for administrative law enforcement, such as locating and removing aliens from the United States based solely on immigration residency status. Although the INS will be made aware of such information when an illegal alien is verified through the automated and/or manual SAVE process, the INS will not attempt to locate, arrest or institute deportation proceedings. The INS is limited to pursuing violations of a criminal nature, such as the use of fraudulent and/or counterfeit documentation, uncovered by the SAVE system. Information relating to unentitled aliens will be forwarded to the appropriate Inspector General's office.

Concerns were raised that the SAVE program would be doomed to a low operation priority in light of the various IRCA related tasks. The position of Immigration Status Verifier was created with the sole function of adjudicating document verification requests submitted by users of the SAVE verification system. Our highly trained specialists are required to respond to the user agency within ten working days after receipt of the request and attached photocopies. The notice has been amended to reflect this change.

Verification Procedures

1. Citizenship or Alienage Declaration

No comment was received regarding this section.

2. Documentary Requirements of Aliens

With regard to the questions concerning acceptable documentation as proof of alien status, the INS has the authority and expertise to verify only documentation that has been issued by the INS. This notice describes the INS system of verification and relates to aliens under the jurisdiction of the United States Immigration and Naturalization Service. Section 264(e) of the Immigration and Nationality Act requires all aliens over 18 years of age to be in possession of their registration documentation at all times.

3. Maintaining Photocopies

Several comments relating to the requirement and the cost of photocopying the alien registration documentation were received. While it is true that photocopying is not a requirement of IRCA, the presentation of and verification of alien registration documentation is. In order to conduct this verification through the manual SAVE system or the secondary process, the submission of photocopies is a requirement. The photocopies are returned to the entitlement authority upon completion of the verification process. With the exception of photocopies of fraudulent or counterfeit documents which constitute a criminal offense, no copies received from the requesting agency are retained in the INS A-file. In the case of fraudulent or counterfeit documents, the INS shall notify the appropriate authority of the entitlement agency. The acquisition of photocopying equipment falls under the authority of the appropriate entitlement issuing agency. Section 121 provides 100 percent reimbursement for costs of implementation and operation of the immigration status verification system. Questions regarding the regulations and authorization of these funds should be addressed to the appropriate federal overseeing agency.

4. Immigration Documentation (Examples)

The list of documents has been amended to include any INS-issued document which is proof of immigrant status containing an alien registration number.

5. Access to the Alien Status Verification Index (ASVI)

The request to better define "Alien Registration Number" was made: The Alien Registration Number, commonly referred to as the A-Number, may consist of a seven- or eight-digit number that has been assigned to an alien at the time his or her alien file has been created. The alien file refers to the history file containing data and documentation pertaining to an individual alien. An A-File is created or amended when any one of several INS actions occurs, for example, application for permanent resident status or for a Certificate of Citizenship. Alien Registration Numbers are assigned at the local File Control Office (FCO) processing the initial action. Each FCO has a set of pre-numbered folder jackets. The lower numbered folders are used first. Upon gaining entry into ASVI, the A-Number is used to access the information contained in the A-File.

6. ASVI Data Elements

Commentators believe that the status displays appear to be incomplete with respect to alien's employment record in the United States. SAVE is to be used to verify an alien applicant's immigration documentation, and present work authorization status, not the alien's employment history.

The INS would like to clarify the intent of this section. If SAVE confirms the applicant's alien status as one who is a lawful permanent resident yet there is some discrepancy in noncritical data such as the date of birth, it is the prerogative of the State agency to submit the document for verification if the agency considers it to be questionable.

Secondary Verification

1. Definition of "Secondary Verification"

Several comments were made pertaining to the suggestion that secondary verification be instituted when a document appears to have characteristics such as photo substitution, ink discoloration, etc. The INS does not wish to impose an additional requirement or assign an enforcement role to the eligibility worker above and beyond what is presently required. On the contrary, much of the guess work will be eliminated by using SAVE in conjunction with other expert systems presently at their disposal. While it is true that there is no basis in the law compelling the eligibility worker to determine whether or not a document is fraudulent, many do examine documents and forward them to the INS. If an eligibility worker feels that a document has been altered or a photo-substitution has been made, there is no statutory preclusion to forwarding a copy of the document to INS under secondary procedures.

With respect to the instructions pertaining to secondary verification, the language describing the procedure has been amended to require its institution: (1) When the initial access to ASVI results in the instruction to initiate secondary review; (2) when the agency has determined that the documentation presented is questionable; or (3) when it is known that the category of the applicant's alien status is not maintained on the ASVI database. The SAVE manual contains specific and detailed instruction pertaining to this issue.

2. Use of Document Verification Request Form G-845A and G-845B

Since the publication of the public notice, the INS has revised and consolidated the Document Verification Request Form G-845; it is now one document. This version shall be used to request all secondary verifications. The SAVE manual describes in full the procedures on how to obtain a secondary verification and an explanation of the appropriate responses. Further, a category has been added to help determine whether or not an alien is permanently residing under color of law.

3. INS Response to Secondary Verification

In response to the many comments expressing concern about the time required by INS to process a G-845, the procedures have been reviewed and a turnaround time of within ten working days of receipt of the request has been mandated.

Types of Access to the Alien Status Verification Index

1. Access to ASVI

Comments were received pertaining to the need for each user agency to negotiate an individual Memorandum of Understanding in order to access ASVI. This requirement is determined by the overseeing Federal agency. To date, only the Departments of Health and Human Services and Agriculture have such a requirement.

Privacy Act

1. Privacy Act Compliance

This section has been amended by replacing "Authorization Code" with "Alien immigration status at the time of inquiry."

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2. Record of Disclosure for Documentation Which Does Not Contain an Alien Registration Number

No comments were received pertaining to this section.

3. Routine Use of Information

It has been stated that this section is in direct conflict with the provisions of the Food Stamp Act of 1977, which requires that State agencies must "limit the use or disclosure of information obtained from applicant households to persons directly connected with the administration or enforcement of the provisions of this Act, regulations issued pursuant to this Act, Federal assistance programs, or federally assisted State programs, except that (A) such safeguards shall not prevent the use or disclosure of such information to the Comptroller General of the United States for audit and examination authorized by any other provision of law, and (B) notwithstanding any other provision of law, all information obtained under this Act from an applicant household shall be made available, upon request, to local, State or Federal law enforcement officials for the purpose of investigating an alleged violation of this Act or any regulation issued under this Act."

Access to the record of disclosure created by INS shall be severely restricted. No information relating to the individual's application for program benefits covered under the Food Stamp Act of 1977 shall be disclosed to any person or agency not directly connected with the administration or enforcement of the provisions of the Food Stamp Act as amended by the Immigration Reform and Control Act of 1986, or the applicants themselves.

Federal Entitlement Programs and Federally Assisted Entitlement Programs Implementation

Several commentators objected to the inclusion of this language into the final notice for the following reasons: (1) This section does not describe SAVE, and (2) the responsibility for the implementation of the SLIAG program rests with the Secretary of Health and Human Services (HHS). Since the publication of these procedures, HHS has published regulations relating to this issue. Therefore, this section has been omitted from the final SAVE notice.

Verification Procedures

(1) Citizenship or Alienage Declaration

All applicants for benefits under the designated programs in section 121 of IRCA will be required to declare under penalty of perjury whether they are citizens or nationals of the United States, or aliens.

(2) Documentary Requirements of Aliens

All aliens in the United States must present original alien registration documentation or other source of documentation that the issuing agency determines is reasonable evidence of the alien's immigration status. The documentation should contain an alien registration number or admission number. The Alien Registration Number, commonly referred to as the A-Number, may consist of a seven- or eight-digit number that has been assigned to an alien at the time his or her alien file has been created. The alien file refers to the history file containing data and documentation pertaining to an individual alien. An A-File is created or amended when any one of several INS actions occurs, for example, application for permanent resident status or for a Certificate of Citizenship. All applicants must present acceptable documentation or furnish a receipt from the INS indicating that an application for replacement documentation has been made.

(3) Maintaining Photocopies

INS suggests that the overseeing Federal agencies require that all original documentation presented by alien applicants be photocopied (front and back) and maintained with the alien's application for benefits or other suitable location that allows for the agency's immediate retrieval. If an office does not have access to photocopy equipment, suitable arrangements should be made to copy the original (front and back) immigration documentation presented by the applicant.

(4) Immigration Documentation (examples)

Immigration documentation includes, but is not limited to, the following:

(a) Form I–151. Alien Registration Receipt card with photograph (for permanent resident aliens). This card was in use prior to 1979;

(b) Form I–551. Resident Alien card (for permanent resident aliens);

(c) Form I–551. Resident Alien card (Conditional). This card expires.

(d) Form AR–3a. Alien Registration Receipt card (Issued during 1941–1949 for permanent resident aliens);

(e) Form I–94. Arrival-Departure Record—(Annotated either "Section 207" or "Refugee," or "Section 208" or "Asylum");

(f) Form I–94. Arrival-Departure Record—Parole Edition (Annotated "Section 212(d)(5)," or "Conditional Entry" or "Section 203(a)(7)");

(g) Form I–94. Arrival-Departure Record (Annotated "Section 243(h)");

(h) Form I–94. Arrival-Departure Record (Annotated Cuban-Haitian Entrant);

(i) Form I–688. Temporary Resident card, Department of Justice, Immigration and Naturalization Service (Card issued pursuant to IRCA. Document expires);

(j) Form I–688A. Employment Authorization card, Department of Justice, Immigration and Naturalization Service (Card issued pursuant to IRCA. Document expires);

(k) Fee Receipt Form I–669. Issued to applicants under the amnesty and SAW programs. This document expires.

(l) Form I–181a. A temporary identification document issued by an INS field office when an alien has been granted lawful permanent resident. Contains annotation of work authorization (Does not contain a photograph);

(m) Form I–327. Re-Entry Permit. Issued to lawful permanent resident aliens before they leave the United States for a one- to two-year period. This document expires.

(n) Form I–571. Refugee Travel Document. This document expires.

(o) A receipt from INS indicating that an application for replacement documentation has been made.

(p) Any document issued by the Immigration and Naturalization Service.

All immigration documentation presented that does not contain a photograph or other information describing the individual (i.e., height, weight, age) should be accompanied by another identity document bearing a photograph or containing other information sufficient to identify that individual.

(5) Access to the Alien Status Verification Index (ASVI)

The alien registration number located on the document shall be used to access ASVI. Alien registration numbers are either seven or eight numerical digits preceded by the letter *A*.

(6) ASVI Data Elements

ASVI verifies some or all of the following biographical data pertaining to the alien applicant. Each agency should identify, under separate regulation, the critical data elements that constitute a valid ASVI verification.

(a) "Last name"

(b) "First name"

(c) "Date of birth"

(d) "Country of birth" (not nationality)

(e) "Social Security Number" (if known)

(f) "Date of entry" (for last status entered into system)

(g) One of the following status displays:

(i) "Lawful Permanent Resident—Employment Authorized"

(ii) "Cuban/Haitian Entrant—Termporary Employment Authorized"

(iii) "Section 245(A) of IRCA Temporary Resident—Temporary Employment Authorized"

(iv) "Section 210 of IRCA Temporary Resident—Temporary Employment Authorized"

(v) "Institute Secondary Verification"

The biographical data and status information located in the ASVI should correspond to the data located on the original documentation presented by the alien applicant. Overseeing federal agencies will regulate the elements that constitute a sufficient alien status verification using ASVI.

Copies of documented proof of immigration status that do not contain an alien registration number, copies of documented proof that do not correspond to the data in the ASVI, or documented alien registration numbers that result in the ASVI instruction "Institute Secondary Verification" should immediately be forwarded to the INS under the secondary verification procedures described below.

Secondary Verification

(1) Definition of "Secondary Verification"

Secondary verification signifies the forwarding of fully readable photocopies of original immigration documents attached to Document Verification Request Form G–845 to a designated INS field office for review. It is instituted when the initial access to ASVI instructs the user to "Institute Secondary Verification." The user agency, at its discretion, may institute secondary verification regardless of the ASVI response, i.e., one of the employment authorized messages is returned, if they feel that the documentation submitted has been altered in some fashion such as obvious photo-substitution, ink discoloration, erasures, or that the documentation warrants further review by the INS. INS then completes the response portion of Form G–845, and returns both the form and the attached photocopies to the submitting office. The INS retains those records necessary to comply with the Privacy Act. Copies of any documents submitted to INS, i.e., counterfeit or altered documentation, may be duplicated. Copies of documentation that indicate criminal misuse of government documents may be forwarded to the Investigations Division of INS, or other federal and state law enforcement agencies.

(2) Use of Document Verification Request Form G–845

Form G–845 must be used by all agencies requiring immigration status and document verification. A full-explanation of the responses to the G–845 is contained in the SAVE manual.

(3) INS Response to Secondary Verification

The INS Records Division will process all secondary verifications. Forms G–845 shall be returned to the submitting agency within ten working days after receipt by INS. The maximum response time should not exceed 21 work days. Delays in processing Form G–845 should not result in a denial, termination, or reduction of benefits. G–845 forms sent to the INS without photocopies of the original immigration documentation will be returned to the submitting agency without a status determination.

Denials

(1) Benefit Denial Responsibility

Denial of benefits based on alien status and the establishment of a fair hearing process are the responsibility of the issuing agency.

Types of Access to the Alien Status Verification Index

(1) Access to ASVI

Each overseeing federal agency will determine the methods of access to ASVI as it will ultimately be responsible for these costs in accordance with section 121 (b) "Providing 100 Percent Reimbursement for Costs of Implementation and Operation." ASVI may be used in one or more of the following methods:

(a) User system to ASVI data base via dedicated telecommunication line (CRT display).

(b) User agency "personal computer" with modem to ASVI data base (CRT display).

(c) "Point-of-sale" equipment to ASVI data base (LED or LCD display). (Point-of-sale machines are key-pad terminals with digitial response displays that use standard telephone lines and require cards with magnetic information strips to access data base.)

(d) Touch-tone telephone access to ASVI data base (Computerized voice data response).

(e) Magnetic tape match against ASVI data base (Magnetic tape response or paper print-out of results).

(f) For those States and jurisdictions with a small number of aliens, a manual system of verification is available. This is achieved by sending a Document Verification Request Form G–845 to the INS. The SAVE manual describes in full the manual procedures.

Access to ASVI may be achieved only after user agency is issued a security access number. User agencies will be provided a manual which will describe the Systematic Alien Verification for Entitlements Program and the use of the ASVI.

Privacy Act

(1) Privacy Act Compliance

A "record of disclosure" shall be made on all alien registration numbers checked through the ASVI and will be maintained by the INS. This will allow the INS to fully comply with the requirements of section (c)(1), (3) and (4) of the Privacy Act (5 U.S.C. 552a). The following records will be maintained and disclosed in accordance with the Privacy Act:

(a) Alien Registration Number

(b) Date and time of disclosure

(c) Agency accessing ASVI

(d) Alien immigration status at the time of inquiry.

INS will protect an individual's privacy to the maximum degree possible, in accordance with the Immigration Reform and Control Act of 1986 and any other applicable statutes.

(2) Record of Disclosure for Documentation Which Does Not Contain an Alien Registration Number

If an immigration document does not contain an alien registration number, INS will run computer checks against all available INS data systems to determine the status of the alien applicant shown on the documentation. If an alien registration number exists for that applicant, the document appears bona fide, and the alien's status requires a disclosure accounting, INS will make the necessary "record of disclosure."

(3) Routine Use of Information

The records of disclosure created by checks made against the ASVI will be available according to the provisions of the Food Stamp Act and Privacy Act restrictions as outlined in 5 U.S.C. 552a.

Audit Trails

(1) Profiles in Audit Trails

Audit trails identify inordinate and extraordinary use of alien registration numbers, i.e., alien registration numbers checked several times in multiple localities within a short period of time,

or non-existent alien registration numbers. This information may be used by the INS and other Federal and State fraud enforcement entities for investigation of possible criminal activity. It will not be used for non-criminal, administrative immigration enforcement purposes. Participating agencies and INS, through secondary verifications, will establish reporting procedures indicating cost avoidance figures and the number of aliens denied benefits.

Dated: September 1, 1988.

James L. Buck,

Deputy Commissioner, Immigration and Naturalization Service.

[FR Doc. 89-2373 Filed 2-2-89; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Massachusetts:	
CT89-1(Jan. 6, 1989)	p.402.
Maryland:	
MD89-1(Jan. 6, 1989)	pp.411-414.
New Hampshire:	
NH89-2(Jan. 6, 1989)	p.591.
New York:	
NY89-2(Jan. 6, 1989)	p.595.
Pennsylvania:	
PA89-17(Jan. 6, 1989)	pp.964,968.
PA89-18(Jan. 6, 1989)	p.970.
PA89-22(Jan. 6, 1989)	p.1002.
PA89-23(Jan. 6, 1989)	p.1006.
West Virginia:	
WV89-2(Jan. 6, 1989)	pp.1210,1219.
Listing by location (index)	p.xxviii.

Volume II

Michigan:	
MI89-2(Jan. 6, 1989)	pp.448-453. pp.457-458.
Minnesota:	
MN89-5(Jan. 6, 1989)	pp.558-564.
MN89-7(Jan. 6, 1989)	pp.568-573.
MN89-8(Jan. 6, 1989)	pp.588-602.
MN89-15(Jan. 6, 1989)	pp.618-626b.

Volume III

Colorado:	
CO89-2(Jan. 6, 1989)	p.116.
Oregon:	
OR89-1(Jan. 6, 1989)	pp.308-310-314.
Utah:	
UT89-1(Jan. 6, 1989)	pp.342-349.
Washington:	
WA89-2(Jan. 6, 1989)	pp.390-391.
WA89-3(Jan. 6, 1989)	p.402.
WA89-7(Jan. 6, 1989)	p.418.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 27th day of January 1989.

Robert V. Setera,

Acting Director, Division of Wage Determinations.

[FR Doc. 89-2353 Filed 2-2-89; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Public Information Collection Request Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The National Archives and Records Administration (NARA) has submitted the following proposal for collection of information to OMB for clearance under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title: Divided Records Data Form.

Affected public: Archival institutions.

Respondents/burden hours: The questionnaire will be sent to approximately 1,500 archival institutions. The one-time collection of information will require between 20 minutes and 1 hour per respondent depending on the number of record collections that meet the information collection criteria. The total reporting burden for this information collection is estimated at 800 hours.

Description of information collection request: NARA has established a cooperative project with state archives to survey public and private archival institutions likely to have records of Federal programs, territorial records, and records of parallel Federal, state, and local functions. Descriptive information identified in this data collection will be entered into a national online data base (RLIN) and included in the "related records" citations in the revised *Guide to the National Archives of the United States*. The information on the location of these dispersed records will provide a valuable service to both researchers and archivists.

DATE: Comments on this proposed information collection should be submitted to OMB within 30 days.

ADDRESSES: Requests for information, including copies of the questionnaire and supporting documentation, should be made to Mr. John Constance, Acting Director, Policy and Program Analysis Division (NAA), National Archives and Records Administration, Washington, DC 20408; telephone (202) 523-3214.

Comments on this collection of information should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for NARA, Washington, DC 20503.

Dated: January 30, 1989.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 89-2546 Filed 2-2-89; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL ECONOMIC COMMISSION

Cancellation of Public Meetings

February 1, 1989.

AGENCY: National Economic Commission.

ACTION: Cancellation of Public Meetings on February 7, 8, 14, 15, and 16.

SUMMARY: The National Economic Commission meetings scheduled for February 7, 8, 14, 15, and 16, 1989 have been cancelled. A public meeting has been scheduled for February 21, 1989. The agenda will be announced. The commission was established by section 2101 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203, enacted December 22, 1987.

Date, Time and Place: February 21, 1989 at 10:30 a.m. in Room 608 Senate Dirksen Office Building.

Open Meeting: All meetings of the commission will be open to the public.

For Additional Information: Jim Hildreth at 703-425-8986 or 202-789-1993, National Economic Commission, 734 Jackson Place, NW., Washington, DC 20503.

Supplementary Information: See **Federal Register**, volume 53, No. 80, Tuesday, April 26, 1988, Page 14871.

Drew Lewis,

Co-Chairman.

Robert S. Strauss,

Co-Chairman.

[FR Doc. 89-2666 Filed 2-2-89; 8:45 am]

BILLING CODE 6820-45-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted by March 6, 1989.

ADDRESSES: Send comments to Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3002, Washington, DC 20503; (202-395-7316). In addition, copies of such comments may be sent to Mrs. Anne C. Doyle, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5401).

FOR FURTHER INFORMATION CONTACT: Mrs. Anne C. Doyle, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests a review of the reinstatement of a previously approved collection. This entry is issued by the Endowment and contains the following information:

(1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: U.S.-Japan Artist Exchange Fellowship Guidelines.

Frequency of Collection: One-time.

Respondents: Individuals and households.

Use: The U.S.-Japan Artist Exchange Fellowship Program offers non-matching fellowships to individual artists of exceptional talent who wish to reside in Japan for six months. The information collected in the application and the required work samples are used in the peer review process and are necessary for accurate, fair and thorough consideration of all applications submitted under the guidelines.

Estimated Number of Respondents: 275.

Average Burden Hours per Response: 10.

Total Estimated Burden: 2,750.

Anne C. Doyle,

Administrative Services Division, National Endowment for the Arts.

[FR Doc. 89-2594 Filed 2-2-89; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Committee Management; Industrial Advisory Committee for Computer and Information Science and Engineering

The Assistant Director for Computer and Information Science and Engineering (CISE) has determined the establishment of the Industrial Advisory Committee for Computer and Information Science and Engineering is necessary and is in the public interest in connection with the duties imposed upon the Director, National Science Foundation (NSF), and other applicable law. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Committee: Industrial Advisory Committee for Computer and Information Science and Engineering.

Purpose: To complement divisional disciplinary research advisory committees; to provide a forum enabling the Assistant Director and other senior staff of the Directorate to obtain industry views pertaining to desirable research directions, the relative status of U.S. and foreign research and development in CISE fields and how CISE impacts on this, the role of CISE in improving U.S. competitiveness, and possible methods for increasing industry/university/government cooperation and collaboration in research.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89-2800 Filed 2-2-89; 8:45 am]

BILLING CODE 7555-01-M

Review Panel for Informal Science Education Program; Meeting

The National Science Foundation announces the following meeting:

Name: Review Panel for Informal Science Education Program.

Date and Time: February 13, 1989, from 9:30 am to 4:00 pm.

Place: Children's Television Workshop, One Lincoln Plaza, New York, NY 10023.

Type of Meeting: Closed.

Contact Person: Michael Templeton, Program Director for Informal Science Education, Room 635, (202) 357-7078.

Summary Minutes: May be obtained from the Contact Person at the above number.

Purpose of Meeting: To provide advice and recommendations concerning support for research.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of propriety confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with exemptions (4) and (6) of the 5 U.S.C. 552b(c), Government in the Sunshine Act.

January 31, 1989.

Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89-2801 Filed 2-2-89; 8:45 am]

BILLING CODE 7555-01-M

Instructional Materials Development Panel; Meeting

The National Science Foundation announces the following meeting:

Name: Instructional Materials Development Panel Meeting.

Date and Time: February 10-11, 1989, from 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 1800 G St., NW. Washington, DC 20550. Rooms 562 and 643.

Type of Meeting: Closed Meeting.

Contact Person: Alice J. Moses or Mary Kohlerman, National Science Foundation, 1800 G St., NW. Washington, DC 20550, Instructional Materials Development, Room 635-A, Phone (202) 357-7068.

Summary of Minutes: May be obtained from the Contact persons at the above address.

Purpose of Meeting: To attend Instructional Materials Development Panel and provide advice and recommendations concerning K-12 Math, Science and Technology education.

Agenda: To review and evaluate Instructional Materials Development proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a propriety confidential including nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Rebecca Winkler,

Committee Management Officer.

January 31, 1989.

[FR Doc. 89-2802 Filed 2-2-89; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-425]

Georgia Power Co. et al.; Environmental Assessment and Finding of No Significant Impact

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the schedular requirement of 10 CFR 50.33(k)(1) to Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and the City of Dalton, Georgia (the licensee) for Vogtle Electric Generating Plant, Unit 2 (Vogtle 2) located at the licensee's site in Burke County, Georgia.

Environmental Assessment

Identification of Proposed Action

10 CFR 50.33(k)(1) states, "Each application shall state: For an application for an operating license for a production or utilization facility, information in the form of a report, as described in § 50.75 of this part, indicating how reasonable assurance will be provided that funds will be available to decommission the facility." 10 CFR 50.75 establishes requirements for indicating how reasonable assurance will be provided that funds will be available for decommissioning. By letter dated December 13, 1988, the licensee requested an exemption from the schedular requirement of 10 CFR 50.33(k)(1) for Vogtle 2. Each holder of an operating license is required to submit a decommissioning funding plan on or before July 26, 1990. The licensee proposes to submit the decommissioning funding plan for Unit 2 at the time it submits the decommissioning funding plan for Unit 1 for which it holds an operating license, that is by July 26, 1990.

The Need for the Proposed Action

The licensee has stated that each of the plant's owners must evaluate the funding options to determine which is most appropriate for them, and then the owners collectively, or each owner separately, must effectuate their decisions by financial instrument. The funding report and certification are complex and require careful and deliberate financial planning. The proposed exemption is needed to provide the time necessary to perform this planning properly and provide an accurate and informed report.

Environmental Impacts of the Proposed Action

The proposed exemption from 10 CFR 50.33(k)(1) will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant cumulative radiation exposure. Accordingly, the Commission concludes that the proposed exemption would result in no significant radiological environmental impact. Additionally, it does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the exemption.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. This would not reduce environmental impacts, since the power would need to be replaced by power generated by another source.

Alternative Use of Resources

This action involves no use of resources not previously considered in connection with the Final Environmental Statements (construction permit and operating license) for the Vogtle Electric Generating Plant, Units 1 and 2.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For details with respect to this action, see the request for exemption dated December 13, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Burke County Public Library, 412 4th Street, Waynesboro, Georgia 30830.

Dated at Rockville, Maryland, this 30th day of January, 1989.

For The Nuclear Regulatory Commission.

David B. Matthews,

Director, Project Directorate II-3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-2551 Filed 2-2-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-254; 50-265, Licenses No. DPR-29; DPR-30, EA 88-161]

Order Imposing Civil Monetary Penalty; Commonwealth Edison Co.

I

In the matter of Quad Cities, Units 1 and 2, Cordova, Illinois.

Commonwealth Edison Company, Cordova, Illinois (licensee) is the holder of Operating Licenses No. DPR-29 and No. DPR-30 (licenses) issued by the Nuclear Regulatory Commission. The licenses authorize the licensee to operate the Quad Cities facility in accordance with the conditions specified therein.

II

NRC inspections of the licensee's activities under the licenses were conducted on April 18-22, May 2-6, 11, 31 and June 1, 1988. The results of these inspections indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalties (Notice) was served upon the licensee by letter dated September 15, 1988. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the licensee had violated, and the amounts of the civil penalties proposed for the violations. The licensee responded to the Notice by letter dated October 17, 1988. In its response, the licensee admitted Violation I.A and paid the associated civil penalty. With respect to Violation I.B, the licensee acknowledged that no formal evaluation of continued operation with grounds in the DC system was performed pursuant to 10 CFR 50.59, but requested reconsideration of the civil penalty on the basis that (1) the civil penalty partially duplicated the escalated civil penalty assessed for Violation I.A. and (2) the mitigation factors in 10 CFR Part 2, Appendix C, Section V.B., were not appropriately applied in assessing the penalty.

III

After consideration of the licensee's response and the statements of fact, explanations, and argument for mitigation contained therein, the Deputy Executive Director for Regional Operations has determined, as set forth in the Appendix to this Order, that the original penalty proposed for Violation I.B, as designated in the Notice of Violation and Proposed Imposition of Civil Penalty, should not be mitigated.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282, Pub. L. 96-295) and 10 CFR 2.205, it is hereby ordered that:

The licensee pay a civil penalty in the amount of Fifty Thousand Dollars ($50,000) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing shall be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commisison, ATTN: Document Control Desk, Washington, DC 20555, with a copy to the Assistant General Counsel for Enforcement, the Regional Administrator, RIII, and to the NRC Resident Inspector, Quad Cities, Units 1 and 2.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issue to be considered at such hearing shall be: whether on the basis of Violation I.B set forth in the Notice of Violation and Proposed Imposition of Civil Penalty referenced in Section II above, which the licensee has admitted, the Order to pay a Fifty Thousand Dollar civil penalty should be sustained.

For the Nuclear Regulatory Commission.

James M. Taylor,

Deputy Executive Director for Regional Operations.

Dated at Rockville, Maryland, this 23rd day of January 1989.

Appendix—Evaluation and Conclusion

On September 15, 1988, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during an NRC inspection. Commonwealth Edison Company responded to the Notice on October 17, 1988. With respect to Violation I.B., the licensee acknowledges that no formal evaluation of continued operation with grounds in the DC System was performed pursuant to 10 CFR 50.59, but requests mitigation of the civil penalty.

Restatement of Violation

I.B. 10 CFR 50.59(b)(1) requires that the licensee maintain records of changes in the facility, to the extent that the changes constitute changes in the facility as described in the Safety Analysis Report. Those records must include a written safety evaluation which provides the bases for determining that the change does not involve an unreviewed safety question. A proposed change involves an unreviewed safety question if the probability of occurrence of a malfunction of equipment important to safety previously evaluated in the Safety Analysis Report may be increased.

Final Safety Analysis Report Section 8.2.3.2.2 states, "The 125 volt battery system operates ungrounded with a ground detector alarm set to annunciate the first ground. In addition, the ground fault resistance, and the time at which a ground fault occurs, is recorded by a recording voltmeter. Thus, multiple grounds, the only reasonable mode failure, are extremely unlikely."

Contrary to the above, at the time of the inspection the licensee did not have a written safety evaluation for operating the ungrounded ESS DIV 1 125 volt battery system from February 1986 until July 1988 with several grounds, constituting a change in the facility as described in the safety analysis report. This change involves an unreviewed safety question because it increases the probability of occurrence of a malfunction caused by the ESS DIV 1 125 volt battery system.

This is a Severity Level III violation (Supplement I). Civil Penalty—$50,000

Summary of Licensee's Response

The licensee acknowledges that no formal evaluation of continued operation with grounds in the DC system was performed pursuant to 10 CFR 50.59. In view of the escalated penalty for Violation I.A, the licensee is requesting mitigation of the penalty for Violation I.B since it believes the penalty partially duplicates the escalated penalty proposed for Violation I.A. For this reason, the licensee requests reconsideration of the civil penalty for Violation I.B. Additionally, the licensee claims mitigation is appropriate because its corrective actions were unusually prompt and extensive, and proper credit was not given for its past good performance involving safety evaluations.

NRC Evaluation of Licensee's Response

The licensee contends that a civil penalty should not be proposed for Violation I.B because it partially duplicates the escalated penalty for Violation I.A. The NRC staff concludes that the licensee has not properly considered the factors that formed the basis for escalating the civil penalty for Violation I.A and proposing the civil penalty for Violation I.B. The escalation of the civil penalty for Violation I.A for failure to take prompt and extensive corrective actions to prevent recurrence was based on the licensee's failure to correct the problem despite three clear opportunities to do so.

Violation I.B represents a much broader concern than merely the licensee's failure to adequately disposition the particular ground indication that resulted from the improper wiring of the emergency diesel generator circuitry and constituted one of the opportunities to discover and correct the wiring problem. Rather, Violation I.B concerns the licensee's failure to properly evaluate and disposition indications of various system grounds during the stated time period. The licensee's failure to properly evaluate these grounds on an ungrounded system is a significant concern to the NRC staff as the evaluation of such a condition is required by 10 CFR 50.59. Therefore, the problem warrants the issuance of a separate Severity Level III violation and the proposal of a civil penalty.

In assessing the escalation and mitigation factors in the Enforcement Policy, NRC considered all five factors and determined that no escalation or mitigation of the base penalty was warranted. The NRC staff determined and the licensee has agreed that no change was warranted for identification and reporting, prior notice, or multiple notice, or multiple occurrences.

Concerning the licensee's request for reconsideration of the civil penalty, the licensee addresses two areas: (1) Past performance and (2) corrective action. The licensee states that its past performance involving safety evaluations has been good, and its review of violations identified by the NRC for a three year period did not show any past violations for not performing adequate evaluations. For this reason, the licensee believes that the civil penalty should be mitigated. The NRC staff review of the licensee's past performance shows that there were two previous violations of 10 CFR 50.59 identified by the NRC in early 1988 as described in Inspection Reports No. 50-254/86002(DRP) and No. 50-265/86002(DRP). After considering that information along with the licensee's SALP ratings in the general area of concern, the NRC staff concluded that no basis existed for mitigation of the civil penalty for past performance.

With regard to the licensee's corrective actions, the NRC staff agrees that the steps taken to raise the level of sensitivity for resolving potential safety issues, such as the ground problem, are indicative of broad based corrective actions. However, the NRC concludes that the licensee's interim policy for dealing with DC power system grounds does not provide timely resolution or proper evaluation of system grounding problems. The licensee's interim policy allows a significant ground (greater than or equal to 115 volts) to exist for up to 14 days prior to location and removal or justification of continued operation. The NRC staff concludes that such a time period is unacceptably long given the magnitude of a significant ground. The licensee's evaluation of grounds under the interim policy is insufficient in that it is based solely on the magnitude of the ground. To provide a proper evaluation, other factors such as consideration of the specific equipment affected, the nature of the ground, and the presence of previously existing grounds should also be considered. On balance, the NRC staff finds no basis for mitigating the civil penalty for corrective actions.

In summary, NRC properly considered all five factors in Section V.B of the enforcement policy and correctly determined that no change to the base civil penalty is appropriate.

NRC Conclusion

For reasons set forth herein, the NRC staff has concluded that the licensee has not provided an adequate basis for remission or mitigation of the civil penalty proposed for Violation I.B. Consequently, the civil penalty in the aount of $50,000 should be imposed.

[FR Doc. 89-2550 Filed 2-2-89; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-244]

Rochester Gas and Electric Corp.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to the Facility Operating License No. DPR-18, issued to Rochester Gas and Electric Corporation (the licensee), for operation of the Ginna Nuclear Power Plant located in Ontario, New York.

The proposed amendment would modify the Technical Specifications on the safety injection and residual heat removal pump recirculation systems. These changes are related to pump start, operation, and minimum discharge pressure for certain flow rates. The discharge pressure of the system pump is based on an assumed conservative degradation of the pump head capacity that may occur due to wear of the pump. In addition to the above changes, the amount of the boric acid in the storage tanks must be increased as a result of the larger recirculation lines that will be installed in the safety injection and residual heat removal systems. All of the aforementioned changes are being carried out in accordance with NRC Generic Letter 88-04, Potential Safety-Related Pump Loss. Modifications are required in order to increase margins of pump protection during conditions which require pump operation at minimum flows. These conditions exist when the reactor coolant system pressure is higher than the shutoff head of the pumps, particularly during surveillance testing.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By March 6, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rule of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall filed a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the cope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW. Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000. The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Richard H. Wessman, Project Directorate I-3: (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Harry Voigt, LeBoeuf, Lamb, Leiby and McRae, Suite 1100, 1333 New Hampshire Avenue, NW., Washington, DC 20036.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92

For further details with respect to this action, see the application for amendment dated November 21 and 29, 1988, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Rochester Public Library, 115 South Avenue, Rochester, NY 14610.

Dated at Rockville, Maryland, this 23rd day of January 1989.

For the Nuclear Regulatory Commission.

Richard H. Wessman,

Director, Project Directorate I-3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-2547 Filed 2-2-89; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-206]

Southern California Edison Co. and San Diego Gas and Electric Co., San Onofre Nuclear Generating Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR-13 issued to Southern California Edison Company, *et al.*, (the licensee), for operation of San Onofre Nuclear Generating Station, Unit No. 1, located in San Diego County, California.

Environmental Assessment

Identification of Proposed Action

The proposed amendment is a request to revise Appendix A Technical Specifications to incorporate Limiting Conditions for Operation and Surveillance requirements for the revised Auxiliary Feedwater System (AFWS). To eliminate single failure susceptibilities in the AFWS, a third pump will be added. The revised system configuration will consist of two trains, with the new pump on one train and the existing two pumps on the other train. The new system will start automatically with a lead train providing the necessary decay heat removal capability, and the second train remaining in standby to provide flow should a malfunction occur in the lead train. To preclude exceeding water hammer limits, train interlocks and mechanical flow restrictors will be incorporated into the new design. In addition, the minimum volume of water required to be available in the AFW storage tank would be changed from 150,000 gallons to 190,000 gallons.

The Need for the Proposed Action

The proposed amendment is required to implement the changes described above, improving the auxiliary feedwater system reliability, and also correct a single failure deficiency in the auxiliary feedwater system.

Environmental Impacts of the Proposed Action

The proposed action would not involve a significant change in the probability or consequences of any accident previously evaluated, nor does it involve a new or different kind of accident. Consequently, any radiological releases resulting from an accident would not be significantly greater than previously determined. The proposed amendment does not otherwise affect routine radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendment. The Commission also concludes that the proposed action will not result in a significant increase in individual or cumulative occupational radiation exposure.

With regard to nonradiological impacts, the proposed amendment does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on January 12, 1989 (54 FR 1260). No request for hearing or petition for leave to intervene was filed following this notice.

Alternatives to the Proposed Action

Because the Commission has concluded that there are no significant environmental impacts associated with the proposed action, there is no need to examine alternatives to the proposed action.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Final Environmental Statement related to operation of San Onofre Nuclear Generating Station, Unit No. 1, dated October 1973.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request that supports the proposed amendment. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendment.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated December 8, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 25th day of January 1989.

For the Nuclear Regulatory Commission.

Robert B. Samworth,

Acting Director, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-2548 Filed 2-2-89; 8:45 am]

BILLING CODE 7590-01-M

Southern California Edison Co. and San Diego Gas and Electric Co., San Onofre Nuclear Generating Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

[Docket No. 50-206]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendent to Provisional Operating License No. DPR-13 issued to Southern California Edison Company, *et al.*, (the licensee), for operation of San Onofre Nuclear Generating Station, Unit No. 1, located in San Diego County, California.

Environmental Assessment

Identification of Proposed Action

The proposed amendment is a request to revise Technical Specification 4.2, "Safety Injection and Containment Spray System Periodic Testing," to add a new surveillance requirement for the proposed trip of the safety injection and main feedwater pumps on low-low refueling water storage tank (RWST) level. The proposed modification is designed to ensure that safety injection flow is terminated at the correct time and to minimize operator actions that may need to be taken in the short time frame of a few minutes. The proposed change would also revise the diesel generator load rejection surveillance test from 3220 Kw to 4000 Kw since the safety injection and feedwater pumps would be tripped simultaneously with the new trip circuit on low-low RWST level. The surveillance test would periodically confirm (at leaat every 18 months) that these pumps can be tripped as designed without causing a diesel-generator trip from overspeed.

The Need for the Proposed Action

The proposed amendment is required to authorize the licensee to make the changes described above.

Environmental Impacts of the Proposed Action

The proposed action would reduce the reliance on prompt operator action and thereby improve the reliability of the safety injection system.

The proposed action would not involve a significant change in the probability or consequences of any accident previously evaluated, nor does it involve a new or different kind of accident. Consequently, any radiological releases resulting from an accident would not be significantly greater than previously determined. The proposed amendment does not otherwise affect routine radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendment. The Commission also concludes that the proposed action will not result in a significant increase in individual or cumulative occupational radiation exposure.

With regard to nonradiological impacts, the proposed amendment does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on January 17, 1989 (54 FR 1809). No request for hearing or petition for leave to intervene was filed following this notice.

Alternatives to the Proposed Action

Because the Commission has concluded that there are no significant environmental impacts associated with the proposed action, there is no need to examine alternatives to the proposed action.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Final Environmental Statement related to operation of San Onofre Nuclear Generating Station, Unit No. 1, dated October 1973.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request that supports the proposed amendment. The NRC staff did not consult other agencies or persons.

Finding of no Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendment.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated November 11, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 25th day of January 1989.

For the Nuclear Regulatory Commission.

Robert B. Samworth,

Acting Director, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-2549 Filed 2-2-89; 8:45 am]

BILLING CODE 7590-01-M

PHYSICIAN PAYMENT REVIEW COMMISSION

Commission Hearing and Meeting

AGENCY: Physician Payment Review Commission.

ACTION: Notice of Hearing and Public Meeting.

SUMMARY: The Physician Payment Review Commission will hold a hearing on Wednesday, February 8, 1989 for interest groups to comment on issues that the Commission will address in its upcoming report to Congress. The hearing is scheduled from 9:00 a.m. to 5:00 p.m. at the Ramada Renaissance Hotel, 1143 New Hampshire Avenue NW. (between L and M Streets). In addition to the hearing on February 8, the Commission will hear testimony from groups representing beneficiaries at its meeting on the morning of Friday, February 10.

The Commission will hold its regular public meeting on Thursday, February 9, 1989, from 9:00 a.m. to 5:00 p.m., and Friday, February 10, 1989, from 8:30 p.m. to approximately 4:00 p.m., also at the Ramada Renaissance Hotel. The agenda for that meeting will include a status report on the Commission's work to develop a relative value scale and discussion of coding and determining relative work values for evaluation and management services, transition from the current payment system to a fee schedule, processes for updating the fee schedule, preliminary results of simulations of the impact of a fee schedule on beneficiaries, alternative options for assignment policy, issues related to care of geriatric patients, utilization and quality review and expenditure targets.

ADDRESS: The Commission office is located in Suite 510, 2120 L Street, NW., Washington, DC. The telephone number is 202/653-7220.

FOR FURTHER INFORMATION CONTACT: Lauren LeRoy, Deputy Director, 202/653-7220.

Paul B. Ginsburg,

Executive Director

[FR Doc. 89-2524 Filed 2-2-89; 8:45 am]

BILLING CODE 6820-SE-M

PRESIDENT'S COMMISSION ON FEDERAL ETHICS LAW REFORM

Meetings

ACTION: Notice of meetings of President's Commission on Federal Ethics Law Reform.

SUMMARY: This notice announces two meeting of the President's Commission on Federal Ethics Law Reform. The purpose of these meetings is to continue work on the Commission's assigned task, which is the provision of recommendations to the President regarding any necessary changes and/or improvements in the governmentwide ethics program. Also included is an explanation of why 15 days notice of the February 14 meeting could not be provided to the public. Notice is required by the Federal Advisory Committee Act, 5 U.S.C. App. 2, and its implementing regulation, 41 CFR 101.6.

DATE: February 14, 1989 and February 22, 1989, 9 a.m.

ADDRESS: U.S. Department of Justice, 10th Street and Constitution Avenue NW., Conference Room B, Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Janis A. Sposato, General Counsel, Justice Management Division, at 202-633-3452.

SUPPLEMENTARY INFORMATION: It was not possible to provide 15 days notice of the February 14 meeting. The Commission was not established until Wednesday, January 25, 1989. The first meeting has been scheduled for February 7, 1989. Since the Executive Order requires a report by March 9, 1989, all meetings are being scheduled on an expedited basis.

Members of the public who wish to present written statements concerning the Federal ethics program are invited to send such statements to the Commission at the following address: President's Commission on Federal Ethics Law Reform, U.S. Department of Justice, Tenth and Constitution Avenue NW., Washington, DC 20530.

The Commission has not yet reached a decision as to whether it will have

time to accept oral testimony. If any member of the public is interested in giving such testimony please contact Amy L. Schwartz, Executive Director of the Commission, at 202–456–7953.

Persons who wish to attend one or more of the Commission's meetings should contact Jean Schmidlin at 202–633–4807 prior to the meeting in order that building access may be facilitated. Visitors should use the entrance at the center of the Constitution Avenue side of the building, midway between Ninth and Tenth Streets.

Malcolm Wilkey,
Chairman.

[FR Doc. 89–2714 Filed 2–3–89; 8:45 am]
BILLING CODE 4410–01–M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by the Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142.

Upon written request copy available from: Securities and Exchange Commission, Office of Consumer Affairs, 450 Fifth Street, NW., Washington, DC 20549.

Extension

Rule 17Ad–4 (b) and (c): File No. 270–264
Rule 17Ad–11: File No. 270–261
Rule 17Ad–13: File No. 270–263

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted the following rules under the Securities Exchange Act of 1934 for clearance:

Rule 17Ad–4 (b) and (c) (15 U.S.C. 78 *et seq.*), which generally requires transfer agents to prepare, maintain, and under certain circumstances, file a Notice of exempt status or loss of exempt status with their appropriate regulatory authority. Seventy transfer agents incur an estimated average burden of thirty minutes in order to comply with this rule.

Rule 17Ad–11 under the Securities Exchange Act of 1934, which generally requires transfer agents to file reports regarding aged record differences, buy-ins, and failure to post certificate detail to master security holder and subsidiary files. One hundred and fifty respondents incur an estimated average burden of thirty minutes to comply with the rule.

Rule 17Ad–13 under the Securities Exchange Act of 1934, which requires certain registered transfer agents to file annually a study and evaluation of internal accounting control. Two hundred respondents incur an estimated average burden of one hundred and seventy-five hours to comply with the rule.

The estimated average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even representative summary or study of the cost of SEC rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, 450 Fifth Street, NW., Washington, DC 20549–0004, and Gary Waxman, Clearance Officer, Office of Management and Budget, Paperwork Reduction Project (3235–0341 for Rule 17Ad–4 (b) and (c), 3235–0261 for Rule 17Ad–11, and 3235–0263 for Rule 17Ad–13) Room 3208 New Executive Office Building, Washington, DC 20503.

Jonathan G. Katz,
Secretary.

January 27, 1989.

[FR Doc. 89–2553 Filed 2–2–89; 8:45 am]
BILLING CODE 8010–01–M

[Release No. 34–26501; File No. Amex–89–1]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Filing of Proposed Rule Change Relating to Listing Fees for Non-U.S. Domiciled Companies

Pursuant to section 19(b)(1), 15 U.S.C. 78s(b)(1), of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder, 17 CFR 240.19b–4, notice is hereby given that on January 23, 1989, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend section 140 of the Amex Company Guide to provide reduced original listing fees to all non-U.S. domiciled companies seeking to list on the Amex, whose shares are already listed and traded on a foreign exchange.

The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

In order to provide an incentive for foreign-based companies to list on the Amex, the Exchange believes that it is appropriate to offer a reduced original listing fee for all non-U.S. domiciled companies whose shares are already listed and traded on other foreign markets. Reducing the fees as proposed would recognize the fact that these companies have already paid a listing fee in their country of domicile, and although seeking to expand the market for their shares, may be hesitant to incur an additional fee to list on the Amex, particularly since the number of shares (or ADRs) to be held by U.S. investors is likely to be relatively insignificant compared to the total number of these companies' shares held on worldwide basis.

The Exchange proposes to offer a 50% discount from the existing initial listing fee rate structure, subject to a maximum charge of $30,000 to all non-U.S. domiciled companies. This fee is based on the current initial listing charge to Canadian-based companies. In 1985 the Exchange reduced its initial listing fee structure for Canadian companies as an incentive for them to list on the Amex. Since that time, 11 Canadian companies have joined the Amex, as compared with four in the prior 2½ year period.

(2) Basis

The proposed rule change is consistent with section 6(b) of the Act is general and furthers the objectives of section 6(b)(4) in particular in that it achieves a reasonable balance between the Exchange's objective of attracting an adequate number of non-U.S. domiciled listed companies and its need for a reasonable level of listing revenue. This assures the equitable allocation of reasonable dues, fees, and other charges among Amex members and issuers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition. On the contrary, it is intended to enhance competition between markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Amex consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. In particular, the Commission is interested in hearing from U.S. domiciled companies whose shares are already listed and traded on the Amex. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filings will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 24, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 30, 1989.

Jonathan G. Katz,
Secretary.

[FR Doc. 89–2555 Filed 2–2–89; 8:45 am]
BILLING CODE 8010–01–M

[Release No. 34–26500; File No. SR–NASD–88–47]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to the Definition of the Term "Bona Fide Research"

The National Association of Securities Dealers, Inc. ("NASD") submitted a proposed rule change on October 12, 1988 (and an amendment thereto on December 8, 1988), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder to amend section 24(b)(2) of Article III of the NASD Rules of Fair Practice and the Board of Governors' Interpretation thereunder to conform the definition or "bona fide research" to the standard announced by the Commission in 1986 with respect to the meaning of "research" under section 28(e) of the Securities Exchange Act of 1934, as amended. In addition, the amendment deleted reference to the Commission's 1976 Release in order to substitute the revised standard (announced in the 1986 Release) to be used in determining what products and services shall be deemed protected "research."

Notice of the proposed rule change together with the substance of the terms of the proposed rule change, as amended, was given by the issuance of the Commission release (Securities Exchange Act Release No. 26375, December 20, 1988) and by publication in the **Federal Register** (53 FR 52286, December 27, 1988). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, with the requirements of section 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change, SR–NASD–88–47, be, and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Jonathan G. Katz,
Secretary.

Dated: January 27, 1989.

[FR Doc. 89–2554 Filed 2–2–89; 8:45 am]
BILLING CODE 8010–01–M

[Release No. IC–16785; (812–7157)]

Legal & General Group Plc and Legal & General Finance Inc.; Application

January 30, 1989.

Agency: Securities and Exchange Commission ("SEC").

Action: Notice of Application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: Legal & General Group Plc and Legal & General Finance Inc. ("Applicants").

Relevant 1940 Act Section: Exemption requested under section 6(c) from all provisions of the 1940 Act.

Summary of Application: Applicants seek an order exempting them from all provisions of the 1940 Act so that they may issue and sell in the United States unsecured prime quality commercial paper and debt securities unconditionally guaranteed by Legal & General Group Plc.

Filing Date: The Application was filed on October 20, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m., on February 23, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing the Secretary of the SEC.

Addresses: Secretary, SEC, 450 Fifth Street NW, Washington, DC 20549. Applicants, Legal & General Group Plc, Temple Court, 11 Queen Victoria Street, London EC4N 4TP, England.

For Further Information Contact: Bibb L. Strench, Staff Attorney (202) 272–2856 or Karen L. Skidmore, Branch Chief (202) 272–3023, Office of Investment Company Regulation.

Supplementary Information: The appliction is a summary of the application; the complete application is

available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representatives

1. Legal & General Group Plc ("L&G") is a holding company incorporated in England whose direct and indirect subsidiaries are engaged worldwide primarily in the insurance and reinsurance business and also in related financial service activities. The group of companies comprised of L&G and its subsidiaries (the "Group") forms the second largest quoted life insurance group in the United Kingdom with consolidated total assets as of December 31, 1987 of $23,022 million. The Group writes both general and long-term insurance, principally in the United Kingdom. The Group's worldwide premium income net of reinsurance for 1987 was $2,886.7 million, of which 20% was attributable to general insurance and 80% to long-term insurance.

2. The Group's activities are subject to extensive regulation in the United Kingdom, principally under the Insurance Companies Act 1982. This act and associated regulations impose on insurance companies operating in the United Kingdom minimum solvency standards and auditing and reporting requirements and grant to the Secretary of State for the Department of Trade and Industry wide powers to supervise and intervene in the affairs of insurance companies. Financial services activities of the Group are also subject to comprehensive United Kingdom government regulation. The business of the Group is also subject to regulation and supervision in the United States and in other countries in which the Group conducts its activities.

3. Legal & General Finance Inc. ("L&G Finance"), incorporated in Delaware, is a wholly-owned subsidiary of L&G. There has been and will be no offering of capital stock or of any other equity security of L&G Finance other than to L&G. L&G Finance's sole business will consist of issuing and selling its commercial paper or other debt securities and advancing substantially all the net proceeds of the sale thereof to L&G or L&G subsidiaries. L&G Finance will not invest in or hold other securities, other than U.S. government securities, securities of L&G or a company controlled by L&G or short-term notes exempt from registration under section 3(a)(3) of the Securities Act of 1933 (the "1933 Act").

4. The Applicants propose to issue and sell in the United States unsecured prime quality commercial paper notes in bearer form ("Notes"). The Applicants may offer other debt securities for sale in the United States ("Debt Securities"). The Application is not intended to cover the issuance of equity securities in the United States at any future time.

5. The Notes will be prime quality, negotiable commercial paper of a type eligible for discount by Federal Reserve Banks and will arise out of current transactions or the proceeds of which will be used for current transactions. The Notes will be sold in amounts not to exceed $350,000,000 at any one time outstanding, whether issued or guaranteed by L&G, and in denominations of no less than $250,000. The notes will have maturities not exceeding 270 days and will contain no provision for payment on demand, extension, renewal or automatic rollover, either at the option of the issuer or the holder.

6. At the present time, it is anticipated that the Notes will be issued by L&G Finance and unconditionally guaranteed by L&G, though in future L&G may itself issue Notes. If the Notes are issued by L&G Finance and guaranteed by L&G, the Notes will rank *pari passu* among themselves and equally with all other unsecured, unsubordinated indebtedness of L&G Finance, and L&G's guarantee of Notes will rank equally with all other unsecured and unsubordinated obligations of L&G, in each case prior to equity securities. The obigations of L&G under its guarantee will be enforceable against it directly by the holders of the Notes. If the Notes are issued L&G, they will be the direct liabilities of L&G, will rank *pari passu* among themselves and equally with all other unsecured and unsubordinated obligations of L&G, in each case prior to equity securities.

7. The Applicants will not issue and sell the Notes until they have received an opinion of United States legal counsel to the effect that, under the circumstances of the proposed offering, the notes would be entitled to exemption under section 3(a)(3) of the 1933 Act. The Applicants do not request the Commission's review or approval of Applicants' United States counsel's opinion. The Applicants are not subject to the reporting requirements of section 13(a) of the Securities Exchange Act of 1934, as amended, and will not become subject to such requirements in connection with the issuance and sale of the Notes.

8. While an announcement of the commercial paper facility may be made as a matter of record, the Applicants undertake to ensure that the Notes will not be advertised or otherwise offered for sale to the general public, but instead will be sold by one or more dealers to institutional investors and other persons who normally purchase commercial paper notes.

9. Debt Securities issued by L&G Finance would be unconditionally guaranteed by L&G; and the obligations of L&G under its guarantee would be enforceable against it directly by the holders of such securities.

10. The Applicants undertake that any offerings of Debt Securities in the United States would be registered under the 1933 Act or made pursuant to an exemption from the registration requirements of the 1933 Act. Applicants would not offer and sell any of their Debt Securities until they have received an opinion of United States legal counsel that the offer and sale of their Debt Securities would be entitled to an exemption from the 1933 Act. L&G undertakes with regard to Debt Securities that are not issued in the United States or sold to United States nationals or residents and are not so exempt, that it will adopt such agreements or procedures reasonably designed to prevent such securities from being offered or sold in the United States or coming into the hands of a United States national or resident as United States counsel may advise are necessary in the circumstances.

11. The Applicants represent that the Notes and Debt Securities sold in the United States shall have received prior to their issuance one of the three highest investment grades from at least one nationally recognized statistical rating organization, and that the Applicants' United States counsel will have certified that such rating has been received, provided, however, that no such rating need be obtained with respect to any issue if, in the opinion of the Applicants' United States counsel (after taking into consideration the doctrine of integration referred to in Rule 502 under the 1933 Act and various releases and no-action letters made by the Commission) an exemption from registration is available under section 4 of the 1933 Act.

12. The Applicants undertake to ensure that the dealer for the Notes will furnish to each offeree a memorandum which will briefly describe the business of the Group (including L&G Finance in the case of issuance by that company) and will contain financial information from the most recent publicly available financial statements for L&G, which shall have been audited in such a manner as is customarily done for L&G by its auditors. Such memorandum would disclose any material differences between the accounting principles applied in the preparation of such financial statements and generally accepted accounting principles as employed by similar companies in the United States. Such memorandum and financial statements will be at least as comprehensive as those customarily used in offering prime grade commercial paper in the United States and will be updated promptly to reflect material changes in the financial condition of the Group and L&G Finance.

13. Any future offering or sale in the United States of Debt Securities will be on the basis of disclosure documents, including audited financials, at least as comprehensive as is customary for the issuance of similar securities in the United States and such documents will be updated promptly to reflect material changes. In the case of a public offering of Debt Securities pursuant to a registration statement under the 1933 Act, the offering will be made on the basis of disclosure documents appropriate for such registrations.

14. Substantially all (in no event less than 85%) of the proceeds of the sale of the Notes or Debt Securities issued by L&G Finance would be provided as soon as practicable (but in no event more than six months after receipt) to L&G (or companies controlled by L&G) on terms that will allow L&G Finance to make timely payment on such securities. In the case of commercial paper proceeds, L&G and its subsidiaries will use such proceeds in the ordinary course of their respective businesses for "current transactions" within the meaning of section 3(a)(3) of the 1933 Act.

15. The Applicants undertake that in the event of an offering in the United States of Debt Securities or Notes denominated in a currency other than United States dollars, the Applicants will set forth in the prospectus or memorandum relating to such offering (i) the rate of exchange between the currency in which the securities are denominated and United States dollars as of a recent date and (ii) appropriate disclosure of the risks to investors regarding the potential for exchange rate fluctuations.

16. The Applicants intend to appoint a bank or other financial institution in the United States as their authorized agent to issue the Notes; the authorized agent will not be a trustee for the Noteholders and will not have any responsibilities or duties to act for such holders as would a trustee. L&G will appoint an agent to accept any process which may be served in any action based on any such security and instituted in any State or Federal court by the holder of any such security. L&G further undertakes that it will submit to the jurisdiction of any State or Federal Court in the City of New York in respect to any such action. Such appointment of agent to accept service of process and such consent to jurisdiction will be irrevocable so long as such securities remain outstanding and until all amounts due and to become due in respect to such securities have been paid. L&G will also be subject to suit in any court in the United States which would have jurisdiction because of the manner of the offering of Notes or Debt Securities or otherwise in connection with such Notes or Debt Securities.

Legal Conclusion

1. Approval of the application would further the policies of opening United States financial markets to foreign entities and encouraging the free flow of capital among world economies.

2. L&G is applying for an order because of uncertainties raised by the fact that the exclusion for "insurance companies" under section 3(c)(3) of the 1940 Act does not extent to foreign insurance companies. The Group's primary business, insurance, is conducted in a rigorous regulatory environment similar to that in which United States insurance companies operate.

3. L&G Finance is an applicant because its rights to receive repayments of loans made to L&G and L&G subsidiaries which constitute virtually all of L&G Finance's assets, could be deemed securities and, under the 1940 Act, L&G Finance could be deemed to be an investment company. However, in promulgating Rule 6c–9 and Rule 3a–5 under the 1940 Act, the Commission has recognized that finance subsidiaries should not be required to register as investment companies. Moreover, the Applicants have undertaken that offerings of securities by L&G Finance and its manner of operation will be essentially in accordance with the Commission's requirements for automatic exemption for finance subsidiaries set out in Rule 3a–5 under the 1940 Act.

Condition

Applicants consent to any Commission order granting the application being expressly conditioned upon its compliance with the undertakings and representations summarized above, under the heading "Applicants' Representations", and more fully set forth in its application.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–2556 Filed 2–2–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–16784; (812–7137)]

Mutual of Omaha Growth Fund, Inc., et al.; Application

January 27, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: Mutual of Omaha Growth Fund, Inc. Mutual of Omaha Income Fund, Inc., Mutual of Omaha Tax-Free Income Fund, Inc. (the "Load Funds"), Mutual of Omaha America Fund, Inc., Mutual of Omaha Money Market Account, Inc., Mutual of Omaha Cash Reserve Fund, Inc. (the "No-Load Funds") (collectively, "the Funds"), and Mutual of Omaha Fund Management Company (collectively with the Funds, the "Applicants").

RELEVANT 1940 ACT SECTION: Approval of exchange offers requested under section 11(a) of the Act.

SUMMARY OF APPLICATION: Applicants seek an order approving certain exchange offers on a basis other than the relative net asset values of the shares to be made between the Funds and made between the Funds and investment companies that may be organized in the future in the same family of the Funds or a subsidiary under common control with the offering company as defined in section 2(a)(9) of the Act. The approval requested hereby is prospective in nature and the Applicants will not rely on any such approval as authority for any exchanges which occurred prior to the issuance of the approval.

FILING DATES: The Application was filed on September 30, 1988, and amended on January 13, 1989.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on February 20, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either

personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, Mutual of Omaha Fund Management Company, 10235 Regency Circle, Omaha, Nebraska 68114.

FOR FURTHER INFORMATION CONTACT: Bibb L. Strench, Staff Attorney (202) 272–2856 or Karen L. Skidmore, Branch Chief (202) 272–3023, Office of Investment Company Regulation.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. The Funds are all diversified, open-end, management investment companies registered under the Act. The Management Company is the manager and investment adviser, principal underwriter, and transfer and divided disbursing agent for the Funds. The Management Company is a wholly-owned subsidiary of Mutual of Omaha Insurance Company.

2. The Management Company proposes to maintain a continuous public offering of shares of the Load Funds at their respective net asset values plus a front end sales load. On purchases of less than $10,000, the maximum sales load for shares of each of the Load Funds is 8.0% of the offering price, with the sales load reduced on larger purchases at the same breakpoints for each Load Fund. This has been the sales load structure since the inception of the Load Funds and the Load Funds have no current plans to alter this sales load structure. The sales load is subject to reductions based upon the amount being invested and to certain exceptions in accordance with the conditions of Rule 22d–1. There is no charge imposed on reinvestment of dividends and distributions from shares of the Load Funds. The Load Funds do not have any redemption charges, contingent deferred sales loads, or other back-end charges nor do they have 12b–1 plans, and they have no current plans to alter such practices.

3. The Management Company proposes to maintain a continuous public offering of shares of No-Load Funds at their respective net asset values. The No-Load Funds do not have any front-end sales loads, redemption charges, contingent deferred sales loads, or other back-end charges. Only the Cash Reserve Fund has implemented a 12b–1 plan and it is not held out to the public as a "no-load fund."

4. Applicants seek an order approving certain exchange offers to be made between the Funds and made between the Funds and investment companies which may be organized in the future in the same family of investment companies or a subsidiary under common control with the offering company. An exchange offer, which is not materially different from the exchange offer described herein, has been offered in the past to shareholders of the Funds. The approval requested hereby is prospective in nature and the Applicants will not rely on any such approval as authority for any exchanges which occurred prior to the issuance of the approval.

5. The shares are to be exchanged on the basis of their relative net asset values, except for shares previously not subject to a load which would be charged the "sales load differential". In exchanges between Reduced Load Funds and Load Funds, any applicable sales load differential will also be assessed. In calculating the sale load charged in connection with exchanges: (i) Where a shareholder exchanges less than all of his shares, the shares upon which the highest sales load was previously paid is deemed to be exchanged first, so that in all cases accumulated sales loads will be used up before new sales loads are imposed, (ii) no sales loads are assessed against reinvested dividends and distributions, and (iii) any variation in sales loads or sales of shares of the Funds by means of exchanges or otherwise, will comply with the requirements of Rule 22d–1 as adopted and as it may be modified. There are no redemption fees and administrative fees on the foregoing transactions.

6. The Management company distributes substantially all of the shares of the Funds through direct marketing from its home office and through a captive sales force of registered representatives ("Reps"). The Management Company has also entered into selling group agreements with a relatively small number of qualified broker-dealers to distribute shares of the Load Funds and a limited number of agreements with qualified broker-dealers and other organizations to assist in the distribution of shares of the Cash Reserve Fund.

7. Shareholders will be notified of the exchange offer, including the imposition of a sales's load differential where applicable, through the Fund's prospectuses and by means of other communications, including sales literature and other advertising. If a shareholder advises any of the Applicants that he wishes to exchange his shares in a Fund for shares of a successor Fund, the shareholder will be provided with a prospectus of such successor Fund. The Applicants undertake that the prospectuses, and any sales literature and other advertising that mentions the existence of the exchange offer, will disclose that for any modification to the exchange offer, the Applicants will seek from the Commission an order amending the approval requested herein to permit the modification.

8. The Management Company will not actively solicit exchanges and will not contact investors by telephone to notify them of the exchange offer. In addition, the Management Company has established adequate internal monitoring and review procedures to ensure that such exchanges are made at the request of investors rather than the Rep's or broker-dealer's personal gain.

Appliant's Legal Conclusions

1. The purpose of the proposed exchange offer is to permit a shareholder whose investment objectives changes to switch his investment to a different Fund within the group of Funds, without incurring the expense of an additional full sales load. At the same time, the proposed exchange offer is intended to treat shareholders exchanging into a Fund and its existing shareholders equitably, without disrupting the distribution system of the Funds. If an exchange from a No-Load Fund to a Reduced-Load Fund or to a Load Fund or from a Reduced-Load Fund to a Load Fund were made at relative net asset value without a sales charge, the distribution of the Funds would be disrupted because an investor could easily avoid the sales charge by first purchasing one of the No-Load Funds and then exchanging the share so acquired for shares of one of the Load Funds that are otherwise sold with a sales charge.

2. The exchange program complies with the terms and conditions of Rule 11a–3 under the Act, as proposed in Investment Company Act Release No. 16504 (July 29, 1988).

Applicants' Conditions

1. Applicants will comply with Revised Proposed Rule 11a–3 as currently stated, an as it may be adopted and modified in the future.

2. Applicants will comply with Rule 12b–1 as adopted and as it may be modified in the future.

3. Any variation in sales loads on sales of shares of the Funds by means of exchanges or otherwise, will comply with the requirements of Rule 22d–1 as adopted and as it may be modified in the future.

4. Any future offers of exchange among Additional Funds will be subject to the representations and conditions described in this application.

5. For any modification to the exchange offer described herein, Applicants will seek from the Commission an order amending the order requested herein.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–2557 Filed 2–2–89; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 1093]

Extension of the Restriction on the Use of United States Passport for Travel to, In, or Through Lebanon

On January 28, 1987, pursuant to the authority of 22 U.S.C. 211a and Executive Order 11295 (31 FR 10603), and in accordance with 22 CFR 51.72(a)(3), all United States passports with the exception of the category cited below, were declared invalid for travel to, in, or through Lebanon unless specifically validated for such travel. This action was required because the situation in Lebanon, and in West Beirut in particular, was so chaotic that it was not believed that any American citizen could be considered safe from terrorist acts.

Review of the situation in Lebanon has led me to conclude that conditions there have not improved by any measurable degree.

Therefore, in light of these circumstances, I have determined that Lebanon continues to be an area "* * * where there is imminent danger to the public health and physical safety of United States travelers" within the meaning of § 51.72(a)(3) of Title 22, Code of Federal Regulations.

Accordingly, all United States passports, except for those passport holders who are immediate family members of hostages in Lebanon, shall remain invalid for travel to, in, or, through Lebanon unless specifically validated for such travel under the authority of the Secretary of State.

This Public Notice shall be effective upon publication in the Federal Register and shall expire at the end of one year unless extended or sooner revoked by Public Notice.

Date: January 29, 1989.

James A. Baker III,

Secretary of State.

[FR Doc. 89–2941 Filed 2–2–89; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 89–006]

Towing Safety Advisory Committee; Meeting of Subcommittees

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; U.S.C. App. I), notice is hereby given a meeting of all Subcommittees of the Towing Safety Advisory Committee (TSAC). The Subcommittee meeting will be held on March 8, 1989 in room 2230 of the Department of Transportation Headquarters (NASSIF) Building, 400 7th Street, SW., Washington, DC. The meeting will begin at 1:30 p.m. and end at 4:00 p.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Discussion of the following topics:
(a) Port Facilities and Operations.
(b) Tug-Barge Construction, Certification and Operations.
(c) Personnel Manning and Licensing.
(d) Personnel Safety and Workplace Standards.
(e) Existing Regulations Review and Restructure.
(f) IMO/MARPOL Initiatives.
(g) Miscellaneous:
(1) Air Quality/Vapor Control.
(2) Bridge to Bridge Radiotelephone Issues.
(3) NAV Rules Update.
3. Presentation of any new items for consideration of the Subcommittees.
4. Adjournment.

Attendance is open to the interested public. Members of the public may present oral or written statements at the meeting. Additional information may be obtained from CDR R.J. Asaro, Executive Director, Towing Safety Advisory Committee, U.S. Coast Guard(G–MP–3), Washington, DC 20593–0001 or by calling (202) 267–0449.

Dated: January 27, 1989.

J. D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89–2537 Filed 2–2–89; 8:45 am]

BILLING CODE 4910–14–M

[CGD 88–005]

Towing Safety Advisory Committee; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Towing Safety Advisory Committee (TSAC). The meeting will be held on March 9, 1989 in room 4234 of the Department of Transportation Headquarters (NASSIF) Building, 400 7th Street, SW., Washington, DC. The meeting is scheduled to begin at 8:00 a.m. and end at 4:00 p.m. Attendance is open to the public. The agenda, which includes docketed rulemakings where indicated, is expected to be as follows:

1. Approval of minutes from October 1988 meeting.
2. Reports on the following items;
(a) Licensing of Pilots (CGD 84–060).
(b) Inland Radar Observer Courses.
(c) Licensing of Maritime Personnel (CGD 91–059).
(d) Intervals for Required Internal Examination and Hydrostatic Testing of Pressure Vessel Type Cargo Tanks (CGD 85–061).
(e) Drydock and Tailshaft Requirements.
(f) Hazardous Substances Regulations (CGD 86–034).
(g) Tankerman Requirements (CGD 79–116).
(h) Regulations Implementing Annex V (CGD 86–002).
(i) Special Area Designation of the Gulf of Mexico.
(j) IMO/MARPOL Initiatives.
(k) IMO Status Report: Global Maritime Distress and Safety Systems.
(l) ABS Towing Rules Questionnaire.
(m) Programs For Chemical Drug and Alcohol Testing of Commercial Vessel Personnel (CGD 86–067).
(n) OSHA's Proposed Benzene Standard.
(o) Air Quality Vapor Control.
(p) Bridge to Bridge Radiotelephone Issues.
(q) NAV Rules Update.
(r) Any other matter properly brought before the Committee. Where appropriate, reports on the above items

may be followed by TSAC discussion, deliberation and recommendations concerning these subjects, including rulemaking projects.

3. Summary of Action Items.

4. Adjournment.

With advance notice, and at the discretion of the Chairman, if time permits, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify the Executive Director of TSAC no later than the day before the meeting. Written statements or materials may be submitted for presentation to the Committee. To ensure distribution to each member of the Committee, 30 copies of written material should be submitted to the Executive Director no later than March 3, 1989.

FOR FURTHER INFORMATION CONTACT: CDR R. J. ASARO, Executive Director, Towing Safety Advisory Committee, U.S. Coast Guard(G-MP-3), Washington, DC 20593-0001 or by calling (202)267-0449.

Dated: January 27, 1989.

J. D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89-2538 Filed 2-2-89; 8:45 am]

BILLING CODE 4910-14-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Delights for the Senses: Dutch and Flemish Still-Life Paintings From Budapest

Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Delights for the Senses: Dutch and Flemish Still-Life Paintings from Budapest" (see list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Leigh Yawkey Woodson Art Museum in Wausau, Wisconsin, beginning on or about March 4, 1989, to on or about April 16, 1989, at the Rochester Museum and Science Center in Rochester, New York, beginning on or about April 28, 1989, to on or about June 18, 1989, at the Dixon Gallery and Gardens in Memphis, Tennessee, beginning on or about July 8, 1989, to on or about August 20, 1989, at the J. B. Speed Art Museum in Louisville, Kentucky, beginning on or about September 12, 1989, to on or about October 22, 1989, at the Bayly Art Museum, University of Virginia in Charlottesville, Virginia, beginning on or about November 1, 1989, to on or about December 31, 1989, at the Cummer Gallery of Art in Jacksonville, Florida, beginning on or about January 13, 1990, to on or about February 25, 1990, at the Tampa Museum of Art in Tampa, Florida, beginning on or about March 17, 1990, to on or about April 29, 1990, and at the Arkansas Arts Center in Little Rock, Arkansas, beginning on or about May 19, 1990, to on or about July 1, 1990, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

R. Wallace Stuart,

Acting General Counsel.

Date: January 30, 1989.

[FR Doc. 89-2517 Filed 2-2-89 8:45 am]

BILLING CODE 8230-01-M

[1] A copy of this list may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is 202-485-7979, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547.

Sunshine Act Meetings

Federal Register
Vol. 54, No. 22
Friday, February 3, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 11:30 a.m., Wednesday, February 8, 1989.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, NW., Washington, DC 20456.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meetings.
2. Establishment of Office of Inspector General. Closed pursuant to exemption (2).

RECESS: 12:30 p.m.

TIME AND DATE: 1:30 p.m., Wednesday, February 8, 1989.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, NW., Washington, DC 20456.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Central Liquidity Facility Report and Review of CLF Lending Rate.
3. Insurance Fund Report.
4. Semiannual Agenda of Regulations.
5. Appeal of the denial of a Federal Credit Union Charter for The Center for Religious Financial Services FCU, St. Louis, Missouri.

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682-9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 89-2673 Filed 2-1-89; 3:06 pm]

BILLING CODE 7535-01-M

THE UNITED STATES INSTITUTE OF PEACE

DATE: Thursday and Friday, February 9 and 10, 1989.

TIME: Thursday 11:00 a.m. to 5:30 p.m., Friday 9:15 a.m. to 1:00 p.m.

PLACE: The United States Institute of Peace, 1550 M Street NW., ground floor (conference room).

STATUS: Open session—Thursday 11:00 a.m. to 5:30 p.m. (portions may be closed pursuant to subsection (c) of section 552(b) of title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Pub. L. (98-525).

AGENDA: (TENTATIVE):

Swearing-in ceremony for Chairman Moore and Members Bark, Kirkpatrick, Thompson, and Weinstein at 10:00 a.m. in the West Conference Room, the United States Supreme Court (Open to the Public).

Meeting of the Board of Directors convened. Chairman's Report. President's Report. Committee Reports. Consideration of the minutes of the Twenty-ninth meeting. Consideration of grant application matters.

CONTACT: Ms. Olympia Diniak. Telephone (202) 457-1700.

Dated: February 1, 1989.

Bernice J. Carney,

Administrative Officer, the United States Institute of Peace.

[FR Doc. 89-2683 Filed 2-1-89; 6:45 am]

BILLING CODE 3155-01-M

Corrections

Federal Register
Vol. 54, No. 22
Friday, February 3, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Forest Service

Transfer of Administrative Jurisdiction; Lake Ouachita, AR

Correction

In the issue of Friday, November 25, 1988, on page 47791, in the correction to FR Doc. 88-25405, the eighth item was inaccurately printed and should have appeared as follows:

* * * * *

8. On page 5612, in the second column, T1S, R23W, Section 30 should read: Pt. S½SW¼ above 610', Pt. SW¼SE¼ above 610'.

Editorial Note: The legal land description for the transfer of administrative jurisdiction was originally published February 25, 1988, at 53 FR 5603. Corrections were subsequently published at 53 FR 44214, November 2, 1988, 53 FR 45854, November 14, 1988 and 53 FR 47791, November 25, 1988.

BILLING CODE 1505-01-D

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 3, 31, 145, and 147

Leverage Transactions

Correction

In proposed rule document 88-1294 beginning on page 3476 in the issue of Tuesday, January 24, 1989, make the following corrections:

1. On page 3479, in the third column, in footnote 9, in the fourth line from the bottom, after "amendments", insert "to Form 2-FR are not reproduced here. Anyone interested ".

2. On page 3480, in the first column, in the last paragraph, in the third line, "(1)" should read "(m)". In the fifth line, "31.11(1)" should read "31.11(m)". In the 11th line, "31.11(1)" should read ""31.11(m)".

§ 31.11 [Corrected]

3. On page 3487, in the second column, in § 31.11(m)(2), in the fifth line, "(n)" should read "(m)".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 310, 343, and 369

[Docket No. 77N-0094]

Internal Analgesic, Antipyretic, and Antirheumatic Drug Products for Over-the-Counter Human Use; Tentative Final Monograph

Correction

In proposed rule document 88-26157 beginning on page 46204 in the issue of Wednesday, November 16, 1988, make the following corrections:

1. On page 46227, in the second column, in the third complete paragraph, in the eighth line, "§ 343.50(c)(1)(v)(8)" should read "§ 343.50(c)(1)(v)(B); and in the ninth line, "(2)(v)(8)" should read "(2)(v)(B)".

2. On page 46243, in the 2nd column, under *M. Comments on Salsalate*, in the 3rd paragraph, in the 17th line, "if" should read "in".

§ 343.50 [Corrected]

3. On page 46257, in the second column, in § 343.50(d)(1), in the footnote to the table, in the second line, "four" should read "five".

4. On the same page, in the 3rd column, in § 343.50(d)(6), in the 12th line, "65.5 milligrams" should read "565.5 milligrams".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88M-0362]

Alcon Laboratories, Inc.; Premarket Approval of Models C118, C119, C138, and C139 Posterior Chamber Intraocular Lenses

Correction

In notice document 88-27542 appearing on page 48311 in the issue of Wednesday, November 30, 1988, make the following correction:

In the 3rd column, under **Opportunity for Administrative Review**, in the 1st paragraph, in the 27th line, "published" should read "publish".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88M-0346]

Corometrics Medical Systems, Inc.; Premarket Approval of Corometrics® Model 146 Fetal Acoustic Stimulator

Correction

In notice document 88-27541 beginning on page 48312 in the issue of Wednesday, November 30, 1988, the heading was inaccurate and should appear as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88M-0363]

Siemens Medical Systems Inc.; Premarket Approval of the Siemens LITHOSTAR Lithotripter

Correction

In notice document 88-27543 beginning on page 48313 in the issue of Wednesday, November 30, 1988, make the following correction:

On page 48313, in the third column, under **Opportunity for Administrative Review**, in the second and third lines, "(21 U.S.C. 360(d)(3))" should read "(21 U.S.C. 360e(d)(3))".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88M-0353]

IOLAB® Intraocular; Premarket Approval of UVBLOC™ Plus Models U102D, U102E, U103B, U103G, U103N, U103Q, U106D, U106E, U106G, U106J, U106M, U106V, U107B, U107D, U107E, U107G, U107P, U107Q, U107W, U108B, U108D, U152D, U156E, U156H, U157E, U157G, U157R, U177B, U194D, U196D, U196E, U703G, U706C, U706D, U706F, U706G, U706J, U706M, U706S, U707D, U707E, U707G, U708G, U709G, U756B, U756E, U757B, U776Q, U777B, U796E, and U796N, Ultraviolet-Absorbing Posterior Chamber Intraocular Lenses

Correction

In notice document 88-27544 beginning on page 48312 in the issue of Wednesday, November 30, 1988, make the following correction:

On page 48313, in the first column, under **Opportunity for Administrative Review**, in the ninth line, "to" should read "of".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 761

Areas Unsuitable for Mining; Areas Designated by Act of Congress; Applicability of the Prohibitions of the Surface Mining Act to the Surface Impacts of Underground Coal Mining; Public Hearings

Correction

In proposed rule document 89-2181 beginning on page 4837 in the issue of Tuesday, January 31, 1989, make the following correction:

On page 4837, in the third column, in the **ADDRESSES**, in the fourth location, in the second line, "1915 Constitution Avenue" should read "1951 Constitution Avenue".

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T. D. 8238]

Corporate Separations; Income Taxes

Correction

In rule document 89-118 beginning on page 283 in the issue of Thursday, January 5, 1989, make the following corrections:

§ 1.355-2 [Corrected]

1. On page 291, in the third column, in § 1.355-2(c)(2), Example (3), in the fourth and fifth lines, remove the words, "of A in X is less than the minimum equity interest " and transfer them to Example (4), in the 15th line after the word "interest".

2. On the same page and in the same column, in paragraph (d)(1) in the 14th line, "of" should read "or".

3. On page 293, in the third column, in § 1.355-2(d)(5)(iv), in the eighth line, "proceding" should read "preceding".

14. On page 296, in the third column, in the file line at the end of the document, "FR Doc. 89-119" should read "FR Doc. 89-118".

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[IA-111-86]

Income Tax; Taxable Years Beginning After December 31, 1986; Changes With Respect to Prizes and Awards and Employee Achievement Awards

Correction

In proposed rule document 89-366 beginning on page 627 in the issue of Monday, January 9, 1989, make the following correction:

§ 1.274-8 [Corrected]

On page 631, in the third column, in § 1.274-8(c)(5), in the tenth line, "section 414(g)" should read "section 414(q)".

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Friday
February 3, 1989

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Temporary Restriction of Instrument Approaches and Certain Visual Flight Rules Operations in High Pressure Weather Conditions; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 25793; Special Federal Aviation Regulation (SFAR) No. 54]

Temporary Restriction of Instrument Approaches and Certain Visual Flight Rules Operations in High Pressure Weather Conditions

AGENCY: Federal Aviation Administration (FAA), Department of Transportation, (DOT).

ACTION: Final rule.

SUMMARY: This action authorizes the issuance of temporary flight restrictions to prohibit certain operations in Alaska and northern border states when accurate altitude information is not available. On January 31, 1989, barometric readings of pressure higher than 31.00 inches of mercury (Hg.) were recorded in various locations in Alaska. Barometric pressure at this level exceeds the capability of standard aircraft pressure altimeters and prevents the indication of accurate altitude information to the pilot. This special regulation authorizes restrictions on certain instrument approaches and night Visual Flight Rules (VFR) operations while the extreme weather conditions remain in existence. This action is necessary to ensure flight safety during certain operations for which accurate altitude information is critical.

DATES: Effective date: February 1, 1989. Expiration date: March 31, 1989.

FOR FURTHER INFORMATION CONTACT: Daniel C. Beaudette, Deputy Director, Flight Standards Service, AFS–2, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, Telephone: (202) 267–8237.

SUPPLEMENTARY INFORMATION:

Availability of Document

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the number of this SFAR. Persons interested in being placed on a mailing list for future rules should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

Background

On January 31, 1989, weather observations in the State of Alaska recorded extremely high, record-breaking readings of barometic pressure. This condition continued on February 1 and is forecast to continue for at least several more days. The condition may also extend to northern portions of the contiguous United States.

Aircraft altimeters indicate aircraft altitude based on a reading of the air pressure surrounding the aircraft. Altimeters incorporate an adjustment for environmental barometric pressure to permit the pilot to manually set the correct pressure reading in the instrument. If the pressure setting is incorrect, the altitude readout will be incorrect. Because barometric readings of 31.00 Hg. or higher almost never occur, standard altimeters do not permit setting of barometric pressures above that level and are not calibrated to indicate accurate aircraft altitude above 31.00 Hg. As a result, U.S.-manufactured altimeters cannot be set to provide accurate altitude readouts to the pilot in conditions such as those that currently exist in Alaska.

The FAA Airman's Information Manual, Paragraph 533, provides a procedure for issuance of altimeter settings when the pressure is above 31.00 inches Hg. However, this procedure is intended for slight barometric variations and not to resolve the severe, widespread, and continuing situation now being experienced in Alaska.

It is theoretically possible to estimate the error in altitude for pressures above 31.00 Hg., by adding 100 feet in aircraft altitude for each .10 inches Hg. However, the extreme cold associated with high barometric pressure produces an effect opposite to the high pressure effect. Therefore, a pilot who corrects for the pressure difference above 31.00 Hg. but not for the temperature effect may unknowingly operate the aircraft at a lower altitude than intended, creating a highly dangerous situation.

Accurate altitude information is essential for normal flight operations and critical to certain phases of flight. Without an accurate altitude reading, a pilot cannot safely execute an instrument approach in instrument weather conditions or execute a VFR approach to an airport at night.

Temporary Restrictions on IFR and VFR Operations

On the basis of the above, I find that these weather conditions are an emergency condition requiring immediate action by the agency in order to maintain safety of flight in Alaska and other areas. It is necessary for the FAA to issue temporary restrictions on certain IFR approaches and night VFR operations while the extreme weather conditions exist.

The specific restrictions authorized by this rule will be issued in a Notice to Airmen (NOTAM) by each affected FAA region. These restrictions may include, but are not limited to, prohibitions of the following when the barometric pressure exceeds or is forecast to exceed 31.00 Hg.:

(1) Initiation of standard instrument approach procedures in IFR weather conditions;

(2) Initiating an IFR flight to an airport;

(3) Making a VFR approach to an airport during night hours;

(4) Special VFR operations in a control zone.

(5) Dispatching an air carrier flight when no alternate with acceptable conditions is available.

A preliminary NOTAM was issued on January 31 to provide the quickest response possible to the developing weather situation. A NOTAM issued under this rule on or after February 1 will incorporate a reference to this Special Federal Aviation Regulation.

The Manager, Regional Flight Standards Division, is authorized to waive any restriction issued under this special rule in order to permit emergency supply or medical services to isolated communities, where the operation can be conducted with an acceptable level of safety.

Effective Date of Final Rule

Because the emergency weather conditions in the State of Alaska are currently in effect and the potential for similar conditions exists in northern portions of the contiguous United States, immediate action is required to maintain safety of flight until the emergency situation abates. For this reason, I find that the notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. For the same reason, I find that good cause exists for making this rule effective immediately upon issuance.

The FAA has determined that this action is not a "major rule" under Executive Order 12291 and is not considered a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). The immediate nature of the action required does not permit that prior completion of a full regulatory evaluation. Because the action is a nonsignificant rulemaking and in effect for only a brief period, a subsequent regulatory evaluation will not be performed.

Federalism Determination

The amendment set forth herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

List of Subjects in 14 CFR Part 91

Aviation safety, Visual flight rules, Instrument flight rules, Special Visual flight rules (VFR).

For the reasons set forth above, the Federal Aviation Administration is amending 14 CFR Part 91 as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for Part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 (as amended by P.L. 100–223), 1422 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 *et seq.*; E.O. 11514; P.L. 100–202; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. By adding Special Federal Aviation Regulation No. 54 to read as follows:

Special Federal Aviation Regulation No. 54

Temporary Restriction of Instrument Approaches and Certain Visual Flight Rules Operations in High Pressure Weather Conditions

1. *Applicability.* This rule applies in states within the Alaskan, Northwest Mountain, Great Lakes, Eastern, and New England Regions.

2. *Special flight restrictions.* No person may operate an aircraft or initiate a flight to an airport in a state contrary to the requirements and terms of any Notice to Airmen issued under this special rule by the Manager, Flight Standards Division of the FAA region within which that state is located.

3. *Waivers.* The Manager, Flight Standards Division, is authorized to waive any restriction issued under this special rule in order to permit emergency supply or medical services to isolated communities, where the operation can be conducted with an acceptable level of safety.

4. *Expiration.* This special rule expires March 31, 1989.

Issued in Washington, DC on February 1, 1989.

T. Allan McArtor,

Administrator.

[FR Doc. 89–2751 Filed 2–2–89; 8:45 am]

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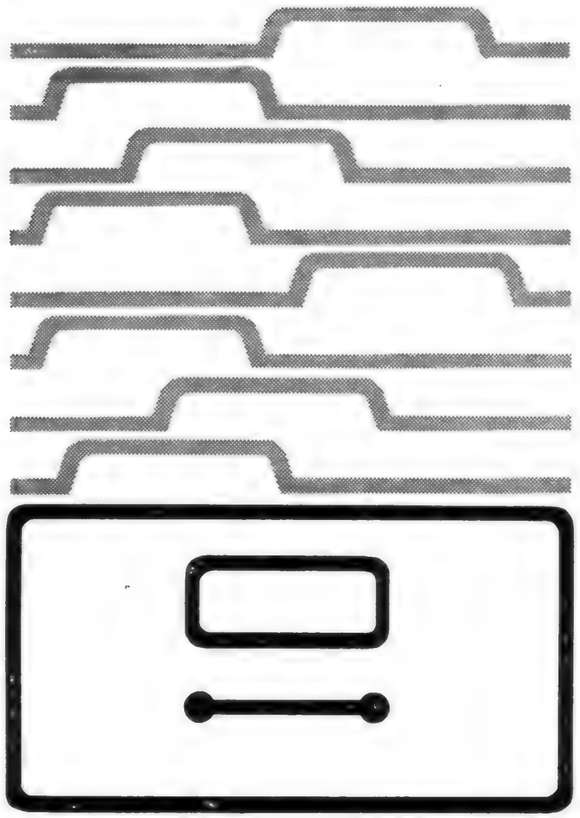
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Vol. 54, No. 23
Monday, February 6, 1989

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV-88-011]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Grapefruit Minimum Size Relaxation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting without modification as a final rule an interim final rule, which temporarily relaxed the minimum size requirements for shipments of domestic and imported pink seedless grapefruit from size 48 (3 1/16 inches in diameter) to size 56 (3 5/16 inches in diameter). The size composition, maturity level, and current and prospective supply and demand conditions for the 1988–89 season Florida grapefruit crop warrants this action.

EFFECTIVE DATE: February 6, 1989.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 475–3918.

SUPPLEMENTARY INFORMATION: This final rule is issued under the Marketing Agreement and Marketing Order No. 905, as amended [7 CFR Part 905], regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issues thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 100 shippers of Florida oranges, grapefruit, tangerines, and tangelos subject to regulation under the Florida citrus marketing order. In addition, there are approximately 13,000 orange, grapefruit, tangerine, and tangelo producers in Florida, and approximately 26 importers who import grapefruit into the United States. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. A minority of these shippers and a majority of the producers and importers may be classified as small entities.

Grade and size requirements for Florida citrus fruit covered under this marketing order are specified in § 905.306 Florida Orange, Grapefruit, Tangerine, and Tangelo Regulation 6 [7 CFR 905.306]. Section 905.306 is effective on a continuing basis subject to modification, suspension, or termination by the Secretary.

An interim final rule amending paragraph (a) of § 905.306 was issued December 1, 1988, and published in the Federal Register [53 FR 49293, December 7, 1988]. That rule provided that interested persons could file written comments through January 6, 1989. No comments were received.

The interim final rule amended paragraph (a) of § 905.306 temporarily relaxing the minimum size requirements for domestic shipments of Florida pink seedless grapefruit from size 48 [3 1/16 inches in diameter] to size 56 [3 5/16 inches in diameter] for the period December 5, 1988, through August 20, 1989. This relaxation is only for 1988–89 season shipments. Tighter minimum size requirements for pink seedless grapefruit will resume for 1989–90 season shipments effective August 21, 1989, as provided in § 905.306. Such tighter size requirements are based upon the maturity, size, quality, and flavor characteristics of pink seedless grapefruit early in the shipping season.

The Citrus Administrative Committee (committee), which administers the program locally, recommended relaxation of the size requirements for Florida pink seedless grapefruit at its November 8, 1988, meeting. The committee recommended that the relaxed size requirements for Florida grapefruit be made effective December 5, 1988, based on an analysis of the current and prospective marketing conditions for the 1988–89 season crop, as well as a projection of the size composition and maturity level of the crop remaining for shipment at that time. The committee reported that it expected that by December 5 size 56 grapefruit would be of a satisfactory quality, maturity, and flavor to be shipped to fresh markets. Lowering such requirements when the fruit reaches an acceptable level of quality, maturity, and flavor follows the practice of prior years. The committee also reported that it expected the grapefruit market to be the strongest and the flow to market the heaviest of the season in early December due to the strong holiday demand, and that these factors should minimize the price depressing effect of releasing smaller sized fruit on the market at that time.

The committee meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Florida oranges, grapefruit, tangerines, and tangelos. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews committee recommendations and information submitted by the committee and other available information, and determines whether modification, suspension, or termination of the regulatory

requirements would tend to effectuate the declared policy of the Act.

Some Florida grapefruit shipments are exempt from the minimum grade and size requirements effective under the marketing order. Handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day under a minimum quantity exemption provision. Also, handlers may ship up to two standard packed cartons of fruit per day in gift packages which are individually addressed and not for resale, under the current exemption provisions. Fruit shipped for animal feed is also exempt under specific conditions. In addition, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements.

Section 8e of the Act [7 U.S.C. 608e–1] provides that whenever specified commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity.

Grapefruit import requirements are specified in § 944.106 [7 CFR Part 944], effective under Section 8e of the Act. That section requires that imported grapefruit meet the same minimum grade and size requirements as those specified for the various varieties of Florida grapefruit in Table I of paragraph (a) in § 905.306. Since this rule maintains relaxed minimum size requirement for pink seedless grapefruit grown in Florida, the relaxed requirements would also be maintained for imported pink seedless grapefruit. The grapefruit import regulation permits persons to import up to 10 standard packed ⅘-bushel cartons exempt from the import requirements.

The relaxation of the minimum size requirements for domestic and import shipments of pink seedless grapefruit was designed to maximize domestic shipments and to permit shipments to meet buyer needs. The relaxation is meeting these objectives. Therefore, the Department's view is that the impact of this action upon producers, shippers, and importers will be beneficial because it will enable shippers to continue to provide grapefruit consistent with buyer requirements. The application of minimum grade and size requirements to Florida grapefruit and imported grapefruit over the past several years, has resulted in fruit of acceptable size, maturity, and flavor being shipped to fresh markets throughout the season.

Based on the above, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other available information, it is found that the rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action maintains relaxed minimum size requirements currently in effect for Florida and imported grapefruit; (2) Florida grapefruit shippers are aware of this action which was recommended by the committee at a public meeting and they are prepared to continue operating in accordance with the relaxed requirements; (3) shipment of the 1988–89 season Florida grapefruit crop is currently underway; (4) grapefruit import requirements are mandatory under section 8e of the Act; (5) the interim final rule provided a 30-day comment period, and no comments were received; and (6) no useful purpose would be served by delaying the effective date until 30 days after publication.

List of Subjects in 7 CFR Part 905

Marketing agreements and orders, Florida, Grapefruit, Oranges, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR Part 905 is amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR Part 905 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Accordingly, the interim final rule amending the provisions of § 905.306, which was published in the **Federal Register** [53 FR 49294, December 7, 1988], is adopted as a final rule without change.

[Note.—This section will appear in the Code of Federal Regulations.]

Dated: February 1, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–2707 Filed 2–3–89; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 919

[Docket No. FV–89–002]

Peaches Grown in Mesa County, CO; Final Rule Redefining Producer Representation Districts

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule redefines the districts into which the production area (Mesa County, Colorado) under the marketing order for Colorado peaches is divided. This action is intended to balance peach production between the five districts in order to provide equitable producer representation on the Administrative Committee.

EFFECTIVE DATE: February 6, 1989.

FOR FURTHER INFORMATION CONTACT: Patrick Packnett, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone 202–475–3862.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement No. 88 and Marketing Order No. 919 (7 CFR Part 919), regulating the handling of peaches grown in Mesa County, Colorado. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 52 handlers of peaches regulated under this marketing order, and approximately 245 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the peach handlers and producers in Mesa County, Colorado, may be classified as small entities.

Notice of this action was published in the **Federal Register** on December 14, 1988 (53 FR 50229). The comment period ended December 29, 1988. No comments were received.

The production area is divided into five districts for the purpose of producer representation on the Administrative Committee (committee). The committee consists of nine members. Five members, one for each district, represent producers. Three members represent cooperative handlers. There is also an independent handler member.

Paragraph (1) of § 919.32 of the order authorizes the committee, with the approval of the Secretary, to redefine the districts into which the production area is divided and to reapportion the representation of any district on the committee. Any such changes should reflect, insofar as practicable, shifts in peach production within the districts and the production area. Changes in the district boundaries were made in 1976 (41 FR 43709), and the districts are currently specified in § 919.111 of the rules and regulations issued under the order.

The committee unanimously recommended that the district boundaries once again be changed to correct imbalances in the distribution of production between the five districts. According to the committee, the boundary changes are needed to reflect shifts in peach production within the production area. These shifts are a result of the replacement of large areas that were once productive peach orchards with ranches and housing developments and of increased production in other areas. The boundary changes also reflect expected production shifts as nonbearing acreage begins production within the next two years. It is desirable to have the districts as equal as possible in production potential because each district is represented by one producer member on the committee.

To accomplish a balance in production between districts, District No. 1 will be increased by adding an area known as Rapid Creek that will be deleted from District No. 2. District No. 4 will be expanded by the addition of approximately 250 acres of production to be removed from District No. 3. In addition, the boundaries of District No. 5 will be clarified to show that the area known as Redlands has been, and will continue to be, a part of District No. 5.

The changes in the district boundaries will evenly distribute production between the five districts with approximately 20 percent of the total production of 175,000 bushels of peaches in each area. This is intended to provide equitable producer representation on the committee and will not impose any additional cost on producers or handlers. Based on the above, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of the information and recommendation submitted by the committee, it is found that this action will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553). It is important that the changes hereinafter set forth be in effect upon publication so that the members and alternates may be nominated and selected as soon as possible for the term of office which began January 1, 1989. Committee members and alternates then would be able to serve as much of that two year term as possible. The proposed changes were recommended by the committee at a public meeting. Further, the proposed rule provided for a thirty-day comment period and no comments were received.

Lists of Subjects in 7 CFR Part 919

Marketing agreements and orders, Peaches, Colorado.

For the reasons set forth in the preamble, 7 CFR Part 919 is amended as follows:

Note.— The following change will be published in the Code of Federal Regulations.

PART 919—PEACHES GROWN IN MESA COUNTY, COLORADO

1. The authority citation for 7 CFR Part 919 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 919.111 is revised to read as follows:

§ 919.111 Redefinition of districts.

The districts into which the production area is divided are redefined as follows:

(a) "District No. 1" shall include all that portion of Mesa County known as the Rapid Creek Area and that portion lying north of the Colorado River and east of 37.3 Road and an extension thereof to the Mesa County line. The Southern boundary is known as Sites Wash.

(b) "District No. 2" shall include all the portion of Mesa County lying south of the Colorado River, known as Vineland, on the floor of the valley and bounded by Sites Wash on the north.

(c) "District No. 3" shall include all that portion of Mesa County lying south of the Colorado River on the west of the District No. 2, known as East Orchard Mesa, to the line designated as 35 Road.

(d) "District No. 4" shall include all that portion of Mesa County lying south of the Colorado River bounded on the west by the Gunnison River including that portion known as Whitewater and bounded on the east by 35 Road.

(e) "District No. 5" shall include all that portion of Mesa County west of 37.3 Road and an extension thereof to the Mesa County line, north of the Colorado River to the junction of the Colorado and the Gunnison Rivers, and all of the rest of Mesa County south of the Colorado River and west of the Gunnison River to include the area known as the Redlands.

Dated: February 1, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–2708 Filed 2–3–89; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 932

Expenses and Assessment Rate for Marketing Order Covering Olives Grown in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order 932 for the 1989 fiscal year (January through December) established for that order. This action is needed for the California Olive Committee established under the order to incur operating expenses during the 1989 fiscal year and to collect funds during that year to pay those expenses. This will facilitate program operations. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: January 1, 1989, through December 31, 1989 (§ 932.223).

FOR FURTHER INFORMATION CONTACT: Patrick Packnett, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O.

Box 96456, Room 2530–S, Washington, DC 20090–6456, telephone 202–475–3862.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 932 (7 CFR 932) regulating the handling of olives grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately seven handlers of California olives regulated under this marketing order each season, and approximately 1,390 olive producers in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. Most, but not all, of the olive producers and none of the olive handlers may be classified as small entities.

Each marketing order administered by the Department of Agriculture requires that the assessment rate for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year. An annual budget of expenses is prepared by each administrative committee and submitted to the Department for approval. The members of administrative committees are handlers and producers of the regulated commodities. They are familiar with the committee's needs and with the costs for goods, services and personnel in their local areas and are thus in a position of formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is derived by dividing anticipated expenses by expected shipments of the commodity (e.g., pounds, tons, boxes, cartons, etc.). Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committees shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their expenses.

The California Olive Committee unanimously recommended 1989 fiscal year expenditures of $1,883,290 and an assessment rate of $25.39 per ton of assessable olives received by handlers. In comparison, 1988 fiscal year budgeted expenditures were $1,627,482 and the assessment rate was $23.92. Major expenditure items budgeted for the 1989 fiscal year compared with those budgeted in 1988 (in parentheses) are $469,540 ($435,434) for program administration, $60,000 ($51,948) for production research, $760,000 ($540,000) for consumer advertising, $398,500 ($494,000) for food service advertising, and $195,250 ($106,100) for public relations. The $255,808 increase in budgeted expenditures from 1988 is mainly for advertising and promotion activities needed to market this year's larger crop.

An estimated assessment income of $1,883,938 based on handler receipts of 74,200 tons of assessable olives will be utilized to cover 1989 fiscal period expenses. Last year's assessable olives totalled 57,300 tons. The proposed rule indicated that $245,473 in excess 1988 assessments would be placed in the committee's reserve. Closer review of the committee's financial statements reveals that the $245,473 are reserve funds derived from excess assessments from fiscal years prior to 1988, not excess 1988 assessments. Therefore, the provision authorizing unexpended funds from the 1988 fiscal year to be carried over as a reserve has been removed.

A proposed rule inviting comments on this action was published in the **Federal Register** on December 30, 1988 (53 FR 53000). The comment period ended January 9, 1989. No comments were received.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed onto producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that the budget of expenses and assessment rate are reasonable and will tend to effectuate the declared policy of the Act. The budget of expenses and assessment rate should be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. Therefore, the Secretary also finds that good cause exists for not postponing the effective date of this action until 30 days after the date of publication in the **Federal Register** (5 U.S.C. 553).

List of Subjects in 7 CFR Part 932

Marketing agreements and orders, olives, California.

For the reasons set forth in the preamble, a new § 932.223 is added as follows:

Note.—This section will not appear in the Code of Federal Regulations:

1. The authority citation for 7 CFR Part 932 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New § 932.223, is added to read as follows:

PART 932—OLIVES GROWN IN CALIFORNIA

§ 932.223 Expenses and assessment rate.

Expenses of $1,883,290 by the California Olive Committee are authorized, and an assessment rate of $25.39 per ton of assessable olives is established, for the fiscal year ending December 31, 1989.

Dated: February 1, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–2709 Filed 2–3–89; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Parts 1124 and 1125

[Docket Nos. AO–368–A16 and AO–226–A32; DA–88–108]

Milk in the Oregon-Washington and Puget Sound-Inland Marketing Areas; Order Amending and Merging Orders; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; correction.

SUMMARY: The final order amending and merging the Oregon-Washington and Puget Sound-Inland Federal milk marketing orders, published in the **Federal Register** on December 30, 1988 (53 FR 52975) contained several errors in the order language (7 CFR Part 1124) for the merged Pacific Northwest marketing area. Corrections to those errors are shown below.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–7183.

SUPPLEMENTARY INFORMATION: The following corrections should be made to the final rule amending and merging the Oregon-Washington and Puget Sound-Inland milk orders that was issued on December 23, 1988, and published in the **Federal Register** on December 30, 1988 (53 FR 52975).

PARTS 124 AND 125—[AMENDED]

§ 1124.40 [Amended]

1. On page 52982, in the second column in § 1124.40(c)(6), in the 2nd line, the citation "§ 1125.41(a)" should read "§ 1124.41(a)".

§ 1124.44 [Amended]

2. On page 52985, in the first column, in § 1124.44(a)(9)(ii), in the 8th line, the citation "(a)(9)(ii) (*a*) through (*c*)" should read "(a)(9)(ii) (A) through (C).

§ 1124.50 [Amended]

3. On page 52986, in the third column, in § 1124.50(c)(3), in the 2nd line, the word "paragraph" should read "paragraphs".

List of Subjects in 7 CFR Parts 1124 and 1125

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Parts 1124 and 1125 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Signed at Washington, DC, on: February 1, 1989.

J. Patrick Boyle,

Administrator.

[FR Doc. 89–2710 Filed 2–3–89; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 25783; Amdt. No. 1392]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

EFFECTIVE DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight

Data Center (FDC) Notice of Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard Instrument, Incorporation by reference.

Issued in Washington, DC on January 20, 1989.

Robert L. Goodrich,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective April 6, 1989

McPherson, KS—McPherson, NDB-A, Amdt. 4
Junction City, KS—Junction City, Muni, NDB-B, Amdt. 1
Clay Center, KS—Clay Center Muni, NDB RWY 35, Amdt. 1

. . . Effective March 9, 1989

Sandersville, GA—Kaolin Field, VOR/DME-A, Amdt. 3
Sandersville, GA—Kaolin Field, NDB RWY 12, Amdt. 2
Goshen, IN—Goshen Muni, LOC BC RWY 9, Amdt. 1
New Orleans, LA—New Orleans Intl/Moisant Fld, ILS RWY 28, Amdt. 1
Anoka, MN—Gateway North Industrial, VOR RWY 34, Amdt. 3, CANCELLED
Ramsey, MN—Gateway North Industrial, VOR RWY 34, Orig.
Mansfield, OH—Mansfield Lahm Muni, LOC BC RWY 14, Amdt. 6, CANCELLED
Salisbury, NC—Rowan County, NDB-B, Amdt. 9
Prospectville, PA—Turner Field, VOR RWY 14, Amdt. 4, CANCELLED
Quarryville, PA—Tanglewood, VOR/DME-A, Amdt. 1, CANCELLED
Appleton, WI—Outagamie County, VOR/DME RWY 3, Amdt. 5
Appleton, WI—Outagamie County, LOC BC RWY 21, Amdt. 6
Appleton, WI—Outagamie County, NDB RWY 3, Amdt. 12
Appleton, WI—Outagamie County, NDB RWY 29, Amdt. 8
Appleton, WI—Outagamie County, RNAV RWY 29, Amdt. 5
Black River Falls, WI—Black River Falls Area, NDB RWY 3, Amdt. 4
Sheboygan, WI—Sheboygan County Memorial, NDB RWY 21, Amdt. 6, CANCELLED
Sheboygan, WI—Sheboygan County Memorial, NDB RWY 21, Orig.
Sheboygan, WI—Sheboygan County Memorial, ILS RWY 21, Orig.
Siren, WI—Burnett County, VOR RWY 4, Amdt. 1
West Bend, WI—West Bend Muni, VOR RWY 31, Amdt. 8, CANCELLED
West Bend, WI—West Bend Muni, LOC RWY 31, Orig.
West Bend, WI—West Bend Muni, NDB RWY 31, Amdt. 10

. . . Effective January 17, 1989

Iowa Falls, IA—Iowa Falls Muni, NDB RWY 31, Amdt. 3
Big Piney, WY—Big Piney-Marbleton, VOR RWY 31, Amdt. 3

. . . Effective January 12, 1989

Kansas City, MO—Kansas City Downtown, ILS RWY 3, Amdt. 1
Newark, NJ—Newark Intl, ILS RWY 4R, Amdt. 7

. . . Effective January 10, 1989

Elizabeth City, NC—Elizabeth City CG Air Station/Muni, VOR/DME RWY 1, Amdt. 10

[FR Doc. 89-2627 Filed 2-3-89; 8:45 am]

BILLING CODE 4910-13-M

Research and Special Programs Administration

14 CFR Part 241

[Docket No. 45529; Amendment No. 241-5B]

RIN 2137-AA99

Aviation Economic Regulations; Updating the Accounting Provisions for Changes in GAAP

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Final rule.

SUMMARY: This final rule relieves large certificated air carriers from the burden of maintaining an accounting system that differentiates between two sets of accounting principles—generally accepted and regulatory. This action aligns the air carrier accounting provisions in accordance with generally accepted accounting principles and in a manner consistent with facilitating the Department's administration of its aviation responsibilities.

EFFECTIVE DATE: March 8, 1989.

FOR FURTHER INFORMATION CONTACT: M. Clay Moritz, Jr. or Jack M. Calloway, Office of Aviation Information Management, DAI-1, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366-4385 and 366-4383, respectively.

SUPPLEMENTARY INFORMATION:

Background

In a notice of proposed rulemaking (NPRM) issued March 16, 1988, the Department proposed to adopt a policy of relying, to the maximum extent practicable, on generally accepted accounting principles (GAAP), as promulgated by the Financial Accounting Standards Board (FASB), the recognized body of accounting principles, for recording large certificated air carrier financial information (Notice 88-5; 53 FR 9653, March 24, 1988). As noted in the proposed rule, the FASB is recognized as the primary body that is responsible for developing and overseeing accounting principles and disclosure standards for American business.

Essentially, the Department proposed to modify the Part 241 uniform accounting provisions for large certificated air carriers by:

1. Clarifying certain definitions contained in glossary Section 03 and eliminating those definitions that are either already defined by GAAP or no longer needed in the current transportation environment;

2. Eliminating the repetition of GAAP in the Department's general accounting provisions that are contained in Sections 1 "Introduction to System of Accounts and Reports," 2 "General Accounting Policies," and 5 "Balance Sheet Account Groupings"; and

3. Eliminating certain balance sheet and profit and loss accounts that are no longer required for either GAAP or regulatory accounting requirements.

While the NPRM proposed that air carriers be allowed to adopt changes in GAAP at the same time for both financial and regulatory accounting purposes, it also contained a mechanism for resolving conflicts when the Department's regulatory needs for financial data cannot be met through the adoption of a particular GAAP pronouncement. In such situations, the NPRM provided that the Department's Office of Aviation Information Management would issue an Accounting Directive explaining in detail why a particular GAAP pronouncement could not be adopted for regulatory accounting purposes. It was further proposed that the Department's needs would be addressed in a notice of proposed rulemaking if significant objections were raised.

Public Comments

The Department has decided to finalize its revisions to the uniform large certificated air carrier accounting provisions as proposed. Trans World Airlines, Inc. (TWA) filed the only comment to the rulemaking notice. TWA agreed with and fully supported the proposed changes.

Statement of Cash Flows

In a related matter that furthers the objectives of this rulemaking, the Department wishes to address at this time the impact of Financial Accounting Standard (FAS) No. 95 "Statement of Cash Flows." This statement modifies generally accepted accounting principles by requiring all business enterprises to include a "statement of cash flows" as part of a full set of financial statements. Under FAS No. 95, the cash flow statement replaces the statement of changes in financial position.

FAS-95 represents a significant philosophical change in the concept of reporting point-in-time financial position. Cash flow statements focus on cash receipts and payments and explain changes in cash and cash equivalents. Funds flow statements, on the other hand, are prepared on a broader concept of the enterprise's economic activity so as to encompass all the changes in financial position. For example, a funds flow statement would include depreciation expense, amortization expense and increases in deferred income taxes as sources of funds in calculating changes in financial position. None of these three items are included in preparing a cash flow statement since they do not affect a firm's cash position.

The financial schedules that comprise RSPA Form 41 "Report of Financial and Operating Statistics for Large Certificated Air Carriers" for carriers with total annual operating revenues of $10 million or more include Schedules B-1 "Balance Sheet," B-12 "Statement of Changes in Financial Position," and P-1.2 "Statement of Operations." While the inclusion of these three schedules in Form 41 is based on the value of the information to the Department in administering its aviation responsibilities, it also reflects the significance that has been historically placed on these types of reports by the accounting profession and the financial community. Because of this similarity of financial data requirements, carriers have been able to fulfill their financial and regulatory reporting responsibilities by developing a management information system that collects financial data in a manner that facilitates the generation of a balance sheet, statement of operations and statement of changes in financial position.

The private sector's adoption of FAS No. 95 and the Department's Schedule B-12 reporting requirement have combined to create a problem for carrier management information systems by requiring the reporting of point-in-time financial position based on two different perspectives: funds flow versus cash flow. This has created a practical data gathering problem for air carriers since funds flow and cash flow statements require the extraction and maintenance of a different subset of financial information from the carrier's data base in order to generate the respective reports.

While the Department believes that a cash flow statement would be useful in administering its aviation programs, it also feels that changing Schedule B-12 from a funds flow to a cash flow format involves a change in reporting that is significant enough to warrant addressing the issue through the rulemaking process. At the same time, the Department is very concerned about the additional reporting burden that carriers must bear until the rulemaking process can be completed.

Because of this concern, the Department has considered various ways of reducing or eliminating this burden, and has decided to accept waiver requests from affected air carriers to enable them, upon a proper showing of need and a finding by the Department, to file a cash flow statement in lieu of the current Schedule B-12. Each waiver request must be accompanied by a pro forma example of the format the carrier proposes to use in lieu of Schedule B-12. Waiver requests must be addressed to the Director, Office of Aviation Information Management, DAI-1, RSPA, Department of Transportation, Washington, DC 20590.

Adoption of GAAP

By virtue of this final rule, the Department adopts a policy of relying on GAAP, as promulgated by the FASB, as the recognized body of accounting principles for recording air carrier financial information. In adopting this policy, the Department recognizes the possibility that a situation may arise where a change in GAAP could adversely affect the Department's ability to administer its aviation responsibilities. In this circumstance, the Department's Office of Aviation Information Management will issue an Accounting Directive fully explaining why the application of the accounting principle in question would negatively impact administration of the Department's aviation programs. The directive also will provide the necessary accounting guidance required to maintain the accounting integrity of the Department's Uniform System of Accounts and Reports for Large Certificated Air Carriers.

If significant objections are raised by any concerned party or parties to the Department's decision not to implement a particular accounting principle, such objections would be addressed in a notice of proposed rulemaking. Air carriers and any other concerned parties will be encouraged to submit their views and comments on the issues raised. After due deliberation of all comments received, the Department will issue a final rule, stating its conclusions.

It should be noted that the Department's decision to rely on GAAP-

based accounting has caused it to retain, rather than eliminate as proposed, account 2860, Subscribed and Unissued Stock. This will allow affected air carriers to account for and disclose the results of stock subscription transactions in accordance with generally accepted accounting principles. Because of this, section 3, Chart of Balance Sheet Accounts, will be editorially revised to include account 2860, which had previously been inadvertently omitted.

Department Regulatory Policies and Procedures

Executive Orders 12291, 12612 and 12630; Department's Regulatory Policies and Procedures; Regulatory Flexibility Act; and Paperwork Reduction Act of 1980.

This action has been reviewed under Executive Order 12291, and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of $100 million or more. There will be no increase in production costs or prices for consumers, individual industries, Federal, State or local governments, agencies or geographic regions. Furthermore, this rule will not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. These regulations will result in a reduction in reporting burden for large certificated air carriers. Accordingly, a regulatory impact analysis is not required.

This action has been analyzed in accordance with the principles and criteria contained in Executive Orders 12612 and 12630 and it has been determined that the final rule: (1) does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment and (2) does not pose the risk of a taking of constitutionally protected private property.

This regulation is significant under the Department's Regulatory Policies and Procedures, dated February 26, 1979, because it involves important Departmental policies. Its economic impact should be minimal and a full regulatory evaluation is not required.

I certify that this rule will not have a significant economic impact on a substantial number of small entities. For purposes of its aviation economic regulations, Departmental policy categorizes certificated air carriers operating small aircraft (60 seats or less or 18,000 pounds maximum payload or less) in strictly domestic service as small entities for purposes of the Regulatory Flexibility Act. The regulatory amendments will affect only large certificated air carriers.

The accounting requirements in this proposal are subject to the Paperwork Reduction Act, Pub. L. 96-511, 44 U.S.C. Chapter 35. A request for clearance of these requirements will be submitted to the Office of Management and Budget for review. It is anticipated that this rule will result in an annual burden reduction of 17 hours per carrier. Taking into account this reduction, the total estimated annual burden associated with this information collection (OMB Clearance No. 2138-0013) is 502 hours per carrier which represents the estimated burden associated with the Department's Uniform System of Accounts and Reports for Large Certificated Air Carriers. Any comments regarding this burden estimate or any aspect of these information requirements, including suggestions for reducing the reporting burden, may be sent to:

Director, Office of Aviation Information Management, DAI-1, U.S. Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590

and

Office of Information and Regulatory Affairs, DOT/RSPA Desk Officer, Office of Management and Budget, Washington, DC 20503.

Regulatory Identification Number

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 14 CFR Part 241

Air carriers, Uniform system of accounts and reports.

Final Rule

Accordingly, the Department of Transportation amends 14 CFR Part 241, *Uniform System of Accounts and Reports for Large Certificated Air Carriers*, as follows:

PART 241—[AMENDED]

1. The authority for Part 241 continues to read as follows:

Authority: Sections 204, 401, 407, 416, 417, 901, 902, 1002 of the Federal Aviation Act of 1958, as amended: 49 U.S.C. 108, 1324, 1371, 1377, 1386, 1387, 1471, 1472 and 1482.

2. The table of contents of the Uniform System of Accounts and Reports for Large Certificated Air Carriers is amended by:

A. Removing sections 1-0, 2-0, 2-7, 2-8, 2-9, 2-10, 2-11, 2-12, 2-13, 2-14, 2-15, 2-16, 2-17, 2-18, 2-19, 2-20, 2-21, 5-1, 5-2, 5-3, 5-4, 5-5, 5-6, 5-7, 5-8 and 5-9.

B. Revising the titles of Sections 2-1, 2-2, 2-3, 2-4, and 2-5 to read:

2-1 Generally accepted accounting principles.
2-2 Basis of allocation between entities.
2-3 Distribution of revenues and expenses within entities.
2-4 Accounting period.
2-5 Revenue and accounting practices.

C. Removing and reserving the title of section 5, Balance Sheet Account Groupings.

Section 03—[Amended]

3. Section 03, Definitions for Purposes of This System of Accounts and Reports, is amended by:

A. Removing the following definitions: Air carrier, route; Air transportation, supplemental; Exposed net asset position; Exposed net liability position; Express; Foreign currency transactions; Foreign currency translation; Forward exchange contract (forward contract); Interest rate implicit in the lease; Lease, Capital; Lease, direct financing; Lease, leveraged; Lease, operating; Lease, sales-type; Lessee's incremental borrowing rate; Marketable (as applied to an equity security); Market price; Market value (equity security); Minimum lease payments; Net unrealized gain or loss, marketable equity securities portfolio; Realized gain or loss, marketable equity security; Schedule, published; Service, irregular (excluding charter and special); Service, special; Service, tourist; Stop, fuel; and Valuation allowance, marketable equity securities portfolio.

B. Revising the following definitions: Agent, cargo; Air carrier, charter; Airport-to-airport distance; Certificate of Public Convenience and Necessity; Flight, developmental; Freight; Mail, nonpriority; Mail, priority; Person controlling an air carrier; Route, certificated; Section 418 cargo operations; Service, charter; Service, mixed; Service, nonscheduled; Stop, flag; Tariff, published; Traffic, deplaned; Traffic, enplaned; and Weight, passenger.

C. Adding the following new definitions: Department, DOT, and Generally Accepted Accounting Principles (GAAP).

* * * * *

Agency, cargo. Any person (other than the air carrier preforming the direct air

transportation or one of its bona fide regular employees or an indirect air carrier lawfully engaged in air transportation under authority conferred by any applicable part of the Economic Regulations of the Department) who for compensation or profit: (1) Solicits, obtains, receives or furnishes directly or indirectly property or consolidated shipments of property for transportation upon the aircraft of an air carrier subject to this part, or (2) procures or arranges for air transportation of property upon aircraft of an air carrier subject to this part by charter, lease, or any other arrangement.

* * * * *

Air carrier, charter. An air carrier holding a certificate issued under section 401(d)(3) of the Federal Aviation Act of 1958, as amended.

* * * * *

Airport-to-airport distance. The great circle distance between airports, measured in statute miles in accordance with Part 247 of this Chapter.

* * * * *

Certificate of Public Convenience and Necessity. A certificate issued to an air carrier under section 401, of the Act, by the Department of Transportation authorizing the carrier to engage in air transportation.

* * * * *

Department. Department of Transportation.

* * * * *

DOT. Department of Transportation.

* * * * *

Flight, developmental. A flight for (1) the development of a new route either prior or subsequent to certification by the Department of Transportation; (2) the extension of an existing route; or (3) the integration of a new type of aircraft or service.

* * * * *

Freight. Property, other than mail, transported by air.

Generally accepted accounting principles (GAAP). The body of authoritative accounting knowledge governing the recording, presenting and disclosing of financial transactions, as incorporated in the pronouncements of the Financial Accounting Standards Board.

* * * * *

Mail, nonpriority. All mail for which transportation by air is provided on a space available basis.

Mail, priority. All mail for which transportation by air is provided on a priority basis.

* * * * *

Person controlling an air carrier. Any person, as defined in section 101 (32) of the Act, whom the Department has found, in any proceeding, to control an air carrier, or who holds, directly or indirectly, the legal or beneficial ownership of more than 50 percent of the outstanding voting capital stock or capital of an air carrier, and who does not make a proper showing to the Department that he or she does not control the carrier despite such stock ownership, shall be deemed to be a person controlling the carrier for the purpose of this part. A brokerage firm which holds record ownership of securities merely for the convenience of the customer beneficially owning the stock shall not be deemed a person controlling an air carrier.

* * * * *

Route, certificated. The route(s) over which an air carrier is authorized to provide air transportation by a Certificate of Public Convenience and Necessity issued by the Depatment of Transportation pursuant to section 401(d) (1) or (2) of the Act.

* * * * *

Section 418 cargo operations. The carriage, pursuant to section 418 of the Act, by aircraft of property and/or mail as a common carrier for compensation or hire in commerce between a place in any State of the United States, or the District of Columbia, or Puerto Rico, or the U.S. Virgin Islands, and a place in any other of those entities, or between places in the same State or other entity through the air-space over any place outside thereof, or between places within the District of Columbia, Puerto Rico, or the U.S. Virgin Islands. This includes commerce moving partly by aircraft and partly by other forms of transportation, as well as commerce moving wholly by aircraft.

Service, charter. Nonscheduled air transport service in which the party receiving transportation obtains exclusive use of an agreed upon portion of the total capacity of an aircraft with the remuneration paid by the party receiving transportation accruing directly to, and the responsibility for providing transportation is that of, the accounting air carrier.

* * * * *

Service, mixed. Transport service for the carriage of both first-class and coach passengers on the same aircraft.

Service, nonscheduled. Includes transport service between points not covered by Certificates of Public Convenience and Necessity issued by the Department of Transportation to the air carrier; services pursuant to the charter or hiring of aircraft; other revenue services not constituting an integral part of the services performed pursuant to published schedules; and related nonrevenue flights.

* * * * *

Stop, flag. A point on an air carrier's operating system that is scheduled to be served only when traffic is to be picked up or discharged.

* * * * *

Tariff, published. A publication containing fares and rates applicable to the transportation of persons or cargo and rules relating to or affecting such fares or rates of transportation, filed with the Department of Transportation.

* * * * *

Traffic, deplaned. A count of the number of passengers getting off and tons of cargo unloaded from an aircraft. For this purpose, passengers an cargo on aircraft leaving a carrier's system on interchange flights are considered as deplaning and the interchange point; and passengers and cargo moving from one operation to another operation of the same carrier, for which separate reports are required by the Department of Transportation, are considered as deplaning at the junction point.

Traffic, enplaned. A count of the number of passengers boarding and tons of cargo loaded on an aircraft. For this purpose, passengers and cargo on aircraft entering a carrier's system on interchange flights are considered as enplaning at the interchange point; and passengers and cargo moving from one operation to another operation of the same carrier, for which separate reports are required by the Department of Transportation, are considered as enplaning at the junction point.

* * * * *

Weight, passenger. For the purposes of this part, a standard weight of 200 pounds per passenger (including all baggage) is used for all civil operations and classes of service. Other weights may be prescribed in specific instances upon the initiative of the Department of Transportation or upon a factually supported request by an air carrier.

4. Section 1, Introduction to System of Accounts and Reports, is amended by removing Section 1-0, Conversion of this system of accounts and reports; and revising Sections 1-7 and 1-8 to read:

Sec. 1-7 Interpretation of accounts.

To the end that uniform accounting may be maintained, questions involving matters of accounting significance which are not clearly provided for should be submitted to the Director, Office of Aviation Information Management, DAI-1, Research and Special Programs Administration, for explanation, interpretation, or resolution.

Sec. 1–6 Address for reports and correspondence.

All reports required under this part and related correspondence shall be addressed to: Data Administration Division, DAI–20, Office of Aviation Information Management, Room 4125, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C., 20590.

Section 2—[Amended]

5. Section 2, General Accounting Policies, is amended by:

A. Removing Sections 2–3, Transactions in foreign currencies; 2–5, Liability accruals; 2–6, Income tax accruals; 2–7, Extraordinary items, discontinued operations, prior period adjustments and accounting changes; 2–8, Unaudited items; 2–9, Improvements, additions and betterments; 2–10, Capitalization of interest; 2–11, Accounting for transactions in gross amounts; 2–12, Acquisition and valuation of assets; 2–13, Establishment of allowances; 2–14, Depreciation and amortization; 2–15, Contingent assets and contingent liabilities; 2–16, Notes of financial statements; 2–18, Transactions between members of an affiliated group; 2–19, [Reserved]; 2–20, Accounting for leases; and 2–21, Accounting for troubled debt restructurings.

B. Redesignating section 2–1 as section 2–2; redesignating section 2–2 as section 2–3, and section 2–17 as section 2–5; and adding a new section 2–1 to read:

Sec. 2.1 Generally accepted accounting principles.

(a) The accounting provisions contained in this part are based on generally accepted accounting principles (GAAP). Persons subject to this part are authorized to implement, as prescribed by the Financial Accounting Standards Board, newly issued GAAP pronouncements until and unless the Director, Office of Aviation Information Management (OAIM), issues an Accounting Directive making an initial determination that implementation of a new pronouncement would adversely affect the Department's programs.

(b) The Director, OAIM, shall review each newly issued GAAP pronouncement to determine its affect on the Department's regulatory programs. If adopting a specific change in GAAP would adversely affect the Department's programs, the Director will issue the results of the review in the form of an Accounting Directive. The directive will state the reasons why the particular change should not be incorporated in the uniform system of accounts and contain accounting guidance for maintaining the integrity of the Department's air carrier accounting provisions.

(c) Objections and comments relating to the Department's decision not to implement a change in generally accepted principles may be addressed to Director, Office of Aviation Information Management/RSPA, DAI–1, U.S. Department of Transportation, Washington, DC 20590. If significant objections are raised urging adoption of a particular GAAP pronouncement, the Department will institute a rulemaking.

C. Revising paragraph (b) of newly redesignated Sec. 2–2 to read as follows:

Sec. 2–2 Basis of allocation between entities

* * * * *

(b) Each transaction shall be recorded and placed initially under accounting controls of the particular air transport entity or organizational division of the air carrier or member of an affiliated group to which directly traceable. If applicable to two or more accounting entities, a proration shall be made from the entity of original recording to other participating entities on such basis that the statements of financial condition and operating results of each entity are comparable to those of distinct legal entities. The allocations involved shall include all debits and credits associated with each entity.

* * * * *

D. Revising the heading for newly redesignated Sec. 2–4 to read as follows:

* * * * *

Section 3—[Amended]

6. Section 3, *Chart of Balance Sheet Accounts*, is amended by adding general classification 2860 under "Stockholders' equity" to read:

Name of account	General classification
* * * * *	
Stockholders' equity:	
* * * * *	
Subscribed and unissued stock	2860
* * * * *	

7. Section 4, *General*, is amended by revising paragraph (b) to read:

Section 4—[Amended]

* * * * *

(b) The balance sheet accounts prescribed in this system of accounts for each air carrier group are set forth in Section 5, Chart of Balance Sheet Accounts. The balance sheet elements to be included in each account are presented in section 6.

Section 5—[Removed and Reserved]

8. Section 5, Balance Sheet Account Groupings, is removed and reserved.

9. Section 6, Objective Classification of Balance Sheet Elements, is amended by:

A. Revising the description of accounts 1510.1, 1510.2 and 1530 to read:

1510.1 Investments in Investor Controlled Companies

Record here the cost of investments in investor controlled companies except that permanent impairment in the value of securities may be reflected through charges to profit and loss classification 8100, Nonoperating Income or Expense—Net. This account shall also include the equity in undistributed earnings or losses since acquisition. In the event dividends are declared by such companies, the air carrier shall credit this account for its share in dividends declared and debit balance sheet account 1270 Accounts Receivable. This account shall separately state: (a) The cost of such investments at date of acquisition and (b) the equity in undistributed earnings or losses since acquisition.

1510.2 Investments in Other Associated Companies

Record here the cost of investments in associated companies other than investor controlled companies. Cost shall represent the amount paid at the date of acquisition without regard to subsequent changes in the net assets through earnings or losses of such associated companies. However, permanent impairment in the value of securities may be reflected through charges to profit and loss classification 8100, Nonoperating Income or Expense—Net.

1510.3

* * * * *

1530 Other Investments and Receivables

Record here notes and accounts receivable not due within one year, investments in securities issued by others, investments in leveraged leases, the noncurrent net investment in direct financing and sales-type leases, and the allowance for unrealized gain or loss on noncurrent marketable equity securities. Securities held as temporary cash investments shall not be included in this account but in balance sheet account 1100 Short-Term Investments.

Investments in and receivables from associated companies which are not settled currently shall be included in balance sheet account 1510 Investments in Associated Companies.

B. Inserting a paragraph immediately following the center heading, *Operating Property and Equipment* to read:

Operating Property and Equipment

"Operating Property and Equipment" shall encompass items used in air transportation services and services related thereto.

C. Revising paragraph (a) of account 1601 to read:

1601 Airframes

(a) Record here the total cost to the air carrier of airframes of all types and classes together with the full complement of instruments, appurtenances and fixtures comprising complete airframes including accessories necessary to the installation of engines and flight control and transmission systems, except as specifically provided otherwise in accounts 1602 and 1607. Also record here in separate subaccounts the costs of airframes overhauls accounted for on a deferral and amortization basis.

* * * * *

D. Revising paragraph (a) of account 1602 to read:

1602 Aircraft Engines.

(a) Record here the total cost to the air carrier of complete units of aircraft engines of all types and classes together with a full complement of accessories, appurtenances, parts and fixtures comprising fully assembled engines as delivered by the engine manufacturer ready for operation in test but without the accessories necessary to its installation in airframes. Also record here in separate subaccounts the costs of aircraft engine overhauls accounted for on a deferral and amortization basis.

* * * * *

E. Revising the description of account 1607 to read:

1607 Improvements to Leased Flight Equipment.

Record here the total cost incurred by the air carrier for modification, conversion or other improvements to leased flight equipment. Also record here, in separate subaccounts, the costs of airframe and aircraft engine overhauls of leased aircraft accounted for on a deferral and amortization basis.

F. Revising paragraph (a) of account 1608 to read:

1608 Flight Equipment Rotable Parts and Assemblies.

(a) Record here the total cost to the air carrier of all spare instruments, parts, appurtenances and subassemblies related to the primary components of flight equipment units provided for in balance sheet accounts 1601 through 1607, inclusive. This account shall include all parts and assemblies of material value which are rotable in nature, are generally reserviced or repaired, are used repeatedly and possess a service life approximating that of the property type to which they relate. Items of an expendable nature which generally may not be repaired and reused, shall not be recorded in this account but in account 1300 Spare Parts and Supplies. Except for recurrent service sales, flight equipment parts recorded in this account shall not be charged to operating expenses as retired. Profit or loss on sales of parts as a routine service to others shall be included in profit and loss account 14 General Service Sales, and parts sold shall be removed from this account at full cost irrespective of any allowance for depreciation which has been provided.

* * * * *

G. Revising paragraph (a) and the note following paragraph (b) of account 1629 to read:

1629 Flight Equipment Airworthiness Allowances.

(a) Record here accumulated provisions for overhauls of flight equipment.

* * * * *

Note.—At the option of the air carrier, the number "2629" may be assigned to this account for accounting purposes. However, for purposes of reporting on RSPA Form 41, the balance in this account shall be reported under account "1629."

H. Revising paragraphs (a) through (h) of account 1630 to read:

1630 Equipment.

* * * * *

(a) Equipment assigned to aircraft or active line operations as opposed to items held in stock for servicing passengers such as broilers, bottleware, dishes, food boxes, thermos jugs, blankets, first aid kits, etc. Spare items shall be carried in balance sheet account 1300 Spare Parts and Supplies and shall be charged directly to expense upon withdrawal from stock for replacing original complements.

(b) Equipment used in restaurants and kitchens.

(c) Equipment of all types and classes used in enplaning and handling traffic and in handling aircraft while on ramps, including motorized vehicles used in ramp service. Classes of equipment used interchangeably between handling aircraft on ramps and in maintaining aircraft may be classified in accordance with normal predominant use.

(d) Nonairborne equipment of all types and classes used in meteorological and communication services which is not a part of buildings.

(e) Equipment of all types and classes including motorized vehicles used in engineering and drafting services and in maintaining, overhauling, repairing and testing other classes of property and equipment.

(f) Property and equipment of all types and classes used in ground and marine transportation services.

(g) Property and equipment of all types and classes used in storing and distributing fuel, oil and water, such as fueling trucks, tanks, pipelines, etc.

(h) All other ground equipment of all types and classes such as medical, photographic, employees' training equipment, and airport and airway lighting equipment.

I. Revising the descriptions of accounts 1636, 1640 and 1679 to read:

1636 Furniture, Fixtures, and Office Equipment.

Record here the total cost to the air carrier of furniture, fixtures and office equipment of all types and classes wherever used or located.

1640 Buildings.

Record here the total cost to the air carrier of owned buildings, structures and equipment and related improvements. Each air carrier shall maintain the following subaccounts in which the values fairly assignable to maintenance and other operations shall be separately recorded:

1640.1 Maintenance Buildings and Improvements.
1640.9 Other Buildings and Improvements.

1679 Land.

Record here the initial cost and the cost of improving land.

J. Revising paragraph (a) of account 1689 to read:

1689 Construction Work in Progress.

(a) Record here all direct and indirect costs of the air carrier that are expended for constructing and readying property and equipment of all types and classes for installation in operations. The amount reported shall reflect all such expenses that are accumulated to the balance sheet date. Where properly includable in the property and

equipment classification, record here also the accumulated costs for uncompleted overhauls of airframes, aircraft engines, or other material units of property.

* * * * *

K. Revising paragraph (a) of account 1695 to read:

1695 Leased Property Under Capital Leases.

(a) Record here the total costs to the air carrier for all property obtained under capital leases.

* * * * *

L. Revising paragraph (a) of account 1696 to read:

1696 Leased Property Under Capital Leases—Accumulated Amortization.

(a) Record here accruals for amortization of leased property obtained under capital leases.

* * * * *

M. Adding a paragraph after the center heading "Nonoperating Property and Equipment" to read:

Nonoperating Property and Equipment

"Nonoperating Property and Equipment" includes investments in property and equipment not separately accounted for within a nontransport division but assigned to other than air transportation and transport-related services, and property and equipment held for future use.

N. Revising the descriptions of accounts 1797, 1798 and 2060 to read:

1797 Property on Operating-type Lease to Others and Property Held for Lease.

Record here the total cost to the air carrier of property on operating-type lease to others and property held for lease.

1798 Property on Operating-type Lease to Others and Property Held for Lease—Accumulated Depreciation.

Record here accruals for depreciation of property on operating-type leases to others and property held for lease.

2060 Current Obligations Under Capital Leases.

Record here the total current liability applicable to property obtained under capital leases.

O. Revising paragraph (b) of account 2120 to read:

2120 Accrued Vacation Liability.

* * * * *

(b) This account shall be credited and the applicable personnel compensation expense account concurrently charged with the cost of any lag between vacations accrued and vacations taken. Accruals may be based upon standard rates of lag, if such standard rates are verified by physical inventory and adjusted accordingly at least once each calendar year. Adjustments of balances in this account shall be cleared to applicable compensation expense accounts.

P. Revising the descriptions of accounts 2130, 2210, 2260, 2340 and 2345 to read:

2130 Accrued Taxes.

(a) Record here accruals for currently payable income and other forms of taxes which constitute a charge borne by the air carrier as opposed to those collected as an agent for others.

(b) Each air carrier shall disclose in the footnotes of its RSPA Form 41 for each calendar quarter whether utilized credits are accounted for by the flow-through method or the deferred method. The method selected shall be consistently followed by the carrier.

2210 Long-Term Debt.

(a) Record here the face value of principal amount of debt securities issued or assumed by the air carrier and held by other than associated companies, which has not been retired or cancelled and is not payable within 12 months of the balance sheet date.

(b) In cases where debt coming due within 12 months is to be refunded, or where payment is to be made from assets of a type not properly classifiable as current, the amount payable shall not be removed from this account. In addition, this account shall include short-term debt obligations when both the intent to refinance the short-term obligations on a long-term basis is established and the ability to consummate this refinancing can be demonstrated.

2260 Noncurrent Obligations under Capital Leases.

Record here the total noncurrent liability applicable to property obtained under capital leases.

2340 Deferred Income Taxes.

Record here credits and debits representing the net tax effect of material timing differences originating and reversing in the current accounting period, giving appropriate recognition to the portion of investment tax credits which would have been allowed if taxes were based on pretax accounting income by a reduction of the deferred tax provision.

2345 Deferred Investment Tax Credits.

Record here investment tax credits utilized as reduction of tax liabilities, when the carrier exercises the option to defer such credits for amortization over the service life of the related equipment.

Q. Removing account 2950, Net Unrealized Loss on Noncurrent Marketable Equity Securities.

R. Revising paragraph (a) of account 2990 to read:

2990 Treasury Stock.

(a) Record here the cost of capital stock issued by the air carrier reacquired by it and not retired or canceled.

* * * * *

Section 7—[Amended]

10. Section 7, Chart of Profit and Loss Accounts, is amended by removing accounts 15, Mutual Aid; 15.1, Receipts; and 15.2, Payments.

Section 8—[Amended]

11. Section 8, General, is amended by revising paragraphs (d)(1)(i), (d)(2)(i), (d)(5), (d)(6), and (d)(7) to read:

* * * * *

(d) * * *

(1) *Operating revenues.* (i) This primary classification shall include revenues of a character usually and ordinarily derived from the performance of air transportation and air transportation-related services, which relate to services performed during the current accounting year, and adjustments of a recurrent nature applicable to services performed in prior accounting years.

* * * * *

(2) *Operating expenses.* (i) This primary classification shall include expenses of a character usually and ordinarily incurred in the performance of air transportation and air transportation-related services, which relate to services performed during the current accounting year, and adjustments of a recurring nature attributable to services performed in prior accounting years.

* * * * *

(5) *Discontinued operations.* This primary classification (9600) shall include earnings and losses of discontinued nontransport operations and gains or losses from the disposal of nontransport operations the result of which are customarily accounted for through profit and loss objective accounts 86, 87 and 88.2.

(6) *Extraordinary items.* This primary classification (9700) shall include material items characterized by their unusual nature and infrequent occurrence.

(7) *Cumulative effect of changes in accounting principles.* This primary classification (9800) shall include the cumulative effect of material changes in accounting principles.

Section 10—[Amended]

12. Section 10, Functional Classification—Operating Expenses of Group I Air Carriers, is amended by:

A. Amending account 5400, paragraph (e) by revising paragraph c. of account 5300 to read:

5400 Maintenance

* * * * *

(e) * * *

5300 Maintenance Burden.

* * * * *

c. This subfunction shall include only those expenses attributable to the current air transport operations of the air carrier. Maintenance burden associated with capital projects of the air carrier, other than overhauls of airframes and aircraft engines shall be allocated to such projects. Maintenance burden incurred in common with services to other companies and operating entities shall be allocated to such services on a pro rata basis unless the services are so infrequent in performance or small in volume as to result in no appreciable demands upon the air carrier's maintenance facilities. When overhauls of airframes or aircraft engines are as a consistent practice accounted for on an accrual basis instead of being expensed directly, maintenance burden shall be allocated to such overhauls on a pro rata basis. Standard burden rates may be employed for quarterly allocations of maintenance burden provided the rates are reviewed at the close of each calendar year. When the actual burden rate for the year differs materially from the standard burden rate applied, adjustment shall be made to reflect the actual cost incurred for the full accounting year. Allocations of maintenance burden to capital projects, and service sales to others shall be made through the individual maintenance burden objective accounts, except that the air carrier may make such allocations by credits to profit and loss account 77 Uncleared Expense Credits provided that use of that account will not undermine the significance of the individual maintenance burden objective accounts in terms of the expense levels associated with the air carrier's air transport services. Maintenance burden allocated to overhauls shall be credited to profit and loss subaccounts 5372.1 or 5372.6 Airworthiness Allowance Provisions.

B. By revising the description of account 7000 to read:

7000 Depreciation and Amortization.

This function shall include all charges to expense to record losses suffered through current exhaustion of the serviceability of property and equipment due to wear and tear from use and the action of time and the elements, which are not replaced by current repairs, as well as losses in serviceability caused by obsolescence, supersession, discoveries, change in demand or actions by public authority. It shall also include charges for the amortization of capitalized developmental and preoperating costs, leased property under capital leases and other intangible assets applicable to the performance of air transportation. (See sections 6–1696, 1830 and 1890.)

Section 11—[Amended]

13. Section 11, *Functional Classification—Operating Expenses of Group II and Group III Air Carriers,* is amended by:

A. Amending account 5400, paragraph (e) by revising paragraph c. of account 5300 to read:

5400 Maintenance.

* * * * *

(e) * * *

5300 *Maintenance Burden.*

* * * * *

c. This subfunction shall include only those expenses attributable to the current air transport operations of the air carrier. Maintenance burden associated with capital projects of the air carrier, other than overhauls of airframes and aircraft engines, shall be allocated to such projects. Maintenance burden incurred in common with services to other companies and operating entities shall be allocated to such services on a pro rata basis unless the services are so infrequent in performance or small in volume as to result in no appreciable demands upon the air carrier's maintenance facilities. When overhauls of airframes or aircraft engines are as a consistent practice accounted for on an accrual basis instead of being expensed directly, maintenance burden shall be allocated to such overhauls on a pro rata basis. Standard burden rates may be employed for quarterly allocations of maintenance burden provided the rates are reviewed at the close of each calendar year. When the actual burden rate for the year differs materially from the standard burden rate applied, adjustment shall be made to reflect the actual costs incurred for the full accounting year. Allocations of maintenance burden to capital projects, and service sales to others shall be made through the individual maintenance burden objective accounts, except that the air carrier may make such allocations by credits to profit and loss account 77 Uncleared Expense Credits under such circumstances in which the use of that account will not undermine the significance of the individual maintenance burden objective accounts in terms of the expense levels associated with the air carrier's air transport services. Maintenance burden allocated to overhauls shall be credited to profit and loss subaccounts 5372.1 or 5372.6 Airworthiness Allowance Provisions.

B. By revising the description of account 7000 to read:

7000 Depreciation and Amortization.

This function shall include all charges to expense to record losses suffered through current exhaustion of the serviceability of property and equipment due to wear and tear from use and the action of time and the elements, which are not replaced by current repairs, as well as losses in serviceability occasioned by obsolescence, supersession, discoveries, change in popular demand or action by public authority. It shall also include charges for the amortization of capitalized developmental and preoperating costs, leased property under capital leases, and other intangible assets applicable to the performance of air transportation. (See sections 6–1696, 1830 and 1890.)

Section 12—[Amended]

14. Section 12, Objective Classification—Operating Revenues and Expenses, is amended by:

A. Revising paragraphs (a) and (c) of account 05 to read:

05 Mail.

(a) Record here revenue from the transportation by air of both United States and foreign mail.

* * * * *

(c) This account shall be subdivided as follows by all air carrier groups:

05.1 *Priority.*
Record here revenue from United States mail for which transportation by air is provided on a priority basis.

05.2 *Nonpriority.*
Record here revenue from United States mail for which transportation by air is provided on a space available basis.

05.3 *Foreign.*
Record here revenue from the transportation by air of mail other than United States mail.

B. Revising the description of account 08 to read:

08 Public Service Revenues (Subsidy).

Record here amounts of compensation received pursuant to the provisions of section 419 of the Federal Aviation Act under rates established by the Department of Transportation for the provision of essential air service to small communities.

C. Removing the account title and description of account 15, Mutual Aid.

D. Revising paragraph (a) of account 39 to read:

39 Traffic Commissions.

(a) Record here charges by others, including associated companies, for commissions arising from sales of transportation. Commissions, fees or other charges incurred for general

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agency services, as opposed to commissions arising from sales of transportation, shall not be included in this account but in profit and loss account 43 General Services Purchased.

* * * * *

E. Revising the description of account 58 to read:

58 Injuries, Loss and Damage.

Record here the remainder of gains, losses or costs resulting from accidents, casualties or mishandlings, after offsetting insurance recoveries, as accumulated until finally determined in balance sheet account 1890 Other Assets and Deferred Charges. This account shall not include gains or losses from retirement of property and equipment resulting from casualties. Such gains or losses shall be recorded in appropriate capital gains or losses accounts.

F. Revising the description of account 61 to read:

61 Foreign Exchange Gains and Losses.

Record here gains or losses from transactions involving currency translations resulting from normal, routine, current fluctuations in rates of foreign exchange. Gains or losses of a nonroutine abnormal character and gains or losses which arise from long-term debt principal and interest transactions shall not be entered in this account but in profit and loss account 85, Foreign Exchange Gains and Losses.

G. Revising paragraph (b) of account 74 to read:

74 Amortization.

* * * * *

(b) This account shall be subdivided as follows by all air carrier groups:

74.1 *Developmental and Preoperating Expenses*

Record here amortization of the cost of projects carried in balance sheet account 1830 Unamortized Developmental and Preoperating Costs.

74.2 *Other Intangibles.*

Record here mortization of the cost of intangibles not provided for otherwise.

Section 14—[Amended]

15.A. Section 14, Objective Classification—Nonoperating Income and Expense, account 82, paragraph (a), is amended by revising the description of accounts 83.1, 83.2, 83.3, 83.4 to read:

82 Other Interest.

(a) * * *

83.1 *Imputed Interest Capitalized—Credit.*

Record here credits related to imputed interest capitalized and recorded in asset accounts.

83.2 *Imputed Interest Deferred—Debit.*

Record here debits related to imputed interest deferred in balance sheet account 2390, Other deferred credits.

83.3 *Imputed Interest Deferred—Credit.*

Record here periodic credits for imputed interest, cleared to this account as the amount of such interest in the asset accounts is amortized.

83.4 *Interest Capitalized—Credit.*

Record here interest which is capitalized and recorded in asset accounts.

* * * * *

B. Account 85 is revised to read as follows:

85 Foreign exchange gains and losses.

Record here gains and losses from transactions involving currency translations resulting from nonroutine abnormal changes in rates of foreign exchange and gains or losses which arise from translations of long-term debt principal and interest transactions.

C. Account 89, paragraph (b), is amended by revising 88.1, 88.3, 88.4, and 89.1 to read as follows:

89 Other nonoperating income and expense—net.

* * * * *

(b) * * *

88.1 *Intercompany Transaction Adjustment—Credit.*

Record here all intercompany credits for any differences between amounts at which transactions between the air carrier and its nontransport divisions or associated companies are initially recorded and are to be settled.

* * * * *

88.3 *Net Unrealized Gain or Loss on Marketable Equity Securities.*

Record here the net unrealized gain or loss on the valuation of marketable equity securities.

88.4 *Net Realized Gain or Loss on Marketable Equity Securities.*

Record here the net realized gain or loss on the valuation of marketable equity securities.

* * * * *

89.1 *Intercompany Transaction Adjustment—Debit.*

Record here all intercompany debits for any differences between amounts at which transactions between the air carrier and its nontransport divisions or associated companies are initially recorded and are to be settled.

* * * * *

Section 15—[Amended]

16. Section 15, Objective Classification—Income Taxes for Current Period, is amended by revising the description of account 91 to read:

91 Provision for Income Taxes.

(a) Record here quarterly provisions for accruals of Federal, State, local, and foreign taxes based upon net income, computed at the normal tax and surtax rates in effect during the current accounting year. In general, this account shall reflect provisions within each period for currently accruing tax liabilities as actually or constructively computed on tax returns, and any subsequent adjustments. This account shall include credits for refund claims arising from the carryback of losses in the year in which the loss occurs, credits for the carry-forward of losses in the year to which the loss is carried, and investment tax credits in the year in which each credit is utilized to reduce the liability for income taxes.

(b) Income taxes shall be allocated among the transport entities of the air carrier, its nontransport divisions, and members of an affiliated group. Under circumstances in which income taxes are determined on a consolidated basis by an air carrier and other members of an affiliated group, the income tax expense to be recorded by the air carrier shall be the same as would result if determined for the air carrier separately for all time periods, except that the tax effect of carryback and carryforward operating losses, investment tax credits, or other tax credits generated by operations of the air carrier shall be recorded by the air carrier during the period in which applied in settlement of the taxes otherwise attributable to any member, or combination of members, of the affiliated group. Any difference between the income tax so recorded and the amount at which settlement is to be made shall be recorded in subaccount 88.1 Intercompany Transaction Adjustment—Credit or in subaccount 89.1 Intercompany Transaction Adjustment—Debit, as is appropriate.

(c) This account shall be subdivided as follows by all carrier groups:

91.1 *Income Taxes Before Investment Tax Credits.*

Record here accruals of income taxes based upon taxable income of the period.

91.2 *Investment Tax Credits Utilized.*

Record here investment tax credits utilized to reduce the accrued liability for income taxes.

Section 17—[Amended]

17. Section 17, Objective Classification—Extraordinary Items, is amended by revising the description of account 96 to read:

96 Extraordinary Items.

Record here material items characterized by their unusual nature and infrequent occurrence. Events or transactions which are material and either unusual or nonrecurring, but not both, shall be recorded in the profit and loss accounts to which they relate and disclosed on RSPA Form 41 Schedule P-2 with identification as to their nature and financial effects.

Section 24—[Amended]

18. Section 24, Profit and Loss Elements, is amended by:

A. Revising the title and paragraph (e), and removing paragraphs (f) through (p) to Schedule P–2 to read:

Schedule P–2—Notes to RSPA Form 41 Report

* * * * *

(e) Each scheduled air carrier shall include on this schedule a description of each interruption in air transport operations, the aggregate effect of which is ten (10) percent or more of the scheduled revenue plane-miles which, except for the interruption, would have been operated during the month or either of 2 consecutive months affected. The information to be reported for each such interruption in operations shall consist of:

(1) For the report period in which partial or complete interruption first occurs, the nature of the interruption and dates of partial and/or complete cessation of operations, as applicable;

(2) For each report period until full resumption of operations, an estimate of the revenue plane-miles canceled in each month of the quarter because of the interruption; and

(3) For the report period in which scheduled operations are resumed, dates of partial and/or complete resumption, as applicable.

B. Adding paragraph (f) of Schedule P–5.2 to read:

Schedule P–5.2—Aircraft Operating Expenses

* * * * *

(f) Item 79.6 "Applied Maintenance Burden" shall reflect a memorandum allocation by each air carrier of the total expenses included in subfunction 5300 "Maintenance Burden" between maintenance of flight equipment, by aircraft type, and maintenance of ground property and equipment. The allocation of subfunction 5300 (maintenance burden) shall include the net effect of charges and credits to profit and loss account 5272 Flight Equiment Airworthiness Provisions.

* * * * *

Issued in Washington, DC on January 27, 1989.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration, DOT.

[FR Doc. 89–2445 Filed 2–3–89; 8:45 am]

BILLING CODE 4910-62-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

Statement of the Commodity Futures Trading Commission Regarding Disclosure by Commodity Pool Operators of Past Performance Records and Pool Expenses and Request for Comments

AGENCY: Commodity Futures Trading Commission.

ACTION: Interpretive Statement and Request for Comments.

SUMMARY: The Commodity Futures Trading Commission is publishing this interpretive statement and request for comments in order to assist commodity pool operators in complying with requirements concerning the disclosure of past performance records and pool expenses.

DATE: Comments should be received on or before April 7, 1989.

ADDRESS: Please submit written comments to the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Tobey W. Kaczensky, Associate Director, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254–6955.

SUPPLEMENTARY INFORMATION: The Commodity Futures Trading Commission ("CFTC" or "Commission") is today reminding commodity pool operators ("CPOs") who solicit participations, or accept or receive funds, securities or other property in respect of participations, in publicly offered commodity pools registered under the Securities Act of 1933 (the "Securities Act") [1] or the Securities Exchange Act of 1934 ("Exchange Act") [2] of certain disclosure obligations under the Commodity Exchange Act (the "CEA"),[3] as more particularly set forth in Part 4 of the CFTC's regulations.[4] This interpretive statement and request for comments is being issued simultaneously with a companion release of the Securities and Exchange Commission ("SEC") generally addressing the same issues.[5] The CFTC, to the extent applicable, incorporates by reference the views expressed by the SEC in its interpretive statement. Commenters may wish to make the same submission to both agencies. The companion statements reflect a continuing effort on behalf of the CFTC and the SEC to maintain consistent, coordinated requirements for publicly offered commodity pools.

I. Background

Part 4 of the CFTC's regulations contains comprehensive disclosure requirements for CPOs.[6] Among other things, Part 4 requires that a current "Disclosure Document" be delivered to each prospective pool participant prior to the solicitation of the participant or the participant's commitment of funds to a pool.[7] This Disclosure Document also must be filed with the CFTC twenty-one days prior to its first use.[8] Under Commission rules, pool disclosure documents must address specifically the management policies of the pool and how the pool will be traded and operated including, without limitation: the five-year business background of its CPOs, CTAs and their respective principals; the financial interests of such persons in the specific pool being offered; and any actual or potential conflict of interest involving, or any material civil, criminal or administrative action against, any CPO, CTA or the principals of either within the preceding five years. Additionally, the document must indicate: the minimum aggregate amount of funds that must be received before the pool will commence trading; the responsibility, if any, of participants to contribute additional capital; and the pool's policies concerning distributions from profits or capital.[9]

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[1] 15 U.S.C. 77a.

[2] 15 U.S.C. 78a.

[3] 7 U.S.C. 1.

[4] 17 CFR Part 4 (hereinafter, all references to CFTC regulations will use the appropriate CFR citation).

[5] This release principally addresses issues raised in the context of public pools. However, given the fact that the CEA and CFTC regulations thereunder generally apply equally to private pools and to public pools, the views expressed herein, unless otherwise specified, also apply to private pools.

[6] The CEA defines a "commodity pool operator" as "any person engaged in a business which is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in any commodity for future delivery on or subject to the rules of a contract market . . ." 7 U.S.C. 2. The CEA defines a "commodity trading advisor" ("CTA") as "any person who, for compensation or profit, engages in the business of advising others . . . as to the value of or the advisability of trading in any contract of sale of a commodity for future delivery made or to be made on or subject to the rule of a contract market . . ." 7 U.S.C. 2.

[7] 17 CFR 4.21(a). A "pool" is defined as "any investment trust, syndicate, or similar form of enterprise operated for the purpose of trading commodity interests." 17 CFR 4.10(d).

[8] 17 CFR 4.21(g).

[9] 17 CFR 4.21(a)(8) and 4.21(a)(12).

Part 4 of the CFTC's regulations also specifically requires disclosure of the actual performance record (*i.e.*, the past performance history) of the pool's CPO, CTAs and their respective principals.[10] Such disclosures must include the past performance history of *all* pools, public or private, as well as that of individual accounts operated or traded by the CPO and its CTAs. Part 4 separately requires a complete description of each kind of expense that may be charged to a pool or its participants which specifies whether such expenses are actual or estimated.[11]

Part 4 also contains a specified risk disclosure statement which warns that a pool participant may lose his or her entire interest in the pool and that pools may be subject to significant charges so that substantial trading profits may be required to avoid the depletion or exhaustion of pool assets.[12]

The National Futures Association ("NFA"), which is the self-regulatory organization ("SRO") responsible, under CFTC oversight, for CPO and CTA compliance with the CFTC's disclosure requirements, has adopted additional rules approved by the CFTC that pertain to pool disclosures. For example, NFA rules prohibit the use of promotional material which includes any reference to actual past trading profits without a statement that "past results are not necessarily indicative of future results * * *."[13] NFA generally requires that this statement be included in the disclosure document adjacent to the performance table and the Commission believes that it should appear in bold face print and in a prominent place immediately preceding the past performance tables required by Part 4.

In any event, CFTC regulations expressly require that a CPO make *all material* disclosures when offering pool participations.[14] As a consequence, to assist CPOs, the CFTC is publishing these views on certain types of disclosures which should be considered material in connection with past performance and pool expense information required to be disclosed to pool participants in order that such required disclosures are not misleading. Additionally, the CFTC is requesting comment on matters related to the presentation of prior performance data by CPOs and CTAs and the presentation of the fees, commissions and expenses incurred by pools. Although the positions expressed in this release reflect the CFTC's views regarding appropriate disclosure in pool disclosure documents, the CFTC is interested in receiving comments on the interpretive positions and other issues set forth herein. The CFTC, in consultation with the SEC, will review the comments received in response to this release with a view toward determining whether further action in addition to this statement is appropriate.

II. Commodity Pool Participation and Performance

In recent years, the futures markets have grown both in volume and in the diversity of products traded thereon, especially the financial, foreign currency and equity-related products. The commodity pool is an increasingly popular means of participation in these markets by the individual customer. In a typical commodity pool, the promoter or CPO pools participants' funds and uses a portion thereof to margin futures positions held by the pool.[15] Trading decisions for the commodity pool generally are made by one or more CTAs selected by the CPO.

The disclosure document provided to pool participants must meet applicable registration, disclosure, antifraud and other requirements of the federal securities laws as well as comply with the CEA and all applicable CFTC regulations.[16] Persons who propose to offer participations in public commodity pools should carefully review the requirement that, in addition to the specific disclosures required by Part 4 of the CFTC's regulations, CPOs must disclose all material information to existing and prospective pool participants.[17]

Certain recently published studies suggest that the actual performance of CTAs employed by publicly held commodity pools was significantly poorer than their previous performance as disclosed in the prior performance tables included in those pools' disclosure documents.[18] CFTC staff is currently reviewing the study results and will investigate possible reasons for the differences in performance reported by the authors if available data permits. To the extent that significant differences exist between the past performance records required to be disclosed in a particular pool disclosure document and the actual subsequent performance of that pool, such differences may be the result of differences between the trading and money management strategies of the current pool and those of the pool or pools previously offered by the relevant CPO or CTAs. For example, it would not be uncommon for significant differences to exist in the proportion of funds committed to margin futures positions and, thus, in the ratio of trading margin to overall equity.[19]

Pending completion of its review of the recently published studies, the CFTC recommends that special attention be given to disclosures in the following areas.

III. Performance Reporting

A. Length of Period Covered by Performance Tables

As mentioned above, CFTC Regulation 4.21 requires that the disclosure document provided to prospective pool participants include, among other things, information with respect to the actual performance of previously operated commodity pools and trading accounts of the CPO, the CTA, and their respective principals. Such prior performance tables must be provided for at least the lesser of three years or the life of the commodity pool or individual trading account for which the performance data are provided.[20] Beyond the required three years, CPOs have discretion to elect to provide historical performance data for additional time periods subject to the obligation to disclose all material information and to the antifraud provisions of the CEA.[21] Where performance history in excess of the required three years is provided for either the CPO or CTA, the CPO must ensure that the additional performance data is not selected in such a way as to misrepresent the overall performance history of the CPO or CTA.[22] In addition, where performance history for periods greater than three years is shown, the CFTC staff generally has advised that at least five years' performance or the entire performance history, if it is available, should be presented. In this connection, the CFTC notes that a CPO is required to maintain all pool records for at least five years.[23]

Comment is requested as to whether the presentation of prior performance data in excess of the currently required three years is useful to participants in making the decision to purchase a pool participation. If so, further comment is requested as to whether the CPO should be required to present the performance history of the CPO and CTA for a longer period such as five years or more, if such performance history is available. In addressing this issue, commenters should discuss specifically those factors that would cause a presentation covering more than three years to be relevant to potential participants in a currently offered pool. The CFTC also requests comment generally on the extent to which the presentation of prior performance may be useful to persons in deciding whether to purchase an interest in a given pool offering in view of the general nonpredictability of trading results.

B. Periodic Reporting

CFTC regulations require that the prior performance of a pool's CPO and CTA be presented on at least a quarterly basis.[24] However, in the CFTC's view, performance disclosure on a monthly basis may be more appropriate, particularly when such monthly performance is volatile.

The CFTC believes that a majority of CPOs and CTAs affiliated with publicly offered commodity pools currently maintain records and present performance history in their disclosure documents on a monthly basis. The CFTC recommends that all CPOs and CTAs affiliated with, or contemplating an affiliation with, a publicly offered commodity pool should, if not currently doing so, consider maintaining records of past performance and presenting such performance on a monthly basis. Moreover, to facilitate a pool participant's review and analysis of prior performance presentations, all prior performance tables for the CPO and its CTAs should be shown, to the extent possible, in a consistent format. Comment is requested as to whether monthly performance reporting should be required in all cases.

C. Composite Performance

CFTC regulations permit prior performance disclosure to be made on either an individual or a composite basis.[25] If a composite presentation is elected, separately captioned composites of previously traded public pools of the CPO and its CTAs may be appropriate when differences between the performance of such public pools and any private accounts are material.[26] Comment is requested as to whether there should be a separate presentation of prior public pool performance of the CPO and its CTAs in all cases or whether a textual explanation of the differences in such account performance may be sufficient in some circumstances. Specifically, the CFTC requests comment on whether performance disclosure in public pool disclosure documents should be limited to the prior performance of publicly offered pools or whether the performance of publicly offered pools should be highlighted.

To enable a participant better to evaluate prior performance presentations, prior performance tables in a public pool disclosure document should be accompanied by textual disclosure regarding any material differences in trading objectives for the pools or trading accounts displayed in the prior performance tables and those objectives for the pool for which the disclosure document is being distributed.[27] For example, specific disclosure should be considered where the margin-to-equity ratio of the commodity pools of trading accounts on which historical performance data are based is materially different from that which will be permitted in the currently offered commodity pool or where there are other material differences in how the current pool will be traded.

Comments are requested concerning what other factors may be relevant to properly interpreting the information contained in the prior performance tables. Comments are also requested as to whether requiring monthly performance disclosure and improving the rate of return calculations as discussed below would be sufficient to address the issues raised above.

D. Additions and Withdrawals and the Rate-of-Return Calculation

The CFTC's regulations require that CPOs and CTAs also present performance in terms of the rate of return for the period contained in the performance table by dividing net performance for the period by the beginning net asset value ("BNAV") for that period.[28] The CFTC chose this formula over more complex measures in order to minimize computational and reporting burdens upon CPOs. This approach assumes that additions or withdrawals are ordinarily made at the beginning of a reporting period. However, as that may not be the case in practice, this method may result in unjustifiably high or low rates of return. If average daily equity ("ADE") were used as a divisor, or adjustments were made to BNAV to achieve a closely equivalent result, the rate of return may be affected less by the timing of additions and withdrawals. The CFTC staff has accepted such alternate presentations where it has been demonstrated that timing differences with respect to additions and withdrawals would materially distort performance.

The CFTC requests comment on the feasibility of requiring that rates of return be computed by dividing net performance by ADE. The CFTC also requests comment as to whether the use of BNAV still should be permitted when the effects of using one measure in preference to the other would not materially affect the rate of return. In this connection, comment is sought specifically on the feasibility of establishing a standard which would

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[10] 17 CFR 4.21(a)(4) and 4.21(a)(5).

[11] 17 CFR 4.21(a)(7). This requirement includes, without limitation, an itemization of fees for management, trading advice, brokerage commissions, legal advice, accounting services and organizational services. That Regulation also requires the disclosure of any expense which has been or is to be paid by a person other than the CPO. 17 CFR 4.21(a)(17)(iv). When any expense is determined by reference to "net assets," "gross profits," "net profits" or "net gains", the CPO must define that term. 17 CFR 4.21(a)(7)(ii).

[12] 17 CFR 4.21(a)(17). The Risk Disclosure Statement must appear as the only language on the page immediately following the cover page and must contain specified language including, in part, the following statements:

YOU SHOULD CAREFULLY CONSIDER WHETHER YOUR FINANCIAL CONDITION PERMITS YOU TO PARTICIPATE IN A COMMODITY POOL. YOU MAY LOSE A SUBSTANTIAL PORTION OR EVEN ALL OF THE MONEY YOU PLACE IN THE POOL.

IN CONSIDERING WHETHER TO PARTICIPATE IN A COMMODITY POOL, YOU SHOULD BE AWARE THAT TRADING COMMODITIES CAN QUICKLY LEAD TO LARGE LOSSES AS WELL AS GAINS. SUCH TRADING LOSSES CAN SHARPLY REDUCE THE NET ASSET VALUE OF THE POOL AND CONSEQUENTLY THE VALUE OF YOUR INTEREST IN THE POOL. ALSO, MARKET CONDITIONS MAY MAKE IT DIFFICULT OR IMPOSSIBLE FOR THE POOL TO LIQUIDATE A POSITION.

[13] NFA Compliance Rule 2-29(b)(5). Further, NFA Compliance Rule 2-29(g) includes disclosure documents within the definition of promotional material. Moreover, NFA Compliance Rule 2-13 adopts the CFTC's Part 4 regulations by reference.

[14] A CPO is required to disclose all material information to existing or prospective pool participants even if such information is not otherwise specifically required by Part 4. 17 CFR 4.21(h).

[15] *See* 1 P. Johnson, *Commodities Regulation* § 1.15, at 82 (1982).

[16] *See* 7 U.S.C. 6m(2), 15 U.S.C. 77b(1) and 15 U.S.C. 78c(a)(10).

[17] *See* n.14, *supra*.

[18] *See* Elton, Gruber and Rentzler, *New Public Offerings, Information and Investor Rationality: The Case of Publicly Offered Funds*, 62 J. Bus. 1, 1-15 (January 1989); *see also* Edwards, *Commodity Pool Performance: Is the Information Contained in Pool Prospectuses Useful?*, Working Paper Series No. 16, Center for the Study of Futures Markets, Columbia Business School (January 1988).

[19] *Id.*

[20] 17 CFR 4.21(a)(4)(i) and 4.21(a)(5)(i).

[21] *See* 17 CFR 4.21(a)(4), 17 CFR 4.21(h) and 7 U.S.C. 6o.

[22] 17 CFR 4.21(a)(4), 4.21(a)(5) and 4.21(h).

[23] 17 CFR 4.23 and 1.31.

[24] 17 CFR 4.21(a)(4)(ii) and 4.21(a)(5)(ii).

[25] 17 CFR 4.21(a)(4)(iv) and 4.21(a)(5)(iii).

[26] The CFTC has been advised that such differences are likely if the private account performance reflected proprietary trading. *See also* 17 CFR 4.21(a)(4)(iv)(B).

[27] 17 CFR 4.21(a)(4)(iii) and 4.21(a)(5)(iii)(A).

[28] 17 CFR 4.21(a)(4)(ii) and 4.21(a)(5)(ii).

provide guidance as to when the use of BNAV would be permitted.

IV. Disclosure of Fees, Commissions and Expenses

CFTC regulations require a complete description on all expenses to be charged to or incurred by a pool, including any interest paid with respect to pool assets to a person other than the pool itself.[59] In order to facilitate analysis of the fees and other expenses to be charged to a publicly offered commodity pool, the CFTC believes that in addition to a narrative description, CPOs should include a tabular presentation prior to the performance tables that details the brokerage commissions, incentive, management and transaction fees, as well as any other expenses attributable to the commodity pool that will be paid directly or indirectly by participants.

The CFTC requests comment on whether it should require that this discussion of expenses be supplemented with a *pro forma* presentation of prior performance history which reflects the brokerage commissions and incentive and management fees that would have been incurred if the fees and expenses charged by commodity pools and trading accounts presented in the prior performance tables were the same as those to be charged to the current pool. Such a *pro forma* presentation should disclose the actual and *pro forma* net return achieved for the last three years. Notwithstanding the foregoing, comment is also requested as to whether this type of presentation, or other *pro forma* presentations based on actual prior results, may cause participants to rely unduly upon prior performance as an indicator of future performance.

Further, comments are solicited as to whether additional disclosure would assist prospective participants in assessing the extent to which expenses charged to a pool could influence the pool's prospective performance. For example, it may be useful to include in the disclosure document the amount by which each unit of participant's net asset value must increase in the first year of trading for the redemption value of that unit to equal the gross purchase price paid to purchase it. Alternatively, the disclosure statement could include a calculation of the net asset value *per* unit, net of sales commissions and other expenses which will be deducted prior to the funds generated by the sale of such participation unit being pooled for futures trading. In this connection, commenters should address the problem of assessing prospectively the effect of incentive fees.

Commenters also are invited to address whether other disclosure modifications are needed to make uniform the presentation of fees and expenses, particularly because the rate of return formula is especially sensitive to the timing of the deduction of such expenses.

V. Conclusion

Although this interpretive statement and the interpretive statement published simultaneously herewith by the SEC represent the views of the respective agencies with respect to certain information which may be material in connection with disclosure documents filed with the CFTC for the offering of participations in commodity pools, nothing in the statements should be construed to diminish the obligation of CPOs and other CFTC registrants to comply with all applicable disclosure requirements of the CEA and the CFTC's regulations thereunder. Attention particularly is directed to the antifraud provisions of the CEA which apply not only to statements made in documents filed with the CFTC, but also to all statements or omissions made in connection with any pool offering.[60] The CFTC expects to provide further guidance following review of the comments received in response to this release and completion of the CFTC's staff study. In this regard, the agency expects to consult with the SEC concerning the comments to its companion release.

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List of Subjects in 17 CFR Part 4

General Provisions, Definitions and Exemption, Commodity Pool Operators, Commodity Trading Advisors, Advertising.

Issued this 1st day of February 1989.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 89-2681 Filed 2-3-89; 8:45 am]

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[59] 17 CFR 4.21(a)(7) and 4.21(a)(9). *See also* 17 CFR 4.22(a).

[60] CPOs are specifically reminded of the quarterly and annual reporting obligations set forth in 17 CFR 4.22.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 231 and 241

[Release Nos. 33-6815; 34-26508 [S7-1-89]

Statement of the Commission Regarding Disclosure by Issuers of Interests in Publicly Offered Commodity Pools

AGENCY: Securities and Exchange Commission.

ACTION: Interpretation and Request for Comment.

SUMMARY: The Securities and Exchange Commission ("Commission") is publishing this release and request for comments regarding disclosure by issuers of interests in publicly offered commodity pools simultaneously with an interpretive statement and request for comments by the Commodity Futures Trading Commission ("CFTC"). In this statement, the Commission to the extent applicable, incorporates by reference the views expressed by the CFTC in its interpretive statement, and reminds issuers of interests in publicly offered pools of their disclosure obligations under the federal securities laws. In addition, the Commission in requesting comment on several matters related to the presentation of prior performance by commodity pool operators and commodity trading advisors, and the presentation of fees, commissions and expenses to be incurred by the typical professionally managed commodity pool. The companion statements reflect a continuing effort on behalf of the CFTC and the Commission to maintain consistent coordinated requirements for publicly offered commodity pools.

DATE: Comments should be received on or before April 7, 1989.

ADDRESS: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Comment letters should refer to File No. S7-1-89. All comment letters will be available for public inspection and copying in the Commission's Public Reference Room 450 Fifth Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: John C. Roycroft, Assistant Director, or Daniel W. Rumsey, Attorney, at (202) 272-7628, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission today is reminding issuers of interests in publicly offered commodity pools registered under the Securities Act of 1933 ("Securities Act") [1] or the Securities Exchange Act of 1934 ("Exchange Act") [2] of their disclosure obligations under those Acts. In connection herewith, and to the extent applicable, the Commission incorporates by reference the views expressed by the CFTC regarding the disclosure requirements under the Commodity Exchange Act ("CEA") [3] and CFTC regulations.[4] The CFTC's views are set forth in an interpretive statement and request for comments being published simultaneously herewith.

The views expressed in this interpretive statement should be considered in connection with a registrant's obligation to disclose, in registration statements and other filings with the Commission, material information to investors that is necessary to make the required disclosure not misleading.[5] In addition, the Commission is requesting comment on several matters related to the presentation of prior performance by commodity pool operators and commodity trading advisors, and the presentation of fees, commissions and expenses to be incurred by the typical professionally managed commodity pool.

I. Background

Issuers of interests in commodity pools must comply with applicable registration, disclosure, antifraud and other requirements of the federal securities laws.[6] In view of the CFTC's jurisdiction over commodity interest trading, commodity pool offerings also must comply with the regulations promulgated by the CFTC regarding commodity pool operators and commodity trading advisors and their associated persons as particularly set forth in the CFTC's interpretive statement. Accordingly, where interests in a commodity pool are registered with the Commission, the disclosure document provided to investors must comply with the disclosure and other requirements of both the federal commodity and securities laws.[7]

The Commission's staff has historically referred to the CFTC's requirements as a starting place in formulating its own disclosure standards applicable to offerings of commodity pools registered with the Commission. The companion statements reflect a continuing effort on behalf of the CFTC and the Commission to maintain consistent coordinated requirements for publicly offered commodity pools. Registrants should nevertheless independently review their disclosure responsibilities and potential liabilities under both the federal commodity and securities laws in the offer and sale of these securities.

Certain recently published studies suggest that the actual performance of publicly held commodity pools was significantly lower than the performance disclosed in the prior performance tables included in commodity pool disclosure documents.[8] While the findings and issues raised in these studies are currently being reviewed by the staff of the CFTC, the Commission believes that it should provide guidance to issuers of publicly offered commodity pools at this time. Although the positions expressed in this release and the CFTC's interpretive statement currently reflect the respective agencies' views regarding appropriate disclosure in commodity pool disclosure documents, the Commission is interested in receiving views on the interpretive positions expressed in those statements. Commentators may wish to make the same submission to both agencies. The Commission expects to consult with the CFTC concerning the comments received in response to their respective statements with a view toward determining whether further action is necessary or appropriate.

II. Disclosure of Prior Performance Tables

Section 4.21 of the CFTC's regulations requires that the disclosure document provided to prospective investors include, among other things, information with respect to the actual performance of previously operated commodity pools and trading accounts of the commodity pool operator, the commodity trading advisor, and their respective principals (the "performance history").[9] In this connection, the CFTC's rules require that the disclosure document include performance history for at least the lesser of three years or the life of the commodity pool or trading account.[10] Beyond the required three years, registrants have discretion, subject to the risk of liability under the antifraud provisions of the federal commodity [11] and securities laws,[12] to present performance history for any additional time periods. Where performance history is provided in excess of three years, however, the additional performance data should not be selected in such a way so as to misrepresent the overall performance history of the commodity pool operator or commodity trading advisor. Thus, where performance history for periods greater than the required three years is presented, the additional performance history should not differ materially from the commodity pool operator's or commodity trading advisor's overall historical performance.[13]

Comment is requested as to whether the presentation of prior performance data beyond the required three years is useful to investors in making their investment decision. If so, further comment is requested as to whether registrants should be required to present the entire performance history of the commodity pool operator and commodity trading advisor, or alternatively, whether registrants should be required to present performance history for some period greater than three years, such as five, seven or ten years where such performance data is

[1] 15 U.S.C. 77a *et seq.*

[2] 15 U.S.C. 78a *et seq.*

[3] 7 U.S.C. 1 *et seq.*

[4] *E.g.*, 17 CFR Part 4.

[5] *See* Securities Act section 17(a), 15 U.S.C. 77q(a); Securities Act Rule 408, 17 CFR 230.408; Exchange Act section 10(b), 15 U.S.C. 78j(b); Exchange Act Rule 10b-5, 17 CFR 240.10b-5; Exchange Act Rule 12b-20, 17 CFR 240.12b-20. *See also Basic Inc. v. Levinson*, 108 S. Ct. 978 (1988).

Registrants also are reminded of their obligation to present information in a clear, concise and understandable manner. Securities Act Rule 421(b), 17 CFR § 230.421(b). *Cf. Gould v. American-Hawaiian Steamship Co.*, 535 F. 2d 761 (3d Cir. 1976); *Kohn v. American Metal Climax, Inc.*, 322 F. Supp. 1331 (E.D. Pa. 1970).

[6] *See* Securities Act section 2(1), 15 U.S.C. 77b(1); Exchange Act section 3(a)(10), 15 U.S.C. 78c(a)(10).

[7] *See, e.g.*, Securities Act section 10(a)(3), 15 U.S.C. 77j(a)(3), which specifies the information required to be in a prospectus used in connection with a registered offering of securities.

[8] *See* Elton, Gruber & Rentzler, *New Public Offerings, Information and Investor Rationality: The Case of Publicly Offered Funds*, 62 J. Bus. 1-15 (January 1989). The authors hypothesized that the findings of the study were at least in part due to the following factors: (1) Public commodity pools have larger transaction costs and management fees than private commodity accounts; (2) only trading advisers with recent successful track records are likely to go public; and (3) trading advisers can select the period of time for disclosing their prior performance, resulting in an upward bias in performance results. *See also* Edwards & Ma, *Commodity Pool Performance: Is the Information Contained in Pool Prospectuses Useful?* Working Paper Series No. 16, Center for the Study of Futures Markets, Columbia Business School (January 1988).

[9] CFTC Regulation section 4.21, 17 CFR 4.21.

[10] CFTC Regulation §§ 4.21(a)(4) and (a)(5), 17 CFR 4.21(a)(4), (a)(5).

[11] Section 4*o* of the Commodity Exchange Act, 7 U.S.C. 6*o*.

[12] *See, e.g.*, Securities Act Section 17(a), 15 U.S.C. 77q(a); Exchange Act section 10(b), 15 U.S.C. 78j(b), and Exchange Act Rule 10b-5, 17 CFR 240.10b-5.

[13] Registrants should be prepared to provide the Commission or its staff with information concerning the presentation of additional performance history. *See* Securities Act Rule 418, 17 CFR 230.418.

available.[14] In addressing these issues, commentators should discuss specifically those factors that would cause a presentation covering more than three years to be useful or relevant to an investment decision in the currently offered commodity pool. The Commission also requests comment as to whether any presentation of prior performance is useful to investors in view of the general nonpredictability of trading results.

The CFTC's regulations require that the prior performance of the commodity pool operator and trading advisor be presented on at least a quarterly basis.[15] In the Commission's view, performance disclosure on a monthly basis is generally more appropriate, particularly when such monthly performance is volatile. Moreover, to facilitate investor review and analysis of the prior performance presentations, a registrant, to the extent practicable, should present the prior performance tables for the commodity pool operator and the commodity trading advisor on a consistent periodic basis.

The CFTC's regulations permit prior performance disclosure on an individual or composite basis.[16] Where a composite presentation is elected, separately captioned composites of previously traded public pools of the commodity pool operator and commodity trading advisor may be necessary to prevent the prospectus from being misleading, where the differences between the prior public pools' and private accounts' performance are material and are not otherwise clearly and concisely disclosed and explained in the text. Comment is requested as to whether there should be a separate presentation of prior public pools of the commodity pool operator and commodity trading advisor under all circumstances or whether an explanation of such differences in the text would be sufficient.

To enable an investor to evaluate prior performance presentations, the prior performance tables should be accompanied by appropriate textual disclosure regarding any material differences in investment objectives or structures between the commodity pools or trading accounts displayed in the prior performance tables and the commodity pool being registered. For example, specific disclosure should be considered where the margin-to-equity ratio of historical commodity pools or trading accounts is materially different from the margin-to-equity ratio permitted in the currently offered commodity pool, or where there are material differences in money management strategies.

Similarly, to the extent an investor's understanding of the performance history would be enhanced by an explanation of significant factors that may have contributed to a materially favorable or unfavorable result during any quarterly or monthly measuring period, registrants should consider appropriate narrative disclosure. Such discussion could address, by way of example, the extent to which such prior performance was attributable to: (1) a particular successful or unsuccessful position or series of positions in one or a limited number of commodities, or was broadly based; (2) the movements of the commodity markets generally as measured by a broad based commonly used industry index; or (3) any material change in investment strategy or objectives. Commentators are requested to discuss any other factors that may be relevant to an understanding of the information contained in the prior performance tables.

III. Disclosure of Fees, Commission and Expenses

Consistent with the Commission's view, the practice is to supplement the prior performance disclosure for publicly offered commodity pools with a pro forma presentation of the performance history reflecting the brokerage commissions, incentive and management fees that would have been incurred if the commodity pools and trading accounts presented in the prior performance tables were subject to the same fees, and expenses as the commodity pool being registered instead of those fees and expenses actually paid by the commodity pools and trading accounts presented. When included, the pro forma presentation should disclose the actual and pro forma net return achieved by the commodity pool operator and commodity trading advisor for the last three years. Comment is requested as to whether this presentation and any other pro forma presentation based on the actual prior results may cause investors to place undue reliance on prior performance results as an accurate indicator of future performance.

Registrants also should include, in addition to a narrative description, a tabular presentation located in the forepart of the prospectus that details the brokerage commissions, incentive, management and transactional fees, as well as any other expenses attributable to the commodity pool that will be paid directly or indirectly by investors.[17] If any affiliate of the commodity pool operator will receive compensation in connection with the operation of the commodity pool, such affiliation and the amount of compensation should be clearly disclosed.

In order to facilitate analysis of the fees, brokerage commissions and other expenses to be charged to the commodity pool, registrants should consider additional disclosure regarding how much each unit's net asset value would have to increase in the first year, for the redemption value per unit, net of expenses attributable to the commodity pool, to equal the purchase price paid by investors for such unit, as well as a calculation of the redemption value per unit estimated prior to the commencement of operations. Comments are requested as to whether alternative disclosures would better enable prospective investors to assess the impact on their investment of the expenses to be charged to the commodity pool.

IV. Conclusion

While this release and the interpretive statement published simultaneously herewith by the CFTC represent the views of the respective agencies as to the preparation and disclosure of material information concerning commodity pools, nothing in the statements should be construed to alleviate the requirement of registrants to comply with all applicable disclosure requirements under the Securities Act, the Exchange Act, and the CEA.[18] Attention also is directed to the antifraud provisions under both the Securities Act and the Exchange Act, which apply not only to statements made in filings with the Commission, but also to those made outside Commission filings.[19] Registrants also are reminded of the disclosure obligations promulgated by the CFTC.

[14] The Commission notes that the CFTC currently requires that registrants maintain all commodity pool and trading account records for at least five years. CFTC Regulation §§ 4.23 and 1.31, 17 CFR 4.23 and 1.31.

[15] CFTC Regulation §§ 4.21(a)(4)(ii) and (a)(5)(ii), 17 CFR 4.21(a)(4)(ii) and (a)(5)(ii).

[16] CFTC Regulation § 4.21(a)(4)(iv) and (a)(5)(iii), 17 CFR 4.21(a)(4)(iv) and (a)(5)(iii).

[17] *See also* Regulation S–K, Item 501, 17 CFR 229.501, which requires the disclosure of the net proceeds to the issuer after deducting selling commissions; and Instruction 5 thereto, which requires footnote disclosure regarding other expenses of issuance and distribution, including organizational costs. 17 CFR 229.501, Instruction 5.

[18] Registrants are specifically reminded of their obligation to include, in annual and quarterly reports filed under the Exchange Act, an analysis of the financial condition and results of operation for the commodity pool. *See* Item 303 of Regulation S–K, 17 CFR 229.303.

[19] *See supra* note 12.

List of Subjects in 17 CFR Parts 231 and 241

Reporting and record keeping requirements, securities.

Parts 231 and 241 of Title 17, Chapter II of the Code of Federal Regulations are amended by adding this Release No. 33–6815, and 34–26508 (February 1, 1989) to the list of interpretive releases.

By the Commission.

Jonathan G. Katz,

Secretary.

Dated: February 1, 1989.

[FR Doc. 89–2859 Filed 2–3–89; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulation No. 4]

Federal Old-Age, Survivors, and Disability Insurance; Reduction Because of Entitlement to Other Benefits

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: We are revising our rules in the case of a deceased insured individual who is simultaneously entitled to retirement and disability benefits. Specifically, this rule delineates those persons who may elect the type of benefit that will be the basis for monthly payments due to the insured before the insured's death. This rule corrects an anomaly which can result in a less advantageous entitlement or even an overpayment in certain instances.

DATE: These regulations are effective February 6, 1989.

FOR FURTHER INFORMATION CONTACT: Lawrence V. Dudar, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965–1795.

SUPPLEMENTARY INFORMATION: We published these regulations as a Notice of Proposed Rulemaking (NPRM) on June 9, 1988 (see 53 FR 21687) with a 60-day period for public comment. No comments were received. As a result, we did not change any of the NPRM provisions for this final rule.

Section 404.407(c) of the regulations provides that in cases of simultaneous entitlement to retirement and disability insurance benefits (RIB/DIB), the insured individual will receive the larger benefit unless he or she elects to receive the smaller. An insured individual age 62 to 65 may be entitled to a higher benefit if he or she receives the DIB. However, because of the way the maximum family benefits are computed, the auxiliaries who are entitled on the record may share a smaller maximum family benefit. Thus, an individual entitled to both RIB and DIB may elect the smaller of the two benefits in order to maximize total family benefits.

Generally, an individual must be alive when an application for benefits is filed. However, in the case of a deceased insured individual, an application for DIB may be filed by someone other than the insured individual within 3 months after the month of the insured individual's death.

In this regard, the regulations at § 404.612(d) provide that a person qualified to receive benefits due the deceased can file the application for DIB after the death of the insured individual. However, strict interpretation had been made of § 404.407(c) so that no one other than the insured individual (or proper applicant on behalf of a living insured individual) could make the election described in § 404.407(c). This could result in an overpayment if the insured individual was entitled to RIB during his or her lifetime, but died before his or her DIB claim was filed or adjudicated. Under current policy, overpayments in family maximum cases are created because even though the DIB monthly benefit is higher than the RIB monthly benefit, the RIB family maximum is higher than the DIB family maximum. The regulations do not currently provide for anyone other than the insured individual to exercise the § 404.407(c) election. A favorable adjudication of a DIB claim subsequent to the death of an insured individual who was receiving RIB payments could result in an overpayment for the period during which the insured was simultaneously entitled to both benefits. An overpayment can occur if the family maximum is lowered as a result of the DIB and no one is authorized to elect the RIB on behalf of the deceased insured.

We are amending § 404.407(c) to state that a person defined in § 404.612(a) (if the claimant is competent), (c) (if the claimant is incompetent), or (d) (if the insured individual is deceased) may make the election described in § 404.407(c).

Regulatory Procedures

Executive Order 12291

These regulations have been reviewed under Executive Order 12291 and the Secretary has determined that this is not a major rule. Therefore, a regulatory impact analysis is not required. These provisions are not expected to have a cost impact on the economy of $100 million or more in one year.

Paperwork Reduction Act

These final regulations impose no recordkeeping or reporting requirements requiring Office of Management and Budget clearance.

Regulatory Flexibility Act

The Secretary certifies that these final regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Programs No. 13.803, Social Security—Retirement Insurance.)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors, and Disability Insurance.

Dated: December 13, 1988.

Dorcas R. Hardy,

Commissioner of Social Security.

Approved: December 30, 1988.

Otis R. Bowen,

Secretary of Health and Human Services.

Subpart E of Part 404 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

PART 404—[AMENDED]

1. The authority citation for Subpart E continues to read as follows:

Authority: Secs. 202, 203, 204 (a) and (e), 205(a), 222(b), 223(e), 224, 227, and 1102 of the Social Security Act; 42 U.S.C. 402, 403, 404 (a) and (e), 405(a), 422(b), 423(e), 424, 427, and 1302.

2. In § 404.407 paragraph (c) is revised to read as follows:

§ 404.407 Reduction because of entitlement to other benefits.

* * * * *

(c) *Entitlement to old-age insurance benefit and disability insurance benefit.* Any individual who is entitled for any month after August 1965 to both an old-age insurance benefit and a disability insurance benefit shall be entitled to only the larger of such benefits for such month, except that where the individual so elects, he or she shall instead be entitled to only the smaller of such

benefits for such month. Only a person defined in § 404.612 (a), (c), or (d) may make the above described election.

* * * * *

[FR Doc. 89-2930 Filed 2-3-89; 8:45 am]

BILLING CODE 4190-11-M

Food and Drug Administration

21 CFR Part 178

[Docket No. 88F-0054]

Indirect Food Additives; Polymers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of hydrogen peroxide solution to sterilize food-contact surfaces prepared from poly-1-butene resins and butene/ethylene copolymers. This action is in response to a petition filed by Shell Oil Company.

DATES: Effective February 6, 1989; written objections and requests for a hearing by March 8, 1989.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Edward J. Machuga, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 21, 1988 (53 FR 9145), FDA announced that a food additive petition (FAP 8B4062) had been filed by Shell Oil Co., Houston, TX 77210, proposing that § 178.1005 *Hydrogen peroxide solution* (21 CFR 178.1005) be amended to provide for the safe use of hydrogen peroxide solution to sterilize food-contact surfaces prepared from poly-1-butene resins and butene/ethylene copolymers complying with § 177.1570.

FDA has evaluated the data in the petition and other relevant material and concludes that the proposed food additive use is safe, and that 21 CFR 178.1005(e)(1) should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before March 8, 1989, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging, Sanitizing solutions.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES, ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 178.1005 is amended in paragraph (e)(1) by alphabetically adding a new entry in the table to read as follows:

§ 178.1005 Hydrogen peroxide solution.

* * * * *

(e) * * *

(1) * * *

Substances	Limitations
* * *	* * *
Poly-1-butene resins and butene/ethylene copolymers.	Complying with § 177.1570 of this chapter.
* * *	* * *

* * * * *

Dated: January 27, 1989.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-2868 Filed 2-3-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8-R Amdt. No. 19]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); CHAMPUS Coverage for Biofeedback

AGENCY: Office of the Secretary, DoD.

ACTION: Final amendment of rule.

SUMMARY: This final rule amends DoD 6010.8-R (32 CFR Part 199) by extending benefits for biofeedback therapy. This amendment provides coverage for biofeedback therapy when used as a treatment modality for certain medical conditions. This amendment offers coverage for services now specifically excluded from CHAMPUS cost-sharing.

EFFECTIVE DATE: February 6, 1989.

FOR FURTHER INFORMATION CONTACT: Judith A. Carroll, Office of Program Development, OCHAMPUS, telephone (303) 361-3521.

SUPPLEMENTARY INFORMATION: In FR Doc. 77-7634, appearing in the **Federal Register** on April 4, 1977 (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8-R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as Part 199 of this title. 32 CFR Part 199 (DoD 6010.8-R) was reissued in the **Federal Register** on July 1, 1986 (51 FR 24008).

In FR Doc. 87-18575 appearing in the **Federal Register** on August 14, 1987 (52 FR 30391), the Office of the Secretary of Defense published for public comment a notice of proposed rulemaking regarding coverage for biofeedback therapy. The following summarizes the comments received and the actions we have taken based on these comments.

Discussion of Comments

The comments received in response to the proposed rule to offer benefits for biofeedback therapy were generally supportive of the decision to expand coverage to include benefits for biofeedback therapy as proposed. A summary of the comments and our responses to them are listed below.

A. Provider Requirements

Comment: Several commentors recommended that the requirement for physician referral be deleted, while other commentors supported this requirement.

Response: We feel that physician referral is essential for the diagnoses listed as coverable to ensure that a patient be adequately evaluated, diagnosed and treated before initiation of biofeedback therapy.

Comment: Several commentors recommended that the requirement for physician supervision be deleted or clarified to read as follows "a physician must continue to be involved in the care of and medically responsible for the patient," or "treatment should be reviewed periodically by a physician to assure maximum patient benefit."

Response: We accept the commentors arguments for deletion and have deleted this requirement in the final rule.

Comments: Several commentors recommended that only individuals who have some form of recognized biofeedback certification be approved as authorized providers of biofeedback services.

Response: We do not find the arguments for this requirement persuasive. We have determined that those individuals practicing within the scope of their licensure and meeting the CHAMPUS criteria of authorized provider are qualified to provide otherwise covered biofeedback therapy.

B. Benefits Provided

Comment: Several commentors objected to the expansion of benefits to include coverage for biofeedback services since it would result in an increase in program expenditures.

Response: While we do agree that the addition of biofeedback as a benefit may initially increase program expenditure, we feel that the initial increase may be offset to a degree by a decrease in other program areas such as prescription drugs, physical therapy, etc. We feel program expenditures are further kept to a minimum since cost-sharing is limited to specific diagnoses, and a maximum yearly limit of 20 sessions.

Comment: Several commentors felt the requirement for documentation that other forms of conventional treatment have been unsuccessful prior to the initiation of biofeedback therapy was too restrictive and could easily be misinterpreted to exclude coverage for biofeedback used in combination with other medical treatment modalities. The commentors recommended this requirement be clarified to read as follows "that other forms of conventional treatment are or have been insufficient, or their omission in a treatment program can be adequately justified."

Response: We agree clarification is needed since it is not our intent to exclude biofeedback therapy when used as an adjunctive treatment with conventional medical treatment. However, considering our list of covered diagnoses, we do feel that other forms of conventional treatment should be attempted and not omitted prior to the initiation of biofeedback therapy. Therefore, the following compromising language has been included in the final rule, "documentation that their present condition is not responding to or no longer responds to other forms of conventional treatment."

Comment: Several commentors objected to the exclusion of all psychosomatic disorders on the basis that all diagnoses have psychosomatic aspects and, therefore, would be excluded from coverage.

Response: We do not agree. The term psychosomatic is defined as having bodily symptoms of psychic, emotional, or mental origin. By using this term, we are clearly indicating our intent to prohibit cost-sharing of biofeedback therapy as treatment of conditions associated solely with mental or emotional origin.

Comment: Several commentors felt that the list of covered diagnoses was too limiting and should be expanded.

Response: We did not find their arguments persuasive. Our benefit design allows far more comprehensive coverage than currently offered by other major third party payors.

As part of the rulemaking process, CHAMPUS is required by law to consult with specific government agencies who have categories of beneficiaries eligible to receive CHAMPUS benefits. Comments received from these government agencies during this coordination process are given serious consideration in forming the design of the final CHAMPUS rule. During this coordination on the proposed rule on biofeedback, the Department of Health and Human Services (DHHS) objected to some of the diagnoses proposed for coverage. Specifically, DHHS felt that biofeedback was safe and efficacious as adjunctive treatment for Raynauds Syndrome and certain spastic motor conditions. However, they felt that medical literature was not conclusive in establishing the efficacy of biofeedback therapy for vascular and tension headaches and mild hypertension. Additionally, as further clarification, the Office of Health Technology Assessment within DHHS indicated that the current Medicare coverage policy on biofeedback was well supported by medical literature. Wishing to assure safety and efficacy for those CHAMPUS beneficiaries who may require biofeedback treatment, we have modified the final rule to incorporate the recommendations of DHHS. Adoption of the current Medicare coverage policy and DHHS's recommendations will provide coverage for several of the specific conditions listed in the proposed rule (e.g., stroke, fecal incontinence, and torticollis) and will exclude coverage for those conditions not supported by medical literature (e.g., vascular and tension headaches and mild hypertension).

As stated in the notice of proposed rulemaking § 199.4, paragraph (g)(59) Part 199 specifically excludes biofeedback therapy from the CHAMPUS Basic Program. The basis for this exclusion was that this treatment modality was primarily experimental and not generally accepted by the professional medical community.

In the Senate Appropriations Committee Report on the Department of Defense Appropriations Act for 1979, OCHAMPUS was requested to "conduct a study and work with the Biofeedback Society of America (or other appropriate representatives of this clinical technique) to delineate the conditions under which biofeedback might be

acceptable as a health care service that can be reimbursed by CHAMPUS."

Following this directive, OCHAMPUS has numerous meetings with DoD officials, OCHAMPUS personnel, and members of the Biofeedback Society of America. The information obtained at these meetings and the input received from other professional sources, led OCHAMPUS to propose an amendment to the Regulation in 1980 which allowed limited coverage for biofeedback therapy. However, the proposed amendment was disapproved because of insufficient evidence establishing clinical efficacy for biofeedback services.

Each year, since that time, the Senate Appropriations Committee has expressed interest on OCHAMPUS' progress toward the establishment of limited biofeedback benefits. In 1983, OCHAMPUS was directed by Congress to report on when OCHAMPUS would establish biofeedback therapy as a benefit. Our response to this Congressional directive indicated that before OCHAMPUS could establish benefits for limited biofeedback therapy further examination of cost-savings was required. Additionally, we reported that we could only support the establishment of biofeedback services when there was clear evidence that it would not increase program costs. Our report further offered a solution of initiating a demonstration project to determine both clinical and cost-effectiveness of biofeedback services. Following this report, The Senate Appropriations Committee Report No. 98-626 of the DoD Appropriations Act of 1985, expressed an interest in being apprised of the results of the OCHAMPUS biofeedback demonstration project.

Acting on the expressed interest of The Senate Appropriations Committee Report, OCHAMPUS determined that an evaluation study of biofeedback by an independent contractor was needed as the first step in designing and implementing a demonstration project. In 1985, a competitive contract was awarded to evaluate the clinical and cost-effectiveness of biofeedback therapy and provide recommendations for policy options.

The results of the evaluation study indicated that biofeedback literature now supports the cost-effectiveness and efficacy of biofeedback therapy for treatment of fecal incontinence, Raynaud's syndrome, hypertension, chronic migraine, and tension headaches and neuromuscular rehabilitation under certain conditions.

The recommendations for CHAMPUS demonstration benefit policy options were: To provide coverage as a primary modality for fecal incontinence; to provide coverage as an adjunct modality for Raynaud's syndrome, hypertension, chronic migraine and tension headaches with coverage limitations on the number of visits and costs per visit and treatment for specific diagnosis. Additionally, coverage should be only for treatment administered by or under the supervision of a physician or prescribed by one. The study recommended that the demonstration test location and control location match as closely as possible with respect to medical care available from a Military Treatment Facility, CHAMPUS-eligible population demographics, and medical doctor-to-certified therapist ratio.

The study further reported that the demand for biofeedback services could not be determined because no biofeedback patient demographic, utilization and cost data were available. As a result, no reliable analysis of coverage options was possible.

Following a review of the evaluation study and all available research material, OCHAMPUS has decided not to initiate a demonstration project, since there is sufficient information which supports biofeedback as an effective treatment modality recognized by the medical community as the standard of care for certain medical conditions. Additionally, we feel the cost involved in the implementation and evaluation of a biofeedback demonstration project can better be applied to establishing biofeedback therapy as a benefit.

Our final rule incorporates the recommendations contained in the evaluation study on benefit options, public comments, and follows Medicare's current coverage policy including their exclusion of biofeedback treatment for psychosomatic disorders. Coverage is limited to the treatment of specific medical conditions for which biofeedback is found to be beneficial and cost-effective.

This final amendment offers coverage for services now specifically excluded from CHAMPUS cost-sharing. It is an enhancement of military benefits.

Section 605(b) of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354) requires that each federal agency prepare and make available for public comment, a regulatory flexibility analysis when the agency issues regulations which would have a significant impact on a substantial number of small entities. The Secretary certifies, pursuant to section 605(b) of Title 5, United States Code, enacted by the Regulatory Flexibility Act (Pub. L. 96-354), that this regulation amendment will not have a significant economic impact on a substantial number of small businesses, organizations, or government jurisdictions. The final rule is expected to have the impact of enhancing the scope of CHAMPUS benefits for biofeedback services. It will not involve any significant burden on OCHAMPUS beneficiaries or providers of biofeedback services. It is not therefore, a "major rule" under Executive Order 12291.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, Military personnel.

Accordingly, 32 CFR Part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 5 U.S.C. 301.

2. Section 199.4 is amended by adding a new paragraph (e)(17) and removing and reserving paragraph (g)(59):

§ 199.4 Basic program benefits.

* * * * *

(e) * * *

(17) *Biofeedback Therapy.* Biofeedback therapy is a technique by which a person is taught to exercise control over a physiologic process occurring within the body. By using modern biomedical instruments the patient learns how a specific physiologic system within his body operates and how to modify the performance of this particular system.

(i) *Benefits Provided.* CHAMPUS benefits are payable for services and supplies in connection with electrothermal, electromyograph and electrodermal biofeedback therapy when there is documentation that the patient has undergone an appropriate medical evaluation, that their present condition is not responding to or no longer responds to other forms of conventional treatment, and only when provided as treatment for the following conditions:

(A) Adjunctive treatment for Raynaud's Syndrome.

(B) Adjunctive treatment for muscle re-education of specific muscle groups or for treating pathological muscle abnormalities of spasticity, or incapacitating muscle spasm or weakness.

(ii) *Limitations.* Payable benefits include initial intake evaluation. Treatment following the initial intake evaluation is limited to a maximum of 20 inpatient and outpatient biofeedback treatments per calendar year.

(iii) *Exclusions.* Benefits are excluded for biofeedback therapy for the treatment of ordinary muscle tension states or for psychosomatic conditions. Benefits are also excluded for the rental or purchase of biofeedback equipment.

(iv) *Provider Requirements.* A provider of biofeedback therapy must be a CHAMPUS-authorized provider. (Refer to § 199.6, "Authorized Providers). If biofeedback treatment is provided by other than a physician, the patient must be referred by a physician.

(v) *Implementation Guidelines.* The Director of OCHAMPUS shall issue guidelines as are necessary to implement the provision of this paragraph.

* * * * *

February 1, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-2660 Filed 2-3-89; 8:45 am]

BILLING CODE 3810-01-M

32 CFR Part 351

[DoD Directive 5134.3]

Authority Delegation; Director of Defense Research and Engineering (DDR&E)

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: The Director of Defense Research and Engineering (DDR&E), has been established pursuant to the provisions of Title 10, United States Code. The DDR&E shall perform duties as the principal staff assistant and advisor to the Under Secretary of Defense (Acquisition) for DoD scientific and technical matters, basic and applied research, and the development of weapon systems. This document conforms to current organizational arrangements within the Office of the Under Secretary of Defense (Acquisition).

EFFECTIVE DATE: January 9, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. R. Kennedy, Office of the Director for Administration and Management (Organizational and Management Planning), the Pentagon, Washington, DC 20301, telephone 202-697-1142.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 351

Organizational and function (government agencies).

Accordingly, 32 CFR Part 351 is revised as follows:

PART 351—DIRECTOR OF DEFENSE RESEARCH AND ENGINEERING (DDR&E)

Sec.
351.1 Purpose.
351.2 Responsibilities.
351.3 Functions.
351.4 Relationships.
351.5 Authorities.

Authority: 10 U.S.C. 135.

§ 351.1 Purpose.

Pursuant to the provisions of Title 10, U.S.C. 135, this Part prescribes the responsibilities, functions, relationships, and authorities of the Director of Defense Research and Engineering (DDR&E). It also revises 32 CFR Part 351.

§ 351.2 Responsibilities.

The DDR&E is the principal staff assistant and advisor to the Under Secretary of Defense (Acquisition) (USD(A)) for DoD scientific and technical matters, basic and applied research, and the development of weapon systems. For each assigned area, the DDR&E shall:

(a) Conduct analyses, develop policies, provide advice, make recommendations, and issue guidance on DoD plans and programs.

(b) Develop systems and standards for the administration and management of approved plans and programs.

(c) Initiate programs, actions, and taskings to ensure adherence to DoD policies and national security objectives, and to ensure that programs are designed to accommodate operational requirements.

(d) Review and evaluate programs for carrying out approved policies and standards.

(e) Inform appropriate organizations and personnel of new and significant trends or initiatives.

(f) Review proposed resource programs, formulate budget estimates, recommend resource allocations, and monitor the implementation of approved programs.

(g) Participate in those planning, programming, and budgeting activities that relate to DDR&E responsibilities.

(h) Review and evaluate recommendations on requirements and priorities.

(i) Promote coordination, cooperation, and mutual understanding within the Department of Defense and between the Department of Defense and other Federal Agencies and the civilian community.

(j) Serve on boards, committees, and other groups pertaining to the DDR&E's functional areas, and represent the Secretary of Defense and the USD(A) on DDR&E matters outside the Department of Defense.

(k) Perform such other duties as the Secretary of Defense or the USD(A) may prescribe.

§ 351.3 Functions.

The DDR&E shall carry out the responsibilities in § 351.2 for the following functional areas:

(a) Basic and applied research and advanced technology, design and engineering, and the development of weapons systems.

(b) Tactical warfare programs activities related to research and development (R&D).

(c) Strategic and theater nuclear forces programs activities related to R&D.

(d) Development test and evaluation (T&E) in accordance with DoD Directive 5000.3 [1] to include ensuring that the T&E program is sufficient to support milestone decisions.

(e) Scientific and technical information.

(f) Assignment and reassignment of research and engineering responsibility for systems.

(g) Research interchange with friendly and allied nations, in conjunction with the Under Secretary of Defense (Policy) (USD(P)).

(h) Contract placement and administration for R&D programs.

(i) Oversight of Federally Funded R&D centers.

(j) Atomic energy for defense as well as chemical warfare and biological defense plans and programs.

(k) Chairmanship of the Nuclear Weapons Council.

(l) Such other areas as the Secretary of Defense or the USD(A) may prescribe.

§ 351.4 Relationships.

(a) The DDR&E shall perform duties under the direction, authority, and control of the USD(A) consistent with 32 CFR Part 382.

(b) In the performance of assigned functions and responsibilities, the DDR&E shall:

(1) Use existing facilities and services, whenever practicable, to achieve maximum efficiency and economy.

(2) Coordinate and exchange information with other DoD organizations having collateral or related functions.

[1] Copies may be obtained if needed, from the U.S. Naval Publications and forms center, Attn: Code 1062, 5801 Tabor Avenue, Philadelphia, PA 19120.

(c) DoD Components shall coordinate with the DDR&E on all matters concerning the functions in § 351.3.

§ 351.5 Authorities.

Pursuant to the authority vested in the Secretary of Defense, and subject to the direction, authority, and control of the USD(A), and in accordance with DoD policies, Directives, and Instructions, the DDR&E or, in the absence of the DDR&E, the person acting for the DDR&E, is hereby delegated authority to:

(a) Issue DoD Instructions, DoD publications, and one-time directive-type memoranda that carry out policies approved by the Secretary of Defense in assigned fields of responsibility, consistent with DoD 5025.1–M. Instructions to the Military Departments shall be issued through the Secretaries of those Departments or their designees. Instructions to Unified and Specified Commands shall be issued through the Chairman of the Joint Chiefs of Staff (CJCS).

(b) Obtain such reports, information, advice, and assistance, consistent with the policies and criteria of DoD Directive 7750.5 [2], as the DDR&E deems necessary.

(c) Communicate directly with heads of DoD Components. Communications with the Unified and Specified Commands shall be coordinated through the CJCS.

(d) Establish arrangements for DoD participation in those nondefense governmental programs for which the DDR&E has been assigned primary cognizance.

(e) Approve, modify, or disapprove R&D, and projects of the Military Departments and other DoD Agencies in assigned fields.

(f) Communicate with other Government Agencies, representatives of the legislative branch, and members of the public, as appropriate, in carrying out assigned functions.

(g) Make determinations and decisions regarding scientific and technical matters, basic and applied research, and the development of weapon systems.

(h) Make the determination required by Title 50, United States Code, section 1512(1), concerning transportation or testing of any lethal chemical or any biological warfare agent.

(i) Submit the annual report to Congress on funds obligated in the chemical warfare and biological defense research programs required by Title 50, United States Code, section 1511.

[2] See footnote 1 to 5351.3(d).

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 28, 1989.

[FR Doc. 89–2240 Filed 2–3–89; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 173 and 174

[CGD 82–015]

RIN 2115–AA82

Casualty and Accident Reporting; Accident Report Threshold

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is raising the reporting requirement threshold to $500 for vessel accidents involving only property damage. Because of inflation since 1979, the existing $200 threshold has resulted in the submission of increasing numbers of accident reports for minor incidents. These reports tend to distort the statistical base for the Boating Safety Program. These additional accident reports, which were not required to be submitted in 1979, have also increased the administrative burden on the Coast Guard and the reporting burden on the boating public. Raising the accident reporting threshold to $500 will compensate for the effects of inflation, provide for a consistent statistical base and reduce the administrative burden on the Coast Guard and the reporting burden on the boating public. State casualty reporting systems may continue to require submission of accident reports at a lower threshold than that required by the Coast Guard.

EFFECTIVE DATE: March 8, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Carlton Perry, Office of Navigation Safety and Waterway Services (G–NAB), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, (202) 267–0979, between 8 a.m. and 3 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: Sections 173.55 and 174.101 of Title 33 Code of Federal Regulations, require boaters to submit a casualty or accident report for accidents involving fatalities, injuries requiring medical treatment beyond first aid, property damage more than $200, or complete loss of vessel. This casualty reporting system has helped to achieve uniform reporting of boating accident information and has provided a statistical base to evaluate the need for safety standards and to help analyze program effectiveness.

In 1972 the original reporting threshold for vessel accidents resulting in only property damage was $100. In 1979, the effects of inflation on the original figure required that the reporting threshold be raised to $200. This adjustment served to correct the distortion on the year to year data in the statistical base and also reduced the number of reports required to be filed. Although no other adjustments have been made since 1979, inflation has increased the cost of minor repairs to the point that previously nonreportable minor damage now exceeds the threshold figure. The resulting reports on these minor repairs tend to distort the year to year comparability of the statistical data base on boating accidents.

The Coast Guard issued a notice of proposed rulemaking on April 25, 1988, (53 FR 13417) proposing to raise the accident reporting threshold to $400 for 1989 to compensate for the effects of inflationary increases in repair costs. The original comment period was extended to July 25, 1988, by a notice issued in the **Federal Register** on July 10, 1988.

Any reporting threshold figure will, over time, require some adjustment. The Coast Guard plans to review the reporting threshold annually, applying the Gross National Product (GNP) deflator published by the Department of Commerce. When, during an annual review, it is determined that an adjustment of the reporting threshold figure is appropriate, the Coast Guard will initiate rulemaking to raise the threshold in $100 increments.

Applying the GNP deflator to the original $100 threshold published in 1972, and rounding to the nearest hundred dollars, yielded equivalent reporting threshold figures of $200 for 1978, $300 for 1981, $400 for 1985 and $500 for 1990 (projected). Although the GNP index formula does not justify a $500 threshold until 1990, establishing the higher threshold now would eliminate the need to initiate another rulemaking project soon after establishing a $400 threshold. The $500 threshold amount will skew the data base only slightly (4%) until inflation catches up. The Coast Guard considers this slight distorting effect on the data base to be within acceptable limits until inflation catches up to the early adjustment. The Coast Guard is, therefore, adjusting the reporting threshold to compensate for the effects of inflation, by raising the threshold figure to $500.

Drafting Information: The principal persons involved in drafting this rulemaking are Carlton Perry, Project Manager and Christena Green, Project Attorney.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

Discussion of Comments: A total of 30 comments were received in response to the NPRM by the close of the extended comment period. One comment received on July 26 has also been considered in this rulemaking. The comments came from the following groups in the numbers noted:

11 Recreational Boaters
3 Marine Surveyors
3 Boating Insurance Companies
8 State Boating Law Administrators
2 Local Boating Law Enforcement
1 National Boating Interest
3 Individual Interests

In addition to proposing the increased accident reporting threshold in the NPRM, the Coast Guard asked a number of specific questions related to raising the appropriate level of reporting threshold; basing reporting requirements on types of damage instead of dollar amounts; impacts of receiving less information or data if the reporting threshold were raised above $400; and what measures could be taken to improve boater compliance with accident reporting requirements. A summary of the responses to each question in the NPRM is set out below:

Question 1. Should the reporting threshold be raised to $400 now for CY 1989, to preserve a comparable data base, and be raised to $500 for CY 1990 to maintain the data base, if still supported by the indexing formula?

Six comments opposed raising the reporting threshold to $400. Two commenters felt the increase would cause a sudden drop in the number of accidents required to be reported and that valuable information would be lost. Two comments suggested that the present threshold was similar to that for motor vehicles and would ensure collection of information which could identify the causes of accidents. Seven comments supported raising the reporting threshold to $400. One commenter supported the proposal to allow the states to retain a lower reporting threshold, and one commenter suggested requiring boaters to report all accidents, but have the states forward to the Coast Guard only reports of damage over $400.

Question 2. Should the reporting threshold be raised to $500 now for CY 1989, to avoid repeating the regulatory process for CY 1990?

Three comments supported raising the reporting threshold to $500 now because the cost to repair very minor damages generally exceeds $500 and the increased threshold would save paperwork expense immediately. The National Association of State Boating Law Administrators also recommended allowing states to use a lower reporting threshold if they wish.

Question 3. Should the reporting threshold be set at some higher level between $600 and $1,000, establishing a new base on which to apply the indexing formula?

Four comments favored a reporting threshold over $500, at levels ranging from $600, to $3,000. One commenter suggested $1,000 to $1,500 because many insurance deductibles are $1,000 or more and people will report damage to an insurance company before reporting it to the Coast Guard. One suggested $2,000 to reduce the volume of reported accidents. Another believed $3,000 would result in more reportable accidents actually being reported.

Question 4. Should the reporting dollar threshold be replaced by the specific types of damage which must be reported, regardless of dollar value of the property damage?

Two comments suggested requiring reports on specific types of accidents instead of using a dollar reporting threshold. Both commenters suggested requiring reports on collisions with other vessels and fixed objects. One also listed falls overboard, capsizings, swampings, sinkings, struck by boat or propeller, fire and/or explosions, and property damage exceeding $500 for all other accidents, because these types of accidents need to be better analyzed to reduce fatalities and injuries.

Question 5. For what purposes are the Coast Guard statistics on recreational boating property damage used?

No comment addressed this question.

Question 6. What impacts, if any, would result from the loss of information, if a reporting threshold above $400 were established?

One comment stated there would be no impact because records of insurance companies could be examined, if necessary, to check on statistics on accidents lower than the reporting threshold.

Discussion of Rulemaking

The Coast Guard has decided to raise the accident reporting threshold to $500. The Coast Guard intends to conduct an annual review of the reporting threshold and raise the reporting threshold in $100 increments when appropriate, to keep reporting data comparable from year to year and avoid a "sudden drop" in data.

This rulemaking does not require the states to raise their reporting thresholds or change their reporting procedures. States may set or keep a lower reporting threshold, if appropriate for their state.

The Coast Guard does not find an adequate basis to substitute categories of accidents for the dollar threshold amount. The Coast Guard also decided not to raise the reporting threshold to $600, or greater, for 1989 because it would create a new data base excluding a segment of accident reports which have been part of our data base since the reporting system was established in 1972. These reports are used in determining the need to establish or change electrical, fuel and ventilation standards for recreational boats. Raising the dollar amount of the reporting threshold to $500 will adequately exclude accident reports of cosmetic or minor damage which are of little statistical value in the accident reporting data base, while continuing to require reporting of accidents equivalent to those required in 1972. The consequent reduction in the number of required reports will relieve the burden on the boating public and on the Coast Guard of processing reports which are not essential to the accident reporting data base.

Discussion of Improving Boater Compliance in Reporting Accidents

The notice of proposed rulemaking also requested public comment on any measures that could be taken to improve boaters' compliance with requirements for reporting property damage. Twenty comments discussed this issue. Five of the comments suggested improving public relations or boater education on reporting requirements, two emphasizing Coast Guard Auxiliary education and one urging mandatory boater education or licensing. Three suggested insurance companies could provide accident reporting forms, and two suggested an insurance claim not be paid until a report is filed. One suggested that insurance companies report to the Coast Guard all claims over $400, and one suggested requiring marine repair shops to file a report if they make any repairs to boat damage exceeding $400. Four commenters emphasized a need for

better access to forms, one suggesting that states mail forms with boat registration information. Two urged simplifying the reports and reporting procedures.

The Coast Guard is working with the states to improve access to accident reporting forms and requirements, to increase efforts in boater education and public relations, and to provide accident reporting forms and reporting requirements to boating insurance companies. The Coast Guard will continue to review these and any additional suggestions, and, where appropriate, initiate rulemaking or develop nonregulatory measures to improve boater compliance with accident reporting requirements.

The National Boating Safety Advisory Council and the National Association of State Boating Law Administrators have been consulted and their opinions and advice have been considered in the formulation of this rule. The transcripts of the proceedings of the National Boating Safety Advisory Council at which this rule was discussed are available for examination in Room 4306, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. The minutes of the meetings are available from the Executive Director, National Boating Safety Advisory Council, c/o Commandant (G-NAB), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001.

Regulatory Evaluation

This rulemaking is considered nonmajor under Executive Order No. 12291 and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). This amendment is being made to adjust accident reporting criterion and does not reflect interpretations of statutory language. The Coast Guard collects and analyzes accident data on a calendar year basis and the intent of this rulemaking is to keep accident data comparable from year to year. The effect of the rulemaking is to reduce the number of reports being submitted for accidents of decreasing seriousness due to economic inflation. Raising the reporting criterion from "more than $200" to "more than $500" will reduce the number of reports presently required because minor cosmetic damage repair costs exceed the reporting threshold. The adequacy of this alternative and method of annual application of GNP deflators to the reporting threshold will be reconsidered during a review of all Coast Guard recreational boating safety regulations scheduled for May 1991. For reasons, the economic impact of the rulemaking has been found to be so minimal that further evaluation is unnecessary. Since the impact of the rulemaking is expected to be minimal, the agency certifies that it will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Parts 173 and 174

Marine safety, Reporting requirements.

In consideration of the foregoing, the Coast Guard is amending Parts 173 and 174 of Title 33, Code of Federal Regulations to read as follows:

PART 173—[AMENDED]

1. The authority for Part 173 is revised to read as follows:

Authority: 46 U.S.C. 6101, 12302; 49 CFR 1.46.

2. Section 173.55 is amended by revising paragraph (a)(3) to read as follows:

§ 173.55 Report of casualty or accident.

(a) * * *

(3) Damage to the vessel and other property totals more than $500 or there is a complete loss of the vessel; or

* * * * *

PART 174—[AMENDED]

3. The authority for Part 174 is revised to read as follows:

Authority: 46 U.S.C. 6101, 12302; 49 CFR 1.46.

4. Section 174.101 is amended by revising paragraph (b) to read as follows:

§ 174.101 Applicability of State casualty reporting system.

* * * * *

(b) The State casualty reporting system may also require vessel casualty or accident reports for property damage in amounts less than that required under § 173.55 of this chapter.

* * * * *

Dated: February 1, 1989.

R.T. Nelson

Rear Admiral, U.S. Coast Guard Chief, Office of Navigation Safety and Waterway Services.

[FR. Doc. 89–2712 Filed 2–3–89; 8:45 am]

BILLING CODE 4910-14-M

VETERANS ADMINISTRATION

38 CFR Parts 2, 3, 14, and 19

General Counsel Opinions

AGENCY: Veterans Administration.

ACTION: Final rules.

SUMMARY: The Veterans Administration (VA) is issuing final regulatory amendments governing legal opinions of the VA General Counsel. These amendments include delegation of authority to the General Counsel to designate certain legal opinions involving veterans' benefits under laws administered by the VA as precedential. The amendments also authorize the General Counsel to issue legal opinions involving veterans' benefits under laws administered by the VA which are binding on Agency officials with respect to the matter at issue, but not precedential. Opinions of this type which are designated as "advisory only" will not have such binding effect. The regulatory action is intended to assist VA officials, benefit claimants and claimants' representatives by defining the status and effect of particular classes of General Counsel opinions.

EFFECTIVE DATE: These rules are effective March 8, 1989.

FOR FURTHER INFORMATION CONTACT: Andrew J. Mullen, Deputy Assistant General Counsel, Office of the General Counsel, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233–2440.

SUPPLEMENTARY INFORMATION: On March 15, 1988, the VA published in the **Federal Register** (53 FR 8471) a notice proposing amendment of Parts 2, 3, and 14 of Title 38, Code of Federal Regulations, to define the status and effect of certain legal opinions of the General Counsel. The VA proposed adding a specific delegation of authority in Part 2 of Title 38 under which the General Counsel would be authorized to designate, in accordance with standards established in an amended § 14.507(b), certain legal opinions as having precedential effect in Agency adjudications and appellate reviews of benefit claims under laws administered by the VA. The Agency also proposed amendment of § 14.507 to provide that a written legal opinion of the General Counsel, as defined in a new paragraph (c) of that section, would be conclusive as to all Agency officials and employees with respect to the matter at issue unless designated "advisory only" or superseded by a change in statute or regulation or by a subsequent opinion. Finally, the VA proposed modification of § 3.101, governing adjudications, to recognize the General Counsel's authority to issue precedent opinions. Interested persons were given until April 14, 1988, to submit written comments, suggestions, or objections concerning the proposed regulatory action.

The VA received three comments on the proposed rules, two from congressional sources and one from a veterans' service organization. The comments were in general agreement as to the need to clarify the status and effect of General Counsel opinions and offered several suggestions for changes in the proposed amendments.

Two commenters asserted that the VA is required by the Freedom of Information Act, 5 U.S.C. 552, to publish all precedent opinions of the General Counsel in the **Federal Register**. Section 522(a)(1)(D) of Title 5, United States Code, provides for publication in the **Federal Register**, for the guidance of the public, of "interpretations of general applicability formulated and adopted by the agency." Under the terms of section 552(a)(1), a person may not be required to resort to or be adversely affected by matter required to be published in the **Federal Register** and not so published, except to the extent the person has actual and timely notice of its contents.

The VA concludes that opinions designated as precedential pursuant to new 38 CFR 14.507(b) will fall within the scope of 5 U.S.C. 552(a)(1) and be subject to its terms concerning publication and actual notice. New 38 CFR 14.507(b) has thus been modified to recognize the applicability of 5 U.S.C. 552(a)(1) to opinions designated as "precedent opinions" pursuant to that regulation, and such opinions will be treated by the Agency in accordance with the referenced statute.

Another commenter asserted that the Freedom of Information Act requires maintenance by the VA of an index of General Counsel opinions. This commenter expressed the view that such an index should include all opinions of the General Counsel and the VA District Counsels, regardless of precedential effect, and all past, as well as future, opinions. This commenter also suggested that the index be made available for sale and be made available for inspection at all VA stations.

Section 552(a)(2) of Title 5, United States Code, provides for indexing of "interpretations which have been adopted by the agency and are not published in the **Federal Register**." Interpretations within the scope of section 552(a)(2) may be relied on or used by an agency against an individual only if the interpretation has been duly indexed and made available or published or the individual has actual and timely notice of its terms. The VA concludes that written legal opinions of the General Counsel which are conclusive as to all Agency officials and employees pursuant to new 38 CFR 14.507(a) and which are not published in the **Federal Register** will fall within the scope of 5 U.S.C. 552(a)(2) and be subject to its terms concerning indexing and actual notice. New 38 CFR 14.507(a) has thus been modified to recognize the applicability of 5 U.S.C. 552(a)(2) to opinions to be accorded conclusive effect pursuant to that regulation, and such opinions will be treated by the Agency in accordance with the referenced statute. The index to be maintained pursuant to 5 U.S.C. 552(a)(2) will be made available to the public in accordance with applicable legal requirements.

The VA does not consider legal opinions which are advisory only to be interpretations adopted by the Agency within the meaning of 5 U.S.C. 552 (a)(1)(D) or (a)(2)(B) and thus does not consider them subject to the publication requirements of section 552(a)(1) or the indexing provisions of section 552(a)(2). Opinions issued by the VA District Counsels, since not accorded conclusive effect under 38 CFR 14.507(a), are considered advisory only and not subject to 5 U.S.C. 552 (a)(1) or (a)(2). Further, because VA statutes and regulations did not previously give precedential or conclusive effect to General Counsel opinions not adopted or approved by the Administrator of Veterans Affairs, the VA does not consider General Counsel opinions issued prior to promulgation of new 38 CFR 14.507 and not adopted or approved by the Administrator to be subject to section 552 (a)(1) or (a)(2) requirements.

The Administrator of Veterans Affairs has long since discontinued the practices of approving and adopting as Administrator's Decisions legal opinions prepared by the General Counsel and of issuing "instructions" for the implementation of statutes. Although such documents are largely of historical interest at this time, Board of Veterans Appeals regulations continue to contain a provision binding the Board to follow decisions and instructions of the Administrator in its consideration of appeals. A similar antiquated reference to Administrator's Decisions and opinions approved by the Administrator and to defined policies as enunciated by the Administrator also appears in Agency adjudication regulations. In order to update the regulations and simplify the classification system for legal opinions, the Agency is amending 38 CFR 3.101 and 19.103 to delete reference to Administrator's Decisions, opinions approved by the Administrator, and instructions and enunciated policies of the Administrator. Pursuant to this change, such decisions, opinions, instructions, and policy statements will be without precedential or conclusive effect in future Agency adjudications.

It is not the VA's intention through these amendments to effect a change in legal principles currently governing claim adjudication. The VA believes that generally legal principles enunciated in Administrator's Decisions affecting benefits have long since been adopted in regulations or are no longer applicable due to amendment or repeal of the statutory provisions to which they pertained. Should a claim arise in which an Administrator's Decision would have been dispositive of a legal issue but for these regulatory amendments, the Agency intends to apply the legal interpretation enunciated in such decision. Accordingly, the General Counsel may, on a case-by-case basis, reissue, under the terms of new § 14.507, opinions formerly adopted as Administrator's Decisions. Any opinion so reissued will have the same effect as a written legal opinion newly issued under that section.

One commenter expressed the view that the proposed amendments would perpetuate what it perceives as a confusing variety of opinions on legal issues. The VA feels that the amendments will reduce any potential for confusion by establishing three classes of opinions involving benefits, i.e., precedent opinions, conclusive opinions without precedential effect, and opinions which are advisory only. However, for purposes of consistency, in order to further clarify the application of the regulations, and to eliminate use of terms such as "adjudication" and "appellate review", which were apparently considered confusing by this commenter, the VA has modified new 38 CFR 2.6(e)(9) and 14.507 to better define the types of opinions to which these sections apply.

Under these provisions as modified, the General Counsel may designate as precedential and give binding effect to a written legal opinion "involving

veterans' benefits under laws administered by the Veterans Administration." This terminology is intended to parallel the jurisdiction of the Board of Veterans Appeals as defined in 38 CFR 19.1 through 19.3. Thus, the term is intended to include not only claims for monetary benefits but also waiver claims and other administrative debt collection matters, determinations of eligibility for a variety of services, devices and equipment, and other matters relating to benefits. In keeping with legislative development of statutes relating to judicial review of VA decisions and attorney fees for representation in benefit matters, the word "claim" has been deleted from the regulations to further clarify that matters other than affirmative claims for benefits are included within the scope of the regulation. The term "veterans' benefits" is intended to include benefits provided to veterans, their dependents, and their surviviors. Also, to improve clarity and more specifically define its scope, revised 38 CFR 14.507 has been modified to limit the authority granted therein to the General Counsel and the Deputy General Counsel acting as or for the General Counsel.

One commenter expressed the view that any opinion meeting the criteria set forth in proposed 38 CFR 14.507(b) should be designated as precedential and the General Counsel should not have discretion in making the designation. However, the VA believes there are likely to be situations where designation of an opinion as precedential may not be desirable even though it meets the criteria provided in the regulation. Such situations may arise, for example, where an opinion involves a rapidly developing area of the law or when a major judicial opinion on a issue is expected in the foreseeable future. The VA therefore concludes that the General Counsel should retain discretion as to which opinions meeting the criteria of § 14.507 should be designated precedent opinions.

One commenter, noting that under proposed 38 CFR 14.507(a) advice, recommendations, or conclusions on matters of Government or Agency policy contained within an otherwise conculsive written legal opinion shall not be considered binding on Agency officials, suggested that format for opinions be employed to differentiate which portions of an opinion are deemed binding. The critical distinction in assessing the conclusive effect of statements in a written legal opinion is whether the statements address policy matters or interpret the law. The VA feels that in most cases this distinction will be readily apparent from the text of the opinion. In those rare instances where questions may arise, the General Counsel may provide clarification upon request.

Section 14.507(b) of the proposed rules provided that all precedent opinions would be entered in the Office of the General Counsel's computer data base. One commenter suggested that the VA clarify its policy regarding public access to this computer data base. Another commenter pointed out the difficulty service organization representatives and members of the public may have in accessing and using this data base and urged that adequate means be employed to make General Counsel opinions available to the public.

The VA believes that recognition of the applicability of 5 U.S.C. 552(a) (1) and (2) to particular classes of General Counsel opinions imposes on the Agency an obligation to make such opinions available to the public accordance with the statutory terms. Difficulties with public access to the Agency's current computer system have been noted. Given the changing nature of the VA's information management capabilities, the Agency considers it prudent at this time to maintain flexibility as to the means by which the public availability requirements of the Freedom of Information Act will be addressed. Accordingly, while the VA maintains its commitment to public availability of opinions in accordance with law, references to public availability and to the General Counsel's computer data base have been deleted from new 38 CFR 14.507(b).

The VA notes that, in adopting this regulation, it does not intend to waive its authority under applicable law to withhold from public disclosure particular opinions designated as "advisory only" pursuant to new 38 CFR 14.507. The VA does intend, however, to make such opinions available to the public to the fullest extent compatible with the General Counsel's responsibility as legal counsel to the Agency.

Finally, one commenter contended that due process requires a claimant be provided a copy of a legal opinion affecting his or her claim and an opportunity to rebut that opinion prior to the Agency's reliance on the opinion in determination of the claim. This commenter also contended that the claimant should be given notice when a request for opinion is made and should be informed of those portions of the opinion upon which the decisionmaker relies.

To the extent that this comment suggests the existence of a right on the part of a claimant to participate in the development of a legal opinion affecting his or her claim, the commenter cited no authority for this proposition, and the VA is aware of none. Such participation would be inappropriate in light of the Agency's special expertise in interpreting its own statutes and regulations. Further, since decisionmakers would not be free to disregard conclusive opinions issued pursuant to 38 CFR 14.507(a), the correctness of such an interpretation would not be an issue at a hearing on the subject claim and the extent of reliance by the decisionmaker would not be in doubt. Apart from due process considerations, however, the VA plans to review its procedures to assure adequate notice of controlling General Counsel opinions to assist claimants in the appeal and judicial-review processes.

In light of the foregoing, the subject regulatory proposal is amended as noted above, and the rules as so amended are adopted as final rules as set forth below.

The Administrator hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), these regulatory amendments are therefore exempt from the initial and final regulatory flexibility analyses requirement of sections 603 and 604. The reason for this certification is that regulatory amendments will have only a limited, beneficial effect on claimants and their representatives.

These regulatory amendments have been reviewed under E.O. 12291 and have been determined to be non-major because they will not have any adverse economic impact on or increase costs to consumers, individual industries, Federal, State, and local government agencies, or geographic regions.

There are no Catalog of Federal Domestic Assistance numbers associated with these regulatory amendments.

List of Subjects

38 CFR Part 2

Authority delegations.

38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans.

38 CFR Part 14

Claims, Foreign relations, Government employees, Lawyers, Legal services, Organization and functions, Reporting and recordkeeping requirements. Surety bonds, Trusts and trustees, Veterans.

38 CFR Part 19

Administrative practice and procedure, Claims, Veterans.

Approved: January 5, 1989.

Thomas K. Turnage,

Administrator.

38 CFR Parts, 2, 3, 14, and 19 are amended as follows:

PART 2—[AMENDED]

1. In 38 CFR Part 2, Delegations of Authority, § 2.6, paragraph (e)(9) is redesignated as paragraph (e)(10); paragraph (e)(10) is redesignated as (e)(11); and a new paragraph (e)(9) is added to read as follows:

§ 2.6 Administrator's delegations of authority to certain officials (38 U.S.C. 212(a)).

* * * * *

(e) *General Counsel.*

* * * * *

(9) The General Counsel, or the Deputy General Counsel acting as or for the General Counsel, is authorized to designate, in accordance with established standards, those legal opinions of the General Counsel which will be considered precedent opinions involving veterans' benefits under laws administered by the Veterans' Administration.

(Authority: 38 U.S.C. 210, 212)

* * * * *

PART 3—[AMENDED]

2. In 38 CFR Part 3, Adjudication, § 3.101 is revised to read as follows:

§ 3.101 Decisions to conform.

All decisions will conform to the statutes and regulations of the Veterans Administration and to the precedent opinions of the General Counsel. Unless designated as precedent opinions under § 14.507(b) of this chapter, legal opinions in individual cases will not be required to be followed as precedents in subsequent cases.

(Authority: 38 U.S.C. 210)

PART 14—[AMENDED]

3. In 38 CFR Part 14, Legal Services, General Counsel, § 14.507 is revised to read as follows:

§ 14.507 Opinions.

(a) A written legal opinion of the General Counsel involving veterans' benefits under laws administered by the Veterans Administration shall be conclusive as to all Agency officials and employees with respect to the matter at issue, unless there is a change in controlling statute or regulation, a superseding written legal opinion by the General Counsel, or the designation on its face as "advisory only" by the General Counsel or the Deputy General Counsel acting as or for the General Counsel. Written legal opinions having conclusive effect under this section and not designated as precedent opinions pursuant to paragraph (b) of this section shall be considered by the Veterans Administration to be subject to the provisions of 5 U.S.C. 552(a)(2). Advice, recommendations, or conclusions on matters of Government or Agency policy, contained within a written legal opinion, shall not be binding on Agency officials and employees merely because of their being contained within a written legal opinion. Written legal opinions will be maintained in the Office of the General Counsel. Written legal opinions involving veterans' benefits under laws administered by the Veterans Administration, which pertain to a particular benefit matter, in addition to being maintained in the Office of the General Counsel, will be filed in the individual claim folder.

(b) A written legal opinion of the General Counsel involving veterans' benefits under laws administered by the Veterans Administration which, in the judgment of the General Counsel or the Deputy General Counsel acting as or for the General Counsel, necessitates regulatory change, interprets a statute or regulation as a matter of first impression, clarifies or modifies a prior opinion, or is otherwise of significance beyond the matter at issue, may be designated a "precedent opinion" for purposes of such benefits. Written legal opinions designated as precedent opinions under this section shall be considered by Veterans Administration to be subject to the provisions of 5 U.S.C. 552(a)(1).

(c) For purposes of this section, the term "written legal opinion of the General Counsel" means a typed or printed memorandum or letter signed by the General Counsel or by the Deputy General Counsel acting as or for the General Counsel, addressed to an official or officials of the Veterans Administration, stating a conclusion on a legal issue pertaining to Veterans Administration activities.

(Authority: 38 U.S.C. 210)

PART 19—[AMENDED]

4. In 38 CFR Part 19, Board of Veterans Appeals, § 19.103, paragraph (a) is revised to read as follows:

§ 19.103 Rule 3; Governing criteria.

(a) *General.* In the consideration of appeals, the Board shall be bound by the laws and regulations of the Veterans Administration and precedent opinions of the General Counsel.

(Authority: 38 U.S.C. 4004(c))

* * * * *

[FR Doc. 89–2642 Filed 2–3–89; 8:45 am]

BILLING CODE 8320–01–M

38 CFR Part 14

Indemnification of Veterans Administration Employees

AGENCY: Veterans Administration.

ACTION: Final regulation.

SUMMARY: Existing Veterans Administration (VA) policy does not provide for the use of Agency funds to indemnify employees who suffer adverse money judgments or personal damage claims as a result of official acts. This amendment to VA regulations parallels recently-adopted Department of Justice regulations in permitting indemnification in appropriate situations as determined by the Administrator or designee. The amendment also provides that VA attorneys participating in VA determinations whether to recommend Department of Justice representation in the above matters, and who assist in any authorized representation, have an attorney-client relationship with the employee with respect to the attorney-client privilege. The amendment will affect the VA's operations by significantly reducing the reluctance of VA employees to take decisive action for fear of reprisal resulting in lawsuits. This enhances the overall efficiency of the VA.

EFFECTIVE DATE: February 6, 1989.

FOR FURTHER INFORMATION CONTACT: Audley Hendricks, Assistant General Counsel (023), Office of the General Counsel, Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 233–3671.

SUPPLEMENTARY INFORMATION: The Comptroller General has issued opinions stating that Federal agencies may both assume liability for settlement and use appropriated funds to pay reasonable costs of legal representation in such cases. *See* 67 Comp. Gen No. B–229052 (October 28, 1987); Unpub. C.G. Decision

B-176229 (September 22, 1977). Department of Justice regulation, 18 CFR 50.15(a)(7)(iii), provides that Federal employees, where authorized, may apply for indemnification for money damages from their employing agencies upon entry of an adverse verdict, judgment or other monetary award as a result of conduct taken within the scope of their employment. VA policy does not now provide for indemnification of Agency employees who are sued in their individual capacity and who suffer an adverse judgment, nor does it provide for settlement of these claims with Agency funds. Lawsuits against Federal employees in their personal capacity have proliferated since the Supreme Court's decision in *Bivens* v. *Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971). As reported by the Department of Justice, since 1971, over 12,000 claims have been filed against Federal employees; nearly 5,000 actions are now pending. A growing number of such suits have been filed against VA officials. These suits attack VA officials performing a wide variety of functions. These suits do not include medical malpractice claims for which, pursuant to 38 U.S.C. 4116, the Federal Tort Claims Act provides the exclusive remedy.

The risk of personal liability and burden of defending a suit as a result of performing one's employment duties have a significant effect on Agency operations. An adverse judgment against a Federal employee has detrimental consequences for both the individual and the Government. The potential for being found personally liable and the uncertainty as to what actions may culminate in a lawsuit intimidate all employees, discouraging initiative and decisiveness. As Professor Kenneth Culp Davis has stated:

> The public suffers whenever a government employee resolves doubts in order to protect his own pocketbook instead of resolving doubts in order to protect the public interest * * * courageous action of public employees is discouraged by the threat of a lawsuit against the employee personally.
>
> K. Davis, *Constitutional Torts* 25, 16 (1984).

The Agency believes that lawsuits against Federal employees in their personal capacity seriously hinder the Agency's effective functioning. A change in VA policy to provide for indemnification of its employees would help alleviate this problem and afford VA employees the same protection now given to other Federal officials. As noted previously, the Department of Justice recently has adopted a similar policy allowing for indemnification of Department employees. 28 CFR 50.15(c). *See also* 13 CFR 114.112 (Small Business Administration).

This amendment permits, but does not require, the Agency to indemnify an employee who suffers an adverse judgment, verdict, or monetary award. The authority applies where the actions giving rise to the claim or judgment fall within the individual's scope of employment, and it requires the Administrator or designee to determine that indemnification is in the interest of the VA. In rare instances, where the Administrator deems it appropriate, an individual damage claim may be settled with Agency funds prior to entry of judgment. Absent exceptional circumstances, however, the VA may not agree to indemnify an employee or settle a claim before entry of an adverse determination. This restriction against settlements is designed to discourage claims brought against Agency employees solely in order to pressure the Agency into settlement. Denial of dispositive motions or delay in deciding such motions will ordinarily not lead to settlement before trial and judgment.

VA attorneys who participate in the process of determining whether VA will recommend that the Department of Justice should provide representation, or whether VA attorneys should assist in representation, may become privy to confidential information from the affected employee. VA attorneys who assist in representation similarly may become privy to confidential information. As a result, the VA policy recognizes that such information acquired by VA attorneys is subject to the attorney-client privilege.

These regulations are published in final form without the opportunity for public notice and comment because they constitute a general statement of policy relating to VA management and personnel; consequently, publication for public notice and comment is unnecessary (5 U.S.C. 553(a)(2); 38 CFR 1.12).

Since a notice of proposed rulemaking is unnecessary and will not be published, these amendments do not come within the term "rule" as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2), and are therefore not subject to the requirements of the act. Nevertheless, these amendments will not have a significant economic effect on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–602.

The Administrator hereby certifies that these regulations do not contain a major rule as the term is defined by Executive Order 12291, Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs and prices for anyone. They will have no significant adverse effects on competition, employment investment, productivity, innovation, or on the ability of United States-based enterprises to compete in domestic or export markets.

These amendments do not impose any additional reporting or recordkeeping requirements on the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 et seq.

List of Subjects in 38 CFR Part 14

Claims, Government employees, Lawyers, Legal services.

Approved: December 15, 1988.

Thomas K. Turnage,

Administrator.

38 CFR Part 14, Legal Services, General Counsel, is amended as set forth below:

PART 14—[AMENDED]

1. The undesignated centered heading before § 14.514 is revised to read as follows:

Litigation (Other Than Under the Federal Tort Claims Act); Indemnification

2. a. In § 14.514, paragraph (c) is redesignated as paragraph (e).

b. In Section 14.514, the section heading is revised, and new paragraphs (c) and (d) are added, to read as follows:

§ 14.514 Suits by or against United States or Veterans Administration officials; indemnification of Veterans Administration employees.

* * * * *

(c) *Indemnification.* (1) The Veterans Administration may indemnify a Veterans Administration employee, who is personally named as a defendant in any civil suit in state or Federal court or an arbitration proceeding or other proceeding seeking damages against the employee personally, where either 28 U.S.C. 2679 or 38 U.S.C. 4116 is not applicable, for any verdict, judgment, or other monetary award which is rendered against such employee; provided that: the alleged conduct giving rise to the verdict, judgment, or award was taken within the scope of his or her employment and that such indemnification is in the interest of the Veterans Administration, as determined by the Administrator or his designee.

(2) The Veterans Administration may settle or compromise a personal damage claim against a Veterans Administration employee, in cases where the provisions of either 28 U.S.C. 2679 or 38 U.S.C. 4116 are not applicable, by the payment of available funds, at any time; provided that: the alleged conduct giving rise to the personal damage claim was taken within the employee's scope of employment and that such settlement or compromise is in the interest of the Veterans Administration, as determined by the Administrator or his designee.

(3) Absent exceptional circumstances as determined by the Administrator or his designee, the Agency will not entertain a request either to agree to indemnify or to settle a personal damage claim before entry of an adverse verdict, judgment, or award.

(4) A Veterans Administration employee may request indemnification to satisfy a verdict, judgment, or award entered against that employee. The employee shall submit a written request, with appropriate documentation including copies of the verdict, judgment, award, or settlement proposal, in a timely manner to the Veterans Administration General Counsel, who shall make a recommended disposition of the request. Where the Veterans Administration determines it appropriate, the Agency shall seek the view of the Department of Justice. The General Counsel shall forward the employee request for indemnification, and the accompanying documentation, with the General Counsel's recommendation to the Administrator for decision.

(5) Any payment under this section either to indemnify a Veterans Administration employee or to settle or compromise a personal damage claim shall be contingent upon the availability of appropriated funds of the Veterans Administration.

(d) *Attorney-client privilege.* Attorneys employed by the Veterans Administration who participate in any process utilized for the purpose of determining whether the Agency should request the Department of Justice to provide representation to an Agency employee sued, subpoenaed or charged in his individual capacity, or whether attorneys employed by the Veterans Administration should provide assistance in the representation of such an Agency employee, undertake a full and traditional attorney-client relationship with the employee with respect to application of the attorney-client privilege. If representation is authorized, Veterans Administration attorneys who assist in the representation of an employee also undertake a full and traditional attorney-client relationship with the employee with respect to the attorney-client privilege. Any adverse information communicated by the client-employee to an attorney during the course of such attorney-client relationship shall not be disclosed to anyone, either inside or outside the Veterans Administration, other than attorneys responsible for representation of the employee, unless such disclosure is authorized by the employee.

* * * * *

[FR Doc. 89–2689 Filed 2–3–89; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

Grants for Health Professions Projects in Geriatrics

AGENCY: Public Health Service, HHS.

ACTION: Final regulations.

SUMMARY: These final regulations set forth requirements which govern the program for Grants for Health Professions Projects in Geriatrics, authorized by section 788(d) of the Public Health Act (the Act), as amended by the Health Professions Training Assistance Act of 1985, and Title VI—Geriatric Training Amendments of 1986.

DATE: These regulations are effective February 6, 1989.

FOR FURTHER INFORMATION CONTACT: William Koenig, Deputy Chief, Associated Health Professions Branch, Division of Associated and Dental Health Professions, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8–103, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number: 301 443–6887.

SUPPLEMENTARY INFORMATION: On May 6, 1988, the Assistant Secretary for Health, Department of Health and Human Services, with the approval of the Secretary, published in the **Federal Register** (53 FR 16293), a Notice of Proposed Rulemaking (NPRM) to add a new Subpart 00 to Part 57 of Title 42 of the Code of Federal Regulations to implement regulations governing Grants for Health Professions Projects in Geriatrics, authorized by section 788(d) of the Public Health Service Act, as amended by Pub. L. 99–129, the Health Professions Training Assistance Act of 1985, enacted on October 22, 1985, and Title VI—Geriatric Training of Pub. L. 99–660, enacted on November 14, 1986. Section 788(d) authorizes the Secretary to make grants to and enter into contracts with accredited schools of medicine, osteopathy, dentistry, pharmacy, optometry, podiatry, veterinary medicine, chiropractic, allied health, and programs for the training of physician assistants to assist in meeting the costs of projects to:

(a) Improve the training of health professionals in geriatrics;

(b) Develop and disseminate curricula relating to the treatment of the health problems of elderly individuals;

(c) Expand and strengthen instruction in methods of such treatment;

(d) Support the training and retraining of faculty to provide such instruction (other than training and retraining of faculty for schools of medicine and osteopathy);

(e) Support continuing education of health professionals and allied health professionals who provide such treatment; and

(f) Establish new affiliations with nursing homes, chronic and acute disease hospitals, ambulatory care centers, and senior centers in order to provide students with clinical training in geriatric medicine.

The Department proposed to implement section 788(d) by awarding grants for projects which support one or more of the statutory purposes and provide assistance to either a single health professions school or program, or a group of such schools or programs.

The NPRM included a definition for "training and retraining of faculty" to mean "a program to train and retrain faculty to provide geriatric instruction which is not a 1-year retraining program for faculty in schools of medicine and osteopathy in geriatrics or a 1-year or 2-year internal medicine or family medicine fellowship program as identified in section 788(e)(3) of the Act."

The Department also proposed that in determining the funding of applications approved under this program, the Department will announce, and solicit public comment on, any special factors related to national needs in periodic notices in the **Federal Register**.

The public comment period for this NPRM ended July 5, 1988. The Department received four comments. A summary of the comments and the Department's response are set forth below.

The majority of the comments concerned the definition of a "health professions school" as it pertains to eligibility to be the recipient of a grant under section 788(d)(1) of the Act, and the definition of a "health professional"

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as it pertains to individuals eligible to participate in training under section 788(d)(1) (A)–(F) of the Act. One respondent noted that although "nurse" and "nurse practitioner" were included in the definition of "health professional," nursing schools were not included in the definition of "health professions school." The reason that schools of nursing were excluded from the definition of "health professions schools" and, consequently, from those entities which are eligible to receive a grant, is that the statute does not authorize their inclusion.

The NPRM defined a "health professions school" to mean "any accredited school of medicine, dentistry, osteopathy, pharmacy, optometry, podiatry, veterinary medicine, public health, and chiropractic as defined in section 701(4) of the Act and as accredited in section 701(5) of the Act." "Health professional" was defined as "any allopathic or osteopathic physician, dentist, optometrist, podiatrist, pharmacist, nurse, nurse practitioner, physician assistant, chiropractor, or allied health professional." Section 788(d)(1) authorizes the Secretary "to make grants to and enter into contracts with accredited health professions schools referred to in section 701(4) or 701(10) and programs referred to in section 701(8) * * *." Schools of nursing are not included in the types of schools identified in section 701(4) or covered by section 701 (8) or (10). Thus, schools of nursing are not eligible to be the direct recipient of a grant or contract under section 788(d). However, schools and other entities not eligible to receive a grant or contract may participate in projects covering the broad range of geriatric education activity described in section 788(d)(1) (A)–(F). For example, a school of medicine which is eligible as a grantee can include a school of nursing as part of a collaborative project proposal. Although schools of nursing are not eligible to be the recipient of a grant under section 788(d), the Department believes that the key role of professional nurses in providing geriatric services makes it essential that they be included in comprehensive geriatric education initiatives.

The distinction between eligibility to be a grantee and a participating health professional also applies to an inquiry received concerning whether schools of psychology would be eligible for support. Although these schools are not eligible to be grantees under section 701(4), 701(8) or 701(10) of the Act, the Secretary believes that these professions should be listed under the definition of "health professionals" as potential trainees under these projects. Therefore, the definition of a "health professional" has been changed to include clinical psychologists and health administrators.

It was also suggested that schools of social work should be included in the definition of "health professions schools." The Department believes that the proposed regulation adequately provides for the effective participation of schools of social work in projects supported under section 788(d).

Several respondents advocated specific types of activities for support, such as: The dissemination and use of existing, as opposed to developing new, curricula; efforts to recruit potential geriatric practitioners; affiliations between geriatric education programs and State units on aging and area agencies on aging; and targeted short-term faculty development for the entire faculty of a department of family medicine.

The Department notes that all of these activities could be included under the broad project purposes set forth in § 57.4004. In fact, some of the existing efforts cited have already been undertaken through Geriatric Education Centers and other projects funded under section 788(d) of the Act. The Secretary believes a flexible approach for funding permits the effective use of scarce educational resources and multidisciplinary approaches. Therefore, § 57.4004 has been retained as proposed.

These final regulations include technical and clarifying revisions to incorporate current departmental grants policy language. Since the revisions are technical in nature, the Secretary has determined pursuant to 5 U.S.C. 553 and departmental policy that is unnecessary and impractical to follow proposed rulemaking procedures. These revisions are summarized below according to the section numbers and titles of the regulations.

1. Revise § 57.4003, entitled "*Who is eligible to apply for a grant?*", by inserting in the footnote a parenthetical phrase, which provides the PHS form and OMB approval numbers for the application form and instructions.

2. Revise § 57.4005(b), entitled "*How will applications be evaluated?*", by removing the words "priority for" and adding the word "of" after the word "funding" to be consistent with recent departmental policy language regarding funding preferences.

3. Revise § 57.4006(b), entitled "*How long does grant support last?*", by removing the second sentence in paragraph (b) which is repetitive of language regarding the submission of a separate application to receive consideration for continued support stated in the last sentence of paragraph (c) of this section.

4. Revised § 57.4009, entitled "*What other audit and inspection requirements apply to grantees?*", by adding the current OMB information collection approval number at the end of the section text.

"On May 10, 1988, the Office of Management and Budget published in the **Federal Register** (53 FR 16618, Part II) revised regulations to implement amendments to the Paperwork Reduction Act of 1980, made by the Paperwork Reduction Reauthorization Act of 1986. These revised regulations set forth additional requirements for information collections which agencies must publish in the preamble of regulations. In compliance with this requirement, the public response burden concerning information collections clearance for this grant program is presented in the preamble. The inclusion of these burdens, however, does not change the statutory provisions of the regulations that govern the Grants for Health Professions Projects in Geriatrics program."

Regulatory Flexibility Act and Executive Order 12291

These regulations govern a financial assistance program in which participation is voluntary. The rule will not exceed the threshold level of $100 million established in section (b) of Executive Order 12291. For these reasons, the Secretary has determined this rule is not a major rule under Executive Order 12291 and a regulatory impact analysis is not required. Further, because the rule does not have a significant economic impact on a substantial number of small entities, a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980 is not required.

Paperwork Reduction Act of 1980

This final rule contains information collections which have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 and assigned control number 0915–0128. The title, description, and respondent description of the information collections are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Grants for Health Professions Projects in Geriatrics.

Description: The audit requirement for 42 CFR 57.4009 is needed to account for expenditures of grant funds by health professions schools.

Description of Respondents: Nonprofit institutions.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN:

Section No.	Annual No. of respondents	Annual frequency [1]	Average burden per response [1]	Annual burden hours
57.4009	25	1	4 hours	100 hours

[1] Audits are estimated to take approximately 8 hours to complete. Since the audits in § 57.4009 are to be conducted biennially, the average burden per response has been reduced by one-half, or 4 hours, to indicate the annual response burden.

We received no public comments on the estimated public reporting burden, and it remains the same as in the proposed rule.

List of Subjects in 42 CFR Part 57

Dental health, Health facilities, Education of the disadvantaged, Health professions, Educational facilities, Loan programs-health, Educational study program, Medical and dental schools, Emergency medical services, Scholarships and fellowships, Grant programs-health, Student aid.

Accordingly, a new Subpart 00 to Part 57 of Title 42 of the Code of Federal Regulations is added, as set forth below.

Dated: November 2, 1988.

Robert E. Windom,

Assistant Secretary for Health.

Approved: December 2, 1988.

Otis R. Bowen,

Secretary.

(*Catalog of Federal Domestic Assistance*, No. 13.969, Grants for the Training of Health Professions in Geriatrics)

PART 57—GRANTS FOR CONSTRUCTION OF TEACHING FACILITIES, EDUCATIONAL IMPROVEMENTS, SCHOLARSHIPS, AND STUDENT LOANS

1. 42 CFR Part 57 is amended by adding a new Subpart 00, entitled "Grants for Health Professions Projects in Geriatrics" to read as follows:

Subpart 00—Grants for Health Professions Projects in Geriatrics

Sec.

57.4001 To what projects do these regulations apply?
57.4002 Definitions.
57.4003 Who is eligible to apply for a grant?
57.4004 Project requirements.
57.4005 How will applications be evaluated?
57.4006 How long does grant support last?
57.4007 For what purposes may grant funds be spent?
57.4008 What additional Department regulations apply to grantees?
57.4009 What other audit and inspection requirements apply to grantees?
57.4010 Additional conditions.

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, 87 Stat. 631 (42 U.S.C. 216); sec 788(d) of the Public Health Service Act, 99 Stat. 542 (42 U.S.C. 295g–6).

§ 57.4001 To what projects do these regulations apply?

These regulations apply to grants to eligible schools and programs under section 788(d) of the Public Health Service Act for geriatric training projects.

§ 57.4002 Definitions.

"Act" means the Public Health Service Act, as amended.

"Allied health professional" means an individual who has received a certificate, an associate degree, a bachelor's degree, a master's degree, a doctoral degree, or postbaccalaureate training, in a science relating to health care and meets the requirements as established in section 701(13) of the Act.

"Budget period" means the interval of time into which the project period is divided for budgetary and reporting purposes, as specified in the grant award document.

"Continuing education" means structured educational programs for practicing health professionals and allied health professionals for the purpose of improving the knowledge and skills in geriatrics of such practitioners with respect to treatment of the health problems of elderly individuals.

"Geriatrics" is the total health and social care of the elderly.

"Geriatric Medicine" means the prevention, diagnosis, care and treatment of illness and disability as required by the distinct needs of the elderly.

"Health professional" means any allopathic or osteopathic physician, dentist, optometrist, podiatrist, pharmacist, nurse, nurse practitioner, physician assistant, chiropractor, clinical psychologist, health administrator, or allied health professional.

"Health professions school" means any school of medicine, dentistry, osteopathy, pharmacy, optometry, podiatry, veterinary medicine, public health, and chiropractic as defined in section 701(4) of the Act and as accredited in section 701(5) of the Act.

"Nonprofit" means an entity owned and operated by one or more corporations or associations, no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual.

"Program for the training of physician assistants" means any educational programs as defined in section 701(8) of the Act.

"Project director" means an individual designated by the grantee in the grant application and approved by the Secretary to direct the project being supported under this subpart.

"Project period" means the total time for which support for a project has been approved including any extensions of the project.

"School of allied health" means a public or nonprofit private junior college, college, or university which provides or can provide a program of education to enable individuals to become allied health professionals or to provide additional training for allied health professions and which meets the criteria set forth in section 701(10) of the Act.

"Secretary" means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

"State" means, in addition to the several States, only the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands (the Republic of Palau), the Republic of the Marshall Islands, and the Federated States of Micronesia.

"Training and retraining of faculty" means a program to train and retrain faculty to provide geriatric instruction which is not a 1-year retraining program for faculty in schools of medicine and osteopathy in geriatrics or a 1-year or 2-year internal medicine or family medicine fellowship program as identified in section 788(e)(3) of the Act.

§ 57.4003 Who is eligible to apply for a grant?

Any public or nonprofit health professions school, school of allied health, or program for the training of physician assistants located in a State may apply for a grant under this subpart. Each eligible applicant desiring a grant under this subpart shall submit an application in the form and at the time the Secretary may prescribe.[1]

§ 57.4004 Program requirements.

(a) The Secretary will award grants to meet the cost of carrying out one or more of the following six purposes:

(1) Improve the training of health professionals in geriatrics;

(2) Develop and disseminate curricula relating to the treatment of the health problems of elderly individuals;

(3) Expand and strengthen instruction in methods of geriatric treatment;

(4) Support the training and retraining of faculty;

(5) Support continuing education of health professionals and allied health professionals who provide geriatric treatment; and

(6) Establish new affiliations with nursing homes, chronic and acute disease hospitals, ambulatory care centers, and senior centers in order to provide students with clinical training in geriatric medicine.

Projects may include one or more of the activities in paragraph (a)(1)–(6) of this section for one or more types of health professionals as defined in § 57.4002 of this subpart.

(b) Each project must evaluate the program systematically, including the determination of a baseline at the outset of the project and the measurement of the degree to which program and educational objectives are met.

§ 57.4005 How will applications be evaluated?

(a) After a peer review group, as required by section 788(d)(2)(B) of the Act, composed principally of non-Federal experts, makes recommendations concerning each application, the Secretary will consult with the National Advisory Council on Health Professions Education, established in section 702 of the Act, with respect to such applications. The Secretary will decide which applications to approve by considering, among other factors:

(1) The degree to which the proposed project adequately provides for the project requirement described in § 57.4004;

(2) The extent to which the rationale and specific objectives of the project are based upon a needs assessment of the status of geriatrics training in the institutions to be assisted and/or the geographic area to be served;

(3) The ability of the project to achieve the project objectives within the proposed geographic area;

(4) The adequacy of educational facilities and clinical training settings to accomplish objectives;

(5) The adequacy of organizational arrangement involving professional schools and other organizations necessary to carry out the project;

(6) The adequacy of the qualifications and experience in geriatrics of the project director, staff and faculty;

(7) The administrative and managerial ability of the applicant to carry out the proposed project in a cost-effective manner; and

(8) The potential of the project to continue on a self-sustaining basis.

(b) In determining the funding of applications approved under paragraph (a) of this section, the Secretary will consider any special factors relating to national needs as the Secretary may from time to time announce in the **Federal Register**.

§ 57.4006 How long does grant support last?

(a) The notice of grant award specifies the length of time the Secretary intends to support the project without requiring the project to recompete for funds. This period, called the project period, will not exceed 5 years.

(b) Generally, the grant will initially be funded for 1 year, and subsequent continuation awards will also be for 1 year at a time. Decisions regarding continuation awards and the funding levels of these awards will be made after consideration of such factors as the grantee's progress and management practices, existence of legislative authority, and the availability of funds. In all cases, continuation awards require a determination by the Secretary that continued funding is in the best interest of the Federal Government.

(c) Neither the approval of any application nor the award of any grant shall commit or obligate the United States in any way to make any additional, supplemental, continuation or other award with respect to any approved application or portion of an approved application. For continuation support, grantees must make separate application at such times and in such a form as the Secretary may prescribe.

§ 57.4007 For what purposes may grant funds be spent?

(a) A grantee shall only spend funds it receives under this subpart according to the approved application and budget, the authorizing legislation, terms and conditions of the grant award, applicable cost principles specified in Subpart Q of 45 CFR Part 74, and these regulations.

(b) Grantees may not spend grant funds for sectarian instruction or for any religious purpose.

(c) Any balance of federally obligated grant funds remaining unobligated by the grantee at the end of a budget period may be carried forward to the next budget period, for use as prescribed by the Secretary, provided a continuation award is made. If at any time during a budget period it becomes apparent to the Secretary that the amount of Federal funds awarded and available to the grantee for that period, including any unobligated balance carried forward from prior periods, exceeds the grantee's needs for the period, the Secretary may adjust the amounts awarded by withdrawing the excess. A budget period is an interval of time (usually 12 months) into which the project period is divided for funding and reporting purposes.

§ 57.4008 What additional Department regulations apply to grantees?

Several other regulations apply to grants under this subpart.

These include, but are not limited to:

42 CFR Part 50, Subpart D—Public Health Service grant appeals procedure

45 CFR Part 16—Procedures of the Departmental Grant Appeals Board

45 CFR Part 46—Protection of human subjects

45 CFR Part 74—Administration of grants

45 CFR Part 75—Informal grant appeals procedures

45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services effectuation of Title VI of the Civil Rights Act of 1964

45 CFR Part 81—Practice and procedure for hearings under Part 80 of this Title

45 CFR Part 83—Regulation for the administration and enforcement of sections 799A and 845 of the Public Health Service Act [1]

45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance

45 CFR Part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance

45 CFR Part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance

§ 57.4009 What other audit and inspection requirements apply to grantees?

Each grantee must, in addition to the requirement of 45 CFR Part 74, meet the requirements of section 705 of the Act, concerning audit and inspection.

(Approved by the Office of Management and Budget under control number 0915-0128.)

§ 57.4010 Additional conditions.

The Secretary may impose additional conditions in the grant award before or at the time of the award if he or she determines that these conditions are necessary to assure or protect the advancement of the approved activity, the interest of the public health, or the conservation of grant funds.

[FR Doc. 89-2701 Filed 2-3-89; 8:45 am]

BILLING CODE 4160-15-M

[1] Applications and instructions (Form PHS 6025-1, OMB #0915-0060) may be obtained from the Grants Management Officer, Bureau of Health Professions, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Health Care Financing Administration

42 CFR Part 405

[BERC-408-F]

Medicare Program; Payment for Kidneys Sent to Foreign Countries or Transplanted in Patients Other Than Medicare Beneficiaries

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: These final regulations exclude from Medicare payments made to organ procurement organizations the costs associated with kidneys sent to foreign countries or transplanted in patients other than Medicare beneficiaries.

In addition to reducing Medicare expenditures by eliminating Medicare subsidization of the costs of kidneys sent to foreign countries or transplanted in patients other than Medicare beneficiaries, we intend these regulations to increase the availability of kidneys to Medicare beneficiaries who are suitable transplant candidates. This could result in medical and social benefits for transplanted patients, and reductions in Medicare expenditures because kidney transplantation is more cost-effective than maintaining beneficiaries on kidney dialysis.

DATE: These regulations are effective on March 8, 1989.

FOR FURTHER INFORMATION CONTACT: Mark Horney, (301) 966-4554.

SUPPLEMENTARY INFORMATION:

I. Background

The Social Security Amendments of 1972 (Pub. L. 92-603) extended Medicare coverage to individuals with end stage renal disease (ESRD) who require dialysis or transplantation. Section 1881 of the Social Security Act (the Act) provides for Medicare payment for kidney transplantation. One of the major components of kidney transplantation is the retrieval of organs through an organ procurement organization (OPO). An OPO, whether independent or hospital-based, is defined in Medicare regulations (42 CFR 485.302 as published on March 1, 1988, 53 FR 6526) as an organization that performs or coordinates the performance of retrieving, preserving, and transporting organs and maintains a system to locate prospective recipients for available organs.

Since the inception of the ESRD program, OPOs have procured kidneys from donors. Once kidneys are retrieved, the OPO searches for and identifies acceptable recipients and coordinates transporting these kidneys to other OPOs, transplant centers or foreign countries. The OPO places kidneys with a transplant organization based on the best possible match of tissue type, blood type, etc., as well as consideration for cold ischemic time (the amount of time a kidney has been outside the body and packed on ice), transportation distance, etc.

The Medicare program pays separately for kidney acquisition services and kidney transplantations. The OPO bills each of the organizations that receive kidneys a standard acquisition charge for each kidney. The standard acquisition charge reflects the cost of removing, preserving, and transporting a kidney, etc. While a hospital-based OPO develops its own charge, an independent OPO's charge is developed by its Medicare fiscal intermediary based on the OPO's costs of operating. These standard acquisition charges become the interim payment for each OPO. The OPO submits its cost of operating on a cost report at the end of its fiscal year. The cost report details both the costs of procuring kidneys and the amounts received from the shipment of kidneys to other OPOs, transplant centers, military hospitals, Veterans Administration (VA) hospitals, and foreign countries. The net difference between the total cost and the total amount received represents the amount due to or from the intermediary.

The Medicare program has always paid the total costs of OPOs because we assumed that all kidneys procured were for Medicare beneficiaries. However, we now realize that this assumption is incorrect and that technology has allowed a significant number of kidneys to be shipped overseas. Since the Medicare program has been paying the cost of procuring kidneys shipped overseas or transplanted into patients other than Medicare beneficiaries, we believe that some action needs to be taken. It is now necessary to amend the regulations in order to effectuate the statutory principles embodied in section 1861(v)(1)(A) of the Act. Section 1861(v)(1)(A) of the Act requires that the cost of services be borne by the appropriate payer. Accordingly, the cost associated with the kidneys not used by Medicare beneficiaries must be borne by the responsible individual or third party payer. Medicare is precluded from paying any costs associated with kidneys not used by Medicare beneficiaries.

On March 2, 1988, we published a proposed rule (53 FR 6672) that would exclude the costs associated with kidneys sent to foreign countries or transplanted in patients other than Medicare beneficiaries from Medicare payments made to OPOs.

II. Provisions of the Proposed Rule

The preamble to the March 2, 1988 proposed rule (53 FR 6673) includes an explanation of current kidney transplantation practices and the proposed regulation provisions and rationale. The final regulation provisions that appear in section IV of this preamble restate the proposed regulation provisions, with the few exceptions noted in that section.

III. Analysis of and Responses to Public Comments

We received 10 timely comments in response to the March 2, 1988 proposed rule. Comments were submitted by OPOs, a nurses' association, and two group health insurance organizations.

[1] Section 799A of the Public Health Service Act was redesignated as section 704 by Pub. L. 94-484; section 845 of the Public Health Service Act was redesignated as section 855 by Pub. L. 94-63.

The major comments and our responses follow.

Comment: Some commenters suggested that we require that all organs be procured through the national Organ Procurement and Transplantation Network (OPTN) before sending them to a foreign country. They also believe that kidneys should not be sent to a foreign country unless all costs are paid by the foreign transplant center.

Response: All Medicare-certified OPOs are required to query the OPTN system for a suitable recipient in the United States if the procured organs cannot be used locally. We agree that this is a necessary requirement to ensure that there is not a suitable recipient in this country. However, it is not the responsibility of the OPTN to arrange or coordinate the exportation or importation of organs, and OPSe are free to make these arrangements directly. As for payment, it is the responsibility of the OPO, not the OPTN, to assure that the foreign transplant center pays the costs of the organ.

Comment: One commenter stated that Canada should not be characterized as a foreign country because of its willingness to share organs.

Response: We cannot accept this suggestion. Section 1862(a)(4) of the Act and Medicare regulations at 42 CFR 405.313 preclude reimbursement by the Medicare program for services performed outside the United States. Therefore, any organs sent to recipients in Canada will be treated as organs sent to a foreign country. Of course, nothing in this requirement need impede organ transfers between the two countries provided that proper cost accounting and billing procedures are followed.

Comment: Several commenters expressed concerns that implementing these regulations would result in an unrecoverable financial loss to nonprofit OPOs or an increase in the discard rate.

Response: The Medicare program has always tried to ensure that it pays only for the services furnished to its beneficiaries. Services furnished to other than Medicare beneficiaries should be paid by those patients or their third-party payers. We are not prohibiting an OPO from sending organs to a foreign country; we are simply not reimbursing these costs under the Medicare program. Section 1861(v)(1)(A) of the Act requires the Medicare program to pay only for the services furnished to Medicare beneficiaries.

While it is true that OPOs are at risk for any financial loss that may occur, we believe that there has been ample time for OPOs to set up memoranda of understanding or lines of credit with selected foreign transplant programs to ensure payment for these organs.

Comment: We received a comment that criticized excluding from Medicare payment the cost of kidneys "when all attempts to utilize the organs in Medicare beneficiaries have failed". The commenter believes that kidneys will be wasted.

Response: We agree that some of these kidneys may be wasted if not used in this country or sent to a foreign transplant center. Costs for kidneys that are wasted and not used either in this country or in a foreign country will be included in the OPOs' cost reports and paid by Medicare based on the ratio of Medicare kidneys to total kidneys. However, we believe that when a kidney is shipped to a foreign country and used in that country, the Medicare program should not be responsible for the cost of that kidney. Accordingly, if a kidney is sent to a foreign country, Medicare will not longer subsidize the cost of procuring that kidney.

Comment: In an effort to encourage the use of kidneys in this country rather than sending them to foreign countries, a commenter suggested that we increase the length of stay limits under the diagnosis related group (DRG). The commenter believes that this suggestion may encourage physicians to use kidneys that have been preserved longer than 40 hours.

Response: First, we believe it is necessary to point out Medicare does not have any length of stay limits for transplanation or for any other DRG. Secondly, Medicare has two methods that will allow a facility to receive additional reimbursement for atypical cases. Additional DRG payments are available to hospitals when the length of stay for a transplant exceeds a specific number of days, or when the cost of services exceeds prescribed thresholds (See §§ 412.82 and 412.84.). Accordingly, there is no payment barrier to the use of kidneys that have been preserved in excess of 40 hours and we see no reason to increase the DRG payment for these kidneys.

Comment: One commenter explained a long-standing reciprocal organ acquisition arrangement its OPO has with a U.S. military hospital in its area. The military renal transplant program (MRTP) is a recipient of kidneys for transplant from the OPO. The OPO and MRTP developed a Memorandum of Understanding due to the fact that military hospitals have no system that allows them to charge civilian OPOs for organ recovery costs. MRTP gets first choice on kidneys recovered from military hospitals, although only 44 of the 124 organs procured in the past 5 years were retained by the MRTP. Eighty organs were used by Medicare certified transplant centers. For kidneys retained by the MRTP, there are no charges by either the OPO or the military hospital for their respective organ recovery costs. Under this long-standing arrangement, the commenter believes its OPO would be adversely affected by the proposed regulation and increased costs to the OPO and the Medicare program would result.

Response: As a result of this long-standing arrangement that is beneficial to the Medicare program, we find it necessary to revise the proposed regulation so that equitable reimbursement to the OPO is maintained. Any special arrangement such as the one mentioned above that was in effect before March 3, 1988 (the publication date of the proposed rule) will be accepted. For these cases, the kidneys procured by an OPO at a military renal transplant hospital and retained for transplant at the hospital will be deemed as Medicare kidneys for cost reporting statistical purposes. While we know of no other special arrangements, if any similar arrangements existed before March 3, 1988, the OPO must submit a request to the fiscal intermediary for review and approval of these arrangements. Absent a special arrangement that existed before March 3, 1988, all kidneys sent to a non-Medicare institution are to be treated as non-Medicare kidneys.

Comment: A commenter stated that included in its hospital-based transplant program costs are a significant amount of pre-transplant costs and living related donor costs that would be partially excluded if a kidney was shipped to a foreign country or transplanted into a patient other than a Medicare beneficiary. The commenter suggested that these costs be removed before any computation that would eliminate the cost of kidneys sent to foreign countries or transplanted into patients other than Medicare beneficiaries.

Response: With respect to pre-transplant costs, we believe that the costs of laboratory tests for waiting list candidates are legitimate costs that should be included with the non-Medicare kidney cost allocation. Living related costs are normal hospital procurement costs that should be included in the overall cost. The amount of non-Medicare costs that will be removed will be a proportionate share of an average of the total costs incurred by the transplant center. In fact, living related acquisition costs are not significantly different from cadaveric acquisition costs. Based on these considerations, we do not see the need for the more sophisticated recordkeeping system that this change will require.

Comment: One commenter questioned the proper handling of patients who are in their first 12 months of ESRD coverage and who are partially or totally covered by group health insurance. The commenter questioned if these secondary payer situations would be considered Medicare transplants or non-Medicare.

Response: We plan to treat secondary payer issues in exactly the same manner as we do all other hospital services. Specifically, if a beneficiary has primary insurance coverage and payment by the primary payer satisfies the liability of the Medicare program, the transplant will be considered a non-Medicare transplant for cost reporting purposes. If the primary payer does not satisfy all of the Medicare program's liability, the transplant will be considered a Medicare transplant for cost reporting purposes. This is consistent with Medicare billing and cost reporting instructions.

Comment: One commenter stated that it is possible for an OPO to sell an organ to a foreign transplant center in excess of its cost. The commenter believes that this situation conflicts with section 301 of the National Organ Transplant Act (Pub. L. 98-507), which prohibits the sale of human organs in excess of the cost to acquire them.

Response: We are also concerned with the sale of human organs for a profit. Even though this regulation is silent on the issue, we expect all intermediaries that discover what appears to be a profit-making arrangement, for not only kidneys but any human organs, to notify the Office of the Inspector General.

Comment: Several commenters mentioned that it is impossible for an OPO to know whether or not the recipient at the transplant center is a Medicare beneficiary.

Response: As stated in the proposed rule (53 FR 6674) any kidney sent to a Medicare-certified transplant center from an OPO will be assumed to be used for Medicare beneficiaries. Once the kidney is received by the transplant center, actual transplant experience will dictate the cost report treatment of these organs. In addition, as mentioned above, kidneys sent to U.S. military transplant hospitals will be treated as Medicare kidneys on the OPO's Medicare cost report.

IV. Provisions of this Final Rule

The regulation provisions of this final rule, for the most part, restate the regulation provisions of the proposed rule. The final rule differs from the proposed rule in that we—

- Replaced the term "organ procurement agency (OPA)" with "organ procurement organization (OPO)" to conform the language to final regulations that were published on March 1, 1988 (53 FR 6526) for OPOs and organ procurement protocols;
- Replaced the use of the term "harvest" with "procure" in response to comments we received; and
- Revised the examples we used in discussing the regulation provisions in response to concerns raised by commenters about military hospitals and the number of nonviable kidneys.

For the reasons explained in the proposed rule, we are adding a new regulation section (42 CFR 413.179) that applies to all OPOs and any Medicare-certified transplant centers that claim kidney acquisition costs on worksheet D-6 of the Hospital Cost Report (HCFA-2552). (42 CFR Part 413 was established on September 30, 1986, at 51 FR 34790.) We will require that kidneys sent to foreign transplant centers or transplanted in patients other than Medicare beneficiaries be excluded from Medicare payments to OPOs. OPOs that send kidneys to foreign countries must ensure that they receive the full amount from the foreign transplant centers for procurement and transportation of the kidneys. We will require OPOs to separate costs associated with kidneys that are sent to foreign countries or transplanted in patients other than Medicare beneficiaries from Medicare allowable costs prior to final settlement by the Medicare fiscal intermediary. The fiscal intermediary will compute the ratio of the number of kidneys used for Medicare beneficiaries to the total number of kidneys used and adjust the costs for kidneys sent to foreign countries or transplanted in patients other than Medicare beneficiaries. For this purpose, kidneys furnished to other OPOs or Medicare-certified transplant centers in the United States will be assumed to be used for transplants in Medicare beneficiaries. As explained earlier in our response to a comment, we will treat kidneys sent to U.S. military institutions in the same manner as kidneys sent to any other Medicare-certified transplant centers from an OPO. Accordingly, any kidney sent to a Medicare-certified transplant center or to one of the two U.S military transplant centers by a certified OPO will be deemed to be a Medicare kidney for reimbursement purposes on the OPO's cost report. However, any costs associated with kidney transplants for patients other than Medicare beneficiaries that are performed in transplant centers will be excluded from total costs of the transplant centers, thereby excluding them from Medicare reimbursement. (The Medicare program will continue to pay for its proportionate share of costs incurred in procuring kidneys that were not transplanted.)

We issued contractor operating instructions to the Provider Reimbursement Manual (HCFA Pub. 15-2, Part II, Chapter 21) in January 1987 that require all OPOs to maintain a log detailing placement efforts effective February 4, 1987. (In the proposed rule, we inadvertently referred to January 1988 instructions.) This is intended to document the efforts that OPOs are making to place kidneys in Medicare beneficiaries before shipping kidneys overseas.

We have detailed below two examples using identical data that show the method of reimbursing OPOs for kidney acquisition costs under the current and revised methodologies.

Total Kidneys—130
Total Usable Kidneys—120
Total Nonviable Kidneys—10
Total Foreign Kidneys—20
Total Military Kidneys—10
Total VA Kidneys—10
Total Cost—$1,200,000 [1]
Foreign Revenue—$25,000 [2]
Military Revenue—$100,000
VA Revenue—$100,000
Payments from Other OPOS or Transplant Centers—$850,000

A. Current Methodology

Under the current methodology, the total cost of procuring kidneys is reduced by the revenue received and the balance is the amount due to or from the Medicare fiscal intermediary. Using the above data in the computation below, the amount the Medicare fiscal intermediary will pay the OPO will be $125,000 on final settlement.

[1] Included in the $1,200,000 total cost are costs associated with nonviable (unusable) kidneys. The Medicare program will continue to pay for its proportionate share of costs incurred in procuring kidneys that were not transplanted.

[2] It is expected that the revenue from the sale of kidneys to foreign countries will increase. As a result, the OPO will receive the same reimbursement in total, but more will come from the foreign country rather than from the Medicare program.

Total cost	$1,200,000
Less military, VA, and foreign revenue	−225,000
Subtotal	975,000
Less payments from Medicare OPOs and transplant centers	−850,000
Balance due OPO from intermediary	$125,000

B. Revised Methodology

Under the revised methodology, an OPO's total cost for all kidneys is reduced by the costs associated with kidneys transplanted in patients other than Medicare beneficiaries or sent to foreign countries regardless of income received from these sources. Using the above data in the computation below, the amount the OPO will pay the Medicare program at the end of the OPO's fiscal year is $50,000.

Step 1—Compute the Medicare Ratio

$$\text{(Medicare Usable Kidneys)} = \text{(Total Usable Kidneys)} - \text{(Total Foreign \& VA Kidneys)}$$

$$90 = 120 - 30$$

$$\text{Medicare Ratio} = \frac{\text{Medicare Usable Kidneys}}{\text{Total Usable Kidneys}}$$

$$75 = \frac{90}{120}$$

Step 2—Compute Medicare Allowable Costs

Total cost (net of transportation costs for exported kidneys)	$1,200,000
Multiplied by Medicare ratio (.75)	X .75
Medicare costs	900,000
Less payments from OPOs, military hospitals, and transplant centers for Medicare kidneys	−950,000
Balance due Medicare Program from OPO	$(50,000)

In the above example, Medicare payments will decrease from $975,000 under the current system to $900,000 under the revised system. OPOs may recoup costs of kidneys from patients other than Medcicare beneficiaries or foreign countries that receive the kidneys.

IV. Regulatory Impact Statement

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any final regulations that are likely to meet criteria for a "major rule." A major rule is one that results in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or any geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), we prepare and publish a regulatory flexibility analysis for final regulations unless the Secretary certifies that the regulations will not have a significant impact on a substantial number of small entities. For purposes of the RFA, we consider OPOs to be small entities.

Currently, there are 72 OPOs, 50 of which are independent (that is, not hospital-based). We expect that the revised system will result in reduced payments to some OPOs, since the Medicare program will no longer subsidize the costs of kidneys that are sent to foreign countries or transplanted in patients other than Medicare beneficiaries. It will result in some program savings, estimated to be approxiamtely $1 million for the first full year of implementation of this regulation. While we expect that some OPOs will experience reductions in Medicare revenues, these reductions will not be substantial unless an OPO provides a disproportionately large number of kidneys to foreign countries. This rule will have an adverse effect on total revenue only if an OPO is unable to obtain payment for the costs associated with kidneys transplanted into patients other than Medicare beneficiaries or sent to foreign countries. We do not believe this is likely; rather, we believe that OPOs will be able to recover their costs not reimbursed by Medicare from patients other than Medicare beneficiaries and foreign transplant centers.

As discussed above, one potential consequence of this change will be an increase in the number of kidneys available for Medicare beneficiaries who need transplants. To the extent that this potential is realized, there will be resulting reductions in Medicare expenditures since patients can be transferred from more costly dialysis to less costly transplantation. These savings will be contingent on matching kidneys with appropriate recipients within a time period considered acceptable. To some extent this may depend on whether U.S. surgeons accept kidneys with a longer cold ischemic time for transplantation. Thus, the savings are not estimable.

We have determined that this regulation does not meet the criteria of E.O. 12291 and does not require a regulatory impact analysis. Also, we have determined, and the Secretary certifies, that this final rule will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis has not been prepared.

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any final rule that may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside a metropolitan statistical area. We have determined, and the Secretary certifies, that this final rule will not have a significant economic impact on the operations of a substantial number of small rural hospitals.

V. Information Collection Requirements

This rule contains no information collection requirements, therefore, it does not come under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501).

VI. List of Subjects in 42 CFR Part 413

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

For the reasons set out in the preamble, Title 42, Part 413 is amended as follows:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES

Subpart H—Payment for End-Stage Renal Disease (ESRD) Services

1. The authority citation for Part 413 continues to read as follows:

Authority: Sections 1102, 1122, 1814(b), 1815, 1833(a), 1861(v), 1871, 1881, and 1886 of the Social Security Act as amended (42 U.S.C. 1302, 1320a–1, 1395f(b), 1395g, 1395l(a), 1395x(v), 1395hh, 1395rr, and 1395ww).

2. Section 413.179 is added to Subpart H to read as follows:

§ 413.179 Organ procurement organizations' (OPOs') or transplant centers' costs for kidneys sent to foreign countries or transplanted in patients other than Medicare beneficiaries

An OPO's or transplant center's total costs for all kidneys is reduced by the costs associated with procuring kidneys sent to foreign transplant centers or transplanted in patients other than Medicare beneficiaries. OPOs, as defined in § 485.302 of this chapter, must separate costs for procuring kidneys that are sent to foreign transplant centers and kidneys transplanted in patients other than Medicare beneficiaries from Medicare allowable costs prior to final settlement by the Medicare fiscal intermediaries. Medicare costs are based on the ratio of the number of usable kidneys transplanted into Medicare beneficiaries to the total number of usable kidneys applied to reasonable costs. Certain long-standing arrangements that existed before March 3, 1988 (for example, an OPO that procures kidneys at a military renal transplant hospital for transplant at that hospital), will be deemed to be Medicare kidneys for cost reporting statistical purposes. The OPO must submit a request to the fiscal intermediary for review and approval of these arrangements.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare Hospital Insurance and No. 13.774, Supplementary Medical Insurance)

Dated: September 18, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: November 21, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 89–2700 Filed 2–3–89; 8:45 am]

BILLING CODE 4120-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88–153; RM–6273]

Radio Broadcasting Services; McFarland, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 275B1 for Channel 275A at McFarland, California, and modifies the Class A license of Caballero Spanish Media, Inc. for Station KXEM–FM, as requested, to specify operation on the higher class channel, thereby providing that community with its first wide coverage area FM service. Reference coordinates for Channel 275B1 at McFarland are 35–29–33 and 119–11–43. With this action, the proceeding is terminated.

EFFECTIVE DATE: March 16, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–153, adopted December 14, 1988, and released January 30, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for California, is amended by revising the entry for McFarland by deleting Channel 275A and adding Channel 275B1.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–2724 Filed 2–3–89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88–32; RM–6029]

Radio Broadcasting Services; Linton, IN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 227B1 for Channel 228A at Linton, Indiana, and modifies the Class A license of Linton Broadcasting Company, Inc. for Station WQTY(FM), as requested, to specify operation on the higher class channel, thereby providing that community with its first wide coverage area FM service. Reference coordinates for Channel 227B1 at Linton are 38–56–46 and 87–18–40. With this action, the proceeding is terminated.

EFFECTIVE DATE: March 16, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–32, adopted December 21, 1988, and released January 30, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Indiana, is amended by revising the entry for Linton by deleting Channel 228A and adding Channel 227B1.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–2727 Filed 2–3–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–128; RM–6168]

Radio Broadcasting Services; Bastrop, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 261C2 in lieu of channel 261A at Bastrop, Louisiana, and modifies the license of Station KMYQ–FM to specify operation on the higher class channel, as requested by Hagan Broadcasting, Inc. This action could provide Bastrop with its second wide coverage area FM station. A site restriction of 10.4 kilometers (6.5 miles) south of Bastrop is required at coordinates 32–41–28 and 91–56–55. With this action this proceeding is terminated.

EFFECTIVE DATE: March 16, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–128, adopted December 21, 1988, and released January 30, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230) 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. § 73.202(b), the Table of FM Allotments is amended, under Louisiana, by removing Channel 261A and adding Channel 261C2 at Bastrop.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–2726 Filed 2–3–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–124; RM–6073]

Radio Broadcasting Services; Moss Point, MS, and Jackson, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 285C2 for Channel 285A at Moss Point, Mississippi, in response to a petition filed by Jackson County Broadcasters, Inc. We shall also modify the license of Station WKKY(FM) to specify operation on Channel 285C2 in lieu of Channel 285A in accordance with § 1.420(g) of the Commission's Rules. The coordinates for Channel 285C2 are 30–24–21 and 88–24–20. To accommodate the substitution of channels at Moss Point, it is necessary to substitute Channel 233A for Channel 285A at Jackson, Alabama. Channel 233A can be substituted for Channel 285A in compliance with the Commission's spacing requirements at the current site of Station WHOD, Jackson. The coordinates for Channel 233A are 31–32–38 and 87–52–30. With this action this proceeding is terminated.

EFFECTIVE DATE: March 16, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–124, adopted December 20, 1988, and released January 30, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments under Mississippi is amended by deleting Channel 285A and adding Channel 285C2 at Moss Point.

3. In § 73.202(b), the Table of FM Allotments under Alabama is amended by deleting Channel 285A and adding Channel 233A at Jackson.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–2725 Filed 2–3–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–31; RM–5682, RM–5848, RM–5979, RM–6166, RM–6384, and RM–6385]

Radio Broadcasting Services; Moscow, OH; Paris, Wilmore, Morehead, Falmouth, Winchester, Carrollton, Elizabethtown, Dry Ridge, Somerset, and Williamstown, KY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document stays the opening of the filing window for FM Channel 245A at Dry Ridge, Kentucky, allotted in MM Docket No. 88–31. The window period for filing applications opened on January 30, 1989, and would have closed on March 1, 1989.

FOR FURTHER INFORMATION CONTACT: Michael Ruger, Mass Media Bureau, (202) 632–6302.

SUPPLEMENTARY INFORMATION: The final rule for this document was published at 54 FR 3781, Jan. 26, 1989. This is a summary of the Commission's Order Granting Request for Stay, MM Docket No. 88–31, adopted February 1, 1989, and released February 2, 1989. The full text of this Commission decision is available during business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–2831 Filed 2–3–89; 8:45 am]

BILLING CODE 6712–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1837

Change to NASA FAR Supplement Concerning Pension Portability

AGENCY: Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This notice amends the NASA Federal Acquisition Regulation Supplement (NFS), Chapter 18 of the Federal Acquisition Regulation System in Title 48 of the Code of Federal Regulations. This rule provides NASA's policy regarding pension portability in service contracts. It establishes the conditions and approvals required to include pension portability provisions in procurements.

EFFECTIVE DATE: February 15, 1989.

FOR FURTHER INFORMATION CONTACT: W.A. Greene, Chief, Regulations Development Branch, Procurement Policy Division (Code HP), Office of Procurement, NASA Headquarters, Washington, DC 20546, Telephone: (202) 453–8923.

SUPPLEMENTARY INFORMATION:

Background

This rule was published for comment as a proposed rule in the **Federal Register** of December 13, 1988. No comments were received.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. This regulation falls in this category. NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*). This rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act of 1980.

List of Subjects in 48 CFR Part 1837

Government procurement.

S.J. Evans,

Assistant Administrator for Procurement.

1. The authority citation for 48 CFR Part 1837 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1837.1—Service Contracting

2. Subpart 1837.1 is amended by adding sections 1837.101, 1837.110, and 1837.170 to read as follows:

1837.101 Definitions.

"Pension portability" means the recognition and continuation in a successor service contract of the predecessor service contract's pension rights and benefits for contractor employees.

1837.110 Solicitation provisions and contract clauses.

The contracting officer shall obtain the Assistant Administrator for Procurement's (Code HP) approval before using in a solicitation, contract, or negotiated contract modification for additional work any installation-developed clause involving pension portability.

1837.170 Pension portability.

It is NASA's policy not to require pension portability in service contracts. However, if it is in the Government's best interest, NASA may consider the inclusion of pension portability requirements in a service contract under the following conditions:

(a) Only defined contribution plans shall be permitted in portability provisions;

(b) At a minimum, vesting shall be 100 percent at contract completion or termination; and

(c) There must be a clear description of the plan, including coverage regarding service, pay, and benefits, as appropriate, from prior contractors.

[FR Doc. 89–2832 Filed 2–3–89; 8:45 am]

BILLING CODE 7510–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 195

[Docket No. PS–95, Amdt. 192–62 and 195–40]

[RIN 2137–AB24]

Gas and Hazardous Liquid Pipelines; Referenced Standards Deletion Affecting Iron, Steel, and Copper Pipe and Other Materials

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule deletes references to certain voluntary design and construction standards concerning cast iron, ductile iron, wrought steel, and wrought iron pipe; copper pipe and tubing; well casing tubing and drill pipe; bronze flanges; and other materials. The references are no longer needed for safety because the materials have minimal or no usage in new gas and hazardous liquid pipelines. This action significantly reduces the number of voluntary standards that are now incorporated by reference in Parts 192 and 195 and the burden of keeping these references up-to-date.

EFFECTIVE DATE: This amendment takes effect March 8, 1989.

FOR FURTHER INFORMATION CONTACT: Paul J. Cory, (202) 366–4561, or the Dockets Unit, (202) 366–4148, regarding copies of this final rule or other material in the docket.

SUPPLEMENTARY INFORMATION:

Background

RSPA issued an Advance Notice of Proposed Rulemaking (ANPRM), published June 4, 1987 (52 FR 21067), and a Notice of Proposed Rulemaking (NPRM), published July 1, 1988, 53 FR 24968, inviting comment on the advisability of deleting from Parts 192

and 195 references to certain voluntary design and construction standards of the American National Standards Institute (ANSI), the American Society for Testing and Materials (ASTM), and the American Petroleum Institute (API). In addition, based on comments to the ANPRM on the question of what additional standards should be considered for deletion, certain standards of the Manufacturer's Standardization Society of the Valve and Fittings Industry (MSS) were included in the NPRM. RSPA determined that the references may no longer be needed for materials that have minimal usage in new construction of gas and liquid pipelines and deleting the references would minimize the effort required to update the current editions of the references to voluntary standards in Parts 192 and 195. The ANPRM and the NPRM presented RSPA's arguments for deleting these references. In most cases deleting references involves revising individual Parts 192 and 195 sections to eliminate reference to the voluntary standard. In Part 192, however, some references are expressed indirectly by referring to a "listed specification," those listed in section I of Appendix B, and deleting any of these references involves changing Appendix B. In Part 192 all referenced voluntary standards are listed in Appendix A to provide names and addresses of publishers. In Part 195 a similar listing is in § 195.3. Thus, deletion of referenced standards also involves changes to Appendix A of Part 192, § 195.3, or both.

Comment Summary

There were 20 letters of comment to the NPRM, including 14 from pipeline operators, two from State pipeline regulatory agencies, three from industry organizations, and one from a fitting manufacturer. Comments generally agreed with the actions proposed by the notice; however, 11 comments addressed specific sections of the proposal. Significant comments and RSPA's responses are discussed hereafter.

Comment: An industry association and one pipeline operator argued against deletion of standards for ductile iron pipe, stating that if the corrosion standards of Part 192 permitted its use in certain soils without applying a protective coating and corrosion control, assuming costs were competitive, they would likely install ductile iron. They cited their own good record with ductile iron pipe as justification.

Response: The subject of corrosion requirements on ductile iron pipe was discussed at length in the NPRM in response to comments to the ANPRM. Briefly, the discussion pointed out that when the Part 192 corrosion standards were published in 1971, there were no persuasive arguments given to exclude ductile iron pipe from the requirements. Since that time, no new data has been presented to RSPA to support a rule change. Besides all this, the primary consideration in this rulemaking is whether at the present time certain materials are being installed in significant amounts in new pipelines to justify maintaining references to voluntary standards to govern use of the materials. Since ductile iron is not being used for new pipelines, standards on ductile iron pipe are deleted in the final rule.

Comment: One industry association and two pipeline operators commented on the proposed revision of § 192.63(a). One comment suggested deleting § 192.63(a)(1), even though it merely restated the existing rule that components be marked according to the specification to which they are made. The rationale given was that for specifications other than "listed specifications," this marking requirement gives specification writers authority to set federal marking standards without appropriate government review. Another comment suggested adding "material" and "grade" to the list of items proposed to be marked on components under § 192.63(a)(2) to provide for correct usage. Another commenter said "as appropriate" should be added at the end of the list, since all listed items may not apply to all components.

Response: Reviewing the marking rule under § 192.63(a)(1), which has been in Part 192 since it was initially published in 1971, is beyond the scope of the present rulemaking which merely eliminates unnecessary or obsolete specifications and makes other conforming changes.

The comments pertaining to the proposed revision of § 192.63(a)(2) have merit, and the final rule is changed accordingly to state the information that is required for marking all items, and as appropriate for the item being marked, additional required information.

Comment: One industry association and two pipeline operators pointed out that in the proposed § 192.125(b), requiring the use of "Type L" pipe for copper service lines has no meaning. The "Type L" designation is used in ASTM B88 to specify wall thickness, and is not needed if the reference to ASTM B88 is deleted.

Response: RSPA agrees and has deleted the reference to "Type L" in the final rule. The table of wall thicknesses that was in the proposed wording is sufficient without mentioning "Type L."

Comment: With regard to the proposed revision of § 192.145, Valves, one operator questioned whether the variation in test pressure of 1.5 times the pressure rating for steel valves, 2.0 for cast iron plug valves, and 1.75 for cast iron gate and swing check valves is justified from a safety viewpoint.

Response: The final wording of § 192.145 has been changed from that proposed in the NPRM to specify a uniform ratio of test level to pressure rating for all valves (1.5) regardless of material or type of valve. This same level is required by the voluntary standards for cast iron and plastic valves that are considered "equivalent" to API 6D. A test level of 1.5 times the pressure rating, uniform with the industry standard presently used for the manufacture of plastic valves, has been set for plastic valves consistent with the level set forth in API 6D for testing of the valve shell. API 6D is the only voluntary standard referenced in the final rule. The requirement contained in the notice that cast iron valves be tested "prior to painting" has been deleted in the final rule because it is superfluous.

Comment: One industry organization and one pipeline operator recommended that RSPA use performance language in § 192.145 for gas pipeline valve design similar to that used in § 195.116 for the design of liquid pipeline valves.

Response: The suggested extensive revision to the proposed rule is beyond the scope of this regulatory action. Also, it must be recognized that the two standards differ because § 195.116 pertains only to valves intended for use in steel pipelines, whereas § 192.145 pertains to valves intended for use in pipelines made of any material. Nevertheless, RSPA has a continuing project to eliminate needless dissimilarities between Parts 192 and 195, and will consider the need for performance language in § 192.145 when this rule is reviewed for that purpose.

Comment: One pipeline operator and one valve manufacturer agreed with deletion of MSS SP–78 in § 192.145, but pointed out that the words, "or equivalent," should be retained as they have permitted the use of improved standards for valves in gas distribution systems that exceed the requirements of MSS SP–78. The comments further pointed out that the equivalent standards being used to manufacture valves for gas distribution systems are:

ANSI B16.33–1981, Manual Operated Metallic Gas Valves for Use in Gas Piping Systems Up to 125 psig (sizes ½" through 2")

ANSI B16.38–1985 Large Metallic Valves for Gas Distribution (Manually Operated, NPS 2½" to 12", 125 psig Maximum)

ANSI B16.40–1985, Manually Operated Thermoplastic Gas Shut-Offs and Valves in Gas Distribution Systems

One commenter recommended that § 192.145(b) be revised to eliminate the proposal to test each valve and rather require operators to conform to the "specifications" presently used for manufacturing these valves. The other commenter recommended that § 192.145 be revised to recognize the differences in the various valve materials by providing separate requirements for steel, ductile iron, cast iron, and plastic valves.

Response: RSPA has reviewed the three ANSI standards now in use for manufacturing valves for use in gas distribution systems and finds the testing levels to be substantially identical (1.5 times the maximum service pressure). Further, we do not agree that the requirement for testing individual valves should be eliminated, because it provides a good quality control check and demonstrates that the valves do not leak.

RSPA agrees that because of differences in the characteristics of materials used for valves, requirements of § 192.145 should recognize both similarities and differences. For instance, under the final rule, valves other than cast iron and plastic are required to meet API 6D, or equivalent. Test requirements for cast iron and plastic valves are the same. Certain additional limitations applying to the use of ductile iron valves in the current rule are retained.

Comment: One operator commented that the proposed wording of § 192.147(c) could lead to an unsafe design. The dimensions and drilling configuration of a cast iron flange is vital to make a workable joint, but the critical safety feature of a cast iron flanged component is its beam strength. The traditional method of recognizing this limitation has been to use flat-faced flanges with full-faced gaskets. The proposal should not imply that dimensions and drilling are the only safety concern, or should also mention flange facing and gasket criticality.

Response: RSPA agrees. The final rule in § 192.147(c) has been changed from the NPRM in response to the comment and the requirements of ANSI B16.1, paragraph 7.2, by adding face and gasket design to those items to which each cast iron flange must conform.

Comment: A pipeline operator stated in regard to the proposed revision of § 192.557(d) that if the design specifics of §§ 192.117 and 192.119 are removed, there is no reason to maintain standards defining how input to stress formulas should be handled.

Response: RSPA does not agree because there are cast iron and ductile iron pipelines that may be uprated. However, as a result of the misunderstanding of the purpose that is illustrated by this comment and numerous other misunderstandings of this section in the past by both industry and enforcement personnel, clarifying wording has been added to § 192.557(d) to indicate the intent. Thus, the final rule remains as proposed, except that the "Note" at the end of § 192.557(d)(3) is deleted in response to a comment, since it is superfluous and refers to two standards which are no longer referenced as a result of this amendment.

Comment: Two comments questioned whether deleting references to voluntary standards governing design would affect the MAOP permitted for existing pipelines. Under § 192.619(a) MAOP may not exceed design pressure determined under Subparts C and D of Part 192. Also, under § 192.553(d) a pipeline may not be uprated to an MAOP higher than this same design pressure.

Response: RSPA recognizes that as a result of this rulemaking, certain types of pipe or components will no longer be specifically addressed under Subparts C and D. However, other general design requirements of Subparts C and D apply for purposes of determining MAOP under §§ 192.619 and 192.553(d). These requirements apply now to older systems that were built to unknown standards. Also, if previously referenced voluntary standards were used in pipe or component manufacture, Part 192 permits the use of these standards to establish the design pressure of the component or pipe in question. (*See* § 192.7)

Impact Assessment

This final rule is considered to be nonmajor under Executive Order 12291 and is not significant under DOT Regulatory Policies (44 FR 11034, Feb. 26, 1979). Because it includes no substantive revisions that could be expected to require significant changes in operator procedures or compliance burdens, and because the economic impact would be slight, a full regulatory evaluation is not required.

The agency certifies under section 605 of the Regulatory Flexibility Act that this final rule will not have a significant impact on a substantial number of small entities.

As a result of deletion of listed standards this final rule makes a number of editorial and other clarifying changes to Parts 192 and 195 and does not impose any substantive new safety requirements exceeding those presently required by the standards being deleted.

Advisory Committee Review

The changes were considered in September 1988 by the Departments gas and liquid advisory committees, the Technical Pipeline Safety Standards Committee and the Hazardous Liquid Pipeline Safety Standards Committee, who approved them without modification.

List of Subjects

49 CFR Part 192

Cast iron pipe, Ductile iron pipe, Copper pipe, Valves, Flanges.

49 CFR Part 195

Pipeline safety, Design pressure, Specification.

In view of the foregoing, RSPA amends 49 CFR Parts 192 and 195 as follows:

PART 192—[AMENDED]

1. The authority citation for Part 192 continues to read as follows:

Authority: 49 App. U.S.C. 1672 and 1804; 49 CFR 1.53.

§ 192.57 [Removed and Reserved]

2. Section 192.57 is removed and reserved.

§ 192.61 [Removed and Reserved]

3. Section 192.61 is removed and reserved.

4. Section 192.63(a) is revised to read as follows:

§ 192.63 Marking of materials.

(a) Except as provided in paragraph (d) of this section, each valve, fitting, length of pipe, and other component must be marked—

(1) As prescribed in the specification or standard to which it was manufactured; or

(2) To indicate size, material, manufacturer, pressure rating, and temperature rating, and as appropriate, type, grade, and model.

* * * * *

§ 192.113 [Amended]

5. In the table in § 192.113 the entries for the following specifications are removed: "ASTM Al34," "ASTM A135," "ASTM A139," AND "ASTM A211."

§ 192.117 [Removed and Reserved]

6. Section 192.117 is removed and reserved.

§ 192.119 [Removed and Reserved]

7. Section 192.119 is removed and reserved.

8. Section 192.125(b) is revised to read as follows:

§ 192.125 Design of copper pipe.

* * * * *

(b) Copper pipe used in service lines must have wall thickness not less than that indicated in the following table:

Standard size (inch)	Nominal O.D. (inch)	Wall thickness (inch)	
		Nominal	Tolerance
⅛	.625	.040	.0035
¼	.750	.042	.0035
⅜	.875	.045	.004
1	1.125	.050	.004
1¼	1.375	.055	.0045
1½	1.625	.060	.0045

* * * * *

9. In § 192.145, paragraph (a) is removed, paragraphs (b), (c), and (d) are redesignated (c), (d), and (e) respectively and new paragraphs (a) and (b) are added as follows:

§ 192.145 Valves.

(a) Except for cast iron and plastic valves, each valve must meet the minimum requirements, or equivalent, of API 6D. A valve may not be used under operating conditions that exceed the applicable pressure-temperature ratings contained in those requirements.

(b) Each cast iron and plastic valve must comply with the following:

(1) The valve must have a maximum service pressure rating for temperatures that equal or exceed the maximum service temperature.

(2) The valve must be tested as part of the manufacturing, as follows:

(i) With the valve in the fully open position, the shell must be tested with no leakage to a pressure at least 1.5 times the maximum service rating.

(ii) After the shell test, the seat must be tested to a pressure not less than 1.5 times the maximum service pressure rating. Except for swing check valves, test pressure during the seat test must be applied successively on each side of the closed valve with the opposite side open. No visible leakage is permitted.

(iii) After the last pressure test is completed, the valve must be operated through its full travel to demonstrate freedom from interference.

* * * * *

10. Section 192.147 is amended by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 192.147 Flanges and flange accessories.

(a) Each flange or flange accessory (other than cast iron) must meet the minimum requirements of ANSI B16.5, MSS SP–44, or the equivalent.

* * * * *

(c) Each flange on a flanged joint in cast iron pipe must conform in dimensions, drilling, face and gasket design to ANSI B16.1 and be cast integrally with the pipe, valve, or fitting.

§ 192.177 [Amended]

11. In § 192.177(b)(1), the words "either API Standard 5A or" are removed.

§ 192.275 [Amended]

12. Section 192.275(e) is removed.

§ 192.277 [Amended]

13. In § 192.277, paragraph (a) is removed and paragraphs (b) and (c) are redesignated as (a) and (b), respectively.

14. Section 192.279 is revised to read as follows:

§ 192.279 Copper pipe.

Copper pipe may not be threaded except that copper pipe used for joining screw fittings or valves may be threaded if the wall thickness is equivalent to the comparable size of Schedule 40 or heavier wall pipe listed in Table C1 of ANSI B16.5.

§ 192.557 [Amended]

15. In § 192.557(d) the introductory text and paragraph (d)(1) are revised to read as follows and the Note following the table in paragraph (d)(3) is removed:

* * * * *

(d) If records for cast iron or ductile iron pipeline facilities are not complete enough to determine stresses produced by internal pressure, trench loading, rolling loads, beam stresses, and other bending loads, in evaluating the level of safety of the pipeline when operating at the proposed increased pressure, the following procedures must be followed:

(1) In estimating the stresses, if the original laying conditions cannot be ascertained, the operator shall assume that cast iron pipe was supported on blocks with tamped backfill and that ductile iron pipe was laid without blocks with tamped backfill.

* * * * *

Appendix A [Amended]

16. Section II of Appendix A to Part 192 is amended by removing and reserving items (1) and (2) from subdivision A; items (3), (4), (5), (9), (12), (14), (15), (16), (17), (18), and (19) from subdivision B; items (1), (2), (3), (6), (7), and (8), from subdivision C; and (1), (3), (4), and (5) from subdivision E. The remaining items in each subdivision are renumbered in appropriate sequence.

Appendix B [Amended]

17. Section I of Appendix B to Part 192 is amended by removing the following entries: "ASTM A134—Steel pipe (1974), ASTM A135—Steel pipe (1979), ASTM A139—Steel pipe (1974), ASTM A211—Steel and Iron pipe (1975), ASTM A377—Cast iron pipe (1979), ASTM A539—Steel tubing (1979), ASTM B42—Copper pipe (1980), ASTM B68—Copper tube (1980), ASTM B75—Copper tube (1980), ASTM B88—Copper tube (1980), ASTM B251—Copper pipe and tubing (1976), and ANSI A21.52—Ductile iron pipe (1971)."

PART 195—[AMENDED]

18. The authority citation for Part 195 continues to read as follows:

Authority: 49 App. U.S.C. 2002 and 49 CFR 1.53.

§ 195.3 [Amended]

19. Section 195.3 is amended by removing and reserving paragraphs (c)(5) (iii), (iv), (v), and (ix).

§ 195.106 [Amended]

20. In the table in § 195.106(e), the entries for the following specifications are removed: "ASTM A134, ASTM A135, ASTM A139, and ASTM A211."

Issued in Washington, DC, on January 31, 1989.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

[FR Doc. 89–2542 Filed 2–3–89; 8:45 am]

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Proposed Rules

Federal Register
Vol. 54, No. 23
Monday, February 6, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 543, 544, and 545

[No. 89–84]

Release Of Customer Financial Records By Federal Associations; Withdrawal Of Proposed Rules

January 29, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rules; withdrawal.

SUMMARY: Today the Federal Home Loan Bank Board ("Board") is withdrawing previously proposed extensive revisions to its regulations regarding the corporate governance of Federal associations as they are redundant of and or conflict with a proposed regulation, entitled Release of Customer Financial Records by Federal Associations, published elsewhere in today's **Federal Register.**

DATE: This withdrawal is effective January 29, 1989.

FOR FURTHER INFORMATION CONTACT: Jeffrey R. Williams, Attorney-Advisor, (202) 377–6559, Regulations and Legislation Division, Kathleen Ulrich, Attorney-Advisor, Corporate and Securities Division, (202) 377–7049, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552; or Ben F. Dixon, Policy Analyst, (202) 331–4599, Policy Division, Office of Regulatory Affairs, Federal Home Loan Bank System, 801 Seventeenth Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: On November 22, 1985, the Board proposed extensive revisions to its regulations regarding the corporate governance of Federal associations. Corporate Governance II, 50 FR 52482 (December 24, 1985). As part of that effort, the Board proposed a new section 543.9–3 entitled "Books and records; stockholder access". 50 FR 52501. That proposed section, which generally dealt with bookkeeping requirements of Federal stock associations, included a paragraph (d) entitled "Confidentiality of records" and provided that no stockholder or any other person had the right to obtain or inspect a list of depositors of a Federal stock association or the confidential customer records of that association.

Subsequently, on June 22, 1987, the Board proposed further extensive revisions to its regulations regarding the corporate governance of Federal associations. Corporate Governance, Parts III and IV, 52 FR 25870 (July 9, 1987). Included in that set of proposed rules was a proposed new § 544.9–2 entitled "Disclosure of membership lists; communication between members of a Federal mutual association", 52 FR 25880. Proposed section 544.9–2 included paragraph (a) entitled "Disclosure of membership list prohibited" and paragraph (b) entitled "Right to inspection of member's own record." Corporate Governance Parts III and IV also included proposed revised section 545.131 entitled "Disclosure of customer information", 52 FR 25883.

Since the foregoing regulatory provisions are redundant of and/or conflict with a proposed regulation creating a new section 545.132 adopted by the Board, published elsewhere in today's **Federal Register** and entitled "Release of Customer Financial Records by Federal Associations", the Board is withdrawing proposed § 543.9–3(d) of Corporate Governance Part II and § 544.9–2(a) and (b) and § 545.131 of Corporate Governance Parts III and IV.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–2705 Filed 2–3–89; 8:45 am]

BILLING CODE 6725–01–M

12 CFR Parts 545, 552

[No. 89–85]

Release of Customer Financial Records by Federal Associations

Date: January 29, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board (the "Bank Board" or "Board") is proposing to revise its regulations governing the release by federally chartered savings and loan associations and savings banks ("Federal associations" or "associations") of customer financial records. The proposal would generally authorize a Federal association, whether chartered as a mutual association ("Federal mutual association"), or as a stock association ("Federal stock association"), to disclose the names and addressees of its customers to any party unless the customer objects, but would prohibit the disclosure of confidential information concerning customers' savings or loan accounts subject to specific exceptions. The proposal would modify the current requirement that Federal mutual associations obtain the prior approval of either the Board or a Supervisory Agent before releasing their customer records. Through this proposal, the Board seeks to balance the legitimate business interests of Federal associations in disclosing customer records with customer expectations of confidentiality.

In addition, by separate action, the Board is withdrawing certain proposed amendments to sections in 12 CFR 543 and 544 proposed in Corporate Governance Parts II, III and IV.

DATE: Comments must be received on or before April 7, 1989.

ADDRESS: Please send comment letters to the Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552. Comment letters will be available for inspection at 801 17th Street NW., Washington, DC 20552.

FOR FURTHER INFORMATION CONTACT: Jeffrey R. Williams, Attorney-Advisor, (202) 377–6559, Regulations and Legislation Division, Kathleen Ulrich, Attorney-Advisor, Corporate and Security Division, (202) 377–7049, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552; or Ben F. Dixon, Policy Analyst, (202) 331–4599, Policy Division, Federal Home Loan Bank System, 801 17th Street NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

A. Current Regulations and Office of General Counsel Interpretations

Section 545.131(a) of the Board's regulation sets forth limitations on public disclosure by a Federal mutual

association of its "membership list." As used in § 545.131, a "membership list" includes a list of the names of the members of the association, their addresses, their savings account or loan account records, or any data from which information reasonably could be constructed. 12 CFR 545.131(a) (1988). Section 545.131(a)(2) generally prohibits Federal mutual associations from disclosing membership lists without the prior written approval of the Board. The regulation contains exceptions for disclosure to officers of the association and to those persons employed by them in the usual course of the association's business. Section 545.131(a) permits a Supervisory Agent to approve or disapprove an application by a Federal mutual association to release such lists and to specify any terms or conditions for such release. *Id.* § 545.131(a)(3). Section 545.131(b) gives a member of a Federal mutual association the right to inspect only those records of the association pertaining to his or her own savings or loan accounts.[1]

In construing the provisions of § 545.131, the Board's Office of General Counsel ("OGC") has interpreted the regulation to permit disclosure to an "agent" of the association, pursuant to a written agency agreement, where the agent acts as the functional equivalent of an officer or employee conducting the business of the association in its usual course. Disclosure also has been permitted to an association's wholly owned service corporations or its wholly owned subsidiaries, when such release has been approved by the Supervisory Agent. Under the authority of Supervisory Agents to specify the terms and conditions of such approval, approval has been conditioned primarily upon the membership list being released to the service corporation or subsidiary pursuant to a written agreement that would protect the members' rights of privacy. *See, e.g.*, OGC Ops. by R. Stewart (Feb. 27, 1985); J. Williams (March 17, 1986) and J. Williams (March 21, 1986). While no Board regulation specifically applies to the release of customer lists by a Federal stock association, other than 12 CFR 552.11(d) prohibiting release of depositor lists to stockholders, the OGC has by interpretive opinion applied to Federal stock associations the same limitations concerning release of customer lists as are applied to Federal mutual associations. *Id.*

B. Description of the Corporate Governance Proposals

As part of Corporate Governance II, III, and IV, the Board proposed changes to its regulations governing release of customer records. *See* 50 FR 52,482 (Dec. 24, 1985); 52 FR 25,870 (July 9, 1987). Taken together, the outstanding proposals currently provide: (1) That no stockholder or any other person would have the right to obtain or inspect lists of depositors in or borrowers from Federal stock associations or other confidential deposit or loan information, 50 FR 52,501; and (2) that the disclosure of membership lists of Federal mutual associations to any person except officers or other employees of an association in the ordinary course of business is generally prohibited. However, the disclosure of customer records by a Federal mutual association to its wholly owned service corporations or subsidiaries in the ordinary course of business is permitted if the lists are required to be used by the subsidiaries solely in the ordinary course of the business of either the subsidiary or the association and if disclosure is made under conditions designed to protect the confidentiality of the records so disclosed. 52 FR 25,880. Specifically, the Corporate Governance proposals would have conditioned any disclosure of membership lists on: (1) The existence of a written agreement under which the subsidiary receiving the records agreed to use the records solely in the ordinary course of business and further agreed not to sell or otherwise make the lists publicly available; and (2) the prior written approval of a Supervisory Agent of the terms of the confidentiality agreement. *Id.*

This latest version of Corporate Governance contained proposed § 554.9–2, which provided that members of, or depositors in, Federal mutual associations had the right to obtain and inspect the association's books and record pertaining solely to the member's or depositor's own savings or loan accounts and that Federal mutual associations may disclose membership lists to their wholly owned subsidiaries and to the association's officers or employees in the ordinary course of conducting the association's business. *Id.*

The comment period for Corporate Governance Proposal Part II ended on February 24, 1986. The end of the comment period for the Corporate Governance Proposal Parts III and IV, originally set at September 8, 1987, was extended until February 1, 1988. 52 FR 42,116 (Nov. 3, 1987). The Board has also considered comments filed after that date. The Board received fifty-three comments concerning proposed §§ 543.9–3, 544.9–2, and 545.131.

C. Discussion of Comments Submitted in Response to the Corporate Governance Proposal Parts II, III and IV

Nineteen commenters responded to proposed § 543.9–3(d) of Corporate Governance Part II, under which no stockholder or any other person would have the right to obtain or inspect lists of names and/or addresses of depositors or borrowers of their loan or savings account information. These commenters, asserting that the proposed section provided Federal mutual associations with a procedure to follow for disclosing such lists while Federal stock associations would be restricted from making such disclosures, argued that the distinction in treatment was without basis.

With respect to the rule set forth in proposed § 544.9–2(a)(2) that a Federal mutual association may release membership lists only to its officers or employees in the ordinary course of conducting the association's business, twenty-three commenters asserted that the provision was unduly restrictive. They explained that many associations use "contract vendors" or "third party vendors" to perform necessary services on behalf of the associations such as check printing, data processing and mailing, and that it was crucial to release at least minimal membership information to entities that perform such tasks. These commenters requested that the proposal be amended to include release not only to officers and employees, but also to those employed in the ordinary course of the association's business. In this way, the commenters claim, the confidentiality of the depositors records would still be preserved.

About twenty-five other commenters advocated a much more expansive disclosure provision. These commenters urged that access to the association's deposit records be granted to, for example, property tax payment services, preparers of annual mortgage statements, direct mail promoters, sellers of tax-deferred annuities and mutual funds, and providers of life and property insurance. Most commonly mentioned were companies that offer mortgage life insurance and group insurance, which, it was claimed by commenters, may protect the association by preventing loan foreclosures and benefit borrowers by providing such insurance at low group rates and offering the convenience of paying along with a loan payment. Moreover, at least five commenters stressed the importance of the fee income provided by these contract vendors and urged that its deprivation would ill-serve the goal of increasing the financial strength of Federal associations. Another commenter noted that the release of customer information to third parties should be left for the customer, not the Bank Board, to decide. Two commenters suggested that all third parties be allowed, pursuant to a written contract, to have access to all records in order to perform all functions that the association or its service corporation is authorized to perform. Another of these commenters stated that all those with a legitimate business need should be entitled to access membership information. Three commenters suggested that liberal disclosure rules would allow small institutions to compete with larger ones that can afford to offer some of these services in-house, and another noted that liberalizing disclosure rules would serve to remove the competitive imbalance between state and federally chartered associations with respect to customer record access. Four commenters stressed the importance of maintaining the confidentiality of customers of Federal associations, suggesting that confidentiality is currently assured by releasing minimal information to vendors.

With regard to the rule set forth in proposed § 544.9–2(a)(4) that an association's Supervisory Agent must pre-approve release of membership lists to wholly owned service corporations and subsidiaries, six commenters responded. All six commenters agreed that such an approval process was unnecessary, unduly burdensome, and time-consuming. The commenters variously suggested that appropriate solutions would be a confidentiality agreement whose terms were preapproved by the Board, or a requirement that all customer record requests be filed with the Board and automatically granted after expiration of a certain time period if not disapproved.

In addition, five commenters objected that the regulations as proposed appear to prohibit reporting by Federal associations to consumer reporting agencies, in violation, the commenters stated, of Congressional intent expressed in, for example, the Fair Credit Reporting Act. One of these commenters claimed that this places Federal associations at a competitive disadvantage with commercial banks that do not operate under such strictures, because the credit reporting agencies will not sell credit information about prospective borrowers to financial institutions that do not report, and Federal associations will not be able to receive the names available from credit reporting agencies in order to solicit new accounts.

One commenter asked that the Board clarify whether it intends to make a distinction between only the names and addresses of customers and all other account and loan information contained in customer records. Another commenter asked that the Board decide whether its regulations on this issue should be phrased only in terms of a party's right to obtain customer records or whether the Board should accommodate an association's desire to turn over such records voluntarily to third parties.

D. Board Reconsideration of Issues

Based upon a thorough review of the comments submitted in response to the Corporate Governance Proposal Parts II, III, and IV, as well as upon consideration of other policy concerns, the Board has determined to revise its proposal concerning disclosure of customer records by Federal associations and to publish its new proposals for comment.[2]

Until now, the Board's regulations concerning the confidentiality and disclosure of customer records have been separately applicable to Federal stock associations and Federal mutual associations. The Board has made the determination that it is more efficacious for these rules to appear in one regulatory section, applicable to all Federal associations. This determination accords with the OGC opinions, previously mentioned, that, with regard to the release of customer records, the interests of Federal mutual associations and Federal stock associations are similar as are the interests of depositors in stock associations and members of mutual associations.

The Board also has reconsidered the issue of allowing release of customer records only to wholly owned service corporations or subsidiaries of the Federal association. The Board believes that it may not be justifiable to have a policy that distinguishes between release by a Federal association of customer lists to its wholly owned service corporations or subsidiaries and release of customer lists to non-affiliated business entities that engaged in the same activities. The Board is cognizant of the view that such an expansion of the disclosure rules may serve to enhance the value of a Federal charter; it specifically requests public comment on this point.

The current system of review by Supervisory Agents of the circumstances under which a Federal association may disclose its customer records pursuant to current § 545.131, modified in the most recent proposal of § 544.9–2, also has been reconsidered by the Board. The supervisory review process has produced differing supervisory guidelines in this area resulting in a lack of uniformity in approach to disclosure of customer records by Federal associations in different districts. The Board also has re-evaluated the review process in light of many commenters' objections that it was unduly burdensome and time consuming. Accordingly, the Board has endeavored in this proposed rule to clarify the circumstances in which customer records may be disclosed.

The Board also has determined to retain in this proposed rule the principle that the prerogative to obtain and inspect a customer's own confidential records resides with the customer. The Board also responds to a commenter's suggestion that the right to obtain such records be distinguished from an association's right to release such records voluntarily. The Board is of the view that the right to obtain and inspect belongs only to a customer, and not to third parties. The decision to release customer records over the objection of customers is left to the Federal associations under strictly limited circumstances.

The Board has given much consideration and attention to the competing interests of customer privacy and Federal associations' business needs raised by the comments to the various Corporate Governance

[1] Section 545.131(c) gives members of a Federal mutual association the right to communicate with other members of the association only in the manner prescribed in paragraph (d). Paragraph (d) of § 545.131 establishes procedures for communications between members of a Federal mutual association. Finally, § 545.131(e) defines the term "improper communications" for purposes of paragraph (d) of that section. Section 544.5(b)(6) contained in Part 544, concerning the charter and bylaws of Federal mutual association, provides that communications between members shall be consistent with § 545.131. These sections are not proposed to be altered by the regulations proposed herein.

[2] At this time, the Board is proposing a rule dealing solely with the issue of the confidentiality and release of customer records. Thus, in a companion document, the Board is proposing to withdraw only those current regulations that either conflict with or are redundant in light of the regulations proposed today. Current regulatory provisions concerning only peripherally related issues, such as communication between members of Federal mutual associations and access to records by shareholders of Federal stock associations, remain unaffected. In addition and by separate action, the Board withdraws those regulatory provisions proposed as part of Corporate Governance Parts II, III, and IV that concern the issue of confidentiality and release of customer records and are redundant or conflict with this proposed rule.

proposals. The Board understands that a Federal association cannot conduct its day-to-day business operations without freely releasing certain customer records to parties such as those who print checks and process customer mailings, whether they are actually in-house employees or third parties hired to perform such services. With observance of methods to safeguard customer confidentiality, as discussed below, the Board believes that customer records must be released to such third parties.

However, many commenters strongly advocated that Federal associations be afforded the opportunity to release customer records voluntarily to many different business entities, such as those offering mortgage life insurance, in the interest of the financial benefits of such transactions both to Federal associations and such business entities. In balancing the business concerns of the association with the privacy concerns of the customers, the Board is proposing the following compromise: a Federal association may freely release the names and addresses of each customer—*i.e.*, customer identification—to any third party including third party vendors of services *unless* the customer affirmatively and in writing prohibits the association from doing so; *provided that* the Federal association has given actual notice of the customer's right to prohibit the release of customer identification and of the intent of the Federal association to release such identification.

Information consisting of names and addresses, however, in conjunction with other account records, is referred to as "customer records." As discussed in more detail below, customer records may only be released after the receipt of a customer's authorization procured by the Federal association or pursuant to certain exceptions.

While each customer would have the ability to prevent release of customer records and identification, the Board recognizes that there are overriding practical and legal concerns that mandate release of confidential customer records to certain parties and entities despite objection by the customer. A Federal association cannot conduct daily operations that entail the preparation and handling of customer information without allowing reasonable access to such records by employees or agents of the association. Similarly, a Federal association, in compliance with the Right to Financial Privacy Act, must be able to cooperate with the Board and Federal Home Loan Bank employees and agents who request customer records in order to perform their duties with respect to Federal associations.

Further, as the commenters emphasized, Federal associations should be allowed to communicate freely with credit reporting agencies in order to conduct certain basic financial operations such as examining the credit history of loan applicants. Certain legal consideration such as the duty to respond to lawful subpoenas and to report to governmental bodies would also require release of confidential customer records when required.

Certain of these exceptions, however, must necessarily be accompanied by safeguards designed to ensure their confidentiality. Therefore, when it cannot be assumed that confidentiality of customer records will be maintained, the Board believes that such disclosures should be accompanied by agreements to protect the confidentiality of these records.

Adoption of this proposal would preempt state law concerning the release of customer indentification and customer records by Federal associations.[3] The Board has extensively reviewed state law concerning these related issues and has concluded that it varies widely. Moreover, state laws do not, for the most part, address the Board's concern about the need to balance customer privacy against the business requirements of Federal associations. Consequently, pursuant to its authority to regulate the operations of Federal associations, the Board is proposing the following regulations to preempt state law and exclusively govern the operations of Federal associations in this regard. *See* 12 U.S.C. 1464(a) (1982 and Supp. VI 1988); 12 CFR 545.1 (1988); *see e.g., Fidelity Fed. Sav. and Loan Ass'n v. de la Cuesta*, 458 U.S. 141, 164 (1983). The Board does, however, specifically request comment on whether it may me advisable to provide that state law governs disclosure instead of following this suggested approach.

E. Description of This Proposal

This proposed rule applies to customers, defined as depositors in, borrowers from, or other patrons of both Federal stock associations and Federal mutual associations. It addresses the issue of the release of information about customers but distinguishes between two types of such information: customer identification, defined as a list of the names and addresses of customers; and customer records, which include not only the names and addresses of customers but also information about the contents and particulars of their savings or loan accounts or other financial transactions with the association.

The proposed rule can be summarized in the following manner: (a) With certain enumerated exceptions, only a customer of a Federal association, and no other person or entity, has the right to inspect and obtain a customer's own customer records; (b) Unless a customer affirmatively and in writing prohibits release of the customer *identification*, a Federal association may, in its discretion, voluntarily release customer identification to any person or entity, provided that any release of customer identification shall consist only of a complete list of all customers who have not objected to the release of their customer identification. Federal associations may not, therefore, release a partial or incomplete list of customer identification, such as, for example, a list of only depositors, or borrowers, or customers with account balances over $50,000; and (c) With certain enumerated exceptions, a Federal association is prohibited from releasing its customer *records*, other than customer identification, unless the Federal association procures from the customer written authorization for such release. The obligation to inform the customer of his or her right to object to the release of customer identification and to obtain written authorization from the customer to release customer records is specifically imposed upon the Federal association. While the Board specifically requests comments on the methods available to Federal associations to implement this affirmative responsibility, the Board is proposing the following procedure.

As to the release of customer identification, associations must notify customers of the association's intent to release customer identification in a timely manner. In this context, the Board views "timely" as allowing a customer sufficient time to receive the notice, review it, consider the alternatives, and decide whether to object to the disclosure of his or her customer identification. Federal associations desiring to release customer identification may provide the notice to new customers at the time an account is opened, before a loan is made, or other financial transaction is entered into, and are authorized to release customer identification no sooner than thirty (30) days thereafter. Written notice containing the opportunity to object to the release of customer identification must be provided to existing customers along with a self-addressed envelope needing no postage in which the customer can return his or her objection to the Federal association. Federal associations may release customer identification no sooner than thirty (30) days after providing existing customers with such notice and opportunity to object to the release of customer identification. If notice is mailed, the thirty days would begin from the date of mailing. In any event, Federal associations may not release customer identification for those customers that have provided written objection to such release.

As to the responsibility of associations to inform customers of the possible release of customer records, the Board also is proposing certain procedures requiring an association to procure a customer's informed consent before customer records are released.

No release of customer records is permitted unless a customer whose records are intended to be released is given notice that release is contemplated, that the customer need not approve the release, and that without the customer's express written authorization for release, the association will not disclose customer records, except in certain enumerated circumstances. Furthermore, the association must retain a copy of the customer's authorization for its records. In this way, associations may sell or make publicly available their customer records, and third parties can conduct direct mail solicitations aimed at customers of Federal associations in a manner that respects the privacy expectations of customers of Federal associations.

Accordingly, the Board proposes that associations may use a standardized notice and authorization form to solicit the consent to release customer records before such records are released. This document would be separate from any and all other documents that are provided to customers pursuant to law or regulation. Such a document would contain, for example, the following:

1. The definition of customer records;
2. A statement that the customer has the right to withhold consent to the release of his or her customer records by the Federal association;
3. A description of the types of businesses, organizations, or other persons or entities to whom customer records may be disclosed and the time period, not to exceed two years, in which such disclosures may be made;
4. A statement that the Federal association may seek to obtain reauthorization from the customer for the release of customer records after the expiration of that time period, or if release is contemplated to types of recipients other than those for which authorization is sought;
5. A statement that the customer may at any time provide the Federal association with written notice withdrawing the customer's prior consent to release customer records and how and to whom such notice must be given;
6. A statement as to the circumstances under which customer records may be released even when not authorized by the customer but required by law;
7. A statement authorizing the release of customer records; and
8. A space for the customer's signature and for the date the document was executed.

The Board's proposal permits associations desiring to release customer records to provide this document to the customer at the time an account is opened, before the customer becomes obligated for a loan, or at the time the customer enters into another form of financial transaction with the association. Federal associations that currently release customer records or that desire to release customer records pertaining to existing customers must provide the notice to each existing customer before customers records can be released. While the Board notes that there may be various methods available to accomplish this requirement, it believes that a mailing to all customers, including a self-addressed envelope needing no postage, would be the most expedient method. Such a document, for example, may be provided to the customer with the customer's monthly account statement. The Board specifically seeks comment on the financial cost of compliance with this requirement by Federal associations, on the effect such costs may have on the ability of Federal associations to disclose customer identification or records for business purposes or for a fee, and on the comparative effects such costs will have on large and small associations.

In proposing these requirements, the Board recognizes that circumstances may change in regard to the release of customer records, both from the perspective of the Federal association and of the customer. Therefore, the Board is proposing that at least every two years after the initial provision of the notice to customers, Federal associations desiring to release customer identification and records shall mail to each customer new consent forms for the purpose of giving customers the opportunity to object to the release of customer identification and of obtaining reauthorization for the release of customer records. If reauthorization from the customer for release of customer records is not received, the Federal association shall no longer continue to release such customer records. Of course, associations may provide such notice more frequently than every two years.

The proposed form and requirements also reflect the Board's belief that customers must be informed not only of the consequences of their decision to consent to the release of customer records, but also of the intended use of such records. There are several methods available to achieve this requirement, such as requiring the disclosure of the names of the intended recipients of customer records, or requiring a general disclosure that the Federal association intends to release customer records to third parties. The Board believes an appropriate balance between these two alternatives is that Federal associations should specify in the notice document the type or nature of business(es) that may receive customer records from the Federal association, *e.g.*, insurance companies, credit card companies, department stores, or marketing agencies. The Board believes this method would advise customers of the intended scope of release of customer records without unreasonably burdening Federal associations.

The Board is aware that alternatives to these approaches exists. For example, associations could be required to procure a customer's informed consent to the release of customer records each time the association intends to release such records and could be required to identify the intended recipient, the purpose of the release, and the date the records will be released. The Board specifically requests comments on this approach. The Board also seeks comment on whether the notice should be provided to each customer each time they enter into a transaction with the association (*e.g.*, each time the customer opens a deposit account or takes out a loan) or whether one notice would be sufficient to cover all records of the customer during the stated time period.

The proposed regulation sets out exceptions to this general non-disclosure rule. In addition to disclosure to the customer or to those authorized by the customer, disclosure would be permitted to those employees or agents of Federal associations responsible for preparing or handling customer records;

[3] The Right to Financial Privacy Act of 1978, 12 U.S.C. 3401 *et seq.*, Pub. L. No. 95-630, Title XI, section 1100, 92 Stat. 3697, provides a federal standard with respect to the release of customer records to federal governmental authorities.

officials, employees or agents of the Board, the Federal Savings and Loan Insurance Corporation, or a Federal Home Loan Bank in the exercise of their official duties; other financial institutions or consumer credit reporting agencies as part of a regular exchange of credit information; federal government agencies or entities requiring such information, reports, or returns pursuant to law; those parties who must be informed concerning the dishonor of a negotiable instrument; appropriate law enforcement authorities when an association reasonably believes it has been the victim of a crime; persons making demand pursuant to a lawful subpoena; and the association's bond or insurance company relative to a claim under the association's liability policy.

The proposal also provides that release of customer records to any person not expressly enumerated in this section is permissible only after the association receives the prior written approval of the Board. The Board believes that this exception should only apply in unusual and highly exceptional circumstances in which the ability to release customer lists is not contemplated by any other exceptions to the non-disclosure rule. The Board specifically asks for comment on the need to include this exception and, if included, on whether it should apply to the release of customer identification and records where the customer has acted to prohibit release, or whether it should only apply to the release of customer records where the customer, while not objecting to the release, has not affirmatively authorized release.

Because the continued confidentiality of customer records following release to the aforementioned excepted parties cannot always be assured, the proposed rule provides that the following parties must execute confidentiality agreements prior to the release of customer records: (1) Parties to whom a customer has authorized such release; (2) officers, employees, or agents of the Federal association responsible for preparing and handling customer records; (3) other financial institutions or credit reporting agencies; and (4) the association's bond or insurance companies. These confidentiality agreements must contain a statement of the specific use to be made of the records and prohibit disclosure by the third party except as required by law or in accordance with the exceptions set out in paragraphs (e) (3), (5), (7) and (8) as if these sections applied directly to the recipient of the records.

Additionally, the Board specifically requests comments with respect to whether an exception to the nondisclosure rule should exist for the disclosure of customer records when state law, not otherwise preempted by Federal law or regulations, requires such disclosure to state governmental authorities in the lawful exercise of such governmental authority over the customer or other third party.

Finally, in order to avoid conflict with or repetition of current regulatory provisions dealing with the confidentiality and release of customer records, this rule proposes to delete such conflicting or repetitive provisions. Specifically, the proposed rule would delete paragraphs (a) and (b) of § 545.131 dealing with the disclosure of membership lists by a Federal mutual association and the right of inspection of a member's own records. It would also delete paragraph (d) of § 552.11, which contains a prohibition against release to stockholders of Federal stock associations of confidential depositor information. It would also amend paragraph (d) of § 545.141 to reflect the adoption of the disclosure procedures and limitations of § 545.132.

Initial Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603 (1982), the Board is providing the following initial regulatory flexibility analysis:

1. *Reasons, objectives, and legal basis underlying the proposed rule.* These elements are incorporated above in the **SUPPLEMENTARY INFORMATION** section.

2. *Small entities to which the proposed rule would apply.* The proposed rule would apply to all Federal assocations without regard to size.

3. *Impact of the proposed rule on small entities.* The proposed rule would clarify the circumstances under which all Federal associations may disclose customer identification and records for business purposes and for a fee. The proposed rule, however, may have a disproportionate impact on small associations, since it may be more difficult for small associations to afford the costs of the notice requirements. This could diminish the ability of small institutions to profit from the sale of customers identification or records. The Board specifically requests comment on this issue in the preamble to the proposed rule.

4. *Overlapping or conflicting Federal rules.* As explained in the **SUPPLEMENTARY INFORMATION** section, the proposed rule is intended to streamline the Board's regulations governing a Federal association's release of its customer records. Other than the Right to Financial Privacy Act of 1978, 12 U.S.C. 3401 et seq. (1982 and Supp VI 1988), which is expressly considered in these proposed regulations, there are no other known federal rules that duplicate, overlap, or conflict with this proposal.

5. *Alternatives to the proposed rule.* As alternatives to the proposed rule, the Board could retain the present requirement of prior Board or supervisory approval contained in section 545.131 for the release of customer records or the Board could adopt the revisions to sections 545.131, 543.9–3, and 544.9–2 as proposed in the Corporate Governance proposals. These alternatives are discussed in the preamble to the proposed regulation and comment is solicited on them.

List of Subjects

12 CFR Part 545

Accounting, Consumer protection, Credit, Electronic funds transfer, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, and Savings and loan associations.

12 CFR Part 552

Reporting and recordkeeping requirements, Savings and loan associations, and Securities.

Accordingly, the Federal Home Loan Bank Board hereby proposes to amend Parts 545 and 552, Subchapter C, Chapter V, Title 12 *Code of Federal Regulations*, as set forth below.

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

PART 545—OPERATIONS

1. The authority citation for Part 545 continues to read as follows:

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 66 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402–403, 407, 48 Stat. 1256–1257, 1260, as amended (12 U.S.C. 1725–1728, and 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

2. Amend § 545.131 by removing paragraphs (a) and (b); by redesignating existing paragraphs (c), (d), and (e) as the new paragraph (a), (b), and (c); and by revising the newly redesignated paragraphs (a) and (b)(5)(ii) to read as follows:

§ 545.131 Communications between members of a Federal mutual association.

(a) *Right of communication with other members.* A member of a Federal mutual association has the right to communicate, as prescribed in paragraph (b) of this section, with other members of the association regarding any matter related to the association's

affairs, except for "improper" communications, as defined in paragraph (c) of this section. The association may not defeat that right by redeeming a savings member's savings account in the association.

(b) *Member communication procedures.* * * *

(5) * * *

(ii) Notification that the association has determined not to mail the communication because it is "improper" as defined in paragraph (c) of this section;

* * * * * *

3. Amend Part 545 by adding a new § 545.132 to read as follows:

§ 545.132 Disclosure of customer records.

(a) *Definitions.* For the purpose of this section:

(1) "Customer" means a depositor in, borrower from, and any other person patronizing Federal associations and utilizing the services offered by those associations.

(2) "Customer identification" means the original or any copy or summary of any document, including any evidence of a transaction conducted by means of an electronic terminal, that contains only a list of the names and/or addresses of all customers of a Federal association who have not objected to the release of their customer identification, or any data from which such information could be constructed.

(3) "Customer records" means the original or any copy or summary of any document or record of a Federal association, including any evidence of a transaction conducted by means of an electronic terminal, that contains any customer's names and/or addresses, and information concerning an individual customer's savings or loan accounts or the details of other types of transactions between the customer and the association, or any data from which such information could be constructed.

(4) "Person" includes an individual, partnership, corporation, association, trust, or any other legal entity organized under the law of any state or of the United States.

(5) "Financial institution" means any office of a bank, savings bank, industrial loan company, trust company, savings and loan, building and loan, or homestead association (including coopereative banks), credit union, or consumer finance institution, located in any state or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands.

(b) *Right to obtain and inspect customer's own customer records.* A customer of a Federal association or his duly authorized agent has the right to obtain and inspect customer records pertaining solely to the customer's own savings account(s) or loan account(s) records, or records pertaining to other financial transactions with the association.

(c) *Disclosure of customer identification.* (1) A Federal association may disclose a customer's customer identification to any person, unless such customer has affirmatively prohibited such disclosure in writing; *provided that* the Federal association has given written notice to the customer of the intent of the Federal association to make such disclosures and of the customer's right to prohibit the release of the customer identification, including a plainly worded form which the customer may use to make such objection, and has provided the customer with a self-addressed envelope needing no postage with which to return the customer's objection to the release of customer identification.

(2) Any disclosure made pursuant to (c)(1) of this section shall be made no sooner than thirty (30) days after the customer received the notice, if the notice was given in person, or thirty days after the notice was mailed to the customer, and shall be limited to a complete list of all customers of the Federal association who have not prohibited the release of his or her customer identification pursuant to that section, and may include the addresses of such customers.

(d) *Disclosure of customer records.* Except as provided in paragraphs (b) and (e) of this section, a Federal association is prohibited from disclosing customer records to any person.

(e) *Exceptions.* Notwithstanding paragraph (d), a Federal association may disclose its customer records to the following:

(1) Any person to whom the customer has affirmatively authorized such disclosure in writing;

(2) Any officer, employee, or agent of a Federal association having the duty to prepare, examine, handle, or maintain customer information in the ordinary course of conducting the association's business, including, but not limited to, a certified public accountant engaged by the Federal association to prepare an independent audit;

(3) Any officer, employee, or agent of the Board, the Federal Savings and Loan Insurance Corporation, or a Federal Home Loan Bank for use solely in the exercise of his or her duties;

(4) A financial institution, commercial enterprise, or consumer reporting agency, when such disclosure is part of an exchange in the regular course of business of credit information between a Federal association and another financial institution or commercial enterprise, directly or through a credit reporting agency;

(5) Persons to whom reports or returns must be made or information disclosed pursuant to Federal law or regulations including, but not limited to, the Internal Revenue Service, or any government authority acting pursuant to the Right to Financial Privacy Act of 1978, 12 U.S.C. 3401 *et seq.*, Pub. L. No. 95–630, Title XI, § 1100, 92 Stat. 3697;

(6) Persons to whom information is permitted to be disclosed under state law concerning the dishonor of a negotiable instrument;

(7) An appropriate law enforcement authority when the Federal association reasonably believes, pursuant to section 563.18(d) of this part, that it has been the victim of a crime or has a known factural basis for a belief that a crime has been committed;

(8) Persons making demand pursuant to a lawful subpoena, summons, warrant, or court order or in response to a subpoena from a federal or state grand jury served upon the Federal association;

(9) The association's bond or insurance companies when the association has information relative to a claim pursuant to its bond or director's and officer's liability insurance policy or other insurance coverage;

(10) Any person not expressly permitted by this section if the association receives the prior written approval of the Board, which may establish the terms and conditions governing such release.

(f) *Confidentiality agreement.* Prior to the release by a Federal association of its customer records authorized by paragraphs (e) (1), (2), (4) and (9) of this section, the association shall require intended recipients of customer records to execute an agreement stating the specific use to be made of the customer records and prohibiting subsequent disclosure of the customer records to a third party, except if such disclosure is required by law, or pursuant to the circumstances set forth in paragraphs (e) (3), (5), (7) and (8) of this section, and, if the recipient of the customer records is a credit reporting agency, subsequent disclosures may be made in the regular course of the agency's business.

(g) *Informed consent form and procedure.* (1) Before releasing any customer records pursuant to subparagraph (e)(1), an institution shall:

(i) Provide a copy of an "Informed Consent Form" to all new and existing

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customers of the association. The consent form shall contain:

(A) The definition of customer records;

(B) A statement that the customer has the right to withhold consent to the release of his or her customer records by the Federal association;

(C) A description of the types of businesses, organizations, or other persons or entities to whom customer records may be disclosed and the time period, not to exceed two years, in which such disclosures may be made;

(D) A statement that the Federal association may seek to obtain reauthorization from the customer for the release of customer records after the expiration of that time period, or if release is contemplated, to types of recipients other than those for which authorization is sought;

(E) A statement that the customer may at any time provide the Federal association with written notice withdrawing the customer's prior consent to release customer records and how and to whom such notice must be given;

(F) A statement that customer records may be released pursuant to statute or regulation even when not authorized by the customer;

(G) A statement authorizing the release of customer records; and

(H) A space for the customer's signature and for the date the document was executed.

(ii) Receive a signed and dated consent form from the customer; and

(iii) Retain a copy of each consent form in an appropriate file maintained for the customer providing the authorization.

(2) A Federal association shall fulfill the requirement that it obtain consent from its customers before disclosing customer records under paragraph (e)(1) of this section by providing a clear and conspicuous document containing the information set forth in (g)(1) of this section. The following complies with this requirement:

Authorization To Disclose Customer Records

[Customer Name]
[Account/Loan Number(s)]

Under applicable Federal law and regulations you have the right to provide or to refuse to provide [name of institution] with your consent to disclose all of the information [name of institution] maintains concerning your name, address, account balances, loans, or other financial activities. This information that pertains to all of your financial transactions is known as "customer records".

[Name of institution] desires to disclose information contained in your customer records during the next [period of time not to exceed two years] to [insert types of persons or entities to which the customer records are intended to be disclosed]. These persons or entities may contact you to offer you a product or service. These persons or entities have agreed, or will be required to agree, not to disclose this information to any other person or business, except as permitted by regulation, and have agreed that the customer records shall remain confidential. [Name of institution] may receive a fee for the release of customer records. In the event that the association wishes to disclose your customer records to persons or entities not described above or beyond the [state time period], the association will seek reauthorization.

[Name of institution] must seek your permission to disclose your customer records pertaining to deposits, loans, or other types of financial transactions with this association. Without your consent, [Name of institution] cannot disclose your customer records, except as provided for by regulation.

If you provide your consent to disclose your customer records now or in the future, you may withdraw your consent at any time. You may withdraw your consent by writing [name of institution] at the following address:
[Name of institution]
[Address of institution]
[Attn:]

If, after reading the following statement, you consent to the release of customer records, sign your name on the space provided and return this form to [name of institution].

Authorization

I have been informed of my right to withhold my consent for [name of institution] to release my customer records, and I have read the information printed above. I hereby provide my consent to [name of institution] to release my customer records to third persons, and understand that I may withdraw such consent at any time.
Name of customer _____
Date _____

(3) Federal associations desiring to continue to disclose customer records shall seek reauthorization from each customer for the release of customer records at least every two years after the initial authorization.

(4) Federal association shall not release any person's customer records pursuant to this paragraph and shall take such affirmative steps as may be necessary to ensure that such customer records are not released:

(i) Upon or following the second anniversary of the initial authorization or the second anniversary of any subsequent reauthorization if the Federal association has not received a reauthorization, or

(ii) If at any time, the Federal association receives written notification of a customer's withdrawal of consent to release customer records, pursuant to paragraph (g)(5) of this section.

(5) A customer may, at any time after providing consent to permit disclosure of customer records, withdraw that consent by writing to the Federal association and informing it of the withdrawal of consent.

4. Amend section 545.141 by revising paragraph (d) to read as follows:

§ 545.141 Remote Service Unites (RSUs).

* * * * *

(d) *Privacy of account data.* A Federal association shall allow accountholders to obtain any information concerning their RSU accounts. Except for generic data or data necessary to identify a transaction, no Federal association may disclose account data to third parties other than the Board or its representatives except in accordance with § 545.132 of this part. Information disclosed to the Board will be kept in a manner to ensure compliance with the Privacy Act, 5 U.S.C. 552a. A Federal association may operate an RSU according to an agreement with a third party or shared computer systems, communications facilities, or services or another financial institution only if such third party or institution agrees to abide by this section as to information concerning RSU accounts in the Federal association.

* * * * *

PART 552—INCORPORATION, ORGANIZATION, AND CONVERSION OF FEDERAL STOCK ASSOCIATIONS

5. The authority citation for Part 552 continues to read as follows:

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–403, 405–407, 48 Stat. 1255–1257, 1259–1260, as amended (12 U.S.C. 1724–1726, 1728, 1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Regn. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

6. Amend § 552.11 by removing paragraph (d).

By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 89–2706 Filed 2–3–89; 8:45 am]
BILLING CODE 6720–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR–89–1]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: April 7, 1988.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–10), Petition Docket No. ____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on January 31, 1989.

Denise Donohue Hall,
Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Rulemaking

Docket No.: 24397.
Petitioner: The Association of Flight Attendants and The Joint Council of Flight Attendant Unions.
Regulations Affected: 14 CFR Parts 121 and 135.
Description of Petition/Disposition: The petitioners asked for flight and duty time limitations and rest requirements for flight attendants engaged in passenger-carrying operations. *Denied January 23, 1989.*

[FR Doc. 89–2626 Filed 2–3–89; 8:45 am]
BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 88–ASW–51]

Airworthiness Directives; Robinson Helicopter Company, Model R22 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require repetitive preflight checks of the lower clutch actuator bearing assembly and replacement, as necessary, on Robinson Helicopter Company (RHC) Model R22 series helicopters. This proposed AD is prompted by reports of lower clutch actuator bearing failure in flight which could result in loss of power to the main rotor drive system and consequent loss of the helicopter.

DATES: Comments must be received on or before May 1, 1989.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Office of the Assistant Chief Counsel, FAA, Fort Worth, Texas 76193–0007 or delivered in duplicate to: Office of the Assistant Chief Counsel, FAA, Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas. Comments must be marked: Docket No. 88–ASW–51.

Comments may be inspected in the Regional Rules Docket, Building 3B, Room 158, Office of Assistant Chief Counsel, between 8 a.m. and 4:30 p.m. weekdays, except Federal holidays.

The applicable technical information may be obtained from: Robinson Helicopter Company, 24747 Crenshaw Boulevard, Torrance, California 90505, or may be examined in the Regional Rules Docket.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy J. Dulin, Aerospace Engineer, ANM–143L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 E. Spring Street, Long Beach, California 90806–2425; telephone (213) 988–5261.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the FAA before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Regional Rules Docket, Office of the Assistant Chief Counsel, Room 158, Building 3B, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: Comments to Docket No. 88–ASW–51. The postcard will be date/time stamped and returned to the commenter.

There have been 27 reports of premature failure of the lower clutch actuator bearing assembly, part number (P/N) A181, bearing assembly lower sheave, installed on shaft and bearing assembly, P/N A007–3. Two of those failures have resulted in loss of power to the main rotor during flight. Since this condition is likely to exist or develop on other helicopters of the same type design, the proposed AD would require

a preflight check of the lower clutch actuator bearing assembly on Robinson Helicopter Company Model R22 series helicopters.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this proposed regulation only involves approximately 386 helicopters at an approximate cost of $1,100 per year per helicopter. Therefore, I certify that this action: (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, and Safety.

The Proposed Amendment

PART 39—AIRWORTHINESS DIRECTIVES

Accordingly pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85.

2. By adding the following new AD:

Robinson Helicopter Company: Applies to all Model R22 series helicopters certificated in any category with lower clutch actuator bearing assembly, P/N A161, bearing assembly lower sheave (all dash numbers).

Compliance is required as indicated unless already accomplished.

To prevent lower clutch actuator bearing failure in flight which could result in loss of power to the main rotor drive system, accomplish the following:

(a) Check lower clutch actuator bearing assembly, P/N A161, bearing assembly lower sheave (all dash numbers), before each flight in accordance with the following procedure:

(1) Check visible portion of the bearing for seal damage (e.g., cuts, distortions, grease extrusion, or any other indications of impending bearing failure); and

(2) Check temperature level on the lower and the upper clutch actuator bearing housing teletemps for comparison.

Note—Some types of bearing failures may not cause teletemp indication to rise.

(3) The checks required by this paragraph may be performed by a pilot properly trained to conduct the checks and must be recorded in accordance with FAR § 43.9.

(b) If bearing or seal damage is found, if either teletemp indication on lower clutch actuator bearing is 20 °F or greater above teletemp indication on upper clutch actuator bearing, or if an unusual lower clutch actuator bearing noise is detected during start-up, perform a detailed bearing inspection prior to further flight as follows:

(1) With the actuator assembly, P/N A051-1, in the belts loose position, remove the scroll, P/N A236-1, and fanwheel assembly, P/N B174-1, per Section 6.210 of the Robinson R22 Maintenance Manual.

(2) Disconnect the lower end of the actuator from the lower clutch actuator bearing assembly housing, P/N A161.

(3) Using fingertips, rotate the bearing housing and check for sound or feel of any roughness, scraping, or looseness. Visually inspect the bearing for seal damage, loss of lubrication or signs of heat damage.

(4) Carefully inspect the inner race of the bearing on the fanshaft. No movement or fretting is allowed between the inner race and the fanshaft.

(5) If any indication of impending bearing failure is found on this inspection, replace the shaft and bearing assembly, P/N A007-3. Consult the R22 Maintenance Manual for removal and replacement of the shaft and bearing assembly.

(c) A flickering clutch light during flight may be indicative of possible clutch actuator bearing failure. The flickering light should not be confused with its normal on-off belt reengaging in flight (on for 1 to 6 seconds, then off). Do not resume flight until cause of the flickering clutch light has been determined.

(d) An alternate method of compliance or adjustment of repetitive compliance times, which provides an equivalent level of safety, may be used if approved by the Manager, Los Angeles Aircraft Certification Office, ANM-100L, FAA, Northwest Mountain Region, 3229 E. Spring Street, Long Beach, California.

Issued in Fort Worth, Texas, on January 24, 1989.

L.B. Andriesen,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 89-3026 Filed 2-3-89; 8:45 am]
BILLING CODE 4910-13-M

DELAWARE RIVER BASIN COMMISSION

18 CFR Part 410

Proposed Amendment to Comprehensive Plan and Water Code of the Delaware River Basin; Proposed Rule Revision and Public Hearing

AGENCY: Delaware River Basin Commission.

ACTION: Proposed rule revision and public hearing.

SUMMARY: Notice is hereby given that the Delaware River Basin Commission will hold a public hearing to receive comments on proposed amendment to its Comprehensive Plan and Water Code in relation to water conservation performance standards for plumbing fixtures and fittings. The proposed amendment would revise a rule adopted by the Commission on January 13, 1988, and noticed in the January 22, 1988, issue of the Federal Register (53 FR 1751).

DATES: The public hearing is scheduled for Monday, March 20, 1989. A presentation on the proposed rule revision will begin at 1:30 p.m. and will be followed at 2:00 p.m. by the first of two hearing sessions. The second and final hearing session will begin at 7:00 p.m. Persons wishing to testify at the hearing are requested to register with the Secretary prior to the hearing. Written comments, received or postmarked by April 24, 1989, will be included in the hearing record.

ADDRESSES: Written comments should be submitted to Susan M. Weisman, Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628. The public hearing will be held at the Holiday Inn King of Prussia, 260 Goddard Boulevard, King of Prussia, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Susan M. Weisman, Commission Secretary, Delaware River Basin Commission: Telephone (609) 883-9500.

SUPPLEMENTARY INFORMATION:

Background and Rationale

On January 13, 1988, the Delaware River Basin Commission adopted Resolution No. 88-2 which established Basinwide water conservation performance standards for plumbing fixtures and fittings installed in new construction and renovation. The regulation required that all water conservation performance standards for plumbing fixtures and fittings adopted by the four Basin States or political subdivisions within the Basin comply with specified minimum standards for sink and lavatory faucets, shower heads, water closets, urinals and associated flushing mechanisms. Compliance dates were specified as were certain specialized fixtures and fittings not covered by the regulation. The regulation also required certification by manufacturers that their plumbing fixtures and fittings comply with the water conservation performance standards. In addition, Pennsylvania political subdivisions or their agencies seeking Commission permit approval or renewal must document that water conservation performance regulations consistent with the adopted standards have been adopted within their area of jurisdiction. Finally, periodic review of the performance standards was also required to allow for incorporation of more stringent water conservation performance standards as technology advances.

Subsection 2.1.5 (4) of the regulation required the Executive Director to conduct an initial review of the standards within a year to consider the modification of the current standard for water closets (a maximum of 3.5 gallons per flush) to require low consumption water closets (a maximum of 1.6 gallons per flush) effective January 1, 1990. A summary report documenting the results of this review was submitted to the Delaware River Basin Commission in January 1989. Based upon this review, the Commission is now proposing that the regulation be revised to require low-consumption water closets effective January 1, 1991.

The proposed requirement for low-consumption water closets would result in an estimated reduction of 42 million gallons per day within the Basin by the year 2020. This reduction in water use would also provide considerable economic savings for the Basin's residents. It is estimated that the requirement for low-consumption water closets could defer about $250 million (1988 dollars) in additional capital costs for water supply and wastewater treatment facilities by the year 2020. Additional economic savings on water and sewer bills would also be realized by consumers employing low-consumption water closets rather than the more wasteful 3.5 gallons per flush products.

The proposal would require that all water conservation performance standards for plumbing fixtures and fittings adopted by the Basin States or political subdivisions within the Basin comply with the low-consumption water closet requirement by January 1, 1991.

The proposal would also modify the schedule for state or local compliance with the performance standards in the Commonwealth of Pennsylvania, which does not yet have statewide performance standards for plumbing fixtures and fittings. The other Basin States already have statewide standards.

Accordingly, the proposal encourages the Commonwealth of Pennsylvania to adopt water conservation performance standards for plumbing fixtures and fittings which comply with the Commission's standards by January 1, 1991. In the absence of Pennsylvania standards, the proposal would require the Commission to notify all municipalities within the Pennsylvania portion of the Basin of the requirement to adopt and enforce local regulations which comply with the Commission standards. Upon such notification by the Commission, municipalites would have one year to adopt local regulations.

The subject of the hearing will be as follows:

Amendment to the Comprehensive Plan and Water Code of the Delaware River Basin Relating to Water Conservation Performance Standards for Plumbing Fixtures and Fittings.

List of Subjects in 18 CFR Part 410

Water pollution control.

PART 410—[AMENDED]

Article 2 of the Water Code of the Delaware River Basin includes Commission policy relating to conservation, development and utilization of Basin water resources. It is proposed to:

Amend the Comprehensive Plan and Article 2 of the Water Code of the Delaware River Basin, which are referenced in 18 CFR Part 410, by the deletion of the existing subsection 2.1.5 and the substitution of a new subsection 2.1.5 to read as follows:

2.1.5 Water conservation performance standards for plumbing fixtures and fittings

(1)(a) All water conservation performance standards for plumbing fixtures and fittings adopted by any signatory state or political subdivision within the Delaware River Basin shall comply with the following minimum standards:

(i) For sink and lavatory faucets, maximum flow shall not exceed three gallons of water per minute when tested in accordance with American National Standards Institute (ANSI) A112.18.1M; and

(ii) For shower heads, maximum flow shall not exceed three gallons of water per minute when tested in accordance with ANSI A112.18.1M; and

(iii) For water closets and associated flushing mechanism, maximum volume shall not exceed an average of one and six-tenths gallons per flushing cycle when tested in accordance with the hydraulic performance requirements of ANSI A112.19.2M and ANSI A112.19.6M; and

(iv) For urinals and associated flushing mechanism, maximum flow shall not exceed one and one-half gallons of water per flush when tested in accordance with the hydraulic performance requirements of ANSI A112.19.2M and ANSI A112.19.6M.

(b) Any water conservation performance standards adopted prior to the effective date of this regulation that are not in compliance with the provisions of (a) shall be amended or revised to comply with the provisions of (a) by January 1, 1991.

(c) The Commonwealth of Pennsylvania is encouraged to adopt water conservation performance standards for plumbing fixtures and fittings that comply with the provisions of (a) by January 1, 1991. In the absence of such regulations, the Commission shall notify all municipalities within the Pennsylvania portion of the Basin of the requirement to adopt and enforce local regulations that comply with the provisions of (a). Upon notification by the Commission, municipalities shall have one year to adopt such local regulations.

(2)(a) The performance standards of subsection (1) shall apply to plumbing fixtures and fittings installed in new construction and, where provided in state or local regulations, in existing structures undergoing renovations involving replacement of such fixtures and fittings.

(b) The performance standards of subsection (1) shall not apply to fixtures and fittings such as emergency showers, aspirator faucets, and blowout fixtures that, in order to perform a specialized function, cannot meet the standards specified in subsection (1).

(3) Manufacturers shall certify that their plumbing fixtures and fittings comply with the water conservation performance standards specified in subsection (1). Such certification shall be based on independent test results in accordance with ANSI standards.

(4) The Executive Director shall periodically review the performance standards and testing requirements set forth in subsection (1) to determine their adequacy in light of advances in technology for water conservation fixtures and fittings. The results of such reviews, including any recommendations for more stringent water conservation performance standards, shall be presented to the Commission.

(5) Municipalities of the Commonwealth of Pennsylvania seeking permit approval or renewal under § 3.8 of the Compact for water supply or wastewater discharge projects shall document that regulations consistent with subsection (1) have been adopted within their area of jurisdiction. Such documentation shall be a condition for permit approval or renewal.

(6) This regulation shall be effective immediately.

Delaware River Basin Compact, 75 Stat. 688.

Susan M. Weisman,
Secretary.
January 30, 1989.
[FR Doc. 89-2610 Filed 2-3-89; 8:45 am]
BILLING CODE 6360-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 169

[DoD Directive 4100.15]

Commercial Activities Program

AGENCY: Office of the Secretary, DoD.
ACTION: Proposed rule; correction.

SUMMARY: The Department of Defense published a supplemental notice of proposed rule on Thursday, February 4, 1988 (53 FR 3218). The notice contained an administrative error in the summary. This document is issued to correct the error. The first sentence states: "This rule proposes to reissue Part 169 to incorporate substantive changes required by Pub. L. 100-180, "National Defense Authorization Act for Fiscal Years 1988 and 1989" December 4, 1987, section 111 and Executive Order 12615, * * *." Section 111 should read 1111.

EFFECTIVE DATE: February 4, 1988.

FOR FURTHER INFORMATION CONTACT:
Mr. Dom Miglionico, telephone 202-325-0537.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
February 1, 1989.
[FR Doc. 89-2661 Filed 2-3-89; 8:45 am]
BILLING CODE 3810-01-M

VETERANS ADMINISTRATION

38 CFR Part 21

Veterans Education; Procedural Due Process

AGENCY: Veterans Administration.
ACTION: Proposed regulations.

SUMMARY: The Veterans Administration (VA) has been reviewing regulations for the purpose of improving due process procedures. This proposal provides that in certain instances if the VA does not furnish claimants or beneficiaries with notice of the time limits within which they are required to act, those time limits do not apply until notice is provided. This proposal will provide increased due process to veterans and eligible persons affected by these time limits.

DATES: Comments must be received on or before March 8, 1989 Comments will be available for public inspection until March 20, 1989.

ADDRESSES: Send written comments to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address, between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until March 20, 1989.

FOR FURTHER INFORMATION CONTACT:
William G. Susling, Jr., Acting Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits, (202) 233-2858.

SUPPLEMENTARY INFORMATION: Various regulations are amended to provide that when the VA does not provide notice of regulatory time limits which must be met when submitting evidence to perfect a claim, or to challenge an adverse VA decision, the time limits will be extended. Other regulations are amended to show the effects of this change in policy.

The VA has determined that these proposed regulations do not contain a major rule as that term is defined in E. O. 12291, entitled Federal Regulation. The proposed regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans Affairs has certified that these proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), the proposed regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the proposed regulations affect only individuals. They will have no significant economic impact on entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the programs affected by these regulations are 64.111 and 64.117.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant progrms-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: December 22, 1988.
Thomas K. Turnage,
Administrator.

PART 21—[AMENDED]

38 CFR Part 21, Vocational Rehabilitation and Education, is proposed to be amended as follows:

1. In § 21.1032, paragraph (c) is revised, and an authrity citation added to read as follows:

§ 21.1032 Time limits.
* * * * *

(c) *Failure to furnish claims or notice of time limit.* (1) The VA's failure to furnish any form or information concerning the right to file a claim or to furnish notice of the time limit for the filing of a claim will not extend the periods allowed for these actions.

(2) The Va's failure to furnish a veteran or serviceperson notice of the time limit within which evidence must be submitted to perfect a claim, or notice of the time limit within which to challenge an adverse VA decision shall extend the time limit for such action in accordance with the provisions of § 3.110 of this chapter.

Authority: 38 U.S.C. 3001, 3013)

2. In § 21.3032, paragraph (b) is revised, and an authority citation is added to read as follows:

§ 21.3032. Time limits.
* * * * *

(b) *Failure to furnish claim or notice of time limit.* (1) The VA's failure to furnish any form or information concerning the right to file a claim or to furnish notice of the time limit for the filing of a claim will not extend the periods allowed for these actions.

(2) The VA's failure to furnish an eligible person notice of the time limit within which evidence must be submitted to perfect a claim, or notice of the time limit within which to challenge an adverse VA decision, shall extend the time limit for such action in accordance with the provisions of § 3.110 of this chapter.

(Authority: 38 U.S.C. 3001, 3013)
* * * * *

3. In § 21.4131, paragraphs (e)(1)(i)(B), (e)(1)(ii)(B), (e)(1)(iii), (e)(2)(i) (B) and (C) are revised, and an authority citation is added to (e)(2)(i) (B) and (C) to read as follows:

§ 21.4131 Commencing dates.
* * * * *

(e) *Increase for dependent—chapter 34.*
(1) * * *
(i) * * *
(B) The VA receives any necessary evidence within 1 year of the date the VA requested the evidence and informed the veteran of the time limit for submitting it.
(ii) * * *
(B) The VA receives any necessary evidence within 1 year of the date the VA requested the evidence and informed the veteran of the time limit for submitting it.
(iii) The effective date will be the date the VA receives all necessary evidence, if that evidence is received more than 1 year from the date the VA requested it, and informed the veteran of the time limit for submitting it.
* * * * *
(2) * * *
(i) * * *
(B) Date notice is received of the dependent's existence if evidence is received within 1 year of the date the VA requested the evidence and informed the veteran of the time limit for submitting the evidence.
(C) Date the VA receives evidence if this date is more than 1 year after the date the VA requested the evidence and informed the veteran of the time limit for submitting it.

(Authority: 38 U.S.C. 3010(n).

4. In § 21.4136, paragraph (k)(1)(ii) is revised to read as follows:

§ 21.4136 Rates; educational assistance allowance; 38 U.S.C. Chapter 34.
* * * * *

(k) * * *
(1) * * *
(ii) The veteran submits the circumstances in writing to the VA within 1 year from the date the VA notifies the veteran that he or she must submit the mitigating circumstances, and inform the veteran of the time limit for submitting them.

(Authority: 38 U.S.C. 1780(a))
* * * * *

5. In § 21.4137, paragraph (h)(1)(ii) is revised to read as follows:

§ 21.4137 Rates; educational assistance allowance; 38 U.S.C. Chapter 35.
* * * * *

(h) * * *
(1) * * *
(ii) The eligible person submits the circumstances in writing to the VA within 1 year from the date the VA notifies the eligible person that he or she must submit the mitigating circumstances, and informs the eligible person of the time limit for submitting them.

(Authority: 38 U.S.C. 1780(a))
* * * * *

[FR Doc. 89-2660 Filed 2-3-89; 8:45 am]
BILLING CODE 8325-01-M

POSTAL SERVICE

39 CFR Part 111

Nonmailability of Locksmithing Devices

AGENCY: Postal Service
ACTION: Proposed rule.

SUMMARY: The Postal Service proposes to amend its regulations to reflect provisions of a recently enacted law making locksmithing devices nonmailable.

DATE: Comments must be received on or before March 8, 1989.

ADDRESS: Send written comments on the proposal to the Assistant General Counsel, Consumer Protection Division, Law Department, U.S. Postal Service, Washington, DC 20260-1144. Copies of all written comments received will be available for inspection and photocopying between 9 a.m. and 4 p.m. each business day, in Room 6347, Postal Service Headquarters, 475 L'Enfant Plaza West, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT:
John Ventresco, (202) 268-3085.

SUPPLEMENTARY INFORMATION: Section 7090 of Pub. L. 100-690, approved November 18, 1988, amended, among other things, chapter 30 of title 39, United States Code, by adding new section 3002a, entitled "Nonmailability of locksmithing devices." Section 3002a defines the term "locksmithing device," and makes any such device nonmailable unless mailed to specified persons or organizations with a business interest in such a device, such as lock manufacturers and locksmiths. Accordingly, the Postal Service proposes to amend Part 124 of its Domestic Mail Manual to reflect these statutory provisions. Certain editorial changes consistent with the statute and the earlier statute on nonmailable motor vehicle master keys—section 3002 of title 39, United States Code—are also made to the regulation.

Although exempt by 39 U.S.C. 410(a) from the provisions of the Administrative Procedure Act regarding proposed rulemaking, 5 U.S.C. 553(b), (c), the Postal Service invites public comment on the following proposed revisions of Part 124 of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001-3011, 3201-3219, 3403-3406, 3621, 5001.

124—NONMAILABLE MATTER—ARTICLES AND SUBSTANCES; SPECIAL MAILING RULES

124.41 [Amended]

2. In 124.41, in the first sentence, remove the second comma; remove the words "and motor vehicle master keys" and add in their place the words "motor vehicle master keys, and locksmithing devices".

124.45 [Amended]

3. In 124.45, change the heading to read "Motor Vehicle Master Keys and Locksmithing Devices (18 U.S.C. 1716A; 39 U.S.C. 3002 and 3002a)".

4. Remove §§ 124.451, 124.452, and 124.453, and add in their place the following:

124.451 Motor Vehicle Master Keys.

a. A motor vehicle master key is any key (other than the key furnished by the manufacturer with the motor vehicle, or the key furnished with a replacement lock, or an exact duplicate of such keys) designed to operate two or more motor vehicle ignition, door, or trunk locks of different combinations, including any pattern, impression, or mold from which such a master key can be made.

b. Any of the items constituting a motor vehicle master key, as defined in § 124.451a, and any advertising (see § 123.432) for the sale of any such item, are nonmailable, except when sent to:

(1) Lock manufacturers;
(2) Professional locksmiths;
(3) Motor vehicle manufacturers or dealers; or
(4) Federal, state or local government agencies.

c. No markings of any kind which would indicate the nature of the contents shall be placed on the outside wrapper or container of any parcel containing motor vehicle master keys.

124.452 Locksmithing Devices.

a. Any locksmithing device, as defined in § 124.452b, is nonmailable, unless such device is mailed to:

(1) A lock manufacturer or distributor;

(2) A bona fide locksmith;

(3) A bona fide repossessor; or

(4) A motor vehicle manufacturer or dealer.

b. A locksmithing device is:

(1) A device or tool (other than a key) designed to manipulate the tumblers in a lock into the unlocked position through the keyway of such lock;

(2) A device or tool (other than a key or a device or tool under § 124.452b(1)) designed for the unauthorized opening or bypassing of a lock or similar security device; and

(3) A device or tool designed for making an impression of a key or similar security device to duplicate such key or device.

124.454 [Revised]

5. Redesignate 124.454 as 124.453.

124.453 [Revised]

6. In redesignated 124.453, remove "124.452" and add in its place "124.451b or 124.452a".

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 89-2807 Filed 2-3-89; 8:45 am]

BILLING CODE 7715-12-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 31, 71, and 91

[CGD 87-089]

RIN 2115-AD03

Cargo Gear Inspection and Testing Intervals

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend its regulations on the interval for inspection and testing of cargo gear. This proposal would extend the interval to five years from the presently required four years. This action is taken to be consistent with standards of other countries so as to not place United States Flag vessels at a competitive disadvantage by requiring more frequent inspection.

DATE: Comments must be received on or before April 7, 1989.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA-2/3600) (CGD 87-089), U.S. Coast Guard, Washington, DC 20593-0001. Comments may be delivered to and will be available for inspection and copying at the Marine Safety Council, Room 3600, 2100 Second Street SW., Washington, DC 20593-0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Stephen L. Johnson, Ship Design Branch, Office of Marine Safety, Security and Environmental Protection, (202) 267-2997.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Each comment should include the name and address of the person submitting the comments, reference the docket number of this notice (CGD 87-089) and the specific section of the proposal to which each comment applies, and give the reasons for comments. If acknowledgement of receipt of comments is desired, a stamped, self-addressed postcard or envelope should be enclosed.

All comments received before the expiration of the comment period willbe considered before final action is taken on this proposal. The proposal may be changed in view of the comments received. No public hearing is planned but one may be held at a time and place to be set in a later notice in the **Federal Register** if requested in writing and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

Drafting Information

The principal persons involved in drafting this proposal are Lieutenant Commander Stephen L. Johnson, Project Manager, and Lieutenant Commander Don M. Wrye, Project Counsel, Office of Chief Counsel.

Discussion of Amendments

It is proposed that the quadrennial interval for inspection and testing of cargo gear in 46 CFR 31.37, 71.47, and 91.37 be changed to an interval of five years.

The existing Coast Guard regulations require vessel cargo gear to be inspected and tested quadrennially. This was consistent with the standards of other countries and international organizations. It was also consistent with the required interval for drydocking of 24 months, so the quadrennial cargo gear testing could be accomplished at every other regularly scheduled drydocking.

The international standard interval for cargo testing is being changed to five years. Also, the domestic requirement for drydocking intervals has been changed to twice within any five year period for vessels operating in salt water. The combined effect of these two changes create an economic disadvantage for U.S. vessel owners concerning cargo gear inspection. Foreign vessel owners will be able to conduct cargo gear testing every five years at regularly scheduled drydockings, while U.S. vessel owners are currently required to test cargo gear quadrennially. Not only do U.S. vessel owners have to conduct the tests more often, they can not coordinate them with drydocking visits to the shipyard. Therefore U.S. vessel owners either have to schedule extra shipyard visits or conduct testing more often than quadrennially if they are to coincide with drydockings.

In addition to quadrennial inspection and testing, an annual inspection of somewhat lesser scope is required. This and the good safety record of cargo gear indicate that extending the quadrennial interval to a five year interval will not have a detrimental effect on safety that would outweigh the savings in expense and time to owners.

E.O. 12291 and DOT Regulatory Policies and Procedures

These proposed regulations are considered to be non-major under Executive Order 12291 and nonsignificant under the Department of Transportation (DOT) regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal has been found to be so minimal that a full regulatory evaluation is unnecessary.

The following comprises a summary of the estimated costs savings to be associated with the proposed regulations. Approximately 1000 quadrennial cargo gear load tests

costing approximately $5,000 each are performed each year on U.S. Flag vessels. Implementation of these changes would reduce the number of tests performed yearly by 20% which would reduce the cost to U.S. vessel owners by a total of approximately $1,000,000 per year. These are preliminary estimates and comments on such costs are requested.

Regulatory Flexibility Act

Because the impact of this proposal is expected to be minimal, the Coast Guard certifies in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this proposal will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rulemaking imposes no new or additional information collection or recordkeeping requirements upon the public.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

Those actions performed as a part of Coast Guard operations to carry out statutory authority in the areas of maritime safety which do not normally have a significant effect on the quality of the human environment are categorically excluded in accordance with Section 2.B.2., of Commandant Instruction M16475.1B. The Coast Guard has considered the environmental impact of the proposed regulations and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this rulemaking is categorically excluded from further environmental documentation.

List of Subjects

46 CFR Part 31

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 71

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 91

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 46 CFR Parts 31, 71, and 91 are proposed to be amended as follows:

PART 31—[AMENDED]

1. The authority citation for Part 31 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703, 5115, 6105; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR, 1971-1975 Comp., p. 793; 49 CFR 1.46.

§ 31.37-1 [Amended]

2. In § 31.37-1(d), the numerical "4" is removed and the word "five" is added in its place.

§ 31.37-5 [Amended]

3. In § 31.37-5(a), the word "quadrennial" is removed and the words "fifth year" are added in its place.

§ 31.37-40 [Amended]

4. In § 31.37-40 (a) and (c), the word "four" is removed and the word "five" is added in its palce.

PART 71—[AMENDED]

5. The authority citation for Part 71 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2113, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR, 1971-1975 Comp., p. 793; 49 CFR 1.46.

§ 71.47-1 [Amended]

6. In § 71.47-1(d), the numeral "4" is removed and the word "five" is added in its place.

§ 71.47-5 [Amended]

7. In § 71.47-5(a), the word "quadrennial" is removed and the words "fifth year" are added in its place.

§ 71.47-40 [Amended]

8. In §§ 71.47-40 (a) and (c), the word "four" is removed and the word "five" is added in its place.

PART 91—[AMENDED]

9. The authority citation for Part 91 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR 1971-1975 Comp., p. 793; 49 CFR 1.46.

§ 91.37-1 [Amended]

10. In § 91.37-1(d), the numeral "4" is removed and the word "five" is added in its place.

§ 91.37-5 [Amended]

11. In § 91.37-5(a), the word "quadrennial" is removed and the words "fifth year" are added in its place.

§ 91.37-40 [Amended]

12. In § 91.37-40 (a) and (c), the word "four" is removed and the word "five" is added in its place.

Dated: November 4, 1988.

M.J. Schiro,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89-2713 Filed 2-3-89; 8:45 am]

BILLING CODE 4910-14-M

Notices

Federal Register
Vol. 54, No. 23
Monday, February 6, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Counties Designated as Suitable for Growing Extra Long Staple Cotton

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of Counties Designated as Suitable for Growing Extra Long Staple Cotton During Marketing Year 1989; Correction.

SUMMARY: This action corrects a previous **Federal Register** document (FR Doc. 89-1328) on page 3098 of the issue for Monday, January 23, 1989, which listed the counties designated as suitable for growing extra long staple cotton during marketing year 1989. That notice incorrectly included the Texas county of Uvalde and excluded the Texas county of Ward. Accordingly, the following counties are designated as suitable for growing such cotton during marketing year 1989:

Arizona: Cochise, Gila, Graham, Greenlee, Maricopa, Mohave, Pima, Pinal, Santa Cruz, Yavapai, and Yuma. (La Paz County was created from Yuma County as a result of an action of the Arizona State legislature and is approved for ELS.)

California: Imperial and Riverside.

Florida: Alachua, Hamilton, Jefferson, Madison, Marion, Suwannee, and Union.

Georgia: Berrien and Cook.

New Mexico: Chaves, Dona Ana, Eddy, Hildalgo, Luna, Otero, and Sierra.

Texas: Brewster, Culberson, El Paso, Hudspeth, Jeff Davis, Loving, Pecos, Presidio, Reeves and Ward.

Before March 31, 1989, as deemed appropriate by the Commodity Credit Corporation, additional counties may be designated as suitable for growing extra long staple cotton during marketing year 1989.

Authority: Sec. 103(h) of the Agricultural Act of 1949, as amended, 97 Stat. 494, as amended, (7 U.S.C. 1444(h)).

EFFECTIVE DATE: January 23, 1989.

FOR FURTHER INFORMATION CONTACT: Charles V. Cunningham, Leader, Fibers Group, Commodity Analysis Division, USDA-ASCS, Room 3758 South Building, P.O. Box 2415, Washington, DC 20013 or call (202) 447-7954.

Signed at Washington, DC, on January 31, 1989.

Milton J. Hertz,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 89-2643 Filed 2-3-89; 8:45 am]

BILLING CODE 3410-05-M

COMMISSION ON CIVIL RIGHTS

Louisiana Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Louisiana Advisory Committee to the Commission will convene at 2:00 p.m. and adjourn at 5:00 p.m., on Friday, February 24, 1989, at the Hilton Hotel, 5500 Hilton Avenue, Baton Rouge, Louisiana. The purpose of the meeting will be to review Committee projects, discuss civil rights issues of current concern in the State, and plan future projects. Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Michael R. Fontham, or William F. Muldrow, Acting Director of the Central Regional Division (816) 426-5253, (TDD 816/426-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 27, 1989.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 89-2608 Filed 2-3-89; 8:45 am]

BILLING CODE 6335-01-M

Texas Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the education subcommittee of the Texas Advisory Committee to the Commission will convene at 10 a.m. and adjourn at 1 p.m. on February 25, 1989, at the Dallas Hilton Inn (White Rock Room), 5660 North Central Expressway, Dallas, Texas 75206. The purpose of the meeting is to develop program plans for a project addressing issues of early childhood education in Texas.

Persons desiring additional information, or planning a presentation to the Committee, should contact subcommittee Chairperson, Dr. Denzer Burke or Philip Montez, Director of the Western Regional Division (213) 894-3437, (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 25, 1989.

Melvin Jenkins,

Acting Staff Director.

[FR Doc. 89-2609 Filed 2-3-89; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council; Change of Public Hearing

AGENCY: National Marine Fisheries Services (NMFS), NOAA, Commerce.

ACTION: Change of date for a public hearing.

SUMMARY: The Mid-Atlantic Fishery Management Council scheduled public hearings for input on Amendment 8 to the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries published January 25, 1989 (54 FR 3637), and by this notice is changing the date for the hearing scheduled to be held in Galilee, Rhode Island. All other information remains the same.

FOR FURTHER INFORMATION CONTACT: John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 South New Street, Dover, DE 19901, 302-674-2331.

The hearing previously scheduled for March 1, 1989, will be held March 8, 1989, 7:00 p.m., Dutch Inn, Great Island Rd., Galilee, Rhode Island.

Dated: February 1, 1989.

Alan Dean Parsons,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-2698 Filed 2-3-89; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1989; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to procurement list.

SUMMARY: This action adds to Procurement List 1989 a commodity to be produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: March 8, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, VA 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverely Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On November 18, 1988, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (53 FR 46645) of proposed addition to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018).

One comment was received from the current contractor for this sea marker. The commenter indicated that his firm's contract for this commodity constituted a significant portion of its business and was the significant element in its recovery strategy. He noted that the contract had generated a 15% increase in revenues. He said that because of the investment capital required for start up, his firm would not receive a satisfactory financial return until the second and following years of production and, thus, adding the sea marker to the Procurement List would "jeopardize the firm's investment payback and anticipated profitability" in the future. The writer also expressed concern for the safety of workshop employees in performing the hazardous operations required to produce the item. He cited the need to handle material in close proximity to high temperatures and pressure.

The value of the firm's current contract for the Sea Marker represents about 11.2% of its total annual sales. This is not considered to be severe adverse impact. The possible loss of business and inability to recoup investment are inherent in the competitive bidding process. Even in the absence of action by the Committee, there is no assurance that the current contractor will receive a future competitive contract for the sea marker.

The only manufacturing function performed by the workshop which involves heat would be a hot stamping and heat sealing process. Manufacturing functions of this type have been performed satisfactorily and safely in workshops for many years and do not constitute severe hazards for blind or severely handicapped workers. A review of the material used to produce the sea marker reflects that none is listed as a hazardous material. After consideration of material presented to it concerning the capability of a qualified workshop to produce the sea marker at a fair market price and the impact of the addition on the current or most recent contractor, the Committee has determined that it is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the commodities listed.

c. The action will result in authorizing small entities to produce the commodities procured by the Government.

According, the following commodity is hereby added to Procurement List 1989:

Sea Marker, Fluorescein Dye
6850-270-9986

Beverly L. Milkman,

Executive Director.

[FR Doc. 89-2685 Filed 2-3-89; 8:45 am]

BILLING CODE 6820-33-M

COMMODITY FUTURES TRADING COMMISSION

Public Information Collection Requirement Submitted for Review to Office of Management and Budget

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of information collection.

SUMMARY: The Commodity Futures Trading Commission has submitted information collection 3038-0025, Practice by Former Members and Employees of the Commission to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35. The information collected pursuant to this regulation, which generally governs the practice by former members and employees of the Commission before this Commission, is intended to insure that the Commission is aware of any conflicts of interest that may exist.

ADDRESS: Persons wishing to comment on this information collection should contact Gary Waxman, Office of Management and Budget, Room 3228, NEOB, Washington, DC 20502, (202) 395-7340. Copies of the submission are available form Joseph G. Salazar, Agency Clearance Officer, (202) 254-9735.

Title: Practice by Former Members and Employees of the Commission, 17 CFR 140.735-10.

Control Number: 3038-0025.

Action: Extension.

Respondents: Former members and employees of the Commission.

Estimated Annual Burden: 1.2 hours.

Respondents	Regulation 17 CFR	Estimated no. of respondents	Annual responses	Estimated August hours per response
Former CFTC members and Employees	§ 140.735–10	12	12	.10

Issued in Washington, DC, on January 31, 1989.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89–2818 Filed 2–3–89; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein, Office of Federal Acquisition and Regulatory Policy, (202) 523–3775.

SUPPLEMENTARY INFORMATION:

a. *Purpose.* The series of standard forms covering contractor's inventories (SF 1423–1434) are essential for reporting, redistribution, and disposal of excess Government property at contractor plants (upon contract completion) and contractor termination inventory in support of contractor termination settlement proposals.

The contractor who is accountable for the property or who is submitting a termination settlement proposal is responsible for completing the inventory schedules.

These inventory schedules are the only means by which contractors report excess contractor inventory, and by which the Government is able to achieve screening, redistribution and disposal of such property. They are also the only means of contractors supporting the inventory portion of their termination settlement proposals, and accounting for Government property in their possession. Thus, this information is not available to those requiring it from any other source.

A variety of activities utilize these inventory schedules. Thus, the Termination Contracting Officer and the cognizant audit agency use the schedules in evaluating the termination charges being claimed under terminated Government contracts. The Property Administrator of the contract administration office uses the schedules to ensure that the contractor has accounted for all Government property in its possession.

In addition, screening activities of the owning agency as well as GSA and other Federal agencies authorized to acquire such property also use the schedules for effecting redistribution of the property within the Government. Eligible donees, under the donation program similarly use the schedules for screening purposes. Finally, the cognizant plant clearance office uses the schedules for effecting disposition of any items determined to be surplus to the Government's requirements.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, *12,500*; responses per respondent, *4*; total annual responses, *50,000*; hours per response, 1; and total response burden hours, *50,000*.

Obtaining Copies of Proposals: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0015, Contractor Inventory Schedule forms.

Dated: January 30, 1989.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 89–2813 Filed 2–3–89; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Availability of Change 3 to DoD 5025.1–I, "DoD Directives System Annual Index"

ACTION: Notice.

SUMMARY: This notice is to inform the public and U.S. Government Agencies other than the Department of Defense of the availability of Change 2 to DoD 5025.1–I, January 1988 edition. The Change may be purchased from the following organizations:

National Technical Information (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, telephone number (703) 487–4600;

OR

U.S. Naval Publications and Forms Center (NPFC), 5801 Tabor Avenue, Attention: Code 1062, Philadelphia, Pennsylvania 19120–5099, telephone number (215) 697–3321.

The NTIS accession number for Change 3 is PB89 143069; NPFC identifies it as Change 3 to DoD 5025.1–I.

FOR FURTHER INFORMATION CONTACT: Ms Linda Bynum, Correspondence and Directives Directorate, Directives Division, Room 2A286, the Pentagon, Washington, DC 20301–1155, telephone number (202) 697–4111.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 1, 1989.

[FR Doc. 89–2862 Filed 2–3–89; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Intent Chemical Stockpile Disposal Program; Umatilla Depot Activity, OR

Intent to prepare an Environmental Impact Statement (EIS) and to initiate the public scoping process for the construction and operation of a chemical munitions disposal facility at Umatilla Depot Activity, Oregon.

AGENCY: Department of the Army, DOD.

ACTION: Notice of intent.

SUMMARY: This announces the Notice of Intent to prepare an EIS on the potential impact of the design, construction, operation and closure of the proposed chemical agent demilitarization facility at Umatilla Depot Activity, Oregon. The proposed facility will be used to demilitarize all chemical agents and munitions currently stored at the Umatilla Depot Activity. Potential environmental impacts will be examined for several locations of the on-site incineration facility and "no action" alternatives. The "no action" alternative is considered to be deferral of demilitarization with continued storage of the agents and munitions at Umatilla Depot Activity.

SUPPLEMENTARY INFORMATION: In its Record of Decision (53 FR, No. 38, pp. 5816–17) for the Final Programmatic Environmental Impact Statement on the Chemical Stockpile Disposal Program, the Department of the Army selected on-site disposal by incineration at all eight chemical munitions storage sites within the continental United States as the method by which it will destroy its lethal chemical stockpile. In compliance with the National Environmental Policy Act (NEPA), section 102(2)(c), the Army determined that an EIS will be prepared to assess the site-specific health and environmental impacts of on-site incineration of chemical agents and munitions at Umatilla Depot Activity. The first phase of this effort will entail the collection and analyses of detailed site-specific information to ensure that the programmatic preferred alternative (on-site incineration) remains valid for Umatilla Depot Activity. A separate report summarizing this effort will be published prior to preparation of the draft EIS for Umatilla Depot Activity. The draft EIS should be available in the spring of 1990. Upon completion of the draft EIS, public notice of its availability for review will be announced and interested persons may provide comment on that documentation.

Notice of Public Meeting

Notice is further given of the Army's intention to initiate the scoping process to aid in determining the significant issues related to the proposed action at Umatilla Depot Activity. Public, as well as Federal, State and local agency, participation and input are desired. An initial scoping meeting will be held on February 15, 1989, at 7:00 p.m. at the Armand Larive Junior High School auditorium in Hermiston, Oregon. Interested individuals, government agencies and private organizations are encouraged to attend and submit information and comments for consideration by the Army.

FOR FURTHER INFORMATION CONTACT: Program Manager for Chemical Demilitarization, ATTN: SAIL–PMI (Ms. Marilyn Tischbin), Aberdeen Proving Ground, Maryland 21010–5401. Individuals desiring to be placed on a mailing list to receive additional information on the public scoping process and copies of the draft and final EIS should contact the Program Manager at the above address.

Lewis D. Walker,

Deputy for Environment, Safety and Occupational Health OASA (I&L).

[FR Doc. 89–2865 Filed 2–3–89; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Date of Meeting: 22 February 1989.

Time of Meeting: 0800–1700 Hours.

Place: The Pentagon, Washington, DC.

Agenda: The Army Science Board's Technical Review of the Army's handguns will meet to hear briefings by the various Program Managers' offices. An executive session will follow at which time a letter report will be discussed and drafted by the panel. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 89–2870 Filed 2–3–89; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Partially Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 28 February and 1 March 1989.

Time: 0800–1600 hours, 28 February (Open); 0800–1000 hours, 1 March (Open); 1000–1800 hours, 1 March (Closed).

Place: The Pentagon, Washington, DC.

Agenda: The Army Science Board's '89 Summer Study on Improving Battlefield Survivability of the Army Command and Control System will hold its first meeting. Included in the meeting will be briefings on an overview of the Army Tactical Command Control System, common support programs, and communications systems. The open portions of the meeting are open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The closed portions of the meeting are closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 89–2871 Filed 2–3–89; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Date of Meeting: 1 March 1989.

Time of Meeting: 1300–1700 Hours.

Place: The Pentagon, Washington, DC.

Agenda: The Army Science Board Ad Hoc Subgroup for Tactical Explosive Systems (TEXS) will hold its eighth meeting. The purpose of the meeting is to finalize the TEXS report. The meeting is closed to the public. The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 89–2872 Filed 2–3–89; 8:45 am]

BILLING CODE 3810–06–M

Corps of Engineers, Department of the Army

Construction Productivity Advancement Research Program (CPAR)

AGENCY: Corps of Engineers, Department of the Army, DOD.

ACTION: Notice of availability.

SUMMARY: The purpose of this notice is to inform potential applicants of a program of cost-shared research, development and technology transfer (R&D) projects between the U.S. Army Corps of Engineers (Corps) and the U.S.

Construction Industry. The purpose of the Construction Productivity Advancement Research (CPAR) Program is to assist the U.S. Construction Industry in enhancing its productivity and domestic and international competitive position through the development and reduction-to-practice of advanced technologies, materials and construction management systems.

DATES: Effective date is February 1, 1989. Proposals will be accepted until March 15, 1989.

ADDRESS: Proposals should be submitted to the Corps laboratories identified in the "CPAR Guidelines for Participation", dated January 1989. Copies of the Guidelines may be obtained by writing to: HQUSACE, Attn: CERD–C; 20 Massachusetts Avenue NW., Washington, DC 20314–1000, or by calling (202) 272–0257.

FOR FURTHER INFORMATION CONTACT: Mr. Jesse A. Pfeiffer, Jr., P.E.; HQUSACE, CERD–C; 20 Massachusetts Avenue NW., Washington, DC 20314–1000, or call (202) 272–1846 or 272–0257.

SUPPLEMENTARY INFORMATION: CPAR is a cost-shared partnership between the Corps, the U.S. Construction Industry (contractors, equipment and material suppliers, architects, engineers, financial organizations), academic institutions, non-profit organizations and other groups who are interested in enhancing construction productivity and competitiveness. CPAR was created to help the Construction Industry regain its competitive edge nationally and internationally by building on the foundation of the existing Corps Construction R&D Program and laboratory resources through an expansion and leveraging effect that cost-shared partnerships provide. The objective of CPAR is to facilitate research, development and application of advanced technologies through cooperative R&D, field demonstration, licensing agreements and other means of technology transfer and reduction-to-practice. Advancing the productivity and competitiveness of the U.S. Construction Industry will provide savings in construction costs for the Government and U.S. industries, and result in a boost to the U.S. economy in general. R&D efforts conducted under CPAR will be based on topics included in the Corps Construction R&D Program and topics suggested by the Construction Industry that can be effectively addressed by a partnership and benefit both the Corps and the Construction Industry.

Participation in CPAR is open to any U.S. private firm, including corporations, partnerships, limited partnerships and industrial development organizations; public and private foundations; academic institutions; non-profit organizations; units of State and local governments; and others who have interest in and the capability to address CPAR objectives. As provided by law, special consideration will be given to small business firms and consortia involving small business firms. Preference will be given to business units located in the United States that agree to substantially manufacture the products domestically. Consideration will be given to a potential partner that is subject to the control of a foreign company or government if that foreign government permits U.S. agencies, organizations, or other persons to enter into cooperative research and development agreements and licensing agreements.

The cost of each CPAR project will be shared by the Corps and the Construction Industry partner(s). Specific cost-sharing terms will be negotiated for each proposed project prior to submission of the proposal to Headquarters, U.S. Army Corps of Engineers (HQUSACE) for approval. "In-kind" services and/or use of facilities may be considered in arriving at a cost-sharing agreement. As required by law, not more than fifty (50) percent of the cost of a CPAR project will be provided by the Corps and not less than five (5) percent of the Construction Industry partner's share of the cost must be paid in cash. The Corps may contribute personnel, services, facilities, property, intellectual property and money. The Construction Industry partner(s) may contribute personnel, services, facilities, property, intellectual property and money. No costs previously incurred by the Corps or the Construction Industry partner(s) on the subject matter of the CPAR project may be recovered in the cost-sharing agreement.

An agreement specific to each project will be negotiated between the Corps and the Industry partner(s). The agreement will contain, in addition to the cost-sharing terms, all other conditions and responsibilities necessary to complete the project, including rights to inventions. In addition to having the authority to grant the partner(s) licenses to Government-owned or jointly-developed inventions, the Corps has authority to waive, in whole or in part, the right of ownership to any invention made by the partner(s) or employees of the partner(s) during the project, subject to reservation by the Government of a non-exclusive, irrevocable, paid-up license to practice the invention or have the invention practiced by or on behalf of the Government.

Initially CPAR will focus on four major areas: design improvement, improved construction site productivity, advanced materials and technology transfer management. Any idea for improving construction productivity will be considered, however.

Design Improvement

- Total Integrated Design Systems.
- Computer Aided Engineering Tools.
- Computer-Aided Design Systems.
- Advanced Site Investigation Technology.
- Knowledge-Based Cost Systems.
- Expert Systems/Artificial Intelligence.
- Materials Selection Systems.

Improved Construction Site Productivity

- Computer-Aided Construction.
- Automated Construction/Robotics.
- Automated Inspection and Quality Control.
- Advanced Excavating and Tunneling.
- Marine Construction.
- Cold Weather Construction.
- Construction Management.
- Expert Systems.
- Materials Handling.

Advanced Materials

- High-Performance Cementitious Materials.
- Structural Polymers.
- Advanced Ceramics.
- Metal Matrix Composites.
- Coatings.
- Geomodifiers/Geotextiles.
- Adhesives/Fasteners.

Technology Transfer Management

- User-Based Technology Transfer Processes.
- Field Demonstration Projects.
- Technical Support Services.
- Patents and Licensing Agreements.
- Software Packages.
- Courses and Workshops.
- Information Exchange Systems.
- Participation With Specification and Building Code Organizations.

Proposal Review Process

Proposals received by the Corps laboratories which meet CPAR criteria may be discussed and further developed, as necessary, by the laboratory and Construction Industry partner(s). The following criteria will be used to evaluate the proposals:

1. Potential Impact on U.S. Construction Industry Productivity

High—Technological advancement which would supplant current technology and will have strong impact on U.S. Construction Industry productivity.
Med—Technological advancement which significantly improves current technology and enhances U.S. Construction Industry productivity.
Low—Technological advancement which would upgrade current standard technology with limited but beneficial impact on U.S. Construction Industry productivity.

2. Potential Impact on Corps of Engineers Mission

High—Technological advancement which would supplant current Corps technology and will have strong impact on the Corps mission.
Med—Technological advancement which significantly improves current Corps technology and enhances the Corps mission.
Low—Technological advancement which would upgrade current standard Corps technology with limited but beneficial impact on the Corps mission.

3. Ease of Adoption

High—Technology provides productivity improvement with minimal additional equipment, training, materials and operating costs.
Med—Technology provides productivity improvements, but at the expense of some additional equipment, material, and training costs.
Low—Technology provides productivity improvement, but with substantially higher costs of training, materials, and equipment.

4. Anticipated Chance of Success of R & D Effort

High—Little risk, such as innovative application of current research.
Med—Some risk, chance of success similar to exploratory development.
Low—High risk, chance of success similar to basic research.

5. Project Duration

High—Project can be completed in 2 years or less.
Med—Project can be completed in 4 years or less.
Low—Project will require more than 4 years to complete.

6. R & D Investment

High—Project will obligate the Corps to spend less than $200,000 in any funding year.
Med—Project will obligate Corps to spend between $200,000 and $400,000 in any funding year.
Low—Project will obligate Corps to spend more than $400,000 in any funding year.

7. Technology Transfer Potential

High—Proposal provides a significant and effective plan which will facilitate wide-scale Federal and non-Federal exploitation of the new technology.
Med—Proposal provides a plan that envisions some effective Federal and non-federal exploitation of the new technology.
Low—Proposal provides a plan that envisions limited, but beneficial Federal and non-federal exploitation of the new technology.

After discussions between the laboratory and the Construction Industry partner(s), a proposal summary will be prepared which will contain all expected costs and cost-sharing arrangements, time needed to complete, specific end product, proposed technology transfer/marketing plan, and expected benefits for the Government and the Construction Industry.

Corps laboratories will submit their recommended proposal summaries to HQUSACE (CERD–C) for consideration under the CPAR Program. An initial screening will be made to ensure that all proposals meet the minimum criteria of being fully cost-shared and appropriate to the CPAR Program. The CPAR proposals will be reviewed and selected by the CPAR Executive Committee in HQUSACE. The CPAR Executive Committee is composed of senior-level HQUSACE managers. The Director of Civil Works, HQUSACE, will act on the recommendations of the CPAR Executive Committee in approving the program.

All information (data) furnished by the Construction Industry partner(s) will be used for evaluation purposes only and will be safeguarded from unauthorized disclosure in accordance with applicable laws. Classified information (data) will be handled in accordance with Army regulations.

Additional Requirements

Applicants are reminded that a false statement may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment. Except where declared by law or approved by the head of agency, no award of Federal funds shall be made to an applicant who is delinquent on a Federal debt until the delinquent account is made current or satisfactory arrangements are made between affected agencies and the debtor. No award will be made to a debarred or suspended contractor.

Classification

This document is not a major rule requiring a regulatory analysis under Executive Order 12291 because it will not have an annual impact on the economy of $100 million or more, nor will it result in a major increase in costs or prices for any group, nor have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. It is not a major federal action requiring an environmental assessment under the National Environment Policy Act. The CPAR Program does not involve the mandatory payment of any matching funds from a State or local government, and does not affect directly any State or local government. Accordingly, the Corps determined that Executive Order 12372 is not applicable to CPAR. This notice does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612. CPAR is being carried out under the authority of Section 7, Water Resources Development Act of 1988 (Pub. L. 100–676).

Dated: January 31, 1989.

Frank R. Finch,

Colonel, Corps of Engineers, Executive Officer, OASA(CW).

[FR Doc. 89–2631 Filed 2–3–89; 8:45 am]
BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.129]

Rehabilitation Long-Term Training Program; Inviting Applications for New Awards for Fiscal Year (FY) 1989

Purpose of Program: This program provides grants to States and other public and private agencies and organizations, including institutions of higher education, to increase the supply of qualified personnel for employment in public and private agencies involved in the vocational and independent living rehabilitation of individuals with physical and mental disabilities.

Deadline For Transmittal of Applications: March 13, 1989.

Applications Available: February 21, 1989.

Estimated Available Funds: $3,450,000 to $5,150,000.

Estimated Average Size of Awards: $86,000.

Estimated Number of Awards: 40–59.

Note.—The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 80, and 85; and (b) the regulations for this program in 34 CFR Parts 385 and 386.

Priority: In accordance with § 386.1 of the program regulations and 34 CFR 75.105(c)(3), the Secretary has established an absolute priority for applications that propose to provide training in one of the following areas of personnel shortages:

Client Assistance
Independent Living
Rehabilitation Job Development and Job Placement
Rehabilitation of the Blind
Rehabilitation of the Deaf
Rehabilitation of the Mentally Ill
Specialized Personnel for Supported Employment
Undergraduate Education in the Rehabilitation Services
Vocational Evaluation and Work Adjustment
Rehabilitation Medicine
Physical Therapy
Prosthetics and Orthotics
Rehabilitation Facility Administration
Rehabilitation Workshop and Facility Personnel

Under 34 CFR 75.105(c)(3), the Secretary funds under this competition only those applications that meet this absolute priority.

SUPPLEMENTARY INFORMATION: The long-term training program is designed to provide academic and non-academic training in areas of personnel shortage identified by the Secretary.

The Department of Education initiated a study in 1988 to update data collected on personnel shortages and training needs in vocational rehabilitation in 1986. Data collected through this study will be used to assist in allocating training funds among the categories included in this notice to reflect areas of identified personnel shortages and training needs.

A separate Notice of Proposed Priorities and Notice Inviting Applications for New Awards under the Rehabilitation Long-Term Training Program for fiscal year 1989 will be published in the **Federal Register** at a later date for the fields of Rehabilitation Counseling and "Other". With the exception of Rehabilitation Counseling and "Other", funds will be available for the award of new grants in only those rehabilitation long-term training fields designated in this notice.

FOR APPLICATIONS OR INFORMATION CONTACT: Mary Ford, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3332 (Switzer Building), Washington, DC 20202–2650. Telephone: (202) 732–1351.

Program Authority: 29 U.S.C. 774.

Dated: February 1, 1989.

Madeleine Will,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 89–2753 Filed 2–3–89; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No.: 84.126H]

Vocational Rehabilitation Service Projects for American Indians With Handicaps Program; Inviting Applications for New Awards for Fiscal Year 1989

Purpose of Program: This program supports projects that provide vocational rehabilitation services to American Indians with handicaps who reside on Federal and State reservations. Governing bodies of Indian tribes and consortia of such bodies located on Federal and State reservations may apply for these grants.

Deadline For Transmittal of Applications: April 3, 1989

Applications Available: February 14, 1989.

Available Funds: $2,517,000.

Estimated Range of Awards: $180,000 to $800,000.

Estimated Average Size of Awards: $210,000.

Estimated Number of Awards: 12.

Note.—The Department is not bound by any estimates in this notice.

Project Period: 12 months up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 75, 77, 80, and 85; and (b) The regulations for this program in 34 CFR Parts 369 and 371.

FOR APPLICATIONS OR INFORMATION CONTACT: Joseph DePhillips, U.S. Department of Education, 400 Maryland Avenue SW., Room 3324 Switzer Building, Washington, DC 20202–2575. Telephone: (202) 732–1329.

Program authority: 29 U.S.C. 777(b).

Dated: February 1, 1989.

Madeleine Will,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 89–2755 Filed 2–3–89; 8:45 am]

BILLING CODE 4000–01–M

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board.

ACTION: Notice of closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Search Committee of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE: February 13, 1989.

FOR FURTHER INFORMATION CONTACT: Eunice E. Henderson, Designated Federal Official, Office of Assistant Secretary for Educational Research and Improvement, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 602C, Washington, DC 20208, Telephone: (202) 357–6050.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), Title III–C of the Augustus F. Hawkins–Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297); 20 USC 1221e–1).

The Board is established to advise the Commissioner of the National Center for Education Statistics on policies and actions needed to improve the form and use of the National Assessment of Education Progress, and develop specifications for the design, methodology, analysis and reporting of test results. The Board also is responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and establishing standards and procedures for interstate and national comparisons.

The Search Committee of the National Assessment Governing Board will meet in closed session, via teleconference, on Monday February 13, 1989 at 8:00 p.m. until business is completed. The subcommittee is meeting in closed session to consider the results of reference checks of applicants for the position of Staff Director and to determine which candidates will be interviewed. The discussion will touch upon matters that would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by

exemption (6) of section 552(b)(c) of Title 5 U.S.C.

The public is being given less than fifteen days notice of this closed session because of the difficulty of arranging the meeting so as to avoid scheduling conflicts in order to ensure participation of subcommittee members. A summary of the activities at the closed session and related matters which are informative to the public consistent with Title 5 U.S.C. 552b will be available to the public within fourteen days of this meeting.

Records are kept of all Board proceedings, and until a permanent office site for the Board has been established, are available for public inspection at the U.S. Department of Education, Office of Educational Research and Improvement, 555 New Jersey Avenue, NW., Room 600, Washington, DC from 8:30 a.m. to 5:00 p.m., Monday through Friday.

Dated: February 2, 1989.

Patricia Hines,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 89–2836 Filed 2–3–89; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent To Award Grant to Dr. Milton B. Thacker

AGENCY: Department of Energy.

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.14, it is making a financial assistance award based on an unsolicited application under Grant Number DE–FG01–89CE15414 to Dr. Milton B. Thacker.

Scope: The funding for this grant will aid in the building and testing of a new fluid catalytic cracking model for petroleum refining.

The purpose of this project is to provide a more economical, more effective unit that will partially benefit small refineries which often find it difficult to justify and purchase the more expensive conventional unit.

Eligibility: Based on receipt of an unsolicited application, eligibility of this award is being limited to Dr. Milton B. Thacker who has high qualifications in this specialized field of technology. The project has high technical merit and represents an innovative technology which has a strong possibility of allowing for future reductions in the nation's energy consumption. There is no other known entity which is conducting or planning to conduct activities such as the building of this unit.

The term of this grant shall be two years from the effective date of award. The estimated cost of this grant is $89,500.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, Attn: Phyllis Morgan, MA–453.2, 1000 Independence Avenue, SW., Washington, DC 20585.

Arnold A. Gjerstad,

Acting Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 89–2723 Filed 2–3–89; 8:45 am]

BILLING CODE 6450–01–M

Bonneville Power Administration

Snohomish County Support Transmission Project; Finding of No Significant Impact

AGENCY: Bonneville Power Administration (BPA), Department of Energy.

ACTION: Finding of No Significant Impact (FONSI) and Floodplain Statement of Findings for BPA's Proposed Snohomish County Support Transmission Project.

SUMMARY: To maintain reliable service to increasing Snohomish County Public Utility District (PUB) loads, BPA proposes to replace a 4.8-mile-long 115-kV transmission line in Snohomish County, Washington, with a double-circuit 230-kV transmission line. BPA has prepared an environmental assessment (DOE/EA–0355) evaluating the proposed project. Reasons that replacing the 115-kV line with a 230-kV double-circuit line would not cause significant environmental impact include: (1) Only limited, mostly short-term impacts on land use, soils, vegetation, and wildlife (including no impact on endangered species); (2) no effect on air and water resources; (3) visual impacts on the landscape are already established by the existing transmission lines in the corridor; and (4) substantive consistency with State and local land use plans.

A finding is included that there is no practicable alternative to locating the project within a 100-year floodplain.

FOR FURTHER INFORMATION CONTACT: Anthony R. Morrell, Assistant to the Administrator for Environment, Bonneville Power Administration, P.O. Box 3621–AJ, Portland, Oregon 97208; telephone (503) 230–5136.

SUPPLEMENTARY INFORMATION: Load growth in the west-central area of Snohomish County, Washington, together with the limited capacity of the existing transmission system in the area, has created potential overload conditions on BPA and Snohomish County PUD facilities. BPA needs to ensure that its service to Snohomish County PUD continues to be reliable. To do this, BPA proposes to replace a 115-kV transmission line between Snohomish Substation and Beverly Park Substation with a double-circuit 230-kV transmission line, with Snohomish County PUD upgrading its Beverly Park-Paine Field 55-kV line to 115-kV. From Snohomish Substation to Beverly Park Substation, the line that would be replaced is within a corridor containing three to eight other transmission lines.

Effects on land use would be mostly short-term. A wider right-of-way would be needed, but is not expected to displace existing land uses except for one house along Snohomish County PUD's part of the project. Snohomish County PUD has purchased the house, which is not of historical significance, and plans to remove it. Other effects on land use would be temporary, such as damage to crops and pasture vegetation. These impacts are not significant because they are short-term and not extensive, or limited to the one house.

Effects on vegetation would also be mostly short-term, because only limited tree clearing would be needed. Low-growing vegetation damaged by construction activity would quickly recover, and BPA would ensure that new infestations of noxious weeds do not occur.

The project would cross the Snohomish River, a navigable water. BPA would obtain the appropriate permit from the U.S. Army Corps of Engineers before construction. No other effects on water resources, including wetlands, are expected.

Terrestrial wildlife would be displaced during construction activity, but their populations are expected to become reestablished naturally along with the ground vegetation. The new line would present an obstacle for birds, as do the other lines in the corridor. However, the number of additional bird collisions is not expected to increase significantly. Because the project would not affect water, neither would it affect fish.

Construction may cause soil rutting, compaction, or erosion, but these impacts would be limited to construction sites and would be repaired as necessary. Construction may also create dust, but this would be temporary and not extensive. Cleared vegetation would not be burned, so no smoke would be created.

Because the proposed new transmission line would replace an existing line, it would have little effect on public health and safety. Magnetic field strength at the right-of-way edge may decrease slightly, and electric field strength may increase slightly, so the potential for health effects that may be cause by electric/magnetic fields would remain substantially unchanged.

The landscape that would be crossed by the new transmission line is typical of the surrounding area and contains no unique features. The existing multi-line corridor has already established visual impacts on the landscape, and the incremental change in transmission line structure size, design, and appearance would not have a significantly greater impact.

No important cultural resources are known to exist in the area of potential impact, but it is possible that undiscovered sites exist. If such sites were discovered during the pre-construction cultural resource survey or during construction, strict procedures would be followed to ensure that damage to important resources are avoided. Therefore, no effects on cultural resources are expected.

The project is consistent with all pertinent State and local land use plans and programs. The Washington Energy Facility Site Evaluation Council reviewed the project against pertinent State siting standards for such facilities, and found it consistent with those standards. The project would provide greater than the minimum vertical clearance required by the State at highway crossings, and structures would be located well away from highways, to accommodate potential highway widening. Also, transmission lines are a permitted use in all Snohomish County land use zones.

Located within Washington's coastal zone, the project is consistent with the substantive provisions of the State's coastal zone management program. The Washington Department of Ecology has commented that, to be consistent with the Washington Shoreline Management Act (through which the coastal zone program is administered), certain local shoreline development permits are required. Snohomish County has also commented that the project requires County permits, i.e., a Flood Hazard Permit and a Shoreline Management Permit. The U.S. Department of Energy and BPA do not agree that these permit processes are pertinent to this Federal project, because the processes are not authorized by the Coastal Zone Management Act or any other applicable Federal law. The controversy is about procedural issues only, and does not affect the significance of environmental impacts.

The project is also consistent with Federal policy for farmland protection and with all regulations for pollution control at Federal facilities.

Floodplain Statement of Findings

The transmission line would unavoidably cross the Snohomish River 100-year floodplain for a distance of about 1.8 mile, within an established utility corridor. The proposed action (with a location map), the impact on the floodplain, an explanation of why the action is being proposed in the floodplain, and steps taken to minimize environmental impacts to the affected floodplain are discussed in the EA. The proposal would have negligible adverse impact on the natural vegetation and would not affect the flow of the river. Adopted mitigation measures, as described in the EA, will ensure that no significant impact will occur to the floodplain and that the action will conform to applicable state and local floodplain protection standards. DOE finds that there is no practicable alternative to locating the project within the floodplain, consistent with the policy set forth in Executive Order 11988.

Public Availability

This Finding will be distributed to all persons and agencies known to be interested in or affected by the proposed action or alternatives.

Determination

The Snohomish County Support Transmission Project is not an action normally requiring the preparation of an environmental impact statement, is not similar to any such action, and is not without precedent. Based on the information in the EA, as summarized here, the Department of Energy determines that BPA's actions will not significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.* Therefore, an environmental impact statement will not be prepared.

Issued in Washington, DC, December 27, 1988.

Ernest C. Hayward III,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 89-2715 Filed 2-3-89; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Issuance of Decision and Orders During the Week of October 10 Through October 14, 1988

During the week of October 10 through October 14, 1988, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

APPEAL

United Association Local 412, 10/11/88, KFA-0220

On September 6, 1988, United Association Local 412 (Local 412) filed a Motion for Reconsideration of a Decision and Order issued by the Department of Energy (DOE) on June 3, 1988. That Decision denied an Appeal, filed under the Freedom of Information Act (FOIA), of a determination issued to Local 412 on April 8, 1988, by the DOE Albuquerque Operations Office. The Albuquerque Office had withheld employees' names and personal identifiers before releasing certified payroll records of a DOE contractor. In affirming that action in the June 3, 1988 Decision, the DOE found that release of the withheld information would constitute an unwarranted invasion of the employees' privacy, and that the information was exempt from disclosure pursuant to Exemption 6 of the FOIA. In the Motion for Reconsideration, Local 412 merely reiterated arguments made in its Appeal, including the assertion that release of the withheld material was sanctioned by the court's holding in *International Brotherhood of Electrical Workers, Local 41 v. United States Dep't of Housing and Urban Dev.*, 593 F. Supp 542 (D.D.C. 1984), *aff'd*, 763 F.2d 435 (D.C. Cir. 1985) (*HUD*). In denying Local 412's Modification request, the DOE again distinguished the *HUD* case from the present one and found that mere allegations of wage law violations were not sufficient enough to outweigh the employees' privacy interest in the disclosure of their names and other identifying information.

Refund Applications

Aminoil U.S.A. Inc./Gulf States Refining, Inc. Progas, Inc., 10/14/88, RF139-156, RF139-158

The DOE issued a Decision and Order concerning Applications for Refund filed by Gulf States Refining, Inc. and Progas, Inc. in the Aminoil U.S.A., Inc. special refund proceeding. The firms submitted information which indicated that they were spot purchasers of Aminoil products and thus ineligible for a refund under the procedures outlined in *Aminoil*. Although allowed an opportunity to rebut this presumption, the applicants did not do so. Accordingly, both applications were denied.

Atlantic Richfield Company/Bernie Nisman, Inc. et al, 10/13/88, RF304-203, et al.

The DOE issued a Decision and Order concerning seventy-two Applications for Refund in the Atlantic Richfield Company special refund proceeding. All of the applicants were either end-users or resellers and retailers that applied under the small claims presumptions. In addition, all of these firms documented their Arco purchase volumes and thus were presumed to have been injured. The DOE concluded that these firms should receive refunds totalling $103,323, representing $82,490, in principal and $20,825 in accrued interest.

Atlantic Richfield Company/Burris Foods, Inc., et al., 10/14/88, RF304-400, et al.

The DOE issued a Decision and Order concerning Applications for Refund filed by 24 claimants in the Atlantic Richfield Company special refund proceeding. All of the applicants were either end-users or reseller/retailers that applied for small claims presumption refunds. In addition, each applicant documented the volume of its purchases from ARCO and, therefore, was presumed to have been injured and entitled to a refund. The DOE concluded that these firms should receive refunds totalling $26,017 in principal and $6,569 in accrued interest.

Atlantic Richfield Company/Gary G. Emerizy et al., 10/14/88, RF304-428, et al.

The DOE issued a Decision and Order concerning Applications for Refund filed by forth-seven claimants in the Atlantic Richfield Company special refund proceeding. Each applicant is either an end-user or a reseller/retailer applying for a small claims refund. In addition, each applicant documented the volume of its purchases from ARCO and thus was presumed to have been injured and entitled to a refund. The DOE concluded that these firms should receive refunds totalling $51,331, representing $40,985 in principal and $10,346 in accrued interest.

Atlantic Richfield Company/Louis Arco et al., 10/14/88, RF304-208, et al.

The DOE issued a Decision and Order concerning Applications for Refund filed by five claimants in the Atlantic Richfield Company special refund proceeding. Each applicant is either an end-user or a reseller/retailer applying for a small claims refund. In addition, each of these firms documented their volume of purchases from ARCO and thus was presumed to have been injured. The DOE concluded that these firms should receive refunds totalling $7,875, representing $5,809 in principal and $1,466 in accrued interest.

Baxter Healthcare Corporation, 10/14/88, RE272-12185

The DOE issued a Decision and Order denying a refund to the Baxter Healthcare Corporation (Baxter) in the Subpart V crude oil refund proceeding. the DOE found that a predecessor to Baxter, Baxter Travenol, had previously been granted a refund from the Surface Transporter Escrow Account and thus had waived any right for itself or successors in interest to a refund in the Subpart V proceeding. Accordingly, the application was denied.

Charles Freihoffer Baking Company, 10/12/88, RF272-6997

The DOE issued a Decision and Order granting a refund in the Subpart V crude oil refund proceeding to Charles Freihoffer Baking Company. The firm documented with actual invoices purchases of 4,351,804 gallons of No. 2 heating oil and provided estimates of additional purchases of 4,677,694 gallons of No. 2 diesel fuel and motor gasoline. The estimates were based on the applicant's total mileage as recorded in company logs, divided by an average of 4 to 6 miles per gallon. The DOE determined that this estimation method was reasonable for the purposes of the proceeding and granted a refund, including interest, of $1,806.

Cooperative Power Arkansas Electric Cooperative Corp. Arkansas Electric Cooperative, Inc., 10/14/88 RF272-23, RF272-30, RF272-31

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to Cooperative Power (CP), the Arkansas Electric Cooperative Corporation (AECC), and the Arkansas Electric Cooperative, Inc. (AECI) in the Subpart V crude oil refund proceeding. During the period August 19, 1973, through January 27, 1981, CP and AECC operated electricity generation and transmission cooperatives, while AECI served as the state association for 16 consumer-owned cooperatives. The DOE found that each applicant had submitted sufficient documentation to support its claim. In addition, CP and AECC certified that they would pass through any refund granted. The DOE determined that AECI need not certify that it would pass through its refund since it was not an electrical generation and transmission cooperative and did not resell the petroleum products. In reaching its determination, the DOE rejected the comments of a group of States in opposition to the refund requests. Specifically, the DOE found that the States had not demonstrated that CP and AECC were ineligible to receive a refund as electrical cooperatives and that the State's Comments on the AECI claim were not relevant. Accordingly, the DOE approved a refund of $1,847 to CP, $88,966 to AECC and $1,342 to AECI based upon the amount of their respective purchases multiplied by the current volumetric of $0.0002 per gallon. The distribution of funds to CP and AECC was stayed pending the outcome of litigation regarding the distribution of crude oil refunds to utilities.

Deans Oil Co., Inc., S&U Coal & Oil, Russell Sohio Service, 10/13/88, RF272-11204, RF272-11205, RF272-11279

The DOE issued a Decision and Order denying three Applications for Refund filed in connection with the Subpart V crude oil refund proceedings. Each applicant was either a reseller or retailer during the period August 19, 1973, through January 27, 1981. Because none of the applicants demonstrated that they were injured due to crude oil overcharges, they were found to be ineligible for a refund and the claims were denied.

Exxon Corporation/Canton Village Exxon et al., 10/13/88, RF307-1102 et al.

The DOE issued a Decision and Order concerning 50 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased directly from Exxon and was either an end-user or a reseller of Exxon products whose allocable share is less than $5,000. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $42,194 ($37,362 principal plus $4,832 in accrued interest).

Exxon Corporation/City of Beaufort et al., 10/14/88, RF307-2241 et al.

The DOE issued a Decision and Order concerning 14 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was

eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $6,740 ($5,983 principal plus $807 interest).

Exxon Corporation/Country Gas Distributors, Inc. et al., 10/13/88, RF307-661 et al.

The DOE issued a Decision and Order concerning six Applications for Refund filed in the Exxon Corporation special refund proceeding. All the Applicants purchased directly from Exxon and were resellers whose allocable share is greater than $5,000. Each applicant elected to receive a refund of $5,000 or 40 percent of its full allocable share, whichever is greater, under the medium range presumption. In each case the refunds were limited to $5,000. The sum of the refunds granted in this Decision is $34,080 ($30,000 principal plus $4,080 interest).

Exxon Corporation/Dew Oil Company, Roesil Corporation, 10/13/88, RF307-2315, RF307-2320

The DOE issued a Decision and Order concerning two Applications for Refund filed in the Exxon Corporation special refund proceeding. Each firm purchased directly from Exxon and was a reseller of Exxon products whose allocable share exceeded $5,000. However, each applicant elected to limit its claim to $5,000. Each firm was granted a refund of $5,680 ($5,000 principal plus $680 interest).

Exxon Corporation Jay's Exxon et al., 10/13/88, RF307-551 et al.

The DOE issued a Decision and Order concerning 41 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $25,266 ($22,372 principal plus $2,894 interest).

Exxon Corporation Raritan Valley Exxon et al., 10/13/88, RF307-2901 et al.

The DOE issued a Decision and Order concerning 46 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $31,697 ($28,066 principal plus $3,631 interest).

Exxon Corporation/Schnieder Fuel Oil, Inc. Exxon et al., 10/13/88, RF307-2201 et al.

The DOE issued a Decision and Order concerning 49 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $32,751 ($29,000 principal plus $3,751 interest).

Exxon Corporation/William's Exxon et al., 10/13/88, RF307-1171 et al.

The DOE issued a Decision and Order concerning 47 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $28,795 ($26,378 principal plus $3,417 interest).

Gulf Oil Corporation/G & S Terminals, Inc. et al., 10/12/88, RF300-1300 et al.

The DOE issued a Decision and Order concerning 15 Applications for Refund filed in the Gulf Oil Company special refund proceeding. The applicants documented their Gulf purchases and were either end-users of resellers whose claims were for $5,000 or less. Therefore, each applicant is presumed to have been injured and is eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is, including both principal and interest, is $18,970.

Joe Turner et al., 10/13/88, RF272-6222 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to six applicants based on their purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used various actual records and/or conservative estimates to support their gallonage claims. Each applicant was an end-user of the products it purchased and was therefore presumed injured. The sum of the refunds granted in this Decision is $978. All of the claimants will be eligible for additional refunds as further crude oil overcharge funds become available.

New Jersey Transit Corporation, 10/12/88, RF272-66243

The New Jersey Transit Corporation (NJT) filed an amended application for an additional refund in the Subpart V crude oil refund proceedings. The amended application was based on purchases of covered products not included in the original NJT application. *Metropolitan Atlanta Rapid Transit Authority, et al.*, 17 DOE ¶ 85,243 (1988). In its amended claim, NJT provided reasonable estimates of those purchases for which it did not have actual records. Accordingly, the amended application was approved and NJT was granted an additional refund, including interest of $4,073.

Norwich University et al., 10/12/88, RF272-1895, et al.

The DOE issued a Decision concerning six Applications for Refund in the Subpart V crude oil refund proceedings. The Applicants purchased various petroleum products during the period August 19, 1973, through January 27, 1981. Five of the Applicants used contemporaneous material to document their volume of purchases while the sixth employed reasonable and acceptable estimating techniques. Each of the Applicants was an end-user of the petroleum products that it purchased and therefore presumed to have been injured. The total refunds approved in this Decision, including interest, was $4,811.

Pennzoil Co./Indiana, 10/12/88, RM10-121

The OHA issued a Decision and Order approving a Motion for Modification filed by the State of Indiana in the Pennzoil Co. refund proceeding. Indiana requested permission to use $41,685 ($22,407 in principal plus $19,288 in interest) of its previously approved Pennzoil funds for its Fuel Saver Van Program. The program uses a travelling van equipped with a computer that, when attached to a car's engine, measures the efficiency of that engine. The OHA found that by helping Indiana residents to make their cars more energy efficient and thereby helping them to save on fuel costs, this program will provide restitution to injured Indiana consumers of motor gasoline.

Standard Oil Co. (Indiana)/Office of State and Local Assistance Programs, 10/12/88, RQ251-469

The OHA issued a Decision and Order dismissing a request by the Office of State and Local Assistance Programs of the DOE for clarification of certain language in a Previous Decision and Order. *See Standard Oil Co. (Indiana)/Indiana*, 15 DOE ¶ 85,238 (1987). The language concerned the applicability of the State Energy Conservation Program (SECP) regulations to a program financed with second-stage refund monies. The OHA restated its position in the Decision that the SECP regulations did not apply to a program funded with second stage refunds, and found no reason to modify the previous Decision. Accordingly, the request was dismissed.

Suburban Propane Gas Corporation/Enterprise Products Company, 10/14/88, RF299-54

The DOE issued a Decision and Order granting an Application for Refund filed by Enterprise Products Company, a purchaser of refined petroleum products, in the Suburban Propane Gas Corporation special refund proceeding. According to the procedures set forth in *Suburban Propane Gas Corporation*, 16 DOE ¶ 85,382 (1987), Enterprise was found to be eligible for a refund based on the volume of commercial butane it purchased from Suburban. The total refund approved in this Decision was $1,471, representing $1,253 in principal plus $218 in accrued interest.

Texas-New Mexico Power Company; Boston Edison Company, 10/14/88, RF272-26231, RF272-55580

The DOE issued a Decision and Order denying two Applications for Refund in the crude oil refund proceedings. Both Texas-New Mexico Power Company and the Boston Edison Company had previously received crude oil refunds from one of the eight Stripper Well escrows, the Utilities Escrow. By receiving those monies, both applicants had irrevocably waived their rights to any future crude oil monies, including crude oil overcharge monies held by the DOE. Accordingly, both submissions were denied.

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decisions and Orders:

Name	Case No.	Date	No. of applicants	Total refund
David Rubeck *et al*	RF272-15823	10/14/88	17	$4,282
Donegal Sch. District *et al*	RF272-14000	10/14/88	17	$8,560
Philip Crouse *et al*	RF272-15205	10/14/88	17	$1,556

Dismissals

The following submissions were dismissed:

Name	Case No.
Anchor Gasoline Corp	KRO-0330.
Aurora Gulf Service	RF300-666.
Bergeron Oil Service	RF300-4805.
Frey's General Store	RF300-1561.
Fuchs Oil Co	RF300-616.
Pat's Truck Stop	RF300-4018.
Talco Self Service	RF300-1566.
Woerner Oil Co., Inc	RF265-1717.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

January 27, 989.

George B. Breznay,

Director, Office of Hearings and Appeals:

[FR Doc. 89-2718 Filed 2-3-89; 8:45 am]

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Issuance of Decisions and Orders During the Week of November 7 Through November 11, 1988

During the week of November 7 through November 11, 1988, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Glen Milner, 11/8/88, KFA-0175

Glen Milner filed an Appeal from a partial denial by the Senior Information Officer, Office of Intergovernmental and External Affairs, of the DOE Albuquerque Operations Office, of a request for information submitted under the Freedom of Information Act. Milner requested the release of "all documents on file" that would provide specified information regarding the production, storage and transportation of certain nuclear warheads. On review, OHA adopted the determination of the DOE Office of Policy and Program Operations that the initial determination was incomplete because (1) it did not address the full scope of the request and (2) appropriate classification review of identified responsive documents had not taken place. Accordingly, the Appeal was remanded to the Albuquerque Operations Office for a new and complete determination of the initial request.

International Brotherhood of Electrical Workers, Local Union #425, 11/8/88, KFA-0224

The International Brotherhood of Electrical Workers, Local Union #425 (IBEW) filed an Appeal from a denial by the Deputy Associate Director for Resource Management of the Morgantown Energy Technology Center of the Department of Energy (DOE) of a Request for Information which it had submitted under the Freedom of Information Act (FOIA). IBEW sought records reflecting compensation of employees of a DOE subcontractor including, in particular, the release of a pension plan. IBEW also claimed that released payroll records did not explain fringe benefits. In considering the Appeal, DOE found that the pension plan was not an agency record and therefore not releasable under the FOIA. With respect to the request involving fringe benefits, the DOE found no requirement to explain documents released pursuant to the FOIA. Accordingly, the DOE denied the IBEW's Appeal.

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Implementation of Special Refund Procedures

Placid Oil Company, 11/7/88, KEF–0007

The DOE issued a Decision and Order implementing a plan for the distribution of $1,478,456 (plus accrued interest) received pursuant to a consent order that the Agency entered into with Placid Oil Company. The DOE determined that the consent order funds should be distributed to purchasers of Placid refined petroleum products during the period August 19, 1973 through January 27, 1981. The specific information to be included in Applications for Refund is set forth in the Decision.

Refund Applications

Airborne Express, Inc., 11/7/88, RF272–9331, RD272–9331

Airborne Express, Inc., an all-cargo air carrier, filed an Application for Refund in the Subpart V crude oil refund proceeding. The claim was based upon the firm's purchases of aviation fuel during the period August 19, 1973 through January 27, 1981. A group of thirty States and two Territories (collectively "the States") filed objections to the receipt of any refund by Airborne, contending that the firm had suffered no actual injury as a result of crude oil overcharges. In addition, the States filed a Motion for Discovery. In considering Airborne's refund application, the DOE determined that the firm had consumed petroleum products in a business unrelated to the petroleum industry. The DOE further determined that the States had failed to rebut the presumption that an end-user, such as Airborne, was injured. The DOE pointed out that the industry-wide data presented in the objections primarily related to scheduled passenger airlines and was not sufficiently probative of the operations of all-cargo air carriers such as Airborne. On the same basis, the DOE determined that the States had failed to adequately support their Motion for Discovery. Accordingly, Airborne's Application for Refund was approved, and the States' Objections and Motion for Discovery were denied. The total refund amount approved in this Decision and Order is $5,654.

Atlantic Richfield Company/Borough of Collingdale et al., 11/8/88, RF304–104 et al.

The DOE issued a Decision and Order concerning 49 Applications for Refund filed in the Atlantic Richfield Company (ARCO) special refund proceeding. As end-users or reseller/retailers claiming refunds of less than $5,000 in principal, the applicants were presumed to have been injured by ARCO's alleged overcharges. After examining the applications and supporting documentation, the DOE determined that the firms should receive refunds of $55,452, representing $44,051 in principal and $11,401 in interest.

Atlantic Richfield Company/Canteen Corp. et al., 11/8/88, RF304–378 et al.

The DOE issued a Decision and Order concerning six Applications for Refund filed in the Atlantic Richfield Company special refund proceeding. All of the applicants documented their purchases from ARCO and were end-users or reseller/retailers requesting refunds of less than $5,000. Therefore, each applicant was presumed to have been injured. The refunds granted in this decision totalled $4,922 in principal and $1,273 in accrued interest.

Atlantic Richfield Company/Holly Oil Company, Inc. et al., 11/8/88, RF304–411 et al.

The DOE issued a Decision and Order concerning fourteen Applications for Refund filed in the Atlantic Richfield Company special refund proceeding. All of the applicants were reseller/retailers and documented their purchases from ARCO. In addition, all of the applicants elected to limit their claims to $5,000 in principal, and, therefore, were presumed to have been injured by alleged ARCO overcharges. The firms received refunds totalling $37,572, representing $30,000 in principal and $7,572 in accrued interest.

Atlantic Richfield Company/McCann Service et al., 11/8/88, RF304–600 et al.

The DOE issued a Decision and Order concerning forty-five Applications for Refund filed in the Atlantic Richfield Company special refund proceeding. All of the applicants were end-users or reseller/retailers requesting refunds of less than $5,000. Therefore, each applicant was presumed to have been injured by alleged ARCO overcharges. The refunds granted in this decision totalled $88,117, including $54,112 in principal and $14,005 in accrued interest.

Atlantic Richfield Company/Metro Fuel Oil Co., Inc. et al., 11/8/88, RF304–802 et al.

The DOE issued a Decision and Order concerning 68 Applications for Refund filed in the Atlantic Richfield Company (ARCO) special refund proceeding. As reseller/retailers claiming refunds of less than $5,000 in principal or end users, the applicants were presumed to have been injured by ARCO's alleged overcharges. The DOE determined that the firms should receive refunds of $103,449, representing $82,182 in principal and $21,267 in interest.

Charles E. Dohn, 11/8/88, RF272–9996

The DOE issued a Decision and Order concerning an application for refund filed by Charles E. Dohn in the crude oil overcharge refund proceeding. Mr. Dohn did not retain purchase records which would enable him to determine precisely his total consumption of refined petroleum products. Based on his income tax records, Mr. Dohn determined that he purchased $42,223.99 of petroleum products during the price control period. He estimated that he spent 75% of that amount on diesel fuel and 25% on gasoline. Using a weighted average price for diesel fuel of $0.4586821/gallon and a weighted average price of gasoline of $0.7025/gallon, the DOE determined that Mr. Dohn purchased 84,067 gallons of petroleum products. Based on that volume of purchases, Mr. Dohn received a refund of $16.81.

Citizens Gas & Coke Utility, 11/9/88, RF272–7233, KFR–0044

Citizens Gas & Coke Utility, a municipal gas utility, filed an application for refund in the Subpart V crude oil refund proceeding. A group of states filed, and later withdrew, an objection to Citizens' application. A similar group of states also filed a Motion for Stay, which was granted by OHA to the extent that the disbursement of refunds to Citizens and 47 other regulated utilities would not be effected. *Pacific Gas & Electric Co.*, 17 DOE ¶ 85,315 (1988). Citizens then filed a Motion for Rescission in which it requested that OHA exclude Citizens from the terms of the stay. Since this motion was unopposed, the DOE granted Citizens' Motion for Rescission and directed that a refund of $10,316 be disbursed to Citizens.

City of Norwich, Department of Public Utilities, 11/10/88, RF272–11468

The DOE issued a Decision and Order granting an Application for Refund filed by the City of Norwich, Connecticut, Department of Public Utilities, in the Subpart V crude oil refund proceeding. Norwich, a purchaser and end-user of petroleum products, stated that it would pass through any refund received to its customers. Accordingly, it was not required to show injury. The total refund approved was $1,338.

Convenience Store Distributing Company, Worcester Housing Authority, 11/9/88, RF272–7130, RF272–7126

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to Convenience Store Distributing Company and Worcester Housing Authority based on each applicant's respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant was an end-user of the products involved and was therefore presumed injured. The sum of the refunds granted in this Decision is $1,436.

Eastern Oil Company/Northside Propane Inc., 11/8/88, RF306–3

The DOE issued a Decision and Order granting an Application for Refund filed by Northside Propane in the Eastern Oil Company special refund proceeding. The applicant was a reseller of motor gasoline whose allocable share of the consent order fund was less than $5,000. Accordingly, the applicant received its full allocable share and was not required to demonstrate injury. The total refund granted is $4,472, representing $3,846 in principal and $626 in interest.

Exxon Corporation/Carmichael Oil of Walterboro et al., 11/9/88, RF307–312 et al.

The DOE issued a Decision and Order granting a refund to five resellers of refined petroleum products from consent order funds collected from Exxon Corporation. Because the applicants limited their claims to the greater of $5,000 or 40 percent of the volumetric refund amount, none was required to demonstrate injury. Each of the five firms received a refund of $5,722 ($5,000 in principal and $722 in interest).

Exxon Corporation/Donald J. Dykstra et al., 11/9/88, RF307–1127 et al.

The DOE issued a Decision and Order concerning 56 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants was either an Exxon reseller whose allocable share was less than $5,000 or an end-user of Exxon products. The DOE therefore found that each applicant was eligible to receive a refund equal to its full allocable share without demonstrating injury. The sum of the refunds granted in this Decision is $28,471 ($25,064 in principal plus $3407 in interest).

Exxon Corporation/E.R. Vine & Sons, Inc., 11/10/88, RF307–2524

The DOE issued a Decision and Order concerning an Application for Refund filed by E.R. Vine & Sons, Inc. in the Exxon Corporation special refund proceeding. Vine's allocable share was calculated to be in excess of $5,000. Since Vine did not elect to make a showing of injury, the firm was eligible to receive the larger of $5,000 or 40 percent of its allocable share up to $50,000. In this case, 40 percent was greater and accordingly the firm was granted a refund of $9,521 ($8,361 in principal and $1,140 in interest).

Exxon Corporation/Howard Cunningham et al., 11/7/88, RF307–403 et al.

The DOE issued a Decision and Order concerning 50 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants was either an Exxon reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share without a demonstration of injury. The sum of the refunds granted in this Decision is $27,846 (24,338 in principal plus $3,308 in interest).

Exxon Corporation/National Exxon et al., 11/10/88, RF307–1843 et al.

The DOE issued a Decision and Order concerning 50 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants was either an Exxon reseller whose allocable share was less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share without a demonstration of injury. The sum of the refunds granted in this Decision is $31,223 ($27,486 in principal plus $3,737 in interest).

Exxon Corporation/Ripley Esso Service et al., 11/7/88, RF307–2032 et al.

The DOE issued a Decision and Order concerning 48 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants was either a reseller of Exxon products whose allocable share was less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share without a demonstration of injury. The sum of the refunds granted in this Decision is $29,137 ($25,650 in principal plus $3,487 in interest).

Exxon Corporation/Vadney Feed & Fuel et al., 11/8/88, RF307–2848, et al.

The DOE issued a Decision and Order concerning 42 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants was either a reseller of Exxon products whose allocable share was less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share without a demonstration of injury. The sum of the refunds granted in this Decision is $27,279 ($24,013 in principal plus $3,266 in interest).

Getty Oil Company/Brook Quick Stop, 11/7/88, RF265–2748

Brook Quick Stop filed an Application for Refund in which it sought a portion of the fund obtained by the DOE through a consent order entered into with the Getty Oil Company. Brook documented the volume of motor gasoline which it purchased from the Tri-County Oil Company, a Getty Jobber. Brook was granted a refund, which was calculated based upon the procedures outlined in *Pioneer Corp./E.I. du Pont de Nemours & Co.*, 14 DOE ¶ 85,190 (1986). The refund totaled $3,012, representing $1,465 in principal and $1,547 in accrued interest.

Getty Oil Company/Manzor Petroleum Co., 11/7/88, RF265–2715

Manzor Petroleum Co. filed an Application for Refund in which it sought a portion of the fund obtained by the DOE through a consent order entered into with the Getty Oil Company. Manzor documented the volume of motor gasoline which is purchased from Getty through the Gaylen Petroleum Company, a Getty Jobber. Manzor was granted a refund, which was calculated based upon the procedures outlined in *Pioneer Corp./E.I. du Pont de Nemours & Co.*, 14 DOE ¶ 85,190 (1986). The refund totaled $1,082, representing $526 in principal and $556 in accrued interest.

Getty Oil Company/Slezak Terminals, Inc., 11/9/88, RF265–0063, RF265–0084, RF265–0085, RF265–0086

The DOE issued a Decision and Order concerning four Applications for Refund filed by a retailer/reseller of motor gasoline, middle distillates and motor oil that were covered by a Consent Order that the DOE entered into with Getty Oil Company. The applicant submitted information indicating purchases from Getty of 11,312,900 gallons of motor gasoline, 539,615 gallons of middle distillates and 13,900 gallons of motor oil during the consent order period. It elected to limit its claims on the basis of the level-of-distribution presumption of injury methodology and was eligible for a refund below the $50,000 ceiling. The sum of the refund approved in this Decision is $15,099, representing $7,337 in principal and $7,762 in accrued interest.

Gulf Oil Corporation/Batten's Gulf Service et al., 11/10/88 RF300–7203 et al.

The DOE issued a Decision granting 43 Applications for Refund in the Gulf Oil Corporation special refund

proceeding. Each application was approved using a presumption of injury. The total refund approved was $79,725.

Gulf Oil Corporation/Brown Transport Corp. et al., 11/9/88, RF300–5126 et al.

The DOE issued a Decision and Order concerning 97 Applications for Refund filed in the Gulf Oil Company special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $169,468.

Gulf Oil Corporation/Charles Service Station et al., 11/7/88, RF300–2515 et al.

The DOE issued a Decision and order concerning 80 Applications for Refund submitted in the Gulf Oil Coporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $134,872.

Gulf Oil Corporation/Dale Bower et al., 11/7/88, RF300–4941 et al.

The DOE issued a Decision and order concerning 109 Applications for Refund filed in the Gulf Oil Coporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $232,765.

Gulf Oil Corporation/East Penn Foundry Company et al., 11/10/88, RF300–2607 et al.

The DOE issued a Decision and Order concerning 70 Applications for Refund submitted in the Gulf Oil Coporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $137,368.

Gulf Oil Corporation/Greenville Gulf et al., 11/9/88, RF300–7451 et al.

The DOE issued a Decision granting 30 Applications for Refund in the Gulf Oil Corporation special refund proceeding. Each Application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $51,601.

Gulf Oil Corporation/Leroy Brown et al., 11/9/88, RF300–2699 et al.

The DOE issued a Decision and Order concerning 86 Applications for Refund in the Gulf Oil Corporation special refund proceeding. Each application was granted using a presumption of injury. The sum of the refunds granted in this Decision is $164,756.

Gulf Oil Corporation/Singing River Electric Power Association et al., 11/10/88, RF300–7011 et al.

The DOE issued a Decision and Order concerning 83 Applications for Refund submitted in the Gulf Oil Coporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $156,686.

Gulf Oil Corporation/White Mountain Oil Co. et al., 11/9/88, RF300–7300 et al.

The DOE issued a Decision granting 50 Applications for Refund in the Gulf Oil Corporation special refund proceeding. Each application was granted using a presumption of injury. The sum of the refunds granted in the Decision is $91,090.

Hall & Dean, Inc., Estes Sunoco, 11/8/88, RF272–32542, RF272–32634

The DOE issued a Decision and Order denying Applications for Refund filed by Hall & Dean, Inc. and Estes Sunoco in the Subpart V crude oil refund proceeding. The DOE's denial was based on the fact that each firm was a reseller of petroleum products that did not demonstrate that it was injured by crude oil overcharges.

Harold S. Hunkins, 11/10/88, RF272–75068

The DOE rescinded a duplicate refund of $24 granted to Harold S. Hunkins in the crude oil overcharge refund proceeding.

Omnitrans et al., 11/9/88, RF272–5985 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to six applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant was an end-user of the products involved and was therefore presumed to have been injured by the alleged crude oil overcharges. The sum of the refunds granted in this Decision is $645.

Sitton Drilling Co. et al., 11/7/88, RF272–16019 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 47 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant was an end-user of the refined products involved and was therefore presumed injured by the alleged crude oil overcharges. The sum of the refunds granted in this Decision is $16,962.

Swire Pacific Holdings, Inc. et al., 11/10/88, RF272–31806 et al.

The DOE issued a Decision and Order approving 17 Applications for Refund submitted in the Subpart V crude oil overcharge refund proceeding. Each applicant was an end-user of the refined products involved and was therefore presumed injured by the alleged crude oil overcharges. The sum of the refunds granted in the Decision is $2,714.

Ted Folz Custom Service et al., 11/10/88, RF272–60854 et al.

The DOE issued a Decision and Order considering 15 Applications for Refund filed in the Subpart V crude oil refund proceeding. Each applicant was reseller or retailer of refined petroleum products and none of the applicants demonstrated that it was injured due to the crude oil overcharges. Accordingly, all the Applications were denied.

Town of Winterville, 11/10/88, RF272–10675

The DOE issued a Decision and Order granting an Application for Refund filed by the Town of Winterville, North Carolina, in the Subpart V Crude Oil refund proceeding. As an end-user of refined petroleum products, Winterville was presumed injured by alleged crude oil overcharges. The total refund approved in this Decision was $32.

Vicker Energy Corp./National Helium Corp./Arizona, 11/8/88, RQ1–483, RQ3–484

The DOE issued a Decision and Order granting the second-stage refund application filed by the State of Arizona in the Vickers Energy Corporation and National Helium Corporation special refund proceedings. Arizona requested a total of $133,405 for two programs. The first would provide information and instruction to the motoring public concerning the need for properly inflated tires to achieve maximum fuel efficiency. The second program is a media campaign to encourage ridesharing. The DOE found that these programs would provide restitution to injured consumers of motor gasoline by helping motorists save on fuel costs. Accordingly, Arizona's request was granted.

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decisions and Orders:

Name	Case No.	Date	No. of applicants	Total refund
Franklin D. Broom *et al.*	RF272–10531	11/10/88	79	$3,019
LAC–USC Medical Center *et al.*	RF272–16601	11/7/88	41	19,145

Dismissals

The following submissions were dismissed:

Name	Case No.
ARCO/Acme Butane Co	RF304–5055.
ARCO/Vito's ARCO	RF304–249.
Charlie's ARCO	RF304–3509.
Courtney Wood Oil Co	RF265–653.
Craig's ARCO	RF304–2643.
Dave's Oil Company	RF265–1646.
El Rancho Truck Stop	RF265–2723.
	RF265–2724.
G & G Car Wash & Gas	RF304–3480.
Gazaway's Gulf	RF300–9646.
George P. Hines	RF304–4369.
Haynes Oil Company	RF304–5132.
Joe's 2nd St. Atlantic, Inc	RF304–3492.
Johns Oil Company	RF265–1432.
K.L. Lamberson Fuel Oil Company	RF304–2104.
Minnesota	KEA–0002.
Missouri Dept. of Corrections	RF272–59102.
Penrose ARCO	RF304–3731.
Pittsboro Gulf Service	RF300–10566.
Smith's Midway Getty, Inc	RF265–1065.
Spartansburg Public Library	RF272–74242.
Transue's Gulf Service Station	RF300–8967.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except Federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

January 27, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 89–2719 Filed 2–3–89; 8:45 am]

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Issuance of Decisions and Orders During the Week of November 28 Through December 2, 1988

During the week of November 28 through December 2, 1988, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Kenneth P. Brooks, 12/1/88, KFA–0226

Kenneth P. Brooks filed an Appeal from a denial by the Deputy Director, Office of Intergovernmental and External Affairs, Albuquerque Operations Office, of a Request for Information which he had submitted under the Freedom of Information Act. In considering the Appeal, the DOE determined that the names of the unsuccessful applicants for a DOE position and certain identification and background information on the successful applicant had been correctly withheld under Exemption 6. However, the DOE found that certain information concerning the successful applicant's qualifications and less sensitive background information must be released. In addition, the DOE found that a new search for other documents responsive to Brooks' request was necessary. Accordingly, the Appeal was granted in part, denied in part, and remanded to the Albuquerque Operations Office for a new search.

Technology for Energy Corporation, 11/28/88, KFA–0228

Technology for Energy Corporation (TEC) filed an Appeal from a partial denial by the Savannah River Operations Office of a Request for Information which the firm had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that the authorizing official at Savannah River properly withheld portions of certain documents pursuant to Exemption 4.

Important issues that wre considered in the Decision and Order were (i) whether discount information is withholdable under FOIA Exemption 4, and (ii) whether detailed technical information, the release of which would reveal proprietary information, is withholdable under Exemption 4.

Refund Applications

Atlantic Richfield Company/Advanced Business Service, Inc., 12/2/88, RF304–1283, et al.

The DOE issued a Decision and Order concerning 45 Applications for Refund filed by 45 claimants from a consent order fund made available by Atlantic Richfield Company. As resellers/retailers applying for small claims refunds and end-users, these firms were presumed to have been injured. The DOE determined that these firms should receive refunds totalling $51,671, representing $40,946 in principal and $10,725 in accrued interest.

Atlantic Richfield Company/John's ARCO, et al., 12/2/88, RF304–1400 et al.

The DOE issued a Decision and Order concerning 77 Applications for Refund filed in the Atlantic Richfield Company (ARCO) special refund proceeding. As end-users or reseller/retailers claiming refunds of less than $5,000 in principal, each applicant was presumed to have been injured by ARCO's alleged overcharges. After examining the applications and supporting documentation, the DOE determined that the firms should receive refunds totalling $94,920, representing $75,231 in principal and $19,689 in interest.

City of Tampa et al., 11/30/88, RF272–30957 et al.

The DOE issued a Decision and Order approving Applications for Refund submitted by 21 claimants for crude oil overcharge funds collected by the DOE. The DOE found that the claimants, all end-users, met the eligibility requirements by supplying their actual or estimated purchase volume information for their commercial or agricultural activities. The DOE granted the claimants refunds totalling $17,275 based on their purchases of 86,361,110 gallons of refined petroleum products.

Coastline Construction Corp. et al., 12/2/88, RF272–34101 et al.

The DOE issued a Decision and Order approving Applications for Refund submitted by 11 claimants for crude oil overcharge funds collected by the DOE. The DOE found that the claimants, all end-users, met the eligibility requirements by supplying their actual or estimated purchase volume information for their commercial or agricultural activities. The DOE granted the claimants refunds totalling $1,029 based on their purchases of 5,148,513 gallons of refined petroleum products.

Commonwealth Gas Co. et al., 11/30/88, RF272–308, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 32 applicants based

on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant used petroleum products for various activities including farming, electricity generation, and manufacturing, and each determined its volume claim either by consulting actual purchase records or by reasonably estimating its consumption. Each applicant was an end-user of the products it claimed and was therefore presumed by the DOE to have been injured. The sum of the refunds granted in this decision is $31,180. All of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Cook Construction Company, Inc., 12/1/88, RF272–2005, RD272–2005

The DOE issued a Decision and Order granting, in part, a crude oil refund application filed by Cook Construction Company, Inc. (Case No. RF272–2005) (Cook). Cook requested a refund based on 79,751,804 gallons of refined petroleum products it used to manufacture and install asphalt pavement. A group of States objected to Cook's refund because, they argued, Cook was not injured by crude oil overcharges. The States also submitted a motion for discovery. The DOE denied the motion for discovery, but requested additional information concerning Cook's ability to pass through increased fuel costs to its contractee through contractual price escalator clauses. Cook stated that these clauses were in effect during the 1978 through 1980 time period in 43.3% of its contracts. The DOE found that Cook would have been reimbursed for 43.3 percent of its increased fuel prices during the 1978–1980 time period, and therefore would not have experienced injury in those instances. Accordingly, the DOE determined that Cook is ineligible to receive a refund for 43.3% of its purchase volumes during the time period that price escalator clauses were operable, 1978 through 1980. The total refund granted in this Decision is $12,764. Cook will receive additional refunds once more crude oil monies become available.

Costa Auto Repair, 12/1/88, RC272–1

The DOE issued a Supplemental Order rescinding the refund granted to Costa Auto Repair in *Jerry Weatherhold*, Case Nos. RF272–23000 *et al.*, (August 10, 1988). In *Jerry Weatherholt*, the DOE granted refunds from crude oil overcharge funds to 113 claimants based on their purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. The DOE subsequently determined, however, that Costa Auto Repair was a retailer, not an end-user, of petroleum products, and therefore required to submit detailed proof of injury to receive a crude oil refund. As Costa had not attempted to demonstrate injury, the refund was rescinded. Due to the small amount of the refund ($70), the firm will not be required to return it. However, no further refunds will be granted to Costa.

Exxon Corporation/Anthony Scarlato et al., 11/28/88, RF307–2517 et al.

The DOE issued a Decision and Order concerning 48 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $25,540 ($22,344 principal plus $3,196 interest).

Exxon Corporation/B&D Exxon SVC 8–8701 et al., 12/2/88, RF307–423 et al.

The DOE issued a Decision and Order concerning 49 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $26,280 ($22,988 principal plus $3,292 interest).

Exxon Corporation/Beheler Exxon et al., 12/2/88, RF307–211 et al.

The DOE issued a Decision and Order concerning 29 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $25,402 ($22,220 principal plus $3,182 interest).

Exxon Corporation/Bill Ballard Exxon et al., 11/29/88, RF307–1 et al.

The DOE issued a Decision and Order concerning 10 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $5,747 ($5,027 principal plus $720 interest).

Exxon Corporation/Collier Oil Co., Inc. et al., 11/28/88, RF307–2045 et al.

The DOE issued a Decision and Order concerning 10 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $19,911 ($17,416 principal plus $2,493 interest).

Exxon Corporation/David J. Sina et al., 11/29/88, RF307–1839 et al.

The DOE issued a Decision and Order concerning 38 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either a reseller whose allocable share is less than 5,000 or an end-user of Exxon products. Each applicant was found to be eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $26,317 ($23,021 principal plus $3,296 interest).

Exxon Corporation/Etna Exxon et al., 12/1/88, RF307–3102 et al.

The DOE issued a Decision and Order concerning 49 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either a reseller whose allocable share is less than 5,000 or an end-user of Exxon products. Each applicant was found to be eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $33,855 ($29,614 principal plus $4,241 interest).

Exxon Corporation/Jim's Exxon et al., 11/30/88, RF307–1129 et al.

The DOE issued a Decision and Order concerning 32 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either a reseller whose allocable share is less than 5,000 or an end-user of Exxon products. Each applicant was found to be eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $24,721 ($21,629 principal plus $3,092 interest).

Exxon Corporation/Ken Thompson Oil Co. et al., 12/2/88, RF307–3638 et al.

The DOE issued a Decision and Order concerning 41 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either a reseller whose allocable share is less than 5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $34,896 ($30,528 principal plus $4,368 interest).

Exxon Corporation/Logan Oil Company, Inc. L.A. Lard Oil Company, Milford Oil Co., Inc., 12/1/88, RF307–1240, RF307–3849, RF307–3871

The DOE issued a Decision and Order concerning Applications for Refund filed by Logan Oil Company (Logan), L.A. Lard Oil Co. (Lard), and Milford Oil Co., Inc. (Milford) in the Exxon Corporation special refund proceeding. Each firm purchased directly from Exxon and was a reseller of Exxon products. Each firm's allocable share exceeded $5,000. Instead of making an injury showing to receive its full allocable share, Logan, Lard, and Milford each elected to receive $5,000 or 40 percent of its allocable share, whichever was greater. In this case, two of the applicants (Logan and Milford) received $5,716 ($5,000 principal plus $716 interest) and one applicant (Lard) received $5,740 ($5,021 principal and $719 interest).

Exxon Corporation/Rachel Oil Company et al., 12/1/88, RF307–1668 et al.

The DOE issued a Decision and Order concerning seven Applications for Refund filed in the Exxon Corporation special refund proceeding. Each firm purchased directly from Exxon and was a reseller of Exxon products. Each firm's allocable share exceeds $5,000. Instead of making an injury showing to receive its full allocable share, each applicant elected to receive either 40 percent of its allocable share or $5,000, whichever is greater. The sum of the refunds granted in this Decision is $40,798 ($35,688 principal plus $5,110 interest).

Exxon Corporation/Rock Springs Superette et al., 12/1/88, RF307–3013 et al.

The DOE issued a Decision and Order concerning seven Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $4,473 ($3,913 principal plus $560 interests).

Gates Rubber Company, 12/1/88, RF272–310

The Department of Energy approved the Application for Refund filed in the crude oil overcharge refund proceeding by Gates Rubber Company, an end-user of refined petroleum products. The applicant calculated its purchase volume by reviewing accounting records showing its purchases of No. 2 fuel oil, No. 6 fuel oil, gas turbine distillate oil, and No. 2 diesel fuel. The amount of the refund was $3,070.

Gulf Oil Corporation/A.R. Fuels, Inc., et al., 12/2/88, RF300–673, et al.

The DOE issued a Decision and Order concering five Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, which includes both principal and interest, is $63,096.

Gulf Oil Corporation/Farmers Propane Gas Company, Inc., et al., RF300–4907 et al.

The DOE issued a Decision and Order concerning 13 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $224,111.

Gulf Oil Corporation/Floyd Rogers, et al., 11/28/88, RF300–1693, et al.

The DOE issued a Decision and Order concerning 145 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, is $236,182.

Gulf Oil Corporation/Georgia Power Company, 12/1/88, RF300–3103

The DOE issued a Decision and Order concerning the Application for Refund filed in the Gulf Oil Corporation special refund proceeding by Georgia Power Company, a regulated public utility. Georgia Power successfully documented its purchases of 234,072,379 gallons of covered petroleum products. Georgia Power also certified that it will notify its appropriate state regulatory agency of any refund it receives and that it will pass through the amount of the refund to its customers on a dollar for dollar basis. The total amount of the refund granted to Georgia Power is $191,939.

Gulf Oil Corporation//J.D. Melton Gulf Station et al., 12/2/88, RF300–1324 et al.

The DOE issued a Decision and Order concerning 115 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $178,388.

Gulf Oil Corporation/Luczan and Ramsoosingh, 12/1/88, RF300–10620

The DOE issued a Supplemental Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding. The DOE granted a refund of $547 to Luczan and Ramsoosingh (Case No. FR300–1044) in *Gulf Oil Corp./City of Moultrie*, 18 DOE ¶ 85,134 (1988). The DOE was unable to locate the applicant for the purpose of awarding the refund. The Supplemental Order therefore rescinded the refund.

Gulf Oil Corporation/Major Management Company, et al., 12/1/88, FR300–3439, et al

The DOE issued a Decision and Order concerning 21 Applications for Refund in the Gulf Oil Corporation refund proceeding. The 21 firms were related by common ownership during the refund period, and the DOE determined that their applications should be considered together for the purpose of analysis. Under the small claims presumption of injury, the applicants were approved a total refund of $6,406, representing $5,000 in principal and $1,604 in interest.

Gulf Oil Corporation/PIB, Inc. USA Gas, Inc. PEH, Inc., 12/1/88, RF300–1461, RF300–10613, RF300–10614

The DOE issued a Supplemental Decision and Order concerning an Applications for Refund filed by three firms that purchased products covered by a consent order that the DOE entered into with Gulf Oil Corporation. In a previous Decision and Order, *Gulf Oil Corp./Belcher's Grocery Store*, 18 DOE ¶ 85,233 (1988), the DOE granted two applicants, U.S.A. Gas, Inc. (RF300–1462) (USA) and PEH, Inc. (RF300–1463) (PEH), refunds of $2,272 and $4,376, respectively. It came to the agency's attention that USA and PEH were affiliated with each other and another applicant, P.I.B., Inc. (Case No. RF300–

1461) (PIB). Because the DOE generally considers applications by related corporate entities to be a single claim, USA's, PEH's, and PIB's requests for refunds were considered on a combined volume basis. Therefore, the refunds granted to USA and PEH in the November 17, 1988 Decision were rescinded. In this Decision, PIB, USA, and PEH were granted a total refund of $8,404, representing $5,000 in principal and $1,406 in interest, under the small claims presumption of injury.

Gulf Oil Corporation/Potomac Electric Power Company, et al., 11/29/88, RF300-5260, et al.

The DOE issued a Decision and Order concerning an Application for Refund submitted by a public utility in the Gulf Oil Corporation special refund proceeding. The application was decided using a presumption of injury and the applicant was required to pass the refund received through to its customers and to notify the appropriate regulatory body of the receipt of refund money. The refund granted in this Decision is $100,831.

Morton Thiokol, Inc., Louisiana Division, 11/28/88, RF272-8754

The DOE issued a Decision and Order concerning an Application for Refund filed by Morton Thiokol, Inc., Louisiana Division, in connection with the Subpart V crude oil refund proceedings. The DOE determined that the applicant was reimbursed on a dollar-for-dollar basis for the full cost of its purchases during the crude oil price control period. Therefore, the DOE concluded that the applicant was not injured by any crude oil overcharges associated with the gallons purchased.

Murphy Oil Corporation/McCurry Oil Corp., et al., 11/30/88, RF309-200 et al.

The DOE issued a Decision and Order granting 50 Applications for Refund filed in the Murphy Oil Corporation special refund proceeding. Each of the applicants purchased directly from Murphy and was either a reseller whose allocable share was less than $5,000 or an end-user of Murphy products. Accordingly, each applicant was granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Murphy escrow account. The sum of the refunds granted in the Decision was $67,559 ($60,216 principal plus $7,341 interest).

Murphy Oil Corporation/Rau Corporation et al., 12/2/88, RF309-101 et al.

The DOE issued a Decision and Order granting an Application for Refund filed by 49 applicants, all purchasers of refined petroleum products, in the Murphy Oil Corporation special refund proceeding. According to the procedures set forth in *Murphy Oil Corporation*, 17 DOE ¶ 85,782 (1988), each applicant was found to be eligible for a refund based on the volume of product it purchased from Murphy. The total refund approved in this Decision was $70,823, representing $63,126 in principal plus $7,697 in accrued interest.

Murphy Oil Corporation/Welcome Traveler et al., 12/2/88, RF309-173 et al.

The DOE issued a Decision and Order granting an Application for Refund filed by 21 applicants, all purchasers of refined petroleum products, in the Murphy Oil Corporation special refund proceeding. According to the procedures set forth in *Murphy Oil Corporation*, 17 DOE ¶ 85,782 (1988), each applicant was found to be eligible for a refund based on the volume of product it purchased from Murphy. The total refund approved in this Decision was $23,234, representing $20,709 in principal plus $2,525 in accrued interest.

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decisions and Orders:

Name	Case No.	Date	No. of applicants	Total refund
City of Carrollton *et al*	RF272-34210	11/30/88	47	$16,499
De Rose Distributors *et al*	RF272-31901	12/2/88	25	$3,507

Dismissals

The following submissions were dismissed:

Name	Case No.
City of Calumet City	RF272-37636
Crawford Electric Coop., Inc.	RF273-54399
Dee's Gulf	RF300-10548
F.J. Niese Farms, Inc.	RF272-52434
Hayes Service Center	RF300-10547
Jack K. Smith	RF272-46681
Lee's Gulf Service	RF300-8844
Leo Bogner	RF272-73126
Martz Exxon	RF307-891
Modern Oil Co., Inc.	RF300-9017
Phillips County Highway Department	RF272-27966
Pines Service Station	RF300-8656
Robbie A. White	RF272-44078
Robert Shreve Fuel Co.	RF300-10410
Stanton County	RF272-42114
Strand Farms	RF272-42132
Town and Country Exxon	RF307-1791
Waldensain Bakeries, Inc.	RF300-8667
Walter Udalhoven	RF272-53513
Warren Pennington Circle Exxon	RF307-849
Woodrow W. Modlin	RF307-6165
Unified School District No. 292	RF272-42135

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

January 27, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals

[FR Doc. 89-2720 Filed 2-3-89; 8:45 am]

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Office of Hearings and Appeals

Issuance of Decisions and Orders During the Week of December 19 Through December 23, 1988

During the week of December 19 through December 23, 1988 the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Hanford Education Action League, 12/20/88, KFA-0232, KFA-0233

The Hanford Education Action League (HEAL) filed Appeals from determinations issued by the Director of the DOE's Executive Secretariat and the Director of the Office of Communications of DOE's Richland Operations Office. These determinations denied Requests for Information which HEAL had submitted under the Freedom of Information Act. HEAL requested from the Executive Secretariat copies of the minutes and all reports from a meeting on the Atomic Energy Commission purportedly held on December 12-14, 1949. HEAL requested from the Office of Communications documents regarding testing of school children in Eastern Washington for thyroid disorders and other health problems. In considering the Appeals, the DOE found that adequate searches had been conducted in response to each of HEAL's requests. Accordingly, both Appeals were denied.

Interlocutory Order

Kenneth Walker, Economic Regulatory Administration, 12/20/88, KRZ-0064, KRZ-0065, KRX-0060, KRX-0061

The Office of Hearings and Appeals issued an interlocutory order concerning a number of motions pertaining to the enforcement proceeding involving Southwestern States Marketing Corporation and Kenneth Walker. OHA's first ruling dealt with a Motion to Vacate filed by Mr. Walker. Walker had sought three forms of relief in his motion: revocation of an interlocutory order issued by OHA on March 3, 1988 in connection with the enforcement proceeding; recusal of the OHA officials currently responsible for handling the enforcement case; and reassignment of the enforcement case to another tribunal. Identifying Walker's motion in its entirety, OHA first found that OHA did not rely on or accord any weight to a criminal matter involving Walker in reaching any determination in its March 3 Order or in any other decision rendered in connection with the case. Thus, OHA held there to be no basis for revoking the March 3 Order on the ground that OHA had improperly relied on a criminal matter in determining the existence of a *prima facie* case of liability against Walker. Next, OHA determined that it did not act in an arbitrary and capricious manner when it decided that the totality of evidence in the record demanded further probing into the issue of Walker's involvement in Southwestern. OHA also found that it never, in reality or in appearance, prejudged the merits of the PRO. Based on these two findings, OHA decided that there was no basis to warrant (1) the recusal of OHA personnel under any reasonable standard of administrative agency practice or (2) the transferal of the enforcement case to another tribunal.

OHA's second ruling concerned a Motion for Sanctions against Walker which the Economic Regulatory Administration filed. In denying ERA's motion, OHA stated that it was unconvinced that Walker had acted in a recalcitrant manner in choosing not to submit evidentiary material that OHA had twice requested. OHA also found that the numerous motions Walker submitted in lieu of the evidentiary materials were not frivolous. These same motions, OHA held, were not filed in bad faith.

Lastly, OHA decided *sua sponte* to amend the Proposed Remedial Order issued to Walker and Southwestern to delete all references to criminal matters pertaining to Walker and Southwestern that appear in that charging document. OHA also decided *sua sponte* to strike those same references to criminal matters from any document tendered or issued in connection with this case. In taking this *sua sponte* action, OHA concluded that the administrative process would be prejudiced if the criminal references remained in the record of the enforcement proceeding.

Refund Applications

Atlantic Richfield Company/Conard Yeats, et al., 12/22/88, RF304-1900, et al.

The DOE issued a Decision and Order concerning 55 Applications for Refund filed in the Atlantic Richfield Company (ARCO) special refund proceeding. As reseller/retailers claiming refunds of less than $5,000 in principal or end users, each applicant is presumed to have been injured by ARCO's alleged overcharges. After examining the applications and supporting documentation, the DOE determined that the firms should receive refunds of $96,867, representing $76,577 in principal and $20,290 in interest.

Atlantic Richfield Company/Eastern LPG Company, et al., 12/21/88, RF304-1800, et al.

The DOE issued a Decision and Order concerning 69 Applications for Refund filed in the Atlantic Richfield Company (ARCO) special refund proceeding. As reseller/retailers claiming refunds of less than $5,000 in principal or end users, each applicant is presumed to have been injured by ARCO's alleged overcharges. After examining the applications and supporting documentation, the DOE determined that the firms should receive refunds of $120,352, representing $95,138 in principal and $25,214 in interest.

Atlantic Richfield Company/Flud's Arco Service, 12/22/88, RF304-6436

The DOE issued a Decision and Order concerning an Application for Refund filed by Flud's Arco Service in the Atlantic Richfield Company (ARCO) special refund proceeding. The firm was unable to make a showing of injury as established in the ARCO proceeding but was presumed to have been injured as a reseller/retailers claiming refunds of less than $5,000 in principal. After examining the application and supporting documentation, the DOE determined that the firm should receive refunds of $2,087, representing $1,646 in principal and $441 in interest.

Atlantic Richfield Company/Johnson's Arco, et al., 12/20/88, RF304-1118, et al.

The DOE issued a Decision and Order concerning five Applications for Refund filed by one claimant in the Atlantic Richfield Company special refund proceeding. The applicant was a reseller/retailer that applied for a small claims presumption refund. In addition, the applicant documented the volume of its purchases from ARCO and, therefore, was presumed to have been injured and entitled to a refund. The DOE concluded that the applicant should receive a refund totalling $5,715 representing $4,518 in principal and $1,197 in accrued interest.

Consolidated Edison Company of New York, et al., 12/22/88, RF272-283, et al.

Four investor-owned public utilities filed applications for refund in the Subpart V crude oil refund proceedings. A group of states filed objections to the applications, claiming that the applicants should not be eligible to receive refunds because they were not injured end-users. The states also claimed that the applicants should not be permitted to act as conduits for the distribution of refund benefits to their injured customers. The DOE rejected both of the states' arguments, finding that the applicants were not claiming a refund for themselves, but rather agreed to pass through to their customers the benefits of any refunds which they would receive. The DOE also found that the Settlement Agreement permitted utilities to receive refunds in Subpart V crude oil proceedings in order to distribute direct restitution to their injured customers. Accordingly, the applications were approved and the applicants were granted refunds totalling $2,729,160

City of Holyoke Gas and Electric, 12/22/88, RA272-1

OHA issued a supplemental order to the City of Holyoke Gas and Electric. OHA's original order instructed the comptroller to disburse an incorrect crude oil refund amount, and the supplemental order granted Holyoke an additional $20.

David Graham Company, 12/22/88/, RF272-34976

The DOE issued a Decision and Order concerning an Application for Refund filed by the David Graham Company. The applicant requested a refund from crude oil overcharge funds collected by the DOE. In considering Graham's application, the OHA found that the firm had filed an Application for Refund from the Surface Transporters (ST) escrow. That application had included a properly executed ST Waiver in which Graham waived its rights to seek refunds in any crude oil Subpart V proceeding. Accordingly, Graham's Application for Refund was denied.

Delmarva Power Light Company, 12/22/88/, RF272-255

Delmarva Power and Light Company (Delmarva), an investor-owned public utility, filed an application for refund in the Subpart V crude oil refund proceedings. A group of states filed objections to Delmarva's application, claiming that the utility should not be eligible to receive a refund because it was not an injured end-user. The states also claimed that Delmarva should not be permitted to act as a conduit for the distribution of refund benefits to its injured customers. The DOE rejected both of the states' arguments finding that Delmarva was not claiming a refund for itself, but rather agreed to pass through to its customers the benefits of any refunds which it would receive. The DOE also found that the Settlement Agreement permitted a utility to receive refunds in Subpart V crude oil proceedings in order to distribute direct restitution to its injured customers. Accordingly, the DOE granted Delmarva a refund for its purchases of refined petroleum products. However, the DOE determined that Delmarva was not eligible to receive a refund in these proceedings for its crude oil purchases. The refund granted to Delmarva totaled $376,790.

Edward Hines Lumber Co., et al., 12/22/88/, RF272-1696, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to five claimants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant used the petroleum products for various commercial activities and each determined its claim by consulting actual purchase records or by using a reasonable estimation technique. As an end-user, each applicant was entitled to receive a refund of its full volumetric share. The refunds granted in this Decision total $12,418.

Exxon Corporation/Genes Exxon et al., 12/20/88/, RF307-3926 et al.

The DOE issued a Decision and Order concerning 48 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. Each applicant was found eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $26,258 ($22,828 principal plus $3,430 interest).

Exxon Corporation/Mary Curro, 12/22/88, RF307-6997

The DOE issued a Supplemental Order to Mary Curro (Curro) an applicant granted a refund in *Exxon Corp./Jim's Exxon* 18 DOE ¶ 85,289, Case No. RF307-3833 (November 30, 1988). The refund amount for Curro in the Appendix to that Decision and Order was found to be incorrect. Since it was calculated using an incorrect volume of refined petroleum products. Since the original refund had not yet been issued, the DOE rescinded the original refund and granted Curro the correct refund amount of $279 ($244 in principal and $35 in interest).

Exxon Corporation/Tate Oil Products, 12/19/88, RF307-1467

The DOE issued a Decision and Order concerning an Application for Refund filed by Tate Oil Products in the Exxon Corporation special refund proceeding. Tate, a wholesale purchaser of Exxon products, purchased directly from Exxon and its allocable share is more than $5,000. Tate did not demonstrate that it was injured by the alleged overcharges. However, in the Exxon proceeding a reseller applicant whole allocable share exceeds $5,000 and who does not demonstrate that it was injured may receive as its refund the larger of $5,000 or 40 percent of its allocable share up to $50,000. In the present case, $5,000 is greater. Accordingly, the refund granted in this Decision is $5,751 ($5,000 principal plus $751 interest).

Exxon Corporation/Tuck's Grocery & Exxon et al., 12/20/88, RF307-4800 et al.

The DOE issued a Decision and Order concerning 30 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $23,887 ($20,766 principal plus $3,121 interest).

Getty Oil Company/Morris Skelly Service, 12/22/88, RF265-2750 RF265-2751

Morris Skelly Service (Morris) filed an Application for Refund seeking a portion of the fund obtained by the DOE through a consent order entered into with the Getty Oil Company. Morris documented the volume of Getty motor gasoline and middle distillates which it purchased indirectly through the Detiefsen Oil Co. utilizing the procedures outlined in *Pioneer Corp./E.I. du Pont de Nemours & Co.*, 14 DOE ¶ 85,190 (1986) we calculated Morris' allocable share. The total amount of this refund is $3,132, representing $1,520 in principal and $1,612 in accrued interest.

Gulf Oil Corporation/Blocker Oil Company, Inc., et al., 12/20/88, RF300-1589, et al

The DOE issued a Decision and Order concerning 44 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $83,840.

Gulf Oil Corporation/City of White Settlement, et al. 12/21/88, RF300-1629, et al.

The DOE issued a Decision and Order concerning 88 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $112,779.

Gulf Oil Corporation/Florida Aviation Fueling Company, Inc., et al., 12/21/88, RF300-4836, et al.

The DOE issued a Decision and Order concerning Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $25,624.

Gulf Oil Corporation/Goddard Gulf Service Station et al., 12/19/88, RF300-6400, et al.

The DOE issued a Decision and Order concerning 73 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury standard. The sum of the refunds granted in this Decision is $160,560.

Gulf Oil Corporation/M & A Petroleum, et al., 12/20/88, RF300-2451, et al.

The DOE issued a Decision and Order concerning five Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $43,682.

Mobil Oil Corp./Ridgeway Petroleum, Inc., 12/22/88, RR225-38, RR225-39

The DOE issued a Decision and Order granting a Motion for Reconsideration filed by Ridgeway Petroleum, Inc. (Ridgeway) in the Mobil Oil Corp. special refund proceeding. *Mobil Oil Corp.*, 13 DOE ¶85 339 (1985). Ridgeway sought reconsideration of a prior determination in which the DOE limited the firm's refund to the level-of-distribution presumptions established in *Mobil*. In that determination, the DOE concluded that the cost banks that Ridgeway approximated from firm-wide annual revenue data were an inadequate basis for rebutting the level-of-distribution presumptions. In its Motion for Reconsideration, Ridgeway successfully demonstrated that its cost banks were not, in fact, firm-wide, and that its approximation method underestimated the size of the cost banks. After applying a three-part competitive disadvantage test, the DOE concluded that Ridgeway should receive a full volumetric refund of $15,577 on its purchases of Mobil motor gasoline. Taking into account the presumption-level refund previously granted to Ridgeway, the DOE granted the firm an additional $10,083, representing $8,042 in principal and $2,041 in accrued interest.

Murphy Oil Corporation/Alabama Oil Company of Florence et al., 12/22/88, RF309-127 et al.

The DOE issued a Decision and Order granting an Application for Refund filed by 13 applicants, all purchasers of refined petroleum products, in the Murphy Oil Corporation special refund proceeding. According to the procedures set forth in *Murphy Oil Corporation*, 17 DOE ¶ 85,782 (1988), each applicant was found to be eligible for a refund based on the volume of product it purchased from Murphy. The total refund approved in this Decision was $84,162, representing $74,552 in principal plus $9,610 in accured interest.

Murphy Oil Corporation/F.F. Faulk et al., 12/19/88, RF309-300 et al.

The DOE issued a Decision and Order granting applications filed by 46 purchasers of Murphy refined petroleum products in the Murphy Oil Corporation specical refund proceeding. According to the procedures set forth in *Murphy Oil Corp.*, 17 DOE ¶ 85,782 (1988), each applicant was found to be eligible for a refund based on the volume of product it purchased from Murphy. The total amount of refund approved in this Decision was $62,718, representing $55,555 in principal plus $7,163 in accured interest.

Exxon Corporation/Widmaier Oil Co., 12/19/88, RF301-1958

The DOE issued a Decision and Order concerning an Application for Refund filed by Widmaier Oil Company in the Exxon Corporation special refund proceeding. The firm was a reseller and end-user that purchased directly from Exxon and did not attempt to prove injury with respect to the volumes that it purchased for resale. The firm's allocable share, based upon all gallons purchased, exceeded $5,000. In the Exxon proceeding a reseller applicant whose allocable share exceeds $5,000 may elect to receive as its refund the larger of $5,000 or 40 percent of the portion of its allocable share attributable to volumes purchased for resale, up to $50,000 plus 100 percent of any portion of its allocable share attributable to end-use. In the present case, $5,000 is greater. Accordingly, the refund granted in this Decision is $5,716 ($5,000 principal plus $716 interest).

Exxon Corporation/William H. Abbott, 12/22/88, RF307-7040

The DOE issued a Supplemental Decision and Order to William H. Abbott in the Exxon Corporation special refund proceeding based on the refunds he received in *Exxon Corp./Shark Hills Exxon* (Case No. RF307-3700 *et al.*) (November 16, 1988) and in his application, Mr. Abbott stated that he had not authorized any other firm or individual to file a refund application on his behalf in the Exxon proceeding. However, through a computer search for duplicates, the OHA found that Mr. Abbott had previously authorized Energy Refunds, Inc. (ERI) to file a refund application on his behalf and that a refund had been granted to ERI on his behalf on November 29, 1988. Accordingly, the DOE rescinded the refund granted to Mr. Abbott on November 16, 1988, since the application in that case contained a false statement, and proposed to rescind the refund granted to ERI unless Mr. Abbott provided a satisfactory explanation for the filing of duplicate applications on his behalf.

Nassau Suffolk Lumber and Supply Corp., 12/20/88, RF272-12118

The DOE issued a Decision and Order granting the Application for Refund of Nassau Suffolk Lumber and Supply Corporation (Nassau) in the DOE's Subpart V crude oil refund proceeding. Nassau was a lumber and building materials supplier that submitted its total purchases of motor gasoline and No. 2 diesel fuel in dollars for the period August 19, 1973 to January 27, 1981. The applicant was an end-user of the petroleum products it purchased and thus was eligible for a refund. Using a previously aproved national average of $0.7025 per gallon, the DOE convened Nassau's dollar purchase amounts of motor gasoline into 824,061 gallons. Using pricing information available in the Energy Information Agency's *Monthly Energy Review*, the DOE derived a national average price, including taxes, for No. 2 diesel fuel of $0.63901 per gallon. On the basis of that price, the DOE determined that Nassau consumed a total of 12,806 gallons of No. 2 diesel fuel. The total volume approved in this Decision was 836,867 gallons and the total refund granted was $167.

National Helium Corp./Arizona, 12/22/88, RQ3-486

The DOE issued a Supplemental Order modifying a recent Decision and Order which granted the State of Arizona $133,405 in second-stage refund monies. *See Vickers Energy Corp./Arizona*, 18 DOE ¶ 85,186 (*Arizona*). Because of errors made in calculating Arizona's second-stage refund, the DOE inadvertently granted the State $2,167 more than the correct amount. Accordingly, the DOE rescinded *Arizona* as to the amount of second-stage monies granted, and granted Arizona a revised refund amount of $131,238.

Putnam Hospital Center et al., 12/22/88, RF272-31741 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 7 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant is a hospital and used petroleum products for various functions including heating, transportation, and cooking, and each determined its volume claim either by consulting actual purchase records or by

reasonably estimating its consumption. Each applicant was an end-user of the products it claimed and was therefore presumed by the DOE to have been injured. The sum of the refunds granted in this decision is $4,566. All of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Standard Oil Co. (Indiana)/New Mexico Perry Gas Processors, Inc./New Mexico, 12/22/88, RQ21-487, RQ183-486

The DOE issued a Supplemental Order rescinding part of the second-stage refund granted to the State of New Mexico in *Standard Oil Co. (Indiana)/New Mexico*, 18 DOE ¶ 85,073 (1988) (*New Mexico*). In *New Mexico*, the DOE had granted the State $205,424 in second-stage refund monies. It was later discovered that this amount had been overstated by $2,995. Accordingly, the State was ordered to remit the sum of $2,995 to the DOE.

Total Petroleum, Inc./Hupp Oil Co. et al., 12/20/88, RF310-155, et al.

The DOE issued a Decision and Order concerning eleven Applications for Refund filed by purchasers of motor gasoline and/or No. 2 oils from Total Petroleum Inc. The applicants sought a portion of the settlement fund obtained by the DOE through a consent order entered into with Total. Under the standards established in *Total Petroleum, Inc.*, 17 DOE ¶ 85,542 (1988), the DOE granted refunds in this proceeding which total $124,688 ($108,574 principal and $16,114 interest).

Vernelle Steinke, 12/22/88, RC272-15

On July 11, 1988, the DOE issued a Decision and Order granting a refund of $27 to Vernelle Steinke (Steinke), Case No. RF272-19154. *Marvin Siebert, et al.*, Case Nos. RF272-19000, *et al.* (July 11, 1988). The DOE determined that this refund was a duplicate of the refund granted to Steinke, Case No. RF272-3882, on March 3, 1988. *Roger Kratzke, et al.*, 17 DOE ¶ 85,168. Because, the figures in Case No. RF272-19154 are more accurate, the DOE issued a Supplemental Order rescinding the refund granted to Steinke in Roger Kratzke, *et al.*

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decision and Order:

Name	Case No.	Date	No. of Applicants	Total refund
R.W. Sidley, Inc. *et al*	RF272-18009	12/19/88	75	$27,718

Dismissals

The following submissions were dismissed:

Name	Case No.
Alton Miller Cab No.	RF272-75089
Barbers Gulf Service	RF300-94
Basile & Calle Atlantic Station	RF304-5140
Belleye Atlantic Service	RF304-3481
Brandon West Gulf	RF300-85
Brooke's Gulf Service	RF300-9650
City of Fresno	RF272-33269
Covelli's A-1	RF304-3596
Cummings Gulf	RF300-10458
Ed's Gulf Service	RF300-10607
Garry's Service Station	RF300-8580
Golden Petroleum Company	RF304-1783
Gordon Service Center	RF300-429
Heath & Lull, Inc.	RF300-8456
Hi-Lo Corporation	RF292-7
Holiday West Gulf	RF300-137
John's Gulf	RF300-10555
Kenyon Oil Company, Inc.	RF304-1764
Lawee Coal Company, Inc.	RF300-996
Monhagen Gulf Service	RF300-177
Morris Oil Company	RF300-9252
Nu-Way Distributing Co.	RF292-6
Puritan Oil Company, Inc.	RF304-1765
Sea Island Gulf Service	RF300-8487
Stones Tire & Supply	RF300-8539
Tawas Area Schools	RF272-46462
Tuck Jones Gulf Service	RF300-285
Vernie L. Jordon	RF300-10578
Wilkerson Service Station	RF300-8002

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

January 27, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 89-2721 Filed 2-3-89; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearing and Appeals

Issuance of Proposed Decision and Order During the Period of December 26, 1988, Through January 6, 1989

During the period of December 26, 1988, through January 6, 1989, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

January 27, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

Brown Oil Company, Blue Mound, Illinois, KEE-0169, Reporting Requirements

Brown Oil Company (Brown) filed an Application for Exception from the requirement that it file Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In considering the Application, the DOE found that Brown's reporting burden was not significantly different from that of other firms participating in the EIA-782B survey. On January 6, 1989, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 89-2722 Filed 2-3-89; 8:45am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for the disbursement of $1,950,756.18 (plus accrued interest) obtained as a result of settlement agreements that the DOE entered into with the Lone Star Oil and Chemical Company (Case No. KEF-0106), a reseller of crude oil, and the Holly Corporation (Case No. KEF-0113), a producer of crude oil. The OHA has determined that the funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986).

DATE AND ADDRESS: Applications for refund must be filed by October 31, 1989, and should be addressed to: Subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2390.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision sets forth the final procedures that the DOE has formulated to distribute crude oil overcharge funds obtained from the Lone Star Oil and Chemical Company and the Holly Corporation. The funds are being held in interest-bearing escrow accounts pending distribution by the DOE.

The OHA has decided to distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986). Under the Modified Policy, crude oil overcharge monies are divided among the states, the federal government, and injured purchasers of refined products. Refunds to the states will be distributed in proportion to each state's consumption of petroleum products during the period of price controls. Refunds to eligible purchasers will be based on the number of gallons of petroleum products which they purchased and the extent to which they can demonstrate injury.

Applications for refund must be filed by October 31, 1989, and should be sent to the address set forth at the beginning of this notice. The information which claimants should include in their applications is explained in the Decision, which immediately follows, and in *Ernest A. Allerkamp*, 17 DOE ¶ 85,079 at 88,177 (1988). Any claimant that has already filed a crude oil refund application need not file again.

Date: January 31, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order

January 31, 1989.

Names of Firms: Lone Star Oil and Chemical Company, Holly Corporation.

Dates of Filing: March 10, 1988, July 21, 1988.

Case Numbers: KEF-0106, KEF-0113.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. 10 C.F.R. § 205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

On March 10 and July 21, 1988, the ERA filed Petitions for the Implementation of Special Refund Procedures (the Petitions) with the Office of Hearings and Appeals (OHA). The March 10, 1988 Petition concerns the ERA's settlement of enforcement proceedings with the Lone Star Oil and Chemical Company (Lone Star) and the July 21, 1988 Petition concerns the ERA's settlement of enforcement proceedings with the Holly Corporation (Holly). In these Petitions, the ERA requests that the OHA formulate and implement procedures for distributing funds obtained through these settlements. *See* 10 CFR Part 205, Subpart V.

Lone Star and Holly have remitted a total of $1,950,756.18 to the DOE pursuant to their settlement agreements. An additional $101,104.46 in interest has accrued on that amount as of December 31, 1988. This Decision and Order establishes procedures for distributing the sum of this principal and interest, or $2,051,860.64, and additional interest accruing in the Holly and Lone Star subaccounts after December 31, 1988.

During the period June 1978 through January 1980, Lone Star was a "reseller" of crude oil as that term is defined in 10 CFR 212.31. Lone Star was therefore subject to the provisions of the Mandatory Petroleum Price Regulations. 10 CFR Part 212. The ERA conducted an extensive audit of Lone Star's operations and found in a Proposed Remedial Order (PRO) that the firm had violated applicable DOE pricing regulations in its sales of crude oil. The PRO was issued as a final Remedial Order (RO) by the OHA on August 26, 1986. *Lone Star Oil and Chemical Company/Michael A. McAlister*, 14 DOE ¶ 83,044 (1986). Lone Star filed an appeal of the RO on October 10, 1986. *Appeal docketed* No. 86-35-000 (Federal Energy Regulatory Commission, October 10, 1986). In order to settle the claims and disputes between Lone Star and the DOE that were raised in the RO, the two parties entered into a Consent Order on April 18, 1987 (the Lone Star Consent Order). In accordance with the terms of that Consent Order, Lone Star paid $184,267.15 to the DOE on February 8, 1988.

Holly was a "producer" of crude oil as that term is defined in 10 CFR 212.31 and was also subject to Part 212 of the Mandatory Petroleum Price Regulations. During the period June 1979 through December 1980, Holly produced and sold crude oil from three properties located in Goliad and Wharton counties, Texas. The ERA conducted an extensive audit of Holly's operations and found in a PRO that the firm had violated applicable DOE pricing regulations in its sales of crude oil. This PRO was issued as a final RO by the OHA on March 29, 1985. *Holly Energy, Inc. and Holly Corporation*, 12 DOE ¶ 83,036 (1985). The Federal Energy Regulatory Commission affirmed the Remedial Order on November 26, 1985. *Holly Corporation and Holly Energy, Inc.*, 37 FERC ¶ 61,187 (1986).[1]

In order to settle all claims and disputes between Holly and the DOE, the two parties entered into a Settlement Agreement on July 31, 1987. The Department of Justice agreed to the Settlement Agreement, modified by an Amendment. In accordance with the terms of the Amendment to the Settlement Agreement, Holly paid $1,766,489.03 to the DOE on April 29, 1988.

Neither the Lone Star Consent Order nor the Holly amended Settlement

[1] Holly's action seeking judicial review of the Remedial Order was terminated when a Stipulation of Withdrawal was entered by the U.S. District Court for the District of Delaware on June 7, 1988.

Agreement makes any provision for the distribution of the funds remitted by the those firms. In its Petitions, the ERA states that it has been unable to identify persons injured by the alleged overcharges or the amount which any individual may be entitled to receive. The ERA therefore requests that OHA establish appropriate procedures for the distribution of the funds remitted by Lone Star and Holly in accordance with the provisions of 10 CFR Subpart V.

The Subpart V process is specifically designed to be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981). *We have considered the ERA's request to implement Subpart V procedures with respect to the monies received from Lone Star and Holly, and have determined that such procedures are appropriate.*

I. Background

On July 26, 1986, as a result of the court-approved Settlement Agreement in *In Re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378, the DOE issued a Modified Statement of Restitutionary Policy (MSRP) providing that crude oil overcharge revenues will be divided among the States, the United States Treasury, and eligible purchasers of crude oil and refined products. 51 FR 27899 (August 4, 1986). Eighty percent of the funds, and any monies remaining after all valid claims are paid, are to be disbursed equally to the states and federal government for indirect restitution. The OHA has been applying the MSRP to all Subpart V proceedings involving alleged crude oil violations. *See* Order Implementing the MSRP, 51 FR 29689 (August 20, 1986). That Order provided a period of 30 days for the filing of any objections to the application of the MSRP, and solicited comments concerning the appropriate procedures to follow in processing refund applications in crude oil refund proceedings.

On April 10, 1987, the OHA issued a Notice analyzing the numerous comments which it received in response to the August 1986 Order. 52 FR 11737. The Notice set forth generalized procedures and provided guidance to assist claimants that wish to file refund applications for crude oil monies under the Subpart V regulations. All applicants for refunds would be required to document their purchase volumes of petroleum products during the period of price controls and to prove that they were injured by the alleged overcharges. The Notice indicated that end-users of petroleum products whose businesses are unrelated to the petroleum industry will be presumed to have absorbed the crude oil overcharges, and need not submit any further proof of injury to receive a refund. Finally, we stated that refunds would be calculated on the basis of a volumetric refund amount derived by dividing crude oil violation amounts of the total consumption of petroleum products in the United States during the period of price controls. The numerator would include the crude oil overcharge monies that were in the DOE's escrow account at the time of the settlement and a portion of the funds in the M.D.L. 378 escrow at the time of the settlement.

The DOE has applied these procedures in numerous cases since the April 1987 Notice, *see, e.g. Shell Oil Co.*, 17 DOE ¶ 85,204 (1988), and *Ernest A. Allerkamp*, 17 DOE ¶ 85,079 (1988) (*Allerkamp*), and the procedures have been approved by the United States District Court for the District of Kansas. Various states had filed a Motion with the Court, claiming that the OHA violated the Settlement Agreement by employing presumptions of injury for end-users and by improperly calculating the refund amount to be used in those proceedings. On August 17, 1987, Judge Theis issued an Opinion and Order denying the States' Motion in its entirety. The court concluded that the Settlement Agreement "does not bar OHA from permitting claimants to employ reasonable presumptions in affirmatively demonstrating injury entitling them to a refund." *In Re: The Department of Energy Stripper Well Exemption Litigation*, 671 F. Supp. 1318, 1323 (D. Kan. 1987). The court also ruled that, as specified in the April 1987 Notice, the OHA could calculate refunds based on a portion of the M.D.L. 378 overcharges. *Id.* at 1323–24. The states appealed the latter ruling, and the Temporary Emergency Court of Appeals affirmed Judge Theis' decision. *In Re: The Department of Energy Stripper Well Exemption Litigation*, 3 Fed. Energy Guidelines ¶ 26,908 (Temp. Emer. Ct. App. 1988).

II. The Proposed Decisions and Orders

On October 12, 1988, the OHA issued a Proposed Decision and Order (PD&O) establishing tentative procedures to distribute the alleged crude oil violation amounts obtained from Holly. On November 16, 1988, the OHA issued a PD&O establishing identical tentative procedures to distribute the monies obtained from Lone Star. The OHA tentatively concluded that these monies should be distributed in accordance with the MSRP and the April 10, 1987 Notice. Pursuant to the MSRP, the OHA proposed to reserve initially 20 percent of the alleged crude oil violations amounts to satisfy claims from injured parties that purchased refined petroleum products between August 19, 1973 and January 31, 1981 (the crude oil price control period). The remaining 80 percent of the funds would be distributed to the state and federal governments for indirect restitution. Once all valid claims are paid, by remaining funds in the claims reserve also would be divided between the state and federal governments. The federal government's share of the unclaimed funds will ultimately be deposited into the general fund of the Treasury of the United States.

In the PD&O's, the OHA proposed to require applicants for refund to document their purchase volumes of petroleum products during the period of price controls and to prove that they were injured by the alleged crude oil overcharges. The PD&O's stated that the petroleum products whose businesses are unrelated to the petroleum industry could use a presumption that they absorbed the crude oil overcharges, and need not submit any further proof of injury to receive a refund. The OHA also proposed to calculate refunds on the basis of a volumetric refund amount, as described in the April 10, 1987 Notice. Comments were solicited regarding the tentative distribution process set forth in the PD&O's.

III. Discussion of the Comments Received

No comments were received by the OHA concerning the Lone Star PD&O. In response to the Holly PD&O, the OHA received comments from Philip P. Kalodner as counsel for six electric utilities, 14 foreign-flag shipping companies, and four pulp and paper manufacturers. Mr. Kalodner's clients are all potential recipients of crude oil refunds. These comments consist of a 12 page brief originally filed by Mr. Kalodner in the OHA proceeding involving Salomon Inc., *et al.*, Case No. KEF–0100 *et al.* (the Salomon brief), and a five page supplemental brief. In these comments, Mr. Kalodner contends that the OHA should not distribute 80 percent of the alleged crude oil violation amounts to the states and federal government. According to Mr. Kalodner, such a distribution will "preclude full direct restitution to claimants." Salomon brief at 4. Mr. Kalodner claims that the 20 percent reserve is insufficient to satisfy all of the legitimate claims that have been or will be filed in these proceedings. Mr. Kalodner asserts that both the DOE and the states assured the United States District Court for the District of Kansas that the amount reserved for the claims process would be adequate to provide refunds for all successful claimants. "Having provided that assurance in order to obtain approval of the Court of the Final Settlement Agreement and the benefits to themselves, the states and the DOE are required by the doctrine of judicial estoppel to make good on that assurance." Salomon brief at 5.

The arguments presented by Mr. Kalodner in the Salomon brief have been considered and rejected by the OHA in *New York Petroleum, Inc., et al.*, 18 DOE ¶ 85,435 at 88,700–01 (1988) (*New York Petroleum*). As we stated in that decision and order, the arguments contained in the Salomon brief concerning the alleged insufficiency of the 20 percent reserve are completely unsupported by any solid evidence. Moreover, it is the position of OHA that the 20 percent set aside is not a discretionary figure but is the upper limit for that reserve as mandated by the following terms of the Settlement Agreement:

> OHA may reserve a reasonable portion of funds from each such proceeding to satisfy potentially provable claims of identifiable injured claimants who have not waived their claims, but such reserve *shall not exceed 20 percent* of the monies in such proceeding and amounts in excess of the reserve shall be distributed while awaiting completion of the first stage refund proceedings. The percentage of the reserve will be altered * * * periodically * * * to reflect the amount of reserve that is warranted and sufficient to provide adequate funding for eligible first-stage claims, and will be lowered as justified by claims experience as a consequence of this Agreement.
>
> Settlement Agreement at IV.B.6, 6 Fed Energy Guidelines ¶ 90,509 at 90,665 (emphasis added).

Thus the OHA may not set aside more than 20 percent of alleged crude oil violation amounts for direct refunds to injured claimants. The OHA may reduce the size of this reserve, but it may not raise the reserve above 20 percent of the funds received. *New York Petroleum*, 18 DOE at 88,701; *A. Tarricone, Inc.*, 15 DOE ¶ 85,495 at 88,893 (1987) (*Tarricone*). The remainder of the crude oil violation amounts must be distributed to the states and federal government prior to the completion of the refund claims process.

An identical reading of this portion of the Settlement Agreement was recently made by the United States District Court for the District of Delaware in *Getty Oil Company* v. *The Department of Energy, et al.*, Civil Action No. 77–434 MMS, decided December 28, 1988 (*Getty*). In that decision, the court rejected the contention of various *amici* petitioners that they possessed an absolute right under the Settlement Agreement to the availability of adequate funds for successful individual claimants. In this regard the court noted the following:

> The [settlement] agreement, however, does not provide for an upward adjustment based upon the amount of claims. Rather it provides for only a maximum reserve of 20 percent for individual claimants and a provision for a downward adjustment if the 20 percent is not distributed. *Stripper Well* Agreement, Dkt. 263 at IV.B.6. Thus based on the *Stripper Well* Agreement itself *amici* cannot claim a right to a refund greater than 20 percent of the fund.

Getty, slip opinion at 14. Accordingly, we find no merit in Mr. Kalodner's assertions concerning the inadequacy of the 20 percent reserve for individual claimants.[3]

As we stated in the Holly and Lone Star PD&O's, we have decided to reserve initially the full 20 percent of the alleged crude oil violation amounts subject to those determinations in order to ensure that sufficient funds will be available for refunds to injured claimants. We will therefore adopt the procedures as proposed in the PD&O's, and order the disbursement to the states and the federal government of 80 percent of the alleged crude oil violation amounts received from Lone Star and Holly.

IV. The Refund Procedures

A. Refund Claims

After considering the comments received concerning the Holly PD&O, we have concluded that the $1,950,756.18 in funds involved in the Holly and Lone Star proceedings, plus the accrued interest on these funds, should be distributed in accordance with the crude oil refund procedures previously discussed. Accordingly, we have decided to reserve the full 20 percent, or $390,151.24, of the alleged violations amounts, plus a proportionate share of the accrued interest, for direct restitution to claimants that purchased refined petroleum products during the crude oil price control period. The amount of the reserve may be adjusted downward later if circumstances warrant such action.

The process which the OHA will use to evaluate claims based on crude oil violations will be modeled after the process the OHA has used to evaluate claims based on alleged refined product overcharges pursuant to 10 CFR Part 205, Subpart V. *Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 (1986) (*Mountain Fuel*). As in non-crude oil cases, applicants will be required to document their purchase volumes and to prove that they were injured by the alleged violations. (*i.e.* that they did not pass through the alleged overcharges to their customers). We will apply the standards for showing injury that the OHA has developed in analyzing non-crude oil claims. *See, e.g., Dorchester Gas Corp.*, 14 DOE ¶ 85,240 (1986). These standards include a finding that end-users and ultimate consumers whose businesses are unrelated to the petroleum industry were injured by a consent order firm's alleged overcharges. From our experience with Subpart V refund proceedings, we believe that potential claimants will fall into the following categories: (1) End-users, *i.e.*, consumers who used refined petroleum products; (2) regulated non-petroleum industry entities that used refined petroleum products in their businesses, or cooperatives that purchased refined petroleum products for their businesses; and (3) refiners, resellers or retailers who resold refined petroleum products.

In establishing the procedures which govern this refund proceeding, we adopt certain presumptions that will permit claimants to participate in the refund process without incurring inordinate expense and will enable the OHA to consider refund applications in the most efficient manner possible. *American Pacific International*, 14 DOE ¶ 85,158 (1986). First, we presume that the alleged overcharges were dispersed equally in all sales of refined products made during the period of crude oil price controls and that refunds should therefore be made on a volumetric per gallon basis. A volumetric refund assumption is sound because of the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.

We also adopt a number of injury presumptions that will simplify and streamline the refund process. These

[3] The comments submitted by Mr. Kalodner also suggest that the OHA add various amounts to the numerator of the volumetric formula in order to increase the size of refunds. These suggestions were previously considered and rejected in *Allerkamp*, 17 DOE at 88,174–75. *See also New York Petroleum*, 18 DOE at 88,701, note 3. Mr. Kalodner has presented no new arguments to justify a reconsideration of those issues in this determination.

presumptions excuse members of certain applicant categories from proving that they were injured by Holly's alleged overcharges. Applicants who were end-users or ultimate consumers of petroleum products, whose business are unrelated to the petroleum industry, and who were not subject to the DOE price regulations are presumed to have absorbed rather than passed on alleged crude oil overcharges. In order to receive a refund, end-users need not submit any further evidence of injury beyond volumes of product purchased. *See Tarricone*, 15 DOE at 88,893–98. The end-user presumption of injury is rebuttable, however. *Berry Holding Company*, 16 DOE ¶ 85,405 at 88,797. If an interested party submits evidence which is of sufficient weight to cast serious doubt on the end-user presumption, the applicant will be required to produce further evidence of injury.

Firms outside the petroleum industry whose prices for goods and services were regulated by a government agency or by the terms of a cooperative agreement need not demonstrate injury as a result of alleged overcharges on refined products. We will require such applicants to certify that they will pass any refund received through to their customers and provide us with a detailed explanation of how they plan to accomplish this restitution. We will also require them to explain how they will notify the appropriate regulatory body or membership group of their receipt of the refund money. *See Office of Special Counsel*, 9 DOE ¶ 82,538 at 85,203 (1982). A cooperative's sales of petroleum products to non-members will be treated in the same manner as sales by other resellers. Cooperatives should therefore provide the DOE with a breakdown of their sales volumes to members and non-members.

Reseller and retailer claimants must submit detailed evidence of injury, and may not rely on the presumptions of injury utilized in refund cases involving refined petroleum products. They can, however, use econometric evidence of the type employed by the OHA in the *Stripper Well Report*. Applicants who executed and submitted a valid waiver pursuant to one of the escrows established in the Settlement Agreement have waived their rights to apply for crude oil refunds under Subpart V. *Boise Cascade Corp.*, 16 DOE ¶ 85,214 at 88,411 (1987); *Sea-Land Service, Inc.*, 16 DOE ¶ 85,496 at 88,981 n. 1 (1987).

Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the combined Lone Star and Holly refund pool of $1,950,750.18 by the total consumption of petroleum products in the United States during the crude oil price control period (2,020,997,335,000 gallons). *Mountain Fuel*, 14 DOE at 89,097. This approach reflects the fact that crude oil overcharges were spread to every region by the Entitlements Program.[3] The volumetric amount for the crude oil pool established in the Lone Star and Holly proceedings is therefore $0.00000096525 per gallon of refined products purchased ($1,950,750.18/2,020,997,335,000 = $0.00000096525).

As we stated in previous Decisions, a crude oil refund applicant will be required to submit only one application for crude oil overcharge funds. *See Allerkamp*, 17 DOE at 88,176. Any party that has previously submitted a refund application in crude oil refund proceedings need not file another application; that application will be deemed to be filed in all crude oil proceedings finalized to date. The volumetric refund amount will be increased as additional crude oil violation amounts are received in the future. Applicants may be required to submit additional information to document their refund claims for these future amounts. Notice of any additional amounts available in the future will be published in the Federal Register.

Any party who has not previously submitted a refund application in the crude oil refund proceeding may submit such an application to the OHA at this time. The application should specifically identify the volumes of petroleum products for which a refund is being claimed and provide information concerning the applicant's use of the petroleum products. Several recent OHA decisions have contained detailed discussions of the suggested contents of a crude oil refund application. *New York Petroleum*, 18 DOE at 88,704–05; *Allerkamp*, 17 DOE at 88,177; *Tarricone*, 15 DOE at 88,898. All applications should be typed or printed and clearly labelled "Application for Crude Oil Refund." Each applicant must submit an original and one copy of the application, which should be mailed to the following address:

Subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Although an applicant need not use any special application form to apply for a crude oil refund, a suggested form has been prepared by the OHA and may be obtained by sending a written request to the address listed above.

B. Payment to the States and the Federal Government

Under the terms of the MSRP, the remaining 80 percent of the Lone Star and Holly payments to the DOE, or $1,560,604.94, plus $36,882.57 in interest through December 31, 1988, or $1,641,488.51, will be disbused equally to the state and federal governments for indirect restitution. We will direct the DOE's Office of the Controller to separate and divide this amount, and to distribute $820,744.26 to the states crude oil tracking account and $820,744.26 to the federal government crude oil tracking account. The states and the federal government will also recive 80 percent of the interest accruing in the Long Star and Holly subaccounts from January 1, 1989 through the date on which the funds are transferred. In the near future, we will issue a Decision and Order directing the DOE's Office of the Controller to make the appropriate disbursements to the individual states from their respective subaccount. This future Order is necessary to improve our ability to track the various disbursements to the states. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Settlement Agreement. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the state under the Settlement Agreement.

It is Therefore Ordered That:

(1) Applications for Refund from the alleged crude oil overcharge funds remitted by the Lone Star Oil and Chemical Company and the Holly Corporation may now be filed.

(2) All applications submitted pursuant to paragraph (1) above must be filed no later than October 31, 1989. Any party that has previously submitted an application for refund from crude oil overcharge funds need not file another application; that application will be deemed to be filed in this and all other crude oil proceeding finalized to date.

[3] The Department of Energy established the Entitlements Program to equalize access to the benefits of crude oil price controls among all domestic refiners and their downstream customers. To accomplish this goal, refiners were required to make transfer payments among themselves through the purchase and sale of "entitlements." This balancing mechanism had the effect of evenly dispersing overcharges resulting from crude oil miscertifications throughout the domestic refining industry. *See, e.g., Amber Refining, Inc.*, 13 DOE ¶ 85,217 (1986).

(3) The director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller, Department of Energy, shall take all steps necessary to transfer, pursuant to Paragraphs (4), (5) and (6) below, all of the funds from the following subaccounts:

Lone Star Oil and Chemical Co., Account No. 6A0700306
Holly Corporation, Account No. 6C0C00249W

(4) The Director of Special Accounts and Payroll shall transfer $820,744.26 of the funds obtained pursuant to paragraph (3) above, plus interest which accrues on the amount from January 1, 1989 to the date of the transfer, into the subaccount denominated "Crude Tracking-States," Number 999DOE003W.

(5) The Director of Special Accounts and Payroll shall transfer the same amount of funds as that indicated in paragraph (4) above into the subaccount denominated "Crude Tracking-Federal," Number 999DOE002W.

(6) The Director of Special Accounts and Payroll shall transfer $410,372.13 of the funds obtained pursuant to paragraph (3) above, plus interest which accrues on the amount from January 1, 1989 to the date of transfer, into the subaccount denominated "Crude Tracking-Claimants 2," Number 999DOE008Z.

Date: January 31, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 89-2717 Filed 2-2-89; 8:45 am]

BILLING CODE 6450-01-M

Proposed Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for disbursement of $198.7 million, plus accrued interest, in crude oil overcharge funds obtained from Getty Oil Company. The OHA proposes to distribute the funds in accordance with the January 18, 1989 Order of the United States District Court for the District of Delaware, as well as the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986).

DATE AND ADDRESS: Comments must be filed in duplicate within 30 days from the date of publication of this notice in the Federal Register and should be addressed to: Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. The filing deadline for comments will be strictly observed. All comments should display a conspicuous reference to Case Number KEF-0124.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2094 (Mann); 586-2383 (Klurfeld).

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth the procedures that the DOE has tentatively formulated to distribute crude oil overcharge funds obtained from Getty Oil Company. The funds are being held in interest-bearing escrow accounts pending distribution by the DOE.

The DOE proposes to distribute these funds in accordance with the January 18, 1989 Order of the United States District Court for the District of Delaware and the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 Fed. Reg. 27899 (August 4, 1986) (the MSRP). Under the MSRP, crude oil overcharge funds are divided among the states, the federal government, and injured purchasers of refined products. Under the plan we are proposing, refunds to the states would be distributed in proportion to each state's consumption of petroleum products during the period of price controls. Refunds to eligible purchasers would be based on the number of gallons of petroleum products which they purchased and the extent to which they can demonstrate injury.

Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments must be submitted within 30 days of publication of this notice in the Federal Register and should be sent to the address set forth at the beginning of this notice. All comments received will be available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except Federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Date: February 2, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order

Implementation of Special Refund Procedures

February 2, 1989.

Name of Firm: Getty Oil Company.
Date of Filing: January 31, 1989.
Case Number: KEF-0124.

Under the procedural regulations of the Department of Energy (DOE), 10 CFR Part 205, Subpart V, the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement refund procedures to distribute funds received as a result of enforcement proceedings. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

The ERA has filed a Petition for the Implementation of Special Refund Procedures for crude oil overcharge funds obtained from Getty Oil Company (Getty). Getty remitted these funds to the United States District Court for the District of Delaware as restitution for its violations of the crude oil producer price regulations formerly codified in 10 CFR Part 212. By Order of the district court dated January 18, 1989, $198.7 million was transferred to the DOE for ultimate distribution to the states, the federal government and individual claimants.* This Proposed Decision and Order sets forth the OHA's plan to distribute these funds in accordance with the district court's Order. Comments are solicited.

The general guidelines which the OHA may use to formulate and implement a plan to distribute refunds are set forth in 10 C.F.R. Part 205, Subpart V. The Subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of violations of the regulations or ascertain

* A total of $128,393,136.88 was actually transferred to the DOE as of January 18, 1989. Title to United States Treasury Bills, with a value of $70,295,920.06, was also transferred to the DOE, but the Treasury Bills are being held by the Bank of Delaware until their maturity date of February 9, 1989. At that time, these proceeds will be transferred to the DOE. The district court retained an additional $500,000 in Getty overcharge funds pending resolution of the states' request for an exemption from an administrative assessment fee. We propose to apply the procedures in this Decision and Order to any of the retained funds that may be transferred to the DOE in the future.

the amount of the refund each person should receive. For a more detailed discussion of Subpart V and the authority of the OHA to fashion refunds, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981). We have considered the ERA's request to implement Subpart V procedures with respect to the monies received from Getty, and have determined that such procedures are appropriate.

I. Background

On August 12, 1976, the Deputy Administrator for Compliance of the Federal Energy Administration issued a Remedial Order to Getty, finding the firm in violation of the crude oil producer price regulations. The DOE's Office of Administrative Review, the OHA's predecessor, affirmed the Remedial Order on appeal and ordered Getty to remit $65 million plus interest as restitution for its violations. *Getty Oil Co.*, 1 DOE ¶ 80,102 (1977). After determining that "persons adversely affected by the Getty overcharges cannot be identified by reasonable measures," the DOE concluded that the Getty overcharges should be paid to the United States Treasury, because such a remedy would compensate "the ultimate victims of Getty's unlawful conduct: the public at large." *Id.* at 80,537.

The United States District Court for the District of Delaware affirmed the DOE's order as to all substantive issues, including the payment of overcharges to the Treasury. *Getty Oil Co. v. DOE*, 589 F. Supp. 1204 (D. Del. 1983). In 1984, the Temporary Emergency Court of Appeals (TECA) affirmed that ruling regarding Getty's liability, but remanded the question of appropriate remedy to the District Court. 749 F.2d 734 (TECA 1984), *cert. denied*, 496 U.S. 1209 (1985). TECA directed the District Court to hold the overcharge funds in an interest-bearing account, and ordered the DOE to reconsider the proper remedial distribution of the funds, taking into account the rights of any party to the funds. 749 F.2d at 739.

Subsequently, on July 7, 1986, the United States District Court for the District of Kansas approved the Settlement Agreement for distribution of $1.4 billion in crude oil overcharge funds resulting from the Stripper Well Litigation. *In Re: The Department of Energy Stripper Well Exemption Litigation*, 653 F. Supp. 108 (D. Kan. 1986). Pursuant to that Agreement, the DOE issued a Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986) ("the MSRP"). The MSRP provides that crude oil overcharge funds in the DOE escrow at the time of the Agreement, as well as crude oil funds obtained by the DOE in other pending administrative and court proceedings, would be divided among the states, the federal government and injured purchasers of refined petroleum products. Under the MSRP, up to 20 percent of these crude oil overcharge funds are reserved initially to satisfy valid claims by injured purchasers of petroleum products. Eighty percent of the funds, and any monies remaining after all valid claims are paid, are disbursed equally to the states and federal government for indirect restitution. The Stripper Well Agreement expressly stated that the MSRP would be applied to any funds obtained in the Getty litigation "to the extent that the funds arising out of such matters are determined to be Alleged Crude Oil Violations funds." Stripper Well Agreement at ¶ III.B.6, 6 Fed. Energy Guidelines ¶ 90,509 at 90,662.

On July 17, 1986, the DOE completed its reconsideration on remand of the Getty proceeding, and recommended to the Delaware District Court that the Getty overcharge funds were crude oil violation amounts and should be disbursed on the same basis as set forth in the Stripper Well Agreement. *Getty Oil Co.*, 14 DOE ¶ 83,033 at 86,284 (1986). That is, 80 percent of the funds would be divided equally between the federal government and the states, and 20 percent would be reserved for restitution to individual claimants. Claims for direct restitution would be administered under Subpart V pursuant to the MSRP. *Id.* at 86,283–84.

On Febraury 10, 1988, the states and DOE filed a Joint Stipulation on Disbursement with the Delaware District Court. That Stipulation recommended that the court adopt the remedy suggested by the DOE as the appropriate disposition of the Getty overcharge funds. In an Opinion dated December 28, 1988, the court adopted the remedy proposed in the DOE's 1986 recommendation and approved the Joint Stipulation, finding it "reasonable, equitable and fair." *Getty Oil Co. v. DOE*, No. 77–434, slip op. at 20. The actual Order transferring the Getty funds to the DOE for disbursement according to the Subpart V regulations was dated January 18, 1989. It directed the DOE to distribute 40 percent of the Getty overcharge funds to the states, and 40 percent to the DOE. The remaining 20 percent of the funds were to be set aside for distribution to claimants pursuant to the Settlement Agreement and the MSRP.

II. The Proposed Refund Procedures

In accordance with that January 18, 1989 Order, we now propose to apply the procedures set forth in the MSRP to the Getty crude oil overcharges. We propose to apply these procedures to the entire $198.7 million transferred to the DOE, plus any interest which accrues on that amount. As directed by the court, we will reserve initially the full 20 percent of the Getty overcharge amounts, or $39.74 million plus interest, for direct restitution to claimants. Any portion of this 20 percent reserve which is not ultimately distributed in this manner will be divided equally between the states and the federal government.

The process which the OHA will use to evaluate claims in this proceeding will be modeled after the process the OHA has used in Subpart V proceedings to evaluate claims based upon alleged overcharges involving refined products. *MAPCO, Inc.*, 15 DOE ¶ 85,097 (1986); *Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 (1986). As in non-crude oil cases, applicants will be required to document their purchase volumes and to prove that they were injured as a result of the violations.

Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry, and who were not subject to the DOE price regulations, are presumed to have been injured by any crude oil overcharges. In order to receive a refund, end-users need not submit any further evidence of injury beyond volumes of product purchased during the period of price controls. *See A. Tarricone, Inc.*, 15 DOE ¶ 85,495 at 88,893–96 (1987). The end-user presumption of injury is rebuttable, however. *Berry Holding Co.*, 16 DOE ¶ 85,405 at 88,797 (1987). If an interest party submits evidence which is of sufficient weight to case serious doubt on the end-user presumption, the applicant will be required to produce further evidence of injury. *New York Petroleum, Inc.*, 18 DOE ¶ 85,435 at 88,702–03 (1988).

Reseller and retailer claimants must submit detailed evidence of injury, and may not rely on the presumptions on injury utilized in refund cases involving refined petroleum products. They can, however, use econometric evidence of the type employed in the OHA Report of the United States District Court for the District of Kansas in the Stripper Well Litigation, 6 Fed. Energy Guidelines ¶ 90,507 (June 19, 1985). Applicants who executed and submitted a valid waiver pursuant to one of the escrows established in the Stripper Well Settlement Agreement have waived their rights to apply for crude oil refunds under Subpart V. *Boise Cascade Corp.*, 16 DOE ¶ 85,214 at 88,411 (1987).

Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the crude oil violation amounts involved in this determination ($198.7 million) by the total consumption of petroleum products in the United States during the period of price controls (2,020,997,335,000 gallons). *Mountain Fuel*, 14 DOE at 88,868 n.4. This yields a volumetric refund amount of $0.0000983 per gallon. We propose to adopt a deadline of October 31, 1989 for refund applications submitted pursuant to this determination.

As we stated in previous Decisions, a crude oil refund applicant will be required to submit only one application for crude oil overcharge funds. *See Ernest A. Allerkamp*, 17 DOE ¶ 85,079 at 88,176 (1988). Any party that has previously submitted a refund application in crude oil refund proceedings need not file another application; that application will be deemed to be filed in this proceeding as well. The volumetric refund amount will be increased as additional crude oil violation amounts are received in the future. Applicants may be required to submit additional information to document their refund claims for these future amounts. Notice of any additional amounts available in the future will be published in the Federal Register.

B. *Payments to the States and Federal Government.* Pursuant to the Order of the Delaware District Court, we will direct that the remaining 80 percent of the Getty overcharge funds, or $158.95 million plus interest, be disbursed in equal shares to the states and federal government for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Settlement Agreement. These funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Settlement Agreement.

Before taking the actions we have proposed in this Decision, we intend to publicize our proposal and solicit comments regarding the claims procedure for the 20 percent fund reserved for direct restitution to individual claimants. Such comments should be filed with the OHA within 30 days of publication of this Proposed Decision and Order in the Federal Register. The filing deadline for comments will be strictly observed.

It Is Therefore Ordered That:

The refund amount remitted by Getty Oil Company to the United States District Court for the District of Delaware, and transferred to the Department of Energy by Order of that court dated January 18, 1989, shall be distributed in accordance with the foregoing Decision.

[FR Doc. 89–2916 Filed 2–3–89; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3514–6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces an extension of the deadline for public comment on the Information Collection Requests (ICRs) abstracted below that were submitted to the Office of Management and Budget (OMB) for review and comment. Public comments regarding the burden estimate, or any other aspect of these collections of information, including suggestions for reducing the burden, must be received by March 3, 1989.

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: Accidental Release Information Program (EPA ICR #1331; OMB #2050–0065). This is a renewal of a currently approved collection.

Abstract: The Accidental Release Information Program (ARIP) applies trigger criteria (death/injury, large releases, and frequent releases of chemicals above the RQ) to select certain hazardous substance releases reported to the National Response Center. Facilities responsible for the selected releases are required to complete and return a questionnaire which asks for more detailed information on the causes, consequences and prevention practices in place at the time of the release.

Burden Statement: The estimated public reporting burden for this collection of information is 27 hours per respondent. This estimate includes time to read the instructions, gather existing information, and prepare and submit the final questionnaire.

Respondents: Owners/operators of facilities with accidental releases.

Estimated No. of Respondents: 1425.

Estimated Total Annual Burden on Respondents: 38,475 hours.

Frequency of Collection: On occasion.

Title: Notification of Hazardous Waste Activity (EPA ICR #0261; OMB #2050–0028). This is a renewal of a currently approved collection.

Abstract: The notification form contains owner and operator information for facilities that handle hazardous wastes. An owner or operator must submit this form to EPA prior to handling hazardous wastes or prior to handling new hazardous waste streams. EPA uses this information to maintain an inventory of all hazardous waste activities throughout the nation.

Burden Statement: The estimated average public reporting burden for this collection of information is 3 hours per respondent per year. This estimate includes all aspects of the information collection including time for reviewing instructions, gathering the data needed, and submitting the notification form.

Respondents: Owners and operators of facilities that handle hazardous wastes.

Estimated No. of Respondents: 850.

Estimated Total Annual Burden on Respondents: 2550.

Frequency of Collection: One time.

Title: RCRA Hazardous Waste Permit Application, Part A (ICR #0262; OMB #2050–0034). This is a renewal of a currently approved collection.

Abstract: The RCRA permit application is used by owners and operators of hazardous waste treatment, storage, and disposal facilities in applying for permits as required by RCRA section 3005. The permit application is also used to define the processes and the wastes that can be managed at the facility in interim status. The application must be revised if certain changes are made to an interim status facility.

Burden Statement: The estimated average public reporting burden for this collection of information is 7.5 hours per respondent. This estimate includes all aspects of the information collection including time for reviewing instructions, gathering and maintaining the data needed, and submitting the forms.

Respondents: Owners and operators of facilities that handle hazardous waste.

Estimated No. of Respondents: 765.

Estimated Total Annual Burden on Respondents: 5745.

Frequency of Collection: On occasion.
Send comments to:
Carl Koch for ICR #1331 (Telephone 202–382–2739), Rick Westlund for ICR #'s 0261 and 0262 (Telephone 202–382–2745), U.S. Environmental Protection Agency, Information Policy Branch (PM–223), 401 M Street SW., Washington, DC 20460
and
Marcus Peacock, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place NW., Washington, DC 20503 (Telephone (202) 395–3084).

Date: January 31, 1989.

Paul Lapsley,

Information and Regulatory Systems Division.

[FR Doc. 89–2658 Filed 2–3–89; 8:45 am]

BILLING CODE 6560–50–M

[OPP–180802; FRL–3514–8]

Oregon Department of Agriculture Receipt of Applications for Emergency Exemptions to Use (+)–2–[4,5–Dihydro–4–Methyl–4–(1–Methylethyl)–5–OXO–1H–Imidazol–2–YL]–5–Ethyl–3–Pyridinecarboxylic Acid; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received specific exemption requests from the Oregon Department of Agriculture (hereafter referred to as the "Applicant") to use the active ingredient (+)–2–[4,5–dihydro–4–methyl–4–(1–methylethyl)–5–oxo–1*H*–imidazol–2–yl]–5–ethyl–3–pyridinecarboxylic acid (Pursuit™) to control broadleaf weeds on 15,000 acres of dry peas, chickpeas, and lentils in Oregon. Pursuit ™ contains an unregistered active ingredient and therefore, in accordance with 40 CFR 166.24, EPA is soliciting comment before making the decision whether or not to grant these exemptions.

DATE: Comments must be received on or before February 21, 1989.

ADDRESS: Three copies of written comments, bearing the identification notation "OPP–180802," should be submitted by mail to:
Public Docket and Information Section, Field Operations Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460
In person, bring comments to: Rm. 236, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information (CBI)." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice of the submitter. All written comments will be available for inspection in Rm. 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:
By mail: Jim Tompkins, Registration Division (TS–767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460
Office location and telephone number: Rm. 716, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–1806).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any provisions of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue specific exemptions to permit the use of an unregistered herbicide, (+)–2–[4,5–dihydro–4–methyl–4–(1–methylethyl)–5–oxo–1*H*–imidazol–2–yl]–5–ethyl–3–pyridinecarboxylic acid (CAS 81335–77–5), manufactured as Pursuit™, by American Cyanamid Company, on dry peas, chickpeas, and lentils in Oregon. Information in accordance with 40 CFR Part 166 was submitted as part of these requests.

Prior to cancellation, dionseb was used to control annual broadleaf weeds in dry peas, lentils, and, chickpeas grown in Oregon according to the Applicant. Section 18's for use of dinoseb for weed control in dry peas, lentils, and chickpeas in the States of Idaho, Oregon and Washington were authorized for the 1988 use season. The Applicant states that other herbicide products that are labeled for use on dry peas, lentils, and chickpeas either do not control a broad spectrum of broadleaf weeds consistently or are not suitable for use in Oregon.

The Applicant indicates that yield losses due to uncontrolled weeds in peas, chickpeas, and lentils could range from 20 percent to 50 percent. Resulting in significant economic losses to growers in Oregon.

Pursuit™ will be applied as a preemergence tank mix with metribuzin at a maximum rate of 0.0468 pounds active ingredient per acre. A single ground application per year will be made sometime between March 1, and June 15, 1989 to approximately 15,000 acres of dry peas, chickpeas, and lentils.

This notice does not constitute a decision by EPA on the applications. The regulations governing section 18 require publication of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide). Such notice provides for the opportunity for public comment on the application.

Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemptions requested by the Oregon Department of Agriculture.

Dated: January 19, 1989.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 89–2655 Filed 2–3–89; 8:45 am]

BILLING CODE 6560–50–M

[OPP–180801; FRL–3514–9]

Wisconsin Department of Agriculture, Trade, and Consumer Protection; Receipt of Application for an Emergency Exemption To Use Mancozeb; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Wisconsin Department of Agriculture, Trade and Consumer Protection (hereafter referred to as "Applicant") to use the fungicide mancozeb to treat 2,250 acres of cultivated American ginseng (*Panax quinguefolium* L.) to control foliar infection caused by *Phytophthora cactorum* and leaf and stem blight caused by *Alternaria panax*. EPA, in accordance with 40 CFR 166.24, is required to issue a notice of receipt and solicit public comment before making the decision whether to grant the exemption.

DATE: Comments should be received on or before February 21, 1989.

ADDRESS: Three copies of written comments, bearing the identification notation "OPP–180801," should be submitted by mail to: Public Docket and Information Section, Field Operations Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:
By mail: Jim Topkins, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–1806).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption to permit use of the fungicide mancozeb (CAS 8018–01–7) available as Dithane M–45, EPA Reg. No. 707–76. Information in accordance with 40 CFR Part 166 was submitted as part of this request. The Applicant was granted emergency exemptions for use of Dithane M–22 (maneb) on ginseng to control *Alternaria* in 1984 and 1985, but not in 1986. An emergency exemption for use of iprodione on ginseng to control *Alternaria* was granted in 1986. The Applicant indicates that a population of *Alternaria*, located in the ginseng growing area of Wisconsin, developed resistance to iprodione. In addition, an epidemic of *Phytophthora* foliar infection occurred in 1986, despite the use of iprodione. The Applicant was granted emergency exemptions for use of Dithane M–45 (mancozeb) on ginseng to control *Phytophthora* and iprodione resistant *Alternaria* in 1987 and 1988. According to the Applicant, without effective control, ginseng growers could experience a 25 to 50 percent crop loss due to *Phytophthora* leaf blight and root rot and a 50 to 100 percent crop loss if *Alternaria* can not be effectively managed.

Dithane M–45 will be applied at weekly intervals by ground application equipment at a rate of 1.6 pounds active ingredient (2 pounds product) per acre during the growing season (late May through September). Dithane M–45 will be applied only during the first three growing seasons. No applications are to be made within one-year of harvest.

A Decision Document (EBDC Pesticides; Initiation of Special Review) for the ethylene bisdithiocarbamate fungicides (EBDC's), which includes mancozeb, was issued July 17, 1987 (52 FR 27172). The Agency initiated this action based on an assessment of the risks from exposure to ethylenethiourea (ETU) present in, or formed as a result of metabolic conversion from pesticide products containing the active ingredient mancozeb. ETU, a potential human carcinogen, teratogen, and thyroid toxicant, is present as a contaminant, degradation product, and metabolite of all the EBDC pesticides. The Agency, therefore, believes that the level of potential risk from mancozeb products, coupled with the presence of and conversion to ETU in all other EBDC pesticide products, warrants an assessment of the risks and benefits of all EBDC pesticides as a group. The Registration Standard for mancozeb was issued April 1987. The Registration Standard outlines data to be required by the Agency.

This notice does not constitute a decision by EPA on this application. The regulations governing section 18 require publication of a notice in the **Federal Register** of receipt of an application for a specific exemption proposing use of a pesticide which contains an active ingredient which has been the subject of a Special Review and is intended for a use that could pose a risk similar to the risk posed by any use of a pesticide which is or has been the subject of a Special Review (40 CFR 166.24(a)(5)). The risks considered in that document which could be similar to the risks posed by this proposed use are oncogenicity; teratogenicity; and thyroid toxicity. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address given above. The Agency will review and consider all comments received during the comment period in determining whether to issue this emergency exemption request.

Dated: January 19, 1989.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 89–2654 Filed 2–3–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL HOME LOAN BANK BOARD

[No. AC–758; FHLBB No. 5451]

First Federal Savings and Loan Association of Roanoke Rapids, Roanoke Rapids, NC; Final Action Approval of Conversion Application

Date: January 27, 1989.

Notice is hereby given that on January 25, 1989, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Federal Savings and Loan Association of Roanoke Rapids, Roanoke Rapids, North Carolina for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Atlanta, 1475 Peachtree Street NE., Atlanta, Georgia 30309.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–2704 Filed 2–3–89; 8:45 am]

BILLING CODE 6720–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603

BEST COPY AVAILABLE

of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200216

Title: Port Authority of New York and New Jersey Terminal Agreement.

Parties: Port Authority of New York and New Jersey (Authority), Lykes Bros. Steamship Co. (Lykes).

Synopsis: The Agreement provides that the Authority will pay Lykes $25.00 per import container and $50.00 per export container unloaded from or loaded on Lykes' vessels at a marine terminal in the Port of New York/New Jersey (Port). The payment applies only to loaded containers for which Lykes is required to pay a railroad for transportation by rail to or from points more than 260 miles from a terminal within the Port and have a prior or subsequent move by water through a marine terminal in the Port.

Agreement No.: 224–004177–005

Title: Port of Seattle Terminal Agreement.

Parties: Port of Seattle (Port), Stevedoring Services of America d.b.a. International Terminal, Inc.

Synopsis: The Agreement provides for an increase of 16.78 acres to the basic lease agreement with a corresponding increase in rental and the addition to the rental schedule of an amortization for a new railyard facility to be constructed by the Port on the premises. It also exercises the first of three five-year renewal options of the basic lease agreement.

Agreement No.: 224–011625–001

Title: Port of Seattle Terminal Agreement.

Parties: Port of Seattle, Hanjin Shipping Company, Ltd. (Hanjin).

Synopsis: The agreement adds 2.26 acres of terminal yard area on a temporary basis and acknowledges that Hanjin's new total area will consist of 27.48 acres upon completion of a new Terminal 42 entry gate. It adjusts the basic rental provisions of the basic lease agreement and acknowledges Hanjin's name change from Hanjin Container Lines, Ltd. to Hanjin Shipping Company, Ltd.

By Order of the Federal Maritime Commission.

Dated: February 1, 1989.

Tony P. Kominoth,

Assistant Secretary.

[FR Doc. 89–2689 Filed 2–3–89; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

[Docket No. R–0658]

Foreign Government Treatment of U.S. Companies Operating in Government Debt Markets Abroad

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of study and request for comment.

SUMMARY: Under the Primary Dealers Act of 1988, which becomes effective on August 23, 1989, the Federal Reserve System may not designate or permit the continuation of the designation as a primary dealer of any person of a foreign country if that person's home country does not grant to U.S. companies the same competitive opportunities in the underwriting and distribution of government debt instruments issued by such country as such country accords to domestic companies of such country. In order to implement this Act, the Federal Reserve is reviewing the government debt markets of certain countries and requests public comment on the treatment of U.S. companies with respect to these markets, focusing in particular on the treatment of U.S. companies relative to domestic firms.

DATE: Comments must be received by May 1, 1989.

ADDRESS: All comments, which should refer to Docket No. R–0658, should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, or delivered to Room B–2222, 20th & Constitution Avenue, NW., Washington, DC, between 8:45 a.m. and 5:15 p.m. weekdays. Comments may be inspected in Room B–1122 between 8:45 a.m. and 5:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Ricki Rhodarmer Tigert, Associate General Counsel (202/452–3428); Kathleen M. O'Day, Senior Counsel (202/452–3786), Legal Division; or John D. Rea, Economist, Division of Monetary Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Earnestine Hill or Dorothea Thompson, (202/452–3544).

SUPPLEMENTARY INFORMATION: As noted above, under the Primary Dealers Act ("Act"), the Federal Reserve System may not permit a person of a foreign country to act as a primary dealer in U.S. government securities if the person's home country does not accord U.S. companies the same competitive opportunities as the foreign country accords domestic companies *in* underwriting and distributing government debt obligations of such countries. A "person of a foreign country" includes any foreign individual or company that directly or indirectly controls a primary dealer. The Act does not affect a primary dealer controlled by a foreign person if, by July 31, 1987, the primary dealer was designated as such and had been acquired by the foreign person or had informed the Federal Reserve Bank of New York of the intent of such foreign person to acquire the primary dealer. The Act also excludes from its coverage primary dealers controlled by persons from a country that had entered into a bilateral free trade agreement with the United States or was negotiating to enter into a trade agreement under the Trade Act of 1974, as of January 1, 1987.

The Federal Reserve System is undertaking a study of the government debt markets of four countries, the United Kingdom, Japan, the Federal Republic of Germany, and Switzerland, to determine whether U.S. companies are accorded national treatment in each of those countries in their access to government debt markets. Nationals of two of these countries, the United Kingdom and Japan, currently control primary dealers that are not grandfathered under the Act; nationals of the other two countries, the Federal Republic of Germany and Switzerland, have expressed active interest in becoming primary dealers.

The Federal Reserve System would welcome the views of U.S. firms or other persons on the specific respects in which U.S. companies are accorded, or not accorded, the same competitive opportunities in the underwriting and distribution of government debt instruments issued by the four countries as those countries accord to domestic companies. All such comments, which should be submitted by May 1, 1989, would be considered in the context of the study of these markets.

By order of the Board of Governors, January 31, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89–2620 Filed 2–3–89; 8:45 am]

BILLING CODE 6210–01–M

Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies; Vivian S. Erikson, et al.

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and section 225.41 of the Board's Regulation

Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 21, 1989.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Vivian S. Erikson,* Del Norte, Colorado; to acquire 80 percent of the voting shares of Rio Grande County Bank, Del Norte, Colorado.

2. *Gus Edwin Malzahn,* Perry, Oklahoma; to acquire an additional 5.8 percent of the voting shares of FNBT Banc Shares, Inc., Perry, Oklahoma, and thereby indirectly acquire First National Bank and Trust Company of Perry, Perry, Oklahoma.

Board of Governors of the Federal Reserve System, January 31, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–2621 Filed 2–3–89; 8:45 am]

BILLING CODE 6210–01–M

Gore Bronson Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 24, 1989.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. **Gore Bronson Bancorp, Inc.,** Northbrook, Illinois; to acquire 100 percent of the voting shares of Bank of Park Forest, Park Forest, Illinois.

2. *Huron Community Financial Services, Inc.,* East Tawas, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Huron Community Bank, East Tawas, Michigan.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Magna Group, Inc.,* Belleville, Illinois; to acquire 10 percent of the voting shares of Sesser Bancorporation, Inc., Sesser, Illinois, and thereby indirectly acquire Bank of Sesser, Sesser, Illinois.

Board of Governors of the Federal Reserve System, January 31, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–2622 Filed 2–3–89; 8:45 am]

BILLING CODE 6210–01–M

Hansen Minnesota, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 24, 1989.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Hansen Minnesota, Inc.,* Freeborn, Minnesota; to acquire Freeborn Agency, Inc., Freeborn, Minnesota, and thereby engage in general insurance agency activities in a place with a population of less than 5,000 persons pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y. These activities will be conducted in Freeborn, Minnesota.

Board of Governors of the Federal Reserve System, January 31, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–2623 Filed 2–3–89; 8:45 am]

BILLING CODE 6210–01–M

National Westminster Bank PLC, et al.; Applications to Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for

inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 23, 1989.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *National Westminster Bank PLC*, London, England; NatWest Holdings, Inc., Wilmington, Delaware; and National Westminster Bancorp, Inc., Wilmington, Delaware; to engage *de novo* through its subsidiary, NatWest Equity Corporation, New York, New York, in making, acquiring, or servicing loans or other extensions of credit for the subsidiary's account or for the account of others such as would be made by a commercial finance company pursuant to § 225.25(b)(1) of the Board's Regulation Y. Comments on this application must be received by February 21, 1989.

B. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Society Corporation*, Cleveland, Ohio; to engage *de novo* through a proposed wholly-owned subsidiary, Society Community Development Corporation, in certain loan and investment activities pursuant to § 225.25(b)(1); and community development related activities pursuant to § 225.25(b)(6) of the Board's Regulation Y.

C. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Hasten Bancorp*, Indianapolis, Indiana; to engage *de novo* through its subsidiary, Hasten Financial Services, Indianapolis, Indiana, in securities brokerage activities pursuant to § 225.25(b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 31, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-2624 Filed 2-3-89; 8:45 am]

BILLING CODE 6210-01-M

North Central Investment Co.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843 (c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 23, 1989.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *North Central Investment Co.*, Corwith, Iowa; to become a bank holding company by acquiring 83.2 percent of the voting shares of Farmers State Bank, Grafton, Iowa.

In connection with this application, Applicant also proposes to acquire North Central Insurance Services, Corwith, Iowa, and thereby engage in the sale of insurance primarily in crop hail and multi peril products in a town of approximately 270 people pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y. These activities will be conducted in the town of Grafton, Iowa, and the surrounding area.

Board of Governors of the Federal Reserve System, January 31, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-2625 Filed 2-3-89; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Intent To Prepare a Draft Environmental Impact Statement and Notice of Project Scoping Public Hearing

Notice is hereby given that the General Services Administration (GSA) intends to prepare a Draft Environmental Impact Statement (DEIS) documenting the assessment of effects related to development of a new Federal Courthouse and new Federal/Municipal Office Building within the Foley Square area, which would replace presently leased governmental office space in Manhattan. The proposed projects would be contained on sites bounded by Worth and Pearl Streets between the New York County Courthouse and Chatham Towers, and the block bounded by Broadway, Elk Street, Duane Street and Reade Street. Also evaluated will be a "No-Action" alternative in which affected governmental operations would remain in leased office space.

In conjunction with this intention to prepare a DEIS, GSA will conduct a project scoping public hearing on February 22, 1989 at 6:00 p.m. at the U.S. Court of International Trade-Ceremonial Courtroom, 1 Federal Plaza, Manhattan.

The purpose of this hearing is to obtain public comments leading to the preparation of the aforementioned DEIS for the new Federal Courthouse, Federal/Municipal Office Building, and alternatives. Comments regarding the proposed project will be accepted at the hearing from community groups, organizations and individuals, and will be limited to 5 minutes per presenter. Written comments will also be accepted at the hearing. It is suggested that organizations designate a spokesperson to present the comments to expedite the hearing process: Mr. Peter A. Sneed, General Services Administration, Region 2, Public Buildings Service, Jacob K. Javits Federal Building, Rm 1605, New York, NY 10278, (212) 264-3561.

Mr. Peter Sneed,

Director Planning Staff GSA, Region 2, Public Building Service.

January 31, 1989.

[FR Doc. 89-2632 Filed 2-3-89; 8:45 am]

BILLING CODE 6820-23-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Office of the Assistant Secretary for Health; the Health Omnibus Programs Extension Act of 1988, Public Law 100-607; Delegation of Authority

Notice is hereby given that I have delegated to the Assistant Secretary for Health, with authority to redelegate, all the authorities vested in the Secretary of Health and Human Services as follows:

1. Title XXIII of the Public Health Service Act, "Research With Respect to Acquired Immune Deficiency Syndrome," (42 U.S.C. 300cc *et seq.*), as amended hereafter. (Section 201 of Pub. L. 100-607.)

2. Title XXIV of the Public Health Service Act, "Health Services With Respect to Acquired Immune Deficiency Syndrome," (42 U.S.C. 300dd *et seq.*), as amended hereafter. (Section 211 of Pub. L. 100-607.)

3. Title XXV of the Public Health Service Act, "Prevention of Acquired Immune Deficiency Syndrome," 42 U.S.C. 300ee *et seq.*), as amended hereafter. (Section 221 of Pub. L. 100-607.)

4. Section 203(a) of Title II, "Programs With Respect to Acquired Immune Deficiency Syndrome," of Pub. L. 100-607 (42 U.S.C. 300cc note), as amended hereafter.

5. Subtitle E of Title II, "Programs With Respect to Acquired Immune Deficiency Syndrome," of Pub. L. 100-607 (42 U.S.C. 300ee-1-4), as amended hereafter.

6. Section 631 of Title VI, "Health Professions Reauthorization Act of 1988," of Pub. L. 100-607 (42 U.S.C. 295g-6 note), as amended hereafter.

7. Subtitle D of Title VII, "Nursing Shortage Reduction and Education Extension Act of 1988," of Pub. L. 100-607, as amended hereafter.

This delegation excluded the authority to promulgate regulations, to submit reports to the Congress, to establish advisory committees or national commissions, and to appoint members to such committees or commissions.

This delegation became effective upon the date of signature.

Date: January 27, 1989.

Don M. Newman,

Acting Secretary.

[FR Doc. 89-2639 Filed 2-3-89; 8:45 am]

BILLING CODE 4160-17-M

Food and Drug Administration

[Docket No. 89F-0011]

National Aeronautics and Space Administration; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the National Aeronautics and Space Administration has filed a petition proposing that the food additive regulations be amended to provide for the safe use of sources of radiation to process beef steaks for use in space flight programs.

FOR FURTHER INFORMATION CONTACT: George H. Pauli, Center for Food Safety and Applied Nutrition (HFF-330), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5740.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 9M4125) has been filed by the National Aeronautics and Space Administration, Washington, DC 20546, proposing that the food additive regulations be amended in Part 179—Irradiation in the Production, Processing and Handling of Food (21 CFR Part 179) to provide for the safe use of sources of radiation to process beef steaks for use in space flight programs.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: January 27, 1989.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-2619 Filed 2-3-89; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Availability of Funds for Community and Migrant Health Centers Activities Including Comprehensive Perinatal Care Program

AGENCY: Health Resources and Services Administration HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is announcing, for Fiscal Year (FY) 1989: (1) The availability of approximately $414.8 million for community health center (CHC) activities and approximately $45.6 million for migrant health center (MHC) activities funded under sections 330 and 329 of the Public Health Service Act (42 U.S.C. 254c and 254b, respectively); (2) the availability of approximately $20.5 million under sections 329 and 330 for C/MHCs to undertake comprehensive perintatal care programs designed to reduce infant mortality; and (3) the criteria that will be used in evaluating applications for FY 1989 funding. Within the aforementioned section 330 funding, the following will occur: (1) Funds will be provided to maintain or expand the provision of essential services by existing grantees that are performing according to program requirements; (2) approximately $20 million will be provided to enhance center efforts to retain and recruit essential health professionals, especially primary care physicians; (3) approximately $3 million will be provided to award grants to provide technical and other non-financial assistance under section 330(f)(1) of the Act; and (4) limited funds will be provided to enhance/improve the range of services at existing access points and to support essential capital improvement programs. No new centers will be funded during this fiscal year.

DATE: Applications for funds to provide essential services by existing grantees are due in the appropriate Public Health Service Regional Office 120 days prior to

the expiration of the current grant award unless otherwise specified. Proposals for the comprehensive perinatal care program funds must be received no later than May 1, 1989. Proposals for grants to provide technical and other non-financial assistance under section 330(f)(1) must be received no later than June 1, 1989. All applications must be delivered to the contact designated in this announcement or be postmarked by the applicable deadline to be considered timely. Any application which does not meet the deadline date will be returned to the applicant.

FOR FURTHER INFORMATION CONTACT: Information on current services grant funding levels may be obtained from, and completed applications should be sent to, the appropriate Regional Grants Management Officer (see Appendix). For general information about the availability of funds, contact Richard C. Bohrer, (301) 443–2280. For information on funding for the comprehensive perinatal care program, contact Joan Holloway, (301) 443–6134.

SUPPLEMENTARY INFORMATION: The Community and Migrant Health Centers Amendments of 1988, Pub. L. 100–366, contains a provision that only the central office of the Health Resources and Services Administration may enter into, or issue approvals with respect to, grants and contracts awarded under sections 329 and 330 of the Public Health Service Act. The intent of this requirement is to ensure that national program goals and requirements are consistently and uniformly applied. Regional Offices are sending application kits to all grantees which incorporate new program requirements arising from recent changes in the program's authorizing legislation.

Criteria for Evaluating Competing and Noncompeting C/MHC Applications

When determining whether Federal support will be made available, the Department will review C/MHCs for compliance with standard criteria stipulated in the regulations (42 CFR Part 51c for CHC and Part 56 for MHC activities) and their use of previously awarded sections 330 and 329 funds. This year's reviews will emphasize need and community impact, health services, management and finance, and governance expectations as set out below:

(a) Need and Community Impact (42 CFR 51c.104(b), 51c.305(b) and 56.104(b))

C/MHCs must demonstrate the need for services in their communities based on geographic, demographic, and economic factors, resources in the area, and health status. Within the defined community a C/MHC must target its resources on the neediest populations. Centers must describe the needs of their user population in terms of health, demographic, and economic status. With respect to the service area, existing centers must describe briefly the unique characteristics of their areas, focusing on location of major service providers, barriers to care, and significant changes in the area. With respect to the user population, centers must document poverty, demographics, major health problems defined in diagnostic terms, and special needs of major population groups for whom the centers are the primary care providers, including migrant and seasonal farmworkers, perinatal patients, the elderly, the homeless, HIV infected individuals, and substance abusers.

(b) Health Services (42 CFR 51c.102(c)(1)(i), 51c.303(a) and (p), 56.303(a) and (p), 56.603(a) and (n), and 56.102(g)(1)(i))

C/MHCs must ensure that basic primary care services, coordination of other levels of care, and support services appropriate to defined needs are available and accessible. They must have qualified providers with a clinical director responsible for providing clinical leadership and supervision of the health care staff and must have a clinical management system that assures quality and continuity of care. The center must demonstrate the integration of needs, the health care plan, staffing, budgeting and clinical management. Each C/MHC must have a Health Care Plan that describes the clinical program, based on the problems identified in the documentation of the needs of the user population, and includes measurable objectives appropriate to the five stages of life (perinatal, pediatric, adolescent, adult, and geriatric) incorporating health promotion/disease prevention activities. The Plan must describe clinical methods, strategies, and protocols to be used to meet the stated objectives and a program to measure the extent to which the objectives are accomplished. Further, the Plan must be consistent with the policies of the center's board of directors and with its available resources. Each C/MHC must have Principles of Practice designed to implement its board's policies and maximize acceptability and effective utilization of services.

(c) Management and Finance (42 CFR 51c.303(g), 51c.303 (r) and (s), and 56.305(a)(3))

C/MHCs must have appropriate leadership and management structures to enable them to operate efficiently and effectively. They must also have financial systems to maintain internal control, ensure stewardship of Federal funds, maximize non-Federal resources, and maintain solvency. With respect to the management structure, appropriateness of the organizational structure, staffing arrangements, a functional management process, and supporting data systems will be reviewed and considered. Annual audits, comparisons of revenues and expenditures and other administrative indices such as productivity will be reviewed in evaluating center performance.

(d) Governance (42 CFR 51c.304 and 56.304)

A C/MHC must be governed by a board which represents the community served, has a user majority, and functions fully and effectively in its fiduciary role. Appropriateness of the board's size, composition, committee structure, performance, and selection process will be reviewed and evaluated.

Any proposed increase in the required level of grant support (other than cost of living adjustments, inflation, and malpractice premium increases) must be accompanied by a justification describing the requirements for a particular activity which could be considered and funded separately. Priority for funding will be given to proposals to support physician retention and recruitment strategies, and limited funding will be available for other purposes such as capital expenditures, improvements in the delivery of essential services, and the expansion of service capacity. Eligibility and Criteria for Evaluating Applications to Provide Technical and Other Non-Financial Assistance under section 330(f)(1):

Eligibility to receive funds under this category is based on the provisions of section 330(f)(1) of the PHS Act, authorizing awards to entities which will provide a broad range of technical assistance to C/MHCs. A full explanation of the basis on which applications will be reviewed is included in the **Federal Register** Notice, Volume 50, July 8, 1985, page 27851, which will also be included in application kits. In addition, the performance of grant recipients in using previously awarded section 330(f)(1) funds will be considered in determining whether Federal support will be made available to continuation applicants.

Criteria for Evaluating Applications for the Comprehensive Perinatal Care Program

The following will be considered when each proposal is reviewed and evaluated:

- Evidence that the center has demonstrated the ability to conduct directly or through contract or other specific arrangements an effective perinatal care program serving high-risk women, infants, and children in a manner that assures continuity of care.
- The extent to which the center is part of a system of care within its own community and/or region and has established linkages with referral sources and relevant organizations to supplement its own capacity. A center's ongoing objective should be to increase patient access to services that the State MCH program provides and to State Medicaid benefits, including those available under the Omnibus Budget Reconciliation Acts of 1986 and 1987.
- The extent to which the center has documented the continued requirement for perinatal services by residents of its community. This should include an assessment of the utilization of services for perinatal and infant care by center users during the previous calendar year. The center should demonstrate its knowledge of other resources available in its community, region, and State to serve at-risk, low income pregnant women and infants, and the extent to which these other providers are serving this population.
- The adequacy and feasibility of the health care plan and new or expanded efforts proposed to meet the needs of the population and to improve pregnancy outcomes by reducing the incidence of infant mortality and morbidity. Particular attention will be focused on the applicant's ability to improve access to perinatal care while integrating a case management approach into overall patient care.
- The appropriateness of the proposed budget for this initiative.
- The adequacy of the center's plan to evaluate the results of this activity in terms of improved health status and the measurable objectives identified in the health care plan.

Executive Order 12372

All grants to be awarded under this notice are subject to the provisions of Executive Order 12372, as implemented by 45 CFR Part 100, which allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application packages to be made available by DHHS (standard DHHS Form No. 424 which has been approved under OMB Control No. 0348–0006) will contain a listing of States which have chosen to set up such a review system and will provide a point of contact in the States for that review. Applicants are to contact their State single point of contact and follow their instructions for the review of applications.

In the OMB Catalog of Federal Domestic Assistance, the Community Health Center program is listed as Number 13.224; the Migrant Health Center program is Number 13.246; and the Technical and Other Non-Financial Assistance to Community Health Centers is Number 13.129.

Dated: December 15, 1988.

John H. Kelso,

Acting Administrator.

Appendix—Regional Grants Management Officers

Mary O'Brien, DHHS-Region I, John F. Kennedy Federal Building, Boston, MA 02203, (617) 565–1462

Thomas Butler, DHHS-Region II, 26 Federal Plaza, New York, NY 10278, (212) 264–4496

Walter H. Ihle, Jr., DHHS-Region III, P.O. Box 13716, 3535 Market Street, Philadelphia, PA 19101, (215) 596–6653

Wayne Cutchens, DHHS-Region IV, 101 Marietta Tower, Room 1108, Atlanta, GA 30323, (404) 331–2597

Lawrence Poole, DHHS-Region V, 300 South Wacker Drive, Chicago, IL 60606, (312) 353–5700

Frank Cantu, DHHS-Region VI, 1200 Main Tower Building, Dallas, TX 75202, (214) 767–3885

Hollis Hensley, DHHS-Region VII, 601 East 12th Street, Room 501, Kansas City, MO 64106, (816) 426–5841

Jerry F. Wheeler, DHHS-Region VIII, 1961 Stout Street, Denver, CO 80294, (303) 864–4461

Alan Harris, DHHS-Region IX, 50 United Nations Plaza, San Francisco, CA 94102, (415) 556–2595

Neal Adams, DHHS-Region X, 2201 Sixth Avenue, Mail Stop RX 20, Seattle, WA 98121, (206) 442–7907

[FR Doc. 89–2667 Filed 2–3–89; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

National Cancer Institute; Meeting (Division of Cancer Treatment Board of Scientific Counselors)

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, DCT, National Cancer Institute, National Institutes of Health, February 13–14, 1989, Building 31C, Conference Room 10, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on February 13 from 8:30 a.m. to approximately 5 p.m., and again on February 14 from 8 a.m. until adjournment, to review program plans, contract recompetitions and budget for the DCT program. In addition, there will be scientific reviews by several programs in the Division. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on February 13 from 5 p.m. to approximately 6 p.m., for the review, discussion and evaluation of individual programs and projects conducted by the National Institute of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301–496–5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Bruce A. Chabner, Director, Division of Cancer Treatment, National Cancer Institute, Building 31, Room 3A52, National Institutes of Health, Bethesda, Maryland 20892 (301–496–4291) will furnish substantive program information.

Dated January 25, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–2669 Filed 2–3–89; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Amended Notice of Meeting

An amendment is hereby given to the notice of the National Cancer Advisory Board meeting which was published in the **Federal Register** (54 FR 3857) on January 26, 1989.

An additional reason for closing the morning session of February 7 is that the presentation involves data that may include incomplete, preliminary and unpublished research findings which may involve commercially valuable information which is privileged and confidential.

Dated: February 2, 1989.
Betty J. Beveridge,
Committee Management Officer, NIH.
[FR Doc. 89-2914 Filed 2-6-89; 8:45 am]
BILLING CODE 4140-01

Public Health Service

Office of the Assistant Secretary for Health, National Center for Health Services Research and Health Care Technology Assessment; Reannouncement of Assessment: Carotid Endarterectomy for the Treatment of Carotid Occlusive Disease

The Public Health Service (PHS), through the Office of Health Technology Assesment (OHTA) has previously published a notice of this assessment in the **Federal Register** Vol. 51 No. 116:22355, June 19, 1988. Additional information is being sought regarding the safety, clinical effectiveness, appropriateness and use of carotid endarterectomy for the treatment of carotid occlusive disease. Carotid endarterectomy is an operation for the removal of an atherosclerotic plaque from a carotid artery. Specifically, this assessment seeks to determine the medical indications for this procedure and the appropriateness of its use on asymptomatic and symptomatic patients. Specific guidelines are sought for identifying patients who may benefit from this procedure. The assessment also seeks to determine whether or not there is conclusive evidence or lack thereof on the benefits of endarterectomy over medical therapy in the management of patients with carotid artery disease.

PHS assessments consists of a synthesis of information obtained from appropriate organizations in the private sector as well as from PHS agencies and others in the Federal Government. The PHS assessments are based on the most current knowledge concerning the safety and clinical effectiveness of a technology. Based on this assessment, a PHS recommendation will be formulated to assist the Health care financing Administration (HCFE) in establishing Medicare coverage policy. Any person or group wishing to provide OHTA with additional information relevant to this assessement should do so in writing no later than April 30, 1989.

The information being sought is a review and assessment of past, current, and planned research related to this technology, a bibliograph of published controlled clinical trial and other well-designed clinical studies, and information related to the clinical acceptability and effectiveness of this technology, and a characterization of the patient population most likely to benefit from it.

Proprietary information is not being sought.

Written material should be submitted to: Harry Handelsman, D.O., National Center for Health Services Research and Health Care Technology Assessment, 5600 Fishers Lane, Room 12A-27, Rockville, MD 20857, (301) 443-4990.

Date: January 20, 1989.
Donald E. Goldstone,
Acting Director, Office of Health Technology Assessment.
[FR Doc. 89-2703 Filed 2-3-89; 8:45 am]
BILLING CODE 4160-17-M

National Institutes of Health; Statement of Organization, Functions and Delegations of Authority

Part H, Chapter HN, (National Institutes of Health) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 53 FR 44126, November 1, 1988) is amended to reflect the following change in the National Library of Medicine, NIH: (1) Establish the National Center for Biotechnology Information (HNL7). The Center will serve as a national focal point for the study of biotechnology information science, provide access nationwide to all relevant molecular biology electronic databases, and develop specifications for future biotechnology databases.

Section HN-B, Organization and Functions, is amended as follows:

(1) After the statement for the *Division of Specialized Information Services (HNL8),* insert the following:

National Center for Biotechnology Information (HNL7). (1) Conducts and sponsors research and development of systems that enhance electronic access by biomedical scientists to university, commercial, and government factual data bases and knowledge bases in biotechnology; (2) supports, assists, and enhances existing pubic information resources for biotechnology, such as nucleic acid and protein sequence databanks and other related research information resources; (3) conducts and sponsors collaborative research and development for molecular biology research information systems, including methods of data acquisition, representation, retrieval, and analysis; (4) provides technical consultation and assistance to other government and private organizations that support biotechnology research and development to foster the links among computer-based biology information resources; (5) sponsors and conducts workshops, symposia, and other scientific meetings to foster the development of computer and information science as appalied to basic biological research; and (6) develops and promotes standards for data bases, communications, and nomenclature for molecular biology data which facilitate the sharing of research data among laboratories on a national and international scale.

Date: January 27, 1989.
Wilford J. Forbush,
Director, Office of Management, PHS.
[FR Doc. 89-2702 Filed 2-3-89; 8:45 am]
BILLING CODE 4140-01-M

Social Security Administration

[Project Announcement No. SSA-OP-89-1]

Federal Old-Age, Survivors, and Disability Insurance

AGENCY: Social Security Administratioon, HHS.

ACTION: Announcement of the availability of funds for section 702 and section 1110 grants.

SUMMARY: The Commissioner of Social Security announces that competing applications will be accepted for new research grants authorized under sections 702 and 1110 of the Social Security Act. This announcement, consisting of three parts, describes the nature of the grant activities and gives notice of the anticipated availability of fiscal year (FY) 1989 funds in support of the proposed activities. Part I discusses the purpose of the announcement and briefly describes the application process. Part II describes the programmatic priorities under which the Social Security Administration (SSA) is soliciting applications for funding. Part III describes the application process and provides guidance on how to submit an application.

DATE: The closing date for the receipt of grant applications in response to this announcement is May 8, 1989.

Part I. Purpose and the Grants Process

A. Program Purpose

This research is intended to add to existing knowledge and to improve methods and techniques for the management, administration, and effectiveness of SSA programs.

In general, SSA will fund the following types of projects:

1. Those that examine "actuarial fairness" and retirement incentives of the delayed retirement credit.
2. Those that examine demand for older workers.

B. Fiscal Year 1989 Grant Process

The grant application process for FY 1989 will consist of a one-stage, full application. Applications are limited to 20 single-spaced pages (excluding resumes, forms, etc.) and must relate to the selection criteria established for review of applications.

Priority areas in this announcement permit applicants to propose research efforts not to exceed 12 months in duration. In item 11 of the Face Sheet (page 1 of form SSA 96) indicate the priority area under which the application is submitted. Applicants should be aware that grant awards are subject to the availability of funds.

Part II. Priority Research Areas

In particular, the following projects will be considered for funding:

A. "Actuarial Fairness" and Retirement Incentives of the Delayed Retirement Credit (DRC)—SSA-OP-89-001

The DRC currently increases the benefit received by a retired worker by 3 percent for each year that the worker delays receipt of benefits after attaining age 65 up to age 70. Under the 1983 Social Security amendments, for individuals attaining age 65 after 1989, the DRC is gradually increased until it reaches 8 percent in 2008 and later years. The objective is that ultimately the benefits paid to workers who retire after the "normal" retirement age will be "actuarially fair" on average—in the sense that the present value of benefits paid to workers who retire after normal retirement age will be the same as for workers who retire at the normal retirement age. A number of proposals to liberalize or eliminate the retirement earnings test (RET) also provide for accelerating the increase in the DRC to 8 percent.

The principal objective of this grant is to examine how the DRC interacts with the retirement earnings test and other program provisions to influence worker incentives to delay or encourage retirement, both at the current 3 percent DRC and the scheduled 8 percent DRC. How do the payment of payroll taxes, benefit recomputations, and income taxation of benefits associated with DRC affect such incentives? The purpose is to provide quantitative insight into the effect of Social Security benefit and tax provisions on the work and retirement incentives of older workers but not to ask for econometric estimates of worker's labor supply responses. We are interested in both average effects on workers, and in the differential effects of such provisions on population subgroups that differ with respect to such factors as mortality and earnings experience. Population subgroups of interest would be classified by such characteristics as: sex, race, marital status, age of benefit acceptance of worker and spouse (if married), and earnings level of worker.

A secondary, related objective is to examine how the "actuarial fairness" of the DRC benefit adjustment affects the distribution of lifetime net benefits over the remaining lifetime of the beneficiaries. Who are the relative gainers and losers? We are again interested in different population subgroups, as described above.

In examining the effect of Social Security benefit provisions on the work-retirement decision and on the distribution of well-being over the retirement lifetime, proposals should consider the appropriate definition of "actuarial fairness" in the context of these questions. In addition to the relationship between the present value of expected benefits and the age of benefit acceptance, alternative definitions might incorporate the additional Social Security payroll taxes paid, the recomputation of benefits, and the income taxation of benefits associated with partial or delayed retirement. The proposed research is limited to the identification and measurement of the incentives associated with different ages of benefit acceptance for different population subgroups. The objective is to provide quantitative insight into the effect of Social Security benefit and tax provisions on the work and retirement incentives of older workers. This grant announcement does not ask for econometric estimates of workers' labor supply responses.

Grant proposals must be based on well-developed, rigorous analysis. It is anticipated that a total of up to $100,000 will be allocated to fund up to one or more projects for a period not to exceed 12 months in duration.

B. Demand for Older Workers—SSA-OP-89-002

The Social Security Amendments of 1983 will gradually raise the retirement age and increase the delayed retirement credit (DRC). Proposals are being made to liberalize or eliminate the earnings test. These changes in the Social Security program may induce behavioral responses, particularly in work and retirement patterns. How changes in work incentive provisions affect the behavior of older workers will depend on whether older workers will be able to find employment. Almost all retirement studies have been based on a model of worker choice that assumes that older workers who retire are able to find jobs at the prevailing wage. Because this assumption may not be valid, there is a need to examine the demand for older workers.

Among the questions to be addressed are: What determines the demand for older workers? Will changes in the age structure of the labor force and changes in the Social Security law encourage firms to continue to employ older workers or hire new older workers, either on a full-time or part-time basis?

What will be the effect on job search attitudes and employment of older workers who become unemployed before reaching the eligible age for Social Security and/or private pension benefits? Will older workers be reemployed in occupations requiring training for new technologies? What will be the effect of the later retirement age on the employment status of older workers who are in physically demanding occupations or whose health has diminished? Will such older workers be employed in less strenuous jobs at the end of their work career? What is, and will be, the role of private pension provisions on the employment of older workers?

Grant proposals should examine the demand for older workers within the framework of rigorous and well-developed models of labor-market behavior. Particular consideration should be given to explaining the demand for older workers in the context of projected changing demographic patterns.

It is anticipated that a total of $75,000 will be allocated to fund one or more projects not to exceed 12 months in duration.

Note.—To foster the sharing of research, principal investigators for each priority area will be required to discuss the results of their research with SSA staff. Funds should be included in the budget for a meeting at the SSA Office of Research and Statistics, Washington, DC 20008.

Part III. Application Process

A. Eligible Applicants

Any State, local government and public or private organization or agency (including educational institutions) may apply for a grant under this announcement. Individuals are not eligible to apply. For-profit organizations or institutions may apply

with the understanding that no grant funds may be paid as profit to any grant recipient. Profit is considered any amount in excess of the allowable costs of the grant. A for-profit organization or institution means a corporation or other legal entity which is organized or operated for the profit or benefit of its shareholders or other owners and must be distinguishable or legally separable from that of an individual acting on his or her own behalf.

B. Availability and Duration of Funding

The grant(s) for "Actuarial Fairness of Delayed Retirement Credit" (SSA–OP–89–001) will be funded under the authority of section 1110 of the Social Security Act. SSA anticipates allocating $100,000 to fund at least one (1) project in priority area SSA–OP–89–001. The grant(s) for "Demand for Older Workers" (SSA–OP–89–002) will be funded under section 702 of the Social Security Act. SSA anticipates allocating $75,000 to fund at least one (1) project in priority area SSA–OP–89–002. SSA will issue an initial grant award(s) not to exceed 12 months in duration in each priority area.

C. Grantee Share of the Project Costs

Grant recipients receiving assistance to conduct these research projects are expected to contribute towards the project costs. Generally, 5 percent of the total costs is considered acceptable. No grant will be awarded that covers 100 percent of the project's costs.

D. The Application Process for Proposals Requesting Grant Funds

Organizations wishing to compete for grants under this announcement must submit an application by May 8, 1989. Applications received in response to this announcement will be reviewed by Federal and non-Federal personnel. Successful applicants may expect funding during the third quarter of FY 1989.

1. Availability of Application Forms

Application kits which contain the prescribed application forms for grant funds are available from the Grants Management Staff; Division of Contract and Grant Operations; Office of Acquisition and Grants; Office of Management; 1–E–4 Gwynn Oak Building; 1710 Gwynn Oak Avenue; Baltimore, Maryland, 21207; telephone (301) 965–9502; Mr. Lawrence H. Pullen, Chief, Grants Management Staff.

When requesting an application kit, the applicant should refer to project announcement number SSA–OP–89–1 and the date of this announcement to ensure receipt of the proper application kit.

2. Additional Information

For additional information concerning project development, please contact Mr. James P. Coughlin; Office of Research and Statistics; Office of Policy; Social Security Administration; 2219 Annex Building; 6401 Security Boulevard; Baltimore, Maryland, 21235; telephone (301) 965–2843.

3. Application Submission

All applications requesting Federal grant funds must be submitted on the standard forms provided by the Grants Management Staff. The application shall be executed by an individual authorized to act for the applicant organization and to assume for the applicant organization the obligations imposed by the terms and conditions of the grant award.

As part of the project title (page 1 of the application form SSA–96, item 11), the applicant must clearly indicate the application submitted is in response to this announcement (SSA–OP–89–1) and must show the appropriate project identifier (i.e., SSA–OP–89–001, etc.).

Applications must be submitted to: Grants Management Staff; Division of Contract and Grant Operations; Office of Acquisition and Grants; Office of Management; Social Security Administration; 1–E–4 Gwynn Oak Building; 1710 Gwynn Oak Avenue; Baltimore, Maryland, 21207.

4. Application Consideration

Applications are initially screened for relevance to this announcement. If judged irrelevant, the applications are returned to the applicants. Applications that conform to the requirements of this program announcement will be reviewed competitively against the evaluation criteria specified in No. 6(b) of this announcement and evaluated by Federal and non-Federal personnel. The results of this evaluation will assist the Commissioner of Social Security in considering competing applications.

5. Application Approval

Grant awards will be issued within the Federal funds available following the approval of the applications selected for funding. The official award document is the "Notice of Grant Award." It will provide the amount of funds awarded, the purpose of the award, the budget period for which support is given, the total project period for which support is contemplated, the amount of grantee financial participation, and any special terms and conditions of the grant award.

6. Criteria for Screening and Reviewing of Applications

(a) Screening Requirements. In order for an application to be in conformance, it must meet *all* of the following requirements:

(1) Number of Copies: An original signed application and two copies must be submitted. Five additional copies are optional and will expedite processing of the grant application.

(2) Length: The narrative portion of the application must not exceed 20 single-spaced pages, exclusive of resumes, forms, etc., typewritten on one side of the paper only. Applications should neither be unduly elaborative nor contain voluminous documentation.

(3) Non-Federal Contribution (Match): Grant recipients must contribute towards the project costs (cash or in-kind). Generally, 5 percent of the total costs is acceptable.

(b) Evaluation Criteria. Applications which pass the screening will be reviewed by at least three individuals. Reviewers will score the applications, basing their scoring decisions on the following criteria. Relative weights are shown in parentheses.

(1) Project Objective: (15 points)

How closely do the project objectives fit those of the announcement? Is the need for the project discussed in terms of the importance of the issues to be addressed? Does it describe how the project builds upon previous research?

(2) Project Design: (30 points).

Is the design of the project adequate and feasible as indicated by the appropriateness of the work statement and the technical approach, including:

(a) a concise and clear statement of goals and objectives; (b) theoretical analysis of the problem and, if appropriate, hypotheses to be tested and/or parameters to be estimated; (c) data to be collected, including specification of data sources; (d) plan for data analysis, including appropriateness of statistical methods to be used; and (e) scheduling of tasks and milestones in the progress of the project? Does the proposal describe specific plans for conducting the project in terms of the tasks to be performed, and how the approach proposed will accomplish the project objectives?

(3) Qualifications: (30 points)

Do the qualifications of the project personnel, as evidenced by training, experience, and publications, indicate that they have the skills required to competently carry out the research and to produce a final report that is comprehensible and usable? Is the staffing pattern appropriate for the proposed research, linking responsibilities clearly to project tasks? Does the applicant's organization have adequate facilities and resources to plan, conduct, and complete the project?

(4) Organization and Budget: (10 points)

Are the resources needed to conduct the project specified, including personnel, time, funds, and facilities? Are any collaborative efforts with other organizations clearly identified and written assurances referenced? Is all budget information provided, including a description by category (personnel, travel, etc.) of the total of the Federal funds required? Are funds specified for each budget period? Where appropriate, are justifications and explanations of costs provided? Are the project's costs reasonable in view of the level of efforts and anticipated outcome?

(5) Expected Outcomes: (15 points)

What is the potential usefulness of the anticipated result and expected benefits to SSA and other target groups? What is the potential usefulness of the proposed project for the advancement of scientific knowledge?

7. Closing Date for Receipt of Applications

The closing date for receipt of grant applications for Federal funds in response to this announcement is May 8, 1989.

Applications may be mailed or sent by commercial carrier or personally delivered to: Grants Management Staff; Division of Contract and Grant Operations; Office of Acquisition and Grants; Office of Management; Social Security Administration; Room 1–E–4 Gwynn Oak Building; 1710 Gwynn Oak Avenue; Baltimore, Maryland, 21207.

Applications must be received by the Grants Management Staff on or before the above closing date to be considered. Personally delivered applications are accepted during normal working hours of 8:30 a.m. to 5 p.m. Monday through Friday on or prior to the established closing date. An application will be considered to be received on time if personally delivered to SSA or mailed through the U.S. Postal Service or sent by commercial carrier on or before the closing date (as evidenced by a legible U.S. Postal Service postmark or legibly dated receipt from a commercial carrier). Private metered postmarks will not be considered acceptable as proof of timely mailing.

Applications submitted by any means other than the U.S. Postal Service or commercial carrier shall be considered as acceptable only if physically received at the above address on or before the deadline date. Applications which are mailed through the U.S. Postal Service or sent by commercial carrier on or before the closing date must be received by SSA prior to the meeting of the reviewers selected to evaluate the grant applications. Applications which are not received on time will not be considered for funding.

Paperwork Reduction Act

This notice contains reporting requirements in "The Application Process" section. However, the information is collected using form SSA–96, *Federal Assistance*, which has OMB clearance No. 0960–0184.

Executive Order 12372—Intergovernmental Review of Federal Programs

This program is not covered by the requirements of Executive Order 12372 relating to the Federal policy for consulting with State and local elected officials on proposed Federal financial assistance.

(Catalog of Federal Domestic Assistance Program No. 13.812—Assistance Payments—Research and Demonstrations)

Dated: January 26, 1989.

Dorcas R. Hardy,

Commissioner of Social Security.

[FR Doc. 89–2684 Filed 2–3–89; 8:45 am]

BILLING CODE 4190–11–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–89–1926]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: January 18, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Second Phase of Collecting Data on Low-Income Housing Tax Credit.

Office: Policy Development and Research.

Description of the Need for the Information and Its Proposed Use: HUD will use this second phase data collection as a one-time effort to help explain to Congress and the public, the housing issues of the Low-Income Housing Tax Credit. HUD will acquire new, complimentary data from 15 State housing agencies, developers, and syndicators for 300 sample tax properties.

Form Number: None.

Respondents: State and local governments and businesses or other for-profit.

Frequency of Submission: One-time.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
State officials	15		1		1		15
Developers	300		1		1		300
Syndicators	300		1		.5		150

Total Estimated Burden Hours: 465.
Status: Revision.
Contact: John Ross, HUD, (202) 744–5428; John Allison, OMB, (202) 395–6880.

Date: January 18, 1989.

Proposal: PHA Development Cost Budget/Cost Statement, Actual Development Cost Certificate, Acquisition and Relocation.

Office: Public and Indian Housing.
Description of the Need for the Information and Its Proposed Use: This report will enable HUD to determine whether amounts requested or spent are reasonable to services or items purchased, or to actual or projected development progress so that if necessary, timely action can be taken. It will also enable HUD to determine PHA's compliance with the U.S. Housing Act of 1937, as amended.

Form Number: HUD–52484, HUD–52477.

Respondents: States or local governments and non-profit institutions.

Frequency of Submission: Recordkeeping and on occasion.
Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
HUD–52484, development cost	207		2		2		828
HUD–52484, cost statement	207		4		2		1,656
HUD–52427, actual development cost certification	207		1		.25		52
Recordkeeping	301		1		1		301

Total Estimated Burden Hours: 2,837.
Status: Reinstatement.
Contact: Raymond W. Hamilton, HUD, (202) 426–0938, John Allison, OMB, (202) 395–6880.

Date: January 18, 1989.

[FR Doc. 89–2694 Filed 2–3–89; 8:45 am]
BILLING CODE 4210–01–M

[Docket No. N–89–1927]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.
ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer of the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: January 10, 1989.

John T. Murphy,
Director, Information Policy and Management Division.

Proposal: Operating Budget and Supporting Schedules.
Office: Public and Indian Housing.
Description of the Need for the Information and Its Proposed Use: This schedule will ensure that Public Housing Authorities (PHAs) follow sound financial practices and that Federal funds are used for eligible expenditures. PHAs will use the form as a financial summary and analysis of immediate and long-term operating programs and plans to provide control over operations and achieve objectives.
Form Number: HUD–52564, HUD–52566, HUD–52567, HUD–52571, and HUD–52573.

Respondents: State or Local Governments and Non-Profit Institutions.
Frequency of Submission: Annually.
Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
HUD–52564	3,780		1		116.5		440,370
HUD–52566	3,780		1		1.0		3,780
HUD–52567	3,780		1		.75		2,835
HUD–52571	3,780		1		1		3,780

Total Estimated Burden Hours: 453,600.
Status: Extension.
Contact: John T. Comerford, HUD, (202) 416–1872, John Allison, OMB, (202) 395–6880.

Dated: January 10, 1989.

Proposal: Contractor's Report of Sales.
Office: Public and Indian Housing.
Description of the Need for the Information and its Proposed Use: HUD will use this report to monitor the volume of sales for each Consolidated Supply Program product. HUD will also validate that a specific product on which suppliers are bidding conforms to specified standards or specifications.
Form Number: HUD–52810.
Respondents: State or Local Governments.
Frequency of Submission: Recordkeeping and Semi-Annually.
Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Contractor's report of sales	400		2		2		1,600
Recordkeeping	400		1		2		800

Total Estimated Burden Hours: 2,400.
Status: Reinstatement.
Contact: Michael Diggs, HUD, (202) 426–4708, John Allison, OMB, (202) 395–6880.

Dated: January 10, 1989.

[FR Doc. 89–2695 Filed 2–3–89; 8:45 am]
BILLING CODE 4210–01–M

[Docket No. N–89–1928]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.
ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: January 17, 1989.

John T. Murphy,
Director, Information Policy and Management Division.

Proposal: Survey of Pensions Funds.
Office: Housing.
Description of the Need for the Information and Its Proposed Use: This survey provides the only source of information on the extent of institutional investment in mortgage-related securities and consequently their provision of funds to the mortgage market. It monitors how institutions respond to changes in Federal regulations. Respondents are pension funds or their investment managers, and commercial and mutual savings banks.
Form Number: None.
Respondents: Businesses or Other For-Profit.
Frequency of Submission: Quarterly.
Reporting Burden:

	Number of respondents	X	Frequency of response	X	Hours per response	=	Burden hours
Survey	586		4		.167		391

Total Estimated Burden Hours: 391.
Status: Revision.
Contract: John N. Dickie, HUD, (202) 755–7270. John Allison, OMB, (202) 395–6880.

Dated: January 17, 1989.

Proposal: Monthly Survey of Private Mortgage Insurance Activity.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: This survey will enable public officials to make sounder policy decisions concerning public/private initiatives and participation in the mortgage market as well as to track growth and identify potential problems confronting the private insurance.

Form Number: None.

Respondents: Businesses or Other For-Profit.

Frequency of Submission: Monthly.

Reporting Burden:

	Number of respondents	X	Frequency of response	X	Hours per response	=	Burden hours
Respondent Reporting Burden	13		12		.08		13

Total Estimated Burden Hours: 13.
Status: Existing.
Contact: John N. Dickie, HUD, (202) 755–7270. John Allison, OMB, (202) 395–6880.

Dated: January 17, 1989.

[FR Doc. 89–2696 Filed 2–3–89; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–040–09–4120–10]

Oklahoma Resource Management Plan (OK RMP)

AGENCY: Bureau of Land Management, Interior.

ACTION: Call for coal and other resource information.

SUMMARY: The Bureau of Land Management (BLM), Tulsa District, Oklahoma Resource Area, is scheduled to prepare a Resource Management Plan (RMP) and Environmental Impact Statement (EIS) for BLM managed Federal lands and minerals within Oklahoma. The major land use decision within the RMP/EIS concerning the Federal coal resource shall be the identification of areas acceptable for further consideration for leasing.

The purpose of this notice is to solicit coal and other resource information and indications of interest and needs pursuant to 43 Code of Federal Regulations (CFR) 3420.1–2, for inclusion in the RMP. Coal companies, state and local governments, and the general public are encouraged to submit information to the BLM to assist in the determination of coal development potential and possible conflicts with other resources. Where such information is determined to indicate development potential for an area, the area may be included in the land use plan for further consideration for leasing.

DATE: Comments relating to this call for information will be accepted until June 1, 1989.

ADDRESS: Comments should be sent to: Paul W. Tanner, Area Manager, Bureau of Land Management, Oklahoma Resource Area, 200 NW Fifth Street, Room 548, Oklahoma City, OK 73102. Proprietary data should be identified as such to ensure confidentiality.

FOR FURTHER INFORMATION CONTACT: Paul W. Tanner, Area Manager, or Brian Mills, RMP Team Leader, Oklahoma Resource Area, (405) 231–5491.

SUPPLEMENTARY INFORMATION: The planning area for the Oklahoma RMP will include all BLM managed surface and mineral estate within Oklahoma. Significant resource issues will be identified during the first phase of the RMP process scheduled to commence in June of 1990. The development of the coal resource is anticipated to be one of the issues addressed in the RMP. Information acquired from this call will be used to identify and categorize areas of coal development potential within the planning area.

Industry and other interested parties are asked to provide any information that will be useful in meeting the requirements of the Federal Coal Management Program defined in 43 CFR 3420, including application of the coal planning screens and future activity planning such as tract delineation, ranking and selection.

Information resulting from this call will be utilized in the application of the unsuitability criteria and the development of other resource use screens.

The type of information needed includes, but is not limited to the following:

1. Location.

(a) Tracts desired by mining companies should include a narrative descritpion with areas delineated on a map with a scale of not less than ½ inch to the mile.

(b) Descriptions of both public and private industry coal users in the general region.

2. Quantity needs (tonnage, datea) for both public and private industry coal users and coal developers.

3. Quality needs (by type and grade) for end users of the coal.

4. Coal reserve drilling data which may pertain to the planning area.

5. Information relating to surface and mineral ownership.

(a) Surface owner consents previously granted, whether consent is transferable, surface owner leases with coal companies.

(b) Non-Federal, or fee coal ownership adjacent to Federal tracts currently leased or mined.

6. Other resource values occurring within the planning area which may conflict with coal development.

(a) Identify the resource value, location by narrative description and may (½ inch to the mile) delineation.

(b) State the reasons the particular resource would conflict with coal development.

Any individual, business entity, or public body may participate in this process by providing coal or other resource information under this call. Public participation activities involved with the preparation of the Oklahoma RMP will be conducted in accordance with all BLM land use planning regulations and requirements, and will be announced at a later date.

Larry L. Woodard,
State Director.

Dated: January 29, 1989.

[FR Doc. 89–2634 Filed 2–3–89; 8:45 am]
BILLING CODE 4310–FB–M

National Park Service

Cancellation of a Notice of Intent To Prepare an Environmental Impact Statement for the Congaree Swamp National Monument, SC

SUMMARY: Notice is hereby given that the National Park Service is cancelling the notice issued in the Federal Register of April 21, 1980, (45 FR 26828) for the preparation of an environmental impact statement on the Congaree Swamp National Monument, South Carolina. A general management plan with an environmental assessment and a Finding of No Significant Impact were issued on December 13, 1988.

FOR FURTHER INFORMATION CONTACT: Jacob J. Hoogland, Chief, Environmental Compliance Division, National Park Service, U.S. Department of the Interior, 18th and C Streets, NW., Room 1210, Washington, DC 20240, telephone (202) 343–2163.

Date: January 30, 1989.

James W. Stewart,
Acting Associate Director, Planning and Development.

[FR Doc. 89–2635 Filed 2–3–89; 8:45 am]
BILLING CODE 4310–70–M

Melozitna Wild and Scenic River Study Area, Alaska

AGENCY: National Park Service, Department of the Interior

ACTION: Termination of Environmental Impact Statement Process

SUMMARY: On November 20, 1981, the National Park Service issued a Notice of Intent (46 FR 57140) to prepare an Environmental Impact Statement for the potential designation of Melozitna Wild and Scenic River, Alaska.

The area was studied for potential designation under the criteria found in Section 2(b) and as directed in Section 4 of the Wild and Scenic Rivers Act, as amended. The study was completed and the area was found to be ineligible for designation. As a result, an EIS will not be prepared and the process is hereby terminated.

FOR FURTHER INFORMATION CONTACT: Jacob J. Hoogland, Chief, Environmental Compliance Division, National Park Service, U.S. Department of the Interior, Room 1210, 18th and C Streets NW., Washington, DC 20240, telephone (202)343–2163.

January 30, 1989.

James W. Stewart,
Acting Associate Director, Planning and Development, National Park Service.

[FR Doc. 89–2637 Filed 2–3–89; 8:45 am]
BILLING CODE 4310–70–M

Wild and Scenic River Study Areas Alaska; Porcupine Wild and Scenic River et al.

AGENCY: National Park Service, Department of the Interior.

ACTION: Termination of Environmental Impact Statement Process.

SUMMARY: The National Park Service issued Notices of Intent to prepare Environmental Impact Statements for the following three potential National Wild and Scenic River designations in Alaska:

November 20, 1981, 46 FR 57140 Porcupine Wild and Scenic River
November 20, 1981, 46 FR 57140 Kisaralik Wild and Scenic River
December 16, 1982, 47 FR 56416 Kanektok Wild and Scenic River.

All three areas were studied for potential designation under the criteria found in section 2(b) and direction of section 4 of the Wild and Scenic Rivers Act, as amended. All relevant studies were completed and the three aforementioned river study areas were found to be eligible for designation. However, their designation was not recommended by the Department of the Interior to the Congress. As a result, an EIS will not be prepared and the process is hereby terminated.

FOR FURTHER INFORMATION CONTACT: Jacob J. Hoogland, Chief, Environmental Compliance Division, National Park Service, U.S. Department of the Interior, Room 1210, 18th and C Streets, NW., Washington, DC 20240, telephone (202) 343–2163.

January 30, 1989.

James W. Stewart,
Acting Associate Director, Planning and Development, National Park Service.

[FR Doc. 89–2636 Filed 2–3–89; 8:45 am]
BILLING CODE 4310–70–M

Landmark Review Committee of Advisory Board; Meeting

AGENCY: National Park Service.

ACTION: Notice of Meeting of Landmark Review Committee of Advisory Board.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Landmark Review Committee of the Secretary of the Interior's National Park System Advisory Board will be held at 9:00 a.m. at the following location and date.

DATE: March 1, 1989.

ADDRESS: 1100 L Street NW. (12th Floor Conference Room 12128), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Benjamin Levy, Senior Historian, History Division, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Telephone (202) 343–8164.

SUPPLEMENTARY INFORMATION: The purpose of the Landmark Review Committee of the Secretary of the Interior's National Park System Advisory Board is to evaluate studies of historic properties in order to advise the full National Park System Advisory Board meeting on April 24, 1989 of the qualifications of properties being proposed for National Historic Landmark designation, and to recommend to the full Board, those properties that the Committee finds meet the criteria of the National Historic Landmarks Program. The members of the Landmark Review Committee are:

Mr. Robert Burley, Chair
Dr. Holly Anglin Robinson
Dr. Alfonz Lengyel
Mrs. Anne Walker

The meeting will include presentations and discussions on the national historic significance and the integrity of numerous properties being nominated for National Historic Landmark designation. These nominations include architectural properties located in California, Massachusetts, Michigan, New York, Rhode Island, and Wisconsin; maritime resources located in Alabama, California, Florida, Illinois, Kentucky, Louisiana, Maine, Massachusetts, New York, Ohio, Oregon, South Carolina, Virginia, and Washington; archeological properties located in California and Mississippi; and an industrial site in Pennsylvania.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Any member of the public may file with the Committee a written

statement concerning matters to be discussed. Written statements may be submitted to the Senior Historian, History Division, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Minutes of the meeting will be available in the office of the History Division, National Park Service, WASO, for public inspection approximately 4 weeks after the meeting.

Dated: January 31, 1989.

Rowland P. Bowers,

Associate Director, Cultural Resources, National Park Service, WASO.

[FR Doc. 89-2686 Filed 2-3-89; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1. Parent Company and address of principal office: Kraft, Inc., Kraft Court, Glenview, IL 60025.

2. Wholly-Owned subsidiaries which will participate in the operations and state(s) of incorporation:

A. American Fruit & Produce Company, Inc. (Minnesota)
B. Anderson Clayton/Humko Products, Inc. (Delaware)
C. Cheese Analog Corp. (Delaware)
D. Chiffon Corp. (Delaware)
E. Churny Company, Inc. (Delaware)
F. Craig Distributing Company (Missouri)
G. Frostex Foods, Inc. (Texas)
H. H.F. Behrhorst & Son, Inc. (Delaware)
I. Holleb & Company (Illinois)
J. I. Feldman and Company, Inc. (Delaware)
K. Kraft Food Ingredients Corp. (District of Columbia)
L. NewCow, Inc. (Delaware), (i) Pollio Dairy Products Corp. (New York)
M. Sagecoach Express, Inc. (Illinois)
N. The All American Gourmet Company (Delaware)
O. Tombstone Pizza Corp. (Delaware)

B. 1. The parent corporation and its principal office are: Trachte Company, Inc., (formerly, Trachte Sales & Construction Corp.), 422 North Burr Oak Avenue, Oregon, Wisconsin 53575.

2. The wholly-owned subsidiaries which will participate in the operation and their states of incorporation are the following:

a. Dane Contracting, Inc., 422 North Burr Oak Avenue, Oregon, Wisconsin 53575 (a Wisconsin business corporation).

b. Trachte Manufacturing Corporation, 422 North Burr Oak Avenue, Oregon, Wisconsin 53575 (a Wisconsin business corporation).

c. Trachte Steelflex Corporation, 422 North Burr Oak Avenue, Oregon, Wisconsin 53575 (a Wisconsin business corporation).

Noreta R. McGee,

Secretary.

[FR Doc. 89-2651 Filed 2-3-89; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31379]

Chicago and North Western Transportation Co.; Trackage Rights Exemption; Wisconsin River Rail Transit Commission and Wisconsin & Calumet Railroad Co.

Wisconsin River Rail Transit Commission and Wisconsin & Calumet Railroad Company have agreed to grant local and overhead trackage rights to Chicago and North Western Transportation Company between milepost 19.6 and milepost 20.6 in Waukesha, WI. The trackage rights became effective on January 23, 1989.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on Myles L. Tobin, Chicago and North Western Transportation Company, One North Western Center, Chicago, IL 60606.

As a condition to the use of this exemption, any employees affected by the trackage rights, will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: January 31, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-2652 Filed 2-3-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-290; Sub-No. 60X]

Southern Railway Co.; Abandonment Exemption Between Leaksville Junction and Axton, VA

Applicant has filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exempt Abandonments* to abandon its 9-mile line of railroad between milepost 21.0-DW near Leaksville Junction, VA, and milepost 30.0-DW at Axton, VA.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on March 8, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/ rail banking statements under 49 CFR 1152.29 must be filed by February 16, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by February 27, 1989 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Roger A. Petersen, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by February 10, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7316. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: January 27, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-2540 Filed 2-3-89; 8:45 am]

BILLING CODE 7035-01-M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C.2d 400 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440-48446).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Water Act; Arcadia, FL, et al.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on January 23, 1989 a proposed Consent Decree in *United States v. City of Arcadia, Florida and the State of Florida*, Civil Action No. 87-24-Civ-FTM-10(A) was lodged with the United States District Court for the Middle District of Florida, Fort Myers Division. The proposed Consent Decree requires that the City upgrade its sewage treatment plant and demonstrate compliance with its permit by July 1, 1991. The Decree also requires the City to meet interim effluent limitations and to pay a civil penalty of $40,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to City of Arcadia, Florida, D.O.J. Ref. 90-5-1-1-2782.

The proposed Consent Decree may be examined at the office of the United States Attorney, Middle District of Florida, United States Courthouse, Tampa, Florida and at the Region IV, Offices of the Regional Counsel, Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.90 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-2647 Filed 2-3-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Water Act; Bayonne, NJ et al.

In accordance with departmental policy, 28 CFR 50.7, notice is hereby given that on January 25, 1989, a proposed consent decree in *United States of America v. City of Bayonne, New Jersey*, consolidated with *United States v. City of Hoboken*, Civil Action No. 79-2030, was lodged with the United States District Court for the District of New Jersey. The proposed consent decree settles the United States' claims against Bayonne under the Clean Water Act, relating to discharges from Bayonne's municipal sewage treatment plants in violation of effluent limitations and other applicable permit requirements.

The proposed consent decree requires Bayonne to construct a pipeline and other facilities necessary to connect its sewerage system to a regional wastewater treatment plant operated by the Passaic Valley Sewerage Commissioners (PVSC) in Newark, and to divert all sewage in Bayonne to the PVSC facility by December 30, 1989. The decree also requires (1) payment of $170,000 in settlement of the United States' civil penalty claims, (2) compliance with interim effluent limitations until the connection to the PVSC facility is completed, and (3) various interim operating improvements at Bayonne's existing treatment facilities.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. City of Bayonne*, D.J. Ref. 90-5-1-1-2552.

The proposed consent decree may be examined at the offices of the United States Attorney, Federal Building, 970 Broad Street, Newark, New Jersey 07102, and at the Region II office of the Environmental Protection Agency, 26 Federal Plaza, New York, NY 10278. A copy of the consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. Copies of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.70 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land & Natural Resources Division.

[FR Doc. 89-2648 Filed 2-3-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Safe Drinking Water Act; Bolton, MS

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on 1-17-89 a proposed Consent Decree in United States v. Town of Bolton, Mississippi, Civil Action No. J89-0027(W) was lodged with the United States District Court for the Southern District of Mississippi. The proposed Consent Decree concerns compliance with the Safe Drinking Water Act by the Town of Bolton, Mississippi. The proposed Consent Decree requires Bolton, which owns and operates a public water supply system serving approximately one thousand fifty-six (1056) individuals, upon entry of the Consent Decree, to comply with all

applicable requirements of 40 CFR § 141.21, 141.31, 141.32, and 141.14 relating to the Safe Drinking Water Act. Under the proposed Consent Decree, Bolton will be required to submit monthly reports to the Environmental Protection Agency (EPA) and the Mississippi State Department of Health, Division of Water Supply, copies of all reports necessary to demonstrate compliance with sampling for microbiological contaminants, and sampling and analytical requirements for coliform bacteria. Bolton, under the proposed Consent Decree, will be required to report all violations and anticipated violations of the Consent Decree to the EPA and Mississippi State Department of Health, Division of Water Supply. In addition, the proposed Consent Decree requires Bolton to hire and continue to employ for a minimum of three years from the date of entry of the Consent Decree a Certified Operator to operate and maintain the Town's public water supply system, so as to ensure compliance with all applicable federal and state statutes and regulations. The proposed Consent Decree provides for graduated stipulated penalties for Bolton's failure to comply with the terms contained in the Consent Decree. Bolton will pay the United States a civil penalty of six thousand dollars ($6,000) for past violations of the Safe Drinking Water Act. Termination of the Consent Decree is effected upon satisfactory compliance with all of the terms of the Decree, including the payment of penalties and the employment of a Certified Operator, and upon compliance with the Safe Drinking Water Act for a period of twelve consecutive months.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to Town of Bolton, Mississippi, D.J. Ref. 90-5-1-1-376.

The proposed Consent Decree may be examined at the office of the United States Attorney, Southern District of Mississippi, United States Courthouse, Jackson, Mississippi, and at the Region IV, Office of the Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.10 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-2646 Filed 2-3-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Water Act; Crown Cork & Seal Co., Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on January 17, 1989 a proposed Consent Decree in *United States v. Crown Cork and Seal Company, Inc.* was lodged with the United States District Court of the District of Wyoming. The proposed decree arises out of a case alleging various violations of general and categorical pretreatment regulations promulgated by the Environmental Protection Agency (EPA) for enforcement of the Clean Water Act, 33 U.S.C. 1251 *et seq.* The proposed decree requires (1) that Crown comply with the general pretreatment regulations requiring the submission of sampling and monitoring reports; (2) that it construct an engineering study of the operation of the treatment system of its Worland, Wyoming plant and construct the modifications necessary to bring the level of the pollutants fluoride, manganese, and oil and grease down to the level fixed in the categorical pretreatment regulations; and (3) that Crown pay a $85,000 civil penalty in consequence of past violations of the Act.

The Department of Justice will receive for a period of thirty (30) days from the date of publication of this notice comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Crown Cork and Seal Company, Inc.* 90-5-1-1-2967.

The proposed Consent Decree may be examined at the Office of the United States Attorney, J.C. Mahoney, Federal Building, 2120 Capitol Avenue, Cheyenne, Wyoming 82001, at the Region VIII office of the Environmental Protection Agency, 999 18th Street, Denver, Colorado 80201, and at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Rm. 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.00 for reproduction costs, payable to the "Treasurer of the United States."

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-2614 Filed 2-3-89; 8:45 am]

BILLING CODE 4481-01-M

Lodging of Consent Decree Pursuant to the Clean Air Act; Lenox, Inc.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on January 30, 1989, a proposed consent decree in *United States of America v. Lenox, Inc.*, Civ. No. 88-1324, was lodged with the United States District Court for the Western District of Pennsylvania.

The proposed consent decree resolves a judicial enforcement action brought by the United States, on behalf of the Environmental Protection Agency ("EPA"), against Lenox, Inc. for violations of the Clean Air Act. The complaint filed by the United States alleged that defendant violated the National Emission Standard for Hazardous Air Pollutants ("NESHAP") for arsenic, promulgated pursuant to section 112 of the Act, in connection with the operation of its glass manufacturing facility in Mt. Pleasant, Pennsylvania.

The proposed consent decree enjoins defendant from violating the arsenic NESHAP in the future and requires defendant to submit certain reports to EPA biannually for a period of one year. the proposed consent decree also requires defendant to pay a civil penalty of $80,000 to the United States Treasury.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States of America v. Lenox, Inc.*, D.O.J. Ref. 90-5-2-1-1239.

The proposed consent decree may be examined at the office of the United States Attorney, Western District of Pennsylvania, 633 U.S. Courthouse, 7th Avenue and Grant Street, Pittsburgh, Pennsylvania 15219, and at the Region III office of the Environmental Protection Agency, Office of Regional Counsel, Attention: Marcia E. Mulkey, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. A copy of the proposed consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, U.S. Department of Justice, Room 1521, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice.

[FR Doc. 89-2645 Filed 2-3-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Air Act; Muskegon Asphalt Paving Co.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that a proposed partial consent decree in *United States of America v. Muskegon Asphalt Paving Company*, Civil Action No. G87-465-CA8, was lodged with the United States District Court for the Western District of Michigan. The complaint filed by the United States in this action alleged that defendant violated sections 111 and 114 of the Clean Air Act, 42 U.S.C. 7411 and 7414, by operating a hot mix asphalt facility located in Muskegon, Michigan (the "Muskegon Plant") without conducting required new source performance tests in accordance with 40 CFR 60.8 and by exceeding applicable new source performance standards ("NSPS") limiting the allowable particulate content and opacity of emissions from the Muskegon Plant.

Under the proposed consent decree, defendant must conduct a performance test, using a test protocol approved by U.S. EPA, to demonstrate whether emissions from the Muskegon Plant comply with the limitations set forth in 40 CFR 60.92. Should this performance test indicate that the Muskegon Plant has not attained compliance with the requirements of 40 CFR 60.92, defendant would be required to repair, modify or replace the Plant's existing baghouse and thereafter demonstrate compliance with applicable NSPS requirements in accordance with a compliance schedule set forth in the proposed decree. The proposed decree also requires defendants to pay a civil penalty of $-7,500 for violations of sections 111 and 114 of the Clean Air Act.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC and should refer to *United States of America v. Muskegon Asphalt Paving Company*, D.J. Ref. No. 90-5-2-1-1106.

The proposed Consent Decree may be examined at the office of the United States Attorney, Room 399, Federal Building, 110 Michigan Street NW., Grand Rapids, Michigan 49503 and at the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 111 West Jackson Street, Third Floor, Chicago, Illinois 60604. Copies of the proposed consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.10 (ten cents per page reproduction cost) payable to the Treasurer of the United States.

Donald Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-2615 Filed 2-3-89; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984; Computer Aided Manufacturing—International, Inc.

Notice is hereby given that, on January 9, 1989, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Computer Aided Manufacturing-International, Inc. ("CAM-I") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in the membership and research and development project areas of CAM-I. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

The current industrial member companies in North America are: Allied Aerospace; Allied-Signal Aerospace Co.; Arthur Andersen & Co.; AT&T; Avery International; Beckman Instruments; Boeing Computer Services; Campbell Soup Company; Carnation Company; Caterpillar, Inc.; Coopers & Lybrand; Dana Corporation; Deere & Company; Deloitte Haskins & Sells; Eastman Kodak Co.; Eaton Corporation; Electronic Data Systems; Ernst & Whinney; General Dynamics; General Electric Co.; Grumman Aerospace; Hewlett-Packard Co.; Honeywell, Inc.; Hughes Aircraft Co.; Johnson Controls; Lockheed Aeronautical Systems Co.-Georgia Division; Lockheed Missiles & Space Co.; LTV Aerospace & Defense Co.; Management Science America; Martin Marietta Energy Syst.; McDonnell Douglas Corp.; Nabisco Brands, Inc.; Northern Telecom, Ltd.; Northrop Corporation; Parker Hannifin Corp.; Peat Marwick Main & Co.; Price Waterhouse; Rockwell International; Sandia National Laboratories; Structural Dynamics Research Corp.; Texas Instruments, Inc.; Textron, Inc.; Procter & Gamble Co.; U.S. Air Force ASD/PMD; U.S. Dept. of Energy; U.S. Navy OASN(S&L); United Technologies Corp.; Westinghouse Electric Corp.; and Williams International.

The current industrial member companies in Europe are: Aerospatiale; Alcatel NV; British Aerospace PLC; Bull SA; Daimler-Benz AG; Finmeccanica S.P.A.; IVF-Swedish Institute of Production Engineering Research; Lucas Engineering & Syst., Ltd.; Messerschmitt-Bolkow-Blohm; Metaalinstituut TNO; Nuovo Pignone S.P.A. DIV/MACC; Philips International B.V.; Siemens AG ZT ZFA AUT L; The Plessey Company PLC; Valmet Corporation; and Volkswagen AG.

Current industrial member companies in the Asian region are: Fujitsu. Ltd.; Hitachi, Ltc.; Honda Engineering Co.; and Oki Electric Industry Co.

The current industrial member in the Australian region is the Australian Government, Department of Defense.

Current educational members in the United States are: Arizona State University; California Polytechnic State University; Illinois Institute of Technology; Massachusetts Institute of Technology; North Carolina State University; North Texas State University; Oklahoma State University; Purdue University; University of

California; University of Maryland; University of Massachusetts; University of New Hampshire; and University of Southern California.

Current educational members in Europe are: Cambridge University; Cranfield Institute of Technology; Dorset Institute of Higher Education; Helsinki University of Technology; Katholieke Universiteit; Loughborough University of Technology; Politechnico Di Milano; Royal Institute of Technology, Stockholm; Technical Institute of Aachen; Universitaet Fridericiana; and University of Trondheim.

The current educational member in the Asian region is Nanyang Technical Institute.

The planned activities of CAM–I remain unchanged except that the project area relating to sculptured surfaces has been deleted and the "factory management" area has been changed to "intelligent manufacturing management."

On December 26, 1984, the Joint Venture filed its original notification pursuant to section 6(a) of the Act. The Department of Justice ("the Department") published a notice in the Federal Register pursuant to section 6(b) of the Act on January 24, 1985, 50 FR 3425–26. Additional notifications showing changes in membership were published in the Federal Register on February 28, 1986, 51 FR 6812–13; May 4, 1987, 52 FR 16321–22; and February 12, 1988, 53 FR 4232–33.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89–2649 Filed 2–3–89; 8:45 am]

BILLING CODE 4410–01–M

National Institute of Corrections

Advisory Board Committee Meetings; National Academy of Corrections and Jails Division

Time and Date: 10:00 a.m., Sunday, February 26, 1989.

Place: Courtyard by Marriott, 4710 Pearl East Circle, Boulder, Colorado.

Status: Open.

Matters To Be Considered: Divisional recommendations for the FY 1990 program plan and budget. The recommendations will be presented at the Advisory Board meeting on Monday, February 27, 1989.

Contact Person for More Information: Larry Solomon, Deputy Director, (202) 724–3106.

Larry Solomon,

Deputy Director.

[FR Doc. 89–2616 Filed 2–3–89; 8:45 am]

BILLING CODE 4410–36–M

Advisory Board Meeting

Time and Date: 8:00 a.m., Monday, February 27, 1989.

Place: Courtyard by Marriott, 4710 Pearl East Circle, Boulder, Colorado.

Status: Open.

Matters to be Considered: At the September 19, 1988 Board meeting, the NIC Advisory Board by-Laws were amended reducing the number of standing committees from five to four. The Information Services Committee was eliminated leaving the Prisons, Jails, Community Corrections, and National Academy of Corrections Committees. The Board will review the assignment of Board members to the four standing committees. Other agenda items include: Board review and approval of NIC staff budget and program recommendations for FY 1990, reports from the four standing committees, and the election of the Officers of the Board.

Contact Person for More Information: Larry Solomon, Deputy Director, (202) 724–3106.

Larry Solomon,

Deputy Director.

[FR Doc. 89–2617 Filed 2–3–89; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of this Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 16, 1989.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 16, 1989.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC, 20213.

Signed at Washington, DC this 17th day of January 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Petitioner (union/workers/firm) and location	Date received	Date of petition	Petition no.	Articles produced
Abex Corporation (USWA), Medina, NY	1/17/89	11/15/88	22,376	Iron and steel castings.
Pool Well Service, Co., (company), Andrews, TX	1/17/89	1/3/89	22,377	Oil and gas.
Pride Well Service, (workers), Andrews, TX	1/17/89	1/3/89	22,378	do.
Texas City Refining, Inc. (workers), Texas City, TX	1/17/89	12/15/88	22,379	do.
Texas Fishing Tools, Inc. (workers), Kilgore, TX	1/17/89	12/29/88	22,380	do.
North American Oil and Gas, Inc. (company), Austin, TX	10/3/88	9/18/88	[1] 21,210	do.

[1] Investigation re-opened.

[FR Doc. 89–2691 Filed 2–3–89; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–21, 778]

Amber Refining, Inc. Forth Worth; TX; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 18, 1988 in response to a worker petition received on November 18, 1988 which was filed by the Federated Independent Texas Union on behalf of workers at Amber Refining, Inc., Forth Worth, Texas.

The retroactive provisions of section 1421(a)(1)(B) of the Omnibus Trade and Competitiveness Act of 1988 do not apply to workers who are engaged in the production of crude oil or refined petroleum products if such workers were eligible to be certified for benefits under the Trade Act prior to the implementation of the retroactive provisions.

All operations at the subject plant were suspended in February of 1986 and have not been reinstated to date. A negative determination applicable to the petitioning group of workers was issued on November 20, 1986 (TA–W–856). No new information is evident which would result in a reversal of the Department's previous determination.

All workers were separated from the subject firm more than one year prior to the date of the current petition. Section 223 of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 17th day of January, 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89–2603 Filed 2–3–89; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–21, 787]

Arctic Surveys Co., Fairbanks, AK; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 18, 1988 in response to a worker petition which was filed by Teamsters Local 959 on behalf of workers and former workers at Arctic Surveys Company, Fairbanks, Alaska.

All workers were separated from the subject firm before October 1, 1985. In accordance with section 223(b) of the Act, as amended by Pub. L. 100–418, no certification may apply to any worker whose last total or partial separation from the subject firm occurred before October 1, 1985. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 23rd day of January 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89–2604 Filed 2–3–89; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 16, 1989.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 16, 1989.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 9th day of January 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition number	Articles produced
Basin Well Service (Workers)	Odessa, TX	1/9/89	12/23/88	22,340	Oil & Gas.
Beckman's Consulting Serv. (IDPC)	Williston, ND	1/9/89	11/15/88	22,341	Oil & Gas.
Blackhawk Drilling & Exploration Inc. (Workers)	Midland, TX	1/9/89	12/19/88	22,342	Oil & Gas.
Box Pipe & Supply (Workers)	Odessa, TX	1/9/89	12/22/88	22,343	Oil & Gas.
Certified Metals (Workers)	Clifton, NJ	1/9/89	12/19/88	22,344	Jewelry.
Cliffs Drilling Co. (Workers)	Scott, LA	1/9/89	11/15/88	22,345	Oil & Gas.
D.L. Ray, Inc. (Workers)	Richardson, TX	1/9/89	12/14/88	22,346	Oil & Gas.
Delta Drilling Co. (Workers)	Tyler, TX	1/9/89	10/25/88	22,347	Oil & Gas.
Electronic Data (Workers)	Hamilton, OH	1/9/89	12/20/88	22,348	Metal Stampings.
Farmland Refinery (Workers)	Coffeyville, KS	1/9/89	12/16/88	22,349	Oil & Gas.
Garden Drilling Co. (Workers)	Salem, IL	1/9/89	12/16/88	22,350	Oil & Gas.
Gas Co. of New Mexico	Bloomfield, NM	1/9/89	11/28/88	22,351	Oil & Gas.
Gasfield Specialists Inc.	Shinglehouse, PA	1/9/89	11/14/88	22,352	Oil & Gas.
Geer Tank Trucks, Inc. (Workers)	Jacksboro, TX	1/9/89	12/22/88	22,353	Oil & Gas.
Goebel United States (Workers)	Pennington, NJ	1/9/89	12/27/88	22,354	Figurines.
Guiberson Div. of Dresser Industries, Inc.	Houston, TX	1/9/89	12/19/88	22,355	Oil & Gas.
Honeywell Bull Phoenix Operations (Workers)	Phoenix, AZ	1/9/89	12/20/88	22,356	Computers.
Imprimis Technology, Inc. (Workers)	Aberdeen, SD	1/9/89	12/19/88	22,357	Read/Write Assemblies.
Kaiser Coal Corp. (UMWA)	Sunnyside, UT	1/9/89	12/15/88	22,358	Coal.
Leverenz Shoe Co. (Workers)	Valders, WI	1/9/89	11/28/88	22,359	Shoes.

BEST COPY AVAILABLE

APPENDIX—Continued

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition number	Articles produced
Martin-Copeland Co. (Workers)	E. Providence, RI	1/9/89	12/6/88	22,360	Eyeglass Frames.
Model Expo Inc.-Euro Imports	Wharton, NJ	1/9/89	12/30/88	22,361	Ship Model Kits.
National Tool (Workers)	Kenilworth, NJ	1/9/89	12/14/88	22,362	Mold Sets & Comp.
Nettl Dress Co. (Workers)	Newark, NJ	1/9/89	12/22/88	22,363	Children's Dresses.
North American Exploration (Workers)	Englewood, CO	1/9/89	12/19/88	22,364	Oil & Gas.
Petrofina Delaware, Inc. (Workers)	Houston, TX	1/9/89	12/19/88	22,365	Oil & Gas.
Portage Mills Co. (TWU)	St. Portage, WI	1/9/89	12/23/88	22,366	Socks.
R&M Kaufmann (Workers)	Aurora, IL	1/9/89	11/30/88	22,367	Dresses.
Rosanna Optical Case, Inc. (Workers)	Paterson, NJ	1/9/89	12/22/88	22,368	Optical Cases.
Schlumberger Well Serv. (Workers)	Traverse City, MI	1/9/89	12/21/88	22,369	Oil & Gas.
See-Land Drilling Co. (Workers)	Houma, LA	1/9/89	12/27/88	22,370	Oil & Gas.
Silver Creek Oil & Gas Inc.	Wichita, KS	1/9/89	12/18/88	22,371	Oil & Gas.
Sundown Well Service (Workers)	Brownfield, TX	1/9/89	12/19/88	22,372	Oil & Gas.
Thompson Electron Tubes & Devices Corp. (IUE)	Dover, NJ	1/9/89	12/19/88	22,373	Electronic Devices.
Tubular Corporation of America	Muskogee, OK	1/9/89	12/19/88	22,374	Oil & Gas.
White Swan Lumber (Workers)	White Swan, WA	1/9/89	12/28/88	22,375	Lumber.

[FR Doc. 89-2605 Filed 2-3-89; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-21,818]

Construction & Rigging Anchorage, AK; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 16, 1988 in response to a worker petition which was filed by Teamsters Local 959 on behalf of workers and former workers at Construction & Rigging, Anchorage, Alaska.

All workers were separated from the subject firm before October 1, 1985. In accordance with section 223(b) of the Act, as amended by Pub. L. 100-418, no certification may apply to any worker whose last total or partial separation from the subject firm occurred before October 1, 1985. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 23rd day of January 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89-2606 Filed 2-3-89; 8:45 am]
BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-89-5-C]

Scarab Energy Corp; Petition for Modification of Application of Mandatory Safety Standard

Scarab Energy Corporation, Route 1, Box 409, Wartburg, Tennessee 37887 has filed a petition to modify the application of 30 CFR 77.1605(k) (berms or guards) to its Buffalo Mountain No. 4 Mine (I.D. No. 40-02962) located in Morgan County, Tennessee. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that beams or guards be provided on the outer banks of elevated roadways.

2. Petitioner states that application of the standard would result in a diminution of safety to the miners affected because berms or guards confine water run off the the road surface, which washes away the surfacing materials and results in a dangerous road surface. Berms would prevent the removal of snow and ice from the roadways.

3. As an alternate method, petitioner states that—

(a) A daily inspection of all coal-hauling vehicles would be made and any defects detected would be corrected before the vehicle is put into service;

(b) All equipment operators would be trained in the use of haulage equipment and the safety of vehicles on haulage roads;

(c) All haulage vehicles would have original manufacturers brakes, and an emergency (parking) braking system;

(d) Roadway surfaces would be kept free of debris, excessive water, snow, and ice, and maintained as free as practicable of small ditches (washboard effects);

(e) Warning signs would be posted designating curves, steep grades, where trucks should shift to a lower gear, and where roadways are reduced to one-lane traffic. Stop signs would be posted where one road intersects another, giving main haulage traffic the right of way, and signs would be posted designating passing points; and

(f) A traffic system would be put into use for these roads requiring that loaded trucks have the right of way on the highwall side of roads regardless of their direction of travel.

4. For these reasons, petitioner requests a modification of the Standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulation and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 8, 1989. Copies of the petition are available for inspection at that address.

Date: January 31, 1989

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-2602 Filed 2-3-89; 8:45 am]
BILLING CODE 4510-43-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice No. (89-06)]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of agency report forms under OBM review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the

Federal Register notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

DATE: Comments are requested by March 8, 1989. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Agency Clearance Officer of your intent as early as possible.

ADDRESS: Philip D. Waller, NASA Agency Clearance Officer, Code NPN, NASA Headquarters, Washington, DC 20546; Paperwork Reduction Project (2700-xxxx), OMB, Room 3235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (202) 453-1090.

Reports

Title: Industry Safety, Reliability, Maintainability and Quality Assurance Manpower Survey.

OMB Number: None.

Type of Request: New.

Frequency of Report: One-time only.

Type of Respondent: Businesses or other for profit, federal agencies or employees, non-profit institutions.

Number of Respondents: 30.

Responses per Respondent: 1.

Annual Responses: 30.

Hours per Response: 3.

Annual Burden Hours: 90.

Abstract-Need/Uses: In the aftermath of the Challenger accident, NASA is revamping its entire Safety, Reliability, Maintainability and Quality Assurance organizations. One measure of the effectiveness of this effort is a comparison of our current and proposed manning levels with those existing in industry or other government agencies performing similar functions.

January 10, 1989.

Philip D. Waller,

Director, General Management Division.

[FR Doc. 89-2603 Filed 2-3-89; 8:45 am]
BILLING CODE 7510-01-M

[Notice 89-05]

Delegation of Federal Information Processing Standards (FIPS) Waiver Authority

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Delegation of FIPS Waiver Authority.

SUMMARY: NASA hereby gives notice that the Administrator delegated authority to the Associate Administrator for Management, NASA's senior official designated pursuant to section 3506(b) of Title 44 of the U.S. Code, the authority to waive, under conditions specified by the Secretary of Commerce, previously issued and all subsequent FIPS that are compulsory for Federal agency use in the acquisition and management of information processing resources.

DATE: The delegation was effective January 9, 1989.

ADDRESS: National Aeronautics and Space Administration, Code NT, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Wallace O. Keene, Assistant Associate Administrator for Information Resources Management, (202) 453-1775.

January 31, 1989.

C. Howard Robins, Jr.,

Associate Administrator for Management.

[FR Doc. 89-2604 Filed 2-3-89; 8:45 am]
BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Folk Arts Advisory Panel; Establishment

In accordance with provisions of the Federal Advisory Committee Act (Pub. L. 92-463) and General Services Administration regulations issued pursuant thereto (41 CFR Part 101-6), and under the authority of section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959 (a)(4)), notice is hereby given that establishment of the Folk Arts Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of two years until February 6, 1991. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

The function of this advisory committee cannot be performed by the Arts Endowment, an existing advisory committee or other means, such as public hearing. Neither the agency nor any existing advisory committee possesses sufficient expertise or breadth of representation regarding this field to offer such advice. Other means, such as public hearings, are not suitable for obtaining the necessary advice. Therefore, the establishment and use of this advisory committee is in the public interest.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and with the Library of Congress.

Yvonne Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

February 1, 1989.

[FR Doc. 89-2731 Filed 2-3-89; 8:45 am]
BILLING CODE 7537-01-M

Opera-Musical Theater Advisory Panel; Establishment

In accordance with provisions of the Federal Advisory Committee Act (Pub. L. 92-463) and General Services Administration regulations issued pursuant thereto (41 CFR Part 101-6), and under the authority of section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959 (a)(4)), notice is hereby given that establishment of the Opera-Musical Theater Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of two years until February 6, 1991. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National

Foundation on the Arts and the Humanities.

The function of this advisory committee cannot be performed by the Arts Endowment, an existing advisory committee or other means, such as public hearing. Neither the agency nor any existing advisory committee possesses sufficient expertise or breadth of representation regarding this field to offer such advice. Other means, such as public hearings, are not suitable for obtaining the necessary advice. Therefore, the establishment and use of this advisory committee is in the public interest.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and with the Library of Congress.

January 31, 1989.

Yvonne Sabine, Director,

Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-2732 Filed 2-3-89; 8:45 am]

BILLING CODE 7537-01-M

Arts in Education Advisory Panel; Renewal

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92-463), section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4) and paragraph 9 of Office of Management and Budget Circular A-63) notice is hereby given that renewal of the Arts in Education Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 6, 1991. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and with the Library of Congress.

February 1, 1989.

Yvonne M. Sabine,

Director, Office of Council & Panel Operations, National Endowment for the Arts.

[FR Doc. 89-2733 Filed 2-3-89; 8:45 am]

BILLING CODE 7537-01-M

Dance Advisory Panel; Renewal

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92-463), section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4) and paragraph 9 of Office of Management and Budget Circular A-63) notice if hereby given that renewal of the Dance Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 6, 1991. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and with the Library of Congress.

February 1, 1989.

Yvonne M. Sabine,

Director, Office of Council & Panel Operations, National Endowment for the Arts.

[FR Doc. 89-2734 Filed 2-3-89; 8:45 am]

BILLING CODE 7537-01-M

Design Arts Advisory Panel; Renewal

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92-463), section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4) and paragraph 9 of Office of Management and Budget Circular A-63) notice is hereby given that renewal of the Design Arts Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 6, 1991. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and with the Library of Congress.

February, 1989.

Yvonne M. Sabine, Director,

Office of Council & Panel Operations, National Endowment for the Arts.

[FR Doc. 89-2735 Filed 2-3-89; 8:45 am]

BILLING CODED 7537-01-M

Expansion Arts Advisory Panel; Renewal

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92-463), section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4) and paragraph 9 of Office of Management and Budget Circular A-63) notice is hereby given that renewal of the Expansion Arts Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 6, 1991. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the

Endowment and with the Library of Congress.

February 1, 1989.

Yvonne M. Sabine,

Director, Office of Council & Panel Operations, National Endowment for the Arts.

[FR Doc. 89-2736 Filed 2-3-89; 8:45 am]

BILLING CODE 7537-01-M

Inter-Arts Advisory Panel; Renewal

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92-463), section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4) and paragraph 9 of Office of Management and Budget Circular A-63) notice is hereby given that renewal of the Inter-Arts Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 6, 1991. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and with the Library of Congress.

February 1, 1989.

Yvonne M. Sabine,

Director, Office of Council & Panel Operations, National Endowment for the Arts.

[FR Doc. 89-2736 Filed 2-3-89; 8:45 am]

BILLING CODE 7537-01-M

Literature Advisory Panel; Renewal

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92-463), section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4) and paragraph 9 of Office of Management and Budget Circular A-63) notice is hereby given that renewal of the Literature Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 6, 1991. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and with the Library of Congress.

January 31, 1989.

Yvonne M. Sabine,

Director, Office of Council & Panel Operations, National Endowment for the Arts.

[FR Doc. 89-2738 Filed 2-3-89; 8:45 am]

BILLING CODE 7537-01-M

Media Arts Advisory Panel; Renewal

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92-463), section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4) and paragraph 9 of Office of Management and Budget Circular A-63) notice is hereby given that renewal of the Media Arts Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 6, 1991. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and with the Library of Congress.

January 31, 1989.

Yvonne M. Sabine,

Director, Office of Council & Panel Operations, National Endowment for the Arts.

[FR Doc. 89-2739 Filed 2-3-89; 8:45 am]

BILLING CODE 7537-01-M

Museum Advisory Panel; Renewal

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92-463), section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4) and paragraph 9 of Office of Management and Budget Circular A-63) notice is hereby given that renewal of the Museum Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 6, 1991. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and with the Library of Congress.

January 31, 1989.

Yvonne M. Sabine,

Director, Office of Council & Panel Operations, National Endowment for the Arts.

[FR Doc. 89-2740 Filed 2-3-89; 8:45 am]

BILLING CODE 7537-01-M

Music Advisory Panel; Renewal

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92-463), section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4) and paragraph 9 of Office of Management and Budget Circular A-63) notice is hereby given that renewal of the Music Advisory Panel has been approved by the Chairman of the National Endowment

for the Arts for a period of 2 years until February 6, 1991. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and with the Library of Congress.

January 31, 1989.

Yvonne M. Sabine,

Director, Office of Council & Panel Operations, National Endowment for the Arts.

[FR Doc. 89-2741 Filed 2-3-89; 8:45 am]

BILLING CODE 7537-01-M

Visual Arts Advisory Panel; Renewal

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92-463), section 10(a)(4) of the Natonal Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4) and paragraph 9 of Office of Management and Budget Circular A-63) notice is hereby given that renewal of the Visual Arts Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 6, 1991. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council of the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) policies and programs of the National Endowment of the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and with the Library of Congress.

January 31, 1989.

Yvonne M. Sabine,

Director, Office of Council & Panel Operations, National Endowment for the Arts.

[FR Doc. 89-2742 Filed 2-3-89; 8:45 am]

BILLING CODE 7537-01-M

Inter-Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Inter-Arts Advisory Panel (Services to the Arts/Artists' Colonies Section) to the National Council on the Arts will be held on February 22-23, 1989, from 9:00 a.m.-6:00 p.m. and on February 24, 1989, from 9:00 a.m.-3:00 p.m. in Room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on February 24, 1989 from 9:00 a.m.-1:00 p.m. The topics for discussion will be guidelines and policy issues.

The remaining sessions of this meeting on February 22-23, 1989 from 9:00 a.m.-6:00 p.m. and on February 24, 1989 from 1:00 p.m.-3:00 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Futher information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

January 31, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-2744 Filed 2-3-89; 8:45 am]

BILLING CODE 7537-01-M

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of th Music Advisory Panel (Music Recording Section) the the National Council on the Arts will be held on March 1-2, 1989 from 9:00 a.m.-5:00 p.m. in Room M-14 at the Nacy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on March 2, 1989 from 3:45 p.m.-5:00 p.m. The topics for discussion will be policy issues.

The remaining sessions of this meeting on March 1, 1989 from 9:00 a.m.-5:00 p.m. and on March 2, 1989 from 9:00 a.m.-3:45 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6), and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

January 31, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-2746 Filed 2-3-89; 8:45 am]

BILLING CODE 7537-01-M

Media Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Programming in the Arts Section) to the National Council on the Arts will be held on March 1, 1989, from 9:30 a.m.-6:30 p.m. and March 2, 1989, from 9:30 a.m.-6:00 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6), and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

January 31, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-2743 Filed 2-3-89; 8:45 am]

BILLING CODE 7537-01-M

Media Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Programming in the Arts Section) to the National Council on the Arts will be held on March 1, 1989, from 9:30 a.m.-6:30 p.m. and March 2, 1989, from 9:30 a.m.-6:00 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6), and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

January 31, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-2747 Filed 2-3-89; 8:45 am]

BILLING CODE 7537-01-M

Theater Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Professional Theater Companies Section) to the National Council on the Arts will be held on March 13-17, 1989, from 9:30 a.m.-10:00 p.m. and March 18, 1989, from 9:30 a.m.-5:00 p.m. in Room M-07 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on March 13, 1989, from 9:30 a.m.-10:00 a.m. and on March 18, 1989, from 1:00 p.m.-5:00 p.m. The topics for discussion will be guidelines and policy issues.

The remaining sessions of this meeting on March 13, 1989, from 10:00 a.m.-10:00 p.m., March 14-17, 1989, from 9:30 a.m.-10:00 p.m., and March 18, 1989, from 9:30 a.m.-1:00 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6), and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682.5433.

January 31, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-2747 Filed 2-3-89; 8:45 am]

BILLING CODE 7537-01-M

Theater Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Fellowships for Mimes and Solo Performance Artists Section) to the National Council on the Arts will be held on February 23, 1989, from 9:00 a.m.-6:00 p.m. in Room M-07 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on February 23, 1989 from 9:00 a.m.-9:30 a.m. The topics for discussion will be policy issues.

The remaining session of this meeting on February 23, 1989, from 9:30 a.m.-6:00 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6), and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

January 31, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-2746 Filed 2-3-89; 8:45 am]

BILLING CODE 7537-01-M

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Professional Training and Career Development Sections) to the National Council on the Arts will be held on February 22, 1989, from 9:00 a.m.-6:00 p.m. and February 23, 1989, from 9:00 a.m.-5:30 p.m. in Room M-14 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on February 23, 1989, from 4:00 p.m.-5:30 p.m. The topics for discussion will be guidelines and policy issues.

The remaining sessions of this meeting on February 22, 1989, from 9:00 a.m.-6:00 p.m. and on February 23, 1989, from 9:00 a.m.-4:00 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed o the public pursuant to

National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

January 31, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-2748 Filed 2-3-89; 8:45 am]

BILLING CODE 7537-01-M

Office for Public Partnership Advisory Panel (Formerly Office of Partnership Advisory Panel); Renewal

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92-463), section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4) and paragraph 9 of Office of Management and Budget Circular A-63), notice is hereby given that renewal of the Office for Public Partnership Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 6, 1991. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and with the Library of Congress.

January 31, 1989.

Yvonne M. Sabine,

Director, Office of Council & Panel Operations, National Endowment for the Arts.

[FR Doc. 89-2749 Filed 2-3-89; 8:45 am]

BILLING CODE 7537-01-M

Theater Advisory Panel; Renewal

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92-463), section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4) and paragraph 9 of Office of Management and Budget Circular A-63), notice is hereby given that renewal of the Theater Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 6, 1991. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and with the Library of Congress.

January 31, 1989.

Yvonne M. Sabine,

Director, Office of Council & Panel Operations, National Endowment for the Arts.

[FR Doc. 89-2750 Filed 2-3-89; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Materials Submitted For OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

Agency Clearance Officer: Herman G. Fleming, (202) 357-9520.

OMB Desk Officer: ATTN: Jim Houser, Desk Officer, OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

Title: Evaluation of NATO Fellowship Program.

Affected Public: Individuals.

Respondents/Burden Hours: 1104 respondents; 8 minutes per response.

Abstract: In the last 30 years, NSF has awarded 1,104 NATO Postdoctoral Fellowships for study at scientific institutions in countries that are members of NATO. A base-line study of the program was conducted in 1968 and this survey is needed for program management. NSF, Department of State and NATO are interested in the impact of the program on young PHD's and the development of international collaboration in science.

Dated: February 1, 1989.

Herman G. Fleming,

NSF Clearance Officer.

[FR Doc. 89-2711 Filed 2-3-89; 8:45 am]

BILLING CODE 7555-01-M

[NSF 89-8]

Ethics and Values Studies in Science, Technology and Society

Closing Dates: For Preliminary Proposals: November 1 and May 1. For Formal Proposals: February 1 and August 1 (occurring annually).

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I. Description

A. Overview

Ethics and Values Studies (EVS), in the Studies in Science, Technology and Society (SSTS) Program of the National Science Foundation (NSF), coordinates support for research and related activities examining ethical or value issues of current significance to U.S. science or engineering.

EVS research and educational efforts focus on ethical or value aspects of the interaction between science, technology and society. The purpose is to encourage thoughtful and systematic inquiry into the mutual influences of science or engineering and the moral life of individuals, groups, institutions, communities and nations. EVS supports projects that enhance understanding of the social values and mutual obligations and responsibilities that arise in these interactions.

Research projects often examine aspects of scientific or professional ethics, controversies surrounding impacts of or on sciences and technologies, or ethical and value issues in development and use of scientific or technical tools for decision making. Cross-cultural research, comparing the U.S. with other nations, is eligible; interdisciplinary work is encouraged.

Educational project make the results of these activities and of prior work available in classrooms or informal educational settings. EVS also considers proposals for national and international conferences, symposia, and research workshops. There must be sponsored or cosponsored by national associations or organizations.

The Studies in Science, Technology and Society program in the Directorate for Biological, Behavioral and Social Sciences coordinates Ethics and Values Studies (EVS). Funds to support EVS projects come from all of the research directorates and the Science and Engineering Education directorate at NSF. Proposals with EVS components can be submitted directly to EVS or to programs in the NSF directorates. To be eligible for EVS funds in those directorates, however, the proposal review process must be coordinated with and involve EVS.

The directorates are interested in encouraging efforts to explore the ethical or value aspects of issues facing scientists and engineers whose educational and research activities they support. EVS has supported studies on ethical and value questions arising from new developments in global change research, and from new developments in biological research; an international conference and campus-based programs on science and social responsibility for graduate and upper-level undergraduate science and engineering students; Delphi-type research projects on ethical norms in computer science, and in publication practices in scientific and technical journals; planning projects on data sharing in the social sciences, and on the effects of communication restrictions on sciences and engineerng; an effort to develop a computer tutorial in ethics for engineering students; and research in ethics, values and hazards management.

Several areas are not eligible for consideration. These include studies or educational activities in medicine and society which have a public health or clinical orientation, and projects focused exclusively on ethical issues associated with new military technologies and national defense strategies, or requiring the use of classified materials.

The examples of areas that EVS has supported do not provide a comprehensive listing of eligible topics; potential applicants are encouraged to write or call and discuss their ideas with SSTS program staff at 202/357-9884; electronic (bitnet) mail address: dirssts@note.nsf.gov. Summaries describing awards made in previous years are available on request.

Scholars and scientists and engineers who wish to improve their skills in EVS-related areas of the Science, Technology and Society Studies program are eligible to apply to the SSTS Postdoctoral Fellowships and Professional Development Awards program. Request NSF Announcement 88-82 for futher information. Support for extraordinary expenses of dissertation research is also available. Please request NSF Announcement 88-35, "Grants for Improving Doctoral Dissertation Research." Faculty members at institutions with limited research opportunities may arrange to work with investigators at other institutions who have or are applying for EVS grants. They should arrange with the grantee institutions to request supplemental funds for these additional costs.

B. EVS Research and Related Activities

EVS Research

EVS research usually brings several disciplinary perspectives to bear on a theme or question in science, technology and society studies. These perspectives may be achieved by a single investigator, with assistance from several advisors as needed, or in a project involving several investigators with different disciplinary backgrounds.

Studies often integrate perspectives and combine methods from

- Scholarly research and reflection traditionally employed in the humanities disciplines,
- Methods of empirical and statistical study practiced in the social sciences,
- Description and assessment of new developments in scientific and engineering practice and understanding,
- Simulation experiments and other methods that primise to yield insight into the ways science, engineering, technology and morality interact.

Research proposals must identify an important problem and appropriate methods by which to study it. They should describe project goals and their implications for Studies in Science, Technology and Society; the theoretical and methodological foundations for the research; prior work and its results; and the anticipated products from the new work. Proposals involving surveys and interviews are expected to meet the standards of experts in these fields.

EVS will also consider requests for planning grants. Applicants may wish to apply for a first phase of research—for instance, for technical assistance in project definition and the development of appropriate tools and interpretive plans.

Conferences and Workshops

EVS can help to support national or international conferences, symposia, and research workshops that enable leading scientists, engineers, scholars, policymakers, and representatives of interested groups to develop, evaluate, and share new research findings. Proposals for conference or workshop support should describe the need for the gathering, the proposed date and location, topic and persons who will be involved, prior related meetings, publicity, and expected outcomes. These activities may be convened as special sessions in regular meetings of professional societies. Concomitant support by several Federal agencies or private organizations is encouraged.

Other Activities

Other appropriate activities include projects to collect, compile, and publish background materials that provide a resource for scholars and other interested persons. A wide variety of EVS educational projects, in precollege and undergraduate education as well as in "informal" educational modes, are also eligible for consideration, in conjunction with programs in the Science and Engineering Education directorate. Applicants should contact EVS to discuss their ideas before preparing a written submission.

II. Submission of Proposals

A. Who May Submit

Proposals may be submitted by qualified individual investigators who do not have institutional affiliations or through normal institutional channels in accordance with instructions contained in the brochure *Grants for Research and Education in Science and Engineering* (GRESE, NSF 83-57, rev. 11/87). The Foundation does not generally provide support for research sponsored by foreign institutions.

B. Preliminary Proposals

EVS is a cross-directorate activity at NSF. In order to manage this activity effectively, the Foundation requests that applicants, particularly those who have not previously submitted a proposal to the program, submit preliminary proposals. Comments by Foundation staff will provide a basis for establishing the relevance of a proposal for potential EVS support, and for providing guidance on the appropriateness and structure of a formal submission.

Preliminary proposals are regarded as informal communications between prospective applicants and Foundation staff and need not adhere to any specific format. However, they should include a cover sheet with the applicant's name, mailing address, the title of the proposed project, and its total cost. Preliminary proposals need not be endorsed by the head or authorized representative of the applicant's institution.

Preliminary proposals, not more than five pages long, should identify an area of inquiry, methods and prior work, contributions expected, dissemination and evaluation plans, investigators' credentials and term and budget for the project. They may be submitted at any time; submission by the dates on the cover of this announcement will assure time for replies of use in preparation of formal proposals for the subsequent closing date.

Two copies of each preliminary proposals should be sent directly to Ethics and Values Studies in Science, Technology and Society, Division of Instrumentation and Resources, National Science Foundation, 1800 G Street NW., Room 312, Washington, DC 20550.

C. Formal Proposals

When to Submit

Formal proposals should be submitted by February 1 and August 1. They will be reviewed and the results communicated to applicants within six months of those submission dates. Until a decision is announced, no information can be provided on the probability of support.

Where to Submit

You should submit 20 copies. The original proposal document and 18 copies should be addressed to the Data Support Services Section, National Science Foundation, 1800 G Street, NW., Room 233, Washington, DC 20550. If they are mailed in more than one package, the number of packages should be marked on the outside of each (e.g., 1 of 3). The remaining copy should be sent, for information, directly to EVS, National Science Foundation, Washington, DC 20550. Proposals must be sent prepaid, not collect.

The acknowledgement of receipt of the proposal will contain a registry number. Later communications about the proposal should be addressed to EVS and identified by the NSF registry number.

Contents of the Proposal

Except as may be modified by this announcement, all applicants should follow the standard NSF guidelines in *GRESE* (NSF 83–57 Rev. 11/87). All proposals should contain the sections outlined in *GRESE* in the order indicated. *GRESE* contains all of the forms needed for formal submissions. It is available from Forms and Publications Unit, Room 232, NSF, 1800 G Street, NW., Washington, DC 20550; telephone 202/357–3619.

Special Notes: EVS project descriptions should be concise—of no more than 15 single spaced or 30 double spaced pages of standard size type. Background information on how the project will contribute to research or education in ethics or values studies in science, technology and society should be summarized. The description should concentrate on the presentation of research assumptions, procedures, and expected outcomes. Interdisciplinary projects should present plans to integrate the various contributions of the collaborators. Cross-cultural studies should identify collaborators in the countries under study. All proposals should describe the audiences for whom results of the projects will be useful and plans to make the results available to them. Outcomes from prior NSF-supported projects that bear on the proposed work should be described in the "Results of Prior Support" section. Biographical sketches should be one or two paragraphs, and vitas should be limited to three pages and list only the five to ten most important publications relevant to judging the investigators' credentials for undertaking the project.

III. Proposal Processing and Evaluation

Proposals will be evaluated in accordance with those criteria outlined in *Grants for Research and Education in Science and Engineering* (GRESE–NSF 83–57 Rev. 11/87). Specific criteria for EVS support include:

- Intellectual excellence and originality;
- Potential to clarify ethical or value aspects of current scientific, engineering, or technical research or its applications;
- Theoretical, methodological or educational contributions to interdisciplinary studies in science, technology, and society;
- Relevance to important issues of public policy or professional practice; and
- National impact and widespread, appropriate dissemination and use of results.

EVS reviewers and panelists will consider whether they would assign the proposal a high, medium or low priority, by asking themselves: Is this an important EVS issue for NSF directorates or programs? Is there meaningful integration between disciplines associated with the effort? Is it likely to continue or encourage related efforts afterwards? Are the results likely to add significantly to our understanding and improve relevant policy or practice?

IV. The Award

Notification of an award is by letter signed by the Foundation's Grants Officer, addressed to the organization to which the grant is made. Copies are included for the principal investigator and the organization's business office.

V. Grant Administration Highlights

Once an award is made the project director is responsible for complying with NSF requirements for its satisfactory completion. NSF brochure 83–57 Rev. 11/87 *Grants for Research and Education in Science and Engineering* describes these requirements in the section entitled "Grant Administration." Grants are administered in accordance with the applicable terms and conditions (GC–1, Grant General Conditions (10/88) or FDP–II, General Terms and Conditions (10/88), copies of which may be requested from the NSF Forms and Publications Unit previously cited.) More comprehensive information is contained in the *NSF Grant Policy Manual*, usually available in grants administration offices.

The Foundation provides awards for research and educational projects. The Awardee is wholly responsible for the conduct of such projects and for preparation of the results for publication. The Foundation, therefore, does not assume responsibility for such findings or their interpretation.

The Foundation welcomes proposals on behalf of all qualified scientists and engineers, and strongly encourages women, minorities and persons with disabilities to compete fully for any of the awards described in this document. Facilitation Awards for Handicapped scientists and engineers (FAH) provide funds on research grants for special assistance or equipment to enable physically disabled scientists or engineers or students to participate in the research. See the FAH announcement (NSF84–62) or contact the SSTS program officers. NSF has TDD (Telephonic Device for the Deaf) capability which enables individuals with hearing impairments to communicate with the Division of Personnel Management for information relating to NSF programs, employment or general information. The number is (202) 357–7492.

In accordance with Federal statutes and regulations and NSF policies, no person on the grounds of race, color, sex, national origin, or disability shall be excluded from participation in, denied the benefits of, or be subject to discrimination under any program or activity receiving financial assistance from the National Science Foundation.

This acitivity is described in the Catalog of Federal Domestic Assistance category 47.051, Biological, Behavioral and Social Sciences.

Rachelle D. Hollander,

Program Director, Ethics and Values Studies in Science, Technology and Society.

[FR Doc. 89–2650 Filed 2–3–89; 8:45 am]

BILLING CODE 7555-01-M

Academic Research Facilities Modernization Program Regional Meetings

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation is sponsoring six half-day regional meetings between February 23 and March 9, 1989, in order to provide interested organizations with information on the legislation and the development of the proposed Academic Research Facilities Modernization Program, as well as to hear questions, suggestions, and views. These morning meetings, open to the public, will be held in Chicago, San Diego, Denver, Atlanta, Boston, and Houston.

DATES

Chicago

Date: Thursday, February 23, 1989
Hosted By: University of Illinois-Chicago
Location: Room 2850, University Hall, University of Illinois-Chicago, 601 South Morgan, Chicago, IL 60607

San Diego

Date: Monday, February 27, 1989
Hosted By: San Diego State University Foundation
Location: Council Chambers, Aztec Center, San Diego State University, San Diego, CA 92182

Denver

Date: Thursday, March 2, 1989
Hosted By: Colorado State University/ University of Denver
Location: Sheraton Denver Airport Hotel, 3535 Quebec Street, Denver, CO 80207, 303–333–7711 (for group rate, mention "NSF Meeting")

Atlanta

Date: Tuesday, March 7, 1989
Hosted By: Emory University
Location: Woodruff Health Sciences Center Administration Building, Room 120, Emory University, Atlanta, Georgia 30322

Boston

Date: Wednesday, March 8, 1989
Hosted By: Boston College
Location: Conte Function Room, Silvio Conte Forum, Boston College, Chestnut Hill, MA 02167

Houston

Date: Thursday, March 9, 1989
Hosted By: University of Houston
Location: South Ballroom, University Hilton Hotel, University of Houston, Houston, TX 77204

FOR FURTHER INFORMATION CONTACT:

Chicago: Joellyn Migas, Office of the Chancellor, University of Illinois, 312–413–3601

San Diego: W. Timothy Hushen, Director, Research Management, San Diego State University Foundation, 619–594–5781

Denver: Celia Walker, Director, Sponsored Programs Development, Colorado State University, 303–491–6355

Atlanta: Ann R. Stevens, Associate Vice President for Academic Affairs/ Research, Emory University, 404–727–2503

Boston: Francis F. Mills, Director of Financing Resources, Boston College, 617–552–3191

Houston: Kathy Bradley, Office of Sponsored Programs, University of Houston, 713–749–3412

SUPPLEMENTARY INFORMATION: As outlined by Pub. L. 100–570, the purpose of the Academic Research Facilities Modernization Act is to assist in modernizing and revitalizing the Nation's research facilities at institutions of higher education, independent nonprofit research institutions and research museums, and consortia thereof, through capital investment. Awards made under the program will be for the repair, renovation, or, in exceptional cases, replacement of obsolete science and engineering facilities primarily devoted to research. No funds are currently available for this program.

William B. Cole, Jr.,

Executive Officer, Research Facilities Office, National Science Foundation.

[FR Doc. 89–2752 Filed 2–3–89; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the Office of Management and Budget (OMB) review of information collection.

SUMMARY: The U.S. Nuclear Regulatory Commission has recently submitted to the OMB for review the following for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: Extension
2. The title of the information collection: 10 CFR 19.13, "Notifications and Reports to Individuals."
3. The form number if applicable: N/A
4. How often the collection is required: As necessary in order that adequate and timely reports of radiation exposure be made to individuals involved in NRC-licensed activities.
5. Who will be required or asked to report: Licensees authorized to receive, possess, use, or transfer material licensed by the NRC.
6. An estimate of the number of responses: 630,000 annually
7. An estimate of average burden per response: 10 minutes
8. An estimate of the total number of hours needed to complete the requirement of request: 105,005
9. An indication of whether section 3504(h), Pub. L. 9696–511 applies: Not applicable
10. Abstract: Title 10 of the Code of Federal Regulations, § 19.13, requires a report, to individuals receiving radiation exposure as a result of NRC-licensed activities, of an individual's radiation exposure when certain conditions are met. These conditions apply during termination of the worker's employment, at the request of a worker, or when the worker's employer (the NRC licensee) must report radiation exposure information on the worker to the NRC.

ADDRESSES: Copies of the submittals may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street NW., Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Comments and questions should be directed to the OMB reviewer: Nicolas B. Garcia, Paperwork Reduction Project (3150–0044), Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone (202) 395–3084.

NRC Clearance Officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 1st day of February 1989.

For the Nuclear Regulatory Commission.

Joyce A. Amenta,

Designated Senior Official for Information Resources Management.

[FR Doc. 89–2674 Filed 2–3–89; 8:45 am]

BILLING CODE 7590–01–M

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Extension.
2. The title of the information collection: 10 CFR Part 11—Criteria and Procedures for Determining Eligibility for Access to or Control Over Special Nuclear Material
3. The form number if applicable: Not applicable.
4. How often the collection is required: New applications, certifications, and amendments may be submitted at any time. Renewal applications are submitted every five years.
5. Who will be required or asked to report: Employees (including applicants for employment), contractors and consultants of NRC licensees and contractors whose activities involve access to our control over special nuclear material at either fixed sites or in transportation activities.
6. An estimate of the number of responses: The majority of responses required under Part 11 are submitted using Standard Form 86, Personnel Security Packet, OMB Clearance No. 3206–0007, and NRC Form 237, Request for Access Authorization, OMB Clearance No. 3150–0050. The response and burden information for those forms is reported separately under those clearances. The remaining number of responses under Part 11 is estimated to be 5.
7. An estimate of the total number of hours needed to complete the requirement or request: Approximately 0.25 hours per response, for an industry total of 1.25 hours.
8. An indication of whether section 3504(h), Pub. L. 96–511 applies: Not applicable.
9. Abstract: NRC regulations in 10 CFR Part 11 establish requirements for access to special nuclear material, and the criteria and procedures for resolving questions concerning the eligibility of individuals to receive special nuclear material access authorization. Personal history information which is submitted on applicants for relevant jobs is provided to OPM, which conducts investigations. NRC reviews the results of these investigations and makes determinations of the eligibilityof the applicants for access authorization.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW., Washington, DC.

Comments and questions can be directed to the OMB reviewer as follows: Nicolas B. Garcia, Paperwork Reduction Project (3150–0062), Office of Management and Budget, Washington, DC, 20503, Telephone (202) 395–3084. Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 1st day of February 1989.

For the Nuclear Regulatory Commission.

Joyce A. Amenta,

Designated Senior Official for Information Resources Management.

[FR Doc. 89–2675 Filed 2–3–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–282 and 50–306]

Northern States Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DPR–42 and DPR–60, issued to Northern States Power Company (the licensee), for operation of the Prairie Island Nuclear Generating Plant, Units Nos. 1 and 2, located in Goodhue County Minnesota.

Environmental Assessment

Identification of Proposed Action

The proposed amendments would revise the Technical Specifications (TSs) by revising the surveillance test frequency of the turbine stop valves, the governor valves and the intercept valves associated with the turbine overspeed protection.

The proposed action is in accordance with the licensee's application for amendment dated September 28, 1987, as supplemented October 15, 1987, and June 24, 1988.

The Need for the Proposed Action

The proposed change to the TSs is required to: (1) Reduce the number of thermal and pressure cycles on the plant; (2) reduce the amount of liquid and solid radioactive waste that results in a reduction in personnel exposure; and (3) reduce the potential for inadvertent reactor scrams.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the TSs. The proposed revision would revise the surveillance test of the turbine stop valves, the governor valves and intercept valves associated with the turbine overspeed protection to an interval not to exceed one year. Since the evaluation demonstrates that the operating parameters are not affected, the proposed change does not increase the probability or consequences of accidents, no changes are being made in the types of any effluents and the change would reduce the amount of effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed change to the TSs involves systems located within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no sigificant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on April 13, 1988 (53 FR 12209). No request for hearing or petition for leave to intervene was filed following his notice.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendments. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statements related to the Prairie Island Nuclear Generating Plant dated May 1973.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendments. Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated September 28, 1987, as supplemented October 15, 1987, and June 24, 1988, which is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC, and at the Technology and Science Department, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Dated at Rockville, Maryland, this 31st day of January 1989.

For the Nuclear Regulatory Commission.

Theodore R. Quay,

Acting Director, Project Directorate III–I, Division of Reactor Projects—III, IV, V & Special Projects

[FR Doc. 89–2677 Filed 2–3–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–266 and 50–301]

Wisconsin Electric Power Co., Point Beach Nuclear Plant, Units Nos. 1 and 2; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission is considering issuance of an amendment to Facility Operating License Nos. DPR–24 and DPR–27, issued to the Wisconsin Electric Power Company (the licensee), for operation of the Point Beach Nuclear Plant, Unit Nos. 1 and 2, located at the licensee's site in Manitowoc County, Wisconsin.

The proposed amendment would revise the provisions in the Point Beach Nuclear Plant, Unit Nos. 1 and 2, Technical Specifications (TS's) relating to the design and operation of the Point Beach fuel cycle with upgraded core features and at higher core power peaking factors (F_Q and F_H) than are currently permitted by the plant TS.

Specifically, the proposed amendment would incorporate higher core power peaking factors which will allow the use of a low-low leakage loading pattern (L4P) fuel management strategy and will result in decreased neutron fluence to the reactor vessel. This fluence reduction will help address reactor vessel irradiation damage issues such as pressurized thermal shock, low upper shelf material toughness and pressure-temperature restrictions on heatup and cooldown. The higher core power peaking factors will allow additional fluence reduction meaures, such as the use of peripheral power suppression assemblies, to be pursued.

In addition to the increase in core power peaking factors, the proposed changes and reanalysis supporting them would permit the use of an upgraded fuel product features package. The upgraded fuel product features include: Removable top nozzlies, integral fuel burnable absorbers, axial blankets, extended burnup geometry, and inclusion of a debris filter bottom nozzle. The reactor core description is modified to reflect the proposed changes. Finally, the reanalysis for this proposed amendment supports the removal of the fuel assembly thimble plugging devices and the elimination of the third line segment of the K(z) curve.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By March 8, 1989, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United

States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing the Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John N. Hannon: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037 attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated August 26, 1988; as supplemented October 28, November 30, and December 23, 1988; and as modified January 17, 1988 (sic), which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Dated at Rockville, Maryland, this 31st day of January 1989.

For Nuclear Regulatory Commission.

Timothy G. Colburn,

Acting Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-2678 Filed 2-3-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-250/251; License Nos. DPR-31 and DPR-41]

Florida Power and Light Co., Turkey Point Plant, Unit Nos. 3 and 4; Receipt of Petition for Director's Decision

Notice is hereby given that by Petition dated December 21, 1988, as supplemented on January 13, 1989, Thomas J. Saporito, Jr., has requested that the Executive Director for Operations take action to insure that Florida Power & Light Company (licensee) not be allowed to bring the Turkey Point Plant, Unit 3 or Unit 4 reactors critical until both the licensee and the NRC have completed safety investigations relating to the concerns contained in the report of December 5, 1988, that the Petitioner filed with the NRC Region II office. Mr. Saporito also requested that the operating licenses for units 3 and 4 be immediately suspended and revoked. The Petition alleges that the Turkey Point Station has continuously demonstrated poor maintenance, poor leadership, poor quality improvement, unprofessional operator behavior, and the inability of management to effectively address and resolve these concerns.

The Petitioner asserts as grounds for his request that an Institute of Nuclear Plant Operations (INPO) Report and an Enercon Services Report identified several problems at the Turkey Point facility. The Petitioner also refers to the Nuclear Regulatory Commission's Safety System Functional Inspection Report (50-250/88-32; 50-251/88-32) and NRC Systematic Assessment of Licensee Performance (SALP) Reports which found various problems at the plant, as well as to a number of identified NRC inspection reports and enforcement actions.

The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The Petition has been referred to the Director of the Office of Nuclear Reactor Regulation (NRR). As provided by § 2.206, appropriate action will be taken on this request within a reasonable time. However, a preliminary review of the concerns contained in the Petitioner's report of December 5, 1988, to the NRC Region II office and items contained in the Petition of December 21, 1988, as supplemented on January 13, 1989, filed with the Office of the Executive Director for Operations under 10 CFR 2.206 does not indicate any immediate necessity to keep the Turkey Point Plant, Units 3 and 4 reactors shut down. The basis for this position is that the Petitioner's concerns do not identify any new information which is not already being addressed by the licensee and the staff, or which we were not already aware of.

A copy of the Petition is available for public inspection at the Commission's Public Document Room at 2120 L. Street, NW., Washington, DC 20555, and at the Local Public Document Room for the Turkey Point Plant, Units 3 and 4, located at the Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

Dated at Rockville, Maryland, this 30th day of January, 1989.

For the Nuclear Regulatory Commission.

James H. Sniezek,

Deputy Director, Office of Nuclear Reactor Regulation.

[FR Doc. 89-2679 Filed 2-3-89; 8:45 am]

BILLING CODE 7590-01-M

Materials Licensee Interim Financial Assurance Guidance Related to Decommissioning: Availability

The Nuclear Regulatory Commission has published NUREG-1336 entitled "Interim Guidance on the Standard Format and Content of Financial Assurance Mechanisms Required for Decommissioning under 10 CFR Parts 30, 40 and 70" and NUREG-1337 entitled, "Interim Guidance on the Standard Review Plan for the Review of Financial Assurance Mechanisms for Decommissioning under Parts 30, 40 and 70."

NUREG-1336 discusses the information to be provided in a materials license application and establishes a uniform format for presenting the information required to meet the decommissioning licensing requirements. NUREG-1337 is prepared for the guidance of Nuclear Regulatory Commission staff reviewers in performing reviews of applications from materials licensees. The document identifies who performs the review, the matters that are reviewed, the basis of the review, how the review is performed, and the conclusions that are sought.

Copies of NUREG-1336 and NUREG-1337 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, N.W., Washington, DC.

Dated at Washington, DC, this 25th day of January 1989.

For the Nuclear Regulatory Commission.

Michael J. Bell,

Chief, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 89-2676 Filed 2-3-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-206; License No. DPR-13]

Southern California Edison Co. and San Diego Gas & Electric Co., San Onofre Nuclear Generating Station, Unit No. 1; Exemption

I

Southern California Edison Company and San Diego Gas and Electric Company (the licensees) are the holders of Provisional Operating License No. DPR-13 which authorizes the licensees to operate San Onofre Nuclear Generating Station, Unit No. 1, at power levels up to 1347 megawatts thermal (rated power). The facility is a pressurized water reactor located on the licensees' site in San Diego County, California. The license is subject to all applicable provisions of the rules, regulations and orders of the Nuclear Regulatory Commission.

II

Paragraph III.D.2(b)(ii) of Appendix J to 10 CFR Part 50, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors", states that air locks that have been opened during periods when containment integrity is not required by the plant's technical specifications shall be tested at the end of such periods at not less than Pa (calculated peak containment pressure for design-basis events). The licensees have requested a partial exemption from this requirement. The licensees propose to conduct the above test only when maintenance has been conducted that could affect the sealing capability of the air lock door seals. Otherwise, the air lock would be tested at least every six months at Pa (49.4 psig) and also within 72 hours after each closing at 10 psig test pressure.

III

Whenever the plant is in cold shutdown (mode 5) or refueling (mode 6), containment integrity is not required. However, if an air lock is opened during modes 5 and 6, Paragraph III.D.2(b)(ii) of Appendix J requires that an overall air lock leakage test at not less than Pa be conducted before plant heatup and startup (i.e., entering mode 4). The existing air lock doors are so designed that a full-pressure (i.e., Pa (49.4 psig)) test of an entire air lock can only be performed after strongbacks (structural bracing) have been installed on the inner door. Strongbacks are needed because the pressure exerted on the inner door during the test is in a direction opposite to that of the accident pressure direction. Installing strongbacks, performing the test, and removing the strongbacks requires several hours, during which access through the air lock is prohibited.

When no maintenance has been performed on the air lock that could affect its sealing capability, and the air lock doors have been closed in accordance with the licensees' procedure, and the periodic 6-month test at Pa required by Paragraph III.D.2(b)(i) of Appendix J has been performed on schedule, there is no reason to expect the air lock to leak excessively just because it has been opened in a shutdown or refueling mode. Performing the door seal leak test (10 psig) of Paragraph III.D.2(b)(iii) of Appendix J is sufficient, in this case, to demonstrate the continuing integrity of the air lock.

Accordingly, the staff concludes that the licensees' proposed approach of substituting the seal leakage test of Paragraph III.D.2(b)(iii) for the full-pressure test of Paragraph III.D.2(b)(ii) of Appendix J is acceptable when no maintenance that could affect sealing capability has been performed on an air lock. Whenever maintenance that could affect sealing capability has been performed on an air lock, the requirements of Paragraph III.D.2(b)(ii) of Appendix J must still be met by the licensees.

The purpose of this provision of Appendix J to 10 CFR Part 50 is to ensure that containment leaktight integrity of air lock penetrations is verified after closure so as to maintain containment leakage within the limits specified in the facility Technical Specifications. The proposed alternative test method of air lock door seal leakage is sufficient to achieve this underlying purpose in that it provides adequate assurance of continued leaktight integrity of the air lock. Because of this, the staff has previously granted this same exemption to other plants and intends to revise Appendix J to alleviate the need for further similar exemptions. Consequently, the special circumstances described by 10 CFR 50.12(a)(2)(ii) exist in that application of the regulation in these particular circumstances is not necessary to achieve the underlying purpose of the rule since the licensee has proposed an acceptable alternative test method that accomplishes the intent of the regulation.

Therefore, a partial exemption from this requirement (10 CFR Part 50, Appendix J, Paragraph III.D.2(b)(ii)) is justified and acceptable, and the licensees' proposal to adopt Surveillance Requirement 4.6.1.3 of Revision 4 of NUREG-0452, "Standard Technical Specifications for Westinghouse Pressurized Water Reactors," is acceptable (NUREG-0452, Rev. 4, was written to accommodate this type of exemption). Further, the staff finds that, in accordance with 10 CFR 50.12(a)(2), the requested exemption represents special circumstances, as discussed above and is consistent with the intent of Appendix J.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(ii) and (iii), are present justifying the exemption.

Therefore, the Commission hereby approves the following exemption to Paragraph III.D.2(b)(ii) of Appendix J to 10 CFR Part 50:

Air locks opened during periods when containment integrity is not required by the Technical Specifications shall be tested at the end of such periods at not less than Pa when maintenance has been performed on the air lock that could affect the air lock sealing capability.

It is further determined that the exemption does not authorize a change in effluent types or total amounts nor an increase in power level and will not have a significant effect on the quality of the human environment. In light of this determination and as reflected in the Environmental Assessment and Findings of No Significant Impact prepared pursuant to 10 CFR 51.2 and 51.30 through 51.32, it is concluded the instant action is insignificant from the standpoint of environmental impact and an environmental impact statement need not be prepared.

For further details with respect to this action, see the application for amendment and exemption request dated March 20, 1987, as supplemented July 22, 1988 and the Commission's Environmental Assessment and Finding

of No Significant Impact dated January 6, 1989 (54 FR 1258). These are available for public inspection at the Commission's Public Document Room 2120 L Street, NW., Washington, DC 20555, and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 25th day of January, 1989.

For the Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-2060 Filed 2-3-89; 8:45 am]

BILLING CODE 7590-01-M

SMALL BUSINESS ADMINISTRATION

Region IV Advisory Council; Public Meeting; Charlotte, NC

The U.S. Small Business Administration, Region IV Advisory Council, located in the geographical area of North Carolina will hold a public meeting scheduled at 10:00 a.m. on Thursday, February 23, 1989, at the Kenan Center in Chapel Hill, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Gary A. Keel, District Director, U.S. Small Business Administration, 222 South Church Street, Suite 300, Charlotte, North Carolina 28202, 704/371-6561.

Jeannette M. Faull,

Acting Director, Office of Advisory Councils.

January 31, 1989.

[FR Doc. 89-2728 Filed 2-3-89; 8:45 am]

BILLING CODE 8025-01-M

[License No. 04/04-5246]

Business Capital Investment Company, Inc.; Issuance of a Small Business Investment Company License

On August 10, 1988, a notice was published in the **Federal Register** (53 FR 30158) stating that an application had been filed by Business Capital Investment Company, Inc. (BCIC), with the Small Business Administation (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1988)) for a license as a small business investment company.

Interested parties were given until close of business September 10, 1988, to submit their comments. No comments were received.

Notice is hereby given that, pursuant to section 301(d) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 04/04-5246 on December 29, 1988, to BCIC, to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: January 31, 1989.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 89-2729 Filed 2-3-89; 8:45 am]

BILLING CODE 8025-01-M

[License No. 09/09-5360]

Calsafe Capital Corporation; Issuance of a Small Business Investment Company License

On October 13, 1988, a notice was published in the **Federal Register** (53 FR 40162) stating that an application has been filed by Calsafe Capital Corporation, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1988)) for a license as a small business investment company.

Interested parties were given until close of business November 12, 1988 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(d) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 09/09-5360 on December 28, 1988, to Calsafe Capital Corporation to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: January 26, 1989.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 89-2730 Filed 2-3-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-89-4]

Petition for Exemption; Summary of Petitions Received and Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exempiton received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: February 27, 1989.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avene SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on January 31, 1989.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 23921
Petitioner: FlightSafety International
Sections of the FAR Affected: 14 CFR 61.57(a)(1), (c), and (d), 61.58(c)(1) and (d); 61.63(d)(2) and (3); 61.67(d)(2); 61.157(d)(1) and (2) and (e)(1) and (2); Appendix A to Part 61; Appendix H to Part 121
Description of Relief Sought: To amend Exemption No. 4058D to add a subparagraph vi.b.(4), which would be an alternative qualifier for persons eligible to instruct in petitioner's simulator programs. This alternative would be for instructors to have a minimum of 2,500 hours of flight time, 500 of which is pilot-in-command time, in lieu of the flight instructor certificate.

Docket No.: 25286
Petitioner: United States Parachute Association
Sections of the FAR Affected: 14 CFR 91.15(a)(2), 91.47, and 105.43(a)(2)
Description of Relief Sought: To amend Exemption No. 4946 to enable foreign participants to make parachute jumps at the U.S. National Skydiving Championships and at other events conducted by the petitioner and other groups members.

Docket No.: 25733
Petitioner: Helicopters, Unlimited
Regulations Affected: 14 CFR 135.337(a)(5)
Description of Relief Sought: To allow Mr. Bennie F. Harris to perform the duties of Flight Instructor and Check Airman for petitioner using a Class III Medical Certificate.

Docket No.: 25761
Petitioner: American Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.441(c)(1)(i)
Description of Relief Sought: To allow a 180-day extension of the compliance date for meeting the training requirements for installed protective breathing equipment.

Docket No.: 25775
Petitioner: Petroleum Helicopters, Inc.
Sections of the FAR Affected: 14 CFR 43.3
Description of Relief Sought: To allow appropriately trained flight crewmembers to remove, replace, and service patient oxygen systems that are installed on petitioner's fleet of emergency medical aircraft.

Docket No.: 22441
Petitioner: United Airlines
Sections of the FAR Affected: 14 CFR 121.433(c)(1)(iii), 121.441(a)(i), and 121.441(b)(1); and Part 121, Appendix F
Description of Relief Sought/Disposition: To extend and amend Exemption No. 3451C that allows petitioner to continue an FAA-monitored program under which the petitioner's pilots in command, seconds in command, and flight engineers meet annual ground and flight recurrent training and proficiency check requirements. The proposed amendment would add, delete, and extend certain provisions of the exemption, based on petitioner's experience to date. Exemption No. 3451C will terminate on January 31, 1989.
Grant, January 19, 1989, Exemption No. 3451D.

Docket No.: 23382
Petitioner: Beaver Aviation Service, Inc.
Sections of the FAR Affected: 14 CFR 141.91(a)
Description of Relief Sought/Disposition: To extend Exemption No. 3682, as amended, that allows petitioner to conduct flight training at a satellite base, which is more than 25 nautical miles from its main operations base.
Grant, January 28, 1989, Exemption No. 3682C.

Docket No.: 23752
Petitioner: Mall Airways
Sections of the FAR Affected: 14 CFR 135.225(e)(1)
Description of Relief Sought/Disposition: To extend Exemption No. 4744 that permits petitioner to take off under instrument flight rules from any Canadian civil airport when the weather visibility minimum at those airports is less than 1-mile visibility, but not less than the minimums prescribed by Transport Canada, which is the Canadian Government agency responsible for establishing such weather visibility minimums. Exemption No. 4744 will expire on January 31, 1989.
Grant, January 17, 1989, Exemption No. 4744A.

Docket No.: 24440
Petitioner: American Flyers
Sections of the FAR Affected: 14 CFR 141.91(a)
Description of Relief Sought/Disposition: To extend Exemption No. 4419A that allows petitioner to conduct flight training and instruction in its approved courses of training at its satellite base located at Houston, Texas, and to conduct a pilot ground school at its facility in Farmers Branch, Texas.
Grant, January 28, 1989, Exemption No. 4419B.

Docket No.: 24565
Petitioner: Horizon Air
Sections of the FAR Affected: 14 CFR 121.371(a) and 121.378
Description of Relief Sought/Disposition: To allow petitioner to continue to contract with Brasthens S.A.F.E. or Norway and FFV Maintenance Avio Comp. of Sweden for the inspection, repair, and overhaul of components installed on petitioner's two F-28 aircraft.
Grant, January 17, 1989, Exemption No. 5013.

[FR Doc. 89-2630 Filed 2-3-89; 8:45 am]

BILLING CODE 4910-13-M

[File No. PFR-1]

Propfan Type Certification Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability and request for comments.

SUMMARY: The draft report, Propfan Type Certification Requirements, provides the results of a FAA study of propfan technology and the certification and safety issues associated with use of such equipment in the air transportation industry. The draft report contains recommendations for certification standards to be applied in type certification programs for propfan powered airplanes and their propulsion systems.

DATE: Comments must identify the draft report file number PFR-1 and be received on or before May 8, 1989.

ADDRESS: Send all comments on the draft report to:

Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Policy and Procedures Branch, AIR-110, 800 Independence Avenue, SW., Washington, DC 20591.

Or Deliver Comments To: Federal Aviation Administration, Policy and Procedures Branch, Room 335, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Kaplan, Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Policy and Procedures Branch, AIR-110, 800 Independence Avenue SW., Washington, DC 20591, Telephone: (202) 267-9588.

Comments received on the draft report may be examined, before and after the comment closing date, in Room 335, FAA Headquarters Building (FOB-10A), 800 Independence Avenue SW., Washington, DC 20591, weekdays, except Federal holidays, between 8:30 a.m. and 4:30 p.m.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the contents of the draft report by submitting such written data, views, or arguments as they desire to the above specified address. All communications received by the FAA prior to the closing date for comments as specified above will be considered before the final version of the report is issued. The recommendations contained in this draft report may be modified in light of the comments received. A public meeting to further discuss outstanding issues may also be held if the comments received indicate a need for this.

Background

In response to the national need to reduce fuel consumption because of the widespread fuel shortages of the mid-1970's, programs were initiated aimed at achieving greater fuel efficiency in aircraft airframe and engine technology. One result of this effort was the development of a new propulsion concept, commonly referred to as propfans, characterized by propulsor blades with highly swept blade planforms and very thin airfoil sections. The rapid advancement of this propfan technology made it apparent that manufacturers would soon be approaching the FAA with requests for certification of this equipment. The FAA, therefore, formed a study team in 1986 to gather all available information about the various propfan designs being proposed or under development and to utilize this knowledge in an assessment of the adequacy of the current airworthiness standards regarding type certification of this new equipment.

The team met with manufacturers and with other airworthiness authorities to discuss the new technology and to share views on possible certification and safety issues. The information gathered and recommendations for certification of this equipment are included in this draft technical report which is being offered to the public for comment. Since the information contained in this report is intended to serve as advisory material from which proposed certification standards can be developed by the aircraft certification organization, the technical report format was chosen as the medium for public dissemination of the team's findings and recommendations.

How to Obtain Copies

A copy of the draft report "Propfan Type Certification Requirements" may be obtained by contacting the person under **"FOR FURTHER INFORMATION CONTACT."**

Issued in Washington, DC, on January 31, 1989.

John K. McGrath,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 89-2629 Filed 2-3-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: January 31, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0271
Form Number: 500-5-56
Type of Review: Extension
Title: Letter to Follow Up On Undelivered Orders
Description: This letter is sent by procurement personnel to vendors to follow up on undelivered items ordered by government purchase orders.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 700
Estimated Burden Hours Per Response: 30 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 350 hours
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89-2697 Filed 2-3-89; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 23
Monday, February 6, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, February 28, 1989.

PLACE: 2033 K St., NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Third Quarter Program Objectives, FY 89.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89-2690 Filed 2-3-89; 2:53 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Tuesday, February 28, 1989.

PLACE: 2033 K St., N.W., Washington, D.C. 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Objectives.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89-2691 Filed 2-3-89; 2:53 pm]

BILLING CODE 6351-01-M

FEDERAL HOME LOAN MORTGAGE CORPORATION

DATE AND TIME: Monday, February 6, 1989, 1:00 p.m.

PLACE: 1776 G Street NW., Board Room, Third Floor, Washington, DC 20006.

STATUS: Closed.

CONTACT PERSON FOR MORE INFORMATION: Keith Earley, 1759 Business Center Drive, P.O. Box 4115, Reston, Virginia 22090, (703) 759-8414.

MATTERS TO BE CONSIDERED:
Closed: Minutes of the December 19, 1988 Board of Directors' Meeting
Closed: President's Report
Closed: Corporate Plan for 1989
Closed: Dividend Policy for 1989
Closed: Financial Report
Date sent to Federal Register: February 1, 1989.

Maud Maier,

Secretary.

[FR Doc. 89-2776 Filed 2-3-89; 2:52 pm]

BILLING CODE 6719-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

February 1, 1989

TIME AND DATE: 10:00 a.m., Thursday, February 2, 1989.

PLACE: Room 600, 1730 K Street NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: In addition to the previously announced item, the Commission will consider and act upon the following:

2. *Ernie L. Bruno v. Cyprus Plateau Mining Corporation,* Docket No. WEST 88-157-D.

It was determined by a unanimous vote of Commissioners that this item be included on the agenda and that no earlier announcement of the addition was possible.

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653-5629 / (202) 566-2673 for TDD Relay.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 89-2873 Filed 2-3-89; 4:02 pm]

BILLING CODE 6735-01-M

Corrections

Federal Register
Vol. 54, No. 23
Monday, February 6, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP89-691-000, et al]

Northern Natural Gas Co., et al; Natural Gas Certificate Filings

Correction

In notice document 89-2229 beginning on page 4896 in the issue of Tuesday, January 31, 1989, make the following correction:

On page 4896, in the third column, in filing 2, the docket number should read "CP89-690-000".

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-424]

Georgia Power Co. et al.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

Correction

In notice document 88-29619 beginning on page 52266 in the issue of Tuesday, December 27, 1988, make the following corrections:

1. On page 52267, in the table, in the first column, "¾" should read "3/4" for the last 13 entries.

2. On the same page, in the table, in the 2nd column, in the 18th line from the bottom, "Under the voltage/under frequency" should read "Under voltage/under frequency".

3. On the same page, in the 2nd column, in the 12th line from the bottom, "and 4." should read "and 4.e.".

4. On page 52269, in the table, in the second column, in the sixth line, "4.6.1.6.b.2" should read "4.6.1.6.1.b.2".

5. On the same page, in the table, in the 2nd column, in the 28th line, "125" should read "135.".

6. On the same page, in the table, in the 2nd column, in the 30th line, between the opening and closing quotation marks following "footnote", insert an asterisk..

7. On the same page, in the table, in the 2nd column, in the 35th line, after "footnote" insert an asterisk.

8. On the same page, in the table, in the 2nd column, in the 37th line, after the first "footnote" insert an asterisk.

9. On the same page, in the table, in the 2nd column, in the 22nd line from the bottom, "4/4/-1." should read "4.1-1".

10. On the same page, in the table, in the 2nd column, the 20th line from the bottom should read "Correct the spelling of 'omitted' in notation '*' .....".

11. On the same page, in the table, in the 2nd column, in the 19th line from the bottom, "3.05" should read "3.0.5".

12. On the same page, in the table, in the 2nd column, the 12th line from the bottom should read "Change '$F_{\Delta H}$' to $F_{\Delta H}$ in 3/4.1.3.2.".

13. On the same page, in the table, in the 2nd column, in the 11th line from the bottom, "FN*H" should read "$F_{\Delta H}$".

14. On page 52271, in the second column, in the heading following the third complete paragraph, "Value" should read "Valve".

15. On page 52272, in the first column, under "**Fuel Handling Building Heater Requirement (item 27)**", in the first complete paragraph, in the second line, "Unit 12 and 2" should read "Unit 1 and 2".

BILLING CODE 1505-01-D

federal register

Monday
February 6, 1989

Part II

Environmental Protection Agency

40 CFR Parts 257 and 503
Standards for the Disposal of Sewage Sludge; Proposed Rule

BEST COPY AVAILABLE

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 257 and 503

[FRL-3479-9]

Standards for the Disposal of Sewage Sludge

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: Today, under authority of sections 405 (d) and (e) of the Clean Water Act (CWA), as amended (33 U.S.C.A. 1251, *et seq.*), the Environmental Protection Agency (EPA) is proposing regulations to protect public health and the environment from any reasonably anticipated adverse effects of certain pollutants which may be present in sewage sludge. The regulation establishes requirements for the final use and disposal of sewage sludge when the sewage sludge is applied to the land, distributed and marketed, placed in monofills (sludge-only landfills) or on surface disposal sites, or incinerated. The standards for each end use and disposal method consist of either limits on the pollutant concentrations in sewage sludge or equations for calculating these pollutant limits; management practices; and other requirements that prescribe the level of management control that treatment works, users, and disposers must exercise over sewage sludge. EPA also is proposing monitoring, record keeping, and reporting requirements.

Today's standards apply to publicly and privately owned treatment works that generate or treat domestic sewage sludge, as well as to any person who uses or disposes of sewage sludge from such treatment works. Consistent with the statute, the proposed rule requires compliance within 12 months of the date the rule is promulgated, or within 24 months if the regulation requires construction of new pollution control facilities. Qualified publicly owned treatment works (POTWs) that comply with the requirements in 40 CFR Part 403 may be eligible to revise categorical pretreatment standards applicable to industrial users in order to allow additional discharges into POTWs of the pollutants included in this rule.

The proposed standards do not apply to sewage sludge treatment processes that precede final use or disposal or to domestic sewage that is treated along with industrial waste and wastewater by privately owned industrial facilities. In addition, standards are not established in this Part for sewage sludge that is determined to be hazardous using the procedures in 40 CFR Part 261, Appendix II, or to sewage sludge found to contain greater than 50 parts per million (ppm) of polychlorinated biphenyls (PCBs). Requirements in 40 CFR Parts 261–268 apply to sewage sludge determined to be hazardous, and requirements in 40 CFR Part 761 apply to sewage sludge containing greater than 50 ppm of PCBs. Compliance with these requirements will constitute compliance with section 405 of the CWA.

Included in this Notice are conforming amendments to 40 CFR Part 257. The conforming amendments remove the applicability of Part 257 for sewage sludge disposed of by those practices for which EPA is proposing standards today.

DATE: EPA will accept public comments on this proposed rule until August 7, 1989.

EPA will conduct two 2-day workshops to discuss the technical bases of proposed rule and will hold several public hearings to take oral comments on the proposal. These workshops and hearings will be scheduled in the near future. Information on the workshops and hearings will be published in the "**Federal Register**."

Information on the workshops and hearings may be obtained by writing or calling Mark Morris, Sludge Regulation and Management Branch (WH–585), 401 M Street, SW., Washington, DC 20460, (202) 475–7301.

ADDRESSES: Comments on this proposed rule should be sent to: William R. Diamond, Criteria and Standards Division (WH–585), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The public docket is located in the Public Information Reference Unit, Room 2904, Waterside Mall, 401 M Street, SW., Washington, DC. The docket is available for viewing from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. The EPA public information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Further information on the proposed rule may be obtained by writing or calling Dr. Alan Rubin, Sludge Regulation and Management Branch (WH–585), 401 M Street, SW., Washington, DC, 20460, (202) 475–7301.

Information on the availability of single copies of the proposed rule, technical support documents, and copies of the analyses and models discussed in today's proposal is provided in Part XIII of **SUPPLEMENTARY INFORMATION.**

SUPPLEMENTARY INFORMATION: The preamble to this Notice is organized as follows:

Overview
PART I: Generation, Use and Disposal of Sewage Sludge
PART II: Federal and State Requirements
PART III: Selection of Pollutants for Regulation
PART IV: Exposure Assessment Models
PART V: Human Health Criteria
PART VI: Environmental Criteria
PART VII: Aggregate Effects Assessment
PART VIII: Alternative Regulatory Approaches
PART IX: Description of 40 CFR Part 503
Subpart A: General Provisions
Subpart B: Land Application
Subpart C: Distribution and Marketing
Subpart D: Monofills
Subpart E: Surface Disposal Sites
Subpart F: Pathogen and Vector Attraction Reduction Requirements
Subpart G: Incineration
Subpart H: Removal Credits
Subpart I: Monitoring, Record Keeping, and Reports
PART X: Implementation of 40 CFR Part 503
PART XI: Benefits and Costs of the Proposed Rule
PART XII: Summary of the Issues and Data Requested
PART XIII: Availability of Technical Information on the Proposal
PART XIV: Changes in 40 CFR Part 257
List of Subjects in 40 CFR Parts 257 and 503

OVERVIEW

The Clean Water Act (CWA) requires municipalities receiving wastewater from households, industrial facilities, and other sources to treat this wastewater. Treatment produces an effluent that is discharged and sewage sludge. The sewage sludge usually contains more than 90 percent water, in addition to solids and dissolved substances. The chemical and biological constituents of the sludge depend upon the composition of the wastewater entering the treatment facility and the subsequent treatment processes. Typically, these constituents may include the following: volatile organic solids; nutrients; disease-causing pathogenic organisms (e.g., bacteria, viruses, etc.); heavy metals and inorganic ions; and toxic organic chemicals from industrial wastes, household chemicals, and pesticides.

The CWA of 1977 amended section 405 by adding subsection (d), which directed EPA to develop regulations containing guidelines for the utilization and disposal of sewage sludge. The regulations were to identify uses for sewage sludge, including disposal, and identify factors to be taken into account in the use or disposal of sewage sludge. In addition, the regulations were to specify concentrations of pollutants which would interfere with sewage sludge use or disposal. The Water Quality Act of 1987 amended section 405(d) by adding a formal requirement that, on the basis of available information, EPA identify the toxic pollutants in sewage sludge that may adversely affect public health or the environment and, in regulations, specify management practices and establish numerical limits for each of the pollutants. The Act requires that the standards be adequate to protect public health and the environment from any reasonably anticipated adverse effects of the pollutants.

Regulatory Determinations

Except for establishing a schedule for promulgation of the regulations, Congress provided little other guidance for the Agency to carry out its broad mandate to protect public health and the environment. Unlike the technology-based requirements of other provisions of the CWA under which the Agency determines appropriate pollutant discharge standards based on the pollutant reduction capabilities of equipment, the directive of section 405(d) requires the Agency to address a much broader range of issues. To develop standards that adequately protect public health and the environment, the Agency must examine and integrate a substantial volume of information and make determinations in a number of different areas. Today's proposal reflects the Agency's determinations on the following issues.

Scope of the Regulation. Different types of sewage sludge are generated and there are different ways of using or disposing of it. Given the different types of sludge that are generated, which types should the Agency regulate? Of the methods used by communities to dispose of their sewage sludge, which types and methods should the Agency regulate?

Pollutant Coverage. On what basis should the Agency select the pollutants (metals, pesticides, organic contaminants, pathogenic organisms) which are regulated in today's proposal?

Pathways of Exposure. What media (air, water, soil) transport the pollutants in sewage sludge into and through the environment?

Target Organisms. What individuals or groups of individuals, plants, or animals are most likely to be affected by the pollutants in sewage sludge?

Models. How will the Agency simulate the movement of the pollutants in sewage sludge into and through the various environmental media to the target organisms?

Type of Risks. What are the potential human health and environmental risks posed by the use or disposal of sewage sludge (e.g., breathing air around a sewage sludge incinerator, drinking water from a well near a monofill, eating food grown on soil to which sludge has been applied, plants growing on sludge-enriched soil, etc.) that the Agency should examine?

Effect Levels. At what concentration does a pollutant adversely affect human health and the environment?

Effects. What are the effects the standards should be designed to prevent (e.g., increased risk of developing cancer or hypertension, phytotoxicity, animal toxicity, etc.)?

Background Pollutant Levels. What are the sources of pollutant exposure other than sludge (e.g., lead from gasoline or from water supply pipes, etc.)?

Acceptable Level Of Risk. What level of risk adequately protects human health and the environment?

Uncertainties. How should the Agency measure and account for the unavoidable uncertainties in its analyses (e.g., use conservative assumptions, add a margin of safety)?

Type Of Effects To Be Evaluated. Should the Agency evaluate the human health and environmental effects on the most exposed target organisms (individual, plant, or animal) or should the Agency also examine the incidence of adverse effects on the total population associated with sewage sludge use or disposal?

Pollutant Limits. Should a single pollutant limit be established for all use or disposal practices or should a separate pollutant limit be established for each use or disposal method?

Form Of The Pollutant Limits. How should the pollutant limits be expressed (e.g., a limitation on pollutant concentrations in sewage sludge, a limitation on pollutant loading rates to the land, a limitation on pollutant emission rates, etc.)?

Regulatory Responsibility. Who should be responsible for meeting the requirements in the rule (end user, treatment work)?

Impacts. Who is affected by the rule? What are the benefits and costs of the proposal?

Since 1984, the Agency has been conducting an extensive information-gathering and analytical program to support the development of today's proposal. Subsequent to the 1987 amendments to the CWA, the Agency redoubled its efforts. This preamble, the technical support documents, and related analyses of the proposal's impact are the product of that effort and explain the basis for the determinations the Agency has made in establishing these standards.

Fundamental Regulatory Principles

The fundamental assumptions underlying today's proposal are discussed below.

Expand the Standards Later

The scope of the Part 503 standards is necessarily constrained by the adequacy of information on sewage sludge pollutants and means of use or disposal. However, rather than wait for more complete information in order to propose all-inclusive regulations, the Agency is proposing standards for those pollutants and use or disposal methods for which there was sufficient information. The Agency will expand and refine these standards in future rulemakings. Section 405 specifically contemplates that the Agency will issue these standards in stages and revise them periodically.

To remedy existing information gaps, the Agency is conducting a National Sewage Sludge Survey which will gather, among other things, additional information on the pollutants in sewage sludge. Furthermore, in cooperation with other Agency offices, EPA is gathering data on the movement of certain pollutants into and through the environment (e.g., dioxins and pathogenic organisms), refining and expanding its modeling capability for specific pollutants or disposal methods (e.g., pathogenic organisms, sewage sludge surface disposal sites), supplementing its information on disposal methods (e.g., sewage sludge incinerators, municipal solid waste incinerators co-firing sewage sludge, sewage sludge surface disposal sites), and identifying the charcteristics of industrial sludge with a domestic sewage component.

In addition during the comment period, EPA will have experts form both inside and outside the Agency review the scientific and technical bases of the proposal. This review may include the Agency's Science Advisory Board, the Cooperative State Research Service, Regional Research Technical Committee (sometimes called the W–17C Committee), representatives of academia, and/or other scientific/technical bodies with expertise in the areas covered by this proposed rule. With the additional data and the scientific and technical review of the proposal, the Agency should be able to expand and refine the standards.

Coordinate With Other Programs

The use and disposal of sewage sludge affect air, soil, and water. In preparing this proposal, the Agency carefully examined the requirements of other media programs and media-specific statutes. Where possible, for consistency, the Agency used the tools and standards developed under these other programs. For example, the air models used in developing the limits for the incineration of sewage sludge are the models used under EPA's air program. Thus, the pollutant limits for the incineration of beryllium and mercury are based on the National Emission Standards for Hazardous Pollutants (NESHAPs). The limit for the incineration of lead is based on the National Ambient Air Quality Standard (NAAQS) for lead. This principle is followed throughout the proposal. Therefore, when the pollutant limits are designed to protect ground water, the Agency used the drinking water standards (maximum contaminant levels—MCLS), where available. When protecting surface water, the Agency used the water quality criterion developed for individual pollutants.

In some cases, regulatory standards are undergoing revision. If the Agency has proposed an alternative standard, as in the case of the drinking water standard for lead, the preamble describes and shows the effect of the new standard on the pollutant limit for a use or disposal practice. If the Agency's analyses have not reached a point at which a regulatory option has been selected, the preamble notes that when a new standard is promulgated, the numerical limit for a disposal practice will be revised.

Control Sewage Sludge Quality

Section 405(d) of the CWA directs the Agency to control the quality of sewage sludge by establishing pollutant limits for a use or disposal method. Preventing the contamination of sewage sludge before it is used or disposed of is more equitable than requiring others to contain the contaminated sludge or to deal with the consequences. Only when it is not feasible for the Agency to set pollutant limits does section 405(d)(3) authorize management practices to contain the pollutants—the approach taken by the Agency in the criteria it has proposed for solid waste disposal in municipal solid waste landfills (MSWLFs) (53 FR 33314, August 30, 1988).

By setting limits on sludge quality, the regulation creates incentives for treatment works to generate clean sludge. Treatment works with sewage sludge that does not meet the standards must clean up the influent (e.g., strengthen their pretreatment programs), improve their treatment of sewage sludge (e.g., reduce the densities of pathogenic organisms), or select another use or disposal method.

Emphasize Waste Reduction and the Beneficial Reuse of Sewage Sludge

Achievement of desired national levels of environmental quality depend on the reduction and elimination of the substantial volumes of waste and wastewater generated at home and at work. Without a significant reduction in these volumes (e.g., by home composting food scraps rather than putting them down a garbage disposal), and a corresponding reduction in the residual from treatment (sludge) which must then be either used or disposed of, attainment of these goals is severely hampered.

Closely linked to the Agency's objective of reducing the volume of waste generated, is EPA's policy of strongly supporting the beneficial reuse of sewage sludge. Improving the productivity of our land with the soil conditioning properties and nutrient content of sewage sludge has human health and environmental advantages beyond those that are directly associated with applying sewage sludge to the land. Secondary or related benefits of reusing sewage sludge result from a reduction in the adverse human health effects of incineration, a decreased dependence on chemical fertilizers, a reduction in the emissions associated with incineration that contribute to the "greenhouse effect" and a reduction in fuel or energy costs associated with incineration. Prior to finalizing the rule, the Agency will carefully consider, and place heavy emphasis on, those comments and approaches that support the Agency's policy of beneficial reuse.

Preserve a Local Community's Choice of a Disposal Method

Although the Agency's preference is for local communities to beneficially use their sewage sludge, EPA's responsibility is to set standards, for each method, that are adequate to protect public health and the environment. While the choice of a use or disposal method is reserved by section 405(e) of the CWA to local communities, protection of public health and the environment, where risks are significant, dictate stringent pollutant limits. EPA believes communities, in certain cases, will be unlikely to meet the limits the Agency has proposed. For example, communities are unlikely to meet the limits that would allow them to place sewage sludge in a monofill over Class I ground water (i.e., an irreplaceable source of drinking water).

Base the Rule on Minimizing Risks to Individuals and to the Population as a Whole

The Agency evaluated the effect of a pollutant on the most exposed individual, plant, or animal (MEI) and on the population as a whole. Regulatory options were examined that would have resulted in a rule based on aggregate incidence analyses only (the effect on the whole population), on MEI analyses only, and a rule based on a combination of aggregate and MEI analyses. Today's proposal uses a combination of aggregate and MEI analyses.

For use or disposal methods that do not result in high levels of pollutant exposure to the MEI and that do not result in significant incidence of disease (e.g., applying sewage sludge to non-agricultural lands, placing sewage sludge in surface disposal sites), the pollutant limits are based on current sludge quality (i.e., the 98th-percentile pollutant concentration shown in "Fate of Priority Pollutants in Publicly Owned Treatment Works"—the "40 City Study"—Reference number 36). However, where current sludge quality and disposal methods result in high levels of pollutant exposure to an individual or to the population as a whole, or where there are significant scientific uncertainties as to the effect of a pollutant in a use or disposal practice, pollutant limits are based on models designed to protect the MEI.

Propose Reasonable Standards

Section 405(d)(2)(D) of the CWA requires the Agency to establish standards that are adequate to protect human health and the environment from any reasonably anticipated adverse effects of each pollutant. The Agency examined the effect of long-term pollutant exposure and circumstances that could: (1) Increase the toxicity and potency of a pollutant in the environment; (2) speed the movement of a pollutant into and through the environment; and (3) intensify the adverse effect that the pollutant may have on human health or the environment.

This approach is used throughout the rule to take account of potential data inadequacies, but does not protect against every conceivable combination of adverse conditions. In taking such an approach, the Agency recognizes that some risks may not have been fully evaluated and that some risks may remain after regulation. For example, the Agency used the average background value of metals in agricultural soils for applying sewage sludge to agricultural lands and assumed that users of sewage sludge would follow simple label instructions. EPA expects that few, if any, individuals will receive higher doses of a pollutant than the doses used to establish the standards. Therefore, the Agency has made the determination that the proposal meets the statutory directive that the standards protect against reasonably anticipated adverse effects of the pollutants.

Propose an Implementable Rule

The proposal balances the flexibility associated with site-specific analyses against the simplicity of national numerical limits. A rule that allows exceptions for every conceivable contingency would prove difficult to understand. Moreover, implementation of such a rule would require an unwarranted commitment of the Agency's limited resources. Therefore, exceptions to national pollutant limits are few, based on a minimum number of site-specific conditions that would make a significant difference in the pollutant limits.

Section 405(e) of the CWA requires treatment works generating or treating sewage sludge, as well as persons using or disposing of sewage sludge, to comply with the technical standards. Realistically, the Agency can not issue permits to every user of sewage sludge. Therefore, primary responsibility is placed on treatment works for ensuring that sewage sludge meets the requirements of the rule. Greater flexibility is provided in the standards if the treatment works control the use or disposal practice or when, through agreements or other contractual mechanisms, the treatment works can effectively control the disposal. When this is impractical (e.g., when sewage sludge products are sold or given away to the general public), sewage sludge must meet higher standards of quality. However, the limits were not designed to protect against every conceivable misuse of the product that is distributed and marketed. Rather, the rule assumes that simple instructions on the proper use of the product will be followed.

Solicit Comment on a Wide Range of Issues

In addition to explaining the proposal, the preamble discusses alternative approaches that have been used by other programs at the Agency regulating pollutants in the various media and that were considered during the development of the rule. The Agency is soliciting public comment on the fundamental principles of the rule, the carcinogenic risk levels proposed, other human health and environmental criteria that could be used in establishing the numerical limits, changes that may occur because of other Agency actions (e.g., changes in the MCL and air standards for lead), the models, the MEI and aggregate risk analyses, the anticipated benefits and costs of the rule, and the data deficiencies. A separate part of the preamble integrates and summarizes the issues and questions raised throughout the preamble.

Some have characterized the preamble as an Advanced Notice of Proposed Rule Making (ANPRM). While the preamble has characteristics similar to an ANPRM, the Notice is a fully developed proposal. Unlike an ANPRM, this Notice solicits comment on specific numerical limits and provisions of the rule. EPA prepared the broadest possible notice to solicit wide public participation on a comprehensive range of issues in the decision-making process and to identify areas in the proposal where the Agency should make changes or repropose, if warranted, based on public comment and the data gathering initiatives underway.

Summary of the Proposed Rule

Today's proposal includes standards for the final use or disposal of sewage sludge when the sewage sludge is applied to agricultural and non-agricultural land, distributed and marketed, placed in monofills or surface disposal sites, or incinerated. Standards are not proposed for sewage sludge that is disposed with solid waste in MSWLFs. The disposal of sewage sludge in MSWLFs will be regulated under 40 CFR Part 258 (see 53 FR 33314, August 30, 1988). In addition, the rule does not cover sewage sludge that is incinerated with solid waste or disposed of in deepwell wet air oxidation systems.

The rule applies to sewage sludge that is generated or treated by publicly owned and privately owned treatment works treating domestic sewage and municipal wastewater. The rule does not apply to domestic sewage that is treated along with industrial wastewater by privately owned facilities. Sewage sludge that is determined to be hazardous under procedures in Appendix II of 40 CFR Part 261 is not included in this proposal, but must be disposed of in compliance with the hazardous waste regulations in 40 CFR Parts 261 through 268. Compliance with those regulations will constitute compliance with Section 405. Also, sewage sludge that is found to contain 50 ppm or more of PCBs is excluded from this proposal. Sewage sludge with 50 ppm of PCBs must be disposed of in accordance with the requirements established in 40 CFR Part 761.

Finally, the rule does not cover the ocean disposal of sewage sludge which is regulated by the Marine Protection, Research, and Sanctuaries Act (MPRSA). The Ocean Dumping Ban Act of 1988, Pub. L. 100-688, amended MPRSA to prohibit any person from dumping sewage sludge into ocean waters after December 31, 1991. In addition, Congress limited ocean dumping during the interim period to those who were authorized as of September 1, 1988, to dump either under an MPRSA permit or a court order. Further, Congress prohibited dumping after August 15, 1988, unless an MPRSA permit has been obtained by that time. EPA is moving forward to issue permits under 40 CFR Parts 220 through 228 for the limited universe of POTWs eligible to continue dumping.

Today's proposal includes specific numerical limits or equations for calculating these limits for 28 pollutants in one or more use or disposal methods. Not every pollutant is regulated under each method.

Today's proposal raises many precedential scientific, technical and policy issues. Therefore, the numerical limits included in today's proposal may change, based on the Agency's data gathering initiatives and public comments. It would not be advisable for permit writers to use these proposed numerical limits before the Agency revises "Guidance For Writing Case-By-Case Permits For Municipal Sewage Sludge" scheduled for later this year.

When sewage sludge is applied to agricultural lands, distributed and marketed, placed in monofills, or incinerated, numerical limits are established using exposure assessment models designed to protect the MEI. The models are used for these practices because the MEI and the population as a whole are likely to receive a high level of pollutant exposure or because there are significant uncertainties about the effect of a pollutant in a use or disposal practice.

The numerical limits derived from the exposure assessment models are based on human health or environmental criteria already published or promulgated by the Agency, on human health criteria developed by the Agency, or on plant and animal toxicity values published in the scientific literature. When sewage sludge is incinerated, the numerical limits for beryllium and mercury are based on the NESHAPs for these pollutants, and the numerical limit for lead is based on the NAAQS for

lead. When the objective is to protect sources of drinking water, pollutant limits were developed which would ensure the MCLs are not violated. When the objective is to protect surface water, Water Quality Criteria are used.

If the Agency has not published or promulgated criteria for specific pollutants, EPA is proposing to use reference doses listed in the Agency's computerized Integrated Risk Information System (IRIS) and risk specific doses corresponding to an incremental carcinogenic risk level of 1×10^{-4}, except when sewage sludge is incinerated. For the incineration of sewage sludge, numerical limits are established to ensure pollutant levels do not exceed a risk specific concentration corresponding to an incremental carcinogenic risk level of 1×10^{-4}. Terrestrial criteria designed to protect plants or animals are based on toxicity values determined from the appropriate scientific literature.

For sewage sludge that is disposed of in monofills or is incinerated, treatment works may submit site-specific datas for a limited number of physical parameters related to the site. The permitting authority will use the treatment works' site-specific data to re-calculate a numerical limit using EPA-approved exposure assessment models. Because these re-calculated numerical limits are based on the same human health and environmental criteria as the national numerical limits, the re-calculated limits will adequately protect human health and the environment.

If practices do not result in high levels of pollutant exposure to the MEI and the aggregate analyses do not show significant human health effects on the population as a whole, the pollutant limits are based on existing sewage sludge quality. Numerical limits based on existing sewage sludge quality are derived from the 98th-percentile concentrations of the "40 City Study." These pollutant concentrations are used to establish numerical limits for pollutants in sewage sludge that is applied to nonagricultural lands or disposed of on surface disposal sites.

The rule also lists pollutants for which removal credits may be authorized. In addition to the pollutants for which numerical limits are established, removal credits may be available for pollutants that EPA examined without establishing numerical limits. No limits are established for this latter group of pollutants because either the Agency determined that at the concentrations found in sewage sludge, these pollutants do not interfere with the particular disposal practice or, for the incineration of sewage sludge, the Agency is proposing to establish numerical limits for total hydrocarbons rather than for individual organic pollutants.

The rule establishes limits for pathogenic organisms or indicator organisms (fecal coliforms and fecal streptococci/enterococci) for sewage sludge that is applied to land, distributed and marketed, or disposed of in monofills or on surface disposal sites. The proposal also includes requirements for reducing the attraction of vectors to sewage sludge.

Supplementing the numerical limits are management practices and other general requirements to reduce levels of pathogenic organisms and to prevent gross abuse of the environment. For the distribution and marketing of sewage sludge, the rule requires the distributor to label the product or to include information sheets with the product. The labels or information sheets are to identify the contents of the product and to provide instructions on the proper use of the product.

The rule also proposes monitoring, record keeping, and reporting requirements. The frequency with which sewage sludge is to be monitored depends on the size of the treatment work. The pollutants for which treatment works must monitor their sewage sludge depend on their use or disposal method. The record keeping and reporting requirements are also specific to a particular method of use or disposal.

The proposed rule is expected to cover approximately 5,300 of the approximately 15,300 POTWs that use one or more of the methods included in the proposal. These 5,300 facilities generate or treat approximately 55 percent of the sewage sludge. Of the remaining POTWs, an estimated 6,700 dispose of their sewage sludge (41 percent of the total sludge generated) in MSWLFs that are to be regulated under the proposed 40 CFR Part 258 (53 FR 33314, August 30, 1988). The remaining 3,300 POTWs use other disposal practices not covered in either this proposal or the MSWLF proposal.

The Regulatory Impact Analysis estimates that current use or disposal practices contribute 12.3 cancer cases annually, based on a life time cancer risk ranging from 5×10^{-5} for incineration to 2×10^{-6} for the land application to non-agricultural land. The other health effects are primarily associated with lead exposure and result in 5,998 cases of hypertension, diminished learning capacity in children, or prenatal birth effects. The Agency estimates the benefits of the proposal to be a reduction of 9.5 cancer cases and a reduction of 5,286 lead cases.

The Agency estimates that the use or disposal of sewage sludge costs POTWs approximately $844,000,000 annually. For the purpose of the regulatory impact analysis, the Agency estimated that approximately 509 POTWs may have sewage sludge which does not meet the proposed numerical limits. This estimate does not take into consideration the possibility that some POTWs may come into compliance by using site-specific data to calculate new numerical limits and by imposing more stringent pretreatment requirements on their industrial dischargers. The Agency estimates annual compliance costs of $157.7 million (in 1987 dollars) or an increase of $5 annually for each household served by the POTWs. The total annual incremental compliance costs include costs for sludge monitoring, management practices, and, in some cases, incremental costs of changing a practice for POTWs that fail to meet the numerical limits.

The technical support documents, aggregate human health risk analyses, the regulatory impact analyses, and the preamble discuss the factors that EPA considered, the data it evaluated, and the determinations that it made in developing today's proposal. The preamble summarizes this information in 15 parts.

Part I briefly describes the generation, volume, and constituents of sewage sludge and the factors that communities must consider in using or disposing of the sewage sludge that results from the treatment of domestic sewage and municipal wastewater. Part I also identifies the ways in which communities commonly use or dispose of their sewage sludge, the benefits of reusing sewage sludge, and the risks associated with its disposal.

Part II lists existing Federal and State requirements for the use and disposal of sewage sludge including the relationship of the existing requirements to today's proposal.

In Part III, the preamble begins to describe how the Agency developed the proposed rule. Initially, the Agency selected pollutants most likely to interfere with the safe use or disposal of sewage sludge and then refined the list of pollutants based on the availability of information on the toxic effects of the pollutants.

In refining the intial list of pollutants, the Agency simulated the movement of pollutants into and through the environment with a series of exposure assessment models to determine the concentrations of pollutants reaching an individual, plant, or animal. Part IV describes these models, the assumptions used in the models, and the questions and uncertainties about the models.

Parts V and VI discuss the human health and environmental criteria that the Agency considered and used in determinning the concentration at which a pollutant would cause an adverse human health or environmental effect.

Prior to selecting its approach for establishing standards for a particular use or disposal method, the Agency examined the aggregate human health effects on the nation from the use and disposal of sewage sludge. The methods used to conduct these analyses and the results are described in Part VII.

Part VIII discusses the four regulatory options considered by the Agency for establishing numerical limits and management practices. Included in the discussion are the factors on which the Agency based its selection of a regulatory approach that would adequately protect public health and the environment.

Part IX describes, in separate subparts, the requirements that apply to the use and disposal of sewage sludge and explains how and why they were selected. Examples illustrate how the pollutant limits are calculated and, where applicable, how the numerical limits may be recalculated based on site-specific data. The Agency discusses alternatives that were considered and invites public comment. In addition, separate subparts of Part IX describe the pathogen and vector attraction reduction requirements; the pollutants eligible for removal credits; and the monitoring, record keeping, and reporting requirements.

Part X briefly discusses the implementation of the rule through Federal and State permit programs. Under a separate rulemaking, the Agency proposed State program management requirements and changes in the National Pollutant Discharge Elimination System permitting requirements (see 53 FR 7642, March 9, 1988).

The benefits, costs, and regulatory impact of the proposed rule are discribed in Part XI. This part also discusses the data limitations and assumptions and determinations that the Agency made in fulfilling its responsibilities under Executive Order 12291.

Throughout the preamble, issues are raised and alternatives are discussed. Public comment is invited on these issues and alternatives. Where data are missing, the Agency identifies the information needed to complete its development of the proposal. The issues, alternatives, and data on which the agency is inviting public comment are delineated in PART XII.

Part XIII provides information on where interested persons may obtain copies of the proposed rule, the technical support documents, the models used in establishing the numerical limits, the aggregate effects assessment, and the regulatory impact analysis. Included in this part is the list of references cited throughout the preamble.

Part XIV describes the proposed changes in 40 CFR Part 257. These changes are limited to removing from coverage in Part 257 sewage sludge disposal methods which will be subject to the new standard the Agency is proposing in 40 CFR Part 503.

Finally, Part XV lists the subjects in 40 CFR Parts 257 and 503.

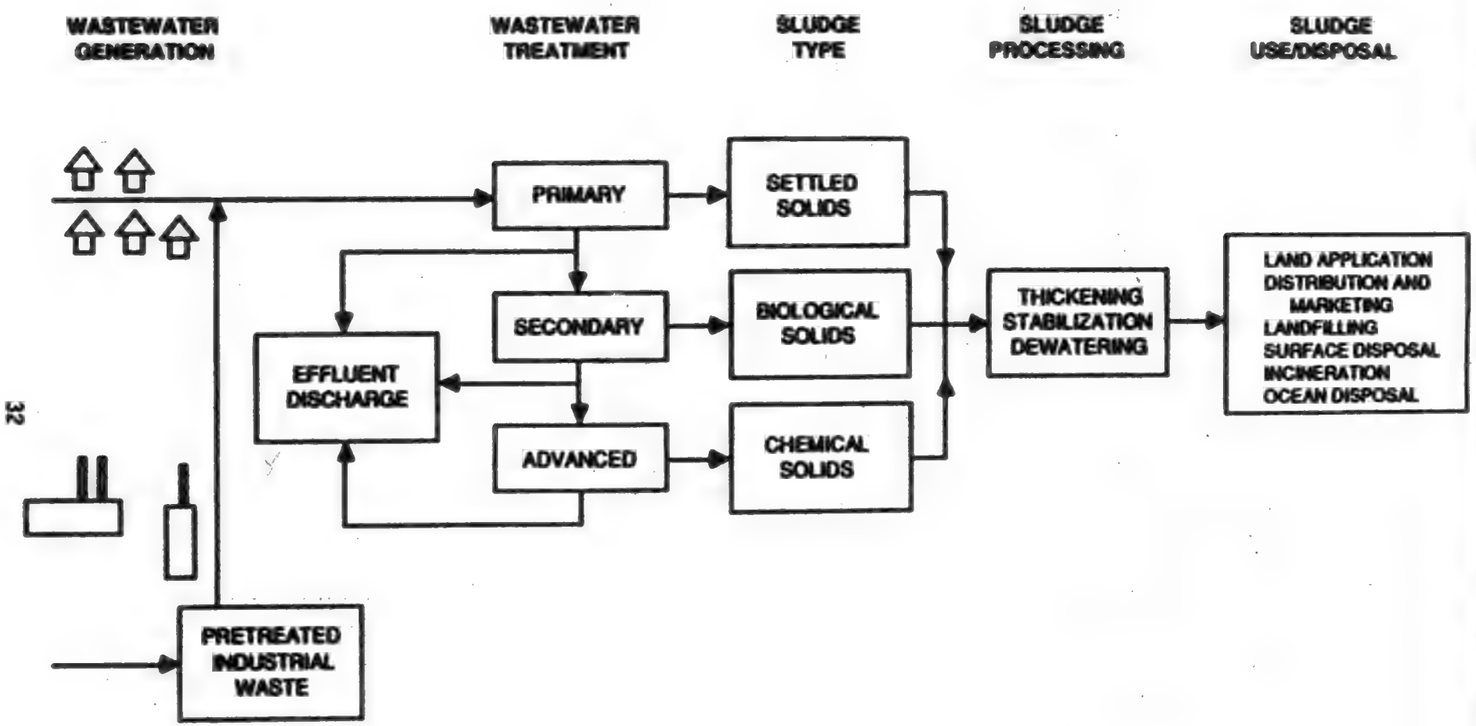
PART I: GENERATION, USE, AND DISPOSAL OF SEWAGE SLUDGE

Generation of Sewage Sludge

The Clean Water Act (CWA) requires municipalities to clean their wastewater prior to discharging it. Wastewater treatment generates sludge which in turn must either be disposed of or used. Sludge management begins with sludge generation and continues through sludge processing and ultimate disposal (see Figure I-1).

BILLING CODE 6560-50-M

Figure I–1 **Generation, Processing, and Use/Disposal of Municipal Wastewater Sludge.**



BILLING CODE 6560-50-C

Domestic wastewater contains material flushed into household drains through toilets, sinks, and tubs. Components of domestic sewage include soaps, shampoos, human excrement and tissue, food stuffs, detergents, pesticides, household hazardous waste, and oil and grease. Typically a family of four discharges 300 to 400 gallons of wastewater per day.

Domestic wastewater is treated at its source in septic tanks, cesspools, portable toilets, or in publicly or privately owned wastewater treatment works. These treatment works may treat domestic wastewater alone, or a combination of domestic wastewater and industrial wastewater.

Municipal wastewater treatment works may use one or more levels of treatment (i.e., primary, secondary, or tertiary) to clean this wastewater. Each level of treatment provides both greater wastewater clean-up and greater amounts of sludge.

Primary treatment processes remove the solids that settle out of the wastewater by gravity. This generates 2,500 to 3,500 liters of sludge per million liters of wastewater treated. Primary sludge contains three to seven percent solids, 60 to 80 percent of which is organic matter. The water content of primary sludge can easily be reduced by thickening or by removing water.

Secondary treatment produces a sludge generated by biological treatment processes. Biological treatment processes (e.g., activated sludge systems, trickling filters, and other attached growth systems) utilize microbes to break down and convert the organic substances in the wastewater to microbial residue. These processes remove up to 90 percent of the organic matter in the wastewater and produce a sludge that typically contains from one-half to two percent solids. These solids are generally more difficult to de-water than primary sludges. The organic content of the solids ranges from 50 to 60 percent. Secondary treatment processes increase the volume of sludge generated over primary treatment by 15,000 to 20,000 liters of sludge per million liters of wastewater treated.

Advanced wastewater treatment processes, such as chemical precipitation and filtration, produce an advanced or tertiary sludge. Chemical precipitation uses chemicals to remove organics and nutrients and to separate the solids from the wastewater. Characteristics of these sludges vary depending upon the type of advanced treatment process used and the type of wastewater entering the treatment process. Because these sludges typically contain considerable amounts of added chemicals, the solids content will vary from 0.2 to 1.5 percent, while the organic content of the solids will be in the 35 to 50 percent range. Tertiary treatment increases the volume of sludge generated over secondary treatment by another 10,000 liters of sludge per million liters of wastewater treated.

Sewage sludge contains from 93 to 99.5 percent water, as well as the solids and dissolved substances that were present in the wastewater or that were added or cultured by the wastewater treatment process. While virtually all sewage sludge contains nutrients (e.g., nitrogen, phosphorus) and significant numbers of pathogens (e.g., bacteria, viruses, protozoa, and eggs of parasitic worms), some sludges also contain more than trace amounts of organic chemicals (e.g., chloroform) and inorganic chemicals (e.g., iron). These pollutants come from domestic wastewater, from the discharge of industrial wastewater to municipal sewers, and from the runoff from parking lots and lawns and fields where fertilizers and pesticides were incorrectly applied.

Sludge Processing

Prior to reusing or disposing of sewage sludge, treatment works generally thicken, stabilize, and dewater the sludge. Sludge thickening is the removal of water from sludge to achieve a volume reduction. The reduction in sludge volume decreases the capital and operating costs of subsequent sludge processing and disposal operations. For example, lowering the volume of sewage sludge reduces transportation costs. EPA estimates that the cost of transporting sewage sludge with a 22 percent solids content over a 20 mile trip is about one-half the cost of transportating sewage sludge with a six percent solids content over the same distance.

Treatment works frequently digest or compost their sewage sludge to reduce the level of pathogens and odors. The degree to which a sludge is processed is very important when applying sewage sludge to land, when distributing and marketing it, and when placing sewage sludge in monofills or on surface disposal sites in order to eliminate the spread of pathogenic diseases.

Amount of Sewage Sludge Generated

Approximately 15,300 publicly owned treatment works (POTWs) generate 7.7 million dry metric tons of sludge annually (see Table I–1), or 64 pounds of sewage sludge (dry weight basis) for every individual in the United States. This volume is expected to double by the year 2000 due to population growth, stricter wastewater treatment requirements, and a greater number of better-operated POTWs. The sewage sludge generated each year would fill 185,950 railroad cars, which, if connected, would span half the country.

Unless the volume of sludge is reduced, the nation cannot achieve its environmental quality objectives. Treatment alone is not the answer. Communities should consider the following measures: Implementation of waste separation and water conservation programs; encouragement of the recycling of garbage in compost piles; separation of household hazardous waste prior to collection and handling; and separation of storm water from wastewater sewer systems. These measures have proved successful in reducing the volume of wastewater generated and in improving the quality of the sewage sludge that is ultimately used or disposed of.

Use and Disposal Methods

The following are common methods of using or disposing of sewage sludge: application to agricultural and non-agricultural lands; distribution and marketing of sewage sludge for use in home gardens; disposal in landfills, monofills, and on surface disposal sites; incineration; and ocean disposal.

Table I–1 shows the amount of sludge that is generated based on the size of a facility and on the amount of sewage sludge that is disposed of by a use or disposal practice. Table I–2 shows the number of facilities using a particular method of use or disposal.

TABLE 1-1.—AMOUNT OF SEWAGE SLUDGE GENERATED BY SIZE OF POTW AND DISPOSED OF BY A USE/DISPOSAL PRACTICE*

(Thousands of dry metric tons per year)

Use/disposal practice	Size of POTW						Use/disposal practice as percent of total
	0<0.2 MGD	0.2<1 MGD	1<10 MGD	10<60 MGD	>60 MGD	Total	
Land application	23.1	103.0	438.3	321.5	316.2	1,202.2	15.6
Distribution and marketing	0.1	4.0	36.3	97.5	567.5	705.5	9.1
Municipal landfills	56.5	278.6	1,043.1	898.5	884.7	3,162.3	41.0
Monofills	0.1	2.8	25.5	44.5	28.5	101.4	1.3
Surface disposal	27.6	33.5	40.8	79.9	15.5	197.5	2.6
Incineration	0	0.6	94.1	363.6	1,173.1	1,651.4	21.4
Ocean disposal	0	0.3	1.2	35.4	387.4	424.4	5.5
Other	37.8	45.8	56.0	109.3	21.1	270.0	3.5
Total	145.3	468.6	1,755.5	1,971.2	3,394.0	7,713.6	
Size class as percent of total	1.9	6.1	22.5	25.5	44.0	100	

*Assumptions are that the amount of sewage sludge generated is identical to the amount of sewage sludge disposed of and that a facility uses a single practice to dispose of its sludge.

TABLE 1-2.—THE NUMBER OF POTWS USING A USE/DISPOSAL PRACTICE AND THE SEWAGE SLUDGE GENERATED BY POTWS USING THE PRACTICE

Use/Disposal practice	POTWS using a practice number	Percent of POTWS	Volume generated (1000's of dry MT/year) volume	Percent of sewage sludge
Land application	2,623	17.1	1,202.2	15.6
Distribution and marketing	106	0.7	705.5	9.1
Municipal landfills	6,664	43.5	3,162.3	41.0
Surface disposal	2,386	15.6	196.4	2.5
Monofills	49	0.3	101.4	1.3
Incineration	169	1.1	1,651.4	21.4
Ocean disposal	25	0.2	424.4	5.5
Other	3,274	21.4	270.0	3.5
Total	15,305	100.0	7,713.6	100.0

Source: Draft Regulatory Impact Analysis of the Proposed Regulation for Sewage Sludge Use and Disposal, November 1988.

Benefits Of Reusing Sewage Sludge

The organic and nutrient content of sewage sludge makes it a valuable resource to use both in improving marginal lands and as a supplement to fertilizers. Although not a high grade fertilizer, the organic content in sewage sludge contains $30 to $60 per dry ton worth of organic nitrogen and phosphorus. A study of sewage sludge and effluent use on selected agricultural crops in one area of Oregon found that the return per acre of sludge application ranged from a loss of $0 to an increase of $15 per acre, compared to traditional fertilizer sources, depending on the crop rotation involved, previous soil management practices, soil type, and level of sludge application. These were net savings in the cost of fertilizers, taking into account the fact that the sludge was available at no cost to the farmer (Reference number 7).

The beneficial uses of sludge are not limited to the production of agricultural commodities. Sludge is used in silviculture to increase forest productivity and to re-vegetate and stabilize harvested forest land and forest land devastated by fires, land slides, or other natural disasters. The application of sewage sludge to forest land shortens wood production cycles by accelerating tree growth, especially on marginally productive soils. Studies at the University of Washington on the use of sludge as a fertilizer in silviculture show height increases of up to 1,190 percent and diameter increases of up to 1,250 percent compared to controls in certain tree species. University of Washington research has also shown that trees grow twice as fast on sludge-amended soil. This means that a tree which would typically be cut after 60 years could be cut after only 30 years to supply lumber for a variety of purposes.

Sludge is productively used to stabilize and revegetate areas destroyed by mining, dredging, and construction activities. Air-dried sludge that looks like compost is frequently used to fertilize highway median strips, clover leaf exchanges, and for covering expired landfills. Historically, land reclamation has been very successful and comparable in cost to other commercial methods. In a strip-mined area in Fulton County, Illinois, reclamation using municipal sewage sludge cost $3,660 an acre, as compared with a range of $3,395 to $8,299 an acre using commercial methods (Reference number 60). Pennsylvania has used the sludge Philadelphia generates to reclaim over 3,000 acres of devastated lands. Sludge, in combination with fly ash, is currently used in the re-vegetation of soils that have become highly contaminated from the operation of a zinc smelter in Palmerton, Pennsylvania over the past 90 years (Reference number 31).

Our analyses show that current use practices, land application, and distribution and marketing pose less carcinogenic risk than disposal practices. On a per ton basis, carcinogenic risks from reusing sewage sludge range from $2x10^{-6}$ to $9.9x10^{-7}$, while those from incinerating and disposing of sewage sludge in monofills range from $3x10^{-5}$ to $5x10^{-3}$.

Studies using Philadelphia sludge have shown that the microbial communities in reclaimed mined soils revert to those of normal soils within 2 to 3 years. It may take as long as 10 to 15 years, or even longer, with conventional reclamation (Reference number 31).

Forest soils have been found to be well suited to sludge application because they have high rates of infiltration (which reduce run-off and ponding), large amounts of organic material (which immobilize metals from the sludge), and perennial root systems (which allow year-round application in mild climates). Although forest soils are frequently quite acidic, research at the University of Washington has found no problems with metal leaching following sludge application (Reference number 37). In addition, studies of animals living on sludge treated sites have found that the animals are healthier than those on control sites because of the increased availability of vegetative matter.

The sale of sewage sludge products can be used to defray the costs of de-watering and composting the sewage sludge, but there is no similar mechanism to defray the costs of de-watering sewage sludge placed in landfills or incinerated. Further, the labor, capital, and operating and maintenance costs of incinerating sewage sludge are substantial.

The Municipality of Metropolitan Seattle (METRO), which treats wastewater in the Seattle-King County region, began using sludge to improve soil in several Seattle area parks, restore land disturbed during strip mining, restore a gravel pit used for Interstate 90 construction, and enhance grass growth at the King County International Airport at Boeing Field. In October 1983, the METRO Council adopted a Sludge Management Plan that outlined its goal to use at least eight alternative sludge recycling or disposal methods through the year 2000. METRO reports that its plants produced 65,000 tons of sludge in 1985 and more than 91,000 tons in 1987. Sludge production is expected to increase dramatically in the next decade after METRO's Puget Sound plants are upgraded from primary to secondary treatment. The Agency says that by creating a demand for sludge and developing a variety of recycling options, it reduced program expenses from $227 per ton of sludge solids in 1983 to $148 in 1987.

The benefits of using sewage sludge to improve land productivity are substantial. However, if sewage sludge containing high levels of pathogenic organisms (e.g., viruses, bacteria) or high concentrations of pollutants is improperly handled, the sludge could contaminate the soil, water, crops, livestock, fish, and shellfish. The major human health, environmental, and aesthetic factors of concern in the land application of sewage sludge are related to pathogens, metals and persistent organic chemicals content, and odors. The standards proposed today would prevent the contamination of soil and crops by pathogens, as well as the contamination of food and animal feed crops by methods and organic pollutants when sewage sludge is applied to lands used in the production of agricultural crops or to lands that may be converted to residential use.

In spite of the benefits of reusing sludge, only 25 percent of the sewage sludge generated in the United States is effectively reused by applying it to the land or by distributing and marketing it for use in home gardens (see Table I-2). In comparison, the 12 countries in the European Economic Community apply 35 percent of their sewage sludge to the land. Japan uses 42 percent of its sewage sludge for coastal reclamation and home garden or farming uses. The United Kingdom applies 51 percent of its sewage sludge to the land (Reference number 3).

While the CWA reserves the choice of use and disposal practices to local communities, EPA's preference is for local communities to reuse this resource in beneficial ways. On June 12, 1984, the EPA published its policy on the management of sewage sludge stating that the Agency will actively promote those municipal sludge management practices that provide for the beneficial use of sludge while maintaining or improving environmental quality and protecting public health (see 49 FR 24358).

When the quality of the sewage sludge appears to be a limiting factor for an otherwise desirable use, POTWs can require their industrial users to pretreat contaminated industrial wastewater before discharging the wastewater to the POTW for cleansing. Controlling the quality of industrial wastewater discharged into municipal sewers is an important element in managing the quality of sewage sludge.

POTWs designed to accommodate flows of more than 5 million gallons per day and smaller POTWs with significant industrial discharges are required to establish local pretreatment programs. Approximately 1,500 of the nation's 15,300 POTWs have local pretreatment programs. The local program must enforce all categorical pretreatment standards and may impose more stringent discharge requirements (i.e., local limits) where necessary to prevent pollutants from interfering with or passing through the POTW wastewater treatment processes.

In addition to wastewater reduction and the separation of contaminated waste from uncontaminated wastes, pretreatment of industrial wastewater is another key step in managing the quality of sewage sludge. If pretreatment does not reduce the pollutant levels sufficiently, communities may have to dispose of rather than use their sludge and, depending on the disposal method, add pollution controls and thereby increase the cost of sludge disposal.

Reuse Practices

Land Application to Agricultural Lands

Seventy-seven percent of the sludge applied to land (approximately 928,000 dry metric tons) is used to improve the condition and nutrient content of soil for agricultural crops, including row and feed crops and pastures. The method of applying sludge to agricultural land depends on the physical characteristics of the sludge and soil and on the crops grown. Liquid sludge may be applied with tractors, tank wagons, irrigation systems, or special application vehicles. Liquid sludge may also be injected under the surface layer of the soil. De-watered sludge, on the other hand, is typically applied to cropland by equipment similar to that used for applying limestone, animal manures, or commercial chemical fertilizers. Generally, the de-watered sludge is applied to the land surface and then incorporated by plowing or disking. When applied to pasture land, sludge is usually not incorporated into the soil.

Land Application to Non-Agricultural Lands

Sludge application to forest land has been undertaken, at least on an experimental field-scale level, in 10 or more States. The most extensive experience with this practice is in the Pacific Northwest. Sludge is most often sprayed from mobile equipment into established forest stands as a partially de-watered, but still liquid, material.

When sewage sludge is used to stabilize and revegetate land, typically large amounts of sludge (usually 112 metric tons per hectare) are applied on a one-time basis. This large amount is necessary to ensure that sufficient organic matter and nutrients are introduced into the soil to support vegetation until a self-sustaining ecosystem is established.

Distribution and Marketing

Nine percent of the sewage sludge generated is distributed and marketed. As a method of managing sewage sludge, distribution and marketing is a highly beneficial practice and one the Agency encourages.

Usually, sewage sludge that is distributed and marketed is composted.

In composting sewage sludge, the sludge is de-watered; mixed with a bulking agent, such as wood chips, bark, rice hulls, straw, or previously composted sludge; and allowed to decompose aerobically for a period of time. In this form, the sewage sludge is dry and easier to distribute. It is also easier for the user to handle. Sewage sludge that is distributed and marketed is used as a substitute for topsoil and peat on lawns, golf courses, parks, and in ornamental and vegetable gardens. Yield improvements have been valued at $35 to $50 per dry ton over other potting media.

Risks of Disposal Methods

Communities should consider alternatives other than burying or burning their sludge. These are wasteful practices that pose risks and incur costs. Some methods of sewage sludge disposal, such as incineration and uncovered landfills, may contribute to global warming (i.e., the "greenhouse effect") by releasing carbon dioxide and methane.

Sewage sludge with high concentrations of organic and metal pollutants could pose human health problems, when disposed of in monofills or on surface disposal sites, if the pollutants leach out of the unit into the ground water. Therefore, the concentration of the pollutants must be limited, or other measures must be taken, to ensure that ground water is not contaminated.

For the incineration of sewage sludge, municipalities must take sufficient measures to control the emissions from sewage sludge incinerators. Otherwise, particulates, sulfur dioxide, oxides of nitrogen, heavy metals, toxic organic compounds, and hydrocarbons will add to a community's air pollution problems.

Ocean dumping of sludge, which Congress banned after 1991, may result in the destruction of biota that influence the balance between oxygen and carbon dioxide. In ocean disposal, there is a potential for the bioaccumulation of certain pollutants often associated with municipal sludge, including mercury, cadmium, and polychlorinated biphenyls. High levels of these pollutants may interfere with the reproductive systems of certain marine organisms, may produce toxic effects in aquatic life, or may present public health problems if contaminated fish and shellfish are eaten.

Disposal Methods

Land Application to Dedicated Sites

Sludge is often disposed of at sites specifically set aside for sewage sludge disposal. Relatively large quantities of sludge (220 to 900 metric tons per hectare) are applied to sites for many years. No attempt is made to use the nutrient and soil conditioning properties of the sewage sludge.

The objective of this practice is to employ the land as a treatment system by using soil to bind metals and by using soil microorganisms, sunlight, and oxidation to destroy the organic matter in the sludge. These sites are generally owned by, or are under long-term leases to, a treatment work. Frequently, the dedicated land disposal site has a non-food chain vegetative cover crop (e.g., sod, pulpwood) to reduce the potential for runoff or leaching of the pollutants to surface or ground water.

Landfilling

Landfilling is a sludge disposal practice in which sludge is deposited in a dedicated area, alone or with solid waste, and buried beneath a soil cover. Landfilling is another disposal method that does not attempt to recover the nutrient content of the sludge for beneficial uses. However, the decomposition of organic matter in sewage sludge that is landfilled produces methane gas. The methane gas can be recovered and yields an energy value more than half as great as that of natural gas.

Forty-one percent of the sewage sludge disposed of by POTWs is landfilled with municipal solid waste. In co-disposal, the absorption characteristics of the solid waste and soil conditioning characteristics of the sludge complement each other. The solid waste absorbs excess moisture from sludge and reduces leachate migration. Sewage sludge usually makes up five percent or less of the material in a solid waste landfill.

Slightly more than one percent of the sewage sludge generated is disposed of in monofills (landfills only accepting sewage sludge). EPA has identified 49 POTWs that dispose of their sewage sludge in monofills. Most monofills consist of a series of trenches, dug into the ground, into which de-watered sludge is deposited and then covered with soil. Other monofill designs, in which the sludge is deposited on the ground surface (area fill mounds, area fill layers, and disked containment) do exist, but these are not commonly used.

Surface Disposal

Sewage sludge surface disposal, like land application to dedicated non-agricultural land and disposal in monofills, is a disposal practice. The majority of surface disposal sites are smaller than one acre and receive less than 50 gallons per day of waste.

The Agency is collecting additional data on the characteristics of surface disposal sites, as compared to monofills or to dedicated non-agricultural land-application sites. Generally, surface disposal sites do not have a vegetative or soil over. Depending on the State in which they are located, surface disposal sites may be regulated in a manner similar to monofills or landfills. In other cases, surface disposal sites are areas of land where sewage sludge has been placed for many years with little or no consideration given to its ultimate disposal.

Incineration

Incineration is a disposal practice that destroys the organic pollutants and reduces the volume of sewage sludge. Incineration takes place in a closed device using a controlled flame. EPA estimates that approximately 1.7 million dry metric tons of sewage sludge are incinerated each year, accounting for more than 20 percent of the sewage sludge disposed of by POTWs.

If the sewage sludge contains 20 percent solids, incinerators reduce the volume of sewage sludge by about 90 percent, on a wet weight basis. While this reduces the amount of material that must be landfilled, owners or operators must control the concentration of the pollutants in the incinerator emissions to prevent exacerbation of a community's air pollution control problems. They must also allocate sufficient funds to pay for the labor, capital, operating, and maintenance costs of sewage sludge incinerators.

Currently, 169 POTWs use 282 incinerators to dispose of their sewage sludge. Most of the incinerators (232) were built prior to 1973, when the New Source Performance Standards for Sewage Sludge Incinerators were published (40 CFR Part 60, Subpart O). Multiple hearth incinerators are the most commonly used sewage sludge incinerators. There are 231 multiple hearth incinerators (82 percent of the incinerators firing sewage sludge), 37 fluidized bed incinerators (13 percent of the total), and five electric incinerators. The remaining incinerators fire sewage sludge with solid waste in municipal waste combusters. A description of these incinerators is included in the "Technical Support Document for Incineration" (Reference number 56).

Ocean Disposal

Ocean disposal of sewae sludge involves the transport of sludge on ocean-going barges to a specially designated site. Under the authority of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972, EPA has approved only one site for the ocean disposal of sewage sludge, the 106-Mile Ocean Waste Disposal Site. That site is located 106 nautical miles southeast of the Ambrose light and approximately 120 nautical miles southeast of Cape May, New Jersey. On November 18, 1988, the President signed the Ocean Dumping Ban Act of 1988, which prohibits the dumping of sewage sludge after December 31, 1991. Until the ban goes into effect, permits will be issued under MPRSA to those municipalities that were authorized as of September 1, 1988 to dump sewage sludge at the 106-Mile Site. In issuing permits during the interim period, the Agency will ensure that the rate of dumping will not attain a rate that would adversely affect aquatic life.

PART II: FEDERAL AND STATE REQUIREMENTS

The use or disposal of sewage sludge is currently subject to some Federal regulation. Existing Federal regulations are authorized under several legislative mandates and have been developed independently along media-specified concerns. State regulations generally are keyed to Federal regulatory requirements, primarily those in 40 CFR Part 257, covering the land application and landfilling of sewage sludge, and those in 40 CFR Part 60, Subpart O, covering sewage sludge incinerators.

This part starts with a discussion of the requirements of the Clean Water Air (CWA), followed by a description and summary of other Federal and State regulatory requirements and how they will relate to today's proposal.

Clean Water Act Statutory Requirements

Sewage sludge has been an important concern of the Agency since 1972, when EPA, through the Federal Water Pollution Control Act construction grants program began assisting in the financing of wastewater treatment facilities. The Clean Water Act of 1977 amended Section 405, mandating that EPA develop guidelines for the use and disposal of sewage sludge. Under Section 405(d), EPA was required to issue regulations that:

(1) Identify uses for sludge, including disposal;

(2) Specify factors to be taken into account in determining the measures and practices applicable to each such use or disposal (including publication of information on costs); and

(3) Identify concentrations of pollutants which interfere with each such use or disposal.

Responding to this mandate, in 1979, EPA adopted criteria which provided guidelines for sludge utilization and disposal when sludge was applied to land or disposed of in landfills. These criteria were included in regulations co-promulgated under Subtitle D of RCRA and section 405(d) of the CWA and are found in 40 CFR Part 257. These regulations contain a number of specific requirements for the management of sludge. To protect the ground water, the regulations prohibit any use or disposal of sludge that causes the concentration of ten heavy metals and six organic chemicals in an underground drinking water source to exceed maximum contaminant levels (MCLs) specified in the criteria. The criteria also included management standards applicable to sludge use or disposal methods to protect surface waters, flood plains, and endangered species. The criteria contain limitations on the concentration of two pollutants (cadmium and polychlorinated biphenyls—PCBs) in sludge when the sludge is applied to the surface of land used for the production of animal feed or food-chain crops. In addition, the requirements in Part 257 restrict sewage sludge disposal except in compliance with certain measures to control pathogens and disease-carrying rodents, insects, and birds. The regulation provided for different levels of pathogen reduction, depending on whether crops for direct human consumption were grown or animals for human consumption were allowed to graze on the sludge-amended soil. The methods for reducing the levels of pathogens include aerobic and anaerobic digestion, composting, lime stabilization, and heat treatment and drying.

As part of its sludge regulatory program, EPA has prepared a number of documents which provide guidance and direction to local publicly owned treatment works (POTWs) on the proper management and handling of sludge. EPA has actively encouraged and assisted in the development and implementation of various practices and processes leading to the beneficial use of sludge. In addition to supporting long-term research and demonstration projects, the Agency has also assisted in the development of detailed design guidance for various beneficial methods of disposal and such technologies as digestion, composting, and lime stabilization. The Agency has also supported development of improved de-watering systems, pyrolysis, and other technologies to improve energy recovery from thermal conversion systems, methane recovery from anaerobic digestion systems, and the recovery of various potentially marketable by-products from sludge.

A lack of action in developing the comprehensive sewage sludge regulations promised in the preamble to the 40 CFR Part 257 rule (44 FR 53439, September 13, 1979) led to the creation of an Intra-Agency Sludge Task Force in 1982. The Task Force was assigned the following tasks: (1) Conducting a multimedia examination of sludge management, focusing on sludge generated by POTWs; and (2) developing a cohesive Agency policy on sewage sludge management, designed to guide implementation of the Agency's sewage sludge regulatory and management programs. Numerous Agency offices and *ad hoc* groups had wrestled with sewage sludge management, but none of these groups had been able to decide how to equitably regulate, on a national level, a complex and variable waste in an environmentally protective and cost-effective manner. Sewage sludge use or disposal involved a myriad of site-specific circumstances, could result in multimedia effects, and depended on proper planning and decision-making at the local level. The Agency lacked experience in developing performance standards for solid waste that would attenuate multimedia environmental effects. Furthermore, at that time, Congress had not provided a compliance mechanism for the regulations.

The Task Force, which included representatives from all parts of the Agency, recommended that the Agency develop an integrated, comprehensive regulatory structure for sludge use or disposal using the combined authorities of section 405 of the CWA and other laws. This structure would also incorporate existing regulations and, where appropriate, new regulations to complete regulatory coverage where important gaps remained.

While the Agency was working on a regulatory approach consistent with the recommendations of the Task Force, the Natural Resources Defense Council sued the Agency over EPA's pretreatment regulation (40 CFR Part 403). In that suit, the U.S. Court of Appeals for the Third Circuit (*Natural Resources Defense Council v. EPA*, 790 F.2d 289, 3rd Cir., 1986) ruled that the pretreatment regulation was invalid in four respects. Most relevant here is the Court's fourth holding:

We hold that, despite EPA's contention that sludge regulations are in place, EPA's device of incorporating other regulations does

not meet the statute's command for a comprehensive framework to regulate the disposal and utilization of sludge and that EPA cannot, in the absence of Section 405(d) regulations authorize the issuance of removal credits under Section 307(b)(1).

Throughout its lengthy consideration of the amendments to the CWA, some members of Congress expressed concern that, without sewage sludge regulations, industry would continue to discharge toxic pollutants into wastewater for POTWs to treat, making it more difficult for a city to find sludge management alternatives. They believed sludge criteria would stimulate effective pretreatment programs and would encourage recycling and reuse of toxic pollutants by industry. In the Water Quality Act of 1987 (Pub. L. 100-4, February 4, 1987), Congress reaffirmed its directive that EPA develop comprehensive sewage sludge regulations and set forth a schedule for the agency to do so. The Water Quality Act amended section 405(d) to include requirements that:

(1) By November 30, 1986, EPA propose regulations establishing numerical limits and acceptable management practices for toxic pollutants that EPA identified as present in sewage sludge in concentrations which, on the basis of information available on their toxicity, persistence, concentration, mobility, or potential for exposure, may adversely affect public health or the environment;

(2) By August 31, 1987, EPA promulgate regulations specifying acceptable management practices and establishing numerical limits for these pollutants that "shall be adequate to protect public and health and the environment from any reasonable anticipated adverse effects of each pollutant;"

(3) By July 31, 1987, EPA identify and propose regulations for those toxic pollutants not identified in the regulations promulgated August 31, 1987, and promulgate regulations for those toxic pollutants by June 15, 1988; and

(4) From time to time, but no less often than every two years, EPA review the regulations for the purpose of identifying additional toxic pollutants and promulgating regulations.

The amendments specify that compliance with the requirements of the regulations must occur not later than 1 year after publication of the regulations, unless the regulations require the construction of new pollution control facilities. In this latter case, compliance must occur no later than 2 years from the date of the regulations' publication.

Section 405(d)(5) also provides that nothing in the section is intended to waive more stringent requirements in the CWA or in any other law. This means that States and local communities remain free to impose more stringent requirements than those included in today's proposal. In addition, as described later in the preamble, where EPA has established requirements applicable to sewage sludge under other statutes, those requirements are included in the proposed Part 503 requirements.

Section 405(e) was further amended to read as follows:

The determination of the manner of disposal for use of sludge is a local determination, except that it shall be unlawful for any person to dispose of sludge from a publicly-owned treatment works or any other treatment works treating domestic sewage for any use for which regulations have been established pursuant to subsection (d) of this section, except in accordance with such regulations.

The implications of this section are presented later in the preamble.

Other Federal Requirements

Traditionally, the Agency has used the standards, definitions, and approaches developed under other Federal public health and environmental programs when they are consistent with the goals and objectives of the CWA. The use of other Federal standards in responding to the broad mandate of section 405(d) is desirable in order to minimize duplicate, overlapping, and conflicting policies and programs. Further, as discussed above, section 405(d)(5) provides that nothing in section 405(d) is intended to waive more stringent requirements established under other statutes. Therefore, as previously indicated, one principle followed in developing today's proposal was to base pollutant limits on human health or environmental criteria established under other statutory authorities.

Under section 304(b) of the CWA, the Agency publishes Water Quality Criteria. For the purposes of Part 503, these criteria are used in making the determination that a pollutant limit for a particular method of use or disposal would not exceed a fresh-water quality criterion, should the pollutant reach the surface water. When the concern is to protect the drinking water supplies, the basis of the pollutant limits is the MCLs promulgated under authority of the Safe Drinking Water Act.

The National Ambient Air Quality Standard (NAAQS) for lead, promulgated under authority of section 109 of the Clean Air Act, and the National Emission Standards for Hazardous Air Pollutants (NESHAPs) for beryllium and mercury, promulgated under authority of section 112 of the Clean Air Act, were used in developing the pollutant limits for these pollutants when sewage sludge is incinerated. Other applicable regulatory requirements for the incineration of sewage include the New Source Performance Standards for Sewage Sludge Incinerators promulgated under section 111 of the Clean Air Act and found at 40 CFR Part 60, Subpart O. Owners or operators of sewage sludge incinerators also must ensure that their operations, including the location of new incinerators, conform to State Implementation Plans approved under the regulations authorized by section 110 of the Clean Air Act and found at 40 CFR Parts 50 through 51.

State Requirements

The information on existing State requirements summarized below was gathered as part of EPA's effort in developing guidance for writing sewage sludge interim permits. Further information may be found in "Guidance For Writing Case-By-Case Permit Requirements For Municipal Sewage Sludge" (Reference number 52). After promulgation of the Part 503 standards, under section 510 of the CWA, States and local entities will retain the authority to impose more stringent standards than provided in this part.

At present, 42 States have regulations or guidelines covering the land application of sewage sludge which set either a maximum allowable concentration or maximum pollutant loading rate for at least one pollutant. Paralleling the requirements in 40 CFR Part 257, 41 States have set restrictions on the growing of crops on soil to which sludge has been applied (e.g., human food chain crops cannot be grown on sludge-amended soil until 18 months after the application of the sewage sludge). In addition, 41 States have established management practices for the land application of sewage sludge.

When States regulate the giveaway or sale of composted sludge, it is regulated under State land application requirements. Eleven States have set numerical limits on the concentration of pollutants in sewage sludge that is distributed and marketed and 22 States have established management practices governing the distribution and marketing of sewage sludge.

Many States enforce landfilling restrictions for non-hazardous sludge that follow the requirements in 40 CFR Part 257. While States have not set maximum pollutant concentrations for sewage sludge that is landfilled, 31 States do have some site restrictions or other management practices governing landfills.

Many States regulate the ambient emissions of sewage sludge incinerators. State implementation plans under the Clean Air Act limit emissions of various pollutants subject to NAAQS or NESHAPs. Twenty States have established opacity limits as well as emission limits for beryllium, mercury, particulates, sulfur dioxide, and carbon monoxide. No State has established a limitation on lead emissions from sewage sludge incinerators. Twenty-nine States have regulations or guidelines governing operation of incinerators, including disposal of the ash.

In one State, the development and enforcement of controls on all methods of sewage sludge use and disposal are delegated entirely to local agencies, as is the issuance of permits. In other States, local as well as State controls are imposed on the disposal of sewage sludge.

PART III: SELECTION OF POLLUTANTS FOR REGULATION

This part describes how the Agency selected the initial list of pollutants for which it is proposing numerical limits and the data bases used to collect information about the pollutants. Additional information may be found in "The Record of Proceedings on the OWRS Municipal Sewage Sludge Committees" and "Summary of the Environmental Profiles" (Reference numbers 80 and 41).

Initial List of Pollutants

In the Spring of 1984, EPA enlisted the assistance of Federal, State, academic, and private sector experts to determine which pollutants, likely to be found in sewage sludge, should be examined closely as possible candidates for special numerical limits. These experts screened a list of approximately 200 pollutants in sludge that, if disposed of improperly, could cause adverse human health or environmental effects. The experts were requested to revise the list, adding or deleting pollutants. The test for inclusion or exclusion was the potential risk to human health and the environment when sewage sludge containing a particular pollutant was applied to the land, placed in a landfill, or incinerated. The Agency also requested that the experts identify the most likely route through which a pollutant could reach target organisms, whether human, plant, or wild or domestic animals. The experts attending the meetings recommended that the Agency gather additional environmental information on approximately 50 pollutants. These pollutants are listed in Table III-1.

TABLE III-1.—POLLUTANTS SELECTED FOR ENVIRONMENTAL PROFILES/HAZARDS INDICES

Pollutants	Land application	Landfill	Incineration
Aldrin/Dieldrin	X		X
Arsenic	X	X	X
Benzene		X	X
Benzidine			
Benzo(a) anthracene	X		X
Benzo(a) pyrene	X	X	X
Beryllium			X
Bis(2-ethylhexyl) phthalate	X	X	X
Cadmium	X	X	X
Carbon tetrachloride			X
Chlordane	X	X	X
Chlorinated dibenzodioxins			X
Chlorinated dibenzofurans			X
Chloroform			X
Chromium	X	X	X
Cobalt	X	X	
Copper	X	X	X
Cyanide	X	X	
DDT/DDD/DDE	X	X	X
3,3'-Dichlorobenzidine			
2,4-Dichlorophenoxy-acetic acid		X	
Dimethylnitrosamine	X		
Fluoride	X		
Heptachlor	X		X
Hexachlorobenzene	X		
Hexachlorobutadiene	X		
Iron	X		
Lead	X	X	X
Lindane	X	X	X
Malathion		X	
Mercury	X	X	X
Methylene bis (2-chloroaniline)	X		
Methylene chloride	X	X	X
Methylethyl ketone		X	
Molybdenum	X	X	
Nickel	X	X	X
PCBs	X	X	X
Pentachlorophenol	X		X
Phenanthrene		X	X
Phenol			X
Selenium	X		
Tetrachloroethylene			X
Toxaphene	X	X	X
Trichloroethylene	X		X
Trichlorophenol			X
Tricresol phosphate	X		
Vinyl chloride			X
Zinc	X	X	X

Environmental Profiles

During 1984 and 1985, the Agency collected data and information from published scientific reports on the toxicity, persistence, means of transport, and environmental fate of these 50 pollutants. EPA also developed information on their occurrence and concentration in sewage sludge by analyzing the sludge of 43 to 45 publicly owned treatment works (POTWs) (depending on the pollutant) in 40 cities ("Fate of Priority Pollutants in Publicly Owned Treatment Works"—the "40 City Study"—Reference number 36). The sludge data from the "40 City Study" consist of concentrations of 40 pollutants (12 metals, six base neutral organic compounds, six volatile organic compounds, nine pesticides, and seven polychlorinated biphenyls—PCBs) in sludge analyzed from the target POTWs.

Using this information on the occurrence and concentration of pollutants in sewage sludge, their toxicity and persistence, the pathways by which the pollutants travel through the environment to a receptor organism (plant, animal, or human), the mechanisms that transport or bind the pollutants in the pathway, and the effects of the pollutants on the target organism, EPA made a preliminary assessment of the likelihood that each pollutant would adversely affect human health or the environment. For this analysis, EPA relied on simple screening models and calculations to predict the concentration of a pollutant that would occur in surface or ground water, soil, air, or food. EPA then compared the predicted concentration with an Agency human health criterion, such as a drinking water standard promulgated under the Safe Drinking Water Act, to determine whether the pollutant could be expected to have an adverse effect on human health. For purposes of this initial screening, EPA assumed conditions that would maximize the pollutant exposure of an individual, animal, or a plant, as well as the worst possible pollutant-related effects.

Based on the factors previously listed (concentration, toxicity, persistence, etc.), EPA "scored" each pollutant and ranked them for more rigorous analysis. EPA excluded two categories of pollutants for further evaluation. First, EPA excluded pollutants which, then compared to a simple index, presented no risk to human health or the environment at the highest concentration that the Agency found in the "40 City Study" or in other available data bases. Second, EPA deferred consideration of pollutants for which

there were no EPA human health criteria or there were insufficient data.

Information on each pollutant, the simple screening models an calculations used to describe the pollutant's path through the environment, and the indices used to evaluate the pollutants are compiled in an "environmental profile" for each pollutant. The summary of the environmental profiles is listed as Reference number 41 in Part XIII of the preamble.

Table III–2 shows the pollutants EPA did not analyze further because the pollutant did not exceed an EPA human health or environmental criterion at the highest concentrations shown. The Agency invites commenters to submit any municipal sewage sludge data, that shows higher concentrations of the pollutant than those shown in the Table III–2. In addition, the Agency would like any documented evidence which would contradict the Agency's conclusion that, at the concentrations shown in Table III–2, these pollutants would not cause adverse human health or environmental effects. The pollutants listed in Table III–2 are included in the list of pollutants for which eligible POTWs, complying with the requirements in Part 503, may, under 40 CFR Part 403, apply for authorization to grant removal credits to their industrial dischargers (see Table 12 in § 503.72).

TABLE III–2.—POLLUTANTS THAT WERE EVALUATED AND FOUND NOT TO INTERFERE WITH SEWAGE SLUDGE USE OR DISPOSAL

Pollutants	Disposal practice (concentration)
Chlordane	Monofill over Class II, III ground water (12 mg/kg).
Chromium	Monofill over Class II, III ground water (1,499.7 mg/kg).
Copper	Incineration (1,427 mg/kg).
Cyanide [1]	Land Application, Distribution and Marketing, Monofill (2,666.6 mg/kg).
Dimethyl nitrosamine [1].	Distribution and Marketing (2.56 mg/kg).
2,4-Dichlorophenoxyacetic acid.	Monofill (7.16 mg/kg).
Fluoride [1]	Land Application, Distribution and Marketing (738.7 mg/kg).
Heptachlor	Incineration (0.09 mg/kg).
Iron [1]	Land Application, Distribution and Marketing (8,700 mg/kg).
Malathion	Monofill (0.63 mg/kg).
Molybdenum	Monofill (40 mg/kg).
Nickel	Monofill over Class II, III ground water (662.7 mg/kg).
Pentachlorophenol.	Land Application, Distribution and Marketing (30.43 mg/kg).
Phenol	Monofill (82.06 mg/kg).
Selenium	Monofill, Incineration (4.85 mg/kg).
Tetrachloroethylene [1].	Distribution and Marketing (13.07 mg/kg).
Zinc	Monofill, Incineration (4,580 mg/kg).

[1] Exposure assessment models were used in making the determination that these pollutants, at the concentrations shown, do not interfere with the disposal of sewage sludge.

Table III–3 shows the pollutants for which a lack of data precludes the Agency from proposing numerical limits at this time. The Agency also solicits information from commenters on these pollutants in order to evaluate them for future rulemaking proceedings.

TABLE III–3.—POLLUTANTS DEFERRED BECAUSE OF INSUFFICIENT DATA

Pollutants	Disposal practice
Benzo(a) anthracene	Land application, distribution and marketing, incineration.
Bis(2-ethylhexl) phthalate	Distribution and marketing.
Chlorinated dibenzo-dioxins.	Land application, distribution and marketing, monofills.
Chlorinated dibenzo-furans.	Land application, distribution and marketing, monofills.
Cobalt	Land application, distribution and marketing, monofills.
Methylene bis (2-chloroanline).	Land application, distribution and marketing.
Methylate chloride	Land application, distribution and marketing, monofills.
Methylene ketone	Monofills.
Pentachlorophenol	Land application, distribution and marketing.
Phenanthrene	Monofills, incineration.
Tricresol phosphate	Land application, distribution and marketing.
Vinyl Chloride	Incineration.

Recently, the Agency established human health criteria for methylene chloride and methylethy ketone. Therefore, these two pollutants are likely to be included on a list of pollutants to be considered for future rulemaking proceedings.

When EPA initiated these pollutant assessments in 1984, the Agency did not include dioxin as a pollutant which it evaluated for this rule. At that time, EPA lacked the data required to assess numerical limitations for dioxin in sludge. Adequate data were not available on the levels of dioxin or its pervasiveness in sewage sludge.

The Agency did not analyze sludge for dioxins as part of the "40 City Study" because, at the time the samples were collected (1979–1980), methodologies did not exist for analyzing trace quantities (parts per trillion) of dioxins in sewage sludge. Because better analytical methods now exist, the Agency is collecting sewage sludge samples for dioxins analyses as part of the National Sewage Sludge Survey (see discussion later in this part of the preamble).

When the analyses of the sewage sludge samples are complete, EPA will use the National Sewage Sludge Survey data and recent scientific studies to propose numerical limits for dioxins. In the interim, as explained later in the preamble, the Agency is limiting the emission of dioxins from sewage sludge incinerators by proposing a limit on total hydrocarbons.

Table III–4 lists the 28 pollutants for which the Agency is proposing numerical limits when a particular method of use or disposal is employed. The pollutants in Table III–4 will be eligible for removal credits. In addition to the pollutants listed in Table III–2 and Table III–4, all organic pollutants for which categorical standards have been promulgated by the Agency and for which the Agency has developed numerical limits will also be eligible for removal credits if the sewage sludge is disposed of by incineration. The rationale for this approach is discussed in connection with Subpart H of the rule (§§ 503.70 through 503.72) in Part IX of the preamble.

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TABLE III-4

POLLUTANTS FOR WHICH SPECIFIC NUMERICAL LIMITS ARE PROPOSED

Pollutants	LA	D & M	MF	SD	I
Aldrin	X	X			
Arsenic	X	X	X	X	X
Benzene			X	X	
Benzo(a) pyrene	X	X	X	X	
Beryllium					X
Bis (2-ethyl - hexyl)- phthalate			X	X	
Cadmium	X	X	X	X	X
Chlordane	X	X	X	X	
Chromium	X	X			X
Copper	X	X	X	X	
DDD, DDE, DDT	X	X	X	X	
Dieldrin	X	X			
Dimethyl nitrosamine	X		X	X	
Heptachlor	X	X			
Hexachlo-robenzene	X	X			
Hexachlo-robuta-diene	X	X			
Lead	X	X	X	X	X

Pollutants	LA	D & M	MF	SD	I
Lindane	X	X	X	X	
Mercury	X	X	X	X	X
Molybdenum	X				
Nickel	X	X	X	X	X
PCB	X	X	X	X	
Selenium	X	X			
Toxaphene	X	X	X	X	
Trichloro-ethylene	X		X	X	
Total hydrocar-bons[1]					X
Zinc	X	X			
	25	22	18	18	8

[1]Total hydrocarbon emissions encompass all organic compounds in the emissions of an incinerator

KEY:

LA refers to land application
D & M refers to distribution and marketing
MF refers to sludge-only landfill (monofill)
SD refers to surface disposal
I refers to incineration

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Use Of The "40 City Study" Data Base

As discussed earlier in this part, the Agency relied on the "40 City Study" data as the primary source of information on the pollutant concentrations in municipal sewage sludge. At this time, the "40 City Study" provides the most comprehensive and best documented nationwide data on the concentration of pollutants in sewage sludge.

EPA recognizes several deficiencies in using the "40 City Study" data. Key among them is the fact that data on final processed sewage sludge is generally not available from the "40 City Study." The Study was designed not to assess the quality of the sewage sludge leaving a POTW, but to determine the fate of section 307(a)(1) priority toxic pollutants entering the POTW. Moreover, some sludge samples were taken at points within the POTW prior to final sewage sludge processing. However, the Study did include information that enabled the Agency to estimate the final dry weight of pollutants in the sewage sludge leaving the POTW.

Another deficiency of the "40 City Study" is that the data were collected in 1979 and in 1980. At that time, analytical methods for measuring organic pollutant concentrations in materials with high suspended solids content were in their infancy. Today, the analytical methods are far more precise and analyses of materials with high suspended solids content are conducted routinely by many laboratories.

A third deficiency in using the "40 City Study" data is that the data may not reflect the current sludge quality. The data were collected prior to the implementation of many pretreatment programs. In cities where pretreatment programs have been implemented, particularly for metals, the concentrations of metals in sewage sludge may be lower than those shown in the "40 City Study". On the other hand, treatment works may find that their sewage sludge contains higher concentrations of organic pollutants because more organic wastes are discharged into municipal sewers as limits are imposed on the disposal of liquid hazardous wastes.

Although other data sources of sewage sludge quality are available, these other data sources are also deficient. EPA has been unable to use these for a number of reasons. Some data were drawn from too narrow a geographic area or were drawn from POTWs of a particular size. Frequently, these data were not collected systematically and different sampling and analytical protocols were used in the same survey. In addition, many of these other data were collected prior to the "40 City Study" data.

EPA believes that based on currently available information, the "40 City Study" data are the appropriate data on which to base its proposal. Although these data were obtained nearly ten years ago, analyses of recent data submitted by the Association of Metropolitan Sewerage Agencies suggest that the "40 City Study" data, particularly for metals, provide a reasonable basis for developing a proposal (see Reference number 36). However, EPA believes that the "40 City Study" data need to be supplemented to support the final regulation. Therefore, EPA is conducting a National Sewage Sludge Survey to provide a current and a reliable data base that will be used to set pollutant limits for a limited number of practices, to better assess the risks of sewage sludge disposal practices, and to evaluate the impact of the rule. The data base will also be used in developing a list of pollutants from which the Agency will select additional pollutants for further analyses and potential regulation under section 405(d) of the CWA.

The results from the National Sewage Sludge Survey are necessary for a number of essential analyses required before promulgation of the final regulation. In establishing numerical limits, the Agency needs the pollutant concentration data from the National Sewage Sludge Survey to determine the level of risk posed by current sludge quality and current use or disposal methods. EPA must also have the data from the Survey to test the reasonableness of its analyses and regulatory approach. Some areas of concern include the accuracy of anticipated risks and analyzed characteristics of increased incidence of disease in proximity to particular use or disposal methods. This information will assist the Agency in further evaluating today's regulatory approach.

In addition, as will be explained later in the preamble, the Agency is proposing to use current sludge quality as the basis of the numerical limits when sewage sludge is applied to non-agricultural land and when sewage sludge is disposed of on surface disposal sites because insignificant adverse health impacts are anticipated from these use and disposal methods. The National Sewage Sludge Survey may show that other use or disposal methods have a similar insignificant impact. In that case, the Agency may conclude that the numerical limits for other use of disposal methods should be based on current sludge quality.

The results of the Survey will also be used to assess the potential shifts among the various use or disposal methods as a result of today's proposal. The effect of today's proposal is an important element in determining how to implement the regulation. For instance, if there is likely to be only a slight impact from a particular numerical limitation, immediate implementation may be appropriate. If, on the other hand, wide shifts in current methods of use or disposal are anticipated from the numerical limits, it might be appropriate to assist the POTWs in the development of more stringent pretreatment limits for their industrial dischargers or in the adoption of alternative use or disposal methods.

In collecting data for the survey, EPA is sending a questionnaire to a random, stratified sample of 479 POTWs employing secondary or advanced wastewater treatment processes and is sampling the sludge from a subset of the 479 POTWs receiving a questionnaire. The statistical sample is designed to produce a statistically unbiased national estimate of the volume of POTW-generated sewage sludge, the frequency with which particular pollutants occur in sewage sludge, and the concentrations of the pollutants found in the sewage sludge analyzed. The sample is also constructed to allow separate analysis by four POTW size groups as measured by wastewater flow (less than 1 million gallons per day—mgd, between 1 and 10 mgd, between 10 and 100 mgd, and over 100 mgd) and by five use or disposal practices (land application, distribution and marketing, monofills, incineration, and others, primarily municipal landfills).

An EPA representative is taking the sample and contract laboratories are analyzing each sample. The sampling protocol is based on the procedures in EPA's protocols for sampling and analysis (see Reference numbers 51 and 55). The protocol includes procedures for selecting and documenting the sampling point, handling and preservation, labeling, transmitting the sample to the laboratory, and chain-of-custody.

The suite of 400 pollutants to be analyzed include those pollutants on the CWA section 307(a) list of pollutants, those toxic compounds highlighted in the Domestic Sewage Study, and those Resource Conservation and Recovery Act Appendix VIII compounds for which analytical methods have been developed. The chemical analysis of the sludge samples will be performed using standard EPA methods for conventional and organic pollutants and Method 8290 for dioxin developed by EPA's Las

Vegas, Nevada Environmental Monitoring Systems Laboratory. These protocols specify sewage sludge matrix clean up by gel permeation chromatography followed by the use of gas chromatography-mass spectrometry (GC/MS) together with isotope dilution. These methods provide better performance in terms of detection, precision, and accuracy than other GC/MS procedures. Further information on the National Sewage Sludge Survey, including the sampling protocols and the questionnaire may be found in the supporting statement for the survey (see Reference number 61).

When completed, all survey reports and other analyses based on survey data will be placed in the Regulatory Record in a masked form to protect any information claimed to be confidential. EPA will notice the availability of the data and make it available to the public. Depending on the results of the analyses, the Agency may re-open the comment period on today's proposal.

Coverage of the Proposal

Today's proposal covers those pollutants and practices for which sufficient information is available for the Agency to establish numerical limits, management practices, and other requirements that will protect public health and the environment from reasonably anticipated adverse affects of each pollutant. The Agency recognizes that today's proposal is not comprehensive. The rule does not establish numerical limits for all pollutants or for radioactive sludge that may interfere with the use or disposal of sewage sludge.

Section 405(d) of the CWA specifically contemplates a phase approach to establishing numerical limits for sludge pollutants. Moreover, section 405(d)(2)(D) of the CWA also provides that "[F]rom time to time, but not less often than every 2 years, the Administrator shall review the regulation * * * for the purpose of identifying additional toxic pollutants and promulgating regulations for such pollutants * * *" The National Sewage Sludge Survey will be used by the Agency to identify additional pollutants in sewage sludge that may interfere with the safe use or disposal of the sludge. From this list of pollutants, the Agency will initiate rulemaking processes to increase the coverage of this Part 503 rule. EPA is today proposing the regulation called for by section 406(d)(2)(A). Additional pollutants not identified at this time will be regulated in the second phase required by section 405(d)(2)(B).

The first step in the process is to determine if there is an EPA-derived human health criterion for the pollutant. For those pollutants that have human health criteria, the Agency will gather sufficient data to evaluate the pollutants using exposure assessment models and analytical techniques EPA has developed for assessing the aggregate effects. The analytical techniques are discussed in the next two parts of the preamble. If sufficient data are available on a pollutant, the Agency will use the exposure assessment models to make a determination as to whether the pollutant may interfere with the safe use and disposal of sewage sludge at the concentrations shown in the National Sewage Sludge Survey. If the pollutant does not pose an unreasonable human health or environmental risk, the Agency would propose that the pollutant be added to the list of pollutants eligible for removal credits. If, based on the exposure assessment models, the pollutant presents an unreasonable human health or environmental risk, the Agency would propose numerical limits for the pollutant appropriate to a particular method of use or disposal. Where the Agency has not developed a human health criterion for a pollutant, EPA would begin to develop the data and information necessary to establish a human health criterion for the pollutant, consistent with the need for and priority of other pollutants. The process is time-consuming particularly if the Agency also must develop a human health criterion.

The Agency is soliciting public comment on the way in which it will expand the coverage of pollutants included in the Part 503 rule. If there are pollutants that are not covered in this rule that should receive immediate attention in future rulemakings, such as dioxins and asbestos, the Agency will consider any suggestions that are offered.

PART IV: EXPOSURE ASSESSMENT MODELS

Introduction

EPA adapted existing models and developed new models to determine the concentration of sludge-borne pollutants that may be applied to the land, placed in sludge-only landfills (monofills), or incinerated without exceeding human health or environmental criteria (Reference numbers 48, 56, and 66). The models simulate the movement of pollutants into and through the environment with a series of mathematical equations or algorithms. These equations or algorithms link the pollutant disposal or release rates to the concentration of the pollutant that moves into the air, water, or terrestrial medium and, subsequently, reaches a target organism (i.e., plants, animals, and humans). Each algorithm in a model represents one exposure pathway through which sludge-borne pollutants enter and pass through or effect an environmental medium.

The target organism is a most exposed individual, plant, or animal (MEI) that remains for an extended period of time at or adjacent to the site where the maximum exposure occurs. The models calculate individual pollutant exposure, relying on certain fixed assumptions about the exposure route. For example, the models assume inhalation of 20 cubic meters of air per day and an average individual diet and two liters of drinking water per day. Other assumptions included in the models are the location of the MEI relative to the site where the sludge is placed and the source of food in the diet of the MEI. The same duration of exposure is used as that assumed in developing the applicable human health or environmental toxicological criteria (allowable doses). For example, where cancer risks are evaluated, the MEI is assumed to be continuously exposed for 70 years.

The Agency's Science Advisory Board (SAB) reviewed the models but not the specific values included in the model algorithms or the way in which the models were used to calculate the proposed numerical limits. The major comments of the Board are discussed in conjunction with each of the models below. The complete report of the SAB is listed in Part XIII of the preamble.

The Agency selected the appropriate numerical values for the parameters in the algorithms of each model, translated the models into computer programs, and, where appropriate, used the models to calculate the numerical limits in today's proposals. The following sections discuss the models that the Agency used to assess the concentrations of the pollutants reaching the MEI when sewage sludge is (1) applied to the land used in the production of agricultural commodities, (2) distributed and marketed, (3) landfilled in monofills, and (4) incinerated.

In addition, the Agency is developing an exposure assessment model to be used in determining the fate of pathogenic organisms in the environment and in determining the concentration of pollutants that may reach target organisms when sewage sludge surface disposal site is the method of disposal. When the models are completed, the Agency will make

them available for public review and comment.

The following discussion provides an overview of the concepts EPA used in developing the models. In this discussion and in other parts of the preamble, EPA points out particular areas of uncertainty on which the Agency would like the public to focus its attention and comments. Full descriptions of the models are presented in the Technical Support Documents prepared in conjunction with today's proposal (Reference numbers 56, 57, and 58).

During the comment period, EPA will solicit the assistance of experts in the review of the scientific and technical bases of the proposal. The experts may include the Agency's Science Advisory Board, the W-170 Committee, representatives of academia, and/or scientific/technical bodies with expertise in the areas covered by this proposal.

Application Of Sewage Sludge To Agricultural Lands

To determine the concentration of a pollutant reaching a target organism when sewage sludge is used in the production of agricultural commodities, the mathematical models consider the likely exposure to the target organism from soil, food, air, surface water, and ground water. The pathways included in the model are identified in Table IV-1.

TABLE IV-1.—PATHWAYS MODELED FOR THE LAND APPLICATION OF SEWAGE SLUDGE

Pathways	Description
1: Sludge-soil-plant-human.	Consumers in regions heavily affected by landspreading of sludge.
1F: Sludge-soil-plant-human.	Farmland converted to residential home garden use in 5 years.
2F: Sludge-soil-human.	Farmland converted to residential use in 5 years with children ingesting soil.
3: Sludge-soil-plant-animals-human.	Farm households producing a major portion of their dietary consumption of animal products on sludge-amended soil.
4: Sludge-soil-animal	Farm households consuming livestock that ingests soil while grazing.
5: Sludge-soil-plant-animal.	Livestock ingesting food or feed crops.
6: Sludge-soil-animal	Grazing livestock ingesting soil.
7: Sludge-soil-plant	Crops grown on sludge-amended soil.
8: Sludge-soil-soil biota.	Soil biota living in sludge-amended soil.
9: Sludge-soil-soil biota-predator.	Animals eating soil biota.
10: Sludge-soil-airborne dust-human.	Tractor operator exposed to dust.
11: Sludge-soil-surface water.	Water Quality Criteria for the receiving water.
12A: Sludge-soil-air-human.	Farm households breathing fumes from any volatile pollutants in sludge.
12W: Sludge-soil-ground water-human.	Farm households drinking water from wells.

In assessing the amount of pollutant exposure that an individual receives from food, the Agency assumed that the MEI obtains a substantial portion of his diet from agricultural crops that are grown or from animals that are raised on sludge-amended soils. Approximately 2.5 percent, on an average, of the MEI's vegetables, grains, and animal products is assumed to be raised on sludge-amended soils depending on the pathway. This compares to the 0.025 percent for an average American consumer. In assessing the amount of pollutant exposure from inhalation and from ingestion of water or soil, the Agency assumed the MEI resides on the property receiving the sludge.

All pathways were evaluated for at least some of the pollutants in Table III-4. Limitations in available data prevented the Agency from evaluating each pollutant in every pathway. "The Technical Support Document for Land Application" (Reference Number 57) includes a matrix that shows the pollutant loading rates for each pathway. That pathway for a pollutant which results in the most stringent numerical limits is the pathway selected by the Agency for assessing the exposure to the MEI and for establishing the proposed numerical limits. That pathway is referred to as the "critical pathway".

All pathways, except those involving ground water and air (Pathways 12W and 12A), assume the mixing of sludge with 15 centimeters (i.e., 6-inch plow depth) of the surface soil layer (having a mass of 2 million kilograms per hectare). This allows conversions between pollutant concentrations in soil (in mass of contaminant per unit mass of soil) and pollutant loadings rate (in mass of contaminant per hectare of land).

After first determining the pollutant concentration in the soil that would be allowed (i.e., the maximum pollutant concentration in the soil that, when taken up by a plant and eaten, does not produce undue risk) for a particular pathway, the model determines the allowable pollutant loading limit in one of two ways. For metals, the model determines the cumulative pollutant loading limit, the total quantity of metal consistent with no undue risk. This equals the allowable pollutants concentration in the soil multiplied by the mass of the soil in the top 15 centimeters of a hectare of land. The Agency assumed that metals remain in the sludge-soil matrix and that, over time, metals do not become more biologically available to plants.

For organics, the model determines an annual pollutant loading limit (in kilograms per hectare per year) by considering the rate of loss or decay. The model assumes that the quantity of an organic pollutant lost per year is directly proportional to the quantity present. With steady annual applications, the concentration of a pollutant gradually approaches a plateau at which the quantity lost each year equals the quantity applied. The annual pollutant loading rate is determined such that the concentration levels off at the allowable soil concentration when sewage sludge is applied over a long period of time.

For the plant toxicity and soil biota pathways (Pathways 7 and 8), the Agency specified an allowable pollutant concentration in the soil, which is the concentration that will not cause plant and soil biota toxicity. This value was derived from scientific data relating plant and soil biota toxicity to soil contaminant levels. Thus, the allowable pollutant load for these pathways is that load which, after dilution with 15 centimeters of soil, does not exceed the threshold value.

For the pathways intended to protect livestock from toxicity (Pathways 5 and 6), the Agency evaluated livestock toxicity data to estimate the maximum allowable pollutant concentration in the feed or sludge-soil mixture that would not be toxic to an animal. Livestock includes all herbivores found in the agricultural or forest setting, including domesticated grazing animals, birds, rodents, etc. The Agency assumed that the livestock only consumed feed grown on sludge-amended pastures. In the pathway involving the uptake of a pollutant from the soil into the feed crop (Pathway 5), the allowable pollutant concentration in the soil is the quotient of the allowable pollutant concentration in the feed and the estimated plant uptake factor (partition coefficient).

In the pathway involving direct ingestion of the contaminated soil by an animal (Pathway 6), eight percent of the animal's diet is assumed to be sludge-amended soil that is incidentaly

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ingested by livestock while grazing. Here, the allowable pollutant concentration in the soil is the allowable feed concentration divided by the fraction of the diet that is soil.

For the pathway involving predators of soil biota (Pathway 9), the Agency evaluated toxicity data to estimate a pollutant concentration in soil biota that would not be toxic to birds. For this pathway, the predator's diet is assumed to be composed entirely of soil biota from the sludge-amended soil. The allowable pollutant concentration in the soil is the quotient of the allowable pollutant concentration in soil biota and an estimated soil biota uptake factor (or partition coefficient).

The surface run-off pathway (Pathway 11) is intended to protect beneficial use of surface waters by determining the pollutant concentration in the soil that would not exceed a Water Quality Criterion for a pollutant if the soil enters a relatively small stream. The rate at which the soil enters the stream is based on the Universal Soil Loss Equation and a sediment delivery ratio. Water Quality Criteria are designed to protect human health, assuming exposure through consumption or drinking water and resident fish, and to protect aquatic life. The pathway was not a critical pathway and therefore was not used as a basis of the numerical limits for any of the pollutants.

In contrast to the pathways described above, the majority of the pathways are intended to protect only human health. These include Pathways 1F, 2F, 3, 4, 10, 12A, and 12W, which are discussed below in ascending order of complexity.

Pathway 10 evaluates the potential for adverse effects from dust inhalation by a tractor driver during tillage operations. The pollutant concentration in the soil is not permitted to exceed the National Institute of Occupational Safety and Health (NIOSH) workplace air quality criteria if significant quantities of soil become airborne. Using the assumption that the total airborne dust does not exceed the NIOSH criterion, this pathway is not a limiting pathway for any pollutant.

The dust inhalation pathway is the only pathway that uses NIOSH criteria. For all other human exposure pathways, the maximum allowable intake is based on the following EPA health effects criteria: a reference does (RfD) for non-carcinogens; a risk specific dose for carcinogens; a daily dietary intake derived from the drinking water standard; or a drinking water standard (maximum contaminant level—MCL).

The Agency evaluated the inadvertent ingestion of soil by children in Pathway 2F. It is assumed that children would come into contact with the sludge-amended soil when the land was converted to residential use 5 years after the final application of sludge. It is also assumed that a sludge-soil mixture is ingested at a rate of 0.1 gram per day for 5 years. The allowable pollutant concentration in the soil is the quotient rate of pollutant ingestion that will not adversely affect a child and the rate of soil ingestion.

The Agency evaluated human exposure from the consumption of plants grown on sludge-amended soil in Pathways 1 and 1F. Both pathways determine an allowable pollutant concentration in the soil based on (1) the allowable intake; (2) an individual's typical daily consumption of several classes of sludge-grown vegetables, legumes, and grains; (3) the fraction of different crops assumed to be grown on sludge-amended soil; and (4) the uptake of a pollutant by each class of crop (uptake coefficient). Pathway 1 is intended to correspond to the exposure of a consumer in a region where sludge is used widely in the production of agricultural crops. It assumes that 2.5 percent of a consumer's intake of grains, vegetables, potatoes, legumes, and garden fruits comes from sludge-amended soil. Pathway 1F involves a home garden scenario, with as much as 60 percent of a consumer's intake coming from grains, vegetables, and potatoes grown on sludge-amended soil. It is assumed that the agricultural land is converted to residential home garden use 5 years after the final application of sludge. Essentially the same partitioning of a pollutant between soil and crop is used for both pathways. The numerical results of modeling these pathways indicate that the home garden pathway (1F) results in more stringent numerical limits than the regional consumer pathway (1) for all pollutants evaluated.

The Agency evaluated human exposure from the consumption of animal products in Pathways 3 and 4. Both assume that approximately 40 percent of the meat, dairy products, and eggs consumed by a farm household is produced on sludge-amended soil.

The first animal product pathway (Pathway 3) assumes that the pollutant reaches the animal through feed crops. The allowable pollutant concentration in the soil is the quotient of the allowable pollutant concentration in the feed crop and a crop uptake factor (partition coefficient). The allowable pollutant concentration in the feed crop is determined from (1) the human intake that can be allowed without causing undue risk, (2) typical consumption rates of various classes of animal products, (3) the percentage of each class of animal product assumed to be raised on sludge-amended soil, and (4) a set of uptake factors relating the pollutant concentration in each animal product to the pollutant concentration in the feed consumed by the animal.

The other animal product pathway (Pathway 4) only involves animals that graze. This pathway assumes that eight percent of the grazing animal's diet consists of a sludge-soil mixture. The allowable pollutant concentration in the soil is the allowable feed concentration divided by the fraction of the animal's diet that is sludge-amended soil. The allowable feed concentration is determined as in Pathway 3, with some differences in the fraction of each food class assumed to be grown on sludge-amended soil.

In model Pathway 12A, the Agency evaluated the exposure of a farm household inhaling vapors of any volatile pollutants that may be in the sludge when it is applied to the land. This pathway is considered for six chemicals: benzo(a)pyrene, bis(2-ethylhexyl)phthalate, chlordane, DDT, dimethylnitrosamine, and polychlorinated biphenyls. The Agency did not apply the vapor pathway to benzene, lindane, trichloroethylene, or toxaphene because these chemicals would volatilize in wastewater treatment processes before sludge disposal—either during wastewater aeration or during sludge processing and de-watering. In addition, the vapor pathway was not applied to relatively non-volatile metals.

The vapor pathway assumes that the total amount of chemical spread in each year would vaporize during that year. Thus, the allowable annual pollutant loading rate is equal to the flux (mass of chemical per unit area per unit time) that may be allowed to enter the atmosphere without exceeding the allowable pollutant concentration in the air. This concentration corresponds to the RfD, risk specific dose, or an MCL. A plume model is used to relate the flux to the resulting pollutant concentration in the air. The allowable flux is determined by (1) the allowable pollutant concentration in the air, (2) the size of the sludge application site, (3) the assumed distance of an individual from the site where the air concentration must be attained, (4) the wind speed, and (5) the degree of atmospheric mixing. The wind direction is assumed never to change, so that the MEI always remains in the center line of the plume.

In model Pathway 12W, the Agency evaluated the exposure of individuals who would obtain their drinking water from ground water located directly

below a field to which sludge had been applied. The leachate concentration formed in the sludge-amended soil layer is related by a partition coefficient to the pollutant concentration in the soil. In moving down through the unsaturated zone, the peak leachate concentration is reduced by the modeled processes of vertical dispersion (primarily caused by detention of sorbed pollutant), chemical degradation, and metal precipitation. The unsaturated zone transport model, CHAIN, and (for metals) the geochemical model, MINTEQ, are used here. These models are described more fully in the section on monofill models.

The allowable pollutant loading rate is thus determined from the MCL (that must be met at the ground water interface with no allowance for dilution), the rate of decay of a pollutant, and other factors that affect either the time period for decay or the dispersive smoothing of the peak concentration. These other factors include the recharge or infiltration rate, hydraulic characteristics of the soil, depth to ground water, and the chemical partition coefficient. For some metals, the net ground water electromotive potential (Eh) and ground water pH influence precipitation.

Distribution and Marketing

The Agency derived the numerical limits for the distribution and marketing (D&M) of sewage sludge in a manner analogous to land application. Fewer pathways were considered, however, because the Agency assumed that animals would not be raised on the sludge-amended soil and that the sludge-amended area would not be large enough to affect ground water or the air above the site. The pathways evaluated are shown in Table IV–2, and were described in the previous section.

TABLE IV–2.—PATHWAYS MODELED FOR D&M

Pathway	Description
1: Sludge-soil-plant-human.	Residential home garden.
2: Sludge-soil-human	Child's indigestion of soil.
7: Sludge-soil-plant	Phytotoxicity.
8: Sludge-soil-soil biota	Soil biota toxicity.
9: Sludge-soil-soil biota-predator.	Animals eating soil biota.
11: Sludge-soil-surface water.	Water quality criteria for the receiving water.

For metals, the D&M pollutant loading limits are identical to the land application rates for the human exposure pathways involving home garden crops and soil consumption (i.e., D&M Pathways 1 and 2 are identical to previously described land application Pathways 1F and 2F, respectively). For organics, the limits for these pathways are slightly more stringent in D&M than in land application because D&M assumes immediate residential use whereas in land application there is a 5-year period between the final sludge application and residential use, allowing for the decay of organic pollutants.

The D&M model pathways evaluating plant toxicity, soil biota, and avian predators (Pathways 7, 8, and 9, respectively) are identical to the corresponding land application pathways for all pollutants. The D&M model algorithm for surface runoff (Pathway 11) produced slightly less stringent limits than land application because of minor differences in assumptions about the size of the affected area.

Technical Uncertainties and Issues in the Exposure Assessment Models for Land Application and D&M

The models used in assessing the risks and in developing the proposed limits for the land application of sludge involve a number of uncertainties and technical issues. The land application model is a complex model made up of a large number of pathways and parameters. This section identifies the key technical points, parameters, and assumptions on which the Agency is particularly interested in receiving comment. The "Technical Support Document on Land Application" (Reference number 57) contains a detailed discussion of the derivation of the model assumptions and parameter values. A more detailed discussion of many uncertainties in the modeling framework can be found in the comments of the SAB. Table IV–3 indicates the land application and D&M model parameters and assumptions that the Agency believes are most important and therefore most worthy of public review and comment.

TABLE IV–3 KEY PARAMETERS AND ASSUMPTIONS FOR AGRICULTURAL LAND APPLICATION AND D & M PATHWAYS

Pathway [1]	Pollutants of greatest concern [2]	Key parameters and assumptions
1 Sludge-Soil-Plant-Human	None	None.
1F Sludge-Soil-Plant-Human	Cd [3]; possibly HCB, Pb.	Plant uptake; assume metal bioavailability unchanging over time; organic pollutant's decay rate and time period for decay; percentage of diet affected; toxicity to humans.
2F Sludge-Soil-Human	None	Soil ingestion rates.
3 Sludge-Soil-Plant-Animal-Human	HCB [3]; possibly DDT [3], PCB [3], Toxaphene.	Plant uptake; organic pollutant's rate; percentage of diet affected; toxicity to humans.
4 Sludge-Soil-Animal-Human	None	Mixing with 15 cm soil.
5 Sludge-Soil-Plant-Animal	Se [3], Mo [3], Cd, Zn.	Plant uptake; assume metal bioavailability unchanging over time; background (Mo) concentration in feed; toxicity to livestock.
6 Sludge-Soil-Animal	None	Mixing with 15 cm soil.
7 Sludge-Soil-Plant	Cu [3], Zn [3], Ni [3]	Background soil concentration assumes metal bioavailability unchanging over time; toxicity to plants.
8 Sludge-Soil-Soil Biota	Cu	Toxicity to soil invertebrates.
9 Sludge-Soil-Soil Biota-Predator	Pb [3], Zn; possibly Aldrin/Dieldrin [3].	Uptake rate in soil invertebrates; assume metal bioavailability unchanging over time; toxicity to birds.
10 Sludge-Soil-Airborne Dust-Human	None	None.
11 Sludge-Soil-Surface Water	None	None.
12A Sludge-Soil-Air-Human	Possibly BaP [3], BEHP [3], Diethylnitrosamine [3].	Assume volatilization more rapid than decay or leaching; wind speed and atmospheric mixing; assume wind direction unchanging; toxicity to humans.

TABLE IV–3 KEY PARAMETERS AND ASSUMPTIONS FOR AGRICULTURAL LAND APPLICATION AND D & M PATHWAYS—Continued

Pathway [1]	Pollutants of greatest concern [1]	Key parameters and assumptions
12W Sludge-Soil Ground Water–Human	Cd, TCE [1]; possibly Toxaphene [1].	Partition coefficient; organic pollutant's decay rate; soil type; depth to ground water; ground water; ground water Eh, pH; toxicity to humans.

[1] Indicates critical pathway for that pollutant.

Reasonable Worst-Case Assumptions And Parameter Values

As discussed elsewhere in the preamble, the numerical limits are intended to protect individuals, plants, and animals from "reasonably anticipated adverse effects of each pollutant". In some cases, the value for a parameter is based on a worst or a near-worst combination of values (e.g., the toxicity values for plants and animals). In other cases, the value is an average or median value (e.g., the assumed background level of metals in the soil). Stringing together a long series of worst-case parameters and assumptions is not appropriate because there is no reasonable expectation that all worst-case conditions would occur simultaneously in any real situation. It is likewise inappropriate to use only average values since a significant portion of real situations are likely to be worse. Although EPA believes that the proposed models build in an appropriate degree of protection, the Agency is particularly interested in receiving comments on the parameter values used for land application and D&M, especially the plant and animal toxicity values. These values have not been peer reviewed for use in the model. In addition, the Agency is soliciting comments on its assumptions about the rate at which crops absorb a pollutant, soil pH, and background metal concentration.

Soil Incorporation

The Agency assumed that the sludge is incorporated into the top 15 centimeters of the soil. For pathways involving plant absorption of a pollutant, the actual depth of soil incorporation should make relatively little difference, since the mean concentration in the root zone is likely to be more important than the distribution of the pollutant within the root zone. However, for pathways involving direct ingestion of soil, the assumed depth of incorporation has greater importance, as discussed later.

Background Metals In Soil

For metals, the Agency used an estimated nationwide median concentration for agricultural lands as the background level of metals in soil. In some cases, the background concentration of a metal is a significant fraction of the maximum allowable soil concentration.

The ability of plants to absorb metals in the soil was assumed to be the same as their ability to absorb metals in sewage sludge. If higher background concentrations of metals were assumed, those numerical limits based on plant toxicity would be more stringent for copper, zinc, and nickel. However, in some cases, the higher background concentrations of metals would exceed the allowable pollutant concentration in the soil. The Agency is soliciting additional data and information on the background concentration of metals associated with agricultural soils.

Behavior of Metals

For the terrestrial Pathways 1–9, the Agency assumed that once the metal is applied, it remains on the land indefinitely. No accounting is made for removal by (1) soil erosion, (2) leaching, (3) volatilization, or (4) absorption of the plant and removal of the harvested portion of the plant. The half-life of the upper 15 centimeters of soil is generally on the order of a century. Most metals are expected to leach out of the top 15 centimeters of soil more slowly than they erode from the site. However, the Agency has not evaluated whether this would also be true in the case of selenium and molybdenum. The Agency has not evaluated the losses of metals through volatilization or through crop harvesting. Thus, EPA is uncertain if its assumption that metals remain on the land would make a significant difference in the numerical limits included in today's proposal. The Agency is much more concerned, however, about the potential error in its assumption that the biological availability of metals does not change over time. While the Agency believes that bioavailability may decrease over time, the Agency did not consider its data adequate to determine the extent of such a decrease and, consequently, did not include this as a modeled factor.

Behavior of Organic Contaminants

For organic pollutants, the model calculates an annual pollutant loading rate (in kilograms per hectare, per year—kg/ha/yr). The allowable annual pollutant loading rate is the loading rate that just balances the decay rate of the pollutant (in kg/ha/yr) when the concentration of a pollutant in the soil reaches the allowable pollutant concentration in the soil for the pollutant. Once this balance is achieved, land application may be carried out indefinitely without exceeding the allowable pollutant concentration in the soil. Therefore, the decay rate coefficient for an organic pollutant is a key parameter in determining the allowable annual loading rate for that pollutant. The effect of decay is to reduce the overall amount of the pollutant in the soil. If a high decay rate is assumed, the allowable annual pollutant loading rate is higher than if a low decay rate is assumed. The time period over which sludge is applied to the land is usually not important to the allowable pollutant loading rate, particularly if sludge is applied for more than 10 to 15 years. However, when the Agency estimates a zero decay rate, as it did for DDT, the assumed time period (which varies by pathway) is important in severely limiting the allowable pollutant loading rate.

Uptake by Plants

In calculating the numerical limits, the Agency assumed that the pollutant concentration in crops is linearly related to the pollutant concentration in soil. There is some evidence that pollutant concentrations in crops may tend to level off with repeated sludge applications. EPA's theoretical framework for modeling plant uptake included equations for both linear and non-linear uptake. Although non-linear uptake is considered more realistic, EPA only used linear uptake factors because the Agency lacks sufficient data to generate nonlinear uptake curves. The Agency is soliciting data that could be used in determining the appropriate shape of plant uptake curves.

Ingestion of Soil by Animals

Ingestion of soil by animals is considered in Pathways 4 and 6, for land application. EPA assumed that a relatively large amount of soil would be ingested by grazing animals (around eight percent of the diet), although higher values have sometimes been reported. The Agency is uncertain if the value used is appropriate for long-term exposure and is, thus, seeking comment.

The Agency is also seeking comment on the assumed dilution of sludge with 15 centimeters of soil when the sludge is applied to pastures. Since the sludge applied to pastures is not incorporated into the soil (as it is for row crops), our assumption relies on climatic conditions and biological factors to assure mixing to the 15-centimeter depth. When grazing, animals often pull up shallow roots with the foliage. If the sludge has not been mixed thoroughly with the soil, grazing animals may ingest greater concentrations of a pollutant than those assumed in the model. Consequently, the Agency is considering depths of less than 15 centimeters in the model for pastures and seeks public comment on the appropriate depth that the Agency should use in calculating pollutant limits.

Ingestion of Soil by Humans

Ingestion of soil by young children is evaluated in Pathway 2 for both land application and D&M. The Agency assumed the quantity of soil ingested by children to be 0.1 gram per day. The Agency considers this to be a good estimate of the mean value (Reference number 22). Because all studies of soil ingestion by children are short-term measurements, there is no way to estimate (long-term) time-average soil ingestion by a child either with PICA behavior or who inadvertently ingests soil. The observed variability between children overstates the true variability of long-term exposure.

While the use of an average soil ingestion rate, rather than the use of an ingestion rate associated with a PICA child (0.5–5.0 grams per day) might be construed as under-protective, other factors suggest that the Agency's analysis may be over-protective. First, the entire 0.1 gram of soil ingested per day was assumed to be composed of sludge-amended soil. In real situations, only a portion of the 0.1 gram per day is likely to be from sludge-amended soil. Second, it is unlikely that a child would ingest 0.1 gram of a sludge-soil mixture every day. Third, and possibly most important, the biological availability of sludge-soil-bound pollutants was assumed to be equal to that of the pollutants in food and drinking water. There is evidence that desorption from the soil particles is a very slow process, generally requiring more time than available to material that is traversing the alimentary canal. Such desorption would have to take place before the contaminant could cross the membranes into the blood stream.

The modeling assumes dilution of the sludge with 15 centimeters soil. EPA has not specifically evaluated the long-term ingestion of pure sludge because the Agency believes that the sludge and soil will be mixed together by natural weathering processes. Therefore, long-term ingestion of 0.1 gram of pure sludge per day is not a reasonable expectation.

Animal Uptake from Feed and Forage Crops

The Agency considered the uptake of pollutants by herbivorous animals from feed or forage (grown on sludge-amended soil) in Pathways 3 and 5 for land application only. The Agency assumed that the pollutant concentration in animal tissues is a linear function of the concentration in the feed, that the animals feed solely on crops or forage grown on sludge-amended soil, and that the bioavailability of the pollutant in the feed is the same as the pure pollutant. EPA is requesting comment on the appropriateness of the values used for the uptake of pollutants by herbivores.

Human Exposure from Diet

The quantity of each of eight food groups in the human diet assumed in the analysis is taken from the Pennington data base for the age and gender group with the highest daily consumption (Reference number 28). While the assumed diet contains an average mix of meat, fruits, legumes, grains, dairy products, etc., the consumption rates are higher than would be expected for a single individual over a lifetime.

Assumptions about diet composition affect pathways differently. A more herbivorous diet would produce greater adverse effects for Pathway 1 (exposure through plants), but less stringent effects in Pathways 3 and 4 (exposure through meat and animal products). A more carnivorous diet would produce the opposite effect.

For today's proposal, the Agency has used the Pennington data base rather than the Tolerance Assessment System (TAS) data base used in pesticide registration actions for calculating the percentage of different food groups in the average adult's diet. The data used to support today's proposal result in slightly more stringent numerical limits than would the TAS diet. The Agency is considering use of the TAS system data base in calculating the numerical limits in any re-evaluation of today's proposal and in future rulemakings.

More important than the diet composition, however, is the assumption about the percentage of diet from sludge-amended soil. Pathway 1F for land application and Pathway 1 of D&M involve home garden scenarios. They assume that nearly 60 percent of an individual's lifetime consumption of grains, potatoes, and vegetables is grown on sludge-amended soil. The Agency has some data to support the amount of potatoes and vegetables grown in home gardens, but has little data to support the amount of grain grown in home gardens. The Agency is requesting comment on the percentage of home grown food in an MEI's diet.

Land application Pathways 3 and 4 involve scenarios of farm households consuming, over a long period of time, 40 percent of their own meat and animal products raised on sludge-amended soil. The Agency is requesting comment on the appropriateness of this assumption.

Plant and Animal Toxicity

The toxicity of pollutants (particularly metals) to plants and animals, based on Pathways 5, 6, 7, 8, and 9, plays a key role in setting numerical limits. The derivation of the toxicity thresholds for these pathways are discussed in Part VIII of the preamble. Comments on these thresholds would be particularly valuable.

Exposure to Contaminant Vapors

Pathway 12 contains two pathways, ground water ingestion and vapor inhalation. The sum of exposures to the MEI from both routes is not permitted to exceed an exposure equivalent to a MCL, a RfD, or a risk-specific dose.

The vapor pathway assumes that the entire quantity of pollutant applied to the land is vaporized during the ensuing year. This assumption simplifies the analyses and avoids the need to predict the vaporization rate, a process likely to be controlled by the rate of pollutant diffusion through the soil. The Agency has no evidence to support the assumption that certain pollutants are vaporized within a year. Indeed, its suspects that the true rate would be significantly lower. The Agency is requesting comment on the assumed rate of vaporization, particularly for benzo(a)pyrene, bis(2-ethylhexyl)phthalate, and dimethylnitrosamine. The Agency is also soliciting comment on its decision not to evaluate the vaporization of

benzene, lindane, toxaphene, and trichloroethylene.

Once vaporized, the downwind pollutant concentrations are predicted with a plume model. The MEI is assumed always to remain at the centerline of the plume. Parameter values for wind speed and atmospheric mixing are those for the worst combination of circumstances. Consequently, the Agency is uncertain if the construct of the model or the parameter values used in the model are appropriate for assessing long-term exposure.

Ground Water

The ground water model was operated to determine the cumulative load of each pollutant that could be applied to the land without causing the leachate to exceed the MCL (or allowable drinking water concentration) at the interface with the saturated zone or water table. As long as the metal's cumulative limit is not exceeded, the leachate at the ground water interface will not exceed the MCL, whether the entire load is applied at once or spread out over many years. Theoretically, the calculated cumulative limit for this pathway should be valid for a few decades (for the more soluble metals) and up to several centuries (for the less soluble metals). Beyond this time period, however, the cumulative limit could be exceeded without causing the leachate to exceed the MCL, if the pollutant were applied at extremely low rates.

The modeled scenario couples a permeable, sandy loam soil, low in natural organic matter, with a high water table that is one meter below the surface. The Agency is uncertain whether such a scenario is reasonable.

For both metals and organics, one of the key chemical parameters is the partition coefficient (the metal concentration in soil solids divided by the metal concentration in the liquid at equilibrium). The partition coefficients for the metals were rather low compared to other partition coefficients that have been used previously (Reference numbers 10 and 18). Despite these low partition coefficients, however, metal limits for this pathway do not restrict the land application of sludge.

For organics, the other key chemical parameter is the decay rate coefficient. The Agency estimated the decay coefficient for trichloroethylene to be zero. Although trichloroethylene is expected to decay, there is evidence that a major product would be stable vinyl chloride. Vinyl chloride has the same risk as trichloroethylene.

Monofills

EPA evaluated two exposure pathways for sludge monofills: (1) Pollutant infiltration to ground water and subsequent ingestion from drinking water, and (2) vaporization from the fill material and subsequent inhalation. The analysis considers the long-term exposure that an MEI would receive from drinking two liters of ground water per day and from inhaling 20 cubic meters of air per day at the property boundary of the monofill. The Agency calculated the combined water and air exposure to the MEI and compared the combined exposure to a MCL, RfD, or risk specific dose. As described below, the analytical framework for the ground water model has four components: (1) A calculation of contaminated leachate pulse duration, (2) a model of pollutant behavior and movement in the unsaturated zone, (3) an evaluation of metal solubility in ground water, and (4) a model of pollutant behavior and movement in the saturated zone.

The analysis begins with assumptions on the monofill size and fill thickness, the pollutant concentrations in the sludge, the pollutant concentrations in the leachate, and the net recharge (infiltration) rate. The duration of time, T (years), over which the fill releases a metal pollutant to unsaturated zone (leachate pulse duration) is then calculated from the following factors: the metal concentration in sludge, CS (milligrams per kilogram); the sludge solids content, SS (kilograms per liter); the fill thickness, D (meters); the assumed leachate concentration, CL (milligrams per liter); the ground-water recharge rate, R (meters per year); and the excess liquid in the original sludge volume, EL (liters per liter). The result is:

$$T = ((CS \times SS/CL)) - EL \times D/R$$

The EL term merely adjusts the recharge water budget for excess water in the sludge. For degradable organic pollutants, the above calculation is modified to account for the rate of decay within the fill, as described in the support documents (Reference numbers 58 and 66).

The above calculation of the leachate pulse duration assumes that CL remains constant over time until the sludge is completely depleted of the pollutant, thereby modeling the leachate pulse as a mathematical square wave. For any particular organic pollutant, the leachate concentration is determined by a solid/liquid partition coefficient and the concentration CS, in the sludge.

The leachate pulse is then used in the unsaturated zone model, CHAIN (Reference number 61). CHAIN assumes a steady rate of percolation through the unsaturated zone and calculates the concentrations in the leachate as affected by sorption to the underlying soil and decay (of organic pollutants). The effect of sorption is to retard the movement of the pollutant through the soil profile and to elongate and flatten out the leachate pulse, thereby reducing the peak concentration. For both metals and organics, sorption to soil is determined by a solid/liquid partition coefficient. The effect of decay is to reduce the overall amount of pollutant in the leachate. For organic compounds, decay includes the processes of hydrolysis and anaerobic biodegradation.

In evaluating exposure to the MEI, the depth to ground water is assumed to be zero over Class I ground water and one meter over Class II and Class III ground water. The definitions of Class I, Class II, and Class III ground water are explained in Part IX of the preamble. CHAIN is bypassed in assessing exposure to an MEI for monofills located over Class I ground water, but is used for assessing exposure to an MEI when a monofill is located over Class II or Class III ground water.

At the bottom of the unsaturated zone, the peak concentrations of metals in the leachate pulse, attenuated as calculated by CHAIN (where applicable), are then adjusted for solubility constraints, based on the calculations of MINTEQ (Reference number 13). The model does not actually operate the MINTEQ code, but rather incorporates the results of previous runs of MINTEQ at various conditions of pH and Eh. The MINTEQ solubility adjustments are applied only to the six metals (arsenic, cadmium, copper, lead, mercury, and nickel). At the low pH and high Eh used in the exposure assessment analysis, MINTEQ predicts that copper would be the only metal to precipitate in amounts that would reduce greatly the ground-water concentration.

The flux of pollutants entering the aquifer in the area beneath the monofill is then input (as a square wave at the peak concentration) to the saturated zone fate and transport model, AT123D (Reference number 65). This model calculates the behavior and movement of the contaminant plume, as affected by advection (ground water flow), diffusion and dispersion (mixing), sorption, decay, and distance from the sewage sludge unit to the property boundary of the monofill or 150 meters (whichever is less). For Class II and Class III ground water, the MCL must be met at the property boundary of the monofill or 150 meters, whichever is less. The effect of diffusion and dispersion is to spread the contaminant plume vertically and horizontally, thereby further reducing the peak concentration. AT123D is only operated for Class II and Class III aquifers. In Class I aquifers, the leachate must meet the MCL upon entry to the aquifer.

The components of the model (leachate pulse—CHAIN—MINTEQ—AT123D) are operated in an iterative trial and error mode to determine the sludge concentration that produces a peak concentration equal to the MCL at the point of compliance.

The Agency evaluated exposure to pollutant vapors even though de-watered municipal sludge is unlikely to contain significant quantities of highly volatile material. Most volatile pollutants would vaporize before sludge disposal, particularly during wastewater aeration or during sludge dewatering. The model used here (Reference number 67) has two components: (1) Calculation of the flux of volatile pollutants into the atmosphere, and (2) determination of the peak air concentration at the property boundary.

The model is formulated so that the vaporization flux depends on the initial concentration of a pollutant in the sludge and on the monofill's cover material. During the time the wastes are assumed to be uncovered, the rate of vaporization is controlled by the rate of diffusion into the air (as opposed to diffusion up through the sludge). The flux is thus formulated to depend primarily on the wind speed and Henry's Law constant (concentration of the pollutant in air divided by the concentration of the pollutant in water, at equilibrium).

During the time that the fill is temporarily or permanently covered, the rate of vaporization is formulated to depend on the rate of diffusion up through air-filled pores in the cover material. The rate thus depends primarily on the cover material's porosity and thickness and on the Henry's Law constant.

The mean flux from the monofill is determined by considering the areas of the monofill expected to be uncovered and temporarily or permanently covered at any time, as described in the "Technical Support Document for Landfills" (Reference number 58).

The concentration at the centerline of a plume downwind of the monofill depends on the size of the monofill, the distance to the point of compliance at the property boundary, the wind speed, and the degree of atmospheric mixing. The wind direction is assumed never to change, so that the MEI always remains in the centerline of the plume.

The predicted vapor exposure is combined with the predicted drinking water exposure and then compared to the exposure allowed by the MCL, RfD, or risk specific dose.

Technical Uncertainties and Issues in the Analysis of Monofills

There are a number of uncertainties and issues in modeling the exposure of an MEI to the pollutants in sewage sludge that is placed in a monofill. The modeling involved is relatively complicated, and the validity of some of the model's assumptions and parameter values is uncertain. For the two pathways that the Agency has modeled, Table IV–4 presents the most significant assumptions and parameters.

The Agency's SAB has questioned several aspects of the modeling framework and suggested it may result in unrealistic over-estimates of exposure and more stringent numerical limitations than necessary. The Agency is soliciting comment on the modeling framework and the parameter values used in the model.

TABLE IV–4.—KEY PARAMETERS AND ASSUMPTIONS FOR MONOFILLING

Pollutants of pathway	Greatest concern	Key parameters and assumptions for pollutants of concern
Ground water	As, Cd, Pb, Benzene, BEHP, TCE	Assume all pollutants are leachable. Assume metal's leachate concentration independent of sludge concentration. Partition coefficient. Organic pollutant's decay rate. Soil type. Depth to ground water. Assume square wave input to ground water. Ground water Eh, pH. Distance to fenceline. Drinking water MCL.
Vapor	Diethyl nitrosamine, BEHP	Assume vaporization controlled by atmospheric diffusion for unburied fill and by pore diffusion for buried fill. Assume vaporization unimpeded by sorption or decay. Henry's Law constant. Wind speed and atmospheric mixing. Assume wind direction unchanging. Allowable air concentration.

Pathways Considered

Four pathways of exposure to the MEI from monofilled pollutants were originally considered: (1) Drinking of ground water containing pollutants that leached from the monofill, (2) inhalation of vapors, (3) inhalation of particles suspended from the open face (unburied portion) of the fill, and (4) run-off to streams. After some preliminary analysis, the Agency found that the third and fourth pathways were unlikely to be important.

The SAB, however, suggested the movement of contaminated ground water into surface waters as a fifth pathway. While the Agency doubts that the risks from such a pathway would exceed those from drinking the ground water directly, it is considering some future evaluation of the pathway.

Leachate Strength Upon Exiting the Fill

The total dry weight concentration of any pollutant in sludge (in mg/kg) can be related to the concentration of the pollutant sorbed to sludge solids, the concentration of a pollutant dissolved in the sludge liquid, and the percent liquid contained in the whole sludge. As water percolates from the land surface into the sludge fill, the liquid in the sludge fill is displaced downward into the underlying soil as leachate. The new liquid percolating into the fill then reaches equilibrium with the sludge solids.

The Agency assumed here that all sludge pollutants will eventually be solubilized if they are not first degraded. All sorption is thus considered to be readily reversible. The Agency suspects,

however, that the analysis may over-estimate the mobility of pollutants in sludge and thereby over-estimate the amount of exposure.

The leachate pulse leaving the fill is modeled as a square wave. Over time, the leachate flux (leaving the sludge and entering the soil) is assumed to maintain a constant value until the pollutant is depleted from the sludge, at which time the leachate flux would be zero. If the pollutant were reversibly sorbed to solids, it could be expected that, over time, the leachate concentration flux would gradually die off to zero. Nevertheless, based on numerical simulations, the Agency believes that a square wave flux and a gradually dying-off flux produce similar results once the leachate has traveled about one meter into the unsaturated zone.

In calculating numerical limits, the dissolved concentration in the sludge and in the leachate from the sludge is related to the sorbed concentration in the sludge by a chemical partition coefficient. The Agency was not always consistent in its modeling of sorption and it intends to re-evaluate the partition coefficients applied, particularly for metals. The Agency may have under-estimated the sorption of several metals to sludge and slightly over-estimated the sorption of source organics to sludge. A more complete discussion is provided in the "Technical Support Document For Landfills" (Reference number 58). The Class I ground water limits are most affected by the Agency's assumptions about sorption to solids.

Effect of Monofill Liners

The Agency did not explicitly intend for the analysis to account for the effect of liners in restricting the movement of pollutants out of the fill. The SAB recommended that the analysis consider liners, although the Agency believes that liners are generally not used in sewage sludge monofills. The Agency did not specifically act upon the SAB recommendation on liners. Nevetheless, the rule does allow for numerical limits to be calculated using site-specific values for soil type and recharge rate. The Agency is requesting comment on whether or not this is a satisfactory means of accounting for the effects of liners when calculating site-specific numerical limits.

Use of CHAIN

CHAIN assumes a steady rate of water percolating down through the unsaturated zone. This allows a relatively efficient iterative analytical solution. However, the assumption of steady flow tends to under-estimate the travel time (and thus the amount of decay) and to over-predict the pollutant concentration.

The SAB recommended the use of the unsteady flow model, PRZM, because of its better resolution of transient events. The Agency, however, is not sure whether better resolution of transient events (although important for short-term analyses) has much value in the analyses of long-term exposure used in this proposal, or whether the inaccuracy introduced by CHAIN (relative to PRZM) is significant compared to other uncertainties and inaccuracies in the models.

MINTEQ

The model does not actually operate the MINTEQ computer code, but rather incorporates the results from running the model at several pollutant concentrations for six different combinations of pH and Eh for arsenic, cadmium, copper, lead, mercury, and nickel. Other pollutants are not simulated by MINTEQ.

In the six combinations of pH and Eh considered, pH has the value of either 6 or 7, and Eh has the value of either −200, +150, or +500 millivolts. The national numerical limits are based on a pH of 6 and Eh of +500. For case-by-case applications of the model, the Agency is uncertain if the above ranges of pH and Eh cover the range of ground water conditions likely to be encountered.

Input to AT123D

The concentration at the bottom of the unsaturated zone (output from CHAIN), when plotted over time, has a Gaussian-like shape (i.e., a rounded central peak tapering off to long tails). For input to AT123D, this smooth curve is converted to a square wave, having a concentration equal to the CHAIN output peak concentration.

The duration of this square wave is formulated to be the duration from that point when the concentration output from CHAIN first reaches one percent of the peak concentration, through the period of elevated concentration, until the concentration drops back to one percent of the peak. The Agency checked this assumption and found that it injected some 2.5 times more contaminant into ground water than the amount reaching the bottom of the unsaturated zone. For non-degrading chemicals, this also means that 2.5 fold more chemical is input to ground water than was disposed of in the landfill.

The Agency believes that, to track the mass of pollutant, it may be more accurate for the duration of the square wave to be equal to the time between the moment when the Gaussian curve first attains 10 percent of the peak and the time when it drops back to 10 percent of the peak (when converting a Gaussian curve into a square wave having the peak concentration). The Agency may change this aspect of the model and is soliciting comment on appropriateness of this change.

Output From AT123D

Users of this model have sometimes found anomalous results. Rather than steadily decreasing with distance, the peak concentration predicted at various distances from a landfill may first increase and then decrease with distance. The Agency is uncertain of either the reason for this anomaly or its overall significance. The Agency is requesting comment on the source and significance of this problem.

Orientation of the Monofill With Respect to the Ground Water Flow

For case-by-case application of the model, the Agency intends to fix the orientation of the monofill as a square monofill at the edge of the aquifer, regardless of the actual site characteristics. If the monofill area were a highly elongated shape, the orientation of the fill with respect to the ground water flow would increase or decrease the ground water concentration. The Agency is soliciting comment on whether it should consider the actual orientation of the monofill in case-by-case determinations of pollutant limits.

Time-Variable Exposure

The predicted concentrations vary over time, whether at the bottom of the saturated zone (i.e., the compliance point for Class I ground water) or at the property boundary (or 150 meters from the sludge disposal unit—the compliance point for Class II and Class III ground water).

Since the peak concentration of a pollutant is not permitted to exceed the allowable concentration, the model calculates a concentration that will not exceed an MCL at any time. For carcinogens with no MCL, the numerical limits are calculated so that the peak concentration does not exceed the 70-year mean concentration corresponding to a risk specific dose. The degree to which the peak concentration exceeds the 70-year mean concentration depends on how rapidly the concentration varies through time, which, in turn, depends primarily on the chemical partition coefficient and the distance involved. Therefore, public comment is requested on whether the Agency should determine the numerical limits for carcinogens using the 70-year mean concentration rather than the peak concentration.

Vaporization Flux

The flux of a pollutant from the monofill into the air depends on the cover over the fill. For uncovered fill, the Agency assumed that the rate limiting process is the diffusion rate of a pollutant from the air-sluge interface into the bulk volume of the air. The Agency is uncertain that the rate limiting process has been correctly identified. The principles set forth in some of the Agency's technical guidance (Reference numbers 10 and 21) indicate that diffusion of a volatile pollutant from within the sludge out to the air-sludge interface should be expected to be the rate limiting process. If the rate limiting process were not correctly identified, the vaporization flux would be over-estimated. The Agency is requesting comment on the vaporization formulation and is particularly seeking alternative formulations for consideration.

For covered fill, the rate is formulated assuming that the rate limiting process is the movement of pollutant up through air-filled voids in the cover material. While the Agency believes that this is reasonable, the SAB has criticized the approach for not considering the retarding effects of sorption and degradation. The Agency is seeking comment and will consider any alternative formulations suggested.

The model does not keep a mass balance account of the total quantity of pollutant vaporized. The model is capable of vaporizing more pollutant than was originally placed in the monofill. In addition, the quantities leached to ground water include the quantities vaporized, thus resulting in some double counting of exposure. The Agency is considering modifying the model to correct these problems.

Atmospheric Plume Modeling

The atmospheric plume model calculates the peak concentration at the centerline of the plume. The MEI is assumed always to remain in the centerline of the plume. The Agency is requested comment on the appropriateness of this assumption and suggestions for other assumptions.

The wind speed (1 meter per second) and atmospheric stability parameters (as described in Reference number 66) are intended to represent the worst combination of conditions. While they may be appropriate for an event, the Agency is uncertain whether they are reasonable for representing long-term conditions. The Agency is soliciting recommendations for appropriate values for the long-term atmospheric conditions.

Model Validation

The Agency has applied modeling approaches that it generally believes are reasonable. The Agency cautions, however, that the ability of the models to accurately simulate actual field situations accurately has not been verified. As noted above, questions remain about the adequacy of some aspects of the model framework and the appropriateness of some of the parameter values. Thus, the Agency is soliciting comment on all aspects of the model used to calculate the numerical limits for the disposal of sludge in monofills.

Incineration

The Agency used a single exposure pathway, inhalation of the incinerator emissions, in analyzing exposure to the MEI. The Agency considers the disposal of incinerator ash to be adequately regulated under 40 CFR Parts 257, 258, and 261 through 68. The disposal of scrubber water is subject to National Pollutant Discharge Elimination System requirements. Generally scrubber water is recycled into the Publically Owned Treatment Work influent. One remaining pathway, exposure to emitted contaminants that may settle on land to water, will be evaluated in the future, as the Agency acquires more data and further develops evaluative models.

In developing today's proposal, the Agency evaluated the inhalation of sludge incinerator emissions of arsenic, cadmium, chromium, lead, nickel, and total hydrocarbons. Total hydrocarbons are used as a surrogate for all organic pollutants and will be discussed in Part IX of the preamble.

The Agency performed air quality modeling to determine the emission rates (mass per unit time) that can be allowed without imposing undue risks to an MEI in the vicinity of the incinerator. For total hydrocarbons, the allowable emission rate determined by modeling is the numerical limit. For metals, an allowable sludge concentration is derived from the allowable emission rate.

The Agency previously evaluated the inhalation of beryllium and mercury during development of National Emission Standards for Hazardous Air Pollutants (NESHAPs), which specify allowable emission rates. For this rule the Agency is taking the NESHAPs values to be the allowable emission rates of beryllium and mercury for sludge incinerators.

The analysis of the inhalation of incinerator emissions employs atmospheric dispersion modeling to relate emission rates to ground level exposure concentrations. As discussed below, the allowable emission rate is determined from (1) the allowable ambient air quality concentration at ground level (the risk specific concentration), (2) the stack height and other physical characteristics of the site, and (3) the meteorological conditions of the site. The allowable sludge quality is then determined by the above allowable emission rate, the rate of sludge incineration, and emission control efficiency.

The allowable ambient air concentration is set to correspond to a risk specific dose for carcinogenic metals (arsenic, cadmium, chromium, and nickel), assuming that the MEI inhales 20 cubic meters of air per day and that indoor and outdoor air concentrations are essentially equal. Lead is set at 25 percent of the National Ambient Air Quality Standard. The rationale for this value is discussed later in the preamble.

The allowable ambient air concentration for total hydrocarbons is based on (1) statistical relationships between the concentration of total hydrocarbons and the concentrations of specific organic pollutants emitted by the four sludge incinerators that were tested and (2) the assumed cancer potency of the specific organic pollutants, as discussed later in the preamble.

Three models are used in today's proposal for incineration: ISCLT, LONGZ, and COMPLEX I (Reference number 44). ISCLT is intended for urban or rural situations where the terrain elevations do not exceed the stack height. It takes account of the aerodynamic effect of building downwash, which is likely to be significant for many sludge incinerators with short stacks. The other two models do not evaluate building downwash, but are more appropriate in situations where terrain elevations exceed the stack height. Such terrain is termed complex terrain. LONGZ is intended for complex urban terrain, while COMPLEX I is intended for complex rural terrain.

All three models require data on the incinerator, the surrounding terrain, and the meteorology of the site where the incinerator is located. Incinerator data include stack height, stack exit diameter, gas flow, and gas temperature. Meteorological data include joint frequency distributions of wind direction, wind speed, and atmospheric stability. The location of the MEI is not

specified beforehand, but is set at the location predicted by the model to have the highest long-term average concentration.

In assessing the exposure to the MEI, ISCLT was used because of its ability to simulate building downwash. Since the MEI location for facilities with significant downwash tends to be close to the incinerator, inability to simulate complex terrain accurately was not considered a serious shortcoming. Side-by-side comparisons of the three models indicated that ISCLT predicts higher concentrations than LONGZ or COMPLEX I, even in complex terrain.

Evaluation of the effect of model parameters on the results indicated that stack height was a key parameter. Consequently, the dispersion factor (maximum long-term exposure concentration per unit rate of emission) varies with stack height. To generate a regression relationship between dispersion factor and stack height, a number of facilities having various stack heights were modeled. Although the stack diameter and gas velocity also varied among these facilities, these parameters were not important and had little effect on the regression relationship. Other parameters were held constant and were applied to all facilities: wind characteristics of Atlanta, Georgia (which had the worst combination of parameters in any U.S. city examined); flat terrain; gas temperature (38 degrees Celsius); building height (5.5 meters); and building effective diameter (39.5 meters) (Reference number 27).

The metals emission control efficiencies assumed in assessing the exposure to the MEI correspond to the worst 10 percent of EPA's data on sewage sludge incinerators. These control efficiencies are as follows: arsenic, 96 percent; cadmium, 65 percent; chromium, 96 percent; lead, 67 percent; and nickel, 95 percent. Control efficiencies are not assumed for organic compounds. Instead, total unburned hydrocarbons are to be used to control organic emissions.

Technical Uncertainties And Issues In The Analysis Of Incineration. The risk analysis for incineration employs a commonly used air modeling approach, coupled with readily measurable input data. Nevertheless, there remain a few technical issues, which are described below.

Worst-Case Conditions. In determining the relationship between MEI exposure and stack height, the Agency used the meteorology of Atlanta, Georgia, the worst case of 16 sites evaluated. Emission control efficiencies for metals correspond to the worst 10 percent of EPA's data on sludge incinerators. Other less important parameters were based on the typical values.

The MEI is assumed to remain at the location of maximum concentration for 70 years. The emissions are assumed to be 100 percent respirable and absorbed by the MEI. Indoor air quality was assumed to be no better than outdoor air quality.

Deposition Of Particulate Pollutants. The current analysis assumes that all emissions remain airborne, thus maximizing their potential for inhalation by the MEI. The SAB, however, recommended that the analysis account for human and ecosystem exposure to incinerator emissions deposited on the ground.

EPA is developing a methodology to perform such an analysis, and will consider it for future application. The methodology involves predicting deposition onto soil and vegetation, further movement of settled pollutants through environmental media, bioaccumulation, human exposure, and ecological effects.

Short Term Variations. The methodology used in this proposal predicts long-term exposure for the average operating conditions at an incinerator. The SAB has suggested that the analysis also consider short-term fluctuations. The Agency considers it unlikely that potential short-term effects could be of greater concern than the potential chronic or long-term health effects considered here. However, if adequate data become available to support an analysis of short-term fluctuations, they will be evaluated.

The Agency continues to investigate the effect of regularly occurring start-up and shut-down events on the long-term average emission control efficiency. The Agency's initial investigations of this suggest that the effect may not be particularly important.

PART V: HUMAN HEALTH CRITERIA

Over the years, the Agency has proposed, and either promulgated or published as guidance, criteria to protect public health and the environment from the adverse effects of specific pollutants. Where such criteria are available, these criteria are used in the exposure assessment models to derive numerical limits. EPA is seeking public comment on the manner in which the Agency is proposing to use the criteria in today's proposal.

As previously explained, the human health criteria that were used in establishing numerical limits for monofills are the maximum contaminant levels (MCLs) for drinking water. Where MCLs have not yet been promulgated in final form, proposed MCLs have been used to establish health-based limits for ground-water contamination. When MCLs are revised, the new drinking water standards will be adopted for this purpose. In the incineration equation, EPA used the National Emissions Standards for Hazardous Air Pollutants for mercury and beryllium, and the National Ambient Air Quality Standards for lead. Water Quality Criteria were used in the appropriate pathways of exposure in the land application model.

Criteria for Non-carcinogens

Where the Agency has not published human health criteria for a non-carcinogenic pollutant, the Agency is proposing to use a reference dose (RfD) listed in the Agency's computerized Integrated Risk Information System (IRIS). Information on access to the data in IRIS is listed in Part XIII of the preamble.

An RfD is a threshold below which adverse human health effects are unlikely to occur. The RfD is directly analogous to a previously used EPA-term "acceptable daily intake" (ADI). The Agency prefers the term RfD rather than ADI to avoid the implication that doses below the threshold are always acceptable, while doses above the threshold are always unacceptable.

The RfDs listed in IRIS are based on an intra-Agency review of the latest scientific information used in the Agency's risk assessments. EPA derives the RfD threshold by evaluating toxicity data for humans (where available) or animals. If multiple studies with different animal species are available, the most sensitive species is often selected. From such data a "no observed adverse effect level" (NOAEL) is identified for the critical toxicological effect or end point. The NOAEL is the highest dose of a chemical at which there is not a statistically or biologically significant increase in frequency or severity of an adverse effect when individuals in an exposed group are compared to individuals in a control group. The RfD typically is set 100–1000 fold below a NOAEL, depending on the quality of the data available.

The Agency recognizes that the actual threshold value at which adverse human health effects may occur could be an order of magnitude higher or lower than the value listed in IRIS. While exposure above the RfD increases the probability of adverse effects, it does not produce a certainty of adverse effects. Similarly, while exposure at or below the RfD reduces the probability, it does not guarantee the absence of adverse effects. The procedure used to establish the RfD does not permit the Agency to estimate what fraction of the population would exhibit effects for exposure above, at, or below the RfD.

RfDs were used to derive an acceptable daily dietary intake (DDI) for the land application and distribution and marketing equations. To derive the acceptable DDI of a pollutant from food and animal products raised on sludge-amended soils, the Agency subtracted the background intake from the RfD. The background values were average values listed in the literature for toddlers and adults and include intake from drinking water, food other than food grown or raised on sludge-amended soils, air, and, in the case of lead, household dust. Because the Agency has not established an RfD for arsenic, the MCL for arsenic was used to derive an acceptable DDI.

Derivation of Lead Limitations for Land Application

EPA is concerned about the health implications of exposure to lead. It is the Agency's objective to minimize lead exposure, particularly for susceptible subpopulations. When sewage sludge is applied to agricultural land, individuals are exposed to lead from food or food products grown on sludge-amended soil.

In land application, the human health pathway is not the most stringent one for the control of lead. An ecological pathway is the most stringent one. Nonetheless, due to the paramount concern about the human health impacts of lead, the following discussion describes in detail how the Agency derived the lead limits based on human impacts. Not only will this promote public discussion and informed comment, it will also demonstrate how the Agency's methodology works for a given pollutant.

By 1990, EPA estimates that the average daily total intake of lead will be approximately 30 micrograms (μg) for children and adults in the United States. Although food is the source of 50 to 75 percent of the overall lead intake for the average adult and of 30 to 45 percent for the average child, only 0.02 percent of this food is grown on sludge-amended soil. Therefore, the portion of overall lead intake attributable to food from sludge amended soil is negligible [30 μg x .75 x .002 = 0.0045 μg] even before Federal regulation of lead in sewage sludge. For comparison purposes, the proposed drinking water MCL if 5 μg/per liter which allows an individual to intake 10 μg/per day (assuming an average individual drinks 2 liters of water per day). This level is 2,000 times higher then the average exposure from lead in sludge applied to agricultural land.

EPA believes the concentration of lead in sewage sludge applied to agricultural land should be limited. Despite its small contribution to daily lead intake, further reduction will promote EPA's policy of lowering blood lead levels. The Aggregate Risk Analysis estimates that at a baseline there are 920 women, children, and white men (the Aggregate Risk Analysis explains why only white men were tabulated) who would be at risk of adverse effects as a result of the application of sewage sludge to agricultural land with current concentrations of lead. The overwhelming majority of these are men with hypertension. The same analysis estimates there could be 38 cases of adverse health effects related to this sludge exposure (see Table VIII–1 in Part VIII of the preamble). These demonstrate the potential for reductions in human health impacts through control of lead levels in sewage sludge applied to agricultural land. The adverse health impacts could also increase if there is an increase in land application of sewage sludge consistent with EPA's Policy on Beneficial Reuse.

Consistent with the statutory directive that the Agency protect against "reasonably anticipated adverse effects" (see section 405(d)(3) of the CWA), EPA conducted, here as elsewhere, an analysis using a combination of reasonable worst-case assumptions to calculate the lead limit. This involved modeling how lead travels from sludge applied to land, through the food-chain, to a human endpoint.

The additive effect of this combination of reasonable worst-case parameters produces a lead limitation that is sufficiently protective of the most exposed individual (MEI) while also accounting for potential data inadequacies. These lead limitations will protect the general population by lowering the total exposure to lead from food grown on sludge-amended soils. However, the method does not drive the limits to levels necessary for protection in every conceivable worst possible circumstance.

The actual methodology involves a number of steps. Since EPA has not established an RfD for lead, it examined the health effects from lead that are generally correlated with blood lead levels to select the human endpoint most sensitive to lead exposure from sewage sludge. Lead exposure across a broad range of blood lead levels is associated with a continuum of pathophysiological effects, including interference with heme synthesis necessary for formation of red blood cells, anemia, kidney damage, impaired reproductive function, interference with vitamin D metabolism, impaired cognitive performance, delayed neurological and physical development in newborns and elevations in blood pressure among adults.

There are several options available for this sensitivity parameter. White middle-aged men (40–50), young children (0–2), and pregnant women (as exposure surrogates for the fetus) are all subpopulations especially sensitive to the toxic effects of lead. Relative to pregnant women, delays in early mental and physical development of fetuses and infants have been associated with maternal blood lead levels. Because the biokinetics of lead during pregnancy have not been well elucidated, the available data are inadequate to quantitatively predict fetal lead exposure under various exposure scenarios. In young children, lead impacts include impairment of mental and physical development, including loss of hearing and reduced attention span in school. For white, middle-aged men, several studies have found a small, but consistent, relationship between blood lead levels and blood pressure. The blood pressure increases may be associated with some increased risk for more serious cardiovascular disease events, such as strokes and heart attacks, especially if blood lead levels are chronically elevated (Reference number 45).

Although children absorb more lead from food, they are not maximally exposed to lead in sewage sludge. Children do not typically consume food grown on sludge-amended soils to the extent that adults do. Since adult males consume more food than women and children, they are more exposed to, and may be most affected by, changes in lead concentrations in sludge that is applied to agricultural lands. Therefore, for this parameter, EPA selected middle-aged men as the human endpoint most sensitive to lead effects.

Step two in the process is to select a blood lead level of concern. In recent rulemakings, the Agency has selected a level of 10 μg of lead per deciliter of blood as a level of concern for health effects which warrant avoidance in infants and children. Research on white males 40 to 59 years old (Reference number 30) found significant associations between blood lead levels and blood pressure after accounting for the other known factors previously associated with elevated blood pressure. This research showed that, with little

change in the coefficient, the relationship also held when tested against every dietary and serological variable measured in NHANES II data, a data base on health and nutrition in the U.S. population (Reference number 30). There remains considerable uncertainty as to the location of a blood lead threshold, if any, for a blood pressure change and the mechanisms by which these changes occur. Therefore, the Agency has not yet determined an appropriate blood lead level to serve as a target for the protection of adult men from elevated blood pressure associated with exposure to lead. However, for purposes of this analysis only, EPA assessed the potential effects of this proposed regulation on adult men based on a blood lead level of 10 μg/dl. If the Agency determines that the level of concern is lower than 10 μg/dl, we will re-evaluate the impacts of this proposal and may choose a different limit on lead in sludge which better reflects the appropriate blood lead level of concern.

The third step in the process is to choose a baseline lead exposure level from all sources other than food grown on sludge-amended soils. The August 1988 Draft Report, "Review of the National Ambient Air Quality Standards for Lead: Exposure Analysis Methodology and Validation" (Reference number 82), included estimates of average lead exposure levels under various air lead concentrations. The report projected a 1990 baseline average blood lead level for white middle-aged men of 3.9 to 4.9 μg/dl. These levels result from exposure to all media including air, drinking water, food other than food grown or raised on sludge-amended soils, dust, and dirt.

It must be noted that these calculations are for an average exposed individual in a large population. Baseline exposure to lead results in blood lead levels that are lognormally distributed. To more completely characterize risk, we must examine blood lead distribution around the average baseline. Given a mean baseline lead in middle-aged men of 4.4 μg/dl and a geometric standard derivation of 1.37 (from NHANES II), approximately 10 percent of the population would be over 6.7 μg/dl and 1.0 percent would be over 9.2 μg/dl. Because of the Agency's concern for those individuals who are exposed to above average lead levels at the baseline (individuals most exposed to lead), EPA selected 8.0 μg/dl as the baseline blood lead exposure level. This corresponds approximately to the 95th-percentile of the distribution.

Step four is to determine the allowable daily intake of lead for sludge that is still protective of the blood lead level of concern. To derive the ADI, the Agency subtracted the baseline blood level exposure level (8 μg/dl) from the blood lead level of concern (10 μg/dl). The Agency then calculated what amount of lead intake from food grown on sludge-amended soils would translate into 2 μg/dl.

Not all of the lead in food that is eaten is absorbed by the body. A method to convert dietary lead intake to blood lead level is described in the Draft Exposure Report and is based on experimental studies, in which dietary supplements were administered to volunteers, and duplicate diet studies. Two studies are identified as most useful in estimated a dietary lead/blood lead relationship (see Reference numbers 83 and 84). For middle-aged men, the coefficient of increase of blood lead level and lead intake attributable to consumption of lead in food is 0.032. Dividing 0.032 into 2 yields of 62.5 μg of lead per day allowable intake due to consumption of lead in foods raised on sludge-amended soils. To be conservative, the Agency chose to limit the allowable intake of lead from sludge to 20 μg per day rather than 62.5 μg.

Step five requires the selection of an individual who is most exposed to sludge (MEI). Approximately 0.02 percent of national agricultural land is treated with sludge each year. With an assumption of complete national mixing of food, an average individual's diet of fruits, vegetables, and meat products contains no more than 0.02 percent of foods grown on sludge-amended lands. To be protective, we assume to MEI receives over 100 times more of his food supply from sludge-amended soils than the average individual. The model attributes 2.5 percent of the MEI's diet to food from sludge treated soils due to potentially high consumption from roadside stands.

Step six is to establish, for each step in the pathway of exposure through the environment, an allowable concentration of lead in the soil and in the plant. The concentrations are based on reasonable worst-case assumptions that speed the transport of lead through the environment and that magnify the bioaccumulative effects of lead in plants and animals. The approach and values used are detailed in Part IV of the preamble and in the "Technical Support Document: Land Application and Distribution and Marketing of Sewage Sludge" (Reference number 57).

Step seven is to establish a lead limitation that would not exceed the allowable DDI. In this case, the model calculated, for the human health pathway, a cumulative pollutant loading rate for lead of 176 kilograms per hectare (kg/ha). However, the model calculated a non-human health cumulative pollutant loading rate of 77 kg/ha. Therefore, the human health pathway was not the most stringent for this pollutant. Because the environmental or non-human health limitation is more stringent, the limit for lead will be even more protective of human health.

It is important to note the relationship between the proposed limitation and current requirements. Thirty-two States now limit the application of lead to soil. The rates range from 200 kilograms of lead per hectare to 2520 kilograms of lead per hectare. The median value is 530 kilograms of lead per hectare. Current EPA guidance suggests that lead should not be applied at a cumulative pollutant loading rate in excess of 500-2000 kg/ha. The proposed lead limit of 125 kg/ha will result in very significant reductions, more than 80 percent.

The Aggregate Risk Analysis projects the number of people exceeding blood thresholds would drop from 920 to 249 after regulation for a benefit of 671. Likewise, the lead cases due to land application would drop from 38 to 10.

Because of the reasonable worst-case conservative nature of this methodology, EPA believes the proposed regulation is very protective of human health impacts from lead. However, we invite comment on the methodology and our selection of parameters. The Agency is interested in whether the public believes EPA has been sufficiently protective or whether EPA should have been more conservative. For example, comment is sought on the advisability of selecting 15 μg per day instead of 20, as the allowable daily intake of lead from sludge, in Step 4. Conversely, the Agency also seeks to know if the public feels it has been too conservative (e.g., in Step 4, EPA could have used the 62.5 μg per day of lead produced by our analysis as the allowable daily intake.

As described above, this human pathway analysis is based on evaluating middle-aged men as the human endpoint most sensitive to lead exposure from sludge. The limitation derived from this methodology will not only protect that MEI but, of course, will also protect the general population and other sensitive subpopulations. Of the 920 people estimated at the baseline to be at risk of adverse health effects resulting from lead in sewage sludge applied to agricultural land, less than 30 are women or children. The proposed

regulation will reduce that number to less than 10. Nonetheless, we invite comment on whether the proposed limitations are sufficiently protective for the specific subpopulations of children 0 to 2 and pregnant women.

As mentioned earlier, there is the potential for an increase in the application of sewage sludge to agricultural land. Such an increase could increase exposure to lead from sewage sludge. In fact, our impact analysis projects there will be a 10-percent decrease in agricultural land.

EPA is also interested in comments on the impact of these limitations on the beneficial reuse of sludge and on the potential inter-media transfer of lead risks. Some municipalities have suggested that our analysis understates the impact and will preclude land application of sludge in most cases. If this is the result, increased amounts of sludge will be incinerated. This could reduce a greater lead exposure and increased numbers of individuals adversely affected by land. On the other hand, reduction of lead in gasoline may have resulted in lower amounts of lead in sludge (at treatment plants with combined sewers). Therefore, tight limits on lead in sludge may not preclude or reduce land application or increase incineration of sewage sludge. EPA is particularly interested in data on these matters that commenters could provide.

Criteria For Carcinogens

As discussed in the "Final Guidelines for Carcinogen Risk Assessment" (51 FR 33992, September 24, 1986), the Agency classifies a pollutant's potential for exhibiting carcinogenic hazards by considering the weight of evidence indicating that a pollutant is a carcinogen. The classes of carcinogens are:

- Group A—human carcinogen based on sufficient epidemiological data;
- Group B1—probable human carcinogen based on sufficient animal data with suggestive human data;
- Group B2—probable human carcinogen based generally on sufficient animal data without suggestive human data;
- Group C—possible human carcinogen based on more limited animal data;
- Group D—not classifiable as a carcinogen due to insufficient data; and
- Group E—evidence of non-carcinogenicity.

Twenty-one of the pollutants for which the Agency is proposing standards have been classified as carcinogens. Table V–1 list the twenty-one pollutants with their associated weight of evidence designations.

TABLE V–1.—CARCINOGENS

Pollutant	Weight of evidence	Unit risk estimate (Q_1^*)[1] (mg/kg/day)
Aldrin	C	30.4
Arsenic [1, 2]	A	15.0
Benzene	A	0.029
Benzo(a)pyrene	B-2	11.5
Beryllium [2]	B-1	2.6
Bis(2-Ethylhexyl) phthalate	B-2	0.0091
Cadmium [2]	B-1	6.1
Chlordane	C	1.81
Chromium VI [2]	A	41.0
DDD/DDE/DDT	B-2	0.34
Dieldrin	C	30.4
Dimethylnitrosamine	B-2	25.9
Heptachlor	B-2	3.37
Hexachlorobenzene	B-2	1.57
Lindane	B-2	1.33
Nickel [2]	A	0.84
PCBs	B-2	7.7
Toxaphene	B-2	1.13
Trichloroethylene	B-2/C	0.011

[1] Arsenic is considered a skin carcinogen through ingestion of drinking water.
[2] These compounds are considered carcinogenic when inhalated.

For each pollutant classified as a carcinogen, the Agency quantitatively estimates, the upper-bound cancer potency (unit risk estimate Q_1^*) for the pollutant. A pollutant's potency is a measure of its ability to increase the risk of contracting cancer over a life time, expressed per unit of daily dose. For Group A pollutants, the cancer potency was based on epidemiological data. For all others, potency was estimated from animal test data. The Agency's upper-bound potency estimates are shown in Table V–1.

Estimates of cancer risks resulting from given levels of exposure are subject to great uncertainty. Extrapolation of carcinogenicity from animals to humans involves uncertainties due to differences in physiology and metabolism. Extrapolation from high doses generating a detectable cancer response to low doses corresponding to environmental contamination involves uncertainties in the shape assumed for the dose-response curve.

For the Table V–1 pollutants, the Agency has extrapolated the response at high doses to the predicted response at low doses assuming the linearized multi-stage model. Compared to other available extrapolation models, the Agency's model generally produces higher estimates of cancer potency and risk. The proposed numerical limits would be higher, possibly by one or two orders of magnitude, if a different extrapolation model had been used. The uncertainties are most pronounced for pollutants showing indications of cancer-promoting action but not cancer-initiating action. Such pollutants include DDT.

Of the available cancer dose-response models, none is recognized as producing the most accurate results. EPA does not believe that procedures yet exist for making "most likely" or "best" estimates of risk. Rather, the Agency believes that its procedures produce a plausible upper limit for risk. Such an estimate, however, does not necessarily give a realistic prediction of risk. The true risk may be as low as zero.

In determining the appropriate dose to use in the exposure assessment models for carcinogenic pollutants, EPA uses the quotient of an incremental risk and the potency value, Q_1^*. The incremental risk is defined as the probability of an individual contracting cancer following a lifetime of exposure to the maximum modeled long-term ambient concentration. Estimates of maximum individual lifetime cancer risk are usually expressed as the probability represented as a negative exponent of 10. For example, one additional cancer case in an exposed population of ten thousand is written as 1×10^{-4}, in an exposed population of one in one hundred thousand is written as 1×10^{-5}, and in an exposed population of one in one million is written as 1×10^{-6}.

The incremental risk cannot be construed as an absolute measure of the risk to the exposed population because of the uncertainties described above. Furthermore, a case does not indicate the severity of the outcome. An additional cancer case does not necessarily mean a terminal illness. Therefore, such estimates are best viewed as relative estimates of the likelihood of cancer.

The Agency usually evaluates risk targets ranging from 1×10^{-6} to 1×10^{-4} in making regulatory decisions. Risk levels of 1×10^{-6} to 1×10^{-4} are generally considered acceptable depending on (1) the pollutants involved, (2) the weight of evidence that the pollutants are human carcinogens, (3) the uncertainties in the analyses, (4) the certainty and severity of the risk posed by the pollutants or activities, (5) the reversibility of the health effects, (6) the number of people exposed to the pollutant, (7) the advantages of the activity, (8) the risks and advantages of any alternatives, and (9) the requirements of the statute under which the pollutants or activities are to be regulated. Risks of less than 1×10^{-6} (i.e., 1×10^{-7}) are very small and these lower estimates increase in uncertainty. Because of the uncertainties of the models and analyses, EPA may build in

margins of safety through either the parameters it uses in the models or the risk target it selects as a basis for its regulatory decisions.

PART VI: ENVIRONMENTAL CRITERIA

Section 405(d) of the Clean Water Act (CWA) requires standards that protect human health and the environment. To ensure that the numerical limits protect not only human health, but also the environment, the Agency examined the pathways through which plants and animals would be exposed to a pollutant when sewage sludge is applied to agricultural and non-agricultural land or distributed and marketed. The Water Quality Criteria published under authority of section 304(a)(1) of the CWA were used as the end point for determining a pollutant concentration that would generally ensure water quality adequate to support fresh water organisms. The guidelines that the Agency uses to develop criteria for aquatic organisms are published in 45 FR 79341, November 30, 1980.

Similar criteria have not been developed for the terrestrial target organisms. EPA could not follow the Water Quality Criteria guidelines in developing criteria for terrestrial organisms because studies have not been conducted on a sufficient variety of species for the Agency to follow the guidelines. Data are generally available for only domestic or commercially valuable spcies, not for wild plants and animals. Therefore, in selecting an environmental criterion for terrestrial organisms, the Agency used the threshold pollutant values, reported in the scientific literature, that were identified with reductions in growth, reproductive health, lifespan, and other symptomatic manifestations of toxicity. The species most sensitive to a pollutant were selected. Where sufficient data were available, the Agency set the allowable exposure at the geometric mean of (1) the lowest observed level of exposure that causes an adverse effect in a species (LOAEL) and (2) the highest observed level that did not cause an adverse effect in that species (NOAEL). Where it was not possible to bracket the LOAEL and NOAEL, the maximum safe dose for a species was used instead.

The Agency identified pollutant concentrations that would not exceed a value toxic to herbivorous animals exposed to pollutants by ingesting the sludge when grazing or by eating feed crops grown on sludge-amended soils. Toxicity values for cattle or sheep were used as the basis of the numerical value for the grazing animal. Toxicity values for swine, cattle, sheep, or chickens, depending on the pollutant, were used for animals eating feed crops. These values were in turn inserted into the model to develop a numerical limit for the particular pathway of exposure to ensure that grazing and non-grazing herbivorous animals would be protected.

To protect soil biota, the Agency used toxicity thresholds for earthworms and grubs, although earthworms are generally the most sensitive species and the species for which the most data are available. However, data were evaluated for a broad range of soil biota, including microorganisms and small invertebrates living in or on the soil.

In selecting a toxic threshold for insectivorous mammals or birds consuming soil biota as a large portion of their diet, EPA used the predator of the soil biota having the highest bioconcentration factor for a particular pollutant to develop the lowest dietary concentration causing an adverse effect on a predator. Generally the most sensitive species were birds, although data for insectivorous mammals, such as moles, were also evaluated. The Agency is making the assumption that by using the highest available pollutant uptake slope in soil biota and the lowest available dietary threshold in domestic birds, the numerical limits will protect untested wild species as well.

In developing the threshold values for phytotoxicity, the Agency attempted to use the highest quality data available. Over the years, research on sludge used in the production of agricultural commodities demonstrated a hierarchy in data quality to predict field or "real world" conditions of pollutant uptake in plants and phytotoxicity. Generally, experiments conducted in fields using sewage sludge that already contains the heavy metals for study produce the most relevant data. Next in the hierarchy are experiments in which plants are grown in pots using sludge that already contain the heavy metals for study. A third level of data are derived from experiments in which salt solutions of the metals that are being studied are spiked into sludge which is then used to grow plants in pots. Response curves for plant uptake from such studies result in concentrations of trace elements and impacts on plant growth that are much higher and more severe than the use of data from the more representative field study.

The Agency selected data from the first category, if available. If data in this category were not available, data from the second category were selected. Only if data in the first two categories were not available, did the Agency select sludge-salt data. The proposed numerical limits for nickel and zinc are based on the phytotoxicity pathway and are derived from sludge-salt data. The Agency invites comment on the use of sludge-salt data when sludge field data are not available.

In developing threshold values for phytotoxicity, the Agency derived the values on the basis of the geometric mean of the LOAEL and the NOAEL in the species most sensitive to a pollutant. Depending on the pollutant, the most sensitive species were generally leafy green vegetables, root crops, or legumes. The studies from which data were taken were generally those in which the soil pH was 6 or greater because this is the usual condition that maximizes crop productivity.

The numerical limits included in today's proposal are based on the most limiting pathway of exposure. The phytotoxicity pathway was the limiting pathway for chromium, copper, nickel, and zinc for both land application (agriculture) and distribution and marketing. Toxicity to predators (ducks) eating soil biota (worms) was the limiting pathway for lead in both land application (agriculture) and distribution and marketing. Toxicity to farm animals eating harvested feed grown on sludge-amended soils was the limiting pathway for molybdenum and selenium. For all other pollutants in land application (agriculture) and distribution and marketing, the limiting pathways of exposure were those affecting humans.

The "Technical Support Document for Land Application of Sewage Sludge" (Reference number 57) lists the values selected and the rationale used in selecting those values. The Agency invites the public to review the values listed in the Technical Support Document and to recommend other values where appropriate. The Agency is particularly interested in receiving data and information on toxicity values for wild plants and animals to supplement the data on which the environmental criteria were established.

PART VII: AGGREGATE EFFECTS ASSESSMENT

Introduction

EPA assessed the nationwide incidences of disease that could be identified and attributed to the use or disposal of sewage sludge. These aggregate effects were used in evaluating the overall risk of current practices and the benefits of four regulatory alternatives discussed in Part VIII of the preamble.

In assessing the adverse human health effects of exposure to sewage sludge-borne pollutants, the Agency developed estimates of the following: (1) Maximum upper-bound individual carcinogenic risk posed by a practice; (2) incidence (i.e., cases per year) of cancer; and (3) number of people exposed to concentrations of non-carcinogenic pollutants that exceed the reference dose (RfD) or other Agency established health effects-based threshold levels. The Agency also employed an innovative methodology to calculate the potential number of people exposed to lead and cadmium above the health-based thresholds.

Estimated aggregate human health effects are provided for sewage sludge that is applied to agricultural lands, applied to non-agricultural lands, distributed and marketed, placed in monofills, and incinerated. The Agency used the same exposure methodologies in estimating the aggregate effects on the population as a whole that it used in assessing exposure the most exposed individual, plant, or animal (MEI).

To estimate the aggregate effects of sewage sludge use or disposal, the Agency applied the exposure assessment models somewhat differently from the way they were used to assess exposure to the MEI. In assessing exposure to the MEI, the Agency used a reasonable combination of worst-case exposure assumptions with upper-bound toxicity estimates. In the aggregate assessment, the Agency evaluated a range of parameters and often focused on average or typical assumptions for the exposure models. However, because the Agency used upper-bound estimates of carcinogenicity, the resulting aggregate cancer cases are upper-bound estimates.

Sewage Sludge Quality

To estimate human health impacts from sewage sludge use or disposal practices, data are needed on the distribution of pollutant concentrations in sludge among all publicly owned treatment works (POTWs). However, since there are, at present, no data on sludge quality for individual POTWs, the Agency relied on data from EPA's "40 City Study". The Agency developed three separate sludge quantities (50th-, 90th-, and 98th-percentile concentrations) using a logarithmic regression procedure based on the assumption that the POTW pollutant means are lognormally distributed across POTWs. This procedure is based on fitting a regression line to the data that expresses the relationship between the logarithms of the plant means and the percentile of distribution. The estimated sludge concentrations were assigned to the actual inventory of POTWs according to the relative contribution of the industrial component of the wastewater flow, as reported by the POTW.

The uncertainties in sludge quality for organic pollutants affect the predicted human health effects. Because the Agency's analysis of the human health effects of organic pollutants relied on the "40 City Study" data, the analysis may underestimate the effects. With improved sampling and analysis protocols, the Agency may observe increased levels of the organic pollutants for which numerical limits are proposed, as well as additional organic pollutants in sewage sludge, thereby increasing the estimates of potential human health effects.

As previously explained, the Agency is gathering additional data on the concentration of organic pollutants in sewage sludge as part of the National Sewage Sludge Survey. When the data from this survey become available, EPA will re-evaluate the aggregate effects of organic pollutants. The Agency will publish the results of the survey in the "Federal Register" and will invite the public to comment on the data and analyses.

Cancer Cases

Aggregate cancer cases are derived assuming a linear non-threshold relationship between dose and risk. Annual cancer incidence attributed to a pollutant of a given carcinogenic potency is directly related to two factors. These are the size of the population considered and the average exposure within the affected population. The predicted incidence of cancer is an upper-bound prediction of the number of new cancer cases per year in the U.S. population that are attributable to sludge use and disposal. The actual incidence may be substantially less than predicted here and, in fact, may be zero. The incidence estimates are not, and should not be construed as, a predicted death rate.

Non-Cancer Health Effects

Aggregate non-cancer risks are expressed in terms of the number of people who are chronically exposed to a concentration of a pollutant that exceeds a fixed reference value. Exceeding the RfD implies a risk of an adverse health effect, but does not predict the occurrence of such an effect. For land application, distribution and marketing, monofilling, and incineration, the Agency compared the predicted time-averaged exposure to an RfD or other health effect-based threshold value.

The number of people exposed to a given reference value depends not only on the population size and mean exposure, but also on the variability of chronic exposure within the population (coefficient of variation). For pollutants other than lead and cadmium, the exposure predicted from sludge use or disposal was simply added to a mean or typical background exposure and then compared to the RfD. The variability (i.e., coefficient of variation) of background exposure and human response within the population was not considered because it could not be estimated reliably. As previously discussed, exposure to concentrations that exceed an RfD implies increased risk but does not imply that an adverse health effect will occur. Because the Agency does not have the data to use a dose-response curve in generating RfD thresholds other than for lead, it cannot predict the incidence of a specific noncancer health effect. The Agency expects the incidence of such health effects to be less than the number of people who exceed an RfD threshold.

Cadmium And Lead Predicted Exposures

The Agency used a different approach for predicting adverse health effects from cadmium and lead from that used for other non-cancerous pollutants. For these two pollutants, sufficient data are available to support improved methods. Estimating health effects from cadmium or lead involves predicting the concentration of the pollutants in body tissue of exposed individuals. In turn, this "body burden" is affected by levels of environmental exposure. For cadmium, body burden is measured as the concentration (micrograms) of cadmium accumulated in a gram of kidney tissue (μg/g). For lead, it is measured as the concentration (micrograms) of lead in a deciliter of blood (μg/dl). For both metals, data are available to describe background levels of tissue concentrations in the U.S. population, to link levels of environmental exposure to expected increments in these tissue concentrations, and to link tissue concentrations to possible or expected health consequences. Separate health effects and background blood lead distribution data (population means and coefficients of variation) are available for men, women, and children. Adverse fetal effects from lead have been detected statistically for women with blood lead as low as 10 μg/dl. Neurological and developmental effects

have been detected in children with blood lead between 10 and 15 μg/dl. For white men of age 40–59, blood level increases (even for levels as low as 7 μg/dl) have been found to be associated with increased blood pressure. Therefore, "threshold" values of 7, 10, and 10 to 15 μg/dl were selected to represent blood lead levels above which adverse effects might be anticipated for men, women, and children, respectively.

Similarly, data are available describing cadmium concentrations (population means and coefficients of variation) in kidneys separately for smokers and non-smokers in the U.S. Adverse health effects from cadmium have been observed in adults with kidney cadmium levels exceeding 200 μg/g. Therefore, a "threshold" value of 200 μg/g was used in estimating potential health effects from cadmium.

From these data, the Agency calculated the number of people with cadmium and lead levels exceeding the threshold values because of background exposures from sources other than sewage sludge. The Agency then predicted the incremental increase in the levels of cadmium and lead in the kidney or blood that could be attributed to sewage sludge use and disposal practices. The number of people exceeding the thresholds was again calculated as a function of the predicted population mean, assuming the same coefficient of variation. This latter calculation includes both the number of people who originally had levels of lead or cadmium exceeding the thresholds and the number of people whose blood or kidney levels would exceed the thresholds as a result of sludge use or disposal.

To determine the number of people who exceeded the thresholds for cadmium and lead because of sewage sludge use and disposal, the Agency subtracted the original number of people whose levels actually exceeded the thresholds from the number of people whose blood levels were predicted to exceed the thresholds after sewage sludge use and disposal. The key parameters in this analysis are background mean tissue concentrations, coefficients of variation, incremental increase in body burdens of cadmium and lead caused by sewage sludge use and disposal practices, and the cadmium or lead levels that may cause a health effect.

The "threshold" approaches described above were used to predict the number of exposed individuals potentially vulnerable to adverse health effects from sludge-related exposure to cadmium or lead. Not all of the individuals with cadmium or lead levels above the selected thresholds, however, would be expected to experience actual health impacts.

In assessing health risks from lead, the Agency used additional techniques to estimate the number of individuals likely to suffer the effects under consideration. For example, the relationship between mean blood lead level in the white male population and expected blood pressure increases (diastolic pressure greater than 90 mm Hg) in that same population was determined using results from semi-log regressions of diastolic blood pressure versus blood lead and from a logistic regression of high blood pressure versus blood lead. As expected, the number of individuals whose blood pressure actually increases as a result of lead exposure from sludge is smaller than the number of individuals whose blood lead levels exceed 7 μg/dl as a result of sewage sludge use and disposal. Similar methods were used to estimate other health effects from lead exposure and the results were used to supplement those from the "threshold" approaches.

Other Risks

The aggregate effects analysis does not address exposure from pathogenic organisms or from pathways that were not examined in the exposure assessment models (e.g., the effects of ingesting plants on which incinerator emissions have fallen). As discussed earlier in the preamble, the Agency is developing exposure assessment models for pathogens and for indirect pathways of exposure from sewage sludge incinerators. When these models are complete, EPA will expand its aggregate assessment analysis to evaluate the effects of these other risks.

The assessment does not quantify ecological effects or farm economic losses caused by plant or animal toxicity, even though some numerical limits in today's proposal are based on plant and animal toxicity values. Methodologies and data are not yet available to accurately estimate the ecological impacts from the use and disposal of sewage sludge.

The remaining portion of this discussion briefly describes the factors that are considered and the key assumptions that are made in the aggregate effects (i.e., incidence) analysis for each end use and disposal method. Generally, only a few pollutants contribute to the total adverse human health effects predicted for each method. These pollutants are identified and the incidence of human health effects from current use and disposal methods are projected.

Agricultural Land Application

Available data indicate that approximately 16 percent (i.e., 1.2 million dry metric tons) of all sludge is applied to agricultural and non-agricultural land. The Agency estimates that about three-fourths of this is used on agricultural land, with substantially more being used on pastures and feed crops than on crops intended for human consumption. Based on Agency estimates, there are 2,623 POTWs that apply sewage sludge, or distribute sewage sludge for application, to the land. Of these, 2,020 apply sewage sludge, or distribute sewage sludge for application, to agricultural lands.

In estimating the aggregate effects from the consumption of food grown on sludge-amended soil, the Agency evaluated the following pathways:

- Sludge-Soil-Plant-Human
- Sludge-Soil-Plant-Animal-Human
- Sludge-Soil-Animal (direct ingestion)-Human
- Sludge-Soil-Surface Water-Human
- Sludge-Soil-Ground Water-Human

In projecting the aggregate human health effects from applying sewage sludge to agricultural lands, risks associated with pathways of exposure involving air were not examined because the exposure assessment models did not show that these pathways would be significant sources of exposure.

The Agency has no data on how harvested crops and food products from different areas of the country are mixed into the national market place and distributed throughout the United States. Consequently, the Agency assumed complete national mixing of food products grown on sludge-amended soil, thus equally exposing the entire U.S. population. The complete mixing assumption has no effect on predicted cancer incidence because cancer incidence is determined by the average dose within the population. The complete mixing assumption tends to underestimate the number of persons who may exceed non-cancer RfDs because an average dose across the population is much less than an RfD. However, where a few individuals are exposed to a larger than average dose, this larger dose may be sufficient to cause an increase in the body burden to a level that exceeds the RfD, depending on the existing body burden of the individual.

Assuming that sludge is spread on land or ordinary productivity at a rate of 11 metric tons per year, the Agency estimates that, overall, 0.02 percent assumed for the average U.S. consumer's diet is food grown on sludge-amended soils, which is substantially less than the 2.5 percent assumed for the MEI's diet.

Another difference between the aggregate analyses and exposure assessment analyses is that the Agency assumed a national average diet using the Tolerance Assessment System (TAS) in the aggregate analyses. As discussed earlier, the Agency is considering the use of the TAS diet for the exposure assessment model.

For the two exposure pathways involving plant uptake of pollutants from soil, the coefficients used to estimate the pollutant concentration in various types of crops per unit concentration in soil represent a key set of parameters. For the exposure pathways involving animal uptake from plants and directly from soil, the coefficients used to estimate the pollutant concentration in various animal products per unit concentration in the feed or soil are key parameters. In both cases, the Agency used the same values in the aggregate assessment that were used in the exposure assessment models. However the coefficients, particularly for metals, may overestimate the effect because the total metal in the soil was used, rather than the soluble or bioavailable fraction (i.e., portion of the metal that is absorbed by the plant).

One important limitation of the assessment of exposure through food is that projected effects are estimated only for sewage sludge applied in a single year. Multi-year applications were not evaluated. Thus, the effects would be underestimated for pollutants that remain in the soil for long periods of time without decomposing, especially the heavy metals.

Aggregate exposure through surface water contamination was estimated by applying the pollutant runoff modeling approach used in the MEI exposure assessment models. To obtain the aggregate pollutant runoff, the runoff per hectare predicted for typical sludge application was multiplied by the number of estimated sludge-amended hectares in each State. This aggregate runoff was assumed to be diluted into the estimated total surface water flow for each State. Aggregate human exposure was estimated assuming 2 liters per day intake by surface water users and 10.6 grams per day intake of fish from State waters. The degree of averaging used in this approach has no effect on the predicted cancer incidence, but does tend to reduce the predicted maximum risks and the predicted incidence of exceeding an RfD.

Aggregate exposure through ground-water contamination was estimated by applying the previously discussed CHAINMINTEQ-AT123D approach. The area affected by each site was taken to be a 90 degree wide slice radiating 3 kilometers outward from the sludge-amended site. The ground-water concentration within this entire area was taken to be the maximum concentration predicted (over time) to occur at the centerline of the plume at a distance of 1.5 kilometers from the site. The population within this area was estimated assuming an average density of 0.13 ground water users per hectare (119 million ground water users distributed over the area of the United States).

Using the methods described above, the Agency projected that application of sludge to agricultural lands could result in maximum individual carcinogenic risks, summed across the 25 pollutants regulated under this practice, of 9×10^{-6} and in an upper-bound cancer incidence of less than one case per year (0.17). The Agency projects that 921 people would exceed an RfD, and that all but one case is due to lead. The number of adverse lead effect cases resulting from this exposure is estimated to be 38.

Non-Agricultural Land Application

The Agency estimates that 276,000 dry tons of all sludge is applied to the land in non-agricultural uses. Such land may be set aside for disposal, forest, or devastated land undergoing reclamation.

The Agency estimated aggregate effects from human exposure to the pollutants through the following pathways:

- Sludge-Soil-Surface water-Human
- Sludge-Soil-Ground water-Human

For both pathways the Agency used the same approach as described for agricultural land application. By this means, the Agency estimated that application of sludge to non-agricultural land could result in maximum individual cancer risks, summed across the 25 pollutants regulated in this practice, of 2×10^{-6} and an upper-bound cancer incidence of less than one case per year (0.1). The Agency projects that 60 people will exceed a RfD because of lead. The number of cases resulting in adverse effects from this exposure is expected to be 3.5.

Distribution and Marketing

The Agency estimates that about nine percent (i.e., 705,000 dry metric tons) of all sludge generated is distributed or marketed by approximately 106 facilities. About 25 percent of this is used in residential settings—half was assumed to be applied to home vegetable gardens and half to ornamental shurbs, flowers, and lawns.

The Agency estimated aggregate risks from human exposure to the pollutants through the following pathways:

- Sludge-Soil-Plant-Human (home gardening)
- Sludge-Soil-Human (children ingesting sludge-amended soil)

For home gardens, the Agency assumed an application rate of 11 metric tons per hectare. The exposed population was estimated to be 2.7 million individuals who garden and consume their own produce. For this exposed population, the following percentages of diet were assumed to consist of food grown on the sludge-amended soil: 27.0 percent of root and leafy vegetables, non-dried legumes, garden fruits, and corn; 15.0 percent of potatoes; and 7.0 percent of dried legumes. The soil-to-plant coefficients used in the aggregate assessment were identical to those used in the exposure assessment models for a home gardener. In evaluating children's sludge ingestion, the Agency assumed that a home gardener would mix the sludge into the soil to a depth of 15 centimeters. Children were assumed to ingest a sludge-soil mixture at a rate of 0.1 grams per day over a 5-year period.

Using the above methodology, the Agency projected that exposure through food grown in home gardens amended with sewage sludge products could result in maximum individual carcinogenic risks, summed across the 22 pollutants regulated in this practice, of 9×10^{-5} and in virtually no cancer cases (0.02 cases per year). Again lead was the primary pollutant causing 1552 persons to exceed the RfD. Most of this exposure (1,546 out of 1,552) results from food and most directly affects white adult males (1,463 of the 1,546), increasing their risk of elevated blood pressure. The number of cases resulting from 1,552 persons exceeding the RfD for lead is 95.

Monofills

Data available to the Agency indicate that 49 POTWs dispose of a total of 101,000 dry metric tons of sludge per year in monofills (approximately two percent of all sludge generated). To predict potential effects from these monofills, the Agency used the same fate and transport model for the aggregate assessment that it used for MEI exposure. The computer model used for the ground-water pathway was SLUDGEMAN, which consists of an unsaturated zone model, CHAIN, the

geochemical model, MINTEQ, and the saturated zone model, AT123D. The model for landfill vapor loss was based on a methodology adopted by EPA in 1987. It considers the landfill operating period with uncovered wastes, with shallow temperature cover, and with permanent cover.

The Agency did not model all 49 facilities because there were insufficient site-specific data. Rather, the Agency used a number of generic scenarios to account for the 49 facilities. The modeled scenarios included the following parameters: five POTW sizes (0 to 0.2 million gallons per day (mgd), 0.2 to 1.0 mgd, 1.0 to 10 mgd, 10 to 60 mgd, and 60 plus mgd), sludge pollutant concentrations that corresponded to the 50th-, 90th-, and 98th-percentiles from the "40 City Study" and nine hydrological and geological variables estimated (using the guidelines of the National Water Works Association, 1985, Reference number 25) to correspond to site-specific characteristics, where possible. Each facility was assigned to one of the modeled scenarios based on its size, percent industrial flow, and location.

The populations affected by each of the 49 facilities were estimated as follows. For the volatilization pathway, the Graphic Exposure Modelling System was used to obtain 1980 Census data and derive populations in 11 ring distances up to 10 kilometers from each landfill site. These populations were then scaled down to reflect only the downwind populations (i.e., those with potential for vapor exposure).

For the ground-water pathway, the Agency identified the locations of drinking water wells within 4 kilometers of each monofill and determined the number of persons serviced by those wells. For monofills in Utah and New Hampshire, the Federal Reporting Data System was used. For the remaining sites, State or regional authorities supplied the data. To account for the unidirectional flow of ground water, only those populations within the quadrant of directional ground-water flow were assumed to be at risk of exposure.

By this means, the Agency projected that exposure to the 18 pollutants evaluated for sludge disposal in monofills could result in a maximum individual carcinogenic risk, summed across all pollutants, of 3×10^{-3} and virtually no cancer cases (0.02 cases per year). The Agency projects that two people would exceed the RfD for cadmium and that 390 people would exceed the RfD for lead as a result of drinking water from wells in close proximity to monofills. The number of adverse lead effect cases from those with blood lead levels exceeding the RfD is estimated to be 26. The Agency believes that it may have applied the models in a manner that substantially over-estimates the mobility of some pollutants, particularly lead, out of monofills and into ground water, thereby over-estimating the risks. The Agency intends to re-evaluate its modeling assumptions.

Incineration

Approximately 21 percent (i.e., 1.65 million metric tons) of all sludge is estimated to be incinerated by 169 POTWs that operate 282 incinerators. Each POTW was assigned to one of 10 model incinerators. The model incinerators represent several characteristics of the facility (such as stack height and sludge feed rate). One facility in each of the 10 groups of incinerators was modeled to determine its air dispersion characteristics by using the computer model, ISCLT, and supplemented, where appropriate, by LONGZ and COMPLEX I to account for terrain effects in urban and rural settings, respectively (see Reference number 46). This produced predicted dispersion factors in 24 concentric rings from 0.1 to 50 kilometers for each of the 10 modeled incinerators. These dispersion factors indicate the exposure concentration per unit rate of emission.

Additionally, there are 25 POTWs, generating 0.4 million dry tons of sewage sludge, that are currently using ocean disposal. Because of recently enacted legislation banning all ocean disposal of sewage sludge, these POTWs will have to shift to alternative methods. Incineration appears to be one of the likeliest disposal methods to be chosen by these 25 POTWs. It is by no means certain that all these POTWs will choose to incinerate their sludge; however, the ocean ban legislation is so recent that many POTWs do not even have preliminary plans in place. For analytical purposes, therefore, it has been assumed that all 25 POTWs will incinerate their sludge. This scenario is considered as the baseline practice for these POTWs. As such, the risk of incinerating the sludge generated by the 25 POTWs have been included in the baseline risk of incineration.

The Agency projects that if the 25 POTWs incinerate their sewage sludge, the POTWs would operate an additional 34 incinerators. The 25 POTWs were also assigned to model facilities based on the most likely type of facility that they would construct.

Metal control efficiencies varied significantly across the tested facilities. For an "average," the Agency used the 25th-percentile control efficiency of the four tested facilities as the expected efficiency. For assessing the exposure to the MEI, the Agency used the 10th-percentile of all sewage sludge incinerator test data (see Reference number 56).

For organic constituents, EPA took a different approach. Rather than starting with a sludge concentration and emission control efficiency, the analysis for organics begins with an emission rate. EPA started with an emission rate for organics because some of the organic compounds in the emissions are formed during the sludge combustion process. These products of incomplete combustion may account for a majority of the constituents in the emissions of an incinerator and for the risk from incinerator emissions.

The Agency analyzed data from four sewage sludge incinerators (three multiple hearth incinerators and one fluidized bed incinerator) that were recently tested to derive organic emission rates. The mean organic emission rate from the three multiple hearth incinerators was used as the organic emission rate of all the multiple hearth and electric arc incinerators in the United States. The actual organic emission rate from the one fluidized bed incinerator tested was used as the organic emission rate of all the fluidized bed incinerators in the United States.

For each of the 316 incinerators, the Human Exposure Model was used to estimate the populations residing within the 0.1 to 50 km concentric rings. The population was assumed to be exposed to the maximum concentration in each ring when the incinerators are operating under normal conditions. Thus, each of the 316 incinerators was assigned an air dispersion factor derived from a similar facility and the population surrounding the facility. From these data, population exposure and risks could be estimated in each concentric ring around each facility. Total population exposure and the effects of exposure at each facility and at all facilities combined were then determined.

In this way, the Agency projected that exposure to seven metals and total hydrocarbon emissions from sewage sludge incinerators could result in a maximum individual carcinogenic risk, summed across all pollutants, of 5×10^{-3} and an upper-bound estimate of 12 cancer cases per year. The Agency projects that incineration of sewage sludge would cause 794 people to have blood levels exceeding the RfD for cadmium and 129,835 to have blood levels exceeding the RfD for lead. The projected number of people adversely affected from exposure to levels of lead above the RfD is 5,976.

Summary

Table VII–1 summarizes the results of the aggregate effects assessments conducted for sewage sludge that is applied to land, distributed or marketed, monofilled, and incinerated.

TABLE VII–1.—AGGREGATE HUMAN HEALTH EFFECTS FROM CURRENT SEWAGE SLUDGE USE AND DISPOSAL

	LA-AG	LA-NON-AG	D&M	Monofills	INC.	Totals
Facilities/sludge:						
Number of POTWs	2,020	603	106	49	194	[1] 2,972
Volume of sludge (100s dry metric tons)	926	276	705	101	1,651	[2] 4,083
Analysis:						
Pollutants	25	25	22	16	8	31
Environmental pathways examined	14	2	6	2	1	
Baseline Aggregate Effects:						
Cancer cases	0.17	0.01	0.02	0.02	12	12.3
Exceeding threshold:						
Lead	920	80	1,552	380	129,835	132,751
Cadmium	1	0	1	2	794	798
Lead cases	38	3.5	95	26	5,976	6,136.5
MEI risk	9×10^{-4}	2×10^{-3}	9×10^{-4}	9×10^{-4}	5×10^{-3}	

[1] Does not include the estimated 2400 POTWs that dispose of their sewage sludge on the surface of the land.
[2] Does not include the estimated 200 dry metric tons of sewage sludge that POTWs dispose of on the surface disposal sites.

PART VIII: ALTERNATIVE REGULATORY APPROACHES

Introduction

This part of the preamble discusses the alternatives that the Agency considered in developing today's proposal. EPA is soliciting public comments on these approaches and welcomes suggestions for other appropriate approaches that the Agency should consider in establishing standards for the use and disposal of sewage sludge.

Over the years, EPA has developed different regulatory approaches depending on the legal requirements of a particular statute, surrounding issues, uncertainties, and information bases. Other EPA statutes covering the same pollutants or activities have very different legal requirements from section 405(d) of the CWA. The following discussion examines how different statutes mandate the way in which EPA is to establish regulatory requirements.

The U.S. Court of Appeals in the *Vinyl Chloride Decision* (*Natural Resources Defense Council, Inc. v. EPA*, 824 F.2d 1146, D.C. Cir., 1987) ruled that under Section 112 of the CAA, the Agency must use a two-step process in making regulatory decisions for National Emission Standards for Hazardous Air Pollutants (NESHAPs). The court ruled that the first step is to define an acceptable risk based only on health factors and then to define a regulatory limit. In defining a regulatory limit, the Agency may consider cost, technological feasibility, and other relevant factors in providing an ample margin of safety, as long as the regulatory limit does not exceed the acceptable level of risk. As indicated in the Benzene Notice (53 FR 28496, July 28, 1988), depending on the policy approach selected by the Agency, EPA would set carcinogenic risk levels for NESHAPs between 1×10^{-6} and 1×10^{-4}.

Under the Safe Drinking Water Act (SDWA), the Agency first defines a goal to limit the concentration of the pollutant in drinking water (for carcinogens, the concentration goal is zero). After setting a goal, the Agency sets an enforceable standard (maximum contaminant level—MCL) based on feasibility. Under the SDWA, the enforceable standard may not necessarily achieve the goal set for the pollutant, but is established at a level that is safe for human health. The carcinogenic risk levels for drinking water MCLs generally range from 1×10^{-6} to 1×10^{-4}.

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Toxic Substances Control Act (TSCA) explicitly provide for balancing health and costs in decision making. The risk levels established under FIFRA range from 1×10^{-6} to 1×10^{-4}, depending on the type of exposure involved. Applicator exposure is generally in the range of 1×10^{-4} and dietary exposure is generally in the range of 1×10^{-6}. The regulatory limits under TSCA are driven by a balancing of economic analyses and exposure analyses, with the exposure analyses taking into consideration adverse health effects other than carcinogenicity.

Under the Resource Conservation and Recovery Act (RCRA), Subtitle D (non-hazardous wastes), the Agency sets standards to protect human health and the environment based on the reasonable probability that municipal solid waste landfills (MSWLFs) will cause adverse effects. The standards are established taking into consideration the "practical capability" of the facilities. The Agency is proposing that States establish ground-water protection standard remedies for carcinogens in the range of 1×10^{-7} to 1×10^{-4} (see 53 FR 33314, August 30, 1988).

However, under Subtitle C of RCRA (hazardous wastes), there is no provision for the consideration of costs or the practical capability of a facility to meet the standards. The standards developed by the Agency under RCRA Subtitle C are those that are necessary to protect human health and the environment. The Agency will soon propose standards that prohibit hazardous waste incinerator emissions for metals from exceeding a summed carcinogenic risk level of 1×10^{-5}.

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) directs the Agency to set standards for cleanup by taking into consideration the relative degree of risk to human health and the environment. Under CERCLA, the Agency has set standards based on carcinogenic risk levels of 1×10^{-7} to 1×10^{-4}, with 1×10^{-6} as the point of departure for the analysis.

As shown, each statute is unique. Therefore, the regulatory approach and limits developed under one statute may not be appropriate for those developed under another statute. Before comparing regulatory requirements, the legal requirements of the authorizing statute must be examined.

In developing a regulatory approach, one of the principles guiding EPA was to propose reasonable standards. Section 405(d)(2)(D) of the CWA requires the Agency to establish management

practices and numerical limits that are "adequate to protect public health and the environment from any reasonably anticipated adverse effects of each pollutant." The Agency examined the effect of long-term pollutant exposure when sewage sludge is used or disposed of under conditions that could: (1) Increase the toxicity and potency of a pollutant in the environment; (2) speed the movement of a pollutant into and through the environment; or (3) intensify the adverse effect the pollutant may have on human health or the environment.

This approach accounts for potential data inadequacies, but does not protect against every conceivable worst-case situation. For example, we assume that a monofill may be located in sandy soil rather than in heavy clay soil because pollutants move faster through sandy soils than through clay soils. We also assume that 2.5 percent of the diet of the most exposed individual (MEI) comes from food grown on sludge-amended soil. By comparison, an average individual's diet contains only 0.025 percent of food grown or raised on sludge-amended soil. In applying sewage sludge products to the home garden, we assume that the homeowner mixes the product into the soil or that climatic forces, particularly rain, filters the sludge product into the soil profile. This assumption means that in evaluating the effect of a child inadvertently ingesting dirt when playing in a garden, EPA analyzed the effect of a child eating a sludge-soil mixture rather than pure sludge. The Agency analyses also assumed that a child, from the ages of one through five, inadvertently ingests 0.1 gram per day of a sludge-soil mixture rather than the 0.5 to 5.0 grams per day for a child exhibiting PICA behavior.

EPA believes that the combination assumptions protects individuals from events that are likely to occur and meets the statutory provision to protect public health and the environment from "reasonably anticipated adverse effects of a pollutant". In taking such an approach, the Agency recognizes that some risks may not have been fully evaluated or may remain after regulation. Individuals who do not follow label instructions (e.g., prevent children, particularly those exhibiting PICA behavior, from mouthing sewage sludge), or those who illegally grow or take all of their food stuffs from land where the growing or taking of food is prohibited (e.g., forests where sludge has been applied), may receive higher doses of a pollutant than the level used in developing the numerical limits for the proposed rule. However, we expect that few, if any, individuals will receive higher doses of a pollutant than the doses used to establish the standards.

Alternative Approaches for Establishing Numerical Pollutant Limits

In developing a regulatory approach for establishing the management practices and numerical limits (standards) that would safeguard public health and the environment, the Agency examined the use or disposal methods and the probability that individuals would be exposed to pollutants from these methods. EPA identified the type of the risks involved, (e.g., breathing air with higher levels of pollutants, drinking water with pollutant levels exceeding the MCLs for drinking water, etc.) and also examined the possibility of special populations at greater risk (e.g., small children playing in gardens where sewage sludge products had been applied, the effect of lead on adult males). The Agency also examined whether individuals voluntarily incurred the risks. For example, risks associated with breathing more contaminated air by individuals living in close proximity to an incinerator are involuntarily-incurred and, therefore, more unacceptable than risks associated with using a properly labeled sewage sludge product in a garden. Finally, before developing alternative approaches, EPA used exposure assessment models to project the effect on an individual receiving a maximum dose throughout an average lifespan of 70 years. Aggregate effects analyses were used to project the incidence of adverse health effects from sewage sludge use or disposal on the population as a whole (i.e., the resulting number of cancer cases, carcinogenic risk, number of lead cases, and the number of people exposed to concentrations of non-carcinogenic pollutants above a reference dose—RfD).

In considering a regulatory approach, EPA primarily focused on two types of risks—risks to individuals receiving the maximum dose and risks to the population as a whole. Using the models and methodology discussed in Parts IV and VII of the preamble, EPA projected that the incremental individual carcinogenic risks from the five disposal practices range from 2×10^{-6} for land application to non-agricultural land to 5×10^{-3} for incineration (see Table VIII–1). The analyses show that, based on incremental carcinogenic risk, the five use or disposal methods employed by 5,367 facilities may contribute 12.3 cancer cases annually. However, the Agency could not project the type and severity of these cases. EPA also projected that out of 132,751 people whose blood lead levels exceeds the RfD, 6,138.5 would exhibit adverse lead effects, primarily due to elevated blood pressure in adult males. Most of this exposure is attributed to the incineration of sewage sludge. These analyses show that, depending on how sewage sludge is used or where sewage sludge is disposed of, individual exposure may be high, particularly in the case of lead.

The Agency developed four regulatory approaches for the use and disposal of sewage sludge. Each of the approaches places greater emphasis on reducing an individual's or other organism's exposure to a pollutant. However, the Agency examined both the individual and aggregate effect of each alternative to balance the uncertainties in the analyses. Because of the data available, greater emphasis was placed on the human health rather than the environmental effects. However, where environmental effects could be identified, even qualitatively, they were considered.

There are differences of opinion concerning the emphasis that should be placed on individual or aggregate risk. Some take the view that individual cancer risk is the most, or the only, important measure. Arguments that favor addressing individual risk maintain that no individual should be at high risk and that consideration of the number of people at risk leads to acceptance of higher individual risk when few people are exposed. Furthermore, the latter approach leads to the inequity of having the acceptable risk to an individual depend on the number of people similarly exposed. The limitation of using maximum individual risk alone is that the measure does not indicate how many people may be affected. It only relates the carcinogenic risk to the MEI.

Arguments in favor of examining the aggregate risk are that incidence is an appropriate measure of total public health impact. Therefore, incidence is a good indicator of whether an approach adequately protects public health.

For a rule, such as today's proposal, that covers both carcinogenic and non-carcinogenic pollutants, there is another disadvantage of using only an MEI or an aggregate analysis as a single measure of whether an approach adequately protects public health and the environment. As discussed earlier, methodologies and data do not yet exist, except for lead, to correlate differing levels of exposure to non-carcinogenic pollutants with incidences of an effect. The only measure is the number of people exposed to a level above a Rfd. This may have little meaning for individual risk. While any exposure to carcinogens is considered a case, the same assumption can not be made for non-carcinogens.

In addition, the Agency typically weighs the aggregate effects estimates along with maximum individual or average cancer risk estimates when evaluating a particular category of like risks (i.e., the number of individuals exposed to a particular pollutant from a particular type of facility). Some observers question the relevance of adding risks, in a rule such as today's proposal, when risks from different types of pollutants present different types of risks (i.e., inhalation, ingestion, etc.) from different types of sources (i.e., incineration, land application for agricultural purposes, etc.).

Table VIII–1 and the following discussion describe the factors considered in developing the standards for today's proposal. The first two approaches accept the aggregate effects of current sludge quality. Approach III is directed solely to protecting the MEI and Approach IV uses a combination of MEI exposure and aggregate effects of current sludge quality.

Although the combination of approaches in Option IV is the Agency's selection for purposes of the proposal, it is not the only possible combination. Commenters should review the proposal keeping in mind that there is flexibility to choose among the different regulatory strategies (the aggregate risk approach and the MEI risk approach) depending on such factors as evaluation of new information and the reassessment of incremental risk of sewage sludge use and disposal methods. For example, an alternative option might be to take an MEI risk approach for incineration and select an aggregate risk approach for all other use or disposal methods. The Agency specifically invites comment on this possible approach in addition to those discussed in more detail.

For the purpose of today's proposal, the aggregate risk approach is based on "existing sludge quality"—defined as the 98th percentile pollutant concentration shown in the "40 City Study." The 98th-percentile pollutant concentrations are calculated from a regression analysis of the values of each pollutant in the "40 City Study." The Agency selected the 98th-percentile concentration to prevent potential deviations from the pollutant concentrations in the "40 City Study" and to prevent increases in any risks associated with current methods of sewage sludge use and disposal. This will ensure that sludge quality does not get worse and therefore assure the continuing validity of the risk assumptions underlying the Agency's regulatory control decisions. There could, of course, be alternative ways to define the "existing sludge quality" basis of the aggregate risk approach. One would be to use a different data base, such as the National Sewage Sludge Survey currently underway. A second would be to select a different pollutant concentration level as one determined to be adequately protective (i.e., the 95th, 99th, or 100th-percentile pollutant concentrations). Are there other data bases or percentile concentrations that the Agency should consider?

The Agency is soliciting comments on the suitability of using these approaches as the basis of setting standards for the use or disposal of sewage sludge. The benefits and costs of each option are discussed in detail in the Regulatory Impact Analysis. Note that the numbering of options 3 and 4 in the Regulatory Impact Analysis is different from those in the discussion below and in Table VIII–1. To avoid confusion the reader should focus on the content of each option's requirements when comparing this discussion with that in the Regulatory Impact Analysis.

TABLE VIII–1.—APPROACHES CONSIDERED FOR SETTING STANDARDS

Number of facilities affected	Volume of sludge affected in dry metric tons	Number of people exposed	Risk
Land application: 2623 Distribution & marketing: 106 Monofills: 49 Incineration: 169	Land application: 1,202 Distribution & marketing: 706 Monofills: 101 Incineration: 1,651	Land application: 226 M Distribution & marketing: 2.7M Monofills: 204,900 Incineration: 51 M	Land application: MEI cancer risk: 9×10^{-6}—2×10^{-6} Cancer cases: 0.21 Lead cases: 41.5. Distribution & marketing: MEI cancer risk: 9×10^{-6} Cancer cases: 0.02 Lead cases: 95. Monofills: MEI cancer risk: 3×10^{-6} Cancer cases: 0.02 Lead cases: 26. Incineration: MEI cancer risk: 5×10^{-3} Cancer cases: 12 Lead cases: 5,836.

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TABLE VIII-1.—APPROACHES CONSIDERED FOR SETTING STANDARDS—Continued

Number of facilities affected	Volume of sludge affected in dry metric tons	Number of people exposed	Risk
I: Use existing regulations	II: Use the 98th-percentile pollutant concentrations to supplement existing regulations	III: Use the exposure assessment models for all use/disposal methods	IV: Use the exposure assessment models and the 98th-percentile pollutant concentration
Description:			
Hazardous sludges regulated under 40 CFR Parts 261-266 and sludge with > 50 ppm of PCBs under 40 CFR Part 761	Hazardous sludges regulated under 40 CFR Parts 261-266 and sludge with > 50 ppm of PCBs under 40 CFR Part 761	Hazardous sludges regulated under 40 CFR Parts 261-266 and sludge with > 50 ppm of PCBs under 40 CFR Part 761	Hazardous sludges regulated under 40 CFR Parts 261-266 and sludge with > 50 ppm of PCBs under 40 CFR Part 761
Retains pollutant limits from existing regulations	Retains pollutant limits from existing regulations	Uses the exposure assessment model in setting numeric limits for all use/disposal methods, except when sewage sludge is incinerated, use the NESHAPs for Hg and Be and .25 of the NAAQS for Pb as the basis for the numeric limit.	When the potential for high individual exposure is likely or when there are significant scientific uncertainties, use the exposure assessment models and when the potential for human exposure is low, use 98th percentile pollutant concentration from the 40 City Study.
Supplements existing regulations with the toxicity characteristic pollutant concentrations in setting numeric limits	Supplements existing regulations with the 98th percentile pollutant concentrations from the 40 City Study in setting numeric limits	Allows site-specific data and modeling to determine case-by-case numeric limits that would not exceed human health or environmental criteria	When sewage sludge is incinerated, use the NESHAPS for Hg and Be and .25 of the NAAQS for Pb as the basis for the numeric limit.
			Allows site-specific data and modeling when using the exposure assessment models to determine case-by-case numeric limits that would not exceed human health or environmental criteria.
Land application: Pollutant limits:			
Cancer: TC pollutant limits, 40 CFR Part 761 (PCBs) or 40 CFR Part 257 (PCBs)	98th percentile conc. 40 CFR Part 761 (PCBs) or 40 CFR Part 257 (PCBs)	1×10^{-4}	1×10^{-4} or 98th percentile conc.
Non-cancer: TC pollutant limits or 40 CFR Part 257 (Cd)	98th percentile conc. or 40 CFR Part 257 (Cd)	Based on RfD or DDI	Based on RfD or DDI, or 98th percentile conc.
Management practices: As required by 40 CFR Part 257 & 40 CFR Part 761	As required by 40 CFR Part 257 & 40 CFR Part 761	Protect public health and/or prevent gross abuse of the environment	Same as III.
Distribution & marketing: Pollutant limits:			
Cancer: TC pollutant limits, 40 CFR Part 761 (PCBs) or 40 CFR Part 257 (PCBs)	98th percentile conc. 40 CFR Part 761 (PCBs) or 40 CFR Part 257 (PCBs)	1×10^{-6} and 1×10^{-6}	1×10^{-4}
Non-cancer: TC pollutant limits	98th percentile conc.	Based on RfD or DDI	Based on RfD or DDI.
Management practices: As required by 40 CFR Part 257 and 40 CFR Part 761	As required by 40 CFR Part 257, 40 CFR Part 761 and labels	Requires labels listing management practices that protect public health and/or prevent gross abuse of the environment	Same as III.
Monofills: Pollutant limits:			
Cancer: TC pollutant limits, 40 CFR Part 761 (PCBs)	98th percentile conc. 40 CFR Part 761 (PCBs)	1×10^{-6}	1×10^{-4}
Non-cancer: TC pollutant limits	98th percentile conc.	MCL	MCL
Management practices: As required by 40 CFR Parts 257, 258	As required by 40 CFR Parts 257, 258	Protect public health and/or prevent gross abuse of the environment	Same as III.
Incineration: Pollutant limits:			
Cancer: TC pollutant limits 40 CFR Part 761 (PCBs)	98th percentile conc. 40 CFR Part 761 (PCBs)	1×10^{-5}	1×10^{-5}
Non-cancer: TC pollutant limits .25 NAAQS for Pb and NESHAPS for Hg, Be	98th percentile conc. .25 NAAQS for Pb and NESHAPS for Hg, Be	.25 NAAQS for Pb and NESHAPS for Hg, Be	.25 NAAQS for Pb and NESHAPS for Hg, Be.
Management practice: As required by 40 CFR Part 60 Subpart O (NSPS)	As required by 40 CFR Part 60 Subpart O (NSPS)	As required by 40 CFR Part 60 Subpart O (NSPS) and others that protect public health and/or prevent gross abuse of the environment	Same as III.

TABLE VIII-1.—APPROACHES CONSIDERED FOR SETTING STANDARDS—Continued

Number of facilities affected	Volume of sludge affected in dry metric tons	Number of people exposed	Risk
Land application: After regulation:			
Cancer cases reduced: 0	0.06	0.18	0.06.
Lead cases reduced: 0	4.5	42	21.
Number of POTWs out of compliance: 0	54	2623	278.
Incremental compliance costs (in $ Million): $4.1	$9.9	$244.3	$15.2.
Distribution & marketing: After regulation:			
Cancer cases reduced: 0	0	0.02	0.02.
Lead cases reduced: 0	0	62	56.
Number of POTWs out of compliance: 0	0	35	35.
Incremental compliance costs (in $ Million): $0.5	$0.6	$25.4	$7.8
Monofill: After regulation:			
Cancer cases reduced: 0	<0.01	0.02	0.02.
Lead cases reduced: 0	0	26	26.
Number of POTWs out of compliance: 0	7	49	49.
Incremental compliance costs (in $ Million): $0.2	$0.9	$25.5	$25.5.
Incineration: After regulation:			
Cancer cases reduced: 2.8	2.8	0.8	9.4.
Lead cases reduced: 5,121	5,134	4,889	5,163.
Number of POTWs out of compliance: 96	97	122	122.
Incremental compliance costs (in $ Million): $21.9	$22.1	$103.8	$103.8.

TC=Toxicity Characteristic.

Approach I: Use Existing Regulations (Aggregate Approach)

The first approach considered by the Agency was to use existing regulations to establish numerical limits and management practices. In establishing numerical limits for sewage sludge that is incinerated, the Agency would use the NESHAPs for mercury and beryllium in 40 CFR Part 61, Subparts C and E, respectively, 25 percent of the National Ambient Air Quality Standards (NAAQS) for lead, and the particulate limitations and monitoring requirements in 40 CFR Part 60, Subpart O. In addition, the Agency would have also used numerical limits for cadmium and polychlorinated biphenyls (PCBs) and the pathogen reduction process requirements in 40 CFR Part 257 when sewage sludge is applied to the land. Under this approach, if existing regulations do not address a particular pollutant, EPA would have used the toxicity characteristic pollutant concentrations in 40 CFR Part 261 to determine if a sludge was hazardous. Therefore, standards for sewage sludge with hazardous concentrations of pollutants would not be established in Part 503. All approaches considered by the Agency similarly exclude sewage sludge with hazardous concentrations of pollutants from the Part 503 standards. As discussed later in Part IX of the preamble, for purposes of Section 405, EPA is regulating hazardous sludge under the requirements in 40 CFR Parts 261 through 268 and sludge with 50 ppm or more PCBs under the requirements in 40 CFR Part 761.

The first approach was rejected immediately by the Agency because it would misuse the toxicity characteristic concentrations. The toxicity characteristic concentrations were developed to identify chemical concentrations in wastes that, if placed in improperly managed MSWLFs have the potential of causing an unacceptably high level of ground-water contamination. The regulatory thresholds do not purport to define a concentration that would be safe if used for growing food or feed crops. The toxicity characteristic concentrations, if used in the exposure assessment models, would result in concentrations exceeding the human health criteria for the disposal practice. Therefore, if existing pollutant concentrations in sewage sludge were to increase to levels near the toxicity concentrations, the projected risks posed by the current use or disposal methods (except for incineration) would increase. Limiting emission levels of sewage sludge incinerators to 25 percent of the NAAQS for lead would require incinerators to install wet electrostatic precipitators (ESPs). At present, States are not controlling lead emissions from sewage sludge incinerators. Therefore, the controls for incinerators would reduce lead exposure cases by 5,155 and other carcinogenic cases due to metals by 2.8.

Approach II: Use The 98th Percentile Pollutant Concentration (Aggregate Approach)

The second approach considered by the Agency was to use existing regulations, as in the first approach. However, if existing regulations do not establish numerical limits, numerical limits corresponding to the 98th-percentile pollutant concentration in the "40 City Study" would be established. The 98th-percentile pollutant concentrations would be calculated from a regression analysis of the values of each pollutant in the "40 City Study" and would be used as a cap on allowable pollutant concentrations. This would preclude potential deviations from the pollutant concentrations shown in the "40 City Study" and prevent increases in any risks associated with current methods of use and disposal. In addition to management practices specified in existing regulations, such as pathogen reduction processes for the land application of sewage sludge in 40 CFR Part 257, the Agency would require that labels or information sheets accompany sewage sludge products that are distributed and marketed. These would inform users about the proper use of the product.

One advantage of such an approach would be few, if any, diaruptions in the use or disposal of sewage sludge. For example, the Agency projects that only three percent of the sludge applied to agricultural lands would be disposed of in MSWLFs. Further significant lead reductions are not projected because the requirement limiting incinerator emissions to 25 percent of the NAAQS for lead is included in the first approach and carried forward in all approaches. A few more incinerators that fire sewage sludge with pollutant concentrations at the 98th-percentile concentration would have to be fitted with wet ESPs to come into compliance with the numerical limits. The Agency projects a total reduction of 2.9 cancer cases and 5,160 lead cases.

However, this approach does nothing to control the rate at which sewage sludge could be applied to agricultural crops. High rates of sewage sludge applied to land use for growing food-chain crops could result in residues that exceed the Food and Drug Administration's Action Levels and subject such crops to seizure. Furthermore, some of the pollutants at the 98th-percentile pollutant concentrations shown in the "40 City Study", if disposed of in monofills, would exceed the pollutant's MCL for drinking water. In addition, this approach does not significantly reduce the projected carcinogenic risk to an individual from sewage sludge disposed of in monofills (3×10^{-5}) or from incineration (5×10^{-5}).

Approach III: Use the Exposure Assessment Models for all Practices (MEI Approach)

The third approach that the Agency considered was to use the exposure assessment models in establishing numerical limits for all use or disposal methods. The exposure assessment models allow the Agency to limit not only the concentration of a pollutant in sewage sludge, but also the annual and cumulative loading rates for pollutants when sewage sludge is applied to land used for growing food-chain crops or distributed and marketed. This approach reduces the maximum individual exposure to carcinogens by one order of magnitude or more if the carcinogenic risk levels are within the range usually set by the Agency (i.e., 1×10^{-6} to 1×10^{-4}). There would not be significant decreases in cancer or lead cases because the Agency projects that more treatment works will incinerate their sewage sludge if they can no longer use their current use or disposal method. Incineration poses greater risks because (1) some of the products of incomplete combustion in the emissions are very carcinogenic; (2) metals are carcinogenic through inhalation, but not through ingestion; and (3) more individuals are exposed to higher levels of lead.

There would be more reductions in the number of cancer and lead cases if the Agency had assumed that the sewage sludge failing the numerical limits would be disposed of in MSWLFs in compliance with the proposed requirements in 40 CFR Part 258 (see 53 FR 33313, August 30, 1988) rather than incinerated. The Agency did not assume that all of the sewage sludge failing to meet the numerical limits would be disposed of in MSWLFs because, in some areas of the country, there is insufficient landfill capacity.

The disadvantage of using the exposure assessment models for all use or disposal methods is that such an approach significantly disrupts the way in which sewage sludge is used or disposed of; 2,823 of the 5,300 POTWs would fail to meet the numerical limits. The Agency projects that all of the sewage sludge applied to agricultural land would have to be incinerated, placed in NSWLFs, or composted. Similarly, all sewage sludge distributed and marketed or placed in monofills would need to be incineration.

Another disadvantage of this approach is that some methods would be over-regulated by protecting individuals from highly improbable risks. For example, it is unlikely that an individual would ever obtain all of his or her food from forests to which sewage sludge had been applied.

Approach IV: Use the Exposure Assessment Models and the 98th-Percentile Pollutant Concentration (Combined Aggregate and MEI Approach)

The final approach that the Agency considered, and the one on which the Agency is basing today's proposal, uses a combination of aggregate and MEI analyses (i.e., the second and third approaches). The Agency is proposing to use existing regulations, the NESHAPs for mercury and beryllium and 25 percent of the NAAQS for lead when sewage sludge is incinerated. EPA is also proposing to use the exposure assessment models to establish numerical limits, as in the third approach, when individuals are likely to be exposed to high levels of pollutants in sewage sludge or when there are significant scientific uncertainties about the effect of a particular sewage sludge disposal practice. As discussed in the next section of this part of the preamble, standards would be based on a higher carcinogenic risk (i.e., 1×10^{-4} and 1×10^{-3}) and 1×10^{-6}.

When individuals are unlikely to be exposed to the pollutants in sewage sludge, the Agency is proposing to set numerical limits that correspond to the 98th-percentile pollutant concentration in the "40 City Study". As in the second approach, the 98th-percentile concentration is a cap on the allowable concentration of a pollutant in sewage sludge that precludes significant deviations from the concentrations shown in the "40 City Study" to avoid increased risk from the disposal of sewage sludge.

The 98th-percentile pollutant concentration would apply to the application of sewage sludge to land uses for non-agricultural purposes (i.e., forests, reclaiming lands, etc.), a practice on which human dietary impacts are negligible. The 98th-percentile pollutant concentration would also apply to the disposal of sewage sludge on surface disposal sites, which are generally small, are located away from population centers, and are usually located on property owned by the treatment work. The Agency believes that there would be little, if any, likelihood of exposure to the pollutants from these two use and disposal methods.

The advantage of using the exposure assessment models along with the 98th-percentile pollutant concentrations is that the approach targets those methods of use or disposal that pose the most risk for reduction in risks. This significantly reduces the cancer and lead adverse health effects resulting from the disposal of sewage sludge. By implementing this approach, the Agency projects a reduction of 9.5 cancer cases and 5,266 lead cases.

As shown in Tables VIII–1 and more fully discussed in the Regulatory Impact Analysis, the proposed regulatory approach results in the greatest reduction in cancer and lead cases. There are more benefits in Option 4 than in Option 3 even though the carcinogenic risks are established at a less protective level in Option 4 (i.e., 1×10^{-4} and 1×10^{-7}] than in Option 3 (i.e., 1×10^{-5} and 1×10^{-7}] because, under Option 3, more POTWs that cannot meet the numerical limits with their current use or disposal methods switch to incineration. In Option 3, all 2,823 POTWs that land apply sewage sludge fail the criteria and 260 of these POTWs are expected to shift to incineration as a compliance strategy. Distribution and marketing shifts reduce the net benefits in Option 3 as compared to Option 4. Under Option 3, 35 POTWs that distribute and market sewage sludge are expected to incinerate their sludge, while under Option 4 only 10 POTWs are expected to do so. Although the controls placed on incineration greatly reduced the adverse health effects of incinerating sewage sludge, fewer benefits are realized because of the assumption that more sewage sludge will be incinerated.

As indicated above, our aggregate effects assessment identified greater risks from incineration even though the incinerators meet the numerical limits. The increase in the number of adverse health effect cases from incineration is due to several factors. First, the aggregate effects analysis in incineration accounted for a greater number of carcinogens that may be in the form of products of incomplete combustion in the emissions of an incinerator. Second, the metal pollutants (i.e., arsenic, cadmium, chromium and nickel) are carcinogenic through inhalation but are not carcinogenic through ingestion. Finally, more people have greater levels of exposure to lead near incinerators, thereby increasing the number of people who would exceed the threshold values.

The Agency anticipates that 509 out of 5,300 facilities will have to find alternative use or disposal methods. About 22 percent of sewage sludge applied to agricultural lands would have to be applied to non-agricultural lands or placed in MSWLFs. Similarly, the Agency estimated that approximately 30 percent of the sewage sludge distributed and marketed would be incinerated or placed in MSWLFs. All of the sewage sludge placed in monofills would have to be incinerated or placed in MSWLFs.

Another disadvantage of the proposed approach is that it focuses almost exclusively on human health effects, leaving the potential for toxicity values of non-agricultural plants and animals to be exceeded. Our analyses show that if 50 metric tons of sewage sludge (on a dry weight basis) were applied to a hectare of non-agricultural land and if the sewage sludge included concentrations of copper, zinc, and lead at their 98th-percentile value, the pollutant loadings of copper and zinc would exceed the assumed phytotoxicity value for plants (lettuce).

However, the Agency does not believe that the 98th-percentile pollutant concentrations will cause significant or widespread adverse environmental impacts in actual practice. Metal concentrations are likely to be less than those in the "40 City Study" because those data were collected prior to the implementation of pretreatment programs.

In addition, field studies in Michigan, Washington, Pennsylvania, Ohio, Illinois, West Virginia, Virginia, and Alabama strongly suggest that the application of sewage sludge to non-agricultural land will not cause significant or widespread adverse environment effects. These field studies indicated that when sewage sludge is used to stimulate tree growth in forests or to establish a vegetative cover on lands ravaged by strip mining or construction activities, most of the pollutants are bound or immobilized in the soil even when high rates of sludge (30 to 300 metric ton per hectare) are applied. Even in acidic forest soils, research at the University of Washington has found no problems with metals following sludge application (see Reference number 37). Studies have found that the pollutants do not leach below the soil profile into the ground water (see Reference numbers 9 and 33) or substantially elevate pollutant levels in plants or animals (see Reference number 2). The increased forage for wildlife in forests seems to outweigh any increase in the animals' trace metal body burden.

In addition, by establishing vegetative cover on drastically disturbed lands, the vegetative cover significantly reduces the heavy metals in runoff from previous mining activities (see Reference numbers 33 and 31). The vegetative cover also holds the soil on these marginal lands, thereby reducing high erosion rates and surface water quality impacts (see Reference number 33).

Concerns have been raised about the conversion of lands receiving sludge with the 98th-percentile pollutant concentrations to more sensitive uses with greater potential for human food-chain impacts, such as agricultural operations or residential uses. Before much experimental data were available, researchers hypothesized that, over time, after sludge was no longer applied, soil bacteria would break down the organic matrix of the organically-bound sludge and free metal ions. Then, supposedly, the free metal ions would become available and plants would absorb high levels of these metal ions (see Reference numbers 7, 17, and 6).

This hypothesis, however, has not been demonstrated in field studies done on crops grown on sludge-amended soils. Long-term observations show that the availability of metallic pollutants for absorption by the plant remained the same or decreased over time after sludge applications had ceased (see Reference numbers 34 and 66).

A sludge field study in Illinois, where annual applications were made for three consecutive years at agronomic rates, showed that when sludge application had stopped, the metal concentrations in a variety of crop tissues decreased rapidly with each successive crop (see Reference numbers 64, 70, 20, and 8). Based on these results, there is no reason to believe that metals derived from sewage sludge will become more available to a plant after application has ended.

Further, the Agency does not believe organic pollutants will pose significant problems. Most of the non-persistent trace organics readily volatilize and degrade in the presence of sunlight and soil microorganisms. The fate of non-persistent organic chemicals, applied to soil has been extensively studied, but usually as pure compounds and not in a sludge matrix. Trace amounts of these chemicals are strongly bound to soils, especially if organic matter is also present. Therefore, these organic chemicals are unlikely to leach to ground or surface waters or be taken up by plants (see Reference numbers 15, 6, and 1).

Samples of sludge-amended and control site soils have also been analyzed for persistent organic compounds. These studies indicate that sludge application did not significantly increase the levels of persistent organic pollutants over the background or control site levels (see Reference numbers 32 and 4).

Based on the aggregate effects analyses, the Agency believes the 98th-percentile pollutant concentration adequately protects public health and the environment, if the sewage sludge is used or disposed of in accordance with the requirements in the proposal. However, the Agency is soliciting comment on the approach.

Alternative Carcinogenic Risk Levels Considered

The Agency did not examine alternative RfDs for non-cancerous pollutants. For non-cancerous pollutants, the Agency establishes a threshold value (such as a blood lead level) above which some adverse health effects may occur. Available statistical information for most non-cancerous pollutants is not sufficient to determine the chance that one threshold value or another will produce a specific adverse human health effect. Alternative threshold values, RfDs, are examined when the Agency sets the thresbold values. For this rule, EPA used the RfD listed in the Agency's Integrated Risk Information System (IRIS). Part XIII of the preamble describes how to access IRIS and obtain the studies used to establish an RfD for a pollutant.

However, the Agency did examine alternative carcinogenic risk levels in establishing numerical limits for the use or disposal of sewage sludge. Since any exposure to a carcinogenic pollutant poses some risk of developing cancer, numerical limits are established on the basis of an acceptable risk such as one chance in 10,000 (1×10^{-4}) of developing cancer. Rather than set a uniform carcinogenic risk target for the use and disposal methods covered by today's proposal, the Agency evaluated each method individually. This approach allowed the Agency to consider and isolate the risks posed by a particular method.

EPA has selected an incremental carcinogenic risk target of 1×10^{-6} for sewage sludge used in the production of agricultural crops, the distribution and marketing of sewage sludge products, and the disposal of sewage sludge in monofills. This target was selected because the analyses do not indicate significant carcinogenic risk (i.e., 0.22 cancer cases per year from these methods combined).

The Agency's analyses indicated that incineration poses more carcinogenic risk than do other use or disposal methods. Incineration may expose 51 million people to varying levels of carcinogenic risk resulting in 12 cancer cases. To reduce this carcinogenic risk and to compensate for examining only one pathway of potential exposure (i.e., the inhalation pathway—see discussion in Part IV on the indirect pathways of exposure), the Agency is proposing to regulate the incineration of sewage sludge such that the carcinogens in the emissions do not exceed an incremental unit risk of 1×10^{-6}. The unit risk estimate of 1×10^{-6} is comparable to the Agency's hazardous waste incinerator programs.

If incineration were regulated at a unit risk of 1×10^{-4} there would be 165 more lead cases and 0.6 more cancer cases. The Agency estimates that compliance costs would be reduced by approximately $62 million. The Agency specifically invites comments on the merits of selecting a 1×10^{-4} incremental carcinogenic risk target for incineration.

The Agency considered an incremental carcinogenic risk level of 1×10^{-4}. The option was rejected because, as explained above, our analyses indicate that such an approach would lead to the incineration of greater volumes of sewage sludge with a reduction in the health benefits. Furthermore, there is considerable uncertainty in projecting the number of cancer cases. When that number is already small (for other than incineration), there is increased uncertainty in projecting further reductions.

Carcinogenic risk targets are applied pollutant-by-pollutant in all use or disposal practices, except for the organic pollutants in the emissions of sewage sludge incinerators. As discussed in Part IX of the preamble, the Agency is setting a limit on the total hydrocarbon emissions from a sewage sludge incinerator rather than on each individual organic pollutant. Therefore, the Agency developed the weighted average risk specific concentration for the carcinogenic organic compounds listed in IRIS. This is comparable to setting a pollutant-by-pollutant risk-specific concentration for the metals in incinerator emissions.

In setting carcinogenic risk targets pollutant-by-pollutant, rather than requiring the mixture of pollutants in sewage sludge to meet a specific risk target, there is potential for the summed risks of all the regulated pollutants to exceed the proposed risk targets of 1×10^{-4} and 1×10^{-6}. In examining the potential for the summed risk to significantly exceed the proposed risk levels, the Agency found it to be highly unlikely.

The Agency analyzed a total of 30 facilities using the "Descriptive Statistics on Contaminants in Municipal Sludge Based on the EPA 40-POTW Study" (Reference number 69) to determine the ratio of the total cancer risk of the pollutant mixture to the cancer risk from the worst or highest risk pollutant for each use or disposal practice. In most of the 30 sludge disposal situations considered, one pollutant dominated the risk. Only in three of the 30 situations did the worst pollutant account for less than half of the total risk. On the average, the risk from the mixture was 1.4 fold greater than the risk of the worst pollutant. This ratio varies case by case as shown in Table VIII–2. It has a range of 1.0–3.2, and a median value of 1.1. Thus, if the worst pollutant is regulated to a risk of 1×10^{-4}, the expected value of the risk of the mixture would be 1.4×10^{-4}

TABLE VIII–2.—RANDOMLY SELECTED PLANTS—RATIO OF TOTAL RISK FROM MIXTURE TO RISK FROM WORST POLLUTANT

	Plant No.	Ratio
Incineration (14 pollutants)	23	1.04
	25	1.36
	04	1.28
	18	1.24
	30	1.26
	35	1.17
	17	1.60
	28	1.06

TABLE VIII–2.—RANDOMLY SELECTED PLANTS—RATIO OF TOTAL RISK FROM MIXTURE TO RISK FROM WORST POLLUTANT—Continued

	Plant No.	Ratio
Land Application (12 pollutants)	22	1.60
	40	1.78
	13	1.00
	01	1.36
	05	3.23
	06	2.26
	07	1.83
	38	1.00
	27	1.02
	28	1.00
	29	1.00
D&M (8 pollutants)	08	1.01
	36	1.00
	15	1.01
	29	1.19
	39	1.00
Monofill (10 pollutants)	13	1.04
	25	1.49
	32	2.32
	27	1.03
	22	1.05
Mean		1.35
Median		1.13
Range		1.00–3.23
Number of cases		30

These results were affected by the assumptions used when a pollutant was not detected. For some publicly owned treatment works (POTWs), available data allowed the Agency to use the detection limit when the pollutant was not detected. For other POTWs, the data only allowed the Agency to use zero when undetected. High values for the risk ratio tend to occur when the detection limit is used. For example, the high ratio of 3.23 (in land application) occurred for a facility where only one of the 12 pollutants was actually detected and the detection limits for the pollutants were used. The low value of 1.00 occurred where only one pollutant was detected. Therefore, EPA believes that the summed risk of all pollutants would not make a significant difference (i.e., raise the risk of a use or disposal practice from 1×10^{-4} to 1×10^{-3}). The Agency believes that setting numerical limits to meet a carcinogenic risk target on a pollutant-by-pollutant basis meets its statutory directive to establish limits for those pollutants that may interfere with the safe use or disposal of sewage sludge. Ensuring that pollutants do not exceed a summed risk would be very difficult. Numerical limits within a permit would have to be constantly re-adjusted to account for different pollutant concentrations in the sewage sludge. Such an approach would be inconsistent with the Agency's principle of developing a rule that can be implemented. However, the Agency is soliciting comment on its believe that setting numerical limits for carcinogenic pollutants on a pollutant-by-pollutant basis adequately protects public health.

Concerns have been raised, however, that treatment works would allow individual pollutant concentrations to increase to a point where each pollutant would not exceed the carcinogenic risk level, thereby increasing the overall risk of a use or disposal method. The Agency believes this is highly unlikely because industrial dischargers must meet categorical pretreatment standards promulgated under other sections of the CWA. In addition to the categorical pretreatment standards for industrial dischargers, local pretreatment programs may further limit the discharge of pollutants into POTWs.

Alternatives to National Numerical Limits

As discussed in Part IV of the preamble, the exposure assessment models are designed to predict the long-term human health and environmental effects of using or disposing of sewage sludge by the methods covered in this proposal. Sensitivity analyses were performed on the models to identify conditions that could reasonably be anticipated. In conducting the sensitivity analyses, the Agency found that varying certain parameters made a significant difference in a numerical limit for a pollutant, without a pollutant exceeding the human health or environmental criterion. Factors such as type of soil and the depth of the soil between the surface and the ground water attenuate the migration of a pollutant into and through the environment. Details on the sensitivity analyses may be found in the Technical Support Documents for each of the use or disposal methods (Reference number 56, 57, and 58).

The Agency considered, but rejected, regulating the use or disposal of sewage sludge on the basis of only a single numerical limit for all use and disposal methods. A single pollutant concentration protective nationwide could over-regulate a use or disposal method because different methods pose substantially different risks. Such an approach also fails to recognize that certain environmental settings are better suited to assimilate or ameliorate the effect of pollutants than others.

The Agency also considered developing a "tiered" regulatory approach for treatment works that could not meet the national numerical limits or that did not want to conduct site-specific modeling for all the parameters in the model. Such an approach would establish intermediate numerical limits based on varying a few model parameters at each tier. Treatment works would submit data for different parameters in the appropriate tier to the permitting authority and the permitting authority would verify that the treatment work's sewage sludge met the appropriate numerical limits.

One reason for rejecting the "tiered" regulatory approach was its complexity. Such an approach would be inconsistent with the Agency's principle of developing a rule that could be implemented easily. It would be impossible to include in the rule all possible variations occurring at a site. Another reason for rejecting the approach was that the Agency did not believe that treatment works would use the intermediate tiers. Rather than varying only a single parameter, the Agency felt it more likely that a treatment work would collect data on as many parameters as possible to determine if, by doing so, their sludge could meet the numerical limits of a disposal practice.

The approach that the Agency is proposing utilizes a combination of national numerical limits and case-by-case site-specific modeling. Depending on the disposal method, the Agency is establishing national numerical limits or providing an equation to calculate numerical limits. If a treatment work is unable to meet the national numerical limits, the permitting authority would calculate new numerical limits based on the physical conditions at a site that make a significant difference in a numerical limit. The parameters for which a treatment work may submit site-specific data are listed in the appropriate sections of the rule.

In some cases a treatment work may not need to collect data for all the parameters that may be varied in the model. The rule lists the values used in the models for the parameters that may be varied. Treatment works have the option of using the values that were used in the models or collecting, at their expense, site-specific data. The data would be submitted to the permitting authority to calculate a new numerical limit using the exposure assessment models developed for this proposal or other EPA-approved models. Information on the availability of the IBM PC compatible models used in establishing the numerical limits for this proposal is found in Part XIII of the preamble.

Recalculation of numerical limits based on site-specific data would be available to treatment works that dispose of their sludge in monofills or in incinerators. Site-specific adjustments in numerical limits would not be available for the land application or distribution and marketing of sewage sludge. Based on the sensitivity analyses, the Agency did not find any physical parameters in the land application model that made a significant difference in the pollutant limits. Site-specific modeling would not be available for the distribution and marketing of sewage sludge because it is impractical to collect data on all sites where the general public may apply sewage sludge.

The Agency is soliciting comment on the approaches that it considered in developing the framework for today's proposal. The specific requirements included in today's proposal, as well as alternatives considered in developing the requirements, are discussed in Part IX of the preamble.

PART IX: DESCRIPTION OF 40 CFR PART 503

This part describes the standards EPA is proposing for the use or disposal of sewage sludge. The standards include pollutant limits, management practices, and other requirements that define a level of control that owners or operators of treatment works and users or disposers of sewage sludge must attain over the use or disposal of sewage sludge to adequately protect human health and the environment. The pollutant limits, management practices, and other requirements are specific to the method of use or disposal employed by treatment works use. This part follows the organization of the proposed rule to facilitate review and understanding of today's proposal.

General Provisions (Subpart A)

Purpose and Applicability (§ 503.1)

EPA is proposing minimum requirements that owners or operators of treatment works and users or disposers of sewage sludge must meet when the sludge is ultimately used or disposed of. The use or disposal methods included in today's proposal are: (1) Application to agricultural or non-agricultural land, (2) distribution and marketing, (3) disposal in monofills, (4) disposal on surface disposal sites, and (5) incineration. The Agency has determined that the requirements in today's proposal adequately protect health and the environment from any reasonably anticipated adverse effects of each regulated pollutant.

Local Community's Choice of a Use or Disposal Method

Although the Agency prefers local communities to reuse their sewage sludge for its nutrient and soil conditioning properties, section 405(e) of

the CWA reserves the choice of a use or a disposal method to local communities.

The pollutant limits EPA developed reflect the risk of each use or disposal method. In some cases, protection of public health and the environment require very stringent standards which would be very difficult for a local community to meet. For example, under the proposal, communities are unlikely to meet the limits that would allow them to dispose of sewage sludge in a monofill over a Class I ground water (i.e., an irreplaceable source of drinking water).

Section 503.1(b)(4) of the rule reiterates the statutory directive that the choice of any sewage sludge use or disposal method is a local one, as long as the treatment work, user, or disposer complies with the requirements in today's proposal.

Ocean Dumping Ban Act

EPA planned as part of its comprehensive sludge technical regulation to establish standards for the ocean disposal of sewage sludge which would adequately protect human health and the environment against any adverse effects of such dumping. The Marine Protection, Research, and Sanctuaries Act (MPRSA) establishes a comprehensive permit program for ocean-dumping activities. To implement its permitting requirement, Congress directed EPA to establish and apply criteria for reviewing and evaluating permit applications. These criteria include not only consideration of the effects of the proposed dumping on human health and the environment, but also on the need for the proposed dumping and the consideration of land-based alternatives to ocean disposal. Thus, the MPRSA requires EPA to weigh and balance a number of factors in determining whether or not to permit dumping.

The Ocean Dumping Ban Act of 1988, Pub. L. 100-688, November 18, 1988 prohibits any person from dumping sewage sludge into ocean waters after December 31, 1991. In addition, Congress limited ocean dumping during the interim period to those communities that were authorized to dump either under an MPRSA permit or court order as of September 1, 1988. Congress also prohibited dumping after August 15, 1989 unless an MPRSA permit has been obtained by that time. EPA is moving forward to issue permits for the limited universe of publicly owned treatment works (POTWs) eligible to continue dumping.

In addition, the Ocean Dumping Ban Act of 1988 also bans the ocean incineration of sewage sludge. EPA has consistently interpreted the MPRSA as requiring a permit for incineration at sea because it is a form of dumping. Therefore, because no permits for incineration of sewage sludge have been issued and incineration is not permitted under any outstanding court orders, the terms of the Ocean Dumping Ban Act of 1988 prohibit ocean incineration after the date of enactment, November 18, 1988.

EPA had contemplated that its Section 405 standards for ocean dumping would be an important element in the evaluation of environmental effects required by the MPRSA. In view, however, of the clearly expressed intention of Congress to eliminate the ocean dumping of sewage sludge by the beginning of 1992, EPA decided not to proceed further with development of ocean dumping standards. It is clear that any standards could not be promulgated until well after the date when the MPRSA permits must be in place and, thus, could not serve the stated purpose of providing environmental criteria for the assessment of ocean dumping applications.

Sludge Processing

The rule does not apply to the processing of sewage sludge before its ultimate use or disposal. Before ultimately using or disposing of sewage sludge, treatment works may use one, or a combination, of biological, chemical, physical, and thermal processes to increase the solids content of the sludge (i.e., by reducing its water content through heat or other processes) and to stabilize the sludge (i.e., by reducing or eliminating pathogenic organisms, odors, and volatile solids). Such processes improve the characteristics of the sludge for a particular disposal method and reduce the potential for public health, environmental, and nuisance problems. EPA requires the use of one or more of the treatment processes to reduce or kill pathogens before applying sewage sludge to land for agricultural and non-agricultural purposes, before distributing and marketing the sewage sludge, or before the disposal of sewage sludge in monofills or on surface disposal sites.

EPA is not specifying process operating methods or requirements for sludge entering or leaving a particular treatment process. The Agency believes that section 405(d) requires EPA to develop regulations for the final use or disposal of sewage sludge and that Congress did not intend for EPA to impose requirements on sludge processing as a part of the comprehensive regulation for sludge use and disposal. Rather, the Agency believes that section 405(d) requires EPA to establish a "standard of quality" against which treatment works can measure the quality of their sludge—its pollutant concentrations—and determine (1) if further processing is needed, (2) if additional treatment limits should be imposed on its industrial dischargers, or (3) if the community should identify alternative practices for the safe management of its sludge. If, however, comments on these proposed rules indicate sufficient justification for establishing standards for sludge processing, EPA will consider such comments for future rulemaking proceedings.

Relationship to Other Requirements (§ 503.2)

As required by section 405(f) of the CWA, the requirements proposed today are to be implemented through permits. The pollutant limits, management practices, and other requirements specified for a particular end use or disposal method are to be included in the POTW's or generator's permit. The implementing permit mechanisms and the State program management requirements are described in Part X of this preamble.

State Authority (§ 503.3)

Anyone using or disposing of sewage sludge is obligated to comply with the requirements proposed today. However, as provided in section 405(d)(5) and section 510 of the CWA, States may impose more stringent requirements than those included in today's proposal.

Exclusions (§ 503.4)

This section of the proposal lists the methods of sewage sludge use or disposal that are not covered by today's proposed rule. In this portion of the preamble, the Agency discusses its rationale for these exclusions.

Industrial Sewage Sludge

The proposed rule will not cover the use or disposal of sewage sludge that is generated by privately owned treatment facilities treating domestic sewage along with industrial waste and wastewater. Such sludge will continue to be covered by rules promulgated under Subtitle C of the Resource Conservation and Recovery Act (RCRA) (40 CFR Parts 261 through 268) or under Subtitle D of RCRA (40 CFR Parts 257 an[1] 258).

The Water Quality Act amendments of 1987 expanded the coverage of section 405(d) to industrial manufacturing and private processing facilities that treat domestic sewage along with industrial wastes and wastewater. Although the legislative history of the Act clearly directs the Agency to impose requirements on any treatment work treating domestic sewage, and not just treatment works "primarily" treating domestic sewage (see 99th Cong. 2d Sess., H.R. Rept. 99-1004, October 15, 1986, p. 160), passage of the amendments in February, 1987 did not provide sufficient time to collect the data necessary to develop standards for such facilities in today's proposal.

At this time, the Agency does not have sufficient information on the characteristics of industrial sludge with a domestic sewage component to determine whether the models and data used to establish numerical limits for the use or disposal of municipal sewage sludge are appropriate for nonhazardous sludge generated by industrial facilities. The Agency recognizes the need to collect additional information on industrial wastes and on industrial waste disposal facilities as a basis for revising its regulations in 40 CFR Part 257 and for developing, if appropriate, additional regulations. As a first step in collecting additional information, EPA proposed, in a separate rulemaking, that industrial facilities notify the States and EPA of the volume of their sludge and the disposal methods and locations used (see 53 FR 33314, August 30, 1988). Once these and other data (e.g., viscosity, density, moisture content, and the organic carbon content of industrial sludge with a domestic sewage content) have been collected, the Agency will determine whether today's proposal should apply or whether additional regulations should be developed for industrial facilities that co-treat domestic sewage with industrial wastewater. The Agency anticipates that any additional requirements for industrial facilities treating domestic sewage along with industrial waste and wastewater would be developed under the joint authorities of sections 4004 and 4010 of RCRA and section 405(d) of the CWA.

Hazardous Sewage Sludge

The proposed rule will not establish standards for disposal of sewage sludge determined to be hazardous under 40 CFR Part 261. In previous **Federal Register** notices, EPA indicated it was considering excluding sewage sludge from regulation under RCRA Subtitle C once comprehensive sludge regulations were developed (see 51 FR 21658, June 1, 1986). The exclusion would be based in part on section 1006(b) of RCRA, which states:

> The Administrator shall integrate all provisions of this Act for purposes of administration and enforcement and shall avoid duplication to the maximum extent practicable, with appropriate provisions of the [CAA, CWA, FIFRA, SDWA, and MPRSA] and such other Acts of Congress as grant regulatory authority to the Administrator. Such integration shall be effected only to the extent that it can be done in a manner consistent with the goals and policies expressed in this Act and in other acts referred to in this subsection.

However, rather than regulating both hazardous and nonhazardous sewage sludge under section 405(d) of the CWA, EPA has concluded it is appropriate to regulate all hazardous wastes, including sewage sludge, under a program specifically designed for hazardous materials. The Agency believes that this provides the public with greater assurance of the consistent regulation and management of hazardous materials. It also provides a strong incentive for any treatment work with hazardous sludge to improve the quality of its sludge through effective pretreatment. Thus, the standards for the disposal of sewage sludge in today's proposal apply only to non-hazardous sludge.

In determining whether their sewage sludge is hazardous, treatment works are to use procedures promulgated under 40 CFR Part 261, Appendix II. If the sewage sludge is hazardous, treatment works generating the hazardous sludge must comply with the applicable requirements of 40 CFR Parts 260 through 268. The Agency has made the determination that compliance with the requirements in 40 CFR Parts 261 through 268 constitutes compliance with section 405(d) of the CWA.

In the Spring, EPA will promulgate amendments to 40 CFR Part 261. The amendments will include additional toxicants to be considered in defining a waste as hazardous and introduce a new leaching procedure, the Toxicity Characteristic Leaching Procedure (TCLP). The regulatory levels that will be in 40 CFR Part 261 are the regulatory levels that will be used in determining if sewage sludge is hazardous.

The pollutants covered by today's proposal and those covered by amendments to 40 CFR Part 261 are not identical. In this proposal, specific limits are established for 17 pollutants for which there are no toxicity characteristic regulatory limits. The 17 pollutants are listed in Table IX-A.1. There are also toxicity characteristic regulatory limits for pollutants that are not covered by today's proposal. The two lists are not identical because the programs under which the lists were developed start from fundamentally different perspectives. The toxicity characteristic regulatory limits are set for chemicals that are still used or manufactured and are likely to find their way to a landfill. The section 405(d) limits are established for those metals and organic compounds that are found in sewage sludge, whether or not the metals and organic compounds are still used in industrial processes. To the extent necessary, the Agency will expand the toxicity characteristic list of pollutants and the pollutants covered by today's proposal. Over time the lists of pollutants can be expected to overlap even more, but they are never expected to be identical.

Table IX-A.1—Section 405(d) Pollutants for Which There Are No Toxicity Characteristic Regulatory Thresholds:

Aldrin
Benzidine
Benzo (a) pyrene
Beryllium
Chlordane
Copper
Cyanide
DDT/DDD/DDE
Dieldrin
Dimethylnitrosamine
Molybdenum
Nickel
Polychlorinated biphenyls
Trichloroethlene
Zinc

Several municipal wastewater agencies believe that the proposed TCLPs would result in the classification of certain sewage sludge as hazardous. In 1986 and 1987, EPA tested 18 municipal sewage sludge samples using the new procedure and found that none failed. Although the results are preliminary and represent only a small percentage of the 15,000 POTWs, the Agency believes that municipal sewage sludge will generally pass the toxicity characteristic regulatory thresholds and be subject to the requirements in 40 CFR Part 503 rather than the requirements in 40 CFR Parts 261-268.

Incinerator Ash

The requirements proposed today do not cover the disposal of ash generated during the incineration of sewage sludge. Rules previously promulgated by the Agency in 40 CFR Part 261 through 268 and 40 CFR Part 257 and those proposed for 40 CFR Part 258 (see 53 FR 33314, August 30, 1988) adequately cover the disposal of incinerator ash. Sewage sludge to which incinerator ash has been added is covered by today's proposal.

Co-disposal of Sewage Sludge

Standards are not established in today's proposal for sewage sludge that is disposed of in a landfill with municipal solid waste. Rather, these standards are established in 40 CFR Part 258 which will include requirements for the disposal of sewage sludge in a municipal solid waste landfill (MSWLF). Compliance by treatment works with requirements of 40 CFR Part 258 when promulgated would constitute compliance with section 405. The standards were jointly proposed under the authorities of sections 4004 and 4010 of RCRA and section 405(d) of the CWA in 53 FR 33314, August 30, 1988.

To meet these standards, treatment works must ensure that the sewage sludge sent to MSWLFs is not hazardous, as defined by the regulatory limits in 40 CFR Part 261, and pass the Paint Filter Liquids Test.

As part of the August 30, 1988 notice, EPA made the determination that the proposed standards for MSWLFs meet the requirement of section 405(d) of the CWA that the Agency establish standards adequate to protect human health or the environment from any reasonably anticipated adverse effect of each pollutant. Section 405(d)(3) of the CWA provides that the Agency may promulgate design, equipment, management practice, or operational standards or combinations thereof if, "in the judgment of the Administrator, it is not feasible to prescribe or enforce a numerical limitation for a pollutant. * * *"

The Agency is proposing a single set of standards for a MSWLF in order to avoid imposing two distinct sets of requirements on a single facility. If the Agency had proposed separate requirements under the two applicable statutes, treatment works would not only have had to comply with whatever numerical limits were established under Part 503, but would also be responsible for ensuring that the MSWLF complies with the Part 258 standards. This would have placed an unfair burden on treatment works when other solid waste contributors were not held similarly responsible.

In lieu of holding treatment works responsible for the compliance of a MSWLF, the Agency is proposing today that treatment works send their sewage sludge to State-permitted facilities. EPA is soliciting comment on this requirement in recognition that few MSWLFs have State permits. The Agency is interested in the potential effect of this requirement on the 6,700 treatment works that send 41 percent (3.2 million dry metric tons) of all sewage sludge generated to MSWLFs.

Co-firing Of Sewage Sludge

Today's proposal will not apply to sewage sludge that is fired in an incinerator with other solid waste. This excludes four facilities that currently fire waste streams consisting of between three and nine percent sewage sludge (on a dry weight basis).

The New Source Performance Standards (NSPS) for sewage treatment plants (see 40 CFR Part 60, Subpart O) apply to facilities when 10 percent or more of their waste stream consists of sewage sludge (on a dry weight basis). However, this 10-percent threshold no longer appears appropriate.

The configuration of systems firing municipal refuse are quite different from those that fire only sewage sludge. Municipal waste combustors (MWCs) generally use mass burn, modular, or refuse-derived fuel systems. Facilities firing sewage sludge most commonly use multiple hearth and fluidized bed systems. A facility designed primarily for firing solid waste cannot efficiently fire more than a small amount of sewage sludge because the highly aqueous sewage sludge reduces the combustion temperature of the incinerator. If a municipal solid waste stream includes 10 percent sewage sludge, which is typically 80 percent water, the sewage sludge reduces the BTu value of the waste stream by 30 percent. Therefore, from a technological standpoint, it is ill-advised for typical MWCs to fire a large volume of sewage sludge.

Currently, the Agency is studying how best to regulate facilities co-firing sewage sludge with municipal solid waste. On July 7, 1987, the Agency issued an advanced notice of proposed rulemaking (52 FR 2599) on revisions to the NSPS for new or modified MWCs under section 111(b) of the CAA and on emission guidelines for existing MWCs under section 111(d) of the CAA. Section 111(b) applies to sources after a rule is proposed and Section 111(d) applies to existing sources.1At this time, the Agency has not determined how it will regulate facilities co-firing sewage sludge with municipal solid waste. In November 1989, the Agency anticipates that it will propose a NSPS for MWCs and will then address standards for sewage sludge in facilities that co-fire municipal solid waste with sewage sludge. Any recommendations or suggestions submitted as part of this rulemaking will be included in the Agency's deliberations on the NSPS for MWCs.

Deepwell Wet Air Oxidation System

The proposed rule does not apply to the location or operation of deepwell wet air oxidation systems. In these systems, sewage sludge flows down the center of two concentric verticle tubes and returns in the annular space. These verticle tubes (about a mile in length) are placed deep within the earth. Oxygen is injected into the liquid sewage sludge where, deep within the well, sufficient pressures and temperatures are reached to support the oxidation of the sewage sludge. This continuous flow system converts the organic waste into inert ash, carbon dioxide, and water. The effluent from these systems could be recycled back into the waste treatment plant or discharged in accordance with a National Pollutant Discharge Elimination System (NPDES) permit. Because these are fully enclosed recycling systems, with no emissions to the air and controlled discharges, if any, to surface water, the Agency does not believe such systems are comparable to the use or disposal methods included in today's proposal. As these systems are developed further, EPA will evaluate if it would be appropriate to develop numerical pollutant limits for the liquid sludge placed in and oxidized in the wells.

Septic Tanks

Today's proposal will not apply to the location and operation of septic tanks. Septic tanks are also excluded from the definition of "treatment works" because of Congressional intention that only treatment and processing of septage be subject to section 405 regulation. However, the septage collected from septic systems is included in the definition of sewage sludge. Thus, septage must meet the requirements in today's proposal when it is ultimately used or disposed of.

Septage is frequently collected and delivered to treatment works for processing, generally to reduce the levels of pathogenic organisms. However, other septage is collected and applied to the land without further processing or without monitoring the levels of pathogenic organisms. Under today's proposal, sewage sludge, including septage, must meet the requirements in Subpart F, if it is applied to the land. The Agency is soliciting comment of the effect of these requirements on the use or disposal of septage.

Marine Sanitation Devices

Today's proposal would only apply to the pumpings from marine sanitation devices that are delivered to on-shore facilities for disposal. Generally the pumpings are collected in tanks at marinas and delivered to treatment works. Requirements in 33 CFR Part 159 specify requirements for the operation and maintenance of marine sanitation devices.

Definitions (§ 503.5)

The definitions included in this section of the rule are those generally applicable to all subparts of the rule. Each subpart includes special definitions that apply only to that subpart. Many of the definitions included in Subpart A are definitions that are included in section 502 of the CWA or have been included in numerous other Agency rules and will not be discussed here. The definitions discussed here amplify and reinforce the coverage of the rule.

Domestic Sewage

Domestic sewage is wastewater generated in households that is discharged to or otherwise enters a treatment work. Excluded from today's proposal is domestic sewage that privately owned treatment works treat along with industrial waste and wastewater.

Pollutant

Pollutant is defined as:

Those organic or inorganic substances or combination of substances, including disease-causing agents, which, after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through the food-chain, will, on the basis of information available to the Administrator, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction), or physical deformations in such organisms or their offspring.

This definition is similar to the definition of "toxic pollutant" included in section 502(13) of the CWA. The term, "toxic pollutant", is not used in today's proposal because, over the years, that term has become synonymous with the listed priority toxic pollutants included in section 307(a) of the CWA. EPA believes that Congress intended for the Agency to develop standards for a broader range of substances that might interfere with the use or disposal of sewage sludge, not just those priority toxic pollutants included in section 307(a).

Septage

In today's proposed rule, "septage" is included in the definition of "sewage sludge." Septage is defined to mean "* * * the liquid and solid material pumped from a septic tank, cesspool, or similar domestic sewage treatment system when the system is cleaned".

This means that the disposal of septage by any method that would be regulated under today's proposal (e.g., applied to land, placed in a monofill or surface disposal site) would be required to meet the applicable requirements in the same manner as any other sewage sludge. For example, where septage is land-applied, the person doing the application would need to identify the concentration of the pollutants in the septage regulated for land application (§ 503.13, Tables 1 and 2, for agricultural land; § 503.15, Table 3 for non-agricultural land) and calculate the allowable annual and cumulative loading rates using the methods described in Appendices B and C. They would also be subject to all applicable management practices for land application.

Users and disposers of septage (usually, septage haulers) would also be required to meet the same pathogen reduction requirements as other users and disposers of sludge. Current regulations for pathogen reduction (40 CFR Part 257) assumes that septage applied to land meets a Process to Significantly Reduce Pathogens if public access is controlled for 12 months and grazing by animals whose products are consumed by humans is prevented for one month. Today, for the reasons discussed in Subpart 7 of this part, EPA is proposing more stringent requirements for septage.

Today's proposal applies to the use and disposal of septage by one of the methods covered in this rule. It does not regulate the generation of septage (thus, owners of septic tanks are excluded from the definition of "treatment works"), or the siting, design, or operation of septic tanks. Nor does today's proposal regulate septage that is transported to treatment works. Such practices are regulated under the pretreatment program. The sludge generated by the receiving treatment plant would be subject to requirements proposed today.

The Agency is proposing to regulate septage in the same way as sewage sludge because of growing concern about the potential adverse effects of applying septage to land. In addition, the qualities of septage are similar to sludge (they are both a residual of wastewater treatment). Under today's proposed approach, the use and disposal of septage would be subject to the same requirements as the use and disposal of other sewage sludge. The Agency recognizes that this may require that septage haulers have their septage processed prior to applying the septage on the land. EPA is unsure about the extent and magnitude of any disruptions that today's approach may cause. Therefore, EPA invites comment on the proposed regulatory approach for septage use and disposal.

Specifically, the public is invited to comment on whether or not septage is sufficiently similar to sewage sludge and of sufficient concern to warrant the same regulatory approach, particularly in terms of the proposed pathogen and vector attraction reduction requirements. Other possible regulatory options might include developing separate standards specifically for septage disposal that are tailored to the particular concerns presented by septage (e.g., pathogens and a narrower list of pollutants) and that might be simpler to apply. For example, rather than requiring the sampling of the septage and the calculation of loading rates, the rule could simply set a loading limit for septage. EPA solicits comments on the desirability or feasibility of such an alternative approach. The Agency welcomes any suggestions concerning other possible approaches that the Agency should consider in regulating septage use and disposal.

Sewage Sludge

Today's proposal defines sewage sludge as any solid, semi-solid, or liquid residue removed during the treatment of municipal wastewater or domestic sewage. Sewage sludge includes, but is not limited to, solids removed during primary, secondary, or advanced wastewater treatment, scum, septage, portable toilet pumpings, Type III marine sanitation device pumpings, and sewage sludge products.

Scum is the material that floats upward and must be skimmed off the top of the wastewater treatment tanks. Scum shares many characteristics with the other residues generated during wastewater treatment and is typically disposed of with sewage sludge. Therefore, it is included in the definition of sewage sludge.

Septage, portable toilet pumpings, and Type III marine sanitation device pumpings are included in the definition of sewage sludge because they share the characteristics of sewage sludge, are generated from domestic sewage, and present the same human health risks (e.g., pathogenic organisms) as sludge from municipal treatment works.

Sewage sludge products are mixtures of sewage sludge and other materials, such as bulking agents (e.g., wood chips), frequently added to sewage

sludge that is composted and then distributed and marketed. Such products are considered to be sewage sludge for the purposes of this proposal, no matter how small the percentage of sewage sludge in the product. The Agency is soliciting comment on this approach to determine if there are sewage sludge products that contain such a small percentage of sewage sludge that they no longer have the characteristics of sewage sludge.

Grit, screenings, or ash generated during the incineration of sewage sludge are not included in the definition of sewage sludge. Grit is the material, such as sand, small pebbles, and similar material, that settles out before primary treatment. Screenings are relatively large pieces of solid material that are caught on the screens at the headworks of the treatment plant. These waste streams are small, have vastly different properties from sewage sludge generated during wastewater treatment, are usually handled and disposed of separately, and are adequately regulated under solid waste programs.

Ash generated during the incineration of sewage sludge is not included in today's definition of sewage sludge. Incinerator ash, typically disposed of in landfills, like other ash material is sterile and dry. Incinerator ash does not have the same characteristics as other residues from wastewater treatment. As discussed above, incinerator ash will be regulated under RCRA (i.e., under Subtitle D if it is non-hazardous and under Subtitle C if it is hazardous). If, however, incinerator ash is mixed and disposed of with other sewage sludge (e.g., in land application), it will be regulated as sewage sludge.

Treatment Works

Treatment works include POTWs owned by State or local entities and federally owned facilities. All sewage sludge generated by these POTWs are covered by today's proposal, irrespective of the amount of industrial influent flowing into the treatment works.

Privately owned treatment works may include commercial processing facilities that treat domestic sewage. If privately owned treatment works treat domestic sewage exclusively, the sewage sludge generated is covered by today's proposal. However, if the privately owned treatment work treats domestic sewage along with industrial waste and wastewater, the sewage sludge is excluded from today's proposal. As discussed earlier, EPA is not prepared, at this time, to propose standards for the use or disposal of such sludge which, pending development of standards, continues to be subject to the requirements in 40 CFR Part 257 or 40 CFR Parts 261 through 266.

For the purposes of this rule, septic systems are excluded from the definition of treatment works. Although septic systems treat domestic sewage, the Agency has no intention of permitting individual owners of septic systems. As discussed above, the ultimate use or disposal of the septage pumped from septic tanks will be covered by today's proposal.

Land Application (Subpart B)

Applicability (§ 503.10)

The numerical limits, management practices, and other requirements in Subpart B apply to the spreading of liquid, de-watered, dried, or composted sewage sludge on or just below the surface of agricultural and non-agricultural land. The requirements also apply to any one who distributes or who uses sewage sludge meeting the numerical limits in this subpart. Sewage sludge which is distributed and marketed for use as a potting medium, or lawns, ornamentals and gardens in compliance with Subpart C is not subject to the requirements of this subpart.

Treatment works with good quality sludge are encouraged to reuse the sewage sludge for its nutrient and soil conditioning properties. Subpart B requirements protect public health and the environment while encouraging the beneficial use of sewage sludge by providing options on the level of pathogen reduction that must be achieved and on the pollutant concentrations that may be present in sludge applied to the land.

Treatment works may use any one of three levels of pathogen reduction when sewage sludge is applied to either agricultural or non-agricultural land as long as the treatment work or applier complies with the applicable restrictions on public access to the land and on growing crops or raising animals on the sludge-amended soil. In addition, two sets of numerical limits are included in this part. The applicability of these limits depend on whether the sewage sludge is used in the production of crops intended, directly or indirectly, for human consumption or for animals raised for human consumption. In this way, the Agency believes that it is encouraging the reuse of sewage sludge while also protecting public health from the adverse effects of pathogenic infections and of chemical contamination of the food-chain.

One key difference between the requirements of Subpart B and Subpart C (distribution and marketing) is the level of pathogen reduction to which a treatment work must process its sludge. Treatment works that distribute and market their sewage sludge to the general public must process their sludge to attain the Class A pathogen reduction standard—the highest level of pathogen reduction (i.e., reduce pathogens below levels of detection). Because sewage sludge that meets the Class A pathogen reduction standard does not pose a risk of an infectious dose, no access restrictions or restrictions on the growing or harvesting of food crops are imposed. Such restrictions would not be feasible for sewage sludge that is distributed and marketed to the general public. In contrast, the land application subpart allows treatment works the option of selecting alternative pathogen reduction standards, Classes B and C, as long as the landowner imposes public access and animal grazing controls and restricts the growing and harvesting of crops in accordance with the standards of the class of pathogen reduction selected.

Another difference between the requirements in Subparts B and C are the numerical limits for some of the organic pollutants and some metals when sewage sludge is applied to agricultural land and when sewage sludge is distributed and marketed. In both scenarios it is assumed that the sewage sludge is used in the production of crops intended for human consumption. The numerical limits for the application of sewage sludge to agricultural land are based on crops intended for direct human consumption or fed to animals intended for direct human consumption, whichever is the more stringent loading rate. For the organic pollutants, which tend to bioaccumulate through the food chain, the limiting numerical limit is based on crops fed to animals intended for human consumption. As explained in Subpart C, the distribution and marketing scenario is designed to protect a fruit and vegetable home garden, not a garden in which feed is raised for animals intended for human consumption. Therefore, the numerical limits for organic pollutants in distribution and marketing tend to be higher than those for agricultural land application.

The third major difference in the requirements between Subparts B and C is that for the requirements in Subpart B to apply, there must be an agreement between the treatment work and the distributor or applier of the sewage sludge to abide by the requirements in Subpart B, such as the access and use restrictions. If there are no agreements and sewage sludge is applied to the land, treatment works must comply with the requirements for the distribution and marketing of sewage sludge in Subpart C.

In developing the requirements for the land application of sewage sludge, the Agency assumed that, except for the applier, there would be little public contact with the sewage sludge itself or with the land receiving the sewage sludge. EPA also assumed that public access restrictions could be imposed on either agricultural or non-agricultural land for a period of time. The underlying premise in developing sewage sluge distribution and marketing requirements was that the sluge would be used in a home garden where there would be immediate and continuous human contact with the sewage sludge or with the land receiving it. Under such circumstances, the Agency could not restrict access.

As discussed earlier in the preamble, Part 503 does not apply to sewage sludge that is determined to be hazardous or to sewage sludge that contains Polychlorinated Biphenyls (PCBs) in conentrations equal to or greater than 50 parts per million (ppm). Such sludge is regulated under Subtitle C of RCRA and under the Toxic Substances Control Act (TSCA). Amendments to 40 CFR 761.20 (53 FR 24220, June 27, 1988) specifically exclude the land application of PCB-contaminated sewage sludge from the prohibition on using PCBs (regardless of the concentration), except in a totally enclosed manner, when the sewage sludge use is regulated under CWA and RCRA. This amendment codified the Agency's traditional practice of deferring to programs other than those of TSCA when regulating materials with less than 50 ppm of PCBs.

Specialized Definitions (§ 503.11)

In this section of the proposal, the Agency defines and clarifies terms that it uses throughout this subpart or in other definitions. Not all of the terms in § 503.11 will be discussed in the order in which they are listed in the rule.

Agricultural Land

The Agency estimates that approximately 25 percent of the sewage sludge that is generated by POTWs is applied to the land and that 77 percent of the sewage sludge applied to the land (approximately 926,000 million dry metric tons) is used to improve the condition and nutrient content of agricultural lands. The definition of agricultural land includes land on which crops or animals are raised for human consumption (e.g., pastures for the grazing of animals). This beneficial reuse of sewage sludge has been and continues to be an Agency priority.

The numerical limits, management practices, and other requirements for agricultural land are applicable if sewage sludge is applied to lands on which the applier grows his or her food or grows food for others. For example, the requirements for agricultural lands apply to pastures used for deer that are raised for subsequent sale or for deer hunts, whereas the requirements for non-agricultural land would apply to land where deer may graze as long as the hunting of the deer is prohibited.

Non-Agricultural Land

Non-agricultural land is defined as land on which neither food nor animal feed crops (including pastures) are grown. Example of non-agricultural lands include lands used for forests or turf farming, lands reclaimed for more productive purposes (i.e., lands devastated by fires, strip mining, etc.), and lands dedicated to sludge disposal.

The beneficial reuse of sewage sludge is not limited to the growing of food-chain crops. Sewage sludge applied to forest lands shortens wood production cycles and increases yields, especially on marginally-productive lands. Marginally-productive lands and lands suffering from poor soil stability and severe water and wind erosion can be stabilized and put to more productive uses through the application of sewage sludge and the establishment of a vegetative cover. For example, strip-mined areas and constructive sites have been reclaimed for use as wildlife sanctuaries and parks.

Lands dedicated to sludge disposal are usually owned or controlled by the treatment work. The objective of this practice is to employ the land as a treatment system by using soil to bind the metals and allow soil microorganisms, sunlight, and oxidation to destroy the organic matter in the sludge. Vegetative covers are established on these lands to preclude the runoff of sludge with soil and water. Although intensive management is required, this may still be less costly than other sewage sludge use or disposal practices in areas where land is available.

No food or feed crops may be grown or animals intended for human consumption raised on non-agricultural lands during the application of sewage sludge or for 5 years after the final application of sewage sludge. This should encourage treatment works to use the soil conditioning properties and nutrient contents of the sewage sludge without concern about the effect of higher pollutant concentrations on the food-chain.

Annual Pollutant Loading Rate

The annual pollutant loading rate is the amount of an organic chemical (in kilograms) that can be applied to a hectare of land (2.5 acres) in a 365-consecutive-day period. The annual pollutant loading rates apply to organic pollutants and is one of two pollutant limits for sewage sludge used in agricultural land. The other pollutant limit is the cumulative pollutant loading rate for metals.

Table 1 in § 503.13 of the proposed rule lists the annual pollutant loading rates for 15 organic pollutants covered by today's proposal. The annual pollutant loading rate, derived from the exposure assessment model, ensures that the amount of a pollutant reaching a target organism does not exceed the human health or environmental criterion for that organism. For humans, the criterion is a carcinogenic potency value (Q_1^* value) because the 15 organic pollutants in Table 1 are all carcinogens. The Q_1^* values are listed in the Agency's Integrated Risk Information System (IRIS). For plants and animals, the criteria are toxicity values derived from the scientific literature and are listed in the "Technical Support Document: Land Application and Distribution and Marketing of Sewage Sludge" (Reference number 57).

As discussed in Part IV of the preamble, a key assumption in establishing an annual pollutant loading rate is that organic pollutants decompose according to first-order kinetics. In other words, the quantity of a pollutant decomposing or lost each year is directly proportional to the quantity present in the soil. This means that when a pollutant is applied at a steady rate for many years, the soil concentration approaches a plateau at which the rate of loss equals the rate of application. The annual pollutant loading rate is established to ensure that the long-term pollutant concentration in the soil is below a concentration that would exceed a human health criterion (i.e., equal to an incremental carcinogenic risk of 1×10^{-4}) if the plant absorbing the pollutant is eaten. For pathways involving the direct ingestion of a sludge-soil mixture by children or by grazing animals, the model builds in the half-life of a pollutant, particularly for persistent organic pollutants such as PCBs.

The Agency has developed a procedure and an equation to determine the amount of a sludge that may be

applied each year without exceeding the pollutants' annual loading rates. The procedure is spelled out in Appendix B of the proposed rule and is explained in connection with the discussion of the pollutant limits later in this subpart of the preamble.

Cumulative Pollutant Loading Rate

The cumulative pollutant loading rate is the maximum amount of a pollutant that can be applied to the land without exceeding a human health or environmental criterion when the pollutant reaches a target organism. An exposure assessment model is used to establish a cumulative pollutant loading rate for each of the 10 inorganic pollutants listed in Table 2 of § 503.13.

The exposure assessment model incorporates two key assumptions. The first is that the background metal concentration corresponds to an average background value for rural agricultural lands (Reference number 57). The second is that over a period of time, the metals adhere to the sludge-soil matrix and do not become more available to plants. The Agency also assumed that the amount of metal absorbed by a plant is a function of the total metal in the soil and that absorption by a plant is determined by the total metal in the soil.

The Agency recognizes that not all of the metal is in a form that can be absorbed by the plant. Only the leachable portion of the metal is available for absorption. Since there is insufficient data to determine the percentage of absorbable metal in a sludge-soil matrix, the Agency assumed that all of the metal is available to the plant. The Agency has initiated work to develop an index to correlate total metal in a sludge-soil matrix to the percentage absorbed by a plant. The percentage of the metal that is actually available for absorption by a plant could significantly affect the amount of metal that may be applied to the land without causing adverse human health or environmental effects, particularly if it is a small amount. The Agency is soliciting data on the dissolved and bound portions of metals in a sludge-soil matrix to assist it in determining the amount available to a plant.

The cumulative pollutant loading rate is the total amount of the pollutant, in kilograms per hectare (kg/ha), that can be added to the background concentration already in the soil without exceeding a human health or environmental criterion when the pollutant reaches the target organism. None of the 10 inorganic pollutants is a carcinogenic when ingested. Therefore, except for arsenic and lead, the Agency used the reference dose (RfD) from IRIS as the human health criteria. Arsenic and lead are not listed in IRIS.

In the case of arsenic, EPA derived a daily dietary intake (DDI) from the maximum contaminant level (MCL). For lead, however, the Agency believed that the existing MCL (50 micrograms per liter) was too high a threshold on which to base a DDI. Therefore, as explained earlier in Part V of the preamble, the Agency derived a DDI on the basis of the amount of lead which could be in food without an adult white male exceeding a blood lead level of 10 micrograms per deciliter (10 μg/dl). Using this approach limits the cumulative pollutant loading rate of lead to 176 kg/ha. However, an environmental pathway (bird eating earthworms) limits the cumulative pollutant loading rate to 125 kg/ha, which, as the more stringent limit, was used by the Agency. The numerical limit of 125 kg/ha is significantly lower than the median regulatory range of 530 kilograms per hectare in the 32 States that have established cumulative loading rates for lead. In these States, the cumulative pollutant loading rates range from 200 to 2520 kilograms per hectare. Current EPA guidance suggests that lead should not be applied at a cumulative pollutant loading rate in excess of 500 to 2,000 kg/ha. The proposed limit of 125 kg/ha will result in significant reductions. As noted earlier in the preamble, the Agency is soliciting comment on the impact of this limit on the beneficial reuse of sewage sludge and on the potential intermedia transfer of lead risks.

The Agency has developed a procedure and an equation to determine the number of years that sewage sludge can be applied to the land without exceeding the cumulative pollutant loading rates. The procedure and equation are spelled out in Appendix C of the proposal and are explained in connection with the discussion of the numerical limits.

Land Application—General Requirements (§ 503.12)

Sewage sludge applied to the land must be applied in accordance with the requirements in Subpart B of the rule. All individuals who apply sewage sludge to the land (as opposed to individuals applying a "sewage sludge product" that is distributed or marketed, see Subpart C) must comply with the requirements.

Agreements

Before sewage sludge may be applied to the land by anyone other than the treatment work, the treatment work must enter into an agreement with the distributor or applier of the sewage sludge. This agreement may be in the form of a performance agreement, a contract, or another similar instrument and must provide that the distributor or applier will meet the requirements in Subpart B of the rule. Thirty-eight States currently require agreements when sewage sludge is applied to the land.

The agreement between POTWs and distributors and appliers is a mechanism for ensuring the distributors and appliers are aware of the obligation, under section 405(e), to dispose of sewage sludge in accordance with the Section 405 technical standards. That obligation arises directly from the statute, not because of the existence of contractual relationship between the POTW and distributor or appliers. Moreover, the requirement to use and dispose of sewage sludge in accordance with the technical standards is directly enforceable by EPA under the statute. Section 405(e) makes it clear that it is unlawful to dispose of sludge for any use for which regulations have been established, except in accordance with the regulations.

The Agency is interested in specifying only the minimum number of elements needed in an agreement to assure compliance with the rule and will carefuly consider suggestions to add or delete any elements to simplify the agreement. The Agency is particularly interested in the effect the agreements would have on small farmers and whether the agreements would discourage the use of sewage sludge in farming operations.

General provisions to be included in written agreements for both agricultural lands and non-agricultural lands are discussed first, followed by the particular provisions directed at sewage sludge that is applied to agricultural lands and to non-agricultural lands.

1. *General Provisions.* All agreements, whether with a sewage sludge distributor or applier, are to provide the following information:

- Name and address of person(s) receiving and applying the sewage sludge;
- Location(s) and legal description of the site(s) to which the sludge will be applied;
- Size(s) of the sites (or portion thereof) to which the sludge will be applied, in hectares or acres;
- The nitrogen concentration of the sewage sludge;
- Amount of sewage sludge to be applied to each site, in metric tons;
- Class of pathogen reduction used in the sewage sludge and the applicable use and access restrictions set forth in 40 CFR 503.52 for that class of pathogen reduction;
- Vector attraction reduction used in treating the sewage sludge;
- Period of time after receipt within which the sewage sludge must be applied;
- Application method to be used (i.e., injection below the surface of the soil, spraying, surface application, etc.) and whether or not the sludge is to be incorporated into the soil; and
- Storage method to be used in case of inclement weather and public health and environmental protective practices to be used until the sludge is applied.

This agreement also must contain prohibitions on the following:

- Application of sewage sludge at rates in excess of the nitrogen requirements of the vegetation and at rates that would cause the excess nitrogen to leach to the ground water;
- Application of sewage sludge to the land if such application will cause or contribute to the harm of an endangered or threatened species of plant, fish, or wildlife, will result in the destruction or adverse modification of the critical habitat of the endangered or threatened species, will restrict the flow of the base flood, or will reduce the temporary water storage capacity of the floodplain;
- Application of sewage sludge to frozen, snow-covered, or flooded land, unless it will not cause a discharge of pollutants into waters of the United States, including wetlands, that violates any requirement of the CWA; and
- Application of sewage sludge to any land that is 10 meters (30 feet) or less from a surface water.

2. *Provisions For Agricultural Lands.* In addition to the general provisions, these agreements must also include the following requirements whenever sewage sludge is applied to agricultural lands:

- Concentration of the pollutants listed in Tables 1 and 2 of 40 CFR 503.13;
- Prohibition on applying sewage sludge in amounts greater than 50 metric tons per hectare (on a dry weight basis);
- Amount of sewage sludge, in metric tons per hectare, that may be applied in a 365-consecutive-day-period without exceeding the annual pollutant loading rates in Table 1 of 40 CFR 503.13 (using procedures in Appendix B of 40 CFR Part 503 to determine the appropriate whole sludge application rate); and

Number of years that sewage sludge may be applied to the land without exceeding the pollutant loading rates in Table 2 of 40 CFR 503.13 (using procedures in Appendix C of 40 CFR Part 503 to determine the number of years that sewage sludge may be applied to the land).

Note that if the quality of the sludge changes, the amount of sludge that may be applied to the land also changes. If sludge quality improves, more could be applied to the land, provided that the increment does not exceed the nitrogen requirements of the crops. However, if the sludge quality becomes worse, less sludge may be applied to the land to avoid exceeding the numerical limits in Tables 1 and 2 in § 503.13.

3. *Provision For Non-Agricultural Lands.* In addition to the general provisions, agreements must also establish the following requirements whenever sewage sludge is applied to non-agricultural lands:

- Concentrations of the pollutants in Table 3 of 40 CFR 503.15;
- Prohibition on growing food or feed crops on the land during the period when sewage sludge is applied to that land and for 5 years after the final application of sewage sludge;
- Prohibition on grazing animals on the land during the period when sewage sludge is applied to that land and for 5 years after the final application of sewage sludge;
- Requirement that a vegetative cover be established on the land; and
- Prohibition on public access to the land to which sewage sludge meeting the Class A pathogen reduction requirements has been applied, until a vegetative cover has been established.

Each of the provisions in the agreement relates to a specific requirement in the rule and will be discussed in connection with the requirement. The agreement will also require submission of all the information a treatment work will need to comply with the monitoring, record keeping, and reporting requirements included in today's proposal.

The Agency recognizes that the portion of the agreement dealing with agricultural lands does not address the issue of an individual who receives sewage sludge from more than a single source. If individuals were to receive sewage sludge from more than one source, potentially more sewage sludge could be applied in a year to a parcel of land than would be authorized by the annual pollutant loading rates in Table 1. Of greater concern, however, is that over time, an individual receiving sewage sludge from multiple sources could exceed the cumulative pollutant loading rates for the metals listed in Table 2.

The Agency does not know if individuals frequently receive their sewage sludge from more than one source. Some States do keep records of individuals receiving sewage sludge, and these States may be able to identify those individuals. EPA is interested in comments on whether the practice of receiving sewage sludge from more than one source is so prevalent that modifications should be made in the agreements to require that individuals identify all sources from which they are receiving or have received sewage sludge and notify the POTWs when they receive sludge from a new source.

Other General Requirements

Some of the general requirements in today's proposal are taken from the "Criteria For Classification of Solid Waste Disposal Facilities and Practices" (40 CFR Part 257). These requirements are to ensure that the land application of sewage sludge does not contribute to adverse human health or environmental effects. Specifically, today's rule proposes that sewage sludge applied to the land shall not cause or contribute to the harm of an endangered or threatened species and shall not result in the destruction or adverse modification of the critical habitat of such species. Other 40 CFR Part 257 requirements in today's proposal also include the following floodplain restrictions: (1) Sewage sludge shall not restrict the flow of a base flood (i.e., a flood that has a one percent or greater chance of recurring in any year or a flood of a magnitude equalled or exceeded once in 100 years); (2) it shall not reduce the temporary water storage capacity of the floodplain; and (3) washout of sewage sludge shall not pose a hazard to human health, wildlife, or land or water resources. Twenty-three States have similar floodplain restrictions.

As a supplement to these provisions, the Agency is proposing to prohibit the application of sewage sludge to frozen, snow-covered, or flooded land unless the applier demonstrates that the sewage sludge can be applied in a manner that will not cause a discharge of pollutants into waters of the United States, including wetlands, that violates any requirement of the CWA. There is every reason to assume that sewage sludge applied to frozen, snow-covered, or flooded lands would readily be transported off the site with the first melt or rainfall into a river, stream, or lake. Twenty-six States impose similar restrictions on the land application of sewage sludge. The Agency is interested in the experiences of those who have successfully applied sewage sludge to frozen, snow-covered, or flooded lands and the techniques that were used to prevent the sewage sludge from reaching a river, stream, or lake. Such information will assist the Agency in

developing guidance on the type of demonstrations that should be made.

Agricultural Land—National Pollutant Limits (§ 503.13)

Pollutants

EPA is proposing numerical limits for a total of 25 pollutants when sewage sludge is applied to the land. Table III–1 in the preamble lists the pollutants that were originally evaluated. Nitrogen and phosphorus were not included. The Agency believes that if sewage sludge is applied in accordance with the nutrient requirements of the plant, nitrogen and phosphorus would not be applied in sufficient quantities to adversely affect ground water or surface water. The Agency may consider modeling nitrogen and phosphorus, if comments on the proposal suggest that good agronomic practices generally have not been followed, particularly for non-agricultural lands.

Table III–2 of the preamble lists the pollutants that do not interfere with the land application of sewage sludge at the concentration shown in "Fate of Priority Pollutants in Publicly Owned Treatment Works" (the "40 City Study"). The Agency determined that, even under the worst combination of circumstances, cyanide, fluoride, iron, and pentachlorophenol do not interfere with the land application of sewage sludge. As shown in Table 12 of § 503.72, the Agency would authorize removal credits for these pollutants when sewage sludge is applied to the land.

Table III–3 lists the pollutants that were originally evaluated, but for which numerical limits are not included in today's proposal due to insufficient data or because the Agency has not established a human health criterion for the pollutant. These pollutants may be considered in future rulemaking proceedings if sufficient information becomes available.

Tables 1 and 2 in § 503.13 of the proposed rule list the pollutants and numerical limits for sewage sludge application to agricultural lands. Table 3 in § 503.15 lists the pollutants and numerical limits for sewage sludge application to non-agricultural lands. The pollutants in Tables 1, 2, and 3 are among the pollutants that are eligible for removal credits when sewage sludge is applied to the land. Treatment works whose sludge meets the pollutant limits in these tables may issue removal credits to their industrial users if the treatment work is eligible to do so under the provisions in 40 CFR Part 403.

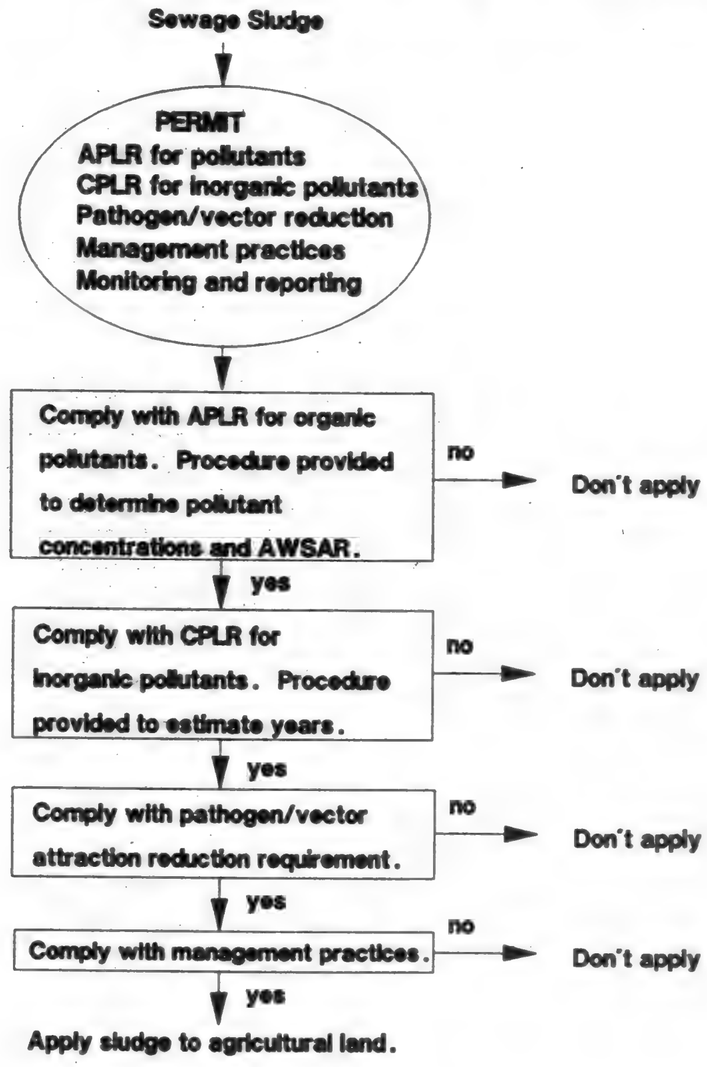
As discussed in Part VIII of the preamble, the Agency used a different approach in establishing numerical limits for sewage sludge applied to agricultural lands from that used for non-agricultural lands. In establishing the numerical limits for agricultural lands, the Agency used the exposure assessment models to limit the potential for individuals to receive a high level of pollutant exposure through their diet. For non-agricultural lands, where there is little likelihood that pollutants will reach individuals through their diets, the Agency used current sludge quality (i.e., the 98th-percentile pollutant concentration shown in the "40 City Study"), unless the exposure assessment models for agricultural lands calculated a higher numerical limit. In the latter case, the pollutant limit is based on the exposure assessment model.

Figure IX–B.1 shows how the pollutant limits, pathogen and vector attraction reduction requirements, and management practices determine whether or not sewage sludge may be applied to agricultural land. Each of these factors is discussed below.

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Figure IX–B.1

LAND APPLICATION (AGRICULTURAL LAND)



Annual Pollutant Loading Rate

The annual pollutant loading rates for organic pollutants are listed in Table 1 of the proposal. The concentration of the organic pollutant in the sewage sludge controls the annual rate at which sludge may be applied to the land (i.e., the annual whole sludge application rate) because the annual pollutant loading rate remains constant with the annual whole sludge application rate. As the pollutant concentration increases, the annual whole sludge application rate decreases and vice versa. The annual whole sludge application rate is determined using the following equation:

$$APLR = C \times 0.001 \times AWSAR \quad (1)$$

Where:

APLR = Annual pollutant loading rate, in kilograms per hectare per year.
C = Pollutant concentration in sewage sludge, in milligrams per kilogram (dry weight basis).
AWSAR = Annual whole sludge application rate, in metric tons per hectare, per year (dry weight basis).
0.001 = Converts milligrams per kilogram times metric tons per hectare to kilograms per hectare.

To determine the pollutant concentration in sewage sludge the equation is rearranged as follows:

$$C = \frac{APLR}{0.001 \times AWSAR} \quad (2)$$

The annual whole sludge application rate would be determined by the pollutant concentration that gives the lowest whole sludge application rate. Appendix B of the rule explains in more detail the procedures for determining the annual whole sludge application rate and provides an example.

Cumulative Pollutant Loading Rate

The cumulative pollutant loading rate is listed on Table 2 of the proposal. To determine the number of years sewage sludge may be applied to the land, the following equation would be used:

$$Y = \frac{CPLR}{APLR} \quad (3)$$

Where:

Y = Number of years that sewage sludge may be applied to the land.
CPLR = Cumulative pollutant loading rate, from Table 2 of the proposed rule.
APLR = Annual pollutant loading rate, derive from equation (1) of this subpart of the preamble.

The pollutant with the lowest number of years at a given annual pollutant loading rate or annual whole sludge application rate determines the number of years for sludge application. Appendix C of the rule explains in detail the procedure for determining the number of years that sludge may be applied to the land and provides an example.

In Part IV of the preamble, the Agency discusses the key assumptions in the exposure assessment models and asks for public review and comment on the data used in developing the models. The data used in the models are tabulated in the "Technical Support Document: Land Application and Distribution and Marketing" (Reference number 57). Part XIII describes how copies of the exposure assessment models may be obtained.

The "Technical Support Document: Land Application and Distribution and Marketing" also contains a matrix showing the 14 pathways of exposure and the pathway for each pollutant that determines the pollutant limit. The pathway that results in the most stringent numerical limit is not always the pathway in which human health protection is the objective. In some cases, an animal or plant toxicity value may be the most stringent. Aldrin, dieldrin, and lead limits, for example, are derived based on the pathway in which predators eat soil biota. Chromium and zinc limits are derived from phytotoxicity values. The Agency believes that the pollutant limits should protect both human health and the environment, but recognizes that some may question whether factors other than human health should control the numerical limits in an agricultural setting. EPA is soliciting comment on this question.

Changes to Cadmium and PCBs

This proposal establishes numerical limits for cadmium and PCBs that are different from the limits in 40 CFR 257.3–5(a). Section 257.3–5(a) establishes annual and cumulative numerical limits for cadmium based on a soil pH of 6.5 or greater and varying milliequivalents of soil cation exchange capacity. As explained earlier, today's proposal does not establish an annual pollutant loading rate for cadmium because the rate at which a metal is applied to the land is less important than the total amount of the metal applied to a specific site.

The Agency is proposing a 18 kilogram per hectare cumulative pollutant loading rate for cadmium. The 40 CFR 257.3–5(a) rule established a cumulative pollutant loading rate of between 5 and 20 kilograms per hectare, depending on the soil cation exchange capacity.

There are several reasons for the differences in the numbers. First, recent research shows that soil cation exchange capacity does not affect the plant's absorption of cadmium when cadmium is in a sludge-soil matrix (Reference number 26). Although previous experiments had shown a direct relationship between the milliequivalent of soil cation exchange capacity and plant absorption of cadmium, these experiments had used the more bioavailable soluble cadmium salts ($CdCl_2$) rather than the cadmium present in sewage sludge. Metals in sewage sludge tend to remain bound to the organic matrix so that not all of the metal is absorbed by the plant.

Another reason for the differences in the cadmium cumulative pollutant loading rates is that today's proposal assumes a soil pH of 6, rather than a soil pH of 6.5. At the time 40 CFR 257.3–5(a) was issued, data indicated that a soil pH of 6.5 or greater was necessary to minimize plant absorption of cadmium for food-chain crops. A more recent review of available data indicates that metal absorption by plants at a pH of 5.7–6.0 is the same as at a pH of 6.4 or greater (Reference numbers 71 and 72).

The Agency believes that basing cadmium's cumulative loading rate on a soil pH of 6 and a toxicity value using lettuce leaf absorption of cadmium (lettuce has a strong tendency to accumulate cadmium) will adequately protect public health and preclude phytotoxic effects. However, the Agency continues to evaluate data and welcomes additional data on the effect of different soil pH on plant absorption of metals from a sludge-soil matrix.

The limits in 40 CFR 257.3–5(b) for PCBs are based on a concentration of PCBs in sewage sludge or on a level of PCBs in animal feed or milk. Today's proposal uses the exposure assessment models to establish a numerical limit for PCBs that take into account PCB bioaccumulation in plants and animals. Therefore, the Agency believes that today's approach is more appropriate for establishing a numerical limit for PCBs.

The proposed numerical limit for PCBs in Table 1 is more restrictive than the Agency's PCB Cleanup Policy for residential areas where soil cleanup must not exceed 10 ppm with a 10-inch cap of soil of less than 1 ppm (40 CFR 761.125(c)(4)(v)). The Cleanup Policy limit for acceptable soil containment levels is based on soil ingestion, inhalation, and ground water contamination. The Cleanup Policy is not based on food-chain pathways, a particularly important pathway for the land application of sewage sludge to agricultural lands. The critical application of sewage sludge to agricultural land is a grazing animal that is used for meat and animal products because of the bioaccumulation of PCBs through the food-chain.

Alternatives to National Numerical Limits

The Agency is proposing national numerical limits for the pollutants in Tables 1 and 2. There is no provision for case-by-case use of site-specific data to calculate alternative pollutant limits as there is for the disposal of sewage sludge in a monofill or for the incineration of sewage sludge. EPA adopted the approach of proposing only national numerical limits for the application of sewage sludge to agricultural lands because the Agency did not find that changes in site parameters made a significant difference in the numerical limits when it performed sensitivity analyses on the site parameters. As discussed earlier, EPA is limiting the use of site-specific data to parameters related to the physical conditions of the site (i.e., depth to ground water) when calculating case-by-case numerical limits. However, the parameters in the exposure assessment models could be varied.

The Agency recognizes that there could be significant differences in the numerical limits, depending on the type of crop grown. Since crops are generally rotated, the Agency did not believe that it was administratively feasible to establish alternative numerical limits for every possible combination of crops that might be grown on a particular field.

The approach that the Agency is proposing may impose numerical limits that are more stringent than necessary in some cases and less stringent, although fully protective, in others. Therefore, the Agency is particularly interested in public comment on the values used in the exposure assessment models for land application. EPA also solicits comment on whether or not the combination of assumptions used in the models and the requirements in today's proposal adequately protect public health and the environment without over-regulating and discouraging the beneficial use of sewage sludge to agricultural lands.

As discussed in Part XI of the preamble, the Agency estimates that 266 POTWs that apply sewage sludge to agricultural lands are likely to exceed the numerical limits in Tables 1 and 2.

Agricultural Land—Management Practices (§ 503.14) 50-Metric Ton Limitation

The proposed rule limits the application of sewage sludge to agricultural lands to 50 metric tons per hectare (20.24 metric tons per acre) or less, on a dry weight basis. This is equivalent to 250 metric tons of wet sludge per hectare (approximately 100 metric tons of sludge per acre), assuming a 20 percent solids content. There are two reasons for the 50-metric ton limitation. First the exposure assessment model cannot calculate pollutant limits above 50 metric tons per hectare. At 50 metric tons per hectare, the sludge starts to dominate the sludge-soil mass, and the model loses its predictive capability. Second, and equally important, the Agency believes that land application becomes a disposal, rather than a reuse practice, at rates over 50 dry metric tons per hectare.

Crop and Access Limitations

Section 503.14(b) requires that owners or operators of agricultural land to which sewage sludge has been applied meet the crop and access restrictions in § 503.52. These restrictions are to protect crops, animals, and people from pathogenic organisms.

EPA is proposing that sewage sludge applied to the land meet one of the three classes of pathogen reduction which are discussed in connection with Subpart F of the preamble. The class of pathogen reduction selected determines the rigor of the access and use restrictions.

For the Class A pathogen reduction requirements, treatment works must reduce all pathogenic organisms below levels of detection. These requirements must also be met if the treatment processes raise the temperature of the sewage sludge to 53 degrees Celsius and reduce the density of fecal coliforms and fecal streptococci to 100 per gram of volatile suspended solids. Because the risk of infection and disease from pathogenic organisms has thereby been eliminated, no access or use restrictions are placed on sewage sludge that meets the Class A pathogen requirements.

If, however, a treatment work elects to meet the Class B pathogen reduction requirements, public access to the land and the growth and harvesting of crops are restricted to eliminate any remaining potential for pathogenic infections. Class B pathogen reduction requirements specify the reductions in the densities of pathogenic bacteria and animal viruses per unit mass of volatile suspended solids. Time and natural processes are used to kill the protozoa and helminth ova.

Section 503.52(b)(4) prohibits public access to the agricultural land where the sewage sludge has been applied for a period of 12 consecutive months after the application of sewage sludge meeting the Class B pathogen reduction requirements. This does not preclude owners, operators, or employees from working in the fields, but it assumes that they will take the necessary precautions of washing before handling food and preventing the spread of any organisms from their clothing. Access restrictions are being imposed because the Agency could not assume that the general public would be aware of the need for such precautions. EPA is not specifying the way in which land owners or operators are to restrict public access, although local authorities may wish to do so. It is the Agency's belief that fencing or periodic signs should be sufficient in populated areas.

The use restrictions on sewage sludge meeting the Class B pathogen reduction requirements in § 503.52(b)(2) specify that no food crops with harvested parts above the ground and touching the sludge or the sludge-soil mixture may be grown for a period of 18 consecutive months after the application of sewage sludge. The restriction does not apply to crops, such as tomatoes, with harvested parts that do not come into contact with the sludge. Research indicates that 18 months should be sufficient for the attenuation of the pathogenic organisms.

Food crops with harvested parts below the ground, however, may not be grown for a period of 5 years, unless a demonstration can be made that there are no viable helminth ova in the soil. If such a demonstration is made, food crops with harvested portions below the ground may be grown 18 months after the application of the sewage sludge. EPA is proposing this restriction because some helminth ova have been shown to survive for as long as 5 years. Even though a demonstration can be made that there are no surviving helminth ova, 18 months is needed to allow time for natural processes to inactivate or destroy helminth ova and other pathogenic organisms.

Today's rule also proposes that animal feed crops not be harvested for a 30-day period after the application of the sewage sludge. During this time, wind and rain are likely to reduce the amount of sewage sludge that adheres to the feed crops.

In addition to the restrictions on food and animal feed crops, EPA is proposing that no animals be allowed to graze on agricultural lands for 30 days after the

applications of sewage sludge. The 30-day period allows time for the climatic conditions to integrate the sludge into the soil layer to prevent animals from physically removing the sludge from the fields or ingesting bacteria such as salmonella.

If the treatment work chooses to meet the Class C pathogen reduction requirements, more rigorous access, harvesting, and grazing restrictions are imposed. This is necessary because the reductions in the density of pathogenic bacteria and animal viruses are less stringent than those in the Class A or Class B requirements. Class C requirements specify that, except for those actually applying the sludge, access is prohibited for 12 months where sewage sludge meeting the Class C requirements has been applied.

The restrictions on growing food crops where sludge meeting Class C requirements is applied are the same as those for sludge meeting Class B requirements. However, the Agency is proposing to prohibit the harvesting of animal feed crops and the grazing of animals for 60 days after the application of sewage sludge.

Agronomic Rates

Section 503.14(c) includes a provision that sewage sludge may not be applied at rates in excess of the nitrogen requirement of the crop and at rates that would cause the excess nitrogen in the sewage sludge to leach to the ground water. The objective of this requirement is to optimize the removal of the nitrogen from the sewage sludge for optimal plant growth and to minimize nitrate contamination of ground water.

Sewage sludge contains three to five percent nitrogen. Nitrogen may be in the form of nitrogen, organic nitrogen, nitrogen as ammonia, and nitrogen nitrate. Organic nitrogen is the predominate form of nitrogen in sewage sludge and decomposes into ammonia and nitrate. Ammonia is the form of nitrogen absorbed by the plant. Ammonia not absorbed by the plant may volatilize or has the potential to oxidize and form nitrate, a water-soluble anion that moves readily downward into the soil profile. High levels of nitrate in drinking water supplies may result in health problems for both infants and livestock. The drinking water standard is 10 micrograms of nitrogen as nitrate per liter of water.

The nitrogen requirements of different plants can range from 50 to over 350 kilograms per hectare (45–312 pounds per acre). The nitrogen content of the sewage sludge, cropping patterns, plant-available nitrogen in the soil, supplemental fertilizers used, climatic conditions, and method of sewage sludge application also affect the amount of nitrogen that plants can effectively absorb from the sewage sludge.

Rather than establish a national numerical limit for nitrogen, the Agency is establishing a requirement that the appropriate limit be established based on site-specific land management practices. Guidance is available to assist in establishing the appropriate application rate from the "Process Design Manual—Land Application of Municipal Sludge" (Reference number 73) and from County Extension Service agents, State Extension soil fertility specialists, and State and local Soil Conservation Service agents.

10-Meter Set-Back

Section 503.14(e) prohibits the application of sewage sludge to land that is closer than 10 meters (30 feet) from a surface water source. EPA is proposing 10-meter set-back to reduce the potential for sewage sludge to reach the surface water in case of precipitation. In addition, the numerical limits established with the exposure assessment models are based on a 10-meter set-back from surface waters. Generally, however, States require a 100 to 200 foot set-back from surface water.

Wellhead Protection Areas

Other than the 10-meter set-back from a surface water source, EPA has not proposed locational criteria for the land application of sewage sludge. However, the Agency recommends that, in applying sewage sludge to the land, consideration be given to any Wellhead Protection Areas established pursuant to section 1428 of the Safe Drinking Water Act and any management strategies established by a State under such programs. The Wellhead Protection Program is designed to protect ground water that supplies wells and wellfields contributing water to public water supply systems. States may have established or may wish to establish other locational criteria consistent with their own Wellhead Protection Programs.

Other Management Practices

The Agency has not included provisions that require sewage sludge incorporation into the soil, soil testing for organic pollutants or metals, or achievement of a particular soil pH. Nor has the Agency included provision to limit the slope of the fields to which sewage sludge is applied. While these are sound management practices, EPA believes that its role is to establish standards which will ensure adequate protection of public health and the environment without specifying how individuals are to meet the standards. Frequently, States have specific requirements. Nine States require the incorporation of the sludge into the soil for new crops, 27 States have a soil pH requirement, 18 States require or conditionally require soil analysis, and 28 States have slope limits. Under the provision of today's proposal, States may continue to impose such requirements.

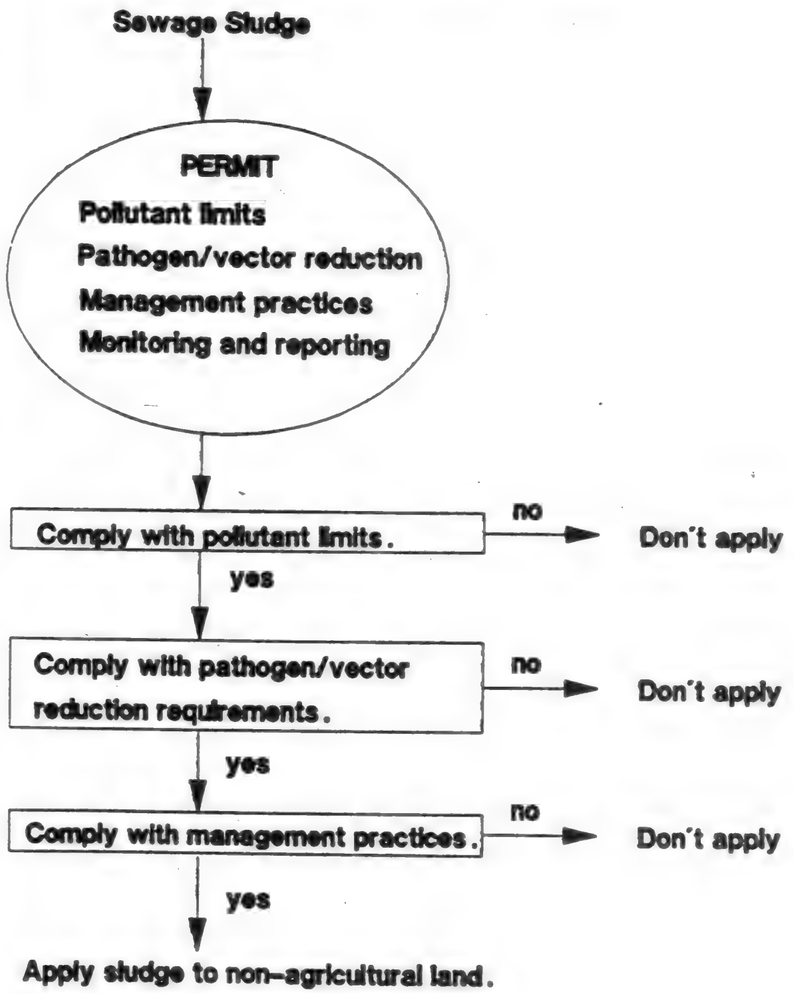
Non-Agricultural Land—Pollutant Limits (§ 503.15)

Figure IX–B.2 shows how the pollutant limits, pathogen and vector attraction reduction requirements, and management practices which determine whether sewage sludge may be applied to non-agricultural land.

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Figure IX–B.2

LAND APPLICATION (NON–AGRICULTURE)



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Table 3 of the proposed rule lists the maximum concentration of a pollutant permitted in sewage sludge applied to non-agricultural lands. As discussed earlier, these concentrations are derived from current sludge quantity (i.e. the 98th-percentile concentrations shown in the "40 City Study" data base) unless the exposure assessment model calculated a higher concentration. To determine which method would give a higher concentration, the Agency assumed that sewage sludge would be applied at the rate of 50 metric tons for 10 years. Since the model calculated higher pollutant limits for aldrin, chlordane, dieldrin, DDD, DDE, DDT, heptachlor, hexachlorobutadiene, lindane, PCBs, and toxaphene, the values for these pollutants are based on the model.

As discussed in Part XI of the preamble, the Agency estimates that 12 POTWs are likely to exceed the numerical limits in Table 3.

Non-Agricultural Land—Management Practices (§ 503.16) Prohibition on Food or Feed Crops

EPA established the numerical limits for non-agricultural lands on the premise that pollutants would not reach individuals through the food-chain. Therefore, § 503.16 prohibits growing food or grazing animals on land where sewage sludge meeting the numerical limits in Table 3 is applied. Five years after the final application of the sewage sludge, food and feed crops may be grown and animals may be grazed on the sludge-amended soils.

The Agency recognizes that neither EPA nor owners or lessees can prevent inadvertent grazing by wild animals on lands where sewage sludge is applied. However, precautions must be taken to preclude hunting or foraging for food. Such precautions may include the periodic posting of signs and or fencing. Many non-agricultural lands receive a one-time sewage sludge application to assist in the reclamation of the land for more productive purposes. These purposes may eventually include covering the land to agricultural or residential uses where food-chain crops are grown or farm animals are raised. Therefore, EPA is limiting the prohibition to a period when the sludge is being applied and for 5 years after the final application of sewage sludge. Five years should provide sufficient time for the soluble portion of the metals to leach from the root zones of any crops grown or to become sorbed to the soil matrix.

EPA is interested in comments on difficulties that the Agency may incur in implementing these provisions and the experiences of State and local agencies with similar restrictions.

Other Management Practices

Vegetative covers are required on non-agricultural lands receiving sewage sludge to retard the migration of the sludge off the land into surface water bodies.

The access restrictions for Class B and Class C pathogen reduction requirements are the same for non-agricultural lands as they are for agricultural lands. For Class A sludge applied to non-agricultural lands, the Agency is proposing to restrict access to the land until a vegetative cover has been established. The establishment of a vegetative cover should reduce the risk of tracking the sewage sludge off the site until natural processes have worked the sludge into the soil profile.

In addition to these management practices, § 503.16 contains requirements precluding the application of sewage sludge to the land at rates in excess of the nitrogen requirements of the vegetation. Furthermore, sewage sludge shall not be applied to land that is 10 meters (30 feet) or less from a surface water. The reasons for these requirements are the same as those discussed in relationship to agricultural land.

The Agency believes that the proposed approach for non-agricultural lands will adequately protect public health and the environment. The exposure assessment model suggests there is some potential for exceeding the environmental toxicity values in the case of copper, zinc, and lead. This could occur if sewage sludge containing the concentrations shown in Table 3 was applied to a hectare of land at the rate of 50 metric tons per hectare on a dry weight basis. In these circumstances, the model indicates that pollutant loadings of copper and zinc would exceed the phytotoxicity values for lettuce, while pollutant loadings of lead would exceed the toxicity value for predators eating soil biota. However, in conducting the analysis, the Agency used the most sensitive species and an extremely high application rate—50 metric tons of sewage sludge per hectare, on a dry weight basis (over 100 metric tons of sewage sludge per acre, assuming 20 percent solids). Therefore, the Agency believes that the actual potential for significant or widespread adverse environmental effects is very low. EPA has requested data on the appropriate environmental criteria that should be used in evaluating the effect of applying sewage sludge to non-agricultural lands and is collecting data on concentrations of pollutants currently in sewage sludge through the National Sewage Sludge Survey.

Pathogen and Vector Attraction Reduction (§ 503.17)

Sewage sludge may be applied to agricultural or non-agricultural land if the sewage sludge meets any of the pathogen reduction requirements and the applicable access and crop restrictions are imposed. The three classes of pathogen reduction are discussed in Subpart F of this part of the preamble. EPA is seeking public comment on whether the proposed approach adequately protects the public from direct contact with pathogenic organisms and from ingestion of the organisms when sewage sludge is used in the production of agricultural commodities. Thirty-five States have adopted the pathogen reduction requirements in 40 CFR Part 257 for application of sewage sludge to agricultural lands. The Agency is particularly interested in the views of these States on the additional flexibility included in today's proposal.

In addition to the pathogen reduction requirements, Subpart F of the rule requires that treatment works process their sludge to rid sewage sludge of components that attract flies, rodents, mosquitos, and birds—disease vectors. This is generally done through the reduction of vegetative bacteria. Subpart F describes the five ways in which treatment works may reduce the vector attraction characteristic of sewage sludge.

Monitoring, Record Keeping, and Reports §§ 503.81 and 503.82)

Treatment works that apply sewage sludge to agricultural land are to measure the concentration of the pollutants on Tables 1 and 2 in § 503.13 in accordance with the frequencies established for the design capacity of the treatment work and with the sampling and analysis procedures in § 503.81. In addition, treatment works are to monitor the sewage sludge for compliance with Class A, Class B, or Class C pathogen reduction requirements. Section 503.82(a)(1) states that unless vector attraction reduction is achieved by injection below the soil surface, the sewage sludge must be monitored for volatile solids, specific oxygen uptake rate (SOUR), pH, and moisture content.

The agreements between the treatment works and the distributor or land applier contain all the records specified in § 503.82(b)(1) that treatment works must keep and all of the information necessary for treatment works to comply with the reporting requirements in § 503.82(c)(1).

EPA is proposing that treatment works applying sewage sludge to agricultural lands keep the records for the life of the treatment work to ensure that the cumulative pollutant loading rate is not exceeded for a particular parcel of land receiving sewage sludge. The Agency solicits comment on this proposal and on other appropriate time periods or ways the objective could be met without requiring records to be kept for the life of the treatment work.

The monitoring, record keeping, and reports required in §§ 503.81 and 503.82 applicable to non-agricultural lands are similar to those required for agricultural lands. One difference is that treatment works do not have to keep track of annual and cumulative pollutant loading rates. Therefore, the reports need only be kept for 5 years. Five years is not only the record retention requirements in the State sludge management program regulation, but it is also the period of time after the final application of sewage sludge that crops intended for human consumption may not be grown or animals intended for human consumption may not be raised on the land. As is true for agricultural lands, the agreement between the treatment work and the distributor or applier contains all the information necessary to comply with §§ 503.81 and 503.82.

Distribution And Marketing (Subpart C)

Applicability (§ 503.20)

Approximately 106 facilities distribute and market 705,500 dry metric tons of sewage sludge (nine percent of the sewage sludge generated). Although 22 States have regulations or guidelines applicable to the distribution and marketing of sewage sludge, today's proposal is the first Federal regulation that establishes specific requirements for sewage sludge that is distributed and marketed.

Distribution and marketing of sewage sludge as a means of managing the disposal of sewage sludge is a highly beneficial practice and one the Agency encourages. Like land application, distribution and marketing employs the soil conditioning and fertilizer value of sewage sludge. In a typical distribution and marketing (D&M) program, sludge products are sold or distributed without charge to commercial growers, landscaping firms, parks, highway departments, cemeteries, and golf courses, as well as to the public for use on lawns, ornamentals, and gardens and as a potting medium. The distribution may be carried out by the treatment work or by an independent distributor. The distributor may collect the sewage sludge from several treatment works and process the sewage before bagging or distributing the final product in bulk form. Although the municipality may receive some return from the sale of sludge products, these revenues do not usually cover the costs of treating, distributing, and marketing the sludge product. Decisions on the market area take into account such factors as the cost of shipping, the demand for the product, and the elasticity of the demand. Most facilities distributing and marketing sewage sludge products find that the demand far exceeds the supply.

Sludge quality is the most important factor to consider in the distribution and marketing of sewage sludge. The sludge must have a low concentration of metals and must meet the Class A pathogen reduction requirements in Subpart F to be distributed and marketed. This may affect some small communities that air-dry their sludge and informally give it away.

Communities that do not have adequate procedures to control the quality of their product may have to improve their quality control procedures or use an alternative practice. Sludge quality control is crucial in protecting human health and the environment and in maintaining public acceptance of the D&M method of managing sewage sludge. The numerical limits, management practices, and other requirements in today's proposal are designed to ensure that only the best quality sludges are distributed and marketed, that adequate quality control procedures are implemented, and that instructions for the appropriate uses and associated quantities of the product are given clearly. These requirements are designed to protect human health and the environment when sewage sludge is distributed and marketed and to fully inform the public on the proper use of the product. The Agency is interested in suggestions, particularly from facilities that are already involved in the distribution and marketing of sewage sludge or are considering the practice, on ways to encourage the distribution and marketing of sewage sludge.

Subpart C applies to sewage sludge that is distributed and marketed, to treatment works that distribute and market their sewage sluge, to distributors of sewage sludge or sewage sludge products, and to those applying the sewage sludge or sewage sludge products. Treatment works will need to decide whether the requirements for the land application of sewage sludge to either agricultural lands or non-agricultural lands in Subpart B are applicable or whether the requirements in this subpart apply.

In part, this decision will depend on whether or not a treatment work can enter into an agreement with a sludge user (e.g., municipal agency) that can restrict access to areas where the sludge has been applied (as required in Subpart B). If this is the case, Subpart B may provide the treatment work with more flexibility. If neither an agreement nor access restrictions are possible, however, the Subpart C requirements must be met.

The Agency developed the requirements for the distribution and marketing of sewage sludge on the premise that the sludge would be used in home gardens. Based on that premise, the Agency made the following assumptions: (1) The treatment work could not control product use; (2) the Agency could not impose access or use restrictions; (3) the Agency could require that instructions on the proper use of the product accompany the product; and (4) users would comply with the use instructions.

Specialized Definitions (§503.21)

A key concept in this subpart is the distinction between sewage sludge and a sewage sludge product. The sewage sludge product, which is the material that is distributed and marketed, may be sewage sludge or a mixture of sewage sludge and other materials (e.g., woodchips or other bulking agents).

The numerical limits in Table 4 of the proposed rule are in the form of pollutant concentrations that correspond to a specific annual whole sludge application rate. An annual whole sludge application rate is the maximum amount of sewage sludge or sewage sludge product that can be applied to a unit of land in a year without exceeding the pollutant concentrations in Table 4. The addition of bulking agents to sewage sludge by distributors may lower pollutant concentrations in the sewage sludge product, thus allowing a higher application rate for the product than for the unaltered sludge.

Pollutant concentrations in sewage sludge may vary from one treatment work to another. Thus, before distributing the product, distributors must determine the mixture's final pollutant concentrations to calculate the annual product application rate for the product's label or accompanying informational sheet.

Distribution and Marketing—General Requirements (§503.22) Agreements

Only sewage sludge or sewage sludge products that meet the requirements in

Subpart C may be distributed and marketed. To ensure product quality control, the Agency is requiring treatment works that do not distribute the sewage sludge product to enter into agreements (e.g., a performance agreement, contract, or other legally binding compliance mechanism) with their distributors. As with sludge that is applied to agricultural or non-agricultural land, sludge that is distributed and marketed must be used in compliance with the standards established in Part C of the proposed rule, which are independently enforceable and do not depend on the existence of the contract relationship between the POTW and any distributor. Rather, the performance agreement spells out the distributor's obligation under these regulations. The performance agreement is to contain the following:

- Name and address of the distributor;
- Concentrations of the pollutants listed in Table 4 of 40 CFR 503.23 that are in the sewage sludge disbursed to the distributor;
- Appropriate annual whole sludge application rate of the sewage sludge disbursed by the treatment work;
- Appropriate annual product application rate of the product to be distributed and marketed;
- Documentation that the sewage sludge disbursed to the distributor is in compliance with the Class A pathogen reduction requirements in 40 CFR 503.52(a) and that it has been monitored for volatile solids, specific oxygen uptake rate (SOUR), pH, or moisture content in compliance with the vector reduction requirements in 40 CFR 503.53; and
- Facsimile of the label or information sheet containing the information required, in 40 CFR 503.24(c), that is to accompany the product.

The Agency is reviewing examples of agreements that treatment works have with their distributors. Suggestions are particularly welcome on ways to simplify the performance agreement while still assuring compliance with the requirements in Subpart C.

The requirements for the distribution and marketing of sewage sludge include a provision that recommended application rates not exceed the nitrogen requirements for the use of the product for the reasons explained in Subpart B. This will require those developing the labels and information sheets to carefully consider the uses of their product and the areas of the country where the product is to be distributed. Nitrogen requirements differ depending on the crop and climatic conditions.

Distribution And Marketing—National Pollutant Limits (§503.23)

Pollutants

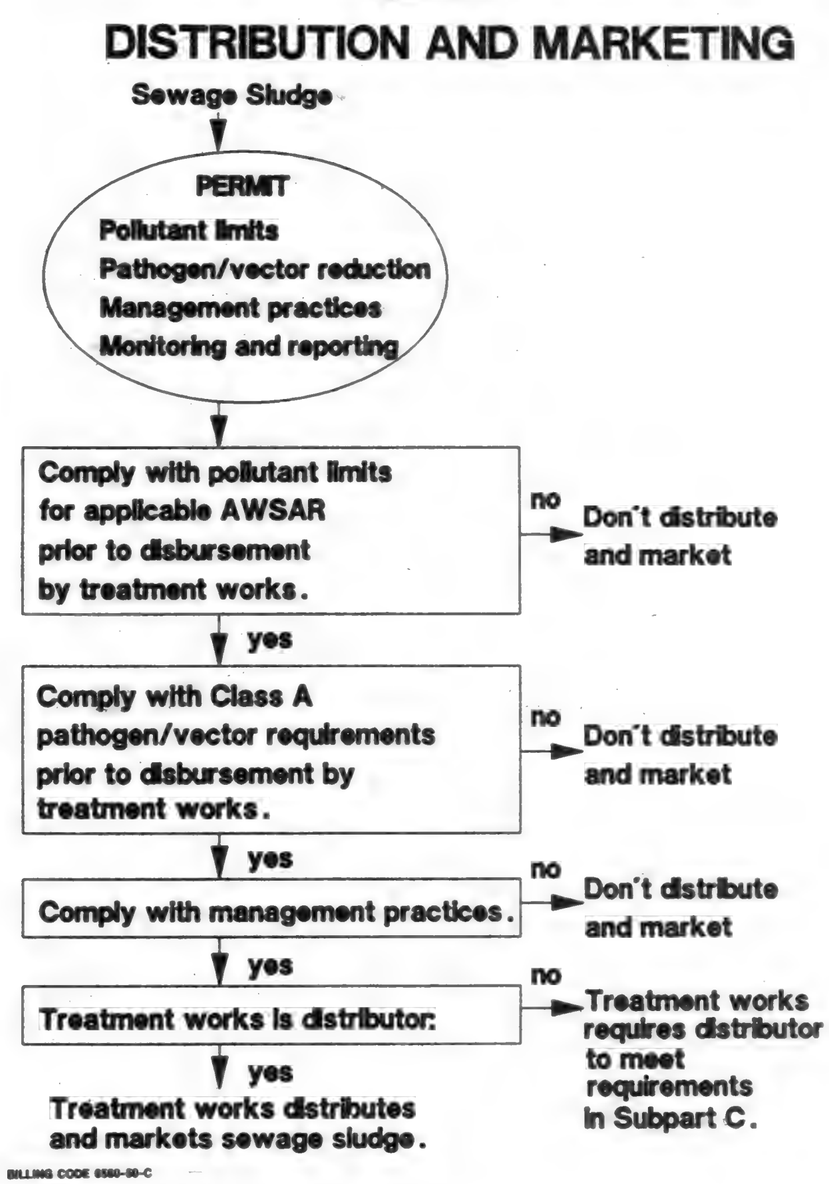
The Agency is proposing numeric limits for a total of 22 pollutants in sewage sludge that is distributed and marketed. Table III–1 lists the pollutants that were originally evaluated and Table III–2 lists the pollutants that do not interfere with the distribution and marketing of sewage sludge at the concentrations shown in the "40 City Study." The Agency determined that even under worst combination of conditions, cyanide, dimethyl nitrosamine, molybdenum, trichlorethylene, and pentachlorophenol do not interfere with sewage sludge products that are distributed and marketed. As shown in Table 12 of § 503.72, the Agency would authorize removal credits for these pollutants.

Table III–3 lists the pollutants that were originally evaluated, but for which numerical limits are not included in today's proposal due to insufficient data or because human health criteria have not been established. If sufficient information becomes available, these pollutants may be considered in a future rulemaking proceeding.

Figure IX–C.1 illustrates how the pollutant limits, pathogen and vector attraction reduction requirements, and management practices determine whether or not sewage sludge may be distributed and marketed. The requirements are discussed below.

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Figure IX–C.1



BILLING CODE 6560-50-C

National Limits

Table 4 of the rule lists the pollutants and the concentrations of the pollutants that may be in sewage sludge that is distributed and marketed. EPA is proposing only national numerical limits because it is not feasible to take into consideration site-specific parameters when sewage sludge is distributed and marketed.

The pollutant concentrations in Table 4 correspond to an annual whole sludge application rate. Before sludge leaves a treatment work, either for distribution to the public or for transfer to a distributor, the concentrations of the pollutants in Table 4 may not exceed the concentration for the applicable annual whole sludge application rate. Similarly, the distributor must ensure that the pollutant concentrations in the product distributed and marketed do not exceed the applicable concentrations for the annual product application rate in Table 4.

EPA established the pollutant concentrations using the exposure assessment model, which calculated an annual organic pollutant loading rate or a cumulative metal pollutant loading rate. The Agency developed equations and procedures to correlate the annual pollutant loading rate to a corresponding annual whole sludge application rate and a pollutant concentration in sludge. The correlation ensures that the concentration of the pollutants reaching the plant would not exceed phytotoxicity values when sewage sludge or the sewage sludge product is applied to the land. The correlation also ensures that the concentration of the pollutants reaching an individual who ingests a plant that absorbed the pollutants or who ingests the sludge-soil mixture would not exceed the human health criteria for the pollutants. The relationship between annual pollutant loading rate, the annual whole sludge application rate, and the pollutant concentration are shown below with the same equations that were discussed in the application of sewage sludge to agricultural lands:

$$APLR = C \times 0.001 \times AWSAR \quad (1)$$

$$C = \frac{APLR}{0.001 \times AWSAR} \quad (2)$$

Where:

APLR = Annual pollutant loading rate, in kilograms per hectare.
C = Pollutant concentration in sewage sludge, in milligrams per kilogram (dry weight basis).
AWSAR = Annual whole sludge application rate, in metric tons per hectare, per year (dry weight basis).
0.001 = Converts milligrams per kilogram times metric tons per hectare to kilograms per hectare.

A treatment work or a distributor would determine the pollutant concentration in the sewage sludge or sewage sludge product for the pollutants listed in Table 4 of the rule. When the actual pollutant concentration is between the values of the Table, the lower annual whole sludge application rate applies. The appropriate whole sludge application rate is determined by the lowest annual whole sludge application rate after calculating application rates for all of the pollutants. The pollutant limits that the treatment work must meet prior to distribution are those for the appropriate annual whole sludge application rate. The annual product application rate is determined in the same way. If the distributor does not add bulking agents to reduce pollutant concentrations in the sludge, the annual product application rate is the same as the annual whole sludge application rate. If bulking agents are added or the distributor mixes sludges of different qualities, the annual product application rate would be based on the actual pollutant concentrations in the mixture. Appendix B describes the procedure in detail and provides an example.

The annual whole sludge application rates for PCBs are limited to concentrations of 49 ppm. For reasons described elsewhere in this preamble, sewage sludge with PCB concentrations of 50 ppm or greater are regulated under TSCA and the implementing regulations in 40 CFR Part 761.

Sludge-Soil Mixture

In establishing the pollutant limits in Table 4, the Agency made certain critical assumptions. The first assumption is that the sewage sludge is mixed with the soil to a depth of 6 inches. The ratio of sewage sludge to soil becomes 1 to 200, if applied at a rate of 10 metric tons per hectare.

The Agency recognizes that homeowners fertilizing their lawns are unlikely to incorporate the sludge product into the soil unless establishing new lawns. Nevertheless, homeowners may water the lawn after applying the sludge product causing the pollutants to migrate into the soil profile in a short period of time. The Agency has no data on the sludge-to-soil ratio when sludge migrates into the soil profile through watering or natural processes and is requesting data and views on the premise that either the homeowner or natural processes will ensure that sludge and soil are mixed to a depth of 6 inches.

The assumption that the sludge mixes with soil to a depth of 6 inches is critical in evaluating the effect of sewage sludge on children who inadvertently ingest soil. Because the Agency assumes that children ingest a sludge-soil mixture (i.e., a diluted form of sludge), direct ingestion of sludge is no longer the pathway that determines the pollutant concentration for lead in distributed and marketed sludge. If the Agency had assumed that children ingested pure sludge, the model would have calculated a more stringent pollutant concentration for lead. However, since the label and informational sheets accompanying the product are to warn that children should not be allowed to ingest the product, the Agency believes that children will be adequately protected.

Pathways Of Exposure Eliminated For D&M Scenario

Another key assumption in the D&M scenario is that animals would not be raised for human consumption. In addition, the Agency assumed that homeowners would not apply a sewage sludge product in quantities sufficient to affect the ground water adversely. By eliminating the animal and ground-water exposure pathways, some pollutant concentrations in Table 4 become less stringent than those in the agricultural land application tables. Chlordane and toxaphene concentrations are less stringent in D&M than in agricultural land application because the ground-water pathway was eliminated. The limits for DDD/DDE/DDT, heptachlor, hexachlorobutadiene, lindane, PCBs, toxaphene, mercury, and selenium also are less stringent in D&M because the animal pathways of exposure were eliminated. Selenium is toxic to animals when they eat plants that have absorbed large quantities of the pollutant. The remaining pollutants bioaccumulate through the food-chain and, therefore, limit the pollutant concentration when sewage sludge is applied to agricultural lands.

The Agency is proposing to prohibit grazing or feeding animals intended for human consumption on pastures or crops to which sewage sludge that meets the D&M pollutant limits has been applied. As an alternative, the Agency could include the animal pathways of exposure, if there is sufficient indication that the D&M scenario should include raising animals for human consumption.

The Agency is interested in the views of commenters on the assumptions it used in defining the D&M scenario. Also the Agency would like to know if the apparent anomaly of less restrictive pollutant limits for the D&M practice, which is otherwise more tightly controlled than agricultural land application, will create problems for those involved in the distribution and marketing of sewage sludge.

Number of Applications

In establishing the numerical limits for the nine metals in Table 4, the Agency had to make assumptions on the number of years that sewage sludge would be applied to the land. The Agency selected 20 applications as a reasonable basis for its calculations. Because the total amount of metals applied to the soil is the critical parameter, it is not important whether the applications are consecutive or whether the applications occur biannually, etc. It is the total amount of metal that is applied to the land that is critical. If the Agency had limited the number of applications to less than 20, the concentration of the metal in the sludge could increase. Conversely, if the Agency had assumed that the number of applications would be greater than 20, the pollutant concentrations would have to decrease.

The Agency examined an alternative of requiring the distributor to specify the number of years on the product label and to use the specified number of years in calculating the limits for metals. This approach was rejected because a homeowner is unlikely to know whether a previous owner had used a sewage sluge product and, if so, how many applications were made. In addition, the proposed approach is simpler to implement. The Agency is soliciting comment on whether 20 years is an appropriate time period to use in establishing the numerical limits for metals.

The pollutants in Table 4 are among the pollutants that are eligible for removal credits when sewage sludge is distributed and marketed. POTWs whose sludge meets the pollutant limits in Table 4 may issue removal credits to their industrial users if the POTW is eligible to do so under the provisions in 40 CFR Part 403.

As discussed in Part XI, the Agency estimates that 35 of 106 facilities will fail to meet the pollutant limits in Table 4.

Distribution and Marketing—Management Practices (§ 503.24)

Labels and Information Sheets

EPA is proposing that sewage sludge products be labeled or accompanied by information on the proper use of the product. When there is a reasonable expectation that individuals will comply with label instructions, the Agency prefers to rely on the use of labels, rather than on licensing or prohibiting the application of a product. EPA has every reason to believe that the instructions included in § 503.24 will be followed.

If the sewage sludge is distributed in bulk form, an information sheet is to be given to the individual who receives the product. If the sewage sludge is distributed in bags or other containers, a label is to be affixed to the bag or container. In general, the label or information sheet is to contain information on the product's distributor, product contents, appropriate product uses, amount to be used, prohibited uses, and warnings. This type of information is on the labels of many sewage sludge products. Fourteen of the 22 States regulating the distribution and marketing of sewage sludge require product labels. Specifically, the labels and informational sheets are to include the following information:

- Name and address of the distributor of the product;
- Statement that the product is derived from sewage sludge;
- List of the pollutant concentrations in the product (at a minimum, the list of pollutants is to include the pollutants in Table 4 of 40 CFR 503.23, if they are present, and the nitrogen concentration of the product);
- Statement prohibiting the use of the product on frozen, snow-covered, or flooded land;
- Statement prohibiting use, except in accordance with the instructions;
- Instructions on the appropriate uses of the product;
- Rate at which the product may be applied for the stipulated uses;
- Warning to keep product out of reach of children;
- Statement prohibiting the grazing of animals raised for human consumption on land where the product is applied;
- Statement prohibiting the use of crops as feed for animals raised for human consumption; and
- Statement that compliance with the instructions on the label or information sheet will constitute compliance with section 405(e) of the CWA.

Provided the label instructions are followed, EPA believes that the pollutant concentrations in Table 4 adequately protect human health and the environment. Except for the pathways involving the raising of animals for human consumption, the drinking of ground water from wells that might become contaminated, and the inhalation of volatile organic compounds, EPA has examined all possible pathways through which a pollutant might reach an individual, a plant, or an animal. The numerical limits in Table 4 reflect the pathway that establishes the most stringent pollutant concentration.

A statement prohibiting the application of the product on frozen, snow-covered, or flooded land is specified to preclude product run-off into a nearby river, stream, or lake. Unlike the requirement in Subpart B, this is an absolute prohibition. It would be impossible for all who use the product to demonstrate that if the sewage sludge is applied to frozen snow-covered, or flood land, that the sewage sludge would not reach a river, stream, or lake.

Statements prohibiting animals raised for human consumption from grazing on pastures or feeding on crops grown on soil to which sludge has been applied are included because of the tendency of some of the pollutants to bioaccumulate in the food-chain. As mentioned above, the Agency is requesting comment the need to assume that animals will be raised for human consumption in the D&M scenario and to revise the numeric limits accordingly.

EPA is proposing that the labels include warnings to keep the product out of the reach of children. Over a period of time, eating significant amounts of undiluted sewage sludge out of the bag could adversely affect young children. As described elsewhere in the preamble, the Agency modeled inadvertent sludge-soil mixture ingestion in young children (ages 1 through 5). The Agency did not model the ingestion of pure sludge of young children because either the applier or natural processes are expected to mix the sludge product with the soil. Therefore, the Agency believes that the warning on the label should provide adequate protection for young children.

The Agency is requiring that the labels or information sheets state the proper amount of the sewage sludge to use because of (1) the requirement that sewage sludge not be applied in excess of the nitrogen requirements of the vegetation and (2) the correlation between the pollutant concentrations and the annual whole sludge or product application rate described above. The instructions should be in terms that an

average individual would understand. For example, if the product is authorized to be applied at an annual product application rate of 15 metric tons per hectare, the phrase, "307 pounds per thousand square feet per year", stated on the label or the information sheet, would be more understandable and more likely to be followed.

Products with higher pollutant concentrations must be applied at lower annual application rates. Questions have been raised whether a homeowner would follow a label if the rate is limited to one metric ton per hectare (i.e., 20.5 pounds per 1000 square feet) or even 5 metric tons per hectare (i.e., 102.4 pounds per 1000 square feet). Some believe that a homeowner might not apply the product at very low rates on the assumption that the sewage sludge would not provide sufficient nutrient and soil conditioning properties at such low rates. If the product were applied at higher rates, the application rate would exceed the authorized pollutant concentrations in Table 4. The Agency is seeking comment on whether instructions for lower application rates are likely to be followed and whether the pollutant concentrations should start at a higher annual whole sludge or product application rate, such as 10 metric tons per hectare (i.e., 205 pounds per 1000 square feet).

Pathogen and Vector Attraction Reduction (§ 503.25)

Sewage sludge that is distributed and marketed is likely to be handled by the general public without protective clothing or applied where public access cannot be restricted. In addition, fruits and vegetables are likely to be planted immediately after the product is applied to the soil. Therefore, all sewage sludge that is distributed and marketed must meet the Class A pathogen reduction requirement in § 503.32(a). As previously explained, Class A pathogen reduction requires that pathogenic bacteria, animal viruses, protozoa, and helminth ova be reduced below levels of detection. Class A requirements may also be met if the treatment processes raise the temperature of the sewage sludge to 50 degrees Celsius and reduce the fecal coliform and fecal streptococci in the treated sewage sludge to less than 100 per gram of volatile suspended solids. The vector attraction reduction requirements are outlined in § 503.33.

EPA is proposing that the treatment works treat the sludge to meet the requirements for Class A pathogen reduction and vector attraction reduction before distributing the sewage sludge to the public or to a distributor. The processes needed to comply with these requirements are part of the treatment works' processes and are the responsibility of the treatment works.

Monitoring, Record Keeping, and Reports 503.31 and 503.33)

Section 503.33 requires that prior to distributing or marketing their sewage sludge, treatment works determine from a representative sample of the sewage sludge the pollutant concentrations and nitrogen content in order to calculate the annual whole sludge application rate. Depending on the frequency with which treatment works distribute a stock pile of sewage sludge to the public or to distributors, the monitoring may take place at more frequent intervals than those in § 503.31(c). Therefore, treatment works may have to hold the sludge until the representative sample can be analyzed. If the distribution of sewage sludge takes place at less frequent intervals than specified in § 503.31(c), treatment works must monitor their sewage sludge at the intervals specified in § 503.31(c). Treatment works also must monitor the sewage sludge to determine compliance with Class A pathogen reduction and vector attraction reduction requirements prior to distribution.

If the treatment work is not the distributor, the distributor must monitor the product for the pollutants in Table 4. The distributor must then calculate the annual product application rate on the basis of the pollutant concentrations in the product and place the annual product application rate on the label or information sheet.

The performance agreement with the distributor contains the information identical to that which treatment works must keep to meet the record keeping requirements in § 503.33(b) and the reports required under § 503.33(c). If the treatment work distributes and markets the sewage sludge, the treatment work is likely to keep these records and will be required to do so under the provisions in §§ 503.33(b) and 503.33(c).

The Agency is proposing retention of records for 5 years, the record retention requirement included in the State program management regulation (40 CFR Part 501). The Agency also considered 3 years. Comment is solicited on the period of time that the Agency should require that treatment works retain records if their sewage sludge is distributed and marketed.

Monofills (Subpart D)

Applicability (§ 503.40)

The requirements contained in this proposal apply to landfills receiving only sewage sludge (monofills) and to any person who disposes of sewage sludge in a monofill. A monofill is an area of land (i.e., a landfill) that contains one or more units accepting only sewage sludge. These units are covered by suitable material at the end of each operating day or at more frequent intervals. EPA has identified 49 monofills (see Regulatory Impact Analysis) and estimates that just over 100,000 dry metric tons out of the approximately 8 million dry metric tons of the total sewage sludge generated, is disposed of in monofills.

A much larger percentage of the sewage sludge generated (i.e., 41 percent or 3.2 million dry metric tons) is disposed of with municipal solid waste in 6,700 MSWLFs. Sewage sludge typically represents five percent of the total waste in these landfills.

Under the joint authority of Sections 4004 and 4010 of RCRA and section 405(d) of the CWA, the Agency proposed requirements for MSWLFs that apply to sewage sludge that is placed in these landfills (see 53 FR 33314, August 30, 1988). The Agency adopted this approach for the reasons discussed in Subpart A of this part of the preamble. Treatment works using a MSWLF to dispose of their sewage sludge must ensure that their sewage is non-hazardous and passes the Paint Filter Liquid Test. They must also send their sewage sludge to State-permitted facilities. If these requirements are met, treatment works will be in compliance with section 405(e) of the CWA.

Specialized Definitions (§ 503.31)

Class I, Class II, And Class III Ground Water

In August 1984, EPA issued its Ground-Water Protection Strategy (Reference number 38) to set out a policy framework for enhancing ground-water protection efforts by EPA and the States. In December 1986, the Agency released draft "Guidelines for Ground-Water Classification Under the EPA Ground-Water Protection Strategy" (Reference number 53). The classification guidelines provide the procedures for implementing the Strategy and can be used in differentiating classes of ground water based on use, value to society, and vulnerability of the ground water to contamination. In developing the definitions of Class I, Class II, and Class III ground water in today's proposal, the Agency used the guidelines as the basis of the definitions.

Class I ground water is defined as an existing source of drinking water or unusually high value that is vulnerable to contamination and is either irreplaceable as a source of drinking water for substantial numbers of people or is ecologically vital (i.e., habitat for rare or endangered species). Class II ground water includes all non-Class I ground water that is currently used for, or is potentially available for, drinking water. Class III ground water is not a source of drinking water because the ground water has one or more of the following characteristics: (1) The concentration of total dissolved solids (TDS) is greater than or equal to 10,000 milligrams per liter (mg/1); (2) the concentration of pollutant(s) exceeds the drinking water standard(s) and cannot be cleaned-up using treatment methods reasonably employed in public water systems; and (3) the yields are insufficient to meet the needs of an average household (150 gallons per day).

As explained later in this subpart of the preamble, the pollutant limits and the way in which the pollutant limits are calculated depend on the class of ground water under the monofill. Therefore, in accordance with the definitions in § 503.31 (b), (c), and (d), owners or operators must document the class of ground water underlying the monofill.

In the Spring of 1988, the Agency conducted a probability analysis of the classes of ground water under the 49 current active monofills. For each monofill site, the analysis estimated the probability that a monofill would be located over a Class I, Class II, and Class III ground water (Reference number 54).

All ground water underlying the monofills was estimated to have an 82 percent probability of being designated as Class II. Fourteen monofills had a 16 to 18 percent probability of lying over ground water designated as Class I. Only two monofills had any probability of lying over ground water designated as Class III. These monofills would be over ground water that is not currently being used as a source of drinking water. The probability analysis was conducted as part of the Agency's effort to assess the impact of the rule on existing facilities. It was not intended to replace State and local site-specific classifications of the ground water underlying each sludge monofill.

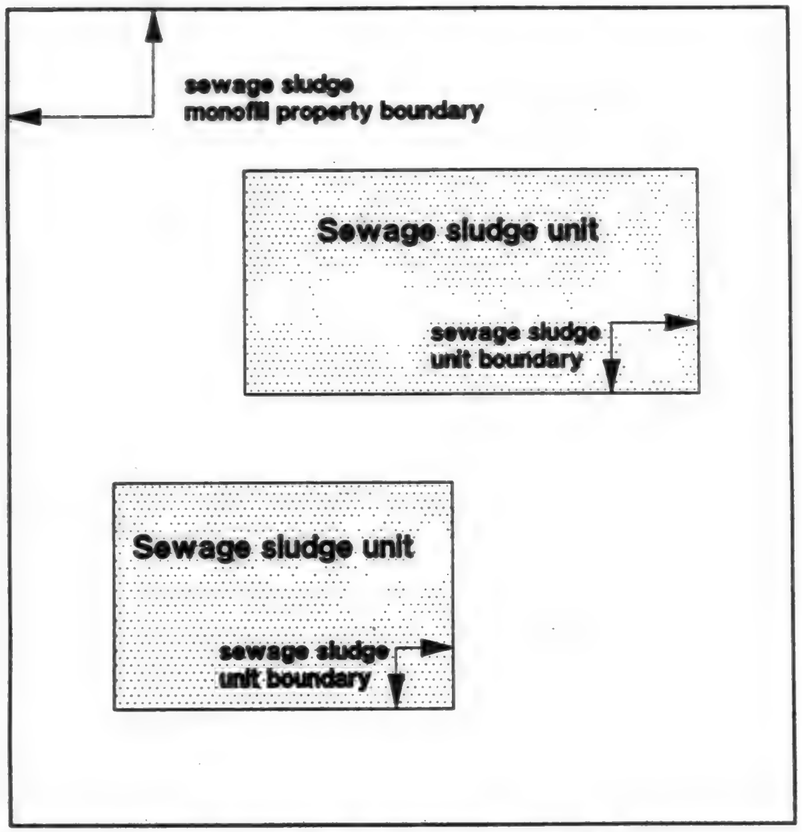
Lateral Expansion

The Agency has defined lateral expansion to mean a horizontal expansion of a sewage sludge unit boundary (see Figure IX–D.1). A sewage sludge unit is an area of land within a monofill in which only sewage sludge is placed and where the sewage sludge is covered with suitable material. Under today's proposal, lateral expansions are treated as new units and must meet the requirements applicable to new units. Any area of an existing unit that has not received waste by the effective date of this rule, but later receives waste is a lateral expansion.

BILLING CODE 6560-50-M

Figure IX-D.1

SEWAGE SLUDGE MONOFILL AND SEWAGE SLUDGE UNIT



Sewage sludge monofill

BILLING CODE 6560-50-C

General Requirements For Monofills (§ 503.32)

Section 503.32(a) prohibits the disposal of sewage sludge in a monofill unless the requirements of the subpart are met. In addition to the other requirements, owners or operators of monofills must obtain an NPDES permit for any discharge from the monofill (i.e., the collection and discharge of run-off from the monofill).

Requirements For Ground-Water Classification

EPA is proposing in § 503.32(c) that owners and operators document the class of ground water underlying the monofill, in accordance with the definitions of ground water discussed above. The documentation should be confirmed by the appropriate State authority as accurately representing one of the classes of ground water in § 503.31 (b), (c), or (d) and as consistent with the way that the State has classified or would classify the ground water.

"The Guidelines for Ground-Water Classification Under the EPA Ground-Water Protection Strategy" (Reference number 53), is an important resource to consult in determining the class of ground water under a monofill. Prior to initiating efforts to classify the ground water under a particular monofill, EPA recommends that owners and operators consult with the appropriate State agencies.

Threatened Or Endangered Species

Monofills should not be located where they would cause or contribute to the harm of a threatened or endangerd species of plant, fish, or wildlife. Care also should be taken to ensure that monofills do not result in the destruction or adverse modification of the critical habitat of such a species. This provision is carried forward from 40 CFR 257.3–2 to ensure that the disposal of sewage sludge is conducted in an environmentally responsible manner.

Requirements For Monofills In Floodplains

In § 503.32(e), EPA is proposing that new and existing monofills located in a 100-year floodplain shall not restrict the flow of the base flood, reduce the temporary water storage capacity of the floodplain, or result in a washout of solid waste that would pose a hazard to human health and the environment. Today's proposal would allow new and existing monofills to be located in a 100-year floodplain only if the monofills can be designed and operated to protect human health, wildlife, or land or water resources.

This requirement may be necessary to ensure adequate protection of human health and the environment from sewage sludge placed in monofills. Floods can damage or undermine the structural integrity of monofills causing release and dispersion of pollutants. Pollutant limitations were derived based upon an assumption of structural integrity of the monofill. Additionally, the model developed to derive limitations accounts for normal rainfall but does not account for the transport of pollutants resulting from the immersion of the monofill by a flood.

Disposal of sewage sludge in floodplains may have significant adverse impacts. If the monofill is not adequately protected from washout, wastes may be carried by flood waters from the site, causing water quality criteria to be exceeded downstream. Filling in the floodplain may restrict the flow of flood waters, causing greater flooding upstream, or may cause more rapid movement of flood waters downstream, resulting in higher flood levels, greater flood damage, and greater risk to human health and the environment.

Owners and operators should use flood insurance rate maps (FIRMS) developed by the Federal Emergency Management Agency (FEMA) to determine whether a unit is located in the 100-year floodplain. FEMA has developed maps for approximately 99 percent of the flood-prone communities in the United States. These maps can be obtained at no cost from the FEMA Flood Map Distribution Center, 6930 (A–F), San Tomas Road, Baltimore, Maryland, 21227–6227. In areas of the country where FIRMs are not available, other sources of information include the U.S. Army Corps of Engineers, the Soil Conservation Service, the National Oceanic and Atmospheric Administration, the U.S. Geologic Survey, the Bureau of Land Management, the Bureau of Reclamation, the Tennessee Valley Authority, and State and local flood control agencies.

If the monofill is expected to, or does, restrict the flow of the 100-year flood and the water storage capacity of the floodplain, the monofill may not be located in the floodplain and must close within one year of the date this rule is promulgated, in accordance with § 503.32(l).

These location and closure requirements should safeguard the 100-year flood flow and water storage capacity of the floodplain from problems related to the location of a monofill. Other Agency regulations allow activities and facilities in 100-year floodplains if precautions have been taken to prevent washout (see 40 CFR Part 257, 40 CFR Part 264, and proposed 40 CFR Part 258). The Agency is soliciting comment on its proposal to prohibit monofills in the 100-year floodplain if the monofill does, or is likely to, restrict the flow of a 100-year flood.

Requirements for Monofills Near Airports

In today's proposal, § 503.32(f) specifies appropriate distances between monofills and airports. Monofills located within 10,000 feet of airports handling turbine-powered aircraft and within 5,000 feet for airports handling aircraft powered by piston engines must not attract birds that could pose a hazard to aircraft. The proposed requirement is included because monofills may receive putrescible wastes which attract birds despite requirements for daily cover. The birds may present a significant risk of collisions with aircraft. The distances specified are designed to meet the requirements of the Federal Aviation Administration (FAA) Order 5200.5, "FAA Guidance Concerning Sanitary Landfills on or near Airports" (October 6, 1974). This states that solid waste disposal facilities "may be incompatible with safe flight operations" when located near an airport. The distances derived from FAA Order 5200.5 are based on the fact that more than 62 percent of all bird strikes occur below altitudes of 500 feet (150 meters) and that aircraft generally are below this altitude within the distances specified.

EPA recommends that owners and operators of monofills consult with the U.S. Fish and Wildlife Service or the appropriate State agency to determine whether specific facilities pose a hazard to aircraft from birds. Where appropriate, this determination should be made in consultation with the FAA, as well as with the owners and operators of near-by airports. Waste disposal within the specified distances may continue if the owner or operator can demonstrate that the operation does not increase the risk of bird and plane collisions.

Requirements for Monofills in Seismic Zones

Section 503.32(g) of today's proposal would require that sewage sludge units in a monofill located within a seismic zone be designed and built to resist the maximum ground motion. Seismic zones are defined as areas having a ground

motion greater than or equal to 0.10 gravities.

Maps depicting the potential seismic activity across the United States at a constant probability have been prepared (U.S. Geological Survey Open-File Reports 82-1033). The maps show that certain portions of the country have higher levels of seismic hazard than other areas. For example, portions of the eastern United States have higher levels of seismic hazard than portions of the western United States.

EPA is proposing that sewage sludge units of monofills located in seismic zones be built to withstand the maximum ground motion because ground motion could cause cracks in foundations or the collapse of structures. Studies indicate that ground motion resulting from earthquakes without associated surface faulting has been found in some cases to be two or three times that associated with quakes with faulting (Reference number 74). The appropriate peak ground acceleration on which to base the design of the sewage sludge unit may be determined from regional studies and site-specific analyses. Designs appropriate for the peak ground acceleration should be approved by EPA.

Requiring sewage sludge units of monofills to be built to withstand the maximum ground motion is consistent with other Agency rules. However, the Agency is soliciting comment on whether to prohibit the location of monofills in seismic zones.

Requirements for Landfills Near Holocene Faults

In § 503.32(h), EPA is proposing to prohibit the siting of sewage sludge units of monofills in locations within 60 meters (200 feet) of faults that have had displacement in Holocene time. The Holocene is a geologic time unit, known as an epoch, that extends from the end of the Pleistocene to the present (approximately the last 11,000 years.)

Earthquakes present a threat to public safety and welfare in many areas of the United States. Damage and loss of life in earthquakes occur from surface displacement along faults (surface faulting) and ground motion (shaking), as well as secondary effects of the shaking, such as ground or soil failure. Today's proposal is designed to protect facilities from deformation (i.e., bending and warping) and displacement (i.e., the relative movement of any two sides of a fault measured in any direction) of the earth's surface that occurs when the fault moves. If a facility is located near a fault, containment structures (i.e., liners, leachate collection systems, and final covers) may be inadequate to prevent release of sewage sludge during an earthquake. The Agency is proposing that monofills now located within 60 meters (200 feet) of a Holocene fault close, in accordance with § 503.32(l), within 1 year of promulgation of this rule.

Holocene faults are designated in this proposal because geologic evidence indicates that faults that have moved in recent times (i.e., during the last 11,000 years) are the ones most likely to move in the future. Faults that have moved in Holocene time are easier to identify and date in the field than older faults because this epoch produced recognizable geological deposits. The U.S. Geological Survey mapped the location of Holocene faults in the United States in 1978 (Reference number 74). Maps of identified Holocene faults in the United States also are available from the States of California and Nevada.

EPA is prohibiting sewage sludge units of monofills within 60 meters of a Holocene fault because studies suggest that most deformation takes place within this distance. The effects of deformation drop off rapidly as distance from the fault increases. The farther away the monofill is from the main fault, the less likely it will be to be affected by deformation. EPA's definition of "fault" (see § 503.31(i)) includes main, branch, or secondary faults. This definition includes faults that appear at the surface and those that do not have surface expression (including the small fault planes associated with surface faults). The 60-meter setback would be measured from any surface or subsurface fault, thus giving ample protection against the effects of deformation.

Today's proposal differs from the proposed requirements of 40 CFR 258.13 in that closure of existing MSWLFs is not required for those landfills located in fault areas, although new units are prohibited from being sited in these areas. EPA does not have sufficient information to justify allowing existing sewage sludge units to remain open while prohibiting the siting of new monofills or sewage sludge units in these areas.

Requirement For The Location Of Monofills In Stable Areas

EPA is proposing that monofills be located in areas having adequate support for the structural components of the sewage sludge units (§ 503.32(i)). Locating monofills in unstable areas is inappropriate because, if the soil subsides, damage to the monofill may cause extensive environmental damage and, potentially, adverse human health effects.

To determine if an area is unstable, the following factors should be considered: (1) Soil conditions that cause significant differential settling; (2) geologic or geomorphologic features such as areas prone to mass movement, Karst terrains, or fissures; (3) surface areas weakened by withdrawal of oil, gas, or water; and (4) other features that historically have indicated that protective measures cannot be designed to withstand a natural event such as a volcanic eruption. A detailed description of unstable areas is contained in the "Technical Support Document: Landfilling of Sewage Sludge" (Reference number 58).

EPA has not tried to delineate all potential unstable areas. Rather, EPA believes that owners or operators, in conjunction with the permitting authority and on a case-by-case basis, will make determinations on the stability of an area and on the appropriateness of an area for a monofill. The Agency has proposed a similar requirement for MSWLFs and is considering such a requirement in its revisions to the hazardous waste landfill regulation.

Section 503.32(l) requires closure of sewage sludge units of monofills that are located in unstable areas within 1 year. This differs from the proposed requirements for MSWLFs (40 CFR 258.15) in that closure of existing MSWLFs in unstable areas is required within 5 years of the effective date of rule. This period, however, may be extended by the State after considering the availability of alternative disposal capacity and the potential risk to human health and the environment. Such a consideration is allowed under the "practicable capability" language of RCRA, while the CWA has no such provision. In addition, the CWA requires compliance within 1 year of the effective date of the regulations. For these reasons, the requirements in today's rule differ from those in 40 CFR 258.15.

Prohibition of Monofills In Wetlands

Section 503.32(j) includes a provision to prohibit the location of sewage sludge units of monofills within the perimeter of wetland areas. Wetland areas are defined as those "areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include, but are not limited to, swamps, marshes, bogs, and similar areas" (see 40 CFR Part 230). Wetland maps are available from the U.S. Fish and Wildlife Service.

Constructing sewage sludge units, essentially a fill operation, has the potential for causing significant environmental damage in a wetland. Such damage cannot be restored because of the complexities and fragility of the wetland ecosystem. In 40 CFR Part 258, new facilities are allowed in wetlands provided very strict demonstrations are made. The Congressional directive in Section 4010 of RCRA, as amended, allows EPA to consider the "practicable capability" of owners and operators of facilities that may receive household hazardous waste or small quantity generator waste in determining the standards to be set. The CWA has no such statutory authority for the sewage sludge reuse and disposal standards.

The Agency has identified wetlands protection as a top priority and, since the proposal of the Part 258 requirements, has under consideration the prohibition of all landfill operations in wetlands. The Agency believes more appropriate locations may be found for the siting of monofills. Section 503.32(l) requires sewage sludge units of monofills located in wetlands to close within 1 year. We invite comment on the appropriateness of this prohibition.

Requirement For Water Collection And Discharge

Section 503.32(k) requires the collection and discharge of the volume of water from the 24-hour, 25-year storm event, in accordance with an applicable NPDES permit. The Agency is proposing this requirement to ensure that the pollutants in the runoff from sewage sludge units in a monofill are collected and, if appropriate, treated in accordance with an NPDES permit. Control of surface runoff may be accomplished by (1) minimizing water that enters the active sewage sludge units of the facility (run-on controls), (2) minimizing the size and number of active sewage sludge units in a monofill, (3) preventing the disposal of sludge with low solids content, and (4) collecting and managing the runoff. Today's proposal only requires the collection and management of the runoff.

The Agency chose the 25-year storm as the design parameter to be consistent with the requirements for hazardous waste landfills in 40 CFR 264.301(g) and the proposed requirement in 40 CFR 258.26(a)(2). Both of these provisions require the active portions of the landfill to be protected from the peak discharge of a 25-year storm. Twenty-seven States require runoff controls for their landfills.

EPA is requesting information on problems that communities may have encountered with locating monofills in areas subject to more frequent flooding (e.g., in 5- or 10-year floodplains) and whether the Agency should consider prohibitng or restricting the location of monofills in areas of frequent flooding.

The Agency also considered requiring run-on controls to prevent flow onto the active portion of the landfill during the peak discharge from a base flood, as is required in 40 CFR 258.26(a)(1). Such controls minimize both the generation of leachate and the volume of runoff which must be collected.

Rainfall and the generation of leachate is considered in the exposure assessment model for calculating the pollutant concentrations for disposing of sludge in monofills. Since leachate generation is already taken into the pollutant limits, a requirement for run-on controls is unnecessary. While run-on controls do minimize runoff, the decision on how to meet the standard is left to the owner or operator of each treatment work. EPA, therefore, rejected this requirement as redundant. Comments are requested on the advisability of requiring run-on controls in addition to controls of surface water runoff.

Closure Requirements

Section 503.32(l) requires that existing sewage sludge units located within 60 meters of a fault or stress fractures that have had displacement in Holocene time, located in unstable areas, or located in wetland areas close within 1 year of the effective date of this rule. This requirement is necessary because section 405(d)(2)(D) of the CWA requires compliance with these rules within 1 year of their promulgation.

Closure Plan

Section 503.32(m) of today's proposal requires that owners or operator prepare a written closure plan for each sewage sludge unit that will need to be closed. The closure plan is necessary to ensure that owners or operators have considered and planned for the necessary activities (e.g., the type of final cover, the cover maintenance, gas venting, and public access controls) to close the sewage sludge unit in a manner that will continue to protect human health and environment. The final cover must be designed to minimize volatilization of pollutants, settling, subsidence, erosion, or other events and prevent runoff from, or other damage to, the final cover. Although the Agency believes the numerical limits and management practices required in today's proposal are adequate to protect human health and the environment, the requirement for a closure plan ensures continued human health and environmental protection, particularly for monofills receiving sewage sludge before the promulgation of today's requirements.

Today's proposal for a closure plan requires that the final cover, gas venting, and public access controls be maintained for 10 years. This requirement is based in part on a recent study entitled "Pilot Scale Evaluation of Sludge Landfilling—Four Years of Operation" (Reference number 76). In that study, sewage sludge, sewage sludge mixed with municipal solid waste (MSW) and MSW itself were placed in simulated landfill cells and methane production was monitored for 3 years and seven months. The results indicate that gas production levels off by the end of the third year. However, because this experiment was a laboratory simulation and was not performed on an operating landfill, there is uncertainty as to the time required for methane gas production to practically cease in an operating landfill. To account for this uncertainty and to allow a safety factor, a 10-year period of methane monitoring was selected for the proposal. States may extend the period of time for post-closure care if it is deemed appropriate. The Agency is soliciting public comment on the 10-year time period and would be particularly interested in hearing from those States and municipalities with monofills.

Financial Assurance Requirements

Financial assurance requirements were considered, but rejected, for this rule. Financial assurance is primarily aimed at fulfilling the closure responsibilities under the closure plan and for corrective action in the event of contamination of ground water.

Today's rule is based on sewage sludge meeting the concentration limits for pollutants in the sludge and on monitoring the sewage sludge to comply with this requirement. Complying with the concentration limits will protect ground water from contamination during the period of active use and the period covered by the closure plan. Further, the costs of closure under the closure plan required at § 503.32(m) are expected to be minimal. For these reasons, the Agency did not believe the limited possibility that the pollutants would leach to the ground water in concentrations in excess of the drinking water standards warranted the imposition of an extensive burden of financial responsibility on owner or

operators. EPA invites comment on the advisability of adding financial assurance requirements to the monofilling portion of today's rule.

Wellhead Protection Areas

In addition to the location requirements discussed above, EPA recommends that owners and operators consider the location of any Wellhead Protection Areas established pursuant to section 1428 of the Safe Drinking Water Act and any management strategies established by a State under such programs. The Wellhead Protection Program is designed to protect ground water that supplies wells and wellfields that contribute drinking water to public water supply systems.

The Agency solicits comments whether State or local restrictions are adequately protective and comprehensive or market forces are adequate to obviate the need for any of these proposed Federal regulatory requirements. (For example, are there State regulations that would prevent inappropriate location of monofills in floodplains? Do existing insurance requirements accomplish the same objective as today's floodplains proposal?) If there are such existing requirements, to what extent is it appropriate for the Agency to rely on them in lieu of regulatory provisions in Part 503?

Monofills—National Pollutant Limits (§ 503.33)

Ground-Water Protection Standard

The objective in establishing the pollutant limits for the disposal of sewage sludge in monofills is to ensure that the pollutant concentrations reaching the ground water do not exceed the drinking water standard or, if no drinking water standard exists, other appropriate human health criteria. This ground-water protection standard is the basis for the Agency's determination that the pollutant limits are adequate to protect public health and the environment from any reasonably anticipated adverse effect of a pollutant.

The Agency used exposure assessment models to simulate the movement of the pollutant into and through the soil profile to the ground water. The models calculate a pollutant concentration that will not exceed an MCL at the point of compliance. For Class I ground water, the point of compliance is the point where the leachate enters the aquifer. For Class II and Class III ground water, the point of compliance is immediately below the property boundary or 150 meters from the point of entry to the aquifer, whichever is less.

The critical parameters in the model are those listed in Table 6 of the proposed rule. In selecting the parameters for development of the rule, the Agency made conservative, but reasonable, worst-case choices to assure an adequate level of protection. Therefore, these parameters tend to over-estimate the mobility of the pollutant out of the sludge matrix, thus reducing the time for the pollutant to reach the ground water.

For example, the model assumes that all pollutants eventually solubilize. However, there is evidence that the pollutants in a sludge matrix are strongly attached to the matrix and do not go into solution or readily leach to the ground water. This is particularly the case with sewage sludge, a by-product of wastewater treatment processes. Any readily soluble pollutant would be removed during treatment processes and contained in the effluent leaving the treatment works, rather than present in sewage sludge. The other critical parameters are discussed in Part IV of the preamble. This combination of reasonable worst-case assumptions used in the models has the effect of increasing the toxicity and potency of a pollutant, increasing its mobility to ground water, and intensifying its effect. Thus, this compounding of conservative factors introduces an added margin of safety in the calculation of the pollutant concentrations. On the basis of these analyses, it is the Agency's belief that the pollutant concentrations meet the ground water protection standard and adequately protect public health and the environment.

Today's proposal modifies and expands the approach used in the "Criteria For Classification Of Solid Waste Disposal Facilities and Practices" (see 40 CFR Part 257). § 257.3–4 establishes a general prohibition on the contamination of an underground drinking water source beyond the solid waste boundary or beyond an alternative boundary specified in accordance with the requirements in the rule. This generic standard was not accompanied by monitoring to ensure compliance.

Today's proposal replaces 40 CFR Part 257, as it applies to sewage sludge, with an approach that takes advantage of the information gathered in the past 10 years. It builds on the ground-water protection standard concept by establishing limits for the sludge on a pollutant-by-pollutant basis to ensure that the concentration of the pollutant reaching the ground water will not exceed the drinking water standard or another appropriate standard. In addition, by requiring the analysis of pollutant concentrations in the sewage sludge placed in a monofill, the Agency is providing a mechanism to ensure that the ground-water protection standard will not be exceeded. Therefore, in preparing today's proposal, the Agency has not carried over the generic ground-water protection standard in 40 CFR 257.3–4, but is requesting public comment on whether it should do so as an additional check on the efficacy of the pollutant-specific sewage sludge limitations.

A fundamental regulatory principle used in developing today's rule is pollution prevention. The Agency believes that it is more protective and equitable to prevent sewage sludge contamination by controlling pollutants at the source than it is to require clean-up of the contaminated ground water. Therefore, controlling the quality of the sludge placed in the monofill is an over-riding objective of today's standards.

This up-front sludge pollution prevention approach is different from the alternative approach taken in the proposed "Solid Waste Disposal Facility Criteria" (see 53 FR 33314, August 30, 1988). The proposed criteria revisions for MSWLFs use location, design, and operating criteria to achieve a ground-water protection performance standard. In addition to those criteria, the Agency also proposed that owners or operators of MSWLFs monitor the ground water and take corrective action when pollutants in the ground water exceed State-established trigger levels. This ground-water monitoring serves as a method of verifying the adequacy of the design and operation of a particular MSWLF. Ground-water monitoring and corrective action were mandated for the proposed criteria revisions by Section 4010 of RCRA "as necessary to detect contamination".

Consistent with the principle of pollution prevention, today's proposal requires that treatment works monitor the quality of the sludge before the sludge is placed in the monofill. The available scientific and technical information indicates that, if the pollutant concentrations do not exceed the limits in today's proposal, the pollutants are unlikely to migrate to the ground water, especially at levels that exceed the drinking water standards. In such circumstances, the Agency believes that requiring ground-water monitoring and corrective action, in addition to sludge testing, is not justified by the regulatory record.

Because of the characteristics of the sewage sludge that bind the pollutants into a sludge matrix, it is highly unlikely that any leaching of the pollutant to the ground would occur within the design life of 30 to 40 years for a monofill. The Agency is requesting public comment on the correctness of its approach. The Agency is also soliciting comment on whether ground-water monitoring would be an appropriate protective measure to back-stop the proposed pollutant specific sludge limitations, and on whether corrective action should be required if the monitoring indicates that ground-water protection standards have been exceeded.

The Agency further requests comment on the need for ground-water monitoring and corrective action for those who apply sewage sludge to agricultural and non-agricultural land and to those who dispose of sewage sludge at sewage sludge surface disposal sites. The Agency is also interested in opinions on the effects of such measures on the beneficial reuse of sewage sludge.

Pollutants

EPA is proposing numerical limits in the form of pollutant concentrations for 18 pollutants when sewage sludge is placed in monofills. Table III–1 lists the pollutants that were originally evaluated and Table III–2 lists the pollutants that do not interfere with the disposal of sewage sludge in monofills. Chlordane, chromium, and nickel were found not to interfere with the disposal of sewage in monofills over Class II or Class III ground water, but may adversely effect human health or the environment if the monofill is over Class I ground water. Since Class I ground water is irreplaceable as a source of drinking water, the Agency is proposing more stringent numerical limits for monofills over Class I ground water. This will be discussed in depth later in this subpart of the preamble.

When the Agency originally evaluated cyanide with the exposure assessment model, significant violations of the cyanide drinking water standard were predicted because of the following assumptions:

- All of the cyanide in sludge partitions to the leachate;
- No decay of cyanide occurs as the leachate percolates through the soil to the ground water; and
- No cyanide precipitates out of solution with metals once the leachate mixes with the ground water.

These assumptions were included in the model because no data were available to quantify the leaching, decay, or precipitation of cyanide compounds. However, under the anaerobic environment below landfills, cyanide would be expected to decompose into ammonia and methane.

EPA's Water Engineering Research Laboratory (WERL) investigated the potential for cyanide leaching from sewage sludge (Reference number 76). Sewage sludge samples were collected from POTWs in 12 cities in Ohio serving populations from 5,000 to 400,000. The 12 samples were split, with half the samples analyzed by WERL and half sent to an EPA contract laboratory. The contract laboratories extracted the samples using the zero head space extractor procedure outlined in the TCLP (40 CFR Part 261, Appendix II).

Standard methods were used to analyze the sludge samples and TCLP extracts for total cyanide, weak acid dissociable cyanide, and percent solids. The quality control checks for the analyses indicated good precision and excellent recovery of spiked cyanide.

The sludge samples contained concentrations of total cyanide ranging from 0.9 to 605 ppm but analyses showed no detectable levels of cyanide in any of the leachate samples. The study demonstrated that cyanide forms complexes with the metals in sewage sludge and thus does not readily leach from the sludge. From these results, EPA concluded that its assumption on the amount of cyanide leaching from the sludge matrix was in error. Therefore, the Agency is not proposing a numerical limit for cyanide in sewage sludge that is disposed of in a monofill.

Table III–3 lists pollutants for which the Agency has deferred proposing a numerical limit until sufficient data become available to use in its exposure assessment model. As noted earlier in the preamble, EPA has recently established human health criteria for methylethyl ketone and methylene chloride. Therefore, these two pollutants will be evaluated in future Part 503 rulemaking proceedings.

For EPA to establish a numerical limit for cobalt, an MCL or an acceptable daily intake value would be needed. For phenanthrene, the Agency needs data on the soil half-life of phenanthrene and an MCL or sufficient data to establish a risk specific dose or an RfD. The Agency is seeking data on these pollutants and is requesting that commenters send available data to facilitate the evaluation of these pollutants in future Part 503 rulemaking proceedings.

Bases of Polutant Limits

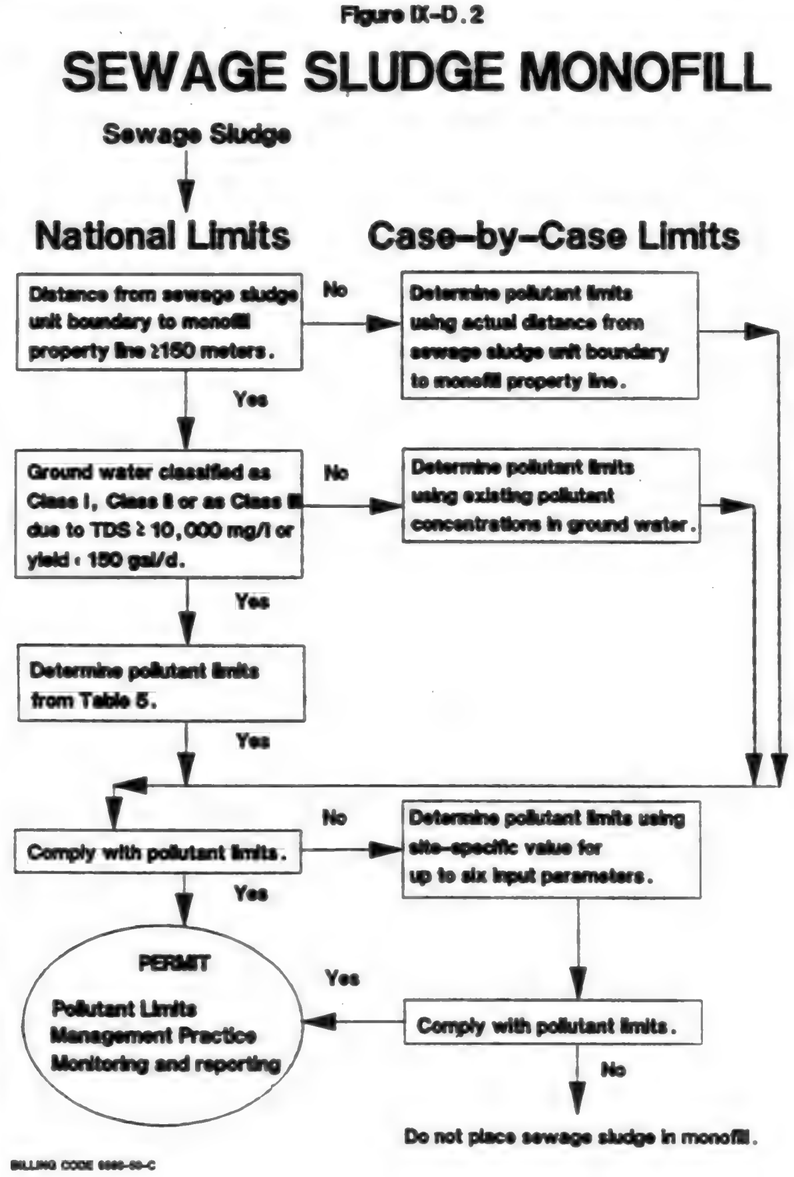
Table 5 in § 503.33 of the proposed rule lists the 18 pollutants for which the Agency is proposing numerical limits. These numerical limits are established so that the concentration of the pollutant will not exceed a human health criterion at the point of compliance for Class I ground water. The point of compliance is where the leachate enters the ground water. For Class II and Class III ground water, the point of compliance is immediately below the property boundary of the monofill or 150 meters from the point of entry, whichever is less. The human health criteria are: (1) MCLs established under the Safe Drinking Water Act, (2) a risk specific dose corresponding to an incremental carcinogenic risk level of 1×10^{-4} (one cancer incident in 10,000) for carcinogenic pollutants that have no MCL, or (3) an RfD for non-carcinogenic pollutants that have no MCL. For the reasons described earlier, EPA is using existing Agency standards as the human health criteria in the models. MCLs were used for arsenic, benzene, cadmium, copper, lead, lindane, mercury, trichloroethylene, and toxaphene. The Agency used a risk specific dose and an incremental carcinogenic risk level of 1×10^{-4} as the human health criteria for benzo(a)pyrene, bis(2-ethylhexyl)phthalate, chlordane, DDT/DDE/DDD, dimethylnitrosamine, and PCBs.

A key factor in establishing numerical limits for sewage sludge placed in monofills is the class of ground water under the monofill. As discussed earlier, owners and operators, in conjunction with the appropriate State agency, need to classify their ground water in accordance with the definitions in § 503.31 (b), (c), or (d)(1), (d)(2), or (d)(3).

Figure IX–D.2 shows the circumstances under which the national pollutant limits in § 503.33(a) apply and those under which the case-by-case pollutant limits in § 503.33(b) apply.

BILLING CODE 6560-50-M

Figure IX-D.2



BILLING CODE 6560-50-C

National Limits

EPA is proposing national numerical limits for the pollutants in Table 5 of § 503.33 of the proposal. These values apply to monofills where the boundaries of the sewage sludge units are 150 meters or more from the property boundary of the monofill. If the distances are less than 150 meters, EPA calculates case-by-case numerical limits.

The national numerical limits apply to monofills over Class I, Class II, and Class III ground water unless the ground water is not a source of drinking water because the background ground-water pollutant concentrations exceed the MCL or other human health criteria listed in Appendix A of the proposed rule. For monofills located over ground water in which the background pollutant concentrations exceed the values in Appendix A, the procedure in § 503.33(b) (2) is used to establish case-by-case numerical limits.

As shown in Table 5 of the rule, one set of values applies to monofills over Class I ground water. A different set of values applies to monofills over Class II ground water, as well as to those over Class III ground water that is not a source of drinking water because either TDS levels exceed 10,000 milligrams per liter or the yields are insufficient to supply the needs of an average household (i.e., 150 gallons per day).

Although Class III ground water is not used as a source of drinking water because of TDS or yield limitations, the Agency does not believe that Class III ground water should be allowed to deteriorate. At some future time, technology may become available to reduce TDS levels. Moreover, the need for ground water may be so acute in water scarce areas that concepts of the yields necessary to supply an average household (150 gallons per day) may not be valid.

If the pollutant concentrations of the sewage sludge to be disposed of in a monofill exceed the values in Table 5, the owner or operator of the monofill or treatment work (if different from that of the monofill), may submit data, in accordance with the procedures in § 503.33(b)(3), documenting that values other than those listed in Table 6 of the rule should be used in calculating a numerical limit using the EPA or other approved model. The discussion below describes how EPA will use site-specific data to calculate alternative pollutant concentrations.

Case-By-Case Limits

As discussed in Part VIII of the preamble, when EPA uses the exposure assessment models to establish numerical limits, alternative numerical limits may be established on a case-by-case basis when the physical parameters at a site differ from those used in the model. In developing the standards for monofills, EPA is proposing three circumstances under which the Agency would establish case-by-case numerical limits. Sections 503.33(b) (1) and (2) mandate the calculation of case-by-case numerical limits. Section 503.33(b)(3) allows case-by-case numerical limits when the values in Table 5 are exceeded. Each subparagraph of § 503.33(b) is discussed in turn below.

When a monofill has a sewage sludge unit that is less than 150 meters from the property boundary of the monofill, § 503.33(b)(1) requires EPA to calculate numerical limits for the pollutants in Table 5. The Agency would use the actual distance to the property boundary as the amount of dilution that would be factored into the EPA-approved exposure assessment model so that numerical limits will not exceed the human health criteria at the point of compliance (i.e., the property boundary). For the other parameters in the model, EPA will use the values in Table 6 unless the owner or operator can demonstrate that other site-specific values should be used. In the latter case, EPA will use the site-specific values in accordance with § 503.33(b)(3) discussed below.

Section 503.33(b)(2) requires EPA to calculate case-by-case numerical limits for those monofills over ground water categorized as Class III because the background ground water concentration of one or more pollutants exceeds the values in Appendix A of the rule. The values in Appendix A are the MCLs, the risk specific doses corresponding to an incremental carcinogenic risk level of 1×10^{-4}, or the RfDs, as appropriate. Owners or operators of monofills are to supply EPA with the background ground water concentration for those pollutants exceeding the values in Appendix A. EPA will then calculate a concentration for the pollutant in sewage sludge so that further degradation of the ground water will not occur because of the disposal of sewage sludge in a monofill. For other parameters in the model, EPA will use the values in Table 6 of the rule. For those pollutants that do not exceed the values in Appendix A, the values in Table 5 apply.

If the concentrations of one or more pollutants exceed the limits listed in Table 5, § 503.33(b)(3) allows the owner or operator to submit documentation that site-specific data, rather than the values shown in Table 6, should be used in calculating the pollutant concentrations for sewage sludge placed in the particular monofill. EPA will recalculate the numerical limits for all pollutants listed in Table 5 using the site-specific data that the owner or operator submits for the parameters in Table 6. If owners or operators choose not to submit data for one or more of the parameters in Table 6, EPA will use the values in Table 6.

The parameters included in Table 6 are depth to ground water, partition coefficient for the unsaturated zone, soil type, net ground-water recharge rate, ground-water electromotive potential (Eh), and ground-water pH. As discussed previously, these are the parameters that, if changed, make a significant difference in the allowable pollutant concentrations (i.e., the pollutant concentration in sewage sludge that does not exceed an MCL or other human health criterion at the point of compliance). The "Technical Support Document: Landfilling of Sewage Sludge" (Reference number 58) documents the values for the parameters in Table 6 and lists the sources for, and the ways in which owners and operators may determine, the site-specific values for these six parameters.

If one or more of the parameters in Table 6 is changed, EPA would calculate new numerical limits for all pollutants in Table 5. The reason for this approach is that a parameter may affect different pollutants in different ways. For example, if changes were made in ground-water pH or net ground-water Eh, the allowable pollutant concentration of some metals would increase while the allowable pollutant concentration of other metals would decrease. Since the model EPA used can calculate the numerical limits simultaneously, it is a simple and straight-forward procedure to recalculate all the numerical limits.

The rule allows site-specific modeling to derive the numerical concentration limits for sludge disposed of in monofills. The rule does not preclude the applicant from incorporating into the model the sites's artifical characteristics (e.g., a synthetic liner) in addition to its natural characteristics (e.g., a natural clay liner). The applicant is thus not prevented from incorporating the effect that containment measures would have on infiltration or recharge flow rates through the fill material and on the porosity and pollutant sorption beneath the fill. The numerical limits are thus capable of being modified to account for the effect of containment measures such as liners.

Nevertheless, the Agency's model was not developed with the specific intent of describing the behavior of liners or other containment measures. Furthermore, in its current form it cannot account for any deterioration in containment effectiveness that may occur over time. The Agency is soliciting comment on whether the model should be modified to account for the effect of liners and the assumptions that the Agency should use in doing so.

If the sewage sludge that a treatment work wishes to place in a monofill continues to exceed the numerical limits in Table 5 or the numerical limits that EPA calculated on a case-by-case basis, the treatment work must either reduce the concentration of the pollutants through more stringent local pretreatment limits or find an alternative way of managing the sewage sludge.

As discussed in Part XI of the preamble, the Agency estimates that all of the facilities are likely to exceed the numerical limits in Table 5. However, this estimate does not take into account the possibility that some sewage sludge may come into compliance when site-specific data is used to re-calculate numerical limits.

Lead

The concentration for lead in Table 5 of the proposal is based on the existing MCL of 50 (μg/l). The Agency has proposed a new MCL for lead (see 53 FR 31516, August 18, 1988) of 5 μg/l in water leaving the drinking water plant. Because lead frequently leaches from pipes, the Agency proposed that, if a specified number of "morning first draw" tap water samples exceed 10 μg/l, public water supply systems would be required to implement a State-approved treatment plan. Although EPA proposed a number of alternatives and received public comment on them, the Agency is seeking public comment today on whether 5 or 10 μg/l should be the basis of the numerical concentrations for monofills. The effect of using 5 or 10 μg/l lead limitations is shown below:

MCL	Class I ground water	Class II and III(1) and (3) ground water
5 μg/l	0.068	37.9 μg/l
10 μg/l	0.079	82.1 μg/l

The Agency requests public comment on the lead level it should use as the human health criterion.

Non-Degradation of Class III Ground Water

The Agency also seeks guidance on the approach it is proposing for Class III ground water that is not a drinking water source because the background ground-water concentration of one or more pollutants exceeds the values in Appendix A. Under the proposed approach, numerical limits would be set so that the background ground-water concentration of a pollutant would not be exceeded.

The Agency is proposing this approach because it does not want any further degradation of ground water in case future technological advances allow public treatment systems to treat polluted ground water economically. However, EPA recognizes that this approach is relatively more stringent for ground water that is not a source of drinking water than the approach for Class II ground water that is a current or potential source of drinking water or the approach for Class III ground water that is not a source of drinking because of TDS levels or yield limitations. For Class II ground water and for the other two categories of Class III ground water, EPA is establishing numerical limits to prevent pollutants from exceeding the MCL or other appropriate human health criteria. Potentially, pollutant levels in monofills located over high quality ground water (i.e., ground water with pollutant concentrations below the MCL or other human health criteria) could increase as long as the pollutant levels did not exceed the MCL or other appropriate human health criteria. The Agency is seeking public comment on whether the basis of the numerical limits for this type of Class III ground water should be some value other than background concentrations.

In addition, the Agency is soliciting public comment on the need to propose, and the basis of numerical limits for, a "non-degradation policy" for all ground water underlying a monofill. Such a policy would require owners or operators to analyze their ground water for background ground water concentrations, regardless of the class of ground water under the monofill. It would also require the Agency or the permitting authority to set case-by-case numerical limits for all monofills; no national limits would be established in the rule. Under a "non-degradation" policy for Class I and Class II ground water, numerical limits for monofills could be based on background concentration or a percentage over background concentration.

Monofills—Management Practices (§ 503.34)

Daily Cover Requirement

Today's proposal requires that suitable cover material be applied at the end of each operating day or at more frequent intervals, if necessary, to control disease vectors, gas venting, odors, and scavenging. Covering the wastes helps control disease vectors, rodents, and odors if putrescible wastes are placed in the monofill. Cover material also reduces air emissions from the monofill, lessens the risk and spread of fires, and reduces infiltration of rainwater, which, in turn, decreases leachate generation and potential surface and ground water contamination. As an additional benefit, daily cover enhances the appearance of an otherwise aesthetically displeasing site and may increase the number of beneficial uses for the site after completion of the filling activities. Cover is normally applied over sludge the same day that the sludge is placed in trenches. The soil excavated during trench construction provides the material that is used for daily cover.

EPA is not specifying the type or amount of cover material to be used, leaving the determination of "suitable material" and minimum cover depth up to the permitting authority. However, good engineering practice suggests that a 6-inch depth of compacted earthen material be used as cover material. Tests have shown that 6 inches of compacted sandy loam soil prevents fly emergence, and daily (or more frequent) cover has been shown to reduce the attraction of birds and to discourage rodents from burrowing into the waste (Reference number 77).

Nineteen States and territories have requirements for daily, intermediate, or final cover. Seven States require 6 inches of daily cover and one State requires 12 inches. One State requires 6 inches of daily cover over stabilized sludges and 2 feet over unstabilized sludges. Four other States require only that solid waste and sludge be covered at the end of each day.

Intermediate cover is specified by two States. One requires 24 inches of intermediate cover, while the other does not specify a depth for the required intermediate cover. Eight States specify a depth of final cover. Six States require 2 feet and two States require 3 feet (Reference number 52). In the closure plan, EPA requires owners or operators to provide a final cover and to maintain that final cover for 10 years. EPA requests comments on the daily cover requirement and whether there are

circumstances when EPA should exempt the requirement.

Methane Gas Monitoring

The decomposition of sewage sludge produces methane gas that, if allowed to accumulate, can migrate to monofill structures or nearby off site structures resulting in fire and explosions and potentially injuring or killing employees and occupants of nearby structures. EPA established an explosive gas criterion in 40 CFR 257.3–8(a) to regulate the concentration of methane in facility structures and at the property boundary. This requirement is expanded in today's proposal consistent with the proposal for MSWLFs.

Section 503.34(b) requires that the concentration of methane gas generated in a sewage sludge monofill shall not exceed 1.25 percent methane in any structure within the sewage sludge monofill and shall not exceed 5.0 percent methane at the property line of the sewage sludge monofill. Five percent methane is the lower explosive limit (LEL). This is the lowest percentage, by volume, of a mixture of explosive gases that will flame at 25 degrees Celsius (77 degrees Fahrenheit) at atmospheric sea level pressure. Today's proposal would require that the concentration of methane generated by the monofills not exceed 25 percent of the LEL (i.e., 1.25 percent methane) in facility structures (excluding gas control or recovery system components) and the LEL itself at the property boundary. EPA based its selection of the 25-percent criterion on a safety factor recognized by other Federal agencies as being appropriate for similar situations (Reference number 77). The Agency is not requiring the same 25-percent criterion at the property boundary, since gases at or below the LEL at the property boundary will become diffused before passing into any structure beyond the property boundary. Requiring that the LEL for methane not be exceeded at the property boundary protects against offsite explosions. The Agency believes that the limits in § 503.34(b) adequately protect public safety without being unduly restrictive.

For owners and operators to comply with the methane gas requirement, they will have to install (if they have not already done so) equipment to monitor methane continuously in the buildings and at the property boundary. This equipment must be maintained for 10 years after closure, as required by § 503.32(m)(3). Twenty-eight States have gas monitoring requirements for landfills.

Other Volatile Organic Compounds (VOCs)

By limiting the concentration of methane gas to 1.25 percent in buildings located in monofills, the Agency believes that other volatile organic compounds (VOCs), such as trichloroethylene, that may still be present in sewage sludge should not pose any human health problems. The sewage sludge placed in monofills will be digested to meet a minimum of Class B pathogen reduction requirements. Digestion raises the temperature of the sewage sludge and evaporates most, if not all, of the volatile portion of the organic compounds. Any remaining VOCs are unlikely to represent more than a tiny fraction of the gases (largely methane) produced by the degradation of the organic compounds in the monofill. Therefore, the Agency did not examine the potential for human health effects associated with volatile organic compounds from the uncovered surface of the monofill which might seep into facility structures during the working portion of the day. EPA believes that the evaporation of VOCs from the open portion of the monofill, rather than seepage, would likely pose a greater health risk. However, the Agency will carefully examine and consider evidence indicating that its assumptions are incorrect.

In its proposal for MSWLFs, EPA proposed to regulate other gases because these landfills appear to be a source of air pollutants (see 53 FR 33338, August 30, 1988). Gases of decomposition originate within a municipal landfill and vent to the atmosphere by vertical migration or lateral migration. Landfill gas is generated by chemical reactions and by microbial degradation of refuse materials into a variety of simpler compounds. Typically, landfill gas consists of nearly 50 percent methane, 50 percent carbon dioxide, and trace constituents of VOCs and other toxic constituents. Pollutants commonly found in gas at municipal landfills include vinyl chloride, benzene, trichloroethylene, and methylene chloride. Some of these compounds can create an unpleasant odor nuisance, while the VOCs and other toxic emissions can constitute a health hazard. This is in addition to the dangers from the explosive potential of methane. EPA decided to regulate air emissions from MSWLFs under section 111(b) of the Clean Air Act, for new landfills, and section 111(d) for existing landfills. Under section 111(d), EPA is preparing air emission guidelines that are to be adopted by the States. They will prepare plans for controlling existing sources of air emissions from municipal landfills, according to the EPA guidelines. The regulations will be based on both collecting and controlling landfill gas. EPA plans to propose air emission standards for these landfills in the near future.

EPA is uncertain that similar air pollution problems are prevalent at monofills. The Agency is soliciting data on any monofill air monitoring by States to assist in determining if regulation of air emissions from landfills should be expanded to include the 49 existing monofills and any new monofills.

Access Controls

Section 503.34(c) requires that access to monofills be controlled, as appropriate, to protect human health and the environment from methane gas hazards and other hazards that could result from disturbing the monofill cover. Access controls are also necessary to prevent illegal dumping and to keep unauthorized vehicular traffic from disturbing the monofill cover. Keeping trespassers off sludge landfills is important because the sludge may not be sufficiently stable to support their weight. Unauthorized access to monofills may be prevented by placing gates with locks at all entrances (access roads) to the site. Other provisions may need to be investigated on a site-by-site basis. EPA is allowing owners and operators the flexibility to implement systems appropriate for their facilities based on the characteristics of their sites, but signs and gates should be posted across access roads even in remote areas. Twenty States require access controls to landfills.

Pathogen Reduction Requirements (§ 503.35)

Section 503.35 requires that sludge placed in monofills meet, at a minimum, the Class B pathogen reduction requirements in § 503.52(b) of the rule. As explained elsewhere in the preamble, Class B pathogen reduction requirements include requirements for access and use restrictions. The access restrictions in Subpart D of today's proposal are more restrictive than those for the Class B pathogen reduction standards and therefore govern.

EPA is including pathogen reduction requirements for sewage sludge disposed of monofills even though the Agency is not aware of any incident in which illnesses have been attributed to pathogens from monofills. A review of the literature (see Reference number 78) indicates that, potentially, pathogens could pose a problem if monofills were

located in sandy soils. This conclusion was based on field studies of the transport and fate of viruses from septic tanks. The results of these studies suggest that enteroviruses can travel substantial distances. In one study, researchers added a single dose of vaccine poliovirus type 1 (derived from cell culture or from stools of recently vaccinated infants) to several septic tank systems. In all cases, the researchers found the viruses persisted for several months and reached the ground water or traveled to nearby bodies of water. Little virus removal occurred during transport through the unsaturated zone. Although no studies have been conducted on sewage sludge placed in monofills to determine if the viruses exhibit similar survival and mobility in a sludge matrix, the high organic content in sludge is unlikely to retard the movement of viruses.

Bacterial movement through the soil surface appears to be more restricted than that of viruses, although rainfall can increase bacterial migration by increasing infiltration rates. However, if bacteria are able to penetrate to the saturated zone, they appear capable of being transmitted significant distances in sandy and gravel soils, although significant reductions may occur from the travel distance. EPA believes that the requirement for daily cover and for the collection of runoff should reduce potential bacteria problems at monofills.

EPA's Office of Research and Development has undertaken an assessment of the potential pathogenic risks from monofills (see Reference number 79) and intends to prepare a quantitative pathogen risk assessment methodology. When the results of the assessment are complete, EPA will re-evaluate the need for additional requirements beyond those in the Class B requirements. However, without additional data on the concentration of pathogens in the leachate or the decay rate of pathogens in the leachate, the Agency will assume that no further decay of pathogens occurs subsequent to the Class B reduction. Such an assumption may not be entirely valid. Therefore, the Agency is requesting laboratory or field data that may assist it in predicting the fate of pathogens from monofills.

As an alternative to the pathogen reduction requirements, particularly for monofills located in sandy soils, the Agency could require owners or operators to add liners. The Agency is soliciting comment on the alternative of requiring liners instead of imposing pathogen reduction standards.

Monitoring, Record Keeping, and Reports (§ 503.81 and § 503.84)

Owners and operators of monofills are to measure the concentration of the pollutants listed in Table 5 at the frequencies established for the design capacity of the treatment work and with the sampling and analysis procedures in § 503.81. Owners and operators must also monitor the sewage sludge to demonstrate compliance with the Class B pathogen reduction requirements, continuously monitor the methane gas at the property boundary, and monitor the volume and concentration of the pollutants in runoff. Section 503.81(b) lists the analytical methods for sampling and analyzing the sewage sludge for the constituents in Table 5 and for pathogenic bacteria, animal viruses, fecal coliform, fecal streptococci, protozoa and helminth ova.

EPA is proposing that owners and operators keep the records required in § 503.84 for a period of 10 years. Ten years is the proposed period of time that the final cover is to be maintained, methane gas monitored, and access to the monofill restricted. The records to be kept and the reports to be submitted ensure that owners and operators of monofills will comply with the monitoring and verification requirements of the rule. Owners and operators must certify that the monofill:

- Does not cause or contribute to the harm of threatened or endangered species or their habitat, does not restrict the flow of a base flood, does not reduce the temporary water storage capacity of a floodplain, and does not present a hazard to human health, wildlife, or land or water resources;
- Does not attract birds that present a hazard to aircraft if the monofill is located either within 3,048 meters (10,000 feet) of aircraft runways used by turbine-powered aircraft or 1,524 meters (5,000 feet) of an airport runway used only by piston engine-powered aircraft;
- Is designed to withstand stress created by the maximum ground motion if the monofill is located in a siesmic zone;
- Is located 60 meters or more from a fault that has had displacement in Holocene time;
- Is located in areas that adequately support the structural components of the unit; and
- Is located outside the perimeter of wetland areas.

In addition, the monofill owner or operator must report the concentration of the pollutants in sewage sludge, level of pathogen reductions achieved, the record of the methane gas concentration in any structure within the monofill boundary and at the property boundary, the volume of runoff treated and discharged, and the concentration of the pollutants in the discharge.

These monitoring, record keeping, and reports relate to key elements within Subpart D and were described throughout the discussion of the requirements for monofills.

Surface Disposal Sites (Subpart E)

Applicability (§ 503.40)

The requirements contained in this proposal apply to surface disposal sites receiving only sewage sludge. The requirements also apply to any person who disposes of sewage sludge on a sewage sludge disposal site.

Specialized Definitions (§ 503.41)

Surface Disposal Sites

There are a number of different ways to apply sewage sludge to the land for reuse or disposal. Sewage sludge applied to agricultural and non-agricultural land, and the distribution and marketing of sewage sludge, generally is done to use the nutrient and soil conditioning properties of the sewage sludge. Applying sewage sludge to dedicated, non-agricultural land, however, is an exception. This practice does not use the nutrient and soil conditioning properties for a beneficial use. Rather, it is a disposal method that uses the soil to bind the metals and uses soil microorganisms, sunlight, and oxidation to destroy the organic matter in the sludge. Disposing of sewage sludge in monofills is also a method of disposal that does not use the beneficial characteristics of the sewage sludge.

The Agency has identified another disposal method that, while similar to some disposal methods and treatment practices, such as surface impoundments, is not strictly covered by those terms. In this method of disposal, sewage sludge is placed on the surface of the land in "piles". The Agency is calling this method of disposal, sewage sludge surface disposal.

The Agency defines a surface disposal site as an area of land on which only sewage sludge is placed for a period of one year or longer. Surface disposal sites do not have a vegetative or other cover. The one year time period is used to differentiate surface disposal from treatment or storage. As explained elsewhere in the preamble, today's proposal only covers final use or disposal methods, not treatment processes or storage.

In 1984, when the Agency initiated the Part 503 rulemaking process, surface disposal sites were considered surface impoundments that were used for treatment or interim storage, not use or disposal facilities. Subsequently, the Agency learned that some communities use surface impoundments for extended periods of time, suggesting that the practice is the community's method of disposal. When surface impoundments are used for the final disposal of sewage sludge, they are surface disposal sites and are subject to the CWA's requirements as a disposal method. The CWA requires the Agency to develop standards for all use or disposal methods that are adequate to protect human health and the environment from any adverse effect of each pollutant.

The Agency identified approximately 5,600 facilities that dispose of 476,500 dry metric tons of sewage sludge by "other" practices, some of which may include surface disposal sites to dispose of 200,000 dry metric tons of sewage sludge. The Agency believes that approximately 2,400 POTWs use surface disposal sites for the disposal of their sewage sludge.

Based on available information, the Agency believes that surface disposal sites generally are small, are located in rural areas on lands owned or controlled by local governments, and do not expose individuals to significant concentrations of pollutants. EPA is collecting additional information on the location, size, and the physical characteristics of surface disposal sites, as well as on the characteristics and quality of sewage sludge placed on, and the typical management practices associated with, surface disposal sites. This information will be used to evaluate the human health and environmental impacts of treatment works using surface disposal sites.

The Agency has initiated work to develop an exposure assessment model for surface disposal sites in much the same way it developed exposure assessment models for other methods of use and disposal. Where possible, the Agency will use existing equations to simulate the movement of pollutants from a surface disposal site into the air, ground water, and surface water. The Agency is soliciting suggestions on modifications that it should make to either the monofill or land application models to develop a surface disposal model.

After completing the exposure assessment model, the Agency will evaluate MEI and aggregate exposure from surface disposal sites. Information on the likely exposure of individuals and the aggregate effects of surface disposal sites, as well as comments on today's proposal, will be used in evaluating the appropriateness of the standards for sewage sludge disposed of on such sites.

For the purpose of regulation, the Agency has tried to distinguish surface disposal from land application to dedicated non-agricultural land and from disposal in monofills. Despite the similarities, there are differences between surface disposal and dedicated non-agricultural land application. On a surface disposal site, no vegetative cover is established on the sewage sludge. However, on dedicated non-agricultural land, a vegetative cover is established.

By the same token, if a surface disposal site is surrounded by a containment wall or if the sewage sludge is placed in a natural topographic depression or a man-made excavation, it resembles a monofill. Again, however, there are differences. One of the main differences is that no daily or final cover is established over the sewage sludge on a surface disposal site. Under the same conditions, surface disposal sites may also resemble sewage sludge treatment facilities such as pits, ponds, and lagoons. The distinguishing feature, though, is that a surface disposal site is the ultimate method of disposal, rather than part of the wastewater or sewage sludge treatment processes.

The Agency is soliciting comment on whether it should distinguish surface disposal from dedicated non-agricultural land application and from disposal in monofills. Comment is also solicited on the use of a 1-year time period to distinguish surface disposal from treatment or storage. Some treatment practices, such as composting, may take as long as 50 weeks. The Agency considered and is soliciting comment on regulating surface disposal sites, dedicated non-agricultural land, and monofills in a similar manner without regard to current practice. This approach would force all current practices to conform to the same standards (i.e., cover, etc.) based on the characteristics of the disposal method, rather than on the anticipated human health and environmental effects of the practice.

The remaining definitions in § 503.41 of the rule are identical to the definitions in § 503.31 for monofills.

General Requirements (§ 503.42)

The requirements for surface disposal sites are similar to those for non-agricultural land, except for the vegetative cover, and similar to those for monofills, except for the daily cover, the determination of the class of ground water under the site, and a closure plan. The Agency is not requiring that owners or operators of surface disposal sites have a vegetative or other cover on the sewage sludge because covers may not be necessary to protect human health and the environment.

The Agency is not requiring owners and operators to determine the class of ground water under their site because the pollutant limits for surface disposal sites are based on "current sludge quality" (i.e., the 98th-percentile pollutant concentration shown in the "40 City Study") and are not contingent on the class of ground water under the site, as they are for monofills.

The Agency is requesting public comment on requiring a closure plan for surface disposal sites and the requirements for the closure plan. For monofills, the Agency is requiring a final cover and, for 10 years, maintenance of the final cover, methane gas monitoring, and restrictions on public access. EPA requests opinions and information on the efficacy of these provisions, particularly since the Agency is not proposing a daily cover, and on the need for a closure plan when one is not required for dedicated non-agricultural land application.

EPA believes that the other general requirements for dedicated non-agricultural land and for monofills are applicable to surface disposal sites. Surface disposal sites should not threaten endangered species or their critical habitat, restrict the flow of a base flood, reduce the temporary water storage capacity of a floodplain, or present a hazard to human health, wildlife, or land or water resources due to a washout of the sewage sludge. In addition, if a surface disposal site is located near an airport, the sewage sludge disposed on the site should not pose a hazard to aircraft by attracting birds to the site.

EPA is proposing that sewage sludge surface disposal sites located in a seismic zone be designed to withstand the maximum ground level acceleration. The Agency further proposes that surface disposal sites be located 60 meters or more from a fault that has had displacement in Holocene time; located in areas where there is adequate support for the site; and located outside the perimeter of wetland areas. If surface disposal sites are located closer than 60 meters from a fault that has had displacement in Holocene time, located in unstable areas, or located in wetland areas, they would have to be closed within 1 year. These facilities must close within a year because Section 405(d)(2)(D) of the CWA requires compliance with the requirements of these rules within 1 year.

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The Agency is also requiring that owners or operators collect the volume of water from the 24-hour, 25-year storm event that runs off a surface disposal site and that they discharge the water in accordance with an applicable NPDES permit. This requirement precludes sewage sludge from washing out of the surface disposal site and endangering human health and environment.

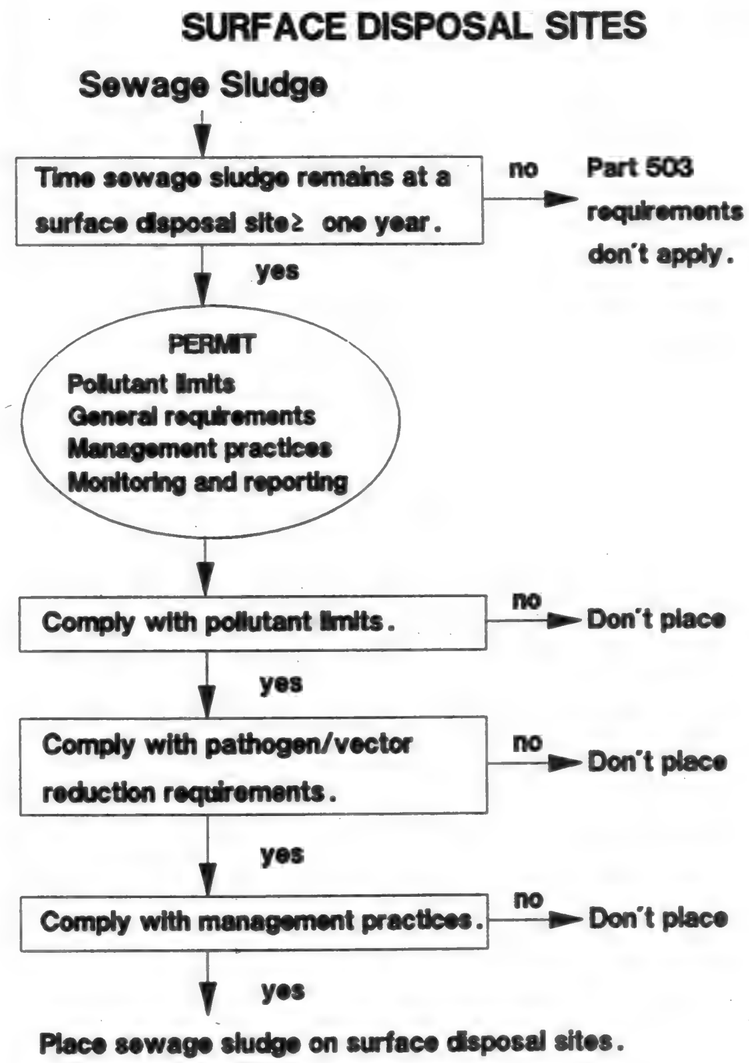
As proposed, the requirements for surface disposal sites apply to active sites still receiving sewage sludge. The Agency is seeking public comment on whether any or all of the requirements in § 503.42 should apply to sites that have not received sewage sludge for more than one year.

Surface Disposal Sites—Pollutant Limits (§ 503.43)

Figure IX-E.1 shows the key elements in determining whether or not sewage sludge may be disposed of on surface disposal sites.

BILLING CODE 6560-50-M

Figure IX-E.1



BILLING CODE 6560-50-C

The pollutant limits for sewage sludge placed on surface disposal sites are shown in Table 7 of the proposed rule. The Agency is proposing to use "current sludge quality" (i.e., the 98th-percentile pollutant concentrations) as the basis of the pollutant concentrations for surface disposal sites because the aggregate effects analysis is expected to show a low incidence of adverse human health effects from this disposal method. Since surface disposal sites are generally small and are located on municipal property away from population centers, few individuals are likely to ingest the pollutants from the sludge by drinking water from wells located near surface disposal sites or inhale the vapors from surface disposal sites. If these assumptions are incorrect, the Agency will propose an alternative approach based on the exposure assessment model that is currently under development.

The numerical limits for surface disposal sites correspond to the 98th-percentile pollutant concentrations unless the exposure assessment model calculates a higher pollutant concentration for monofills located over Class I ground water. In the latter case, the Agency is proposing the higher pollutant concentration calculated by the model. The higher pollutant concentrations are based on the stringent assumptions in the model for Class I ground water. In other words, the pollutant levels in the leachate cannot exceed the MCLs because the facility is located in a sandy soil immediately over the ground water. The pollutant concentrations for DDT/DDE/DDD (total), lindane, toxaphene, and benzo(a)pyrene are based on the monofill model rather than the 98th-percentile pollutant concentration.

There are two main reasons why the model calculates a higher pollutant concentration than the 98th-percentile concentration for these organic pollutants. The concentration values reported for organic pollutants in the "40 City Study" may not accurately reflect the actual concentrations in the sewage sludge. At the time the "40 City Study' data were collected, the analytical techniques used in the Study were not as sophisticated or precise as current techniques and they had higher limits of detection for ogranic pollutants. In effect, concentrations or organic pollutants were not detected. It is likely that the National Sewage Sludge Survey will find these compounds in sewage sludge. Even if these compounds are found, the models may still calculate a less stringent limit for DDT/DDE/DDD (total), lindane, and toxaphene because these are high molecular-weight, chlorinated organic pollutants that have a low solubility in water and, therefore, do not leach to the ground water. The models also may calculate a less stringent concentration for benzo(a)pyrene than the 98th-percentile concentration because the partition coefficient for benzo(a)pyrene is very high. This means that only a small portion of the pollutant goes into solution and leaches to the ground water.

Surface Disposal Sites—Management Practices (§ 503.44)

The requirement that owners or operators monitor methane gas is the same for surface disposal sites as for monofills. Methane gas forms during the decomposition of organic pollutants under the anaerobic conditions in the layer of sludge at the bottom of the surface disposal site and could accumulate. The Agency is proposing that owners or operators monitor for methane gas, either in buildings located within the boundary of the surface disposal site or at the property boundary, to protect against any potential accumulation to levels that could endanger public safety.

EPA is proposing that crops not be grown for human consumption on a surface disposal site, that vegetation growing on a surface disposal site not be fed to animals, and that animals raised for human consumption not be grazed on the vegetation. The reason for these requirements is that vegetation may spontaneously grow at surface disposal sites. If this occurs, care should be taken to ensure that animals do not graze on the vegetation and that individuals do not harvest the vegetation for subsequent feeding to animals or humans.

Access controls are to be erected to prevent unauthorized entry to the surface disposal site. This requirement is designed to protect the public from methane gas and from walking on an unstable surface. The access controls should also assist in guarding against any illegal dumping.

Pathogen And Vector Attraction Reduction Requirements (§ 503.45)

The Agency is proposing that sewage sludge placed in surface disposal sites meet at least the Class B pathogen reduction requirements to reduce the spead of pathogenic organisms from the surface disposal site. The basis of this requirement is the study, described in the discussion of monofills, that shows the migration of pathogenic organisms from septic tanks located in sandy soils. As in the case of monofills, the Agency is requesting comment on whether the pathogen reduction requirement for sewage sludge on surface disposal sites should be waived if a liner is installed. In addition, the Agency is requesting comment on whether it should allow Class C pathogen reduction for sewage sludge disposed of on surface disposal sites, as it does for dedicated non-agricultural lands.

EPA is requiring that sewage sludge disposed of on surface disposal sites meets one of the vector attraction reduction requirements in § 503.53. The Agency did not propose that sewage sludge placed in monofills meet the vector attraction reduction requirements because the sewage sludge is covered daily. A daily cover should provide sufficient protection against the attraction of vectors to the sewage sludge and the subsequent spread of pathogenic organisms from the monofill. However, the Agency is not proposing a similar daily cover provision for surface disposal sites and, therefore, believes that the vector attraction reduction requirements in § 503.53 are needed to reduce the attraction of vectors to the sewage sludge and the potential spread of pathogenic organisms from the surface disposal site. The vector attraction reduction requirement for surface disposal sites is the same as the requirement for dedicated non-agricultural land.

Monitoring, Record Keeping, And Report Requirements (§§ 503.81 and 503.85)

Owners and operators of surface disposal sites are to measure the concentration of the pollutants listed in Table 7 of the rule at the frequencies established for the design capacity of the treatment work and with the sampling and analysis procedures in § 503.81. Owners or operators must monitor the sewage sludge to ensure compliance with the Class A or Class B pathogen reduction requirements, monitor the methane gas at the property boundary, and monitor the volume and concentration of the pollutants in the runoff. Section 503.81(b) lists the analytical methods for these analyses.

EPA is proposing that the specified records be kept for 5 years, a requirement of the State program management regulation (40 CFR Part 501). Also under consideration is a record retention requirement of 3 years. The Agency is seeking public comment on the appropriate period of time treatment works should be required to retain the records for surface disposal sites.

The reports ensure that owners or operators of surface disposal sites will comply with the monitoring and verification requirements of the rule. In addition, owners or operators must certify that each surface disposal site:

- Does not cause or contribute to the harm of threatened or endangered species or their habitat, does not restrict the flow of a base flood, does not reduce the temporary water storage capacity of a flood plain, and does not present a hazard to human health, wildlife, or land or water resources;
- Does not attract birds that present a hazard to aircraft if the surface disposal site is located either within 3,048 meters (10,000 feet) of aircraft runways used by turbine-powered aircraft of 1,524 meters (5,000 feet) of an aircraft runway used only by piston engine-powered aircraft;
- Is designed to withstand stress created by the maximum recorded ground-level accelaration if the surface disposal site is located in a seismic zone;
- Is located 60 meters or more from a fault that has had displacement in Holocene time;
- Is located in areas that adequately support the structural components of the surface disposal site; and
- Is located outside the perimetur of a wetland area.

In addition, the owner or operator of each surface disposal site must report, at the same frequency specified for sewage sludge monitoring, the concentration of the pollutants in sewage sludge, the level of pathogen reduction achieved, the vector attraction reduction approach used, the record of the methane gas concentration in any structure within the surface disposal site boundary or at the property boundary, the volume of runoff treated and discharged, and the concentration of the pollutants in the runoff.

Pathogen And Vector Attraction Reduction Requirements (Subpart F)

Applicability And Scope (§ 503.50)

The pathogen reduction and vector attraction reduction requirements included in Subpart F pertain to sewage sludge that is applied to agricultural and non-agricultural land, distributed and marketed, or disposed of in monofills or on surface disposal sites. Pathogenic organisms in wastewater and sludge include bacteria, viruses, protozoa, and helminth ova and constitute one class of contaminants. These organisms can cause diseases, usually enteric diseases, through direct human contact with the organisms or through ingestion of an infected animal.

Pathogen bacteria and viruses occur in sewage. Based on a literature review, Table IX–F.1 lists those pathogenic organisms that (1) are associated with a high incidence of disease, (2) are found in high concentrations in sewage sludge, (3) exhibit resistance to environmental stresses, (4) can be detected with available methods, and (5) exhibit low infectious doses.

TABLE IX–F.1—PRIMARY PATHOGENS IN SEWAGE SLUDGE

Type	Organism	Disease
Bacteria	*Campylobacter jejuni*	Gastroenteritis.
	Escherichia coli (pathogenic strains)	Gastroenteritis.
	Salmonella sp.	Gastroenteritis, Enteric fever.
	Shigella sp.	Gastroenteritis.
	Vibrio cholerae	Cholera.
Viruses	Enteroviruses	
	Poliovirus	Gastroenteritis, meningitis, carditis central nervous system involvement, pneumonia.
	Coxsackievirus	Infectious hepatitis.
	Echovirus	
	Hepatitis A virus	
	Norwalk virus	Gastroenteritis.
	Norwalk-like viruses	Gastroenteritis.
	Reovirus	Respiratory infections, gastroenteritis.
	Rotavirus	Gastroenteritis, infant diarrhea.
Helminths	*Necator americanus*	Hookworm.
	Taenia sp.	Taeniasis (tapeworm).
	Toxocara sp.	Visceral larva migrans.
	Trichuris sp.	Ascariasis.
	Hymenolepis nana	Taeniasis.
Protozoans	*Toxoplasma gondi*	Toxoplasmosis.
	Balantidium coli	Balantidiasis.
	Entamoeba histolyca	Amebic dysentery.
	Giardia lamblia	Giardiasis.
	Cryptosporidium	Gastorenteritis.
Fungi	*Aspergillus fumigatus*	Aspergillosis or respiratory infections.

Source: Technical Support Document: Pathogens and Vectors. EPA, 1989.

Wastewater treatment processes remove pathogenic organisms from wastewater, not so much by destroying them as by concentrating them in the residual sludge streams. Because sludge volume is much smaller than wastewater volume, concentrations of pathogens on a volume basis are much higher in the sludge than in the original wastewater. The increased pathogen content of sludge makes it essential that the Agency require processing and other procedures that minimize exposure of humans and animals to infectious organisms in sludge.

Ideally, regulations designed to protect individuals from pathogenic organisms in sewage sludge take into consideration:

- The densities of specific pathogens of major public health significance contained in sewage sludge;
- The ability of specific wastewater and sludge treatment processes to reduce the concentrations of these pathogens;
- The survival or transport of pathogenic organisms in the environment; and
- The risk to humans ingesting a specific number of these pathogens.

However, research on the fate and pathogenicity of microorganisms in

sewage sludge is still under development. Therefore, the Agency has traditionally specified technology-based standards (i.e., processes that significantly reduce pathogens—PSRP—and processes that further reduce pathogens—PFRP). These treatment technologies are included in 40 CFR 257.3–6.

The Agency is gathering additional information on the survival and transport of pathogenic organisms in the environment and on the specific number of pathogenic organisms likely to cause an infection. This information will be used to develop a series of equations to simulate the movement of pathogenic organisms through the environment. These equations will be integrated into a model similar to the other exposure assessment models discussed in Part IV of the preamble. The model will (1) start with levels of pathogenic organisms usually seen in wastewater prior to treatment, (2) project the level of reduction attained by wastewater and sewage sludge treatment, and (3) calculate the movement, survival, and attenuation of the pathogenic organisms in the environment, as well as the risk of human disease.

In conjunction with the development of the model, the Agency is gathering information on the infectious dose of pathogenic organisms (i.e., the minimum number of bacteria, viruses, protozoa, or helminths necessary to cause an infectious dose in the host). In defining an infectious dose, the Agency will use a process similar to the way in which it establishes RfDs for non-carcinogenic pollutants. The numbers will likely be similar to an RfD (i.e., establishing a level such that the likelihood of developing an infectious case is very low). Once microbiological "human health criteria" are established for pathogenic organisms, the Agency will incorporate this information with data on survivability, transport, and climatic effects into a model to calculate the densities of pathogenic organisms in sewage sludge that can be applied to the land or disposed of in monofills or on surface disposal sites without infecting individuals.

Because more data are available on bacteria, the Agency anticipates modeling bacteria first, followed by viruses, protozoa, and helminth ova. Once the model and criteria are fully developed and have undergrone review by the Agency's Science Advisory Board, the Agency will publish the model and, if necessary, propose revisions in the Part 503 requirements.

Until the Agency develops microbiological human health criteria that link specific numbers of pathogenic organisms to an infectious dose, the Agency is basing today's proposal on the premise that pathogenic organisms must be below levels of detection or below specified levels of fecal coliforms and fecal streptococci/enterococci (indicator bacteria) to protect human health and the environment. To attain this standard, treatment works may use treatment processes alone (Class A, such as composting), or a combination of treatment processes and periods of time when access to and use of the land where sludge is applied are restricted to allow environmental exposure (sunlight and soil temperature) to kill the remaining pathogens (Class B and Class C). Less stringent treatment standards (Class B and Class C) are combined with more rigorous restrictions on access to the land and on growing and harvesting food and feed crops on sludge-amended soils. The combination of treatment standards and access and use restrictions should ensure that the densities of the remaining pathogenic organisms are sufficiently attenuated that the risk of human disease is negligible.

EPA is specifying reductions in pathogenic organisms and densities of indicator organisms that must be attained, rather than continuing to specify technologies that must be used, because of the difficulties in equating new processes to the documented processes (i.e., PSRP or PFRP). Without performance standards corresponding to a desired level of pathogen reduction or density of indicator organisms, manufacturers had difficulty in demonstrating that their technology was equivalent to the treatment process specified in 40 CFR 257.3–6. In 1985, the Agency established a Pathogen Equivalency Committee to review and assist the Agency in assigning new technologies to either PSRP or PFRP. However without performance standards, the Agency believes manufacturers still will encounter difficulties and be reluctant to invest in new technologies.

Today's performance standards are based on well-operated wastewater and sewage sludge treatment processes (see Reference number 78). Any process may be used for a particular class of pathogen reduction as long as the appropriate pathogenic organism reduction or density of indicator organisms is attained.

Another reason that the Agency is revising the requirements in 40 CFR 257.3–6 is to provide additional flexibility for small treatment works to meet the requirements in the rule. The two technologies specified in 40 CFR 257.3–6 (PSRP and PFRP) did not give sufficient flexibility to small treatment plants with processes that are not equivalent to PSRP to meet the requirements by increasing the access and use restrictions, rather than investing in significantly more costly processes. Therefore, the Agency is adding a third class of pathogen reduction/indicator organism densities that is combined with more rigorous access and use restrictions to provide additional opportunities for small treatment works to attain the performance standard.

The Agency is also revising the 40 CFR 256.3–6 requirements because of the growing concern about applying septage to the land. In 1979, when the 40 CFR Part 257 requirements were published, septage was considered to have been treated to a level equivalent to PSRP. Therefore, septage could be placed on the land as though it had been treated by PSRP. In today's proposal, septage is defined as sewage sludge. Therefore, septage collected and applied to the land or disposed of in monofills or on surface disposal sites would have to be monitored and meet the requirements for the appropriate class of pathogen reduction in the same manner as would any other sewage sludge that is generated or treated. The Agency recognizes that this way may require that septage haulers have their septage processed prior to applying the septage to the land. However, the Agency is unsure about the extent and magnitude of any disruptions that today's approach may cause. Public comments are requested on the impact of the proposed rule on the use and disposal of septage.

The Agency also is revising the approach used in 40 CFR 257.3–6 to separate the pathogen reduction/indicator organism density requirements from the vector attraction reduction requirements. The Agency is proposing (1) five ways to demonstrate that vectors would no longer be attracted to sewage sludge or (2) that sewage sludge be injected below the surface of the land. Except for ensuring that the vector attraction reduction is concurrent with or follows the Class A pathogen reduction processes (to preclude explosive regrowth of the pathogens), the Agency sees no merit in linking a particular vector attraction reduction option to a particular pathogen reduction performance standard.

Specialized Definitions (§ 503.51)

Aerobic Digestion

Digestion by aerobic processes is commonly used to stablize sewage sludge. Typically there is no attempt to control temperature, so temperatures ordinarily range from 10 to 30 degrees Celsius, depending on the daily weather conditions. If energy is conserved (e.g., by minimizing air flow and covering the digester), temperatures can increase to the thermophilic range (50 to 60 degrees Celsius). Nominal residence times range from 10 to 40 days. Volatile solids reductions, which indicate a reduction in the ability of the sludge to create odors and attract vectors, is increased by operating at higher temperatures and for longer residence times.

The three types of aerobic digestion processes are conventional semi-batch digestion, conventional (mesophilic) continuous digestion, and autoheated (thermophilic) continuous digestion. In the semi-batch operation, solids are pumped directly from the clarifier into the continually aerated digester. When the digester is full, aeration continues for an additional 2 to 3 weeks. The conventional continuous operation closely resembles the activated sludge process with a flow-through aerobic digester followed by a clarifier-thickener. Many conventional aerobic digesters are operated in the ambient temperature ranges. In the autoheated processes, sludge from the clarifiers is usually thickened to provide a digester feed with greater than four percent solids. In these digesters, thermophilic conditions (50 to 60 degrees Celsius) result from the exothermal heat of substrate oxidation.

Anaerobic Digestion

Anaerobic digestion is the degradation of microbiological organic substance in the absence of oxygen. Primary or secondary sludge is digested in an air-tight reactor for varying periods of time depending on the temperature.

The three basic types of anaerobic digestion are low-rate digestion, high-rate digestion, and two-stage digestion. In low-rate digestion, the sludge is unmixed in the reactor and the processes of sludge thickening and liquid solid separation are carried out simultaneously. In high-rate digestion, the sludge in the reactor is mixed and heated to speed up microbial processing of the sludge. High-rate reactors are operated at either mesophilic (30 to 38 degrees Celsius) or thermophilic (50 to 60 degrees Celsius) temperatures. High-rate reactors have shorter detention times than do low-rate reactors (i.e., 30 to 60 days for low-rate digesters versus 10 to 20 days for high-rate digesters). In the two-stage process, a high-rate digester is linked to a second digester, generally unmixed. The second digester primarily serves as a thickener.

Density of Microorganisms

The density of microorganisms per unit mass of volatile suspended solids is the number of microorganisms divided by the mass of volatile suspended solids in the sewage sludge. The number of microorganisms may be colony-forming units or most probable number of bacteria, plaque-forming units of viruses, or the actual number, by count, of either protozoan cysts or helminth ova.

The Agency is defining the density of microorganisms in terms of volatile suspended solids because these organisms are associated with volatile suspended solids (i.e., organic material) in the sewage sludge. The Agency invites comment on this approach.

Specific Oxygen Uptake Rate

Specific oxygen uptake rate (SOUR) is the rate at which bacteria consume oxygen in a liquid sewage sludge that has been treated in an aerobic process (i.e., mass of oxygen consumed per unit time, per unit mass of sewage sludge solids). A high SOUR indicates there is a large and active bacteria mass in the sewage sludge and the sewage sludge is likely to putrefy rapidly. A low SOUR indicates that the bacteria in the sewage sludge have consumed available food sources and the sewage sludge will not putrefy rapidly. The SOUR standard of 1 milligram of oxygen per hour, per gram of sewage sludge solids or less is used as one of the indicators that the treatment has met the vector attraction reduction requirements.

The SOUR standard is only appropriate for sewage sludge or compost that has undergone aerobic digestion and has a high proportion of aerobic bacteria. Therefore, untreated, limed, and anaerobically digested sewage sludge are not eligible to use this standard.

Volatile Suspended Solids

Volatile suspended solids is that portion of the total solids in sewage sludge that is removed when the sewage sludge is burned at 550 degrees Celsius in the presence of excess air. Microbiological densities are measured in terms of volatile suspended solids in the sewage sludge because these microbes are associated with the volatile suspended fecal material.

Pathogen Reduction Requirements (§ 503.52)

Section 503.52 proposes three classes of pathogen reduction to achieve the objective of reducing pathogenic organisms below levels of detection. EPA developed the three classes or levels of pathogen reduction (i.e., Class A, Class B, and Class C) to provide treatment works greater flexibility in reducing the risk of infection and disease from pathogens than was allowed in 40 CFR 257.3–6. Treatment works may meet the pathogen reduction requirement by treating the sewage sludge to the Class A performance standard. The requirement may also be met by treating the sewage sludge to a Class B or a Class C performance standard and by placing time restrictions on public access to the land where the sewage sludge is applied and placing time restrictions on growing and harvesting crops and grazing animals on that land. These access and use restrictions are not applicable to sewage sludge disposed of in monofills or on surface disposal sites because crops are not grown on monofills or surface disposal sites and because the access restrictions for these disposal practices are more stringent than the access restrictions for land application of sewage sludge.

Class A

Class A pathogen reduction is achieved by processing the sewage sludge. Generally, this will involve composting the sewage sludge or using other processes that increase the temperature of the sewage sludge to 50 to 60 degrees Celsius.

To achieve Class A reduction, the pathogenic bacteria, viruses, protozoa, and helminth ova in the sewage sludge must be reduced to below detectable limits. By requiring that bacteria, viruses (*Salmonella* sp.), protozoa, and helminth ova are all below levels of detection, the Agency believes that these organisms will not infect individuals or animals.

The proposed methods to be used in measuring each of these organisms are presented in § 503.51(b) and discussed later in the preamble. As part of that discussion the Agency is inviting comments on the methods.

An alternative requirement is presented in today's proposed rule for Class A pathogen reduction because of the difficulty in demonstrating that all four types of pathogens are below detectable limits. EPA is proposing that when the temperature of sewage sludge is raised (53 degrees Celsius for 5 days or 55 degrees Celsius for 3 days or 70 degrees Celsius for one-half hour) and the density of fecal coliforms and fecal streptococci (enterococci) per gram of volatile suspended solids are each equal to or less than 100, the Class A pathogenic reduction requirements are achieved.

Fecal coliforms and fecal streptococci are benign organisms present in fecal material. They are used as indicators of the presence of fecal material. If their densities are high, the risk of infectious levels of pathogenic organisms is also high. Agency data indicate that when coliform densities in processed sludge are low (100 per gram of volatile suspended solids or less), *Salmonella* are absent and when coliform densities are high, *Salmonella* are present (Reference number 78). Thermal processes are about as efficient in destroying pathogenic organisms as they are in destroying fecal indicators, but the fecal indicators are present in much higher densities. When the fecal indicators are reduced to very low values, the likelihood of pathogen survival is negligible. Research also shows that thermal processes must raise the temperature of the sludge to 53 degrees Celsius or above to ensure the destruction of helminth ova (*Ascaris* sp.) (Reference number 78). Other processes may reduce fecal indicator densities to low levels but may not reduce all of the pathogens in sewage sludge to acceptable levels. For example, ionizing radiation is more effective against bacteria than against viruses. For this reason, viruses may be present in the sewage sludge even though the fecal indicators are below the 100 gram level. Another example is chemical treatment of sewage sludge. Chemical treatment may reduce pathogenic bacteria and viruses, but may not reduce helminth ova because the ova are protected by a shell that may be impervious to chemicals. Therefore, measurement of fecal indicators may be used only when thermal processes raise the temperature of the sludge for the specified periods of time.

The Agency invites comments on applying the fecal indicator alternative only to processes that raise the temperature of the sewage sludge to at least 53 degrees Celsius and solicits data on the correlation of pathogens to fecal indicator organisms for other technologies. The Agency also requests comments on both the use of indicator organisms to measure pathogen reduction and on the use of the density of 100 per gram of volatile suspended solids value for fecal coliforms and fecal streptococci/enterococci. The Class A pathogen reduction must be completed prior to or must be concurrent with the processes that are used to meet the vector attraction reduction requirements (see § 503.52(a)(3)). The objective of this requirement is never to leave a sewage sludge that is required to meet Class A requirements nearly devoid of vegetative bacteria unless there is something present that inhibits bacterial growth. The inhibiting factor may be dryness, presence of certain chemicals, or presence of vegetative bacteria. If the Class A process that reduces pathogens follows the process for reducing vector attraction (for example, pasteurization after anaerobic digestion), vegetative bacteria are destroyed. Subsequent contamination by pathogenic bacteria could result in explosive regrowth. If the situation were reversed, the presence of nonpathogenic bacteria that caused the digestion and reduced the value of the sludge as an energy source would severely limit potential for explosive regrowth. This does not apply to Class B and Class C pathogen reduction because competitive bacterial organisms that hinder regrowth are present in the sewage sludge.

Since the Class A pathogen requirements reduce pathogenic organisms to levels unlikely to cause an infectious dose, the Agency is not imposing restrictions on access to or use of the land for any period of time. Access is restricted for non-agricultural lands until a vegetative cover is established, but only to keep individuals from sitting in or tracking sewage sludge off the field. Sewage sludge that is distributed and marketed must meet Class A pathogen reduction requirements. It is optional for other methods of use or disposal.

Class B

To reduce pathogenic organisms to safe levels, Class B pathogen reduction requirements use a combination of treatment and time restrictions on access to and use of land to which the sewage sludge is applied. The level of pathogenic organism reduction or the density of indicator organisms is based on well-operated treatment works that use primary settling, followed by activated sludge treatment and anaerobic digestion. For treatment works to achieve the Class B pathogen reductions, they must either demonstrate that the treatment processes reduce the average density of pathogenic bacteria and of viruses per unit mass of volatile suspended solids in the sludge two orders of magnitude lower than those densities in the incoming wastewater or demonstrate that the densities of each of the fecal indicator organisms is 6 $\log_{10}$ or less.

For example, if the influent to the treatment work shows that the average density of pathogenic bacteria per unit mass of volatile suspended solids is 1 million (10^6) and that the average density of viruses per unit mass of volatile suspended solids is 10,000 (10^4), after treatment, the processed sludge must show pathogenic bacteria densities of 10,000 (10^4) and virus densities of 100 (10^2) per unit mass of volatile suspended solids.

No requirements for reduction in protozoan cysts or helminth eggs are specified. Protozoan cysts are believed to be greatly reduced in numbers by sludge processing and even if they were not greatly reduced, their numbers are reduced through environmental exposure on land. Helminth eggs are not significantly reduced by processing and their densities decline slowly in the environment. The long period when growing food crops with the harvested portion below the ground is not allowed (5 years or 18 months if no viable helminth ova are found) and the 12-month period during which public access to the fields is restricted protect the public against possible ingestion of viable infective helminth eggs.

The test data that the Agency has on the reductions in pathogenic organisms are based on relative $\log_{10}$ reductions. The Agency found that absolute numbers varied significantly between facilities depending on the influent to the treatment work, the method used to measure the pathogenic organisms, and the investigator conducting the measurements. However, for fecal coliforms and fecal streptococci, the Agency does have data indicating that when treatment of the influent includes a well-operated physical or biological process and these processes are combined with alkali additions, chlorine additions, or storage of the sewage sludge, the log density of fecal coliforms and fecal streptococci each are 6.0 or less. Reductions in fecal indicators correlate well with reductions in pathogenic bacteria and viruses when a combination of processes is used to treat the influent and the sewage sludge. Current data also indicate that the logarithms of the densities of fecal coliforms and fecal streptococci in the influent to the treatment works do not vary significantly for different wastewater. For these reasons, the Agency believes an absolute value for fecal indicators can be used to indicate that the Class B pathogen reduction has been achieved. The Agency invites comments on this alternative requirement and on limiting the applicability of the requirement to the use of certain technologies. The Agency also solicits data on the correlation of fecal coliforms and fecal streptococci to pathogenic bacteria and viruses. The access and use restrictions discussed later in this section of the preamble also

apply when this alternative requirement is achieved.

EPA is proposing to state the standard in terms of the difference in log densities between the influent wastewater and the processed sludge. The Agency is using this approach to credit the wastewater treatment processes as part of the processes to reduce pathogenic organisms. The requirements in 40 CFR 257.3-6 only recognized processing of the sludge. However, some wastewater treatment processes are more effective than others in reducing pathogenic densities. Therefore, since the overall objective is to reduce the level of pathogenic organisms in the final sludge, the Agency now believes that treatment works using those wastewater treatment processes that are more effective in reducing pathogenic organisms should be credited for doing so.

Access And Use Restrictions—Class B

When the Class B treatment standards are met, some pathogenic bacteria and viruses remain. In addition, if protozoa and helminth ova are in the influent, they are likely to be in the sewage sludge. Therefore, as part of the Class B pathogen reduction requirements, EPA is imposing access and use restrictions to limit exposure to the sewage sludge and provide time for attenuation of the pathogenic organisms. The period of time EPA is proposing to limit access to and use of the land should be sufficient to minimize the risk of disease when individuals, plants, and animals come in contact with the sewage sludge.

The use restrictions for Class B reduction apply to agricultural land where sewage sludge is applied. The public access restrictions apply to both agricultural and non-agricultural land. The access restrictions do not apply to monofills and surface disposal sites because the access restrictions for these disposal methods are more rigorous. The access restrictions for monofills and surface disposal sites are designed to preclude public exposure to potentially toxic pollutants in the sewage sludge.

The first two Class B use restrictions are for food crops. Food crops that have harvested parts above the ground touching the sludge-soil mixture cannot be grown for 18 months after application of the sewage sludge. If the harvested parts are above the ground and do not touch the sewage sludge, there is no restriction on growing the crop. The 18-month period provides time for the sun's radiant energy and desiccation to inactivate helminth eggs that are the most resistant to environmental stress.

Food crops with harvested parts below the ground cannot be grown for a period of 5 years unless a demonstration is made that there are no viable helminth ova in the soil. Research results indicate that helminth ova survive in soils for as long as 4 years after application of the sewage sludge to the land, even though their survival rate is expected to be low (Reference number 79). At least 18 months is sufficient, however, to allow time for the inactivation of most of the helminth ova on the soil surface.

The third requirement is that feed crops may not be harvested for a period of 30 days after application of the sewage sludge. The restriction protects humans and animals from contact with the harvested product. The 30-day period allows wind action and rainfall to reduce the amount of sewage sludge that adheres to the crops. Thirty States have a similar restriction.

The fourth requirement restricts the grazing of animals on agricultural land for 30 days after application of the sewage sludge. This prevents animals from physically removing the sewage sludge from the fields where the sewage sludge was applied. The restriction also reduces the potential for infection of animals from bacterial diseases, such as salmonellosis, that can be transmitted to humans. Thirty days should provide sufficient time for rain and wind to remove most of the sludge from the plants and for the adverse environmental factors to cause pathogen die-off.

The Class B access restriction further prevents access by the uninformed public to the land where the sewage sludge is applied for 12 consecutive months. Agricultural workers and personnel who apply the sewage sludge to agricultural and non-agricultural land are exempt from the restriction. Twelve months is fully protective against viruses and bacteria and will provide protection against helminths. The time restriction for public access is less than the time restriction for growing crops because the risk of infection is less from walking or sitting on the land than it is from ingesting food crops grown on the sludge-amended soil.

The time periods that are in today's proposal are based on research results and on experience discussed in the "Technical Support Document: Pathogens/Vectors" (Reference number 78). The Agency invites comments on these time periods and on the types of activities that are restricted.

Class C

Class C pathogen reduction requirements and the densities of indicator organisms are based on the performance of treatment works that have aerobic treatment processes with long detention times and no primary settling processes. The Class C reductions in pathogenic organisms or densities of fecal indicator organisms are slightly less stringent than the Class B requirements. Therefore, the Class C access and use restrictions are more stringent than the Class B restrictions.

Class C pathogen reduction is achieved when processes reduce the density of bacteria and animal viruses per unit of volatile suspended solids in the sludge 1.5 orders of magnitude lower than those densities in the incoming wastewater. The Agency invites comment on the 1.5 logarithmic reduction for Class C.

Treatment works may also demonstrate that the density of fecal coliforms in sewage sludge does not exceed 6.3 $\log_{10}$ or less per gram of volatile suspended solids and the density of fecal streptococci (enterococci) in the sewage sludge does not exceed 6.7 $\log_{10}$ or less per gram of volatile suspended solids prior to disposal. The Agency also invites comments on these values.

Access and Use Restrictions—Class C

The further reduction in pathogenic bacteria and animal viruses and the reduction in protozoa cyst and helminth ova for Class C pathogen reduction are achieved through the access and use restrictions. These restrictions allow the protozoa and helminth ova to be reduced by natural processes. Crops, animals, and humans are protected by the access and use restrictions on the land where the sewage sludge is applied.

The first two Class C use restrictions are the same as the first two Class B use restrictions. They restrict growing food crops with harvested parts that are above the ground and that touch the sludge-soil mixture for a period of 18 months. Restrictions are also placed on growing crops with harvested parts below the ground for a period of 5 years, unless a demonstration is made to show that helminth ova are not present in the soil. If that demonstration is made, food crops with harvested parts below ground may be grown after 18 months.

The third and fourth requirements restrict the harvesting of feed crops for 60 days and the grazing of animals for 60 days. Both of these requirements are 30 days longer than the Class B restriction. This additional time is being imposed because of the less stringent logarithmic reduction in pathogenic organisms and the less stringent pathogenic densities for indicator organisms.

The access restriction for Class C pathogen reduction restricts access to

all personnel, except for those applying the sewage sludge, for 12 months. The Class B access requirement only restricts access to the public for 12 months. The Class C access requirement is more stringent because of the less stringent logarithmic reduction in pathogenic organisms for Class C requirements. The Agency requests comment on this approach.

Vector Attraction Reduction (§ 503.53)

Vectors such as rodents, flies, and mosquitoes play an important role in the spread of pathogenic diseases. To break that link, treatment works are to eliminate the characteristics of sewage sludge that attract vectors. Untreated sewage sludge is a high energy food source that can nourish insect larvae and provide food for vectors. Putrescible organic compounds, including organic amines such as putrescine and cadaverine and short-chained fatty acids such as butyric acid, give off odors that attract vectors. The characteristics of sewage sludge that attract vectors can be reduced or eliminated by composting or digesting the sewage sludge, by raising the pH of the sewage sludge, by reducing the moisture content of the sewage sludge, or by injecting the sewage sludge below the surface of the ground. EPA is proposing five indicators which show that the sewage sludge has been processed sufficiently so as not to attract vectors. In lieu of meeting these indicators, owners or operators of treatment works may inject the sewage sludge below the surface of the ground to meet the vector attraction reduction requirements (unless the sewage sludge is distributed and marketed). When sewage sludge is distributed and marketed, injection below the soil surface cannot be used to comply with the vector attraction reduction requirement because there is no control over the end user of the distributed and marketed product. In addition, sewage sludge is generally liquid when it is injected below the soil surface, but distributed and marketed sewage sludge is generally dried when it is either given away or sold.

The vector attraction reduction requirements may be met by reducing the volatile solids in the processed sewage sludge. The volatile solids of the processed sludge must be 38 percent lower than the volatile solids in the influent. Experience over the last 9 years indicates that if the volatile solids content of sewage sludge has been reduced by 38 percent, sewage sludge does not attract vectors (see Reference number 78). Volatile solids reduction is calculated by a volatile solids balance of the digester.

An alternative to the 38 percent volatile solids reduction is proposed because the Agency is aware of other measures that can be used to show a reduction in volatile solids. In many treatment plants, sewage sludge is returned after treatment to the aerator for more treatment or to the inlet of the digester to improve the fluidity of the incoming sludge. The sludge entering the digester has already been partially digested so it is extremely difficult to achieve an additional 38 percent volatile solids reduction by digestion. Available data indicate that when digestion occurs at mesophilic temperatures (30 to 38 degrees Celsius), the reduction in vector attraction of the sewage sludge is achieved if less than a 15 percent volatile solids reduction occurs in 40 additional days of batch digestion. The "ability to digest further" appears to be the best indicator of an index of the potential for the sewage sludge to putrefy further. This approach would not be a viable approach if an immediate evaluation of a sludge is required. The Agency invites comment on this approach.

Another way vector attraction reduction can be achieved is to reduce SOUR of the sewage sludge to 1 milligram of oxygen per hour, per gram of sewage sludge solids or less. This requirement only applies to sewage sludge treated in aerobic processes. If a sludge has been treated aerobically to the point where the biological organisms present are consuming very little oxygen, the value of the sludge as a food source for microorganisms is very low and thus the sewage sludge does not putrefy or attract vectors. The Agency also invites comments on the use of SOUR to demonstrate vector attraction reduction of a sludge or composted product and on the 1 milligram value in today's proposal.

Vector attraction reduction may also be met by adding alkali to raise the pH of the sewage sludge to 12 or above and, without the further addition of alkali, to remain at 12 or above for two hours and then to remain at 11.5 or above for an additional 22 hours. When the pH of the sewage sludge is raised to 12 or above, the bacterial activity is greatly diminished. When the pH of the sewage sludge drops below 10.5, bacterial regrowth from spore-forming bacteria commences and the sewage sludge begins to putrefy. The requirement that no additional alkali be added after the initial increment assures the presence of sufficient excess alkali to prevent pH from falling below 10.5 for the several days needed to apply the sludge to the land. The pH values and time periods in the proposed rule are based on research results and experiences (Reference number 78). The Agency invites comments on the pH values and time periods and solicits data on alkali addition to sewage sludge and the time the pH of a sewage sludge has to be maintained at a certain pH value.

Another way to achieve vector attraction reduction is to dry the sewage sludge to achieve a 75 percent solids content of the sludge. Dry sewage sludge greatly diminishes the bacterial activity and, therefore, will not produce odors and will not putrefy. The 75 percent solids value must be complied with prior to mixing the sewage sludge with other materials. The Agency invites comments on the 75 percent solids requirement and solicits data on the reduction of vegetative bacteria in sewage sludge that has a lower percent solids content. While the Agency believes that the 75-percent value is adequate, data on a wide variety of sludge are solicited, particularly on the potential spontaneous combustion of sewage sludge with a solids content between 60 and 80 percent.

The final way vector attraction reduction can be achieved is to inject the sewage sludge below the soil surface. The ground absorbs the moisture in the sewage sludge and that, combined with the cover over the sewage sludge, reduces the vector attraction of the sewage sludge.

When the vector attraction reduction for a Class A sewage sludge is achieved by injection below the soil surface, there is a concern that bacterial regrowth may occur in the sewage sludge-soil mixture. Good management practices could reduce, but hardly eliminated, all sources of contamination. Research results and experience indicate that if the fecal coliforms and fecal streptococci of the sewage sludge do not exceed 1000 (3 $\log_{10}$) per gram of volatile suspended solids at the time the sewage sludge is injected, it is likely that any bacteria introduced by contamination of the sewage sludge would have grown to densities that could threaten human health (Reference number 78). For this reason, § 503.52(a)(4) requires that if the sewage meets Class A pathogen reduction requirements and is to be injected below the soil surface for vector attraction reduction, owners and operations would have to monitor the densities of fecal coliforms and fecal streptococci to ensure that the densities do not exceed 1000 (3 $\log_{10}$) per gram of volatile suspended solids at the time of injection.

As an alternative, the Agency considered specifying that the sewage sludge would have to be injected into the ground within a specified period of time after processing. However, without knowing the specific circumstances under which the sewage sludge would be handled or distributed, EPA could not discern an appropriate length of time between processing and injection. Therefore, the Agency felt that it was more reasonable to look for evidence of regrowth. Public comment is requested on the proposal to monitor the sludge prior to injection and the alternative of specifying a period of time within which injection would have to occur.

Sampling Protocols And Analytical Methods (§ 503.81)

Sections 503.81(b) (3) through (11) lists the proposed protocols for sampling and analyzing sewage sludge for pathogenic organisms, fecal indicator organisms, volatile solids, volatile suspended solids, percent volatile solids reduction, and SOUR. The Agency is interested in other methods that should be considered, particularly for pathogenic organisms because standard methods are available only for a few microorganisms.

Although many of the microbiological methods were originally developed for water, with proper sample processing, they are also applicable to sewage sludge. Part 908 of "Standard Methods for the Examination of Water and Wastewater" (16th edition, 1985) discusses the handling of mud, sediments, and sludge.

In addition to Part 917 "Standard Methods for the Examination of Water and Wastewater" for measuring the density of protozoa and helminth ova, EPA is proposing the use of Fox, J., P. R. Fitzgerald, and C. Lue-Hing, "Sewage Organisms: A Color Atlas". This book presents and discusses several types of media, as well as techniques for measuring protozoa and helminth ova. Neither technique is a standard method. However, the methods presented in the book, although not subjected to rigorous statistical analytical comparisons, were developed for, and were extensively tested on, sludge and soils. Some of the methods are appropriate for particular types of helminth ova and some are not. Before selecting a method, the Agency notes that the introductory materials must be carefully reviewed to assure the appropriate method is used.

Incineration (Subpart G)

Applicability (§ 503.60)

The requirements in Subpart G will apply to those facilities that fire waste streams consisting only of sewage sludge. As previously discussed, this excludes four facilities that currently fire waste streams consisting of between three and nine percent sewage sludge, on a dry weight basis.

The standards proposed in Subpart G do not apply to sewage sludge incinerators that fire sewage sludge containing 50 ppm or more of PCBs, on a dry weight basis. Owners or operators whose incinerators fire sewage sludge containing 50 ppm or more of PCBs, on a dry weight basis, must comply with the requirements in 40 CFR 761.70. In addition, owners or operators of facilities firing sewage sludge that has been determined to be hazardous must comply with the requirements in 40 CFR 264.34.

Specialized Definitions (§ 503.61)

Air Pollution Control System

Air pollution control systems include one or more processes used to treat the air emissions from a sewage sludge incinerator. These systems use a variety of wet and dry devices. For example, sewage sludge incinerators either are or could be fitted with wet and dry cyclones, low and high pressure drop venturi scrubbers, scrubbing towers, impingement scrubbers, wet and dry electrostatic precipitators (ESPs), and fabric filters. Incinerators may also be fitted with after-burners, dry lime scrubbers, and lime spray dryers.

Control Efficiency

Control efficiency refers to the effectiveness of an incinerator and its air pollution control system in preventing the release of metal to the atmosphere. Control efficiency is determined as follows:

$$CE_i = \frac{\text{Mass, in} - \text{Mass, out}}{\text{Mass, in}}$$

Where:

CE_i = Control efficiency for metal i (decimal fraction).

Mass, in = Mass of metal i in the sewage sludge fed to the incinerator, in grams per hour.

Mass, out = Mass of metal i in the emissions of the incinerator measured after the air pollution control system, in grams per hour.

The combined metal control efficiencies of the incinerator and the air pollution control system are a key variable in calculating numerical limits for metals. In Table 10 of the proposed rule, EPA lists the control efficiencies to be used in calculating numeric limits for arsenic, beryllium, cadmium, chromium, lead, mercury, and nickel. Except for beryllium and mercury, the metal control efficiencies listed in Table 10 represent the lowest tenth percentile metal control efficiencies of sewage sludge incinerators in EPA's data base. The metal control efficiencies for beryllium and mercury are based on the assumptions used in developing the National Emission Standards for Hazardous Pollutants (NESHAPs) for these pollutants. For other metals, EPA's data base includes information reported in the literature from 1972 to 1985 and data from four incinerator tests conducted by the Agency in 1987. Table IX–G.1 summarizes EPA's sewage sludge metal emission data base and lists the 10th-percentile control efficiency on which the Agency set the values in Table 10.

TABLE IX–G.1—SUMMARY OF CONTROL EFFICIENCY DATA FOR METALS

Contaminant	Number of incinerators tested	Minimum	Mean	Maximum	10th percentile	Regulatory value
Arsenic	7	93.90	98.62	100.00	95.52	96
Cadmium	24	40.25	86.54	99.96	85.15	85
Chromium	23	86.92	96.16	100.00	96.12	96
Lead	24	34.22	92.24	99.67	86.73	87
Nickel	19	89.15	96.68	100.00	95.00	95

The owner or operator of a facility may use either the control efficiencies listed in Table 10 or may conduct a performance test of the facility to calculate the efficiency with which the incinerators and air pollution control systems control the emissions of one or more of the metals listed in this proposal. The emission control tests are

to be conducted in accordance with EPA guidance. EPA is developing guidance for emission control tests specific to sewage sludge incinerators. This guidance will be available for public review and comment prior to the promulgation of the rule.

Dispersion Factor

A dispersion factor is a derived numerical value that relates the maximum allowable emission rate of a pollutant from a sewage sludge incinerator stack to a maximum allowable increase in the ground level ambient air concentration for that pollutant at a specified distance from the incinerator. EPA developed the dispersion factors in Table 9 of the proposed rule using the ISCLT air model. The dispersion factors were developed using a number of conservative factors including the meteorology of Atlanta, Georgia, and low gas exit temperatures (38 degrees Celsius, 100 degrees Fahrenheit). The ISCLT model accounts for significant atmospheric downwash from short incinerator stacks. A full discussion of the derivation of the dispersion factors is included in the "Technical Support Document for Incineration" (Reference number 56).

The owner or operator would use the appropriate dispersion factor based on the height of the facility's stacks. The rule also provides that owners and operators may calculate a dispersion factor on a case-by-case basis for their facilities using the "Guidelines on Air Quality Models" [Reference number 44].

Maximum Combustion Temperature

The maximum combustion temperature occurs in the combustion zone of the sewage sludge incinerator. In multiple hearth and electric incinerators, the combustion zone is in the middle hearths. In a fluidized bed incinerator, the maximum combustion temperature usually occurs in the free board space above the fluidized bed. The proposal specifies that for incinerators not tested for case-by-case metal control efficiencies, the maximum combustion temperature must not exceed 898 degrees Celsius, 1650 degrees Fahrenheit to avoid excessive metal emissions. For incinerators which are tested for case-by-case metal control efficiencies, the maximum combustion temperature will be based on the results of the test.

Risk Specific Concentration

The risk specific concentration is the maximum allowable annual incremental increase that may occur in the ground level ambient air for a pollutant when sewage sludge is incinerated. This concentration is the human health criterion upon which the numerical limit is based. The risk specific concentrations are derived from the cancer inhalation potency values. Risk specific concentrations are listed in Table 8 of the proposed rule.

No risk specific concentrations were developed for mercury or beryllium because the numerical limits for these pollutants are based on their NESHAPs. Therefore, the NESHAP values, expressed as an emission rate (grams per 24 hours) are used to develop numerical limits for mercury and beryllium. Equations are provided in the rule to convert the NESHAP emission rate to a pollutant concentration that would be incorporated into a facility's permit. Similarly, the numerical limit for lead is based on the National Ambient Air Quality Standard (NAAQS) value and equations are used to convert the NAAQS value to a pollutant concentration.

The Agency derived the risk specific concentrations (RSC) using the cancer potency values (Q_1^*) with the following equation:

$$RSC = \frac{RL \times BW \times 1{,}000}{Q_1^* \times I_a}$$

Where:

RSC = Risk specific concentration, in micrograms per cubic meter.
RL = Risk level expressed as a negative exponent of 10.
BW = Body weight, in kilograms.
1,000 = Factor to convert milligrams to micrograms.
Q_1^* = Cancer potency expressed as milligrams per kilogram of body weight per day^{-1}.
I_a = Inhalation rate expressed in cubic meters per day.

In establishing a risk specific concentration, EPA used the following values in the equation:

RL = 1×10^{-5}, or one chance in 100,000 of developing cancer.
BW = 70 kilograms, which is the standard body weight of an adult male.
I_a = 20 cubic meters, which is the standard inhalation rate of an adult male.
Q_1^* = Potency value for each pollutant.

For example, the derivation of the risk specific concentration for arsenic is as follows:

$$RSC\ (Arsenic) = \frac{(1 \times 10^{-5}) \times (70\ kg) \times (1{,}000)}{(15.0\ [mg/kg/day]^{-1}) \times (20\ m^3/day)}$$

RSC (Arsenic) = 0.0023 $\mu g/m^3$

In deriving the risk specific concentrations for chromium, and nickel, and in using the NAAQS for lead, EPA made critical assumptions that are discussed below.

1. *Chromium.* In deriving a risk specific concentration for chromium (0.085 $\mu g/m^3$), the Agency assumed that one percent of the total chromium emission is in the form of hexavalent chromium (Cr^{+6}). Chromium can be emitted in either the highly-carcinogenic, hexavalent state or in the relatively non-toxic trivalent state (Cr^{+3}). Trivalent chromium compounds have not been shown to be carcinogenic. Toxic levels of trivalent chromium are prevalent only at concentrations higher than those normally found in sewage sludge.

Hexavalent chromium, representing the more oxidized state of chromium, would be expected to be in the emissions when sewage sludge containing chromium compounds is incinerated. However, some investigators speculate that most of the chromium is likely to be emitted in the trivalent state because the hexavalent state of chromium is highly reactive and is likely to re-form into trivalent chromium.

Japanese laboratory and EPA-sponsored research, reported in the literature, have shown a correlation between the amount of hexavalent chromium formed in the ash from the incineration of sewage sludge and the degree of lime treatment of sludge before incineration. As the quantity of lime added to the sludge was increased, the quantity of hexavalent chromium formation in the ash increased. The increased level of hexavalent chromium formation in the ash would likely be reflected in increased hexavalent chromium concentration in air emissions (Reference numbers 23 and 12).

EPA attempted to determine the ratio of hexavalent chromium to total chromium in the emissions of sewage sludge incinerators. To date, only two sewage sludge incinerators have been tested successfully. The two results were quite variable, ranging from a level below the detection limits of hexavalent chromium (at 10 ppm Cr^{+6} to total chromium) to about 13 percent hexavalent chromium to total chromium (Reference numbers 47 and 39).

In several instances the Agency encountered problems with the hexavalent stack testing method. Recovery problems have been encountered in the extraction procedure used to remove the chromium from the collected particulate matter. It is suspected that certain organic and metal compounds emitted from combustion sources and present in the particulate catch could be reducing the hexavalent chromium to the trivalent form. This would result in a significant under-estimation of the actual hexavalent amount in the stack emissions.

EPA is currently investigating procedures to improve the recovery of hexavalent chromium in stack emission tests. At this time, the Agency is close to completion of a new ion chromographic method for hexavalent chromium. This new method is expected to be available for use in stack emission testing in 1989.

Based on the limited hexavalent chromium data from actual emissions tests, EPA is proposing to assume that one percent of the total chromium emitted is hexavalent chromium. The Agency derived one percent by calculating the geometric mean of the two results, 10 ppm and 13 percent. The geometric mean is 0.11 percent hexavalent chromium to total chromium. The mean value was then multiplied by a safety factor of 10 to derive the one percent assumption today's proposal.

EPA plans further tests of sewage sludge incinerator emissions using improved sampling and analysis methods for hexavalent chromium. These additional tests should provide more insight into the ratio of hexavalent chromium to total chromium in the emissions of sewage sludge incinerators.

2. *Nickel.* Nickel emissions present a problem similar to chromium. Nickel can potentially be emitted from combustion sources in several different forms. Nickel subsulfide has been identified as the most carcinogenic form of nickel. Because EPA currently has no data on the chemical form of nickel emissions from sewage sludge incinerators, the Agency assumed that all nickel emitted is in the most carcinogenic form, nickel subsulfide. EPA has initiated studies on the speciation of nickel emissions from combustion sources to evaluate their health effects. Until these studies demonstrate otherwise, the Agency believes the appropriate approach is to assume that all nickel emitted is in the form of nickel subsulfide.

EPA requests comments on the assumptions used in deriving the risk specific concentrations for chromium and nickel. The Agency also requests submission of data on the emissions of chromium and nickel from sewage sludge incinerators as part of comments on today's proposal to assist in evaluating its proposal.

3. *Lead.* EPA is proposing to limit lead emissions from sewage sludge incinerators so that the ground level concentration of lead does not exceed 25 percent of the NAAQS for lead. The NAAQS for lead is 1.5 micrograms per cubic meter maximum arithmetic mean averaged over a calendar quarter (see 40 CFR 50.12).

In deriving a ground level concentration for lead, the Agency evaluated the following two alternatives: 10 percent of the NAAQS, the percent used in the forthcoming proposed revisions to the Hazardous Waste Incinerator regulation; and 25 percent of the NAAQS. States allocate a percentage of the NAAQS to various sources of lead emissions in non-attainment areas through State Implementation Plans (SIPs). Up to now, States have not included limits for sewage sludge incinerators in their SIPs, leading the Agency to believe that States do not consider sewage sludge incinerators to be significant sources of lead emissions. EPA is soliciting comments on this assumption.

EPA is proposing to use 25 percent of the NAAQS as an initial step in regulating lead from sewage sludge incinerators. Based on available information, limiting lead emissions from sewage sludge incinerators to 25 percent of the NAAQS ensures that the increase in ground level ambient concentration of lead would not exceed the current lead NAAQS.

The Agency is soliciting comments on limiting emissions to 10 percent of the NAAQS. Ten percent would further limit lead exposure. The Agency's goal is to minimize lead exposure from all sources due to the significant biological changes across a broad range of exposures to lead (down to very low levels). Keeping the contribution of sewage sludge incinerators to ambient air lead levels to 10 percent of the NAAQS level (i.e., 0.15 $\mu g/m^3$) would be consistent with this goal. Allowing sewage sludge incinerators alone to contribute potentially up to 25 percent of the NAAQS may be excessive since allowing that increment could allow ambient lead levels in some areas to rise substantially from the present average background level of 2.0 $\mu g/m^3$. States may wish to further limit the emission of lead from sewage sludge incinerators if it is warranted in non-attainment areas.

The 1978 NAAQS for lead was designed to ensure that 99.5 percent of the population has blood lead levels below 30 micrograms per deciliter ($\mu g/dl$), the level then judged to provide an adequate margin of safety from adverse health effects. The Agency now has data indicating that much lower blood lead levels are associated with a variety of toxic effects in men, women, and, particularly, in the very young. EPA is currently reviewing the current NAAQS for lead and will incorporate this new information. Until a new NAAQS is promulgated for lead, the current NAAQS will be the basis of the numerical limit when sewage sludge is incinerated. When EPA revises the current NAAQS of 1.5 $\mu g/m^3$, the Agency also will revise the numerical limit for lead from sewage sludge incineration.

Sewage Sludge Feed Rate

The feed rate is either the average amount of all the sewage sludge incinerated per day at the facility or the design capacity of the facility, taking into account the total amount of sewage sludge that can be fired each day by all the incinerators within the property line of the facility. "The Technical Support Document for Incineration" (Reference number 56) describes how the sewage sludge feed rate is to be measured.

The feed rate of a facility, in metric tons per day is used in calculating the pollutant limits (i.e., concentration of a metal in sewage sludge). The numerical limit must be calculated based on all sludge fired at a facility. Otherwise, it will not account for all the emission from the facility and may not provide an adequate level of protection.

Stack Height

The stack height is the difference between the elevation of the top of a sewage sludge incinerator stack and the elevation of the ground surface at the base, when the difference is equal to or less than 65 meters. Owners or operators of incinerators with stacks higher than 65 meters must determine the creditable stack height above 65 meters in accordance with "good engineering practice" (GEP) (see 40 CFR 51.100(ii)(1)(ii)). Creditable GEP stack height means the greater of the following measurements: (1) 65 meters, measured from the ground level elevation at the base of the stack; or (2) a calculated measurement based on the height (and, possibly, width) of nearby

structures and a constant. The latter measurement is derived from the formula that follows:

$$Hg = H + 1.5L$$

Where:
Hg = GEP stack height, measured from the ground level elevation at the base of the stack, in meters.
H = Height of nearby structure(s), measured from the ground level elevation at the base of the stack, in meters.
L = Lesser dimension, height or projected width, or nearby structure(s), in meters.

The creditable GEP stack height was developed by the Agency to assure that the degree of emission limitations required for the control of any air pollutants under an applicable SIP is not affected by that portion of a stack height exceeding GEP or by any other dispersion technique. Guidance is available on how to calculate good engineering stack height (Reference number 42).

Total Hydrocarbons

Total hydrocarbons is the sum of all emitted organic compounds that have one or more carbon-to-carbon bonds, one or more carbon-to-hydrogen bonds, and that may also have one or more carbon-to-chlorine, carbon-to-nitrogen, or carbon-to-oxygen bonds. For the purposes of today's proposal, total hydrocarbons is defined as a pollutant for which the Agency is proposing limits. The limits are expressed in terms of the concentration of total hydrocarbons in the emissions. EPA is controlling hydrocarbon emissions as a way of limiting the emission of organic pollutants present in the sludge fed into the incinerator and that are created during the incineration process. This proposed approach is discussed further later in this subpart of the preamble.

General Requirements (§ 503.62)

Other Governing Regulations

In addition to the requirements in Subpart G of the proposed rule, owners and operators of sewage sludge incinerators must comply with existing requirements promulgated under the authority of the Clean Air Act (CAA). Sewage sludge incinerators are subject to both the beryllium NESHAP (40 CFR 61.30 through 61.34) and the mercury NESHAP (40 CFR 61.50 through 61.55). Furthermore, the 47 facilities built or substantially modified after July 11, 1973, and any new sewage sludge incinerators that are built are subject to the NSPS for sewage sludge incinerators in 40 CFR 60.150 through 60.154.

State Implementation Plans require the review of new sewage sludge incinerators under procedures for "prevention of significant deterioration (PSD) of air quality" (see 40 CFR 51.21) and for "new source review" (see 40 CFR 51.165). These procedures are designed to (1) prevent further air quality degradation in non-attainment areas because of particulates, ozone, nitrogen oxides, sulfur dioxide, lead, and carbon monoxide; (2) ensure that no significant deterioration occurs in other areas; and (3) ensure compliance before a permit is issued to construct or modify an emission source. This review may require a new sewage sludge incinerator to install the best available control technology economically achievable to control the criteria pollutants to a level that will not cause any deterioration in air quality.

Incinerator Ash

Today's proposal does not include separate requirements for the disposal of ash from the incineration of sewage sludge. Rather, the Agency is referencing the applicable requirements for the disposal of incineration ash from 40 CFR Parts 257, 258, and 261 through 268.

Feed Rate

EPA is requiring the use of either the design capacity of the facility or the feed rates of all sewage sludge incinerators within the property boundary of a facility in calculating the pollutant limits for a facility. As discussed above, this requirement is necessary to ensure that emissions from the facility will not contain pollutant concentrations that pose an unreasonable risk to human health. For the purposes of this rule, an unreasonable risk would be one in which the pollutant limits exceeded an incremental carcinogenic risk level of 1×10^{-6}. If the feed rate of all sewage sludge incinerated at a facility is not considered, the emissions from the facility could pose an incremental risk greater than 1×10^{-6}.

Monitoring Instruments

Owners and operators of sewage sludge incinerators must install, calibrate, operate, and maintain an instrument that measures the sludge feed rates of an incinerator. The instrument must have an accuracy of plus or minus five percent over its operating range, a standard generally used by the Agency. EPA is also proposing that owners and operators install, calibrate, operate, and maintain instruments that continuously monitor and record the oxygen content of the exit gas (before the gas is diluted by air), the temperature in the combustion zone of the incinerator, and the total hydrocarbon concentration in the exit gases. The rationale for each of these requirements is discussed below.

1. *Feed Rates.* The NSPS for sewage sludge incinerators require instruments for monitoring sludge feed rate for all sewage sludge incinerators built after 1973. The effect of today's proposal is to require the owners or operators of the 122 facilities that are not covered by the NSPS to install instruments that continually monitor the feed rate of sewage sludge, if they have not already done so.

The ability to monitor sludge feed rate continuously allows for more stable operation of the incinerator and provides the operator with advanced knowledge of a change in operating conditions. For example, a large increase in the sludge feed rate increases the drying load on the top hearths of a multiple hearth incinerator causing the combustion zone to drop to a lower hearth. This type of upset results in increased gas flow through the furnace and an increase in particulate emissions to the air pollution control system. A large decrease in the sludge feed rate will cause the combustion zone to rise to a higher hearth. The higher combustion hearth location reduces the overall residence time of the combustion gases in the incinerator and can increase the emissions of unburned organic pollutants from the incinerator.

Continuous monitoring of the sludge feed rate ensures that the furnace is not fed sludge in excess of the unit's design capacity. If the design capacity of the incinerator were exceeded, excessive emissions from the incinerator and incomplete combustion of organics and carbon could result.

EPA is including a requirement for owners and operators to provide access to the sewage sludge fed to the incinerator so that a well-mixed, representative grab sample of the sewage sludge can be collected easily. The representative sample allows periodic verification to be made that the facility is in compliance with the metal limits in its permit.

2. *Oxygen In Combustion Gases.* The Agency is proposing that owners and operators of incinerators continuously monitor and record the amount of oxygen in combustion gases leaving the combustion zone to avoid excess oxygen levels in the combustion gases. Excessive oxygen causes unnecessarily high gas velocities in the furnace. This phenomenon increases particulate matter in the gases, placing a greater load on the air pollution control system. Overloading the air pollution control system reduces the efficiency of the system to remove organic and metal pollutants attached to the particulates.

3. *Combustion Zone Temperatures.* Owners and operators are also required to monitor and record the operating temperatures in the combustion zone. A proper operating temperature is the single most important control parameter of an incinerator. Temperatures that are too low result in incomplete combustion of organic pollutants. Temperatures that are too high result in excessive metal emissions.

For multiple hearth furnaces, EPA is proposing that every hearth have a temperature-measuring device (thermocouple) and that the burning hearth have two measuring devices. The requirement for two devices in the burning hearth is to provide redundancy in the case of the failure of one device. The high temperature of the burning hearth increases the rate of failure of the thermocouples. In addition, the burning hearth temperature is the most critical temperature in the furnace and requires the most control to minimize emissions. This requirement is consistent with the revised NSPS for sewage sludge incinerators (40 CFR 60.153(b) (3)).

For fluidized bed furnaces, the Agency is proposing two temperature measuring devices: one in the bed and one in the outlet duct of the fluidized bed. For electric furnaces and rotary kilns, the Agency is proposing one temperature measuring device in the drying zone and two in the combustion zone. These requirements are consistent with the revised NSPS for sludge incinerators (40 CFR 60.153(b)(3)).

4. *Total Hydrocarbons In Emission Gases.* The Agency is proposing that owners and operators continuously monitor and record the total hydrocarbon concentration in the emission gases of sewage sludge incinerators. As discussed later in this subpart of the preamble, EPA is proposing to limit the concentration of total hydrocarbons in the emissions in lieu of specifying the concentration of an organic pollutant that may be fed into the incincerator.

Total hydrocarbon emissions are to be measured with a flame ionization detector. The detector is a hydrogen-oxygen flame into which a small sample of the exhaust gases from an incinerator is introduced. If there are any hydrocarbon gases present in the sample, they will burn in the hydrogen-oxygen flame. When any carbon-to-carbon or carbon-to-hydrogen bonds are broken and oxidized in the flame, an ion is released. An electrical detection system senses the release of the ion. The electrical signal strength is a direct measure of the number of carbon-to-carbon and carbon-to-hydrogen bonds that are oxidized in the flame. The direct readout of this signal is calibrated to indicate the concentration of hydrocarbons in the sample stream by use of a series of calibration gases of known hydrocarbon concentration which are periodically introduced into the sample stream. The flame ionization detection system is described by Method 25A in Appendix A of 40 CFR Part 60.

The Agency is requiring that a flame ionization detector include a 150 degrees Celsius heated sample line and inlet system for measuring total organic emissions. The 150 degree heated sample line keeps the semi-volatiles in the gas sample in the vapor phase and prevents their reduction in the sample transportation and conditioning system. EPA estimates that, without the heated sample line, only 50 to 60 percent of the total hydrocarbons would be detected by the flame inonization detector. With the heated sample line, at least 75 percent of the total hydrocarbons present in the exit gases can be detected. This reading is then multiplied by a correction factor and adjusted to 7-percent oxygen to obtain the true concentration of total hydrocarbons. Further discussion of the flame ionization detector system is in the "Technical Support Document for the Incineration of Sewage Sludge" (Reference number 56).

Incineration—National Pollutant Limits (§ 503.63)

As described in Part III of the preamble, the Agency initially evaluated 34 pollutants. With simple models using the worst combination of conditions, the Agency found that the following pollutants did not pose an unreasonable risk to human health in the concentrations shown in the "40 Cities Study": copper, selenium, and zinc. These pollutants are among the pollutants listed in Subpart H of the proposed rule that are eligible for removal credits when sewage sludge is incinerated.

Equations

EPA is proposing to use one equation for beryllium, a second equation for mercury, a third equation for lead, and a fourth equation for arsenic, cadmium, chromium, and nickel to calculate the allowable concentration of these pollutants in sewage sludge that may be incinerated. A fifth equation is used to calculate an acceptable concentration of total hydrocarbons in the combustion gases exiting the incinerator.

The Agency found that it could not establish a specific concentration for each pollutant in the sludge or a specific concentration for total hydrocarbons in the emissions that would be applicable to all facilities. Key variables could make a significant difference in the allowable pollutant concentration. Such variables include the physical characteristics of the facility (e.g., feed rate of the facility, stack height, control efficiency of the incinerator and air pollution control system), and the terrain and meteorology where the facility is located.

1. *Beryllium.* The equation for beryllium is:

$$C = \frac{10}{(1 - CE) \times SF}$$

Where:
C = Maximum allowable concentration of beryllium in sewage sludge, in milligrams per kilogram (dry weight basis).
CE = Sewage sludge incinerator control efficiency (from Table 1 in the proposed rule).
SF = Sewage sludge feed rate, in metric tons per day (dry weight basis).

This equation is used to calculate the maximum allowable concentration of beryllium in sewage sludge that may be incinerated at a facility without exceeding the beryllium NESHAP emission of 10 grams over a 24-hour period (see 40 CFR 61.32).

The owner or operator provides the permitting authority with the design capacity of the facility (i.e., the combined feed rate of all the incinerators at a facility) to insert into the equation. The NESHAP emission limits are developed with a numerical value that relates a level of emission to a ground level concentration that will not cause undue risk to an individual exposed to the maximum pollutant concentration in the plume. Thus, the Agency did not include a dispersion factor in the equations for beryllium or mercury.

The Agency assumed a 0.99 control efficiency to convert the beryllium NESHAP emission limit to an allowable concentration in sludge. This control efficiency, the result of the test, is the only data available to the Agency because beryllium is not generally found in incinerated sewage sludge and therefore, analyses have not been conducted for beryllium. If owners or operators demonstrate a greater or lesser control efficiency for beryllium in a performance test of the facility, the actual control efficiency demonstrated will be inserted into the equation. The Agency is seeking data that demonstrates the efficiency with which sewage sludge incinerators and air

pollution control devices control the emission of beryllium.

Using the equation with the sludge feed rate of the facility and 0.99 control efficiency, the permitting authority calculates the maximum allowable beryllium concentration. This concentration is compared with the concentration of beryllium found in the sludge to be incinerated at the facility. Sludge that exceeds the maximum allowable concentration may not be incinerated.

2. *Mercury.* The equation for mercury is:

$$C = \frac{3200}{(1-CE) \times SF}$$

Where:
C = Maximum allowable concentration of mercury in sewage sludge, in milligrams per kilogram (dry weight basis).
CE = Sewage sludge incinerator control efficiency (from Table 10 in the proposed rule).
SF = Sewage sludge feed rate, in metric tons per day (dry weight basis).

This equation is used to calculate the maximum allowable concentration of mercury in sewage sludge that may be incinerated at a facility without exceeding the mercury NESHAP emission limit of 3,200 grams per 24-hour period (see 40 CFR 61.52).

As in the previous equation, the owner or operator provides the permitting authority with the design capacity of the facility or the combined sewage sludge feed rates of all the incinerators at the facility. The permitting authority then inserts this facility-specific feed rate into the equation.

The permitting authority inserts a zero into the equation for the mercury control efficiency. A zero control efficiency is included in the proposal because, in developing the NESHAP for mercury, the Agency assumed a zero control efficiency. If owners or operators can demonstrate a greater level of control based on a performance test, the permitting authority will use the control efficiency demonstrated in the performance test. Using the sewage sludge feed rate of a facility and either a zero control efficiency or a control efficiency demonstrated in a performance test, the permitting authority calculates the maximum allowable mercury concentration in sewage sludge that may be incinerated at a facility. This maximum allowable concentration of mercury is then compared with the concentration of mercury found in the sewage sludge incinerated at the facility. If the facility's sludge exceeds the allowable concentration, the owner or operator may not incinerate the sludge containing the excessive concentrations of mercury.

3. *Lead.* The equation for lead is:

$$C = \frac{.25(NAAQS) \times 86,400}{DF \times (1-CE) \times SF}$$

Where:
C = Maximum allowable concentration in sewage sludge, in milligrams per kilogram (dry weight basis).
NAAQS = National Ambient Air Quality Standard for lead (1.5 micrograms per cubic meter maximum arithmetic mean averaged over a calendar quarter).
86,400 = Number of seconds in a day.
DF = Dispersion factor, in micrograms per cubic meter per gram per second (from Table 9 in the proposed rule).
CE = Sewage sludge incinerator control efficiency (from Table 10 in the proposed rule).
SF = Sewage sludge feed rate, in metric tons per day (dry weight basis).

To insert a value for the dispersion factor, the owner or operator selects the dispersion factor corresponding to the stack height of the incinerators at the facility from Table 9 of the proposed rule, if the height of the incinerator stack is 65 meters or less. If the stack exceeds 65 meters, the creditable stack height above 65 meters is determined in accordance with 40 CFR 51.100(ii)(1)(ii). The results of this calculation would be used in the EPA-approved air dispersion model, such as the ISCLT (appropriate for the facility's surrounding terrain and meteorology), to calculate a dispersion factor for the equation. Owners or operators whose incinerators have stacks less than 65 meters also may conduct their own air dispersion modeling at the facility to establish a facility-specific dispersion factor in accordance with EPA's "Guidelines on Air Quality Models" (Reference number 44).

The control efficiency for lead is listed in Table 10 of the proposed rule. The owner or operator may conduct performance tests of the facility, in accordance with the requirements specified by EPA, to demonstrate an alternative control efficiency. If a performance test is conducted, the actual control efficiency demonstrated will be included in the equation.

As in the previous equations, the owner or operator provides the permitting authority with information on the design capacity of the facility or the combined sewage sludge feed rates of all the incinerators at the facility. Using the above information, the permitting authority would calculate a facility-specific numerical limit for lead. This calculation is then compared to the concentration of lead found in the sewage sludge to be incinerated at the facility.

4. *Arsenic, Cadmium, Chromium, And Nickel.* The equation for arsenic, cadmium, chromium, and nickel is:

$$C_i = \frac{RSC_i \times 86,400}{DF \times (1-Ce_i) \times SF}$$

Where:
C_i = Maximum allowable concentration of metal pollutant in sewage sludge, in milligrams per kilogram (dry weight basis).
RSC_i = Risk specific concentration for the metal in sewage sludge, in micrograms per cubic meter.
86,400 = The number of seconds in a day.
DF = Dispersion factor, in micrograms per cubic meter per gram per second (from Table 9 in the proposed rule).
CE_i = Sewage sludge incinerator control efficiency (from Table 10 in the proposed rule).
SF = Sewage sludge feed rate, in metric tons per day (dry weight basis).

The permitting authority would select the appropriate risk specific concentration from Table 8 in the proposed rule. As discussed earlier, the risk specific concentrations are derived from EPA's cancer potency values (Q_1^*). The owner or operator would then follow the same process as described above for lead.

5. *Total Hydrocarbons.* EPA is proposing to limit the concentration of total hydrocarbons in the emissions of incinerators for two reasons. First, this approach controls the emission of individual organic compounds found in sludge fed into the incinerator, and second, the approach controls the emission of organic compounds that are created during the combustion process (i.e., products of incomplete combustion—PICs). The Agency recognizes that setting limits on total hydrocarbons is an innovative approach that may be applicable to other incinerator programs. Therefore, the Agency will carefully review and consider the issues raised and the comments submitted on this approach.

(a) *Human Health Criterion For Organic Components of Total Hydrocarbons.* To develop a risk specific concentration for total hydrocarbons, the Agency developed a weighted carcinogenic potency (Q_1^*) value for the organic compounds that are projected to be in the emissions of a sewage sludge incinerator. In developing the Q_1^* value, the Agency multiplied the Q_1^* value of every carcinogenic organic pollutant listed in IRIS by the weighted fraction of the compound in the emissions of sewage sludge incinerators. Calculating a weighted fraction of a compound in the emissions required a two-step process. First, the Agency determined the concentration (in $\mu g/m^3$) for the pollutant in the emissions in one of three ways. If the compound was measured in the emission of the sludge incinerator, the concentration of the compound was used. In the case of compounds expected to be present, but not detected, the observed detection limit ($\mu g/m^3$) was used. Finally, for the remaining pollutants listed in IRIS and detected in emissions from other sources, an analytical detection limit of 0.1 $\mu g/m^3$ was assigned to those pollutants. The Agency then calculated a weighted fraction for each pollutant by dividing the sum of all the pollutant concentrations into each individual pollutant concentration. EPA multiplied the weighted fraction of each pollutant by the pollutant's Q_1^* value and then added the products of the multiplication to give a weighted carcinogenic potency value for all carcinogenic pollutants detected or not detected.

Weighted fractions were also calculated for all non-carcinogens that have RfDs in IRIS. However, the Agency assumed that the actual ambient air concentration of the non-carcinogens (i.e., threshold pollutants) would not exceed their inhalation RfDs and, therefore, do not contribute to the weighted Q_1^* value or cause adverse health effects.

The Agency is seeking comments on its determination that the expected concentration of non-carcinogens would not be associated with adverse health effects. The weighted average Q_1^* value for total hydrocarbons is 0.013 (mg/kg/day). All the data and calculations used in developing the weighted Q_1^* value are in Appendix E of the "Technical Support Document: Incineration of Sewage Sludge" (Reference number 56). The Agency is soliciting comments on the approach used.

From the weighted Q_1^* value, the Agency developed a risk specific concentration for total hydrocarbons using the same equation that was used to develop the risk specific concentrations for metals. The risk specific concentration for total hydrocarbons was derived as follows:

$$RSC = \frac{RL \times BW \times 1,000}{Q_1^* \times Ia}$$

Where:
RSC = Risk specific concentration of total hydrocarbons, in micrograms per cubic meter.
RL = Risk level of 1×10^{-5}.
BW = Body weight of 70 kilograms.
Q_1^* = Weighted average Q_1^* value of 0.013 for all carcinogens with Q_1^* values in IRIS and all non-carcinogen (threshold) pollutants in IRIS, in $(mg/kg/day)^{-1}$.
Ia = Inhalation rate of 20, in cubic meters per day.
1,000 = Factor to convert milligrams to micrograms.
Therefore:

$$RSC = \frac{(1 \times 10^{-5}) \times (70\ kg) \times 1,000}{(0.013) \times 20\ m^3/day} \text{ or}$$

$$= 2.69\ \mu g/m^3$$

The risk specific concentration is extremely sensitive to the analytical limits of detection selected for individual carcinogenic organic compounds not detected in emissions tests of sewage sludge incinerators. A relatively high analytical detection limit will generate a high risk and a low detection limit will generate a lower risk. This is particularly true for dioxins, PCBs, and aldrin/dieldrin.

The risk specific concentration is then used to develop a numerical limit for the concentration of total hydrocarbons in the emissions.

(b) *Measuring Total Hydrocarbons.* The instrument used to monitor total hydrocarbons is a flame ionization detector. Questions have been raised about the capability of a flame ionization detector to monitor continuously the total hydrocarbons emissions from an incinerator. Moreover, there is uncertainly about the relationship of the reading of the flame inonization detector to the risk specific concentration that will protect individuals to an incremental carcinogenic risk of 1×10^{-5}.

Introduced in the mid-1960's, flame ionization detectors have a number of applications, such as detection systems in gas chromatographs located in laboratories around the world. Their wide use in the analysis of organic compounds has resulted in a substantial body of literature on using the detector to monitor total hydrocarbons. However, there are problems with the system as a regulatory compliance method.

First, organic compounds with very high boiling points tend to condense in the sampling line between the stack and the detector system, escaping detection. As a result, the detector system does not accurately measure these high-boiling compounds. Most of this problem can be overcome by the use of a heated sampling system operated at 150 degrees Celsius. Moreover, a correction factor has been applied in EPA's equation for calculating the total hydrocarbon limit to account for the loss of the high-boiling organic compounds.

A second problem with the flame ionization detector system is the differing response of the detector to different compounds incinerated. The detector system primarily measures the oxidation of carbon-to-carbon and carbon-to-hydrogen bonds. Organic compounds with differing numbers of these bonds will give different responses. Fortunately the relative response of a large number of the organic compounds are known. The Agency is calculating a weighted average response factor for the flame ionization detector analogous to our weighted Q_1^* calculation for the risk specific concentration. This weighted average response factor is incorporated into the conversion factors in the equation used to calculate a numerical limit for total hydrocarbons thereby relating the reading of the device to an incremental carcinogenic risk level of 1×10^{-5}.

EPA has initiated tests to verify the long-term reliability of the detectors. The equipment requires routine maintenance and daily calibration, which are well within the expertise of personnel at sewage sludge incinerator facilities. Flame ionization detectors, including the 150-degree Celsius sampling line cost approximately $20,000. Annual operating costs are expected to be $6,000.

(c) *Calculating A Numeric Limit For Total Hydrocarbons.* The equation to be used in developing a numerical limit for total hydrocarbons is:

$$THC = \frac{RSC \times 3,240,000,000}{DF \times GF}$$

Where:
THC = Maximum allowable total hydrocarbon concentration in a sewage sludge incinerator stack, in parts per million, at 7-percent oxygen.
RSC = Risk specific concentration for THC, in micrograms per cubic meter.
DF = Dispersion factor, in micrograms per cubic meter, per gram per second.
GF = Maximum gas flow from the sewage sludge incinerator, in gram moles per day.
3,240,000 = Correction factor in gram moles, per gram per second per day.

The conversion factor of 3,240,000 is derived from:

$$CF = \frac{86,400 \times 0.75 \times 1.7 \times 1 \times 10^6}{34}$$

Where:
86,400 = Number of seconds in a day.
0.75 = Correction factor for the estimated loss of organic compounds in the flame ionization detector system (dimensionless).
1.7 = Ratio of the flame ionization detector of propane (3.0) to the weighted average flame ionization detector response of the list of compounds (1.8), used to determine the weighted average unit risk.
1×10^6 = Conversion parts of per million to concentration.

The derivation of this equation is explained more fully in Appendix E of the "Technical Support Document: Incineration of Sewage Sludge" (Reference number 56).

As with the equation for the metals, the owner or operator has two options for inserting a value for the dispersion factor. A dispersion factor corresponding to the stack height of the facility's incinerators may be selected from either Table 9 of the rule or the owner or operator may conduct air dispersion modeling of the facility to establish a facility-specific dispersion factor in accordance with EPA's "Guidelines on Air Quality Models" (Reference number 44).

The maximum gas flow (GF) is calculated using the work sheet in Appendix D of today's proposed rule. This work sheet uses the following: (i) The maximum sludge feed rate; (ii) the average calculated combustion temperature of the sewage sludge based on the percent volatiles, heating value of the sludge volatiles, and percent solids; and (iii) the average auxiliary fuel usage. The result of the Appendix D calculation is expressed in gram moles of combustion gases at 50 percent excess air (seven percent oxygen) and zero percent moisture.

When the flame ionization detector system actually measures the total hydrocarbons, the measurement must be converted to 50 percent excess air (seven percent oxygen) before it is compared to the facility's numerical limit for total hydrocarbons. Unless this conversion is done, the hydrocarbons would be diluted by the excess air and not represent the actual hydrocarbon concentration in the exit gases. The oxygen correction is an engineering correction expressed as:

$$THC_{(corrected)} = THC_{(actual)} \times \frac{14}{21 - Y}$$

Where:
Y = Measured oxygen concentration, percent.

The correction factor is developed at 50 percent excess air. The correction is easily made because EPA is proposing that sewage sludge incinerators have instruments that continuously monitor the oxygen concentration in combustion gases (§ 503.62(f)). The calculated total hydrocarbon limit is then compared to the oxygen-corrected total hydrocarbon reading from the flame ionization detector to determine if the incinerator is in compliance.

(d) *Effect of the Proposed Approach.* There are those who believe that by limiting total hydrocarbons, the Agency is establishing more stringent emission controls than if the Agency were to regulate the concentration of organics in sewage sludge by developing numerical limits on a pollutant-by-pollutant basis. They reason that the total hydrocarbon limit is based on the sum of the weighted average Q_s * values for all carcinogenic organic pollutants listed in IRIS. A pollutant-by-pollutant approach would control the concentration of individual carcinogenic organic pollutants to a pollutant-by-pollutant individual risk level of 1×10^{-5}. Potentially, the summed risk of ten organic pollutants could be 10×10^{-5} or 1×10^{-4}, depending on the actual concentration of a pollutant in the emissions.

Based on the Agency's examination of the ten model plants, 122 facilities that operate 219 incinerators are projected to be out of compliance with the pollutant limits in today's proposal. Of those 122 facilities, a subset of 28 facilities that operate 61 incinerators are projected to exceed the total hydrocarbons numerical limit. However, these facilities also would exceed the numerical limit for one or more metals. Therefore, the approach does not affect the number of facilities that would be in or out of compliance.

The compliance mechanism for a pollutant-by-pollutant approach and for total hydrocarbons is the installation of after-burners. After-burners cost approximately $1 million.

(e) *Alternatives Considered.*—(i) *Organic Pollutant-by-Organic Pollutant Approach.* EPA originally considered controlling the concentration of organic pollutants fed into an incinerator on a pollutant-by-pollutant basis, similar to the approach that the Agency is proposing for metals. However, the approach was not feasible for organic pollutants because the Agency could not establish a destruction and removal efficiency for sewage sludge incinerators. The series of tests on four sewage sludge incinerators revealed that organic destruction and removal efficiencies of the incinerators ranged from 99.7 percent to negative efficiencies of −1,314 percent (see Table IX-G.2). A negative efficiency means that compounds were formed during the combustion process (i.e., a product of incomplete combustion—PIC). Some of these PICs are known or suspected carcinogens. Organic destruction and removal efficiencies (DREs) of an incinerator are needed to relate the emission of an organic pollutant to its risk specific concentration and to an allowable concentration in sewage sludge. Without consistent DRE data from sewage sludge incinerators, the Agency had no basis on which to construct an equation which could be used to calculate allowable organic concentration.

TABLE IX-G.2.—ORGANICS IDENTIFIED IN SLUDGE INCENERATOR TESTING

Compounds	DE range	
	Hi	Low
Semivolatiles:		
Bis (2-ethylhexyl)phthalate	95.7	ND
1,2-Dichlorobenzene	97.3	[1] 94.2
1,3-Dichlorobenzene	99.7	[1] 67.5
1,4-Dichlorobenzene	95.7	87.4
2-Nitrophenol	97.2	ND
Phenol	91.7	ND
Naphthalene	90.9	ND
Volatiles:		
Acrylonitrile	[1] −1.9	−349.0
Benzene	[1] 25.3	[1] −1314.0
Carbon tetrachloride	99.8	79.1
Chlorobenzene	99.8	23.0
Chloroform	−39.4	−527.5
1,2-Dichloroethane	97.0	ND
Trans 1,2-Dichloroethene	99.4	[1] 76.0
Ethylbenzene	99.3	[1] 6.0
Methylene chloride	98.6	[1] −145.0
Tetrachloroethene	98.6	[1] −175.0
Toluene	99.7	[1] −256.0
1,1,1-Trichloroethane	99.6	70.0

TABLE IX-G.2.—ORGANICS IDENTIFIED IN SLUDGE INCENERATOR TESTING—Continued

Compounds	DE range	
	Hi	Low
Trichloroethene	97.9	−67.0
Vinyl chloride	−112.0	−426

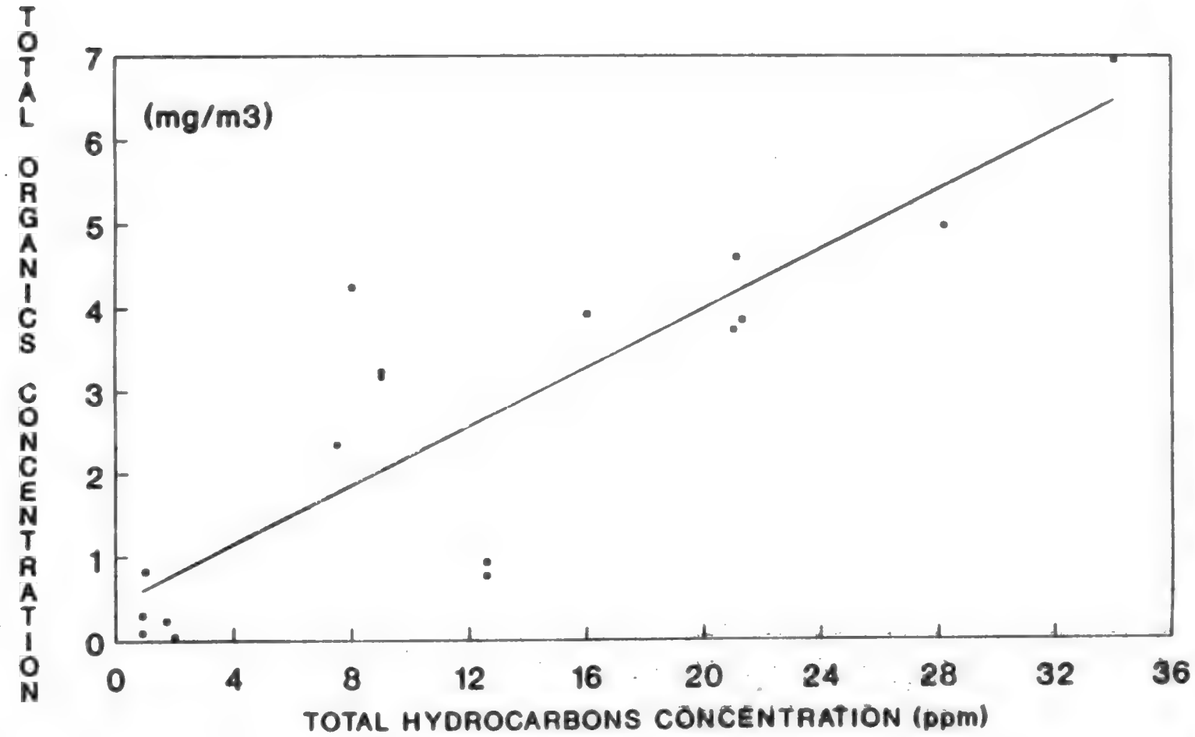
[1] The pollutant was detected in the stack, but not in the sludge. Efficiency is calculated using the analytical detection limit of the pollutant in sluge.

The data from the four incinerator tests shows a strong correlation between the concentration of organic compounds in the emissions and the concentration of total hydrocarbons in the emissons (See Figure IX-G.1). The "Technical Support Document: Incineration of Sewage Sludge" (Reference number 56) includes all the data used in developing the Figure.

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Figure IX-G.1

TOTAL HYDROCARBONS vs. TOTAL ORGANICS



Correlation Coefficient = .741

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The ability to correlate concentrations of organic compounds emitted with the concentration of total hydrocarbons in the emission gases persuaded EPA to propose a numerical limit for the concentration of total hydrocarbons in the emission gases. Setting numerical limits for total hydrocarbons has several advantages over setting numerical limits for individual organic compounds in sewage sludge fed into an incinerator. By setting a numerical limit based on the concentration of total hydrocarbons in the emissions, the Agency does not need the DRE of an incinerator. EPA could have proposed that owners or operators conduct performance tests of their incinerators to determine the efficiency of their units and then calculate an allowable pollutant concentration based on the results of the performance test. Such performance tests cost approximately $20,000 per facility.

If the Agency had based limits on the concentration of organic pollutants in sewage sludge, PICs created during the combustion process would not have been controlled. By setting numerical limits on the basis of the total hydrocarbon concentration in the emissions, however, EPA will be limiting the emission of the organic compounds fed into the incinerators, as well as those compounds formed during the combustion process. In addition, setting numerical limits on the basis of total hydrocarbons allows the Agency to propose a more comprehensive rule sooner. The proposed rule for the incineration of sewage sludge covers all organic pollutants that have a human health criterion listed in IRIS. If the Agency were to establish, propose, and promulgate a pollutant-by-pollutant concentration for potentially hundreds of organic pollutants in sewage sludge, the process would take many years. Furthermore, such a technology-based approach is inconsistent with the requirements of section 405(a) of the CWA to establish pollutant limits that are adequate to protect human health and the environment.

(ii) *Establish A DRE For The Operation Of Sewage Sludge Incinerators.* The Agency's existing incinerator regulations are primarily based on the performance of well-operated incinerators. However, as indicated above the Agency does not have sufficient data to determine the DRE for a well-operated incinerator.

(iii) *Carbon Monoxide.* EPA considered, but rejected, setting numerical limits for carbon monoxide (CO) in lieu of setting limits for total hydrocarbons. The Agency will propose that hazardous waste incinerators limit the emission of carbon monoxide to 100 ppm. If the 100 ppm limit is exceeded, facilities would be required to monitor total hydrocarbons. The Agency based the 100 ppm carbon monoxide limit on a review of the emissions of PICs from a number of hazardous waste incinerators and boilers that burn hazardous wastes. The data support the conclusion that low carbon monoxide levels (i.e., less than 100 ppm) are associated with low rates of PICs in hazardous waste incinerators. However, the Agency could not draw the same conclusion for sewage sludge incinerators (see Table IX–G.3).

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TABLE IX-G.3

SUMMARY OF EMISSIONS DATA FROM 1987 INCINERATOR TESTS

SITE	RUN	THC (ppm)	CO (ppm)	B,2,6,PN (ug/M3)	1,2,DICHLOROBENZENE (ug/M3)	1,3,DICHLOROBENZENE (ug/M3)	1,4,DICHLOROBENZENE (ug/M3)	2-NITROPHENOL (ug/M3)	PHENOL (ug/M3)
1	1	9	320	2.5			22		
1	2	16	450						
1	3	9	450	22.1	15.6				
1	4	7.5	360				25.9		
1	5	8	325	16.2		11.5	43.8		
2	1	21.1	821	191	34	0	50.7	89.4	173
2	2	21	821	35.8	15.8	0	24.7	42.6	107
2	3	34	1490	36.4	36.4	0	41.7	91	208
2	4		1563	15	13.5	0	16.6	0	61.7
2	5		1037	7.2	35.4	3.1	29.7	91.5	153
2	6		888	7.3	25.8	2.2	36.2	112	50.1
3	1	0.9	168	5.2	0	0	0	0	0
3	2		71	30.5	0	0	0	0	0
3	3	2	132	10.1	0	0	0	0	0
4	1		256						3.6
4	2	21.3	1503						6.9
4	3	182	1841						8.8
4	4	1.01	250						
4	5	1.72	98						
4	6	0.91	221						
4	7	12.6	1230						
4	8	12.6	1230						
4	9	28.2	2838						

TABLE IX-G.3 (CONT'D)

SUMMARY OF EMISSIONS DATA FROM 1987 INCINERATOR TESTS

SITE	RUN	NAPHTHAL. (ug/M3)	ACRYLONITRIL (ug/M3)	BENZENE (ug/M3)	CCL4 (ug/M3)	CHLORO BENZENE (ug/M3)	CHLOROFORM (ug/M3)	1,2 DICHL OROETHANE (ug/M3)
1	1		454	883	8.1	50.7	218	0.6
1	2		884	948	5.6	75.5	214	0.2
1	3		574	774	3.1	47.6	276	0.5
1	4		439	528	3.4	27	226	0.9
1	5		1073	1287	6.8	69.4	325	4.6
2	1	65.6	2159	507	0.4	29	0.34	0
2	2	124	1892	283	0.31	18	0.38	0
2	3	85.3	3159	511	0.44	19.5	1.1	0
2	4	0	2594	573	0.46	53.8	0.49	0
2	5	282	3351	730	0.1	43.3	0	0
2	6	62.6	3869	4191	0	33.3	0	0
3	1	0	0	37	0	0.29	244	0
3	2	0	0	62	0	0.6	745	0
3	3	0	0	7.4	1.1	0	4.1	0
4	1	1.3	8737	902	0	255	0	0
4	2	3.4	2429	433	4.41	102	11.4	0
4	3	3.6	8566	2224	5.02	324	25.1	0
4	4		504	142	2.16	5.91	5.84	0
4	5		165	57.8	0.242	2.63	0.617	0
4	6		0	54.9	0.384	0	1.6	0
4	7		693	52.7	0.92	7.11	0.823	0
4	8		816	68.2	0	6.35	3.7	0
4	9		4555	307	7.18	16.3	13.1	0

TABLE IX-G.3 (CONT'D)

SUMMARY OF EMISSIONS DATA FROM 1987 INCINERATOR TESTS

SITE	RUN	TRANS 1,2 DICHLORO ETHANE (ug/M3)	ETHYL BENZENE (ug/M3)	METHYLENE CHLORIDE (ug/M3)	TETRA CHLORO ETHENE (ug/M3)	TOLUENE (ug/M3)	1,1,1 TRICHLORO ETHANE (ug/M3)	TRICHLORO ETHENE (ug/M3)	VINYL CHLORIDE (ug/M3)	DIOXIN EQUIVALENTS (ug/M3)
1	1	7.2	34.1	82.4	898	232	10.1	44.1	225	
1	2	7.3	31	103.2	962	252	14.4	81	335	
1	3	12.8	249.6	176.8	572	201	15.6	78.7	211	
1	4	11.3	37.1	154.9	450	193	25.5	46.8	175	
1	5	14	69.3	43.4	300	441	7.9	101.1	430	
2	1	0.74	10.5	0	23.6	341	0	2.8	913	
2	2	0.77	0.79	2.7	16.1	241	0	3	918	
2	3	1.1	29.8	0.14	22.4	2005	0.27	8.7	693	
2	4	0.36	91.7	323	27.9	2389	0.59	8.7	1389	
2	5	0.46	34.1	181	56.3	1322	0	4.6	1101	
2	6	0.77	11.6	29.5	114	4437	0	9.6	1273	
3	1	0	0.49	11	0	2.2	5	0.62	0	
3	2	0	0	6.9	0	2.7	2.9	0	0	
3	3	0	3.3	1.9	3.9	11.3	3.7	1.2	0	
4	1	0	579	20.1	174	744	4.62	37.3	944	
4	2	0	61.3	4.96	73.5	193	1.66	7.19	511	
4	3	0	444	33.5	350	1316	24.4	141	465	
4	4	0	27.4	2.73	0.263	136	1.33	0.836	0	0.983
4	5	0	3.84	0	0.174	25.2	1.13	0.191	0	1.214
4	6	0	5.83	0	0.503	31.9	0.39	0.377	0	0.995
4	7	0	0	1	6.59	2.38	2.96	9.45	0	0.271
4	8	0	0	5.32	11.1	1.54	9.94	9.21	0	1.148
4	9	0	0	0.44	7.6	29.5	5.44	1.87	20.1	

NOTE: DIOXIN SAMPLES TAKEN AFTER THE AFTER-BURNER

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The carbon monoxide levels measured in the four sewage sludge incinerator tests were much higher than those measured in hazardous waste incinerators. The four sludge incinerators tested had carbon monoxide concentrations ranging from 71 ppm to levels over 2,000 ppm and an overall average carbon monoxide level of 795 ppm. The Agency also found that, even though the carbon monoxide level was high for a particular sewage sludge incinerator, the total hydrocarbon concentration was low for the same incinerator. Thus, EPA was unable to correlate carbon monoxide levels in sewage sludge incinerators to the concentration of organics in the emissions. This may be caused by the differences between the composition of sludge and hazardous waste and differences in incinerator design.

Sewage sludge is mostly water, with the combustible portion typically making up only 20 percent or less. Multiple hearth incinerators typically used for the incineration of sewage sludge are designed to remove the water content of sludge as efficiently as possible and to handle the large amount of ash left from sewage sludge incineration. The design configuration of multiple hearth incinerators results in incomplete combustion due to oxygen starvation and poor gas mixing and therefore, is not efficient for the combustion of organic pollutants.

Hazardous waste generally contains significant amounts of organic chemicals. To destroy these chemicals, hazardous waste incinerators are designed to achieve turbulent gas mixing, high combustion temperatures, and adequate gas residence times. When hazardous waste incinerators are operated properly, they normally achieve carbon monoxide levels well below 100 ppm.

(iv) *National Total Hydrocarbon Limit.* Another alternative on which the Agency is soliciting comment is the use of a single national total hydrocarbon limit applicable to all incinerators. This limit would be based on the information from all of the model plants in our database to calculate a reasonable worse case limit that would be protective at an incremental carcinogenic risk level of 1×10^{-5} at most incinerators. For example, if the Agency selected a total hydrocarbon level of 20 ppm our data indicates that approximately 80 percent of incinerators would meet 1×10^{-5} MEI risk. This approach would replace site-specific total hydrocarbon calculations at each facility. EPA solicits comments on the merits and implications of this type of approach.

(f) *Limitations of the Proposed Approach.* EPA recognizes that limited data exist to quantify public health risks, particularly for total hydrocarbon emissions. For sewage sludge incinerators, the Agency has been able to identify and quantify eight to nine percent in the compounds of the total hydrocarbon emissions. The compounds which were identified, represented some organic carcinogens of great concern. As previously noted, the risk specific concentration is extremely sensitive to the compounds not detected and their assumed concentration. EPA believes its approach of assigning undetected carcinogen detection limit value for the purpose of developing the weighted Q_1^* value is consistent with the CWA section 405 requirement to protect human health and the environment. The Agency is continuing to conduct emission testing to improve the data base in support of today's proposal.

Other concerns raised about today's approach are that it accounts for only inhalation health impacts, but does not account for health impacts resulting from the indirect exposure to incineration emissions (e.g., through food or water) or for environmental impacts. At this time, the Agency has not yet developed procedures for quantifying indirect exposure or environmental impacts for purposes of establishing regulatory emission limits. However, work is underway to refine these procedures.

Example

The following example is to be used to illustrate how a sewage sludge incinerator facility would determine if it could meet the proposed numerical limits. The hypothetical facility has two incinerators with a total capacity of 25 dry metric tons per day each and a single stack that is 22 meters high. The sludge to be incinerated has an average volatile fraction of total solids of 0.5 and an average volatile solids fraction heating value of 5.5 kilocalories per gram. The two incinerators burn 24,000 pounds per day of fuel oil calculated on an annual basis. The sewage sludge to be incinerated contains the following pollutant concentrations:

Pollutant	Concentration (mg/kg)
Arsenic	4.79
Beryllium	0.548
Cadmium	9.54
Chromium	275.91
Lead	182.04
Mercury	2.15
Nickel	69.82

Table 9 in the proposed rule was used to obtain the dispersion factor of 14.78 micrograms per cubic meter, per gram per second for a 22-meter stack. The numerical limits for the metals listed above were then calculated using the equations described earlier, which are in § 503.63. For example, the numerical limit for arsenic was calculated as follows:

$$C_{As} = \frac{RSC_{As} \times 86{,}400}{DF \times (1 - CE_{As}) \times SF}$$

Where:
$RSC_{As} = 0.0023\ \mu g/m^3$ from Table 8.
$DF = 14.78\ \mu g/m^3/g/s$ from Table 9.
$CE_{As} = 0.97$ from Table 10.
$SF = 50$ dry tons per day capacity of both incinerators.
Therefore:

$$^{c}As = \frac{0.0023 \times 86{,}400}{14.78 \times (1 - .97) \times 50}$$

$^{c}As = 8.96$ mg/kg.

Using the same procedure, but with appropriate risk specific concentrations from Table 8 and combustion efficiencies from Table 10, the following numerical limits were calculated:

Pollutant	Calculated numerical limit (mg/kg)	Measured sludge concentration (mg/kg)
Arsenic	8.96	4.79
Cadmium	1.90	9.54
Chromium	248.44	275.91
Lead	134.63	182.04
Nickel	77.16	69.82

The beryllium and mercury values were calculated using the equations (1) and (2) in § 503.63.

Pollutant	Calculated numerical limit (mg/kg)	Measured sludge concentration (mg/kg)
Beryllium	20	0.548
Mercury	64	2.15

Comparing the calculated numerical limits with the measured sludge

concentrations, the facility's sludge is found to exceed the concentrations for cadmium, chromium, and lead.

The numerical limit for total hydrocarbons was calculated using equation 5 as follows:

$$THC = \frac{RSC \times 3,240,000,000}{DF \times GF}$$

Where:
RSC = 2.69 micrograms per cubic meter (from Table 8).
DF = 14.78 micrograms per cubic meter per gram per second (from Table 9).
GF = 1.74×10^7 gram moles per day.

The gas flow of 1.74×10^7 gram moles per day was computed using the procedure in Appendix D of the rule as follows:

Sludge Gas Flow = SF × VF × VEHC × 7.01×10^4
Where:
SF = 50 dry tons per day sludge feed rate.
VF = average sludge volatiles fraction.
VEHC = 5.5 kilocalories per gram heating value of the sludge volatiles fraction.
Therefore:
Sludge Gas = $50 \times 0.5 \times 5.5 \times 7.01 \times 10^4$ or
Flow = 9.64×10^6 gram moles of combustion gas per day from sludge combustion. Fuel Gas Flow = FR × FC
Where:
FR = 24,000 pounds per day #2 fuel oil usage.
FC = 324.8 gram moles per day #2 fuel oil constant.
Therefore:
Fuel Gas = $24,000 \times 324.8$ or
Flow = 7.79×10^6 gram moles of combustion gas per day from the fuel combustion.
Therefore:
Fuel Gas = $9.64 \times 10^6 + 10^6$
Flow = 1.74×10^7 gram moles per day

The gas flow would be inserted into the equation as follows:

$$THC = 2.69 \times 3,240,000,000 \text{ or } \frac{}{14.78 \times 1.74 \times 10^7} THC = 33.9 \text{ ppm}$$

Therefore, the facility would have to be operated to meet a 34 ppm total hydrocarbon concentration in the stack emissions. The 34-ppm limit is calculated on the basis of 50 percent excess air, which then requires that the actual readings from the flame ionization detector be corrected to 50 percent excess air before the measured concentration of total hydrocarbons can be compared to the limit calculated above. This correction was calculated using the equation in Section 503.63(f)(iv):

$$\text{Correction factor} = \frac{14}{21 - Y}$$

Where:
Y = percent oxygen in combustion gases

The average total hydrocarbon concentration reading for the hypothetical facility was 37 ppm, at 10 percent excess oxygen. This total hydrocarbon concentration reading was corrected as follows:

$$THC_{(corrected)} = \frac{37}{ppm} \times \frac{14}{21 - 10}$$

$THC_{(corrected)} = 47$

Therefore, in this example, the facility exceeds the 34 ppm total hydrocarbon limit.

The owners and operators of the hypothetical facility could be expected to conduct air dispersion modeling to obtain a site-specific dispersion factor for inclusion in the equations for cadmium, chromium, lead, mercury, and total hydrocarbons. If air dispersion modeling were conducted, the owners and operators would need site-specific information, including:

- Stack exit diameter,
- Stack exit gas temperature,
- Stack exit gas velocity,
- Adjacent building dimensions,
- Characteristics of the area around the facility to determine if the urban or rural modelling option should be used and whether any terrain features need to be considered, and
- Meteorological data from a nearby meteorologic station or airport.

With the site-specific values for the above parameters, the owner or operator would use the ISCLT model to obtain a site-specific dispersion factor of 10.10 micrograms per cubic meter per gram per second. Therefore, the total hydrocarbon limit is re-calculated for the site-specific dispersion factor to obtain 5.0 ppm concentration. The hypothetical facility now would meet the total hydrocarbon limit because the actual reading from the flame ionization detector corrected to 50 percent oxygen was 47 ppm.

The site-specific dispersion factor was also used to re-calculate the allowable sludge concentrations for the following three pollutants:

Pollutant	Re-calculated numerical limit (mg/kg)	Measured sludge concentration (mg/kg)
Cadmium	2.79	9.54
Chromium	363.57	275.81
Lead	197.01	182.04

These calculations show that the hypothetical facility would now meet its pollutant limits for lead and chromium, but not for cadmium. The owners and operators would be, therefore, likely to conduct a test of the incinerator to determine the facility-specific control efficiency for cadmium. After performing the tests for the hypothetical facility, the average sludge-to-stack emissions removal efficiency was found to be 79.0 percent for cadmium. The numerical limit for cadmium was then re-calculated, using the actual control efficiencies and the site-specific dispersion factor of 10.10 micrograms per cubic meter per gram per second to yield:

Pollutant	Re-calculated concentration (mg/kg)	Measured sludge concentration (mg/kg)
Cadmium	4.64	9.54

This calculation indicated that the concentration of cadmium in the sludge was still above the re-calculated numerical limit. The owners or operators would have to take some action or combination of actions to bring the incinerator into compliance. Among the actions they could consider to reduce the actual sludge concentration would be applying more stringent pretreatment limits or:

- Restricting the feed to the incinerators to lower the sludge feed rate (SF) in the equation;
- Increasing the incinerator control efficiency by installing a more efficient air pollution control system; or
- Increasing the stack height, the stack exit temperature, or the stack exit velocity to reduce the value of the site-specific dispersion factor in the equation.

If the owners or operators decided to upgrade the air pollution control system, however, they would have to retest the incinerator to obtain new emission control efficiencies.

If the facility had encountered difficulty in meeting the total hydrocarbon concentration limit, several corrective actions would be possible:

- Optimize the incinerator operation to obtain higher combustion temperatures and higher excess air rates to improve combustion of the organics in sludge;
- Reduce the sludge feed rate and the fuel rate to lower the total gas flow rate;
- Install an afterburner to further burn the excess total hydrocarbons and lower the concentration to an acceptable level; or
- Increase the stack height, stack exit temperature, or stack exit velocity to reduce the value of the site-specific dispersion factor.

Stack Height Option

The Agency is soliciting comments on whether to deny owners and operators of incinerators an opportunity to raise the height of their stacks, after the effective date of the rule, as the means of complying with the numerical limits in the rule. Raising the stack height increases the amount of dispersion, thereby reducing the concentration of the pollutants that reach the MEI. However, increasing the height of stacks does not reduce the mass emissions of the pollutants. Therefore, national cancer incidence (the number of cancer cases due to the pollutants being emitted) may not change significantly, if owners or operators choose to meet these requirements by merely increasing the height of their stacks.

Today's proposed regulatory approach is designed to limit the exposure of the MEI to a level that does not exceed an incremental carcinogenic risk of 1×10^{-5}. The legislative history of section 405 of the CWA directs the Agency to establish numerical limits that protect the health of individuals or populations which are at higher risk than the population as a whole (Cong. Rec., S1624, October 16, 1986). If, in complying with this risk level, all incinerators in the regulatory universe install pollution control equipment (such as after-burners and wet ESPs), EPA's analysis shows that, in addition to protecting the MEI, reductions would incur in the total number of projected cancer cases (from 12 to 3) as well as the number of projected adverse lead health effects (from 5,800 to 800).

However, the possibility exists that, in lieu of installing pollution control equipment to meet the metal and hydrocarbon limits, some owners or operators would only raise the height of their incinerators' stacks to comply with the pollutant limits. While such an approach would protect the MEI to the 1×10^{-5} risk level, it would not reduce the projected number of cancer cases (incidence) nationwide as much as the installation of treatment technology. How much reduction could be expected would depend on the number of facilities choosing to use pollution control equipment rather than merely increasing the height of the stacks. EPA has no information at this time indicating whether some, all, or none of the facilities that cannot meet the proposed requirements would choose stack height increases over the use of air pollution control equipment. Factors involved in that local determination include whether it is structurally possible to raise the height of the stacks, comparable costs, local citizen concerns, and State and local requirements. EPA will try to gather more information and requests technical data and public comments on the environmental and human health impacts, and the feasibility and relative cost, of stack height increases versus the installation and use of pollution control equipment.

In addition, the Agency invites public comments on whether the final rule should reflect an alternative approach and be directed at not only the MEI's risk, but should also be directed toward reducing the projected nationwide cancer incidence associated with incinerator emissions. The Agency further invites comments on whether specifying compliance methods is consistent with Section 405 of the CWA.

The Agency is concerned that refusing credit for stack height increases puts EPA in the anomalous position of permitting dispersion credit for existing tall stacks, while denying credit to others for stack height increases, without any clear rationale for distinguishing the two cases. Consequently, the proposal allows for the calculation of a dispersion factor based on the actual height of the stack. However, the Agency invites comments on the alternative of whether to include, in this and other rules, the alternative of imposing a stack height ceiling of approximately 25 meters for all incinerators (e.g., tall enough to prevent down wash) for the purposes of determining compliance with standards.

While dispersion credit for stack emissions is granted under certain conditions under the Clean Air Act (Section 123), the extent of credit is limited. The intent and practice of granting such credit has been with regard to criteria pollutants (i.e., particulates, ozone, nitrogen oxides, sulfur dioxide, lead, and carbon monoxide), not for many of the potentially toxic air pollutants emitted from sewage sludge incinerators, municipal solid waste combustors, and hazardous waste incinerators.

Finally, in setting requirements for technology-based effluent standards under other sections of the CWA, the Agency does not allow the dilution of pollutants as a means of pollution control. EPA requests comment on the basis of such a prohibition under Section 405.

Compliance

The Agency projects that 122 of 194 incinerator facilities will fail to comply with today's proposed numerical limits. Some of the facilities may meet the numerical limits without additional air pollution control devices, if owners or operators can demonstrate (e.g., by air dispersion modeling or by a performance test of the incinerators) that dispersion factors other than those in Table 9 of the proposed rule or the control efficiencies for metals other than those in Table 10 of the proposed rule are applicable to their facilities.

Eligible POTWs that comply with the proposed requirements in this rule would be authorized to issue removal credits for the compounds under § 503.72 (Tables 11 and 12) of the rule. In addition to the metals (e.g., arsenic, beryllium, cadmium, chromium, lead, mercury, and nickel) for which numerical limits are proposed in this part, removal credit authority would be available for metals that have been determined to pose no hazard (e.g., copper, selenium, and zinc) when incinerated. Removal credit authority would also be available for the organic pollutants that are listed in IRIS (see Table 11 in § 503.72 of the proposed rule). The Agency is limiting removal credit authority to organic pollutants listed in IRIS because the human health criterion (weighted Q_1^* value) for total hydrocarbons was based on the existing Q_1^* values listed in IRIS.

Section 405(d)(2)(D) of the CWA requires that compliance be as expeditious as practicable, but in no case later than 1 year after promulgation of the regulations, unless construction is required, in which case compliance is to be within 2 years. The Agency urges all sewage sludge incinerator facility owners or operators to evaluate whether their facilities would be able to comply

with the numerical limits included in today's proposal. While incinerator performance tests are not required in this proposal, a facility may wish to conduct a performance test to develop site-specific data demonstrating that it complies with the requirements of the regulation. Based on the Agency's experience, the time required to plan, conduct, and evaluate the results of incinerator tests may extend beyond a year. Therefore, if owners or operators decide to test their incinerators, waiting until final promulgation of this rule before starting to plan a performance test may not allow sufficient time to demonstrate compliance.

Incineration—Management Practices (§ 503.64)

Combustion Zone Temperature

Today's proposal specifies that incinerators not exceed a temperature of 898 degrees Celsius (1,650 degrees Fahrenheit) in the combustion zone. This value would apply unless the owners or operators conducted a performance test of the incinerator, in which case the temperature recorded during the test would apply. The temperature proposed is based on EPA-sponsored sewage sludge incinerator tests and data from the tests of other sewage sludge incinerators. These data are included in the "Technical Support Document: Incineration of Sewage Sludge" (Reference number 56).

There is considerable evidence that the emission of metals increases when temperatures exceed those designed for the incinerator. Evaluation of the incinerator tests discussed earlier indicate that, for several metals, the control efficiencies of the incinerators and air pollution control systems decrease as the combustion zone temperature increases. The relationship between combustion zone temperature and control efficiency is particularly significant for lead, arsenic, and cadmium. Therefore, EPA is proposing a limit on the maximum temperature in the combustion zone of sludge incinerators to control metal emission levels.

Oxygen Content of the Exit Gas

Today's proposal specifies that the oxygen content of the exit gas, is not to exceed 12 percent (dry basis) for multiple hearth incinerators, 7 percent (dry basis) for fluidized bed incinerators, 9 percent (dry basis) for electric incinerators, and 12 percent (dry basis) for rotary kiln incinerators. These values would apply unless the owners or operators conducted a performance test of the incinerator. If a performance test of an incinerator is conducted, the values recorded during the test would apply.

The Agency is proposing to limit the oxygen content of the exit gas because too much excess air causes an increase in the total amount of suspended particulates in the exhaust gas. Twelve percent oxygen, on a dry gas basis, corresponds to an excess air (oxygen) level of approximately 150 percent. The 12 percent (dry basis) oxygen limit for multiple hearth incinerators is based on generally accepted design and operating principles for this type of incinerator (Reference numbers 62 and 35). In addition, results from the four sludge incinerator tests indicate that lead emissions from multiple hearth furnances become excessive at excess air rates over 150 percent (12 percent oxygen). Seven percent oxygen, on a dry gas basis, for fluidized bed incinerators corresponds to approximately 50 percent excess air. Operating experience indicates that this limit is typical for fluidized bed incinerators (Reference numbers 35 and 62). Electric furnaces are to be controlled to a maximum oxygen limit of 9 percent, on a dry gas basis. This limit corresponds to an excess air rate of approximately 70 percent, a value that was obtained from the design and operating experience of a manufacturer of an electric furnace (Reference number 67).

No information on the appropriate excess air level for rotary kiln incinerators was available to the Agency. Therefore, the 12 percent oxygen limit established for multiple hearth furnaces is proposed for any rotary kiln incinerators burning sewage sludge.

EPA is seeking comments on whether values specified for the combustion zone temperature and the oxygen content of the exit gases are reasonable for sludge incinerators. The Agency is soliciting data from tests that may support or question the proposed values.

Air Pollution Control Systems

EPA is not requiring that the air pollution control systems for sewage sludge incinerators maintain a specific minimum pressure drop. Rather, EPA is requiring that owners or operators install the appropriate air pollution control systems and instrumentation and that the equipment be operated to maintain the numerical limits for metals that EPA is proposing today.

Most sewage sludge incinerators have wet scrubbers. The major variable affecting particulate emissions from sewage sludge incinerators is the operating pressure drop of wet scrubbers. Particulate emission rates also are affected by the design of the incinerator, the type and design of the control device used, the characteristics of the sludge that is incinerated, and the method of operation of the incinerators and control devices.

The particulate removal efficiency of a given wet scrubber increases as the pressure drop of the scrubber increases. Emission of particulates and metals will increase as the pressure drop is decreased for a given incinerator and a given scrubber. Proper operation and maintenance of emission control devices is a key factor in minimizing particulate emissions from sewage sludge incinerators. However, the appropriate operating parameters are incinerator-specific and cannot be generalized on a nationwide basis. Therefore, EPA is not requiring that a specific minimum pressure drop be maintained. Instead, owners or operators must install the appropriate air pollution control systems and instrumentation and must operate the equipment to meet the numerical limits for metals that EPA is proposing today.

Other Management Practices Considered

EPA also considered specifying minimum combustion zone and exit temperatures for combustion gases from sludge incinerators to ensure adequate destruction of organic pollutants. This requirement would have been appropriate if the Agency had proposed setting concentrations for specific organic pollutants with an assumed DRE for the organic pollutants. However, since the Agency has decided to propose the continuous monitoring of total hydrocarbons to measure compliance, specifying minimum combustion system temperatures is not required. As a consequence of requiring all sewage sludge incinerators to meet a total hydrocarbon emission concentration, minimum combustion temperatures will have to be maintained for adequate organic destruction.

The Agency also considered specifying minimum excess air rates to ensure adequate destruction of organic pollutants. A minimum level of excess air (oxygen) is required in an incinerator to obtain complete combustion of organic compounds. This minimum requirement is different for the various incinerators used for the incineration of sewage sludge. Multiple hearth incinerators usually require higher levels of excess air to destroy organic compounds than fluidized bed and electric incinerators. However, because the Agency is proposing that owners and operators continuously monitor for total hydrocarbons in the exhaust gases, sludge incinerators will need to provide sufficient excess air to achieve adequate organic pollutant destruction to meet the total hydrocarbon limits.

The proposed rule does not specify any special requirements for scrubber water, which is usually treated to reduce its solids content. Fly ash residue produced during scrubber water treatment is de-watered and disposed of with the incinerator bottom ash. After solids are removed, treated scrubber water effluent is generally recycled back to the wastewater treatment plant influent. Scrubber water effluent is treated along with the wastewaters, and, when discharged, must meet the facility's effluent limits. Therefore, the scrubber water should not pose risks to human health or the environment.

Monitoring, Record Keeping, and Reports (§§ 503.61 and 503.66)

Owners and operators of sewage sludge incinerators are to measure the concentrations of arsenic, beryllium, cadmium, chromium, lead, mercury, and nickel in accordance with the frequencies established for the treatment work and with the sampling and analysis procedures in § 503.61. In addition, owners and operators must continuously monitor the total hydrocarbon concentration in the incinerator stack gases, the rate at which sewage sludge is fed to an incinerator, the combustion temperature in the incinerator, the oxygen content of the exit gas, and the pressure drop across the air pollution control system, if applicable. The Agency's rationale for these requirements was explained earlier in the discussion of the requirements for sewage sludge incinerators.

The records to be kept are those of the parameters to be monitored as well as the results of any site-specific air modeling or performance tests conducted. These records are to be kept for 5 years, the period of time specified in the State program management regulations (see 40 CFR Part 501). Reports are to be submitted whenever one of the following occurs:

- The combustion temperature in the incinerator remains outside the allowable range for 15 minutes or longer;
- The oxygen content of the exit gas from the incinerator stack remains outside the allowable range for 15 minutes or longer;
- The pressure drop across the air pollution control device exceeds the allowable drop for longer than one hour, if applicable.

The time periods specified are those required in amendments to the NSPS for sewage sludge incinerations. The rationale for the time periods may be found in 53 FR 39412 (October 6, 1988).

In addition to the requirements mentioned above, reports are to be submitted at the frequencies specified in § 503.81(c) for the total hydrocarbon concentration in the stack gases of the incinerator and for the sewage sludge feed rate.

Removal Credits (Subpart H)

Pollutant-contaminated industrial wastewater that is discharged to POTWs can inhibit or upset POTW treatment systems and pass through the facility to surface waters or into the sludge generated by these facilities. To prevent this interference, pass through, and sludge contamination, Congress directed EPA to establish national pretreatment standards for industrial discharges into POTWs (see section 307(b)(1) of the CWA, 33 U.S.C. 1317(b)(1)). These pretreatment standards limit the amount of a pollutant that plants in an industrial category may discharge into a POTW. However, to avoid redundancy in treatment capacity, the Act authorized the POTW to revise a categorical pretreatment standard for an industrial user by adjusting the amount of a pollutant the plant may discharge to the POTW. The revision in the categorical pretreatment standard is based on the percentage of the pollutant removed by the POTW. A "removal credit" is the difference between the categorical pretreatment standard and the revised pretreatment standard. A removal credit allows the POTW's industrial user to discharge greater quantities of a particular pollutant than would otherwise be allowed by the categorical pretreatment standard. The CWA authorizes these revisions in the categorical pretreatment standards provided that certain criteria are met. Among these criteria is a requirement that the increased discharge to the POTW by the industrial user does not cause a deterioration in sludge quality or interfere with sludge use or disposal.

In 1984, EPA issued rules implementing the pretreatment removal credits provision (40 CFR 403.7). However, in a 1986 response to a challenge by the Natural Resources Defense Council, the United States Court of Appeals for the Third Circuit found the regulation invalid (*Natural Resources Defense Council, Inc. v. U.S. Environmental Protection Agency*, 790 F.2d 289, 3d Cir., 1986). EPA has now amended the regulations to respond to all but one of the Third Circuit's four holdings (52 FR 42434, November 5, 1987). Its fourth holding was that EPA may not authorize POTWs to grant removal credits to their industrial users until EPA promulgates the comprehensive regulation required by section 405(d). Thus, upon promulgation of regulation that is proposed today, POTWs that manage their sludge by the use or disposal methods covered in the proposed rule (land application, distribution and marketing, disposal in monofills and on surface disposal sites, and incineration) may apply to EPA for removal credit authority. EPA may grant such authority to any POTW that complies with the procedural and substantive requirements of the removal credits regulation and this part. Moreover, EPA may grant such authority to any POTW that disposes of its sewage sludge in a MSWLF in compliance with 40 CFR Part 258.

EPA's removal credit regulation (40 CFR 403.7) provides that, subject to the conditions of the regulation, any POTW receiving wastewater from an industrial user to which a categorical pretreatment standard applies, at its discretion, may grant a removal credit to reflect removal of pollutants specified in the categorical pretreatment standard by the POTW. A POTW is authorized to grant a removal credit if five conditions are met. First, the POTW must receive authorization to grant removal credits from EPA or the authorized approval authority in an NPDES State with an approved State pretreatment program. Next, the POTW must demonstrate and continue to achieve consistent removal of pollutants. Third, the POTW must have an approved pretreatment program. Fourth, the granting of a removal credit must not cause the POTW to violate local, State, or Federal sludge requirements for the sludge management method chosen by the POTW. Finally, granting removal credits must not cause a POTW to violate its NPDES permit conditions or limitations (40 CFR 403.7(a)(3)).

Pollutants for Which Removal Credits May Be Authorized (§ 503.72)

Provided a POTW complies with all other applicable requirements, removal credits would be available for the pollutants listed below.

The 65 Pollutants Regulated in One or More Use or Disposal Methods

If a POTW uses or disposes of its sludge through one of the methods for which standards are developed in today's proposal and meets the numerical limits and management practices for that use or disposal

method, the POTW would then be authorized to grant a removal credit for the pollutants regulated in the practice employed by the POTW.

Many facilities may use one or more methods for disposing of their sewage sludge. EPA has concluded that certain pollutants may pose a greater threat to human health and the environment in particular use of disposal methods. For POTWs using one or more use or disposal methods, removal credits would only be available if the concentration of the pollutants do not exceed the lowest concentration for the use or disposal method employed by the POTW.

The 17 Pollutants Which EPA Examined Without Establishing Numerical Limits

Removal credits would also be available for 17 pollutants in one or more use or disposal methods because, at the highest concentrations shown, the pollutant did not pose an unreasonable risk. When a POTW uses or disposes of its sludge through one of the methods for which a pollutant was evaulated for adverse effect in accordance with the requirements of this part, a removal credit would be authorized for that pollutant. However, a removal credit would only be available so long as the concentration of the pollutant in the POTW's sludge did not exceed the numbers evaluated by EPA for adverse effects. These values are included on Table 12 in § 503.72 of the proposed rule. In most cases, these concentrations represent the very highest values, in excess of expected current sludge quality levels. EPA solicits comment on the appropriateness of the capping concentrations of these pollutants for the purpose of removal credits. EPA also solicits data concerning concentration of these pollutants in sludge.

Pollutants Disposed of in MSWLFs

A POTW that disposes of its sewage sludge in a MSWLF and meets the requirements of 40 CFR Part 258 would be eligible to issue removal credits for the pollutants in its sludge. EPA has made the determination that the requirements in 40 CFR Part 258 are adequate to protect human health and the environment from any reasonably anticipated adverse effects of each pollutant.

Some POTWs may employ other use or disposal methods in combination with disposal in a MSWLF. Under those circumstances, EPA is considering limiting removal credits to those pollutants for which specific numerical limits have been established in order to encourage the maximum beneficial reuse of sewage sludge. The Agency remains concerned that such an approach may have the opposite effect. It may encourage POTWs to dispose of all their sludge in landfills, rather than using some of their sludge in a beneficial manner. The Agency solicits comment on this concern.

Hazardous Sludge

EPA has also determined that compliance with the requirements in 40 CFR Parts 261 through 268 (promulgated under Subtitle C of RCRA) when disposing of hazardous sludge will constitute compliance with Section 405 of the CWA. Thus, this type of sludge disposal will be a regulated disposal method under the comprehensive section 405 system. It could be argued that hazardous concentrations of pollutants disposed of under RCRA Subtitle C, by definition, do not interfere with sludge use and disposal and, therefore, removal credits should be available for such pollutants. However, in the case of pollutant concentrations which result in a hazardous sludge, allowing industrial users to obtain removal credits for such pollutants would be inconsistent with statutory objections of improving sludge quality and encouraging beneficial reuse. The availability of removal credits would permit the industrial user to reduce its level or treatment, shifting the removal burden to the POTW and ensuring that the sludge was unavailable for a beneficial use. EPA does not intend that its comprehensive sludge management program and the availability of removal credits encourage any increase in the generation of highly contaminated sludge.

Phenolic Compounds

EPA is also requesting comment on another issue. Certain phenolic compounds (e.g., parent phenol) are regulated for a number of different use and disposal methods but are determined not to represent a threat to human health and the environment for other methods. Consequently, removal credits would be available for those pollutants. The Agency notes that its pretreatment standards regulated 4AAP, an indicator for parent phenol and certain other phenolic compounds. The Agency is considering whether or not removal credits should be available for the family of compounds represented by 4AAP. Only the parent phenol and certain other phenolic compounds were the subject of an environmental assessment. EPA believes that removal credits should be available only for that portion of 4AAP that measures the specific compounds which were subject to an environmental assessment. The Agency requests information on whether 4AAP will consistently reflect the levels of the different phenolic compounds present in the wastewater.

Monitoring, Record Keeping, and Reports (Subpart I)

Purpose (§ 503.80)

This subpart contains the minimum monitoring, record keeping, and reporting requirements necessary to ensure that treatment works, users, and disposers comply with the requirements of the rule. The Agency is requesting public comment on the appropriateness of placing these requirements with the Part 503 technical standards. As an alternative, the Agency is considering the consolidation of the record keeping and reporting requirements in today's proposal with the State program management requirements (40 CFR Part 501) and with the NPDES permitting requirements (40 CFR Parts 122 through 124). Such an approach would consolidate requirements that are primarily administrative. However, the argument can also be made that, along with the monitoring requirements, record keeping and reporting requirements are an integral part of the technical standards.

The Agency is proposing that treatment works monitor a representative sample of their sewage sludge for two classes of pollutants. The first class entails pollutants with specific numerical limits for the use or disposal method employed by the treatment work (i.e., 25 pollutants for the land application of sewage sludge, 22 pollutants for the distribution and marketing of sewage sludge, 18 pollutants for the disposal of sewage sludge in monofills and on surface disposal sites, and seven pollutants for the incineration of sewage sludge). The second class contains those pollutants listed on Table 12 of § 503.72, i.e., those pollutants for which the POTW may grant a removal credit.

Monitoring frequency is based on the wastewater flow of the facility. Facilities that have a wastewater flow of less than one million gallons per day (mgd) would monitor once a year. Those with a wastewater flow of 1 to 10 mgd would monitor quarterly. Those with a wastewater flow over 10 mgd would monitor monthly. The Agency is considering alternatives such as monthly monitoring the first year and then specifying alternative frequencies in a treatment work's permit, based on the variability of the first-year's monitoring results. Sludge with pollutant concentrations that constantly fluctuate would be monitored more frequently than sludge with uniform pollutant concentrations. Another approach that the Agency is considering, is to specify monitoring frequencies based on the industrial flow into the facility.

Permitting authorities may impose more comprehensive and more frequent monitoring requirements than those in today's proposal. Nothing in this subpart precludes the establishment of more stringent requirements. The Agency encourages permitting authorities to recommend alternative monitoring and reporting frequencies as part of their comments on today's proposal.

The discussion included in this section of the preamble is limited to the general requirements that are applicable to treatment works, irrespective of the method by which they use or dispose of their sewage sludge. Monitoring, recording keeping, and reporting requirements that are specific to a particular method were discussed in connection with that method.

General (6,503.81)

Sampling Protocols

EPA is proposing that treatment works collect and analyze their sewage sludge samples in accordance with "Sampling Procedures and Protocols for the National Sewage Sludge Survey," EPA, Office of Water Regulations and Standards, March 1988 (Reference number 55). The sampling procedures and protocols included in this document were compiled specifically for the National Sewage Sludge Survey described elsewhere in this preamble. The procedures are specific to sewage sludge and describe the type of representative samples to be collected, sample locations, sample collection procedures, equipment to be used, procedures for handling liquid and solid samples, and procedures for sample handling and preservation.

Prior to the Survey, these procedures were extensively reviewed within the Agency and by the Association of Metropolitan Sewerage Agencies, Association of State and Interstate Water Pollution Control Administrators, Chicago Metropolitan Sanitary District, and the Iowa Department of Natural Resources. In conducting the Survey, EPA has found that the procedures worked well, irrespective of the size and complexity of the plant sampled. EPA believes that these standard procedures will improve the quality and consistency of data and ensure the integrity of samples collected prior to analysis.

These procedures are also found in Chapter 2 of "POTW Sludge Sampling and Analysis Guidance Document" (Reference number 87). This document includes other relevant information that POTWs may find helpful.

Analytical Methods

The preferred analytical methods for determining the concentration of organic and inorganic compounds in sewage sludge and for the determining the fraction of total, dissolved, and suspended solids in sewage sludge are listed in "Analytical Methods for the National Sewage Sludge Survey," Office of Water, Sample Control Center, March 1988 (Reference number 51). These procedures are also found in Chapter 3 of "POTW Sludge Sampling and Analysis Guidance Document" (Reference number 87).

Methods 1624 and 1625 are isotope dilution, gas chromatography-mass spectrometry (GC/MS) methods for analyzing volatile and semi-volatile organic pollutants amenable to GC/MS. Isotope dilution uses a stable, isotopically labeled analog as an internal standard for the analysis of a compound. As an alternative to Methods 1624 and 1625, EPA lists Methods 624 and 625 found in 40 CFR Part 136. However, Methods 624 and 625 do not have the same precision and accuracy as do Methods 1624 and 1625. Methods 624 and 625 can not distinguish between similar compounds in a sludge matrix. Therefore, the Agency is soliciting public comment on whether it should limit acceptable methods to 1624 and 1625.

Method 1618, used for pesticides, is undergoing further validation as part of the National Sewage Sludge Survey. EPA requests laboratories that have used Method 1618 to provide the Agency with an evaluation of the method in conjunction with their comments on today's proposal. Any changes in Method 1618 will be published in the "Federal Register" as part of the Notice on the results of the National Sewage Sludge Survey.

The methods for analyzing inorganic pollutants in "Analytical Methods for the National Sewage Sludge Survey" are fully validated methods and were compiled from:

- "Methods for Chemical Analysis of Water and Wastes," EPA, Cincinnati, OH, March 1983 (EPA–600/4–79–020), currently available from National Technical Information Service, Springfield, VA 22161 (PB84–128677); and
- "Test Methods for Evaluating Solid Waste," EPA, Washington, DC, November 1986 (SW–846), currently available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC, 20402.

The methods for analyzing pathogenic bacteria, animal viruses, fecal coliform, fecal streptococci, protozoa, helminth ova, volatile solids, volatile suspended solids, and SOUR were described in the discussion of the pathogen and vector attraction reduction requirements. The equation for calculating the percent volatile solids reduction was also described in that subpart of this part of the preamble.

The Agency is seeking public comment on the proposed methods for measuring the parameters included in today's proposal. Alternative methods will be carefully evaluated and may be included in the final rule.

PART X: IMPLEMENTATION OF 40 CFR PART 503

Clean Water Act

The 1987 amendments to the Clean Water Act (CWA) included significant changes to section 405 of the CWA with regard to the implementation of the technical standards for the use and disposal of sewage sludge. Prior to the 1987 amendments, the CWA required that EPA develop standards for the use and disposal of sewage sludge, but did not specify whether the standards were to be implemented through permits and, if so, under what authority. Traditionally, National Pollutant Discharge Elimination System (NPDES) jurisdiction arises when there is a discharge of pollutants to navigable waters from a point source. Thus, there was some question about the applicability of NPDES permits to regulate sewage sludge disposal that did not involve discharges to navigable waters. Likewise, other permits either are media-specific (e.g., permits issued under the Clean Air Act) or regulate particular substances or methods of disposal (e.g., Subtitle D of the Resource Conservation and Recovery Act—RCRA). Therefore, they were also ill-equipped to comprehensively regulate across all media the use and disposal of sewage sludge.

The 1987 amendments establish a program with the objective of protecting public health and the environment from the adverse effects of pollutants in sewage sludge. This is to be accomplished by developing technical standards that establish pollutant limits and management practices for each use and disposal method and implementing these standards through permits. The 1987 amendments make it plain that the technical standards are to be implemented through NPDES permits, unless the standards are included in a permit issued either under one of the listed Federal programs or by an

approved State sludge program. Section 405(f)(1), as amended, provides:

> Through Section 402 Permits.—Any permit issued under section 402 of this Act to a publicly owned treatment works or any other treatment works treating domestic sewage shall include requirements for the use and disposal of sludge that implement the regulations established pursuant to subsection (d) of this section, unless such requirements have been included in a permit issued under the appropriate provisions of subtitle C of the Solid Waste Disposal Act, part C of the Safe Drinking Water Act, the Marine Protection, Research, and Sanctuaries Act of 1972, or the Clean Air Act, or under State permit programs approved by the Administrator, where the Administrator determines that such programs assure compliance with any applicable requirements of this section * * *.

Thus the Act provides authority to implement the standards through NPDES permits where the standards are not included in a Clean Air Act permit, a RCRA subtitle C permit, a Marine Protection, Sanctuaries, and Research Act permit, an Underground Injection Control permit under the Safe Drinking Water Act, or an approved State program permit. It is clear that permit coverage among the programs is to be complementary, not duplicative. However, it is also clear that permit coverage of publicly owned treatment works (POTWs) and other treatment works is to be comprehensive and that no facilities are to go unpermitted because they fall outside the traditional jurisdiction of media-specific programs. If the POTW or other treatment work treating domestic sewage does not have an NPDES permit or any of the other permits listed in section 405(f)(1), the CWA authorizes the issuance of a permit solely to implement the sludge standards (see CWA section 405(f)(2)).

In addition to the requirement that the standards be implemented through permits, the other important provision of section 405(f)(1) allows a State to issue permits to implement the technical standards where the State permit program has been approved by the Administrator. The Administrator may approve State programs that he finds will assure compliance with the requirements of section 405.

Regulations For Implementation Of The Technical Standards And For State Program Approval

EPA proposed State sludge management program regulations that appeared in the **Federal Register** on February 4, 1988 (51 FR 4458). These regulations set forth minimum program requirements and procedures for States to obtain approval of their sludge management programs. These regulations would have required that the States develop sludge management programs which would assure that sludge use and disposal complied with the technical standards. Because these regulations were proposed prior to the Water Quality Act (WQA) of 1987, they did not require that the States develop permit programs.

On March 9, 1988, EPA proposed new State program and permitting requirements (53 FR 7842). These regulations will implement the WQA requirement that permits issued to POTWs and other treatment works treating domestic sewage contain the sludge standards and the requirement that EPA promulgate procedures for the approval of State programs. The purpose of the State program and permitting rules is to provide the implementation framework for the sludge technical standards proposed today by: (1) Providing permit conditions to incorporate the standards into permits, as well as additional requirements to track compliance with the standards; and (2) setting approval requirements for State sludge programs so that they can implement the Section 405 requirements. The March 9, 1988 proposed rules contained three principal sections. First, the proposed rules would revise the existing NPDES permitting regulations at 40 CFR Part 122 and 124 to include sludge conditions in NPDES permits. Second, the proposed rules contained revisions to 40 CFR Part 123 for States with NPDES authority that wish to modify their existing NPDES program to include the regulation of sewage sludge. Third, the March 9, 1988 proposal contains a separate section with requirements for State sludge programs that are not based on NPDES. Thus, these regulations reflect the CWA's stipulation that the sludge standards may be included in any of a number of permits under different programs, so long as they are addressed in a permit. The regulations do not require that States implement the sludge standards through the NPDES program. Where EPA is the permitting authority (i.e., where the State has not sought and obtained approval of its sludge program), the sludge requirements will be primarily implemented through NPDES permits, unless the requirements are contained in one of the other listed Federal permits. These regulations are scheduled to be promulgated in April 1989.

Requirements Prior To Promulgation Of The Technical Standards

The WQA also requires that, prior to promulgation of the technical standards, NPDES permits issued to POTWs are to contain sludge conditions. Moreover, the Administrator is authorized to take other appropriate measures to protect public health and the environment from the adverse effects of sewage sludge (see CWA section 405(d)(4)). In response to this call for controls before promulgation of the technical standards, EPA has developed an interim strategy for sludge permitting. The "interim" or "pre-technical standards" sludge program for implementing section 405(d)(4) of the CWA is contained in a document entitled "Strategy for Interim Implementation of Sludge Requirements in Permits Issued to POTWs" (see Notice of Availability of this document, 53 FR 1987, May 31, 1987). Once the technical standards proposed today are promulgated, the use and disposal of sewage sludge will be regulated by those standards and by the permitting and State program requirements. The "interim" program will continue to apply to those facilities, pollutants, and use and disposal methods not covered by the technical standards. EPA's authority to impose permit limits developed on a case-by-case basis will continue with respect to pollutants and management practices not regulated by the technical standards.

EPA is sensitive to the problems that may arise if "interim" conditions significantly differ from those that will be required by the technical regulations. Thus, in developing its interim permitting strategy, the Agency has sought to adopt approaches which are consistent with the anticipated direction of the technical standards. In addition, a primary emphasis of the interim strategy will be ensuring compliance with existing federal requirements, such as 40 CFR Part 257. Generally, additional limits will be required only for POTWs with known or suspected sludge use or disposal problems. The recommendations for additional limits are based on existing federal guidance and State requirements, and consist in most cases of best management practices, rather than numerical limits. EPA has adopted this approach in recognition that such measures are interim only. EPA's primary objective under section 405(d)(4) remains the protection of public health and the environment.

The anti-backsliding provision of section 402(o) of the CWA does not apply to sewage sludge use and disposal activities. This means that if the permit contains limits developed on a case-by-case basis (i.e., based on the permit writer's best professional judgement) under EPA's interim sludge permitting strategy which are more stringent than subsequently promulgated Part 503 standards, the reissued permit could include limits based on the less stringent Part 503 standards rather than the more stringent case-by-case interim limit. This would be true not only for pollutant concentration limits, but also for monitoring or testing requirements or management practices in Part 503. Because the Part 503 standards (and permit conditions implementing them) must protect public health and the environment, from reasonably anticipated adverse effects, "backsliding" from more stringent interim limits should not result in any significant adverse public health or environmental effects.

PART XI: BENEFITS AND COSTS OF THE PROPOSED RULES

Administrative and Statutory Requirements

As explained in Part II of this preamble, section 405(d) of the Clean Water Act (CWA), directs EPA to publish information on the costs of sludge use and disposal. In addition to this legislative requirement, Executive Order 12291 directs EPA to analyze and consider the cost and impact associated with this proposed regulation. This Executive Order, signed in February 1981, addresses various concerns about Federal regulations, including a requirement to develop a Regulatory Impact Analysis for all major regulations, which are defined as those that impose an annual cost to the economy of $100 million or more or that meet other economic impact criteria. Based on the Agency's estimates of the incremental costs of complying with the proposed regulation, the Agency considers today's action to be a major rule as defined in Executive Order 12291, and has prepared an extensive analysis of the benefits, costs, and other impacts associated with the proposed regulations. This analysis, "Regulatory Impact Analysis of the Proposed Regulations for Sewage Sludge Use and Disposal" (hereafter referred to as the RIA), is part of the record for this rulemaking and copies are available for review and comment (see Part XIII on availability of technical information). The RIA was transmitted to the Office of Management and Budget (OMB) with the notice of proposed rulemaking. OMB's comments are presented in the public record for this rulemaking.

Overview of the RIA

The RIA presents an evaluation of the costs, benefits, and economic impact associated with the proposed regulation. Although the proposed regulation applies to all treatment works except privately owned treatment works treating domestic sewage along with industrial waste and wastewater, the RIA pertains only to publicly owned treatment works (POTWs). This is due to the lack of data indicating the nature and extent of private ownership of such treatment works.

The analysis begins with an assessment of the sludge disposal methods currently used by POTWs and then evaluates the impact of new or additional requirements imposed by the proposed regulation. The RIA also presents the costs and impacts of three other regulatory options that the Agency considered. Each of the options reflects a separate set of regulatory requirements. The impacts of each of these three options are briefly discussed earlier in the preamble (Part VIII, see Table VIII–1) and are covered in detail in the RIA. The following discussion focuses only on the regulatory option that is the basis for today's proposed rulemaking.

The Agency's overall approach to the RIA recognizes that, in addition to compliance costs for testing, monitoring, record keeping, and other requirements, a POTW may be required to alter its current method of sludge use or disposal to achieve compliance with the regulation. These changes could include shifts to a new or different combination of disposal methods, installation or operation of pollution control equipment, or increased reliance on industrial pretreatment. The costs of these changes are evaluated for each of the use and disposal methods. The benefits associated with complying with the regulation in the form of reduced health risks are also evaluated. The RIA presents quantified estimates of these benefits, expressed as a reduction in as the number of cancer cases and other health effects.

There are more than 15,000 POTWs in the U.S. processing nearly 28 billion gallons of wastewater a day. POTWs provide various degrees of pollutant removal depending on the level of treatment in place. The levels of treatment are generally described as pretreatment, preliminary treatment, primary treatment, secondary treatment, advanced treatment, and no discharge. The level of treatment employed in a given facility determines, in part, the purity of the plant's effluent and the quantity and pollutant content of the facility's sludge. The more than 15,000 POTWs in the United States generate an estimated 7.7 million dry metric tons of sewage sludge annually.

The proposed regulations are expected to cover 5,367 POTWs, which is an estimate of the facilities currently using the use and disposal methods that are specifically addressed by the proposed regulations. These facilities produce about 56 percent of the total sludge volume. Of the remaining POTWs, an estimated 6,664 (accounting for 41 percent of the total sludge volume) dispose of sludge in landfills that are specifically controlled by other statutory requirements and are covered in today's regulation by the requirements in proposed Part 258 of RCRA (see Part IX and Part XIV of the preamble). In addition, 3,274 POTWs use other disposal practices that will be addressed in future rulemakings.

Summary of Impacts of the Proposed Regulation

For the disposal practices covered by the regulation, the Agency projects incremental annual compliance costs of $157.7 million (1987 dollars), or an average of $5 per household served by these facilities. The total annual costs include costs for management practices (e.g., sludge testing, record keeping, emissions testing) and, in some cases, incremental costs for a change in the method of use or disposal. In addition, the regulation will result in benefits consisting of reduced effects on human health resulting from reduced exposure to pollutant contaminants. The Agency estimates that the benefits of this proposed rule will be an annual reduction of 9.5 cancer cases and 5,286 cases of other health effects. The proposed regulations are also expected to create certain environmental benefits as a consequence of the improved use and disposal practices. Table XI–1 is a summary of the costs and benefits for each disposal practice.

TABLE XI-1—SUMMARY OF COSTS AND BENEFITS ASSOCIATED WITH THE PROPOSED REGULATIONS

Disposal practice	Number of POTWS	Annual incremental Cost ($ million)	Human Health Benefits		
			Cancer cases avoided	Other health effects avoided	Total cases avoided
Land application	2,623	15.2	0.66	21	21.66
Distribution and marketing	106	7.8	0.02	56	56.02
Monofill	49	25.5	0.62	26	26.62
Surface disposal	2,395	5.5	(1)	(1)	(1)
Incineration	[2] 194	103.8	9.4	5,163	5,172.40
Total	5,367	157.7	9.5	5,266	5,275.50

[1] Not estimated.
[2] In lieu of the current legislation affecting ocean disposal of sewage sludge in the ocean, 25 POTWs currently known to dispose of sewage sludge in the ocean were re-categorized into incineration for purposes of the RIA.

It is important to note that the Agency is not projecting that specific facilities will discontinue their current practice and immediately undertake an alternative practice. Data pertaining to the manner in which specific facilities would react to the proposed regulations are not available. Instead, the compliance strategies for which costs were calculated represent an estimate of the incremental cost of compliance that POTWs face overall.

In light of the uncertainties associated with any particular POTW's compliance strategy, the Agency estimated the incremental cost of compliance as follows. For land application, the estimated compliance cost is based on either a shift to municipal solid waste landfills (MSWLFs) or a change in end uses and sludge processes (e.g., composting). For distribution and marketing, the costs represent a shift in practice to non-agricultural land application under a contractual arrangement or incineration for those POTWs that are not expected to be in compliance. For monofills, the costs reflect a shift to either co-disposal landfills (i.e., landfills accepting sludge and municipal waste) or incineration for the facilities estimated to be in non-compliance. For the facilities currently using sewage sludge surface disposal, the compliance costs reflect a shift to co-disposal in MSWLFs or to composting and non-agricultural land application. For the facilities that currently use incineration but are not expected to be in compliance, the costs are based on additional pollution control equipment.

The feasibility of pretreatment by industrial dischargers as a compliance alternative was also evaluated as part of the RIA. Depending on site-specific conditions, the effects of industrial pretreatment on sludge quality could be significant. The Agency currently lacks sufficient information to reach widely applicable conclusions regarding the improvements to sludge quality (and, therefore, the ability to attain compliance) from locally-imposed, industrial pretreatment requirements.

In an effort to highlight the potential importance of pretreatment, the Agency conducted a limited number of case studies on the effect of industrial pretreatment on municipal sludge quality as part of the RIA. Pollutant removals were estimated for all industrial dischargers covered by categorical standards. Estimates were also made reflecting treatment levels beyond that represented by the standards. (The pretreatment case studies are described in the RIA.) The Agency found, in these particular cases, that an increase in industrial pretreatment provides a significant reduction in the amount of pollutants in the sludge. The portion of pollutant pounds removed from sludge in the case studies ranged from 6 to 96 percent. The reduction in pollutant levels from pretreatment enabled one of the case study POTWs to achieve compliance with the sludge disposal criteria.

The case studies' findings are limited by the site-specific nature of the analysis. The results are dependent on the type and size of the industrial dischargers. The analysis is also limited in that the improvements in sludge quality were based on removals for only a subset of pollutants in the sludge—those for which categorical standards have been established. Other pollutants that may be affected by local limits were not included in the case studies. Thus, industrial pretreatment could potentially be more of a solution to reducing pollutant levels in municipal sludge than is indicated by these case study results.

Limitations of the RIA

The regulatory analysis described here is limited by the general scarcity of current and reliable data on sewage sludge use and disposal methods and pollutant concentrations in municipal sewage sludge. The analysis is also constrained by a lack of specific information as to how POTWs would react to resolve or eliminate compliance difficulties, particularly where changes in use of disposal methods are indicated. Lacking such detailed information, the Agency relies on a number of baseline assumptions pertaining to sludge volumes for each use or disposal method, the costs of existing methods, compliance with the proposed regulation, and potential shifts in methods that may occur. The RIA results, including incremental compliance costs, are strongly influenced by these analytical assumptions.

The most significant limitation is related to the scarcity of data concerning sewage sludge quality. In the absence of a comprehensive data base, and lacking facility-specific information about sludge quality, the Agency relied on an EPA study completed in 1981, "Fate of Priority Toxic Pollutants in Publicly Owned Treatment Works" (Reference number 36, hereafter referred to as the "40 City Study"). Although the study provided data from the largest available sample of nationally distributed treatment plants, it was not specifically designed to support the sewage sludge regulation. Thus, use of this study for sludge quality data is limited by such factors as the locations in the plant where sludge samples were taken, the analytical methods used for measuring the pollutant concentrations, the pollutants analyzed, and the use of the analytical results. The study also only provided data for POTWs.

The Agency used the data from the "40 City Study" to develop three profiles of sludge quality to represent sludge from all publicly owned wastewater treatment plants. In addition to the limitations of the data mentioned above, the sludge quality profiles are further limited by the procedure used to assign the profiles to each of the POTWs. One of the three sludge quality profiles was assigned to each POTW, based on the percentage of industrial influent in the POTW's wastewater. This procedure assumes there is an association between high percentages of industrial influent and high concentrations of pollutants in the sludge. In fact, this intuitively logical relationship has not been convincingly verified by the Agency's analysis of the "40 City Study". We believe our assumption is valid, and that the failure of the "40 City Study" data to support this conclusion further demonstrates the limitations of the data.

The quality of sewage sludge is the basis for determining (1) the ability of POTWs to comply with the proposed regulation, (2) the subsequent impact of non-compliance, and (3) the risks associated with sludge use and disposal. The actual sludge quality at POTWs (i.e., the concentrations of pollutants in sludge) could be significantly different from the sludge quality data used in developing the RIA. Based on the limitations of the sludge quality data, it is possible that the quality of sewage sludge has been misinterpreted and the impact of the proposal over- or understated.

There are other limitations to the RIA that result from the scarcity of data. The RIA does not include any analysis for treatment works other than POTWs. In addition, the volume of sludge generated by POTWs using the various sludge disposal practices was estimated based on the volume of wastewater processed as reported in the "1986 Needs Survey". These estimates may not be accurate because they may not reflect up-to-date wastewater treatment process information. This information affects the estimates of volume of sludge generated.

Other limitations tied to the scarcity of facility-specific information include an inability to evaluate those parts of the proposed regulation that establish maximum pollutant limitations using site-specific parameters. When addressing site-specific criteria in the RIA, the Agency again relies on sludge quality profiles and model plants to represent actual facilities. The lack of facility-specific data also limits the Agency's ability to determine how POTWs will achieve compliance with the regulation. The decision to adopt an alternative disposal practice, to add pollution control equipment, or to require additional pretreatment from industrial dischargers will be made by individual POTWs based on a variety of site-specific conditions and considerations. In the absence of facility-specific information, the Agency relied on a limited number of assumptions concerning the effect of local factors on compliance strategy. As an example, shifts to MSWLFs from other methods of use or disposal were considered to be unlikely for large volume POTWs located in areas where landfill capacity is constrained.

Another limitation of the RIA relates to the distribution of disposal methods among POTWs. The Agency estimated the distribution of disposal practices using original research and a limited amount of existing data (sources are identified in the RIA). For analytical purposes, each facility was assumed to employ only one use or disposal method. In reality, many POTWs use more than one method.

These limitations are important because they affect the compliance cost estimates—some of them to a significant degree. Some of the limitations tend to overstate compliance costs. For example, some POTWs that incinerate sludge are likely to be able to change operations (e.g., decrease feed rate) or depend on other site-specific characteristics (e.g., very high stack height) to avoid the expenditures that the RIA projects for out-of-compliance units to install additional pollution control technologies. In fact, EPA expects that POTWs producing sludge which fails to meet the numerical limits will try any and all low-cost solutions rather than use higher-cost alternatives such as changes in their basic use or disposal method.

Some of the other limitations used in the RIA may have the result of understating the impacts of the proposed regulations. For example, EPA has assumed that the smaller POTWs currently operating sludge monofills that are out of compliance will shift to MSWLFs. This assumption is based on the premise that these smaller POTWs are located in non-metropolitan or rural areas that have land available for new and existing landfill sites. We recognize, however, that the availability and cost of landfilling are becoming serious problems in virtually all areas of the country due to increased public resistance to siting new landfills or expanding current landfills.

Given the scarcity of data that might better indicate how affected POTWs will react to the sewage sludge use and disposal regulations, EPA is confident that the compliance costs provided in the RIA are reasonable estimates of such reactions and costs. Taken together, the Agency believes that the RIA methodology neither understates nor overstates the regulations' costs.

In an effort designed, in part to eliminate many of the limitations of the analysis, the Agency has initiated an information collection effort designed, in part, to provide national estimates of sludge quality, sewage sludge use and disposal practices, and general characteristics of individual facilities (see discussion of the National Sewage Sludge Survey in Part III of this preamble). The Agency is also soliciting comments on several aspects of the procedures and assumptions in the RIA to improve the analysis and better assess the impact of the proposed regulations.

Description Of The Methodology

To evaluate the costs of compliance and benefits associated with the proposed regulations, the RIA first outlines the general characteristics of the wastewater treatment industry. This covers the types of treatment facilities, the number and size of facilities, the quantity of sewage sludge generated, the quality of sewage sludge, the amount of sludge used or disposed of by each method, and the costs of each use and disposal method. Estimates of the number, size, and types of treatment facilities are based on the "1986 Needs Survey". National estimates of the distribution of sewage sludge use and disposal methods among POTWs and the quantity of sludge disposed by each method were developed using original research and existing data (see the previous section of this part). For analytical purposes, each facility was assumed to use only one use or disposal method.

The Agency used data from the "40 City Study" for developing sludge contaminant levels. Three sludge profiles were developed to represent sludges from all publicly owned wastewater treatment facilities. The percent industrial influent of each POTW, as reported in the "Needs Survey", was used to assign one of the sludge quality profiles to each POTW. The three profiles represent three levels of pollutant contamination in sludges. First, a typical or expected level is set at the 50th percentile of the distribution of concentrations in the "40 City Study". Second, a more highly contaminated level is set at the 90th percentile. Third, a very highly contaminated level, representing a small number of facilities with very contaminated sludges, is set at the 98th percentile. Before finalizing the assignment of POTWs to a profile, adjustments were made to the percent industrial influent data to correct for

inconsistently reported values in the "Needs Survey." Once the adjustment was made, the typical sludge profile was assigned to those POTWs having an industrial contribution of 17 percent or less (90 percent of the POTWs). POTWs with higher industrial contributions—i.e., greater than 17 percent but less than 55 percent (accounting for approximately 8 percent of the POTWs)—were assigned to the 90th-percentile category. Finally, those POTWs with an industrial contribution greater than 55 percent (2 percent of the POTWs) were assigned to the 98th-percentile category.

Baseline sewage sludge use and disposal costs were developed from several sources. The most extensive data base was developed by SCS Engineers and published in "Handbook for Estimating Sludge Disposal Costs at Municipal Wastewater Treatment Facilities" (EPA 430/9-81-004). Table XI-2 presents sludge use and disposal costs for representative facility size categories. These costs include annualized capital and operation/maintenance costs for each method and transportation of sludge to the use or disposal site, if applicable.

TABLE XI-2.—BASELINE DISPOSAL COSTS BY DISPOSAL PRACTICE

(Annual Disposal Costs Per Dry Metric Ton of Sludge)

POTW size (MGD)	Annual sludge generation per POTW (tons/yr)	Incineration	Distribution and marketing	Monofill	Dedicated land application	Crop application	Reclamation	Surface disposal [1]
			($/dry metric ton [2])					
0.1	22	[3] na	813	301	279	298	536	236
0.5	111	2,422	458	183	196	179	356	179
2	445	772	326	246	205	176	312	176
14	3,116	283	183	83	57	46	173	46
128	28,478	153	147	55	42	42	161	42

[1] Costs assumed to be similar to crop application.
[2] 1987 dollars.
[3] There are no POTWs using incineration in this size class.

The sludge quality profiles were used to determine compliance with the proposed regulations for each use and disposal method. Once a compliance strategy is assumed, the associated compliance costs are estimated. Estimated costs of compliance are compared to the baseline costs to determine the incremental cost of complying with the criteria. The sum of the incremental costs and the costs associated with management practices and sludge testing are the total costs for each use and disposal method.

Regulatory Impacts for Land Application

Land application is defined in Subpart B of the proposed regulations as the application of liquid, dewatered, dried, or composted sludge to either agricultural or non-agricultural land. A more detailed discussion of land application and the various end uses is presented in Part IX of this preamble and in the RIA.

The regulatory requirements pertaining to land application include pollutant-specific numerical criteria and management practices. These criteria and management practices differ for agricultural and non-agricultural applications. The criteria for agricultural land limit both the application rate (the maximum amount of sludge that can be applied at one time to a unit area of land) and the pollutant loading rate (the maximum amount of a pollutant that can be applied to a unit area of land either during a calendar year or cumulatively). For non-agricultural land, the regulation defines maximum sewage sludge pollutant concentrations. Management practices include various restrictions on access to and use of land. These restrictions vary depending on the level of pathogen reduction attained.

Compliance with the regulation was estimated by comparing the numerical criteria for both agricultural and non-agricultural land applications to the three sludge quality profiles. Non-agricultural land appliers that could not meet the maximum pollutant concentrations, as well as agricultural land appliers that could not meet either annual or cumulative application rates, were assumed to shift to another disposal method.

The results of the analysis for typical sludge quality indicate compliance with all of the criteria for agricultural land application. For the 90th- and 98th-percentile sludges to meet the criteria, sludge applications rates are considered too low to be practically feasible. Therefore, the POTWs that have been assigned to the 90th- and 98th-percentile sludge qualities are projected to be out of compliance with the agricultural land application criteria. The results of the analysis for non-agricultural criteria indicate that the maximum allowable concentrations can be met for the typical and 90th-percentile sludge quality. Only the 98th-percentile sludge fails to meet the non-agricultural land application criteria.

The 266 POTWs that cannot meet the agricultural land application criteria are assumed to shift to either non-agricultural land application (dedicated sites), MSWLFs, or composting in combination with non-agricultural land application. The 12 POTWs that fail to meet the maximum concentration limits for non-agricultural land are assumed to shift to MSWLFs or to add composting processes prior to dedicated land application. The total incremental cost associated with shifting agricultural ($7.0 million) and non-agricultural ($1.0 million) land applications to alternative practices is $8.0 million annually.

Pathogen and vector attraction reduction and access and use restrictions are not expected to result in any incremental costs for POTWs in this category. These management practices are thought to be currently required by existing State and Federal regulations. There is an estimated total annual cost of $500,000 associated with pathogen testing for all POTWs applying sludge to land. Because many POTWs perform vector attraction tests, the cost of such testing is assumed to be negligible. Sludge testing and record keeping and monitoring are required for all POTWs applying sludge to both agricultural and non-agricultural land. Those 25 POTWs shifting to co-disposal landfill would not incur costs of sludge testing and record keeping and monitoring. The total annual cost of sludge testing is approximately $4.4 million. Record keeping and monitoring are estimated to cost $2.2 million annually. Thus, the total estimated compliance costs associated with land application are $15.2 million annually.

The baseline risks associated with land application (i.e., the risks associated with current practice) are estimated to be 0.18 cancer cases and 42 cases of other health effects. The benefits of complying with the proposed regulation are expressed as reductions in the risk—the number of baseline cases that are avoided. For land application, the benefits are estimated to be 0.06 cancer cases avoided and 21 cases of other adverse health effects avoided.

Regulatory Impacts for Distribution and Marketing

The proposed regulation defines distribution and marketing as the use of sewage sludge or a product derived from sewage sludge (e.g., composted sewage sludge) primarily as a soil amendment or fertilizer. The sludge or product may be sold or given to users or distributed in containers, such as bags, or in bulk form. The end user and, therefore, the ultimate end use of the sewage sludge is usually not controlled (either directly or indirectly through a contract or similar mechanism) by the POTW. For purposes of the RIA, distribution and marketing has been distinguished from land application on the basis of whether or not the sludge has been composted. POTWs known to compost sewage sludge and the quantities of sewage known to be composted were used to approximate the number of POTWs and volumes of sludge involved in distribution and marketing.

A total of 106 POTWs currently practice distribution and marketing. These POTWs generate an estimated 705,500 metric tons of sewage sludge per year, roughly nine percent of the total sewage sludge generated in the United States annually.

The proposed regulation defines maximum pollutant concentrations in the distributed and marketed product as a function of application rates. The pollutant concentrations of the 106 POTWs, as represented by sludge quality profiles, were compared to the regulatory limitations to determine maximum rates of application. Since composted sludge is mixed with bulking agents before being distributed, the final concentration of pollution in composted sludge was calculated using a dilution factor. The application rate analysis indicates that a typical quality sludge, when applied at 10 dry metric tons per hectare, complies with the maximum allowable concentrations. For higher pollutant concentrations, the application rates would be too limiting. Thus, the 35 POTWs associated with the 90th- and 98th-percentile sludge are assumed to shift to alternative disposal methods.

An estimated 70 percent of these 35 POTWs (25 POTWs) are expected to shift to non-agricultural land application. These POTWs currently dispose of their sludge by using non-agricultural end uses, they either have some level of control or are expected to gain contractual control of the end use of their sludge. The remaining 30 percent of the 35 POTWs are assumed to shift to incineration. The total incremental cost for these 10 POTWs to shift their current method to incineration is $7.1 million. This includes $180,000 for continuous monitoring and recording and a one-time cost of $130,000 for performance testing and air dispersion modeling.

Management practices required by the proposed regulation include preparing labels and information sheets for the distributed sludge, testing sludge, and reducing pathogens. The level of pathogen reduction required by the regulation is assumed to be achieved when sewage sludge is properly composted. Thus, no incremental costs are expected for pathogen reduction in this case. The 71 POTWs that will continue distribution and marketing incur a total cost of about $23,000 for labels or sheets. All 106 POTWs in this distribution and marketing category will test their sewage sludge at a cost of $500,000 annually and will incur annual costs of $140,000 for record keeping and reporting annually. In sum, the total estimated compliance costs for distribution and marketing are $7.8 million for the first year and $7.7 million annually for subsequent years.

The baseline risks associated with distribution and marketing (i.e., the risks associated with current practice) are estimated to be 0.02 cancer cases and 95 cases of other health effects. The benefits of complying with the proposed regulation are expressed as reductions in the risk—the number of baseline cases that are avoided. For distribution and marketing, the benefits are estimated to be 0.02 cancer cases avoided and 56 cases of other adverse health effects avoided.

Regulatory Impacts For Monofills

As discussed in Part IX of the preamble, Subpart D of the proposed regulations apply to landfills that are used only for the disposal of municipal wastewater sludge (monofills). The methods of landfilling sewage sludge and the basis for regulatory requirements are discussed more fully in the RIA and in Part IX of this preamble. The following is a summary of the methodology used in the RIA to assess the impact of the regulation on facilities disposing of sewage sludge in monofills.

The Agency has identified 49 POTWs that use or maintain monofills. These POTWs account for approximately 100,000 metric tons of sewage sludge per year (about one percent of the total sewage sludge generated in the United States).

To determine the number of POTWs in compliance with the proposed criteria for monofills, each of the POTWs using monofills was assigned to one of the three sludge profiles based on the percent industrial contribution to each plant. The three sludge profiles were then compared to the maximum allowable sludge concentration specified in the proposed regulation for monofills overlying Class II ground waters. Although the proposed regulation specifies separate criteria for Class I, and Class II and Class III ground waters, the criteria for Class II were used for this analysis based on studies indicating a high probability that existing monofills overlie Class II ground waters. This comparison resulted in none of the 49 POTWs passing all of the pollutant limits for any sludge profile.

A POTW that does not meet the numerical criteria for one or more pollutants can request that EPA run a computer model to generate criteria based on the POTW's site characteristics. In the absence of the individual facility data required to demonstrate compliance by running a site-specific model, all plants failing to meet a regulation's numerical criteria were assumed to switch to a different method of sewage sludge disposal. The smallest facilities (0.1 to 0.5 million gallons per day (mgd) model facilities) are assumed to shift to MSWLFs. The larger facilities, because of their potentially significant impact on municipal landfill capacity problems, are assumed to shift to incineration.

The estimated total incremental cost for the 19 smaller-size facilities to shift from monofills to MSWLFs is approximately $170,000 annually. For the 30 POTWs currently monofilling that are in the larger size classes, the incremental cost to shift to onsite incineration is estimated to be $24.3 million annually.

Those POTWs shifting to MSWLFs will not be required to test their sludge quality continually. But, the 30 facilities shifting to incineration will be required to test for the pollutants specified in the

proposed regulation as it pertains to incineration. The total cost associated with sludge testing for these facilities is approximately $22,000 per year. In addition, the POTWs shifting to incineration will have to perform continuous monitoring, record keeping, and reporting tasks at a cost of $600,000 annually. POTWs shifting to incineration will also incur a one-time cost of approximately $400,000 for performance testing and air dispersion modeling.

The total incremental compliance costs associated with sewage sludge monofills for the first year are $25.5 million annually. The annualized cost in subsequent years are estimated to be $25.1 million.

The baseline risks associated with monofills (i.e., the risks associated with current practice) are estimated to be 0.02 cancer cases and 26 cases of other health effects. The benefits of complying with the proposed regulation are expressed as reductions in the risk—the number of baseline cases that are avoided. For the monofill disposal practice, benefits are estimated to be 0.02 cancer cases avoided and 26 cases of other health effects avoided.

Regulatory Impacts for Surface Disposal Sites

A surface disposal site is defined in the proposed regulation as an area of land on which only sewage sludge is placed without vegetative or other cover and on which sewage sludge remains for a period of one year or longer. The Agency has identified 2,395 POTWs that use sewage sludge surface disposal sites for managing the disposal of their sludge. Most of these POTWs are in the smallest size categories (0.1 and 0.5 mgd) and generate approximately 197,000 metric tons of sewage sludge per year, less than three percent of the total generated in the United States.

The proposed regulation defines maximum allowable pollutant concentrations for surface disposal sites. To determine the number of POTWs in compliance with the proposed criteria, the three sludge quality profiles were compared to the pollutant concentration limits defined in the regulation. Based on this comparison, 25 POTWs with 98th-percentile sludge quality failed to meet the numerical limits for one or more pollutants. The 20 smallest facilities that cannot meet the criteria are assumed to shift to MSWLFs. The five largest facilities that do not meet the criteria are assumed to compost their sludge and land apply it to dedicated sites.

The total incremental cost for the smaller facilities to shift from sewage sludge surface disposal to MSWLFs is approximately $150,000 annually. The total incremental cost for the larger facilities to apply composted sludge to dedicated land is $1.2 million annually. Management practices required by the proposed regulations for surface disposal include sludge testing, record keeping and reporting, and pathogen and vector attraction reduction. Sludge testing required for all of the POTWs using surface disposal sites is estimated to cost $2.3 million annually. The annual cost of record keeping and reporting is estimated to be $1.7 million. These POTWs will also incur an annual cost of $0.2 million to meet the pathogen and vector attraction reduction requirements. Other management practice requirements include use and access restrictions, runoff controls, and limits for methane gas generated. The costs for complying with these requirements are expected to vary by site; some POTWs may already be subject to similar requirements imposed by local or State authorities. The Agency does not have sufficient information to estimate the costs for methane control and for runoff requirements and solicits comment on the compliance costs associated with all surface disposal site management practice requirements. For purposes of the proposed rulemaking, the Agency estimates the total incremental cost of compliance for surface disposal to be $5.5 million, annually. The Agency has not yet estimated human health benefits for this method of disposal.

Regulatory Impacts for Incineration

A detailed discussion of sewage sludge incineration and the regulatory requirements pertaining to incineration can be found in Part IX of this preamble. The following is a brief discussion of the methodology used in the RIA for developing the compliance costs and risk estimates for incineration.

The proposed regulation requires sewage sludge that is incinerated to meet pollutant limits for seven metals and for total hydrocarbons (THC). Compliance with the proposed criteria is demonstrated in the RIA using a two-step process. First, maximum concentration limits for the metals and for THC are calculated using the equations specified in the regulation. The maximum concentration limits for the metals are based on the sludge feed rate and incinerator control efficiencies. For THC, the limits are based on the gas flow rate and a dispersion factor. All of the equation parameters used to establish limitations, except for the sludge feed rates and the gas flow rates, are given in the regulation. If any of the pollutant concentrations in the sludge of a POTW are above the calculated maximum concentration values, the incinerator at that POTW is not in compliance. Compliance must be demonstrated through incinerator emissions testing and air dispersion modeling.

Parameters provided by incinerator performance tests and computerized air-dispersion modeling are used to calculate maximum allowable concentrations for metals. For THC, the air dispersion model is used to calculate the dispersion factor, which is used to re-calculate the equation given in the regulation. If compliance is not achieved through these two steps, POTWs are assumed to upgrade the incinerator's pollution control equipment. For purposes of the RIA, the pass/fail analysis uses the 10th-percentile metal control efficiency values specified in the regulation to determine how many facilities would have to test their facilities and conduct air dispersion modeling. Then, typical values were used as a proxy to determine the number of facilities that would be out of compliance with the numerical limit after performance testing and modeling.

EPA identified 169 POTWs that use 282 sewage sludge incinerators as a method of disposal. These POTWs generate slightly more than 20 percent (1.7 million dry metric tons per year) of the total municipal sewage sludge produced in the United States. For purposes of this analysis, 10 actual incineration facilities were selected as models to represent the variety of geographic, meteorological, and operating conditions relevant to all incineration facilities. Each of the 169 facilities is represented by the one facility in the group of ten it most closely resembles in terms of location, stack parameters, and capacity.

The Ocean Dumping Ban Act of 1988 prohibits the dumping of sewage sludge into ocean waters after December 1991. To account for the 400,000 dry metric tons of sewage sludge currently disposed of in ocean water, the 25 POTWs that currently use this method have been included in the incineration category. The volume of sludge generated by these POTWs will eventually be covered by today's proposed regulation. At present, incineration is the most likely disposal method. The 25 POTWs were assigned to one of the 10 models as were the other 169 POTWs currently incinerating their sewage sludge. It is assumed that 34 additional incinerator units will be required. Therefore, for the purposes of the RIA, the Agency assumes 194 POTWs generating 2.1 million metric dry metric tons of sewage sludge per year, using 316 sewage sludge incinerators.

Compliance costs were estimated using a two-stage process. First, an analysis was performed to determine the number of facilities currently in compliance with the proposed regulatory criteria. The three sludge quality profiles (previously discussed in the methodology section) formed the basis for comparison to the criteria. Second, compliance costs were aggregated for monitoring, record keeping, other management practice modifications, performance tests, and pollution control systems.

When the sludge feed rates from the 10 model facilities were used to calculate the maximum allowable pollutant concentration, all three of the sludge quality profiles exceeded the limits for several pollutants. All of the incinerator facilities are then assumed to incur the costs of emission testing and air dispersion modeling to demonstrate compliance. When maximum allowable concentrations are calculated using typical, rather than worst-case 10th-percentile, removal efficiencies and dispersion factors (to provide a better representation of site-specific conditions at the model plants), 122 POTWs (with 219 incinerators) are projected to fail to meet the numerical limits for metals. Of these, 28 POTWs (with 61 incinerators) are also projected to fail to meet hydrocarbon emissions requirements.

The cost of complying with the proposed regulation includes the costs of management practices required of all sewage sludge incinerator facilities, the costs of performance testing, and the costs of retrofit technologies if facilities do not comply after performance tests and air dispersion modeling. Management practices include sludge testing for regulated pollutants and continuous monitoring of several incinerator parameters. Performance testing costs include emissions testing and air dispersion modeling.

The total annual cost of sludge testing for all POTWs with incinerators is approximately $180,000. The total incremental costs of monitoring and recording (some facilities are believed to have monitoring devices in place to meet New Source Performance Standards requirements already) are estimated to be $4.1 million annually. These costs reflect annualized capital costs plus annual operating and maintenance expenses. Record keeping and reporting is estimated to cost $350,000 annually. Thus, the total annual costs for management practice requirements are $4.6 million.

The total costs associated with performance testing for 169 POTWs are $2.6 million. Theoretically, these costs are one-time expenditures by all POTWs that want to show compliance through performance tests and air dispersion modeling and avoid the cost of retrofit pollution control devices.

A total of 219 incinerator units are projected to incur the cost of upgrading their air pollution controls. Aggregate costs were estimated for the following three retrofit technology options to control metals emissions; (1) Wet electrostatic precipitators (ESPs); (2) fabric filters; and (3) dry scrubbers with fabric filters. Removal efficiency data for these technologies are very limited. The Agency has obtained and evaluated several studies of these technologies as applied to municipal solid waste combusters, but has no comparable studies of sewage sludge incinerators. Still, EPA believes that improved incinerator performance is achievable with the addition of these air pollution control devices. In the absence of better information, however, the Agency is unable to differentiate among the three retrofit technologies for purposes of assigning an improved removal efficiency. In order to estimate costs for this rulemaking, installation of wet ESPs was assumed to be appropriate for all incinerators that fail to meet the criteria for metals.

Total annual incremental costs for the retrofit technologies include annualized capital costs, installation and engineering expenses, and yearly operation and maintenance costs. The total costs assuming all POTWs choose the wet ESP option are $24.0 million annually. The costs associated with the addition of fabric filters are $21.5 million annually. The most expensive option is the dry scrubber/fabric filter option, which is estimated to cost $186.2 million annually. The 28 POTWs (with 61 incinerators) that are also estimated to fail to meet hydrocarbon emission limits are assumed to require afterburners to effect removal of hydrocarbons. The total annual cost of after-burners with heat exchangers (energy recovery system) for these POTWs is estimated to be $72.6 million.

The aggregate compliance costs associated with incineration for the first year, including management practice costs, performance testing costs, and costs of all of the wet ESP retrofit technology, are $103.8 million. The performance testing is a one-time cost. The annualized costs in subsequent years are estimated at $101.2 million.

The baseline risks associated with incineration (i.e., the risks associated with current practice) are estimated to be 12.0 cancer cases and 5,976 cases of other health effects. The benefits of complying with the proposed regulation are expressed as reductions in the risk—the number of baseline cases that are avoided. For incineration, the benefits are estimated to be 9.4 cancer cases avoided and 5,163 cases of other adverse health effects avoided, for a total of 5,172.4 disease cases avoided.

Pretreatment

One section of the RIA is a separate analysis of the potential for application of industrial pretreatment as a compliance option for the proposed sewage sludge regulations. The assumption here is that stricter enforcement and requirements for pretreatment (beyond the categorical standards for indirect dischargers) would reduce the amount of pollutants entering the POTW and, consequently, would reduce the amount of pollutants in the sludge. In the RIA, the pretreatment case studies are used to determine whether compliance with the proposed regulation could be achieved through tighter pretreatment controls on categorical dischargers rather than shifts to alternative disposal methods.

To date, EPA has analyzed eight POTWs to determine the effect of stricter pretreatment measures on a POTW's ability to comply with the sludge disposal criteria. The eight POTWs were selected on the basis of data availability, while also trying to cover a variety of geographic regions, sludge disposal practices, and mix of contributing industries. Of the eight case studies, two POTWs use incineration, one uses a monofill, one uses a MSWLF, three use land application, and one uses ocean disposal for sludge disposal. The case study POTWs range in size from 2 to 300 mgd and the percent of industrial influent ranges from 4 to 52 percent. Fourteen industry segments and eight pollutants were included in each case study.

The case studies consider the effect of categorical pretreatment standards and, when applicable, more stringent technologies. At each POTW, the annual loading rates of several pollutants were estimated for each industrial contributor. Then, the reduction in pollutant loadings was estimated for the additional control provided by pretreatment. The major sources of information for pretreatment technologies and their pollutant reductions were the technical support documents for the effluent guidelines covering each industry. Pollutant reductions as a result of stricter

pretreatment will vary for each POTW depending on the types and sizes of the industrial contributors.

The results of the case studies show that only one of the eight facilities can achieve compliance for all pollutants if additional pretreatment by categorical industries is achieved. This POTW uses land application to dispose of its sewage sludge. For the POTWs that incinerate and monofill their sewage sludge, the criteria in the proposed regulations are stringent enough that even substantial reductions in certain pollutant levels were insufficient to attain compliance. The general conclusion of this analysis is that significant reductions in pollutants can be achieved by strict pretreatment, but that compliance with the sludge disposal criteria may not necessarily be attained through pretreatment actions alone.

The case study analysis and its conclusions are limited by the site-specific nature of the analysis, making it difficult to extrapolate results to all POTWs. The results are dependent on the type and size of the dischargers. The analysis is also limited in that the only improvements in sludge quality were among the categorical dischargers. Further, the pollutant removals were limited to those contaminants for which categorical pretreatment standards have been established.

This study of pretreatment also raises another question that may affect the Agency's policy on sewage sludge disposal. The issue is whether industrial pretreatment will merely shift pollutant problems from the sludge at the POTWs to the sludge at industrial facilities. The Agency plans to study this question before promulgating the final technical regulations and invites comment on the issue.

Reduction In Risk

In addition to the costs associated with the proposed regulations, the RIA also discusses the benefits that can be attributed to control of sewage use and disposal. The presentation in the RIA is limited to a summary description of the methodology used to calculate benefits and a summary of the results. A detailed description of the methodological approach and findings are presented in a companion document entitled "Aggregate Risk Assessment of Municipal Sewage Sludge".

The risk assessment used in the analysis follows the process outlined by the National Academy of Sciences. The assessment begins with a hazard identification and a source assessment and continues with fate and transport estimates, exposure assessments, pharmokinetics analysis, and dose response assessments. These components are used to develop the changes in health, measured as morbidity and mortality.

The first step in identifying the benefits from the proposed sewage sludge regulation involves estimating the baseline human health risks of sludge use or disposal. These health risks are presented as cases of cancer and other health effects, such as lead-related diseases. The key inputs for estimating baseline risks include source (POTW) information, sludge contaminants, and ultimate disposal site characteristics. Baseline risks from the sludge disposal practices are characterized based on the sludge quality profiles presented earlier, the quantity of sludge generated by each POTW, and the fate and transport of the pollutants subsequent to disposal, depending on a number of different environments that vary with each disposal practice.

On the basis of the above inputs, the analysis estimates the potential pathways of human exposure and models the fate and transport of the key sludge constituents for these primary pathways. The study then estimates the potential population exposed. This information, along with dose-response data for each of the sludge contaminants of concern, is used to characterize baseline human health risks.

Once baseline risks are derived, risk estimates are recalculated based on the level of control imposed by the proposed regulation. The regulatory compliance strategies for the health risk assessment parallel those used to estimate the compliance cost. The same risk assessment process is used to derive the change in the baseline risk as a result of each control option by use or disposal method. This change in the baseline is the measure of benefit. The estimates of the benefits are presented in the analysis for each use of disposal method and are expressed as the number of disease cases avoided. These disease cases include cancer cases avoided, but the results of the analysis also specify non-cancer human health effects that are avoided as a result of the proposed regulation.

Based on the analysis, the Agency estimates the benefits for this proposed rule to be a reduction of 9.5 cancer cases and 5,286 cases of other health effects. The quantitative benefits for each disposal practice are presented earlier in this part of the preamble and in Table XI–1.

There are a number of limitations that affect the estimates of risk reduction, including the exclusion of certain exposure pathways, contaminants, and health effects. The analysis is also limited by the reliability of sludge quality data, the uncertainty of the distribution of disposal practices by POTWs, and the lack of ability to account for population growth and mobility.

Environmental Effects

The proposed regulation is expected to result in certain environmental benefits, in addition to the benefits associated with reducing the incidence of adverse human health effects. These environmental benefits are an outgrowth of the general reduction in the amount and toxicity of sludge that is used or disposed of by ways damaging to the environment, particularly that which is placed in environmentally sensitive areas. These environmental benefits consist mainly of improved habitats for wildlife and other species in the areas where methods of disposal and use practices occur.

For example, the regulations affecting land application of sewage sludge are likely to result in some level of improvement in the quality of water bodies in the watershed for these areas. The management practices specified in the regulation provide for set-backs from water bodies. This will tend to decrease runoff of pollutants, thereby improving water quality in the area's streams, rivers, or lakes. Similarly, monofills and surface disposal sites are prohibited from wetland areas. Together, these improvements, while they may be small, will nevertheless benefit the aquatic species present and other species in the food-chain that are dependent on the water bodies and wetlands for food (e.g., waterfowl). To some extent, sport fishermen and hunters are likely to gain some benefit due to the improved habitats for fish and wildlife.

Changes in incineration practices are also likely to provide some marginal environmental gain for wildlife. In addition, emissions reductions in the vicinities of the incinerators may reduce particulate and other chemical deposition on buildings, automobiles, and structures, providing for a reduction in the extent to which these items are damaged by air pollution. Commerical farms and home gardens located in areas affected by deposition from sludge incinerators may experience some increase in crop vitality due to lower levels of pollutants that are discharged.

Small Entity Analysis

In addition to the analytical requirements imposed by the statute and by Executive Order 12291, the Regulatory Flexibility Act requires all Federal agencies to analyze the impact of a proposed regulation on small businesses, small governmental jurisdictions, and small organizations. The purpose of this analysis is to determine whether the proposed regulation will have a significant impact on a substantial number of small entities. For purposes of the proposed sludge regulation, the Agency defines small entity as a small POTW. The size distinction is based on daily influent flow, which is a frequently used parameter for describing the size of a POTW. There is also a direct relationship between the amount of flow and the quantity of sludge generated.

Throughout the RIA, costs have been estimated for five size classes of POTWs represented by 0.1 mgd, 0.5 mgd, 2 mgd, 14 mgd, and 128 mgd. For the purpose of evaluating the impact of the sludge regulation on small entities, a POTW in the 0.1- or 0.5-mgd size class is defined as a small entity. The Agency solicits comment on this definition. Eighty-one percent (4,337 POTWs) of the POTWs covered by the proposed regulations are in these two size classes. The majority (98 percent) of these small entities practice land application or use surface disposal sites.

The small POTWs will not incur significant costs if their sludge is considered to be of typical quality, which is the Agency's projection for approximately 90 percent of all POTWs. In addition, the Agency has limited the compliance burden for small entities in the area of sludge testing. The proposed regulations are tiered such that smaller POTWs are subject to less frequent monitoring and reporting requirements. Small entities make up 81 percent of all POTWs subject to the regulation, but only incur six percent of the total compliance costs for the proposed regulations. The total annual compliance costs per POTW averaged over all disposal practices are about $1,600 per year for POTWs in the 0.1-mgd size class and about $3,000 per year for those in the 0.5-mgd size class.

Request for Comments

The Agency has initiated an information collection effort through the National Sewage Sludge Survey. The survey collects data that will be used to develop the final numerical limits by testing the assumptions on which those limits are based and to better estimate the effects of this regulation on the methods of sewage sludge use and disposal. Approximately 470 POTWs are expected to participate by completing a questionnarie. In addition, any other treatment works interested in answering the survey should call or write for a copy of the questionnaire, as directed in the "For Further Information, Contact" section at the beginning of this preamble.

As discussed earlier, the RIA was limited by data constraints in several areas. Therefore, the cost and benefit results are partly based on a number of assumptions about sewage sludge use and disposal. In an effort to increase the accuracy of the Agency's projections and improve the analysis, EPA is soliciting comments on the following issues concerning the RIA. (These issues are described in detail in the appropriate segment of the RIA.)

Number of POTWs and Volumes of Sludge

As part of the National Sewage Sludge Survey, the Agency is collecting information on the number of POTWs, the volume of sludge currently generated, and the amount going to each method of use or disposal. As part of this request for comment, however, the Agency further solicits information on these estimates.

Multiple Practices

The RIA simplifies current estimates by assigning a single use or disposal method to each facility, although the Agency is aware that some POTWs use multiple methods of use or disposal. The Agency requests comment on the extent to which multiple methods are being used and the extent of error that might be associated with the RIA's simplification.

Small Entity Analysis

The RIA includes a small entity analysis. The Agency solicits comment on the definition of small entity, both in terms of using the flow size of a POTW as the means to define small and also on the levels selected to define small POTWs for regulatory purposes.

Baseline Costs

All of the compliance cost estimates are based on baseline costs for each of the methods of use or disposal. The major source of these baseline costs was an engineering study published by the Agency in 1981. The Agency solicits comment on the accuracy of these baseline costs and requests updates on any of the cost values that have changed.

Privately Owned Treatment Works

The RIA is limited to the impact that may be incurred by POTWs, but the regulation applies to all treatment works. The Agency requests comment on the number, location, size, and sludge use or disposal methods at privately owned treatment works.

Pretreatment

The Agency believes that industrial pretreatment will be a means of compliance for many municipalities, but lacks sufficient information to make a quantitative assessment of the number of POTWs that will use local limits, either alone or with other compliance strategies, to comply with these regulations. Comment is requested on all aspects of industrial pretreatment as it pertains to compliance with sewage sludge use and disposal limitations (e.g., the extent of industrial pretreatment as a means of compliance). The Agency also solicits suggestions or additional data to evaluate pretreatment as a means of compliance.

Sludge Quality Data

One of the more serious data limitations associated with the RIA is a lack of sludge quality data. As described above, the assumptions concerning the concentrations of pollutants currently found in sewage sludge are critical to many phases of the RIA's conclusions. One objective of the National Sewage Sludge Survey, in its analytical sampling component, is to collect sludge quality information. Even in light of this planned data collection effort, the Agency requests comments on other sources of sludge quality data to use for comparative purposes and for verification. The Agency is also requesting comment on how the sludge profiles are used to represent sludge quality at individual treatment plants because, even when the sampling effort is completed, some assignment of sampling results to actual facilities may be required to conduct the Regulatory Impact Analysis.

Site-Specific Factors and Compliance

Another limitation of the RIA is an inability to assess compliance when site-specific factors will be used to establish the regulatory limitations. For example, the regulatory limitations for monofills may be adjusted on the bases of depth to ground water. The RIA does not account for such adjustments. Similarly, actual operating parameters at an incinerator may affect the allowable pollutant concentrations. The RIA accounts for conditions at ten model facilities, but not for distinctions at individual locations. The Agency requests comments on the extent to which site-specific factors will affect compliance.

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it is used or disposed of and to create incentives for treatment works to generate clean sludge.

Emphasize Waste Reduction and the Beneficial Reuse of Sewage Sludge

By reducing the generation of sewage sludge (e.g., by home composting of food scraps rather than putting them down a garbage disposal) and by creating incentives for the generation of clean sludge, treatment works have more options to manage their sewage sludge beneficially.

Preserve a Local Community's Choice of a Use or Disposal Method

Although the Agency's preference is for local communities to reuse sludge for its nutrient and soil conditioning properties of sewage sludge, the Clean Water Act (CWA) reserves the choice of a use or disposal method to local communities. However, the protection of public health and the environment, where risks are significant, still dictates stringent pollutant limits. Therefore, some communities may not be able to continue with their current method of disposal, if, for example, a monofill is located over Class I ground water.

Base the Rule on Minimizing Risks to Individuals

In cases where exposure to pollutants is likely to be high or where there are significant scientific uncertainties, pollutant limits are derived using exposure assessment models designed to protect the most exposed individual, plant, or animal (MEI). If a use or disposal method poses insignificant risk of pollutant exposure to individuals through food, water, or air, base the numerical limits on "current sludge quality."

Propose Reasonable Standards

To protect human health and the environment from reasonably anticipated adverse effects of each pollutant, design an approach that accounts for data inadequacies, but does not necessarily protect against every conceivable combination of adverse case conditions.

Propose an Implementable Rule

Balance the flexibility associated with site-specific analyses against the simplicity of national pollutant limits.

Solicit Comment on a Wide Range of Issues

In addition to explaining the proposal, the preamble should discuss alternative approaches that have been used by other Agency programs regulating pollutants in the various media and that were considered in developing the rule.

EPA is soliciting comment on these principles which it used in developing today's proposal.

Coverage of the Rule

The CWA recognizes that the development of standards for the use and disposal of sewage sludge is an iterative process. In section 405(d)(2)(C), the Administrator is directed to review the regulations from time-to-time, but no less frequently than every two years, to identify additional pollutants and to promulgate regulations for those pollutants. After evaluating a total of 50 pollutants, EPA is proposing specific numerical limits for 28 pollutants in one or more use or disposal methods. The National Sewage Sludge Survey will identify additional pollutants for the Agency to evaluate. However, are there pollutants that are not included in today's proposal which commenters believe should be evaluated immediately?

EPA did not evaluate the initial list of 50 pollutants for each use or disposal method because the Agency's expert advisory group did not believe that certain pollutants would interfere with a particular method of use or disposal. However, without evaluating whether or not a pollutant interferes with a particular disposal method, EPA could not authorize a removal credit when sewage sludge is disposed of by that method. In future rulemakings, the Agency plans to evaluate the interference of a pollutant with each method of use or disposal. The Agency is soliciting comment on the need to re-run its models for all the pollutants in every use or disposal method if a human health criterion exists.

The proposal does not set standards for sewage sludge that is generated or treated by privately owned treatment facilities that treat domestic sewage along with the facilities' industrial wastewater. At this time, the Agency does not believe that it has sufficient information on the characteristics of industrial sludge to use the models that were developed for municipal sewage sludge. However, are there types of industrial sludge, such as food processing wastes with a high organic content, that are sufficiently similar to municipal sewage sludge for the Agency to establish standards with the models developed for municipal sewage sludge? The data needed to determine the appropriateness of the exposure assessment models for industrial sludge include the viscosity, density, moisture content, and organic carbon content of the sludge.

Generally, when sewage sludge is incincerated, the sewage sludge is fired in sewage sludge-only facilities. The Agency is examining the co-firing of sewage sludge with solid waste in connection with the development of new source performance standards for municipal waste combustors. Under section 405(d) of the CWA, should the Agency set separate standards for sewage sludge fired with solid waste, even though sewage sludge is unlikely to be a significant portion of the waste fed into a municipal waste combustor? On the other hand, should the Agency develop standards under both section 111 of the CAA and section 405(d) of the CWA? Standards were proposed under the joint authority of sections 4004 and 4010 of RCRA and section 405(d) of the CWA in the case of the disposal of sewage sludge in municipal solid waste landfills (MSWLFs).

The Agency is proposing standards for five disposal practices. Are there other methods of using or disposing of sewage sludge that the rule does not, but should cover?

Methodologies

Exposure Assessment Models

The Agency developed a series of mathematical expressions or algorithms to simulate the movement of a pollutant into and through the environment to an MEI. These models were designed to calculate the long-term exposure to an individual, plant, or animal. Were the most appropriate models used or are there other more appropriate models that the Agency should consider prior to promulgating pollutant limits? How should the models EPA used be revised? In a rule such as this, is it appropriate to evaluate only the long-term effects or should the models be modified to also consider short-term fluctuations in exposure?

The technical support documents for land application, landfilling, and incineration list the values used in the models. Do these values support a rule that is "adequate to protect public health and the environment from any reasonably anticipated adverse effect of each pollutant"? The Agency is soliciting additional data in refining today's proposal.

The Agency used the accepted approach of evaluating the effect of 70 years of continuous exposure to an individual who receives the maximum exposure except for a child ingesting soil. For a child ingesting soil, the assumption is that the ingestion will occur over a 5-year period from the ages one through six. Are the scenarios for

Cost for Monofills To Change Practices

For monofills, the compliance cost estimates are based on the assumption that facilities unable to comply with the concentration limits will shift their disposal of sludge to a MSWLF or to incineration, depending on the size of the facility. The Agency solicits comments on the reasonableness of these presumed shifts in practice. Are suitable landfill sites available? What tipping fees would the POTW face to dispose of sewage sludge in a MSWLF? Would existing sewage sludge incinerators within reasonable distances accept sludge from this facility? Would sludge now disposed on monofills likely to go to practices other than municipal landfills or incinerators?

Distribution and Marketing Factors

For distribution and marketing, the RIA used a limited amount of information from POTWs to determine the final end use of the sewage sludge product (e.g., application to home gardens, parks, highway medians). While the National Sewage Sludge Survey is designed to increase the accuracy of this final end use information, the Agency is requesting comment on the distribution and marketing of sludge products among the end uses presented in the RIA.

Also for distribution and marketing, the Agency is soliciting comment on the shifts that are assumed for POTWs that would not comply with the sludge application rates and pollutant concentrations. The RIA assumes various shifts, depending on the size of the POTW, the quality of the sludge, and the final end use. Comments are requested on the land availability assumptions, opportunity to control the final end use, and reasonableness of shifts to alternatives.

Land Application Cumulative Loading Notes

The cumulative loading rates for land application were considered to be "passed" if one application (i.e., 1 year) was possible. However, in the results presented in the RIA, the lowest passing rate actually used was 10 years, which was based on the calculations specified in the regulation and on the sludge quality profiles used throughout the RIA. The Agency solicits comment on the reaction of POTWs to cumulative loading rate limitations. How many years of application reflect common land application practices? Will a cumulative loading rate be interpreted differently than an annual loading rate?

Incinerator Factors

For incineration, site-specific conditions could significantly affect the limitations for a particular facility (e.g., incinerator stack height and sludge feed rate). In the absence of more information, the RIA cannot project compliance for individual facilities. The Agency solicits comment on the various parameters that affect compliance (i.e., meeting more of the individual pollutant limitations, given the conditions at and around the facility).

The analysis of incineration relies on various air pollution control devices as the treatment technologies that facilities could use to comply with emissions limitations. Several retrofit technologies (e.g., wet ESPs, fabric filters) were used to estimate compliance costs (e.g., effectiveness of retrofit technologies in reducing the pollutant emissions). The Agency solicits removal efficiency data for the technologies used in the RIA and for other air pollution control devices. EPA also requests comments on the cost estimates used in the RIA for installing and operating these treatment systems.

Surface Disposal Site Management Practices

For surface disposal sites, the Agency solicits comment on management practices that facilities use to control access, prevent runoff, reduce pathogens, and control the generation of methane gas. EPA has found that the use of surface disposal sites is not well-documented. The Agency requests information on the number of facilities using surface disposal sites (as defined in this proposed rule), the volume of sludge disposed of, and expected compliance strategies if the pollutant concentration limits are not met.

Paperwork Reduction Act

The public reporting burden for the collection of information imposed by this proposal, averaged over a 3-year period, is estimated to be 336 hours for POTWs land-applying sewage sludge, 981 hours for POTWs distributing and marketing sewage sludge, 152 hours for POTWs disposing of sewage sludge on surface disposal sites, and 4,751 hours for POTWs incinerating sewage sludge. The average time per response per POTW is estimated to be 406.9 hours. The information collection requirements have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA (ICR No. 1489) and a copy may be obtained from Eric Strassler, Information Policy Branch; EPA; 401 M Street, SW. (PM–223); Washington, DC 20460 or by calling (202) 382–2709. Submit comments on these requirements to EPA and: Office of Information and Regulatory Affairs; OMB; 726 Jackson Place, NW; Washington, DC 20503 marked "Attention: Desk Office for EPA". The final rule will respond to any OMB or public comments on the information collection requirements.

PART XII: SUMMARY OF ISSUES AND DATA REQUESTED

In the foregoing preamble discussion, EPA solicited public comment on a broad range of issues and requested specific data and information. The Agency believes that it has provided sufficient information in the preamble and in technical support documents to support today's proposal. Public comments and data and information submitted to the Agency will be thoroughly evaluated to refine the proposal. In addition during the comment period, EPA will solicit the assistance of experts both inside and outside the Agency in the review of the scientific and technical bases of the rule. If new information alters the premises of today's proposal, the Agency will publish the new information along with a revised proposal in the **Federal Register**.

The broad issues, data and information discussed in the preamble are summarized below and are organized into the following categories: principles used in developing today's proposal, coverage of the rule, methodologies, level of protection, establishment of the standards, related requirements, and impacts.

Principles Used in Developing Today's Proposal

The fundamental principles underlying today's proposal follow.

Expand the Standards Later

While not delaying the proposal to wait for more current information, the Agency is conducting a National Sewage Sludge Survey, as well as gathering other data to assist in revising and expanding the scope of today's proposal.

Coordinate With Other Programs

Use the regulatory standards and tools developed for other Agency programs, where appropriate, in developing standards for a use or disposal method.

Control Sludge Quality

Set numerical limits on a pollutant-by-pollutant basis to prevent the contamination of sewage sludge before

the MEI reasonable? Do they reflect scenarios which could occur? For example, is it reasonable to assume that for the application of sewage sludge to agricultural land that the MEI resides on the land where the sewage sludge is applied? For distribution and marketing, the MEI scenario is a rural non-farm family growing 60 percent of their fruits and vegetables in a sludge-amended home garden. For monofills, the assumption is that the MEI drinks 2 liters of water from a well located at the property boundary of the monofill and inhales 20 cubic meters of air a day while standing in the center of the plume at the property boundary of the monofill. For the incineration scenario, the MEI is located in the peak concentration of the plume, inhaling 20 cubic meters of air a day.

In addition to the MEI, each of the exposure assessment models has key parameters that effect the limit that is calculated. EPA is interested in comments on key parameters which may not have, but should have been considered. The key parameters on which the Agency is particularly interested in receiving public comment follow.

Land Application for Agricultural Lands

The key parameters for the land application of sewage sludge on agricultural lands include the following:

- The land receiving the sewage sludge will be converted to residential home gardens within 5 years;
- The sludge is mixed with soil to a depth of 15 centimeters (6 inches);
- The background concentration of metals in the soil corresponds to the average soil concentration of rural agricultural land;
- Over time, metals are absorbed by plants at the same rate as they were when first applied to the soil;
- Eight percent of the food intake of a grazing animal consists of a sludge-soil mixture;
- The most highly sensitive plants and animals were used in the analysis; and
- The ingestion rate of 0.1 grams per day for 5 years was used in analyzing the effect of children eating soils (as compared to 0.5–5.0 grams for a child exhibiting PICA behavior).

Distribution and Marketing

The key parameters for the distribution and marketing of sewage sludge include the following:

- Neither the raising of animals for human consumption nor the growing of feed crops for animals raised for human consumption were considered for this home garden scenario;
- The background concentration of metals in the soil corresponds to the average soil concentration of rural agricultural land; and
- The sludge is mixed with soil to a depth of 15 centimeters (6 inches).

Monofills

The key parameters for the disposal of sewage sludge in monofills include the following:

- All metals go into solution and leach to the ground water;
- For Class I ground water, the point of compliance is the point at which the leachate reaches the ground water—the depth to ground water is assumed to be zero;
- For Class II and Class III ground water, the point of compliance is 150 meters (450 feet) from the point of entry—the depth to ground water is assumed to be one meter;
- The effect of synthetic liners was not considered in the analysis; and
- The rate at which pollutants volatilize into the atmosphere is not attenuated by the adsorption or degradation of pollutants.

Incineration

The key parameters of the incineration of sewage sludge include the following:

- The metal control efficiencies of incinerators were assumed to correspond to the 10 percent worst-control efficiencies of the sewage sludge incinerators in EPA's data base;
- All incinerator emissions include the same constituents; and
- Short-term fluctuations of operations were not examined.

Other Exposure Assessment Models

The Agency is developing exposure assessment models for sewage sludge placed on surface disposal sites and for the development of health-based pathogen and vector attraction reduction requirements.

In developing the model for surface disposal sites, the Agency is soliciting additional data on the location and size of surface disposal sites. The Agency is also soliciting data on the key differences in the sewage sludge disposed of in monofills, on dedicated non-agricultural land, and on surface disposal sites (e.g., the viscosity, density, solids content, and pollutant concentrations). In addition, the Agency is soliciting information on the management practices, if any, generally associated with surface disposal sites. Comments are requested on the proposed definition of "surface disposal sites." Does it make sense to differentiate surface disposal sites from dedicated land application and from monofills?

For pathogens, the Agency is soliciting data on the movement of pathogenic organisms from a sewage sludge matrix and the attenuation of the organisms by dilution, temperature, moisture, sunlight, pH, presence of antagonistic organisms, and soil structure. In addition, the Agency is requesting information on reliable measurement techniques for pathogenic organisms. Also, data are requested on the relationship between infectious dose and disease.

Methodology for Evaluating the Aggregate Effects of Current Use and Disposal Practices

EPA did not look at the effects of concurrent exposure to more than one source of sewage sludge-borne pollutants. The Agency is interested in evaluating models that would take into account multiple routes of exposure and is requesting that information on such models be submitted to EPA as part of the comments on today's proposal.

The Agency relied on data from "Fate of Priority Pollutants in Publicly Owned Treatment Works" (the "40 City Study", Reference number 36) as the primary source of information on the pollutant concentrations in municipal sewage sludge. Recognizing the deficiencies in the data base, the Agency has initiated a National Sewage Sludge Survey to provide current and reliable data that will improve our analyses of risks of using and disposing of sewage sludge and, consequently, of appropriate pollutant limits. Given the lack of data on the quality of sewage sludge that is used or disposed of by a particular method, was it reasonable for the Agency to assume that a facility's sewage sludge corresponded to the 50th-, 90th-, or 98th-percentile concentrations in the "40 City Study"? Was it reasonable to assign the 50th-, 90th-, and 98th-percentile sludges to facilitates based on the industrial component of wastewater flow?

Until the Agency develops exposure assessment models for pathogens and for sewage sludge disposal on surface disposal sites, quantitative assessments of the effects of sewage sludge use and disposal will be incomplete. However, the Agency does not believe that surface disposal sites measurably increase the incidence of adverse human health or environmental effects. The Agency is interested in evaluating any documented evidence that pathogenic diseases have been transmitted through the application of sewage sludge to the land or through the disposal of sewage sludge in monofills or on surface disposal sites.

The Agency is interested in approaches others may have used in evaluating human health and environmental effects of disposing of sewage sludge on surface disposal sites.

In evaluating the effects of current methods of sewage sludge use and disposal, the Agency used average or typical conditions. Was this an appropriate approach or should the Agency consider other approaches in determining the effects of sewage sludge-borne pollutants? Are the assumptions that the Agency made in identifying typical conditions reasonable? Was it reasonable to assume complete mixing of food crops in the national market place and that sewage sludge would be applied only once to farm land? Are the percentages of food consumed from home gardens reasonable? Is it reasonable to use the rate normal children ingest dirt rather than the rate associated with a PICA child? Did the Agency select the appropriate-sized POTWs and the appropriated hydrogeologic characteristics in modeling the 49 monofills? Was it appropriate for the Agency to allocate all 194 sewage sludge incinerator facilities to one of 10 modeled facilities? Is the 25th-percentile metal control efficiency reasonable to use in evaluating the effects of metal emissions from incinerators? Given the lack of data on total hydrocarbon emissions, did the Agency use an appropriate approach in allocating the results from four tests to the 194 sewage sludge incinerator facilities?

The Agency is interested in alternative approaches that it should consider in estimating the number of cancer cases, in estimating the number of individuals exposed to concentrations above a reference dose (RfD), and in estimating the effects from exposure to lead. In addition, the Agency is interested in approaches that may have been developed to evaluate ecological effects, including farm economic losses caused by plant or animal toxicity.

Level of Human Health and Environmental Protection

In setting numerical limits with the exposure assessment models, EPA generally is using existing Agency criteria, where they exist, to ascertain that the numerical limits do not exceed human health criteria. Where the Agency has not published human health criteria, the approach used in this proposal was to select the values in the Agency's computerized Integrated Risk Information System (IRIS). Are there more appropriate human health criteria that the Agency should have evaluated? Was it appropriate for the Agency to assume that, if a value was not listed in IRIS, there was no human health criterion for a pollutant and to defer consideration of the pollutant until IRIS listed a human health criterion? In developing a human health criterion for lead, when food grown on sludge-amended soils is ingested, did the Agency make the appropriate assumption on the allowable food intake? Do the assumptions the Agency used in developing an exposure scenario (e.g., MEI is an adult male, 2.5 percent of whose diet is from food grown on sludge-amended soils) provide an adequate margin of safety for any uncertainties in the data? Or are these assumptions so limiting that they preclude the beneficial reuse of sewage sludge and force sewage sludge to be incinerated?

The Agency selected risk specific doses corresponding to an incremental carcinogenic risk of $1x10^{-4}$ for the land application of sewage sludge to agricultural land, for the distribution and marketing of sewage sludge, and for the disposal of sewage sludge in monofills and a carcinogenic risk of $1x10^{-5}$ for the incineration of sewage sludge. The Agency selected a lower risk for the incineration of sewage sludge in order to compensate for postponing the examination of indirect pathways of exposure (i.e., deposition of emissions on plants and their subsequent ingestion), because of the number of people who may be exposed to high emission levels (51 million), and because of the high levels of maximum individual and aggregate risk posed by incineration. Do the projected benefits (i.e., increase in health cases avoided) merit a lower risk level? Given the assumptions used in establishing the doses, the assumptions used in the exposure assessment models, and the projected risks posed by each use and disposal method are the carcinogenic risk levels and the RfDs for non-carcinogenic pollutants adequate to protect public health "from any reasonable anticipated adverse effect from each pollutant." EPA, in particular, requests comments on its approach to establishing a cancer potency value for total hydrocarbons.

In selecting environmental criteria, the Agency used the most sensitive plant and animal toxicity values reported in the scientific literature. Are the plants and animals that the Agency used appropriate? By selecting the toxicity values for the most sensitive species, is the Agency setting more stringent pollutant limits than is necessary to adequately protect human health and the environment when sewage sludge is applied to agricultural lands? When field data were not available, was it appropriate for the Agency to base numerical limits on the phytotoxicity pathway using pot studies with sludge spiked with metal salts? Are there data on wild plant and animal species that the Agency should evaluate?

Establishment of the Standards

EPA is proposing standards that include numerical pollutant limits, management practices, and other requirements that define the level of management control that treatment works, users and disposers must exercise over their sewage sludge to preclude adverse human health and environmental effects. The standards are established separately for each method of use or disposal.

In establishing the numerical limits, the Agency is proposing two approaches. The Agency is proposing to use the exposure assessment models to calculate pollutant limits when sewage sludge is applied to agricultural lands, distributed and marketed, disposed of in monofills, and incinerated because these practices are likely to result in high levels of pollutant exposure to an MEI or because there are significant scientific uncertainties about the effect of the disposal practice. The other approach is to use "current sludge quality" (i.e., the 98th-percentile pollutant concentrations shown in the "40 City Study") for the application of sewage sludge to non-agricultural lands and for disposing of sewage sludge on surface disposal sites. The Agency is using the "current sludge quality" approach for the later two practices because of its belief that human dietary exposure is unlikely to result from these practices.

Are these the appropriate premises for establishing the pollutant limits? Are there other premises that the Agency should consider? Is the Agency correct in assuming the implausibility of human dietary exposure, either through food or water, when sewage sludge is applied to non-agricultural lands or disposed of on surface disposal sites? Has the Agency over-estimated the amount of pollutant exposure likely to occur from the other practices warranting use of the 98th-percentile pollutant concentrations for other methods of use or disposal. Will the numerical limits or the definition of a use or disposal practice inhibit the beneficial reuse of sewage sludge (e.g., prohibiting the raising of crops for human consumption on non-agricultural lands)?

Will the 98th-percentile pollutant concentrations adequately protect the environment? The Agency's analysis shows that if 50 metric tons of sewage sludge were placed on a hectare of non-agricultural land, toxicity values for plants (lettuce) would be exceeded for copper and zinc at the 98th-percentile pollutant concentrations and toxicity values for predators (ducks) eating soil biota (earthworms) would be exceeded

for lead at the 98th-percentile pollutant concentration. Because these are the most sensitive species, is the Agency correct in assuming that any adverse environmental effect is unlikely to be significant?

In calculating the numerical limits with the exposure assessment models, the Agency is allowing the use of site-specific data to calculate case-by-case limits for sewage sludge that is disposed of in monofills and that is incinerated. These methods involve site-specific physical conditions that make a significant difference in the pollutant limits.

For land application, there are no physical parameters related to the site that make a significant difference in the pollutant limits. However, the models could be used to re-calculate numerical limits based on site-specific data. Should the Agency allow site-specific data to be used to calculate pollutant limits for factors other than those related to the physical characteristics of the site or when there is less than a significant difference in the resulting pollutant limit? Will national limits for sewage sludge applied to agricultural lands significantly inhibit the use of sewage sludge? Should the Agency consider the use of case-by-case limits for agricultural lands based on soil pH or type of crop grown and consider the testing of crops to ensure that crop residue levels will not exceed a limit that would cause the pollutant concentration to exceed the human health criterion?

The Agency believes that it would be impractical to establish case-by-case limits for sewage sludge distributed and marketed because of the infinite number of possible site-specific conditions. Is this a logical assumption?

The Agency is requiring the application of management practices for each disposal method to prevent gross abuse of the environment where it could not reasonably be anticipated that individuals would follow these management practices as part of the final use and disposal method. The Agency is also requiring controls to prevent the exposure of individuals and animals to pathogenic organisms when sewage sludge is applied to the land, distributed and marketed, and disposed of in monofills and on surface disposal sites. For the most part, the Agency has assumed that good practices will be carried out by the user and disposer. Should the Agency specify additional practices or allow States and localities to specify additional practices?

A summary of comments on issues, data, and information that the Agency is requesting related to the definition of sewage sludge, to specific use or disposal methods, to the pathogen and vector attraction reduction requirements, and to the proposed pollutant limits follows.

Sewage Sludge

Septage and sewage sludge products are included in the definition of sewage sludge. By including septage in the definition of sewage sludge, the Agency does not wish to infer that it intends to regulate the location and operation of septic tanks. Therefore, septic tanks are specifically excluded from the definition of a treatment work. The Agency is regulating the use or disposal of the pumpings from septic tanks because of its concern with the levels of pathogenic organisms that may be in septage. However, are there other regulatory approaches that should be considered for septage that would tailor requirements to the Agency's specific concerns (e.g., pathogenic organisms) and would relieve sewage sludge haulers from monitoring for the 25 pollutants and calculating annual and cumulative pollutant loading rates? The Agency is uncertain about the extent and magnitude of any disruptions that today's approach may cause and is soliciting comment on the effect of defining septage as sewage sludge.

The Agency is also including sewage sludge products in the definition of sewage sludge. Sewage sludge products are mixtures of sewage sludge and other materials frequently added during composting. Today's proposal includes sewage sludge products within the definition of sewage sludge no matter how small the percentage of sewage sludge in the product. The Agency is soliciting comment on the possibility of sewage sludge products that contain so small a percentage of sewage sludge that they no longer have the characteristics of sewage sludge.

Land Application

EPA is proposing different approaches for calculating pollutant limits depending on the use of the land. If the land is used for agricultural commodities that are eventually consumed by humans, the Agency is proposing annual and cumulative pollutant loading rates calculated with the exposure assessment model. If the land is used for non-agricultural purposes, the "current sludge quality" (i.e., the 98th-percentile pollutant concentrations shown in the "40 City Study") is used as the basis of the pollutant limits unless the exposure assessment model calculated a higher pollutant limit. When the model calculated a higher pollutant limit, the higher limit is used. The Agency is also proposing to prohibit growing or taking food for human consumption on land used for non-agricultural purposes during the application of sewage sludge and for a 5-year period after the final application of the sewage sludge.

Several issues arise on which the Agency is seeking public comment. Is it logical to assume that food is generally not grown on forest lands, lands being reclaimed, and lands dedicated to sludge disposal? Will the prohibition of taking food (e.g., hunting or berry picking) significantly affect uses of non-agricultural lands such as forests? Is 5 years a reasonable period of time to preclude growing food or feed crops or grazing animals on non-agricultural land that has been amended with sewage sludge? Will the Agency's proposal inhibit the beneficial reuse of sewage sludge? If so, why?

In deciding how to meet the pathogen reduction and vector attraction reduction requirements, treatment works have more flexibility if they choose to apply sewage sludge to land rather than to distribute and market it. With the increased flexibility, the Agency is requiring an agreement, contract, or other instrument with the applier or distributor to ensure that the applier is aware of the requirements (e.g., the time periods for public access and use restrictions) and complies with the requirements. Are the provisions in the agreement appropriate? Do treatment works believe that they will have difficulty in negotiating such agreements with those applying or distributing the sewage sludge? Are there provisions which the Agency should add to the agreements? How should the Agency deal with situations in which an applier of sewage sludge receives sewage sludge from more than one treatment work?

The land application model calculates pollutant limits for 14 pathways. The limit that EPA is proposing is derived from the pathway which results in the most stringent limit. The "Land Application Technical Support Document" includes a matrix showing the limits for each pollutant in each pathway. Are there circumstances under which the limiting pathway is inappropriate for sewage sludge applied to agricultural lands?

Key assumptions in the model affecting the numerical limits were identified in the discussion on the exposure assessment models. The Agency is particularly interested in the values used in the exposure assessment models and whether the combination of assumptions used in the models and the

requirements in today's proposal adequately protect human public health and the environment without over-regulating the beneficial use of sewage sludge.

The Agency proposed prohibiting the application of sewage sludge to frozen, snow-covered, or flooded land unless it is demonstrated that sewage sludge will not flow into nearby rivers, lakes, or streams. Are there circumstances when the application of sewage sludge to frozen, snow-covered, or flooded lands does not pose such a threat?

The models assume that certain practices such as incorporation into the soil to a depth of 15 centimeters or a soil pH of 6, are generally followed. Are these assumptions correct? While the Agency does not believe that it should mandate how landowers manage their land, are there other management practices directly tied to the protection of human health and the environment that the Agency has not specified, but should?

Do the pathogen reduction and vector attraction reduction requirements provide treatment works sufficient flexibility in meeting the goal of reducing the risk of transmitting pathogenic diseases from the use of sewage sludge? Are the time periods for restricting access to the land and grazing animals appropriate? Are the time periods for the growing and harvesting of crops sufficient to reduce the risk of transmitting pathogenic organisms into the food chain?

Distribution And Marketing

Is EPA's home garden scenario the appropriate assumption for the distribution and marketing of sewage sludge? The Agency is proposing that labels or information sheets accompany sewage sludge that is distributed and marketed. Is it also appropriate for the Agency to assume that use can be controlled with a product label? Are the provisions on the labels or sheets the appropriate provisions? Are there provisions that should be deleted? Are there provisions that should be added? Is it appropriate for the Agency to assume that users of the sewage sludge product will follow the type of label or sheet that the Agency is proposing?

Three key assumptions are used in calculating the pollutant limits. The first assumption is that sewage sludge is incorporated into the soil to a depth of 15 centimeters (6 inches). The Agency is uncertain that natural weathering processes will mix the sludge with the soil to that depth when the sewage sludge product is applied to a lawn. Are there studies on the depth to which natural processes mix sewage sludge into the soil profile? Should the Agency have the labels or sheets require users to incorporate the sewage sludge into the soil to a depth of 6 to 8 inches?

The second key assumption in the home garden scenario is that animals raised for human consumption, as well as the food and feed crops for such animals, are not exposed to sewage sludge. As a consequence of this assumption and the prohibition on the labels, the Agency eliminated pathways of exposure relating to animals raised for human consumption. Elimination of these animal pathways results in less stringent numerical limits for organic pollutants than those for agricultural lands. Was it logical for the Agency to assume that animals raised for human consumption were not a part of the home garden scenario?

Finally, the Agency assumed that 20 applications of sewage sludge would be applied to the land in calculating the pollutant limits for metals. Is this a logical assumption or is there documentation to show that greater or smaller number of applications are generally applied to home gardens?

Monofills

For the most part, EPA is using pollutant limits to protect human health and the environment from potential adverse impacts of the disposal of sewage sludge in monofills. However, the Agency has included restrictions on the location of monofills and on other practices to ensure human health and the environment are adequately protected. Are the requirements sufficient? Should the Agency include additional requirements, such as ground-water monitoring or corrective action, or eliminate some requirements as redundant or inconsistent with the primary approach of controlling what is disposed of in the monofill (i.e., pollution prevention as opposed to pollutant containment)?

The Agency has not analyzed the effect of synthetic liners in attenuating the migration of pollutants to the ground water. Neither has it factored in the use of synthetic liners in situations for which case-by-case limits are calculated. The soil characteristics of natural clay liners could be used in the site-specific analysis. How should the Agency analyze the attenuation factor of synthetic liners?

EPA is proposing that owners and operators of facilities develop a closure plan. Ther plan is to ensure that for 10 years a final cover is maintained, gas venting is monitored, and access restrictions are maintained. Since data show that sewage sludge decomposes within 4 to 5 years, does 10 years provide a sufficient margin of safety for owners and operators to restrict the use of the land for other purposes?

Owners and operators will be required to determine the class of ground water under their monofill. Are the definitions and guidance sufficiently clear to allow such determinations to be made? The class of ground water under the monofill has a major effect on the assumptions used to establish the pollutant concentrations.

Pollutant limits for monofills must be determined with site-specific data when the distance from the sewage sludge unit to the monofill boundary is less than 150 meters and where the background pollutant concentration in the ground water exceeds the maximum contaminant level (MCL). Under the latter case, pollutant concentrations would be established so that there is no further degradation of the ground water. Is this approach appropriate when, for monofills located over other classes of ground water, degradation is allowed as long as the pollutant concentrations in the ground water do not exceed the MCL? Should EPA establish pollutant limits such that there is no degradation of any ground water, whether or not that ground water is used for drinking water?

Pollutant limits may be determined using site-specific data if the parameters at the monofill differ from those on Table 6 in § 503.33. Are these the appropriate parameters? Will there be difficulties in measuring any of the parameters? Should other parameters, such as the use of synthetic liners, be included in case-by-case pollutant concentrations?

In today's proposal the Agency is seeking comment on whether it should use 5 micrograms per liter, the proposed MCL for lead which is measured at the water treatment facility, or 10 micrograms per liter, which is the threshold value for a treatment plan if a certain number of "morning first draw samples" exceed the value as the basis of the numerical concentration for lead in sludge disposed of in monofills. The Agency is soliciting comments on the appropriate value it should use.

The Agency is also proposing that sewage sludge placed in monofills meets the Class B pathogen reduction requirements. Are the pathogen reduction requirements appropriate?

Surface Disposal Sites

EPA is soliciting information on the size, location, and characteristics of surface disposal sites. The Agency has proposed that sewage sludge placed on surface disposal sites for more than a year come under the requirements of

today's proposal. Is the Agency correct in assuming that sewage sludge placed on surface disposal sites for less than a year is more likely to be used in treating sewage sludge rather than in its disposal?

The Agency is proposing to use the 98th-percentile pollutant concentrations for sewage sludge disposed of on surface disposal sites because of its belief that surface disposal sites are small and that the pollutants in the sludge are unlikely to result in significant human health or environmental exposure. Are surface disposal sites usually small and are they generally located within the property boundary of the treatment work? As the Agency develops the exposure assessment model for surface disposal sites, it will be collecting information that should confirm or refute these premises.

Except for covers and a closure plan, the general requirements and management practices for surface disposal are similar to those for monofills and, in other cases, to dedicated, non-agricultural land application. Are the distinctions in these three methods of disposal appropriate? Should the three methods of disposal be consolidated? Or is there sufficient justification to maintain the distinction?

Pathogen Reduction and Vector Attraction Reduction Requirements

Until EPA establishes a relationship between infectious dose and disease and develops a model to simulate the movement and attenuation of pathogenic organisms in the environment, the Agency is proposing a combination of performance-based technology requirements and time periods during which access to the land and the growing and harvesting of certain crops is restricted. Are there other approaches that the Agency should consider?

The relative reductions in pathogenic organisms and the numbers of indicator organisms that the Agency is proposing are based on limited research and the Agency's experience with different types of treatment technologies. The Agency is requesting information that shows either that greater reductions are likely to occur or that the Agency's assessment of the reductions likely to occur was overoptimistic.

Incineration

A major issue on which the Agency is seeking public comment is the proposal to control the emission of organic pollutants through a limitation on the concentration of total hydrocarbons in the emissions. Should other organic pollutants have been used in deriving the risk specific air concentration for total hydrocarbon emissions? Does the flame ionization detector, in conjunction with the correction factors included in the equation, limit the level of organic emissions to an incremental carcinogenic risk level of 1×10^{-5}? Should the Agency establish a national cap for total hydrocarbon emissions or calculate, as proposed, a limit for each facility?

The Agency is soliciting data that correlates organic emissions, carbon monoxide levels, and total hydrocarbon emissions from multiple hearth, fluidized bed, and other types of incinerators which are similar to those firing sewage sludge. As an alternative to limiting hydrocarbon emissions, should the Agency consider using "good" performance standards, such as a 100-ppm limit, for carbon monoxide? Because data are lacking on good sewage sludge incinerator performance, should the Agency use the organic pollutant-by-organic pollutant health-based approach? Are there other approaches that the Agency should consider that would limit not only the organic pollutants that are fed into the incinerator, but also the organic pollutants that are formed by the combustion process?

In deriving the risk specific air concentrations for chromium and nickel, the Agency made the assumption that hexavalent chromium was one percent of the chromium emissions and that nickel subsulfide was 100 percent of the nickel emissions. Are there data to show that alternative percentages of hexavalent chromium and nickel subsulfide should have been used?

The Agency is requesting public comment on its proposal to use 25 percent of the NAAQS for lead as the basis for the lead limit. In light of the significant health effects from the emission of lead from sewage sludge incinerators, would 10 percent of the NAAQS have been a more appropriate basis?

Are the values that the EPA is proposing for temperature and oxygen content of the exit gas reasonable for sewage sludge incinerators? The Agency is soliciting data from tests that may support or question the proposed values. Should the Agency have specified requirements for incinerator ash and incinerator scrubber water? If so, how would these requirements differ from those already in place under other regulatory programs?

The Agency is soliciting comments on whether to deny owners or operators the opportunity to obtain credit for an increase in the height of their stacks, after the effective date of the rule, as a means of complying with the numerical limits in the rule. Raising the stack height increases the amount of dispersion, thereby reducing the concentration of the exposure that reaches the MEI. However, raising the stack does not reduce the mass emission of the pollutants. National cancer incidence, therefore, may not change significantly from increasing stack height rather than installing constant controls (e.g., wet electrostatic precipitators (ESPs) and after-burners).

Use Of The Numerical Limits

The pollutant limits included in today's proposal are based on extensive data and analysis. The proposal raises many precedential scientific, technical and policy issues. Therefore, depending on results of the National Sewage Sludge and comments on the proposed rule, the Agency may revise some of the limits. It would not be advisable for permit writers to use the proposed limits in permits in advance of the final issuance of the "Guidance For Writing Case-By-Case Permit Requirements for Municipal Sewage Sludge".

This Guidance Document was developed to assist permit writers in developing permits for sewage sludge prior to the technical standards in today's proposal. The Guidance document is based on existing Federal and State requirements. It is not inconsistent with today's proposal. Rather, today's proposal goes beyond the Guidance document. Revisions to the Guidance document will assist permit writers in giving the appropriate weight to the numerical limits in today's proposal. These revisions should be available by September 30, 1989.

Related Requirements

Monitoring, Record Keeping And Reporting

The Agency is proposing sewage sludge monitoring, record keeping, and reporting requirements with the Part 503 requirements. However, the Agency is also considering placing such requirements in the State program management requirements (40 CFR Part 501) and in the National Pollutant Discharge Elimination System permitting requirements (40 CFR Parts 222–224). Comments are solicited on this. In addition, the Agency is soliciting comments on the frequency with which it is proposing to have facilities test their sewage sludge, the sampling and analysis protocols that are to be used in testing and analyzing the sewage sludge, and the record keeping and reporting requirements that the Agency is proposing. The Agency recognizes that the proposed requirements are minimum requirements and that many States have much more frequent and extensive monitoring, record keeping, and reporting requirements. Should the Agency specify more frequent sewage sludge monitoring requirements? Should the Agency base the sewage sludge monitoring requirements on factors other than wastewater flow (e.g, percent industrial influent to the facility) or should the Agency establish a uniform frequency for the first year and then allow less frequent testing based on the variations seen in the facility's sludge quality?

The Agency is proposing different record retention requirements, depending on the use or disposal method. When sewage sludge is applied to agricultural land, the records must be kept for the life of the publicly owned treatment work (POTW) to ensure that the cumulative pollutant loading rates for metals are not exceeded. For the disposal of sewage sludge in monofills, records must be kept for 10 years, the proposed closure period. For all other use or disposal methods, the Agency is proposing that records be retained for 5 years, the period of time proposed for the State program management regulations. As an alternative, the Agency also considered record retention requirements of 3 years. Should the Agency have a single record retention requirements for all use or disposal methods? Do the distinctions among the use or disposal methods justify different record retention requirements.

Removal Credits

The Agency is proposing to allow eligible POTWs to revise pretreatment standards and issue removal credits for pollutants in three situations. First, removal credits would be available for the pollutants that are regulated under the use or disposal method employed by the POTW. Removal credits would also be available for the pollutants in sewage sludge disposed of in MSWLFs in compliance with 40 CFR Part 258. Finally, removal credits would be available for pollutants that the Agency evaluated without establishing numerical limits, if a POTW employs the disposal method for which the pollutant was evaluated, because EPA concluded that, even under the worst conditions, the pollutant did not interfere with the use or disposal method.

The list of organic pollutants on Table 11 in § 503.72 includes only those organic pollutants listed in IRIS. Some organic pollutants, such as vinyl chloride, are not presently listed in IRIS because their human health criteria are undergoing Agency review. IRIS changes periodically. How should the Agency revise and update Table 11? Adding pollutants to Table 11 will require recalculating a human health criterion for total hydrocarbons and adjusting the risk specific concentration.

The Agency is soliciting comment on the proposal to limit removal credits to pollutants regulated under a use or disposal method included in today's proposal when a POTW employs use or disposal methods other than disposal in MSWLFs. The Agency also solicits comments on its decision not to allow removal credits for pollutants when the concentration of those pollutants lead to the determination that the sewage sludge is hazardous, even though disposal of this sludge in conformance with 40 CFR Part 261–268 constitutes compliance with Section 405(d) of the CWA.

Impact

The Agency projected that the benefits of complying with this rule include the following: a reduction of 9.5 annual cancer cases (from 12.3 annual incremental cancer cases attributable to the use or disposal of sewage sludge); and a reduction of 5,266 incidences of individuals who experience adverse effects from lead (from 6,139). This projection is a net increase in benefits due to the fact that, in some instances (e.g., incineration), the anticipated compliance strategy poses greater risk. Furthermore, in projecting the reduction in cancer and lead cases, the Agency assumed that incinerators would install constant controls (e.g., after-burners and wet ESPs).

To come into compliance with the rule, the Agency projected that 5,300 POTWs will have annual incremental costs of approximately $157.7 million dollars. Some of these costs are pursuant to monitoring, reporting, and record keeping requirements. Other costs are due to the costs of putting on constant controls or using a different use or disposal method. It is anticipated that 509 POTWs will have to take positive actions to come into compliance with today's proposal. The projected cost figure does not account for site-specific modeling to bring some POTWs into compliance with the proposed numerical limits. Nor does it reflect that some POTWs may strengthen their pretreatment programs to improve the quality of their sewage sludge.

To improve the Agency's analyses, comments are requested on the following:

- Procedures for assigning a particular sludge quality to an individual facility;
- Relationship of industrial flow to the quality and amount of the sewage sludge generated;
- Procedures used to assign a use or disposal method to a particular facility;
- Baseline costs of the disposal practices;
- Baseline costs for testing, monitoring, and record keeping requirements;
- Assumptions in determining if a facility complies with the requirements, particularly the annual pollutant loading rates for agricultural land application;
- Assumptions concerning how facilities would comply with the requirements, particularly the assumptions made on the alternative practices that would be used;
- Assumptions used to determine the retrofit technologies owners and operators of sewage sludge incinerators would use to comply with today's proposal;
- Additional data needed to make assumptions on the feasibility of pretreatment by industrial dischargers;
- Assumptions used in projecting the benefits of the rule; and
- Definition of a small entity.

While the foregoing discussion lists the major issues, data and information of interest to the Agency, any provision of the rule is open for public comment. The Agency will carefully evaluate all public comments and will respond to the comments in the Notice modifying today's proposal and in promulgating the rule.

PART XIII. AVAILABILITY OF TECHNICAL INFORMATION ON THE PROPOSED RULE

Availability of Numerical Criteria Computational Programs

The following numerical criteria computational programs are available:

- Land Application/Distribution and Marketing—RAMS Model for terrestrial Pathways—PB 89–138739, Cost $55.00.
- Land Application/Distribution and Marketing—SLAPMAN Model for surface runoff—PB 89–138747, Cost $55.00.
- Landfill (Monofill)—Sludgeman Model—PB 89–138754, Cost $60.00.
- Incineration—Sludge Incineration Model—PB 89–138762, Cost $120.00.

Programs on IBM PC compatible disks may be ordered from: National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, ATTN: Sales, Telephone No. (703) 487–4650.

Please specify PB number when ordering.

Availability of the Proposed Rule and Preamble

The proposed rule and preamble may be obtained by contacting: Dr. Alan Rubin, Sewage Sludge Task Force (WH-585), United States Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 475-7301.

Availability of Technical Support Documents

The following technical support documents are available:

- Technical Support Document for Land Application and Distribution and Marketing of Sewage Sludge—PB 89-136576, Cost: $42.95 (A19, paper copy); $6.95 (A01, microfiche).
- Technical Support Document for Landfilling of Sewage Sludge—PB 89-136584, Cost: $15.95 (A05, paper copy); $6.95 (A01, microfiche).
- Technical Support Document for Incineration of Sewage Sludge—PB 89-136592, Cost: $49.95 (A22, paper copy); $6.95 (A01, microfiche).
- Technical Support Document for Surface Disposal of Sewage Sludge—PB 89-136600, Cost: $21.95 (A07, paper copy); $6.95 (A01, microfiche).
- Technical Support Document for Pathogen Reduction in Sewage Sludge—PB 89-136618, Cost: $13.95 (A03, paper copy); $6.95 (A01, microfiche).

These documents may be ordered from the National Technical Information Service.

Availability of Aggregate Impact Anaylsis Methodology

The following aggregate impact analysis methodology may be ordered from the National Technical Information Service:

- Human Health Risk Assessment for Municipal Sludge Disposal; Benefit of Alternative Regulatory Options—PB 89-136620, Cost: $42.95 (A18, paper copy).

Availability of the Regulatory Impact Analysis and Information Collection Request Documents

The following documents supporting this proposed regulation may be ordered from the National Technical Information Service:

- The Regulatory Impact Analysis—PB 89-136634, Cost: $42.95 (A20, paper copy); $6.95 (A01, microfiche).
- Information Collection Request Documents—PB 89-136642, Cost: $21.95 (A06, paper copy); $6.95 (A01, microfiche).

Availability of EPA's Science Advisory Board Review of Risk Assessment Methodologies

The following Science Advisory Board report may be ordered from the National Technical Information Service.

- The Review of the Risk Assessment Methodologies for Land Application/Distribution and Marketing, Landfilling, and Incineration of Sewage Sludge—PB 89-136659, Cost: $15.95 (A05, paper copy); $6.95 (A01, microfiche).

Access to IRIS

Those outside EPA can obtain an IRIS account by contacting: Mike McLaughlin, DIALCOM, Inc./Federal Systems Division, 600 Maryland Avenue, SW., Washington, DC 20024. Telephone: (202) 488-0550.

IRIS is also available through the Public Health Network (PHN) of the Public Health Foundation. Call Paul Johnson at (202) 898-5600 for more information. PHN is only available to local, State, and Federal public health officials.

IRIS is currently available on the NIH National Library of Medicine's TOXNET systems. Call (301) 496-6531 for details.

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PART XIV: CHANGES IN 40 CFR PART 257

As described in previous parts of the preamble, the proposed requirements in 40 CFR Part 503 establish standards to protect human health and the environment from any reasonably anticipated adverse effects of each regulated pollutant in sewage sludge. These standards provide specific pollutant concentrations, management practices, and other requirements for the final use or disposal of sewage sludge when the sewage sludge is applied to agricultural and non-agricultural land, distributed and marketed, disposed of in monofills or on surface disposal sites, or incinerated. The standards apply to publicly and privately owned treatment works that generate or treat domestic sewage sludge and to any person who uses or disposes of sewage sludge from such treatment works.

Existing requirements in 40 CFR Part 257 are applicable to all solid waste disposal facilities and practices regulated under sections 4004 and 4010 of the Resource Conservation and Recovery Act. With certain exceptions listed in § 257.1(c), the requirements in 40 CFR Part 257 apply to all types of facilities (i.e., landfills, surface disposal sites, land application units, and waste piles) used for disposal of solid waste, as well as all types of non-hazardous solid wastes (i.e., municipal, industrial, commercial, agricultural, mining, and oil and gas waste). Part 257 also applies to the disposal of sewage sludge from publicly and privately owned treatment works. However, because Part 257 covers only a limited number of pollutants and use and disposal practices and because EPA is proposing comprehensive regulations under 40 CFR Part 503, EPA proposes to amend 40 CFR Part 257 to exclude sewage sludge.

List of Subjects

40 CFR Part 257

Reporting and record keeping requirements, waste disposal.

40 CFR Part 503

Sewage sludge use and disposal, monitoring, reporting and record keeping requirements.

Dated: January 18, 1989.

Lee M. Thomas,
Administrator.

For reasons set out in the preamble, Title 40 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 257—CRITERIA FOR CLASSIFICATION OF SOLID WASTE DISPOSAL FACILITIES AND PRACTICES

1. The authority citation for Part 257 is revised to read as follows:

Authority: Section 1008(a)(3) and section 4004(a), Pub. L. 94–580, 90 Stat. 2803 and 2815 (42 U.S.C. 6907(a)(3) and 6944(a)).

2. Section 257.1 is amended by revising paragraphs (b), (c)(3) and (c)(4) to read as follows:

§ 257.1 Scope and purpose.

* * * * *

(b) These criteria do not apply to the use or disposal of sewage sludge under section 405(d) of the Clean Water Act, as amended.

(c) * * *

(3) The criteria do not apply to the land application of domestic sewage or treated domestic sewage.

(4) The criteria do not apply to the location and operation of septic tanks.

* * * * *

3. Section 257.2 is amended by revising the definition for "sludge" and "solid waste" to read as follows:

§ 257.2 Definitions.

* * * * *

"Sludge" means any solid, semi-solid, or liquid waste generated from a commercial or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility or any other such waste having similar characteristics and effect.

"Solid waste" means any garbage, refuse, sludge from a privately owned treatment plant operated in conjunction with commercial or industrial manufacturing or processing facilities, water supply treatment plant, or air pollution facility and other discarded material, included solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved materials in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended, (86 Stat. 880), or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923).

* * * * *

4. Section 257.3–4 is amended by revising paragraph (b)(1) introductory text to read as follows:

§ 257.3–4 Ground water.

* * * * *

(b)(1) For purposes of section 1008(a)(3) of the Act, a party charged with open dumping may demonstrate that compliance should be determined at an alternative boundary in lieu of the solid waste boundary. The court shall establish an alternative boundary only if it finds that such a change would not result in contamination of ground water which may be needed or used for human consumption. This finding shall be based on analysis and consideration of all of the following factors that are relevant:

* * * * *

§ 257.3–6 [Amended]

5. Section 257.3–6 is amended by removing paragraphs (b) and (c).

It is proposed to add Part 503 to proposed Subchapter O [1] to read as follows:

[1] 51 FR 4463, February 4, 1986.

SUBCHAPTER O—SEWAGE SLUDGE

PART 503—TECHNICAL STANDARDS FOR THE USE AND DISPOSAL OF SEWAGE SLUDGE

Subpart A—General Provisions

Sec.
503.1 Purpose and applicability.
503.2 Relationship to other requirements.
503.3 State authority.
503.4 Exclusions.
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Subpart B—Land Application of Sewage Sludge

503.10 Applicability.
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503.12 Land application—general requirements.
503.13 Agricultural land—national pollutant limits.
503.14 Agricultural land—management practices.
503.15 Non-agricultural land—national pollutant limits.
503.16 Non-agricultural land—management practices.
503.17 Pathogen and vector attraction reduction requirements.

Subpart C—Distribution and Marketing of Sewage Sludge

503.20 Applicability.
503.21 Specialized definitions.
503.22 Distribution and marketing—general requirements.
503.23 Distribution and marketing—national pollutant limits.
503.24 Distribution and marketing—management practices.
503.25 Pathogen and vector attraction reduction requirements.

Subpart D—Disposal of Sewage Sludge in Monofills

503.30 Applicability.
503.31 Specialized definitions.
503.32 Monofills—general requirements.
503.33 Monofills—pollutant limits.
503.34 Monofills—management practices.
503.35 Pathogen reduction requirements.

Subpart E—Disposal of Sewage Sludge on Surface Disposal Sites

503.40 Applicability.
503.41 Specialized definitions.
503.42 Surface disposal sites—general requirements.
503.43 Surface disposal sites—national pollutant limits.
503.44 Surface disposal sites—management practices.
503.45 Pathogen and vector attraction reduction requirements.

Subpart F—Pathogen and Vector Attraction Reduction Requirements

503.50 Applicability and scope.
503.51 Specialized definitions.
503.52 Pathogen reduction requirements.
503.53 Vector attraction reduction requirements.

Subpart G—Incineration of Sewage Sludge

503.60 Applicability.
503.61 Specialized definitions.
503.62 Incineration—general requirements.
503.63 Incineration—pollutant limits.
503.64 Incineration—management practices.

Subpart H—Removal Credits

503.70 Applicability and description of a removal credit.
503.71 Specialized definition.
503.72 Pollutants for which removal credits may be authorized.

Subpart I—Monitoring, Record Keeping, and Reports

503.80 Purpose.
503.81 General.
503.82 Land application of sewage sludge.
503.83 Distribution and marketing of sewage sludge.
503.84 Disposal of sewage sludge in monofills.
503.85 Disposal of sewage sludge on surface disposal sites.
503.86 Incineration of sewage sludge.

Appendix A—Ground Water Pollutant Criteria

Appendix B—Procedure To Determine Annual Whole Sludge Application Rate

Appendix C—Procedure To Determine The Number Of Applications (Years) That Sewage Sludge May Be Applied To Agricultural Land

Appendix D—Procedure To Calculate Maximum Combustion Gas Flow Rate

Authority: Sections 405 (d) and (e), Clean Water Act, as amended by Pub. L. 95–217, Sec. 54(d), 91 Stat. 1591 (33 U.S.C. 1345 (d) and (e)); and Pub. L. 100–4, Title IV, Sec. 406 (a), (b), 101 Stat. 71, 72.

Subpart A—General Provisions

§ 503.1 Purpose and applicability.

(a) *Purpose.* The purpose of this part is to establish standards for the use or disposal of sewage sludge that is generated during the treatment of domestic sewage in treatment works or that is treated in treatment works. This regulation contains numerical pollutant limitations, management practices, and other requirements for the use and disposal of sewage sludge which protects public health and the environment from any reasonably anticipated adverse effects of each regulated pollutant.

(b) *Applicability.* (1) This part establishes minimum requirements for the sewage sludge that is applied to agricultural and non-agricultural land, distributed and marketed, disposed of in monofills, disposed of on surface disposal sites, and incinerated.

(2) Any person who employs a method of final use or disposal identified in paragraph (b)(1) of this section must do so in accordance with this part.

(3) This part does not apply to processes used to treat municipal wastewater and domestic sewage or processes used to treat sewage sludge prior to the final use or disposal of the sewage sludge.

(4) The determination of the manner in which sewage sludge is finally used or disposed of is a matter for local communities. Any use or disposal method may be used as long as the use or disposal is carried out in accordance with the requirements of this part.

§ 503.2 Relationship to other requirements.

(a) Permits for the use and disposal of sewage sludge are addressed in 40 CFR Parts 122 through 124.

(b) Requirements for the approval of State sewage sludge management programs are included in 40 CFR Part 501.

§ 503.3 State authority.

Nothing in this part precludes States from imposing more stringent requirements for any sewage sludge use or disposal method covered by this part.

§ 503.4 Exclusions.

(a) *Industrial sludge.* (1) This part does not apply to any sludge that is generated or treated by industrial wastewater treatment works treating industrial waste or wastewater or treating domestic sewage along with industrial waste or wastewater.

(2) Standards for the use and disposal of non-hazardous industrial sludge are established in 40 CFR Parts 257 and 258.

(b) *Hazardous sewage sludge.* (1) This part does not apply to sewage sludge determined to be hazardous in accordance with Appendix II of 40 CFR Part 261.

(2) Standards for the disposal of sewage sludge determined to be hazardous are established in 40 CFR Parts 261 through 268.

(3) Use or disposal of hazardous sewage sludge in compliance with the requirements in 40 CFR Parts 261 through 268 will constitute compliance with the requirements of section 405 of the Clean Water Act.

(c) *Incinerator ash.* (1) This part does not apply to the ash generated during the incineration of sewage sludge.

(2) Standards for the use and disposal of ash generated during the incineration of sewage sludge are established in 40 CFR Part 257, Part 258, or Parts 261 through 268.

(d) *Disposal of sewage sludge in municipal landfills.* (1) This part does not apply to sewage sludge that is disposed of in a landfill with municipal solid waste. Standards for the disposal of sewage sludge in municipal solid

waste landfills are established in 40 CFR Part 258.

(2) Treatment works disposing of their sewage sludge in municipal solid waste landfills must ensure that their sewage sludge meets the requirements of 40 CFR Part 258 and that the sewage sludge is sent to a State-permitted facility.

(3) Disposal of sewage sludge in compliance with 40 CFR Part 258 will constitute compliance with section 405 of the Clean Water Act.

(e) *Co-firing of sewage sludge.* This part does not apply to sewage sludge that is fired in an incinerator with other wastes.

(f) *Deepwell wet air oxidation systems.* The part does not apply to sewage sludge that is placed in deepwell wet air oxidation systems or to the location or operation of these systems.

(g) *Septic tanks.* This part does not apply to the location and operation of septic tanks, but does apply to septage that is pumped and collected for disposal.

(h) *Marine sanitation devices.* (1) This part does not apply to Type I or Type II marine sanitation devices, as defined in 33 CFR Part 159.

(2) This part does apply to the pumpings from Type III marine sanitation devices, as defined in 33 CFR Part 159, that are delivered to shore-side facilities for disposal.

§ 503.5 General definitions.

(a) CWA means the Clean Water Act (formerly referred to either as the Federal Water Pollution Act or the Federal Water Pollution Control Act Amendments of 1972) Pub.L. 92–500, as amended by Pub.L. 95–217, Pub.L. 95–576, Pub.L. 96–483, Pub.L. 97–117 and Pub.L. 100–4.

(b) Domestic sewage is waste and wastewater from humans or from household operations that are discharged to or otherwise enter treatment works.

(c) Ground water is water below the land surface in a zone of saturation.

(d) Industrial wastewater treatment works are privately owned treatment works that treat waste and wastewater generated by industrial, manufacturing, and commercial processing facilities.

(e) Municipality means a city, town, borough, county, parish, district, association, or other public body (including an intermunicipal Agency of two or more of the foregoing entities) created by or under State law; an Indian tribe or an authorized Indian tribal organization having jurisdiction over sewage sludge management; or a designated and approved management Agency under section 208 of the CWA, as amended. The definition includes a special district created under State law, such as a water district, sewer district, sanitary district, utility district, drainage district, or similar entity, and an integrated waste management facility as defined in section 201(e) of the CWA, as amended, that has as one of its principal responsibilities the treatment, transport, or disposal of sewage sludge.

(f) Person is an individual, association, partnership, corporation, municipality, State or Federal agency, or an agency or employee thereof.

(g) Pollutant means those organic or inorganic substances, or combinations of substances, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through the food-chain, will, on the basis of information available to the Administrator, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction), or physical deformations in such organisms or their offspring.

(h) Pollutant limit is a numeric limit for a pollutant that describes the maximum amount of a pollutant allowed per unit amount of sewage sludge (e.g., milligrams of pollutant per kilogram of dry solids); the maximum amount of a pollutant that can be applied per unit area of land (e.g., kilograms per hectare); or the maximum amount of a pollutant per unit volume of air (e.g., micrograms per cubic meter).

(i) Publicly owned treatment works, or POTW, means any device or system used in the treatment (including recycling and reclamation) of domestic sewage or industrial waste of a liquid nature that is owned by a municipality or State entity.

(j) Septage is the liquid and solid material pumped from a septic tank, cesspool, or similar domestic sewage treatment system or a holding tank when the system is cleaned and maintained.

(k) Sewage sludge is any solid, semi-solid, or liquid residue removed during the treatment of municipal wastewater and domestic sewage or the treatment of domestic sewage. Sewage sludge includes, but is not limited to, solids removed during primary, secondary, or advanced wastewater treatment, scum, septage, portable toilet pumpings, Type III marine sanitation device pumpings, and sewage sludge products.

(l) State is one of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

(m) Treatment works are publicly owned treatment works owned by a State, or municipal entity or federally or privately owned treatment works that treat domestic sewage. Treatment works do not include septic systems. Privately owned industrial waste treatment works that process industrial, manufacturing, or commercial waste and wastewater along with domestic sewage are not included in this definition.

Subpart B—Land Application of Sewage Sludge

§ 503.10 Applicability.

This subpart applies to the application of sewage sludge to either agricultural or non-agricultural land and to any person who uses, disposes of, or distributes sewage sludge by or for application to either agricultural or non-agricultural land. Sewage sludge which is distributed and marketed in compliance with Subpart C is not subject to this subpart.

§ 503.11 Specialized definitions.

(a) Agricultural land is land to which sewage sludge is applied, in order to use the nutrient and soil conditioning properties of sewage sludge, for crops which are intended for direct or indirect human consumption or for animal feed for animals intended for human consumption. This includes land used as pasture for the grazing of animals.

(b) Annual pollutant loading rate is the maximum amount of a pollutant that may be applied to a unit area of land during a 365-consecutive-day period.

(c) Annual whole sludge application rate is the maximum amount of sewage sludge that may be applied to a unit area of land during a 365-consecutive-day period.

(d) Applier is a person who receives sewage sludge from treatment works or distributors and who is responsible for the proper application of the sewage sludge.

(e) Base flood is a flood that has a one-percent or greater chance of recurring in any given year or a flood of a magnitude equalled or exceeded once in 100 years, on the average, over a significantly long period.

(f) Cumulative pollutant loading rate is the maximum amount of an inorganic pollutant that may be applied to a unit area of land.

(g) Dedicated land is land that is used for the disposal of sewage sludge. No attempt is made to use the nutrient and soil conditioning properties of the sewage sludge for a beneficial purpose on this land.

(h) Distributor is a person who receives sewage sludge from treatment works and delivers the sewage sludge to a user or another distributor.

(i) Feed crops are crops intended for consumption by animals.

(j) Floodplain is the lowland and relatively flat areas adjoining inland and coastal waters, including flood prone areas of offshore islands that are inundated by a base flood.

(k) Food crops are crops intended for human consumption.

(l) Forest land is land to which sewage sludge is applied in order to use the nutrient and soil conditioning properties of the sludge for the growth of the trees on the land.

(m) Land application is the application of liquid, de-watered, dried, or composted sewage sludge to the land. Sewage sludge may be sprayed or spread onto the surface of the land, injected below the surface of the soil, or incorporated into the soil.

(n) Non-agricultural land is land where sewage sludge is applied but where no food or feed crops are grown or animals are grazed. This includes, but is not limited to, forest land, reclaimed land, and dedicated land.

(o) Pasture land is land to which sewage sludge is applied in order to use the nutrient and soil conditioning properties of the sludge for the growing of crops, such as legumes, grasses, grain stubble, and stover, that are intended for animals grazing on the land.

(p) Reclaimed land is land that has been drastically disturbed (e.g., a strip mine) or that is marginally productive. As part of the reclamation process, sewage sludge is applied for its nutrient and soil conditioning properties to help re-vegetate and reclaim the land.

(q) Sewage sludge boundary is the outermost perimeter of an area of land to which sewage sludge is applied.

§503.12 Land application—general requirements.

(a) No person subject to this subpart shall use or dispose of sewage sludge by land application or distribute sewage sludge for use or disposal by land application except in accordance with this subpart.

(b) Treatment works shall enter into an agreement with the distributor or applier of sewage sludge that requires the distributor or applier to comply with the requirements in this subpart. Each distributor of sewage sludge shall enter into an agreement with the applier of sewage sludge to comply with the requirements in this subpart. All agreements must include the general provisions in paragraph (b)(1) and the provisions in paragraph (b)(2) or paragraph (b)(3) of this section.

(1) General provisions include the following:

(i) The name and address of persons receiving and applying the sewage sludge;

(ii) The location and legal description of the sites to which the sludge is to be applied;

(iii) The size of the sites (or portion thereof) to which the sludge is to be applied, in hectares or acres;

(iv) The nitrogen content of the sewage sludge;

(v) A prohibition on applying sewage sludge at rates in excess of the nitrogen requirements of the vegetation (food or feed crops, trees, grasses, etc.) and at rates that would cause the excess nitrogen in the sewage sludge to leach to the ground water;

(vi) The amount of sewage sludge to be applied to each site, in metric tons;

(vii) The class of pathogen reduction used in treating the sewage sludge and the applicable use and access restrictions set forth in 40 CFR 503.52 for that class of pathogen reduction;

(viii) The method used in complying with the vector attraction reduction requirements in 40 CFR 503.53;

(ix) The period of time after receipt within which the sewage sludge must be applied;

(x) The application method to be used (i.e., injection below the soil surface, spraying, surface application, etc.) and whether or not the sludge is to be incorporated into the soil;

(xi) The storage method to be used in case of inclement weather and the public health and environmentally protective practices to be used until the sludge is applied;

(xii) The provisions in § 503.12 (c), (d), and (e).

(2) Provisions for agricultural lands include the following:

(i) The concentrations of the pollutants in Table 1 and Table 2 of 40 CFR 503.13;

(ii) Specification of the amount of sewage sludge, in metric tons per hectare, that may be applied in a 365-consecutive-day period without exceeding the annual pollutant loading rates in Table 1 of 40 CFR 503.13 (see Appendix B of this part to determine the appropriate whole sludge application rate);

(iii) Specification of the number of years that sewage sludge may be applied to the land without exceeding the pollutant loading rates in Table 2 of 40 CFR 503.13 (see Appendix C of this part to determine the number of years that sewage sludge may be applied to the land); and

(iv) The management practices set forth at 40 CFR 503.14.

(3) Provisions for non-agricultural lands include the following:

(i) The concentrations of the pollutants in Table 3 of 40 CFR 503.15;

(ii) The management practices set forth at 40 CFR 503.16.

(c) Sewage sludge shall not be applied to the land if the application would cause or contribute to the harm of a threatened or endangered species of plant, fish, or wildlife or would result in the destruction or adverse modification of the critical habitat of a threatened or endangered species.

(d) Sewage sludge shall not be applied to the land if the application of the sewage sludge would restrict the flow of a base flood, would reduce the temporary water storage capacity of the floodplain, or would pose a hazard to human health, wildlife, or land or water resources because of sewage sludge in the runoff from the flood base.

(e) Sewage sludge shall not be applied to frozen, snow-covered, or flooded land unless it can be demonstrated that the application will not cause a discharge of pollutants into waters of the United States, including wetlands, that violates any requirements of the CWA.

(f) Owners or operators of treatment works or distributors of sewage sludge not from treatment works shall comply with the monitoring requirements in § 503.81 and the record keeping and report requirements in § 503.82.

§ 503.13 Agricultural land—national pollutant limits.

(a) Sewage sludge shall be applied to agricultural land at an annual whole sludge application rate that does not exceed the annual pollutant loading rates in Table 1. The procedure in Appendix B shall be used to determine the annual whole sludge application rate.

(b) Sewage sludge shall be applied to agricultural land in amounts that do not exceed the cumulative pollutant loading rates in Table 2. The procedure in Appendix C shall be used to determine the number of applications sewage sludge may be applied to the land.

TABLE 1.—ANNUAL POLLUTANT LOADING RATES

Pollutant	Annual pollutant loading rate [1] (kilograms per hectare)
Aldrin/dieldrin (total)	0.016
Benzo(a)pyrene	0.13
Chlordane	1.2
DDT/DDE/DDD (total) [2]	0.0055

TABLE 1.—ANNUAL POLLUTANT LOADING RATES—Continued

Pollutant	Annual pollutant loading rate [1] (kilograms per hectare)
Dimethyl nitrosamine	0.039
Heptachlor	0.073
Hexachlorobenzene	0.039
Hexachlorobutadiene	0.34
Lindane	4.6
Polychlorinated biphenyls	0.0056
Toxaphene	0.048
Trichloroethylene	0.013

[1] Maximum amount of a pollutant that can be applied per hectare of land per 365-consecutive-day period.
[2] DDT-2,2-Bis(chlorophenyl)-1,1,1-trichloroethane
DDE-1,1-Bis(chlorophenyl)-2,2-dichloroethane
DDD-1,1-Bis(chlorophenyl)-2,2-dichloroethane

TABLE 2.—CUMULATIVE POLLUTANT LOADING RATES

Pollutant	Cumulative pollutant loading rate [1] (kilograms per hectare)
Arsenic	14
Cadmium	18
Chromium	530
Copper	46
Lead	125
Mercury	15
Molybdenum	5
Nickel	76
Selenium	32
Zinc	170

[1] Maximum amount of an inorganic pollutant that can be applied to a hectare of land.

§ 503.14 Agricultural land—management practices.

The application of sewage sludge to agricultural land must meet the following requirements:

(a) Sewage sludge shall be applied to agricultural land at an annual whole sludge application rate that is 50 metric tons per hectare or less (on a dry weight basis).

(b) Sewage sludge shall only be applied to land in accordance with the crop and land access restrictions of § 503.52(b) (3) and (4) or in § 503.52(c) (3) and (4).

(c) Sewage sludge shall not be applied to the land at rates in excess of the nitrogen requirements of the crops (food or feed crops) and at rates that would cause the excess nitrogen in the sewage sludge to leach to the ground water.

(d) Sewage sludge shall not be applied to land that is 10 meters (30 feet) or less from a surface water.

§ 503.15 Non-agricultural land—national pollutant limits.

The concentration of the pollutants in sewage sludge applied to non-agricultural land shall not exceed the pollutant limits in Table 3.

TABLE 3.—NON-AGRICULTURAL LAND POLLUTANT LIMITS

Pollutant	Maximum Sewage sludge concentration [1] (milligrams per kilogram)
Aldrin/dieldrin	0.33
Arsenic	36
Benzo(a)pyrene	6.9
Cadmium	360
Chlordane	24
Chromium	3100
Copper	3300
DDT/DDE/DDD (total) [2]	0.11
Dimethyl nitrosamine	1.4
Heptachlor	1.5
Hexachlorobenzene	2.8
Hexachlorobutadiene	6.8
Lead	1600
Lindane	92
Mercury	30
Molybdenum	230
Nickel	990
Polychlorinated biphenyls	0.11
Selenium	84
Toxaphene	0.97
Trichloroethylene	160
Zinc	8600

[1] Dry weight basis.
[2] DDT—Bis 2,2-(chlorophenyl)-1,1,1-trichloroethane
DDE—Bis 1,1-(chlorophenyl)-2,2-dichloroethane
DDD—Bis 1,1-(chlorophenyl)-2,2-dichloroethane.

§ 503.16 Non-agricultural land—management practices.

The application of sewage sludge to non-agricultural lands must meet the following requirements:

(a) Food crops and feed crops shall not be grown or harvested during the period when sewage sludge is applied to that land or for a period of 5 years after the final application of the sewage sludge;

(b) Animals shall not be grazed during the period when sewage sludge is applied or for a period of five years after the final application of the sewage sludge;

(c) A vegetative cover shall be established on the land;

(d) When sewage sludge meeting the Class A pathogen reduction requirements specified in § 503.52(a) is applied, public access to the land shall be restricted for the period of time necessary to establish a vegetative cover on the land;

(e) Sewage sludge shall not be applied to the land at rates in excess of the nitrogen requirements of the vegetation (trees, grasses, etc.) and at rates that would cause the excess nitrogen in the sewage sludge to leach to the ground water; and

(f) Sewage sludge shall not be applied to land that is 10 meters (30 feet) or less from a surface water.

§ 503.17 Pathogen and vector attraction reduction requirements.

Sewage sludge applied to either agricultural or non-agricultural land shall comply with the requirements in § 503.52 (a), (b), or (c) and the requirements in § 503.53 (a), (b), (c), (d), (e), or (f).

Subpart C—Distribution and Marketing of Sewage Sludge

§ 503.20 Applicability.

This subpart applies to the distribution and marketing of sewage sludge, to any person who distributes and markets sewage sludge, and to any person who uses sewage sludge that is distributed and marketed. Sewage sludge which is applied to either agricultural or non-argicultural land in compliance with Subpart B is not subject to this subpart.

§ 503.21 Specialized definitions.

(a) Annual product application rate is the maximum amount of the product prepared by a distributor that may be applied to a unit area of land in a 365-consecutive-day period in compliance with the pollutant limits in this subpart.

(b) Annual whole sludge application rate is the maximum amount of sewage sludge (or a product derived from sewage sludge prior to disbursement by the treatment works) that may be applied to a unit area of land in a 365-consecutive-day period in compliance with the pollutant limits in this subpart.

(c) Distribution and marketing is the give-away or sale of sewage sludge or a product derived from sewage sludge, either in containers (e.g., bags) or in bulk form, by owners or operators of treatment works or by a person who receives sewage sludge from treatment works.

(d) Distributor is a person who prepares the product for distribution and marketing and who is responsible for distributing and marketing the product.

(e) Product is the material that is distributed and marketed. The product may be either sewage sludge, processed sewage sludge, or a mixture of sewage sludge and other materials such as woodchips.

§ 503.22 Distribution and marketing—general requirements.

(a) No person subject to this part shall distribute and market sewage sludge except in accordance with this subpart.

(b) When the treatment work is not the distributor of the product, the treatment work shall enter into an agreement with the distibutor to comply with the requirements of this subpart. The agreement must include the following:

(1) Name and address of the distributor;

(2) Concentrations of the pollutants listed in Table 4 of 40 CFR 503.23 that are in the sewage sludge disbursed to the distributor;

(3) Appropriate annual whole sludge application rate of the sewage sludge disbursed by the treatment work;

(4) Appropriate annual product application rate of the product to be distributed and marketed;

(5) Documentation that the sewage sludge disbursed to the distributor is in compliance with the Class A pathogen reduction requirements in 40 CFR 503.52(a) and that it has been monitored for compliance with 40 CFR 503.53 (a), (b), (c), (d), or (e).

(6) Facsimile of the label affixed to the product or the information sheet accompanying the product that contains the information required in 40 CFR 503.24(b).

(c) Sewage sludge shall not be applied at rates that would exceed the nitrogen requirements of the vegetation (food crops, grasses, ornamental plants, etc.) and that would cause the excess nitrogen to leach to the ground water.

(d) Owners or operators of treatment works or distributors of sewage sludge shall comply with the monitoring requirements in § 503.81 and the record keeping and report requirements in § 503.83.

§ 503.23 Distribution and marketing—national pollutant limits.

(a) The concentration of the pollutants in sewage sludge that is distributed and marketed shall not exceed the pollutant limits in Table 4 for the appropriate annual whole sludge application rate prior to being disbursed by the treatment works. The procedure in Appendix B shall be used to determine the annual whole sludge application rate.

(b) The annual product application rate for sewage sludge that is distributed and marketed by distributors shall not exceed the pollutant limits in § 503.23(a).

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TABLE 4

DISTRIBUTION AND MARKETING POLLUTANT LIMITS

Maximum Sewage Sludge Concentration
(milligrams per kilogram - dry weight basis)

Annual Whole Sludge Application Rate (metric tons per hectare)	1	3	5	10	15	20	25	30	35	40	45	50
Pollutant												
Aldrin/dieldrin	16	5.3	3.3	1.6	1.1	0.82	0.66	0.56	0.47	0.41	0.36	0.33
Arsenic	700	230	140	70	47	35	28	23	20	18	16	14
Benzo(a)pyrene	80	26	15	7.7	5.1	3.8	3.1	2.6	2.2	1.9	1.7	1.5
Cadmium	900	310	180	90	61	46	37	31	26	23	20	18
Chlordane	22500	7500	4500	2200	1500	1100	900	750	640	560	500	450
Chromium	26500	8800	5300	2700	1770	1330	1060	880	760	660	590	530
Copper	2500	770	460	230	150	110	92	77	66	57	51	46
DDT/DDE/DDD (total)[1]	46	15	9.2	4.6	3.1	2.3	1.8	1.5	1.3	1.2	1	0.92
Heptachlor	79	26	19	7.9	5.3	3.9	3.2	2.6	2.3	2	1.8	1.6
Hexachlorobenzene	46	15	9.1	4.6	3	2.3	1.8	1.15	1.3	1.14	1.01	0.91
Hexachlorobutadiene	41000	14000	8200	4100	2700	2100	1600	1400	1200	1000	910	820
Lead	6000	2100	1300	600	400	310	250	210	180	160	140	130
Lindane	293500	97800	58700	29350	19570	14680	11740	9789	8390	7340	6500	5870
Mercury	1990	660	400	199	133	99	80	66	57	50	44	40
Nickel	3000	1300	780	390	260	200	160	130	110	98	87	76
Polychlorinated biphenyls	49	49	30	15	10	7	6	5	4	4	3	3
Selenium	8106	2702.1	1600	810	540	410	320	270	230	200	160	160
Toxaphene	117	39	23	12	7.8	5.8	4.7	3.9	3.3	2.9	2.6	2.3
Zinc	8600	2900	1700	860	570	430	340	290	250	220	190	170

[1] DDT = 2,2-Bis(chlorophenyl)-1,1,1-trichloroethane
DDE = 1,1-Bis(chlorophenyl)-2,2-dichloroethylene
DDD = 1,1-Bis(chlorophenyl)-2,2-dichloroethane

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§ 503.24 Distribution and marketing—management practices.

(a) When sewage sludge is distributed and marketed, a label shall be affixed to the product or an information sheet shall acompany the product. The label or information sheet shall contain the information required by paragraph (b) of this section.

(b) When sewage sludge is distributed and marketed, the following information shall be provided on a label or information sheet:

(1) Name and address of the distributor of the product;

(2) Statement that the product is derived from sewage sludge;

(3) List of the nitrogen and pollutant concentrations in the product (at a minimum, the list of pollutants is to include the pollutants on Table 4 in § 503.23 that are present in the product);

(4) Statement prohibiting the use of the product on frozen, snow-covered, or flooded land;

(5) Statement prohibiting use, except in accordance with the instructions;

(6) Instructions on the appropriate uses of the product;

(7) Statement prohibiting the use of the product 10 meters (30 feet) or less from a surface water;

(8) Rate at which the product may be applied for stipulated uses (rates may not exceed the nitrogen requirements of the vegetation—food crops, grasses, ornamentals, etc.);

(9) Warning to keep the product out of reach of children;

(10) Statement prohibiting the grazing of animals intended for human consumption on land where the product is applied;

(11) Statement prohibiting the use of crops grown on land where the product is applied as feed for animals intended for human consumption; and

(12) Statement that compliance with the instructions on the label or information sheet will constitute compliance with section 405(e) of the CWA, as amended.

§ 503.25 Pathogen and vector attraction reduction requirements.

Sewage sludge that is distributed and marketed shall be treated to comply with the Class A pathogen reduction requirements in § 503.52(a) and one of the vector attraction reduction requirements in § 503.53 (a) through (e).

Subpart D—Disposal of Sewage Sludge in Monofills

§ 503.30 Applicability.

This subpart applies to the disposal of sewage sludge in monofills accepting only sewage sludge, to sewage sludge monofills, and to any person who disposes of sewage sludge in a monofill.

§ 503.31 Specialized definitions.

(a) Base flood is a flood that has a one-percent or greater chance of recurring in any given year or a flood of a magnitude equalled or exceeded once in 100 years, on the average, over a significantly long period.

(b) Class I ground water is ground water of unusually high value that is highly vulnerable to contamination and is either an irreplaceable source of drinking water to substantial populations or ecologically vital.

(c) Class II ground water is ground water that is not Class I ground water and that is used currently or is available potentially as a source of drinking water and other beneficial uses.

(d) Class III ground water is ground water that:

(1) Is not a source of drinking water and has a total dissolved solids concentration greater than 10,000 milligrams per liter;

(2) Is not a source of drinking water and is contaminated by either naturally occurring conditions or the effects of broad scale human activity to levels that cannot be cleaned up using treatment methods reasonably employed in public water supply systems; or

(3) Is not a source of drinking water because of insufficient yields to meet the minimum needs of an average household.

(e) Closed sewage sludge unit is a sewage sludge unit that no longer receives sewage sludge as of the effective date of this rule and that has received a final cover.

(f) Cover material is soil or other suitable material used to cover sewage sludge in a sewage sludge unit.

(g) Displacement is the relative movement of a fault measured in any direction.

(h) Fault is a fracture along which rocks on one side are displaced with respect to those on the other side.

(i) Final cover is suitable material that permanently covers the sewage sludge unit.

(j) Floodplain is the lowland and relatively flat areas adjoining inland and coastal waters, including floodplain areas of offshore islands that are inundated by a base flood.

(k) Holocene time is the most recent epoch of the Quaternary period, extending from the end of the Pleistocene to the present.

(l) Lateral expansion is a horizontal expansion of a sewage sludge unit boundary.

(m) Monofill is an area of land that contains one or more sewage sludge units.

(n) Runoff is rainwater, leachate, or other liquid that drains overland on any part of a sewage sludge unit.

(o) Saturated zone is that part of the earth's crust in which all voids of porous materials are filled with water.

(p) Seismic impact zone is an area that has had horizontal ground level acceleration equal to or greater than 0.10 gravities.

(q) Sewage sludge unit is an area of land where only sewage sludge is placed and where the sewage sludge is covered with suitable material at the end of each operating day or at more frequent intervals. Land does not include waters of the United States as defined in 40 CFR 230.3(s).

(r) Sewage sludge unit boundary is the outermost perimeter of the sewage sludge unit.

(s) Unsaturated zone is the zone between the land surface and the water table.

(t) Water table is the upper surface of ground water where the pressure in the porous medium above the ground water equals the atmospheric pressure.

(u) Wetland areas are areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include, but are not limited to, swamps, marshes, bogs, and similar areas.

§ 503.32 Monofills—general requirements.

(a) No person shall place sewage sludge in a monofill unless the requirements in this subpart are met.

(b) In addition to the requirements of this subpart, owners or operators of monofills shall comply with the National Pollutant Discharge Elimination System (NPDES) requirements promulgated pursuant to section 402 of the CWA.

(c) Owners or operators of a monofill shall determine the class of ground water over which a monofill is located.

(d) Monofills shall not cause or contribute to the harm of a threatened or endangered species of plant, fish, or wildlife or result in the destruction or adverse modification of the critical habitat of a threatened or endangered species.

(e) Monofills and sewage sludge units shall not restrict the flow of a base flood; reduce the temporary water storage capacity of a floodplain; or present a hazard to human health, wildlife, or land or water resources

because of sewage sludge in the run-off from the base flood.

(f) A monofill located within 3,048 meters (10,000 feet) of an airport runway used by turbine-powered aircraft or within 1,524 meters (5,000 feet) of an airport runway used only by piston engine-powered aircraft shall not pose a hazard to aircraft from birds.

(g) When a monofill is located in a seismic impact zone, the sewage sludge units shall be designed to withstand the maximum recorded horizontal ground level acceleration.

(h) Sewage sludge units shall be located 60 meters or more from a fault or stress fractures that have had displacement in Holocene time.

(i) Sewage sludge units shall be located in areas where adequate support for the structural components of the sewage sludge unit exists.

(j) Sewage sludge units shall be located outside the perimeter of wetland areas.

(k) Owners or operators of a sewage sludge unit shall collect and discharge the volume of run-off from a 24-hour, 25-year storm event, in accordance with an applicable NPDES permit.

(l) Sewage sludge units located within 60 meters of a fault or stress fractures that have had displacement in Holocene time, located in unstable areas, or located in wetland areas shall be closed within 1 year of the effective date of this rule.

(m) Owners or operators of monofills shall develop a written plan that describes the steps necessary to close each sewage sludge unit and the measures required after each closure to protect public health and the environment for each sewage sludge unit. The plan shall be submitted to the permitting authority with a permit application. At a minimum, the plan shall include:

(1) A description of the final cover to be used on each sewage sludge unit that closes;

(2) A description of how the final cover will minimize the effects of any volatilization of the pollutants, minimize settling, subsidence, erosion, or other events, and minimize runoff from, or other damage to, the final cover;

(3) A description of how the final cover will be maintained for a period of 10 years;

(4) A description of the methane gas monitoring that will be conducted for a period of 10 years to ensure continued compliance with the requirements in § 503.34(b); and

(5) A description of how public access restrictions to the sewage sludge unit will be maintained for a period of 10 years.

(n) Owners or operators of treatment works shall comply with the monitoring requirements in § 503.81 and the record keeping and report requirements in § 503.84.

§ 503.33 Monofills—pollutant limits.

(a) *National limits.* The concentration of the pollutants in the sewage sludge placed in monofills located over Class I, Class II, and Class III(1) or Class III(3) ground water as defined in § 503.31 (b), (c), and (d)(1) and (d)(3) shall not exceed the pollutant limits in Table 5 or (b)(1) of this section, except as provided in (b)(3) of this section.

(b) *Case-by-case limits.* (1) Where a sewage sludge unit boundary is located less than 150 meters from the property line of the monofill:

(i) Owners or operators of the monofill shall submit the actual distance of the sewage sludge unit boundary to the property line of the monofill; and

(ii) The permitting authority must calculate numeric limits for the pollutants in Table 5 using an EPA-approved model and the actual distance of the sewage sludge unit to the monofill boundary.

(2) When a monofill is located over Class III(2) ground water as defined in § 503.31(d)(2):

(i) Owners or operators of the monofill must submit the actual concentration for those pollutants that exceed the values in Appendix A; and

(ii) The permitting authority shall calculate the numeric limits using an EPA-approved model and the actual concentration in the ground water of those pollutants that exceeded the values in Appendix A.

(3) When one or more of the pollutant limits in § 503.33(a), § 503.33(b)(1), or § 503.33(b)(2) are exceeded and when the monofill site characteristics are different from the values in Table 6, alternative limits may be developed in accordance with the following procedure:

(i) Owners or operators shall document site-specific values for one or more of the parameters in Table 6; and

(ii) The permitting authority shall calculate numeric limits for all pollutants in Table 5 using an EPA-approved model and the site-specific values provided by the owner or operator.

TABLE 5.—MONOFILL POLLUTANT LIMITS

MAXIMUM SEWAGE SLUDGE CONCENTRATION

(Milligrams per kilogram [1])

Pollutant	Monofills over class I ground water	Monofills over class II/class III(1) and class III(3) ground water
Arsenic	0.20	24
Benzene	0.28	0.65
Benzo(a)pyrene	89	250
Bis(2-ethylhexyl)phthalate	4.5	1600
Cadmium	0.040	9.6
Chlordane	180	
Copper	8.4	
DDT/DDE/DDD (Total) [2]	0.05	51
Dimethyl nitrosamine	0.0019	0.07
Lead	0.35	530
Lindane	2.3	75
Mercury	0.0070	26
Nickel	7.0	
Polychlorinated biphenyls	49	49
Toxaphene	0.5	1.65
Trichloroethylene	2.4	7.4

[1] Dry weight basis.

[2] DDT—2,2-Bis(chlorophenyl)-1,1,1-trichloroethane
DDE—1,1-Bis(chlorophenyl)-2,2-dichloroethene
DDD—1,1-Bis(chlorophenyl)-2,2-dichloroethane.

TABLE 6.—MONOFILL PARAMETERS

Parameter	Value [1]
Depth to ground water	0 meters for Class I ground water; 1 meter for Class II and Class III ground water
Soil type	Sand
Net ground water recharge rate.	0.5 meters per year
Ground water electromotive potential (Eh).	+ 500 millivolts
Ground water pH	6.0
Partition coefficient (liters per kilogram):	
Arsenic	5.95
Benzene	0.0074
Benzo(a)pyrene	63.0
Bis(2-ethylhexyl)phthalate	0.7244
Cadmium	14.9
Chlordane	17.0
Copper	41.0
DDT/DDE/DDD (Total) [2]	500.0
Dimethyl nitrosamine	0.000004
Lead	234.0
Lindane	0.108
Mercury	322.0
Nickel	12.2
Polychlorinate biphenyls	32.0
Toxaphene	0.096
Trichlorethylene	0.0196

[1] Use value in this Table or measured site-specific value for parameter

[2] DDT—2,2-Bis(chlorophenyl)-1,1,1-trichloroethane
DDE—1,1-Bis(chlorophenyl)-2,2-dichloroethene
DDD—1,1-Bis(chlorophenyl)-2,2-dichloroethane.

§ 503.34 Monofills—management practices.

(a) The owners or operators of a monofill shall cover sewage sludge units with suitable material at the end of each operating day. Cover material shall be applied at more frequent intervals, if necessary, to control disease vectors, odors, gas venting, and scavenging.

(b) The owners or operators of a monofill shall ensure that:

(1) The concentration of methane gas generated in the sewage sludge units does not exceed 1.25 percent methane in any structure within the monofill;

(2) The concentration of methane gas generated in the sewage sludge units does not exceed 5.0 percent methane at the property line of the monofill;

(3) A routine methane gas monitoring program is implemented in accordance with § 503.84(a); and

(4) All necessary and appropriate actions are taken immediately to protect public safety if the limits specified in paragraph (b) (1) or (2) of the section are detected.

(c) Owners and operators shall restrict public access to monofills to protect human health and the environment and to prevent unauthorized vehicular traffic or dumping in the monofill.

§ 503.35 Pathogen reduction requirements.

Sewage sludge placed in a monofill shall be treated to comply with either the Class A pathogen reduction requirements in § 503.52(a) or the Class B pathogen reduction requirements in § 503.52(b).

Subpart E—Disposal of Sewage Sludge on Surface Disposal Sites

§ 503.40 Applicability.

This subpart applies to the disposal of sewage sludge on surface disposal sites, to surface disposal sites, and to any person who disposes of sewage sludge on a surface disposal site.

§ 503.41 Specialized definitions.

(a) Base flood is a flood that has a one-percent or greater chance of recurring in any given year or a flood of a magnitude equalled or exceeded once in 100 years, on the average, over a significantly long period.

(b) Displacement is the relative movement of a fault measured in any direction.

(c) Fault is a fracture along which rocks on one side are displaced with respect to those on the other side.

(d) Floodplain is the lowland and relatively flat areas adjoining inland and coastal waters, including floodplain areas of offshore islands that are inundated by a base flood.

(e) Holocene time is the most recent epoch of the Quaternary period, extending from the end of the Pleistocene to the present.

(f) Lateral expansion is a horizontal expansion of a surface disposal site.

(g) Runoff is a rainwater, leachate, or other liquid that drains overland on any part of a surface disposal site.

(h) Saturated zone is that part of the earth's crust in which all voids of porous materials are filled with water.

(i) Seismic impact zone is an area that has had horizontal ground level acceleration equal to or greater than 0.10 gravities.

(j) Surface disposal site is an area of land on which only sewage sludge is placed for a period of 1 year or longer. Surface disposal sites do not have a vegetative or other cover. Land on which a surface disposal site is located does not include waters of the United States as defined in 40 CFR 230.3(s).

(k) Unsaturated zone is the zone between the land surface and the water table.

(l) Water table is the upper surface of ground water where the pressure in the porous medium above the ground water equals the atmospheric pressure.

(m) Wetland areas are areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include, but are not limited to, swamps, marshes, bogs, and similar areas.

§ 503.42 Surface disposal sites—general requirements.

(a) No person subject to this part shall place sewage sludge in a surface disposal site except in accordance with this subpart.

(b) In addition to the requirements of this subpart, owners or operators of surface disposal sites shall comply with the NPDES requirements promulgated pursuant to section 402 of the CWA.

(c) Surface disposal sites shall not cause or contribute to the harm of a threatened or endangered species of plant, fish, or wildlife or result in the destruction or adverse modification of the critical habitat of a threatened or endangered species.

(d) Surface disposal sites shall not restrict the flow of a base flood; reduce the temporary water storage capacity of a floodplain; or present a hazard to human health, wildlife, or land or water resources because of sewage sludge in the runoff from the base flood.

(e) A surface disposal site located within 3,048 meters (10,000 feet) of an airport runway used by turbine-powered aircraft or within 1,524 meters (5,000 feet) of an airport runway used only by piston engine-powered aircraft shall not pose a hazard to aircraft from birds.

(f) When a surface disposal site is located in a seismic impact zone, the surface disposal site shall be designed to withstand the maximum recorded horizontal ground level acceleration.

(g) Surface disposal sites shall be located 60 meters or more from a fault or stress fractures that have had displacement in Holocene time.

(h) Surface disposal sites shall be located in areas where adequate support for the structural components of the surface disposal site exists.

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(i) Surface disposal sites shall be located outside the perimeter of wetland areas.

(j) Owners or operators of surface disposal sites shall collect and discharge the volume of runoff from a 24-hour, 25-year storm event, in accordance with an applicable NPDES permit.

(k) Sewage sludge surface disposal sites located within 60 meters of a fault or stress fractures that have had displacement in Holocene time, located in unstable areas, or located in wetland areas shall be closed within 1 year of the effective date of this rule.

(l) Owners or operators of treatment works shall comply with the monitoring requirements in § 503.61 and record keeping and report requirements in § 503.85.

§ 503.43 Surface disposal sites—national pollutant limits.

The concentration of the pollutants in sewage sludge placed on a surface disposal site shall not exceed the pollutant limits in Table 7.

TABLE 7.—SURFACE DISPOSAL SITES POLLUTANT LIMITS

Pollutant	Maximum sewage sludge concentration [1] (milligrams per kilogram)
Arsenic	36
Benzene	15
Benzo(a)pyrene	99
Bis(2-ethylhexyl)phthelate	782
Cadmium	385
Chlordane	180
Copper	3300.1
DDT/DDE/DDD (Total) [2]	0.95
Dimethyl nitrosamine	1.4
Lead	1622
Lindane	2.3
Mercury	17
Nickel	988
Polychlorinated biphenyls	49
Toxaphene	0.5
Trichloroethylene	181

[1] Dry Weight Basis.
[2] DDT—2,2-Bis(chlorophenyl)-1,1,1,-trichloroethane. DDE—1,1-Bis(chlorophenyl)-2,2-dichoeroethane. DDD—1,1,-Bis(chlorophenyl)-2,2-dichloroethane.

§ 503.44 Surface disposal sites—management practices.

(a) The owners and operators of a surface disposal site shall ensure that:

(1) The concentration of methane gas generated in a surface impoundment does not exceed 1.25 percent methane in any structure within the property line of the surface disposal site;

(2) The concentration of methane gas generated in a surface disposal site does not exceed 5.0 percent methane at the property line of the surface disposal site;

(3) A routine methane gas monitoring program is implemented in accordance with § 503.85(a); and

(4) All necessary and appropriate actions are taken immediately to protect public safety if the limits specified in paragraph (a) (1) or (2) of this section are detected.

(b) Food crops and feed crops intended for human or animal consumption shall not be grown on the sewage sludge.

(c) Animals shall not be grazed on the sewage sludge.

(d) Owners and operators shall restrict public access to surface disposal sites to protect human health and the environment and to prevent unauthorized dumping at the site.

§ 503.45 Pathogen and vector attraction reduction requirements.

Sewage sludge placed on a surface disposal site shall be treated to comply with either the Class A pathogen reduction requirement in § 503.52(a) or the Class B pathogen reduction requirements in § 503.52(b) and one of the vector attraction reduction requirements in § 503.53 (a) through (f).

Subpart F—Pathogen and Vector Attraction Reduction Requirements

§ 503.50 Applicability and scope.

(a) *Applicability.* This subpart applies to sewage sludge that is applied to agricultural and non-agricultural land, distributed and marketed, disposed of in a monofill, or disposed of on a surface disposal site.

(b) *Scope.* This subpart establishes the requirements for eliminating or reducing pathogenic organisms in sewage sludge and for eliminating or reducing the characteristics of sludge that attract vectors.

§ 503.51 Specialized definitions.

(a) Aerobic digestion is the oxidation of organic matter in sewage sludge into carbon dioxide by aerobic bacteria.

(b) Anaerobic digestion is the decomposition of organic matter in sewage sludge into methane and carbon dioxide by anaerobic bacteria.

(c) Density of microbial organisms per unit mass of volatile suspended solids is the number of microbial organisms divided by the mass of volatile suspended solids in the sewage sludge.

(d) Feed crops are crops intended for consumption by animals.

(e) Food crops are crops intended for human consumption.

(f) Indicator organisms are fecal coliform and fecal streptococci (enterococci) that are used to indicate the presence of pathogenic organisms in the processed sewage sludge.

(g) Pathogen reduction is the elimination or reduction of pathogenic bacteria (*Salmonella* sp.), viruses, protozoa, and helminth ova in sewage sludge.

(h) Specific oxygen uptake rate (SOUR) is the rate at which bacteria consume oxygen in a liquid sewage sludge that has undergone aerobic digestion (i.e., mass of oxygen consumed per unit time per unit mass of sewage sludge solids).

(i) Vector attraction reduction is the elimination or reduction of the characteristics of sewage sludge that attract rodents, flies, mosquitos, and other organisms (i.e., organic amines and short-chained fatty acids).

(j) Volatile solids is that portion of the total solids in sewage sludge that evaporates when the sewage sludge is combusted at 550 degrees Celsius in the presence of excess air.

(k) Volatile suspended solids is that portion of the total suspended solids in sewage sludge that evaporates when the sewage sludge is combusted at 550 degrees Celsius in the presence of excess air.

§ 503.52 Pathogen reduction requirements.

(a) *Class A pathogen reduction requirements.* Owners or operators of treatment works or distributors of sewage sludge not from treatment works shall monitor their sewage sludge in accordance with the methods in § 503.81(b) (3) through (11) to ensure that pathogenic organisms or indicator organisms do not exceed the limits in paragraph (a) (1) or (2) of this section. Also, owners or operators of treatment works or distributors shall comply with paragraph (a)(3) and, if applicable paragraph (a)(4) of this section.

(1) Pathogenic organisms are equal to or less than:

(i) 3 *Salmonella* sp. per gram of volatile suspended solids;

(ii) 1 plaque forming virus unit per gram of volatile suspended solids;

(iii) 1 protozoan organism per gram of volatile suspended solids; and

(iv) 1 helminth egg per gram of volatile suspended solids.

(2) Sewage sludge is raised to 53 degrees Celsius for 5 days, to 55 degrees Celsius for 3 days, or to 70 degrees Celsius for one-half hour and the densities of indicator organisms are equal to or less than:

(i) 2 $\log_{10}$ fecal coliform per gram of volatile suspended solids; and

(ii) 2 $\log_{10}$ fecal streptococci (enterococci) per gram of volatile suspended solids.

(3) Owners or operators of treatment works or distributors shall process the sewage sludge to achieve the limits in paragraph (a) (1) or (2) of this section prior to or concurrent with § 503.53 (a) through (e).

(4) If the method selected for vector attraction reduction is injection below the soil surface as provided in § 503.53(f), treatment works or distributors shall monitor the sewage sludge to ensure that the densities of fecal coliform and fecal streptococci (enterococci) each do not exceed 3 $\log_{10}$ per gram of volatile suspended solids prior to injection.

(b) *Class B pathogen reduction requirements.* Owners or operators of treatment works or distributors of sewage sluge not from treatment works shall monitor their sewage sludge in accordance with the methods in § 503.81(b) (3) through (11) to ensure that pathogenic organisms or indicator organisms do not exceed the limits in paragraph (b) (1) or (2) of this section. Also, owners or operators of treatment works or distributors shall comply with paragraphs (b) (3) and (4) of this section.

(1) The density of pathogenic organisms in the influent to the treatment work is reduced in the final processed sludge by:

(i) 2 $\log_{10}$ for *Salmonelli* sp. per gram of volatile suspended solids; and

(ii) 2 $\log_{10}$ for viruses per gram of volatile suspended solids.

(2) When the influent to the treatment work or sewage sludge not from a treatment work is processed by a physical or biological method and when the sewage sludge from those methods is treated in a physical, biological, or chemical addition method, or is stored for at least 1 day, the densities of the indicator organisms are equal to or less than:

(i) 6 $\log_{10}$ fecal coliform per gram of volatile suspended solids; and

(ii) 6 $\log_{10}$ fecal strepotococci (enterococci) per gram of volatile suspended solids.

(3) When sewage sludge is applied to the land, owners or operators of treatment works or distributors shall ensure that:

(i) Food crops with harvested parts that touch the sludge-soil mixture and that are totally above ground shall not be grown for a period of 18 consecutive months after application of the sewage sludge to the land;

(ii) Food crops with harvested parts that are below the surface of the ground shall not be grown for a period of 5 consecutive years after application of the sewage sludge, unless no viable helminth ova are present in the soil; if there are no ova present, food crops with harvested parts that are below the surface of the ground may be grown 18 months after application of the sewage sludge;

(iii) Feed crops shall not be harvested for a period of 30 consecutive days after the sewage sludge is applied; and

(iv) Animals shall not be allowed to graze for a period of 30 consecutive days after the sewage sludge is applied.

(4) Owners or operators of treatment works or distributors shall ensure that public access to agricultural and non-agricultural lands is restricted for a period of 12 consecutive months after the application of the sewage sludge.

(c) *Class C pathogen reduction requirements.* Owners or operators of treatment works or distributors of sewage sludge not from treatment works shall monitor their sewage sludge in accordance with the methods in § 503.81(b)(3) through (11) to ensure that pathogenic organisms or indicator organisms do not exceed the limits in paragraph (c) (1) or (2) of this section. Also, owners or operators of treatment works or distributors shall comply with paragraphs (c) (3) and (4) of this section.

(1) The density of pathogenic organisms in the influent to the treatment work is reduced in the final processed sludge by:

(i) 1.5 $\log_{10}$ for *Salmonelli* sp. per gram of volatile suspended solids; and

(ii) 1.5 $\log_{10}$ for viruses per gram of volatile suspended solids.

(2) When the influent to the treatment work or sewage sludge not from a treatment work is processed by a physical or biological method and when the sewage sludge from those methods is further processed by a physical or biological method, is stored in a lagoon, is air dried, or is otherwise stored for at least 1 day, the densities of the indicator organisms are equal to or less than:

(i) 6.3 $\log_{10}$ fecal coliform per gram of volatile suspended solids; and

(ii) 6.7 $\log_{10}$ fecal streptococci (enterococci) per gram of volatile suspended solids.

(3) When sewage sludge is applied to the land, owners or operators of treatment works or distributors shall ensure that:

(i) Food crops with harvested parts that touch the sludge-soil mixture and that are totally above the ground shall not be grown for a period of 18 consecutive months after application of the sewage sludge;

(ii) Food crops with harvested parts that are below the surface of the ground shall not be grown for a period of 5 consecutive years after application of the sewage sludge, unless no viable helminth ova are present in the soil; if there are no ova present, food crops with harvested parts that are below the surface of the ground may be grown 18 months after application of the sewage sludge;

(iii) Feed crops shall not be harvested for a period of 60 consecutive days after the sewage sludge is applied; and

(iv) Animals shall not be allowed to graze for a period of 60 consecutive days after the sewage sludge is applied.

(4) Owners or operators of treatment works or distributors shall ensure that access to agricultural and non-agricultural lands is restricted for a period of 12 consecutive months after the application of the sewage sludge.

§ 503.53 Vector attraction reduction requirements.

Any of the approaches in paragraphs (a) through (f) of this section may be used in meeting the vector attraction reduction requirements when sewage sludge is applied to agricultural and non-agricultural land or disposed of on a surface disposal site. Owners or operators of treatment works that distribute and market their sewage sludge may not use the approach in paragraph (f) of this section.

(a) The mass of volatile solids in sewage sludge that is treated by an aerobic or anaerobic digestion process is reduced by 38 percent.

(b) The mass of volatile solids in sewage sludge that is treated by an anaerobic digestion process is reduced by less than 15 percent when the sewage sludge is processed for 40 additional days at 30 or more degrees Celsuis by anaerobic digestion.

(c) For sewage sludge that is processed by aerobic digestion, the specific oxygen uptake rate (SOUR) of the sewage sludge prior to final disposal is 1 milligram of oxygen per hour, per gram or less of sewage sludge solids.

(d) The pH of the sewage sludge is raised to 12 or above by alkali addition and, without the addition of more alkali, remains at 12 or above for 2 consecutive hours and then remains at 11.5 or above for an additional period of 22 hours.

(e) The percent solids of the sewage sluge, based on the moisture and solids content of the sewage sludge prior to mixing with other materials, is 75 percent or greater.

(f) The sewage sludge is injected below the surface of the soil with no evidence of the sewage sludge on the land surface within 1 hour after injection of the sewage sludge.

Subpart G—Incineration of Sewage Sludge

§ 503.60 Applicability.

This subpart applies to the incineration of sewage sludge in an incinerator that only fires sewage sludge, to sewage sludge incinerators, and to any person who disposes of sewage sludge in a sewage sludge incinerator.

§ 503.61 Specialized definitions.

(a) Air pollution control system is one or more processes used to collect emissions from a sewage sludge incinerator.

(b) Control efficiency is the mass of a metallic pollutant in the sewage sludge fed to an incinerator minus the mass of that pollutant in the emission from the incinerator stack divided by the mass of the pollutant in the sewage sludge fed to the incinerator.

(c) Dispersion factor is a numerical value that correlates the maximum allowable emission rate for a pollutant from a sewage sludge incinerator stack to the maximum allowable increase in the ground level ambient air concentration for that pollutant at a specified distance from the incinerator stack.

(d) Incineration is the firing of sewage sludge in an enclosed device using controlled flame combustion. An enclosed device includes, but is not limited to, multiple hearth incinerators, fluidized bed incinerators, electric incinerators, or rotary kiln incinerators.

(e) Maximum combustion temperature is the maximum temperature in the combustion zone of a sewage sludge incinerator.

(f) Risk specific concentration is the increase in the concentration of a pollutant that sewage sludge incinerators may contribute to the average annual ground level ambient air concentration for that pollutant.

(g) Sewage sludge feed rate is the average amount of sewage sludge incinerated per day for all sewage sludge incinerators within the property line of a facility or the incinerator design capacity for the total amount of sewage sludge that can be incinerated per day for all sewage sludge incinerators within the property line of the facility.

(h) Stack height is the difference between the elevation of the top of a sewage sludge incinerator stack and the elevation of the ground surface at the base, when this difference is equal to or less than 65 meters. For incinerator stacks higher than 65 meters, the creditable stack height above 65 meters is determined in accordance with 40 CFR 51.1(l)(ii).

(i) Total hydrocarbons is the sum of all emitted organic compounds that have one or more carbon-to-carbon bonds, one or more carbon-to-hydrogen bonds, and that also may have one or more carbon-to-chlorine, carbon-to-nitrogen, or carbon-to-oxygen bonds, etc.

§ 503.62 Incineration—general requirements.

(a) No person shall fire sewage sludge in a sewage sludge incinerator unless the sewage sludge and the sewage sludge incinerator meet the requirements in this subpart.

(b) In addition to the requirements in this subpart, owners or operators of sewage sludge incinerators shall comply with the requirements promulgated under the authority of the Clean Air Act in 40 CFR 61.30 through 61.34, 40 CFR 61.50 through 61.55, and 40 CFR 60.150 through 60.154.

(c) Ash from the incineration of sewage sludge shall be disposed of in accordance with the requirements of 40 CFR Parts 257, 258, or 261 through 266, as appropriate.

(d) Sewage sludge feed rates for all sewage sludge incinerators within the property line of treatment works shall be used to calculate the pollutant limits in § 503.63 (b) through (e).

(e) An instrument that continuously measures the sewage sludge feed rate shall be installed, calibrated, operated, and maintained for each sewage sludge incinerator. The instrument shall have an accuracy of plus or minus five percent over its operating range.

(f) Access to the sewage sludge that is fed to an incinerator shall be provided so that representative grab samples of the sewage sludge can be obtained.

(g) An instrument that monitors and continuously records the oxygen content of the combustion chamber gas prior to the point at which any air dilutes the combustion chamber gas shall be installed, calibrated, operated, and maintained. The oxygen measuring instrument shall have an accuracy of plus or minus five percent over its operating range and shall be calibrated at least once every 24-hour operating period.

(h) Instruments that monitor and continuously record temperatures shall be installed, calibrated, operated, and maintained. The number and placement of the instruments shall be as follows:

(1) For a multiple hearth incinerator, one instrument in every hearth and two instruments in the combustion hearth;

(2) For a fluidized bed incinerator, one instrument in the bed and one instrument in the outlet duct of the fluidized bed;

(3) For an electric incinerator, one instrument in the drying zone, one instrument in the cooling zone, and two instruments in the combuston zone; and

(4) For a rotary kiln incinerator, one instrument in the drying zone, one instrument in the cooling zone, and two instruments in the combustion zone.

(i) An instrument that monitors and continuously records the total hydrocarbon concentration, in parts per million, in the sewage sludge incinerator exit gas shall be installed, calibrated, operated, and maintained. The total hydrocarbon measuring device shall employ a flame ionization detector and a heated sampling line maintained at a temperatoure of 150 degrees Celsius at all times.

(j) Owners or operators of treatment works shall comply with the monitoring requirements in § 503.61 and recordkeeping and report requirements in § 503.66.

§ 503.63 Incineration—pollutant limits.

(a) Sewage sludge may be fired in an incinerator only if the sewage sludge does not exceed the pollutant limit for beryllium in § 503.63(b); the pollutant limit for mercury in § 503.63(c); the pollutant limit for lead in § 503.63(d); the pollutant limits for arsenic, cadmium, chromium, and nickel in § 503.63(e); and the pollutant limit for total hydrocarbons in § 503.63(f).

(b) Beryllium.

The maximum allowable concentration of beryllium in sewage sludge which may be incinerated shall not exceed the concentration in paragraph (b)(1) of this section, except as provided in paragraph (b)(2) of this section.

(1) National limit—beryllium.

The maximum allowable concentration of beryllium shall be calculated using equation (1).

$$C = \frac{10}{(1-CE) \times SF} \qquad (1)$$

Where:
C=Maximum allowable beryllium concentration in sewage sludge, in milligrams per kilogram (dry weight basis).
CE=Sewage sludge incinerator control efficiency (from Table 10).
SF=Sewage sludge feed rate, in metric tons per day (dry weight basis).

(2) Case-by-case limit—beryllium.

If the concentration of beryllium in the sewage sludge that is to be incinerated exceeds the concentration in equation (1), owners or operators may perform a test of the incinerator(s) in accordance with requirements specified by EPA to determine the actual control efficiency of the sewage sludge incinerator(s) in preventing the release of beryllium to the atmosphere. The control efficiency obtained from the performance test shall be used in equation (1) to calculate a maximum allowable concentration of beryllium in sewage sludge which may be fed into the incinerator.

(c) Mercury.

The maximum allowable concentration of mercury in sewage sludge which may be incinerated shall not exceed the concentration in paragraph (c)(1) of this section, except as provided in paragraph (c)(2) of this section.

(1) National limit—mercury.

The maximum allowable concentration of mercury shall be calculated using equation (2).

$$C = \frac{3200}{(1-CE) \times SF} \qquad (2)$$

Where:
C=Maximum allowable concentration of mercury in sewage sludge, in milligrams per kilogram (dry weight basis).
CE=Sewage sludge incinerator control efficiency (from Table 10).
SF=Sewage sludge feed rate in metric tons per day (dry weight basis).

If the concentration of mercury in the sewage sludge that is to be incinerated exceeds the concentration in equation (2), owners or operators may perform a test of the incinerator(s) in accordance with requirements specified by EPA to determine the actual control efficiency of the sewage sludge incinerator(s) in preventing the release of mercury to the atmosphere. The control efficiency obtained from the performance test shall be used in equation (2) to calculate a maximum allowable concentration of mercury in the sewage sludge which may be fed into the incinerator.

(d) Lead.

The maximum allowable concentration of lead in sewage sludge which may be incinerated shall not exceed the concentration in paragraph (d)(1) of this section, except as provided in paragraph (d)(2)(i) or (2)(ii) of this section.

(1) National limit—lead.

The maximum allowable concentration of lead incinerated shall be calculated using equation (3).

$$C = \frac{.25\ (NAAQS) \times 86{,}400}{DF \times (1-CE) \times SF} \qquad (3)$$

Where:
C=Maximum allowable concentration of lead in sewage sludge, in milligrams per kilogram (dry weight basis).
NAAQS=National Ambient Air Quality Standard for lead (1.5 micrograms per cubic meter maximum arithematic mean averaged over a calendar quarter).
86,400=Number of seconds in a day.
DF=Dispersion factor, in micrograms per cubic meter, per gram, per second (from Table 9).
CE=Sewage sludge incinerator control efficiency (from Table 10).
SF=Sewage sludge feed rate, in metric tons per day (dry weight basis).

(i) The dispersion factor (DF) in equation (3) shall be obtained from Table 9 if the sewage sludge incinerator stack height is 65 meters or less.

(ii) When the sewage sludge incinerator stack height exceeds 65 meters, the creditable stack height shall be determined in accordance with 40 CFR 51.1(l)(ii) and shall be used in an EPA-approved air dispersion model to determine the appropriate dispersion factor for equation (3).

(2) Case-by-case limit—lead.

(i) If the concentration of lead in the sewage sludge that is to be incinerated exceeds the concentration in equation (3) because of the dispersion factor in Table 9, owners or operators may determine an alternative dispersion factor using an EPA-approved air dispersion model. The dispersion factor obtained from air dispersion modeling shall be used in equation (3) to calculate a maximum allowable concentration of lead in sewage sludge which may be fed into the incinerator.

(ii) If the concentration of lead in the sewage sludge that is to be incinerated exceeds the concentration in equation (3) because of the control efficiency in Table 10, owners or operators may perform a test of the incinerator(s) in accordance with requirements specified by EPA to determine the actual control efficiency of the incinerator(s) in preventing the release of lead to the atmosphere. The control efficiency obtained from the performance test shall be used in equation (3) to calculate a maximum allowable concentration of lead in the sewage sludge which may be fed into the incinerator.

(e) Arsenic, cadmium, chromium, and nickel.

The maximum allowable concentration of arsenic, cadmium, chromium, or nickel in sewage sludge which may be incinerated shall not exceed the concentration in paragraph (e)(1) of this section, except as provided in paragraph (e)(2)(i) or (ii) of this section.

(1) National limit—arsenic, cadmium, chromium, and nickel.

The maximum allowable concentration of arsenic, cadmium, chromium, or nickel shall be calculated using equation (4).

$$C = \frac{RSC \times 86{,}400}{DF \times (1-CE) \times SF} \qquad (4)$$

Where:
C=Maximum allowable concentration of arsenic, cadmium, chromium, or nickel in sewage sludge, in milligrams per kilogram (dry weight basis).
CE=Sewage sludge incinerator control efficiency (from Table 10).
DF=Dispersion factor, in micrograms per cubic meter, per gram, per second (from Table 9).
RSC=Risk specific concentration, in micrograms per cubic meter (from Table 8).
86,400=Number of seconds in a day.
SF=Sewage sludge feed rate, in metric tons per day (dry weight basis).

(i) The dispersion factor (DF) in equation (4) shall be obtained from Table 9 if the sewage sludge incinerator stack height is 65 meters or less.

(ii) When the sewage sludge incinerator stack height exceeds 65 meters, the creditable stack height shall be determined in accordance with 40 CFR 51.1(l)(ii) and shall be used in an EPA-approved air dispersion model to determine the appropriate dispersion factor for equation (4).

(2) Case-by-case limit—arsenic, cadmium, chromium, and nickel.

(i) If the concentration of arsenic, cadmium, chromium, or nickel in the sewage sludge that is to be incinerated exceeds the concentration in equation (4) because of the dispersion factor in Table 9, owners or operators may determine an alternative dispersion factor using an EPA-approved air dispersion model. The dispersion factor obtained from air dispersion modeling shall be used in equation (4) to calculate a maximum allowable concentration of arsenic, cadmium, chromium, or nickel in sewage sludge which may be fed into the incinerator.

(ii) If the concentration of arsenic, cadmium, chromium, or nickel in the sewage sludge that is to be incinerated exceeds the concentration in equation (4) because of the control efficiency in Table 10, owners or operators may perform a test of the incinerator(s) in accordance with requirements specified by EPA to determine the actual control efficiency of the sewage sludge incinerator(s) in preventing the release of arsenic, cadmium, chromium, or nickel to the atmosphere. The control efficiency obtained from the

performance test shall be used in equation (4) to calculate a maximum allowable concentration of arsenic, cadmium, chromium, or nickel in the sewage sludge which may be fed into the incinerator.

(f) Total hydrocarbons.

The maximum allowable concentration of total hydrocarbons that may be in the emissions from sewage sludge incinerators shall not exceed the concentration in paragraph (f)(1) of this section, except as provided in paragraph (f)(2) of this section.

(1) National limit—total hydrocarbons.

The maximum allowable concentration of total hydrocarbons shall be calculated using equation (5).

$$THC = \frac{RSC \times 3,240,000,000}{DF \times GF} \quad (5)$$

Where:

THC = Maximum allowable concentration of total hydrocarbons in the sewage sludge incinerator's emissions, in parts per million, on a volumetric basis, corrected for seven percent oxygen (dry basis).

RSC = Risk specific concentration, in micrograms per cubic meter (from Table 8).

3,240,000,000 = Conversion factors.

DF = Dispersion factor, in micrograms per cubic meter, per gram, per second (from Table 9).

GF = Maximum combustion gas flow rate from the sewage sludge incinerator, in gram moles per day.

(i) The dispersion factor (DF) in equation (5) shall be obtained from Table 9 if the sewage sludge incinerator stack height is 65 meters or less.

(ii) When the sewage sludge incinerator stack height exceeds 65 meters, the creditable stack height shall be determined in accordance with 40 CFR 51.1(l)(ii) and shall be used in an EPA-approved air dispersion model to determine the appropriate dispersion factor for equation (5).

(iii) The maximum combustion gas flow rate (GF) in equation (5) shall be determined using the procedure in Appendix D of this part.

(iv) The concentration of total hydrocarbons measured in the emissions shall be corrected to 50 percent excess air (seven percent oxygen), zero percent moisture as shown in equation (6).

$$\text{Correction factor dimensionless} = 14\ (6)\ (21 - Y)$$

Where:

Y = Oxygen concentration in the sewage sludge incinerator exit gas (percent).

(v) The corrected concentration of total hydrocarbons is the total hydrocarbon concentration that must meet the concentration calculated with equation (5), except as provided in paragraph (f)(2) of this section.

(2) Case-by-case limit—total hydrocarbons.

If the concentration of total hydrocarbons from incinerator emissions—measured with the device specified in § 503.62(i) and corrected to 50 percent excess air (seven percent oxygen), as provided in equation (6)—exceeds the limit in equation (5) because of the dispersion factor in Table 9, owners or operators may determine an alternative dispersion factor using an EPA-approved air dispersion model. The dispersion factor obtained from the dispersion modeling shall be used in equation (5) to calculate a maximum allowable concentration of total hydrocarbons in sewage sludge which may be fed into the incinerator.

TABLE 8.—RISK SPECIFIC CONCENTRATION

Pollutant	RSC (Micrograms per cubic meter)
Arsenic	0.0023
Cadmium	0.0057
Chromium	0.085
Nickel	0.033
Total Hydrocarbons	2.69

TABLE 9.—DISPERSION FACTORS

Stack height (meters)	Dispersion factor (micrograms per cubic meter per gram per second)
5	58.24
6	57.67
7	57.12
8	56.58
9	56.04
10	55.80
11	54.96
12	50.98
13	47.00
14	42.41
15	37.83
16	33.24
17	28.65
18	25.88
19	23.10
20	20.33
21	17.55
22	14.78
23	12.00
24	11.73
25	11.46
26	11.19
27	10.93
28	10.66
29	10.39
30	10.12

TABLE 9.—DISPERSION FACTORS—Continued

Stack height (meters)	Dispersion factor (micrograms per cubic meter per gram per second)
31	9.85
32	9.59
33	9.32
34	8.04
35	8.78
36	8.51
37	8.24
38	7.98
39	7.71
40	7.52
41	7.37
42	7.23
43	7.09
44	6.95
45	6.81
46	6.67
47	6.53
48	6.39
49	6.25
50	6.11
51	5.97
52	5.83
53	5.69
54	5.54
55	5.40
56	5.26
57	5.12
58	4.98
59	4.84
60	4.70
61	4.56
62	4.42
63	4.28
64	4.14
65	3.99

TABLE 10.—INCINERATOR CONTROL EFFICIENCIES

Pollutant	Control Efficiencies
Arsenic	0.96
Beryllium	0.99
Cadmium	0.65
Chromium	0.96
Lead	0.67
Mercury	0.00
Nickel	0.05

§ 503.64 Incineration—management practices.

(a) Except as provided in paragraph (b) of this section, sewage sludge incinerators must be operated as follows:

(1) The miximum combustion temperature in the sewage sludge incinerator shall be no greater than 898 degrees Celsius (1650 degrees Fahrenheit);

(2) The maximum oxygen content of the exit gas from a sewage sludge incinerator stack shall be 12 percent (dry basis) for a multiple hearth sewage sludge incinerator, seven percent (dry basis) for a fluidized bed sewage sludge incinerator, nine percent (dry basis) for an electric sewage sludge incinerator, and 12 percent (dry basis) for a rotary kiln sewage sludge incinerator; and

(3) The air pollution control system, including instrumentation, used to collect emissions from the sewage sludge incinerator stack shall be appropriate for the type of incinerator used and shall be operated and maintained to meet all applicable requirements.

(b) When a performance test of an incinerator is used to obtain a control efficiency for the pollutants in § 503.63(b) through (e), the incinerator must be operated as follows:

(1) The maxium combustion temperature and maximum oxygen content of the stack exit gas for the sewage sludge incinerator shall be based on the results of the performance test; and

(2) The air pollution control system used to collect emissions from the sewage sludge incinerator stack, including instrumentation, shall be appropriate for the type of incinerator used and shall be operated and maintained to meet all applicable requirements.

Subpart H—Removal Credits

§ 503.70 Applicability and description of a removal credit.

(a) *Applicability.* This subpart applies to those pollutants in sewage sludge for which pollutant limits are established in this part, to additional pollutants that do not pose an unreasonable risk to human health or the environment when sewage sludge is used or disposed of by a particular method, and to pollutants in sewage sludge that is disposed of in accordance with 40 CFR Part 258.

(b) *Description of a removal credit.* Regulations at 40 CFR Part 403 provide that, subject to the conditions of Part 403, any POTW receiving wastes from an industrial user to which a categorical pretreatment standard applies, at its discretion, upon authorization from the approval authority, may grant credits to industrial users that reflect removal by the POTW of pollutants specified in the categorical pretreatment standards.

§ 503.71 Specialized definition.

Categorical pretreatment standard is a numerical effluent limit promulgated by EPA for a pollutant discharged into a POTW with which all processes in an industrial category must comply.

§ 503.72 Pollutants for which removal credits may be authorized.

Subject to the conditions of 40 CFR Part 403, the owners or operators of a POTW may grant removal credits under any of the following conditions:

(a) For any pollutant listed on Table 11 that is regulated in the use or disposal method employed by the POTW, if the POTW complies with the requirements of this part;

(b) For any pollutant listed on Table 12 in the use or disposal method employed by the POTW if the POTW's sewage sludge does not exceed the levels shown on Table 13 and if the POTW complies with the requirements of this part; or

(c) For any pollutant present in the sewage sludge of the POTW, if the owner or operator disposes of the sludge in accordance with 40 CFR Part 258.

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TABLE 11

REGULATED POLLUTANTS ELIGIBLE FOR REMOVAL CREDITS

Pollutants	LA	D&H	MF	BP	1
Acrylonitrile					X
Aldrin	X	X			X
Arsenic	X	X	X	X	X
Benzene			X	X	X
Benzidine					X
Benzo(a)pyrene	X	X	X	X	X
Beryllium					X
Bis(2-chloroethyl)ether					X
Bis(2-xethylhexyl)phthalate			X	X	X
Bromodichloromethane					X
Bromoethane					X
Cadium	X	X	X	X	X
Carbon tetrachloride					X
Chlordane	X	X	X	X	X
Chloroform					X
Chromium	X	X			X
Copper	X	X	X	X	X
DDD,DDE,DDT	X	X	X	X	X
Dibromochloromethane					X
Dibutyl phthalate					X
2,4-dichlorophenol					X
1,3-dichloropropene					X
Diethyl phthalate					X
2,4-dinitrophenol					X
1,2-diphenylhydrazine					X
Dieldrin	X	X			
Dimethyl nitrosamine	X		X	X	
Endosulfan					X
Endrin					X
Ethylbenzene					X
Heptachlor	X	X			X
Heptachlor epoxide					X
Hexachlorobenzene	X	X			
Hexachlorobutadiene	X	X			
alpha-hexachlorocyclohexane					X
beta-hexachlorocyclohexane					X
Hexachlorepentadiene					X
Hexachloroethane					X
Hydrogen cyanide					X
Isophorone					X
Lead	X	X	X	X	X
Lindane	X	X	X	X	X

(continued)	LA	D&M	MF	SD	I
Mercury	X	X	X	X	X
Molybdenum	X				
Nitrobenzene					X
N-Nitrosodimethylamine					X
N-Nitrosodi-n-propylamine					X
Nickel	X	X	X	X	X
Pentachlorophenol					X
Phenol					X
Polychlorinated biphenyls	X	X	X	X	X
Selenium	X	X			
2,3,7,8-tetrachlorodibenzo-p-dioxin					X
1,1,2,2,-tetrachloroethane					X
Tetrachloroethylene					X
Toulene					X
Toxaphene	X	X	X	X	X
Trichloroethylene	X		X	X	X
1,2,4-trichlorobezene					X
1,1,1-trichloroethane					X
1,1,2-trichloroethane					X
2,4,6-trichlorophenol					X
Zinc	X	X	X	X	X

KEY: LA refers to land application
D&M refers to distribution and marketing
MF refers to sludge-only landfills
SD refers to surface disposal unit
I refers to incineration

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TABLE 12.—ADDITIONAL POLLUTANTS ELIGIBLE FOR REMOVAL CREDITS

	mg/kg
Land Application of Sewage Sludge:	
Cyanide	2,686.6
Flouride	738.7
Iron	78,700
Pentachlorophenol	30.43
Distribution and Marketing of Sewage Sludge:	
Cyanide	2,886.6
Dimethyl nitrosamine	2.55
Fluoride	738.7
Iron	78,700
Pentachlorophenol	30.43
Trichloroethylene	13.07
Disposal of Sewage Sludge in Monofills:	
Chlordane	12
Chromium	1,499.7
Copper [1]	1,427
Cyanide	2,886.6
2,4 Dichlorophenoxyacetic acid	7.16
Malathion	0.63
Molybdenum	40
Nickel	1,862.7
Phenol	82.06
Selenium	4.85
Zinc	4,580
Disposal of Sewage Sludge on Surface Disposal Sites:	
Chromium	1,499.7
Cyanide	2,686.6
2,4 Dichlorophenoxyacetic acid	7.16
Malathion	0.63
Molybdenum	40
Phenol	82.06
Selenium	4.85
Zinc	4,580
Incineration of Sewage Sludge:	
Copper	1,427
Selenium	4.85
Zinc	4,580

[1] A removal credit may be granted for this pollutant when the monofill is located over ground water classified as Class II, Class III(1), and Class III(3), as defined in § 503.31 (c) and (d).

Subpart I—Monitoring, Record Keeping, and Reports

§ 503.80 Purpose.

This subpart contains the minimum frequencies that owners or operators of treatment works must monitor their sewage sludge; the minimum records that owners or operators of treatment works must keep; the period of time the records must be kept; and the minimum information that owners or operators of treatment works must report to the permitting authority. Nothing in this subpart prevents the establishment of more stringent monitoring, record keeping, and report requirements for any practice covered by this part.

§ 503.81 General.

Owners or operators of treatment works or distributors of sewage sludge shall collect sewage sludge samples and analyze these samples in accordance with the procedures, methods, and frequency specified in paragraphs (a), (b), and (c) of this section. The pollutants and pathogenic organisms or indicator organisms for which owners or operators of treatment works shall analyze their sewage sludge depend on the use or disposal method employed by the treatment work or distributor and are specified in § 503.93 through § 503.97 of this part.

(a) Sampling protocol.

"Sampling Procedures and Protocols for the National Sewage Sludge Survey," Office of Water Regulations and Standards (March 1988).

(b) Analytical methods.

(1) Organic pollutants.

Methods 1624 and 1625 in "Analytical Methods for the National Sewage Sludge Survey," Office of Water Sample Control Center (March 1988) or Methods 624 and 625 in 40 CFR Part 136.

(2) Inorganic pollutants.

"Analytical Methods for the National Sewage Sludge Survey," Office of Water Sample Control Center (March 1988).

(3) Pathogenic bacteria, *Salmonella* sp.

(i) Part 912 C.1, "Standard Methods for the Examination of Water and Wastewater," 16th Edition (1985); or

(ii) Kenner, B.A. and H.A. Clark, "Detection and enumeration of *Salmonella* and *Pseudomonas aeruginosa*," "J. Water Pollution Control Federation," 46(9):2163–2171.

(4) Viruses.

"The Manual of Methods for Virology," EPA/600/4–84/013 (February 1984), as revised.

(5) Protozoa.

(i) Part 917, "Standard Methods for the Examination of Water and Wastewater," 16th Edition (1985); or

(ii) Fox, J.C., P.R. Fitzgerald, and C. Lue-Hing, "Sewage Organisms: A Color Atlas," Lewis Publishers, Chelsea, Michigan (1981).

(6) Helminth ova.

(i) Part 917, "Standard Methods for the Examination of Water and Wastewater," 16th edition (1985); or

(ii) Fox, J.C., P.R. Fitzgerald, and C. Lue-Hing, "Sewage Organisms: A Color Atlas," Lewis Publishers, Chelsea Michigan (1981).

(7) Fecal coliform.

Part 908 or Part 909, "Standard Methods for the Examination of Water and Wastewater," 16th Edition (1985).

(8) Fecal streptococci/enterococci.

(i) Part 910 A, "Standard Methods for the Examination of Water and Wastewater," 16th Edition (1985); or

(ii) Slantely, L.W. and C.H. Bartley, "Numbers of enterococci in water, sewage, and feces determined by the membrane filter technique with an improved medium," "J. Bacteriology," 74:591–595 (1957).

(9) Volatile solids.

Part 209 C, "Standard Methods for the Examination of Water and Wastewater," 16th Edition (1985).

(10) Volatile suspended solids.

Part 209 G, "Standard Methods for the Examination of Water and Wastewater," 16th Edition (1985).

(11) Percent volatile solids reduction.

The percent volatile solids reduction shall be calculated using the following equation:

$$\text{Percent Volatile Solids Reduction} = \frac{(Mi - Mg) \times 100}{Mi}$$

Where:

Mi = The mass of volatile solids in sewage sludge prior to processing.

Mg = The mass of volatile solids in sewage sludge after processing.

(12) Specific oxygen uptake rate (SOUR).

Part 213 A, "Standard Methods for the Examination of Water and Wastewater," 16th Edition (1985).

(c) Frequency of monitoring and reporting.

Unless otherwise specified, owners or operators of treatment works shall monitor and report the parameters specified in this subpart in accordance with the following:

Treatment works design capacity (million gallons per day)	Frequency of monitoring
Less than 1.0	Once per year.
1.0 to 10.0	Once per quarter.
Greater than 10.0	Once per month.

§ 503.82 Land application of sewage sludge.

(a) Monitoring—(1) Agricultural land.

From a representative sample of sewage sludge, owners or operators of treatment works or distributors of sewage sludge, in accordance with the applicable frequency specified in § 503.81(c), shall:

(i) Determine the concentrations of nitrogen and the pollutants listed on Tables 1 and 2 in § 503.13. Also, owners or operators shall monitor for the pollutants listed on Table 12 in § 503.72 if the POTW grants removal credits for these pollutants.

(ii) Determine compliance with Class A, Class B, or Class C pathogen-reduction requirements in § 503.52.

(iii) Determine compliance with the vector attraction reduction requirements in § 503.53.

(iv) When owners or operators of treatment works inject the sewage sludge below the surface of agricultural land to comply with the vector attraction reduction requirements in § 503.53(f), the sewage sludge does not have to be monitored for volatile solids, SOUR, pH, or moisture content.

(2) *Non-agricultural land.* From a representative sample of sewage sludge, owners or operators of treatment works or distributors of sewage sludge, in accordance with the applicable frequency specified in § 503.81(c), shall:

(i) Determine the concentrations of nitrogen and the pollutants listed on Table 3 in § 503.15. Also, owners or operators shall monitor for the pollutants listed on Table 12 in § 503.72 if the POTW grants removal credits for these pollutants.

(ii) Determine compliance with Class A, Class B, or Class C pathogen reduction requirements in § 503.52.

(iii) Determine compliance with the vector attraction reduction requirements in § 503.53.

(iv) When owners or operators of treatment works inject the sewage sludge below the surface of non-agricultural land to comply with the vector attraction reduction requirements in § 503.53(f), the sewage sludge does not have to be monitored for volatile solids, SOUR, pH, or moisture content.

(b) *Record keeping*—(1) *Agricultural land.* Owners or operators of treatment works or distributors of sewage sludge shall retain for the life of the treatment works the following:

(i) The name and address of the applier of the sewage sludge;

(ii) The location and legal description of the field, including the area of each field where the sewage sludge is applied;

(iii) The concentrations of nitrogen and the pollutants listed on Tables 1 and 2 in § 503.13;

(iv) The amount of sewage sludge applied to each site;

(v) The amount of each organic pollutant listed on Table 1 in § 503.13 applied to each site;

(vi) The amount of each inorganic pollutant listed on Table 2 in § 503.13 applied to each site;

(vii) The results of monitoring the sewage sludge to determine compliance with the pathogen reduction requirements in § 503.52;

(viii) The results of monitoring the sewage sludge to determine compliance with the vector attraction reduction requirements in § 503.53;

(ix) A record that indicates whether sewage sludge was injected below the soil surface to comply with the vector attraction reduction requirement in § 503.53(f);

(x) The contracts between the treatment work and the distributors and appliers of the sewage sludge;

(xi) Certification that the applier was informed about the access and use restrictions;

(xii) Certification that the land application does not cause or contribute to the harm of a threatened or endangered species or result in the destruction or adverse modification of the critical habitat of a threatened or endangered species; does not restrict the flow of the base flood; does not reduce the temporary water storage capacity of a floodplain; and does not present harm to human health, wildlife, or land or water resources; and

(xiii) Certification, for each application site, that the distance between the sewage sludge boundary and any surface water is at least 10 meters.

(2) *Non-agricultural land.* Owners or operators of treatment works or distributors of sewage sludge shall keep, for 5 years, the following:

(i) The name and address of the applier of the sewage sludge;

(ii) The concentrations of nitrogen and the pollutants listed on Table 3 in § 503.15;

(iii) The results of monitoring the sewage sludge to determine compliance with the pathogen reduction requirements in § 503.52;

(iv) The results of monitoring the sewage sludge to determine compliance with the vector attraction reduction requirements § 503.53;

(v) A record that indicates whether sewage sludge was injected below the soil surface to comply with the vector attraction reduction requirement in § 503.53(f);

(vi) The contracts between the treatment works and the distributors and appliers of the sewage sludge;

(vii) Certification that the applier was informed about the access and use restrictions;

(viii) Certification that the land application does cause or contribute to the harm of a threatened or endangered species or result in the destruction or adverse modification of the critical habitat of a threatened or endangered species; does not restrict the flow of the base flood; does not reduce the temporary water storage capacity of a floodplain; and does not present harm to human health, wildlife, or land or water resources; and

(ix) Certification, for each application site, that the distance between the sewage sludge boundary and any surface water is at least 10 meters.

(c) *Reports.*—(1) *Agricultural land.* In accordance with the applicable frequency specified in § 503.81(c), owners or operators of treatment works or distributors of sewage sludge shall provide the permitting authority with:

(i) The information required by § 503.82(b)(1).

(ii) After the initial submission, the owners or operators of treatment works or distributors of sewage sludge shall re-submit the information in § 503.82(b)(1) (x) through (xiii) only when there are changes.

(2) *Non-agricultural land.* In accordance with the applicable frequency specified in § 503.81(c), owners or operators of treatment works or distributors of sewage sludge shall provide the permitting authority with:

(i) The information required by § 503.82(b)(2).

(ii) After the initial submission, the owners or operators of a treatment work or distributors of sewage sludge shall re-submit the information in § 503.82(b)(2) (vi) through (ix) only when there are changes.

§ 503.83 Distribution and marketing of sewage sludge.

(a) *Monitoring.* (1) Owners or operators of treatment works shall determine the concentrations of nitrogen and the pollutants listed on Table 4 in § 503.23 from a representative sample of sewage sludge prior to its disbursement or in accordance with the applicable frequency specified in § 503.81(c), whichever is the more frequent period of time. Also, owners or operators shall determine the concentrations of the pollutants listed on Table 12 in § 503.72 if the POTW grants removal credits for these pollutants.

(2) When a treatment work is not the distributor, the distributor of the product shall determine the concentrations of nitrogen and the pollutants on Table 4 in

§ 503.23 from a representative sample of the product prior to its disbursement.

(3) Owners or operators of treatment works shall determine compliance with the Class A pathogen reduction requirements in §503.52(a) from a representative sample of the sewage sludge that is disbursed.

(4) Owners or operators of treatment works shall determine compliance with the vector attraction reduction requirement selected in § 503.53 (a) through (e) from a representative sample of the sewage sludge that is disbursed.

(b) *Record keeping.* Owners or operators of treatment works shall keep, for 5 years, the following:

(1) The name and address of the distributor of the sewage sludge;

(2) The concentrations of nitrogen and the pollutants that are listed on Table 4 in § 503.23 prior to disbursement by the treatment work;

(3) The concentrations of nitrogen and the pollutants in the product that are listed on Table 4 in § 503.23;

(4) The appropriate annual whole sludge application rate prior to disbursement by the treatment work;

(5) The annual product application rate;

(6) The contracts between the distributor of the product and the treatment work, when applicable;

(7) The results of monitoring the sewage sludge prior to disbursement by the treatment work to determine compliance with the pathogen reduction requirements;

(8) The results of monitoring the sewage sludge prior to disbursement by the treatment work to determine complicance with the vector attraction reduction requirements; and

(9) A copy of the label affixed to the product or the informational sheet accompanying the product.

(c) *Reports.* In accordance with the applicable frequency specified in § 503.81(c), owners or operators of treatment works shall provide the permitting authority with:

(1) The information required by § 503.83(b).

(2) After the initial submission, the owners or operators of a treatment work shall re-submit the information in § 503.83(b) only if there are changes.

§ 503.84 Disposal of sewage sludge in monofills.

(a) *Monitoring.* (1) From a representative sample of sewage sludge, owners or operators of treatment works shall determine the concentrations of the pollutants listed on Table 5 in § 503.33 in accordance with the applicable frequency specified in § 503.81(c). Also, owners or operators shall monitor for the pollutants listed on Table 12 in § 503.72 if the POTW grants removal credits for these pollutants.

(2) From a representative sample of sewage sludge, owners or operators of treatment works shall determine compliance with either Class A or Class B pathogen reduction requirements in § 503.52(a) or (b) in accordance with the applicable frequency specified in § 503.81(c).

(3) Owners or operators of monofills shall continuously monitor the air for methane gas in any structure within a monofill and at the property line of the monofill.

(4) Owners or operators of monofills shall monitor the run-off from the monofill that is collected to determine the volume of the run-off discharged and the concentration of pollutants in the discharge.

(b) *Record keeping.* Owners or operators of treatment works or of the monofill, as appropriate, shall keep, for 10 years, the following:

(1) The concentrations of the pollutants listed on Table 5 in § 503.33;

(2) The results of monitoring the sewage sludge to determine compliance with the pathogen reduction requirements in § 503.52 (a) or (b);

(3) A record of the methane gas concentration in any structure within the monofill and at the property line of the monofill;

(4) The volume of run-off collected and discharged and the concentration of the pollutants in the discharge;

(5) Certification that the monofill does not cause or contribute to the harm of a threatened or endangered species or result in the destruction or adverse modification of the critical habitat of a threatened or endangered species; does not restrict the flow of a base flood; does not reduce the temporary water storage capacity of a floodplain; and does not present a hazard to human health, wildlife, or land or water resources;

(6) Certification that the monofill is not a hazard to aircraft from birds if the monofill is located within 3,048 meters (10,000 feet) of aircraft runways used by turbine-powered aircraft or within 1,524 meters (5,000 feet) of an airport runway used only by piston engine-powered aircraft;

(7) Certification that the monofill is designed to withstand stress created by the maximum horizontal ground level acceleration if the monofill is located in a seismic zone;

(8) Certification that each sewage sludge unit is located 60 meters or more from a fault or stress fractures that have had displacement in Holocene time;

(9) Certification that each sewage sludge unit is located in an area that has adequate support for the structural components of the unit; and

(10) Certification that each sewage sludge unit is located outside wetland areas.

(c) *Reports.* In accordance with the applicable frequency specified in § 503.81(c), owners or operators of treatment works or of the monofills, as appropriate, shall provide the permitting authority with:

(1) The information required in § 503.84(b).

(2) After the initial submission, the owners or operators of a treatment work or monofill, as appropriate, shall re-submit the information in § 503.84(b) (5) through (10) only when there are changes.

§ 503.85 Disposal of sewage sludge on surface disposal sites.

(a) *Monitoring.* (1) From a representative sample of sewage sludge, owners or operators of treatment works shall determine the concentrations of the pollutants listed on Table 7 in § 503.43 in accordance with the applicable frequency specified in § 503.81(c). Also, owners or operators shall monitor for the pollutants listed on table 12 in § 503.72 if the POTW grants removal credits for these pollutants.

(2) From a representative sample of sewage sludge, owners or operators of treatment works shall determine compliance with either Class A or Class B pathogen reduction requirements in § 503.52 (a) or (b) in accordance with the applicable frequency specified in § 503.81(c).

(3) From a representative sample of sewage sludge, owners or operators of treatment works shall determine compliance with the vector attraction reduction requirements in § 503.53 in accordance with the applicable frequency specified in § 503.81(c).

(4) When owners or operators of treatment works inject the sewage sludge below the soil surface to reduce the vector attraction, the sewage sludge does not have to be monitored for volatile solids, SOUR, pH, or moisture content.

(5) Owners or operators of surface disposal sites shall continuously monitor the air for methane gas in any structure on the disposal site and at the property line of the site.

(6) Owners or operators of surface disposal sites shall monitor the runoff from the surface disposal site that is collected to determine the volume of the runoff discharged and the concentration of pollutants in the discharge.

(b) *Record keeping.* Owners or operators of treatment works or of the surface disposal sites, as appropriate, shall keep, for 5 years, the following:

(1) The concentrations of the pollutants listed on Table 7 in § 503.43;

(2) The results of monitoring the sewage sludge to determine compliance with the pathogen reduction requirements in § 503.52 (a) or (b).

(3) The results of monitoring the sewage sludge to determine compliance with the vector attraction reduction requirements of § 503.53;

(4) A record of the methane gas concentration in any structure within the surface disposal site and at the property line of the surface disposal site;

(5) The volume of run-off collected and discharged and the concentration of the pollutants in the discharge;

(6) Certification that the surface disposal site does not cause or contribute to the harm of a threatened or endangered species or result in the destruction or adverse modification of the critical habitat of a threatened or endangered species; does not restrict the flow of a base flood; does not reduce the temporary water storage capacity of a floodplain; and does not present a hazard to human health, wildlife, or land or water resources;

(7) Certification that the surface disposal site is not a hazard to aircraft from birds if the surface disposal site is located within 3,048 meters (10,000 feet) of aircraft runways used by turbine-powered aircraft or within 1,524 meters (5,000 feet) of an airport runway used only by piston engine-powered aircraft;

(8) Certification that the surface disposal site is designed to withstand stress created by the maximum ground level acceleration if the surface disposal site is located in a seismic zone;

(9) Certification that each surface disposal site is located 60 meters or more from a fault or stress fractures that have had displacement in Holocene time;

(10) Certification that each surface disposal site is located in an area that has adequate support for the structural components of the site; and

(11) Certification that each new surface disposal site is located outside wetland areas.

(c) *Reports.* In accordance with the applicable frequency specified in § 503.81(c), owners or operators of treatment works or of the surface disposal site, as appropriate, shall provide the permitting authority with:

(1) The information required in § 503.85(b).

(2) After the initial submission, owners or operators of a treatment work or surface disposal site, as appropriate, shall re-submit the information in § 503.85(b) (6) through (11) only when there are changes.

§ 503.86 Incineration of sewage sludge.

(a) *Monitoring.* (1) From a representative sample of sewage sludge, owners or operators of treatment works that incinerate their sewage sludge shall determine the concentrations of arsenic, beryllium, cadmium, chromium, lead, mercury, and nickel in accordance with the applicable frequency specified in § 503.81(c). Also, owners or operators shall monitor for the pollutants listed on Table 12 in § 503.72 if the POTW grants removal credits for these pollutants.

(2) Owners or operators of sewage sludge incinerators shall continuously monitor:

(i) The total hydrocarbon concentration in the incinerator stack;

(ii) The rate at which sewage sludge is fed to an incinerator;

(iii) The combustion temperature in the incinerator;

(iv) The oxygen content of the exit gas; and

(v) The pressure drop across the air pollution control system, if applicable.

(b) *Record keeping.* Owners or operators of treatment works or of the sewage sludge incinerator, as appropriate, shall keep, for 5 years, the following:

(1) The concentrations of arsenic, beryllium, cadmium, chromium, lead, mercury, and nickel in the sewage sludge;

(2) A record of the parameters in § 503.86(a)(2) that are continuously monitored;

(3) Calibration and maintenance records and original instrument chart recordings for continuous-monitoring instruments;

(4) Results of any site-specific air modeling; and

(5) Results of any incinerator performance tests.

(c) *Reports.* In accordance with the applicable frequency specified in § 503.81(c), owners or operators of treatment works or of the incinerator, as appropriate, shall provide the permitting authority with the following:

(1) The information required in § 503.86(b);

(2) The periods when the combustion temperature in the incinerator was above the maximum allowable temperature, as specified in § 503.64 (a)(1) or (b)(1), for 15 minutes or longer;

(3) The periods when the oxygen content of the exit gas from the incinerator stack was above the maximum allowable, as specified in § 503.64 (a)(2) or (b)(1), for 15 minutes or longer;

(4) The periods when the pressure drop across the air pollution control device remained outside the range of allowable drop, as specified in § 503.64 (a)(3) or (b)(2), if applicable, for longer than 1 hour;

(5) The recordings for the concentration of total hydrocarbons in the incinerator stack, required in § 503.86(a) (i); and

(6) The recordings for the sewage sludge feed rate, required in § 503.86(a)(2)(ii).

Appendix A.—Ground Water Pollutant Criteria

Pollutant	Concentration (micrograms per liter) [1]
Arsenic	50.0
Benzene	5.0
Bezo(a)pyrene	0.3
Bis(2-ethylhexyl)phthalate	348.0
Cadmium	10.0
Chlordane	2.1
Copper	1300.0
DDT/DDE/DDD (total) [2]	10.2
Dimethylnitrosamine	0.1
Lead	50.0
Lindane	4.0
Mercury	2.0
Nickel	1750.0
Polychlorinated biphenyls	0.45
Toxaphene	5.0
Trichloroethylene	5.0

[1] Pollutant concentration values referenced in 503.33(a).

[2] DDT—2,2-Bis(chlorophenyl)-1,1,1-trichloromethane
DDE—1,1-Bis(chlorophenyl)-2,2-dichloroethene
DDD—1,1-Bis(chlorophenyl)-2,2-dichloroethane

APPENDIX B—Procedure To Determine Annual Whole Sludge Application Rate

Land Application

Section 503.13(b) requires that sewage sludge be applied to agricultural land at an annual whole sludge application rate (AWSAR) that does not exceed the annual pollutant loading rates (APLR) in Table 1. This appendix contains a procedure to be used in determining the AWSAR that will not cause the APLRs to be exceeded.

The relationship between APLR and AWSAR is shown in equation (1).

$$APLR = C \times 0.001 \times AWSAR \qquad (1)$$

Where:

APLR = Annual pollutant loading rate, in kilograms per hectare, per 365-consecutive-day period.

C = Pollutant concentration in sewage sludge, in milligrams per kilogram (dry weight basis).

AWSAR = Annual whole sludge application rate, in metric tons per hectare, per 365-consecutive-day period (dry weight basis).

To determine the pollutant concentration in the sewage sludge, equation (1) is rearranged into equation (2):

$$C = \frac{APLR}{.001 \times AWSAR} \quad (2)$$

The APLR rates are given in Table 1 in § 503.13. The APLR remains constant for all AWSAR and all sludge pollutant concentrations. When the pollutant concentrations vary, AWSARs vary. As the AWSAR increases, the pollutant concentration decreases and vice versa.

Table B–1 contains the pollutant concentrations based on the APLRs in Table 1 for various AWSARs. Table B–1 is used to illustrate the procedure to determine the appropriate AWSAR for a sewage sludge.

Procedure:

1. Locate the sludge pollutant concentrations in Table B–1. The circled values in Table B–1 represent the actual pollutant concentrations for this example. When an actual pollutant concentration is between the values in Table B–1, circle the concentration for the lower AWSAR. For example, if the actual concentration for lindane is 125 mg/kg, circle the value for the 35 MT/ha AWSAR (i.e., 130).

2. Determine the limiting AWSAR for the sewage sludge. The limiting AWSAR is the lowest AWSAR considering all of the circled concentration values. In this example, the limiting AWSAR is 10 MT/ha/365-consecutive-day period.

3. Sewage sludge with the actual pollutant concentrations used in this example (i.e., the circled values in Table B–1) can be applied to agricultural land at an annual whole sludge application rate of 10 MT/ha or less. If the sewage sludge is applied to agricultural land at an annual whole sludge application rate greater than 10 MT/ha, the annual pollutant loading rate for hexachlorobutadiene would be exceeded.

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TABLE B-1

Maximum Sewage Sludge Concentration
(mg/kg - dry weight basis)

Annual Whole Sludge Application Rate (metric tons per hectare)	1	3	5	10	15	20	25	30	35	40	45	50
Pollutant												
Aldrin/dieldrin	16	5.5	3.3	1.6	(1.1)	0.82	0.66	0.55	0.47	0.41	0.36	0.33
Benzo(a)pyrene	130	45	27	13	8.9	(6.7)	5.4	4.5	3.8	3.4	3	3
Chlordane	1200	400	240	120	(80)	60	48	40	34	30	27	24
DDT/DDE/DDD (total)*	5.5	1.8	1.1	0.55	0.36	0.27	0.22	(0.18)	0.16	0.14	0.12	0.11
Dimethyl nitrosamine	39	13	7.8	3.9	2.6	(1.9)	1.6	1.3	1.1	0.97	0.87	0.78
Heptachlor	73	24	15	7.3	4.9	3.7	2.9	2.4	(2.1)	1.8	1.6	1.5
Hexachlorobenzene	39	13	7.8	3.9	2.6	1.9	1.6	(1.3)	1.1	0.97	0.87	0.78
Hexachlorobutadiene	340	110	68	(34)	23	17	14	11	9.7	8.5	7.5	6.8
Lindane	4600	1500	920	460	310	230	180	150	(130)	120	102	92
Polychlorinated biphenyls	5.64	1.88	1.13	0.56	0.38	(0.28)	0.23	0.19	0.16	0.14	0.13	0.11
Toxaphene	48	16	9.7	4.8	(3.2)	2.4	1.9	1.6	1.4	1.2	1.08	0.97
Trichloroethylene	13	4.2	2.5	1.3	0.85	0.64	0.51	(0.42)	0.36	0.32	0.28	0.25

* DDT - 2,2-Bis(chlorophenyl)-1,1,1-trichloroethane
DDE - 1,1-Bis(chlorophenyl)-2,2-dichloroethylene
DDD - 1,1-Bis(chlorophenyl)-2,2-dichloroethane

BILLING CODE 6560-50-C

Distribution and Marketing

Section 503.23 requires sewage sludge that is distributed and marketed to meet the pollutant limits in Table 4 for an applicable AWSAR. This appendix contains a procedure that can be used to determine the applicable AWSAR for distribution and marketing.

Equations (1) and (2) in the land application section of this appendix show the relationship between annual pollutant loading rate, annual whole sludge application rate, and pollutant concentration in sewage sludge. Equation (2) is used to calculate the pollutant concentrations in Table B–2 for various AWSARs. The procedure to determine the appropriate AWSAR for a sewage sludge that is distributed and marketed is presented below.

Procedure:

1. Determine the actual concentration of the pollutants listed in Table B–2 in the sewage sludge. The circled values in Table B–2 represent the actual pollutant concentrations for this example. When an actual pollutant concentration is between the values in Table B–2, circle the concentration for the lower AWSAR (see Step 1 of the procedure in this appendix for land application).

2. Determine the applicable AWSAR for the sewage sludge. The applicable AWSAR is the lowest AWSAR considering all of the circled concentration values. In this example, the applicable AWSAR is 15 MT/ha/365-consecutive-day period.

3. The pollutant limits that the sewage sludge has to meet prior to disbursement by the treatment works are those for an AWSAR of 15 MT/ha. If a higher AWSAR is used, the annual pollutant loading rate for lindane would be exceeded.

4. The label or information sheet accompanying the product, required by § 503.24(a), would indicate that the annual product application rate should not exceed 15 MT/ha (i.e., 307 pounds per 1000 square feet per year) if the product is sewage sludge only. If the product is a mixture of sewage sludge and other material such as wood chips, the annual product application rate for the mixture may be higher than 15 MT/ha/365-consecutive-day period, depending on the actual pollutant concentrations in the mixture.

BILLING CODE 6560-50-M

Table B-2

Maximum Sewage Sludge Concentration (mg/kg - dry weight basis)

Annual Whole Sludge Application Rate (metric tons per hectare)	1	3	5	10	15	20	25	30	35	40	45	50
Pollutant												
Aldrin/dieldrin	16	5.5	3.3	1.6	1.1	0.82	0.66	(0.55)	0.47	0.41	0.36	0.33
Arsenic	700	230	140	70	47	35	(28)	23	20	18	16	14
Benzo(a)pyrene	80	26	15	7.7	5.1	3.8	3.1	2.6	2.2	(1.9)	1.7	1.5
Cadmium	900	310	180	90	61	46	37	31	(26)	23	20	18
Chlordane	22500	7500	4500	2200	1500	1100	900	(750)	640	560	500	450
Chromium	26500	8800	5300	2700	1770	1330	1060	880	760	660	590	530
Copper	2300	770	460	230	150	110	92	77	(66)	58	51	46
DDT/DDE/DDD (total)	46	15	9.2	4.6	3.1	2.3	1.8	1.5	1.3	1.2	1	(1.02)
Heptachlor	79	26	16	7.9	5.3	3.9	3.2	2.6	(2.3)	2	1.8	1.6
Hexachlorobenzene	46	15	9.1	4.6	3	2.3	1.8	1.5	1.3	1.16	1.01	0.91
Hexachlorobutadiene	41000	14000	8200	4100	2700	2100	1600	1400	1200	(1000)	910	820
Lead	6000	2100	1300	600	400	310	(250)	210	180	160	140	130
Lindane	293500	97800	58700	29350	(19570)	14680	11740	9780	8390	7340	6520	5870
Mercury	1990	660	400	199	133	99	80	66	57	50	44	(40)
Nickel	3900	1300	780	390	260	200	160	130	110	(98)	87	78
Polychlorinated biphenyls	49	49	30	15	10	7	6	(5)	4	4	3	3
Selenium	8106	2702.1	1600	810	540	410	(320)	270	230	200	160	160
Toxaphene	117	39	23	12	7.8	5.8	4.7	(3.9)	3.3	2.9	2.6	2.3
Zinc	8680	2900	1700	860	570	(430)	340	290	250	220	190	170

* DDT - 1,1-(4-Chlorophenyl)-2,2,2-trichloroethane
DDE - 1,1-(4-Chlorophenyl)-2,2-dichloroethylene
DDD - 1,1-(4-Chlorophenyl)-2,2-dichloroethane

BILLING CODE 6560-50-C

APPENDIX C—Procedure To Determine the Number of Applications (Years) That Sewage Sludge May Be Applied to Agricultural Land

Section 503.13(c) requires that sewage sludge not be applied to agricultural land in amounts that do not exceed the cumulative pollutant loading rates in Table 2. This appendix contains a procedure to be used in determining the number of sewage sludge applications that can be made without exceeding those rates. The number of applications is dependent on the pollutant concentrations in the sewage sludge and the annual whole sludge application rate (AWSAR).

Procedure:

1. Determine the concentration of arsenic, cadmium, chromium, copper, lead, mercury, molybdenum, nickel, selenium, and zinc in the sewage sludge. For the purpose of this example, assume the following pollutant concentrations (dry weight basis):

arsenic = 37 mg/kg
cadmium = 30 mg/kg
chromium = 2500 mg/kg
copper = 1000 mg/kg
lead = 1000 mg/kg
mercury = 17 mg/kg
molybdenum = 75 mg/kg
nickel = 400 mg/kg
selenium = 14 mg/kg
zinc = 4000 mg/kg

2. Determine the AWSAR for the sewage sludge. The AWSAR is the AWSAR from the land application procedure in Appendix B that does not cause the annual pollutant loading rates in Table 1 to be exceeded. For this example, the AWSAR is 10 MT/ha/365-consecutive-day period.

3. Calculate an annual pollutant loading rate (APLR), for each inorganic pollutant using equation (1).

$$APLR = C \times 0.001 \times AWSAR \quad (1)$$

Where:
APLR = Annual pollutant loading rate, in kilograms per hectare, per 365-consecutive-day period.
C = Pollutant concentration in sewage sludge in milligrams per kilograms (dry weight basis).
AWSAR = Annual whole sludge application rate, in metric tons per hectare, per 365-consecutive-day period (dry weight basis).

For this example, the APLRs are:

Pollutant	Concentration (mg/kg)	APLR (kg/ha)
Arsenic	37	0.37
Cadmium	30	0.30
Chromium	2500	25.0
Copper	1000	10.0
Lead	1000	10.0
Mercury	17	0.17
Molybdenum	75	0.75
Nickel	400	4.0
Selenium	14	0.14
Zinc	4000	40.0

4. Calculate the years a pollutant can be applied to the land by dividing the cumulative pollutant loading rates from Table 2 in § 503.13 by the APLRs from Step 3 of this procedure.

Pollutant	CPLR (kg/ha)	APLR (kg/ha/yr)	Years (CPLR/APLR)
Arsenic	14.0	0.37	37.8
Cadmium	18.0	0.30	60.0
Chromium	530.0	25.0	21.2
Copper	46.0	10.0	4.6
Lead	125.0	10.0	12.5
Mercury	15.0	0.17	88.2
Molybdenum	5.0	0.75	6.7
Nickel	78.0	4.0	19.5
Selenium	32.0	0.14	299.0
Zinc	170.0	40.0	4.3

5. Select the lowest number of years calculated in Step 4. For this example, the lowest number of years is 4.3.

6. Sewage sludge with the pollutant concentrations given in Step 1 could be applied to agricultural land at an AWSAR of 10 MT/ha/365-consecutive-day period for a maximum of 4.3 years. After 4.3 years, the amount of zinc applied to the land exceeds the cumulative amount that can be applied to the land.

Appendix D—Procedure To Calculate Maximum Combustion Gas Flow Rate

Equation (5) in § 503.63(f) is used to calculate the pollutant limit for total hydrocarbons for a sewage sludge incinerator. This appendix contains the procedure used to determine the maximum combustion gas flow rate (GF) used in that equation.

Procedure:

1. Calculate the maximum combustion gas flow rate for the sewage sludge incinerator attributable to the combustible portion of the sewage sludge using equation (1):

$$SGF = SF \times VF \times VEHC \times 70,100 \quad (1)$$

Where:
SGF = Maximum combustion gas flow rate attributable to the combustible portion of the sewage sludge, in gram moles per day.
SF = Annual average daily sewage sludge feed rate, in metric tons per day (dry weight basis).
VF = Annual average volatile solids fraction of the sewage sludge solids (dimensionless, less than 1.0).
VEHC = Annual average heat value of the volatile solids in sewage sludge, in kilocalories per gram of volatile solids in sewage sludge.

2. Calculate the gas flow rates from the combustion of all auxiliary fuels in the sewage sludge incinerator using equation (2).

$$FGF = FR \times FC \quad (2)$$

Where:
FGF = Fuel combustion gas flow rate, in gram moles per day.
FR = Annual average daily fuel usage rate, in either pounds per day or cubic feet per day.
FC = Fuel constant: natural gas—17.69, #2 fuel oil—324.8, #6 fuel oil—309.7

3. The maximum combustion gas flow rate (GF) used in equation (5) in § 503.63(f) is the sum of the maximum combustion flow rate attributable to the combustible portion of the sewage sludge (SGF) and the fuel combustion gas flow-rate (FGF).

$$GF = SGF + FGF \quad (3)$$

[FR Doc. 89-2018 Filed 2-3-89; 8:45 am]
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federal register

Monday
February 6, 1989

Part III

General Services Administration

41 CFR Parts 201-1 et al.
Revisions of FIRMR Policies To Simplify the Procurement Process and Implementation of Initial Phase of the FIRMR Improvement Project; Notice of Availability of Proposed Rulemaking

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 201-1, 201-7, 201-16, 201-23, 201-24, 201-30, 201-32, 201-38, and 201-40

Revisions of FIRMR Policies To Simplify the Procurement Process

AGENCY: Information Resources Management Service, GSA.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule revises a number of Federal Information Resources Management Regulation (FIRMR) management and acquisition policies. A few of the provisions of this rule are also contained in a second proposed FIRMR rule that is being published for comment concurrently with this rule. The second proposed rule presents a revised FIRMR Part 201–39 that consolidates into a single part all policies and procedures unique to contracting for Federal ADP and telecommunications resources. That regulation will be the first FIRMR part published as a result of the FIRMR Improvement Project (FIP). The FIP initiative is a major GSA effort to reorganize and rewrite the FIRMR.

The FIP uses the current FIRMR and proposed changes to the FIRMR as the baseline for its revisions. Therefore, the revised Part 201–39 includes changes to acquisition policies and procedures contained in this proposed rule, specifically those contained in Parts 201–32, 201–38, and 201–40. The changes are being published in both proposed regulations to highlight the fact that key FIRMR provisions are being revised and to explain the rationale for the changes. The intent is to focus attention on these changes so that agencies will give them appropriate consideration in their comments to GSA. The changes in Parts 201–32, 201–38, and 201–40 will be deleted from this regulation upon its publication as a final rule but will continue to be reflected in the rule revising Part 201–39, as will agency comments regarding these Parts.

FIRMR provisions in this rule are being revised with regard to: (1) clarifying security provisions; (2) updating planning provisions; (3) revising GSA review requirements for ADP and Telecommunications schedule acquisitions under maximum order limitations; (4) removing outdated criteria on the selection of discount factors when performing present value analyses; (5) removing provisions which tend to encourage agencies to solicit and evaluate financing methods which can't satisfy programs needs; (6) eliminating the "only new" and the "all or none" special justifications which are unique to GSA nonmandatory ADP and telecommunications schedule contracts; (7) eliminating information in Commerce Business Daily (CBD) notices which encourage agencies and vendors to inappropriately view GSA nonmandatory ADP and telecommunications schedule contracts as if they were open market solicitations; (8) clarifying provisions regarding the use of functional telecommunications system specifications which tend to encourage agencies to solicit and evaluate sources which can't satisfy user's needs; and (9) removing language regarding selecting lowest overall system/item life cost to avoid misinterpretation when contracting by negotiation.

DATE: Comments are due March 8, 1989.

ADDRESSES: Comments should be submitted to the General Services Administration [KMPR], Project 87.46A, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: William R. Loy or Margaret Truntich, Regulations Branch (KMPR), Office of Information Resources Management Policy, telephone (202) or FTS 566–0194. The full text of the proposed final rule is available upon telephone request.

SUPPLEMENTARY INFORMATION: (1) Existing FIRMR coverage regarding security requirements is redundant with existing policies, procedures, standards and guidelines issued by other central management agencies. In order to eliminate possible conflicting provisions, Part 201–7 is revised to remove this redundant coverage and to state only basic GSA policy requirements.

(2) Part 201–16 is retitled and revised to better describe its contents regarding planning for information resources activities. Reference is made to current statutory and OMB planning requirements. Agency reporting requirements to GSA have been reduced to only a copy of the agency OMB submissions. The planning policy is stated. The relationship of agency performance of this function to GSA delegations of procurement authority (DPA's) to agencies is described.

(3) The requirement for a specific DPA from GSA when ordering equipment exceeding $300,000 from GSA nonmandatory ADP schedule contracts is removed. The intent of this action is to eliminate special GSA reviews when agencies acquire ADP equipment through use of GSA nonmandatory ADP schedule contracts. The requirements that (1) orders be within any applicable ADP schedule contract maximum order limitation (MOL), (2) the FIRMR provisions on the use of GSA nonmandatory ADP schedule contracts be met, and (3) appropriate procurement authority be obtained when exceeding GSA blanket DPA thresholds continue in force. To implement this change and to simplify and clarify coverage regarding use of the schedules, the following changes are made: Section 201–23.104–1 (b) and (c) are revised, paragraphs (b) and (h) of § 201–32.206 are revised, paragraphs (c) and (d) of that same section are removed and subsequent paragraphs of that section are renumbered.

Note.—Section 201–40.006 does not require modification in this regard because there is no specific DPA threshold cited for the use of GSA nonmandatory telecommunications schedule contracts.

(4) A new § 201–24.108 removes ambiguity contained in the coverage on present value analysis that appeared at §§ 201–24.208 and 201–24.305. Section 201–24.106 provisions also apply, as the agency determines them applicable, in the evaluation of offers resulting from solicitations. Paragraph (d) of § 201–1.102–2 is revised to remove the reference to OMB Circular A–94. The change to § 201–1.102–2 adds a citation to OMB Circular A–130, which rescinded OMB Circulars A–71, A–90, A–108, and A–121. Section 201–30.009–2 is changed to recognize the new § 201–24.108.

(5) As written, the provisions of § 201–24.208, are being misinterpreted and are encouraging agencies to solicit and evaluate methods of acquisition (e.g., purchase and lease) which cannot satisfy user's needs. In order to more clearly state policies in regard to soliciting and evaluating only methods of acquisition which satisfy program needs, a new § 201–24.107, Evaluation of alternative methods of acquisition, has been added. The section clarifies the relationship between the analysis of alternatives in the acquisition planning process and the evaluation of offers process. The new section replaces §§ 201–24.208 and 201–40.006. Section 201–24.216(d) is revised to recognize the new § 201–24.107.

(6) Current provisions regarding "only new" and "all or none" requirements when using GSA nonmandatory ADP and telecommunications schedule contracts have resulted in confusion regarding their applicability. Therefore, §§ 201–32.206(a)(2) and 201–40.008(a)(2) are revised to delete the automatic requirement for special justifications for "only new" and "all or none" specifications.

(7) Under the nonmandatory ADP and telecommunications schedule contract program, the CBD notice is used to advertise the specific make and model of products and services the agency intends to select. The intent of the CBD notice is to give vendors an opportunity to identify additional products and services which are comparable to those advertised in the CBD, and which should be considered by the selecting agency. Therefore, the need to advertise underlying requirements in the CBD has been removed from the newly redesignated §§ 201–32.206(d)(2)(v) (see paragraph (3) above) and 201–40.008(b)(2)(v).

(8) As the competitive marketplace for telecommunications technology resources has grown, the provisions of § 201–38.012, Use of functional telecommunications system specifications, have been misinterpreted. Therefore, the section is revised to clarify its intended meaning: Namely, a neutral policy that is transparent to whether the offering is or is not subject to state or other regulatory or judicial conditions (e.g., tariffs). The provision is not intended to require agencies to always solicit both tariffed and non-tariffed offerings, nor to require solicitation of either class of offerings to the exclusion of the other.

(9) Current language in § 201–32.102(a) regarding selecting the method of acquisition that represents the lowest overall system/item life cost has been misinterpreted when negotiated contracts are used. The paragraph has been revised to clarify its meaning and to make it consistent with language used in the Federal Acquisition Regulation.

(10) The General Services Administration has determined that this rule is not a major rule for purposes of Executive Order 12291 of February 17, 1981. GSA decisions are based on adequate information concerning the need for and the consequences of the rule. The rule is written to ensure maximum benefits to Federal agencies. This is a Governmentwide management regulation that will have little or no net cost effect on society. The rule is therefore not likely to have significant impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

List of Subjects in 41 CFR Parts 201–1, 201–7, 201–16, 201–23, 201–24, 201–30, 201–32, 201–38, and 201–40

Computer technology, Government procurement, Government property management, Security measures, Telecommunications, Information resources activities, Competition.

Dated: February 22, 1989.

Francis A. McDonough,

Deputy Commissioner for Federal Information Resources Management.

[FR Doc. 89–2611 Filed 2–3–89; 8:45 am]

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41 CFR Parts 201–1, 201–2, 201–6, 201–8, 201–11, 201–23, 201–24, 201–30, 201–32, 201–38, 201–39, 201–40, 201–41

Implementation of Initial Phase of the FIRMR Improvement Project

AGENCY: Information Resources Management Service, GSA.

ACTION: Notice of availability of proposed rulemaking.

SUMMARY: This proposed rule consolidates into a single FIRMR part, 41 CFR Part 201–39, all policies and procedures unique to acquiring Government ADP and telecommunications resources by contract. The intent is to enable Federal contracting personnel to more easily use the FIRMR in conjunction with the Federal Acquisition Regulations (FAR) and to more easily locate the FIRMR's contracting policies and procedures. To achieve this, FIRMR Part 201–39 has been organized for consistency with the FAR structure and redundant material has been eliminated.

In addition, for the convenience of FAR users, GSA and the FAR councils have agreed to reprint FIRMR Part 201–39 as an appendix to the FAR. FIRMR Part 201–39 will be reprinted in the FAR appendix exactly as it will appear in the FIRMR. GSA will submit future changes to FIRMR Part 201–39 to the public, Federal agencies, and the FAR councils for review and comment. These changes will be under the sole authority of the GSA Administrator. Changes to FIRMR Part 201–39 will also be reprinted in the FAR appendix.

DATE: Comments are due: April 7, 1989.

ADDRESS: Comments should be submitted to the General Services Administration (KMPP), Project 88–1, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Patricia Phillips or David Mullins, Policy Branch (KMPP), Office of Information Resources Management Policy, telephone FTS or (202) 535–7462. The full text of the proposed rule for Project 88–1 is available upon request, by telephoning FTS or (202) 535–7462.

SUPPLEMENTARY INFORMATION: (1) In the January 11, 1988, **Federal Register**, GSA announced the FIRMR Improvement Project, including a proposed new FIRMR structure. This proposed rule, which will codify Part 201–39, represents the initial phase of this effort.

Note.—Several changes are made to portions of the current FIRMR so this new Part 201–39 can be codified following reconciliation of NPR comments.

(2) The changes proposed for the effected FIRMR parts are explained in the following paragraphs:

(a) Part 201–1 is amended to reference the new Part 201–39, as applicable.

(b) Part 201–2 is amended to revise, add and delete definitions of words and terms.

(c) Part 201–6 is amended to remove references to FIRMR sections that are removed.

(d) Part 201–8 is revised to remove the major portion of the text. Specifications for Federal standards are now covered by new Subpart 201–39.10.

(e) Part 201–11 is revised to remove the major portion of the text. The subject area is covered in Subparts 201–39.6 and 201–39.17.

(f) Part 201–23 is amended to remove references to FIRMR sections that are removed.

(g) Part 201–24 is amended to remove major portions of the text. In some instances, FIRMR information was deleted because the FAR provides adequate coverage of the subject. Other information from this part has been rewritten and relocated to Parts 201–30 and 201–39.

(h) Part 201–30 is amended to remove portions of the text. Portions of the text have been rewritten and relocated to Part 201–39. Guidance concerning specifications for Federal information processing resources requirements, including compatibility requirements, has been amended.

(i) Part 201–32 is removed and reserved. The information from this part has been revised and relocated to Part 201–39.

(j) Part 201–38 is amended to remove references to FIRMR sections that are removed.

(k) Part 201–39 is activated and titled "Acquisition of Federal Information Processing Resources by Contracting." It contains the policies, procedures, solicitation provisions and contract clauses affecting contracting for Federal information processing resources.

Note.—Subpart 201–39.10 contains policies and procedures regarding solicitation specifications for implementing the requirements of the Computer Security Act of

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1987 regarding security training and plans for the security and privacy of Federal computer systems. GSA believes that it would not be appropriate to prescribe specific contract clauses to implement these requirements. However, GSA welcomes comments and recommendations on whether specific clauses should be developed and added to Subpart 201-39.52.

(l) Part 201-40 is removed and reserved. The information from this part has been revised and relocated to Part 201-39.

(m) Part 201-41 is amended to remove a reference to a FIRMR part that is revised.

(3) The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. GSA actions are based on adequate information concerning the need for, and the consequences of the rule. The rule is written to ensure maximum benefits to Federal agencies. This is a Governmentwide regulation that will have little or no net cost effect on society. It is therefore certified that this rule will not have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

List of Subjects in 41 CFR Parts 201-1, 201-2, 201-6, 201-8, 201-11, 201-33, 201-24, 201-30, 201-32, 201-36, 201-38, 201-40, 201-41

Acquisition methods, Acquisition planning, Clause, Commerce Business Daily, Competition, Contractor, Conversion, Deviation, Evaluation, Evaluation factors, Federal standards, Federal information processing resources, GSA Board of Contract Appeals (GSBCA), GSA nonmandatory schedule contract, Lease, Lowest overall cost, Options, Outdated Federal information processing equipment, Negotiation, Mandatory, Multiple award schedule, Maximum order limitation, Other than full and open competition, Privacy, Protest, Present value, Publicizing, Purchase, Sealed bidding, Security, Source selection, Specific make and model, Specifications, Synopsis, System life, Telecommunications, Teleprocessing Services Program (TSP).

Dated: August 10, 1988.

Francis A. McDonough,

Deputy Commissioner for Federal Information Resources Management.

[FR Doc. 89-2812 Filed 2-3-89; 8:45 am]

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federal register

Monday
February 6, 1989

Part IV

Environmental Protection Agency

Dinocap: Intent To Cancel Registrations; Conclusion of Special Review; Notice of Final Determination

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30000/45B; FRL-3515-1]

Dinocap: Notice of Intent To Cancel Registrations; Conclusion of Special Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final determination and intent to cancel; notice of intent to deny applications for registrations.

SUMMARY: This Notice announces EPA's intent to cancel registrations and to deny applications for registration for all pesticide products that contain dinocap as the active ingredient unless the changes specified in this Notice are made to the registrations or applications for registration. This action concludes EPA's Special Review of dinocap and is based on the Agency's determination that the use of dinocap without the modifications specified herein will result in unreasonable adverse effects to applicators.

DATE: Requests for a hearing by a registrant, applicant, or other adversely affected parties must be received on or before March 8, 1989 or, for a registrant or applicant, within 30 days from their receipt by mail of this Notice, whichever date is later.

ADDRESS: Requests for a hearing must be submitted to: Hearing Clerk (A–110), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

Paul Parsons, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Office location and telephone number: Room 1020, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–0064).

SUPPLEMENTARY INFORMATION: This Notice announces EPA's decision to cancel registrations and deny applications for registrations of pesticide products containing dinocap as an active ingredient unless the terms and conditions of registration are amended to comply with the terms and conditions set forth in this Notice. This Notice concludes the Agency's administrative Special Review of the risks and benefits of dinocap which was initiated in a **Federal Register** notice of January 9, 1985 (50 FR 1119).

When the Notice of Preliminary Determination concerning dinocap was published on October 29, 1986 (51 FR 39577), supporting documents were made available to any requesting party. After carefully evaluating the risk/benefit information, the Agency concluded in the Preliminary Determination that the risks posed by the use of dinocap outweighed the benefits of continued registration, unless certain modifications to the terms of registration were made. The Agency proposed to require closed mixing systems, additional protective clothing, application from vehicles with enclosed cabs for some uses, restriction of use to certified applicators for agricultural uses, and a teratogenicity warning statement on product labels for agricultural use as well as products registered for use in home gardens and home lawns.

The Agency's preliminary determinations were submitted to the FIFRA Scientific Advisory Panel (SAP) and the U.S. Department of Agriculture (USDA) for review pursuant to sections 6(b) and 25(d) of FIFRA. Comments were also solicited from the registrants and any other interested parties. After reviewing all comments, the Agency has determined that the use of dinocap products as currently registered will result in risks to mixer/loaders and applicators that are not outweighed by the benefits of the use of dinocap. By making modifications to the terms and conditions of dinocap registrations, as detailed in this Notice, the Agency has determined that the benefits of the use of dinocap will outweigh the risks of such use. These modifications are:

1. The Agency will require all dinocap labels to bear the statement, "Use of this product may be hazardous to your health. This product has been determined to cause birth defects in laboratory animals."

2. The Agency will lower the rate of application of liquid formulations of dinocap for use on pears to 0.47 lbs./acre.

3. For the use of dinocap as a wettable powder on apples, the Agency will require mixer/loaders and applicators to use additional protective clothing and equipment not currently required. When warm weather conditions make the use of certain protective clothing impractical, applications for this use will be from a vehicle with a closed cab.

4. For the use of dinocap as a wettable powder on pears, or as a liquid or wettable powder on grapes and field cucurbits, the Agency will require mixer/loaders and applicators to use additional protective clothing and equipment not currently required, and will require that they make all applications of dinocap for these uses from a vehicle with a closed cab.

This Notice is organized into seven units. Unit I is the introduction, describing the chemical background and regulatory history of dinocap, and the legal basis of the Special Review process. Unit II summarizes the Agency's analyses of the risks and benefits of dinocap, as presented in the Preliminary Determination (51 FR 39577), and described in greater detail in the Technical Support Document, issued October 14, 1986. Unit II also responds to the comments of the Scientific Advisory Panel (SAP), U.S. Department of Agriculture (USDA), and Rohm and Haas Company, the registrant and only other commenter, on the Agency's analysis of the risks and benefits of dinocap use. Unit II also contains the Agency's final position on the risks and benefits of dinocap. Unit III contains the complete text of the comments of the SAP and USDA and discusses their comments as well as comments of Rohm and Hass that were not addressed in Unit II. Unit IV describes the Agency's final determinations and the regulatory actions required by this Notice. Unit V describes various procedural matters including procedures for requesting a hearing. Unit VI discusses the public docket for this Special Review. Unit VII is the bibliography.

I. Introduction

A. Chemical Background

Dinocap is the common name for a mixture of the cis- and trans-isomers of 2,4-dinitro-6-octylphenol crotonate and 2,6-dinitro-6-octylphenol crotonate; about 85 percent of technical dinocap is composed of these compounds, the remainder being poorly characterized reaction products. Dinocap, a fungicide, is registered to control powdery mildew diseases, and also has limited use as a miticide. About 100,000 pounds of active ingredient are applied annually in the United States. Rohm and Haas is the sole producer of technical dinocap and markets end-use products containing dinocap; other companies buy technical dinocap from Rohm and Haas and formulate it into end-use products as well. There are about 80 federally registered products containing dinocap, 20 intrastate products, which have been called in for Federal registration, and 4 special local needs registrations issued pursuant to FIFRA section 24(c).

Apples account for about 92 percent of the annual use of dinocap; application is made to apples from early spring to late summer. An estimated 30 percent of the U.S. apple acreage and up to 80 percent of certain varieties are treated. Dinocap is also applied to other fruits, vegetables, and ornamental crops. Its home garden use accounts for less than 1 percent of all dinocap use. There is negligible greenhouse use.

B. Regulatory History

On January 9, 1985, EPA issued a Notice of Initiation of Special Review of Registrations of Pesticide Products containing dinocap (50 FR 1119) based on the Agency's determination that pesticide products containing dinocap met or exceeded the risk criteria in 40 CFR 162.11(a)(3)(ii)(B) for producing a "chronic or delayed toxic effect in test animals." Specifically, the Special Review was initiated because laboratory studies in rabbits demonstrated that dinocap has the potential to produce teratogenic effects. The Agency determined that dermal and inhalation exposure to dinocap may present significant risks to pregnant women who apply the product.

The risk criteria set forth in 40 CFR 162.11(a)(3)(ii)(B) have been superceded by new criteria set forth in 40 CFR 154.7(a)(2), which provide that a Special Review may be conducted if the use of a pesticide "may pose a risk of inducing in humans an oncogenic, heritable genetic, teratogenic, fetotoxic, reproductive effect, or a chronic or delayed toxic effect, which risk is of concern in terms of either the degree of risk to individual humans or the number of humans at some risk * * *." Dinocap also exceeds the new criteria. Based on an evaluation of the available information, including information received in public comments to the Notice of Special Review, on October 14, 1986, EPA issued a Notice of Preliminary Determination and Notice of Availability of the Technical Support Document and a Draft Notice of Intent to Cancel. In the Preliminary Determination the Agency announced its proposed decision to cancel registrations of dinocap products unless certain modifications were made to the terms and conditions of registration. These proposed modifications were:

1. All products for all uses (pears, apples, grapes, field cucurbits, greenhouse uses, field roses, peaches and apricots, and home lawn and gardens) must bear a teratogenicity warning statement.

2. All wettable powder formulations for use on pears, apples, grapes, field cucurbits, greenhouse uses, field roses, peaches and apricots must be packaged in water soluble bags.

3. All ground boom, airblast and mist blower applications to pears, apples, grapes, field cucurbits, greenhouse uses, field roses, peaches and apricots must be made from enclosed vehicles.

4. Applicators must wear long-sleeved shirts and long pants, and will also be required to wear chemical-resistant gloves when exiting the vehicle or while repairing equipment.

5. All products for use on pears, apples, grapes, field cucurbits, greenhouse uses, field roses, peaches and apricots must be classified for restricted use, with the additional requirement that certified applicators be physically present while the application is taking place.

For liquid products for use on peaches and apricots, and wettable powder products already packaged in water soluble packaging for use on peaches and apricots, there were adequate margins of safety. The Agency believed that these modifications would provide adequate margins of safety, taking into consideration risks and benefits, for all categories of mixers, loaders, and applicators.

In the Preliminary Determination, the Agency also noted that the manufacturer of technical dinocap, Rohm and Haas, was developing a dinocap technical product of higher purity than the currently available dinocap. Current technical dinocap is an approximately 80 to 85 percent pure mixture of the cis- and trans- isomers of 2,4-dinitro-6-octylphenol crotonate and 2,6-dinitro-6-octylphenol crotonate, the remainder consisting of other reaction compounds. There was some evidence, based on a teratogenicity screening test performed by the Agency at Research Triangle Park, North Carolina, that the isomers of dinocap were not developmentally toxic (Ref. 21). If this evidence were confirmed, it would indicate that the developmentally toxic component of dinocap is the other reaction products. Therefore, a purer technical dinocap should be less developmentally toxic, since it would contain less of the developmentally toxic component. The new technical material is about 95 percent pure. On January 14, 1988, the Rohm and Haas Company applied to amend the registration of its current technical dinocap product to reflect the new, purer form of dinocap. The Agency is reviewing this application to amend the registration of dinocap, and will decide whether to approve the amended registration pending the submission and review of required studies. This Notice addresses only the current, less pure, dinocap formulation.

The most common formulation of dinocap is as a mixture with another fungicide, mancozeb. Mancozeb and several related pesticides, collectively called the "EBDC fungicides", are also undergoing special review. This Notice, however, concerns only the risks and benefits of dinocap.

Following review of public comments on the Preliminary Determination and all available data, the Agency has determined that the risks of developmental toxicity remain; however, these risks can be reduced to acceptable levels if the modifications specified in Unit IV of this Notice are made. The Agency will cancel the registrations of dinocap products and deny applications for registration of such products which have not complied with the modified terms and conditions of registration set forth in this Notice within 30 days of publication or receipt of this notice by the registrants, whichever occurs later.

C. Legal Background

Before a pesticide product may be lawfully sold or distributed in either intrastate or interstate commerce, the product must be registered by the Environmental Protection Agency [FIFRA sections 3(a) and 12(a)(1)]. A registration is a license allowing a pesticide product to be sold and distributed for specified uses in accordance with specified use instructions, precautions, and other terms and conditions. In order to obtain a registration for a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA), an applicant for registration must demonstrate that the pesticide satisfies the statutory standard for registration. The standard requires, among other things, that the pesticide perform its intended function without causing "unreasonable adverse effects on the environment," under FIFRA section 3(c)(5). The term "unreasonable adverse effects on the environment" is defined under FIFRA section 2(bb) as "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide." This standard requires a finding that the benefits resulting from the use of the pesticide exceed the risks resulting from use, when the pesticide is used in compliance with the terms and conditions of registration or in accordance with commonly recognized practices.

The burden of proving that a pesticide satisfies the statutory standard is on the proponents of registration and continues as long as the registration remains in effect. Under section 6 of FIFRA, the Administrator may cancel the registration whenever it is determined that the pesticide causes unreasonable adverse effects on the environment. The Agency created the Special Review process to facilitate the identification of

pesticide uses which may not satisfy the statutory requirements for registration and to provide an informal procedure to gather and evaluate information about the risks and benefits of these uses.

A Special Review is initiated if a pesticide meets or exceeds risk criteria set out in the regulations at 40 CFR Part 154. The Agency announces that a Special Review is initiated by publishing a notice in the **Federal Register**. Registrants and other interested persons are invited to review the data upon which the review is based and to submit data and information to rebut the Agency's conclusions. Such data and information may rebut the Agency's conclusions by showing that the Agency's initial determination was in error or by showing that use of the pesticide is not likely to result in any significant risk to human health or the environment. In addition to submitting evidence to rebut the Agency's initial determination, commenters may submit relevant information to aid in the determination of whether the economic, social, and environmental benefits of the use of the pesticide outweigh the risks of use. After reviewing the comments received and other relevant material obtained during the Special Review process, the Agency makes a decision on the future status of the pesticide registrations.

The Special Review process may be culminated in several ways, depending upon the outcome of the Agency's risk/benefit assessment. If the Agency concludes that all of its risk concerns have been adequately rebutted, the pesticide registration will be maintained unchanged. However, if all risk concerns are not rebutted, the Agency will proceed to a risk/benefit assessment. In determining whether the use of a pesticide poses risks which are greater than the benefits, the Agency considers possible changes to the terms and conditions of registration which can reduce risks, and the impacts of such modifications on the benefits of use. If the Agency determines that such changes reduce risks to the level where the benefits outweigh the risks, it may require that such changes be made in the terms and conditions of the registrations. Alternatively, the Agency may determine that no changes in the terms and conditions of a registration will adequately assure that use of the pesticide will not pose any unreasonable adverse effects. If the Agency makes such a determination, it may seek cancellation, and, if necessary, suspension. In either case, the Agency must issue a Notice of Intent to Cancel the registrations. If the Notice requires changes in the terms and conditions of registration, cancellation may be avoided by making the specified changes set forth in the Notice. Adversely affected persons may also request a hearing on the cancellation of a specified registration and use, and if they do so in a legally effective manner, that registration and use will be continued pending a decision at the close of an administrative hearing.

II. Risk and Benefit Assessments and Evaluation of Comments

A. Summary of Toxicological Studies Used to Support the Preliminary Decision

The effect of concern for dinocap is developmental toxicity. The Agency "Guidelines for the Health Assessment of Suspect Developmental Toxicants" (51 FR 34028) define developmental toxicity as including (1) death of the developing organism, (2) malformation, (3) altered growth, and (4) functional deficiency. Teratogenicity is considered to be synonymous with structural anomalies, i.e., malformations.

Rohm and Haas have submitted two oral teratology studies of dinocap (Refs. 1 and 2); the effects observed were primarily neural tube and skull malformations. These studies, described on pp. II–1–2 of the Technical Support Document, showed the oral teratogenicity no-observed effect level (NOEL) in the rabbit to be 0.5 mg/kg/day. Based on these studies, a Special Review was initiated because of the Agency's concern that exposure to dinocap posed a risk of teratogenic effects to humans.

After the initiation of the Special Review, Rohm and Haas submitted a dermal dose-range finding study (Ref. 3) and a primary dermal teratology study in rabbits (Ref. 4). Dermal exposure to technical dinocap during the period of organogenesis produced dermal irritation in rabbits at all dosage levels tested (25, 50, 100 mg/kg/day). Frank systemic toxicity in the dams was observed in the 100 mg/kg group as evidenced by significant decreases in food consumption and body weight gains observed during the dosing period. There were several indications of developmental toxicity seen in this study.

The incidence of litters with skeletal abnormalities was increased in all treated groups (11.8, 18.7, 20.0, and 21.4 percent, for the control, 25, 50 and 100 mg/kg/day groups, respectively). An increase in both litter and fetal incidents of "skull, bone islands" was found at the highest dose tested (100 mg/kg/day). The occurrence of extra skull ossification centers, considered to be a form of fetal toxicity, is unusual. Reduced fetal weight was also observed at the 100 mg/kg/day dose.

Developmental toxicity in the form of reduced fetal weight was observed at the highest dose (100 mg/kg/day). Since statistically significant decreases in fetal weight were noted at the 200 mg/kg/day dose (Ref. 3), the decrease in fetal weight noted at the 100 mg/kg/day was regarded as potentially treatment-related. Scoliosis (lateral curvature of the spine), previously observed in the oral studies, was also present in the dermal study but did not attain a statistical difference. Three of the 40 treated litters (affecting 1 litter in each of the 25, 50, and 100 mg/kg/day groups) had scoliosis as compared to 3/155 of the historical control litters. Further, an increase (not statistically different) in the incidence of skull abnormalities was found at the 100 mg/kg/day dosage level. The findings in the 100 mg/kg/day dose could be biologically significant and a dermal development toxicity NOEL was therefore established at 50 mg/kg/day.

Because of the dermal study, in the Preliminary Decision the effect of concern for dinocap was broadened to the general endpoint of developmental toxicity rather than the narrow definition generally associated with the term teratogenicity. Teratogenicity, as noted before, is usually considered to be synonomous with structural anomalies. Because all four manifestations of developmental toxicity are of concern, the Agency Guidelines direct that developmental toxicity risk assessments be based on the NOEL for the most sensitive manifestation. The Agency used the dermal NOEL rather than the previously established oral NOEL because most of the dinocap exposure to applicators, the group at highest risk, is via the dermal route.

1. *Scientific Advisory Panel comments on the toxicological data base.* The Agency's proposed decision to cancel the uses of dinocap (unless certain modifications were made to the terms of registration) was submitted to the Scientific Advisory Panel (SAP) for review in accordance with section 6 of FIFRA. The Panel's report, which is reprinted in its entirety in Unit III of this document, noted several comments on the dinocap developmental toxicity data. First, the Panel agreed that the weight-of-evidence supports the conclusion that dinocap is a developmental toxicant in the rabbit by the oral route. Second, the Panel believed that the small group size and limitation of studies to one species limited the certainty of calculated margins of safety. They believed that the dermal data were inconclusive and the data could not be used to establish a confident NOEL and margin of safety. The Panel offered several possibilities for improving the data set. They suggested that teratology studies be done in another species, first by the oral route. Other suggestions and comments of the Panel are discussed in Unit II.B. of this document.

The Agency does not agree with the SAP that the available dermal teratology studies may not permit calculation of MOS's for dinocap. The study has been carefully reviewed and judged adequate for risk assessment purposes. The number of animals tested was in accordance with Agency guidelines. The Agency does not believe that limitation of dermal data to one species, the rabbit, invalidates any conclusions on risk. The developmental toxicity seen in the dermal teratology study in rabbits is consistent with the developmental toxicity seen in the oral teratology studies in rabbits and another test species. Two oral studies using CD–1 mice (Refs. 7 and 20) demonstrated the developmental toxicity effects of dinocap. Further, it is Agency policy to use data obtained by the expected route of human exposure, when such data are available. In the case of dinocap, agricultural workers are primarily exposed by the dermal route; thus, data from the dermal developmental toxicity study are most appropriate for risk assessment.

2. *Other comments on toxicology studies.* Rohm and Haas commented on the dermal dose selected as the NOEL for dinocap, saying that the effects observed were not statistically significant nor dose-related, and that the reduced fetal weights observed were within historical controls.

As noted in the Preliminary Determination, and as the SAP has agreed, oral developmental toxicity studies in the rabbit have shown a developmental toxicity NOEL of 0.5 mg/kg, with a variety of neural tube-related anomalies observed at dose levels of 3.0 mg/kg and greater. In dermal testing in the rabbit, at dose levels of 0, 25, 50, and 100 mg/kg, compound-related teratogenic findings did not appear to be statistically increased at any dose level. However, indications of structural abnormalities (skull, delayed ossification) and altered growth were observed at 100 mg/kg. Altered growth (decreased fetal weight) became significant at the 200 mg/kg. Although the incidences at the 100 mg/kg dosage level were not statistically different from concurrent and historical control ranges, they still were biologically relevant in light of the positive trend. As per the consensus obtained from a workshop organized by the Agency (Ref. 22) an adverse developmental effect occurring at the statistically significant level at the highest exposure level (i.e., 200 mg/kg/day) can be considered treatment related even at lower doses (i.e. 100 mg/kg/day) in which the observed difference in incidence from the concurrent control value may not achieve statistical significance. A dermal developmental toxicity NOEL was therefore conservatively established by the Agency at the next lower dose, 50 mg/kg/day. The Agency has used this value in calculating margins of safety in the Final Determination.

B. Exposure and Risk Determinations

1. *Summary of exposure and risk assessment in the Preliminary Determination.* The exposure assessment used in the Preliminary Determination considered only dermal exposure of mixer/loaders and applicators from the agricultural and home uses of dinocap. Although inhalation was cited as a route of exposure in initiating the Special Review, it was not exhaustively evaluated because it comprises only a small component of total exposure (usually less than 1 percent) and does not significantly affect margins of safety. Dietary exposure was not considered at length because worst case calculations at the time of the initiation of the Special Review showed that food residues of dinocap at tolerance levels were within adequate margins of safety (>100) for the risks of developmental toxicity. Farmworkers who do not mix, load, or apply dinocap have adequate margins of safety (>100) for the risks of developmental toxicity even if the farmworkers reenter treated areas on the same day that dinocap is applied (Ref. 15).

At the time of the Preliminary Determination, dinocap labels for agricultural use required that mixer/loaders wear protective gloves, boots, coveralls, a face shield or goggles, and a chemical-resistant apron. The exposure analysis in the Preliminary Determination assumed that agricultural mixer/loaders wore the protective clothing required on the label, and that applicators wore a long-sleeved shirt and pants (Refs. 16 and 23). It was also assumed that the same person did both the mixing/loading and application. It was estimated that approximately 825 applicators were women. Other assumptions regarding exposure are detailed on pages II–7 and II–8 of the Technical Support Document.

In estimating the range of likely exposures for workers involved in application of dinocap, the Agency used a standard methodology in which exposure data for other pesticides, "surrogate data", are used to derive exposure estimates (Ref. 10). Surrogate studies are used to estimate dermal exposure to pesticides because the factors that most influence pesticide dermal exposure are formulation, application method, and application rate. These factors are more related to a pesticide's use patterns than to the properties of the pesticide itself. Thus, by knowing the formulation, application rate, and application method of a pesticide, and by knowing the average area of a crop to be treated, it is possible to estimate dermal exposure to a pesticide on the basis of how much of the pesticide a mixer/loader or applicator handles. Therefore, dermal exposure to dinocap was calculated by combining the results of surrogate studies with information about dinocap use patterns. The following Table 1 shows the estimated range of combined mixing/loading and application exposures to dinocap by crop and formulation type. The Agency used these exposure values in calculating Margins of safety in the Preliminary Determination.

TABLE 1.—COMBINED MIXER/LOADER AND APPLICATOR EXPOSURES TO DINOCAP (IN MG/KG/DAY) USED IN THE PRELIMINARY DETERMINATION

Crop	Formulation	Combined exposure
Peaches/ Apricots	Liquid	0.11–0.16
	Wettable powder	0.14–0.21
Pears	Liquid	0.50–1.2
	Wettable powder	0.66–1.6
Apples	Liquid	0.40–0.50
	Wettable powder	0.53–0.66
Grapes	Liquid	0.66–1.7
	Wettable powder	0.88–2.3
Field cucurbits	Liquid	0.16 (0.084–1.9)[1]
	Wettable powder	0.36 (0.28–2.1)[1]
Field roses	Liquid	0.21–0.25
	Wettable powder	0.27–0.35
Greenhouse uses	Liquid	0.16–0.25
Homeowner garden	Liquid	.0056–.022[2]
	Dust	.0016–.0064
Homeowner turf	Liquid	018

[1] Geometric mean (range). Dinocap is applied to field cucurbits by ground booms rather than by air blast sprayers; exposure values from the surrogate database for ground boom applications range over three orders of magnitude, with most of the data points at the lower end of the range. Because of this wide range, a geometric mean exposure was calculated for field cucurbits rather than a simple weight-

ed mean. A geometric mean is more representative under these conditions because it is less influenced by outlying data points. Both the geometric mean and the range are shown here, however.

[2] In the Technical Support Document, the higher end of this range was reported to be 0.222 mg/kg/day; the correct value is 0.022 mg/kg/day. The MOS calculations for this use have been recalculated with the lower value throughout this Notice.

Risks presented by developmentally toxic pesticides, such as dinocap, are expressed in terms of "margins of safety" (MOS). The margin of safety is a safety criterion used to assess hazard and is defined as the ratio of the no-observed effect level (NOEL) to estimated daily exposure. Generally, the Agency becomes concerned when the margin-of-safety for a particular use of a developmentally toxic pesticide is less than 100. In determining risk from dinocap exposure, the Agency also evaluated available pharmacokinetic data in order to establish the internal absorbed dose. At the time the dermal teratology study was submitted, Rohm and Haas also submitted a dermal pharmacokinetic study of dinocap in female rabbits and in rhesus monkeys. In the pharmacokinetic study in female rabbits, conducted as an adjunct to the rabbit dermal teratology study (Ref. 6), the doses used were the same as those in the dermal teratology study. It was found that 5.1 percent of the applied dose was absorbed.

In the dermal penetration study of dinocap in rhesus monkeys (Ref. 24), it was determined that the dermal absorption rate was 15.7 percent. The higher absorption rate found in monkeys vs. rabbits was reflected in the margin-of-safety calculations in the Preliminary Determination. This was done because it was assumed that the dermal kinetics in monkeys was similar to humans. Pages II–5 and II–6 of the Technical Support Document contain a more detailed discussion of these two studies.

The following formula was used in the Preliminary Determination to calculate margins of safety:

$$\frac{0.051(\text{dermal absorption in rabbits}) \times 50\ \text{mg/kg/day NOEL}}{0.157(\text{dermal absorption in monkeys}) \times \text{Applicator exposure mg/kg/day}}$$

Based on the above formula, the Agency calculated MOS's for all use sites and formulation types (see following Table 2). The exposure values used are those found in Table 1 of this document.

TABLE 2.—MARGINS OF SAFETY (MOS'S) IN THE PRELIMINARY DETERMINATION

Crop/Formulation	MOS
Peaches/Apricots:	
Liquid	147–101
Wettable powder	116–77
Pears:	
Liquid	32–14
Wettable powder	25–10
Apples:	
Liquid	41–32
Wettable powder	31–25
Grapes:	
Liquid	24–10
Wettable powder	19–7
Field Cucurbits: [1]	
Liquid	102 (193–9)
Wettable powder	45 (58–8)
Field Roses:	
Liquid	77–62
Wettable powder	60–46
Greenhouse liquid	102–65
Home Garden: [2]	
Liquid	[3] 2900–732
Dust	10151–1934
Home Turf: Liquid	1015

[1] As explained in Footnote 1 of Table 1, there was a very wide range of exposures for the field cucurbit use of dinocap, and so the extremes of the range and the geometric mean of the range were given. These MOS' for the field cucurbit use of dinocap were calculated from both the extremes and the geometric mean of the exposure values.

[3] Due to a typographical error, this MOS was reported to be 738 in the Preliminary Determination. The correct value is 732.

2. SAP comments on exposure and risk assessment. A large measure of the Panel's concerns about the inadequacy of the dermal studies for establishing a confident NOEL and margin of safety was apparently based on lack of estimation of dose (internal). The Panel suggested that additional dermal teratology studies be conducted when absorbed dose reaches a steady state, so that dose could be measured accurately. Where appropriate they suggested using urinary metabolites to quantify the dose that gets metabolized as well as determining exposure on the basis of metabolite levels in plasma and tissue. They expressed concern that dermal absorption estimates in humans reflected only the concentration of dinocap on the skin surface and not the dose delivered to potential target tissues.

In regard to the SAP's first and last comment above, the Agency notes that its calculations in the Preliminary Determination did reflect an estimate of absorbed dose, based on rabbit and monkey pharmacokinetic data, and not just the concentration of dinocap on the skin. The Agency believed it had achieved a reasonable estimate of internal absorbed dose.

Because of the many variables involved in attempts to determine absorbed dose from measurements based on metabolite levels in urine, plasma and tissue, this would not be a practical approach at this time. That metabolite data would not be relevant is especially true in this case, in which the registrant is actively providing the basic data to support the registration of a new technical material; the new material appears to be less developmentally toxic than the dinocap under Special Review.

The Panel also commented that they were not convinced that the 50 percent reduction in exposure attributed to the use of long-sleeved shirts and long pants was appropriate. Although not stated, the Panel's concern appears to be that the value is too high, i.e., penetration through clothing may be higher than 50 percent. Rohm and Haas objected that the 50 percent value understates the amount of protection provided by protective clothing. Protective clothing is defined in 40 CFR 170.2(d) as including a long-sleeved shirt and long pants.

EPA recognizes that no single value will accurately represent the extent to which protective clothing reduces pesticide exposure for every individual wearing such clothing. In fact, data show that there is considerable variation in the protection level afforded by wearing protective clothing, both between individuals and for the same individual under different conditions. Thus, it is very difficult to characterize the impact on exposure from wearing protective clothing.

When assessing the impact of wearing protective clothing on exposure to dinocap, the Agency used surrogate monitoring data, that is, monitoring data collected for other pesticides applied under conditions similar to dinocap. The dinocap exposure study submitted by Rohm and Haas monitored dermal exposure underneath water-resistant rainsuits. The Agency did not use these data because it believes the use of water-resistant clothing is atypical. The use of surrogate data is necessary because many variables are encountered when conducting exposure monitoring studies in the field. Some of these variables, such as weather and the care exercised by applicators, cannot be controlled by the supervisor of the study; because of these uncontrollable factors, experimental results can vary widely. Thus, the Agency believes that a more scientifically reliable assessment of the value of protective clothing results from using a broad range of surrogate exposure data than from relying on the results of a few studies or even a single study of a pesticide of special concern, since the more limited data base would not be as likely to reflect the wide range of variables affecting exposure.

The surrogate data base shows great variability in pesticide penetration values, but with most data points in the 5 to 10 percent penetration range. Davies (Ref. 5) reported that ethion penetration through the clothing of mixers averaged 28 percent, and 17 percent for airblast applicators. Maddy (Ref. 12) determined that the penetration of dinoseb through the outer layer of the clothing of mixer/loader truck drivers averaged 2.0 and 2.3 percent on the first day of the study, and 240 and 1.2 percent on the next day. For hand wand applicators, the average penetration of dinoseb was 6.6 and 170 percent for one applicator, and 5.9 and 72 percent for a second applicator. Nigg (Ref. 13) reported that the mean penetration of dicofol through the shirts of mixer/loaders and applicators ranged from 1.3 to 35 percent, with the penetration on any given day ranging from 0 to 300 percent. In a later report, Nigg (Ref. 14) reported the penetration of pesticides through Tyvek, a fabric designed to have low penetration, to range from 0 to 23 percent.

The penetration values which exceed 100 percent suggest, in effect, that protective clothing in these instances has very little or no protective value. Penetration values larger than 100 percent are possible because of the method by which penetration is calculated; it is the ratio of the amount of pesticide found in external patches to the amount of pesticide found in patches within the applicator's protective clothing. Occasionally larger amounts of pesticide are found inside the clothing than outside, due to "wicking", the movement of pesticide through the material of the protective suit by capillary action, and to other indirect routes of internal deposition.

In sum, the available data on the impact of protective clothing show a wide range of penetration values. A few measurements of pesticide deposition are greater within the protective clothing than on the outside of the clothing, suggesting that the clothing had little or no protective value. Most data points, however, show considerable reduction in exposure, with the most common penetration of pesticide through clothing in the range of 5 to 10 percent. EPA does not believe that more sophisticated statistical analysis of the data—for instance, to determine mean, median, or 90th percentile levels—would be appropriate, given the limited nature of current data and the large degree of variability in the data points.

In light of the above, the Agency agrees, in a sense, with both the SAP and Rohm and Haas objections to the assumption that protective clothing will reduce dinocap exposure by 50 percent. For some individuals, exposure to covered areas of the body may not be halved by wearing protective clothing, but for many, exposure to these areas is likely to be reduced by considerably more than half. The Agency, however, continues to believe that the use of the 50 percent penetration value is appropriate in initially assessing the impact of wearing protective clothing.

There are not sufficient data available to identify a single statistically valid value for clothing penetration. While the clustering of data points in the range of 5 to 10 percent penetration is suggestive of what might be typical, there are enough excursions above that range to create a need to employ a safety factor. The 50 percent penetration figure was chosen because it incorporates an ample safety factor above the 5 to 10 percent penetration values typically seen in the surrogate data base and includes many of the outlying excursions representing higher penetrations as well. Furthermore, the 50 percent figure does not overstate the data, in that it does not represent an attempt to capture every excursion beyond 5 to 10 percent penetration. These examples of extremely high penetration values are interpreted as outliers which are not likely to be representative of typical experience.

As an additional step in its risk assessment, EPA determined whether, and to what extent the use of different penetration values would affect the Agency's regulatory decision for each use. This "sensitivity" analysis was based on the risk/benefit finding that for every use the costs of the proposed regulatory measures (the "benefits") were exceeded by the risks associated with continued unregulated use resulting in MOS's of less than 100. In essence, then, the MOS's above 100 were found to not cause unreasonable adverse effects and thus require no additional regulation, while MOS's less than 100 were found to cause unreasonable adverse effects and thus require additional regulation. The questions posed by the sensitivity analysis were, does the use of different clothing penetration assumptions move the MOS above or below 100, and what is the range of penetration assumptions which will not cause the MOS to move above or below the 100 threshold?

For all formulations for peaches and apricots and liquids used in greenhouses any clothing penetration assumptions from 0 to 100 percent would give MOS's greater than 100. Thus, the use of any clothing penetration assumption has no effect on the Agency's regulatory position. For wettable powder formulations for grapes and field cucurbits, the clothing penetration would have to be 0 percent in order for the Agency not to propose regulatory changes. Because it is highly unlikely that protective clothing affords 100 percent protection, the use of any prudent protective clothing assumptions has little effect on the Agency's regulatory position.

For wettable powder formulations for pears and liquid formulations for grapes and field cucurbits, any clothing penetration assumption from 10 to 100 percent protection would have resulted in MOS's below 100. The frequency of excursions above 10 percent penetration make an assumption of 10 percent or less penetration imprudent; thus, the use of any prudent protective clothing assumptions for these uses would have little effect on the Agency's regulatory position. For the wettable powder formulation for use on apples, by far the most used formulation, any penetration value from 100 to 30 percent would result in a MOS less than 100. Again, the frequency of excursions above 30 percent penetration make a 70 percent protection assumption imprudent. Thus, the use of any prudent protective clothing assumptions for these uses would not affect the Agency's regulatory position.

For liquid formulations on apples, any penetration value less than 50 percent would result in a MOS greater than 100. Thus, the protective clothing assumption could affect the Agency's regulatory position. For pears, at the reduced application rate required in the Final Determination, any value from 60 to 0 percent penetration would result in a MOS greater than 100. Although there are instances of excursions above 60 percent, these incidents are likely to be unusual. Although a different clothing protection assumption could affect the Agency's regulatory position for this use, such an assumption would not likely represent a typical use situation.

For wettable powder formulations used on field roses, any value from 70 to 0 percent penetration would result in a MOS greater than 100. The propriety and impact of using different clothing penetration assumptions for this use would be similar to those described for pears above. Finally, for liquid formulations for field roses any value from 0 to 90 percent penetration would result in a MOS greater than 100. Because clothing penetration values

greater than 90 percent are considered very unusual, the use of any reasonable clothing protection value would have no effect on the Agency's regulatory position.

For all the uses for which the Agency is requiring the use of enclosed cabs to increase MOS's to acceptable levels, the Agency would have had to assume a protective value for areas of the body covered by protective clothing of almost 100 percent, in order not to impose this requirement.

In conclusion, the 50 percent penetration value used by the Agency in its risk assessment reflects a number of scientific and policy judgments. The surrogate data base provides some scientific guidance for the choice of an appropriate clothing protection factor. However, policy considerations also contribute significantly to the decision. Public health policy concerns require that a safety factor be employed when, as here, the data do not provide a precise answer. Economic concerns also require that the choice of a safety factor not represent an unrealistic and over-protective choice. For these reasons, the Agency believes that the 50 percent penetration value represents an appropriate choice.

3. *Other comments on exposure and risk assessment.* Rohm and Haas commented that the Agency has used different penetration values at different times, citing the Alachlor Position Document 1 (80 percent) and the Dinocap Technical Support Document in its assessment of exposure from home and garden application of dinocap (90 percent).

The Agency notes that the alachlor document estimated the reduction in exposure by going from no clothing to protective clothing and gloves. However, in retrospect, the Agency agrees that it was inconsistent to use 90 percent reduction for home and garden situations involving dinocap; the value was based on a Kurtz and Bode study (Ref. 11), submitted by Rohm and Haas. The Agency believes that the penetration value established for agricultural uses (50 percent) is also appropriate for home and garden applications. The increased estimated exposure values do not significantly affect the margin of safety calculations for home and garden use.

Rohm and Haas also commented that the Preliminary Determination was incorrect in stating that dinocap labels are ambiguous or silent on requiring applicators to wear gloves. The labels clearly require the applicator to use protective gloves or an enclosed cab.

The Agency agrees that all dinocap labels clearly require that applicators use protective gloves, and has assumed that gloves are worn in its calculations of applicator exposure for the Final Determination.

Rohm and Haas questioned the time and acreage estimates for grapes and field roses used in the exposure assessment. They proposed that the acreage that can be treated in a normal day be calculated by assuming a treatment rate of 4.9 acres/hour over a 6-hour treatment day. This would result in a maximum treated area of 30 acres per day. This calculation method, which assumes a smaller treatment area per day, would reduce mixer/loader and applicator exposure, because the Agency assumes that exposure is based on total amount of pesticide handled per day, which in turn is based on acreage treated per day.

The Agency does not accept this approach to calculating acreage treated. The Agency's estimates of treatment areas per day are based on contacts with growers, agricultural extension experts, and university personnel. According to these sources, growers will work as long as 18 hours to complete spray operations, and so a 12-hour spray period, as assumed in the Preliminary Determination, does not appear unreasonable.

Rohm and Haas commented that the 1.5 lb a.i./acre application rate on pears was unrealistically high, and should be reduced to 0.47 lbs. a.i./acre.

The Agency notes that 1.5 lb. a.i./acre application rate on pears is the maximum label rate for the liquid concentrate formulation (Ref. 17). The label states the application rate for pears to be 20 to 48 oz/acre of the 4 lb. a.i./gal formulation; this is equal to 0.625 to 1.5 lb. a.i./acre. The label rate suggested for the wettable powder is 0.5 lbs. of a 19.5 percent a.i. formulation per 100 gallons of water, 600 to 800 gallons to be used per acre. This is equal to 0.58 to 0.78 lbs. a.i./acre. However, based on Rohm and Haas' comment, the Agency will reduce the maximum application rate for liquid formulations of dinocap for use on pears to 0.47 lbs. a.i./acre.

4. *Conclusions on exposure and risk assessment.* The Agency has adjusted its final exposure/risk calculations based on the comments received and discussed in Units II.B.2. and 3. (50 percent penetration value for protective clothing worn by home and garden applicators, gloves assumed to be worn by applicators, and reduced application rate for pears) as well as on information discussed below that was received after the Preliminary Determination was issued. Specifically, the Agency determined that apparent procedural deficiencies in the monkey dermal penetration study (Ref. 24) may render it invalid, and therefore no conclusions on dermal absorption can be based on this study at this time. The Agency also learned that the rabbit pharmacokinetic study (Ref. 6) involved only one isomer of dinocap and that isomer has been shown not to be developmentally toxic in a study conducted by the Agency (Ref. 21). The material tested for dermal absorption is not the material that is developmentally toxic and the resulting absorption value of 5.1 percent used in the Preliminary Determination can no longer be used in calculating margins of safety for dinocap. Thus, in the final calculations of dinocap margins of safety the Agency divided the NOEL, 50 mg/kg/day, by the estimated applicator exposure in mg/kg/day, without making a species-specific adjustment for dermal penetration. This procedure has the effect of assuming an equivalent dermal absorption of dinocap for humans and rabbits, independent of any specific estimate of the rate of such absorption. The effect on the calculated margins of safety in the Final Determination, compared to the Preliminary Determination, is to increase margins of safety by a factor of three, since the previous adjustment including a three-fold greater adsorption by monkeys (15.7 percent) compared to rabbits (5.1 percent).

The following table, Table 3, shows (1) estimated exposures and margins of safety resulting from use of label required protective clothing, (2) estimated exposures and margins of safety resulting from use of protective clothing required in the Final Determination, and (3) estimated exposures and margins of safety resulting from use of protective clothing and enclosed cabs required in the Final Determination.

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Table 3--EXPOSURES (MG/KG/DAY) AND MARGINS OF SAFETY USED IN THE FINAL DETERNMINATION ON DINOCAP

Crop/ Formulation	Current Label		Current Label With Protective Clothing Required in the Final Determination		Current Label With Protective Clothing Required in the Final Determination and Enclosed Cabs	
	Estimated Exposure	MOS's	Estimated Reduced Exposure	MOS's	Estimated Reduced Exposure	MOS's
Peaches/Apricots						
Liquid	0.11-0.16	455-313	----------	-------	----------	-------
Wettable Powder	0.14-0.21	357-238	----------	-------	----------	-------
Pears						
Liquid	0.50-1.2	100-42	----------	-------	----------	-------
Liquid, Reduced Rate		300-126	----------	-------	----------	-------
Wettable Powder	0.66-1.6	76-31	0.28-0.69	179-72	0.20-0.48	250-104
Apples						
Liquid	0.40-0.50	125-100	----------	-------	----------	-------
Wettable Powder	0.53-0.66	94-76	0.23-0.28	217-179	----------	-------
Grapes						
Liquid	0.66-1.7	94-29	0.25-0.66	200-76	0.14-0.36	357-139
Wettable Powder	0.88-2.3	57-22	0.38-0.99	132-51	0.27-0.69	185-72
Field Cucurbits						
Liquid	0.084-1.9	595-26	0.075-0.68	667-74	0.052-0.12	962-417
Wettable Powder	0.028-2.1	1785-24	0.20-0.80	250-63	0.17-0.25	294-200
Field Roses						
Liquid	0.21-0.26	238-192	----------	-------	----------	-------
Wettable Powder	0.27-0.35	185-143	----------	-------	----------	-------
Greenhouse						
Liquid	0.16-0.25	313-200	----------	-------	----------	-------
Home Garden						
Liquid	.0056-.0222	8829-2252	----------	-------	----------	-------
(Revised)	.0061-.028	8197-1786				
Dust	.0016-.0084	31250-5925	----------	-------	----------	-------
(Revised)	.0021-.0097	23810-5155				
Home Turf						
Liquid	.016	3130	----------	-------	----------	-------
(Revised)	.017-.020	2941-2500				

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C. Benefits Assessment and Evaluation of Comments

1. *Summary of benefits assessment in the Preliminary Determination.* In the Preliminary Determination, the Agency assessed at length the benefits of the continued use of dinocap on a major site, apples, and a minor site, ornamentals. Use on ornamentals was selected because of concern about the possibility of high exposure to home gardeners. The Agency has solicited comment from registrants and user groups on the economic importance of dinocap for the remaining uses (pears, grapes, field cucurbits, greenhouse uses, peaches and apricots, and home lawn and garden) but has received no further information. Therefore, the remaining sites were not reviewed. The Agency believes dinocap is much less important to these sites, based on the small percentage of dinocap used on those sites and the small percentage of those sites to which dinocap is applied. This section summarizes the Preliminary Determination's assessment of the benefits of the apple and ornamental uses of dinocap; these benefits are discussed at greater length on pp. III 1–14 of the Technical Support Document.

About 30 percent of the U.S. apple acreage is treated with dinocap, mostly in the East and North Central regions. Dinocap is usually applied to apple foliage as a spray. The principal application method is by airblast sprayer. The target pest is powdery mildew, but dinocap also provides some control of mites. Although there are other fungicides registered to control powdery mildew, resistance by the powdery mildew fungus has been reported for some of them; no dinocap resistance either by powdery mildew or mites has been reported. The alternatives to dinocap are described at length on pp. IV 4–6 of the Technical Support Document.

If dinocap registrations were canceled for use on apples, the Agency estimated total short term cost increases of $3.9 million per year, ranging from $1.2 to $6.7 million per year. These increases would be regionally distributed: Northwest, $25,000; North Central, $683,000; and East, $3 million.

Based on recent production budgets (Ref. 19), the average total variable production cost per affected acre would increase less than 1 percent in the Northwest, and 5 percent or less in the North Central and East regions. Costs per affected acre would increase $8.37 in the Northwest, $5.25 in the North Central, and $6.76 in the East. Based on these estimates, on the average number of acres per farm by region, and on the regional variation in number of dinocap treatments, the total cost increase per year to a typical affected grower would be $170 to $690 in the Northwest, $530 to $1310 in the North Central, and $1630 to $2310 in the East.

The unavailability of dinocap would not be expected to affect the quantity or quality of apples available to the consumer, but there might be a slight increase in short term retail prices because of increases in production costs. Dinocap is used only to a very limited extent for powdery mildew control in ornamental plants. For both home and garden and commercial ornamental use, dinocap has a negligible market share. There are numerous alternative pesticides which provide equal or better control. There might be an increase in treatment costs if dinocap registrations were canceled for this use.

2. *Comments on the benefits assessment.* There was only one comment on the benefits of the use of dinocap. Rohm and Haas commented that the Agency's estimate of the volume of use of dinocap, 500,000 pounds a year, was overstated by a factor of 5.

The Agency's estimates were based on general survey data, which are inexact for relatively small-volume pesticides such as dinocap. The Agency has accepted Rohm and Haas' estimation of the volume of use of dinocap, and will use a 100,000 pound annual usage figure instead.

3. *Conclusions on benefits assessment.* Rohm and Haas did not question the Agency's per-acre estimates of the benefits of dinocap usage, and therefore the Agency has lowered its estimate of benefits by a factor of five to reflect the reduced usage estimates. The Agency does not believe that this reduction in overall benefits will occur disproportionately from one region to another, so benefits have been uniformly lowered for each region. The short term cost increase for the U.S. apple production is now estimated as $.78 million (range of $.24 to $1.3 million) per year. This impact was regionally distributed as follows: Northwest—$5,000; North Central—$176,600; and East (where dinocap use is concentrated) $600,000. The Agency has also recalculated the percentage of acreage treated with dinocap based on revised agricultural census data and data usage provided by the registrant; this recalculation lowered the Agency's estimate of the number of applicators exposed to dinocap (Ref. 18) to 11,650 before adjustments were made for the reduced usage noted by Rohm and Hass in their comments. A five-fold reduction in the number of applicators based on reduced usage gives an estimate of 2,330 applicators. Assuming, as was done in Preliminary Determination, that 5 percent of dinocap applicators are women, the number of women applicators that might be at risk is now estimated to be 117.

III. Comments of the Scientific Advisory Panel, Secretary of Agriculture and Rohm and Haas

As required under sections 6 and 25 of FIFRA, the Agency provided its Preliminary Determination to the Scientific Advisory Panel (SAP) and the Secretary of Agriculture for their comments. Unit III also includes general comments from Rohm and Haas. Most of the comments submitted by the SAP and Rohm and Haas were addressed in Unit II, Risk and Benefit Assessment.

A. Comments of the Scientific Advisory Panel

Comments of the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel

A Set of Scientific Issues Being Considered by the Agency in Connection with the Special Review of Dinocap.

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) has completed review of the data base supporting the Environmental Protection Agency's (EPA) preliminary decision to cancel most of the registrations of dinocap unless certain modifications to the terms and conditions of registration are made by the registrants. The review was conducted in an open meeting held in Arlington, Virginia, on November 20, 1986. All Panel members, except Dr. Harold L. Bergman and Dr. John J. Lech, were present for the review. In addition, Dr. Bernard Schwetz, Chief of the Systemic Toxicology Branch of the Toxicology Research and Testing Program, National Institute of Environmental Health Sciences, served as an *ad hoc* member of the Panel.

Public notice of the meeting was published in the Federal Register on Friday, October 24, 1986.

Oral statements were received from staff of EPA and from Dr. David R. Streelman of Rohm and Haas Company.

In consideration of all matters brought out during the meeting and careful review of all documents presented by the Agency, the Panel unanimously submits the following report.

Report of Panel Recommendations

Dinocap

The Agency requested the Panel to focus its attention upon a set of scientific issues relating to the Special Review of dinocap. There follows a list of the issues and the Panel's response to each issue:

1. *The weight-of-evidence supports the conclusion that dinocap is a developmental toxicant.*

Panel Response: The Panel agrees that the weight-of-evidence supports the conclusion that dinocap is a developmental toxicant in laboratory animals, specifically in rabbits, by the oral route.

2. *The dermal exposure to dinocap can be estimated using available data.*

Panel Response: The Panel is disappointed with the apparent quality of the data relating to human exposure to dinocap. The Panel is not convinced that the 50 percent exposure level is appropriate for workers wearing protective clothing. The data appear to show that the applicator is at greatest risk. More attention to the applicator's use of protective clothing and/or restriction to certified applicators may be required.

Regarding the exposure assessment, the Panel believes that the plasma/urinary/tissue levels of metabolites should be used as an index of human exposure, rather than concentration on skin surface.

3. *That margins of safety were appropriately estimated using available developmental toxicity data, dermal absorption estimates and applicator exposure.*

Panel Response: The Panel is not certain that the human exposure estimates are suitable. The dermal teratology studies may not permit the determination of a margin of safety. The small group sizes, the lack of estimation of dose, and limitation of teratology studies to one species, limit the certainty of the calculated margin of safety. These data are inconclusive, in the Panel's opinion, and this situation prevents the use of these data to establish a confident no-observed effects level and margin of safety.

There are several possibilities for improving the data set: obtain teratology studies in another species, first by the oral route.

Alternatively or additionally, do dermal teratology studies when absorbed dose has reached a steady state, so that dose can be determined accurately or, where appropriate, use urinary metabolites to quantify the dose that gets metabolized. Parallel human dosimetry vs. urinary metabolites could be conducted.

It should be noted that the Panel is concerned that the dermal absorption estimates in humans reflect only the concentration of dinocap at the skin surface and not the dose delivered to potential target tissues. As noted previously, the Panel wishes to express the need to determine human exposure on the basis of metabolite levels in plasma/urine/tissue, etc.

For the Chairman:

Certified as an accurate report of Findings: Stephen L. Johnson, Executive Secretary, FIFRA Scientific Advisory Panel, Date: November 25, 1986.

The Agency's response to the issues raised by the Panel are found in Unit II of this document. In brief, the Panel expressed concern about the confidence level in margins of safety calculated from the rabbit dermal teratology study. The Panel's focus of concern appears to be lack of supporting urinary, plasma and tissue data to derive an internal absorbed dose. In the Preliminary Determination, the Agency did estimate internal dose by utilizing rabbit and monkey pharmacokinetic studies. However, subsequent to the issuance of the Preliminary Determination, the Agency discovered that the rabbit data was not conducted on the developmentally toxic component of dinocap and that the monkey study was invalid. The Agency is no longer using these studies and has calculated margins of safety in the Final Determination by dividing the NOEL determined from the rabbit dermal teratology study (50 mg/kg/day) by the estimated applicator exposure expressed in mg/kg/day. The Agency believes that the 50 mg/kg/day NOEL is still appropriate notwithstanding the concerns raised by the Panel.

B. Comments of the Secretary of Agriculture

The comments of the Secretary of Agriculture to the Preliminary Determination and draft Notice of Intent to Cancel are printed in full below:

December 17, 1986

Mr. Douglas Campt,

Director, Office of Pesticide Programs (TS–766C), U.S. Environmental Protection Agency, Washington, DC 20460.

Dear Mr. Campt: This is in response to your letter of November 7 forwarding a draft notice of intent to cancel registrations of the pesticide chemical dinocap unless the registrant makes certain modifications to the registration.

The Department does not have any basic objection to the proposed action, however we question the practicality of requiring enclosed cab tractors in eastern orchards. Further, there may be technical problems associated with certain formulations as it relates to water soluble packaging.

Sincerely,

Charles L. Smith,

Coordinator, Pesticides & Pesticide Assessment.

In response to the comment on enclosed cabs, the Agency contacted Dr. Kenneth Hickey, Plant Pathologist, at the Pennsylvania University Fruit Research Laboratory for further information (Refs. 8 and 9). Dr. Hickey indicated that, other than the expense of converting current equipment or purchasing enclosed cab tractors, the system is practical and desirable; he noted that some growers already use enclosed cab tractors.

Generally, expert opinion holds that enclosed cab tractors are already in use, and therefore the Agency considers them as a practical regulatory option to reduce exposure to dinocap. However, for those smaller scale growers who do not already have enclosed cab tractors, purchasing one could be a major expense. It is not known how many eastern growers already have closed cab tractors; however, the Agency believes that for those growers who have pickup trucks which could be fitted to pull airblast sprayers the costs would not represent a major expense.

In addition to the comment by the Secretary on water soluble packaging, Rohm and Haas submitted data showing that water soluble packaging is not practical for the Dikar© formulation of dinocap, since the mancozeb component embrittles the packaging material. This embrittlement and the subsequent rupturing of containers of Dikar© which could be expected to occur, would occasionally result in very high exposures to dinocap from accidents and from clean-up operations. The Agency accepts this comment and will withdraw its proposal to require water soluble packaging for the Dikar© formulation.

IV. Final Determination

In the Preliminary Determination, the Agency proposed several modifications to the terms and conditions of registration of dinocap products. The Agency's proposals were based on its determination that the uses of dinocap as currently registered posed unreasonable adverse effects to applicators and mixer/loaders and the changes in the terms and conditions of registration were necessary to ensure that the benefits of use outweighed the risks of use.

The requirements specified in the Preliminary Determination were listed in

Unit I of this document and are discussed in detail in the Technical Support Document. Based on an evaluation of the comments received in response to the Preliminary Determination as well as additional information received subsequent to its issuance, the Agency has determined that the uses of dinocap continue to pose unreasonable risks to human health. Therefore, in order for the benefits of use to outweigh the risks of use, and to avoid cancellation, registrations of dinocap products must be modified to meet the terms and conditions specified in Unit IV. A. and B. of this document.

A. Product Label Requirements

Based on margins of safety calculated in the Final Determination, several uses of dinocap will require no label changes except the change specified in Unit IV. A.1. below. Those uses that do not require any label changes except the change specified in Unit IV.A.1. include:

(1) Liquid and wettable powder formulations used on peaches/apricots, and field roses.

(2) Liquid formulations used on pears, apples, and in greenhouses.

(3) All home and garden uses.

1. All products must bear a developmental toxicity warning statement as follows:

Use of this product may be hazardous to your health. This product has been determined to cause birth defects in laboratory animals.

2. All liquid formulation products that bear uses for pears must limit the maximum application rate to 0.47 lbs./acre.

3. All wettable powder formulation products that bear uses for apples must bear the following label statement for use on apples:

During the mixing and loading of concentrated dinocap, wear a protective suit of one or two pieces that covers all parts of the body except the head, hands, and feet. Wear chemical-resistant gloves, chemical-resistant apron, and chemical-resistant shoes, shoe coverings, or boots. Wear goggles or a face shield. A hood or hat may also be worn.

Whenever possible it is recommended that application be made from a vehicle with a completely enclosed cab. All vents and windows of the cab should remain closed during application. During application from a vehicle with a completely enclosed cab, wear a long-sleeve shirt and long pants. A clean set of protective clothing and equipment as defined here must be available in case you must exit the cab in treated areas for repairs or other reasons. Always wear protective gloves upon exiting the cab. Remove protective clothing and equipment before reentering the cab to prevent cab contamination.

If application from a vehicle with a completely enclosed cab is not possible and during repair and cleanup of equipment or reentry into treated areas prior to drying of the spray, wear a protective suit of one or two pieces that covers all parts of the body except the hands, feet, and head. Wear chemical-resistant gloves and chemical-resistant shoes, shoe coverings or boots. A hood or hat may also be worn. During airblast or mist blower application a protective hood or wide brim hat must be worn.

Warning: Wearing the protective suit for the prolonged periods required for application may produce heat stress at temperatures above 85 °F on a cloudy day or 80 °F on a sunny day. Application of this product must be conducted from enclosed cab vehicles when the temperature exceeds 85 °F (80 °F on sunny days) or delayed until the temperature drops. After application of the pesticide is completed, remove all clothes and shoes. Shower using soap and water. Redress only in clean clothes. Do not use contaminated clothing. Wash non-disposable protective clothing and protective equipment with soap or detergent and water after each use. Personal and non-disposable protective clothing worn during use must be laundered separately from household articles. Clothing or protective equipment heavily contaminated or drenched with dinocap must be destroyed according to state or local regulations. Heavily contaminated or drenched clothing cannot be adequately decontaminated.

4. All liquid and wettable powder formulations that bear uses for grapes and field cucurbits and all wettable powder formulations that bear uses for pears must bear the following label statement for use on these commodities:

During the mixing and loading of concentrated dinocap, wear the following protective clothing and equipment: Wear a protective suit of one or two pieces that covers all parts of the body except the head, hands, and feet. Wear chemical-resistant gloves, chemical-resistant apron, and chemical-resistant shoes, shoe coverings, or boots. Wear goggles or a face shield. A hood or hat may also be worn.

This product *must* be applied from a vehicle with an enclosed cab. All vents and windows of the cab should remain closed during the application. During application, wear a long-sleeve shirt and long pants. A clean set of protective clothing and equipment as defined below must be available in case you must exit the cab in treated areas for repairs or other reasons. Always wear protective gloves upon exiting the cab. Remove protective equipment before reentering the cab to prevent cab contamination.

Wear the following protective clothing during equipment repair, equipment cleaning, and during reentry to treated areas before spray has dried: A protective suit of one or two pieces that covers all parts of the body except the hands, feet, and head, chemical-resistant gloves and chemical-resistant shoes, shoe coverings or boots. A hood or hat may also be worn.

After application of the pesticide is completed, remove all clothes and shoes. Shower using soap and water. Redress only in clean clothes. Do not use contaminated clothing. Wash non-disposable protective clothing and protective equipment with soap or detergent and water after each use. Personal and non-disposable protective clothing worn during use must be laundered separately from household articles. Clothing or protective equipment heavily contaminated or drenched with dinocap must be destroyed according to state or local regulations. Heavily contaminated or drenched clothing cannot be adequately decontaminated.

B. Basis for Modification to Terms and Conditions of Registration

1. *Developmental toxicity warning statement on all labels.* The Agency believes this statement is necessary for all products to ensure that applicators and mixer/loaders as well as home and garden users are aware that this product is a developmental toxicant in test animals and that users will therefore be more likely to follow use directions carefully and wear required protective clothing. Imposition of this label requirement will not increase costs to growers and therefore will not diminish the benefits of use of this chemical.

2. *Reduced label rate for pears.* Based on information submitted by the registrant that 0.47 lbs./acre is the maximum rate used in actual practice the Agency is requiring that label rates reflect this lower use rate. Without a reduction in the label rate, applicators would have to wear the same protective clothing required for wettable powder formulations used on apples in order to achieve an acceptable margin of safety. Imposition of the reduced application rate will not impact on growers and consequently will not diminish the benefits of use of this chemical.

3. *Protective clothing requirement for wettable powder formulations for use on apples.* In order to achieve acceptable margins of safety, the Agency is requiring that applicators and mixer/loaders wear the specified protective clothing and apply dinocap from an enclosed cab when weather conditions make it impractical to wear all the required clothing. Acquiring the protective clothing required by this Notice should result in only minor costs to growers since the additional protective clothing is already required for mixer/loaders and most growers perform both mixing/loading and application. Therefore, the minimal cost increases that may be incurred for protective clothing does not appreciably alter the benefits of use of wettable powder formulations of dinocap on apples.

4. *Protective clothing and enclosed cab requirement for liquid and wettable powder formulations for grapes and field cucurbits and all wettable powder formulations for pears.* In order to achieve acceptable margins of safety, the Agency is requiring that applicators and mixer/loaders wear the specified protective clothing and apply dinocap from an enclosed cab. Some growers already have tractors with enclosed cabs. For those growers who do not have such tractors, a pickup truck, available in most farm operations, can be used to pull spray equipment in many application situations. Some small scale growers might face an expense of several thousand dollars in purchasing a tractor with an enclosed cab or a pick up truck, or retrofitting a tractor with an enclosed cab. The Agency believes the additional costs of acquiring enclosed cab equipment, minimal in most cases, will not significantly diminish the benefits of dinocap for these uses.

5. *Summary.* The Agency has concluded that if the modifications to the terms and conditions of registration of dinocap products as specified in this Notice are made, the benefits of use outweigh the risks of continued use. The Agency is not imposing the restricted use classification, nor is it requiring the use of closed mixing systems, both measures proposed in the Preliminary Determination, because if the modifications to the terms and conditions of registration of dinocap as specified in this Notice are made, the benefits of use outweigh the risks of continued use, and such further measures are unnecessary.

C. Existing Stocks Provisions

Pursuant to FIFRA section 6(a)(1), "the Administrator may permit the continued sale and use of existing stocks of a pesticide whose registration [is cancelled pursuant to this Notice] to such extent, under such conditions, and for such uses as he may specify, if he determines that such sale or use is not inconsistent with the purposes of [FIFRA] and will not have unreasonable adverse effects on the environment." For purposes of this Notice, "existing stocks" are defined as any quantity of dinocap products subject to this Notice that has been formulated, packaged and labeled for use and is being held for shipment or release or has been shipped and released into commerce prior to the date by which the registration of the product is cancelled pursuant to this Notice.

The Agency has determined that, for cancelled dinocap products, i.e., those products for which the registrant did not make the label changes required by this Notice, no further shipment, distribution, or sale of existing stocks will be permitted after 6 months from the publication date of this Notice unless such products are stickered with the labeling required by this Notice. Registrants may petition the Agency to allow the sale and distribution of unstickered existing stocks. Such a petition should be accompanied by risk and benefit data which the registrant believes would allow the Agency to determine that the benefits of use exceed the risk for the duration of use of such stocks. The Agency is allowing 6 months from the date of this Notice before requiring cancelled products to be stickered in order to have an enforcement policy consistent with the provisions provided for products for which the registrant is making the label changes required by this Notice. In the event that all dinocap products subject to this Notice are cancelled pursuant to this Notice, the Agency will not allow the sale and distribution of any existing stocks of these cancelled products from the date of cancellation unless such products are stickered with the label provisions required by this Notice.

Dinocap products for which registrants are making the label changes required by this Notice may not be released for shipment, distributed or sold by a registrant 6 months from the publication date of this Notice unless such product bears an amended label. Such dinocap products may not be distributed or sold by anyone else 6 months after the publication date of this Notice unless such product bears the amended label *or* is stickered with the amended label.

V. Procedural Matters

This Notice announces the Agency's determination to cancel all registrations of products containing dinocap and deny registration to all applications to register products containing dinocap unless certain modifications are made to the terms and conditions of registration. This Unit explains how registrants may apply to amend their registrations for dinocap products to comply with the terms and conditions discussed in Unit IV.A. of this document. Under sections 6(b)(1) and 3(c)(6) of FIFRA, applicants, registrants, and certain other adversely affected parties may request a hearing on the cancellation and denial actions that this Notice initiates. Unless a hearing is properly requested with regard to a particular registration or application, the registration will be cancelled or the application denied. This unit of the Notice explains how such persons may request a hearing in accordance with the procedures specified in this Notice and the consequences of requesting or failing to request a hearing.

1. *Procedure for amending the terms and conditions of registration to avoid cancellation or denial of application.* Registrants affected by the cancellation actions set forth in this Notice may avoid cancellation by filing an application for an amended registration which contains the label modifications detailed in Unit IV.C. of this Notice. This application must be filed within 30 days of receipt of this Notice or within 30 days from the publication of this Notice, whichever occurs later. Applicants for a registration subject to this Notice must file an amended registration application within the applicable 30-day period to avoid denial of their pending application. Applications must be submitted to: Dennis Edwards, Product Manager 12, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW, Washington, DC 20460, (703-557-2386).

2. *Procedure for requesting a hearing.* To contest the regulatory actions initiated by this Notice, registrants, and any applicant whose applications for registration has been denied, may request a hearing within 30 days of receipt of this Notice, or within 30 days from the publication of this Notice in the Federal Register, whichever occurs later. Any other persons adversely affected by the cancellation action described in this Notice, or any interested person with the concurrence of an applicant whose application for registration has been denied, may request a hearing within 30 days of publication of this Notice in Federal Register. All registrants, applicants, and other adversely affected persons who request a hearing must file the request in accordance with the procedures established by FIFRA and the Agency's Rules of Practice Governing Hearings (40 CFR Part 164). These procedures require that all requests must identify the specific registration(s) by Registration Number(s) and the specific use(s) for which a hearing is requested, and must be received by the Hearing Clerk within the applicable 30-day period. Failure to comply with these requirements will result in denial of the request for a hearing. Requests for a hearing should also be accompanied by objections that are specific for each use of the pesticide product for which a hearing is

requested. Requests for a hearing must be submitted to: Hearing Clerk (A–110), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

a. *Consequences of filing a timely and effective hearing request.* If a hearing on any action initiated by this Notice is requested in a timely and effective manner, the hearing will be governed by the Agency's Rules of Practice for Hearings under FIFRA section 6 (40 CFR Part 164). In the event of a hearing, each cancellation action concerning the specific uses or uses of the specific registered product which is the subject of the hearing will not become effective except pursuant to an order of the Administrator at the conclusion of the hearing. Similarly, in the event of a hearing, each denial of registration which is a subject of the hearing will not become effective prior to the final order of the Administrator at the conclusion of the hearing. The hearing will be limited to the specific registrations or applications for which the hearing is requested.

b. *Consequences of failure to file in a timely and effective manner.* If a hearing concerning the cancellation or denial of registration of a specific dinocap pesticide product subject to this Notice is not requested by the end of the applicable 30 day period, registration of that product will be cancelled, or the denial will be effective.

3. *Separation of Functions.* The Agency's rules of practice forbid anyone who may take part in deciding this case, at any stage of the proceeding from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives (40 CFR 164.7). Accordingly, the following Agency offices, and the staffs thereof, are designated as the judicial staff of the Agency in any administrative hearing on this Notice of Intent to Cancel: The Office of the Administrative Law Judge, the Office of the Judicial Officer, the Deputy Administrator and the members of the staff in the immediate office of the Deputy Administrator, the Administrator, and the members of the staff in the immediate office of the Administrator. None of the persons designated as the judicial staff may have any *ex parte* communication with the trial staff or any other interested person not employed by EPA, on the merits of any of the applicable regulations.

VI. Public Docket

Pursuant to 40 CFR 154.15, EPA has established a public docket for the Dinocap Special Review. The public docket includes (1) this Notice; (2) any other notices pertinent to the Dinocap Special Review; (3) non-CBI documents and copies of written comments or other materials submitted to EPA in response to this Notice, and any other Notice regarding dinocap submitted at any time during the Special Review process; (4) memoranda describing each meeting held during the Special Review process between EPA personnel and any person outside government pertaining to the use of dinocap; and (5) a current index of materials in the dinocap public docket. The docket is available for public inspection from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, in: Room 236, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

VII. References

The references used in this Notice are listed below:

(1) Costlow, R.D., and W.W. Kane. (1984b). Teratology study with Karathane® in Rabbits. Rohm and Haas Protocol 83P–302, Report No. 83R–113, March 30, 1984.

(2) Costlow, R.D., and W.W. Kane. (1984a). Teratology study with Karathane® in Rabbits (amendment). Rohm and Haas Protocol 83P–060, Report No. 83R–022, December 7, 1984.

(3) Costlow, R.D., and M.F. Lutz. (1985a). Range Finding Dermal Study with Karathane® Formulation in Rabbits. Rohm and Haas No. Report 84R–248, draft dated February 25, 1985.

(4) Costlow, R.D., and M.F. Lutz. (1985b). Dermal Teratology Study with Karathane® Technical in Rabbits. Rohm and Haas Protocol 84P–470, Report 85R–16, draft dated February 25, 1985.

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(6) DiDonato, L.J., and S.L. Longacre. (1985). Karathane® Pharmacokinetic Study in Female Rabbits. Rohm and Haas Protocol No. 84P–563, Report No. 85R–002, draft dated February 25, 1985.

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(8) Hickey, K.D. (1986a). Fruit Research Lab., Pennsylvania State University, Biglerville, PA. Personal Communication to E.N. Pelletier, USEPA, Washington, DC. May 14, 1986.

(9) Hickey, K.D. (1986b). Fruit Research Lab., Pennsylvania State University, Biglerville, PA. Personal communication to J.L. Andersen, USEPA, Washington, DC. July 1, 1986.

(10) Honeycutt, R.C. (1985). Field Worker Exposure: The Usefulness of Estimates Based on Generic Data in Dermal Exposure Related to Pesticide Use. American Chemical Society Symposium Series 273, pp. 369–75.

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(12) Maddy, K.T. and H.R. Fong. (1983). Monitoring Worker Exposure to Dinoseb. California Department of Food and Agriculture Report HS–1079, April 28, 1983.

(13) Nigg, H. (1986). Dicofol Exposure to Florida Citrus Applicators: Effects of Protective Clothing. Archives of Environmental Contamination and Toxicology 15:121–134.

(14) Nigg, H., *et al.* (1987). Pesticide Exposure to Florida Greenhouse Applicators. Draft Report under EPA Grant CR–810743, April 1987.

(15) Offutt, C.K. (1985). Review of Reentry Data [on Dinocap]. Memorandum to Jay Ellenberger, Product Manager, Insecticide-Rodenticide Branch, RD, OPP, USEPA. Washington, DC. April 15, 1985.

(16) Opinion Research Corporation (O.R.C.) (1985). An Evaluation of Monsanto's Grower Meetings Final Report. June 1985.

(17) Pelletier, E.N. (1984). Report on Use Practice Data Relative to Daily Exposure to Dinocap. Memorandum to David Severn, Exposure Assessment Branch, HED, OPP, USEPA. Washington, DC. May 4, 1984.

(18) Pelletier, E.N. (1988). Numbers of Application Workers Estimated to Be Exposed to Dinocap Usage. Memorandum to Paul Parsons, Special Review Branch, RD, OPP, USEPA. USEPA. Washington, DC. August 23, 1988.

(19) Pelletier, E.N., J.L. Andersen, and J.E. Hogue. (1986). Benefits Summary for the Dinocap PD 2/3, USEPA, OPP, BUD, SSB. Washington, DC. July 14, 1986.

(20) Rogers, J.M., *et al.* (1986). Teratogenic Effects of the Fungicide Dinocap in the Mouse. Teratogenesis, Carcinogenesis, and Mutagenesis 6:375–81.

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(22) Skalko, R.G. and E.G. Johnson. (1988). Consensus Workshop on the Evaluation of Maternal and Developmental Toxicity Work Group I Report: End Points of Maternal and Developmental Toxicity. Teratogenesis, Carcinogenesis, and Mutagenesis 7:307–10.

(23) Waldron, A.C. (1985). Minimizing Exposure Risk for the Mixer/Loader, Applicator, and Field Worker. American Chemical Society Symposium Series 273.

(24) Webster, R.C. and H.I. Maibach. (1985). Karathane®: Percutaneous Absorption of 14_C-Karathane (14_C-DNHPC) in Rhesus Monkeys following Single Topical Application. Rohm and Haas Protocol 84P–480, Report No. 85RC–49, November 25, 1985.

All but the published references concerning this Final Determination on dinocap are available for inspection in Room 236, 1921 Jefferson Davis Highway, Arlington, Virginia, from 9 a.m. to 4 p.m. Monday through Friday, except legal holidays.

Dated: January 25, 1989.

John A. Moore,

Acting Administrator.

[FR Doc. 89–2656 Filed 2–3–89; 8:45 am]

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The **List of Public Laws** will be resumed when bills are enacted into public law during the first session of the 101st Congress, which convened on January 3, 1989. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202–275–3030).

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1987. The CFR volume issued January 1, 1987, should be retained.

[3] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1988. The CFR volume issued as of Apr. 1, 1980, should be retained.

[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1988. The CFR volume issued as of July 1, 1986, should be retained.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 26

Determination of World Price for Upland Cotton

AGENCY: Office of the Secretary, USDA.
ACTION: Final Rule.

SUMMARY: The purpose of this rule is to adopt as a final rule the proposed rule published at 53 FR 47720 which would amend the regulations found at 7 CFR Part 26 with respect to the procedure for selecting the northern Europe price quotations which are used to calculate the Northern Europe price and the Northern Europe coarse count price during the period in which both current and forward shipment prices are quoted. This action is initiated under the authority of section 103A(a)(5)(E) (i)–(iii) of the Agricultural Act of 1949, as amended, in order to enhance the effectiveness of the upland cotton price support program.

EFFECTIVE DATE: February 3, 1989.

FOR FURTHER INFORMATION CONTACT: Charles V. Cunningham, Leader, Fibers Group, Commodity Analysis Division, USDA–ASCS, Room 3758 South Building, P.O. Box 2415, Washington, DC 20013 or call (202) 447–7954.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been designated as "not major." It has been determined that these provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The titles and numbers of the Federal Assistance Programs to which this final rule applies are: Commodity Loans and Purchases—10.051 and Cotton Production Stabilization—10.052 as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Analysis completed when 7 CFR Part 26 was originally added to the Code of Federal Regulations adequately covers these amendments. Therefore, a new Regulatory Flexibility Analysis has not been prepared.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

A proposed rule was published in the **Federal Register** on November 25, 1988 (53 FR 47720) which would amend regulations found at 7 CFR Part 26 with respect to the procedure for selecting the northern Europe price quotations used to calculate the Northern Europe price and the Northern Europe coarse count price during the period in which both current and forward shipment prices are quoted. The proposed rule provided for a 30-day public comment period which ended December 27, 1988. One comment was received from an organization representing U.S. cotton shippers.

Discussion of Comments

The respondent endorsed the procedure for selecting the northern Europe price quotations used to calculate the Northern Europe price and the Northern Europe coarse count price during the period in which both current and forward shipment prices are quoted. The respondent also supported the six-week transition period from using current shipment prices to using all forward shipment prices in calculating the adjusted world price for upland cotton.

The respondent recommended that, instead of utilizing the procedure to adjust the Northern Europe price to average U.S. spot market location set forth in the proposed rule, the actual transportation cost be utilized. However, the respondent further recommended that in the event the procedure set forth in the proposed rule was adopted, the difference between the average price quotations for the U.S. Memphis territory and the California/Arizona territory as quoted each Thursday for Middling (M) 1 3/32 inch cotton C.I.F. northern Europe and the average price of M 1 3/32 inch (micronaire 3.5 through 4.9) cotton as quoted each Thursday in the designated U.S. spot markets for any week not exceed a range of 95 percent below or 105 percent above the actual transportation cost, rather than the range of 85 to 115 percent set forth in the proposed rule.

The respondent also submitted comments relating to an issue for which comments were not requested.

The respondent's recommendation to adjust the Northern Europe price to average designated spot market location by utilizing the actual cost of transportation or, in lieu thereof, substituting a value that is 5 percent above or below the actual transportation cost for any week in which the difference between the average price quotations for the U.S. Memphis territory and the California/Arizona territory as quoted each Thursday for M 1 3/32 inch cotton C.I.F. northern Europe and the average price of M 1 3/32 inch (micronaire 3.5 through 4.9) cotton as quoted each Thursday in the designated U.S. spot markets are substantially above or below the actual transportation cost was not adopted since the cost associated with transporting U.S. cotton to northern Europe may fluctuate over time. Accordingly, it has been determined that the range for substituting a value which is either 5 percent above or 5 percent below the actual cost of transportation is too narrow to allow any developing trends in transportation costs to be manifested.

The respondent's recommendation to further adjust the adjusted world price to reflect differences between the offering prices and actual transaction prices of cotton growths quoted in

northern Europe also was not adopted since the data needed to complete a historical analysis of such differences and to calculate an accurate adjustment in a timely fashion on a regular basis are not readily available.

In order to mitigate any possible adverse market impact, it has been determined that this final rule will be effective as of 12:01 a.m. Friday, February 3.

List of Subjects in 7 CFR Part 26

Upland cotton, World market price.

Final Rule

Accordingly, the proposed rule published at 53 FR 47720 is hereby adopted as follows as a final rule without change:

PART 26—[AMENDED]

1. The authority citation for Part 26, Subpart A continues to read as follows:

Authority: Sec. 103A(a)(5)(E), Pub. L. 81–439, 639 Stat. 1031, as amended (7 U.S.C. 1444–1(a)(5)(E)).

2. Section 26.2 is revised to read as follows:

§ 26.2 Determination of the prevailing world market price for upland cotton.

The prevailing world market price for upland cotton shall be determined by the Secretary of Agriculture as follows:

(a) During the period when only one daily price quotation is available for each growth quoted for Middling one and three-thirty-second inch (M 1 3/32 inch) cotton C.I.F. (cost, insurance, and freight) northern Europe, the prevailing world market price for upland cotton shall be based upon the average of the quotations for the preceding Friday through Thursday for the five lowest-priced growths of the growths quoted for M 1 3/32 inch cotton C.I.F. northern Europe.

(b) During the period when both a price quotation for cotton for shipment no later than August/September of the current calendar year (hereinafter referred to as the "current shipment price") and a price quotation for cotton for shipment no earlier than October/November of the current calendar year (hereinafter referred to as the "forward shipment price") are available for the growths quoted for M 1 3/32 inch cotton C.I.F. northern Europe, the prevailing world market price for upland cotton shall be based upon the following:

Beginning with the first week covering the period Friday through Thursday which includes April 15 or, if both the average of the current shipment prices for the preceding Friday through Thursday for the five lowest-priced growths of the growths quoted for M 1 3/32 inch cotton C.I.F. northern Europe (hereinafter referred to as the "Northern Europe current price") and the average of the forward shipment prices for the preceding Friday through Thursday for the five lowest-priced growths of the growths quoted for M 1 3/32 inch cotton C.I.F. northern Europe (hereinafter referred to as the "Northern Europe forward price") are not available during that period, beginning with the first week covering the period Friday through Thursday after the week which includes April 15 in which both the Northern Europe current price and the Northern Europe forward price are available, the prevailing world market price for upland cotton shall be based upon the result calculated by the following procedure:

Weeks 1 and 2: Northern Europe price = (2 × Northern Europe current price + Northern Europe forward price) /3.

Weeks 3 and 4: Northern Europe price = (Northern Europe current price + Northern Europe forward price) /2.

Weeks 5 and 6: Northern Europe price = (Northern Europe current price + 2 × Northern Europe forward price) /3.

Weeks 7 through July 31: Northern Europe price = Northern Europe forward price.

(c) The prevailing world market price for upland cotton as determined in accordance with § 26.2 (a) or (b) shall hereinafter be referred to as the "Northern Europe price."

(d) If quotes are not available for one or more days in the five-day period, the available quotes during the period will be used. If no quotes are available during the Friday through Thursday period, the prevailing world market price shall be based upon the best available world price information, as determined by the Secretary.

3. Section 26.3(b)(1) is revised to read as follows:

§ 26.3 Adjusted world price for upland cotton.

* * * * * *

(b) * * *

(1) The Northern Europe price shall be adjusted to average designated U.S. spot market location by deducting the average difference in the immediately preceding 52-week period between:

(i)(A) The average of price quotations for the U.S. Memphis territory and the California/Arizona territory as quoted each Thursday for M 1 3/32 inch cotton C.I.F. northern Europe during the period when only one daily price quotation for such growths is available, or

(B) The average of the current shipment prices for U.S. Memphis territory and the California/Arizona territory as quoted each Thursday for M 1 3/32 inch cotton C.I.F. northern Europe during the period when both current shipment prices and forward shipment prices for such growths are available; and

(ii) The average price of M 1 3/32 inch (micronaire 3.5 through 4.9) cotton as quoted each Thursday in the designated U.S. spot markets.

* * * * * *

4. Section 26.3(c) is revised to read as follows:

§ 26.3 Adjusted world price for upland cotton.

* * * * * *

(c) In determining the average difference in the 52-week period as provided in paragraph (b)(1) of this section:

(1) If the difference between the average price quotations for the U.S. Memphis territory and the California/Arizona territory as quoted for M 1 3/32 inch cotton C.I.F. northern Europe and the average price of M 1 3/32 inch (micronaire 3.5 through 4.9) cotton as quoted each Thursday in the designated U.S. spot markets for any week is:

(i) More than 115 percent of the estimated actual cost associated with transporting U.S. cotton to northern Europe, then 115 percent of such actual cost shall be substituted in lieu thereof for such week.

(ii) Less than 85 percent of the estimated actual cost associated with transporting U.S. cotton to northern Europe, then 85 percent of such actual cost shall be substituted in lieu thereof for such week.

(2) If Thursday price quotations are not available for either the northern Europe or the spot market quotations for any week, that week will not be taken into consideration.

* * * * * *

5. Section 26.3(e)(2) is revised to read as follows:

§ 26.3 Adjusted world price for upland cotton.

* * * * * *

(e) * * *

(2) The adjustment for upland cotton provided for by paragraph (e)(1) of this section shall be determined by deducting from the adjusted world price:

(i) The difference between the Northern Europe price, and

(A) During the period when only one daily price quotation for each growth quoted for "coarse count" cotton C.I.F. northern Europe is available, the average of the quotations for the corresponding Friday through Thursday for the three lowest-priced growths of the growths quoted for "coarse count" cotton C.I.F. northern Europe.

(B) During the period when both current shipment prices and forward shipment prices are available for the growths quoted for "coarse count" cotton C.I.F. northern Europe, the result calculated by the following procedure:

Beginning with the first week covering the period Friday through Thursday which includes April 15 or, if both the average of the current shipment prices for the preceding Friday through Thursday for the three lowest-priced growths of the growths quoted for "coarse count" cotton C.I.F. northern Europe (hereinafter referred to as the "Northern Europe coarse count current price") and the average of the forward shipment prices for the preceding Friday through Thursday for the three lowest-priced growths of the growths quoted for "coarse count" cotton C.I.F. northern Europe (hereinafter referred to as the "Northern Europe coarse count forward price") are not available during that period, beginning with the first week covering the period Friday through Thursday after the week which includes April 15 in which both the Northern Europe coarse count current price and the Northern Europe coarse count forward price are available:

(*1*) Weeks 1 and 2: Northern Europe coarse count price = (2 × Northern Europe coarse count current price + Northern Europe coarse count forward price)/3.

(*2*) Weeks 3 and 4: Northern Europe coarse count price = (Northern Europe coarse count current price + Northern Europe coarse count forward price)/2.

(*3*) Weeks 5 and 6: Northern Europe coarse count price = (Northern Europe coarse count current price + 2 × Northern Europe coarse count forward price)/3.

(*4*) Week 7 through July 31: The Northern Europe coarse count forward price, minus

(ii) The difference between the applicable loan rate for a crop of upland cotton for M 1 3/32 inch (micronaire 3.5 through 4.9) cotton and the loan rate for a crop of upland cotton for SLM 1 1/32 inch (micronaire 3.5 through 4.9) cotton.

(iii) The result of the calculation as determined in accordance with § 26.3(e)(2) shall hereinafter be referred to as the "Northern Europe coarse count price."

* * * * * *

Signed at Washington, DC on January 25, 1989.

Peter C. Myers,

Acting Secretary.

[FR Doc. 89–2901 Filed 2–2–89; 4:57 pm]

BILLING CODE 3410-05-M

Federal Grain Inspection Service

7 CFR Part 68

Miscellaneous Reference Changes and Corrections

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) is amending citations referenced in certain sections of the Part 68 regulations to reflect changes in the regulations of the Office of the Secretary of Agriculture; and to correct the fee schedule to remove references to hay and straw and their related inspection fees.

EFFECTIVE DATE: February 7, 1989.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., RM, USDA, FGIS, Room 0628 South Building, P.O. Box 96454, Washington, DC 20090–6454, telephone: (202) 475–3428.

SUPPLEMENTARY INFORMATION: The regulations of the Office of the Secretary of Agriculture relating to official records were revised on December 31, 1987 at 52 FR 49386. As part of that action, some of the section numbers to which FGIS' regulations refer, were changed. As a result, the appropriate sections of Part 68, Subpart A, are being amended to show the correct citations. Further, § 68.90 *Fees for certain Federal inspection services* is being revised to remove references to hay and straw and their related inspection fees. On March 13, 1987 at 52 FR 7817, FGIS removed the U.S. Standards for Hay and the U.S. Standards for Straw as official standards from the Part 57 regulations under the Agricultural Marketing Act of 1946. In addition, the fees related to the inspection of hay and straw were removed from the Part 68 regulations. However, on February 9, 1988 at 53 FR 3721 the references to hay and straw and their related fees for inspection service were inadvertently reentered into § 68.90 of the repromulgated Part 68 regulations. This final rule makes necessary corrections to the FGIS regulations.

These changes are technical and nonsubstantive; further pursuant to section 553(b)(3)(A) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(A)) (APA), the requirements of general notice of proposed rulemaking do not apply to interpretive rules, general policy statements, or rules regarding agency organization, procedure, or practice. Since this rule relates to general agency management, including procedure and practice, and to agency organization, the requirements regarding general notice of rulemaking under the APA do not apply. For the same reasons, the relevant provisions of Departmental Regulation 1512–1, Executive Order 12291, and the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are also not applicable. Additionally, upon good cause, the provisions of section 553(d) of the APA (5 U.S.C. 553(d)) concerning postponing the effective date of a substantive rule until 30 days after publication in the **Federal Register** do not apply to this action.

List of Subjects in 7 CFR Part 68

Administrative practices and procedures—FGIS, Agricultural commodities, Export.

For reasons set forth in the preamble, 7 CFR Part 68 is amended as follows:

PART 68—[AMENDED]

1. The authority citation for Part 68 continues to read as follows:

Authority: Secs. 202–208, 60 Stat. 1087, as amended (7 U.S.C. 1621 *et seq.*).

§ 68.11 [Amended]

2. Section 68.11(a) is amended by removing the citations "§§ 1.1 through 1.16" and "(7 CFR 1.1 through 1.16)" and inserting in their place, "§§ 1.1 through 1.23" and "(7 CFR 1.1 through 1.23)" respectively.

3. Sections 68.11 (b) and (c) are amended by removing the citation "7 CFR 1.2(a)" and inserting in its place, "7 CFR 1.5".

4. Section 68.11(d) is amended by removing the citation "7 CFR 1.3(a)" and inserting in its place, "7 CFR 1.6".

5. Section 68.11(e) is amended by removing the citation "7 CFR 1.3(e)" and inserting in its place, "7 CFR 1.13".

6. Section 68.90 is amended by revising the undesignated center heading preceding the tables, and Table 2 to read as follows:

§ 68.90 Fees for certain Federal inspection services.

* * * * * *

Fees for Inspection of Hops, Pulses, and Miscellaneous Processed Commodities

* * * * * *

TABLE 2.—UNIT RATES

Service [1]	Beans, peas, lentils	Hops	Non-graded, non-processed commodities
Lot or sample (per lot or sample)		$22.40	
Field run (per lot or sample)	$15.00		
Other than field run (per lot or sample)	11.20		
Factor analysis (per factor)	5.75		$3.75
Extra Copies of certificates (per copy)	3.00	3.00	3.00

[1] Fees apply to determinations (original or appeal) for kind, class, grade, factor analysis, and any other quality designation as defined in the official U.S. Standards or applicable instructions when performed at other than the point of service.

* * * * * *

Dated: February 1, 1989.
D.R. Galliart,
Acting Administrator.
[FR Doc. 89-2809 Filed 2-6-89; 8:45 am]
BILLING CODE 3410-EN-M

7 CFR Part 800

Miscellaneous Reference Changes and Corrections

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) is amending citations referenced in certain sections of the Part 800 regulations to reflect changes in the regulations of the Office of the Secretary of Agriculture; and is amending certain Office of Management and Budget (OMB) control numbers to reflect current authorities. In addition, FGIS is amending the regulations to reflect its current mail address.

EFFECTIVE DATE: February 7, 1989.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., RM, USDA, FGIS, Room 0628 South Building, P.O. Box 96454, Washington, DC 20090-6454, telephone: (202) 475-3428.

SUPPLEMENTARY INFORMATION: The regulations of the Office of the Secretary of Agriculture relating to official records were revised on December 31, 1987 at 52 FR 49386. As part of that action, some of the section numbers to which FGIS' regulations refer, were changed. As a result, the appropriate sections of Part 800 are being amended to show the correct citations. Further, under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the OMB clearance authorities for information collection and reporting requirements of FGIS have been combined into two authorities. As a result, the OMB clearance numbers relating to certain sections of FGIS' regulations were changed and some additional sections of the regulations were included under these two clearance numbers. This final rule is necessary to add the appropriate OMB clearance numbers to some sections of the FGIS regulations and correct references in other sections. Also, FGIS recently changed its mail address from a street address to a post office box number. As a result of this action, applicable sections of the Part 800 regulations are being amended to reflect this change.

In addition to the above, a change is needed to § 800.73(c) of the regulations to remove an unnecessary section reference. As promulgated in March of 1980, the FGIS regulations contained a paragraph (b) as part of § 800.47 regarding agency or field office expenses when a request for service has been withdrawn by an applicant. This paragraph was removed by a final rule dated August 2, 1984 (49 FR 30911) because the applicable information was duplicated elsewhere in the regulations. A reference to the section should have been removed from § 800.73(c). This final rule makes the necessary change.

These changes are technical and nonsubstantive; further pursuant to section 553(b)(3)(A) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(A)) (APA), the requirements of general notice of proposed rulemaking do not apply to interpretive rules, general policy statements, or rules regarding agency organization, procedure, or practice. Since this rule relates to general agency management, including procedure and practice, and to agency organization, the requirements regarding general notice of rulemaking under the APA do not apply. For the same reasons, the relevant provisions of Departmental Regulation 1512-1, Executive Order 12291, and the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are also not applicable.

Additionally, upon good cause, the provisions of section 553(d) of the APA (5 U.S.C. 553(d)) concerning postponing the effective date of a substantive rule until 30 days after publication in the **Federal Register** do not apply to this action.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure, Export, Grain.

PART 800—GENERAL REGULATIONS

For the reasons set out in the preamble, 7 CFR Part 800 of the regulations is amended as follows:

1. The authority citation for Part 800 continues to read as follows:

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

§§ 800.31, 800.32, 800.33, 800.45, 800.46, 800.172, 800.187, 800.197, and 800.198 [Amended]

2. The parenthetical phrases at the end of §§ 800.31, 800.32, 800.33, 800.45, 800.46, 800.172, 800.187, 800.197, and 800.198 are amended by removing the control number "0580-0003" and inserting in its place "0580-0012".

§ 800.37 [Amended]

3. The parenthetical phrase at the end of § 800.37 is amended by removing the control number "0580-0008" and inserting in its place "0580-0012".

§§ 800.60 and 800.185 [Amended]

4. The parenthetical phrases at the end of §§ 800.60 and 800.185 are amended by removing the control number "0580-0006" and inserting in its place "0580-0011".

§§ 800.195 and 800.196 [Amended]

5. The parenthetical phrases at the end of §§ 800.195 and 800.196 are amended by removing the control numbers "0580-0009" and "0580-0006" and inserting in their place "0580-0012" and "0580-0011" respectively.

§§ 800.125 and 800.136 [Amended]

6. The following parenthetical phrase is added at the end of §§ 800.125 and 800.136.

(Approved by the Office of Management and Budget under control number 0580-0012)

§ 800.5 [Amended]

7. Section 800.5(c) is amended by removing the citations "§ 2.68(a)(15)" and "(7 CFR 2.68(a)(15))" and inserting in their place "§ 2.68(a)(14)" and "(7 CFR 2.68(a)(14))" respectively.

§ 800.7 [Amended]

8. Section 800.7 is amended by removing the address "at 14th Street and Independence Avenue, SW., Washington, DC 20250" and inserting its place "P.O. Box 96454, Washington, DC 20090-6454".

§ 800.8 [Amended]

9. Section 800.8(a) is amended by removing the citations "1.1 through 1.16" and "(7 CFR 1.1 through 1.16)" and inserting in their place "1.1 through 1.23" and "(7 CFR 1.1 through 1.23)" respectively.

10. Sections 800.8(b) and 800.8(c) are amended by removing the citation "7 CFR 1.2(a)" and inserting in its place "7 CFR 1.5".

11. Section 800.8(d) is amended by removing the citations "7 CFR 1.3(a)" and inserting in its place "7 CFR 1.6". Section 800.8(d) is further amended by removing the address "14th Street and Independence Avenue, SW., Washington, DC 20250" and inserting in its place "P.O. Box 96454, Washington, DC 20090-6454".

12. Section 800.8(e) is amended by removing the citation "7 CFR 1.3(e)" and inserting in its place "7 CFR 1.13". Section 800.8(e) is further amended by removing the address "U.S. Department of Agriculture", Washington, DC 20250" and inserting in its place "P.O. Box 96454, Washington, DC 20090-6454".

§ 800.73 [Amended]

13. Section 800.73(c) is amended by removing the phrase at the end of the paragraph "or under the provisions set forth in § 800.47(b)".

Dated: February 1, 1989.
D.R. Galliart,
Acting Administrator.
[FR Doc. 89-2810 Filed 2-6-89; 8:45 am]
BILLING CODE 3410-EN-M

7 CFR Part 802

Display of OMB Control Number

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This amendment displays the control number assigned to information collection requirements of the Federal Grain Inspection Service (FGIS) pursuant to the regulations promulgated by the Office of Management and Budget (OMB) and the Paperwork Reduction Act of 1980.

EFFECTIVE DATE: February 7, 1989.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., Management Improvement and Information Programs, USDA, FGIS, Room 0628 South Building, P.O. Box 96454, Washington, DC 20090-6454, telephone (202) 475-3428.

SUPPLEMENTARY INFORMATION: This amendment incorporates approved OMB control numbers for information collection into Part 802 of the regulations as required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), and 5 CFR Part 1320 of the regulations, Controlling Paperwork Burden on the Public.

These changes are technical and nonsubstantive; further pursuant to section 553(b)(3)(A) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(A)) (APA), the requirements of general notice of proposed rulemaking do not apply to interpretive rules, general policy statements, or rules regarding agency organization, procedure, or practice. Since this rule relates to general agency management, including procedure and practice, and to agency organization, the requirements regarding general notice of rulemaking under the APA do not apply. For the same reasons, the relevant provisions of Departmental Regulation 1512-1, Executive Order 12291, and the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are also not applicable. Additionally, upon good cause, the provisions of section 553(d) of the APA (5 U.S.C. 553(d)) concerning postponing the effective date of a substantive rule until 30 days after publication in the **Federal Register** do not apply to this action.

List of Subjects in 7 CFR Part 802

Administrative practices and procedures, Export, Grain, Incorporation by reference.

For reasons set out in the preamble, 7 CFR Part 802 is amended as follows:

PART 802—[AMENDED]

1. The authority citation for Part 802 continues to read as follows:

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

§ 802.1 [Amended]

2. Section 802.1 is amended by adding a parenthetical phrase at the end of the section to read as follows:

(Approved by the Office of Management and Budget under control number 0580-0011).

Dated: February 1, 1989.
D. R. Galliart,
Acting Administrator.
[FR Doc. 89-2811 Filed 2-6-89; 8:45 am]
BILLING CODE 3410-EN-M

Rural Electrification Administration

7 CFR Part 1735

Standard Forms of Electric Contracts

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) hereby amends 7 CFR Chapter XVII by adding: (1) Part 1735, REA Standard Forms of Electric Contracts; and (2) § 1735.1, List of Standard Forms of Electric Contracts. The purpose of § 1735.1 is to provide a list of the current REA standard forms of contracts available for use by REA electric borrowers as required when obtaining professional services, purchasing materials and equipment, and constructing electric facilities. The listing also provides: (1) Purpose of each form; (2) the date of the current issue; and (3) the source where copies may be obtained. This action does not change any of REA's current requirements and procedures. It is being published in final form since it is a listing of existing forms with no changes in REA procedures or requirements.

EFFECTIVE DATE: February 7, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. H. Robert Lash, Transmission Branch, Electric Staff Division, Rural Electrification Administration, Room 1263, South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 382-9098.

The Impact Analysis describing the options considered in developing this rule is available on request from the above office.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 *et seq.*), the Rural Electrification Administration (REA) hereby amends 7 CFR Chapter XVII by adding: (1) Part 1735, REA Standard Forms of Electric Contracts; and (2) § 1735.1, List of Standard Forms of Electric Contracts. Copies of all the contract forms are available upon request from the addresses stated in § 1735.1. This action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; (3) result in significant adverse effects on competition, employment, investment or productivity, innovations, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets and; therefore, has been determined to be "not major". These actions do not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.* (1976)) and, therefore, does not require an environmental impact statement or an environmental assessment. This program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with state and local officials.

This regulation contains no information or recordkeeping requirements which require approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq.*).

Background

REA has issued a series of publications entitled "bulletins" which serve to implement the policy, procedures, and requirements for administering its loan and loan guarantee programs and the security instruments which provide for and secure REA financing. REA has issued in this series a number of bulletins that set forth REA's requirements and procedures for the purchase and installation of such items of material and equipment, and the construction of

system facilities by REA electric borrowers. To assist the REA borrowers and promote efficiency, a listing of all the electric program contracts involved in these activities has been established to show the purpose of each contract, its current issue date, and the source where copies may be obtained.

List of Subjects in 7 CFR Part 1735

Loan programs—electric.

In view of the above, REA hereby amends 7 CFR Chapter XVII by adding Part 1735 to read as follows:

PART 1735—STANDARD FORMS OF ELECTRIC CONTRACTS

Authority: 7 U.S.C. 901 *et seq.*; 7 U.S.C. 1921 *et seq.*

§ 1735.1 List of standard forms of electric contracts.

Following is a list of the current REA standard forms of contracts that REA prepared for use by electric borrowers when procuring engineering and architectural services, purchasing distribution and transmission materials and equipment, and constructing generating facilities with REA loan funds. Copies of the contract forms are available for the sources indicated in the testing. A notice of any change in these contract forms will be published in the Federal Register.

REA STANDARD FORMS OF ELECTRIC PROGRAM CONTRACTS

REA form No.	Issue date	Title	Purpose	Source of copies[1]
168b	5-82	Contractor's bond	Used in REA Forms 200, 203, 764, 790, 830 & 831	In respective contract form.
168c	4-79	Contractor's bond (less than $1 million)	In lieu of REA Form 168b, used when contractor's surety has accepted a small business administration guarantee.	REA.
173	3-55	Materials contract	Used for distribution, transmission, general plant and minor generation material and equipment purchases.	REA.
187	9-66	Certificate of completion contract construction	Used in REA Form 200	In respective contract form.
198	3-73	Equipment contract	Used for equipment purchases	REA.
200	9-72	Construction contract generating	Used for generating plant construction or for the furnishing and installation of major items of equipment.	REA.
201	7-72	Right-of-way clearing contract	Used for distribution right-of-way clearing work which is to be performed separate from line construction.	REA.
203	3-72	Transmission system right-of-way clearing contract.	Used for transmission line right-of-way clearing work which is to be performed separate from line construction.	REA.
211	8-78	Engineering service contract for the design and construction of a generating plant.	Used to obtain the services of an engineer for the design and construction of a generating plant. This contract is optional if under $50,000.	REA.
215	5-67	Engineering service contract system planning	Used to obtain the services of an engineer for system planning.	REA.
220	1-82	Architectual services contract	Used to obtain the architectural services for the design, preparation of drawings and description of material for headquarters buildings.	REA.
224	3-55	Waiver and release of lien	Used in REA Forms 200, 203, 764, 830, and 831	In respective contract form.
231	3-55	Waiver and release of lien	Used in REA Forms 200, 203, 764, 830, and 831	In respective contract form.
235	6-72	Engineering service contract—electric substation design and construction.	Used to obtain the services of an engineer for the design and construction of substations.	REA.
236	6-72	Engineering service contract—electric system design and construction.	Used to obtain the services of an engineer for the design and construction of distribution and transmission facilities.	REA.
237	6-72	Engineering service contract—electric system design and construction.	Used to obtain the services of an engineer for the design and construction of distribution and transmission facilities.	REA.
242	11-58	Assignment of engineering service contract	Used to assign engineering service contract	REA.
244	12-55	Engineering service contract—special services	Used to obtain the engineering services for work not covered by other engineering service contracts.	REA.
251	5-53	Material receipt	Used in REA Forms 764, 830, and 831	In respective contract form.
257	3-73	Contract to construct buildings	Used to construct headquarter buildings, generating plant buildings and other structure construction.	GPO [2].
270	7-70	Equal opportunity addendum	Addendum to contracts not having current equal opportunity provisions.	REA.
297	12-55	Engineering service contract—retainer for consultation services.	Used to obtain the services of an engineer for consultation services.	REA.
307	4-60	Bid bond	Used in REA Forms 200, 203, 257, 764, 830 and 831	In respective contract form.
458	3-55	Material contract	Used to obtain generating plant material and equipment purchases over $10,000, not requiring acceptance tests at the project site.	REA.
459	9-58	Engineering service power study	Used to obtain the services of an engineer to do a power study.	REA.
764	8-72	Substation and switching station erection contract.	Used to construct substations and switching stations	REA.
786	3-72	Electric system communications and control equipment contract.	Used for delivery and installation of equipment for system communications.	REA.
790	5-70	Distribution line extension construction contract (labor & materials).	Used for limited distribution construction accounted for under work order precedure.	GPO [2].

REA STANDARD FORMS OF ELECTRIC PROGRAM CONTRACTS—Continued

REA form No.	Issue date	Title	Purpose	Source of copies[1]
792	5-70	Distribution line extension construction contract (labor only).	Used for limited distribution construction accounted for under work order procedure.	GPO [2].
792a	10-82	Contractor's bond	Used in REA Forms 201 and 792	In respective contract form.
792b	2-70	Certificate of construction and indemnity agreement.	Used in REA Forms 201, 790, and 792	In respective contract form.
792c	5-70	Supplemental contract for additional project	Used in REA Forms 201, 790 and 792	In respective contract form.
830	8-72	Electric system construction contract (labor & material).	Used for distribution and/or transmission project construction.	GPO [2].
831	2-73	Electric transmission construction contract (labor & material).	Used for transmission project construction	GPO [2].

[1] A limited number of copies of the publication will be furnished by REA upon request. As this document is published by the Federal Government and is, therefore, in the public domain, additional copies may be duplicated locally by any user as desired. Requests for copies should be sent to the Director, Administrative Services Division, U.S. Department of Agriculture, Rural Electrification Administration, Washington, DC 20250. The telephone number of the REA publication office is (202) 382-8674.

[2] Requests for copies should be submitted to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Telephone orders may also be placed, using Mastercard or Visa, by calling (202) 783-3238.

(7 U.S.C. 901 *et seq.*; 7 U.S.C. 1921 *et seq.*)

Dated: October 12, 1988.

Harold V. Hunter,

Administrator.

[FR Doc. 89-2844 Filed 2-6-89; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 101

INS Number: 1006-89

Rule Revision To Add New Special Immigrant Classification

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This revision will add a new special immigrant section. The rule revision is necessary to implement Pub. L. 99-603 section 312, which created new special immigrant and nonimmigrant classifications.

EFFECTIVE DATE: February 7, 1989.

FOR FURTHER INFORMATION CONTACT: Thomas E. Cook, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633-3320.

SUPPLEMENTARY INFORMATION: On November 6, 1986, President Reagan signed Pub. L. 99-603, the Immigration Reform and Control Act of 1986. Section 312 of Pub. L. 99-603 amended section 101(a)(27)(I) of the Immigration and Nationality Act (INA), 8 U.S.C. 1101, to add a new category of "special immigrants," covering certain officers and employees of international organizations and their immediate relatives.

This provision was intended to alleviate hardships on long-time United States resident employees and officers of international organizations and their immediate family members. The House Judiciary Committee Report of May 13, 1983, page 60, indicates that the grant of special immigrant status was intended to reflect the fact that some aliens who have been employed by international organizations in the United States for long periods of time have in effect become fully integrated into American society, and that forced departure due to the retirement or death of the principal G-IV visa holder has an adverse effect on the family members who had become "Americanized."

The publication of implementing regulations was held in abeyance pending the passage of the Immigration Technical Corrections Act of 1988, signed by the President on October 24, 1988, which overcame certain ineligibilities not intended by the original legislation.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is impractical and unnecessary as the changes have been mandated by passage of Pub. L. 99-603.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule does not have significant economic impact on a substantial number of small entities.

The information collection requirements contained in this rule have been approved by the Office of Management and Budget, under the provisions of the Paperwork Reduction Act, under control number, 1115-0053.

This is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

List of Subjects in 8 CFR Part 101

Definitions.

Accordingly, Chapter I of Title 8, Code of Federal Regulations, is amended to read as follows:

PART 101—PRESUMPTION OF LAWFUL ADMISSION

1. The authority citation of Part 101 is revised to read as follows:

Authority: 8 U.S.C. 1103, 8 CFR Part 2.

2. A new § 101.5 is added to read as follows:

§ 101.5 Special Immigrant Status for Certain G-4 Nonimmigrants.

(a) *Application.* An application for adjustment to special immigrant status under section 101(a)(27)(I) of the INA shall be made on Form I-485. The application date of the I-485 shall be the date of acceptance by the Service as properly filed. If the application date is other than the fee receipt date it must be noted and initialed by a Service officer. The date of application for adjustment of status is the closing date for computing the residence and physical presence requirement. The applicant must have complied with all requirements as of the date of application.

(b) *Documentation.* All documents must be submitted in accordance with § 103.2(b) of this chapter. The application shall be accompanied by documentary evidence establishing the aggregate residence and physical presence required. Documentary evidence may include official employment verification, records of official or personnel transactions or recordings of events occurring during

the period of claimed residence and physical presence. Affidavits of credible witnesses may also be accepted. Persons unable to furnish evidence in their own names may furnish evidence in the names of parents or other persons with whom they have been living, if affidavits of the parents or other persons are submitted attesting to the claimed residence and physical presence. The claimed family relationship to the principle G–4 international organization officer or employee must be substantiated by the submission of verifiable civil documents.

(c) *Residence and physical presence requirements.* All applicants applying under sections 101(a)(27)(I) (i), (ii), and (iii) of the INA must have resided and been physically present in the United States for a designated period of time.

For purposes of this section only, an absence from the United States to conduct official business on behalf of the employing organization, or approved customary leave shall not be subtracted from the aggregated period of required residence or physical presence for the current or former G–4 officer or employee or the accompanying spouse and unmarried sons or daughters of such officer or employee, provided residence in the United States is maintained during such absences, and the duty station of the principle G–4 nonimmigrant continues to be in the United States. Absence from the United States by the G–4 spouse or unmarried son or daughter without the principle G–4 shall not be subtracted from the aggregate period of residence and physical presence if on customary leave as recognized by the international organization employer. Absence by the unmarried son or daughter while enrolled in a school outside the United States will not be counted toward the physical presence requirement.

(d) *Maintenance of nonimmigrant status.* Section 101(a)(27)(I) (i), and (ii) requires the applicant to accrue the required period of residence and physical presence in the United States while maintaining status as a G–4 or N nonimmigrant. Section 101(a)(27)(I)(iii) requires such time accrued only in G–4 nonimmigrant status.

Maintaining G–4 status for this purpose is defined as maintaining qualified employment with a "G" international organization or maintaining the qualifying family relationship with the G–4 international organization officer or employee. Maintaining status as an N nonimmigrant for this purpose requires the qualifying family relationship to remain in effect. Unauthorized employment will not remove an otherwise eligible alien from G–4 status for residence and physical presence requirements, provided the qualifying G–4 status is maintained.

Dated: January 18, 1989.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 89–2769 Filed 2–3–89; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88–CE–33–AD; Amdt. 39–6139]

Airworthiness Directives; Dornier Model Do–28 D–1 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Dornier Model Do–28 D–1 airplanes, which requires a check of the location and relocation, if necessary, of the installed Station Guide Line. The Center of Gravity (C.G.) Station Guide Line has been incorrectly installed on some Do–28 D–1 airplanes, which if used to determine the airplane balance, may result in the airplane being loaded forward or aft of the C.G. limits. Operation of the airplane outside it's design C.G. envelope could cause the loss of control of the airplane. This action will preclude use of an incorrect location reference.

EFFECTIVE DATE: March 10, 1989.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Dornier Service Bulletin (S/B) No. 1121–1703, dated May 20, 1988, applicable to this AD may be obtained from Dornier GmbH, D–8000 Munchen 66, Post Office Box 2160, Federal Republic of Germany. This information may also be examined at the Rules Docket, FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Heinz Hellebrand, Aircraft Certification Office, AEU–100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, B–1000, Brussels, Belgium; Telephone (322) 513.38.30; or Mr. Herman C. Belderok, Project Support Section Foreign Aircraft, Central Region, ACE–109, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 426–6932.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) to include an AD requiring an inspection of the C.G. Station Guide Line (SGL) location and replacement if incorrectly installed on certain Model Do–28 D–1 airplanes was published in the **Federal Register** on November 4, 1988 (53 FR 44610). The proposal resulted from the manufacturer becoming aware that the airplane C.G. SGL located in the cabin and used for determining the loading station, does not correspond to the Airplane Flight Manual and the loading station referred to in the loading tables. In certain cases, using the values determined by the C.G. SGL may result in the airplane being loaded to exceed the forward or aft C.G. loading limits, thereby adversely affecting the airplane stability characteristics. Consequently, Dornier issued S/B No. 1121–1703, dated May 20, 1988, which requires an inspection of the location of the C.G. SGL and replacement if the location guide is incorrectly installed.

The Federal Republic of Germany Civil Aviation Authority, the Luftfahrt Bundesamt (LBA), which has responsibility and authority to maintain the continuing airworthiness of these airplanes in Germany, classified this Service Bulletin and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes.

On airplanes operated under LBA registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of the LBA combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA examined the available information related to the issuance of Dornier S/B No. 1121–1703, dated May 20, 1988, and the mandatory classification of this Service Bulletin by the LBA, and concluded that the condition addressed by Dornier S/B No. 1121–1703, dated May 20, 1988, was an unsafe condition that may exist on other airplanes of this type certificated for operation in the United States. Accordingly, the FAA proposed an amendment to Part 39 of the FAR to include an AD on this subject.

Interested persons have been afforded an opportunity to comment on the proposal. No comments or objections were received on the proposal or the FAA determination of the related cost to the public. Accordingly, the proposal is adopted without change.

The FAA has determined that this regulation involves 3 airplanes at an approximate one-time cost of $20 for each airplane, for a total fleet cost of $60. The cost of compliance with the proposed AD is so small that the expense of compliance will not be a significant financial impact on any small entities operating these airplanes.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Dornier: Applies to Model Do–28 D–1 (all serial numbers) airplanes certificated in any category.

Compliance: Required within the next 50 hours time-in-service after the effective date of this AD, unless already accomplished.

To preclude operation of the airplane beyond the approved forward or rear center of gravity limits, accomplish the following:

(a) Inspect the installed Center of Gravity Station Guide Line in accordance with Dornier Service Bulletin No. 1121–1703, dated May 20, 1988, and determine its location. Prior to further flight, replace, and correctly locate the Guide Line if necessary.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(c) An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Office, AEU–100 Europe, Africa, and Middle East Office, FAA, c/o American Embassy, B–1000 Brussels, Belgium.

All persons affected by this directive may obtain copies of the document referred to herein upon request to the Aircraft Certification Office, AEU–100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, B–1000 Brussels, Belgium; or may examine this document at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on January 25, 1989.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–2756 Filed 2–6–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 88–ACE–14]

Alteration of Transition Area Clarinda, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: This action corrects the name of the airport erroneously cited in the description of the Clarinda, Iowa, transition area, as "Clarinda Municipal Airport." It should state "Schenck Field".

EFFECTIVE DATE: February 7, 1989.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE–540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

On December 28, 1988, the FAA published FR Document No. 88–29682 which amended the Clarinda, Iowa, transition area (53 FR 52403). Inadvertently, the incorrect airport name was used. This action corrects that error.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me, line 5 of the Clarinda, Iowa, transition area description, in **Federal Register** Document 88–29682, beginning on page 52403 of the **Federal Register** published on December 28, 1988, should be corrected to read as follows: "169° bearing from Schenck Field".

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g), (Rev. Pub. L. 97–449, January 12, 1983; 14 CFR 11.69)

Billy G. Peacock,

Acting Manager, Air Traffic Division, ACE–500.

[FR Doc. 89–2757 Filed 2–6–89; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 8560]

Fred Astaire Dance Studio of Washington, DC, et al.; Now Ronby Corp. et al.

AGENCY: Federal Trade Commission.

ACTION: Notice of period for public comment on Order to Show Cause.

SUMMARY: This document announces the public comment period on the Commission's decision to reopen and modify its order affecting acts and practices of the Fred Astaire Dance Studios to provide greater protection for the consumers.

DATES: The deadline for filing comments in this matter is March 3, 1989.

ADDRESSES: Comments should be sent to the Office of the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580. Requests for copies of the Order to Show Cause should be sent to the Public Reference Branch, Room 130.

FOR FURTHER INFORMATION CONTACT: Wallace A. Witkowski, (202) 326–3015, or George O'Brien, (202) 326–2972, Enforcement Division, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The order in Docket No. 8560 was published at 29 FR 4083 on March 28, 1964. Ronby Corporation, et al., licenses the operation of the Fred Astaire Dance

Studios. The proposed order modifications would provide cancellation and pro rata refund rights for the students and impose other measures for the protection of the consumer. Respondents have consented to the proposed modification. The Order to Show Cause was placed on the public record on February 1, 1989.

Lists of Subjects in 16 CFR Part 13

Dance studios, Trade practices.

Donald S. Clark,

Secretary.

[FR Doc. 89-2805 Filed 2-6-89; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 356

[Docket No. 81141-8241]

Panel Review Under Article 1904 of the U.S.-Canada Free-Trade Agreement

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of effective date of interim-final rule.

SUMMARY: Title IV of the United States-Canada Free-Trade Agreement Implementation Act of 1988, Pub. L. No. 100-449, 102 Stat. 1851 (1988) ("the FTA Act"), establishes procedures for review by a binational panel of United States antidumping and countervailing duty final determinations involving Canadian products and for requesting panel review of Canadian antidumping and countervailing duty final determinations involving products of the United States. Title IV implements Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement"). As authorized by section 405(d) of the FTA Act, the International Trade Administration published an interim-final rule and request for comments on December 30, 1988 (53 FR 53232) intended to implement certain administrative procedures required by Article 1904 of the Agreement and the FTA Act. The regulations were to be codified at 19 CFR Part 356. The effective date of this interim-final rule was to be the date of entry into force of the Agreement. On January 6, 1989, the United States Trade Representative published a notice in the **Federal Register** (54 FR 505) announcing January 1, 1989 as the entry into force date of the Agreement. Therefore, January 1, 1989 is the effective date of ITA's interim-final rule published on December 30, 1988 (53 FR 53232).

EFFECTIVE DATE: January 1, 1989 is the effective date of the regulations published on December 30, 1988, 53 FR 53232, Part V. Written comments on the interim-final rule must be received no later than March 2, 1989.

FOR FURTHER INFORMATION CONTACT: Lisa B. Koteen, (202) 377-1754 or Jean Heilman Grier, (202) 377-0833.

Allen Moore,

Under Secretary for International Trade.

Date: January 31, 1989.

[FR Doc. 89-2773 Filed 2-6-89; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Bambermycins and Narasin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Hoechst-Roussel Agri-Vet Co. The NADA provides for using separately approved Type A medicated articles containing either bambermycins or narasin to manufacture a combination Type C medicated feed for the prevention of coccidiosis, for increased rate of weight gain, and for improved feed efficiency in broiler chickens.

EFFECTIVE DATE: February 7, 1989.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV-128), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4317.

SUPPLEMENTARY INFORMATION: Hoechst-Roussel Agri-Vet Co., Route 202-206 North, Somerville, NJ 08876, has filed NADA 140-845, providing for combining separately approved bambermycins and narasin Type A medicated articles to make a Type C medicated feed containing 1 to 2 grams of bambermycins per ton and 54 to 72 grams of narasin per ton for use in broiler chickens for the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. maxima, E. brunetti,* and *E. mivati,* and for increased rate of weight gain and improved feed efficiency.

The application is approved and the regulations in 21 CFR 558.95 and 558.363 are amended accordingly. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(ii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 558.95 is amended by adding new paragraph (b)(4)(ii) to read as follows:

§ 558.95 Bambermycins.

* * * * *

(b) * * *

(4) * * *

(ii) Narasin as in § 558.363.

3. Section 558.363 is amended by adding new paragraphs (a)(4) and (c)(1)(iv) to read as follows:

§ 558.363 Narasin.

(a) * * *

(4) To 012799: 36, 45, 54, 72, and 90 grams per pound with 2 and 10 grams per pound of bambermycins, paragraph (c)(1)(iv).

* * * * *

(c) * * *

(1) * * *

(iv) *Amount per ton.* Narasin, 54 to 72 grams, plus bambermycins, 1 to 2 grams.

(A) *Indications for use.* For prevention of coccidiosis caused by *Eimeria necatrix, E. tenella, E. acervulina, E. brunetti, E. mivati,* and *E. maxima,* and for increased rate of weight gain and improved feed efficiency.

(B) *Limitations.* For broiler chickens only. Feed continuously as the sole ration. May be fatal if fed to adult turkeys, horses, or other equines.

* * * * *

Dated: January 31, 1989.

Richard H. Teske,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 89-2799 Filed 2-6-89; 8:45 am]

BILLING CODE 4160-01-M

VETERANS ADMINISTRATION

38 CFR Part 8

Capping of Veterans Special Life Insurance "RS" Term Premiums

AGENCY: Veterans Administration.

ACTION: Final regulation.

SUMMARY: The Veterans Administration (VA) is amending its regulations to reflect that premiums for Veterans Special Life Insurance (VSLI) "RS" term policyholders will be capped at the renewal age 70 premium rate. VSLI "RS" term policyholders who have already renewed their policies at the age 71 premium rate or above will have their premiums reduced ("rolled back") to the renewal age 70 rate. Policyholders under age 70 will have their premiums capped at their first renewal beyond age 70.

EFFECTIVE DATE: February 7, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Paul F. Koons, Assistant Director for Insurance, Veterans Administration Regional Office and Insurance Center, P.O. Box 8079, Philadelphia, PA 19101, (215) 951-5360.

SUPPLEMENTARY INFORMATION: On pages 39750 and 39751 of the **Federal Register** of October 12, 1988, the VA published proposed regulatory amendments providing that premiums for VSLI "RS" term policyholders will be capped at the renewal age 70 premium rate. Interested parties were given 30 days within which to submit written comments, suggestions, or objections regarding the proposed regulatory amendments. No written objections were received and the proposed regulations are hereby adopted without change as set forth below.

The Administrator hereby certifies that this final regulation will not have a significant impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), this regulation is, therefore, exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that this regulation will affect only certain VSLI policyholders. It will, therefore, have no significant direct impact on small entities in terms of compliance costs, paperwork requirements or effects on competition.

The VA has also determined that this final regulation is non-major in accordance with Executive Order 12291, Federal Regulation. This regulation will not have a large effect on the economy, will not cause an increase in costs or prices, and will not otherwise have any significant adverse economic effects.

The Catalog of Federal Domestic Assistance Program number for this proposed regulation is 64.103.

List of Subjects in 38 CFR Part 8

Life insurance, Veterans.

Approved: January 24, 1989.

Thomas E. Harvey,

Acting Administrator.

38 CFR Part 8, National Service Life Insurance, is amended to read as follows:

PART 8—[AMENDED]

1. In § 8.3, paragraph (d) is revised and an authority citation added to read as follows:

§ 8.3 Premium rates.

* * * * *

(d) The premium rates for the term insurance issued under section 621 of the National Service Life Insurance Act, as amended, are based on the Commissioners 1941 Standard Ordinary Table of Mortality and interest at the rate of 2¼ per centum per annum: *Provided* That on or after (the date the regulation is published as final) Veterans Special Life Insurance "RS" five-year level premium term rates shall not exceed the renewal age 70 term premium rate. Policies of such term insurance which are converted to insurance on the modified life plan under 38 U.S.C. 704 (b) or (e) and such insurance subsequently issued on the ordinary life plan under 38 U.S.C. 704 (d) or (e), shall for the purposes of such provisions of law be deemed to have been issued under 38 U.S.C. 723(b) (see paragraph (e) of this section).

(Authority: 38 U.S.C. 704, 706)

* * * * *

2. In § 8.85, paragraph (a) is revised to read as follows:

§ 8.85 Renewal of National Service Life Insurance on the 5-year level premium term plan and limited convertible 5-year level premium term plan.

(a) Effective July 23, 1953, except as provided in paragraph (c) of this section, all or any part of National Service Life Insurance on the 5-year level premium term plan or limited convertible 5-year level premium term plan, in any multiple of $500 and not less than $1,000, which is not lapsed at the expiration of any 5-year term period, shall be automatically renewed without application or medical examination for a successive 5-year period at the applicable level premium term rate for the then attained age of the insured: *Provided,* That on or after September 1, 1984, National Service Life Insurance "V" 5-year level premium term rates shall not exceed the renewal age 70 term premium rate, or that on or after (the date the regulation is published as final), Veterans Special Life Insurance "RS" five-year level premium term rates shall not exceed the renewal age 70 "RS" term premium rate: *Provided further,* That in any case in which the insured is shown by satisfactory evidence to be totally disabled at the expiration of the term period of his or her insurance under conditions which would entitle the insured to continued insurance protection but for such expiration, such insurance, if subject to renewal under this paragraph shall be automatically renewed for an additional period of 5 years at the applicable premium rate. The renewal of insurance for any successive 5-year period will become effective as of the day following the expiration of the preceding term period, and the premium for such renewal will be the applicable level premium term rate on that day: *Provided further:* That no insurance is subject to renewal if the policyholder has exercised the insured's right to change to another plan of insurance.

(Authority: 38 U.S.C. 705, 706)

* * * * *

3. In § 8.113, paragraph (e) and its authority citation are revised to read as follows:

§ 8.113 Premium waiver under section 622 of the National Service Life Insurance Act, as amended, and section 724 of Title 38, United States Code.

* * * * *

(e) National Service Life Insurance on the 5-year level premium term plan or limited convertible 5-year level premium term plan shall be automatically renewed for an additional 5-year period at the premium rate for the then attained age of the insured, provided the

premiums on such insurance are being waived under this section at the expiration of the term period: *Provided*, That on or after September 1, 1984, National Service Life Insurance "V" 5-year level premium term rates shall not exceed the renewal age 70 term premium rate, or, that on or after (the date of the regulation is published as final), Veterans Special Life Insurance "RS" 5-year level premium term rates shall not exceed the renewal age 70 "RS" term premium rate: *Provided further*, That limited convertible term insurance may not be renewed after the insured's fiftieth birthday. The renewal of insurance under this section shall be effective as of the day following the expiration of the preceding term period, and the premium for such renewed insurance will be the applicable level premium term rate on that day. The premiums on the insurance renewed under this section shall continue to be waived while the insured continues in active service and for 120 days after separation therefrom.

(Authority: 38 U.S.C. 705, 706)

* * * * *

[FR Doc. 89-2856 Filed 2-6-89; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6707

[OR-943-09-4214-10; GP9-046; OR-19032]

Opening of Land Subject to Section 24 of the Federal Power Act; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order opens 21.19 acres withdrawn by an Executive order in connection with Powersite Reserve No. 66 to permit consummation of a pending land exchange, subject to the provisions of section 24 of the Federal Power Act.

EFFECTIVE DATE: March 3, 1989.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-231-6905.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by section 24 of the Federal Power Act of June 10, 1920, as amended, 16 U.S.C. 818, and pursuant to the determination by the Federal Energy Regulatory Commission in DA-572-Oregon, it is ordered as follows:

1. The following described land is hereby opened to disposal by land exchange as specified in Federal Energy Regulatory Commission determination DA-572-Oregon, subject to the provisions of section 24 of the Federal Power Act of June 10, 1920, as amended, 16 U.S.C. 818:

Willamette Meridian

T. 6 S., R. 13 E.,
Sec. 13, lot 1.

The area described contains 21.19 acres in Wasco County.

2. At 8:30 a.m., on March 3, 1989, the land will be opended to disposal by land exchange under section 206 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1716, subject to valid existing rights, the provisions of existing withdrawals, the provisions of section 24 of the Federal Power Act, and the requirements of applicable law.

3. Except as provided in paragraph 2, the land remains withdrawn from operation of the public land laws generally, and has been and continues to be open to location under the United States mining laws, subject to the provisions of the Act of August 11, 1955, 69 Stat. 682; 30 U.S.C. 621, and to applications and offers under the mineral leasing laws.

J. Steven Griles,
Assistant Secretary of the Interior.
January 27, 1989.

[FR Doc. 89-2766 Filed 2-6-89; 8:45 am]

BILLING CODE 4310-33-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-491; RM-5557, RM-5396 and RM-6538]

Radio Broadcasting Services; St. James and Blue Earth, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The *Notice* in this proceeding was issued in response to two mutually exclusive petitions. Rogers Broadcasting Inc. proposed the substitution of FM Channel 283C2 for Channel 285A at St. James, Minnesota, and modification of its license for Station KXAX. Minn-Iowa Christian Broadcasting, Inc., requested the substitution of Channel 283C2 for Channel 265A at Blue Earth, Minnesota, and modification of its license for Station KJLY(FM) to specify the higher class channel. A counterproposal was also filed by Minn-Iowa Christian Broadcasting, Inc., proposing a swap of the two Class A channels and an adjacent channel upgrade on the new Class A channels. St. James Broadcasting Co. responded to the counterproposal, indicating it would file an application for Channel 283C2 at St. James, providing a second FM service to the community.

On December 6, 1988, Rogers Broadcasting, Inc., filed comments withdrawing its petition for modification of Station KXAX at St. James. Rogers Broadcasting stated its intention to continue operation on Channel 285A.

In view of the above information, we shall substitute Channel 283C2 for Channel 265A at Blue Earth, Minnesota, and modify the license of Station KJLY(FM) to specify Channel 283C2. The coordinates for Channel 283C2 at Blue Earth are 43-39-41 and 94-06-29. In response to the interest expressed by St. James Broadcasting, we shall allot Channel 283C2 to St. James, Minnesota, at coordinates 43-59-00 and 94-37-48. We shall dismiss the petition for rule making filed by Rogers Broadcasting, Inc. (RM-5396) and the counterproposal filed by Minn-Iowa Christian Broadcasting, Inc. (RM-6538).

DATES: Effective March 20, 1989; The window period for filing applications for Channel 283C2 at St. James, Minnesota, will open on March 21, 1989, and close on April 20, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-491, adopted December 22, 1988 and released February 1, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended, under Minnesota by removing Channel 265A and adding Channel 283C2 at Blue Earth and by adding Channel 283C2 at St. James.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-2783 Filed 2-6-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-25; RM-6128]

Radio Broadcasting Services; Rural Retreat, VA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 276A to Rural Retreat, Virginia, as that community's first FM service, at the request of Highlands Broadcasting, Inc. A site restriction of 3.5 kilometers (2.2 miles) east of the city is required at coordinates 36-53-39 and 81-14-20. With this action, this proceeding is terminated.

DATES: Effective March 20, 1989; The window period for filing applications will open on March 21, 1989, and close on April 20, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-25, adopted December 21, 1988 and released February 1, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Virginia, by adding Rural Retreat, Channel 276A.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-2785 Filed 2-6-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-402; RM-5784, RM-6524, RM-6555]

Radio Broadcasting Services; Canadian and Amarillo, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 235C1 for Channel 276A at Canadian, Texas, and modifies the license of Station KEZP-FM to specify operation on the higher class station at the request of Megahype Broadcasting, Inc. Canadian could receive its first wide coverage area FM service. In addition, this action substitutes Channel 275C1 for Channel 276A at Amarillo, Texas, at the request of Atkins Broadcasting. The license of Station KRGN-FM at Amarillo is modified to specify operation on the higher class adjacent channel, providing expanded FM coverage to that community. The current transmitter site of Station KEZP-FM can be used for Channel 235C1 at coordinates 35-49-10 and 100-23-38. Channel 275C1 at Amarillo requires a site restriction of 11.9 kilometers (7.4 miles) northeast of the city at coordinates 35-16-38 and 101-43-57. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 20, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-402, adopted November 30, 1988, and released February 1, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Texas, by adding Channel 235C1 and deleting Channel 276A at Canadian; and by adding Channel 275C1 and deleting Channel 276A at Amarillo.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-2784 Filed 2-6-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 97

[PR Docket No. 88-467; FCC 89-18]

Amateur Radio Service; Amendment To Permit Use of the 17 Meter Band by the Amateur Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rules.

SUMMARY: This action amends the amateur service rules to permit use of the 17 meter band (18.068-18.168 MHz) by General, Advanced and Amateur Extra Class operator licensees beginning 0001 u.t.c., July 1, 1989. Early access to the band beginning 0001 u.t.c., January 31, 1989, was also authorized. The rule amendments are necessary so that United States amateur operators can communicate on the 17 meter band frequencies. They were allocated worldwide to the amateur service by the 1979 World Administrative Radio Conference. The rule amendments will permit United States amateur stations to make radio contacts with all parts of the world.

DATES: The rule amendments are effective 0001 u.t.c., July 1, 1989. The temporary authorization allowing early access to the 17 meter band is effective 0001 u.t.c., January 31, 1989.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554, (202) 632-4964.

BEST COPY AVAILABLE

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, adopted January 27, 1989, and released January 31, 1989. The complete text of this Commission action, including the rule amendments, is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this Report and Order, including the rule amendments, may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

1. The amateur service rules have been amended to permit use of the 17 meter band (18.068-18.168 MHz) by General, Advanced and Amateur Extra Class operator licensees beginning 0001 u.t.c., July 1, 1989.

2. Telegraphy emission A1A is authorized for the entire 17 meter band. A 42 kHz subband at 18.068-18.110 MHz has been provided for digital emission type F1B for direct-printing, telemetry, telecommand and computer communications. A 58 kHz subband at 18.110-18.168 MHz has been provided for analog emission types, such as facsimile, television and telephony.

3. The maximum authorized transmitter power of 1500 watts that is generally available in the high frequency bands may be used in the 17 meter band.

4. In response to a request from The American Radio Relay League, Inc., the Commission also authorized amateur service stations early access to the 17 meter band beginning 0001 u.t.c., January 31, 1989. Such early access is premised upon the same conditions as the regular access beginning in July, and is on a secondary basis to Government fixed service operations. Transmissions must be immediately terminated if interference is caused.

5. The amended rules are set forth at the end of this document.

6. The rule amendments contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure or record retention requirements and will not increase or decrease burden hours on the public.

7. The amended rules are issued under the authority of 47 U.S.C. 154(i) and 303(r). The temporary authorization for early access to the 17 meter band is granted pursuant to footnote US 248 to the Table of Frequency Allocations in § 2.106 of the Commission's Rules, 47 CFR 2.106. The authority citation for Part 97 continues to read as follows: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609, unless otherwise noted.

List of Subjects in 47 CFR Part 97

Amateur radio, Digital communications, Emissions, Frequencies.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Amended Rules

Part 97 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended, as follows:

PART 97—[AMENDED]

1. Section 97.7(c) is amended by adding the following line entry in the table between the last 20 meter band entry and the first 15 meter band entry, as follows:

§ 97.7 Frequency privileges.

* * * * *

(c) * * *

Meterband	Terrestrial location of the amateur radio station			Limitations (see para. (g))
	ITU region 1	ITU region 2	ITU region 3	
	Kilohertz			
17	18068-18168	18068-18168	18068-18168	

* * * * *

2. Section 97.7(d) is amended by adding the following line entry in the table between the last 20 meter band entry and the first 15 meter band entry, as follows:

Section 97.7 Frequency privileges.

* * * * *

(d) * * *

Meterband	Terrestrial location of the amateur radio station			Limitations (see para. (g))
	ITU region 1	ITU region 2	ITU region 3	
	Kilohertz			
17	18068-18168	18068-18168	18068-18168	

* * * * *

3. Section 97.7(e) is amended by adding the following line entry in the table between the 20 meter band entry and the 15 meter band entry, as follows:

§ 97.7 Frequency privileges.

* * * * *

(e) * * *

Meterband	Terrestrial location of the amateur radio station			Limitations (see para. (g))
	ITU region 1	ITU region 2	ITU region 3	
	Kilohertz			
17	18068-18168	18068-18168	18068-18168	

* * * * *

4. Section 97.61(a) is amended by adding two line entries to the table between the 14150-14350 kHz and 21000-21200 kHz entries, as follows:

§ 97.61 Authorized emissions.

(a) * * *

Frequency band (kHz)	Emissions	Limitations (see paragraph (d))
18068-18110	A1A, F1B	
18110-18168	A1A, A3E, F3E, G3E, A3C, F3C, A3F, F3F, H3E, J3E, R3E	

* * * * *

5. Section 97.415(a) is amended by adding one line entry between the 14000-14250 and 21000-21450 entries in the kilohertz portion of the table, as follows:

§ 97.415 Frequencies available.

(a) * * *

Frequency band kilohertz	Limitations (see paragraph (b))
18068-18168	

* * * * *

[FR Doc. 89-2782 Filed 2-6-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Thalictrum Cooleyi (Cooley's Meadowrue)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Thalictrum cooleyi* (Cooley's meadowrue), a perennial herb limited to 12 populations in North Carolina and Florida, to be an endangered species under the authority of the Endangered Species Act of 1973, as amended (Act). *Thalictrum cooleyi* is endangered by suppression of fire, mining, drainage activities associated with silviculture and agriculture, and residential and industrial development. This action will implement Federal protection provided by the Act for *Thalictrum cooleyi*.

EFFECTIVE DATE: March 9, 1989.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Asheville Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801.

FOR FURTHER INFORMATION CONTACT: Ms. Nora Murdock at the above address (704/259-0321 or FTS 672-0321).

SUPPLEMENTARY INFORMATION:

Background

Thalictrum cooleyi, described by H.E. Ahles (1939) from material collected in Onslow County, North Carolina, is a rhizomatous perennial herb. The stems, which generally do not exceed 1 meter in height (but sometimes reach 2 meters on recently burned sites), are erect in full sun; in shade they are lax and sometimes lean on other plants or trail along the ground. Leaflet shape (as well as texture) varies considerably but is usually narrowly lanceolate and unlobed, although occasionally two- to three-lobed leaves are seen. The unisexual flowers are borne in an open panicle on slender pedicels in mid- to late June. The flowers lack petals, but staminate ones have yellowish to white sepals and lavender filaments about 5 to 7 millimeters long. Pistillate flowers are smaller and have greenish sepals. (Flower color can vary somewhat between plants, and at different stages of maturity in the same plant.) The fruits, which mature in August and September, are narrowly ellipsoidal achenes approximately 5 to 6 millimeters long (Radford *et al.*, 1964, Kral 1983, Rome 1987, Leonard 1987). According to Ahles (1939), who described the species, *Thalictrum cooleyi* differs from other similar species in the *Leucocoma* section of this genus in having lavender rather than white filaments (although this character is not always consistent even within the same population), in having much narrower leaflets that are narrowly lanceolate instead of oblong to ovate, and in having fewer leaf divisions.

Thalictrum cooleyi is a species endemic to the Southeastern Coastal Plain where it is currently known from 11 locations in North Carolina and 1 in Florida. The species occurs in moist to wet bogs and savannas and savanna-like openings on circumneutral soils and is dependent upon some form of disturbance to maintain the open quality of its habitat. Currently, artificial disturbances, such as power line and road right-of-way maintenance, and plowed firebreaks, are maintaining some of the openings historically provided by naturally occurring periodic fires.

Seventeen populations of *Thalictrum cooleyi* have been reported historically from eight counties in North Carolina, Georgia, and Florida. The report of the Georgia population is now believed to have been based on a misidentification (Leonard 1987). The 12 remaining populations (located in Walton County, Florida; and Brunswick, Columbus, Onslow, and Pender Counties, North Carolina) are all in private ownership, with The Nature Conservancy owning part of one of the sites in Pender County, North Carolina. Extirpated populations are believed to have succumbed as a result of fire suppression and silvicultural and agricultural activities. The continued existence of *Thalictrum cooleyi* is threatened by these activities as well as mining (part of one population exists on the edge of an inactive marl pit mine), drainage, highway construction/improvement, and herbicide use.

Federal government actions on this species began with section 12 of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered,

threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. The Service published a notice in the July 1, 1975, **Federal Register** (40 FR 27832) of its acceptance of the report of the Smithsonian Institution as a petition within the context of Section 4(c)(2) (now section 4(b)(3)) of the Act and of its intention thereby to review the status of the plant taxa named within.

On December 15, 1980, the Service published a revised notice of review for native plants in the **Federal Register** (45 FR 82480); *Thalictrum cooleyi* was included in that notice as a category 1 species. Category 1 species are those species for which the Service currently has on file substantial information on biological vulnerability and threats to support proposing to list them as endangered or threatened species. Subsequent revisions of the 1980 notice have maintained *Thalictrum cooleyi* in category 1.

Section 4(b)(3)(B) of the Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Thalictrum cooleyi* because of the acceptance of the 1975 Smithsonian report as a petition. On October 13, 1983; October 12, 1984; October 11, 1985; October 10, 1986; and October 14, 1987; the Service found that the petitioned listing of *Thalictrum cooleyi* was warranted but precluded by other listing actions of a higher priority and that additional data on vulnerability and threats was still being gathered. The April 21, 1988 (53 FR 13220), proposal to classify *Thalictrum cooleyi* as endangered constituted the final finding required for this species.

Summary of Comments and Recommendations

In the April 21, 1988, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting public comment were published in North Carolina's "Wilmington Star-News" and in the Fort Walton Beach, Florida, "Playground Daily News" on May 10, 1988, and May 11, 1988, respectively.

Two written comments were received. One stated no position on the proposal but offered additional information on morphological and chromosomal characters of the species. Carolina Power and Light Company (landowner of one of the population sites) offered the other comment, which was in support of the proposal. One individual verbally provided additional distributional and threat information which has been incorporated into the appropriate sections of the rule.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Thalictrum cooleyi* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Act and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Thalictrum cooleyi* Ahles (Cooley's meadowrue) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range. Thalictrum cooleyi* has been and continues to be endangered by destruction or adverse alteration of its habitat. Since discovery of the species, approximately one-fourth of the known populations have been extirpated largely due to fire suppression and conversion of the habitat for silvicultural and agricultural purposes. Fire suppression is a serious problem for this species and will be discusssed in detail under factor "E" below.

At least 11 of the remaining 12 populations are currently threatened by habitat alteration (Rayner 1980, Leonard 1987). Four of these populations survive on roadsides, and another three are in power line rights-of-way. All of these populations are small, which increases their vulnerability to extirpation as a result of highway and right-of-way maintenance and improvement, particularly if herbicides are used. The 11 populations remaining in North Carolina probably represent the fragmented remains of what were once 3 larger populations—the 6 sites in Onslow and Pender Counties are all within a 6.5-kilometer radius, the 3 sites in Columbus County are within a 4.0-kilometer radius, and the 2 sites in Brunswick County are within a 1.5-kilometer radius. These 11 sites now support a total of approximately 800 plants (which may be an overestimate due to the rhizomatous nature of the species) (Leonard 1987). Areas within the small radii occupied by the remaining colonies in North Carolina have been bulldozed, planted in fields, converted to pastures, or drained, undoubtedly destroying *Thalictrum cooleyi* populations in the process (Rayner 1980, Leonard 1987). One of the Pender County, North Carolina, populations was recently impacted by private road maintenance operations which resulted in most of the plants being covered with fill material. The Walton County, Florida, site has been recently impacted by commercial timber operations, and only nine mature plants remain there (Deborah White, Florida Natural Areas Inventory, personal communication, 1987). As stated by Mansberg (1985) the "extreme narrowness of geographic range and scarcity of appropriate habitat further increases the severity of the threats" faced by the species.

Although, as stated in the "Background" section above, this species requires some form of disturbance to maintain its open habitat and can withstand mowing and timber-harvesting operations if properly done, it cannot withstand bulldozing, drainage, conversion to pine plantation, or direct application of herbicides. In addition, the small populations that survive on road edges could be easily destroyed by highway improvement projects or right-of-way maintenance activities if these are not done in a manner consistent with protecting *Thalictrum cooleyi*.

B. *Overutilization for commercial, recreational, scientific, or educational purposes. Thalictrum cooleyi* is not currently a significant component of the commercial trade in native plants. Research is ongoing with the alkaloids in other species of *Thalictrum* which are believed to have potential medical (chemotherapy) applications; because of the large amounts of material necessary for such studies, it is unlikely that a species as rare as *Thalictrum cooleyi* could ever be analyzed for this purpose using currently available methodology. However, because of its small and easily accessible populations, Cooley's meadowrue is vulnerable to taking and vandalism that could result from increased specific publicity. Rayner (1980) stated that although it is unlikely that it will ever be of commercial or horticultural interest, delineation of critical habitat for *Thalictrum cooleyi* would probably increase collections made for scientific or educational purposes.

C. *Disease or predation.* Not applicable to this species at this time.

D. *The inadequacy of existing regulatory mechanisms. Thalictrum cooleyi* is afforded legal protection in North Carolina by North Caroline General Statutes, sections 106–202.12 to 106–202.19 (Cum. Supp. 1985), which provides for protection from intrastate trade (without a permit), for monitoring and management of State-listed species, and prohibits taking of plants without written permission of landowners. *Thalictrum cooleyi* is listed in North Carolina as endangered. This species is not listed by the State of Florida, where it was thought to have been extirpated until very recently. State prohibitions against taking are difficult to enforce and do not cover adverse alterations of habitats, such as disruption of drainage patterns and water tables or exclusion of fire. Section 404 of the Federal Water Pollution Control Act (FWPCA) could potentially provide some protection for the habitat of *Thalictrum cooleyi*; however, most, if not all, of the sites where it occurs do not meet the wetlands criteria of the FWPCA. The Endangered Species Act would provide additional protection and encouragement of active management for *Thalictrum cooleyi*.

E. *Other natural or manmade factors affecting its continued existence.* As mentioned in the "Background" section of this rule, many of the remaining populations are small in numbers of individual stems and in terms of area covered by the plants. In addition, the rhizomatous nature of the species indicates that there are many fewer individual plants in existence than stem counts would indicate. There is therefore low genetic variability within populations, making it more important to maintain as much habitat and as many of the remaining colonies as possible. In addition, the dioecious nature of the species further increases the vulnerability of extremely small populations, where plants of only one sex may remain. Leonard (1987) observed a ratio of male to female plants (in all populations) of three to one, a situation which probably hinders reproduction in recently colonized sites and in sites with very few plants.

Leonard (1987) also noted that the species is not prolific in terms of the number of seeds produced and that it seems to lack an effective seed distribution mechanism, which further inhibits colonization of new sites. Much remains unknown about the demographics and reproductive requirements of this species. Fire or some other suitable form of disturbance, such as mowing or careful clearing, is essential to maintaining the savanna and bog edges where *Thalictrum cooleyi* occurs. Without such periodic disturbance, this type of habitat is gradually overtaken and eliminated by the shrubs and trees of the adjacent woodlands. As the woody species increase in height and density, they overtop the *Thalictrum cooleyi*, which is shade-intolerant. The current distribution of this species is ample evidence of its dependence on disturbance. Of the 12 remaining populations, 7 are on roadsides or in power line rights-of-way, and the other 5 are in areas which have been exposed to periodic fire. Populations in areas that have been recently burned tend to be more vigorous and to bloom more profusely.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Thalictrum cooleyi* as endangered. With one-fourth of the species' populations already having been eliminated, and only 12 remaining in existance; and, based upon its dependence on some form of active management, it definitely warrants protection under the Act. Endangered status seems appropriate because of the imminent serious threats facing most populations. As stated by Rayner (1980), "*Thalictrum cooleyi* certainly is one of the rarest, most directly threatened species in the entire United States. It should receive top priority for listing as an endangered species." Critical habitat is not being designated for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Thalictrum cooleyi* at this time. As discussed under factor "B" in the "Summary of Factors Affecting the Species," *Thalictrum cooleyi* is threatened by taking, an activity difficult to enforce against. Publication of critical habitat descriptions would make this species even more vulnerable and increase State enforcement problems. All involved parties and landowners will be notified of the location and importance of protecting and managing this species' habitat.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requries Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal activities that could impact *Thalictrum cooleyi* and its habitat in the future include, but are not limited to, the following: Power line construction, maintenance, and improvement; highway construction, maintenance, and improvement; drainage alterations; and permits for mineral exploration and mining. The Service will work with the involved agencies to secure protection and proper management of *Thalictrum cooleyi* while accommodating agency activities to the extent possible.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. With respect to *Thalictrum cooleyi*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of commercial activity, sell or offer for sale

this species in interstate or foreign commerce, or to remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for listed plants the 1988 amendments (Pub. L. 100-478) to the Act prohibit their malicious damage or destruction on Federal lands, and their removal, cutting, digging up, or damaging or destroying in known violation of any State law or regulation, including State criminal trespass law. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued, since *Thalictrum cooleyi* is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 27329, Central Station, Washington, DC 20038-7329 (202-343-4955).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Ahles, H. 1939. *Thalictrum cooleyi* sp. nov. Brittonia 11:68-70.

Kral, R. 1983. A report on some rare, threatened, or endangered forest-related vascular plants of the south. Tech. publ. R8-TP-2. USDA Forest Service. 4:28-431.

Leonard, S. 1987. Inventory of populations of *Thalictrum cooleyi* and its occurrence sites in North Carolina. Report to the North Carolina Natural Heritage Program, Raleigh, NC. 16 pp.

Mansberg, L. 1985. *Thalictrum colleyi*; draft global element ranking form prepared for the Nature Conservancy; North Carolina Natural Heritage Program, Raleigh, NC. 2 pp.

Radford, A., H. Ahles, and C. Bell. 1964. Manual of the vascular flora of the Carolinas. UNC Press, Chapel Hill, 459-462.

Rayner, D. 1980. Status report on *Thalictrum cooleyi* Ahles, submitted to U.S. Fish and Wildlife Service, Atlanta, GA.

Rome, A. 1987. *Thalictrum cooleyi*; draft stewardship abstract. The Nature Conservancy, Arlington, VA. 9 pp.

Author

The primary author of this rule is Ms. Nora Murdock, Asheville Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801, (704/259-0321 or FTS 672-0321).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 is revised to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411; Pub. L. 100-478, 102 Stat. 2306; Pub. L. 100-653, 102 Stat. 3825 (16 U.S.C. 1531 *et seq.*); Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.12(h) for plants by adding the following, in alphabetical order under the family Ranunculaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Ranunculaceae—Buttercup family:						
* * *	* * *	* * *	* * *	* * *	* * *	* * *
Thalictrum cooleyi	Cooley's meadowrue	U.S.A. (NC, FL)	E	344	NA	NA
* * *	* * *	* * *	* * *	* * *	* * *	* * *

Dated: January 24, 1989.

Becky Norton Dunlop,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89-2858 Filed 2-6-89; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 646

[Docket No. 81017-8271]

Snapper-Grouper Fishery of the South Atlantic; Corrections

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule; corrections.

SUMMARY: This document corrects errors in the preamble of the final rule to implement Amendment 1 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic (FMP) which was published January 17, 1989 (54 FR 1720).

EFFECTIVE DATE: January 12, 1989.

FOR FURTHER INFORMATION CONTACT: Rodney C. Dalton, 813-893-3722.

In rule document 89-955 beginning on page 1720 in the issue of January 17, 1989, the following corrections are made:

1. On page 1721, column 2, under the paragraph heading "Scientific Data", line 9, the sentence is corrected to read "Although one study did indicate recovery of a trawled area after twelve months, the study was based on a single pass of the trawl through the area."

2. In the same paragraph, line 9, "The" is added before "authors".

3. On the same page, column 3, under the paragraph heading "Impact on Development of New Trawling Methods", line 4, after "growth" delete "by".

Dated: February 1, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.

[FR Doc. 89-2842 Filed 2-6-89; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 24
Tuesday, February 7, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 113

[Docket No. 88-211]

Viruses, Serums, Toxins, and Analogous Products; Standard Requirements for Bovine Virus Diarrhea Vaccine Etc.

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of reopening and extension of comment period for proposed rulemaking.

SUMMARY: This document reopens and extends the comment period by 45 days, until February 23, 1989, for a notice of proposed rulemaking entitled "Viruses, Serums, Toxins, and Analogous Products; Standard Requirements for Bovine Virus Diarrhea Vaccine etc." This action will provide interested persons with additional time to prepare comments on the proposed rule.

DATE: Written comments must be postmarked or received on or before February 23, 1989.

ADDRESSES: Send an original and two copies of written comments to Helene R. Wright, Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 87-185. Comments received may be inspected at USDA, Room 1141, South Building, 14th and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Peter L. Joseph, Senior Staff Veterinarian, Veterinary Biologics, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, Room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-6332.

SUPPLEMENTARY INFORMATION: On December 9, 1988, the Animal and Plant Health Inspection Service published in the **Federal Register** (53 FR 49669-49674, Docket Number 87-185) a proposed rule to codify in the regulations standard requirements for evaluating certain vaccines.

The proposed rule provided that written comments would be accepted for 30 days until January 9, 1989. Shortly before the comment period closed, we received requests from industry associations that we extend the comment period to provide interested persons with adequate time to prepare comments.

We believe it is in the public interest to reopen and extend the comment period. Accordingly, we are reopening and extending this comment period for 45 days, until February 23, 1989. This action will allow interested persons additional time to prepare comments.

Done in Washington, DC, this 2nd day of February 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-2808 Filed 2-6-89; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS-250-82]

Election, Revocation, Termination, and Tax Effect of Subchapter S Status; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to the notice of proposed rulemaking (PS-250-82), which was published in the **Federal Register** on Tuesday, December 27, 1988 (53 FR 52190). The proposed regulations relate to the election, revocation, termination, and corporate effect of electing subchapter S treatment as a result of the changes to the tax law made by the Subchapter S Revision Act of 1982, as amended by the Tax Reform Act of 1984, the Tax Reform Act of 1986, and the Technical and Miscellaneous Revenue Act of 1988.

FOR FURTHER INFORMATION CONTACT: Stuart G. Wessler, (202) 566-3822 (not a toll-free number.

SUPPLEMENTARY INFORMATION:

Background

On December 27, 1988, a notice of proposed rulemaking relating to the election, revocation, termination, and corporate effect of electing subchapter S treatment was published in the **Federal Register** (53 FR 52190). The amendments were proposed to conform the regulations to changes in the applicable tax laws conform the regulations to changes in the applicable tax laws made by the Subchapter S Revision Act of 1982, as amended by the Tax Reform Act of 1984, the Tax Reform Act of 1986, and the Technical Miscellaneous Revenue Act of 1988.

Need for Correction

As published, the notice of proposed rulemaking contains omitted words, lines and typographical errors which may prove to be misleading and are in need of correction.

Correction of Publication

Accordingly, the notice of proposed rulemaking, which was the subject of FR Doc. 88-28606 (53 FR 52190), is corrected as follows:

1. On page 52190, in the preamble, column 1, under the caption "DATES", line 3 the word "by" is added immediately following the word "delivered".

§ 1.1362-0 [Corrected]

2. On page 52192, column 1, in the table of contents, § 1.362-3(d)(5)(ii)(A), line 8, should end with a period to read "(A) Exclusion of certain capital gains."

3. On page 52192, column 1, in the table of contents, § 1.1362-4(e)(4), line 63, the language "(4) Year in which income from S short year" is added in its place.

4. On page 52193, column 3, in § 1.1362-2(c)(2), line 2, the language "consent to the granted by the Internal" is removed and the language "consent to the election within such extended period of time as may be granted by the Internal" is added in its place.

§ 1.1362–3 [Corrected]

5. On page 52193, column 3, in § 1.1362–3(b)(1), (mistakenly printed as § 1.1362.3), lines 16 and 17, remove the phrase "which statement shall state section 1362(a)."

6. On page 52194, column 2, § 1.1362–3(b)(5), line 4, the language "consent of each person who became a" is removed and the language "consent of each person who consented to the revocation and by each person who became a" is added is its place.

7. On page 52195, column 3, § 1.1362–3(d)(4)(ii)(B), line 21, the word "sale" should read "sales".

8. On page 52196, column 3, § 1.1362–3(d)(5)(iv), line 16, the word "motors " should read "motor".

9. On page 52197, column 2, § 1.1362–3(d)(6), the first table in the example should be removed and the following table added in its place:

Gross receipts from operations	$75,000
Gross rental receipts	3,000
Gross interest receipts	1,000
Gross dividend receipts	500
Gains on sale of P stock (loss on Q stock is not taken into account	2,500
Net gain on sale of parcels 1 and 2	4,000
Gross receipts on sale of business asset	3,000
Total gross receipts	89,000

10. On page 52197, column 2, § 1.1362–3(d)(6), line 44, the word "treatment" is removed and the word "investment" is added in its place.

§ 1.1362–4 [Corrected]

11. On page 52197, column 3, § 1.1362–4(a), line 11, the word "section" is added immediately following the word "under".

12. On page 52197, column 3, § 1.1362–4(a), line 27, the word "gain," is removed.

13. On page 52197, column 3, § 1.1362–4(a), line 28, add a comma to read "deduction, and credit under normal tax".

14. On page 52198, column 2, § 1.1362–4(c)(4)(iii)(B), last line, the language "of paragraph (c)(4)(A) of this section, the" is removed and the language "of paragraph (c)(4)(iii)(A) of this section the " is added in its place.

15. On page 52198, column 3, § 1.1362–4(c)(4)(iv)(B), line 2, the word "established" should read "establishes".

16. On page 52198, column 3, § 1.1362–4(c)(4)(v), line 4 of Example (3), the language "the corporation" is removed and the language "the stock of N" is added in its place.

17. On page 52199, column 1, § 1.1362–4(c)(5)(i), line 3, the language "this section" is removed and the language "§ 1.1362–3;" is added in its place.

18. On page 52199, column 2, § 1.1362–4 (e)(4), line 1, the language "(4) *Year in which income from short S"* is removed and the language "(4) *year in which income from S short"* is added in its place.

§ 1.1362–5 [Corrected]

19. On page 52199, column 3, § 1.1362–5(c), line 16, the word "section" is added immediately following the word "under".

§ 1.1362–6 [Corrected]

20. On page 52000, column 3, § 1.1362–6(c), line 4, the word "corporations" is removed and the words "a corporation" are added in its place.

Dale D. Goode,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 89–2852 Filed 2–6–89; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Ohio Permanent Regulatory Program; Remining

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing the receipt of proposed amendments to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments are intended to revise the State program to incorporate additional flexibility afforded by the amended Clean Water Act. The amendments would provide statutory authority and would establish criteria and standards for Ohio to authorize the remining of previously affected areas which have continuing pollutional discharges. This remining would be in accordance with remining National Pollutant Discharge Elimination System (NPDES) permits issued by the Ohio Environmental Protection Agency (OEPA).

This notice sets forth the times and locations that the Ohio program and proposed amendments to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m. on March 9, 1989. If requested, a public hearing on the proposed amendments will be held at 1:00 p.m. on March 6, 1989. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m. on February 22, 1989.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Ms. Nina Rose Hatfield, Director, Columbus Field Office, at the address listed below. Copies of the Ohio program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays.

Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSMRE's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, Room 202, Columbus, Ohio 43232, Telephone: (614) 866–0578.

Office of Surface Mining Reclamation and Enforcement, 1100 "L" Street NW., Room 5131, Washington, DC 20240, Telephone: (202) 343–5492.

Ohio Department of Natural Resources, Division of Reclamation, Fountain Square, Building B–3, Columbus, Ohio 43224, Telephone: (614) 265–6675.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Columbus Field Office, (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Discussion of the Proposed Amendments

On February 4, 1987, the Clean Water Act was amended under Pub. L. 100–4. A new paragraph (p) was added to Section 301 of the Clean Water Act authorizing

the issuance, by the U.S. Environmental Protection Agency (EPA) or by approved State offices of the EPA, of modified NPDES permits for coal remining operations. These modified permits for remining can be issued if the applicant demonstrates that the coal remining operation will result in the potential for improved water quality from the area to be remined. The modified permits can contain approved variances for effluent limitations with respect to the pH, iron, and manganese levels in pre-existing discharges in the remining area. Modified effluent requirements can be established on a case-by-case basis for each mining permit, applying the best available technology which is economically achievable and using best professional judgment. In no case will the remining operation be allowed to worsen the pollution level of the pre-existing discharge nor exceed State water quality standards established under Section 303 of the Clean Water Act.

By letter dated January 20, 1989 (Administrative Record No. OH–1131), the Ohio Department of Natural Resources, Division of Reclamation (Ohio) submitted proposed amendments to the Ohio program at Ohio Revised Code (ORC) sections 1513.07 (B)(2)(s) and (E)(7) and 1513.16(F)(3) (a), (b), and (c) and at Ohio Administrative Code (OAC) Section 1501:13–4–15.

The proposed changes were initiated by Ohio to take advantage of the increased flexibility afforded to the OEPA under the amended Clean Water Act. Ohio's proposed changes are intended to create incentives for mine operators to enter, mine, and reclaim areas that were previously affected by mining and which, as a result, have continuing water pollution.

At the present time, coal mine operators who reaffect previously mined areas in Ohio with pre-existing water pollution are unable to obtain bond release unless they eliminate that pollution. Ohio's existing bonding regulations prevent the State from releasing bonds where there are pollutional discharges on the permit area even if those pollutional discharges were present before the operator began mining.

The program amendments submitted by Ohio would create a limited exception to the existing regulations which would allow special authorization for, and the subsequent release of bonds to, operators who mine areas with pre-existing pollutional discharges. The amendment provisions would allow Ohio to release performance bonds if, at a minimum, the operator:

(1) Satisfies the modified NPDES effluent limitations established by Ohio and approved by OEPA under the amended Clean Water Act for areas with pre-existing pollutional discharges,

(2) Has fully implemented the approved abatement and reclamation plan, and

(3) Has not caused degradation of the baseline pollution load for a specified period of time.

The specific changes proposed by Ohio are briefly discussed below:

(1) ORC section 1513.07(B)(2)(s): This paragraph is being added to require that permit applicants proposing to conduct coal mining operations on previously mined areas must provide additional information as required by the Chief of the Division of Reclamation, Ohio Department of Natural Resources (the Chief) including maps, plans, cross sections, water quality data, and a pollution abatement plan which may improve water quality.

(2) ORC section 1513.07(E)(7): This paragraph is being added to allow the Chief to grant authorization for a permit applicant to conduct coal mining operations on previously mined areas if the applicant demonstrates that neither the applicant nor any other officer, partner, or owner:

(a) Has any legal responsibility to treat the water pollution discharges from the area of proposed remining;

(b) Has any statutory responsibility for reclaiming the proposed remining area;

(c) Has had a determination by the Chief of a demonstrated pattern of willful violations of the Ohio mining law and rules with respect to water quality within eighteen months prior to the application; or

(d) Has forfeited a mining bond or similar security.

(3) ORC section 1513.16(F)(3) (a), (b), and (c): These paragraphs are being rewritten to require that an operator must comply with all additional requirements imposed by the Chief concerning remining areas in order for the Chief to release bond on areas covered by an authorization to remine previously affected areas.

(4) OAC section 1501:13–4–15: This new rule is being added to establish the terms and conditions for authorization by the Chief for mine operators to conduct coal mining operations on previously mined areas. The proposed rule includes the following:

(a) Definitions of terms;

(b) Additional permit application requirements for remining areas;

(c) Conditions for approval or denial of applications by the Chief;

(d) Performance standards for remining areas;

(e) Requirements for treatment of discharges from remining areas; and

(f) Criteria and schedules for release of bonds on remining areas by the Chief.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is now seeking comment on whether the amendments proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **"DATES"** or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **"FOR MORE INFORMATION CONTACT"** by 4:00 p.m. on February 22, 1989. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."** All such meetings shall be open to the public and, if possible,

notices of the meetings will be posted at the locations listed under "ADDRESSES." A written summary of each public meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 935

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Carl C. Close,

Assistant Director, Eastern Field Operations.

Date: January 30, 1989.

[FR Doc. 89-2806 Filed 2-6-89; 8:45 am]

BILLING CODE 4310-05-M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 211

[Docket No. RM 88-7]

Mask Work Protection; Registration of Claims of Protection in Mask Works Proposed Regulations

AGENCY: Library of Congress, Copyright Office

ACTION: Proposed regulations.

SUMMARY: The Copyright Office of the Library of Congress is proposing an amendment to its regulations on mask work registration to provide an exception to the most complete form requirement. Section § 211.4(c) and (e) now require one registration per work and that the registration cover the most complete form of the semiconductor chip product in existence. The proposed exception would permit separate registration of unpersonalized gate arrays and the customized metallization layers despite the existence of a completed final form.

DATES: Comments should be received on or before March 9, 1989.

ADDRESSES: Ten copies of written comments should be addressed, if sent by mail to: Library of Congress, Department 100, Washington, DC 20540. If delivered by hand, copies should be brought to: Office of the General Counsel, James Madison Memorial Building, Room LM-407, First and Independence Avenue, SE., Washington, DC 20559, (202) 707-8380.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Washington, DC 20559, (202) 707-8380.

SUPPLEMENTARY INFORMATION: On November 8, 1984, the President signed into law the Semiconductor Chip Protection Act of 1984, Pub.L. 98-620. The Act created a new form of intellectual property law separate and apart from any earlier law. The legislation consisted of an amalgam of patent and copyright principles, but also contained new features. The law was codified as Chapter 9 of Title 17 of the U.S. Code, and is primarily administered by the Copyright Office.

On June 28, 1985, the Copyright Office issued final regulations implementing the Semiconductor Chip Protection Act. A public hearing (49 FR 39171) and interim regulations (50 FR 203) preceded the formulation of final regulations.

One of the most controversial issues raised in the rulemaking proceeding was the registerability of "intermediate forms" of semiconductor chip products. Section 901 of the Act defines "semiconductor chip product" as including "the final or intermediate form of any product * * *." A mask work cannot be protected under the Act until it has been fixed in such a product.

In the interim regulations, a principle was advanced allowing only one registration for the same version of a mask work. Special rules were established for registering mask works fixed as intermediate forms whereby registration of the intermediate form was possible only if the intermediate form represented twenty percent or more of the intended final form.

The purpose of the policy was to discourage applicants from fractionalizing their mask work contributions into smaller portions. The commentary preceding the interim regulation cited a number of reasons for this policy. In cases where claims were asserted on the basis of small portions of mask works fixed in semiconductor chip products, it would be difficult to develop and apply standards of originality. The practice of registering multiple claims in small portions of mask works might discourage legitimate reverse engineering under section 906 of the Act. A problem in calculating the duration of protection might also arise if several portions of a final product were registered separately at different times because duration for unexploited mask works begins upon registration. Finally, multiple registrations could lead to compounding of statutory damages in a way not contemplated by Congress.

In comments on the interim regulation, industry spokesmen attacked the prohibition against registering an intermediate form where a final form was in existence. They also attacked the twenty percent rule as an arbitrary standard which was without support under the Act.

At the heart of the argument was the industry view that applicants should have discretion to subdivide their mask work contribution. That it would be easier to prove substantial similarity in litigation was cited as the primary reason an applicant would choose to follow such a course.

The Copyright Office concluded that the basic policy of the interim regulation in favor of one registration per work was a sound policy. In implementing the policy, however, the final regulation adopted a number of changes. The language of § 211.4(e) was recast to require applicants to register mask work contributions in their most complete form. The twenty percent rule as an absolute bar to registration was eliminated. However, in cases where an applicant sought registration of a contribution of less than 20 percent of the intended final form, a full disclosure deposit was required.

The primary reason for the policy adopted in the final regulation was the belief of the Copyright Office that reference to "intermediate forms" in the Act was intended to have a limited purpose. According to testimony in the Congressional hearings on the Act, lengthy testing of semiconductor chip products often took place before a final product became commercially available. In the interim, a semiconductor chip producer might need protection before the product was completed in its final form. In order to address this problem, Congress included the reference to "intermediate forms" in the Act. This consideration, however, in no way justified making multiple registrations of completed semiconductor chip products.

The Copyright Office rejected the assertion that multiple registrations of final semiconductor chip products were necessary, in order to prevent judges from misconstruing the Act. On the contrary, far greater confusion would likely arise from permitting multiple registrations of completed semiconductor chip products. If discretionary subdivision of claims were permitted, each manufacturer would be tempted to divide his mask works into as small a portion as possible in order to maximize his level of protection. Moreover, under the interim deposit regulation, applicants were not required to disclose fully the content of their mask work contribution due to trade secret concerns. It appeared clear from the comment letters received that claims in very small portions of semiconductor chip products would be advanced. Therefore, without policies discouraging discretionary subdivision of claims, adjudicating protection in only one semiconductor chip product could require judges to take into account multiple registrations based on deposits which were calculated to obscure the nature of the claim. The registration and the public record would be of minimal assistance to the court, if helpful at all.

A related issue concerned the registration of gate arrays. In general, unpersonalized gate arrays contain an array of unconnected cells which can be customized to create a variety of semiconductor chip products. Customizing is accomplished by adding metallization layers to the unpersonalized gate array to complete the electrical circuitry.

Commentators on the interim regulations argued that the regulations prevented the registration of unpersonalized gate arrays. In its commentary on the final regulations, the Copyright Office disputed this assertion by pointing out that under the regulations registration was possible for both the unpersonalized gate arrays as an intermediate form (or where that was the extent of the owner's right to claim) and the custom metallization layers, and this policy was continued under the final regulations. However, once a final product was produced by adding metallization layers, only registration based on the most complete form would be possible.[1]

The Copyright Office believes the general policies adopted in the final regulations have worked well. While disagreements over the necessity of the most complete form regulation may exist, applicants seemed to have experienced few problems in complying with the policy. No case litigating any aspect of the Semiconductor Chip Protection Act has been argued in federal court.

Despite the general appropriateness of the most complete form regulation, it has come to the attention of the Copyright Office that there may be one instance in which a hardship is raised. The hardship concerns the different registration treatment of unpersonalized gate arrays according to whether the owner is a merchant manufacturer or a captive manufacturer.

So-called merchant manufacturers are companies that license unpersonalized gate arrays to others who customize the chips into finished products by adding the customized metallization layers. In the typical circumstances, the merchant manufacturer will own the mask work contribution in the unpersonalized gate array, and the company manufacturing the final product will own the rights in the customized metallization layers. As a result, two separate registrations may be made covering each owner's mask work contribution.

The so-called captive manufacturer owns both the gate array and the metallization layers. Typically, captive manufacturers are large manufacturers of computer products. Once a captive manufacturer has produced any final product by adding the metallization layers, the company loses the right to register separately the unpersonalized gate array under the existing regulations. A captive manufacturer can avoid this result by registering the unpersonalized gate array before any metallization layers have been added. As a practical matter, captive manufacturers have not adopted such a practice, apparently because it is thought to be too disruptive to the manufacturing process.

Captive manufacturers have complained to the Copyright Office that the most complete form regulation puts them at a competitive disadvantage in protecting their unpersonalized gate arrays. They theorize that it would be more difficult for them to prove substantial similarity against an infringer of the gate array because their registration covers both the gate array and the metallization layers. Merchant manufacturers, on the other hand, have registrations typically covering only the gate array.

It is reasonable that captive manufacturers should be accorded the same protection in their unpersonalized gate arrays as merchant manufacturers. Whether a competitive disadvantage would arise is impossible to evaluate in the absence of cases. The Copyright Office believes it is unlikely that serious competitive disadvantage would arise. Nevertheless, the Copyright Office concedes that there is uncertainty on the issue. In order to put all manufacturers of gate arrays on equal footing, the Copyright Office proposes a limited exception to the most complete form requirement allowing separate registration of unpersonalized gate arrays and custom metallization layers.

The exception has purposely been drawn narrowly to accomplish the limited purpose of extending to captive manufacturers of gate arrays the same treatment as merchant manufacturers. Essentially, the exception allows the captive manufacturer two registrations: one in the entire unpersonalized gate array and one in the custom metallization layers. Applicants seeking to invoke the exception are required to make the nature of their claim clear at line 8 of Form MW. With respect to the Regulatory Flexibility Act, the Copyright Office takes the position that this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress and is part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended [Title 5, Chapter 5 of the U.S. Code, Subchapter II and Chapter 7]. The Regulatory Flexibility Act consequently does not apply to the Copyright Office since that Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act.[2]

[1] The requirement of one registration assumes that the owner of the unpersonalized gate array and the metallization layers is the same. If the owner of the gate array is different from the owner of the metallization layers, then each owner is entitled to register his mask work contribution.

[2] The Copyright Office was not subject to the Administrative Procedure Act before 1978, and it is now subject to it only in areas specified by section 701(d) of the Copyright Act (i.e. "all actions taken by the Register of Copyrights under this title (17), except with respect to the making of copies of copyright deposits). (17 U.S.C. 706(b)). The Copyright Act does not make the Office an "agency as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA FOIA requirements.

List of Subjects in 37 CFR Part 211

Mask works, Semiconductor chip products.

Proposed Regulations

In consideration of the foregoing, the Copyright Office proposes to amend Part 211 of 37 CFR, Chapter II.

1. The authority citation for Part 211 would continue to read as follows:

Authority: Copyright Act of 1976; Pub. L. 94-533, 90 Stat. 2541 [17 U.S.C. 702 and 908].

2. Section 211.4 (c), (d), and (e) would be revised to read as follows:

§ 211.4 [Amended]

* * * * *

(c) *One registration per mask work.* (1) Subject to the exception specified in paragraph (c)(2), only one registration can generally be made for the same version of a mask work fixed in an intermediate or final form of any semiconductor chip product. However, where an applicant for registration alleges that an earlier registration for the same version of the work is unauthorized and legally invalid and submits for recordation a signed affidavit, a registration may be made in the applicant's name.

(2) Notwithstanding the general rule permitting only one registration per work, owners of mask works in final forms of semiconductor chip products which are produced by adding metal-connection layers to unpersonalized

gate arrays may separately register the entire unpersonalized gate array and the custom metallization layers. Applicants seeking to register separately entire unpersonalized gate arrays or custom metallization layers should make the nature of their claim clear at Space 8 of application Form MW.

(d) *Registration as a single work.* Subject to the exception specified in paragraph (c)(2), for purposes of registration on a single application and upon payment of a single fee the following shall be considered a single work:

(1) In the case of a mask work that has not been commercially exploited: All original mask work elements fixed in a particular form of a semiconductor chip product at the time an application for registration is filed and in which the owner or owners of the mask work is or are the same; and

(2) In the case of a mask work that has been commercially exploited: All original mask work elements fixed in a semiconductor chip product at the time that product was first commercially exploited and in which the owner or owners of the mask work is or are the same.

(e) *Registration in most complete form.* Owners seeking registration of a mask work contribution must submit the entire original mask work contribution in its most complete form as fixed in a semiconductor chip product. The most complete form means the stage of the manufacturing process which is closest to completion. In cases where the owner is unable to register on the basis of the most complete form because he or she lacks control over the most complete form, an averment of this fact must be made at Space 2 or Form MW. Where such an averment is made, the owner may register on the basis of the most complete form in his or her possession. For applicants seeking to register an unpersonalized gate array or custom metallization layers under paragraph (c)(2), the most complete form is the entire gate array or customized metallization layers in which mask work protection is asserted.

* * * * *

Dated: January 12, 1989.

Ralph Oman,

Register of Copyrights.

Approved by:

Dr. James H. Billington,

The Librarian of Congress.

[FR Doc. 89-2953 Filed 2-6-89; 8:45 am]

BILLING CODE 1410-07-M

VETERANS ADMINISTRATION

38 CFR Part 21

Veterans Education; Procedural Protections Following Loss of Dependent

AGENCY: Veterans Administration.

ACTION: Proposed regulation.

SUMMARY: This regulation sets out procedures which the Veterans Administration (VA) will follow when considering reduction of the veteran's educational assistance allowance in certain instances because the VA has received evidence that the veteran has lost a dependent. This proposal will bring the procedures used in such circumstances into agreement with the procedures followed when a veteran is receiving disability compensation or pension and the VA receives evidence that the veteran has lost a dependent. The effect of this proposal will be to improve and more clearly define procedural protections afforded the veteran.

DATES: Comments must be received on or before March 9, 1989. Comments will be available for public inspection until March 20, 1989.

ADDRESSES: Send written comments to Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address, between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until March 20, 1989.

FOR FURTHER INFORMATION CONTACT: William G. Susling, Jr., Education Advisor, Vocational Rehabilitation and Education Service (225C), Department of Veterans Benefits, (202) 233-2666.

SUPPLEMENTARY INFORMATION: The VA recently proposed regulatory amendments to 38 CFR Part 3 in order to improve certain procedural protections for disability compensation and pension claimants and beneficiaries. At that time, the VA indicated that its review of adjudication regulations was ongoing and that it might propose additional regulations in the future.

As a result of that ongoing review, the VA has decided that when the VA receives evidence that the veteran has lost a dependent, the same procedural protections will be followed for a veteran who is receiving educational assistance allowance as when that event occurs while a veteran is receiving disability compensation or pension. This proposal will provide those rights for veterans receiving benefits under the Vietnam Era GI Bill.

No additional benefits for dependents are now payable to recipients of educational assistance under the Montgomery GI Bill—Active Duty. However, we invite comments as to whether the VA should in the future propose a similar regulation for the Montgomery GI Bill—Active Duty before January 1, 1990. On that date, some people receiving educational assistance under that program will be eligible for additional assistance for dependents. Similar regulatory changes are not needed for the regulations which govern Dependents' Educational Assistance and the Post-Vietnam Era Educational Assistance Program (VEAP), because additional benefits for dependents are not payable to beneficieries under those programs.

The VA has determined that this proposed regulation does not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulation will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans Affairs certifies that this regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), the regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulation affects only individuals. It will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.111.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: January 5, 1989.

Thomas K. Turnage,

Administrator.

PART 21—[AMENDED]

In 38 CFR Part 21 VOCATIONAL REHABILITATION AND EDUCATION, § 21.4132 is proposed to be added to read as follows:

§ 21.4132 Procedural protections; reduction following loss of a dependent.

(a) *Notice of reduction required when a veteran loses a dependent.*

(1) Except as provided in paragraph (2) of this section, the Veterans Administration will not reduce an award of educational assistance allowance following the veteran's loss of a dependent unless:

(i) The Veterans Administration has notified the veteran of the adverse action, and

(ii) The Veterans Administration has provided the veteran with a period of 60 days in which to submit evidence for the purpose of showing that the educational assistance allowance should not be reduced.

(2) When the reduction is based solely on written, factual, unambiguous information as to dependency or marital status provided by the veterans or his or her fiduciary with knowledge or notice that the information would be used to determine the monthly rate of educational assistance allowance:

(i) The Veterans Administration is not required to send a prereduction notice as stated in paragraph (1) of this section, but

(ii) The Veterans Administration will send notice contemporaneous with the reduction in educational assistance allowance.

(Authority: 38 U.S.C. 3012, 3013)

(b) *Prereduction notice.* Where a reduction in educational assistance allowance is warranted by reason of information concerning dependency received from a source other than the veteran, the Veterans Administration will:

(1) Prepare a proposal for the reduction of educational assistance allowance, setting forth material facts and reasons;

(2) Notify the veteran at his or her latest address of record of the contemplated action;

(3) Furnish detailed reasons for the proposed reduction;

(4) Inform the veteran that he or she has an opportunity for a predetermination hearing, provided that the Veterans Administration receives a request for such a hearing within 30 days from the date of the notice; and

(5) Give the veteran 60 days for the presentation of additional evidence to show that the educational assistance allowance should be continued at its present level.

(Authority: 38 U.S.C. 3012, 3013)

(c) *Predetermination hearing.*

(1) If the Veterans Administration receives a timely request for a predetermination hearing:

(i) The Veterans Administration will notify the veteran in writing of the date, time and place for the hearing; and

(ii) Payments of educational assistance allowance will continue at the previously established level pending a final determination concerning the proposed reduction.

(2) The hearing will be conducted by a Veterans Administration employee:

(i) Who did not participate in the preparation of the proposal to reduce the veteran's educational assistance allowance, and

(ii) Who will bear the decision-making responsibility.

(Authority: 38 U.S.C. 3012, 3013)

(d) *Final action.* The Veterans Administration will take final action following the predetermination procedures specified in paragraph (c) of this section.

(1) If a predetermination hearing was not requested or if the veteran failed to report for a scheduled predetermination hearing, the final action will be based solely upon the evidence of record.

(2) If a predetermination hearing was conducted, the Veterans Administration will base final action upon:

(i) Evidence adduced at the hearing,

(ii) Evidence contained in the claims file at the time of the hearing, and

(iii) Any additional evidence obtained following the hearing pursuant to necessary development.

(3) Whether or not a predetermination hearing was conducted, a written notice of the final action shall be issued to the veteran setting forth the reasons for the decision, and the evidence upon which it is based.

(4) When a reduction of educational assistance allowance is found to be warranted following consideration of any additional evidence submitted, the effective date of the reduction or discontinuance shall be as specified under the provisions of § 21.4135. (For information concerning the conduct of the hearing see § 3.103 (c) and (d) of this chapter.)

(Authority: 38 U.S.C. 3012, 3013)

[FR Doc. 89-2761 Filed 2-6-89; 8:45 am]

BILLING CODE 8320-01-M

38 CFR Part 21

Veterans Education; Eligibility for Dependents' Educational Assistance

AGENCY: Veterans Administration.

ACTION: Proposed regulation.

SUMMARY: Occasionally, a veteran's child will become eligible for dependents' educational assistance after the child's eighteenth birthday. The pertinent provision of the Code of Federal Regulations which addresses this situation incompletely states the applicable statutory requirement for determining the child's effective date of eligibility. This proposal will bring the Code of Federal Regulations into agreement with the law.

DATES: Comments must be received on or before March 9, 1989. Comments will be available for public inspection until March 20, 1989.

ADDRESSES: Send written comments to Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address, between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until March 21, 1989.

FOR FURTHER INFORMATION CONTACT: William G. Susling, Jr., Education Advisor, Vocational Rehabilitation and Education Service (225C), Department of Veterans Benefits, (202) 233-2666.

SUPPLEMENTARY INFORMATION: The law provides an exception to the rule for determining the beginning date of a child's eligibility for dependents' educational assistance. The exception occurs when the child is eligible because he or she has a parent with a permanent and total disability permanent in nature, but the veteran is not notified of that disability rating until after the child has reached age 18. In that case the beginning date of eligibility is the date on which the Veterans Administration (VA) first finds that the parent from whom eligibility is derived has a service-connected total disability permanent in nature. The law goes on to define the term "first finds" as the effective date of the rating or the date of notification to the veteran from whom eligibility is derived, whichever is more to the child's advantage. The Code of Federal Regulations when addressing this subject mentions the effective date of the rating, but does not mention the alternative date of notification to the veteran. This proposal corrects this error.

The VA has determined that this proposed regulation does not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulation will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans Affairs has certified that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulation affects only individuals. It will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.117.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: January 9, 1989.

Thomas K. Turnage,

Administrator.

38 CFR Part 21, Vocational Rehabilitation and Education is proposed to be amended as set forth below:

PART 21—[AMENDED]

1. In § 21.3041, paragraph (b)(2) introductory, text is amended by removing the word "shall," and inserting in its place the work "may".

2. In §21.3041, paragraphs (b)(2)(ii) and (b)(2)(iii) are redesignated as paragraphs (b)(2)(iii) and (b)(2)(iv), respectively.

3. In § 21.3041, paragraph (b)(2)(i) is revised, aned pargraph (b)(2)(ii) is added, to read as follows:

§ 21.3041 Periods of eligibility—child.

* * * * *

(h) * * *

(2) * * *

(i) If the effective date of the permanent and total disability rating is before the child has reached 18 but the date of notification to the veteran from whom the child derives eligiblity occurs after the child has reached 18, the beginning date of eligibility shall be the basic beginning date as determined in paragraph (a) of this section, or the date of notification to the veteran, whichever is more advantageous to the eligible child.

(ii) If the effective date of the permanent and total disability rating occurs after the child has reached 18 but before he or she has reached 26, the beginning date of eligibility will be the effective date of the rating or the date of notification to the veteran from whom the child derives eligibility, whichever is more advantageous to the eligible child.

(Authority: 38 U.S.C. 1712(a)(3), 1712(d))

* * * * *

[FR Doc. 89–2857 Filed 2–6–89; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405 and 415

[BERC-142-P]

Medicare Program; Payment for Physician Services Furnished in Teaching Settings; Payment to Providers for Compensation Paid to Physicians Who Furnish Services to Providers; and Payment for Consultative Pathology Services Furnished to Patients in Providers

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: We are proposing to revise the regulations governing Medicare payment for physician services in teaching settings to implement statutory provisions that specify the circumstances under which these physicians would be reimbursed on a reasonable cost basis or, alternatively, when they would be reimbursed on a reasonable charge basis. We also describe the methods that would be used to determine the customary charges for the services of these physicians.

We are also proposing to revise the regulations that govern Medicare payment for the services of physicians to health care providers. We would clarify our policy regarding allocation of provider compensation to physicians who return to a provider, directly or indirectly, some or all of the payments that those physicians receive for treating patients in the provider. In addition, the regulations concerning updates to the reasonable compensation equivalents (RCEs), which limit the amount of compensation allowable for services furnished by physicians to providers would also be revised. We propose to update the RCE limits periodically, when an update would result in a significant change in the limits, rather than annually.

Finally, we are proposing to amend the criteria that must be met in order for physician laboratory services furnished to patients in providers to be paid on a reasonable charge basis. Under our proposed changes, interpretations of laboratory test results by pathologists would have to be requested by the patient's attending physician, and a standing order policy would no longer be an acceptable substitute.

The revised regulations would be placed in a new 42 CFR Part 415. We would also redesignate under Part 415 the current regulations on teaching hospitals, the services of physicians to providers, the services of physicians in providers, and the services of interns and residents. This redesignation would locate related rules having a specialized audience in a separate part and, thereby, make them easier to use.

DATE: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on April 10, 1989.

ADDRESS: Mail comments to the following address: Administrator, Health Care Financing Administration, Department of Health and Human Services, Attention: BERC–142–P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC; or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC–142–P.

Comments received timely will be available for public inspection as they are received, generally beginning about three weeks after the date of publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone 202–245–7890).

FOR FURTHER INFORMATION CONTACT:

Kenneth Marsalek, (301) 966–4502, Payment for Physician Services in Teaching Settings and Payment for Consultative Pathology Services Furnished to Patients in Providers

Ward Pleines, (301) 966–4528, Payment to Providers for Compensation Paid to Physicians Who Furnish Services to Providers.

SUPPLEMENTARY INFORMATION:

I. General Background

The Medicare statute (title XVIII of the Social Security Act (the Act)) generally provides separate coverage and payment rules for provider services and for physician services. Under Medicare, provider services such as inpatient hospital services and skilled nursing facility (SNF) services are covered under Hospital Insurance (Part A) and are paid for from the Part A Trust Fund. Outpatient hospital services are covered under Supplementary Medical Insurance (Part B) and are paid for from the Part B Trust Fund. Provider services are paid for on a prospective payment or reasonable cost basis through Medicare contractors known as fiscal intermediaries. Physician services and other "medical and other health services," as defined in section 1861(s) of the Act, are paid for under Part B, and generally are paid for on a reasonable charge basis through Medicare contractors known as carriers.

To administer the Medicare program in accordance with the statute, we must be able to distinguish clearly between provider services and physician services, to pay for each on the proper basis (prospective payment, costs, or charges) from the correct trust fund (Part A or Part B). We also must develop billing and payment procedures that—

- Permit us to meet these requirements;
- Are administratively sound, simple, and efficient;
- Ensure that Medicare payments are reasonable in amount; and
- Avoid duplicate payment.

In 1966 and 1967, we issued regulations that set forth the basic principles regarding payment for services of physicians who practice in providers (currently located at 42 CFR 405.480 through 405.488) and additional principles applicable to payment for physician services in teaching hospitals §§ 405.520 and 405.521). Since the publication of these regulations, developments have occurred that greatly affect the manner in which services of physicians in provider settings are reimbursed. First, physicians' financial agreements with providers have become more complex. Second, during this time, Congress has enacted a series of legislative changes that affect reimbursement for physician services in providers. Some of these amendments require changes in current Medicare regulations.

For example, section 948 of the Omnibus Reconciliation Act of 1980 (Pub. L. 96–499; enacted December 5, 1980) and section 2307 of the Deficit Reduction Act of 1984 (Pub. L. 98–369; enacted July 18, 1984) pertain specifically to problems that arise in the teaching setting. (See section III.D. of this preamble for a more detailed discussion of these provisions.) In addition, in section 108 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–248; enacted September 3, 1982), Congress added a new section 1887 to the Act and made a conforming change to section 1861(v)(7) of the Act. This legislation dealt explicitly with distinguishing between the services a physician furnishes to individual patients in a provider and services furnished to the provider itself, as well as with the method of reimbursement for both types of services.

On March 2, 1983, we published a final rule with comment period (48 FR 8902) that implemented the provisions of section 108 of Pub. L. 97–248. That final rule revised the regulations that govern Medicare coverage and reimbursement for services of physicians who practice in providers such as hospitals, SNFs, and comprehensive outpatient rehabilitation facilities (CORFs). As a part of that final rule, we revised §§ 405.480 through 405.482, removed §§ 405.483 through 405.488, and added new §§ 405.550 through 405.557. These regulations—

- Set forth basic criteria for distinguishing those physician services furnished in providers that are reimbursed on a reasonable charge basis from those services that are reimbursed only on a reasonable cost basis;
- Establish how the amounts reimbursed are determined on both charge and cost bases;
- Set limits on the amounts reimbursable on a reasonable cost basis to providers for physician services to the provider; and
- Establish more specific criteria for determining the basis and amount of payment for physician services in the specialties of anesthesiology, radiology, and pathology.

In the preamble to the March 2, 1983 final rule (48 FR 8906), we stated that because of problems related to applying portions of the revised regulations to teaching hospitals and to implement sections 1842(b)(6) and 1861(b)(7) of the Act (as amended by section 948 of Pub. L. 96–499), we planned to publish, in a separate document, proposed regulations that would establish special rules governing payment for services of physicians in teaching hospitals. These rules were to supersede §§ 405.520 and 405.521 if they became effective. Subsequently, however, Congress enacted the Deficit Reduction Act of 1984 (Pub. L. 98–369), which further amends section 1842(b)(6) of the Act, redesignates it as section 1842(b)(7), and amends section 1886(d)(5). This proposed rule would implement the amendments of both Pub. L. 96–499 and Pub. L. 98–369.

As noted earlier, the services of physicians to individual patients, including hospital patients, generally are covered under Medicare Part B and are paid for on a reasonable charge basis. The reasonable charge for a service is the charge that the Medicare carrier for the locality determines to be reasonable under the regulations set forth at §§ 405.501 through 405.506. Carriers generally compare a charge actually billed to the physician's customary charge for similar services (as determined under § 405.503) and the prevailing charge in the locality for similar services (as determined under § 405.504). In general, the reasonable charge for a physician service is the lowest of the actual, customary, or prevailing charge.

One major exception to this general rule is the method we use to determine charges for services of physicians who practice in providers and who are compensated by providers or other organizations for their services. In many cases, these physicians are compensated both for their care of individual patients and for other services that benefit the provider's patients generally (for example, teaching, administrative services, quality control, and committee work). The rules on payment for services of physicians who practice in providers assume that the compensation a physician receives is for all services the physician performs in the provider unless the provider can demonstrate otherwise (see current § 405.481). The portion of each physician's compensation that relates to time spent by the physician in furnishing services to individual patients is used by the carrier as a basis for developing a schedule of customary charges for these services. The carrier then uses this compensation-related schedule of

customary charges, rather than charges developed under the general reasonable charge rules, to determine the amount of payment for that physician's services furnished in the provider to Medicare patients.

In this document, we are proposing to do the following:

- Revise the regulations governing Medicare payment for services of physicians in teaching settings (section II of this preamble).
- Revise the regulations governing Medicare payment to providers for compensation paid to physicians who furnish services that are of general benefit to patients in the provider (section III of this preamble).
- Revise the regulations governing Medicare payment for laboratory services furnished by physicians to patients in providers (section IV of this preamble).

II. Payment for Physician Services Furnished in Teaching Settings

A. Physician Services in Teaching Hospitals

Of the nearly 7,000 hospitals that now participate in Medicare, approximately 1,200 have graduate medical education programs. Although some services in these hospitals are personally furnished by physicians (that is, the services do not involve interns or residents), many patients in these hospitals receive services from interns and residents who work under the supervision of teaching physicians. The salaries of the interns and residents and the related direct costs of medical education are reimbursed as described in § 413.85. Administrative and supervisory services not involving interns and residents are paid either through the inpatient hospital prospective payment system or, for hospitals not subject to the prospective payment system, on a reasonable cost basis. The professional services of physicians furnished to inpatients are generally reimbursed on a reasonable charge basis.

Practices vary widely among teaching hospitals with respect to the degree of physician involvement in the care of patients. In some cases, teaching physicians personally direct interns and residents while these interns and residents are treating patients. In other cases, the interns and residents assume actual responsibility for the care patients receive and the teaching physicians exercise only general control over these interns and residents activities.

These differences in the levels of physician involvement in the delivery of services involving interns and residents raise two issues that we must resolve if we are to ensure that Medicare pays properly for these types of services. First, we must specify the level of physician involvement in the delivery to patients of services involving interns and residents that is needed to justify payment to the physicians for those services on a reasonable charge basis. Second, in the case of services for which charge payment is appropriate, we must develop payment methods that will ensure that Medicare payments for the services of teaching physicians in hospitals are not excessive in relation to the nature of the service or the payment policies of other payors.

B. Statutory and Other Developments Pertaining to Teaching Physician Services

1. Original Medicare Law and Regulations

As originally enacted, title XVIII of the Act excluded the services of physicians, interns, and residents from the definition of "inpatient hospital services", except for the services of interns and residents in approved training programs. However, it did not include specific rules on payment for physician services in teaching hospitals. On August 31, 1967, we issued regulations (§§ 405.520 and 405.521), which are substantially still in effect, to govern these payments. Under the provisions of these regulations, a physician in a teaching setting is considered the attending physician for a Medicare patient, and thereby qualifies for Part B reasonable charge payment, only if he or she furnishes "personal and identifiable direction" to the interns and residents who provide the actual services to the patient.

Although § 405.521(b) lists examples that illustrate the types of responsibilities attending physicians typically carry out, the list is not exhaustive. In individual cases, it is often difficult to determine, by reference to § 405.521, whether a physician in a teaching setting is the attending physician for a Medicare patient.

It became apparent, shortly after §§ 405.520 and 405.521 were issued, that some Medicare carriers were paying charges for physician services in some teaching hospitals, even though interns and residents were primarily responsible for the care of the patients. The physicians who were billing for these services were often assuming only limited responsibility for the medical management of the patients treatment. It also became clear that some physicians were billing charges for services to Medicare patients even though other non-Medicare patients were not charged for similar services, and patients generally were not obligated to pay for physician services.

These problems led in April 1969 to the issuance of Intermediary Letter (I.L.) 372, which sets forth specific conditions that physicians in teaching settings must meet to be considered attending physicians and, thus, qualify for charge payment for their services. It also specifies how carriers are to determine the reasonable charges for these services. Although I.L. 372 has provided specific guidance to Medicare carriers and intermediaries on payment for these services, it has not been applied uniformly by all Medicare carriers. As explained later in this preamble (section I.C.4.), the policies in I.L. 372 were considered by Congress when it enacted section 948 of Pub. L. 96–499.

2. 1972 Amendments

In 1972, Congress amended the Social Security Act to provide specific rules on payment for physician services in teaching hospitals. Section 227 of the Social Security Amendments of 1972 (Pub. L. 92–603) amended section 1861(b) of the Act to require that Medicare treat these services as hospital services and pay for them on a reasonable cost basis, except under certain specific circumstances. Section 227 also made certain incentives available to hospitals that elect to be paid for physician services on a reasonable cost basis.

In subsequent legislation (section 15 of the Social Security Amendments of 1973 (Pub. L. 93–233) and section 7 of the End-Stage Renal Disease Program Amendments of 1978 (Pub. L. 95–292)), Congress deferred implementation of all provisions of section 227 of Pub. L. 92–603 except for the incentives to be reimbursed on a reasonable cost basis. The cost reimbursement provisions were implemented through § 405.465, as published in a final rule on August 8, 1975 (40 FR 33440). The statutory provisions that were not implemented were eventually replaced by new provisions enacted by Congress in Pub. L. 96–499 on December 5, 1980. Pub. L. 96–499 reaffirmed, but did not otherwise affect, the provisions of section 227 of Pub. L. 92–603 authorizing cost reimbursement incentives.

3. Omnibus Reconciliation Act of 1980 and Deficit Reduction Act of 1984

As mentioned earlier, section 948 of Pub. L. 96–499 made several important changes in the sections of the Medicare law that deal with payment for physician services in teaching hospitals. Specifically, section 948—

- Repealed the provisions of section 1861(b) of the Act that required Medicare to pay for these services (with certain exceptions) on a reasonable cost basis;
- Amended section 1861(b) of the Act to allow hospitals with approved teaching programs to elect to be paid on a reasonable cost basis for physician services to their Medicare patients and for the supervision of interns and residents in the care of individual patients if all physicians in the hospital agree not to bill charges for their services to Medicare patients; and
- Amended section 1842(b)(6) of the Act (now section 1842(b)(7)) to specify the conditions that must be met to permit payment of charges under Part B for physician services in teaching hospitals that do not elect cost reimbursement, and to provide special payment rules for determining the customary charges applicable in this situation.

Subsequently, section 2307(a) of Pub. L. 98–369 further amended these provisions. Section 2307(a) was later amended by the technical amendments to Pub. L. 98–369 in sections 3(b) (5) and (6) of Pub. L. 98–617 (enacted on November 8, 1984). As revised, section 2307(a) amended section 1842(b)(7) of the Act (which was redesignated from 1842(b)(6) of the Act by section 2306 of Pub. L. 98–369) to provide that—

- The customary charge of a physician qualifying as a teaching physician is set no lower than 85 percent of the prevailing charge paid for similar services in the same locality; and
- If all the teaching physicians in a teaching hospital agree to accept assignment for all the services they furnish to Medicare patients in that hospital, the customary charge is set at 90 percent of the prevailing charge paid for similar services in the same locality.

4. Legislative History

In the Conference Report accompanying Pub. L. 96–499 (H.R. Rep. No. 1479, 96th Cong., 2d Sess. 145 (1980)), the Conference Committee stated that its intention was to permit payment for physician services in a teaching hospital on a reasonable charge basis only if the physician is the patient's "attending physician". The conferees also endorsed the attending physician criteria in I.L. 372. Therefore, the attending physician criteria in I.L. 372 are used as the basis for the attending physician criteria set forth in this proposed rule. The criteria in I.L. 372 have been modified to be specifically applicable to psychiatry, family practice, anesthesiology, radiology, physician laboratory, and consultative services.

The Conference Report further states that "[t]he conferees intend (without precluding reasonable changes in the future) that in determining [sic] the amount payable on a charge basis under medicare part B for services of physicians in teaching hospitals, the policies contained in Intermediary Letter 372 should be generally followed where these are not inconsistent with the provisions of the conference agreement." *Ibid.* p. 146. In addition, the Report specifies that collection of at least 50 percent of the charges billed to non-Medicare patients is to be interpreted as collection in substantial part for purposes of determining whether the conditions for charge payment are met, but that any charges paid under Medicaid, regardless of amount, are deemed to be collected in substantial part. *Ibid.* p. 145.

C. Major Provisions of Proposed Regulations Regarding Physicians in Teaching Settings

The proposed regulations would provide for the following:

1. A definition of a teaching hospital, for purposes of these rules, as a hospital engaged in a residency program in medicine, osteopathy, dentistry, or podiatry that is approved by one of the national accrediting bodies set forth in section 1861(b)(6) of the Act.

2. The continuation of the longstanding policy that provides for payment made on a reasonable cost basis for physician medical and surgical services and for the supervision of interns and residents in the care of individual patients in a teaching hospital that elects payment on this basis, if all physicians who furnish services to beneficiaries in the hospital agree not to bill charges for those services. (See section 1861(b)(7) of the Act.) Payment for physician compensation costs for the administration of intern resident programs incurred by teaching hospitals that elect cost reimbursement would be included in the per resident amounts for direct medical education as provided in the provisions of section 9202 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272).

3. As prescribed by section 1842(b)(7)(A)(i) (I) and (II) of the Act, payment on a reasonable charge basis under Part B for physician services in teaching hospitals that do not elect to receive payment on a reasonable cost basis under Part A for those services, if the physician services meet the following two basic requirements for charge payment:

a. The physician furnishes sufficient personal and identifiable physician services to the patient to exercise full, personal control over the management of the portion of the case for which payment is sought; that is, the physician must serve as the patient's "attending physician".

b. The physician's services to Medicare patients are of the same character as his or her services to non-Medicare patients.

4. As specified in section 1842(b)(7)(A)(i)(III) of the Act, a teaching hospital fee collection provision that requires that, during a representative fee collection period, at least 25 percent of the hospital's non-Medicare patients who received services that met the two conditions set forth in item 3 above paid at least 50 percent of the charges (other than nominal charges) imposed for the services. (Nominal charges are defined as those charges that are 10 percent or less of the prevailing charge levels for similar services in the same locality.)

5. For physician services that meet the conditions of item 3 above, but the hospital requirement in item 4 above is not met, payment would be made under the compensation-related charge rules (current §§ 405.480 through 405.482 and 405.550 through 405.557) if the physician is compensated by the teaching hospital or affiliated entity for physician services furnished to patients. If the physician is not so compensated, then payment would be made under the general reasonable charge rules (current §§ 405.501 through 405.508). (Section 1842(b)(7)(C) of the Act.)

6. For physician services that meet the conditions of item 3 above and the hospital requirement in item 4 above is also met, payment is made as described in item 5 above. However, if the physician is a teaching physician (as defined in item 7 below), the physician may elect to be paid under the compensation-related charge rules. If that election is not made, the physician would be paid on a reasonable charge basis with the customary charge determined as described in item 8 below (section 1842(b)(7) (A) and (B) of the Act).

7. A definition of a teaching physician as a physician who is compensated by a hospital, medical school, other affiliated entity, or professional practice plan for physician services furnished to patients and who generally involves interns and residents in patient care (section 1842(b)(7)(B)(i) of the Act).

8. Special rules for determining the customary charge for the services of teaching physicians that are furnished in teaching hospitals as follows:

• For services furnished by a teaching physician, if the hospital, its physicians, or another billing entity has established one or more charge schedules, customary charges would be based on the greatest of—

—The charges (other than nominal charges), that are most frequently collected in full or substantial part from the hospital's non-Medicare patients;

—The mean of all of the charges (other than nominal charges) that are collected in full or substantial part from the hospital's non-Medicare patients; or

—Eighty-five percent of the prevailing charges paid for similar services in the same locality (section 1842(b)(7)(B)(ii) of the Act).

• For services furnished by teaching physicians in a teaching hospital where all the teaching physicians have agreed to accept assignment, the customary charge is set at 90 percent of the prevailing charge paid for similar services in the same locality (section 1842(b)(7)(A)(ii) of the Act).

Each physician, hospital, or other billing entity that wishes to claim payment under these rules for services of teaching physicians based on a customary charge greater than 85 percent of the prevailing charge must submit any information required by HCFA to substantiate the claim.

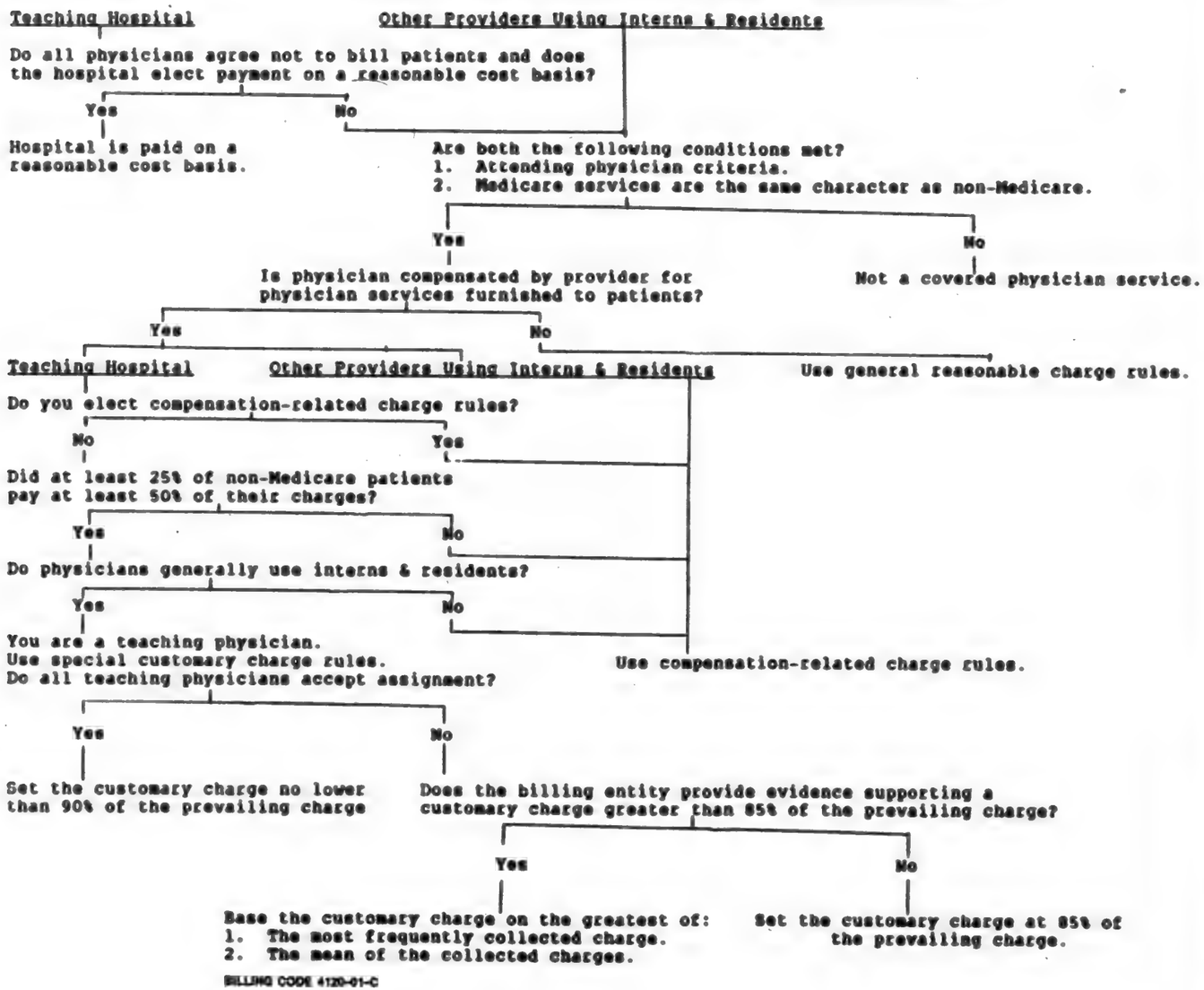
9. A set of requirements governing the execution of the agreement to accept assignment for all physician services furnished by teaching physicians in a teaching hospital, the conditions under which the hospital may terminate the agreement, and the limitations placed upon entrance into a new agreement following termination of a previous agreement.

10. Physicians who use interns and residents in the care of their patients in providers that do not meet the definition of a teaching hospital (that is, hospitals with teaching programs that are not approved by one of the organizations specified in section 1861(b)(6) of the Act) must meet the requirements of item 3a and b above in order to receive payment on a reasonable charge basis for physician services. Payment would be made based on either the compensation-related charge rules or the general reasonable charge rules as described in item 5 above.

The following chart summarizes how payment to physicians in teaching settings would be made under the proposed regulations.

BILLING CODE 4120-01-M

PAYMENT FOR PHYSICIAN SERVICES FURNISHED IN TEACHING SETTINGS



BILLING CODE 4120-01-C

D. Significant Issues Considered in Developing Proposed Regulations

1. Attending Physician Criteria

As noted earlier in this preamble, the Conference Committee for Pub. L. 98–499 stated in its Report its intention that payment on a reasonable charge basis for physician services in teaching hospitals be permitted only if the physician is the patient's attending physician, and the committee explicitly endorsed the attending physician requirements in I.L. 372. We believe that past problems experienced with undocumented physician services has resulted from the lack of proper enforcement of the attending physician criteria and not from any lack in the criteria themselves. We have, therefore, used the conditions for charge payments set forth in section 948 of Pub. L. 98–499 and the attending physician criteria in I.L. 372 in developing the parts of the proposed regulations that specify the circumstances under which payment of charges would be permitted.

As mentioned above, the attending physician criteria contained in I.L. 372 have been revised for purposes of this proposed rule, based on suggestions received from the health care industry and physician specialty groups, to apply more specifically to certain physician specialties; that is, psychiatry, family practice, and anesthesiology. Experts in these areas noted that due to the way residents in these specialties are trained, the general attending physician criteria are not always applicable. For example, the criteria requiring that the attending physician be recognized by the beneficiary as his or her attending physician is not applicable to residency programs in psychiatry and family practice. In psychiatry, the supervisory physician, although present, may only observe a resident's treatment of patients through one-way mirrors or on video tapes. Similarly, a purpose of the family practice teaching program is to have patients recognize the resident as the primary care physician and to recognize that the supervisory physician, while present at the office site during patient encounters and responsible for management of the patient's care, may not always personally perform all of the services required of an attending physician.

The general attending physician criteria would also be revised to state clearly the conditions that must be met by anesthesiologists. Essentially, an attending physician relationship would be established if the anesthesiologist directs no more than two concurrent procedures involving residents or interns or a "mix" of no more than one resident or intern and one certified registered nurse anesthetist (CRNA) or other qualified individual. (See section I.D.6. below for a complete discussion of reimbursement for anesthesiology services.)

The attending physician criteria would apply to all physician services in teaching hospitals and in other providers that use interns and residents regardless of whether the physician meets the definition of a teaching physician.

2. Definition of Teaching Physician

Section 1842(b)(7)(B) of the Act authorizes us to define the term "teaching physician." For this purpose, we would define a teaching physician as a physician who is compensated by a hospital, medical school, other affiliated entity, or professional practice plan for physician services furnished to patients and who generally involves interns and residents in patient care.

Prior to the enactment of Pub. L. 98–369, a physician's customary charge was determined based on whether or not the physician had a substantial practice outside the teaching setting (for example, more than 50 percent of the physician's charges were for services furnished to patients outside the teaching setting). We considered including the requirement that a physician could not have a substantial outside practice as part of the definition of a teaching physician. However, as noted above, this provision was eliminated by the amendments to the Act made by Pub. L. 98–369 and we note that the special reimbursement rules described above (in section C.8.) apply only to the services furnished by a teaching physician in the teaching hospital. Therefore, we have decided against including this requirement because we believe that the volume of a physician's charges for services furnished in a teaching hospital is not directly relevant to this issue.

We also considered the idea of requiring that a teaching physician must have a faculty appointment to a medical school with which the hospital is associated. We rejected this idea because there is no standard definition of a faculty appointment among teaching hospitals, and we believe that it would not contribute further to identifying the physicians intended to be covered by the definition.

3. Special Customary Charge Rules for Teaching Physicians

As discussed above, the customary charge of a teaching physician would be determined based on the greatest of—

- The charges (other than the nominal charges) that are most frequently collected in full or substantial part for services to patients who are not entitled to benefits under Medicare;
- The mean of the charges (other than nominal charges) that are collected in full or substantial part for services to patients who are not entitled to benefits under Medicare; or
- Eighty-five percent of the prevailing charges paid for similar services in the same locality.

We are proposing that carriers establish a physician's customary charges based on 85 percent of the prevailing charges unless the carrier receives evidence supporting a higher customary charge based on either the most frequently collected charges or the mean of the collected charges. If a physician meets the definition of a teaching physician (that is, a compensated physician who generally involves interns and residents in patient care) and the physician does not elect to be paid under the compensation-related charge rules, then the special customary charge rules would apply to all of his or her services in the teaching hospital, including those for which he or she is compensated by a hospital, medical school, other affiliated entity, or a professional practice plan; those services for which the physician bills the patient; and those occasional cases in which interns and residents are not used.

A community physician who also practices in a teaching hospital and meets the definition of a teaching physician would be paid under the special customary charge rules for physician services furnished to patients in the teaching hospital. A physician who does not meet the definition of a teaching physician would be paid under the compensation-related charge rules if compensated by the hospital and under the general reasonable charge rules if not compensated by the hospital.

It should be noted that under the current regulations (§ 405.521) all physicians in teaching hospitals are exempt from the compensation-related charge rules unless they specifically elect to be paid under those rules. This includes those physicians in hospitals that do not have residency programs in all specialties. Under these proposed rules, a physician who is compensated by a teaching hospital but who does not generally involve interns and residents in patient care would be paid under the compensation related charge rules.

We believe that the objective of the amendments made by Pub. L. 98–499 and Pub. L. 98–369 is to ensure that

unless a teaching physician elects to be paid under the compensation-related charge rules, Medicare does not pay more for teaching physician services than the most frequently collected charges or the mean of the collected charges from non-Medicare patients, subject to the customary charge "floor" described in section 1842(b)(7)(B)(ii)(III) of the Act. The law did not provide specific guidance for the calculation of the "most frequently collected charges" and "the mean of the charges". Under our proposed regulations, these calculations would be performed by the entity (for example, an individual physician, group of physicians, a medical practice plan, or a hospital) that is legally entitled to bill Medicare for the teaching physicians' services to Medicare patients in teaching hospitals. The calculations would be based on a representative past period of time, performed on either an individual physician, department, or hospital-wide basis, and updated annually to coincide with the reasonable charge update. The Medicare carrier would review and approve the calculations and perform the periodic audits to validate the schedule of charges.

In the Conference Report accompanying Pub. L. 98–369 (H.R. Rep. No. 861, 98th Cong., 2d Sess. 1311 (1984)), the Conference Committee urged us to develop a simplified or expedited methodology for calculating a customary charge when it is based on charge schedules. We plan to issue instructions in the Medicare Carrier Manual (HCFA Pub. 14–3) that will provide necessary guidance for performing customary charge calculations under this methodology. In order to minimize the number of physicians whose involvement would be necessary to perform these calculations, we wish to develop a presumptive test based on the hospital's mix of patients and payment levels of other third party payors. For example, a physician demonstrates that a majority of his or her charges that are paid in full or substantial part by non-Medicare payors is in excess of the Medicare prevailing charge. In these cases, the physician would automatically be paid for Medicare services at the lesser of the actual charges or the Medicare prevailing charge and no further calculations would be necessary. Thus, we would presume that the prevailing charge is the most frequently collected charge. We invite comments both on how to develop a presumptive test for this purpose and on a methodology for performing the calculations of the customary charges of those physicians who do not meet the presumptive test that would conform to hospital billing systems.

In the Conference Report accompanying Pub. L. 98–499, the Conference Committee specified that, in general, in determining whether charges are collected in "substantial part", it intends that "a substantial part of the charges" be interpreted as at least 50 percent of the charges (H.R. Rep. No. 1479, 98th Cong., 2d Sess. 145 (1980)). Nominal charges are excluded from the calculations. Since collection of only half of the charges is considered as collection in full, we consider nominal charges to represent an insignificant amount. Therefore, we are proposing to define nominal charges as those charges that are 10 percent or less of the prevailing charge level for similar services in the same locality.

4. Election of Payment on a Reasonable Cost Basis

Section 1861(b)(7) of the Act provides that if all the physicians who furnish medical or surgical services to Medicare beneficiaries in the hospital agree not to bill charges for these services, a teaching hospital may elect to be paid on a reasonable cost basis for those services. This provision, as added by section 227 of Pub. L. 92–603, was intended in part to simplify the administration of the program by eliminating the need for the hospital to document what portion of the physician's time is attributable to "medical and surgical services," and what portion constitutes "supervision of interns and residents." This documentation would otherwise be necessary in order to establish whether the "attending physician" criteria were met which would allow the physicians to bill charges under Part B for their medical and surgical services. (See S. Rep. No. 1230, 92d Cong., 2d Sess. 198 (1972).)

(The criteria for making this election are set forth in § 405.521(d)(2) and the cost reimbursement provisions are set forth in § 405.465, as published in a final rule on August 8, 1975 (40 FR 33440). Although § 405.521(d)(2) specifies that this special provision expires with cost reporting periods beginning before June 1, 1976, it was continued on a temporary basis by section 7 of Pub. L. 95–292 and was reaffirmed by section 948 of Pub. L. 96–499.)

Section 1886(h) of the Act, as added by section 9202 of Pub. L. 99–272, provides that effective with cost reporting periods beginning on or after July 1, 1985, the direct costs of graduate medical education are paid on the basis of per resident amounts, rather than reasonable cost. The per resident amount is based on graduate medical education costs included in the hospital's intern and resident cost center in a specified base year. (See section 1886(h) of the Act for a detailed explanation of how payment is made to hospitals for the direct costs of medical education. This provision of the law will be implemented through a separate rulemaking document.)

For those hospitals that made the election under section 1861(b)(7) of the Act for cost reporting periods beginning prior to their section 1886(h) base year (that is, the hospital's cost reporting period that began in Federal fiscal year 1984), both physicians' medical and surgical services, and any supervision of interns and residents incident to furnishing the medical and surgical services, were included in a cost center separate from the intern and resident cost center during the base year. Moreover, as explained above, there is no documentation that would provide the basis for distinguishing between the time spent on medical services as opposed to supervision. Accordingly, the supervision of interns and residents under these circumstances will not be reflected in the per resident amounts for payment of direct graduate medical education costs under section 1886(h) of the Act, but will be reimbursed separately, on a reasonable cost basis under the section 1861(b)(7) election.

However, if a hospital made the election after its section 1886(h) base year, the costs of supervising interns and residents would have been included in the intern and resident cost center, and therefore were included in the calculation of the per resident amount. Thus, the effect of the election would be a duplicate payment for the supervision services. Accordingly, for hospitals that elect the special payment method for cost reporting beginning on or after their section 1886(h) base year, we plan to propose in the rulemaking document that implements section 1886(h) of the Act an adjustment to the per resident amounts for graduate medical education to reflect proportionately lower costs from those that are represented in the amounts determined for other teaching hospitals.

5. Definition of "Patients Entitled to Benefits Under Medicare"

Under section 1842(b)(7) (A) and (B) of the Act, the applicability of the special rules on payment for physician services in a teaching hospital depends on the collection of fees for similar services to the hospital's patients who are not entitled to benefits under Medicare. The statute does not further distinguish

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between those patients who have Medicare Part B (or Medicare Part B and Medicaid) as their only physician services coverage, and those who have both Medicare Part B coverage and private supplemental policies. We propose to define "patients entitled to benefits under Medicare" to mean all patients who are entitled to Medicare Part B whether or not those patients also have private supplemental insurance or are dually entitled to Medicaid.

6. Payment Procedures for Anesthesiologists in Teaching Hospitals

The regulations currently at § 405.552(a)(2) provide payment for anesthesiology services furnished to a patient in a provider on a reasonable charge basis if the physician directs the procedures. Payment is calculated using a combination of base units and time units when the physician directs no more than four concurrent procedures. (See 48 FR 8926 (March 2, 1983) and section 5218 of the Medicare Carrier Manual (HCFA Pub. 14–3) for an explanation of how base and time units are calculated.) Payment is generally calculated using only base units when the physician directs more than four concurrent procedures.

The preamble to the March 2, 1983 final rule, which added § 405.552 to the regulations, stated that the individual who performs the anesthesia procedure and who is employed by the hospital and is directed by a physician could be either a CRNA, resident, or other qualified individual. "Other qualified individual" has been defined to include interns and residents. (See 48 FR 8926.) However, instructions in section 5218.1 of the Medicare Carrier Manual provide that an attending physician relationship can be established only in the case of the concurrent direction of no more than two interns and residents.

The advice we have received from the health care industry indicates that a one-to-two ratio of physician to interns or residents is good medical practice. Therefore, we are proposing to revise the regulations to provide that an attending physician relationship cannot be established if an anesthesiologist concurrently directs more than two interns or residents. In addition, we would recognize the existence of an attending physician relationship if the anesthesiologist concurrently directs one intern or resident and no more than one CRNA or other qualified individual.

If an attending physician relationship is established, the carrier may recognize one time unit for each 15 minutes of direction furnished to an intern or resident by the anesthesiologist for each procedure. If the anesthesiologist directs a CRNA or other qualified individual, the reimbursement principles for physician medical direction set forth in current § 405.553 would apply in determining payment for the services of the CRNA or other qualified individual. We want to note that the attending physician relationship exists in the context of a physician directing an intern or resident, not in directing a CRNA or other qualified individual. An attending physician relationship (that is, the attending physician criteria are met) is required for payment based on 15 minute time units.

7. Determining Payment for Physician Services Furnished to Renal Dialysis Patients in Teaching Hospitals

Medicare pays for physician services furnished on or after August 1, 1983 to end-stage renal disease (ESRD) patients on the basis of the physician monthly capitation payment method as described in § 405.542. This payment method generally applies to renal related physician services furnished to outpatient maintenance dialysis patients, regardless of where the services are furnished (that is, in an independent ESRD facility, a hospital-based ESRD facility, or in the patient's home). We propose to continue the use of this physician payment method if a teaching hospital has an ESRD facility. No special medical record documentation requirements would be imposed solely because the ESRD facility is based in a teaching hospital.

Reasonable charges for covered physician services furnished to inpatients in a hospital by a physician who elects not to continue to receive payment on a monthly capitation basis through the period of the inpatient stay would be determined according to the rules described in proposed § 415.190. Physicians, of course, would have to either personally furnish the services, or establish an attending physician relationship with the patients as described in proposed §§ 415.172 through 415.182.

E. Application of Outpatient and Radiology Limits

The 60 percent limit on physician services furnished in outpatient settings (§ 405.502(f)(4)) and the 40 percent limit on radiology services furnished in a provider setting (currently at § 405.555(c)(2)) would apply to physician services reimbursed on a reasonable charge basis under the provisions of these proposed regulations.

III. Payment to Providers for Compensation Paid to Physicians Who Furnish Services to Providers

A. Background

As discussed earlier in this preamble, under the Medicare program, payment to a provider for services furnished by a physician in the provider is made under either Part A or Part B of the program, depending on the type of services furnished. Generally, physicians' charges for medical or surgical services to individual Medicare patients are paid for under Part B. On the other hand, the compensation that physicians receive from or through a provider for professional services that benefit patients generally is reimbursed to the provider on either a prospective payment or reasonable cost basis under Part A for inpatients, and on a reasonable cost basis under Part B for outpatients.

Professional services to a provider are those professional activities that benefit the provider or the patients generally but that do not qualify as medical services payable on a charge basis under Part B and do not necessarily require performance by a physician. They include, but are not limited to, teaching or supervision of professional or technical personnel, administration or management of a hospital department, quality control activities, and work schedule planning. Under section 1887(a)(2)(A) of the Act, as implemented by regulations at current § 405.480(a), under the cost reimbursement system, services by physicians to providers are allowable only if they are professional services that benefit patients generally, and are properly apportioned based on time. The costs of these services are allowable if—

- The services do not meet the criteria for reasonable charge reimbursement;
- The services do not include physician availability services (except for reasonable availability services furnished for emergency rooms);
- The provider has incurred a cost for salary or other compensation it furnished the physician for the services; and
- The costs of the services meet the requirements of our regulations, including § 413.9 regarding costs related to patient care.

The regulations governing payment on a reasonable cost basis for services of physicians to providers are currently set forth in §§ 405.480 through 405.482.

B. Allocation of Compensation Costs

Section 1887(a)(2)(A) of the Act requires that for purposes of cost reimbursement only the part of the total physician compensation cost that is allocated to the professional services of a physician to a provider (that is, professional services for the benefit of patients generally) be considered an allowable provider cost and be taken into account in determining payment to the provider. A provider can obtain payment for physician compensation costs for professional services for the benefit of patients generally only if it can demonstrate to the satisfaction of its intermediary that a measurable proportion of the physician's time is devoted to services to the provider.

Under current rules, to be paid, the provider must submit to its fiscal intermediary a written allocation agreement between the provider and the compensated physician showing the respective amounts of time the physician spends in furnishing physician services to the provider, physician services to patients, and services that are not reimbursable under Medicare (see § 415.60). Generally, we will attribute a physician's compensation to all the services the physician furnishes, both to patients and the provider, in direct proportion to the amounts of time the physician spends in furnishing each type of service.

In those cases in which a physician who is compensated by a provider for services furnished to it also furnishes physician services to individual patients in the provider, the terms of the provider/physician agreement must indicate professional services of a physician to a provider (that is, professional services for the benefit of patients generally) be considered an allowable provider cost and be taken into account in determining payment to the provider. A provider can obtain payment for physician compensation costs for professional services for the benefit of patients generally only if it can demonstrate to the satisfaction of its intermediary that a measurable proportion of the physician's time is devoted to services to the provider.

Under current rules, to be paid, the provider must submit to its fiscal intermediary a written allocation agreement between the provider and the compensated physician showing the respective amounts of time the physician spends in furnishing physician services to the provider, physician services to patients, and services that are not reimbursable under Medicare (see § 415.60). Generally, we will attribute a physician's compensation to all the services the physician furnishes, both to patients and the provider, in direct proportion to the amounts of time the physician spends in furnishing each type of service.

In those cases in which a physician who is compensated by a provider for services furnished to it also furnishes physician services to individual patients in the provider, the terms of the provider/physician agreement must indicate whether the physician is compensated by the provider or a related organization for the physician services furnished to individual patients. Related organizations are defined at § 413.17(b) and include entities such as medical schools or physician practice plans. If the physician is compensated by the provider or related organization for these services, the provider or related organization bills the Part B carrier for the services on behalf of the physician. Alternatively, if the physician is not compensated by the provider for those services, the physician may receive his or her payment for physician services furnished to individual patients directly from the Part B carrier on a reasonable charge basis.

Some provider/physician agreements, whether formal or informal, provide that physicians who bill the Part B carrier directly for services furnished to individual patients must return a portion of the realized charge revenue to the provider or the related organization if one is involved. Similarly, other agreements in which the provider bills the Part B carrier on behalf of the physician provide that the provider will retain a portion of the revenue received.

The revenues received by the provider in either of these situations might be utilized by the provider or related organization to defray the costs of medical educational activities, patient care, or nonpatient care related activities, including the costs of services furnished by physicians in these areas. However, if a provider compensates physicians for services to the provider, and claims Part A or Part B cost reimbursement for those services, any portion of physician charge revenue for physician services furnished to individual patients that is returned to or retained by the provider or related organization is treated as a reduction in the provider's allowable compensation costs for physician services to the provider in order to ensure that Medicare reimburses only the actual net cost to the provider for compensation. This would also avoid any duplicate payments by Part A and Part B for the same services.

However, we have determined that our policy governing this type of situation should be stated more clearly in these regulations. While the current regulation at § 405.481(d)(2) is intended to cover this type of situation, it has become apparent that that paragraph does not describe clearly enough the applicable policy for cases in which portions of the payments received from billings for physician services to individual patients are returned to or retained by the provider or an organization related to the provider. We are proposing to revise the regulations to state more clearly how we treat these situations and how the provider's allowable compensation costs are affected.

The proposal is consistent with the statute and with our regulations concerning cost related to patient care (§ 413.9). Under section 1814(b) of the Act, we may not pay more than the reasonable cost of services (under the cost reimbursement system). Section 1861(v)(1)(A) of the Act defines reasonable cost as the cost of services actually incurred by providers in furnishing patient care excluding unnecessary costs. For example, if a provider receives a rebate or discount from a supplier of goods or services, we reimburse the actual costs, net of the discount (see § 413.98). Another example would be that if a provider claims reimbursement for interest expense, generally it must reduce that amount by any investment income (§ 413.153). This provision has been upheld in court as a reasonable way to determine the "net cost" of a provider's borrowing

Similarly, if an employee, including a physician, is compensated for services to the provider and, as a condition of employment, is required to return to the provider part of the payment received for services to individual patients in the provider, this payment serves to reduce the provider's actual incurred costs for compensation. Thus, in determining reasonable costs, we base reimbursement on the net or actual compensation costs incurred. Therefore, we believe that if a hospital, related medical school, or other related organization such as a faculty practice plan compensates a physician for provider services, amounts retained by the hospital or related organization over and above the revenue retained by the physician for services furnished to individual hospital patients should be construed as a reduction in physician compensation costs for services provided by the physician to the hospital or related party, which

of the cost reporting period to which they would apply. Once we have published a set of RCE limits, they would remain in effect until new, updated limits are published.

As mentioned above, we are proposing to redesignate the regulations governing payment for services of physicians to providers (current §§ 405.480 through 405.482). Therefore, current § 405.482(f) would be redesignated as § 415.70(f), and the changes we are proposing would be made in that section.

IV. Payment for Consultative Pathology Services Furnished to Patients in Providers

As we have stated several times previously in this document, the services of physicians to individual patients in a provider generally are covered under Part B on a reasonable charge basis. Under the authority of section 1887(a)(1) of the Act, regulations at current § 405.550(b) set forth the criteria that must be met in order for services furnished by physicians in providers to be paid on the basis of reasonable charges. Those criteria are the following:

- The services are personally furnished for an individual patient by a physician.
- The services contribute directly to the diagnosis or treatment of an individual patient.
- The services ordinarily require performance by a physician.

In addition to these three criteria, if the services furnished are anesthesiology, radiology, or laboratory services, additional criteria must be met. Any services furnished by a physician in a provider that do not meet these criteria but that are related to the provision of patient care by the provider are paid for as provider services.

The additional requirements for payment of physician laboratory services on a reasonable charge basis are found in current § 405.556 and are—

- The services are anatomical pathology services;
- The services are performed by a physician in personal administration of test devices, isotopes, or other materials to an individual patient; or
- The services are consultative pathology services that must—

—Be requested by the patient's attending physician;

—Relate to a test result outside the clinically significant normal or expected range in view of the patient's condition;

—Result in a written narrative report included in the patient's medical record; and

—Require the exercise of medical judgment by the consultant physician.

The condition that consultative pathology services must be requested by the patient's attending physician is located in current § 405.556(b)(1). Since October 1983 when these regulations were first implemented, we have allowed a hospital or medical staff to substitute a standing order policy for the individual request by the patient's attending physician. However, after several years of experience, we propose to change this policy for the following reasons:

- Standing orders are generating medically unnecessary consultations that are costly to the program and its beneficiaries.
- Generally, a standing order for a consultation does not meet the acceptable medical standard of care for communication between an attending physician and a consultant since this procedure does not reflect the exercise of medical judgment on the part of the requesting physician.
- Some hospitals and medical staffs have defended the standing order policy on the grounds that it is a type of quality control or a preventive measure to ensure that all diagnostic possibilities are considered. Services furnished by physicians on this basis do not meet the criteria for reasonable charge payment contained in § 405.556(b), notably that the service is specifically requested by the patient's attending physician.

Therefore, we are including in this proposed rule a revision of current § 405.556(b)(1) to require that interpretations of laboratory test results by pathologist must be requested by the individual attending physician and to state that standing orders are not acceptable. In the proposed redesignation of the regulations governing payment for services furnished by physicians to patients in providers (current §§ 405.550 through 405.557), current § 405.556(b)(1) would be redesignated as § 415.130(b)(1), and the changes we are proposing would be made in that section.

V. Redesignation of Regulations on Teaching Hospitals, Teaching Physicians, and Physicians Who Practice in Providers

As a part of this rulemaking process, we are redesignating the regulations currently set forth in §§ 405.465 and 405.466, §§ 405.480 through 405.482, §§ 405.522 through 405.525, and §§ 405.550 through 405.580 into a new Part 415, along with the new regulations proposed in this rule. This redesignation is part of our continuing effort to improve the overall organization of title 42 of the CFR and, in this case, specifically, the organization of the regulations on teaching hospitals, teaching physicians, and physicians who practice in providers. We are making only technical changes, such as changes to conform cross-references, and no substantive changes are included. We intend this redesignation to make these regulations easier to use. Following is a reference table that indicates the new section numbers that would result from the redesignation.

REDESIGNATION TABLE

Old section	New section
405.465	415.162
405.466	415.164
405.480	415.50
405.481	415.60
405.482	415.70
405.522	415.200
405.523	415.202
405.524	415.204
405.525	415.206
405.550	415.100
405.551	415.105
405.552 except (b)	415.110
405.553	415.115
405.552(b) and 405.554	415.120
405.555	415.125
405.556	415.130
405.557	415.135
405.580	415.198

VI. Impact Analysis

A. Executive Order 12291

Executive Order 12291 requires us to prepare and publish an initial regulatory impact analysis for any proposed regulations that would be considered a "major rule". A major rule is one that would result in—

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or any geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We do not expect this proposed rule to meet any of the criteria for a major rule. Therefore, we have not prepared an initial regulatory impact analysis.

B. Regulatory Flexibility Analysis

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare and publish an initial regulatory flexibility analysis for proposed regulations unless the Secretary certifies that the regulations would not have a significant impact on a

effectively reduces the reimbursable cost to the provider.

For example, a hospital may have an agreement with a physician group that provides for the physicians to be compensated by the hospital for administrative and various other services furnished to the provider. Further, the hospital bills fees on behalf of the physician group for the direct patient care services furnished to individual hospital patients by the physicians. The hospital retains a portion of the amounts realized from the fee billings and submits the balance of the receipts to the physician group. As a result of the agreement, under our proposed regulations, the net compensation costs incurred by the hospital for physician services to the provider and those that should be included in the hospital's allowable costs would be calculated as follows. The retained revenue for a physician for services to individual patients would be offset against that physician's compensation (for services to the provider) on the basis of the ratio of the time devoted by that physician in furnishing allowable services to the provider to total time expended by that physician in all categories of service, excluding direct patient care time.

As we discuss below in section V of this preamble, we are proposing to redesignate the regulations governing payment for services of physicians to providers (current §§ 405.480 through 405.482). Therefore, current § 405.481(d)(2) would be redesignated as § 415.60(d)(2). We would delete the second sentence of § 415.60(d)(2) and add a new paragraph (g) to that section to describe our policy concerning allowable provider costs when payments to physicians for services furnished to individual patients are returned to or withheld by the provider or a related organization.

C. Reasonable Compensation Equivalent Limits

As required by section 1887(a)(2)(B) of the Act, allowable compensation for services furnished by physicians to providers that are reimbursed by Medicare on a reasonable cost basis is subject to reasonable compensation equivalent (RCE) limits. Under these limits, reimbursement is determined based on the lower of the actual cost of the services to the provider (that is, the compensation of the physician, whatever the form) or an RCE.

Effective with cost reporting periods beginning on or after October 1, 1983, most hospitals are paid for Part A inpatient services under the prospective payment system. The RCE limits do not apply to care paid for under that system. Effective with cost reporting periods beginning on or after July 1, 1985, the RCE limits do not apply to the costs of direct medical education costs that are paid on the basis of a per resident amount; however, these limits continue to apply to services furnished to providers by physicians as follows:

- In hospitals and units of hospitals not subject to the prospective payment system, the limits apply for both inpatient and outpatient services.
- In hospitals subject to the prospective payment system, the limits apply for outpatient hospital services, and, in teaching hospitals that elect cost reimbursement under section 1861(b)(7) of the Act, the limits also apply for the medical and surgical services of physicians and compensation associated with the supervision of interns and residents.
- In CORFS and in SNFs, the limits apply for all services.

If a physician receives any compensation from a provider for his or her physician services to the provider (that is, those services that benefit patients generally or otherwise are not eligible for reimbursement on the basis of reasonable charges), reasonable cost reimbursement to the provider for the costs of compensation allocated to those services is subject to the RCE limits. The RCE limits are not applied to reimbursement for services that are identifiable medical or surgical services to individual patients and reimbursable on a reasonable charge basis, even if the physician agrees to accept compensation from a provider for those services. However, as described in section II.C.2. of this preamble, reimbursement to teaching hospitals that have elected to be reimbursed for these services on a reasonable cost basis in accordance with section 1861(b)(7) of the Act is subject to the limits. If a physician is compensated only for services to the provider, the RCE limit is applied to reimbursement to the provider for the entire cost of compensating the physician for those services.

On March 2, 1983, we published in the **Federal Register** (48 FR 8902) the RCE limits and the methodology used to calculate those limits that were applicable to cost reporting periods beginning during calendar years 1982 and 1983. As part of that same publication, we issued regulations (§ 405.482) that constitute a general authority to develop, publish, and apply limits.

Specifically, § 405.482(f) provides that before the start of a cost reporting period to which a set of limits will be applied, we must publish a notice in the **Federal Register** that sets forth the limits and explains how they were calculated. If the limits are merely updated by applying the most recent economic index data without revising the methodology, then the revised limits are published without prior publication of a proposal or public comment period. However, if we are revising the methodology by which the limits are established, we publish a notice, with opportunity for public comment, to that effect in the **Federal Register**. The latest notice that updated the RCE limits was published in the **Federal Register** on February 20, 1985 (50 FR 7123) and was effective for cost reporting periods beginning on or after January 1, 1984.

The RCE limits are intended to exert a moderating influence on rapidly increasing costs for physician services that are reimbursed on a reasonable cost basis in provider settings. However, the advent of the hospital prospective payment system has greatly reduced the total amount of physician compensation costs subject to the RCE limits. Thus, the effect of the limits as a cost savings instrument has been significantly reduced.

Although the regulations do not specifically provide for an annual adjustment to the RCE limits, the preamble to the March 2, 1983 final rule, which described the updating process, indicated that the limits would be updated annually (48 FR 8923). In addition, § 405.482(f)(1) requires that the limits be published prior to the cost reporting period to which the limits apply. The importance of updating the RCE limits annually to reflect projected increases in the Consumer Price Index has diminished considerably due to recent changes in the Medicare program. In fact, the 1984 update resulted in an overall increase of only approximately one percent in net physician compensation over the 1983 limits. We believe that publishing annual limits, an administratively burdensome procedure, has become difficult to justify. Therefore, we are proposing to make some changes in current § 405.482.

Since we believe that annual updates to the RCE limits will not always be necessary, we propose to revise current § 405.482(f) to provide that we would review the RCE limits annually and update the limits only if a significant change in the limits is warranted. In addition, we are proposing to revise current § 405.482(f)(1) to state that limits would be published in the **Federal Register** before they could be applied. That paragraph currently states that limits must be published before the start

substantial number of small entities. This proposed rule would affect a substantial number of physicians, interns and residents, and teaching hospitals, all of which may be considered small entities, or the employees of small entities, under the RFA. However, we do not believe the effects would be significant.

The provisions of this proposed rule would, in general, have little economic impact. Specifically, we estimate that—

- Eliminating standing orders and requiring that pathologist's reading of the more complex orders be requested by the individual attending physician would result in an annual savings of $1 million;
- Revising the methodology for determining customary charges for teaching physicians would result in a $2 million annual increase in Federal expenditures;
- Deducting any Part B payment to provider-compensated physicians that is returned to or retained by the provider from Part A payments due the provider would result in initial savings of $6 million for the first year and lesser savings each year thereafter, and
- Publication of this proposed rule would serve as the basis for reformulated guidelines to carriers that may result in stricter enforcement of the teaching physician criteria. The lack of data, however, prevents us from quantifying these effects.

Based on these estimates, we have determined, and the Secretary certifies, that these proposed regulations would not have a significant economic impact on a substantial number of small entities. Therefore, we have not prepared an initial regulatory flexibility analysis.

C. Impact on Small Rural Hospitals

Section 1102(b) of the Act requires the Secretary to prepare an initial regulatory impact analysis for proposed regulations that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside a Metropolitan Statistical Area.

Since we know of no hospitals with fewer than 50 beds located in a rural area that are also teaching hospitals, we have determined that this proposed rule would have no effect on small rural hospitals. Even if there should be one or more small rural hospitals affected by this proposed rule, the effect on the operations of such a hospital is likely to be quite small.

VII. Other Required Information

A. Responses to Public Comments

Because of the large number of items of correspondence we normally receive on proposed regulations, we cannot acknowledge or respond to them individually. However, we will consider all comments that are received by the date and time specified in the "DATE" section of this preamble and, if we proceed with a final rule, we will respond to those comments in the preamble to that rule. We note that we are inviting comments only on proposed new §§ 415.150, 415.152, 415.160, and 415.168 through 415.194, and the proposed revisions to §§ 415.60, 415.70(f), and 415.130(b). Comments are not; invited on the existing regulations that are merely being redesignated with minor stylistic and conforming changes, except that comments are invited with respect to whether we may have inadvertently made a substantive change.

B. Paperwork Reduction Act

Sections 415.60(f) (l) and (h) of this proposed rule contain information collection requirement that have been approved by EOMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511). These collections of information are approved under OMB control number 0938–0285. Sections 415.160(b), 415.162(e)(2)(i), 415.172(b), 415.178(b), 415.182(c), 415.194(c)(2), and 415.194(e) of this proposed rule contain information collection requirements that are subject to review by EOMB under the Paperwork Reduction Act of 1980. As required, we have submitted a copy of this proposed rule to EOMB for its review. Other organizations and individuals who wish to submit comments on these information collection requirements should direct them to the agency official whose name appears in the preamble and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington, DC 20503, Attn: Allison Herron

C. List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO), Health professions, Kidney diseases, Laboratories, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 415

Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

We are proposing to amend 42 CFR Chapter IV as set forth below:

I. The table of contents for Chapter IV is amended by adding a new Part 415 to Subchapter B to read as follows:

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

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SUBCHAPTER B—MEDICARE PROGRAMS

* * * * *

PART 415—SERVICES OF PHYSICIANS, INTERNS, AND RESIDENTS IN PROVIDERS

* * * * *

II. Part 405 is amended as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart D—[Removed and Reserved]

A. Subpart D, consisting of §§ 405.465 through 405.482, is removed and reserved.

B. Subpart E is amended as follows:

1. The authority citation for Subpart E is revised to read as follows:

Authority: Sections 1102, 1814(b), 1832, 1833(a), 1842 (b) and (h), 1861(v), 1866(a), 1871, 1881, and 1869 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395k, 1395l(a), 1395u (b) and (h), 1395x(v), 1395cc(a), 1395hh, 1395rr, and 1395zz).

2. The heading for Subpart E is revised to read as follows:

Subpart E—Criteria for Determination of Reasonable Charges

3. Subpart E is amended by removing §§ 405.520 through 405.525 and 405.550 through 405.580, and the undesignated center heading preceding § 405.550.

III. A new Part 415 is added to read as follows:

PART 415—SERVICES OF PHYSICIANS, INTERNS, AND RESIDENTS IN PROVIDERS

Subpart A—[Reserved]

Subpart B—Services of Physicians to Providers

Sec.

415.50 Payment for services of physicans to providers: General rules.
415.60 Allocation of physician compensation costs.
415.70 Limits on compensation for services of physicians in providers.

Subpart C—Physician Services to Patients in Providers

415.100 Conditions for payment of charges for physician services to patients in providers: General provisions.

Sec.

415.105 Reasonable charges for physician services in providers: General provisions.
415.110 Conditions for payment of charges: Anesthesiology services.
415.115 Reasonable charges for anesthesiology services.
415.120 Conditions for payment of charges: Radiology services.
415.125 Reasonable charges for radiology services.
415.130 Conditions for payment of charges: Physician laboratory services.
415.135 Reasonable charges for physician labcratory services.

Subpart D—Physician Services in Teaching Settings

415.150 General provisions.
415.152 Definitions.
415.160 Election of reasonable cost reimbursement for physician services in teaching hospitals.
415.162 Determining reimbursement for physician services furnished to beneficiaries in teaching hospitals.
415.164 Payment to a fund.
415.170 Conditions for payment on a reasonable charge basis for physician services in a teaching setting.
415.172 Attending physician requirements: Entire hospital stay.
415.174 Attending physician requirements: Discrete part of hospital stay.
415.176 Special attending physician requirements: Psychiatry services.
415.178 Special attending physician requirements: Outpatient services.
415.180 Special attending physician requirements: Renal dialysis services.
415.182 Special attending physician requirements: Anesthesiology services.
415.184 Requirements for radiology, physician laboratory, and consultative services.
415.190 Payment on a reasonable charge basis for physician services in a teaching setting.
415.192 Determination of the customary charge for the services of teaching physicians.
415.194 Determination of the customary charge if all teaching physicians agree to accept assignment.
415.198 Conditions of payment for assistants at surgery in teaching hospitals.

Subpart E—Services of Interns and Residents in Providers

415.200 Interns' and residents' services in approved teaching programs.
415.202 Interns' and residents' services not in approved teaching programs.
415.204 Interns' and residents' services outside the hospital.
415.206 Basis of reimbursement to providers for services of interns and residents.

Authority: Secs. 1102, 1832(a), 1833(a), 1842(b), 1861(b), 1862(a)(14), 1871, 1886, and 1887, Social Security Act (42 U.S.C. 1302, 1395k(a), 1395l(a), 1395u(b), 1395x(b), 1395y(a)(14), 1395hh, 1395ww, and 1395xx).

Subpart A—[Reserved]

Subpart B—Services of Physicians to Providers

§ 415.50 Payment for services of physicians to providers: General rules.

(a) *Allowable costs.* Except as specified in § 413.102 of this chapter or Subpart D of this part, costs a provider incurs for services of physcians are allowable only if the following conditions are met:

(1) The services do not meet the conditions in § 415.100(b) regarding reasonable charge reimbursement for services of physicians to an individual patient of a provider.

(2) The services do not include physician availability services, except for reasonable availability services furnished for emergency departments.

(3) The provider has incurred a cost for salary or other compensation it furnished the physician for the services.

(4) The costs incurred by the provider for the services meet the requirements in § 413.9 of this chapter regarding costs related to patient care.

(5) The costs do not include supervision of interns and residents unless the provider elects reasonable cost reimbursement as specified in §415.160.

(b) *Allocation of costs.* In determining its costs of services that meet the conditions for payment in paragraph (a) of this section, the provider must follow the rules in § 415.60 regarding allocation of physician compensation costs.

(c) *Limits on allowable costs.* In determining its payments to a provider for the costs of services that meet the conditions for payment in paragraph (a) of this section, the intermediary must apply the limits on compensation set forth in § 415.70.

§ 415.60 Allocation of physician compensation costs.

(a) *Definition.* For purposes of this subpart, physician compensation costs means monetary payments, fringe benefits, deferred compensation and any other items of value (excluding office space or billing and colletion services) that a provider or other organization furnishes a physician in return for the physician's services. Other organizations are entities related to the provider within the meaning of § 413.17 of this chapter or entities that furnish services for the provider under arrangements as defined in § 409.3 of this chapter.

(b) *General rule on allocation of physician compensation costs.* Except as provided in paragraph (d) of this section, each provider that incurs physician compensation costs must allocate those costs, in proportion to the percentage of total time that is spent in furnishing each category of services, among—

(1) Physician services to the provider (as described in § 415.50);

(2) Physician services to patients (as described in § 415.100); and

(3) Activities of the physician, such as funded research, that are not reimbursable under either Part A or Part B of Medicare.

(c) *Allowable physician compensation costs.* Only costs allocated to reimbursable physician services to the provider (as described in § 415.50) are allowable costs to the provider under this subpart.

(d) *Allocation of all compensation to services to the provider.* The total phsician compensation received by a physician is allocated among all servicers furnished by the physician, unless—

(1) The provider certifies that the compensation is attributable solely to the physician's services to the provider; and

(2) The physician bills all of his or her patients for the physician services he or she furnishes to those patients and personally receives the payment from the billings.

(e) *Assumed allocation of all compensation to patient services.* If the provider and physician agree to accept the assumed allocation of all the physician's services to direct services to individual patients as described under § 415.100(b), a written allocation agreement is not required.

(f) *Determination and payment of allowable physician compensation costs.* (1) Except as provided under paragraph (e) of this section, the intermediary reimburses the provider for these costs only if—

(i) The provider submits to the intermediary a written allocation agreement between the provider and the physician that specifies the respective amounts of time the physician spends in furnishing physician services to the provider, physician services to patients, and services that are not reimbursable under either Part A or Part B of Medicare; and

(ii) The compensation is reasonable in terms of the time devoted to these services.

(2) In the absence of a written allocation agreement, the intermediary assumes, for purposes of determining reasonable costs of the provider, that 100 percent of the physician's compensation cost is allocated to

services to patients as specified in paragraph (b)(2) of this section.

(g) *Physician payments returned to provider or related organization.* (1) If any part of the payment a physician receives for physician services furnished to individual patients is directly or indirectly returned to or retained by the provider or a related organization (as defined in § 413.17(b) of this chapter) under a formal or informal agreement, the provider's aggregate costs of compensation to that physician for services to the provider must be reduced by the amount of payment returned to or retained by the provider or related organization.

(2) To determine the amount of the reduction to provider costs for returned or retained payments for physician services to individual patients, the payments returned or retained are allocated to the various categories of services furnished by the physician on the basis of the relative proportions of time in each category to the total time in all categories. Time expended by a physician furnishing services to individual patients is excluded in allocating the payments.

(h) *Recordkeeping requirements.* Except for services furnished in accordance with the assumed allocation under paragraph (e) of this section, each provider that claims payment for services of physicians under this subpart must—

(1) Maintain the time records or other information it used to allocate physician compensation in a form that permits the information to be validated by the intermediary or the carrier;

(2) Report the information on which the physician compensation allocation is based to the intermediary or the carrier on an annual basis, and promptly notify the intermediary or carrier of any revisions to the compensation allocation; and

(3) Retain each physician compensation allocation, and the information on which it is based, for at least four years after the end of each cost reporting period to which the allocation applies.

§ 415.70 Limits on compensation for services of physicians in providers.

(a) *Principle and scope.* (1) Except as provided in paragraphs (a) (2) and (3) of this section, HCFA establishes reasonable compensation equivalent (RCE) limits on the amount of compensation paid to physicians by providers. These limits are applied to a provider's costs incurred in compensating physicians for services to the provider, as described in § 415.50(a).

(2) Limits established under this section do not apply to costs of physicians compensation attributable to furnishing inpatient hospital services that are paid for under the prospective payment system implemented under Part 412 of this chapter.

(3) Compensation that a physician receives for activities that may not be paid for under either Part A or Part B of Medicare is not considered in applying these limits.

(b) *Methodology for establishing limits.* HCFA establishes a methodology for determining reasonable annual compensation equivalents, considering average physician incomes by specialty and type of location, to the extent possible using the best available data.

(c) *Application of limits.* If the level of compensation exceeds the limits established under paragraph (b) of this section, Medicare payment is based on the level established by the limits.

(d) *Adjustment of the limits.* The intermediary may adjust limits established under paragraph (b) of this section to account for costs incurred by the physician or the provider related to malpractice insurance, professional memberships, and continuing medical education.

(1) For the costs of membership in professional societies and continuing medical education, the intermediary may adjust the limit by the lesser of:

(i) The actual cost incurred by the provider or the physician for these activities; or

(ii) Five percent of the appropriate limit.

(2) For the cost of malpractice expenses incurred by either the provider of the physician, the intermediary may adjust the reasonable compensation limit by the cost of the malpractice insurance expense related to the physician's service to provider patients.

(e) *Exception to limits.* An intermediary may grant a provider an exception to the limits established under paragraph (b) of this section only if the provider can demonstrate to the intermediary that it is unable to recruit or maintain an adequate number of physicians at a compensation level within these limits.

(f) *Notification of changes in methodologies and payment limits.* HCFA annually reviews the limits established under this section and updates them if it determines that an update is necessary.

(1) Before limits established under this section are applied, HCFA publishes a notice in the **Federal Register** that sets forth the amount of the limits and explains how the limits were calculated.

(2) If HCFA proposes to revise the methodology by which payment limits under this section are established, HCFA publishes a notice, with opportunity for public comment, to that effect in the **Federal Register**. The notice would explain the proposed basis for setting limits, specify the limits that would result, and state the date of implementation of the limits.

(3) Revised limits updated by applying the most recent economic index data without revision of the limit methodology are published in a notice in the **Federal Register** without prior publication of a proposal or public comment period.

(4) Limits established under paragraph (f)(1) of this section remain in effect until newly updated limits are published.

Subpart C—Physician Services to Patients in Providers

§ 415.100 Conditions for payment of charges for physician services to patients in providers: General provisions.

(a) *Scope.* This section implements section 1887(a)(1) of the Act by providing general conditions that must be met in order for services furnished by physicians in providers to be paid for on the basis of reasonable charges under this subpart. Section 415.105 sets forth general requirements for determining the amounts of payment for services that meet the conditions of this section. Sections 415.110 through 415.135 set forth additional conditions for payment and rules for determining reasonable charges for physician services in the specialities of anesthesiology, radiology, and pathology (laboratory services).

(b) *Conditions for payment for services of physicians to provider patients.* The carrier pays for services of physicians to patients of providers on a reasonable charge basis only if the following requirements are met:

(1) The services are personally furnished for an individual patient by a physician.

(2) The services contribute directly to the diagnosis or treatment of an individual patient.

(3) The services ordinarily require performance by a physician.

(4) In the case of anesthesiology, radiology, or laboratory services, the additional requirements in § 415.110, 415.120, or 415.130 must be met.

(c) *Services of physicians to providers.* If a physician furnishes services in a provider that do not meet the requirements in paragraph (b) of this section but are related to the provision of patient care by the provider, the

intermediary pays for those services, if otherwise covered, under the rules in §§ 415.50 and 415.60 on physician services to providers.

(d) *Effect of billing charges for physician services to a provider.* (1) For services performed by a physician that may be reimbursed under the reasonable cost rules in § 415.50 or 415.60 or would be paid under those rules except for the prospective payment rules in Part 412 of this chapter, and under the payment rules for graduate medical education established by section 1886(h) of the Act, neither provider nor physician may seek charge payment from the carrier, beneficiary, or another insurer.

(2) The carrier does not pay on a reasonable charge basis for services furnished by a physician to an individual patient that do not meet the applicable conditions in §§ 415.110, 415.120, and 415.130.

(3) If the physician, the provider, or another entity bills the carrier or the beneficiary for physician services to the provider, as described in § 415.50(a), the provider in which and to which the services were furnished may be considered to have violated its provider participation agreement, and that agreement may be terminated. See Part 489 of this chapter for rules governing provider agreements.

(e) *Effect of physician's assumption of operating costs.* If a physician or other entity enters into an agreement (such as a lease or concession) with a provider, under which the physician (or entity) assumes some or all of the operating costs of the provider department in which the physician furnishes physician services in the provider, the following rules apply:

(1) The carrier makes reasonable charge payments only for a physician's services to an individual patient.

(2) To the extent the provider incurs a cost reimbursable on a reasonable cost basis under Part 413 of this chapter, the intermediary will pay the provider on a reasonable cost basis for the costs associated with producing these services, including overhead, supply, and equipment costs, and services furnished by nonphysician personnel.

(3) The physician (or other entity) is treated as related to the provider within the meaning of § 413.17 of this chapter.

(4) The physician (or other entity) must make its books and records available to the provider and the intermediary as necessary to verify the nature and extent of the costs of the services furnished by the physician (or other entity).

§ 415.105 Reasonable charges for physician services in providers: General provisions.

(a) *Scope.* The carrier determines reasonable charges for physician services to patients in providers in accordance with the general rules governing reasonable charge payment in §§ 405.501 through 405.508 of this chapter, except as provided in this section.

(b) *Application in certain settings.*—(1) *Teaching hospitals.* In determining the amount of payment for physician services to individual patients in a teaching hospital, the carrier applies the rules in Subpart D of this part, in addition to those in this section.

(2) *Hospital-based ESRD facilities.* In determining the amount of payment for physician services to individual patients furnished in a hospital-based ESRD facility approved under Subpart U of Part 405 of this chapter, the carrier applies the rules in § 405.542 of this chapter instead of those in this section.

(c) *Customary and prevailing charges for physician services in provider settings.* (1) The carrier calculates customary and prevailing charges for physician services furnished to individual patients in providers, in accordance with the general rules in §§ 405.501 through 405.508 of this chapter, separating, if appropriate, charges for physician services furnished in provider-based practices and physician services furnished in office-based practices.

(2) The carrier applies the appropriate prevailing charge screens in determining reasonable charges for physician services, considering the setting.

(d) *Compensation-related charges.* (1) In developing customary charges for physician services furnished in providers by physicians compensated by the provider or a related organization for those services, the carrier establishes a schedule of charges related to that part of the physician's compensation that is allocated to physician services to individual patients under § 415.60 (In a teaching hospital, compensation-related charges may be based on payments made, to the physician for services furnished to patients in the hospital, by a political subdivision, university, or medical school, irrespectively of whether it is a related organization.) The carrier generally uses the compensation paid to the physician during the hospital's most recently ended cost reporting period for this purpose. If this information is unavailable from the intermediary, the intermediary makes a reasonable estimate of a fair compensation amount based on what is paid for similar services in another hospital.

(2) The carrier develops compensation-related charges on an item-by-item basis, considering the frequency with which the various services are furnished, and the relative values assigned to each service in a relative value study.

(3) The intermediary may pay the provider, for physicians' services to an individual patient, on the basis of a single per diem, per visit, or other time-related rate, if the provider, or the particular department in which the services are furnished, has a uniform all-inclusive rate for services to patients.

(e) *Change of agreements.* For services furnished on or after January 1, 1987, if a physician who has been compensated by or through a provider (or other entity) for physician services to individual patients ends his or her compensation agreement and instead bills all patients, or their insurers, directly for his or her services, the carrier determines the physician's customary charge for a service based on the 50th percentile of the weighted customary charges used to establish the prevailing charge for the service until the carrier has accumulated charge data from at least three months of the 12 month period of July 1 through June 30 preceding the January 1 annual reasonable charge update. However, if a physician terminates a direct billing arrangement and enters into a compensation agreement with a provider, the carrier determines compensation-related customary charges in accordance with paragraph (d) of this section except that during the first year, the total payments made on the basis of the compensation-related charges may not exceed what total payment would have been under the physician's former direct billing practice.

(f) *Rules for certain specialties.* In determining the amount of payment for anesthesiology or radiology services furnished by a physician to an individual patient, the carrier applies the rules in this section and in §§ 415.115 and 415.125 in addition to the general rules governing reasonable charges at §§ 405.501 through 405.508 of this chapter.

§ 415.110 Conditions for payment of charges: Anesthesiology services.

The carrier pays a physician for anesthesiology services furnished to patients in a provider on a reasonable charge basis only if the services meet the conditions for reasonable charge

payment in § 415.100(b) and the following additional conditions are met:

(a) For each patient, the physician—

(1) Performs a pre-anesthetic examination and evaluation;

(2) Prescribes the anesthesia plan;

(3) Personally participates in the most demanding procedures in the anesthesia plan, including induction and emergence;

(4) Ensures that any procedures in the anesthesia plan that he or she does not perform are performed by a qualified individual;

(5) Monitors the course of anesthesia administration at frequent intervals;

(6) Remains physically present and available for immediate diagnosis and treatment of emergencies; and

(7) Provides indicated postanesthesia care.

(b) The physician either performs the procedure directly, without the assistance of an anesthetist, or directs anesthesia procedures (subject to the restriction in § 415.182(a)), and does not perform any other services while he or she is directing the procedures.

§ 415.115 Reasonable charges for anesthesiology services.

(a) *General rule.* In determining reasonable charge payment for anesthesiology services that meet the conditions in § 415.110, the carrier follows the rules in paragraph (b) or (c) of this section.

(b) *Services furnished by the anesthesiologist or by an anesthetist employed by the anesthesiologist.* (1)(i) The provisions of this paragraph apply to anesthesia services furnished by an anesthesiologist without the assistance of an anesthetist or to anesthesia services furnished to hospital outpatients or SNF or CORF patients by an anesthetist who is employed by an anesthesiologist.

(ii) Except as provided in paragraph (b)(4) of this section, anesthesia services furnished to a hospital inpatient by an anesthetist under the medical direction of an anesthesiologist are paid for in accordance with paragraph (c) of this section.

(iii) Except as specified in paragraphs (d) and (e) of this section, if the anesthetist who administers anesthesia under the direction of the anesthesiologist is employed by the anesthesiologist, the carrier determines the amount of payment for the services under the reasonable charge rules for physician services in providers in § 415.105 and the general reasonable charge rules in §§ 405.501 through 405.508 of this chapter.

(2) In determining reasonable charges for these anesthesia services, the carrier allows for no more than one time unit for each 15 minute interval, or fraction thereof, beginning from the time the physician or anesthetist begins to prepare the patient for induction of anesthesia, and ending when the patient may be safely placed under post-operative supervision and the physician or anesthetist is no longer in personal attendance.

(3) If a physician constructs his or her charges using time units of other than 15 minutes, the carrier adjusts the customary and prevailing charge screens to ensure that in a one-hour period the value of four 15-minute intervals is not less than would have been allowed if the entire hour had consisted of intervals of another length, such as five 12-minute intervals or six 10 minute intervals.

(4) The provisions of paragraph (b)(1)(ii) of this section do not apply to inpatient hospital services furnished by an anesthetist employed by a physician if the services are furnished during cost reporting periods beginning on or after October 1, 1984, through any part of a cost reporting period occurring before January 1, 1989.

(c) *Anesthetist not employed by anesthesiologist.* Except as specified in paragraphs (d) and (e) of this section, if the anesthetist who administers anesthesia under the direction of the anesthesiologist is not employed by the anesthesiologist, the carrier determines reasonable charges for the services by allowing no more than one time unit for each 30 minute interval, or fraction thereof, beginning from the time the anesthetist begins to prepare the patient for induction of anesthesia, and ending when the patient may be safely placed under post-operative supervision and the anesthetist is no longer in personal attendance.

(d) *Services furnished by interns and residents.* Reasonable charges for anesthesia services furnished to a hospital inpatient by an intern or resident under the direction of an anesthesiologist are determined as follows:

(1) If an attending physician relationship, as described in § 415.182, is established, the reasonable charges are determined under the provisions of paragraphs (b)(1)(iii) and (b)(2) of this section.

(2) If an attending physician relationship is not established, the reasonable charges are determined as specified in paragraph (c) of this section.

(e) *Supervision of more than four concurrent procedures.* If the physician is involved in furnishing concurrently more than four procedures, or is performing other services while directing the concurrent procedures, the carrier determines reasonable charges for the services by allowing no more than three base units for each procedure and one time unit for each procedure for induction if the physician is physically present at induction.

§ 415.120 Conditions for payment of charges: Radiology services.

(a) *Services to patients.* The carrier pays for radiology services furnished by a physician to an individual patient on a reasonable charge basis only if the services meet the conditions for reasonable charge payment in § 415.100(b) and are identifiable, direct, and discrete diagnostic or therapeutic services to an individual patient, such as interpretation of X-ray plates, angiograms, myelograms, pyelograms, or ultrasound procedures.

(b) *Services to providers.* The carrier does not pay on a reasonable charge basis for physician services to the provider (for example, administrative or supervisory services) or for provider services needed to produce the X-ray films or other items that are interpreted by the radiologist. However, allowable costs for these services are paid to the provider by the intermediary. (See § 415.50 for provider costs, and § 415.100(e)(2) for costs borne by a physician, such as under a lease or concession agreement.)

§ 415.125 Reasonable charges for radiology services.

(a) *General rule.* In determining payment for radiology services that meet the conditions for payment of charges in § 415.120, the carrier follows the rules in paragraph (b) or (c) of this section.

(b) *Services not furnished in providers.* If the services are furnished in a radiologist's office, a freestanding radiology clinic, or any other setting that is not part of a provider, the carrier determines the amount of payment for the services under the general reasonable charge rules in §§ 405.501 through 405.508 of this chapter.

(c) *Services furnished in providers.* If the services are furnished in a hospital radiology department or any other setting that is part of a provider, the following rules apply:

(1) The carrier determines the amount of payment under the reasonable charge rules for physician services in providers in § 415.105 and the general reasonable charge rules in §§ 405.501 through 405.508 of this chapter.

(2) The reasonable charge for a physician's radiology service furnished to a hospital inpatient or furnished in a provider to a provider patient may not exceed 40 percent of the prevailing charge for a similar service furnished in a nonprovider setting.

§ 415.130 Conditions for payment of charges: Physician laboratory services.

(a) *Physician laboratory services.* The carrier pays for laboratory services furnished by a physician to an individual patient on a reasonable charge basis only if the services meet the conditions for reasonable charge payment in § 415.100(b) and are—

(1) Anatomical pathology services;

(2) Consultative pathology services that meet the requirements in paragraph (b) of this section; or

(3) Services performed by a physician in personal administration of test devices, isotopes, or other materials to an individual patient.

(b) *Consultative pathology services.* For purposes of this section, consultative pathology services must meet the following requirements:

(1) The services must be personally requested by the beneficiary's attending physician and may not be furnished under a standing order.

(2) The services must relate to a test result that lies outside the clinically significant normal or expected range in view of the condition of the patient.

(3) The services must result in a written narrative report included in the beneficiary's medical record.

(4) The services must require the exercise of medical judgment by the consultant physician.

(c) *Independent laboratory services furnished to hospital inpatients.* Laboratory services furnished to a hospital inpatient by an independent laboratory (as defined in § 405.1310(a) of this chapter) are paid on a reasonable charge basis under the provisions of Subpart E of Part 405 of this chapter only if they are physician laboratory services as described in paragraph (a) of this section. Payment for nonphysician services furnished to a hospital inpatient by an independent laboratory is made by the intermediary to the hospital in accordance with Subpart D of Part 405 of this chapter.

§ 415.135 Reasonable charges for physician laboratory services.

The carrier pays for physician laboratory services that meet the conditions for reasonable charge payment in § 415.130(a) under the reasonable charge rules for physician services in providers in § 415.105 and the general reasonable charges rules in §§ 405.501 through 405.508 of this chapter.

Subpart D—Physician Services in Teaching Settings

§ 415.150 General provisions.

(a) *Statutory basis.* This subpart implements sections 1832(a)(2)(B)(i)(II), 1842(b)(7), and 1861(b)(7) of the Act, which provide special rules on payment for the services of physicians in teaching settings.

(b) *Scope.* This subpart sets forth the rules governing payment for the services of physicians in teaching settings and the method under which that payment is made (that is, as a provider service paid on a reasonable cost basis or as a physician service paid on a reasonable charge basis).

§ 415.152 Definitions.

As used in this subpart—

"Billing entity" means any entity that is legally entitled to bill and receive payment in its name for physician services furnished to beneficiaries.

"Charges collected in full or substantial part" means that at least 50 percent of the charged amount is collected except in the case of charges paid under Medicaid, which are considered to have been collected in substantial part, regardless of the actual amount collected.

"Nominal charges" means those charges that are 10 percent or less of the prevailing charge level for similar services in the same locality.

"Teaching hospital" means a hospital engaged in a residency program in medicine, osteopathy, dentistry, or podiatry that is approved by one of the national accrediting bodies set forth in § 415.200(a).

"Teaching physician" means a physician who is compensated by a hospital, medical school, other affiliated entity, or professional practice plan for physician services furnished to patients, and who generally involves interns or residents in patient care.

§ 415.160 Election of reasonable cost reimbursement for physician services in teaching hospitals.

(a) *Condition for election.* A teaching hospital may elect to be paid on a reasonable cost basis for physician services furnished to beneficiaries in lieu of any payment that might otherwise be made on a reasonable charge basis for those services if all physicians who furnish services to beneficiaries in the hospital agree not to bill charges for those services.

(b) *Procedure for making election.* If a teaching hospital wants to elect reasonable cost payment for physician services furnished to beneficiaries, it must notify its intermediary in writing that—

(1) It is making this election; and

(2) It meets the condition set forth in paragraph (a) of this section.

(c) *Effect of election.* If a teaching hospital elects to receive reasonable cost reimbursement for physician medical and surgical services furnished to beneficiaries, those services and the supervision of interns and residents in the care of individual patients are covered as hospital services and the intermediary pays the hospital for those services on a reasonable cost basis under the rules in § 415.162. (Payment for other physician compensation costs related to approved graduate medical education programs is made as described in § 413.85 of this chapter.) If the teaching hospital does not make this election, payment for physician services furnished to beneficiaries is made on a reasonable charge basis as described in § 415.190, and payment for the supervision of interns and residents is made as described in § 413.85.

§ 415.162 Determining reimbursement for physician services furnished to beneficiaries in teaching hospitals.

(a) *General.* Payments for services of physicians furnished to beneficiaries and supervision of interns and residents in the care of individual patients is made by Medicare on the basis of reasonable cost if the hospital exercises the election as provided for in § 415.160. If this election is made—

(1) Physician services furnished to beneficiaries and supervision of interns and residents in the care of individual patients are reimbursable cost basis, as provided for in paragraph (b) of this section;

(2) Reimbursement for certain medical school costs may be made as provided for in paragraph (c) of this section; and

(3) Payments for services donated by volunteer physicians to beneficiaries are made to a fund designated by the organized medical staff of the teaching hospital or medical school as provided for in paragraph (d) of this section.

(b) *Reasonable cost of physician services furnished to beneficiaries and supervision of interns and residents in the care of individual patients in a teaching hospital.* Physician services furnished to beneficiaries and supervision of interns and residents in the case of individual patients, in a teaching hospital are reimbursable as provider services on a reasonable-cost basis. For purposes of this paragraph, reasonable cost is defined as the direct salary paid to these physicians, plus applicable fringe benefits. The costs

must be allocated to the services as provided by paragraph (j) of this section and apportioned to program beneficiaries as provided by paragraph (g) of this section. Other allowable costs incurred by the provider related to the services described in this paragraph are reimbursable subject to the requirements applicable to all other provider services.

(c) *Reasonable costs incurred by a teaching hospital for the services furnished by a medical school or related organization in a hospital.* An amount not in excess of the reasonable cost (as defined in paragraphs (c)(1) and (2) of this section) incurred by a teaching hospital for services furnished by a medical school or organization related thereto within the meaning of § 413.17 of this chapter for certain costs to the medical school (or such related organization) in furnishing services in the hospital are reimbursable to the hospital by the health insurance program provided that the costs would be reimbursable if incurred directly by the hospital rather than under such arrangement.

(1) *Reasonable costs of physician services furnished to beneficiaries and supervision of interns and residents in the care of individual patients in a teaching hospital by physicians on the faculty of a medical school or organization related to the medical school.* (i) If the medical school (or organization related to the medical school) and the hospital are related by common ownership or control as described in § 413.17 of this chapter, the cost of such services are allowable costs to the hospital under the provisions of § 413.17 of this chapter and the reimbursable costs to the hospital are determined under the provisions of this section in the same manner as the costs incurred for physicians on the hospital staff and without regard to payments made to the medical school by the hospital.

(ii) If the medical school and the hospital are not related organizations under the provisions of § 413.17 of this chapter and the hospital makes payment to the medical school for the costs of such services furnished to all patients, reimbursement is made by Medicare to the hospital for the reasonable cost incurred by the hospital for its payments to the medical school for services furnished to beneficiaries. Costs incurred under such an arrangement must be allocated to the full range of services provided to the hospital by the medical school physicians on the same basis as provided for under paragraph (j) of this section and costs so allocated to direct medical and surgical services furnished to hospital patients must be apportioned to beneficiaries as provided for under paragraph (g) of this section. If the medical school and the hospital are not related organizations under the provisions of § 413.17 of this chapter and the hospital makes payment to the medical school only for the costs of such services furnished to beneficiaries costs of the medical school not to exceed 105 percent of the sum of physicians' direct salaries, applicable fringe benefits, employer's portion of FICA taxes, federal and state unemployment taxes, and workmen's compensation paid by the medical school or an organization related thereto may be recognized as allowable cost of the medical school. These allowable medical school costs must be allocated to the full range of services furnished by the physicians of the medical school or organization related thereto as provided by paragraph (j) of this section. Costs so allocated to direct medical and surgical services furnished to hospital patients must be apportioned to beneficiaries as provided by paragraph (g) of this section.

(2) *Reasonable costs of other than physician services furnished to beneficiaries and supervision of interns and residents in the care of individual patients in a teaching hospital by medical school faculty (or organization related to the medical school).* These costs are determined in accordance with paragraph (c)(1) of this section except that—

(i) If the hospital makes payment to the medical school for other than physician services furnished to beneficiaries and supervision of interns and residents in the care of individual patients, these payments are subject to the required cost-finding and apportionment methods applicable to the cost of other hospital services (excepting direct medical and surgical services furnished to patients); or (ii) If the hospital makes payment to the medical school only for these services furnished to beneficiaries; then the cost of services that are so reimbursed are not subject to cost-finding and apportionment as otherwise provided by this subpart and the reasonable cost reimbursed by Medicare must be determined on the basis of the health insurance ratio(s) used in the apportionment of all other provider costs (excepting physicians' direct medical and surgical services furnished to patients) applied to the allowable medical school costs incurred by the medical school for the services furnished to all patients of the hospital.

(d) *"Salary Equivalent" payments for physicians' direct medical and surgical services furnished to beneficiaries in a teaching hospital by physicians on the voluntary staff of the hospital (or medical school or organization related thereto under arrangement with the hospital).*

(1) Payments are made to a fund as defined in § 415.164 for direct medical and surgical services furnished on a regularly scheduled basis by physicians on the unpaid voluntary medical staff of the hospital (or medical school under arrangement with the hospital) to beneficiaries. These payments represent compensation for contributed medical staff time which, if not contributed, would have to be obtained through employed staff on a reimbursable basis. Payments for volunteer services are determined by applying to the regularly scheduled contributed time an hourly rate not to exceed the equivalent of the average direct salary (exclusive of fringe benefits) paid to all full-time, salaried physicians (other than interns and residents) on the hospital staff or, if the number of full-time salaried physicians is minimal in absolute terms or in relation to the number of physicians on the voluntary staff, to physicians at like institutions in the area. This "salary equivalent" is a single hourly rate covering all physicians regardless of specialty, and is applied to the actual regularly scheduled time contributed by the physicians in furnishing direct medical and surgical services to beneficiaries including supervision of interns and residents in such care. A physician who receives any compensation from the hospital or a medical school related to the hospital by common ownership or control (within the meaning of § 413.17 of this chapter), for direct medical and surgical services furnished to any patient in the hospital is not considered an unpaid voluntary physician for purposes of this paragraph. If, however, a physician receives compensation from the hospital or related medical school or organization related thereto for only services that are other than direct medical and surgical services, a salary equivalent payment for his or her regularly scheduled direct medical and surgical services to beneficiaries of the hospital may be imputed. However, the sum of the imputed value for volunteer services and his or her actual compensation from the hospital and the related medical school (or organization related thereto) may not exceed the amount that would have been imputed if all of the physician's hospital and medical school services (compensated

and volunteer) had been (i) volunteer services, or (ii) at the rate of $30,000 per year, whichever is less.

(2) The following examples illustrate how the allowable imputed value for volunteer services is determined. In each example, it has been assumed that the average salary equivalent hourly rate is equal to the hourly rate for the individual physician's compensated services.

Example No. 1. Dr. Jones received $3,000 a year from Hospital X for services other than direct medical services to all patients, for example utilization review and administrative services. Dr. Jones also voluntarily furnished direct medical services to beneficiaries. The imputed value of the volunteer services amounted to $10,000 for the cost-reporting period. The full imputed value of Dr. Jones' volunteer direct medical services would be allowed since the total amount of the imputed value ($10,000) and the compensated services ($3,000) does not exceed $30,000.

Example No. 2. Dr. Smith received $25,000 from Hospital X for services as a department head in a teaching hospital. Dr. Smith also voluntarily furnished direct medical services to beneficiaries. The imputed value of the volunteer services amounted to $10,000. Only $5,000 of the imputed value of volunteer services would be allowed since the total amount of the imputed value ($10,000) and the compensated services ($25,000) exceeds the $30,000 maximum amount allowable for all Dr. Smith's services.

Computation:

Maximum amount allowable for all services performed by Dr. Smith for purposes of this computation	$30,000
Less compensation received from hospital X for other than direct medical services to individual patients	$25,000
Allowable amount of imputed value for the volunteer services furnished by Dr. Smith	$5,000

Example No. 3. Dr. Brown is not compensated by Hospital X for any services furnished in the hospital. Dr. Brown voluntarily furnished direct surgical services to beneficiaries for a period of six months and the imputed value of these services amounted to $20,000. The allowable amount of the imputed value for volunteer services furnished by Dr. Brown would be limited to $15,000 ($30,000 × 6/12).

(3) The amount of the imputed value for volunteer services applicable to beneficiaries and payable to a fund is determined in accordance with the Aggregate Per Diem Method described in paragraph (g) of this section.

(4) Medicare payments to a fund must be used by the fund solely for improvement of care of hospital patients or for educational or charitable purposes (which may include but are not limited to medical and other scientific research). No personal financial gain, either direct or indirect, from benefits of the fund may inure to any of the hospital staff physicians, medical school faculty, or physicians for whom Medicare imputes costs for purposes of payment into the fund. Expenses met from contributions made to the hospital from such a fund are not included as a reimbursable cost when expended by the hospital, and depreciation expense is not allowed with respect to equipment or facilities donated to the hospital by such a fund or purchased by the hospital from monies in such a fund.

(e) *Requirements for reimbursement for physicians' direct medical and surgical services (including supervision of interns and residents) in the care of individual patients furnished in a teaching hospital—*

(1) *Physicians on the hospital staff.* The requirements under which the costs of physicians' direct medical and surgical services (including supervision of interns and residents) in the care of individual patients furnished to beneficiaries are allowed are the same as those applicable to the cost of all other covered provider services except that the costs of these services are separately determined as provided by this section and are not subject to cost-finding as described in § 413.24 of this chapter.

(2) *Physicians on the medical school faculty.* Reimbursement is made to a hospital for the costs of services of physicians on the medical school faculty, provided that if the medical school is not related to the hospital (within the meaning of § 413.17 of this chapter), the hospital does not make payment to the medical school for services furnished to all patients and the following requirements are met: If the hospital makes payment to the medical school for services rendered to all patients, these requirements do not apply (see paragraph (c)(1)(ii) of this section).)

(i) There is a written agreement between the hospital and the medical school or organization related thereto, specifying the types and extent of services to be furnished by the medical school and specifying that the hospital must pay to the medical school an amount at least equal to the reasonable cost (as defined in paragraph (c) of this section) of providing such services to beneficiaries.

(ii) The costs are paid to the medical school by the hospital no later than the date on which the cost report covering the period in which the services were furnished is due.

(iii) Payment for the services furnished under such an arrangement would have been made to the hospital had such services been furnished directly by the hospital.

(3) *Physicians on the voluntary staff of the hospital (or medical school under arrangement with the hospital).* Payments are made on a "salary equivlant" basis (as defined in paragraph (d) of this section) to a fund if the conditions outlined in § 415.164 are met.

(f) *Requirements for reimbursement for medical school faculty services other than physicians' direct medical and surgical services furnished in a teaching hospital.* Reimbursement is made to a hospital for the costs of medical school faculty services other than physicians' direct medical and surgical services furnished in a teaching hospital where the requirements described in paragraph (e) of this section are met.

(g) *Aggregate per diem methods of apportionment for physicians' direct medical and surgical services (including supervision of interns and residents) in the care of individual patients, furnished in a teaching hospital—*

(1) *Aggregate per diem method of apportionment for the costs of physicians' direct medical and surgical services (including supervision of interns and residents) in the care of individual patients.* The cost of physicians' direct medical and surgical services furnished in a teaching hospital to beneficiaries is determined on the basis of an average cost per diem as defined in paragraph (h)(1) of this section for physicians' direct medical and surgical services to all patients (see §§ 415.172 through 415.182) for each of the following categories of physicians:

(i) Physicians on the hospital staff.

(ii) Physicians on the medical school faculty.

(2) *Aggregate per diem method of apportionment for the imputed value of physicians' volunteer direct medical and surgical services.* The imputed value of physicians' direct medical and surgical services furnished beneficiaries in a teaching hospital is determined on the basis of an average per diem, as defined in paragraph (h)(1) of this section, for physicians' direct medical and surgical services to all patients

except that the average per diem is derived from the imputed value of the physician volunteer direct medical and surgical services furnished to all patients.

(h) *Definitions*—(1) *Average cost per diem for physicians' direct medical and surgical services (including supervision of interns and residents) furnished in a teaching hospital.* Average cost per diem for physicians' direct medical and surgical services furnished in a teaching hospital to patients in each category of physicians' services as described in paragraphs (g)(1) (i) and (ii) of this section means the amount computed by dividing total reasonable costs of these services in each category by the sum of—

(i) Inpatient days (as defined in paragraph (h)(2) of this section); and

(ii) Outpatient visit days (as defined in paragraph (h)(3) of this section).

(2) *Inpatient days.* Inpatient days are determined by counting the day of admission as 3.5 days and each day subsequent to a patient's day of admission except the day of discharge, as one day.

(3) *Outpatient visit days.* Outpatient visit days are determined by counting only one visit day for each calendar day that a patient visits the outpatient department.

(i) *Application.* (1) The following illustrates how apportionment based on the Aggregate Per Diem Method for cost of physicians' direct medical and surgical services furnished in a teaching hospital to patients is determined.

Teaching Hospital Y

Statistical and financial data:	
Total inpatient days as defined in paragraph (h)(2) of this section and outpatient visit days as defined in paragraph (h)(3) of this section	75,000
Total inpatient part A days applicable to beneficiaries	20,000
Total inpatient part B days applicable to beneficiaries where part A coverage is not available	1,000
Total inpatient part B visit days applicable to beneficiaries	5,000
Total cost of direct medical and surgical services furnished to all patients by physicians on the hospital staff as determined in accordance with paragraph (i) of this section	$1,500,000
Total cost of direct medical and surgical services furnished to all patients by physicians on the medical school faculty as determined in accordance with paragraph (i) of this section	$1,650,000
Computation of cost applicable to program for physicians on the hospital staff:	
Average cost per diem for direct medical and surgical services to patients by physicians on the hospital staff: $1,500,000 ÷ 75,000 = $20 per diem.	
Cost of physicians' direct medical and surgical services furnished to inpatient beneficiaries covered under part A: $20 per diem × 20,000	$400,000
Cost of physicians' direct medical and surgical services furnished to inpatient beneficiaries covered under part B: $20 per diem × 1,000	$20,000
Cost of physicians' direct medical and surgical services furnished to outpatient beneficiaries covered under part B: $20 per diem × 5,000	$100,000
Computation of cost applicable to program for physicians on the medical school faculty:	
Average Cost per diem for direct medical and surgical services to patients by physicians on the medical school faculty: $1,650,000 ÷ 75,000 = $22 per diem.	
Cost of physicians' direct medical and surgical services furnished to inpatient beneficiaries covered under part A: $22 per diem × 20,000	$440,000
Cost of physicians' direct medical and surgical services furnished to inpatient beneficiaries covered under part B: $20 per diem × 1,000	$22,000
Cost of physicians' direct medical and surgical services furnished to outpatient beneficiaries covered under part B: $22 per diem × 5,000	$110,000

(2) The following illustrates how the imputed value of physicians' volunteer direct medical and surgical services furnished in a teaching hospital applicable to beneficiaries is determined.

Example: The physicians on the medical staff of Teaching Hospital Y donated a total of 5,000 hours in furnishing direct medical and surgical services to patients of the hospital during a cost-reporting period and did not receive any compensation from either the hospital or the medical school. Also, the imputed value for any physicians' volunteer services did not exceed the rate of $30,000 per year per physician.

Statistical and financial data:	
Total salaries paid to the full-time salaried physicians by the hospital (excluding interns and residents)	$800,000
Total physicians who were paid for an average of 40 hours per week or 2,080 (52 weeks × 40 hours per week) hours per year	20
Average hourly rate equivalent: $800,000 ÷ 41,600 (2,080 × 20)	$19.23
Computation of total imputed value of physicians' volunteer services applicable to all patients:	
(Total donated hours × average hourly rate equivalent): 5,000 × $19.23	$96,150
Total inpatient days (as defined in paragraph (h)(2) of this section) and outpatient visit days (as defined in paragraph (h)(3) of this section)	75,000
Total inpatient part A days applicable to beneficiaries	20,000
Total inpatient part B days applicable to beneficiaries where part A coverage is not available	1,000
Total outpatient part B visit days applicable to beneficiaries	5,000
Computation of imputed value of physicians' volunteer direct medical and surgical services applicable to beneficiaries:	
Average per diem for physicians' direct medical and surgical services to patients: $96,150 ÷ 75,000 = $1.28 per diem.	
Imputed value of physicians' direct medical and surgical services furnished to inpatient beneficiaries covered under part A: $1.28 per diem × 20,000	25,600
Imputed value of physicians' direct medical and surgical services furnished to inpatient beneficiaries covered under part B: $1.28 per diem × 1,000	1,280
Imputed value of physicians' direct medical and surgical services furnished to outpatient beneficiaries covered under part B: $1.28 per diem × 5,000	56,400
Total	533,280

(j) *Allocation of compensation paid to physicians in a teaching hospital.* In determining reasonable cost under this section, the compensation paid by a teaching hospital, or a medical school or related organization under arrangement with the hospital, to physicians in a teaching hospital must be allocated to the full range of services implicit in the physicians' compensation arrangements. (However, see paragraph (d) of this section for the computation of the "salary equivalent" payments for volunteer services furnished to patients.) This allocation must be made and must be capable of substantiation on the basis of the proportion of each physician's time spent in furnishing each type of service to the hospital or medical school.

§ 415.164 Payment to a fund.

(a) *General.* Payment for certain voluntary services by physicians in teaching hospitals (as these services are described in § 415.160) is made on a salary equivalent basis (as described in § 415.162(d) subject to the conditions and limitations contained in Parts 405 and 413 of this chapter and this Part 415, to a single fund (as defined in paragraph (b) of this section) designated by the organized medical staff of the hospital (or, if the services are furnished in the hospital by the faculty of a medical school, to a fund as may be designated by the faculty), if—

(1) The hospital (or medical school furnishing the services under arrangement with the hospital) incurs no actual cost in furnishing the services;

(2) The hospital has an agreement with HCFA under Part 489 of this chapter; and

(3) The intermediary, or HCFA as appropriate, has received written assurances that—

(i) The payment if used solely for the improvement of care of hospital patients or for educational or charitable purposes; and

(ii) Neither the individuals who are furnished the services nor any other persons are charged for the services (and if charged, provision is made for the return of any monies incorrectly collected).

(b) *Definition of a fund.* For purposes of paragraph (a) of this section, a fund is an organization that meets either of the following requirements:

(1) The organization has and retains exemption, as a governmental entity or under section 501(c)(3) of the Internal Revenue Code (nonprofit educational, charitable, and similar organizations), from Federal taxation.

(2) The organization is an organization of physicians who, under the terms of their employment by an entity that meets the requirements of paragraph (b)(1) of this section, are required to turn over to that entity all income that the physician organization derives from the physicians' services.

(c) *Status of a fund.* A fund approved for payment under paragraph (a) of this section has all the rights and responsibilities of a provider under Medicare except that it does not enter into an agreement with HCFA under Part 489 of this chapter.

§ 415.170 Conditions for payment on a reasonable charge basis for physician services in a teaching setting.

(a) *General rule.* The manner in which the carrier calculates the reasonable charge for physician services furnished to beneficiaries in a teaching setting depends on which of the following conditions are met.

(b) *Degree of physician involvement.* The physician furnishes sufficient personal and identifiable physician services to the patient to exercise full, personal control over the management of the portion of the case for which payment is sought, as evidenced by the physician's compliance with the attending physician requirements in §§ 415.172 through 415.174 or—

(1) In the case of psychiatry services, the physician requirements in § 415.178;

(2) In the case of services furnished in an emergency room or in a family practice program in a hospital outpatient department, the physician requirements in § 415.178;

(3) In the case of renal dialysis services, the physician requirements in § 415.180;

(4) In the case of anesthesiology services, the physician requirements in § 415.182; and

(5) In the case of radiology, physician laboratory services, and consultative services, the physician requirements in § 415.184;

(c) *Character of physician services.* The physician's services to beneficiaries are of the same character as the services the physician furnishes to patients not entitled to benefits under Medicare.

(d) *Fee collection.* During the specified fee collection period, at least 25 percent of the hospital's patients who were not entitled to benefits under Medicare and who received physician services of the type described in paragraphs (b) and (c) of this section paid all or a substantial part of the charges (other than nominal charges) imposed for those services. For purposes of determining whether a hospital meets this condition, the following rules apply:

(1) The fee collection period for a hospital may be any 60-day period specified by the carrier that ended at least 120 days before the start of the cost reporting period in which the physician services for which payment is claimed under this section were furnished.

(2) All patients who are entitled to Medicare Part B, regardless of whether they also have private insurance or are dually entitled to Medicaid, are considered to be patients entitled to benefits under Medicare. For purposes of this paragraph (d), all other patients are considered to be patients not entitled to Medicare.

(3) During its fee collection period, at least 25 percent of the hospital's patients who were not entitled to benefits under Medicare paid at least 50 percent of the amounts billed for physician services or had physician services' paid for under—

(i) Medicaid; or

(ii) A private insurance plan that pays amounts for physician services that are—

(A) Accepted as payment in full by entities legally entitled to bill for physician services in the hospital; or

(B) At least 50 percent of the amounts billed for those services.

§ 415.172 Attending physician requirements: Entire hospital stay.

(a) *Requirements.* Except as specified in §§ 415.176 through 415.184, to qualify as a beneficiary's attending physician for the beneficiary's entire hospital stay, a physician must—

(1) Review the beneficiary's medical history, physical examination, and record of tests and therapies in the hospital;

(2) Personally examine the beneficiary within a reasonable period after admission;

(3) Personally examine the beneficiary on a regular basis during the hospital stay;

(4) Make the admission diagnosis or, if another physician admitted the beneficiary to the hospital, confirm or revise the admission diagnosis;

(5) Determine the course of treatment to be followed;

(6) Be recognized by the beneficiary as his or her personal physician;

(7) Assume responsibility for the continuity of the beneficiary's care;

(8) When a surgical procedure or a dangerous or complex medical procedure is performed, be ready to furnish any service that would be furnished by the beneficiary's personal physician in a nonteaching hospital;

(9) Personally direct interns or residents who furnish services to the beneficiary and assure that these services are appropriate; and

(10) Be expected by the beneficiary to furnish, or arrange for others to furnish, any care the beneficiary may require immediately after he or she is discharged from the hospital.

(b) *Documentation.* At a minimum, the patient's medical record must be annotated as follows to document the attending physician requirements set forth in paragraph (a) of this section:

(1) The medical record must contain signed or countersigned notes by the physician that shows that he or she personally—

(i) Reviewed the beneficiary's medical history;

(ii) Performed a physical examination;

(iii) Confirmed or revised the diagnosis;

(iv) Visited the beneficiary during the more critical period of illness; and

(v) Discharged the beneficiary.

(2) With respect to other services, the medical record must contain a notation made by an intern, resident, or nurse that indicates that the physician was physically present when the required service was furnished.

§ 415.174 Attending physician requirements: Discrete part of hospital stay.

(a) Except as specified in §§ 415.176 through 415.182, a physician may qualify as a beneficiary's attending physician

for a part of a hospital stay if that part of the stay—

(1) Constitutes a distinct segment of the beneficiary's course of treatment; and

(2) Is long enough to require the physician to assume a substantial responsibility for the continuity of the beneficiary's care.

(b) To qualify as a beneficiary's attending physician for a part of a hospital stay that does not include the date the beneficiary is admitted to the hospital, the physician must meet all the requirements in § 415.172 except the personal examination requirement in § 415.172(a)(2).

(c) To qualify as a beneficiary's attending physician for a part of a hospital stay that does not include the date the beneficiary is discharged from the hospital, the physician must meet the requirements in § 415.172 except the care after discharge requirement in § 415.172(a)(10).

§ 415.176 Special attending physician requirements: Psychiatry services.

To qualify as a beneficiary's attending physician for psychiatry services, a physician must meet the requirements in § 415.172 (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(7), (a)(9), (b)(1), and (b)(2).

§ 415.178 Special attending physician requirements: Outpatient services.

(a) To qualify as a beneficiary's attending physician for physician services furnished in an outpatient setting, including an emergency department or a family practice program in a hospital outpatient department, the physician must—

(1) Direct interns or residents who furnish services to the beneficiary from such proximity as to constitute immediate availability;

(2) Assure that these services are appropriate; and

(3) Review the beneficiary's medical history, physical examination, and record of tests and therapies that are received in the hospital outpatient department.

(b) Documentation must include notes signed by the physician that reflect the extent of his participation in services furnished.

§ 415.180 Special attending physician requirements: Renal dialysis services.

To qualify as a beneficiary's attending physician for renal dialysis services, physicians who are not reimbursed under the physician monthly capitation payment method (as described in § 405.542(c) of this chapter) must meet all the requirements of § 415.172 or § 415.174, as applicable.

§ 415.182 Special attending physician requirements: Anesthesiology services.

(a) *General rule.* The anesthesiology services must be performed by a physician who furnishes services that meet the conditions for charge payment set forth in § 415.110. An attending physician relationship may be recognized if an anesthesiologist—

(1) Directs no more than two interns or residents concurrently; or

(2) Directs an intern or resident and concurrently directs no more than one certified registered nurse anesthetist or other qualified individual.

(b) *Documentation.* Documentation must indicate the physician's presence or participation in the administration of the anesthesia and a pre-operative and a post-operative visit by the physician.

§ 415.184 Requirements for radiology, physician laboratory, and consultative services

(a) *Radiology and physician laboratory services.* The radiology or physician laboratory services must be performed by a physician and meet the conditions for charge payment set forth and described in § 415.100(b). Documentation must indicate that the physician performed the services.

(b) *Consultative services.* (1) For purposes of this paragraph, "consultative services" means services (other than consultative pathology services) a physician furnishes to a beneficiary at the request of the beneficiary's attending physician, including history taking, examination of the beneficiary and the beneficiary's medical record, and furnishing the attending physician, for inclusion in the beneficiary's medical record, a written opinion concerning diagnosis or treatment.

(2) Consultative services must—

(i) Be ordered by the beneficiary's attending physician;

(ii) Be personally performed by the consulting physician, or by interns or residents under the personal direction of the consulting physician; and

(iii) Be documented by including the name of the referring physician in the medical records.

§ 415.190 Payment on a reasonable charge basis for physician services in a teaching setting.

(a) *Teaching hospitals.* If a teaching hospital does not elect to receive payment on a reasonable cost basis for physician services furnished to beneficiaries, the following rules, subject to the limits in § 405.502(f)(4) of this chapter and § 415.125(c)(2), apply:

(1) If the physician services meet the conditions for charge payment set forth in § 415.170 (b) and (c) but the hospital does not meet the condition in § 415.170(d), payment is made as follows:

(i) A physician who is compensated by a hospital, medical school, other affiliated entity, or professional practice plan for physician services furnished to patients is paid under the compensation-related charge rules set forth in Subparts B and C of this part.

(ii) A physician who is not compensated as described in paragraph (a)(1)(i) of this section is paid under the general reasonable charge rules set forth in §§ 405.501 through 405.508 of this chapter and Subpart C of this part.

(2) If all the conditions set forth § 415.170 are met, payment is made as follows:

(i) If the physician is not a teaching physician, as described in § 415.152, payment is made as described in (a)(1) of this section.

(ii) If the physician is a teaching physician, as described in § 415.152, payment is made under—

(A) The compensation-related charge rules set forth in Subparts B and C of this part if the physician so elects; or

(B) The special customary charge rules set forth in §§ 415.192 and 415.194.

(b) *Other providers using interns and residents.* Physician services that meet the conditions for charge payment in § 415.170 (b) and (c) and are furnished in providers that are not teaching hospitals as defined in § 415.152 but that use interns and residents to furnish care to their patients are paid under the following rules:

(1) A physician furnishing services who is compensated for them by the provider or another organization is paid under the compensation-related charge rules in Subparts B and C of this part.

(2) A physician furnishing services who is not compensated for them by the provider or another organization is paid under the general reasonable charge rules in §§ 405.501 through 405.508 and Subpart C of this part.

§ 415.192 Determination of the customary charge for the services of teaching physicians.

(a) *Basis of determination.* Except as specified in § 415.194, if a teaching hospital, its physicians, or another appropriate billing entity (see § 415.152) has established one or more schedules of charges that are collected for medical and surgical services, the customary charges for the physician services that a teaching physician furnishes in that hospital or affiliated entities are based on the greatest of—

(1) The charges (other than nominal charges) that are most frequently collected in full or substantial part for services to patients who are not entitled to benefits under Medicare and who were furnished services of the type described in § 415.170 (a) and (b);

(2) The mean of the charges (other than nominal charges) that are collected in full or substantial part for services to patients who are not entitled to benefits under Medicare and who were furnished services of the type described in § 415.170 (a) and (b); or

(3) Eighty-five percent of the prevailing charges paid for similar services in the same locality.

(b) *Evidence requirement.* Unless the billing entity provides evidence satisfactory to its carrier supporting a higher customary charge under the rules in paragraph (a)(1) or (a)(2) of this section, the customary charge is based on paragraph (a)(3) of this section.

§ 415.194 Determination of the customary charge if all teaching physicians agree to accept assignment.

(a) *General rule.* If all the teaching physicians in a teaching hospital agree to accept assignment as described in § 405.1675 of this chapter or under the procedure described in § 405.1684 of this chapter for all covered physician services they furnish in the hospital, the customary charge is set at 90 percent of the prevailing charge paid for similar services in the same locality.

(b) *Execution of the agreement.* The agreement to accept assignment must be executed by—

(1) The teaching physician for those physician services for which the teaching physician bills in his or her own name; and

(2) The hospital, medical group, or other entity authorized by the physician to accept assignment on his or her behalf for those physician services for which the entity bills in its name.

(c) *Notification of the carrier by the hospital.* To establish that the requirements for payment in accordance with paragraph (a) of this section are met, the hospital must file a statement with the carrier having jurisdiction of the claims for the services of the teaching physicians that—

(1) Certifies that all agreements stipulated by paragraph (a) of this section are on file in the hospital and are available for inspection by HCFA or the carrier; and

(2) Agrees to notify the carrier immediately if—

(i) Any teaching physician that has executed an agreement to accept assignment and has staff privileges in the hospital has submitted to the hospital a written request for termination of the agreement; or

(ii) Any teaching physician has furnished covered physician services in the hospital that are not covered by an agreement to accept assignments; for example, a new physician or medical group begins to furnish services in the hospital and fails to execute such an agreement.

(d) *Notification by the carrier and effective date of the agreement.* As soon as practicable after receiving the hospital's statement described in paragraph (c) of this section, the carrier notifies the hospital that the agreement is effective on the 20th day after the date of the carrier's notice to the hospital.

(e) *Voluntary termination of the agreement*—(1) *Basis for termination.* The agreement to accept assignment under paragraph (a) of this section terminates if the hospital notifies the carrier in writing that—

(i) A teaching physician that has staff privileges in the hospital has requested termination of the physician's or entity's agreement;

(ii) A teaching physician has furnished covered physician services that are not covered by an agreement to accept assignment; or

(iii) The hospital wishes to terminate its agreement with respect to those physicians for which the hospital bills in its name.

(2) *Notification by the carrier and effective date of termination.* As soon as practicable after receiving the hospital's notice described in paragraph (e)(1) of this section, the carrier notifies the hospital that its agreement is terminated effective on the 20th day after the date of the carrier's notice to the hospital.

(3) *Limitation on reentrance into an agreement.* Teaching physicians and entities may not enter into an agreement to accept assignment under paragraph (a) of this section for the services of teaching physicians in a hospital until at least 12 months have elapsed since a previous agreement concerning teaching physicians services in that hospital was terminated.

(f) *Effect of violation of the agreement to accept assignment*—(1) *Relationship between agreement and assignment privilege.* A physician or entity that has entered into an agreement to accept assignment under this section is deemed to have accepted assignment with respect to all services furnished under the agreement for purposes of—

(i) Determining the liability of the beneficiary or other person for payment for the services under the terms of the assignment as set forth in § 405.1675 and § 405.1684 of this chapter; and

(ii) Revoking the physician's or entity's right to receive assigned payment, in accordance with § 405.1681 of this chapter, because the physician or entity has violated the undertakings required for assigned payment under §§ 405.1675 and 405.1684 of this chapter.

(2) *Termination of the agreement for cause.* As soon as practicable after learning that a physician's or entity's right to accept assignment has been revoked under § 405.1681 of this chapter and the physician or entity still has staff privileges in the hospital, the carrier notifies the hospital that the agreement under paragraph (a) of this section will terminate—

(i) On the date of that revocation for purposes of payment to a teaching physician or entity whose right to accept assignments has been revoked; and

(ii) On the 20th day after the date of the notice from the carrier to the hospital for purposes of payment under paragraph (a) of this section to any other teaching physician or entity furnishing services in that hospital.

(3) *Limitation on reentrance into an agreement.* If an agreement to accept assignment for teaching physicians' services furnished in a teaching hospital are terminated for cause, a new agreement may not be entered into until at least 12 months after the termination of the agreements has passed and HCFA is satisfied that violations will not recur.

§ 415.198 Conditions of payment for assistants at surgery in teaching hospitals.

(a) *Basis, purpose, and scope.* This section describes the conditions under which Medicare pays on a reasonable charge basis for the services of an assistant at surgery in a teaching hospital. This section is based on section 1842(b)(7)(D) of the Act and applies only to hospitals with an approved teaching program. Except as specified in paragraph (c) of this section, reasonable charge reimbursement is not available for assistants at surgery in hospitals with—

(1) A training program relating to the medical specialty required for the surgical procedure; and

(2) A qualified individual on the staff of the hospital available to serve as an assistant at surgery.

(b) *Definitions.* For purposes of this section, the following definitions apply: "Assistant at surgery" means a physician who actively assists the physician in charge of a case in performing a surgical procedure.

"Qualified individual on the staff of the hospital" means a resident in a training program relating to the specialty required for the surgery.

"Teaching hospital" means a hospital with a graduate education program approved as specified in § 415.200(a).

"Team physicians" means a group of physicians, each performing a discrete, unique function integral to the performance of a complex medical procedure that requires the special skills of more than one physician.

(c) *Conditions for payment for assistants at surgery.* Beginning October 1, 1982, payment on the basis of reasonable charges may be made for the services of an assistant at surgery in a teaching hospital only if the services—

(1) Are required due to exceptional medical circumstances;

(2) Are performed by team physicians needed to perform complex medical procedures;

(3) Constitute concurrent medical care relating to a medical condition which requires the presence of and active care by a physician of another specialty during surgery; or

(4) Are medically required and are furnished by a physician who is primarily engaged in the field of surgery and the preliminary surgeon does not utilize interns and residents in the surgical procedures he or she performs (including preoperative and postoperative care).

Subpart E—Services of Interns and Residents in Providers

§ 415.200 Interns' and residents' services in approved teaching programs.

(a) Medicare recognizes hospital teaching programs that are approved in their respective fields by the Accreditation Council for Graduate Medical Education, by the Committee on Hospitals of the Bureau of Professional Education of the American Osteopathic Association, by the Council on Dental Education of the American Dental Association, or, for provider cost reporting periods beginning after December 31, 1972, by the Council on Podiatry Education of the American Podiatry Association.

(b) Services of interns and residents in these approved programs are explicitly excluded from the definition of "physicians' services" and are covered as hospital services. This exclusion applies whether or not the intern or resident may be authorized to practice as a physician under the laws of the State in which he or she performs services. In accordance with the basis for payment under Medicare for services provided by participating hospitals, the cost of the services or interns and residents is reimbursable to the hospital, specifically as a component of allowable costs defined by the principles of reimbursement for provider costs set forth in Part 413 of this chapter. Under the principles discussed in Part 413 of this chapter, an appropriate share of the provider's total allowable costs is reimbursable under the Medicare program. (For purposes of including services of interns and residents as an element of allowable cost in accordance with these principles, recording and reporting by the hospital of the specific services furnished to individual beneficiaries is not necessary.)

(c) Conversely, services of interns and residents are not reimbursable under Medicare on the basis that applies to physicians' services, that is, reasonable charges (see §§ 405.501–405.508 of this chapter). This distinction with respect to the basis for Medicare reimbursement applies to services of interns and residents whether covered under Medicare Part A or Part B. Outpatient services that are provided by a hospital, including intern and resident services, are reimbursed to the hospital under the supplementary medical insurance program to the extent of 80 percent of the cost of the services furnished to beneficiaries after recognition of the deductible amount (see § 405.240(c) of this chapter). The beneficiary incurs the expense of the deductible and coinsurance amounts as determined on the basis of the hospital's charges to the beneficiary. Hospital charges may include a charge for the services of interns and residents as a specific item, or these services may be included in the general charges to the beneficiary made by the hospital for the covered services it provides.

§ 415.202 Interns' and residents' services not in approved teaching programs.

(a) The services of a hospital resident or intern who is not under an approved teaching program described in § 415.200(a) are reimbursable to the hospital on a cost basis under Medicare Part B. For purposes of this section, these services are deemed to include services of a physician employed by the hospital who is authorized to practice only in a hospital setting. Even if the services are furnished to inpatients, the cost of the services is not an allowable cost under Medicare Part A but is allowable under Medicare Part B.

(b) In his connection reimbursement under Medicare for services discussed in paragraph (a) of this section is made to the hospital in an amount of 80 percent of the cost of services furnished to the beneficiaries after recognition of the deductible. The beneficiary incurs the expense of the deductible and coinsurance amounts as determined on the basis of the hospital's charges to the beneficiary for its services that are covered under Medicare Part B.

§ 415.204 Interns' and residents' services outside the hospital.

(a) Under Medicare Part A, the allowable costs on which reimbursement to a participating extended care facility for covered services is based may include the cost of services of an intern or resident who is under an approved teaching program in a hospital with which the facility has a transfer agreement (see § 405.1133 of this chapter) which provides, in part, for the transfer of patients and the interchange of medical records. Likewise, a participating home health agency may be reimbursed under the Medicare Part A for the cost of the services of an intern or resident who is under an approved teaching program of a hospital with which the home health agency is affiliated or under common control where these services are furnished as part of the posthospital home health visits for a beneficiary.

(b) Medical services of a resident or intern of a hospital that are furnished by a provider of services are reimbursed under Medicare Part B on an 80 percent of allowable cost basis if reimbursement is not provided under Medicare Part A.

§ 415.206 Basis of reimbursement to providers for services of interns and residents.

Status of patient	Status of intern or resident [1]	Reimbursment provided under [2]	Basis of payment [3]
Hospital inpatient	Under approved program	Part A	Cost
	Other	Part B	80 percent of cost.
Hospital outpatient	Under approved program	Part B	80 percent of cost.
	Other	Part B	80 percent of cost.
Skilled nursing facility patient	Under approved program of a hospital with which facility has a transfer agreement.	Part A Cost.	
Home health plan patient	Other	80 percent of cost.	
	Posthospital services furnished under approved program of hospital with which the home health agency is affiliated or under common control.	Part A	Cost.
	Other	Part B	Cost.

[1] An "approved program" means a program approved by the Accreditation Council for Graduate Medical Education, by the Committee on Hospitals of the Bureau of Professional Education of the American Osteopathic Association, or by the Council on Dental Education of the American Dental Association; or with respect to providers' accounting periods beginning after Dec. 31, 1972, by the Council on Podiatry Education of the American Podiatry Association. "Other" interns and residents include, in addition to interns and residents-in-training, a physician employed by the hospital who is authorized to practice only in the hospital setting.

[2] "Part A" refers to the hospital insurance program and "part B" refers to the supplementary medical insurance program.

[3] The term "cost" refers to reimbursement on a cost basis in accordance with the principles in Part 413 of this chapter.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare-Hospital Insurance Program; No. 13.774, Medicare-Supplementary Medical Insurance Program)

Dated: June 30, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: October 3, 1988.

Otis R. Bowen,

Secretary.

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FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6948]

Proposed Flood Elevation Determinations; Arizona et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed Rule.

SUMMARY: Technical information or comments are solicited on the proposed modified base (100-year) flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program..

DATES: The period for comment will be ninety (90) days following the second publication of the proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–2767.

SUPPLEMENTARY INFORMATION:

The Federal Emergency Management Agency gives notice of the proposed determinations of modified base (100-year) flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents. Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed modified flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement) of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

PART 67—[AMENDED]

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

The proposed modified base flood elevations for selected locations are:

PROPOSED MODIFIED BASE FLOOD ELEVATIONS

State	City/Town/County	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Arizona	Town of Cave Creek, Maricopa County.	Andora Hills Wash	Approximately 0.6 mile upstream of confluence with Cave Creek.	*2,068	*2,068
			Approximately 0.15 mile downstream of Grapevine Road.	*2,072	*2,074
			Approximately 0.05 mile downstream of Grapevine Road.	*2,083	*2,083

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/Town/County	Source of flooding	Location	#Depth in feet above ground. °Elevation in feet (NGVD)	
				Existing	Modified
Maps are available for review at Town Hall, 37622 North Cave Creek Road, Cave Creek, Arizona. Send comments to The Honorable Jacqueline Davis, Mayor, Town of Cave Creek, 37622 North Cave Creek Road, Cave Creek, Arizona 85331.					
Arizona	City of Glendale, Maricopa County.	New River	At the confluence with Agua Fria River	°1,031	°1,032
			Approximately 925 feet downstream of Glendale Avenue.	°1,055	°1,054
			Approximately 425 feet downstream of Northern Avenue.	°1,080	°1,077
			Approximately 500 feet downstream of Olive Avenue.	°1,092	°1,091
			Approximately 1,000 feet downstream of Mountainview Road.	°1,100	°1,099
			Approximately 600 feet downstream of Peoria Avenue.	°1,109	°1,108
			Approximately 1,100 feet downstream of Grand Avenue.	°1,130	°1,123
			Approximately 0.5 mile upstream of Atchison Topeka and Santa Fe Railroad Bridge.	°1,144	°1,143
			Approximately 1,530 feet downstream of Thunderbird Road.	°1,150	°1,148
			Approximately 1,850 feet upstream of Thunderbird Road.	°1,165	°1,157
			At confluence of Skunk Creek	°1,163	°1,170
			Approximately 3,700 feet upstream of confluence of Skunk Creek.	°1,170	°1,182
			Approximately 1.0 mile upstream of confluence of Skunk Creek.	°1,178	°1,191
			Approximately 800 feet downstream of Bell Road.	°1,195	°1,195
Maps are available for review at the City Engineering Department, 5850 West Glendale Avenue, Glendale, Arizona. Send comments to The Honorable George Renner, Mayor, City of Glendale, 5850 West Glendale Avenue, Glendale, Arizona 85301.					
Arizona	Maricopa County Unincorporated Areas.	New River	At the confluence with Agua Fria River	°1,031	°1,032
			Approximately 925 feet downstream of Glendale Avenue.	°1,055	°1,054
			Approximately 425 feet downstream of Northern Avenue.	°1,080	°1,077
			Approximately 500 feet downstream of Olive Avenue.	°1,092	°1,091
			Approximately 1,000 feet downstream of Mountainview Road.	°1,100	°1,099
			Approximately 600 feet downstream of Peoria Avenue.	°1,109	°1,108
			Approximately 1,100 feet downstream of Grand Avenue.	°1,130	°1,123
			Approximately 0.5 mile upstream of Atchison Topeka and Santa Fe Railroad Bridge.	°1,144	°1,143
			Approximately 1,530 feet downstream of Thunderbird Road.	°1,150	°1,148
			Approximately 1,850 feet upstream of Thunderbird Road.	°1,165	°1,157
			At confluence of Skunk Creek	°1,163	°1,170
			Approximately 3,700 feet upstream of confluence of Skunk Creek.	°1,170	°1,182
			Approximately 1.0 mile upstream of confluence of Skunk Creek.	°1,178	°1,191
			Approximately 800 feet downstream of Bell Road.	°1,195	°1,195
			Approximately 2.3 miles downstream of Carefree Highway.	None	°1,480
			Approximately 260 feet upstream of Carefree Highway.	None	°1,550
			Approximately 1.0 mile upstream of Carefree Highway.	None	°1,590

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/Town/County	Source of flooding	Location	#Depth in feet above ground. °Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 3.0 miles upstream of Carefree Highway.	None	°1,668
			Approximately 5.0 miles upstream of Carefree Highway.	None	°1,751
			Approximately 3.0 miles downstream of Interstate Highway 17.	None	°1,836
			Approximately 1.0 mile downstream of Interstate Highway 17.	None	°1,928
			Immediately downstream of Interstate Highway 17.	None	°1,960
			Immediately downstream of Frontage Road	None	°2,000
			Approximately 600 feet upstream of New River Road.	None	°2,030
			Approximately 2.0 miles upstream of New River Road.	None	°2,130
			Approximately 4 miles upstream of New River Road.	None	°2,240
			Approximately 5.0 miles upstream of New River Road.	None	°2,300
			Approximately 5.6 miles upstream of New River Road.	None	°2,342
		New River East Split	At confluence with New River main channel	None	°1,536
			Approximately 300 feet downstream of Carefree Highway.	None	°1,552
			Approximately 3,900 feet upstream of Carefree Highway.	None	°1,584
		New River Middle Split	At confluence with New River main channel	None	°1,574
			Approximately 1.54 miles upstream of confluence with New River main channel.	None	°1,640
		New River West Split	At split with New River main channel	None	°1,882
			At confluence with Sweet Canyon Wash	None	°1,596
			Approximately 2.0 miles upstream of confluence with Sweet Canyon Wash.	None	°1,684
			Approximately 3.0 miles upstream of confluence with Sweet Canyon Wash.	None	°1,732
		Sweet Canyon Wash	At split from New River main channel	None	°1,809
			Approximately 0.4 mile upstream of confluence with New River.	None	°1,576
			Approximately 2.0 miles upstream of confluence with New River.	None	°1,632
			Approximately 3.0 miles upstream of confluence with New River.	None	°1,669
			Approximately 4.1 miles upstream of confluence with New River.	None	°1,714
		Buchanan Wash	Approximately 0.7 mile upstream of confluence with Skunk Creek.	None	°1,460
			Approximately 1.0 mile upstream of confluence with Skunk Creek.	None	°1,464
			Approximately 2.0 miles upstream of confluence with Skunk Creek.	None	°1,491
			Approximately 2.2 miles upstream of confluence with Skunk Creek.	None	°1,496
Maps are available for review at the Maricopa County Flood Control District, 3335 West Durango Street, Phoenix, Arizona. Send comments to The Honorable Tom Freestone, Chairman, Maricopa County Board of Supervisors, 111 South Third Avenue, Phoenix, Arizona 85003.					
Arizona	City of Peoria, Maricopa County.	New River	At the confluence with Agua Fria River	°1,031	°1,032
			Approximately 925 feet downstream of Glendale Avenue.	°1,055	°1,054
			Approximately 425 feet downstream of Northern Avenue.	°1,080	°1,077
			Approximately 500 feet downstream of Olive Avenue.	°1,092	°1,091
			Approximately 1,000 feet downstream of Mountainview Road.	°1,100	°1,099
			Approximately 600 feet downstream of Peoria Avenue.	°1,109	°1,108
			Approximately 1,100 feet downstream of Grand Avenue.	°1,130	°1,123
			Approximately 0.5 mile upstream of Atchison Topeka and Santa Fe Railroad Bridge.	°1,144	°1,143

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PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/Town/County	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 1,530 feet downstream of Thunderbird Road.	*1,150	*1,148
			Approximately 1,850 feet upstream of Thunderbird Road.	*1,165	*1,157
			At confluence of Skunk Creek	*1,163	*1,170
			Approximately 3,700 feet upstream of confluence of Skunk Creek.	*1,170	*1,162
			Approximately 1.0 mile upstream of confluence of Skunk Creek.	*1,178	*1,191
			Approximately 800 feet downstream of Bell Road.	*1,195	*1,195
			Approximately 2.3 miles downstream of Carefree Highway.	None	*1,460
			Approximately 260 feet upstream of Carefree Highway.	None	*1,550
			Approximately 1,900 feet upstream of Carefree Highway.	None	*1,560
		New River East Split	At confluence with New River main channel	None	*1,536
			Approximately 300 feet downstream of Carefree Highway.	None	*1,552
			Approximately 3,900 feet upstream of Carefree Highway.	None	*1,584

Maps are available for review at the City Engineering Department, 8320 W. Madison Street, Peoria, Arizona.
Send comments to The Honorable Ronald Travers, Mayor, City of Peoria, P.O. Box 38, Peoria, Arizona 85345.

Arizona	City of Phoenix, Maricopa County.	New River	At the confluence with Agua Fria River	*1,031	*1,032
			Approximately 925 feet downstream of Glendale Avenue.	*1,055	*1,054
			Approximately 425 feet downstream of Northern Avenue.	*1,080	*1,077
			Approximately 500 feet downstream of Olive Avenue.	*1,092	*1,091
			Approximately 1,000 feet downstream of Mountainview Road.	*1,100	*1,099
			Approximately 600 feet downstream of Peoria Avenue.	*1,109	*1,108
			Approximately 1,100 feet downstream of Grand Avenue.	*1,130	*1,123
			Approximately 0.5 mile upstream of Atchison Topeka and Santa Fe Railroad Bridge.	*1,144	*1,143
			Approximately 1,530 feet downstream of Thunderbird Road.	*1,150	*1,148
			Approximately 1,850 feet upstream of Thunderbird Road.	*1,165	*1,157
			At confluence of Skunk Creek	*1,163	*1,170
			Approximately 3,700 feet upstream of confluence of Skunk Creek.	*1,170	*1,182
			Approximately 1.0 mile upstream of confluence of Skunk Creek.	*1,178	*1,191
			Approximately 800 feet downstream of Bell Road.	*1,195	*1,195

Maps are available for review at the City Engineering Department, Flood Management Section, 125 East Washington Street, Phoenix, Arizona.
Send comments to The Honorable Terry Goddard, Mayor, City of Phoenix, Municipal Building, 251 West Washington Street, Phoenix, Arizona 85003.

Arizona	Town of Pinetop-Lakeside, Navajo County.	Billy Creek	Approximately 1,900 feet upstream of Porter Mountain Road.	*6,724	*6,724
			Approximately 2,800 feet downstream of Meadow Drive.	None	*6,767
			Just upstream of Meadow Drive	None	*6,783
			Approximately 2,100 feet upstream of Meadow Drive.	None	*6,800
			Approximately 4,300 feet upstream of Meadow Drive.	None	*6,816

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/Town/County	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified

Maps are available for review at the Planning and Zoning Department, 1548 East White Mountain Road, Pinetop, Arizona.
Send comments to The Honorable Richard J. Mullins, Mayor, Town of Pinetop-Lakeside, P.O. Drawer 1450, Pinetop, Arizona 85935.

Connecticut	Somers, Town, Tolland County.	Unnamed Tributary	At confluence with Abbey Brook	None	*210
			Just upstream of State Route 83 (South Road)	None	*325
		Abbey Brook	Approximately 550 feet upstream of Ninth District Road.	None	*210
			Approximately 1,720 feet upstream of Ninth District Road.	None	*210

Maps available for inspection at the Town Office, 600 Main Street, Somers, Connecticut.
Send comments to The Honorable Steve Kominski, First Selectman of the Town of Somers, Tolland County, P.O. Box 308, Somers, Connecticut 06071.

Florida	Unincorporated Areas of Polk County.	Lake Garfield	Along shoreline	*102	*107

Maps available for inspection at the Polk County Engineering Department, 166 West Main, P.O. Box 1519, Bartow, Florida.
Send comments to The Honorable Frank B. Smith, County Administrator, Polk County, P.O. Box 60, Bartow, Florida 33830.

Georgia	City of Marietta, Cobb County.	Ward Creek	About 100 feet upstream of confluence of Westside Branch.	*1,018	*1,018
			About 350 feet downstream of Whitlock Drive	*1,029	*1,030
			Just downstream of Whitlock Drive	*1,032	*1,032
		Westside Branch	About 400 feet upstream of confluence with Ward Creek.	*1,019	*1,017
			About 325 feet downstream of Polk Street	*1,048	*1,052
			About 900 feet upstream of Polk Street	*1,066	*1,065
		Elizabeth Branch	About 580 feet downstream of Cobb Industrial Boulevard.	*1,033	*1,033
			Just upstream of Interstate 75	*1,057	*1,058
			About 450 feet upstream of Interstate 75	*1,068	*1,066
		Sope Creek	At confluence of Sope Branch	*1,022	*1,022
			Just downstream of Page Street	*1,029	*1,027
			Just upstream of Page Street	*1,037	*1,037
		Poorhouse Creek	Just downstream of U.S. Highway 41	*936	*938
			About 500 feet upstream of U.S. Highway 41	*949	*942
			About 0.83 mile upstream of U.S. Highway 41	*951	*950

Maps available for inspection at the City Hall, Marietta, Georgia.
Send comments to The Honorable Vicki Chastain, Mayor, City of Marietta, City Hall, P.O. Box 1247, Marietta, Georgia 30061.

Maryland	Prince George's County, Unincorporated Areas.	Indian Creek	Approximately 230 feet upstream of Interstate Route 95.	*74	*75
			Approximately 0.5 mile upstream of Sunnyside Avenue.	*93	*92

Maps available for inspection at the County Administrative Building, Upper Marlboro, Maryland.
Send comments to The Honorable Parris N. Glendening, County Executive, Prince George's County, County Administrative Building, Upper Marlboro, Maryland 20772.

Minnesota	City of St. Paul, Ramsey County.	Mississippi River	About 2.7 miles downstream of Chicago & North Western railroad bridge.	*705	*704

Maps available for inspection at the St. Paul Planning Division, Division of Planning and Economic Development, 25 West Fourth Street, St. Paul, Minnesota.
Send comments to the Honorable George Latimer, Mayor, City of St. Paul, City Hall, Room 347, St. Paul, Minnesota 55102.

Mississippi	City of Madison, Madison County.	Hearn Creek	About 1,920 feet downstream of Northbay Drive.	*300	*300
			About 170 feet downstream of Northbay Drive	*306	*303
			About 1,780 feet upstream of Northbay Drive	*310	*310

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/Town/County	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) Existing	Modified
Maps available for inspection at the Maintenance Facility Building, 525 Post Oak Road, Madison, Mississippi.					
Send comments to The Honorable Mary Hawkins, Mayor, City of Madison, 106 Old Canton Road, P.O. Box 40, Madison, Mississippi 39110.					
Missouri	Unincorporated Areas of Jackson County.	Little Blue River	At confluence with Missouri River	*723	*723
			About 1.6 miles downstream of Blue Hills Road	*723	*726
			Just upstream of U.S. Highway 24	None	*732
Maps available for inspection at the Jackson County Courthouse, 415 East 12th Street, Kansas City, Missouri.					
Send comments to The Honorable Bill Wells, County Executive, Jackson County, Jackson County Courthouse, 415 East 12th Street, Kansas City, Missouri 64106.					
New Jersey	Bordentown, City, Burlington County.	Crosswicks Creek	At upstream corporate limits	*14	*15
			At downstream corporate limits (at confluence with Blacks Creek).	*14	*15
		Blacks Creek	At upstream corporate limits	*14	*15
			At downstream corporate limits (at confluence with Crosswicks Creek).	*14	*15
Maps available for inspection at the City Hall, 324 Farnsworth Avenue, Bordentown, New Jersey.					
Send comments to The Honorable Gloria Scholey, Mayor of the City of Bordentown, Burlington County, City Hall, 324 Farnsworth Avenue, Bordentown, New Jersey 08505.					
New Jersey	Burlington, City, Burlington County.	Delaware River	Approximately 0.2 mile upstream of Delaware Memorial Bridge, at the upstream corporate limits.	*11	*12
			Approximately 1.9 miles downstream of the Delaware Memorial Bridge.	*11	*12
Maps available for inspection at the Department of Engineering, Township Building, 851 Old York Road, Burlington, New Jersey.					
Send comments to The Honorable Joseph Foy, Mayor of the Township of Burlington, Burlington County, 851 Old York Road, P.O. Box 340, Burlington, New Jersey 08016.					
New Jersey	Wanaque, Borough, Passaic County.	Stephens Lake Brook	Approximately 200 feet upstream of Wilson Drive.	*270	*269
Maps available for inspection at the Borough Clerk's Office, Borough Hall, 570 Ringwood Avenue, Wanaque, New Jersey.					
Send comments to The Honorable Angelo Cutillo, Mayor of the Borough of Wanaque, Passaic County, Municipal Office, 570 Ringwood Avenue, Wanaque, New Jersey 07465.					
New York	Hempstead, Town, Nassau County.	Negro Bar Channel	At the intersection of Chestnut Road and Bayswater Boulevard.	None	*8
Maps available for inspection at the Department of Engineering, 350 Front Street, Hempstead, New York.					
Send comments to The Honorable David Levy, Supervisor for the Town of Hempstead, Nassau County, 350 Front Street, Hempstead, New York 11550.					
Ohio	City of Brecksville, Cuyahoga County.	Chippewa Creek	Just downstream of Chippewa Road	*809	*812
			Just upstream of Brecksville Road	*815	*832
			Just upstream of the upstream crossing of Old Royalton Road.	*969	*874

Maps available for inspection at the Building Department, 9069 Brecksville Road, Brecksville, Ohio.					
Send comments to the Honorable Jerry N. Hruby, Mayor, of City Brecksville, 9069 Brecksville Road, Brecksville, Ohio 44141.					
Ohio	Village of Chilo, Clermont County.	Ohio River	At downstream corporate limits (river mile 434.8).	*509	*506
			At upstream corporate limits (river mile 434.0)	*510	*506
Maps available for inspection at the Community Building, 310 Washington Street, Chilo, Ohio.					
Send comments to The Honorable Jane Snell, Mayor, Village of Chilo, 306 Washing Street, Chilo, Ohio 45112.					
Ohio	City of Dublin, Franklin, Delaware and Union Counties.	North Fork Indian Run	Just upstream of Brand Road	*886	*886
			About 500 feet downstream of Brandonway Drive.	*888	*887
			About 500 feet upstream of confluence of Tributary I1.	*891	*891
		Tributary S1	About 850 feet upstream of Interstate 270	*899	*899
			About 1,000 feet upstream of Interstate 270	None	*900
Maps available for inspection at the City Hall, 6665 Coffman Road, Dublin, Ohio.					
Send comments to The Honorable Michael Close, Mayor, City of Dublin, City Hall, 6665 Coffman Road, Dublin, Ohio 43017.					
Oklahoma	Oklahoma City, City, Canadian, Cleveland, Oklahoma, McClain, and Pottawatomie Counties.	Deep Fork Tributary 12	Approximately 850 feet upstream from confluence with Deep Fork.	*1,070	*1,071
			Approximately 1,400 feet downstream of 50th Street.	*1,079	*1,078
		Deep Fork Tributary 13	Approximately 60 feet upstream from confluence with Deep Fork.	*1,071	*1,072
			Approximately 40 feet downstream from Northeast Lake Dam.	*1,075	*1,077
Maps available for inspection at the City Hall, 200 North Walker, Suite 302, Oklahoma City, Oklahoma.					
Send comments to The Honorable Ronald J. Norick, Mayor of the City of Oklahoma City, Canadian, Cleveland, Oklahoma, McClain, and Pottawatomie Counties, 302 Municipal Building, 200 North Walker, Oklahoma City, Oklahoma 73102.					
South Carolina	Unincorporated Areas of Greenwood County.	Turner Branch	At mouth	None	*525
			Just downstream of Newcastle Road	None	*590
			Just upstream of Newcastle Road	None	*600
			Just downstream of Earl Court	None	*602
			Just upstream of Earl Court	None	*606
			Just upstream of Lakeforest Road	None	*622

Maps available for inspection at the Greenwood County Courthouse, Office of the County Engineers, Room 107, Greenwood, South Carolina.

Send comments to The Honorable Carroll H. Brooks, Chairman, Greenwood County Council, Greenwood County Courthouse, Room 203, Greenwood, South Carolina 29646.

Tennessee	Town of Collierville, Shelby County.	Wolf River Lateral K	About 1.3 miles downstream of Collierville-Arlington Road.	*293	*294
			About 1 mile downstream of Collierville-Arlington Road.	*299	*303
			About 2,100 feet downstream of Collierville-Arlington Road.	*317	*312
			Just downstream of Collierville-Arlington Road	*334	*334

Maps available for inspection at the Town Hall, 101 Walnut Street, Collierville, Tennessee.

Send comments to The Honorable Jerry Robinson, Town Administrator, Town of Collierville, Town Hall, 101 Walnut Street, Collierville, Tennessee 38017.

Tennessee	Unincorporated Areas of Rutherford County.	East Fork Stones River	At mouth	*501	*506
			About 1,000 feet downstream of Old Jefferson Pike.	*506	*506
		West Fork Stones River	At mouth	*499	*506
			About 1.2 miles upstream of Old Jefferson Pike.	*506	*506

Maps available for inspection at the County Courthouse, 100 North Maple Street, Room 200 Murfreesboro, Tennessee.

Send comments to The Honorable John Mankin, County Executive Rutherford County, County Courthouse, 224 North Maple Street, Murfreesboro, Tennessee 37130.

Texas	Coppell, City, Dallas County.	Grapevine Creek	Confluence with Elm Fork of the Trinity River	*438	*439
			Approximately 750 feet downstream of Beltline Road.	*456	*455
		Denton Creek	Confluence with Elm Fork of the Trinity River	*445	*446
			Approximately 2,800 feet upstream of Denton Tap Road.	*463	*462
		Elm Fork of the Trinity River	At the confluence of Grapevine Creek	*438	*439
			At Interstate Highway 35E	*451	*452
		Cottonwood Branch	Confluence with Denton Creek	*461	*458
			Upstream side of Denton Tap Road	*462	*461

Maps available for inspection at 255 Parkway Boulevard, Coppell, Texas 75019.

Send comments to The Honorable Lou Duggan, Mayor of the City of Coppell, Dallas County, P.O. Box 478, Coppell, Texas 75019.

Texas	Grapevine, City, Dallas and Tarrant Counties.	Bear Creek	Approximately 1,200 feet downstream of confluence of Tributary BB-5.	*554	*553
			Approximately 1,300 feet upstream of confluence of Tributary BB-5.	*559	*558
		Tributary BB-5	Confluence with Bear Creek	*556	*554
			Approximately 10 feet downstream on Creekwood Drive.	*564	*563

Maps available for inspection at the Department of Public Works, 307 West Dallas Road, Grapevine, Texas.

Send comments to The Honorable William Tate, Mayor of the City of Grapevine, Dallas and Tarrant Counties, P.O. Box 729, Grapevine, Texas 76051.

Texas	Montgomery County	Panther Branch	At confluence with Spring Creek	*112	*113
			Downstream face of MacDonald Road	*121	*120
		Spring Creek	At confluence of Panther Branch	*112	*113
			3.4 miles upstream of the confluence of Panther Branch.	*120	*121
		Bear Branch	Approximately 1.68 miles upstream of confluence with Panther Branch.	*148	*147
			Approximately 3.75 miles upstream of confluence with Panther Branch.	*162	*161

Maps available for inspection at the Department of Engineering, 326½ North Main, Conroe, Texas 77301.

Send comments to The Honorable Al Stahl, Montgomery County Judge, 300 North Main Street, Conroe, Texas 77301.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

Issued: January 25, 1989.

[FR Doc. 89-2796 Filed 2-6-89; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6938]

Proposed Flood Elevation Determinations; Correction

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule; Correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations previously published at 53 FR 40105 on October 13, 1988. This correction notice provides a more accurate representation of the Flood Insurance Study and Flood Insurance Rate Map for the Township of Morris, Clearfield County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Township of Morris, Clearfield County, Pennsylvania, previously published at 53 FR 40105 on October 13, 1988, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234). 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67.

List of Subjects in 44 CFR Part 67

Flood insurance Floodplains.

PART 67—[AMENDED]

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4002 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

On page 40105, in the October 13, 1988 issue of the **Federal Register**, the entries under Morris (Township), Clearfield County, are correctly revised to read as follows:

Source of flooding and location	Depth in feet above ground. *Elevation in feet (NGVD)
Moshannon Creek:	
At Conrail bridge	*1,415
At upstream corporate limits	*1,422

Issued: January 31, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89-2797 Filed 2-6-89; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-604, RM-6271]

Radio Broadcasting Services; Prairie Grove, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Southside Broadcasting, proposing the allotment of FM Channel 235A to Prairie Grove, Arkansas, as that community's first local broadcast service. Reference coordinates used for proposed Channel 235A at Prairie Grove are 35-53-52 and 94-19-29.

DATES: Comments must be filed on or before March 24, 1989, and reply comments on or before April 10, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In additional to filing comments with the FCC, interested parties should serve the petitioner, as follows: Southside Broadcasting, c/o C.R. Crisler, Box 415, Johnson, AR 72741.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-604, adopted November 29, 1988, and released January 31, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commision's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commision proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Pat 73

Radio broadcasting.

Federal Communications Commission.

Steve Kramer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-2786 Filed 2-6-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-608, RM-6497]

Radio Broadcasting Services; Goulds, Immokalee and LaBelle, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Hispanic American Radio Broadcasting Corporation seeking the substitution of Channel 252C for Channel 252A at Goulds, Florida, and the modification of its license for Station WTHM to specify operation on the higher powered channel. In addition, the petitioner requests the substitution of Channel 221A for Channel 252A at Immokalee, Florida, with the modification of Station WCOO(FM)'s license accordingly, and the substitution of Channel 223A for Channel 221A at LaBelle, Florida, with the modification of Station WKZY's license accordingly. All of the channel substitutions can be made in compliance with the Commission's minimum distance separation requirements and can be used at each station's present transmitter site. The coordinates for Channel 252C at Goulds are North Latitude 25-32-24 and West Longitude 80-28-07. The coordinates for Channel 221A at Immokalee are North Latitude 26-21-19 and West Longitude 81-21-03. The coordinates for Channel 223A at LaBelle are North Latitude 26-48-46 and West Longitude 81-21-16.

DATES: Comments must be filed on or before March 24, 1989, and reply comments on or before April 10, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lee W. Shubert, Esq., David

G. O'Neil, Esq., Haley, Bader & Potts, 2000 M Street, NW., Suite 600, Washington, DC 20036–4574 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making and Orders to Show Cause, MM Docket No. 88–608, adopted December 2, 1988, and released January 31, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–2787 Filed 2–6–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–611, RM–6494]

Radio Broadcasting Services; Rockland, ME

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Passamaquoddy Broadcasting, Inc., proposing the substitution of FM Channel 277B for Channel 277B1 at Rockland, Maine. Petitioner also requests modification of its license for 277B1 to specify operation on Channel 277B. Canadian concurrence is required for the allotment of Channel 277B at Rockand at coordinates 44–07–34 and 69–05–19.

DATES: Comments must be filed on or before March 24, 1989, and reply comments on or before April 10, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Richard J. Hayes, Jr., 1359 Black Meadow Road, Spotsylvania, VA 22553 (Counsel to the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–611, adopted December 2, 1988, and released January 31, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–2788 Filed 2–6–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 88–619, RM–6477]

Radio Broadcasting Services; Ridge, MD

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Keith A. Mayo and Chih Ping Mayo, proposing the allotment of FM Channel 261A to Ridge, Maryland, as that community's first FM broadcast service. The coordinates for Channel 261A are 38–07–09 and 76–22–27.

DATES: Comments must be filed on or before March 27, 1989, and reply comments on or before April 11, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Keith A. Mayo & Chih Ping Mayo, 4747 Hummingbird Drive, Waldorf, Maryland 20601.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–619, adopted December 20, 1988 and released February 1, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to the proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–2789 Filed 2–6–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–620, RM–6504]

Radio Broadcasting Services; Traverse City, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Fabiano-Strickler Communications, Inc., proposing the substitution of FM Channel 298C2 for Channel 298A at Traverse City, Michigan, and modification of the license for Station WCCW–FM to special operation on Channel 298C2. The license for Station WCCW–FM was modified in MM Docket 87–529 (3 FCC Rcd 4024 1988) to specify operation on Channel 298A in lieu of Channel 221A. That action was effective August 12, 1988. The coordinates for Channel 298C2 at Traverse City are 44–46–11 and 85–41–22. Canadian concurrence will be obtained for this allotment.

DATES: Comments must be filed on or before March 27, 1989, and reply comments on or before April 11, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Jerrold Miller, Miller & Fields, P.C., P.O. Box 33003, Washington, DC 20033, (Counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–620, adopted December 13, 1988, and released February 1, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, as *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–2790 Filed 2–6–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–617, RM–6493]

Radio Broadcasting Services; Walker, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Midland Broadcasting Company, proposing the substitution of FM Channel 256C2 for Channel 257A at Walker, Minnesota, and modification of its license for Station KLLR–FM, to reflect the new channel. Canadian concurrence is required for the allotment of Channel 256C2 at Walker at coordinates 47–05–37 and 94–34–47.

DATES: Comments must be filed on or before March 27, 1989, and reply comments on or before April 11, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Thomas L. Ferebee, President, Midland Broadcasting Company, Station KLLR–FM, P.O. Box 70—Highway 34 West, Walker, Minnesota 56484.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–617, adopted December 20, 1988, and released February 1, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to the proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–2791 Filed 2–6–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–607, RM–6488]

Radio Broadcasting Services; Ashtabula, OH

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Rod A. Callahan proposing the allotment of Channel 252A to Ashtabula, Ohio, as the community's second local FM service. Channel 252A can be allotted to Ashtabula in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.0 kilometers (3.7 miles) northeast to avoid a short-spacing to Station WNCX, Channel 253B, Cleveland, Ohio. The coordinates for this allotment are North Latitude 41–54–27 and West Longitude 80–43–52. Canadian concurrence is required since Ashtabula is located within 320 kilometers of the U.S.-Canadian border.

DATES: Comments must be filed on or before March 24, 1989, and reply comments on or before April 10, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Timothy K. Brady, Esq., P.O. Box 906, Brentwood, Tennessee 37027–0966 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–607, adopted December 2, 1988, and released January 31, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–2782 Filed 2–6–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–610, RM–6496]

Radio Broadcasting Services; Wellston, OH

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Jackson County Broadcasting, Inc. seeking the substitution of Channel 244B1 for Channel 244A at Wellston, Ohio, and the modification of its license for Station WKOV–FM to specify the higher powered channel. Channel 244B1 can be allotted to Wellston in compliance with the Commission's minimum distance separation requirements and can be used at Station WKOV–FM's present transmitter site. The coordinates for this allotment are North Latitude 39–01–45 and West Longitude 82–35–51. Canadian concurrence is required. In accordance with Section 1.420(g) of the Commission's rules, we shall not accept competing expressions of interest in use of Channel 244B1 at Wellston or require the petitioner to demonstrate the availability of an additional equivalent channel for use by such interested parties.

DATES: Comments must be filed on or before March 24, 1989, and reply comments on or before April 10, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Marvin Rosenberg, Esq., Frank R. Jazzo, Esq., Garrison Klueck, Esq., Fletcher, Heald & Hildreth, 1225 Connecticut Avenue, NW., Suite 400, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–610, adopted December 2, 1988, and released January 31, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–2783 Filed 2–6–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–609, RM–6498]

Radio Broadcasting Services; Galeton, PA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Lori L. Michael to allot Channel 264B1 to Galeton, Pennsylvania, as the community's first local FM service. The Commission has substituted Channel 264B1 in lieu of originally proposed Channel 268B1 for consideration herein to avoid a conflict with the possible allotment of Channel 268A to Covington, Pennsylvania (MM Docket 88–258, 3 FCC Rcd 3181 (1988)). Channel 264B1 can be allotted to Galeton in compliance with the Commission's minimum distance separation requirements with a site restriction of 15.4 kilometers (9.6 miles) southeast to avoid a shortspacing to Stations WQIX, Channel 265A, Horseheads, NY and WBJZ, Channel 265A, Olean, NY. The coordinates for the allotment are North Latitude 41–36–26 and West Longitude 77–33–43. Canadian concurrence is required since Galeton is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before March 24, 1989, and reply comments on or before April 10, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lori L. Michael, R.D. #1, Box 59, Benton, Pennsylvania 17814 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–609, adopted December 2, 1988, and released January 31, 1989. The full text of the Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–2794 Filed 2–6–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–621, RM–6519]

Radio Broadcasting Services; Beeville, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Hamon Broadcasting Inc., permittee of Station KYTX(FM), Channel 250A at Beeville, Texas, proposing the substitution of Channel 250C2 for Channel 250A at Beeville and modification of its license to specify operation on the higher class co-channel. The proposal could provide the community with its first wide coverage area FM service. A site restriction of approximately 21.7 kilometers (13.5 miles) west of the city is required. Petitioner specified its desire to utilize a site 28.5 kilometers (16.4 miles) west of the city at coordinates 28–24–00 and 98–01–00. Concurrence of the Mexican government is also required.

DATES: Comments must be filed on or before March 27, 1989, and reply comments on or before April 11, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554 In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Christopher D. Imlay, Esquire; Booth, Freret & Imlay, 1920 N Street NW., Suite 520, Washington, DC 20036 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No.88–621, adopted December 14, 1988, and released February 1, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Streat NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as the one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–2795 Filed 2–6–89; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for Calyptronoma rivalis

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine *Calyptronoma rivalis* (palma de manaca) to be a threatened species pursuant to the Endangered Species Act of 1973, as amended (Act). Critical habitat is not proposed. *Calyptronoma rivalis* is endemic to the island of Puerto Rico. The two remaining natural populations are restricted to the subtropical moist and subtropical wet limestone forests of the northwestern part of the island. The species is threatened by erosion due to flash flooding, agricultural expansion, and rural development. Flash flooding has increased due to extensive deforestation in surrounding areas. This proposal, if made final, would implement the Federal protection and recovery provisions afforded by the Act for *Calyptronoma rivalis*. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by April 10, 1989. Public hearing requests must be received by March 24, 1989.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boqueron, Puerto Rico 00622. Comments and materials received will be available for public inspection, by appointment, at this office during normal business hours, and at the Service's Southeast Regional Office, Suite 1282, 75 Spring Street, SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Silander at the Caribbean Field Office address (809/851–7297) or Mr. Tom Turnipseed at the Atlanta Regional Office address (404/331–3583 or FTS 242–3583).

SUPPLEMENTARY INFORMATION:

Background

Calyptronoma rivalis was first collected in 1901 by L.M. Underwood and R.F. Grigg in San Sebastian of western Puerto Rico. In 1923, N. Britton and P. Wilson referred to this species as *Calyptrogyne occidentalis;* however,

L.H. Bailey, in his 1936 monograph on the group, provided sufficient evidence to place the species in a separate genus *Calyptronoma*. Authorities on the palm family accept this opinion and view this palm as an endemic species. Until recently, the species was known only from the type locality, where 44 individuals are known to occur. An additional population was discovered along the Camuy River of northwestern Puerto Rico in 1981 (Vivaldi and Woodbury 1981). About 200 individuals are presently known from this population. In addition, seeds have been collected from mature specimens and a small number of seedlings cultivated from these have been introduced into the Puerto Rico Department of Natural Resource's Rio Abajo Commonwealth Forest.

Calyptronoma rivalis is an arborescent palm which may reach 30 to 40 feet (9 to 13 meters) in height and 8 to 10 inches (15 to 25 centimeters) in diameter. The spineless, pinnate leaves may reach up to 12 feet (4 meters) and have petioles and sheaths up to 2 feet long (.7 meter). The inflorescence is a drooping panicle about 3 feet (1 meter) long. The flowers are in triads of two males and one female and are borne on sunken pits. Fruits are only 0.24 inch (6 millimeters) in diameter and are subglobose and reddish when ripe. All fruits mature at approximately the same time and fall with the persistent flower parts still attached to the base.

Only two natural populations and one small, introduced population are known: San Sebastian, Camuy, and the Rio Abajo Commonwealth Forest. All occur in the semievergreen seasonal forests of the karst region of northwestern Puerto Rico at elevations of 100 to 150 meters. All three populations are found in level or nearly level areas along stream banks. Deforestation in the surrounding areas has increased the threat of flash flooding and therefore the establishment of seedlings may be difficult. The construction of a road in the Camuy area resulted in the destruction of a large portion of that population.

Calyptronoma rivalis was recommended for Federal listing by the Smithsonian Institution (Ayensu and DeFilipps 1978). The species was included among the plants being considered as a candidate endangered or threatened species by the Fish and Wildlife Service, as published in the Federal Register (45 FR 82480) dated December 15, 1980; the November 28, 1983, update (48 FR 53640) of the 1980 notice; and the September 27, 1985, revised notice (50 FR 39526). The species was designated Category 1 (species for which the Service has substantial information supporting the appropriateness of proposing to list them as endangered or threatened) in each of the three notices.

In a notice published in the Federal Register on February 15, 1983 (48 FR 6752), the Service reported the earlier acceptance of the new taxa in the Smithsonian's 1978 book as under petition within the context of section 4(b)(3)(A) of the Act, as amended in 1982. The Service made subsequent petition findings in 1984, 1985, 1986, 1987, and 1988 that listing *Calyptronoma rivalis* was warranted but precluded by other pending listing actions of a higher priority, and that additional data on vulnerability and threats were still being gathered. This proposed rule constitutes the final required petition finding in accordance with section 4(b)(3)(B)(ii) of the Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Calyptronoma rivalis* (O.F. Cook) L.H. Bailey (palma de manaca) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Modification of the original semievergreen seasonal forest and conversion to agricultural and pasture land may have eliminated populations and reduced available habitat. Direct destruction of plants through deforestation and flash flooding and the continued modification of habitat appear to be the most serious threats to *Calyptronoma rivalis*. Road construction eliminated part of the Camuy River population. Fires in surrounding sugar cane fields have burned some individuals. Flash flooding, increased by deforestation in surrounding areas, may cause erosion of stream banks, may reduce germination by washing away the seeds, and may result in poor establishment and survival of seedlings.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Taking for these purposes has not been a documented factor, but it could become a problem if information on the palm were to be widely publicized.

C. *Disease or predation.* Disease and predation have not been documented as factors in the decline of this species.

D. *The inadequacy of existing regulatory mechanisms.* The Commonwealth of Puerto Rico has adopted a regulation that recognizes and provides protection for certain Commonwealth listed species. Although the Puerto Rico Department of Natural Resources issued an internal directive in 1979 to try to protect this endemic palm, *Calyptronoma rivalis* is not yet on the Commonwealth list. Federal listing would provide interim protection and, if the species is ultimately placed on the Commonwealth list, enhance its protection and possibilities for funding needed research.

E. *Other natural or manmade factors affecting its continued existence.* All 3 populations, totaling perhaps 250 individuals, are known to inhabit areas that are susceptible to flash flooding.

Although germination may occur readily, establishment of seedlings is often impossible due to the frequency of such occurrences. Cattle have been observed feeding on and trampling young seedlings.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Calyptronoma rivalis* as threatened. Since the species appears to produce large quantities of viable seed, improvement in the species' status may only require mechanisms to protect it from the effects of deforestation in surrounding areas. In addition, introduction efforts in the Rio Abajo Forest appear to have been initially successful, although it is not yet known if the palms will reproduce and colonize the area naturally. Therefore, threatened rather than endangered status seems an accurate assessment of the species' condition. The reasons for not proposing critical habitat for this species are discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species that is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. The number of individuals of *Calyptronoma rivalis* is sufficiently small that vandalism could seriously affect the survival of the species. Such an activity is difficult to enforce against and only regulated by the Act with respect to plants in cases of (1) removal and reductions to possession of endangered plants from lands under Federal jurisdiction or malicious damage or destruction on such lands; and (2) removal, cutting, digging up, or damaging or destroying in knowing violation of any State laws or regulation, including State criminal trespass law. Publication of critical habitat descriptions and maps in the Federal Register would increase the likelihood of such activities. The Service believes that Federal involvement in the areas where this plant occurs can be identified without the designation of critical habitat. All involved parties and principal landowners have been notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will also be addressed through the recovery process and through the section 7 jeopardy standard. Therefore, it would not be prudent to determine critical habitat for *Calyptronoma rivalis* at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, Commonwealth and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the Commonwealth, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No critical habitat is being proposed for *Calyptronoma rivalis*, as discussed above. Federal involvement is not expected where the species is known to occur.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any threatened plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer it for sale in interstate or foreign commerce, or to remove and reduce the species to possession from areas under Federal jurisdiction. In addition for listed plants, the 1988 amendments to the Act (Pub. L. 100-478) prohibit (1) their malicious damage or destruction on Federal lands, and (2) their removal, cutting, digging up, or damaging or destroying in knowing violation of any State law or regulation, including State criminal trespass law. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions can apply to agents of the Service and Commonwealth conservation agencies.

The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. It is anticipated that few trade permits for *Calyptronoma rivalis* will ever be sought or issued since the species is not common in cultivation and is uncommon in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 27329, Washington, DC 20038-7329 (202/343-4955).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments are particularly sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Calyptronoma rivalis;*

(2) The location of any additional populations of *Calyptronoma rivalis*, and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) additional information concerning the range and distribution of this species; and

(4) current or planned activities in the subject areas and their possible impacts on *Calyptronoma rivalis.*

Final promulgation of the regulation on *Calyptronoma rivalis* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of this proposal. Such requests must be made in writing and addressed to the Field Supervisor, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boqueron, Puerto Rico 00622.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

References Cited

Ayensu, E. S., and R. A. DeFilipps. 1978. Endangered and threatened plants of the United States. Smithsonian Institution and World Wildlife Fund, Washington, DC xv + 403 pp.

Bailey, L. H. 1938. Certain palms of the Greater Antilles. I. 7. *Calyptronoma rivalis*. Gentes Herbarium 4:153-177.

Vivaldi, J. L., and R. 0. Woodbury. 1981. Status report on *Calyptronoma rivalis* (0. F. Cook) L. H. Bailey. Unpublished status report submitted to the Fish and Wildlife Service, Atlanta, Georgia. 35 pp.

Author

The primary author of this proposed rule is Ms. Susan Silander, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boqueron, Puerto Rico 00622 (809/851-7297).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 96-304, 96 Stat. 1411; Pub. L. 100-478, 102 Stat. 2306; Pub. L. 100-653, 102 Stat. 3825 (16 U.S.C. 1531 *et seq.*); Pub. L. 99-625,100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following family, and Arecaceae entries, in alphabetical order to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

Species							
Scientific name	Common name	Historic range	Status	When listed	Critical habitat	Special rules
*	*	*	*	*	*	*
Arecaceae—Palm family:						
Calyptronoma rivalis	Palma de manaca	U.S.A. (PR)	T		NA	NA
*	*	*	*	*	*	*

Dated: December 22, 1988.

Becky Norton Dunlop,

[FR Doc. 89-2861 Filed 2-6-89; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for the Pygmy Sculpin, Cottus pygmaeus

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine the pygmy sculpin, *Cottus pygmaeus*, to be a threatened species under the authority of the Endangered Species Act of 1973, as amended (Act). This small fish is known to exist in only Coldwater Spring and the spring run in Calhoun County, Alabama. Groundwater contamination and restricted population represent major threats to this small sculpin. Water sampling has revealed low levels of trichloroethylene in Coldwater Spring. This proposal, if made final, would implement the protection of the Act for the pygmy sculpin. The Service seeks relevant data and comments from the public.

DATES: Comments from all interested parties must be received by April 10, 1989. Public hearing requests must be received by March 24, 1989.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Jackson, Mississippi, Field Office, U.S. Fish and Wildlife Service, Jackson Mall Office Center, Suite 316, 300 Woodrow Wilson Avenue, Jackson, Mississippi 39213. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: James Stewart at the above address (601/965-4900 or FTS 490-4900).

SUPPLEMENTARY INFORMATION:

Background

The pygmy sculpin was first collected from Coldwater Spring, Calhoun County, Alabama in 1963 and described in 1968 (Williams 1968). This species rarely exceeds 45 millimeters (1.8 inches) in total length. The head is large, body moderately robust and the lateral line is incomplete. Coloration varies by sex, maturity, and breeding condition, while pigmentation is generally consistent (Williams 1968). Pigmentation generally consists of up to three dorsal saddles and mottled or spotted fins. Juveniles have a grayish black body with three light colored saddles. With maturity, the body color becomes lighter, with the grayish black color that remains forming two dark saddles. In juveniles, the head is black, changing to white with small, scattered melanophores in adults. In breeding males, the dark spots in the spinous dorsal fin enlarge and become more intense and the fin margin becomes reddish orange. The entire body becomes suffused with black pigment which almost completely conceals the underlying pattern. The breeding color of females tends to be slightly darker than in non-breeding females.

The only known population of pygmy sculpins is in Coldwater Spring and the spring run. Coldwater Spring is impounded to form a pool of over one acre, 2 to 4 feet deep (McCaleb 1973). The spring run is up to 60 feet wide and 500 feet long where it is joined by Dry Creek. Below this confluence, the stream is known as Coldwater Creek until it joins Choccolocco Creek. The spring flows from the brecciated zone of the Jacksonville fault in the Weisner formation (Williams 1968, McCaleb 1973, Scott et al., 1987). The average flow is 32 million gallons per day with a fairly constant temperature of 16 to 18 degrees centigrade (61° to 64°F). The bottom is gravel and sand with large rocks where the spring boils occur. Large mats of vegetation are present in the spring pool and along the edges of the spring run. Water excess to needs of the Anniston Water Department flows over a low weir dam that is approximately 22 feet wide, to form the spring run. The downstream limit of the pygmy sculpin population occurs at the confluence of Dry Creek. This small stream drains the area of Anniston Army Depot and of a clay mining operation. Water quality degradation has been a long-term problem in Dry Creek. Historic records are not available to document if the pygmy sculpin occurred below the confluence of Dry Creek prior to the water quality degradation.

The City of Anniston owns Coldwater Spring, the spring run, and approximately 240 surrounding acres. The spring pool serves as the primary water supply for Anniston. The average daily withdrawl by Anniston is 16.5 million gallons with an average spring flow of 31.2 million gallons (Scott et al. 1987). The recharge area for Coldwater Spring is estimated at 90 square miles. This area includes portions of Anniston Army Depot, Fort McClellan, the Cities of Anniston and Jacksonville, several smaller towns, and private lands.

Previous Service actions on this species include a notice of review on March 18, 1975 (40 FR 12297), a proposal to list the pygmy sculpin and three other fishes as endangered with critical habitat on November 29, 1977 (42 FR 60765), notice of extension of the comment period and public hearing on February 6, 1978 (43 FR 4872), notice of withdrawal of critical habitat on March 6, 1979 (44 FR 12382), reproposal of critical habitat and notice of public meeting on July 27, 1979 (44 FR 44418), notice of withdrawal of proposed rule on January 24, 1980, (45 FR 5782), and notices of review on December 30, 1982 (47 FR 58454), and September 18, 1985 (50 FR 37958). The pygmy sculpin was placed in category 3C for the 1982 notice, and in category 1 for the 1985 notice. Category 3C candidates were defined as taxa that have proven to be more abundant or widespread than was previously believed and/or those that are not subject to any identifiable threat. In the 1985 notice, category 1 candidates are defined as comprising taxa for which the Service currently has information on hand to support the biological appropriateness of proposing to list as endangered or threatened.

Public meetings on the 1977 listing proposal were held in Birmingham, Alabama, on March 15, 1978, and in Anniston, Alabama, on August 28, 1979. Numerous individuals spoke at the these meetings both for and against the proposal. The opposition was based upon the fear of economic impacts and loss of the spring as a water supply. Some individuals expressed doubt that the pygmy sculpin was confined to just Coldwater Spring. Former Governor Wallace opposed the proposal to list the pygmy sculpin and three other fish species based upon questions concerning the listing procedures, and the potentially adverse economic impact that he perceived would result from the listing of two species other than the pygmy sculpin. The Anniston Water Works and Sewer Board opposed the proposal because they did not believe there was sufficient data to support the listing. The Service discontinued efforts to list the species, and on November 29, 1979, 2 years after publication in the **Federal Register**, the species had not been listed and was therefore automatically withdrawn from proposed status in accordance with provisions of the Endangered Species Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the pygmy sculpin (Cottus pygmaeus) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The pygmy sculpin is known to exist in only Coldwater Spring and the spring run. It has never been collected below the confluence of Dry Creek after water from these two streams has completely mixed. Thus, its present range is also the known historic range. However, the historic range may have extended downstream of the Dry Creek confluence prior to the occurrence of environmental pollution as discussed in Factor E. The pygmy sculpin and its habitat are threatened by the proposed construction of a highway bypass from Interstate Highway 20 to the City of Anniston. The Alabama Highway Department has identified three alternate routes for the proposed Anniston Bypass. The early planning preferred route (alternate one) is along the side of Coldwater Mountain immediately above and to the east of Coldwater Spring. The second alternate is to the west of Coldwater Spring. The third alternate is an enlargement of the existing road immediately adjacent to and west of Coldwater Spring and the spring run (Carwile *in litt.*). All three of these proposed routes pass through the recharge area for Coldwater Spring (Scott et al. 1987). Water in subsurface aquifers moves along fissures, faults and cracks in reaching the aquifer and in returning to the surface. The recharge area for Coldwater Spring is estimated at 90 square miles and includes Coldwater Mountain. Construction of alternate one will be along the side of Coldwater Mountain and will undoubtedly require the use of explosives in carving out the roadway. This use of explosives might result in the shifting and closing or cracks and fissures which allow water to surface at Coldwater Spring. An additional threat posed by the completion of alternate one is the accidental spillage of toxic substances. Coldwater Mountain is so steep and the underlying rock formations of such relatively low permeability that the susceptibility for contamination from the mountain is low. However, parallel to Coldwater Mountain and in the valley, is the Jacksonville Fault. The valley has a thick residual mantle with underlying cavernous carbonate rocks over the Fault. This area is highly susceptible to contamination because sinkholds and depressions on the land surface are common in parts of this recharge area (Scott et al. 1987). Any accidental spill from the proposed roadway into this highly permeable area would likely result in rapid contamination of Coldwater Spring to the detriment of the pygmy sculpin. Alternates two and three are to the west of Coldwater Spring and do not pose the same magnitude of threat as alternate one. However, they are still within a portion of the recharge area and the potential for contamination by accidental spillage does exist.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Coldwater Spring and the spring run are owned and protected from trespassing and collecting by the Anniston Water Department. As long as this protection exists, this species should not be overutilized.

C. *Disease or predation.* Although the pygmy sculpin may be a prey species for larger carnivorous fish and water snakes, and may be afflicted by diseases and parasites common to fish, there is no evidence to indicate that natural mortalities from these sources are a problem at present.

D. *The inadequacy of existing regulatory mechanisms.* The inadequacy of existing regulatory mechanisms. The State of Alabama requires a scientific collector's permit if a species such as the pygmy sculpin is to be collected. This species is listed as threatened by the Alabama Nongame Conference (Mount 1986) and is designated a nongame species by the State of Alabama. As a nongame species, it is unlawful to possess more than four individuals without a scientific collection permit. The difficulty of enforcing the permit requirement and the priority demands for a law enforcement officer's time virtually eliminate any protection for this species. Therefore, the most effective protection has been provided by a cooperative agreement between the Anniston Water Works and Sewer Board and the U.S. Fish and Wildlife Service that no action will be taken which would endanger the pygmy sculpin. While this good faith agreement provides protection from actions under the control of the Board, it does not provide protection from water contamination and construction projects

discussed in Factors A and E or from other factors beyond the Board's control.

E. *Other natural or manmade factors affecting its continued existence.* Water contamination is occurring in surface water and the subsurface aquifer and is affecting both Coldwater Spring and Dry Creek. Water sampling on and adjacent to the Anniston Army Depot (Depot) indicates hexavalent chromium is discharged to Dry Creek and that chlorinated hydrocarbons are in the ground water at the Depot (Schalla et al. 1984). Schalla et al. conclude that the migration of chlorinated hydrocarbon is not of immediate concern but may have long-range impacts. Trichloroethylene occurs in strong concentrations (up to 120,000 parts per billion) in test wells on Annistan Army Depot and up to 3.4 parts per billion in Coldwater Spring (ESE 1986). Sampling in 1986 did not find phenols and hexavalent chromium in Coldwater Spring yet these chemicals may be migrating in the aquifer since they are found in test wells 2 and 4 on the Depot. Shallow ground water in the area of these wells likely contributes to the recharge of the Jacksonville fault zone (Kangas 1987). Kangas' assessment indicates that water is lost from the shallow aquifer between the Depot boundary and test well 2. This indicates that water from the Depot's shallow aquifer is sinking to a deeper aquifer and possibly surfacing at Coldwater Spring. The 90 square mile recharge area includes several potential contamination sources, including a chemical manufactring industry, Fort McClellan, the City of Anniston, at least one landfill, and the proposed highway connecting Interstate 20 and State Highway 202.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the pygmy sculpin as threatened. Threatened status was chosen because the species does not appear to be in imminent danger, but it does face threats which could place it in danger of extinction within the foreseeable future. Critical habitat is not designated for reasons discussed in the following section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the same time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time owing to lack of benefit from such designation. No additional benefits would accrue from a critical habitat designation that do not already accrue from the listing.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibition against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or theatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal involvement with this species is expected to include the Federal Highway Administration relative to highway construction, and the Environmental Protection Agency and Department of Defense relative to pollution of the subsurface aquifer.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions would apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to Field Supervisor (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Caldwell, R.D. 1965. A study of the fishes from limestone springs in the Valley and Ridge Province of the Mobile Basin. Thesis. Univ. Alabama.

Environmental Science and Engineering, Inc. 1986. Off-post investigation of Anniston Army Depot, summary of preliminary results. Report to U.S. Army Toxic and Hazardous Materials Agency. 35 pp and appendices.

Kangas, M.J. 1987. Draft Anniston Army Depot endangerment assessment. Contract Report to Anniston Army Depot. 66 pp and appendix.

McCaleb, J.E. 1973. Some aspects of the ecology and life history of the pygmy sculpin, *Cottus pygmaeus* Williams, a rare spring species of Calhoun County, Alabama (Picsce:Cottidae). Thesis. Auburn Univ. 62 pp.

Mount, R.H. 1986. Vertebrate animals of Alabama in need of special attention. Alabama Agri. Exp. Sta. pp 11–12.

Schalla, R., G.L. McKown, J.M. Meuser, R.G. Parkhurst, C.M. Smith, F.W. Bond, and C.J. English. 1984. Source identification, contaminant transport simulation, and remedial action analysis, Anniston Army Depot, Anniston, Alabama. Rept. to Anniston Army Depot. 55 pp.

Scott, J.C., W.F. Harris, and R.H. Cobb. 1987. Geohydrology and susceptibility of Coldwater Spring and Jacksonville Fault areas to surface contamination in Calhoun County, Alabama. U.S. Geological Survey report. 29 pp.

Williams, J.D. 1968. A new species of sculpin, *Cottus pygmaeus*, from a spring in the Alabama River Basin. Copeia 1968:334–342.

Author

The primary author of this proposed rule is James H. Stewart (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411; Pub. L. 100–478, 102 Stat. 2306; Pub. L. 100–653, 102 Stat. 3825 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–652, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under FISHES, to the List of Endangered and Threatened Wildlife.

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species						
Common name	Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Fishes							
Sculpin, pygmy	*Cottus pygmaeus*	U.S.A. (AL)	Entire	T		NA	17.44(u)

3. It is further proposed to add the following as special rule to § 17.44(u).

§ 17.44 Special rules—FISHES

* * * * *

(u) Pygmy sculpin (*Cottus pygmaeus*). The City of Anniston Water Works and Sewer Board will continue to use Coldwater Spring as a municipal water supply. Pumpage may remove all spring flow in excess of six cubic feet per second (3,888,000 gallons per day).

Dated: December 22, 1988.

Becky Norton Dunlop,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89–2859 Filed 2–6–89; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 54, No. 24
Tuesday, February 7, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[TB-89-003]

National Advisory Committee for Tobacco Inspection Service; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App. 1) announcement is made of the following committee meeting:

Name: National Advisory Committee for Tobacco Inspection Services.
Date: March 7, 1989.
Time: 9:30 a.m.
Place: Agricultural Marketing Service, U.S. Department of Agriculture, Conference Room 3506 South Building, 14th and Independence Avenue, Washington, DC 20250.
Purpose: To review various regulations issued pursuant to the Tobacco Inspection Act (7 U.S.C. 511 *et seq.*), to hear persons who have asked to address the committee and who have been scheduled to do so, and to discuss the level of tobacco inspection and related services. In particular, the committee will consider an increase in the user fee to recover costs involved in the inspection and grading of tobacco sold at designated auction markets beginning with the 1989-90 selling season.

The meeting is open to the public. Public participation will be limited to written statements submitted before, at, or after the meeting unless otherwise requested by the committee chairperson.

Persons, other than members who wish to address the committee at the meeting, should contact Ernest L. Price, Director, Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, 300 12th Street SW., Room 502 Annex Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-2567, prior to the meeting.

Dated: February 1, 1989.

J. Patrick Boyle,
Administrator.

[FR Doc. 89-2807 Filed 2-6-89; 8:45 am]
BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

[Docket No. 88-213]

U.S. Veterinary Biological Product and Establishment Licenses Issued

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: By this notice, we are advising the public of licenses for production of veterinary biological products and licenses for establishments producing veterinary biological products that have been issued by the Animal and Plant Health Inspection Service during the month of November, 1988. The licenses have been issued in accordance with 9 CFR Part 102, which regulates the licensing of veterinary biological products and establishments producing veterinary biological products.

FOR FURTHER INFORMATION CONTACT: Dr. Peter L. Joseph, Senior Staff Veterinarian, Veterinary Biologics, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-6332.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR Part 102, "Licenses For Biological Products," require that every person who prepares certain biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

Pursuant to these regulations, APHIS has issued the following U.S. Veterinary Biological Product Licenses during the month of November, 1988:

Product license code	Date issued	Product	Establishment	Establishment license No.
7160.00	11-1-88	Clostridium Chauvoei-Septicum-Haemolyticum-Novyi-Sordellii-Perfringens, Types C & D Bacterin-Toxoid.	Beecham Laboratories	225
C800.00	11-3-88	Normal Serum, Equine Origin, For Further Manufacture	Quad Five	366
A101.20	11-4-88	Bovine Rhinotracheitis Virus, Modified Live Virus, For Further Manufacture	Beecham Laboratories	225
A841.20	11-4-88	Bovine Parainfluenza, Virus, Modified Live Virus, For Further Manufacture	Beecham Laboratories	225
2101.01	11-7-88	Bordetella Bronchiseptica-Erysipelothrix Rhusiopathiae-Pasteurella Multocida Bacterin.	Ambico, Inc	281
A201.20	11-9-88	Bovine Virus Diarrhea Virus, Modified Live Virus, For Further Manufacture	Beecham Laboratories	225
2579.00	11-14-88	Leptospira Bratislava Bacterin	Norden Laboratories	189
3601.01	11-21-88	Normal Plasma, Equine Origin	Lake Immunogenics, Inc	318

The regulations in CFR Part 102 also require that each person who prepare biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold a U.S. Veterinary Biological Establishment License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

Pursuant to these regulations, APHIS has issued the following U.S. Veterinary Biological Establishment License during the month of November, 1988:

Establishment	Establishment license No.	Date issued
Quad Five, 301 Rothemay Road, Box 5, Ryegate, Montana 59074.	366	Nov. 3, 1988.

Done at Washington, DC, this 2nd day of February 1989.

James W. Glosser,
Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-2809 Filed 2-6-89; 8:45 am]
BILLING CODE 3410-34-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis
Title: Unemployment Insurance Benefit Payments by County
Form Number: Agency—NA; OMB—0608-0038
Type of Request: Renewal of a currently approved collection
Burden: 24 Respondents; 144 reporting hours
Average Hours Per Response: 6 Hours
Needs and Uses: The Bureau of Economic Analysis prepares county estimates of personal income. To produce county estimates of unemployment insurance benefit payments, which are a part of personal income, it is necessary to request data directly from the responsible State agencies. The data which are compiled by the States for their own administrative purposes are only available from the State administering the programs.
Affected Public: State government agencies
Frequency: Annually
Respondent's Obligation: Voluntary
OMB Desk Officer: Francine Picoult, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated February 1, 1989.

Edward Michals,
Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-2771 Filed 2-6-89; 8:45 am]
BILLING CODE 3510-CW-M

Agency Information Collections Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Patent and Trademark Office
Title: Patent Processing
Form Number: Agency—Numerous; OMB—0651-0011
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 125,000 respondents; 331,574 reporting hours; Average hours per response is 2.43 hours
Needs and Uses: The Patent and Trademark Office is responsible for issuing patents. The information collected is for use by the staff of the Patent and Trademark Office in order to process patent applications and assess the propriety of granting United States patents.
Affected Public: Individuals; State of local governments; Farms; Businesses or other for-profit institutions; Federal agencies; Non-profit institutions; and Small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Robert Veeder, 395-3785

Agency: Patent and Trademark Office
Title: Miscellaneous Patent Provisions
Form Number: Agency—None; OMB—0651-0018
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 2,215 respondents; 2,046 burden hours; Average hours per response—.92 burden hours
Needs and Uses: The information requested is used by PTO in determining whether or not to grant a patent when two or more individuals are responsible for the invention. The data requirements under this clearance, however, are primarily related to applying for a Statutory Invention Registration. This provision allows firms or individuals to register for a special benefit. Under this provision, a patent is not issued but no other person or corporation can apply for ownership of the invention. However, others can use, make or sell the invention.
Affected Public: Individuals; Businesses or other for-profit institutions; Federal agencies; Non-profit institutions; Small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Robert Veeder, 395-3785.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Robert Veeder, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: January 31, 1989.

Edward Michals,
Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-2774 Filed 2-6-89; 8:45 am]
BILLING CODE 3510-CW-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration.
Title: Service Supply Licensing Procedure.
Form Number: BXA-6028P and E.A.R. section 773.7 (d) & (k); OMB-0694-0002.
Type of Request: Extension of the expiration date of a currently approved collection.
Burden: 115 respondents; 530 responses; 489 reporting/recordkeeping hours. Approximate hours per respondent is 4 hours.
Needs and Uses: The Service Supply License procedure provides U.S. firms a means to provide prompt service for equipment, (A) previously exported from the U.S., (B) produced abroad by a subsidiary, affiliate or branch of a U.S. firm or (C) produced abroad with U.S. parts included in the manufactured product.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations.
Frequency: On occasion; quarterly, recordkeeping.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: Francine Picoult, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC 20503.

Dated: January 31, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-2775 Filed 2-6-89; 8:45 am]

BILLING CODE 3510-CW-M

Foreign-Trade Zones Board

[Order No. 426]

Approval for Expansion of Foreign-Trade Zone No. 17, Kansas City, KS

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board (the Board) adopts the following order:

Whereas, the Greater Kansas City Foreign-Trade Zone, Inc., Grantee of Foreign-Trade Zone No. 17, has applied to the Board for authority to expand its general-purpose zone in Kansas City, Kansas, to include two additional public warehouse sites in Kansas City, within the Kansas City Customs port of entry;

Whereas, the application was accepted for filing on November 10, 1987, and notice inviting public comment was given in the **Federal Register** on November 24, 1987 (Docket 33–87, 52 FR 45003);

Whereas, an examiners committee has investigated the application in accordance with the Board's regulations and recommends approval;

Whereas, the expansion is necessary to improve and expand zone services in the Kansas City area; and,

Whereas, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Baord's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby orders:

That the Grantee is authorized to expand its zone in accordance with the application filed November 10, 1987. The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing or assembly operations. The authority given in this Order is subject to settlement locally by the District Director of Customs and the District Army Engineer regarding compliance with their respective requirements relating to foreign-trade zones.

Signed at Washington, DC, this 31st day of January 1989.

Jan W. Mares,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates Foreign-Trade Zones Board.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 89-2862 Filed 2-6-89; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 428]

Approval for Expansion of Foreign-Trade Zone No. 29 Louisville, KY

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board (the Board) adopts the following order:

Whereas, the Louisville and Jefferson County Riverport Authority, Grantee of Foreign-Trade Zone No. 29, has applied to the Board for authority to expand its general-purpose zone in Louisville, Kentucky, to include additional acreage at the existing zone site at the Riverport Industrial Complex and to add a site in eastern Jefferson County, within the Louisville Customs port of entry;

Whereas, the application was accepted for filing on November 16, 1987, and notice inviting public comment was given in the **Federal Register** on November 24, 1987 (Docket 34–87, 52 FR 45003);

Whereas, an examiners committee has investigated the application in accordance with the Board's regulations and recommends approval;

Whereas, the expansion is necessary to improve and expand zone services in the Louisville area; and

Whereas, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby orders:

That the Grantee is authorized to expand its zone in accordance with the application filed November 16, 1987. The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing or assembly operations. The authority given in this Order is subject to settlement locally by the District Director of Customs and the District Army Engineer regarding compliance with their respective requirements relating to foreign-trade zones.

Signed at Washington, DC, this 31st day of January 1989.

Jan W. Mares,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates Foreign-Trade Zones Board.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 89-2863 Filed 2-6-89; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 427]

Approval for Expansion of Foreign-Trade Zone No. 74 Baltimore, MD

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board (the Board) adopts the following order:

Whereas, the City of Baltimore, Grantee of Foreign-Trade Zone No. 74, has applied to the Board for authority to expand its general-purpose zone in Baltimore, Maryland, to include the Point Breeze Business Center, within the Baltimore Customs port of entry;

Whereas, the application was accepted for filing on October 29, 1987, and notice inviting public comment was given in the **Federal Register** on November 12, 1987 (Docket 29–87, 52 FR 43378);

Whereas, an examiners committee has investigated the application in accordance with the Board's regulations and recommends approval;

Whereas, the expansion is necessary to improve and expand zone services in the Baltimore area; and

Whereas, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby orders:

That the Grantee is authorized to expand its zone in accordance with the application filed October 29, 1987. The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing or assembly operations. The authority given in this Order is subject to settlement locally by the District Director of Customs and the District Army Engineer regarding compliance with their respective requirements relating to foreign-trade zones.

Signed at Washington, DC, this 31st day of January 1989.

Jan W. Mares,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates Foreign-Trade Zones Board.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 89-2864 Filed 2-6-89; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-588-810]

Initiation of Antidumping Duty Investigation: Mechanical Transfer Presses From Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of mechanical transfer presses from Japan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of mechanical transfer presses materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before February 26, 1989. If that determination is affirmative, we will make a preliminary determination on or before June 21, 1989.

EFFECTIVE DATE: February 7, 1989.

FOR FURTHER INFORMATION CONTACT: James P. Maeder, Jr. or Mary S. Clapp, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377–4929 or (202) 377–3965, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On January 12, 1989, we received a petition filed in proper form by the Verson Division of Allied Products Corporation, the United Auto Workers, and the United Steelworkers of America (AFL–CIO–CLC) on behalf of the domestic mechanical transfer press industry. In compliance with the filing requirements of 19 CFR 353.36, petitioners allege that imports of mechanical transfer presses from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

United States Price and Foreign Market Value

Petitioners' estimate of United States price is based on Verson's bid price less the estimated amount by which the winning company underbid it. U.S. duty, movement charges, U.S. Customs merchandise processing fee, and U.S. Customs harbor maintenance fee were deducted. Petitioners' estimate of foreign market value (FMV) is based on a constructed value, calculated on the basis of Verson's actual cost of manufacture, adjusted for known differences between Japanese and U.S. costs.

Based on a comparison of FMV to the United States price, petitioners allege dumping margins ranging from 6.19 to 97.68 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on mechanical transfer presses from Japan and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of mechanical transfer presses from Japan are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by June 21, 1989.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the *Harmonized Tariff Schedule* (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive as to the scope of the product coverage.

Imports covered by this investigation are shipments of mechanical transfer presses from Japan. For purposes of this investigation, the term "mechanical transfer presses" refers to automatic metal-forming machine tools with multiple die stations in which the workpiece is move from station to station by a transfer mechanism synchronized with the press action, whether imported as machines or parts suitable for use solely or principally with these machines. These presses may be assembled or unassembled. During most of the review period, such merchandise was classifiable under items 674.3583, 674.3586, 674.3587, 674.3592, 674.3594, 674.3596, 674.5315, and 674.5320 of the *Tariff Schedules of the United States Annotated* (TSUSA). This merchandise is currently classifiable under HTS items 8462.29.00, 8462.39.00, 8462.49.00, 8462.99.00, 8466.94.50.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by February 26, 1989, whether there is a reasonable indication that imports of mechanical transfer presses from Japan materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

BEST COPY AVAILABLE

This notice is published pursuant to section 732(c)(2) of the Act.

Jan W. Mares,

Assistant Secretary for Import Administration.

February 1, 1989.

[FR Doc. 89-2866 Filed 2-6-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-014]

Tuners (of The Type Used in Consumer Electronic Products) From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On December 13, 1988, the Department of Commerce published the preliminary results of its antidumping duty administrative review on tuners (of the type used in consumer electronic products) from Japan. The review covers one manufacturer/exporter of this merchandise to the United States and the period December 1, 1986 through November 30, 1987.

We gave interested parties an opportunity to comment on our preliminary results. We received no comments. The final results of review are unchanged from those presented in the preliminary results.

EFFECTIVE DATE: February 7, 1989.

FOR FURTHER INFORMATION CONTACT: Edward Haley or Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On December 13, 1988, the Department of Commerce ("The Department") published in the **Federal Register** (53 FR 50063) the preliminary results of its administrative review of the antidumping duty finding on tuners (of the type used in consumer electronic products) from Japan (35 FR 18914, December 12, 1970). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by the review are shipments of tuners (of the type used in consumer electronic products) consisting primary of television receiver tuners and tuners used in radio receivers such as household radios, stereo and high fidelity radio systems, and automobile radios. They are vitrually all in modular form, aligned and ready for simple assembly into the consumer electronic product for which they were designed. The term "consumer electronic product" includes television sets, radios, and other electronic products of the type commonly bought at retail by household consumers, whether or not used in or around the household. Excluded are complete stereophonic tuners which are consumer products themselves, but not excluded are modular-type stereophonic tuners. During the review period, such merchandise was classifiable under items 685.0200 and 685.3300 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under HTS items 8529.90.10 and 8529.90.50. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one manufacturer/exporter of Japanese tuners to the United States, Toa Electric Co., Ltd., and the period December 1, 1986 through November 30, 1987.

Final Results of the Review

We invited interested parties to comment on the preliminary results. We received no comments. Based on our analysis, the final results of review are the same as those presented in the preliminary results of review, and we determine that a dumping margin of 1.9 percent exists for Toa Electric Co., Ltd. for the period December 1, 1986 through November 30, 1987.

The Department will instruct the Customs Service to assess antidumping duties at the above rate on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, the Department shall require a cash deposit of estimated duties of 1.9 percent for Toa Electric Co., Ltd. For any future shipments from the remaining known manufacturers and/or exporters not covered in this review, the cash deposit will continue to be at the rate published in the final results of the last administrative review for each of those firms. The above margin does not change the current rate of cash deposit for new exporters. These deposit requirements are effective for all shipments of Japanese tuners (of the type used in consumer electronic products) entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and will remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.53a

Jan W. Mares,

Assistant Secretary for Import Administration.

Date: February 1, 1989.

[FR Doc. 89-2865 Filed 2-6-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-122-404]

Live Swine From Canada; Correction to Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of correction to final results of countervailing, administrative review.

EFFECTIVE DATE: February 7, 1989.

FOR FURTHER INFORMATION CONTACT: Sylvia Chadwick or Bernard Carreau, Office of Countervailing Duty Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

Correction

On January 9, 1989, we published the Notice of Final Results of Countervailing Duty Administrative Review on Live Swine from Canada (54 FR 651). We hereby correct the Final Results by removing the following cite from page 652, third column, first paragraph, lines nine through thirteen:

See, e.g., Preliminary Affirmative Countervailing Duty Determination: Certain Softwood Lumber Products from Canada (51 FR 37453, Oct. 22, 1986).

Date: January 30, 1989.

Timothy N. Bergan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 89-2772 Filed 2-6-89; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Business Development Center Applications; Arizona

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Indian Business Development Center (IBDC) program to operate an IBDC for approximately a 3 year period, subject to the availability of funds. The cost of performance for the first 12 months is $193,000 in Federal funds for the budget period July 1, 1989 to June 30, 1990. The IBDC will operate in the State of Arizona.

The I.D. Number for this project will be 09-10-89009-01.

The funding instrument for the IBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The IBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

The IBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an IBDC's satisfactory performance, the availability of funds and Agency priorities.

DATE: The closing date for applications is March 13, 1989. Applications must be postmarked on or before March 13, 1989.

ADDRESS:

San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, Room 1280, San Francisco, California 94105, 415/974-0597.

A pre-application conference to assist all interested applicants will be held at the following address and time:

Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, Room 1280, San Francisco, California 94105, February 23, 1989.

FOR FURTHER INFORMATION CONTACT: Dr. Xavier Mena, Regional Director, San Francisco Regional Office.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(11.801 Indian Business Development Catalog of Federal Domestic Assistance)

Xavier Mena,

Regional Director, San Francisco Regional Office.

February 1, 1989.

[FR Doc. 89-2777 Filed 2-6-89; 8:45 am]

BILLING CODE 3510-21M-M

Business Development Center Applications, California

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Indian Business Development Center (IBDC) program to operate an IBDC for approximately a 3 year period, subject to the availability of funds. The cost of performance for the first 12 months is $303,000 in Federal funds for the budget period July 1, 1989 to June 30, 1990. The IBDC will operate in the State of California.

The I.D. Number for this project will be 09-89010-01.

The funding instrument for the IBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The IBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority business. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firms and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

The IBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an IBDC's satisfactory performance, the availability of funds and Agency priorities.

DATE: The closing date for applications is March 13, 1989. Applications must be postmarked on or before March 13, 1989.

ADDRESS:

San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce,

221 Main Street, Room 1280,
San Francisco, California 94105,
415/974-9597.

A pre-application conference to assist all interested applicants will be held at the following address and time:

Minority Business Development Agency,
U.S. Department of Commerce,
221 Main Street, Room 1280,
San Francisco, California 94105.
February 23, 1989.

FOR FURTHER INFORMATION CONTACT:
Dr. Xavier Mena, Regional Director, San Francisco Regional Office.

SUPPLEMENTARY INFORMATION:
Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(11.801 Indian Business Development Catalog of Federal Domestic Assistance)

Xavier Mena,

Regional Director, San Francisco Regional Office.

February 1, 1989.

[FR Doc. 89-2778 Filed 2-6-89; 8:45 am]

BILLING CODE 3510-21-M

Business Development Center Applications; Riverside, CA

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3-year period, subject to the availability of funds. The cost of performance for the first 12 months is $230,400 in Federal funds and a minimum of $40,659 in non-Federal contributions for the budget period July 1, 1989 to June 30, 1990. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Riverside, California geographic service area.

The I. D. Number for this project will be 09-10-89006-01.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of $500,000.

The MBDC may continute to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-year quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

DATE: The closing date for applications is March 13, 1989. Applications must be postmarked on or before March 13, 1989.

ADDRESS:

San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, Room 1280, San Francisco, California 94105, 415/974-9597.

A pre-application conference to assist all interested applicants will be held at the following address and time:

Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, Room 1280, San Francisco, California 94105.
February 23, 1989.

FOR FURTHER INFORMATION CONTACT:
Dr. Xavier Mena, Regional Director, San Francisco Regional Office.

SUPPLEMENTARY INFORMATION:
Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Xavier Mena,

Regional Director, San Francisco Regional Office.

February 1, 1989.

[FR Doc. 89-2779 Filed 2-6-89; 8:45 am]

BILLING CODE 3510-21-M

Business Development Center Applications; San Francisco, CA

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3 year period, subject to the availability of funds. The cost of performance for the first 12 months is $553,000 in Federal funds and a minimum of $97,588 in non-Federal contributions for the budget period July 1, 1989 to June 30, 1990. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the San Francisco, California geographic service area.

The I.D. Number for this project will be 09-10-89007-01.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

DATE: The closing date for applications is March 13, 1989. Applications must be postmarked on or before March 13, 1989.

ADDRESS:

San Francisco Regional Office,
Minority Business Development Agency,
U.S. Department of Commerce,
221 Main Street, Room 1280,
San Francisco, California 94105,
415/974-9597.

A pre-application conference to assist all interested applicants will be held at the following address and time:

Minority Business Development Agency,
U.S. Department of Commerce,
221 Main Street, Room 1280,
San Francisco, California 94105,
February 23, 1989.

FOR FURTHER INFORMATION CONTACT:
Dr. Xavier Mena, Regional Director, San Francisco Regional Office.

SUPPLEMENTARY INFORMATION:
Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(11.800 Minority Business Development. Catalog of Federal Domestic Assistance)

Xavier Mena,

Regional Director, San Francisco Regional Office.

February 1, 1989.

[FR Doc. 89-2780 Filed 2-6-89; 8:45 am]

BILLING CODE 3510-21-M

Business Development Center Applications; Seattle, WA

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3 year period, subject to the availability of funds. The cost of performance for the first 12 months is $184,280 in Federal funds and a minimum of $32,516 in non-Federal contributions for the budget period July 1, 1989 to June 30, 1990. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Seattle, Washington geographic service area.

The I.D. Number of this project will be 10-10-89008-01.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

DATE: The closing date for applications is March 13, 1989. Applications must be postmarked on or before March 13, 1989.

ADDRESS:

San Francisco Regional Office,
Minority Business Development Agency,
U.S. Department of Commerce,
221 Main Street, Room 1280,
San Francisco, California 94105,
415/974-9597.

A pre-application conference to assist all interested applicants will be held at the following address and time:

Minority Business Development Agency,
U.S. Department of Commerce,
221 Main Street, Room 1280,
San Francisco, California 94105.
February 23, 1989.

FOR FURTHER INFORMATION CONTACT: Dr. Zavier Mena, Regional Director, San Francisco Regional Office.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the proceding information, copies of application kits and applicable regulations can be obtained at the above address.

(11.800 Minority Business Development, Catalog of Federal Domestic Assistance)

Xavier Mena,

Regional Director, San Francisco Regional Office.

February 1, 1989.

[FR Doc. 89-2761 Filed 2-6-89; 8:45 am]

BILLING CODE 3510-24-M

National Technical Information Service

Intent To Grant Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Academic Catalyst Corporation, having a place of business at 14 Madison Avenue, Valhalla, NY 10595, an exclusive right in the United States to practice the invention embodied in U.S. Patent No. 4,722,851 "Flan-Type Pudding Using Cereal Flour". The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments, and other materials relating to the intended license must be submitted to Robert P. Auber, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

A copy of the instant patent may be purchased from the U.S. Patent and Trademark Office.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 89-2874 Filed 2-6-89; 8:45 am]

BILLING CODE 3510-04-M

Intent to Grant Exclusive Patent License; Salsbury Laboratories, Inc.

Correction

In notice document 89-114 appearing on page 1980 in the issue of Wednesday, January 18, 1989, please make the following correction:

In the first column, in the 6th and 7th lines, "U.S. Patent Application Serial Number 7-128,386" should read U.S. Patent Application Serial Number 7-128,836.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing.

[FR Doc. 89-2913 Filed 2-6-89; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Coverage for Import Limits and Visa and Certification Requirements for Part-Category 659-C Produced or Manufactured in Various Countries

February 1, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending coverage for import limits and visa and certification requirements.

EFFECTIVE DATE: February 8, 1989.

FOR FURTHER INFORMATION CONTACT: Brian Fennessy, Commodity Industry Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-3400.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 205 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

To facilitate the implementation of bilateral textile agreements and export visa arrangements based upon the Harmonized Tariff Schedule, for goods exported on and after January 1, 1989, the coverage of part-Category 659-C is being amended to include HTS number 6210.10.4020 in all import limits and visa and certification arrangements for countries with that part-category.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 46910, published on November 21, 1988; 53 FR 52464, published on December 28, 1988; and 53 FR 52759, published on December 29, 1988.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 1, 1989.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directives issued to you on December 2, 1988, December 6, 1988, December 8, 1988, May 13, 1988, December 13, 1988 and December 22, 1988 by the Chairman, Committee for the Implementation of Textile Agreements. These directives concern imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China, Japan, Korea, Mexico, Sri Lanka and Taiwan.

This directive also amends, but does not cancel, the directive of December 22, 1988 which amended visa requirements for all countries for which visa arrangements are in place with the United States Government. The directive of September 1, 1988 establishing export visa requirements for Sri Lanka is also being amended.

Effective on February 8, 1989, you are directed to add HTS number 6210.10.4020 for part-Category 659-C to the import control directives for the aforementioned countries. Also, HTS number 6210.10.4020 will be required for all countries with part-Category 659-C (or 659(1) in the case of Hong Kong) icluded in their visa and certification arrangement.

The complete coverage for part-Category 659-C is listed below: 6103.23.0055, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.69.1000, 6104.69.3014, 6114.30.3040, 6114.30.3050, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4020, 6211.33.0010, 6211.33.0017, 6211.43.0010.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-2838 Filed 2-6-89; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Financial Products Advisory Committee Meeting

This is to give notice pursuant to section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 1, 10(a) and 41 CFR 101-6.1015(b), that the Commodity Futures Trading Commission's Financial Products Advisory Committee will conduct a public meeting on Tuesday, February 21, 1989, in Room 1310-A of the Longworth House Office Building, Independence Avenue, between C Street and South Capitol Street, SE, in Washington, DC. The meeting will be held between 10:00 a.m. and 3:30 p.m. The agenda will consist of the following:

1. Discussion of off-exchange trading of instruments with futures-like and options-like characteristics;

2. Discussion of electronic trading systems and their introduction and adaptation to futures trading;

3. Discussion of systems and techniques which might facilitate the trading of large orders; and

4. Discussion of other Committee business, including:

a. A discussion of agenda items and scheduling for future Committee meetings; and

b. Any other business that may properly come before the committee.

The purpose of this meeting is to solicit the views of the Committee on the above-listed agenda matters. The Advisory Committee was created by the Commodity Futures Trading Commission for the purpose of receiving advice and recommendations on financial products issues. The purposes and objectives of the Advisory Committee are more fully set forth at 52 FR 17313 (May 7, 1987).

The meeting is open to the public. The Chairman of the Advisory Committee, Commissioner Robert R. Davis, is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: The Commodity Futures Trading Commission Financial Products Advisory Committee, c/o Brian A. Marks, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, to be received prior to the date of the meeting. Members of the public who wish to make oral statements also should inform Mr. Marks in writing at the above address at least three days prior to the meeting. Provision will be made, if time permits, for an oral presentation of reasonable duration.

Issued in Washington, DC this 2nd day of February 1989, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89-2912 Filed 2-6-89; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: DoD FAR Supplement, Part 203, Improper Business Practices and Personal Conflicts of Interest, Control Number 0704-0277.

Type of Request: Revision.

Average Burden Hours/Minutes Per Response: 125.81 hours

Frequency of Response: As required

Number of Respondents: 31,000

Annual Burden Hours: 3,900,000

Annual Responses: 31,000

Needs and Uses: This request concerns information collection requirements related to (1) annual reporting of compensation provided to former DoD employees and (2) establishment of a Mandatory Code of Conduct Program

Affected Public: Businesses or other for-profit.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Ms. Eyvette R. Flynn.

Written comments and recommendations on the proposed information collection should be sent to Ms. Eyvette R. Flynn at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone (202) 746-0933.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 2, 1989.

[FR Doc. 89-2868 Filed 2-6-89; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Jose M. Mendonca and Frozen Lightning Products; Intent To Grant Partially Exclusive Patent License

Pursuant to the provisions of Part 101-4 of Title 41, Code of Federal Regulations, which implements Pub. L. 96-517, the Department of the Air Force announces its intention to grant to Jose M. Mendonca, 20 Tiffany Road, Apartment 11, Salem, New Hampshire 03079, an individual, and Frozen Lightning Products, 8628 South 228th, Kent, Washington 98031, a corporation of the State of Washington, a partially exclusive royalty-bearing license under application Serial No. 158,447, filed 22 February 1988 in the name of Jose M. Mendonca for "A Method of Controlling the Discharge of Stored Electric Charge in a Plastic."

The licenses described above will be granted unless an objection thereto, together with a request for an opportunity to be heard, if desired, is received in writing by the addressee set forth below within sixty (60) days from the date of publication of this Notice. Copies of the patent application may be obtained, on request, from the same addressee.

All communications concerning this Notice should be sent to: Mr. Donald J. Singer, Chief, Patents Division, Office of The Judge Advocate General, HQ USAF/JACP, 1900 Half Street, SW., Washington, DC 20324-1000, Telephone No. (202) 475-1386.

Patsy J. Conner,

Air Force Federal Register, Liaison Officer.

[FR Doc. 89-2875 Filed 2-6-89; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Intent To Prepare an Environmental Impact Statement for Aircraft Operations at Naval Air Station Whidbey Island, WA

In accordance with the Council on Environmental Quality regulations (40 CFR Parts 1500-1508) implementing the procedural provisions of the National Environmental Policy Act (NEPA), the Navy provides notice of the intent to prepare an Environmental Impact Statement (EIS) for the conduct of air operations at Naval Air Station Whidbey Island (NASWI), Washington.

All Navy EA-6B Prowler electronic warfare squardrons and all west coast A-6E Intruder squadrons are stationed at NASWI. The A-6E Intruder and EA-6B Prowler are tactical jet aircraft that form an essential aircraft carrier-based

combat team critical to the mission of the Navy.

Aircrew readiness through intensive training is essential to the successful functioning of these aircraft in the role of national defense and the projection of power at sea. The Navy must ensure efficient, realistic, and cost effective training opportunities for Prowler and Intruder aircrews and support personnel for the entire west coast at or near NASWI. The continued use of existing training fields is of vital importance in fulfilling this responsibility.

Ault Field and Outlying Field (OLF) Coupeville are currently used for training exercises on Whidbey Island. OLF Coupeville, located on Whidbey Island only 10 nautical miles by air from Ault Field, is used for field carrier landing practice. Its proximity to Ault Field results in maximum benefit to the aircrew in short transit times and availability of on-site ground support teams. The rural setting for Coupeville provides an area relatively free of development and associated lighting, thus allowing closer simulation of dark "at sea" conditions representative of nighttime carrier landings.

In recent years regional population increases have resulted in more people residing in noise and accident-potential zones adjacent to NASWI and Coupeville. This high rate of growth is projected to continue. Over the pat five years, the level of training operations has also gradually increased. The Navy is preparing an EIS to plan for the long-term capability of NASWI to effectively train carrier aircrews while integrating the environmental concerns of the public. The EIS will address the potential environmental impacts associated with training operations currently being conducted and to evaluate possible alternatives to mitigate impacts that may be identified.

Four alternatives are currently identified for evaluation in the EIS. They are:

1. No-Action Alternative (i.e., no change in current operations)
2. Training operations redistributed between Ault Field and OLF Coupeville
3. Establish a new OLF to replace OLF Coupeville, with training operations distributed between Ault Field and a new OLF
4. Establish a new OLF for use in conjunction with OLF Coupeville, with training operations distributed between Ault Field, OLF Coupeville, and a new OLF.

The Navy will initiate a scoping process for the purpose of determining the scope of issues to be addressed and for identifying the significant issues related to this action. Public scoping meetings will be held at the Coupeville Junior-Senior High School on Tuesday, January 21, 1989, beginning at 7:00 pm and at the Oak Harbor High School on Wednesday, 22 Jan 1989 beginning at 7:00 pm. At these meetings, Navy representatives will be available to receive comments from the public regarding issues of concern to the public. In the interest of available time, each speaker will be asked to limit there oral comments to 5 minutes. Further scoping meetings may be held at new OLF locations or other locations as the study progresses. It is important that Federal, state, and local agencies, and interested individuals take the opportunity to identify environmental concerns that should be addressed during the preparation of the EIS.

Agencies and the public are also invited and encouraged to provide written comment in addition to, or in lieu of, oral comments at the public meetings. To be most helpful, scoping comments should clearly describe specific issues or topics which the commentor believes the EIS should address. Written statements and or questions regarding the scoping process should be mailed no later than 31 March 1989 to: Officer in Charge of Construction, Northwest, Western Division Naval Facilities Engineering Command, Attention Code 09EP 3505 Anderson Hill Rd., P.O. Box 2360, Silverdale, Washington 98383.

Date. February 1, 1989.

Jane M. Virga,

Lt., JAGC, USNR, Federal Register Liaison Officer.

[FR Doc. 89-2750 Filed 2-6-89; 8:45 am]

BILLING CODE 3810-AE-M

Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Navy Strategy Formation Task Force will meet February 14–15, 1989 from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to discuss the Formation of Navy Strategy. The entire agenda for the meeting will consist of discussions of key issues regarding formation of Navy Strategy in support of U.S. national security and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

This Notice is being published late because operational necessity constitutes an exceptional circumstance, not allowing for 15 days' notice of this meeting.

For further information concerning this meeting, contact Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302-0268. Phone (703) 756-1205.

Dated: February 3, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89-2947 Filed 2-6-89; 8:45 am]

BILLING CODE 3810-AE-M

Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Latin America Task Force will meet February 16–17, 1989 from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to gain a broad overview and insight on Latin America related to U.S. security and naval interests. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

This Notice is being published late because operational necessity constitutes an exceptional circumstance, not allowing for 15 days' notice of this meeting.

For further information concerning this meeting, contact Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302-0268. Phone (703) 756-1205.

Dated: February 3, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89-2948 Filed 2-6-89; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Intent To Prepare Environmental Impact Statement for Clean Coal Technology Program

AGENCY: Department of Energy (DOE).

ACTION: Notice of Intent (NOI) To prepare an Environmental Impact Statement (EIS).

SUMMARY: DOE announces its intent to prepare a Programmatic EIS pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, to evaluate the potential environmental impacts of the Clean Coal Technology (CCT) Program. Under the CCT program, DOE solicits proposals for, evaluates, selects, and subsequently provides cost-shared funding support for a new generation of environmentally improved, cost-effective, coal utilization technologies. The proposed Programmatic EIS will analyze the potential environmental impacts of projected commercialization of successfully demonstrated innovative clean coal technologies by the private sector in the year 2010. The environmental aspects of the actual individual demonstration projects will be addressed in separate site-specific NEPA documents (see "Background Information," below).

Invitation To Comment: To ensure that the full range of environmental issues related to the CCT program are addressed, comments on the proposed scope and content of the Programmatic EIS are invited from all interested parties. Comments are also solicited on the *Programmatic Environmental Impact Analysis* (PEIA) (see "Background Information," below), which will be used as the basis for the preparation of the draft Programmatic EIS. Comments and suggestions received during the scoping period will be considered in preparing the draft EIS. Upon completion of the draft EIS, its availability will be announced in the **Federal Register**, and public comments will be solicited again. Comments on the draft EIS will be considered in preparing the final EIS.

ADDRESSES: Requests for copies of the PEIA, and written coments or suggestions on the scope of the EIS, should be directed to: Dr. Jerry Pell, Senior Environmental Scientist, Clean Coal Technology Program, Office of Fossil Energy, FE-22, U.S. Department of Energy, Washington, DC 20585, (202) 586-7166.

Envelopes should be marked: "CCT EIS."

FOR FURTHER INFORMATION CONTACT: For general information on the EIS process, contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Project Assistance, EH-25, U.S. Department of Energy, Washington, DC 20585, (202) 586-4600.

Requests for general information on the CCT Program should be directed to: Dr. C. Lowell Miller, Associate Deputy Assistant Secretary for Clean Coal, Office of Fossil Energy, FE-22, U.S. Department of Energy, Washington, DC, 20585, (202) 586-7150.

DATES: To ensure their consideration in the preparation of the draft Programmatic EIS, written comments and suggestions on the proposed scope of the EIS should be postmarked by the 20th (twentieth) day after the date of publication of this NOI in the **Federal Register**. In the event that the 20th day coincides with a Saturday, Sunday, or federal holiday, the deadline postmark date shall be the first business day that follows thereafter. Comments received after the twenty-day period will be considered to the extent practicable.

Background Information

The CCT program is an ongoing technology development program, jointly funded by government and industry, whereby the supported demonstration projects provide a "showcase" to prospective commercial users (i.e., "consumers") of the selected innovative clean coal technologies. By assisting with the demonstration of their readiness, the program substantively contributes to the acquisition and technology transfer of the data necessary for the private sector to be able to judge the attributes and commercial potential of the technologies. Hence, the CCT program serves as a vital bridge between research and development and readiness for consideration of these new technologies by the marketplace.

The advanced concepts for using domestic coal more efficiently, while better protecting the environment, embrace technologies that range from approaches to and methods of preparing and cleaning the coal prior to combustion, to burning the coal with reduced emissions of sulfur dioxide (SO_2) and/or oxides of nitrogen (NO_x), and to controlling the emissions of pollutants during or subsequent to combustion. The CCT program is interested in potential applications of these technologies to all users and generators of energy in the economy, including the electric utility, industrial, commercial, transportation, and residential sectors.

The CCT program is a major component of the U.S. strategy to curb acid rain emissions. On March 18, 1987, President Reagan announced his decision to seek $2.5 billion to fund the demonstration of innovative clean coal technologies over a five-year period. The President directed that projects be selected, to the extent possible, using the criteria recommended by the Special Envoys on Acid Rain, Drew Lewis of the United States, and William Davis of Canada. In January of 1986, the appointees issued the *Joint Report of the Special Envoys on Acid Rain*, also known as "the Lewis/Davis Report." The Report contained twelve recommendations, the first of which was that the:

> U.S. government should implement a five-year, five-billion-dollar control technology commercial demonstration program. The federal government should provide half the funding * * * for projects which industry recommends, and for which industry is prepared to contribute the other half of the funding.

DOE proposes to issue the third solicitation under the CCT program, requesting proposals for cost-shared demonstration projects, by May 1, 1989. The first CCT solicitation was conducted in accordance with Pub. L. No. 99-190 of December 19, 1985. The second solicitation was conducted in accordance with Pub. L. No. 100-202 of December 22, 1987. The next solicitation will be conducted in accordance with Pub. L. No. 100-446, enacted on September 27, 1988, which provides $575 million be made available for additional CCT demonstration projects. Conference Report 100-862, accompanying the legislation, specifies that the "request for proposals should be issued by May 1, 1989, with proposals due no later than 120 days after issuance of the request for proposals [by August 29, 1989], and that the Secretary of Energy should make project selections no later than 120 days after receipt of proposals [by December 27, 1989]."

To accomplish NEPA compliance for the CCT program, DOE proposes to take the following actions:

- Issue a publicly available Programmatic EIS prior to the selection of projects;
- Prepare a pre-selection project-specific environmental review for use by

the Source Selection Official (SSO) for proposals that undergo comprehensive evaluation. (The SSO's responsibilities include designating the Source Evaluation Board (SEB), reviewing the SEB's procurement plan and schedule, reviewing the statement of work and qualification and evaluation criteria developed by the SEB, reviewing the relative importance of the evaluation criteria, and making the selection decision.) This review will focus on environmental issues pertinent to decisionmaking. This review will contain proprietary and business confidential information, such that it will not be released to the public;

• Prepare detailed site-specific NEPA documents for each of the individual projects selected by DOE, and for which cooperative agreements have been successfully executed. Federal funds from the CCT program will not be provided for project detailed design, construction, operation and/or dismantlement until the NEPA process has been successfully completed.

The *Programmatic Environmental Impact Analysis* (PEIA), Report DOE/PEIA–0002, completed by DOE in September 1988 in support of the February 22, 1988, solicitation, will serve as the basis for the preparation of the Programmatic EIS for the CCT program. Copies of the PEIA may be obtained from the address provided above. Copies of this notice and of the PEIA are being sent to selected agencies, organizations, members of Congress, and others known to be interested in the CCT program. The PEIA is also available for review at the DOE Freedom of Information Reading Room in Room 1E–190 of the Forrestal Building, 1000 Independence Avenue, SW., Washington, DC. Preparation of the EIS will be in accordance with NEPA, the Council on Environmental Quality Regulations for Implementing NEPA (40 CFR Parts 1500–1508), and the DOE NEPA Guidelines (52 FR 47662).

Alternatives Proposed for Consideration

The direct action being considered in the draft Programmatic EIS is the selection, for cost-shared federal funding, of one or more projects to demonstrate innovative clean coal technologies. The indirect effect of this program is expected to be the widespread commercialization by the private sector of the successfully demonstrated innovative clean coal technologies. It is the potential environmental consequence of the indirect effects of widespread commercialization of these technologies in the year 2010 that will be addressed in the draft Programmatic EIS.

The alternatives proposed for consideration in the draft Programmatic EIS include the major coal utilization technologies. These technologies, which are described in the PEIA, are representative of the proposals that DOE expects to receive in response to the proposed third solicitation (described above). Technologies proposed as alternatives can be categorized as follows:

1. Fluidized Bed Combustion, Atmospheric and Pressurized;
2. Integrated Gasification Combined Cycle;
3. Fuel Cells;
4. Advanced Slagging Combustors;
5. Limestone Injection Multi-Stage Burners;
6. Low NO_x Burners;
7. Advanced Flue Gas Cleanup with Spray Dryer, Reburning, Sorbent Injection and Selective Catalytic Reduction;
8. Coal Liquefaction, Direct and Indirect;
9. Coal-Oil Coprocessing;
10. Advanced Coal Cleaning, Physical and Chemical;
11. Ultrafine Coal Processing; and
12. Industrial Processes.

Modifications and improvements to the above technologies likely will be proposed for demonstration in response to the proposed CCT solicitation. Proposed new technologies, not included as alternatives in the above list, will be added as necessary. As required by NEPA, a "No Action" alternative also will be analyzed.

Identification of Environmental Issues

The issues listed below have been tentatively identified for programmatic analysis in the EIS. This list is not all inclusive nor does it imply any predetermination of potential impacts. Additions or deletions to this list may occur as the result of the scoping process. Furthermore, many issues that are site-specific and/or project-specific in nature will be dealt with in the individual NEPA documents to be prepared later for each of the selected demonstration projects. Only issues that can be considered on a regional, national, or global basis are listed here:

1. Air resources, including air quality and the quantitative aspects of atmospheric emissions such as sulfur dioxide, oxides of nitrogen, and carbon dioxide.
2. Water resources, including the acidification of surface waters, nutrient enrichment, and other quantitative and qualitative aspects of water use.
3. Regulatory compliance, including discussion of applicable federal statutes and regulations.
4. Land use, including discussion of coal processing, power plant land use, and disposal of solid waste generated by coal combustion technologies.
5. Socioeconomic impacts, including impacts on communities affected by coal cleaning, impacts from the construction and operation of, and provision of support services to, coal-fired power plants, and impacts related to coal-related waste disposal.

Signed in Washington, DC, this 31st day of January, 1989, for the United States Department of Energy.

Raymond P. Berube,

Acting Assistant Secretary, Environment, Safety and Health.

[FR Doc. 89–2870 Filed 2–6–89; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award; Intent To Award Grant to Lektrocorp, Inc.

AGENCY: Department of Energy.

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.14, it is making a financial assistance award based on an unsolicited application under Grant Number DE FG01–89CE15409 to Lektrocorp, Inc., to develop and test the invention, "Self-Dressing Resistance Spot Welding Electrode Tip."

Scope: This Grant will aid in providing funding for Lektrocorp, Inc., as follows: (1) Determine field performance data for all embodiments of the self-dressing electrode; (2) establish optimum weld parameters; (3) establish energy consumption data for the invention and standard electrodes; and (4) design, fabricate and test electrode tips using ceramic implants to improve energy efficiency.

The purpose of this project will be "to build, test and develop the advanced tip prototype in order to increase energy efficiency by minimizing tip mushrooming." The anticipated objective is to improve the interior cooling and provide renewable layers that give the tip a longer useful life.

Eligibility: Based on receipt of an unsolicited application, eligibility of this award is being limited to Lektrocorp, Inc., a private corporation with high qualifications in this specialized field of technology. The inventor and principal investigator for Lektrocorp, Inc., Mr. Bryan Prucher, holds the patent on this tip. Lektrocorp, Inc., will subcontract this work to three companies who have substantial facilities and expertise in their respective specialties. It has been determined that this project has high technical merit, representing an innovative and novel idea which has a strong possibility of allowing for future reductions in the nations energy consumption.

The term of this grant shall be two years from the effective date of award. The estimated cost of this grant is $57,102.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, Attn: Lisa Tillman, MA–453.2, 1000 Independence Avenue SW., Washington, DC 20585.

Arnold Gjerstad,

Acting Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 89–2872 Filed 2–6–89; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not include information collection requirements contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, or extension; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden, and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed within 30 days of publication of this notice.

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards, at the address below.)

For further information and copies or relvant materials contact: Carole Patton, Office of Statistical Standards (EI–70), Energy Information Administration, M.S. 1H–023, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–2222.

SUPPLEMENTARY INFORMATION: If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this Notice, you should advise the OMB DOE Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the DOE contact listed above.)

The energy information collection submitted to OMB for review was:

1. Energy Information Administration
2. EIA–846A/D
3. 1905–0129
4. Manufacturing Energy Consumption Survey
5. Revision
6. Triennially
7. Mandatory
8. Businesses or other for profit
9. 13,025 respondents
10. 4,342 responses
11. 7.99 hours per response
12. 34,700 hours (total)
13. EIA–846A/D will collect data on the consumption of energy sources and the fuel-switching capability of establishments in the manufacturing sector. Respondents are primarily manufacturing establishments in SIC–20 through 39.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, February 1, 1989.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 89–2871 Filed 2–6–89; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. QF89–131–000]

Alameda County Water District; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

February 3, 1989.

On January 24, 1989, Alameda County Water District (Applicant), of P.O. Box 5110, 43885 South Grimmer Boulevard, Fremont, California 94537 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 900 kilowatt hydroelectric small power production facility will be located in Fremont, California. The facility will consist of a new turnout structure located on the existing South Bay Aqueduct, a new pipeline, and a new powerhouse and other associated equipment.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Lois D. Cashell,

Secretary.

[FR Doc. 89–2910 Filed 2–6–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ER89-172-000, et al.]

Florida Power & Light Co., et al., Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Florida Power & Light Company

[Docket No. ER89-172-000]

January 31, 1989.

Take notice that on January 9, 1989, Florida Power & Light Company (FPL) tendered for filing a document entitled Amendment Number Twelve to Revised Agreement to Provide Specified Transmission Service Between Florida Power & Light Company and Jacksonville Electric Authority (Rate Schedule FERC No. 60) and a document entitled Schedule TX Operating Agreement Between Florida Power & Light Company and Jacksonville Electric Authority which document supplements Amendment Number Twelve.

FPL states that under Amendment Number Twelve FPL will transmit power and energy for Jacksonville Electric Authority as is required in the implementation of its interchange agreement with the Utility Board of The Florida Municipal Power Agency, the utility Board of the City of Key West, Fort Pierce Utilities Authority, City of Gainesville, City of Homestead, City of Kissimmee, City of Lake Worth, New Smyrna Beach Utilities Commission, City of Starke, City of Tallahassee, Tampa Electric Company and City of Vero Beach.

FPL further states that the Schedule TX Operating Agreement defines the methodology used to determine the additional incremental cost under section I.4 of Amendment Number Twelve.

FPL requests that waiver of the Commission's regulations be granted and that the proposed Amendment and the proposed Operating Agreement be made effective immediately. FPL states that copies of the filing were served on Jacksonville Electric Authority.

Comment date: February 14, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Northern States Power Company (Minnesota)

[Docket No. ER88-347-000]

January 31, 1989.

Take notice that on April 11, 1988, Northern States Power Company (Minnesota) (NSPM) tendered for filing a Sales Agreement dated March 15, 1988 among NSPM, Northern States Power Company (Wisconsin) (NSPW) and Wisconsin Public Power Incorporated System (WPPI). Take further notice that on November 28, 1988 and January 23, 1989 NSPM submitted additional information to supplement the original filing.

The Sales Agreement, as supplemented, provides that NSPM and NSPW will sell and transmit energy, on a non-firm basis, to WPPI when transmission capacity is available. The Sales Agreement sets forth the energy transaction procedures, and terms and conditions.

NSPM requests that the Commission expedite its consideration of its filing so that transactions under the Sales Agreement may begin January 27, 1989. In this regard, NSPM requests waiver of the Commission's 60-day notice requirement to permit the early effective date of the proposed rate schedule, if the Commission's order is issued within the 60-day period.

Copies of this filing have been provided to the respective parties and to the State Commissions of Minnesota, North Dakota, South Dakota, Wisconsin and Michigan.

Comment date: February 10, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Southwestern Electric Power Company

[Docket No. ER89-157-000]

January 31, 1989.

Take notice that on December 29, 1988, Southwestern Electric Power Company (SWEPCO) tendered for filing a letter agreement (Letter Agreement), dated December 2, 1988, between SWEPCO and the City of Lafayette, Louisiana (Lafayette). Under the Letter Agreement, SWEPCO will continue to furnish transmission service through its system for up to 26 megawatts of power and associated energy from the Southwestern Power Administration (SWPA) for delivery to SWEPCO's interconnections with Central Louisiana Electric Company (CLECO) and Gulf States Utilities Company (GSU) for Lafayette's benefit.

SWEPCO requests an effective date of January 1, 1989, to assure that there is no break in service to Lafayette and, accordingly, requests waiver of the Commission's notice requirements. Copies of the filing were served upon Lafayette, SWPA, CLECO, GSU, the Arkansas Public Service Commission, the Louisiana Public Service Commission and the Public Utility Commission of Texas.

Comment date: February 13, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. ONSITE/Molokai Limited Partnership

[Docket No. QF89-127-000]

February 1, 1989.

On January 19, 1989, ONSITE/Molokai Limited Partnership (Applicant), c/o ONSITE Energy, Inc., 306 SW First Avenue, Suite 200, Portland, Oregon 97204 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed small power production facility will be located at Palaau, Molokai, Hawaii. The facility will consist of a boiler and a steam turbine generator. The net electric power production capacity of the facility will be 3400 kilowatts. The primary source of energy will be biomass in the form of wood chips. Petroleum coke may be used as supplemental fuel.

Applicant is a limited partnership comprised of Westinghouse Credit Corporation, a Delware corporation and ONSITE Energy Inc., an Oregon corporation (ONSITE). ONSITE is a wholly owned subsidiary of PacifiCorp, which is an electric utility.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2911 Filed 2-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-8067-000 et al.]

Texaco Inc. et al., Applications for Certificates, Abandonment of Service and Amendment of Certificates [1]

February 1, 1989

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce, to abandon service or to amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before February 15, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Description
G-8070-000, B, Jan. 9, 1989	Texaco Inc., P.O. Box 52332, Houston, TX 77052.	Colorado Interstate Gas Company, Greenwood Field, Morton County, Kansas.	Lease reverted.
G-10143-007, D, Jan. 13, 1989.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, TX 75221.	Tennessee Gas Pipeline Company, West Delta and Grand Isle Area, Plaquemines Parish, Louisiana.	Acreage assigned to Chevron U.S.A. Inc., 10-1-87.
CI84-252-000, D, Jan. 13, 1989.	Tenneco Oil Company, P.O. Box 2511, Houston, Texas 77252.	Northern Natural Gas Company, Division of Enron Corp., McKinney Field, Clark and Meade Counties, Kansas.	Assigned 8-13-86 to Bereseo Properties, Inc.
CI89-190-000, B, Dec. 20, 1988.	Nielson Enterprises Inc., *et al.*, P.O. Box 370, Cody, WY 82414.	Western Gas Interstate Company, Sec. 24, T4N R22ECM, Beaver County, Oklahoma.	Uneconomical to continue service. Since 1-1-87, expenses exceeded revenues by $4,860.
CI89-209-000, (CI76-409), D, Jan. 5, 1989.	Chevron U.S.A. Inc., P.O. Box 3725, Houston, TX 77253.	Northern Natural Gas Company, Division of Enron Corp., Farnsworth Field, Ochiltree County, Texas.	Assigned 7-1-87 to Atlantic Energy (USA) Corporation.
CI89-210-000, B, Jan. 6, 1989.	Samedan Oil Corporation, P.O. Box 909, Ardmore, OK 73401.	Transcontinental Gas Pipe Line Corporation, Kaplan Field, Vermilion Parish, Louisiana.	Gas reserves depleted.
CI89-211-000 (CI84-1035), B, Jan. 6, 1989.	Tenneco Oil Company	Mississippi River Transmission Corporation, Woodlawn Field, Harrison and Marion Counties, Texas.	Three wells plugged and abandoned. Other interests assigned 3-1-79 to Paramount Petroleum Corporation.
CI89-212-000 (CI84-1073), B, Jan. 6, 1989.	do	KN Energy, Inc., Minto *et al.* Field, Logan, County, Colorado.	No production on leases.
CI89-213-000 (CI66-697), B, Jan. 6, 1989.	do	Mississippi River Transmission Corporation, Woodlawn Field, Harrison County, Texas.	Well plugged and abandoned.
CI89-214-000, E, Jan. 9, 1989.	Diamond Shamrock Offshore Partners Limited Partnership, 717 N. Harwood St., Dallas, TX 75201.	Trunkline Gas Company, Block A-542, High Island Area, South Addition, Offshore Texas.	Acreage acquired 10-1-88 from Pacific Enterprises Oil Company (formerly Pacific Lighting Exploration Company).
CI89-218-000 (CI75-765), B, Jan. 9, 1989.	Tennoco Oil Company	Arkla Energy Resources a division of Arkla, Lacy SW Field, Kingfisher County, Texas.	Leases released and/or surrendered. Other interests assigned 2-1-84 to Jack P. Speed.
CI89-221-000 (CI79-535), B, Jan. 9, 1989.	Pogo Producing Company, P.O. Box 61289, Houston, TX 77208-1289.	United Gas Pipe Line Company, High Island Block 279, Offshore Texas.	Reserves depleted, lease terminated.
CI89-222-000 (CI77-452), D, Jan. 11, 1989.	Union Pacific Resources Company, P.O. Box 7, M.S. 3202, Fort Worth, TX 76101-0007.	El Paso Natural Gas Company, Burton Flat Field, Eddy County, New Mexico.	Acreage assigned to Bristol Resources 1987-1 Acquisition Program 10-1-88.
CI89-224-000, (CI82-42-000), D, Jan. 9, 1989.	Diamond Shamrock Offshore Partners Limited Partnership.	Columbia Gas Transmission Company, Block A-471, High Island Area, South Addition, Offshore Texas.	Acreage assigned to Energy Development Corporation 9-1-88.
CI89-225-000, B, Jan. 13, 1989.	Houston Oil & Minerals Corporation, c/o Tennoco Oil Company.	United Gas Pipe Line Company, Poehler Field, Goliad County, Texas.	Release and surrender of dedicated acreage effective 11-15-84.
CI89-226-000 (CI84-268-000), D, Jan. 13, 1989.	Tennoco Oil Company	Williams Natural Gas Company, South Liberal Field, Seward County, Kansas.	Assigned 8-14-86 to Bereseo Properties, Inc.
CI89-227-000 (CI63-312), B, Jan. 13, 1989.	do	Panhandle Eastern Pipe Line Company, Averd NW Field, Woods County, Oklahoma.	Well plugged and abandoned.
DCI89-230-000 (CI84-1015), D, Jan. 13, 1989.	do	Colorado Interstate Gas Company, Keyes Field, Cimmarron County, Oklahoma.	Assigned 2-4-87 to Bruce L. Shannon d/b/a Shannon Energy.
CI89-231-000 (CI79-399), D, Jan. 13, 1989.	do	Panhandle Eastern Pipe Line Company, Waynoka NE Field, Woods County, Oklahoma.	Assigned 3-18-85 to Redgate Petroleum.
CI89-234-000 (CI84-988), D, Jan. 13, 1989.	do	United Gas Pipe Line Company, Sibley Field, Webster Parish, Louisiana.	Assigned 10-1-72 to Franks Petroleum Inc.
CI89-236-000 (G-1063), B, Jan. 13, 1989.	do	Florida Gas Transmission Company, Cortez and South McAllen Fields, Starr and Hidalgo Counties, Texas.	J.S. Lehman Gas Unit 2 plugged and abandoned.
CI89-237-000, E, Jan. 17, 1989.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company.	Arkla Energy Resources, a division of Arkla, Inc., Wilburton Field, Latimer County, Oklahoma.	Acreage acquired 12-1-87 from Samson Resources Company.
CI89-238-000, E, Jan. 17, 1989.	do	do	Acreage acquired 10-1-87 from Philomena M. Wahl.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Description
CI89-239-000, E, Jan. 18, 1989.	....do....	....do....	Acreage acquired 9-1-87 from Gadsco, Inc.
CI89-243-000, (CI71-386), D, Jan. 13, 1989.	Tenneco Oil Company	Williams Natural Gas Company, Niles East Field, Canadian County, Oklahoma.	Assigned 11-1-87 to Woods Petroleum Corporation.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total succession; F—Partial succession.

[FR Doc. 89-2825 Filed 2-6-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. ST89-471-000 et al.]

El Paso Natural Gas Co. et al; Self-Implementing Transactions

February 2, 1989.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's Regulations, and sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA.)[1]

The "Recipient" column in the following table indicate the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's Regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's Regulations and section 311(a)(2) of the NGPA. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b)(2), the table lists the proposed rate and the expiration date of the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a motion to intervene with the Secretary of the Commission on or before February 17, 1989.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's Regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G(LT)" or "G(LS)" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.224 of the Commission's Regulations.

A "G(HT)" or "G(HS)" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.224 of the Commission's Regulations.

Lois D. Cashell,
Secretary.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (cents per MMBTU)
ST89-0471	El Paso Natural Gas Co	Cabot Gas Supply Corp	11-01-88	B		
ST89-0472	Northwest Pipeline Corp	Northwest Natural Gas Co	11-01-88	B		
ST89-0473	Trunkline Gas Co	Consumers Power Co	11-01-88	B		
ST89-0474	Trunkline Gas Co	Western Gas Marketing USA, Ltd	11-01-88	G-S		
ST89-0475	Trunkline Gas Co	Northern Indiana Public Service Co	11-01-88	B		
ST89-0476	Trunkline Gas Co	CSX NGL Corp	11-01-88	G-S		
ST89-0477	Trunkline Gas Co	American Central Gas Marketing Co	11-01-88	G-S		
ST89-0478	Trunkline Gas Co	Central Illinois Public Service Co	11-01-88	B		
ST89-0479	United Gas Pipe Line Co	TXG Gas Marketing Co	11-01-88	G-S		
ST89-0480	United Gas Pipe Line Co	Tejas Power Corp	11-01-88	G-S		
ST89-0481	Phillips Natural Gas Co	Acadia Pipeline Corp	11-01-88	C	3-31-89	35.55
ST89-0482	ONG Transmission Co	Natural Gas Pipeline Co. of America	11-01-88	C	3-31-89	24.32
ST89-0483	ONG Transmission Co	Natural Gas Pipeline Co. of America	11-01-88	C	3-31-89	24.32
ST89-0484	Natural Gas Pipeline Co. of America	Amoco Production Co	11-01-88	G-S		
ST89-0485	Natural Gas Pipeline Co. of America	Tennessee Gas Pipeline Co	11-01-88	G		
ST89-0486	BP Gas Transmission Co	ANR Pipeline Co., et al	11-02-88	C	3-31-89	19.00
ST89-0487	BP Gas Transmission Co		11-01-88	C	3-31-89	13.7/28.6
ST89-0488	Transok, Inc	Natural Gas Pipeline Co. of America	11-01-88	C	3-31-89	32.50
ST89-0489	Tekas Corp	Northern Natural Gas Co	11-01-88	C	3-31-89	55.00
ST89-0490	Arkla Energy Resources	Neches Gas Distribution Co	11-01-88	B		
ST89-0491	Colorado Interstate Gas Co	Ohio Valley Gas Corp	11-01-88	B		
ST89-0492	Houston Pipe Line Co	Tennessee Gas Pipeline Co	11-02-88	C		
ST89-0493	Valero Transmission, L.P	Trunkline Gas Co	11-02-88	C		
ST89-0494	Valero Transmission, L.P	Transcontinental Gas Pipe Line Corp	11-02-88	C		
ST89-0495	Texas Gas Transmission Corp	Western Kentucky Gas Co	11-02-88	B		
ST89-0496	Oasis Pipe Line Co	Northern Natural Gas Co	11-02-88	C		
ST89-0497	Oasis Pipe Line Co	Natural Gas Pipeline Co. of America	11-02-88	C		

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's Regulations.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (cents per MMBTU)
ST89-0498	Oasis Pipe Line Co	Transwestern Pipeline Co	11-02-88	C		
ST89-0499	Houston Pipe Line Co	Transwestern Pipeline Co	11-02-88	C		
ST89-0500	Houston Pipe Line Co	Florida Gas Transmission Co	11-02-88	C		
ST89-0501	Houston Pipe Line Co	Transcontinental Gas Pipe Line Corp	11-02-88	C		
ST89-0502	Houston Pipe Line Co	Transcontinental Gas Pipe Line Corp	11-02-88	C		
ST89-0503	Arkla Energy Resources	Llano, Inc	11-02-88	B		
ST89-0504	United Gas Pipe Line Co	Amoco Production Co	11-02-88	G-S		
ST89-0505	United Gas Pipe Line Co	Eastex Gas Transmission Co	11-02-88	B		
ST89-0506	Texas Gas Transmission Corp	Corning Natural Gas Corp., et al	11-02-88	B		
ST89-0507	Texas Gas Transmission Corp	Mid-South Oil & Gas, Inc	11-02-88	G-S		
ST89-0508	Texas Gas Transmission Corp	Columbia Gas of Ky, Inc., et al	11-02-88	B		
ST89-0509	Northwest Pipeline Corp	Williams Gas Marketing Co	11-02-88	G-S		
ST89-0510	Williams Natural Gas Co	Armco, Inc	11-02-88	G-S		
ST89-0511	Williams Natural Gas Co	NGC Intrastate Pipeline Co	11-02-88	B		
ST89-0512	Williams Natural Gas Co	Missouri Public Service Co	11-02-88	B		
ST89-0513	Delhi Gas Pipeline Corp	Northern Natural Gas Co	11-03-88	C	04-03-89	35.00
ST89-0514	United Gas Pipe Line Co	Llano, Inc	11-03-88	B		
ST89-0515	United Texas Transmission Co	United Gas Pipe Line Co., et al	11-03-88	C		
ST89-0516	Natural Gas Pipeline Co. of America	Texaco Producing, Inc	11-03-88	G-S		
ST89-0517	Panhandle Eastern Pipe Line Co	General Motors Corp	11-03-88	G-S		
ST89-0518	Panhandle Eastern Pipe Line Co	Ohio Gas Co	11-03-88	B		
ST89-0519	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	11-03-88	B		
ST89-0520	Panhandle Eastern Pipe Line Co	Great River Gas Co	11-03-88	B		
ST89-0521	Panhandle Eastern Pipe Line Co	Citizens Gas Fuel Co	11-03-88	B		
ST89-0522	ANR Pipeline Co	Coastal Gas Marketing Co	11-03-88	G-S		
ST89-0523	Williams Natural Gas Co	Quivira Gas Co	11-03-88	B		
ST89-0524	Williams Natural Gas Co	NGC Intrastate Pipeline Co	11-03-88	B		
ST89-0525	Williams Natural Gas Co	Union Gas System, Inc	11-03-88	B		
ST89-0526	Williams Natural Gas Co	V.H.C. Pipeline, L.P	11-03-88	B		
ST89-0527	Williams Natural Gas Co	Hadson Gas Systems, Inc	11-03-88	G-S		
ST89-0528	Williams Natural Gas Co	Energy Marketing Exchange, Inc	11-03-88	G-S		
ST89-0529	Williams Natural Gas Co	Access Energy Corp	11-03-88	G-S		
ST89-0530	Williams Natural Gas Co	Maxus Exploration Co	11-03-88	G-S		
ST89-0531	Northwest Pipeline Corp	Mallon Oil Co	11-03-88	G-S		
ST89-0532	Trunkline Gas Co	Consumers Power Co	11-03-88	B		
ST89-0533	Trunkline Gas Co	Entrade Corp	11-03-88	G-S		
ST89-0534	Panhandle Eastern Pipe Line Co	Michigan Gas Utilities Co	11-03-88	B		
ST89-0535	Panhandle Eastern Pipe Line Co	General Motors Corp	11-03-88	G-S		
ST89-0536	Williston Basin Interstate P/L Co	MGTC, Inc	11-03-88	B		
ST89-0537	Williston Basin Interstate P/L Co	MGTC, Inc	11-03-88	B		
ST89-0538	Williston Basin Interstate P/L Co	MGTC, Inc	11-03-88	B		
ST89-0539	Texas Eastern Transmission Corp	City of Anna	11-03-88	G		
ST89-0540	Texas Eastern Transmission Corp	Columbia Gas of Ohio, Inc	11-03-88	B		
ST89-0541	Texas Eastern Transmission Corp	Valero Transmission, L.P	11-03-88	B		
ST89-0542	Texas Eastern Transmission Corp	Access Energy Pipeline Corp	11-03-88	B		
ST89-0543	Texas Eastern Transmission Corp	East Ohio Gas Co	11-03-88	B		
ST89-0544	Texas Eastern Transmission Corp	Northern Illinois Gas Co	11-03-88	B		
ST89-0545	Texas Eastern Transmission Corp	Elizabethtown Gas Co	11-03-88	B		
ST89-0546	Texas Eastern Transmission Corp	Hope Gas, Inc	11-03-88	B		
ST89-0547	Northern Border Pipeline Co	Natural Gas Pipeline Co. of America	11-04-88	G		
ST89-0548	Natural Gas Pipeline Co. of America	Continental Natural Gas, Inc	11-04-88	G-S		
ST89-0549	Transcontinental Gas Pipeline Line Corp	Philadelphia Gas Works, Inc	11-04-88	B		
ST89-0550	Transcontinental Gas Pipeline Line Corp	Brooklyn Union Gas Co	11-04-88	B		
ST89-0551	ONG Transmission Co	Panhandle Eastern Pipe Line Co	11-04-88	C	04-03-89	24.32
ST89-0552	ONG Transmission Co	Panhandle Eastern Pipe Line	11-04-88	C	04-03-89	24.32
ST89-0553	ONG Transmission Co	Natural Gas Pipeline Co. of America	11-04-88	C	04-03-89	24.32
ST89-0554	Qeustar Pipeline Co	Mountain Fuel Supply Co	11-04-88	B		
ST89-0555	Tennessee Gas Pipeline Co	East Tennessee Natural Gas Co	11-04-88	G		
ST89-0556	Tennessee Gas Pipeline Co	Chevron U.S.A	11-04-88	G-S		
ST89-0557	Tennessee Gas Pipeline Co	Cornerstone Production Corp	11-04-88	G-S		
ST89-0558	Panhandle Eastern Pipe Line Co	General Motors Corp	11-04-88	G-S		
ST89-0559	Truckline Gas Co	United Gas Pipe Line Co	11-07-88	B		
ST89-0560	Truckline Gas Co	American Central Gas Marketing Co	11-07-88	G-S		
ST89-0561	Truckline Gas Co	City of Somerville	11-07-88	B		
ST89-0562	Truckline Gas Co	Northern Indiana Public Service Co	11-07-88	B		
ST89-0563	Truckline Gas Co	American Central Gas Marketing Co	11-07-88	G-S		
ST89-0564	Northwest Pipeline Corp	Smurfit Newsprint Corp	11-07-88	G-S		
ST89-0565	Northwest Pipeline Corp	Chevron U.S.A	11-07-88	G-S		
ST89-0566	El Paso Natural Gas Co	Associated Intrastate Pipeline Co	11-07-88	B		
ST89-0567	Northern Natural Gas Co	Adobe Gas Co	11-07-88	B		
ST89-0568	Oasis Pipe Line Co	Transwestern Pipeline Co	11-07-88	C		
ST89-0569	Oasis Pipe Line Co	Transwestern Pipeline Co	11-07-88	C		
ST89-0570	Oasis Pipe Line Co	Transwestern Pipeline Co	11-07-88	C		
ST89-0571	Houston Pipe Line Co	Texas Gas Transmission Corp	11-07-88	C		
ST89-0572	Houston Pipe Line Co	Natural Gas Pipeline Co. of America	11-07-88	C		
ST89-0573	Houston Pipe Line Co	Natural Gas Pipeline Co. of America	11-07-88	C		
ST89-0574	Houston Pipe Line Co	Northern Natural Gas Co	11-07-88	C		
ST89-0575	Panhandle Gas Co	Southern California Gas Co	11-07-88	D		
ST89-0576	Channel Industries Gas Co	Tennessee Gas Pipeline Co	11-07-88	C		

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (cents per MMBTU)
ST89-0577	Tennessee Gas Pipeline Co	Citizens Gas Supply Corp.	11-07-88	G-S		
ST89-0578	Gas Co. of NM (DIV. PUBLIC SERV. CO. NM)	El Paso Natural Gas Co	11-07-88	G-HT		
ST89-0579	Superior Offshore Pipeline Co	Alabama Tennessee Nat. Gas Co., et al	11-07-88	B		
ST89-0580	United Gas Pipe Line Co	Resource Group, Inc	11-07-88	G-S		
ST89-0581	United Gas Pipe Line Co	Southern Natural Gas Co	11-04-88	G		
ST89-0582	United Gas Pipe Line Co	Delhi Gas Pipeline Corp	11-04-88	B		
ST89-0583	United Gas Pipe Line Co	Amalgamated Pipeline Co	11-04-88	B		
ST89-0584	United Gas Pipe Line Co	Mobile Gas Service Corp	11-04-88	B		
ST89-0585	United Gas Pipe Line Co	Eastex Gas Transmission Co	11-04-88	B		
ST89-0586	Texas Eastern Transmission Corp	Ugi Corp	11-04-88	B		
ST89-0587	Northwest Pipeline Corp	Evanite Fiber Corp	11-04-88	G-S		
ST89-0588	Northwest Pipeline Corp	Cascade Steel Rolling Mills, Inc	11-04-88	G-S		
ST89-0589	Northern Border Pipeline Co	Northern Natural Gas Co	11-07-88	G		
ST89-0590	Northern Border Pipeline Co	Northern Natural Gas Co	11-07-88	G		
ST89-0591	Transcontinental Gas Pipe Line Corp	Commonwealth Gas Pipeline Corp	11-07-88	B		
ST89-0592	Transcontinental Gas Pipe Line Corp	Lynchburg Gas Co	11-07-88	B		
ST89-0593	Transcontinental Gas Pipe Line Corp	Carnation Co	11-7-88	G-S		
ST89-0594	Northern Natural Gas Co	Gastrak Corp	11-07-88	G-S		
ST89-0595	Tennessee Gas Pipeline Co	North Atlantic Utilities, Inc	11-08-88	G-S		
ST89-0596	Tennessee Gas Pipeline co	Union Pacific Resources Co	11-08-88	G-S		
ST89-0597	Tennessee Gas Pipeline Co	Houston Gas Exchange Corp	11-08-88	G-S		
ST89-0598	El Paso Natural Gas Co	Gas Co. of NM (Div. Public Serv. Co. NM)	11-08-88	B		
ST89-0599	United Gas Pipe Line Co	Consolidated Fuel Corp	11-08-88	G-S		
ST89-0600	Transcontinental Gas Pipe Line Corp	Union Gas Co	11-08-88	B		
ST89-0601	Transcontinental Gas Pipe Line Corp	South Carolina Pipeline Corp	11-08-88	B		
ST89-0602	Arkla Energy Resources	Arkansas Louisiana Gas Co	11-08-88	B		
ST89-0603	Trunkline Gas Co	Amgas, Inc	11-08-88	G-S		
ST89-0604	Trunkline Gas Co	Louisiana Energy, Inc	11-08-88	G-S		
ST89-0605	Trunkline Gas Co	Exxon Corp	11-08-88	G-S		
ST89-0606	Panhandle Eastern Pipe Line Co	Northern Indiana Public Service Co	11-08-88	B		
ST89-0607	Panhandle Eastern Pipe Line Co	Citizens Gas and Coke Utility	11-08-88	B		
ST89-0608	Panhandle Eastern Pipe Line Co	Amgas, Inc	11-08-88	G-S		
ST89-0609	Panhandle Eastern Pipe Line Co	Conoco, Inc	11-08-88	G-S		
ST89-0610	Northwest Pipeline Corp	Occidental Chemical Co	11-08-88	G-S		
ST89-0611	Northwest Pipeline Corp	Unocal Canada Limited	11-08-88	G-S		
ST89-0612	Williams Natural Gas Co	Continental Natural Gas, Inc	11-08-88	G-S		
ST89-0613	Williams Natural Gas Co	Cabot Energy Marketing Corp	11-08-88	G-S		
ST89-0614	Williams Natural Gas Co	Enogex Service Corp	11-08-88	G-S		
ST89-0615	Williams Natural Gas Co	Gulf Energy Marketing Co	11-08-88	G-S		
ST89-0616	Williams Natural Gas Co	Reliance Pipeline Co	11-08-88	B		
ST89-0617	Transwestern Pipeline Co	Southern California Gas Co	11-09-88	B		
ST89-0618	Valero Transmission, L.P.	El Paso Natural Gas Co	11-09-88	C		
ST89-0619	Texas Gas Transmission Corp.	Columbia Gas of OHIO, Inc., et al	11.09-88	B		
ST89-0620	Texas Gas Transmission Corp.	Summit Pipeline & Producing Co.	11-09-88	G-S		
ST89-0621	Texas Gas Transmission Corp.	East Ohio Gas Co., et al	11-09-88	B		
ST89-0622	Texas Gas Transmission Corp.	Columbia Gas of KY, Inc., et al	11-09-88	B		
ST89-0623	Texas Gas Transmission Corp.	East Ohio Gas Co	11-09-88	B		
ST89-0624	Texas Gas Transmission Corp.	Sun Gas Transmission Co., Inc	11-09-88	B		
ST89-0625	Texas Gas Transmission Corp.	Corning Natural Gas Corp., et al	11-09-88	B		
ST89-0626	Panhandle Eastern Pipe Line Co.	Central Illinois Light Co.	11-10-88	B		
ST89-0627	Panhandle Eastern Pipe Line Co.	Central Illinois Light Co.	11-10-88	B		
ST89-0628	Panhandle Eastern Pipe Line Co.	Illinois Power Co	11-10-88	B		
ST89-0629	Panhandle Eastern Pipe Line Co.	Illinois Power Co	11-10-88	B		
ST89-0630	Channel Industries Gas Co	Natural Gas Pipeline Co. of America	11-10-88	C		
ST89-0631	Natural Gas Pipeline Co. of America	Central Illinois Public Service Co.	11-10-88	B		
ST89-0632	Natural Gas Pipeline Co. of America	Peoples Natural Gas Co.	11-10-88	B		
ST89-0633	Natural Gas Pipeline Co. of America	United Cities Gas Co	11-10-88	B		
ST89-0634	Natural Gas Pipeline Co. of America	Delhi Gas Pipeline Corp.	11-10-88	B		
ST89-0635	Natural Gas Pipeline Co. of America	Columbia Gas of PA, Inc., et al	11-10-88	B		
ST89-0636	Natural Gas Pipeline Co. of America	Northern Indiana Public Service Co	11-10-88	B		
ST89-0637	El Paso Natural Gas Co	Southern California Gas Co.	11-10-88	B		
ST89-0638	El Paso Natural Gas Co	Southwest Gas Corp	11-10-88	B		
ST89-0639	Transcontinental Gas Pipe Line Corp	Transco Energy Marketing Co	11-10-88	G-S		
ST89-0640	Transcontinental Gas Pipe Line Corp	Niagara Mohawk Power Corp	11-10-88	G-S		
ST89-0641	ONG Transmission Co	Panhandle Eastern Pipe Line Co.	11-10-88	C	04-09-89	24.32
ST89-0642	ONG Transmission Co	Panhandle Eastern Pipe Line Co.	11-10-88	C	04-09-89	24.32
ST89-0643	ANR Pipeline Co.	Apache Transmission Corp.	11-10-88	B		
ST89-0644	ANR Pipeline Co.	Pacific Gas and Electric Co.	11-10-88	B		
ST89-0645	ANR Pipeline Co.	Consumers Power Co.	11-10-88	B		
ST89-0646	ANR Pipeline Co.	Placid Oil Co.	11-10-88	G-S		
ST89-0647	ANR Pipeline Co.	City of Milan	11-10-88	B		
ST89-0648	ANR Pipeline Co.	Wisconsin Power and Light Co.	11-10-88	B		
ST89-0649	ANR Pipeline Co.	Wisconsin Natural Gas Co.	11-10-88	B		
ST89-0650	ANR Pipeline Co.	St. Joseph Light & Power Co.	11-10-88	B		
ST89-0651	ANR Pipeline Co.	City of Bethany	11-10-88	B		
ST89-0652	Enogex Inc.	Arkla Energy Resources	11-14-88	C	04-13-89	28.50
ST89-0653	Enogex Inc.	ANR Pipeline Co	11-14-88	C	04-13-89	28.50
ST89-0654	Enogex Inc.	Natural Gas Pipeline Co. of America, et al	11-14-88	C	04-13-89	28.50
ST89-0655	Enogex Inc.	Natural Gas Pipeline Co. of America	11-14-88	C	04-13-89	28.50

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (cents per MMBTU)
ST89-0656	Enogex Inc.	Phillips Gas Pipeline Co., et al	11-14-88	C	04-13-89	28.50
ST89-0657	Enogex Inc.	Natural Gas Pipeline Co. of America	11-14-88	C	04-13-89	28.50
ST89-0658	Enogex Inc.	Natural Gas Pipeline Co. of America	11-14-88	C	04-13-89	28.50
ST89-0659	Enogex Inc.	ANR Pipeline Co.	11-14-88	C	04-13-89	28.50
ST89-0660	Enogex Inc.	ANR Pipeline Co.	11-14-88	C	04-13-89	28.50
ST89-0661	Enogex Inc.	Phillips Gas Pipeline Co.	11-14-88	C	04-13-89	28.50
ST89-0662	Enogex Inc.	ANR Pipeline Co	11-14-88	C	04-13-89	28.50
ST89-0663	Enogex Inc.	Phillips Gas Pipeline Co.	11-14-88	C	04-13-89	28.50
ST89-0664	Enogex Inc.	Phillips Gas Pipeline Co	11-14-88	C	04-13-89	28.50
ST89-0665	Enogex Inc.	ANR Pipeline Co	11-14-88	C	04-13-89	28.50
ST89-0666	Enogex Inc.	Natural Gas Pipeline Co. of America	11-14-88	C	04-13-89	28.50
ST89-0667	Enogex, Inc.	Arkla Energy Resources	11-14-88	C	04-13-89	28.50
ST89-0668	Enogex, Inc.	Natural Gas Pipeline Co. of America	11-14-88	C	04-13-89	28.50
ST89-0669	Enogex, Inc.	ANR Pipeline Co.	11-14-88	C	04-13-89	28.50
ST89-0670	Natural Gas Pipeline Co. of America	CNG Trading Co	11-14-88	G-S		
ST89-0671	Transcontinental Gas Pipe Line Corp.	Transco Energy Marketing Co	11-14-88	G-S		
ST89-0672	Transcontinental Gas Pipe Line Corp.	Trunkline Gas Co.	11-14-88	G		
ST89-0673	Transcontinental Gas Pipe Line Corp.	Delmarva Power and Light Co.	11-14-88	B		
ST89-0674	Transcontinental Gas Pipe Line Corp.	Apache Transmission Corp.	11-14-88	B		
ST89-0675	Transcontinental Gas Pipe Line Corp.	South Jersey Gas Co.	11-14-88	B		
ST89-0676	Northwest Pipeline Corp.	Northwest Natural Gas Co.	11-14-88	B		
ST89-0677	Northwest Pipeline Corp.	Williams Gas Marketing Co.	11-14-88	G-S		
ST89-0678	Northwest Pipeline Corp.	Williams Gas Marketing Co.	11-14-88	G-S		
ST89-0679	Phillips Gas Pipeline Co.	Intersearch Gas Corp.	11-14-88	B		
ST89-0680	Questar Pipeline Co.	Gossner Foods, Inc.	11-14-88	G-S		
ST89-0681	United Texas Transmission Co.	United Gas Pipe Line Co., et al	11-14-88	C		
ST89-0682	Midcon Texas Pipeline Corp.	Natural Gas Pipeline Co. of America	11-14-88	C		
ST89-0683	United Texas Transmission Co.	Natural Gas Pipeline Co. of America	11-14-88	C		
ST89-0684	Valero Transmission, L.P.	El Paso Natural Gas Co.	11-14-88	C		
ST89-0685	Tennessee Gas Pipeline Co.	City of Adamsville	11-14-88	B		
ST89-0686	Tennessee Gas Pipeline Co.	Boston Gas Co.	11-14-88	B		
ST89-0687	Texas Gas Transmission Corp.	Clinton Gas Marketing	11-14-88	G-S		
ST89-0688	Texas Gas Transmission Corp.	Peoples Gas Co., et al.	11-14-88	B		
ST89-0689	Texas Gas Transmission Corp.	Conoco, Inc.	11-14-88	G-S		
ST89-0690	United Gas Pipe Line Co.	Texaco Gas Marketing, Inc.	11-14-88	G-S		
ST89-0691	United Gas Pipe Line Co.	PSI, Inc.	11-14-88	G-S		
ST89-0692	United Gas Pipe Line Co.	Texaco Gas Marketing, Inc.	11-14-88	G-S		
ST89-0693	United Gas Pipe Line Co.	Victoria Gas Corp.	11-14-88	G-S		
ST89-0694	Gulf Energy Pipeline Co.	Trunkline Gas Co.	11-15-88	C		
ST89-0695	Questar Pipeline Co.	Associated Intrastate Pipeline Co.	11-14-88	B		
ST89-0696	Transcontinental Gas Pipe Line Corp.	Shell Gas Trading Co.	11-14-88	G-S		
ST89-0697	Transcontinental Gas Pipe Line Corp.	Southern California Gas Co., et al.	11-14-88	B		
ST89-0698	Columbia Gulf Transmission Co.	Connecticut Natural Gas Corp.	11-15-88	B		
ST89-0699	Columbia Gulf Transmission Co.	Penn. & Southern Gas Co., et al.	11-15-88	B		
ST89-0700	Columbia Gulf Transmission Co.	Commonwealth Gas Co.	11-14-88	B		
ST89-0701	Tennessee Gas Pipeline Co.	Reliance Pipeline Co	11-15-88	B		
ST89-0702	Tennessee Gas Pipeline Co.	PSI, Inc.	11-15-88	G-S		
ST89-0703	Texas Eastern Transmission Corp.	City of Cobden	11-14-88	B		
ST89-0704	Texas Eastern Transmission Corp.	Neches Gas Distribution Co.	11-14-88	B		
ST89-0705	Texas Eastern Transmission Corp.	Mountaineer Gas Co.	11-14-88	B		
ST89-0706	Texas Eastern Transmission Corp.	Equitable Gas Co.	11-14-88	B		
ST89-0707	Texas Eastern Transmission Corp.	Columbia Gas of Pennsylvania, Inc.	11-14-88	B		
ST89-0708	Texas Eastern Transmission Corp.	City of Chireno	11-14-88	B		
ST89-0709	Texas Eastern Transmission Corp.	Cincinnati Gas and Electric Co.	11-14-88	B		
ST89-0710	Texas Eastern Transmission Corp.	Peoples Natural Gas Co.	11-14-88	B		
ST89-0711	Texas Eastern Transmission Corp.	Cincinnati Gas and Electric Co.	11-14-88	B		
ST89-0712	Texas Eastern Transmission Corp.	Columbia Gas of Ohio, Inc.	11-14-88	B		
ST89-0713	Texas Eastern Transmission Corp.	Woodward Pipeline, Inc.	11-14-88	B		
ST89-0714	Trunkline Gas Co.	City of Newbern	11-14-88	B		
ST89-0715	Panhandle Eastern Pipe Line Co.	Central Illinois Light Co.	11-14-88	B		
ST89-0716	ANR Pipeline Co	Michigan Gas Co.	11-14-88	B		
ST89-0717	ANR Pipeline Co	West Ohio Gas Co	11-14-88	B		
ST89-0718	ANR Pipeline Co	Wisconsin Natural Gas Co	11-14-88	B		
ST89-0719	ANR Pipeline Co	City of Stanberry	11-14-88	B		
ST89-0720	ANR Pipeline Co	Gulf Fuels, Inc	11-14-88	B		
ST89-0721	ANR Pipeline Co	Wisconsin Gas Co	11-14-88	B		
ST89-0722	ANR Pipeline Co	Wisconsin Fuel and Light Co	11-14-88	B		
ST89-0723	ANR Pipeline Co	Ohio Gas Co	11-14-88	B		
ST89-0724	ANR Pipeline Co	Michigan Consolidated Gas Co	11-14-88	B		
ST89-0725	Williams Natural Gas Co	City of Mulberry	11-15-88	G-S		
ST89-0726	Williams Natural Gas Co	MEGA Operating Limited Partnership	11-15-88	G-S		
ST89-0727	Williams Natural Gas Co	St. Francis Hospital & Medical Center	11-15-88	G-S		
ST89-0728	Williams Natural Gas Co	Apache Corp	11-15-88	G-S		
ST89-0729	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co	11-15-88	B		
ST89-0730	Natural Gas Pipeline Co. of America	Wisconsin Southern Gas Co., Inc	11-15-88	B		
ST89-0731	Natural Gas Pipeline Co. of America	Iowa Southern Utilities Co	11-15-88	B		
ST89-0732	Transcontinental Gas Pipe Line Corp	Delmarva Power and Light Co	11-15-88	B		
ST89-0733	Transcontinental Gas Pipe Line Corp	Delmarva Power and Light Co	11-15-88	B		
ST89-0734	United Gas Pipe Line Co	Amoco Production Co.	11-15-88	G-S		

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date[2]	Transportation rate (cents per MMBTU)
ST89-0735	United Gas Pipe Line Co	Chevron U.S.A	11-15-88	G-S		
ST89-0736	United Gas Pipe Line Co	Amoco Production Co	11-15-88	G-S		
ST89-0737	United Gas Pipe Line Co	Valley Gas Co., et al	11-15-88	B		
ST89-0738	United Gas Pipe Line Co	Brock Gas Systems and Equipment Co	11-15-88	G-S		
ST89-0739	Transcontinental Gas Pipe Line Corp	United Cities Gas Co., SC Div	11-15-88	B		
ST89-0740	ANR Pipeline Co	EP Operating Co	11-15-88	G-S		
ST89-0741	Valero Transmission, L.P	Tennessee Gas Pipeline Co	11-16-88	C		
ST89-0742	Panhandle Eastern Pipe Line Co	Western Gas Marketing USA, LTD	11-16-88	G-S		
ST89-0743	Texas Gas Transmission Corp	Total Minatome Corp	11-16-88	G-S		
ST89-0744	Texas Gas Transmission Corp	City of Alexandria, et al	11-16-88	B		
ST89-0745	Texas Gas Transmission Corp	Corning Nat. Gas Corp., et al	11-16-88	B		
ST89-0746	Texas Gas Transmission Corp	BP Gas Transmission Co	11-16-88	B		
ST89-0747	Texas Gas Transmission Corp	BP Gas Transmission Co	11-16-88	B		
ST89-0748	Texas Gas Transmission Corp	Total Minatome Corp	11-16-88	G-S		
ST89-0749	Texas Gas Transmission Corp	Total Minatome Corp	11-16-88	G-S		
ST89-0750	Texas Gas Transmission Corp	Total Minatome Corp	11-16-88	G-S		
ST89-0751	Texas Gas Transmission Corp	Total Minatome Corp	11-16-88	G-S		
ST89-0752	ANR Pipeline Co	Michigan Consolidated Gas Co	11-16-88	B		
ST89-0753	ANR Pipeline Co	Wisconsin Power and Light Co	11-16-88	B		
ST89-0754	Natural Gas Pipeline Co. of America	Quivira Gas Co	11-17-88	B		
ST89-0755	Natural Gas Pipeline Co. of America	Natural Gas Clearinghouse, Inc	11-15-88	G-S		
ST89-0756	Western Gas Supply Co	El Paso Natural Gas Co	11-17-88	C		
ST89-0757	Delhi Gas Pipeline Corp	Tennessee Gas Pipeline Co	11-17-88	C		
ST89-0758	Houston Pipe Line Co	Northern Natural Gas Co	11-17-88	C		
ST89-0759	Houston Pipe Line Co	United Gas Pipe Line Co	11-17-88	C		
ST89-0760	Houston Pipe Line Co	Transcontinental Gas Pipe Line Corp	11-17-88	C		
ST89-0761	Enserch Gas Transmission Co	Trunkline Gas Co	11-17-88	C		
ST89-0762	Lone Star Gas Co	Natural Gas P/L Co. of America, et al	11-17-88	C		
ST89-0763	Delhi Gas Pipeline Corp	Natural Gas Pipeline Co. of America	11-17-88	C	04-16-89	35.00
ST89-0764	Tennessee Gas Pipeline Co	LL & E Gas Marketing, Inc	11-17-88	G-S		
ST89-0765	Tennessee Gas Pipeline Co	NGC Intrastate Pipeline Co	11-17-88	B		
ST89-0766	Texas Gas Transmission Corp	Ford Motor Co	11-17-88	G-S		
ST89-0767	Texas Gas Transmission Corp	Ford Motor Co	11-17-88	G-S		
ST89-0768	Texas Gas Transmission Corp	Ford Motor Co	11-17-88	G-S		
ST89-0769	Texas Gas Transmission Corp	Ford Motor Co	11-17-88	G-S		
ST89-0770	Texas Gas Transmission Corp	Ford Motor Co	11-17-88	G-S		
ST89-0771	United Gas Pipe Line Co	Laser Marketing Co	11-17-88	G-S		
ST89-0772	United Gas Pipe Line Co	Louisiana Gas Service Co	11-17-88	B		
ST89-0773	United Gas Pipe Line Co	Intercon Gas, Inc	11-17-88	G-S		
ST89-0774	United Gas Pipe Line Co	Entex, Inc	11-17-88	B		
ST89-0775	United Gas Pipe Line Co	Texaco Gas Marketing, Inc	11-17-88	G-S		
ST89-0776	United Gas Pipe Line Co	Acadian Gas Pipeline System	11-17-88	B		
ST89-0777	Arkla Energy Resources	Northern States Power Co	11-17-88	B		
ST89-0778	ONG Transmission Co	Williams Natural Gas Co	11-18-88	C	04-17-89	24.32
ST89-0779	ONG Transmission Co	Panhandle Eastern Pipe Line Co	11-18-88	C	04-17-89	34.32
ST89-0780	Exxon Gas System, Inc	Texas Eastern Transmission Corp	11-18-88	C	04-17-89	12.80
ST89-0781	Tennessee Gas Supply Co	Tennessee Gas Pipeline Co., et al	11-18-88	C		
ST89-0782	El Paso Natural Gas Co	City of Long Beach	11-18-88	B		
ST89-0783	Natural Gas Pipeline Co. of America	Peoples Gas Light & Coke Co	11-18-88	B		
ST89-0784	Natural Gas Pipeline Co. of America	Wisconsin Natural Gas Co	11-18-88	B		
ST89-0785	Southern Natural Gas Co	Consolidated Fuel Corp	11-18-88	G-S		
ST89-0786	Southern Natural Gas Co	Shell Gas Trading Co	11-18-88	G-S		
ST89-0787	United Gas Pipe Line Co	United Texas Transmission Co	11-18-88	B		
ST89-0788	United Gas Pipe Line Co	Chevron U.S.A	11-18-88	G-S		
ST89-0789	Northern Natural Gas Co	Minnegasco, Inc	11-16-88	B		
ST89-0790	Northern Natural Gas Co	Watertown Municipal Utility	11-16-88	B		
ST89-0791	Northern Natural Gas Co	Wisconsin Gas Co	11-16-88	B		
ST89-0792	Northern Natural Gas Co	NGC Intrastate Pipeline Co	11-16-88	B		
ST89-0793	ANR Pipeline Co	Tennessee Gas Pipeline Co	11-18-88	G		
ST89-0794	ANR Pipeline Co	Entrade Corp	11-18-88	G-S		
ST89-0795	ANR Pipeline Co	PSI, Inc	11-18-88	G-S		
ST89-0796	ANR Pipeline Co	NGC Intrastate Pipeline Co	11-16-88	B		
ST89-0797	ANR Pipeline Co	Ohio Gas Co	11-16-88	B		
ST89-0798	ANR Pipeline Co	Baltimore Gas and Electric Co	11-16-88	B		
ST89-0799	ANR Pipeline Co	Louisville Gas & Electric Co	11-16-88	B		
ST89-0800	ANR Pipeline Co	Michigan Consolidated Gas Co	11-16-88	B		
ST89-0801	ANR Pipeline Co	Wisconsin Gas Co	11-16-88	B		
ST89-0802	Columbia Gulf Transmission Co	Louisville Gas & Electric Co	11-16-88	B		
ST89-0803	Columbia Gulf Transmission Co	City Gas Co	11-16-88	B		
ST89-0804	Columbia Gulf Transmission Co	Southern Conn. Gas Co., et al	11-16-88	B		
ST89-0805	Northern Natural Gas Co	Lone Star Gas Co	11-16-88	B		
ST89-0806	El Paso Natural Gas Co	Southern California Gas Co	11-21-88	B		
ST89-0807	El Paso Natural Gas Co	Southern California Gas Co	11-21-88	B		
ST89-0808	Tennessee Gas Pipeline Co	Pennsylvania Gas and Water Co	11-21-88	B		
ST89-0809	Tennessee Gas Pipeline Co	Jala Pipe Line Corp	11-21-88	B		
ST89-0810	Tennessee Gas Pipeline Co	Western Massachusetts Electric Co	11-21-88	G-S		
ST89-0811	Natural Gas Pipeline Co. of America	Excel Intrastate Pipeline Co	11-21-88	B		
ST89-0812	Natural Gas Pipeline Co. of America	Panhandle Trading co	11-21-88	G-S		
ST89-0813	Channel Industries Gas Co	Tennessee Gas Pipeline Co., et al	11-21-88	C		

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date[2]	Transportation rate (cents per MMBTU)
ST89-0814	Tennagasco Gas Supply Co	Tennessee Gas Pipeline Co	11-21-88	C		
ST89-0815	Panhandle Eastern Pipe Line Co	Kansas Pipeline Co	11-21-88	B		
ST89-0816	Panhandle Eastern Pipe Line Co	Dayton Power and Light Co	11-21-88	G-S		
ST89-0817	Panhandle Eastern Pipe Line Co	Northern Indiana Fuel & Light Co	11-21-88	B		
ST89-0818	Panhandle Eastern Pipe Line Co	Access Energy Pipeline Corp	11-21-88	B		
ST89-0819	Panhandle Eastern Pipe Line Co	Archer Daniels Midland Co	11-21-88	G-S		
ST89-0820	Panhandle Eastern Pipe Line Co	Illinois Power Co	11-21-88	B		
ST89-0821	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	11-21-88	B		
ST89-0822	Panhandle Eastern Pipe Line Co	KPL Gas Service	11-21-88	B		
ST89-0823	Panhandle Eastern Pipe Line Co	Illinois Power Co	11-21-88	B		
ST89-0824	Columbia Gulf Transmission Co	Chevron U.S.A	11-21-88	G-S		
ST89-0825	United Gas Pipe Line Co	Mississippi Fuel Co	11-21-88	B		
ST89-0826	United Gas Pipe Line Co	Citizens Gas Supply Corp	11-21-88	G-S		
ST89-0827	United Gas Pipe Line Co	Louisiana Gas Service Co	11-21-88	B		
ST89-0828	United Gas Pipe Line Co	Texaco, Inc	11-21-88	G-S		
ST89-0829	United Gas Pipe Line Co	Seagull Marketing Services, Inc	11-21-88	G-S		
ST89-0830	Northern Natural Gas Co	Canterra Natural Gas, Inc	11-21-88	G-S		
ST89-0831	Northern Natural Gas Co	Mobil Natural Gas, Inc	11-21-88	G-S		
ST89-0832	Northern Natural Gas Co	Texaco Gas Marketing, Inc	11-21-88	G-S		
ST89-0833	Northern Natural Gas Co	Mobil Natural Gas, Inc	11-21-88	G-S		
ST89-0834	Northern Natural Gas Co	Amoco Production Co	11-21-88	G-S		
ST89-0835	Northern Natural Gas Co	Apache Corp	11-21-88	G-S		
ST89-0836	Northern Natural Gas Co	Northern States Power Co	11-21-88	B		
ST89-0837	Northern Natural Gas Co	Wisconsin Gas Co	11-21-88	B		
ST89-0838	Northern Natural Gas Co	Colony Pipeline Corp	11-21-88	B		
ST89-0839	Colorado Interstate Gas Co	Cominco American, Inc	11-21-88	G-S		
ST89-0840	Colorado Interstate Gas Co	Northern Gas Co	11-21-88	B		
ST89-0841	Colorado Interstate Gas Co	Cominco American, Inc	11-21-88	G-S		
ST89-0842	Colorado Interstate Gas Co	Union Pacific Resources Co	11-21-88	G-S		
ST89-0843	Algonquin Gas Transmission Co	City of Middleborough	11-21-88	B		
ST89-0844	Algonquin Gas Transmission Co	Central Hudson Gas and Electric Co	11-21-88	B		
ST89-0845	Algonquin Gas Transmission Co	Fall River Gas Co	11-21-88	B		
ST89-0846	Northwest Pipeline Corp	Gulf Gas Utilities Co	11-21-88	B		
ST89-0847	United Gas Pipe Line Co	Tennessee Gas Pipeline Co	11-21-88	G		
ST89-0848	ONG Transmission Co	Natural Gas Pipeline Co. of America	11-22-88	C	04-21-89	24.32
ST89-0849	United Texas Transmission Co	Natural Gas Pipeline Co. of America	11-22-88	C		
ST89-0850	United Texas Transmission Co	Natural Gas Pipeline Co. of America	11-22-88	C		
ST89-0851	United Texas Transmission Co	Natural Gas Pipeline Co. of America	11-22-88	C		
ST89-0852	United Texas Transmission Co	United Gas Pipe Line Co	11-22-88	C		
ST89-0853	Natural Gas Pipeline Co. of America	BP Gas Marketing Co	11-22-88	G-S		
ST89-0854	United Gas Pipe Line Co	Arco Oil & Gas Co	11-22-88	G-S		
ST89-0855	United Gas Pipe Line Co	Arkla Energy Marketing	11-22-88	G-S		
ST89-0856	United Gas Pipe Line Co	Entex, Inc	11-22-88	B		
ST89-0857	Texas Eastern Transmission Corp	National Fuel Gas Distribution Corp	11-22-88	B		
ST89-0858	Texas Eastern Transmission Corp	Reliance Pipeline Co	11-22-88	B		
ST89-0859	Texas Eastern Transmission Corp	Peoples Natural Gas Co	11-22-88	B		
ST89-0860	Texas Eastern Transmission Corp	Kenges of Texas, Inc	11-22-88	B		
ST89-0861	Texas Eastern Transmission Corp	TPC Pipeline Co	11-22-88	B		
ST89-0862	Texas Eastern Transmission Corp	Niagara Mohawk Power Corp	11-22-88	B		
ST89-0863	Texas Eastern Transmission Corp	Hanley and Bird	11-22-88	B		
ST89-0864	Texas Eastern Transmission Corp	Cincinnati Gas and Electric Co	11-22-88	B		
ST89-0865	EL Paso Natural Gas Co	Cabot Gas Supply Corp	11-23-88	B		
ST89-0866	EL Paso Natural Gas Co	Meridian Oil Hydrocarbons, Inc	11-23-88	B		
ST89-0867	Tennessee Gas Pipeline Co	Delhi Gas Pipeline Corp	11-23-88	B		
ST89-0868	Tennessee Gas Pipeline Co	Energy Marketing Services, Inc	11-23-88	G-S		
ST89-0869	Tennessee Gas Pipeline Co	Tejas Hydrocarbons Co	11-23-88	B		
ST89-0870	Tennessee Gas Pipeline Co	Cornerstone Production Corp	11-23-88	G-S		
ST89-0871	Tennessee Gas Pipeline Co	Lighthouse Gas Marketing Co	11-23-88	G-S		
ST89-0872	Tarpon Transmission Co	Panhandle Trading Co	11-23-88	G-S		
ST89-0873	Transcontinental Gas Pipe Line Corp	Philadelphia Gas Works, Inc	11-23-88	B		
ST89-0874	United Gas Pipe Line Co	Huggs Intrastate Gas Transmission, LTD	11-23-88	B		
ST89-0875	United Gas Pipe Line Co	Jala Pipe Line Corp	11-23-88	B		
ST89-0876	United Gas Pipe Line Co	Midcon Marketing Corp	11-23-88	G-S		
ST89-0877	United Gas Pipe Line Co	Marathon Oil Co	11-23-88	G-S		
ST89-0878	United Gas Pipe Line Co	Mobil National Gas, Inc	11-23-88	G-S		
ST89-0879	Texas Gas Transmission Corp	Txg Gas Marketing Co	11-23-88	G-S		
ST89-0880	Texas Gas Transmission Corp	Txg Gas Marketing Co	11-23-88	G-S		
ST89-0881	Texas Gas Transmission Corp	Corning Natural Gas Corp., ET AL	11-23-88	B		
ST89-0882	Texas Gas Transmission Corp	Columbia Gas of Ohio, Inc	11-23-88	B		
ST89-0883	Texas Gas Transmission Corp	Columbia Gas of Ohio, Inc	11-23-88	B		
ST89-0884	Texas Gas Transmission Corp	Columbia Gas of Ohio, Inc	11-23-88	B		
ST89-0885	Texas Gas Transmission Corp	Txg Gas Marketing Co	11-23-88	G-S		
ST89-0886	Texas Gas Transmission Corp	Columbia Gas of Ohio, Inc	11-23-88	B		
ST89-0887	Texas Gas Transmission Corp	Columbia Gas of Ohio, Inc	11-23-88	B		
ST89-0888	Texas Gas Transmission Corp	Columbia Gas of Ohio, Inc	11-23-88	B		
ST89-0889	Texas Gas Transmission Corp	Txg Gas Marketing Co	11-23-88	G-S		
ST89-0890	Texas Gas Transmission Corp	Columbia Gas of Ohio, Inc	11-23-88	B		
ST89-0891	Tennessee Gas Pipeline Co	Mountaineer Gas Co	11-25-88	B		
ST89-0892	Tennessee Gas Pipeline Co	Entrade Corp	11-25-88	G-S		

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date[2]	Transportation rate (cents per MMBTU)
ST89-0893	Northern Natural Gas Co.	Union Exploration Partners, LTD	11-25-88	G-S		
ST89-0894	Northern Natural Gas Co.	Conoco, Inc.	11-25-88	G-S		
ST89-0895	Northern Natural Gas Co.	Sun Operating Limited Partnership	11-25-88	G-S		
ST89-0896	Northern Natural Gas Co.	Tranam Energy Inc.	11-25-88	G-S		
ST89-0897	Northern Natural Gas Co.	Peoples Natural Gas Co.	11-25-88	B		
ST89-0898	Northern Natural Gas Co.	Texaco, Inc.	11-25-88	G-S		
ST89-0899	Williston Basin Interstate P/L Co.	Mgtc, Inc.	11-25-88	B		
ST89-0900	Williston Basin Interstate P/L Co.	Northern Illinois Gas Co.	11-25-88	B		
ST89-0901	Williston Basin Interstate P/L Co.	Mgtc, Inc.	11-25-88	B		
ST89-0902	Williston Basin Interstate P/L Co.	Montana-Dakota Utilities Co.	11-25-88	B		
ST89-0903	Williston Basin Interstate P/L Co.	Montana-Dakota Utilities Co.	11-25-88	B		
ST89-0904	Williston Basin Interstate P/L Co.	Quivira Gas Co.	11-25-88	B		
ST89-0905	Williston Basin Interstate P/L Co.	Quivira Gas Co.	11-25-88	B		
ST89-0906	Williston Basin Interstate P/L Co.	Quivira Gas Co.	11-25-88	B		
ST89-0907	Columbia Gulf Transmission Co.	East Ohio Gas Co.	11-23-88	B		
ST89-0908	Columbia Gulf Transmission Co.	Florida Gas Transmission Co.	11-23-88	G		
ST89-0909	Columbia Gulf Transmission Co.	Tennessee Gas Pipeline Co.	11-23-88	G		
ST89-0910	Columbia Gulf Transmission Co.	Louisiana Gas System, Inc.	11-23-88	B		
ST89-0911	Columbia Gulf Transmission Co.	Chevron U.S.A.	11-23-88	G-S		
ST89-0912	Columbia Gulf Transmission Co.	Public Service Electric and Gas Co.	11-23-88	B		
ST89-0913	Northwest Pipeline Corp.	Illinois Power Co.	11-23-88	B		
ST89-0914	Texas Eastern Transmission Corp.	East Ohio Co.	11-23-88	B		
ST89-0915	Williston Basin Interstate P/L Co.	Quivira Gas Co.	11-25-88	B		
ST89-0916	Phillips Natural Gas Co.	Phillips Gas Pipeline Co.	11-25-88	C	04-24-89	35.55
ST89-0917	Phillips Natural Gas Co.	Phillips Gas Pipeline Co.	11-25-88	C	04-24-89	35.55
ST89-0918	Delhi Gas Pipeline Corp.	Phillips Gas Pipeline Co.	11-25-88	C	04-24-89	46.78
ST89-0919	Valero Transmission, L.P.	Natural Gas Pipeline Co. of America	11-25-88	C		
ST89-0920	Houston Pipe Line Co.	Natural Gas Pipeline Co. of America	11-25-88	C		
ST89-0921	Houston Pipe Line Co.	Tennessee Gas Pipeline Co.	11-25-88	C		
ST89-0922	Oasis Pipe Line Co.	El Paso Natural Gas Co.	11-25-88	C		
ST89-0923	Cabot Pipeline Corp.	El Paso Natural Gas Co., et al.	11-25-88	C	4-24-89	53.05
ST89-0924	Trunkline Gas Co.	Conoco, Inc.	11-28-88	G-S		
ST89-0925	Trunkline Gas Co.	American Central Gas Marketing Co.	11-28-88	G-S		
ST89-0926	Trunkline Gas Co.	Eastex Gas Transmission Co.	11-28-88	B		
ST89-0927	Trunkline Gas Co.	Northern Indiana Public Service Co.	11-28-88	B		
ST89-0928	Trunkline Gas Co.	Baltimore Gas and Electric Co.	11-28-88	B		
ST89-0929	Trunkline Gas Co.	Alabama Gas Corp., et al.	11-28-88	B		
ST89-0930	Trunkline Gas Co.	Peoples Natural Gas Co., et al.	11-28-88	B		
ST89-0931	Delhi Gas Pipeline Corp.	Cincinnati Gas and Electric Co.	11-28-88	C		
ST89-0932	Ozona Residue Systems Co.	Northern Natural Gas Co.	11-28-88	C		
ST89-0933	Moraine Pipeline Co.	Natural Gas Pipeline Co. of America	11-28-88	G		
ST89-0934	Moraine Pipeline Co.	PST, Inc.	11-28-88	G-S		
ST89-0935	Moraine Pipeline Co.	Wisconsin Natural Gas Co.	11-28-88	B		
ST89-0936	Natural Gas Pipeline Co. of America	Wisconsin Natural Gas Co.	11-28-88	B		
ST89-0937	Natural Gas Pipeline Co. of America	Texaco Producing, Inc.	11-28-88	G-S		
ST89-0938	United Gas Pipe Line Co.	Santa Fe International Corp.	11-28-88	G-S		
ST89-0939	United Gas Pipe Line Co.	Sun Operating Limited Partnership	11-28-88	G-S		
ST89-0940	Trunkline Gas Co.	Transtate Gas Service Co.	11-28-88	G-S		
ST89-0941	Trunkline Gas Co.	Ohio Valley Gas Corp.	11-28-88	B		
ST89-0942	Colorado Interstate Gas Co.	Northern Indiana Fuel & Light Co.	11-28-88	B		
ST89-0943	Colorado Interstate Gas Co.	Energy Pipeline Co.	11-28-88	B		
ST89-0944	Colorado Interstate Gas Co.	MGTC, Inc.	11-28-88	B		
ST89-0945	Colorado Interstate Gas Co.	NGC Intrastate Pipeline Co.	11-28-88	B		
ST89-0946	Valero Transmission, L.P.	El Paso Natural Gas Co.	11-29-88	C		
ST89-0947	Valero Transmission, L.P.	Tennessee Gas Pipeline Co.	11-29-88	C		
ST89-0948	Northern Natural Gas Co.	Hadson Gas Systems, Inc.	11-29-88	G-S		
ST89-0949	Tennessee Gas Pipeline Co.	Columbia Gas Transmission Corp.	11-29-88	G		
ST89-0950	BP Gas Transmission Co.	ANR Pipeline Co., et al.	11-30-88	C	04-29-89	9.50
ST89-0951	BP Gas Transmission Co.	ANR Pipeline Co., et al.	11-30-88	C	04-29-89	5.00
ST89-0952	Valero Transmission, L.P.	Trunkline Gas Co.	11-30-88	C		
ST89-0953	Sabine Pipe Line Co.	Excel Intrastate Pipeline Co.	11-30-88	B		
ST89-0954	Sabine Pipe Line Co.	Excel Intrastate Pipeline Co.	11-30-88	B		
ST89-0955	Sabine Pipe Line Co.	Indiana Gas Co., et al.	11-30-88	B		
ST89-0956	Trunkline Gas Co.	East Ohio Gas Co.	11-30-88	B		
ST89-0957	Trunkline Gas Co.	Dayton Power & Light, et al.	11-30-88	B		
ST89-0958	Phillips Natural Gas Co.	Phillips Gas Pipeline Co.	11-30-88	C	04-29-89	35.55
ST89-0959	Northern Border Pipeline Co.	Northern Natural Gas Co.	11-30-88	G		
ST89-0960	Williams Natural Gas Co.	Terra Resources, Inc.	11-30-88	G-S		
ST89-0961	Williams Natural Gas Co.	Associated Natural Gas Co., Inc.	11-30-88	G-S		
ST89-0962	Williams Natural Gas Co.	Reliance Gas Marketing Co.	11-30-88	B		
ST89-0963	Williams Natural Gas Co.	Union Gas System, Inc.	11-30-88	B		
ST89-0964	Gas Transport, Inc.	Conoco, Inc.	11-30-88	G-S		
ST89-0965	Northwest Pipeline Corp.	PPG Industries	11-30-88	G-S		
ST89-0966	United Gas Pipe Line Co.	Catamount Natural Gas, Inc.	11-30-88	G-S		
ST89-0967	United Gas Pipe Line Co.	KM Gas Co.	11-30-88	G-S		
ST89-0968	El Paso Natural Gas Co.	Public Service Co of New Mexico	11-30-88	B		
ST89-0969	Transok, Inc.	Natural Gas Pipeline Co. of America	11-30-88	C	04-29-89	32.50
ST89-0970	Transok, Inc.	Natural Gas Pipeline Co. of America	11-30-88	C	04-29-89	32.50
ST89-0971	Transok, Inc.	Natural Gas Pipeline Co. of America	11-30-88	C	04-29-89	32.50

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date[2]	Transportation rate (cents per MMBTU)
ST89-0972	ANR Pipeline Co	Coastal States Gas Transmission Co.	11-30-88	B		
ST89-0973	ANR Pipeline Co	Michigan Consolidated Gas Co.	11-30-88	B		
ST89-0974	ANR Pipeline Co	Trinity Pipeline, Inc.	11-30-88	B		
ST89-0975	ANR Pipeline Co	Fountaintown Gas Co.	11-30-88	B		
ST89-0976	ANR Pipeline Co	Michigan Gas Co.	11-30-88	B		
ST89-0977	ANR Pipeline Co	Coastal States Gas Transmission Co.	11-30-88	B		
ST89-0978	CNG Transmission Corp	Nestle Foods Corp.	11-30-88	G-S		
ST89-0979	CNG Transmission Corp	Gulf Oil Corp.	11-30-88	G-S		
ST89-0980	CNG Transmission Corp	Sharon Tube Co.	11-30-88	G-S		
ST89-0981	CNG Transmission Corp	Natural Gas Clearinghouse, Inc	11-30-88	G-S		
ST89-0982	CNG Transmission Corp	Peoples Natural Gas Co	11-30-88	B		
ST89-0983	CNG Transmission Corp	General Chemical	11-30-88	G-S		
ST89-0984	CNG Transmission Corp	IESCO	11-30-88	G-S		
ST89-0985	CNG Transmission Corp	Beechnut Nutrition Corp.	11-30-88	G-S		
ST89-0986	CNG Transmission Corp	Hammermill Paper Co.	11-30-88	G-S		
ST89-0987	CNG Transmission Corp	Robinson & Smith	11-30-88	G-S		
ST89-0988	CNG Transmission Corp	Revere Copper Products, Inc	11-30-88	G-S		
ST89-0989	CNG Transmission Corp	BP Gas Marketing Co.	11-30-88	G-S		
ST89-0990	CNG Transmission Corp	Special Metals Corp.	11-30-88	G-S		
ST89-0991	CNG Transmission Corp	Bristol Myers	11-30-88	G-S		
ST89-0992	CNG Transmission Corp	Johnstown Knitting Mills	11-30-88	G-S		
ST89-0993	CNG Transmission Corp	BP Gas Marketing Co.	11-30-88	G-S		
ST89-0994	CNG Transmission Corp	The City of Syracuse	11-30-88	G-S		
ST89-0995	CNG Transmission Corp	Access Energy Corp.	11-30-88	G-S		
ST89-0996	CNG Transmission Corp	Scott Paper Co.	11-30-88	G-S		
ST89-0997	CNG Transmission Corp	Will & Bauner, Inc.	11-30-88	G-S		
ST89-0998	CNG Transmission Corp	Welch Allyn, Inc.	11-30-88	G-S		
ST89-0999	CNG Transmission Corp	Nelson A. Taylor Company, Inc	11-30-88	G-S		
ST89-1000	CNG Transmission Corp	Gulf Ohio Corp	11-30-88	G-S		
ST89-1001	CNG Transmission Corp	Alcan Rolled Products	11-30-88	G-S		
ST89-1002	CNG Transmission Corp	CNG Transmission Co.	11-30-88	G-S		
ST89-1003	CNG Transmission Corp	Latrobe Steel Co.	11-30-88	G-S		
ST89-1004	CNG Transmission Corp	Cranberry Pipeline Corp.	11-30-88	B		
ST89-1005	CNG Transmission Corp	Boston Gas Co.	11-30-88	B		
ST89-1006	CNG Transmission Corp	Upton Court, Wesley-on-East LTD.	11-30-88	G-S		
ST89-1007	CNG Transmission Corp	Natural Gas Clearinghouse, Inc	11-30-88	G-S		
ST89-1008	CNG Transmission Corp	Smiths Laundry & Dry Cleaning	11-30-88	G-S		
ST89-1009	CNG Transmission Corp	BP Gas Marketing Co.	11-30-88	G-S		
ST89-1010	CNG Transmission Corp	Natural Gas Clearinghouse, Inc	11-30-88	G-S		
ST89-1011	CNG Transmission Corp	Capitol Dist. Energy Cent. Cogen. Assoc.	11-30-88	G-S		
ST89-1012	CNG Transmission Corp	Somerset Dyeing & Finishing	11-30-88	G-S		
ST89-1013	CNG Transmission Corp	Pass & Seymour, Inc.	11-30-88	G-S		
ST89-1014	CNG Transmission Corp	Texas Ohio Gas, Inc.	11-30-88	G-S		
ST89-1015	CNG Transmission Corp	Natural Gas Clearinghouse, Inc	11-30-88	G-S		
ST89-1016	CNG Transmission Corp	Pentech Papers, Inc.	11-30-88	G-S		
ST89-1017	CNG Transmission Corp	The Trustees of Hamilton College	11-30-88	G-S		
ST89-1018	CNG Transmission Corp	Cranberry Pipeline Corp.	11-30-88	B		
ST89-1019	CNG Transmission Corp	Natural Gas Clearinghouse, Inc	11-30-88	G-S		
ST89-1020	CNG Transmission Corp	Natural Gas Clearinghouse, Inc	11-30-88	G-S		
ST89-1021	CNG Transmission Corp	Natural Gas Clearinghouse, Inc	11-30-88	G-S		
ST89-1022	CNG Transmission Corp	MCA Manufacturing	11-30-88	G-S		
ST89-1023	CNG Transmission Corp	Iesco	11-30-88	G-S		
ST89-1024	CNG Transmission Corp	Kogas, Inc	11-30-88	G-S		
ST89-1025	CNG Transmission Corp	Rome Strip Steel Co.	11-30-88	G-S		
ST89-1026	CNG Transmission Corp	Brandywine Industrial Gas, Inc.	11-30-88	G-S		
ST89-1027	CNG Transmission Corp	Southern Connecticut Gas Co.	11-30-88	B		
ST89-1028	CNG Transmission Corp	Wayne Finger Lakes Boces	11-30-88	G-S		
ST89-1029	CNG Transmission Corp	Utica Corp.	11-30-88	G-S		
ST89-1030	CNG Transmission Corp	Hussman Corp.	11-30-88	G-S		
ST89-1031	CNG Transmission Corp	Gold Bond Building Products	11-30-88	G-S		
ST89-1032	CNG Transmission Corp	Crown Leather	11-30-88	G-S		
ST89-1033	Colorado Interstate Gas Co.	Citizens Utilities Co.	11-30-88	B		
ST89-1034	Transcontinental Gas Pipe Line Corp	Piedmont Natural Gas Co.	11-30-88	B		
ST89-1035	ANR Pipeline Co	Battle Creek Gas Co.	11-30-88	B		
ST89-1036	ANR Pipeline Co	Missouri Valley Natural Gas Co	11-30-88	B		
ST89-1037	ANR Pipeline Co	Coastal States Gas Transmission Co.	11-30-88	B		
ST89-1038	ANR Pipeline Co	BP Gas Transmission Co.	11-30-88	B		
ST89-1039	ANR Pipeline Co	Consumers Power Co.	11-30-88	B		
ST89-1040	ANR Pipeline Co	NGC Instrastate Pipeline Co.	11-30-88	B		
ST89-1041	ANR Pipeline Co	Wisconsin Public Service Corp.	11-30-88	B		
ST89-1042	ANR Pipeline Co	Baltimore Gas and Electric Co.	11-30-88	B		
ST89-1043	ANR Pipeline Co	Ohio Gas Co.	11-30-88	B		

[1] Notice of transactions does not constitute a determination that filings with Commission regulations in accordance with order No. 436 (Final rule and notice requesting supplemental comments, 50 FR 42,372, 10/18/85).

[2] The Intrastate Pipeline has sought Commission approval of its transportation rate pursuant to § 284.123(B)(2) of the Commission's regulations (18 CFR 284.123(B)(2)). Such rates are deemed fair and equitable if the Commission does not take action by the date indicated.

[FR Doc. 89-2907 Filed 2-6-89; 8:45 am]

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BEST COPY AVAILABLE

[Docket Nos. CP89-702-000, et al.]

United Gas Pipe Line Co., et al.; Natural Gas Certificate Filings

Take notice that the following fillings have been made with the Commission:

1. United Gas Pipe Line Company

[Docket No. CP89-702-000]

January 31, 1989.

Take notice that on January 26, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket CP89-702-000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas for United Texas Petroleum Corporation (UTPC), a producer, under United's blanket certification issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to transport up to 4,120 million Btu equivalent of natural gas per day on an interruptible basis for UTPC. United states it would receive the gas at an existing point of receipt offshore Louisiana, and redeliver the gas for the account of UTPC at an existing interconnection also located offshore Louisiana. United states it commenced service for under UTPC § 284.223(a) on January 13, 1989, as reported in Docket No. ST89-1741.

Comment date: March 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Texas Gas Transmission Corporation

[Docket No. CP89-678-000]

January 31, 1989.

Take notice that on January 23, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed on Docket CP89-678-000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for RMI Company (RMI) under the blanket certificate issued in Docket No. CP88-686-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Gas requests authorization to transport on a peak day up to 4,000 MMBtu of natural gas for RMI, with an estimated average daily quantity of 3,288 MMBtu. On an annual basis, RMI estimates a volume of up to 1,200 MMBtu. The ultimate consumer of the gas would be RMI.

It is stated that transportation service for RMI commenced December 6, 1988, under the 120-day automatic provisions of Section 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-1380.

Comment date: March 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Arkla Energy Resources, a division of Arkla, Inc.

[Docket No. CP89-701-000]

January 31, 1989.

Take notice that on January 26, 1989, Arkla Energy Resources (AER), a division of Arkla, Inc., P.O. Box 21734, Shreveport, Lousiana 71151, filed in Docket No. CP89-701-000 a request pursuant to §§ 157.205 (18 CFR 157.205) of the Commission's Regulations under the Natural Gas Act for authorization to construct and operate two pipeline taps in Lee and Faulkner Counties, Arkansas, for the delivery of gas to Arkansas Louisiana Gas Company (Arkla), a division of Arkla, Inc., for resale, pursuant to AER's blanket certificate issued under section 7 of the Natural Gas Act in Docket Nos. CP82-384-000 and CP82-384-001, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

AER proposes to construct and operate a two-inch tap facility on its JM-1 pipeline in Lee County, Arkansas, to serve approximately 348 consumers in the communities of Moro and Aubry, Arkansas, up to 912 Mfc of gas on a peak day or approximately 33,825 Mcf annually. Estimated cost of the facility is $21,858. AER also proposes to construct and operate a two-inch tap facility on its JM-30 pipeline in Faulkner County, Arkansas to serve approximately 96 consumers in the town of Mt. Vernon, Arkansas, up to 288 Mcf of gas per peak day or approximately 9,185 Mfc annually. Estimated cost of the facility is $13,170.

Comment date: March 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Texas Gas Transmission Corporation

[Docket No. CP89-680-000]

January 31, 1989.

Take notice that on January 23, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-680-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for Unicorp Energy, Inc. (Unicorp) under the blanket certificate issued in Docket No. CP88-686-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Gas requests authorization to transport on a peak day up to 100,000 MMBtu of natural gas for Unicorp, with an estimated average daily quantity of 30,000 MMBtu. On an annual basis, Unicorp estimates a volume of up to 10,950,000 MMBtu. The ultimate consumer of the gas would be Unicorp.

It is stated that transportation service for Unicorp commenced December 3, 1988, under the 120-day automatic provisions of § 284.233(a) of the Commission's Regulations, as reported in Docket No. ST89-1404.

Comment date: March 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Texas Gas Transmission Corporation

[Docket No. CP89-686-000]

February 1, 1989.

Take notice that on January 24, 1989, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP89-686-000, an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon by removal certain measurement facilities in Assumption Parish, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Gas states it has installed the measurement facility to facilitate transportation service for various end-users. It is claimed that this facility was installed under Texas Gas's blanket certificate issued in Docket No. CP82-407-000 and that it is known as the Ballard Exploration—North Thibodaux Meter Station. Texas Gas states that production associated with this facility has been abandoned by the producer and all wells have been plugged.

Comment date: February 22, 1989, in accordance with Standard Paragraph F at the end of this notice.

6. United Gas Pipe Line Company

[Docket No. CP89-705-000]

February 1, 1989.

Take notice that on January 30, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-705-000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, for EnTrade Corporation (EnTrade), a marketer, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to transport up to a maximum of 103,000 MMBtu of natural gas per day for EnTrade from specifc existing receipt points in various states to specific delivery points in various states. United anticipates transporting up to 103,000 MMBtu on a peak day and average day, and 12,360,000 MMBtu annually for EnTrade. United explains that service commmenced November 28, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-1699.

Comment date: March 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP89-677-000]

February 1, 1989.

Take notice that on January 23, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP89-677-000 an application pursuant to section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations for an order authorizing Northern to partially abandon firm sales service to a utility customer, Peoples Natural Gas, Division of Utilicorp United Inc. (Peoples), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern states that Peoples has converted from sales service under Rate Schedule CD-1 to firm transportation service under Rate Schedule FT-1 57,463 Mcf of firm entitlements as of November 1, 1988. It is indicated that the contract demand option made available to Peoples is due to Northern's settlement in Docket No. RP85-206-000 which Northern indicates is generally consistent with Order No. 436 guidelines. It is also indicated that Northern seeks approval in the application to permanently abandon that portion of certificated sales obligation to Peoples which was converted to firm transportation service.

Northern states that Peoples has executed a new CD-1 service agreement reflecting the reduced sales volumes.

Comment date: February 22, 1989, in accordance with Standard Paragraph F at the end of this notice.

8. Natural Gas Company of America

[Docket No. CP89-660-000]

February 1, 1989.

Take notice that on January 18, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed on Docket No. CP89-660-000 pursuant §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act of (18 CFR 157.205) for authorization to transport for CEPEX Inc. (CEPEX) under the blanket certificate issued in Docket No. CP86-582-000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Natural indicates that it proposes to transport up to 26,500 MMBtu per day, on an interruptible basis, on behalf of CEPEX pursuant to a Transportation Agreement dated November 1, 1988 between Natural and CEPEX (Transportation Agreement). The Transportation Agreement Proposes to transport natural gas for CEPEX from points of receipt located in Kansas and Iowa. The point of delivery is located in Nebraska.

Natural further indicates that it commenced this service on December 1, 1988, as reported in Docket No. ST89-1790-000.

Comment date: March 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. United Gas Pipe Line Company

[Docket No. CP89-703-000]

February 1, 1989.

Take notice that on January 26, 1989, United Gas Pipe Line Company, (United) P.O. Box 1478, Houston, Texas, 77251-1478 filed in Docket No. CP89-703-000 a request pursuant to § 157.205 under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Sonat Marketing Company (Sonat), under its blanket authorization issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United would perform the proposed interruptible transportation service for Sonat, a marketer of natural gas, pursuant to a gas transportation service agreement under Rate Schedule ITS dated October 17, 1988, as amended (Contract No. T1-21-1915). The term of the transportation agreement is for a primary term of one month from the first delivery of gas and shall continue in effect for successive one month terms thereafter until terminated. United proposes to transport on a peak day up to 91,670 MMBtu; on an average day up to 91,670 MMBtu; and on an annual basis 33,459,550 MMBtu for Sonat. United proposes to receive the subject gas from various exiting points of receipt on it system in Texas and Louisiana. United would then transport and redeliver such volumes to Sonat at existing points of interconnection in Alabama, Florida and Louisiana for use by industrial end users. The proposed rate to be charged is 32.26 cents per Mcf pursuant to Rate Schedule ITS. United indicates that it would be using existing facilities to provide the proposed transportation service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. United commenced such self-implementing service on December 7, 1988, as reported in Docket No. ST88-1737-000.

Comment date: March 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. ANR Pipeline Company

[Docket No. CP89-699-000]

February 1, 1989.

Take notice that on January 24, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243 filed in Docket No. CP89-699-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization for an additional sales delivery point for Illinois Power Company (IPC), under the authorization issued in Docket No. CP82-480-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR states pursuant to § 157.212(a) of the Commission's Regulations, it requests authorization to add the new delivery point by means of a new meter station for delivery of natural gas to IPC. The location of the proposed meter station will be section 22, Township 16 North, Range 5 East, Henry County, Illinois (Kewanee Meter Station). It is stated that ANR's sales to IPC are made pursuant to a service agreement dated December 14, 1987. IPC's purchases of natural gas are made from the general system supply of ANR under Rate Schedule CD-1 of ANR's FERC Gas Tariff, Original Volume No. 1. ANR

states that the volumes intended for delivery to IPC at the Kewanee Meter Station are within IPC's current and proposed peak day and annual entitlements. ANR further states that its tariff does not prohibit the new delivery point and that it has sufficient capacity to accomplish the specified deliveries without detriment or disadvantage to its other customers.

Comment date: March 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. Eastern Shore Natural Gas Company

[Docket No. CP89-611-000]

February 1, 1989.

Take notice that on January 13, 1989, Eastern Shore Natural Gas Company (Eastern Shore), P.O. Box 615, Dover, Delaware 19903-0615, filed in Docket No. CP89-611-000 a request pursuant to § 157.205, 157.211(b) and 157.212(a) of the Commission's Regulations for authorization to construct and operate one sales tap for a local distribution company, under the blanket certificate issued in Docket No. CP83-40-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Eastern Shore proposes to construct and operate one sales tap for its existing customer, Delaware Division of Chesapeake Utilities Corporation (Delaware Division). It is stated that the tap would be located on Hazlettville Road in Dover, Delaware. Eastern Shore states that it was granted original authority to serve Delaware Division in Docket No. G12-200 and that the current level of service was authorized in Docket No. CP85-89-000, *et al.* Eastern Shore proposes to initially deliver through the proposed tap an average of 5 MMBtu per day or 1,725 MSCF per year. It is stated that Delaware Division intends to resell the gas to residential customers.

Eastern Shore states that the volumes that it would deliver through the proposed tap would be within the Delaware Division's certificated entitlement. It is further stated that the impact of the proposed sales tap on Eastern Shore's other customers' annual and peak day deliveries would be insignificant.

Comment date: March 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. Panhandle Eastern Pipe Line

[Docket No. CP89-706-000]

February 1, 1989.

Take notice that on January 26, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas, 77251, filed in Docket No. CP89-706-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a firm transportation service being provided to Diamond Shamrock Corporation (Diamond Shamrock), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle states that diamond Shamrock has requested discontinuance of the tranportation service being provided pursuant to a transportation agreement dated March 31, 1978, under Panhandle's Rate Schedule T-27 of its FERC Gas Tariff, Original Volume No. 2, on the basis that the service is no longer required. Panhandle further states that the service invovles the transportation of up to 100 Mcf per day of natural gas from the inlet of Diamond Shamrock's measuring station located at its McKee Plant in Moore County, Texas, and redelivered at an interconnection between Panhandle and Diamond Shamrock in Hutchinson County, Texas, and was authorized under the certificate issued in Docket No. CP78-396 on October 23, 1978. Panhandle advises that there would be no abandonment of facilities.

Comment date: February 22, 1989, in accordance with Standard Paragraph F at the end of this notice.

13. Panhandle Eastern Pipe Line Company

[Docket No. CP89-597-000]

February 1, 1989.

Take notice that on January 12, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas, 77251, filed in Docket No. CP89-597-000 and application pursuant to section 7(b) of the Natural Gas Act for permission and approval to partially abandon sales service to Northern Indiana Fuel & Light Company, Inc. (NIFL), an existing jurisdictional sales customer, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle states that Panhandle and NIFL have entered into a sales agreement dated November 1, 1988, providing for a 8.57% reduction of sales contract demand (CD) level corresponding to volumes converted to firm transportation service. Panhandle explains that NIFL has elected under § 284.10 of the Commission's regulations to convert a portion of its daily contract demand to firm transportation. Panhandle states that the firm transportation service is being rendered under the terms and conditions of its Rate Schedule PT-Firm. Accordingly, Panhandle proposes to reduce NIFL's current sales contract demand quantity, to be effective November 1, 1988, by the daily amount in Column No. 2, as shown below.

Month	Current CD mcf/d	Reduction mcf/d	Resulting CD mcf/d
	(1)	(2)	(3)
January	23,068	915	22,153
February	23,068	915	22,153
March	23,068	915	22,153
April	12,608	1,432	11,176
May	9,368	1,432	7,936
June	6,308	1,432	4,876
July	3,968	1,432	2,536
August	4,868	1,432	3,436
September	7,568	1,432	6,136
October	11,168	1,432	9,736
November	23,068	915	22,153
December	23,068	915	22,153

Panhandle further states that the proposed abandonment would reduce the annualized total CD from 5,188,320 Mcf to 4,743,707 Mcf.

Comment date: February 22, 1989, in accordance with Standard Paragragh F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Ruels of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2890 Filed 2-6-89; 8:45am]

BILLING CODE 6717-01-M

[Project No. 10116-001, California]

Triple Star Hydro Ltd.; Surrender of Preliminary Permit

January 31, 1989.

Take notice that Triple Star Hydro Limited, permittee for the North County Hydroelectric Project, located on Eagle Creek in Trinity County, California, has requested that its preliminary permit be terminated. The preliminary permit was issued on February 9, 1987, and would have expired on January 31, 1990. The permittee states that analysis of the project did not indicate feasibility for development.

The permittee filed the request on January 11, 1989, and the preliminary permit for Project No. 10116 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2819 Filed 2-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2407, Alabama]

Alabama Power Co.; Intent to File an Application for a New License

February 2, 1989.

Take notice that on December 21, 1988, Alabama Power Company, the existing licensee for the Yates Hydroelectric Project No. 2407, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2407 was issued effective April 1, 1962, and expires December 31, 1993.

The project is located on the Tallapoosa River in Elmore and Tallapoosa Counties, Alabama. The principal works of the Yates Project include a 70-foot-high concrete dam; a reservoir of 2,000 acres at elevation 344 feet m.s.l.; a powerhouse with an installed capacity of 32,000 kW; a substation and transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street NE., Washington, DC 20426. The above information as described in the rule is now available form the licensee at 600 North 18th Street, Birmingham, AL 35291.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2820 Filed 2-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2408, Alabama]

Alabama Power Co.; Intent To File an Application for a New License

February 2, 1989.

Take notice that on December 21, 1988, Alabama Power Company, the existing licensee for the Thurlow Hydroelectric Project No. 2408, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2408 was issued effective April 1, 1962, and expires December 31, 1993.

The project is located on the Tallapoosa River in Elmore and Tallapoosa Counties, Alabama. The principal works of the Thurlow Project include a concrete dam and spillway; a reservoir of 574 acres at elevation 288.85 feet m.s.l.; a powerhouse with an installed capacity of 58,000 kW; a substation and transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 600 North 18th Street, Birmingham, AL 35291.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2820 Filed 2-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-245-004]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

February 2, 1989.

Take notice that ANR Pipeline Company ("ANR") on January 27, 1989 tendered for filing as a part of its FERC Gas Tariff Original Volume No. 1-A,

Third Substitute Original Sheet No. 136B.

ANR states that the above referenced tariff sheet is being filed in compliance with the Commission's Letter Order of January 19, 1989 in Docket Nos. RP88-248-001 and RP88-246-003 to correct a typographical error.

ANR has requested that the Commission accept this filing to become effective as of October 1, 1988.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Such protests or motions must be filed by February 9, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2891 Filed 2-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-56-000]

Blue Dolphin Pipe Line Co.; Tariff Change

February 1, 1989.

Take notice that on January 27, 1989, Blue Dolphin Pipe Line Company (Blue Dolphin), tendered for filing with the Commission, to be effective on March 1, 1989, the following tariff sheets to be included in Blue Dolphin's FERC Gas Tariff:

Original Volume No. 1

First Revised Sheet No. 59
First Revised Sheet No. 91
First Revised Sheet No. 92
Original Sheet No. 92a
Original Sheet No. 92b
First Revised Sheet No. 98

Blue Dolphin states that the purpose of the revised tariff sheets is to revise sections of Blue Dolphin's Order No. 436 transportation tariff to comply with the requirements of Order No. 509, as they relate to OCS pipelines conducting an open season for firm transportation capacity with respect to any presently uncommitted firm capacity and with respect to firm capacity that existing shippers may be willing to relinquish. Blue Dolphin states that it is submitting changes to the capacity allocation sections of its open access transportation tariff to establish such an open season on an annual basis. Blue Dolphin states that its filing is intended also to provide reasonable notice of Blue Dolphin's firm capacity open season, which shall begin on March 1, 1989.

Blue Dolphin asks for whatever waivers are necessary for the Commission to approve the proposed tariff sheets, and for the tariff sheets to go into effect on March 1, 1989.

Any persons desiring to be heard or to make any protest with reference to said filing should, on or before February 9, 1989, file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any conference or hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2813 Filed 2-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-3-63-000]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

February 2, 1989.

Take notice that Carnegie Natural Gas Company ("Carnegie") on January 27, 1989, tendered for filing the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1:

Thirteenth Revised Sheet No. 47
Thirteenth Revised Sheet No. 48

Carnegie states that pursuant to the Purchased Gas Adjustment in Article 22 of its FERC Gas Tariff, it proposes to adjust its rates effective March 1, 1989, to reflect a $.1077 per Dth decrease in the applicable commodity components of its LVWS and CDS Rate Schedules, a $.0875 per Dth decrease in the D-1 components, and a $.0007 per Dth decrease in the D-2 components of those Rate Schedules. The proposed decrease in the LVIS Rate Schedule is $.1141 per Dth.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 9, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2892 Filed 2-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-3-22-000]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

February

Take notice that CNG Transmission Corporation ("CNG"), on January 27, 1989, pursuant to section 4 of the Natural Gas Act, Part 154 of the Commission's regulations (18 CFR Part 154) and section 12 of the General Terms and Conditions of CNG's tariff, filed the following revised tariff sheet to Original Volume No. 1 of its FERC Gas Tariff: Sixth Revised Sheet No. 31.

The filing constitutes CNG's regular quarterly PGA filing for effectiveness on March 1, 1989.

Copies of the filing were served upon CNG's sales customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211). All motions or protests should be filed on or before February 9, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2902 Filed 2-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-55-000]

El Paso Natural Gas Co.; Proposed Changes in FERC Gas Tariff

February 1, 1989.

Take notice that El Paso Natural Gas Company ("El Paso") on January 26, 1989, tendered for filing pursuant to Part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act certain revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1-A.

El Paso states on December 1, 1988 it filed its acceptance of the blanket certificate authorization granted by the Commission's order issued November 2, 1988 at Docket No. CP88-433-000. The blanket certificate authorizes certain transportation of natural gas in interstate commerce under the terms and conditions provided in Part 284, Subpart G of the Regulations promulgated in Order Nos. 436 and 500. As a result of El Paso's acceptance of said blanket certificate authorization, it is necessary to make certain revisions to the Transportation Service Request Form contained in El Paso's Original Volume No. 1-A Tariff. Accordingly, the tendered revised tariff sheets, when accepted for filing and permitted to become effective, will (i) revise El Paso's Transportation Service Request Form in recognition of El Paso accepting its blanket certificate authorizing certain transportation of natural gas in interstate commerce under the terms and conditions provided in Part 284, Subpart G of the Regulations promulgated in Order Nos. 436 and 500; and (ii) make certain clarifications in existing tariff provisions.

El Paso has requested that the tariff sheets tendered be accepted for filing and permitted to become effective thirty (30) days after the date of filing.

Copies of the filing were served upon all shippers of El Paso and interested state regulatory Commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before Feb. 8, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2814 Filed 2-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-87-030]

Granite State Gas Transmission, Inc.; Proposed Changes in Tariff Provisions

February 2, 1989.

Take notice that on January 27, 1989, Granite State Gas Transmission, Inc., (Granite State), 120 Royall Street, Canton, Massachusetts 02021 tendered for filing with the Commission the revised tariff sheets listed below in its FERC Gas Tariff, First Revised Volume No. 1 for effectiveness on December 7, 1988:

Substitute Fifth Revised Sheet No. 70
Substitute Fourth Revised Sheet No. 71
Substitute Fourth Revised Sheet No. 72
Substitute Third Revised Sheet No. 73

According to Granite State, it filed revised tariff sheets on December 22, 1988 in compliance with a settlement of a rate proceeding in Docket No. RP87-87-000 approved by the Commission in an order issued November 20, 1988. The compliance filing included revisions in the purchased gas cost provision of Granite State's tariff to conform with the requirements of the settlement. Granite State further states that the revised tariff sheets listed above replace certain parts of the purchased gas adjustment provision to comply strictly with the requirements of the Commission's revised purchased gas cost regulations.

According to Granite State copies of its filing were served upon its customers, Bay State Gas Company and Northern Utilities, Inc., and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 9, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2893 Filed 2-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-1-45-001]

Inter-City Minnesota Pipelines Ltd., Inc.; Tariff Filing

February 2, 1989.

Take notice that on January 27, 1989, Inter-City Minnesota Pipelines Ltd., Inc. ("Inter-City"), 245 Yorkland Boulevard, North York, Ontario, Canada M2J 1R1, filed Substitute First Revised Thirty-First Revised Sheet No. 4 to Original Volume No. 1 of its FERC Gas Tariff.

Inter-City states the revised tariff sheet reflects its quarterly PGA. Inter-City requests that the tariff sheet be made effective February 1, 1989.

Copies of the filing were served on Inter-City's jurisdictional customers and interested state commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 9, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2903 Filed 2-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-14-003]

Inter-City Minnesota Pipelines Ltd., Inc.; Tariff Filing

February 2, 1989.

Take notice that on January 27, 1989, Inter-City Minnesota Pipelines Ltd., Inc.

("Inter-City"), 245 Yorkland Boulevard, North York, Ontario, Canada M2J 1R1, tendered for filing the following revised tariff sheet to its FERC Gas Tariff:

Original Volume No. 1

Substitute Thirty-Second Revised Sheet No. 4

Original Volume No. 2

Substitute Sixth Revised Sheet No. 11
Substitute Sixth Revised Sheet No. 12

Inter-City states that this revised tariff sheet is submitted in compliance with the Commission's order issued in this proceeding on November 30, 1988. The revised tariff sheet and attached workpapers reflect revised D–2 charges, rates developed on the basis of D–1 costs allocated between zones using a three-day peak methodology, a refund to Inter-City's customers of deferred income times and a PGA surcharge.

Copies of this filing were served on Inter-City's jurisdictional customers and interested state commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 9, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–2906 Filed 2–6–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA89–1–45–003]

Inter-City Minnesota Pipelines Ltd., Inc.; Tariff Filing

February 2, 1989.

Take notice that on January 27, 1989, Inter-City Minnesota Pipelines Ltd., Inc. ("Inter-City"), 245 Yorkland Boulevard, North York, Ontario, Canada M2J 1Rl, submitted Second Substitute Thirty-First Revised Sheet No. 4 to Volume No. 1 of its FERC Gas Tariff.

Inter-City states the filing is made to correct Substitute Thirty-First Revised Sheet No. 4 submitted on January 12, 1989.

Inter-City states that copies of the filing have been mailed to Inter-City's all of its customers and affected state regulatory commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 9, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–2909 Filed 2–6–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP85–524–001]

Iroquois Gas Transmission System; Amendment to Application for a Presidential Permit for the Construction, Operation, Maintenance, and Connection at the U.S./Canada International Boundary, of Facilities for the Importation of Natural Gas

February 1, 1989

Take notice that on January 17, 1989, Iroquois Gas Transmission System (Iroquois), 2 Enterprise Drive, Shelton, Connecticut 06484, filed pursuant to section 153.11 of the Commission's Regulations an amendment to its application for a Presidential Permit for the construction, operation, maintenance and connection at the international boundary between the United States and Canada of facilities for the importation of natural gas, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Iroquois states that the amendment is occasioned principally by the concurrent filing of its application for a certificate of public convenience and necessity (Certificate Application) in Docket No. CP89–634–000, which in turn is filed in conjunction with a Joint Offer of Settlement filed in the Commission's "open season" proceeding by Iroquois and Tennessee Gas Pipeline Company ("Tennessee").

Iroquois' Certificate Application seeks authority for Iroquois (1) to construct and operate a new pipeline system with a capacity of 534,000 Mfc of natural gas per day from a point on the international border near Iroquois, Ontario through the States of New York and Connecticut across Long Island Sound to a point near South Commack, Long Island, New York and (2) to transport natural gas through the new pipeline for local distribution companies and power generators in New York, New Jersey and New England. It is proposed that the 30-inch diameter pipeline to be owned by Iroquois interconnect at the border with the 30-inch diameter pipeline to be owned by TransCanada Pipelines, Limited (TransCanada).

It is stated that Iroquois has been established as a general partnership under the laws of New York. The partners in Iroquois are or will be affiliates of TransCanada. AEC Oil and Gas Company, The Brooklyn Union Gas Company, the Northeast Utilities system, Southern Connecticut Gas Company, Connecticut Natural Gas Corporation, New Jersey Resources Company, J. Makowski Company, Inc., Tennessee, Texas Eastern Transmission Corporation, ANR Pipeline Company, and CNG Transmission Corporation.

Iroquois states that all of its partners are United States corporations. Iroquois will be managed by a Management Committee, which will be comprised of a representative and alternate representative of each partner. When the representatives and alternate representatives have been designated, Iroquois will supplement its amended application with a list of the members of the Management Committee and their nationalities.

Iroquois further states that: neither Iroquois nor its pipeline will be owned in any part by any foreign government or directly or indirectly subventioned by any foreign government; Iroquois has no understanding with any foreign government for such ownership or subvention; Iroquois has no existing contracts with any foreign government or private concern which relate to the control or fixing of rates for the purchase, sale or transportation of natural gas and which may serve in any way to restrict or prevent competing American companies from extending their own activities; and no foreign government or agency has granted Iroquois any landing license or permit in connection with the exportation or importation of natural gas.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before February 22, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the

Commission's Rules of Practice and Procedure (18 CFR 384.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 89–2898 Filed 2–6–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ89–1–53–000]

K N Energy, Inc.; Proposed Changes in FERC Gas Tariff

February 2, 1989.

Take notice that K N Energy, inc. ("K N") on January 27, 1989 tendered for filing a quarterly PGA proposing changes in its FERC Gas Tariff to adjust the rates charged to its jurisdictional customers pursuant to the Purchased Gas Adjustment provision (section 19) of the General Terms and Conditions of K N's FERC Gas Tariff, Third Revised Volume No. 1 to reflect changes in the Current Adjustment. The proposed changes would increase the commodity rate under each of K N Energy's jurisdictional rate schedules, exclusive of IOR–1 and IOR–2, by 2.94¢ per Mcf. Rates under Rate Schedules IOR–1 and IOR–2 are proposed to increase by 2.19¢ per Mcf and 2.22¢ per Mcf, respectively. K N has also revised the rates of its various rate schedules to reflect purchased gas costs on an as-billed basis. The result is an increase in D1 demand costs and decreases in D2 demand costs as set forth in K N's transmittal letter and tariff sheets. K N states that the filing reflects revision to its base tariff rates to reflect projected weighted average gas costs for the quarter ending May 31, 1989. The proposed effective date for the rate changes is March 1, 1989.

Copies of the filing were served upon K N's jurisdictional customers, and interested public bodies.

Any person desiring to be heard or to make any protest with reference to this filing should, on or before February 9, 1989, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a petition to intervene or a protest in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–2904 Filed 2–6–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–225–003]

Inter-City Minnesota Pipelines Ltd., Inc.; Tariff Filing

January 31, 1989

Take notice that on January 25, 1989, Inter-City Minnesota Pipelines Ltd., Inc. ("Inter-City"), 245 Yorkland Boulevard, North York, Ontario, Canada M2J 1R1, submitted revised tariff sheets:

Original Volume No. 1

Substitute Fourth Revised Sheet No. 56
Second Substitute Second Revised Sheet No. 56–A
Second Substitute Original Revised Sheet No. 56–B
Second Substitute Third Revised Sheet No. 57
Second Substitute Third Revised Sheet No. 58
Second Substitute Fifth Revised Sheet No. 60
Second Substitute Sixth Revised Sheet No. 61
Second Substitute Second Revised Sheet No. 61–A
Second Substitute Second Revised Sheet No. 61–B
Second Substitute Second Revised Sheet No. 61–C
Second Substitute Second Revised Sheet No. 61–D
Second Substitute Third Revised Sheet No. 62
Second Substitute Fourth Revised Sheet No. 63
Second Substitute Sheet No. 64–B

Inter-City states that the revised tariff sheets reflect changes in its PGA tariff language to bring it into compliance with Order Nos. 483 and 483–A.

Copies of the filing were served on Inter-City's jurisdictional customers and interested state commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 8, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–2827 Filed 2–6–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP89–35–001, CP87–106–005, CP88–256–003.]

Midwestern Gas Transmission Co.; Tariff Filing

February 1, 1989.

Take notice that on January 17, 1989, Midwestern Gas Transmission Company (Midwestern) tendered for filing the following tariff sheets to Volume II of its FERC Gas Tariff to be effective on January 1, 1989 (November 1, 1988 for Sheet No. 68B and Sheet No. 68F1).

Substitute Ninth Revised Sheet No. 62K
Substitute Fourth Revised Sheet No. 68B
Sixth Revised Sheet No. 68D
Fifth Revised Sheet No. 68E
Substitute First Revised Sheet No. 68F1
Substitute Original Sheet No. 74
Substitute Original Sheet No. 75

Midwestern states that these revisions are being filed to reflect rate changes made effective in Docket Nos. RP89–35 and RP89–36 and to correct typographical errors in earlier filings.

Midwestern states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, DC 20425, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 8, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene; provided, however, that any person who had previously filed a motion to intervene in this proceeding is not required to file a further motion. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois Cashell,

Secretary.

[FR Doc. 89-2815 Filed 2-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ89-4-25-000 and TM89-2-25-000]

Mississippi River Transmission Corp. Rate Change Filing

February 2, 1989.

Take notice that on January 27, 1989, Mississippi River Transmission Corporation (MRT) tendered for filing, to be effective March 1, 1989, Thirty-First Revised Sheet No. 4, Eleventh Revised Sheet No. 4A, Second Revised Sheet No. 4A.1 and Second Revised Sheet No. 4A.2 to its FERC Gas Tariff, Second Revised Volume No. 1. MRT states that this filing is being submitted to reflect its third quarterly purchased gas cost adjustment (PGA) pursuant to § 154.308 of the Commission's Regulations and the PGA provisions of MRT's tariff, and is designed to track various pipeline and producer cost changes.

MRT notes that its filing is predicated upon the settlement rates made effective by United Gas Pipeline Line Company (United) in its pending rate proceedings at Docket Nos. RP88-92-000, *et al.*; and, thus, MRT expressly reserves it rights to increase the rates reflected in this filing in the event of modification of United's settlement rates to MRT. The quarterly impact of MRT's PGA filing on its jurisdictional customers is stated to be a decrease of $.1 million.

MRT further states that the enclosed Revised Sheet Nos. 4A reflect the most recent revised fixed take-or-pay charges applicable to MRT as a result of filings of United, Natural Gas Pipeline Company of America and Trunkline Gas Company. MRT states that the quarterly jurisdictional impact of this take-or-pay flowthrough filing is an increase of approximately $.1 million.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 9, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2905 Filed 2-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-708-000]

Natural Gas Pipeline Co. of America; Technical Conference on Engineering Issues

February 1, 1989.

Take notice that on February 21 and 22, 1989, members of the engineering staff of the Federal Energy Regulatory Commission will conduct a technical consultation concerning engineering issues relating to Natural Gas Pipeline Company of America's (Natural) response to data requests concerning CP88-708-000. Natural has agreed to provide the technical assistance necessary to interpret Natural's engineering data response. A professional engineer employed by Natural will spend two full days working with a FERC design engineer. Natural's legal staff will not attend. The FERC staff requires technical assistance in interpreting the response and seeks assistance in building a computer simulation of Natural's transmission system. The technical consultation will commence at 8:30 a.m. at 825 North Capitol Street, NE., Washington, DC 20426. The engineering conference and computer rooms will be used for this consultation.

All parties to this proceeding, Commission staff, and interested members of the public are invited to attend; however, mere attendance at the consultation will not confer party status. Any person wishing to become a party to this proceeding must file a Motion to Intervene in accordance with Rule 214(d) of the Commission's Rules of Practice and Procedure (18 CFR 385.214(d)).

Further information concerning the technical conference may be obtained from Mr. William L. Zoller, Pipeline Certificates and Projects Branch (202-357-8203), or John F. Korzeniowski, Division of Engineering, Market and Environmental Analysis (202-357-8843) Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2899 Filed 2-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-94-015]

Natural Gas Pipeline Co. of America; Changes in FERC Gas Tariff

February 2, 1989.

Take notice that on January 27, 1989, Natural Gas Pipeline Company of America (Natural) submitted for filing Substitute First Revised Sheet Nos. 165 and 166 and Third Revised Sheet Nos. 169 and 170 to be a part of its FERC Gas Tariff, Third Revised Volume No. 1, to be effective as proposed.

Natural states that the purposes of the filing are to (1) recover additional take-or-pay buyout and buydown and contract reformation costs (transition costs) incurred since the previous filing made on December 30, 1988 under Docket No. RP88-94-014; (2) recover accrued interest for the month of February, 1989 on transition costs previously included for recovery in prior filings; and (3) comply with ordering paragraph (E) of the order issued April 29, 1988 under Docket Nos. RP88-94-000 and -001 which required that Natural revise, as necessary, "the balance allocated to each customer to reflect only those costs that actually have been paid as of December 31, 1988 or for which there has been incurred a written obligation to pay."

Finally, Natural requests that the Commission grant any waivers it deems necessary to allow the tariff sheets to become effective March 1, 1989. A copy of the filing was mailed to Natural's jurisdictional customers, interested state regulatory agencies, and all parties set out on the official service list in Docket No. RP88-94-000.

Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211. All such motions or protests must be filed on or before February 9, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2894 Filed 2-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2436, New York]

New York State Electric & Gas Corp.; Intent to File an Application for a New License

February 2, 1989.

Take notice that on December 19, 1988, New York State Electric & Gas Corporation, the existing licensee for the Seneca Falls and Waterloo Stations Hydroelectric Project No. 2436, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2436 was issued effective March 1, 1965, and expires December 31, 1993.

The project is located on the Seneca River in Seneca County, New York. The principal works of Seneca Falls Station include a concrete dam owned by the State of New York; a powerhouse with an installed capacity of 8,000 kW; and a short 34.5-kV line to Seneca Falls switchyard. The Waterloo Station includes a concrete dam; a powerhouse with an installed capacity of 1,920 kW; and a short 34.5-kV line to Waterloo switchyard. Each station has appurtenant electrical and mechanical facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at Kent Building, Chenango Street, Binghamton, NY 13902, Attn: Ms. Melanie K. Chapel, telephone (607) 729-2551, ext. 4750.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2821 Filed 2-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP87-451-016 et al.]

Northeast U.S. Pipeline Projects; Offers of Settlement

February 1, 1989.

Take notice that on January 17, 1989, Offers of Settlement were filed by ANR Pipeline Company (ANR), Champlain Pipeline Company (Champlain), and jointly by Iroquois Gas Transmission System (Iroquois) and Tennessee Gas Pipeline Company (Tennessee), pursuant to Rule 602 of the Commission's Rules of Practice and Procedure, the Principles of Settlement incorporated in the "Final Report of the Chief Judge and Certification of Settlement", issued November 30, 1988 (*Northeast U.S. Pipeline Projects, et al.*, Docket Nos. CP87-451-008, *et al.*, 45 FERC ¶ 63,019), and the Commission's order issued January 12, 1989 in Docket No. CP87-451-016 (46 FERC ¶ 61,012). Pursuant to the provisions of Rule 602 and the Commission's order, comments on these offers of settlement are due 20 days after the date of filing, or on February 6, 1989. As stated in the Commission's January 12 order, the ANR, Champlain, and Iroquois/Tennessee projects were severed from the open-season proceeding conditioned upon the sponsors of those projects filing comprehensive offers of settlement setting forth discrete projects. Therefore, as further stated in the January 12 order, and notwithstanding any contrary or conflicting intent on the part of the project sponsors, comments filed on the offers of settlement should address issues of mutual exclusivity (discreteness).

The Commission's January 12 order also required the sponsors of the ANR, Champlain, and Iroquois/Tennessee projects to file new and/or amended applications to implement the proposed projects. Take notice that separate notice is today being issued of applications filed in Dockets Nos. CP86-524-001, Iroquois Gas Transmission System; CP89-629-000, Tennessee Gas Pipeline Company; CP89-634-000, Iroquois Gas Transmission System; CP89-635-000, Columbia Gas Transmission Corporation; CP89-637-000, ANR Pipeline Company; CP89-638-000, CNG Transmission Corporation; CP89-661-000, Algonquin Gas Transmission Company; CP89-646-000, Champlain Pipeline Company; and CP89-654-000, Champlain Pipeline Company, with regard to those projects. Any person desiring to be heard or to protest regarding the merits of these or subsequent applications filed pursuant to the Commission's January 12 order should file motions to intervene or protests with the Federal Energy Regulatory Commission as set forth in the relevant notices.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2900 Filed 2-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL87-37-000]

Oroville-Wyandotte Irrigation District, CA; Withdrawal of Complaint

January 31, 1989.

On April 10, 1987, the California Sportfishing Protection Alliance (CSPA) filed with the Commission a complaint against the Oroville-Wyandotte Irrigation District (OWID), licensee for the South Fork Project No. 2088, located in Butte, Plumas, Sierra, and Yuba Counties, California. CSPA alleged that OWID violated the terms of its license in that it failed to maintain the continuous minimum flow mandated by Article 58 of the license at the Lost Creek feature of the project. CSPA filed further comments on April 27, 1987, and OWID filed an answer to the complaint on May 5, 1987.

Commission staff conducted an investigation of CSPA's complaint in conjunction with an ongoing review of OWID's compliance with its license for the South Fork Project. Due to inadequate measuring devices, it was not possible to establish that the alleged violations had occurred. However, in response to staff's investigation, OWID installed new measuring devices, new concrete weirs, and a telemetry system at the Slate Creek feature of the project. These new devices will accurately measure the minimum flows and should prevent future violations.

Based on these remedial actions, on October 27, 1988, CSPA withdrew its complaint. The withdrawal of any pleading is effective at the end of fifteen days from the date of filing if no motion in opposition to the withdrawal is filed.[1] No motion in opposition to the withdrawal has been filed. Accordingly,

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[1] *See* 18 CFR 385.216(b) (1988).

CSPA's complaint is deemed withdrawn, effective November 11, 1988.[3]

Lois D. Cashell,

Secretary.

[FR Doc. 89-2828 Filed 2-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-2-55-000]

Questar Pipeline Co.; Rate Change

February 1, 1989.

Take notice that on January 30, 1989, Questar Pipeline Company tendered for filing and acceptance Nineteenth Revised Sheet No. 12 to its FERC Gas Tariff, First Revised Volume No. 1, to be effective March 1, 1989.

Questar Pipeline states that the purpose of this filing is to adjust the purchased gas costs under Questar Pipeline's sale-for-resale Rate Schedule CD-1 effective March 1, 1989.

Questar Pipeline further states that Nineteenth Revised Sheet No. 12 shows a commodity base cost of purchased gas as adjusted of $2.03537/Dth which is $0.12477/Dth lower than the currently effective rate of $2.16014/Dth. The demand base cost of purchased gas as adjusted remained unchanged at $0.01357/Mcf.

Questar Pipeline has requested any necessary waivers of the Commission's Rules and Regulations to allow the tendered tariff sheet to become effective as proposed, and states that it has provided a copy of the filing to its sales customer and state public service commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 9, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2826 Filed 2-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP85-177-059, CP87-28-006, RP88-221-004, CP88-136-004, CP87-169-002]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

February 1, 1989.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on January 26, 1989 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1 and Original Volume No. 2, six copies of the tariff sheets listed on Appendix A.

Texas Eastern states that the purpose of this filing is to file substitute tariff sheets reflecting the Commission's rejection of Texas Eastern's October 26 Compliance Filing (October 26 Filing) in Docket No. RP85-177 *et al., in lieu of previously filed tariff sheets when assumed that the Commission would approve Texas Eastern's October 26 Filing. The October 26 Filing was rejected by the Commission in an order dated January 13, 1989 in Docket Nos. RP85-177-056, CP88-136-001, and RP88-67-11. Texas Eastern is also concurrently with this instant filing making an additional filing of tariff sheets in Docket Nos. TM89-2-17 and TA89-1-17 to reflect inter alia,*

the removal of the effects of the October 26 Filing.

Proposed Substitute Tariff Sheets

In order to remove the effects of the October 26 Filing from tariff filings made subsequent to October 26, 1988, Texas Eastern files the following tariff sheets:

Texas Eastern Docket No. CP87-28-004

Substitute Ninth Revised Sheet No. 50 to replace Ninth Revised Sheet No. 50.

Texas Eastern Docket No. RP88-221-003

Substitute Fifth Revised Sheet No. 489 and Second Substitute First Revised Sheet No. 489A to replace Fifth Revised Sheet No. 489 and Substitute First Revised Sheet No. 489A which were filed on December 16, 1988 in Docket No. RP88-221-003. The replacement tariff sheets are proposed to be effective December 1, 1988 and exclude references to Rate Schedules CD-1 and CD-2.

Texas Eastern withdraws Second Revised Sheet Nos. 112 and 126 contained in the Company's December 16, 1988 filing.

Texas Eastern Docket Nos. RP85-177-058 and CP88-136-002

Substitute Third Revised Sheet No. 1, Substitute Third Revised Sheet No. 461, Substitute Fifth Revised Sheet No. 463, Substitute Sixth Revised Sheet No. 464, Substitute Third Revised Sheet No. 474 and Substitute Third Revised Sheet No. 600.

Texas Eastern Docket No. CP87-169

Substitute First Revised Sheet No. 1284 of Original Volume No. 2.

The tariff sheets are proposed to become effective as of the dates proposed on Appendix A.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions. In addition, copies have also been mailed to all parties in Texas Eastern's Docket Nos. CP87-28, CP87-169, RP85-177 and CP88-136, and RP88-221.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 8, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2816 Filed 2-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TM88-2-17-001 and TA89-1-17-002]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

February 1, 1989.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on January 26, 1989 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1 and Original Volume No. 2, certain revised tariff sheets.

Texas Eastern states these tariff sheets are filed in compliance with the Commission's December 20, 1988 order in Docket No. TM89-2-17-000 and to reflect the rejection by the Commission on January 13, 1989 of Texas Eastern's October 26, 1988 Compliance filing in Docket Nos. RP85-177-056, CP88-136-001, and RP88-67-011.

Texas Eastern Docket No. TM89-2-17-000

On December 2, 1988, Texas Eastern filed in Docket No. TM89-2-17-000 tariff sheets to reflect revised Rate Schedule SS-2 and SS-3 rates which tracked CNG Transmission Corporation's increased Rate Schedule GSS rates in Docket No. RP88-211 as of January 1, 1989.

Substitute Tenth Revised Sheet No. 50 is filed to replace Tenth Revised Sheet No. 50 which was approved to be effective January 1, 1989 by Commission order issued December 20, 1988 in Docket No. TM89-2-17-000. Substitute Tenth Revised Sheet No. 50 reflects the revised Rate Schedule GSS rates contained in CHG's December 30, 1988 filing and the deletion of the effects of Texas Eastern's October 26, 1988 filing in Docket No. RP85-177-056, RP88-67-011 and CP88-136-001 which was rejected by the Commission in an order dated January 13, 1989. The proposed tariff sheet also reflects lower revised Rate Schedule SS-3 withdrawal rates for Zone D which are based on an average shrinkage factor of 1.5% instead of 2.0% which was inadvertently used in Texas Eastern's December 2, 1988 filing in Docket No. TM89-2-17-000. Schedule A of the filing reflects the calculations involved in tracking the GSS rate changes through Texas Eastern's Rate Schedules SS-2 and SS-3.

Substitute Ninth Revised Sheet No. 51 replaces Ninth Revised Sheet No. 51 which was filed on December 2, 1988 in Docket No. TM89-2-17-000 and which was approved to be effective January 1, 1989 by Commission order dated December 20, 1988, subject to any action taken in Docket Nos. RP85-177-056, RP88-67-011, and CP88-136-001. Substitute Ninth Revised Sheet No. 51 is being filed solely to reflect the deletion of the effects of Texas Eastern's October 26, 1988 filing.

Texas Eastern Docket No. TA89-1-17-001

Texas Eastern filed on December 30, 1988 a revision to its December 2, 1988 Annual PGA Filing in Docket No. TA89-1-17-000 which is proposed to be effective February 1, 1989. The December 30, 1988 revised PGA filing contains an alternate set of tariff sheets which exclude the effects of Texas Eastern's October 26, 1988 filing in Docket Nos. RP85-177-056, RP88-67-011 and CP88-136-001. Texas Eastern requests that the Commission accept the alternate tariff sheets to be effective February 1, 1989 Texas Eastern states that Third Substitute Eleventh Revised Sheet No. 50 and is filed to replace Alternate Second Substitute Eleventh Revised Sheet No. 50 and is filed to reflect the revised Rate Schedule GSS rates contained in CNG's December 30, 1988 filing and to reflect Rate Schedule SS-3 withdrawal rates for Zone D that are based on an average shrinkage factor of 1.5 percent.

Texas Eastern requests that the Commission waive any of its rules and regulations necessary to permit Substitute Tenth Revised Sheet No. 50 and Substitute Ninth Revised Sheet No. 51 to become effective on January 1, 1989 and that Texas Eastern's December 30, 1988 revised PGA filing be amended to permit the remaining tariff sheets proposed for filing above to become effective February 1, 1989 in accordance with the proposed effective date as originally requested in Texas Eastern's December 30, 1988 revised PGA filing.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intevene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 8, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2817 Filed 2-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-80-012, RP88-192-002, RP88-223-005 and RP88-251-005]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

February 2, 1989.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on January 27, 1989 tendered for filing, in compliance with the Commission's orders on January 13, 1989 in Docket Nos. RP88-80-008, RP88-192-001, and RP88-223-003 and in Docket Nos. RP88-80-011 and RP88-251-002, as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Proposed To Be Effective April 1, 1988

Third Substitute First Revised Sheet No. 483

Proposed To Be Effective July 1, 1988

Second Substitute Second Revised Sheet No. 483

Proposed To Be Effective September 1, 1988

Second Substitute Third Revised Sheet No. 483

Proposed To Be Effective November 1, 1988

Substitute Fourth Revised Sheet No. 483

Proposed To Be Effective September 9, 1988

Second Substitute Original Sheet No. 483D

Texas Eastern states if filed tariff sheets on September 30, 1988 in Docket Nos. RP88-80-008, RP88-192-001, and RP88-223-003 and on October 24, 1988 in Docket Nos. RP88-80-011 and RP88-251-002 to flowthrough the take-or-pay costs of United and Southern. The Commission issued orders on January 13, 1989 accepting the filings, but requiring Texas Eastern to file, within 15 days of the date of the orders, revisions to Sheet Nos. 483 and 483D.

Texas Eastern states that, as originally filed, Sheet No. 483 provided that a customer would continue to be liable for the take-or-pay costs if prior to March 22, 1988 (the date Texas Eastern initially filed to flowthrough costs directly billed by United in Docket No. RP88-27) both the applicable service agreement had not expired and any necessary abandonment authorization for the subject service had not been received. The orders required revisions to Sheet No. 483 to reflect that March 22, 1988 was applicable only for the costs directly billed by United to Texas Eastern. The Commission determined that June 16, 1988 and August 17, 1988 were the applicable dates for the flowthrough of United's costs billed by Texas Gas and Southern respectively. The January 13 orders also require tariff language on Sheet No. 483 be revised to provide departing customers the option of paying a lump sum or continuing over the amortization period. Finally, the Commission required the correction of a reference to the date September 9, 1988 on Sheet No. 483D which was stated as September 9, 1983. Texas Eastern submits that the aforementioned

[3] On June 19, 1987, Pacific Gas and Electric Company (PG&E) filed a petition to intervene in this proceeding. CSPA filed a response in opposition to that intervention on July 8, 1987. No action was taken on the petition to intervene, which is made moot by this withdrawal of the underlying complaint.

revisions comply with the Commission's orders of January 13, 1989.

The effective dates of the above tariff sheets are as proposed above, the same dates as the tariff sheets approved in the January 13, 1989 orders.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions. In addition, Texas Eastern is mailing a copy of this filing to all parties or record in Docket No. RP88-80.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 9, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2895 Filed 2-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-239-009]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

February 2, 1989.

Take notice that on January 26, 1989, Trunkline Gas Company (Trunkline) tendered for filing the following tariff sheets to its FERC Gas Tariff Original Volume No. 1:

Second Substitute Original Revised Sheet No. 3-A.5
Second Substitute Original Revised Sheet No. 3-A.6

The proposed effective date of these revised sheets is September 20, 1988.

Trunkline states that the proposed tariff sheets are being filed in compliance with the Commission's September 28, 1988 Order, as further clarified in the Commission's Order Denying Rehearing, dated December 16, 1988, in the above-captioned proceeding accepting Trunkline's proposed recovery of take-or-pay settlement costs under Order No. 500. Specifically, these revised tariff sheets eliminate carrying charges Trunkline paid its customers on amounts collected from them through Trunkline's rates in Docket Nos. RP87-15-000 and RP87-67-000.

Trunkline states that copies of the filing were sent to all of Trunkline's jurisdictional customers and interested state commissions, as well as the parties to the above-captioned proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before February 9, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2896 Filed 2-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-2-30-000]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

February 2, 1989.

Take notice that Trunkline Gas Company (Trunkline) on January 27, 1989, tendered for filing the following revised tariff sheet to its FERC Gas Tariff, Original Volume No. 1:

Sixty-Seventh Revised Sheet No. 3-A

The proposed effective date of this revised tariff sheet is March 1, 1989.

Trunkline states that this revised tariff sheet filed herewith reflects a commodity rate decrease of (0.70¢) per Dt in the projected purchased gas cost component.

Trunkline states that the above-referenced tariff sheet is being filed in accordance with Section 154.308 (quarterly PGA filing) of the Commission's Regulations and pursuant to Section 18 (Purchased Gas Adjustment Clause) of Trunkline's FERC Gas Tariff, Original Volume No. 1 to reflect the changes in Trunkline's jurisdictional rates effective March 1, 1989.

Trunkline states that copies of its filing have been served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 9, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2897 Filed 2-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-2-56-000]

Valero Interstate Transmission Co.; Proposed Changes in FERC Gas Tariff

February 2, 1989.

Take notice that Valero Interstate Transmission Company ("Vitco"), on January 27, 1989 tendered for filing the following tariff sheets as required by Orders 483 and 483-A containing changes in Purchased Gas Cost Rates pursuant to such provisions:

FERC Gas Tariff, Original Volume No. 1

11th Revised Sheet No. 14.2

FERC Gas Tariff, Original Volume No. 2

16th Revised Sheet No. 6

Vitco states that this filing reflects changes in its purchased gas cost rates pursuant to the requirements of Orders 483 and 483-A.

Vitco states that the change in rates to Rate Schedule S-1, FERC Gas Tariff, Original Volume No. 2 includes an increase in purchased gas costs of $.5394 per MMBtu. The change in rates to Rate Schedule S-3 includes an increase in purchased gas cost of $.2759 per MMBtu.

The proposed effective date for the above filing is March 1, 1989. Vitco requests a waiver of any Commission order or regulations which would prohibit implementation by March 1, 1989.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 9, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2906 Filed 2-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2459, West Virginia]

West Penn Power Co.; Intent To File an Application for a New License

February 2, 1989.

Take notice that on December 20, 1988, West Penn Power Company, the existing licensee for the Lake Lynn Hydroelectric Project No. 2459, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2459 was issued effective July 3, 1962, and expires December 31, 1993.

The project is located on the Cheat River in Monongalia County, West Virginia, and Fayette County, Pennsylvania. The principal works on the Lake Lynn Project include a 125-foot-high, 1,000-foot-long concrete dam; a reservoir of 1,729 acres at elevation 870 feet m.s.l.; eight penstocks of reinforced concrete, 12 feet by 18 feet; a powerhouse with an installed capacity of 51,200 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE, Washington, DC 20426. The above information as described in the rule is now available from the licensee at 800 Cabin Hill Drive, Greensburg, PA 15601.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2822 Filed 2-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2431, Wisconsin and Michigan]

Wisconsin Electric Power Co.; Intent To File an Application for a New License

February 2, 1989.

Take notice that on December 19, 1988, Wisconsin Electric Power Company, the existing licensee for the Brule Hydroelectric Project No. 2431, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2431 was issued effective April 1, 1962, and will expire December 31, 1993.

The project is located on the Brule River in Florence County, Wisconsin, and Iron County, Michigan. The principal works of the Brule Project include a remote earth dike, 880 feet long; two earth dikes, 150 and 270 feet long, flanking a 212-foot-long concrete gravity dam and spillway section; a reservoir of 774 acres; a powerhouse, at the dam, with an installed capacity of 5,335 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at Room 452, Public Service Building, 231 West Michigan Street, Milwaukee, WI 53201.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2823 Filed 2-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2357, Wisconsin and Michigan]

Wisconsin Electric Power Co.; Intent To File an Application for a New License

February 2, 1989.

Take notice that on December 19, 1988, Wisconsin Electric Power Company, the existing licensee for the White Rapids Hydroelectric Project No. 2357, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2357 was issued effective January 1, 1965, and expires December 31, 1993.

The project is located on the Menominee River in Marinette County, Wisconsin, and Menominee County, Michigan. The principal works of the White Rapids Project include a composite concrete and earthfill dam, 50 feet high and 1,236 feet long; a reservoir of 465 acres; a powerhouse with an installed capacity of 8,000 kW; a substation and 0.28-mile-long, 138-kV transmission line; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at Room 452, Public Service Building, 231 West Michigan Street, Milwaukee, WI 53201.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2826 Filed 2-6-89; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-820-DR]

Major Disaster and Related Determinations; Utah

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Utah (FEMA-820-DR), dated January 31, 1989, and related determinations.

DATE: January 31, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3614.

Notice

Notice is hereby given that, in a letter dated January 31, 1989, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288, as amended by Pub. L. 100-707), as follows:

I have determined that the damage in certain areas of the State of Utah, resulting from flash flooding caused by the failure of the Quail Creek Reservoir dike on January 1, 1989, is of sufficient severity and magnitude to warrant a major disaster declaration under Pub. L. 93-288, as amended by Pub. L. 100-707. I, therefore, declare that such a major disaster exists in the State of Utah.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

Individual Assistance is not provided at this time. You are authorized to provide Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93-288, as amended by Pub. L. 100-707, for Public Assistance will be limited to 75 percent of total eligible costs.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint John D. Swanson of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Utah to have been affected adversely by this declared major disaster:

Washington County for Public Assistance for eligible public facilities located downstream from the failed dike which were damaged as a result of the flooding. Work associated with the repair, restoration and upgrade of the failed Quail Creek Reservoir Dike, and construction of a temporary water bypass pipeline are not eligible for Federal disaster assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Julius W. Becton, Jr.,

Director, Federal Emergency Management Agency.

[FR Doc. 89-2796 Filed 2-6-89; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200129-001

Title: L.A. Cruise Ship Terminals, Inc.

Parties: L.A. Cruise Ship Terminals, Inc., Metropolitan Stevedore Company

Synopsis: The Agreement extends the term of the basic agreement to April 10, 1990, to coincide with the termination of Permit No. 506 between L.A. Cruise Ship Terminals, Inc. and the City of Los Angeles.

By Order of the Federal Maritime Commission.

Dated: February 2, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-2833 Filed 2-6-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

PNC Financial Corp.; Proposal To Underwrite and Deal in Certain Securities to a Limited Exent

PNC Financial Corp, Pittsburgh, Pennsylvania ("Applicant"), has applied, pursuant to the section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.23(a), of the Board's Regulation Y (12 CFR 225.23(a)), for permission to engage through PNC Securities Corp, Pittsburgh, Pennsylvania ("Company"), in the activities of underwriting and dealing in, to a limited degree, 1-4 family mortgage-related securities and consumer-receivable-related securities ("ineligible securities"). These securities are eligible for purchase by banks for their own account but not eligible for banks to underwrite and deal in.

Company would conduct the proposed activities on a nationwide basis. Company is currently authorized under section 4(c)(8) of the BHC Act to underwrite and deal in commercial paper and municipal revenue bonds under certain conditions and to a limited extent. *See PNC Financial Corp*, 73 Federal Reserve Bulletin 742 (1987). In addition, Company is authorized under section 4(c)(8) of the BHC Act to engage in underwriting and dealing in securities that state member banks are permitted to underwrite and deal in under the Glass-Steagall Act, and to provide discount securities brokerage services. 12 CFR 225.25(b) (16) and (15). Applicant has pending with the Board an application to provide investment advice in conjunction with brokerage services to institutional and retail customers.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." Applicant has applied to underwrite and deal in ineligible securities in accordance with the limitations set forth in the Board's Orders approving those activities for a number of bank holding companies. *See, e.g., Citicorp, J.P. Morgan & Co. Incorporated and Bankers Trust New York Corporation*, 73 Federal Reserve Bulletin 473 (1987); and *Chemical New York Corporation, The Chase Manhattan Corporation, Bankers Trust New York Corporation, Citicorp, Manufacturers Hanover Corporation and Security Pacific Corporation*, 73 Federal Reserve Bulletin 731 (1987).

Applicant contends that approval of the application would not be barred by section 20 of the Glass-Steagall Act (12 U.S.C. 377). Section 20 of the Glass-Steagall Act prohibits the affiliation of a member bank, such as Pittsburgh National Bank, Pittsburgh, Pennsylvania, with a firm that is "engaged principally" in the "underwriting, public sale or distribution" of securities. Applicant states that it would not be "engaged principally" in such activities on the basis of the restriction on the amount of the proposed activity relative to the total business conducted by the underwriting subsidiary previously approved by the Board.

Any request for a hearing on this application must comply with § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Cleveland.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than February 28, 1989.

Board of Governors of the Federal Reserve System, February 1, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-2760 Filed 2-6-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 87F-0408]

Environmental Assessment; Finding of No Significant Impact; Selenium; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Center for Veterinary Medicine (CVM) of the Food and Drug Administration (FDA) is announcing the availability for comment of documents assessing and determining the potential environmental impact of a new dosage form for delivering a previously approved quantity of selenium as a nutritional supplement for cattle.

DATE: Comments by March 10, 1989.

ADDRESS: Submit written comments to the Dockets Management Branch (address below) identified with the docket number found in brackets in the heading of this document. Copies of the environmental assessment and the finding of no significant impact are available for public examination at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Woodrow M. Knight, Center for Veterinary Medicine (HFV-226), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3390.

SUPPLEMENTARY INFORMATION: On January 6, 1988 (53 FR 289), CVM filed a food additive petition (FAP 2210) from Schering Animal Health, Schering Corp., 200 Galloping Hill Rd., Kenilworth, NJ 07033, that would provide for the use of a sustained release bolus to provide selenium at 3 milligrams (mg) per head per day in beef and dairy cattle. In the notice of filing of the food additive petition, CVM invited comments on the environmental assessment submitted by the petitioner. No comments were received.

CVM reviewed the environmental assessment and found deficiencies that were later addressed in a revised environmental assessment now being made available for comment with CVM's finding of no significant impact. The finding of no significant impact and the revised environmental assessment are simultaneously being filed with the Environmental Protection Agency and with State and area-wide clearinghouses for review. The comment period for this notice is 30 days.

In the **Federal Register** of April 6, 1987 (52 FR 10987), FDA published a food additive regulation amending 21 CFR 573.920, permitting an increase in the level of selenium in complete feeds for cattle, sheep, chickens, swine, turkeys, and ducks, and also in mineral mixes and feed blocks for beef cattle and sheep. The permitted level of supplemental selenium that could be provided was increased from 0.1 part per million (ppm) to 0.3 ppm in complete feed and from 1 mg per head per day to 3 mg per head per day in supplemental feeds for beef cattle.

The Schering Animal Health Food additive petition provides for a different dosage form, a sustained release bolus, that is covered by 21 CFR 573.920. The new product is a substitute method of providing selenium that could offer improved control of the dose of selenium delivered to cattle. The Schering Animal Health petition contains a revised environmental assessment that is adequate to determine that the new dosage form will be manufactured in a manner that is safe for the environment. Additionally, the firm has described certain mitigations to reduce the potential for adverse environmental impact due to use of the product, including labeling to warn against the use of the bolus in areas where there is already sufficient selenium in the soil, and that the bolus may not be used in conjunction with any other form of selenium supplementation. The firm has also provided instructions for the return of damaged or out-of-date products to the manufacturer for proper disposal. CVM has concluded that no adverse environmental impacts are anticipated as a result of the manufacture and distribution of the product and that impacts due to the use of the product are equal to or less than the already marketed selenium dosage forms.

Interested persons may, on or before March 10, 1989, submit to the Dockets Management Branch (address above) written comments regarding the revised environmental assessment and the finding of no significant impact. Two copies of any comments should be submitted, except that individuals may submit one copy. Comments and other information on this topic have been placed on file and may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated February 3, 1989

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-2918 Filed 2-3-89; 10:27 am]

BILLING CODE 4160-01-M

[Docket No. 88E-0430]

Determination of Regulatory Review Period for Purposes of Patent Extension; Photoplex™

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Photoplex™ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESS: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so

long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissoner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Photoplex ™ (butyl methoxydibenzoylmethane and Padimate O). Photoplex ™ provides protection from the acute and long-term risks associated with UVA and UVB light exposures. Photoplex ™ screens out the sun's burning rays to prevent sunburn. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Photoplex ™, U.S. Patent No. 4,387,089, from Givaudan Corp., and requested FDA's assistance in determining the patent's eligibility for patent term restoration. FDA, in a letter dated December 22, 1988, advised the Patent and Trademark Office that the human drug product had undergone a regulatory review period and that the active ingredients, butyl methoxydibenzoylmethane and Padimate O, represented the first permitted commercial marketing or use of those active ingredients. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Photoplex ™ is 1,701 days. Of this time, 429 days occurred during the testing phase of the regulatory review period, while 1,272 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* February 5, 1984. FDA has verified the applicant's claim that the investigational new drug application (IND) for Photoplex ™ became effective on February 5, 1984.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* April 8, 1985. FDA has verified the applicant's claim that the new drug application for the drug (NDA 19-459) was initially submitted on April 8, 1985.

3. *The date the application was approved:* September 30, 1988. FDA has verified the applicant's claim that NDA 19-459 was approved on September 30, 1988.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 730 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before April 10, 1989, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before August 7, 1989, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 30, 1989.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 89-2804 Filed 2-6-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88M-0383]

Cordis Corp.; Premarket Approval of the Cordis Percutaneous Transluminal Coronary Angioplasty Dilatation Catheter

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Cordis Corp., Miami, FL, for premarket approval, under the Medical Device Amendments of 1976, of the Cordis Percutaneous Transluminal Coronary Angioplasty Dilatation Catheter. After reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant by letter of October 28, 1988, of the approval of the application.

DATE: Petitions for administrative review by March 9, 1989.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Tara A. Ryan, Center for Devices and Radiological Health (HFZ-450), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7371.

SUPPLEMENTARY INFORMATION: On May 11, 1988, Cordis Corp., Miami, FL 33102, submitted to CDRH an application for premarket approval of the Cordis Percutaneous Transluminal Coronary Angioplasty Dilatation Catheter. The device is indicated for balloon dilatation of the atheromatous, stenotic portion of a coronary artery in patients who are suitable candidates for coronary artery bypass graft surgery and who meet one or more of the following selection criteria:

1. Single-vessel atherosclerotic coronary artery disease that is concentric, discrete, subtotal, noncalcified, and accessible to a dilatation catheter.

2. Multiple-vessel coronary artery disease under certain circumstances.

3. Coronary artery disease of the native coronary arteries and/or coronary artery bypass grafts of some patients who have previously undergone coronary artery bypass graft surgery, have recurrence of symptoms, and (a) progression of disease, or (b) stenosis and closure of the grafts.

On September 16, 1988, the Circulatory System Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On October 28, 1988, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Tara A. Ryan (HFZ-450), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before March 9, 1989, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: January 27, 1989.

Walter E. Gundaker,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 89-2800 Filed 2-6-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88M-0400]

Abbott Laboratories; Premarket Approval of Murine® Contact Lense Cleaner

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Abbott laboratories, Columbus, OH, for premarket approval, under the Medical Device Amendments of 1976, of Murine® Contact Lens Cleaner. The device is to be manufactured under an agreement with Paco Pharmaceutical Services, Inc., Lakewood, NJ, which has authorized Abbott Laboratories to incorporate information contained in its approved premarket approval application for the Charter Labs Cleaning Solution for Sensitive Eyes. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of November 8, 1988, of the approval of the application.

DATE: Petitions for administrative review by March 9, 1989.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7940.

SUPPLEMENTARY INFORMATION: On July 11, 1988, Abbott Laboratories, Columbus, OH 43216, submitted to CDRH an application for premarket approval of Murine® Contact Lens Cleaner. The device is indicated for use to clean soft (hydrophilic) contact lenses before rinsing and disinfection. The application includes authorization from Paco Pharmaceutical Services, Inc., Lakewood, NJ 08701, to incorporate information contained in its approved premarket approval application for the Charter Labs Cleaning Solution for Sensitive Eyes.

On November 8, 1988, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ-460), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before March 9, 1989, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this

document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: January 24, 1989.

Walter E. Gundaker,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 89–2801 Filed 2–6–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 88N–0401]

Emerging Food Safety and Quality Issues for the Next Decade; Announcement of Rescheduled Closed Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announced in the **Federal Register** of December 19, 1988 (53 FR 51008), that the Life Sciences Research Office of the Federation of American Societies for Experimental Biology (FASEB), under its contract with FDA (No. 223–88–2124), was undertaking a review and evaluation of topics and issues in food safety and quality that FDA should consider as important scientific concerns emerging in the next decade. (For complete information see 53 FR 51008.) The notice also announced that closed meetings of the ad hoc expert panel, established by FASEB, were scheduled for Wednesday, Thursday, and Friday, March 29 through 31, 1989. Because of conflicting schedules of the panel members, those closed meetings have been rescheduled.

DATES: The closed meetings of the ad hoc expert panel will be held on Monday and Tuesday, April 3 and 4, 1989, at 9 a.m.

ADDRESS: The closed meetings will be held at FASEB, 9650 Rockville Pike, Bethesda, MD 20814.

FOR FURTHER INFORMATION CONTACT: Kenneth D. Fisher, Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814, 301–530–7030, or C. William Cooper, Center for Food Safety and Applied Nutrition (HFF–3), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0285.

Dated: January 31, 1989.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–2802 Filed 2–6–89; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

[HSQ–166–N]

Meeting of the Advisory Panel on the Development of Uniform Needs Assessment Instrument(s)

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the fifth meeting of the Advisory Panel on the Development of Uniform Needs Assessment Instrument(s). The Panel is responsible for the development of a standard method to be used to evaluate the post-hospitalization needs of patients. The meeting is open to the public.

DATE: February 22–23, 1989.

TIME: February 22, 10:00 a.m. to 5:00 p.m. c.s.t. February 23, 8:00 a.m. to 5:00 p.m. c.s.t.

ADDRESS: Hotel Inter-Continental New Orleans, 444 St. Charles Avenue, New Orleans, Louisiana 70130.

FOR FURTHER INFORMATION CONTACT: Sue Nonemaker, (301)966–6825.

SUPPLEMENTARY INFORMATION: Section 9305(c) of the Omnibus Budget Reconciliation Act of 1986 (OBRA '86), in amending section 1861(e) of the Social Security Act, requires that hospitals, as a condition to participate in the Medicare program, provide discharge planning. Discharge planning activities vary and we currently lack a standardized method for evaluating a patient's need for health care after hospitalization. The development of a standardized method would allow more uniformity among those responsible for discharge planning and improve determination of a patient's need for post-hospital services.

Section 9305(h) of OBRA '86 requires the Secretary to develop a uniform needs assessment instrument in consultation with an advisory panel made up of experts in the delivery of post-hospital extended care services, home health services, and long term care services. The panel is made up of experts in the delivery of post-hospital extended care services, home health services, long term care services and representatives of physicians, Medicare beneficiaries, hospitals, skilled nursing facilities, home health agencies, long term care providers, and fiscal intermediaries.

Mr. Jay Rudman, Director of the Clinical Social Work Department at the University of California at Los Angeles Medical Center is chairman of the panel.

At the previous panel meetings, the activities have focused on the following:

- Developing a standard method to evaluate an individual's ability to function or engage in activities of daily living, the nursing and other care requirements necessary to meet health care needs, and the social and familial resources available to the individual;
- Constructing the standard method so that it could be used by discharge planners, hospitals, nursing facilities, other health care providers and fiscal intermediaries in evaluating an individual's needs for post-hospital extended care; and
- Evaluating the advantages and disadvantages of using the tool as a basis for determining whether payment should be made for post-hospital extended care services and home health services which are provided to Medicare beneficiaries.

At this meeting, the Advisory Panel will continue its deliberations regarding the content and use of the uniform needs assessment instrument. Also, as required by the Panel's Charter, we will include a discussion of the advantages and disadvantages of using the instrument(s) as the basis for determining whether payment should be made for post-hospital extended care services provided to Medicare beneficiaries. The items of discussion are subject to change as priorities dictate. An Executive session will be held at 8:00 a.m. on February 22, 1989; the remainder of the meeting is open to the public.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program No. 13.773, Medicare-Hospital Insurance Program No. 13.774, Medicare-Supplementary Medical Insurance.)

Dated: February 1, 1989.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 89–2854 Filed 2–6–89; 8:45 am]

BILLING CODE 4120–01–M

Public Health Service

National Toxicology Program (NTP) Board of Scientific Counselors' Meeting—Review of Draft NTP Technical Reports

Pursuant to Pub. L. 92–463, notice is given of the next meeting of the NTP Board of Scientific Counselors Technical Reports Review Subcommittee and associated *ad hoc* Panel of Experts (*Peer Review Panel*) on March 13, 1989, in the Conference Center, Building 101, South Campus, National Institute of Environmental Health Sciences, 111 Alexander Drive, Research Triangle Park, North Carolina. The meeting will begin at 8:30 a.m. and is open to the public. The primary agenda topics are the peer review of Technical Reports of long-term toxicology and carcinogenesis studies from the National Toxicology Program, and for the first time peer review of draft Technical Reports of toxicity studies.

Tentatively scheduled to be peer reviewed are draft Technical Reports of long-term studies on the seven chemicals, listed alphabetically, along with supporting information including tentative levels of evidence of carcinogenic activity in Table 1. All studies were done using Fischer 344 rats and B6C3F$_1$ mice.

Also, scheduled to be peer reviewed are draft Technical Reports of toxicity studies on three chemicals, listed alphabetically, along with supporting information in Table 2. Order of presentation is given in the far right column of each table.

Persons wanting to make a *formal* presentation regarding a particular Technical Report must notify the Executive Secretary by telephone or by mail no later than March 7, 1989, and provide a written copy in advance of the meeting so copies can be made and distributed to all Panel members and staff and made available at the meeting for attendees. Oral presentation should supplement and not repeat the written statement. Presentations should be about 5 minutes, and must be limited to no more than 10 minutes.

Those interested in having more information about any of the studies listed in this announcement, or wanting to provide input, should contact the particular NTP staff scientist as early as possible by telephone or by mail to: NIEHS, P.O. Box 12233, Research Triangle Park (RTP), North Carolina 27709. The staff scientists would welcome receiving toxicology and carcinogenesis data from completed, ongoing or planned studies by others as well as current production data, human exposure information, and use and use patterns.

The Executive Secretary, Dr. Larry G. Hart, NTP, P.O. Box 12233, RTP, North Carolina 27709, telephone (919–541–3971), FTS (629–3971), will furnish final agendas, a roster of subcommittee and panel meetings, and other program information prior to the meeting, and summary minutes subsequent to the meeting.

Attachment

Dated: January 27, 1989.

David P. Rall,

Director, National Toxicology Program.

TABLE 1.—SUMMARY DATA AND PROPOSED LEVELS OF EVIDENCE FOR NTP TECHNICAL REPORTS PROJECTED FOR PEER REVIEW AT THE BOARD OF SCIENTIFIC COUNSELORS' PEER REVIEW PANEL MEETING ON MARCH 13, 1989

Chemical CAS No.	Staff scientist/ technical report No.	Use	Route/exposure levels	Laboratory	Proposed levels of evidence of carcinogenicity [1] organ/ tissue (neoplasm) [2]	Order of review
Benzofuran, 271–89–6.	Dr. R. Irwin, TR–370 03/13/89.	Manufacture of coumarone-indene resins.	Oral, Gavage (corn oil): FR&MM: 0, 60, 120, MR: 0, 30, 60, FM: 0, 120, 240 MG/KG, Rats: Fischer 344, Mice: B6C3F1.	Springborn Inst. for Bioresearch, Inc.	MR: No evidence. FR: Some evidence kidney (tubular cell adenocarcinoma). MM: Clear evidence liver (adenoma, hepatoblastoma, adenoma or carcinoma or hepatoblastoma) forestomach (squamous cell papilloma, squamous cell papilloma or carcinoma) lung (alveolar/ bronchiolar adenoma, alveolar/bronchiolar adenoma or carcinoma) FM: Clear evidence liver (adenoma, adenoma or carcinoma) lung (alveolar/bronchiolar adenoma, alveolar/bronchiolar adenoma or carcinoma) forestomach (squamous cell papilloma, or carcinoma).	5
N,N-Dimethylaniline, 121–69–7.	Dr. K. Abdo, TR–360 03/12/89.	Reagent, catalyst, activator, solvent, vulcanizer, chemical intermediate.	Oral, Gavage (corn oil): R: 0, 3, 30, M: 0, 15, 30 MG/KG, Rats: Fischer 344, Mice: B6C3F1.	Springborn Inst. for Bioresearch, Inc.	MR: Some evidence spleen (sarcoma). FR: No evidence. MM: No evidence. FM: Equivocal evidence forestomach (squamous cell papilloma).	7
α-Methylbenzyl alcohol, 98–85–1.	Dr. M. Dieter, TR–369 03/13/89.	Flavoring agent. Fragrances. Lab reagent. Intermediate in styrene production. Dyes.	Oral, Gavage (corn oil): R&M: 0, 375, 750 MG/KG, Rats: Fischer 344, Mice: B6C3F1.	Microbiological Associates.	MR: Some evidence kidney (tubular cell adenoma or adenocarcinoma). FR: No evidence. MM: No evidence. FM: No evidence.	6
Nalidixic acid, 389–08–2.	Dr. R. Morrissey, TR–368 03/13/89.	Antibacterial agent for urinary infections.	Oral in Feed: R&M: 0, 2000, 4000 PPM, Rats: Fischer 344, Mice: B6C3F1.	Physiological Research Laboratory.	MR: Clear evidence preputial gland (adenoma or papilloma or carcinoma). FR: Clear evidence clitoral gland (adenoma or papilloma or carcinoma). MM: Equivocal evidence subcutaneous tissue (Fibroma or fibrosarcoma). FM: No evidence.	8

BEST COPY AVAILABLE

TABLE 1.—SUMMARY DATA AND PROPOSED LEVELS OF EVIDENCE FOR NTP TECHNICAL REPORTS PROJECTED FOR PEER REVIEW AT THE BOARD OF SCIENTIFIC COUNSELORS' PEER REVIEW PANEL MEETING ON MARCH 13, 1989—Continued

Chemical CAS No.	Staff scientist/ technical report No.	Use	Route/exposure levels	Laboratory	Proposed levels of evidence of carcinogenicity [1] organ/ tissue (neoplasm) [2]	Order of review
Phenylbutazone, 50-33-9.	Dr. F. Karl, TR-367 03/13/89.	Anti-inflamatory agent and analgesic in vet medicine.	Oral Gavage (Corn oil): R: 0, 50, 100, M: 0, 150, 300 MG/KG, Rats: Fischer 344, Mice: B6C3F1.	EG&G Mason Research Institute.	MR: Some evidence kidney (tubular cell adenoma). FR: Some evidence kidney (tubular cell adenoma). MM: Some evidence liver (adenoma, carcinoma). FM: No evidence.	2
Toluene, 108-88-3.....	Dr. J. Huff, TR-371 03/13/89.	Chemical intermediate. Solvent. Denaturant.	Inhalation: R: 0, 600, 1200, M: 0, 120, 600, 1200 PPM, Rats: Fischer 344, Mice: B6C3F1.	International Research & Development Corp.	MR: No evidence. FR: No evidence. MM: No evidence. FM: No evidence.	1
4-Vinyl-1-cyclohexene diepoxide, 106-87-6.	Dr. R. Chhabra, TR-362 03/13/89.	Polymers, organic synthesis, reactive diluent, chemical intermediate.	Skin Paint (Acetone): R: 0, 50, 100, M: 0, 25, 50, 100 MG/ML, Rats: Fischer 344, Mice: B6C3F1.	Battelle Columbus Laboratory.	MR: Clear evidence skin (basal cell carcinoma, squamous cell carcinoma). FR: Clear evidence skin (basal cell carcinoma, squamous cell carcinoma). MM: Clear evidence skin (squamous cell carcinoma). FM: Clear evidence skin (squamous cell carcinoma) ovary (benign mixed tumors or granulosa cell tumors or luteoma).	5

[1] Levels of Evidence Summary: (28 individual experiments): clear evidence, 8; some evidence, 6; equivocal evidence, 2; no evidence, 12, inadequate study, none.
[2] Regarding tumor types, the format used is explained by the following example: liver (adenoma, carcinoma) means that both benign and malignant types of neoplasms were increased and influenced the level of evidence; liver (adenoma *or* carcinoma) indicates that both types of neoplasia were combined to make the evaluation and to assign a level of evidence.

NOTE:—The results indicated are to be considered tentative until reviewed, discussed, and approved at the Board of Scientific Counselors' Peer Review Panel Public Meeting March 13, 1989.
MR = Male Rats; FR = Female Rats; MM = Male Mice; FM = Female Mice.

TABLE 2.—SUMMARY DATA FOR NTP TECHNICAL REPORTS OF TOXICITY STUDIES PROJECTED FOR PEER REVIEW AT THE BOARD OF SCIENTIFIC COUNSELORS PEER REVIEW PANEL MEETING ON MARCH 13, 1989

Chemical name/CAS No.	Use	Staff scientist/technical report number	Route/exposure levels	Laboratory	Order of review
Acetone, 67-64-1	Solvent	Dr. D. Dietz, 919-541-2272 02.	Water MM: 0, .125, .25, .5, 1.0, 2.0 percent.	Microbiological Associates	10
Hexachloro-1,3-Butadiene, 87-68-3	Solvent	Dr. R. Yang, 919-541-2947 03.	Feed Mice only 0, 1, 3, 10, 30, 100 PPM.	Microbiological Associates	8
N-Hexane, 110-54-3	Solvent	Dr. J. Dunnick, 919-541-4811.	Inhal 0, 500, 1000, 4000, 10000 PPM.	Brookhaven National Laboratory.	9

[FR Doc. 89-2915 Filed 2-6-89; 8:45 am]
BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N-89-1917; FR-2606]

Unutilized and Underutilized Federal Buildings and Real Property Determined by HUD To Be Suitable for Use for Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

DATE: February 7, 1989.

ADDRESS: For further information, contact Morris Bourne, Director, Transitional Housing Development Staff, Room 9140, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 755-9075; TDD number for the hearing- and speech-impaired (202) 426-0015. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 2, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, D.C.D.C. No. 88-2503-OG, HUD is publishing this Notice to identify Federal buildings and real property that HUD has determined are suitable for use for facilities to assist the homeless. The properties were identified from information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies.

The court order requires HUD to take certain steps to implement section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), which sets out a process by which unutilized or underutilized Federal properties may be made available to the homeless. Under section 501(a), HUD is to collect information from Federal landholding agencies about such properties and then to determine, under criteria developed in consultation with the Department of Health and Human Services (HHS) and the Administration of General Services (GSA), which of those properties are suitable for facilities to assist the homeless. The court order requires HUD to publish, on a weekly basis, a Notice in the **Federal Register** identifying property determined suitable. HUD published the first Notice on January 9, 1989 (54 FR 667.)

The properties identified in this Notice may ultimately be available for use by the homeless, but they are first subject to review by the controlling agencies, pursuant to the court's Memorandum opinion of December 14, 1988 and section 501(b) of the McKinney Act. Section 501(b) requires HUD to notify each Federal agency with respect to any property of such agency that has been identified as suitable. Within 30 days from receipt of such notice from HUD, the agency must transmit to HUD its intention to: (1) Declare the property excess to the agency's need, or to make the property available on an interim basis for use as facilities to assist the homeless; or (2) state the reasons that the property cannot be declared excess or made available on an interim basis for use as facilities to assist the homeless.

First, if the controlling agency decides that the property cannot be declared excess or made available to the homeless for use on an interim basis, the property will no longer be available.

Second, if the controlling agency declares the property excess to the agency's need, that property may be made available for use by the homeless in accordance with applicable law and the court's order of December 12, 1988 and Memorandum of December 14, 1988, subject to screening by other Federal agencies that may wish to make use of the property. In accordance with its normal procedures, GSA will notify the public when properties that HUD has determined suitable are declared excess to the controlling agency's needs. The properties identified by GSA shall be held available for expressions of interest for 30 days following GSA's notification to the public. Thus, applicants will have 30 days after the notification by GSA that the properties have been declared excess to submit an application or written expression of interest in a property to Judy Brietman, Division of Health Facilities Planning, Public Health Services, HHS, Room 17A-10 Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857 (301) 443-2265. (This is not a toll-free number.)

Finally, in lieu of declaring any particular property as excess, the controlling agency may decide to make the property available to homeless for use on an interim basis. Public bodies and private nonprofit organizations wishing more information about a particular property identified with this Notice or wishing to make application for use of a particular property on an interim basis should contact the appropriate landholding agency at the following addresses: U.S. Navy: Andrea Wohlfeld, Code 20YAW, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332 (202) 325-7342; U.S. Army military facilities: HQ-DA, Attn: DAEN-ZCI-P, Robert Conte, Room 1E671, Pentagon, Washington, DC 20360-2600 (202) 693-4583; U.S. Army civil works projects: Bob Swieconek, HQ-US Army Corps of Engineers, Attn: CERE-MM, 20 Massachusetts Avenue, NW., Washington, DC 20314-1000 (202) 272-1750; U.S. Air Force: Bill Kimball, HQ-USAF/LEER, Washington, DC 20332-0500 (202) 767-4384; Veterans Administration: Linda Tribby, 084A, Real Property Program Management, Veterans Administration, 810 Vermont Ave. NW., Washington, DC 20420 (202) 233-5026. (These are not toll-free telephone numbers.)

Dated: January 31, 1989.

James E. Schoenberger,
General Deputy, Assistant Secretary for Housing—Federal Housing Commissioner.

Suitable Buildings

Rodo Gun Club, Building 63-325, Elmendorf AFB, AK, Land Holding Agency: USAF
Underground Hospital, Building 63-320, Elmendorf AFB, AK, Land Holding Agency: USAF
Naval Reserve Center, Huntsville, AL, Land Holding Agency: NAVY
Anderson Family Housing, Annex No. 4 (AJKP), Guam, Land Holding Agency: USAF
Vandenberg Air Force Base, Building #1021, Vandenberg AFB, CA 93437, Land Holding Agency: USAF
VA Medical Center (Building 91), 16111 Plummer Street, Sepulveda, CA 91343, Land Holding Agency: VA
VA Medical Center (Building 85), 16111 Plummer Street, Sepulveda, CA 91343, Land Holding Agency: VA
VA Medical Center (Building 88), 16111 Plummer Street, Sepulveda, CA 91343, Land Holding Agency: VA
VA Medical Center (Building 63), 16111 Plummer Street, Sepulveda, CA 91343, Land Holding Agency: VA
VA Medical Center (Building 60), 16111 Plummer Street, Sepulveda, CA 91343, Land Holding Agency: VA
Tract 155 Falcon Buffer (Trailer), 15230 Thornton Lane, Colorado Springs, CO 80909, Land Holding Agency: ARMY
Tract 116 Falcon Buffer, 15475 Blue Road, Colorado Springs, CO 80909, Land Holding Agency: USAF
Tract 137 Falcon Buffer, 1935 Curtis Road, Colorado Springs, CO, Land Holding Agency: USAF
Tract 153 Falcon Buffer (Trailer), 15155 Thorton Lane, Colorado Springs, CO 80909, Land Holding Agency: ARMY
Tract 147 Falcon Buffer (Trailer), Colorado Springs, CO 80909, Land Holding Agency: USAF
Tract 138 Falcon Buffer (Trailer), Colorado Springs, CO 80909, Land Holding Agency: USAF
Tract 134 Falcon Buffer (2 Buildings), 1615 S. Curtis Road, Colorado Springs, CO 80909, Land Holding Agency: USAF
Family Housing, Eagle Drive, Shelton, CT, Land Holding Agency: ARMY
Naval Reserve Center, 2810 Tigertown Rd., Miami, FL, Land Holding Agency: NAVY
VA Medical Center (Building 11), 1900 E. Main Street, Danville, IL 61832, Land Holding Agency: VA
Chanute AFB (Building 1220), 3345 Civil Engineering Squadron, Chanute AFB, IL 61868-5046, Land Holding Agency: USAF
Brandou Road Lock and Dam, 1100 Brandou Road, Joliet, IL 60436, Land Holding Agency: ARMY
Ohio River Locks & Dam, Building 53, Grand Chain, IL 62941-9801, Land Holding Agency: ARMY
Chanute AFB (Building 552), 3345 Civil Engineering Squadron, Chanute AFB, IL 61868-5046, Land Holding Agency: USAF
Chanute AFB (Building 1380), 3345 Civil Engineering Squadron, Chanute AFB, IL 61868-5046, Land Holding Agency: USAF
Chanute AFB (Building 1221), 3345 Civil Engineering Squadron, Chanute AFB, IL 61868-5046, Land Holding Agency: USAF
Chanute AFB (Building 556), 3345 Civil Engineering Squadron, Chanute AFB, IL 61868-5046, Land Holding Agency: USAF
Chanute AFB (Building 383), 3345 Civil Engineering Squadron, Chanute AFB, IL 61868-5046, Land Holding Agency: USAF
Chanute AFB (Building 984), 3345 Civil Engineering Squadron, Chanute AFB, IL 61868-5046, Land Holding Agency: USAF
Chanute AFB (Building 551), 3345 Civil Engineering Squadron, Chanute AFB, IL 61868-5046, Land Holding Agency: USAF
Chanute AFB (Building 550), 3345 Civil Engineering Squadron, Chanute AFB, IL 61868-5046, Land Holding Agency: USAF
Cecil M. Hardin Lake, RR No. 1, Box 129, Rockville, IN, Land Holding Agency: ARMY
McConnell AFB, Building 1, McConnell AFB, KS 67221-5000, Land Holding Agency: USAF
Holmes Band Campground, Green River Lake, KY, Land Holding Agency: ARMY
Dale Hollow Lake (Tract No. A-1), Dale Hollow Lake, KY, Land Holding Agency: ARMY
Harlan Flood Protection Project, Tract No. 602, Harlan County, KY, Land Holding Agency: ARMY
Harlan Flood Protection Project, Tract No. 403, Harlan County, KY, Land Holding Agency: ARMY

Harlan Flood Protection Project, Tract No. 603, Harlan County, KY, Land Holding Agency: ARMY
Harlan Flood Protection Project, Tract No. 606, Harlan County, KY, Land Holding Agency: ARMY

Suitable Land

Beale Air Force Base, Marysville, CA, Land Holding Agency: USAF
March AFB, Hawes Site (KHGM), Hinckley, CA 92518–5000, Land Holding Agency: USAF
Pt. of the Lewes Rehoboth Canal, 1100 South and South Rt. Bridge 9, Lewes, DE, Land Holding Agency: ARMY
Assawoman Canal, Sussex County, DE, Land Holding Agency: ARMY
VA Medical Center, North Chicago, IL, Land Holding Agency: VA
Pomona Lake (Dragoon), Ottawa, KS, Land Holding Agency: ARMY
Pomona Lake (110 mile), Ottawa, KS, Land Holding Agency: ARMY
Perry Lake (Grasshopper Point), Perry, KS, Land Holding Agency: ARMY
Perry Lake (Sunset Ridge), Perry, KS, Land Holding Agency: ARMY
Perry Lake (Paradise Point), Perry, KS, Land Holding Agency: ARMY
VA Medical Center, 2501 Shreveport Hwy., Alexandria, LA 71301, Land Holding Agency: VA

[FR Doc. 89–2812 Filed 2–6–89; 8:45 am]
BILLING CODE 4310-27-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–940–09–4214–10; CACA–18152]

Order Providing for Opening of Land; California

January 27, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Opening order.

SUMMARY: The Federal Energy Regulatory Commission has determined that the land withdrawals for Projects Nos. 1302 and 3247 are no longer essential and has vacated the projects in their entirety. The lands were closed to entry, location or other disposal under the laws of the United States. This action will open the land to surface entry and mining. All of the lands have been and will remain open to mineral leasing.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, BLM California State Office, 2800 Cottage Way, Sacramento, California 95825, 916–978–4815.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, and pursuant to the determination of the Federal Energy Regulatory Commission, it is ordered as follows:

1. By order dated September 30, 1985, the Federal Energy Regulatory Commission declared that Power Projects Nos. 1302 and 3247 are no longer essential and vacated the projects in their entirety. The lands are described as follows:

Mount Diablo Meridian
Plumas National Forest

All portions of the following described tracts lying within 100 feet of the centerline of the wood flume, the wood stave pipeline and the steel penstock locations, and within the project boundaries enclosing the diversion dam; all as shown on a map designated Exhibit "F" (FPC 1302–1) and entitled "Hydroelectric Power Development on Grayeagle Creek for California Fruit Exchange" and filed in the office of the Federal Power Commission on February 8, 1935; and as shown on amended Exhibit "F" (FPC 1302–3) entitled "Hydroelectric Power Development of Gray Eagle Creek for Grayeagle Lumber Co., Plumas County, California," also filed in the office of the Federal Commission on November 19, 1945:

T. 22 N., R. 12 E.,
Sec. 21, SE¼NW¼, N½SW¼, and SW¼,SW¼.

The area described contains 19.50 acres in Plumas County.

2. At 10 a.m. on March 8, 1989, the lands included in Projects Nos. 1302 and 3247 shall be opened to such forms of disposition as may by law be made of National Forest System lands, including location and entry under the United States mining laws. Appropriation of lands described in this order under the general mining laws prior to lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Ed. Hastey,
State Director.

[FR Doc. 89–2759 Filed 2–6–89; 8:45 am]
BILLING CODE 4310-40-M

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Republication and Availability of Species Lists

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The Service announces the republication and availability of the current Lists of Endangered and Threatened Wildlife and Plants found at 50 CFR 17.11 and 17.12.

DATES: The republished lists contain all changes through January 1, 1989.

ADDRESSES: Requests for copies should be addressed to the Publications Unit, U.S. Fish and Wildlife Service, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Mr. William E. Knapp, Chief, Division of Endangered Species and Habitat Conservation, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235–2771).

SUPPLEMENTARY INFORMATION: The Service has incorporated into a separate reprint all changes through January 1, 1989, to the lists at 50 CFR 17.11 and 17.12 published since the October 1, 1987, compilation of that title. (The October 1, 1988, compilation is not expected to be available to the public before early March 1989.) In addition, minor changes or corrections to the spellings of names, historic ranges, and special rules applicable to a particular entry in the table and found elsewhere in this title have been incorporated in this special reprinting of these lists. Otherwise, no entry in these lists has been significantly affected. The document also contains a list of the species that have been entirely removed from §§ 17.11 or 17.12 since 1973. The 35-page document is available from the Publications Unit (address above).

Dated: December 13, 1988.

Frank Dunkle,
Director.

[FR Doc. 89–2860 Filed 2–6–89; 8:45 am]
BILLING CODE 4310-55-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 28, 1989. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by February 22, 1989.

Carol D. Shull,
Chief of Registration, National Register.

ALABAMA

Jefferson County

Pratt City Carline Historic District, Ave. U. from Ave. A to Carline and Carline from Ave. W to 6th Ave., Birmingham, 89000118
Thomas Historic District, Roughly area between 1st and 8th Sts., N of Village Creek and W of St. Louis and San Francisco Railroad tracks, Birmingham, 89000119

CONNECTICUT

Hartford County

Royal Typewriter Company Building, 150 New Park Ave., Hartford, 84003898

DISTRICT OF COLUMBIA

District of Columbia

Gallinger Municipal Hospital Psychopathic Ward, Reservation 13, 19th St. and Massachusetts Ave., SE, Washington, 89000074

MINNESOTA

Hennepin County

Minnesota Soldiers' Home Historic District, Roughly bounded by Minehaha Ave., Mississippi River, and Godfrey Pkwy., Minneapolis, 89000076

Mahnomen County

Mahnomen County Fairgrounds Historic District, Jct. MN 200 and Co. Hwy. 137, Mahnomen vicinity, 89000077

MISSOURI

St. Louis Independent City

Beethoven Conservatory, 2301 Locust St., St. Louis, 89000075

NEVADA

Douglas County

Jensen, Arendt, House, 1431 Ezell St., Gardnerville, 89000126

OREGON

Hood River County

Slade, J.E., House, 1209 State St., Hood River, 89000065
Thompson, Clark, House, 22 NW Cragmont, Cascade Locks, 89000124

Jackson County

Buckhorn Mineral Springs Resort, 2200 Buckhorn Springs Rd., Ashland, 89000064

Lane County

McMorran and Washburne Department Store Building, 795 Willamette St., Eugene, 89000125

Multnomah County

Bagdad Theatre (Portland Eastside MPS), 3708—26 SE Hawthorne, Portland, 89000099
Bartman, Gustave, House, (Portland Eastside MPS), 1617 SE 12th, Portland, 89000098
Bedell Building, 520—538 SW 6th Ave., Portland, 89000066
Clarke—Woodward Drug Company Building, 911 NW Hoyt, Portland, 89000121
Deere, John, Plow Company Building (Portland Eastside MPS), 215 SE Morrison, Portland, 89000097
Douglas Building (Portland Eastside MPS), 3525—41 SE Hawthorne, Portland, 89000096
Dupont, Edward D., House (Portland Eastside MPS), 3328 SE Main, Portland, 89000095
Electric Building, 621 SW Alder St., Portland, 89000059
Eugenia Apartments (Portland Eastside MPS), 1314 SE Salmon, Portland, 89000094
Farrer, Franklin W., House (Portland Eastside MPS), 2706 SE Yamhill, Portland, 89000093
Fisher, Thaddeus, House (Portland Eastside MPS), 913—15 SE 33rd, Portland, 89000092
Frigidaire Building (Portland Eastside MPS), 230 E Burnside, Portland, 89000091
Gilliland, Lewie T., House, 2229 NE Brazee, Portland, 89000063
Gowanlock, Elizabeth B., House (Portland Eastside MPS), 808 SE 28th, Portland, 89000089
Groat—Gates House, 35 NE Twenty-second Ave., Portland, 89000062
Hawthorne, Rachel Louise, House (Portland Eastside MPS), 1007 SE 12th, Portland, 89000090
International Harvester Company Warehouse (Portland Eastside MPS), 79 SE Taylor, Portland, 89000088
Italian Gardeners and Ranchers Association Market Building (Portland Eastside MPS), 1305—37 SE Union, Portland, 89000087
Jones, Clarence H., House (Portland Eastside MPS), 1834 SE Ankeny, Portland, 89000085
Knight, F.M., Building (Portland Eastside MPS), 3300 SE Belmont, Portland, 89000086
Krouse, Nettie, Fourplex (Portland Eastside MPS), 2108—12 SE Main, Portland, 89000084
Kuehle, Henry, Investment Property (Portland Eastside MPS), 210—13 SE 12th, Portland, 89000083
Lent, George P., Investment Properties (Portland Eastside MPS), 1921—1927 SE 7th and 621—637 SE Harrison, Portland, 89000082
Marshall—Wells Company, Warehouse No. 2, 1420 NW Lovejoy St., Portland, 89000081
Mohle, Wilhelmina, House (Portland Eastside MPS), 734 SE 34th, Portland, 89000081
Munsell, William O., House (Portland Eastside MPS), 1507 SE Alder, Portland, 89000080
Olympic Cereal Mill (Portland Eastside MPS), 107 SE Washington, Portland, 89000115
Oregon Portland Cement Building (Portland Eastside MPS), 111 SE Madison, Portland, 89000114
Page and Son Apartments (Portland Eastside MPS), 723—37 E Burnside, Portland, 89000113
Parelius, Martin, Fourplex (Portland Eastside MPS), 423—29 and 433—39 SE 28th, Portland, 89000112
Piper, Charles, Building (Portland Eastside MPS), 3610—24 SE Hawthorne, Portland, 89000111
Polhemus, James S., House(Portland Eastside MPS), 135 SE 16th, Portland, 89000110
Portland Fire Station No. 23 (Portland Eastside MPS), 1917 SE 7th, Portland, 89000108
Portland Fire Station No. 7 (Portland Eastside MPS), 1036 SE Stark, Portland, 89000109
Raabe, Capt. George, House (Portland Eastside MPS), 1506—08 SE Taylor, Portland, 89000107
Raymond, Jessie M., House (Portland Eastside MPS), 2944 SE Taylor, Portland, 89000106
Rosenfeld, Dr. James, House, 2125 SW Twenty-first Ave., Portland, 89000060
Santa Barbara Apartments (Portland Eastside MPS), 2052 SE Hawthorne, Portland, 89000105
Scott, Leslie M., House (Portland Eastside MPS), 2936 SE Taylor, Portland, 89000104
Sensel, Henry, Building (Portland Eastside MPS), 3556—62 SE Hawthorne, Portland, 89000103
Troy Laundry Building (Portland Eastside MPS), 1025 SE Pine, Portland, 89000102
Wallace, John M., Fourplex (Portland Eastside MPS), 3645—55 SE Yamhill, Portland, 89000101
Webb, Alfred, Investment Properties (Portland Eastside MPS), 1503—17 Belmont and 822 SE 15th Portland, 89000100
Wilcox Building, 508 SW 6th Ave., Portland, 89000058

Washington County

Blanton, M.E., House, 3980 SW 170th Ave., Aloha, 89000123

Yamhill County

Kershaw, Dr. Andrew, House, 472 E Main St., Willamina, 89000102

RHODE ISLAND

Providence County

Edgewood Yacht Club, 3 Shaw Ave., Cranston, 89000072

TENNESSEE

Lincoln County

South Elk Street Historic District, Roughly bounded by E. Campbell St., Franklin St., Louisville and Nashville Railroad tracks, and S Elk St., Fayetteville, 89000127

Robert County

O'Bryan, George, House, O'Bryan and Highland Aves., Ridgetop, 89000073

Wisconsin

Dane County

Mt. Horeb Opera Block, 109—117 E Main St., Mt. Horeb, 89000068

Dodge County

Hotel Rogers, 103 E Maple Ave., Beaver Dam, 89000120

Kenosha County

Civic Center Historic District, Roughly bounded by 55th St., 8th Ave., 58th St., and 10th Ave., Kenosha, 89000069

Milwaukee County

First Church of Christ, Scientist, 1443—1451 M. Prospect Ave., Milwaukee, 89000070

Sauk County

Sauk City High School, 713 Madison St., Sauk City, 89000071

[FR Doc. 89-2834 Filed 2-6-89; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31356]

The Kansas City Southern Railway Co.; Control Exemption—Joplin Union Depot Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Interstate Commerce Commission exempts the Kansas City Southern Railway Company (KCS) from the requirements of 49 U.S.C. 11343, *et seq.*, to acquire sole control of Joplin Union Depot Company (JUD). KCS is now performing all of JUD's switching and related transportation services with KCS crews and equipment. The exemption is subject to employee protective conditions.

DATES: This exemption will be effective on March 9, 1989. Petitions to stay must be filed by February 17, 1989 and petitions for reconsideration must be filed by February 27, 1989.

ADDRESSES: Send pleadings referring to Finance Docket No. 31356 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Robert K. Dreiling, 301 West 11th Street, Kansas City, MO 64105.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decisions, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357/4359 (DC Metropolitan Area), (assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters.)

Decided: January 30, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89-2853 Filed 2-3-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; Inland Steel Co. et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on December 29,1988, a proposed Consent Decree in *United States* v. *Inland Steel Company, et al.*, Civil Nos. H79-75 and H81-216, was lodged with the United States District Court for the Northern District of Indiana. The proposed Consent Decree arises from a civil action filed under the Clean Air Act, 42 U.S.C. 7401 *et seq.*, seeking to control air pollution at Inland Steel's iron and steel mill in East Chicago, Indiana.

The Department of Justice will receive for a period of thirty (30) days from the date of publication comments relating to the proposed Amendment to Judgment Order. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Inland Steel Company, et al.*, DJ Ref. 90-5-2-1-445A.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Northern District of Indiana, Federal Building (4th Floor), 507 State Street, Hammond, Indiana 46320. Copies of the Amendment to Judgment Order may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1748, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy please enclose a check in the amount of $2.30 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-2768 Filed 2-6-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Amended Consent Decree; Raymark Industries et al.

In accordance with section 122(d) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9622(d), notice is hereby given that on January 25, 1989, a proposed Consent Decree was filed in *United States of America* v *Raymark Industries, et al.*, Civil Action No. 85-3073. The proposed Amended Consent Decree will resolve claims brought by the United States against five defendants, pursuant to sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, and section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6973, for a mandatory injunction requiring defendants to intercept and contain a plume of groundwater contamination which allegedly threatens a drinking water source for the Borough of Hatboro, Pennsylvania, and to reimburse the United States for response costs it has incurred in the case.

The proposed Consent Decree requires that a sum of $1,125,000 be distributed to the Borough of Hatboro and the United States. That sum of money has been held in an escrow fund pending the preparation and execution of the Decree. Of this, $612,500 will be distributed to Hatboro, which will use the funds to erect pumping and treating systems at two of its municipal water supply wells. The pumping and treating system at one well (H-2) will be used primarily to contain a plume of groundwater contaminated with trichloroethylene ("TCE") so that it will not flow toward an uncontaminated well (H-15). Water drawn into well H-2 will be treated to remove TCE so that the water may, at Hatboro's discretion, be used in Hatboro's water supply system. The pumping and treating system at the other well (H-16), will be used primarily to remove TCE from water being drawn into that well so that the water can be used in Hatboro's water supply system. The remaining sum, $512,500, will partially reimburse the Hazardous Substances Superfund for the United States' expenditures in connection with the site from which the TCE allegedly originated, and for expected expenditures from the Superfund for a Remedial Investigation/Feasibility Study at the site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Amended Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, (Attention: David E. Street) and should refer to *United States, et al.* v. *Raymark Industries, et al.*, C.A. No. 85-3073 (E.D. Pa.), D.J. Ref. No. 90-11-2-12.

Copies of the proposed Amended Consent Decree may be examined: at the Office of the United States Attorney, Eastern District of Pennsylvania, Room 3310 United States Courthouse, Philadelphia, Pennsylvania 19106; at the Region III office of the Environmental Potection Agency, 841 Chestnut Building, 9th and Chestnut Streets, Philadelphia, Pennsylvania 19107; and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Amended Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $4.60 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-2765 Filed 2-6-89; 8:45am]

BILLING CODE 4410-01-M

Lodging of Consent Decree; Stauffer Chemical Co. et al.

In accordance with Departmental policy, 28 CFR 50.7, and 42 U.S.C. 9622(i), notice is hereby given that on January 30, 1989, a proposed consent decree in *United States of America* v. *Stauffer Chemical Company, et al.*, Civil Action No. 89-0195-MC, was lodged with the United States District Court for the District of Massachusetts. The United States' complaint, filed at the same time as the consent decree, sought recovery of response costs and injunctive relief under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Resource Conservation and Recovery Act against Stauffer Chemical Company, Monsanto Company, ICI American Holdings Inc., and twenty-three other corporations, trusts, and individuals responsible for hazardous wastes found at the Industri-Plex Site in Woburn, Massachusetts, a National Priority List facility. The consent decree resolves these claims and similar claims brought by the Commonwealth of Massachusetts against the same defendants under CERCLA and state law.

The consent decree provides that the defendants will perform work to remedy contamination at the site, in accordance with a remedial action plan developed by the U.S. Environmental Protection Agency (EPA), and reimburse EPA and Massachusetts for all of their costs of overseeing the remedial action. The remedial work will include capping of all areas of contamination above action levels specified by EPA, pumping and treating two plumes of solvents in groundwater, capturing and treating gaseous emissions from one area of the site, designing and implementing institutional controls to preserve the effectiveness of the remedial action, long-term operation and maintenance activities, and monitoring of groundwater and surface water. The defendants also agree to reimburse EPA and Massachusetts for certain past governmental response costs.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Stauffer Chemical Company*, D.J. Ref. 90-11-2-228.

The proposed consent decree may be examined at the office of the United States Attorney, 1107 J.W. McCormack Post Office/Courthouse, Boston, Massachusetts 02109 and at the Region I office of the Environmental Protection Agency, 2203 JFK Federal Building, Boston, Massachusetts 02203. Copies of the consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. Copies of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, at the above address. In requesting a copy, please enclose a check in the amount of $15.10 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land & Natural Resources Division.

[FR Doc. 89-2764 Filed 2-6-89; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Proposed Termination of Final Judgment; Crown Oil Corp. et al.

Notice is hereby given that Crown Oil Corporation and Granex Corporation have filed with the United States District Court for the Central District of California a motion to terminate the Final Judgment in *United States* v. *Crown Oil Corp.*, Civil No. 81-0787-TJH: and the Department of Justice ("Department"), in a stipulation filed with the court, has consented to termination of the judgment, but has reserved the right to withdraw its consent pending receipt of public comments. The complaint in this case (filed on February 17, 1981) alleged that the defendants had participated in a conspiracy to fix the price and create a shortage of crude coconut oil solid in the United States.

The Final Judgment (entered on June 21, 1982) enjoined the defendants from fixing prices, refusing to sell to any persons within the United States, discriminating in prices or terms of sale among customers, storing crude or refined coconut oil except pursuant to a legitimate shortage contract, and communicating with any other seller of coconut oil about prices or terms of sale, except in the course of a legitimate sales transaction.

The Department has filed with the court a memorandum setting forth the reasons why the Department believes that termination of the judgment would serve the public interest. Copies of the complaint and Final Judgment, defendant's motion papers, the stipulation containing the Government's consent, the Department's memorandum, and all further papers filed with the court in connection with this motion will be available for inspection in Room 3233, Antitrust Division, Department of Justice, 10th Street and Pennsylvania Avenue NW., Washington, DC 20530 (telephone: 202-633-2481), and at the Office of the Clerk of the United States District Court for the Central District of California, 312 North Spring Street, Los Angeles, California 90012. Copies of any of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by the Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the decree to the Department. Such comments must be received within the sixty-day period established by court order, and will be filed with the court. Comments should

be addressed to Gary R. Spratling, Chief, San Francisco Office, Antitrust Division, Department of Justice, 450 Golden Gate Avenue, Box 36046, San Francisco, CA 94102 (telephone: 415–556–6300).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89–2767 Filed 2–6–89; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Controlled Substances; Proposed 1989 Aggregate Production Quota for Methaqualone

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of a Proposed 1989 Aggregate Production Quota.

SUMMARY: This notice proposes a 1989 aggregate production quota for methaqualone, a Schedule I controlled substance.

DATE: Comments or objections must be received on or before March 9, 1989.

ADDRESS: Send comments or objections to the Administrator, Drug Enforcement Administration, 1405 I Street NW., Washington, DC 20537, Attn: DEA Federal Register Representatives.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, 1405 I Street, NW, Washington, DC 20537, Telephone: (202) 633–1366.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (21 U.S.C. 826) requires that the Attorney General establish on an annual basis aggregate production quotas for all controlled substances listed in Schedules I and II. This responsibility has been delegated to the Administrator of the Drug Enforcement Administration pursuant to § 0.100 of Title 28 of the Code of Federal Regulations.

Recently, the Drug Enforcement Administration received an application for a manufacturing quota for methaqualone, a Schedule I controlled substance. The methaqualone is to be used to prepare analytical standards.

The Administrator of the Drug Enforcement Administration, under the authority vested in the Attorney General by section 306 of the Controlled Substances Act of 1970 (21 U.S.C. C. 826) and delegated to the Administrator by § 0.100 of Title 28 of the Code of Federal Regulations, hereby proposes the 1989 aggregate production quota for methaqualone expressed in grams of anhydrous base.

Basic class	Proposed 1989 aggregate production Quota (grams)
Methaqualone	2

All interested persons are invited to submit comments or objections in writing regarding this proposal. Comments or objections should be submitted to the Administrator, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Representative, and must be received by March 9, 1989. If a person raises one or more issues which that person believes would warrant a hearing, that individual should so state and summarize the reason for this belief.

In the event that comments or objections to this proposal raise one or more issues which the Administration finds warrant a hearing, the Administrator shall order a public hearing by a notice in the Federal Register, summarizing the issues to be heard and setting the time for the hearing.

Pursuant to sections (3)(c)(3) and 3(e)(2)(C) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S.C 601, et seq. The establishment of annual production quotas for Schedule I and II controlled substances is mandated by law and by international commitments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

Dated: December 8, 1988.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89–2762 Filed 2–6–89; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Registration; Eli Lilly Industries, Inc.

By Notice dated September 28, 1988, and published in the Federal Register on September 30, 1988, (53 FR 38366), Eli Lilly Industries, Inc., Chemical Plant, Kilometer 146.7, State Road 2, Mayaguez, Puerto Rico 00708, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of bulk dextropropoxyphene (non-dosage forms) (9273), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: January 25, 1989.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89–2846 Filed 2–6–89; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Application; Janssen Inc.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on December 29, 1988, Janssen Inc., HC–02, Box 19250, Gurabo, Puerto Rico 00658–9629, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basis classes of controlled substances listed below:

Drug	Schedule
Alfentanil (9737)	II
Sufentanil (9740)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice.

1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than March 9, 1989.

Dated: January 25, 1989.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89–2847 Filed 2–6–89; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 88–53]

Jopat Drugs, Inc., Revocation of Registration

On April 21, 1988, the Administrator of the Drug Enforcement Administration (DEA), issued an Order to Show Cause to Jopat Drugs, Inc. (Respondent), of 1655 Grand Avenue, Baldwin, New York, proposing to revoke its DEA Certificate of Registration, AJ3425936, and to deny any pending applications for renewal of such registration. The Order to Show Cause alleged that the continued registration of Respondent would be inconsistent with the public interest, as set forth in 21 U.S.C. 823(f) and 824(a)(4). Additionally, citing his preliminary finding that Respondent's continued registration posed an imminent danger to the public health and safety, the Administrator ordered the immediate suspension of Respondent's registration pending the outcome of these proceedings. 21 U.S.C. 824(d).

Respondent, through counsel, requested a hearing in a letter dated May 6, 1988. The matter was docketed before Administrative Law Judge Francis L. Young. Following prehearing procedures, a hearing was held in Washington, DC on September 1, 1988. On October 25, 1988, the Administrative Law Judge issued his opinion and recommended ruling. On November 7, 1988, counsel for Respondent filed exceptions to the recommended ruling. On November 17, 1988, Government counsel filed its response to Respondent's exceptions to the recommended ruling. On November 28, 1988, Judge Young transmitted the record of these proceedings, including the aforementioned exceptions, to the Administrator. The Administrator has considered the record in its entirety and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that Alan Engerson has been a licensed pharmacist and the sole owner of Respondent pharmacy since May 9, 1984. Evidence presented at the hearing revealed that DEA initiated an investigation of Respondent pharmacy's controlled substance handling practices after records submitted to DEA revealed that Respondent purchased approximately 37,000 dosage units of oxycodone products in 1986, making Respondent the largest purchaser of such products during that time period in Nassau and Suffolk Counties, New York. On March 9, 1988, DEA Investigators conducted an audit of selected Schedule II controlled substances at Respondent pharmacy. The audit period covered May 11, 1987 to March 9, 1988, and revealed shortages of 2,063 dosage units of Percodan; 17,803 dosage units of Percocet; 6,021 dosage units of oxycodone with APAP; and 1,029 dosage units of Levo-Dromoran. These shortages represented 34%, 75%, 80% and 3%, respectively, of the quantities of the items audited for which Respondent was accountable.

DEA Investigators discussed the results of the audit with Mr. Engerson. Mr. Engerson stated that he was unaware of any shortages at the pharmacy and did not know the cause of such shortages. Following the discussion with Mr. Engerson, DEA Investigators conducted another accountability audit of various Schedule II controlled substances at Respondent pharmacy on March 9, 1988. This audit covered the period of January 1, 1987 to March 9, 1988, and revealed shortages of 1,631 dosage units of Percodan; 23,773 dosage units of Percocet; 7,061 dosage units of oxycodone; 4,998 dosage units of Dexedrine (5 mg.); 3,994 dosage units of Dexedrine (10 mg.); and 935 dosage units of Dilaudid. These shortages represented 27%, 76%, 79%, 93%, 80% and 30%, respectively, of the quantities of items audited for which Respondent pharmacy was accountable. In reality, the shortages of the second group of audited substances were most likely greater than the figures arrived at by the Investigators since a zero initial inventory was used. A zero initial inventory assumes that none of the audited substances were in stock at the beginning of the audit period and therefore, Respondent was thus not held accountable for any of the drugs that were actually in stock on January 1, 1987.

DEA Investigators discussed the results of the second audit with Mr. Engerson. Once again, Mr. Engerson stated he was unaware of any shortages at the pharmacy and did not know the cause of such shortages. Subsequent to the audits conducted at Respondent pharmacy on March 9, 1988, DEA received information from a local drug distributor that Respondent had placed an order for Schedule II controlled substances. On March 29, 1988, DEA monitored the delivery of the ordered substances to Respondent pharmacy. On April 1, 1988, DEA Investigators returned to Respondent pharmacy to conduct a follow-up accountability audit to the March 9, 1988, audits. The same Schedule II substances were audited as were audited during the second accountability audit. This audit covered the period March 9, 1988 to April 1, 1988, and revealed shortages of 70 dosage units of Dexedrine (5 mg.); 95 dosage units of Dexedrine (10 mg.); 374 dosage units of oxycodone with APAP; and 1,624 dosage units of Percocet. These shortages represented 62% of the Dexedrine (5 mg.), 31% of the Dexedrine (10 mg.), 24% of the oxycodone with APAP, and 70% of the Percocet for which Respondent had been accountable during the less than thirty day period covered by the audit.

DEA Investigators interviewed Mr. Engerson on April 5, 1988. During the course of the interview, Mr. Engerson stated that he was in the pharmacy on a daily basis and was responsible for ordering controlled substances at the pharmacy. During the audit periods, January 1, 1987 to April 1, 1988, Mr. Engerson and one other pharmacist were the only two pharmacists employed at Respondent pharmacy. Additionally, almost all of the DEA order forms used to order Schedule II controlled substances for the pharmacy during the audit periods were signed by Mr. Engerson. Mr. Engerson advised DEA Investigators that he was unaware of any controlled substance shortages until the Investigators brought the shortages to his attention. However, in light of Mr. Engerson's ownership and control over Respondent pharmacy, Mr. Engerson should have known that the pharmacy was ordering an inordinate number of potentially dangerous controlled substances which seemed to be "disappearing."

At the hearing, Respondent seemed to suggest that Lewis Lazarus, the other pharmacist working at Respondent pharmacy during the audit periods, was responsible for the shortages of controlled substances and therefore, Mr. Engerson should not be held accountable. This argument is flawed for two reasons. First, no evidence was introduced at the hearing to support a finding that Mr. Lazarus was responsible for such shortages. Second, regardless of whether or not Mr. Lazarus did in fact divert the missing drugs, Respondent pharmacy, along with its

owner, is responsible for guarding against the diversion of controlled substances into the illicit market. The Drug Enforcement Administration registers pharmacies to handle controlled substances, not pharmacists. 21 U.S.C. 823(f).

The Administrator may revoke a DEA Certificate of Registration if he determines that the continued registration of the registrant would be inconsistent with the public interest. 21 U.S.C. 824(a)(4). Pursuant to 21 U.S.C. 823(f), in determining the public interest, the following factors, among others, shall be considered: the registrant's experience in dispensing controlled substances, his compliance with applicable state, Federal or local laws relating to controlled substances and such other conduct as may threaten the public health and safety. In weighing these factors, the Administrative Law Judge found that the continued registration of Respondent pharmacy is not in the public interest. Mr. Engerson permitted thousands of dosage units of Schedule II controlled substances to disappear from his pharmacy without a trace. As evidenced by the shortages revealed by the audits, there were no prescriptions or other records to show that thousands of dosage units of Schedule II controlled substances being ordered by Respondent were being dispensed ligitimately. Respondent obviously failed to keep complete and accurate records of them, and thus, through his negligence, if not his culpability, may well have permitted a flood of dangerous drugs to flow into the hands of abusers. Respondent's failure to account for these drugs establishes the pharmacy as a potent danger to the public health. Registrants with DEA must protect against the diversion of controlled substances into the illicit market. Respondent has miserably failed to so protect the public health and safety.

In addition, the Administrative Law Judge found that during the course of the investigation, DEA Investigators noted a number of instances where emergency oral prescriptions for Schedule II controlled substances were not followed up within 72 hours by written prescriptions signed by the prescribing physician. DEA regulations at 21 CFR 1306.11(d) provide that, in an emergency situation, a pharmacist may dispense a Schedule II controlled substance upon receiving oral authorization from the prescribing practitioner. However, 21 CFR 1306.11(d)(4) provides that within 72 hours after such oral authorization, the prescribing practitioner will forward a written prescription to the pharmacy for the emergency quantity prescribed. The evidence presented at the hearing clearly establishes that Respondent pharmacy failed to comply with these regulations on a number of occasions.

The Administrative Law Judge found that Mr. Engerson's utter lack of a sense of responsibility is further attested by his failure to disclose to the Government agents the whereabouts of all of the drugs he knew they had come to seize on April 22, 1988. Mr. Engerson exhibited a cavalier attitude at the hearing toward the fact that Respondent pharmacy was still in possession of controlled substances even though it was known by Mr. Engerson that the pharmacy could not lawfully possess such drugs. The Administrative Law Judge found that there is ample justification to conclude that the continued registration of Respondent pharmacy, owned and controlled by Alan Engerson, is inconsistent with the public interest. The Administrative Law Judge recommended that the Administrator revoke Respondent's DEA Certificate of Registration.

The Administrator adopts the recommended ruling, findings of fact, conclusions of law and decision of the Administrative Law Judge in its entirety. In view of the foregoing facts, it is quite evident that Respondent has ignored his duties as a professional to guard against the diversion of controlled substances, and has thereby disregarded his responsibility to protect the public health and safety. Respondent's registration is clearly inconsistent with the public interest. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AJ3425938, previously issued to Jopat Drugs, Inc., be, and it hereby is, revoked. It is further ordered that any pending applications for renewal of said registration be, and they hereby are, denied.

At the time the Order to Show Cause and Immediate Suspension of Registration was served on Respondent, the majority of the controlled substances possessed by the pharmacy under the authority of its then-suspended registration were placed under seal and removed for safekeeping. Subsequently, the remaining controlled substances were turned over to the Drug Enforcement Administration to be placed under seal. 21 U.S.C. 824(f) provides that no disposition may be made of such controlled substances under seal until the time for taking appeals has elapsed. Accordingly, these controlled substances shall remain under seal until March 9, 1989, or until any appeal of this order has been concluded. At that time, all such controlled substances shall be forfeited to the United States and shall be disposed of pursuant to 21 U.S.C. 881(e).

This order is effective immediately.

John C. Lawn,

Administrator.

Dated: February 1, 1989.

[FR Doc. 89-2849 Filed 2-6-89; 8:45 am]

BILLING CODE 4410-09-M

Importation of Controlled Substances; Application; Kalipharma, Inc.

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(h)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on November 28, 1988, Kalipharma, Inc., 200 Elmora Avenue, Elizabeth, New Jersey 07207, made application to the Drug Enforcement Administration to be registered as an importer of bulk dextropropoxyphene (non-dosage forms) (9273), a basic controlled substance in Schedule II.

Any manufacturer holding, or applying for, registration as a bulk manufactuer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register Respresentative (Room 1112), and must be filed no later than March 9, 1989.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745-46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: January 31, 1989.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89-2843 Filed 2-6-89; 8:45 amn]

BILLING CODE 4410-09-M

Importation of Controlled Substances; Application; McNeilab, Inc.

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(h)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on December 19, 1988, McNeilab, Inc., Welsh and McKean Roads, Spring House, Pennsylvania 19477, made application to the Drug Enforcement Administration to be registered as an importer of difenoxin (9168), a basic controlled substance in Schedule I.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than March 9, 1989.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745-46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: January 25, 1989.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89-2844 Filed 2-6-89; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration; MD Pharmaceutical, Inc.

By Notice dated January 6, 1988, and published in the Federal Register on January 15, 1988, (53 FR 1060), MD Pharmaceutical, Inc., 3501 West Garry Avenue, Santa Ana, California 92704, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methylphenidate (1724)	II
Diphenoxylate (9170)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: January 25, 1989.

Gene R. Haislip,

Deputy Assistance Administrotor, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89-2846 Filed 2-6-89; 8:45 am]

BILLING CODE 4410-09-M

Importation of Controlled Substances Registration; Wildlife Laboratories, Inc.

By Notice dated December 15, 1988, and published in the Federal Register on December 22, 1988, (53 FR 51600), Wildlife Laboratories, Inc., 1401 Duff Drive, Suite 600, Fort Collins, Colorado 80524, made application to the Drug Enforcement Administration to be registered as an importer of carfentanil (9743), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21 Code of Federal Regulations § 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89-2845 Filed 2-6-89; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency or the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395–6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Revision

Employment and Training Administration Guidelines for the State Employment Security Agency Program Budget Plan for the Unemployment Insurance Program 1205–0132; ET Handbook No. 336; ETA 8623A, 8632, 2208, 2208A, 8701 State or local governments.

Form No.	Affected public	Respondents	Frequency	Average time per response (hours)
ETA 8623A	State/local Govt.	53	1	3
ETA 2208	do	53	1	3
ETA 2208A	do	53	4	1
ETA 2208A (SAVE)	do	53	4	1
ETA 8701	do	53	1	1
Transmittal Memo, Checklist, Sig. Pg	do	53	1	1
Narrative Description (ETA 8632)	do	53	1	27
2,279 total hours				

The Program Budget Plan provides the basis for an application for funds for State Unemployment Insurance operations for the coming year. In the PBP, States certify intent to comply with assurances. The affected public are the 53 State Employment Security Agencies.

Revision

Employment Standards Administration
Notice of Termination, Suspension, Reduction or Increase in Benefit Payments
1215–0064; CM–908
On occasion.

Businesses or other for-profit; small businesses or organizations 325 respondents; 2,600 total hours; 12 min. per response; 1 form Coal mine operators who pay monthly benefits must notify DCMWC of any change in benefits and the reason for that change. DCMWC uses this notification to monitor payments to beneficiaries.

Signed at Washington, DC this 2nd day of February, 1989.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 89–2867 Filed 2–6–89; 8:45 am]

BILLING CODE 4510-30-M

Employment and Training Administration

[TA–W–20,893]

Caterpillar Industrial, Inc., Dallas, OR; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 26, 1988 applicable to all workers of the Caterpillar Industrial, Inc., Dallas, Oregon. The certification was published in the **Federal Register** on November 17, 1988 (53 FR 46509).

Based on additional information from the company, a few workers were laid off in August 1987 prior to the July 15, 1988 impact date set in the certification. Their layoffs were the result of the closing out of production of certain models of lift trucks. The intent of the certification is to cover all such workers.

The amended notice applicable to TA–W–20,893 is hereby issued as follows:

All workers of Caterpillar Industrial, Incorporated, Dallas, Oregon who became totally or partially separated from employment on or after August 12, 1987 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 25th day of January 1989.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89–2869 Filed 2–6–89; 8:45 am]

BILLING CODE 4510-30-M

[TA–W–21,723]

H.C. Price Construction Co., Anchorage, AK; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 18, 1988, in response to a worker petition which was filed by Laborers' Local 942 on behalf of workers at H.C. Price Construction Company, Anchorage, Alaska.

A negative determination applicable to the petitioning group of workers is currently being issued (TA–W–21,856). No new information is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 25th day of January 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89–2860 Filed 2–6–89; 8:45 am]

BILLING CODE 4510-30-M

[TA–W–21,864]

Hoffman Construction Co. of Alaska, Portland, OR; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 18, 1988, in response to a worker petition which was filed by Teamsters Local 959 on behalf of workers and former workers at Hoffman Construction Company of Alaska, Portland, Oregon.

All workers were separated from the subject firm before October 1, 1985. In accordance with section 223(b) of the Act, as amended by Pub. L. 100–418, no certification may apply to any worker whose last total or partial separation from the subject firm occurred before October 1, 1985. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 24th day of January 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89–2864 Filed 2–6–89; 8:45 am]

BILLING CODE 4510-30-M

[TA–W–21,641]

M.I. Drilling Fluids Co., Houston, TX; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated in response to a worker petition received on November 14, 1988 which was filed on behalf of workers at M.I. Drilling Fluids Company, Houston, Texas.

An active certification covering the petitioning group of workers remains in effect (TA–W–21,288). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 24th day of January 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89–2885 Filed 2–6–89; 8:45 am]

BILLING CODE 4510-30-M

[TA–W–21,528]

Parallel Petroleum Corp., Midland, TX; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 31, 1988 in response to a worker petition which was filed on behalf of workers at Parallel Petroleum Corporation, Midland, Texas.

The retroactive provision of section 1421 (a)(1)(B) of the Omnibus Trade and Competitiveness Act of 1988 do not apply to workers who are engaged in the production of crude oil or refined petroleum products if such workers were eligible to be certified for benefits under the Trade Act prior to the implementation of the retroactive provisions.

A negative determination applicable to the petitioning group of workers was recently issued to workers at Parallel Petroleum Corporation, Midland, Texas on April 20, 1988 (TA–W–20,528). No new information is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC this 24th day of January 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89–2886 Filed 2–6–89; 8:45 am]

BILLING CODE 4510-30-M

[TA–W–21,530]

Reed Oil Co., Chanute, KS; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 4, 1988, in response to a worker petition which was filed on behalf of workers at Reed Oil Company, Chanute, Kansas.

An active certification covering the petitioning group of workers remains in effect (TA–W–21,529). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 25th day of January 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89–2883 Filed 2–6–89; 8:45 am]

BILLING CODE 4510-30-M

[TA–W–21,086]

Trident Oilfield Service and Construction Co., Olney, IL; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 18, 1988, in response to a worker petition which was filed on November 18, 1988, on behalf of workers at Trident Oilfield Service and Construction Company, Olney, Illinois.

An active certification covering the petitioning group of workers remains in effect (TA–W–21,488). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 25th day of January 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89–2881 Filed 2–6–89; 8:45 am]

BILLING CODE 4510-30-M

[TA–W–22,087]

Triple B Oil Producers, Inc.; Olney, IL; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated in response to a petition received on November 16, 1988, and filed on behalf of workers at Triple B Oil Producers, Incorporated, Olney, Illinois. The workers produced crude oil.

The retroactive provisions of section 1421(a)(1)(B) of the Omnibus Trade and Competitiveness Act of 1988 do not apply to workers who are engaged in the production of crude oil or refined petroleum products if such workers were eligible to be certified for benefits under the Trade Act prior to the implementation of the retroactive provisions. Consequently, layoffs occurring at Triple B Oil Producers before November 9, 1987, cannot be covered by the subject investigation.

All workers were separated from the subject firm more than one year prior to the date of the petition. Section 223 of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 25th day of January 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89-2862 Filed 2-6-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-21,036]

Town & Country Shoes, Inc.; Sedalia, MO; Negative Determination Regarding Application for Reconsideration

By an application dated January 2, 1989, Teamster Local #534 requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on December 5, 1988 and is scheduled to be published in the Federal Register soon.

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) It it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union claims that company imports adversely affected employment and production at the Sedalia plant. The union indicated that serveral styles of women's shoes will be made offshore for Town & Country Shoes for the Fall 1988 season. It is also claimed that uppers for two styles are currently being produced in Mexico. The union states that workers at the Sedalia plant have been hurt by shoe imports since 1981.

Investigation findings show that the workers at Town & Country Shoes, Sedalia produce women's shoes and finished shoes with uppers made in Mexico. Production at the plant ceased on November 4, 1988.

Investigation findings show that the uppers imported from Mexico were never produced at Sedalia. The Mexican uppers were incorporated into the production including the finishing operations on the uppers from Mexico was transferred to other domestic company plants in Arkansas. A domestic transfer of production would not form a basis for certification.

The findings also show that the sandals and moccasins produced in Brazil were never produced at Sedalia. Also, the Sheri style woman's shoe produced in Taiwan for Town & Country's Fall 1988 season was never produced at Sedalia. Investigation findings show that the imports of the Sheri style shoe accounted for an unimportant portion of Sedalia's 1988 production.

The Department's denial was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act of 1974 was not met. This test is generally demonstrated by a survey of the company's customers. The Department's survey of major customers of Town & Country Shoes shows that the respondents' import purchases of women's shoes in the 1986–1987 comparison period and the January-August 1987–1988 comparison period were not important and did not contribute importantly to any employment declines at the subject firm.

Lastly, shoe imports back to 1981 are beyond the scope of the subject investigation. Section 223(b)(1) of the Act does not permit the certification of workers separted more than one year prior to the date of the petition which in this case is September 6, 1988. Accordingly, there would be no purpose in collecting data not relevant to the petiton.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 25th day of January 1989.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-2886 Filed 2-6-89; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATE: Requests for copies must be received in writing on or before March 24, 1989. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESS: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of the Air Force, Directorate of Information Management and Administration, Records Management Branch (N1–AFU–87–19). A comprehensive schedule of all Air Force Operational Test and Evaluation Records. (Final reports and other substantive documents are permanent as well as case files pertaining to significant projects.)

2. Department of the Air Force (N1–AFU–89–4, –5, and –6). Routine commissary records.

3. Department of the Air Force (N1–AFU–89–9). Temporary leave transfer program records.

4. Department of the Air Force (N1–AFU–89–10). Records relating to applicants to Air Force research programs.

5. Department of State, Office of Management Operations (N1–59–88–12). Post Profile System (system contains information on personnel, vehicles, and similar matters).

6. Tennessee Valley Authority, Office of Natural Resources and Economic Development (N1–142–88–10). Comprehensive schedule for the office's Engineering Laboratory Branch.

Dated: February 1, 1989.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 89-2879 Filed 2-6-89; 8:45 am]

BILLING CODE 7515-01-M

NUCLEAR REGULATORY COMMISSION

Baltimore Gas and Electric Co.; Calvert Cliffs Nuclear Power Plant Unit Nos. 1 and 2; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment Nos. 134 and 115 to Facility Operating License Nos. DPR–53 and DPR–69, respectively, to the Baltimore Gas and Electric Company which revised the Technical Specifications (TS) for operation of the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2 located in Calvert County, Maryland.

The amendments are effective as of the date of issuance.

The amendments modified TS 5.6.2, "Criticality—New Fuel," by (1) increasing the U–235 enrichment limit for fuel stored in the new fuel storage racks from 4.1 to 5.0 weight percent and (2) reducing the maximum allowed value for the effective multiplication factor (k_{eff}) for the fuel stored in the new fuel storage racks from 0.98 to 0.95 with the addition of the full flood condition to the various densities of unborated water conditions that are assumed in determing k_{eff}.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the Federal Register on August 8, 1988 (53 FR 29791) modified on December 8, 1988 (53 FR 49618). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated June 9, 1988, as supplemented on October 25, 1988, (2) Amendment Nos. 134 and 115 to License Nos. DPR–53 and DPR–69, respectively, and (3) the Commission's related Safety Evaluation and Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., and at the Calvert County Library, Prince Frederick, Maryland. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland, this 30th day of January 1989.

For the Nuclear Regulatory Commission.

David E. LaBarge,

Project Manager, Project Directorate I–1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-2839 Filed 2-6-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50–317 and 50–318]

Baltimore Gas and Electric Co.; Calvert Cliffs Nuclear Power Plant Unit Nos. 1 and 2; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment Nos. 135 and 116 to Facility Operating License Nos. DPR–53 and DPR–69, respectively, to the Baltimore Gas and Electric Company which revised the Technical Specifications (TS) for operation of the Calvert Cliffs Nuclear Power Plant, Units Nos. 1 and 2 located in Calvert County, Maryland.

The amendments are effective as of the date of issuance.

The amendments changed the Units 1 and 2 TS 6.2.2, "Unit Staff," by (1) modifying the requirement of TS 6.2.2.g that the General Supervisor-Nuclear Operations (GS–NO) hold a senior reactor operator (SRO) license to a new requirement that the GS–NO shall hold or shall have held an SRO license at Calvert Cliffs, and (2) add a new requirement to TS 6.2.2.g to require that the Assistant General Supervisor-Nuclear Operations hold an SRO license.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the Federal Register on December 8, 1988 (53 FR 49617). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated March 15, 1988, as modified by letter dated December 2, 1988 and supplemented by letters dated June 3, 1988 and January 13, 1989, (2) Amendment Nos. 135 and 116 to License Nos. DPR–53 and DPR–69, respectively, and (3) the Commission's related Safety Evaluation and Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Calvert County Library, Prince Frederick, Maryland. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland, this 30th day of January 1989.

For the Nuclear Regulatory Commission.

David E. LaBarge,

Project Manager, Project Directorate I–1, Division of Reactor Projects I/II.

[FR Doc. 89–2940 Filed 2–6–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–416]

Systems Energy Resources, Inc., et al.; Consideration of Issuance of Amendment To Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity For Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–29, issued to Systems Energy Resources, Inc., *et al.* (the licensee), for operation of the Grand Gulf Nuclear Station, Unit 1, located in Claiborne County, Mississippi.

The amendment would revise the Technical Specifications (TS) by adding requirements to maintain secondary containment when handling loads over irradiated fuel assemblies in the primary containment during Operational Condition 5 and over irradiated fuel assemblies in the spent fuel pool at all times. In addition, action statements which require suspension of handling irradiated fuel assemblies would be revised to also require suspension of handling loads over spent fuel.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination is provided below.

The proposed changes would ensure that when certain loads are handled over spent fuel assemblies there is secondary containment, so that should the load be dropped, the offsite radiation dose consequences would be acceptable. The present TS prohibit the handling of loads greater than 1140 pounds over spent fuel assemblies and require secondary containment when irradiated fuel assemblies are handled. The change in TS would add the requirement to maintain secondary containment when loads lighter than 1140 pounds with a potential energy greater than 17,000 foot-pounds are handled over spent fuel assemblies. The change makes the consequences of a dropped load on the spent fuel assemblies the same as the consequences of the design basis fuel handling accident as previously analyzed in the Final Safety Analysis Report Section 15.7.4 and Section 15.7.6. The handling of loads would not be changed from that used in previous refueling outages and over the spent fuel pool; but an added requirement for secondary containment will reduce the potential consequences of a dropped load.

Therefore, operation in accordance with the proposed amendment involves no significant hazards consideration. The changes will not (1) involve a significant increase in the probability or consequences of an accident previously evaluated because load handling practices and procedures would not be changed and offsite dose consequences of a dropped load would be decreased; (2) create the possibility of a new or different kind of accident from any accident previously evaluated because load handling practices and procedures would not be changed; or (3) involve a significant reduction in the margin of safety because the margin of safety for a dropped load would be the same as the present margin of safety for a dropped irradiated fuel assembly.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determinations. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Informatin and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555 and should cite the publication date and page number of the Federal Register notice. Written comments may also be delivered to 7920 Norfolk Avenue, Room P–216, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m.

Copies of written comments received may be examined at the Nuclear Regulatory Commission Public Document Room, 2120 L Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 9, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene if filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitionerr who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

In the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1 (800) 325–6000 (in Missouri 1 (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Edward A. Reeves; petitioner's name and telephone number; date petition was mailed; plant name; and the publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Nicholas S. Reynolds, Esquire; Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated January 26, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Dated at Rockville, Maryland this 1st day of February 1989.

For the Nuclear Regulatory Commission.

Edward A. Reeves,

Acting Project Director, Project Directorate II–1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–2941 Filed 2–6–89; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34–26509; File Nos. 4–218 and S7–433]

Joint Industry Plan; Notice of Filing and Summary Effectiveness of Amendments to the Consolidated Quotation Plan and Consolidated Transaction Plan Fee Schedules

On December 23, 1988, the participants in the Consolidated Tape Association ("CTA") and Consolidated Quotation Plan ("CQ Plan") submitted amendments [1] to the Plan governing the operation of the consolidated quotation reporting system ("CQS") and the Plan governing the operation of the consolidated transaction reporting plan ("CTA Plan").[2]

I. Description of the Amendments

The purpose of the Amendments is to increase the Network B [3] non-member [4] bid/ask and last sale interrogation unit subscriber fees by one dollar each, as follows: the CQ Plan amendment raises the non-member fee for bid/ask information from $13.60 to $14.60; the CTA Plan amendment raises the non-member fee for last-sale information from $12.60 to $13.60.

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[1] The amendments to the CQ and CTA Plans were submitted pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 ("Act"). The CTA Plan amendments also were submitted pursuant to Rule 11Aa3–1 under the Act.

[2] The Participants requested that the proposed amendments be put into effect summarily pursuant to Rule 11Aa3–2(c)(4). That section empowers the Commission to summarily put into effect on a temporary basis a Plan amendment "if the Commission finds that such action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments so, and perfect mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.

[3] "Network B" refers to the consolidated data stream representing transaction and quotation data on eligible securities that are listed on the American Stock Exchange ("Amex") or that are traded on another exhange but substantially meet the Amex listing standards.

[4] Members that subscribe to the Network B services belong to the participant exchanges in the CTA and CQ Plans; non-members are professional subscribers who are not members of the participant exchanges.

The participants stated that Network B is increasing its non-member bid/ask and last sale subscriber fees to ensure that Network B participants are able to meet the increasing costs of administering the dissemination of Network B equity market data. The increase in the non-member fees will more accurately reflect the higher costs of approving, billing and collecting monies owed Network B by non-member subscribers.

II. Summary Effectiveness of the Amendments

Rule 11Aa3–2 provides that the Commission may, upon publication of notice of the amendment, summarily put into effect for 120 days an amendment to a national market system plan. The Commission first must determine, however, that it is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of, a national market system or otherwise in furtherance of the purposes of the Act. The Commission believes the amendments meet these standards.

Both the CQ and CTA Plans provide for different fees for members and non-members. The participants stated in their filing that the number of growth rate of non-member subscribers currently far exceeds the number and growth rate of members subscribers. Thus, with higher administrative costs attributable to an increasing number of non-member subscribers, the participants believe that it is appropriate for non-member subscribers to bear an increase in subscriber fees to cover these costs. Under the standard set forth in action 11A(c)(1) of the Exchange Act, persons are entitled to receive trading data disseminated by the markets on terms which are not unreasonably discriminatory. The Commission believes that if the increase in the number of non-member subscribers is resulting in increasing administrative costs for Network B, then it may be appropriate to apply these fee increases to non-members.

III. Request for Comment

To assist the Commission in determining whether to approve permanently the amendments, interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 28, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz

Secretary.

Dated: February 1, 1989.

[FR Doc. 89–2878 Filed 2–6–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 34–26507; File No. SR–CBOE–89–03]

Self-Regulatory Organizations; Chicago Board Options Exchange; Filing and Order Granting Temporary Accelerated Approval; Extension of Trading Crowd Evaluation Program

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice hereby is given that on January 23, 1989, the Chicago Board Options Exchange, Inc. "CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange's Trading Crowd Evaluation Program has been in operation since Feburary 1, 1987.[1] By this rule change, the program would be extended from February 2, 1989 until and including February 1, 1990. The program would continue as described in File No. SR–CBOE–85–44.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Trading Crowd Evaluation Program has been highly successful. It has been administered in an efficient and fair manner. The Program has been operational for two years and there have been virtually no complaints regarding its operation.

The Exchange believes that the unparalleled success of the program justifies its extension. Thus, this rule change seeks continuation of the program for one year.

The Exchange believes that the rule change is consistent with the purposes and provisions of the Act, and in particular Section 6(b)(5) thereof, in that the proposed rule change promotes just and equitable principles of trade as well as protects investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change will not impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The CBOE Has requested that the proposed rule change be granted accelerated effectiveness pursuant to section 19(b)(2) of the Act. This rule filing simply extends the current pilot program for an additonal one-year period. In addition, the public was afforded ample opportunity to comment on the Trading Crowd Evaluation Program prior to the Commission's original approval of the two-year pilot.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 [3] and the rules and regulations thereunder. The CBOE's Trading Crowd Evaluation Program appears to have functioned efficiently and fairly during the initial two-year period. Extension of the Program will permit the Exchange to continue to ensure liquid and continous markets for options traded on its floor by permitting it to more effectively enforce the affirmative and negative obligations imposed on CBOW market-makers.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof. The proposed rule change will enable the Exchange to maintain the Trading Crowd Evaluation Program on a continuous basis. In addition, the public was afforded an opportunity to comment on the Program prior to its initial implementation in February 1987.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Stret, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will als be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by Feburary 28, 1989.

It therefore is ordered, pursuant to section 19(b)(2) of the Act,[4] that the proposed rule change is approved through February 1, 1990.

For the Commission, by the Divison of Market Regulation, pursuant to delegated authority.

Dated: January 31, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–2877 Filed 2–6–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 26506; File Nos. SR–MCC–87–05 and SR–MCC–88–07]

Self-Regulatory Organizations; Order Approving Proposed Rule Changes By the Midwest Clearing Corporation to Establish Fund/Serv

On October 21, 1987, the Midwest Clearing Corporation ("MCC") filed a proposed rule change (File No. SR–MCC–87–05), described below, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("the Act")[1] to establish facilities for MCC member use of the Mutual Fund Settlement, Entry, and Registration Verification Service or ("Fund/Serv"). On March 28, 1988, the Commission published notice of this proposed rule change in the **Federal Register** to solicit comments from interested persons.[2] On June 14, 1988, MCC filed a second proposed rule change (File No. SR–MCC–88–07), also described below, pursuant to section 19(b)(1) of the Act to establish participants' fund requirements for Fund/Serv users, to establish Fund/Serv procedures, and to clarify that MCC participants may exchange Fund/Serv data directly with MCC's Fund/Serv facilities manager, the National Securities Clearing Corporation ("NSCC"). On September 15, 1988, the Commission published notice of the second proposed rule change in the **Federal Register** to solicit comments from interested persons.[3] No comments were received on either filing. On October 25, 1988, the Commission approved both proposals on a pilot basis until January 31, 1989.[4] As discussed below, this Order approves both proposals.

I. Description

The proposal amends MCC's rules to establish Fund/Serv and to authorize MCC to promulgate procedures to implement that service. Fund/Serv enables MCC participants to transmit mutual fund purchase and sale transactions, confirmations, settlement and registration data to mutual fund participants.[5] NSCC is MCC's facilities manager for Fund/Serv; [6] NSCC receives Fund/Serv data directly from MCC participants and retransmits that data to the appropriate mutual fund.[7] MCC participants, however, settle Fund/Serv transactions at MCC.

An MCC participant who wishes to use Fund/Serv must notify MCC of its intention and provide its Fund/Serv clearing fund contribution to MCC.[8] MCC will obtain from NSCC a Fund/Serv account number for the participant and a date when the participant may access the service. After the MCC participant meets these requirements, it will be able to transmit trade information directly to NSCC for retransmission to any mutual fund that is a Fund/Serv participant.[9]

The proposal requires Fund/Serv broker-dealers to submit trade information to MCC's facilities manager, NSCC, by 7:00 p.m. on the day of the trade ("T").[10] NSCC forwards all acceptable trades to the mutual fund. Mutual funds submit confirmations and rejections of orders to NSCC by 11:00 a.m. on T+1. NSCC acknowledges receipt of this information to the mutual fund and forwards such information to MCC's participants. NSCC also notifies

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[1] The Trading Crowd Evaluation Program was approved by the Commission on a two-year pilot basis in Securities Exchange Act Release No. 24008 (January 16, 1987), 52 FR 3072 ("Adopting Release").

[2] As described more fully in the Adopting Release, the Trading Crowd Evaluation Program involved adoption of new CBOE Rule 8.12, which establishes a Market Performance Committee to conduct periodic evaluations of members, individually and/or collectively as participants in a trading crowd, to determine whether they have fulfilled performance standards relating to quality of markets, competition among market-makers, ethics, compliance with Exchange rules and other administrative factors.

[3] 15 U.S.C. 78f (1982).

[4] 15 U.S.C. 78s(b)(2) (1982).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 25497 (March 21, 1988), 53 FR 10027.

[3] Securities Exchange Act Release No. 26067 (September 8, 1988), 53 FR 35944.

[4] Securities Exchange Act Release No. 26216 (October 25, 1988), 53 FR 43945 (October 31, 1988).

[5] At this time, MCC will not offer Fund/Serv services to mutual fund processing agents. Thus, all mutual-fund participants in Fund/Serv are NSCC Fund members.

[6] For a description of Fund/Serv, *see generally*, Securities Exchange Act Release No. 25148 (November 20, 1987), 52 FR 45478.

[7] NSCC has agreed to provide MCC members access to Fund/Serv on substantially the same terms and conditions as NSCC members.

[8] Although MCC's proposal creates a new category of membership, Fund/Serv-only participants, MCC has no immediate plans to admit any Fund/Serv-only members. It is the Commission's understanding, however, that MCC will submit appropriate membership standards to the Commission as a proposed rule change prior to admitting any Fund/Serv-only members.

[9] MCC participants transmit data directly to NSCC through a computer to computer linkage. NSCC works directly with each participant, or each participant's service bureau, to ensure that transmissions are submitted to NSCC's required format and in accordance with NSCC's procedures.

[10] Broker-dealers may submit trades, on an exception basis, until 11:00 p.m. if operational or communication difficulties prevent timely data entry. According to NSCC, however, no Fund/Serv participant has ever submitted information this late because broker-dealers want to submit their orders before the end of the mutual funds' processing day.

the mutual funds and the broker-dealers of orders which are neither confirmed nor rejected. Broker-dealers may submit corrections concerning the money values of trades or concerning the number of shares on either T+1 or T+2. Mutual funds will have until T+2 to confirm orders not previously confirmed and may make price changes in orders confirmed on T+1. Purchases and redemptions not involving physical shares will settle on T+5. For redemptions involving physical shares, the mutual fund, once it has received the physical share certificates, will submit a release to NSCC authorizing settlement of those redemptions on the day following the receipt of the release.[11]

On the evening of T+4, NSCC provides mutual funds, broker-dealers, and MCC with a settlement summary listing transactions that are due to settle the following day. MCC uses this settlement summary to prepare an adjustment report which lists each participant's Fund/Serv debits and credits and to determine whether a Fund/Serv member is in a net pay or collect position. MCC combines each participant's Fund/Serv net pay or collect figure with its other MCC obligations to obtain each participant's total net pay or collect figure. Participants pay MCC in next-day funds approximately one hour after MCC notifies them of a "pay" settlement figure, at about 3:00 p.m. on settlement day. MCC pays its participants at approximately 3:00–3:30 p.m. on settlement day in next-day funds.[12] NSCC and MCC settle their obligations with each other on T+6 in same-day funds.

As with NSCC's Fund/Serv, MCC's Fund/Serv is not a guaranteed service. If an MCC participant defaults on its Fund/Serv payment obligations before NSCC has paid its participants, MCC will notify NSCC of the default so NSCC can stop payments to affected mutual funds and reverse transactions settled on behalf of the defaulting MCC participant. If NSCC receives notification of the default after it has paid its participants, NSCC could stop payment on those funds (NSCC pays its participants in next-day funds) or, if NSCC is unable to stop payment, it could charge the affected participants the next day. If NSCC is unable to collect the funds it paid on behalf of the defaulting MCC participant, NSCC may declare those mutual fund participants to be in default or liquidate any open contractual commitments on their behalf. If MCC fails to notify NSCC by 10:00 a.m. on settlement day[13] and NSCC suffers a loss or liability as a result of the MCC participant default, MCC will indemnify NSCC. MCC will fund its obligation to NSCC first from the defaulting participant's MCC Fund/Serv clearing fund contribution, and then from that participant's contribution to the general MCC clearing fund. If MCC still has not satisfied the loss, then MCC will allocate that loss, *pro-rata*, among MCC participants using Fund/Serv. If the loss remains unsatisfied, then MCC would follow its loss recovery rules and procedures.

If a mutual fund participant defaults on payment obligations arising from transactions with MCC participants, NSCC would inform MCC so that MCC can reverse any settlement credits to MCC participants because of transactions due to settle with the defaulting mutual fund.[14] If MCC receives notice of the default after it has paid its participants, it could stop payment of those checks (like NSCC, MCC pays its participants in next-day funds) or it could charge its participants for the amount of the transactions the next day. If MCC cannot collect the funds recharged to its participants, MCC may declare those participants to be in default and may use their clearing fund deposits or liquidate their open positions.

MCC has established a Fund/Serv clearing fund contribution requirement to cover potential Fund/Serv risks. The amount of a participant's clearing fund contribution is based on the settlement debits that a participant may have with any one eligible mutual fund. If the participant's Fund/Serv debits with each mutual fund are less than $100,000, then the participant must contribute $5,000 to the Fund/Serv clearing fund; if the participant's Fund/Serv debits with each mutual fund are less than $500,000, then the participant must contribute $10,000 to the Fund/Serv clearing fund; and if the participant's Fund/Serv debits with any one mutual fund are greater than $500,000, then the participant must contribute $20,000 to the Fund/Serv clearing fund. If on any given day a MCC participant's Fund/Serv debits for any one mutual fund exceed the point at which a higher clearing fund contribution is required, that participant must increase his contribution level accordingly.

II. MCC's Rationale

MCC believes the proposal is consistent with section 17A of the Act because it promotes the prompt and accurate clearance and settlement of mutual fund transactions by providing its members with a standardized method of communicating trade information to mutual funds. MCC believes that Fund/Serv's automated processing system is more efficient than the current methods used by its participants. MCC also believes that it has established appropriate risk management procedures, such as monitoring participants' activity, requiring additional clearing fund contributions when necessary, and limiting participants' activity, to protect itself from the potential risks associated with Fund/Serv activity.

III. Discussion

The Commission believes that the proposal is consistent with section 17A of the Act because it will facilitate the prompt and accurate clearance and settlement of mutual fund transactions. MCC's Fund/Serv is designed to extend to MCC participants the benefits of a centralized automated processing system for mutual fund purchases and redemptions. This service facilitates the prompt and accurate clearance and settlement of mutal fund transactions by allowing mutual fund purchase and redemption information to be submitted in one standardized format to one central location, instead of submitting such information in different formats to each mutual fund.

MCC's proposed clearing fund requirement for Fund/Serv is based upon an individual member's activity level in Fund/Serv and upon the fact that Fund/Serv is not a guaranteed service. MCC's clearing fund requirements are the same as NSCC's clearing fund requirements for Fund/Serv participants.[15] Specifically, the clearing fund deposits are designed to protect MCC from risk associated with Fund/Serv, including the risk of simultaneous defaults by a MCC participant and a NSCC mutual fund participant. NSCC can withhold payment and reverse any transactions to its mutual funds made by the defaulting MCC participant if it receives notice of a default from MCC by 3:00 p.m., the time NSCC pays its Fund/Serv participants. From 3:00 p.m. until approximately 6:00 a.m. the next day, NSCC could place a stop payment on any funds paid to any mutual fund as a result of transactions by a MCC defaulting participant. Once NSCC participants have received their funds, NSCC could charge those mutual funds that received payment on transaction by defaulting MCC participants and, absent a default of a NSCC mutual fund participant, should be able to recover such funds. MCC must notify NSCC as early as possible of a MCC participant's default in order for NSCC and MCC to avoid or minimize their potential financial exposure.

MCC has informed the Commission that it has not experienced any problems with late payments or unpaid settlements by its members, and accordingly, MCC has not suffered any losses that would require its members to make additional clearing fund contributions. MCC has not had to take any disciplinary actions against any of its members for not making timely payments, or use the clearing fund during the pilot program. In addition, MCC has not experienced any problems with mutual fund contra parties fulfilling their responsibilities to transmit and receive information and pay their Fund/Serv obligations.

NSCC has developed and operated Fund/Serv since the pilot program began in February 1986, with no significant operational problems.[16] Extending the benefits of Fund/Serv to MCC participants will help achieve the Act's goal of facilitating the establishment of a safe, efficient, and equitable national clearance and settlement system for mutual fund transactions.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule changes (File Nos. SR–MCC–87–05 and SR–MCC–87–07) be, and hereby are, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 31, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–2829 Filed 2–6–89; 8:45 am]

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[11] A mutual fund can not complete redemptions involving physical shares until it receives the share certificates related to the transactions submitted with proper endorsements and guarantees. Therefore the transaction information is retained in the system, but settlement is delayed until the mutual fund receives those physical share certificates.

[12] NSCC pays its mutual fund participants by 1:30 p.m. NSCC pays its broker-dealer participants located in New York between 4:00 and 7:00 p.m. and pays its broker-dealer participants located outside New York between 3:00 and 5:00 p.m.

[13] Under the MCC–NSCC Fund/Serv Linkage Agreement, if MCC notifies NSCC by 10:00 a.m. (E.S.T.) on settlement day that it has ceased to act for an MCC participant, MCC's liability shall be limited to the portion of the defaulting Fund member's clearing fund contribution attributable to Fund/Serv. If MCC notifies NSCC later than 10:00 a.m. (E.S.T.) on settlement day, and NSCC can not reverse the transaction, MCC shall pay NSCC all amounts due resulting from the defaulting participant's use of Fund/Serv.

[14] As noted above, Fund/Serv payment obligations are not guaranteed by MCC or NSCC. According, if a mutual fund defaulted on payment obligations to NSCC, MCC can refuse to pay its affected members.

[15] NSCC's Fund/Serv clearing fund requirements were approved in Securities Exchange Act Release No. 26377 (December 20, 1988) 53 FR 52546.

[16] Securities Exchange Act Release No. 22928 (February 20, 1986), 51 FR 6954.

[Rel. No. 34–26512; File No. SR–NSCC–89–1]

Self Regulatory Organizations; National Securities Clearing Corp.; Filing and Immediate Effectiveness of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s (b)(1), notice is hereby given that on January 27, 1989, NSCC filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend the following fees. NSCC's fee for keypunching Transfer Initiation Form information ("TIF") related to the Automated Customer Account Transfer Service ("ACATS") shall be $1.00 per item, its Inter-City Deliveries ("IESS") fee shall be $2.75 per envelope, its National Transfer Service ("NTS") fee shall be $1.25 per envelope, its Dividend Settlement Service fee shall be $0.25 per envelope, and its Correspondent Delivery and Collection Service ("CDCS") fee for deliveries other than those through the International Securities Clearing Corporation shall be $18.00 per envelope plus pass-through costs to reach locations outside of immediate local delivery areas.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

(a) The proposed rule change consists of modifications to NSCC's fees relative to two of its services. The proposed rule change, set forth in Exhibit A, increases the fee for keypunching Transfer Initiation Form Information ("TIF") related to the Automated Customer Account Transfer Service ("ACATS"). The increase is necessary because TIF information is more voluminous and complex than other ACATS items and thus, requires a greater period of time for the keypunching of data. The proposed rule change set forth in Exhbit B increases the fee for certain NSCC Delivery Services. The fee change is necessary because the volume of physical deliveries has decreased, while fixed costs for providing the service (including rent, manpower and insurance) have increased substantially. The fee changes will be effective January 1, 1989.

(b) Because the proposed rule change relates to the equitable allocation of fees among NSCC participants, it is consistent with the requirements of the 1934 Act, as amended (the "Act") and the rules and regulations thereunder applicable to a self-regulatory organization.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does believe that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No comments have been solicited or received. NSCC will notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective, pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934. At anytime within sixty days of the filing of such a proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the

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purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change that are filed with Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to SR–NSCC–89–1 and should be submitted by February 28, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 2, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–2876 Filed 2–6–89; 8:45 am]

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DEPARTMENT OF STATE

[CM–8 1257]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea, Working Group on Ship Design and Equipment; Meeting

The Working Group on Ship Design and Equipment of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on March 2, 1989 at 9:30 a.m. in Room 6332 at the United States Department of Transportation, Nassif Building, 400 7th Street, SW., Washington, DC.

The purpose of the meeting will be to discuss the results of the 32nd Session of the International Maritime Organization (IMO), Subcommittee on Ship Design and Equipment (DE), held December 5 to 9, 1988, and to prepare for the 33rd Session of IMO DE, tentatively scheduled for the Spring of 1990. Items of discussion will include the following: Review of the Mobile Offshore Drilling Unit (MODU) Code; materials other than steel for pipes; maneuverability of ships; helicopter facilities offshore; below deck openings into cargo tanks; requirements for purpose and non-purpose-built ships dedicated to the carriage of irradiated nuclear fuel; harmonization of alarm provisions; amendments of regulations II–1/41 and 45 of SOLAS 1974, as amended; ventilation of vehicle decks during loading and unloading; review of reporting requirements on Codes and Assembly resolutions related to the work of the Subcommittee; underpressure in cargo tanks due to the application of vacuum systems to minimize the effect of pollution of oil after damage; maximum stowage height of survival craft; and, carriage of dangerous goods on vehicle decks of cargo ships.

Members of the public may attend up to the seating capacity of the room.

For further information contact Captain J.C. Maxham at (202) 267–2967, U.S. Coast Guard Headquarters (G–MTH), 2100 Second Street, SW., Washington, DC 20593–0001.

Date: January 25, 1989.

Thomas J. Wajda,

Chairman, Shipping Coordinating Committee.

[FR Doc. 89–2763 Filed 2–6–89; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 89-2-2; Dockets 45942 and 45943]

Applications of Louisiana-Pacific Corp. For Certificate Authority Under Subpart Q

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue orders finding Louisiana-Pacific Corporation fit and awarding it certificates of public convenience and necessity to engage in domestic and foreign charter air transportation of persons and property.

DATES: Persons wishing to file objections should do so no later than February 17, 1989.

ADDRESSES: Objections and answers to objections should be filed in Dockets 45942 and 45943 and addressed to the Documentary Services Division (C–55, Room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Carol A. Woods, Air Carrier Fitness Division (P–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2340.

Dated: February 1, 1989.

Gregory S. Dole,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 89–2867 Filed 2–6–89; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

February 1, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0746
Form Number: None
Type of Review: Extension
Title: Creditability of Foreign Taxes
Description: The information needed is a statement by the taxpayer that it has elected to apply the safe harbor formula of section 1.901–2A(e) of the foreign tax credit regulations. This statement is necessary in order that the IRS may properly determine the taxpayer's tax liability.
Respondents: Individuals or households, Farms, Businesses or other for-profit
Estimated Number of Respondents: 110
Estimated Burden Hours Per Response: 20 minutes
Frequency of Response: Nonrecurring
Estimated Total Reporting Burden: 37 hours
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89–2803 Filed 2–6–89; 8:45 am]

BILLING CODE 4810–25–M

UNITED STATES INSTITUTE OF PEACE

Procedures And Deadlines for Grant Applications

Contact: Dr. Hrach Gregorian

This announcement succeeds the **Federal Register** announcements of July 16, 1986 (*Interim Procedures for Grant Applications*), December 10, 1986 (*Notice of Changes in Grant Application Review and Voting*), and December 23, 1987 (*Procedures for Grant Applications*). It is effective upon publication in the **Federal Register.** The United States Institute of Peace invites public comment and emphasizes that this announcement provides procedures that are subject to modification from time to time as experience and further consideration warrant. Significant changes will be published in the **Federal Register.**

The announcement identifies eligible recipients for grants; the subject-matter scope for which grants may be issued, including areas of special interest to the United States Institute of Peace; and the procedures the Institute will follow to receive, evaluate, and act upon grant applications. It also provides deadlines for the submission of applications (with accompanying decision dates), and explains how grant application forms may be obtained.

Introduction

The United States Institute of Peace is an independent, nonprofit corporation established by Act of Congress (Pub. L. 98–525) in October 1984. It was created to . . .

> serve the people and the Government through the widest possible range of education and training, basic and applied research opportunities, and peace information services on the means to promote international peace and the resolution of conflicts among the nations and peoples of the world without recourse to violence.
> [United States Institute of Peace Act, section 1702(b)]

The United States Institute of Peace is funded entirely by federal appropriations. The Institute is prohibited from receiving gifts, contributions, and grants from foreign governments or agencies and from private individuals or organizations. The Institute is governed by a fifteen-member Board of Directors, including four *ex officio* members from federal service, and eleven individuals appointed from outside federal service by the President of the United States and confirmed by the United States Senate.

The Grants Program Eligibility, Subject-Matter and Deadlines

Eligible Grant Recipients

Through its two principal grantmaking components—Unsolicited Grants and Solicited Grants—the Institute promotes scholarship, education, training, and the dissemination of information on international peace and conflict management by providing financial support to nonprofit organizations, official public institutions, and individuals. Grantees may be foreign nationals or foreign nonprofit institutions and official public institutions. The Institute is required to pay in grants or contracts at least one-fourth of its annual appropriations to nonprofit or official public institutions, which include:

> Institutions of postsecondary, community, secondary, and elementary education (including combinations of such institutions)
> . . .
> Public and private educational, training, or research institutions (including the American Federation of Labor—the Congress of Industrial Organizations) and libraries, and
> . . .
> Public departments and agencies (including State and territorial departments of education and commerce).
> [United States Institute of Peace Act, section 1705(c)]

The Institute may obligate through grants and contracts more than twenty-five percent of its annual appropriations to nonprofits or official public institutions. The twenty-five percent requirement also applies to appropriated funds from any prior fiscal year that have been transferred to the Endowment of the United States Institute of Peace.

Indirect Costs

The Institute does not favor applying the public monies entrusted to it to costs not directly related to any project being funded. Applicants are advised to explain both the necessity for such indirect costs in their proposal and to describe efforts made to reduce or eliminate them.

Subject-Matter Scope of Grants

The Institute does not take positions on policy issues pending before Congress or other domestic or international bodies and does not mediate particular international disputes. Therefore, the Institute will not fund grant proposals of a partisan political nature or proposals that would inject the grantee or the Institute into the policy processes of the United States government or any foreign government or international organization. In addition, in accord with the United States Institute of Peace Act, section 1709(b), the Institute will not use political tests or political qualifications in selecting or monitoring any grantee.

In implementing its research, education and training, and public information mandates, the broad purposes for which the Institute invites and will consider grants are:

(1) To carry out basic and applied research, particularly of an interdisciplinary or multidisciplinary nature, on the causes of war and other international conflicts, on the ways in which conflicts have been or can be prevented, contained, or terminated, and on the condition and character of peace where it obtains among nations and peoples;

(2) To educate students, including graduate and post-graduate students, and the general public on questions of international peace and conflict resolution, including peace and conflict resolution theories, methods, techniques, programs, and systems and the experience of the United States and other nations in resolving conflicts with justice and dignity and without violence;

(3) To conduct training, symposia, and continuing education programs for practitioners, policymakers, policy implementers, and citizens and noncitizens that will develop their skills in international peace and conflict resolution;

(4) To make international peace and conflict resolution research, education, and training more available and useful to persons in government, private enterprise, and voluntary associations, including the creation of handbooks and other practical materials;

(5) To examine the resolution of conflict between free trade unions and Communist-dominated organizations in the context of the global struggle for the protection of human rights; and

(6) To assist the Institute in its publication, clearinghouse, library, and other information services programs.

Priority Subject Areas for Grants

Mindful of its obligation to expend taxpayer funds with great care, the Institute is conducting a review of past and ongoing research in international peace and conflict management, and related fields, in order to identify gaps and subjects that warrant additional consideration.

The Institute seeks to obtain the maximum benefits from its grantmaking program for research, education and training, and public information activities. The Board of Directors has

instance of outside review, the Institute staff will seek at least one specialist in the field relevant to the particular project proposed in the application (or as close to it as possible) and one from an outside field.

In evaluating grant applications, central concerns will include: (1) The significance of the project to the Institute's mandate and the subject areas of special interest identified by the Board of Directors and listed above; (2) evidence that the project will not simply duplicate existing knowledge or programs; (3) the likelihood that the project will make a significant contribution to the field in scholarship and knowledge; and (4) the usefulness of the proposed product in fulfilling the Institute's mandate. The Institute is particularly interested in proposals that envision a specific product of enduring value.

Conflict of Interest and Recusal

Institute Directors, officers, and employees will recuse themselves from the consideration process with respect to any application for a grant with which they have a conflict of interest or which might reasonably present the appearance of a conflict of interest. All recusals will be reported to the Institute's Ethics Officer. Directors, officers, or employees of the Institute who have reason to believe they may have a potential conflict of interest regarding any proposal upon which they are called to act shall bring the situation to the attention of the Ethics Officer for guidance. Nothing in this paragraph shall be read as diminishing in any way the conflict of interest provisions contained in the United States Institute of Peace Act, including section 1706(g).

Application Forms are available from United States Institute of Peace, 1550 M Street, NW., Suite 700, Washington, DC 20005–1706 (202) 457–1700, FAX# (202) 429–6063.

January 27, 1989.

February 2, 1989.

Charles Duryee Smith,

General Counsel.

[FR Doc. 89–2917 Filed 2–6–89; 8:45 am]

BILLING CODE 3155–01–M

determined that encouraging a concerted focus on specific identified subjects—which will be changed from time to time to reflect new priorities—will increase the Institute's effectiveness. It has identified several areas for priority consideration in the immediate future. The Board emphasizes, however, that applicants should feel free to submit proposals dealing with other aspects of the Institute's mandate. They, too, will receive careful attention.

The subjects of special interest to the Institute at the present time are:

- Research on the relationship between adherence to international human rights standards and international peace.
- Research on perceptions of peace across political systems and ideologies, including the comparative status of peace movements and their impact under different political systems, and a comparative assessment and survey of the teaching of peace.
- Research on negotiations, including lessons from negotiations between the United States and the Soviet Union, lessons from negotiations between democratic and nondemocratic systems, and general lessons in the art of negotiation.
- Research on the relationship between domestic political systems and the aggressive use of force.
- Research on strengthening the non-use-of-force provisions of the United Nations Charter, including the effectiveness of the United Nations and other international institutions in dealing with low intensity and covert forms of aggression.
- Research on the mediation of political change.
- Developing curricula and materials for the study of international peace and conflict resolution from high school through post-graduate programs.
- Developing curricula and materials for negotiation, mediation, and conciliation theory, teaching, and training.
- Assisting media programming, including research and the development of materials particularly for television and radio, that will bring information about issues of international peace and conflict resolution to the broader public.
- Developing library programs, databases and bibliographies and implementing collection development.

Unsolicited Grants Application Deadlines

There are three cycles of competition for unsolicited grants:

Cycle	Deadline for application	Notification date
I	June 1	Late September
II	October 1	Late January
III	February 1	Late May

Solicited Grants

In addition to its established practice of providing support for unsolicited grant proposals, the Institute solicits proposals that focus attention on certain themes and topics of special interest. Solicited grant topics are announced annually and are published separately in the Federal Register.

Solicited Grants Application Deadline

Solicited grant topics are normally announced in *late December*. The annual deadline for applications in the solicited grants competition is *April 1*. The notification date for applications in this category is *late July*.

Grants Program Procedures

Grant Proposals

Every proposal for a grant from the Institute must be made on an official Application Form and may include attachments as needed. It is particularly important that all pages of the Application Form be filled out completely and with care. Some members of the Institute's Board of Directors may see no more of the application than the Application Form. Applicants must, therefore, report the basic elements of their proposals clearly and succinctly therein.

Every proposal must be submitted in four typed copies. The Application Form may be obtained from the Institute at the address given below. In addition to the information required in the Application Form, a proposal may be as detailed as the applicant desires.

Project directors from colleges, universities, official public institutions, and nonprofit organizations should be sure to consult with grants officials of their institutions in preparing project budgets. Budget categories included in the official Application Form are intended for general use. Although the terminology may not correspond well with usages employed at any given institution, applicants should make every effort to use USIP forms and to provide a detailed budget description.

Review Process

The Institute's staff will examine every proposal for eligibility and completeness. Questions on either will be referred to the applicant. Staff responses on eligibility and completeness will not be considered part of the formal review process, but the Institute's President will inform the Board of Directors of any applicant determined by the Institute's staff not to qualify on grounds of ineligibility and of any proposal that is incomplete and has not within a reasonable period of time been made complete. After staff examination, the President will send all eligible and complete applications to the Board of Directors for review.

Normally, each member of the Board of Directors will receive a copy of the official Application Form. In addition, each application will be assigned to a committee of the Board for initial review, and each member of that committee will receive copies of the Application Form and all attachments submitted by the applicant. Any Board member not on the committee to which the application has been assigned may request to receive a full application (i.e., the official form and all attachments) at any time.

Upon receipt of applications for review at designated meetings of the Board of Directors, each member will notify the Institute's Ethics Officer of his recusal from review and action on any application involving a conflict of interest or the appearance of a conflict of interest. (For additional information on recusal, see the last paragraph of this announcement.)

In reviewing applications, members of the Board committee to which those applications have been assigned will divide them into two categories: *P* (applications for possible award) and *N* (noncompetitive applications). The ratings will be communicated to the Institute's Director of Grant Programs.

All applications receiving a *P*-rating from any committee member will be reviewed and acted upon in committee. Applications falling fully into the *N* category (i.e., not receiving a *P*-rating from any committee member and not requested for discussion by a Board member not on the committee) will not be discussed in committee and will be regarded as recommended for rejection by the full Board. In the course of committee discussion or at any time prior to making recommendations to the full Board, the committee may decide to review and act upon an application originally receiving a full *N*-rating.

All applications not falling fully into the *N* category will be discussed by the full Board in plenary session. *N*-rated applications will be reported to the full Board as rejected, but may be reviewed if a Board member so requests. All applications, irrespective of their initial ratings or committee recommendation, will be voted on by the full Board of Directors.

Outside review of applications may be sought during any part of the review and action process. Any Board member, whether on the initial review committee or otherwise, may request outside review of an application. In each

Sunshine Act Meetings

Federal Register
Vol. 54, No. 24
Tuesday, Feburary 7, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Friday, February 10, 1989.

PLACE: Marriners S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposed interpretation of Regulation H (Membership of State Banking Institutions in the Federal Reserve System) regarding investment in mutual funds.

Discussion Agenda

2. Proposed revision of the Board's 1980 Community Reinvestment Act Information Statement.

3. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202)452-3204.

Date: February 3, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-2925 Filed 2-3-89; 10:36 am]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS.

TIME AND DATE: Approximately 11:00 a.m., Friday, February 10, 1989, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Issues regarding eligibility criteria for Federal Reserve Bank and Branch directors.

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: February 3, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-2926 Filed 2-3-89; 10:38 am]

BILLING CODE 6210-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

February 2, 1989.

TIME AND DATE: 10:00 a.m., Thursday, February 9, 1989.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Possible revisions to present Commission Procedural Rules 59-65, 29 CDR 2700.59-65.

Any person intending to attend this meeting who requries special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5629 (202) 566-2673 for TDD Relay.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 89-2959 Filed 2-3-89; 3:50 pm]

BILLING CODE 6735-01-M

NATIONAL LABOR RELATIONS BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: January 31, 1989, Volume 54 FR 4939.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: February 7, 1989, 9:30 a.m.

CHANGE IN THE MEETING: The open part of the meeting, casehandling procedures is canceled. The date and time of the closed meeting remain unchanged.

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, Washington, DC 20570, Telephone: (202) 254-9430.

Dated, Washington, DC, February 3, 1989.

By direction of the Board.

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[FR Doc. 89-2951 Filed 2-3-89; 11:48 am]

BILLING CODE 7545-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of February 6, 13, 20, and 27, 1989.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of February 6

Monday, February 6

2:00 p.m.
Briefing on Status of Peach Bottom (Public Meeting)

Tuesday, February 7

2:00 p.m.
Briefing on Final Rule Regarding the High Level Waste Management Licensing Support System (Public Meeting)

Wednesday, February 8

10:00 a.m.
Briefing on Final Rule on Fitness for Duty (Public Meeting)

Thursday, February 9

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting):
a. Policy Statement on the Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production and Utilization Facilities (Tentative)

Friday, February 10

2:00 p.m.
Oral Argument on Sanction Issue in Shoreham Proceedings (Public Meeting)

Week of February 13 (Tentative)

Friday, February 17

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of February 20 (Tentative)

Tuesday, February 21

10:00 a.m.
Briefing on Staff Proposal on Continuity of Government Program (Closed—Ex. 1)

2:00 p.m.
Briefing on Final Rule on Early Site Permits; Standard Design Certification; and Combined Licenses for Nuclear Power Reactors (Public Meeting)

Wednesday, February 22

10:00 a.m.
Briefing on Status of West Valley Project (Public Meeting)

Thursday, February 23

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of February 27 (Tentative)

Monday, February 27

10:00 a.m.
Briefing on the Status of NUREG-1150 (Public Meeting)

2:00 p.m.
Briefing on Final Report on BWR Mark I Containment Issues (Public Meeting)

Wednesday, March 1

9:30 a.m.
Briefing on Report on Maintenance Performance Indicator Development (Public Meeting)

Thursday, March 2

10:00 a.m.
Briefing on Importing and Exporting of Radioactive Waste (Public Meeting)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meetings Call (Recording)—(301) 492-0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill, (301) 492-1661.

William M. Hill, Jr.,

Office of the Secretary.

February 2, 1989.

[FR Doc. 89-2971 Filed 2-3-89; 3:06 pm]

BILLING CODE 7590-01-M

Corrections

Federal Register
Vol. 54, No. 24
Tuesday, February 7, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-41030; FRL-3476-6]

Twenty-Third Report of the Interagency Testing Committee to the Administrator; Receipt of Report and Request for Comments Regarding Priority List of Chemicals

Correction

In notice document 88-26306 beginning on page 46262 in the issue of Wednesday, November 16, 1988, make the following corrections:

1. On page 46265, in the second column, in the table, in item 9, at the end of the third line, insert "hydroxy-,".

2. On the same page, in the same column, in the table, in item 12, in the fourth line, insert a hyphen before "hydroxy-".

3. On the same page, in the same column, in the table, in item 13, in the fourth line, insert a hyphen before "hydroxy"; and at the end of the fifth line, remove "D".

4. On page 46266, in the second column of the table, the second entry (corresponding to "Empirical Formula") should read "$C_8H_{13}C1_3O_4P$".

5. On the same page, in the first column, in the last line, before "and" insert "automobiles, buildings, etc. are scrapped and disposed of in dumps".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 50 and 56

[Docket No. 87N-0032]

Protection of Human Subjects; Informed Consent; Standards for Institutional Review Boards for Clinical Investigations

Correction

In proposed rule document 88-25553 beginning on page 45678 in the issue of Thursday, November 10, 1988, make the following corrections:

1. On page 45680, in the second column, in the last line, "§ 2.110(b)" should read "§ ———.110(b)".

2. On page 45681, in the 3rd column, under **PART 56—INSTITUTIONAL REVIEW BOARDS**, in the authority citation, in the 12th line, after "381)" insert a comma; and in the 15th line, "263-263n" should read "263b-263n".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 53 and 56

[EE-154-78]

Lobbying by Public Charities; Lobbying by Private Foundations

Correction

In proposed rule document 88-29304 beginning on page 51826 in the issue of Friday, December 23, 1988, make the following corrections:

§ 53.4945-2 [Corrected]

1. On page 51834, in the second column, in § 53.4945-2(d)(1)(vii), in *Example (4)*, the first line should read "*Example (4)*. P publishes a bi-monthly".

2. In § 53.4945-2(d)(1)(vii), in *Example 10*, on page 51835, in the 1st column, in the 10th line, "§ 53.4945-2(d)(v)" should read "§ 53.4945-2(d)(1)(v)".

3. On page 51835, in the first column, in § 53.4945-2(d)(4), in the 12th line, after "lobbying" insert "and are thus taxable expenditures under section 4945".

§ 56.4911-2 [Corrected]

4. On page 51836, in the first column, § 56.4911-2(b)(2)(ii)(C) and the closing text of paragraph (b) should read as follows:

(C) Encourages the recipient of the communication to take action with respect to such legislation.

(For special rules regarding certain mass media communications, see § 56.4911-2(b)(5)).

5. On page 51838, in the 2nd column, in § 56.4911-2(b)(4)(ii)(C), in *Example (5)*, in the 15th line, "in" should read "is".

6. On page 51840, in the 3rd column, in § 56.4911-2(c)(1)(vii), in *Example (5)*, in the 25th line, "written" should read "within".

7. On page 51841, in the first column, in § 56.4911-2(c)(1)(vii), in *Example (10)*, in the second line, "conduct to" should read "conduct a".

8. On the same page, in the second column, in § 56.4911-2(c)(2), in the fourth line, "board" should read "broad".

§ 56.4911-3 [Corrected]

9. On page 51843, in the second column, in § 56.4911-3(b), in *Example (6)*, in the last line, "§ 56.491-3(a)(2)(ii)" should read "§ 56.4911-3(a)(2)(ii)".

BILLING CODE 1505-01-D

federal register

Tuesday
February 7, 1989

Part II

Department of Energy

Office of Conservation and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products: Final Rulemaking Regarding Regulations Related to Energy Conservation Standards for Consumer Products; Final Rule

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

[Docket No. CAS-RM-78-110]

Energy Conservation Program for Consumer Products: Final Rulemaking Regarding Regulations Related to Energy Conservation Standards for Consumer Products

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act, the National Appliance Energy Conservation Act of 1987, and the National Appliance Energy Conservation Amendments of 1988, prescribes energy conservation standards for certain types of consumer products. As a general matter, these Federal standards preempt State and local standards and any other State and local requirements with respect to energy efficiency or energy use of these products.

The Department of Energy today is issuing a final rule amending Title 10, Part 430 of the Code of Federal Regulations to include procedures for petitions that may be made by States and manufacturers with regard to Federal preemption of State and local energy conservation standards.

The rule also adds procedures by which certain small businesses may obtain exemptions from the standards and sets forth procedures for certification and enforcement of the standards. Today's action also includes the following: Clarification of the basis for calculating the heating seasonal performance factor energy conservation standard prescribed by the Energy Policy and Conservation Act, as amended, for central air conditioners and heat pumps; an annual energy use measure for refrigerators, refrigerator-freezers and freezers; and test procedure and sampling requirements for pool heaters.

EFFECTIVE DATE: March 9, 1989.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Forrestal Building Mail Station, CE-132, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building Mail Station, GC-12, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION:

I. Introduction
- a. Authority
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I. Introduction

a. Authority

Part B of Title III of the Energy Policy and Conservation Act (EPCA), Pub. L. 94-163, as amended by the National Energy Conservation Policy Act (NECPA), Pub. L. 96-619, by the National Appliance Energy Conservation Act of 1987 (NAECA), Pub. L. 100-12, and by the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Pub. L. 100-357,[1] created the Energy Conservation Program for Consumer Products other than Automobiles. The consumer products subject to this program (often referred to hereafter as "covered products") are: Refrigerators, refrigerator-freezers and freezers; dishwashers; clothes dryers; water heaters; central air conditioners and central air conditioning heat pumps; furnaces; direct heating equipment; television sets; kitchen ranges and ovens; clothes washers; room air conditioners; pool heaters; and fluorescent lamp ballasts; as well as any other consumer product classified by the Secretary of Energy. See section 322. To date, the Secretary has not so classified any additional products.

Under the Act, the program consists essentially of three parts: testing, labeling, and mandatory minimum energy conservation standards. The Department of Energy (DOE or Department), in consultation with the National Bureau of Standards, is required to amend or establish new test procedures, as appropriate, for each of the covered products. Section 323. The purpose of the test procedures is to provide for test results that reflect the energy efficiency, energy use, or estimated annual operating costs of each of the covered products. Section 323(b)(3). A test procedure is not required if DOE determines by rule that one cannot be developed. Section 323(d)(1). One hundred and eighty days after a test procedure for a product is adopted, no manufacturer may represent the energy consumption of, or the cost of energy consumed by the product except as reflected in a test conducted according to the DOE procedure. Section 323(c)(2).

The Federal Trade Commission (FTC) is required by the Act to prescribe rules governing the labeling of covered products for which test procedures have been prescribed by DOE. Section 324(a). These rules are to require that each particular model of a covered product bear a label that indicates its annual operating cost and the range of estimated annual operating costs for other models of that product. Section 324(c)(1). Disclosure of estimated operating cost is not required under section 324 if the FTC determines that such disclosure is not likely to assist consumers in making purchasing decisions or is not economically feasible. In such a case, FTC must require a different useful measure of energy consumption. Section 324(c). At the present time there is an FTC rule requiring labels under the Act for the following products: Room air conditioners, furnaces, clothes washers, dishwashers, water heaters, freezers, and refrigerators and refrigerator-freezers. 44 FR 66475, November 19, 1979. On December 10, 1987, FTC published a rule requiring labels for central air conditioners. 52 FR 46888.

For twelve of the covered products, the Act prescribes Federal energy conservation standards. Section 325 (a)(1) and (b) through (h). The Act establishes initial effective dates for the standards in 1988, 1990, 1992 or 1993, depending on the product and specifies that the standards are to be reviewed by the Department within three to ten years, also depending on the product. Section 325 (b) through (h). After the specified three- to ten-year period, DOE may promulgate new standards for each product, but such standards may not be less stringent than those initially established by the Act. Section 325 (l)(1).

The Act also directs DOE to prescribe an energy conservation standard no later than January 1, 1989, for small gas furnaces, i.e., gas furnaces having an input of less than 45,000 Btu per hour

[1] Part B of Title III of EPCA as amended by NECPA, NAECA, and NAECA 1988 is referred to in this notice as the "Act." Part B of Title III is codified at 42 U.S.C. 6291 *et seq.* Part B of Title III of EPCA as amended by NECPA only, is referred to in this notice as NECPA.

and manufactured on or after January 1, 1992. Section 325(f)(1)(B).

With regard to another covered product, television sets, the Act allows the Department to prescribe an applicable standard; however, such standard may not become effective before January 1, 1992. Section 325(i)(3).

The Act also permits the Department to prescribe standards for any other type of consumer product, that using certain criteria, DOE may classify as a covered product. Section 325(i), (1) and (m). Any new or amended standard is required to be designed so as to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. Section 325(1)(2)(A).

Section 325(1)(2)(B)(i) provides that before DOE determines whether a standard is economically justified, it must first solicit views and comments on a proposed standard. After reviewing comments on the proposal, DOE must then determine that the benefits of the standard exceed its burdens, based, to the greatest extent practicable, by considering:

(1) The economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard;

(2) The savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered products which are likely to result from the imposition of the standard;

(3) The total projected amount of energy savings likely to result directly from the imposition of the standard;

(4) Any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard;

(5) The impact of any lessening of competition, determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

(6) The Nation's need to conserve energy; and

(7) Other factors the Secretary considers relevant. In addition, the Act specifies criteria for petitions to DOE in regard to amendments to standards. Section 325(k). Under the Act, any person may petition the Department to conduct a rulemaking to amend a Federal energy conservation standard for any covered product. Section 325(k)(1). The Department must grant such a petition if it determines that an amended standard will result in significant conservation of energy, is technologically feasible and is cost-effective. Section 325(k)(2). Section 325(k)(3) (A) and (B) stipulates that in no case may an amended standard apply to products manufactured within three years or five years, depending on the product, after publication of the final rule establishing a standard. Today's final rule does not include procedures and criteria for petitions for an amended standard. Since 1990 is the earliest date by which an amended standard could apply, DOE will address this issue in a future rulemaking proceeding.

Section 325(q) provides that manufacturers having annual gross revenues not exceeding $8 million may apply to DOE for an exemption from all or part of the requirements of an energy conservation standard. This exemption may not extend beyond two years from the effective date of any standard's requirement. This authority will not be exercised by DOE unless, after written consultation with the Attorney General, the Secretary finds that failure to allow the exemption would likely result in a lessening of competition.

Section 326 of the Act authorizes the Secretary to impose requirements upon manufacturers to submit information or reports to assure that each covered product to which a standard applies meets the required energy efficiency level. Today's rule establishes certification provisions that include testing by the manufacturer and submission of compliance and certification data to DOE. The Act also specifies that in determining information requirements, DOE consider existing sources of information, including nationally recognized trade association certification programs. Section 326(d).

Enforcement-related provisions of the Act provide for: (1) DOE to prescribe rules requiring manufacturers to allow the Department to observe testing and inspect results of testing conducted by the manufacturer (section 326(b)(5)); (2) manufacturers to supply to DOE a reasonable number of products for testing purposes (section 326(b)(3)); (3) manufacturers to submit information or reports necessary to ensure compliance (section 326(d)); and (4) injunctive relief against any prohibited act, including distribution of noncomplying products (section 334).

Section 327 of the Act addresses the effect of Federal rules concerning testing, labeling, and standards on State laws or regulations concerning such matters. Generally, all such State laws or regulations are superseded by the Act. Section 327 (a) through (c). Exceptions to this general rule include: (1) State standards prescribed or enacted before January 3, 1987, and applicable to products before January 3, 1988, may remain in effect until the applicable standard begins (section 327(b)(1)); (2) state procurement standards which are more stringent than the applicable Federal standard may remain in effect (section 327(b)(2) and (e)); and certain building code requirements for new construction may remain in effect until the applicable standards begin, and, if certain criteria are met, the codes are exempt from Federal preemption (section 327(b)(3) and (f)(1) through (f)(4)); state regulations banning constant burning pilot lights in pool heaters are exempt from Federal preemption (section 372(b)(4)); and State standards for television sets effective on or after January 1, 1992, may remain in effect in the absence of a Federal standard for such product (section 327(b)(6)).

Another exception to Federal preemption concerns standards for refrigerators, refrigerator-freezers and freezers. The Act specifies that if DOE does not publish a final rule before January 1, 1990, relating to the revision of Federal standards for this product category, the standards for these products that have been promulgated by the State of California, and are to be effective January 1, 1992, may become effective beginning January 1, 1993, and may not be preempted by any Federal standard prescribed on or after January 1, 1990. Section 325(b)(3)(A)(ii)(I) and section 327(c).

In addition, if DOE does not publish a final rule before January 1, 1992, relating to the revision of standards for refrigerators, refrigerator-freezers and freezers, any State regulation which applies to such products manufactured on or after January 1, 1995, is exempt from Federal preemption until the effective date of a Federal standard. Section 325(b)(A)(ii)(II).

A State whose energy conservation standard is preempted may petition the Department for a rule that it not be preempted on the basis that the State regulation is needed to meet unusual and compelling State or local energy interests. Section 327(d). However, DOE cannot issue the requested rule if it is established that such State regulation will significantly burden marketing, manufacturing, distribution, sale or servicing of the covered products, or is likely to result in the unavailability in the State of any covered product with performance characteristics that are substantially the same as those generally available in the State at the time of DOE's determination. Section 327(d)(4).

The Act further provides that, except under certain energy emergency

conditions, any State regulation for which exemption is granted shall apply to products manufactured three years after DOE publishes such a rule in the Federal Register, or five years after publication, if DOE finds that additional time is necessary for retooling and redesign. Section 327(d)(5).

b. Background

NECPA required DOE to establish mandatory energy efficiency standards for each of 13 coverage products.[2] These standards were to be designed to achieve the maximum improvement in energy efficiency that was technologically feasible and economically justified.

NECPA provided, however, that no standard for a product be estasblished if there were no test procedure for the product, or if DOE determined by rule either that a standard would not result in significant conservation of energy, or that a standard was not technologically feasible or economically justified. In determining whether a standard was economically justified, the Department was directed to determine whether the benefits of the standard exceeded its burdens by weighing the seven factors discussed above.

NECPA specified the priorities and procedures to be followed in adopting efficiency standards. Nine of the 13 covered products were given priority. These nine products were: Refrigerators and refrigerator-freezers, freezers, clothes dryers, water heaters, room air conditioners, home heating equipment not including furnaces, kitchen ranges and ovens, central air conditioners, and furnaces.

On June 30, 1980, DOE set forth its first proposed rulemaking for the nine products. 45 FR 43076. (Hereafter referred to as the June 1980 proposal). It also proposed comprehensive requirements for certification and enforcement of the standards as well as criteria and procedures for petitions from small businesses seeking temporary exemption from standards and by States seeking exemption for regulations subject to the general preemption requirements of NECPA.

On April 2, 1982, DOE published a further notice of proposed rulemaking with respect to the nine priority products. 47 FR 14424. (Hereafter referred to as the April 1982 proposal).

[2] The consumer products covered by NECPA included: Refrigerators and refrigerator-freezers; freezers; dishwashers; clothes dryers; water heaters; room air conditioners; home heating equipment not including furnaces; television sets; kitchen ranges and ovens; clothes waters; humidifiers and dehumidifiers; central air conditioners; and furnaces.

Among other things, the April 1982 proposal included rules governing petitions to DOE both by States to obtain exemption from preemption of State or local energy efficiency standards, as well as by manufacturers to obtain preemption of State or local standards.

On December 22, 1982, DOE published a final rule that efficiency standards were not warranted for two covered products (clothes dryers and kitchen ranges and ovens) and that also prescribed final procedures by which States might obtain exemption for State or local efficiency standards from Federal preemption, and by which manufacturers might obtain preemption of a State or local standard not otherwise preempted. 47 FR 57198. (Hereafter referred to as the December 1982 final rule).

On August 30, 1983, DOE published a final rule with respect to six additional covered products: Refrigerators and refrigerator-freezers, freezers, water heaters, furnaces, room air conditioners and central air conditioners. 48 FR 39378. (Hereafter referred to as the August 1983 final rule). For each of the six products covered by the August 1983 final rule, except central air conditioners, DOE determined that an energy efficiency standard would not result in significant conservation of energy and would not be economically justified. With respect to central air conditioners, DOE found that an energy efficiency standard would result in significant conservation of energy, but would not be economically justified.

On April 1, 1985, DOE published a proposed rule with respect to four covered products: Dishwashers, television sets, clothes washers and humidifiers and dehumidifiers. 50 FR 12968. (Hereafter referred to as the 1985 proposal.) For each of the four products covered by the 1985 proposal, DOE proposed that an energy efficiency standard would not be economically justified and would not result in a significant conservation of energy.

During 1983, DOE's December 1982 and August 1983 final rules were challenged in a lawsuit brought by the Natural Resources Defense Council (NRDC) and others against the Department. On July 16, 1985, the U.S. Court of Appeals for the District of Columbia Circuit set aside DOE's December 1982 and August 1983 final rules. *NRDC* v. *Herrington*, 768 F.2d 1355 (DC Cir. 1985).

Consequently, on March 5, 1986, DOE published notices in the Federal Register removing the December 1982 and August 1983 final rules and withdrawing the 1985 proposal. 51 FR 7549 and 51 FR 7552.

As required by NAECA, which was enacted on March 17, 1987, and which established energy conservation standards for certain appliances, DOE published an advance notice of proposed relemaking regarding amended standards for refrigerators, refrigerator-freezers, and freezers and regarding establishing standards for small gas furnaces and television sets. 52 FR 46367, December 7, 1987. (Hereafter referred to as the December 1987 advance notice.) The December 1987 advance notice presented the product classes and analytical methodology for DOE's analysis in the rulemaking for these three products. The Department published a notice of proposed rulemaking on December 2, 1988, proposing to increase the standard level for refrigerators, refrigerator-freezers, and freezers; to establish a standard of 78 percent AFUE for small gas furnaces and to determine that no standard be established at this time for television sets. 53 FR 48798.

On March 4, 1988, the Department published a notice of proposed rulemaking concerning regulations implementing certain provisions of NAECA. 53 FR 7110. (Hereafter referred to as the March 1988 proposal.) In response to the March 1988 proposal, four trade associations representing appliance manufacturers testified at the public hearing held on April 12, 1988, and during the comment period ending May 3, 1988, DOE received nine written comments from manufacturers, trade associations and State governments. The issues raised in the Testimony and written comments are addressed in section II of this notice. Today's final rule responds to the comments received on the March 1988 proposal.

On March 15, 1988, the President signed Executive Order 12630 (53 FR 8859, March 18, 1988) directing that agencies review proposed regulations to avoid unnecessary taking of private property and to assist agencies in accounting for taking private property necessitated by statutory mandate.

The Executive Order states:

"Policies that have takings implications" refer to Federal regulations, proposed Federal legislation, comments on proposed Federal legislation or other Federal policy statements, that, if implemented or enacted, could effect a taking, such as rules and regulations that propose or implement licensing, permitting or other condition requirements or limitations on private property use, or that require dedications or exactions from owners of private property.

Since the Executive Order was issued after the March 1988 proposal, the proposal did not include a section on this requirement. The Department has conducted such an assessment of today's rule and has concluded that these regulations do not constitute a taking of private property. A discussion of this assessment appears in section III of this notice.

Today's notice also addresses Executive Order 12612, "Federalism". Executive Order 12612 requires that regulations or rules be reviewed for any substantial direct effects on States, on the relationship between the National government and the States, or on the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then Executive Order 12612 requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a regulation or a rule.

II. Discussion of Comments

There was general agreement among the comments that DOE's March 1988 proposal was clear, workable and equitable. Comments recommending changes and requests for clarification focused primarily on certification and enforcement and preemption of State regulations. The comments also included questions and suggestions concerning certain definitions in the March 1988 proposal. The following discussion addresses these comments.[3]

a. General Provisions

The 1987 NAECA amendments NECPA included several definitions of terms which also are defined in 10 CFR Part 430. However, some of the definitions contained in the Act are inconsistent with those previously adopted by DOE regulation. Therefore, DOE is amending 10 CFR Part 430 by adopting the definitions contained in the Act. Since these definitions were established by law and are not subject to revision, they were not included in the March 1988 proposal. However, the preamble to the March 1988 proposal did include a list of these terms and definitions. The terms included in today's final rule are "energy conservation standard," "furnace," and "water heater."

The American Gas Association (AGA) commented that it sees no need for DOE to adopt the term "energy conservation standard" in place of "energy efficiency standard." (AGA, No. 2200, at 3). As stated in the preamble to the March 1988 proposal and above in today's notice, DOE is adopting this and other definitions established by the Act.

Similarly, the NAECA amendments included terms which are not found currently in § 430.2 of 10 CFR Part 430. DOE today is adopting the legislated definitions. The terms are: "Annual fuel utilization efficiency," "pool heater," and "weatherized warm air furnace or boiler." Likewise the NAECA 1988 Amendments included terms which are not found in § 430.2 of 10 CFR Part 430. DOE today is also adopting those legislated definitions. The terms are: "Fluorescent lamp ballast" and "ballast efficacy factor." Also, in regard to test procedures, DOE is adopting the following legislated terms in a new Appendix (Q) to Subpart B of Part 430: "F40T12 lamp," "F96T12 lamp," "F96T12HO lamp," "input current," "luminaire," "ballast input voltage," "nominal lamp watts," "power factor," "power input," "relative light output," and "residential building."

As noted in the March 1988 proposal, annual fuel utilization efficiency (AFUE) is determined in accordance with § 4.6 of Appendix N to Subpart B of Part 430. Because the current provisions for determining AFUE are not consistent with the legislated definition, DOE proposed and, today, is adopting amendments to § 4.6 of Appendix N which conform to the NAECA amendments.

The Hydronics Institute commented that the expression $(1 + 0.7)$, in the denominator of the equation should be $(1 + \alpha$, stating that modulating units, being rated at each design heating requirement, will have varying values of α (Alpha). (Hydronics Institute, Testimony). The Hydronics Institute's suggested change may be a technical improvement to the test procedure, but it is not pertinent to the substance of this rulemaking. It is not DOE's intent to address test procedure issues in today's notice.

The March 1988 proposal stated that the measure of AFUE is based on the assumption that weatherized furnaces and boilers are located out-of-doors; that non-weatherized furnaces are located indoors and all combustion and ventilation air is admitted through grille or ducts from the outdoors and does not communicate with the air in the conditioned space; and that non-weatherized boilers are located indoors. These amendments will likely result in many non-weatherized (indoor) furnaces being rerated to reflect isolated combustion system values. The Hydronics Institute also questioned whether the weatherized furnaces and boilers have to meet 78 and 80 percent AFUE, respectively, when calculated as outdoor units in accordance with the DOE test procedures, or must the weatherized units meet 78 and 80 percent AFUE when calculated as indoor units. (Hydronics Institute, Testimony). The Department believes the language in the Act and the March 1988 proposal is clear, specifying an outdoor unit.

Two comments addressed the proposed definition for packaged terminal heat pump. The Air Conditioning and Refrigeration Institute (ARI) suggested that DOE adopt ARI's definition, which states that the unit "should" have other supplementary heat sources, rather than "may" have supplementary heating available as proposed by DOE. (ARI, No. 2197, at 2). The AGA stressed that the existing definition for packaged terminal air conditioner restricts the use of gas as a heating energy source, even though units utilizing gas are available commercially. AGA stated that to adopt this definition as the basis for the definition of packaged terminal heat pump would further restrict the use of gas as an acceptable source of heating energy. (AGA, No. 2200, at 3).

The Department accepts ARI's point that the suggested word change implies a preference or good practice. Likewise, DOE agrees with AGA that the current definition for packaged terminal air conditioner and the proposed definition for packaged terminal heat pump exclude the use of gas as an available energy source. Today's notice reflects these recommendations.

The International Environmental Corporation (IEC), a manufacturer of hydronic and direct expansion fan coil units, requested clarification on the number of units comprising a "collection" since the definition of "batch" in the March 1988 proposal states that it is a collection of production units of a basic model from which a batch sample is selected. (IEC, No. 2195, at 1). A "collection" means all units in a manufacturer's possession of a single production run of a basic model.

The Department also received comments concerning test procedures and units to be tested. The Association of Home Appliance Manufacturers (AHAM) and Whirlpool Corporation (Whirlpool) were concerned that DOE has not stated clearly that compliance with any standard established by the Act is based on the mean energy value for a basic model rather than on each

[3] Comments on the March 1988 proposal were assigned docket numbers and are numbered consecutively, beginning with No. 2194. Comments presented at the April 12, 1988, public hearing are identified as Testimony.

individual unit. (AHAM, No. 2198, at 2–3, and Whirlpool, No. 2194, at 1).

The Department sees no reason to address this issue in today's rule since the test procedures already establish the requirement as being basic model-specific. As such, each test procedure already includes the method for determining the applicable energy descriptor. Therefore, in order for a manufacturer to certify compliance with a standard, the energy value calculated in accordance with the sampling provisions in § 430.23 must meet or exceed the standard. These provisions are based on mean and adjusted mean values.

AHAM also suggested that DOE amend § 430.23 so that it applies clearly to the energy conservation standards in section 325 of the Act. (AHAM, No. 2198, at 3).

In response to AHAM's suggestion, the Department today is amending the language in the first paragraph of § 430.23.

The National Electrical Manufacturers Association (NEMA) commented on the March 1988 proposal in anticipation of fluorescent lighting fixtures becoming a covered product.[4] NEMA urged DOE to determine that test procedures for fluorescent lamp ballasts are not required under section 323(d)(1) of the Act. (NEMA, No. 2202, at 2–3).

The Department rejects NEMA's reasoning. DOE can make a finding under section 323(d)(1) of the Act only if test procedures cannot be developed which meet the requirements of section 323(b)(3). That subsection states that "Any test procedure * * * shall be reasonably designed to produce test results which measure energy efficiency, energy use, or estimated annual operating cost of a product * * * and shall not be unduly burdensome to conduct." Congress recognized and the legislation specifies a test procedure which meets the requirements of section 323(b)(3) of the Act. That test procedure is ANSI C82.2–1984, The American National Standard for Fluorescent Lamp Ballasts Methods of Measurement.

NEMA also requested that DOE include in today's rule several definitions contained in the 1988 Amendments. These terms include, *inter alia*, "fluorescent lamp ballast," "ballast efficacy factor," "fluorescent lamp," "luminaire." NEMA also urged DOE to conduct a new rulemaking to ensure that fluorescent lighting fixtures are addressed adequately in the regulations. (NEMA, No. 2202, at 10).

[4] The 1988 Amendments were pending before Congress during the comment period for this rulemaking.

The 1988 Amendments were not included in the Act until after the March 1988 proposal, so DOE did not address fluorescent lighting fixtures in the March 1988 proposal. However, the Department considers it appropriate to include this covered product in today's final rule, since it was discussed in comments received on the March 1988 proposal. Therefore, DOE is adopting the legislated definitions, and standards contained in the NAECA 1988 amendments. The Department will address additional regulations, as needed, in a separate rulemaking dealing with fluorescent lamp ballasts.

As stated above, and in the March 1988 proposal, the Act establishes standards for 12 types of appliances. Since these standards are established by law, they are being adopted today without comment.

The California Energy Commission (CEC) commented on the classes established for the covered products, in particular for refrigerators. The CEC pointed out that there is no class assigned for refrigerators with automatic defrost or for refrigerator-freezers with automatic defrost and internally mounted freezers. (CEC, No. 2201, at A–1). Since this relates and was the subject of comment to the December 1987 advance notice, DOE's review and determination of these options will be included in the refrigerator rulemaking mentioned above.

CEC also suggested that DOE revise the standard for water heaters so that the formulas used to determine the energy factor are based on actual measured volume instead of rated volume. CEC also requested DOE to include a definition of the term "rated storage volume." (CEC, No. 2201, at A–2).

Today's final rule addresses the implementation of major provisions of the Act. Since CEC's comment actually relates to test procedure issues, DOE will include this in a pending rulemaking concerning amendments to the test procedures for water heaters.

b. Petitions To Exempt State Regulation From Preemption

The Department received several comments concerning the criteria and procedures by which States may petition DOE for exemption from preemption.

NEMA opposed DOE's proposed amendments altogether, stating that the Department's action will allow States to petition for exemption from Federal preemption. NEMA added that it cannot envision any unusual or compelling interest to justify DOE granting a State's petition. (NEMA, No. 2202, at 10).

NEMA is incorrect in its understanding of the Act and of DOE's March 1988 proposal. It is the statute, not the Department's regulations, that permits States to petition DOE for such exemptions. Section 327(d)(1)(A) of the Act provides that:

> Any State with a State regulation which provides for any energy conservation standard * * * with respect to energy use or energy efficiency for any * * * covered product for which there is a Federal * * * standard * * * may file a petition with the Secretary requesting a rule that such State regulation become effective. * * *

Section 327 of the Act also establishes DOE's responsibilities for considering such petitions and requires that a State petition established by a preponderance of evidence that such regulation is needed to meet unusual and compelling State and local interests.

Whirlpool and AHAM urged DOE to emphasize that the Department may not grant a State petition if evidence shows that the rule will result in the unavailability in the State of any covered product (or class) of performance characteristics * * * that are substantially the same as those generally available in the State at the time of the Secretary's finding." (Whirlpool, No. 2194, at 3, and AHAM, No. 2198, at 14).

This criterion is prescribed in section 327(d)(4) of the Act with regard to State petitions. A similar provision, regarding new or amended standards, is contained in section 325(l)(4) of the Act. Whirlpool and AHAM believe that both these provisions should be included in today's rule. The provision established in section 327(d)(4) of the Act pertaining to State petitions appeared in § 430.41 of the March 1988 proposal and, likewise, is included in today's final rule. Today's action, however, is not a standards' rulemaking, therefore, section 325(l)(4) of the Act does not apply to the regulations contained in this notice.

The Gas Appliance Manufacturers Association (GAMA) argued that the Department misinterpreted section 327(d)(5) of the Act. GAMA contends that no rule granting a State's petition may permit a State regulation to become effective earlier than three years from the date such a rule is published in the **Federal Register**. GAMA's understanding of the Act is that there are no exceptions to this provision. Therefore, in the case of an energy emergency condition, DOE may allow a State to implement its regulation before the earliest possible effective date for the revision of the applicable standard, but in no case may a State regulation become effective before three years from the date DOE grants the petition. (GAMA, No. 2196, at 6.)

The Department rejects GAMA's argument. There is nothing in the Act prescribing or suggesting that the requirements of section 327(d)(5)(A) dictate the terms of a finding that an energy emergency condition exists within a State. If a State has established that such a condition exists, GAMA's interpretation would negate the remedy provided by section 327(d)(5)(B) of the Act. The March 1988 proposal and today's final rule recognize this remedy. Therefore, a rule exempting a State standard from Federal preemption will be effective upon publication in the **Federal Register** if DOE determines and publishes such determination in the **Federal Register** that such rule is needed to meet an energy emergency condition existing within the State.

Several comments maintained that DOE did not provide adequate guidance and criteria concerning the content of State petitions.

AHAM stated that the Department should emphasize that the Act does not favor exemptions and that DOE intends to scrutinize petitions to ensure that the intent of the waiver criteria is met. (AHAM, No. 2198, at 2 and 11.) In addition, Whirlpool and AHAM urged DOE to emphasize that the criteria under NAECA are significantly more difficult to satisfy than those prescribed by NECPA. (Whirlpool, No. 2194, at 2–3 and AHAM, No. 2198, at 2.)

These comments suggest, if not assert, that the Act discourages states from seeking a rule to exempt a State standard. The Act establishes general rules of preemption and allows for the waiver of Federal preemption, prescribing the conditions under which DOE may or may not grant a petition. While the grounds for the waiver may be argued to be more stringent than formerly, they need be established by the State only by a "preponderance of the evidence." DOE will examine each petition for adherence to the actual requirements of the Act and DOE's regulations.

Pursuant to NECPA, the Department, in considering a State petition, was required to determine that there was a significant State or local interest to justify a State standard and that such a standard was more stringent than the applicable Federal standard. NECPA prohibited DOE from granting a petition, however, if it determined that a State standard would unduly burden interstate commerce. NECPA did not require a State to prove a negative prediction, i.e., that its standard would not impose an undue burden on interstate commerce. The Department's regulations required a petitioner to describe the significant State or local interest justifying the State standard and any other information the State considered relevant or the Department required.

The Act, as amended by NAECA, requires DOE to grant a State petition if certain criteria are satisfied, though, these criteria are different. DOE must grant a State's petition if it finds that the State has established, by a preponderance of the evidence, that such a standard is needed to meet unusual and compelling State or local energy interests. This term, as defined by the Act, includes factors to establish the difference, in nature and magnitude, between the State's interests and those prevailing in the U.S. generally, and the costs and benefits resulting from the State regulation that would make it preferable or necessary when compared to the costs and benefits of alternative approaches to energy savings or production. The Act also requires DOE to evaluate the State's claim of unusual and compelling State or local interests within the context of the State's energy plan and forecast.

The Act prohibits the Department from granting a petition if it finds that interested persons have established, by a preponderance of the evidence, that the State standard will significantly burden manufacturing, marketing, distribution, sales, or servicing of the covered product on a national basis. The Department must evaluate all factors, including the impact on manufacturing and distribution costs and on small businesses; the extent to which the standard would cause a burden to manufacturers; and the extent to which the State regulation is likely to contribute significantly to a proliferation of State standards. The Department also may not grant a petition if interested persons have established by a preponderance of the evidence, that the State standard is likely to result in the unavailability in the State of any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities and volumes that are substantially the same as those generally available at the time of DOE's finding.

It is important to note that pursuant to the Act, as amended by NAECA, again, a State is not required to prove a negative prediction, i.e., that a State standard will not significantly burden manufacturing, marketing, etc., or that a standard will not likely result in the unavailability in the State of any covered product type, etc.

The Department's regulations, as contained in today's notice, require a petition to include a copy of the State's energy plan and forecast, and any other information the petitioner believes is pertinent or the Department may require.

In addition to comparing the requirements for State petitions under NECPA and NAECA, DOE believes the above discussion responds to the New York State Energy Office (NYSEO) request that DOE clarify "burden of proof" requirements for petitioners and interested persons (those submitting comments on petitions). (NYSEO, No. 2199, at 2).

On a related issue, GAMA urged DOE to be explicit, through examples or requirements, that the burden of proof on States to justify exemption is very high. (GAMA, No. 2196, at 5–6). The California Energy Commission (CEC) also encouraged DOE to specify, through regulation, what type of information DOE expects in petitions. (CEC, No. 2201, at 10).

In addition, AHAM and Whirlpool stated that among other things, DOE should require each petition to provide the basis for differentiating its State energy problems from supply and consumption issues facing other States. (AHAM, No. 2198, at 11 and Whirlpool, No. 2194, at 2–3). AHAM also suggested that States must show that less restrictive alternatives, such as voluntary standards, consumer education or rebates, cannot accomplish substantially the same objectives as standards. (AHAM, No. 2198, at 12).

The Act is clear as to the criteria DOE must consider and evaluate in determining whether or not to grant a State petition. In light of such clarity, the Department disagrees with the comments that petitioners will not know what information to include in their petitions.

The March 1988 proposal provided examples of information and data that would be helpful to DOE in its consideration of a petition. The Department believes those examples are adequate guidance. Moreover, in view of the criteria described above, DOE will reject, with explanation, any petition which does not contain sufficient information. In such a case, the petition may be resubmitted.

The CEC stated that, since time will be of the essence in the petition process, DOE should establish regulations for a discovery process allowing for written interrogatories and requiring that all data and quantitative statements in petitions and comments be fully documented. (CEC, No. 2201, at 11.)

Section 336(a)(1) of the Act includes the petition process in a provision

requiring opportunity for public comment during the rulemaking processing. However, under section 336(a)(2), the "opportunity to question" applies only to rulemakings conducted under section 325 (standards) of the Act. It appears that the CEC contemplates other types of evidentary procedures which are appropriate for adjudicatory types of hearings. DOE does not believe the petition process should be so expanded.

In regard to documentation of data and quantitative statements contained in petitions and comments, section 327 of the Act already requires that States and interested parties provide "evidence" on which DOE must base its determination. The Department believes that those who will file petitions and submit comments are aware that their ability to succeed in such rulemaking proceedings will be based on the information contained in these documents. As such, DOE expects that data and other quantitative material will be documented fully. As mentioned previously, DOE will review thoroughly each petition and comment for content and completeness.

AHAM, GAMA and ARI commented that in no case should DOE grant a petition without holding a public hearing. (AHAM, No. 2197, at 12; GAMA, No. 2196, at 6; and ARI, No. 2197, at 2.) AHAM stressed that at least one mandatory public hearing should be held on each petition unless DOE determined that "a petition is insufficient on its face to warrant further consideration." (AHAM, No. 2196, at 12.)

As discussed above, section 336(a)(1) of the Act requires DOE to hold a hearing and provide a comment period for rulemakings pertaining to (section 327 of the Act) state petitions, as well as for rulemakings conducted under sections 323, 324, 325 and 328 of the Act. Therefore, DOE has concluded that it is unnecessary to include this as a requirement in today's rule.

ARI questioned whether the **Federal Register** notice of a final rule granting or denying a petition will contain the actual text of DOE's determination. ARI believes such text should be included and available for public review. ARI also stated that § 430.48 (request for reconsideration) of the March 1988 proposal was inadequate. ARI suggested that this section require petitioners requesting DOE reconsideration of a denial to serve copies of such request on interested persons, at least those who commented on the petition. ARI also urged DOE to publish a **Federal Register** notice upon receipt of a request for reconsideration, soliciting comments, data and information. (ARI, No. 2197, at 3–4.)

Section 430.46 of the March 1988 proposal and today's rule state that the **Federal Register** notice will include the reasons and basis for a final rule granting or denying a petition. As such, the **Federal Register** notice is the actual text of DOE's determination. Also, since denial of a petition will be reconsidered only if it demonstrated the denial was based on an error in law or fact, and that evidence of the error is found in the record of the proceeding, this process is not subject to the public notification and request for comment requirements of a rulemaking proceeding. The Department does have the flexibility, however, to order a petitioner to serve copies of the request for reconsideration, in a timely manner, on interested persons.

Finally, the NYSEO requested clarification on the applicability of the preemption provisions concerning products manufactured prior to the effective date of Federal standards. The NYSEO interprets the Act to provide that such products remain subject to pre-existing state standards. (NYSEO, No. 2199, at 2–3.)

The Department agrees with the NYSEO's understanding of the Act. A State standard would be preempted upon the effective date of the applicable Federal standard. However, the pre-existing State standard would apply to products manufactured prior to the effective date of the Federal standard.

c. Small Business Exemptions

Pursuant to section 325(q) of the Act, DOE proposed, and today is adopting, a new Subpart E that establishes procedures by which manufacturers, whose annual gross revenues for the preceding 12-month period do not exceed $8,000,000, may petition DOE for temporary exemption from all or part of an energy conservation standard for up to 24 months from the date such standard is effective.

In reference to this provision, ARI urged DOE to make it clear that an exemption may not exceed 24 months. ARI also commented that the March 1988 proposal did not provide adequate opportunity for public review and comment on applications for exemption. ARI recommended that all materials submitted by an applicant be available for public review, that DOE publish a **Federal Register** notice upon receipt of each application, and that DOE be explicit in providing opportunity for public comment on such applications. (ARI, No. 2197, at 4).

The Department believes that the language in both the discussion and rule sections of the March 1988 proposal was quite clear. On page 7115 of the **Federal Register** notice, DOE stated that such exemptions are temporary and may be granted for up to 24 months from the date the applicable standard is effective. On page 7124 of the same notice, under § 430.57 "Duration of Temporary Exemption," DOE proposed: "A temporary exemption terminates according to its own terms but not later than twenty-four months after the effective date for which the exemption is allowed." Furthermore, DOE has determined that no additional provisions are necessary for public review of and comment on applications for exemption. ARI seeks a rule requiring all materials submitted to DOE be publicly available. Section 430.53 provides that all applications and supporting documents "may" be made available for public review. Some documents, however, might not be made available. For example, should DOE determine that an entire support document is exempt from public disclosure pursuant to 10 CFR 1004.11, the Department would not make such document available for public review. Likewise, DOE would not make publicly available an application that was determined to be incomplete and was being returned, without further review, to the applicant. DOE agrees with ARI on the potential competitive effects of a small business exemption. The Department also is aware of and must be concerned with the potential competitive effects of information contained in such applications. For this reason, DOE will determine, on a case-by-case basis, which materials will be made available for public review.

The Department agrees with ARI that DOE should publish a **Federal Register** notice with regard to any application for exemption that DOE has received and accepted for filing and that such notice should solicit comments from interested persons. Today's rule reflects ARI's recommendation.

d. Certification and Enforcement

The certification procedures in the March 1988 proposal were patterned after the reporting requirements for FTC's appliance labeling program and trade association certification programs. Generally, the comments DOE received concerning certification and enforcement characterized these provisions of the March 1988 proposal as equitable and minimally burdensome. The comments included requests for clarification on issues such as data submission, records maintenance, definitions, sampling and compliance testing; and also included suggested

revisions primarily to the proposed enforcement provisions.

GAMA, Whirlpool, ARI, IEC, CEC and AHAM commented on DOE's proposed reporting requirements under § 430.62. Regarding third party reporting, IEC questioned whether a trade association, such as ARI, may submit a report on behalf of a manufacturer. (IEC, No. 2129, at 2). ARI commented that it believes that its statement on behalf of any participant should satisfy the requirements of the compliance statement (ARI, No. 2197, at 5). The CEC maintained that while a third party may perform the reporting function, responsibility for accuracy and completeness remains with the manufacturer. (CEC, No. 2201 at 5).

Section 430.62(e) of today's final rule remains unchanged—it permits a manufacturer to use a third party, such as a trade association, to submit the information required under § 430.62. However, ARI is incorrect in assuming that this satisfies the requirements of the compliance statement. A third party may not make any statements on behalf of a participating manufacturer to substitute for the compliance statement. The regulation merely permits the third party to transmit the compliance statement to DOE. Therefore, the CEC is correct that the manufacturer, alone, is responsible for all of the information submitted by a third party. If a manufacturer elects to use a third party, the compliance statement must include this, and therefore, serves as notification to DOE that the manufacturer has authorized a third party to submit such information.

The Department emphasizes that the compliance statement need not be resubmitted with future certification reports for new models unless the information contained in the original compliance statement no longer is accurate.

The CEC stated that a meaningful certification and enforcement program should include a provision for DOE to "spot check" wholesale and retail outlets and for DOE to publish directories to assist consumers in determining the efficiency of a model and whether it meets the applicable standard. The CEC also stressed that DOE should accept certification data only from programs that conduct routine testing for a significant percentage of basic appliance models available for sale each year and include procedures for challenging data open to all participants in the program. (CEC, No. 2201, at 4).

The Department rejects this point of view on the basis of CEC's earlier statement that testing is the manufacturer's responsibility. A third party may submit the information only if the manufacturer certifies compliance. The Department also does not agree with the CEC on the necessity to publish directories, particularly in light of the availability and use of trade association directories, and the FTC labeling program. In regard to a need for the "threat of periodic spot checks," nothing in the Act or in DOE's regulations prevents the Department from conducting such random checks.

In commenting on the reporting requirements of § 403.62(b), ARI urged DOE to revise the reporting dates, bringing them more in line with the effective dates of standards. In particular, ARI pointed out that while the reporting date for all central air conditioners and heat pumps is on or before July 1, 1991 (six months before standards are in effect for split system central air conditioners and heat pumps), that date is 18 months before the effective date of standards for single package central air conditioners. ARI suggested that reporting dates be changed to 30 days prior to the effective date of any standard. (ARI, No. 2197, at 4).

The Department agrees with ARI that the 18-month difference is excessive. Moreover, DOE wants to clarify that this is not an annual reporting requirement. The dates specified in the March 1988 proposal represent initial, one-time only, reporting requirements. In addition, to reduce the reporting burden on manufacturers and third parties, DOE selected dates that coincide with FTC reporting deadlines. To simplify DOE's reporting requirements, § 430.62(b) of today's final rule specifies that the initial (one-time only) reporting requirement for all existing covered products must be submitted no later than the effective date of the standard for each product.

For new models, introduced after a standard becomes effective, the certification report must be submitted to DOE prior to or concurrent with any distribution of such model. This change, as reflected in today's rule, also addresses an issue raised by GAMA concerning its certification directory publication cycle.

In submitting certification reports on behalf of program participants, AHAM stated that it plans to submit its certification directory yearly, with monthly supplements, as needed, to reflect new models. (AHAM, No. 2196, at 5). GAMA explained that it, too, will use its certification directory, which is published twice a year. However, GAMA argued that its publication schedule conflicts with DOE's proposal that information on new models be submitted prior to the distribution of such models. GAMA requested that DOE allow manufacturers 30 days after a new model is introduced before requiring the submission of a certification report, at which time GAMA would submit to DOE a monthly supplement to the GAMA directory. (GAMA, No. 2196, at 3).

The Department believes that its clarification and simplification of the reporting requirements will reduce the reporting burden on manufacturers and third parties. In light of the lead-time necessary to introduce a new model, DOE believes there is ample time for a manufacturer or third party to submit the necessary information prior to or at the time a new model is introduced. Therefore, DOE rejects GAMA's suggestion for a 30-day waiting period.

IEC questioned the meaning of the statement under § 430.62(c) that "any change to a basic model which affects energy consumption may constitute the addition of a new basic model subject to the requirements of § 430.61." (IEC, No. 2195, at 2). If a manufacturer makes any adjustments or changes to a basic model that result in a different rating, the Department will consider that to be a new basic model.

IEC also inquired as to how an indoor coil manufacturer's basic model would qualify as an "other than tested model" pursuant to § 430.63(b) of the March 1988 proposal. (IEC, No. 2195, at 2). In prescribing test procedures for central air conditioners, including heat pumps, DOE recognized the extreme burden and cost associated with testing these products. Therefore, the test procedure requires testing only of the outdoor unit and indoor coil that represent a manufacturer's highest sales combination. As provided by § 430.23(m) of DOE regulations, all other combinations marketed by a manufacturer, or coil only manufacturers, may be rated on the basis of computer model.

AHAM, Whirlpool and GAMA also commented on the March 1988 proposal's requirement under § 430.62(c) that discontinued models shall be reported in the next annual report. GAMA viewed this requirement as unnecessary since in GAMA's certification program discontinued models "simply don't appear in the next directory." (GAMA, No. 2196, at 4). AHAM and Whirlpool also recommended that DOE delete this requirement since a model may be discontinued in production, but remain in distribution for several years afterward. Therefore, since there is no

way to determine when a model is discontinued in distribution. AHAM and Whirlpool stressed that it is important that once a model is certified, it remains certified so as to avoid the perception of a noncompliant product. (AHAM, No. 2198, at 4–5 and Whirlpool, No. 2194, at 2). AHAM recommended that it could conduct an annual review and provide DOE a list of models no longer in its directory. (AHAM, No. 2198, at 5).

The Department accepts the reasoning offered by these comments. Therefore, today's final rule requires a manufacturer or third party to notify DOE, in writing, of any model no longer being manufactured. Such notification may be a letter or copy of a previous directory, highlighted to indicate the discontinued model(s).

Finally, ARI interpreted and DOE agrees that computer records are acceptable for meeting the requirement under § 430.62(d) that records be maintained for two years from the date production of a particular model has ceased. (ARI, No. 2197, at 5).

The majority of the comments submitted to DOE addressed enforcement-related issues, and are discussed below.

The Hydronics Institute offered comments on enforcement testing in which it described anomalous results of applying the proposed sampling provisions. The Hydronics Institute illustrated an application of the proposed provisions for two groups, each with four test results. It argued that the first phase of enforcement testing should have a five percent tolerance as does the second phase and asserts that absent such a tolerance a sample of boilers with a mean 79.1 AFUE would pass, while a sample with a mean of 79.75 AFUE would not. (Hydronics Institute, Testimony).

The first group in the Hydronics Institute's example consists of four boiler test results, all of which are below the standard level of 80 percent AFUE and demonstrate a small standard deviation. The second group of four test results also are below the standard level of 80 percent AFUE but demonstrate a relatively large standard deviation compared to the first group. Since all the test results are below the standard level, the sample means are below the standard level, i.e., 79.75 AFUE for the first group and 79.1 for the second group. The Hydronics Institute shows that the group with a mean of 79.75 AFUE and a small standard deviation would be determined in noncompliance in step 6 of the proposed provisions, whereas the group with the lower AFUE rating (79.1), but larger standard deviation group would be judged in compliance in step 7. The Hydronics Institute concluded that "the procedure favors divergent test results on the first test samples." Accordingly, Hydronics Institute asks that the procedure be checked for possible error.

The Department has reviewed the Hydronic Institute's comments and concludes that the proposed provisions are appropriate. The perceived inconsistency is a result of the nature of statistical inferences, rather than an error in the equations. In the example provided, the procedure does, in fact, favor divergent test results at that particular point in the process, i.e., steps 6 and 7. In other words, the population represented by the second group, with its larger degree of uncertainty, i.e., larger standard deviation, is given a better probability of having a true mean at or above the standard level than that of the population represented by the first group. In the examples, the two probabilities happen to be above and below the level chosen as the "reasonable risk" threshold, thus explaining the opposing determinations of compliance and non-compliance. Since the issue raised by the Hydronics Institute is complex, DOE believes it is appropriate to discuss the concept of "reasonable risk" in today's notice. In general terms, the two types of risk are: "Manufacturer risk," which is the probability, based on sample data, of being, in fact, in compliance when the sample data indicate a determination of noncompliance; and "government risk," which is the probability, based on sample data, of being, in fact, in noncompliance when the sample data indicate a determination of compliance. As with all statistical matters, the absolute is never known. (A "reversal" is a useful way to express the adverse impacts of these risks. For example, at steps 6 and 7, the proposed procedures assign a 2.5 percent probability of reversal as the maximum allowed.)

Applying these terms to the Hydronics Institute example, the population represented by the first group has less than a 2.5 percent chance of a reversal, i.e., being, in fact, in compliance when the sample data indicates noncompliance. Similarly, the population represented by the second group has less than a 2.5 percent chance of a reversal, i.e., being in noncompliance when the sample data indicates compliance.

The Hydronics Institute attributes the problem to the five percent tolerance "given" in these procedures. Rather, the tolerance allowed is in the form of upper and lower confidence limits. In step 11, the five percent tolerance mentioned is the limit of tolerance allowed by the confidence limits, and the term "0.05 (EPS)" in step 7 is not a tolerance, but the mathematical expression of the difference between a standard and 95 percent of the standard.

Whirlpool, GAMA, AHAM and ARI pointed out that while the preamble to the March 1988 proposal stated that DOE's receipt of "credible and substantiated" information triggers DOE's actions to determine compliance of a certified product, the rule itself is vague. (Whirlpool, No. 2194, at 2; GAMA, No. 2196, at 4; AHAM, No. 2198, at 6; and ARI, No. 2197, at 5). Whirlpool also suggested that DOE discourage "nuisance" challenges by requiring test data to support any challenge of energy performance. (Whirlpool, No. 2194, at 6). The CEC also commented that DOE should establish a petition process for such challenges and complaints from manufacturers and consumers. (CEC, No. 2201, at 7).

The Department believes that § 430.70(a)(1), as stated in the March 1988 proposal and in today's final rule, is clear—the Department "may" conduct testing of a particular product upon receipt of information concerning the energy performance of that product. The Department will evaluate thoroughly any complaint received, and will issue a test notice if DOE determines that such action is warranted. DOE is not requiring submission of test data since, in several instances, such data would be unnecessary. For example, in the case of prescriptive standards, test data would be inappropriate in cases concerning pilot lights in certain appliances. Furthermore, compliance with certain performance standards can be determined by reviewing design information. Determination of noncompliance will be made in accordance with the enforcement provisions found in Appendix B to Subpart F. Therefore, the Department will determine what information is appropriate on a case-by-case basis. Furthermore, nothing in the Act or in DOE's regulations prohibits DOE from requiring the submission of additional information, including test data.

In reference to CEC's suggestion, the Department believes that establishing procedures and criteria for a separate petition process would be restrictive and inappropriate. Since DOE has the flexibility to require the submission of additional or supporting information, DOE sees no purpose in requiring a prescribed format or specific procedures for submitting such information. Furthermore, since such a submittal does not serve as a request for rulemaking or similar action, e.g., request for waiver, DOE sees no justification for requiring a petition process. Section 430.70(a)(1) of today's rule does include the requirement that information submitted to DOE be in writing.

GAMA and ARI urged DOE to adopt the term "basic model" instead of "model or basic model" as included in §§ 430.70(a)(1)(iii) and 430.71(a) of the March 1988 proposal. (GAMA, No. 2196, at 4 and ARI, No. 2197, at 6). In addition, IEC stated that the proposal did not define the term "basic model."

The Department agrees with GAMA and ARI that use of both terms could cause confusion. Therefore, today's final rule specifies only "basic model." In response to IEC's comment, since DOE is not revising the definition of "basic model" as it appears in § 430.2 Title 10 of the Code of Federal Regulations, the term is not included in today's final rule.

GAMA and ARI also questioned the rationale, in § 430.70(a)(1)(iii), that provides for testing alternative basic models when a selected basic model is unavailable for testing. These comments maintained that there is no justification for testing any model other than the basic model alleged to be in noncompliance. (ARI, No. 2197, at 6 and GAMA, No. 2196, at 4).

The Department believes there may, indeed, be occasions when testing an alternative basic model is necessary. For example, if a particular condensing unit is combined with several different evaporation coils, each combination could be a different basic model. If one combination is not available, i.e., a particular coil is not available, an alternative coil could be selected for testing, representing an alternative basic model.

Finally, IEC requested clarification of "the method of selecting the test sample" under § 430.70(a)(1)(iii). (IEC, No. 2195, at 2). Section 430.70(e)(i) states that DOE will offer a manufacturer the opportunity to verify compliance, and today's rule specifies that the manufacturer may meet with DOE. As appropriate, in correspondence and/or meetings, DOE will discuss the method of selecting test units on a case-by-case basis.

Several comments sought clarification concerning the payment of testing costs. (GAMA, No. 2196, at 5; ARI, No. 2197, at 5; IEC, No. 2195, at 2–3; and CEC, at 7).

The Department is to pay for all enforcement testing performed under steps 1–11 of Appendix B to Subpart F of Part 430. The manufacturer bears the cost of additional testing, steps A–C of Appendix B—manufacturer-option testing. Such costs are to be paid directly to the testing facility. In the case of option testing, the manufacturer is responsible for contracting with the testing facility.

GAMA suggested that DOE require an initial shipment of four units out of the test sample of 20 units. (GAMA, No. 2196, at 5). To protect against any modification or substitution of units, GAMA and ARI recommended that DOE identify, mark and package each unit selected with a tamper-proof seal. ARI also suggested that the independent lab conducting the testing could also inspect each unit for tampering. (GAMA, No. 2196, at 5 and ARI, No. 2197, at 6).

The Department believes that such a requirement would be an unnecessary burden in a process DOE had made every effort to be simple and expeditious. Therefore, all units, up to 20, specified in a test notice, are to be shipped according to instructions contained in the notice. DOE will determine the number of units required after review of information described in § 430.70(a)(1)(i). A "reasonable" number of units, no less than four and no more than 20, will be the amount DOE determines, upon review of the pertinent information, is appropriate for compliance testing.

NEMA stated that the sampling method required under § 430.70 is inappropriate for fluorescent lamp ballasts since the practice in that industry is to design and produce every ballast to meet performance standards. Therefore, NEMA proposed that all ballasts be designed to meet the ballast efficiency factor prescribed in the 1988 Amendments and be exempt from the sampling procedures in the March 1988 proposal. (NEMA, No. 2202, at 4).

The Department is not persuaded by NEMA's argument and believes that NEMA has misunderstood the testing requirements. Section 430.70(a)(3) of the March 1988 proposal states that DOE's determination of a basic model's compliance will be based on testing conducted according to the statistical sampling procedures in Appendix B of the proposal and in the testing procedures in § 430.23 of Title 10 Code of Federal Regulations. Since these procedures minimize testing and associated costs, e.g., § 430.23 permits testing of as few as two units for each basic model, today's final rule provides no exemptions or exceptions to the sampling requirements. The Department emphasizes that the sampling procedures minimize the burden on manufacturers since there is no requirement to test each unit of a basic model to demonstrate that the basic model is in compliance. The regulations take into account the product variability that occurs in the manufacturing process and do not penalize the manufacturer for the anomalous unit.

Finally, while today's final rule does not include sampling provisions under § 430.23 for fluorescent lamp ballasts, DOE will propose such provisions in an upcoming test procedure rulemaking.

ARI also commented on enforcement sampling, and contended that if, for example, a central air conditioner or heat pump basic model is found to be noncompliant, such noncompliance determination applies only to the condensor-evaporator combination found in that unit, and not to other basic models using the same condensing unit. (ARI, No. 2197, at 7).

While ARI's assertion may be valid in some instances, it may not be so in others. The Department will make such determinations on a case-by-case basis.

The March 1988 proposal specified that DOE may subdivide a batch utilizing such criteria as date of manufacture, component supplier, location of manufacturing facility, or other criteria to differentiate one unit from another. Section 430.70(a)(4)(1). ARI maintained that date and location are adequate for identifying units and therefore, DOE should delete the language "or other criteria." (ARI, No. 2197, at 7).

The Department does not view that identification criteria as restrictive or burdensome. Each manufacturer must identify each unit using criteria set forth in the test notice, such as date and location of manufacture. A category for "other criteria" may indeed be helpful to a manufacturer and DOE in differentiating units. As discussed above, in correspondence and/or meetings, DOE and the manufacturer will determine if other criteria would be helpful in differentiating units.

In a separate reference to date of manufacture, the CEC argued that the current FTC labels will be insufficient for consumers to determine whether an appliance complies with the applicable Federal standard. The CEC maintained that without a label requiring date of manufacture, it will be impossible to know whether the unit is even required to meet a particular standard. DOE should require manufacturers to display prominently a label on every certified model giving the month and year of manufacture and stating that the unit has been certified to be in compliance with the applicable Federal standard. (CEC, No. 2201, at 5–6).

The Department recognizes the situation described by CEC and agrees that for a period of time following the effective date of any standard, consumers will make purchase decisions

without the certainty a model complies with the standard. However, while agreeing that such information might be helpful, DOE believes that such benefit does not provide an adequate basis for requiring manufacturers to display an additional label on each unit. This is true because, as discussed above, upon notification by DOE, a manufacturer is required to submit such identifying information to DOE as part of establishing compliance prior to entry of the model into distribution.

ARI and IEC recommended that DOE provide for units that fail compliance testing due to defective components or component failure. (ARI, Testimony and IEC, No. 2195, at 2).

The Department agrees that if a unit is inoperative, it cannot be tested. Therefore, today's final rule provides for the replacement or repair of defective components or units. For the purposes of today's rule, DOE considers a defect as that which prevents the product from being operated according to the manufacturer's intent, design and directions.

AHAM maintained that DOE should delete § 430.70(a)(6)(iv), requiring a manufacturer to cease distribution of a model being tested at the manufacturer's option. (AHAM, No. 2198, at 7–9). AHAM argued that DOE has no authority for such a regulation other than seeking a court injunction. AHAM would accept such a provision if it served simply to suggest cessation of distribution based on indications of noncompliance and to notify the manufacturer that civil penalties or an injunction may be sought. (AHAM, No. 2198, at 7–10).

In addition, GAMA stressed that cessation of distribution should be required only if non-compliance is determined upon completion of all tests conducted at the manufacturer's option. To require cessation of distribution before such time would effectively preclude the additional testing provided under § 430.70(a)(6) and the requirement of § 430.71(a)(2) would likely halt sales and damage a model's reputation. (GAMA, No. 2196, at 5).

ARI emphasized that, upon receipt of a manufacturer's request for optional testing, DOE should conduct prompt testing according to prescribed deadlines. (ARI, No. 2197, at 7–8).

First, DOE rejects AHAM's argument concerning DOE's authority to require cessation of distribution. Section 325(o) of the Act states that "any new or amended * * * standard * * * may include any requirement which the Secretary determines is necessary to assure that each covered product * * * meets the required minimum level of energy efficiency * * * specified in such standard." Furthermore, section 328 of the Act authorizes the Department to issue such rules as it deems necessary to carry out the provisions of the Act.

In addition, while DOE accepts GAMA's observations concerning the potential impacts of cessation of distribution, neither GAMA nor AHAM have been persuasive in arguing why distribution of a model, determined noncompliant in accordance with § 430.70, should be allowed to continue.

Finally, DOE agrees that a manufacturer's optional testing should be conducted with great haste since a determination of compliance will result in DOE's issuance of a notice allowing resumption of distribution. However, as discussed earlier, such manufacturer's optional testing is done at an independent testing laboratory contracted for by the manufacturer, not DOE. Therefore, DOE is not prescribing deadlines for work performed under such contracts.

There was some confusion about the requirement, under § 430.71(a)(2), to give written notice of a determination of compliance.

AHAM stated that this requirement is unclear and inquired about the meaning of "notifying all persons whom the manufacturer has distributed units of the basic model manufactured since the date of the last determination of compliance." AHAM asked if DOE is referring to initial compliance with the standard, the effective date of the standard, or does the requirement presume that a manufacturer was, at some time, in compliance? AHAM also suggested that DOE revise the requirement so that notification is limited to those persons who received noncomplying products. (AHAM, No. 2198, at 7).

The CEC argued that manufacturers should be required to notify dealers, distributors and consumers and that consumers should be entitled to receive, at manufacturer expense, replacement units that comply with the standard. (CEC, No. 2201, at 7–8).

ARI stressed that cessation of distribution applies only to unsold units and future production and that unless it can be shown that a manufacturer deliberately misrepresented the rating, manufacturers should not be required to replace or retrofit units already purchased since a noncompliant model would not pose a health or safety risk.

Finally, IEC requested clarification of the term "distributed to" as used in § 430.71(a)(2) since § 430.71(a)(4) permits a manufacturer to modify a noncompliant model and bring it into compliance as long as records prove that the modifications were made to all units prior to distribution in commerce. (IEC, No. 2195, at 3).

With respect to AHAM's request for clarity to § 430.71(a)(2), DOE finds that the notification requirement could apply in any of the instances AHAM cited; that is, the requirement applies to any determination of noncompliance, whether it involves a new basic model or a basic model that previously was found to be in compliance. In addition, while the Department rejects AHAM's suggestion to limit the recipients of notification to those who received noncomplying units, the test notice will specify how the batch sample will be selected. If DOE has reason to believe that there are factors causing noncompliance, e.g., use of compressors from a new supplier, DOE will consider such information in making a selection for a batch sample. If DOE determines that such a factor exists and its affects the model's efficiency, those units will be determined to be a new basic model and notice is to be limited to those persons to whom the applicable basic model was distributed.

As to whom should receive written notification, a manufacturer is required to notify all parties to whom the manufacturer has distributed the basic model for resale. The extent of such notification may vary from manufacturer to manufacturer, depending on each firm's marketing and distribution methods. The Department disagrees with the CEC that manufacturers should be required to notify consumers. Such a task would be an enormous, at best, incomplete, effort. Manufacturers do not, as a rule, have records identifying individual purchasers and the extent and accuracy of such recordkeeping varies greatly among department stores, discount stores and catalog businesses. Furthermore, the Department believes it is inappropriate to prescribe, through regulation, that manufacturers provide replacement units for consumers. Section 335(a)(1) of the Act provides that "any person may commence a civil action against any manufacturer or private labeler who is alleged to be in violation * * *." Since the Act includes such a provision for citizen suits and does not specify or suggest that the Department prescribe other remedies for citizens, DOE believes such relief may be addressed in the courts.

The Department's clarification, above, of the term "distributed to" is responsive to IEC's inquiry concerning notification requirements. However, it appears that IEC has misinterpreted the provisions of § 430.71(a)(4). While the regulation permits a manufacturer to modify a basic model so that it complies with the standard, such modification results in a new basic model which must be certified pursuant to § 430.62 of today's rule. Also, a manufacturer's records must show that the modifications were made to all units of the new basic model prior to distributing these units, i.e., prior to distributing these units to resellers of that product. Therefore, § 430.71(a)(4) does not address distribution of the noncompliant basic model.

The CEC urged DOE to specify in today's rule that the term "each violation," as included in section 333(a) of the Act, means each separate unit of a noncomplying basic model. The Department concurs with CEC's interpretation. However, DOE believes the language of the Act is clear and requires no further explanation.

The CEC also recommended that DOE strengthen § 430.65 (Exports) to require prominent display of the prescribed stamp or label identifying a product as intended for export. Also, DOE should specify who is liable for penalties should an export unit be marketed in the U.S. (CEC, No. 2201, at 8–9).

The Department believes that the export labeling requirement of the Act (section 330) is sufficient. Upon finding that a product manufactured for export has been marketed in the U.S., the Department will determine at which point in the marketing chain the transaction occurred and will take appropriate action.

Finally, AHAM submitted a list of technical revisions including spelling and terminology corrections, to Appendix B of the March 1988 proposal. (AHAM, No. 2198, at 6). DOE has included most of these revisions in today's notice. However, it appears that AHAM has misunderstood steps 10a through 11b. Steps 10a and 11a address energy consumption standards; steps 10b and 11b address energy efficiency standards. AHAM's suggested revisions would, in fact, result in computations only for energy consumption standards, i.e., steps 10a and 10b would be identical, as would steps 11a and 11b.

III. Environmental, Regulatory Impact, Regulatory Flexibility, Paperwork Reduction Act, Takings Assessment, and Federalism Assessment Reviews

a. Environmental Review

Pursuant to section 7(c)(2) of the Federal Energy Administration Act of 1974, a copy of the March 1988 proposal was submitted to the Administrator of the Environmental Protection Agency (EPA) on April 22, 1988, for his comments concerning the impact of this proposal on the quality of the environment. The EPA had no comments on the Department's proposal.

The Department is adopting procedures implementing the Act's provisions for (1) certification and enforcement; (2) small business exemptions; and (3) petitions concerning exemption of State standards.

The Department believes the first element clearly is not environmentally significant since it will not result in any environmental impacts.

For applications seeking a temporary small business exemption, as well as for all petitions seeking exemption from Federal standards or supersession of State standards, DOE will conduct an appropriate National Environmental Policy Act (NEPA) review on a case-by-case basis.

The Department believes that today's action is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, and that neither an Environmental Impact Statement nor an Environmental Assessment is required.

b. Regulatory Impact Review

DOE has concluded that the rule is not a "major rule" for purposes of Executive Order 12291 because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This conclusion is based on several factors. First, while the imposition of conservation standards will result in an increase in the cost of certain appliances, this increase will be offset by a reduction in energy costs. Second, the costs of complying with the testing requirements of the rule are not significant. For example, there will be no additional testing costs for labeled products, i.e., refrigerators, refrigerator-freezers, freezers, water heaters, furnaces, central air conditioners and room air conditioners, since DOE is accepting the applicable testing requirements of the Federal Trade Commission. Likewise, there will be no testing costs for those products that have design standards, i.e., clothes washers, dishwashers, and clothes dryers. With regard to pool heaters while not a labeled product or covered by a trade association certification program, it is likely that testing already has been accomplished because of California's standards for this product. Finally, any impacts resulting from a conservation standard for television sets will be addressed in a future rulemaking for this product. Therefore, in accordance with section 3(c)(3) of the Executive Order, which applies to rules other than major rules, today's final rule was approved by OMB without a regulatory impact analysis.

c. Small Entity Impact Review

In light of the foregoing, the Department has determined and hereby certifies pursuant to section 605(b) of the Regulatory Flexibility Act that today's action will not have a "significant economic impact on a substantial number of small entities." To minimize potential impacts on small businesses which are appliance manufacturers, DOE is, in fact, adopting rules that provide relief, in the form of temporary exemptions, from the applicable conservation standards.

In addition, as mentioned above, the Department will consider, as appropriate, any significant economic impact on small entities in deciding petitions to preserve or supersede State standards under section 327(d) of the Act.

d. Paperwork Reduction Act Review

This final rulemaking includes information collections that were previously cleared by the Department under OMB Control Number 1910–1400, expiring June 30, 1989.

e. Takings Assessment Review

Executive Order 12630 (53 FR 8859, March 18, 1988) directs that, in proposing a regulation, an agency conducts a "takings" review. Such a review is intended to assist agencies in avoiding unnecessary takings and help such agencies account for those takings that are necessitated by statutory mandate.

For purposes of the Order:

"Policies that have takings implications" refers to Federal regulations, proposed Federal regulations, proposed Federal legislation, comments on proposed Federal legislation, or other Federal policy statements that, if implemented or enacted, could effect a taking, such as rules and regulations that propose or implement licensing, permitting, or other condition requirements or limitations on private property use, or that require dedications or exactions from owners of private property.

It appears that there are three parts of the appliance standards regulatory

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program that should be reviewed for "takings implications." These are testing and certification requirements, the impacts of standard levels, and possible DOE testing of products for validation.

With regard to the first part, namely, testing and certification, the Department believes that such a requirement, implementing a long-established statutory mandate in a manner calculated to minimize adverse economic impacts does not constitute a "taking" of private property. Executive Order 12630 applies to those regulatory actions which are a substitute for the exercise of governmental eminent domain power. This applies to situations where regulations exact a transfer of title, possession, or beneficial use of private property without compensation. The regulations under consideration are simply an exercise of police power and do not exact such a transfer of private property.

Similarly, the Department's possible validation testing does not constitute a "taking," within the limitation described above.

The Department believes that the fact that while an energy conservation standard may limit some manufacturers in the range of appliance efficiencies that they can produce, such narrowing of the energy efficiency range does not constitute a "taking" in the sense described above. Furthermore, this rulemaking simply recites the standards explicitly mandated by the Act.

In short, in none of the three parts of the appliance standards program does the Department believe that the provisions of E.O. 12630 pertain.

f. Federalism Assessment Review

Executive Order 12612 (52 FR 41685, October 30, 1987) requires that regulations or rules be reviewed for any substantial direct effects on States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then Executive Order 12612 requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a regulation or a rule.

DOE has identified a substantial direct effect that standards have on State governments. It initially preempts inconsistent State regulations. However, DOE has concluded that the initially preemptive effect is not sufficient to warrant preparation of a federalism assessment for two reasons. First, DOE does not have discretion under the Act to avoid promulgating a preemptive regulation because of a policy preference for State regulation as a general matter. Second, the Act provides for subsequent State petitions for exemption which necessarily means that the determination as to whether a State law prevails must be made on a case-by-case basis using criteria set forth in the Act. When DOE receives such a petition, it will be appropriate to consider preparing a federalism assessment consistent with the criteria in the Act.

g. Regulatory Flexibility Review

The Regulatory Flexibility Act of 1980 (Pub. L. 96-354) requires an assessment of the impact of proposed regulations on small businesses. Small businesses are defined as those firms within an industry that are privately owned and less dominant in the market.

In light of the foregoing, the Department has determined and hereby certifies pursuant to section 605(b) of the Regulatory Flexibility Act that today's action will not have a "significant economic impact on a substantial number of small entities." To minimize potential impacts on small businesses which are appliance manufacturers, DOE is, in fact, adopting rules that prove relief, in the form of temporary exemptions, from the appliance conservation standards.

In addition, the Department will consider, as appropriate, any economic impact on small entities in deciding petitions to preserve or supersede State standards under section 327(d) of the Act.

In consideration of the foregoing, Part 430 of Chapter II of Title 10, Code of Federal Regulations is amended, as set forth below.

Issued in Washington, DC, January 24, 1989.

Dr. John R. Berg,

Assistant Secretary, Conservation and Renewable Energy.

Lists of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for Part 430 is revised to read as follows:

Authority: Energy Policy and Conservation Act, Title III, Part B, as amended by National Energy Conservation Policy Act, Title IV, Part 2, by the National Appliance Energy Conservation Act, and by the National Appliance Energy Conservation Amendments of 1988 (42 U.S.C. 6291–6309).

2. Section 430.1 is revised to read as follows:

§ 430.1 Purpose and scope.

This part establishes the regulations for the implementation of Part B of Title III (42 U.S.C. 6291–6309) of the Energy Policy and Conservation Act (Pub. L. 94-163), as amended by Pub. L. 94-385, Pub. L. 100-12, and Pub. L. 100-357, which establishes an energy conservation program for consumer products other than automobiles.

3. Section 430.2 is amended by revising the definition of "Act", removing the definitions of "Administrator" and "Energy efficiency standard", inserting the word "energy" in place of the last five words in the definition for "packaged terminal air conditioner," and adding the following definitions in alphabetical order:

§ 430.2 Definitions.

* * * * *

"Act" means the Energy Policy and Conservation Act (Pub. L. 94-163), as amended by the National Energy Conservation Policy Act (Pub. L. 95-619) and by the National Appliance Energy Conservation Act (Pub. L. 100-12).

* * * * *

"Annual fuel utilization efficiency" means the efficiency descriptor for furnaces and boilers, determined using test procedures prescribed under section 323 and based on the assumption that all—

(a) Weatherized warm air furnaces or boilers are located out-of-doors;

(b) Warm air furnaces which are not weatherized are located indoors and all combustion and ventilation air is admitted through grill or ducts from the outdoors and does not communicate with air in the conditioned space;

(c) Boilers which are not weatherized are located within the heated space.

* * * * *

"Ballast efficacy factor" means the relative light output divided by the power imput of a fluorescent lamp ballast, as measured under test conditions specified in ANSI Standard C82.2-1984.

* * * * *

"Batch" means a collection of production units of a basic model from which a batch sample is selected.

"Batch sample" means the collection of units of the same basic model from which test units are selected.

"Batch sample size" means the number of units in a batch sample.

"Batch size" means the number of units in a batch.

* * * * *

"Energy conservation standard" means:

(a) A performance standard which prescribes a minimum level of level of energy efficiency or a maximum quantity of energy use for a covered product, determined in accordance with test procedures prescribed under section 323; or

(b) A design requirement for the products specified in paragraphs (6), (7), (8), (10), and (13) of section 322(a) of the Act; and includes any other requirements which the Secretary may prescribe under section 325(o) of the Act.

* * * * *

"Fluorescent lamp ballast" means a device which is used to start and operate fluorescent lamps by providing a starting voltage and current and limiting the current during normal operation.

"Furnace" means a product which utilizes only single-phase electric current, or single-phase electric current or DC current in conjunction with natural gas, propane, or home heating oil, and which—

(a) Is designed to be the principal heating sources for the living space of a residence;

(b) Is not contained within the same cabinet with a central air conditioner whose rated cooling capacity is above 65,000 Btu per hour;

(c) Is an electric central furnace, electric boiler, forced-air central furnace, gravity central furnace, or low pressure steam or hot water boiler; and

(d) Has a heat imput rate of less than 300,000 Btu per hour for electric boilers and low pressure steam or hot water boilers and less than 225,000 Btu per hour for forced-air central furnaces, gravity central furnaces, and electric central furnaces, gravity central furnaces, and electric central furnaces.

* * * * *

"Packaged terminal air conditioner" means * * * by builder's choice of energy.

"Packaged terminal heat pump" means a packaged terminal air conditioner that utilizes reverse cycle refrigeration as its prime heat source and should have supplementary heating availability by builder's choice of energy.

* * * * *

"Pool heater" means an appliance designed for heating nonpotable water contained at atmospheric pressure, including heating water in swimming pools, spas, hot tubs and similar applications.

* * * * *

"Secretary" means the Secretary of the Department of Energy.

* * * * *

"Water heater" means a product which utilizes oil, gas, or electricity to heat potable water for use outside the heater upon demand, including—

(a) Storage type units which heat and store water at a thermostatically controlled temperature, including gas storage water heaters with an input of 75,000 Btu per hour or less, oil storage water heaters with an input of 105,000 Btu per hour or less, and electric storage water heaters with an input of 12 kilowatts or less;

(b) Instantaneous type units which heat water but contain no more than one gallon of water per 4,000 Btu per hour of input, including gas instantaneous water heaters with an input of 200,000 Btu per hour or less, oil instantaneous water heaters with an input of 210,000 Btu per hour or less, and electric instantaneous water heaters with an input of 12 kilowatts or less; and

(c) Heat pump type units, with a maximum current rating of 24 amperes at a voltage no greater than 250 volts, which are products designed to transfer thermal energy from one temperature level to a higher temperature level for the purpose of heating water, including all ancillary equipment such as fans, storage tanks, pumps, or controls necessary for the device to perform its function.

* * * * *

"Weatherized warm air furnace or boiler" means a furnace or boiler designed for installation outdoors, approved for resistance to wind, rain, and snow, and supplied with its own venting system.

* * * * *

Subpart B—[Amended]

4. Subpart B of Part 430 is amended by removing Appendices A and B.

4a. Section 430.22 is amended by removing paragraphs (a)(6) and (b)(6); redesignating and revising paragraphs (a)(5) and (b)(5) as paragraphs (a)(6) and (b)(6) respectively; and adding new paragraphs (a)(5) and (b)(5) as follows:

§ 430.22 [Amended]

(a) * * *

(5) The annual energy use of electric refrigerators and electric refrigerator-freezers equals the representative average use cycle of 365 cycles per year times the average per-cycle energy consumption for the standard cycle in kilowatt-hours per cycle, determined according to 6.2 of Appendix A1 of this subpart.

(6) Other useful measures of energy consumption for electric refrigerators and electric refrigerator-freezers shall be those measures of energy consumption for electric refrigerators and electric refrigerator-freezers which the Secretary determines are likely to assist consumers in making purchasing decisions which are derived from the application of Appendix A1 of this subpart.

(b) * * *

(5) The annual energy use of all freezers equals the representative average-use cycle of 365 cycles per year times the average per-cycle energy consumption for the standard cycle in kilowatt-hours per cycle, determined according to 6.2 of Appendix B1 of this subpart.

(6) Other useful measures of energy consumption for freezers shall be those measures of energy consumption for freezers which the Secretary determines are likely to assist consumers in making purchasing decisions and which are derived from the application of Appendix B1 of this subpart.

* * * * *

5. Subpart B of Part 430 is amended by removing the word "(ALTERNATIVE)" in the headings to Appendices A1 and B1 and by removing the following references to Appendices A and B in § 430.22: "4.1 of Appendix A or" from paragraphs (a)(1)(ii), (a)(2)(ii), (a)(3)(ii), (a)(4)(i), (a)(4)(ii); "4.2 of Appendix A or" from (a)(4)(i), (a)(4)(ii); "4.1 of Appendix B or" from (b)(1)(ii), (b)(2)(ii), (b)(3)(ii), (b)(4)(i), (b)(4)(ii); and "4.2 of Appendix B or" from (b)(4)(i), (b)(4)(ii).

* * * * *

§ 430.22 [Amended]

6. Section 430.22 is amended by adding new paragraphs (p) and (q) as follows:

* * * * *

(p) *Pool heaters.* (1) The estimated annual operating cost (space reserved).

(2) The thermal efficiency of pool heaters, expressed as a percent, shall be determined in accordance with section 4 of Appendix P to this subpart.

(q) *Fluorescent lamp ballasts.* [Reserved]

* * * * *

7. Section 430.23 is amended by revising the first sentence of the introductory paragraph and by adding new paragraphs (p) and (q) to read as follows:

§ 430.23 Units to be tested.

When testing of a covered product is required to comply with section 323(c) of the Act, or to comply with rule-

prescribed under sections 324 or 325 of the Act, * * *

(p)(1) For each basic model[1] of pool heater a sample of sufficient size shall be tested to insure that—

(i) [Reserved]

(ii) Any represented value of the fuel utilization efficiency or other measure of energy consumption of a basic model for which consumers would favor higher values shall be no greater than the lower of (A) the mean of the sample or (B) the lower 97½ percent confidence limit of the true mean divided by .96.

(q) [Reserved]

8. Subpart B of Part 430 is amended by adding a sentence to the end of section 1.5 of Appendix M as follows:

Appendix M to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Central Air Conditioners.

* * * * *

1.15 * * * The single number HSPF energy conservation standard for central air conditioning heat pumps specified in section 325(d)(2) (A) and (B) is based on Region IV and the standardized DHR found in section 6 of this appendix, nearest the capacity measured in the 47 °F test.

* * * * *

9. Subpart B of Part 430 is amended by adding new Appendices P and Q as follows:

Appendix P to Subpart B of Part 430—Uniform Test Mothod for Measuring the Energy Consumption of Pool Heaters

1. *Test method.* The test method for testing gas- and oil-fired pool heaters shall be as specified in American National Standards Institute Standard for Gas-Fired Pool Heaters, Z21.56–1986.

2. *Test conditions.* Establish the test conditions specified in section 2.8 of ANSI Z21.56–1986.

3. *Measurements.* Measure the quantities delineated in section 2.8 of ANSI Z21.56–1986, except in the case of oil-fired heaters the measurement of energy consumption in Btu's is to be carried out in appropriate units, e.g., gallons.

4. *Calculations.* Calculate the thermal efficiency (expressed as a percent) as specified in section 2.8 of ANSI Z21.56–1986, except in the case of oil-fired heaters the expression of fuel consumption shall be in Btu's.

[1] Components of similar design may be substituted without requiring additional testing if the represented measures of energy consumption continue to satisfy the applicable sampling provision.

Appendix Q to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Fluorescent Lamp Ballasts

1. Definitions

1.1 "ANSI Standard" means a standard developed by a committee accredited by the American National Standards Institute.

1.2 "Ballast input voltage" means the rated input voltage of a fluorescent lamp ballast.

1.3 "F4OT12 lamp" means a nominal 40 watt tubular fluorescent lamp which is 48 inches in length and one and a half inches in diameter, and conforms to ANSI standard C78.1–1978(R1984).

1.4 "F96T12 lamp" means a nominal 75 watt tubular fluorescent lamp which is 48 inches in length and one and a half inches in diameter, and conforms to ANSI standard C78.1–1978(R1984).

1.5 "F96T12HO lamp" means a nominal 110 watt tubular fluorescent lamp which is 96 inches in length and one and a half inches in diameter, and conforms to ANSI Standard C78.1–1978(R1984).

1.6 "Input current" means the root-mean-square (RMS) current in amperes delivered to a fluorescent lamp ballast.

1.7 "Luminaire" means a complete lighting unit consisting of a fluorescent lamp or lamps, together with parts designed to distribute the light, to position and protect such lamps, and to correct such lamps to the power supply through the ballast.

1.8 "Nominal lamp watts means the wattage at which a fluorescent lamp is designed to operate.

1.9 "Power factor" means the power input divided by the product of ballast input voltage and input current of a fluorescent lamp ballast, as measured under test conditions specified in ANSI Standard C–82.2–1984.

1.10 "Power input" means the power consumption in watts of a ballast and fluorescent lamp or lamps, as determined in accordance with the test procedures specified in ANSI Standard C82.2–1984.

1.11 "Relative light output" means the light output delivered through the use of a ballast divided by the light output delivered through the use of a reference ballast, expressed as a percent, as determined in accordance with the test procedures specified in ANSI Standard C82.2–1984.

1.12 "Residential building" means a structure or portion of a structure which provides facilities or shelter for human residency, except that such term does not include any multifamily residential structure of more than three stores above grade.

10. Section 4.6 of Appendix N to Subpart B of Part 430 is revised as follows:

Appendix N to Subpart B of Part 430—Uniform Tests Method for Measuring the Energy Consumption of Furnaces

* * * * *

4.6 *Annual fuel utilization efficiency.* The annual fuel utilization efficiency (AFUE) shall be expressed as a percent and defined as:

$$AFUE = \frac{5200 N_m Q_m}{5200 N_m Q_m + 2.5(1+0.7)(4600) N_o Q_o}$$

where:

5200 = average annual heating degree-days

N_m = as defined in 4.3 of this appendix for condensing furnaces and boilers measured by the optional direct condensate measurement method; as $N_{m,wt}$ as defined in 4.5.14 of this appendix at each design heating requirement for modulating furnaces and boilers; or as $Effy_m$ as defined in 11.2.5 of ANSI/ASHRAE 103–82 for all other furnaces and boilers.

N_o = part load efficiency and is based on the assumption that all weatherized warm air furnaces or boilers are located out-of-doors; warm air furnaces which are not weatherized are installed as isolated combustion systems; and boilers which are not weatherized are installed in doors. Part load efficiency as defined in 4.3 of this appendix for condensing furnaces and boilers measured by the optional direct condensate measurement method; as $N_{o,wt}$ as defined in 4.5.1 of this appendix at each design heating requirement for modulating furnaces and boilers; or as $Effy_o$ as defined in 11.2.34 of ANSI/ASHRAE 103–82 and in 4.2 of this appendix for all other furnaces and boilers except that C_j and I_j are defined as:

0 for boilers which are not weatherized

3.3 for furnaces which are weatherized

C_j 1.7 for furnaces which are not weatherized

4.7 for boilers which are weatherized

I_j jacket loss and is either assigned the value of 1 percent or determined in accordance with 8.8 of ANSI/ASHRAE 103–82 in percent

Q_m = steady-state heat input as defined in 11.2.34 of NSI/ASHRAE 103–82

0.7 = average oversizing factor for furnaces and boilers

4600 = average non-heating season hours per year

Q_o = pilot flame fuel input rate as defined in 9.2 of of ANSI/ASHRAE 103–82

Appendix N—[Amended]

11. Section 4.7 of Appendix N to Subpart B of Part 430 is amended by changing the following references "0 for furnaces or boilers intended to be installed indoors." to "0 for boilers which are not weatherized,"; "1.7 for furnaces or boilers intended to be installed as isolated combustion systems." to "1.7 for furnaces which are not weatherized."; "3.3. for furnaces or boilers intended to be installed outdoors." to "3.3 for furnaces or boilers which are weatherized."; and "1.0 for finned tubed boilers intended for installation outdoors." to "1.0 for finned tubed boilers which are weatherized."

12. Subpart C of Part 430 is revised to read as follows:

Subpart C—Energy Conservation Standards

Sec.
430.31 Purpose and scope.
430.32 Energy conservation standards and effective dates.
430.33 Preemption of State regulations.

Subpart C—[Amended]

§ 430.31 Purpose and scope.

This subpart contains any energy conservation standards for classes of covered products that are required to be administered by the Department of Energy pursuant to the Energy Conservation Program for Consumer Products Other Than Automobiles under the Energy Policy and Conservation Act, as amended (42 U.S.C. 6291 *et seq.*).

§ 430.32 Energy conservation standards and effective dates.

The energy conservation standards for the covered product classes are:

(a) *Refrigerators/refrigerator-freezers/freezers.*

Product class	Energy standards equations, Jan. 1, 1990
1. Refrigerators and refrigerator-freezers with manual defrost	16.3 AV+316
2. Refrigerator-freezers—partial automatic defrost	21.8 AV+429
3. Refrigerator-freezers-automatic defrost with top-mounted freezer without ice	23.5 AV+471
4. Refrigerator-freezers—automatic defrost with side-mounted freezer without ice	27.7 AV+488
5. Refrigerator-freezers—automatic defrost with bottom-mounted freezer without ice	27.7 AV+488
6. Refrigerator-freezers-automatic defrost with top-mounted freezer with through the door ice service	26.4 AV+535
7. Refrigerator-freezers—automatic defrost with side-mounted freezer with through the door ice	30.9 AV+547
8. Upright freezers with manual defrost	10.9 AV+422
9. Upright freezers with automatic defrost	16.0 AV+623
10. Chest freezers and all other freezers	14.8 AV+223

AV = Total adjusted volume, expressed in ft.[3]

(b) *Room air conditioners.*

Product class	Energy efficiency ratio Jan. 1, 1990
1. Without reverse cycle and with louvered sides less than 6,000 Btu	8.0
2. Without reverse cycle and with louvered sides 6,000 to 7,999 Btu	8.5
3. Without reverse cycle and with louvered sides 8,000 to 13,999 Btu	9.0
4. Without reverse cycle and with louvered sides 14,000 to 19,999 Btu	8.8
5. Without reverse cycle and with louvered sides 20,000 and more Btu	8.2
6. Without reverse cycle and without louvered sides Less than 6,000 Btu	8.0
7. Without reverse cycle and without louvered sides 6,000 to 7,999 Btu	8.5
8. Without reverse cycle and without louvered sides 8,000 to 13,999 Btu	8.5
9. Without reverse cycle and without louvered sides 14,000 to 19,999 Btu	8.5
10. Without reverse cycle and without louvered sides 20,000 and more Btu	8.2
11. With reverse cycle, and with louvered sides	8.5
12. With reverse cycle, without louvered sides	8.0

(c) *Central air conditioners and central air conditioning heat pumps.*

Product class	Seasonal energy efficiency ratio	Heating seasonal performance factor	Effective date
1. Split systems	10.0	6.8	01/01/92
2. Single package systems	9.7	6.6	01/01/93

(d) *Water heaters*

Product class	Energy factor, Jan. 1, 1990
1. Gas Water Heater	0.62—(.0019 x Rated Storage Volume in gallons).
2. Oil Water Heater	0.59—(.0019 x Rated Storage Volume in gallons).
3. Electric Water Heater.	0.95—(.00132 x Rated Storage Volume in gallons).

(e) *Furnaces*

Product class	Annual fuel utilization efficiency	Effective date
1. Furnaces (excluding classes noted below) (percent)	75	01/01/92
2. Mobile Home Furnaces (percent)	75	01/01/90
3. "Small" furnaces (input rate less than 45,000 Btu/hour	[1]	01/01/92
4. Boilers (excluding gas steam) (percent)	80	01/01/92
5. Gas steam boilers (percent)	75	01/01/92

[1] Reserved.

(f) *Dishwashers.* Dishwashers must be equipped with an option to dry without heat. The standard was effective on January 1, 1988.

(g) *Clothes washers.* Clothes washers must have an unheated water rinse option. The standard was effective on January 1, 1988.

(h) *Clothes dryers.* Constant burning pilot lights in gas clothes dryers are prohibited. The standard was effective on January 1, 1988.

(i) *Direct heating equipment.*

Product class	Annual fuel utilization efficiency, Jan. 1, 1990 (percent)
1. Gas wall fan type up to 42,000 Btu/hour	73
2. Gas wall fan type over 42,000 Btu/hour	74
3. Gas wall gravity type up to 10,000 Btu/hour	59
4. Gas wall gravity type over 10,000 Btu/hour up to 12,000 Btu/hour	60
5. Gas wall gravity type over 12,000 Btu/hour up to 15,000 Btu/hour	61
6. Gas wall gravity type over 15,000 Btu/hour up to 19,000 Btu/hour	62
7. Gas wall gravity type over 19,000 Btu/hour up to 27,000 Btu/hour	63
8. Gas wall gravity type over 27,000 Btu/hour up to 46,000 Btu/hour	64
9. Gas wall gravity type over 46,000 Btu/hour	65
10. Gas floor up to 37,000 Btu/hour	56
11. Gas floor over 37,000 Btu/hour	57
12. Gas room up to 18,000 Btu/hour	57
13. Gas room over 18,000 Btu/hour up to 20,000 Btu/hour	58
14. Gas room over 20,000 Btu/hour up to 27,000 Btu/hour	60
15. Gas room over 27,000 Btu/hour up to 46,000 Btu/hour	64
16. Gas room over 46,000 Btu/hour	65

(j) *Kitchen ranges and ovens.* Gas kitchen ranges and ovens with an electrical supply cord shall not be equipped with a constant burning pilot. The standard is effective on January 1, 1990.

(k) *Pool heaters.* The thermal efficiency of pool heaters must be no less than 78%. The standard is effective on January 1, 1990.

(l) *Television sets.* [Reserved]

(m) *Fluorescent lamp ballasts.* (1) Except as provided in paragraph (m)(2) of this section, each fluorescent lamp ballast—

(i)(A) Manufactured on or after January 1, 1990;

(B) Sold by the manufacturer on or after April 1, 1990; or

(C) Incorporated into a luminarie by a luminarie manufacturer on or after April 1, 1991; and

(ii) Designed—

(A) To operate at nominal input voltages of 120 or 277 volts;

(B) To operate with an input current frequency of 60 Hertz; and

(C) For use in connection with F40T12, F96T12, or F96T12HO lamps; shall have a power factor of 0.90 or greater and

shall have a ballast efficacy factor not less than the following:

Application for operation of	Ballast input voltage	Total nominal lamp watts	Ballast efficacy factor
One F40T12 lamp	120	40	1.805
	277	40	1.805
Two F40T12 lamps	120	80	1.060
	277	80	1.050
Two F8T12 lamps	120	150	0.570
	277	150	0.570
Two F96T12HO lamps	120	220	0.390
	277	220	0.390

(2) The standards described in paragraph (m)(1) of this section do not apply to (i) a ballast which is designed for dimming or for use in ambient temperatures of 0°F or less, or (ii) a ballast which has a power factor of less than 0.90 and is designed for use only in residential building applications.

§ 430.33 Preemption of state regulations.

Any state regulation providing for any energy conservation standard, or other requirement with respect to the energy efficiency or energy use, of a covered product that is not identical to a Federal standard in effect under this subpart is preempted by that standard, except as provided for in section 327 (b) and (c) of the Act.

13. Subpart D of Part 430 is revised to read as follows:

Subpart D—Petitions To Exempt State Regulation From Preemption; Petitions to Withdraw Exemption of State Regulation

Sec.

430.40 Purpose and scope.
430.41 Prescriptions of a rule.
430.42 Filing requirements.
430.43 Notice of petition.
430.44 Consolidation.
430.45 Hearing.
430.46 Disposition of petitions.
430.47 Effective dates of final rules.
430.48 Request for reconsideration.
430.49 Finality of decision.

Subpart D—[Amended]

§ 430.40 Purpose and scope.

(a) The regulations in this subpart prescribe the procedures to be followed in connection with petitions requesting a rule that a State regulation prescribing an energy conservation standard or other requirement respecting energy use or energy efficiency of a type (or class) of covered product not be preempted.

(b) The regulations in this subpart also prescribe the procedures to be followed in connection with petitions to withdraw a rule exempting a State regulation prescribing an energy conservation standard or other requirement respecting energy use or energy efficiency of a type (or class) of covered product.

§ 430.41 Prescriptions of a rule.

(a) *Criteria for exemption from preemption.* Upon petition by a State which has prescribed an energy conservation standard or other requirement for a type or class of a covered product for which a Federal energy conservation standard is applicable, the Secretary shall prescribe a rule that such standard not be preempted if he determines that the State has established by a preponderance of the evidence that such requirement is needed to meet unusual and compelling State or local energy interests. For the purposes of this regulation, the term "unusual and compelling State or local energy interests" means interests which are substantially different in nature or magnitude than those prevailing in the U.S. generally; and are such that when evaluated within the context of the State's energy plan and forecast, the costs, benefits, burdens, and reliability of energy savings resulting from the State regulation make such regulation preferable or necessary when measured against the costs, benefits, burdens, and reliability of alternative approaches to energy savings or production, including reliance on reasonably predictable market-induced improvements in efficiency of all products subject to the State regulation. The Secretary may not prescribe such a rule if he finds that interested persons have established, by a preponderance of the evidence, that the State's regulation will significantly burden manufacturing, marketing, distribution, sale or servicing of the covered product on a national basis. In determining whether to make such a finding, the Secretary shall evaluate all relevant factors including: The extent to which the State regulation will increase manufacturing or distribution costs of manufacturers, distributors, and others; the extent to which the State regulation will disadvantage smaller manufacturers, distributors, or dealers or lessen competition in the sale of the covered product in the State; the extent to which the State regulation would cause a burden to manufacturers to redesign and produce the covered product type (or class), taking into consideration the extent to which the regulation would result in a reduction in the current models, or in the projected availability of models, that could be shipped on the effective date of the regulation to the State and within the U.S., or in the current or projected sales volume of the covered product type (or class) in the State and the U.S.; and the extent to which the State regulation is likely to contribute significantly to a proliferation of State appliance efficiency requirements and the cumulative impact such requirements would have. The Secretary may not prescribe such a rule if he finds that such a rule will result in the unavailability in the State of any covered product (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the State at the time of the Secretary's finding. The failure of some classes (or types) to meet this criterion shall not affect the Secretary's determination of whether to prescribe a rule for other classes (or types).

(1) Requirements of petition for exemption from preemption. A petition from a State for a rule for exemption from preemption shall include the information listed in paragraphs (a)(1)(i) through (a)(1)(viii) of this section. A petition for a rule and correspondence relating to such petition shall be available for public review except for confidential or proprietary information submitted in accordance with the Department of Energy's Freedom of Information Regulations set forth in 10 CFR Part 1004:

(i) The name, address and telephone number of the petitioner;

(ii) A copy of the State standard for which a rule exempting such standard is sought;

(iii) A copy of the State's energy plan and forecast;

(iv) Specification of each type or class of covered product for which a rule exempting a standard is sought;

(v) Other information, if any, believed to be pertinent by the petitioner; and

(vi) Such other information as the Secretary may require.

(b) *Criteria for exemption from preemption when energy emergency conditions exist within State.* Upon petition by a State which has prescribed an energy conservation standard or other requirement for a type or class of a covered product for which a Federal energy conservation standard is applicable, the Secretary may prescribe a rule, effective upon publication in the **Federal Register**, that such regulation not be preempted if he determines that in addition to meeting the requirements of paragraph (a) of this section the State has established that: an energy emergency condition exists within the State that imperils the health, safety and welfare of its residents because of the inability of the State or utilities within the State to provide adequate quantities of gas or electric energy to its residents at less than prohibitive costs; and cannot be substantially alleviated by the importation of energy or the use of interconnection agreements; and the State regulation is necessary to alleviate substantially such condition.

(1) Requirements of petition for exemption from preemption when energy emergency conditions exist within a State. A petition from a State for a rule for exemption from preemption when energy emergency conditions exist within a State shall include the information listed in paragraphs (a)(1)(i) through (a)(1)(vi) of this section. A petition shall also include the information prescribed in paragraphs (b)(1)(i) through (b)(1)(iv) of this section, and shall be available for public review except for confidential or proprietary information submitted in accordance with the Department of Energy's Freedom of Information Regulations set forth in 10 CFR Part 1004:

(i) A description of the energy emergency condition which exists within the State, including causes and impacts.

(ii) A description of emergency response actions taken by the State and utilities within the State to alleviate the emergency condition;

(iii) An analysis of why the emergency condition cannot be alleviated substantially by importation of energy or the use of interconnection agreements;

(iv) An analysis of how the State standard can alleviate substantially such emergency condition.

(c) *Criteria for withdrawal of a rule exempting a State standard.* Any person subject to a State standard which, by rule, has been exempted from Federal preemption and which prescribes an energy conservation standard or other requirement for a type or class of a covered product, when the Federal energy conservation standard for such product subsequently is amended, may petition the Secretary requesting that the exemption rule be withdrawn. The Secretary shall consider such petition in accordance with the requirements of paragraph (a) of this section, except that the burden shall be on the petitioner to demonstrate that the exemption rule received by the State should be withdrawn as a result of the amendment to the Federal standard. The Secretary shall withdraw such rule if he determines that the petitioner has shown the rule should be withdrawn.

(1) Requirements of petition to withdraw a rule exempting a State standard. A petition for a rule to withdraw a rule exempting a State standard shall include the information prescribed in paragraphs (c)(1)(i) through (c)(1)(vii) of this section, and shall be available for public review, except for confidential or proprietary information submitted in accordance with the Department of Energy's Freedom of Information Regulations set forth in 10 CFR Part 1004:

(i) The name, address and telephone number of the petitioner;

(ii) A statement of the interest of the petitioner for which a rule withdrawing an exemption is sought;

(iii) A copy of the State standard for which a rule withdrawing an exemption is sought;

(iv) Specification of each type or class of covered product for which a rule withdrawing an exemption is sought;

(v) A discussion of the factors contained in paragraph (a) of this section;

(vi) Such other information, if any, believed to be pertinent by the petitioner; and

(vii) Such other information as the Secretary may require.

§ 430.42 Filing requirements.

(a) *Service.* All documents required to be served under this subpart shall, if mailed, be served by first class mail. Service upon a person's duly authorized representative shall constitute service upon that person.

(b) *Obligation to supply information.* A person or State submitting a petition is under a continuing obligation to provide any new or newly discovered information relevant to that petition. Such information includes, but is not limited to, information regarding any other petition or request for action subsequently submitted by that person or State.

(c) *The same or related matters.* A person or State submitting a petition or other request for action shall state whether to the best knowledge of that petitioner the same or related issue, act, or transaction has been or presently is being considered or investigated by any State agency, department, or instrumentality.

(d) *Computation of time.* (1) Computing any period of time prescribed by or allowed under this subpart, the day of the action from which the designated period of time begins to run is not to be included. If the last day of the period is Saturday, or Sunday, or Federal legal holiday, the period runs until the end of the next day that is neither a Saturday, or Sunday or Federal legal holiday.

(2) Saturdays, Sundays, and intervening Federal legal holidays shall be excluded from the computation of time when the period of time allowed or prescribed is 7 days or less.

(3) When a submission is required to be made within a prescribed time, DOE may grant an extension of time upon good cause shown.

(4) Documents received after regular business hours are deemed to have been submitted on the next regular business day. Regular business hours for the DOE's National Office, Washington, DC, are 0:30 a.m. to 4:30 p.m.

(5) DOE reserves the right to refuse to accept, and not to consider, untimely submissions.

(e) *Filing of petitions.* (1) A petition for a rule shall be submitted in triplicate to: The Assistant Secretary for Conservation and Renewable Energy, U.S. Department of Energy, Section 327 Petitions, Appliance Efficiency Standards, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

(2) A petition may be submitted on behalf of more than one person. A joint petition shall indicate each person participating in the submission. A joint petition shall provide the information required by § 430.41 for each person on whose behalf the petition is submitted.

(3) All petitions shall be signed by the person(s) submitting the petition or by a duly authorized representative. If submitted by a duly authorized representative, the petition shall certify this authorization.

(4) A petition for a rule to withdraw a rule exempting a State regulation, all supporting documents, and all future submissions shall be served on each State agency, department, or instrumentality whose regulation the petitioner seeks to supersede. The petition shall contain a certification of this service which states the name and mailing address of the served parties, and the date of service.

(f) *Acceptance for filing.* (1) Within fifteen (15) days of the receipt of a petition, the Secretary will either accept it for filing or reject it, and the petitioner will be so notified in writing. The Secretary will serve a copy of this notification on each other party served by the petitioner. Only such petitions which conform to the requirements of this subpart and which contain sufficient information for the purposes of a substantive decision will be accepted for filing. Petitions which do not so conform will be rejected and an explanation provided to petitioner in writing.

(2) For purposes of the Act and this subpart, a petition is deemed to be filed on the date it is accepted for filing.

(g) *Docket.* A petition accepted for filing will be assigned an appropriate docket designation. Petitioner shall use the docket designation in all subsequent submissions.

§ 430.43 Notice of petition.

(a) Promptly after receipt of a petition and its acceptance for filing, notice of such petition shall be published in the **Federal Register**. The notice shall set forth the availability for public review of all data and information available, and shall solicit comments, data and information with respect to the determination on the petition. Except as may otherwise be specified, the period for public comment shall be 60 days after the notice appears in the **Federal Register**.

(b) In addition to the material required under paragraph (a) of this section, each notice shall contain a summary of the State regulation at issue and the petitioner's reasons for the rule sought.

§ 430.44 Consolidation.

DOE may consolidate any or all matters at issue in two or more proceedings docketed where there exist common parties, common questions of fact and law, and where such consolidation would expedite or simplify consideration of the issues. Consolidation shall not affect the right of any party to raise issues that could have been raised if consolidation had not occurred.

§ 430.45 Hearing.

The Secretary may hold a public hearing, and publish notice in the **Federal Register** of the date and location of the hearing, when he determines that such a hearing is necessary and likely to result in a timely and effective resolution of the issues. A transcript shall be kept of any such hearing.

§ 430.46 Disposition of petitions.

(a) After the submission of public comments under § 430.42(a), the Secretary shall prescribe a final rule or deny the petition within 6 months after the date the petition is filed.

(b) The final rule issued by the Secretary or a determinatfon by the Secretary to deny the petition shall include a written statement setting forth his findings and conclusions, and the reasons and basis therefor. A copy of the Secretary's decision shall be sent to the petitioner and the affected State agency. The Secretary shall publish in the **Federal Register** a notice of the final rule granting or denying the petition and the reasons and basis therefor.

(c) If the Secretary finds that he cannot issue a final rule within the 6-month period pursuant to paragraph (a) of this section, he shall publish a notice in the **Federal Register** extending such period to a date certain, but no longer than one year after the date on which the petition was filed. Such notice shall include the reasons for the delay.

§ 430.47 Effective dates of final rules.

(a) A final rule exempting a State standard from Federal preemption will be effective:

(1) Upon publication in the **Federal Register** if the Secretary determines that such rule is needed to meet an "energy emergency condition" within the State.

(2) Three years after such rule is published in the **Federal Register**; or

(3) Five years after such rule is published in the **Federal Register** if the Secretary determines that such additional time is necessary due to the burdens of retooling, redesign or distribution.

(b) A final rule withdrawing a rule exempting a State standard will be effective upon publication in the **Federal Register**.

§ 430.48 Request for reconsideration.

(a) Any petitioner whose petition for a rule has been denied may request reconsideration within 30 days of denial. The request shall contain a statement of facts and reasons supporting reconsideration and shall be submitted in writing to the Secretary.

(b) The denial of a petition will be reconsidered only where it is alleged and demonstrated that the denial was based on error in law or fact and that evidence of the error is found in the record of the proceedings.

(c) If the Secretary fails to take action on the request for reconsideration within 30 days, the request is deemed denied, and the petitioner may seek such judicial review as may be appropriate and available.

(d) A petitioner has not exhausted other administrative remedies until a request for reconsideration has been filed and acted upon or deemed denied.

§ 430.49 Finality of decision.

(a) A decision to prescribe a rule that a State energy conservation standard or other requirement not be preempted is final on the date the rule is issued, i.e., signed by the Secretary. A decision to prescribe such a rule has no effect on other regulations of a covered product of any other State.

(b) A decision to prescribe a rule withdrawing a rule exempting a State standard or other requirement is final on the date the rule is issued, i.e., signed by the Secretary. A decision to deny such a petition is final on the day a denial of a request for reconsideration is issued, i.e., signed by the Secretary.

14. Part 430 is amended by adding new Subpart E, to read as follows:

Subpart E—Small Business Exemptions

Sec.
430.50 Purpose and scope.
430.51 Eligibility.
430.52 Requirements for applications.
430.53 Processing of applications.
430.54 Referral to the Attorney General.
430.55 Evaluation of the application.
430.56 Decision and order.
430.57 Duration of temporary exemption.

Subpart E—(Amended)

§ 430.50 Purpose and scope.

(a) This subpart establishes procedures for the submission and disposition of applications filed by manufacturers of covered consumer products with annual gross revenues that do not exceed $8 million to exempt them temporarily from all or part of energy conservation standards established by this part.

(b) The purpose of this subpart is to provide content and format requirements for manufacturers of covered consumer products with low annual gross revenues who desire to apply for temporary exemptions from applicable energy conservation standards.

§430.51 Eligibility.

Any manufacturer of a covered product with annual gross revenues that do not exceed $8,000,000 from all its operations (including the manufacture and sale of covered products) for the 12-month period preceding the date of application may apply for an exemption. In determining the annual gross revenues of any manufacturer under this subpart, the annual gross revenue of any other person who controls, is controlled, by, or is under common control with, such manufacturer shall be taken into account.

§ 430.52 Requirements for applications.

(a) Each application filed under this subpart shall be submitted in triplicate to: U.S. Department of Energy, Small Business Exemptions, Appliance Efficiency Standards, Assistant Secretary for Conservation and Renewable Energy, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

(b) An application shall be in writing and shall include the following:

(1) Name and mailing address of applicant;

(2) Whether the applicant controls, is controlled by, or is under common control with another manufacturer, and if so, the nature of that control relationship;

(3) The text or substance of the standard or portion thereof for which the exemption is sought and the length of time desired for the exemption;

(4) Information showing the annual gross revenue of the applicant for the preceding 12-month period from all of its operations (including the manufacture and sale of covered products):

(5) Information to show that failure to grant an exemption is likely to result in a lessening of competition;

(6) Such other information, if any, believed to be pertinent by the petitioner; and

(7) Such other information as the Secretary may require.

§ 430.53 Processing of applications.

(a) The applicant shall serve a copy of the application, all supporting documents and all subsequent submissions, or a copy from which confidential information has been deleted pursuant to 10 CFR 1004.11, to the Secretary, which may be made available for public review.

(b) Within fifteen (15) days of the receipt of an application, the Secretary will either accept it for filing or reject it, and the applicant will be so notified in writing. Only such applications which conform to the requirements of this subpart and which contain sufficient information for the purposes of a substantive decision will be accepted for filing. Applications which do not so conform will be rejected and an explanation provided to the applicant in writing.

(c) For the purpose of this subpart, an application is deemed to be filed on the date it is accepted for filing.

(d) Promptly after receipt of an application and its acceptance for filing, notice of such application shall be published in the **Federal Register**. The notice shall set forth the availability for public review of data and information available, and shall solicit comments, data and information with respect to the determination on the application. Except as may otherwise be specified, the period for public comment shall be 60 days after the notice appears in the **Federal Register**.

(e) The Secretary on his own initiative may convene a hearing if, in his discretion, he considers such hearing will advance his evaluation of the application.

§ 430.54 Referral to the Attorney General.

Notice of the application for exemption under this subpart shall be transmitted to the Attorney General by the Secretary and shall contain (a) a statement of the facts and of the reasons for the exemption, and (b) copies of all documents submitted.

§ 430.55 Evaluation of application.

The Secretary shall grant an application for exemption submitted under this subpart if the Secretary finds, after obtaining the written views of the Attorney General, that a failure to allow an exemption would likely result in a lessening of competition.

§ 430.56 Decision and order.

(a) Upon consideration of the application and other relevant information received or obtained, the Secretary shall issue an order granting or denying the application.

(b) The order shall include a written statement setting forth the relevant facts and the legal basis of the order.

(c) The Secretary shall serve a copy of the order upon the applicant and upon any other person readily identifiable by the Secretary as one who is interested in or aggrieved by such order. The Secretary also shall publish in the **Federal Register** a notice of the grant or denial of the order and the reason therefor.

§ 430.57 Duration of temporary exemption.

A temporary exemption terminates according to its terms but not later than twenty-four months after the affective date of the rule for which the exemption is allowed.

15. Part 430 is amended by adding a new Subpart F to read as follows:

Subpart F—Certification and Enforcement

Sec.
430.60 Purpose and scope.
430.61 Prohibited acts.
430.62 Submission of data.
430.63 Sampling.
430.64 Imported products.
430.65 Exported products.
430.70 Enforcement.
430.71 Cessation of distribution of a basic model.
430.72 Subpoena.
430.73 Remedies.
430.74 Hearings and Appeals.
430.75 Confidentiality.

APPENDIX A to Subpart F of Part 430—Compliance Statement.

APPENDIX B to Subpart F of Part 430—Sampling Plan for Enforcement Testing.

Subpart F—[Amended]

§ 430.60 Purpose and scope.

The regulations in this subpart set forth the procedures to be followed for certification and enforcement testing to determine whether a basic model of a covered product complies with the applicable energy conservation standard set forth in Subpart C of this Part. Energy conservation standards include minimum levels of efficiency and maximum levels of consumption (also referred to as performance standards) and prescriptive energy design requirements (also referred to as design standards).

§ 430.61 Prohibited acts.

(a) Each of the following is a prohibited act pursuant to section 332 of the Act:

(1) Failure to permit access to, or copying of records required to be supplied under the Act and this rule or failure to make reports or provide other information required to be supplied under this Act and this rule;

(2) Failure of a manufacturer to supply at his expense a reasonable number of covered products to a test laboratory designated by the Secretary;

(3) Failure of a manufacturer to permit a representative designated by the Secretary to observe any testing required by the Act and this rule and inspect the results of such testing; and

(4) Distribution in commerce by a manufacturer or private labeler of any new covered product which is not in compliance with an applicable energy efficiency standard prescribed under the Act and this rule.

(b) In accordance with section 333 of the Act, any person who knowingly violates any provision of paragraph (a) of this section may be subject to assessment of a civil penalty of no more than $100 for each violation. Each violation of paragraph (a) of this section shall constitute a separate violation with respect to each covered product, and each day of noncompliance with paragraphs (a) (1) through (3) of this section shall constitute a separate violation.

§ 430.62 Submission of data.

(a) Compliance statement and certification report. Each manufacturer or private labeler before distributing in commerce any basic model of a covered product subject to the applicable energy conservation standard set forth in Subpart C of this Part shall certify by means of a statement of compliance and certification report, that each basic model meets the requirements of that standard.

(1) The compliance statement shall certify that:

(i) The basic model(s) comply with the applicable energy conservation standards;

(ii) All required testing on which the compliance statement is based was conducted in conformance with the

applicable test requirements prescribed in 10 CFR Part 430 Subpart B and this subpart and all test data are reported in accordance with this subpart;

(iii) All information reported in the compliance statement is true, accurate, and complete; and

(iv) The manufacturer (private labeler) is aware of the penalties associated with violations of the Act and the regulations thereunder, and 18 U.S.C. 1001 which prohibits knowingly making false statements to the Federal Government. The format for a compliance statement is set forth in Appendix A of this subpart.

(2) For each basic model the certification report shall include the annual energy use and adjusted volume (for refrigerators, refrigerator-freezers and freezers), energy factor and rated storage volume (for water heaters), the energy efficiency ratio (for room air conditioners), seasonal energy efficiency ratio and heating seasonal performance factor (for central air conditioners and central air conditioning heat pumps), thermal efficiency (for pool heaters), and annual fuel utilization efficiency (for furnaces and direct heating equipment) the model numbers for each basic model; and its capacity.

(3) Copies of reports to the Federal Trade Commission which include the information in paragraph (a)(2) of this section meet the requirements of this paragraph.

(b) *Initial reporting requirements.* All data required by paragraph (a) of this section shall be submitted on or before the effective date of the applicable energy conservation standard as prescribed in section 325 of the Act. For each basic model of a covered product to be distributed in commerce, each manufacturer and private labeler or his representative shall file a compliance statement and certification report, by certified mail, to Department of Energy, Appliance Efficiency Standards, Assistant Secretary for Conservation and Renewable Energy, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

(c) *New models.* All information required by paragraph (a)(2) of this section must be submitted for new models prior to or concurrent with any distribution of such model. Any change to a basic model which affects energy consumption may constitute the addition of a new basic model subject to the requirements of § 430.61 of this part. If such change does not alter compliance with the applicable energy conservation standard for the basic model, the new model shall be considered certified. Models which are discontinued shall be reported, in writing, to the Department of Energy.

(d) *Maintenance of records.* (1) The manufacturer of any covered product subject to any of the energy performance standards or procedures prescribed in this part, shall establish, maintain, and retain the records of the underlying test data for all certification testing. Such records shall be organized and indexed in a fashion which makes them readily accessible for review. The records should include the supporting test data associated with tests performed on any test units to satisfy the requirements of this subpart (except tests performed by DOE directly).

(2) All such records shall be retained by the manufacturer for a period of two years from the date that production of the applicable model has ceased. Records shall be retained in a form allowing ready access to DOE upon request.

(e) *Third party representation.* If a manufacturer or private labeler elects to use a third party, e.g., trade association or other authorized representative, to submit the certification report, the certification report shall include all the information identified in paragraph (a) of this section, including the compliance statement.

§ 430.63 Sampling.

(a) For purposes of a certification of compliance, the determination that a basic model complies with the applicable energy performance standard shall be based upon the sampling procedures set forth in § 430.23 of this Part. For purposes of a certification of compliance, the determination that a basic model complies with the applicable design standard shall be based upon the incorporation of specific design requirements for clothes dryers, dishwashers, clothes washers and kitchen ranges and ovens specified in section 325 of the Act.

(b) A basic model which meets the following requirements may qualify as an "other than tested model" for purposes of the certification testing and sampling requirements:

(1) Central air conditioners: The condenser-evaporator coil combinations manufactured by the condensing unit manufacturer other than the combination likely to have the largest volume of retail sales or the condenser-coil combinations manufactured in part by a component manufacturer using the same condensing unit.

(2) For purposes of certification of "other than tested models," as defined in paragraph (b)(1) of this section, a manufacturer may certify the basic model on the basis of computer simulation or engineering analysis as set forth in § 430.23(m) of this Part.

§ 430.64 Imported products.

(a) Pursuant to section 331 of the Act, any person importing any covered product into the United States shall comply with the provisions of the Act and of this Part, and is subject to the remedies of this Part.

(b) Any covered product offered for importation in violation of the Act and of this Part shall be refused admission into the customs territory of the United States under rules issued by the Secretary of the Treasury, except that the Secretary of the Treasury may, by such rules, authorize the importation of such covered product upon such terms and conditions (including the furnishing of a bond) as may appear to the Secretary of Treasury appropriate to ensure that such covered product will not violate the Act and this Part, or will be exported or abandoned to the United States.

§ 430.65 Exported products.

Pursuant to section 330 of the Act, this part shall not apply to any covered product if (a) such covered product is manufactured, sold, or held for sale for export from the United States (or such product was imported for export), unless such product is, in fact, distributed in commerce for use in the United States, and (b) such covered product, when distributed in commerce, or any container in which it is enclosed when so distributed, bears a stamp or label stating that such covered product is intended for export.

§ 430.70 Enforcement.

(a) *Performance standard*—(1) *Test notice.* Upon receiving information in writing, concerning the energy performance of a particular covered product sold by a particular manufacturer or private labeler which indicates that the covered product may not be in compliance with the applicable energy performance standard, the Secretary may conduct testing of that covered product under this subpart by means of a test notice addressed to the manufacturer in accordance with the following requirements:

(i) Such a procedure will only be followed after the Secretary or his designated representative has examined the underlying test data provided by the manufacturer and after the manufacturer has been offered the opportunity to meet with DOE to verify compliance with the applicable performance standard. A representative designated by the Secretary shall be permitted to observe any reverification procedures by this subpart, and to inspect the results of such reverification.

(ii) The test notice will be signed by the Secretary or his designee. The test notice will be mailed or delivered by DOE to the plant manager or other responsible official, as designated by the manufacturer.

(iii) The test notice will specify the model or basic model to be selected for testing, the method of selecting the test sample, the time at which testing shall be initiated, the date by which testing is scheduled to be completed and the facility at which testing will be conducted. The test notice may also provide for situations in which the selected basic model is unavailable for testing, and may include alternative basic models.

(iv) The Secretary may require in the test notice that the manufacturer of a covered product shall ship at his expense a reasonable number of units of a basic model specified in such test notice to a testing laboratory designated by the Secretary. The number of units of a basic model specified in a test notice shall not exceed twenty (20).

(v) Within 5 working days of the time units are selected, the manufacturer shall ship the specified test units of a basic model to the testing laboratory.

(2) *Testing Laboratory.* Whenever DOE conducts enforcement testing at a designated laboratory in accordance with a test notice under this section, the resulting test data shall constitute official test data for that basic model. Such test data will be used by DOE to make a determination of compliance or noncompliance if a sufficient number of tests have been conducted to satisfy the requirements of Appendix B of this subpart.

(3) *Sampling.* The determination that a manufacturer's basic model complies with the applicable energy performance standard shall be based on the testing conducted in accordance with the statistical sampling procedures set forth in Appendix B of this subpart and the test procedures set forth in Subpart B of this Part.

(4) *Test unit selection.* A DOE inspector shall select a batch, a batch sample, and test units from the batch sample in accordance with the provisions of this paragraph and the conditions specified in the test notice.

(i) The batch may be subdivided by DOE utilizing criteria specified in the test notice, e.g., date of manufacture, component-supplier, location of manufacturing facility, or other criteria which may differentiate one unit from another within a basic model.

(ii) A batch sample of up to 20 units will then be randomly selected from one or more subdivided groups within the batch. The manufacturer shall keep on hand all units in the batch sample until such time as the basic model is determined to be in compliance or noncompliance.

(iii) Individual test units comprising the test sample shall be randomly selected from the batch sample.

(iv) All random selection shall be achieved by sequentially numbering all of the units in a batch sample and then using a table of random numbers to select the units to be tested.

(5) *Test unit preparation.* (i) Prior to and during testing, a test unit selected in accordance with paragraph (a)(4) of this section shall not be prepared, modified, or adjusted in any manner unless such preparation, modification, or adjustment is allowed by the applicable DOE test procedure. One test shall be conducted for each test unit in accordance with the applicable test procedures prescribed in Subpart B.

(ii) No quality control, testing or assembly procedures shall be performed on a test unit, or any parts and subassemblies thereof, that is not performed during the production and assembly of all other units included in the basic model.

(iii) A test unit shall be considered defective if such unit is inoperative or is found to be in noncompliance due to failure of the unit to operate according to the manufacturer's design and operating instructions. Defective units, including those damaged due to shipping or handling, shall be reported immediately to DOE. DOE shall authorize testing of an additional unit on a case-by-case basis.

(6) *Testing at manufacturer's option.* (i) If a manufacturer's basic model is determined to be in noncompliance with the applicable energy performance standard at the conclusion of DOE testing in accordance with the double sampling plan specified in Appendix B of this subpart, the manufacturer may request that DOE conduct additional testing of the model according to procedures set forth in Appendix B of this subpart.

(ii) All units tested under paragraph (a)(6) of this section shall be selected and tested in accordance with the provisions given in paragraphs (a) (1) through (5) of this section.

(iii) The manufacturer shall bear the cost of all testing conducted under paragraph (a)(6) of this section.

(iv) The manufacturer shall cease distribution of the basic model being tested under the provisions of paragraph (a)(6) of this section from the time the manufacturer elects to exercise the option provided in this paragraph until the basic model is determined to be in compliance. DOE may seek civil penalties for all units distributed during such period.

(v) If the additional testing results in a determination of compliance, a notice of allowance to resume distribution shall be issued by the Department.

(b) *Design standard.* In the case of a design standard, a model is determined noncompliant by DOE after the Secretary or his designated representative has examined the underlying design information provided by the manufacturer and after the manufacturer has been offered the opportunity to verify compliance with the applicable design standard.

§ 430.71 Cessation of distribution of a basic model.

(a) In the event that a model is determined noncompliant by DOE in accordance with § 430.70 of this Part or if a manufacturer or private labeler determines a model to be in noncompliance, then the manufacturer or private labeler shall:

(1) Immediately cease distribution in commerce of the basic model;

(2) Give immediate written notification of the determination of noncompliance, to all persons to whom the manufacturer has distributed units of the basic model manufactured since the date of the last determination of compliance.

(3) Pursuant to a request made by the Secretary, provide DOE within 30 days of the request, records, reports and other documentation pertaining to the acquisition, ordering, storage, shipment, or sale of a basic model determined to be in noncompliance.

4. The manufacturer may modify the noncompliant basic model in such manner as to make it comply with the applicable performance standard. Such modified basic model shall then be treated as a new basic model and must be certified in accordance with the provisions of this subpart; except that in addition satisfying all requirements of this subpart, the manufacturer shall also maintain records that demonstrate that modifications have been made to all units of the new basic model prior to distribution in commerce.

(b) If a basic model is not properly certified in accordance with the requirements of this subpart, the Secretary may seek, among other remedies, injunctive action to prohibit distribution in commerce of such basic model.

§ 430.72 Subpoena.

Pursuant to section 329(a) of the Act, for purposes of carrying out this part, the Secretary or the Secretary's designee, may sign and issue subpoenas for the attendance and testimony of witnesses and the production of relevant books, records, papers, and other documents, and administer the oaths. Witnesses summoned under the provisions of th is section shall be paid the same fees and mileage as are paid to witnesses in the courts of the United States. In case of contumacy by, or refusal to obey a subpoena served, upon any persons subject to this Part, the Secretary may seek an order from the District Court of the United States for any District in which such person is found or resides or transacts business requiring such person to appear and give testimony, or to appear and produce documents. Failure to obey such order is punishable by such court as a contempt thereof.

§ 430.73 Remedies.

If DOE determines that a basic model of a covered product does not comply with an applicable energy conservation standard:

(a) DOE will notify the manufacturer, private labeler or any other person as required, of this finding and of the Secretary's intent to seek a judicial order restraining further distribution in commerce of such basic model unless the manufacturer, private labeler or any other person as required, delivers to DOE within 15 calendar days a statement, satisfactory to DOE, of the steps he will take to insure that the noncompliant model will no longer be distributed in commerce. DOE will monitor the implementation of such statement.

(b) If the manufacturer, private labeler or any other person as required, fails to stop distribution of the noncompliant model, the Secretary may seek to restrain such violation in accordance with section 334 of the Act.

(c) The Secretary shall determine whether the facts of the case warrant the assessment of civil penalties for knowing violations in accordance with section 333 of the Act.

§ 430.74 Hearings and appeals.

(a) Pursuant to section 333(d) of the Act, before issuing an order assessing a civil penalty against any person under this section, the Secretary shall provide to such person notice of the proposed penalty. Such notice shall inform such person of that person's opportunity to elect in writing within 30 days after the date of receipt of such notice to have the procedures of paragraph (c) of this section (in lieu of those in paragraph (b) of this section) apply with respect to such assessment.

(b)(1) Unless an election is made within 30 calendar days after receipt of notice under paragraph (a) of this section to have paragraph (c) of this section apply with respect to such penalty, the Secretary shall assess the penalty, by order, after a determination of violation has been made on the record after an opportunity for an agency hearing pursuant to section 554 of Title 5, United States Code, before an administrative law judge appointed under section 3105 of such Title 5. Such assessment order shall include the administrative law judge's findings and the basis for such assessment.

(2) Any person against whom a penalty is assessed under this section may, within 60 calendar days after the date of the order of the Secretary assessing such penalty, institute an action in the United States Court of Appeals for the appropriate judicial circuit for judicial review of such order in accordance with Chapter 7 of Title 5, United States Code. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside in whole or in part, the order of the Secretary, or the court may remand the proceeding to the Secretary for such further action as the court may direct.

(c)(1) In the case of any civil penalty with respect to which the procedures of this section have been elected, the Secretary shall promptly assess such penalty, by order, after the date of the receipt of the notice under paragraph (a) of this section of the proposed penalty.

(2) If the civil penalty has not been paid within 60 calendar days after the assessment has been made under paragraph (c)(1) of this section, the Secretary shall institute an action in the appropriate District Court of the United States for an order affirming the assessment of the civil penalty. The court shall have authority to review de novo the law and the facts involved and shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part, such assessment.

(3) Any election to have this paragraph apply may not be revoked except with the consent of the Secretary.

(d) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order under paragraph (b) of this section, or after the appropriate District Court has entered final judgment in favor of the Secretary under paragraph (c) of this section, the Secretary shall institute an action to recover the amount of such penalty in any appropriate District Court of the United States. In such action, the validity and appropriateness of such final assessment order or judgment shall not be subject to review.

(e)(1) In accordance with the provisions of section 333(d)(5)(A) of the Act and notwithstanding the provisions of title 28, United States Code, or section 502(c) of the Department of Energy Organization Act, the Secretary shall be represented by the General Counsel of the Department of Energy (or any attorney or attorneys within DOE designated by the Secretary) who shall supervise, conduct, and argue any civil litigation to which paragraph (c) of this section applies including any related collection action under paragraph (d) of this section in a court of the United States or in any other court, except the Supreme Court of the United States. However, the Secretary or the General Counsel shall consult with the Attorney General concerning such litigation and the Attorney General shall provide, on request, such assistance in the conduct of such litigation as may be appropriate.

(2) In accordance with the provisions of section 333(d)(5)(B) of the Act, and subject to the provisions of section 502(c) of the Department of Energy Organization Act, the Secretary shall be represented by the Attorney General, or the Solicitor General, as appropriate, in actions under this section, except to the extent provided in paragraph (e)(1) of this section.

(3) In accordance with the provisions of section 333(d)(5)(C) of the Act, section 402(d) of the Department of Energy Organization Act shall not apply with respect to the function of the Secretary under this section.

§ 430.75 Confidentiality.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information or data which the person believes to be confidential and exempt law from public disclosure should submit one complete copy, and fifteen copies from which the information believed to be confidential has been deleted. In accordance with the procedures established at 10 CFR 1004.11, DOE shall make its own determination with regard to any claim that information submitted be exempt from public disclosure.

OMB Control No. 1910–1400

Appendix A to Subpart F Compliance Statement

Statement of Compliance With Energy Conservation Standards for Appliances

Product: _____
Manufacturer's Name and Address

_____
_____
_____
_____

Date: _____

Submit by Certified Mail to: Department of Energy, Appliance Efficiency Standards, Assistant Secretary for Conservation and Renewable Energy, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

This report is submitted pursuant to Part 430 (Energy Conservation Program for Consumer Products) of the Energy Policy and Conservation Act (Pub. L. 94–163), and amendments thereto. The basic model(s) included in this report complies (comply) with the applicable energy conservation standard. All testing where appropriate, on which this certification report is based, was conducted in conformance with the applicable test requirements prescribed in Subpart B of 10 CFR Part 430. All information reported in this certification report is true, accurate, and complete. I am aware of the penalties associated with violations of the Act and the regulations thereunder, and am also aware of the provisions contained in 18 U.S.C. 1001, which prohibits knowingly making false statements to the Federal Government.

Name of Person to Contact for Further Information:
Name: _____
Address: _____
Telephone No.: _____

If the model specific information accompanying this statement of compliance was prepared by a third party organization under the provisions of § 430.62 of 10 CFR Part 430, the individual (manufacturer) authorizing third party representations:
Signature: _____
Name: _____
Address: _____
Telephone No.: _____

Appendix B to Subpart F of Part 430—SAmpling Plan for Enforcement Testing

Double Sampling

Step 1. The first sample size (n_1) must be four or more units.

Step 2. Compute the mean ($\bar{x}_1$) of the measured energy performance of the n_1 units in the first sample as follows:

$$\bar{x}_1 = \frac{1}{n_1}\left(\sum_{i=1}^{n_1} x_i\right) \qquad (1)$$

where x_i is the measured energy efficiency or energy consumption of unit i.

Step 3. Compute the standard deviation (s_1) of the measured energy performance of the n_1 units in the first sample as follows:

$$s_1 = \sqrt{\frac{\sum_{i=1}^{n_1} (x_1 - \bar{x}_1)^2}{n_1 - 1}} \qquad (2)$$

Step 4. Compute the standard error ($s_{\bar{x}_1}$) of the measured energy performance of the n_1 units in the first sample as follows:

$$s_{\bar{x}_1} = \frac{s_1}{\sqrt{n_1}} \qquad (3)$$

Step 5. Compute the upper control limit (UCL_4) and lower control limit (LCL_4) for the mean of the first sample using the applicable DOE energy performance standard (EPS) as the desired mean and a probability level of 95 percent (two-tailed test) as follows:

$$LCL_1 = EPS - ts_{\bar{x}_1} \quad (4)$$

$$UCL_1 = EPS + ts_{\bar{x}_1} \quad (5)$$

where t is a statistic based on a 95 percent two-tailed probability level and a sample size of n_1.

Step 6A. For an Energy Efficiency Standard, compare the mean of the first sample ($\bar{x}_1$) with the upper and lower control limits (UCL_1 and LCL_1) to determine one of the following:

(i) If the mean of the first sample is below the lower control limit, then the basic model is in noncompliance and testing is at an end. (Do not go on to any of the steps below.)

(ii) If the mean of the first sample is equal to or greater than the upper control limit, then the basic model is in compliance and testing is at an end. (Do not go on to any of the steps below.)

(iii) If the sample mean is equal to or greater than the lower control limit but less than the upper control limit, then no determination of compliance or noncompliance can be made and a second sample size is determined by Step 7a.

Step 6b. For an Energy Consumption Standard, compare the mean of the first sample ($\bar{x}_1$) with the upper and lower control limits (UCL_1 and LCL_1) to determine one of the following:

(i) If the mean of the first sample is above the upper control limit, then the basic model is in noncompliance and testing is at an end. (Do not go on to any of the steps below.)

(ii) If the mean of the first sample is equal to or less than the lower control limit, then the basic model is in compliance and testing is at an end. (Do not go on to any of the steps below.)

(iii) If the sample mean is equal to or less than the upper control limit but greater than the lower control limit, then no determination of compliance or noncompliance can be made and a second sample size is determined by Step 7b.

Step 7a. For an Energy Efficiency Standard, determine the second sample size (n_2) as follows:

$$n_2 = \left(\frac{t\ s_1}{0.05\ EPA}\right)^2 - n_1 \quad (6a)$$

where s_1 and t have the values used in Steps 4 and 5, respectively. The term "0.05 EPS" is the difference between the applicable energy efficiency standard and 95 percent of the standard, where 95 percent of the standard is taken as the lower control limit. This procedure yields a sufficient combined sample size (n_1+n_2) to give an estimated 97.5 percent probability of obtaining a determination of compliance when the true mean efficiency is equal to the applicable standard.

Given the solution value of n_2, determine one of the following:

(1) If the value of n_2 is less than or equal to zero *and* if the mean energy efficiency of the first sample ($\bar{x}_1$) is either equal to or greater than the lower control limit (LCL_4) or equal to or greater than 95 percent of the applicable energy efficiency standard (EES), whichever is greater, i.e., if

$n_2 \leq 0$ *and* $\bar{x}_1 \geq \max(LCL_4, 0.95\ EES)$,

the basic model is in compliance and testing is at an end.

(2) If the value of n_2 is less than or equal to zero *and* the mean energy efficiency of the first sample ($\bar{x}_1$) is less than the lower control limit (LCL_4) or less than 95 percent of the applicable energy efficiency standard (EES), whichever is greater, i.e., if

$n_2 \leq 0$ *and* $\bar{x}_1 < \max(LCL_4, 0.95\ EES)$,

the basic model is in noncompliance and testing is at an end.

(3) If the value of n_2 is greater than zero, then value of the second sample size is determined to be the smallest integer equal to or greater than the solution value of n_2 for equation (6a). If the value of n_2 so calculated is greater than $20-n_1$, set n_2 equal to $20-n_1$.

Step 7b. For an Energy Consumption Standard, determine the second sample size (n_2) as follows:

$$n_2 = \left(\frac{t\ s_1}{0.05\ EPA}\right)^2 - n_1 \quad (6b)$$

where s_1 and t have the values used in Steps 4 and 5, respectively. The term "0.05 EPS" is the difference between the applicable energy consumption standard and 105 percent of the standard, where 105 percent of the standard is taken as the upper control limit. This procedure yields a sufficient combined sample size ($n_1 + n_2$) to give an estimated 97.5 percent probability of obtaining a determination of compliance when the true mean consumption is equal to the applicable standard.

Given the solution value of n_2, determine one of the following:

(1) If the value of n_2 is less than or equal to zero *and* if the mean energy consumption of the first sample ($\bar{x}_1$) is either equal to or less than the upper control limit (UCL_4) or equal to or less than 105 percent of the applicable energy performance standard (EPS), whichever is less, i.e., if

$n_2 < 0$ *and* $\bar{x}_1 \leq \min(UCL_4, 1.05\ EPS)$,

the basic model is in compliance and testing is at an end.

(2) If the value of n_2 is less than or equal to zero *and* the mean energy consumption of the first sample ($\bar{x}_1$) is greater than the upper control limit (UCL_4) or more than 105 percent of the applicable energy performance standard (EPS), whichever is less, i.e., if

$n_2 < 0$ *and* $\bar{x}_1 > \geq < \min(LCL_4, 1.05\ EPS)$,

the basic model is in noncompliance and testing is at an end.

(3) If the value of n_2 is greater than zero, then the value of the second sample size is determined to be the smallest integer equal to or greater than the solution value of n_2 for equation (6b). If the value of n_2 so calculated is greater than $20-n_1$, set n_2 equal to $20-n_1$.

Step 8. Compute the combined mean ($\bar{x}_2$) of the measured energy performance of the n_1 and n_2 units of the combined first and second samples as follows:

$$\bar{x}_2 = \frac{1}{n_1 + n_2}\left(\sum_{i=1}^{n_1+n_2} x_1\right) \quad (7)$$

Step 9. Compute the standard error ($s_{\bar{x}_2}$) of the measured energy performance of the n_1 and n_2 units in the combined first and second samples as follows:

$$s_{\bar{x}_2} = \frac{s_1}{\sqrt{n_1 + n_2}} \quad (8)$$

Note.—s_1 is the value obtained in Step 3.

Step 10a. For an Energy Efficiency Standard, compute the lower control limit (LCL_2) for the mean of the combined first and second samples using the DOE energy efficiency standard (EES) as the desired mean and a one-tailed probability level of 97.5 percent (equivalent to the two-tailed probability level of 95 percent used in Step 5. above) as follows:

$$LCL_2 = EES - t\ s_{\bar{x}_2} \quad (9a)$$

where the t-statistic has the value obtained in Step 5 above.

Step 10b. For an Energy Consumption Standard, compute the upper control limit (UCL_2) for the mean of the combined first and second samples using the DOE energy performance standard (EPS) as the desired mean and a one-tailed probability level of 102.5 percent (equivalent to the two-tailed probability level of 95 percent used in Step 5. above) as follows:

$$UCL_2 = EPS + t\ s_{\bar{x}_2} \quad (9b)$$

where the t-statistic has the value obtained in Step 5 above.

Step 11a. For an Energy Efficiency Standard, compare the combined sample mean ($\bar{x}_2$) to the lower control limit (LCL_2) to find one of the following:

(i) If the mean of the combined sample ($\bar{x}_2$) is less than the lower control limit (LCL_2) or 95 percent of the applicable energy efficiency standard (EES), whichever is greater, i.e., if

$\bar{x}_2 < \max(LCL_2, 0.95\ EES)$,

the basic model is in noncompliance and testing is at an end.

(ii) If the mean of the combined sample ($\bar{x}_2$) is equal to or greater than the lower control limit (LCL_2) or 95 percent of the applicable energy efficiency standard (EES), whichever is greater, i.e., if

$\bar{x}_2 \geq \max(LCL_2, 0.95\ EES)$,

the basic model is in compliance and testing is at an end.

Step 11b. For an Energy Consumption Standard, compare the combined sample mean ($\bar{x}_2$) to the upper control limit (UCL_2) to find one of the following:

(i) If the mean of the combined sample ($\bar{x}_2$) is greater than the upper control limit (UCL_2) or 105 percent of the applicable energy performance standard (EPS), whichever is less, i.e., if

$\bar{x}_2 > \min(UCL_2, 1.05\ EPS)$,

the basic model is in noncompliance and testing is at an end.

(ii) If the mean of the combined sample ($\bar{x}_2$) is equal to or less than the upper control limit (UCL_2) or 105 percent of the applicable energy performance standard (EPS), whichever is less, i.e.,

$\bar{x}_2 \leq \min(UCL_2, 1.05\ EPS)$,

the basic model is in compliance and testing is at an end.

Manufacturer–Option Testing

If a determination of non-compliance is made in Steps 6, 7 or 11, above, the manufacturer may request that additional testing be conducted, in accordance with the following procedures.

Step A. The manufacturer requests that an additional number, n_3, of units be tested, with n_3 chosen such that $n_1+n_2+n_3$ does not exceed 20.

Step B. Compute the mean energy performance, standard error, and lower or upper control limit of the new combined sample in accordance with the procedures prescribed in Steps 8, 9, and 10, above.

Step C. Compare the mean performance of the new combined sample to the revised lower or upper control limit to determine one of the following:

a.1. For an Energy Efficiency Standard, if the new combined sample mean is equal to or greater than the lower control limit or 95 percent of the applicable energy efficiency standard, whichever is greater, the basic model is in compliance and testing is at an end.

a.2. For an Energy Consumption Standard, if the new combined sample mean is equal to or less than the upper control limit or 105 percent of the applicable energy consumption standard, whichever is less, the basic model is in compliance and testing is at an end.

b.1. For an Energy Efficiency Standard, if the new combined sample mean is less than the lower control limit or 95 percent of the applicable energy efficiency standard, whichever, is greater, and the value of $n_1+n_2+n_3$ is less than 20, the manufacturer may request that additional units be tested. The total of all units tested may not exceed 20. Steps A, B, and C are then repeated.

b.2. For an Energy Consumption Standard, if the new combined sample mean is greater than the upper control limit or 105 percent of the applicable energy consumption standard, whichever is less, and the value of $n_1+n_2+n_3$ is less than 20, the manufacturer may request that additional units be tested. The total of all units tested may not exceed 20. Steps A, B, and C are then repeated.

c. Otherwise, the basic model is determined to be in noncompliance.

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Part III

Department of Health and Human Services

Public Health Service

Cooperative Agreements To Support National Health Promotion and Disease Prevention Initiatives; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Cooperative Agreements To Support National Health Promotion and Disease Prevention Initiatives

The Office of Disease Prevention and Health Promotion (ODPHP) announces the availability of funds for Fiscal Year 1989 for cooperative agreements to support national health promotion initiatives.

The Office of Disease Prevention and Health Promotion (ODPHP) was established by Pub. L. 94-317, the National Consumer Health Information and Health Promotion Act of 1976, and functions under the provisions of Title XVII of the Public Health Service Act, as amended. Located within the Office of the Assistant Secretary for Health, the mission of ODPHP is to provide leadership for disease prevention and health promotion among Americans. The Office undertakes this mandate through the formulation of national health goals and objectives; the coordination of DHHS activities in disease prevention, health promotion, preventive health services, and health information and education with respect to the appropriate use of health care; and the stimulation of public and private programs and strategies to enhance the health of the Nation. ODPHP is organized around four areas: Prevention policy, clinical preventive services, nutrition policy, and health communication.

Background

At the turn of the century, infectious diseases were the leading killers in the United States. Now, nearly half of all disease and premature death can be traced to lifestyle factors such as smoking, improper diet, and lack of exercise. Identifying which behaviors, practices and habits enhance or threaten health, and encouraging the adoption of healthy behaviors, carries great potential for preventing disease and disability.

Improvements in the health status of Americans over the past decade can be attributed, in part, to the national commitment to health promotion first described in "Healthy People: The Surgeon General's Report on Health Promotion and Disease Prevention", which presented health goals for five major life stages. These goals were used as a framework for developing 226 national measurable prevention objectives for achievement by 1990, published in the policy document "Promoting Health/Preventing Disease: Objectives for the Nation". The so-called 1990 objectives, addressing 15 priority areas, can be divided into the three broad categories of health promotion, health protection, and personal preventive services. For example, the five areas identified as targets for health promotion efforts are: Smoking and health; misuse of alcohol and drugs; nutrition; physical fitness and exercise; and control of stress and violent behavior. The sustained emphasis on health information and health promotion needed to meet the 1990 objectives is being achieved in a variety of ways—education, research, and public information dissemination—and involves a partnership of Federal, State, local, voluntary, and private sector participants. ODPHP has been working over the past decade to extend the reach of health promotion/disease prevention programs through cooperative agreements with national organizations with local chapters, affiliates, or members. Cooperative agreements are granted as part of the National Health Promotion Program, as described in the *Catalog of Federal Domestic Assistance.*

FY 1989 Priorities

In support of ODPHP's mandate to help promote health and prevent disease among Americans through the oversight and support of the Department of Health and Human Services' programs in prevention, ODPHP works to foster partnerships with the private sector that will further the reach of health promotion and disease prevention activities and programs. To this end, ODPHP intends to establish cooperative agreements in FY 1989 with national membership organizations whose concerns could be addressed through the following initiatives:

- Putting the Year 2000 National Health Objectives into Practice: Targeting Special Populations and Settings for Health Promotion and Disease Prevention.

The Public Health Service is now in the process of setting new national objectives for reducing preventable death and disability by the year 2000, to succeed the 1990 health objectives set in 1980. Many of the new objectives will aim specifically at improving the health status of special populations at high risk for morbidity, disability, or premature mortality. To help meet these year 2000 targets, six cooperative agreements will be awarded to national membership organizations, or consortiums of national organizations, representing special populations, for the purpose of stimulating the development of targeted health promotion/disease prevention programs and policies. The special populations are: Blacks, Hispanics, Asian/Pacific Islanders, adolescents, older people, and people with disabilities.

In addition, different sites within the community have been found to be efficient and effective settings for health promotion/disease prevention activities. How these sites can be used to meet the year 2000 objectives will also be addressed through three cooperative agreements to national organizations, or consortiums of organizations, representing worksites, schools, and clinical settings. A similar project will be addressed to American Indian/Alaska Native populations through a cooperative arrangement with the Indian Health Service.

- Develop a National Worksite Health Promotion Resource Center.

The purpose of this initiative is to create a state-of-the-art national resource center which will provide technical information and expertise to employers, employee groups, insurers, policy makers, and professionals in the field on how preventive services and health promotion programs at the worksite can be successfully integrated with other employee benefits to enhance the strength and productivity of the workforce. A special emphasis of the Center will be on assisting the development and expansion of health promotion/disease prevention programs and policies in small businesses and the public sector.

The Center will focus efforts on identifying approaches that: (1) Are able to transfer new information and state of the art technology; (2) have proven incentives for bringing about healthy behavior changes; (3) improve the value of resources spent on disease prevention and health promotion activities; and (4) bring the purchaser and provider communities together to enhance the health of employees with quality and efficiency.

- Promote Healthy School Lunch Programs.

The purpose of this initiative is to document and disseminate effective approaches to organizing and providing school lunch programs in public schools that reflect the current state of knowledge about the link between diet and health.

Eligibility Requirements

Cooperative Agreements awarded to address the ODPHP priorities outlined above are limited to national membership organizations, due to limitations on availability of funds and as a function of the kind of public-private collaboration which the priorities entail. Requests to Congress for funds for the National Health Promotion Program have specified this limitation of applicant eligibility. ODPHP has a history of facilitating Public Health Service work with national membership organizations to implement national health promotion and disease prevention programs and policies. As representatives of special constituencies, membership organizations are in a unique position to be able to identify realistic, appropriate, and effective strategies for reaching their members, or the populations their members represent, with health information.

In order to be eligible to participate in these cooperative agreements, an organization must meet all of the following requirements:

- Be a national, private, nonprofit organization;
- Have a national membership, state/local chapters, and/or otherwise well-defined affiliate structure;
- Demonstrate an understanding of the current and potential role of the membership in health promotion and disease prevention efforts;
- Have in place a variety of communication channels that are appropriate for informing members and other constituencies about how to become involved in meeting the objectives of the cooperative agreement; and
- Demonstrate top level support within the organization for the project and, where appropriate, demonstrate similar support from the membership.

For purposes of this announcement, national membership organizations are defined as organizations with individual or institutional members in a majority of the States or in a sufficient number of States to reach a majority of the special population or site. "Members" must voluntarily and expressly associate themselves with the organization as through payment of a membership fee or other declaration of association (i.e., request and receipt of a membership card or certificate of membership).

Period of Performance

Contingent on the availability of funds and satisfactory performance, cooperative agreements will be awarded to national membership organizations for project periods of between 17 months (for the project to Promote Healthy School Lunch Programs) to three years (for the projects to Implement the Year 2000 Health Objectives, and Develop a National Worksite Health Promotion Resource Center). For projects over 17 months in length, awards will be made for 12-month budget periods. To obtain funding after the initial budget period, continuation applications and approvals will be required for each subsequent 12-month period. Continuation applications will not be subject to competitive review but will be subject to review for satisfactory progress and availability of funds.

Terms and Conditions

Federal funds should be viewed as seed money to assist organizations in the development of health promotion/disease prevention initiatives. Monies allocated for cooperative agreements are not intended to cover all of the costs that will be incurred in the process of completing the projects. Applicants should demonstrate a commitment of financial or in-kind resources to the support of proposed projects. Organizations participating in the cooperative agreement program may use awarded funds to support salaries of individuals assigned to the project. However, due to the modest support afforded through the cooperative agreements, applicants are urged to restrict funding of salaries to approximately 30 percent of the awarded funds in order to insure that sufficient resources remain to accomplish the purposes of the projects. Federal funds offered through this announcement may be used for the development or purchase of project materials, directly related project activities, and project-related travel. Award recipients will be encouraged to seek additional sources of funds to complement the activities of the proposed project.

Applicants should include in proposed budgets support for their project director to participate in up to two two-day meetings in Washington, D.C., in each project year. The purpose of the meetings will be to consult with ODPHP and coordinate with other cooperative organizations, as appropriate.

Special Considerations for Cooperative Agreements to Implement the Year 2000 Health Objectives

For those cooperative agreements addressing the implementation of the national health objectives for the year 2000, eligible applicants must be national membership organizations that are willing and have the capability to take the lead in developing and implementing long-range strategies for meeting the health promotion/disease prevention targets set for the populations or sites they represent.

In addition, organizations are encouraged to collaborate with other groups which share a common mission in support of the health of a special population or populations which can be reached through certain settings.

In these cooperative agreements, and possibly in others, collaboration may be preferable to expand the range of expertise, resources, and grassroots access available. If a consortium of organizations collaborates on a cooperative agreement, the majority of the group must meet all of the eligibility requirements. However, all organizations must be national, private, nonprofit, and membership organizations.

ODPHP Involvement

ODPHP will:

1. Provide a significant portion of the time of a professional staff person to work with the award recipient on the cooperative agreement and to coordinate activities.
2. Make available the resources of the ODPHP National Health Information Center for promoting and/or disseminating materials and information generated by the cooperative agreement which is of value beyond the organization's own membership and constituents.
3. Make available other information and technical assistance from government sources as appropriate.
4. Provide liaison with other government agencies as appropriate.

Application Process

1. All applications must be submitted with a signed copy of PHS Form 5161, with the required information filled in appropriately. The required application form with instructions will be mailed to potential applicants who make telephone requests to Ms. Patricia Jones at (202) 472-5660 or write to her at ODPHP/PHS, Department of Health and Human Services, Switzer 2132, Washington, DC 20201.
2. All applications must be either received or postmarked on or before 5:00 p.m. on April 18, 1989. Applications received or postmarked later than 5:00 p.m. (e.s.t.) on that day will be ineligible. Applications postmarked but not received by March 15, 1989, will be eligible only if they are received in time for orderly processing and review.
3. Application packages should be mailed or delivered to: Ms. Patricia Jones, Office of Disease Prevention and Health Promotion/PHS/DHHS, 2132 Switzer Building, 330 C Street SW., Washington, DC 20201.

4. Applications must be typed on one side of the page only.

5. The original and two copies of each application, with attachments and documentation, must be submitted.

6. Applications for projects which are national in scope are not required to carry out the provisions of Executive Order 12372.

Application Requirements

Applications must include the following information:

1. A description of the organization and its membership, and documentation that it meets all the eligibility requirements, with examples of the organization's prior efforts and activities as needed to substantiate its capability to undertake the proposed project.

2. Measurable goals and objectives for the full term of the cooperative agreement.

3. A description of how the project will contribute to the Public Health Service's efforts to promote health, prevent disease and improve the quality of life.

4. A detailed delineation of the tasks that will be undertaken in the first budget period and the outcomes expected at the end of that period.

5. A detailed budget for the first budget period.

6. A brief delineation of the tasks that will be undertaken in each of the remaining budget periods, as appropriate, and how they will contribute toward accomplishing the project's goals and objectives.

7. A timetable for each budget period of the project.

8. An evaluation plan which will show how the impact of the proposed project will be measured, if feasible, or the effectiveness of the process in meeting project goals and objectives.

9. The background and qualifications of the individual(s) who will manage and staff the project. If the individual(s) is not now known, provide a list of the qualifications that will be sought.

10. If it is anticipated that any individuals or other organizations will be subcontracted for year one, information about the role they will play and their qualifications. If the applicant expects to subcontract any portion of the project during the remaining years, a description of the role they will play and their qualifications should be included.

11. If organizations are collaborating on a proposal, information about the role each will play, along with complete eligibility information. Specify leadership responsibility and project management structure.

12. Further information given as "Special Application Requirements" in each of the initiative summaries below.

Review and Selection Process

The applications will be screened by ODPHP upon receipt to assure that all eligibility requirements have been met. Applications meeting these requirements will be reviewed by a Federal panel of reviewers using the criteria outlined below. The results of this review will be recommended to the Director of ODPHP for FY 1989 cooperative agreement awards. ODPHP intends to make awards in June 1989.

Evaluation Criteria

1. Understanding the Project—20

Understanding of the issues and the program priority that the project proposes to address. Clarity, feasibility, and practicality of the goals and objectives of the project and the plan to meet them.

2. Methodology and Approach—30

Soundness, practicality, and feasibility of the technical approach to the work, including how the tasks are to be carried out, anticipated problems and proposed solutions. The potential for the project to make an innovative, significant impact and contribution to health promotion and disease prevention. Feasibility and appropriateness of the proposed evaluation plan and mechanisms.

3. Organizational Capability—25

Commitment of management and members to the project, as demonstrated, in part, through commitment of financial or in-kind resources to support proposed project. Relevant experience of the organization in conducting similar projects. Adequacy of project management to keep project on track and on schedule. Demonstrated capacity for reaching key audiences to project.

4. Project Direction, Management, and Staffing—25

Management plan, advisory and supervisory structure, and qualifications and relevant experience of proposed staff both in the content and execution of proposed project. Relevant experience could include, but would not be limited to, communications and marketing of issues and programs to diverse constituents, health promotion and disease prevention program activities, and data collection and analysis.

I. Initiative to Put the Year 2000 National Health Objectives Into Practice: Targeting Special Populations and Settings for Health Promotion and Disease Prevention ($50,000 per Project Each Budget Period, 9 Projects Total)

The Public Health Service is now in the process of setting new national objectives for reducing preventable death and disability by the year 2000, to succeed the 1990 health objectives set in 1980. Many of the new objectives will aim specifically at improving the health status of special populations at high risk for morbidity, disability, or premature mortality. To help meet these year 2000 targets, six cooperative agreements will be awarded to national membership organizations, or consortiums of national organizations, for the purpose of stimulating the development of targeted health promotion/disease prevention programs and policies. The special populations to be represented are: Blacks, Hispanics, Asian/Pacific Islanders, adolescents, older people, and people with disabilities. A similar project addressing American Indian/Native Alaskan populations will be undertaken through a cooperative arrangement with the Indian Health Service.

In addition, three cooperative agreements will be available to national organizations, or consortiums of organizations, representing worksites, schools, and clinical settings. These agreements will address how these sites can be used to meet the Year 2000 objectives.

Background

The year 2000 health objectives will be published in July 1990, as the second "Surgeon General's Report on Disease Prevention and Health Promotion." ODPHP is responsible for managing the development of the new objectives, a process which has involved extensive input from professional associations, voluntary organizations, and other national membership groups, academicians, corporate leaders, and other concerned sectors of the public.

The year 2000 national health objectives will likely fall within the following 21 interim priority areas:

1. Reduce tobacco use
2. Reduce alcohol and other drug abuse
3. Improve nutrition
4. Increase physical activity and fitness
5. Improve mental health and prevent mental illness
6. Improve environmental public health
7. Improve occupational safety and health
8. Prevent and control unintentional injuries
9. Reduce violent and abusive behavior
10. Prevent and control HIV infection and AIDS
11. Prevent and control sexually transmitted diseases
12. Immunize against and control infectious diseases
13. Improve maternal and infant health
14. Improve oral health
15. Reduce adolescent pregnancy and improve reproductive health
16. Prevent, detect, and control high blood cholesterol and high blood pressure
17. Prevent, detect, and control cancer
18. Prevent, detect, and control other chronic diseases and disorders
19. Maintain the health and quality of life of older people
20. Improve health education and access to preventive health services
21. Improve surveillance and data systems

Each of the 21 priority areas will include specific objectives for special populations who, compared with the general population, experience significantly higher disease rates, higher levels of risk, or lower levels of awareness, services, or protection. For example, specific objectives might be set to address high blood pressure in Black and Hispanic Americans, or unintentional injuries among children and adolescents. Each priority area might also contain objectives that pertain only to activities in particular settings, for example, worksites, schools, or clinical settings.

ODPHP requests applications for cooperative agreements with national membership organizations, or consortiums of organizations, which want to help take the lead in putting the year 2000 health objectives into practice. Award recipients must represent and/or serve the six high risk populations—Blacks, Hispanics, Asian/Pacific Islanders, adolescents, older people, or people with disabilities—or the three sites—worksites, schools, and clinical settings.

Each award recipient will be expected to produce a national plan for a special population or in a particular setting, setting priorities and identifying short- and long-term strategies for meeting the year 2000 health objectives. The approaches taken to strategy development will differ but are expected to follow general guidelines agreed upon at a meeting of the nine awardees so that outcomes are consistent.

A public draft of the year 2000 health objectives will be made available to all organizations upon award, including the identification of those objectives pertinent to their population or setting. While the final set of objectives will not be available until spring of 1990, it is expected that the public draft will offer award recipients a reasonable starting point.

Specific activities undertaken by each organization, or consortium of organizations, to implement the plan are expected to depend on the programming and communication mechanisms of the organization, as well as organizational interests, priorities, and other factors. Additional activities may include, but are not limited to, some of the following.

1. Promote health promotion/disease prevention objectives—and strategies for meeting those objectives—to members, as well as to allied local, state and/or national organizations and policymakers who share common concern for a special population/setting.

2. Collect, analyze and disseminate exemplary community approaches to health promotion/disease prevention for a special population, or approaches for the three sites, which could be used to carry out the strategic plan and put the year 2000 health objectives into practice.

3. Evaluate the dissemination of the year 2000 health objectives to key audiences and how the objectives are being used to stimulate new programs and policies.

Special Application Requirements

The application should follow the process and requirements given above.

In addition:

- Describe the organization's experience in strategic and/or long range planning;
- Describe how the development of a national health promotion/disease prevention strategy would complement the organization's present agenda and how program initiatives could be integrated into future directions.
- Demonstrate authority and experience in representing the membership at the national, State, and local levels.

II. Initiative to Develop a National Worksite Health Promotion Resource Center ($250,000 for One Project)

Purpose

The purpose of this cooperative agreement is to create a state-of-the-art national resource center which will provide technical information and expertise to employers, employee groups, insurers, policy makers, and professionals in the field on how preventive services and health promotion programs at the worksite can be successfully integrated with other employee benefits to enhance the strength and productivity of the workforce. A special emphasis of the Center will be on assisting the development and expansion of health promotion/disease prevention programs and policies in small businesses and the public sector.

The Center will focus efforts on identifying approaches that: (1) Are able to transfer new information and state of the art technology; (2) have proven incentives for bringing about healthy behavior changes; (3) improve the value of resources spent on disease prevention and health promotion activities; and (4) bring the purchaser and provider communities together to enhance the health of employees with quality and efficiency.

The Worksite Health Promotion Resource Center will serve as a major project of ODPHP and its principal contribution to the expansion and improvement of health promotion efforts for the working population. Therefore, ODPHP intends to emphasize the partnership aspect of this cooperative agreement and to devote the majority of the time of one senior professional staff person to involvement with it.

Background

Increasingly, the worksite is seen as an ideal location for teaching individuals about positive health practices. The national trend toward promoting healthier lifestyles in the workplace has been fueled by employers' increased attention to health issues, the health community's focus on this opportune site for health interventions and education, and employees' desire to have a healthy work environment.

The employer, the employee, and the health community have strong incentives to implement worksite health promotion activities. Employers, in particular, are seeking new ways to better manage health benefits, as the cost of health care continues to spiral, while still insuring a healthy, productive, and competitive workforce. Health care providers view the worksite as an opportunity to affect the health practices of a significant portion of the workplace, and as a potential market for health related products and services.

A recent national survey of worksite health promotion activities conducted by ODPHP shows that there is an increasing acceptance of health promotion activities by major employers. However, employees working at smaller worksites were less likely to be offered health promotion activities. In addition, activities beyond health information and health promotion policies were less likely to be available;

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and furthermore, employees at any single worksite were more likely to be offered a specific type of activity rather than a set of activities. In order to have a significant impact on overall health status, employers need better information on how the many and diverse approaches to employee benefits now undertaken can be integrated to improve the overall health status of the workforce.

In response to these concerns, in part, the 100th Congress called on ODPHP, in consultation with the Centers for Disease Control, to "develop model programs through which employers in the public sector, and employers that are small businesses * * * an provide for their employees a program to promote healthy behaviors and to discourage participation in unhealthy behaviors (and to) * * * provide technical assistance to public and private employers in implementing such programs * * * *" (Title XVII of the Public Health Service Act, as amended, 1988, section 1701). It is expected that the Worksite Health Resource Center will work in partnership with ODPHP to address the objectives set in the 1988 Amendment of Title XVII.

Description

The Resource Center will be a national center that gathers and transfers new information and technology in the areas of health benefits system design, health data, preventive services, health promotion programs, and health science research.

The specific activities undertaken by the Center will depend on the unique capacities of the award recipient, but are expected to include the following.

1. Technical information for employers, employee organizations, insurers, and other professionals in the field to implement or expand health promotion and disease prevention education programs, services, and policies in the workplace, particularly in small businesses and the public sector.

2. Information dissemination initiatives that will result in effectively sharing the latest concepts, methods, and findings with employers, employee organizations, insurers, and other professionals in the field.

3. Training of employee benefits managers, and other professionals, related to the integration of employee health benefits with health promotion and disease prevention programs and policies through seminars, workshops, and conferences.

4. Appropriate applied research and development of a short term nature which can be generated and disseminated to the Center's key users. For example:

—An analysis of the barriers to a fully integrated employee health system, particularly in small businesses and the public sector;

—An assessment of what employers regard as the critical variables in the design of such a system;

—The development of worksite program models, with an emphasis on models for small businesses, which demonstrate how to integrate health promotion and disease prevention programs, health benefit plans and other employee protection programs into a comprehensive system.

Guidance of Center activities is expected to come from an Advisory Committee which includes representation from the employer, employee, insurer, and public health communities.

Special Application Requirements

Application should be made following the process and requirements given above. In addition:

- Describe past activities which demonstrate the organization's capability in reaching and influencing employers and employees on health policy and programmatic issues;
- Demonstrate knowledge of health economics, particularly on issues related to employee health benefits, disease prevention and health promotion services, the provider/supplier market, and other reimbursement issues;
- Demonstrate experience in providing training and technical information to employers, employee organizations, insurers;
- Demonstrate knowledge and track record with research and demonstration projects including research methodology, designs, and written publications; and
- Describe what access the organization has to data on employer health benefits and health promotion/disease prevention activities.

III. Initative to Promote Healthy Lunches in the Schools ($125,000 for One Project)

Purpose

The purpose of this initiative is to document and disseminate effective approaches to organizing and providing school lunch programs in public schools that reflect the current state of knowledge about the link between diet and health.

Background

The release of the "Surgeon General's Report on Nutrition and Health" in 1988 underscored the significant impact that diet has on health. For children, the impact is twofold. Nutritional meals are important for development. A healthy diet in childhood also can set the pattern for a healthy diet throughout life.

The recent findings of the National Adolescent Student Health Survey (1988) indicate that, while nearly 75 percent of respondents knew about nutrition and health relationships such as saturated fats and heart disease, nearly 40 percent continue to eat fried foods as a regular mainstay of their diets. Forty percent report eating breakfast on two or fewer days during the week preceding the survey. Seventy-two percent eat lunch in school cafeterias. And nearly half report eating three or more snacks a day, with over 60 percent of those snacks composed of sodas, candy, doughnuts or ice cream. It is estimated that nearly a quarter of our children and youth are obese. The National Children and Youth Fitness Studies I and II found that children and adolescents are 2 to 3 mm fatter than children and adolescents of the 1960s.

The traditional public health intervention aimed at improving the nutritional habits of youth has been school-based nutrition education offered in health or home economic classes in junior and senior high school. According to the National Adolescent School Health Survey, 74 percent of the respondents said they had had some nutrition education.

However, education alone does not appear to be an effective method for improving the eating habits of students, at least taken alone. Dietary intake at younger ages reflects the food choices provided by parents, other caregivers, and school food service workers. Eating patterns set by those choices may play an equally important role. At most, a child eats 180 school lunches each year, with approximately 900 meals consumed in other settings. But the school lunch can be used as an important medium for promoting healthy eating.

Description

This cooperative agreement is intended to help a national membership organization, whose representation includes the school food service community, provide State and local decisionmakers with information about how to implement healthy school lunch programs. While the specific activities undertaken by the award recipient will depend on the programming and communication mechanisms of the organization, they may include:

1. Identification and analysis of implementation processes within selected exemplary schools or school systems with respect to their school lunch programs, including constraints and opportunities;

2. Identification of key decisionmakers to target with information about model programs;

3. Development and dissemination of materials, such as a video or written guide about model programs, to state and local decisionmakers.

Special Application Requirements

Application should be made following the process and requirements given above. In addition:

- Demonstrate competence and experience with schools, food service workers, public school decisionmakers;
- Demonstrate competence and experience in developing public information materials, including any relevant experience in formative research, message testing, and dissemination.

Further Information

This **Federal Register** Notice contains information collections required from respondents for the subject cooperative agreements. The information collection is approved under OMB control number 0937-0189.

To request additional copies of this notice, or for further clarification, contact: Patricia Jones, (202)472-5307, Room 2132, Switzer Building, 330 C Street SW., Washington, DC 20201.

(National Health Promotion Program, Catalog of Domestic Assistance Number 13.990)

Dated: February 2, 1989.

J.M. McGinnis,

Deputy Assistant Secretary for Health (Disease Prevention and Health Promotion), Assistant Surgeon General.

Appendix A.—Recommended Publications

The following publications may be useful in the preparation of applications for the cooperative agreements announced herein. All the publications may be ordered from: ODPHP National Health Information Center, P.O. Box 1133, Washington, DC 20013-1133, 800-336-4797, 01-565-4167 in Maryland.

"The 1990 Health Objectives for the Nation: A Midcourse Review" (1986), Order No. P0013, $3 handling fee.

"Promoting Health/Preventing Disease: Objectives for the Nation" (1980), Order No. P0009, $3 handling fee.

"Healthy People: The Surgeon General's Report on Health Promotion and Disease Prevention" (1979), Order No. P0005, $3 handling fee.

"A Review of State Activities Related to the Public Health Service's Health Promotion and Disease Prevention Objectives for the Nation" (1988), Order No. M0002, $2 handling fee.

"National Survey of Worksite Health Promotion Activities: A Summary" (1987), Order No. M0005, $2 handling fee.

Additional reports and papers are available in the areas of community health promotion programs, school health programs, worksite health promotion programs, nutrition, professional education and federal programs and policies. Contact the ODPHP National Health Information Center for a copy of the ODPHP Publications List.

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federal register

Tuesday
February 7, 1989

Part IV

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

28 CFR Part 34

Competition and Peer Review Procedures; Proposed Rule

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

28 CFR Part 34

Competition and Peer Review Procedures

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) proposes to revise its competition and peer review regulation, originally published at 50 **Federal Register** 31361, August 2, 1985, and codified at 28 CFR Part 34, to implement the expanded competition and peer review requirements of section 262(d) of the Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5601 *et seq.*, as amended by the Juvenile Justice and Delinquency Prevention Amendments of 1988, subtitle F of title VII of Pub. L. 100–690, November 18, 1988 (hereinafter "Act"). The regulation governs the award of categorical grant funds under Part C—National Programs, of the Act.

DATES: Comments must be submitted on or before March 9, 1989.

ADDRESS: Submit comments to: Roberta Dorn, Office of the Administrator, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue NW., Room 1102. Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Roberta Dorn, Telephone: (202) 724–7855.

SUPPLEMENTARY INFORMATION:

Background Information

This regulation implements the competition and peer review requirements added to OJJDP's categorical assistance programs by the Juvenile Justice and Delinquency Prevention Amendments of 1988, Subtitle F of title VII of Pub. L. 100–690, November 18, 1988. These amendments consolidated OJJDP'S title II categorical programs in Part C of the Act. Previously, title II contained different, or had no, competition and peer review requirements for each of the three categorical programs established in Parts A, B and C of title II. Now, pursuant to section 262(d), competition and peer review requirements have been standardized for all categorical programs funded under Part C—National Programs. The technical assistance and training program authority, which had been in Part A, is now incorporated in Part C, Subpart I. Special Emphasis Prevention and Treatment Programs which had been under Part B, Subpart II, are now covered under Subpart II of Part C. The National Institute for Juvenile Justice and Delinquency Prevention programs remain in Part C under Subpart I. The retitled Part C consolidates all these categorical programs, and all Part C funds are governed by this revised regulation unless expressly excluded (See § 34.2).

The changes in this revision constitute technical and conforming amendments only. Therefore, OJJDP does not believe that renewed consultation with the National Science Foundation and the National Institute of Mental Health is required.

Executive Order 12291

This announcement does not constitute a "major" rule as defined by Executive Order 12291 because it does not result in: (a) An effect on the economy of $100 million or more, (b) a major increase in any costs or prices, or (c) adverse effects on competition, employment, investment, productivity, or innovation among American enterprises.

Regulatory Flexibility Act

This proposed rule does not have "significant" economic impact on substantial number of small "entities", as defined by the Regulatory Flexibility Act (Pub. L. 96–354).

Paperwork Reduction Act

There are no collection of information requirements contained in this regulation required to be submitted to the Office of Management and Budget for review under the Paperwork Reduction Act, 44 U.S.C. 3504(h).

List of Subjects in 28 CFR Part 34

Grant programs, Juvenile delinquency.

Accordingly, Title 28 Code of Federal Regulations, Part 34, is revised to read as follows:

PART 34—OJJDP COMPETITION AND PEER REVIEW PROCEDURES

Subpart A—Competition

Sec.

34.1 Purpose and applicability.
34.2 Exceptions to applicability.
34.3 Selection criteria.
34.4 Additional competitive application requirements and procedures.

Subpart B—Peer Review

34.100 Purpose and applicability.
34.101 Exceptions to applicability.
34.102 Peer review procedures.
34.103 Definition.
34.104 Use of peer review.
34.105 Peer review methods.
34.106 Number of peer reviewers.
34.107 Use of Department of justice staff.
34.108 Selection of reviewers.
34.109 Qualifications of peer reviewers.
34.110 Management of peer reviews.
34.111 Compensation.

Subpart C—Emergency Expedited Review—[Reserved]

Authority: Juvenile Justice and Delinquency Prevention Act of 1974, as amended, (42 U.S.C. 5601 *et seq.*).

Subpart A—Competition

§ 34.1 Purpose and applicability.

(a) This Subpart of the regulation implements section 262(d)(1) (A) and (B) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended (42 U.S.C. 5601 *et seq.*). This provision requires that project applications, selected for categorical assistance awards under Part C—National Programs shall be selected through a competitive process established by rule by the Administrator, OJJDP. The statute specifies that this process must include announcement in the **Federal Register** of the availability of funds for assistance programs, the general criteria applicable to the selection of applications for assistance, and a description of the procedures applicable to the submission and review of assistance applications.

(b) This Subpart of the regulation applies to all grant, cooperative agreement, and other assistance awards selected by the Administrator, OJJDP, or the Administrator's designee, under Part C—National Programs, of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, except as provided in the exceptions to applicability set forth below.

§ 34.2 Exceptions to applicability.

The following are assistance and procurement contract award situations that OJJDP considers to be outside the scope of the section 262(d)(1) competition requirement:

(a) Assistance awards to initially fund or continue projects if the Administrator has made a written determination that the proposed program is not within the scope of any program announcement expected to be issued, is otherwise eligible for an award, and the proposed project is of such outstanding merit, as determined through peer review under Subpart B, that an assistance award without competition is justified (section 262(d)(1)(B)(i));

(b) Assistance awards to initially fund or continue training services to be funded under Part C, section 244, if the Administrator has made a written determination that the applicant is uniquely qualified to provide proposed training services and other qualified sources are not capable of providing such services (section 262(d)(1)(B)(ii));

(c) Assistance awards of funds transferred to OJJDP by another Federal agency to augment authorized juvenile justice programs, projects, or purposes;

(d) Funds transferred to other Federal agencies by OJJDP for program purposes as authorized by law;

(e) Procurement contract awards which are subject to applicable Federal laws and regulations governing the procurement of goods and services for the benefit and use of the government;

(f) Assistance awards from the 5% "set aside" of Special Emphasis funds under section 261(e); and

(g) Assistance awards under section 241(f).

§ 34.3 Selection criteria.

(a) All individual project applications will, at a minimum, be subject to review based on the extent to which they meet the following general selection criteria:

(1) The problem to be addressed by the project is clearly stated;

(2) The objectives of the proposed project are clearly defined;

(3) The project design is sound and contains program elements directly linked to the achievement of project objectives;

(4) The project management structure is adequate to the successful conduct of the project;

(5) Organizational capability is demonstrated at a level sufficient to successfully support the project; and

(6) Budgeted costs are reasonable, allowable and cost effective for the activities proposed to be undertaken.

(b) The general selection criteria set forth under § 34.3(a), above, may be supplemented for each announced competitive program by program-specific selection criteria for the particular Part C program. Such announcements may also modify the general selection criteria to provide greater specificity or otherwise improve their applicability to a given program. The relative weight (point value) for each selection criterion will be specified in the program announcement.

§ 34.4 Additional competitive application requirements and procedures.

(a) *Applications for grants.* Any applicant eligible for assistance may submit on or before such submission deadline date or dates as the Administrator may establish in program announcements, an application containing such pertinent information and in accordance with the forms and instructions as prescribed therein and any additional forms and instructions as may be specified by the Administrator. Such application shall be executed by the applicant or an official or representative of the applicant duly authorized to make such application and to assume on behalf of the applicant the obligations imposed by law, applicable regulations, and any additional terms and conditions of the assistance award. The Administrator may require any applicant eligible for assistance under this subpart to submit a preliminary proposal for review and approval prior to the acceptance of an application.

(b) *Cooperative arrangements.* (1) When specified in program announcements, eligible parties may enter into cooperative arrangements with other eligible parties, including those in another State, and submit joint applications for assistance.

(2) A joint application made by two or more applicants for assistance may have separate budgets corresponding to the programs, services and activities performed by each of the joint applicants or may have a combined budget. If joint applications present separate budgets, the Administrator may make separate awards, or may award a single assistance award authorizing separate amounts for each of the joint applicants.

(c) *Evaluation of applications submitted under Part C of the Act.* All applications filed in accordance with § 34.1 of this subpart for assistance with Part C—National Programs funds shall be reviewed by the Administrator through OJJDP and other DOJ personnel (internal review) and by such experts or consultants required for this purpose that the Administrator determines are specially qualified in the particular Part C program area covered by the announced program (peer review). Supplementary application review procedures, in addition to internal review and peer review, may be used for each competitive Part C program announcement. The program announcement shall clearly state the application review procedures (peer review) to be used for each competitive Part C program announcement.

(d) *Applicant's performance on prior award.* When the applicant has previously received an award from OJJDP or another Federal agency, the applicant's noncompliance with requirements applicable to such prior award as reflected in past written evaluation reports and memoranda on performance, and the completeness of required submissions, may be considered by the Administrator. In any case where the Administrator proposes to deny assistance based upon the applicant's noncompliance with requirements applicable to a prior award, the Administrator shall do so only after affording the applicant reasonable notice and an opportunity to rebut the proposed basis for denial of assistance.

(e) *Applicant's fiscal integrity.* Applicants must meet OJP standard of fiscal integrity (see OJP M 7100.1C, par. 24 and OJP HB 4500.2B, par. 48 a and b).

(f) *Disposition of applications.* On the basis of competition and applicable review procedures completed pursuant to this regulation, the Administrator will either:

(1) Approve the application for funding, in whole or in part, for such amount of funds, and subject to such conditions as the Administrator deems necessary or desirable for the completion of the approved project;

(2) Determine that the application meets minimum criteria, but that the application must be disapproved for funding because it did not rank sufficiently high in relation to other applications submitted in response to the same program announcement to qualify for an award based on the level of funding allocated to the program; or

(3) Reject the application for failure to meet the applicable selection criteria at a sufficiently high level to justify an award of funds or for any other reason which the Administrator determines adversely impacts upon the applicant's capability to successfully carry out the project.

(g) *Notification of disposition.* The Administrator will notify the applicant in writing of the disposition of the application. A signed Grant/Cooperative Agreement form will be issued to notify the applicant of an approved project application.

(h) *Effective date of approved grant.* Federal financial assistance is normally available only with respect to obligations incurred subsequent to the effective date of an approved assistance project. The effective date of the project will be set forth in the Grant/Cooperative Agreement form. Recipients may be reimbursed for costs resulting from obligations incurred before the effective date of the assistance award, if such costs are authorized by the Administrator in the notification of assistance award or subsequently in writing, and otherwise would be allowable as costs of the assistance award under applicable guidelines, regulations, and award terms and conditions.

Subpart B—Peer Review

§ 34.100 Purpose and applicability.

(a) This Subpart of the regulation implements section 262(d)(2) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended. This provision requires that projects funded as new or continuation programs selected for categorical assistance awards under Part C—National Programs shall be reviewed before selection and thereafter as appropriate through a formal peer review process. Such process must utilize experts (other than officials and employees of the Department of Justice) in fields related to the technical and/or subject matter of the proposed program.

(b) This subpart of the regulation applies to all applications for grants, cooperative agreements, and other assistance awards selected by the Administrator, OJJDP, for funding under Part C—National Programs that are being considered for competitive and noncompetitive (including continuation awards) awards to begin new project periods, except as provided in the exceptions to applicability set forth below.

§ 34.101 Exceptions to applicability.

The assistance and procurement contract situations specified in § 34.2 (c), (d), (e), (f), and (g) of Subpart A are considered by OJJDP to be outside the scope of the section 262(d) peer review requirement as set forth in this Subpart.

§ 34.102 Peer review procedures.

The OJJDP peer review process is contained in an OJJDP *Peer Review Manual* developed in consultation with the Directors and other appropriate officials of the National Science Foundation and the National Institute of Mental Health. In addition to specifying substantive and procedural matters related to the peer review process, the *Manual*, addresses such issues as standards of conduct, conflict of interest, compensation of peer reviewers. The peer review process for all Part C—National Programs assistance awards subject to this regulation will be conducted in a manner consistent with this Subpart as implemented in the *Peer Review Manual*.

§ 34.103 Definition.

"Peer review" means the technical and programmatic evaluation by a group of experts (other than officials and employees of the Department of Justice) qualified by training and experience to give expert advice, based on selection criteria established under Subpart A of this part, in a program announcement, or as established by the Administrator, on the technical and programmatic merit on an application for assistance.

§ 34.104 Use of peer review.

(a) *Peer review for competitive and noncompetitive applications.* (1) For competitive applications, each program announcement will indicate the program specific peer review procedures and selection criteria to be followed in peer review for that program. In the case of competitive programs for which a large number of applications is expected, pre-applications (concept papers) may be required. Pre-applications will be reviewed by qualified OJJDP staff to eliminate those pre-applications which fail to meet minimum program requirements, as specified in a program announcement, or clearly lack sufficient merit to qualify as potential candidates for funding consideration. If appropriate the Administrator may subject both pre-applications and formal applications to the peer review process.

(2) For noncompetitive applications, the general selection criteria set forth under Subpart A of this Part may be supplemented by program-specific selection criteria for the particular Part C program. Applicants for noncompetitive continuation awards will be fully informed of any additional specific criteria in writing.

(b) When formal applications are required in response to a program announcement, an initial review will be conducted by qualified OJJDP staff, in order to eliminate from peer review consideration applications which do not meet minimum program requirements. Such minimum program requirements will be specified in the program announcement. Applications determined to be qualified and eligible for further consideration will then be considered under the peer review process.

(c) Ratings will be in the form of numerical scores assigned by individual peer reviewers as illustrated in the OJJDP *Peer Review Manual*. The results of peer review under a competitive program will be a ranking of applications based on the average of the total scores assigned to each application by each peer reviewer in the form of "Summary Ratings." The results of peer review for a noncompetitive new or continuation project will be in the form of numerical scores based on criteria established by the Administrator.

(d) Peer review recommendations, in conjunction with the results of internal review and any necessary supplementary review, will assist the Administrator's consideration of competitive and noncompetitive applications and selection of applications for funding.

(e) Peer review recommendations are advisory only and are binding on the Administrator only as provided by section 262(d)(B)(i) for noncompetitive assistance awards to programs determined through peer review not to be of such outstanding merit that an award without competition is justified. In such case, the determination of whether to issue a competitive program announcement will be subject to the exercise of the Administrator's discretion.

§ 34.105 Peer review methods.

(a) For both competitive and noncompetitive applications, peer review will normally consist of written comments provided in response to the general selection criteria established under Subpart A of this Part and any program-specific selection criteria identified in the program announcement or otherwise established by the Administrator, together with the assignment of numerical values. Peer review may be conducted at meetings with peer reviewers held under OJJDP oversight, through mail reviews, or a combination of both. When advisable, site visits may also be employed. The primary method of peer review anticipated for each announced competitive program, including the evaluation criteria to be used by peer reviewers, will be specified in each program announcement.

(b) When peer review is conducted through meetings, peer review panelists will be gathered together for instruction by OJJDP, including review of the OJJDP *Peer Review Manual*. OJJDP will oversee the conduct of individual and group review sessions, as appropriate. When time or other factors preclude the convening of a peer review panel, mail reviews will be used. For competitive programs, mail reviews will be used only where the Administrator makes a written determination of necessity.

§ 34.106 Number of peer reviewers.

The number of peer reviewers will vary by program (as affected by the volume of applications anticipated or received). OJJDP will select a minimum of three peer reviewers (qualified individuals who are not officials or employees of the Department of Justice) for each program or project review in order to ensure a diversity of backgrounds and perspectives. In no case will fewer than three reviews be made of each individual application.

§ 34.107 Use of Department of Justice staff.

OJJDP will use qualified OJJDP and other DOJ staff as internal reviewers. Internal reviewers determine applicant compliance with basic program and statutory requirements, review the results of peer review, and provide overall program evaluation and recommendations to the Administrator.

§ 34.108 Selection of reviewers.

The Director of the OJJDP program division with responsibility for a particular program or project will propose a selection of peer reviewers from an extensive and varied pool of juvenile justice and delinquency prevention experts for approval by the Administrator. The selection process for peer reviewers is described in the OJJDP *Peer Review Manual*.

§ 34.109 Qualifications of peer reviewers.

The general reviewer qualification criteria to be used in the selection of peer reviewers are:

(a) Generalized knowledge of juvenile justice; and

(b) Specialized knowledge in areas or disciplines addressed by the applications to be reviewed under a particular program.

(c) No conflict of interest (see OJP M7100.1C, par. 94).

Additional details concerning peer reviewer qualifications are provided in the OJJDP *Peer Review Manual*.

§ 34.110 Management of peer reviews.

A technical support contractor may assist in managing the peer review process.

§ 34.111 Compensation.

All peer reviewers will be eligible to be paid according to applicable regulations and policies concerning consulting fees and reimbursement for expenses. Detailed information is provided in the OJJDP *Peer Review Manual*.

Subpart C—Emergency Expedited Review—[Reserved]

Diane M. Munson,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

January 30, 1989.

[FR Doc. 89-2835 Filed 2-6-89; 8:45 am]

BILLING CODE 4410-18-M

federal register

Tuesday
February 7, 1989

Part V

Department of Health and Human Services

Centers for Disease Control

Meeting: Vital and Health Statistics National Committee; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Meeting; Vital and Health Statistics National Committee

ACTION: Notice of meeting.

SUMMARY:

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the National Committee on Vital and Health Statistics (NCVHS) Executive Subcommittee established pursuant to 42 U.S.C. 242k, section 306(k)(2) of the Public Health Service Act, as amended, announces the following Subcommittee meeting (working session).

Name: National Committee on Vital and Health Statistics Executive Subcommittee.

Time and Date: 9:00 a.m.–12:00 noon—February 8, 1989.

Place: Room 405A, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

Status: Open.

Purpose: The Subcommittee will discuss committee business including work plans and future activities.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and roster of Committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, National Committee on Vital and Health Statistics, Room 2–12, Center Building, 3700 East West Highway, Hyattsville, Maryland 20782, telephone (301) 436–7050.

Notice of a meeting of the full Committee to be held on February 8, 9, and 10, 1989, was published in Vol. 53, No. 248, page 52237, of the **Federal Register** dated December 27, 1988. The need has just occurred for this meeting of the Executive Subcommittee. Therefore, the 15-day publication requirement could not be met.

Dated February 3, 1989.

Elvin Hilyer,

Associate Director for Policy Coordination Centers for Disease Control.

[FR Doc. 89–3053 Filed 2–6–89 11:29 am]

BILLING CODE 4160–18–M

Meeting; Vital and Health Statistics National Committee

ACTION: Notice of meeting.

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Minority Health Statistics established pursuant to 42 U.S.C. 242k, section 306(k)(2) of the Public Health Service Act, as amended, announces the following Subcommittee meeting (working session).

Name: National Committee on Vital and Health Statistics Subcommittee on Minority Health Statistics.

Time and Date: 1:00 p.m.—3:00 p.m.—February 10, 1989.

Place: Room 703A, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

Status: Open.

Purpose: The Subcommittee will discuss plans for a public hearing on indigent health care data needs.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and roster of Committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, National Committee on Vital and Health Statistics, Room 2–12, Center Building, 3700 East West Highway, Hyattsville, Maryland 20782, telephone (301) 436–7050.

Notice of a meeting of the full Committee to be held on February 8, 9, and 10, 1989, was published in Vol. 53, No. 248, page 52237, of the **Federal Register** dated December 27, 1988. The need has just occurred for this meeting of the Subcommittee on Minority Health Statistics. Therefore, the 15-day publication requirement could not be met.

Dated: February 3, 1989.

Elvin Hilyer,

Associate Director for Policy Coordination Centers for Disease Control.

[FR Doc. 89–3052 Filed 2–6–89; 11:29 am]

BILLING CODE 4160–18–M

federal register

Tuesday
February 7, 1989

Part VI

Federal Home Loan Bank Board

12 CFR Parts 525, 569c, and 578
Federal Savings and Loan Insurance Corporation Assignment or Pledge of Assets; Final Rules

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 578

[No. 89-108]

Assignment or Pledge of Assets Held by the FSLIC in Its Corporate Capacity

Date: February 6, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as the operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), is adopting an interpretive rule which asserts the FSLIC's right to assign or pledge assets which it holds in its corporate capacity.

EFFECTIVE DATE: February 6, 1989.

FOR FURTHER INFORMATION, CONTACT: Lawrence W. Hayes, Deputy General Counsel, (202) 377-6428, or Richard B. Foley, Attorney, Office of General Counsel, (202) 377-7393, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Board is exercising its rulemaking authority as operating head of the FSLIC by adopting an interpretive regulation which states that the FSLIC may assign or pledge assets which it holds in its corporate capacity. The regulation also explains the manner by which assignments or pledges of FSLIC assets may be perfected. Authority to engage in rulemaking on this subject has been conferred upon the Board by section 402(a) of the NHA, 12 U.S.C. 1725(a) (1982). Section 402(a) provides that the FSLIC shall be operated by the Board "under such bylaws, rules, and regulations as it [the Board] may prescribe for carrying out the purposes of this title [title IV of the NHA, 12 U.S.C. 1724–1730g (1982)]." This broad rulemaking authority allows the Board to adopt regulations governing the operation of the FSLIC, including its financial operations. As explained below, the regulation simply makes explicit the statutory powers implied by section 402(d) of the NHA, 12 U.S.C. 1725(d) (1982), which delineates the FSLIC's authority with respect to its financial operations.

Section 402(d) of the NHA authorizes the FSLIC to borrow "for the purposes of this subchapter" (i.e., title IV of the NHA)[1] and directs that loans to the FSLIC from the Federal Home Loan Banks "shall be adequately secured, as determined by the Board."[2] Since there is no express authority for the FSLIC to provide security for loans anywhere in the NHA or in any other statute, section 402(d) must be viewed as implicitly authorizing the FSLIC to provide security—i.e., to assign or pledge its assets as collateral. Otherwise, the language in section 402(d) regarding adequate security is rendered meaningless or nugatory. Well-settled principles of statutory construction dictate that an interpretation which would leave a statute meaningless or nugatory should be avoided if possible: "[T]he courts start with the assumption that the legislature intended to enact an effective law."[3]

In addition to NHA section 402(d), separate and independent authority for the FSLIC to assign or pledge assets stems from its authority to provide financial assistance pursuant to NHA section 406(f), 12 U.S.C. 1729(f) (1982). Section 406(f) expressly authorizes the FSLIC, "in its sole discretion and upon such terms and conditions as [it] may prescribe," to make loans or contributions to, and to assume the liabilities of, persons or entities meeting the statutory prerequisites for such assistance, provided such assistance is not more expensive than liquidation. 12 U.S.C. 1729(f)(1), 1729(f)(2)(A), 1729(f)(4)(A) (1982). This authority is the basis for FSLIC guarantees of advances. Like a FSLIC guarantee, an assignment or pledge of FSLIC assets in essence constitutes a loan or contribution to, or a contingent assumption of the liabilities of, the person or entity involved.

The regulation, set forth below, states that the FSLIC may assign or pledge any asset which it holds in its corporate capacity, including, but not limited to, claims of the FSLIC against receiverships as subrogee of insured depositors. The regulation also provides that such assignments or pledges must be made and perfected in the following manner: (a) with respect to assignments or pledges of claims against receivers, in accordance with Part 569c; (b) with respect to assignments or pledges of interests in real property, in accordance with the laws of the jurisdiction where the real property is located; and (c) with respect to assignments or pledges of other assets in which the FSLIC has an interest, in accordance with the terms set forth in sections 28:9-101 through 28:9-507 of the District of Columbia Code, unless the Board provides otherwise.

This regulation, effective upon adoption by the Board, is being issued without the notice and comment procedures of the Administrative Procedure Act, as amended ("APA"). Pursuant to 5 U.S.C. 553(b)(3)(A), 553(d)(2) (1982), and in accordance with the Board's regulations published at 12 CFR 508.11 and 508.14 interpretive rules are not subject either to the notice and comment or delayed effective date requirements of the APA. Moreover, even if the notice and comment and delayed effective date requirements were applicable to this regulation, the Board finds good cause for not complying with these requirements, pursuant to 5 U.S.C. 553(b)(3)(B), 553(d)(3) (1982). Due to the instability of a significant number of insured institutions, immediate implementation of this regulation is necessary in order for the FSLIC to carry out its statutory responsibilities.

Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 1165 (1980), the Board is providing the following regulatory flexibility analysis.

1. *Reasons, objectives, and legal basis underlying the rule.* These elements are incorporated above in the supplementary information regarding the rule.

2. *Small institutions to which the rule would apply.* The rule applies only to the FSLIC in its corporate capacity.

3. *Impact of the rule on small institutions.* The rule will affect equally all institutions and will not have a disproportionate impact on small institutions.

4. *Overlapping or conflicting federal rules.* There are no known federal rules that may duplicate, overlap or conflict with this rule.

5. *Alternatives to the rule.* There are no alternatives to the rule that would have less impact on small institutions.

List of Subjects in 12 CFR Part 578

Administrative practice and procedure, Savings and loan associations.

[1] Section 402(i) of the NHA, 12 U.S.C. 1725(i) (1982), allows the FSLIC to borrow from the Treasury an amount not exceeding an aggregate of $750,000,000 outstanding at any one time and prohibits the FSLIC from exercising its borrowing power under section 402(d) for the purpose of borrowing from any source other than the Federal Home Loan Banks.

[2] This clause was added to section 402(d) by section 125(a) of the Garn-St Germain Depository Institutions Act of 1982, Pub. L. No. 97-320, § 125(a), 96 Stat. 1469, 1485 (1982). The legislative history of this amendment, which is permanent legislation, does not shed light on the Congressional intent underlying the clause. However, the Board has issued a statement of policy concerning Federal Home Loan Bank loans to the FSLIC which provides that: "[s]uch loans may be secured or unsecured, as determined by the Board." 12 CFR 531.2(b)(1) (1987).

[3] 73 Am. Jur. 2d *Statutes* section 249 (1974).

Accordingly, the Board hereby adds Part 578, Subchapter D, Chapter V of Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

1. Subchapter D is amended by adding new Part 578 to read as follows:

PART 578—FSLIC FINANCIAL OPERATIONS

Authority: Sections 402, 406, 48 Stat. 1256, 1259, as amended (12 U.S.C. 1725, 1729); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1943-1948 Comp., p. 1071.

§ 578.1 Assignment or pledge of Corporation's assets.

(a) The Corporation may assign or pledge its interest in any asset held in its corporate capacity, including, but not limited to, any claim against a receiver acquired by subrogation or otherwise.

(b) Assignments or pledges of claims against receivers of insured institutions shall be made, perfected and have priority as specified under Part 569c or by resolution of the Federal Home Loan Bank Board. Unless otherwise provided by the Federal Home Loan Bank Board, assignments or pledges of other assets in which the Corporation has an interest shall be made and perfected in accordance with the terms set forth in sections 28:9-101 through 28:9-507 of the District of Columbia Code, except for assignments or pledges of interests in real property, which assignments or pledges of interests in real property shall be made and perfected in accordance with the laws of the jurisdiction where the real property is located.

By the Federal Home Loan Bank Board.

John F. Ghiz soni,

Assistant Secretary.

[FR Doc. 89-3060 Filed 2-6-89; 12:56 pm]

BILLING CODE 6720-01-M

12 CFR Part 569c

[No. 89-109]

Recognition by Receivers of the FSLIC's Claims as Subrogee of Insured Depositors and Assignments or Pledges of Such Claims

Date: February 6, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), is adopting a regulation applicable to the FSLIC as receiver for federal and state institutions ("Receiver"). The regulation provides for recognition on the books of the Receiver of claims to which the FSLIC in its corporate capacity ("FSLIC") has been subrogated by payment of insurance and for recognition of transfers of such subrogated claims.

EFFECTIVE DATE: February 6, 1989.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Hayes, Deputy General Counsel, (202) 377-6428, or Richard B. Foley, Attorney, Office of General Counsel, (202) 377-7393, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

A. Introduction

The Board is amending the regulations governing the conduct of receiverships to make it clear that: (1) When insurance is paid to a depositor, the Receiver shall note on its books the transfer of the depositor's claim and the FSLIC's subrogation thereto to the extent of the insurance paid; (2) in the event insurance is paid by making available to the depositor an insured account in another institution or by payment through an agent, the effective date of the transfer of the insured portion of the depositor's claim and the FSLIC's subrogation thereto which the Receiver shall note on its books shall be the effective date on which such accounts are transferred to such other insured institution or agent; (3) assignments, pledges, conveyances, or other transfers of any claim to which the FSLIC has been subrogated, by the FSLIC or a subsequent holder of record of an interest in such a claim, shall be noted on the books of the Receiver as of the date of such transfer immediately upon notification by such holder of record, shall be effective without further action or notice by the transferee, and shall not be subject to any competing claim or interest not recorded in the Receiver's books; and (4) the Receiver shall inform any purported holder of an interest in a claim to which the FSLIC has been subrogated, upon written request, whether such interest is recorded in the books of the Receiver and whether it is subject to any competing claims or interests recorded in the books of the Receiver.

Pursuant to section 5(d)(11) of the Home Owners' Loan Act of 1933, as amended ("HOLA"), 12 U.S.C. 1464(d)(11) (1982), the Board has plenary authority to make rules and regulations for federally chartered associations in conservatorship or receivership, for the conduct of conservatorships and receiverships, and for the liquidation and dissolution of such associations. Pursuant to section 406(c)(3)(A) of the National Housing Act, as amended ("NHA"), 12 U.S.C. 1729(c)(3)(A) (1982), the provisions of section 5(d)(11) of the HOLA are applicable to a state-chartered, FSLIC-insured institution for which the Board has appointed the FSLIC as receiver "in the same manner and to the same extent as if such [state-chartered] institution were a Federal association * * *."

Congress has twice amended section 5(d) of the HOLA to enlarge the Board's power to regulate conservatorships and receiverships. Originally, the 1933 version of section 5(d) provided that "[T]he Board shall have full power to provide in the rules and regulations * * * for the liquidation of such associations * * * including the power to appoint a conservator or receiver * * *." Home Owners' Loan Act of 1933, Pub. L. No. 73-74, section 5(d), 48 Stat. 132 (1933). The original powers were clarified in 1954. "The Board shall have power to make rules and regulations for the reorganization, merger, and liquidation of Federal associations and for such associations in conservatorship and receivership and for the conduct of conservatorships, and receiverships." Housing Act of 1954, Pub. L. No. 83-560, section 503(2), 68 Stat. 590 (1954).

In 1966, Congress recognized that "it is essential that the Federal supervisory agencies have the statutory and administrative facility to move quickly and effectively to require adherence to the law and cessation and corrections of unsafe or improper practices." S. Rep. No. 1482, 89th Cong., 2d Sess., *reprinted in* 1966 U.S. Code Cong. & Ad. News 3532, 3536. To this end, Congress altered provisions concerning the grounds of appointment and challenges to appointment and enacted section 5(d)(11) in its present form. Financial Institutions Supervisory Act of 1966, Pub. L. No. 87-695, section 101(a), 80 Stat. 1028 (1966). The broad powers restated and amplified in the 1966 amendment authorize the Board's present rulemaking authority under the HOLA.

In 1968, by the enactment of section 406(c)(3) of the NHA, Congress extended the Board's regulatory powers to include authority to issue similar regulations for the receivership and liquidation of state-chartered, FSLIC-insured institutions. Pub. L. No. 90-389, section 6, 82 Stat. 294 (1968). Congress based this extension of regulatory powers on the FSLIC's vital interest in seeing that the liquidation of the [state-chartered] association

proceeds in an orderly manner." S. Rep. No. 1293, 90th Cong., 2d Sess., *reprinted in* 1968 U.S. Code Cong. & Ad. News 2530, 2531.[1]

These grants of statutory authority are not less broad than those conferred upon the Board by section 5(a) of the HOLA, 12 U.S.C. 1464(a) (1982), which the United States Supreme Court regards as authorizing the Board to govern "the powers and operations of every federal savings and loan association from its cradle to its corporate grave." *Fidelity Federal Savings and Loan Association v. de la Cuesta*, 458 U.S. 141, 145 (1982), citing *People v. Coast Federal Savings and Loan Association*, 98 F. Supp. 311, 316 (S.D. Cal. 1951).[2]

For the last fifty years, then, Congress has consistently acted to protect the welfare of depositors, the credibility of the nation's financial institutions, and the soundness of the FSLIC reserves, by granting the Board increasing authority over associations in conservatorship or receivership, and the authority to engage in rulemaking concerning the receivership, liquidation, and dissolution of insured institutions. Accordingly, the Board has determined that this regulation is within the Board's statutory authority under section 5(d)(11) of the HOLA and section 406(c)(3) of the NHA. The regulation is applicable to the FSLIC as receiver for any insured institution.

B. FSLIC's Claims as Subrogee

Section 405(b) of the NHA, 12 U.S.C. 1728(b) (1982), directs the FSLIC, in the event of a default by any insured institution, to pay each insured account in such insured institution which is "surrendered and transferred" to the FSLIC. Payment is to be made "as soon as possible either (1) by cash or (2) by making available to each insured member a transferred account in a new insured institution in the same community or in another insured institution in an amount equal to the insured account of such member * * * ." Id. Pursuant to section 406(b)(2) of the NHA, 12 U.S.C. 1729(b)(2) (1982), the FSLIC is directed to pay insurance in accordance with section 405. Section 406(b)(2) also provides that the FSLIC, upon "surrender and transfer" of an insured account in any federal association which is in default, shall become subrogated with respect to such account. The provisions of section 406(b)(2) are made applicable to statechartered institutions by section 408(c)(1) of the NHA, 12 U.S.C. 1729(c)(1) (1982).

Under the foregoing statutory framework, the FSLIC's obligation to pay insured accounts or to make available transferred accounts in a new insured institution in the same community or in another insured institution, and its right to become subrogated with respect to insured accounts, are both contingent upon the "surrender and transfer" of insured accounts in the closed institution. Thus it is necessary to determine when the "surrender and transfer" occurs in order to determine the timing of the FSLIC's insurance payment obligation and subrogation.

The legislative history of the NHA does not specify what constitutes a "surrender and transfer". The second sentence of section 406(b)(2) of the NHA, containing the subrogation provision in its present form, was set forth in section 26 of the Additional Home Mortgage Relief Act, Pub. L. No. 74-75, section 26, 49 Stat. 293, 299 (1935). As originally enacted in 1934, the second sentence did not include a reference to subrogation but read as follows: "The net proceeds that may arise from the orderly liquidation of any such association, after reimbursement of the Corporation [FSLIC] of all amounts paid by it for such insurance, shall be distributed pro rata among the shareholders of the association." Although the legislative history of the 1935 amendment reveals that its purpose was to ensure that the FSLIC would not have a preferred position over that of general creditors or uninsured accountholder interests in the liquidation of an institution in receivership,[3] there is no indication in the legislative history of the intended meaning of "surrender and transfer". It is likely that the "surrender and transfer" language of section 406(b)(2) was included in the 1935 amendment in order to track the original (and current) version of section 405(b). However, the legislative history of section 405(b) does not provide specific guidance as to the meaning of this language either.

Given the absence of legislative history concerning what constitutes a "surrender and transfer" under sections 405(b) and 406(b)(2) of the NHA, the FSLIC has adopted measures to assure itself that a "surrender and transfer" and subrogation are accomplished. When cash payments of insured accounts are made, depositors are required to execute formal assignments of their insured accounts in order to receive payment. However, when transferred accounts are made available to depositors—by execution of an agreement between the FSLIC and an insured institution—such formal assignments generally are not executed; the transfer is effected as of the date of default.[4] In transfer of accounts transactions, the "surrender and transfer" and subrogation of the FSLIC are accomplished through application of the general common law doctrine of equitable subrogation.[5]

Pursuant to the doctrine of equitable subrogation, the FSLIC is entitled to exercise the rights of depositors with respect to their insured accounts after making available transferred accounts. Subrogation is a remedy which has been available in courts of equity at least since the seventeenth century.[6] The doctrine is explained as follows in the Restatement of the Law of Restitution:

> Where property of one person is used in discharging an obligation owed by another or a lien upon the property of another, under such circumstances that the other would be unjustly enriched by the retention of the benefit thus conferred, the former is entitled to be subrogated to the position of the obligee or lien-holder.

Restatement of the Law of Restitution section 162 (1937); *see id.*, comment (a).[7]

It is clear from the Restatement that the underlying justification and purpose for subrogation, as with most forms of restitution, is to prevent unjust enrichment:

> The reason for subrogation when a surety pays a debt is that this prevents unjust enrichment of the principal. Once this is recognized, subrogation should always be available when and to the extent that it serves to prevent unjust enrichment.

1 G. Palmer, Law of Restitution § 3.6(b) (1978).[8]

Equity's interest in preventing unjust enrichment is, therefore, the basis for the FSLIC's right of equitable subrogation. In this regard, the FSLIC's rights are like those of any insurer:

> [T]he equitable right of subrogation as the legal effect of payment [of insurance] inures to the insurer *without any formal assignment* or any express stipulation to that effect in the [insurance] policy. Consequently, the refusal of the insured to make an assignment to the insurer of a cause of action against a wrongdoer through whose negligent act a loss occurred is no defense to an action by the insurer, even in the absence of an express convenant by the insured to assign.

44 Am. Jur. 2d *Insurance* section 1794 (1982) (emphasis added).

The foregoing principles dictate that the FSLIC, upon making available transferred accounts pursuant to section 405(b) of the NHA, is equitably subrogated to the rights of depositors regarding their insured accounts in the closed institution regardless of whether formal assignments have been made. Since the FSLIC, in fulfillment of its statutory mandate, has discharged the closed association's obligations to depositors with respect to their insured accounts, subrogation of the FSLIC to the rights of depositors in connection with such insured accounts is necessary in order to prevent unjust enrichment of such depositors. Thus, the "surrender and transfer" required by section 406(b)(2) of the NHA occurs by virtue of equitable subrogation.[9]

C. Assignment or Pledge of the FSLIC's Claim as Subrogee

Having become subrogated to the insured accounts of depositors pursuant to section 406(b)(2) and common law equitable subrogation, the FSLIC has claims against receiverships for the amount of such insured accounts. These claims, like other assets of the FSLIC, can be assigned or pledged pursuant to the implicit authority of section 402(d) of the NHA, 12 U.S.C. 1725(d). Section 402(d) of the NHA authorizes the FSLIC to borrow "for the purposes of this subchapter" (i.e., title IV of the NHA)[10] and directs that loans to the FSLIC from the Federal Home Loan Banks "shall be adequately secured, as determined by the Board."[11] Since there is no express authority for the FSLIC to provide security for loans anywhere in the NHA or in any other statute, section 402(d) must be viewed as implicitly authorizing the FSLIC to provide security—i.e., to assign or pledge its assets as collateral. Otherwise, the language in section 402(d) regarding adequate security is rendered meaningless or nugatory. Well-settled principles of statutory construction dictate that an interpretation which would leave a statute meaningless or nugatory should be avoided if possible: "[T]he courts start with the assumption that the legislature intended to enact an effective law."[12]

In addition to NHA section 402(d), separate and independent authority for the FSLIC to assign or pledge assets stems from its authority to provide financial assistance pursuant to NHA section 406(f), 12 U.S.C. 1729(f) (1982). Section 406(f) expressly authorizes the FSLIC, "in its sole discretion and upon such terms and conditions as [it] may prescribe," to make loans or contributions to, and to assume the liabilities of, persons or entities meeting the statutory prerequisites for such assistance, provided such assistance is not more expensive than liquidation. 12 U.S.C. 1729(f)(1), 1729(f)(2)(A), 1729(f)(4)(A) (1982). This authority is the basis for FSLIC guarantees of advances. Like a FSLIC guarantee, an assignment or pledge of FSLIC assets in essence constitutes a loan or contribution to, or a contingent assumption of the liabilities of, the person or entity involved.

D. Procedural Rule

Based on the foregoing analysis and authority, the Board hereby issues the following procedural regulation applicable to FSLIC receiverships (i.e., receiverships for associations chartered by the Board or state-chartered institutions insured by the FSLIC for which the FSLIC has been appointed as receiver). The regulation consists of five paragraphs, (a), (b), (c), (d), and (e).

Paragraph (a) states that the regulation is applicable to the FSLIC as Receiver for any insured institution.

Paragraph (b) provides that, when the FSLIC makes payment of an insured account or deposit to the account holder or depositor, the transfer of the claim of the account holder or depositor against the insured institution to the FSLIC—and the FSLIC's subrogation to such claim—shall be noted on the Receiver's books to the extent of the insurance paid.

Paragraph (c) provides that, in the event insurance is paid by making available a transferred account in another insured institution or by payment through an agent, the effective date of the transfer of the account holder's or depositor's claim to the FSLIC and the FSLIC's subrogation to such claim which the Receiver shall note on its books shall be the effective date on which such account is transferred to such other institution or agent by contracts or other actions of the FSLIC.

Paragraph (d) provides for notation by the Receiver of transfers—by assignment, pledge, conveyance or otherwise—of claims to which the FSLIC has been subrogated, whether such transfers are made by the FSLIC or by subsequent holders of record of interests in such claims. Clause (i) of paragraph (d) provides that the Receiver shall note any such transfers on its books as of the date of such transfer immediately upon notification by a holder of record of an interest in such claim. Clause (ii) of paragraph (d) provides that no further action or notice by the transferee is necessary to make the transfer effective. Clause (iii) of paragraph (d) provides that transferees shall acquire their interests free and clear of competing claims, liens, defenses, rights or interests of any party (including those of judgement or lien creditors of the

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[1] A further revision was made in 1982, which extended these powers to appointments under the Garn-St German Depository Institutions Act of 1982, Pub. L. No. 97-320, section 122(f) 96 Stat. 1469, 1482 (1982).

[2] Section 5(a) of the HOLA provides in part that the Board "is authorized under such rules and regulations as it may prescribe to provide for the organization, incorporation, examination, operation, and regulation of associations to be known as federal savings and loan association, or federal savings banks."

[3] *See, e.g.*, 79 Cong. Rec. 3184 (March 7, 1935) [Statement of Rep. Franklin W. Hancock, Jr. (D-N.C.)]; and *Home Owners' Loan and National Housing Act: Hearings on S. 1771 and H.R. 6021 Before the Senate Subcommittee of the Committee on Banking and Currency*, 74th Cong., 1st Sess. 34 (1935) [statement of I. Friedlander (President, U.S. Building and Loan League)].

[4] Depositors whose accounts are partially uninsured are required to execute formal assignments of their insured accounts.

[5] Equitable subrogation, also known as "legal" subrogation, is distinguished from "conventional" subrogation. The former arises by operation of law and, unlike the latter, does not depend on contract or agreement. 73 Am. Jur. 2d *Subrogation* § 8 (1974). At least one federal court has confirmed that the FSLIC's right of subrogation is derived from common law as well as from statutory sources. *See Federal Savings and Loan Insurance Corporation v. Heidrick*, No. HM 86-77 (D.Md. Jan. 7, 1986) (LEXIS, Genfed library, Dist. file).

[6] 1 G. Palmer, Law of Restitution § 1.5(b) (1978). *See Ford v. Stobridge*, 21 Eng. Rep. 760 (Ch. 1682); *Morgan v. Seymour*, 21 Eng. Rep. 525 (Ch. 1637).

[7] *See also* 73 Am. Jur. 2d *Subrogation* § 5 (1974); 4 J. Pomeroy, Equity Jurisprudence §§ 1211-12 (5th ed. 1941).

[8] "As now applied, [the doctrine of subrogation] is broad enough to include every instance in which one person, not acting as a mere volunteer or intruder, pays a debt for which another is primarily liable, and which in equity and good conscience should have been discharged by the latter.

The doctrine of subrogation embraces all cases where, without it, complete justice cannot be done. Bottomed on this premise, there is, it has been said, no limit to the circumstances that may arise in which the doctrine may be applied."

73 Am. Jur. 2d *Subrogation* section 6 (1974).

[9] It should be noted that, as discussed in the supplementary information accompanying the proposed regulations for conservators and receivers published at 50 FR 48970 (November 27, 1985), the receiver has substantial equity powers. Moreover, as a fiduciary the receiver is obligated to employ the foregoing equitable principles.

[10] Section 402(i) of the NHA, 12 U.S.C. 1725(i) (1982), allows the FSLIC to borrow from the Treasury an amount not exceeding an aggregate of $750,000,000 outstanding at any one time and prohibits the FSLIC from exercising its borrowing power under section 402(d) for the purpose of borrowing from any source other than the Federal Home Loan Banks.

[11] This clause was added to section 402(d) by section 125(a) of the Garn-St Germain Depository Institutions Act of 1982, Pub. L. No. 97-320, § 125(a), 96 Stat. 1469, 1485 (1982). The legislative history of this amendment, which is permanent legislation, does not offer any indication of the Congressional intent underlying the clause. However, the Board has issued a statement of policy concerning Federal Home Loan Bank loans to the FSLIC which provides that "[s]uch loans may be secured or unsecured, as determined by the Board." 12 CFR 531.2(b)(1) (1987).

[12] 73 Am. Jur. 2d *Statutes* § 249 (1974).

receiver), or any transferee of such party, unless such competing claims, liens, defenses, rights or interests are recorded in the books of the Receiver.

Finally, paragraph (e) provides that, upon written request by any purported holder of an interest in a claim to which the FSLIC has been subrogated, the Receiver shall inform such holder whether such interest is recorded in the Receiver's books and whether it is subject to any competing claims or interests recorded in the Receiver's books.

This regulation, effective upon adoption by the Board, is being issued without the notice and comment procedures of the Administrative Procedure Act, as amended ("APA"). Pursuant to 5 U.S.C. 553(b)(3)(A), 553(d) (1982), and in accordance with the Board's regulations published at 12 CFR 508.11 and 504.14 non-substantive procedural rules are not subject either to the notice and comment or delayed effective date requirements of the APA. Moreover, even if the notice and comment and delayed effective date requirements were applicable to this regulation, the Board finds good cause for not complying with these requirements, pursuant to 5 U.S.C. 553(b)(3)(B), 553(d)(3) (1982). Due to the instability of a significant number of insured institutions, immediate implementation of this regulation is necessary in order for the FSLIC to carry out its statutory responsibilities.

Regulatory Flexibility Analysis

Pursuant to Section 3 of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 1165 (1980), the Board is providing the following regulatory flexibility analysis.

1. *Reasons, objectives, and legal basis underlying the rule.* These elements are incorporated above in the supplementary information regarding the rule.

2. *Small institutions to which the rule would apply.* The rule would apply to all institutions the accounts of which are insured by the FSLIC and for which the FSLIC has been appointed receiver as well as to all associations chartered by the Board.

3. *Impact of the rule on small institutions.* The rule will affect equally all institutions to which it applies and will not have a disproportionate impact on small institutions.

4. *Overlapping or conflicting federal rules.* There are no known federal rules that may duplicate, overlap or conflict with this rule.

5. *Alternatives to the rule.* There are no alternatives to the rule that would have less impact on small institutions.

List of Subjects in 12 CFR Part 569c

Savings and loan associations.

Accordingly, the Board hereby amends Part 569c, Subchapter D, Chapter V of Title 12, *Code of Federal Regulations*, as set forth below.

PART 569c—RECEIVERSHIP RULES

1. The authority citation for Part 569c continues to read as follows:

Authority: Section 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402, 406, 48 Stat. 1256, 1259, as amended (12 U.S.C. 1725, 1729); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1943–1948 Comp., p. 1071.

2. Section 569c.7–1 is added to read as follows:

§ 569c.7–1 Subrogation of the Corporation and Assignment of Claim.

(a) The provisions of this § 569c.7–1 apply to the Corporation as receiver for any insured institution.

(b) When the Corporation makes payment of an insured account or deposit in an insured institution, to the account holder or depositor (either hereinafter referred to as "depositor"), the transfer of the depositor's claim against the insured institution to the Corporation and the subrogation of the Corporation to such claim shall be noted on the books of the receiver to the extent of the insurance paid.

(c) In the event the Corporation makes payment of an insured account or deposit in an insured institution by making available to a depositor a transferred account in another insured institution or by payment through an agent, the effective date of the transfer of the depositor's claim to the Corporation and the subrogation of the Corporation which the receiver shall note on its books shall be the effective date on which such account is transferred to such other institution or payment through the agent pursuant to the actions of, or contracts entered into by, the Corporation.

(d) In the event that the Corporation transfers, by assignment or pledge, a depositor's claim to which it has been subrogated, or in the event that a subsequent holder of record of an interest in such claim makes such a transfer of its interest:

(1) The receiver shall immediately enter such transfer into its books as of the date of such transfer upon notice by any such holder of record of an interest in such claim;

(2) Such transfer shall be effective without further action or notice by the transferee; and

(3) The transferee shall acquire its interest free and clear of any claim, lien, defense, right, or interest of any party, including a judgment or lien creditor of the receiver, or any transferee of such party, unless such claim, lien, defense, right, or interest has been previously recorded in the books of the receiver.

(e) Upon written request from any purported holder of an interest in a depositor's claim to which the Corporation has been subrogated, the receiver shall promptly inform the holder whether that holder's interest in such claim is recorded in the books of the receiver and whether such interest is subject to any other competing claims or interests recorded in the books of the receiver.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–3061 Filed 2–6–89; 12:56 pm]

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12 CFR Part 525

[No. 89–110]

Collateral for Bank Advances

Date: February 6, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") is amending its regulations concerning Federal Home Loan Bank ("Bank") advances to specify that eligible collateral for Bank advances includes claims of the Federal Savings and Loan Insurance Corporation ("FSLIC") against receiverships, which the FSLIC acquired by subrogation or otherwise, and assignments or pledges of such claims.

EFFECTIVE DATE: February 6, 1989.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Hayes, Deputy General Counsel, (202) 377–6428, or Richard B. Foley, Attorney, Office of General Counsel, (202) 377–7393, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: Section 352 of the Garn-St Germain Depository Institutions Act of 1982, Pub. L. No. 97–320, 96 Stat. 1469, 1507 (1982) ("DIA"), eliminated restrictions on eligible collateral for Bank advances contained in section 10(a) of the Federal Home Loan Bank Act ("Act"), 12 U.S.C. 1430(a) (1982), and authorized each Bank "to make secured advances to its members upon such security as the Board may prescribe." In amending section 10(a) of the Act, the Congress expressed a clear intent to "give the Bank Board authority to prescribe what should constitute acceptable security." S. Rep. No. 536, 97th Cong., 2d Sess. 59 (1982).

In order to implement section 10(a) of the Act, as amended by the DIA, the board adopted regulations, published at 49 FR 34197 (August 29, 1984) and codified at 12 CFR Part 525, which provide that eligible collateral for Bank advances shall consist of the following types of property: (1) Fully-disbursed, whole first mortgages on improved residential property; (2) U.S. Government and Agency securities; (3) deposits of a Bank; or (4) other property acceptable to the Bank, as long as the Bank can readily ascertain its value and can perfect a security interest in it. The regulations also provide that the Banks shall determine the value of collateral for Bank advances and allow the Banks to take action at any time to perfect their security interest in such collateral.

The Board is now amending Part 525 to specify that eligible collateral for Bank advances includes claims of the FSLIC against receiverships, which the FSLIC acquired by subrogation or otherwise, and assignments or pledges of such claims. The new provision will replace the current § 525.7(b)(4), which will be redesignated as § 525.7(b)(5). In amending Part 525 as described, the Board is exercising its express authority under section 10(a) of the Act, as amended by the DIA, to prescribe the types of security upon which Banks can make advances to member institutions.

The amendment provides an additional source of liquidity for member institutions by enabling Banks to accept as eligible collateral for advances assignments or pledges of the FSLIC's claims against receiverships as subroges of depositors to whom it has paid insurance of accounts pursuant to section 406(b) of the National Housing Act, as amended ("NHA"), 12 U.S.C. 1728(b) (1982). The FSLIC in its corporate capacity becomes subrogated to the claims of such depositors against receiverships by virtue of section 406(b)(2) of the NHA and the common law principle of equitable subrogation. Regulations being adopted by the Board contemporaneously with this regulation, to be codified at 12 CFR 578.1 and 569c.7–1, respectively, state that the FSLIC in its corporate capacity has the authority to assign or pledge its claims against receiverships as subroges of depositors, and provide for the recognition of such assignments or pledges by the FSLIC as receiver.

This regulation, effective upon adoption by the Board, is being issued without the notice and comment procedures of the Administrative Procedure Act, as amended ("APA"). The Board finds that good cause exists for finding that these procedures, as well as the APA's requirement of a thirty-day delay of the effective date, are unnecessary and inapplicable with respect to this regulation, pursuant to 5 U.S.C. 553(b)(B) and 553(d)(1) (1982), and 12 CFR 508.11 and 508.14 of the Board's regulations because it further relieves regulatory restrictions concerning eligible collateral for Bank advances.

Regulatory Flexibility Analysis: Pursuant to section 3 of the Regulatory Flexibility Act, Pub. L. No. 96–354, 94 Stat. 1164, 1165 (1980), the Board is providing the following regulatory flexibility analysis.

1. Reasons, objectives, and legal basis underlying the rule. These elements are incorporated above in the supplementary information regarding the rule.

2. Small institutions to which the rule would apply. The rule applies to Banks and member institutions.

3. Impact of the rule on small institutions. The rule will affect all member institutions equally and will not have a disproportionate impact on small institutions.

4. Overlapping or conflicting federal rules. There are no known federal rules which may duplicate, overlap or conflict with this rule.

5. Alternatives to the rule. There are no alternatives to this rule which would have less impact on small institutions.

List of Subjects in 12 CFR Part 525

Credit, Federal home loan banks, Government securities.

Accordingly, the Board hereby amends Part 525, Subchapter B, Chapter V of Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

PART 525—ADVANCES

1. The authority citation for Part 525 continues to read as follows:

Authority: Sec. 10, 47 Stat. 731, as amended (12 U.S.C. 1430); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); Reorg. Plan No. 3 of 1947; 12 FR 4981, 3 CFR 1943–1948 Comp., p. 1071.

2. Amend § 525.7 by amending paragraph (b)(3) by removing the word "or" after the semicolon, redesignating paragraph (b)(4) as paragraph (b)(5), and by adding a new paragraph (b)(4), as follows:

§ 525.7 Collateral securing advances.

* * * * *

(b) * * *

(4) Claims of the Federal Savings and Loan Insurance Corporation ("Corporation") against a receivership, which the Corporation acquired by subrogation or otherwise, and assignments or pledges of such claims; or

* * * * *

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–3062 Filed 2–6–89; 12:56 pm]

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WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
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3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Regulation H; Docket No. R-0636]

Membership of State Banking Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System is amending Regulation H, 12 CFR Part 208. The purpose of the amendment is to make available to the public information regarding the financial condition of state member banks and U.S. branches and agencies of foreign banks. The amendment requires state member banks to make available to shareholders and any member of the public, upon request, information regarding each such bank's financial condition in the form of the bank's two most recent year-end Reports of Condition and Income ("Call Reports") (OMB No. 7100-0036). As alternatives to furnishing the Call Reports, at each bank's option, persons requesting such information may be given one of the following: (1) Specified schedules from the two most recent year-end Call Reports; (2) in the case of a bank required to file statements and reports pursuant to Regulation H, a copy of the bank's annual report to shareholders for meetings at which directors are elected; (3) copies of independently audited financial statements (accompanied by a copy of the certificate or report of the independent accountant) if they contain information comparable to that presented in the two most recent year-end Call Report schedules specified for alternative (1) above; or (4) in the case of a state member bank that is the only bank subsidiary of a bank holding company, that is majority owned by that bank holding company, and that has assets equal to 95 percent or more of the bank holding company's consolidated total assets; (A) A copy of the annual report of the one-bank holding company prepared in conformity with the regulations of the Securities and Exchange Commission ("SEC"); or (B) if the holding company has assets of $150 million or more, copies of those portions of the bank holding company's two most recent year-end Form FR-Y-9C, "Consolidated Financial Statements for Bank Holding Companies with Total Consolidated Assets of $150 Million or More, or With More Than One Subsidiary Bank" (OMB No. 7100-0128), that are comparable to the Call Report schedules specified for alternative (1) above.

The amendment also requires state licensed agencies of foreign banks and state licensed branches of such banks that are not insured by the Federal Deposit Insurance Corporation to make available, upon request, the following schedules from the two most recent year-end Reports of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks ("Foreign Branch and Agency Call Reports") (OMB No. 7100-0032): Schedules RAL (Assets and Liabilities), E (Deposit Liabilities and Credit Balances), and P (Other Borrowed Money).

DATE: This amendment shall be effective April 1, 1989.

FOR FURTHER INFORMATION CONTACT: For further information, contact Stephen L. Siciliano, Special Assistant to the General Counsel for Administrative Law, Legal Division (202/452-3920), Frederick M. Struble, Associate Director, Division of Banking Supervision and Regulation (202/452-3794), Rhoger H. Pugh, Manager, Policy Development Section, Division of Banking Supervision and Regulation (202/728-5883), Peggy S. Scarborough, Financial Analyst, Division of Banking Supervision and Regulation (202/452-2538) or Elizabeth Thede, Attorney, Legal Division (202/452-3274); or for the hearing impaired *only*: Telecommunication Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The amendment to Regulation H requires state member banks to make available annually, upon request, specified financial information to shareholders and members of the public.

The Federal Deposit Insurance Corporation ("FDIC"), on December 17, 1987, adopted a final regulation requiring state-chartered banks that are not members of the Federal Reserve System to prepare annual disclosure statements that are to be made available to the public upon request. The Office of the Comptroller of the Currency adopted a final regulation similar to the FDIC's but applicable to national banks on February 10, 1988. The regulations of both agencies also apply to U.S. branches and agencies of foreign banks that are regulated by those agencies.

This amendment to Regulation H requires a state member bank to make available its most recent year-end Call Report together with its Call Report for the prior year end. Alternatively, a state member bank may fulfill the disclosure requirement of the amendment by making available: (1) Certain specified schedules from its two most recent year-end Call Reports; (2) in the case of a bank required to file statements and reports pursuant to Regulation H, a copy of the bank's annual report to shareholders for meetings at which directors are elected; (3) copies of independently audited financial statements (accompanied by a copy of the certificate or report of the independent accountant) if they contain information comparable to that presented in the two most recent year-end Call Report schedules specified for alternative (1) above; or (4) in the case of a state member bank that is the only bank subsidiary of a bank holding company, that is majority owned by that bank holding company, and that has assets equal to 95 percent or more of the bank holding company's consolidated total assets, the bank holding company's annual reports filed with the SEC or, if the holding company has assets of $150 million or more, certain information from its two most recent year-end consolidated financial statements filed with the Board pursuant to Regulation Y.

The amendment also requires state licensed agencies of foreign banks and state licensed branches of such banks that are not insured by the FDIC to make available, upon request, Schedules RAL (Assets and Liabilities), E (Deposit Liabilities and Credit Balances), and P

(Other Borrowed Money) from their two most recent year-end Foreign Branch and Agency Call Reports.

State member banks and Board-regulated U.S. branches and agencies of foreign banks must inform persons receiving information pursuant to the amendment that the Federal Reserve System is not responsible for the accuracy or completeness of such information. The Board notes, however, that state member banks are required to prepare the Call Reports by 12 U.S.C. 324 and § 208.10 of Regulation H (12 CFR 208.10), that U.S. branches and agencies of foreign banks are subject to the reporting requirements of 12 U.S.C. 3105(b), and that the filing of false reports with an agency of the United States is a federal crime (18 U.S.C. 1001, 1005). The content and accuracy of reports to shareholders and of audited financial statements are adequately addressed by other federal and state laws.

The purpose of the amendment is to make available to the public information regarding the financial condition of state member banks and U.S. branches and agencies of foreign banks. The information made available pursuant to this amendment will most likely be of particular interest to shareholders and to persons doing business with such institutions. The amendment addresses only the disclosure to the public of the documents identified in § 208.17 (d) and (e). The amendment does not address the disclosure obligations of banks and bank holding companies under federal and state securities laws. The amendment is not intended to affect the legal rights of shareholders and other persons under state and federal laws or contractual obligations between banks and other persons. The amendment is also not intended to create a private right of action against any institution disclosing documents pursuant to this provision, and the Board has added a provision to the proposed amendment to this effect.

On May 27, 1988 (53 FR 19308), the Board issued for comment the proposed amendment to Regulation H. In response to this request for comments, the Board received 26 public comments from interested individuals and organizations. The comments the Board received on the proposed amendment were largely unfavorable. Many commentators focused on the cost of such additional regulation, especially to small banks. The commentators argued that even if the amendment is not in itself prohibitively expensive to small banks, the amendment, when coupled with those requirements already in effect or being implemented, would create a heavy burden on small banks. Commentators stated that the cost of compliance will put affected banks at a competitive disadvantage relative to other financial institutions. One trade association contended that financial disclosures will not benefit depositors since depositors know that their deposits are FDIC-insured and that, in any case, regulators do not allow large banks to fail. Disclosure of troubled finances of small banks could, however, heighten concerns of depositors whose deposits are not completely insured.

The Board does not believe that increased public access to this information will have such ill effects. The information required to be disclosed under the amendment is information that is presently prepared by banks and that is publicly available and routinely disclosed upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Board's regulations implementing that Act. The amendment simply increases the ease with which the public can access the information. Instead of having to locate the relevant bank regulator and ascertain the appropriate means of filing a request for information, the public will be able to go directly to the bank for the information.

The Board also believes that commentators' concerns about the burden that this amendment will impose, particularly on small banks, are unfounded. The Board has structured the amendment to facilitate the disclosure of information that is properly in the public domain in a manner that imposes the least possible burden on state member banks and other covered institutions. Covered institutions would not be required to prepare new reports, but only to make available upon request reports or other financial information that they already prepare. State member banks presently are required to publish the balance sheet portion of their Call Reports pursuant to § 208.10 of Regulation H.

Several commentators recommended that banks be allowed to pass reproduction costs on to requestors of the information. The final rule clarifies the Board's position on whether banks may charge a copying fee by requiring banks to provide one free copy to each requestor of the document the bank has chosen to disclose. The Board believes that providing a free copy best comports with the underlying principle behind the amendment, which is to provide easy access to financial information about banks. The Board does not believe that the assumption of this cost will be too onerous a burden for banks. Limiting the number of free copies the bank must provide to one free copy per requestor ensures that no requestor can abuse this requirement by submitting requests for multiple copies. Should the reproduction cost prove unexpectedly burdensome on banks, the Board would be amenable to reconsidering its position on copying fees.

The amendment also requires banks and other covered institutions to notify shareholders and the public of the availability of these reports. In the case of shareholders, the amendment specifies that notification be made in the form of a written announcement that may be included with the notice of the annual shareholders' meeting. In the case of the public, the amendment does not specify the means to be used to provide notification, but only requires that the means be "reasonable." Several commentors asserted that the cost of mailing notices to the general public may be very high and urged that the proposed amendment be revised to indicate that banks can comply with the requirement by making the required information available on bank premises. It is the Board's intent to be flexible on the means a bank may choose to satisfy this notification requirement. For example, if a bank views mailing notices to all members of the community as too costly, the bank may post a notification in its lobby. If a bank finds that it has too great a proliferation of lobby notifications already, it may satisfy the requirement by passing out brochures, by leaving brochures at a convenient place in the lobby, by publication in a newspaper of general circulation, or by other means. In sum, the Board will view as reasonable any means that transmits to the public, particularly the public that does business with the institution, that such information is available. The final rule has been modified to provide that the notification to the public, as well as the notification to shareholders, must state that one copy of the information is available free of charge upon request.

Several commentators also expressed concern about the proposed requirement that banks provide the information "as soon as it becomes available." One trade association indicated that this language might force banks to release information before having a chance to prepare it for public release. The trade association also stated that, by requiring banks to choose which report to release on the basis of which report was available first, this language might effectively preclude the choice the amendment provides banks about which form of information to release. Finally, the trade association argued that banks should be permitted to mail a disclosure statement within a reasonable time period after the information is requested to enable banks to utilize central distribution centers.

The final rule has been modified to address these concerns. The final rule makes it clear that a bank need not determine which information to release on the basis of which information is available first. A bank can release any document satisfying one of the amendment's options, so long as the bank releases the document as soon as is reasonably possible but not later than April 1. The Board intends the April 1 cut-off date to strike a balance between ensuring that banks are reasonably able to select among the disclosure options provided in the amendment and ensuring that the public obtains reasonably current information regarding the bank's condition. Nothing in the final rule prevents banks from utilizing central distribution centers.

One commentator stated that banks should be able to disclose additional materials along with the materials the amendment requires. The Board notes that the amendment identifies specific information that covered institutions must disclose. The Board has no objection to disclosure of additional information so long as the information helps the public to understand the information that the bank or other covered institution is required to disclose, and does not mislead the public as to the financial condition of the institution. A bank could, for example, include a narrative statement describing the disclosed items. A bank could also provide quarterly disclosures along with the annual disclosures required by this amendment. In addition, a state licensed agency of a foreign bank could provide information on the financial condition of the foreign bank.

In response to a suggestion from a commentator, the Board's final rule exempts bankers' banks from the general public disclosure requirements on the grounds that such requirements are unnecessary in light of the unique purpose and function of bankers' banks. Congress has recognized the unique character of bankers' banks by exempting them from the Community Reinvestment Act's disclosure requirements. The final rule continues to require bankers' banks to comply with the shareholder disclosure requirements.

One trade association suggested that the amendment carry a two-year sunset provision to ensure that the Board will reevaluate the proposal. The Board regards a sunset provision as unnecessary. The Board can reexamine the amendment at any time, and interested members of the public can petition for reexamination at any time.

List of Subjects in 12 CFR Part 208

Membership, Banks, Accounting, Confidential business information, Federal Reserve System, Reporting and recordkeeping requirements, Securities, Disclosures of financial information.

For the reasons set out in this notice, and pursuant to the Board's Authority under section 11 of the Federal Reserve Act of 1913, as amended (12 U.S.C. 248), and section 7 of the International Banking Act of 1978 (12 U.S.C. 3105(b)), the Board amends 12 CFR Part 208 as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM

1. The authority citation for Part 208 continues to read as follows:

Authority: Sections 9, 11, and 21 of the Federal Reserve Act (12 U.S.C. 321–338, 248, and 486, respectively); sections 4 and 13(j) of the Federal Deposit Insurance Act (12 U.S.C. 1814 and 1823(j), respectively); section 7(a) of the International Banking Act of 1978 (12 U.S.C. 3105); sections 907–910 of the International Lending Supervision Act of 1983 (12 U.S.C. 3906–3909); sections 2, 12(b), 12(g), 12(i), 15B(c)(5), 17, 17A, and 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78b, 78/(b), 78/(g), 78/(i), 780–4(c)(5), 78q, 78q–1, and 78w, respectively); and section 5155 of the Revised Statutes (12 U.S.C. 36) as amended by the McFadden Act of 1927.

2. Section 208.17 is added to read as follows:

§ 208.17 Disclosure of financial information by state member banks.

(a) *Purpose and scope.* The purpose of this section is to facilitate the dissemination of publicly available information regarding the financial condition of state member banks, state licensed agencies of foreign banks, and state licensed branches of foreign banks that are not insured by the Federal Deposit Insurance Corporation. This section requires all state-chartered banks that are members of the Federal Reserve System and all other covered institutions:

(1) To make year-end Call Reports or Reports of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks or, in the case of state member banks, other alternative financial information, available to shareholders, customers, and the general public upon request; and

(2) To advise shareholders and the public of the availability of this information.

This section does not amend or modify the publication requirements of § 208.10, or any other section of this regulation.

(b) *Definitions.* For purposes of this section, the following definitions apply:

(1) "Call Report" means the Consolidated Reports of Condition and Income (OMB No. 7100–0036) filed pursuant to 12 U.S.C. 324 and § 208.10 of this regulation (12 CFR 208.10).

(2) "State member bank" means a bank that is chartered by a State and is a member of the Federal Reserve System.

(3) "Other covered institutions" means state licensed agencies of foreign banks, or state licensed branches of foreign banks that are not insured by the Federal Deposit Insurance Corporation.

(c) *Availability of financial information—*(1) *Shareholders.* Each state member bank shall advise its shareholders, by a written announcement, which may be included in the notice of the annual shareholders' meeting, that one copy of certain financial information is available free of charge upon request. The announcement shall include, at a minimum, an address or telephone number to which requests may be directed.

(2) *General public.* State member banks and other covered institutions shall use reasonable means at their disposal to advise the public of the availability of information pursuant to this section. Bankers' banks, as defined by the Federal Reserve Act, as amended by the Monetary Control Act of 1980 (Title I of Pub. L. 96–221), and 12 CFR 204.121, are exempt from this requirement. The notification to the public shall state that one copy of the information is available free of charge upon request and state an address or telephone number to which requests may be directed.

(d) *Financial information to be provided by state member banks.* The bank shall have discretion to determine which type of information, identified in this subsection, to release. The bank shall make the information it chooses to release available as soon as is reasonably possible but not later than April 1 of the year immediately following the end of the year to which the most recently available information pertains. State member banks shall fulfill the requirements of this section by providing, upon request, at least one free copy to each requestor of the following information:

(1) Copies of their entire Call Report for the most recent year end and the prior year end, excluding any information for which confidential

treatment is permitted pursuant to the Call Report instructions; or

(2) Copies of only the following schedules from their Call Reports for the most recent year end and the prior year end, excluding any information for which confidential treatment is permitted pursuant to the Call Report instructions:

(i) Schedule RC (Balance Sheet);
(ii) Schedule RC–N (Past Due and Nonaccrual Loans and Leases);
(iii) Schedule RI (Income Statement);
(iv) Schedule RI–A (Changes in Equity Capital); and
(v) Schedule RI–B (Charge-offs and Recoveries and Changes in Allowance for Loan and Lease Losses)—Part I may be omitted; or

(3) In the case of a bank required to file statements and reports pursuant to the Board's Regulation H, a copy of the bank's annual report to shareholders for meetings at which directors are to be elected or the bank's annual report; or

(4) In the case of a bank with independently audited financial statements, copies of the audited financial statements and the certificate or report of the independent accountant if such statements contain information for the two most recent year ends comparable to that specified in subsection (d)(2); or

(5) In the case of a bank that is the only bank subsidiary of a bank holding company, that is majority owned by that bank holding company, and that has assets equal to 95 percent or more of the bank holding company's consolidated total assets, a copy of either:

(i) The annual report of the bank holding company prepared in conformity with the regulations of the Securities and Exchange Commission; or

(ii) If the holding company has consolidated assets of $150 million or more, the sections in the bank holding company's consolidated financial statements for the most recent year end and the prior year end on Form FR–Y–9C ("Consolidated Financial Statements for Bank Holding Companies With Total Consolidated Assets of $150 Million or More, or With More Than One Subsidiary Bank" (OMB No. 7100–0128)) prepared pursuant to the Board's Regulation Y, and comparable to the Call Report schedules enumerated in paragraph (d)(2) of this section.

(e) *Financial information to be provided by other covered institutions.* Other covered institutions shall fulfill the requirements of this section by providing, upon request, at least one free copy to each requestor of the following schedules from the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (OMB No. 7100–0032) for the most recent year end and the prior year end:

(1) Schedule RAL (Assets and Liabilities);
(2) Schedule E (Deposit Liabilities and Credit Balances);
(3) Schedule P (Other Borrowed Money).

The institution shall make the information available as soon as is reasonably possible but not later than April 1 of the year immediately following the end of the year to which the most recently available information pertains.

(f) *Disclaimer.* The following legend shall be included with any financial information provided pursuant to this section: "This financial information has not been reviewed, or confirmed for accuracy or relevancy, by the Federal Reserve System."

(g) This section is not intended to create a private right of action against any institution disclosing documents pursuant to this section.

Board of Governors of the Federal Reserve System.

February 1, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89–2923 Filed 2–7–89; 8:45 am]

BILLING CODE 6210–01–M

FARM CREDIT ADMINISTRATION

12 CFR Part 615

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations

AGENCY: Farm Credit Administration.

ACTION: Final rule; correction.

SUMMARY: The Farm Credit Administration (FCA) is correcting an error that appeared in the final rule which amended the regulation relating to the capitalization of Farm Credit System banks and associations. The final rule appeared in the **Federal Register** on October 13, 1988 (53 FR 40033).

EFFECTIVE DATE: This regulation shall become effective after the expiration of 30 days from publication during which either or both Houses of Congress are in session. Notice of effective date will be published.

FOR FURTHER INFORMATION CONTACT:

William G. Dunn, Chief, Financial Analysis and Standards Division, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, (703) 883–4402

or

Dorothy J. Acosta, Senior Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, (703) 883–4020, TDD 883–4444.

SUPPLEMENTARY INFORMATION: In printing the final rule for publication in the **Federal Register**, an error was inadvertently made.

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

1. On page 40046, third column, second line from the bottom, the word "implement" was incorrectly substituted for the word "impairment." Paragraph (b)(4) of § 615.5230 is correctly revised to read as follows:

Subpart I—Issuance of Equities

§ 615.5230 Implementation of cooperative principles.

* * * * *

(b) * * *

(4) All classes of common stock and participation certificates (except those resulting from a conversion of allocated surplus) must be accorded the same priority with respect to impairment and restoration of impairment and have the same rights and priority upon liquidation.

Dated: February 2, 1989.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 89–2954 Filed 2–7–89; 8:45 am]

BILLING CODE 6705–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88–NM–129–AD; Amdt. 39–6126]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Model 737 series airplanes, which requires inspection of pressure relief panels in the cockpit door for the presence of sealant. The AD also requires removal of the sealant if it is present. This amendment is prompted by the discovery that panels have been erroneously sealed closed in production. The panels are designed to open in the event of a decompression to prevent a buildup of differential pressure between the cockpit and other areas. This condition, if not corrected, could cause an unacceptably high pressure differential to build up and result in structural damage to the airplane in the event of decompression.

EFFECTIVE DATE: March 10, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Gardlin, Airframe Branch, ANM–120S; telephone (206) 431–1932. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires inspection for and, if necessary, removal of sealant on pressure relief panels in the cockpit door of certain Model 737 airplanes, was published in the **Federal Register** on October 13, 1988 (53 FR 40072).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The Air Transport Association (ATA) of America responded on behalf of its members:

The commenter advised that the cost estimate was in error, since only 650 airplanes were considered and the NPRM applies to 1,587 airplanes. The FAA does not concur. The cost estimate is based on the number of affected airplanes of U.S. registry only, even though there are in excess of 1,600 Model 737 airplanes in the worldwide fleet. The preamble now clearly states how costs are determined. Additionally, the cost estimate has been revised to include one additional manhour of labor required to perform testing on certain panels to ensure their proper operation.

Since issuance of the NPRM, Boeing has released Revision 1 to Alert Service Bulletin 737–52A1105, dated September 29, 1988, to include figures and formalize the original issue, which was issued telegraphically. The final rule has been revised to reflect Revision 1 of this service bulletin. Since the changes in Revision 1 are clarifying only, no additional burden is imposed by incorporating the later revision. Airplanes modified in accordance with the revision of the service bulletin dated August 16, 1988, do not require additional work.

The commenter also objected to the inclusion of airplanes prior to line number 1000, since the original issue of Boeing Alert Service Bulletin 737–52A1105 applied only to airplanes line numbers 1000 through 1587. The FAA notes that the service bulletin has since been revised to include all airplanes prior to line number 1588. The AD continues to include airplanes prior to line number 1000, since it cannot be positively determined that the relief panels on those airplanes were not erroneously sealed as well.

The commenter noted that certain operators may have refurbished the cockpit door several times on earlier airplanes and, since the manual instructions to accomplish this refurbishment have not been in error, there is no reason to believe that the possible production error would have been duplicated in the field during refurbishment. The FAA concurs that doors which were delivered with sealant may have been corrected once in service; however, all such doors may not have been corrected, and the potential remains for sealant to be present.

Finally, the commenter objected to the provision in paragraph B. of the NPRM, requiring that the results of the inspection be reported to the FAA. The commenter believed such a reporting requirement is justified only when a rule is considered interim action and further information is required to complete rulemaking. The commenter suggested that the information could be provided informally if needed. The FAA does not concur. When the unsafe condition addressed by AD action appears to be attributed to a manufacturer's quality control (QC) problem, such a reporting requirement is instrumental in ensuring that FAA is able to gather as much information as possible as to the extent and nature of the QC problem or QC breakdown, especially in cases where this information may not be available through other established means. This information is necessary to ensure that proper corrective action is implemented. The final rule, therefore, retains the reporting requirement.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed, with the change noted above.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB Control Number 2120–0056.

There are approximately 1,587 Model 737 series airplanes of the affected design in the worldwide fleet. It is estimated that 650 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $52,000.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because few, if any, Model 737 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR Part 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 737 series airplanes, line number 001 through 1387, certificated in any category. Compliance required within 90 days after the effective date of this AD, unless previously accomplished.

To permit proper functioning of blowout panels in the cockpit door, accomplish the following:

A. Inspect for improper use of adhesive and remove adhesive, if necessary, in accordance with Boeing Alert Service Bulletin 737-52A1108, Revision 1, dated September 29, 1988.

B. Within 10 days after completion of the inspection required by paragraph A., above, submit a report of findings, positive or negative, to the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective March 10, 1989.

Issued in Seattle, Washington, on January 18, 1989.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-2953 Filed 2-7-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 157

[Docket No. RM81-19]

Publication of Project Cost Limits Under Blanket Certificates

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order of the director, OPPR.

SUMMARY: Pursuant to the authority delegated by 18 CFR 375.370(e)(1), the Director of the Office of Pipeline and Producer Regulation computes and publishes the project cost and annual limits specified in Table I of § 157.208(d) and Table II of § 157.215(a) for each calendar year.

EFFECTIVE DATE: January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Martin A. Bunless, Jr., Assistant to Director, Division of Pipeline Certificates, OPPR (202) 357-9030.

Order of the Director, OPPR

Issued: January 31, 1989.

Section 157.208(d) of the Commission's Regulations provides for project cost limits applicable to construction, acquisition, operation and miscellaneous rearrangement of facilities (Table I) authorized under the blanket certificate procedure (Order No. 234, 19 FERC ¶61,216). Section 157.215(a) specified the calendar year dollar limit which may be expended on underground storage testing and development (Table II) authorized under the blanket certificate. Section 157.208(d) requires that the "limits specified in Tables I and II shall be adjusted each calendar year to reflect the 'GNP implicit price deflator' publish by the Department of Commerce for the previous calendar year."

Pursuant § 375.307(a)(1) of the Commission's Regulations, the authority for the publication of such cost limits, as adjusted for inflation, is delegated to the Director of the Office of Pipeline and Producer Regulation. The cost limits for calendar years 1982 through 1989, as published in Table I of § 157.208(d) and Table II of § 157.215(a), are hereby issued.

List of Subjects in 18 CFR Part 157

Natural gas.

Kevin P. Madden,

Director, Office of Pipeline and Producer Regulation.

Accordingly, 18 CFR Part 157 is amended as follows:

PART 157—[AMENDED]

1. The authority citation for Part 157 continues to read as follows:

Authority: Natural Gas Act 15 U.S.C. 717-717w (1982); Department of Energy Organization Act, 42 U.S.C. 7101-7352(1982); E.O. 12009, 3 CFR 142(1978); Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432(1984), unless otherwise noted.

§ 157.208 [Amended]

2. Table I in § 157.208(d) is revised to read as follows:

TABLE I

Year	Limit	
	Auto. proj. cost limit (col. 1)	Prior notice proj. cost limit (col. 2)
1982	$4,200,000	$12,000,000
1983	4,500,000	12,800,000
1984	4,700,000	13,300,000
1985	4,900,000	13,800,000
1986	5,100,000	14,300,000
1987	5,200,000	14,700,000
1988	5,400,000	15,100,000
1989	5,600,000	15,600,000

§ 157.215 [Amended]

3. Table II in § 157.215(a) is revised to read as follows:

TABLE II

Year	Limit
1982	$2,700,000
1983	2,900,000
1984	3,000,000
1985	3,100,000
1986	3,200,000
1987	3,300,000
1988	3,400,000
1989	3,500,000

[FR Doc. 89-3040 Filed 2-7-89; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 133

[Docket No. 84P-0133]

Pasteurized Process Cheese Spread; Amendment of Standard of Identity

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the standards of identity for pasteurized process cheese spread and, by cross-reference, three other cheese spread standards to permit the optional use of nisin. Nisin is an antimicrobial agent which prevents the outgrowth of *Clostridium botulinum* spores and toxin formation in packaged cheese. This action is taken to promote honesty and fair dealing in the interest of consumers by allowing increased flexibility in product formulation.

DATES: Effective April 10, 1989; compliance may begin March 13, 1989; objections and requests for a hearing by March 10, 1989.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Karen L. Carson, Center for Food Safety and Applied Nuturition (HFF-414), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-485-0110.

SUPPLEMENTARY INFORMATION:

I. The Proposal

In the **Federal Register** of April 6, 1988 (53 FR 11312), FDA published a proposal based on a petition from Arthur A. Checchi, Inc., representing Aplin and Barrett, Ltd., of Trowbridge, Wiltshire, England, to amend the standards of identity for pasteurized process cheese spread (21 CFR 133.179) and, by cross-reference, pasteurized cheese spread (21 CFR 133.175), pasteurized cheese spread with fruits, vegetables, or meats (21 CFR 133.178), and pasteurized process cheese spread with fruits, vegetables, or meats (21 CFR 133.180), to provide for the optional use of nisin, an antimicrobial agent, to prevent outgrowth of *C. botulinum* spores and toxin formation in packaged cheese. A final rule affirming the generally recognized as safe (GRAS) status of nisin preparation, the ingredient in which nisin is carried, was also published in the **Federal Register** of April 6, 1988 (53 FR 11247).

Three comments, all in favor of the proposal, were received. All three comments supported the optional use of nisin as an additional safety measure that may permit variations in formulations used for pasteurized cheese spreads and pasteurized process cheese spreads. The comments agreed that the addition of nisin should not be used as a substitute for careful attention to good manufacturing practices.

After considering the comments received, the agency concludes that the proposed amendment is reasonable and that the amendment, as set out below, will promote honesty and fair dealing in the interests of consumers by allowing increased flexibility in product formulation. Accordingly, the agency is amending the standard of identity for pasteurized process cheese spread by adding paragraph (f)(11) to 21 CFR 133.179. By cross-reference to 21 CFR 133.179, the agency is also amending the standards of identity for pasteurized cheese spread (21 CFR 133.175), pasteurized cheese spread with fruits, vegetables, or meats (21 CFR 133.176), and pasteurized process cheese spread with fruits, vegetables, or meats (21 CFR 133.180) to permit the optional use of nisin.

II. Economic Impact

In accordance with the Regulatory Flexibility Act, the agency previously considered the potential effects that this rule would have on small entities, including small businesses. In accordance with section 605(b) of the Regulatory Flexibility Act, the agency has determined that a significant impact on a substantial number of small entities would not derive from this action. FDA has not received any new information or comments that would alter its previous determination.

III. Objections

Any person who will be adversely affected by this regulation may at any time on or before March 10, 1989, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 133

Cheese, Food grades and standards.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 133 is amended as follows:

PART 133—CHEESES AND RELATED CHEESE PRODUCTS

1. The authority citation for 21 CFR Part 133 continues to read as follows:

Authority: Secs. 401, 701(e), 52 Stat. 1046, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e)); 21 CFR 5.10 and 5.61.

2. Section 133.179 is amended by adding paragraph (f)(11) to read as follows:

§ 133.179 Pasteurized process cheese spread.

* * * * *

(f) * * *

(11) Nisin preparation in an amount which results in not more than 250 parts per million nisin in the food.

* * * * *

Dated: February 2, 1989.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-2982 Filed 2-7-89; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 178

[Docket No. 88F-0171]

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of α-butyl-Ω-hydroxypoly (oxyethylene)poly(oxypropylene), minimum molecular weight 1,000, and α-lauroyl-Ω-hydroxypoly(oxyethylene), having a minimum molecular weight of 200, as components of surface lubricants used in the manufacture of metallic articles intended to contact food. This action responds to a petition filed by Reynolds Metals Co.

DATES: Effective February 8, 1989; written objections and requests for a hearing by March 10, 1989.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food an Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of June 20, 1986 (51 FR 22566), FDA announced that a petition (FAP 6B3931) had been filed by Reynolds Metals Co., 2101 Reymet Road, Richmond, VA 23237, proposing that § 178.3910 *Surface lubricants used in the manufacture of metallic articles* (21 CFR 178.3910) be amended to provide for the safe use of α-tridecyl-Ω-hydroxypoly(oxyethylene) phosphate; α-butyl-Ω-hydroxypoly(oxyethylene)poly (oxypropylene) minimum molecular weight 1,000; and α-lauroyl-Ω-hydroxypoly(oxyethylene) in the manufacture of metallic articles intended to contact food.

FDA finds that one of the additives listed in the filing notice a α-tridecyl-Ω-hydroxypoly(oxyethylene) phosphate, is currently regulated under 21 CFR 178.3400 for the use requested in this petition. Therefore, the agency concludes that there is no need to regulate the additive under 21 CFR 178.3910, as requested by the petitioner. The agency also notes that the filing notice did not designate a minimum molecular weight of 200 for α-lauroyl-Ω-hydroxypoly(oxyethylene). This designation is being added in this final rule to better identify this additive.

FDA has reviewed the safety of the two remaining additives and the starting materials used to manufacture these additives, as well as the byproducts associated with the manufacturing process. Although the additives themselves have not been found to cause cancer, they have been found to contain minute amounts of unreacted ethylene oxide and 1,4-dioxane as byproduct impurities which are carried through the reaction process. Ethylene oxide and 1,4-dioxane have been shown to cause cancer in test animals. Residual amounts of reactants and manufacturing aids, such as these chemicals, are commonly found as contaminants in chemical products including food additives.

I. Determination of Safety

Under section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) 21 U.S.C. 348(c)(3)(A)), the so-called "general safety clause" of the statute, a food additive cannot be approved for a particular use unless a fair evaluation of the data establishes that the additive is safe for that use. The concept of safety embodied in the Food Additives Amendment of 1958 is explained in the legislative history of the provision: "Safety requires proof of a reasonable certainty that no harm will result from the proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstances." (H. Rept. 2284, 85th Cong., 2d Sess. 4 (1958).) This definition of safety has been incorporated into FDA's food additive regulations (21 CFR 170.3(i)). The anticancer of Delmey clause of the Food Additives Amendment (section 409(c)(3)(A) of the act) provides further that no food additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal.

In the past, FDA has refused to approve a use of an additive that contained or was suspected of containing even minor amounts of a carcinogenic chemical, even though the additive as a whole had not been shown to cause cancer. The agency now believes, however, that developments in scientific technology and experience with risk assessment procedures make it possible for FDA to establish the safety of additives that contain carcinogenic chemicals but that have not themselves been shown to cause cancer.

In the preamble to the final rule permanently listing D&C Green No. 6, published in the **Federal Register** of April 2, 1982 (47 FR 14138), FDA explained the basis for approving the use of a color additive that had not been shown to cause cancer, even though it contains a carcinogenic constituent. Since that decision, FDA has approved the use of other color additives and food additives on the same basis.

An additive that has not been shown to cause cancer, but that contains carcinogenic impurities may properly be evaluated under the general safety clause of the statute using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive.

The agency's position is supported by *Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984). That case involved a challenge to FDA's decision to approve the use of D&C Green No. 5, which contains a carcinogenic chemical but has itself not been shown to cause cancer. Relying heavily on the reasoning in the agency's decision to list this color additive, the United States Court of Appeals for the Sixth Circuit rejected the challenge to FDA's action and affirmed the listing regulation.

II. Safety of Petitioned Use

The agency estimated the daily intake of the petitioned use of the additives, α-butyl-Ω-hydroxypoly(oxyethylene) poly(oxypropylene), minimum molecular weight 1,000, and α-lauroyl-Ω-hydroxypoly(oxyethylene), minimum molecular weight of 200 (common name—polyethylene glycol-200 monolaurate), on the basis of several factors, including projected migration of the additives under the most severe conditions of use and the probable concentration of the additives in the daily diet from food-contact articles. The agency estimated that the daily intake of the two additives would be 0.18 milligram per person per day and 0.033 milligram per person per day, respectively.

FDA does not ordinarily consider chronic testing to be necessary to determine the safety of an additive whose use will result in such low exposure level (Refs. 1 and 2), and the agency has not required such testing here. However, the agency has reviewed available acute oral toxicity studies on α-lauroyl-Ω-hydroxypoly(oxyethylene) and acute oral toxicity studies and subchronic studies in the rat and dog on α-butyl-Ω-hydroxypoly(oxyethylene)poly (oxyprophylene). No adverse effects were reported in these studies.

Because these two additives have not been shown to cause cancer, the anticancer clause does not apply to them. However, FDA has evaluated the safety of these additives under the general safety clause, considering all available data and using risk assessment procedures to estimate the upper bound limit of risk presented by the carcinogenic chemicals ethylene oxide and 1,4-dioxane that may be present as impurities in the additives. Based on this evaluation, the agency has concluded that the additives are safe under the proposed conditions of use.

The risk assessment procedures that FDA used in this evaluation are similar to the methods that the agency has used to examine the risk associated with the presence of minor carcinogenic impurities in various other food and color additives that contain carcinogenic impurities (e.g., 49 FR 13018, 13019; April 2, 1984). This risk evaluation of the carcinogenic impurities has two aspects: (1) Assessment of the worst-case exposure to the impurities from the proposed use of the additive; and (2) extrapolation of the risk observed in the animal bioassays to the conditions of probable exposure to humans.

A. 1,4-Dioxane

Based on the fraction of the daily diet that may be in contact with surfaces containing the additives, and assuming that 1,4-dioxane is present at the limit of detection in the additives (Ref. 3), FDA estimated the hypothetical worst case exposure to 1,4-dioxane from the use of these two additives to be 2.1 nanograms per person per day. The agency used data from a carcinogenesis bioassay on 1,4-dioxane conducted for the National Cancer Institute (Ref. 4) to estimate the upper bound level of lifetime human risk from the proposed use of the additives. The results of the bioassay on 1,4-dioxane indicated that the material was carcinogenic for female rats under the conditions of the study. The test material caused significantly increased incidence of squamous cell carcinomas and hepatocellular tumors in female rats.

The Center for Food Safety and Applied Nutrition's Cancer Assessment Committee (the committee) reviewed this bioassay and other relevant data available in the literature and concluded that the findings of carcinogenicity were supported by this information on 1,4-dioxane. The committee further concluded that an upper bound level of lifetime risk from potential exposure to 1,4-dioxane stemming from the proposed use of these two additives could be calculated from the bioassay.

The agency used a quantitative risk assessment procedure (linear proportional model) to extrapolate from the dose used in the animal experiment to the very low doses encountered under the proposed conditions of use. This procedure is not likely to underestimate the actual risk from very low doses and may, in fact, exaggerate it because the extrapolation models used are designed to estimate the maximum risk consistent with the data. For this reason, the estimate can be used with confidence to determine to a reasonable certainty whether any harm will result from the proposed conditions and levels of use of the food additives.

Based on a worst case exposure of 2.1 nanograms per person per day, FDA estimates that the upper bound limit of individual lifetime risk from the potential exposure to 1,4-dioxane from the use of these two additives is 8×10^{-11} or less than 1 in 12 billion (Ref. 5). Because of numerous conservatisms in the exposure estimate, lifetime averaged individual exposure to 1,4-dioxane is expected to be substantially less than the estimated daily intake, and, therefore, the calculated upper bound limit of risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from the exposure to 1,4-dioxane that might result from the proposed use of the additive.

B. Ethylene Oxide

Based on the fraction of the daily diet that may be in contact with surfaces containing the additives and assuming that ethylene oxide is present at the limit of detection in the additives (Ref. 3), FDA estimated the hypothetical worst case exposure to ethylene oxide from the use of these two additives to be 1.8 nanograms per person per day. The agency used data from a carcinogenesis bioassay on ethylene oxide conducted by the Institute of Hygiene, University of Mainz, Federal Republic of Germany (Ref. 6) to estimate the upper bound level of lifetime human risk from the proposed use of the additives. The results of the bioassay on ethylene oxide indicated that the material was carcinogenic for female rats under the conditions of the study. The test material caused significantly increased incidence of squamous cell carcinoma of the forestomach and carcinoma in situ of the glandular stomach.

The committee reviewed this bioassay and other relevant data available in the literature and concluded that the findings of carcinogenicity were supported by this information on ethylene oxide. The committee further concluded that an upper bound level of human risk from potential exposure to ethylene oxide stemming from the proposed use of these two additives could be calculated from the bioassay.

Based on a worst case exposure of 1.8 nanograms per person per day, FDA estimates that the upper bound limit of individual lifetime risk from the potential exposure to ethylene oxide from the use of these two additives is 3×10^{-9} or less than 1 in 330 million (Ref. 5). Because of numerous conservatisms in the exposure estimate, lifetime averaged individual exposure to ethylene oxide is expected to be substantially less than the estimated daily intake, and, therefore, the calculated upper bound limit of risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from the exposure to ethylene oxide that might result from the proposed use of these two additives.

C. Need for Specifications

The agency has also considered whether specifications are necessary to control the amount of ethylene oxide and 1,4-dioxane in the additives. The agency finds that specifications are not necessary for the following reasons: (1) Because of the low levels at which ethylene oxide and 1,4-dioxane may be expected to remain as impurities following production of the additives, the agency would not expect these impurities to become components of food at other than extremely small levels; and (2) the upper bound limit of lifetime risk from exposure to these impurities, even under worst case assumptions, is very low, less than 1 in 12 billion for 1,4-dioxane and less than 1 in 330 million for ethylene oxide.

D. Conclusion on Safety

FDA has evaluated the data in the petition and other relevant material and concludes that the proposed use of these additives in lubricants used in the production of metallic articles for food-contact is safe, and that 21 CFR 178.3910(a)(2) should be amended to provide for the safe use of α-Buty1-Ω-hydroxypoly(oxyethylene) poly(oxypropylene) (CAS Reg. No. 9038-95-3) and α-Lauroyl-Ω-hydroxypoly (oxyethylene) (CAS Reg. No. 9004-81-3).

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

III. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Carr, G. M., "Carcinogenicity Testing Programs," *in* "Food Safety: Where Are We?" Committee on Agriculture, Nutrition, and Forestry, United States Senate, p. 59, July 1979.

2. Kokoski, C. J., "Regulatory Food Additive Toxicology," *in* "Chemical Safety Regulation and Compliance," Edited by F. Homburger and J. K. Marquis, S. Karger, New York, NY, pp. 24-33, 1985.

3. Memorandum dated June 4, 1987, from the Food Chemistry Branch to the Indirect Additives Branch.

4. "Bioassay of 1,4-Dioxane for Possible Carcinogenicity," National Cancer Institute, NCI-CG-TR-80, 1978.

5. Memorandum dated September 25, 1986, from the Quantitative Risk Assessment Committee of the Center for Food Safety and Applied Nutrition.

6. Dunkelberg, H., "Carcinogenicity of Ethylene Oxide and 1,2-Propylene Oxide Upon Intragastric Administration to Rats," *British Journal of Cancer*, 46:924, 1982.

IV. Objections

Any person who will be adversely affected by this regulation may at any time on or before March 10, 1989, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Sec. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 178.3910 is amended in paragraph (a)(2) by alphabetically adding two new entries in the table to read as follows:

§ 178.3910 Surface lubricants used in the manufacture of metallic articles.

* * * * *

(a) * * *

(2) * * *

List of substances	Limitations
* * * * *	
α-Butyl-Ω-hydroxypoly (oxyethylene)-poly (oxypropylene) (CAS Reg. No. 9038-95-3) produced by random condensation of a 1:1 mixture by weight of ethylene oxide and propylene oxide with butanol and having a minimum molecular weight of 1,000.	
α-Lauroyl-Ω-hydroxypoly (oxyethylene) (CAS Reg. No. 9004-81-3) having a minimum molecular weight of 200.	
* * * * *	

Dated: February 2, 1989.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-2961 Filed 2-7-89; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 178

[Docket No. 87F-0150]

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of dimethyl succinate polymer with 4-hydroxy-2,2,6,6-tetramethyl-1-piperidineethanol as a stabilizer for olefin polymers and ethylene-vinyl acetate copolymers complying with 21 CFR 177.1520 and 21 CFR 177.1350, respectively. This action is in response to a petition filed by Ciba-Geigy Corp.

DATES: Effective February 8, 1989; written objections and requests for a hearing by March 10, 1989.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of May 20, 1987 (52 FR 18958), FDA announced that a food additive petition (FAP 7B3991) had been filed by Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the safe use of dimethyl succinate polymer with 4-hydroxy-2,2,6,6-tetramethyl-1-piperidineethanol as a stabilizer for olefin polymers and ethylene-vinyl acetate copolymers complying with 21 CFR 177.1520 and 21 CFR 177.1350, respectively.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that the regulations should be amended in 21 CFR 178.2010(b) as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before March 10, 1989 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that

objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 178.2010 is amended in paragraph (b) by revising the entry for "Dimethyl succinate polymer with 4-hydroxy-2,2,6,6-tetramethyl-1-piperidineethanol (CAS Reg. No. 65447-77-0)" in the table under the heading "Limitations" to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
* * * *	
Dimethyl succinate polymer with 4-hydroxy-2,2,6,6-tetramethyl-1-piperidineethanol (CAS Reg. No. 65447-77-0).	For use only: 1. At levels not to exceed 0.3 percent by weight of olefin polymers complying with § 177.1520 of this chapter and under conditions of use B through H described in Table 2 of § 178.170(c) of this chapter. 2. At levels not to exceed 0.3 percent by weight of ethylene-vinyl acetate copolymers complying with § 177.1350 of this chapter and under conditions of use B through H described in Table 2 of § 178.170(c) of this chapter.
* * * *	

Dated: January 27, 1989.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-2927 Filed 2-7-89; 8:45 am]

BILLING CODE 4160-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3513-7; FL-019]

Approval and Promulgation of Implementation Plans; Florida Stack Height Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, EPA is approving revisions to the Florida state implementation plan (SIP) submitted to EPA on July 1, 1988. Florida has revised its SIP to include regulations for good engineering practice stack height. These regulations are equivalent to EPA requirements promulgated at Part 51 of Chapter I, Title 40 of the Code of Federal Regulations.

EFFECTIVE DATE: This action will be effective on April 10, 1989, unless notice is received within 30 days that adverse or critical comments will be submitted.

ADDRESSES: Copies of the materials submitted by Florida may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Air Programs Branch, Environmental Protection Agency, Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365

Bureau of Air Quality Management, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32301

FOR FURTHER INFORMATION CONTACT: Beverly T. Hudson, EPA Region IV, Air Programs Branch, at above listed address, telephone (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 8, 1985 (50 FR 27892), EPA published final regulations to implement section 123 of the Clean Air Act (CAA), which regulates the manner in which dispersion of pollutants from a source may be considered in setting emission limitations. Pursuant to these regulations and the Clean Air Act Amendments of 1977, all states were required to (1) review and revise, as necessary, their state implementation plans (SIPs) to include provisions that limit stack height credit and dispersion techniques in accordance with the revised regulations, and (2) review all existing emission limitations to determine whether these limitations have been affected by stack height credits above GEP or any other dispersion techniques. For any limitations so affected, states were to prepare revised limitations consistent with their revised SIPs. All SIP revisions and revised emission limits were to be submitted to EPA within nine months of promulgation.

Subsequently, EPA issued detailed guidance on carrying out the necessary reviews. For the review of emission limitations, states were to prepare inventories of stacks greater than 65 meters in height and sources with emissions of sulfur dioxide (SO_2) in excess of 5000 tons per year. These limits correspond to the *de minimis* GEP stack height and the *de minimis* SO_2 emission exemption from prohibited dispersion techniques. These sources were then to be subjected to detailed review for conformance with the revised regulations. State submissions were to contain an evaluation of each stack and source in the inventory.

On July 1 and November 19, 1988, the Florida Department of Environmental Regulation submitted SIP revisions for good engineering practice stack height. Since the State formally revised its SIP, public hearings on these stack height rules were held on March 28 and August 20, 1986.

Florida's regulations limit the amount of stack height or dispersion credit (dispersion techniques) a source can claim in the process of establishing its emission limitation. Dispersion techniques include the use of stack heights greater than 65 meters and use of other techniques to increase the dispersion of emissions rather than continuously reducing emissions from a source. These regulations do not limit the physical stack height of any source,

carbon disulfide and ethylene dichloride for fumigation of grain milling equipment, is being revoked as discussed in a related document published elsewhere in this issue of the Federal Register. Also revoked, as discussed in that related document, are the exemptions from the requirement of a tolerance for carbon disulfide, ethylene dichloride and chloroform used to fumigate stored grains.

The Agency invited comments for a period of 60 days after publishing and proposed rule to revoke the exemption from the requirement of a tolerance for CCl_4, and responses were received from the following organizations and trade associations:

1. Grocery Manufacturers of America (GMA),
2. National Food Processors Association (NFPA),
3. Grain Elevator and Processing Society (GEAPS),
4. Terminal Elevator Grains Merchants Association (TEGMA),
5. National Grain and Feed Association (NGFA),
6. American Bakers Association (ABA),
7. Millers' National Federation (MNF).

The comments were unanimously against the proposed removal of the exemption from the requirement of tolerance for CCl_4, and expressed several concerns.

Several of the associations believed that the existence of low levels of CCl_4 residues on grain, in the absence of an exemption from tolerance, in effect a "zero tolerance," could be misconstrued as a public health risk. This misconception could lead State regulators to establish nonuniform action levels and take enforcement action on grain lots containing residues from legal use of the chemical. (The commentors agreed with the Agency that the public health risk is low.) Several of the trade associations noted that data on CCl_4 grain residues had been provided to EPA and that this data should be used to establish a tolerance or action level.

The Agency continues to believe that the establishment of a tolerance or an action level is not warranted because long-term dietary risks from "pipeline" residues remaining in grain-based consumer products are negligible, and these risks will be further diminished in time through normal dissipation since all legal use of the fumigant ended in June 1986 and there is little likelihood of the public misconstruing the negligible health risk involved. The Agency maintains that any State regulatory action is likely to be taken in conjunction with State Health Departments. To ensure that such health personnel were aware of the Agency's proposal, the proposal to revoke the tolerance exemptions for carbon tetrachloride was sent to department of health directors in certain States who are members of the Association of State and Territorial Health Organizations (ASTHO). No comments were received from members who were specifically sent the proposal, or from any other health departments during the formal comment period. State pesticide regulatory officials, who routinely see and comment on Agency proposals, also did not comment on the revocation. Since there has been no expressed concern by the State Health Agencies or other State regulatory officials about the risks of CCl_4 from exposure to treated grain and/or a need for a tolerance level, it is extremely unlikely that States would take enforcement action on grain after the exemption expires.

GMA and other associations have provided CCl_4 residue data which has been useful to the Agency. The data indicate that residues of CCl_4 in or on raw grain treated prior to June 30, 1986, the last day of legal use of the fumigant, ranged from less than 10 ppb to 30 ppm. For intermediate grain products, e.g., flour, the CCl_4 levels ranged from less than 10 ppb to 10 ppm. Ready-to-eat grain products contained CCl_4 residues in the range of less than 10 ppb to 50 ppb. Available residue data on treated grain indicate that CCl_4 residue levels are decreasing with time; however, the Agency does not consider these data adequate to accurately predict the rate of CCl_4 decline in treated grain or to establish tolerance or action levels.

The Federal Grain Inspection Service of USDA has provided the most recent data which showed that during the first quarter of 1988, the maximum residue found in 128 raw grain samples tested was estimated to be 1258 ppb CCl_4; the average concentration was 123 ppb CCl_4. During the third quarter of 1988, the maximum residue found in 90 raw grain samples tested was estimated to be 193 ppb CCl_4; the average concentration was 17 ppb CCl_4. The Agency expects levels to continually decrease in time. As noted previously, the pool of available data are inadequate to establish a tolerance level. If the data were used to establish a tolerance, it would have to be set high enough to cover all possible residues from legally treated grain, and would have to be set at a point much higher than presently existing average residue levels. The Agency does not believe that setting a tolerance or action level at such high levels would be warranted or would be in the best interest of public health protection.

Another major concern of several commentors was the potential economic impact on the grain industry and the effect on the orderly marketing of grain if the Agency finalized its revocation. The Grain Elevator and Processing Society believed that purchasers of grain intended for human consumption would insist on grain being tested for CCl_4 residues and that purchasers would not be willing to buy grain with detectable residues or would do so only at a substantial discount. They also noted that few if any grain-handling companies have the means to rapidly test for CCl_4 residues (a capacity needed to facilitate shipping), and they noted that as much as 50 percent of the 1986 wheat crop had detectable CCl_4 residues. Also, several commentors questioned whether the agreement was legal and binding between EPA and FDA, whereby FDA would not seize grain legally treated on or before June 30, 1986, unless residues posed a public health concern, once exemptions from tolerance requirements were removed. Commentors questioned the meaning of "level of public health concern" as well as how it would be determined that grain had or had not been legally treated.

It is not EPA's intention or desire to create a situation where the distribution and marketing of grain food commodities are disrupted when there is negligible dietary risk in consumer products processed from grain treated with CCl_4. In order for events to develop in the manner suggested by the commentors, i.e., individual States setting their own differing action levels and hence creating a major disruption in grain marketing, States would have to perceive a public health risk situation that demanded regulatory action. As noted earlier, the Agency does not believe that this is likely. With regard to the concern about the legality and the enforceability of the FDA agreement, the Agency has no reason to believe that FDA would not exercise its enforcement discretion in the manner specified.

The Agency is, however, sensitive to the concerns of the grain industry and wishes to avoid an unnecessary negative impact on the industry while at the same time ensuring that CCl_4 fumigant levels continue their present rate of decline and eventual dissipation. Therefore, EPA believes it prudent to delay the removal of the exemption from the requirement for a tolerance for CCl_4. The Agency will amend 40 CFR 180.1005 to expire on July 31, 1990, 4 years after the last legal application of the fumigant.

BEST COPY AVAILABLE

or the actual use of dispersion techniques at a source, nor do they require any specific stack height for any source. Instead, they set limits on the maximum credit for stack height and other dispersion techniques to be used in ambient air modeling for the purpose of setting an emission limitation and calculating the air quality impact of a source. Sources are modeled at their actual physical stack height unless that height exceeds their GEP stack height. The regulations apply to all stacks not in existence on December 31, 1970, and all dispersion techniques implemented since December 31, 1970. The regulations apply to both new and existing sources, thereby satisfying requirements for state new source review regulations at 40 CFR 51.164 (old § 51.18(1)).

Florida has adopted definitions corresponding to EPA's GEP regulations. The State's regulations define a number of specific terms, including "emission limitation," "excessive concentration," "dispersion techniques" and "nearby." However, the definition of "emission limitation" does not include the phrase "established by the Administrator." Inclusion of this phrase in a State rule is not necessary.

In the case of an EPA emission limitation, not adopted by the Department, no clarification is necessary because the state would not be relying on such limitations. Florida's revision brings their existing regulation into conformance with the federal stack height rule, therefore we will approve the State's Regulations.

Final Action

EPA has reviewed the submittal and found it to be in conformance with EPA's stack height requirements. Therefore, EPA is today approving Florida's regulations on stack height.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial issue and anticipates no adverse comments. This action will be effective 60 days from the date of this Federal Register notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective April 10, 1989.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 10, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Incorporation by reference.

Note: Incorporation by reference of the Florida State Implementation Plan was approved by the Director of the Federal Register on July 1, 1982.

Dated: January 27, 1989.

John A. Moore,
Acting Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart K—Florida

2. Section 52.520 is amended by adding paragraph (c)(60) to read as follows:

§ 52.520 Identification of plan.

* * * * *

(c) * * *

(60) Stack height regulations were submitted on July 1 and November 19, 1986, by the Florida Department of Environmental Regulation.

(i) Incorporation by reference.

(A) Revised FAC 17–2.100(177), added FAC 17–2.500(5)(h)6., and added FAC 17–2.510(4)(f), adopted on May 8, 1986.

(B) Revised FAC 17–2.100(61) and revised FAC 17–2.270, adopted on September 30, 1986.

(ii) Other material—none.

[FR Doc. 89-3419 Filed 2-7-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[OPP–300159A; FRL 3515–3]

Carbon Tetrachloride; Amendment to the Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule amends the exemption from the requirement of a tolerance for residues of carbon tetrachloride use on certain grains as a post-harvest fumigant by establishing an expiration date of July 31, 1990.

DATES: Effective on February 8, 1989. This exemption will expire on July 31, 1990.

ADDRESS: Written objections may be submitted to the: Hearing Clerk, Environmental Protection Agency, Room 3708 (A–110), 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Laszlo J. Madaras, Special Review and Reregistration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Office location and telephone number: Room 1006, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703–557–5778).

SUPPLEMENTARY INFORMATION: The residues resulting from use of carbon tetrachloride (CCl_4) as a post-harvest fumigant have been exempted, until now, from the requirement of a tolerance for the following grains: barley, corn, oats, popcorn, rice, rye, sorghum (milo), and wheat (§ 180.1005). This exemption was established in 1956 based on available toxicology studies and the conclusion that the 5 to 10 parts per million (ppm) residue levels which resulted in the consumed food did not have any toxicological significance.

EPA issued a proposed rule [OPP–300159], published in the Federal Register of October 14, 1987 (52 FR 38202), which proposed to remove the exemption from the requirement of a tolerance for residues of carbon tetrachloride in these grains because the registrations for all products used as fumigants for stored grain or for grain-milling equipment containing this chemical had been cancelled. The use of CCl_4 as a fumigant for stored grain has been prohibited since June 30, 1986. The use of CCl_4 as a fumigant for grain-milling equipment is covered by a food additive regulation. The food additive regulation for CCl_4, as well as that for

There is no expectation that during the time that the tolerance exemptions continue until July 31, 1990, the presence of declining levels of CCl_4 would pose a risk to the public health. EPA does not feel that the removal of CCl_4 tolerance exemptions more than 4 years after last legal application will have any significant economic impact since detectable levels are continually declining, and according to the representatives of the grain industry, the outer limit of grain storage is 5 years.

Any person adversely affected by this regulation amending 40 CFR 180.1005 should file written objections with the Hearing Clerk at the address given above within 30 days after the date of publication of this regulation in the **Federal Register**. Such objections must be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

Executive Order 12291

Under Executive Order 12291, the Agency must determine whether a regulatory action is "Major" and, therefore, subject to the requirements of a Regulatory Impact Analysis. The Agency has determined that this regulatory action is not a major regulatory action, i.e., it will not have an annual effect on the economy of at least $100 million, will not cause a major increase in prices, and will not have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises.

This rule has been reviewed by the Office of Management and Budget as required by section 3 of Executive Order 12291.

Regulatory Flexibility Act

This rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354; 94 Stat. 1165, 5 U.S.C. 601 *et seq.*), and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations. The revocation of the exemption from the requirement of a tolerance after July 31, 1990, would potentially affect firms in the grain-milling and bakery products industries as well as grain farmers. Products found to contain CCl_4 may be subject to enforcement action after this date. However, since FDA has agreed not to take enforcement action unless residue levels are at a level of public health concern or residues resulted from treatment after June 30, 1986, it is expected that little or no economic impact would occur when the tolerance exemption is revoked.

Accordingly, I certify that this regulatory action does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 31, 1989.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.1005 is revised to read as follows:

§ 180.1005 Carbon tetrachloride; exemption from the requirement of a tolerance.

The insecticide carbon tetrachloride is exempted from the requirement of a tolerance for residues, when used as a fumigant after harvest, for the following grains: Barley, corn, oats, popcorn, rice, rye, sorghum (milo), and wheat. This exemption will expire on July 31, 1990.

[FR Doc. 89–2965 Filed 2–7–89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 8E3620/R996; FRL 3515–5]

Pesticide Tolerance for 3-(3,5-Dichlorophenyl)-5-Ethenyl-5-Methyl-2,4-Oxazolidinedione

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for the combined residues of the fungicide 3-(3,5-dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione (hereafter referred to in the preamble as "vinclozolin") and its metabolites containing the 3,5-dichloroaniline moiety in or on the raw agricultural commodity Belgian endive tops (chicory tops) at 5 parts per million (ppm). BASF Wyandotte Corp. petitioned for this tolerance.

EFFECTIVE DATE: February 8, 1989.

ADDRESS: Written objections, identified by the document control number [PP 8E3620/R996], may be submitted to: Public Docket and Freedom of Information Section, Environmental Protection Agency, Rm. 3706, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail:

Lawrence J. Schnaubelt, Acting Product Manager (PM) 21, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460

Office location and telephone number: RM. 227 CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1900.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of October 20, 1988 (53 FR 41209), in which it was announced that BASF Wyandotte Corp., Agricultural Chemical Division, 110 Cherry Hill Rd., Parsippany, NJ 07454, had submitted pesticide petition 8E3620 to EPA proposing the establishment of a tolerance for the combined residues of the fungicide vinclozolin and its metabolites in or on the raw agricultural commodity Belgian endive tops (chicory tops) at 5.0 parts per million.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and all other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 6, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.380(a) is amended by adding and alphabetically inserting the entry for the raw agricultural commodity Belgian endive tops, to read as follows:

§ 180.380 3-(3,5-Dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione; tolerances for residues.

(a) * * *

Commodities	Parts per million
Belgian endive, tops	5.0

[FR Doc. 89–2967 Filed 2–7–89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 180 and 185

[OPP–300155A, 300156A, and 300158A; FRL 3515–3]

Carbon Disulfide, Carbon Tetrachloride and Ethylene Dichloride; Revocation of Food Additive Regulations Carbon Disulfide, Ethylene Dichloride, and Chloroform; Removal of Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule removes certain food additive regulations for carbon disulfide, carbon tetrachloride, and ethylene dichloride. The rule also removes the exemption from the requirement of a tolerance for the pesticide chemicals carbon disulfide, ethylene dichloride and chloroform. This EPA-initiated regulatory action removes the food additive regulations and exemptions for which related pesticide uses have been cancelled.

DATE: Effective on February 8, 1989.

ADDRESS: Written objections may be submitted to the: Hearing Clerk, Environmental Protection Agency, Room 3708 (A–110), 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail:

Laszlo J. Madaras, Special Review and Reregistration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Rm. 1006, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–5778).

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 14, 1987, EPA issued four proposed rules: OPP–300155 (52 FR 38198), OPP–300156 (52 FR 38199), OPP–300158 (52 FR 38200), and OPP–300159 (52 FR 38202) to remove the food additive regulations for the chemicals carbon disulfide, carbon tetrachloride, and ethylene dichloride, and the exemption from the requirement of a tolerance for residues of the chemicals carbon disulfide, ethylene dichloride and chloroform on grains and grain-milling equipment since the registration for products used as fumigants containing these chemicals had been cancelled. The proposed removal of the exemption from the requirement of tolerance for the pesticide chemicals carbon disulfide (40 CFR 180.1004), ethylene dichloride (40 CFR 180.1007), and chloroform (40 CFR 180.1009) is found in OPP–300155; the removal of exemptions from the requirement of tolerance for the pesticide chemical carbon tetrachloride (40 CFR 180.1005) is found in OPP–300159; the proposed removal of food additive regulations for carbon disulfide and ethylene dichloride in 21 CFR Part 193 for fumigation of grain-mill machinery and processed grains used in the production of fermented malt beverages is found in OPP–300156; and removal of food additive regulations for carbon tetrachloride in 21 CFR Part 193 for fumigation of grain-mill machinery and processed grains in the production of fermented malt beverages is found in OPP–300158.

Food additive regulations in 21 CFR Part 193 have been redesignated into 40 CFR Part 185 by a recodification document published in the **Federal Register** of June 29, 1988 (53 FR 24666). Therefore, several of the rules have been combined. The Agency is publishing two rules: one final rule, found elsewhere in this issue of the **Federal Register**, which amends the exemption for the requirement for a tolerance for carbon tetrachloride, and this final rule, which combines all other proposed revocations mentioned above.

No comments were received in response to the proposed revocations of the food additive regulations for carbon tetrachloride, carbon disulfide, and ethylene dichloride. Therefore, based on the information discussed in detail in the cited **Federal Register** documents and lack of public comments, the Agency is removing the food additive regulations in 40 CFR 185.3475(a) for use of carbon disulfide, carbon tetrachloride and ethylene dichloride as fumigants for grain-mill machinery.

The only comment on the proposed revocation of the exemption from tolerance for carbon disulfide, ethylene dichloride and chloroform was submitted by the Grocery Manufacturers of America (GMA), who agreed with the Agency's proposal. The GMA as well as several other food processing and grain handling organizations opposed the proposed revocation of the exemption for a tolerance for carbon tetrachloride. These comments are addressed in a related final rule document [OPP–300159A], published elsewhere in this issue of the **Federal Register**.

Therefore, the Agency is removing the exemption from the requirement of a tolerance for carbon disulfide (40 CFR 180.1004), ethylene dichloride (40 CFR 180.1007), and chloroform (40 CFR 180.1009) for residues on barley, corn, oats, popcorn, rice, rye, sorghum (milo), and wheat resulting from the use of these pesticides as fumigants for grain stored in bulk, since the registrations of all products containing these chemicals in treated grain have been cancelled.

Residue data currently available to the Agency indicate that carbon disulfide, ethylene dichloride and chloroform are not particularly persistent in the environment and these chemicals had not been used to fumigate grain in the several years prior to June 30, 1986, when use was prohibited. EPA does not anticipate significant residues resulting from the last allowable treatment of grain stocks, on or before June 30, 1986.

Any person adversely affected by these regulations should file written objections with the Hearing Clerk at the address given above within 30 days after the date of publication of this regulation in the **Federal Register**. Such objections must be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must

state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

In order to satisfy requirements for analysis as specified by Executive Order 12291 and the Regulatory Flexibility Act, the Agency has analyzed the costs and benefits of the revocation of the exemptions from tolerances for these chemicals.

Executive Order 12291

Under Executive Order 12291, the Agency must determine whether a regulatory action is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. The Agency has determined that this regulatory action is not a major regulatory action, i.e., it will not have an annual effect on the economy of at least $100 million, will not cause a major increase in prices, and will not have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises.

This rule has been reviewed by the Office of Management and Budget as required by section 3 of Executive Order 12291.

Regulatory Flexibility Act

This rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354; 94 Stat. 1165, 5 U.S.C. 601 *et seq.*) and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations. The removal of exemptions from tolerances would potentially affect firms in the grain-milling and bakery products industries as well as grain farmers.

Accordingly, it is certified that these regulations do not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

List of Subjects in 40 CFR Part 180

Administrative practice and procedures, Agricultural commodities, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 31, 1989.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

PART 180—[AMENDED]

1. In Part 180:

a. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

§ 180.1004 [Removed]

b. By removing § 180.1004 *Carbon disulfide; exemption from the requirement of a tolerance.*

§ 180.1007 [Removed]

c. By removing § 180.1007 *Ethylene dichloride; exemption from the requirement of a tolerance.*

§ 180.1009 [Removed]

d. By removing § 180.1009 *Chloroform; exemption from the requirement of a tolerance.*

PART 185—[AMENDED]

2. In Part 185:

a. The authority citation for Part 185 continues to read as follows:

Authority: 21 U.S.C. 348.

b. In § 185.3475, paragraph (a) is revised to read as follows:

§ 185.3475 Fumigants for grain-mill machinery.

* * * * *

(a) The fumigant consists of methyl bromide.

* * * * *

c. In § 185.3480, paragraphs (a) and (b) are revised to read as follows:

§ 185.3480 Fumigants for processed grains used in production of fermented malt beverages.

* * * * *

(a) Methyl bromide. Total residues of inorganic bromides (calculated as Br) from the use of this fumigant shall not exceed 125 parts per million.

(b) Methyl bromide is used to fumigate corn grits and cracked rice in the production of fermented malt beverages.

* * * * *

[FR Doc. 89–2966 Filed 2–7–89; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Parts 180, 185, and 186

[PP 7F3476 and FAP 7H5524/R1006; FRL 3515–4]

Pesticide Tolerances For Myclobutanil

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: These rules establish tolerances for residues of the fungicide myclobutanil in or on certain raw agricultural commodities, food additives, and feed additives. These regulations, to establish maximum permissible levels of residues of myclobutanil in or on the commodities, food additives, and feed additives, were requested in petitions submitted by Rohm and Haas Co.

EFFECTIVE DATE: January 26, 1989.

ADDRESS: Written objections, identified by the document control number [PP 7F3476 and FAP 7H5524/R1006], may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Room M–3708, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

Lawrence J. Schnaubelt, Acting Product Manager (PM) 21, Registration Division (TS–767C), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Office location and telephone number: Room 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–1900

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of December 30, 1988 (53 FR 53019), which announced that Rohm and Haas Co. of Independence Mall West, Philadelphia, PA 19105, submitted pesticide petition (PP) 7F3476 and food additive petition (FAP) 7H5524 to EPA proposing the establishment of tolerances for the fungicide myclobutanil [alpha-butyl-alpha-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile] and its metabolites containing both the chlorophenyl and triazole rings in or on the following: Apples (whole fruit) at 0.5 part per million (ppm), wet apple pomace at 1.0 ppm, and dry apple pomace at 5.0 ppm; grapes (whole fruit) at 1.0 ppm, wet grape pomace at 2.0 ppm, dry grape pomace at 10.0 ppm, raisins at 10.0 ppm, and raisin waste at 25 ppm; milk at 0.1 ppm; meat and meat by-products (mbyp) (except liver) at 0.04 ppm; liver of cattle, goats, hogs, horses, and sheep at 0.5 ppm; and eggs at 0.04 ppm.

Subsequently, Rohm and Haas amended the petitions by: Reducing the tolerance for eggs to 0.02 ppm; and the tolerance for liver of cattle, goats, hogs, horses, and sheep to 0.3 ppm; and milk to 0.05 ppm; proposing increases in the tolerances for meat and meat by-products (except liver) to 0.05 ppm; amending the tolerance expression of meat and meat by-products (except liver) to include fat and to specify cattle, goats, hogs, horses, and sheep; combining the tolerances for residues in apple pomace (wet and dry) at 5.0 ppm and grape pomace (wet and dry) at 10.0 ppm; proposing a tolerance for meat, fat, and meat by-products of poultry at 0.02 ppm; and by amending the tolerance expressions to specify the metabolite(s)

to be regulated in the raw and processed commodities.

Former Parts 193 and 561 of Title 21 of the Code of Federal Regulations, in which FAP 7H5524 proposed regulations, have been recodified into 40 CFR Parts 185 and 186, respectively, by a document published in the **Federal Register** of June 29, 1988 (53 FR 24666).

There were no comments received in response to the proposed rule.

The data submitted in support of the petitions and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Parts 180, 185, and 186

Administrative practice and procedures, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 26, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

PART 180—[AMENDED]

1. In Part 180:

a. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

b. New § 180.443 is added, to read as follows:

§ 180.443 Myclobutanil; tolerances for residues.

(a) Tolerances are established for the combined residues of the fungicide myclobutanil [alpha-butyl-alpha-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile] and its metabolite alpha-(3-hydroxybutyl)-alpha-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile (free and bound) in or on:

Commodity	Parts per million
Apples	0.5
Grapes	1.0

(b) Tolerances are established for the combined residues of the fungicide myclobutanil [alpha-butyl-alpha-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile and its metabolites, alpha-(3-hydroxybutyl)-alpha-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile] (free and bound) and alpha-(4-chlorophenyl)-alpha-(3,4 dihydroxybutyl)-1*H*-1,2,4-triazole-1-propanenitrile, in:

Commodity	Parts per million
Milk	0.05

(c) Tolerances are established for the combined residues of the fungicide myclobutanil [alpha-butyl-alpha-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile] and its metabolite alpha-(3-hydroxybutyl)-alpha-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile (free) in:

Commodity	Parts per million
Cattle, fat	0.05
Cattle, liver	0.3
Cattle, meat	0.05
Cattle, mbyp	0.05
Eggs	0.02
Goats, fat	0.05
Goats, liver	0.3
Goats, meat	0.05
Goats, mbyp	0.05
Hogs, fat	0.05
Hogs, liver	0.3
Hogs, meat	0.05
Hogs, mbyp	0.05
Horses, fat	0.05
Horses, liver	0.3
Horses, meat	0.05
Horses, mbyp	0.05
Poultry, fat	0.02
Poultry, meat	0.02
Poultry, mbyp	0.02
Sheep, fat	0.05
Sheep, liver	0.3
Sheep, meat	0.05
Sheep, mbyp	0.05

PART 185—[AMENDED]

2. In Part 185:

a. The authority citation for Part 185 continues to read as follows:

Authority: 21 U.S.C. 348.

b. By revising § 185.4350, to delete the existing temporary food additive tolerance on raisins and replace it with a regulation as follows:

§ 185.4350 Myclobutanil.

Tolerances are established for combined residues of the fungicide myclobutanil [alpha-butyl-alpha-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile] and its metabolite alpha-(3-hydroxybutyl)-alpha-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile (free and bound) in or on the following food additive commodity:

Commodity	Parts per million
Raisins	10.0

PART 186—[AMENDED]

3. In Part 186:

a. The authority citation for Part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b. By revising § 186.4350, to delete the existing temporary feed additive tolerances on apple pomace, grape pomace, and raisin waste and replace them with a regulation, to read as follows:

§ 186.4350 Myclobutanil.

Tolerances are established for combined residues of the fungicide myclobutanil [alpha-butyl-alpha-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile] and its metabolite alpha-(3-hydroxybutyl)-alpha-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile (free and bound) in or on the following feed additive commodities:

Commodities	Parts per million
Apple pomace (wet and dry)	5.0
Grape pomace (wet and dry)	10.0
Raisin waste	25.0

[FR Doc. 89–2968 Filed 2–7–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-616; RM-6075]

Radio Broadcasting Services; Emporia, KS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 258A to Emporia, Kansas, in response to a petition filed by Emporia Broadcasting. There is a site restriction 6 kilometers (3.7 miles) southwest of the community. The coordinates for Channel 258A are 38–22–09 and 96–13–54. The Notice proposed allotment of Channel 241A to Emporia, but to prevent foreclosure of possible expanded service in Derby, Kansas, a staff study determined that Channel 258A was available for use at Emporia, providing a third service to the community. With this action, this proceeding is terminated.

DATES: Effective March 20, 1989. The window period for filing applications will open on March 21, 1989, and close on April 20, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–616, adopted January 18, 1989, and released February 2, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended under Kansas by adding Channel 258A at Emporia.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–2933 Filed 2–7–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 88–283; RM–6260]

Radio Broadcasting Services; Port Gibson, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 263A to Port Gibson, Mississippi, as that community's first FM broadcast service, in response to a petition filed by Evan Doss, Jr. The coordinates for Channel 263A are 31–57–30 and 90–59–00. With this action, this proceeding is terminated.

DATES: Effective March 20, 1989. The window period for filing applications will open on March 21, 1989, and close on April 20, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–283, adopted January 18, 1989 and released February 2, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments under Mississippi is amended by adding Channel 263A at Port Gibson.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–2934 Filed 2–7–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 88–311; RM–6230]

Radio Broadcasting Services; Richton, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 243A to Richton, Mississippi, in response to a petition filed by Richton Broadcasting Company. The allotment could provide Richton with its first FM broadcast service. The coordinates for Channel 243A at Richton are 31–16–12 and 88–56–18. With this action, this proceeding is terminated.

DATES: Effective March 20, 1989. The window period for filing applications will open on March 21, 1989, and close on April 20, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–311, adopted December 21, 1988, and released February 1, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended under Mississippi, by adding Richton, Channel 243A.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–2935 Filed 2–7–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 88–452; RM–6312]

Radio Broadcasting Services; Garapan, Saipan

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Inter-Island Communications, Inc., substitutes Channel 280C2 for Channel 230A at Garapan, Saipan, and modifies its license for Station KZMI(FM) to specify operation on the higher powered channel. Channel 280C2 can be allotted to Garapan, Saipan, in compliance with the Commission's minimum distance separation requirements. The coordinates for this allotment are North Latitude 15–12–28 and East Longitude 145–43–30. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 20, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–452, adopted December 21, 1988, and released February 1, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Garapan, Saipan, is revised by removing Channel 230A and adding Channel 280C2.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–2936 Filed 2–7–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 88–197; RM–6297]

Radio Broadcasting Services; Crockett, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 224C2 for Channel 224A at Crockett, Texas, and modifies the license of Station KIVY–FM to specify operation on the higher class co-channel, at the request of James H. Gibbs, d/b/a Pioneer Broadcasting. Action taken herein could provide a second wide coverage area FM service at Crockett. The upgraded facilities can be constructed at the current transmitter site of Station KIVY–FM consistent with the Commission's minimum distance separation requirements. The coordinates are 31–18–20 and 95–27–06. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 20, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–197, adopted December 21, 1988, and released February 1, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Texas, by removing Channel 224A and adding Channel 224C2 at Crockett.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–2937 Filed 2–7–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 88–258; RM–6298]

Radio Broadcasting Services; Jasper, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 274C2 for Channel 272A at Jasper, Texas, and modifies the license of Station KWYX(FM) to specify operation on the higher class channel, at the request of KTXJ Radio, Inc. Action taken herein could provide a second wide coverage area FM service at Jasper. A site restriction of 23.7 kilometers (14.7 miles) north of the community is required at coordinates 31–07–54 and 93–56–28. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 20, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–258, adopted January 18, 1989, and released February 2, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Texas, by

removing Channel 272A and adding Channel 274C2 at Jasper.

Steve Kaminer,
Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-2936 Filed 2-7-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-177; RM-6164]

Radio Broadcasting Services; Ellensburg, WA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 237C2 for Channel 237A at Ellensburg, Washington, and modifies the license of Station KXLE-FM to specify operation on the higher class co-channel, at the request of KXLE, Inc. The community could receive its second wide coverage area FM service. The station's current transmitter site can be used for the channel change, at coordinates 47-00-00 and 120-31-40. Canadian government has concurred in the allotment. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 20, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-177, adopted January 18, 1989, and released February 2, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Washington, by removing Channel 237A and adding Channel 237C2 at Ellensburg.

Steve Kaminer,
Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-2939 Filed 2-7-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-24; RM-6092]

Radio Broadcasting Services; West Pasco or Pasco, WA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 267A to Pasco, Washington, as that community's second local FM service, at the request of West Pasco Fine Arts Radio. A site restriction of 2.4 kilometers (1.5 miles) west of the community is required at coordinates 46-13-41 and 119-07-32. Canadian concurrence has been received. The allotment has been made to Pasco instead of West Pasco, since insufficient evidence was presented to conclude the community status of West Pasco for allotment purposes. With this action, this proceeding is terminated.

DATES: Effective March 30, 1989. The window period for filing applications will open on March 21, 1989, and close on April 20, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-24, adopted December 21, 1988, and released February 1, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 US..C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Washington, by adding Channel 267A at Pasco.

Steve Kaminer,
Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-2940 Filed 2-7-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 81131-9019]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure; request for comments.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the shares of the total allowable catch (TAC) for sablefish that will be allocated in part of the Bering Sea for the 1989 fishing year are needed as bycatch amounts to support other directed fisheries for groundfish in the Bering Sea by all gear types during the 1989 fishing year. The Secretary of Commerce, therefore, is prohibiting directed fishing for sablefish in part of the Bering Sea using all gear types during the 1989 fishing year. This action is necessary to prevent wastage of sablefish that would otherwise occur if sablefish quotas were reached prematurely. This action is intended to carry out objectives contained in the fishery management plan used for managing groundfish resources in the Bering Sea and Aleutian Islands.

DATES: Effective February 3, 1989. Comments are invited until February 21, 1989.

ADDRESS: Comments should be addressed to Steven Pennoyer, Director, Alaska Region (Regional Director), National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802-1668.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Management Biologist, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION: This notice addresses the need to close the directed sablefish fishery by all gear types in the Bering Sea Subarea within the Bering Sea and Aleutians Islands management area. Regulations pertaining to management of the Bering Sea Subarea are at 50 CFR Part 675. These regulations implement the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area.

Sablefish are caught in directed fisheries, and are also caught incidentally while fishing for other groundfish species. Amounts of incidental catches of sablefish must be considered when managing total allowable catches (TACs) available in 1989. The Secretary is establishing TACs for each of the target groundfish species, including sablefish, after having counsulted with the North Pacific Fishery Management Council (Council). The Council met during December 5-9, 1988 and adopted TACs for each of the target species, and is recommending that the Secretary implement these for the 1989 fishing year, which begins January 1. For sablefish, the Council recommended a TAC for the Bering Sea Subarea of 2,380 mt.

All the amounts currently allocated to all gear types in the Bering Sea Subarea are expected to be caught as bycatch while fishing for other groundfish species. The Secretary of Commerce, therefore, is closing the Bering Sea Subarea to all directed fishing for sablefish, effective January 1, 1989.

Under § 675.20(a)(7) of regulations governing the Bering Sea and Aleutian Islands Area groundfish fishery, when the Regional Director determines that the amount of TAC of any large species or of the "other species" category remaining during the fishing year is necessary for bycatch in the fisheries for other groundfish species during the remainder of the fishing year, the Secretary will publish as a notice in the **Federal Register** prohibiting directed fishing for that species or the "other species" category for the remainder of the fishing year. Since sablefish bycatches would be retainable, wastage is reduced.

Trawl vessels as well as other gear types conducted directed fisheries for sablefish in the Bering Sea Subarea in 1988. The Secretary closed the directed sablefish fishery in Bering Sea Subarea on June 11, 1988 (53 FR 22328, June 15, 1988). Further catches were required to be discarded at sea.

The Regional Director finds that directed fishing by vessels using all gear types in Bering Sea Subarea of the Bering Sea and Aleutian Islands management unit would be likely to occur early in the 1989 fishing year. The Regional Director's findings are based on two facts. First, the price paid to fishermen for sablefish in 1988 averaged about $1.70 per pound, and will likely be this much in 1989, which will continue to attract significant effort early in the year. Second, the Council adopted a management policy at its December 1988 meeting which rejects the current access system in the sablefish fishery. The Council intends to develop an alternative management system which would rationalize future participation in the sablefish fishery. Additional numbers of fishermen are likely to participate in the 1989 sablefish fishery to gain possible future rights.

Absent this closure, available amounts of sablefish would be caught early, and force the Secretary to declare sablefish a prohibited species. Additional catches could not be retained, resulting in their being discarded at sea which would be a waste of a commercially valuable resource. Under § 675.20(a)(7), the Secretary is prohibiting directed fishing for sablefish, defined at § 675.2, in the Bering Subarea of the Bering Sea and Aleutian Islands management area during the 1989 fishing year.

Public comments on this notice of closure may be submitted to the Regional Director at the address above until February 21, 1989.

Classification

This action is taken under § 675.20 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and Recordkeeping requirements.

Dated: February 3, 1989.

Richard H. Schaefer,
Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-2989 Filed 2-3-89; 4:34 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 25
Wednesday, February 8, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. AO-85-83; FV-88-102]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Recommended Decision on Proposed Amendment of Marketing Agreement and Order No. 905

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and opportunity to file exceptions.

SUMMARY: This recommended decision invites written exceptions regarding proposed amendments to Marketing Agreement and Order 905, covering Florida oranges, grapefruit, tangerines, and tangelos. The amendments would: (1) Classify Canada and Mexico as export markets rather than domestic markets as they are now; (2) define the Interior District and the Indian River District in the marketing order; (3) authorize changing the eligibility requirements for grower members on the Citrus Administrative Committee; (4) authorize the committee to borrow money to fund committee operations in emergency situations; and (5) provide for the conduct of periodic referenda on continuance of the order every six years. The proposed amendments are designed to improve the administration and functioning of the marketing order.

DATE: Written exceptions must be filed by March 10, 1989.

ADDRESS: Written exceptions should be filed with the Hearing Clerk, United States Department of Agriculture, Room 1079, South Building, Washington, DC 20250. Four copies of all written exceptions should be submitted, and they will be made available for public inspection during regular business hours.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone: 202-475-3918, or John R. Toth, Officer-in-Charge, Southeast Marketing Field Office, Florida Citrus Building, 600 3rd Street NW., P.O. Box 2276, Winter Haven, Florida 33883-2276, telephone: 813-299-4770. Copies of this decision may be obtained from either of the above named individuals.

SUPPLEMENTARY INFORMATION: Prior Document in this Proceeding: Notice of hearing issued January 7, 1988, and published in the **Federal Register** (53 FR 898, January 14, 1988).

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291 and Departmental Regulation 1512-1.

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to the proposed amendments of Marketing Agreement and Order No. 905 (order), as amended (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida.

This notice of filing of the recommended decision and of opportunity to file exceptions thereto is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act, and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and orders (7 CFR Part 900).

This proposed amendment of the order is based on the record of a public hearing held in Lakeland, Florida on February 17, 1988. The amendment proposals considered at the hearing were submitted by the Citrus Administrative Committee, hereinafter referred to as the committee, established under the order. The United States Department of Agriculture (Department) proposed that it be authorized to make any necessary conforming changes.

Small Business Considerations

In accordance with the provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Administrator of the Agricultural Marketing Service has determined that this action would not have a significant economic impact on a substantial number of small entities. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000. Small agricultural service firms, which include shippers under this order, are defined as those firms with gross annual receipts of less than $3,500,000.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Interested persons were invited in the notice of hearing to present evidence on the probable regulatory and informational impact of the proposed changes on small businesses. Witnesses who presented testimony on this subject were generally of the opinion that the proposed amendments would benefit such businesses. Marketing orders issued pursuant to the Act and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both the RFA and the Act are compatible with respect to small entities.

During the 1986-87 season, about 100 shippers of Florida oranges, grapefruit, tangerines, and tangelos were subject to regulation under the order. In addition, there are about 13,000 orange, grapefruit, tangerine, and tangelo producers in Florida. A minority of these shippers and a majority of the producers may be classified as small entities.

The proposed amendments to the marketing order include classifying Canada and Mexico as export markets rather than domestic markets as currently provided. Such a change is expected to result in expanded Florida citrus sales by permitting shipment of the grade and size of fruit more consistent with the demand and preference of the consumers, thereby benefitting Florida citrus producers and shippers. This change would not adversely affect small entities.

The proposal to make the Interior District synonymous with Regulation Area I and the Indian River District synonymous with Regulation Area II would facilitate the marketing of citrus through the use of commonly used terms, thus benefitting growers and producers.

The proposed amendment, which would authorize the committee with the approval of the Secretary, to change the eligibility requirements for grower members and grower alternate members to serve on the committee, would provide a means to increase the number of qualified growers who could serve on the committee. This change should have no adverse affect on small entities.

The proposed amendment to permit the committee to borrow money in emergency situations would provide the committee with additional flexibility in financing committee operations during such emergency situations, and thereby benefit producers and shippers who operate under the order. There should also be no adverse effect on small entities due to the change.

The proposed amendment to require a continuance referendum every six years would provide producers the opportunity to periodically vote on whether the order should be continued.

All of the proposed amendments set forth in this document are designed to enhance the administration, operation and functioning of the order and should result in an overall positive economic impact on small businesses.

The proposed amendments to the order would have no significant impact on the recordkeeping and reporting burdens of the affected industry. Moreover, the proposed amendments (including referenda every six years) would not change the reporting and recordkeeping requirements under the Paperwork Reduction Act of 1980, which have been previously approved by the Office of Management and Budget (OPM) (Approval No. 0581-0094).

Material Issues

The material issues of record addressed in this decision are:

(1) Whether to designate Canada and Mexico as export markets for purposes of establishing quality regulations under the order, rather than domestic markets as they are now;

(2) Whether to include the terms Interior and Indian River Districts in the definitions making them synonymous with Regulation Area I and Regulation Area II;

(3) Whether to change the eligibility requirements for grower members to serve on the committee, by permitting them to also be shippers or employees of shippers who grow citrus fruit under the order;

(4) Whether to permit the committee to borrow money to fund committee operations in emergency situations;

(5) Whether to require a referendum every six years to determine if producers favor continuance of the order; and

(6) Whether to make conforming changes.

Findings and Conclusions

The findings and conclusions on the material issues, all of which are based on evidence adduced at the hearing and the record thereof, are:

(1) Section 905.9 should be amended by deleting reference to Canada and Mexico and thus making them export markets rather than domestic markets, and § 905.52 should be amended to make handling regulations issued for fruit shipped to export markets applicable to shipments to Canada and Mexico. Several witnesses testified and presented evidence at the hearing in support of these changes.

Currently, under § 905.9, Canada and Mexico are not considered to be export markets. Under § 905.52, the order provides for the establishment of different grade and size requirements for domestic and export markets in order to recognize varying demand characteristics between these markets.

Minimum grade and size requirements for Florida oranges, grapefruit, tangerines, and tangelos have been in effect under the order continuously for several years for both domestic shipments and export shipments of the fruit. The minimum size requirements have generally been smaller for fruit shipped to export markets than for fruit shipped to domestic markets, while the minimum grade requirements have generally been the same for both domestic and export shipments.

Canada and Mexico were included as domestic markets because of their close proximity to the United States and the belief that the market preferences and requirements of these countries were similar to those of the United States. Canada is an important market for Florida citrus fruit, especially grapefruit and oranges. During the past five seasons (1982-83 through 1986-87), total annual fresh Florida citrus shipments to Canada accounted for 8.6 percent of total fresh shipments. Annual grapefruit shipments to Canada amounted to 11.5 percent of total fruit shipments during that period. Mexico, on the other hand, is currently a relatively minor market for Florida citrus, but shipments to Mexico could increase in the future.

The evidence of record indicates that Canada and Mexico are distinct market areas which are different from those in the United States, and it is no longer appropriate to include them as domestic markets. For example, Canadian consumers tend to prefer smaller-sized, fresh citrus fruit, especially grapefruit, whereas consumers in the United States tend to prefer grapefruit of the larger sizes. In Mexico, on the other hand, the consumer demand for citrus is significantly less than that in the United States and Canada, and the marketing and distribution systems in Mexico differ consideraably from those of the United States. Only minimal quantities of Florida citrus have been shipped to Mexico to date.

Redesignating the Canadian and Mexican markets as export markets would allow handling regulations applicable to export shipments to be instituted to recognize some of the differences in the demand characteristics for fresh citrus existing in these markets. Product standards, such as minimum grade and size requirements, have a significant effect on the demand for agricultural commodities. When variations in the demand among markets can be identified and handling regulations can be established at an appropriate level for each market, the sales of the commodity can be improved for the benefit of producers. Variation in size preference for fresh grapefruit between United States and Canadian consumers is an example of differences in the demand between consumers in these two countries. Hence, allowing the committee to recommend regulations which are more closely tailored to the market needs of these two countries should benefit both growers and shippers of Florida citrus.

A Lake Region Packing Association official testified at the hearing in opposition to reclassifying Canada as an export market because shipments of smaller-sized fruit to Canada would likely displace larger fruit sold in the Canadian market, shift it to the United States market, and possibly reduce prices for the larger-sized fruit in the United States. However, the evidence indicates that Canadian markets generally prefer smaller fruit and the recommended changes would allow the committee to recommend regulations which better meet the export market requirements, and, thus, should have a positive impact on overall industry shipments and returns. This official further testified that smaller grapefruit would increase in size if left on the trees longer and could be marketed later as larger fruit, presumably at a higher price. The recommended changes would not prevent growers from leaving fruit on the trees longer to gain size.

At the time § 905.9 was last amended (1957), the continental United States

consisted of the 48 contiguous States and the District of Columbia, but not Alaska. Testimony presented at the hearing supported the continued use of such definition as the domestic market. As a conforming change, the term continental United States should be changed to "contiguous 48 States and the District of Columbia of the United States."

It is concluded that the definition of "Handle or ship" in § 905.9 should be amended to mean: (a) To sell, consign, deliver, or transport fruit, or in any other way, to place fruit in the current of commerce between the production area and any point outside thereof in the 48 contiguous States and the Distict of Columbia of the United States; and (b) to export fruit from any point in the 48 contiguous States and the District of Columbia of the United States to any destination.

In connection with redesignating Canada and Mexico as export markets, the proponents identified some potential for abuse. The proponents testified that it was possible that Florida citrus shipped to Canada or Mexico meeting export requirements but not domestic requirements could be returned to the United States and disrupt the U.S. market. However, the proponents thought that this was unlikely to happen because the extra handling and transportation costs involved in shipping the fruit back to the United States would make such shipments unprofitable.

Another potential abuse mentioned was the diversion of fruit meeting export requirements but not requirements for domestic markets in the United States while in transit to Mexico or Canada. The proponents thought that this would not likely occur because any such diversion would constitute a violation of the marketing order and the violators would be subject to the penalties authorized under the Act.

However, the proponents recommended that the order should provide authority for the committee to recommend and the Secretary to approve safeguards to guard against any possible abuse. Such safeguards could include requirements specifying that all containers of fruit inspected and certified for export market destinations be marked clearly by the shippers that the fruit is for export only. Other container markings which might be required to provide necessary safeguards are the name and address of the shipper, the inspection lot stamp number, the variety of the fruit, the fruit size and grade, and the country of intended destination. To authorize these safeguards, paragraph (a)(5) of § 905.52 should be amended to add authority for the committee to recommend and the Secretary to issue container marking requirements for fruit packed for export destinations. Also, the current language in paragraph (a)(5) of § 905.52 which authorizes the size, capacity, weight, dimensions, or pack of the container used in the shipment of fruit to export markets should be amended to delete reference to Canada or Mexico.

Reclassifying Canada and Mexico as export markets would exempt fruit shipped to these countries from any shipping holiday prohibitions issued under paragraph (a)(3) of § 905.52 of the order. This action is not expected to cause any problems in order operations.

Therefore, it is concluded that the provisions in § 905.52 should be amended, as hereinafter set forth, to make handling regulations issued for export markets applicable to Canada and Mexico. To accomplish this, paragraphs (a)(3), (a)(4), (a)(5), and (d) in § 905.52 need to be revised to change all references to Canada and Mexico as domestic markets, to export markets.

(2) Sections 905.15 and 905.16 should be amended, as hereinafter set forth, to include the terms Interior and Indian River Districts in the definitions making them synonymous with Regulation Area I and Regulation Area II, respectively. All of the testimony and evidence presented at the hearing on the committee's proposal to define the Interior District and the Indian River District in the order was in support of the proposed definition changes.

The order currently defines Regulation Area I in § 905.15 to include all that part of the production area not included in Regulation Area II and defines Regulation Area II in § 905.16 as a prescribed area along the east coast of Florida.

Federal Marketing Order 913, which authorized weekly volume regulations for grapefruit grown in the Interior District, defined that district in § 913.12 of that order prior to its termination on October 9, 1987 (52 FR 37762, October 9, 1987), and Federal Marketing Order 912, which authorized weekly volume regulations for grapefruit grown in the Indian River District, defined that district in § 912.13 of that order prior to its termination on July 31, 1987 (52 FR 21241, June 5, 1987). Also, both the Interior District and the Indian River District are defined currently in § 601.091 of the Florida Statutes. In former Marketing Orders 912 and 913, the term Interior District covered the same area as Regulation Area I in Order 905, and the term Indian River District covered the same area as Regulation Area II in Order 905. In the current Florida Statutes, these terms correspond similarly.

The evidence of record further indicates that the terms Interior District and Indian River District more clearly depict the two citrus fruit producing areas in Florida than do the terms Regulation Area I and Regulation Area II, and that the district names are more commonly used by the Florida citrus industry in referring to these areas. Furthermore, it is a current practice of some shippers to designate the district in which the fruit is grown when the fruit is marketed. Most fresh grapefruit grown in Regulation Area II are currently marked as having been grown in the Indian River District. Further, growers and shippers in this growing area have spent substantial sums of money promoting fruit grown in this area as a premium product.

Therefore, §§ 905.15 and 905.16 of the order should be amended to include the terms Interior District and Indian River District in the definitions making them synonymous with Regulation Area I and Regulation Area II.

(3) Section 905.19 provides for the establishment of a committee, comprised of grower and shipper members and a non-industry member, to administer the order locally. This section also specifies the number of growers and handlers which shall serve on the committee, and the eligibility requirements for each of these membership categories. The order provides that the committee shall consist of at least eight but not more than nine grower members, and eight shippers members. Shipper members must be shippers or employees of shippers. Currently, grower members are not permitted to be persons who are also shippers or employees of shippers. There is no prohibition against shipper members being growers or employees of growers.

Proponents favored revising § 905.19 of the order to remove the prohibition that grower members cannot be shippers or employers of shippers. The change would permit growers who are also shippers or employees of shippers to be nominated and to serve as grower members and alternate grower members on the committee. The proponents contended that this change in the eligibility requirements would increase the number of qualified growers who could be nominated and selected to serve on the committee by making all growers eligible to serve.

The proponents presented evidence indicating that there has been considerable change in the Florida citrus industry since the order which covers

fresh market shipments because effective in the late 1930's. Since that time, the industry has evolved from a predominantly fresh oriented industry to a predominantly processed-product industry. When the order became effective, approximately 80 percent of the Florida citrus fruit produced was shipped fresh, compared with approximately 18 percent of the crop shipped fresh during the 1986–87 season. As a consequence, fewer growers now have a direct interest in marketing order operations.

Also, the proponents stated that many growers are employed by shippers and that some serve on the boards of directors for shippers. Moreover, some growers also ship their own citrus fruit and fruit for other growers. One consequence of this development is that there are fewer eligible growers who can serve on the committee as grower members, and the committee experienced difficulty at times in finding qualified nominees who are interested in filling the grower member positions under the current eligibility requirements.

Two witnesses representing Florida Citrus Mutual and the Indian River Citrus League, which collectively represent over 13,000 members, testified at the hearing in opposition to changing the eligibility requirements. They testified that the current requirements specifying that grower members on the committee not be shippers or employees of shippers should not be changed because the current requirements maintain a proper balance between the two categories of members on the committee—the grower members and the shipper members. They contended that permitting growers who are also shippers to serve on the committee as grower members could result in a shift of the current balance on the committee in favor of shipper interests. As shippers' interests may differ from growers' interests, this could result in recommendations for handling regulations which are favorable to shippers but not growers.

In evaluating the testimony, it is recognized that marketing orders are primarily intended to promote grower interests, and it is important that administrative committees and members representing grower interests. The record indicates that more growers are now involved in some manner in the activities of shippers and the trend appears to be for increased grower involvement in the handling of their fruit. This involvement includes growers participating on the boards of directors of shipping organizations. This trend helps to explain the current difficulty in finding qualified candidates. Moreover, while there was opposition testimony on behalf of two organizations which collectively represent a very large portion of all Florida citrus growers, that testimony did not directly address the apparent difficulty the committee has experienced in obtaining qualified grower nominees. No estimate of the number of citrus growers in the industry who would qualify as grower members under the present order requirements was ordered. Also, no distinction was made between potential grower members who handled only their own fruit and grower members with small acreage whose principal occupation was as a shipper for a number of growers.

In view of the foregoing, the record does not clearly support a need for the proposed amendment. However, it does support the proposition that at some time in the near future, current requirements for grower members and alternates may need to be modified in order to expand the field of eligible candidates. Thus, to provide for such contingency, paragraph (a) of § 905.19 should be revised to authorize the committee, with the approval of the Secretary, to establish alternative qualifications for grower members and alternates. Such authority would provide necessary flexibility to the committee to respond to any shortage of qualified grower members. It would be appropriate for the committee to make any such recommendation since it is, under the order, the official representative body of the industry.

Any resulting committee recommendations should have as their purpose the qualification of persons who will represent the interests of growers. Any such recommendation should include a wide range of possible alternatives to insure that a full committee is nominated and appointed and that grower interests are served.

(4) At the present time the order authorizes the committee, with the approval of the Secretary, to make expenditures and establish an assessment rate each fiscal period for fruit shipped under the order. Handlers of the fruit are obligated to pay assessments to the committee based on the number of cartons of fruit shipped. Any assessment in excess of expenses incurred during a fiscal period may be carried over as a reserve, provided the funds already in the reserve do not exceed approximately one-half of one fiscal period's expenses.

The committee has found, over the years, that during normal seasons the present order provisions have provided sufficient funds to carry on normal operations from one season to the next. However, over the past six seasons, the Florida citrus industry has experienced four devastating freezes that brought the reserve fund to undesirably low levels before assessment income from the next season became available to pay expenses. The frequency of such freezes caused the committee to recommend that authority be added to the order to permit the committee to borrow money in emergency situations to continue normal operations until assessment revenue is sufficient to pay authorized expenses.

The shipping season for Florida citrus fruit normally begins in mid-September and continues through mid-June. This seasonal, shipping period varies slightly from season to season depending on weather conditions. Historically, such shipments are light through mid-October and increase significantly in November and remain heavy through the end of March and then start to decline and end in June. The committee's reserve fund is normally used to meet most of its financial obligations during the first part of the fiscal period each season from August 1 until the first part of December, when sufficient assessment funds become available to meet committee expenses. In the event of a severe crop reduction due to a freeze, hurricane, or other extreme emergency, and consequent lack of assessment income, the committee should be permitted to borrow needed money on a short term basis to insure continued operation of the order. Such borrowed money would permit the committee to continue functioning and the order to operate during the crisis. The committee would repay borrowed money by the end of the next fiscal period from assessment income.

Increasing the assessment rate during the fiscal period following a disaster to generate additional funds would require all shippers to pay a higher assessment rate on all fruit shipped during the entire season. This could place an economic hardship on shippers. Hence, a significant increase in the assessment rate would not be a satisfactory solution to this potential problem.

The authority to borrow money is not intended to permit the committee to obligate itself to borrow large sums of money over an extended period of time. Any borrowing should be used only when necessary to meet financial obligations, in the event that assessment income is substantially reduced, to permit the committee to continue operating following emergencies such as devastating freezes or hurricanes.

Based on the testimony and evidence presented at the hearing, a new paragraph (c) should be added to § 905.41, as hereinafter set forth, to permit the committee to borrow money on a short term basis to meet current financial obligations in the event of an extreme emergency. The language in paragraph (c) of § 905.41 has been changed from that in the hearing notice for clarification purposes and to provide more precisely when the committee should repay borrowed money.

(5) The committee proposed that periodic referenda should be held to determine whether the order should be continued. A proponent witness representing the Florida Farm Bureau testified in favor of the committee's proposal to amend the order to require that such referenda should be held every six years. In addition, the committee manager testified in favor of the proposal, and other witnesses expressed support for the proposal. One witness testified in opposition to the proposal because he did not think that continuance referenda are necessary.

The Secretary has determined that continuance referenda are an effective means for ascertaining whether producers favor continuation of marketing order programs. Currently, the order provides that the Secretary may terminate the marketing order program at any time by giving at least one day's notice, and shall terminate it whenever, through the conduct of a referendum, it is indicated that a majority of producers favor termination, provided that, such majority produced more than 50 percent of the commodity for market during a representative period. Since less than 50 percent of all producers often participate in a referendum, it is difficult to determine producer support or opposition for termination of an order. Thus, to provide a basis for determining whether producers favor continuance of the order, a new paragraph (c) should be added to § 905.83 to provide for continuance referenda. Current paragraph (c) should be redesignated as paragraph (d). Also, proponents at the hearing testified that consideration regarding continuance of the order should be based on two-thirds of the producers voting in the referendum or producers of two-thirds of the volume of fruit represented in the referendum.

The results of continuance referenda should be based upon the same percentage of support required in section 8c(8) of the Act with respect to producer approval of the issuance of a marketing order. This requirement is considered adequate to measure producer support to continue the marketing order. The Secretary would consider termination of the order if less than two-thirds of the producers voting in the referendum and producers of less than two-thirds of the volume of fruit represented in the referendum favor continuance. In evaluating the merits of continuance versus termination, the Secretary would not only consider the results of the referendum but also all other relevant information concerning the operation of the order and the relative benefits and disadvantages to producers, handlers, and consumers in order to determine whether continued operation of the order would tend to effectuate the declared policy of the Act. In this regard, in the event of an adverse vote by producers in a continuance referendum, the Secretary may solicit input from the public through meetings, press releases, or other means.

The Secretary's "Guidelines For Fruit, Vegetable, and Specialty Crop Marketing Orders" provide for periodic referenda to allow producers the opportunity to indicate their support for or rejection of a marketing order. It is the position of the Department that periodic referenda ensure that marketing order programs continue to be accountable to their producers, obligate producers to evaluate their programs periodically, and involve producers more closely in the marketing order operation. The record evidence supports these goals.

The Agricultural Marketing Service recommends that the order be amended to provide that the Department conduct referenda every six years after the effective date of this amendment to ascertain whether producers favor continuance of the order. This recommendation is based on an evaluation of evidence and a finding that evidence supports adding this provision to the order. To effect this change, § 905.83 should be amended by redesignating current paragraph (c) as paragraph (d), and by adding a new paragraph (d) to provide that the Secretary shall conduct a referendum six years after the effective date of the amendment and every sixth year thereafter to ascertain whether continuance of this part is favored by producers. The Secretary may terminate the provisions of this part at the end of any fiscal period in which the Secretary has found that continuance of this part is not favored by producers who during a representative period, determined by the Secretary, has been engaged in the production for market of the fruit in the production area. Such termination shall be announced on or before July 31 of the fiscal period.

(6) The Department proposed in the notice of hearing that it be authorized to make any necessary changes in the order language to make the entire order conform with any amendments resulting from this proceeding. This proposal was supported at the hearing without opposition. Such conforming changes as necessary have been incorporated in this recommended decision.

Rulings on Briefs of Interested Persons

At the conclusion of the hearing, the Administrative Law Judge fixed March 31, 1988, as the final date for interested persons to file proposed findings and conclusions and written arguments or briefs, based on the evidence received at the hearing. None were filed.

General Findings

Upon the basis of the record, it is found that:

(1) The findings hereinafter set forth are supplementary to, and in addition to, the previous findings and determinations which were made in connection with the issuance of the marketing agreement and order and each previously issued amendment thereto. Except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein, all of said prior findings and determinations are hereby ratified and affirmed;

(2) The marketing agreement and order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(3) The marketing agreement and order, as amended, and as hereby proposed to be further amended, regulate the handling of fresh oranges, grapefruit, tangerines, and tangelos grown in the production area in the same manner as, and are applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which hearings have been held;

(4) The marketing agreement and order, as amended, and as hereby proposed to be further amended, are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(5) The marketing agreement and order, as amended and as hereby proposed to be further amended, prescribe, so far as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the difference in the production and marketing of fresh oranges, grapefruit, tangerines, and tangelos grown in the production area; and

(6) All handling of fresh oranges, grapefruit, tangerines, and tangelos grown in the production area as defined in the marketing agreement and order, as amended, and as hereby proposed to be further amended, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

List of Subjects in 7 CFR Part 905

Marketing agreements and orders, Florida, Oranges, Grapefruit, Tangerines, Tangelos.

Recommended Further Amendment of the Marketing Agreement and Order

The following amendment of the marketing agreement and order, both as amended, is recommended as the detailed means by which the foregoing conclusions may be carried out:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIA

1. The authority citation for 7 CFR Part 905 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 905.9 is revised, and § 905.52 is amended by revising paragraphs (a)(3), (a)(4), (a)(5), and (d) to read as follows:

§ 905.9 Handle or ship.

"Handle or ship" means (a) to sell, consign, deliver, or transport fruit, or in any other way, to place fruit in the current of commerce between the production area and any point outside thereof in the 48 contiguous States and the District of Columbia of the United States; and (b) to export fruit from any point in the 48 contiguous States and the District of Columbia of the United States to any destination.

§ 905.52 Issuance of regulations.

(a) * * *
(1) * * *
(2) * * *

(3) Limit the shipment of the total quantity of any variety by prohibiting the shipment thereof: *Provided,* That no such prohibition shall apply to exports or be effective during any fiscal period with respect to any variety other than for one period not exceeding five days during the week in which Thanksgiving Day occurs, and for not more than two periods not exceeding a total of 14 days during the period December 20 to January 20, both dates inclusive.

(4) Provide that exports of any variety shall be limited to grades and sizes different from the grade and size limitations applicable to shipments of such variety in the United States, and specify condition requirements for such variety; and

(5) Fix the size, capacity, weight, dimensions, marking, or pack of the container or containers which may be used in the shipment of fruit for export: *Provided,* That such regulation shall not authorize the use of any container which is prohibited for use for fruit under the provisions of Chapter 601 of the Florida Statutes and regulations effective thereunder.

(b) * * *
(c) * * *

(d) Whenever any variety is regulated pursuant to paragraph (a)(3) of this section, no such regulation shall be deemed to limit the right of any person to sell, contract to sell, or export such variety, but no handler shall otherwise ship any fruit of such variety which was prepared for market during the effective period of such regulation.

3. Section 905.15 is revised and § 905.16 is amended by revising the introductory text to read as follows:

§ 905.15 Regulation Area I.

"Regulation Area I" is defined as the "Interior District", and shall include all that part of the production area not included in Regulation Area II.

§ 905.16 Regulation Area II.

"Regulation Area II" is defined as the "Indian River District", and shall include that part of the State of Florida particularly described as follows:

* * * * *

4. Section 905.19 is revised to read as follows:

§ 905.19 Establishment and membership.

(a) There is hereby established a Citrus Administrative Committee consisting of at least eight but not more than nine grower members, and eight shipper members. Grower members shall be persons who are not shippers or employees of shippers: *Provided,* That the committee with the approval of the Secretary may establish alternative qualifications for such grower members. Shipper members shall be shippers or employees of shippers. The committee may be increased by one non-industry member nominated by the committee and selected by the Secretary. The committee, with approval of the Secretary, shall prescribe qualifications, term of office, and the procedure for nominating the non-industry member.

(b) Each member shall have an alternate who shall have the same qualifications as the member for whom this person is an alternate.

5. Section § 905.41 is amended by adding a new paragraph (c) to read as follows:

§ 905.41 Assessments.

* * * * *

(c) In the case of an extreme emergency, the committee may borrow money on a short term basis to provide funds for the administration of this part. Any such borrowed money shall only be used to meet the committee's current financial obligations, and the committee shall repay all such borrowed money by the end of the next fiscal period from assessment income.

6. Section § 905.83 is amended by redesignating paragraph (c) as paragraph (d) and adding a new paragraph (c) to read as follows:

§ 905.83 Termination.

* * * * *

(c) The Secretary shall conduct a referendum six years after the effective date of this subsection and every sixth year thereafter to ascertain whether continuance of this part is favored by producers. The Secretary may terminate the provisions of this part at the end of any fiscal period in which the Secretary has found that continuance of this part is not favored by producers who during a representative period, determined by the Secretary, have been engaged in the production for market of the fruit in the production area. Such termination shall be announced on or before July 31 of the fiscal period.

* * * * *

Dated: February 3, 1989.

J. Patrick Boyle,

Administrator.

[FR Doc. 89–2985 Filed 2–7–89; 8:45 am]

BILLING CODE 3410–02–M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 872 3044]

Cooper Rand Corp.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a New York marketer of consumer products from representing that any lighter-to-lighter charger will restart a discharged battery instantly or as quickly as jumper cables, or from making any other performance claim for the product, unless respondent can substantiate such claims. In addition, the order would require respondent to prominently disclose in each advertisement and in the product instruction insert, either a statement concerning the product's limitations or the specific length of time needed to recharge a battery.

DATE: Comments must be received on or before April 10, 1989.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Allen Hile or Lydia Parnes, FTC/H-238, Washington, DC 20580. (202) 326-3122 or 326-3126.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

List of Subjects in 16 CFR Part 13

Automobile battery chargers, Battery chargers, Trade practices.

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Cooper Rand Corporation, a corporation, hereinafter sometimes referred to as proposed respondent, and it now appearing that the proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Cooper Rand Corporation, by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Cooper Rand Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 45 West 25th Street, New York, New York 10010.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of the complaint attached hereto.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act, 5 U.S.C. 504.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it together with the proposed complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and take action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. The agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the proposed complaint attached hereto.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the proposed complaint attached hereto and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect hereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order comtemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

For the purpose of this Order, "lighter-to-lighter charger" means any device to be used to recharge the battery in a disabled vehicle by connection to an operating vehicle through the cigarette lighter receptacles of both vehicles.

I.

It is ordered that respondent, Cooper Rand Corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the marketing, advertising, offering for sale, sale, or distribution of the Auto Starter or any other lighter-to-lighter charger in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

(a) That any such lighter-to-lighter charger can or will restart a vehicle disabled by a discharged battery as quickly as jumper cables;

b. That any such lighter-to-lighter charger can or will instantly restart a vehicle disabled by a discharged battery; or

c. Any performance characteristic of any lighter-to-lighter charger unless, at the time the representation is made, respondent possesses and relies upon competent and reliable scientific evidence which substantiates such representation; provided, however, that to the extent such evidence consists of any test, experiment, analysis, research, study or other evidence based on the expertise of professionals in a relevant area, such evidence shall be "competent and reliable" for purposes of this paragraph only if the test, experiment, analysis, research, study, or other evidence is conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

II.

It is further ordered that respondent, Cooper Rand Corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the marketing, advertising, offering for sale, sale or distribution of the Auto Starter or any other lighter-to-lighter charger in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith and for a period of five (5) years from the effective date of service of this order cease and desist from failing to disclose clearly and prominently in each solicitation for the sale of such lighter-to-lighter charger, on a hand tab affixed to each such lighter-to-lighter charger, and in the product instruction insert either.

(a) The following information expressed in the exact language set forth below in ten point or larger bold face Helvetica type:

This product will not instantly start your car. Unlike a jumper cable, it must first recharge your battery. Also, older batteries or colder temperatures may significantly increase the amount of time needed to restart your car.

or

(b) The specific length of time required to recharge a battery in a given state of discharge, accompanied by a statement disclosing whether the specified time is a maximum, minimum, typical, or other such time, and that older batteries or colder temperatures may increase charging times.

III.

It is further ordered that respondent, Cooper Rand Corporation, its successors and assigns, shall, within fifteen (15) days after the date of service of this Order, using lists of names and addresses of purchasers of lighter-to-lighter chargers Cooper Rand has complied from its own files, and from the files of each credit card issuing company or other company through which Cooper Rand Corporation sold or distributed lighter-to-lighter chargers to the public, send by first class mail to each of the approximately 131,000 purchasers of a lighter-to-lighter charger whose name and address appears on such lists a 4" X 6" postcard containing only the exact language as set forth in Appendix A, attached hereto and incorporated herein by reference, and clearly stamped on the front in at least twelve (12) point type with the words "IMPORTANT PRODUCT INFORMATION."

IV.

It is further ordered that Cooper Rand Corporation, its successors and assigns, shall distribute a copy of this Order to each present and future officer, employee, agent and representative having sales, advertising, or policy making responsibilities for any lighter-to-lighter charger and secure from each such person a signed statement acknowledging receipt of said Order.

V.

It is further ordered that respondent, Cooper Rand Corporation, its successors and assigns, shall maintain for at least three years and make available to the FTC with reasonable notice for inspection records showing the names and addresses of all owners to whom the notice required by Part III of this Order is sent.

VI.

It is further ordered that respondent, Cooper Rand Corporation, its successors and assigns, shall maintain for at least three years and upon request make available to the Federal Trade Commission for inspection and copying:

(a) The originals of signed statements required by Part IV of this Order;

(b) All materials relied upon to substantiate any representation covered by this order;

(c) All test reports, studies, data or other materials and other documents or information in respondent's possession or control that contradict, qualify or call into question such representation or the basis upon which respondent relied for such representation;

(d) Records showing the name and address of any consumer who contacts respondent pursuant to the notice provided by Part III of this order, and the total number of such contacts; and

(e) Records showing any action respondent takes in response to any such consumer contact in response to the notice provided by Part III of this order, and the total number of such actions.

VII.

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of the Order.

VIII.

It is further ordered that respondent shall, within ninety (90) days after service upon it of this Order, file with the Commission a report, in writing, setting forth in detail, the manner and form in which it has complied with this Order.

Appendix A

Dear Customer:

Our records show that some time ago you purchased a lighter-to-lighter auto battery charger distributed by Cooper Rand Corporation.

We want you to be aware that lighter-to-lighter chargers cannot restart a disabled vehicle as quickly as jumper cables can. This is because they work by recharging a battery rather than by providing a brief "jolt" of energy to restart your vehicle, as jumper cables do. Also, longer charging time is needed with low outdoor temperatures, older batteries, and batteries in poor condition. If a battery is too old or its condition is too poor, it may not accept a charge.

Cooper Rand is concerned that our customers accurately understand the use of this product. We trust that the above information will clarify the proper use of your lighter-to-lighter charger.

Sincerely,

Michael Flood,

Vice President, Cooper Rand Corporation.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Cooper Rand Corporation, 45 West 25th Street, New York 10010. Cooper Rand is a direct marketer of a variety of consumer products.

This proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Cooper Rand Corporation sells through solicitations enclosed with the

monthly statement of various credit card issuing companies a number of consumer products, including the "Auto Starter." The "Auto Starter" is a portable "lighter-to-lighter" automobile battery charger, a device designed to be used to recharge the battery in a disabled vehicle by connection to an operating vehicle through the cigarette lighter receptacles of both vehicles.

The complaint charges that Cooper Rand expressly misrepresented that lighter-to-lighter charges can or will restart a vehicle disabled by a discharged battery "instantly" and as quickly as jumper cables. The complaint alleges that this is deceptive and in violation of section 5 of the Federal Trade Commission Act because lighter-to-lighter charges take significantly longer than jumper cables to restart a vehicle, even under the most favorable circumstances, and lighter-to-lighter charges cannot restart a vehicle disabled by a discharged battery instantly.

The complaint also alleges that Cooper Rand expressly misrepresented that illumination of the lighter-to-lighter charger's power monitor light indicates that the disabled vehicle is ready to start. The complaint alleges that this is deceptive and in violation of section 5 of the Federal Trade Commission Act because illumination of the lighter-to-lighter charger's power monitor light is not an accurate indicator that a disabled vehicle is ready to start.

In addition, the complaint charges that Cooper Rand claimed that it had a reasonable basis for its claims that lighter-to-lighter charges can or will restart a vehicle disabled by a discharged battery "instantly" and as quickly as jumper cables. The complaint alleges that this misrepresentation by Cooper Rand was deceptive and in violation of section 5 of the Federal Trade Commission Act.

Part I of the proposed consent order would prohibit Cooper Rand from representing that its lighter-to-lighter charges can or will restart a vehicle disabled by a discharged battery "instantly" or as quickly as jumper cables, and would prohibit Cooper Rank from making any performance claims for these without possessing and relying upon a reasonable basis for those claims at the time they are made.

Part II of the proposed consent order would require Cooper Rand to disclose, in solicitations for future sales of its lighter-to-lighter chargers, on a hang tag affixed to the product, and in the product instruction insert, *either*: The specific length of time required to recharge a battery in a given state of discharge and whether the specified time is a maximum, minimum, typical, or other such time, and that older batteries or colder temperatures may increase charging time; *or*: that lighter-to-lighter chargers, unlike jumper cables, will not instantly restart a vehicle; that lighter-to-lighter chargers must recharge a battery before the vehicle can be restarted; and that older batteries and colder temperatures may significantly increase the amount of time needed to restart a vehicle with a lighter-to-lighter charger.

Part III of the proposed consent order would require Cooper Rand to send past purchasers of lighter-to-lighter chargers a corrective notice disclosing that lighter-to-lighter chargers, unlike jumper cables, will not instantly restart a vehicle; that lighter-to-lighter chargers must recharge a battery before the vehicle can be restarted; and that older batteries and colder temperatures may significantly increase the amount of time needed to restart a vehicle with a lighter-to-lighter charger.

Part IV of the proposed consent order would required Cooper Rand to distribute copies of the order to all of its officers, employees, and other agents. Part V of the proposed consent order would require Cooper Rand to retain for three years and make available to the Commission the names and addresses of persons to whom the required corrective notice is sent. Part VI would require Cooper Rand to retain and make available to the Commission certain other records, including any materials relied upon to substantiate any representation, and any test reports, studies, data or other materials that qualify or call into question any such representation or the basis upon which Cooper Rand relies for such representation. Part VII of the proposed consent order would require Cooper Rand to notify the Commission of any change in its corporate structure that might affect compliance obligations arising out of the order. Finally, Part VIII would require Cooper Rand to file a report within ninety (90) days after the order is served setting forth the manner and form of its compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed consent order; it is not intended to constitute an official interpretation of the agreement and proposed consent order, or to modify their terms in any way.

Donald S. Clark,

Secretary.

[FR Doc. 89-2930 Filed 2-7-89; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1310 and 1313

Records, Reports, Imports, and Exports of Precursor and Essential Chemicals, Tableting Machines, and Encapsulating Machines

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule outlines procedures designed to implement the regulatory requirements set forth in the Chemical Diversion and Trafficking Act of 1988. The proposal contains the requirements for the recordkeeping, reporting, importing, and exporting of precursor and essential chemicals, and recordkeeping and reporting on tableting machines and encapsulating machines.

DATE: Written comments and objections must be received on or before March 27, 1989.

ADDRESSES: Comments and objections should be submitted in quintuplicate to the Administrator, Drug Enforcement Administration, 1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Mr. G. Thomas Gitchel, Chief, State and Industry Section, Office of Diversion Control, Drug Enforcement Administration, 1405 I Street NW., Washington, DC 20537, Telephone (202) 633-1216.

SUPPLEMENTARY INFORMATION: The Chemical Diversion and Trafficking Act of 1988 (Pub. L. 100-690) requires that any person who distributes, imports, or exports certain precursor and essential chemicals identify their customers, maintain retrievable records for a specified period of time, report suspicious or unusual orders, and provide advanced notification of imports and exports. The requirements for maintaining records and reporting suspicious or unusual orders also applies for tableting machines, and encapsulating machines. The Act further provides that the Attorney General has the authority to suspend imports and exports if he determines that such shipments may be diverted to the clandestine manufacture of a controlled substance.

When the rule is finalized, the Piperidine Report (DEA Form 420), OMB approval 1117-0017, will be eliminated.

The Administrator of the Drug Enforcement Administration hereby certifies that this proposed rule will

have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This rule is not a major rule for purposes of Executive Order (E.O.) 12291 of February 17, 1981. Pursuant to sections 3(c)(3) and 3(e)(2)(C) of E.O. 12291 this proposed rule has been submited for review to the Office of Management and the Budget.

This action has been analyzed in accordance with the principles and criteria contained in E.O. 12612, and it has been determined that the proposed rule does not have sufficient federalism implications towarrant the preparation of a Federalism Assessment.

List of Subjects

21 CFR Part 1310

Drug traffic control, Reporting and recordkeeping requirements.

21 CFR Part 1313

Drug traffic control, Exports, Imorts, Reporting requirements.

For reasons set out above, Chapter II, Title 21, Code of Fedeal Regulations is proposed to be amended as follows:

1. Part 1310 is proposed to be revised to read as follows:

PART 1310—RECORDS AND REPORTS OF LISTED CHEMICALS AND CERTAIN MACHINES

Sec.

1310.1 Definitions.
1310.2 Substances covered.
1310.3 Persons required to keep records and file reports.
1310.4 Maintenance of records.
1310.5 Reports.
1310.6 Content of records and reports.
1310.7 Proof of identity.

Authority: 21 U.S.C. 802, 830, 871(b).

§ 1310.1 Definitions.

As used in this part, the following terms shall have the meanings specified:

(a) The term "Act" means the Controlled Substances Act, as amended (84 Stat. 1242; 21 U.S.C. 801) and/or the Controlled Substances Import and Export Act, as amended (84 Stat. 1285; 21 U.S.C. 951).

(b) The term "listed chemical" means any listed precursor chemical or listed essential chemical.

(c) The term "listed precursor chemical" means a chemical specifically designated by the Administrator in § 1310.2(a) that, in addition to legitimate uses, is used in manufacturing a controlled substance in violation of this title and is critical to the creation of a controlled substance.

(d) The term "listed essential chemical" means a chemical specifically designated by the Administrator in § 1310.2(b) that, in addition to legitimate uses, is used as a solvent, reagent, or catalyst in manufacturing a controlled substance in violation of this title.

(e) The term "regulated person" means a person who manufactures, distributes, imports, or exports a listed chemical, a tableting machine, or an encapsulating machine.

(f) The term "regulated transaction" means:

(1) A distribution, receipt, sale, importation or exportation of a threshold amount as determined by the Administration which includes a cumulative threshold amount for multiple transactions of a listed chemical, except that such term does not include:

(i) A domestic lawful distribution in the usual course of business between agents or employees of a single regulated person; in this context, agents or employees means under the direct management and control of the regulated person;

(ii) A delivery of a listed chemical to or by a common or contract carrier for carriage in the lawful and usual course of the business of the common or contract carrier, or to or by a warehouseman for storage in the lawful and usual course of the business of the warehouseman, except that if the carriage or storage is in connection with the distribution, importation, or exportation of a listed chemical to a third person, this paragraph does not relieve a distributor, importer, or exporter from compliance with this section;

(iii) Any category of transaction specified by regulation of the Administration as excluded from this definition as unnecessary for enforcement of this title or title III;

(iv) Any transaction in a listed chemical that is contained in a drug that may be marketed or distributed lawfully in the United States under the Federal Food, Drug, and Cosmetic Act; or

(v) Any transaction in a chemical mixture.

(2) A distribution, importation, or exportation of a tableting machine or encapsulating machine.

(g) The term "chemical mixture" means a combination of two or more chemical substances, at least one of which is not a listed precursor chemical or listed essential chemical, except that such term does not include any combination of a listed precursor chemical or a listed essential chemical with another chemical that is present solely as an impurity or which has been created to evade the requirements of the Act.

(h) The term "retrievable" means that records required by this section are kept by automatic data processing systems or other electronic or mechanized recordkeeping systems in such a manner that they can be readily retrieved and separated out from all other records in a reasonable time and/or records are kept on which the listed chemicals, tableting machines, and encapsulating machines are asterisked, redlined, or in some other manner visually identifiable apart from other items appearing on the records or are maintained separate from all other records.

(i) Any term not defined in this section shall have the definition set forth in section 102 and 1001 of the Act (21 U.S.C. 802 and 951) and § 1301.2 of this chapter.

§ 1310.2 Substances covered.

The following chemicals have been specifically designated by the Administrator of the Drug Enforcement Administration as the listed chemicals subject to the provisions of this section and Part 1313.

(a) Listed Precursor Chemicals:

(1) Anthranilic acid and its salts.

(2) Benzyl cyanide.

(3) Ephedrine, its salts, optical isomers, and salts of optical isomers.

(4) Ergonovine and its salts.

(5) Ergotamine and its salts.

(6) N-Acetylanthranilic acid and its salts.

(7) Norpseudoephedrine, its salts, optical isomers, and salts of optical isomers.

(8) Phenylacetic acid and its salts.

(9) Phenylpropanolamine, its salts, optical isomers, and salts of optical isomers.

(10) Piperidine and its salts.

(11) Pseudoephedrine, its salts, optical isomers, and salts of optical isomers.

(12) 3,4-Methylenedioxyphenyl-2-propanone.

(b) Listed Essential Chemicals:

(1) Acetic anhydride.

(2) Acetone.

(3) Benzyl chloride.

(4) Ethyl ether.

(5) Hydriodic acid.

(6) Potassium permanganate.

(7) 2-Butanone (or Methyl Ethyl Ketone or MEK).

(8) Toluene.

(c) The Administrator may add or delete a substance as a listed chemical by publishing a final rule in the **Federal Register** following a proposal which shall be published at least 30 days prior to the final rule.

(d) Any person may petition the Administrator to have any substance

added or deleted from paragraphs (a) or (b) of this section.

(e) Any petition under this section shall contain the following information:

(1) The name and address of the petitioner;

(2) The name of the chemical to which the petition pertains;

(3) The name and address of the manufacturer(s) of the chemical (if known);

(4) A complete statement of the facts which the petitioner believes justifies the addition or deletion of the substance from paragraphs (a) or (b) of this section;

(5) The date of the petition.

(f) The Administrator may require the petitioner to submit such documents or written statements of fact relevant to the petition as he deems necessary in making a determination.

(g) Within a reasonable period of time after the receipt of the petition, the Administrator shall notify the petitioner of his decision and the reason therefor. The Administrator need not accept a petition if any of the requirements prescribed in paragraph (e) of this section or requested pursuant to paragraph (f) of this section are lacking or are not clearly set forth as to be readily understood. If the petitioner desires, he may amend and resubmit the petition to meet the requirements of paragraphs (e) and (f) of this section.

(h) If a petition is granted or the Administrator, upon his own motion, adds or deletes substances as listed chemicals as set forth in paragraph (c) of this section, he shall issue and publish in the **Federal Register** a proposal to add or delete a substance as a listed chemical. The Administrator shall permit any interested person to file written comments regarding the proposal within 30 days of the date of publication of his order in the **Federal Register**. The Administrator will consider any comments filed by interested persons and publish a final rule in accordance with his decision in the matter.

§ 1310.3 Persons required to keep records and file reports.

Each regulated person who engages in a regulated transaction involving a listed chemical, a tableting machine, or an encapsulating machine shall keep a record of the transaction and file reports as specified by § 1310.4.

§ 1310.4 Maintenance of records.

(a) Every record required to be kept subject to § 1310.3 for a listed precursor chemical, a tableting machine, or an encapsulating machine shall be kept by the regulated person for four years after the date of the transaction.

(b) Every record required to be kept subject to § 1310.3 for a listed essential chemical shall be kept by the regulated person for two years after the date of the transaction.

(c) A record under this section shall be kept at the principal place of business or other location which is provided in writing to the Special Agent in Charge of the Administration in the nearest office of the Drug Enforcement Administration and shall be readily retrievable and available for inspection and copying by authorized employees of the Administration under the provisions of 21 U.S.C. 880.

§ 1310.5 Reports.

(a) Each regulated person shall report to the nearest office of the Drug Enforcement Administration, as follows:

(1) Any regulated transaction involving an extraordinary quantity of a listed chemical, an uncommon method of payment or delivery, or any other circumstance that the regulated person believes may indicate that the listed chemical will be used in violation of this part.

(2) Any proposed regulated transaction with a person whose description or other identifying characteristic the Administration has previously furnished to the regulated person.

(3) Any unusual or excessive loss or disappearance of a listed chemical under the control of the regulated person.

(4) Any domestic regulated transaction in a tableting machine or an encapsulating machine.

(b) Each report submitted pursuant to paragraph (a) of this section shall, whenever possible, be made orally to the nearest office of the Administration at the earliest practicable opportunity after the regulated person becomes aware of the circumstances involved and as much in advance of the conclusion of the transaction as possible. Written reports of transactions listed in paragraphs (a)(1), (a)(3) and (a)(4) of this section will subsequently be filed as set forth in § 1310.6. A transaction may not be completed with a person whose description or identifying characteristic has previously been furnished to the regulated person by the Administration unless the transaction is approved by the Administration.

(c) The quantitative threshold to be utilized in determining whether a receipt, sale, importation or exportation is a regulated transaction or the cumulative amount for multiple transactions within a thirty day period which would be reportable under this section are as follows:

(1) Listed Precursor Chemicals:

Chemical	Base weight
(i) Anthranilic acid and its salts	30 kilograms.
(ii) Benzyl cyanide	1 kilogram.
(iii) Ephedrine, its salts, optical isomers, and salts of optical isomers.	1 kilogram.
(iv) Ergonovine and its salts	10 grams.
(v) Ergotamine and its salts	20 grams.
(vi) N-Acetylanthranilic acid and its salts.	40 kilograms.
(vii) Norpseudoephedrine, its salts, optical isomers, and salts of optical isomers.	2.5 kilograms.
(viii) Phenylacetic acid and its salts.	1 kilogram.
(ix) Phenylpropanolamine, its salts, optical isomers, and salts of optical isomers.	2.5 kilograms.
(x) Piperidine and its salts	500 grams.
(xi) Pseudoephedrine, its salts, optical isomers, and salts of optical isomers.	1 kilogram.
(xii) 3,4-Methylenedioxyphenyl-2-propanone.	20 kilograms.

(2) Listed Essential Chemicals:

(i) Imports and Exports

Chemical	By volume	By weight of chemical
(A) Acetic anhydride	250 gallons	1,023 kilograms.
(B) Acetone	500 gallons	1,508 kilograms.
(C) Benzyl chloride	N/A	4 kilograms.
(D) Ethyl ether	500 gallons	1,364 kilograms
(E) Hydriodic acid	40 liters (57%)	22.8 kilograms.
(F) Potassium permanganate	N/A	500 kilograms.
(G) 2-Butanone (MEK)	500 gallons	1,465 kilograms.
(H) Toluene	500 gallons	1,591 kilograms.

(ii) Domestic Sales

Chemical	By volume	By weight of chemical
(A) Acetic anhydride	≥50 gallons	1,023 kilograms.
(B) Acetone	50 gallons	150 kilograms.
(C) Benzyl chloride	N/A	1 kilogram.
(D) Ethyl ether	50 gallons	135.6 kilograms.
(E) Hydriodic acid	10 liters (57%)	5.7 kilograms.
(F) Potassium permanganate	N/A	55 kilograms.
(G) 2-Butanone (MEK)	50 gallons	145 kilograms.
(H) Toluene	50 gallons	159 kilograms.

(iii) The cumulative threshold is not applicable to domestic sales of Acetone, 2-Butanone (MEK), and Toluene.

§ 1310.6 Content of records and reports.

(a) Each record and/or report required by §§ 1310.3–1310.5 shall include the following:

(1) The name, address, and telephone number of each party to the regulated transaction.

(2) The date of the regulated transaction.

(3) The name, quantity and form of packaging of the listed chemical or a description of the tableting machine or encapsulating machine (including make, model and serial number).

(4) The method of transfer (company truck, picked up by customer, etc.).

(5) The type of identification used by the purchaser and any unique number on that identification.

(b) If a report is submitted pursuant to § 1310.5 (a)(1) or (a)(3), the report must also include a description of the circumstances leading the regulated person to make the report, such as the reason that the method of payment was uncommon or the loss unusual. If the report is a loss or disappearance under § 1310.5(a)(3), the circumstances of such loss must be provided (in-transit, theft from premises, etc.).

(c) For purposes of this section, normal business records shall be considered adequate if they contain the information listed in paragraph (a) of this section, and are retrievable from other business records of the regulated person.

(d) A suggested format for the reports is provided below:

Supplier:
Name
Business Address
City
State
Zip
Business Phone
Purchaser:
Name
Business Address
City
State
Zip
Business Phone
Identification
Shipping Address (if different that purchaser address):
Street
City
State
Zip
Date of Shipment
Name of Listed Chemical(s)
Quantity and Form of Packaging
Description of Machine:
Make:
Model:
Serial #
Method of Transfer
If Loss or Disappearance:
Date of Loss
Type of Loss

Public reporting burden for this collection of information is estimated to average ten minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Drug Enforcement Administration, Records Management Section, Washington, DC 20537; and to the Office of Management and Budget, Paperwork Reduction Project No. 1117-xxxx, Washington, DC 20503.

§ 1310.7 Proof of identity.

Each regulated person who engages in a regulated transaction must identify the other party to the transaction. This should be accomplished by having the purchaser present some document which would verify the identity of the purchaser to the regulated person. The type of documents and other evidence of proof must consist of at least purchase documents and signature of the purchaser or the purchaser's agent in the case of business entities or a drivers license and other identification for sales to individuals or cash purchasers. When transacting business with a new representative of a firm, the regulated person must verify the agency of the representative. The regulated person should attempt to verify the existence of a business entity if the regulated person is not familiar with that business or has some reason to question the validity of the business. This may be accomplished by such methods as checking the telephone directory, the local credit bureau, the local Chamber of Commerce or the local Better Business Bureau.

2. A new Part 1313 is proposed to be added to read as follows:

PART 1313—IMPORTATION AND EXPORTATION OF PRECURSORS AND ESSENTIAL CHEMICALS

Sec.

1313.1 Scope.
1313.2 Definitions.

Importation of Precursors and Essential Chemicals

1313.12 Requirement of authorization to import.
1313.13 Contents of import declaration.
1313.14 Distribution of import declaration.
1313.15 Waiver of 15-day advance notice for chemical importers.

Exportation of Precursors and Essential Chemicals

1313.21 Requirement of authorization to export.
1313.22 Contents of export declaration.
1313.23 Distribution of export declaration.
1313.24 Waiver of 15-day advance notice for chemical exporters.

Transshipment and In-Transit shipment of Precursors and Essential Chemicals

1313.31 Advance notice of importation for transshipment or transfer.
1313.41 Suspension of shipments.

Hearings

1313.51 Hearings generally.
1313.52 Purpose of hearing.
1313.53 Waiver of modification of rules.
1313.54 Request for hearing.
1313.55 Burden of proof.
1313.56 Time and place of hearing.
1313.57 Final order.

Authority: 21 U.S.C. 802, 830, 871(b), 971.

§ 1313.1 Scope.

Procedures governing the importation, exportation, transshipment and intransit shipment of precursors and essential chemicals pursuant to section 1018 of the Act (21 U.S.C. 971) are governed generally by those sections and specifically by the sections of this part.

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§ 1313.2 Definitions.

As used in this part, the following terms shall have the meanings specified:

(a) The term "chemical export" means with respect to a listed chemical or chemicals, any taking out or removal of such article from the jurisdiction of the United States (whether or not such taking out or removal constitutes an exportation within the meaning of the Customs and related laws of the United States) that is not in conflict with the laws of the country to which it is intended for import.

(b) The term "chemical exporter" includes every regulated person who exports, or who acts as an export broker or forwarding agent for a chemical export. In the event that the broker or forwarding agent does not take title or possession of the chemical export, such broker or forwarding agent will not be considered a chemical exporter for purposes of Part 1313 unless the chemical exporter and the broker or forwarding agent have reached an agreement of which the Administrator has been informed in writing at the earliest possible time that specifies which of the two parties will be responsible for the filing of the Precursor and Essential Chemical Import/Export Declaration (DEA form 486) notifying the Administrator of each chemical export.

(c) The term "chemical import" means, with respect to a listed chemical, any bringing in or introduction of such article into either the jurisdiction of the United States or the Customs territory of the United States, and from the jurisdiction of the United States into the Customs territory of the United States (whether or not such bringing in or introduction constitutes an importation within the meaning of the tariff laws of the United States).

(d) The term "chemical importer" includes every regulated person who imports, or who acts as an import broker or forwarding agent for a chemical import. In the event that the broker or forwarding agent does not take title to or possession of the chemical import, such broker or forwarding agent will not be considered a chemical importer for purposes of Part 1313 unless the chemical importer and the broker or forwarding agent have reached an agreement of which the Administrator has been informed in writing at the earliest possible time that specifies which of the two parties will be responsible for the filing of the Precursor and Essential Chemical Import/Export Declaration (DEA Form 486) notifying the Administrator of each chemical import.

(e) The term "regular customer" means a person with whom the regulated person has an established business relationship for a specified listed chemical or chemicals that is reported to and accepted by the Administration.

(f) The term "regular supplier" means a supplier with whom the regulated person has an established business relationship that is reported to the Administration.

(g) The term "Customs territory of the United States" means the several states, the District of Columbia, and Puerto Rico.

(h) The term "jurisdiction of the United States" means the Customs territory of the United States, the Virgin Islands, the Canal Zone, Guam, American Samoa, and Palau.

(i) Any term not defined in this section shall have the definition set forth in section 102 and 1001 of the Act (21 U.S.C. 802 and 951) and § 1301.2 of this chapter.

Importation of Precursors and Essential Chemicals

§ 1313.12 Requirement of authorization to import.

(a) No person shall import or cause to be imported any chemical listed in § 1310.2 which meets or exceeds the threshold quantities identified in § 1310.5, until such time a DEA Form 486 has been filed with the Administrator.

(b) A DEA Form 486 must be furnished to the Drug Enforcement Administration, Drug Control Section, P.O. Box (to be designated), for all regulated, chemical import transactions. However, the 15-day advance notification requirement found in § 1313.13 is waived for chemical importers who have completed the requirements of § 1313.15. The DEA Form 486 must be provided in this instance on or before the date of importation.

§ 1313.13 Contents of import declaration

(a) Any precursor or essential chemical listed in § 1310.2 may be imported if that chemical is necessary for medical, commercial, scientific, or other legitimate uses within the United States. Chemical importations into the United States for immediate transfer/transshipment outside the United States must comply with the procedures outlined in § 1313.31.

(b) Any regulated person who desires to import a threshold or greater quantity of a listed chemical must furnish the Drug Enforcement Administration, Drug Control Section, P. O. Box (to be designated), with a completed DEA Form 486 at least 15 days prior to the date of importation and distribute four copies of this form as directed in § 1313.14.

(c) The DEA Form 486 must be executed in quintuplicate and will include the following information:

(1) The name, address, telephone and telex numbers of the regulated, chemical importer, the name, address, and telephone and numbers of the broker or forwarding agent (if any); and

(2) The complete name and description of each listed chemical to be imported, the size or weight of container, the number of containers, the net weight of each listed chemical given in kilograms or parts thereof; and the gross weight of the shipment given in kilograms or parts thereof; and

(3) The proposed import date, the foreign port of exportation to the United States, and the first U.S. Customs Port of Entry; and

(4) The name, address, telephone number, and telex number (if known) of the consignor in the foreign country of exportation, the name(s) and address(es) of any intermediate consignor(s), and any license numbers if the consignor is required to have such numbers by the country of exportation.

§ 1313.14 Distribution of import declaration.

The required five copies of the precursor and essential chemical import declaration (DEA Form 486) will be distributed as follows:

(a) Copy 1, Copy 2, and Copy 3 shall be transmitted to the foreign shipper. The foreign shipper will submit Copy 1 to the proper governmental authority in the foreign country, if required as a prerequisite to export authorization. Copy 1 will then accompany the shipment to its destination, and shall be retained on file by the chemical importer. Copy 2 will accompany the shipment and be available for use by the appropriate customs official of the exporting country. Copy 3 shall accompany the shipment and be available for inspection and removal by an official of the U.S. Customs at the time of entry.

(b) Copy 4 shall be forwarded within the time limit specified in § 1313.13(b), directly to the Drug Enforcement Administration, Drug Control Section, Import/Export Unit, P.O. Box (to be designated).

(c) Copy 5 shall be retained on file by the regulated person as the record of authorization to import. Import declaration forms involving a listed procursor chemical must be retained for four years; declaration forms for listed essential chemicals must be retained for two years.

§ 1313.15 Waiver of 15-day advance notice for chemical importers.

(a) The Administrator shall determine whether a chemical importer shall be exempt from the 15-day advance notice requirement for filing the Precursor and Essential Chemical Import/Export Declaration (DEA Form 486) required by § 1313.13 for importations from regular suppliers.

(b) The Administrator shall grant regular suppliers status to the supplier or suppliers of a chemical importer if the Administrator determines that:

(1) The current supplier or suppliers submitted for consideration under paragraph (c) of this section has an established business relationship with the chemical importer; and

(2) The chemical imports are to be used for legitimate medical, scientific or commercial reasons, and are being received from a regular supplier.

(c) The Administrator shall consider the following factors in making a determination:

(1) The name and location of the chemical importer;

(2) The nature of the chemical importer's business (i.e., importer, exporter, broker, forwarding agent, distributor, manufacturer, etc.);

(3) The listed chemical or chemicals imported by the chemical importer and the use to which the listed chemical or chemicals will be applied;

(4) The names, street addresses, and telephone and telex numbers of the customers of the chemical importer to whom chemical imports are supplied;

(5) The names, street addresses, and telephone and telex numbers of the chemical importer's suppliers;

(6) The frequency and number of import transactions of a listed chemical or chemicals occurring in the preceding two year period;

(7) The method of delivery (direct shipment or through a broker or forwarding agent); and

(8) Any other information submitted by the chemical importer that may be considered relevant.

(d) The chemical importer should submit the information listed in paragraph (c) of this section, as well as the street address, name of a contact person and telephone number of that person to the Administrator in order that a determination be made as to whether the 15-day advance notice requirement should be waived.

(e) The information submitted must be received by the Administrator not later than 30 days after the publication of the final order pertaining to Part 1313 and shall be sent to the Drug Enforcement Administration, Office of Diversion Control, P.O. Box (to be designated).

(f) If upon the filing of a declaration for a chemical shipment from a supplier who has not been determined by the Administrator to be a regular supplier pursuant to paragraph (b) of this section and if upon the expiration of the 15-day advance notice the Administrator has not notified the chemical importer in writing to the contrary, the supplier will automatically become a regular supplier for purposes of this section.

(g) In the event that the chemical importer should relocate, change ownership, import listed chemicals which were not previously imported, or add a new customer, the chemical importer shall advise the Administrator of the appropriate changes. The Administrator shall make a new determination on the waiver of the 15-day advance notice requirement upon evaluating the new information.

(h) All chemical importers shall be required to file a DEA Precursor and Essential Chemical Import/Export Declaration (DEA Form 486) as required by § 1313.13 for all chemical imports.

(i) The Administrator may determine that a chemical importer who has been granted an exemption under this section for specific regular suppliers is no longer entitled to the waiver of the 15-day advance notice requirement if the Administrator determines that the chemical importer has:

(1) Failed to provide notification of shipments as required by 1313.13;

(2) Failed to comply with the requirements of paragraph (g) of this section;

(3) Engaged in activities in violation of the Act; or

(4) Diverted or aided in the diversion of imported chemicals to the clandestine manufacturer of an illicit controlled substance.

(j) The chemical importer will be notified in writing by the Administrator if such waiver is rescinded and the reasons for such action.

Exportation of Precursors and Essential Chemicals

§ 1313.21 Requirement of authorization to export.

(a) No person shall export or cause to be exported from the United States any chemical listed in § 1310.2, which meets or exceeds the threshold quantities identified in § 1310.5, until such time a DEA Form 486 has been filed with the Administrator.

(b) No person shall export or cause to be exported any listed chemical which is in violation of the law of the country to which the listed chemical is exported.

(c) A DEA Form 486 must be furnished to the Drug Enforcement Administration, Drug Control Section, P.O. Box (to be designated) for all regulated, chemical export transactions. However, the 15-day advance notification requirement found in § 1313.22 is waived for chemical exporters who have satisfied the "regular customer" considerations of § 1313.24.

§ 1313.22 Contents of export declaration.

(a) Any precursor or essential chemical listed in § 1310.2 which meets or exceeds the quantitative threshold criteria established in § 1310.5 may be exported if that chemical is needed for medical, commercial, scientific, or other legitimate uses.

(b) Any regulated person authorized to export and desiring to export a threshold or greater quantity of a listed chemical must complete a DEA Form 486 which must be received by the Drug Enforcement Administration at least 15 days prior to the date of exportation and distribute four copies of the form as directed in § 1313.23.

(c) The DEA Form 486 must be executed in quintuplicate and will include the following information:

(1) The name, address, and telephone and telex numbers of the regulated, chemical exporter, and the name, address, and telephone number of the exporter broker, if any;

(2) A complete description of the listed chemical to be exported, the size or weight of container, the number of containers, the net weight of each listed chemical given in kilograms or parts thereof; and the gross weight of the shipment given in kilograms or parts thereof;

(3) The proposed export date, the U.S. Customs port of exportation, and the foreign port of entry; and

(4) The name, address, telephone number and telex number (if known) of the consignee in the country of destination, the name(s) and address(es) of any intermediate consignee(s), and any license numbers if the consignee is required to have such numbers by the country of importation.

(d) Notwithstanding the time limitations included in paragraph (b) of this section, a regulated person may receive a waiver of the 15-day advance notification requirement following the procedures outlined in § 1313.24.

(e) Declared exports of listed chemicals which are refused, rejected, or otherwise deemed undeliverable may be returned to the U.S. exporter upon receiving written authorization by the Drug Enforcement Administration. The regulated person must first forward a completed import declaration with a

letter detailing the circumstances of the return.

§ 1313.23 Distribution of export declaration

The required five copies of the precursor and essential chemical export declaration (DEA Form 486) will be distributed as follows:

(a) Copy 1 shall accompany the shipment and remain with the shipment to its destination.

(b) Copy 2 shall accompany the shipment and will be available for use by the appropriate customs official at the foreign country of destination.

(c) Copy 3 shall accompany the shipment and will be attached to the "Dock Receipt" and made available for inspection by U.S. Customs prior to export. Copy 3 shall be available for inspection and removal of an official of the U.S. Customs Service at the port of exportation.

(d) Copy 4 shall be forwarded, within the time limit required in § 1313.22 of this part, directly to the Drug Enforcement Administration, Drug Control Section, P.O. Box (to be designated).

(e) Copy 5 shall be retained by the chemical exporter on file as his record of authority for the exportation. Export declaration forms involving a precursor chemical must be retained for four years; export declarations for essential chemicals must be retained for two years.

§ 1313.24 Waiver of 15-Day Advance notice for chemical exporters.

(a) The Administrator shall determine whether a chemical exporter shall be exempt from the 15-day advance notice requirement for filing the Precursor and Essential Chemical Import/Export Declaration (DEA Form 486) required by § 1313.21 for exportations to regular customers.

(b) The Administrator shall grant regular customer status to the customer or customers of a chemical exporter if:

(1) The Administrator determines that the current customer or customers submitted for consideration under paragraph (d) of this section have an established business relationship with the chemical exporter; or

(2) Upon the filing of a declaration for a chemical shipment to a customer who has not been determined by the Administrator to be a regular customer pursuant to paragraph (c) of this section and if upon the expiration of the 15-day advance notice the Administrator has not notified the chemical exporter in writing to the contrary, the customer will automatically become a regular customer for purposes of this section.

(c) Each chemical exporter whose customer becomes a regular customer as a result of the conditions mentioned in paragraph (b)(2) of this section shall be exempt from the 15-day advance notice requirement for exportations with that customer occurring pursuant to § 1313.21; however, the chemical exporter must ensure that a declaration has been forwarded to the Administrator not later than the date of shipment for all future shipments to the regular customer.

(d) The Administrator shall determine if the chemical exporter and a customer have a bona fide established business relationship upon evaluating the information provided by the chemical exporter to the Administrator. To facilitate the determination of this section regarding the status of a chemical exporter's regular customer or customers, each chemical exporter as defined in § 1313.2 shall provide the Administrator with a list of each customer who is a purchaser of a listed chemical or chemical who has an active, established business relationship with the chemical exporter regarding a listed chemical or chemicals which includes a history of previous purchases. The list shall be provided not later than 30 days after the publication of the regulations pertaining to Part 1313 and shall be sent to the Drug Enforcement Administration, Office of Diversion Control, P.O. Box (to be designated). It shall include the following information:

(1) The name and street address of the chemical exporter and of each regular customer;

(2) The telephone and telex number and contact person for the chemical exporter and for each regular customer;

(3) The nature of the regular customer's business (i.e., importer, exporter, broker, distributor, manufacturer, etc.) and use to which the listed chemical or chemicals will be applied;

(4) The duration of the business relationship;

(5) The frequency and number of transactions occurring during the preceding two year period;

(6) The amounts and the listed chemical or chemicals involved in regulated transactions between the chemical exporter and the regular customer;

(7) The method of delivery (direct shipment or through a broker or forwarding agent); and

(8) Any other information submitted by the chemical exporter that the exporter considers relevant for determining whether a customer is a regular customer.

(e) Unless notified in writing to the contrary, each chemical export to a regular customer submitted for consideration under paragraph (d) of this section who is determined by the Administrator to have a bona fide established business relationship with the chemical exporter shall be exempt from the 15-day advance notice requirement for exportations occurring pursuant to § 1313.21.

(f) In the event that the chemical exporter or the regular customer should relocate, change ownership, add a listed chemical or chemicals destined for exportation, or should any other significant factor contained in the original submission under § 1313.24(d) change, the chemical exporter shall advise the Administrator of the appropriate changes. Upon evaluating the new information, the Administrator shall make a new determination on the status of the regular customer.

(g) Chemical exporters shall file the DEA Precursor and Essential Chemical Import/Export Declaration (DEA Form 486) required in § 1313.21 for each chemical export of a threshold or greater amount of a listed chemical or chemicals to a regular customer. The declaration must be forwarded to the Administrator not later than the date of shipment.

(h) The Administrator may:

(1) Notify any chemical exporter that a regular customer has been disqualified or that a new customer for whom a declaration has been submitted is not to be accorded the status of a regular customer; or

(2) Determine that a chemical exporter who has been granted an exemption under this section is no longer entitled to the waiver of the 15-day advanced notice requirement.

(i) The chemical exporter will be notified in writing by the Administrator if such disqualification should occur or if the waiver of the 15-day advance notice is rescinded and the reasons for such action.

(j) The 15-day advance notice requirement will not be waived for listed precursor chemicals included in Table I of the Convention Against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances.

Public reporting (one-time) burden for this collection of information is estimated to average four hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing and collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Drug Enforcement Administration, Records Management Section, Washington, DC 20537; and to the Office of Management and Budget, Paperwork Reduction Project No. 1117–xxxx, Washington, DC 20503

Transhipment and In-Transit Shipment of Precursors and Essential Chemicals

§ 1313.31 Advance notice of importation for transshipment or transfer.

(a) A quantity of a chemical listed in § 1310.2 that meets or exceeds the threshold reporting requirements found in § 1310.5 may be imported into the United States for transshipment, or may be transferred or transshipped within the United States for immediate exportation, provided that advance notice is given to the Drug Enforcement Administration.

(b) Each advance notice shall contain the following information and be furnished to the Drug Enforcement Administration, Drug Control Section, P.O. Box (to be designated) at least 15 days prior to the proposed chemical importation into the United States:

(1) The date the notice was executed;

(2) The complete name and description of the listed chemical to be imported;

(3) The number of containers, and the size or weight of container for each listed item;

(4) The net weight of each listed chemical given in kilograms or parts thereof;

(5) The gross weight of the shipment given in kilograms of parts thereof;

(6) The name, address, telephone number and telex number (if known), and business of the foreign exporter;

(7) The foreign port of exportation;

(8) The approximate date of exportation;

(9) The complete identification of the exporting carrier;

(10) The name, address, business, and telephone number of the importer, transferror, or transshipper;

(11) The U.S. port of entry;

(12) The approximate date of entry;

(13) The name, address, telephone number and telex number (if known), and business of the consignee at the foreign port of entry;

(14) The shipping route from the U.S. port of exportation to the foreign port of entry at final destination;

(15) The approximate date of receipt by the consignee at the foreign port of entry; and

(16) The signature of the importer, transferror or transshipper, or his agent, accompanied by the agent's title.

(c) Unless notified to the contrary prior to the expected date of delivery, the importation for transshipment or transfer is considered approved.

(d) No waiver of the 15-day advance notice will be given for imports of listed chemicals in quantities meeting or exceeding threshold quantities for transshipment or transfer outside the United States.

§ 1313.41 Suspension of shipments.

(a) The Administrator may suspend any importation or exportation of a chemical listed in § 1310.2 based on evidence that the chemical proposed to be imported or exported may be diverted to the clandestine manufacture of a controlled substance. If the Administrator so suspends, he shall provide written notice of such suspension to the regulated person. Such notice shall contain a statement of the basis for the order.

(b) Upon service of the order of suspension, the regulated person to whom the order applies under paragraph (a) of this section must, if he desires a hearing, file a written request for a hearing pursuant to §§ 1313.51—1313.57.

Hearings

§ 1313.51 Hearings generally.

In any case where a regulated person requests a hearing regarding the suspension of a shipment of a listed chemical, the procedures for such hearing shall be governed generally by the procedures set forth in the Administrative Procedures Act (5 U.S.C. 551–559) and specifcally by section 6053 of the Chemical Diversion and Trafficking Act (Pub. L. 100–690), by 21 CFR 1313.52–1313.57, and by the procedures for administrative hearings under the Controlled Substances Act set forth in §§ 1316.41–1316.67 of this chapter.

§ 1313.52 Purpose of hearing.

If requested by a person entitled to a hearing, the Administrator shall cause a hearing to be held for the purpose of receiving factual evidence regarding the issues involved in the suspension of shipments within 45 days of the date of the request, unless the requesting party requests an extension of time.

§ 1313.53 Waiver of modification of rules.

The Administrator or the presiding officer (with respect to matters pending before him) may modify or waive any rule in this part by notice in advance of the hearing, if he determines that no party in the hearing will be unduly prejudiced and the ends of justice will thereby be served. Such notice of modification or waiver shall be made a part of the record of the hearing.

§ 1313.54 Request for hearing.

Any person entitled to a hearing pursuant to § 1313.52 and desiring a hearing shall, within 30 days after receipt of the notice to suspend the shipment, file with the Administrator a written request for a hearing in the form prescribed in § 1316.47 of this chapter.

§ 1313.55 Burden of proof.

At any hearing regarding the suspension of shipments, the Agency shall have the burden of providing that the requirements of this part for such suspension are satisfied.

§ 1313.56 Time and place of hearing.

(a) If any regulated person requests a hearing on the suspension of shipments, a hearing will be scheduled no later than 45 days after the request is made, unless the regulated person requests an extension to this date.

(b) The hearing will commence at the place and time designated in the notice given pursuant to paragraph (a) of this section but thereafter it may be moved to a different place and may be continued from day to day or recessed to a later day without notice other than announcement thereof by the presiding officer at the hearing.

§ 1313.57 Final order.

As soon as practicable after the presiding officer has certified the record to the Administrator, the Administrator shall issued his order on the determination on the suspension of shipment. The order shall include the findings of fact and conclusions of law upon which the order is based. The Administrator shall serve one copy of his order upon each party in the hearing.

Date: January 23, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89–2770 Filed 2–7–89; 8:45 am]

BILLING CODE 4410-09-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 8E3676/P477; FRL–3513–5]

Pesticide Tolerance for Glyphosate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for the combined residues of the herbicide glyphosate and its metabolite in or on the raw agricultural commodity crop group bulb vegetables. The proposed regulation to establish a maximum permissible level for residues of the herbicide in or on the crop group commodities was requested in a petition submitted by the Interregional Research Project No. 4 (IR–4).

DATE: Comments, identified by the document control number [PP 6E3676/P477], must be received on or before March 10, 1989.

ADDRESS: By mail, submit written comments to:

Public Docket and Freedom of Information Section, Field Operations Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to:

Rm. 246, CM # 2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Hoyt Jamerson, Emergency Response and Minor Use Section (TS–767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington DC 20460.

Office location and telephone number:

Rm. 716C, CM # 2, 1921 Jefferson Davis Highway Arlington, VA 22202, (703)–557–2310.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition (PP) 6E3676 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project, and the Agricultural Experiment Stations of California, Florida, Michigan, and New York.

The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the combined residues of the herbicide glyphosate (*N*-(phosphonomethyl) glycine), and its metabolite aminomethylphosphonic acid (AMPA) in or on the raw agricultural commodity onions at 0.2 part per million (ppm). The petition was later amended to propose a tolerance for residues of glyphosate at 0.2 ppm in or on commodities of the bulb vegetable crop group, which consists of the raw agricultural commodities garlic, leeks, onions (green and dry bulb), and shallots.

The proposed tolerance for the bulb vegetable crop group replaces, in part, the existing glyphosate tolerance for root crop vegetables at 0.2 ppm. The root crop vegetable group consists of the raw agricultural commodities garlic, leeks, onions, and shallots, as well as beets carrots, chickory, horseradish, Jerusalem artichokes, parsnips, potatoes, radish, rutabagas, salsify, sugarbeets, sweet potatoes, turnips, and yams.

The term "root crop vegetables" is a crop group designation that was used prior to the revision of 40 CFR 180.34(f), the Crop Group Regulations, which was published in the **Federal Register** on June 29, 1963 (48 FR 29655). Establishment of the proposed tolerance for bulb vegetables allows the deletion of the existing glyphosate tolerance for root crop vegetables. Glyphosate tolerances for the remaining raw agricultural commodities from the root crop vegetable group that do not belong to the bulb vegetable crop group are retained by listing individual tolerances at 0.2 ppm for the following commodities: Beets, carrots, chickory, horseradish, Jerusalem artichokes, parsnips, potatoes, radishes, rutabagas, salsify, sugar beets, sweet potatoes, turnips, and yams.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include:

1. A three-generation rat reproduction study with a no-observed-effect level (NOEL) of 10 milligrams (mg) per kilogram (kg) per day.

2. A chronic feeding/oncogenicity study in rats with a systemic NOEL of 31 mg/kg/day, which was negative for oncogenic potential under the conditions of the study at all feeding levels tested (0, 3, 10, and 31 mg/kg/day). Although the rat study meets the requirement for a chronic feeding study, it does not satisfy guideline requirements for an oncogenicity study. There is no evidence that the highest dose tested (31 mg/kg/day) was a toxic or maximum-tolerated dose (MTD).

3. A 1-year dog feeding study with a systemic NOEL of 500 mg/kg/day (highest dose tested).

4. A rat teratology study, negative for teratogenic effects at 3,500 mg/kg/day (highest dose tested), with maternal and developmental toxicity NOELs of 1,000 mg/kg/day.

5. A rabbit teratology study, negative for teratogenic effects at 350 mg/kg/day (highest dose tested), with a maternal NOEL of 175 mg/kg/day and a developmental toxicity NOEL of 350 mg/kg/day.

6. Mutagenicity studies as follows: Chromosomal aberration *in vitro* (no aberrations in Chinese hamster ovary cells were caused with or without S–9 activation); DNA repair in rat hepatocytes (negative); *in vivo* bone marrow cytogenic in rats (negative); rec-assay with *B. subtilis* (negative up to 2,000 micrograms of test material per disk); reverse mutation with *S. typhimurium* (negative); Ames test with *S. typhimurium* (negative); and a dominant lethal test in mice (negative).

Additionally, a 2-year oncogenicity study in CD–1 mice has been completed and reviewed by the Agency. Feeding levels in this study were 1,000, 5,000 and 30,000 ppm (equivalent to 150, 750, and 4,500 mg/kg/day, respectively). The NOEL for nonneoplastic chronic effects was established at 5,000 ppm. In this study, glyphosate produced an equivocal oncogenic response, possibly causing a slight increase in the incidence of renal tubular adenomas (a benign tumor of the kidney) in male mice at the highest dose tested (30,000 ppm). Because of the equivocal nature of the oncogenic response in mice and the lack of an acceptable oncogenicity study in rats, the Agency referred the issue to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Science Advisory Panel (SAP) for a "Weight-of-Evidence" recommendation. After reviewing all available evidence, the SAP concluded that the oncogenic potential of glyphosate could not be determined from the available information and recommended that the mouse and/or rat studies be repeated to clarify unresolved questions. Subsequently, the Agency classified glyphosate as a "Category D Oncogen" (inadequate evidence of oncogenicity) and requested repeat oncogenicity studies in both mice and rats. The rat oncogenicity study is due in 1990 and a repeat study in male mice is due in 1992.

Current Agency policy is to establish tolerances for significant new uses of glyphosate on a case-by-case basis. Tolerances which change the theoretical maximum residue contribution (TMRC) by more than 1 percent are generally considered significant.

The acceptable daily intake (ADI), based on the NOEL of 10 mg/kg/day from the rat reproduction study and using a 100-fold safety factor, is calculated to be 0.1 mg/kg/ of body weight (bw)/day. The TMRC from existing tolerances for a 1.5-kg/daily diet is calculated to be 0.004987 mg/kg/day. The tolerance for onions will not result in an increase in the TMRC because of the already established tolerance on root crops. Published tolerances utilize 5.0 percent of the ADI; the current action does not increase the percent of the ADI utilized.

No secondary residues in meat, milk, poultry, or eggs are anticipated since the bulb vegetable crop group commodities are not considered livestock feed commodities. The nature of the residues is adequately understood and an adequate analytical method (gas chromatography using a flame photometric detector) is available for enforcement purposes. An analytical enforcement method is currently available in the *Pesticide Analytical Manual* (PAM), Vol. II. There are currently no actions pending against the continued registration of this chemical.

Based on the data and information considered, the Agency concludes that the tolerance proposed would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 6E3676/P477]. All written comments filed in response to this petition will be available in the Public Docket and Freedom of Information Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: January 18, 1989.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.364 is amended by removing the existing entry for root crop vegetable group and by adding and alphabetically inserting the commodity crop group bulb vegetables and the raw agricultural commodities beets, carrots, chickory, horseradish, Jerusalem artichokes, paranips, potatoes, radishes, rutabagas, salsify, sugar beets, sweet potatoes, turnips and yams, to read as follows:

§ 180.364 Glyphosate; tolerances for residues.

(a) * * *

Commodities	Parts per million
Artichokes, Jerusalem	0.2
Beets	0.2
Bulb vegetables	0.2
Carrots	0.2
Chickory	0.2
Horseradish	0.2
Paranips	0.2
Potatoes	0.2
Radishes	0.2
Rutabegas	0.2
Salisfy	0.2
Sugar beets	0.2
Sweet potatoes	0.2
Turnips	0.2
Yams	0.2

[FR Doc. 89–2425 Filed 2–7–89; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 300

[FRL 3515–8]

National Oil and Hazardous Substances Pollution Contingency Plan; Hazard Ranking System (HRS) For Uncontrolled Hazardous Substance Releases; Appendix A of the National Oil and Hazardous Substances Contingency Plan; Extension of Comment Period

AGENCY: Environmental Protection Agency.

SUMMARY: In December 1988, the Environmental Protection Agency (EPA) proposed revisions to both the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (53 FR 51394, December 21, 1988) and the Hazard Ranking System (HRS) (53 FR 51962, December 23, 1988). In response to requests from the public, the Agency is extending the comment period on both proposed regulations from February 21, 1989 to March 23, 1989.

DATES: Comments must be received on or before March 23, 1989.

ADDRESSES: Comments may be mailed or delivered to the Superfund Docket, mail code OS–240, Superfund Docket Room 2427, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Separate comments should be sent for each proposed regulation. Written comments on the proposed revisions to the NCP should be submitted in triplicate, atten: Docket Number NCP–R2. Written comments on the proposed revisions to the HRS should be submitted in quadruplicate, attn: Docket Number 105 NCP–HRS. The public docket for the NCP and the HRS contain all relevant background material supporting these revisions.

Requests for copies of these documents should be made to the Superfund Docket Office, Room 2427,

U.S. Environmental Protection Agency. 401 M Street, SW., Washington, DC 20460, phone 202–382–3046. The docket is available for viewing by appointment only from 9:00 am to 4:00 pm, Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION: Contact Tod Gold (OS–240) for information on the NCP revisions and Steve Caldwell or Jane Metcalfe (OS–230) for information on the HRS revisions, Office of Emergency and Remedial Response, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, or the Superfund Hotline, phone 800–424–9346 (or 382–3000 in the Washington, DC metropolitan area).

SUPPLEMENTARY INFORMATION: On December 21, 1988, the Environmental Protection Agency proposed revisions to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The Superfund Amendments and Reauthorization Act of 1986 (SARA) amends existing provisions of and adds major new authorities to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). Futhermore, SARA mandates that the NCP be revised to reflect these amendments. The proposed NCP revisions are intended to implement regulatory changes necessitated by SARA, as well as to clarify existing NCP language and to reorganize the NCP to coincide more accurately with the sequence of response actions (53 FR 51394).

On December 23, 1988, the Agency also published revisions to the Hazard Ranking System, the principal mechanism for placing sites on the National Priorities List (NPL). The NPL is a list of releases and potential releases of hazardous substances, pollutants or contaminants that are eligible for Superfund-financed remedial actions. These revisions would change the way EPA evaluates potential threats to public health and the environment from hazardous waste sites and may affect the type and number of such sites included on the NPL. These revisions are designed to make the Hazard Ranking System more accurate in assessing relative potential risk as well as to meet other statutory requirements (53 FR 51962).

The Agency received several requests for an extension of the comment period. In order to provide the public sufficient time to comment on these rules, EPA is extending the comment period until March 23, 1989. This extension will give all members of the public adequate time to comment fully on both proposed regulations.

The deadline for all comments pertaining to the material published at 53 FR 51394 and 53 FR 51962, is March 23, 1989.

Dated: February 2, 1989.

Jonathan Cannon,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 89–2686 Filed 2–7–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88–298, RM–6069]

Radio Broadcasting Services; Grundy Center, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of.

SUMMARY: The Commission grants the request of Stoner Broadcasting System for the dismissal of its petition for rule making seeking the substitution of Channel 241A for Channel 249A at Grundy Center, Iowa, and the modification of Station KGGI(FM)'s license accordingly. With this action, this proceeding is terminated.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–298, adopted January 16, 1989, and released February 2, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–2941 Filed 2–7–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 88–156; RM–6018]

Radio Broadcasting Services; Mora and Nisswa, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule, dismissal of proposal.

SUMMARY: A Notice of Proposed Rule Making was issued in response to a petition filed by John Godfrey, proposing the allotment of Channel 227C1 to Mora, Minnesota, as that community's second FM service. The proposal required the deletion of Channel 227C (vacant) at Nisswa, Minnesota. Since the release of the *Notice* (April 18, 1988), two applications have been filed for the channel at Nisswa. A staff study determined there were no other Class C channels available for Nisswa and no other Class C1 channels available for Mora. Our study also indicated that downgrading the class of the Nisswa channel would not eliminate the short spacing to the Mora proposal. We could find no sufficient justification to delete a channel which could provide a first FM service to Nisswa and for which two applications are pending in order to provide a second FM service to Mora. Accordingly, the proposal in this proceeding to allot Channel 227C1 to Mora, Minnesota, by deleting Channel 227C from Nisswa, Minnesota, is denied. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–156, adopted December 20, 1988, and released January 20, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio Broadcasting

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–2942 Filed 2–7–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89–7, RM–6573]

Radio Broadcasting Services; Kimberling City, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Arthur C. Morris, proposing the allotment of FM Channel 261A to Kimberling City, Missouri. There is a site restriction 7.3 kilometers south of the community at coordinates 36–34–27 and 93–25–16. The allotment of Channel 261A at Kimberling City is contingent on the outcome of MM Docket 87–474 (2 FCC Rcd 6090 (1987)), which proposes to substitute Channel 263C2 for Channel 261A at Aurora, Missouri.

DATES: Comments must be filed on or before March 27, 1989, and reply comments on or before April 11, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Arthur C. Morris, Rt. 1 Box 350B, Bolivar, Missouri 65613.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–7, adopted January 11, 1989, and released February 2, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission,

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–2943 Filed 2–7–89; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 54, No. 25
Wednesday, February 8, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

February 3, 1989.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Comments on any of the items listed should be directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

• *Agricultural Marketing Service*
Honey Research, Promotion, and Consumer Information Order
None
Recordkeeping; On occasion; Monthly, Semi-annually
Individuals or households; Farms; Businesses or other for-profit; Small businesses or organizations; 40,150 responses; 3,838 hours; not applicable under section 3504(h)
Virginia M. Olson, (202) 475-3930

• *Food Safety and Inspection Service*
Regulations Governing Poultry Inspection
FSIS, 11,300-2, FSIS 11,300-3, FSIS 11,300-4, FSIS 11,300-5, FSIS 6800-6, MP 528, FSIS 6500-1, FSIS 6500-2, FSIS 6500-3, FSIS 9061-1, FSIS 6000-17, MP 2, FSIS 6510-7, MP 112, FSIS 9540-1
On occasion; Quarterly
Individuals or households; State or local governments; Businesses or other for-profit; Small businesses or organizations; 740,899 responses; 70,562 hours; not applicable under section 3504(h)
Roy Purdie Jr., (202) 447-5372

• *Agricultural Marketing Service*
Reporting requirements under regulations governing the inspection and grading services of manufactured processed dairy products. DA 125, 132, 155
On occasion
Businesses or other for-profit; 9,261 responses; 857 hours; not applicable under section 3504(h)
Lynn G. Boerger, (202) 382-9361

New Collection

• *Food and Nutrition Service*
Redemption Accountability Pilot-Food Stamp Processing Questionnaire
None
One time only
Businesses or other for-profit; Federal agencies or employees; Small businesses or organizations; 350 responses; 350 hours; not applicable under section 3504(h)
David M. Temoshok, (703) 756-3048.

Jane A. Benoit,
Departmental Clearance Officer.
[FR Doc. 89-2864 Filed 2-7-89; 8:45 am]
BILLING CODE 3410-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-583-003]

Fireplace Mesh Panels From Taiwan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On December 9, 1988, the Department of Commerce published the preliminary results of antidumping duty administrative review of the antidumping duty order on fireplace mesh panels from Taiwan. The review covers four manufacturers and/or exporters of this mechandise to the United States and the period June 1, 1987 through May 31, 1988.

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of review are unchanged from those presented in the preliminary results.

EFFECTIVE DATE: February 8, 1989.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or Phyllis Derrick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-8312/2923.

SUPPLEMENTARY INFORMATION:

Background

On December 9, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 49718) the preliminary results of its administrative review of the antidumping duty order on fireplace mesh panels from Taiwan (47 FR 24616, June 7, 1982). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted

to the Harmonized Tariff Schedule ("HTS"), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by this review are shipments of fireplace mesh panels. Such panels are defined as precut, flexible mesh panels, both finished and unfinished, which are constructed of interlocking spirals of steel wire and are of the kind used in the manufacture of safety screening for fireplaces. During the review period, such merchandise was classifiable under items 642.7600 and 654.0045 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under HTS items 7314.49.00 and 7323.99.00. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers four manufacturers and/or exporters of this merchandise to the United States and the period June 1, 1987, through May 31, 1988.

Final Results of the Review

We invited interested parties to comment on the preliminary results. We received no comments. Based on our analysis, the final results of review are the same as those presented in the preliminary results of review. The Department has determined that a dumping margin of 6.4 percent exists for Yeh Sheng Wire Mesh & Screen Co., Ltd., Tah Chung Iron of Superior Quality Co., Ltd., Yeh Sheng Wire Mesh & Screen Co./Taipoly Industries Ltd., and Dalvey Products Supply, Ltd. for the period June 1, 1987, through May 31, 1988. The Department will instruct the Customs Service to assess antidumping duties at that rate on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided by section 751(a)(1) of the Tariff Act, the Department will require a cash deposit of estimated antidumping duties of 6.4 percent for Yeh Sheng Wire Mesh & Screen Co., Ltd., Tah Chung Iron of Superior Quality Co., Ltd., Yeh Sheng Wire Mesh & Screen Co./Taipoly Industries Ltd., & Dalvey Products Supply, Ltd. For any future shipments from the remaining known exporters not covered in this review, a cash deposit of 6.4 percent shall be required as published in the final results of the last administrative review (53 FR 16179, May 5, 1988). For any future entries of this merchandise from a new exporter not covered in this or in prior administrative reviews, whose first shipment occurred after May 31, 1988, and who is unrelated to any reviewed firm or any other previously reviewed firm, a cash deposit of 6.4 percent shall be required. These deposit requirements are effective for all shipments of Taiwanese fireplace mesh panels entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and will remain in effect until the final results of the next administrative review.

The administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Date: February 1, 1989.

Jan W. Mares,
Assistant Secretary, for Import Administration.
[FR Doc. 89-2860 Filed 2-7-89; 8:45 am]
BILLING CODE 3510-DS-M

[C-427-016]

Industrial Nitrocellulose From France; Final Results of Countervailing Duty Administrative Review and Revocation of Countervailing Duty Order

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of countervailing duty administrative review and revocation of countervailing duty order.

SUMMARY: On December 2, 1988, the Department of Commerce published the preliminary results of its administrative review and intent to revoke the countervailing duty order on industrial nitrocellulose from France. We have now completed that review and determine the net subsidy during the period January 1, 1988, through March 10, 1988 to be *de minimis*. We are also revoking the countervailing duty order effective March 10, 1988.

EFFECTIVE DATE: February 8, 1989.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or Bernard Carreau, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On December 2, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 48668) the preliminary results of its administrative review and intent to revoke the countervailing duty order on industrial nitrocellulose from France (48 FR 28521; June 22, 1983). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by this review are shipments of French industrial nitrocellulose containing between 10.8 percent and 12.2 percent nitrogen, not explosive grade nitrocellulose which contains over 12.2 percent nitrogen. Industrial nitrocellulose is a dry, white, amorphous, synthetic chemical produced by the action of nitric acid on cellulose. Industrial nitrocellulose comes in several viscosities and is used to form films in lacquers, coatings, furniture finishes and printing ink. During the period of review, such merchandise was classifiable as cellulosic plastic materials, other than cellulose acetate, under item number 445.2500 of the Tariff Schedules of the United States Annotated.

Final Results of Review

We gave interested parties an opportunity to comment on the preliminary results and intent to revoke. We received no comments.

As a result of our review, we determine the net subsidy to be 0.12 percent *ad valorem* for the period January 1, 1988, through December 31, 1988, 0.09 percent *ad valorem* for the period January 1, 1987, through December 31, 1987, and 0.06 percent *ad valorem* for the period January 1, 1988, through March 10, 1988. The Department considers any rate less than 0.50 percent *ad valorem* to be *de minimis*.

Therefore, the Department will instruct the Customs Service to liquidate, without regard to countervailing duties, all unliquidated entries of this merchandise exported on or after January 1, 1988, and on or before March 10, 1988.

Further, we are revoking the countervailing duty order on industrial nitrocellulose from France effective March 10, 1988. Therefore, the Department will instruct the Customs Service to terminate the suspension of liquidation requirement and to refund any cash deposits of estimated countervailing duties made on any shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after March 10, 1988.

This administrative review, revocation, and notice are in accordance with section 751 (a)(1) and (c) of the

Tariff Act (19 U.S.C. 1675 (a)(1)) and (c) and 19 CFR 355.41 and 355.42.

Date: February 1, 1989.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 89-2991 Filed 2-7-89; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

ACTION: Notice of application for an amendment to an Export Trade Certificate of Review

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an amendment to an Export Trade Certificate of Review. This notice summarizes the amendment and requests comments relevant to whether the Certificate should be amended.

FOR FURTHER INFORMATION CONTACT: Thomas H. Stillman, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the Federal Register identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1223, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 87-3A004."

OETCA has received the following application for a third amendment to Export Trade Certificate of Review #87-00004, which was issued on May 19, 1987 (52 FR 19371, May 22, 1987), and previously amended on December 11, 1987 (52 FR 46454, December 22, 1987), and January 3, 1989 (54 FR 837, January 10, 1988).

Applicant: National Machine Tool Builders' Association ("NMTBA") a.k.a. NMTBA—The Association for Manufacturing Technology, 7901 Westpark Drive, McLean, Virginia 22102-4269, Contact: James R. Atwood, legal counsel, Telephone: 202/662-8000.

Application No.: 87-3A004.

Date Deemed Submitted: January 27, 1989.

Summary of the Application

NMTBA seeks to amend its Certificate to include as a protected Export Trade Activity the operation and establishment of jointly owned subsidiaries or other joint venture entities owned exclusively by Members for the purposes of (a) exporting Products covered by the Certificate to Export Markets; (b) operating warranty, servicing, and training centers in Export Markets; and (c) providing Export Trade Facilitation Services to Members. These entities and the Members that own them would also be protected by the Certificate when the entities engage in the Export Trade Activities and Methods of Operation already authorized by the Certificate.

Date: February 2, 1989.

Thomas H. Stillman,

Director, Office of Export Trading Company Affairs.

[FR Doc. 89-2974 Filed 2-7-89; 8:45 am]

BILLING CODE 3510-DR-M

Possible Certain Steel Products Investigations; Meeting

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of meeting.

SUMMARY: This is to advise the public that the International Trade Administration's Import Administration unit will hold a meeting to explore ways to manage investigations where a large number of antidumping (AD) and countervailing duty (CVD) steel petitions may be filed simultaneously. Interested persons are invited to present written and oral views regarding any issue which relates to this matter.

DATE: The hearing will be held at 9:30 a.m. on February 24, 1989.

FOR FURTHER INFORMATION CONTACT: Roland MacDonald (AD) or Barbara Tillman (CVD), Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; (202) 377-1766 or (202) 377-2438.

SUPPLEMENTARY INFORMATION: The International Trade Administration is holding a public meeting to solicit views on various methods that might be employed to manage a large number of simultaneous steel products investigations. The Department is interested in exploring ways in which it can streamline various aspects of such investigations while still conforming fully with the governing statutes. Some of the areas the Department wishes to explore are discussed below. This list, however, is not intended to be exclusive nor indicative of how the Department intends to proceed. The Department welcomes suggestions on any substantive or procedural area that would enable it to conduct a large number of steel investigations in a timely and high-quality manner.

In some instances, we have suggested several alternatives; in others, we have suggested only one or two. Please direct your comments to these suggestions, and to other relevant approaches you believe the Department should consider which are not included in this notice.

Antidumping Alternatives

• Petitions

—Supplemental information not to be accepted after filing. All necessary information to be in the petition, as filed.

• Subsequent allegations, *e.g.*, cost of production, multinational companies.

—Limitation on time in which these can be made.

—*All* information necessary to meet respective criteria to initiate (*e.g.*, company specific prices, sale, etc.) to be included.

• Period of investigation (POI).

—Less than a six-month period to be selected from the normal POI, which includes the month of filing plus the five preceding months.

—Less than a six-month period, but selection of the months would come from the most recently audited fiscal year.

• Home market viability determination.

—To be based on total class or kind of merchandise under investigation (as opposed to such or similar categories).

• Third country sales.

—Maximum of two countries to be considered before using constructed value.

—Sales to more than one third country not to be cumulated.

—Volume of sales to equal at least five percent of U.S. sales.

• Sales reporting.

—Limitation on number of categories of merchandise to be analyzed; category selection based on highest sales volume items.

—Identical merchandise only where a minimum coverage threshold (*e.g.*, 33 percent of U.S. sales) is met.

—Non-inclusion of exporter's sales price, purchase price, or further U.S. manufacture sales depending on volume of these sales types involved within comparison categories selected.

—Monthly averaging of U.S. sales prices.

—Selection of specific days within the POI.

• Cost of production (COP)/constructed value (CV) reporting.

—Immediate use of CV where identical or most similar home market/third country comparison category yields no comparison.

—Examination of an abbreviated period to determine whether or not sales have been made at below cost.

• Adjustments for circumstances of sale (CS)/indirect selling expense.

—Use of average amounts for most recently completed fiscal year regardless of POI selected.

—Non-reporting for individual CS categories involving insignificant amounts as determined from past steel cases.

• Difference in merchandise adjustments for similar merchandise comparisons.

—No adjustments where home market comparison categories are narrowly structured.

—Use of average adjustment amounts based on all home market sales within a comparison category.

• Movement charges.

—Use of POI average charges by specific destination for U.S. sales.

—Use of POI average amounts including all destinations for home market sales.

• Rebates and discounts.

—Use of average discount amounts for last audited fiscal year.

—Use of average rebate amounts for sales during POI to extent available.

• Taxes and duties.

—Use of last completed fiscal year data for duty drawback adjustments.

• Administrative protective orders (APO)/non-proprietary summary procedures.

—All petitioner APO requests to be filed within two weeks of initiation.

—APO issuance in advance of the receipt of certain business proprietary data.

—Non-proprietary summaries rejected only if specific complaints are received.

• Verification/verification reports.

—Dates set by Department not to be changed or extended.

—Limited verification on all sales and cost-related data.

—Where appropriate, brief narrative with maximum use of exhibits in verification reports.

• Voluntary responses/exclusion requests.

—No analyses will be undertaken.

—Any deficiencies found will result in rejection.

• ADP.

—ADP portion of questionnaire to be reformatted to conform to streamlining procedures that are adopted.

Countervailing Duty Alternatives

• Petition.

—An allegation in support of initiation of an investigation of a government program must contain the elements necessary for the imposition of a duty and must be supported by evidence reasonably available to the petitioner. Specifically:

—The Department will decide whether there is a sufficient basis to initiate an investigation based on information submitted in the petition. No supplemental information will be requested.

—For each program, the petition must state clearly:

(i) How the program constitutes a countervailable export subsidy or domestic subsidy;

(ii) The factual allegations which support the designation of the program as an export or domestic subsidy; and

(iii) All information reasonably available to petitioner in support of such factual allegations.

—If the program is alleged to be a countervailable domestic subsidy, the petition must:

(i) Clearly allege that the benefits under the program are provided to a specific enterprise or industry, or group of enterprises or industries;

(ii) Provide factual information in support of the claim of specificity;

(iii) Describe the nature of the benefit; and

(iv) Demonstrate how the benefit is paid or bestowed, directly or indirectly, on the manufacture, production, or export of steel in accordance with section 771(5)(A)(ii) of the Act.

—If information available to the Department at the time of initiation indicates that the countervailable benefit conveyed under a program is less than .01 percent, the Department will not investigate that program.

—No new allegations accepted after initiation except upstream allegations.

—Equity and uncreditworthy allegations must specify the time period being alleged and then provide the financial information, including full analyses, for the three years prior to this period.

—Allegations and supporting documentation with respect to loans from government banks must demonstrate specificity and inconsistency with commercial considerations.

—Programs previously found not used in steel cases will not be initiated without evidence of use.

—Programs previously found not countervailable will not be initiated without new evidence supporting countervailability.

• Coverage.

—Investigate only those companies which account for 60 percent of exports to the United States.

• Review period.

—Each company's fiscal year will be the basis for its review period, even if other companies under investigation have different fiscal years.

• Verification.

—Certain aspects of all programs will only be verified at either the government or company.

—Only certain programs will be verified at the government.

—Not all companies will be verified and/or not all programs will be verified at a company.

• Exclusions.

—No exclusion requests will be accepted.

• Reporting Requirements.

—Where there are numerous short-term loans, use averaging techniques to calculate the benefit, and/or require information to be submitted in Lotus format on diskettes.

—All loan, grant and equity information must be submitted in Lotus format on diskettes.

• Benchmarks.

—Use published interest rates for short- and long-term loan benchmarks, or a benchmark from a previous

investigation or administrative review.

• Suspension Agreements.

—No requests for suspension agreements will be considered without a clear demonstration that the statutory requirements will be met.

Combined Antidumping and Countervailing Duty Alternatives

• Questionnaire formats, response time, and deficiency/omission letters.

—Abbreviated format to conform to simplification measures that are adopted.

—Limited response time with no extensions.

—Only one deficiency/clarification response request will be made.

—Relaxation on number of copies of documents to be filed.

• Hearings

—Dates set by Department will not be changed.

—Limitation on size of briefs and rebuttal briefs.

• Federal register notices.

—Comments and DOC positions for major issues only.

The hearing will be held at 9:30 a.m. on February 24, 1989, in Room 4830 at the Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Persons who with to participate in the hearing must submit a written request (10 copies) to Michael J. Coursey, Deputy Assistant Secretary for Investigations, Room B099, at the above address, within 10 days of the publication of this notice. Requests should contain: (1) The person's name, address, telephone number, and affiliation: (2) the number of participants; (3) the reasons for attending; and (4) a list of the points to be discussed. Written comments must be filed in accordance with 19 CFR 353.46 and 19 CFR 355.31 in at least 10 copies by February 21, 1989 Oral presentations will be limited to those points raised in your written comments. Those persons wishing to appear will be notified of their time allocations for their presentations.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 89-3109 Filed 2-7-89; 8:45 am]

BILLING CODE 3510-DS-M

National Technical Information Service

Intent To Grant Exclusive Patent License; Akzo

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Akzo, having a place of business at Chicago, Illinois, an exclusive license in the United States and certain foreign countries to practice the invention embodied in U.S. Patent 3,969,549, patent application S. N. 5-536,125, "Method of Deacidifying Paper." The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The proposed license may be granted unless, within sixty days from the date of this published notice, NTIS recieves written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments, and other materials relating to the proposed license must be submitted to Charles A. Bevelacqua, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

A copy of the instant patent may be purchased from the Commissioner of Patents, United States Patent & Trademark Office, Washington, DC 20231.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 89-2919 Filed 2-7-89; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of New Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Mauritius

January 26, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing new limits.

EFFECTIVE DATE: February 2, 1989.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Governments of the United States and Mauritius have agreed to amend further their current Bilateral Textile Agreement to establish new limits for Categories 336, 340/640 and 352/652.

A copy of Memorandum of Understanding dated October 28, 1988 is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-1998.

A description of the textile categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 37021, published on September 23, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 26, 1989

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive amends but does not cancel, the directive of September 19, 1988 from the Chairman, Committee for the Implementation of Textile Agreements, which establishes restraint limits for certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Mauritius and exported during the twelve-month period which began on October 1, 1988 and extends through September 30, 1989.

Effective on February 2, 1989 the directive of September 20, 1988 is being amended to include the following new limits for the periods beginning, in the case of Categories 340/640, on October 1, 1988; and in the case of Categories 336 and 352/652, on January 1, 1989; and extending through September 30, 1989:

Category	New restraint limit [1]
336	44,503 dozen.
340/640	361,709 dozen of which not more than 235,977 dozen shall be in Categories 340-Y/640-Y.[2]
352/652	747,945 dozen of which not more than 635,753 dozen shall be in Category 352.

[1] The limit for Categories 340/640 has not been adjusted to account for any imports exported after September 30, 1987.

[2] In Categories 340-Y/640-Y, only tariff numbers 6205.20.20.15, 6205.20.20.20, 6205.20.20.45, 6205.20.20.50 and 6205.20.20.60 in Category 340-Y; and 6205.30.20.10, 6205.30.20.20, 6205.30.20.50 and 6205.30.20.60 in Category 640-Y.

Textile products which have been exported to the United States prior January 1, 1989 for Categories 336 and 352/652 shall not be subject to this directive.

Textile products in Categories 336 and 352/652 which have not been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The import charges already made to Categories 340 and 640 are to be retained.

The limits established in this directive may be adjusted in the future under the provisions of the Memorandum of Understanding dated October 26, 1988.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-2973 Filed 2-7-89; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 1-2 March 1989.

Time of Meeting: 0800-1700 hours each day.

Place: Huntsville, Alabama.

Agenda: The Army Science Board Ad Hoc Subgroup on Ballistic Missile Defense (Follow-on) will meet for briefings and discussions on matters that are an integral part of, or related to, the issue of the study effort. The meeting is closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202)695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 89-2958 Filed 2-7-89; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board, Education.

ACTION: Notice of closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Search Committee of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a) (2) of the Federal Advisory Committee Act.

DATE: February 19 and 20, 1989.

ADDRESS: The Ritz Carlton Hotel, 2100 Massachusetts Avenue NW., Washington, DC 20008.

FOR FURTHER INFORMATION CONTACT: Eunice E. Henderson, Designated Federal Official, Office of Assistant Secretary for Educational Research and Improvement, U.S. Department of Education, 555 New Jersey Avenue NW., Room 602C, Washington, DC 20208, Telephone: (202) 357-6050.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), Title III-C of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100-297); 20 U.S.C. 1221e-1).

The Board is established to advise the Commissioner of the National Center for Education Statistics on policies and actions needed to improve the form and use of the National Assessment of Education Progress, and develop specifications for the design, methodology, analysis and reporting of test results. The Board also is responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and establishing standards and procedures for interstate and national comparisons.

The Search Committee of the National Assessment Governing Board will meet in closed session on February 19 and 20, 1989. The subcommittee is meeting in closed session to interview and consider candidates for the position of Staff Director. The discussion will touch upon matters that would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemption (6) of section 552(b)(c) of Title 5 U.S.C. The public is being given less than 15 days notice of this meeting because the interview schedule could not be determined until the Board's January 27-28, 1989 meeting.

A summary of the activities at the closed session and related matters which are informative to the public consistent with Title 5 U.S.C. 552b will be available to the public within fourteen days of this meeting.

Records are kept of all Board proceedings, and until a permanent office site for the Board has been established, are available for public inspection at the U.S. Department of Education, Office of Educational Research and Improvement, 555 New Jersey Avenue NW., Room 600, Washington, DC from 8:30 a.m. to 5:00 p.m., Monday through Friday.

Dated: February 6, 1989.

Patricia Hines,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 89-3046 Filed 2-7-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 88-56-NG]

CanadianyOxy Marketing Inc.; Order Extending Blanket Authorization To Import Natural Gas

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order extending blanket authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting CanadianOxy Marketing Inc. (CanadianOxy) an extension of its existing blanket authorization to import up to 100 Bcf of

natural gas over a two-year period commencing on the date of first delivery after February 22, 1989.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, January 31, 1989.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 89–3025 Filed 2–7–89; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 88–67–NG]

Kerr-McGee Chemical Corp.; Order Granting Short-Term Authorization To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order granting short-term authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order extending Kerr-McGee Chemical Corporation's [Kerr-McGee Chemical] authority to import natural gas from Canada. The order issued in ERA Docket No. 88–67–NG authorizes Kerr-McGee Chemical to import up to 18,000 Mcf per day of Canadian natural gas over a two-year term beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on January 31, 1989.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 89–3026 Filed 2–7–89; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 87–60–NG]

Northwest Pipeline Corp.; Order Amending a Long-Term Authorization To Import Natural Gas From Canada and Granting Interventions

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order amending authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order amending an existing import authorization granted to Northwest Pipeline Corporation that increases the volume of gas it is authorized to import at Kingsgate, British Columbia, from 100 MMcf per day to up to 152 MMcf per day for the balance of its existing long-term import authorization ending October 31, 1989.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal Holidays.

Issued in Washington, DC, January 31, 1989.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 89–3027 Filed 2–7–89; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. RP85–122–016]

Colorado Interstate Gas Co.; Compliance Filing

February 3, 1989.

Take Note that on January 17, 1989 Colorado Interstate Gas Company ("CIG") submitted the certain tariff sheets in compliance with the July 28, 1988 Letter Order and November 28, 1988 Order Denying Appeal From Staff Action in this proceeding.

CIG states these tariff sheets reflect effective rates for the entire Docket No. RP85–122 period.

CIG states the issue of whether its fixed cost minimum bill should be eliminated retroactively to the effective date of Docket No. RP85–122 rates is pending judicial review in *Natural Gas Pipeline Co.* v. *FERC*, No. 88–1930 (10th Circuit). Accordingly, consistent with *ANR Pipeline Co.* v. *FERC*, Nos. 87–1340 and 88–1030 (DC Cir. December 13, 1988), CIG states that it reserves the right to revise the instant tariff sheets to reflect the elimination of the minimum bill volumes and the resulting reallocation of costs, and to establish an appropriate rate adjustment mechanism in the event that the minimum bill is ultimately ordered to be eliminated retroactively.

Copies of this filing are being served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 10, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89–2993 Filed 2–7–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–187–014]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

Take notice that Columbia Gas Transmission Corporation (Columbia) on January 30, 1989, tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1, to be effective February 1, 1989:

Nineteenth Revised Sheet No. 16B
Ninth Revised Sheet No. 16B1
Ninth Revised Sheet No. 16B2

Columbia states that the foregoing tariff sheets modify and supplement Columbia's previous filings in Docket No. RP88–187 in which Columbia established procedures pursuant to Order No. 500 to recover from its customers the take-or-pay and contract reformation costs billed to Columbia by is pipeline suppliers. Specifically, Columbia proposes to revise and supplement its earlier filings to permit it to flow through take-or-pay and contract reformation costs from (i) Texas Eastern Transmission Corporation pursuant to the Federal Energy Regulatory Commission's orders issued on January 13, 1989 in Docket Nos. RP88–60, RP88–192 and RP88–223, (ii) Panhandle Eastern Pipe Line Company pursuant to filings made on December 19, 1988 in Docket Nos. RP89–9 and RP89–10, and (iii) Tennessee Gas Pipeline Company pursuant to the Commission's orders issued on December 29, 1988 in Docket No. RP88–191.

Additionally, Columbia states its revised tariff sheets reflect changes in the deficiency period sales volumes for certain customers which, in turn, affect the development of allocation factors for the flowthrough of take-or-pay costs to each of Columbia's customers.

Copies of the filing were served upon Columbia's jurisdictional customers and interested state commissions and upon each person designated on the official service list compiled by the Commission's Secretary in Docket No. RP88–187–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 10, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–2994 Filed 2–7–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP88–567–001]

Distrigas Corp. et al.; Tariff Filing

February 2, 1989.

Take notice that on January 17, 1989, Distrigas Corporation (Distrigas) and Distrigas of Massachusetts Corporation (DOMAC), Two Oliver Street, Boston, Massachusetts 02109, filed a Compliance Filing pursuant to the Commission's December 16, 1988 order in the above-captioned Docket.

Distrigas states that in compliance with ordering Paragraph A of that order, Distrigas and DOMAC have filed certain tariff sheets implementing the amended and restructured sales and storage services authorized therein.

Distrigas states that the compliance tariff sheets submitted by Distrigas, for inclusion in Distrigas' FERC Gas Tariff, First Revised Volume No. 1, include the new Distrigas Special Rate Schedule approved by the Commission to govern the Sale of LNG by Distrigas to DOMAC.

The Compliance tariff sheets to be incorporated in DOMAC's FERC Gas Tariff, First Revised Volume No. 1, include:

1. Revised General Terms and Conditions;
2. New DOMAC Rate Schedules FLSS, FVSS, FCSS and ISS, with corresponding Forms of Service Agreements for firm liquid sales service, firm vapor sales service, interruptible liquid service, and interruptible vapor sales service;
3. A new Storage Service contract between DOMAC and Boston Gas Company which implements the new contract storage service to be provided by DOMAD at the contract rate of $0.16/MMBtu per month.

In each instance, Distrigas and DOMAC allege that the submitted tariff sheets conform with the pro forma tariff sheets filed with Distrigas and DOMAC's application in Docket No. CP88–567 and to the Commission's December 16, 1988 Order. DOMAC's General Terms and Conditions have been revised to reflect the terms of the new services authorized by the December 16, 1988 Order and to eliminate anachronistic language that is not meaningful in the context of the new rate schedules and sales services. The General Terms and Conditions have also been revised to reflect amendments to DOMAC's curtailment plan as required by the Commission's December 16, 1988 Order. Additionally, DOMAC has revised the pro forma tariff sheets initially filed to reflect DOMAC's firm and interruptible sales services to reflect the call payment and commodity payments caps instituted by the Commission's December 16, 1988 Order.

Distrigas and DOMAC have requested waiver of the Commission's Regulations to the extent necessary to permit the filed tariff sheets to become effective on December 17, 1988.

Distrigas and DOMAC state that a copy of their filing has been mailed to each party on the official service list at Docket No. CP88–587.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214. All such motions or protests must be filed on or before Feb. 9, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–2995 Filed 2–7–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP89–57–000]

El Paso Natural Gas Co.; Tariff Filing

February 3, 1989.

Take notice that on January 27, 1989, El Paso Natural Gas Company ("El Paso") tendered pursuant to Part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act, a tariff filing to implement changes in the manner requests are made for transportation on El Paso's interstate pipeline system. Such requests are subject to section 4, Scheduling of Receipts and Deliveries, of the Transportation General Terms and Conditions in El Paso's FERC Gas Tariff, Original Volume No. 1–A, and section 4, Service Agreement and Service Obligations, of the Force Majeure, Service Rules and Service Obligations provisions in El Paso's FERC Gas Tariff, Third Revised Volume No. 2.

El Paso states the new scheduling procedures retain the currently effective three (3) day schedule over which volumes are nominated, confirmed and delivered to El Paso for transportation, but contain beneficial modifications including confirmation and requests to be completed by the conclusion of Day 1, and a provision to schedule on Day 2 additional volumes of gas where additional capacity exists.

El Paso requests the tendered tariff sheets become effective March 1, 1989.

Copies of El Paso's filing were served upon all shippers utilizing El Paso's system and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 10, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–2995 Filed 2–7–89; 8:45 am]

BILLING CODE 6717–01–M

protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2996 Filed 2-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-2-15-000]

Mid Louisiana Gas Co.; Proposed Change of Rates

February 3, 1989.

Take notice that Mid Louisiana Gas Company (Mid Louisiana) on January 31, 1989, tendered for filing as part of First Revised Volume No. 1 of its FERC Gas Tariff the following Tariff Sheets to become effective March 1, 1989:

	Superseding
Sixty-Seventh Revised Sheet No. 3a.	Sixty-Sixth Revised Sheet No. 3a.

Mid Louisiana states that the purpose of the filing of Sixty-Seventh Revised Sheet No. 3a is to reflect a $.0043 per MCF decrease in its current cost of gas.

Mid Louisiana states this filing is made in accordance with section 19 of Mid Louisiana's FERC Gas Tariff. Copies of this filing have been mailed to Mid Louisiana's Jurisdictional Customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 10, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2997 Filed 2-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-47-017 and RP88-47-018]

Northwest Pipeline Corp.; Change in FERC Gas Tariff

February 3, 1989.

Take notice that on January 26, 1989 Northwest Pipeline Corporation ("Northwest"), in compliance with the order issued by the Federal Energy Regulatory Commission ("Commission") on January 11, 1989 submitted certain tariff sheets, to be part of its FERC Gas Tariff.

On January 27, 1989, Northwest filed Substitute Fourth Amended Fourteenth Revised Sheet No. 201 after it was discovered that Fourth Amended Fourteenth Revised Sheet No. 201, filed on January 26, 1989, contained mathematical errors.

Northwest states that these tariff sheets reflect the customer-nominated D-2 billing determinants pursuant to the Commission's order on May 16, 1988, in Northwest's pending rate case. The tariff sheets also include the full certificated transportation contract demand level for ANR Pipeline in the derivation of D-1 charges.

A copy of this filing is being served on all parties of record in this proceeding, and on Northwest's jurisdictional customers and affected state commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 10, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2998 Filed 2-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-3-37-001]

Northwest Pipeline Corp. Change in FERC Sales Tariff

February 3, 1989

Take notice that on January 27, 1988, Northwest Pipeline Corporation ("Northwest") tendered for filing and acceptance the following tariff sheets:

First Revised Volume No. 1

Forty-Eighth Revised Sheet No. 10
Sixth Revised Sheet No. 303

Original Volume No. 1-A

Fourth Revised Sheet No. 602

Northwest states that the purpose of this filing is to restate its January 1, 1989 PGA to reflect appropriate D-2 nominations as required by the Commission's December 28, 1988 order in Docket No. TQ89-3-37-000. Sheet Nos. 303 and 602 reflect revised statements of D-2 filing determinants and Sheet No. 10 reflects revised rates. Northwest has requested waivers to permit effective dates as follows:

November 1, 1988: Sixth Revised Sheet No. 303, Fourth Revised Sheet No. 602.
January 1, 1989: Forty-Eighth Revised Sheet No. 10.

Northwest states that a copy of this filing has been served on all jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 10, 1989. Protests will be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary,

[FR Doc. 89-2999 Filed 2-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-2-28-000]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

February 3, 1989.

Take notice that on January 30, 1989, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following tariff sheets to its FERC Gas Tariff Original Volume No. 1:

Second Substitute Original Revised Sheet No. 3-C.7
Second Substitute Original Revised Sheet No. 3-C.8
Second Substitute Original Revised Sheet No. 3-C.9

The proposed effective date of these revised sheets is September 29, 1988.

Panhandle states that the instant filing reflects revised tariff sheets to flowthrough Trunkline Gas Company's (Trunkline) revised direct billing amount of take-or-pay charges to Panhandle. Trunkline is filing concurrently herewith in compliance with Ordering Paragraph (B) of the Commission's Order dated September 28, 1988, as further clarified in the Commission's Order Denying Rehearing dated December 16, 1988 in Docket No. RP88-239-000 and Docket No. RP88-239-003, respectively, revised tariff sheets to reflect the elimination of carrying charges Trunkline paid its customers on amounts previously collected from them through Trunkline's rates.

Panhandle states that copies of the filing were sent to all of Panhandle's jurisdictional customers and interested state commissions, as well as the parties to the above-captioned proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before February 10, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-3000 Filed 2-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-2-6-001]

South Georgia Natural Gas Co.; Proposed Changes to FERC Gas Tariff

February 3, 1989.

Take notice that on January 30, 1989, South Georgia Natural Gas Company ("South Georgia") tendered for filing Substitute Fiftieth Revised Sheet No. 4 to its FERC Gas Tariff, First Revised Volume No. 1. This tariff sheet and supporting information is being filed with a proposed effective date of January 1, 1989, pursuant to the Purchased Gas Cost Adjustments provision set out in section 14 of South Georgia's FERC Gas Tariff.

South Georgia states that the proposed tariff sheet is submitted in compliance with the Commission's letter order of December 23, 1988, in Docket No. TQ89-2-6-000, as modified by the Notice of Extension of Time issued by the Commission on January 13, 1989. The December 23rd letter order directed South Georgia to file revised PGA rates within fifteen (15) days of the issuance of the order which reflected the effective rates of its pipeline supplier, Southern Natural Gas Company.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before February 10, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-3001 Filed 2-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-165-001, *et al.*]

Tennessee Gas Pipeline Co. (formerly Tennessee Gas Pipeline Company, a Division of Tenneco Inc.); Redesignation

February 3, 1989.

On February 29, 1988, Tennessee Gas Pipeline Company filed in Docket No. G-165-001, *et al.*, a request for the issuance of a notice redesignating to Tennessee Gas Pipeline Company all certificates of public convenience and necessity, all rate and tariff proceedings, all self-implementing transactions, and any and all other records or proceedings relating to or in the name of Tennessee Gas Pipeline Company, a Division of Tenneco Inc. In accordance with a corporate name change, the jurisdictional natural gas operations are to be conducted under the name of Tennessee Gas Pipeline Company.

Accordingly, the authorization issued by this Commission and by the Federal Power Commission, the applications currently pending before the Commission, the FERC Gas Tariff on file, and any other records or proceedings relating to the former Tennessee Gas Pipeline Company, a Division of Tenneco Inc. are hereby redesignated as those of Tennessee Gas Pipeline Company.

A listing of authorizations and pending proceedings is set forth in the appendix.

This action is taken pursuant to 18 CFR 375.302(r) of the Commission's rules.

Lois D. Cashell,

Secretary.

Appendix—Tennessee Gas Pipeline Company

List of Pending and Completed Proceedings [1]

G-165	G-1577
G-230	G-1582
G-610	G-1614
G-621	G-1649
G-652	G-1661
G-660	G-1662
G-678	G-1921
G-701	G-1922
G-780	G-1930
G-789	G-1969
G-805	G-1969-000
G-808	G-2025
G-824	G-2106
G-836	G-2271
G-850	G-2290
G-854	G-2310
G-910	G-2311
G-911	G-2316
G-992	G-2330
G-975	G-2331
G-978	G-2352
G-982	G-2548
G-989	G-4226
G-1001	G-4227
G-1073	G-4262
G-1188	G-4715
G-1206	G-4715-004
G-1226	G-6127
G-1234	G-8215
G-1235	G-8601
G-1248	G-8805
G-1280	G-8806
G-1287	G-8872
G-1273	G-8890
G-1283	G-9087
G-1284	G-9175
G-1288	G-9331
G-1290	G-9448
G-1301	G-9454
G-1365	G-9867
G-1453	G-10204
G-1572	G-10610
G-1573	G-10804

[1] Docket number containing an asterisk (*) refers to the FERC changing the name to the extent of its authority granted under the DOE Organization Act and the delegations of the Secretary of Energy thereunder, pursuant to which authority to exercise certain jurisdiction is delegated to the ERA, and authority to exercise other jurisdiction is delegated to the FERC.

C-11107
C-11228
C-11277
C-11980
C-12583
C-12954
C-13146
C-14562
C-15285
C-15475
C-15825
C-15826
C-16555
C-16942
C-16943
C-17013
C-17037
C-17392
C-17409
C-18080
C-18196
C-18877
C-19042
C-19079
C-19122
C-19980
C-19981
C-20386
C-20389
CP60-5
CP60-57
CP60-58
CP60-64
CP60-94
CP61-105
CP61-146
CP61-250
CP61-294
CP62-14
CP62-62
CP62-80
CP62-185
CP62-194
CP62-202
CP62-213
CP62-275
CP62-291

CP65-68
CP63-85
CP65-86
CP63-111
CP63-112
CP63-148
CP63-173
CP63-177
CP63-181
CP63-194
CP63-205
CP63-226
CP63-247
CP63-328
CP64-2
CP64-4
CP64-92
CP64-130
CP64-141
CP64-165
CP65-218
CP65-26
CP65-29
CP65-33
CP65-35
CP65-49
CP65-55
CP65-66
CP65-68
CP65-120
CP65-130
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CP65-158
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CP66-181
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CP66-269
CP66-277
CP66-295
CP66-302
CP66-303
CP66-358
CP66-420
CP67-8
CP67-13
CP67-14
CP67-35
CP67-38
CP67-46
CP67-62
CP67-64
CP67-76
CP67-112
CP67-115
CP67-165
CP67-211*
CP67-253
CP67-303
CP67-325
CP67-361
CP68-29
CP68-41
CP68-62
CP68-76
CP68-77
CP68-100
CP68-119

CP68-148
CP68-149
CP68-166
CP68-202
CP68-231
CP68-232
CP68-237
CP68-245
CP68-246
CP68-271
CP68-276
CP68-281
CP68-324
CP68-330
CP68-333
CP68-355
CP69-5
CP69-35
CP69-50
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CP69-71
CP69-86
CP69-183
CP69-233
CP69-242
CP69-256*
CP69-296
CP69-307
CP69-329
CP69-332
CP69-352
CP69-353
CP70-9
CP70-35
CP70-56
CP70-57

CP70-67
CP70-83
CP70-166
CP70-122
CP70-123
CP70-134
CP70-175
CP70-177
CP70-188
CP70-185-000
CP70-185-010
CP70-229*
CP70-245
CP70-250

CP72-114
CP72-127
CP72-190
CP72-203
CP72-295
CP73-16
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[FR Doc. 89-2902 Filed 2-7-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP89-59-000]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

February 3, 1989.

Take notice that Transwestern Pipeline Company (Transwestern) on January 30, 1989 tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following sheets:

53rd Revised Sheet No. 5
Original Sheet No. 5D
Original Sheet No. 5E
33rd Revised Sheet No. 6
3rd Revised Sheet No. 8
3rd Revised Sheet No. 14
2nd Revised Sheet No. 19
2nd Revised Sheet No. 20A
2nd Revised Sheet No. 22
3rd Revised Sheet No. 37
1st Revised Sheet No. 87
1st Revised Sheet No. 88
1st Revised Sheet No. 89
1st Revised Sheet No. 90
Original Sheet No. 90A

Transwestern states these tariff sheets are the second in a series of Order No. 500 filings that Transwestern will make to recover a portion of its take-or-pay buyout and contract reformation costs (Transition Costs). In Docket No. RP88-198-004 and 005, Transwestern requested authority to recover approximately $99.1 million of these transition costs. On December 16, 1988, the Commission accepted such filing to become effective December 1, 1988, subject to certain conditions. With this instant filing, Transwestern requests authority to begin recovery of an additional amount of $45,732,439. This is the amount Transwestern has paid or anticipates to incur by January 31, 1989. Transwestern is continuing its Order No. 300 election to absorb 25% of these costs, direct bill 25%, and recover the remaining 50% by a throughput surcharge. Transwestern requests that the tendered tariff sheets be made effective on January 31, 1989.

Transwestern states that, with these tariff sheets, it proposes tariff revisions. First, Transwestern proposes to recover costs resulting from contracts which are subject to litigation or arbitration by March 31, 1989, or such later date as may be prescribed, but which are not actually paid until after such date. Second, Transwestern proposes to recover eligible take-or-pay costs incurred through March 31, 1989 or such later date that may be prescribed, from all customers including former customers. Third, Transwestern has included language to take into account the extension of the Commission's deadline for Order No. 500 take-or-pay recovery filings. Fourth, Transwestern has clarified the TCR Surcharge in respect to discounting.

Transwestern requests that the Federal Energy Regulatory Commission grant any and all waivers of its rules, regulations and orders as may be necessary, specifically § 154.63 of its Regulations, so as to permit the above listed rate tariff sheets to become effective January 31, 1989.

Copies of the filing were served on Transwestern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 10, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-3002 Filed 2-7-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP89-40-001]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

February 3, 1989.

Take notice that Williams Natural Gas Company (WNG) on January 30, 1989, tendered for filing the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Revised Fifth Revised Sheet No. 2
Revised Original Sheet Nos. 6B-6D
Revised First Revised Sheet No. 109
Revised Original Sheet Nos. 110 and 111

WNG states these tariff sheets are filed in compliance with Commission Order issued December 30, 1988 in Docket No. RP89-40-000 (December 30 Order). WNG was ordered to file revised tariff language within 30 days of the Order to eliminate § 28.3 from its tariff and references in § 28.1 to transportation rate schedules and volumetric commodity surcharges.

WNG states it has received its direct bill from Transwestern Pipeline Co. and changed the amount allocated to its customers to the amount actually billed by Transwestern. This amount which the Commission's December 30 Order permits WNG to flow through from Transwestern is reflected on Revised Original Sheet Nos. 6B, 6C and 6D.

WNG states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 10, 1989. Protests will be considered by the Commission in

determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-3003 Filed 2-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-34-002]

Williston Basin Interstate Pipeline Co.; Proposed Changes in FERC Gas Tariffs

February 3, 1989.

Take notice that on January 30, 1989, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, tendered for filing revised tariff sheets to First Revised Volume No. 1, Original Volume No. 1-A, Original Volume No. 1-B and Original Volume No. 2 of its FERC Gas Tariff. Williston Basin states that these tariff sheets, with supporting workpapers, are filed under protest in compliance with the Commission's Order of December 30, 1988, in Docket No. RP89-34-000.

Copies of this filing were served on the Company's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such motions or protests should be filed on or before February 10, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-3004 Filed 2-7-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[PF-507; FRL 3515-6]

Pesticide Tolerance Petitions

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: This notice announces the filing of a pesticide petition by the Sandoz Crop Protection Corp. proposing the establishment of tolerances and or regulations for the herbicide norflurazon in or on certain raw agricultural commodities and the withdrawal of a petition by the Mobay Chemical Corp. for a herbicide.

ADDRESS:

By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

In person, bring comments to: Room 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (TS-767C), Attention: Product Manager (PM) named in the petition, Environmental Protection Agency, Office of Pesticide Programs.

In person, contact the PM named in each petition at the following office location/telephone number:

Product manager	Office location/ telephone number	Address
Richard Mountfort (PM 23).	Rm 237, CM #2, (703)-557-1830.	Do.
Robert Taylor (PM 25).	Rm. 245, CM #2, (703)-557-1800.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions (PP) as follows proposing the establishment and withdrawal of tolerances or regulations for residues of certain pesticide chemicals in or on certain agricultural commodities.

Initial Filing

1. *PP 9F3702.* Sandoz Crop Protection Corp., 1300 East Touhy Ave., Des Plaines, IL 60018, proposes amending 40 CFR 180.356(a) by establishing tolerances for the combined residues of the herbicide norflurazon (4-chloro-5-(methylamino)-2-(alpha, alpha, alpha, trifluoro-*m*-toly1)-3-(2*H*)-pyridazinone) and its desmethyl metabolite 4-chloro-5-(amino)-2-alpha, alpha, alpha-trifluoro-*m*-tolyl)-3(2H)-pyridazinone in or on certain raw agricultural commodities as follows: Peanuts, nutmeat at 0.05 part per million (ppm); peanuts, hulls at 1.0 ppm; peanuts, vines (green hay) at 0.075 ppm; and peanuts hay (dry) at 0.5 ppm. (PM23)

Withdrawal of Petition

1. *PP 3F2673.* Mobay Chemical Corp., P.O. Box 4913, Hawthorne Rd., Kansas City, MO 64120, filed PP 3F2873, notice of which was published in the **Federal Register** of June 8, 1983 (48 FR 26535), proposing to amend 40 CFR 180.332 by increasing to 3.0 ppm the established tolerance for the combined residues of the herbicide 4-amino-6-(1, 1-dimethyl)-3-(methylthio)-1,2,4,-triazin-5(4H)-one and its triazinone methabolites in or on the commodities corn fodder and forage to 3.0 ppm. This notice announces that the petitioner has withdrawn the petition without prejudice. (PM 25)

Authority: 7 U.S.C. 136a.

Dated: November 29, 1988.

Anne E. Lindsay,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 89-2969 Filed 2-7-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-42109/OPTS-42104A; FRL-3516-9]

Imidazolium and Ethoxylated Quaternary Ammonium Compounds and Nonylphenol; Development of Testing Consent Orders and Solicitation of Interested Parties

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA's procedures for requiring the testing of chemical substances and mixtures under section 4 of the Toxic Substances Control Act (TSCA) include the adoption of testing consent orders and the promulgation of test rules. Consent orders may be adopted where consensus on an industry test program is reached in a timely manner by EPA, affected manufacturers, processors and other interested parties. If a timely consensus cannot be reached or appears unlikely, and the Agency makes certain statutory findings under TSCA, EPA issues test rules. This notice announces EPA's decision to consider negotiating a consent order for chronic health effects, environmental effects and chemical fate testing of imidazolium (IQAC; CAS No. 68122-96-1) and ethoxylated (EQAC; CAS Nos. 68153-35-5 and 68410-69-5) quaternary ammonium compounds; environmental effects and chemical fate testing of nonylphenol mixed isomers (NP; CAS No. 25154-52-3) and 4-nonylphenol, branched (4-NP; CAS No. 84852-15-3*); 89T-16 and to announce two public meetings to discuss such testing; and requests all persons desiring to have the status of "interested parties" in negotiation of a consent order for IQAC and EQAC, and for NP and 4-NP, to notify EPA of their interest.

DATES: A public meeting on IQAC and EQAC will be held on February 17, 1989, at 11 a.m. in NE-103, 401 M St., SW., Washington, DC. Submit written notice of interest to be designated an "interested party" for IQAC and EQAC by February 24, 1989.

A public meeting on nonylphenols will be held on February 13, 1989, at 1 p.m. in NE-103, 401 M St., SW., Washington, DC. Submit written notice of interest to be designated an "interested party" for nonylphenols by February 20, 1989. If your group has already submitted requests for designation following the nonylphenol public meeting (see 52 FR 39273) of October 27, 1987, you do not have to resubmit the request. Your name has been provided as an "interested party" to the appropriate offices.

ADDRESS: Submit written request to be an "interested party" in triplicate, identified by the document control number (OPTS-42109 for IQAC/EQAC and OPTS-42104A for NP and 4-NP) to: TSCA Public Docket Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Room NE-G004, 410 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room EB-44, 401 M Street SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

Persons interested in attending the public meeting should notify EPA by telephone on or before the date of the public meeting.

SUPPLEMENTARY INFORMATION: EPA is initiating the consent agreement process because EPA believes this process will lead to the development of necessary test data significantly earlier than through rulemaking. An industry group has approached EPA with a request to review proposals for health and environmental effects and chemical fate testing of IQAC and EQAC. Should the Agency be unable to come to an agreement with interested parties for a testing consent order as a result of this meeting and the following negotiation period, a proposed test rule will be issued for any testing the Agency believes necessary for IQAC and EQAC as required under section 4 of TSCA.

An industry group has approached EPA with a request to review proposals for the environmental effects testing of NP and 4-NP to be conducted later this year. Should the Agency be unable to come to an agreement with interested parties for a testing consent order, a proposed test rule will be issued for any testing the Agency believes necessary for the nonylphenols as required under section 4 of TSCA.

EPA has issued amendments to the procedural regulations in 40 CFR Part 790, which govern the development and implementation of testing requirements under section 4 of TSCA. These amendments establish procedures for using testing consent orders to develop testing requirements under section 4 of the Act. This notice serves three purposes. First, it requires "interested parties" who wish to participate in testing negotiations either for IQAC/EQAC or nonylphenols to identify themselves to EPA. If your group has already submitted requests for designation following the nonylphenol public meeting (see 52 FR 39273) of October 27, 1987, you do not have to resubmit the request. Second, it announces two public meetings to initiate testing negotiations for these chemicals. Third, it proposes target schedules for the development of consent orders.

I. Identification of Interested Parties

Under 40 CFR 790.22, the testing negotiation procedures are initiated by the publication of a **Federal Register** notice which invites persons interested in participating in or monitoring negotiations for the development of a testing consent order to notify the Agency in writing. Those individuals and groups who respond to EPA's notice by the deadline established in the notice will have the status of "interested parties" and will be afforded opportunities to participate in the negotiations process. These "interested parties" will not incur any obligations by being designated "interested parties." The procedures for these negotiations are described in 40 CFR 790.22. Individuals and groups desiring to have the status of "interested parties" in the development of the consent order should submit a written request to the agency at the address given above on or before February 24, 1989, for IQAC and EQAC, and February 20, 1989, for NP and 4-NP.

II. Public Meetings

Public meetings are held in Rm. 103 of the Northeast Mall, EPA Headquarters, 401 M Street SW., Washington, DC. On February 17, 1989, at 11 a.m., a public meeting will be held for IQAC and EQAC to discuss the Agency's evaluation of testing needs and any testing proposals from industry. EPA's determination of testing needs for IQAC and EQAC will initiate the testing negotiations period. Persons interested in attending this meeting should notify the EPA TSCA Assistance Office by telephone at the number listed above on or before February 17, 1989.

On February 13, 1989, at 1 p.m., a public meeting will be held to discuss the Agency's evaluation of testing needs for NP and 4-NP and industry's testing proposals, and to initiate testing negotiations. Persons interested in attending this meeting should notify the EPA TSCA Assistance Office by telephone at the number listed above on or before February 20, 1989.

III. Timetable for Negotiating Test Agreements

Two "target schedules" have been established, in accordance with the procedures for the development of consent agreements in 40 CFR 790.22. There is no statutory deadline for response from EPA to the ITC's recommendations for imidazolium and ethoxylated quaternary ammonium compounds. However, the Agency plans to conduct negotiations in a timely manner. The following target schedule is established for IQAC and EQAC:

February 17, 1989—Public meeting to initiate testing negotiations.

February 24, 1989—Deadline for notice of interested party designations.

March 24, 1989—Decision by EPA on whether to use consent order to test rule.

June 5, 1989—Issuance of consent order to industry for signatures.

A "target schedule" has also been established for NP and 4-NP. There is no statutory deadline for response from EPA to the Testing Priority Committee's nomination for nonylphenols as is required for chemicals designated by the Interagency Testing Committee under TSCA section 4(e). However, the Agency plans to conduct negotiations in a timely manner. The following target schedule is established for NP and 4-NP:

February 13, 1989—Public meeting to initiate testing negotiations.

February 20, 1989—Deadline for notice of interested party designations.

March 27, 1989—Decision by EPA on whether to use consent order or test rule.

July 25, 1989—Issuance of consent order to industry for signatures.

Authority: 15 U.S.C. 2603.

Dated February 6, 1989.

Joseph J. Merenda,

Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 89-3005 Filed 2-7-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of information collection.

Title: Right to Submit Technical or Scientific Data to Correct Mapping Deficiencies Unrelated to Community-wide Elevation Determinations.

Abstract: Any owner or leasee of property in the 19,075 communities with mapped special flood hazard areas (SFHA) who believe his or her property has been incorrectly included on a SFHA has the right to submit technical or scientific data that shows the map to be deficient.

Type of Respondents: Individuals or households.

Estimate of Total Annual Reporting and Recordkeeping Burden: 59,880.

Number of Respondents: 2495.

Estimated Average Burden Hours Per Response: 24.

Frequency of Response: On occasion.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to the FEMA Clearance Officer at the above address; and to Francine Picoult, (202) 395-7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Date: February 1, 1989.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 89-2949 Filed 2-7-89; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which the notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-007680-072.

Title: American West African Freight Conference.

Parties: America-Africa Europe Line GMBH; Barber West Africa Line; Farrell Lines, Inc.; Maersk Line; Societe Ivoirienne De Transport Maritime, SITRAM; Torm West Africa Line; Westwind Africa Line.

Synopsis: The proposed modification would add Nigerian National Shipping Line as a party to the Agreement. It would also prohibit member lines from entering into loyalty contracts or exercising independent action on any loyalty contract offered by the Conference. It further deletes any reference to loyalty contracts.

Agreement No.: 202-010270-031.

Title: Gulf-European Freight Association.

Parties: Compagnie Generale Maritime (CGM); Lykes Bros. Steamship Co., Inc.; Gulf Container Line (GCL), B.V.; Hapag-Lloyd AG; Sea-Land Service, Inc.; P&O Container (TFL) Limited; Nedlloyd Lijnen, B.V.

Synopsis: The proposed modification would clarify and conform the Agreement to the Commission's requirements concerning Docket No. 88-7, Service Contract; "Most Favored Shipper." The parties have requested a shortened review period.

Agreement No.: 202-010636-054.

Title: U.S. Atlantic-North Europe Conference Agreement.

Parties: Atlantic Container Line, B.V.; Orient Overseas Container Line (UK) Ltd.; Hapag-Lloyd AG; Sea-land Service, Inc.; A.P. Moller-Maersk Line; Gulf Container Line (GCL) B.V.; P&O Container (TFL) Limited; Compagnie Generale Maritime (CGM); Nedlloyd Lijnen, B.V.

Synopsis: The proposed modification would clarify and conform the Agreement to the Commission's requirements concerning Docket No. 88-7, Service Contract; "Most Favored Shipper." The parties have requested a shortened review period.

Agreement No.: 202-010637-037.

Title: North Europe-U.S. Atlantic Conference.

Parties: Atlantic Container Line, B.V.; Hapag-Lloyd AG; Sea-Land Service, Inc.; Nedlloyd Lijnen, B.V.; Gulf Container Line (GCL) B.V.; P&O Containers (TFL) Limited; Compagnie Generale Maritime (CGM).

Synopsis: The proposed modification would clarify and conform the Agreement to the Commission's requirements concerning Docket No. 88-7, Service Contract; "Most Favored Shipper." The parties have requested a shortened review period.

Agreement No.: 202-010656-032.

Title: North Europe-U.S. Gulf Freight Association.

Parties: Compagnie Generale Maritime (CGM); Lykes Bros. Steamship Company, Inc.; Gulf Container Line (GCL) B.V.; Sea-Land Service, Inc.; Hapag-Lloyd AG; P&O Containers (TFL) Limited; Nedlloyd Lijnen, B.V.

Synopsis: The proposed modification would clarify and conform the Agreement to the Commission's requirements concerning Docket No. 88-7, Service Contract; "Most Favored Shipper." The parties have requested a shortened review period.

Agreement No.: 202-010689-035.

Title: Transpacific Westbound Rate Agreement.

Parties: American President Lines, Ltd.; Hanjin Container Lines, Ltd.; Hyundai Merchant Marine Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.; A.P. Moller-Maersk Line; Mitsui O.S.K. Lines, Ltd.; Neptune Orient Lines, Ltd.; Nippon Yusen Kaisha, Ltd.; Sea-Land Service, Inc.; Orient Overseas Container Line, Inc.

Synopsis: The proposed modification would restore the Agreement's right to enter into agreement service contracts with shippers and consignees and would also authorize adoption of internal standards and procedures governing negotiation and adoption of such contracts.

Agreement No.: 202-010714-009.

Title: Trans-Atlantic American Flag Liner Operators Agreement.

Parties: Farrell Lines Incorporated, Sea-Land Service, Inc., Lykes Bros. Steamship Co., Inc.

Synopsis: The proposed modification reduces the minimum notice period for resignation from the Agreement from 180 days to 75 days. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: February 3, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-3022 Filed 2-7-89; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200217.

Title: Port Authority of New York & New Jersey Terminal Agreement.

Parties: Port Authority of New York & New Jersey (Port) OCCL-USA Inc. (Carrier).

Synopsis: The Agreement provides that the Port will pay Carrier twenty-five dollars ($25.00) per loaded import container and fifty dollars ($50.00) per loaded export container loaded or unloaded from Carrier's vessels at a marine terminal in the Port of New York/New Jersey. Each container must have been shipped by rail to or from points more than 260 miles from the Port.

By Order of the Federal Maritime Commission.

Dated: February 3, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-3021 Filed 2-7-89; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Revocations; Alberto Scott & Co., Inc., et al.

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License Number: 636
Name: Alberto Scott & Co., Inc.
Address: 465 California St., #525, San Francisco, CA 94104
Date Revoked: December 23, 1988
Reason: Failed to maintain a valid surety bond

License Number: 3033
Name: MSS Enterprise International, Inc.
Address: 3014 Mecom, P.O. Box 60165 AMF, Houston, TX 77205
Date Revoked: December 28, 1988
Reason: Failed to maintain a valid surety bond

License Number: 1291
Name: Robert J. Semany & Co., dba Altransco
Address: 10501 Allen Rd., #206, Allen Park, MI 48101
Date Revoked: January 1, 1989
Reason: Failed to maintain a valid surety bond

License Number: 1327
Name: ALFA Aerofreight Service, Inc.
Address: 8010 N.W. 66th St., Miami, FL 33166
Date Revoked: January 1, 1989
Reason: Failed to maintain a valid surety bond

License Number: 3154
Name: Nydia B. Cardenas
Address: 4905 Park Ave., Apt. 4C, Union City, NJ 07087
Date Revoked: January 4, 1989
Reason: Failed to maintain a valid surety bond

License Number: 632
Name: McClary, Swift & Company, Inc.
Address: 625 First Ave., Seattle, WA 98104
Date Revoked: January 6, 1989
Reason: Failed to maintain a valid surety bond

License Number: 1380
Name: E. Dillingham, Inc.
Address: 128 Dearborn St., Buffalo, NY 14207
Date Revoked: January 11, 1989
Reason: Surrendered license voluntarily

License Number: 2750
Name: Josh Brown Enterprises, Inc., dba Ocean Transport International
Address: 220 W. Ivy St., Inglewood, CA 90302
Date Revoked: January 12, 1989
Reason: Failed to maintain a valid surety bond

License Number: 976
Name: ABC International, Inc.
Address: One World Trade Center, #1729, New York, NY 10048
Date Revoked: January 17, 1989
Reason: Surrendered license voluntarily

License Number: 2746
Name: Amity International Forwarding Inc.
Address: Cargo Bldg. 150, Newark International Airport, Newark, NJ 07114
Date Revoked: January 18, 1989
Reason: Failed to maintain a valid surety bond

License Number: 3126
Name: Trans Continental Cargo, Inc., dba Freight Forwarding Service
Address: 7369 N.W. 54th St., Miami, FL 33166
Date Revoked: January 26, 1989
Reason: Failed to maintain a valid surety bond

License Number: 1593
Name: Robertson Forwarding Co., Inc.
Address: 147-05 176th St., Jamaica, NY 11434
Date Revoked: January 26, 1989
Reason: Failed to maintain a valid surety bond

License Number: 1298
Name: Haniel Transport Inc.
Address: 105 Washington St., New York, NY 10006
Date Revoked: January 27, 1989
Reason: Surrendered license voluntarily

Robert G. Drew,

Director, Bureau of Domestic Regulation.

[FR Doc. 89-2931 Filed 2-7-89; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Reissuance of License; Fast Shipping Co.

Notice is hereby given that the following ocean freight forwarder license has been reissued by the Federal Maritime Commission pursuant to

section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License No.	Name/Address	Date Revoked
1227	Fast Shipping Co., P.O. Box 523303, 7370 N.W. 36th Street, Miami, FL 33152.	Jan. 17, 1989.

Robert G. Drew,
Director, Bureau of Domestic Regulation.
[FR Doc. 89-2932 Filed 2-7-89; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

February 2, 1989.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulation on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822)

OMB Desk Officer—Gary Waxman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7340)

Final approval under OMB delegated authority of the extension, without revision, of the following report:

Report Title: Report of Commercial Paper Outstanding Placed by Brokers and Dealers; Report of Commercial Paper Outstanding Placed Directly by Issuers; and Daily Report of Offering Rates on Commercial Paper.

Agency Form Number: FR 2957a, b, and d.

OMB Docket Number: 7100-0002.

Frequency: Daily, weekly, and monthly.

Reporters: Securities Brokers and Dealers and Direct Issuers of Commercial Paper.

Annual Reporting Hours: 1796.

Estimated Number of Respondents: 87.

Estimated Average Hours per Response: .2 to .7.

Small businesses are not affected.

General Description of Report:

This information collection is voluntary (12 U.S.C. 225a and 353 *et seq.*) and is given confidential treatment (5 U.S.C. 552(b)(4)).

These reports provide information on the amount outstanding and selected offering rates on commercial paper, which is used by the Federal Reserve in monitoring developments in the commercial paper market for supervisory, regulatory, and monetary policy purposes.

Board of Governors of the Federal Reserve System, February 2, 1989.

William W. Wiles,
Secretary of the Board.
[FR Doc. 89-2924 Filed 2-7-89; 8:45 am]
BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Service's claims collection regulations (45 CFR Part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the "Schedule of Certified Interest Rates with Range of Maturities." This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register**.

The Secretary of the Treasury has certified a rate of 15% for the quarter ended December 31, 1988. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Date: February 2, 1989.

Dennis J. Fischer,
Deputy Assistant Secretary, Finance.
[FR Doc. 89-2930 Filed 2-7-89; 8:45 am]
BILLING CODE 4150-04-M

Centers for Disease Control

National Institute for Occupational Safety and Health; Meeting

The following meeting will be convened by the National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC):

Name: Methods for Detecting Evidence of Mutation During Spermatogenesis.

Date: February 17, 1989.

Place: Division of Biomedical and Behavioral Science, NIOSH, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Time: 8:00 a.m.-5:00 p.m.

Status: Open to the public, limited only by space available.

Purpose: The purpose of this meeting will be to review the new NIOSH intramural project to develop methods for assessing the sample to determine if germ cell mutations have occurred.

Additional information may be obtained from: Dr. Steven M. Schrader, Division of Biomedical and Behavioral Science, NIOSH, Mail Stop C23, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephone: Commercial: (513) 533-8210, FTS: 684-8210.

Dated: February 3, 1989.

Elvin Hilyer,
Associate Director for Policy Coordination, Centers for Disease Control.
[FR Doc. 89-3054 Filed 2-7-89; 8:45 am]
BILLING CODE 4160-17-M

Food and Drug Administration

Advisory Committees; Filing of Annual Reports

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that, as required by the Federal Advisory Committee Act, the agency has filed with the Library of Congress the annual reports of those FDA advisory committees that held closed meetings.

ADDRESS: Copies are available for public examination at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm 4-62, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1751.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA-306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2765.

SUPPLEMENTARY INFORMATION: Under section 13 of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I, as amended)) and 21 CFR 14.60(c), FDA has filed with the Library of Congress the annual reports for the following FDS advisory committees that held closed meetings during the period October 1, 1987, through September 30, 1988:

Center for Biologics Evaluation and Research: Allergenic Products Advisory Committee, Blood Products Advisory Committee,Vaccines and Related Biological Products Advisory Committee.

Center for Drug Evaluation and Research: Anesthetic and Life Support Drugs Advisory Committee, Anti-Infective Drugs Advisory Committee, Dermatologic Drugs Advisory Committee.

Center for Devices and Radiological Health: Gastroenterology-Urology Devices Panel, Immunology Devices Panel, Ophthalmic Devices Panel.

Center for Veterinary Medicine: Veterinary Medicine Advisory Committee.

National Center for Toxicological Research: Science Advisory Board.

Annual reports are available for public inspection at: (1) The Library of Congress, Newspaper and Current Periodical Reading Room, Rm. 1026, Thomas Jefferson Bldg., Second and Independence Ave. SE., Washington, DC; (2) the Department of Health and Human Services Library, Rm. G-400, 330 Independence Ave. SW., Washington, DC, on weekdays between 9 a.m. and 4:30 p.m.; and (3) the Dockets Management Branch (HFA-305), Rm. 4-62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 1, 1989.

John M. Taylor,
Associate Commissioner for Regulatory Affairs.
[FR Doc. 89-2928 Filed 2-7-89; 8:45 am]
BILLING CODE 4160-01-M

[Docket No. 87D-0315]

Oligosaccharide Antibotic Drugs; Neomycin Sulfate for Prescription Compounding; Amendment of Withdrawal of Approval of Abbreviated Antibiotic Drug Applications

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending a previous notice withdrawing approval of abbreviated antibiotic drug applications (AADA's) for neomycin sulfate for prescription compounding. This amendment rescinds the notice of withdrawal with respect to AADA 62-385, held by Paddock Laboratories, Inc. AADA 62-385 was incorrectly listed in the withdrawal notice.

EFFECTIVE DATE: February 8, 1989.

FOR FURTHER INFORMATION CONTACT: Margaret F. Sharkey, Center for Drug Evaluation and Research (HFD-366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-6041.

SUPPLEMENTARY INFORMATION: In a notice publisehd in the **Federal Register** on December 6, 1988 (53 FR 49231), FDA withdrew approval of AADA's for neomycin sulfate for prescription compounding that were not supplemented to provide for revised labeling recommending use only for oral compounding, and for which their sponsors did not request a hearing on the matter. That notice incorrectly included AADA 62-385, held by Paddock Laboratories, Inc., 3101 Louisiana Ave. North, Minneapolis, MN 55421. Paddock Laboratories submitted a supplement to AADA 62-385 to provide for revised labeling on May 12, 1988, and FDA approved the supplemental application on August 2, 1988. Accordingly, the Director of the Center for Drug Evaluation and Research hereby rescinds the December 6, 1988, notice of withdrawal with respect to AADA 62-385.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 505(e), 52 Stat. 1052-1053 as amended (21 U.S.C. 355(e))) and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.82).

Dated: January 25, 1989.

Carl C. Peck,
Director, Center for Drug Evaluation and Research.
[FR Doc. 89-2929 Filed 2-7-89; 8:45 am]
BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Ft. Belknap Irrigation Project, MT

AGENCY: Bureau of Indian Affairs Interior.

ACTION: Public notice.

Purpose: Fort Belknap Irrigation Project Annual Operation and Maintenance Charges.

SUMMARY: The annual operation and maintenance charges for the *Non-Indian* operator will be $12.50 per assessable acre and for the *Indian* operator $6.25 per assessable acre. The projects annual operation and maintenance charges are based on the estimated normal operating cost of the project for one Fiscal Year. These operation and maintenance charges will remain in effect until the Billings Area Director has replaced these rates with another announcement in the **Federal Register**.

The Bureau of Indian Affairs has identified the Fort Belknap Irrigation Project as a Category II project. As a Category II project, the Bureau of Indian Affairs will partially subsidize the operation and maintenance of the project.

The due date for all operation and maintenance charges will be May 1 of each calendar year.

Interest and/or penalty fees will be assessed on all (Trust, and Fee assessed lands) delinquent operation and maintenance charges as prescribed in the 42 Bureau of Indian Affairs Manual and the Code of Federal Regulations, Chapter 4, Part 102. Government agencies, such as Federal, State and Tribal Governments are exempted from interest and/or penalty fees.

This notice will be published and posted at the following locations:

U.S Post Offices
Harlem, MT 59526

Newspaper
Harlem News
Harlem, MT 59526

Bureau of Indian Affairs
Fort Belknap Agency
Harlem, MT 59526

Comments: All comments concerning the operating and maintenance charges for the Fort Belknap irrigation project must be in writing and addressed to the Superintendent of the Fort Belknap Agency before the close of business on February 10, 1989.

Appeal Process: Title 25, Part 2 of the Code of Federal Regulations outlines the appeal process for this administrative action. Appeals must be received by the Billings Area Director before the close of business in February 10, 1989.

SUPPLEMENTARY INFORMATION: This notice is issued pursuant to the Code of Federal Regulations, Title 25, Part 171 under the authority delegated to the Area Director, by the Assistant Secretary of Indian Affairs and the Deputy Assistant Secretary of the

Interior (Department Manual, Chapter 3, Part 230, (3.1 & 3.2)).

Norris M. Cole,
Acting Billings Area Director.
[FR Doc. 89-2920 Filed 2-7-89; 8:45 am]
BILLING CODE 4310-09-M

Bureau of Land Management

[WAOR 39978; OR-130-09-4212-14; GP9-112]

Realty Action; Noncompetitive Sale of Public Lands in Ferry County, WA

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The following described land has been found suitable for direct sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), at not less than the appraised fair market value of $125. The land will not be offered for sale before 60 days after the date of this notice.

Willamette Meridian,

T. 30 N., R. 32 E.,
Sec. 1, Lot 11.

Containing approximately 0.75 acre.

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

This land is being offered by direct sale to Richard Williams. It has been determined that the subject parcel contains no known minerals of more than nominal value; therefore, mineral interests may be conveyed simultaneously. Acceptance of the direct sale offer will qualify the purchaser to make application for conveyance of the mineral estate.

The patent will contain certain reservation to the United States and will be subject to valid existing rights. Detailed information concerning these reservations and specific conditions of the sale are available for review at the Spokane District Office, Bureau of Land Management, E. 4217 Main Ave. Spokane, WA 99202.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Spokane District, at the above address. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Date of issue: January 30, 1989.

Joseph K. Buesing,
District Manager.
[FR Doc. 89-2921 Filed 2-7-89; 8:45 am]
BILLING CODE 4310-33-M

Bureau of Reclamation

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information reproduced below has been submitted to the Office of Management and Budget for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval has been requested by February 17, 1989. Comments and suggestions on the proposal should be made directly to the Bureau clearance officer listed below and to the Office of Management and Budget Interior Desk Officer, Washington, DC 20503.

Title: Reclamation States Drought Assistance Act of 1988.

Abstract: Information is being collected to: (1) Assist willling sellers and buyers in the redistribution of water supplies to minimize losses and damages resulting from the drought, and will be used to facilitate such exchanges, (2) to identify the potential users, uses of the Federal water or facilities, and financial feasibility of the applicants, and will be used to develop individual temporary contracts, (3) to identify the potential borrowers, uses of the loan, and relevant financial data, and will be used to develop individual loan repayment contracts, and (4) to identify the potential resources to be protected or mitigated, and the need for the water, and will be used to evaluate the potential to prevent or mitigate damages to fish and wildlife resources caused by the drought.

Additonal Information: The information collection requirements contained in this rule have been submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 *et seq.* Expedited review has been requested in order to provide the emergency relief authorized in time to assist victims of the 1988 drought.

Frequency: On occasion.

Description of Respondents: Irrigation districts, cities, and other water user institutions impacted by the drought in the 17 Reclamation States.

Estimated Completion Times: 3 hours.

Annual Responses: 200.

Annual Burden Hours: 600.

Bureau Clearance Officer: Ms. Carolyn G. Hipps, Chief, Branch of Publications and Records Management, Bureau of Reclamation, P.O. Box 25007, Denver, Colorado, 80225; 303-236-6769.

Information collection can be found in § 423.5, 423.6, 423.7, and 423.8 of the following rules.

Dated: November 16, 1988.

C. Dale Duvall,
Commissioner, Bureau of Reclamation.

Section 423.5 Transfers of water between willing buyers and willing sellers.

(a) The Secretary is authorized, under section 412(2) of the Act, to assist willing sellers and willing buyers in the redistribution of water supplies to minimize losses and damages resulting from the drought. To facilitate such a water exchange program, Reclamation Regional Directors will compile and maintain a list of buyers and sellers.

(b) Interested buyers and sellers are encouraged to submit the following information to the appropriate Regional Director, as presented in § 423.6(b)(1).

(1) Sellers:

(a) The amount of water available for sale, proposed sale price, timing of its availability, and source of supply.

(b) Legal information relating to seller's right to the water, and the normal purpose or use of the supply.

(2) Buyers:

(a) Amount and timing of water requested.

(b) Proposed purchase price.

(c) Expected use of the water supply.

(d) Location of use.

(c) Each Regional Director will review the proposals submitted by the willing sellers and buyers to match potential exchanges. Where available supplies equal or exceed requests from buyers and no other apparent conflicts exist, buyers and sellers will be brought together to negotiate an exchange agreement, consistent with state law.

(d) If requests from buyers exceed the water available from willing sellers, priorities will be established. In those instances where State law establishes priorities, such priorities will be followed in allocating the water. Where state law is silent in setting priorities, the Regional Director will consult with State and local water resources agencies to establish allocation priorities.

Section 423.6 Availability of water and the use of project conveyance facilities on a temporary basis.

(a) Under general authority pursuant to the Act, the Secretary may contract to make water or conveyance capacity

available, on a temporary basis, to mitigate losses and damages from the drought, provided such contracts are consistent with existing contracts, state law, and Interstate compacts governing the use of such water.

(b) Application Process. The procedure for application for water or conveyance capacity pursuant to section 413 of the Act is as follows:

(1) The contracting entity shall submit an application to the appropriate Regional Director of the Bureau of Reclamation (address shown below).

Regional Director, Pacific Northwest Region, Bureau of Reclamation, Federal Building, U.S. Court House, Box 043, 550 West Fort Street, Boise ID 83724.

Regional Director, Mid-Pacific Region Bureau of Reclamation, Federal Office Bulding, 2800 Cottage Way, Sacramento CA 95825.

Regional Director, Upper Colorado Region, Bureau of Reclamation, PO Box 11568, Salt Lake City UT 84147.

Regional Director, Great Plains Region, Bureau of Reclamation, PO Box 36900, Billings MT 59107-6900.

Regional Director, Lower Colorado Region, Bureau of Reclamation, PO Box 427, Boulder City, NV 89005.

(Map on following page)

BILLING CODE 4310-09-M



RIVER BASIN BOUNDARIES
• REGIONAL DIRECTOR
□ DENVER OFFICE

Regional boundaries for the new Bureau of Reclamation

BILLING CODE 4310-09-C

(2) The application for a water supply or conveyance capacity will be reviewed on a first-come-first-served basis and approval will be based on need as determined and in accordance with priorities established by the Secretary. The application shall include the following information:

(i) Identification of contracting entity with name, address, telephone number, and title of the appropriate officials.

(ii) Identification of water conservation plans, quantities of water involved, perennial crops or crops for foundation livestock uses, and other relevant data on water uses and expected results.

(iii) Relevant financial data, records, or statements, which demonstrate or support that payment for the water or conveyance capacity is financially feasible.

(c) Contracts. Contracts for the temporary use of water and conveyance capacity pursuant to this Act shall be consistent with subsections 9(c)(2) or 9(e) of the Reclamation Project Act of 1939 (53 Stat. 1187) unless the Act authorizes provisions different from those in subsections 9(c)(2) or 9(e). Any contract executed under this paragraph shall provide that:

(1) Water supply or conveyance contracts executed pursuant to this act shall terminate no later than December 31, 1989.

(2) Land currently irrigated by nonproject water supplies may receive supplies made available pursuant to this Act.

(3) Lands not now subject to reclamation law that receive temporary water supplies pursuant to this Act shall not become subject to the ownership limitations of Federal reclamation law because of such temporary water supplies.

(4) Lands that are subject to the ownership limitations of Reclamation law shall not be exempted from those limitations because of the delivery of such temporary water supplies.

(5) The price for the use of such water shall be at least sufficient to recover all Federal operation and maintenance costs, and a proportionate share of capital costs. In addition, the price of water used shall be full cost in the following cases:

(i) Where water is delivered to a landholding of 960 acres of class I lands or the equivalent belonging to a qualified recipient (as defined by 43 U.S.C. 390 bb), the water shall be full cost for those acres in excess of 960.

(ii) Where water is delivered to a landholding of 320 acres of class I lands or the equivalent belonging to a limited recipient (as defined by 43 U.S.C. 390 bb), the water shall be full cost for those acres in excess of 320.

(6) Contracting entities shall be responsible for identifying all individuals who will use agricultural water obtained pursuant to section 413 of the Act and the extent of their respective landholdings for the purpose of determining the rate to be charged for such water.

(7) The Secretary shall include such other terms and conditions as deemed appropriate.

Section 423.7 Emergency loan program.

(a) Purpose. Any contracting entity located in a designated drought area may be eligible to obtain loans for the purposes of improving water management, instituting water conservation activities, and acquiring and transporting water. Loans may also be obtained to finance drought-induced increases in pumping costs.

(b) Application Process. The procedure for application for drought assistance loans is as follows: The applicant shall submit an application to the appropriate Regional Director of the Bureau of Reclamation, as presented in § 423.6(b)(1). The application for a loan shall include appropriate information as follows:

(1) Identification of contracting entity with name, address, telephone number, and title of the appropriate official.

(2) A description of the expected use of the loan funds, including, if applicable, water conservation plans, quantities of water involved, perennial crops or crops for foundation livestock uses that have been affected by the drought, water purchase and sales price criteria, and other relevant data on water uses and expected results.

(3) Relevant financial data, records, or statements, which demonstrate or support the need for financial assistance and demonstrate that repayment of the loan is financially feasible.

(4) A statement or resolution setting forth a commitment to repay the loan covered by the application.

(5) Evidence of compliance with applicable state water and entitlement laws.

(6) Other drought related financial assistance that may have been applied for or received.

(c) Loans. (1) Federal financial assistance for the purposes defined in § 423.7(a) will be handled through loans with the contracting entity which must be repaid over a period of not less than 5 years, but no more than 10 years beginning not later than the first year following the next year of adequate water supply, as determined by the Secretary. Loans for non-agricultural purposes shall be repaid with interest at the rate determined pursuant to the Water Supply Act of 1958. Loans for agricultural purposes shall be interest free.

(2) Contracts for repayment of any loan will be developed separately from any existing repayment or water service contract between the United States and a contracting entity. The contract will include the terms and conditions for repayment specified above and will be approved by the appropriate Regional Director in behalf of the Secretary following review and certification of the contract's legal sufficiency by the Solicitor. Section 203(a) of the Reclamation Reform Act of 1982 (Pub. L. 97-293; 43 U.S.C. 390CC) shall not apply to any contract for such a loan.

(3) Activities undertaken by contracting entities pursuant to these rules shall be completed not later than December 31, 1989.

(4) Terms and Conditions for Disbursement of Funds.

(i) Emergency loan requests will be reviewed on a first-come-first-served basis and disbursement will be made based on need as determined by the Secretary.

(ii) The contracting entity must be deemed eligible by the United States.

(iii) The Secretary may disburse up to fifty percent of the estimated loan amount prior to execution of a repayment contract, provided that the contracting entity, by appropriate resolution, agrees to enter into a repayment contract covering reimbursement of the loan program funds in accordance with the terms and conditions set forth in these rules.

(iv) Interest, where applicable, shall accrue beginning with the first disbursement of funds.

(v) Except as provided herein, standard Reclamation contract terms and conditions will apply.

Section 423.8 Fish and wildlife mitigation.

(a) The Secretary may make water from a Reclamation project, purchased or otherwise acquired, available to prevent or mitigate damage to fish and wildlife resources caused by the drought in areas designated eligible pursuant to § 423.2 of these rules.

(b) The application for water pursuant to this section shall include appropriate information as follows:

(1) Identification of the appropriate State, Federal, local or private entity representing the fish and wildlife resources, including name, address, telephone number, and title of the contact official.

(2) Identification of the resource to be protected or mitigated, the magnitude of such protection or mitigation, the level and extent of coordination with State and local officials, the source of the water proposed to be used, quantities of water involved, justification of the

reasonableness of the proposed action, and any other relevant information deemed necessary by Reclamation to make a decision concerning the proposed action.

(c) The applicant shall notify Reclamation of the water needs of fish and wildlife in areas capable of service from Reclamation facilities. The need for water must be attributable to the drought.

(d) When Reclamation incurs cost or foregoes revenues in excess of the funds available pursuant to the Act in order to provide water for fish and wildlife protection or mitigation, the applicant will be responsible for identifying the source of necessary funding to implement section 413(c) of the Act.

[FR Doc. 89-2963 Filed 2-7-89; 8:45 am]

BILLING CODE 4310-09-M

[INT DES 88-60]

American River Service Area Water Contracting Program, California

AGENCY: Bureau of Reclamation (USBR), Interior.

ACTION: Extension of review period and change of public hearing dates on draft environmental impact statement.

SUMMARY: A Notice of Availability of the Draft Environmental Impact Statement (DEIS) and Notice of Public Hearings for water contracting in the Sacramento River Service Area was published in the **Federal Register**, Vol. 54, No. 2, pages 195–196, on January 4, 1989. Because of problems in circulating the DEIS, the deadline for comments has been extended and the four announced public hearings have been rescheduled.

DATES: The comment period on the DEIS has been extended to April 3, 1989.

ADDRESSES: The four public hearings have been rescheduled for 7 p.m. at the following locations:

Tuesday, March 14, 1989, Blue Gum Restaurant, Highway 99W, Willows, CA 95988.

Thursday, March 16, 1989, Holiday Inn/ Holidome, Sonora Room, 5321 Date Avenue, Sacramento, CA 95841.

Tuesday, March 21, 1989, Center Plaza Holiday Inn, Conference Center, Salons D1 and D2, 2233 Ventura, Fresno, CA 93721.

Thursday, March 23, 1989, Concord Hilton, Baldwin & Chabot Rooms, 1970 Diamond Blvd., Concord, CA 94520.

FOR FURTHER INFORMATION CONTACT: Mr Bill Payne or Mr. William Tully (Bureau of Reclamation, Mid-Pacific Region, Sacramento, CA 95825), (916) 978–5130; or Dr. Wayne Deason (Manager, Environmental Services, Denver, CO), (303) 236–9336.

SUPPLEMENTARY INFORMATION: Comments on the DEIS may be submitted at any of the public hearings or submitted in writing to the Regional Director, Bureau of Reclamation, Mid-Pacific Region, Attention: MP–750, 2800 Cottage Way, Sacramento, CA 95825–1898.

Date: February 2, 1989.

Darrell W. Webber,

Acting Deputy Commissioner.

[FR Doc. 89-2944 Filed 2-7-89; 8:45 am]

BILLING CODE 4310-09-M

[INT DES 88-61]

Delta Export Service Area Water Contracting Program, California

AGENCY: Bureau of Reclamation (USBR), Interior.

ACTION: Extension of review period and change of public hearing dates on draft environmental impact statement.

SUMMARY: A Notice of Availability of the Draft Environmental Impact Statement (DEIS) and Notice of Public Hearing for water contracting in the Sacramento River Service Area was published in the **Federal Register**, Vol. 54, No. 2, pages 196–197, on January 4, 1989. Because of problems in circulating the DEIS, the deadline for comments has been extended and the four announced public hearings have been rescheduled.

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FOR FURTHER INFORMATION CONTACT: Mr. Bill Payne or Mr. William Tully (Bureau of Reclamation, Mid-Pacific Region, Sacramento, CA 95825), (916) 978–5130; or Dr. Wayne Deason (Manager, Environmental Services, Denver, CO), (303) 236–9336.

SUPPLEMENTARY INFORMATION: Comments on the DEIS may be submitted at any of the public hearings or submitted in writing to the Regional Director, Bureau of Reclamation, Mid-Pacific Region, Attention: MP–750, 2800 Cottage Way, Sacramento CA 95825–1898.

Date: February 12, 1989.

Darrell W. Webber,

Acting Deputy Commissioner.

[FR Doc. 89-2945 Filed 2-7-89; 8:45 am]

BILLING CODE 4310-09-M

[INT DES 88-59]

Sacramento River Service Area Water Contracting Program, California

AGENCY: Bureau of Reclamation (USBR), Interior.

ACTION: Extension of review period and change of public hearing dates on draft environmental impact statement.

SUMMARY: A Notice of Availability of the Draft Environmental Impact Statement (DEIS) and Notice of Public Hearings for water contracting in the Sacramento River Service Area was published in the **Federal Register**, Vol. 54, No. 2, pages 197–198, on January 4, 1989. Because of problems in circulating the DEIS, the deadline for comments has been extended and the four announced public hearings have been rescheduled.

DATE: The comment period on the DEIS has been extended to April 3, 1989.

ADDRESSES: The four public hearings have been rescheduled for 7 p.m. at the following locations:

Tuesday, March 14, 1989, Blue Gum Restaurant, Highway 99W, Willows, CA 95988.

Thursday, March 16, 1989, Holiday Inn/ Holidome, Sonora Room, 5321 Date Avenue, Sacramento, CA 95841.

Tuesday, March 21, 1989, Center Plaza Holiday Inn, Conference Center, Salons D1 and D2, 2233 Ventura, Fresno, CA 93721.

Thursday, March 23, 1989, Concord Hilton, Baldwin & Chabot Rooms, 1970 Diamond Blvd., Concord, CA 94520.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Payne or Mr. William Tully (Bureau of Reclamation, Mid-Pacific Region, Sacramento, CA 95825), (916) 978–5130; or Dr. Wayne Deason (Manager, Environmental Services, Denver, CO), (303) 236–9336.

SUPPLEMENTARY INFORMATION: Comments on the DEIS may be submitted at any of the public hearings or submitted in writing to the Regional Director, Bureau of Reclamation, Mid-Pacific Region, Attention: MP–750, 2800 Cottage Way, Sacramento, CA 95825–1898.

Date: February 2, 1989.

Darrell W. Webber,

Acting Deputy Commissioner.

[FR Doc. 89-2946 Filed 2-7-89; 8:45 am]

BILLING CODE 4310-09-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-285]

Certain Chemiluminescent Compositions and Components Thereof and Methods of Using the Same; Determination Not To Review an Initial Determination Finding Respondent Societe Prolufab in Default

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 13) finding respondent Societe Prolufab in default in the above-captioned investigation.

ADDRESSES: Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000.

FOR FURTHER INFORMATION CONTACT: Thomas J. O'Connell, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC, telephone 202–252–1108. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission TDD terminal on 202–252–1810.

SUPPLEMENTARY INFORMATION: On December 6, 1988, the presiding ALJ issued an order (Order No. 10) directing respondent Societe Prolufab (Prolufab) to show cause by December 28, 1988, why it should not be held in default in this investigation for failure to file a response to the complaint and notice of investigation, and for failure to respond to the discovery requests of complainant and the Commission investigative attorney. Prolufab did not respond to that order and, accordingly, the presiding administrative law judge, on January 6, 1989, issued an ID (Order No. 13) finding Prolufab in default. No petitions for review of the ID or government or public comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), as amended by the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418), and § 210.53 of the Commission's Interim Rules of Practice and Procedure, 53 FR 33070 (Aug. 29, 1988).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: January 31, 1989.

[FR Doc. 89-3017 Filed 2-7-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-289]

Certain Concealed Cabinet Hinges and Mounting Plates; Notice to All Parties

The time for the commencement of the preliminary conference on February 10, 1989 in Hearing Room B of the ITC Building set in Order No. 3 has been changed from 1:00 p.m. to 2:30 p.m. Counsel for the parties have been notified by telephone on February 3 about the change in time.

The Secretary shall publish this notice in the **Federal Register**.

Issued: February 3, 1989.

Paul J. Luckern,

Administrative Law Judge.

[FR Doc. 89-3018 Filed 2-7-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-294]

Certain Electric Power Tools, Battery Cartridges, and Battery Chargers; Decision Not To Review Initial Determination Granting Motion to Intervene

AGENCY: U.S. International Trade Commission.

ACTION: Nonreview of an initial determination allowing The Robert Bosch Power Tool Corporation to intervene as a fully participating respondent in the subject investigation.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") (Order No. 26) issued by the presiding administrative law judge ("ALJ") granting The Robert Bosch Power Tool Corporation's motion to intervene in the above-captioned investigation as a fully participating respondent.

FOR FURTHER INFORMATION CONTACT: P.N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–252–1061.

SUPPLEMENTARY INFORMATION: *Background.* The subject investigation is being conducted to determine whether there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337 as amended by section 1342 of the Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100–418, 102 Stat. 1107 (1988)) in the importation or sale of certain electric power tools, battery cartridges, and battery chargers from Taiwan. The complainants are Makita USA, Inc. ("Makita"), and its subsidiary, Makita Corporation of America ("Makita"). Makita's complaint alleged that 31 respondents from Taiwan and the United States have engaged in infringement of Makita's common-law or registered trademarks, false representation, false advertising, and/or passing off in the importation or sale of the accused merchandise. *See* 53 FR 31112 (Aug. 17, 1988) as amended by 53 FR 47587 (Nov. 23, 1988).

On November 29, 1988, The Robert Bosch Corporation ("Bosch") moved to intervene in the investigation as respondent (Motion No. 284–30). That motion was subsequently amended to request that Bosch's subsidiary, the Robert Bosch Power Tool Corporation ("Bosch"), be permitted to intervene instead of The Robert Bosch Corporation (Motion No. 284–40).

On December 9, 1988, the Commission investigative attorneys filed a response supporting Bosch's motion. On December 13, 1988, Makita filed a response opposing the motion. By viture of their failure to file any response to the motion, all existing respondents were deemed to have consented to the motion. *See* interim rule 210.24(c), 53 FR 33043 and 33060 (Aug. 29, 1988).

On December 21, 1988, the presiding administrative law judge filed with the Commission Secretary an ID (Order No. 28) granting Bosch's motion to intervene. On January 3, 1989, Makita petitioned for review of the ID and requested oral argument on its petition. Bosch, the Commission investigative attorneys, and respondent Puma International Co., Ltd. ("Puma") filed responses opposing Makita's petition. Copies of the ID were served on other federal agencies as required by interim rule 210.53(e), 53 FR 33043 and 33070 (Aug. 29, 1988). However, the Commission did not receive any comments on the ID from other agencies.

On January 25, 1989, Makita filed a notice withdrawing its petition for review. The notice explained that that Makita and Bosch had reached a settlement agreement that would be presented to the presiding administrative law judge in order to

terminate Bosch as a respondent (if and when the Commission granted Bosch's motion for leave to intervene as a respondent).

Although Makita's petition for review was withdrawn, the Commission could have reviewed the ID on its own motion, if the facts and circumstances so warranted. *See* interim rules 210.55 and 210.54(a)(1)(ii), 53 FR 33043 and 33071 (Aug. 29, 1988). After considering the ID, however, the Commission found no basis for taking such action. By virtue of the Commission's determination not to review the ID, it has become the Commission's final determination on Bosch's motion to intervene. *See* interim rules 210.53(h) and 210.55, 53 FR 33043, 33070, and 44071 (Aug. 29, 1988), and 19 CFR 201.14(b).

Correction of the ID. Although the Commission found no error or policy reason warranting review, the Commission determined to make one minor correction in the text of the ID. The word "supplier," which appears in the following portions of the ID, is hereby changed to "manufacturer": page 1, last line of the second paragraph; and page 2, sixth line of the third paragraph. This correction was made in order to have the ID conform to the information provided in Bosch's motion to intervene.

Public inspection. Copies of the original and amended motions to intervene and the responses thereto, the ID, the petition for review of the ID the responses thereto, Makita's notice of withdrawal, and all other nonconfidential documents on the record of the investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, Docket Section, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone 202–252–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission TDD terminal on 202–252–1810.

By Order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: January 31, 1989.

[FR Doc. 89–3019 Filed 2–7–89; 8:45 am]

BILLING CODE 7020-02-M

[332-268]

Foreign Investment Barriers or Other Restrictions That Prevent Foreign Capital From Claiming the Benefits of Foreign Government Programs

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of hearing.

SUMMARY: Following receipt on November 16, 1988, of a request from the U.S. Trade Representative made at the direction of the President, the Commission instituted investigation No. 332–268 under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) in order to identify countries which maintain investment barriers or other restrictions which effectively prevent foreign capital from claiming the benefit of government programs on the same terms as domestic capital.

EFFECTIVE DATE: January 27, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Cynthia B. Foreso (202–252–1348) or Mr. Edward Matusik (202–252–1356) in the Commission's Office of Industries. For information on legal aspects of the investigation contact Mr. William Gearhart of the Commission's Office of the General Counsel at 202–252–1091.

Background: The conference report accompanying the Omnibus Trade and Competitiveness Act of 1988 (Report No. 100–576, at p. 587) directs the U.S. Trade Representative to ask the U.S. International Trade Commission to conduct a section 332 investigation identifying countries which maintain investment barriers or other restrictions which effectively prevent foreign capital from claiming the benefit of foreign government programs on the same terms as domestic capital. The conference report further directs that the Commission's report should be submitted to the House Ways and Means Committee, the Senate Finance Committee, and the USTR. Based upon the ITC report, the conference report indicates the USTR should self-initiate section 301 investigations to address those practices it considers to be the most egregious unreasonable practices within the meaning of section 301 and to have the most adverse impact on U.S. industries.

Written Submissions: Interested persons are invited to submit written statements concerning the investigation. The Commission is seeking early comments from the public on (1) foreign government programs which create an advantage for domestic industries, (2) investment barriers or other restrictions that have the effect of denying these advantages to U.S. persons, and (3) the impact of such foreign practices on U.S. industry and trade. The Commission is seeking information on programs and investment barriers of all types, including those related to natural resource access and pricing. Early submission of written statements is desired, preferably by 5:00 p.m. on February 28, 1989, however written statements will be received up to the close of business on April 4, 1989. Early comment on areas of public concern will be used to the extent feasible to assist the Commission in focusing its investigation. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436.

Public Hearing: A public hearing in connection with the investigation will be held in the Commission Hearing Room, 500 E Street SW., Washington, DC, beginning at 9:30 a.m. on April 18, 1989, and continuing as required on April 19. All persons shall have the right to appear by counsel or in person, to present information, and to be heard. Persons wishing to appear at the public hearing should file requests to appear and should file prehearing briefs (original and 14 copies) with the Secretary at the Commission's office in Washington, DC, not later than 5:00 p.m., April 4, 1989. Post-hearing briefs are due May 2, 1989.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 252–1810.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: February 2, 1989.

[FR Doc. 89–3016 Filed 2–7–89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337–TA–281]

Certain Recombinant Erythropoietin; Decision to Extend Deadline for Determining Whether to Review Initial Determination

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to extend the deadline for determining whether to review the initial determination (ID) issued by the administrative law judge (ALJ) granting summary determination on the domestic industry issue in this investigation to coincide with the deadline for determining whether to review the remainder of the final ID. The consolidated review deadline is February 27, 1989.

ADDRESS: Copies of the ID and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–252–1104. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

SUPPLEMENTARY INFORMATION: On January 10, 1989, the ALJ issued his final ID in this investigation. The final ID included an ID granting summary determination on the domestic industry issue. Under Commission interim rule § 210.53(h), 53 FR 33070 (Aug. 29, 1988), an ID granting summary determination becomes the Commission's determination 30 days after service of the ID unless the Commission orders review. Under the same Commission rule, a final ID becomes the Commission's determination 45 days after service of the ID unless the Commission orders review. The Commission has determined to extend the summary determination ID review deadline to coincide with the final ID review deadline.

This action is taken under authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and sections 201.14(b) and 210.53(h) of the Commission's Rules of Practice and Procedure (19 CFR 210.14(b), 53 FR 33070 (Aug. 29, 1988)).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: January 31, 1989.

[FR Doc. 89–3020 Filed 2–7–89; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket Nos. AB–7 and AB–57; Sub-Nos. 114X and 29X]

CMC Real Estate Corp.; Abandonment Exemption and Soo Line Railroad Co.; Discontinuance of Operations Exemption; Chicago, IL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the discontinuance by Soo Line Railroad Company of operations on a line of railroad between the southwesterly line of Kingsbury Street and engineering station 36+50 in Chicago, IL, and the abandonment by CMC Real Estate Corporation of a line of railroad between engineering station 23+11 and engineering station 23+14.1 in Chicago, IL, subject to standard employee protective conditions. The abandonment modifies the scope of the notice of exemption in Docket No. AB–7 (Sub-No. 114X) to engineering stations 23+14.1 and 61.56.

DATES: These exemptions and the modified notice will be effective on February 23, 1989. Petitions to stay the exemptions must be filed by February 15, 1989. Petitions for reconsideration must be filed by February 21, 1989.

ADDRESSES: Send pleadings referring to Docket No. AB–57 (Sub-No. 29X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Railroad's representative: Glenn Olander-Quamme, Suite 1000, Soo Line Building, 105 South Fifth Street, Minneapolis, MN 55402

Send pleadings referring to Docket No. AB–7 (Sub-No. 114X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Railroad's representative: John Broadley, Jenner & Block 21 DuPont Circle, NW. Washington, DC 20036

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245 (TDD for hearing impaired: (202) 275–1721.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone (202) 289–4357/4359, (assistance for hearing impaired is available through TDD services (202) 275–1721.)

Decided: February 1, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89–2922 Filed 2–7–89; 8:45 am]

BILLING CODE 7035-01-M

NATIONAL MEDIATION BOARD

Performance Review Board; Membership

ACTION: Notice of appointment of members of the Performance Review Board.

Notice is hereby given in accordance with 5 USC 4314 of the membership of the National Mediation Board's Performance Review Board for the position of Executive Director. The members are as follows:

Mr. Joshau M. Javits, Member, National Mediation Board. Washington, DC.

Mr. Howard W. Solomon, Executive Director, Federal Service Impasses Panel, Washington, DC.

Mr. John C. Truesdale, Executive Secretary, National Labor Relations Board, Washington, DC.

EFFECTIVE DATE: February 1, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Charles R. Barnes Executive Director, 1425 K. Street, NW., Washington, DC 20572, (202) 523–5950.

By direction of the National Mediation Board.

Charles R. Barnes,

Executive Director.

[FR Doc. 89–2961 Filed 2–7–89; 8:45 am]

BILLING CODE 7550-01-M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrences for Third Quarter CY 1988; Dissemination of Information

Section 208 of the Energy Reorganization Act of 1974, as amended, requires the NRC to disseminate information on abnormal occurrences (i.e., unscheduled incidents or events which the Commission determines are significant from the standpoint of public health and safety). The following incidents at NRC licensees were determined to be abnormal occurrences (AOs) using the criteria published in the **Federal Register** on February 24, 1977 (42 FR 10950). The abnormal

occurrences are described below, together with the remedial actions taken. The events are also being included in NUREG–0090, Vol. 11, No. 3 ("Report to Congress on Abnormal Occurrences: July–September 1988"). This report will be available in the NRC's Public Document Room, 2120 L Street, NW., (Lower Level), Washington, DC, about three weeks after the publication date of this Federal Register Notice.

88–12 Multiple Medical Therapy Misadministrations

The general AO criterion notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

Date and Place—Twenty-one medical therapy misadministrations during 1985 and 1986, reported to the NRC on April 6 and May 3, 1988; Marquette General Hospital, Marquette, Michigan.

Nature and Probable Consequences—On April 6, 1988, a medical physicist discovered that the doses given to two patients undergoing irradiation of the breast in November of 1985 and March of 1986 were about 65% of the prescribed doses. On the same day, the licensee notified NRC Region III of the misadministrations.

The licensee was using a proprietary computer program to calculate dose profiles in patients; however, there was an error in the procedure used to calculate the beam-on time using information generated by the treatment planning computer. The medical physicist who discovered the error in the two patient charts was conducting a quality assurance review of the treatment records.

Upon notification, the NRC requested the licensee to review its patient files to identify any additional patients who may have been treated using the erroneous computer program. On May 5, 1988, the licensee reported that 29 additional cases from September 1985 to October 1986 had been identified in which the actual doses were only about 65% of the prescribed doses. [The licensee stated that the procedure was no longer used after October 1986.] In regard to possible health effects, the licensee stated, "The radiation dose given is less than the prescribed dose. Radiobiologically, it is not harmful to the patient and no medical damage was done. The average given dose was about 15% less, however, it is still very close to the biological range. In addition, some of these patients received boost doses to the breast via electron or interstitial implants to localized areas."

Nevertheless, the event is of concern since a single error resulted in so many people receiving therapeutic doses other than were prescribed.

Cause or Causes—The cause was due to an error in the manual calculations that were performed on the treatment planning computer output. The licensee failed to detect the error before the procedure was used.

Actions Taken to Prevent Recurrence

Licensee—The particular procedure involved has not been used since October 1986. In order to prevent a recurrence of the type of event, the licensee committed to take the following actions:

(1) All current dose calibration procedures will be reviewed and documented by the physicist and the radiation oncologist to check for correctness.

(2) Before any new calculation procedures are initiated, they will be thoroughly discussed between the radiation oncologist and the physicist.

(3) If there are any questions brought up during these reviews, a physicist from an outside institution will be contacted for consultation.

The licensee submitted a quality assurance program to prevent recurrence of this type of event. The program has been incorporated into the licensee's license.

NRC—The incident, and the licensee's corrective actions, will be reviewed during the next NRC inspection at the hospital.

* * * * *

88–13 Medical Diagnostic Misadministration

The general AO criterion notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

Date and Place—June 27, 1988; The Fairfax Hospital, Falls Church, Virginia.

Nature and Probable Consequences—A patient was administered 2.7 millicuries of I–131 MIBG rather than the intended dose of 500 microcuries of I–131 MIBG.

I–131 MIBG is currently an Investigational New Drug and is used in a relatively new and rarely ordered diagnostic study performed at the hospital. Prior to the administration, the technologist involved, who was unfamiliar with the correct amount to administer, checked both the literature which accompanied the shipment and the department's procedure manual. However, even though the correct dose was listed in the procedure manual, the technologist missed it and assumed that the entire vial of 2.7 millicuries was to be administered.

The misadministration resulted in an estimated adrenal medullae dose of 2584 rads, as calculated in accordance with literature supplied by the United States Food and Drug Administration. The thyroid burden should be negligible because the thyroid had been blocked with Lugols prior to the administration of the I–131 MIBG, as prescribed in the protocol.

The licensee stated the patient exhibited no adverse health effects.

Cause of Causes—The cause is attributed to the technologist's error in overlooking the proper dosage as listed in the department's procedure manual.

Action Taken to Prevent Recurrence

Licensee—The technologist was admonished and retrained.

NRC—NRC Region II telephoned the hospital for additional details on the incident. The incident will be reviewed during the next NRC inspection at the hospital.

* * * * *

Dated at Rockville, MD this 3d day of February 1989.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 89–2975 Filed 2–7–89; 8:45 am]

BILLING CODE 7590–01–M

Public Workshop on the Individual Plant Examinations

AGENCY: Nuclear Regulatory Commission.

ACTION: Preliminary workshop agenda and announcement of availability of additional NRC Staff Guidance on IPEs.

SUMMARY: On November 21, 1988 the NRC Staff issued Generic Letter No. 88–20, IPE for Severe Accident Vulnerabilities. The Generic Letter requires all licensees holding operating licenses and construction permits for nuclear power reactor facilities to provide the Commission with information regarding plant specific severe accident vulnerabilities. Draft NUREG–1335 ("Individual Plant Examination: Submittal Guidance), which has now been published provides additional licensee guidance. In order to discuss the IPE objectives and solicit questions and points for clarification on the generic letter and additional guidance that has been provided, including draft NUREG–1335, the NRC plans to conduct a workshop. The announcement for the workshop was published in the Federal Register (53 FR 52861) on December 29, 1988. A free single copy of draft NUREG–1335 may be requested by those considering public comment by writing to the U.S. Nuclear Regulatory Commission, ATTN: Distribution Section, Room P–130A, Washington, DC 20555. A copy is also available for inspection and/or copying in the NRC Public Document Room, 2120 L Street NW., Lower Level of the Gelman Building, Washington, DC. A preliminary agenda of the workshop is provided below.

DATES: Workshop will be held February 28, 1989 and March 1–2, 1989.

ADDRESS: Workshop will be held at The Worthington Hotel, 200 Main Street, Fort Worth, Texas 76102.

FOR FURTHER INFORMATION CONTACT: John H. Flack, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492–3979.

SUPPLEMENTARY INFORMATION:

The following is the preliminary agenda for the workshop.

Day 1: 9 a.m.—5 pm

1. Introduction and opening remarks.
2. Overview of Generic Letter 88–20, "Individual Plant Examination for Severe Accident Vulnerabilities."
3. Discussion on the Individual Plant Examination Methodology Staff Evaluation Report.
4. Discussion of Draft NUREG–1335.
5. Question/Answer Period.

Day 2: 9 am—5 pm

1. Introduction and opening remarks by the Workshop Chairman.
2. Remarks on preparing for external events in the IPE.
3. Consideration of Human Factors in the IPE.
4. Question/Answer Period.
5. Comments by the public and industry.

Statements and comments by the public and industry on matters relating to the performance of IPEs and submittals to NRC are requested. To schedule time for concise comments, please call NRC contact listed above.

6. Question/Answer Period.

Day 3: 9 am—5 pm

1. Highlight Summary of Questions, Comments, and Staff Responses.
2. Discussion on Accident Management.
3. Discussion of Integrated Safety Assessment.
4. Question/Answer Period.
5. General and Closing Comments.
6. Adjourn.

Dated in Rockville, Maryland this 3rd day of February 1989.

For the Nuclear Regulatory Commission.

William Beckner,

Chief, Severe Accident Issues Branch, Division of Safety Issue Resolution, Office of Nuclear Regulatory Research.

[FR Doc. 89–2976 Filed 2–7–89; 8:45 am]

BILLING CODE 7590–01–M

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from January 16, 1989 through January 27, 1989. The last biweekly notice was published on February 1, 1989 (54 FR 5159).

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room P-216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 10, 1989 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should

also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to [*Project Director*]: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Arkansas Power & Light Company, Docket No. 50-313, Arkansas Nuclear One, Unit 1, Pope County, Arkansas

Date of amendment request: June 30, 1988

Description of amendment request: The proposed amendment would modify the Technical Specifications by adding surveillance requirements for the automatic actuation of the shunt trip attachments of the reactor trip breakers, and for the silicon controlled rectifier (SCR) trip relays used to interrupt power to the control rods, as required by Items 4.3 and 4.4 of Generic Letter 83-28, "Required Actions Based On Generic Implications of Salem Anticipated Transient Without Scram Events," and Generic Letter (GL) 85-10, "Technical Specifications For GL 83-28, Items 4.3 and 4.4."

This Notice supersedes the Notice published September 21, 1988 (53 FR 36668).

Basis for proposed no significant hazards consideration determination: As stated in 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards consideration, if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The Commission has provided guidance for the application of the above criteria for no significant hazards consideration determination by providing examples of amendments that are considered not likely to involve significant hazards considerations (51 FR 7751). These examples include: Example (ii) A change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications: e.g., "a more stringent surveillance requirement."

The proposed addition of surveillance test requirements and limiting conditions for operation for the RTB shunt trip attachments and the SCR trip relays are additional limitations not presently included in the Technical Specifications, and are therefore within the scope of the example.

Since the application for amendment involves a proposed change that is encompassed by an example for which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell, & Reynolds, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Jose A. Calvo

Arkansas Power & Light Company, Docket No. 50-313 and 50-368, Arkansas Nuclear One, Units 1 and 2, Pope County, Arkansas

Date of amendment request: October 30, 1987

Description of amendment request: The proposed amendment would change the expiration date for Unit 1 Facility Operating License No. DPR-51 from December 6, 2008 to May 20, 2014 and would change the expiration date for Unit 2 Facility Operating License No. NPF-6, from December 6, 2012 to July 17, 2018.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards in 10 CFR 50.92(c) for determining whether a significant hazards consideration exists. A proposed amendment to an Operating License for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The Arkansas Power and Light Company reviewed the proposed change and determined for Unit 1 and Unit 2 that:

(1) The proposed change does not involve any changes in plant design, physical changes to plant systems, equipment or structures, or modifications to Technical Specifications or plant procedures. The original plant design provides for 40 years of operation and postulated accidents have been evaluated accordingly. Surveillance, inspection, testing, and maintenance programs are in place to sustain the condition of the plant throughout its service life. In conclusion, the potential effects of 40 years of operation have been considered in the existing design, analyses and operation of the plant and, therefore, the probability or consequences of previously evaluated accidents has not been significantly increased.

(2) Since the proposed change does not affect the design or operation of the plant and programs are in place to maintain the plant throughout its service life, the change does not increase the possibility of a new or different accident from those previously evaluated.

(3) The proposed change does not involve any changes in plant design, physical changes to plant systems, equipment or structures, or modifications to Technical Specifications or plant procedures. Existing surveillance, inspection, testing, and maintenance programs sustain the condition of the plant throughout its service life. These measures, together with continued operation in accordance with the Technical Specifications assure that an adequate margin of safety is preserved on a continuous basis. Therefore, the extension of the operating license term does not result in a significant reduction in a margin of safety.

Based on the previous discussion, the licensee concluded that the proposed amendment request does not involve a significant increase in the probability of a new or different kind of accident from any accident previously evaluated; nor involve a significant reduction in the required margin of safety. The NRC staff has reviewed the licensee's no significant hazards considerations determination and agrees with the licensee's analysis. The staff has, therefore, made a proposed determination that the licensee's request does not involve a significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell, & Reynolds, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Jose A. Calvo

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut and Northeast Nuclear Energy Company, et al., Docket Nos. 50-245/336/423, Millstone Nuclear Power Station, Unit Nos. 1, 2 and 3, New London County, Connecticut

Date of amendment request: January 12, 1989

Description of amendment request: The proposed amendments to the Technical Specifications (TS) will add a new requirement to TS Section 6.7, "Safety Limit Violation." This requirement will state that "operation shall not be resumed until authorized by the Commission." This proposed change will make the TS for the four plants consistent with the requirements of 10 CFR 50.36.

In addition a change to the Millstone Unit 3 TS has been proposed to change the requirement for auditing TS compliance from all provisions in each section to provision in each section, each year, during the five-year audit cycle for this plant. This change will make the Millstone Unit 3 TS consistent with the TS for the other three plants.

Basis for proposed no significant hazards consideration determination: The licensees have reviewed the proposed changes in accordance with 10 CFR 50.92 and have concluded and the staff agrees that they do not involve a significant hazards consideration in that these changes would not:

1. Involve a significant increase in the probability of occurrence or consequences of an accident previously analyzed. The proposed changes will make the technical specifications consistent with 10 CFR 50.36 for Safety Limit Violations. In addition, the change proposed in the area of Nuclear Review Board Audits will make Millstone Unit 3 consistent with the Westinghouse Standard TS and other Nuclear Plant's Technical Specifications. These changes will not increase the probability of occurrence or the consequences of an accident previously analyzed.

2. Create the possibility of a new or different kind of accident from any previously analyzed. Since there are no changes in the way the plant is operated, the potential for an unanalyzed accident is not created. No new failure modes are introduced.

3. Involve a significant reduction in the margin of safety. Since the proposed changes do not affect the consequences of any accident previously analyzed, there is no reduction in the margin of safety.

Based on the above, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457 and the Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: September 30, 1988 as supplemented December 30, 1988 and revised January 20, 1989.

Description of amendment request: The amendment would revise the Indian Point 2 Technical Specifications to allow a fuel design transition to Westinghouse 15X15 Optimized Fuel Assemblies (OFA) fuel. Indian Point 2 has been operating with a Westinghouse 15X15 low-parasitic (LOPAR) fueled core. The

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15X15 OFA fuel has design features similar to the 15X15 LOPAR fuel. The major design difference is the use of seven middle zircoloy grids for the OFA fuel versus seven middle inconel grids for the LOPAR fuel. Several of the plant operating limitations contained in the Technical Specifications will require revisions to allow the use of the OFA fuel and are discussed below.

1. *Administrative Changes* - References to LOPAR fuel throughout the Technical Specifications will be revised. In addition, the licensee is using this amendment application to delete obsolete requirements, relocate requirements to other sections of the Technical Specifications and make typographical corrections and clarifications.

2. *Improved Thermal Design Procedure and WRB-1 Correlation* - The proposed changes to Technical Specification Figure 2.1-1 would include a change to the thermal hydraulic design method used to satisfy the Departure from Nucleate Boiling design bases for Indian Point 2.

3. *Low Pressurizer Pressure Reactor Trip Setpoint* - The proposed changes to Technical Specification 2.3.1.B(3) would increase the minimum allowable value for the low pressurizer pressure reactor trip set point from greater than or equal to 1700 psig to greater than 1870 psig. The change is being proposed to revise the allowable setpoint trip to a value more consistent with plant operation.

4. *Over Temperature delta T and Over Power delta T Setpoints* - The proposed amendment would change Technical Specifications 2.3.1.B(4), 2.3.1.B(5) and Figure 2.1-1 concerning Overtemperature delta T and Overpower delta T. The revision to Figure 2.1-1 results from the implementation of a change in the Westinghouse DNB methodology as discussed in 2 above and a change in the allowable F delta H discussed in 8 below. The changes to 2.3.1.B(4) and 2.3.1.B(5) reflect the revised reactor core safety limits given in the proposed Figure 2.1-1.

5. *Boric Acid Storage System Volume* - The proposed revision to Section 3.2 changes the minimum volume requirements of the Boric Acid Storage System from 4400 to 6000 gallons. The revision is proposed to provide additional fuel management flexibility.

6. *Safety Injection Accumulators* - The proposed revision to Specification 3.3.A.1.C changes the Safety Injection Accumulators pressure and volume requirements from 600 psig and a minimum of 814.5 ft^3 and a maximum of 829.5 ft^3 to 615 psig and a minimum of 787.5 ft^3 and a maximum of 802.5 ft^3 respectively. The changes are proposed to provide increased flexibility in fuel management.

7. *Boron Concentration and Shutdown Margin* - The proposed revision to Specification 3.6.B.2 would decrease the required shutdown margin during refueling from 10% delta k/k to 5% delta k/k and fix the minimum refueling boron concentration at 2000 ppm. To maintain consistency Specification 3.6.A.1 will also be revised to reflect the revised shutdown margin and minimum boron concentration. The changes are proposed to provide increased flexibility in fuel management.

8. *Power Distribution F delta H* - The proposed revision to Specification 3.10.2.1 would increase the allowable peak value of F delta H at 100% power from 1.55 to 1.62. This change is proposed to increase flexibility in fuel management.

9. *Rod Drop Time* - The proposed revision to Specification 3.10.8, Rod Drop Time, would change the control rod drop time interval of 1.8 seconds from loss of stationary gripper core voltage to dashpot entry to a control rod drop time interval of 2.4 seconds from gripper release to dashpot entry.

10. *Hot Channel Factor* $F_Q(Z)$ - The proposed revision to Technical Specification 3.10 would revise the normalized total peaking factor as a function of core height. This would increase the allowable normalized total peaking factor at the upper elevations of the reactor core and is being revised to reflect the new LOCA analyses.

11. *Low Pressure Safety Injection Setpoint* - The proposed revision to Table 3.5-1 changes the pressurizer low pressure safety injection setpoint from 1700 to 1829 psig. The purpose of the proposed change is to account for possible instrument error.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

In accordance with the above criteria, the licensee provided the following no significant hazards analysis for the eleven categories of change discussed above.

1. Administrative changes
...these changes would not:
(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed revisions do not affect plant operations. The proposed revisions delete obsolete specifications, relocate existing specifications and add corrections and clarifications.
(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed revisions delete obsolete specifications, relocate existing specifications and add corrections and clarifications. The proposed changes do not modify the plant's configuration or operation. Nothing would be added or removed that could conceivably introduce a new or different kind of accident mechanism or initiating circumstances than those previously evaluated.
(3) Involve a significant reduction in a margin safety. With the proposed changes, all safety criteria previously evaluated are still met, remain conservative, and continue to maintain the previous margins of safety. Because these changes are administrative in nature their implementation does not affect any margin of safety.

2. Improve Thermal Design Procedure and WRB-1 Correlation
...this change would not:
(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The ITDP and WRB-1 represent changes to analyses methods only. The probability of an accident occurring is not impacted by the methods selected to evaluate the DNB design basis associated with that accident once it has been postulated to occur. The consequences of the accident must satisfy the same DNB design basis as previously evaluated. Use of ITDP and the WRB-1 do not decrease the available DNB margins when evaluating an accident.
(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. The noted changes are to the methods used in evaluating the DNB design basis only and are involved in analyses only after an accident has been postulated to occur.
(3) Involve a significant reduction in a margin of safety. With the proposed change, all safety criteria previously evaluated are still met, remain conservative, and continue to maintain the previous margins of safety. The DNB design criteria continues to be satisfied with the use of ITDP and the WRB-1. As described in the safety assessment, use of this improved method and correlation do not decrease DNB margin over methods and correlations previously used in Indian Point Unit 2.

3. Low Pressurizer Pressure Reactor Trip Setpoint
...this change would not:
(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed revision is supported by conservative analyses utilizing the latest approved computer codes and methodology. These analyses have demonstrated conformance to the applicable design and regulatory criteria.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change to the minimum allowable setpoint for reactor trip on low pressurizer pressure does not modify the plant's configuration or operation, and therefore the identical postulated accidents are the only ones that require evaluation and resolution. Nothing would be added or removed that could conceivably introduce a new or different kind of accident mechanism or initiating circumstance than that previously evaluated.
In general, the proposed change does not adversely effect the ability of the pressurizer low pressure reactor trip signal to perform its safety function to initiate reactor core shutdown during a rapid depressurization event.
(3) Involve a significant reduction in a margin of safety. With the proposed change, all safety criteria previously evaluated are still met, remain conservative, and continue to maintain the previous margins of safety.
The safety function of reactor trip on low pressurizer pressure is to initiate reactor core shutdown during a severe depressurization event and to ensure that the reactor coolant system pressure does not exceed the applicable lower limit for the overtemperature and overpower delta T protection. Worst case large and small break LOCA transients were reanalyzed using the latest approved computer codes and methodology as a basis for evaluating this proposed change. For the Non-LOCA accidents, analyses and evaluations demonstrate continued conformance to all applicable design and safety criteria.

4. Over Temperature delta T and Overpower delta T Setpoints
...these changes would not:
(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed revision is supported by conservative evaluations and analyses utilizing the latest approved computer codes and methodology. These analyses have demonstrated conformance to the applicable design and regulatory criteria.
(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes to the OT delta T and OP delta T setpoint functions for reactor trip do not modify the plant's configuration or operation, and therefore the identical postulated accidents are the only ones that require evaluation and resolution. Nothing would be added or removed that could conceivably introduce a new or different kind of accident mechanism or initiating circumstance than that previously evaluated.
In general, the proposed changes do not adversely affect the ability of OT delta T and OP delta T reactor trip signals to perform their safety function to initiate reactor core shutdown during an overtemperature delta T or overpower delta T transient condition, respectively.
(3) Involve a significant reduction in a margin of safety. With the proposed change, all safety criteria previously evaluated are still met, remain conservative, and continue to maintain the previous margins of safety.
The safety function of reactor trip on overtemperature delta T and overpower delta T is to initiate reactor core shutdown during delta T transient events to ensure that the reactor core safety limits as defined in Technical Specification Figure 2.1-1 are not exceeded. Evaluations and/or analyses for all of the licensing basis accidents described in FSAR Chapter 14 which take credit for an OT delta T or OP delta T reactor trip have been performed and the results of these analyses and evaluations have demonstrated conformance with the applicable design and regulatory requirements.

5. Boric Acid Storage System Volume
...this change would not:
(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The volume or boric acid required in the boric acid storage system is not considered in the mitigation of Chapter 14 events. The volume is required to ensure that a sufficient volume of boric acid solution is available to borate the reactor coolant system to a cold shutdown condition.
(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. The larger volume requirement is well within the capacity of the boric acid storage system. The RWST provides an alternative source of boric acid to meet redundancy requirements.
(3) Involve a significant reduction in a margin of safety. The use of the more conservative shutdown margin assumptions have not decreased, but actually increased cold shutdown boration capability.

6. Safety Injection Accumulators
...this change would not:
(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed revisions are supported by conservative analysis utilizing the latest approved computer codes and methodology for large break LOCA and by evaluation of conformance to the applicable design and regulatory criteria in the unlikely event of a small or large break LOCA.
(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes to the accumulator cover gas pressure and water volume do not modify the plant's configuration or operation, and therefore the identical postulated accidents are the only ones that require evaluation and resolution. Nothing would be added or removed that could conceivably introduce a new or different kind of accident mechanism or initiating circumstances than those previously evaluated.
The proposed changes are within the capabilities of the system and do not adversely effect the ability of the emergency core cooling system accumulators to perform their safety function to provide passive injection of borated water to the reactor coolant system.
(3) Involve a significant reduction in a margin of safety. With the proposed change, all safety criteria previously evaluated are still met, remain conservative, and continue to maintain the previous margins of safety.
The safety function of the emergency core cooling system accumulators is to provide passive injection of borated water to the reactor coolant system in the event of massive depressurization and loss of reactor coolant inventory. The worst case large break LOCA transient was reanalyzed using the latest approved computer codes and methodology as a basis for evaluating these proposed changes, and evaluations have determined that these changes will not adversely affect the results of small break LOCA analyses. These analyses/evaluations demonstrate continued conformance to all applicable design and safety criteria.

7. Boron Concentration Shutdown Margin
...these changes would not:
(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed revision is supported by conservative analyses utilizing approved methodology. These analyses have demonstrated conformance to the applicable design and regulatory criteria.
(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change to the refueling shutdown margin and minimum boron concentration does not modify the plant's configuration or operation, and therefore the identical postulated accidents are the only ones that require evaluation and resolution. Nothing would be added or removed that could conceivably introduce a new or different kind of accident mechanism or initiating circumstance than that previously evaluated.
In general, the proposed change does not adversely affect the ability to keep the reactor safely shutdown during refueling operations.
(3) Involve a significant reduction in a margin of safety. With the proposed change, all safety criteria previously evaluated are still met, remain conservative, and continue to maintain the previous margins of safety.
The safety function of refueling shutdown margin and minimum boron concentration is to keep the reactor core shutdown during refueling operations. Safety analyses for the licensing basis accident described in FSAR Chapter 14 which take credit for refueling boron concentration have been performed and the results of these analyses have demonstrated conformace with the applicable design and regulatory requirements.

8. Power Distribution F delta H
...this change would not:
(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The peak F delta H value represents a design limit on peaking factors which must be satisfied for plant operation. This proposed change is supported by conservative analyses and evaluations based on approved codes and methodologies. All applicable design and safety criteria continue to be satisfied.
(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change in the design and operational limit value of F delta H does not modify the plant's configuration or operation, and therefore the previously postulated accidents are the only ones that require evaluation or resolution. Nothing would be added or removed that could conceivably introduce a new or different kind of accident mechanism or

initiating circumstances than that previously evaluated.

(3) Involve a significant reduction in a margin of safety. With the proposed changes, all safety criteria previously evaluated are still met, remain conservative, and continue to maintain the previous margins of safety. Approved analysis codes and methodologies were employed as the basis for evaluating this proposed change.

All applicable LOCA and non-LOCA design and safety criteria continue to be satisfied including the impact of an increased F delta H.

9. Rod Drop Time

...these changes would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed revision is supported by conservative evaluations and analyses utilizing the latest approved computer codes and methodology. These analyses have demonstrated conformance to the applicable design and regulatory criteria.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change to the control rod drop time for reactor trip does not modify the plant's configuration or operation, and therefore the identical postulated accidents are the only ones that require evaluation and resolution. Nothing would be added or removed that could conceivably introduce a new or different kind of accident mechanism or initiating circumstance than that previously evaluated.

In general, the proposed change does not adversely affect the ability of control rods to perform their safety function of intitiating core shutdown in response to a reactor trip signal.

(3) Involve a significant reduction in a margin of safety. With the proposed change, all safety criteria previously evaluated are still met, remain conservative, and continue to maintain the previous margins of safety.

The safety function of control rod drop in response to a reactor trip signal is to initiate reactor core shutdown. Safety evaluations and analysis for all of the licensing basis accidents described in FSAR Chapter 14 which take credit for a reactor trip have been performed and the results of these analyses and evaluations have demonstrated conformance with the applicable design and regulatory requirements.

10. Hot Channel Factor $F_Q(Z)$

...this change would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed revision is supported by conservative analyses utilizing the latest approved computer codes and methodology. These analyses have demonstrated conformance to the applicable design and regulatory criteria in the unlikely event of a small or large break LOCA.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change to the allowable core axial power distribution limits does not modify the plant's configuration or operation, and therefore the identical postulated accidents are the only ones that require evaluation and resolution. Nothing would be added or removed that could conceivably introduce a new or different kind of accident mechanism or initiating circumstances than that previously evaluated.

(3) Involve a significant reduction in a margin of safety. With the proposed change, all safety criteria previously evaluated are still met, remain conservative, and continue to maintain the previous margins of safety.

Worst case large and small break LOCA transients were reanalyzed using the latest approved computer codes and methodology as a basis for evaluating this proposed change. These anlayses demonstrate continued conformance to all applicable design and safety criteria.

11. Low Pressurizer Pressure Safety Injection Setpoint

...these changes would not:

(1) Involve a significant increase in the probability or consequence or an accident previously evaluated. The proposed revision assures that assumptions are met for the existing safety analyses.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change to the minimum allowable setpoint for safety injection on low pressurizer pressure does not modify the plant's configuration or operation, and therefore the identical postulated accidents are the only ones that require evaluation and resolution. Nothing would be added or removed that could conceivably introduce a new or different kind of accident mechanism or initiating circumstances than those previously evaluated.

(3) Involve a significant reduciton in a margin of safety. With the proposed change, all safety criteria previously evaluated are still met, remain conservative, and continue to maintain the previous margins of safety.

The safety function of the safety injection on low pressurizer pressure is to initiate safety injection flow during a severe depressurization event. The proposed change will increase the allowable pressure setpoint and assure that safety injection flow will be delivered to the reactor core as assumed in the safety analyses.

The proposed changes to the Technical Specifications are as a result of core reload and not because of any significant changes made to the acceptance criteria for technical specifications, and the analytical methods used by the licensee in the required reload analyses have been previously found acceptable by the NRC. Therefore, based on the above the staff proposes that the proposed changes do not represent a significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003

NRC Project Director: Robert A. Capra, Director

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: December 21, 1987

Description of amendment request: The proposed amendments to Technical Specification (TS) 4.7.6.d would extend the sampling interval of the carbon adsorbers of the Control Room Area Ventilation System from 720 hours to 1440 hours. With sampling every 720 hours, the six sampling canisters in each of the two carbon beds would be used up in a year. Installing fresh sample canisters requires opening and resealing the covers of the carbon beds. By TS 4.7.6e, these operations require leak tests and penetration tests which normally would not be required for 18 months. By extending the sampling interval from 720 hours to 1440 hours, the surveillance required by TS 4.7.6e would need to be performed only after the normal 18-month interval. The state of the art triethylenediamine-treated carbon adsorbers have been demonstrated by laboratory tests to remain highly efficient in adsorbing methyl iodide after extended operation.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee, in its submittal of December 21, 1987, provided the following discussion and anlysis with regard to the three 10 CFR 50.92 standards:

The OPERABILITY of the Control Room Area Ventilation System ensures that: (1) the ambient air temperature does not exceed the allowable temperature for continuous-duty rating for the equipment and instrumentation cooled by this system, and (2) the control room will remain habitable for operations personnel during and following all credible accident conditions. Technical Specification 4.7.6, Control Room Area Ventilation System Surveillance Requirements, ensures that the System remains operable as required.

Proposed Technical Specification 4.7.6.d seeks to extend the Control Room Ventilation System Carbon adsorber sample time interval from 720 hours to 1440 hours because existing requirements are overly restrictive. Catawba Nuclear Station is equipped with state of the art Control Room Ventilation System Carbon adsorbers which retain very high efficiencies over prolonged intervals of operation. Laboratory data support the efficiency of the Carbon adsorbers. Therefore, it is reasonable and justifiable to extend the carbon adsorber sample time interval as indicated in the proposed Technical Specification.

Existing Technical Specification 4.7.6.d indicates that each Control Room Area Ventilation System is to be demonstrated operable after every 720 hours (30 days) of carbon adsorber operation by verifying within 31 days after removal that a laboratory analysis of a representative carbon sample meets the laboratory testing criteria of Regulatory Position C.6.b of Regulatory Guide 1.52, Revision 2, March 1978, for a methyl iodide penetration of less than 1%. The filter units in service at Catawba Nuclear Station currently have no bypass mode. Therefore, either A train (1CRA-PFT-1) or B train (2CRA-PFT-1) must operate in the filtered mode continuously. This design configuration allows one unit to run continuously for 30 days before a sample must be removed.

Each filter unit is initially provided with six installed sample canisters. If one canister is removed every 30 days (one canister from each unit is removed every 2 months) the samples would be depleted after one year. The removed canisters are to be reloaded and reinstalled in the filter unit. Removal of the cover from the carbon bed jeopardizes Unit integrity and a refrigerant penetration leak rate test is required on the carbon bed whenever the cover is removed. This results in the Technical Specification 4.7.6.e surveillance test interval being reduced from the normal 18 month to one year or less. Therefore the existing sampling interval is overly restrictive and results in excessive sampling of the Control Room pressurizing filter units. Proposed Technical Specification 4.7.6.d would allow for a normal 18 month surveillance test interval (as required by existing Technical Specification 4.7.6.e) by extending the Technical Specification 4.7.6.d sample interval from 720 hours to 1440 hours.

Historical data supports the proposed Technical Specification 4.7.6.d sampling interval of 1440 hours. Laboratory sample analysis results for filter units 1CRA-PFT-1 and 2CRA-PFT-2 show that over the course of one year and more than 4,000 hours of run time per unit covering typical atmospheric and seasonal meteorological conditions, there was no noticeable degradation in the methly iodide efficiency of the carbon. The sample results varied from 99.98% to 99.95% for 1CRA-PFT-1 and from 99.99% to 99.90% efficiency for 2CRA-PFT-1. Therefore, the proposed extension of the Technical Specifications 4.7.6.d sample interval is justifiable due to the high efficiency of the carbon in 1CRA-PFT-1 and 2CRA-PFT-1 and their ability to retain their efficiency over the course of prolonged operation as shown by the subject laboratory sample results.

The air flow rate through 1CRA-PFT-1 and 2CRA-PFT-2 is 6,000 cubic feet per minute (CFM) of which 4,000 cfm is outside air and 2,000 is recirculated Control Room area air. Since Catawba Nuclear Station is located in a rural environment, away from any major industrial plants, the outside air is essentially clean and free of any industrial pollutants. Therefore, circulation of outside air through the filter units has no detrimental effect on the efficiency of the carbon. This phenomena is demonstrated by Catawba's carbon analyses results from the start of plant operation.

Additionally, the carbon utilized at Catawba Nuclear Station is activated and impregnated with Triethylenediamine (TEDA). This type of carbon is a state-of-art-the-art material which results in high methyl iodide efficiency as shown by laboratory analysis of the samples. The 720 hours run time interval recommended by Regulatory Guide 1.52 is an arbitrary value applying to activated carbon. Since Catawba's carbon is activated impregnated with TEDA, the methyl iodide efficiency has been increased substantially.

In summary, the Control Room Ventilation System carbon adsorbers have been proven to maintain very high levels of Methyl Iodide efficiency under extended operation conditions. Laboratory analysis of carbon samples indicate that extending the sampling interval to 1440 hours has an insignificant effect on the efficiency of the adsorbers. Also, outside air circulated through the adsorbers is of high quality and would not impact the efficiency of the adsorbers even if sampling intervals are extended. Therefore, the proposed change to Technical Specification 4.7.6.d is reasonable and technically justifiable.

Pursuant to 10 CFR 50.92, this analysis provides a determination that the proposed amendments to the Technical Specifications involves no significant hazards considerations if operation in accordance with the proposed amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

The proposed amendment does not involve a significant increase in the probability or consequences of any previously evaluated accident. Catawba Nuclear Station is equipped with state of the art Control Room Ventilation System Carbon adsorbers which retain very high Methyl Iodide efficiencies over prolonged intervals of operation. Previous laboratory analysis results indicate that over the course of a one year and more than 4,000 hours of runtime covering typical atmospheric and seasonal conditions, there is no noticeable degradation in the methyl iodide efficiency of the adsorber and that the carbon is perfectly capable of extended operation. Increasing the Technical Specification 4.7.6.d sample time intervals to 1440 hours has no significant impact to the efficiency of the carbon adsorbers and Control Room Area Ventilation System operability. Therefore, the proposed change cannot increase the probability or consequences of any previously evaluated accident.

The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed increase of Technical Specification 4.7.6.d sample time intervals to 1440 hours has no effect on the function, operation, or efficiency of the Control Room Area Ventilation System. Therefore the proposed Technical Specification change cannot create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment does not involve a significant reduction in a margin of safety. As it was previously indicated, the Catawba Station Control Room Ventilation System Carbon adsorbers are capable of extended operation without any significant reduction in their Methyl Iodide removal efficiency. Previous laboratory carbon sample analysis results indicate that the proposed carbon adsorber sampling interval of 1440 hours will not reduce the efficiency of the Control Room Ventilation System in any significant manner. Therefore, the proposed Technical Specification does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's submittal and agrees that the proposed amendments would not have a significant adverse effect on the safe operation of the facility. Laboratory tests and plant experience have demonstrated the continued high adsorption efficiency of triethylenediamine-treated carbon after air ciculuation for 4000 hours. Also, contaminants such as industrial pollutants which could affect the carbon adsorption efficiency are absent in the pure outside air in the rural environment of the plant. The staff also agrees with the licensee's evaluation of the proposed amendment with respect to the three standards of 10 CFR 50.92.

On this basis, the Commission has concluded that the requested amendments meet the three standards and, therefore, has made a proposed determination that the amendment application does not involve a significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: David B. Matthews

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: September 19, 1988, as supplemented December 28, 1988

Description of amendment request: The proposed amendments would revise the setpoints for Catawba Unit 2 steam generator level trips due to the planned relocation of level taps. The changes are applicable to Unit 2 only. Unit 1 is included administratively because the Technical Specifications are combined in one document for both units. The proposed changes for Unit 2 would revise:

(1) Table 2.2-1, Item 13.b.

(2) Table 3.3-4, Items 5.b.2., 6.c.2., and 8.c.2)

(3) the basis for Steam Generator Water Level, page B 2-7

Catawba Unit 2 is equipped with Westinghouse Model D5 steam generators while Unit 1 has Model D3. A major difference between those two models is the design of the moisture separator section. Two aspects of this design difference are of significance with respect to the proposed modification: (1) The D5 has a higher recirculation rate than the D3, and (2) the elevation of the lower deck plate in the D5 is higher than in the D3. Due to these differences, the lower instrument tap for the narrow range level instrumentation was located above the transition cone and lower deck plate on the D5 as opposed to below the transition cone in the downcomer in the D3. This has resulted in significantly different operating characteristics. The proposed modification will relocate the D5 lower instrument tap to the same location as the D3. Due to the location of the lower tap in model D5 generators, the shrink and swell characteristics are more pronounced than in the D3 model. This makes plant control difficult and more susceptible to trips.

In order to determine the potential gain in operational control characteristics of the D5 steam generator if the lower instrument tap were relocated to the equivalent location as the D3, Duke and Westinghouse installed pilot instrumentation on the Catawba 2C generator. Transient data have shown that the modified D5 level instrumentation will perform similarly to the D3 in terms of post-trip response.

The present span between the high level and low level trips on the D5 is physically bounded by the elevation of the top of the moisture separator swirl vanes and the elevation of the lower instrument tap, respectively. By relocating the lower tap, the lower level trip setpoint can be reduced. The high and operating level trip setpoints will also be reduced. The low level trip setpoint will be set at the elevation of the lower deck plate. With this arrangement, the margin between the operating level setpoint and low level trip setpoint will be increased from a current 42" to 58". This will make Unit 2 more tolerant to feedwater system malfunctions at power, thus reducing unnecessary trips and corresponding challenges to safety systems.

Relocating the narrow range instrumentation lower sensing tap on the Westinghouse model D5 steam generators to the same elevation as the model D3 steam generators would provide the following safety enhancements:

(1) The effects of level shrink and swell at low power levels will be greatly reduced, thus reducing the potential for reactor trips.

(2) The time necessary to recover indicated level following a reactor trip will be greatly reduced, thus reducing the potential for an overcooling event due to excessive auxiliary feedwater.

(3) The margin to low level trip will be increased thus reducing the potential for reactor trips at power.

Relocation of the level sensing tap to the downcomer region requires that the velocity induced error be accounted for in the determination of trip and operating level setpoints. This can be accomplished without reducing any current margin to trip.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated because the Westinghouse Safety Evaluation discusses the transients not requiring any reanalysis as well as those that required reanalysis. Its findings indicated that no conclusions in the Catawba Final Safety Analysis Report will be violated by relocating the steam generator level taps. The licensee reviewed two other events: (1) steam generator tube rupture and (2) loss-of-coolant accident (LOCA) to evaluate the need for reanalyses. The licensee concluded that no reanalyses were needed and that the conclusions of the current analyses remain bounding.

The proposed amendments do not create the possibility of a new or different kind of accident from any accident previously evaluated because relocating the level tap on the D5 generator should improve operation and no new modes of operation are introduced.

The proposed amendments do not involve a significant reduction in margin of safety because the modification would enhance safety by making the steam generators less susceptible to feedwater transients. This would reduce the potential for reactor and turbine trips and would avoid unnecessary transients on the primary and secondary systems.

Accordingly, the Commission has concluded that the requested changes meet the three standards and, therefore, has made a proposed determination that the requested license amendments do not involve a significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: David B. Matthews

Duke Power Company, Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: November 28, 1988

Description of amendment request: The proposed amendments would change Technical Specification (TS) TS 6.2.3 to clarify and supplement the specified function, composition, responsibilities, reporting, and records requirements for the Catawba Safety Review Group (CSRG) consistent with Item I.B.1.2 of NUREG-0737. Specifically,

- The function of the CSRG in TS 6.2.3.1 would be revised to specifically define the function of the group.

- The composition of the CSRG in TS 6.2.3.2 would be revised to add the qualification requirements for members of the group.

- The responsibilities requirement of TS 6.2.3.3 would be revised to replace a general statement with an itemized list of specific responsibilities.

- The reporting of the CSRG, specified by TS 6.2.3.4, would be revised to reflect that they report to the Manager of Nuclear Safety Assurance, rather than to the Director, Nuclear Safety Review Board.

- The recordkeeping and distribution requirements of TS 6.2.3.5 would be revised to require that records of CSRG activities be maintained for the life of the station, and that reports of CSRG activities be forwarded to the Manager of Nuclear Safety Assurance.

Basis for proposed no significant hazards consideration determination: TS 6.2.3 provides requirements regarding administrative controls for the CSRG which represents the "Independent Safety Engineering Group" required by Item I.B.1.2 of NUREG-0737. The existing TS 6.2.3 is ambiguous and lacking in the necessary level of specificity to ensure effective control regarding the function, composition, responsibilities, reporting and records requirements of the CSRG. The proposed changes would correct this deficiency and, thereby provide increased assurance of compliance with Item I.B.1.2 of NUREG-0737.

The Commission has provided certain examples (51 FR 7744) of actions likely to involve no significant hazards considerations. The proposed changes do not match the examples. However, the staff has reviewed the licensee's request for amendments and has determined that should this request be implemented, it would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety; rather these changes ensure that the administrative control aspects for the CSRG will be maintained in accordance with NUREG-0737 requirements for an independent safety engineering group. Accordingly, the Commission proposes to find that the changes do not involve a significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina, 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: David B. Matthews

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: January 17, 1989

Description of amendment request: The proposed amendments would revise Technical Specification (TS) Table 3.3-5, Item 15, and Surveillance Requirement (SR) 4.7.1.2.1b.4) to increase the Auxiliary Feedwater (CA) System suction swapover time from less than or equal to 15 seconds to less than or equal to 16 seconds. This would be accomplished by increasing the delay time from 5 to a maximum of 6 seconds. The proposed wording of the notes associated with Item 15 of TS Table 3.3-5 and SR 4.7.1.2.1b.4) would be modified to clearly state that the 6 seconds represent the maximum delay time and that a shorter delay may be acceptable.

This proposed change is in response to Corrective Action (9) contained in Licensee Event Report (LER) 414/88-12 dated April 8, 1988. This LER described an incident at Catawba Unit 2 where Train A Suction for the motor-driven CA pump inadvertently swapped over from the normal condensate grade supply to the Nuclear Service Water System.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluted; or (3) involve a significant reduction in a margin of safety.

The proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed changes would reduce the probability of an inadvertent swapover and would not affect the previously evaluated accident analyses discussed in the Final Safety Analysis Report.

The proposed amendments do not create the possibility of a new or different kind of accident from any accident previously evaluated because the increase in the swapover time would not significantly impact the design basis of the system and no new modes of operation are introduced.

The proposed amendments do not involve a significant reduction in a margin of safety because the changes would reduce the probability of an inadvertent swapover without increasing its consequences.

Accordingly, the Commission has concluded that the requested changes meet the three standards and, therefore, has made a proposed determination that the requested license amendments do not involve a significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: David B. Matthews

Duke Power Company, Docket Nos. 50-369 and 50-370 McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: November 28, 1988

Description of amendment request: The proposed amendments would change the name of the "Station Safety Review Group (SSRG)" in Technical Specification (TS) 6.2.3 to the "McGuire Safety Review Group (MSRG)." The change to TS 6.2.3 would also clarify and supplement the specified function, composition, responsibilities, reporting, and records requirements for the MSRG consistent with Item I.B.I.2 of NUREG-0737. Specifically,

- The function of the MSRG in TS 6.2.3.1 would be revised to specifically define the function of the group.

- The composition of the MSRG in TS 6.2.3.1 would be revised to add the qualification requirements for members of the group.

- The responsibilities requirement of TS 6.2.3.3 would be revised to replace a general statement with an itemized list of specific responsibilities.

- The reporting of the MSRG, specified by TS 6.2.3.4, would be revised to reflect that they report to the Manager of Nuclear Safety Assurance, rather than to the Director, Nuclear Safety Review Board.

- The recordkeeping and distribution requirements of TS 6.2.3.5 would be revised to require that records of MSRG activities be maintained for the life of the station, and that reports of MSRG activities be forwarded to the Manager of Nuclear Safety Assurance.

Basis for proposed no significant hazards consideration determination: TS 6.2.3 provides requirements regarding administrative controls for the MSRG. The MSRG at McGuire represents the "Independent Safety Engineering Group" which is required by Item I.B.I.2 of NUREG-0737. The existing TS 6.2.3 is ambiguous and lacking in the necessary level of specificity to ensure effective control regarding the function, composition, responsibilities, reporting and records requirements of the MSRG.

The proposed changes would correct this deficiency and, thereby provide increased assurance of compliance with NUREG-0737 Item I.B.1.2.

The Commission has provided certain examples (51 FR 7744) of actions likely to involve no significant hazards considerations. One of the examples (i) is "a purely administrative change to technical specifications; for example, ... a change in nomenclature." The change to replace SSRG by MSRG matches this example. The other proposed changes do not match the examples. However, the staff has reviewed the licensee's request for amendments and has determined that should this request be implemented, it would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety; rather these changes ensure that the administrative control aspects for the MSRG will be maintained in accordance with the NUREG-0737 requirements for an independent safety engineering group. Accordingly, the Commission proposes to find that the changes do not involve a significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: David B. Matthews

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: December 23, 1988

Description of amendment request: The amendment would allow the licensee to store fuel of up to 4.5 percent enrichment in both the dry fuel storage racks and storage pool A. This request is a result of the licensee's intent to use fuel of up to 4.2 percent enrichment during Fuel Cycle 9. The licensee is currently limited to storing fuel of 4.0 and 3.5 percent enrichment in the dry fuel storage racks and storage pool A respectively.

Basis for proposed no significant hazards consideration determination: The Commission has provided criteria for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee addressed the above three criteria in the amendment application and made a no significant hazards consideration determination. In regard to the first criterion the licensee provided the following analysis:

This amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

An increase in fuel enrichment will not by itself affect the mixture of fission product nuclides. A change in fuel cycle design which makes use of an increased enrichment may result in fuel burnup consisting of a somewhat different mixture of nuclides. The effect of this instance is insignificant because:

(a) The isotopic mixture of the irradiated assembly is relatively insensitive to the assembly's initial enrichment.

(b) Most accident doses are such a small fraction of 10 CFR Part 100 limits, a large margin exists before any change becomes significant.

(c) The change in Pu content which would result from an increase in burnup would produce more of some fission product nuclides and less of other nuclides. Small increases in some doses are offset by reductions in other doses. The radiological consequences of accidents are not significantly changed.

With respect to the second criterion the licensee stated:

This amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

As indicated in the enclosed analyses, an unplanned criticality event will not occur as Keff will not exceed 0.95 with the maximum allowable enriched fuel in pool A, and flooded with unborated water, or the dry storage racks immersed in a water mist of 7.5% moderator density. Criticality is possible for a mist environment only if the higher enriched fuel occupies all of the locations in the dry storage racks including those which are required to be vacant. To prevent [this] occurrence, FPC commits to establish controls to preclude improper fuel storage.

In regards to the third criterion the licensee provides the following statement:

This amendment will not involve a significant reduction in a margin of safety.

While the increased enrichment in pool A and the dry storage racks may lessen the margin to criticality this reduction is not significant because the overall safety margin is within NRC criteria of Keff [less than] 0.95 (NRC Standard Review Plan, Section 9.2.1).

Therefore, this amendment request satisfies the criteria specified in 10 CFR 50.92 for amendments which do not involve a significant hazards consideration.

The staff has reviewed the analysis provided by the licensee in support of a no significant hazards consideration determination. The staff agrees with the licensee's analysis and believes that the licensee has met the criteria for such a determination. Therefore, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida 32629

Attorney for licensee: R. W. Neiser, Senior Vice President and General Counsel, Florida Power Corporation, P. O. Box 14042, St. Petersburg, Florida 33733

NRC Project Director: Herbert N. Berkow

General Public Utilities Nuclear Corporation, Docket No. 50-320, Three Mile Island Nuclear Station, Unit No. 2, (TMI-2), Dauphin County, Pennsylvania

Date of amendment request: December 4, 1987

Description of amendment request: The proposed amendment would revise TMI-2 Operating License No. DPR-73 by modifying Appendix A Technical Specifications Sections 1.13 - Definitions, and 3 - Limiting Conditions for Operation. The proposed amendment would revise the specifications related to fire protection systems at TMI-2. The proposed changes would align license requirements of fire protection systems consistent with the current, as well as future plant conditions through the remainder of the current cleanup operations.

A revised definition of "Fire Suppression Water System", Section 1.13, is proposed. The definition describes the components of the fire suppression water system. The revised definition deletes the terms "sprinkler" and "spray system riser" to be consistent with the revised requirements of Technical Specification 3.7.10.2 Deluge/Sprinkler Systems.

The licensee proposes to revise Technical Specification 3.7.10.1, Fire Suppression Water System, by eliminating one of four separate and redundant high pressure fire pumps and one of four separate water supplies supplying water to the pumps. The licensee further proposes to delete the requirement to maintain operability of the Unit 2 River Water Intake Diesel Fire Pump and the Unit 2 River Water Intake Structure. The licensee also proposes to remove the terms "sprinkler" and "spray system user" to be consistent with the revised requirements of Technical Specification 3.7.10.2 - Deluge/Sprinkler Systems.

Technical Specification 3.7.10.2 - Deluge/Sprinkler Systems, would be deleted by the licensee. The current Technical Specifications require deluge and/or sprinkler systems in a number of areas in the TMI-2 ventilation system. The purpose of this system is for suppression of charcoal filter fires in the ventilation system. The licensee has determined that the ventilation system is no longer necessary to maintain the safe shutdown condition of the plant or to maintain off-site doses to less than 10 CFR Part 100 limits.

Section 3.7.10.3 - Halon System, requires that the Halon systems in the Cable and Transformer Rooms and four zones of the air intake tunnel be operable. The licensee proposes to delete this system. The licensee has determined that these areas, protected by the Halon system and located outside the Reactor Building, would not affect the safe shutdown condition of the plant nor would it result in an off-site release greater than 10 CFR Part 100 limits.

Technical Specifications 3.7.11 - Penetration Fire Barriers, would be deleted by the licensee. The current Technical Specification requires that all penetration fire barriers protecting safety related areas be functional. The November 17, 1987 revised Fire Protection Program Evaluation establishes the Reactor Building as the only fire area. The licensee has determined that maintenance of the penetration fire barriers are not necessary to ensure the safe shutdown of the facility.

The licensee proposes to modify the Bases Section 3/4.3.3.6 and 3/4.3.3.9 - Fire Detection Instrumentation, by making reference to the TMI-2 Fire Protection Program Evaluation with regard to adequate fire warning capability, delete reference to safety related equipment and permit remote surveillance techniques in lieu of fire patrols when fire detection instrumentation is inoperative.

Bases Section 3/4.7.10 - Fire Suppression Systems, would be similarly modified making reference to the TMI-2 Fire Protection Program Evaluation with regard to adequate fire suppression capability, and delete reference to the fire suppression system capability to minimize potential damage to safety related equipment. The Basis currently refers to four main fire pumps in the fire suppression system. Consistent with the changes proposed in Section 3.7.10.1, the Basis would be changed to refer to three main fire pumps. The licensee also proposes to delete the reference to the necessity for immediate corrective measures should the fire suppression water system become inoperative. The licensee proposes instead to state that the inoperability of the system would not affect the capability to maintain the safe shutdown condition of the plant nor the capability to prevent off-site releases greater than 10 CFR Part 100 limits. The licensee would retain the statement that if portions of the fire suppression system are inoperable, alternate backup fire fighting equipment would be made available in affected areas until the affected equipment could be restored to service.

The licensee proposes to delete Basis Section 3/4.7.11 Penetration Fire Barriers, consistent with the request to delete Section 3.7.11 - Penetration Fire Barriers.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

TMI-2 is currently in a post-accident, cold shutdown, long-term cleanup mode, with sufficient decay heat removal assured by direct heat loss from the reactor coolant system to the reactor building atmosphere. The licensee is presently engaged in defueling the damaged reactor, decontaminating the facility and readying the plant for long-term storage. As of the end of December 1988, approximately 70 percent of the fuel contained in the reactor vessel has been removed. Defueling the facility has progressed to the regions below the location of the original core volume. Defueling activities within the reactor building will be completed by fall of 1989. The staff has determined in previous license amendments, that the potential accidents analyzed for TMI-2 in the current cleanup mode are bounded in scope and severity by the range of accidents originally analyzed in the facility FSAR. The changes proposed by the licensee are changes to the Appendix A Technical Specifications reducing the fire protection requirements necessary to assure the safe shutdown of the facility. Since the facility is in a safe shutdown configuration, the reactor system is not pressurized and the core is partially defueled the licensee asserts that a reduction in fire protection measures is warranted and that off-site doses, even in the event of a fire, would be less than 10 CFR Part 100 limits.

The proposed changes do not significantly increase the probability or consequences of an accident previously evaluated. The proposed changes to the Technical Specifications are based on a safety analysis contained in the November 17, 1987 Fire Protection Plan Evaluation (FPPE) submitted by the licensee in support of the proposed changes. The FPPE concludes that maintenance of only one fire area, the TMI-2 Reactor Building, is justified and that this assumption will not affect either the capability to maintain the monitored safe shutdown condition of the plant nor result in off-site doses greater than 10 CFR Part 100 limits.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because no new modes of operation or new equipment are being introduced. The proposed changes do not involve a significant reduction in a margin of safety since the changes are consistent with the results of the recent Fire Protection Program Evaluation and do not affect the capability of the licensee to maintain the safe shutdown condition of the facility nor result in the possibility of off-site doses greater than 10 CFR Part 100 limits. The proposed changes will still require fire detection and suppression capability in the Reactor Building.

Based on the above considerations, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: State Library of Pennsylvania Government Publications Section, Education Building, Walnut Street and Commonwealth Avenue, Harrisburg, Pennsylvania 17126.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts, & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: December 23, 1988

Description of amendment request: The proposed amendment would change the Technical Specifications to show a new location for one of the backup seismic monitors.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The seismic monitor being moved is currently in a location to detect peak accelerations on the reactor coolant system (RCS) piping by being attached to a pipe directly connected to the RCS piping. The location, however, is in a harsh environment subject to vibrations from a reactor coolant pump. The environment and vibrations continually damage the monitor rendering it useless. The new location will also place the monitor on a connected pipe to the RCS and should provide comparable information with less chance of unrelated damage. These backup seismic monitors do not influence any accident previously evaluated except possibly for the small added weight of the monitor on the connecting pipe. The licensee has evaluated the effects of the added weight at the new location; the weight does not cause the new seismic stress valves to exceed any limits. Therefore, the proposed change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

The monitor provides backup information to verify seismic induced stress calculations. It is not powered by external power sources and the weight at the new location should have no effect on the piping. The mounting clamp and monitor meet seismic Category 1 requirements and should not fall during a seismic event and local pipe whip restraints should prevent the monitors from becoming missiles after a postulated pipe break. Therefore, the proposed change will not create the possibility of a new or different kind of accident previously evaluated.

The monitor provides backup recording to verify seismic induced stress calculations. The new location still provides information on the RCS piping and the monitor should have no effect on the new piping location. The current location renders the monitor useless while the new location restores the margin of safety as a backup monitor as originally required. Therefore the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, the staff proposes to determine that the change does not involve a significant hazards consideration.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N St., NW., Washington, DC 20037

NRC Project Director: Jose A. Calvo

Mississippi Power & Light Company, System Energy Resources, Inc., South Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: December 6, 1988, as supplemented December 30, 1988.

Description of amendment request: The amendment would change the Technical Specifications (TS) as required to support the Cycle 4 fuel reload. Specific changes would be made in the Bases for Section 2.1, "Safety Limits," the TS and Bases for Section 3/4.2, "Power Distribution Limits," and TS 5.3.1, "Fuel Assemblies." Specifically, the proposed Technical Specification changes address the following:

(a) The addition of one MAPLHGR curve for the new 8x8 fuel type.

(b) The revision of the MAPLHGR curve for 8x8 fuel during Single LOOP Operation (SLO).

(c) The revision of flow dependent thermal limits, $MAPFAC_p$, and $MCPR_f$, based on all ANF core for Cycle 4.

(d) The revision of power dependent MCPR, $MCPR_p$, based on analyses specific to an all ANF core for Cycle 4.

(e) Changes associated with the addition of four 9x9-5 Lead Test Assemblies (LTAs) introduced in Cycle 4. The applicable MAPLHGR and LHGR curves are added.

(f) The revision of design description of the fuel assemblies consistent with Item (e) above (administrative).

(g) Administrative changes (editorial).

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided an analysis of no significant hazards considerations in its request for a license amendment. The licensee's analysis of the proposed amendment against the three standards in 10 CFR 50.92 is reproduced below.

1. a) This change introduces one MAPLHGR limit for the new 8x8 fuel. This change only introduces a new MAPLHGR limit and does not affect the precursors to any event previously evaluated. Therefore, this change does not involve a significant increase in the probability of any event previously evaluated.

The peak clad temperature (PCT) for the new 8x8 fuel was calculated based on the same bounding MAPLHGR limit which was used in the analyses for Cycles 2 and 3. [The MAPLHGR operating limits in the Technical Specifications for Cycles 2, 3 and 4 are bounded by the MAPLHGR limit used in LOCA analysis.] Small variations in PCT, compared to the bounding PCT calculated in Cycle 2, are observed as a result of minor fuel design differences (e.g., lattice radial enrichment, and therefore, power distribution). The maximum increase in PCT relative to Cycle 2 is 11 degrees F at 20 GWd/MTU. This increase is negligible compared to the calculated PCT which is more than 500 degrees below the 10 CFR 50.46 limit of 2200 degrees F. Therefore, the proposed change does not involve a significant increase in the consequences of any event previously evaluated.

b) This change consists of a revision to the SLO MAPLHGR limit for the 8x8 fuel types. It only redefines the SLO MAPLHGR limit and does not affect the precursors to any event previously evaluated. Therefore, this change does not involve a significant increase in the probability of any event previously evaluated.

The revised SLO MAPLHGR limit conservatively bounds, during Cycle 4, the individual MAPLHGR limits for the 8x8 fuel types. Therefore, this change does not involve a significant increase in the consequences of any event previously evaluated.

c) This change consists of revisions to the $MCPR_f$ and $MAPFAC_f$ limits. The revised limits are based on ANF's methodology, are defined for specific modes of operation and do not take credit for the core flow limiter. These changes only redefine the flow dependent thermal limits and do not affect the precursors to any event evaluated previously. Therefore, these changes do not involve a significant increase in the probability of any event evaluated previously.

As a result of this change, both reduction and increase in the Cycle 3 limits are observed. However, the revised $MCPR_f$ and $MAPFAC_f$ operating limits were constructed in a conservative manner. The limiting flow runout event will not cause the plant to exceed the MCPR safety limit or the LHGR 120% overpower line even with the plant initially at the revised operating limits. Therefore, the proposed changes do not involve a significant increase in the consequences of any event previously evaluated.

d) This change consists of a revision to the $MCPR_p$ limit. The revised $MCPR_p$ limit is based on ANF's methodology applied to a full ANF core. The limit is lower than the Cycle 3 limit above 40% of rated power up to, but not including, 100% power. Below 40% of rated power and at 100% power, the limit is unchanged. This change only redefines the $MCPR_p$ limit and does not affect the precursors to any event previously evaluated. Therefore, this change does not involve a significant increase in the probability of any event previously evaluated. Cycle 4 analysis demonstrated that the limiting events will result in a CPR above the $MCPR_p$ operating limit. Therefore, the proposed change does not involve a significant increase in the consequences of any event previously evaluated.

e) This change addresses the introduction of four (4) LTAs into the core for Cycle 4 operation. The thermal, mechanical and neutronic performance of the LTAs has been determined for the limiting events evaluated by ANF for Cycle 4. The LTAs have been determined for the limiting events evaluated by ANF for Cycle 4. The LTAs have been shown to be compatible with the co-resident 8x8 fuel assemblies. Therefore, introduction of the LTAs during Cycle 4 does not affect the precursors to any event evaluated previously for 8x8 fuel. Therefore, this change does not involve a significant increase in the probability of any event previously evaluated for 8x8 fuel. The Cycle 4 reload analysis shows that the LTA performance is bounded by the performance of the co-resident 8x8 fuel. This is ensured by the LTAs being placed in non-limiting core locations. Therefore, the introduction of LTAs does not involve a significant increase in the consequences of any event previously evaluated.

f) This change is administrative. Therefore, it does not involve a significant increase in the probability or consequences of an accident previously evaluated.

g) These changes are administrative. Therefore, they do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Overall, the proposed changes define parameters determined conservatively and consistent with the fuel which will be resident in the core during Cycle 4. They do not affect the precursors to any accident previously evaluated. These changes, therefore, do not involve a significant increase in the probability or consequence of any accident previously evaluated.

2. The new 8x8 fuel type is of a design similar to the fuel present in the core. It has been determined by ANF that the 9x9x-5 LTA is compatible with the 8x8 fuel and will not create the possibility of a new or different kind of accident. The proposed changes do not involve any new modes of operation, any plant modifications or any changes to setpoints. Therefore, the proposed changes do not result in the creation of any new precursors to any accident. They only introduce new and revised MAPLHGR, LHGR and off-rated power and flow limits. These limits have been determined using methodologies similar to those used for previous cycles. The administrative changes have no effect on any accidents. Therefore, the proposed changes do not create the possibility of a new or different type of accident from any accident previously evaluated.

3. a) This change introduces one MAPLHGR limit for the new 8x8 fuel. The peak clad temperature (PCT) for the new 8x8 fuel was calculated based on the same bounding MAPLHGR limit which was used in the analyses for Cycles 2 and 3. Small variations in PCT, compared to the bounding PCT calculated in Cycle 2 are observed as a result of minor fuel design differences (e.g., lattice radial enrichment, and therefore, power distribution). The maximum increase in PCT relative to Cycle 2 is 11 degrees F at 20 GWd/MTU. The available margin to the 10CFR50.46 limit of 2200 degrees F at this exposure is greater than 500 degrees F. Therefore, the introduction of the new MAPLHGR limit does not involve a significant reduction in the margin of safety.

b) This change consists of a revision to the SLO MAPLHGR limit for 8x8 fuel. The revised SLO MAPLHGR curve conservatively bounds, during Cycle 4, the individual MAPLHGR limits for all 8x8 fuel types. The method used to calculate off-rated MAPLHGR limits in Cycle 3 is maintained for Cycle 4. Therefore, revision of the SLO MAPLHGR limit does not involve a significant reduction in the margin of safety.

c) This change consists of revisions to the $MCPR_f$ and $MAPFAC_f$ operating limits. The revised limits are based on ANF's methodology, are defined for specific modes of operation and do not take credit for the use of the core flow limiter. The revised $MCPR_f$ limit is based on a conservative bound of the maximum achievable core flow (110% of rated) for the limiting flow runout event. The Cycle 3 limits are based on maximum core flows of 102.5 and 107% of rated. The revised $MCPR_f$ limits are in general lower than the Cycle 3 $MCPR_f$ operating limits. However, the ANF Cycle 4-specific safety analyses show an adequate margin to the safety limit. The $MCPR_f$ limit consists of two curves corresponding to Non-Loop Manual and Loop Manual modes of operation. For Non-Loop Manual modes, the limiting flow runout event consists of a two loop runout whereas for Loop Manual mode, the limiting event consists of a one loop runout. Therefore, the limiting consequences (flow increase and the associated delta CPR) in the Loop Manual mode are smaller than in the Non-Loop Manual modes, resulting in an added CPR margin for the LOOP Manual mode.

The $MCPR_f$ operating limit is constructed based on a number of conservative assumptions: 1) The increase in flow rate for both one and two loop runout events are [sic] conservative (see report NESDQ-88-003). 2) the ANF analysis assumes a conservative rod-line for the limiting flow runout event, and 3) the $MCPR_f$ limit includes an added conservatism to address performance variations in subsequent cycles (NESDQ-88-003 and ANF-88-149, Figure 5.1). With the plant initially at the revised $MCPR_f$ operating limit, the limiting flow run-out event, for both Loop Manual and Non-Loop Manual operations, will result in a final CPR above the MCPR safety limit. This ensures that an adequate margin of safety is available.

The basis for determining the $MAPFAC_f$ limits is similar to that used in determining the $MCPR_f$ limits. The $MAPFAC_f$ limit consists of two curves corresponding to Non-Loop Manual and Loop Manual modes of operation. The change in $MAPFAC_f$ under the more restrictive Loop Manual mode (one loop runout) is smaller than under the Non-Loop Manual modes (two loop runout). The conservatisms associated with the assumed flow increases and the analysis rod-line described above for the $MCPR_f$ related analyses are applied to the $MAPFAC_f$ analyses as well. With the plant initially on the revised $MAPFAC_f$ limit, the limiting flow runout event, for both Loop Manual and Non-Loop Manual operations, will result in a final $MAPFAC_f$ below the 120% overpower line. This assures an adequate margin of safety for this event.

Therefore, the proposed changes in the $MCPR_f$ and $MAPFAC_f$ limits do not involve a significant reduction in the margin of safety.

d) This change consists of a revision to the $MCPR_p$ limit. The revised $MCPR_p$ limit is based on ANF's methodology applied for a full ANF core. The limit is lower than the Cycle 3 limit above 40% of rated power up to, but not including, 100% power. Below 40% of rated power and at 100% power, the limit is unchanged. Cycle 4 analysis demonstrated that even with the plant initially on the revised $MCPR_p$ operating limit, the analyzed limiting core-wide transients and local events will result in a CPR above the MCPR safety limit. Therefore, the proposed change in the $MCPR_p$ limit does not involve a significant reduction in the margin of safety.

e) This change addresses the introduction of four (4) LTAs into the core for Cycle 4 operation. The thermal and mechanical performance of the LTAs for the limiting events analyzed by ANF for Cycle 4 is bounded by the performance of the 8x8 fuel. MAPLHGR and LHGR curves specific to the 9x9-5 LTA have been developed. These curves were developed using the same methods as were used for the 8x8 fuel. Comparable margins to the PCT and mechanical design limits were shown to be available for the LTAs. Additional margin is introduced by placing the LTAs in non-limiting core locations. Therefore, the introduction of four (4) LTAs does not involve a significant reduction in the margin of safety.

f) This change is administrative. Therefore, it does not involve a significant reduction in the margin of safety.

g) These changes are administrative. Therefore, they do not involve a significant reduction in the margin of safety.

Therefore, these changes ((a) through (g)) do not involve a significant reduction in the margin of safety.

The licensee has concluded that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards consideration.

The NRC staff has made a preliminary review of the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154

Attorney for licensee: Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036

NRC Acting Project Director: Edward A. Reeves

Mississippi Power & Light Company, System Energy Resources, Inc., South Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: December 16, 1988

Description of amendment request: The amendment would change the Technical Specifications (TS) Section 6.0, "Administrative Controls," by:

1. Replacing references to specific staff positions identified in the composition of the Plant Safety Review Committee (PSRC) and the Safety Review Committee (SRC) with descriptions and qualifications of required personnel.

2. Adding a footnote to TS Table 6.2.2-1, "Minimum Shift Crew Composition," to allow a licensed senior reactor operator (SRO) on the crew to serve in a dual capacity as SRO and shift technical advisor (STA).

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided an analysis of no significant hazards considerations in its request for a license amendment. The licensee's analysis of the proposed amendment against the three standards in 10 CFR 50.92 is reproduced below.

Change 1

No significant increase in the probability or consequences of an accident previously evaluated results from this change.

a. The replacement of specific position titles with general titles and requirements is administrative. The proposed change does not affect assumptions contained in plant safety analyses, the physical design or operation of the plant, nor are TS that preserve safety analysis assumptions affected. The same level of expertise applied to the PSRC and SRC review function will exist with the approval of the proposed change. There will be no loss in PSRC or SRC effectiveness due to the proposed change. The positions which are important to safe operation of the facility will continue to be specified in the TS. The NRC will continue to be informed of the PSRC/SRC composition through the UFSAR.

b. Therefore, there is no increase in the probability or consequences of previously analyzed accidents due to the proposed change.

2. This change would not create the possibility of a new or different kind of accident from any previously evaluated.

a. The proposed change is administrative. No physical alterations of plant configuration or change to setpoints or operating parameters are proposed. The level of position qualifications are not reduced in the TS. The same level and quality of PSRC and SRC review is maintained and unaltered by this proposed change.

b. Therefore, the possibility of a new or different kind of accident from any previously evaluated is not created.

3. This change would not involve a significant reduction in the margin of safety.

a. The change being proposed is administrative and does not relate to or modify the safety margins defined in and maintained by the TS. The change does not alter SERI's commitment to maintain a management structure that contributes to the safe operation and maintenance of the plant. No position qualifications are being reduced in the TS. The level and quality of PSRC and SRC review is maintained since there will be no change in the collective talents on the PSRC and SRC the scope of independent review conducted by the PSRC and SRC will be unchanged.

b. Therefore, this proposed change will not involve a significant reduction in the margin of safety.

Change 2

1. No significant increase in the probability or consequences of an accident previously evaluated results from this change.

a. The objective of the STA requirement is to improve the ability of an operating shift to recognize, diagnose and effectively deal with plant transients or other abnormal conditions. The analysis of accidents such as Rod Withdrawal Error, Rod Drop Accidents, etc., that concern operator error, do not take credit for the STA as decreasing the probability of occurrence of these accidents. The proposed change simply provides flexibility in meeting an administrative requirement and does not involve any modifications or change in the plant.

b. With the proposed change, GGNS operating shift personnel will continue to have the expertise to recognize and effectively deal with plant transients or other abnormal events. The analysis of accidents such as Rod Withdrawal Error, Rod Drop Accidents, etc., that concern operator error, do not take credit for the STA as mitigating the consequences of these accidents. Rather, these accidents are mitigated by plant design (i.e. Rod Pattern Control System, Shutdown Margin, Core Monitoring Instrumentation, etc.). The proposed change is administrative. The expertise of the operating shift is not jeopardized and the radiological consequences of any evaluated accident remain unchanged.

c. Therefore, there is no increase in the probability or consequences of previously analyzed accidents due to the proposed change.

2. This change would not create the possibility of a new or different kind of accident from any previously evaluated.

a. The proposed change does not involve any modifications or changes in the plant. This is an administrative change in which the ability of the operating shift is not jeopardized. Since the STA has no operational responsibilities or duties on shift other than those associated with plant transients and accidents, combining the Shift Superintendent or the second SRO function with the STA will not introduce any new opportunity for operator error to occur.

b. Therefore, the possibility of a new or different kind of accident from any previously evaluated is not created.

3. This change would not involve a significant reduction in the margin of safety

a. The proposed change will not have any effect on safety limits, boundary performance or system performance. The STA or SRO/STA will continue to monitor thermal limits, thermal power, core flow, reactor pressure and level to ensure safety limits are not exceeded in normal or abnormal situations.

b. The functions of the STA will continue to be carried out by an individual on shift. That individual on shift will continue to have the knowledge, training, experience, and expertise required to assess, analyze, and evaluate plant transients and accidents. There will be no detraction from the operating duties of the SRO or STA.

c. The proposed change still would meet the current NRC position on training and qualification of STAs. In addition, NRC shift staffing requirements would still be met with the proposed change.

d. Therefore, this proposed change will not involve a reduction in the margin of safety.

The licensee has concluded that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards consideration.

The NRC staff has made a preliminary review of the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposed to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1400 L Street, NW., Washington, DC 20005

NRC Project Director: Elinor G. Adensam

Mississippi Power & Light Company, System Energy Resources, Inc., South Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: January 26, 1989

Description of amendment request: The amendment would provide one-time exceptions to TS 3.0.4 for certain Technical Specifications (TS) during the third refueling outage while the plant is in Operational Condition 4 (cold shutdown) and Operational Condition 5 (refueling). For these TS, the exceptions to TS 3.0.4 would allow entry into the specified operational conditions without meeting limiting conditions for operation provided the requirements of the associated action statements are met. The use of these exceptions will reduce the refueling outage time. The specific TS for which exceptions to TS 3.0.4 are requested are:

a. Residual Heat Removal - Cold Shutdown, 3.4.9.2, Actions a and - page 3/4 4-27

b. ECCS - Shutdown, 3.5.2, Action a - page 3/4 5-6

c. Suppression Pool, 3.5.3, Action c - page 3/4 5-9

d. Containment and Drywell Isolation Valves, 3.6.4, Actions b and c - page 3/4 6-26

e. Secondary Containment Automatic Isolation Dampers/Valves, 3.6.6.2, Actions b and c - page 3/4 6-49

f. Standby Service Water System, 3.7.1.1, Actions b, c and d - pages 3/4 7-1 and 3/4 7-2

g. Ultimate Heat Sink, 3.7.1.3, Action a - page 3/4 7-4

h. Control Room Emergency Filtration System, 3.7.2, Action b.1 - page 3/4 7-5

i. Residual Heat Removal and Coolant Circulation - Low Water, 3.9.11.2, Actions a and b - page 3/4 9-19

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided an analysis of no significant hazards considerations in its request for a license amendment. The licensee's analysis of the proposed amendment against the three standards in 10 CFR 50.92 is reproduced below.

1. The proposed changes are intended to provide operational flexibility during the upcoming refueling outage while ensuring core decay heat removal capability, ECCS water injection requirements and primary and secondary containment capability. SERI has developed and implemented a management philosophy for effective control of potential vessel draining and decay heat removal during plant outages. This philosophy has been implemented by policy as a Technical Specification Position Statement which requires:

a) At least one ECCS and one Fuel Pool Cooling subsystem functional at all time.

b) At least one shutdown cooling subsystem of RHR remain functional except for periods of required maintenance or testing.

c) The emergency diesel/generator associated with the one required ECCS, Fuel Pool Cooling, and Shutdown Cooling subsystem be functional (and OPERABLE when possible).

d) Any alternate shutdown cooling subsystem must be demonstrated to be able to remove reactor decay heat load existing at the time the system is required.

In addition, it is SERI's outage philosophy to minimize the time in TS action statements associated with the above systems such that these action statements are only entered for required maintenance, testing, inspections, and modifications. Any exceptions to the above must receive prior Plant Safety Review Committee review and approval.

2. This policy has been successfully executed and demonstrated effective in previous refueling outages.

3. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. SERI has evaluated UFSAR Chapter 15 events which are considered to be applicable during OPERATIONAL CONDITIONs 4 and 5. These events include a dropped fuel bundle and inadvertent criticality. The proposed Specification 3.0.4 exceptions cannot affect the probability of occurrence of any of these events. The proposed 3.0.4 exceptions would have no effect on fuel handling operations in the containment or in the spent fuel pool because fuel handling procedures and methods remain unchanged. The proposed changes have no effect on control rod interlocks or fuel loading errors and thus do not affect the probability of occurrence of an inadvertent criticality. The proposed changes will allow the following evolutions to occur during the third refueling outage while in the action statements of the affected TS:

a. Tensioning and detensioning the reactor vessel head.

b. Lowering the reactor cavity water level to less than 22 feet 8 inches above the reactor pressure vessel flange.

c. Performance core alternations and handling irradiated fuel while relying on the provisions of ACTION b and c of TS 3.6.4 and 3.6.6.2.

4. The above listed evolutions will be performed while in the action statements associated with ECCS operating and shutdown requirements, provisions concerning the number of RHR shutdown cooling loops required OPERABLE, provisions concerning primary containment, drywell and secondary containment capability and control room emergency filtration system. Without the requested TS 3.0.4 exceptions, the required systems would have to be made operable just to perform the above evolutions and then they may be made inoperable again for maintenance and testing purposes. The evolution of making systems operable just to change operational conditions or other specified conditions represents significant impact on the refueling outage. With the proposed changes the outage length can be significantly decreased with no significant impact to overall plant safety.

5. The proposed changes do not affect the consequences of an accident previously evaluated. SERI policy looks at the overall outage plan and attempts to optimize testing and maintenance periods on ECCS and decay heat removal systems in order to ensure optimum availability while at the same time accomplishing required maintenance and testing activities.

6. The proposed changes involving RHR shutdown cooling affect Specifications 3.4.9.2 ACTIONs a and b, 3.7.1.1 ACTIONs b and d, 3.7.1.3 ACTION a, and 3.9.11.2. The action statements of Specifications 3.4.9.2 and 3.9.11.2 contain provisions to establish alternate methods of decay heat removal, when necessary, with RHR shutdown cooling loops inoperable. These alternate methods of decay heat removal are procedurally prescribed prior to entering an outage based on available equipment and planned outage activities. Since decay heat removal is provided for in the action statements of the affected specifications, entry into the OPERATIONAL CONDITIONs with less than the required number of RHR Shutdown Cooling Loops available does not involve a significant increase in the probability or consequences of an accident previously evaluated.

7. The proposed change to Specification 3.7.1.1 ACTIONs b and and d and 3.7.1.3

ACTION a affect the SSW subsystems and ultimate heat sink that support the RHR shutdown cooling loops. With an SSW subsystem inoperable, its associated RHR shutdown cooling loop is also required by Technical Specifications to be declared inoperable. Changing OPERATIONAL CONDITIONs or other specified conditions with this SSW subsystem and associated RHR shutdown cooling loop inoperable represents no significant increase in the probability or consequences of an accident previously evaluated.

8. The proposed changes to Specification 3.5.2 and 3.7.1.1 ACTION c will allow operational condition changes with one ECCS subsystem/system OPERABLE. Since only OPERATIONAL CONDITIONs 4 and 5* are affected, present TS indicate that one ECCS subsystem/system is sufficient for water makeup requirements for the four hour time allowance of ACTION c of Specification 3.5.2. The proposed change to ACTION c of Specification 3.7.1.1 is similar to that for ACTIONs b and d such that when equipment is out of service, a support system such as SSW is not required to be OPERABLE for that ECCS function. Since ECCS makeup capability is provided while in ACTION a of Specification 3.5.2, the proposed change does not involve a significant increase in the probability of consequences of an accident previously evaluated.

9. The proposed change to 3.5.3 ACTION c will allow operation of the Alternate Decay Heat Removal System (ADHRS) which requires declaring inoperable a division of suppression pool water level instrumentation. TS 3.0.4 presently restricts changing operational conditions while relying on the provisions of that action. ADHRS operation causes the inoperability of one division of suppression pool level instrumentation which causes entry into ACTION c of TS 3.5.3. This action requires that suppression pool level be verified once per 12 hours by an alternate indicator. Operational condition or specified condition changes cannot be made while relying on the provisions of the ACTION even though suppression pool level can be verified by an alternate indicator. Since an alternate means of verifying suppression pool level is provided by ACTION c of Specification 3.5.3, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

10. The proposed changes involving drywell, primary containment and secondary containment isolation valves affect Specification 3.6.4 ACTIONs b and c and Specification 3.6.6.2 ACTIONs b and c. The action statements of those specifications provide provisions for isolating affected penetrations when one or more of the associated isolation valves or dampers are inoperable. The action involves isolating the affected penetration by use of at least one deactivated automatic valve secured in the isolated position or by use of at least one closed manual valve or blind flange such that the safety function of the valve or damper is accomplished. Because the affected penetrations are isolated in accordance with the specified actions, changing operational or other specified conditions while relying on the provisions of the action does not involve a significant increase in the probability or consequences of an accident previously evaluated.

11. The proposed change involving the control room emergency filtration system affects Specification 3.7.2 ACTION b.1. The action statement of that specification provides provisions for OPERATIONAL CONDITIONs 4, 5 and "*" when one of the two required control room emergency filtration system subsystems are inoperable. The action requires restoration of the inoperable subsystem within seven days or initiate and maintain operation of the OPERABLE subsystem in the isolation mode of operation. Since emergency filtration capability is provided by the OPERABLE subsystem, changing operational conditions or other specified conditions with less than the required number of control room emergency filtration subsystems does not involve a significant increase in the probability or consequences of an accident.

12. The proposed change does not increase the possibility of a new or different kind of accident from any previously analyzed. The proposed changes do not increase the amount of time ECCS, RHR shutdown cooling loops or control room emergency filtration subsystems are unavailable nor do the changes reduce the drywell, containment or secondary containment isolation capability. The proposed changes do not increase the potential for draining the reactor vessel. Since the above safety systems are maintained, there is no possibility of a new or different kind of accident from any previously analyzed. The proposed changes are intended to increase outage flexibility while maintaining necessary levels of plant safety.

13. The proposed change does not involve a significant reduction in a margin of safety. The proposed Specification 3.0.4 exceptions will still ensure that core decay heat removal, ECCS makeup capabilities, control room emergency filtration capability, and drywell, containment and secondary containment capability are available when required during the refueling outage. In addition to Technical Specification action requirements, SERI is to maintain at least one ECCS system and one Fuel Pool Cooling and Cleanup system functional at all time during the outage. RHR shutdown cooling loops will be functional unless maintenance or testing removes them from service. SERI's outage policy will minimize time in the action statements as much as possible. Since essential safety systems are available as necessary during the outage, the change does not involve a significant reduction in a margin of safety.

The licensee has concluded that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards consideration.

The NRC staff has made a preliminary review of the licensee's no significant hazards consideration determination and agrees with the licensee's analysis for operational condition 4 and 5 only. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154

Attorney for licensee: Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036

NRC Project Director: Edward A. Reeves

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: October 14, 1986, July 21, 1987 and January 12, 1989.

Description of amendment request: By applications for license amendments dated October 14, 1986, July 21, 1987 and January 12, 1989, Northeast Nuclear Energy Company (the licensee) requested changes to the Technical Specifications (TS) for Millstone Unit 2 to address recommendations of Generic Letter 83-37. The proposed change to the TS would incorporate Limiting Conditions for Operation (LCO) and Surveillance Requirements (SRs) for the Reactor Vessel Coolant Level (RVCL) instrumentation into TS 3/4.3.3.8, "Instrumentation - Accident Monitoring."

Basis for proposed no significant hazards consideration determination: The RVCL instrumentation for Millstone Unit 2 is based upon the heated junction thermocouple technology for post-accident determination of reactor pressure vessel water inventory. In our safety evaluations dated April 18, 1985 and August 28, 1986, the NRC staff addressed the adequacy of the RVCL instrumentation for Millstone Unit 2. The need for RVCL instrumentation and associated TS was one of a number of post-TMI initiatives that had been established by the NRC staff. Based upon discussions with the NRC staff, and applications for license amendments dated October 14, 1986 and July 21, 1987, the licensee has submitted revised proposed LCOs and SRs for the RVCL instrumentation in a letter dated January 12, 1989.

The proposed LCO for the RVCL instrumentation would require at least one of the two channels to be operable. In the event that no channel is operable either restore the unoperable channel(s) to operable status in 48 hours or:

1. Prepare and submit a special report to the Commission pursuant to Specification 6.9.2 within 30 days following the event outlining the action taken, the cause of the inoperability, and the plans and schedule for restoring the system to operable status; and

2. Restore the system to operable status at the next scheduled refueling; and

3. Initiate an alternate method of monitoring the reactor vessel inventory.

The SRs for the RVCL instrumentation includes monthly channel checks (a determination of operability) and calibration of the instrumentation (from the electronic cabinets only) during refueling. The approval of similar, generic, requirements is contained in a letter from Mr. D. Crutchfield, NRC, to Mr. R.W. Wells, Chairman, Combustion Engineering Owners Group, dated October 28, 1986.

On March 6, 1986, the NRC provided guidance in the **Federal Register** (51 FR 7751) concerning examples of amendments that are not likely to involve significant hazards consideration. One example of amendments not likely to involve significant hazards considerations is example (ii) which involves "A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications, e.g., a more stringent surveillance requirement." The proposed change to TS 3/4.3.3.8 would incorporate LCOs and SRs for the RVCL instrumentation into the TS. The proposed change to the TS is thus judged to be within the scope of example (ii), above. Accordingly, the Commission proposes to determine that the proposed change to the TS involves no significant hazards considerations.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry and Howard, One Constitution Plaza, Hartford, Connecticut 06103.

NRC Project Director: John F. Stolz

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: January 6, 1989 as supplemented by letter dated January 20, 1989.

Description of amendment request: By application for license amendment dated January 6, 1989 as supplemented by letter dated January 20, 1989, Northeast Nuclear Energy Company, et al. (the licensee), requested changes to Millstone Unit 3 Technical Specification (TS) 4.7.10b, "Snubbers", to allow an approximate two month extension in snubber visual inspections, to allow continued operation until the next refueling outage.

Technical Specification 4.7.10b requires that snubbers on safety-related components and piping be visually inspected at various intervals depending upon snubber failure rate determined by the previous inspection. An increased number of snubber failures would decrease the surveillance intervals from as great as 18 months 27 25% to as little as 31 days 27 25%. The current inspection interval for Millstone Unit 3 is 18 months for all snubbers except for Type PSA-1/2 and PSA-1/4, which have a 12 month interval. During the last round of inspections, the licensee found all snubbers operable which enabled the licensee to increase the inspection interval for the Type PSA-1/2 and PSA-1/4 snubbers to 12 months. The next required inspection interval would end April 30, 1989. The licensee has requested that the surveillance interval be extended to allow snubber inspection during the next refueling outage, which is scheduled to begin on May 20, 1989.

Basis for proposed no significant hazards consideration determination:

Title 10 CFR 50.92, "Issuance of amendment", contains standards for evaluating the existence of no significant hazards consideration. In this regard, the proposed change to TS 4.7.b will not:

- Involve a significant increase in the probability or consequences of an accident previously evaluated. The probability of a seismic event is independent of the snubber surveillance program. With regard to consequences of seismic events, it is unlikely that a one time extension of approximately 20% of the snubber inspection interval will appreciably increase the incidence of undetected snubber failure. The inherent seismic-resistance capability of the components and piping provide reasonable assurance of safety during the proposed extended inspection interval.
- Create the possibility of a new or different kind of accident. Safety systems that were designed to be seismic-resistant, will continue to be seismic-resistant with no significant decrease in capability. Thus, no new or different types of accidents will be created as a result of seismic events.
- Involve a significant reduction in a margin of safety. Although there may be small, localized, reductions in safety margins with regard to seismic resistance of safety systems due to undetected snubber failures, the overall reduction in safety margin will not be significant. The proposed change does not affect the consequences of any accident previously analyzed.

Based on the above, the staff proposes to determine that the proposed change to TS 4.7.10.b does not involve a significant hazards consideration.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, One Constitution Plaza, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Northern States Power Company, Dockets Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Units Nos. 1 and 2, Goodhue County, Minnesota

Date of amendment request: July 18, 1988.

Description of amendment request: The proposed Technical Specification (TS) changes would eliminate requirements dealing with steam generator low water level and low feedwater flow. Specifically, the proposed changes to the TSs, which would become effective after the installation of the digital feedwater control system, are as follows:

1. Specification 2.3.A.3(c) dealing with the reactor trip setpoints of "low steam generator water level - greater than or equal to 15% of the narrow range instrument in coincidence with steam/feedwater mismatch flow - greater than or equal to 1.0×10^6 lbs/hr" would be deleted.

2. Specification Table TS.3.5-2, item 18 dealing with low feedwater flow reactor trip, would be deleted.

3. Specification Table TS.4.1-1, item 12, Steam Generator Flow Mismatch, would be modified so that surveillance would be performed on steam flow channels only since feedwater flow channels would no longer be used in the protection circuit.

The licensee also proposes to revise the bases to reflect the removal of the low feedwater flow reactor trip.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of standards for making a no significant hazards consideration determination by providing certain examples (51 FR 7751). One of the examples is (ix):

A repair or replacement of a major component or system important to safety, if the following conditions are met:

(1) The repair or replacement process involves practices which have been successfully implemented at least once on similar components or systems elsewhere in the nuclear industry or in other industries, and does not involve a

significant increase in the probability or consequences of an accident previously evaluated or create the possibility of a new or different kind of accident from any accident previously evaluated; and

(2) The repaired or replacement component or system does not result in a significant change in its safety function or a significant reduction in any safety limit (or limiting condition of operation) associated with the component or system.

The replacement feedwater control system that utilizes a median signal selector function has been installed at several other plants where it demonstrated a superior means of feedwater flow control as compared to the existing control systems. This advanced means of controlling feedwater flow eliminates the possibility of flow transient conditions, and therefore the need for a reactor trip initiated by low feedwater flow or low steam generator water level becomes unnecessary. The setpoint parameters associated with the steam generator water level and feedwater flow have not been factored into analyses of any of the previously analyzed accidents. Therefore, the elimination of these reactor trip settings does not involve a significant increase in the probability or consequences of an accident previously evaluated or create the possibility of a new or different kind of accident from any accident previously evaluated. In addition, the proposed changes will in no way alter the safety function of the feedwater control system or result in a significant reduction in any safety limits associated with the feedwater control system. On this basis, the Commission proposes to determine that the requested action does not involve a significant hazards consideration.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Theodore R. Quay, Acting.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: January 26, 1989

Description of amendment request: The proposed amendment would modify the Technical Specifications to correct deficiencies in the degraded voltage protection features. The amendment replaces in its entirety an earlier amendment dated September 7, 1988 for which notice of consideration was provided in the **Federal Register** on October 19, 1988 [53 FR 40996]. Accordingly, this notice replaces and supersedes in its entirety the Notice of October 19, 1988. The deficiencies were identified as a result of revised voltage regulation studies. The studies were based in part on the consideration that, under certain offsite power emergency conditions, the voltage provided to the station's offsite power supply transformers could be lower than previously assumed. The study also modeled the plant's power distribution system to a greater level of detail.

The proposed changes are grouped into two categories. The Category A changes address the degraded grid protection relays, and involve providing protective relays on each 4.16kV bus (with revised voltage setpoints) and increasing the time delay for the 4.16kV bus to transfer to an alternate power supply. Category B changes address the Emergency Core Cooling System (ECCS) loading sequence.

The Category A changes involve two independent offsite power sources which are referred to as the start-up sources. The 4160 volt (4.16kV) bus feeder breakers provide the interface between the two offsite power sources and the plant safety-related AC power distribution system. Each of the four 4.16kV buses in each unit can be powered by either of the two offsite power supplies. Each of the 4.16kV buses can also be powered from a safety related diesel generator.

Each startup source to each 4.16kV bus is equipped with an instantaneous undervoltage protective relay. Each relay is presently set to initiate at 90% of nominal voltage on the 4.16kV bus. The purpose of these relays is to ensure that adequate levels of voltage are provided to the motors and control components which are powered from the 480V motor control centers (MCCs) which are fed from the 4.16kV buses. After a 0.1 second internal time delay the degraded voltage protective relays initiate time delay relays which transfer the 4.16kV bus to an alternate supply source if the normal supply source does not recover to the instantaneous relay reset value (currently 93%) in a set period of time. The control circuit logic to the time delay relays distinguishes between an undervoltage condition without a safety injection signal and one concurrent with a safety injection signal. Without a safety injection signal, a time delay relay will initiate the transfer 60 seconds after initiation of the instantaneous relay if the voltage does not recover.

With a safety injection signal, another time delay relay will initiate the transfer six seconds after initiation of the instantaneous relay if the voltage does not recover. The purpose of the six second delay is to minimize the time that safety-related equipment is exposed to the undervoltage condition, yet allow the voltage to recover from the dips caused by acceleration of the large safety-related motors. In either case, if the voltage of the normal supply has not recovered before the time delay relays initiate the transfer, the associated source breaker is tripped and the bus is loaded onto an alternate power supply. The alternate supply for an 4.16kV bus is, in order of preference, the remaining offsite power source, then the emergency diesel generator. The revised voltage regulation study identified that under the scenario of a safety injection signal on one unit while operating with only one of two offsite power sources (permitted for seven days by Limiting Condition for Operation 3.9.B.1), the existing six seconds time delay setting is inadequate. The existing six second timer setting, along with the 0.1 second internal delay, would not allow sufficient acceleration time for the core spray pump motors. Therefore, even after a 6.1 second delay, the core spray pump motors, which are currently started simultaneously, will not be at rated speed (based on design acceleration versus voltage values) thereby not allowing voltage recovery on the 4.16kV buses, and all four 4.16kV bus feeder breakers will trip, thus loading each bus onto its associated diesel generator. This would represent a reduction in defense in depth since it is desirable, if offsite power is available, to supply these loads from the offsite power supply without reliance on the backup diesel generators. The licensee has identified two categories of changes to address this concern.

The Category A changes deal with the offsite power source and include the following: (1) Revise Technical Specification Table 3.2.B on page 71a to designate the presence of undervoltage protective relays (two per 4.16kV bus) which actuate under LOCA conditions and set at "89% of rated voltage 27 0.3% of setting (3702 volts 27 11 volts) with a "0.9 - 1.1 second internal time delay" and undervoltage protective relays (two per 4.16kV bus) which actuate under non-LOCA conditions and are set at "98% of rated voltage 27 0.3% of setting (4077 volts 27 12 volts)" with a "0.9 - 1.1 second internal time delay" instead of "90% (+/-2%) of rated voltage," and replace the "(ITE)" in the trip function column with "(27N)"; (2) Revise Table 3.2.B on page 71a to designate the trip level setting for the LOCA time delay relays as "9 second 27 7% (27 0.6 sec.) time delay" instead of "6 second (+/-5%) time delay." Express the tolerance of the "non-LOCA" relay in terms of seconds (27 5% as 27 3 sec.); (3) Revises Bases section 3.2 on page 93a to reflect the presence of separate relays for LOCA and non-LOCA conditions, with the LOCA relay set at 89% and the non-LOCA relay set at 98%.

The Category B changes deal with revising the scheme for the sequential loading of the residual heat removal (RHR) and the core spray (CS) pumps. The four CS pumps and the four RHR pumps of the Emergency Core Cooling System (ECCS) are powered from the 4.16kV buses. In the event of a LOCA with offsite power available, the RHR and CS pumps are loaded sequentially onto the 4.16kV buses to preclude severe voltage transients from the simultaneous starting of the pumps. The present loading sequence for the RHR and CS pumps in the event of the safety injection signal with offsite power available results in voltage dips on the 4.16kV and 480V buses which are unacceptable in consideration of the degraded grid protective relay settings due to core spray pump motor acceleration time. Therefore, the licensee proposes a revised loading sequence for a safety injection signal with offsite power available as follows: (1) Revise Table 3.2.B on page 67 to designate the initiation setpoint for the A and C core spray pumps to be "13 sec. +/-7% of setting" and the initiation setpoint for the B and D core spray pumps to be "23 sec. +/-7% of setting"; (2) Revise Table 3.2.B on page 67 to designate the initiation setpoint for the A and B LPCI pumps to be "2 sec. +/-7% of setting" and the initiation setpoint for the C and D LPCI pumps to be "8 sec. +/-7% of setting"; (3) Revise Table 3.2.B on page 67 of the Unit 3 Technical Specifications only to delete the asterisk next to the ADS Bypass Timer and the footnote which reads "Effective when modification association with this amendment is complete."

In addition to the proposed ECCS loading sequence, the licensee will further improve the voltage regulation of the 480V load centers during a motor starting transient by a combination of plant modifications which revise the load shedding or sequencing of the emergency service water pumps, the RHR compartment coolers, the cooling towers and the diesel generator vent supply fans. The licensee plans to perform these changes pursuant to 10 CFR 50.59 since none involves an unreviewed safety question or a change to the Technical Specifications. The Appendix K (ECCS Evaluation Models) analysis was used to determine bounding allowable starting times for the RHR and CS pumps. For change Request (1), the licensee concluded that the proposed increases in the core spray timer settings are within the Appendix K analysis. Success of the core spray system requires two factors: (1) pump ready for rated flow and (2) injection valve open to permit full flow. There are two conditions required to support worst case valve opening; reactor pressure is at the low end of its low pressure permissive (400-500 psig) and power is available to the valve operator. Under the limiting scenario, the low pressure permissive occurs 47 seconds following occurrence of the LOCA. Power to the injection valves is not interrupted in this scenario and the valve stroke time is 12 seconds. The earliest that the injection valve can be opened, therefore, is 59 seconds, and the pumps must be ready for full flow prior to this time. The series of events contribution to the establishment of the pumps ready for rated flow are the sensor times for detection of the LOCA, the time for power to be available at the emergency bus, the time for power to be available to the pump motor and pump motor acceleration time. As stated previously, an assumption of the current Appendix K analysis of record is that the time available to start and accelerate the CS pumps from the offsite sources is 59 seconds. Taking into account the above equipment operational time requirements, the CS timer setting must be less than 47 seconds. Thus, the proposed 13 and 23 second timer settings are within the analyzed condition.

For Change Request (2), the licensee has similarly concluded that the proposed increases in RHR pump timer settings are in accordance with the Appendix K analysis. Success of the low pressure coolant injection (LPCI) mode of the RHR system requires three factors: (1) pump ready for rated flow, (2) injection valve open to permit full flow and (3) full closure of the recirculation discharge valve. Under the limiting scenario, 57 seconds are available for the RHR pumps to start and accelerate to rated speed. The 57 seconds are derived from the time to reach the low pressure permissive to close the reactor recirculation discharge valve plus the full stroke closure time of the recirculation discharge valve. The series of events for the RHR pumps ready for rated flow are similar to the series of events for the CS pumps. Taking into account the sensor and acceleration delays, the RHR timer setting must be less than 50.9 seconds. Thus, the proposed two and eight second timer settings are within the analyzed condition. Neither change request involves additional loading onto the DC system. All replacement and additional relays resulting from these changes will be located in existing safety-related panels. The control relays provided will equal or exceed the ratings of the existing relays and meet the applicable design requirements for environmental and seismic qualification.

Change Request (3) is proposed to the Unit 3 Technical Specifications only to delete a footnote which is no longer required since the modification associated with the ADS bypass timer (Modification 633) was completed for Unit 3 on February 24, 1988. Removing the footnote will eliminate the need to check the status of the modification to determine the applicability of the specification. The licensee proposes this administrative change to enhance safety by reducing the effort required to interpret the specification.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has provided a discussion of the proposed changes as they relate to these standards; the discussion is presented below.

Standard 1 - The proposed Category A changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Category A changes are proposed to improve the protection provided by the undervoltage protective relays. The application of two undervoltage relays per the proposed logic scheme represents a significant improvement in the level of protection provided to 480 volt MCC components under normal (non-LOCA) conditions. Although the proposed setpoint for the undervoltage relay used for protection

in the event of a LOCA is lower than the existing relay setpoint, protection to the MCC components is actually improved due to the improved operational tolerance of the proposed replacement relay. Increasing the setting on the "LOCA" time delay relay from 8 seconds to 9 seconds will ensure that he 4.16kV buses will not be spuriously transferred to the diesel generators in the event of a design basis accident with only one offsite power source available. These proposed changes do not affect the probability or consequences of any accidents previously evaluated, but ensure that the 4.16kV buses will not be spuriously transferred to the diesel generators thereby ensuring the validity of the existing accident analysis; specifically, a loss of coolant accident with off-site power available.

Standard 2 - The proposed Category A changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes to the relay settings do not involve a redistribution of loads on safety-related buses or affect the electrical separation or redundancy of any safety-related trains or components. The proposed changes improve the undervoltage protective scheme and allow the 4.16kV buses to sustain a normal motor acceleration transient without a spurious transfer to an alternate power source. The Category A changes do not alter the intent of the relays, and do not create the possibility of a new or different kind of accident from any previously evaluated.

Standard 3 - The proposed Category A changes do not result in a significant reduction in a margin of safety.

The Category A changes are proposed to enhance safety. The proposed change in undervoltage protection results in an improved protected voltage level to 460 volt MCC's and associated control components for both LOCA and non-LOCA conditions. The tolerance for the existing undervoltage relays is 272% of setting. The tolerance for the proposed undervoltage relays is 270.3% of setting. This results in an improved minimum protected level for non-LOCA conditions from 88.2% of rated voltage to 97.7% of rated voltage, and an improved minimum protected level for LOCA conditions from 88.2% of rated voltage to 88.7% of rated voltage.

The "non-LOCA" setpoint assures a limiting voltage value of 93% to 460 volt MCC's. An associated review of MCC contactor control circuits and implementation of control circuit modifications as necessary will assure 85% voltage to contactors. The "LOCA" undervoltage relay comes into effect on a LOCA signal, and the "non-LOCA" or normal protective setpoint is inhibited on the LOCA signal. The transition between the "non-LOCA" and "LOCA" undervoltage relays in essence represents a continuity of protection with respect to the offsite power sources to the 4.16kV buses when the effect of starting the 4kV ECCS motors on the 4.16kV buses is considered. Thus an improved continuity of protection against negative consequences of degrading grid or failure of offsite power source equipment is assured.

Increasing the time delay settings allows pump motors to accelerate without an unnecessary transfer to an alternate power supply. The changes do not involve a significant reduction in any margin of safety.

Standard 1 - The proposed Category B changes do not involve a significant increase in the probability or consequences of any accident previously evaluated.

The Category B changes are proposed to ensure the validity of the existing accident analyses; specifically, a design basis LOCA with offsite power available. Revising the timer settings for the RHR and CS pumps will improve the voltage at the 480V levels during a motor acceleration transient and also prevents spurious transfer of the 4.16kV buses to the diesel generators in the event of a safety injection while operating with only one offsite power source available. Therefore, the proposed changes do not increase the probability or consequences of an accident previously evaluated.

Standard 2 - The proposed Category B changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes to the CS and RHR systems only involve changes to load sequencing when offsite power is available. The proposed changes do not involve the CS or RHR system piping configurations, pumps, valves or system redundancies. The replacement timers required for the proposed load sequencing equal or exceed the ratings for the existing timers, and do not affect the environmental or seismic qualification of the panels in which they will be installed. Failure of any timer can only affect one redundant train of equipment. Therefore, the possibility of a new or different kind of accident is not created.

Standard 3 - The proposed Category B changes do not result in a significant reduction in a margin of safety.

The proposed changes do not adversely affect the safety margin assumed in the 10 CFR Appendix K analysis for ensuring fuel integrity for the entire spectrum of postulated LOCAs. The limiting Appendix K scenario for core spray requires the CS pumps to be at rated flow 59 seconds after a LOCA to ensure the existing margin of safety. Under the proposed changes, the latest that the CS pumps will achieve rated flow is 35 seconds (3 seconds for detection of the LOCA plus 23 seconds for the longer of the CS timer delays plus a maximum of 9 seconds for motor acceleration). The limiting Appendix K scenario for the low pressure coolant injection mode of residual heat removal requires the RHR pumps to be at rated flow 57 seconds after a LOCA to ensure the existing margin of safety. Under the proposed changes, the latest that the RHR pumps will achieve rated flow is 14.1 seconds (3 seconds for detection of the LOCA plus 8 seconds for the longer of the RHR timer delays plus 3.1 seconds for motor acceleration). Therefore, although the Category B changes delay the availability of the CS and RHR pumps at rated flow, they do not result in a significant reduction in the margin of safety for core coolant delivery.

The staff has reviewed the licensees' no significant hazards consideration for Category A, items 1 and 2 and Category B, items 1 and 2 and agrees with the licensees' analysis. Accordingly, the Commission has proposed to determine that the above changes do not involve a significant hazards consideration.

The Category B, item 3, changes involving deletion of a now obsolete footnote is proposed as an administrative change to improve the use of the Technical Specifications. The Commission has provided guidance for the application of the criteria for no significant hazards consideration determination by providing examples of amendments that are considered not likely to involve significant hazards considerations (51 FR 7751). These examples include: Example (i) "A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, corrections of an error, or a change in nomenclature." The proposed change, to delete a footnote which refers to a now completed modification is an example of such an administrative change since, now that the modification has been completed, the specification is in effect and the footnote is extraneous. Since this proposed change is encompassed by an example for which no significant hazard exists, the staff has made a proposed determination that it involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126

Attorney for Licensee: Troy B. Conner, Jr., 1747 Pennsylvania Avenue, NW. Washington, DC 20006

NRC Project Director: Walter R. Butler

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: December 2, 1988

Description of amendment request: The licensee has provided the following description:

Using the guidance provided by Generic Letter 87-09, this proposed change will clarify applicability of limiting conditions for operation and associated action requirements when a surveillance requirement is not performed within its allowed surveillance interval. It will state that a missed surveillance shall constitute noncompliance with the operability requirements of the related LCOs. It will specify that time limits for required actions for operating in a degraded mode apply at the time it is identified that a surveillance requirement has not been performed.

For allowable outage times that are less than 24 hours, a 24 hour delay period will be added to allow performance of a missed surveillance to satisfy operability requirements before implementing action requirements applicable to operating in a degraded mode.

The basis will be expanded accordingly to ensure the proposed changes for missed surveillance requirements are implemented consistent with the guidance provided in GL 87-09.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has provided the following analysis:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response:

A significant increase in the probability or consequences of an accident previously evaluated is not involved. A small increase in risk is associated with delaying the implementation of an LCO for 25 hours to allow completion of a missed surveillance. This risk is offset by a reduction in the possibility of a plant upset and challenge to safety systems. The risk of plant upset is greater if testing to complete a surveillance requirement is in progress at the time plant shutdown is commenced to comply with an LCO. It is preferable to allow time to complete the surveillance and demonstrate operability prior to changing plant status. The increase in safety gained from demonstrating operability during the delay period balances out the risk associated with the delay. In the case where inoperability is determined by testing during this extension, plant safety is enhanced if the affected equipment can be restored to an operable status prior to changing the plant's operating condition.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response:

The proposed change, as analyzed, does not involve a new or different kind of accident, from that previously evaluated. The definition of operability is clarified for the case of a missed surveillance. The application of LCO action requirements is expanded upon in this case and a delay is allowed by this proposed change to complete a missed surveillance before taking required actions. This affects only the impact of surveillance activities on plant operations by providing interpretation to the operator regarding the implementation of associated LCOs. Therefore, the possibility of a new or different kind of accident is not created.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response:

A significant reduction in a margin of safety is not involved. An allowance for testing while operating is incorporated in the design of safety systems provided to prevent plant transients from approaching margins of safety. By allowing the completion of a missed surveillance before applying LCO shutdown requirements, this change will in fact reduce the potential for a challenge to safety systems while they are undergoing required testing.

Based on the above, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra, Director

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: December 30, 1988.

Description of amendment request: The licensee has provided the following description:

This application seeks to amend Section 3.3 and Section 4.4 of Appendix A to the Operating License by revising the Limiting Condition for Operation (LCO) for the Weld Channel and Penetration Pressurization System (WC&PPS) and the Isolation Valve Seal Water System (IVSWS) to more closely reflect the system design. The proposed LCO changes will apply to the four independent zones of the WC&PPS and the individual station headers of the IVSWS, rather than to the supply headers of these systems. Consistent with the Westinghouse Standard Technical Specifications the allowable out-of-service time for one individual zone or station header of these systems will be seven days. The proposed change will also relocate an LCO from the Surveillance Requirements, Section 4.4 to Section 3.3.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety. The licensee has provided the following analysis:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response

The proposed change involves a revision in application of the WC&PPS and IVSWS operability requirements to more closely reflect system design and safety function. As the safety function and operability requirement of the WC&PPS is to provide compressed air to containment penetrations and liner weld channels, the LCO is clarified to specifically apply to those system distribution zones which supply this air directly to these penetrations. Neither the clarification in applicability of the LCO or the addition of three days to the out-of-service time allowed by these LCOs should significantly impact the availability of these systems to reduce containment leakage in the event of an accident. Since only a small portion of these systems are allowed to be temporarily out-of-service for a short period of time, there is little change in the probability that the WC&PPS and IVSWS will not be able, at least in part, to perform their function of reducing isolation valve or penetration leakage, if any should occur. In any event, the operability of these systems is not considered in previous evaluations. Therefore, no significant increase in the probability or consequences of an accident previously evaluated are involved.

(2) Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response

The proposed change does not involve a physical change to any plant systems, structures or components. The proposed change does not adversely affect the manner in which the plant is operated. Hence, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response

The LOCA offsite dose calculations, which do not assume WC&PPS and IVSWS operations, demonstrate that the calculated offsite doses are well within the 10 CFR Part 100 limits. Therefore, the margin of safety between the calculated offsite dose and the regulatory acceptable limits remains unchanged. However, operation of these systems assures that the containment leak rate is lower than that calculated by an uncalculated amount. This represents an additional assurance that the margin of safety remains unchanged. The revision of LCO applicability and out-of-service time for these systems will not significantly impact

this additional assurance that containment leakage will be lower than that calculated. Since postulated LOCA assumptions remain unchanged and the proposed change does not involve a physical change to the WC&PPS and IVSWS, a significant reduction in the original margin of safety is not involved.

Based on the above, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra, Director

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: December 20, 1988

Description of amendment request: The proposed amendments would delete from the Salem 1 and 2 Technical Specifications a portion of Surveillance Requirement 4.5.2.i associated with verifying that the Residual Heat Removal (RHR) System suction/isolation valves automatically close on a Reactor Coolant System pressure signal. Issuance of these amendments will allow the removal of the RHR Autoclosure Interlock (ACI) circuitry.

Basis for proposed no significant hazards consideration determination: Both the industry and the NRC have recognized the safety benefits of removing the Residual Heat Removal Autoclosure Interlock circuitry (RHR ACI). The NRC-AEOD case study on long term decay heat removal, Case Study Report AEOD/C503, Decay Heat Removal Problems at U.S. Pressurized Water Reactors, December 1985, recommended that consideration should be given to removal of the RHR ACI circuitry to minimize loss of decay heat removal events. Also, a study performed for the NRC by Brookhaven National Laboratory, NUREG/CR-5015, Improved Reliability of Residual Heat Removal Capability in PWRs as Related to Resolution of Generic Issue 99, May 1988, listed several improvements to reduce the risk of loss of decay heat removal. One improvement was the removal of the RHR ACI circuitry.

In parallel with the NRC activities, the Westinghouse Owners Group initiated a program to evaluate the removal of the RHR ACI circuitry on all Westinghouse designed plants. The end product of this program was WCAP-11736, Residual Heat Removal System Autoclosure Interlock Deletion Report for the Westinghouse Owners Group, Volumes 1 and 2, Revision 0.0, February 1988. WCAP-11736 documents the probabilistic analysis performed on the removal of the RHR ACI in terms of (1) the likelihood of an interfacing loss-of-coolant-accident (LOCA), (2) Residual Heat Removal system availability, and (3) low temperature over-pressurization concerns. The results of the analysis show that (1) the frequency of an interfacing system LOCA decreases with the removal of the RHR ACI, (2) removal of the RHR ACI increases the RHR system availability, and (3) removal of the RHR ACI has no effect on heat input transients, but will result in a small, but not significant, increase in the frequency of occurrence for some types of mass input transients with a decrease in others. The net effect of RHR ACI deletion is an improvement in safety.

To provide assurance that the Reactor Coolant system (RCS) will not be pressurized with the Residual Heat Removal system inlet valves open WCAP-11736 requires that a safety grade alarm be added that will actuate in the control room given a "VALVE NOT FULLY CLOSED" signal in conjunction with a "RCS PRESSURE-HIGH" signal. The intent of this alarm is to alert the operator that the RCS/RHR series suction/isolation valve(s) is(are) not fully closed, and that double valve isolation from the Reactor Coolant system to the Residual Heat Removal system is not being maintained. WCAP-11736 further states that applicable operating procedures should be modified to reflect this new alarm and describe the appropriate response. The licensee has committed to adding the alarm and modifying the operating procedures before implementing the requested technical specification change.

The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has analyzed the proposed amendment to determine if a significant hazards consideration exists:

The proposed change does not involve a significant hazards consideration because operation of Salem Generating Station Units 1 and 2 in accordance with this change would not:

(1) involve a significant increase in the probability or consequences of an accident previously evaluated. The deletion of the RHR ACI was analyzed in WCAP-11736 in terms of (1) the frequency of an interfacing LOCA, (2) the availability of the RHR system, and (3) the effect on overpressure transients.

With the removal of the ACI and addition of a control room alarm, the probabilistic risk analysis predicts a decrease in the frequency of interfacing LOCAs from 8.35E-07 to 5.77E-07/year, a decrease of approximately 31%.

The availability of the RHR system was analyzed in three phases: initiation, short term cooling, and long term cooling. The probabilistic analysis indicated that deletion of the RHR ACI has no impact on the failure probability for RHR initiation. During short term cooling (72 hours after initiation), RHR ACI deletion decreased the RHR failure probability by 13%, from 1.60E-02 to 1.40E-02. The long term cooling RHR failure probability was calculated to decrease by 67% from 3.60E-02 to 1.20E-02.

Appendix D of WCAP-11736 presents the analysis used to determine the effect of removal of the ACI on overpressurization transients. The analysis categorizes the types of initiating events, determines their frequency of occurrence, and then identifies the consequences of these occurrences both with and without the ACI feature. The result is a list of overpressure consequence categories with associated failure probabilities (see Reference 4 [WCAP-11736], Appendix D, Tables D-9, -10 and -11). For the charging/safety injection event, consequence frequencies increased on the order of 1.0E-10 shutdown year. This is an insignificant increase as the overall consequence frequency of the charging/safety injection event is 1.25E-01. Likewise, for the letdown isolation with RHR system operable case, one frequency category was increased on the order of 1.0E-11. Again this is insignificant when compared with the total frequency of these events of 1.25E-01. For the letdown isolation with RHR system isolated event, the overall consequence frequency was reduced from 4.45E-01 to 2.22E-01. This occurs because many spurious closures of the RHR isolation valves cause the isolation of letdown.

Removing the RHR ACI reduces the frequency of this event by approximately 50%. It is concluded that the removal of the RHR ACI circuitry has an insignificant impact on the frequency of overpressurization events at Salem Station.

(2) create the possibility of a new or different kind of accident from any accident previously evaluated. The effect of an overpressure transient at cold shutdown conditions will not be altered by removal of the RHR ACI function. With or without the ACI function, the RHR system could be subject to overpressure for which the RHR relief valves must be relied upon to limit pressure to within RHR design parameters. While it is true that the ACI initiates an automatic closure of the RHR suction/isolation valves on high RCS pressure, overpressure protection of the RHR system is provided by the RHR system relief valves and not by the slow acting suction/isolation valves that isolate the RHR system from the RCS. This is reflected in the Salem UFSAR, which states:

Isolation of the RHR System is achieved with two remotely-operated series stop valves in the line from the RCS to the RHR pump suction and by two check valves in series in each line from the RHR pump discharge to the RCS, plus a remotely-operated stop valve in each discharge line. Overpressure in the RHR System is relieved through a relief valve to the pressurizer relief tank in the RCS. (Reference 7) [Salem UFSAR Section 5.5.7.2, page 5.5-28, Revision 7]

The purpose of the ACI feature is to ensure that there is a double barrier between the RHR system and RCS when the plant is at normal operating conditions, i.e., pressurized and not in the RHR cooling mode. Thus the ACI feature serves to preclude conditions that could lead to a LOCA outside of containment due to operator error. The safety function of the ACI is not to isolate the RHR system from the RCS when the RHR system is operating in the decay heat removal mode.

There are several methods to ensure that there is a double barrier between the RHR system and the RCS when the plant is at normal operating conditions. First, plant operating procedures instruct the operators to isolate the RHR system during plant heatup. Second, an alarm that will be installed as part of this change would annunciate in the control room given a "VALVE NOT FULLY CLOSED" signal in conjunction with a "RCS PRESSURE-HIGH" signal. This alarm would alert operators that either the RH1 or RH2 valve is not fully closed, and that double isolation has not been achieved. In conjunction with this, operators will be trained using revised alarm response procedures to ensure they act to restore double isolation or return to a safe shutdown condition. Third, the open permissive interlock, which is not being removed, will prevent the opening of the RH-1 and RH-2 whenever the RCS pressure is greater than the RHR system design pressure.

Since relief valves prevent overpressurization of the RHR system during shutdown conditions and several methods are in place to ensure that the RHR system is isolated from the RCS during normal plant conditions, removal of the ACI does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) involve a significant reduction in a margin of safety. The RHR ACI function is not a consideration in a margin of safety in the basis for any Technical Specification. However, since the probabilistic analysis of WCAP-11736 indicates that the availability of the RHR system is increased with the removal of the ACI, overall safety has been increased.

The staff has reviewed the licensee's submittal and significant hazards analysis and concurs with the licensee's determination that the proposed amendment does not involve a significant hazards consideration. Therefore, the staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Conner and Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: December 30, 1988

Description of amendment request: The proposed amendments to the Salem Units 1 and 2 Technical Specifications would permit the use of a new fuel design, Vantage 5 Hybrid, in both Salem Units. Additional changes are proposed to reduce the flow measurement uncertainty allowance because of recent plant modifications and to eliminate the rod bow penalty based on new analysis methods applied during the Vantage 5 Hybrid safety analysis. Specifically the Salem Units 1 and 2 Technical Specifications would be revised as follows:

1. Bases - Change the W-3 correlation to W-3 (R-Grid) and add the WRB-1 correlation and design Departure from Nucleate Boiling Ratio (DNBR) limits for Vantage 5H fuel (V5H).

2. Modify Specification 3.1.3.3 to incorporate a new rod drop time of less than or equal to 2.7 seconds.

3. Modify Unit 1 and Unit 2 Specification 3.2.3 to delete the Rod Bow Penalty as a function of burnup in the F-Delta-H equation and delete Figure 3.2-3.

4. Modify Unit 1 and Unit 2 Specification 3.2.5 Table 3.2-1 to define the Reactor Coolant System flow limit, including uncertainties, to be 357,200 GPM.

Basis for proposed no significant hazards consideration determination: Proposed revisions 1 and 2 are being requested to allow for the implementation of an improved fuel design, Westinghouse Vantage 5H fuel (V5H). Rod drop times are increased because of an increased dashpot effect caused by a reduction in guide tube diameter.

Proposed revisions 3 and 4 are being requested to incorporate new evaluation methods for the effects of fuel rod bow on departure from nucleate boiling (DNB). The new methods provide a basis to eliminate unnecessary power distribution penalties and to simplify the specification. Consistency between the Unit 1 and 2 Technical Specifications is also achieved.

Proposed revisions 5 and 6 are being requested to clearly define the DNB flow parameter limit plus uncertainties based upon the plants current configurations (previously licensed resistance temperature detector (RTD) flow uncertainty reductions) and to achieve consistency between the Unit 1 and 2 Technical Specifications.

The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has analyzed the proposed amendment to determine if a significant hazards consideration exists:

1. DNBR Bases Definition, Increased Rod Drop Time and Elimination of Rod Bow Penalty [Items 1-3]

The evaluation considered the effects of the proposed Technical Specification changes on the following areas:

a. Nuclear, Thermal-hydraulic and Mechanical Fuel Assembly Design

b. Non-Loca Accidents

c. Loca Accidents

The above areas have been evaluated including the concurrent effects of V5H features, thimble plug deletion, loose parts in the RCS and up to 3.5% steam generator tube plugging. In addition, transition core effects (mixed core of V5H and the 17X17 Standard product) have been addressed. The analyses required for the evaluations were performed by Westinghouse using approved methods and procedures (Attachment 4) [Public Service Electric and Gas Co. letter to NRC dated December 30, 1988, Plant Safety Evaluation for Salem Units 1 and 2 Fuel Upgrade, Dated November 1988]. LOCA evaluations were performed using the 1978 Westinghouse large break LOCA model which is our current evaluation model of reference. The results of the LOCA evaluations will be reevaluated against the Westinghouse updated model as part of the reanalysis required by the Salem Unit 2 Schedular Exemption from 10 CFR 50.46(a)(1)(i) (Ref. letter from J. C. Stone, Project Manager, Office of Nuclear Reactor Regulation to S. E. Miltenberger, Vice President and Chief Nuclear Officer, PSE&G, dated November 1, 1988). PSE&G has

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reviewed and concurs with the Westinghouse analyses.

Operation of the Salem Units in accordance with the proposed Technical Specification changes:

a. Will not involve a significant increase in the probability or consequences of an accident previously evaluated for the Salem Units. The evaluations of the Nuclear, Thermal-hydraulic, and Mechanical design effects support the conclusion that the requested changes are within the design criteria established in the Updated Final Safety Analysis Report. Consequently, no new mechanisms have been introduced to increase the probability of an accident occurring. The accident evaluations (LOCA and NON-LOCA) exhibit results which maintain the confidence level in the physical integrity of the fission product boundaries as defined in the Updated Safety Analysis Report. Therefore, the consequences of the accidents do not increase.

b. Will not create the possibility of a new or different kind of accident from any accident previously evaluated for the Salem Units. The evaluations performed establish that the Updated Final Safety Analysis Report design criteria and system responses during normal and accident conditions are bounding with respect to the requested changes. Therefore, the changes will not affect the function of any protection system nor introduce hardware which is different in design criteria requirements.

c. Will not involve a significant reduction in a margin of safety. The evaluations performed by Westinghouse addressed all design criteria and accident analyses. In performing the evaluations, the safety limits established by the Updated Final Safety Analysis Report and Technical Specifications were not modified such as to reduce the difference between the safety limit and the limit defined as the failure point of a fission product boundary. Therefore, the margins which were assumed in the accident analyses remain bounding for the proposed changes.

2. Definition of DNB Parameter Reactor Coolant Flow Limit (Item 4)

The evaluation considered the effect of the proposed Technical Specification changes on the following areas:

a. Updated Final Safety Analysis Report Chapter 15 Events

b. Protection System Setpoints and Response

The analyses required for the above evaluations were performed by Westinghouse and the results documented in WCAP-11579 (forwarded via PSE&G letter NLR-N87157, dated September 17, 1987). PSE&G has reviewed the WCAP and concurs with the results. In addition, a review of the units instrumentation uncertainties provides the conclusion that the results of WCAP-11579 are applicable for the Salem units. Specifically, the Unit 2 actual measurement uncertainties were verified to be bounded by the uncertainties assumed in WCAP-11579 (PSE&G letter NLR-N88171, dated October 19, 1988). The instrumentation in Unit 1 is comparable to the Unit 2 instrumentation, therefore, the comparison of uncertainties provided in NLR-N88171 is bounding for the Unit 1 instruments.

Operation of the Salem Units in accordance with the proposed Technical Specification changes:

a. Will not involve a significant increase in the probability or consequences of an accident previously evaluated for the Salem Units. The reduction in the uncertainty value is attributed to the reduced error associated with the modified RCS narrow range temperature monitoring system. The Chapter 15 accident analyses impacted by this modification were previously reviewed and approved by the NRC as Amendments 84 and 56 to the Salem Unit 1 and 2 licenses, respectively, and by Amendment 64 to the Unit 2 license.

b. Will not create the possibility of a new or different kind of accident from any accident previously evaluated for the Salem Units. The correction factor which modifies the RCS minimum flow value limit is based on an analysis of flow measurement uncertainties. The correction does not affect any process variable which inputs to a process control or reactor protection system control function. Therefore, Chapter 15 analyses are not affected.

c. Will not involve a significant reduction in a margin of safety. An RCS Flow uncertainty error of 3.5% was originally assumed for the purpose of calculating a minimum allowable RCS flow rate for safe plant operation. The uncertainty correction provides a reference point from which the relative magnitude of the safety margin between measured flow rate and design thermal flow rate can be inferred. WCAP-11579 demonstrates that the total uncertainty associated with the modified RCS narrow range temperature monitoring system could be reduced to a conservative value of 2.2% from existing value of 3.5%. In addition to the 2.2%, an additional uncertainty of 0.1% for feedwater venturi fouling will be added for a total uncertainty factor of 2.3%. The evaluations provided show that the change to the allowable flow uncertainty does not result in a reduction to the margin of safety as identified in the Final Safety Analysis Report. The value of the thermal design flow used in DNBR analyses remains the same as in the current UFSAR.

The staff has reviewed the licensee's submittal and significant hazards analysis and concurs with the licensee's determination that the proposed amendment does not involve a significant hazards consideration. Therefore, the staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Conner and Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: January 3, 1989

Description of amendment request: The proposed amendments would define for Salem Unit 1 and Salem Unit 2 the Fully Withdrawn position of Rod Cluster Control Assemblies to address potential rod wear concerns as seen at other Westinghouse designed plants. Sections of the Salem Unit 1 and Salem Unit 2 Technical Specifications that are affected by the definition of Fully Withdrawn are to be changed accordingly. In addition, changes are proposed to delete from Salem Unit 1 Technical Specifications a rod bank insertion limit curve for three loop operation and to correct inconsistencies between Salem Unit 1 and Salem Unit 2 Technical Specifications. Specifically the Same Unit 1 and Salem Unit 2 Technical Specifications would be revised as follows:

1. Definitions - add a definition for the fully withdrawn position of the Rod Cluster Control Assemblies (RCCAs).

2. Modify definition 1.28, Shutdown Margin, Specifications 3.1.3.4 and 3.10.1, and Bases 2.1.1 and 3/4.1.3 to incorporate the new definition of "Fully Withdrawn".

3. Replace Figure 3.1-1 to incorporate the new definition of Fully Withdrawn.

4. Delete Figure 3.1.2 from Unit 1.

5. Modify Specification 3.1.3.3 to clarify rod drop test requirements.

6. Modify Unit 2 Specification 3.1.3.2.2 to incorporate the rod drop testing requirements previously in Specification 3.10.5.

7. Add to Unit 1 Specification 3.1.3.2.2 rod drop test requirements as included in Unit 2 to achieve consistency between units.

8. Delete Unit 2 Specification 3.10.5.

Basis for proposed no significant hazards consideration determination: Proposed revision items one through three are being requested to address potential rod wear concerns as seen previously at other Westinghouse plants. These items redefine Fully Withdrawn to be between 222 and 228 steps withdrawn.

Proposed revision Item four is being requested to delete the curve implementing three loop operations which is not currently allowed but is still affected by redefining Fully Withdrawn. Rather than modifying this specification, it is proposed to be deleted. This is consistent with the Unit 2 specifications.

Item five is being requested to clarify that rod drop test times are to be performed from 228 steps withdrawn. With the proposed redefinition of Fully Withdrawn, test times could be performed from 222 steps withdrawn if this clarification was not made.

Proposed revisions six through eight are being requested to correct an inconsistency present in the current Unit 2 Technical Specifications. Previously, a change was approved that no longer required that the Analog Rod Position Indication (ARPI) be operable in Modes 3, 4 and 5. This eliminates the need for Specification 3.10.5 since the other requirements are being addressed in specification 3.1.3.2.2. The rod drop test requirements are being added to Unit 1 for consistency between units.

The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has analyzed the proposed amendment to determine if a significant hazards consideration exists:

1. Rods Fully Withdrawn Definition (Items 1-5)

A safety evaluation has been performed to address repositioning the fully withdrawn position of the RCCAs (Attachment 4) [Public Service Electric and Gas Co. Letter to NRC dated January 3, 1989, Analysis of effects of RCCA Repositioning on loss-of-coolant related accidents]. The evaluation considered the effects of the proposed technical specification changes on the following areas:

a. Small Break LOCA
b. Large Break LOCA
c. Short and Long Term LOCA
d. Steam Generator Tube Rupture
e. Post-LOCA Long Term Cooling
f. Hot Leg Switchover to Prevent Potential Boron Precipitation
g. Blowdown Reactor Vessel and Loop Forces
h. Non-LOCA Transients

The conclusions of the evaluation are as follows:

a. The changes in the definition of the fully withdrawn RCCA position proposed create no significant changes in the affected safety parameters involved in verification of current technical specification limits. The involved safety parameters include those parameters normally addressed by the cycle specific Reload Safety Evaluation Checklist. The change of the fully withdrawn position from 228 steps to 222 steps or higher involves only a small amount of absorber being inserted into the active region of core and does not result in any design or regulatory limit being exceeded.

b. No FSAR safety limits are exceeded based on the proposed technical specification change. The position of the control and shutdown banks, relative to each other in the core will not change; therefore the limiting axial power distribution assumed for the DNB analyses remain applicable. The FSAR conclusion that the DNBR design basis acceptance criteria is met for the Condition II events remains valid. Additionally, there is no significant impact on any core physics assumptions and design peaking factors important to the non-LOCA safety analyses and the reload verification.

c. The proposed change does not invalidate current control rod drop times or other tripped rod characteristics assumed in the LOCA licensing basis analysis.

Operation of the Salem Units in accordance with this proposed technical specification change:

a. Would not involve a significant increase in the probability or consequences of an accident previously evaluated for the Salem Units, since the changes caused by repositioning the fully withdrawn position of the control rods are bounded by those assumed in the accident analyses.

b. Would not create the possibility of a new or different kind of accident from any accident previously evaluated for the Salem Units, since no plant hardware changes are required by this change.

c. Would not involve a significant reduction in a margin of safety, since the margin which was assumed in the accident analyses bounds the change proposed.

2. Elimination of Special Test Exemption 3.10.5 [Items 6-8]

Operation of the Salem Units in accordance with this proposed Technical Specification change:

a. Would not create a significant increase in the probability or consequences of an accident previously evaluated for the Salem Units since the change is administrative in that it eliminates an unnecessary specification and incorporates the requirements into an existing specification. Additionally, it imposes a like requirement into the Unit 1 Technical Specification;

b. Would not create the possibility of a new or different kind of accident from any accident previously evaluated for Salem since no plant hardware modifications are required and no tests are being deleted;

c. Would not involve a significant reduction in a margin of safety, since no analytical or test changes are being made.

The staff has reviewed the licensee's submittal and significant hazards analysis and concurs with the licensee's determination that the proposed amendment does not involve a significant hazards consideration. Therefore, the staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Conner and Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of amendment request: December 30, 1988

Description of amendment request: The proposed amendment involves proposed changes to the Surveillance Standards of the Technical Specifications on a one-time basis. The requested changes are for a one-time extension for surveillances that are currently required by the Technical Specifications to be performed beginning March 29, 1989. Specifically, the changes involve the following Technical Specification sections:

4.0 General Surveillance Requirements

4.4.1.2 Local Leakage Rate Tests

4.5.3 Decay Heat Removal System and Reactor Building Spray System Leakage

The licensee requested that the surveillances be performed at the next refueling outage currently scheduled to begin on or before August 1, 1989.

This request encompasses all Hot Shutdown and Cold Shutdown surveillances due prior to August 1, 1989 except those regarding the emergency diesel generators. In addition this proposed amendment clarifies the surveillance period of the Decay Heat Removal Test defined in Specification 4.5.3.2.A.

All requested surveillance test extensions are associated with surveillances normally performed during refueling outages. Since the restart of Rancho Seco in March 1988, following an extended maintenance outage, the duration of the current refueling cycle, Cycle 7, has been lengthened due to operational testing at reduced power and several short maintenance outages.

Basis for Proposed No Significant Hazards Consideration Determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

The licensee has determined that the requested amendment per 10 CFR 50.92 does not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because extending surveillances by four months does not significantly affect the probability of accidents, nor will degradation occur in these four months that would change the consequences of an accident; or

(2) Create the possibility of a new or different kind of accident from an accident previously evaluated because the proposed Technical Specification changes do not change the operation of any equipment and the systems' abilities to perform their intended functions will not be altered; or

(3) Involve a significant reduction in a margin of safety because system operation is not affected and deferral of the surveillances will not result in significant degradation of equipment.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis.

Accordingly, the Commission has proposed to determine that the above changes do not involve a significant hazards consideration.

Local Public Document Room location: Martin Luther King Regional Library, 7340 24th Street Bypass, Sacramento, California 95822

Attorney for licensee: David S. Kaplan, Sacramento Municipal Utility District, 6201 S Street, Post Office Box 15830, Sacramento, California 95813

NRC Project Director: George W. Knighton

Southern California Edison Company, et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of amendment request: December 29, 1988

Description of amendment request: The proposed amendment is a request to revise Appendix A Technical Specifications to incorporate Limiting Conditions for Operation (LCOs) and Surveillance requirements associated with the containment spray actuation instrumentation. In accordance with resolution to Systematic Evaluation Program Topic VI-10.A, "Testing of Reactor Trip System and Engineered Safety Features, Including Response Time Testing," this proposed change incorporates LCOs and surveillances that are not currently included in the technical specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis about the issue of no significant hazards consideration which is quoted below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

RESPONSE: No

The CSAS is an accident mitigation system with no impact on accident probabilities. The CSAS is an existing system and this proposed change will incorporate surveillance and operability requirements into the technical specifications. The operability of the CSAS does affect previously analyzed accident consequences, as these accidents require successful operation of the CSAS to achieve their calculated design basis conclusion. Therefore, it is concluded that operation of the facility in accordance with this proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

RESPONSE: No

The CSAS is an existing plant system and formally requiring its operability and surveillance does not create any new or different accidents. The proposed LCOs and surveillance requirements are consistent with STS specifications in this area, and, accordingly, are appropriate. Therefore, it is concluded that operation of the facility in accordance with this proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

RESPONSE: No

Requiring the CSAS to be operable and surveilled will preserve existing, analyzed margins of safety. As the proposed change is in conformance with STS guidance, a required and assumed margin of safety will be maintained. Therefore, it is concluded that operation of the facility in accordance with this proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the analysis and, based on that review, it appears that the three criteria are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Attorney for licensee: Charles R. Kocher, Assistant General Counsel, and James Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

NRC Project Director: George W. Knighton

Southern California Edison Company, et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of amendment request: December 29, 1988

Description of amendment request: The proposed amendment would revise Technical Specifications associated with the Reactor Protection System instrumentation. This proposed change incorporates Limiting Conditions for Operation and Surveillance requirements into the technical specifications that are currently performed by procedure. In addition, surveillance intervals and out of service times have been increased in accordance with Westinghouse recommendations as documented in WCAP-10271.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis about the issue of no significant hazards consideration which is quoted below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

Implementation of the proposed changes is expected to result in an acceptable increase in total Reactor Protection System yearly unavailability. This increase, which is primarily due to less frequent surveillance testing, results in an increase of similar magnitude in the probability of an Anticipated Transient Without Scram (ATWS) and in the probability of core melt resulting from an ATWS. Based on the following, these slight increases are judged to be acceptable.

Implementation of the proposed changes is expected to result in a significant reduction in the probability of core melt from inadvertent reactor trips. This is a result of a reduction in the number of inadvertent reactor trips (0.5 fewer inadvertent reactor trips per unit per year) occurring during testing of RPS instrumentation. This is primarily attributable to testing in bypass and less frequent surveillance.

The reduction in inadvertent core melt probability is sufficiently large to counter the increase in ATWS core melt probability resulting in an overall reduction in total core melt probability. Incorporation of additional controls not currently in the technical specifications does not impact the probability or consequences of an accident previously evaluated, as these additional surveillances are currently maintained administratively by plant procedures.

The proposed changes do not result in an increase in the severity or consequences of an accident previously evaluated. Implementation of the proposed changes affects the probability of failure of the RPS but does not alter the manner in which protection is afforded nor the manner in which limiting criteria are established.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No

The proposed changes do not result in a change in the manner in which the Reactor Protection System provides plant protection. No change is being made which alters the functioning of the Reactor Protection System (other than in a test mode). Rather, the likelihood or probability of the Reactor Protection System functioning properly is affected as described above. Therefore, the proposed changes do not create the possibility of a new or different kind of accident.

The proposed changes do not involve hardware changes except those necessary to implement testing in bypass. Some existing technical specifications allow testing in bypass. Testing in bypass is also recognized by IEEE Standards. Therefore, testing in bypass has been previously approved and implementation of the proposed changes for testing in bypass does not create the possibility of a new or different kind of accident from any previously evaluated. Furthermore since the other proposed changes do not alter the functioning of the RPS, the possibility of a new or different kind of accident from any previously evaluated has not been created.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No

The proposed changes do not alter the manner in which safety limits, limiting safety system setpoints or limiting conditions for operation are determined. The impact of the reduced testing other than as addressed above is to allow a longer time interval over which instrument uncertainties (e.g., drift) may act. Experience at two Westinghouse plants with extended surveillance intervals has shown the initial uncertainty assumptions to be valid for reduced testing.

Implementation of the proposed changes is expected to result in an overall improvement in safety by:

a. 0.5 fewer inadvertent reactor trips per unit. This is due to less frequent testing and testing in bypass which minimizes the time spent in a partial trip condition.

b. Higher quality repairs leading to improved equipment reliability due to longer repair times.

c. Improvements in the effectiveness of the operation staff in monitoring and controlling plant operation. This is due to less frequent distraction of the operator and shift supervisor to attend to instrumentation testing.

The NRC staff has reviewed the analysis and, based on that review, it appears that the three criteria are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Attorney for licensee: Charles R. Kocher, Assistant General Counsel, and James Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

NRC Project Director: George W. Knighton

Tennessee Valley Authority, Dockets Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment requests: September 29, 1988 (TS 257)

Description of amendment requests: Browns Ferry Nuclear Plant Technical Specifications Tables 3.2.J and 4.2.J, Seismic Monitoring Instrumentation, are being revised to reflect the manufacturer's suggested testing for the upgraded triaxial peak accelerographs. This upgrade replaced the Terra Technology (PRA-103S) seismic instruments with the EngDahl (PAR-400-2) seismic instruments. These new instruments were installed to improve instrument efficiency and dependability. In addition to the manufacturer's recommendations, several administrative changes are also being made to these tables and to the Bases for Technical Specification, Section 3.2.

Specifically, the channel calibration frequency for triaxial time history accelerographs and the triaxial peak accelerographs would be changed from "N/A" to "R" (refueling). The channel functional test frequency for the triaxial peal accelerographs would be changed from "12 months" to "N/A." The channel functional test frequency for the triaxial time history accelerographs and the biaxial seismic switches would be changed from "six months" to "SA" (semi-annually). The channel calibration frequency for biaxial seismic switches would be changed from once/operating cycle to "R"; i.e., each refueling cycle. The note which says "except seismic switches" and is referenced by the channel check requirements for the triaxial time history accelerographs and the biaxial seismic switches would be deleted. The other administrative changes would provide a consistent order to the tables, numbering the table entries for each type of instrument, and correcting the spelling of accelerograph. Also, in each table after each biaxial siesmic switch, the correct elevation (EL. 519) is added.

Basis for proposed no significant hazards consideration determination: The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) Create the possibility of a new or different kind of accident previously evaluated or (3) Involve a significant reduction in a margin of safety. The staff has reviewed the licensee's no significant hazards determination analyses, provided to the Commission, in accordance with 10 CFR 50.91. The staff concurs with the licensee's determination. However, the staff has determined that additional clarification was needed and, therefore, the staff is providing the following determination with these clarifications:

1. The replacement of the original seismic instruments with the EngDahl instruments does not involve a significant increase in the probability or consequences of an accident previously evaluated. Regulatory Guide 1.12 requires that seismic instrumentation be installed at nuclear power plants so that, in the event of an earthquake, the seismic response of plant features important to safety can be determined promptly. This response is then compared with that used in the design basis in order to decide whether the plant can continue to be operated safely. Although the monitoring instrumentation hardware is being changed, the intended monitoring functions and data provided by the EngDahl instruments are consistent with the appropriate Regulatory Guide. The replacement of the seismic instruments will provide easier field calibrations to be performed, greater reliability than the previous instruments, and therefore improve plant ability to monitor peak accelerations during a seismic event. The replacement of these instruments support the current design bases, noted regulatory requirements, and does not invalidate any safety analysis assumed for the licensing and operation of BFN.

The surveillance requirements in Table 4.2.J are being revised to incorporate the vendor recommended

testing frequencies. The revision to the Channel Calibration testing frequencies for the triaxial history accelerographs and triaxial peak accelerographs to once per refueling outage is consistent with the GE Standard Technical Specifications as well as Table 1, Frequency of Maintenance, of ANSI/ANS-2.2-1978, "Earthquake Instrumentation Criteria for Nuclear Power Plants." The addition of these surveillances provides added assurance that the subject equipment performs as designed. Deleting the triaxial peak accelerograph Channel Functional Test and adding the Channel Calibration Test does not degrade the intent of the current TS since the Channel Calibration test is a more comprehensive operability verification. The changes made to the surveillance testing frequencies will still provide adequate verification that the instrumentation is performing its intended design function.

The administrative changes being made are to correct typographical errors existing in the current Tables. The other administrative changes provide greater consistency between the two Tables, make the testing frequency notations consistent with the existing definitions section, and provide elevations for the location of the seismic monitors.

The changes discussed above do not affect the function or intended design bases for any safety-related equipment currently installed at BFN. The replacement instrumentation, amended surveillance testing, nor the administrative changes do not change any of the safety analysis, assumptions made in the Final Safety Analysis Report, or calculations used in the design or licensing basis for BFN.

2. The proposed change does not create the possibility of a new or different kind of accident from an accident previously evaluated. The replacement EngDahl seismic instruments provide the same type of data and are similar in size to the original instruments. The seismic instruments are mounted on specific pipes inside the plant.

The size of the replacement instruments are similar enough that only minor mounting bracket modifications were needed. The seismic qualification of the piping was not affected. Since this is a hardware modification, the intended function and parameters monitored will remain the same as the original instruments. This amendment does not change the intended function or operation of any safety-related equipment, emergency operating procedures, or operating procedures, or operating practices.

Amending the surveillance frequencies as noted is in compliance with the appropriate industry standards and vendor recommendations. This amendment does not change the intent of the existing TS and additionally ensures that, through the proper testing and calibration, the instrumentation is performing its intended function.

The proposed administrative changes provide consistency between the Tables. These changes do not affect any operational conditions, safety-related equipment, or setpoints which could cause or adversely affect the mitigation of a new or different kind of accident from an accident previously evaluated.

3. The proposed changes do not significantly decrease the margin of safety at BFN. The replacement of the seismic instruments is a hardware change only. The new instruments will provide added reliability and therefore, improve the plant's overall ability to monitor peak accelerations caused by a seismic event. The replacement instruments will perform the same function as the original seismic instruments.

Amending the surveillance frequencies as noted is consistent with current industry standards and practices. These changes are also consistent with the vendor recommendations. The surveillances are to be utilized to ensure appropriate instrument function.

The administrative changes are being made to provide consistency between the Tables and correct typographical errors. These changes are administrative in nature and do not reduce any margin of safety.

The seismic monitoring instrumentation is not required to mitigate the consequences of any design basis events, but rather provide data for evaluation after a seismic event to ensure that the plant can continue to operate safely. Therefore, the proposed TS does not involve a significant reduction in the margin of safety.

Therefore, the staff proposed to determine that the application for amendment involve no significant hazards consideration.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Suzanne Black

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment requests: December 22, 1988 (TS 88-34)

Description of amendment requests: The Tennessee Valley Authority (TVA) proposes to modify the Sequoyah Nuclear Plant (SQN) Units 1 and 2 Technical Specifications (TS). The changes are to remove inappropriate testing requirements associated with the auxiliary building gas treatment system (ABGTS). Surveillance requirements for ABGTS activation exist in Section 7, "Plant Systems," and Section 9, "Refueling Operations," of the TS. These requirements are TS 4.7.8.d.2 and 4.9.12.d.2. The ABGTS surveillance requirements from Section 7 are applicable during Modes 1, 2, 3, and 4; and the ABGTS surveillance requirements from Section 9 are applicable whenever irradiated fuel is in the spent fuel storage pool. The ABGTS test requirement associated with the auxiliary building ventilation monitoring systems (ABVMS) would be deleted from both Sections 7 and 9. The ABGTS test requirement associated with a phase A containment isolation signal would be deleted in Section 9 but would remain in Section 7. The ABGTS test requirement associated with the high radiation signal from the spent fuel pool monitors would be deleted in Section 7 but would remain in Section 9.

A new requirement has been added to Table 4.3.9 of Specification 3.3.3.10, "Radioactive Gaseous Effluent Monitoring," to demonstrate automatic isolation of the auxiliary building ventilation exhaust any time the ABVMS (radiation monitor) indicates measured levels above the alarm/trip setpoint. This requirement is currently in Sections 7 and 9 as part of the ABGTS actuation test for a high radiation signal from the ABVMS but would be deleted from Sections 7 and 9. Also, two typographical errors in the Unit 1 Specification 3.3.3.10 have been corrected.

Basis for proposed no significant hazards consideration determination: TVA provided the following information on the ABGTS which is part of the auxiliary building ventilation system (ABVS) in its submittal on the proposed TS changes.

The ABVS is described in section 9.4.2 of the Final Safety Analysis Report (FSAR. This system serves all areas of the auxiliary building including the radwaste areas and the fuel handling areas. It is designed to maintain acceptable environmental conditions for personnel access, for protection of mechanical and electrical equipment and controls, and to limit the release of radioactivity to the environment.

The current ABGTS surveillance requirements impose appropriate actions under certain conditions. For example, should the single auxiliary building vent radiation monitor become inoperable, ABGTS must be declared inoperable and consequently a plant shutdown is required by Specification 3.0.3. Similar effluent monitoring technical specifications allow continued reactor operation with vent path sampling. Similar inappropriate action applies to inoperability of the fuel pool monitors while in modes 1, 2, 3, and 4. An inoperable fuel pool radiation monitor, while in these modes, would require that ABGTS be declared inoperable and could possibly result in a plant shutdown. The more appropriate action is to limit crane operation with loads over the spent fuel pit as specified in Technical Specification 3.9.12.

Another inappropriate action would exist in Mode 6 with the Phase A containment isolation signal becoming inoperable. Crane operation with loads over the spent fuel pit may be prohibited when, in fact, the loss of coolant accident (LOCA) mitigation equipment is not required. The proposed technical specification change will alleviate these problems by assigning each ABGTS surveillance requirement to its proper accident signal.

Deletion of the ABGTS actuation surveillance requirement from the high radiation signal in the auxiliary building vent will significantly reduce the amount of surveillance work, system alignment, and unnecessary operator interface required to perform the test. The current test addresses all aspects of the ABGTS function: ABGTS filter train start, auxiliary building isolation, ABSCE [auxiliary building secondary containment enclosure] establishment, and accident mode room cooling.

The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

TVA has evaluated the proposed technical specification change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of SQN in accordance with the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The ABGTS is an engineered safety features system required to function postaccident. The signal for ABGTS initiation on high radiation in the auxiliary building vent is not included in any accidents evaluated by the safety analysis report. Deletion of the subject test requirement has no impact on the function of the ABGTS or the radiation monitor itself. Deletion of [the surveillance requirements associated with] the phase A containment isolation signal and the fuel handling area radiation monitor signal is consistent with assumptions made in the accident analysis. The typographical corrections are strictly administrative and do not alter any intent of the specification. Therefore, there is no change in the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any previously analyzed. High radiation in the auxiliary building vent initiates an ABGTS start and isolation of the auxiliary building. For any accident where ABGTS is assumed, the start signal would be provided by redundant channels in the initiation logic, all of which are safety-grade, trained redundant instruments. The phase A signal and the fuel handling area signal are required operable as assumed in the FSAR. The typographical corrections are strictly administrative. Thus, the possibility of a new or different kind of accident has not been created.

(3) Involve a significant reduction in a margin of safety. No change is being made to the hardware or function of ABGTS or the auxiliary building vent monitor. The actual testing of the phase A signal and the fuel handling area signal is not changed. Because of the test signal being deleted is backed up by redundant channels, which are safety-grade, trained, and therefore more reliable, no margin of safety is reduced. The typographical corrections are strictly administrative.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Suzanne Black

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: November 29, 1988, supplemented November 30, 1988.

Description of amendment request: The amendment would reflect personnel changes, correct typographical errors, and make minor word changes to clarify the intent of Technical Specifications (TS).

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (51 FR 7751) of actions that are considered not likely to involve significant hazards considerations. Example (i) of this guidance states: "a purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature."

The proposed changes are directly related to the example. They do not involve a decrease in management support or involvement in the Kewaunee Plant. Engineering and technical support supplied by the plant and corporate staff would not be decreased as a result of the changes. The proposed changes are purely administrative and editorial.

Based on the above, the staff proposes to determine that the proposed changes do not involve significant hazards considerations.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Attorney for licensee: David Baker, Esq. Foley and Lardner, P.O. Box 2193 Orlando, Florida 31082.

NRC Project Director: John N. Hannon.

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Indiana Michigan Power Company, Docket No. 50-315, Donald C. Cook Nuclear Plant, Unit No. 1, Berrien County, Michigan

Date of amendment request: August 9, 1988

Brief description of amendment: The proposed license amendment would allow a one-time extension of the

surveillance intervals for certain surveillances normally performed with the unit shutdown. The extensions involve:

1. ice basket weighing;
2. ice condenser flow passage inspections;
3. ice condenser inlet door testing; and
4. resistance temperature detector calibrations.

Date of publication of individual notice in **Federal Register:** January 17, 1989 (54 FR 1606)

Expiration date of individual notice: February 16, 1989.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: November 15, 1988

Brief Description of amendment request: The proposed amendment would change the Technical Specifications to reflect a revised safety analysis that includes the use of fuel designed and fabricated by Advanced Nuclear Fuels Corporation.

Date of publication of individual notice in **Federal Register:** January 24, 1989 (54 FR 3545)

Expiration date of individual notice: February 23, 1989.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

Arizona Public Service Company, et al., Docket No. STN 50-528 Palo Verde Nuclear Generating Station, Unit 1 Maricopa County, Arizona

Date of application for amendment: July 25, 1988

Brief description of amendment: The Amendment revises TS Section 3.3.2, Table 3.3-5, "Engineered Safety Features Response Times" by clarifying the response time requirements for radiation detectors associated with Control Room Essential Filtration Actuation. Minor editorial corrections have also been incorporated in TS Section 3/4.3.2, "Engineered Safety Features Actuation System Instrumentation."

Date of issuance: December 28, 1988

Effective date: December 28, 1988

Amendment No.: 41

Facility Operating License No. NPF-41: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 21, 1988 (53 FR 36666). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 28, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, Business and Science Division, 12 East McDowell Road, Phoenix, Arizona 85004.

Arizona Public Service Company, et al, Docket No. STN 50-528, Palo Verde Nuclear Generating Station, Unit 1, Maricopa County, Arizona

Date of application for amendment: December 23, 1988

Brief description of amendment: The amendment revised Surveillance Requirement 4.1.3.1.2 to allow continued operation of PVNGS Unit 1, until the end of the current cycle (approximately 3 months), without conducting any further exercise tests of control element assembly (CEA) No. 64.

Date of issuance: January 13, 1989

Effective date: January 13, 1989

Amendment No.: 42

Facility Operating License No. NPF-41: Amendment changed the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes (54 FR 75 dated January 3, 1989). That notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by January 18, 1989, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 13, 1989, which makes a final no significant hazards consideration determination.

Attorney for Licensee: Arthur C. Gehr, Esq., Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85007.

Local Public Document Room location: Phoenix Public Library, Business and Science Division, 12 East McDowell Road, Phoenix, Arizona 85004.

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Unit Nos. 1 and 2, LaSalle County, Illinois

Date of application for amendments: March 6, 1987 supplemented January 6 and March 9, 1988 and January 6, 1989.

Description of amendments: These amendments revise the LaSalle County Station, Units 1 and 2 Technical Specifications by removing all references to the ammonia detector monitoring instrument system.

Date of issuance: January 16, 1989

Effective date: January 18, 1989

Amendment Nos.: 61 and 42

Facility Operating License Nos. NPF-11 and NPF-18. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 8, 1987 (52 FR 11357). The supplemental submittals by the licensee provided further revisions to the initial probability analysis, but did not change the staff's initial determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 18, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348

Commonwealth Edison Company, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: September 16, and November 18, 1988

Brief description of amendments: Revise Main Steam Line Radiation Monitors trip setpoint for reactor protection system from seven times normal full power background to 15 times. This is necessary to provide for implementation of Hydrogen Water Chemistry control.

Date of issuance: January 18, 1989

Effective date: January 18, 1989

Amendment Nos.: 112 and 108

Facility Operating License Nos. DPR-29 and DPR-30. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 14, 1988 (53 FR 50321). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 18, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Commonwealth Edison Company, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: November 16, 1988

Brief description of amendments: Revises surveillance interval of Main Steam Isolation Valves local leak rate testing from 18 months to each fuel cycle, not to exceed once every 24 months.

Date of issuance: January 19, 1989

Effective date: January 19, 1989

Amendment Nos.: 113 and 109

Facility Operating License Nos. DPR-29 and DPR-30. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 14, 1988 (53 FR 50322). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 19, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: November 7, 1988

Brief description of amendment: The amendment revises Table 7.2-1, "Radioactive Liquid Effluent Monitoring Instrumentation" and Table 8.2-1, "Radioactive Liquid Effluent Monitoring Instrumentation Surveillance Requirement" by providing the respective radiation monitors identification label with the previous identified radiological monitoring locations.

Date of Issuance: January 24, 1989

Effective date: January 24, 1989

Amendment No.: 111

Facility Operating License No. DPR-61. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated January 24, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: June 24, 1988.

Brief description of amendment: This amendment revises the Fermi-2 Technical Specifications to remove the organization charts from the Technical Specifications following the guidance provided in NRC Generic Letter 88-06. The amendment also makes various administrative changes to Section 6.0 of the Technical Specifications.

Date of issuance: January 24, 1989

Effective date: January 24, 1989

Amendment No.: 30

Facility Operating License No. NPF-43. The amendment revises the Technical Specifications

Date of initial notice in **Federal Register:** August 10, 1988 (53 FR 30129). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 24, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Duke Power Company, Docket Nos. 50-269, 50-270, and 50-287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application for amendments: September 3, 1987, as supplemented February 27, September 9, and September 20, 1988.

Brief description of amendments: The amendments revised the Technical Specifications to replace the values of cycle-specific parameter limits with a reference to the Core Operating Limits Report which contains the values of those limits.

Date of issuance: January 26, 1989

Effective date: January 26, 1989

Amendment Nos.: 172, 172, and 169

Facility Operating License Nos. DPR-38, DPR-47, and DPR-55. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 14, 1988 (53 FR 50325). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 26, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of application for amendment: November 12, 1986, supplemented by letter dated November 17, 1988

Brief description of amendment: The amendment revises the visual inspection requirements for snubbers and the service life monitoring requirements.

Date of issuance: January 23, 1989

Effective date: January 23, 1989

Amendment No. 135

Facility Operating License No. DPR-66. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 25, 1987 (52 FR 9567). The November 17, 1988 submittal provided additional clarifying information and did not change the determination of the initial notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 23, 1989

No significant hazards consideration comments received: No

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Duquesne Light Company, Docket No. 50-412, Beaver Valley Power Station, Unit No. 2, Shippingport, Pennsylvania

Date of application for amendment: August 30, 1988, supplemented by letter dated November 10, 1988

Brief description of amendment: The amendment changes the Technical

Specifications to allow storage of fuel and spent fuel assemblies up to enrichment of 4.85 weight-percent U-235.

Date of issuance: January 17, 1989
Effective date: January 17, 1989
Amendment No. 12
Facility Operating License No. NPF-73. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 5, 1988 (53 FR 39168). The November 10, 1988 submittal provided additional clarifying information and did not change our initial determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 17, 1989

No significant hazards consideration comments received: No

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-424, Vogtle Electric Generating Plant, Unit 1, Burke County, Georgia

Date of application for amendment: December 6, 1988

Brief description of amendment: The amendment modified the Technical Specifications to raise the minimum diesel generator voltage for tests not requiring circuit breaker closure to ensure that the generator "ready-to-load" condition is met during surveillance.

Date of issuance: January 23, 1989
Effective date: January 23, 1989
Amendment No.: 15
Facility Operating License No. NPF-68: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 15, 1988 (53 FR 50480). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 23, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: November 30, 1988, as supplemented by letter dated December 12, 1988

Brief description of amendment: The amendment deletes the requirement in Technical Specification, Table 3.1.1.A.6 for a Low Condenser Vacuum Scram when the Reactor Mode Switch is in the refuel position. This change clarifies the Technical Specification to allow Rod Scram time testing to be performed while shutdown. The amendment also revises Technical Specification, Table 3.1.1.C.1 to add a reference to note "21" in the startup mode for the High Reactor Pressure Isolation Condenser initiative function. This change is necessary to install new analog pressure sensors during refueling outage 12R.

Date of Issuance: January 13, 1989
Effective date: January 13, 1989
Amendment No.: 131
Provisional Operating License No. DPR-16. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 12, 1988 (53 FR 49943). The December 12, 1988 submittal corrected a Technical Specification page and did not change the determination of the initial notice. The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated January 13, 1989

No significant hazards consideration comments received: No.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: March 5, 1987 as clarified by letters dated October 11, 1988 and November 1, 1988.

Brief description of amendment: This amendment to the license updates the physical security plan.

Date of issuance: January 23, 1989
Effective date: January 23, 1989
Amendment No.: 110
Facility Operating License No. DPR-36. Amendment revised a license condition.

Date of initial notice in **Federal Register:** (53 FR 50331) December 14, 1988. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 23, 1989

No significant hazards consideration comments received: No.

Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04576.

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of application for amendment: January 14, 1988

Brief description of amendment: To eliminate a contradiction between Technical Specification 3.1.1.b(3)(b) and Specification 3.1.1.e and to require verification in Specification 3.1.1.b(3)(b) that the control rod program is being followed appropriately.

Date of issuance: January 26, 1989
Effective date: January 26, 1989
Amendment No.: 103
Facility Operating License No. DPR-63: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** December 14, 1988 (53 FR 50332). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 26, 1989

No significant hazards consideration comments received: No.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: August 11, 1988

Brief description of amendment: The amendment changes Technical Specification (TS) 4.6.1.2, "Containment Leakage," to allow the use of the "mass point" methodology, per ANSI/ANS 56.8-1981 and 10 CFR Part 50, Appendix J, Section III. A(3), in addition, or as an alternative to, the "total time" methodology currently specified in the TS.

Date of issuance: January 17, 1989
Effective date: January 17, 1989
Amendment No.: 30
Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 21, 1988 (53 FR 3662). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 17, 1989

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of application for amendment: November 1, 1988

Brief description of amendment: The amendment changed the Technical Specifications to reflect NRC approved modifications to certain containment penetrations to permit foward leak testing of associated isolation valves and testing of valve packing leakage.

Date of issuance: January 18, 1989
Effective date: 60 days after date of issuance
Amendment No. 15
Facility Operating License No. NPF-39. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 14, 1988 (53 FR 50334). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 18, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: January 19, 1988

Brief description of amendments: These amendments changed the Technical Specifications and surveillance requirements applicable to containment hydrogen analyzers.

Date of issuance: January 25, 1989
Effective date: As of the date of issuance with implementation to be completed within 30 days of the date of issuance, for both units.
Amendment Nos. 90 and 65
Facility Operating License Nos. DPR-70 and DPR-75. These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 24, 1988 (53 FR 32295). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 25, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

Southern California Edison Company, et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of application for amendment: March 20, 1987, as supplemented July 22, 1988.

Brief description of amendment: The amendment allows a seal leakage test to be performed in lieu of a full pressure test on the containment air lock when no maintenance has been performed on the air lock that could affect sealing capability of the air lock. The amendment also makes two editorial clarifications to the testing requirements on air lock doors.

Date of issuance: January 24, 1989
Effective date: This license amendment is effective the date of issuance and must be fully implemented no later than 30 days from date of issuance.
Amendment No.: 118
Provisional Operating License No. DPR-13: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 7, 1988 (53 FR 34611). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 24, 1989.

No significant hazards consideration comments received: No comments.

Local Public Document Room location: General Library, University of California, Post Office Box 19557, Irvine, California 92713.

NRC Project Director: George W. Knighton

Tennessee Valley Authority, Dockets Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendments: September 29, 1988 (TS 255)

Brief description of amendments: The amendments modify Technical Specifications Sections 3.6.H and 4.6.H to permit removal of references to seismic restraints and supports.

Date of issuance: January 19, 1989
Effective date: January 19, 1989, and shall be implemented within 60 days
Amendments Nos.: 163, 160, and 134
Facility Operating Licenses Nos. DPR-33, DPR-52 and DPR-68: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 19, 1988 (53 FR 41001). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 19, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Tennessee Valley Authority, Dockets Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendments: August 4, 1988 (TS 252)

Brief description of amendments: These amendments add Technical Specifications Limiting Conditions for Operation and Surveillance Requirements for the Anticipated Transients Without Scram (ATWS) - Recirculation Pump Trip (RPT).

Date of issuance: January 26, 1989
Effective date: January 26, 1989, and shall be implemented within 60 days
Amendments Nos.: 164, 161, 135
Facility Operating Licenses Nos. DPR-33, DPR-52 and DPR-68: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 30, 1988 (53 FR 48336). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 26, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Tennessee Valley Authority, Docket No. 50-327, Sequoyah Nuclear Plant, Unit 1, Hamilton County, Tennessee

Date of application for amendments: September 21, 1988 as supplemented by letter dated October 25, 1988 (TS 88-28)

Brief description of amendments: The amendment modifies the Sequoyah Nuclear Plant, Unit 1 Technical Specifications. The change revises the limiting condition for operation 3.2.2 and surveillance requirement 4.2.2 to reflect a reduction in the heat flux hot channel factor limit from 2.237 to 2.15. The limit shall be 2.15 instead of 2.237 until an analysis in conformance with 10 CFR 50.46, using plant operating conditions and showing that a limit of 2.237 satisfies the requirements of 10 CFR 50.46(b), has been completed and submitted to NRC.

Date of issuance: January 23, 1989
Effective date: January 23, 1989
Amendment No.: 95
Facility Operating Licenses Nos. DPR-77 and DPR-79. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 5, 1988 (53 FR 39178). The Commission's related evaluation of

the amendment is contained in a Safety Evaluation dated January 23, 1989

No significant hazards consideration comments received: No

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: September 30, 1988

Brief description of amendments: The amendments allow an increase in the steam generator tube plugging from 7 percent and 15 percent to 18 percent. Also, the maximum FQ limit is increased from 2.15 to a value of 2.19.

Date of issuance: January 17, 1989

Effective date: January 17, 1989

Amendment Nos.: 114 and 97

Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: November 16, 1988 (53 FR 46161). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 17, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a Federal Register notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By March 10, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Indiana Michigan Power Company, Docket No. 50-316, Donald C. Cook Nuclear Plant, Unit 2, Berrien County, Michigan

Date of application for amendment: October 14, 1988

Brief description of amendment: The amendment increases the shutdown margin requirements for operational Modes 4 and 5. The revised requirements are based on an analysis of a potential boron dilution transient.

Date of issuance: January 13, 1989

Effective date: January 13, 1989

Amendment No.: 106

Facility Operating License No. DPR-74. Amendment revises the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

Comments received: No. The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated January 13, 1989

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

NRC Project Director: Theodore Quay, Acting.

Washington Public Power Supply System, et al., Docket No. 50-397, Nuclear Project, No. 2, Benton County, Washington

Date of application for amendment: December 21, 1988

Brief description of amendment: The amendment revises testing requirements for the 4.16 KV emergency bus under voltage trip functions set forth in WNP-2 Technical Specification Tables 3.3.3-1 and 4.3.3.1-1. The monthly functional channel test for degraded voltage protection of the Division 1 and 2 buses will include the sensor and its associated 5 second delay relay but will no longer include the secondary 3 second delay relays. The Division 3 protection system will be tested at an interval not to exceed 18 months instead of monthly.

Date of issuance: January 6, 1989

Effective date: January 6, 1989

Amendment No.: 64

Facility Operating License No. NPF-21: Amendment revised the Technical Specifications.

Public Comment requested as to proposed no significant hazards consideration: No. The Commission's related evaluation of the amendment, finding of emergency circumstances, consultation with the State of Washington, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated January 6, 1989.

Attorneys for licensee: Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell Reynolds, 1400 L Street, NW., Washington, DC 20005-3502 and Mr. G. E. Doupe, Esq., Washington Public Power Supply System, P.O. Box 968, 3000 George Washington Way, Richland, Washington 99352.

Local Public Document Room location: Richland City Library, Swift and Northgate Streets, Richland, Washington 99352.

NRC Project Director: George W. Knighton

Dated at Rockville, Maryland, this 2nd day of February, 1989.

For the Nuclear Regulatory Commission

Gus C. Lainas,

Acting Director, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation

[Doc. 89-3537 Filed 2-7-89; 8:45 am]

BILLING CODE 7590-01-D

[Docket No. 50-155, License No. DPR-06, EA 87-80]

Consumers Power Co., Big Rock Point Nuclear Plant; Order Imposing Civil Monetary Penalty

I

Consumers Power Company (licensee) is the holder of Operating License No. DPR-06 issued by the Nuclear Regulatory Commission (NRC/Commission) on August 30, 1962. The license authorizes the licensee to operate the Big Rock Point Nuclear Plant, in accordance with the conditions specified therein.

II

A special safety inspection of the licensee's activities was conducted during the period September 15–19, 1988. The results of the inspection indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the licensee by letter dated September 22, 1988. The Notice stated the nature of the violation, the provisions of the NRC's requirements that the licensee had violated, and the amount of the civil penalty proposed for the violation. The licensee responded to the Notice by two letters dated December 1, 1988. In its response, the licensee admitted the facts stated in the violation, but argued that the guidance of the NRC's Modified Enforcement Policy was unduly punitive and not equitably applied when the specifics of the Big Rock Point situation, the complexity of the issues and the size of the plant are considered. The licensee requested that the Commission reconsider the amount of the proposed fine.

III

After consideration of the licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the Deputy Executive Director for Regional Operations has determined, as set forth in the Appendix to this Order, that the penalty proposed for the violation designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered that:

The licensee pay a civil monetary penalty in the amount of One Hundred and Eighty-Seven Thousand Five Hundred Dollars ($187,500) within 30 days of the date of this Order by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and should be addressed to the Director of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, DC 20555, with a copy to the Regional Administrator, Region III, 799 Roosevelt Road, Glen Ellyn, Illinois, 60137, and a copy to the NRC Resident Inspector, Big Rock Point Nuclear Plant.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made at that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issue to be considered at such hearing shall be: whether the proposed civil penalty should be imposed in whole or in part.

For the Nuclear Regulatory Commission.

James M. Taylor,

Deputy Executive Director for Regional Operations.

Dated at Rockville, Maryland this 31st day of January 1989.

Appendix—Evaluation and Conclusion

On December 1, 1988, Consumers Power Company (licensee) replied in two letters to the NRC's September 22, 1988, Notice of Violation and Proposed Imposition of Civil Penalty (notice) regarding environmental qualification (EQ) of electrical equipment admitting that the facts stated in the violations are substantially correct, but raising objections to the NRC's conclusions that a civil penalty was warranted. The licensee states that the deficiencies in the Notice were identified and discussed with the NRC prior to the deadline of November 30, 1985 for compliance with 10 CFR 50.49 and that required corrective action was implemented. In addition, the licensee contends that the amount of the proposed civil penalty is excessive for the significance of the deficiencies and the size of the facility and requests that the Commission reconsider the amount of the proposed fine. The violation is restated below followed by a summary of the licensee's response and the NRC's evaluation and the conclusion.

1. Restatement of Violation

10 CFR 50.49(f) requires each item of electrical equipment important to safety be environmentally qualified by testing and/or analysis.

10 CFR 50.49(k) specifies that requalification of electric equipment important to safety is not required if the Commission has previously required qualification in accordance with "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors," November 1979 CDOR Guidelines).

DOR Guidelines, Section 5.2.2, states that type tests should only be considered valid for equipment identical in design and material construction to the test specimen and any deviations should be evaluated as part of the qualification documentations.

Contrary to the above, Consumers Power Company failed to qualify equipment important to safety by appropriate testing and/or analysis as evidence by the following examples:

a. Limitorque Motor Actuator MO–7068, an item of electrical equipment important to safety, was removed from service after 13 years of operation and was subjected to a Loss of Coolant Accident (LOCA) test on April 23, 1975. This actuator was then reinstalled and returned to service in the containment spray system without being qualified by testing and/or analysis to evaluate aging and degradation due to the LOCA test. This condition existed from November 30, 1985 until February 13, 1987, at which time Limitorque Motor Actuator MO–7068 was replaced.

b. Butyl rubber and polyethylene insulated cables, items of electrical equipment important to safety, which had not been environmentally qualified by testing and/or analysis, were installed in various Class 1E circuits inside containment. This condition existed from November 30, 1985 until June 30, 1987, at which time the unqualified cables were replaced.

2. Summary of Licensee's Response

The licensee admits that the facts stated in the violation are substantially correct. However, Consumers Power Company claims that, prior to the EQ deadline, the qualification concerns had been identified and discussed with the NRC and that the licensee had implemented actions to satisfy the concerns. Since the NRC had not notified the licensee to the contrary, the licensee had assumed the concerns had been satisfactorily addressed and its equipment was qualified.

Consumers Power Company also argues that a fine of the magnitude proposed is unreasonable for a generating plant the size and age of Big Rock Point. In fact, on a per megawatt basis, the licensee argues that is the largest fine the Commission has ever proposed for a licensee. The licensee also argues that the safety significance of the examples in the Notice do not warrant a fine in the amount proposed. In summary, the licensee states that, due to the circumstances that apply to the specifics of the Big Rock Point situation and the complexity of the issues involved, the guidance of the modified Enforcement Policy is unduly punitive and has not been equitably applied. The licensee contends that the amount of the proposed civil penalty is excessive and requests that the Commission reconsider the amount of the proposed fine.

3. NRC Evaluation of Licensee's Response

The NRC staff believes the licensee had no reasonable basis for assuming that the NRC had approved its actions to satisfy the identified EQ concerns. As evidenced in various NRC documents, the NRC did identify the document the deficiencies stated in the Notice prior to the EQ deadline (as early as 1983) and in each case identified the need for replacement or new testing and analysis of the unqualified equipment. The licensee's corrective actions were not presented to the NRC until the September 1986 Region III EQ Inspection. During this inspection, the NRC again informed the licensee that the actuator and cables in question were unqualified. The licensee took an unreasonable length of time to correct the identified deficiencies and numerous meetings had to be held between the NRC and the licensee to prompt the licensee and ensure that it took adequate corrective action.

With regard to Limitorque Actuator MO–7068, the licensee claims that the NRC and its consultant, Franklin Research Institute, were aware that Actuator MO–7068 had been tested under LOCA conditions and returned to service after being inspected and refurbished "where needed." Since the NRC had raised no further concerns, the licensee assumed the actuator was qualified for intended service.

The Franklin Research Center Technical Evaluation Report (TER), February 18, 1983, Page 3A, identified Actuator MO–7068 as Category 8B, "Equipment Qualification Pending Modification." The summary section of the TER identified the corrective action as "Replace or Rebuild and Qualify."

In its conclusion, the TER stated, "radiation and thermal aging qualification testing has not been performed for this type actuator." The TER also stated this conclusion for other type Limitorque Model SMA–00 actuators.

In the discussion, the TER acknowledged that the Actuator MO–7068 had at one time been subjected by the licensee to a LOCA. However, that test was considered an adequate basis only for interim operation for Type SMA–00 actuators until they were replaced or rebuilt. Further, the TER did not state or imply that the LOCA-tested actuator, i.e., MO–7068, could be returned to service without refurbishment of degraded parts. The licensee, however, returned the actuator to service after the LOCA test without any evidence of refurbishing EQ-related components. Neither the NRC nor Franklin was aware that the actuator had been returned to service without the refurbishing of degraded parts. Based on these considerations, the licensee's claim that the actuator was qualified based on lack of NRC notification to the contrary is not supported.

With regard to the Polyethylene and Butyl Rubber insulated cables, the licensee claims that, in lieu of LOCA-testing the cables, it purchased a test report for $30,000 and qualified the cables by similarity. The licensee assumed the cables were qualified since the NRC had raised no further concern.

The February 18, 1983 Franklin TER identified Polyethylene and Butyl rubber cables as those for which equipment qualification had not been established. In June 1984, NRR identified these cables as unqualified during an EQ inspection. On July 25, 1984, the NRC granted the licensee an extension on the schedule for qualification of these cables until March 31, 1985. Finally, in September 1986, the Region III inspectors identified those cables as unqualified and required replacement or qualification by testing. Despite all these notifications, the licensee did not take timely corrective action. During an April 13, 1987 meeting between the Consumers Power Company and NRC staffs, the licensee committed to replace all Polyethylene and Butyl rubber cable in question. This commitment was documented in an April 15, 1987 Confirmatory Action Letter issued to the licensee by the NRC Region III office.

The licensee claims it spent $50,000 to purchase test reports of similar cables because 10 CFR 50.49 permits qualification by similarity. The licensee claims the NRC was aware of its approach to qualify by similarity and had raised no concerns. The NRC agrees that a licensee may qualify equipment by similarity as this clearly allowed in the regulations. However, when the NRC inspection was conducted, the tests discussed in the purchased reports were found to be deficient in that they did not test similar or identical cable. The NRC had not reviewed the adequacy of these reports until the Region III inspection, at which time the reports were found clearly inadequate for applications at Big Rock, for the reasons given in the Notice.

The licensee claims the NRC SER of November 15, 1985, further confirmed the qualification of these cables because there were no remarks to the contrary. The NRC SER, however, only addressed the approval of the licensee's general approach to resolving outstanding EQ deficiencies, not the adequacy of the resolution of each specific issue. The corrective actions were scheduled to be reviewed during the NRC Region III inspection. Based on the above consideration, the licensee's claim that the cables were qualified by similarity based on lack of NRC notification to the contrary, is not supported.

With regard to the licensee's argument concerning the safety significance of the violation, the NRC staff, under the Modified EQ Policy Enforcement Policy, considers violations of EQ requirements to be safety significant because the electrical equipment required to be qualified are those which are important to safety. This is a case in which it appears that the components were properly categorized as important to safety. If the licensee cannot demonstrate that such components are qualified, for enforcement purposes, a significant violation has occurred. The only exceptions to this practice include those cases in which a documentation deficiency of a minor nature exists which is readily correctable. In this case, the licensee failed to have adequate documentation and would have needed to develop extensive additional information to demonstrate qualification. Therefore, the NRC staff concluded a significant violation existed.

While Consumers Power Company does operate a small reactor, Big Rock Point's size alone is not a sufficient justification for mitigation of a civil penalty. The facility is categorized as a commercial power reactor and as such is subject under the Modified EQ Enforcement Policy, as under the "General Statement of Policy and Procedure for NRC Enforcement Action", 10 CFR Part 2 Appendix C, to the same base civil penalty as all other commercial power reactors. The NRC carefully considered whether it would be advisable to assess lesser civil penalties for smaller commercial power reactors and it was concluded that the inherent risks associated with any size commercial nuclear plant are such that a significant deterrent is needed to motivate a licensee to implement and maintain programs for detection and correction of problems that may constitute or lead to violations of regulatory requirements.

For these reasons, the NRC has concluded that mitigation of the civil penalty is not warranted.

3. Conclusion

The NRC has concluded that this violation occurred as stated and there is no adequate basis for withdrawing the violation or reducing the amount of the civil penalty. Consequently, the proposed civil penalty in the amount of $187,500 should be imposed.

[FR Doc. 89–2877 Filed 2–7–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–334]

Duquesne Light Co., Ohio Edison Co., and Pennsylvania Power Co., Beaver Valley Power Station, Unit No. 1; Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by Duquesne Light Company, (licensee) an amendent to Facility Operating License No. DPR–66, issued to the licensee for operation of the Beaver Valley Power Station, Unit No. 1, located in Beaver County, Pennsylvania. Notice of Consideration of Issuance of this amendment was published in the Federal Register on July 15, 1987 (52 FR 26586).

The purpose of the licensee's amendment request was to revise the Technical Specifications (TS) to clarify certain requirements concerning reactor coolant system boron dilution.

The licensee has informed the staff that a revised request will be submitted to address the staff's concerns. The revised submittal is still outstanding. Therefore, the staff decides to deny the amendment request in order to conserve staff resources. This denial will not constitute a prejudice against the licensee's revised submittal which will be treated as a new request.

The licensee was notified of the Commission's denial of the proposed TS change by a letter dated by March 10, 1989, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel-Rockville, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esquire and Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated April 30, 1987, and (2) the Commission's letter to the licensee dated.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the B.F. Jones Memorial Library, 663 Franklin Avenue, Aliqquippa, PA 15001. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland, this 2nd day of February,1989.

For the Nuclear Regulatory Commission.

Peter D. Tam,

Senior Project Manager, Project Directorate I-4, Division of Reactor Projects O/II, Office of Nuclear Regulation.

[FR Doc. 89-2978 Filed 2-7-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-260]

Tennessee Valley Authority; Withdrawal of Application for Amendment to Facility Operating License DPR-52

The United States Nuclear Regulatory Commission (the Commission) has granted the request of the Tennessee Valley Authority (the licensee) to withdraw its August 12, 1988 application for amendment, technical specification (TS) change 249, to Facility Operating License DPR-52 for the Browns Ferry Nuclear Plant, Unit 2 located in Decatur, Alabama. TS-249 will be replaced by a new request for changes.

This amendment would have modified the TS by revising the limiting conditions for operation and the surveillance requirements for equipment required by 10 CFR Part 50, Appendix R safe shutdown.

The Commission issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on October 19, 1988 (53 FR 4100). By letter dated January 17, 1989, the licensee withdrew the proposed change regarding Appendix R safe shutdown.

For further details with respect to this action, see the application for amendment dated August 12, 1988 and the licensee's withdrawal dated January 17, 1989. These documents are available for public inspection at the Commission's Public Document Room, 2121 L Street NW., Washington, DC and at the Athens Public Library, South Street, Athens, Alabama.

Dated at Rockville, Maryland this 1st day of February 1989.

For the Nuclear Regulatory Commission.

Suzanne Black,

Assistant Director for Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-2979 Filed 2-7-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-483]

Union Electric Co., Callaway Nuclear Power Plant; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-30, issued to Union Electric Company, for operating of the Callaway Plant located in Callaway County, Missouri.

The amendment would change Technical Specification (TS) 4.9.8.1, 4.9.8.2, and the associated Bases to reduce the required Residual Heat Removal (RHR) system flow rate during Mode 6 operation; change TS 4.4.9.3.2, 4.5.2.d, and the associated Bases to delete the RHR autoclosure interlock function; and change TS 3.5.4 and the associated Bases to allow safety injection pumps to be energized with the head on and with water level not above the top of the reactor vessel flange, in Modes 5 and 6.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By March 10, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitoner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifiteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW., Washington, DC., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Indentification Number 3737 and the following message addressed to John N. Hannon: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely fillings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its intent to make a no significant hazards consideration finding in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated January 6, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the local public document room, Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Dated at Rockville, Maryland, this 31st day of January, 1989.

For the Nuclear Regulatory Commission.

Timothy G. Colburn,

Acting Director, Project Directorate III-3, Division of Reactor Projects-III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-2980 Filed 2-7-89; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-26505; File No. SR-DTC-89-3]

Self-Regulatory Organizations; Filing of Proposed Rule Change; The Depository Trust Co.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 30, 1989, The Depository Trust Company filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Depository Trust Company ("DTC") is filing herewith a proposed rule change relating to an International Institutional Delivery System. By order dated December 20, 1988, the Commission approved the proposed rule change on a pilot basis. DTC now seeks approval to open the program to all of its Participants and to other registered clearing agencies.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose for the proposed rule change is to provide information which is intended to increase efficiency in settling many institutional trades executed in foreign (non-U.S. or Canadian) securities. The proposed rule change would add an international capability to DTC's existing Institutional Delivery system that would permit users to accept foreign security trade confirmation data from broker-dealers, distribute ID confirmations to international investors and other interested parties, provide for trade affirmation, and transmit deliver/receive instructions to those concerned, including foreign sub-custodians. Trade settlement would not take place in DTC, but between foreign sub-custodians.

The proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to DTC since the proposed rule change will increase efficiency in settling many trades in foreign securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The propose rule change was developed at the request of Participants and securities industry organizations. An International ID steering committee composed of industry representatives developed solutions for the issues involved. DTC requested comments on the proposed rule change by memorandum dated August 26, 1988. One comment letter was received which endorsed the proposed rule change. The proposed rule change has been operating as a pilot program with limited participation for the past month. Based upon informal conversations with pilot Participants we understand that no operational difficulties have been encountered. *See* Securities Exchange Act Release Nos. 26374 (December 20, 1988), 53 FR 52283, and 26492 (January 26, 1989).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number SR–DTC–89–03 and should be submitted by March 1, 1989.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: January 31, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–2930 Filed 2–7–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–26515; File No. SR–NYSE–88–08]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 28, 1988, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed amendment to Rule 607 would allow the Exchange to decrease the number of arbitrators required in a matter exceeding $500,000 making such matters economically and administratively more efficient. The proposed amendment to Rule 601 would increase the monetary limit in a simplified arbitration to $10,000 and state the fee schedule applicable to this increased amount. Note that this increased limit does not change the filing fee appropriate for a matter. The proposed amendment to Rule 630 would allow the Exchange to increase from $25 to $100 the amount of a party's filing fee retained by the Exchange if a matter has been withdrawn or settled prior to the commencement of the first session. The increased fee retention would better distribute arbitration costs amongst its users.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purposes of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below of the most significant aspect of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The purpose of the proposed amendments to Rule 607, which would provide for no less than three arbitrators to hear a matter involving a public customer or non-member where the amount in controversy exceeds $500,000, is to further simplify and expedite the arbitration process in a manner which does not alter the quality of an Exchange arbitration and to keep arbitration costs down. Using three arbitrators instead of five will speed up the rescheduling of adjourned or continued arbitrations. It also saves honorarium and duplicative paperwork costs.[1]

The purpose of the proposed amendment to Rule 601, which would increase the monetary limit of the simplified arbitration form controversies not in excess of $5,000 to controversies not in excess of $10,000, is to enable more public customers to benefit from the use of the simplified arbitration procedure and to help keep arbitration costs down.

The purpose of the proposed amendment to Rule 630, which would increase the amount of money retained by the Exchange when a matter is settled or withdrawn from $25 to $100, is to better distribute the costs of arbitration among its users.

(b) The proposed changes are consistent with section 6(b)(5) of the Act in that they promote just and equitable principles of trade by insuring that members and member organizations and the public have an impartial forum for the resolution of their disputes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding (ii) as to which the self-regulatory

[1] In a letter to Commission staff, the NYSE stated that its proposal to change the number of arbitrators used for large cases from five to three is the result of the Exchange's difficulty in administering arbitration with five arbitrators because of scheduling difficulties. The Exchange also noted that arbitrators have not felt that a greater number of arbitrators contributes to a better administration of justice. The NYSE, however, stated that Rule 607, as amended, provides discretion to appoint more than three arbitrators for a case where appropriate, such as where special additional expertise is desirable. *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE to Sharon Lawson, Esq., Division of Market Regulation, Securities and Exchange Commission, dated January 18, 1989.

organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. The persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–88–08 and should be submitted by March 1, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February, 2, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–2987 Filed 2–7–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–16790; 812–7081]

J.P. Morgan Acceptance Corporation I; Application

February 2, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: J.P. Morgan Acceptance Corporation I.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from all provisions of the 1940 Act.

Summary of Application: Applicant seeks an order to exempt it and certain trusts that it may form ("Trusts") from all provisions of the 1940 Act to permit the issuance of collateralized mortgage obligations by the Applicant and the Trusts and sale of beneficial ownership in the Trusts and residual interest certificates.

Filing Date: The application was filed on July 26, 1988, and an amendment to the application was filed on February 1, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on February 27, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also sent it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. J.P. Morgan Acceptance Corporation I, 23 Wall Street, 21/15, New York, NY 10015.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel at (202) 272–3030.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a free from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. The Applicant is a wholly-owned, limited purpose subsidiary of J.P. Morgan Securities Holdings Inc., a Delaware corporation and a wholly-owned subsidiary of J.P. Morgan & Co. Incorporated, a bank holding company which is also a Delaware corporation. The Applicant, a Delaware corporation, was organized to facilitate the financing of mortgage loans through the issuance of one or more series (each, a "Series") of bonds ("Bonds") either directly or through the Trusts, as to which the Applicant will act as depositor, secured primarily by Mortgage Certificates (as defined below) and will perform certain related activities.

2. The Applicant seeks relief on behalf of itself and on behalf of J.P. Morgan Acceptance Trust I and other similar trusts (the "Issuers") permitting the Applicant and the Trusts to issue one or more Series of Bonds and invest in certain Mortgage Certificates which will be used to collateralize such Bonds, and permitting the Applicant to sell the Applicant's right to receive funds released by the Bond Trustee from the lien of the Indenture (each as defined below) either in the form of beneficial interests (the "Beneficial Interests") in the Trusts issuing Bonds or, to the extent that the Applicant issued the Bonds directly, in the form of residual interest certificates ("Residual Interest Certificates").

3. Each Trust will be established under a separate deposit trust agreement (the "Deposit Trust Agreement") between the Applicant and an independent trustee ("Owner Trustee") for the holders of the Beneficial Interest in such Trust. The Applicant will issue one or more Series of Bonds under the terms of an Indenture between the Applicant and the bond trustee (the "Bond Trustee"). Each Trust will issue one or more Series of Bonds under the terms of a separate Indenture for such Trust (each, an "Indenture") between the Owner Trustee and the Bond Trustee. Each Indenture will be qualified under the Trust Indenture Act of 1939 unless an appropriate exemption is available.

4. The Applicant or each Trust will issue and sell Bonds in Series secured primarily by Mortgage Certificates. The "Mortgage Certificates" collateralizing the Bonds will be limited to fully modified pass-through mortgage-backed certificates guaranteed by the Government National Mortgage Association ("GNMA Certificates"). Guaranteed Mortgage Pass-Through Securities issued by the Federal National Mortgage Association ("FNMA Certificates") and Mortgage Participation Certificates issued by the Federal Home Loan Mortgage Corporation ("FHLMC Certificates"). All or a portion of the Mortgage Certificates securing a Series of Bonds may be "Partial Pool" Mortgage Certificates. In addition to the Mortgage Certificates directly securing the Bonds, a Series may have additional collateral which may include certain collateral proceeds accounts and reserve funds, as specified in the related Indenture.

5. Each Series of Bonds will consist of one or more classes, including one or more classes of current interest Bonds, compound interest Bonds, zero coupon Bonds or floating interest rate Bonds, as described more fully in the application. Each Series of Bonds may also be secured by certain funds and accounts including collateral proceeds accounts, reserve funds, reinvestment agreements and by other funds and accounts described in the series supplement (any or all of the foregoing together with the Mortgage Certificates, the "Collateral").

6. The Mortgage Certificates securing each Series of Bonds, together with any reinvestment income thereon and any applicable funds, will be sufficient to pay all interest due on the Bonds and to retire each Class of Bonds by its stated maturity. The outstanding "collateral value" (calculated in accordance with the Indenture) at the time of issuance of the Bonds and following each payment date will be equal to or be greater than the outstanding principal balance of the Bonds. The Mortgage Certificates will be assigned to the Bond Trustee and will be subject to the lien of the related Indenture.

7. Neither the Applicant, the owners of the Beneficial Interests, the holders of the Residual Interest Certificates, the Owner Trustee, nor the Bond Trustee will be able to impair the security afforded by the Mortgage Certificates because, without the consent of each affected holder of the Bonds ("Bondholders"), neither the Applicant, the owners of the Beneficial Interests, the holders of the Residual Certificates, the Owner Trustee, nor the Bond Trustee will be able to: (a) Change the stated maturity on any Bond; (b) reduce the principal or rate of interest (or the manner of determining the rate of interest on floating interest rate bonds) on any Bond; (c) change the priority of payment on any class of any series of Bonds; (d) impair or adversely affect the Mortgage Certificates securing a Series of Bonds; (e) permit the creation of a lien ranking prior to or on parity with the lien of the related Indenture with respect to the Mortgage Certificates; or (f) otherwise deprive the Bondholders of the security afforded by the lien of the related Indenture.

8. The sale of the Beneficial Interests in a Trust or Residual Interest Certificates will not alter the payment of cash flows under any Indenture, including the amounts to be deposited in the collateral proceeds account or any reserve fund. Thus, the aggregate interest in the Collateral which is available to the owners of the Beneficial Interests in a Trust or Residual Interest Certificates always will be far less than payments to Bondholders. Further, except for the limited right to substitute Mortgage Certificates, subject to Condition A.(3) below, it will not be possible for the owners of Beneficial Interests or the Residual Interest Certificates to alter the Mortgage Certificates, and, in no event will the limited right of substitution result in a diminution in the value of the Collateral.

9. An election by an Issuer to treat the arrangement by which the collateral secures a Series of Bonds as a "real estate mortgage investment conduit" ("REMIC") under the Internal Revenue Code of 1986, as amended, will have no significant effect on the level of expenses that would be incurred by the Applicant or such Trust. Administration fees and expenses will be paid or provided for in a manner satisfactory to the nationally recognized statistical rating agency the Series and subject to Condition D below.

Applicant's Legal Conclusions

1. The relief requested is consistent with the purposes of the 1940 Act and appropriate in the public interest because neither the Applicant nor the Trusts it plans to form are the types of entities to which the provisions of the 1940 Act were intended to be applied, and the proposed activities will promote the public interest by facilitating the financing of mortgage loans, thereby increasing the secondary market for such loans and adding to the flow of mortgage capital ultimately available to home buyers. Under the circumstances described in the application, the interests of investors will be adequately protected.

Conditions

The Applicant agrees that the requested order may be expressly conditioned upon the following:

A. Conditions relating to the Collateral

(1) the Bonds of each Series wil be registerd under the Securities Act of 1933 (the "1933 Act") unless offered in the transaction excempt from registration either pursuant to section 4(2) of the 1933 Act or because such Series of Bonds will come to rest outside the United States, provided that the Bonds are offered and sold outside the United States or to non-United States persons in reliance upon an opinion of United States counsel that registration is not required. No single offering of Bonds both within and outside the United States will be made without registration of all such Bonds under the 1933 Act without first obtaining a no-action letter permitting such offering or otherwise complying with applicable standards then governing such offerings. In all such cases, the Issuer will adopt agreements and procedures reasonably designed to prevent such Bonds from being offered or sold in the United States or to United States persons (except as United States counsel may them advise is permissible). Disclosure provided to purchasers located outside the United States will be substantially the same as that provided to United States investors in United States offerings.

(2) The Bonds will be "mortgage related securities" within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934. The primary collateral directly securing the Bonds will be limited to GNMA, FNMA and FHLMC Certificates.

(3) If new Mortgage Certificates are substituted, the substitute Mortgage Certificates will: (i) Be of equal or better quality other than the Mortgage Certificates replaced; (ii) have similar payment terms and cash flows to the Mortgage Certificates replaced; (iii) be insured or guaranteed at least to the same extent as the Mortgage Certificates replaced; and (iv) meet the criteria set forth in conditions A. (2) and (4). New Mortgage Certificates may not be substituted for more than 40% of the aggregate face amount of the Mortgage Certificates initially pledged as collateral. In no event may any new Mortgage Certificates be substituted for any substitute Mortgage Certificates.

(4) Neither the Applicant, any Trust nor the owners of the Beneficial Interests or Residual Interest Certificates will sell the Mortgage Certificates securing the Bonds of a Series while such Bonds are outstanding without the written consent of 100% of the holders of the Bonds of such Series.

(5) All Mortgage Certificates, funds, accounts or other collateral securing a Series of Bonds will be held by the Bond Trustee or on behalf of the Bond Trustee by an independent custodian. Neither the Bond Trustee nor the custodian may be an affiliate (as the term "affiliate" is defined in Rule 405 under the 1933 Act, 17 CFR 230.405) of the Applicant or any Trust or any owner of a Beneficial Interest or Residual Interest Certificate. The Bond Trustee will retain a first priority perfected security or lien interest in and to all collateral securing such Bonds.

(6) Each Series of Bonds will be rated in one of the two highest bond rating categories by at least one nationally recognized statistical rating organization that is not affiliated with the Applicant or any Trust or any owner of a Beneficial Interest or Residual Interest Certificate. The Bonds will not be "redeemable securities" within the meaning of section 2(a)(32) of the 1940 Act.

(7) No less often than annually, an independent public accountant will audit the books and records of the Applicant and each Trust and will report on whether the anticipated payments of principal and interest on the Mortgage Certificates and other collateral continue to be adequate to pay the principal and interest on the Bonds in accordance with their terms. Upon completion, copies of the auditor's reports will be provided to the Bond Trustee.

B. Conditions Relating to Floating Interest Rate Bonds

(1) Each class of floating interest rate Bonds will have a set maximum interest rate (an interest rate cap) or a minimum interest rate or provide some other mechanism to insure that condition (2) below is satisfied.

(2) At the time of the assignment and pledge of the Mortgage Certificates to the Bond Trustee, as well as during the life of the Bonds, the scheduled payments of principal and interest to be received by the Bond Trustee on the Mortgage Certificates plus any reinvestment income thereon, and funds, if any, pledged to secure the Bonds (as described in the application) will be sufficient to make all payments of principal and interest on the Bonds then outstanding.[1] The Mortgage Certificates will be paid down as the mortgages underlying the Mortgage Certificates are repaid, but subject to the limited right to substitute collateral as set forth in Condition A. (3) above, will not be released from the lien of the Indenture prior to the payment of the Bonds.

C. Conditions Relating to the Sale of the Beneficial Interests and the Residual Interest Certificates

(1) Notwithstanding the sale of Beneficial Interests or Residual Interest Certificates, all of the outstanding capital stock of the Applicant will continue to be owned by J.P. Morgan Securities Holdings Inc. or an affiliate thereof. The Applicant will not issue any other capital stock, except to J.P. Morgan Securities Holdings Inc. or an affiliate thereof.

(2) A Beneficial Interest in a Trust or a Residual Interest Certificate will be offered and sold only to (i) institutions or (ii) not more than 15 noninstitutions which are "accredited investors" as defined in Rule 510(a) of the 1933 Act. Upon initial sale, there will not be more than 100 owners of the Beneficial Interests in any Trust or more than 100 owners of Residual Interest Certificates in any Series of Bonds. Institutional owners of Beneficial Interests or Residual Interest Certificates will be limited to mortgage lenders, thrift institutions, commercial and investment banks, savings and loan associations, pension funds, employee benefit plans, insurance companies, mutual funds (subject to certain limitations discussed in the application), real estate investment trusts, master limited partnerships or other similar institutional investors. Institutional investors will have such knowledge and experience in financial and business matters as to be able to evaluate the risks of purchasing Beneficial Interests and Residual Interest Certificates and understand the volatility of interest rate fluctuations as they affect the value of mortgates, mortgage-related securities and residual interests therein. Non-institutional accredited investors will be limited to not more than 15, be required to purchase at least $200,000 of such Beneficial Interests or Residual Interest Certificates and will have a net worth at the time of purchase that exceeds $1,000,000 (exclusive of their primary residence). Non-institutional accredited investors will have such knowledge and experience in financial and business matters, specifically in the field of mortgage-related securities, as to be able to evaluate the risk of purchasing a Beneficial Interest or Residual Interest Certificate and will have direct personal and significant experience in making investments in mortgage-related securities.

(3) Each sale of Beneficial Interests or Residual Interest Certificates will qualify as a transaction not involving any public offering within the meaning of section 4(2) the 1933 Act.

(4) The Deposit Trust Agreement or the Indenture, as applicable, will prohibit the transfer of any such Beneficial Interests or Residual Interest Certificates if there would be more than 100 holders of Beneficial Interests in a Trust or Residual Interest Certificates in a Series of Bonds as a result of such transfer.

(5) In connection with each sale of Beneficial Interests or Residual Interest Certificates each purchaser thereof will be required to represent that it is purchasing for investment and not for distribution and that it will hold such Beneficial Interests or Residual Interest Certificates in its own name and not as nominee for undisclosed investors.

(6) In connection with each sale of Beneficial Interests or Residual Interest Certificates, each purchaser thereof will be required to represent that (i) It is not affiliated with the Bond Trustee and (ii) if it is the holder of a controlling interest (as that term is defined in Rule 405 under the 1933 Act) in the related Trust that it is not affiliated with either the custodian which may hold the Collateral on behalf of the Trustee or the nationally recognized statistical rating agency rating the Bonds of the relevant Series.

(7) If the sale of Beneficial Interests results in the transfer of control (as the term "control" is defined in Rule 405 under the 1933 Act) of any Trust, the exemptive relief afforded by an order granted on the application would not apply to subsequent Bond offerings by such Trust.

D. Condition Relating to REMICs

The election by the Applicant or a Trust to treat the arrangement by which the collateral secures a Series of Bonds as a REMIC will have no significant effect on the level of the expenses that would be incurred by the REMIC. In the event of such a REMIC election, the Applicant or the Trust, as appropriate, will provide for the payments of administrative fees and expenses as set forth in the application, and will ensure that the anticipated level of fees and expenses will be adequately provided for regardless of the method selected.

For the commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-2988 Filed 2-7-89; 8:45 am]

BILLING CODE 8010-01-M

[1] In the case of a Series of Bonds that contain a class or classes of floating interest rate Bonds, the application describes a number of mechanisms that exist to ensure that this condition will be valid notwithstanding subsequent potential increases in the interest rate applicable to the floating interest rate Bonds. It is expected that other mechanisms may be identified in the future. The Applicant will give the staff notice by letter of any such additional mechanisms before they are utilized, in order to give the staff an opportunity to raise any questions as to the appropriateness of their use.

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 6665; Amdt. 2]

Wyoming; Declaration of Disaster Loan Area

The above-numbered Declaration (53 FR 40819), as amended (54 FR 3883), is hereby amended to include Converse County, and the contiguous counties of Albany, Campbell, Johnson, and Platte, in the State of Wyoming, as a result of damages from forest fires which started on July 5, 1988. All other information remains the same; i.e., the termination date for filing applications for economic injury assistance is the close of business on July 6, 1989. Any contiguous counties not included in this amendment are already covered under a previous declaration.

(Catalog of Federal Domestic Assistance Program No. 59002.)

BEST COPY AVAILABLE

Date: January 26, 1989.
James Abdnor,
Administrator.
[FR Doc. 89-3023 Filed 2-7-89; 8:45 am]
BILLING CODE 8025-01-M

Equis Investment; License Surrender

[License No. 09/09-0353]

Notice is hereby given that Equis Investment, Three Embarcadero Center, San Francisco, California 94111, has surrendered its license to operate as a small business investment company under section 301(c) of the Small Business Investment Act of 1958, as amended (the Act). Equis Investment was licensed by the Small Business Administration on February 12, 1985.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender of the license was accepted on January 17, 1989, and accordingly, all rights, privileges, and franchies derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies).

Robert G. Lineberry,
Deputy Associate Administrator for Investment.

Dated: January 27, 1989.
[FR Doc. 89-3012 Filed 2-7-89; 8:45 am]
BILLING CODE 8025-01-M

[License No. 05/05-0208]

Hidden Oaks Financial Services, Inc.; License Surrender

Notice is hereby given that Hidden Oaks Financial Services, Inc., 4620 W. 77th Street, Edina, MN 55435 (Hidden Oaks) has surrendered its license to operate as a small business investment company under section 301(c) of Small Business Investment Act of 1958, as amended (the Act). Hidden Oaks was licensed by the Small Business Administration on May 11, 1988.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender of the license was accepted on January 20, 1989, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: January 27, 1989.
Robert G. Lineberry,
Deputy Associate Administrator for Investment.
[FR Doc. 89-3013 Filed 2-7-89; 8:45 am]
BILLING CODE 8025-01-M

[License No. 05/05-0200]

Itasca Growth Fund, Inc.; License Surrender

Notice is hereby given that Itasca Growth Fund, Inc., 501 NW. Second Avenue, Grand Rapids, Minnesota 55744, has surrendered its license to operate as a small business investment company under section 301(c) of the Small Business Investment Act of 1958, as amended (the Act). Itasca Growth Fund, Inc. was licensed by the Small Business Administration on May 16, 1985.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender of the license was accepted on January 9, 1989, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: January 27, 1989.
Robert G. Lineberry,
Deputy Associate Administrator for Investment.
[FR Doc. 89-3014 Filed 2-7-89; 8:45 am]
BILLING CODE 8025-01-M

[Apple No.: 02/02-0515]

CMNY Capital II, L. P.; Application for a Small Business Investment Company License

An application for a license to operate a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended (the Act) (15 U.S.C. 661, *et seq.*) has been filed by CMNY Capital II, L. P., 77 Water Street, New York, New York 10005 (Applicant), with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1988).

The management and ownership of the Applicant, a limited partnership, are as follows:

Name	Type of partner	Percent of partnership Capital
Robert G. Davidoff, 40 Stoner Ave., Great Neck, NY 11021.	General, Limited, Class B Limited.	44.0
Howard M. Davidoff, 16 West 16th Street, New York, NY 10011.	General, Limited	1.5
Mark L. Claster, 1 Hummingbird Drive, Roslyn, NY 11516.	General, Limited	1.0
Andrew M. Boas, 15 East 91st Street, New York, NY 10128.	General, Limited	01.0
Robert S. Boas, 25 Harbour Road, Great Neck, NY 11024.	Limited, Class B Limited.	22.0
Edwin S. Marks, 15 Eagle Point Drive, Kings Point, NY 11024.	Limited, Class B Limited.	22.0

There are seven additional limited partners who own an aggregate 6.5 percent of the partnership capital.

The Applicant, a Delaware limited partnership, will begin operations with $4,000,000 in partnership capital. The Applicant will conduct its activities principally within the State of New York.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the company under their management, including adequate profitability and financial soundness in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street NW., Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in New York, New York.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: February 2, 1989.

Robert G. Lineberry,
Deputy Associate Administrator for Investment.

[FR Doc. 89-3015 Filed 2-7-89; 8:45 am]
BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review; Barnstable Municipal Airport (Hyannis), Barnstable, MA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure map submitted by the town of Barnstable, Massachusetts, for Barnstable Municipal Airport (Hyannis) under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150 is in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Barnstable Municipal Airport under Part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before July 29, 1989.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure map and of the start of its review of the associated noise compatibility program is January 30, 1989. The public comment period ends on March 31, 1989.

FOR FURTHER INFORMATION CONTACT: John Silva, Federal Aviation Administration, New England Region, Airports Division, ANE-600, 12 New England Executive Park, Burlington, Massachusetts 01803.

Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure map submitted for Barnstable Municipal Airport is in compliance with applicable requirements of Part 150, effective January 30, 1989. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before July 29, 1989. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA a noise exposure map which meets applicable regulations and which depicts noncompatible land uses as of the date of submission of such map, a description of projected aircraft operations, and the ways in which such operations will affect such map. The Act requires such map to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted a noise exposure map that is found by FAA to be in compliance with the requirements of Federal Aviation Regulation (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken, or proposes, for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The town of Barnstable submitted to the FAA on December 31, 1987, a noise exposure map, descriptions, and other documentation which were produced during the Airport Nosie Compatibility Planning (Part 150) Study at Barnstable Municipal Airport from November 1985 to August 1988. It was requested that the FAA review this material as the noise exposure map, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure map and related descriptions submitted by the town of Barnstable. The specific maps under consideration are Figures 8.03 and 8.04, along with the supporting documentation in Volume I: Noise Exposure Map of the Part 150 Study. The FAA has determined that the map for Barnstable Municipal Airport is in compliance with applicable requirements. This determination is effective on January 30, 1989. FAA's determination on an airport operator's noise exposure map is limited to a finding that the map was developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure map to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of a noise exposure map. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted the map, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 or FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Barnstable Municipal Airport, also effective on January 30, 1989. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before July 29, 1989.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure map, the FAA's evaluation of the map, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591.

Federal Aviation Administration, New England Region, Airports Division,

ANE-600, 12 New England Executive Park, Burlington, MA 01803.
Airport Manager's Office, Barnstable Municipal Airport, Hyannis, MA 02601.

Questions may be directed to the individual named above under the heading: **FOR FURTHER INFORMATION CONTACT.**

Issued in Burlington, Massachusetts, on January 30, 1989.

Vincent A. Scarano,

Manager, Airports Division, New England Region.

[FR Doc. 89-2952 Filed 2-7-89; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Kenosha County, WI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Kenosha County, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Ms. Jacki Lawton, Environmental Coordinator, Federal Highway Administration 4502 Vernon Boulevard, Madison, Wisconsin 53705-4905. Telephone (608) 264-5967.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Wisconsin Department of Transportation will prepare an environmental impact statement (EIS) on a proposal to improve State Trunk Highway (STH) 31 between the Wisconsin/Illinois State Line and STH 50, a distance of about 5 miles, southwest of the City of Kenosha, Wisconsin.

The proposed action is considered necessary to provide for future projected traffic demand. Alternatives under consideration include: (1) Taking no action; (2) widening the existing two-lane highway to a multi-lane highway; (3) constructing a multi-lane highway on new location. Incorporated into and studied with the various build alternatives will be design variations of grade and alinement. Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies. A series of public meetings will be held in Kenosha County during 1989. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing. No formal scoping meeting is planned at this time. To ensure that a full range of issues related to this proposed action are addressed, and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: January 30, 1989.

Frank M. Mayer,

Division Administrator, Madison, Wisconsin.

[FR Doc. 89-2962 Filed 2-7-89; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement, Multnomah County, OR

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project called the Mt. Hood Parkway in Multnomah County.

FOR FURTHER INFORMATION CONTACT: Elton Chang, Environmental Coordinator and Safety Programs Engineer, Federal Highway Administration, Equitable Center, Suite 100, 530 Center NE, Salem, Oregon 97301 Telephone: (503) 399-5749.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Oregon Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to construct a roadway between the Columbia River Highway (Interstate 84) and the Mt. Hood Highway (US 26) in Multonamah County, Oregon. The proposed name for this controlled access connection is the Mt. Hood Parkway. This project is located in portions of the City of Wood Village, the City of Troutdale, and the City of Gresham as well as in unincorporated areas of Multnomah County. The proposed roadway will provide a good principal north-south route that will tie into the county arterial system. The proposed improvement is considered necessary to provide for the existing and projected traffic demand and a safe and efficient highway meeting modern design standards.

Alternatives under consideration include corridors that are within the urban area and that are in the surrounding rural area. The alternative of taking no action will also be considered.

Information describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies. Public meetings will be held during project development, and a public hearing will be held. No formal scoping meeting is planned at this time.

Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Issued on: January 27, 1989.

Elton H. Chang,

Environment Coordinator/Safety Program Engineer, Oregon Division, Salem, Oregon.

[FR Doc. 89-2963 Filed 2-7-89; 8:45 am]

BILLING CODE 4910-22-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 25
Wednesday, February 8, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 9:00 a.m. February 21, 1989.

PLACE: 5th Floor, Conference Room, 805 Fifteenth Street, NW., Washington, DC

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of minutes of last meeting.
2. Thrift Savings Plan activities report by Executive Director.
3. Review of investment policy.

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, or Catherine Ball, Deputy Director, Office of External Affairs (202) 523-5660.

Date: February 6, 1989.

Francis X. Cavanaugh,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 89-3057 Filed 2-6-89; 11:34 am]

BILLING CODE 6760-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m. Tuesday, February 14, 1989.

PLACE: The Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: The first three items are open to the public. The last item is closed under Exemption 10 of the Government in Sunshine Act.

MATTERS TO BE CONSIDERED:

1. Railroad Accident Report: Head-On Collision of Conrail Freight Trains UBT-506 and TV-61, Thompsontown, Pennsylvania, January 14, 1988.
2. Recommendation to FAA: Review of Airline Sick Leave Policies.
3. Aviation Accident Data Review: General Aviation Accidents Involving Visual Flight Rules Flight into Instrument Meteorological Conditions.
4. Opinion and Order: Administrator v. Friday, Docket SE-6113; disposition of cross appeals.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382-6525.

Bea Hardesty,

Federal Register Liaison Officer.

February 3, 1989.

[FR Doc. 89-3005 Filed 2-3-89; 4:54 pm]

BILLING CODE 7533-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of February 13, 1989.

A closed meeting will be held on Tuesday, February 14, 1989, at 2:30 p.m. Open meeting will be held on Wednesday, February 15, 1989, at 10:00 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Fleischman, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, February 14, 1989, at 2:30 p.m., will be:

Institution of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Settlement of administrative proceedings of an enforcement nature.
Formal orders of investigation.
Settlement of injunctive actions.

The subject matter of the open meeting scheduled for Wednesday, February 15, 1989, at 10:00 a.m., will be:

1. The Commission will consider whether to propose for public comment certain amendments to the Commission's rules and forms to reflect recent changes in generally accepted accounting principles established under newly adopted Statements of Financial Accounting Standards. The Commission will also consider whether to approve certain changes to the Codification of Financial Reporting Policies to conform with the newly adopted standards. For further information, please contact John W. Albert or Teresa Iannaconi at (202) 272-2130 or Robert Bayless at (202) 272-2553.

2. Consideration of whether to propose for public comment Rule 32a-3 under the Investment Company Act of 1940. Rule 32a-3 would provide certain management investment companies with an expanded time period in which to select the independent public accountant. For further information, please contact C. Christopher Sprague at (202) 272-7779.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Kevin Fogarty at (202) 272-2300.

Jonathan G. Katz,

Secretary.

February 3, 1989.

[FR Doc. 89-3106 Filed 2-6-89; 3:50 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 54, No. 25
Wednesday, February 8, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Commodity Credit Corporation

7 CFR Part 1413

Farm Marketing Quotas, Acreage Allotments, and Production Adjustment; Feed Grain, Rice, Upland and Extra Long Staple Cotton, Wheat, and Related Programs

Correction

In rule document 89-1324 beginning on page 2991 in the issue of Monday, January 23, 1989, make the following correction:

On page 2993, in the second column, in amendatory instruction 2, in the first line, "using" should read "revising".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 520, 522, 524, 546, and 555

Animal Drugs, Feeds, and Related Products; Change of Sponsor

Correction

In the issue of Friday, December 9, 1988, on page 49823, in a correction to rule document 88-23997, beginning in the second column, the second paragraph of the text that appeared was inaccurate and should read as follows:

On page 40720, in the third page-column, under **SUPPLEMENTARY INFORMATION**, in the table, in the second table-column, in the sixth entry, "Diethylcarbamazine" was misspelled; and in the seventh entry, after "SDM", the entry should read "10% Injection (Sulfadimethoxine)"

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88M- 0323]

Innovative Optics, Inc.; Premarket Approval of I.O.-18 (Kolfocon A) and I.O.-32 (Kolfocon B) Rigid Gas Permeable Contact Lenses (Clear and Tinted)

Correction

In notice document 88-24625 beginning on page 43044 in the issue of Tuesday, October 25, 1988, make the following corrections:

1. On page 43044, in the third column, under **DATE**, in the first line, "administrative" was misspelled.

2. On page 43045, in the third column, in the second line, "the" should read "each".

3. On the same page, in the same column, in the first complete paragraph, in the eighth line, "Devices" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 87A-0088, 88A-0120, and 88A-0213]

Request for Exemption From Federal Preemption of State and Local Medical Device Requirements; Hearing Aid Devices; States of Connecticut, Vermont, and Missouri Statutes; Availability

Correction

In notice document 88-29088 beginning on page 52780 in the issue of Thursday, December 29, 1988, make the following correction:

On page 52780, in the third column, in the agency docket line, the docket numbers should appear as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88F-0333]

Sandoz AG; Filing of Food Additive Petition

Correction

In the issue of Friday, December 9, 1988,on page 49824, in the first column, in the correction to notice document 88-24624, designated paragraph 2 was incomplete and should have read as follows:

2. In the 3rd column, under **SUPPLEMENTARY INFORMATION**, in the 3rd line, "see." should read "sec."; in the 6th line, "CH-442" should read "CH-4402"; and in the 12th line, "methylpentene" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6706

[AK-932-09-4214-10; F-14988]

Withdrawal of Public Land for the Air Force Indian Mountain Research Site; Alaska

Correction

In rule document 89-531 appearing on page 979 in the issue of Wednesday, January 11, 1989, make the following correction:

In the second column, under T. 7 N., R. 24 E., in the second line, insert "NE¼SW¼SW¼" after the first "SW¼,"

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88-AGL-28]

Proposed Control Zone Alterations—Ann Arbor, MI, and Detroit Willow Run Airport, MI

Correction

In proposed rule document 89-1301 beginning on page 3076 in the issue of Monday, January 23, 1989, make the following correction:

On page 3077, in the first column, under **PART 71—[AMENDED]**, in the authority citation, in the first line, "49 U.S.C. 1345(a)" should read "49 U.S.C. 1348(a)".

BILLING CODE 1505-01-D

federal register

Wednesday
February 8, 1989

Part II

The President

Bolivian Coca Cultivation; Memorandum

Department of State

Bolivian Coca Cultivation; Certification

Federal Register
Vol. 54, No. 25
Wednesday, February 8, 1989

Presidential Documents

Title 3—

The President

Memorandum of December 22, 1988

Delegation of Certification Responsibility

Memorandum for the Honorable George P. Shultz, the Secretary of State

By virtue of the authority vested in me as President by the Constitution and the statutes of the United States of America, including Section 621 of the Foreign Assistance Act of 1961, as amended, and Section 301 of Title 3 of the United States Code, I hereby delegate to the Secretary of State the responsibility for making the certification required by Section 4302(a) of the Anti-Drug Abuse Act of 1988 (P.L. 100–690).

You are authorized and directed to publish this memorandum in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
Washington, December 22, 1988.

[FR Doc. 89–2956
Filed 2–7–89; 8:45 am]
Billing code 3195–01–M

Presidential Documents

Department of State

[Public Notice 1094]

Bolivian Coca Cultivation; Certification

Certification on Bolivia

Pursuant to section 4302(a) of the Anti-Drug Abuse Act of 1988 (Pub. L. 100–690), and in accordance with the delegation of responsibility from the President dated December 22, 1988, I hereby certify that the Government of Bolivia is implementing legislation that (1) establishes its legal coca requirements, (2) provides for the licensing of the number of hectares necessary to produce the legal requirement, (3) makes unlicensed coca production illegal, and (4) makes possession and distribution of coca leaf illegal (other than possession and distribution for licit purposes).

This certification shall be reported to the Congress immediately.

This certification shall be published in the **Federal Register.**

Date: January 6, 1989.

John C. Whitehead,

Acting Secretary.

Justification for Certification on Bolivia

Section 4302(a) of the Anti-Drug Abuse Act of 1988 (Pub. L. 100–690) states that FY 1989 security assistance may be provided for Bolivia only if the President certifies to the Congress that the Government of Bolivia is implementing legislation that: (1) establishes its legal coca requirements, (2) provides for the licensing of the number of hectares necessary to produce the legal requirement, (3) makes unlicensed coca production illegal, and (4) makes possession and distribution of coca leaf illegal (other than possession and distribution for licit purposes).

The Government of Bolivia has in fact adopted and is implementing legislation that meets the criteria of section 4302(a). Its new coca law (Law 1008, published July 22, 1988), and implementing regulations signed by the President on December 29, 1988 in Executive Decree 22099, contain a number of provisions to control excess coca production:

—Legal coca requirements are established at 12,000 hectares by Article 29 of the new law. Articles 8 through 11, and the implementing regulations, make cultivation in most of the country illegal, limiting traditional and transitional cultivation zones to a few provinces of La Paz and Cochabamba Departments.

—Article 17 of the law requires the Government to register all coca growers in the traditional and transitional zones and record their holdings to establish the quantity under production. Article 5 of the regulations stipulates that the coca reduction agency (DIRECO) bears this responsibility. Growers will have up to a year to be measured and recorded, after which they will be subject to involuntary eradication without compensation.

—Under Articles 7, 11, 12, 31, and 71, all coca grown in illegal zones, seedbeds, coca associated with processing facilities or that grown under contract is illegal.

—Article 7 states that all coca leaf destined for processing (coca paste, base, etc.) is illegal. The law and implementing regulations establish licensing requirements for wholesale buyers and limit legal markets to those locations established by "coca legal" of the Ministry of Interior. Coca leaf not destined for established markets is subject to seizure and incineration.

[FR Doc. 89-3065
Filed 2-7-89; 8:45 am]
Billing code 4710-09-M

federal register

Wednesday
February 8, 1989

Part III

Environmental Protection Agency

Final Decision Not To Initiate a Special Review and Decision and Order of Cancellation on Chlordimeform; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30000/52A; FRL-3515-7]

Chlordimeform; Final Decision Not To Initiate a Special Review and Decision and Order of Cancellation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; final decision not to initiate a special review and decision and order of cancellation.

SUMMARY: On September 19, 1988, the Agency proposed not to initiate a Special Review of chlordimeform (53 FR 36422) because chlordimeform registrations had been amended, at the registrants' request, to terminate on February 19, 1989. The September 19 notice also proposed not to allow sale, distribution, and use of chlordimeform after February 19, 1989. In response to the notice, EPA received numerous comments from users, state officials, and researchers to allow use of remaining stocks in 1989. After conducting a risk/benefit analysis of the use of existing stocks for one more season, EPA has decided to allow use of existing stocks of chlordimeform in the possession of end users until October 1, 1989. Sale and distribution of existing stocks now in the possession of registrants, retailers, and distributors will not be permitted after February 19, 1989; registrants are required to recall those stocks in the hands of distributors and retailers.

FOR FURTHER INFORMATION CONTACT:

By mail: Paul Parsons, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M. St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 1006, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-0064).

SUPPLEMENTARY INFORMATION: This Notice has six units. Unit I is the Introduction. Unit II summarizes the Agency's risk concerns about chlordimeform. Unit III discusses the comments received in response to the proposed notice not to initiate a Special Review of chlordimeform. Unit IV sets forth the Agency's final decision not to initiate the Special Review of chlordimeform and the Agency's risk/benefit analysis of allowing the use of existing stocks of chlordimeform in 1989. Unit V describes the comment opportunities and announces the availability of the public docket. Unit VI sets forth the Order of Cancellation.

I. Introduction

A. Description of Chlordimeform

Chlordimeform is the common name for N'-(4-Chloro-o-tolyl)-N, N-dimethylformamidine. Chlordimeform hydrochloride is the common name for N'-(4-Chloro-o-tolyl)-N,N-dimethylformamidine hydrochloride. The two most common trade names are Galecron® (Ciba-Geigy Corporation) and Fundal® (Nor-Am Chemical Company). Both Ciba-Geigy and Nor-Am are registrants of technical chlordimeform and chlordimeform hydrochloride. Chlordimeform, an insecticide, is used on cotton to control *Heliothis spp.*

B. Legal Background

A pesticide product may be sold or distributed in the United States only if it is registered or exempt from registration under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136 *et seq.*). Before a product can be registered it must be shown that it can be used without "unreasonable adverse effects on the environment." (FIFRA section 3(c)(5)). The term "unreasonable adverse effects on the environment" is defined in FIFRA section 2(bb) as "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefit of the use of any pesticide." The burden of proving that a pesticide meets this standard for registration is, at all times, on the proponent of initial or continued registration. If at any time the Agency determines that a pesticide no longer meets this standard, the Administrator may cancel this registration under section 6 of FIFRA.

The Special Review process provides a mechanism to permit public participation in EPA's deliberations prior to issuance of any Notice of Final Determination describing the regulatory action which the Administrator has selected. The Special Review process, which was previously called the Rebuttable Presumption Against Registration (RPAR) process, is described in 40 CFR Part 154, published in the Federal Register of November 27, 1985 (50 FR 49015).

The Special Review process is commenced by the issuance of a preliminary notification to registrants and applicants for registration pursuant to 40 CFR 154.21 that the Agency is considering commencing a Special Review. If the Agency determines, after issuance of a notification pursuant to 40 CFR 154.21, that it will not conduct a Special Review, it is required under 40 CFR 154.23 to issue a proposed decision to be published in the Federal Register. That regulation requires that a period of not less than 30 days be provided for public comment on the proposed decision not to conduct a Special Review. Subsequent to receipt and evaluation of comments on the proposed decision not to conduct a Special Review, the Administrator is required by 40 CFR 154.25 to publish in the Federal Register his final decision regarding whether or not a Special Review will be conducted.

C. Regulatory History

Chlordimeform was first registered in 1968 for use on apples. Between 1968 and 1976 use on several more crops was authorized, including cotton. In 1976 the registrants voluntarily withdrew chlordimeform from the market based on results of a chronic mouse study showing that chlordimeform caused malignant turmors.

Chlordimeform was reintroduced to the market in 1978 with only the cotton use on the label. At that time, extensive protective clothing measures were required as well as requirements for mixing and loading in closed systems, reduced application rates, restricted use classification, and training for workers. Registrants were also required to implement a worker urine monitoring program. Following the reintroduction of chlordimeform, the Agency received additional positive mouse cancer studies on chlordimeform and its metabolites.

On September 15, 1985, the Agency issued a preliminary notification to the registrants of chlordimeform, pursuant to 40 CFR 154.21, based on evidence that chlordimeform caused tumors in laboratory animals. On January 15, 1986, a draft Registration Standard for chlordimeform was issued for public comment. This document notified the public that the Agency would initiate a Special Review and invited comments from registrants and other interested parties. Public comment on the draft Registration Standard was initiated because there was a substantially complete chronic health and teratology data base for chlordimeform (40 CFR 155.34). The Agency decided not to issue a Federal Register notice merely announcing initiation of a Special Review but to proceed directly to a combined Notice of Initiation of Special Review and Preliminary Determination. A Notice of Preliminary Determination sets forth both the risks and the benefits of the chemcial, analyzes the risks and benefits, discusses regulatory options for reducing risk, and proposes a regulatory action. The Agency was preparing a combined Notice of Initiation of Special Review and Preliminary Determination when, prior to formal initiation of a Special Review, on February 19, 1988, Ciba-Geigy and Nor-Am, the only registrants of chlordimeform, requested voluntary cancellation of all products containing chlordimeform, effective February 19, 1989. Both companies announced their intent to discontinue sale and distribution after the 1988 cotton-growing season, about October 1, 1988; they indicated that they expected existing stocks, about the same amount as they sold in 1987, to be used up in the 1988 growing season. Both companies also stated that they would recall any unused stocks down to the user level, and would dispose of these recalled stocks. Both companies requested immediate withdrawal of all tolerances except for cotton; they requested the withdrawal of the cotton related tolerances effective December 31, 1990. The Agency has approved amendments submitted by both companies which place a termination date of February 19, 1989 on their chlordimeform registrations.

The Agency has also discussed with the National Institute of Occupational Safety and Health (NIOSH) and various State health agencies, a possible program to contact agricultural and factory workers exposed to significant levels of chlordimeform in the past. The purpose of such notification would be to inform workers of their increased risk of bladder cancer, and to encourage them to seek medical attention, such as cancer screening tests, which would allow early detection and treatment. No decision has been made yet to pursue a notification program.

This Notice announces that, for the reasons explained in the September 19, 1988, Federal Register Notice (53 FR 36422) and summarized in Unit IV of this Notice, the Agency will not initiate the Special Review based on the companies' voluntary cancellations. The Agency has cancelled Ciba-Geigy's and Nor-Am's chlordimeform registrations, effective February 19, 1989. The September 19, 1988, proposed notice contained a prohibition against the sale, distribution, and use of existing stocks after February 19, 1989. This notice announces EPA's decision to prohibit sale and distribution after February 19, 1989, but to allow the use of existing stocks in the possession of end users, until October 1, 1989, based on comments and information received from users, state officials, and researchers, which the Agency used in a risk/benefit analysis of the short term use of chlordimeform until October 1, 1989. The reasons for granting this provision are also discussed in Unit IV.

II. Risk Concerns

A. Oncogenic Risks

A private notification, issued pursuant to 40 CFR 154.21, which began the pre-Special Review process, was sent to chlordimeform registrants because of Agency concerns that chlordimeform exceeded the risk criterion for oncogenicity now specified in 40 CFR 154.7(a)(2). This concern was specifically based on four mouse oncogenicity studies which demonstrate significant dose-related increases in tumor rates in male and female mice. These studies are discussed at length in the draft Chlordimeform Registration Standard, which can be obtained from the address given above for "FURTHER INFORMATION."

After the private notification to registrants, the Agency received preliminary findings from a retrospective mortality study of German production workers which suggests 4-chlor-o-toluidine (5-CAT), a metabolite of chlordimeform which has been detected in the urine of exposed agricultural workers, may induce bladder cancer in humans. The metabolite 5-CAT belongs to a class of organic chemicals, the substituted anilines, many members of which have been identified as carcinogenic.

Based on animal data, EPA had previously concluded that there is sufficient experimental evidence to classify chlordimeform as a B_2 or probable human carcinogen, pursuant to Agency carcinogen assessment guidelines. The human data from the epidemiological study of workers support the classification of chlordimeform as a probable human carcinogen.

B. Exposure

Exposure estimates for chlordimeform were developed using data from Ciba Geigy/Nor-am urine monitoring studies and the Agency's surrogate data base. The estimated values for absorbed dose varied by little more than an order of magnitude. The variations in values are not viewed as significant and in fact represent a reasonable agreement between the dermal surrogate data and urine data and support the level of confidence in the exposure determinations. A detailed exposure analysis is contained in the public docket and was summarized in the September 19 notice.

C. Applicator Risk

The Agency concluded that the most appropriate potency value for the parent compound with regard to mixer/loader/applicator risk is 0.94 $(mg/kg/day)^{-1}$. This value was chosen because it represents the geometric mean of cancer potency for malignant hemangioendotheliomas observed in the mouse oncogenicity studies.

After considering the data related to exposure and oncogenicity, the Agency developed risk estimates for agricultural workers. The following Table 1 summarizes the risk estimates for workers, mixer/loaders, and scouts:

TABLE 1—LIFETIME CANCER RISKS FOR APPLICATORS EXPOSED TO CHLORDIMEFORM

	EPA surrogate data	Urine data, agency corrections
Mixers/loaders	10^{-3}	10^{-3}
Pilots	10^{-4}	
Flaggers	10^{-4}	
Scouts	10^{-4}	

The exposure value used in the risk calculation for mixer/loaders (0.023 mg/kg/ working day) was the absorbed dose value calculated by the Agency based on adjustments to the urine data base. Risk estimates for mixer/loaders based on the Ciba-Geigy/Nor-Am urine data are 10^{-3}, and are consistent with those risk estimates based on the Agency's surrogate dermal data base. The risk estimates are for the upper 95 percent confidence level. For the purposes of conducting risk assessments, the Agency traditionally assumes a life expectancy of 70 years. In addition, the Agency traditionally assumes agricultural workers have a 35-year working lifetime.

III. Comments on Proposed Notice Not To Initiate Special Review

Virtually all comments received concerned the Agency's proposal to prohibit the use of existing stocks of chlordimeform after the date of cancellation, February 19, 1989. The Agency's response to these comments appears in the following Unit III.A. In making the proposal, the Agency assumed that all stocks of chlordimeform would be used up in 1988, and so there would be no stocks remaining in 1989; in addition, the registrants had agreed to recall any unused stocks down to the end user level. However, drought and low pest pressure in 1988 combined to reduce the usage of chlordimeform to about 75 to 90 percent of usage in more typical years. Based on limited surveys and estimates by State agricultural officials and the registrants, the Agency believes that

there are significant stocks of chlordimeform (thought to be within a range of 10 to 25 percent of a normal year's supply; that is, 100,000 to 250,000 pounds) remaining in the hands of end users. Therefore, in light of the larger than expected stocks of chlordimeform in the hands of end users and in light of the comments of State pesticide officials and user groups, the Agency has conducted a risk/benefit analysis of allowing the use of existing stocks of chlordimeform in 1989. This risk/benefit analysis appears in the following Unit III.B.

A. Agency's Response to Comments

Comments were received from the following organizations and state regulatory agencies:

Arizona Agricultural Chemical Association (1)
Arizona Commission of Agriculture and Horticulture (2)
Arizona Cotton Growers Association (3)
Arizona Farm Bureau Federation (4)
Agricultural Council of Arkansas (5)
Arkansas State Plant Board (6)
Association of America Pesticide Control Officials (7)
Georgia Agricultural Chemical Association (8)
Georgia Cooperative Extension Service (9)
Georgia Department of Agriculture (10)
Helena Chemical Corporation (11)
Louisiana Agricultural Aviation Association (12)
Louisiana Cooperative Extension Service (13)
Louisiana Farm Bureau Federation (14)
Mississippi Cooperative Extension Service (15)
Mississippi Department of Agriculture and Commerce (16)
National Agricultural Aviation Association (17)
National Cotton Council (18)
North Carolina Farm Bureau Federation (19)
Sundance Farms (20)
Trans-Pecos Cotton Association (21).

In addition, numerous comments were received from individual cotton growers and pesticide applicators. These latter comments are substantially the same as those comments made by state regulatory officials, and are answered in the responses to the state regulatory officials.

1. *Comment:* One commenter (3) states that the Agency does not have legal authority to prohibit use of a voluntarily canceled pesticide, and that the Agency's proposal to not allow use of existing stocks is not consistent with an earlier proposal to allow use with restrictions.

Agency's Response: In determining the status of stocks of pesticides voluntarily canceled pursuant to section 6(f), the Administrator may or may not permit the sale and use of existing stocks. The Agency is not prevented from changing its position on use of existing stocks, where such can be justified under FIFRA, especially when new conditions become relevant.

2. *Comment:* Several commenters (6, 7, 8, 9, 14, and 17) stated that it would be difficult to locate any remaining stocks of chlordimeform, especially if these stocks are in the hands of end users.

Agency's Response: The Agency does not agree that it will be particularly difficult to locate existing stocks of chlordimeform. Both registrants have already contacted their dealer/distributor networks about the recall of chlordimeform, and have agreed to publicize the recall in appropriate newspapers and agricultural journals in order to reach end users. In addition, the Agency notes that chlordimeform is a restricted use pesticide, and that therefore records of chlordimeform sales have been required to be kept.

3. *Comment:* Several commenters (1, 2, 3, 5, 6, 7, 10, 12, 13, 15, 17, 19, and 21) stated that there is no means by which to dispose of chlordimeform, or that use of existing stocks of chlordimeform would pose less risk than transportation and disposal, or that allowing use of chlordimeform would allow it to remain in the hands of people trained in proper safety procedures.

Agency's Response: The Agency agrees that disposal of existing stocks of chlordimeform is a serious matter; however, the Agency does not agree that there is no method available to dispose of chlordimeform. It is possible to incinerate chlordimeform, and it is this method of disposal that registrants have agreed to use, not burial in landfills. The Agency also does not believe that allowing personnel employed by the registrants to ship and handle chlordimeform in order to dispose of it is intrinsically riskier than allowing it to be used up; through many years of registered use, personnel trained in proper safety procedures have shipped and handled chlordimeform in quantities larger than those expected to be involved in the recall. Appropriate protective clothing and other safety measures can be employed to mitigate risks.

4. *Comment:* One commenter (11) states that there are no funds set aside to indemnify users who have remaining stocks of chlordimeform.

Agency's Response: Section 15 indemnification provisions are not involved in this situation. A voluntary cancellation occurred here. There was no imminent hazard suspension as is required as one of the prerequisites for section 15 to be triggered.

5. *Comment:* Some commenters (4, 5, 10, 15, and 16) expressed concern that stocks of chlordimeform remaining in the hands of end users are not likely to be turned in for disposal; as a result, there will be illegal use of chlordimeform, probably by ground application, which poses higher risks than the aerial applications that would occur if existing stocks of chlordimeform were to be used up. Furthermore, they comment that aerial applicators will have to turn away customers who want to have chlordimeform applied aerially.

Agency's Response: The Agency is aware of the possibility that not all remaining stocks of chlordimeform may be returned, and then, in the absence of an existing stocks provision, these stocks may be diverted to riskier ground application. However, the Agency believes that the efforts of the registrants to publicize the recall would result in at least some stocks being returned by users. If use after the date of cancellation were illegal, the Agency would expect states to vigorously enforce the prohibition against use of existing stocks. The Agency agrees with the commenters that aerial applicators, because of their extensive licensing procedures, are more likely to comply with the prohibition against continued use of chlordimeform, and that this would possibly lead to less business for affected aerial applicators during 1989. If the aerial applicators were not to refuse such business and undertook illegal applications, in addition to possible penalties, such illegal activity would jeopardize such aerial applicator's license and certification.

6. *Comment:* Several comments (2, 3, 4, 13, 14, 16, 17, 18, and 20) concerned the benefits of chlordimeform, arguing that there are no alternative pesticides with which to replace chlordimeform, or that use of chlordimeform will delay development of resistance to the pyrethroid insecticides.

Agency's Response: The Agency agrees that chlordimeform does have benefits, and that these benefits will be foregone if use of existing stocks is not permitted. However, the Agency notes that there are alternative pesticides registered for ovicidal control of *Heliothis spp.* (methomyl and thiodicarb). The Agency further notes that no data have been provided to show that chlordimeform delays resistance to the pyrethroid insecticides.

7. *Summary of Comments:* Comments generally concerned the practicality of

retrieving and disposing of remaining stocks of chlordimeform, the risks of disposal and of misuse of these stocks, and the benefits of these stocks. The Agency does not find any of the comments to be compelling in allowing or disallowing the use of remaining stocks. However, in consideration of the concern for the use or nonuse of remaining stocks as expressed in these comments, EPA has conducted an analysis of the short-term risks and benefits regarding the possible use of existing stocks of chlordimeform in 1989.

B. Risk/Benefit Analysis of Allowing Use of Existing Stocks

1. Risks of Use of Existing Stocks of Chlordimeform

In order for the Agency to allow the use of existing stocks of products cancelled as a result of a risk/benefit finding, EPA must determine that the benefits of the use of any existing stocks outweigh the risks of such use for the period of use. Chlordimeform registrations were not cancelled as a result of an Agency risk/benefit finding, but instead were cancelled voluntarily by the registrants. Nevertheless, the Agency believes a risk/benefit analysis for existing stocks is appropriate in this case because the Agency had issued a Preliminary Notification to the registrants and was in the process of preparing a Notice of Initiation of Special Review and a Preliminary Determination at the time the voluntary cancellation was filed. The incremental risk of allowing an additional year of use of the existing stocks of chlordimeform is calculated by dividing the lifetime risk by 70, and by dividing this result by some factor representing the reduced amount of chlordimeform to be used. The lifetime risk already includes an adjustment for 35 years of exposure during an assumed lifespan of 70 years, because occupational exposures are assumed to be 35 years. This calculation assumes that risk is directly proportional to the total amount of pesticide handled over time.

In a typical year, about 1 million to 2 million pounds of chlordimeform are reportedly used. Based on specific information received through the public comments, the Agency believes that from 10 to 25 percent of this amount of chlordimeform remains available for use in 1989. These assumptions are based on a limited survey of Alabama pesticide distributors, which confirm earlier estimates by State regulatory officials and the registrants. However, comments and other information available to the Agency indicate that there may be much larger stocks of chlordimeform remaining in the hands of end users; the Agency cannot fully evaluate the accuracy of any of these estimates, because insufficient information has been submitted on the design of the surveys used to reach these estimates. Therefore, the Agency has calculated risks and benefits not only for the 10 percent and 25 percent remaining stocks assumption, but also on the worst case assumption, that is, that there is an entire typical year's supply of chlordimeform remaining in the hands of end users. The Agency has received little specific information on how leftover stocks are divided between end users and distributors/retailers, but the registrants have indicated that virtually all remaining stocks are in the hands of end users.

Two different scenarios can be proposed concerning the number of workers exposed to chlordimeform. In the first scenario, it would be assumed that, at most, the same number of workers will be exposed to chlordimeform in 1989 as were exposed in earlier years, but that they will individually be exposed to less chlordimeform in proportion to the decrease in the supply of chlordimeform (the "constant number/reduced poundage" assumption). This is believed to be a reasonable assumption because chlordimeform, a restricted use pesticide, would be applied only by air in 1989 (as most current labeling requires and as most chlordimeform has been applied in the past), and because chlordimeform is applied in many cotton-growing areas; in brief, there are very few people qualified and equipped to apply chlordimeform, and they are widely scattered.

The second scenario would assume that a smaller number of individual workers, smaller in proportion to the decrease in the supply of chlordimeform, will apply the same amount of chlordimeform as in previous years (the "reduced number/constant poundage" assumption). This may also be a reasonable assumption, since the decline in chlordimeform stocks may be regionally distributed, such that some regions may have no chlordimeform and others may have nearly as much as in any other year. The reduced number/constant poundage assumption results in higher individual risk to a smaller number of applicators, when compared to the results of the reduced poundage/constant number assumption. However, aggregate risk, the total number of cases of cancer arising from an additional year's use of chlordimeform, calculated by mutliplying individual risk by the total number of exposed workers, is the same regardless of which assumption about the number of applicators is used. There are no data to support one assumption over the other, so risk numbers have been calculated for both assumptions.

Using the constant number/reduced poundage assumption, and assuming only 10 percent (the low end of available estimates) of the 1988 chlordimeform supply remains in the hands of end users, the individual oncogenic risk from an additional year's exposure to chlordimeform would be:

Risk (as cited in the exposure analysis) X 1/10 X 1/70. Risk estimates for the other assumptions were adjusted accordingly. The following Table 2 shows the individual risks to various groups of exposed workers, using the 10 percent, 25 percent and 100 percent available stock assumptions:

TABLE 2.—RISK FROM AN ADDITIONAL YEAR OF CHLORDIMEFORM USE [1]

Exposed group	35-Year [2] exposure risk	No. at [2] risk	1-Year exposure		
			10% stocks	25% stocks	100% stocks
A: Constant Number of Applicators/Reduced Poundage per Applicator:					
Mixer/Loaders	4×10^{-3}	124	10^{-4}-10^{-6}	10^{-5}	10^{-4}-10^{-5}
Applicators	1×10^{-4}	204	10^{-7}	10^{-6}-10^{-7}	10^{-6}
B: Reduced Number of Applicators/Constant Poundage per Applicator:					
Mixer/Loaders	4×10^{-3}	12.4 or 31	10^{-4}-10^{-6}	10^{-4}-10^{-6}	10^{-4}-10^{-5}
Applicators	1×10^{-4}	20.4 or 51	10^{-6}	10^{-6}	10^{-6}

[1] Additional risk has been rounded to the nearest order of magnitude.
[2] Individual risk cited in exposure analysis and used in rounded form in Notice of Intent Not to Initiate Special Review
[3] From exposure analysis.

2. Benefits of Use of Existing Stocks of Chlordimeform

The possible benefits from chlordimeform accrue indirectly from its contribution to reducing insect resistance to the pyrethroid insecticides, and directly from its effects on cotton yields, through its control of *Heliothis* spp. The available data do not allow a definitive estimate of the magnitude of yield losses that could result from not using chlordimeform in 1989. Limited data indicate possible yield reductions of 5 to 10 percent, or an average of 7.5 percent on treated acres, about the same as the loss estimate developed by USDA in its preliminary benefits assessment, if other pesticides are used in place of chlordimeform.

Using a range of 0 to 7 percent loss on 28 percent of the harvested cotton acreage (that is, 100 percent of the annual usage before cancellation), the loss in benefits ranges from $10 to $220 million. Using a range of 0 to 7 percent yield loss on 7 percent of the harvested cotton acreage (that is, 25 percent of the annual usage before cancellation), the loss in benefits ranges from $3 million to $54 million. Using a range of 0 to 7 percent yield loss on 2.8 percent of the harvested cotton acreage (that is, 10 percent of the prior annual usage), the loss in benefits ranges from $1 million to $22 million. The low end of the range reflects the greater cost of alternative pesticides, most likely to be methomyl or thiodicarb in this case. The upper end of the range reflects the possible greater efficacy of chlordimeform over alternatives. These benefit estimates are based on the small amount of data on yield losses, and may over or underestimate actual benefits.

3. Risk/Benefit Analysis of Use of Existing Stocks of Chlordimeform

Making the worst case assumption that 100 percent of a normal year's supply of chlordimeform remains in the hands of users, that is, 1 million pounds, the incremental risk from one additional year's use of chlordimeform to mixer/loaders is in the 10^{-4} to 10^{-5} range, and to applicators is 10^{-4}. As shown in Table 2, individual risks from one more year of use under any of the probable use scenarios are low. The incidence of cancer in the exposed group, as predicted by this assessment, would be negligible, because of the small number of applicators and mixer/loaders who handle chlordimeform. Benefits under the various scenarios range from $1 to $220 million. Given the minimal risk and the possible substantial benefits, the Agency concludes that the use of existing stocks of chlordimeform in the 1989 growing season does not pose unreasonable risks. However, because cancer risk from 35 years of occupational exposure is high, estimated to be 1 in a 1000, and because epidemiological data suggest a correlation between exposure to the 5-CAT metabolite of chlordimeform and excess incidence of bladder cancer, the Agency believes long term risks would be unacceptable.

The Agency is requiring the registrants, Ciba-Geigy and Nor-Am, to conduct their recall programs down to the dealer/distributor level, in order to be sure that no further quantities of chlordimeform become available to end users.

As mentioned previously, the EPA has held discussions with other Federal and State agencies regarding the possibility of notifying factory and agricultural workers who were exposed to significant levels of chlordimeform over long periods of time of their elevated risk of bladder cancer. EPA believes that factory workers' level of exposure to chlordimeform was substantially higher than that to mixer/loaders or applicators, possibly resulting in as much as two orders of magnitude greater risk. Thus, EPA believes it is reasonable to allow limited exposure of mixer/loaders and applicators for an additional year. Nevertheless, EPA supports the voluntary urine monitoring program offered by the registrants to mixer/loaders and applicators.

IV. Agency's Final Decision Regarding Special Review

All chlordimeform registrations have been amended so that they terminate February 19, 1989. The Agency received no comments objecting to its proposed decision not to initiate a Special Review of chlordimeform. Therefore, the Agency will not initiate a Special Review of the use of chlordimeform on cotton. The only issue resulting from the Agency's proposal was the objection to the prohibition of the use of existing stocks in 1989.

The agency has conducted a short term risk/benefit analysis of the use of existing stocks of chlordimeform in the hands of end users and concluded that the benefits of one additional year of limited use outweigh the risks of such use. Therefore, the use of chlordimeform stocks in the possession of end users will be permitted until October 1, 1989. Such use must be in accordance with all label restrictions. Any further sale or distribution of existing stocks or recalled stocks by registrants, distributors, or retailers is prohibited after February 19, 1989. All use of chlordimeform after October 1, 1989, is prohibited. Both registrants indicated they have not marketed chlordimeform after the 1988 cotton season, around the beginning of October 1988. Both registrants also indicated that they will recall all existing stocks of chlordimeform down to the dealer/distributor level, and will accept for disposal any stocks of chlordimeform turned in by end users.

While the Agency has serious concerns about the long-term risks associated with chlordimeform use on cotton, it will not initiate a Special Review of chlordimeform because all use, and therefore exposure, will end at the end of the 1989 cotton-growing season. The cancellations will become effective automatically on February 19, 1989. The Agency has acted in reliance on the voluntary cancellation by proposing revocation of non-cotton tolerances and by not initiating a Special Review.

The Agency has other tools that may be available to it under FIFRA to take regulatory action regarding chlordimeform, including initiation of Special Review and subsequent initiation of cancellation proceedings, immediate initiation of cancellation proceedings, suspension, and emergency suspension. As compared with initiation of Special Review followed by initiation of cancellation proceedings, or immediate initiation of cancellation proceedings, the action announced here reduces risks faster than would occur under those other more time-consuming approaches. Finally, the Agency does not believe that the appropriate tests for either suspension or emergency suspension have been met.

V. Public Record

The Agency has established a public record (public docket #30000/52) for the chlordimeform Special Review. This public record includes:

1. This Notice.
2. The draft Registration Standard.
3. Any other notices pertinent to the chlordimeform Special Review.
4. Documents and copies of written comments submitted to the Agency in response to the pre-Special Review registrant notification, the draft Registration Standard, this Notice, and any other notice regarding chlordimeform submitted at any time during the chlordimeform Special Review process by any person outside government.
5. Analysis of comments received in response to the draft Registration Standard and the preliminary notification to registrants.

6. Memoranda describing each meeting between Agency personnel and any person outside government which concerns a chlordimeform Special Review decision.
7. Comments, documents, proposals or other materials concerning the chlordimeform Special Review submitted by any person or party outside government.
8. A current index of materials in the public docket.

Information for which a claim of confidentiality has been asserted will not be put in the public docket. The docket and index will be available for inspection and copying from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, at the following location: Public Docket and Freedom of Information Section, Field Operations Division (TS-767C), Rm. 236, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

VI. Order of Cancellation

By this order, the voluntary cancellations are accepted; cancellation is hereby ordered according to the terms contained herein. Any further sale or distribution of chlordimeform products is prohibited as described herein and any use must be in accordance with the terms set forth herein and any label restrictions.

Dated: January 6, 1989.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 89-2970 Filed 2-7-89; 8:45 am]

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federal register

Wednesday
February 8, 1989

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 25 and 52
Federal Acquisition Regulation (FAR); Buy American Act, List of Exempt Items; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 25 and 52

Federal Acquisition Regulation (FAR); Buy American Act, List of Exempt Items

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to FAR 25.102(a)(4), 25.202(a)(3), and the provision at 52.225–1 concerning implementation of the Buy American Act. The revision would clarify that the Buy American List of Exempt Items located at 25.108 is provided for information only and that each agency is responsible for making a determination that an item is exempt from provisions of the Buy American Act. This revision is needed to ensure that the FAR is consistent with the provisions of the Buy American Act.

COMMENTS: Comments should be submitted to the FAR Secretariat at the address shown below on or before April 10, 1989, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 88–72 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the proposed rule does not impose any new requirements on contractors and only serves to clarify existing regulatory coverage. An Initial Regulatory Flexibility Act analysis has therefore not been performed. Comments from small entities concerning the affected FAR Subpart will also be considered. Such comments must be submitted separately and cite FAR Case 88–610.

B. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes do not impose any recordkeeping or information collection requirements from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 25 and 52

Government procurement.

Dated: January 31, 1989.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Parts 25 and 52 be amended as set forth below:

1. The authority citation for 48 CFR Parts 25 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 25—FOREIGN ACQUISITION

25.102 [Amended]

2. Section 25.102 is amended in paragraph (a)(4) by removing the words "one or more agencies have determined".

3. Section 25.108 is amended by revising paragraphs (a) and (b) to read as follows:

25.108 Excepted articles, materials, and supplies.

(a) One or more agencies have determined that the articles, materials, and supplies listed in paragraph (d) of this section are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. The list in paragraph (d) is furnished for information only; an article, material or supply listed therein may be treated as domestic only when the agency concerned has made a determination that it is not mined, produced, or manufactured in the United States in sufficient and reasonably available quantities of a satisfactory quality.

(b) Agencies making determinations under 25.102(a)(4) or 25.202(a)(3) for unlisted articles, materials, or supplies shall submit a copy of these determinations to the appropriate FAR Council for possible addition of items to the list.

* * * * *

25.202 [Amended]

4. Section 25.202 is amended in paragraph (a)(3) by removing the words "One or more agencies have determined that the" and inserting in their place the word "The".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.225–1 [Amended]

5. Section 52.225–1 is amended by inserting a colon in the introductory text following the word "provision" and removing the remainder of the sentence; by removing in the title of the provision the date "(APR 1984)" and inserting in its place the date "(FEB 1989)"; by removing in the last paragraph of the provision the parenthetical phrase "(listed at 25.108 of the Federal Acquisition Regulation)"; and by removing the derivation lines following "(End of provision)".

[FR Doc. 89–2960 Filed 2–7–89; 8:45 am]

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federal register

Wednesday
February 8, 1989

Part V

Department of Defense

Department of the Air Force

Intent To Prepare Environmental Impact Statements; Beale AFB, CA, et al.; Notices

DEPARTMENT OF DEFENSE

Department of the Air Force

Intent To Prepare an Environmental Impact Statement for the Addition of the Specialized Undergraduate Navigation Training (SUNT) to Beale AFB, CA

The United States Air Force intends to prepare an Environmental Impact Statement (EIS) for use in decision-making regarding the addition to the Specialized Undergraduate Navigation Training (SUNT) to Beale AFB, CA. SUNT includes 14 T-43 and 17 T-37 aircraft. There are also 588 full time military, 193 full time civilians and an average daily student load is approximately 719 associated with the SUNT. Approximately 1100 students enter SUNT each year. This realignment was announced on December 29, 1988, as part of a comprehensive package prepared by the Defense Secretary's Commission on Base Realignments and Closures. On January 5, 1989, the Secretary of Defense accepted the Commission's recommendations.

The EIS process has been modified by Pub. L. 100-526, section 204(c) (1) and (2) which provides that the National Environmental Policy Act (NEPA) does not apply to the actions of the Commission or to the Secretary of Defense's acceptance of the Commission's recommendations. This means that the decision to add the SUNT to Beale AFB has already occurred and is outside the scope of the EIS. The EIS being announced today is an implementation EIS, focused primarily on the SUNT realignment impacts taking place at BEALE AFB. It will analyze the local environmental effects caused by the SUNT realignment. The EIS will also develop appropriate mitigation measures. The Air Force hopes to have this EIS completed by the middle of 1990.

Implementing this realignment involves moving SUNT to Beale AFB. The environmental impacts to Beale AFB caused by this action are within the scope of this EIS. The previously programmed force structure action to deactivate 7 SR-71A/Bs will be assessed in a separate NEPA document with the cumulative impact being addressed in this EIS. The environmental impacts caused by the departure of those units from Mather AFB are *not* part of this EIS; those impacts will be analyzed in separate NEPA documents focusing on impacts and issues at the closure base.

The Air Force will conduct a public scoping meeting on February 15, 1989 to obtain public input. This input will assist in determining the nature, extent and scope of the issues and concerns to be addressed in the EIS. Notice of the time and place of the planned meeting will be made available to local officials and announced in the news media. The scoping process may also include other meetings with local officials, either before or after the public meeting. In addition, anyone may write to the Air Force with comments on the scope of the EIS. To assure the Air Force will have sufficient time to consider public input on issues to be included in the EIS, comments should be forwarded to the addressee listed below by March 15, 1989.

After scoping and analysis of this realignment, the Air Force may find that the environmental impacts are insufficient to justify preparation of an EIS. If so, the Air Force would prepare an Environmental Assessment and a Finding of No Significant Impact. Both documents would be publicly announced and publicly available.

For further information concerning this EIS, contact: Wayne Wiley, HQ SAC/DEPV Offutt AFB, NE 68113, (402) 294-3684.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89-3141 Filed 2-7-89; 11:03 am]

BILLING CODE 3910-01-M

Intent To Prepare Environmental Impact Statements for the Closure of Chanute AFB, IL

The United States Air Force intends to prepare Environmental Impact Statements (EISs) for use in decision-making regarding the closure and final disposition of property at Chanute AFB, IL. That closure was announced on December 29, 1988, as part of a comprehensive package prepared by the Defense Scretary's Commission on Base Realignments and Closures. On January 5, 1989, the Secretary of Defense accepted the Commission's recommendations.

The EIS process has been modified by Pub. L. 100-526, section 204(c) (1) and (2) which provides that the National Environmental Policy Act (NEPA) does not apply to the actions of the Commission or to the Secretary of Defense's acceptance of the Commission's recommendations. This means that the decision to close Chanute AFB has already occurred and is outside the scope of the EISs being announced today. One of the EISs being announced today is an implementation EIS, focused on the closure impacts taking place at Chanute AFB. Its purpose is to help the Air Force intelligently cease operations. It will analyze the local environmental effects caused by the closure and the measures necessary to implement the closure. It will also develop appropriate mitigation measures. The Air Force hopes to have the EIS associated with base closure completed by the middle of 1990.

Implementing the closure involves moving Air Force units from Chanute AFB to other bases. The environmental impacts to Chanute AFB caused by the departure of those units are within the scope of this EIS. However, the environmental impacts caused by the arrival of those units at the new locations are *not* part of this EIS; those impacts will be analyzed in separate NEPA documents focusing on impacts and issues at the various receiving bases.

The other EIS will cover the final disposition of the facilities at Chanute AFB. This process also involves laws and community issues quite different from the comparatively straight forward steps involved in closure (i.e. halting operations and removing equipment and personnel). Although the Air Force is only in the rudimentary stages of considering disposal proposals, the scoping process is beginning at this time because the Air Force desires to solicit community comments at the earliest opportunity.

The Air Force will conduct a public scoping meeting to obtain public input. This input will assist in determining the nature, extent and scope of the issues and concerns to be addressed in the EISs. The public scoping meeting will be held on March 1, 1989 at 7:30 in Rantoul High School Boys Gym, 200 South Sheldon Street, Rantoul, IL. The scoping process may also include other meetings with local officials, either before or after the public meeting. In addition, anyone may write to the Air Force with comments on the scope of the EISs. To assure the Air Force will have sufficient time to consider public input on issues to be included in the EISs, comments should be forwarded to the addressee listed below by April 1, 1989.

After scoping and analysis of the closure process, the Air Force may find that the environmental impacts are insufficient to justify preparation of the EISs. If so, the Air Force would prepare environmental assessments and Findings of No Significant Impact. Both documents would be publicly announced and publicly available.

For further information concerning the EISs, contact: Lt. Col. Ron Voorhees, ATC/DEPR, Randolph AFB, TX 78150, (512) 652-6352.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89-3142 Filed 2-7-89; 11:03 am]

BILLING CODE 3910-01-M

Intent To Prepare Environmental Impact Statements for the Closure of George AFB, CA

The United States Air Force intends to prepare Environmental Impact Statements (EISs) for use in decision-making regarding the closure and final disposition of property at George AFB, CA. That closure was announced on December 29, 1988, as part of a comprehensive package prepared by the Defense Secretary's Commission on Base Realignments and Closures. On January 5, 1989, the Secretary of Defense accepted the Commission's recommendations.

The EIS process has been modified by Pub. L. 100-526, section 204(c) (1) and (2) which provides that the National Environmental Policy Act (NEPA) does not apply to the actions of the Commission or to the Secretary of Defense's acceptance of the Commission's recommendations. This means that the decision to close George AFB, CA has already occurred and is outside the scope of the EISs being announced today. One of the EISs being announced today is an implementation EIS, focused on the potential closure impacts taking place at George AFB. Its purpose is to help the Air Force intelligently cease operations. It will analyze the local environmental effects caused by the closure and the measures necessary to implement the closure. It will also develop appropriate mitigation measures. The Air Force hopes to have the EIS associated with base closure completed by the middle of 1990.

Implementing the closure involves moving units from George AFB to other bases. The environmental impacts to George AFB caused by the departure of those units, except the previously programmed force structure action to relocate 24 F-4Es, are within the scope of this EIS. The F-4Es will be assessed in a separate NEPA document with the cumulative impact being addressed in this EIS. The environmental impacts caused by the arrival of those units at the new locations are *not* part of this EIS; those impacts will be analyzed in separate NEPA documents focusing on impacts and issues at the various receiving bases.

The other EIS will cover the final disposition of the facilities at George AFB. This process also involves laws and community issues quite different from the comparatively straightforward steps involved in closure (i.e. halting operations and removing equipment and personnel). Although the Air Force is only in the rudimentary stages of considering disposal proposals, the scoping process is beginning at this time because the Air Force desires to solicit community comments at the earliest opportunity.

The Air Force will conduct a public scoping meeting on March 14, 1989 to obtain public input. This input will assist in determining the nature, extent and scope of the issues and concerns to be addressed in the EISs. Notice of the time and place of the planned meeting will be made available to local officials and announced in the news media. The scoping process may also include other meetings with local officials, either before or after the public meeting. In addition, anyone may write to the Air Force with comments on the scope of the EISs. To assure the Air Force will have sufficient time to consider public input on issues to be included in the EISs, comments should be forwarded to the addressee listed below by April 17, 1989.

After scoping and analysis of the closure process, the Air Force may find that the environmental impacts are insufficient to justify preparation of the EISs. If so, the Air Force would prepare environmental assessments and Findings of No Significant Impact. Both documents would be publicly announced and publicly available.

For further information concerning the EISs, contact: Captain Wilford Cassidy, HQ TAC/DEEV, Langley AFB, VA 23665, (804) 764-4430.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89-3143 Filed 2-7-89; 11:03 am]

BILLING CODE 3910-01-M

Intent To Prepare an Environmental Impact Statement for the Addition of the 63rd and 445th Military Airlift Wings to March AFB, CA

The United States Air Force intends to prepare an Environmental Impact Statement (EIS) for use in decision-making regarding the addition of the 63rd Military Airlift Wing (MAW), 445th MAW, and other minor units to March AFB, CA. The Wings include 36 C-141s, 4 C-12s, and 4 C-21s. They also require 1951 full time military personnel and 769 full time civilians. This realignment was announced on December 29, 1988, as part of a comprehensive package prepared by the Defense Secretary's Commission on Base Realignments and Closures. On January 5, 1989, the Secretary of Defense accepted the Commission's recommendations.

The EIS process has been modified by Pub. L. 100-526, section 204(c) (1) and (2) which provides that the National Environmental Policy Act (NEPA) does not apply to the actions of the Commission or to the Secretary of Defense's acceptance of the Commission's recommendations. This means that the decision to add the 63rd MAW, 445th MAW and other minor units to March AFB has already occurred and is outside the scope of the EIS. The EIS being announced today is an implementation EIS, focused primarily on the realignment impacts taking place at March AFB. It will analyze the local environmental effects caused by the 63rd MAW, 445th MAW and other minor unit realignments. The EIS will also develop appropriate mitigation measures. The Air Force hopes to have this EIS completed by early 1990.

Implementing this realignment involves moving various units to March AFB. The environmental impacts to March AFB caused by this action, except the previously programmed force structure actions to relocate 14 KC-135As and 14 F-4Es and the addition of 18 OA-10As and 2 KC-135Es, are within the scope of the EIS. The force structure actions will be assessed in a separate NEPA document with the cumulative impacts being addressed in the EIS. The environmental impacts caused by the departure of those units from Norton AFB are *not* part of the EIS; those impacts will be analyzed in separate NEPA documents focusing on impacts and issues at the closure base.

The Air Force will conduct a public scoping meeting on February 23, 1989 to obtain public input. This input will assist in determining the nature, extent and scope of the issues and concerns to be addressed in the EIS. Notice of the time and place of the planned meeting will be made available to local officials and announced in the news media. The scoping process may also include other meetings with local officials, either before or after the public meeting. In addition, anyone may write to the Air Force with comments on the scope of the EIS. To assure the Air Force will have sufficient time to consider public input on issues to be included in the EIS, comments should be forwarded to the addressee listed below by March 23, 1989.

After scoping and analysis of this realignment, the Air Force may find that the environmental impacts caused by these actions at March AFB are

insufficient to justify preparation of an EIS. If so, the Air Force would prepare an environmental assessment and a Finding of No Significant Impact. Both documents would be publicly announced and publicly available.

For further information concerning the EIS, contact: Mr. Wayne Wiley, HQ SAC/DEPV, Offutt AFB, NE 68113, (402) 294–3684.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89–3144 Filed 2–7–89; 11:00 am]

BILLING CODE 3910-01-M

Intent To Prepare Environmental Impact Statements for the Closure of Mather AFB, CA

The United States Air Force intends to prepare Environmental Impact Statements (EISs) for use in decision-making regarding the closure and the final disposition of property at Mather AFB, CA. That closure was announced on December 29, 1988, as part of a comprehensive package prepared by the Defense Secretary's Commission on Base Realignments and Closures. On January 5, 1989, the Secretary of Defense accepted the Commission's recommendations.

The EIS process has been modified by Pub. L. 100–526, section 204(c) (1) and (2) which provides that the National Environmental Policy Act (NEPA) does not apply to the actions of the Commission or to the Secretary of Defense's acceptance of the Commission's recommendations. This means that the decision to close Mather AFB has already occurred and is outside the scope of the EISs being announced today. One of the EISs being announced today is an implementation EIS, focused on the potential closure impacts taking place at Mather AFB. Its purpose is to help the Air Force intelligently cease operations. It will analyze the local environmental effects caused by the closure and the measures necessary to implement the closure. It wil also develop appropriate mitigation measures. The Air Force hopes to have the EIS associated with base closure completed by early 1990.

Implementing the closure involves moving active Air Force units from Mather AFB to other bases. The environmental impacts to Mather AFB caused by the departure of those units, except the previously programmed force structure action to relocate 14 B–52Gs, are within the scope of this EIS. The B–52Gs will be assessed in a separate NEPA document with the cumulative impact being addressed in this EIS. However, the environmental impacts caused by the arrival of those units at the new locations are *not* part of this EIS; those impacts will be analyzed in separate NEPA documents focusing on impacts and issues at the various receiving bases.

The other EIS will cover the final disposition of the facilities and the Air Force Reserve KC–135 Squadron at Mather AFB. If local authorities do not elect to operate Mather AFB as an airport, then the Air Force Reserve unit will be relocated to McClellan AFB, located 10 miles away. This process also involves laws and community issues quite different from the comparatively straightforward steps involved in closure (i.e. halting operations and removing equipment and personnel). Althought the Air Force is only in the rudimentary stages of considering disposal proposals, the scoping process is beginning at this time because the Air Force desires to solicit community comments at the earliest opportunity.

The Air Force will conduct a public scoping meeting to obtain public input. This input will assist in determining the nature, extent and scope of the issues and concerns to be addressed in the EISs. The public scoping meeting will be held on February 27, 1989 at 7:30 in Cordova High School Auditorium, 2239 Chase Drive, Rancho Cordova, CA. The scoping process may also include other meetings with local officials, either before or after the public meeting. In addition, anyone may write to the Air Force with comments on the scope of the EISs. To assure the Air Force will have sufficient time to consider public input on issues to be included in the EISs, comments should be forwarded to the addressee listed below by March 27, 1989.

After scoping and analysis of the closure process, the Air Force may find that the environmental impacts are insufficient to justify preparation of the EISs. If so, the Air Force would prepare environmental assessments and Findings of No Significant Impact. Both documents would be publicly announced and publicly available.

For further information concerning the EIS, contact: Lt. Col. Ron Voorhees, ATC/DEPR, Randolph AFB, TX 78150, (512) 652–6352.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89–3145 Filed 2–7–89; 11:04 am]

BILLING CODE 3910-01-M

Intent To Prepare an Environmental Impact Statement for the Addition of the 35th Tactical Training Wing (TTW) to Mountain Home AFB, ID

The United States Air Force intends to prepare an Environmental Impact Statement (EIS) for use in decision-making regarding the addition of the 35th TTW (93 F–4E/Gs) and the removal of part (32 F– 111A/Es) of the 366th Tactical Fighter Wing (TFW) at Mountain Home AFB, ID. These two actions will result in a net gain at Mountain Home AFB of 1859 military personnel and 90 civilians. This realignment was announced on December 29, 1988, as part of a comprehensive package prepared by the Defense Secretary's Commission on Base Realignments and Closures. On January 5, 1989, the Secretary of Defense accepted the Commission's recommendations.

The EIS process has been modified by Pub. L. 100–526, section 204(c) (1) and (2) which provides that the National Environmental Policy Act (NEPA) does not apply to the actions of the Commission or to the Secretary of Defense's acceptance of the Commission's recommendations. This means that the decision to add the 35th TTW and reduce the 366th TFW at Mountain Home AFB has already occurred and is outside the scope of the EIS. The EIS being announced today is an implementation EIS, focused primarily on the realignment impacts taking place at Mountain Home AFB. It will analyze the local environmental effects caused by the 35th TTW and 366th TFW realignments. The EIS will also develop appropriate mitigation measures. The Air Force hopes to have this EIS completed by early 1990.

Implementing this realignment involves moving the 35th TTW to and moving part of the 366th TFW from Mountain Home AFB. The environmental impacts to Mountain Home AFB caused by this action are within the scope of this EIS. However, the environmental impacts caused by the departure of the 35th TTW from George AFB or the addition of part of the 366th TFW to Cannon AFB are *not* part of this EIS; those impacts will be analyzed in separate NEPA documents focusing on impacts and issues at those bases.

The Air Force will conduct a public scoping meeting on March 16, 1989 to obtain public input. This input will assist in determining the nature, extent and scope of the issues and concerns to be addressed in the EIS. Notice of the time and place of the planned meeting will be made available to local officials and announced in the news media. The scoping process may also include other meetings with local officials, either before or after the public meeting. In addition, anyone may write to the Air Force with comments on the scope of the EIS.

To assure the Air Force will have sufficient time to consider public input on issues to be included in the EIS, comments should be forwarded to the addressee listed below by April 17, 1989.

After scoping and analysis of this realignment, the Air Force may find that the environmental impacts caused by these actions at Mountain Home AFB are insufficient to justify preparation of an EIS. If so, the Air Force would prepare an Environmental Assessment and a Finding of No Significant Impact. Both documents would be publicly announced and publicly available.

For further information concerning this EIS, contact: Captain Wilford Cassidy, HQ TAC/DEEV, Langley AFB, VA 23665, (804) 764–4430.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89–3146 Filed 2–7–89; 11:04 am]

BILLING CODE 3910-01-M

Intent To Prepare Environmental Impact Statements for the Closure of Pease AFB, NH

The United States Air Force intends to prepare Environmental Impact Statements (EISs) for use in decision-making regarding the closure and final disposition of property at Pease AFB, New Hampshire. That closure was announced on December 29, 1988, as part of a comprehensive package prepared by the Defense Secretary's Commission on Base Realignments and Closures. On January 5, 1989, the Secretary of Defense accepted the Commission's recommendations.

The EIS process has been modified by Pub. L. 100–526, section 204(c) (1) and (2) which provides that the National Environmental Policy Act (NEPA) does not apply to the actions of the Commission or to the Secretary of Defense's acceptance of the Commission's recommendations. This means that the decision to close Pease AFB has already occurred and is outside the scope of the EISs being announced today. One of the EISs being announced today is an implementation EIS, focused on the potential closure impacts taking place at Pease AFB. Its purpose is to help the Air Force intelligently cease operations. It will analyze the local environmental effects caused by the closure and the measures necessary to implement the closure. It will also develop appropriate mitigation measures. The Air Force hopes to have the EIS associated with base closure completed early in 1990.

Implementing the closure involves moving active Air Force units from Pease AFB to other bases. The environmental impacts to Pease AFB caused by the departure of those units, except the previously programmed force structure action to relocate 21 FB–111As, are within the scope of this EIS. The FB–111As will be assessed in a separate NEPA document with the cumulative impact being addressed in this EIS. The environmental impacts caused by the arrival of those units at the new locations are *not* part of this EIS; those impacts will be analyzed in separate NEPA documents focusing on impacts and issues at the various receiving bases.

The other EIS will cover the final disposition of the facilities and the Air National Guard (ANG) KC–135 Squadron at Pease AFB. If local authorities do not elect to operate Pease AFB as an airport, then the ANG unit will be relocated. This process also involves laws and community issues quite different from the comparatively straightforward steps involved in closure (i.e. halting operations and removing equipment and personnel). Although the Air Force is only in the rudimentary stages of considering disposal proposals, the scoping process is beginning at this time because the Air Force desires to solicit community comments at the earliest opportunity.

The Air Force will conduct a public scoping meeting on February 15, 1989 to obtain public input. This input will assist in determining the nature, extent and scope of the issues and concerns to be addressed in the EISs. Notice of the time and place of the planned meeting will be made available to local officials and announced in the news media. The scoping process may also include other meetings with local officials, either before or after the public meeting. In addition, anyone may write to the Air Force with comments on the scope of the EISs. To assure the Air Force will have sufficient time to consider public input on issues to be included in the EISs, comments should be forwarded to the addressee listed below by March 15, 1989.

After scoping and analysis of the closure process, the Air Force may find that the environmental impacts are insufficient to justify preparation of the EISs. If so, the Air Force would prepare environmental assessments and Findings of No Significant Impact. Both documents would be publicly announced and publicly available.

For further information concerning the EISs, contact: Mr. Wayne Wiley, HQ SAC/DEPV, Offutt AFB, NE 68113, (402) 294–3684.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89–3147 Filed 2–7–89; 11:04 am]

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federal register

Wednesday
February 8, 1989

Part VI

Department of Health and Human Services

Social Security Administration

Disability Advisory Committee; Meeting; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

Disability Advisory Committee; Meeting

AGENCY: Social Security Administration, HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463), this notice announces the schedule and proposed agenda of the first meeting of the Disability Advisory Committee (the Committee). This notice also describes the purpose, structure, and termination date of the Committee.

DATE: February 22, 1989, 10:00 a.m. to 5:00 p.m.; February 23, 1989, 9:00 a.m. to 3:30 p.m.

ADDRESS: Hubert H. Humphrey Building, Room 800, 200 Independence Avenue SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Jean H. Hinckley, Executive Director, Disability Advisory Committee, P.O. Box 17064, Baltimore, Maryland 21235, (301) 965–4648.

SUPPLEMENTARY INFORMATION: The Committee is established and governed by the provisions of section 1114 of the Social Security Act, as amended, and the provisions of the Federal Advisory Committee Act, as amended, (Pub. L. 92–463).

The purposes of the Committee are to study the Social Security administrative review process (known as the "appeals process"), receive and consider public views on reform, and make a report and recommendations to the Commissioner of Social Security (the Commissioner).

The Committee is to submit a report consisting of its findings and any recommendations to the Commissioner of Social Security.

The Committee will terminate after the specified report is submitted to the Commissioner.

The Commissioner has appointed the members of the Committee. This notice announces the first meeting of the Committee. The Committee is chaired by Dr. John E. Affeldt.

This meeting, which is organizational in nature, is open to the public to the extent that space is available. We will publish another **Federal Register** notice soliciting public views and explaining how written statements and testimony of the public will be taken.

A transcript of the Committee meeting will be made available to the public on an at-cost-of duplication basis. The transcript can be ordered from the Executive Director of the Committee.

The proposed agenda includes briefings on the current processes, with an emphasis on disability appeals under the Social Security and Supplemental Security Income programs; an overview of issues the Committee must consider; the development of plans for future Committee meetings; and such other business as the chairperson, the Executive Director, or the membership may put before the Committee.

Dated: February 3, 1989.

Jean H. Hinckley,

Executive Director, Disability Advisory Committee.

[FR Doc. 89–3157 Filed 2–7–89; 11:43 am]

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The **List of Public Laws** will be resumed when bills are enacted into public law during the first session of the 101st Congress, which convened on January 3, 1989. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202–275–3030).

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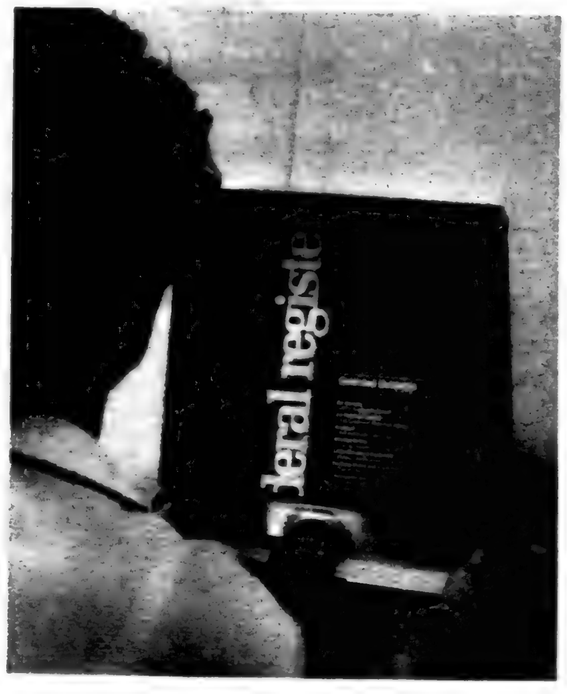
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Federal Register
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Thursday, February 9, 1989

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1150

[DA-88-124]

Dairy Promotion Program; Amendments to the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action amends the Dairy Promotion and Research Order to modify the composition of the National Dairy Promotion and Research Board by adding one Board seat to Region 2 (California) and removing one Board seat from Region 5 (Minnesota, North Dakota, and South Dakota). The amendment, as proposed by the National Dairy Promotion and Research Board that administers the order, is necessary to reflect changes in milk production patterns that have occurred since the initial Board was established in 1984. The modification of the number of Board seats for the two regions is necessary so that the Board will best reflect the 1987 geographic distribution of milk production volume in the United States.

EFFECTIVE DATE: May 1, 1989.

FOR FURTHER INFORMATION CONTACT: Marcia Gibney, Chief, Promotion and Research Staff, USDA/AMS/Dairy Division, Room 2934, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-6961.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Invitation to Submit Comments on Proposed Amendments to the Order: Issued on November 23, 1988; published on November 29, 1988 (53 FR 47956).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. This change in the composition of the National Dairy Promotion and Research Board will result in no economic effect on any entity engaged in the dairy industry. Also, this rule has been reviewed under Executive Order 12291 and Department Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

Preliminary Statement

The Dairy Promotion and Research Order specifies that the National Dairy Promotion and Research Board shall review the geographic distribution of milk production volume throughout the United States and, if warranted, shall recommend to the Secretary a reapportionment of the regions and/or a modification of members from regions to best reflect the geographic distribution of milk production. The order also specifies the formula to be used to determine the number of Board seats to represent each of the 13 geographic regions of the country. Under the formula, total milk production for the 48 States for the previous calendar year is divided by 36 to determine a factor of pounds of milk represented by each Board member. The resulting factor is then divided into the pounds of milk produced in each region to determine the number of Board members for each region.

The initial Board established in 1984 was based on 1983 milk production. Each Board member represented about 3,875 million pounds of the 139,509 million pounds of milk produced in the 48 States during 1983. During 1987, total milk production increased to 142,271 million pounds, which indicates that each of the 36 Board members would represent 3,952 million pounds of milk.

Based on a review of the 1987 geographic distribution of milk production, the Board has concluded that the number of Board members for two of the 13 geographic regions should be changed. Milk production in Region 2 (California) increased to 17,934 million pounds in 1987 from 14,743 million pounds in 1983, indicating 4.54 Board members based on 1987 production (17,934 divided by 3,952 = 4.54) compared to 3.8 Board membes based on 1983 production (14,743 divided by 3,875 = 3.80). Also, milk production in Region 5 (Minnesota, North Dakota and South Dakota) decreased to 13,298 million pounds in 1987 from 13,832 million pounds in 1983, indicating 3.36 Board members based on 1987 production (13,298 divided by 3,952 = 3.36) compared to 3.57 Board members based on 1983 production (13,832 divided by 3,874 = 3.57). Thus, the Board proposed that the number of Board members for Region 2 be increased from four to five and that the number of Board members for Region 5 be decreased from four to three so that the Board will best reflect the geographic distribution of milk production volume throughout the United States.

A notice of the proposed amendment to the order to modify the composition of the Board was published in the Federal Register on November 29, 1988. Interested parties were invited to submit written comments on the proposal by December 29, 1988.

Findings

Four comments were received in response to the invitation to submit written comments on the proposal to add one Board seat to Region 2 and remove one Board seat from Region 5. The California Farm Bureau Federation supported the change on the basis that such a modification would result in a National Dairy Promotion and Research Board that best reflects the geographic distribution of milk production volume throughout the United States. Three comments opposed the proposed modification. However, for reasons hereinafter set forth, such comments do not provide a basis for either revising or denying the proposed amendments to the order. Consequently, the proposed amendments to the order as contained in the notice of proposed rulemaking are hereby adopted as a final rule.

A comment filed on behalf of the Farmers Union Milk Marketing Cooperative, the Minnesota Farmers Union and the South Dakota Farmers Union indicated that dairy farmers in the Upper Midwest would be unfairly penalized by the removal of one Board seat from Region 5. They contend that the proposal would contradict goals of other dairy programs to reduce surplus milk production since producers in Region 5 states would be penalized for reducing production while dairy farmers in California would be rewarded for

increasing production. In addition, the North Dakota Farmers Union indicated that it would be inappropriate to continue a Board structure that rewards regional production increases. This organization also suggested that Board representation be based on the number of producers in each region rather than on the volume of milk production.

While overall surplus milk production is a matter of concern, the regional distribution of production is a factor that cannot be ignored in the composition of the National Dairy Promotion and Research Board. A failure to recognize changes in regional production patterns would result in maintaining a Board composition that contradicts the order requirement to establish a Board composition that best reflects the geographic distribution of milk production volume in the United States. Both the order and the enabling legislation specify that milk production volume is the controlling factor in establishing Board representation.

Land O'Lakes, Inc. (LOL) also opposed the reduction of the number of Board seats for Region 5 and proposed, as an alternative, that Region 5 be reapportioned to include the States of Nebraska and Iowa, which are currently included in Region 7 along with the States of Illinois and Missouri. LOL contends that such an expanded Region 5 would be appropriate since the same marketing organizations operate across the territory and that marketing and production conditions in the States of Nebraska and Iowa are similar to those that exist in Minnesota, North Dakota and South Dakota.

There is no indication of widespread support among dairy farmers for a reapportionment of Regions 5 and 7, or other regions that might, in turn, be affected by such reapportionment. It is likely that any change in the territory in any of the current 13 regions would lead to further reapportionment considerations because of the changes in Board seats that would occur. For example, the reapportionment recommended by LOL would result in the loss of two Board seats for Region 7 as well as in increase of one Board seat for Regions 2 and 5. Consequently, any consideration for a reapportionment of regions requires a broader base of input and consideration by the industry than was generated by this proposed action. Although reapportionment may be a valid option for future consideration, it does not appear to be appropriate at this time in view of the apparent lack of widespread support and the lack of any indication that substantial consideration has been devoted to the issue by the dairy industry or organizations involved in the nominations process.

LOL also suggested that any implementation of any amendment be delayed until after new Board appointments are made. LOL noted that the nomination process to fill expiring terms is already under way and that the invitation to submit nominations includes an expiring Board seat for Region 5 that would not be filled if the proposed amendment is adopted. Thus, LOL contends that organizations that submit nominations for Region 5 have no way of knowing if their nominations will be considered and also that it is not known if there will be sufficient nominations to fill the additional Board seat for Region. 2.

The nomination process to fill expiring terms, as well as the proposed amendment to the composition of the Board, are factors that are known by those organizations that submit nominations to serve on the Board. There is no indication that anything of significance would be lost by inviting nominations to fill a Board seat for Region 5 that would be removed as a result of this amendment, or that there would be insufficient nominations to fill the additional Board seat created for Region 2. A failure to amend the order at this time would result in continuing, for an additional year, a Board composition that does not reflect the most recent geographic distribution of milk production.

In this regard, the order should be amended effective May 1, 1989. Such date is appropriate since Board members serve until April 30 of the year in which his/her term expires and a new Board, with up to one-third of the Board members being replaced, is seated on May 1 of each year. Thus, such effective date for the modification of the number of Board members for Regions 2 and 5 will be the least disruptive to the functioning of the Board.

List of Subjects in 7 CFR Part 1150

Milk, Dairy products, Promotion, Research.

It is hereby determined that 7 CFR Part 1150—Dairy Promotion Program, be amended as follows:

PART 1150—DAIRY PROMOTION PROGRAM

1. The authority citation for 7 CFR Part 1150 continues to read as follows:

Authority: Pub. L. 98–180, 97 Stat. 1128.

2. In § 1150.131, paragraphs (a) (2) and (5) are revised to read as follows:

§ 1150.131 Establishment and membership.

(a) * * *

(2) Five members from region number 2 comprised of the following State: California.

* * * * *

(5) Three members from region number five comprised of the followng States: Minnesota, North Dakota and South Dakota.

* * * * *

Effective date: May 1, 1989.

Signed at Washington, DC, on January 19, 1989.

Kenneth A. Gilles,

Assistant Secretary of Agriculture, Marketing and Inspection Services.

[FR Doc. 89–3106 Filed 2–8–89; 8:45 am]

BILLING CODE 3410–02–M

FARM CREDIT ADMINISTRATION

12 CFR Part 615

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published final regulations under Part 615, October 13, 1988 (53 FR 40033). The final regulations to Part 615 relate to the capitalization of Farm Credit System banks and associations and set forth the statutory requirements for capitalization bylaws, requirements for the issuance and retirement of equities in order to qualify as permanent capital, requirements designed to ensure implementation of cooperative principles, disclosure requirements for the issuance of equities, requirements for retirement of equities, and, for banks for cooperatives, a minimum requirement for additions to unallocated surplus. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is February 9, 1989.

EFFECTIVE DATE: February 9, 1989.

FOR FURTHER INFORMATION CONTACT:

William G. Dunn, Chief, Financial Analysis, and Standards Division, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4402, or

Dorothy J. Acosta, Senior Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4020, TDD (703) 883–4444.

(12 U.S.C. 2252(a) (9) and (10))

Dated: February 6, 1989.

David A. Hill,

Secretary, Farm Credit Administration.

[FR Doc. 89–3104 Filed 2–8–89; 8:45 am]

BILLING CODE 6705–01–M

12 CFR Part 624

Regulatory Accounting Practices; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published final regulations under Part 624, October 13, 1988 (53 FR 40049). The final regulations to Part 624 relate to the use of regulatory accounting practices (RAP) by Farm Credit institutions and authorize them to use RAP for certain interest rate evaluations and extend the use of RAP until 1992. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is February 9, 1989.

EFFECTIVE DATE: February 9, 1989.

FOR FURTHER INFORMATION CONTACT:

Thomas L. Dalton, Staff Accountant, Office of Analysis and Supervision, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4475, or

Gary L. Norton, Senior Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4020, TDD (703) 883–4444

(12 U.S.C. 2252(a) (9) and (10))

Dated: February 6, 1989.

David A. Hill,

Secretary, Farm Credit Administration.

[FR Doc. 89–3105 Filed 2–8–89; 8:45 am]

BILLING CODE 6705–01–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 108

[Rev. 4, Amdt. 19]

Loans to State and Local Development Companies

AGENCY: Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: This final rule is limited to carrying out the mandate of Pub. L. 100–590, approved November 3, 1988, requiring amendments to the development company regulations in part 108 of Title 13, Ch. 1 of the Code of Federal Regulations (CFR). The new provisions relate to a number of issues affecting SBA's development company program: (1) SBA's policy on rural economic development; (2) an exception to SBA's *alter ego* rule; (3) easing restrictions on leasing development company financed new construction; (4) SBA's authority to preempt state usury laws; (5) SBA's sale of guaranteed development company debentures to investors made permanent; and (6) a prohibition on government agencies restricting SBA development company operations by requiring that they assist only certain types of businesses.

DATES: This rule is effective February 9, 1989. The provision relating to SBA's preemption of State usury laws (§ 108.503–8(b)(4)) expires October 1, 1990.

ADDRESS: Written comments may be sent to the Office of Economic Development, Small Business Administration, Room 720, 1441 L Street, NW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: LeAnn M. Oliver, Financial Analyst, Office of Economic Development, (202) 653–6988.

SUPPLEMENTARY INFORMATION: Public Law 100–590, the Small Business Administration Reauthorization and Amendment Act of 1988 (Act), requires several amendments to SBA's regulations of the development company programs, 13 CFR Part 108.

(1) Section 115 of the Act emphasizes the Congressional purpose of fostering economic development in rural as well as urban areas. It directs SBA to promote the economic development program in rural areas and to develop a plan for greater outreach of procurement and export trade in such areas. This Congressional emphasis is implemented by new paragraph (b) of § 108.1 Policy.

(2) Section 114 of the Act requires an amendment to § 108.8(d). Section 108.8(d)(4) required, among other things, that the ownership interests in the small concern, for the benefit of which a property was acquired by a borrower with the proceeds of an SBA-guaranteed debenture, and the ownership interests in such borrower, be completely identical, and remain so until repayment of the loan. The new rule provides that such identity shall not be required of a family group (consisting of father, mother, son, daughter, wife, husband, brother or sister) if SBA determines on a case-by-case basis that the SBA guarantee, the family group ownership and the loan will benefit the small concern substantially. The second rule promulgated here amends § 108.8(d)(4) in accordance with this statutory mandate.

(3) Section 108.503–4(a) of 13 CFR provided that the proceeds of an SBA-guaranteed development company debenture or loan could be used to finance construction of a new facility for an eligible small concern, if the following conditions were met: (1) Not more than fifteen percent of the space in such project would be leased out to third parties, (2) reasonable projections indicated that the small concern would need the additional space within three years, and it is not feasible to build an addition in the future. That paragraph also provided that the small concern may lease out up to 49% of the space in an existing facility acquired with the proceeds of an SBA-guaranteed debenture or loan. The new law provides that a small concern may lease out up to 33% of such a newly constructed facility, if reasonable projections of growth demonstrate that the small concern will need additional space within three years and will fully utilize the entire facility within ten years. The provision governing the lease of space in an existing facility was left unchanged. The third rule promulgated here carries out the mandate of Section 116(a) of the Act.

(4) The fourth rule carries out the mandate of section 112(c) of the Act, which authorizes SBA to establish a maximum legal interest rate on the bank or commercial lender portion of the development company loan package. This maximum interest rate will override state law and control all legal disputes. This provision is intended to encourage more section 504 loan making authority in states whose usury laws have discouraged banks from agreeing to the long term commitment which is a prerequisite to the section 504 program. This pilot program will be repealed on October 1, 1990, unless Congress and the President decide to extend the authority.

An appropriate insertion is made to § 108.503–8(b)(4).

(5) Section 112(a) of the Act, among other things, amends section 504 of the Small Business Investment Act, 15 U.S.C. 697a, to omit any reference to a pilot program to sell guaranteed development company debentures to investors, and makes this program permanent. Accordingly, the fifth rule revises § 108.504 (b) and (c) by omitting references to the temporary nature of the debenture sales program as a mechanism for financing the acquisition of fixed assets for small concerns.

(6) Finally, section 117(b) of the Act prohibits any United States department or agency from linking financial support of a development company with a restriction on the type of small business which such development company may assist, unless such department or agency provides the entire project assistance to such small concern, and its restriction is limited to such small concern. The sixth and last rule adds a new § 108.506 which states this prohibition.

Compliance With Executive Orders 12291 and 12612, the Regulatory Flexibility Act and the Paperwork Reduction Act

For purposes of Executive Order 12291, SBA has determined that the rule is not a major rule. SBA estimates that it will make 140 additional loans for a total of $25 million in rural areas under the first rule. Under the second rule we estimate that SBA will make an additional 125 *alter ego* loans to family groups for a total of $50 million. Under the third rule, we estimate that SBA will make an additional 50 loans for a total of $15 million to construct new business space for small concerns who may initially lease out up to one third to others. Under the fourth rule, we expect to make no more than 20 loans for an aggregate of $8 million. The fifth rule is editorial, and without impact on the national economy. The sixth rule also can have no impact on the economy, since it merely forbids other Government agencies to interfere with SBA's management of the development company program before May 1, 1991, and after such date forbids development companies to accept funding from any source if such funding involves any conditions relating to the types of small concerns to be assisted, or imposes any requirement on the small concerns being assisted under this program. The total impact of these rules may thus reach at most an aggregate of $98 million per year.

SBA is also certain that these rules will not cause an increase in the costs for consumers, individual industries, Federal, State and local government agencies or geographic regions, and will have no adverse effects on competition, employment, investment, productivity or innovation.

SBA certifies that these rules do not warrant the preparation of a Federal Assessment in accordance with Executive Order 12612; the only rule with federalism implications is the fourth rule, amending § 108.503–8(b)(4). That rule tracks section 112(c)(2) of Pub. L. 100–590, and authorizes SBA to preempt the usury laws of any State as they impact on the non-Federal financing of a project under this part. As the implementation of the Statute, the provision does not require a federalism assessment under the Executive Order.

Inasmuch as the amendments here set forth do no more than implement statutorily mandated changes to the regulations and because prompt notification to the public of the changes is essential, notice of proposed rulemaking and public comment thereon are unnecessary, and therefore not required pursuant to 5 U.S.C. 553(d). SBA is publishing this rule as a final rule, effective immediately. Since no notice of proposed rulemaking is required by § 553, no regulatory flexibility analysis is required under the Regulatory Flexibility Act, specifically 5 U.S.C. 603.

There are no additional reporting, recordkeeping and other compliance requirements inherent in these rules which would come under the Paperwork Reduction Act, 44 U.S.C. Chapter 35. There are no federal rules which duplicate, overlap or conflict with these rules.

The legal authority for these rule changes is section 5(b)(6) of the Small Business Act, 15 U.S.C. 634(b)(6) and section 308(c) of the Small Business Investment Act, 15 U.S.C. 687(c).

List of Subjects in 13 CFR Part 108

Loan programs/business, Small Business Administration, Small businesses.

Accordingly, Part 108 of the Code of Federal Regulations is amended as follows:

PART 108—[AMENDED]

1. The authority citation for Part 108 is amended to read as follows:

Authority: 15 U.S.C. 687(c), 695, 696, 697, 697a, 697b, 697c, Pub. L. 100–590.

2. The table of contents of Part 108 is amended by striking the words "pilot program" after "108.504" and substituting "Private Debenture Sales" therefor.

3. The table of contents of Part 108 is further amended by inserting at the end thereof a new center heading "Assistance by other Government agencies" and a new section entitled "108.506 Restrictions on development company assistance".

4. Section 108.1 is amended by redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively, and by adding the following new paragraph (b) to read as follows:

§ 108.1 Policy.

* * * * *

(b) The purpose of the development company program is to foster economic development in both urban and rural areas by providing long term financing for small business concerns through the development company loan programs. In order to carry out this objective, greater emphasis shall be placed on the needs of rural areas and the promotion of the development company program in such areas.

* * * * *

5. Section 108.8(d)(4) is revised to read as follows:

§ 108.8 Borrower requirements and prohibitions.

* * * * *

(d) * * *

(4) The ownership interest(s) in the applicant shall be completely identical with and in the same proportion as the ownership interest(s) in such operating small concern, and this identity of interests shall remain unchanged until the section 502 loan or 503 loan is repaid in full or if SBA sooner gives approval to a change: *Provided, however,* That SBA shall not decline a loan or a guarantee to an applicant when the ownership interests in the operating small concern and in such applicant are not identical and in the same proportion solely because one or more of the following members of the same family have such interest or interests in one and/or the other: father, mother, son, daughter, wife, husband, brother, or sister. In each such case, SBA shall make a determination that such ownership, such guarantee and the proceeds of such loan will substantially benefit the operating small concern.

* * * * *

6. Section 108.503–4(a) introductory text is amended by striking the words "Up to fifteen (15) percent" at the beginning of the fifth sentence thereof, and inserting instead "Up to thirty-three percent (33%)" and by revising paragraph (a)(2) thereof to read as follows:

§ 108.503–4 Project eligibility.

(a) * * *

(2) Reasonable projections of growth demonstrate that the applicant concern will need additional space within three years and will fully utilize such additional space within ten years, and

* * * * *

7. Section 108.503–8 Third-party financing is amended by revising paragraph (b)(4) to read as follows:

§ 108.503–8 Third-party-financing.

* * * * *

(b) * * *

(4) SBA shall not participate in a project partially financed under this part, unless the interest rate on the other financing is legal and reasonable: *Provided, however,* where the constitution or laws of any State limit the rate or amount of interest which may be charged, taken, received or reserved, SBA shall establish for any commercial loan which funds any portion of the cost of such project (other than the portion financed pursuant to this part), a maximum legal rate which shall supersede such rate prescribed by such State. SBA shall publish such rate quarterly by a Notice in the **Federal Register.** The authority to establish such rate shall terminate on October 1, 1990, unless reenacted by Congress and approved by the President.

* * * * *

§ 108.504 [Amended]

8. Section 108.504 is amended by striking the caption "*Pilot program*" and substituting "*Private debenture sales*" therefor.

9. Section 108.504 is further amended by revising paragraphs (b) and (c) to read as follows:

(b) *504 Program.* SBA shall conduct a program involving the sale to investors of 504 debentures or 505 certificates, as defined in § 108.2, either publicly or by private placement.

(c) *Purpose.* The terms and conditions upon which assistance may be rendered under this section shall be for the same purposes and shall be the same as set forth in §§ 108.503 to 108.503–15 of this part, except as superseded by this section.

10. A new section is added at the end of Part 108 to read as follows:

§ 108.506 Restriction on development company assistance.

Prior to May 1, 1991 no department or agency of the United States government which provides funding to any State or local development company (including a 503 company) shall impose any condition, priority or restriction upon the type of small business which receives financing under this part nor shall it include any condition or impose any requirement, directly or indirectly, upon any recipient of assistance under this part: *Provided,* That the foregoing shall not affect any such conditions, priorities or restrictions if the department or agency also provides all of the financial assistance to be delivered by the development company to the small business and such conditions, priorities or restrictions are limited solely to the financial assistance so provided on or after May 1, 1991, no development company may accept funding from any source, including but not limited to any department or agency of the United States Government, if such funding includes any conditions, priorities or restrictions upon the types of small businesses to which they may provide financial assistance under this part or if it includes any conditions or imposes any requirements, directly or indirectly, upon any recipient of assistance under this part: *Provided,* That the foregoing shall not affect any such conditions, priorities or restrictions if the department or agency also provides all of the financial assistance to be delivered by the development company to the small business and such conditions, priorities or restrictions are limited solely to the financial assistance so provided.

[Catalog of Federal Domestic Assistance 59.013 State and Local Development Company Loans; 59.036 Certified Development Company Loans (503 Loans); 59.041 Certified Development Company Loans (504 loans).

Dated: December 29, 1988.

James Abdnor,

Administrator.

[FR Doc. 89–3007 Filed 2–8–89; 8:45 am]

BILLING CODE 8025–01–M

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13 CFR Part 121

Small Business Size Standard for Real Estate Agents and Managers

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) is establishing a permanent size standard of $1 million in average annual receipts for the Real Estate Agents and Managers industry, Standard Industrial Classification (SIC) code 6531. This rule is necessary to finalize an interim emergency final rule size standard issued July 3, 1985 and to clarify how receipts will be computed for this size standard. Its purpose is to identify that segment of the industry defined as small business.

EFFECTIVE DATE: February 9, 1989.

FOR FURTHER INFORMATION CONTACT: Harvey D. Bronstein, (202) 653–6373.

SUPPLEMENTARY INFORMATION: This rule establishes a permanent size standard for the Real Estate Agents and Managers industry. In the 1985 Emergency Interim Final Rule (50 FR 27418), SBA explained the reasons for the selection of the $1 million in fees and commissions size standard. It also requested public comment.

To summarize the 1985 rule, SBA indicated that the primary application of the size standard would be for SBA's Economic Injury Disaster Loans. Due to the limited availability of statistics on the real estate industry, SBA relied to a great extent on trade association sources, in this case, the National Association of Realtors' publications on firm size distribution and average firm size. SBA also analyzed statistics from Dun and Bradstreet.

SBA found that average firm size ranged from 10 to 24 salespersons, depending on the source used. Commissions per employee averaged $33,000 in 1984 dollars. After considering various possible size standards in the 1985 interim rule, SBA selected $1 million in commissions, equivalent to 30 employees. This level was selected because it includes a proportion of firms and industry sales comparable to SBA's overall proportion of firms and sales covered by size standards for all industries, and because it was below the National Association of Realtors' large size category (see 50 FR 27419). SBA received no comments on the 1985 rule.

In computing small business eligibility for this industry, SBA will include receipts from all sources, but exclude monies which are received in trust for an unaffiliated third party. For example, consider a firm has 10 percent commission on $8 million in sales, $100,000 from real estate management fees and $50,000 in real estate appraisal fees. The $8 million in sales that are remitted to third parties, in this case the sellers of properties, would be excluded from the calculation of annual receipts. SBA would regard the firm as small business with $950,000 in receipts, composed of $800,000 in commissions and $150,000 in other noncommissioned sources of income.

The exclusion of funds received in trust for unaffiliated third parties is consistent with SBA's Office of Hearings and Appeals decision in the 1985 Size Appeal of Morris Travel Corporation, No. 2228 (July 29, 1985), concerning the sales of airline tickets by travel agents on behalf of the airlines and is similar to

the approach now used in the size standard for the travel agent industry (see 53 FR 18820). This calculation is described in footnote 10 of the size standard table.

Since the travel agencies industry, like the real estate agent industry, often receives funds in trust for third parties, i.e., a property owner or transportation carrier, SBA believes it appropriate to apply footnote 10 to the travel agencies size standard and has done so in this final rule. The footnote makes explicit Agency policy for the travel agencies size standard that has been followed since the decision in the Size Appeal of Morris Travel Corporation. The size standard for the travel agent industry (SIC code 4724), however, remains unchanged at $500,000 as stated in the SBA's final rule governing that industry, published May 25, 1988 (53 FR 18820).

Compliance With Executive Orders 12291 and 12612, Regulatory Flexibility Act and Paperwork Reduction Act (5 U.S.C. 601, et seq. and 44 U.S.C. Chapter 35)

This final rule defines which firms in the Real Estate Agents and Managers industry are eligible for SBA's assistance. It is not expected to have an annual economic impact exceeding $100 million per year. As explained in the 1985 interim rule, the Economic Injury Disaster Loan program, the primary application of the rule, is too small to account for this magnitude of impact. In addition, SBA believes this rule is not likely to result in a major increase in costs or prices, or have a significant economic effect.

SBA also certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, nor does it contain recordkeeping or reporting requirements subject to the Paperwork Reduction Act. This rule is nonmajor because SBA rarely makes loans to firms in this industry, and the number of contracts set aside in this industry is small. In FY 1987, there was only one loan for $279,000. On Government procurements, real estate agents and managers defined as small businesses received $49 million in Government contracts in FY 1987 of which $5.4 million was awarded on a set aside basis.

SBA certifies that this final rule would not have federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Loan programs—business, Reporting and recordkeeping requirements, Small business.

Accordingly, Part 121 of 13 CFR is amended as follows:

PART 121—[AMENDED]

1. The authority citation for Part 121 of 13 CFR continues to read as follows:

Authority: Secs. 3(a) and 5(b)(6) of the Small Business Act, 15 U.S.C. 632(a) and 634(b)(6), and Pub. L. 99-591 and 99-661.

§ 121.2 [Amended]

2. In § 121.2(d)(2) in Table 2 for Major Group 47, SIC code 4724, footnote 10 is added to column 3 to read as follows:

(d) * * *

(2) * * *

SIC	Description	Size standards in number of employees or millions of dollars
(* = New SIC Code in 1987, not used in 1972	(N.E.C. = Not elsewhere classified)	
4724	Travel agencies	[10] $0.5

* * * * *

3. In § 121.2(d)(2) in Table 2 Major Group 65, SIC code 6531 is revised to read as follows:

(d) * * *

(2) * * *

SIC	Description	Size standards in number of employees or millions of dollars
(* = New SIC Code in 1987, not used in 1972	(N.E.C. = Not elsewhere classified)	
6531	Real estate agents and managers	[10] $1.0

* * * * *

4. In § 121.2(d)(2), footnote 10 following Table 2 is revised to read as follows:

[10] As measured by total revenues, but excluding funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. The commissions received would be included as revenue.

Date: November 10, 1988.

James Abdnor,

Administrator, U.S. Small Business Administration.

[FR Doc. 89-3008 Filed 2-8-89; 8:45 am]

BILLING CODE 8025-01-M

13 CFR Part 123

[Rev. 11; Amdt. 10]

Disaster Loans

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration is publishing three final rules relating to its Disaster Loan Program. The first rule promulgated here amends the disaster loan regulation, 13 CFR Ch. I, Part 123, by authorizing SBA to establish a flexible repayment schedule during the first two years of a disaster loan, reflecting the borrower's ability to pay. The second rule promulgated here harmonizes SBA's disaster loan making authority with the Federal Emergency Management Administration's (FEMA) standard flood insurance policy. The third of these rules promulgated here clarifies the procedures which SBA will use to impose the statutory penalty of 150% of the loan amount on disaster loan recipients who misapply disaster loan proceeds.

EFFECTIVE DATE: February 9, 1989.

FOR FURTHER INFORMATION CONTACT: Bernard Kulik, Deputy Associate Administrator for Disaster Assistance, (202) 653-6879.

SUPPLEMENTARY INFORMATION: On August 8, 1988, SBA published a Notice of Proposed Rulemaking (NPRM 1; 53 FR 29691) proposing the first two rules promulgated now as final. The comment period ended October 7, 1988. No comments were received.

On August 31, 1988, SBA published another NPRM (NPRM 2, 53 FR 33494) proposing the third of the three rules promulgated now as final. The comment period ended October 31, 1988. No comments were received.

The first amendment to SBA's disaster regulations promulgated here authorizes a departure from the standard repayment schedule, which requires equal monthly payments of principal and interest, beginning five months after the date of the note, and permits a choice of different payment terms only if the borrower can show a seasonal or fluctuating income flow. There are, however, other circumstances in which it is desirable to accommodate a borrower's individual needs. (See NPRM 1 for examples.) Under the final rule, in cases of a definitely foreseeable change in the borrower's circumstances, SBA could authorize a payment plan tailored to the borrower's ability to make payments. This departure from the standard payment schedule would be

authorized during the first two years of the note, and not longer, because events are difficult to predict for longer periods. Accordingly, § 123.9(a) is revised to permit accommodation of a borrower's individual needs during the first two years of repayment, notwithstanding the absence of a showing of seasonal or fluctuating income.

The second amendment promulgated here is geared to FEMA's Standard Flood Insurance Policy, 44 CFR Part 61, Appendix A(2) (1987). That policy excepts from its coverage

B. A building, and its contents, located entirely in, on, or over water, or seaward of mean high tide, if the building was newly constructed or substantially improved on or after October 1, 1982.

"Substantial improvement" is defined in FEMA's regulations. Briefly summarized, that definition considers as substantial improvement any repair or improvement of a structure if the work costs at least 50% of the market value of the structure either before the improvement, or—if damaged—before such damage, not including any improvement to bring the structure "up to Code" or any alteration of a historic structure. For the complete definition, see 44 CFR Ch. 1, 59.1 (1987). SBA regulations implementing the National Flood Insurance Act Program, 13 CFR Ch. I, Part 116, Subpart B (1988), require flood insurance before financial assistance for acquisition or construction purposes in FEMA-designated special flood hazard areas, if such insurance has been made available under the National Flood Insurance Act of 1968, 42 U.S.C. 4011, 4012(a). In line with the Congressional policy that "any Federal assistance * * * will be related closely to all flood-related programs * * * of the Federal Government" and "to guide the development of proposed future construction * * * away from locations which are threatened by flood hazards," 42 U.S.C. 4001(c) (2) and (4), SBA now excludes from disaster loan eligibility those same structures excluded from FEMA's insurance coverage. Accordingly, a new paragraph is added to § 123.14 which tracks closely FEMA's exclusionary language, but makes allowance for business needs. For example, a boat house needs to be on the water, and SBA will not exclude a boat rental business from eligibility, because a business need for such location can be shown.

The third of the three rules promulgated now clarifies the procedures which SBA will use to impose the statutory penalty on disaster loan recipients who misapply disaster loan funds.

The statute, reprinted below, imposes a liability equal to one-and-one-half times the original principal amount of a disaster loan, on a borrower who wrongfully misapplies the proceeds of such loan. Prior to this rule, the statute was reflected in 13 CFR 123.24(d) with respect to physical disaster loans, and in § 123.41(g)(3) with respect to economic injury disaster loans. These references are deleted, and a new section inserted. The new section makes clear that use of disaster loan proceeds contrary to the use schedule in the Loan Authorization and Agreement (hereafter "Agreement") will be deemed a misapplication of funds. Non-use of loan proceeds for authorized purposes after a specified maximum period of time will also be deemed a misapplication; the rule sets a maximum term of 60 days from the date of the disbursement check, unless otherwise approved by SBA in writing (see NPRM 2 for the reasoning underlying this rule).

The rule defines "wrongful misapplication" as the willful use of proceeds contrary to the Agreement. These words are intended to exclude from the statutory term minor shifts permitted by SBA within the use schedule of the Agreement. For examples, see NPRM 2.

The rule also defines the statutory terms "one-and-one-half times the original amount of the loan" as one hundred and fifty percent of the total amounts disbursed up to the time that SBA notifies the borrower of the allegation of misapplication. For justification, see NPRM 2.

The description of the procedure has been slightly revised, to eliminate an apparent presumption by SBA of a misapplication. This implication was not intended. The regulation now speaks of "indications" instead of "evidence." It offers the borrower the opportunity, upon notice from SBA by certified mail, to refute the allegations of misapplication, or in the alternative to show that such misapplication has been cured, within a stated period of at least 30 days, or more if SBA permits. Failure to submit such rebuttal or evidence within the allotted time will be deemed an admission of misapplication.

If such rebuttal or evidence is submitted, the director or manager (or deputy director or manager) of the SBA office named in the notice will determine, within 30 days of receipt, whether the answer dispels or confirms the allegations of misapplication. If misapplication is determined, the authorized loan amount will be reduced to the aggregate amounts already disbursed, and the case transferred to liquidation with a recommendation that the statutory penalty be imposed. If, on the contrary, the determination is that no misapplication has occurred or that it has been cured, the borrower would be promptly notified accordingly by certified mail.

Executive Orders 12291 and 12612, Regulatory Flexibility and Paperwork Management

SBA has determined that the rules promulgated here do not constitute a major rule for the purposes of Executive Order 12291, since the annual effect of this rule on the national economy cannot attain $100 million. In this regard, SBA estimates (based on Fiscal Year 1988) that the flexible repayment rule may affect an aggregate loan volume of $13.2 million, and the flood insurance rule $1.35 million. The misapplication rule adds no regulatory requirement to the prior rule, but merely sets forth the procedures used to implement an existing requirement. Accordingly, it has no impact on the national economy. Also, these rules will not result in a major increase in costs or prices to consumers, individual industries, Federal, State and local government agencies or geographic regions, and will have no significant effects on competition, employment, investment, productivity or innovation.

For the purpose of compliance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, these rules may have a significant economic impact on a substantial number of small entities. It is estimated that approximately 800 out of approximately 15,000 disaster loan borrowers (roughly 5.3%) will benefit economically from the flexible repayment plan, and that about 100 disaster loan applicants will be affected by the flood insurance rule. The misapplication rule is procedural only, and has no substantive effect on small entities.

The following analysis of these provisions is provided within the context of the review prescribed by the Regulatory Flexibility Act (5 U.S.C. 603).

The reasons for these rules, and their purposes are as follows:

The rule authorizing fluctuating payments during the first two years of a disaster loan is designed to give greater flexibility to SBA's loan officers and disaster loan borrowers where rigid adherence to a requirement of equal monthly payments of principal plus interest may adversely affect the borrower's financial situation, require a denial of the loan, or require a longer payout period. Since the purpose of SBA's disaster assistance is remedial, close attention to a disaster victim's

individual circumstances is preferable to adherence to standardized requirements.

The rule removing structures surrounded by water from disaster loan eligibility is prompted by the statutory requirement that all Federal flood assistance programs follow integrated policies (42 U.S.C. 4002(a)(2)).

The misapplication rule fills a prior omission in the disaster regulations, which left unstated the procedures governing a possible imposition of the statutory penalty for the misapplication of disaster loan funds.

SBA hereby certifies that these new rules have no federalism implications warranting a Federal Assessment in accordance with Executive Order 12612.

SBA estimates that the rule offering flexible payment terms during the first two years of a disaster loan will benefit 800 disaster victims, out of an average annual disaster loan volume of 15,000 loans. The rule barring structures surrounded by water from disaster assistance is estimated to affect 100 such structures each year. No estimate of the number of cases in which SBA will uncover misapplication of disaster loan funds is possible, since SBA has hitherto undertaken few investigations in this regard.

There are no additional reporting, recordkeeping and other compliance requirements inherent in these rules which would come under the Paperwork Reduction Act. 44 U.S.C. Chapter 35. There are no federal rules which duplicate, overlap or conflict with these rules; SBA views its policy to harmonize its disaster assistance policy with FEMA's as supplementing rather than duplicating FEMA's rule. There are no significant alternate means to accomplish the objectives of these rules.

The legal authority for these rule changes is section 5(b)(6) of the Small Business Act, 15 U.S.C. 634(b)(6).

List of Subjects in 13 CFR Part 123

Disaster assistance, Loan programs/business, Small Business Administration, Small businesses.

Accordingly, Part 123 of Ch. I, Title 13, Code of Federal Regulations is amended as follows:

PART 123—[AMENDED]

1. The authority citation for Part 123 continues to read as follows:

Authority: Secs. 5(b)(6), 7 (b), (c), (f) of the Small Business Act, 15 U.S.C. 634(b)(6) and 636 (b), (c), (f); Pub. L. 100–590.

2. The Table of contents of Part 123 is amended by adding at the end of Subpart A—Conditions Applicable to All Loans Under This Part, a new entry as follows:

§ 123.19 Misapplication of loan proceeds.

§ 123.9 [Amended]

3. Section 123.9(a) is revised as follows:

(a) *Loan terms.* No loans made under this part, including renewals and extensions thereof, may be authorized for a term in excess of thirty years (see also § 123.13(b)), and no physical disaster loan made to a business able to obtain Credit Elsewhere (as defined in § 123.3) may be authorized for a term exceeding three years. Repayment ability shall be determined by SBA. Maturity and installment terms shall be established on each loan on the basis of the borrower's need and ability to pay. In most cases equal monthly installment payments of principal and interest, beginning five months from the date of the note, are required, but other payment terms may be accorded borrowers with seasonal or fluctuating income, and installment payments of varying amounts over the first two years of the loan may be agreed upon if SBA determines that such schedule better reflects the borrower's ability to pay. There is no penalty for prepayment of a direct loan.

* * * * *

§ 123.14 [Amended]

4. Section 123.14 is amended by redesignating paragraphs (c) and (d), respectively, as paragraphs (d) and (e), and adding a new paragraph (c) to read as follows:

(c) *Buildings ineligible for flood insurance.* No loans under this part shall be made to an applicant for losses sustained to a building, and its contents, located seaward of mean high tide, or entirely in, on or over water, without a business need therefor, if such building was newly constructed or substantially improved on or after February 9, 1989. "Substantial improvement" shall have the same meaning as the definition in 44 CFR, Ch. 1, 59.1 (1987).

§123.24 [Amended]

5. (a) Section 123.24(d) is amended by removing the second sentence thereof and adding at the end "(See § 123.19)."

§ 123.41 [Amended]

(b) Section 123.41(g)(3) is amended by removing the second sentence thereof and adding at the end "(See § 123.19)."

6. A new § 123.19 is added to Subpart A of Part 123 to read as follows:

§ 123.19 Misapplication of loan proceeds.

(a) *Statute.* Whoever wrongfully misapplies the proceeds of a loan obtained under this subsection (15 U.S.C. 636(b)) shall be civilly liable to the Administrator in an amount equal to one-and-one-half times the original principal amount of the loan. (Pub. L. 92–385, approved August 16, 1972; 86 Stat. 554.)

(b) *Terms defined.* For purposes of this section:

(1) "Wrongful misapplication" means the willful use, without SBA approval, of any part or all of the loan proceeds contrary to the Loan Authorization and Agreement (hereafter "misapplication"). Non-use for authorized purposes of disbursed loan funds after a reasonable time not to exceed sixty (60) days from the date of the disbursement check, unless otherwise approved by SBA in writing, shall be deemed such misapplication.

(2) "Original principal amount" means the aggregate amount disbursed by SBA under such Agreement.

(3) "One-and-one-half times" means the original principal amount (together with accrued interest) plus one-half of such original principal amount.

(c) *Procedure.* (1) The SBA officer servicing the loan shall notify the borrower at the borrower's last known address by certified mail, return receipt requested, of the indications SBA has (including information supplied by the borrower) that a wrongful misapplication under this section may have occurred.

(2) Such notice shall offer the borrower an opportunity to submit to the SBA office indicated in the notice, within a stated time limit of at least 30 days from the date of such notice, in person or in writing, *pro se* or otherwise, whatever evidence the borrower wishes to offer that the misapplication has been cured, or, in the alternative, to rebut the allegation contained in the notice. Failure or refusal to submit such evidence or rebuttal within the stated time limit (or any extension thereof, for good cause shown, in SBA's discretion) shall be deemed an admission of such misapplication. If such evidence or rebuttal is submitted, the director or manager of the SBA office indicated in the notice, or his or her deputy, shall determine within thirty days of receipt of the borrower's answer, whether or not a misapplication has occurred.

(3) If such determination is that a misapplication has occurred, the approved loan amount shall be reduced to the original principal amount, the borrower notified accordingly by certified mail, return receipt requested, and the case referred for liquidation with the recommendation that the statutory penalty be imposed.

(4) If the determination under paragraph (c)(2) of this section is that no misapplication has occurred, the borrower shall be promptly notified accordingly, by certified mail, return receipt requested.

[Catalog of Federal Domestic Assistance, Numbers 59002, Economic Injury Disaster Loans; 59.006, Physical Disaster Loans]

Dated: January 4, 1989.

James Abdnor,

Administrator.

[FR Doc. 89–3009 Filed 2–8–89; 8:45 am]

BILLING CODE 8025-01-M

13 CFR Part 142

Program Fraud Civil Remedies Act Regulations

ACTION: Final rule.

SUMMARY: This regulation implements the Program Fraud Civil Remedies Act of 1986 (PFCRA) which established for certain agencies an administrative remedy for fraudulent claims or statements made to such agencies. Since the PFCRA contemplated that the participating agencies promulgate substantially similar regulations, this regulation is, in large part, identical to a model developed for the participating agencies by a Task Force headed by the Department of Health and Human Services (HHS) and amended pursuant to public comment. The rule establishes administrative procedures for imposing the statutorily authorized penalties against any person who makes, submits, or presents a false, fictitious, or fraudulent claim or written statement to the Small Business Administration (SBA).

EFFECTIVE DATE: February 9, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia R. Forbes, Chief Counsel for Legislation, (202) 653–6573.

SUPPLEMENTARY INFORMATION: The structure of a PFCRA procedure under this regulation may be described as follows: The PFCRA authorizes investigations of false claims and statements by the Small Business Administration's (SBA) Inspector General (investigating official). Cases are initially referred to SBA's General Counsel (reviewing official) for evaluation and approval, then to the Attorney General for Department of Justice approval. The Department of Justice could elect to bring the case itself in court under the False Claims Act or other statutes, which would preclude SBA's further action on the matter. If the Department of Justice approves the use of PFCRA procedures, the case may be referred to an ALJ for a formal hearing on the record. The PFCRA provides for an appeal of the ALJ's decision to SBA's Administrator and then to the U.S. District Court.

On May 21, 1987 (52 FR 19156), SBA published a proposed rule and permitted 30 days for the public to comment. SBA received no public comments; however, other agencies which proposed regulations based on the model did receive comments. Those comments have been reviewed by the Task Force and the model has been amended in certain respects. In addition to adopting these changes, SBA has made certain changes to bring the regulation in line with existing SBA procedure.

The following substantive changes were made to conform to the model rule. (See final rule published on April 8, 1988 by HHS for description of comments and explanation of and basis for changes, 53 FR 11656.)

Section 142.2 Definitions

"Administrator." This definition was added to clarify that "Administrator" means the Administrator of the Small Business Administration.

"Benefit." This definition was amended to delete the phrase "except as the context otherwise requires" and by substituting the phrase "in the context of 'statements'" in response to comments that the definition in the proposed rule was vague and overbroad.

"Person." This definition was amended by adding the word "or" before "private" and by deleting the phrase "State, political subdivision of a State, municipality, county, district, and Indian tribe" in response to comments that the statute does not permit inclusion of states and their political subdivisions in the definition of "person."

"Representative." This definition was amended to specify that, in order to be a representative, an attorney must be a member in good standing of the bar of any State, or possession of the United States or of the District of Columbia or the Commonwealth of Puerto Rico.

Section 142.5 Review by the reviewing official

Paragraph (6) of this section was amended to delete the final sentence. That sentence provided that a statement made by a reviewing official concerning reasonable prospect of collecting penalties may be based on information then known or an absence of any information indicating that the person may be unable to pay such an amount. The result of this change is that the issue of what will constitute sufficient support for the reviewing official's statement will be left to the Department of Justice.

Section 142.7 Complaint

Paragraph (a) of this section was amended by inserting the words "and provide a copy to the Office of Hearings and Appeals" after the word "defendant." This addition was made to ensure that the Office of Hearings and Appeals receives copies of all complaints issued.

Section 142.8 Service of complaint

Paragraph (a) of this section was amended by deleting the final sentence which read "Service is complete upon receipt." Inserted in its place are the words "Service is complete when made in accordance with the preceding sentence." This substitution was made to bring the regulations in line with the Federal Rules of Civil Procedure.

Section 142.9 Answer

Paragraph (a) of this section was amended by inserting the words "and the Office of Hearings and Appeals" after the word "official." This addition was made in order to notify the Office of Hearings and Appeals that the defendant is seeking a hearing.

Section 142.17 Rights of parties

This section was amended by adding "as permitted by the ALJ" to the end of paragraph (h) to clarify that post-hearing briefs may be filed only at the discretion of the ALJ.

Section 142.18 Authority of the ALJ

Paragraph (c) of this section was amended to specify that the ALJ does not have the authority to find Federal statutes or regulations invalid.

Section 142.20 Disclosure of documents

Paragraph (b) of this section was amended by adding a sentence at the end of such paragraph which states "The term 'information' as used in this section means factual data."

Section 142.21 Discovery

Paragraphs (e) (1), (2) and (3) of this section were amended to clarify that subpoenas need be obtained only in cases where a party seeks to depose a non-party. A subpoena is unnecessary with respect to depositions of parties because the ALJ can issue an order compelling discovery if a party refuses to be deposed.

Paragraph (e)(4) of this section was amended by deleting the words "and copying" at the end of the sentence. Copies of a deposition transcript may be

obtained for a fee from the reporting service which prepared such transcript.

Section 142.22 Exchange of witness lists, statements, and exhibits

Paragraph (a) of this section was amended by deleting the words "copies of prior statements of proposed witnesses" because such statements may well be protected under the attorney work product privilege or the attorney-client privilege. SBA does recognize, however, that it must disclose such statements if they are exculpatory. *See* § 142.20.

Section 142.26 Form, filing and service of papers

Paragraph (b) of this section, *Service,* was amended to clarify that service upon any party other than those required to be served as prescribed in § 142.8 shall be made by delivering a copy or by placing a copy of the document in the United States mail, postage prepaid, and addressed to the party's last known address.

Section 142.28 Motions

Paragraph (d) of this section was amended by adding "requests for extensions of time" to the list of circumstances under which an ALJ may grant a motion before the time period for reply has elapsed. SBA believes this change is necessary to provide the ALJ discretion to grant extensions of time immediately.

Section 142.31 Determining the amounts of penalties and assessments

Paragraph (b)(7) of this section was amended by adding the words "public finance" after the word "safety." The reason for such an amendment is to ensure that the potential or actual effect of misconduct affecting public finance will be considered when determining penalties.

Section 142.33 Witnesses

Paragraph (f)(2) of this section was amended to add the words "appearing for the entity pro se or" after the words "employee of the party" for clarity.

Section 142.35 The record

Paragraph (a) of this section was amended by deleting the second sentence thereof because transcripts, if desired, should be obtained from the court reporter.

Section 142.36 Post-hearing briefs

This section was amended by deleting the second sentence, which allowed parties to file post-hearing briefs at their will. Such filings will be permitted only at the discretion of the ALJ.

Section 142.37 Initial decision

Paragraph (c) of this section was amended to substitute the word "parties" for the word "defendants" in the second sentence in order to clarify that the ALJ will serve all parties and not just defendants with a statement describing the right of any defendant determined to be liable to file a motion for reconsideration.

Section 142.38 Reconsideration of initial decision

Paragraph (f) of this section has been rewritten to clarify that if the ALJ denies reconsideration, the initial decision shall be final and shall be binding on the parties 30 days after the ALJ denies the motion, unless the initial decision is timely appealed to the Administrator in accordance with § 142.39

Paragraph (g) of this section has been rewritten to clarify that if the ALJ issues a revised initial decision, that decision shall be final and binding on the parties 30 days after it is issued, unless timely appealed to the Administrator in accordance with § 142.39.

Section 142.39 Appeal to the administrator

Paragraph (b)(1) of this section has been rewritten to clarify that a notice of appeal may be filed at any time within 30 days after the ALJ issues an initial decision. However, if another party files a motion for reconsideration under § 142.38, consideration of the appeal shall be stayed automatically pending resolution of the motion for reconsideration.

Paragraph (b)(2) of this section has been amended to clarify that a party is not obligated to file an appeal.

Paragraph (b)(3) has been deleted to conform to the changes made in paragraph (b)(1).

Paragraph (c) of this section has been amended to clarify that if a timely appeal is filed, the ALJ will forward the record of the proceeding to the Administrator after the time for filing motions for reconsideration has expired.

Paragraph (k) of this section has been amended to specify that all parties will be served with a statement describing the right of any person determined to be liable for a penalty or assessment to seek judicial review. The former language provided only that the defendant would be served with such a statement.

Compliance With the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., Executive Order 12291, and the Paperwork Reduction Act, 44 U.S.C. Ch. 35

SBA certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Although the procedures enable certain penalties to be assessed where false or fictitious statements have been made to SBA, SBA does not anticipate that a substantial number of small businesses will be affected by these procedures.

In addition, SBA finds that this regulation is not a major rule under Executive Order 12291, as the procedures it establishes are not expected to result in an annual effect on the economy of $100 million or more. Since the PFCRA does not expand the investigative jurisdiction of the SBA, the economic effect of these procedural regulations is not expected to approach the $100 million level.

These procedural regulations do not require any additional reporting or recordkeeping requirements which are subject to the Paperwork Reduction Act.

SBA also certifies that this rule does not require a Federal Assessment under Executive Order 12612.

List of Subjects in 13 CFR Part 142

Administrative practice and procedure, Investigations, Small businesses.

Accordingly, pursuant to section 3803(g)(2) of the Program Fraud Civil Remedies Act, 31 U.S.C. Ch. 38, the Administrator is amending Chapter I of title 13, Code of Federal Regulations, by adding a new Part 142 to read as follows:

PART 142—PROGRAM FRAUD CIVIL REMEDIES ACT REGULATIONS

Sec.

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142.46 Compromise or settlement.
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Authority: 31 U.S.C. 3803(g)(2), 15 U.S.C. 634(b)(6).

§ 142.1 Basis and purpose.

(a) *Basis.* This part implements the Program Fraud Civil Remedies Act of 1986, Pub. L. 99–509, sections 6101–6104, 100 Stat. 1874 (October 21, 1986), codified at 31 U.S.C. 3801–3812. 31 U.S.C. 3809 of the statute requires each authority head to promulgate regulations necessary to implement the provisions of the statute.

(b) *Purpose.* This part (1) establishes administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to authorities or to their agents, and (2) specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties and assessments.

§ 142.2 Definitions.

Administration means the Small Business Administration.

Administrator means the Administrator of the Small Business Administration.

ALJ means an Administrative Law Judge in the Administration appointed pursuant to 5 U.S.C. 3105 or detailed to the Administration pursuant to 5 U.S.C. 3344.

Benefit means, in the context of "statement," anything of value, including but not limited to any advantage, preference, privilege, license, permit, favorable decision, ruling, status, or loan guarantee.

Claim means any request, demand, or submission—

(a) Made to the Administration for property, services, or money (including money representing grants, loans, insurance, or benefits);

(b) Made to a recipient of property, services, or money from the Administration or to a party to a contract with the Administration—

(1) For property or services if the United States—

(i) Provided such property or services;

(ii) Provided any portion of the funds for the purchase of such property or services; or

(iii) Will reimburse such recipient or party for the purchase of such property or services; or

(2) For the payment of money (including money representing grants, loans, insurance, or benefits) if the United States—

(i) Provided any portion of the money requested or demanded; or

(ii) Will or is potentially liable to reimburse such recipient or party for any portion of the money paid on such request or demand; or

(c) Made to the Administration which has the effect of decreasing an obligation to pay or account for property, services, or money.

Complaint means the administrative complaint served by the reviewing official on the defendant under § 142.7.

Defendant means any person alleged in a complaint under § 142.7 to be liable for a civil penalty or assessment under § 142.3.

Government means the United States Government.

Individual means a natural person.

Initial decision means the written decision of the ALJ required by § 142.10 or § 142.37, and includes a revised initial decision issued following a remand or a motion for reconsideration.

Investigating official means the Inspector General of the Small Business Administration or an officer or employee of the Office of Inspector General as designated by the Inspector General and serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule.

Knows or has reason to know means that a person, with respect to a claim or statement—

(a) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(b) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(c) Acts in reckless disregard of the truth or falsity of the claim or statement.

Makes, wherever it appears, shall include the terms presents, submits, and causes to be made, presented, or submitted. As the context requires, *making* or *made,* shall likewise include the corresponding forms of such terms.

Person means any individual, sole proprietorship, partnership, corporation, association, or private organization, and includes the plural of that term.

Presiding officer means an administrative law judge appointed pursuant to section 3105 of title 5, United States Code and serving in the Office of Hearings and Appeals of the Small Business Administration or detailed to such office pursuant to section 3344 of title 5, United States Code.

Representative means an attorney who is a member in good standing of the bar of any State, Territory, or possession of the United States or of the District of Columbia or the Commonwealth of Puerto Rico.

Reviewing official means the General Counsel of the Administration or his designee who is—

(a) Serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for a grade GS–16 under the general schedule;

(b) Not subject to supervision by, or required to report to, the investigating official; and

(c) Not employed in the organizational unit of the Administration in which the investigating official is employed.

Statement means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made—

(a) With respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(b) With respect to (including relating to eligibility for)—

(1) A contract with, or a bid or proposal for a contract with; or

(2) A grant, loan, or benefit from, the Administration, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under such contract or for such grant, loan, or benefit, or if the Government will be or is potentially liable to reimburse such State, political subdivision, or party for any portion of the money or property under such

contract or for such grant, loan, or benefit.

§ 142.3 Basis for civil penalties and assessments.

(a) *Claims.*

(1) Any person who makes a claim that the person knows or has reason to know—

(i) Is false, fictitious, or fraudulent;

(ii) Includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;

(iii) Includes or is supported by any written statement that—

(A) Omits a material fact;

(B) Is false, fictitious, or fraudulent as a result of such omission; and

(C) Is a statement in which the person making such statement has a duty to include such material fact; or

(iv) Is for payment for the provision of property or services which the person has not provided as claimed, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such claim.

(2) Each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim.

(3) A claim shall be considered made to the Administration, recipient, or party to a contract with the Administration when such claim is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the Administration, recipient, or party.

(4) Each claim for property, services, or money is subject to a civil penalty regardless of whether such property, services, or money is actually delivered or paid.

(5) If the Government has made any payment (including transferred property or provided services) on a claim, a person subject to a civil penalty under paragraph (a)(1) of this section shall also be subject to an assessment of not more than twice the amount of such claim or that portion thereof that is determined to be in violation of paragraph (a)(1). Such assessment shall be in lieu of damages sustained by the Government because of such claim.

(b) *Statements.*

(1) Any person who makes a written statement that—

(i) The person knows or has reason to know—

(A) Asserts a material fact which is false, fictitious, or fraudulent; or

(B) Is false, fictitious, or fraudulent because it omits a material fact that the person making the statement has a duty to include in such statement; and

(ii) Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such statement.

(2) Each written representation, certification, or affirmation constitutes a separate statement.

(3) A statement shall be considered made to the Administration when such statement is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the Administration.

(c) No proof of specific intent to defraud is required to establish liability under this section.

(d) In any case in which it is determined that more than one person is liable for making a claim or statement under this section, each such person may be held liable for a civil penalty.

(e) In any case in which it is determined that more than one person is liable for making a claim under this section on which the Government has made payment (including transferred property or provided services), an assessment may be imposed against any such person or jointly and severally against any combination of such persons.

§ 142.4 Investigation.

(a) If an investigating official concludes that a subpoena pursuant to the authority conferred by 31 U.S.C. 3804(a) is warranted—

(1) The subpoena so issued shall notify the person to whom it is addressed of the authority under which the subpoena is issued and shall identify the records or documents sought;

(2) The investigating official may designate a person to act on his or her behalf to receive the documents sought; and

(3) The person receiving such subpoena shall be required to tender to the investigating official or the person designated to receive the documents a certification that—

(i) The documents sought have been produced;

(ii) Such documents are not available and the reasons therefor; or

(iii) Such documents, suitably identified, have been withheld based upon the assertion of an identified privilege.

(b) If the investigating official concludes that an action under the Program Fraud Civil Remedies Act may be warranted, the investigating official shall submit a report containing the findings and conclusions of such investigation to the reviewing official.

(c) Nothing in this section shall preclude or limit an investigating official's discretion to refer allegations directly to the Department of Justice for suit under the False Claims Act or other civil relief, or to defer or postpone a report or referral to the reviewing official to avoid interference with a criminal investigation or prosecution.

(d) Nothing in this section modifies any responsibility of an investigating official to report violations of criminal law to the Attorney General.

§ 142.5 Review by the reviewing official.

(a) If, based on the report of the investigating official under § 142.4(b), the reviewing official determines that there is adequate evidence to believe that a person is liable under § 142.3 of this part, the reviewing official shall transmit to the Attorney General a written notice of the reviewing official's intention to issue a complaint under § 142.7.

(b) Such notice shall include—

(1) A statement of the reviewing official's reasons for issuing a complaint;

(2) A statement specifying the evidence that supports the allegations of liability;

(3) A description of the claims or statements upon which the allegations of liability are based;

(4) An estimate of the amount of money or the value of property, services, or other benefits requested or demanded in violation of § 142.3 of this part;

(5) A statement of any exculpatory or mitigating circumstances that may relate to the claims or statements known by the reviewing official or the investigating official; and

(6) A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments.

§ 142.6 Prerequisites for issuing a complaint.

(a) The reviewing official may issue a complaint under § 142.7 only if—

(1) The Department of Justice approves the issuance of a complaint in a written statement described in 31 U.S.C. 3803(b)(1), and

(2) In the case of allegations of liability under § 142.3(a) with respect to a claim, the reviewing official determines that, with respect to such claim or a group of related claims submitted at the same time such claim is submitted (as defined in paragraph (b) of this section), the amount of money or the value of property or services demanded or requested in violation of § 142.3(a) does not exceed $150,000.

(b) For the purposes of this section, a related group of claims submitted at the same time shall include only those claims arising from the same transaction (*e.g.*, grant, loan, application, or contract) that are submitted simultaneously as part of a single request, demand, or submission.

(c) Nothing in this section shall be construed to limit the reviewing official's authority to join in a single complaint against a person claims that are unrelated or were not submitted simultaneously, regardless of the amount of money or the value of property or services demanded or requested.

§ 142.7 Complaint.

(a) On or after the date the Department of Justice approves the issuance of a complaint in accordance with 31 U.S.C. 3803(b)(1), the reviewing official may serve a complaint on the defendant and provide a copy to the Office of Hearings and Appeals, as provided in § 142.8.

(b) The complaint shall state—

(1) The allegations of liability against the defendant, including the statutory basis for liability, an identification of the claims or statements that are the basis for the alleged liability, and the reasons why liability allegedly arises from such claims or statements;

(2) The maximum amount of penalties and assessments for which the defendant may be held liable;

(3) Instructions for filing an answer to request a hearing, including a specific statement of the defendant's right to request a hearing by filing an answer and to be represented by a representative; and

(4) That failure to file an answer within 30 days of service of the complaint will result in the imposition of the maximum amount of penalties and assessments without right to appeal, as provided in § 142.10.

(c) At the same time the reviewing official serves the complaint, he or she shall serve the defendant with a copy of these regulations.

§ 142.8 Service of complaint.

(a) Service of a complaint must be made by certified or registered mail or by delivery in any manner authorized by Rule 4(d) of the Federal Rules of Civil Procedure. Service is complete when made in accordance with the preceding sentence.

(b) Proof of service, stating the name and address of the person on whom the complaint was served, and the manner and date of service, may be made by—

(1) Affidavit of the individual serving the complaint by delivery;

(2) A United States Postal Service return receipt card acknowledging receipt; or

(3) Written acknowledgment of receipt by the defendant or his or her representative.

§ 142.9 Answer.

(a) The defendant may request a hearing by filing an answer with the reviewing official and the Office of Hearings and Appeals within 30 days of service of the complaint. An answer shall be deemed to be a request for hearing.

(b) In the answer, the defendant—

(1) Shall admit or deny each of the allegations of liability made in the complaint;

(2) Shall state any defense on which the defendant intends to rely;

(3) May state any reasons why the defendant contends that the penalties and assessments should be less than the statutory maximum; and

(4) Shall state the name, address, and telephone number of the person authorized by the defendant to act as defendant's representative, if any.

(c) If the defendant is unable to file an answer meeting the requirements of paragraph (b) of this section within the time provided, the defendant may, before the expiration of 30 days from service of the complaint, file with the reviewing official a general answer denying liability and requesting a hearing, and a request for an extension of time within which to file an answer meeting the requirements of paragraph (b) of this section. The reviewing official shall file promptly with the ALJ the complaint, the general answer denying liability, and the request for an extension of time as provided in § 142.11. For good cause shown, the ALJ may grant the defendant up to 30 additional days within which to file an answer meeting the requirements of paragraph (b) of this section.

§ 142.10 Default upon failure to file an answer.

(a) If the defendant does not file an answer within the time prescribed in § 142.9(a), the reviewing official may refer the complaint to the ALJ.

(b) Upon the referral of the complaint, the ALJ shall promptly serve on defendant in the manner prescribed in § 142.8, a notice that an initial decision will be issued under this section.

(c) The ALJ shall assume the facts alleged in the complaint to be true, and, if such facts establish liability under § 142.3, the ALJ shall issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.

(d) Except as otherwise provided in this section, by failing to file a timely answer, the defendant waives any right to further review of the penalties and assessments imposed under paragraph (c) of this section, and the initial decision shall become final and binding upon the parties 30 days after it is issued.

(e) If, before such an initial decision becomes final, the defendant files a motion with the ALJ seeking to reopen on the grounds that extraordinary circumstances prevented the defendant from filing an answer, the initial decision shall be stayed pending the ALJ's decision on the motion.

(f) If, on such motion, the defendant can demonstrate extraordinary circumstances excusing the failure to file a timely answer, the ALJ shall withdraw the initial decision in paragraph (c) of this section if such a decision has been issued, and shall grant the defendant an opportunity to answer the complaint.

(g) A decision of the ALJ denying a defendant's motion under paragraph (e) of this section is not subject to reconsideration under § 142.38.

(h) The defendant may appeal to the Administrator the decision denying a motion to reopen by filing a notice of appeal with the Administrator within 15 days after the ALJ denies the motion. The timely filing of a notice of appeal shall stay the initial decision until the Administrator decides the issue.

(i) If the defendant files a timely notice of appeal with the Administrator, the ALJ shall forward the record of the proceeding to the Administrator.

(j) The Administrator shall decide expeditiously whether extraordinary circumstances excuse the defendant's failure to file a timely answer based solely on the record before the ALJ.

(k) If the Administrator decides that extraordinary circumstances excused the defendant's failure to file a timely answer, the Administrator shall remand the case to the ALJ with instructions to grant the defendant an opportunity to answer.

(l) If the Administrator decides that the defendant's failure to file a timely answer is not excused, the Administrator shall reinstate the initial decision of the ALJ, which shall become final and binding upon the parties 30 days after the Administrator issues such decision.

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§ 142.11 Referral of complaint and answer to the ALJ.

Upon receipt of an answer, the reviewing official shall file the complaint and answer with the ALJ.

§ 142.12 Notice of hearing.

(a) When the ALJ receives the complaint and answer, the ALJ shall promptly serve a notice of hearing upon the defendant in the manner prescribed in § 142.8. At the same time, the ALJ shall send a copy of such notice to the representative for the Government.

(b) Such notice shall include—

(1) The tentative time and place, and the nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law to be asserted;

(4) A description of the procedures for the conduct of the hearing;

(5) The name, address, and telephone number of the representative of the Government and of the defendant, if any; and

(6) Such other matters as the ALJ deems appropriate.

§ 142.13 Parties to the hearing.

(a) The parties to the hearing shall be the defendant and the Administration.

(b) Pursuant to 31 U.S.C. 3730(c)(5), a private plaintiff under the False Claims Act may participate in these proceedings to the extent authorized by the provisions of that Act.

§ 142.14 Separation of functions.

(a) The investigating official, the reviewing official, and any employee or agent of the Administration who takes part in investigating, preparing, or presenting a particular case may not, in such case or a factually related case—

(1) Participate in the hearing as the ALJ;

(2) Participate or advise in the initial decision or the review of the initial decision by the Administrator, except as a witness or a representative in public proceedings; or

(3) Make the collection of penalties and assessments under 31 U.S.C. 3806.

(b) The ALJ shall not be responsible to, or subject to the supervision or direction of, the investigating official or the reviewing official.

(c) Except as provided in paragraph (a) of this section, the representative for the Government may be employed anywhere in the Administration, including in the offices of either the investigating official or the reviewing official.

§ 142.15 Ex parte contacts.

No party or person (except employees of the ALJ's office) shall communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

§ 142.16 Disqualification of reviewing official or ALJ.

(a) A reviewing official or ALJ in a particular case may disqualify himself or herself at any time.

(b) A party may file with the ALJ a motion for disqualification of a reviewing official or an ALJ. Such motion shall be accompanied by an affidavit alleging personal bias or other reason for disqualification.

(c) Such motion and affidavit shall be filed promptly upon the party's discovery of reasons requiring disqualification, or such objections shall be deemed waived.

(d) Such affidavit shall state specific facts that support the party's belief that personal bias or other reason for disqualification exists and the time and circumstances of the party's discovery of such facts. It shall be accompanied by a certificate of the representative of record that it is made in good faith.

(e) Upon the filing of such a motion and affidavit, the ALJ shall proceed no further in the case until he or she resolves the matter of disqualification in accordance with paragraph (f) of this section.

(f) (1) If the ALJ determines that a reviewing official is disqualified, the ALJ shall dismiss the complaint without prejudice.

(2) If the ALJ disqualifies himself or herself, the case shall be reassigned promptly to another ALJ.

(3) If the ALJ denies a motion to disqualify, the Administrator may determine the matter only as part of his or her review of the initial decision upon appeal, if any.

§ 142.17 Rights of parties.

Except as otherwise limited by this part, all parties may—

(a) Be accompanied, represented, and advised by a representative;

(b) Participate in any conference held by the ALJ;

(c) Conduct discovery;

(d) Agree to stipulations of fact or law, which shall be made part of the record;

(e) Present evidence relevant to the issues at the hearing;

(f) Present and cross-examine witnesses;

(g) Present oral arguments at the hearing as permitted by the ALJ; and

(h) Submit written briefs and proposed findings of fact and conclusions of law after the hearing, as permitted by the ALJ.

§ 142.18 Authority of the ALJ.

(a) The ALJ shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The ALJ has the authority to—

(1) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of discovery;

(8) Regulate the course of the hearing and the conduct of representatives and parties;

(9) Examine witnesses;

(10) Receive, rule on, exclude, or limit evidence;

(11) Upon motion of a party, take official notice of facts;

(12) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact;

(13) Conduct any conference, argument, or hearing on motions in person or by telephone; and

(14) Exercise such other authority as is necessary to carry out the responsibilities of the ALJ under this part.

(c) The ALJ does not have the authority to find Federal statutes or regulations invalid.

§ 142.19 Prehearing conferences.

(a) The ALJ may schedule prehearing conferences as appropriate.

(b) Upon the motion of any party, the ALJ shall schedule at least one prehearing conference at a reasonable time in advance of the hearing.

(c) The ALJ may use prehearing conferences to discuss the following:

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;

(3) Stipulations and admissions of fact or as to the contents and authenticity of documents;

(4) Whether the parties can agree to submission of the case on a stipulated record;

(5) Whether a party chooses to waive appearance at an oral hearing and to submit only documentary evidence (subject to the objection of other parties) and written argument;

(6) Limitation of the number of witnesses;

(7) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(8) Discovery;

(9) The time and place for the hearing; and

(10) Such other matters as may tend to expedite the fair and just disposition of the proceedings.

(d) The ALJ may issue an order containing all matters agreed upon by the parties or ordered by the ALJ at a prehearing conference.

§ 142.20 Disclosure of documents.

(a) Upon written request to the reviewing official, the defendant may review any relevant and material documents, transcripts, records, and other materials that relate to the allegations set out in the complaint and upon which the findings and conclusions of the investigating official under § 142.4(b) are based, unless such documents are subject to a privilege under Federal law. Upon payment of fees for duplication, the defendant may obtain copies of such documents.

(b) Upon written request to the reviewing official, the defendant also may obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint, even if it is contained in a document that would otherwise be privileged. If the document would otherwise be privileged, only that portion containing exculpatory information must be disclosed. The term "information" as used in this section does not include legal materials such as statutes or case law obtained through legal research.

(c) The notice sent to the Attorney General from the reviewing official as described in § 142.5 is not discoverable under any circumstances.

(d) The defendant may file a motion to compel disclosure of the documents subject to the provisions of this section. Such motion may only be filed with the ALJ following the filing of an answer pursuant to § 142.9.

§ 142.21 Discovery.

(a) The following types of discovery are authorized:

(1) Requests for production of documents for inspection and copying;

(2) Requests for admissions of the authenticity of any relevant document or of the truth of any relevant fact;

(3) Written interrogatories; and

(4) Depositions.

(b) For the purpose of this section and §§ 142.22 and 142.23, the term "documents" includes information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence. Nothing contained herein shall be interpreted to require the creation of a document.

(c) Unless mutually agreed to by the parties, discovery is available only as ordered by the ALJ. The ALJ shall regulate the timing of discovery.

(d) *Motions for discovery.* (1) A party seeking discovery may file a motion with the ALJ. Such a motion shall be accompanied by a copy of the requested discovery, or in the case of depositions, a summary of the scope of the proposed deposition.

(2) Within ten days of service, a party may file an opposition to the motion and/or a motion for protective order as provided in § 142.24.

(3) The ALJ may grant a motion for discovery only if he finds that the discovery sought—

(i) Is necessary for the expeditious, fair, and reasonable consideration of the issues;

(ii) Is not unduly costly or burdensome;

(iii) Will not unduly delay the proceeding; and

(iv) Does not seek privileged information.

(4) The burden of showing that discovery should be allowed is on the party seeking discovery.

(5) The ALJ may grant discovery subject to a protective order under § 142.24.

(e) *Depositions.* (1) If a motion for deposition of a non-party is granted, the ALJ shall issue a subpoena for the deponent, which may require the deponent to produce documents. The subpoena shall specify the time and place at which the deposition will be held. If a motion for deposition of a party is granted, the party seeking such deposition shall promptly notify counsel for the party to be deposed, by first class mail, of the time and place of deposition.

(2) The party seeking to depose a non-party shall serve the subpoena in the manner prescribed in § 142.8.

(3) A non-party deponent may file with the ALJ a motion to quash the subpoena or a motion for a protective order within ten days of service.

(4) The party seeking to depose shall provide for the taking of a verbatim transcript of the deposition, which it shall make available to all other parties for inspection.

(f) Each party shall bear its own costs of discovery.

§ 142.22 Exchange of witness lists, statements, and exhibits.

(a) At least 15 days before the hearing or at such other time as may be ordered by the ALJ, the parties shall exchange witness lists and copies of proposed hearing exhibits, including copies of any written statements that the party intends to offer in lieu of live testimony in accordance with § 142.33(b). At the time the above documents are exchanged, any party that intends to rely on the transcript of deposition testimony in lieu of live testimony at the hearing, if permitted by the ALJ, shall provide each party with a copy of the specific pages of the transcript it intends to introduce into evidence.

(b) If a party objects, the ALJ shall not admit into evidence the testimony of any witness whose name does not appear on the witness list or any exhibit not provided to the opposing party as provided above unless the ALJ finds good cause for the failure or that there is no prejudice to the objecting party.

(c) Unless another party objects within the time set by the ALJ, documents exchanged in accordance with paragraph (a) of this section shall be deemed to be authentic for the purpose of admissibility at the hearing.

§ 142.23 Subpoenas for attendance at hearing.

(a) A party wishing to procure the appearance and testimony of any individual at the hearing may request that the ALJ issue a subpoena.

(b) A subpoena requiring the attendance and testimony of an individual may also require the individual to produce documents at the hearing.

(c) A party seeking a subpoena shall file a written request therefor not less than 15 days before the date fixed for the hearing unless otherwise allowed by the ALJ for good cause shown. Such request shall specify any documents to be produced and shall designate the witnesses and describe the address and location thereof with sufficient particularity to permit such witnesses to be found.

(d) The subpoena shall specify the time and place at which the witness is to

appear and any documents the witness is to produce.

(e) The party seeking the subpoena shall serve it in the manner prescribed in § 142.8. A subpoena on a party or upon an individual under the control of a party may be served by first class mail.

(f) A party or the individual to whom the subpoena is directed may file with the ALJ a motion to quash the subpoena within ten days after service or on or before the time specified in the subpoena for compliance if it is less than ten days after service.

§ 142.24 Protective order.

(a) A party or a prospective witness or deponent may file a motion for a protective order with respect to discovery sought by an opposing party or with respect to the hearing, seeking to limit the availability or disclosure of evidence.

(b) In issuing a protective order, the ALJ may make any order which justice requires to protect a party or person from unreasonable annoyance, embarrassment, or oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That the discovery may be had only through a method of discovery other than that requested;

(4) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the ALJ;

(6) That the contents of discovery or evidence be sealed;

(7) That a deposition after being sealed be opened only by order of the ALJ;

(8) That a trade secret or other confidential research, development, commercial information, or facts pertaining to any criminal investigation, proceeding, or other administrative investigation not be disclosed or be disclosed only in a designated way; or

(9) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the ALJ.

§ 142.25 Fees.

The party requesting a subpoena shall pay the cost of the fees and mileage of any witness subpoenaed in the amounts that would be payable to a witness in a proceeding in United States District Court. A check for witness fees and mileage shall accompany the subpoena when served, except that when a subpoena is issued on behalf of the Administration, a check for witness fees and mileage need not accompany the subpoena.

§ 142.26 Form, filing and service of papers.

(a) *Form.* (1) Documents filed with the ALJ shall include an original and two copies.

(2) Every pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the case number assigned by the ALJ, and a designation of the paper (*e.g.*, motion to quash subpoena).

(3) Every pleading and paper shall be signed by, and shall contain the address and telephone number of the party or the person on whose behalf the paper was filed, or his or her representative.

(4) Papers are considered filed when they are mailed. Date of mailing may be established by a certificate from the party or its representative or by proof that the document was sent by certified or registered mail.

(b) *Service.* A party filing a document with the ALJ shall, at the time of filing, serve a copy of such document on every other party. Service upon any party of any document other than the complaint or notice of hearing shall be made by delivering or mailing a copy to the party's last known address. When a party is represented by a representative, service shall be made upon such representative in lieu of the actual party.

(c) *Proof of service.* A certificate of the individual serving the document by personal delivery or by mail, setting forth the manner of service, shall be proof of service.

§ 142.27 Computation of time.

(a) In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal Government, in which event it includes the next business day.

(b) When the period of time allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal Government shall be excluded from the computation.

(c) Where a document has been served or issued by mail, an additional five days will be added to the time permitted for any response.

§ 142.28 Motions.

(a) Any application to the ALJ for an order or ruling shall be by motion. Motions shall state the relief sought, the authority relied upon, and the facts alleged, and shall be filed with the ALJ and served on all other parties.

(b) Except for motions made during a prehearing conference or at the hearing, all motions shall be in writing. The ALJ may require that oral motions be reduced to writing.

(c) Within 15 days after a written motion is served, or such other time as may be fixed by the ALJ, any party may file a response to such motion.

(d) The ALJ may not grant a written motion before the time for filing responses thereto has expired, except upon consent of the parties, following a hearing on the motion, or for a request for extension of time, but may overrule or deny such motion without awaiting a response.

(e) The ALJ shall make a reasonable effort to dispose of all outstanding motions prior to the beginning of the hearing.

§ 142.29 Sanctions.

(a) The ALJ may sanction a person, including any party or representative for—

(1) Failing to comply with an order, rule, or procedure governing the proceeding;

(2) Failing to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) Any such sanction, including but not limited to those listed in paragraphs (c), (d), and (e) of this section, shall reasonably relate to the severity and nature of the failure or misconduct.

(c) When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the ALJ may—

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) In the case of requests for admission, deem each matter of which an admission is requested to be admitted;

(3) Prohibit the party failing to comply with such order from introducing or relying upon evidence or testimony relating to the information sought; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(d) If a party fails to prosecute or defend an action under this part commenced by service of a notice of hearing, the ALJ may dismiss the action or may issue an initial decision imposing penalties and assessments.

(e) The ALJ may refuse to consider any motion, request, response, brief or other document which is not filed in a timely fashion.

§ 142.30 The hearing and burden of proof.

(a) The ALJ shall conduct a hearing on the record in order to determine whether the defendant is liable for a civil penalty or assessment under § 142.3 and, if so, the appropriate amount of any such civil penalty or assessment considering any aggravating or mitigating factors.

(b) The Administration shall prove defendant's liability and any aggravating factors by a preponderance of the evidence.

(c) The defendant shall prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(d) The hearing shall be open to the public unless otherwise ordered by the ALJ for good cause shown.

§ 142.31 Determining the amount of penalties and assessments.

(a) In determining an appropriate amount of civil penalties and assessments, the ALJ and the Administrator, upon appeal, should evaluate any circumstances that mitigate or aggravate the violation and should articulate in their opinions the reasons that support the penalties and assessments they impose. Because of the intangible costs of fraud, the expense of investigating such conduct, and the need to deter others who might be similarly tempted, ordinarily double damages and a significant civil penalty should be imposed.

(b) Although not exhaustive, the following factors are among those that may influence the ALJ and the Administrator in determining the amount of penalties and assessments to impose with respect to the misconduct (*i.e.*, the false, fictitious, or fraudulent claims or statements) charged in the complaint:

(1) The number of false, fictitious, or fraudulent claims or statements;

(2) The time period over which such claims or statements were made;

(3) The degree of the defendant's culpability with respect to the misconduct;

(4) The amount of money or the value of the property services, or benefit falsely claimed;

(5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the costs of investigation;

(6) The relationship of the amount imposed as civil penalties to the amount of the Government's loss;

(7) The potential or actual impact of the misconduct upon national defense, public health or safety, public finance, or public confidence in the management of Government programs and operations, including particularly the impact on the intended beneficiaries of such programs;

(8) Whether the defendant has engaged in a pattern of the same or similar misconduct;

(9) Whether the defendant attempted to conceal the misconduct;

(10) The degree to which the defendant has involved others in the misconduct or in concealing it;

(11) Where the misconduct of employees or agents is imputed to the defendant, the extent to which the defendant's practices fostered or attempted to preclude such misconduct;

(12) Whether the defendant cooperated in or obstructed an investigation of the misconduct;

(13) Whether the defendant assisted in identifying and prosecuting other wrongdoers;

(14) The complexity of the program or transaction, and the degree of the defendant's sophistication with respect to it, including the extent of the defendant's prior participation in the program or in similar transactions;

(15) Whether the defendant has been found, in any criminal, civil, or administrative proceeding to have engaged in similar misconduct or to have dealt dishonestly with the Government of the United States or of a State, directly or indirectly; and

(16) The need to deter the defendant and others from engaging in the same or similar misconduct.

(c) Nothing in this section shall be construed to limit the ALJ or the Administrator head from considering any other factors that in any given case may mitigate or aggravate the offense for which penalties and assessments are imposed.

§ 142.32 Location of hearing.

(a) The hearing may be held—

(1) In any judicial district of the United States in which the defendant resides or transacts business;

(2) In any judicial district of the United States in which the claim or statement in issue was made, presented or submitted; or

(3) In such other place as may be agreed upon by the defendant and the ALJ.

(b) Each party shall have the opportunity to present argument with respect to the location of the hearing.

(c) The hearing shall be held at the place and at the time ordered by the ALJ.

§ 142.33 Witnesses.

(a) Except as provided in paragraph (b), testimony at the hearing shall be given orally by witnesses under oath or affirmation.

(b) At the discretion of the ALJ, testimony may be admitted in the form of a written statement or deposition. Any such written statement must be provided to all other parties along with the last known address of such witness in a manner which allows sufficient time for other parties to subpoena such witness for cross-examination at the hearing . Prior written statements of witnesses proposed to testify at the hearing and deposition transcripts shall be exchanged as provided in § 142.22(a).

(c) The ALJ shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

(d) The ALJ shall permit the parties to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(e) At the discretion of the ALJ, a witness may be cross-examined on matters relevant to the proceeding without regard to the scope of his or her direct examination. To the extent permitted by the ALJ, cross-examination on matters outside the scope of direct examination shall be conducted in the manner of direct examination and may proceed by leading questions only if the witness is a hostile witness, an adverse party, or a witness identified with an adverse party.

(f) Upon motion of any party, the ALJ shall order witnesses excluded so that they cannot hear the testimony of other witnesses. This rule does not authorize exclusion of—

(1) A party who is an individual;

(2) In the case of a party that is not an individual, an officer or employee of the party appearing for the entity pro se or designated by the party's representative; or

(3) An individual whose presence is shown by a party to be essential to the presentation of its case, including an individual employed by the Government engaged in assisting the representative for the Government.

§ 142.34 Evidence.

(a) The ALJ shall determine the admissibility of evidence.

(b) Except as provided herein, the ALJ shall not be bound by the Federal Rules of Evidence. However, the ALJ may

apply the Federal Rules of Evidence where appropriate, *e.g.*, to exclude unreliable evidence.

(c) The ALJ shall exclude irrelevant and immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence may be excluded if it is privileged under Federal law.

(f) Evidence concerning offers of compromise or settlement shall be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.

(g) The ALJ shall permit the parties to introduce rebuttal witnesses and evidence.

(h) All documents and other evidence offered or taken for the record shall be open to examination by all parties, unless otherwise ordered by the ALJ pursuant to § 142.24.

§ 142.35 The record.

(a) The hearing will be recorded and transcribed.

(b) The transcript of testimony, exhibits and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ and the Administrator.

(c) The record may be inspected and copied (upon payment of a reasonable fee) by anyone, unless otherwise ordered by the ALJ pursuant to § 142.24.

§ 142.36 Post-hearing briefs.

The ALJ may require or permit the parties to file post-hearing briefs. The ALJ shall fix the time for filing such briefs, not to exceed 60 days from the date the parties receive the transcript of the hearing or, if applicable, the stipulated record. Such briefs may be accompanied by proposed findings of fact and conclusions of law. The ALJ may permit the parties to file reply briefs.

§ 142.37 Initial decision.

(a) The ALJ shall issue an initial decision based only on the record, which shall contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.

(b) The findings of fact shall include a finding on each of the following issues:

(1) Whether the claims or statements identified in the complaint, or any portions thereof, violate § 142.3;

(2) If the person is liable for penalties or assessments, the appropriate amount of any such penalties or assessments considering any mitigating or aggravating factors that he or she finds in the case, such as those described in § 142.31.

(c) The ALJ shall promptly serve the initial decision on all parties within 90 days after close of the hearing or after the time for submission of post-hearing briefs and reply briefs (if permitted) has expired. The ALJ shall at the same time serve all parties with a statement describing the right of any defendant determined to be liable for a civil penalty of assessment to file a motion for reconsideration with the ALJ or a notice of appeal with the Administrator. If the ALJ fails to meet the deadline contained in this paragraph, he or she shall notify the parties of the reason for the delay and shall set a new deadline.

(d) Unless the initial decision of the ALJ is timely appealed to the Administrator, or a motion for reconsideration of the initial decision is timely filed, the initial decision shall constitute the final decision of the Administrator and shall be final and binding on the parties 30 days after it is issued by the ALJ.

§ 142.38 Reconsideration of initial decision.

(a) Except as provided in paragraph (d) of this section, any party may file a motion for reconsideration of the initial decision within 20 days of receipt of the initial decision. If service was made by mail, receipt will be presumed to be five days from the date of mailing in the absence of contrary proof.

(b) Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Such motion shall be accompanied by a supporting brief.

(c) Responses to such motions shall be allowed only upon request of the ALJ.

(d) No party may file a motion for reconsideration of an initial decision that has been revised in response to a previous motion for reconsideration.

(e) The ALJ may dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(f) If the ALJ denies a motion for reconsideration, the initial decision shall constitute the final decision of the Administrator and shall be final and binding on the parties 30 days after the ALJ denies the motion, unless the initial decision is timely appealed to the Administrator in accordance with § 142.39.

(g) If the ALJ issues a revised initial decision, that decision shall constitute the final decision of the Administrator and shall be final and binding on the parties 30 days after it is issued, unless it is timely appealed to the Administrator in accordance with § 142.39.

§ 142.39 Appeal to the Administrator.

(a) Any defendant who has filed a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal such decision to the Administrator by filing a notice of appeal with the Administrator in accordance with this section.

(b)(1) A notice of appeal may be filed at any time within 30 days after the ALJ issues an initial decision. However, if another party files a motion for reconsideration under § 142.38, consideration of the appeal shall be stayed automatically pending resolution of the motion for reconsideration.

(2) If a motion for reconsideration is timely filed, a notice of appeal may be filed within 30 days after the ALJ denies the motion or issues a revised initial decision, whichever applies.

(3) The Administrator may extend the initial 30 day period for an additiona1 30 days if the defendant files with the Administrator a request for an extension within the initial 30-day period and shows good cause.

(c) If the defendant files a timely notice of appeal with the Administrator and the time for filing motions for reconsideration under § 142.38 has expired, the ALJ shall forward the record of the proceeding to the Administrator.

(d) A notice of appeal shall be accompanied by a written brief specifying exceptions to the initial decision and reasons supporting the exceptions.

(e) The representative for the Government may file a brief in opposition to exceptions within 30 days of receiving the notice of appeal and accompanying brief.

(f) There is no right to appear personally before the Administrator.

(g) There is no right to appeal any interlocutory ruling by the ALJ.

(h) In reviewing the initial decision, the Administrator shall not consider any objection that was not raised before the ALJ unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection.

(i) If any party demonstrates to the satisfaction of the Administrator that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at such hearing, the Administrator shall remand the matter to the ALJ for consideration of such additional evidence.

(j) The Administrator may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment, determined by the ALJ in any initial decision.

(k) The Administrator shall promptly serve each party to the appeal with a copy of the decision of the Administrator and a statement describing the right of any person determined to be liable for a penalty or assessment to seek judicial review.

(l) Unless a petition for review is filed as provided in 31 U.S.C. 3805 after a defendant has exhausted all administrative remedies under this part and within 60 days after the date on which the Administrator serves the defendant with a copy of the Administrator's decision, a determination that a defendant is liable under § 142.3 is final and is not subject to judicial review.

§ 142.40 Stays ordered by the Department of Justice.

If at any time the Attorney General or an Assistant Attorney General designated by the Attorney General transmit to the Administrator a written finding that continuation of the administrative process described in this part with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, the Administrator shall stay the process immediately. The Administrator may order the process resumed only upon receipt of the written authorization of the Attorney General.

§ 142.41 Stay pending appeal.

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the Administrator.

(b) No administrative stay is available following a final decision of the Administrator.

§ 142.42 Judicial review.

Section 3805 of title 31, United States Code, authorizes judicial review by an appropriate United States District Court of a final decision of the Administrator imposing penalties or assessments under this part and specifies the procedures for such review.

§ 142.43 Collection of civil penalties and assessments.

Sections 3806 and 3808(b) of title 31, United States Code, authorize actions for collection of civil penalties and assessments imposed under this part and specify the procedures for such actions.

§ 142.44 Right to administrative offset.

The amount of any penalty or assessment which has become final, or for which a judgment has been entered under § 142.42 or § 142.43, or any amount agreed upon in a compromise or settlement under § 142.46, may be collected by administrative offset under 31 U.S.C. 3716, except that an administrative offset may not be made under this subsection against a refund of an overpayment of Federal taxes, then or later owing by the United States to the defendant.

§ 142.45 Deposit in Treasury of United States.

All amounts collected pursuant to this part shall be deposited as miscellaneous receipts in the Treasury of the United States, except as provided in 31 U.S.C. 3806(g).

§ 142.46 Compromise or settlement.

(a) Parties may make offers of compromise or settlement at any time.

(b) The reviewing official has the exclusive authority to compromise or settle a case under this part at any time after the date on which the reviewing official is permitted to issue a complaint and before the date on which the ALJ issues an initial decision.

(c) The Administrator has exclusive authority to compromise or settle a case under this part at any time after the date on which the ALJ issues an initial decision, except during the pendency of any review under § 142.42 or during the pendency of any action to collect penalties and assessments under § 142.43.

(d) The Attorney General has exclusive authority to compromise or settle a case under this part during the pendency of any review under § 142.42 or of any action to recover penalties and assessments under 31 U.S.C. 3806.

(e) The investigating official may recommend settlement terms to the reviewing official, the Administrator, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the Administrator, or the Attorney General, as appropriate.

(f) Any compromise or settlement must be in writing.

§ 142.47 Limitations.

(a) The notice of hearing with respect to a claim or statement must be served in the manner specified in § 142.8 within 6 years after the date on which such claim or statement is made.

(b) If the defendant fails to file a timely answer, service of a notice under § 142.10(b) shall be deemed a notice of hearing for purposes of this section.

(c) The statute of limitations may be extended by agreement of the parties.

Dated: December 21, 1988.

James Abdnor,

Administrator.

[FR Doc. 89-3010 Filed 2-8-89; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-90-AD; Amdt. 39-6132]

Airworthiness Directives: Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which currently requires inspection and repair, as necessary, of the body and canted bulkhead structure for cracks at the nose gear wheel well forward corners. Recent service experience indicates that airplanes which have been modified by the incorporation of an external doubler need to be inspected externally as well as internally to detect cracks. Since an undetected crack may result in sudden loss of cabin pressurization and extensive structural damage, this amendment requires additional inspection and repair, and also adds additional airplanes which may be subject to similar cracking.

EFFECTIVE DATE: March 15, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Dan R. Bui, Airframe Branch, ANM-120S; telephone (206) 431-1919. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations by superseding AD 84-18-02, Amendment 39-4908 (49 FR 35622; September 11, 1984), to require inspection and repair, if necessary of the

body and canted bulkhead structure for cracks at the nose gear wheel well forward corners on Boeing Model 747 series airplanes, was published in the Federal Register on August 17, 1988 (53 FR 31012). The comment period for the proposal closed on October 11, 1988.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Boeing Commercial Airplanes suggested several wording changes to the AD, so as to align the wording with that of the referenced service bulletin. The FAA concurs with certain of these suggestions:

a. Paragraphs G.1. and J.1. have been reworded to clarify that the low frequency eddy current inspection must be performed "prior to the accumulation of 6,000 landings after modification * * *" (the proposal had stated "within 6,000 landings after modification * * *"). This is merely a clarifying change and reflects the intent of the FAA as to this requirement.

b. Throughout the final rule the words "* * * repair in accordance with FAA procedures * * *" have been changed to "* * * repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region * * *" The Manager of that office is the individual delegated the authority to approve designs or repair methods to be used in correcting an unsafe condition addressed by AD action.

The FAA has determined that these changes will not increase the scope of the AD, nor will they increase the economic burden on any operator.

The FAA does not concur with Boeing's suggestion that repairs may be performed in accordance with a method approved by an FAA Designated Engineering Representative (DER) of The Boeing Company. While DER's are authorized to determine whether a design or repair method complies with a specific requirement, they are not authorized to make discretionary determinations of what the applicable requirement is.

The Air Transport Association (ATA) of America expressed no technical objections to the proposed rule. However, one of its members requested that the proposed initial compliance period be increased from 100 landings to 300 landings after the effective date of the AD to improve scheduling and flexibility. This operator advised that it had been inspecting in accordance with the existing AD at 1,000 landing intervals instead of 1,500 landings. The FAA does not concur with the recommendation. In light of the severity of the hazard involved, and the fact that there has been no additional data submitted that would support this increase, the FAA determined that the proposal for 100 landings is appropriate. This AD does contain, however, provisions for use of an alternate means of compliance, which may be requested by the operator if it has data to justify an increased initial compliance time.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes noted above.

There are approximately 302 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that a total of 114 airplanes (including 24 additional airplanes) of U.S. registry will be affected by this AD, that it will take approximately 200 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Repair parts are estimated at $2,000 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,140,000.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because few, if any, Model 747 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By superseding AD 84-18-02, Amendment 39-4906 (49 FR 35622; September 11, 1984), with the following new airworthiness directive:

§ 39.13 [Amended]

Boeing: Applies to Model 747 series airplanes, Groups 1, 2, and 3 as listed in Boeing Service Bulletin 747-53-2112, Revision 4, dated February 25, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent failure of the body skin and the canted pressure bulkhead structure, accomplish the following:

A. For Group 1 airplanes on which the initial inspection requirements of Airworthiness Directive (AD) 84-18-02 have not been conducted as of the effective date of this AD, and which have not been modified by incorporation of a doubler in accordance with Boeing Service Bulletin 747-53-2112:

1. Prior to the accumulation of 4,000 landings or within the next 100 landings after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 1,000 landings, perform a detailed visual inspection of the nose gear wheel well forward lower corners, exterior and interior area, for cracks, in accordance with Boeing Service Bulletin 747-53-2112, Revisions 3 or 4. Additionally, perform a high frequency eddy current (HFEC) inspection of the chord and doubler for cracks at the two forward hinge fairing attach bolt locations, in accordance with Boeing Service Bulletin 747-53-2112, Revisions 3 or 4.

2. Cracks found while conducting the inspections required by paragraph A.1., above, must be repaired as follows:

a. If the crack is visible on an interior surface, or exceeds any of the limits defined in paragraph A.2.b., below, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, prior to further flight.

b. If the crack is visible from an exterior surface only and has not progressed into the vertical leg of the nose wheel well forward bulkhead lower chord and does not extend forward of the first row of skin fasteners, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, prior to the accumulation of 500 additional landings, provided that a detailed visual inspection is performed at intervals not to exceed 100 landings.

3. Inspections are to continue after repair. If additional cracks are found, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, prior to further flight.

B. For Group 1 airplanes on which the initial inspection requirements of AD 84-18-02 have been conducted as of the effective date of this AD, and which have not been modified by incorporation of a doubler in accordance with Boeing Service Bulletin 747-53-2112: Continue to perform the repetitive inspections, and to make repairs, if necessary, in accordance with the requirements of paragraph A., above.

C. For Group 1 airplanes on which the initial inspection requirements of AD 84-18-02 have not been conducted as of the effective date of this AD, and which have been modified by incorporation of a doubler, in accordance with Boeing Service Bulletin 747-53-2112:

1. Inspect the nose gear wheel well forward lower corners at the times and using the methods specified in either paragraph C.1.a. or C.1.b., below.

a. *Option I: External inspection.*

Within 1,500 landings after modification or within the next 100 landings after the effective date of this AD, whichever occurs later, perform an external detailed visual inspection of the nose gear wheel well forward lower corner structure for cracks in accordance with Boeing Service Bulletin 747-53-2112, Revision 4, dated February 25, 1988. After the initial inspection, continue to inspect as follows: Perform external general visual inspections at intervals not to exceed 100 landings, and external detailed visual inspections at intervals not to exceed 1,000 landings, in accordance with Boeing Service Bulletin 747-53-2112, Revision 4, dated February 25, 1988.

b. *Option II: External and internal inspection.*

Within 1,500 landings after modification or within the next 100 landings after the effective date of this AD, whichever occurs later, perform an external and internal detailed visual inspection of the nose gear wheel well forward lower corner structure for cracks, in accordance with Boeing Service Bulletin 747-53-2112, Revision 4, dated February 25, 1988. Repeat external and internal detailed visual inspections at intervals not to exceed 1,500 landings.

2. If cracks are found, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, prior to further flight.

3. Inspections are to continue after repair. If cracks are found, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, prior to further flight.

D. For Group 1 airplanes on which the initial inspection requirements of AD 84-18-02 have been conducted as of the effective date of this AD, and which have been modified by incorporation of a doubler, in accordance with Boeing Service Bulletin 747-53-2112: Continue to perform the repetitive inspections, and to make repairs, if necessary, in accordance with the requirements of paragraph C. of this AD.

E. For Group 2 airplanes on which the initial inspection requirements of AD 84-18-02 have not been conducted as of the effective date of this AD, and which have not been modified by incorporation of the hinge fairing rework or modification doublers in accordance with Boeing Service Bulletin 747-53-2112: Perform the inspections and repairs, if necessary, in accordance with the requirements of paragraph A. of this AD, except that repetitive inspection intervals shall not exceed 2,000 landings. Inspections are to continue after repair. If cracks are found, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, prior to further flight.

F. For Group 2 airplanes on which the initial inspection requirements of AD 84-18-02 have been conducted as of the effective date of this AD, and which have not been modified by incorporation of the hinge fairing rework or modification doublers in accordance with Boeing Service Bulletin 747-53-2112: Continue to perform the repetitive inspections, and to make repairs, if necessary, as described in paragraph A. of this AD, except that repetitive inspection intervals shall not exceed 2,000 landings. Inspections are to continue after repair. If cracks are found, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, prior to further flight.

G. For Group 2 airplanes on which the initial inspection requirements of AD 84-18-02 have not been conducted as of the effective date of this AD, and which have been modified by incorporation of the hinge fairing rework in accordance with Boeing Service Bulletin 747-53-2112:

1. Prior to the accumulation of 6,000 landings after modification or within the next 100 landings after the effective date of this AD, whichever occurs later, perform a low frequency eddy current (LFEC) inspection for cracks in the underskin doubler at the nose gear wheel well forward lower corners, in accordance with Boeing Service Bulletin 747-53-2112, Revision 4, dated February 25, 1988. Repeat low frequency eddy current inspections in the underskin doubler at intervals not to exceed 2,000 landings.

2. If a crack is found that is visible on an interior surface or exceeds any of the limits in paragraph G.3., below, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, prior to further flight.

3. If an underskin doubler crack is found that is not visible from the interior and has not progressed into the vertical leg of the nose wheel well forward bulkhead lower chord and does not extend forward of the first row of fasteners, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, prior to the accumulation of 500 additional landings, provided that a detailed visual inspection of the nose gear wheel well forward corner structure is performed at intervals not to exceed 100 landings.

4. Inspections are to continue after repair. If cracks are found, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, prior to further flight.

H. For Group 2 airplanes on which the initial inspection requirements of AD 84-18-02 have been conducted as of the effective date of this AD, and which have been modified by incorporation of hinge fairing rework only in accordance with Boeing Service Bulletin 747-53-2112: Continue to perform the repetitive inspections, and to make repairs, if necessary, in accordance with the requirements of paragraph G. of this AD.

I. For Group 2 airplanes on which the initial inspection requirements of AD 84-18-02 have been conducted as of the effective date of this AD, and which have been modified by incorporation of the hinge fairing rework and modification doublers in accordance with Boeing Service Bulletin 747-53-2112:

1. If the underskin doubler was not cracked at the time of modification, within 10,000 landings after the modification or within 1,000 landings after the effective date of this AD, whichever occurs later, perform an internal and external detailed visual inspection for cracks, in accordance with Boeing Service Bulletin 747-53-2112, Revision 4, dated February 25, 1988. Repeat internal and external detailed visual inspections at intervals not to exceed 2,000 landings.

2. If the underskin doubler was cracked at time of modification, within 2,000 landings after modification or within 1,000 landings after the effective date of this AD, whichever occurs later, perform an internal and external detailed visual inspection for cracks, in accordance with Boeing Service Bulletin 747-53-2112, Revision 4, dated February 25, 1988. Repeat internal and external detailed visual inspection at intervals not to exceed 2,000 landings.

3. If cracks are found, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, prior to further flight.

4. Inspections are to continue after repair. If cracks are found, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, prior to further flight.

J. For Group 3 airplanes which have not been modified by incorporation of the external doubler in accordance with Boeing Service Bulletin 747-53-2112:

1. Prior to the accumulation of 6,000 landings after hinge fairing modification or within 1,000 landings after the effective date of this AD, whichever occurs later, perform a low frequency eddy current inspection for cracks in the underskin doubler at the nose gear wheel well forward lower corners, in accordance with Boeing Service Bulletin 747-53-2112, Revision 4, dated February 25, 1988. Repeat low frequency eddy current inspections in the underskin doubler at intervals not to exceed 2,000 landings.

2. If a crack is found that is visible on an interior surface or exceeds the limits defined in paragraph J.3., below, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, Northwest Mountain Region, prior to further flight.

3. If an underskin doubler crack is found that is not visible from the interior and has

not progressed into the vertical leg of the nose wheel well forward bulkhead lower chord and does not extend forward of the first row of fasteners, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, prior to the accumulation of 500 additional landings, provided that a detailed visual inspection of the nose gear wheel well forward corner structure is performed at intervals not to exceed 100 landings.

4. Inspections are to continue after repair. If additional cracks are found, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, prior to further flight.

K. For Group 3 airplanes which have been modified by incorporation of the external doubler in accordance with Boeing Service Bulletin 747-53-2112:

1. If the underskin doubler was not cracked at time of modification, within 10,000 landings after modification or within 1,000 landings after the effective date of this AD, whichever occurs later, perform an internal and external detailed visual inspection for cracks, in accordance with Boeing Service Bulletin 747-53-2112, Revision 4, dated February 25, 1988. Repeat internal and external detailed visual inspections at intervals not to exceed 2,000 landings.

2. If the underskin doubler was cracked at the time of modification, within 2,000 landings after modification or within 1,000 landings after the effective date of this AD, whichever occurs later, perform an internal and external detailed visual inspection, in accordance with Boeing Service Bulletin 747-53-2112, Revision 4, dated February 25, 1988. Repeat internal and external detailed visual inspections at intervals not to exceed 2,000 landings.

3. If cracks are found, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, prior to further flight.

4. Inspections are to continue after repair. If cracks are found, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, prior to further flight.

L. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

M. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment supersedes AD 88-18-02, Amendment 39-4908.

This amendment becomes effective March 15, 1989.

Issued in Seattle, Washington, on January 23, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-3033 Filed 2-8-89; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2704

Implementation of Amendments to the Equal Access to Justice Act

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Final rule with request for comments.

SUMMARY: This rule amends the Commission's regulations in accordance with the standards required by the Equal Access to Justice Act, as amended. The rule conforms generally to the model rules established by the Administrative Conference of the United States.

EFFECTIVE DATE: February 9, 1989; comments must be received on or before March 13, 1989.

ADDRESS: Written comments should be addressed to Richard L. Baker, Executive Director, Federal Mine Safety and Health Review Commission, 1730 K Street NW., Sixth Floor, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: L. Joseph Ferraro, General Counsel, Office of the General Counsel, 1730 K Street NW., Sixth Floor, Washington, DC 20006, telephone: 202-653-5610 (202-566-2673 for TDD Relay). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: On August 5, 1985, Pub. L. 99-80, 99 Stat. 183, reauthorized and amended the Equal Access to Justice Act, 5 U.S.C. 504 (EAJ Act), which had expired September 30, 1984. The EAJ Act provides for the award of attorneys' fees and other expenses to certain parties who prevail against the federal government in court cases and adversary administrative proceedings. Specifically, as relevant here, the EAJ Act applies to litigation conducted before the Commission under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 *et seq.* (1982), in which an eligible party prevails over the Department of Labor's Mine Safety and Health Administration. 29 CFR 2704.100 and 2704.103. Prevailing parties may receive awards if they meet the EAJ Act's eligibility standards (which set ceilings on the net worth and number of employees of parties) and if the government's position was not "substantially justified."

Under the amendments to the EAJ Act, the net worth ceilings for eligible parties have been raised to $2,000,000 for individuals and $7,000,000 for partnerships, corporations, and other entities. 5 U.S.C. 504(b)(1)(B). Units of local government may also now be eligible for fee awards. 5 U.S.C. 504(b)(1)(B). Moreover, the position of the government that must be substantially justified has been defined to include the underlying governmental action or failure to act upon which the proceeding is based, as well as the government's position in litigation. 5 U.S.C. 504(b)(1)(E). Finally, whether the position of the agency is substantially justified shall be determined on the basis of the administrative record as a whole made in the adversary adjudication for which fees and other expenses are sought. 5 U.S.C. 504(a)(1). The Commission's regulations (§§ 2704.104 and 2704.105) have been amended to reflect these changes.

The Administrative Conference of the United States ("Administrative Conference"), responsible for coordinating the procedural rules adopted by various federal agencies to implement the EAJ Act, issued revised model rules implementing the amendments to the EAJ Act (51 FR 16659 (May 6, 1986)), after receiving public comment on draft model rules (50 FR 46250 (November 8, 1985)). The Commission's modifications to its regulations conform to the Administrative Conference's final model rules, although there are three departures.

First, the Commission's amended rule revising the effective dates in § 2704.102, entitled "When the Act applies," does not provide that the EAJ Act shall apply (1) to adversary adjudications "pending on or commenced on or after October 1, 1981, in which an application for fees and other expenses was timely filed and was dismissed for lack of jurisdiction;" or (2) "to any adversary adjudication commenced on or after October 1, 1984, and finally disposed of before August 5, 1985, provided that an application for fees and expenses * * * has been filed with the agency within 30 days after August 5, 1985." No Commission cases arose in those situations, and such language would be superfluous.

Second, while a literal reading of 5 U.S.C. 504(a)(1) may be interpreted to prohibit discovery or evidentiary proceedings in an EAJ Act application case to determine substantial justification, the legislative history indicates that when the proceeding for which fees and expenses are sought was conceded by the agency on the merits, withdrawn by the agency, or otherwise settled before any of the merits are heard, the administrative record may include affidavits and other supporting documents filed by the parties in *both* the fee producing proceeding and the case on the merits. H.R. Rep. No. 120, Part 1, 99th Cong., 1st Sess. 13, *reprinted in* 1985 U.S. Code Cong. Ad. News 132, 141. The Commission's amended rule in § 2704.306, entitled "Further proceedings on the application," in accord with the intent of Congress reflected in the legislative history, permits the applicant and the Secretary of Labor to supplement the record with affidavits and other supporting documentary evidence, under the circumstances set forth above, for determining whether the Secretary's position was substantially justified. Such supplementation may be necessary if the underlying record of the settled or withdrawn case is abbreviated.

Third, the Commission has retained in § 2704.105, entitled "Standards for awards," the language that the Secretary may avoid an award by showing her position was "reasonable in law and fact." The Administrative Conference deleted the language in question in its model rule, stating that it was not certain that the "reasonable in law and fact" formulation reflected Congressional intent and that the case law was unsettled concerning the validity of the language in determining whether an agency's position was substantially justified. 51 FR 16661. Since the Administrative Conference's model rules were published, the Supreme Court has concluded that the phrase "substantially justified" means "justified in substance or in the main—that is justified to a degree that could satisfy a reasonable person"; the Court explained that this definition is no different from the "reasonable basis in law and fact" formulation adopted by the majority of Courts of Appeals. *Pierce* v. *Underwood*, — U.S. —, — S. Ct. —, 101 L.Ed. 2d 490, 504-05 (1988).

One other technical modification to the Commission's regulations deserves comment. The Commission has amended § 2704.104 to provide, in accordance with the EAJ Act, that an organization described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)(3)) exempt from taxation under section 501(a) of the Code may be an eligible party regardless of the net worth of such organization. *See* 5 U.S.C. 504(b)(1)(B). Such organizations were also exempt, with respect to net worth, under the EAJ Act as originally authorized and this rule change corrects a technical discrepancy in the Commission's present regulations.

This rule revises agency regulations of procedure and practice. The Administrative Procedure Act, 5 U.S.C. 553(b)(A), authorizes agencies to revise such regulations concerning internal procedures without prior notice or public comment. Because the Commission wishes to put these revised procedures into effect as soon as possible and the rule substantively conforms with the Administrative Conference's model rules, the Commission adopts these revised regulations as its final rule. Nevertheless, the Commission values any comments that the public may have on these matters. Public comment is accordingly invited. Comments may be mailed to the Commission's Executive Director at the address previously stated. It is requested that comments be filed no later than March 13, 1989. Upon receipt and consideration of any comments, these rules will be subject to possible change.

List of Subjects in 29 CFR Part 2704

Administrative practice and procedure, Equal access to justice.

Accordingly, 29 CFR Part 2704 is amended as follows:

PART 2704—[AMENDED]

1. The authority citation for Part 2704 is revised to read as follows:

Authority: Sec. 203(a)(1), Pub. L. 96-481, 94 Stat. 2325 (5 U.S.C. 504(c)(1)); Pub. L. 99-80, 99 Stat. 183.

2. Section 2704.102 is revised to read as follows:

§ 2704.102 When the Act applies.

The Act applies to adversary adjudications before the Commission pending or commenced on or after August 5, 1985.

3. Section 2704.104 is amended by revising paragraph (b) to read as follows:

§ 2704.104 Eligibility of applicants.

* * * * * *

(b) The types of eligible applicants are as follows:

(1) An individual with a net worth of not more than $2 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than $7 million, including both personal and business interests, and employs not more than 500 employees;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees; and

(4) Any other partnership, corporation, association, unit of local government, or public or private organization with a net worth of not more than $7 million and not more than 500 employees;

* * * * *

4. Section 2704.105 is amended by revising paragraph (a) to read as follows:

§ 2704.105 Standards for awards.

(a) A prevailing applicant may receive an award for fees and expenses incurred in connection with a proceeding, or in a significant and discrete substantive portion of the proceeding, unless the position of the Secretary was substantially justified. The position of the Secretary includes, in addition to the position taken by the Secretary in the adversary adjudication, the action or failure to act by the Secretary upon which the adversary adjudication is based. The burden of proof that an award should not be made to a prevailing applicant because the Secretary's position was substantially justified is on the Secretary who may avoid an award by showing that her position was reasonable in law and fact.

* * * * *

5. Section 2704.201 is amended by revising paragraph (b) to read as follows:

§ 2704.201 Contents of application.

* * * * *

(b) The application also shall include a statement that the applicant's net worth does not exceed $2 million (if an individual) or $7 million (for all other applicants including their affiliates, as described in § 2704.104(f) of this part). However, an applicant may omit this statement if it attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a

ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section.

* * * * *

6. Section 2704.306 is revised to read as follows:

§ 2704.306 Further proceedings on the application.

(a) The determination of an award will be made on the basis of the record made during the proceeding for which fees and expenses are sought, except as provided in paragraphs (b) and (c) of this section.

(b) On request of either the applicant or the Secretary, or on the administrative law judge's own initiative, the judge may order further proceedings, such as an informal conference, oral argument, additional written submissions or, as to issues other than substantial justification (such as the applicant's eligibility or substantiation of fees and expenses), pertinent discovery or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application and shall be conducted as promptly as possible.

(c) If the proceeding for which fees and expenses are sought was conceded by the Secretary on the merits, withdrawn by the Secretary, or otherwise settled before any of the merits were heard, the applicant and the Secretary may supplement the administrative record with affidavits or other documentary evidence.

(d) A request that the judge order further proceedings under this section shall specifically identify the information sought on the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

Dated: February 3, 1989.

Ford B. Ford,

Chairman, Federal Mine Safety and Health Review Commission.

[FR Doc. 89-3127 Filed 2-8-89; 8:45 am]

BILLING CODE 6735-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3506-8]

Approval and Promulgation of Implementation Plan, Texas

AGENCY: Enviromental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is approving the anti-tampering (parameter) portion of the vehicle inspection and maintenance (I/M) program and certain Transportation Control Measures (TCMs) submitted as part of the Ozone State Implementation Plan (SIP) for Dallas and Tarrant (DFW) Counties. Elsewhere in today's Federal Register, EPA is proposing to approve commitments made by the State of Texas to expand the I/M program and to adopt additional TCMs. EPA is approving the previously proposed (July 14, 1987) portions of the I/M program and the TCMs as part of the Post-82 Ozone SIP for Dallas and Tarrant Counties as these regulations will assist in further control of volatile organic compound (VOC) emissions.

EFFECTIVE DATE: This rule will become effective on March 13, 1989.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

Air Programs Branch, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202.

Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723.

Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Gerald Fontenot, Chief, Air Programs Branch, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202 (214) 655-7204.

SUPPLEMENTARY INFORMATION: A comprehensive description of the requirements of the Clean Air Act and EPA's policies under the Act was set forth in the proposal published in the Federal Register on July 14, 1987, (52 FR 26421). Other actions EPA is taking on other portions of the submittal are described elsewhere in today's Federal Register.

Background

On February 28, 1984, the EPA Region 6 Regional Administrator sent the Governor of Texas a formal notice for a revision to the ozone (O_3) SIP for Dallas and Tarrant Counties, Texas. Texas submitted a revision for Dallas and Tarrant Counties in several parts in 1985 and 1986. That revision did not provide for sufficient VOC emission reductions to demonstrate timely attainment of the O_3 National Ambient Air Quality Standards (NAAQS). EPA, therefore, proposed to find that Texas had failed to respond adequately to the 1984 SIP call, and hence proposed sanctions on July 14, 1987. The reader is referred to EPA's proposed action discussed elsewhere in today's Federal Register.

The Texas Air Control Board (TACB) submitted an additional revision in December 1987 referred to as the Post-82 Interim SIP. The anti-tampering portion of the I/M program and certain TCMs found in the 1985, 1986, and 1987 revisions are approvable by EPA. EPA will approve these regulations because they assist in further control of VOC emissions.

1. I/M Requirements

The July 14, 1987, notice proposed to approve the parameter I/M program SIP revision if certain conditions were fulfilled. The notice also described the details of the program. On December 21, 1987, the State of Texas met the certain conditions by submitting letters of commitment from the local law enforcement agencies, recordkeeping requirements, quality control commitments, mechanic training and public information commitments, and the final rules. EPA is approving the anti-tampering portion of the I/M porgram as found in the 1985, 1986 and 1987 revisions since it will strengthen the existing SIP.

Elsewhere in today's Federal Register, EPA describes the commitments made by the State of Texas to expand the DFW I/M program to include an exhaust emissions (tailpipe) inspection program. EPA will review the entire expanded I/M program for approvability upon completion of the commitments.

2. Transportation Control Measures

The July 14, 1987, Federal Register notice proposed approval of the TCMs submitted in the 1985 and 1986 SIP revisions for the Post-82 SIP call contingent upon documentation of the evaluation of the TCMs specified under section 108(f) of the Clean Air Act. Texas submitted documentation in the 1987 SIP revision that provided sufficient justification that additional TCMs were not feasible during the timeframe covered by the 1985 and 1986 Post-82 SIP submittal, i.e., 1985 through 1987.

EPA is approving the TCMs which were proposed in the July 14, 1987, Federal Register notice and the additional infeasibility documentation submitted in the 1987 submittal since these measures contribute toward the reduction in VOCs and strengthen the existing SIP. The credit reduction for TCMs in the 1985 and 1986 Post-82 SIP submittals was revised. However, the expansion and enhancement of the vehicle I/M program and the control of gasoline vapor pressure associated with the Post-82 Interim SIP affect the amount of credit each measure will provide for a given area. These controls will make the fleet more efficient and emit less pollutants, thereby reducing the amount of emission reduction attributed to TCMs.

In the 1987 SIP revision, Texas has submitted additional TCM commitments for 1987 through 1992. The commitment to adopt additional TCMs is discussed elsewhere in today's Federal Register.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 10, 1989. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Intergovernmental relations, Incorporation by reference.

Authority: Sec. 110(a) and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410(a) and 7601(a)).

Note: Incorporation by reference of the State Implementation Plan for the State of Texas was approved by the Director of the Federal Register on July 1, 1982.

Dated: January 18, 1989.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart SS—Texas

1. Section 52.2270 is amended by adding paragraph (c) (66) to read as follows:

§ 52.2270 Identification of Plan.

* * * * *

(c) * * *

(66) Revisions to the plan for attainment of the standard for ozone in Dallas and Tarrant Counties were submitted by the Governor on September 30, 1985 and December 21, 1987.

(i) Incorporation by reference.

(A) Revisions to the Texas Air Control Board Regulation IV, Section 114.1 (c), (e), (f), 114.3, 114.5 (a), (b), (d), (e), (f), and (g) adopted July 26, 1985.

(B) Vehicle Inspection and Maintenance and Transportation Control Measures (VIMTCM), Appendix AG, Emission Reduction Commitments for Transportation Control Measures in Post-1982 SIP Areas adopted by the Texas Air Control Board on August 28, 1985.

(C) VIMTCM, Appendix AJ, Excerpted Senate Bill 725, section 35 (d) and (g) effective September 1, 1985; and House Bill 1593 sections 21 and 22 effective June 18, 1987.

(D) The following portions of VIMTCM, Appendix AK, Texas Vehicle Parameter Inspection and Maintenance Program adopted by the Texas Air Control Board on December 18, 1987.

1 Record keeping and Record submittal Requirements, pages 15–17

2 Quality Control, Audit and Surveillance Procedures, pages 17–18

3 Procedures to Assure that Noncomplying Vehicles are Not Operated on the Public Roads, pages 18–20

4 Mechanic Training Program, pages 21–23

5 A Public Awareness Plan, pages 23–25

6 Vehicle Maintenance Program (Anti-tampering), pages 25–27

(E) VIMTCM, Appendix AM, Department of Public Safety Rules and Regulations Concerning Vehicle Inspection and Maintenance Programs, Sections 1, 2, and 3 adopted by the Texas Air Control Board on December 18, 1987.

(F) VIMTCM, Appendix AN, Local Government Letters of Commitment to Enforce Vehicle Inspection and Maintenance Programs adopted by the Texas Air Control Board on December 18, 1987.

[FR Doc. 89-1585 Filed 2-8-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[FRL-3516-3]

Approval and Promulgation of Implementation Plans; Various States

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Notice of State Implementation Plan (SIP) inadequacy and call for SIP revision; Information Notice.

SUMMARY: USEPA hereby gives notice that it has formally (1) notified the Governor of the State of Ohio by letter on December 22, 1988, that the Ohio State Implementation Plan is substantially inadequate to attain and maintain the National Ambient Air Quality Standards (NAAQS) for sulfur dioxide (SO_2) in Hamilton County, Ohio; and (2) called upon the State to submit to USEPA a SIP revision to correct the deficiency.

DATES: The State of Ohio must submit by February 20, 1989, a schedule setting forth dates and increments of progress for correcting the Hamilton County SIP deficiencies. The State must correct the plan deficiency elements and submit its fully approved Hamilton County SO_2 plan to USEPA not later than June 22, 1990.

ADDRESSES: Copies of the documents associated with this notice are available for inspection at: (It is recommended that you telephone Maggie Greene, at (312) 886-6068, before visiting the Region V, Office.) U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Maggie Greene, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886-6068.

SUPPLEMENTARY INFORMATION: USEPA approved portions of the Ohio SO_2 SIP for Hamilton County on January 27, 1981 (46 FR 8481), and April 20, 1982 (47 FR 16784), and the remaining portion on May 13, 1982 (47 FR 20586). The portion of Hamilton County which was originally designated nonattainment was redesignated to attainment on March 19, 1982 (47 FR 11870). Hamilton County was divided into two separate attainment areas on May 13, 1982 (47 FR 20586). However, since the time of these rulemakings, three modeling analyses were submitted to USEPA (one to support an Indiana SO_2 SIP and two others to support two separate permits for new sources in Ohio). The modeling analyses have each predicted violations of the SO_2 NAAQS due to existing sources that are located in Hamilton County, Ohio. The SO_2 NAAQS are violated whenever the following standards are exceeded more than once a year per site:

SULFUR DIOXIDE NAAQS

	Primary	Secondary
Annual arithmetic average	[1] 80 μg/m³	
Maximum 24-hour concentration	365 μg/m³	
Maximum 3-hour concentration		1300 μg/m³

[1] Micrograms per cubic meter.

The modeling analyses predicted the highest annual and the highest, second high 24-hour and 3-hour concentrations to be approximately:

PREDICTED AIR QUALITY VIOLATIONS

Modeling study	Highest annual	Highest second high 24-hour	Highest second high 3-hour
Dearborn County Indiana SO_2 SIP	90 μg/m³	1200 μg/m³	4000 μg/m³
University of Cincinnati	129 μg/m³	622 μg/m³	
American Electric Power-Zimmer		786 μg/m³	1998 μg/m³

Based on the predicted violations, USEPA notified the Governor of Ohio on December 22, 1988, under section 110(a)(2)(H) of the Clean Air Act, 42 U.S.C. 7410(a)(2)(H), that the SIP for SO_2 is substantially inadequate to attain and maintain the SO_2 NAAQS in Hamilton County. The finding of inadequacy and the call for a SIP revision were generally issued in accordance with USEPA's guidance on issuing notices of SIP inadequacy.[1] Under this guidance, the State would have to submit a commitment and a schedule for the development of the SIP revision to USEPA not more than 60 days from the date of notification. A fully adopted plan for Hamilton County would then have to be submitted within 1 year of the date of notification.

However, it is USEPA's practice to consider alternative schedules, where warranted. After discussions with the Ohio Environmental Protection Agency, USEPA is providing the State with 60 days to submit a commitment and schedule for the development of an approvable SIP and up to 18 months from the date of notification for submission of a fully State adopted SO_2 plan for Hamilton County, which assures the attainment and maintenance of the SO_2 NAAQS both in Hamilton County and the surrounding area.

Therefore, Ohio must submit a schedule for correcting the deficiency by February 20, 1989, and a plan and enforceable regulations for Hamilton County by no later than June 22, 1990.[2]

Conclusion

USEPA notified the Governor of the State of Ohio by letter that the Ohio SO_2 SIP is inadequate to assure the attainment and maintenance of the National Ambient Air Quality Standards. The notice of deficiency requires Ohio to submit the SIP revisions necessary to achieve the standards.

The USEPA considers today's notice to be informational only and to have no regulatory effect. It informs the public of a call for a SIP revision made by USEPA pursuant to section 110(a)(2)(H) of the Clean Air Act, 42 U.S.C. 7410(a)(2)(H). Any final definition of what would be an inadequate response to this SIP call, any further USEPA action that would result from an inadequate State response in the future, will be effective only after notice-and-comment rulemaking.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Sulfur/Oxides.

Authority: 42 U.S.C. 7401–7642.

Dated: January 20, 1989.

Frank M. Covington,

Acting Regional Administrator.

[FR Doc. 89–3072 Filed 2–8–89; 8:45 am]

BILLING CODE 6560–50–M

[1] USEPA's guidance for issuing section 110(a)(2)(H) notices of SIP deficiencies is found in a November 2, 1983, **Federal Register** notice entitled "Compliance with the Statutory Provisions of Part D of the Clean Air Act" (48 FR 50686). "USEPA's Guidance Document for the Correction of Part D SIP's for Nonattainment Areas" (January 1984) contains more information on the content of the revisions USEPA requested. Although these documents were issued specifically to deal with areas designated nonattainment, they also contain USEPA's general guidance for issuing notices of SIP deficiency for areas with approved SIPs but with continued (or newly found) nonattainment problems.

[2] If the State does not submit a schedule by February 20, 1989, or a curative SIP revision to USEPA by June 22, 1990, the Clean Air Act gives USEPA certain options. It may initiate Federal promulgation under section 110(c)(1), propose funding restrictions under section 176(b), and/or, possibly, propose funding sanctions under section 316(b). Section 110(c)(1) authorizes the Administrator to propose and promulgate a Federal plan if a State fails to revise its SIP in a timely manner in response to a SIP call. Section 176(b) authorizes USEPA to withhold or restrict Clean Air Act funds. Section 316(b) authorizes USEPA to withhold, condition, or restrict sewage treatment construction grants in affected areas.

40 CFR Part 162

[OPP–00149B; FRL–3517–3]

Clarification of HIV (AIDS Virus) Labeling Policy for Antimicrobial Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Clarification of labeling policy for antimicrobial pesticide products bearing claims of effectiveness against HIV (AIDS virus).

SUMMARY: This notice announces a clarification of the labeling policy for HIV (AIDS virus) efficacy claims in antimicrobial pesticide product labeling. EPA considers antimicrobial pesticides to be unique because of the critical nature of the threat to public health resulting from ineffective use of products due to obsolete or misleading labeling and advertising. EPA has implemented and will continue to develop future initiatives designed to upgrade and clarify the labeling of all antimicrobial pesticides to reflect accurately the documented efficacy of products. It was not considered necessary to establish new policy or revise existing policy in order to approve HIV efficacy claims. Rather, a clarification and/or reinforcement of existing policies as they apply to HIV efficacy claims is needed to serve as guidance to antimicrobial pesticide product manufacturers and registrants. It is for these reasons that the Agency is announcing a clarification of HIV labeling policy. Registrants desiring to register a product or to amend an existing registration to include a HIV efficacy claim must comply with this policy. Sterilant products previously approved by EPA to bear HIV must be revised to comply with this policy.

FOR FURTHER INFORMATION CONTACT:

By mail: D. Jean Jenkins (General Information), William C. Campbell, Jr. (Technical data and labeling requirements), Jeff Kempter and/or John Lee (Applications for registration), Antimicrobial Program Branch, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office of location and telephone number: Room 711, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557–7470.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of May 28, 1986 (51 FR 19174), EPA issued a notice concerning "Advocacy of Pesticide Uses Which Do Not Appear on Registered Pesticide Labels." The main thrust of this Notice was to address the unwarranted promotion of efficacy claims for antimicrobial pesticides against HIV in advertising and other product related materials. At the time of this Notice, an acceptable test procedure was not yet available for evaluating the efficacy of antimicrobial pesticides against HIV, and therefore, EPA had not approved any label claims of effectiveness against HIV.

Since May 1986, EPA has received and approved three test procedures developed by three different commercial testing laboratories. The laboratories developed their test procedures in accordance with those already employed for testing disinfectants against other kinds of viruses, except for the virus-specific host and assay procedures. These procedures were approved by EPA following consultation with the Centers for Disease Control (CDC) and the Food and Drug Administration (FDA). Staff members of both CDC and FDA agreed that the basic parameters of the three approved testing protocols were in agreement with those employed for testing disinfectants against other kinds of viruses and were valid test procedures. Based on these three approved procedures, several antimicrobial pesticide manufacturers tested their products and submitted data to EPA in support of proposed label efficacy claims against HIV. To date, data on 68 disinfectant products have been evaluated by EPA. The data demonstrate effectiveness of the products as virucides against HIV–1 on hard non-porous surfaces in the presence of moderate amounts of organic soil (5 to 10 percent) at the recommended label dosages in 30 seconds to 10 minutes at 20 to 25 °C.

This demonstration of acceptable performance against HIV–1 required that EPA consider approval of appropriate label claims. In consideration of EPA labeling policy for HIV claims, several labeling elements were addressed, including: acceptable terminology/nomenclature for designation of target pest; the use of featured statements/phrases, enlarged/emphasized lettering, special graphics, or product names for promotion of HIV efficacy claims; acceptable use patterns and required documentation; directions for use of products against HIV; and use and acceptability of supplemental labeling.

Evaluation of these labeling elements indicated that adequate regulations and policies existed to address issues that had surfaced, or were likely to surface, in the registration of antimicrobial pesticides efficacious against HIV. Therefore, it was not considered necessary to establish new policy or revise existing policy in order to regulate HIV efficacy claims. Rather, only a clarification and/or reinforcement of existing policies as they apply to HIV efficacy claims is needed to serve as guidance to registrants and/or manufacturers of antimicrobial pesticides.

II. Clarification of Labeling Policy

The following elements constitute a labeling policy clarification for HIV efficacy claims:

1. The only terminology/nomenclature that is acceptable for designation of the target pest(s) associated with human immunodeficiency syndrome is "human immunodeficiency virus Type 1 (HIV–1)" or "human immunodeficiency virus Type 2 (HIV–2)." Either of the above may be combined with the parenthetical phrase "(associated with AIDS)" or "(AIDS virus)."

2. Featured statements/phrases, emphasized/enlarged lettering, special graphics, or any product name, that employ the term *AIDS*, are prohibited. The terms "AIDS virus" or "Associated with AIDS" may be used for recognition purposes, *in parentheses*, to accompany the official name of the virus.

Featured statements/phrases, emphasized/enlarged lettering, or special graphics that are employed for the primary purpose of especially promoting or drawing attention to HIV efficacy without appropriate use information, are unacceptable. For example, a featured, incomplete phrase such as KILLS HIV–1 will not be permitted. However, a featured statement such as KILLS HIV–1 ON PRE-CLEANED ENVIRONMENTAL SURFACES/OBJECTS PREVIOUSLY SOILED WITH BLOOD/BODY FLUIDS is acceptable if the product is effective against HIV–1 when tested; the specific surfaces/objects recommended for treatment are likely to be soiled with blood/body fluids; and appropriate directions and other use information are provided. Such claims will be permitted only under the Directions for Use section of the label.

3. The only use patterns considered acceptable in conjunction with HIV efficacy claims are those that involve health care settings or other settings in which there is an expected likelihood of soiling of inanimate surfaces/objects with blood or body fluids, and in which the surfaces/objects likely to be soiled with blood or body fluids can be associated with the potential for transmission of HIV. EPA will require the substantiation of efficacy against the specific target pest, HIV–1, and the likelihood of blood and body fluid soiling and association of soiled surfaces with the potential transmissibility of HIV.

4. Special instructions for use of antimicrobial pesticides against HIV must be provided in the following format, with each section appropriately titled and the required use information included.

a. *Heading:* Identify as "SPECIAL INSTRUCTIONS FOR CLEANING AND DECONTAMINATION AGAINST HIV OF SURFACES/OBJECTS SOILED WITH BLOOD/BODY FLUIDS."

b. *Personal Protection:* The specific barrier protection items to be used when handling items soiled with blood or body fluids must be identified, such as disposable latex gloves, gowns, masks, or eye coverings.

c. *Cleaning Procedure:* The need to clean the specific surfaces/objects prior to disinfection must be identified, e.g., "Blood and other body fluids must be thoroughly cleaned from surfaces and objects before application of the disinfectant (or sterilant)."

d. *Disposal of Infectious Materials:* The use directions must state how and where to dispose of blood, body fluids, and cleaning materials that are removed from surfaces/objects, e.g., "Blood and other body fluids should be autoclaved and disposed of according to Federal, State, and local regulations for infectious waste disposal."

e. *Contact Time:* When a contact time for HIV is specified that is shorter than the contact time specified for other pathogens, then it must be qualified with a prominent statement such as "this contact time will not control other common types of viruses and bacteria."

5. Sticker-type labeling will be permissible for use in conjunction with HIV efficacy claims only if alone, or in conjunction with the remainder of the product label text, it provides all of the required HIV-related use information (i.e. use site, surfaces/objects, directions for use, etc.); does not conflict with the rest of the labeling; and complies with

the same labeling requirements that are applicable to the rest of the labeling text (scientific terminology, featured claims, etc.). Sticker-type labeling used solely for promotional purposes to draw attention to HIV effectiveness, rather than for providing valid use information, is not acceptable.

8. HIV related use information may be presented either on the product container label, or in accompanying technical brochures or literature. However, in the latter case, the product container label must specifically reference the accompanying literature where such information is presented.

III. Registration Requirements

Registrants desiring to register a product bearing HIV efficacy claims, or to amend an existing registration to include a HIV efficacy claim, must comply with the policy announced in this notice and pursue EPA approval through the required registration application procedures.

The **Federal Register** notice of May 28, 1986 (51 FR 19174), permitted registrants of sterilant products to claim efficacy against HIV without additional documentation of effectiveness other than the required sporicidal data, when directions for use as a sterilant were prescribed for HIV efficacy, and Agency approval of labeling was obtained. EPA allowed the sterilizer use because sterilization is an absolute term that denotes killing of all microorganisms, including the most resistant spore forms, against which these products are tested, and the treatment regimen is stringent (e.g., immersion for 10 hours). Sterilant products registered by EPA with approval to bear HIV efficacy claims must also bear labeling that is in compliance with the labeling policy announced in this clarification notice (See section II above). Therefore, sterilant products previously approved by EPA to bear HIV claims must be revised in accordance with this announcement, and registrants must pursue EPA approval through the required registration application procedures within 60 days of the date of this Notice. EPA will notify these registrants of this labeling clarification policy, the amended registration requirements, and the time frame for responding upon publication of this **Federal Register** Notice.

Dated: January 27, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 89-3066 Filed 2-8-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 271

[FRL-3516-7]

North Carolina: Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: North Carolina has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed North Carolina's application and has made a decision, subject to public review and comment, that North Carolina's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve North Carolina's hazardous waste program revisions. North Carolina's application for program revision is available for public review and comment.

DATES: Final authorization for North Carolina shall be effective April 10, 1989, unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on North Carolina's program revision application must be received by the close of business on March 13, 1989.

ADDRESSES: Copies of North Carolina's final authorization application are available during 9:00 a.m. to 5:00 p.m. at the following addresses for inspection and copying: North Carolina Department of Human Resources, P.O. Box 2091, Raleigh, North Carolina 27602, Phone: 919/733-2178; U.S. EPA Headquarters Library, PM 211A, 401 M Street, SW., Washington, DC 20460, Phone: 202/382-5926; U.S. EPA Region IV Library, 345 Courtland Street, NE., Atlanta, Georgia 30365. Written comments should be sent to Mr. Otis Johnson, Jr., Chief, Waste Planning Section RCRA Branch, Waste Management Division, U.S. Environmental Protection Agency, 345 Courtland Street, NE; Atlanta, Georgia 30365, Phone: 404/347-3016.

FOR FURTHER INFORMATION CONTACT: Mr. Otis Johnson, Jr., Chief, Waste Planning Section, RCRA Branch, Waste Management Division, U.S. Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365, Phone: 404/347-3016.

SUPPLEMENTARY INFORMATION:

A. Background

Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows EPA to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program subject to the authority retained by EPA in accordance with the Hazardous and Solid Waste Amendments of 1984 (HSWA). Two types of authorization may be granted. The first type, known as "interim authorization," is a temporary authorization which is granted if EPA determines that the State program is "substantially equivalent" to the Federal program (Section 3006(c), 42 U.S.C. 6926(a)).

The second type of authorization is a "final" (permanent) authorization that is granted by EPA if the Agency finds that the State program (1) is "equivalent" to the Federal program, (2) is consistent with the Federal program and other State programs, and (3) provides for adequate enforcement (Section 3006(b), 42 U.S.C. 6926(b)). States need not have obtained interim authorization in order to qualify for final authorization. EPA regulations for interim or final State authorization appear at 40 CFR Part 271.

B. North Carolina

North Carolina initially received final authorization on December 31, 1984. North Carolina received authorization for a revision to its program on March 25, 1986, for the Redefinition of Solid Waste provisions promulgated January 4, 1985. North Carolina has also received authorization for revisions to its program on October 4, 1988 for Closure Post Closure, and Financial Responsibility Requirements promulgated May 2, 1986, and

- Listing of Spent Pickle Liquor promulgated on May 28, 1986. Today, North Carolina is seeking approval of its program revision for the following authorities promulgated between 1/2/83 and 4/23/85.

Federal Requirement	State Authority
• 3006(f) Availability of Information, 40 CFR Part 2, Subpart A 5 U.S.C. 552.	10NCAC 10F.0040(a) 10NCAC 10F.0034(b) NCGS 6-19.2 NGCS 6-20
• Biennial Report 48 FR 3961-3963.	NCGS 130A-294(c) 10 NCAC 10F.0030(d) 10 NCAC 10F.0030(e) 10 NCAC 10F.0030(f) 10 NCAC 10F.0034(a)(c)
• Permit Rules: Settlement Agreement: 48 FR 39822, 9/1/83.	NCGS 130A-294(c) 10 NCAC 10F.0034(b) 10 NCAC 10F.0034(c)
• Interim Status Standards Applicability; 48 FR 57218-20, 11/22/83.	NCGS 130A-294(c) 10 NCAC 10F.0033(a)
• Chlorinated Aliphatic Hydrocarbon Listing (FO 24): 49 FR 5312, 2/10/84.	NCGS 130A-294(c) 10 NCAC 10F.0029(e)
• National Uniform Manifest: 49 FR 10500-10510.	NCGS 130A-294(c) 10 NCAC 10F.0002(a) 10 NCAC 10F.0030(b) 10 NCAC 10F.0030(e) 10 NCAC 10F.0030(f)
• Listing Warfarin and Zinc Phosphide: 49 FR 19922 5/10/84.	NCGS 130A-294(c) 10 NCAC 10F.0029(e)

Federal Requirement	State Authority
• Lime Stabilized Pickle Liquor Sludge: 49 FR 23264 6/5/84.	NCGS 130A-294(c) 10 NCAC 10F.0029(a)
• Settlement Agreement: Permit Rules: 49 FR 17718-17719 4/24/84.	NCGS 130A-294(c) 10 NCAC 10F.0034(g)
• Exclusion of Household Waste: 49 FR 44960, 11/13/86.	NCGS 130A-294(c) 10 NCAC 10F.0029(a)
• Interim Status Standards Applicability: 49 FR 46095, 11/21/84.	NCGS 130A-293(c) 10 NCAC 10F.0033(a)
• Corrections to Test Methods Manual: 49 FR 97391, 12/4/84.	NCGS 130-166.18(c) NCGS 130A-294(c) 10 NCAC 10F.0026(b) 10 NCAC 10F.0001(e) 10 NCAC 10F.0034(a)
• Satellite Accumulation: 49 FR 49571, 12/20/84.	NCGS 130A-294(c) 10 NCAC 10F.0030(c)
• Interim Status Standards for Landfills 50 FR 18044.	NCGS 130A-294(c) 10 NCAC 10F.0033(k) 10 NCAC 10F.0033(m) 10 NCAC 10F.0033(n)

EPA has reviewed North Carolina's application, and has made an immediate final decision that North Carolina's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to North Carolina. The public may submit written comments on EPA's immediate final decision up until March 13, 1989. Copies of North Carolina's application for program revision are available for inspection and copying at the location indicated in the "Addresses" section of this notice.

Approval of North Carolina's program revision shall become effective in 60 days unless an adverse comment pertaining to the State's revisions discussed in this notice is received by the end of the comment period. If an adverse comment is received EPA will publish either (1) A withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

North Carolina is not authorized by the Federal Government to operate the RCRA program on Indian lands. This authority will remain with EPA.

C. Decision

I conclude that North Carolina's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, North Carolina is granted final authorization to operate its hazardous waste program as revised. North Carolina now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA-program, subject to the limitation of its revised program application and previously approved authorities. North Carolina also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under section 3008, 3013 and 7003 of RCRA.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. The authorization effectively suspends the applicability of certain Federal regulations in favor of North Carolina's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of section 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: December 22, 1988.

Greer C. Tidwell,

Regional Administrator.

[FR Doc. 89-3073 Filed 2-8-89; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-17

[FPMR Temp. Reg. D-73, Supp. 1]

Quality Workplace Environment Program

AGENCY: Public Buildings Service, GSA.

ACTION: Temporary regulation.

SUMMARY: This supplement extends to February 11, 1990, the expiration date of FPMR Temporary Regulation D-73. D-73 provides procedures to the development and maintenance of planning information, and reporting systems to ensure the efficient assignment and utilization of Federal work space. It also implements Executive Order 12411 signed by the President on March 29, 1983. The General Services Administration's authority for issuing this regulation is contained in Executive Order 12411 and in the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)).

DATES: *Effective date:* February 11, 1989.

Expiration date: February 11, 1990.

FOR FURTHER INFORMATION CONTACT: Robert E. Ward, Director, Real Estate (202-566-1025).

SUPPLEMENTARY INFORMATION: The purpose of this regulation is to extend the Quality Workplace Environment Program and the related policies and procedures covering the improved assignment and utilization of space. GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more, a major increase in costs to consumers or others, or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101-17

Administrative practices and procedures, Federal buildings and facilities, Government property management.

PART 101-17—[AMENDED]

Authority: Sec. 205(c), 63 Stat. 390 40 U.S.C. (486(c)).

In 41 CFR Chapter 101, FPMR Temp. Reg. D-73, Supplement 1 is added to the appendix at the end of Subchapter D to read as follows:

Federal Property Management Regulations Temporary Regulation D-73 Supplement 1

January 25, 1989.

To: Heads of Federal agencies

Subject: Quality Workplace Environment Program

1. *Purpose.* This supplement extends the expiration date of FPMR Temporary Regulation D-73.

2. *Effective date.* This regulation is effective upon publication in the FEDERAL REGISTER.

3. *Expiration date.* This supplement expires February 11, 1990, unless sooner canceled or revised.

4. *Explanation of change.* The expiration in par. 3 of FPMR Temporary Regulation D–73 is revised to February 11, 1990.

Richard G. Austin,

Acting Administrator of General Services.

[FR Doc. 89–3040 Filed 2–8–89; 8:45 am]

BILLING CODE 6820–23–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[CC Docket Nos. 78–72, 80–286; FCC 88–399]

Access Charges

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted certain changes to the Part 69 access charge rules that will, effective on April 1, 1989, require the National Exchange Carrier Association (NECA) common line pool and local exchange carriers (LECs) that leave the pool to set their originating carrier common line (CCL) rates at one cent, and their terminating rates to recover the remaining interstate revenue requirement. If this method would result in an individual LEC having a terminating rate of less than one cent, that LEC is required to utilize equalized CCL charges. The Commission concluded that a balanced approach that protects against originating rates reaching too high a level for any individual company, yet minimizes the differentials between originating and terminating CCL charges, which is best for the new pooling environment.

EFFECTIVE DATE: April 1, 1989.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Cynthia Work, Policy and Program Planning Division, Common Carrier Bureau (202) 632–9342.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (FCC 88–399), adopted December 9, 1988, and released December 12, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

1. The Commission's access charge rules originally provided that non-traffic sensitive (NTS) costs allocated to the carrier common line (CCL) element would be recovered through a uniform charge assessed on both originating and terminating switched access minutes. In early 1986, however, the Commission adopted temporary measures to reduce some of the incentives for uneconomic bypass by freezing the terminating CCL charge and providing that any subsequent common line cost reductions would be applied to reduce the originating charge. This interim bifurcated CCL arrangement was initially scheduled to expire on December 31, 1987, but was extended to November 30, 1988, to coincide with the effective date of the $.60 subscriber line charge increase on this latter date.

2. On July 12, 1988, the Commission released a reconsideration order in its access charge proceeding (MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, *Memorandum Opinion and Order on Reconsideration and Order Inviting Comments*, 3 FCC Rcd 4543 (1988), *petition for review pending, Public Service Commission of the District of Columbia v. FCC*, D.C. Cir. No. 88–1661 (petition filed Sept. 12, 1988)) in which it extended the bifurcated CCL charge approach to March 31, 1989, to avoid unnecessary rate churn, to minimize incentives for originating end bypass, and to afford it time to invite and analyze comment on whether a bifurcated CCL charge structure should be continued in the new pooling environment. The Commission noted that the implementation of the common line pooling changes on April 1, 1989, offered an appropriate opportunity to consider whether bifurcated CCL charges should be retained for an additional period after that date or whether equalized charges should be reinstituted, and it asked for comment on this issue.

3. A number of commenting parties urged the Commission to permit each LEC the flexibility to set its originating rate at a level ranging from zero to the terminating rate of that LEC. The Commission declined to accord LECs this flexibility, noting that the order inviting comments disclaimed any intention to examine broader questions relating to CCL flexibility, and that it accordingly would be inappropriate to address such issues in this narrow proceeding.

4. Based on its review of the record, the Commission decided that a balanced approach that protects against originating rates reaching too high a level for any individual company, yet minimizes the differentials between originating and terminating CCL charges, would be best for the new pooling environment that will be implemented on April 1, 1989. Thus, effective April 1, 1989, the Commission will require LECs and the NECA common line pool to set their originating CCL rates at one cent ($.01), and to set their terminating rates to recover the remaining interstate CCL revenue requirement. If the remaining revenue requirement would produce a terminating charge of less than one cent, the Commission will require the LEC to equalize its CCL charges.

5. The Commission concluded that continuation of a bifurcated CCL rate scheme would help to deter bypass, encourage interexchange carriers to provide and market interexchange service in the serving areas of higher-cost LECs, and offer other advantages. It observed that the disadvantages associated with having a higher, equalized originating rate outweigh the problems associated with the measured form of bifurcation adopted in this order, and noted moreover that any problems relating to bifurcated rates would be mitigated by the one cent cap, or are abating due to other external factors.

Ordering Clauses

1. *It is hereby ordered,* That, pursuant to 47 U.S.C. 154(i) and (j), 201, 202, 203, 205, 403, 405, and 410 and 5 U.S.C. 553, that the CCL rate structure described in the foregoing paragraphs shall be implemented in the common line tariffs that will become effective on April 1, 1989.

2. *It is further ordered,* That the rule modifications are adopted, effective April 1, 1989.

List of Subjects in 47 CFR Part 69

Common carrier, Access charges, Common carrier, Resale, Wide Area Telephone Service (WATS).

Part 69 of Title 47 of the Code of the Federal Regulations is amended as follows:

PART 69—ACCESS CHARGES

1. The authority citation for Part 69 continues to read as follows:

Authority: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1070, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403.

2. Section 69.105 is amended by revising paragraph (b) to read as follows:

§ 69.105 Carrier Common Line.

* * * * *

(b)(1) For purposes of this section and § 69.113:

(i) A carrier or other person shall be deemed to receive premium access if access is provided through a local exchange switch that has the capability to provide access for an MTS–WATS equivalent service that is substantially equivalent to the access provided for MTS or WATS, except that access provided for an MTS–WATS equivalent service that does not use such capability shall not be deemed to be premium access until six months after the carrier that provides such MTS–WATS equivalent service receives actual notice that such equivalent access is or will be available at such switch;

(ii) The term "open end" of a call describes the origination or termination of a call that utilizes exchange carrier common line plant (a call can have no, one, or two open ends); and

(iii) All open end minutes on calls with one open end (*e.g.*, an 800 or FX call) shall be treated as terminating minutes.

(2) For association Carrier Common Line tariff participants—

(i) The premium originating Carrier Common Line charge shall be one cent per minute, and

(ii) The premium terminating Carrier Common Line charge shall be computed by subtracting the sum of the projected revenues generated by the originating Carrier Common Line charges (both premium and non-premium) of association Carrier Common Line tariff participants and of telephone companies that are not association Carrier Common Line tariff participants from the sum of the projected Carrier Common Line revenue requirements for association Carrier Common Line tariff participants and for telephone companies that are not association Carrier Common Line tariff participants, and dividing the remainder by the sum of the projected premium terminating minutes and a number equal to .45 multiplied by the projected non-premium terminating minutes of association Carrier Common Line tariff participants and of telephone companies that are not association Carrier Common Line tariff participants.

(3) If the calculations described in § 69.105(b)(2) result in a per minute charge on premium terminating minutes that is less than one cent, both the originating and terminating premium charges for the Carrier Common Line tariff participants shall be computed by dividing the sum of the projected Carrier Common Line revenue requirements of such telephone companies and of telephone companies that are not association Carrier Common Line tariff participants, by the sum of the projected premium minutes and a number equal to .45 multiplied by the projected non-premium minutes of association Carrier Common Line tariff participants.

(4) The Carrier Common Line charges of telephone companies that are not association Carrier Common Line tariff participants shall be computed at the level of Carrier Common Line access element aggregation selected by such telephone companies pursuant to § 69.3(e)(7). For each such Carrier Common Line access element tariff—

(i) The premium originating Carrier Common Line charge shall be one cent per minute, and

(ii) The premium terminating Carrier Common Line charge shall be computed by subtracting the projected revenues generated by the originating Carrier Common Line charges (both premium and non-premium) from the Carrier Common Line revenue requirement for the companies participating in that tariff, and dividing the remainder by the sum of the projected premium terminating minutes and a number equal to .45 multiplied by the projected non-premium terminating minutes for such companies.

(5) If the calculations described in § 69.105(b)(4) result in a per minute charge on premium terminating minutes that is less than one cent, both the originating and terminating premium charges for the companies participating in said Carrier Common Line tariff shall be computed by dividing the projected Carrier Common Line revenue requirement for such companies by the sum of the projected premium minutes and a number equal to .45 multiplied by the projected non-premium minutes for such companies.

(6) Telephone companies that are not association Carrier Common Line tariff participants shall submit to the Commission and to the association whatever data the Commission shall determine are necessary to calculate the charges described in this section.

§ 69.113 [Redesignated as § 69.114]

3. Section 69.113 is redesignated as § 69.114.

4. A new § 69.113 is added to read as follows:

§ 69.113 Non-premium charges for MTS–WATS equivalent services.

(a) Charges that are computed in accordance with this section shall be assessed upon interexchange carriers or other persons that receive access that is not deemed to be premium access (as this term is defined in § 69.105(b)(1)) in lieu of carrier charges that are computed in accordance with §§ 69.105, 69.106, 69.111 and 69.112.

(b) The non-premium charge for the Carrier Common Line element shall be computed by multiplying the premium charge for such element by .45.

(c) The non-premium charge for the Local Switching element shall be computed by multiplying a hypothetical premium charge for such element by .45. The hypothetical premium charge for such element shall be computed by dividing the annual revenue requirement for such element by the sum of the projected premium access minutes for such element for such period and a number that is computed by multiplying the projected non-premium minutes for such element for such period by .45.

(d) The non-premium charge or charges for the Transport element or elements shall be computed by multiplying the corresponding premium charge or charges by .45.

5. Section 69.201 is revised to read as follows:

§ 69.201 General.

Notwithstanding §§ 69.4, 69.104, 69.106, and 69.111 through 69.112, charges for the access elements described in this Subpart shall be computed in accordance with this Subpart during the period commencing January 1, 1984 and ending December 31, 1992. This Subpart does not supersede Sections 69.106 (c) through (e).

6. Section 69.205 is amended by revising paragraph (a), removing the existing text of paragraph (b), and by relettering the subsequent paragraphs. Section 69.205 is revised to read as follows:

§ 69.205 Transitional premium charges.

(a) Charges that are computed in accordance with this section shall be assessed upon interexchange carriers or other persons that receive premium access in lieu of carrier charges that are computed in accordance with §§ 69.106, 69.111 and 69.112 of this part if any carrier or other person does not receive premium access, as this term is defined in § 69.105.

(b) Separate Local Switching transitional premium charges that are expressed in dollars and cents per access minute shall be computed for the

LS1 and LS2 categories. The LS1 category shall consist of local dial switching for services other than MTS, WATS and services receiving access to the local switch equal to that received by MTS and WATS. The LS2 category shall consist of local dial switching for MTS, WATS and services receiving access to the local switch equal to that received by MTS and WATS.

(c) The charge for an LS2 premium access minute shall be computed by dividing the premium Local Switching revenue requirement by the sum of the projected LS2 premium access minutes and a number that is computed by multiplying the projected LS1 premium access minutes by the applicable LS1 transition factor. The charge for an LS1 premium access minute shall be computed by multiplying the charge for an LS2 premium access minute by the applicable LS1 transition factor. The premium Local Switching revenue requirement shall be computed by subtracting the projected revenues from non-premium charges attributable to the Local Switching element from the revenue requirement for such element.

(d) During each of the following years the LS1 transition factor shall be:

(1) January 1, 1988 through March 31, 1989—.78;

(2) April 1, 1989 through June 30, 1990—.86;

(3) July 1, 1990 through June 30, 1991—.905;

(4) July 1, 1990 through June 30, 1992—.955; and

(5) July 1, 1992 through December 31, 1992—.98

(e) Transitional premium charges that are computed in accordance with applicable requirements shall be assessed for the Transport element or elements. Such premium charges shall be designed to produce total annual revenue that is equal to the premium transport revenue requirement. The premium transport revenue requirement shall be computed by subtracting projected revenues from non-premium charges attributable to the Transport element or elements from the revenue requirement for such element or elements.

§ 69.206 [Removed]

7. Section 69.206 is removed.

§ 69.207 [Removed]

8. Section 69.207 is removed.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-3049 Filed 2-8-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-269; RM-6231 & RM-6514]

Radio Broadcasting Services; Frankfort and Stephenson, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 257C2 for Channel 257A at Frankfort, Michigan, in response to a petition filed by Forum Communications, Inc. We shall also modify the license of Station WBNZ(FM) to specify operation of Channel 257C2 in lieu of Channel 257A in accordance with Section 1.420(g) of the Commission's Rules. The coordinates for Channel 257C2 at Frankfort are 44-36-38 and 86-09-38. To accommodate the substitution at Frankfort, it is necessary to substitute the Channel 272A for Channel 257A (vacant) at Stephenson, Michigan. The *Notice* proposed Channel, 261A be substituted at Stephenson. In response to comments filed by Evangel Ministries, Inc., we have instead substituted Channel 272A for Channel 257A at Stephenson, which will prevent a conflict with its petition to substitute Channel 261C1 for Channel 262C1 at Rhinelander, Wisconsin and Channel 262C2 for Channel 261A at Menasha, Wisconsin. The coordinates for Channel 272A at Stephenson are 45-24-54 and 87-36-24. Since the communities of Frankfort and Stephenson, Michigan, are both located within 320 kilometers of the U.S.-Canadian border, concurrence of the Canadian government has been obtained for these allotments. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 23, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket 88-269, adopted January 4, 1989, and released February 6, 1989. The full text of the Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments under Michigan is amended by deleting Channel 257A and adding Channel 257C2 at Frankfort and by deleting Channel 257A and adding Channel 272A at Stephenson.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-3093 Filed 2-8-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-193; RM-6158 and RM-6250]

Radio Broadcasting Services; Philadelphia and Union, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The *Notice of Proposed Rule Making* was issued in response to a petition filed by Quail Communications proposing the allotment of FM Channel 281A to Philadelphia, Mississippi. Petitioner failed to file supporting comments and as stated in the *Appendix* to the *Notice*, continuing interest is required before a Channel will be allocated. Therefore, in accordance with the Commission's Policy, no further consideration will be given to the allotment of FM Channel 281A at Philadelphia, Mississippi.

A counterproposal was filed by Double B Broadcasting, seeking the allotment of FM Channel 281C2 to Union, Mississippi, and indicated its intention to file an application for the use of the channel at Union. Channel 281C2 can be allotted to Union, Mississippi, in compliance with the spacing requirements provided there is a site restriction 4.5 kilometers southwest of the community. The site restriction will prevent a conflict with Channel 282A (vacant) State College, Mississippi. The coordinates for the restricted site are 32-32-01 and 89-08-26. With this action, this proceeding is terminated.

DATES: Effective March 23, 1989; The window period for filing comments for Channel 281C2 at Union, Mississippi will open on March 24, 1989, and close on April 24, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-193, adopted January 18, 1989, and released February 6, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended under Mississippi by adding Union, Channel 281C2.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-3094 Filed 2-8-89; 8:45 am]

BILLING CODE 6712-01-M

BEST COPY AVAILABLE

Proposed Rules

Federal Register
Vol. 54, No. 26
Thursday, February 9, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

Public Meeting To Discuss Requirements for Control of Internal Doses

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public meeting.

SUMMARY: The proposed revision to 10 CFR Part 20, published on January 9, 1986, (51 FR 1092), contained a section (§ 20.205) that would have allowed licensees to control the internal dose from certain long-lived radionuclides on the basis of the dose actually delivered during the year from all intakes, both past and present (annual dose). The control of all other nuclides was to be based upon the dose, both present and future, that would be delivered as a result of intakes of radioactive materials during the year (committed dose). The NRC staff, during preparation of the final rule that would implement the 10 CFR Part 20 revision, deleted this option. This deletion effectively continues the present practice of requiring that internal doses to workers from all radionuclides would be controlled on committed dose equivalents.

At the request of the Nuclear Utilities Management and Resources Council (NUMARC), a meeting between industry representatives and NRC staff members is scheduled to hear industry concerns regarding the deletion of the proposed § 20.205 and discuss the impact of the 5-fold reduction in the occupational air concentration limit for insoluble uranium on nuclear fuel fabrication facilities.

DATE: Meeting to be held February 22, 1989, from 1:30–3:30 p.m.

ADDRESS: Meeting to be held in room 10–B–11 of the Commission's headquarters building at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Harold T. Peterson, Jr., Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, 5650 Nicholson Lane South [142], Rockville, MD 20852. Telephone: (301) 492–3640. Facsimile: (301) 443–7804 or 443–7836. Verification: (301) 492–3607.

SUPPLEMENTARY INFORMATION:

The deletion of § 20.205 has been previously discussed in public meetings of the NRC Advisory Committee on Reactor Safeguards (ACRS) Subcommittee on Occupational and Environmental Health on May 31, 1988 and before the full ACRS on June 3, 1988; in the Commission's public meeting on 10 CFR Part 20 on November 10, 1988; and the NRC Advisory Committee on Nuclear Waste on December 21, 1988.

Persons wishing to make statements on these issues should notify the contact person identified in this document and submit a written request including the statement to be presented at lease one week in advance of the meeting. The statement should be no longer than 3 minutes.

Dated at Rockville, Maryland, this 6th day of February 1989.

Alan K. Roecklein,

Acting Chief, Radiation Protection and Health Effects Branch, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 89–3083 Filed 2–8–89; 8:45 am]
BILLING CODE 7590–01–M

DEPARTMENT OF ENERGY

Office of the Secretary

10 CFR Part 600

Financial Assistance Rules; Technical Corrections

AGENCY: Department of Energy.

ACTION: Proposed rule.

SUMMARY: The Department of Energy (DOE) today proposes amendments to the Financial Assistance Rules, 10 CFR Part 600, to make technical, non-substantive corrections. Because of three changes to the rules in 1988, a detailed review of them has taken place and disclosed a number of technical errors (typographical errors, repetitions, incorrect citations, and the like) which warrant correction. These do not involve any substantive change.

DATE: Comments due by March 13, 1989.

ADDRESS: Comments should be addressed to: James J. Cavanagh, Director, Business and Financial Policy Division (MA–422), Procurement and Assistance Management, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Edward F. Sharp, Business and Financial Policy Division (MA–422), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6192

Christopher Smith, Office of the Assistant General Counsel Procurement and Finance (GC–34), U.S. Department of Energy, Washington, DC 20585, (202) 586–1526.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Department of Energy (DOE) is today issuing a proposed rule to make non-substantive changes to the Financial Assistance Rules (10 CFR Part 600) to correct errors appearing in it. There have been three significant amendments to the Rules in 1988: Changes to the way in which cooperative agreements are handled (53 FR 5280, February 22, 1988), adoption of the A–102 Common Rule (53 FR 8044, March 11, 1988), and the establishment of procedures for dealing with determinations of noncompetitive financial assistance and justifications of restricted eligibility (53 FR 12137, April 13, 1988). These changes have not only involved policy issues, but, in the case of the common rule, a substantial reorganization of the Financial Assistance Rules, with renumbering of various sections. Inevitably, errors have appeared in the text, including typographical mistakes, repetitions, and incorrect references.

II. Proposed Changes to 10 CFR Part 600

Section 600.2 is being amended by deleting the reference to OMB Circular A–102 in paragraph (f)(i) and to OMB Circular A–124 in paragraph (f)(iii). Circular A–102 was replaced by the Common Rule (adopted by DOE as Subpart E of the Financial Assistance Rules) and Circular A–124 was cancelled in March 1987. The remaining

numbering within the subsection is changed to reflect the deletions.

Section 600.10 is being corrected to reinsert a subsection initially included in the February 22 revision and inadvertently deleted in the March 11 revision. Section 600.10(b) is being corrected to remove the reference to OMB Circular A–102, Attachment M, as a result of the adoption of the Common Rule.

Section 600.14 is being amended to correct a typographical error in paragraph (a) and a repetition in paragraph (e).

Section 600.20 is being amended to correct a reference in paragraph (c) to § 600.108. This section was redesignated as § 600.32 in the March 11, 1988, Common Rule.

Section 600.30 is being amended to clarify a citation in paragraph (a)(2).

Section 600.102 is being amended to eliminate a reference to OMB Circular A–102 in paragraph (b)(1).

Sections 600.104, 600.106, and 600.108 of Subpart B of the Financial Assistance Rules are being designated "Reserved" sections. They were redesignated as §§ 600.30, 600.31, and 600.32, respectively, in DOE's March 11, 1988, addendum to the A–102 Common Rule. There are sections in Subpart B following them.

Section 600.114 is being amended to change a reference in (b)(ii) to reflect the redesignation of § 600.108 to § 600.32 in the March 11, 1988, Federal Register notice. This section is also being amended to delete the duplicate inclusion of (b)(iv).

Section 600.119 is being amended to clarify that the applicable section for procurement under financial assistance to governmental entities is contained in § 600.436, Subpart E, and to delete a reference to § 600.19(b)(1), which has been removed from the rule.

Section 600.207 is being amended to correct the references in paragraphs (b)(7), (8), and (9) from § 600.118 to § 600.33.

Section 600.305 is being amended to replace the reference in paragraph (c) to A–102 with the correct citation to Subpart E.

Section 600.315 is being amended to replace the reference to A–102 with the correct citation to Subpart E.

Section 600.402 is being amended to include the addition to the definition of "prior approval" contained in the March 11, 1988, final rule. It is also being amended to replace, in the definition of "supplies," the word "part" with the word "subpart."

Section 600.403 is being amended to replace "part" with "subpart" in the last line of paragraph (a)(3)(i).

III. Review Under Executive Order 12291

Today's proposed rule was reviewed under Executive Order 12291 (February 17, 1981). It involves only technical changes to the Financial Assistance Rules. DOE has concluded that it is thus not a "major rule" because its promulgation will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete in domestic or export markets. In accordance with requirements of the Executive order, this rulemaking has been reviewed by the Office of Management and Budget (OMB).

IV. Review Under the Regulatory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, 94 Stat. 1164, which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities; i.e., small businesses, small organizations, and small governmental jurisdictions. DOE has concluded that the proposed rule will have no effect on small entities. DOE thus certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

V. Review Under the Paperwork Reduction Act

No information collection or recordkeeping requirements are imposed upon the public by this proposed rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.*, or OMB's implementing regulations at 5 CFR Part 1320.

VI. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of these wholly technical changes clearly would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.* (1976)), the Council on Environmental Quality Regulations (40 CFR Parts 1500 through 1508), and the DOE guidelines (10 CFR Part 1021) and, therefore, does not require an environmental impact statement pursuant to NEPA.

VII. Review Under Executive Order 12612

Executive Order 12612 requires that regulations or rules be reviewed for substantial direct effects on States, on the relationship between the national government and the States, or in the distribution of power among various levels of government. If there are sufficient substantial direct effects, E.O. 12612 requires preparation of a federalism assessment to be used in all decisions involved in promulgating or implementing a regulation or rule.

Today's proposed regulatory amendments, when finalized, will have direct effects on State recipients of financial assistance, but those direct effects will be insubstantial because they involve minor technical corrections to existing regulations. Accordingly, DOE has concluded that preparation of a federalism assessment is not warranted.

VIII. Public Comments

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments with respect to the proposed changes set forth in this notice. Three copies of written comments should be submitted to the address indicated in the "ADDRESS" section of this notice. All comments received will be available for public inspection in the DOE Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. All written comments received by March 13, 1989 will be fully considered prior to publication of a final rule. Any information you consider to be confidential must be so identified and submitted in writing, one copy only. DOE reserves the right to determine the confidential status of the information and to treat it according to our determination.

The Department has concluded that this proposed rule does not involve a substantial issue of fact or law, and that it should not have substantial impact on the nation's economy or a large number of individuals or businesses. Therefore, pursuant to Pub. L. 95–91, the DOE Organization Act, and the Administrative Procedures Act (5 U.S.C. 553), the Department does not plan to hold a public hearing on this rule.

List of Subjects in 10 CFR Part 600

Administrative practice and procedure, Cooperative agreements/energy, Copyrights, Debarment and Suspension, Educational institutions, Energy, Grants/energy, Hospitals, Indian Tribal governments, Individuals, Inventions and patents, Non profit organizations, Reporting and record keeping requirements, and Small businesses.

In consideration of the foregoing, the Department of Energy hereby proposes to amend Chapter II of Title 10 of the Code of Federal Regulations by amending Part 600 as set forth below.

Berton J. Roth,

Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set out in the preamble, Part 600 of Chapter II, Title 10 of the Code of Federal Regulations is proposed to be amended as follows:

PART 600—[AMENDED]

a. The authority citation for Part 600 continues to read as follows:

Authority: Sec. 644 and 646, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254 and 7256); Pub. L. 97–258, 96 Stat. 1003–1005 (31 U.S.C. 6301–6308).

§ 600.2 [Amended]

b. Section 600.2(f)(1) is amended by removing Sections 600.2(f)(1)(i) and (iii) and redesignating (f)(1)(ii) as (f)(1)(i) and (f)(1)(iv) through (f)(1)(vii) as (f)(1)(ii) through (f)(1)(v).

c. Section 600.10 is corrected by revising paragraph (a) and (b) to read as follows:

§ 600.10 Form and content of applications and preapplications.

(a) *General.* Applications shall be required for all financial assistance projects or programs. Preapplications shall be required for all construction, land acquisition, and land development projects or programs for which the need for Federal funding exceeds $100,000 unless the cognizant program office makes a written program determination to waive the preapplication requirement.

(b) *Forms.* Applications or preapplications shall be on the form or in the format and in the number of copies specified by DOE either in this Part, in a program rule, or in the applicable solicitation, and must include all required information. For State governments, local governments, or Indian tribal governments, applications shall be made on the applicable forms in the Standard Form 424 (SF 424) series. Such applicants shall not be required to submit more than the original and two copies of the application or preapplication.

* * * * *

§ 600.14 [Amended]

d. Section 600.14(a) is amended to change "from" in the first sentence to "for".

§ 600.20 [Amended]

f. Section 600.20(c) is amended by correcting the reference to "§ 600.108" to read "§ 600.32".

§ 600.30 [Amended]

g. Section 600.30(a)(2) is amended by correcting the reference to "§ 1040.4" to read "10 CFR 1040.4".

§ 600.102 [Amended]

h. Section 600.102(b)(1) is amended to remove the words "contained in OMB Circular A–102, as" in the second sentence.

§ 600.114 [Amended]

i. Section 600.114(b)(1)(ii) is amended by correcting the reference to "§ 600.108(d)" to read "§ 600.32(d)".

j. Section 600.114(b)(1)(iv) is corrected by removing the second version of this duplicated paragraph.

k. Section 600.119 is amended by revising paragraphs (a)(1) and (c)(2)(i) to read as follows:

§ 600.119 Procurement under grants and subgrants.

(a) * * *

(1) This section does not apply to procurements covered by § 600.436, Subpart E.

* * * * *

(c) * * *

(2) * * *

(i) If DOE or the grantee determines, on the basis of a review in accordance with § 600.104 or § 600.105, that the grantee's or subgrantee's procurement procedures or operations do not comply with one or more of the applicable procurement system standards; or

* * * * *

§ 600.207 [Amended]

l. Section 600.207(b) (7), (8), and (9) are amended to revise the reference to "§ 600.118" to read "§ 600.33".

§ 600.305 [Amended]

m. In § 600.305, paragraph (b)(2)(ii) is amended by correctly designating (c) as (C), and correctly designated paragraph (b)(2)(ii)(C) is amended to revise the reference to "Attachment F of Circular A–102, 'Uniform requirements for grants to State and local governments'" to read "§ 600.424 of Subpart E".

§ 600.315 [Amended]

n. Section 600.315 is amended to revise the reference to "Attachment O of Circular A–102, 'Uniform requirements for grants to State and local governments,' as implemented by § 600.119 of this part" to read "§ 600.436 of Subpart E".

o. Section 600.402 is amended to revise the definitions of "prior approval" and "supplies" as follows:

§ 600.402 Definitions.

* * * * *

"Prior approval" means documentation evidencing consent prior to incurring specific cost. For the Department of Energy, this must be signed by a Contracting Officer.

* * * * *

"Supplies" means all tangible personal property other than "equipment" as defined in this subpart.

§ 600.403 [Amended]

p. Section 600.403 (a)(3)(i) is amended by changing the reference to "part" to read "subpart".

[FR Doc. 89–3024 Filed 2–8–89; 8:45 am]

BILLING CODE 6450–01–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards for Industries Without an Established Size Standard

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) is proposing the establishment of a residual size standard of $3.5 million in average annual receipts for all industries for which no size standard exists at present. Industries without size standards consist of eight in transportation and public utilities; 43 in finance, insurance, and real estate; and one in nonclassifiable establishments. While requests for SBA's assistance from companies in these 52 industries are infrequent, they occasionally occur. Size standards are needed in all industries to establish eligibility for SBA's financial assistance and other programs.

DATE: Comments to be submitted on or before March 13, 1989.

ADDRESSES: *Comments to:* Gary M. Jackson, Director, Size Standards Staff, U.S. Small Business Administration, 1441 'L' Street NW.—Room 601, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Norman Salenger or Alan Odendahl, Economists, Size Standards Staff, (202) 653–6373.

SUPPLEMENTARY INFORMATION: In the latter part of 1988, SBA was contacted by several Federal agencies concerning a number of current and forthcoming solicitations for natural gas distribution (SIC code 4924). This industry was among the 53 four-digit Standard Industrial Classification (SIC) industries for which SBA did not have an established size standard. As a result, SBA established an emergency interim size standard for Natural Gas Distribution in November 1988. SBA's policy is to have a size standard for every industry. Size standards were not established previously for these 53 industries because SBA was not expected to receive requests for assistance from firms in these industries. Also, limited data on the structure of many of the 53 uncovered industries delayed the establishment of size standards. A similar situation led to the establishment of an emergency interim size standard for Commodity Brokers in August 1988.

To avoid the need for publishing separate notices in the **Federal Register** for each of the remaining 52 industries as a size standard becomes necessary, SBA is proposing that a residual size standard of $3.5 million in average annual receipts be established for these industries. This is the same size standard that is used as the residual standard for all industries not specifically listed under SIC Division I—Services.

When SBA receives a request to establish a size eligibility criteria, either for the purpose of SBA's financial assistance or so that a small business set-aside solicitation may be issued, it currently takes at least several months to establish a size standard. The need for a size standard in these instances is much sooner than the time SBA can usually respond to such a request. This residual size standard would, accordingly, avbid the delay experienced up to now. SBA solicits and welcomes comments on the suitability of making the proposed $3.5 million size standard a final rule.

The industries for which no size standard currently exist include eight four-digit SIC industries within SIC Division E (Transportation, Communications, Electric, Gas, and Sanitary Services), 43 four-digit industries within SIC Division H (Finance, Insurance, and Real Estate), and the four digit industry of SIC code 9999, Nonclassifiable Establishments (the only industry in SIC Division K). This proposal would apply the residual standard of $3.5 million in average annual receipts to all these industries, leaving only SIC Division J (Public Administration), which is totally outside the purview of SBA's programs, not covered by size standards.

As indicated above, little data are available on many of the 52 industries without size standards, partly because they are not included in the economic censuses published by the U.S. Bureau of the Census. Data are also sometimes contradictory on the size structure and even on the number of firms in these industries. In this situation, it is judged appropriate to apply the "anchor standard" of $3.5 million to the uncovered industries, rather than to adopt some other size standard weakly supported by available evidence.

In 1985, the SBA's Size Policy Board adopted two anchor size standards to serve as reference points from which to begin considerations of a specific standard. For receipt-based size standards $3.5 million is the anchor and for employee-based size standards 500 employees was adopted. The dollar-based size standard originated in 1954, a short time after the inception of the Agency. At that time, size standards of $300,000 to $1,000,000 were established for the retail trade and service industries. In 1963, a single standard of $1,000,000 was established for both industries. Inflationary adjustments to this figure eventually led to the $3.5 million size standard in effect today for most retail trade and service industries.

In addition, the size standard is consistent with the $3.5 million already in use for the residual size standard for all industries not specifically listed in SIC Division I—Services (49 FR 39996, October 12, 1984; 50 FR 10495, March 15, 1985). The other anchor size standard recognized by the Agency is 500 employees. Employee-based size standards apply generally to the manufacturing industries. None of the 52 uncovered industries are included in the manufacturing industries. Thus the 500-employee size standard is an unsuitable alternative standard for these industries. However, SBA recognizes that a $3.5 million size standard may prove to be too low, or too high for one or more individual industries which now have no size standard. Therefore, comments and data on the size structure of such industries, or advice on sources of such data, are solicited.

Compliance With Regulatory Flexibility Act, Executive Orders 12291 and 12612 and the Paperwork Reduction Act

SBA certifies that this proposed rule will not, if promulgated in final form, have a significant economic impact on a substantial number of small entities. In past years firms in these 52 industries did not request SBA's financial assistance, and in many cases are excluded from such assistance. Additionally, there was little interest in setting aside procurements for exclusive small business bidding in these industries. These were the reasons why size standards were not established for these industries in the past. Therefore, the number of firms becoming eligible as small businesses overstates the expected incidence of use of the residual size standard. The establishment of a residual size standards avoids delay and the detailed procedure of establishing a separate size standard for each request to establish a size standard for an uncovered industry, which is estimated at three to four times a year.

Since the U.S. Bureau of the Census does not collect industry data for all of those industries for which this proposal applies, the SBA used its small business data base file entitled "United States Establishment and Enterprise Microdata" (USEEM) to evaluate the economic impact of this rule. These data provide industry information by employment size distribution for each four-digit Standard Industrial Classification (SIC) code. For each size class, USEEM provides the percentage of the industry's employees and sales as well as the average sales per firm and sales per employee. Federal procurement data for fiscal year 1987 were provided by the Federal Procurement Data Center (FPDC) which includes Federal contract dollars by four-digit SIC code.

There are 46,689 firms in the 52 industries not now covered by an SBA size standard. A total of 34,682 firms would become eligible to bid for Federal contracts set aside for exclusive small business bidding and 13,240 firms would become eligible by virtue of size for SBA's financial assistance under this proposed residual size standard. Since SBA is not authorized to make loans to firms who finance others, the number of firms eligible for financial assistance is much less than those eligible for Federal contracts.

The following table presents the total number of firms, number of small firms, total Federal procurement dollars, and expected small business share of Federal contracts under the proposed $3.5 million residual size standard for the 52 industries. In other industries where a size standard exists, Federal procurement data reflects, as one dollar amount, the procurement dollars going to small firms, but does not contain

more detail regarding the size of the firm receiving the contract. Since for these 52 industries there is no existing size standard, the procurement data cannot designate procurement dollars going to small firms. In order to estimate the expected small business share of Federal contracts under the residual size standard of $3.5 million, the percent of sales, Federal and others, in their industry by firms with $3.5 million in receipts or less was applied as the expected percent of Federal procurements by small firms. This assumes that small firms in these industries will participate in the Federal market in the same proportion that they participate in the total market of their industry.

IMPACT OF RESIDUAL SIZE STANDARD OF $3.5 MILLION

	All 52 industries	Gas and electric	Finance	Insurance	Other industries
Total firms	45,689	601	26,336	4,401	15,351
Firms becoming eligible for SBA loans	13,240	328	8,752	(2)	4,150
Expected SBA loans[1]	(3)	(3)	(3)	(3)	(3)
Firms becoming eligible for small business set-aside contracts	34,662	328	20,951	2,593	10,900
Federal procurement in FY 1987 (million of dollars)	$467.7	$308.0	$34.3	$35.0	$40.4
Expected small business share of Federal procurements (million of dollars)	$41.4	$20.7	$14.9	$0.3	$5.5

Source: USEEM, FPDC.
[1] Very few requests for loans were made to SBA in the past by firms in these industries.
[2] Based on same proportion these firms participate in all sales of their industry.
[3] None.
[4] Negligible.
[5] Small.

The impact on the smallest 328 firms providing gas and electric is expected to be minimal. Since many of these firms are monopolies in their locality, there would be almost no procurement impact due to the absence of competition. These firms should be considered sufficiently creditworthy as to be capable of obtaining financing without SBA's assistance, thus they would not be expected to qualify for or to seek an SBA loan.

The residual size standard is expected to have a minimal impact on financial assistance since, in part, SBA is not authorized to provide financial assistance to all types of firms. The SBA is prohibited from making loans to fiduciaries. The only firms that would become eligible for SBA's loans in the financial industries are those that are nonfiduciary service firms in SIC code 6099, Functions Related to Banking, Not Elsewhere Classified; SIC code 6211 Security Brokers; SIC code 6282, Investment Advice; and SIC code 6289, Services Allied to Securities and Commodities, Not Elsewhere Classified.

Insurance firms, as fiduciaries, are also not eligible for SBA's financial assistance. The insurance firms, with under $3.5 million in receipts, becoming eligible under the proposed rule account for a very small percentage of their industries' receipts. Federal contracting to these firms is expected to be less than one million dollars.

Other firms becoming eligible for SBA loans under this proposed rule are 1,334 Title Abstract Offices; 1,349 Oil Royalty Traders; and 1,467 Patent Owners and Lessors. The number of firms to become eligible for Federal contracts set aside for small business include the following: 4,553 Investors, Not Elsewhere Classified; 2,017 Cemetary Subdividers and Developers, and 40 Unit Investment Trusts. Loans to these aforementioned industries are expected to be negligible based on past requests for assistance, and contracts to small firms in these industries are expected to be about $5 million, based on their participation in their industry's sales.

SBA certifies that this proposed rule is not a major rule within the meaning of Executive Order 12291 because it is not expected to have an annual economic impact of $100 million or more, as previously discussed. This residual size standard is proposed to facilitate the processing of SBA's financial assistance for specific individual loan guarantees and for procurement assistance programs. Based on requests received to date, SBA anticipates that these 52 industry size standards would be needed only three to four times per year. Similarly, this regulation would not likely result in a major increase in costs or prices or have a significant adverse effect on the United States economy. This rule poses no new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C., Chapter 35. SBA certifies that this proposed rule would not have federalism implications warranting the preparation of a federalism assessment in accordance with Executive Order 12612.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—Business, Loan programs—business, Recording and recordkeeping requirements, Small business.

Accordingly, Part 121 of 13 CFR is proposed to be amended as follows:

PART 121—[AMENDED]

1. The authority citation for Part 121 continues to read as follows:

Authority: Secs. 3(a) and 5(b)(6) of the Small Business Act, 15 U.S.C. 632(a) and 634(b)(6) and Pub. L. 99–591, 99–661 and 100–656.

§ 121.2 [Amended]

2. Section 121.2(d), Table 2, is amended by adding a center heading after the column headings and before "SIC Division A—Agriculture" in the table "Final Rule Size Standards by SIC Industry," as follows:

(d) * * *

SIC	Description	Size standards
(* = New SIC Code in 1987, Not Used in 1972).	(N.E.C. = Not Elsewhere Classified).	in number of employees or millions of dollars.

For all industries not specifically listed in this Table or Table 1 above, except for those in Divisions I and J of the SIC System, the size standard is $3.5 million in annual receipts.

Date: February 2, 1989.

James Abdnor,

Administrator, U.S. Small Business Administration.

[FR Doc. 89–3011 Filed 2–8–89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88–AGL–20]

Proposed Alteration of Jet Route

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Withdrawal of Notice of Proposed Rulemaking.

SUMMARY: This notice withdraws the Notice of Proposed Rulemaking (NPRM), Airspace Docket No. 88–AGL–20, which was published in the **Federal Register** on October 17, 1988. That NPRM proposed to alter the description of Jet Route J–522 by extending it from Green Bay, WI, to Fargo, ND, via Brainerd, MN. The Minneapolis Air Route Traffic Control Center (ARTCC) objected to the establishment of J–522 due to its negative effect on traffic flow.

EFFECTIVE DATE: February 9, 1989.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9250.

The Proposed Rule

On October 17, 1988, a Notice of Proposed Rulemaking was published in the **Federal Register** to alter the description of J–522 by extending it from Green Bay, WI, to Fargo, ND, via Brainerd, MN. This change would have provided a chartered route through an area where aircraft are normally vectored. The Minneapolis Air Route Traffic Control Center (ARTCC) objected to the establishment of J–522 because the route extension would considerably increase the workload of other sectors in the ARTCC. Therefore, the extension of J–522 would have a negative effect on the flow of traffic.

List of Subjects in 14 CFR Part 71

Aviation safety, Jet routes.

The Withdrawal

Accordingly, pursuant to the authority delegated to me, the Notice of Proposed Rulemaking, Airspace Docket No. 88–AGL–20, as published in the **Federal Register** on October 17, 1988 (53 FR 40452) is hereby withdrawn.

(Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.)

Issued in Washington, DC, on January 31, 1989.

William C. Davis,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89–3035 Filed 2–8–89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88–AWP–19]

Proposed Alteration of VOR Federal Airway; Page, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of Federal Airway V–208 in the vicinity of Page, AZ. Currently, airways northbound and eastbound over the Grand Canyon area are required to maintain an altitude above 14,500 feet mean sea level (MSL) in order to avoid the flight-free area. This flight restriction creates a need for an airway with a lower minimum en route altitude (MEA) to accommodate aircraft unable to operate at high altitudes. This action aids flight planning.

DATE: Comments must be received on or before March 27, 1989.

ADDRESSES: Send comments on the proposal in triplicate to:

Director, FAA, Western-Pacific Region, Attention: Manager, Air Traffic Division, Docket No. 88–AWP–19, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88–AWP–19." The postcard will be dated/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the description of VOR Federal Airway V–208 located in the vicinity of Page, AZ. The current airway structure traversing the Grand Canyon National Park has an MEA above 14,500 feet MSL established in Docket No. 25149, SFAR 50–2, effective September 22, 1988 (53 FR 36946). This altitude restriction prevents a number of aircraft from operating in this area. This action provides an airway with a lower MEA that bypasses

the Grand Canyon National Park. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. § 71.123 is amended as follows:

V-208 [Amended]

By removing the words "Peach Springs, AZ. From Page, AZ, via" and substituting the words "Peach Springs, AZ; Grand Canyon, AZ; INT Grand Canyon 067°T(060°M) and Tuba City, AZ, 218°T(231°M) radials; Tuba City; Page, AZ;".

Issued in Washington, DC on February 1, 1989.

William C. Davis,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-3036 Filed 2-8-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

Oil and Gas and Sulphur Operations in the Outer Continental Shelf, California

AGENCY: Minerals Management Service, Interior.

ACTION: Extension of comment period.

SUMMARY: On January 17, 1989, (54 FR 1846), the Minerals Management Service (MMS) published a notice of proposed rulemaking in the **Federal Register** which would establish special emission control requirements for Outer Continental Shelf (OCS) facilities off the coast of California under the provisions of section 5(a)(8) of the OCS Lands Act, as amended. The public comment period for this proposed rule was to close on February 16, 1989. The MMS has determined that extension of the comment period is warranted. This notice extends the comment period for the proposed rulemaking until April 17, 1989.

DATE: Comments must be hand delivered or postmarked no later than April 17, 1989.

ADDRESS: Comments should be mailed or hand delivered to the Department of the Interior, Minerals Management Service; 12203 Sunrise Valley Drive; Mail Stop 646; Reston, Virginia 22091; Attention: Gerald D. Rhodes.

FOR FURTHER INFORMATION CONTACT: Gerald D. Rhodes; Chief, Branch of Rules, Orders, and Standards; Minerals Management Service; 12203 Sunrise Valley Drive; Mail Stop 646; Reston, Virginia 22091; telephone (703) 648-7816, (FTS) 959-7816.

SUPPLEMENTARY INFORMATION: On January 17, 1989, MMS published in the **Federal Register** a notice of proposed rulemaking to establish requirements governing the control of emissions which may result from operations conducted on Federal oil and gas leases in the OCS off the coast of California. The comment period for this proposed rule was to close February 16, 1989. Since the proposed rule had been developed with extensive input from Federal, State, and local agencies, and other interested parties, it was thought that a 30-day comment period would provide sufficient time for interested parties to review and analyze the proposed rule and to prepare and submit written comments.

The MMS received several requests for additional time within which to submit comments on the proposed rule. The requests were based on either a need for additional time to allow reviewers to gather the technical information necessary to support their comments; a need to allow times for commenters from similar organizations to discuss the proposed rule and consider the submission of consolidated comments on behalf of an association of commenters; or on a need for additional time to analyze the proposed rule and to prepare comments on behalf of other parties.

In view of the apparent need for additional time, it has been decided that an additional 60 days would be authorized for the submission of comments and recommendations; therefore, the comment period is being extended to April 17, 1989. Comments should be sent to the address provided above and must be hand delivered or postmarked by April 17, 1989.

Date: February 3, 1989.

William D. Bettenberg,

Associate Director for Offshore Minerals Management.

[FR Doc. 89-3044 Filed 2-8-89; 8:45 am]

BILLING CODE 4310-MR-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3508-9]

Approval and Promulgation of Implementation Plan; Texas

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule; deferral of sanctions.

SUMMARY: On July 14, 1987, EPA proposed to disapprove the ozone (O_3) Post-1982 State Implementation Plan (SIP) revision that Texas had submitted under the Clean Air Act (the Act) for Dallas and Tarrant Counties (DFW) because the DFW SIP revision submitted by the State did not persuasively demonstrate timely attainment of the national ambient air quality standard (NAAQS) for O_3. As a result of the proposed disapproval and the possibility of a construction ban which could result from a final disapproval, the Texas Air Control Board (TACB) developed a Post-82 "Interim" SIP which was submitted to EPA by the Governor of Texas on December 21, 1987. Based on the subsequent efforts and cooperation put forth by the State of Texas, and the additional control measures and commitments in the Post-82 Interim SIP, EPA today defers the proposed finding that Texas did not adequately revise its Post-1982 SIP and thus defers the proposed sanctions, pending successful and timely completion of each of the commitments outlined in the Post-82 Interim SIP. Despite deferral of sanctions, additional SIP revisions will be required for the DFW area in accordance with the May 26, 1988, Post-87 SIP call. Texas has begun to meet the requirements of the May 26, 1988, SIP call by committing to develop an emission inventory and revise and adopt by July 21, 1989, the Volatile Organic Compound (VOC) regulations in Texas Air Control Board Rule 115 in accordance with EPA's guidance document "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, May 25, 1988."

Today's notice also proposes to approve the stationary source volatile organic compound (VOC) regulation revisions associated with the initial Post-82 SIP and the Interim SIP to the extent that they represent an improvement over the previously approved regulations. The rule revisions, however, do not in all cases constitute Reasonable Available Control Technology (RACT) as required in SIP call areas and are not being proposed for approval as RACT. The notice also proposes to approve the commitments to the gasoline volatility program, the commitments related to the Inspection and Maintenance (I/M) Program, the commitments to the Transportation Control Measures (TCMs), the contingency provisions, and the schedules for the VOC regulation revision and I/M program submitted as part of the Post-82 Interim SIP. EPA proposes to defer action on the submitted pollution control strategy demonstration as a whole since the modeled required reduction reflected in the Interim SIP was based on a 1983 base year emission inventory which Texas is now in the process of updating as the initial step toward meeting the May 26, 1988, SIP call requirements.

DATE: Comments must be received on or before March 13, 1989.

ADDRESSES: Copies of the State submission are available for inspection during normal business hours at the following locations: Environmental Protection Agency, Region VI, Air Programs Branch, 1445 Ross Avenue, Dallas, Texas 75202; Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723.

FOR FURTHER INFORMATION CONTACT: Rebecca Caldwell, Air Programs Branch, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, (214) 655-7214, (FTS) 255-7214; Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723.

SUPPLEMENTARY INFORMATION: On February 24, 1984, the EPA Region 6 Regional Administrator notified the Governor of Texas that the SIP the State had developed under Part D of the Act to demonstrate attainment by December 31, 1982, was inadequate to attain the O_3 standard for Dallas and Tarrant Counties, Texas. An additional SIP revision call was made in 1984 for Denton County, Texas, based on review of the O_3 data through December 1983. In response to the 1984 SIP call, Texas submitted revisions for Dallas and Tarrant Counties in 1985 and 1986. However, the revisions did not provide for sufficient and enforceable VOC emission reductions to attain the O_3 NAAQS. Based on the EPA's judgment in 1987 that Texas had failed to adequately carry out the requirements to revise its SIP after EPA had called for a SIP revision under section 110(a)(2)(H) of the Act, EPA proposed on July 14, 1987, to impose a ban under section 173(4) of the Act on permitting new or modified major VOC sources. EPA also proposed, however to approve the anti-tampering vehicle inspection and maintenance (I/M) program and certain Transportation Control Measures (TCMs) in the initial Post-82 SIP as helpful toward attaining the standard. This action is being finalized elsewhere in today's **Federal Register**. For important background information on today's notice, see 52 FR 26421, July 14, 1987.

State Action

At the August 14, 1987, TACB Board meeting, the Board members directed its staff to prepare a Post-82 Interim SIP revision to address the emission shortfall and regulation concerns with the initial Post-82 SIP revisions submitted to EPA in 1985 and 1986.

Texas held a public meeting on August 13, 1987, in Arlington, Texas and published a notice for public hearing on the proposed Interim SIP revision in the Texas Register. Public hearings were held on October 28, 1987, in Cleburne and Rockwall, Texas. On October 29, 1987, hearings were conducted in Arlington, Texas.

The TACB and EPA Region 6 met on several occasions to discuss corrections needed to the existing 1985 and 1986 SIP revisions as well as revisions needed to Regulation V, Volatile Organic Compound Regulations, specifically RACT requirements, test methods, recordkeeping requirements, alternative measures, applicability, and enforceability measures. The meeting dates were January 28, February 10, February 24, and March 23, 1988. TACB held public hearings June 28-30, 1988, for additional necessary Regulation V revisions.

Control Strategy

1. Emission Data

The emission inventory used in the Post-82 Interim SIP was the 1983 base year emission inventory used for the initial Post-1982 SIP submitted in 1985 and 1986. This inventory was the most current inventory available for the Interim SIP submittal due to the time restraints in submitting the SIP revision by the end of 1987. EPA will defer action on the overall control strategy in the Interim SIP revision since the emission reduction was based on the 1983 emission inventory, and Texas subsequently committed to develop a more current inventory, for the May 26, 1988, SIP call, which could substantially change the quantity of emissions, the control strategy, and the attainment demonstration for the DFW area.

Texas has corrected the concerns EPA raised in the July 14, 1987 proposed disapproval notice regarding the 1983 inventory and modeling in the initial Post-82 SIP. Texas added a NO_x emission inventory, projected VOC and NO_x emissions to 1987, based the inventory on a kilogram/day basis to account for summertime weekday emissions, and estimated the mobile source emissions with the use of a prototype of the MOBILE 4 model.

2. Modeling Analysis

Texas used Level III City Specific EKMA/OZIPP analysis as required by EPA guidance. EPA's concerns raised in the disapproval proposal notice have been addressed by the use of a straight line trajectory rather than an actual air parcel trajectory approach. Texas has also used the meteorological data suggested by EPA. With these recommended changes, the model, with the use of the 1983 emission inventory, predicted that a 43.9% and 41.7% VOC emission reduction for Dallas and Tarrant Counties, respectively, were needed to meet the ozone NAAQS by December 1991.

3. Areawide Requirements

Texas used an areawide I/M approach in the control strategy in order to account for emissions from vehicles that commute to Dallas and Tarrant counties. This area includes the entire Consolidated Metropolitan Statistical Area (CMSA) which consists of the following counties: Dallas, Tarrant,

Parker, Rockwall, Denton, Collin, Johnson, Ellis, and Kaufman.

EPA had already made a SIP call for Denton County in 1984. Since that time, monitored ozone exceedances have occurred in Parker, Rockwall, and Collin County. EPA made a Post-87 SIP call on May 26, 1988, for the Dallas-Fort Worth CMSA which will require all the counties in the CMSA to be addressed in the Post-87 ozone plan for the DFW area.

4. Stationary Source Regulation Revisions

As required by the Clean Air Act section 172 and the April 4, 1979, **Federal Register** notice (44 FR 20372), RACT has been required in Dallas and Tarrant Counties for all sources covered by EPA's Control Technology Guidelines (CTGs), which include major and minor sources, as well as all major non-CTG sources. Texas has adopted rules requiring control of all CTG category sources located in Dallas and Tarrant counties and has submitted negative declarations for seven of the category sources not located in these counties. These rules were submitted in the 1985 submittal.

EPA last approved revisions to Regulation V as part of the Harris County O_3 SIP on July 28, 1985 (50 FR 26362). Since that time, TACB made additional revisions on July 26, 1985 (numerous rules as part of the initial Post-1982 O_3 SIP for Dallas and Tarrant Counties and the Post-82 SIP for El Paso), March 27, 1985 (automobile and light duty truck surface coating rule for a source specific alternative compliance plan), November 13, 1987 (previous commitment to control sources specifically in Harris County), December 18, 1987, and October 14, 1988 (the last two as part of the Dallas and Tarrant Counties Post-1982 corrective SIP.)

As part of the initial Post-82 SIP submittal, TACB adopted on July 26, 1985, revisions to TACB's existing regulations controlling VOC loading and unloading, Stage I vapor recovery, vent gas emissions, cutback asphalt, solvent metal cleaning, certain surface coating operations, perchloroethylene dry cleaning, and gasoline tank truck leaks. The purpose of these revisions was to impose additional control on those source categories thus gaining additional VOC emission reductions. EPA's specific comments regarding Regulation V were given to Texas in a November 2, 1987, letter to TACB regarding the draft regulations submitted September 30, 1987. These comments addressed those rules that were revised July 26, 1985, and submitted as part of the initial Post-82 SIP as well as the draft regulations submitted September 30, 1987. In response to the May 26, 1988, SIP call, Texas has scheduled to address deficiencies existing in all VOC Regulation V and general rules and adopt these revisions by July 21, 1989, as they apply to all the SIP call areas in Texas. Some of these deficiencies have already been addressed for Dallas and Tarrant Counties as part of the Post-82 Interim SIP submittal as described below. Other federally approved rules which cover VOC storage tanks, petroleum refinery operations, additional surface coating operations, pharmaceutical manufacturing operations, and those which allow source categories to petition for source specific compliance plans, that apply in Dallas and Tarrant Counties may need revision similar to those rules discussed in today's notice which should be submitted as part of its initial response to the May 26, 1988, Post-87 SIP call.

On December 18, 1987, TACB adopted more revisions to TACB's regulations controlling cutback asphalt, surface coating, and graphic arts (printing). Regulations were also adopted for control of the following three new categories of emissions: Architectural coating, automobile refinishing coating, and consumer-solvent products. On October 14, 1988, TACB adopted revised rules controlling VOC loading and unloading, Stage I vapor recovery, water separation, vent gas emissions, cutback asphalt, solvent metal cleaning, surface coating, graphic arts, perchloroethylene dry cleaning, and gasoline tank trucks. These revisions include the addition of specific test methods and recordkeeping requirements for determining and demonstrating continual compliance with the rule, and the deletion of or modification to exemptions from the rules. For further details on these regulation revisions refer to the Technical Support Document (TSD).

Additionally, on November 13, 1987, regulation revisions were submitted by the Governor to EPA independently of the other DFW regulation revisions. They pertain to the Harris County 1982 SIP only. Therefore, EPA will take action separately on the November 13, 1987, adoption, specifically Regulation V Sections 115.163(b)(2)(A), 115.163(b)(2)(B), and 115.261–115.265.

Today's notice will act upon the VOC regulations that are applicable to Dallas and Tarrant Counties as they appear after the October 14, 1988, TACB adoption which was submitted to EPA on December 13, 1988. EPA believes the last two sets of adopted VOC revisions (October 14, 1988, and December 18, 1987) create an overall set of rules that are much clearer, more enforceable, and more effective in reducing VOC emissions in Dallas and Tarrant Counties than were previous versions. These revisions strengthen the SIP; however, EPA is not concluding that these rules represent RACT in all cases. The May 26, 1988, SIP call requires Texas to further revise, as indicated below, VOC regulations included in today's action. Also, the SIP call requires Texas to revise all VOC Regulation V and general rules applying to all ozone SIP call areas in Texas in accordance with the deficiencies EPA noted in its June 9, 1988, letter to TACB and in accordance with the EPA document "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, May 25, 1988." Therefore, EPA is not now proposing approval of these specific rules as RACT. The rules are proposed for approval because they are a major improvement over previous versions. Some major deficiencies still existing with these rules included in today's action are listed as follows.

Exemption Levels

The Clean Air Act requires that both major and minor VOC sources in Dallas and Tarrant Counties falling under any of the Control Technique Guideline (CTG) categories must meet RACT level control requirements. "Major" sources are those emitting greater than or equal to 100 tons per year (tpy) of VOC and "minor" sources are those emitting less than 100 tpy. CTG's and other EPA guidance may establish exemption levels for some source categories based on conditions specific to certain sources such as production rate or size/type of equipment while other categories have no defined exemption levels or lower bounds. Certain processes such as cold solvent metal cleaning and degreasing apply to all operations no matter what the emission rate. For the surface coating categories, RACT should apply to all sources with actual daily VOC emissions of 15 pounds or greater summed from all surface coating operations in that category.

Texas has chosen to require all sources emitting 15 pounds VOC or greater per consecutive 24 hour period to utilize compliant coatings when available. Further, sources greater than this limit but less than 100 pounds VOC emissions in any consecutive 24 hour period are not required to use add-on control equipment in the absence of compliant coatings. This is a partial application of RACT. Sources greater than the 100 pounds per day level must fully apply RACT such as compliant coatings or use of add-on control

equipment to meet the emission limitation specified in the regulation.

While this is a partial application of RACT per EPA's past guidance, it has merit. First, it is an improvement over Texas' prior exemption of all sources less than 100 pounds VOC per day. Second, the State contends that requiring sources emitting 15 pounds VOC per day to retrofit with incinerators is economically infeasible. Texas contends that requiring add-on controls for all surface coating sources would not reflect RACT. However, Texas has not evaluated each source on a case-by-case basis to determine if other control options are feasible. EPA proposes today to approve this revised exemption level because it represents an improvement over the previously approved regulation. The rule does not represent RACT and EPA is requiring TACB in the May 26, 1988, Post-87 SIP call to reevaluate RACT on a source specific basis.

Continuous Applicability

It is EPA's position that once a source becomes subject to a rule by emitting or operating above the applicability cutoff, it must meet the requirements from that time forward ("once-in-always-in"). EPA believes that to effectively control VOC emissions, a source must continuously apply RACT level controls even if its day-to-day operation alternates above and below the exemption level.

Texas has not clearly stated that once sources are subject to a RACT level regulation or equivalent limitations, they shall always be subject to those requirements. This deficiency is particularly important with respect to Texas' VOC loading and unloading, surface coating, and vent gas control regulations. EPA is today proposing to approve revisions to these regulations because they represent an improvement over the previous approved regulation. The rules, however, do not represent RACT and Texas must further revise this rule as required by the May 26, 1988, SIP call.

A state may choose to limit a source to operate below the emission or operation cutoff rate. Texas may wish to do this through issuance of a Board Order or other federally enforceable mechanism and should provide the enforceable mechanism to EPA as a SIP revision for approval by EPA.

Alternative Test Methods

In numerous instances, the Texas rules allow the TACB to approve test methods which are alternatives to the EPA reference methods. EPA requires the use of EPA approved test methods as detailed in 40 CFR Part 60. Texas has specified these methods where applicable, with the exception of allowing the use of "equivalent test methods approved by the Executive Director of the TACB." EPA requires such equivalent methods to be submitted as SIP revisions since the integrity of a control strategy rests largely on the requirements of the specific rule and on agreeing on universal, replicable, and reliable test methods to determine if operations and emissions are in compliance. The control strategy also depends on assuring the effective reductions in emissions called for by the rule in the ozone strategy. Texas chose not to specify that these alternatives be approved by EPA. Texas is required by the May 26, 1988, SIP call, to remove this alternative test method provision or state that they will submit alternative methods in accordance with SIP revision protocol for EPA approval. Similarly, Section 115.163(e) allows alternate methods of demonstrating and documenting compliance to be approved by the Executive Director of the TACB. EPA likewise requires such alternatives methods to be submitted as a SIP revision to ensure consistency with the rule and not compromise the future effectiveness of this regulation. EPA today proposes to approve the various revisions which add test method requirements; however, compliance with the federally enforceable requirements of the SIP will be determined only by the approved EPA and ASTM test methods stated in the rules until Texas makes these required revisions. EPA is also proposing approval of the revisions to the General Vent Gas Rule (115.163) except for that part of the rule which allows discretionary approval.

Compliance with the SIP will be judged only by those provisions and criteria specified in 115.163 without consideration of the discretionary approval allowed by 115.163(e) until the State revises this rule.

Alternative Compliance Methods and Requirements

Similarly, the current Regulation V rules allow TACB to approve alternative compliance methods or requirements on petition by the source on a case-by-case basis. Alternative compliance methods are allowed under Section 115.401 of Regulation V. Such alternatives should achieve the same quantity of (equivalent) reductions intended by the rule and must not be used to avoid more stringent RACT level control. In cases where a surface coating operation claims it cannot meet the requirements, Section 115.193(c)(6) gives TACB the authority to specify alternative emission limits. As with the alternative test methods described above, EPA requires that any of these two alternatives, or other revisions, approved by the State be submitted to EPA for its review and approval as a SIP revision rather than generically be considered a part of the SIP upon State adoption. Texas has not clearly stated in its rules which alternate compliance methods and requirements will be submitted as SIP revisions or how such petitions must demonstrate compliance with the underlying SIP. Therefore, Texas must clearly state in the response to the May 26, 1988, Post-87 SIP call that alternative compliance methods under either of the aforementioned sections require EPA approval as SIP revisions in order that they be recognized as part of the SIP. In the absence of such case-by-case SIP approval, the specified enforceable requirements of the SIP will be the emission limits or the reduction requirements, the continual compliance requirements, and the methods and timeframes stated in the rules.

Non CTG Major Sources

The Clean Air Act, as interpreted in EPA's Post-82 SIP revision guidance, requires that all major non-CTG VOC sources in Dallas and Tarrant Counties have specific RACT applied to them. Major non-CTG sources are those whose total unregulated emissions equal 100 tons per year or more. Texas submitted documentation on March 11, 1988, showing that all major non-CTG sources in Dallas and Tarrant Counties are subject to control requirements found in Regulation V or that such controls are economically infeasible. Texas regulates these sources as well as smaller sources by controlling all vent gas streams greater than 100 pounds per day and greater than 0.009 psia true partial pressure (612 ppm). This rule requires any vent, regardless of the origin of the VOC emissions, to incinerate the vent emissions if the quantity or concentration are greater than the limits described above. EPA intends that RACT be applied to the process which is the source of the VOC emissions and not just the vents. Controls resulting in additional VOC reduction beyond incineration must be evaluated. These controls include use of improved work practices, process requirements, or improved fugitive VOC capture.

EPA encourages TACB to continue their evaluation of source specific future control requirements for non-CTG major sources beyond incineration. EPA is proposing to approve revisions to the Vent Gas rule for Dallas and Tarrant Counties as an improvement over the

previous version and is allowing Texas additional time to develop industry specific RACT level controls in the response to the May 26, 1988, Post-87 SIP call.

Automobile and Light-Duty Truck Compliance Date

Texas submitted revisions to its automobile surface coating rule, Section 115.191(a)(8), in the initial Post-82 SIP. Those revisions contained provisions such as allowing monthly averaging of coating emissions and a new compliance date which extended the final compliance date by one year. Some of the provisions in the Interim SIP revisions submitted on December 13, 1988, including monthly averaging, have been deleted by the State at EPA's request, but the extended compliance date has not been changed. While EPA considers the revisions to be an improvement to the rule, the later compliance date allowed by Texas is a relaxation. EPA proposes to approve this rule since it is an improvement over the previous regulation, however, this revised regulation is not being approved as RACT and EPA is not proposing to approve the compliance date extension. Therefore, the date for compliance in the federally approved regulation remains December 31, 1986.

5. I/M Requirements

Texas submitted in the Post-82 Interim SIP a proposed expanded vehicle inspection and maintenance (I/M) program. The Interim SIP commits to expand the parameter I/M program to include the surrounding counties in the CMSA, which includes Denton County, and to expand the program in Dallas and Tarrant Counties to include an idle exhaust emissions check. The TACB has committed to seek additional legislative authority to include the perimeter counties in the I/M program, to seek the additional resources needed by the Texas Department of Public Safety to administer the new expansions in the I/M program, and to adopt final rules.

Texas must complete the remainder of the expanded I/M program before EPA can complete review of the program for approvability. Additionally, EPA must finish the criteria for what constitutes an enhanced 1/M program and determine if Texas's program meets the criteria. TACB's efforts toward completion of the expanded I/M program are on the schedule outlined in the Post-82 Interim SIP submittal.

A public hearing was held on July 26, 1988, in Arlington, Texas, concerning revisions to Regulation IV, Control of Air Pollution from Motor Vehicles. EPA provided comments on the revisions to Regulation IV at that time. The revisions included the addition of hydrocarbon and carbon monoxide cutpoints for the emissions check and the addition of specific conditions for acceptable vehicle engine and catalytic converter replacement. Elsewhere in today's FR is a notice approving the parameter I/M program submitted in the original Post-82 SIP in 1985 and 1986 for Dallas and Tarrant counties.

6. Transportation Control Measure (TCMs)

In the July 14, 1987, FR notice, EPA proposed approval of the TCM measures submitted in the initial Post-82 SIP revision contingent upon documentation of the evaluation of the TCMs specified under section 108(f) of the Clean Air Act. Texas submitted acceptable documentation in the Interim SIP. Therefore, EPA is approving these Post-82 TCM measures elsewhere in this FR.

The Post-82 Interim SIP revision provides for additional TCMs for Dallas and Tarrant Counties. The TCMs to be implemented include intersection signal improvements and a travel demand management program which together are predicted to reduce VOC emissions by 3161 kg/day in Dallas County and 1591 kg/day in Tarrant County. These measures satisfy EPA's prior guidance on TCMs and Texas has committed in the SIP to implement these measures or others at a minimum reduction level of 20% per year in a five year timeframe. Therefore, EPA is proposing to approve the additional TCM measures committed to in the Post-82 Interim SIP.

7. Gasoline Volatility Control Program

Texas commits to controlling the volatility of all gasoline marketed for use in motor vehicles during the summer ozone season in Dallas and Tarrant Counties. Texas has taken credit for VOC reductions obtainable if EPA's proposed nationwide gasoline volatility program (52 FR 31274, August 19, 1987) is finalized. If EPA does not finalize its action by May 16, 1989, then Texas has committed to initiate rulemaking for control of gasoline volatility in the Dallas and Tarrant County area for implementation in May 1990.[1]

Texas has estimated reductions using EPA's results from a prototype of MOBILE 4. EPA's concerns raised in the July 14, 1987, proposal have been addressed with this new modeling analysis. Reductions were estimated for inuse motor vehicles which will result from lower evaporative losses due to a lower RVP during normal operation and hot-soak conditions and from stationary source reductions which occur from all gasoline marketing operations when fuel is stored, transferred, or dispensed. EPA is proposing to approve this commitment as part of the Post-82 Interim SIP.

Schedules

Texas submitted schedules in the Interim SIP that outlined the milestones that were to be completed in the future in order to carry out SIP commitments. The schedules were for Regulation V review, modifications, and adoption, and for commitments to fulfill the I/M and TCM requirements. The commitments have been carried out to date. These schedules are proposed to be approved as part of the Post-82 Interim SIP and can be found in the Technical Support Document.

Contingency Provision

Texas has included in the Interim SIP a contingency provision to adopt additional control measures in order to demonstrate attainment if the VOC control measures committed to in the SIP revisions are insufficient to effect RFP between 1983 and 1991. This includes a commitment by Texas to adopt a gasoline volatility control program by May 16, 1989, for implementation in May 1990 if EPA fails to take final action on the proposed national program. It also includes a commitment for additional measures if Texas cannot get the appropriate legislative authority and funding to implement the I/M programs. EPA is proposing to approve this contingency plan as part of the Post-82 Interim SIP.

Post-87 Requirements

The Post-82 Interim SIP is not a plan designed to avoid future planning requirements, such as the requirements of the May 26, 1988, Post-87 SIP call, but is in fact a plan that, when implemented, will substantially reduce VOC emissions. Texas has made a first step toward an areawide approach by extending the I/M program to the entire CMSA i.e. the areawide approach is the scope described in the proposed Post-87 guidance published November 24, 1987, 52 FR 226. Texas is still required to meet EPA's Post-87 requirements for the Dallas-Fort Worth CMSA as identified in the SIP call letter from EPA on May 26, 1988, associated guidance, and EPA's future policy on Post-87 ozone attainment.

[1] In the event that EPA publishes a final volatility rule that differs from the proposed rule, EPA will assess the impact of such a rule on the Texas commitment to initiate rulemaking, and whether state rulemaking would raise any issues under section 211(c)(4) of the Clean Air Act regarding federal preemption.

Conclusion

The original Post-82 submittals in 1985 and 1986 and the Post-82 Interim SIP revisions claim to provide for sufficient VOC emission reductions to demonstrate attainment of the ozone NAAQS by December 31, 1991. According to EKMA modeling performed in the Interim SIP, the 1983 emissions inventory must be reduced by 43.9% in Dallas County and 41.7% in Tarrant County. The Post-82 Interim additional revisions provide for a reduction of the 1983 base year VOC inventory by 44.3% in Dallas county and 43.4% in Tarrant county. Since the percent reductions were determined by a 1983 emission inventory, EPA is deferring action on the control strategy as a whole until a more current emission inventory and control strategy is developed in response to the May 26, 1988, Post-87 SIP call. Based on the efforts and cooperation put forth by the State, the additional adopted measures in the Interim plan; and Texas' commitment to meet the milestones outlined in the Interim SIP schedules, EPA is deferring its proposed finding that Texas had failed to meet the requirements to respond adequately to the 1984 SIP call, and thus defers the proposed sanctions pending successful and timely completion of each of the commitments outlined in the Post-82 Interim SIP submitted on December 21, 1987. Despite deferral of this finding and sanctions, additional SIP revisions will be required for the DFW area in accordance with the May 26, 1988, Post-87 Ozone/Carbon Monoxide SIP call and EPA's future policy on Post-87 ozone attainment. With the qualifications described above, EPA also proposes to approve the stationary source VOC regulations found in the initial Post-82 SIP and the Interim SIP submittals as submitted on December 21, 1987 and December 13, 1988, to the extent that they represent an improvement over the previously approved regulations. The rule revisions, however, do not in all cases constitute RACT as required in SIP call areas and are not being proposed for approval as RACT. EPA also proposes to approve the commitments of the I/M and TCM Program, outlined in the Post-82 Interim SIP, the Post-82 Interim SIP contingency plan, the gasoline volatility program commitments, and the regulation revision and I/M schedule submitted as part of the Post-82 Interim SIP, because they are all helpful steps toward attainment of the ozone standard in the DFW area.

Under 5 U.S.C.(605(b)), I certify that SIP approvals do not have a significant impact on a substantial number of small entities (see 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Parts 52

Air pollution control, Hydrocarbons, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Date: December 29, 1988.

Robert E. Layton,

Regional Administrator.

[FR Doc. 89–1586 Filed 2–8–89; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[FRL–3516–2]

Approval and Promulgation of Implementation Plans; Wisconsin State Implementation Plan: Extension of Comment Period

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Notice of extension of the public comment period.

SUMMARY: USEPA is giving notice that the public comment period for a notice of proposed rulemaking published December 27, 1988 (53 FR 52202), has been extended 30 days from date of publication. This notice proposed to approve a revision to the Wisconsin State Implementation Plan (SIP), which consists of the addition of Natural Resources § 154.12(10) of the Wisconsin Administrative Code, Rothschild Reasonably Available Control Technology Sulfur Limitations, to the Wisconsin SIP. The revision sets sulfur dioxide emission limits for sources in the City of Rothschild and the Town of Weston. These sources are located in Marathon County, Wisconsin. USEPA is taking this action based on an extension request by a commentor.

DATE: Comments are now due on or before February 27, 1989.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6031.

Date: January 31, 1989.

Frank M. Covington,

Acting Regional Administrator.

[FR Doc. 89–3071 Filed 2–8–89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88–618, RM–6525]

Radio Broadcasting Services; Redwood Falls, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by CD Broadcasting Corporation, proposing the substitution of Channel 249C1 for Channel 249A at Redwood Falls, Minnesota, and modification of its license for Station KLGR–FM to specify operation on Channel 249C1. The coordinates used for Channel 249C1 at Redwood Falls are 44–32–33 and 95–07–57.

DATES: Comments must be filed on or before March 30, 1989, and reply comments on or before April 14, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Frank R. Jazzo, Fletcher, Heald & Hildreth, 1225 Connecticut Avenue NW., Suite 400, Washington, DC 20036 (Counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–618, adopted December 21, 1988 and released February 6, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do nt apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed

Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-3097 Filed 2-8-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-4, RM-6565]

Radio Broadcasting Services; Mansfield, PA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Kennedy Broadcasting, Inc. seeking the allotment of Channel 288A to Mansfield, Pennsylvania, as the community's first local FM service. To avoid a conflict with pending allotment proposals at Covington and Galeton, Pennsylvania, the Commission has substituted Channel 277A for consideration. Channel 277A can be allotted to Mansfield in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.8 kilometers (4.2 miles) west to avoid a short-spacing to recently allotted Channel 222A at Riverside, Pennsylvania. The coordinates for this allotment are North Latitude 41-47-38 and West Longitude 77-09-37. Canadian concurrence is required.

DATES: Comments must be filed on or before March 30, 1989, and reply comments on or before April 14, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John A. Kennedy, President, Kennedy Broadcasting, Inc., R.D. 1, Box 460, Cogan Station, Pennsylvania 17728 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-4, adopted January 4, 1989, and released February 6, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contracts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 78

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-3096 Filed 2-8-89; 8:45 am]

BILLING CODE 6712-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 509 and 552

[GSAR Notice No. 5-227]

General Services Administration Acquisition Regulation; Contractor Qualifications; Solicitation Provisions and Contract Clauses

AGENCY: Office of Acquisition Policy, GSA

ACTION: Proposed rule.

SUMMARY: This notice invites comments on a proposed change to the General Services Administration Acquisition Regulation (GSAR) that would add Subpart 509.3 to provide coverage on first article testing, and add Sections 552.209-74, 552.209-75, and 552.209-76 to provide the text of the clauses prescribed in Subpart 509.3.

DATE: Comments are due in writing on or before March 13, 1989.

ADDRESS: Comments should be addresed to Ms. Marjorie Ashby, Office of GSA Acquisition Policy and Regulations (VP), 18th and F Streets, NW, Room 4026, Washington, DC, 20405.

FOR FURTHER INFORMATION CONTACT: Carrie L. Bumgarner, Esq., Office of GSA Acquisition Policy and Regulations, (202) 523-4766.

SUPPLEMENTARY INFORMATION: The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this proposed rule. The GSA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. The proposed rule simply implements the requirements outlined in FAR 9.306 regarding solicitation requirements for first article testing by the Contractor, first article testing by the Government, and for waiving the requirerent for first article testing and approval. Therefore, no regulatory flexibility analysis has been prepared. This rule does not contain any information collection requirements that require OMB approval under the Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 509 and 552

Government procurement.

1. The authority citation for 48 CFR Parts 509 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 509—CONTRACTOR QUALIFICATIONS

2. Subpart 509.3 is added to read as follows:

Subpart 509.3—First Article Testing and Approval

509.302 General.

When first article testing and approval is appropriate for a procurement pursuant to FAR 9.3, the general policy of the Federal Supply Service (FSS) is to require:

(a) The contractor to perform required testing, unless after coordinating with the technical specialist and Quality Assurance Divison (FQA) the contracting officer determines that Government testing is in the best interest of the Government;

(b) That the first article be produced at the same facility where production quantities will be produced; and

(c) That the first article serve as the manufacturing standard.

509.303 Use.

The contracting officer shall coordinate all determinations to require first article testing and approval with the technical specialist and the Office of Quality and Contract Administration, Quality Assurance Division (FQA). At the time of coordination, the contracting officer should obtain the following information from the technical specialist and FQA:

(a) The test requirements for inclusion in the solicitation as outlined in FAR 9.306 (a) and (b).

(b) Advice on whether the contractor or the Government should perform required testing.

(c) The information necessary to complete the fill-in requirements of FAR clauses 52.209-3 First Article Approval—Contractor Testing [and alternates], and 52.209-4 First Article Approval—Government Testing [and alternates].

509.306 Solicitation requirements.

The contracting officer shall insert the provision at 552.209-74, Waiver of First Article Testing and Approval Requirement, in solicitations that require first article testing and approval. Any determinations to waive first article testing under FAR 9.306(c) must be approved by the technical specialist and the Quality Assurance Division (FQA). The first article tests that will be performed by the contractor (or the Government, if the Government elects to perform the testing) must be set forth in the solicitation.

509.305 Contract clauses.

509.306-1 Testing performed by contractor.

In accordance with FAR 9.306-1, the FSS contracting officers shall use the clause at FAR 52.209-3 with its Alternate I and the supplemental clause at 552.209-75, Supplemental Requirements for First Article Approval–Contractor Testing.

509.306-2 Testing performed by the Government.

In accordance with FAR 9.306-2, FSS contracting officers shall use the clause at FAR 52.209-4 with its Alternate I and the supplemental clause at 552.209-76, Supplemental Requirements for First Article Approval—Government Testing.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Sections 552.209-74, 552.209-75, and 552.209-76 are added to read as follows:

552.209-74 Waiver of First Article Testing and Approval Requirements.

As prescribed in 509.306, insert the following provision:

Waiver of First Article Testing and Approval Requirement (XXX 1989)

(a) The Government reserves the right to waive the requirements of first article testing set forth elsewhere in this solicitation as to those Offerors offering a product which has been previously procured and approved by the General Services Administration under the same specification and at the same facility.

(b) Offerors must submit an offer including testing and approval, however, an Offeror may submit an alternate offer excluding testing and approval, provided the Offeror satisfies the requirements for the waiving of first article testing.

(c) Before a waiver of the first article testing requirement of this solicitation will be considered, the Offeror is requested to identify the procurement under which the product offered was previously approved and accepted: _____

(Offer to insert both contract number and appplicable national stock number)

(End of provision)

552.209-75 Supplemental Requirements for First Article Approval—Contractor Testing.

As prescribed in 509.308-1, insert the following clause:

Supplemental Requirements for First Article Approval—Contractor Testing (1989)

(a) The term "Contracting Officer" as used in FAR 52.209-3, First Article Approval—Contractor Testing, means the Administrative Contracting Officer (ACO).

(b) The Contractor shall have either, (1) the necessary inspection and test equipment at the Contractor's plant to perform first article testing, or (2) if the inspection and test equipment is not available, a letter of commitment from a laboratory acceptable to the Government to perform the inspection and testing.

(c) When the Government elects to witness the first article testing, the Contractor shall conduct the testing between the hours of 7:00 a.m. and 5:00 p.m., Monday thru Friday, unless a different time is agreed to by the ACO.

(d) The first article test report shall contain:

(1) The complete test data, the test method(s) used and date of test;

(2) Signature and printed name of the individual who performed the inspection;

(3) Applicable specification/CID and/or drawing numbers;

(4) Name and type of test equipment used; and

(5) All numerical values as a result of testing with each notated as to whether they pass or fail the contract test requirements.

(e) The first article shall be retained by the Contractor as the manufacturing standard and will be kept in a secure area, under control of the Quality Assurance Specialist (QAS), to protect against possible changes or alterations for the life of the contract. If the first article sample is destroyed during testing or damaged to a point making it unusable as a standard, the Contractor, upon Government request, shall provide a second sample.

(f) If the Contractor delivers the approved first article as part of the contract quantity it shall be in the last scheduled delivery under the contract.

(End of Clause)

552.209-76 Supplemental Requirements for First Article Approval—Government Testing.

As prescribed in 509.308-2, insert the following clause:

Supplemental Requirements for First Article Approval—Government Testing (1989)

(a) The term "Contracting Officer" as used in FAR 52.209-4, First Article Approval—Government Testing, means the Administrative Contracting Officer (ACO).

(b) The first article shall be retained by the Contractor as the manufacturing standard and will be kept in a secure area, under the control of the Quality Assurance Specialist (QAS) to protect against possible changes or alterations for the life of the contract. If the first article sample is destroyed during testing or damaged to a point making it unusable as a standard, the Contractor, upon Government request, shall provide a second sample.

(c) If the Contractor delivers the approved first article as part of the contract quantity it shall be in the last scheduled delivery under the contract.

(End of Clause)

Dated: January 31, 1989.

Richard H. Hopf III,

Associate Administrator for Acquisition Policy.

[FR Doc. 89-3038 Filed 2-8-89; 8:45 am]

BILLING CODE 6820-61-M

Notices

Federal Register
Vol. 54, No. 26
Thursday, February 9, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

West Girard Timber Sale Proposals

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement for the development of a series of timber sales on the McCloud, Mount Shasta and Shasta Lake Ranger Districts, Shasta-Trinity National Forests, Shasta County, California. The environmental impact statement will describe the environmental consequences of the proposed timber sales in the West Girard released roadless area.

DATE: Comments concerning the scope of the analysis should be received by August 1, 1989.

ADDRESS: Written comments concerning the scope of the analysis must be sent to Steven D. Clauson, District Ranger, McCloud Ranger District, Box 1620, McCloud, California 96057.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and environmental impact statement should be directed to William L. Branham, Planning Officer, McCloud Ranger District, McCloud, California, phone 916-964-2184.

SUPPLEMENTARY INFORMATION: The majority of the proposed project area is currently unroaded, and was released for multiple use management in the California Wilderness Act of 1984. The harvest proposals may also include adjacent areas which are already roaded. If approved, the timer sales are scheduled to be sold in 1992 and 1993.

Specific Alternatives have not been formulated. The Forest Service will consider a range of alternatives, including no action and alternatives with greater or lesser levels of harvest. The EIS will evaluate a range of harvest methods, and consider the impact of each alternative on dispersed recreation and other resources. Alternatives will include measures to protect spotted owls, fish and water quality.

Robert R. Tyrrel, Forest Supervisor, Shasta-Trinity National Forest, Redding, California, is the responsible official.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from federal, state and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft environmental impact statement (DEIS). The scoping process will include:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring possible alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

Additional opportunities for public involvement will be announced through the local news media.

The draft environmental impact statement (DEIS) is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by January 1990. At that time EPA will publish a notice of availability of the DEIS in the **Federal Register**.

The comment period on the DEIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register**. It is very important that reviewers participate at that time. To be the most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed. (See the Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3.) In addition, federal court decisions have established that reviewers of DEIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978), and environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement (FEIS). *Wisconsin Heritage, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

After the comment period ends, the comments will be analyzed and considered by the Forest Service in preparing the FEIS. The FEIS is scheduled to be completed by June 1990. The Forest Service is required to respond in the FEIS to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, disclosure of environmental consequences, and applicable law, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and rationale in the Record of Decision. That decision will be subject to appeal under 36 CFR Part 217.

Robert R. Tyrrel,
Forest Supervisor.

Date: January 30, 1989.

[FR Doc. 89-3119 Filed 2-8-89; 8:45 am]
BILLING CODE 3410-11-M

Soil Conservation Service

Henrieville Resource Conservation and Development, Utah

AGENCY: Soil Conservation Service.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Henrieville Resource Conservation and Development Measure, Garfield County, Utah.

FOR FURTHER INFORMATION CONTACT: Francis T. Holt, State Conservationist, Soil Conservation Service, 125 South State Street, Salt Lake City, Utah 84147, telephone 801/524-5050.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Francis T. Holt, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

Henrieville Resource Conservation and Development, Utah; Notice of a Finding of No Significant Impact

The project concerns a plan for three erosion control structures and four grade stabilization structures to protect the culinary water collection system and delivery pipeline for the Town of Henrieville, Utah. The proposed project will prevent Henrieville Creek from undercutting the spring and horizontal well and erosion from destroying the delivery pipeline for the Town's 169 residents.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Francis T. Holt, State Conservationist.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(Catalog of Domestic Assistance Program under No. 10.901—Resource Conservation and Development Program. Executive Order 12372, regarding state and local clearing house review of Federal and federally assisted programs is applicable.)

Dated: January 31, 1989.

Francis T. Holt,
State Conservationist.

[FR Doc. 89-3042 Filed 2-8-89; 8:45 am]
BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-602-801]

Final Determination of Sales at Less Than Fair Value; Calcined Bauxite Proppants From Australia

AGENCY: Import Administration, International Trade Administration.

ACTION: Notice.

SUMMARY: We determine that calcined bauxite proppants from Australia are being, or are likely to be, sold in the United States at less than fair value. We also determine that critical circumstances do not exist with respect to imports of the subject merchandise from Australia. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the Customs Service to continue to suspend liquidation of all entries of the subject merchandise from Australia as described in the "Continuation of Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: February 9, 1989.

FOR FURTHER INFORMATION CONTACT: Contact Alain Letort or Richard Capwell, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: 202/377-3818 (Letort) or 202/377-8668 (Capwell).

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that calcined bauxite proppants from Australia are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d) (the Act). The estimated margin of sales at less than fair value is 75.00 percent *ad valorem*, as shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

On November 21, 1988, we made an affirmative preliminary determination in this case (53 FR 47842—November 28, 1988). Since the publication of that notice, we have received no response or comments from Comalco Aluminum Limited (Comalco), which accounted for virtually all the exports to the United States from Australia during the period of investigation. We have received no comments from any other interested party in this investigation.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted from the *Tariff Schedules of the United States, Annotated* (TSUSA) to the *Harmonized Tariff Schedule* (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption, on or after that date is now classified soley according to the appropriate HTS item number(s). As with the TSUSA numbers, the HTS numbers are provided for convenience and customs purposes. The written product description remains dispositive.

The products covered by this investigation are calcined bauxite proppants, which are currently provided for under HTS item number 2606.00.00.00.

Period of Investigation

The period of investigation for calcined bauxite proppants from Australia extends from January 1, 1988 through June 30, 1988.

Fair Value Comparisons

To determine whether the sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price, based on the best information available, with the foreign market value, also based on the best information available. We used the best information available, as required by section 776(c) of the Act, because Comalco failed to submit an appropriate response.

United States Price

Since we did not have specific data as to the quantities and prices of the subject merchandise sold in the United States, we used the price information available, pursuant to section 776(c) of the Act. We used the packed United States price estimated by petitioner minus deductions for foreign inland freight, ocean freight, marine insurance, and brokerage and handling charges.

Foreign Market Value

Since we did not have specific data with respect to the quantities and prices of the subject merchandise sold in Australia or third countries, we used the constructed value of the subject merchandise provided in the petition as the best information available, pursuant to section 776(c) of the Act. The constructed value calculated in the

petition was based on the petitioner's manufacturing costs plus petitioner's general expenses, which were higher than the statutorily required minimum of 10 percent. To this cost of production we made the statutorily mandated addition of 8 percent for profit.

Critical Circumstances

The petitioner alleges that "critical circumstances" exist with respect to imports of calcined bauxite proppants from Australia. Under section 735(a)(3) of the Act, critical circumstances exist if we determine that there is a reasonable basis to believe or suspect that:

(A) (i) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation; or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 735(a)(3)(B), we generally consider the following factors in determining whether imports have been massive over a relatively short period of time (1) The volume and value of imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

Based on our analysis of Bureau of the Census import data, we find that imports of calcined bauxite proppants from Australia have not been massive over a relatively short period of time. Therefore, we need not address the issues of whether importers knew, or should have known, that the exporters were selling the subject merchandise at less than its fair value, or whether there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of this investigation.

In light of the above, we determine that critical circumstances, within the meaning of section 735(a)(3) of the Act, do not exist with respect to imports of calcined bauxite proppants from Australia.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of calcined bauxite proppants from Australia that are entered, or withdrawn from warehouse, for consumption, on or after November 28, 1988, the date of publication of the preliminary determination in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price, which is 75.00 percent *ad valorem*. This suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. If the ITC determines that material injury, or threat of material injury, does not exist in this case, this proceeding will be terminated and all securities posted as a result of suspension of liquidation will be refunded. If, however, the ITC determines that material injury, or threat of material injury, does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on calcined bauxite proppants from Australia which are entered, or withdrawn from warehouse, for consumption, on or after the date on which liquidation was suspended. The antidumping duty will equal the amount by which the foreign market value of the subject merchandise exceeds United States price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Jan W. Mares,

Assistant Secretary for Import Administration.

February 2, 1989.

[FR Doc. 89-3113 Filed 2-8-89; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of issuance of an Export Trade Certificate of Review, Application No. 88-00016.

SUMMARY: The Department of Commerce has issued an export trade certificate of review to the Wood Machinery Manufacturers of America (WMMA). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: Thomas H. Stillman, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97-290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

Products

Woodworking machines, woodworking systems, and accessories, principally, but not exclusively, classified in SIC # 3553, including: Cutting machines (including boring, dowelling, carving, dovetailing, mortising, planing, routing, sawing, shaping, profiling, tenoning, chucking, turning, and veneering machines); sanding machines (including edge, flat surface, irregular surface, and special-purpose sanding machines); gluing, laminating, and assembling machines (including assembly clamping, auxiliary gluing, edge gluing, surface gluing, pressing, and laminating machines); finishing machines (including applicator, auxiliary finishing, and drying machines and ovens); wood drying equipment (including dryers, kilns, and moisture measurement equipment); auxiliary machines and equipment (including environmental and safety equipment, materials handling equipment, auxiliary attachments, tool maintenance equipment, and tooling); special product and special purpose machines; logging and sawmilling machines (including log handling and preparation machines, log conversion equipment, and other auxiliary equipment and attachments); and wood residue utilization systems or equipment.

Services

Engineering, design, and related services related to Products and to turn-key contracts that substantially incorporate Products; servicing of Products; and training with respect to the use of Products.

Export Trade Facilitation Services (as They Relate to the Export of Products, Services, and Technology Rights)

Consulting; international market research; marketing and trade promotion; trade show participation; insurance; legal assistance; transportation; trade documentation and freight forwarding; communication and processing of export orders; warehousing; foreign exchange; financing; and taking title to goods.

Technology Rights

Patents, trademarks, service marks, copyrights, trade secrets, and know-how.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Members (in Addition to Applicant)

Abrasive Engineering & Manufacturing, Olathe, KS; Alexander Dodds Company, Grand Rapids, MI; Black Bros. Company, Mendota, IL; C. R. Onsrud, Inc., Troutman, NC; Crouch Machinery, Inc., Pinehurst, NC; CTD Machines, Inc., Los Angeles, CA; Delta International Machinery Corporation, Pittsburgh, PA; Diehl Machines, Wabash, IN; Fulghum Industries, Inc., Wadley, GA; Industrial Woodworking Machine Company, Garland, TX; James L. Taylor Manufacturing Company, Poughkeepsie, NY; Jenkins Division, Kohler General Corporation, Sheboygan Falls, WI; Ken Hazledine Machine Company, Inc., Terre Haute, IN; L.R.H. Enterprises, Inc., Van Nuys, CA; Lancaster Machinery Company, Lancaster, PA; Medalist Automated Machinery, Oshkosh, WI; Mereen-Johnson Machine Company, Minneapolis, MN; Mid-Oregon Industries, Bend, OR; Montaco, Inc., Orlando, FL; Newman Machine Company, Inc., Greensboro, NC; North American Products Corporation, Jasper, IN; Northfield Foundry & Machine Company, Northfield, MN; Oliver Machinery Company, Grand Rapids, MI; Onsrud Machine Corporation, Wheeling, IL; Powermatic, McMinnville, TN; Robert A. Martin Company, Inc., Harvey, IL; Robert Bosch Power Tool Corporation, New Bern, NC; The Wallace Company, Pasadena, CA; Thermwood Corporation, Dale, IN; Timesavers, Inc., Minneapolis, MN; Tyler Machinery Company, Inc., Warsaw, IN; Whirlwind, Inc., Dallas, TX; and Yates-American Machinery, Inc., Beloit, WI.

Export Trade Activities and Methods of Operation

1. WMMA and/or one or more of its Members may:

a. Engage in joint bidding or other joint selling arrangements for Products, Services, and/or Technology Rights in Export Markets and allocate sales resulting from such arrangements;

b. Establish export prices for sales of Products, Services, and/or Technology Rights by the Members in Export Markets, with each Member being free to deviate from such prices by whatever amount it sees fit;

c. Discuss and reach agreements relating to interface specifications and engineering requirements demanded by specific potential customers for Products for Export Markets;

d. Refuse to quote prices for, or to market or sell in, Export Markets with respect to Products, Services and/or Technology Rights;

e. Provide or jointly negotiate for and purchase from Suppliers Export Trade Facilitation Services for Members;

f. Solicit non-member Suppliers to sell their Products, Services, and/or Technology Rights or offer their Export Trade Facilitation Services through the certified activities of WMMA and/or its Members;

g. Coordinate with respect to the installation and servicing of Products in Export Markets, including the establishment of joint warranty, service, and training centers in such markets;

h. License associated Technology Rights in conjunction with the sale of Products, but in all instances the terms of such licenses shall be determined solely by negotiations between the licensor Member and the export customer without coordination with WMMA or any other Member;

i. Engage in joint promotional activities, such as advertising and trade shows, aimed at developing existing or new Export Markets;

j. Bring together from time to time groups of Members to plan and discuss how to fulfill the technical Product, Service, and/or Technology Rights requirements of specific export customers or Export Markets; and

k. Operate and establish jointly owned subsidiaries or other point venture entities, owned exclusively by Members, to export Porducts to Export Markets, operate warranty, service, and training centers in Export Markets, and provide Export Trade Facilitation Services to Members.

2. WMMA and/or its Members may enter into agreements wherein WMMA and/or one or more Members agree to act in certain countries or markets as the Members' exclusive or non-exclusive Export Intermediary for Products, Services, and/or Technology Rights in that country or market. In such agreements, (i) WMMA or the Members(s) acting as an exclusive Export Intermediary may agree not to represent any other Supplier for sale in the relevant country or market, and (ii) Members may agree that they will export for sale in the relevant country or market only through WMMA or the Member(s) acting as exclusive Export Intermediary, and that they will not export independently to the relevant country or market, either directly or through any other Export Intermediary.

3. WMMA and/or its Members may exchange and discuss the following types of information:

a. Information that is already generally available to the trade or public (other than information about the costs, output, capacity, inventories, domestic prices, domestic sales, domestic orders, terms of domestic marketing or sale, or United States business plans, strategies or methods);

b. Information about sales and marketing efforts for Export Markets; activities and opportunities for sales of Products, Services, and/or Technology Rights in Export Markets; selling strategies for Export Markets; pricing in Export Markets; projected demands in Export Markets; customary terms of sale in Export Markets; the types of Products available from competitors for sale in particular Export Markets, and the prices for such Products; and customer specifications for Products in Export Markets;

c. Information about the export prices, quality, quantity, source, and delivery dates of Products available from Members for export, provided, however, that exchanges of information and discussions as to product quantity, source, available capacity to produce Products, and delivery dates must be on a transaction-by-transaction basis only and shall relate solely to Products intended for or available for export;

d. Information about terms and conditions of contracts for sales in Export Markets to be considered and/or bid on by WMMA and its Members;

e. Information about joint bidding, selling, or servicing arrangements for Export Markets and allocation of sales resulting from such arrangements among the Members;

f. Information about expenses specific to exporting to and within Export

Markets, including without limitation transportation, intermodal shipments, insurance, inland freight to port, port storage, commissions, export sales, documentation, financing, customs, duties, and taxes;

g. Information about U.S. and foreign legislation and regulations affecting sales in Export Markets; and

h. Information about WMMA's or its Members' export operations, including without limitation sales and distribution networks established by WMMA or its Members in Export Markets, and prior export sales by Members (including export price information).

4. WMMA may provide its Members or other Suppliers the benefit of any Export Trade Facilitation Service to facilitate the export of Products to Export Markets. This may be accomplished by WMMA itself, or by agreement with Members or other parties.

5. WMMA and/or its Members may meet to engage in the activities described in paragraphs 1 through 4 above.

6. WMMA and/or its Members may refuse to provide Export Trade Facilitation Services, or participation in the other activities described in paragraphs 1 through 5 above, to non-members.

7. WMMA and/or its Members may forward to the appropriate individual Members requests for information received from a foreign government or its agent (including private pre-shipment inspection firms) concerning that Member's domestic or export activities (including prices and/or costs), and if such individual Member elects to respond, it shall respond directly to the requesting foreign government or its agent with respect to such information.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Date: February 3, 1989.

Thomas H. Stillman,

Director, Office of Export Trading Company Affairs.

[FR Doc. 89-3062 Filed 2-8-89; 8:45 am]

BILLING CODE 3510-DR-M

Exporters' Textile Advisory Committee; Open Meeting

A meeting of the Exporters' Textile Advisory Committee will be held March 2, 1989 at 10:00 a.m. in Conference Room, Building A, Room 802 at the Fashion Institute of Technology, 227 West 27th Street, New York, New York 10001. Building A is the David Dubinsky Student Center just off 8th Avenue. The Committee provides advice about ways to promote increased exports of U.S. textiles and apparel.

Agenda: Review of export data; report on conditions in the export market; review of Office of Textiles and Apparel export expansion activities; and other business.

The meeting will be open to the public with a limited number of seats available. For further information or copies of the minutes, contact William Dawson (202/377-4324).

Date: February 3, 1989.

James H. Babb,

Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. 89-3045 Filed 2-8-89; 8:45 am]

BILLING CODE 3510-DR-M

National Institute of Standards and Technology

NIST/OSI Implementors' Workshop; 1990 Meeting Dates

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: The NIST announced four (4) workshop sessions to reach implementor agreements on Open Systems Interconnection (OSI) computer network protocols.

DATES: The following constitutes the schedule for the workshops for the year of 1990. The dates are firm:

March 12–16, 1990
June 18–22, 1990
September 10–14, 1990
December 10–14, 1990

The meetings will be hosted by NIST and will be held at Gaithersburg, Maryland.

ADDRESS: To register for the workshops, companies may contact: OSI Workshop Series, Attn: Brenda Gray, National Institute of Standards and Technology, Building 225, Room B-217, Gaithersburg, MD 20899, Telephone: (301) 975-3664.

The registration request must name the company representative(s) and specify the business address and telephone number for each participant. An NIST representative will confirm workshop registration reservations by telephone.

FOR FURTHER INFORMATION: Tim Boland (301) 975-3608.

SUPPLEMENTARY INFORMATION: The workshops will cover protocols in seven layers of the ISO Reference Model. Attendance at the workshops is limited due to space requirements and the size of the conference facility; therefore, registration is on a first come, first served basis with recommended limitation of two participants per company. A registration fee will be charged for attending the workshops. Participants are expected to make their own travel arrangement and accommodations. NIST reserves the right to cancel any part of the workshops.

Raymond G. Kammer,

Acting Director.

Date: February 3, 1989.

[FR Doc. 89-3003 Filed 2-8-89; 8:45 am]

BILLING CODE 3510-CN-M

National Oceanic and Atmospheric Administration

National Marine Fisheries Service

Marine Mammals: Application for Permit; Sea World, Inc. (P2U) Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. *Applicant:* Sea World, Inc., 7007 Sea World Drive, Orlando, Florida 32821.

2. *Type of Permit:* Public Display.

3. *Species and Number of Marine Mammal Requested:* One (1) killer whale (*Orcinus orca*).

4. *Requested Activity:* Import from Sao Paulo, Brazil.

5. *Duration of Activity:* The animal will be imported within one year after issuance of a permit.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Silver Spring, Maryland, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protection Resources, National Marine Fisheries Service, 1335 East-West Highway, Room 7324, Silver Spring, Maryland 20910;

Director, Northeast Region, National Marine Fisheries Service, NOAA, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930;

Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731.

Date: February 1, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs.

[FR Doc. 89-3029 Filed 2-8-89; 8:45 am]

BILLING CODE 3510-23-M

Sea Grant Review Panel Meeting

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of Partially Closed Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Sea Grant Review Panel. The meeting will have several purposes. Panel will discuss the follow-up report of the Sea Grant Office to the Assistant Administrator of Oceanic and Atmospheric Research, be advised on artificial intelligence updates, transition activities, the fellowship program, new panel candidates and discuss new business. The panel members will also participate in a joint session with the Sea Grant Director's Council. In addition, time will be devoted to discussion of the application of a Sea Grant Program for Sea Grant College Status.

The last session of the afternoon of Tuesday, February 28, 1989, will be devoted to discussion of an application for Sea Grant College designation. This session will be closed since the discussion is likely to disclose information of a personal nature which would constitute a clearly unwarranted invasion of personal privacy.

DATES: The announced meeting is scheduled for three days, Monday, February 27, Tuesday, February 28, and Wednesday, March 1, 1989, as follows: February 27, 9:00 a.m.–12:00 noon, February 28, 3:00 p.m.–4:30 p.m. and 4:30 p.m.–6:00 p.m., and March 1, 1989, 9:00 a.m.–12:00 noon.

The February 28, 4:30–6:00 p.m. session will be closed to the public. All other sessions will be open sessions.

ADDRESS: The meetings will be held at: Wild Dunes Resort & Conference Center, Isle of Palms, Charleston, South Carolina.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Shephard, National Sea Grant College Program, National Oceanic & Atmospheric Administration, 6010 Executive Boulevard, Room 826, Rockville, Maryland 20852, (301) 443-8886.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration of the Department of Commerce, with the concurrence of the General Counsel, formally determined on February 7, 1989, pursuant to section 10(d) of the Federal Advisory Committee Act, that the agenda items covered in this closed portion may be exempted from the provisions of the Act relating to open meetings and public participation therein because this item will be concerned with matters that are within the purview of 5 U.S.C. 552b(c)(6). This section covers discussions which are likely to disclose information of a personal nature which would constitute a clearly unwarranted invasion of personal privacy. (A copy of the determination is available for public inspection and copying in the Public Reading Room, Central Reference and Records Inspection Facility, Room 6628, Department of Commerce.)

Date: February 7, 1989.

Alan R. Thomas,

Acting Assistant Administrator Oceanic and Atmospheric Research

[FR Doc. 89-3223 Filed 2-8-89; 8:45 am]

BILLING CODE 3510-12-M

National Technical Information Service

Intent To Grant Exclusive Patent License; Academic Catalyst Corp.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Academic Catalyst Corporation, having a place of business at 14 Madison Avenue, Valhalla, NY 10595, an exclusive right in the United States to practice the invention embodied in U.S. Patent No. 4,722,851 "Flan-Type Pudding Using Cereal Flour." The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments, and other materials relating to the intended license must be submitted to Robert P. Auber, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

A copy of the instant patent may be purchased from the U.S. Patent and Trademark Office.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 89-3118 Filed 2-8-89; 8:45 am]

BILLING CODE 3510-04-M

Intent To Grant Exclusive Patent License; Upjohn Co.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Upjohn Company, having a place of business in Kalamazoo, MI, an exclusive license in the United States and certain foreign countries to practice the invention entitled, "Cytotoxic Agent Against Specific Virus Infection," U.S. Patent Application Serial Number 7-223,270. The patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments, and other materials relating to the intended license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

A copy of the instant patent application may be purchased from the NTIS Sales Desk by telephoning (703) 487-4650 or by writing to the Order

BEST COPY AVAILABLE

Department, NTIS, 5285 Port Royal Road, Springfield, VA 22151.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 89-3117 Filed 2-8-89; 8:45 am]

BILLING CODE 3510-04-M

COUNCIL ON ENVIRONMENTAL QUALITY

National Environmental Policy Act—Referrals; Central Valley Project, California

Under section 309 of the Clean Air Act and CEQ's regulations implementing the National Environmental Policy Act (NEPA), the Administrator of the Environmental Protection Agency (EPA) is directed to review and comment publicly on the environmental impacts of Federal activities, including actions for which environmental impact statements are prepared. If, after this review, the Administrator determines that the matter is "unsatisfactory from the standpoint of public health or welfare or environmental quality," section 309 directs that the matter be referred to the Council on Environmental Quality (CEQ). 42 U.S.C. 7609; 40 CFR 1504.2(b).

On February 3, 1989, CEQ received a referral from the Acting Administrator of EPA, referring the proposal by the Department of the Interior, Bureau of Reclamation, to renew long-term water contracts for the Orange Cove and other Friant Unit irrigation districts of the Central Valley Project. EPA's letter states that,

"Accordingly, I have determined that making irretrievable long-term commitments of water use without benefit of an EIS [environmental impact statement] violates the purposes and intent of NEPA. Further, in the absence of environmental analysis that would indicate otherwise I believe that renewal of these contracts is unsatisfactory from the standpoint of environmental quality in the San Joaquin River/Sacramento-San Joaquin Delta/San Francisco Bay area. *Letter from John A. Moore, Acting Administrator, EPA, to the Honorable A. Alan Hill, Chairman, CEQ,* February 2, 1989.

Under the CEQ referral regulations, the Department of the Interior has twenty-five (25) days to deliver a response to CEQ and EPA. This period expires on February 28, 1989. During this period, CEQ will accept comments from any interested person in support of either the referring agency (EPA) or the lead agency (Department of Interior). The comments may address whether the referral raises issue(s) of national importance because of the treat to national environmental resources or policies or for some other reason; whether CEQ should proceed with consideration of the issues raised in the referral; and any suggestions as to procedures to be followed during the course of the referral. Comments addressing the merits of the issues raised in the referral should be deferred until CEQ determines whether it will proceed with the referral, after the Department of Interior's response has been received.

FOR FURTHER INFORMATION AND TO RECEIVE THE REFERRAL MATERIAL, CONTACT: Sara Nero, Office of General Counsel, CEQ, (202) 395-5754.

DATES: Comments must be received by CEQ no later than close of business on February 28, 1989. Comment letters should addressed to Dinah Bear, General Counsel, Council on Environmental Quality, 722 Jackson Place, Northwest, Washington, DC 20503.

A. Alan Hill,

Chairman.

[FR Doc. 89-3216 Filed 2-8-89; 8:45 am]

BILLING CODE 3125-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

February 2, 1989.

The USAF Scientific Advisory Board Strategic Cross-Matrix Panel will meet on March 6-7, 89, from 8:00 a.m. to 5:00 p.m., at HQ Strategic Air Command (SAC), Offutt AFB NE.

The purpose of this meeting will be to facilitate the exchange of information amongst Scientific Advisory Board members and SAC staff on technical developments and strategic operations issues. The meeting at HQ Strategic Air Command (SAC) will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89-3118 Filed 2-8-89; 8:45 am]

BILLING CODE 3910-01-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Proposed Flood Control Plan for Valley Creek, Birmingham, Jefferson County, AL

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: Channel improvements to reduce flooding along Valley Creek.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Jones, PD-EI, U.S. Army Engineer District, Mobile, Post Office Box 2288, Mobile, Alabama 36628, Phone: (205) 690-2725.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

Implement flood control measures to preserve and protect businesss and residences along Valley Creek, in Birmingham, Alabama. The study is being undertaken under the authority of the House of Representatives resolution adopted June 19, 1963, contained in House Document No. 414. Several alternatives are being evaluated for this proposed action and they are listed below.

2. Alternatives

Alternatives to the proposed action which will be considered include the following:

a. No action:

b. Combination of channel clearing and widening and bridge widening.

c. Deepen creek to increase flow capacity:

d. Relocation of residences in the flood plain:

e. Construct levees:

f. Construct reservoir:

Scoping Process

a. The scoping process, as outlined by the Council on Environmental Quality in November 29, 1978 **Federal Register**, National Environmental Policy Act of 1969 Regulations, will be utilized to involve Federal, State, and local agencies and other interested persons. Evaluation of preliminary engineering, enviromental and economic factors indicate that an Environmental Impact Statement is appropriate for the alternatives identified to date.

b. Significant issues to be addressed in detail in the DEIS will include socioeconomics issues such as the effects of relocation of families, purchasing of property, disruption of normal activities and water quality.

c. The proposed action will be coordinated with the Alabama Department of Environmental Management, Alabama Department of Conservation and Natural Resources, the Alabama State Historic Preservation Officer, the Advisory Council on Historic Preservation, Environmental Protection Agency, and the U.S. Fish and Wildlife Service.

d. Upon completion of the DEIS, the report will be circulated for review by Federal, State, and local government agencies. In addition, the public will be allowed to comment during the same time span.

e. An initial public workshop with local residents and other interested parties was held in June 1988 in Birmingham, Alabama. A subsequent workshop will again be held in June 1989 in Birmingham to discuss the alternatives with local officials and the public.

4. The DEIS will be made available to the public in October 1989.

Date: February 7, 1989.

Louis J. Martinez,

LTC, Corps of Engineers, Acting District Engineer.

[FR Doc. 89-3120 Filed 2-8-89; 8:45 am]

BILLING CODE 3710-CR-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATE: Interested persons are invited to submit comments on or before March 13, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732-3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: February 3, 1989.

Carlos U. Rice,

Director for Office of Information Resources Management.

Office of Postsecondary Education

Type of Review: Extension

Title: Application for Grants under the Graduate Assistance in Areas of National Need Program

Frequency: Annually

Affected Public: Non-Profit institutions

Reporting Burden:

Responses: 400

Burden Hours: 2000

Recordkeeping Burden:

Recordkeepers: 0

Burden Hours: 0

Abstract: This form will be used by eligible non-profit institutions to apply for funding under the Graduate Assistance in Areas of National Need Program. The Department uses the information to make grant awards.

[FR Doc. 89-3134 Filed 2-8-89; 8:45 am]

BILLING CODE 4000-01-M

National Council on Vocational Education; Meeting

AGENCY: National Council on Vocational Education.

ACTION: Notice of public meeting of the Council.

SUMMARY: This notice sets forth the proposed agenda of a forthcoming meeting of the National Council on Vocational Education. It also describes the functions of the Council. Notice of this meeting is required under Section 10(a) (2) of the Federal Advisory Committee Act, and is intended to notify the general public of its opportunity to attend.

DATE: February 27, 1989—8:00 p.m. to 3:00 p.m.

ADDRESS: Embassy Suites Hotel, 1250 22nd Street, NW., Washington, DC 20037, location to be posted in Hotel. (202) 857-3388.

SUPPLEMENTARY INFORMATION: The National Council on Vocational Education is established under section 104 of the Vocational Education Amendments of 1968, Pub. L. 90-576.

The Council is established to:

(A) Advise the President, the Congress, and the Secretary of Education concerning the administration of, preparation of general regulations for, and operation of, vocational education programs supported with assistance under this title;

(B) Review the administration and operation of vocational education programs under this title, including the effectiveness of such programs in meeting the purposes for which they are established and operated, make recommendations with respect thereto, and make annual reports of its findings and recommendations (including recommendations for changes in the provisions of this title) to the Secretary for transmittal to Congress; and

(C) Conduct independent evaluations of programs carried out under this title and publish and distribute the results thereof.

AGENDA: The proposed agenda will include: an Executive Committee Planning Session to plan the National Council's meetings and agenda for the year.

FOR FURTHER INFORMATION CONTACT: Dr. Joyce Winterton, Executive Director, 330 C Street, SW., MES—Suite 4080, Washington, DC 20202-7580, (202) 732-1384.

Records are kept of all Council proceedings, and are available for public inspection at the above address from the hours of 9:00 a.m. to 4:30 p.m.

Signed at Washington, DC, February 2, 1989.

Joyce Whiterton,

Executive Director.

[FR Doc. 89-2957 Filed 2-8-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Determination of Floodplain/Wetlands Involvement for Site Characterization at Yucca Mountain, NV

AGENCY: Department of Energy.

ACTION: Floodplain/wetlands involvement and opportunity for comment.

SUMMARY: The Department of Energy proposes to construct facilities such as access roads, utility lines, a muck-storage area, several trenches, and drill and core holes in Yucca Mountain, Nevada, to support site characterization activities. Yucca Mountain in Nye County, Nevada is a potential site for the United States' first underground repository for the permanent disposal of commercial spent nuclear fuel and high-level radioactive waste.

DATE: Comments must be received on or before April 1, 1989.

ADDRESS: Address written comments to: Deborah Valentine, Office of Civilian Radioactive Waste Management, Department of Energy, Mail Stop 7F-070, RW-333, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-5559.

FOR FURTHER INFORMATION CONTACT:

1. Ms. Deborah Valentine at the above address.
2. Mr. Robert Kaiser, Yucca Mountain Project Office, Department of Energy, 101 Convention Center Drive, Las Vegas, Nevada 89109, (702) 794-7954.

SUPPLEMENTARY INFORMATION: Before a decision is made concerning the suitability of the site, the geology and hydrology of Yucca Mountain must be characterized to ensure that it can safely accommodate the waste.

Characterization of the Yucca Mountain site will involve the construction of an Exploratory Shaft Facility (ESF), which requires excavation of two large shafts (out of floodplain), and the construction of several surface support facilities within the floodplain. DOE expects to begin some of the proposed actions in the floodplain in May 1989. DOE is considering several measures, including re-routing segments of several dry washes around critical facilities, and straightening banks along several wash segments to avoid adverse effects related to the location of surface facilities in the floodplain. In floodplain areas remote from ESF activity, trenches and drill and core holes will be necessary to support ground-water recharge investigations and subsurface formation studies. The specific locations of the proposed actions can be found in the Site Characterization Plan (SCP) for the Yucca Mountain Site in Nevada in section 6.2.4 at page 6-121ff. The specific locations of the potential areas of the 100-year and 500-year flood can be found in the SCP in section 6.1.2 at page 6-89. The SCP was issued for public review and comment on December 28, 1988. Copies are available upon request from: U.S. Department of Energy, Office of Scientific and Technical Information, P.O. Box 62, Oak Ridge, Tennessee 37831. In addition, copies have been placed in selected libraries throughout Nevada, as well as DOE public reading rooms in Headquarters, in Las Vegas, and the Operations Offices nationwide. The complete list of those locations was published in the **Federal Register** on December 30, 1988, at 53 FR 53057.

Pursuant to DOE's "Compliance with Floodplain/Wetlands Environmental Review Requirements" (10 CFR Part 1022), DOE has determined that the proposed actions will be within the 100-year Flood Boundary of several dry washes. Planned work will include construction and floodplain modifications as described above. The DOE will prepare a floodplain/wetlands assessment.

Pursuant to 10 CFR 1022.4, this Public Notice provides the opportunity for public review and comment on this proposed floodplain action. Comments received will be evaluated and considered before making a decision on the proposed action. Comments should be addressed to Deborah Valentine at the above address.

Issued in Washington, DC, February 3, 1989.

Raymond P. Berube,

Acting Assistant Secretary, Environment, Safety and Health.

[FR Doc. 89-3111 Filed 2-8-89; 8:45 am]

BILLING CODE 6450-01-M

Office of Conservation and Renewable Energy

Grants; California Cast Metals Association

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Notice of intent to award a noncompetitive grant agreement to the California Cast Metals Association.

SUMMARY: The U.S. Department of Energy (DOE) announces that pursuant to 10 CFR 600.7, a grant is to be funded to the California Cast Metals Association (CCMA) based on an application dated November 14, 1988.

The Office of Conservation and Renewable Energy intends to award a grant in the amount of $48,400. The purpose of the grant is to revise and condense the CCMA 1961 *Foundary Engineering Study* and *Workbook* into a single *Foundry Industry Energy Conservation Workbook* reflecting the most recent foundry energy conservation technology. The practices and technology discussed in this revised workbook will be presented to foundry owners and managers through a series of workshops to be held at six locations nationwide.

This proposed project management has both an affiliation with and understanding of the foundry industry. The CCMA is privy to both the needs of the foundry industry and the current innovative practices and technologies developed to meet these industry needs. As the prime sponsor of this project CCMA has obtained the endorsement of the American Cast Metals Association (ACMA), which is the principle national corporate trade association of the metal casting industry. The ACMA will assist the CCMA with the workshops and distribution of this workbook to all the operating firms of the metal casting industry.

The *Foundry Energy Conservation Workbook* which will include the most recent available foundry energy conservation technology, will represent a significant contribution to improved energy efficiency in the Primary Metals Industry, SIC 33. This is consistent with the advancement of the public purpose of stimulating energy conservation. The objectives of the proposal have a high probability of success because the techniques and technology to be provided are based on past successful material developed by these associations and the most recent processes established by their corporate membership.

The proposed award will be funded in fiscal year 1989. The time required for completion of the project (excluding time required for printing the *Workbook* by the DOTE) is seven (7) months. The resulting *Foundry Industry Conservation Workbook* will be distributed to foundries nationwide. This notice represents the only official notice of intent on the part of the DOE.

ADDRESS: Request for information regarding the proposed assistance award and any written inquiries concerning this notice shall be addressed to: Charles J. Glaser, U.S. Department of Energy, Office of Industrial Programs, CE-14, Room 5F-044, Washington, DC, 20585, (202) 586-1290.

Issued in Washington, DC on January 23, 1989.

John R. Berg,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 89-3110 Filed 2-8-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER83-726-000 et al.]

Boston Edison Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

February 1, 1989.

Take notice that the following filings have been made with the Commission:

1. Boston Edison Company

[Docket No. ER83-726-000]

January 31, 1989.

Take notice that on January 19, 1989, the Boston Edison Company (Edison) tendered for filing a transmission rate revised in accordance with the requirements of the Commission's Opinion No. 310 issued August 1, 1988 and Opinion No. 310-A issued December 20, 1988 for service to the Town of Norwood, Massachusetts. Edison states that copies of the filing have been served on the Town of Norwood and all persons listed on the Commission's official service list.

Comment date: February 13, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. AES Cedar Bay

[Docket No. QF89-126-000]

On January 19, 1989, AES Cedar Bay, Inc. (Applicant), c/o Jeffrey V. Swain, Vice President, 1925 North Lynn Street, Suite 1200, Arlington, VA 22209 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Jacksonville, Florida. The facility will consist of an extraction/condensing steam turbine generator and a coal fired boiler. Thermal energy recovered from the facility will be used for industrial processes in the Sininole Kraft paper mill. The net electric power production capacity of the facility will be 248,000 KW. The primary source of energy will be coal. Construction of the facility is scheduled to begin January 1990.

Comment date: March 13, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Gulf States Utilities Company

[Docket No. ER88-519-003]

Take notice that on January 24, 1989, Gulf States Utilities Company (Gulf States) tendered for filing its compliance filing in compliance with the Commission's order issued January 18, 1988.

Comment date: February 15, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-3135 Filed 2-8-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ES89-16-000 et al.]

Gulf States Utilities Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

February 3, 1989.

Take notice that the following filings have been made with the Commission:

1. Gulf States Utilities Company

[Docket No. ES89-16-000]

January 31, 1989.

Take notice that on January 26, 1989, Gulf States Utilities Company (Applicant) filed an application seeking an order under section 204(a) of the Federal Power Act authorizing the Applicant to issue secured and/or unsecured short-term promissory notes not to exceed $400,000,000 principal amount in the aggregate outstanding at any time and to issue up to a like amount of principal of Applicant's Bonds in one or more series and security for the Notes. These issues will be exempted from competitive bidding requirements pursuant to § 34.2(a)(1) (ii) and (iii) of the Commission's Regulations. The Notes and Bonds would be issued at various times after authorization is granted but no Note or Bond would have a maturity after December 31, 1991.

Comment date: February 20, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Kansas Gas & Electric Company

[Docket No. ES89-15-000]

Take notice that on January 25, 1989, Kansas Gas & Electric Company filed an application with the Federal Energy Regulatory Commission, pursuant to section 204 of the Federal Power Act, seeking an order authorizing the issuance of up to 250,000 shares of its common stock. Without par value. The securities are to be issued from time to time pursuant to the Applicant's 401(k) Plan.

Comment date: February 24, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. UtiliCorp United Inc.

[Docket No. ES89-14-000]

Take notice that on January 24, 1989, UtiliCorp United Inc. ("Applicant") filed an application seeking an order under section 204(a) of the Federal Power Act authorizing the Applicant to issue up to 4,000,000 shares of preference stock, without par value, and for exemption from the competitive bidding and negotiated placement requirements.

Comment date: February 24, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Idaho Power Company

[Docket No. ER89-194-000]

Take notice that on January 24, 1989, Idaho Power Company (Idaho Power) tendered for filing the Average System Cost (ASC) determined by the Bonneville Power Administration (BPA), BPA's written ASC report, and Idaho Power's ASC schedules for Idaho Power's Idaho exchange jurisdiction.

The ASC rates filed have been determined pursuant to the Revised Average System Cost Methodology approved by the Commission in its Order No. 400 issued October 1, 1984, in

Docket No. RM84-16-000, and section 5(c) of the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. 830-839h). This act provides for the exchange of electric power between Idaho Power and BPA for the benefit of Idaho Power's residential and farm customers.

A copy of the filing has been served upon BPA and all parties to Idaho Power's Appendix 1 filing with BPA.

Comment date: February 17, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-3136 Filed 2-8-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. EL89-13-000 et al.]

Hydroelectric Applications; The Eyak Corp. et al.

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

a. Type of Application: Declaration of Intention.

b. Project No.: EL89-13-000.

c. Date Filed: December 27, 1988.

d. Applicant: The Eyak Corporation (AK).

e. Name of Project: Power Creek Hydroelectric Project.

f. Location: Power Creek, Cordova, Alaska.

g. Filed Pursuant to: Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. Applicant Contact: Stephen M. Rehnberg, Chief Executive Officer, The Eyak Corporation, Post Office Box 340, Cordova, Alaska 99574, (907) 424-7161.

i. FERC Contact: Hank Ecton, (202) 376-9073.

j. Comment Date: March 6, 1989.

k. Description of Project: The proposed Power Creek Hydroelectric Project, a run of river project, would consist of: (1) A 120-foot-long diversion weir and intake structure; (2) two 6,375-foot-long, 72-inch-steel-pipe pressure penstocks; (3) a steel-and-concrete powerhouse, containing two generating units, with a total generating capacity of 10,000 kilowatts; (4) a concrete-and-rock-filled tailrace; (5) a 7.5-mile-long primary transmission line, 1.5 miles overhead and 6 miles under Eyak Bay; and (7) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project; (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. Purpose of Project: All power developed by the project will be sold to the local electric utility, Cordova Electric Cooperative.

m. This notice also consists of the following standard paragraphs: B, C, and D2.

2 a. Type of Application: Acceleration of License Expiration.

b. Project No.: 2188-019.

c. Date Filed: December 16, 1988.

d. Applicant: The Montana Power Company.

e. Name of Project: Missouri-Madison.

f. Location: On the Madison and Missouri Rivers in Cascade, Gallatin, Lewis, and Clark, and Madison Countries, Montana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Applicant Contact: Michael Manion, The Montana Power Company, 40 East Broadway, Butte, MT 59701, (406) 723-5421.

i. FERC Contact: Dean C. Wight, (202) 376-9267.

j. Comment Date: March 13, 1989.

k. Description of Application: The applicant, licensee for the referenced project, seeks to accelerate the expiration of the license from November 30, 1998, to November 30, 1994. The license was issued on April 23, 1956, effective as of December 1, 1948 (15 FPC 1330) and consists of nine developments: Hebgen, Madison, Hauser, Holter, Black Eagle, Ryan, Rainbow, Cochrane, and Morony Dams. The total installed capacity of the developments is 286 megawatts. The applicant states that the earlier expiration date will facilitate financing of proposed rehabilitation and capacity expansions of the project by allowing the applicant to make earlier application for a new license. *See* 18 CFR, Part 16—Procedures Relating to Takeover and Relicensing of Licensed Projects, and Notice of Proposed Rulemaking in Docket No. RM87-33-000, issued May 24, 1988.

l. This notice also consists of standard paragraphs: B, C and D2.

3 a. Type of Application: Transfer of License.

b. Project No.: 3063-036.

c. Date Filed: December 23, 1988.

d. Applicant: KAMO Electric Cooperative, Inc., Oklahoma Municipal Power Authority.

e. Name of Project: Kaw Project.

f. Location: On the Arkansas River in Kay County, Oklahoma.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: S. Dean Sanger, General Manager, KAMO Electric Cooperative, Inc., P.O. Box 577, Vinita, OK 74301, (918) 256-7501.

i. FERC Contact: Mary Nowak, (202) 376-9634.

j. Comment Date: March 6, 1989.

k. Description of Project: KAMO Electric Cooperative, Inc., (KAMO) and the Oklahoma Municipal Power Authority (OMPA), licensees for FERC Project No. 3063, propose a partial transfer of license by transferring KAMO's remaining 0.5% share to co-licensee OMPA. OMPA would be the sole owner and licensee of the project.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

4 a. Type of Application: Amendment of License.

b. Project No.: 4114-014.

c. Date Filed: December 19, 1988.

d. Applicant: Long Lake Energy Corporation.

e. Name of Project: Lower Saranac.

f. Location: On the Saranac River in Clinton County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Mr. Sanford L. Hartman, Long Lake Energy Corporation, 420 Lexington Avenue, Suite 540, New York, NY 10170, (212) 986-0440.

i. FERC Contact: Mr. Dean Wright, (202) 376-9267.

j. Comment Date: March 10, 1989.

k. Description of Project: The applicant, licensee for the referenced project, seeks to amend the license by altering the transmission line route and project boundary. The proposed 46 kilovolt (kV) transmission line would extend from the project powerhouse approximately 1,400 feet south to the existing New York State Electric and Gas Indian Rapids-Kent Falls transmission line No. 879. The proposed transmission line would replace the proposed 2,500-foot-long transmission line authorized by the project license.

l. This notice also consists of standard paragraphs: B, C and D1.

5 a. Type of Application: Surrender of Exemption.

b. Project No.: 4536-002.

c. Date Filed: December 30, 1988.

d. Applicant: Utah Power and Light Company.

e. Name of Project: Electric Lake Hydroelectric Project.

f. Location: On Electric Lake in Emery County, Utah.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Jody L. Williams, 1407 West North Temple, Room 330, Salt Lake City, Utah 84140, (801) 220-4910.

i. FERC Contact: Nanzo T. Coley, (202) 376-9418.

j. Comment Date: March 9, 1989.

k. Description of Project: On June 28, 1984, an exemption was issued to Utah Power and Light Company. The project consisted of a 5kW unit installed in the valve chamber of the Electric Lake dam.

The exemptee states that the generating unit was damaged and stopped operating because of constant exposure to dampness in the valve chamber, and that other options were investigated and found not economically feasible.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

6 A. Type of Application: Exemption (5 MW or less).

B. Project No.: 6623-001.

C. Date Filed: July 31, 1984.

D. Applicant: Eric R. Jacobson and Hydro-West, Inc.

E. Name of Project: Bridal Veil Falls.

F. Location: On Bridal Veil Creek in San Miguel County, Colorado.

G. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

H. Applicant contact: Michael T. Mishkin, esq., Squire, Sanders and Dempsey, 1201 Pennsylvania Avenue NW., Washington, DC 20044, (202) 626-6779.

I. FERC Contact: Mr. William Roy-Harrison, (202) 376-9830.

J. Comment Date: March 20, 1989.

K. Description of Action: The proposed project was originally noticed on February 5, 1985, as a license application. The applicant now, through a proposed settlement agreement filed May 27, 1988, with the Commission, wishes to convert the project from a license to an exemption. All project facilities as originally noticed would remain the same. The applicant further request a waiver of § 4.33(d)(3) of the Commissions regulations.

This notice is without prejudice to the Commission's ultimate decision on acceptance or rejection of the proposed settlement agreement between Idarado Mining Co., and the applicant.

l. This notice also consists of the following standard paragraphs: B, C, and D3a.

7 a. Type of Application: Amendment of License.

b. Project No.: 7045-003.

c. Date Filed: November 2, 1988.

d. Applicant: Mainstream Hydro Corporation.

e. Name of Project: Claremont Water Power Project.

f. Location: On the Sugar River in Claremont, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Mr. George Lagassa, Consultant, P.O. Box 947, North Hampton, NH 03862, (603) 964-7113.

i. FERC Contact: Lawrence Marquez, (202) 376-1763.

j. Comment Date: March 3, 1989.

k. Description of Project: Rather than construct the intake at northerly end of the Broad Street Dam and start the penstock from that point, we propose to erect a *new water diversion structure* 250' downstream of the Broad Street Dam. This diversion structure will consist of two feet of permanent, concrete spillway anchored to ledge (crest elevation 506' msl) and three feet of steel, hydraulically operated, flashboards (maximum crest elevation 511' msl).

The proposed new diversion structure will divert water into a *new intake structure and canal* located at its northerly end. The proposed canal will be trapezoidal in shape, be 55' wide at the intake, and extend 100' in a northeasterly direction to its 25' wide terminus. By using the route of an old canal (long since filled in with earth), this route should provide minimal construction difficulties.

New Penstock Route: At this point water will flow into a submerged, 10' I.D. penstock, which will continue approximately 230' in a northeasterly direction to the existing intake at the Upper Sullivan Dam.

From here it will turn easterly (more directly downstream) and extend an additional 50 feet to a *proposed new powerhouse* (40' W x 30' L, identical in size and layout to the powerhouse originally licensed). Again, water from the turbines will discharge into a *tailrace canal,* with approximately the same dimensions and layout as approved in the original license, with the major difference being that the proposed new powerhouse and tailrace will be located *on the northerly instead of the southerly side of the sugar river.* In addition, to facilitate efficient operations, we also propose to move the installation of the 40 kW minimum flow turbine from the southerly end of the dam to the northerly end, adjacent to the existing intake structure on the Upper Sullivan Dam. Like the minimum flow turbine originally proposed, this installation would use the same configuration of siphon inlet tube and enclosed turbine-generator unit.

The proposed changes will produce a gross head of 46.5 ft., an average *net head* of 43 ft. (as opposed to 50') and generating CAPACITY in the main powerhouse of 1515 kW, in two machines of 1000 kW and 515 kW respectively. Together with the 40 kW minimum flow unit, total capacity of 1555 kW should allow the generation of 6,000,000 kWh/year.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

8 a. Type of Application: Minor License.

b. Project No.: 9713-001.

c. Date Filed: July 21, 1988.

d. Applicant: Alpine Hydroelectric Company.

e. Name of Project: Alpine Project.

f. Location: On the Cascade Alpine Brook in Coos County, New Hampshire.

g. Field Pursuant to: Federal Power Act, U.S.C. 791 (a)-825(r).

h. Applicant Contact: Mr. Harold Turner, Alpine Hydroelectric Company, P.O. Box 7191, Concord, NH 03301, (603) 497-3940.

i. FERC Contact: Steven H. Rossi; (202) 376-9814.

j. Comment Date: April 6, 1989.

k. Description of Project: The proposed project would consist of: (1)

The existing 25-foot-high and 178-foot-long dam of cut granite masonry construction; (2) an existing reservoir having a surface area of 0.44 acre and a storage capacity of 3.7 acre-feet at normal pool elevation of 1,220 feet MSL; (3) an existing 12-inch-diameter and 2,200-foot-long buried cast iron penstock equipped with new bifurcation; (4) a new concrete and brick powerhouse containing a single generating unit rated at 115 kW; (5) a tailrace discharging into the river; (6) a new 50-foot-long, three-phase transmission line; and (7) appurtenant facilities. The applicant estimates that the average annual generation would be 500,000 kWh. The existing dam is owned by the James River Paper Company, Berlin, New Hampshire.

l. Purpose of Project: Project power would be sold to the James River Paper Company or the Public Service Company of New Hampshire.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

9 a. Type of Application: Preliminary Permit.

b. Project No.: 10634–000.

c. Date Filed: August 8, 1988.

d. Applicant: City of Manassas, Virginia.

e. Name of Project: Summersville Dam.

f. Location: On the Gauley River near Summersville, Nicholas County, West Virginia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Clyde D. Wimmer, 9027 Center St., P.O. Box 560, Manassas, VA 22110, (703) 335–8226.

i. FERC Contact: Michael Dees, (202) 376–9414.

j. Comment Date: April 3, 1989.

k. Description of Project: The proposed project would utilize the existing Corps of Engineers' Summersville Dam and reservoir and would consist of: (1) a proposed intake structure; (2) a proposed penstock 24 feet in diameter and 1,900 feet long; (3) a proposed reinforced concrete powerhouse housing two 40,000-kW and one 20,000-kW hydropower units; (4) a proposed tailrace; (5) a proposed 138-kV transmission line 12 or 24 miles long; and (6) appurtenant facilities. The estimated annual energy production is 255 GWh. Project power would be used by Manassas to meet its own system demand and would be sold to other utility systems. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $350,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

10 a. Type of Application: Preliminary Permit.

b. Project No.: 10674–000.

c. Date Filed: October 11, 1988.

d. Applicant: Midtec Paper Company.

e. Name of Project: Midtec Project.

f. Location: On the Fox River in Outagamie County, Wisconsin.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. Applicant Contact: Mr. C.E. Wise, Manager or Engineering, Maintenance & Utilities, Midtec Paper Company, North Main Street, Kimberly, WI 54136, (414) 788–3511 Ext. 447.

i. FERC Contact: Robert Bell, (202) 376–9237.

j. Comment Date: April 7, 1989.

k. Description of Project: The proposed project would utilize the U.S. Corps of Engineers Cedars Lock and Dam and impoundment and would consist of: (1) An existing intake structure; (2) 31 existing 12 foot 8 inch diameter penstocks 66 inches long; (3) an existing powerhouse containing 3 generating unit with a total installed capacity of 2700 kW; and (4) appurtenant facilities. The proposed project would have an average annual generators of 8600 MWh.

l. Purpose of Project: All energy generated would be used by applicant in its mills.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

11 a. Type of Application: Preliminary Permit.

b. Project No. 10685–000

c. Date Filed: November 3, 1988.

d. Applicant: North Coast Development Co., Inc.

e. Name of Project: Crater Lake.

f. Location: At Crater Lake in Sec 11, T15W, R3W and Sec 14, T15S, R3W, Copper River Meridian near Cordova, Alaska.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Howard T. Harstad, P.O. Box 98787, Des Moines, WA 98198, (206) 243–8606.

i. FERC Contact: Ms. Julie Bernt, (202) 376–1936.

j. Comment Date: March 29, 1989.

k. Description of Project: The proposed project would consist of: (1) Intake No. 1 at water surface elevation 1,514 at Crater Lake, intake No. 2 on a stream from Crater Lake at elevation 340 feet, and intake No. 3 on an unnamed stream to the north of Crater Lake; (2) a 12-inch-diameter, 3,300-foot-long penstock from intake No. 1 terminating at powerhouse No. 1, and two 12-inch-diameter, 3,300-foot-long penstocks from intake No. 2 and intake No. 3 terminating at a storage tank at the powerhouse No. 1 site; (3) a 24-inch-diameter, 1,200-foot-long penstock from the storage tank to powerhouse No. 2; (4) powerhouse No. 1 at elevation 335 feet containing two generating units each with a rated capacity of 500 kW, and powerhouse No. 2 at elevation 27 feet containing two generating units each with a rated capacity of 300 kW; and (5) approximately 1,500 feet of transmission line. Applicant estimates the average annual energy production to be 4 MWh and the cost of the work to be performed under the preliminary permit to be $52,000.

l. Purpose of Project: The power produced will be sold to the local power company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

12 a. Type of Application: Preliminary Permit.

b. Project No. 10710–000.

c. Date Filed: December 15, 1988.

d. Applicant: The Washington Water Power Company.

e. Name of Project: Monroe Street Second Powerhouse Project.

f. Location: At the Monroe Street and Upper Falls developments of the Spokane River Project No. 2545, on the Spokane River in Spokane County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Roger D. Woodworth, East 1411 Mission Avenue, P.O. Box 3727, Spokane, WA 99220, (509) 482–4138.

i. FERC Contact: Mr. James Hunter, (202) 376–1943.

j. Comment Date: March 30, 1989.

k. Description of Project: The proposed project would utilize the reservoir formed by the Division Street Control Works, which spans the north channel of the Spokane River at the upstream tip of Havermale Island, and would consist of: (1) modifications to the south channel to increase the peak flow Capacity; (2) an intake on the south channel adjacent to the Upper Falls dam and intake; (3) a 20-foot-diameter, 1,040-foot-long underground penstock; (4) a 40 foot by 80 foot powerhouse adjacent to the Monroe Street powerhouse containing two identical generating units with a total capacity of 37.5 MW and an average annual output of 175 GWh; (5) modifications to the Monroe Street tailrace; and (6) a 350-foot-long, 115 KV transmission line connecting to the applicant's existing Post Street Substation. The estimated cost of remaining permit activities is $200,000.

l. Purpose of Project: Project power would be used to serve the applicant's load requirements or to displace higher cost thermal resources.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

13 a. Type of Application: Preliminary Permit.

b. Project No. 10711–000.

c. Date Filed: December 15, 1988.

d. Applicant: The Washington Water Power Company.

e. Name of Project: Long Lake Second Powerhouse.

f. Location: At the Long Lake development of the Spokane River Project No. 2545, near Reardan in Lincoln County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Roger D. Woodworth, East 1411 Mission Avenue, P.O. Box 3727, Spokane, WA 99220, (509) 482–4138)

i. FERC Contact: Mr. James Hunter, (202) 376–1943.

j. Comment Date: March 30, 1989.

k. Description of Project: The proposed project would utilize the Long Lake dam and reservoir and would consist of: (1) an intake at the cutoff dam, which is 600 feet upstream of the Long Lake dam; (2) a 20-foot-diameter, 1,000-foot-long penstock; (3) a 40 foot by 80 foot powerhouse adjacent to the existing powerhouse containing a generating unit with a capacity of 50 MW and an average annual output of 94 GWh; (4) a tailrace; and (5) a connection to the existing 115 KV transmission line from the Long Lake powerhouse. The estimated cost of remaining permit activities is $150,000.

l. Purpose of Project: Project power would be used to serve the applicant's load requirements or to displace higher cost thermal resources.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

14 a. Type of Application: Preliminary Permit.

b. Project No.: 10712–000.

c. Date Filed: December 15, 1988.

d. Applicant: The Washington Water Power Company.

e. Name of Project: Nine Mile Second Powerhouse Project.

f. Location: At the Nine Mile development of the Spokane River Project No. 2545, in Spokane County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Roger D. Woodworth, East 1411 Mission Avenue, P.O. Box 3727, Spokane, WA 99220, (509) 482–4136.

i. FERC Contact: Mr. James Hunter, (202) 376–1943.

j. Comment Date: March 30, 1989.

k. Description of Project: The proposed project would utilize the existing 58-foot-high, 364-foot-long, concrete gravity Nine Mile dam and reservoir, which has a 420 acre surface area at normal full pool elevation 1,606.6 feet, msl. Depending on the results of feasibility studies, the reservoir elevation could be raised, by modifying the existing dam or constructing a new dam, to 1,616.6 feet, msl, producing a 500 acre surface area, and a single generating unit could be added, with a capacity of 15 MW and an average annual output of 32 GWh. The estimated cost of remaining permit activities is $150,000.

l. Purpose of Project: Project power would be used to serve the applicant's load requirements or to displace higher cost thermal resources.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

15 a. Type of Application: Preliminary Permit.

b. Project No.: 10715–000.

c. Date Filed: December 30, 1988.

d. Applicant: Island Power Company, Inc.

e. Name of Project: Upper Wailua Water Power Project.

f. Location: On the North Branch of the North Fork Wailua River in Kauai County, Hawaii.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: McNeill Watkins II, 1400 L Street NW., Washington, DC 20005, (202) 371–5785.

i. FERC Contact: Nanzo T. Coley, (202) 376–9416.

j. Comment Date: March 30, 1989.

k. Description of Project: The proposed project would consist of: (1) The existing Wailua-Hanalei extension tunnel; (2) a proposed intake structure constructed at the tunnel outlet; (3) a proposed 6,400-foot-long penstock; (4) a proposed powerhouse containing one generating unit rated at 1,260 kW; (5) a proposed 12-kV transmission line, approximately 3-miles long; and (6) appurtenant facilities. The estimated average annual energy output for the project is 7,200,000 MWh. The applicant estimates that the cost of the work to be performed under the preliminary permit would be $290,000.

l. Purpose of Project: Energy produced at the project would be sold to the Kauai Electric Division.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

16 a. Type of Application: Preliminary Permit.

b. Project No.: 10717–000.

c. Date Filed: January 4, 1989.

d. Applicant: Blue Marsh Hydro Associates.

e. Name of Project: Blue Marsh Dam.

f. Location: On Tulpehocken Creek near Reading, Berks County, Pennsylvania.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Kenneth R. Broome, Blue Marsh Hydro Associates, 15 Fawn Drive, Reading, PA 19607.

i. FERC Contact: Michael Dees, (202) 376–9414.

j. Comment Date: April 10, 1989.

k. Description of Project: The proposed project would utilize the existing Corps of Engineers' Blue Marsh Dam and reservoir and would consist of: (1) an existing intake structure; (2) an existing 48-inch diameter pipe; (3) a proposed penstock 48-inches in diameter and 50 feet long; (4) a proposed concrete block powerhouse housing a 400-kW hydropower unit; (5) a proposed tailrace; (6) a proposed transmission line; and (7) appurtenant facilities. The estimated annual energy production is 2.4 MWh. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $16,500.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36).

Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to Dean Shumway, Director, Division of Project Review, Federal Energy Regulatory Commission, Room 203–RB, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. Agency Comments—States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural or other relevant resources of the relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 89–29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in section 313(b) of the Federal Power Act, 16 U.S.C. section 8251(b), that Commission findings as to facts must be supported by substantial evidence.

All other federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If any agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be sent to the Applicant's representatives.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. Agency Comments—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, state and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: February 6, 1989, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 89–3138 Filed 2–8–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT88–29–004]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff Pursuant to Order No. 497

February 6, 1989.

Take notice that on January 31, 1989, Florida Gas Transmission Company tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, First Revised Volume No. 1:

1st Revised Sheet No. 57D

Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211. All such motions or protests must be filed by February 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any action wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–3137 Filed 2–8–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT88–24–003]

Northern Natural Gas Co., Division of Enron Corp.; Proposed Changes in FERC Gas Tariff Pursuant to Order No. 497

February 6, 1989.

Take notice that on January 31, 1989, Northern Natural Gas Company, Division of Enron Corp., tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Third Revised Volume No. 1:

First Revised Sheet No. 52f.18
First Revised Sheet No. 52f.19
First Revised Sheet No. 52f.20
First Revised Sheet No. 52f.21.

Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211. All such motions or protests must be filed by February 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–3139 Filed 2–8–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT88–26–002]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff Pursuant to Order No. 497

February 6, 1989.

Take notice that on January 31, 1989, Transwestern Pipeline Company tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Second Revised Volume No. 1:

1st Revised Sheet No. 30F
1st Revised Sheet No. 30G
1st Revised Sheet No. 30H
1st Revised Sheet No. 30I
1st Revised Sheet No. 34E
1st Revised Sheet No. 34F
1st Revised Sheet No. 34G
1st Revised Sheet No. 34H

Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211. All such motions or protests must be filed by February 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–3140 Filed 2–8–89; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings And Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of $29,300,785, plus accrued interest, obtained by the DOE from Amorient Petroleum Company, California (Case No. KEF–0101), Salomon, Inc. (Case No. KEF–0109), Coral Petroleum, Inc. (Case No. KEF–0114), International Crude Corporation (Case No. KEF–0115) and Conoco Inc. (Case No. KFX–0027). The OHA has determined that the funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986).

DATE AND ADDRESS: Applications for Refund submitted pursuant to this Decision must be filed in duplicate and postmarked no later than October 31, 1989 and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. Any party that has previously submitted a refund application in crude oil refund proceedings need not file another application; that application will be deemed to be filed in all crude oil proceedings finalized to date.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–2860.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute funds obtained from Amorient Petroleum Company, California, Salomon, Inc., Coral Petroleum, Inc., International Crude Corporation and Conoco Inc.

The DOE has determined to distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986) (MSRP). Under the MSRP, crude

oil overcharge monies are divided among the states, the federal government, and injured purchasers of refined products. Refunds to the states will be distributed in proportion to each state's consumption of petroleum products during the period of crude oil price controls. Refunds to eligible purchasers will be based on the number of gallons of petroleum products which they purchased and the extent to which they can demonstrate injury.

As the Decision and Order indicates, Applications for Refund may now be filed by injured purchasers of refined petroleum products. Applications must be filed in duplicate and postmarked no later than October 31, 1989. The specific information required in an Application for Refund is set forth in the Decision and Order. As we state in the Decision, any party that has previously submitted a refund application in crude oil refund proceedings need not file another application; that application will be deemed to be filed in all crude oil proceedings finalized to date.

Date: February 3, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order

Names of Firms: Amorient Petroleum Company, California, Salomon, Inc., Coral Petroleum, Inc., International Crude Corporation, Conoco Inc.

Dates of Filings: February 8, 1988, June 17, 1988, August 2, 1988, August 2, 1988, November 14, 1988

Case Numbers: KEF-0101, KEF-0109, KEF-0114, KEF-0115, KFX-0027.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. 10 CFR 205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

The ERA has filed five Petitions for the implementation of Special Refund Procedures for crude oil overcharge funds obtained from Amorient Petroleum Company, California (Amorient),[1] Salomon, Inc., Coral Petroleum, Inc., International Crude Corporation and Conoco Inc.[2] These five firms remitted a total of $29,300,786 to the DOE.[3] An additional $6,182,544 in interest has accrued on that amount as of December 31, 1988. This Decision and Order establishes procedures for distributing these funds.

The general guidelines which the OHA may use to formulate and implement a plan to distribute refunds are set forth in 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981). We have considered the ERA's request to implement Subpart V procedures with respect to the monies received from the five firms listed above, and have determined that such procedures are appropriate.

I. Background

On July 28, 1986, the DOE issued a Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986) ("the MSRP"). The MSRP, issued as a result of a court-approved Settlement Agreement in *In Re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378 (D. Kan.), provides that crude oil overcharge funds will be divided among the states, the federal government, and injured purchasers of refined petroleum products. Under the MSRP, up to 20 percent of these crude oil overcharge funds will be reserved initially to satisfy valid claims by injured purchasers of petroleum products. Eighty (80) percent of the funds, and any monies remaining after all valid claims are paid, are to be disbursed equally to the states and federal government for indirect restitution.

The OHA has been applying the MSRP to all Subpart V proceedings involving alleged crude oil violations. *See* Order Implementing the MSRP, 51 FR 29689 (August 20, 1986). That Order provided a period of 30 days for the filing of any objections to the application of the MSRP, and solicited comments concerning the appropriate procedures to follow in processing refund applications in crude oil refund proceedings.

On April 6, 1987, the OHA issued a Notice analyzing the numerous comments which it received in response to the August 1986 Order. 52 FR 11737 (April 10, 1987). The Notice set forth generalized procedures and provided guidance to assist claimants that wish to file refund applications for crude oil monies under the Subpart V regulations. All applicants for refunds would be required to document their purchase volumes of petroleum products during the period of Federal crude oil price controls and to prove that they were injured by the alleged overcharges. The Notice indicated that end-users of petroleum products whose businesses are unrelated to the petroleum industry would be presumed to have absorbed the crude oil overcharges, and need not submit any further proof of injury to receive a refund. Finally, we stated that refunds would be calculated on the basis of a per gallon refund amount derived by dividing crude oil violation amounts by the total consumption of petroleum products in the United States during the period of price controls. The numerator would consist of crude oil overcharge monies that were in the DOE's escrow account at the time of the M.D.L. 378 settlement, or were subsequently deposited in the escrow account, and a portion of the funds in the M.D.L. 378 escrow at the time of the settlement.

The DOE has applied these procedures in numerous cases since the April 1987 Notice, see, *e.g.*, *Shell Oil Co.*, 17 DOE ¶ 85,204 (1988)(*Shell Oil*), and *Ernest A. Allerkamp*, 17 DOE ¶ 85,079 (1988)(*Allerkamp*), and the procedures

[1] The Amorient Consent Order refers to the firm's sales of crude oil and refined petroleum products during the period from August 19, 1973 through January 27, 1981. However, after reviewing the ERA audit file concerning Amorient's pricing practices, we find that it is likely that the firm sold only crude oil during the consent order period. This finding in no way represents a determination on any of the factual or legal issues involved in the Amorient enforcement proceeding that was settled by the Consent Order. Rather, it represents our determination as to the most equitable and efficient method of treating the Amorient consent order funds for purposes of this Subpart V proceeding.

[2] On December 12, 1985, the OHA issued a Decision and Order concerning the petition to implement refund procedures for $11 million in crude oil overcharge funds and $8 million in petroleum product overcharge funds obtained from Conoco Inc. pursuant to a court approved settlement. *Conoco Inc.*, 13 DOE ¶ 85,318 (1986). One crude oil refund of $185,949 was granted in a direct purchaser *at* crude oil in that proceeding. *See Conoco Inc./Delmarva Power*, 17 DOE ¶ 85,022 (1988). We will distribute the $10,804,184 in residual funds in the Conoco escrow account, plus accrued interest, pursuant to the procedures set forth in this Decision.

[3] In addition to the $10,804,154 in the Conoco escrow fund, Amorient remitted $1,083,442 to the DOE pursuant to a July 6, 1988 Consent Order, Number 94SC00002Z; Salomon, Inc. remitted $16,250,000 to the DOE pursuant to a March 24, 1988 Consent Order, Number 6C0X00246Z; Coral Petroleum, Inc. remitted $1,000,000 pursuant to a settlement approved on February 8, 1988, Consent Order Number 6SX00035Z; and International Crude Corporation remitted a total of $103,188.89 pursuant to a Consent Order entered into between its president, Gregg Pritchard, and the DOE for $26,093.09, Consent Order Number 8AX00037Z, and an award by the bankruptcy trustee of International Crude Corp. for $97,686.80.

have been approved by the United States District Court for the District of Kansas. Various States had filed a Motion with that Court, claiming that the OHA violated the Stripper Well Settlement Agreement by employing presumptions of injury for end-users and by improperly calculating the refund amount to be used in those proceedings. On August 17, 1987, Judge Theis issued an Opinion and Order denying the States' Motion in its entirety. The Court concluded that the Settlement Agreement "does not bar OHA from permitting claimants to employ reasonable presumptions in affirmatively demonstrating injury entitling them to a refund." *In Re: The Department of Energy Stripper Well Exemption Litigation*, 671 F. Supp. 1318, 1323 (D. Kan. 1987). The Court also ruled that, as specified in the April 1987 Notice, the OHA could calculate refunds based on a portion of the M.D.L. 378 overcharges. *Id.* at 1323–24. The States appealed the latter ruling, and the Temporary Emergency Court of Appeals affirmed Judge Theis' decision. *In Re: The Department of Energy Stripper Well Exemption Litigation*, 3 Fed. Energy Guidelines ¶ 26,606. (Temp. Emer. Ct. App. 1988)]

II. The Proposed Decisions and Orders

On September 14, 1988, the OHA issued a Proposed Decision and Order establishing tentative procedures to distribute the alleged crude oil violation amounts obtained from Salomon, Inc., Coral Petroleum, Inc., International Crude Corporation, and Conoco Inc. 53 FR 36486 (September 20, 1988). On October 17, 1988, the OHA issued a Proposed Decision and Order establishing the same tentative procedures to distribute the alleged crude oil violation amounts obtained from Amorient. 53 FR 43028 (October 25, 1988). The OHA tentatively concluded that the monies in those cases should be distributed in accordance with the MSRP and the April 1987 Notice. Pursuant to the MSRP, the OHA proposed to reserve initially 20 percent of the alleged crude oil violation amounts for direct restitution to applicants who claim that they were injured by the alleged crude oil violations. The remaining 80 percent of the funds would be distributed to the states and federal government for indirect restitution. After all valid claims are paid, any remaining funds in the claims reserve also would be divided between the states and federal government. The federal government's share ultimately would be deposited into the general fund of the Treasury of the United States.

In the Proposed Decisions and Orders, the OHA proposed to require applicants for refund to document their purchase volumes of petroleum products during the period of price controls and to prove that they were injured by the alleged crude oil overcharges. Both Decisions stated that end-users of petroleum products whose businesses are unrelated to the petroleum industry could use a presumption that they absorbed the crude oil overcharges, and need not submit any further proof of injury to receive a refund. The OHA also proposed to calculate refunds on the basis of a volumetric refund amount, as described in the April 1987 Notice. Comments were solicited regarding the tentative distribution process set forth in the Proposed Decisions and Orders.

III. Discussion of the Comments Received

In response to the Proposed Decisions and Orders, the OHA received comments from Philip P. Kalodner, counsel for 6 electric utilities, 14 foreign-flag shipping companies, and 4 pulp and paper manufacturers. Mr. Kalodner's clients are all potential recipients of crude oil refunds. In his comments, Mr. Kalodner contends that the OHA should not distribute 80 percent of the alleged crude oil violation amounts to the states and federal government. According to Kalodner, such a distribution will preclude claimants from obtaining "their full direct restitutionary share of crude oil refunds." Kalodner Comments at 4. Kalodner claims that the 20 percent reserve is insufficient to satisfy all of the legitimate claims that have been or will be filed in these proceedings. Kalodner asserts that both the DOE and the states assured the United States District Court for the District of Kansas that the amount reserved for the claims process would be adequate to provide refunds for all successful claimants. "Having provided that assurance in order to obtain approval of the Court of the Final Settlement Agreement and the benefits to themselves, the States and the DOE are required by the doctrine of judicial estoppel to make good on that assurance." *Id.* at 5.

Kalodner's arguments are not persuasive. The DOE could not, and did not, give assurances as to the precise level of restitution that would be afforded to claimants from the crude oil overcharge funds. Instead, the DOE agreed that it would apply existing Subpart V regulations and precedents to claims for crude oil overcharge funds. Accordingly, Kalodner's premise as to assurances given by the DOE is incorrect. It must be emphasized that neither the Subpart V refund regulations nor the Settlement Agreement addresses any particular formula OHA must employ when granting refunds from the claimants' 20 percent set-aside. In fact, that the DOE has considerable discretion in how to allocate available funds among claimants was fully endorsed by Judge Theis and by TECA when they approved OHA's use of the "full parity" methodology to be used in paying claims. *See In Re: The Department of Energy Stripper Well Exemption Litigation*, 671 F. Supp. 1318, 1323–24 (D. Kan. 1987); *In Re: The Department of Energy Stripper Well Exemption Litigation*, 3 Fed. Energy Guidelines ¶ 26,606 at 26,827. (Temp. Emer. Ct. App. 1988) The court's determination upholding the full parity method severs the self-interested arguments of parties on both extremes. It defeats the challenge from the States, who sought to minimize the amount of refunds paid to Subpart V claimants from the 20 percent reserve, and it also defeats the attack from Kalodner's clients, who seek to increase their refunds by inflating the per-gallon amount of refunds in Subpart V proceedings.[4]

Moreover, there is absolutely no evidence to support Kalodner's assertion that the 20 percent reserve will be insufficient to pay claimants. His argument is based on a pyramid of speculation and unsubstantiated allegations. For example, Kalodner contends that, given OHA's record of approval of refund cases, including those in which the States have filed comments, there will be essentially no disallowance of pending claims. Kalodner, in effect, assumes that the volumes claimed in the remaining refund applications will not significantly decrease through the OHA's analyses of those claims. Indeed, facts known today belie the validity of the "worst case scenario" raised by Kalodner. First, not all volumes submitted by claimants will prove to be valid, and volumes will decrease through the OHA analysis of those claims. For example, in *Borst Oil Corp.*, 17 DOE ¶ 85,232 (1988), we denied claims based on purchases of 747 million gallons by petroleum resellers who failed to prove they were injured by crude oil overcharges. In *Christian Haaland A/S*, 17 DOE ¶ 85,439 (1988), we held that the States, in challenges to

[4] Mr. Kalodner also suggests in his comments that we add various amounts to the numerator of the volumetric formula in order to increase the size of refunds. These suggestions were previously considered and rejected in *Allerkamp*, 17 DOE at 88,174–175. Mr. Kalodner has presented no new arguments to justify a reconsideration of those issues in this determination.

refund applications filed by foreign flag ocean carriers, have submitted information that rebutted the presumption that the carriers were injured by crude oil overcharges and shifted the burden of going forward with evidence back to the carriers. We therefore established a schedule for the submission of additional legal arguments and factual materials. It is unclear the extent to which those applications will be granted. There are thousands of other refund claims in which serious challenges have been raised. These disputes will have to be adjudicated before the magnitude of valid claims can be accurately determined. We therefore reject Kalodner's arguments regarding the sufficiency of the 20 percent set-aside.

Based upon the foregoing conclusions, we have decided to reserve initially the full 20 percent of the alleged crude oil violation amounts subject to this determination in order to ensure that sufficient funds will be available for refunds to injured claimants. We will therefore adopt the procedures as proposed in the Proposed Decisions and Orders, and order the disbursement of 80 percent of the alleged crude oil violation amounts to the states and federal government.

IV. The Refund Procedures

A. Refund Claims

After considering the comments received, we have concluded that the $29,300,785 in alleged crude oil violation amounts covered by this Decision, plus the $6,182,544 in interest which has accrued on that amount as of December 31, 1988, should be distributed in accordance with the crude oil refund procedures previously discussed. As noted earlier, we have decided to reserve initially the full 20 percent of the alleged crude oil violation amounts, or $7,096,666, including interest, for direct refunds to claimants, in order to ensure that sufficient funds will be available for refunds to injured persons. The amount of the reserve may be adjusted downward later if circumstances warrant such action.

The process which the OHA will use to evaluate claims based on alleged crude oil violations will be modeled after the process the OHA has used in Subpart V proceedings to evaluate claims based upon alleged overcharges involving refined products. *See MAPCO, Inc.*, 15 DOE ¶ 85,097 (1986); *Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 (1986) (*Mountain Fuel*). As in non-crude oil cases, applicants will be required to document their purchase volumes and to prove that they were injured as a result of the alleged violations. Following Subpart V precedent, reasonable estimates of purchase volumes may be submitted. *See Greater Richmond Transit Co.*, 15 DOE ¶ 85,028 at 88,060 (1986). Generally, it is not necessary for applicants to identify their suppliers of petroleum products in order to receive a refund.

Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry, and who were not subject to the DOE price regulations are presumed to have absorbed rather than passed on alleged crude oil overcharges. In order to receive a refund, end-users need not submit any further evidence of injury beyond volumes of product purchased during the period of crude oil price controls. *See Tarricone*, 15 DOE at 88,893-96. The end-user presumption of injury is rebuttable, however. *Berry Holding Co.*, 16 DOE ¶ 85,405 at 88,797 (1987). If an interested party submits evidence which is of sufficient weight to cast serious doubt on the end-user presumption, the applicant will be required to produce further evidence of injury.

Reseller and retailer claimants must submit detailed evidence of injury, and may not rely on the presumptions of injury utilized in refund cases involving refined petroleum products. *See Tarricone*, 15 DOE at 88,896. They can, however, use econometric evidence of the type employed in the OHA Report on Stripper Well Overcharges. *See* 6 Fed. Energy Guidelines ¶ 90,507. Applicants who executed and submitted a valid waiver pursuant to one of the escrows established in the Settlement Agreement have waived their rights to apply for crude oil refunds under Subpart V. *See Boise Cascade Corp.*, 16 DOE ¶ 85,214 at 88,411, *reconsideration denied*, 16 DOE ¶ 85,494 (1987); *Sea-Land Service, Inc.*, 16 DOE ¶ 85,496 at 88,991 n.1 (1987).

Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the crude oil violation amounts involved in this determination ($29,300,785) by the total consumption of petroleum products in the United States during the period of price controls (2,020,997,335,000 gallons). *See Mountain Fuel*, 14 DOE at 88,868. This yields a volumetric refund amount of $0.0000144962 per gallon.[6]

Refund applications submitted pursuant to this Decision must be postmarked no later than October 31, 1989, the deadline established in *World Oil Co.*, 17 DOE ¶ 85,568 (1988). As we stated in previous Decisions, a crude oil refund applicant will be required to submit only one application for crude oil overcharge funds. *See Allerkamp*, 17 DOE at 88,176. Any party that has previously submitted a refund application in the Subpart V crude oil refund proceedings need not file another application; that application will be deemed to be filed in all crude oil proceedings finalized to date. Applicants may be required to submit additional information to document their refund claims for these future amounts. Notice of any additional amounts available in the future will be published in the **Federal Register**.

To apply for a crude oil refund, a claimant should submit an Application for Refund. The application should contain all of the following information:

(1) Identifying information including the applicant's name, address, and social security number or employer identification number, an indication whether the applicant is a corporation, the name and telephone number of a person to contact for any additional information, and the name and address of the person who should receive the refund check;

(2) A short description of the applicant's business and how it used petroleum products. If the applicant did business under more than one name, or a different name during the period of price controls, the applicant should list these names;

(3) If the applicant's firm is owned by another company, or owns other companies, a list of those other companies' names and their relationship to the applicant's firm;

(4) A statement identifying the petroleum products which the applicant purchased during the period August 19, 1973, through January 27, 1981, the number of gallons of each product purchased, and the total number of gallons for all products purchased on which the applicant bases its claim;

(5) An explanation of how the applicant obtained its purchase volume figures and an explanation of its method of estimation if the applicant used estimates to determine its purchase volumes;

[6] The total volumetric refund amount approved in all proceedings finalized prior to and including *Shell Oil* was $0.0009442315. *Shell Oil*, 17 DOE at 88,406. When the volumetric amount approved in *World Oil Co., New York Petroleum, Inc.*, 18 DOE ¶ 85,435 (1988), and this Decision is added to that amount, the current total per-gallon refund is $0.0009623945. This volumetric refund amount will be increased as additional crude oil violation amounts are received in the future.

(6) A statement that neither the applicant, its parent firm, affiliates, subsidiaries, successors nor assigns has waived any right it may have to receive a refund in these cases (i.e., by having executed and submitted a valid waiver pursuant to any one of the escrow accounts established pursuant to the Settlement Agreement in the Stripper Well Exemption Litigation);

(7) If the applicant is not an end-user whose business is unrelated to the petroleum industry, a showing that the applicant was injured by the alleged overcharges (i.e., that the applicant did not pass through the overcharges to its own customers); and

(8) If the applicant is a regulated utility, a certification that it will notify the appropriate regulatory authority of any refund received and that it will pass on the entirety of its refund to its retail customers.

All applications should be typed or printed and clearly labelled "Application for Crude Oil Refund." Each applicant must submit an original and one copy of the application, which should be mailed to the following address: Subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Although the applicant need not use any special application form to apply for crude oil refund, a suggested form has been prepared by the OHA and may be obtained by sending a written request to the address listed above.

B. Payments to the States and Federal Government

Under the terms of the MSRP, the remaining 80 percent of the $35,483,269 ($29,300,785 in principal plus $6,182,544 in interest) involved in this Decision, or $28,386,663, should be disbursed in equal shares to the states and federal government for indirect restitution. Accordingly, we will direct the DOE's Office of the Controller to segregate $28,386,663 and transfer one-half of that amount, or $14,193,331.50, into an interest-bearing subaccount for the states, and one-half into an interest-bearing subaccount for the federal government. In the near future, we will issue a Decision and Order directing the DOE's Office of the Controller to make the appropriate disbursements to the individual states from their respective subaccount. This future Order is necessary to improve our ability to track the various disbursements to the states. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Settlement Agreement. When disbursed, these funds will be subject to the same limitations and reported requirements as all other crude oil monies received by the states under the Settlement Agreement.

It is therefore ordered That:

(1) Applications for Refund from the alleged crude oil overcharge funds remitted by Amorient Petroleum Company, California, Salomon, Inc., Coral Petroleum, Inc., International Crude Corporation, and Conoco Inc. may now be filed.

(2) All applications submitted pursuant to paragraph (1) above must be filed in duplicate and postmarked no later than October 31, 1989.

(3) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller, Department of Energy, shall take all steps necessary to transfer, pursuant to paragraphs (4), (5), and (6) below, all of the funds from the following subaccounts:

Amorient Petroleum Company, California, Account No. 940X00168Z
Salomon, Inc., Account No. 6COX00249Z
Coral Petroleum, Inc., Account No. 650X00320Z
International Crude Corporation, Account No. 6AOX00327Z
Conoco Inc., Account No. RCOA00002Y.

(4) The Director of Special Accounts and Payroll shall transfer $14,193,331.50 of the funds obtained pursuant to paragraph (3) above, plus interest which accrues on that amount from December 31, 1988 to the date of transfer into the subaccount denominated "Crude Tracking-States," Number 999DOE003W.

(5) The Director of Special Accounts and Payroll shall transfer the same amount of funds as that indicated in paragraph (4) above into the subaccount denominated "Crude Tracking-Federal," Number 999DOE002W.

(6) The Director of Special Accounts and Payroll shall transfer $7,096,666 of the funds obtained pursuant to paragraph (3) above, plus interest which accrues on that amount from December 31, 1988 to the date of transfer, into the subaccount denominated "Crude Tracking-Claimants 2," Number 999DOE008Z.

George B. Breznay,
Director, Office of Hearings and Appeals.
Date: February 3, 1989.

[FR Doc. 89-3112 Filed 2-8-89; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59866; FRL-3517]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984 (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of nine such PMN(s) and provides a summary of each.

DATES: Close of Review Periods:

Y 89-37, 89-38, 89-39—January 1, 1989.
Y 89-40—January 4, 1989.
Y 89-41—January 5, 1989.
Y 89-45—January 11, 1989.
Y 89-46, 89-47, 89-48—January 23, 1989.

FOR FURTHER INFORMATION CONTACT: Lawrence Culleen, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m.,

Monday through Friday, excluding legal holidays.

Y 89–37

Manufacturer. Confidential.
Chemical. (G) Polyester.
Use/Production. (S) Reactant for a polymer adhesive raw material. Prod. range: 45,454–113,636 kg/yr.

Y 89–38

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Saturated polyester resin.
Use/Production. (S) Low profile additive for sheet molding compound. Prod. range: Confidential.

Y 89–39

Manufacturer. Confidential.
Chemical. (G) Hydroxy functional acrylic resin.
Use/Production. (S) Coatings. Prod. range: Confidential.

Y 89–40

Manufacturer. Minnesota Mining & Manufacturing Co., 3M.
Chemical. (G) Arylalkyl polyester diol.
Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

Y 89–41

Manufacturer. Minnesota Mining & Manufacturing Co., 3M.
Chemical. (G) Aromatic polyester urethane.
Use/Production. (G) Binder resin. Prod. range: Confidential.

Y 89–45

Manufacturer. Confidential.
Chemical. (S) Phenol; formaldehyde; sodium hydroxide; and potassium hydroxide.
Use/Production. (S) Thermosetting binder for plywood. Prod. range: Confidential.

Y 89–46

Manufacturer. Sicpa Securink Corporation.
Chemical. (G) Intaglio varnish.
Use/Production. (S) Manufacture of printing inks. Prod. range: Confidential.

Y 89–47

Manufacturer. Sicpa Securink Corporation.
Chemical. (G) Alkyd resin.
Use/Production. (S) Manufacture of printing inks. Prod. range: Confidential.

Y 89–48

Manufacturer. Sicpa Securink Corporation.
Chemical. (G) Intaglio varnish.
Use/Production. (S) Manufacture of printing inks. Prod. range: Confidential.

Date: January 13, 1989.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 89–3087 Filed 2–8–89; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–51725; FRL–3517–2]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of forty-two such PMNs and provides a summary of each.

DATES: Close of Review Periods:

P 89–136, 89–137, 89–138, 89–139, 89–140, 89–141, 89–142, 89–143, 89–144, 89–145, 89–146, 89–147, 89–148, 89–149, 89–150, 89–151, 89–152, 89–153, 89–154, 89–155, 89–156, 89–157, 89–158, 89–159, 89–160, 89–161, 89–162, 89–163, 89–164, 89–165—December 25, 1988.

P 89–166—March 4, 1989.

P 89–167—January 29, 1989.

P 89–171—March 6, 1989.

P 89–172—March 5, 1989.

P 89–173, 89–174—March 7, 1989.

P 89–175, 89–176, 89–177, 89–178—March 11, 1989.

P 89–179, 89–180—March 12, 1989.

Written comments by:

P 89–136, 89–137, 89–138, 89–139, 89–140, 89–141, 89–142, 89–143, 89–144, 89–145, 89–146, 89–147, 89–148, 89–149, 89–150, 89–151, 89–152, 89–153, 89–154, 89–155, 89–156, 89–157, 89–158, 89–159, 89–160, 89–161, 89–162, 89–163, 89–164, 89–165—November 25, 1988.

P 89–166—February 2, 1989.

P 89–167—December 30, 1988.

P 89–171—February 4, 1989.

P 89–172—February 3, 1989.

P 89–173, 89–174—February 5, 1989.

P 89–175, 89–176, 89–177, 89–178—February 9, 1989.

P 89–179, 89–180—February 10, 1989.

ADDRESS: Written comments, identified by the document control number "[OPTS–51725]" and the specific PMN number should be sent to: Document Control Office (TS–790), Office of Toxic Substances, Environmental Protection Agency, 401 M Street SW., Room 201 East Tower, Washington, DC 20460 (202) 382–3532.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB–44, 401 M Street SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 89–136

Manufacturer. Ethyl Corporation.
Chemical. (S) Octenes.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 10 g/kg species(Rat). Acute dermal toxicity: LD50 > 10 g/kg species(Rabbit). Inhalation toxicity: LC50 33,400 PPM 4 hr. species(Rat).

P 89–137

Manufacturer. Ethyl Corporation.
Chemical. (S) Decenes.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 10 g/kg species(Rat). Acute dermal toxicity: LD50 > 10 g/kg species(Rabbit). Inhalation toxicity: LC50 33,400 PPM 4 hr. species(Rat).

P 89–138

Manufacturer. Ethyl Corporation.
Chemical. (S) Dodecenes.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 10 g/kg species(Rat). Acute dermal toxicity: LD50 > 10 g/kg species(Rabbit). Inhalation toxicity: LC50 33,400 ppm species(Rat).

P 89–139

Manufacturer. Ethyl Corporation.
Chemical. (S) Tetradecenes.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 10 g/kg species (Rat). Acute dermal toxicity: LD 50 > 10 g/kg species (Rabbit). Inhalation toxicity: LC50 33, 400 ppm 4 hr species(Rat).

P 89–140

Manufacturer. Ethyl Corporation.
Chemical. (S) Hexadecenes.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential
Toxicity Data. Acute oral toxicity: LD50 > 10 g/kg species(Rat). Acute dermal toxicity: LD50 > 10 g/kg species(Rabbit). Inhalation toxicity: LC50 33,400 ppm 4 hr. species(Rat).

P 89–141

Manufacturer. Ethyl Corporation.
Chemical. (S) Octadecenes.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 10 g/kg species(Rat). Acute dermal toxicity: LD50 > 10 g/kg species(Rabbit). Inhalation toxicity: LC50 33,400 ppm 4 hr. species(Rat).

P 89–142

Manufacturer. Ethyl Corporation.
Chemical. (S) Eicosenes.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 10 g/kg species(Rat). Acute dermal toxicity: LD50 > 10 g/kg species(Rabbit). Inhalation toxicity: LC50 33,400 ppm 4 hr. species(Rat).

P 89–143

Manufacturer. Ethyl Corporation.
Chemical. (S) Docosenes.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 10 g/kg species(Rat). Acute dermal toxicity: LD50 > 10 g/kg species(Rabbit). Inhalation toxicity: LC50 33,400 ppm 4 hr. species(Rat).

P 89–144

Manufacturer. Ethyl Corporation.
Chemical. (S) Tetracosenes.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential
Toxicity Data. Acute oral toxicity: LD50 > 10 g/kg species(Rat). Acute dermal toxicity: LD50 > 10 g/kg species(Rabbit). Inhalation toxicity: LC50 33,400 ppm 4 hr. species(Rat).

P 89–145

Manufacturer. Ethyl Corporation.
Chemical. (S) Hexacosenes.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential
Toxicity Data. Acute oral toxicity: LD50 > 10 g/kg species(Rat). Acute dermal toxicity: LD50 > 10 g/kg species(Rabbit). Inhalation toxicity: LC50 33,400 ppm 4 hr. species(Rat).

P 89–146

Manufacturer. Ethyl Corporation.
Chemical. (S) Octacosenes.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 10 g/kg species(Rat). Acute dermal toxicity: LD50 > 10 g/kg species(Rabbit). Inhalation toxicity: LC50 33,400 ppm 4 hr. species(Rat).

P 89–147

Manufacturer. Ethyl Corporation.
Chemical. (S) Triacontenes.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 10 g/kg species(Rat). Acute dermal toxicity: LD50 > 10 g/kg species(Rabbit). Inhalation toxicity: LC50 33,400 ppm 4 hr. species(Rat).

P 89–148

Manufacturer. Ethyl Corporation.
Chemical. (S) Octanes.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 10 g/kg species(Rat). Acute dermal toxicity: LD50 > 10 g/kg species(Rabbit). Inhalation toxicity: LC50 33,400 ppm 4 hr. species(Rat).

P 89–149

Manufacturer. Ethyl Corporation.
Chemical. (S) Decanes.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 10 g/kg species(Rat). Acute dermal toxicity: LD50 > 10 g/kg species(Rabbit). Inhalation toxicity: LC50 33,400 ppm 4 hr. species(Rat).

P 89–150

Manufacturer. Ethyl Corporation
Chemical. (S) Dodecanes
Use/Production. (G) Chemical intermediate. Prod. range: Confidential
Toxicity Data. Acute oral toxicity: LD50 > 10 g/kg species(Rat). Acute dermal toxicity: LD50 > 10 g/kg species(Rabbit). Inhalation toxicity: LC50 33,400 ppm species(Rats).

P 89–151

Manufacturer. Ethyl Corporation.
Chemical. (S) Tetradecanes.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 10 g/kg species(Rat). Acute dermal toxicity: LD50 > 10 g/kg species(Rabbit). Inhalation toxicity: LC50 33,400 ppm 4 hr. species(Rats).

P 89–152

Manufacturer. Ethyl Corporation.
Chemical. (S) Hexadecanes.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 10 g/kg species(Rat). Acute dermal toxicity: LD50 > 10 g/kg species(Rabbit). Inhalation toxicity: LC50 33,400 ppm 4 hr. species(Rats).

P 89–153

Manufacturer. Ethyl Corporation.
Chemical. (S) Octadecanes
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 10 g/kg species(Rat). Acute dermal toxicity: LD50 > 10 g/kg species(Rabbit). Inhalation toxicity: LC50 33,400 ppm 4 hr. species(Rats).

P 89–154

Manufacturer. Ethyl Corporation.
Chemical. (S) Eicosanes.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 10 g/kg species(Rat). Acute dermal toxicity: LD50 > 10 g/kg species(Rabbit). Inhalation toxicity: LC50 33,400 ppm 4 hr. species(Rats).

P 89–155

Manufacturer. Ethyl Corporation.
Chemical. (S) Docosanes.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 10 g/kg species(Rat). Acute dermal toxicity: LD50 > 10 g/kg species(Rabbit). Inhalation toxicity: LC50 33,400 ppm 4 hr. species(Rats).

P 89–156

Manufacturer. Ethyl Corporation.
Chemical. (S) Tetracosanes.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 10 g/kg species(Rat). Acute dermal toxicity: LD50 > 10 g/kg species(Rabbit). Inhalation toxicity: LC50 33,400 ppm 4 hr. species(Rats).

P 89–157

Manufacturer. Ethyl Corporation.
Chemical. (S) Hexacosanes.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 10 g/kg species(Rat). Acute dermal toxicity: LD50 > 10 g/kg species(Rabbit). Inhalation toxicity: LC50 33,400 ppm 4 hr. species(Rats).

P 89–158

Manufacturer. Ethyl Corporation.
Chemical. (S) Octacosanes.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 10 g/kg

species(Rabbit). Inhalation toxicity: LC50 33,400 ppm 4 hr. species(Rats).

P 88-159

Manufacturer. Ethyl Corporation.
Chemical. (S) Triacontanes.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 10 g/kg species(Rat). Acute dermal toxicity: LD50 > 10 g/kg species(Rabbit). Inhalation toxicity: LC50 33,400 ppm 4 hr. species(Rats).

P 88-160

Manufacturer. Ethyl Corporation.
Chemical. (S) Tetradecenes.
Use/Production. (G) Component. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 10 g/kg species(Rat). Acute dermal toxicity: LD50 > 10 g/kg species(Rabbit). Inhalation toxicity: LC50 33,400 ppm 4 hr. species(Rats).

P 88-161

Manufacturer. Ethyl Corporation.
Chemical. (S) Docosenes.
Use/Production. (G) Component. Prod. range: Confidential.

P 88-162

Manufacturer. Ethyl Corporation.
Chemical. (S) Tetracosenes.
Use/Production. (G) Component. Prod. range: Confidential.

P 88-163

Manufacturer. Ethyl Corporation.
Chemical. (S) Hexacosenes.
Use/Production. (G) Component. Prod. range: Confidential.

P 88-164

Manufacturer. Ethyl Corporation.
Chemical. (S) Octacosenes.
Use/Production. (G) Component. Prod. range: Confidential.

P 88-165

Manufacturer. Ethyl Corporation.
Chemical. (S) Triacontenes.
Use/Production. (G) Component. Prod. range: Confidential.

P 88-166

Manufacturer. Confidential.
Chemical. (G) Modified polyether carbodiimide.
Use/Production. (G) Crosslinking agent for carboxylated polymers. Prod. range: Confidential.

P 88-167

Manufacturer. Confidential.
Chemical. (G) Poly(ester-imide).
Use/Production. (G) Industrially used chemical with an open use. Prod. range: 1,500–6,000 kg/yr.

P 88-171

Importer. Confidential.
Chemical. (S) Benzenepentanol, gamma-methyl-; 2-methyl-5-phenyl-pentanol.
Use/Production. (G) Dispersive. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species(Rat). Eye irritation: Moderate species(Rabbit). Skin irritation: Moderate species(Rabbit). Mutagenicity: Negative. Skin sensitization: Negative species (guinea pig).

P 88-172

Manufacturer. Sanncor Industries, Inc.
Chemical. (S) 2-Methyl-omega-hydroxy-poly(oxy-1,4)butandiyl polymer with 3-hydroxy-2-hydroxymethyl-2-methyl propanic acid, meta-tetramethyloxylene diisocyanate and 3-amino methyl-3,5,5-trimethyl cyclohexylamine.
Use/Production. (G) Fabric coating. Prod. range: Confidential.

P 88-173

Manufacturer. Monsanto Company.
Chemical. (G) Modified methylated, butylated-melamine/formaldehyde resin blocked alkylbenzene sulfonic acid.
Use/Production. (G) Component of thermosetting paint formulations. Prod. range: Confidential.

P 88-174

Importer. Huls America Inc.
Chemical. (G) Alkyd resin.
Use/Import. (S) Liquor ingredient. Import range: Confidential.

P 88-175

Manufacturer. Confidential.
Chemical. (G) Hydroxy functional acrylic copolymer.
Use/Production. (S) Coating. Prod. range: Confidential.

P 88-176

Manufacturer. Confidential.
Chemical. (G) Acrylic resin.
Use/Production. (S) Coating. Prod. range: Confidential.

P 88-177

Manufacturer. Confidential.
Chemical. (G) Aqueous dispersion of polyurethane urea.
Use/Production. (S) Component of industrial adhesives. Prod. range: Confidential.

P 88-178

Manufacturer. Confidential.
Chemical. (G) Aqueous dispersion of polyurethane urea.
Use/Production. (S) Component of industrial adhesives. Prod. range: 203,500–407,000 kg/yr.

P 88-179

Manufacturer. Confidential.
Chemical. (G) Carboxylic acid, metal salt.
Use/Production. (G) Polymerization catalyst. Prod. range: 6,000–40,000 kg/yr.

P 88-180

Manufacturer. Confidential.
Chemical. (G) Carboxylic acid, metal salt.
Use/Production. (S) Coatings. Prod. range: Confidential.

Date: January 31, 1989.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 89-3068 Filed 2-8-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51724; FRL-3517-4]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of seven such PMNs and provides a summary of each.

DATES: Close of Review Periods:

P 89-231—March 27, 1989.
P 89-232, 89-233—March 29, 1989.
P 89-234, 89-235, 89-236—April 2, 1989.
P 89-238—March 27, 1989.
Written comments by:
P 89-231—February 25, 1989.
P 89-232, 89-233—February 27, 1989.
P 89-234, 89-235, 89-236—March 3, 1989.
P 89-238—February 25, 1989.

ADDRESS: Written comments, identified by the document control number "[OPTS-51724]" and the specific PMN number should be sent to: Document Control Office (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M Street SW., Room 201 East Tower, Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Lawrence Culleen, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 89-231

Importer. Pfister Chemical, Inc.
Chemical. (S) 3-diazo-3, 4-dihydro-4-oxo-1-naphthalene-sulfonic acid, sodium salt monohydrate.
Use/Import. (S) Intermediate for the production of photo sensitiers used in microelectronics industry. Import range: 3,000 kg/yr.

P 89-232

Importer. Confidential.
Chemical. (G) Brominated aromatic carbonate oligomer.
Use/Import. (S) Flame retardant for plastics. Import range: Confidential.

P 89-233

Importer. Confidential.
Chemical. (G) Brominated aromatic carbonate oligomer.
Use/Import. (S) Flame retardant for plastics. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 15,000 kg/yr species (Rat). Eye irritation: Slight species (Rabbit). Skin irritation: Negligible species (Rabbit).

P 89-234

Importer. GE Plastics.
Chemical. (G) Oligomeric phosphate ester.
Use/Import. (S) Flame retardent for thermoplastic resin. Import range: Confidential.

P 89-235

Manufacturer. Confidential.
Chemical. (S) Tall oil fatty acids; pentaerythritol; cyclohexanedimethanol; ethylene glycol; benzoic acid; chlorendicanhydride; maleic anhydride.
Use/Import. (S) Polymer used as the major vehicle component of a protective coating formulated use on metal substrates. Prod. range: 35,121-90, 718 kg/yr.

P 89-236

Importer. Harvey E. Giss and Associates.
Chemical. (S) 4-Dibenzylamino-2-methyl benzldehyde-diphenyl hydrazone.
Use/Import. (S) Electrographic photoconductor. Import range: 1,000–5,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (Rat). Eye irritation: None species (Rabbit). Skin irritation: Negligible species (Guinea pig). Mutagenicity: Negative. Skin sensitization: Negative species (Guinea pig). Phototoxicity: Negative species (Guines pig).

P 89-238.
Manufacturer. Confidential.
Chemical. (G) Polyester.
Use/Production. (G) Dispersing agent. Prod. range: Confidential.

Date: January 18, 1989.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 89-3069 Filed 2-8-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Travel Reimbursement Program October 1, 1988–December 31, 1988

Summary Report

Total Number of Sponsored Events	6
Total Number of Sponsoring Organizations	6
Total Number of Commissioners/ Employees Attending	13
Total Amount of Reimbursement Expected:	
Transportation	$3,140.35
Subsistence	2,450.30
Other expenses	503.60
Total	6,103.25

Individual Event Reports Attached. Amount of Reimbursement Shown May be Estimated.

Individual Event Report

Sponsoring Organization

WSBK-TV/Gillett Communications of Boston, Inc., 83 Leo Brimingham Parkway, Boston, Massachusetts 02136

Date of the Event

October 13, 1988

Description of the Event

To participate as panel members at the National Broadcast Association for Community Affairs Convention—1988

Commissioners Attending

None

Other Employees Attending

Diane Killory—General Counsel
Richard Bozzelli—Special Assistant—Office of General Counsel

Amount of Reimbursement

Transportation	$297.00
Subsistence	157.50
Other expenses	71.60
Total	526.10

Individual Event Report

Sponsoring Organization

SLACK Incorporated, 6900 Grove Road, Thorofare, New Jersey 08086

Date of the Event

October 5, 1988

Description of the Event

To speak on Federal, Legal and Regulatory Issues at the Atlantic Cable Show—1988

Commissioners Attending

None

Other Employees Attending

Lisa Hook—Legal Assistant—Office of the Chairman

Amount of Reimbursement

Transportation	$131.35
Subsistence	49.50
Other expenses	11.00
Total	191.85

Individual Event Report

Sponsoring Organization

California Cable Television Association, 4341 Piedmont Avenue, Oakland, California 94611

Date of the Event

December 7–9, 1988

Description of the Event

To participate in the 1988 Western Cable Show

Commissioners Attending

None

Other Employees Attending

Renee Licht—Attorney Advisory—Mass Media Bureau
John Wong—Electronics Engineer—Mass Media Bureau
Ronald Parver—Supv. Attorney—Mass Media Bureau
William Johnson—Deputy Chief—Mass Media Bureau
John Haring—Chief—Office of Plans and Policy

Amount of Reimbursement

Transportation	$1,870.00
Subsistence	1,1411.89
Other expenses	247.54
Total	3,529.44

Individual Event Report

Sponsoring Organization

Bellcore—Bell Communications Research, 6200 Route 53, Lisle, Illinois 60532

Date of the Event

November 21–22, 1988

Description of the Event

To participate in Bellcore's Telecommunications Industry Perspectives 88 Symposium

Commissioners Attending

None

Other Employees Attending

John Haring—Chief—Office of Plans and Policy

Amount of Reimbursement

Transportation	$417.00
Subsistence	118.00
Other expenses	0.00
Total	535.00

Individual Event Report

Sponsoring Organization

EIC/Intelligence, Inc., 48 West 38th Street, New York, New York 10018

Date of the Event

October 4, 1988

Description of the Event

To participate at the Tele/Scope Sixth Annual Telecommunications Forum

Commissioners Attending

None

Other Employees Attending

Peter K. Pitsch—Chief of Staff—Office of the Chairman

Amount of Reimbursement

Transportation	$116.00
Subsistence	0.00
Other expenses	40.00
Total	156.00

Individual Event Report

Sponsoring Organization

United States Telephone Association, 900 19th Street, NW., Suite 800, Washington, DC 20006–2105

Date of the Event

October 10–12, 1988

Description of the Event

To participate and speak at USTA's 91st Annual Convention held in New York City

Commissioners Attending

Dennis R. Patrick—Chairman

Other Employees Attending

Peter K. Pitsch—Chief of Staff—Office of the Chairman
James D. Schlichting—Legal Assistant—Office of the Chairman

Amount of Reimbursement

Transportation	$318.00
Subsistence	713.50
Other expenses	133.36
Total	$1,164.86

Donna R. Searcy,
Secretary.

[FR Doc. 89–3047 Filed 2–6–89; 8:45 am]
BILLING CODE 6712–01–M

Applications for Consolidated Hearing; Triple-S Communications et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

I.

Applicant, City and State	File No.	MM Docket No.
A. Edward C. Sugg, Rebecca J. Sugg, Michael E. Sugg d/b/a Triple-S Communications, Loris, SC.	BPH-870915ME	88–586
B. Robert L. Rebon, Loris, SC.	BPH-87091 8MA	
C. Drake Davis Hereford, Loris, SC.	BPH-87091 8MT	
D. Loris Radio Limited Partnership, Loris, SC.	BPH-87091 8MW	
E. Augusta Radio Fellowship Institute, Inc. d/b/a South Carolina Radio Fellowship, Loris, SC.	BPED-87091 8NH	

Issue Heading and Applicant(s)

1. Air Hazard, B
2. Comparative, A,B,C,D,E
3. Ultimate, A,B,C,D,E

II.

Applicant, City/State	File No.	MM Docket No.
A. C. Ray Helton, Green Valley, AZ.	BPH-871022MH	88–615
B. Abundant Life Ministries, Green Valley, AZ.	BPH-871022MK	
C. Crystal Sets, Inc., Green Valley, AZ.	BPH-871022MD (Previously Dismissed).	

Issue Heading and Applicant(s)

1. Character/ Misrepresentation, A
2. Comparative, A, B
3. Ultimate, A, B

III.

Applicant, City and State	File No.	MM Docket No.
A. Voice of Calvary Educational Ministries, Inc., Roanoke, VA.	BPED-830419AH	88–585
B. Unity of Roanoke Valley, Salem, VA.	BPED-830830AE	

Issue Heading and Applicant(s)

1. Environmental Impact, B
2. 307(b)-Noncommercial Educational, A, B
3. Contingent Comparative-Noncommercial Educational, A, B
4. Ultimate, A, B

IV.

Applicant, City and State	File No.	MM Docket No.
A. Marilyn S. & James W. Cobb, Nappanee, IN.	BPH-871120MF	88–586
B. Nappanee Broadcasting Corp., Nappanee, IN.	BPH-871022MG	
C. Andrew Lawrence Banas, Nappanee, IN.	BPH-871022MK	

Issue Heading and Applicant(s)

1. Comparative, All
2. Ultimate, All

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,
Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 89–3005 Filed 2–6–89; 8:45 am]
BILLING CODE 6712–01–M

Applications for Consolidated Hearing; Jack A. Tucey et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

I.

Applicant, City and State	File No.	MM Docket No.
A. Jack A. Tucey, Avalon, CA.	BPH-880521ME	89–9
B. Bay Broadcasting Systems, Avalon, CA.	BPH-880529MC	
C. Thomas Quinn Turner, III, Avalon, CA.	BPH-880529MD	
D. Crescent Rainbow Limited Partnership, Avalon, CA.	BPH-880530MG	
E. VLM Enterprises, Inc., Avalon, CA.	BPH-880530MI	

Issue Heading and Applicant(s)

1. Environmental, D & E
2. Comparative, All Applicants
3. Ultimate, All Applicants

II.

Applicant, City and State	File No.	MM Docket No.
A. Smith Broadcasting, Inc., South Pittsburg, TN.	BPH870629NL	89–5
B. Tennessee Broadcast Group Limited Partnership, South Pittsburg, TN.	BPH870630MO	
C. James V. Long, South Pittsburg, TN.	BPH870630MR	
D. Eaton P. Govan, Jr., South Pittsburg, TN.	BPH870630ND	

Issue Heading and Applicant(s)

1. Air Hazard, B
2. Financial Qualifications, C
3. Comparative, A–D
4. Ultimate, A–D

III.

Applicant, City and State	File No.	MM Docket No.
A. Impulse, Inc., Salisbury, MD.	BPH–880507ML	89–1
B. Thompson's Radio Limited Partnership, Salisbury, MD.	BPH–880507MN	
C. Salisbury FM Broadcasting Company, Salisbury, MD.	BPH–880507MP	
D. First Minority Broadcasters of Salisbury, Incorporated, Salisbury, MD.	BPH–880507MR	
E. William H. Mallery d/b/a Salisbury Broadcasting, Salisbury, MD.	BPH–880507MT	
F. Bruce D. Blanchard, Salisbury, MD.	BPH–880507NK	
G. Connor Broadcasting Corp., Salisbury, MD.	BPH–880507QE	
H. Marlene Powell Levering Tr/as Salisbury Broadcasting Company, Salisbury, MD.	BPH–880507MM (Dismissed Previously).	
I. Gallus Radio Broadcasting, Inc., Salisbury, MD.	BPH–880507MS (Dismissed Previously).	

Issue Heading and Applicant(s)

1. Air Hazard, D
2. Comparative, All
3. Ultimate, All

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the isues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,
Assistant chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 89–3006 Filed 2–6–89; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL HOME LOAN BANK BOARD

[No. 89–103]

Power of Receiver and Conduct of Receiverships; Repurchase Agreements; Western Savings and Loan Association

Date: February 2, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The Federal Home Loan Bank Board ("Board"), by Resolution No. 88–1575, dated December 29, 1988, made it clear that the protections afforded those dealing with insured savings and loan associations in "repos" of government and mortgage-backed securities by amendments to the Bankruptcy Code by Resolution No. 84–572 would also be afforded to securities dealers and others engaged in repo transactions with Western Savings and Loan Association, Phoenix, Arizona ("Western"). Thereafter, the Board found that paragraph 3 of Resolution No. 88–1575, which was inapplicable to Western, was inadvertently included. Accordingly, this new Resolution deletes Paragraph 3 and corrects the numbered paragraphs following Paragraph 2. In addition, the definition of "Repos Assets" inadvertently included "whole loan mortgages and interests therein" and this phase is also deleted. In view of possible reliance on this language, however, the amendment of the

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definition of "Repo Assets" will not be immediately effective.

EFFECTIVE DATE: February 2, 1989. The definition of "Repo Assets" will become effective March 27, 1989.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Hayes, Deputy General Counsel for FSLIC, (202) 377-6428; or Debra Buie, Attorney, Office of General Counsel, (202) 377-6851; Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Board has adopted the following resolution:

Whereas, The Federal Home Loan Bank Board ("Board") has considered the particular importance of Repos (as defined below) in providing liquidity and funding for Western Savings and Loan Association, a Arizona chartered institution ("Western"), the accounts of which are insured by the Federal Savings and Loan Insurance Corporation ("FSLIC"), and the potential disruption to the markets in such Repos that could arise as a result of a receivership, conservatorship, or similar proceeding with respect to Western, which disruption could have additional negative effects on the cost of the funding and liquidity of Repo Assets (as defined below) for other FSLIC insured institutions and institutions chartered by the Board; and

Whereas, The Board as operating head of the FSLIC has decided, pursuant to its powers under section 5(d)(11) of the Home Owners Loan Act of 1933, as amended, and section 406(c)(3) of the National Housing Act, as amended, to adopt the following resolutions.

Now, Therefore, the Board resolves as follows: 1. The Board commits that it shall use its powers under the National Housing Act to ensure that any receivership (and to the fullest extent permitted by law, any conservatorship or similar proceeding) with respect to Western shall be conducted solely by the FSLIC (and not the Arizona Superintendent of Banks) as receiver, conservator or similar official ("Receiver") under Federal law and regulations, Board Resolution No. 84-572, and these resolutions.

2. The Receiver will perform all of Western's obligations under Repos outstanding at the time of its appointment according to their then existing terms and conditions (including payment and margin maintenance terms) and will perform all obligations under any New Repos (as defined below) in accordance with their terms and conditions.

3. The Receiver shall have the power to renew, extend, to modify any Repo, and to enter into new Repos (collectively, "New Repos"), but may only exercise such power with the consent of the Repo counterparty.

4. In any termination of the receivership of Western or disposition of Western's liabilities under any Repo or New Repo, the Board and the Receiver shall provide for the performance of obligations and the exercise of remedies under Repos and New Repos in a manner consistent with Board Resolution No. 84-572 and these resolutions.

5. Notwithstanding any other provision of law, regulation, or these resolutions, if the Receiver does not perform all such obligations in accordance with their terms, the counterparty to such Repos or New Repos shall have the absolute right to exercise all if its rights and remedies with respect to such Repos and New Repos (including liquidation of Repo Assets).

6. In the event of a Cross-Default (as defined below), a counterparty to a Repo or New Repo shall have the absolute right to accelerate the repurchase and other obligations thereunder (without notice to the Receiver) and exercise all of its rights and remedies with respect to such Repos and New Repos (including liquidation of Repo Assets to satisfy such accelerated obligations).

7. The failure or delay of a counterparty to exercise any of its rights or remedies upon a failure to perform or a Cross-Default shall not constitute a waiver of any rights or remedies in connection therewith.

8. In connection with a Repo or New Repo counterparty's exercise of remedies upon failure to perform or a Cross-Default, neither the Board nor the Receiver shall object to or seek to oppose or stay such exercise or assert or seek to assert any adverse claims (including stop-transfer instructions) against the Repo Assets or any holder or transferee thereof in connection therewith.

9. The Receiver may enforce its claim to any excess received by a counterparty upon the exercise of such remedies over the stated repurchase price (including interest to the date of liquidation of the Repo Assets) and reasonable expenses of liquidation; *provided,* however, that nothing herein shall be construed to limit any set-off rights that such counterparty shall have against any such excess.

10. Notwithstanding any provision of law or regulation, neither the Board nor the Receiver shall seek to avoid or recover any payment or transfer of Repo Assets or funds made in connection with any Repo or New Repo or the liquidation thereof as a preferential transfer or fraudulent conveyance (other than any fraudulent conveyance made by Western, voluntarily or involuntarily, with actual intent to hinder, delay or defraud its creditors; provided, however, any tranferee of such a transfer that takes for value and in good faith has a lien on or may retain any interests transferred, and shall not be subject to a fraudulent conveyance claim in respect of such transfer, in each case to the extent that such transferee gave value to Western in exchange for such transfer and provided further that in no event shall the Board or the Receiver make any such fraudulent conveyance claim against any Repo Assets).

11. Nothing herein shall limit the power of the Board or the Receiver to make a claim against a counterparty (but not Repo Assets) based on such counterparty's fraud or failure to liquidate a Repo or a New Repo in a commercially reasonable manner. In light of the substantial volume of Western's Repos, the Board and the FSLIC hereby confirm that liquidation of Repo Assets over a period, not in excess of 90 days from the date of termination of a Repo or New Repo, would constitute a liquidation of a Repo or New Repo in a commercially reasonable time, and that the counterparty shall be entitled (but in the case of a Repo only from the proceeds of liquidation of Repo Assets or by way of set-off) to interest, at the contract rate, accruing during such period; *provided,* however, that a liquidation of Repo Assets at any point during such period or after a longer period of time shall not in and of itself constitute a commercially unreasonable time.

12. In connection with any Repo or New Repos, the Board and the FSLIC, in its corporate capacity, each irrevocably waives compliance by counterparties to Repos or New Repos with the FSLIC right or notice and purchase (12 CFR 563.B-2) and the contractual language required thereby, if applicable to any Repo Assets.

13. Nothing herein shall limit the exercise by a counterparty to a Repo or New Repo of its rights and remedies thereunder in reliance on the Board's Resolution No. 84-572, which Resolution shall continue in full force and effect; provided, however, that paragraphs 2, 4, 5, 6, 7, 8, 10, and 12, the proviso to paragraph 9, and the second sentence of paragraph 11 of these resolutions shall not apply to a termination of a Repo prior to the stated repurchase or maturity date therefor based solely on

the appointment of the Receiver for Western.

14. In recognition of the reliance counterparties to Repos and New Repos place and will place on Resolution No. 84-572 and these resolutions in continuing to renew and enter into Repos with Western, the Board intends itself, the FSLIC, in its corporate capacity, and the Receiver to be bound by Resolution No. 84-572 and these resolutions, and will not amend or rescind them without appropriate public notice of at least 45 days and any such amendment or rescission shall operate only prospectively.

"Cross Default" means, as to any counterparty to a Repo or New Repos, (a) the failure by Western or the Receiver to make any payment of funds or delivery of additional Repo Asset to any other Repo or New Repo counterparty when due, (b) the failure by Western or the Receiver to make any payment of funds or delivery of securities under any "securities contract" or "commodities contract" (each as defined in the Federal Bankruptcy Code), or interest rate exchange agreement, when due, or (c) such counterparty is unable to finance or sell under repo, on reasonable terms and conditions, any Repo Assets (whether due to market insecurity, a breach by the Board of its commitments hereunder, or otherwise).

"Repo Assets" means assets that are "liquid assets" under 12 CFR 523.10 or assets that would be so "liquid" but for their remaining term to maturity "mortgage-related securities" (as defined in section 3(a)(41) of the Securities Exchange Act of 1934).

"Repo" means an agreement, whether documented as a purchase and sale transaction or a secured loan transaction, by Western (or the Receiver, in the case of New Repos) pursuant to which Western or the Receiver transfers Repo Assets to a counterparty that is a registered broker-dealer (including a registered government securities broker-dealer) or an affiliate thereof, the Federal Home Loan Mortage Corporation, or (to the extent that Repo Assets are securities that are direct to obligations of or that are fully guaranteed as to principal and interest by the United States or any agency thereof, the Federal Home Loan Mortgage Corporation, or the Federal National Mortgage Association) a Federal Home Loan Bank, against the transfer of funds with a simultaneous agreement by the counterparty to retransfer such Repo Assets to Western or the Receiver on a date certain or on demand against the transfer of funds.

Resolved further, that these resolutions shall be effective immediately upon their adoption by the Board.

Resolved further, that the Secretary to the Board shall forward this resolution for publication in the **Federal Register.**

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-3100 Filed 2-8-89; 8:45 am]

BILLING CODE 6720-01-M

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Activities Under OMB Review

The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to revise currently approved information collection 3090-0121, Contractor's Report of Orders Received, GSA Forms 72 and 72A. This information is used by GSA to estimate requirements for the subsequent year, evaluate the effectiveness of the schedule, negotiate better prices on future contracts based on volume, and for special reports.

AGENCY: Office of Acquisition Policy (V), GSA.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC, 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), F Street at 18th NW., Washington, DC 20405.

Annual Reporting Burden: Firms responding, 5,962; responses, 20 per year; average hours per response, .264; burden hours, 32,204.

FOR FURTHER INFORMATION CONTACT: Ida M. Ustad, 202-566-1224.

Copy of Proposal: A copy of the proposal may be obtained from the Information Collection Management Branch (CAIR), Room 3014, GS Bldg., Washington, DC 20405, or by telephoning 202-535-7691.

Dated: February 1, 1989.

Emily C. Karam,

Director, Information Management Division (CAI).

[FR Doc. 89-3039 Filed 2-8-89; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88M-0259]

Abbott Laboratories; Premarket Approval of Murine® Sterile Saline Solution

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Abbott Laboratories, Columbus, OH, for premarket approval, under the Medical Device Amendments of 1976, of Murine® Sterile Saline Solution. The device is to be manufactured under an agreement with Paco Pharmaceutical Services, Inc., Lakewood, NJ, which has authorized Abbott Laboratories to incorporate information contained in its approved premarket approval application for the Charter Labs Nonpreserved Saline Solution. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of November 8, 1988, of the approval of the application.

DATE: Petitions for administrative review by March 13, 1989.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7940.

SUPPLEMENTARY INFORMATION: On July 28, 1988, Abbott Laboratories, Columbus, OH 43215, submitted to CDRH an application for premarket approval of Murine® Sterile Saline Solution. The device is indicated for use in the rinsing, heat disinfection, and storage of soft (hydrophilic) contact lenses. The application includes authorization from Paco Pharmaceutical Services, Inc., Lakewood, NJ 08701, to incorporate information contained in its approved premarket approval application for the Charter Labs Non-preserved Saline Solution.

On November 8, 1988, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH

based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ-460), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before March 13, 1989, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: February 1, 1989.

Walter E. Gundaker,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 89-3055 Filed 2-8-89; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of March 1989:

Name: National Advisory Council on Health Professions Education.

Date and Time: March 30–31, 1989, 9:00 a.m.

Place: Conference Room E, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open on March 30, 9:00 a.m.–12:00 noon.

Closed for Remainder of Meeting.

Purpose: The Council advises the Secretary with respect to the administration of programs of financial assistance for the health professions and makes recommendations based on its review of applications requesting such assistance. This also involves advice in the preparation of regulations with respect to policy matters.

Agenda: The open portion of the meeting will cover welcome and opening remarks, report of the Administrator, Health Resources and Services Administration, report of the Director, Bureau of Health Professions, financial management and legislative implementation update, and future agenda items. The meeting will be closed at 12:00 noon on March 30, 1989, for the remainder of the meeting for the review of grant applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C. Code, and the Determination by the Administrator, Health Resources and Services Administration, pursuant to Public Law 92-463.

Anyone requiring information regarding the subject Council should contact Mr. James M. Hoeven, Executive Secretary, National Advisory Council on Health Professions Education, Room 8C-22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-6880.

Agenda items are subject to change as priorities dictate.

Date: February 6, 1989.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 89-3092 Filed 2-8-89; 8:45 am]

BILLING CODE 4160-15-M

Public Health Service

Filing of Annual Reports of Federal Advisory Committees

Notice is hereby given that, pursuant to section 13 of Pub. L. 92-463, the Annual Reports for the following Office of the Assistant Secretary for Health Federal Advisory Committees have been filed with the Library of Congress:

Health Care Technology Study Section;
Health Services Research and Developmental Grants Review Committee;
National Advisory Council on Health Care Technology Assessment.

Copies are available to the public for inspection at the Library of Congress, Special Forms Reading Room, Main Building, on weekdays between 9:00 a.m. and 4:30 p.m. at the Department of Health and Human Services, Department Library, Room G400, 330 Independence Avenue SW., Washington, DC 20201, telephone (202) 245-6791.

Copies may be obtained from Mr. James E. Owens, National Center for Health Services Research and Health Care Technology Assessment, Room 18A20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443-3091.

Dated: January 31, 1989.

Donald E. Goldstone,

Acting Director, National Center for Health Services Research and Health Care Technology Assessment.

[FR Doc. 89-3101 Filed 2-8-89; 8:45 am]

BILLING CODE 4160-17-M

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HF(Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, Feb. 25, 1970, as amended most recently in pertinent part at 48 FR 54130, Nov. 30, 1983) is amended to reflect a retitling of an office in the Food and Drug Administration.

FDA proposes to retitle the Office of Compliance in the Center for Devices and Radiological Health as the Office of Compliance and Surveillance to give higher visibility to its postmarketing product surveillance commitment.

Section HF-B Organization and Functions is amended as follows:

1. Delete paragraph o-2 Office of Compliance (HFWC) in its entirety.

2. Insert new paragraph o-2 Office of Compliance and Surveillance (HFWC) reading as follows:

(o-2) *Office of Compliance and Surveillance (HFWC).* Advises the Center Director and other Agency officials on legal, administrative, and regulatory programs and policies concerning Agency compliance responsibilities relating to medical device and radiological health activities.

Develops, directs, coordinates, evaluates, and monitors compliance and surveillance programs covering regulated industry.

Conducts field tests and inspections when necessary for regulatory purposes and evaluates industry quality control and testing programs to assure compliance with regulations.

Provides advice to Agency field offices on, and manages Center activities relating to legal actions, case development, and contested case assistance.

Designs, develops, and implements Center programs to collect, evaluate, and disseminate medical device data, including information on injuries and other experience; register device establishments; and list products.

Manages and coordinates Center activities under the Government-wide Quality Assurance and Bioresearch Monitoring Programs.

Coordinates all field planning activities and issues all field assignments for the Center.

Provides technical support and guidance in the development and review of standards and regulations, and the training of Federal and State compliance personnel.

Advises actual or potential manufacturers concerning the requirements of the law and regulations.

Date: January 30, 1989.

Wilford J. Forbush,

Director, Office of Management, PHS.

[FR Doc. 89-3102 Filed 2-8-89; 8:45 am]

BILLING CODE 4160-1-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-920-09-4120-10]

Proposed Decertification of All or a Portion of the Powder River Coal Production Region in Montana and Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Public notice.

SUMMARY: On December 15, 1988, the Powder River Regional Coal Team (RCT) recommended (1) not to initiate the coal activity planning process within the Powder River Region until at least the next RCT meeting and (2) not to delete Musselshell, Yellowstone, and Golden Valley counties, Montana, from the region but rather to gain public comment on partial and total decertification of the Powder River Coal Region. This notice implements these recommendations in accordance with the concurrence of the Director of the Bureau of Land Management.

DATE: Public comments on the proposal are requested on or before April 10, 1989.

ADDRESS: Public comments are to be sent to State Director (925), Wyoming State Office, Bureau of Land Management, 2515 Warren Ave., P.O. Box 1828, Cheyenne, WY 82003.

FOR FURTHER INFORMATION CONTACT: Don Brabson, telephone 307-772-2571 or FTS 328-2571, at the above address.

SUPPLEMENTARY INFORMATION: On December 15, 1988, the Powder River RCT reviewed the need for additional Federal coal leasing within the Powder River Coal production region. The RCT recommended that no regional Federal coal leasing activity planning efforts be initiated at this time. The RCT recommendation was based largely on a recognition of limited leasing interests in the region, soft market conditions for the foreseeable future, and public input. The Director of the Bureau of Land Management and the Department of the Interior concur with this recommendation.

During this same public meeting, the RCT reviewed a proposal to delete Musselshell, Yellowstone, and Golden Valley counties, Montana, from the Powder River Coal Production region. If deleted, these counties would have been opened to Federal coal leasing-by-application. Based largely on public discussion, the RCT recommended not to delete these three counties. Instead, the RCT concluded that public comments should be requested on partial as well as total decertification of the Powder River Region. The remainder of this ntoice explains the implications of partial and total regional decertification.

The Powder River Coal Production Region is composed of Campbell, Converse, Crook, Goshen, Johnson, Natrona, Niobrara, Sheridan, and Weston counties, Wyoming, and Big Horn, Golden Valley, Musselshell, Powder River, Rosebud, Treasure, and Yellowstone counties, Montana. The Powder River RCT guides, among other things, the regional Federal coal leasing processes within these counties Currently, with the exception of emergency coal leasing pursuant to 43 CFR Part 3425, all coal leasing efforts within the region must be conducted through the regional coal activity planning process set out in 43 CFR Part 3420. This activity planning process is more expensive and time consuming than coal leasing-by-application. Due to the limited leasing potential and soft regional coal market conditions, the RCT has not recommended any regional coal activity planning efforts in the past 5 years. However, a small number of apparently viable coal leasing interests have been recognized in the region during the past 5 years. These leasing interests have not been pursued because no regional coal activity planning has been pursued.

However, if the region were partially or totally decertified, then these areas would be opened to leasing-by-application pursuant to 43 CFR 3425.1-5. Lease applications could then be generally processed in approximately 1 year, rather than the 3 year minimum timeframe necessary for regional coal activity planning to result in a competitive lease sale. Partial decertification would be implemented by removal of Musselshell, Yellowstone, and Golden Valley counties, Montana, from the region. The RCT's oversight of leasing-by-application in these three counties could be retained via RCT charter modification. The remainder of the region would remain as it is and, therefore, be subject to the regional coal activity planning process.

Total decertification would be implemented by removal of all counties from the region. The RCT would recommend to the Secretary of the Interior to revise its charter to allow it to guide leasing-by-application within the region. The revised charter would have a provision to allow for the re-establishment of the regional activity planning process, should market conditions strengthen and more

widespread regional leasing again becomes necessary.

The reason for the RCT's proposal of partial and total decertification is to allow for an accommodation of the limited leasing potential within the subject areas, during the current soft coal market, and with the maximum administrative efficiency (i.e., time, Federal personnel, and Federal funds).

The RCT will review all public responses to this notice at the next RCT meeting in 1989. Based on public input and regional coal leasing needs, the RCT will develop at its next public meeting, a recommendation on whether to (1) keep the region in tact (no change), (2) partially decertify the region and allow for coal leasing-by-application with RCT oversight in Musselshell, Golden Valley, and Yellowstone counties, Montana, or (3) decertify the entire region thereby allowing leasing-by-application throughout the region with RCT oversight. Public comments and suggestions are requested on these proposals within 60 days of the date this notice is published in the **Federal Register**. Comments are requested to be sent to the address above. The public RCT meeting during which the RCT will develop its recommendations on partial or total decertification will be announced in a subsequent **Federal Register** notice.

Ray Brubaker,
State Director.
[FR Doc. 89-3122 Filed 2-8-89; 8:45 am]
BILLING CODE 4310-32-M

[CA-020-09-4050-00]

California; Cancellation of Susanville District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting cancellation.

SUMMARY: Notice is hereby given that the Susanville District Advisory Council meeting, originally scheduled for Tuesday, February 14, 1989 has been cancelled. The meeting will be rescheduled at a later date.

FOR FURTHER INFORMATION CONTACT: Jeff Fontana at 916-257-5381.

Robert J. Sherve,
Acting District Manager.
[FR Doc. 89-3126 Filed 2-8-89; 8:45 am]
BILLING CODE 4310-40-M

[AZ 020-41-5410-15-ZAFG; AZA-23675]

Mineral Interest Applications: Arizona

ACTION: Notice of Receipt of Conveyance of Mineral Interest Application.

Notice is hereby given that pursuant to section 209 of the Act of October 21, 1976, 90 Stat. 2757, Lakeview City, Inc. has applied for conveyance of the mineral estate described as follows:

Gila and Salt River Meridian, Arizona

T. 6 N., R. 2 E.
Sec. 9;
Sec. 13;
Sec. 14;
Sec. 15;
Sec. 22;
Sec. 23;
Sec. 24;
Sec. 27.
T. 6 N., R. 3 E.,
Sec. 16;
Sec. 19.
Containing approximately 6,000 acres.

Additional information concerning this application may be obtained from the Area Manager, Phoenix Resource Area, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Upon publication of this notice in the **Federal Register**, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application or two years from the date of filing of the application, January 11, 1989, whichever occurs first.

Henri R. Bisson,
Acting District Manager.
Date: February 1, 1989.
[FR Doc. 89-3121 Filed 2-8-89; 8:45 am]
BILLING CODE 4310-32-M

[MT-020-05-4212-11; MTM 55885]

Revocation of Classification and Opening of Land; Montana

AGENCY: Bureau of Land Mangement, Interior.

ACTION: Notice.

SUMMARY: This action revokes Recreation and Public Purpose Classification MTM 55885 and opens the lands affected to the operation of the public land and mining laws. They have been and remain open to mineral leasing.

EFFECTIVE DATE: March 3, 1989.

FOR FURTHER INFORMATION CONTACT: Loren Glade, BLM Miles City District Office, P.O. Box 940, Miles City, Montana 59301, 406-232-4331.

SUPPLEMENTARY INFORMATION: The Recreation and Public Purpose Act classification effected by the Initial Classification Decision of September 15, 1982, for the following described lands is hereby revoked as provided for in 43 CFR 2450.6:

Principal Meridian

T. 9 S., R. 55 E., Section 30, That part of lot 5 (formerly lot 2) described my metes and bounds as follows: Commencing as a point 200 feet east of the west quarter corner; thence S 89° 55' E 500 ft., thence N 0° 5' W 250 ft., thence N 89° 55' W 500 ft., thence S 0° 5' E 250 ft., to the point of Beginning excepting therefrom lot 6.

The area described contains 1.53 acres in Carter County.

1. At 9 a.m. on March 3, 1989, the land will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to March 3, 1989 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

2. At 9 a.m. on March 3, 1989, the land will be opened to location and entry under the United States mining laws. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. section 38 shall vest no rights against the United States. Acts required to establish a location and to initiate a rights of possession are governed by State law where not in conflict with Federal Law. The Bureau of Land Management will not intervene in disputes between rival locators across possessory rights since Congress has provided for such determinations in local courts.

Date: February 1, 1989.

Mat Millenbach,
District Manager.
[FR Doc. 89-3123 Filed 2-8-89; 8:45 am]
BILLING CODE 4310-DN-M

[ID-942-09-4730-12]

Idaho; Filing of Plats of Survey

The plat of survey of the following described land, was officially filed in the Idaho State Office, Bureau of Land Management, Bosie, Idaho, effective 10:00 a.m., February 2, 1989.

The plat representing the dependent resurvey of a portion of the subdivisional lines, the subdivision of section 9, and the survey of the center line of the right-of-way of State Route No. 28 in section 9, T. 9N., R. 30 E., Bosie Meridian, Idaho, Group No. 772, was accepted January 30, 1989.

This survey was executed to meet certain administrative needs by this Bureau.

All inquiries about this land should be sent to the Idaho State Office, Bureau of Land Management, 3380 Americana Terrice, Bosie, Idaho, 83706.

February 2, 1989.

Duane E. Olsen,
Chief Cadastral Surveyor for Idaho
[FR Doc. 89-3124 Filed 2-8-89; 8:45 am]
BILLING CODE 4310-GG-M

[AZ-020-09-4214-11, AR-035025]

Proposed Modification and Continuation of Withdrawal; Arizona

February 2, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: NOTICE.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to modify and continue for 20 years Public Land Order 3656, which withdrew lands in the Coconino and Apache National Forests. This notice pertains only to the lands within the Coconino National Forest. Another notice will be published at a later date for the land located within the Apache National Forest.

The lands continue to be utilized for the purpose for which they were withdrawn, that of protecting archaeological sites. The sites covered by the withdrawal on the Coconino include the Chavez Pass Ruins, 70.00 acres; the Clear Creek Ruins, 82.08 acres (a resurvey and designation of lots in the area increased the size from 80.00 acres to 82.08 acres, and the Winona Ruins, 160.00 acres.

It is anticipated that there will be no change in land use. The Forest Service proposes that the lands will remain closed to operation of the mining laws only.

DATE: Comments to this notice should be received by May 10, 1989.

ADDRESS: Comments should be addressed to the Arizona State Director, BLM, P.O. Box 16563, Phoenix, Arizona 85011.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, 602-241-5531.

SUPPLEMENTARY INFORMATION: The Forest Service proposes that PLO 3656, withdrawing lands from mining claim location for an indefinite period of time be modified and continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 State. 2751, 43 U.S.C. 1714, insofar as it affects the following described lands in the State of Arizona:

Gila and Salt River Meridian

T. 16 N., R. 11 E.,
Sec. 12, ptn. SW¼;
Sec. 13, ptn. NW¼.
T. 13 N., R. 5 E.,
Sec. 11, ptn. SW¼.
T. 21 N., R. 9 E.,
Sec. 11, ptn. SE¼;
Sec. 12, ptn. SW¼;
Sec. 13, ptn. NW¼;
Sec. 14, ptn. NE¼.

The areas described contain 312.06 acres in Coconino and Yavapai Counties.

The purpose of the withdrawal is to protect valuable archaeological sites from prospecting and disturbance caused by mining operations.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connecton with this proposed action may present their views in writing to this office.

The authorized officer of the BLM will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be modified and continued and, if so, for how long. Notice of final determination will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Larry P. Bauer,
Deputy State Director, Division of Mineral Resources.
[FR Doc. 89-3125 Filed 2-8-89; 8:45 am—
BILLING CODE 4310-32-M

Minerals Management Service

Development Operations Coordination Document

AGENCY: Minerals Management Service.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Elf Aquitaine Petroleum has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 9400, Block 167, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on January 31, 1989. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of

the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: February 1,1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89-3041 Filed 2-8-89; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document

AGENCY: Minerals Management Service.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD)

SUMMARY: Notice is hereby given that Hall-Houston Oil Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 5727, Block 244, Main Pass Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on January 31, 1989. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § Section 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: February 1, 1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89-3037 Filed 2-8-89; 8:45 am]

BILLING CODE 4310-MR-M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Advisory Committee on Voluntary Foreign Aid; Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Committee on Voluntary Foreign Aid (ACVFA) on Tuesday and Wednesday March 14–15, 1989. The topic to be discussed is "The Year 1999: The Economic Policy Context Shaping International Voluntarism."

Date: March 14–15, 1989.

Time: Tuesday, March 14: 2:00 p.m.–5:30 p.m.

Time: Wednesday, March 15: 9:00 a.m.–3:30 p.m.

Place: The National Press Club, 14th and F Streets, NW. Washington, DC 20045.

The meeting is free and open to the public. However, NOTIFICATION BY MARCH 10, 1989 THROUGH THE ADVISORY COMMITTEE HEADQUARTERS IS REQUIRED.

Persons wishing to attend the meeting must call Melissa Nuwaysir, (703) 875–4497, or write, not later than March 10 The address is: The Advisory Committee on Voluntary Foreign Aid, Room 305, SA–6, Agency for International Development, Washington, DC 20523.

Date: January 26, 1989.

Thomas A. McKay,

Deputy Assistant Administrator for Private and Voluntary Cooperation, Bureau for Food for Peace and Voluntary Assistance.

[FR Doc. 89-3043 Filed 2-8-89; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-6 (Sub-No. 300)]

Burlington Northern Railroad Co.; Abandonment of Railroad in Crawford and Labette Counties, KS; Findings

The Commission has found that the public convenience and necessity permit Burlington Northern Railroad Company to abandon its 26.5 miles of railroad between milepost 145.70 near Cherokee and milepost 172.50 near West Parsons in Crawford and Labette Counties, KS.

A certificate will be issued authorizing abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served on the applicant no later than 10 days from the publication of this Notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope: "Rail Section, AB–OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Decided: February 1, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89-3079 Filed 2-8-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-1 (Sub-215)]

Chicago and North Western Transportation Co.—Abandonment—Between Norma and Cornell—in Chippewa County, WI; Findings

The Commission has found that the public convenience and necessity permit Chicago and North Western Transportation Company to abandon 19.7 miles of railroad between Norma (milepost 3.4) and Cornell (milepost 23.1), in Chippewa County, WI.

A certificate will be issued authorizing abandonment unless within 15 days after this publication the Commission also finds that: (1) a financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served on the applicant no later than 10 days from the publication of this Notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope: "Rail Section, AB–OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Decided: February 1, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips. Commissioner Lamboley concurred in the result.

Noreta R. McGee,

Secretary.

[FR Doc. 89-3036 Filed 2-8-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

National Crime Information Center Advisory Policy Board; Renewal

In accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), and Title 41, CFR 101–6.1015, the Director, FBI, with the concurrence of the Attorney General, has determined that the renewal of the National Crime Information Center (NCIC) Advisory Policy Board is in the public interest in connection with the performance of duties imposed upon the FBI by law, and hereby gives notice of its renewal.

The Board recommends to the Director, FBI, general policy with respect to the philosophy, concept, and operational principles of the NCIC, particularly the system's relationship with local and state criminal justice systems.

The Board consists of thirty members of which twenty are elected from State and local criminal justice representatives; six are appointed by the Director, FBI, consisting of two members each from the judicial, prosecutorial, and correctional segments of the criminal justice community; four are representatives of criminal justice professional associations, e.g., American Probation and Parole Association, National Sheriff's Association, National District Attorney's Association, and the International Association of Chiefs of Police.

The Board functions solely as an advisory body in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed in accordance with the provisions of the Act.

Interested persons are invited to submit comments regarding the renewal of the National Crime Information Center (NCIC) Advisory Policy Board to Mr. William A. Bayse, Committee Management Liaison Officer, Technical Services Division, Federal Bureau of Investigation, Washington, DC 20535, telephone number 202–324–5350.

William S. Sessions,

Director.

[FR Doc. 89-3078 Filed 2-8-89; 8:45 am]

BILLING CODE 4410-02-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings: Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786–0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which would significantly frustrate implementation of proposed agency; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

1. *Date:* March 3, 1989.
Time: 9:00 a.m. to 5:30 p.m.
Room: 430.
Program: The meeting will review applications submitted to the Humanities Projects in Libraries and Archives Program, Division of General Programs, for projects beginning after October 1, 1989.

2. *Date:* March 6–7, 1989.
Time: 8:30 a.m. to 5:00 p.m.
Room: 430.
Program: This meeting will review applications submitted to the Preservation Program, Office of Preservation, for projects beginning after July 1, 1989.

3. *Date:* March 10, 1989.
Time: 8:30 a.m. to 5:00 p.m.
Room: 430.
Program: This meeting will review applications submitted to the U.S. Newspaper Program, Office of Preservation, for projects beginning after July 1, 1989.

4. *Date:* March 13–14, 1989.
Time: 8:30 a.m. to 5:00 p.m.
Room: 430.
Program: This meeting will review applications submitted to the Preservation Program, submitted to the Office of Preservation, for projects beginning after July 1, 1989.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 89-3081 Filed 2-8-89; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

Meeting to Comment on the First Biennial Revision of the U.S. Arctic Research Plan; Meeting

In accordance with the Arctic Research and Policy Act of 1984, Pub. L. 98–373, the National Science Foundation announces the following meeting:

Name of Meeting: First Biennial Revision of the U.S. Arctic Research Plan—Opportunity to Comment.

Date of Meeting: March 2, 1989, 9:00 am to 12:00 pm.

Place: Anchorage, Alaska (Federal Bldg., 222 W. 7th St., Rm. C–122).

Purpose of Meeting: Section 109(a) of the Arctic Research and Policy Act requires a biennial revision of the Plan (due in July 1989). Section 109(a) of the Act further requires the Interagency Arctic Research Policy Committee to consult with a number of groups during development of the Plan. The Interagency Committee and its staff and working groups have prepared a draft revision to the Plan, which will be available for review in the following locations in Alaska from February 15–March 10, 1989:

Anchorage, Alaska: The Alaska Resources Library, Federal Building, 222 W. 7th St., 1st Floor;
Juneau, Alaska: The Alaska State Library, State Office Building, entrance on 4th Street, Circulation Desk, 8th Floor;
Fairbanks, Alaska: The Rasmusen Library, University of Alaska, Fairbanks, Reserve Desk.

Representatives of the groups named in section 109(a) of the Act (Arctic Research Commission, Governor of Alaska, residents of the Arctic, the private sector and public interest groups) as well as members of the general public, are invited to obtain a copy of the draft revision for review, and to bring any comments they may have to the meeting. Staff of the Interagency Committee will be present to receive comments and answer questions.

The biennial revision to the Arctic Research Plan is organized to address research needs in the following areas:

1. Arctic Oceans and Marginal Seas
2. Atmosphere and Climate
3. Land and Offshore Resources
4. Land-Atmosphere Interactions
5. Engineering and Technology
6. People and Health

Coordinated interagency efforts and supporting programs are also discussed. These include: Atmosphere-Ocean and Atmosphere-Land interactions, human adaptation, data and information systems, logistics, and international activities.

Public Participation: This meeting is open to the public. Comments from representatives of groups named in the Arctic Research and Policy Act are encouraged. Written comments may be submitted to the address below by March 10, 1989.

For Further Information: If you would like to review a copy of the biennial revision, but are unable to visit one of the above locations, please write to the following address: Arctic Research Plan, National Science Foundation, 1800 G Street, NW., Room 620, Washington, DC 20550, or call (202) 357–7817.

Information will be available after February 13, 1989.

Costs: None.

Jerry Brown,

Head, Arctic Staff (for the Interagency Arctic Research Policy Committee), Division of Polar Programs, National Science Foundation.

[FR Doc. 89–3115 Filed 2–8–89; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–206]

Southern California Edison Co. and San Diego Gas and Electric Co., San Onofre Nuclear Generating Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR–13 issued to Southern California Edison Company, *et al.*, (the licensee), for operation of San Onofre Nuclear Generating Station, Unit No. 1, located in San Diego County, California.

Environmental Assessment

Identification of Proposed Action

The proposed amendment is a request to revise Technical Specification 3.5.1 and Table 2.1 to incorporate revised steam/feedwater flow mismatch reactor trip setpoints and revised limiting conditions for operation. The reactor trip on steam/feedwater flow mismatch would occur on either high or low mismatch of 25% when the reactor is above 50% power. Below 50%, the trip would not activate, but reactor protection would be provided by a 50% setting on pressurizer level which would be active at all power levels. The proposed changes are designed to correct a single failure deficiency in the steam/feedwater flow reactor trip circuit identified in an earlier report dated November 20, 1987.

The Need for the Proposed Action

The proposed amendment is required to implement the changes described above and thereby correct a single failure deficiency in the reactor protection system.

Environmental Impacts of the Proposed Action

The proposed action would not involve a significant change in the probability or consequences of any accident previously evaluated, nor does it involve a new or different kind of accident. Consequently, any radiological releases resulting from an accident would not be significantly greater than previously determined. The proposed amendment does not otherwise affect routine radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendment. The Commission also concludes that the proposed action will not result in a significant increase in individual or cumulative occupational radiation exposure.

With regard to nonradiological impacts, the proposed amendment does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on January 17, 1989 (54 FR 1808). No request for hearing or petition for leave to intervene was filed following this notice.

Alternatives to the Proposed Action

Because the Commission has concluded that there are no significant environmental impacts associated with the proposed action, there is no need to examine alternatives to the proposed action.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Final Environmental Statement related to operation of San Onofre Nuclear Generating Station, Unit No. 1, dated October 1973.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request that supports the proposed amendment. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendment.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated November 11, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 31st day of January, 1989.

For the Nuclear Regulatory Commission.

George W. Knighton,

Director, Project Directorate V Division of Reactor Projects—III, IV, V and Special Projects Office of Nuclear Reactor Regulation.

[FR Doc. 89–3084 Filed 2–8–89; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Nuclear Waste; Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold a meeting on February 21–23, 1989, Room P–110, 7920 Norfolk Avenue, Bethesda, MD. Portions of this meeting may be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy 5 U.S.C. 552b(c)(6). Notice of this meeting was published in the Federal Register on January 26, 1989 (54 FR 3877).

Tuesday, February 21, 1989—1:00 p.m.–5:00 p.m. (Open)

Comments by ACNW Chairman regarding items of current interest.

NRC Staff (DHLWM) Presentation on Current Status of the Review of the Site Characterization Plan (SCP) and related topics.

Wednesday, February 22, 1989—8:30 a.m.–5:00 p.m. (Open)

Presentation by the Department of Energy (DOE) on the Site Characterization Plan (SCP) and related topics.

Executive Session—Preparation of ACNW Reports.

Thursday, February 23, 1989—8:30 a.m.–4:30 p.m. (Open)

State of Nevada (Nevada Nuclear Waste Projects Office) Technical Comments on Consultation Draft Site Characterization Plan (CDSCP).

NRC Staff (RES) Presentation on Proposed Rule on Disposal of Greater than Class C Radioactive Waste.

Administrative Session—Future Agenda, By-Laws and New Members, etc.

Executive Session—Complete Preparation of ACNW Reports.

Procedures for the conduct of and participation in ACNW meetings were published in the Federal Register on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. The Office of the ACRS is providing Staff support for the ACNW. Persons desiring to make oral statements should notify the Executive Director of the Office of the ACRS as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the Executive Director of the Office of the ACRS, Mr. Raymond F. Fraley (telephone 301/492–4516), prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

Date: February 2, 1989.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 89–3085 Filed 2–8–89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50–383–CP/OL and 50–604–CP]

All Chemical Isotope Enrichment, Inc. (AIChemIE Facility–1 CPOF) and AIChemIE Facility–2 Oliver Springs; Assignment of Atomic Safety and Licensing Appeal Board

Notice is hereby given that, in accordance with the authority conferred by 10 CFR 2.787(a), the Chairman of the Atomic Safety and Licensing Appeal Panel has assigned the following panel members to serve as the Atomic Safety and Licensing Appeal Board for this construction permit proceeding:

Thomas S. Moore, Chairman
Christine N. Kohl
Howard A. Wilber

Eleanor E. Hagins,

Secretary to the Appeal Board.

Dated: February 3, 1989.

[FR Doc. 89–3086 Filed 2–8–89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–461]

Illinois Power Co., et al.; Issuance of Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has issued Amendment No. 18 to Facility Operating License No. NPF–62 issued to the Illinois Power Company [1] (IP), Soyland Power Cooperative, Inc. and Western Illinois Power Cooperative, Inc., (the licensees), for operation of the Clinton Power Station, Unit 1, located in DeWitt County, Illinois.

The amendment consists of proposed changes to the Technical Specifications (TS) related to four issues. The first proposed change would allow the Clinton Power Station (CPS) to perform its first reactor refueling, in which new types of reactor fuel will be utilized, and to proceed with subsequent reactor operation with the reloaded core.

The reload for Cycle 2 is generally a normal reload with no unusual core features or characteristics. Proposed TS changes related to Maximum Average Planar Linear Heat Generation Rate (MAPLHGR) and Linear Heat Generation Rate (LHGR) limits for the new fuel, MAPLHGR and Minimum Critical Power Ration (MCPR) limits for all of the fuel using Cycle 2 core and transient parameters.

The second proposed change would permit CPS operation in the maximum extended operating domain (MEOD) with (a) up to 50°F reduction in feedwater temperature and (b) elimination of APRM setdown.

The MEOD includes expansion of the normal power/flow map into new regions. One region, which involves operation at rated power at lower than rated core flow rates, is called the

[1] Illinois Power Company is authorized to act as agent for Soyland Power Cooperative, Inc. and Western Illinois Power Cooperative, Inc. and has exclusive responsibility and control over the physical construction, operation and maintainance of the facility.

extended load line region (ELLR). The other region, which involves operation at core flows at up to 107% of rated flow is called the increased core flow region (ICFR). Operation in the ELLR and ICFR permits greater operational flexibility and an improved unit capacity factor.

Reduced feedwater temperatures can arise from the inoperability or degraded performance of individual feedwater heaters or string(s) of feedwater heaters or by deliberate reduction of feedwater heating.

The third proposed change would revise the Romote Shutdown System Controls to include additional control switches for valves 1E12–F068B and 1E12–F014B and circuit breaker 252A–T1AA1.

Current operation of these components, when the normal control switch is inaccessible, requires them to be operated manually. The circuitry is therefore being modified to add control switches for these components. The addition of these control switches will enhance the operation of the Remote Shutdown System to the acceptable methods recognized by the NRC for satisfying GDC–19.

The fourth proposed change consists of several changes to the surveillance requirements for the jet pumps. One would allow present Surveillance Requirement 4.4.1.2 to be performed with THERMAL POWER in excess of 25% OF RATED THERMAL POWER instead of the present prior to exceeding 25% OF RATED THERMAL POWER.

Another proposed change also revised Surveillance Requirements 4.4.1.2 by deleting the requirement that the recirculation flow control valves be in the same position when performing the surveillance.

The proposed changes also include combining the sections which currently and separately address single and double loop operation into a single section.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the licensee's amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on November 22, 1988 (53 FR 47285). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact to this action and has determined not to prepare an environmental impact statement. Based upon the Environmental Assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated September 6, 1988 (2) Amendment No. 18 to License No. NPF–62, and (3) the Environmental Assessment and Finding of No Significant Impact. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC; and at Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Director, Division of Reactor Projects.

Dated at Rockville, Maryland, this 31st day of January 1989.

For The Nuclear Regulatory Commission.

John B. Hickman,

Project Manager, Project Directorate III–2 Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 89–3087 Filed 2–8–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–443–OL and 50–444–OL; ASLBP No. 82–471–02–OL]

Public Service Co. of New Hampshire, et al., Seabrook Station, Units 1 and 2 (Offsite Emergency Planning); Reconstitution of Board

Pursuant to the authority contained in 10 CFR 2.721, the Atomic Safety and Licensing Board for *Public Service Company of New Hampshire, et al.* (Seabrook Station, Units 1 and 2) (Offsite Emergency Planning), Docket Nos. 50–443–OL and 50–444–OL, is hereby reconstituted by appointing Administrative Judge Kenneth A. McCollom in place of Jerry R. Kline who has disqualified himself in this proceeding.

As reconstituted, the Board is comprised of the following Administrative Judges:

Ivan. W. Smith, Chairman
Richard F. Cole, Member
Kenneth A. McCollom, Member
James H. Carpenter, Alternate Member

All correspondence, documents and other material shall be filed with the Board in accordance with 10 CFR 2.701 (1980). The address of the new Board member is: Administrative Judge Kenneth A. McCollom, Member, 1107 West Knapp Street, Stillwater, Oklahoma 74075.

Robert M. Lazo,

Acting Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

Dated at Bethesda, Maryland, this 3rd day of February, 1989.

[FR Doc. 89–3088 Filed 2–8–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–271–OLA]

Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station); Reconstitution of Atomic Safety and Licensing Appeal Board

Notice is hereby given that, in accordance with the authority conferred by 10 CFR 2.787(a), the Chairman of the Atomic Safety and Licensing Appeal Panel has reconstituted the Atomic Safety and Licensing Appeal Board for this operating license amendment proceeding. As reconstituted, this Appeal Board will consist of the following members: Christine N. Kohl, Chairman, Dr. W. Reed Johnson, Howard A. Wilber.

Eleanor E. Hagins,

Secretary to the Appeal Board.

Dated: February 3, 1989.

[FR Doc. 89–3089 Filed 2–8–89; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34–26516; File No. SR–DTC–88–21]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Depository Trust Company; Participant Terminal System

The Depository Trust Company ("DTC") on January 3, 1989, filed a proposed rule change with the Commission under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"). The proposal would permit DTC to adopt certain new procedures in the use of its Participant Terminal System ("PTS"). The Commission is publishing this notice to solicit public comment on the proposal.

I. DTC's Description of the Proposal

DTC states in its filing that its existing procedures require a DTC participant to submit hard copy identification data: (1) To identify, for tax purposes, the securities that it holds at DTC in its own account for investment purposes (in distinction from the securities it holds at DTC for customers or other brokers); and (2) to release securities from such investment identification. Under this proposal, DTC's participants would be able to submit such data electronically by the use of PTS.

II. DTC's Rationale for the Proposal

DTC states that the proposal is consistent with the Act, particularly section 17A of the Act, in that it would use automation to increse efficiency in the clearing and settlement of securities transactions and would remove a possible disincentive for depository immobilization of securities certificates.

III. Proposal's Effectiveness and Solicitation of Comments

The rule change has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b–4. The Commission may summarily abrogate the rule change at any time within 60 days of its filing if it appears to the Commission that abrogation is necessary or appropriate in the public interest, for the protection of investors, or in furtherance of the purposes of the Act.

Interested persons may submit written comments within 21 days after notice is published in the **Federal Register**. Six copies of such comments should be filed with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, with accompanying exhibits, and all written comments, except for material that may be withheld from the public under 5 U.S.C. 552, are available at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of the filing also will be available for inspection and copying at the principal offices of DTC. All submissions should refer to File No. SR–DTC–88–21 and should be submitted by March 2, 1989.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

February 3, 1989.

[FR Doc. 89–3050 Filed 2–8–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 34–26517; File No. SR–OCC–89–02]

Self-Regulatory Organizations; Proposed Rule Change by Options Clearing Corp. Relating to Securities Clearing Group Filing

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. section 78s(b)(1) (the "Act"), notice is hereby given that on January 24, 1989, Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Term of Substance of the Proposed Rule Change

Attached as Exhibit A is a copy of a proposed rule change of The Options Clearing Corporation (OCC) reflecting the agreement it has entered into with several other registered clearing agencies. The Agreement [1] creates a Securities Clearing Group (SCG) from within the Securities and Exchange Commission's Monitoring Coordination Group (MCG). The Agreement identifies various areas of cooperation between and among the other members of the SCG to, among other things, increase the coordination of clearing agency clearance and settlement, and facilitate the sharing of certain clearing and settlement information among clearing agencies.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

As a result of developments surrounding the October, 1987 Market Break, the SCG was created to review various issues relating to the clearance and settlement of securities transactions, improved linkages of the clearance and settlement facilities, and development of uniform standards and procedures for clearance and settlement. The stated purposes of the SCG are to (i) Increase cooperation and coordination of persons involved in the clearance and settlement of securities transactions, (ii) promote the increased access to surveillance information and member risk monitoring through the sharing of certain information regarding the clearance and settlement of securities transactions.

The members of SCG have executed the attached agreement to accomplish this purpose. The agreement, in section 3, identified various areas of cooperation between and among members of the SCG to, among other things, increase and facilitate the sharing of certain clearance, settlement and surveillance information among clearing agencies.

The proposed rule change is consistent with the purposes and requirements of section 17A of the Securities Exchange Act of 1934, as amended, in that it fosters cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and removes impediments to and perfects the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited by OCC with respect to the proposed rule change and none have been received by OCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

[1] For a copy of the text of the proposed rule change, *see* Securities Exchange Act Rel. No. 23600 (Nov. 21, 1988); 53 FR 48353 (Nov. 30, 1988).

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR-OCC-88-02 and should be submitted by March 2, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

February 3, 1989.

[FR Doc. 89-3051 Filed 2-8-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24814]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

February 3, 1989.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by February 27, 1989 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the manner. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Consolidated Natural Gas Company (70-7338)

Consolidated Natural Gas Company ("Consolidated"), CNG Tower, Pittsburgh, Pennsylvania 15222-3199, a registered holding company, has filed a post-effective amendment to its declaration pursuant to sections 6(a) and 7 of the Act and Rules 50 and 50(a)(5) thereunder.

By prior Commission order, dated February 26, 1987 (HCAR No. 24326), Consolidated was authorized to issue and sell, from time-to-time within two years of the effective date of authorization, up to $250 million principal amount of its debentures, in one or more series, with maturities of up to 30 years. That order permitted Consolidated to sell the debentures on a competitive basis, or pursuant to an exception from the competitive bidding requirements of Rule 50, subject to a reservation of jurisdiction over the associated fees, expenses, terms and conditions. On October 29, 1987 Consolidated issued and sold, at competitive bidding, $100 million principal amount of its 9⅛% Debentures Due October 1, 1992, of which $50 million was authorized under earlier Commission orders dated April 5, 1985, August 29, 1986 and March 30, 1987, (HCAR Nos. 23655, 24160 and 24357, respectively), and $50 million herein. Subsequently, on January 25, 1989, Consolidated issued and sold, at competitive bidding, an additional $100 million principal amount of its 9⅝% Debentures Due February 1, 1997 pursuant to authority permitted in this file.

Consolidated now requests the authority to issue and sell the remaining $100 million principal amount of its debentures not heretofore issued and sold under the February 26, 1987 order, through February 28, 1991, less any additional amounts issued and sold prior to February 28, 1989. In all other respects the authority requested and permitted in that order will remain unchanged.

General Public Utilities Corporation, et al. (70-7535)

General Public Utilities Corporation, 100 Interpace Parkway, Parsippany, New Jersey 07054 ("GPU"), a registered holding company, and its subsidiary, General Portfolios Corporation, Mellon Bank Center, Tenth and Market Streets, Wilmington, Delaware 19801 ("GPC"), have filed a post-effective amendment to their application-declaration pursuant to sections 9(a), 10 and 12(b) of the Act and Rule 45 thereunder.

By order dated November 2, 1988 (HCAR No. 24738), GPU was authorized to acquire all of the common stock of GPC and to make capital contributions to GPC consisting of (i) the common stock of Energy Initiatives, Incorporated ("EII") and (ii) $25 million which GPC was in turn to contribute to EII. The Commission reserved jurisdiction over GPU's request to contribute an additional $25 million to GPC.

By orders dated December 24, 1986 (HCAR No. 24278) and May 7, 1986 (HCAR No. 24069), GPU was authorized to acquire 7,866 shares of stock of Exel Limited, a Cayman Islands corporation for a purchase price of $1,180,000 ("Exel Shares") and 51,975 shares of stock of ACE Limited, a Cayman Islands corporation for a purchase price of $5,197,500 ("ACE Shares").

GPU now requests authority to make contributions to the capital of GPC consisting of the Exel Shares and the ACE Shares, which shares GPU acquired in 1986.

General Public Utilities Corporation (70-7687)

General Public Utilities Corporation, 100 Interpace Parkway, Parsippany, New Jersey 07054 ("GPU"), a registered holding company, has filed an application-declaration with the Commission pursuant to sections 6(a), 7 9(a), 10 12(c) and 12(e) of the Act and Rules 42, 50(a)(5), 62 and 65 thereunder.

GPU proposes initially to issue, through December 31, 1998, pursuant to an exception from competitive bidding requirements of Rule 50 under subsection (a)(5) thereunder, and subsequently to reacquire, up to 20,000 shares of GPU common stock under a Restricted Stock Plan for Outside Directors ("Plan"). The common stock to be issued under the Plan will be either authorized and issued shares or reacquired shares held as treasury stock, and will be subject to certain restrictions. Under the Plan, members of

GPU's Board of Directors ("Board") who are outside directors ("Outside Directors") would be awarded shares of GPU common stock, in addition to the annual retainer and committee fees, as further compensation for their services as members of the Board. The Plan is to be administered by a committee ("Committee").

Shares of common stock awarded under the Plan will not be transferable prior to an Outside Director's termination of service because of: (i) Death or disability; (ii) failure to stand for reelection at the end of the term during which the Outside Director reaches age 70; (iii) resignation or failure to stand for reelection with the consent of GPU's Board; or (iv) failure to be reelected to the Board after being duly nominated. Shares of common stock held by an Outside Director who fails to satisfy such conditions will be subject to forfeiture by that Outside Director and reaquisition by GPU. GPU therefore seeks authorization to reacquire such shares of common stock that may be forfeited.

It is stated that 100 shares of GPU common stock, or a portion thereof, is to be awarded with respect to service by an Outside Director in 1989. Beginning in 1990, each Outside Director will receive an award in an amount to be determined by the Board only in accordance with the recommendations of the Committee.

GPU also proposes to solicit proxies from its stockholders for use at the 1989 Annual Meeting, scheduled to be held on May 3, 1989, during which GPU will request its shareholders to approve the Plan. It is anticipated that the related proxy materials will be mailed to GPU's shareholders on or about April 3, 1989. Subject to approval, the Plan would be effective as of January 1, 1989.

General Portfolios Corporation Energy Initiatives, Incorporated (70-7612)

General Portfolios Corporation ("GPC"), Mellon Bank Center, Tenth and Market Streets, Second Floor, Wilmington, Delaware 19801, and Energy Initiatives, Incorporated ("EII"), One Gatehall Drive, Gatehall Center I, Parsippany, New Jersey, 07054, each a subsidiary company of General Public Utilities Corporation, a registered holding company, have filed an application-declaration pursuant to section 6(a), 7, 9(a), 10 and 12(b) of the Act and Rules 45 and 50(a)(5) thereunder.

EII proposes to acquire, through one or more Delaware limited partnerships ("Partnerships"), a 50% ownership interest in three closely held California corporations ("Collectively, Energy Companies"), including two state institutions and a university. Each Energy Company is the lessee under a long-term lease of a natural gas-fired cogeneration facility which is a qualifying facility under the Public Utility Regulatory Policies Act of 1978.

In order to acquire its interest in the Energy Companies, EII proposes to organize one or more wholly owned Delaware subsidiary corporations ("EII Subs") which would be both the general partner and limited partners of the Partnerships. Alternatively, GPC may acquire one or more of such limited partnership interests. It is proposed that the Partnership acquire either all of the assets or all of the outstanding shares of common stock of the Energy Companies for a total purchase price not to exceed $22 million.

EII and GPC therefore propose to contribute to the Partnerships, either directly or indirectly through EII Subs, up to $11 million in exchange for which: (1) EII will acquire all of the outstanding shares of common stock of each EII Sub for $1,000; and (2) GPC and the EII Subs will acquire their general and limited partnership interests in the Partnerships. Alternatively, EII may lend the Partnerships a portion of the $11 million and the Partnerships would issue to EII their respective promissory notes, from time to time, with maturities not in excess of 30 years, at an interest rate of not less than that borne by U.S. Treasury Securities of comparable maturities, which would be repaid from the cash flows generated by operation of the projects.

EII expects that the rate of return of its equity investment in the Partnerships will not be lower than 12.38%, the latest generic rate of return on common equity for public utilities allowed by the Federal Energy Regulatory Commission under the Federal Power Act.

In order to refinance the investment and the Partnership, the Partnership itself may issue debt with a maturity not in excess of 30 years from its date of issue, hearing interest at a rate not in excess of that borne by U.S. Treasury Securities of comparable maturities plus 35C basis points and with redemption provisions consistent with the Commission's Statement of Policy regarding first mortgage bonds. Such debt may be secured or unsecured and shall not be convertible into, or carry any right to purchase, any other securities of the issuer or any associate company of GPU.

The applicants-declarants have requested an exception from the competitive bidding requirements of Rule 50 pursuant to Rule 50(a)(5) with respect to the issuance of securities in connection with the refinancing of the investment and the Partnership.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-3107 Filed 2-8-89; 8:45 am]

BILLING CODE 8010-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-89]

Unfair Trade Practices; Rescheduled Public Hearing on Japanese Barriers to the Provision of Architectural, Engineering, and Construction Services, and Related Consulting Services

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of revised date and location of public hearing.

SUMMARY: On November 21, 1988, the United States Trade Representative (USTR) initiated an investigation under section 302 of the Trade Act of 1974 with respect to Japanese barriers to the provision of architectural, engineering, and construction services, and related consulting services (53 FR 47897). On January 18, 1989, a notice was published in the Federal Register (54 FR 2033) announcing that a public hearing in this matter would be held February 14, 1989. The purpose of this notice is to change the original hearing date and location as published in 54 FR 2033. The public hearing on this matter is now scheduled for March 13, 1989, at 9:00 a.m.

FOR FURTHER INFORMATION CONTACT: Bonnie Richardson, Special Assistant for Services, (202) 395-7271, Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC 20506.

SUPPLEMENTARY INFORMATION: The International Engineering and Construction Industries Council has requested a public hearing on this matter, and the USTR believes such a hearing is an appropriate means of obtaining information to prepare for future consultations with the Government of Japan regarding this investigation.

The Section 301 Committee originally scheduled this hearing at 10 a.m. on February 14, 1989 (54 FR 2033). Because of scheduling conflicts, the hearing date and location have been revised as follows: the hearing will be conducted on March 13, 1989, at 9:00 a.m., in the amphitheater (second floor) at the

Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC, 20006.

Interested persons wishing to testify orally must provide a written request to do so by noon on March 3, 1989, to Dorothy Balaban, Staff Assistant to the Section 301 Committee, Office of the U.S. Trade Representative, Room 222, 600 17th Street NW., Washington, DC 20506. The request must conform with 15 CFR 2006.8 and provide the following information: (1) Name, address, telephone number, and firm or affiliation; and (2) a summary of the presentation. After consideration of a request to present oral testimony at the public hearing, the Chairman of the Section 301 Committee will notify the applicant of the time of his or her testimony.

Persons presenting oral testimony must submit 20 copies of their written testimony, in English, by noon on March 6, 1989, to Ms. Balaban at the address listed above. Those persons who have already submitted such testimony need not resubmit it. Remarks at the meeting will be limited to 5 minutes. In order to assure each party an opportunity to contest the information provided by other parties, the Section 301 Committee will entertain written rebuttal comments filed by an interested person in accordance with 15 CFR 2006.8(c) by noon on March 17, 1989.

A. Jane Bradley,

Chairman, Section 301 Committee.

[FR Doc. 89-3183 Filed 2-8-89; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program, St. Lucie County International Airport, Ft. Pierce, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Naples Airport Authority, under the provisions of Title I of the Aviation Safety and Noise Abatement Act (ASNA) of 1979 (Pub. L. 96-193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96-52 (1980). On June 20, 1988, the FAA determined that the noise exposure maps submitted by St. Lucie County Port and Airport Authority, under Part 150 were in compliance with applicable requirements. On December 12, 1988, the Administrator approved the St. Lucie County International Airport noise compatibility program. Most of the recommendations of the program were approved. No program elements relating to new or revised flight procedures for noise abatement were proposed by the airport operator.

EFFECTIVE DATE: The effective date of the FAA's approval of the St. Lucie County International Airport noise compatibility program is December 12, 1988.

FOR FURTHER INFORMATION CONTACT: Pablo G. Auffant, Airports Planning and Development Specialist, Federal Aviation Administration, Orlando Airports District Office, 4100 Tradecenter Street, Orlando, Florida 32827-5096, (407) 648-6583. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for St. Lucie County International Airport, effective December 12, 1988.

Under section 104(a) the Aviation Safety and Noise Abatement Act (ASNA) of 1979, (hereinafter referred to as "the Act") an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such program to be developed in consultation with interested and affected parties, including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgement for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act, and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against type or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government.

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitation with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office, Orlando, Florida.

The St. Lucie County Port and Airport Authority submitted to the FAA on March 31, 1988, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from March 7, 1986, through January 2, 1987. The St. Lucie County International Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on June 20, 1988. Notice of this determination was published in the **Federal Register** on July 13, 1988.

The St. Lucie County International Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to/or beyond the year 1992. It was requested that FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on June 20, 1988, and was required by a provision of the Act to approve of disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained eighteen (18) proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective December 12, 1988.

Outright approval was granted for fourteen (14) of the specific program elements. The approval action was for the following program elements:

Measure No. 1	Description	FAA action
1	Extension of Rwy 9/27.	Disapproved pending submission of additional information.
2	NAVAID Installation (ILS/MLS).	Disapproved for purpose of Part 150.
3	Deactivation of Rwy 18/36.	Do.
4	Deactivation of Rwy 4/22.	Do.
5	Noise Complaint Procedure.	Approved.
6	Program Review Revision.	Do.
7	Comprehensive Plan.	Do.
8	Zoning	Do.
9	Building Code	Do.
10	Site Design	Do.
11	Land Acquisition	Do.
12	Avigational Easement.	Do.
13	Development Rights.	Do.
14	Military Zones	Do.
15	Airport Advisory Committee.	Do.
16	Informational Materials.	Do.
17	Annual Workship	Do.
18	Evaluation of Noise Abatement Pgm.	Do.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on December 12, 1988. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the Naples Airport Authority.

Issued in Orlando, Florida, of January 26, 1989.

James E. Sheppard,

Manager, Orlando Airports District Office.

[FR Doc. 89-3032 Filed 2-8-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review.

Dated: February 3, 1989.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0122

Form Number: 1118, Schedule I, Schedule J

Type of Review: Resubmission

Title: Computation of Foreign Tax Credit—Corporations

Description: Form 1118 and separate Schedules I and J are used by domestic and foreign corporations to claim a credit against tax for taxes paid to foreign countries. The IRS uses Form 1118 and related schedules to determine if the corporation has computed the foreign tax credit correctly.

Respondents: Businesses or other for-profit

Estimated Number of Respondents: 10,000

Estimated Burden Hours Per Response/ Recordkeeping:

	1118	Schedule I	Schedule J
Recordkeeping	71 hrs. 31 mins.	8 hrs. 51 mins.	80 hrs. 12 mins.
Learning about the law or the form	17 hrs. 13 mins.	1 hr.	1 hr. 5 min.
Preparing the form	21 hrs. 6 mins.	1 hr. 11 mins.	2 hrs. 35 mins.
Copying, assembling, and sending the form to IRS	32 mins.	0	0

Frequency of Response: Annually

Estimated Total Recordkeeping/ Reporting Burden: 3,322,963 hours

Clearance Officer: Garrick Shear, (202) 535-4297, International Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89-3048 Filed 2-8-89; 8:45 am]

BILLING CODE 4810-25-M

Office of the Secretary

[Department Circular—Public Debt Series—No. 5-89]

Treasury Bonds of 2019

Washington, February 2, 1989.

1. Invitations for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $9,500,000,000 of United States securities, designated Treasury Bonds of 2019 (CUSIP No.

912810 EC 8), hereafter referred to as Bonds. The Bonds will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Bonds and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Bonds may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Bonds may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Bonds will be dated February 15, 1989, and will accrue interest from that date, payable on a semiannual basis on August 15, 1989, and each subsequent 6 months on February 15 and August 15 through the date that the principal becomes payable. They will mature February 15, 2019, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Bonds are subject to all taxes imposed under the Internal Revenue Code of 1954. The Bonds are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Bonds will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Bonds will be issued only in book-entry form, and in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. A Bond may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as fiscal agents of the United States. The provisions specifically applicable to the separation, maintenance, transfer, and reconstitution of Principal and Interest Components are set forth in Section 6 of this circular. Subsections 2.1. through 2.4. of this section are descriptive of Bonds in their fully constituted form; the description of the separate Principal and Interest components is set forth in Section 6 of this circular.

2.6. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the Treasury Direct Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Bonds offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239–1500, prior to 12:00 noon, Eastern Standard time, Thursday, February 9, 1989. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Wednesday, February 8, 1989, and received no later than Wednesday, February 15, 1989.

3.2. The par amount of Bonds bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Bonds applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 92.500. That stated rate of interest will be paid on all of the Bonds. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Bonds specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Bonds allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Bonds allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Wednesday, February 15, 1989. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Monday, February 13, 1989. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Bonds allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Wednesday, February 15, 1989. When payment has been submitted with the tender and the purchase price of the Bonds allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Bonds allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Bonds allotted and to be held in *Treasury Direct* are not requried to be assigned if the inscription on the registered definitive security is identical to the registration of the Bond being purchased. In any such case, the tender form used to place the Bonds allotted in *Treasury Direct* must be completed to show all the information required thereon, or the *Treasury Direct* account number previously obtained.

6. Separability of Principal and Interest

6.1. Under the Treasury's STRIPS Program (Separate Trading of Registered Interest and Principal of Securities), a Bond may be divided into its separate components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The separate STRIPS components are: each future semiannual interest payment (referred to as an Interest Component) and the principal payment (referred to as the Principal Component). Each Interest Component and the Principal Component shall have an identifying designation and CUSIP number, which are set forth in Attachment A to this circular.

6.2. Attachment A also provides the payable dates for the separate components. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

6.3 For a Bond to be separated into the components described in section 6.1., the par amount of the Bond must be in an amount which, based on the stated interest rate of the Bond, will produce a semi-annual interest payment of $1,000 or a multiple of $1,000. Attachment B to this circular provides the minimum par amounts required to separate a security at various interest rates, as well as the interest payments corresponding to those minimum par amounts. Par amounts greater than the minimum amount must be in multiples of that amount. The minimum par amount for this offering will be provided in the public announcement of the amount and yield range of accepted bids.

6.4 A Bond may be separated into its components at any time from the issue date until maturity. A request for separation must be made to the Federal Reserve Bank maintaining the account for the Bonds. Once a Bond has been separated into its components, the components may be maintained and transferred in multiples of $1,000.

6.5 Interest Components and Principal Components in multiples of $1,000 will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

6.6 Interest and Principal Components of separated securities may be reconstituted, i.e., restored to their fully constituted form, on the book-entry records of the Federal Reserve Banks. A Principal Component and all related unmatured Interest Components, in the appropriate minimum or multiple amounts previously announced, must be submitted together for reconstitution.

6.7 Detached physical interest coupons, coupons held under the CUBES Program, or cash payments may not be substituted for missing Interest or Principal Components. Any reconstitution request which does not comprise all of the necessary STRIPS components in the appropriate amounts will not be accepted.

6.8 The book-entry transfer of each Interest Component and Principal Component included in a reconstitution transaction will be subject to the fee schedule generally applicable to transfers of book-entry Treasury securities.

6.9 Unless otherwise provided in this offering circular, the Department of the Treasury's general regulations governing United States securities apply to the Bonds separated into their components.

7. General Provisions

7.1 As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Bonds.

7.2 The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Bonds. Public announcement of such changes will be promptly provided.

7.3 The Bonds issued under this circular shall be obligations of the United States, whether held in the fully constituted form or as separate Interest and Principal Components, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Bonds.

7.4 Attachments A and B are incorporated as part of this circular.

Gerald Murphy,

Fiscal Assistant Secretary.

CUSIP Numbers and Designations for the Principal Component and Interest Components of Treasury Bonds of February 15, 2019, CUSIP No. 912810 EC 8

The Principal Component is designated (Interest Rate) Treasury Principal (TPRN) 2019 due February 15, 2019, CUSIP No. 912803 AQ 6.

INTEREST COMPONENTS

Designation	CUSIP No. 912833
Treasury interest (TINT) due:	
Aug. 15, 1989	BE 9
Feb. 15, 1990	BF 6
Aug. 15, 1990	BG 4
Feb. 15, 1991	BH 2
Aug. 15, 1991	BJ 8
Feb. 15, 1992	BK 5
Aug. 15, 1992	BL 3
Feb. 15, 1992	BM 1
Aug. 15, 1993	BN 9
Feb. 15, 1994	BP 4
Aug. 15, 1994	BQ 2
Feb. 15, 1995	BR 0
Aug. 15, 1995	BS 8
Feb. 15, 1996	BT 6
Aug. 15, 1996	BU 3
Feb. 15, 1997	BV 1
Aug. 15, 1997	BW 9
Feb. 15, 1998	BX 7
Aug. 15, 1998	BY 5
Feb. 15, 1999	BZ 2
Aug. 15, 1999	CA 6
Feb. 15, 2000	CB 4
Aug. 15, 2000	CC 2
Feb. 15, 2001	CD 0
Aug. 15, 2001	CE 8
Feb. 15, 2002	CF 5
Aug. 15, 2002	CF 3
Feb. 15, 2003	CH 1
Aug. 15, 2003	CJ 7
Feb. 15, 2004	CK 4
Aug. 15, 2004	CL 2
Feb. 15, 2005	CM 0
Aug. 15, 2005	CN 8
Feb. 15, 2006	CP 3
Aug. 15, 2006	CQ 1
Feb. 15, 2007	CR 9
Aug. 15, 2007	CS 7
Feb. 15, 2008	CT 5
Aug. 15, 2008	CU 2
Feb. 15, 2009	CV 0
Aug. 15, 2009	CW 8
Feb. 15, 2010	CX 6
Aug. 15, 2010	CY 4
Feb. 15, 2011	CZ 1
Aug. 15, 2011	DA 5
Feb. 15, 2012	DB 3
Aug. 15, 2012	DC 1
Feb. 15, 2013	DD 9
Aug. 15, 2013	DE 7
Feb. 15, 2014	DF 4
Aug. 15, 2014	DG 2
Feb. 15, 2015	DH 0
Aug. 15, 2015	JT 8
Feb. 15, 2016	KG 4
Aug. 15, 2016	KJ 8
Feb. 15, 2017	KL 3
Aug. 15, 2017	KN 9
Feb. 15, 2018	KQ 2
Aug. 15, 2018	KS 8
Feb. 15, 2019	KU 3

ATTACHMENT B—MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1,000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1,000

Coupon (percent)	Minimum face (dollars)	Interest payment (dollars)
5.000	40,000.00	1,000.00
5.125	1,600,000.00	41,000.00
5.250	800,000.00	21,000.00

ATTACHMENT B—MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1,000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1,000—Continued

Coupon (percent)	Minimum face (dollars)	Interest payment (dollars)
5.375	1,600,000.00	43,000.00
5.500	400,000.00	11,000.00
5.625	320,000.00	9,000.00
5.750	800,000.00	23,000.00
5.875	1,600,000.00	47,000.00
6.000	100,000.00	3,000.00
6.125	1,600,000.00	49,000.00
6.250	32,000.00	1,000.00
6.375	1,600,000.00	51,000.00
6.500	400,000.00	13,000.00
6.625	1,600,000.00	53,000.00
6.750	800,000.00	27,000.00
6.875	320,000.00	11,000.00
7.000	200,000.00	7,000.00
7.125	1,600,000.00	57,000.00
7.250	800,000.00	29,000.00
7.375	1,600,000.00	59,000.00
7.500	80,000.00	3,000.00
7.625	1,600,000.00	61,000.00
7.750	800,000.00	31,000.00
7.875	1,600,000.00	63,000.00
8.000	25,000.00	1,000.00
8.125	320,000.00	13,000.00
8.250	800,000.00	33,000.00
8.375	1,600,000.00	67,000.00
8.500	400,000.00	17,000.00
8.625	1,600,000.00	69,000.00
8.750	160,000.00	7,000.00
8.875	1,600,000.00	71,000.00
9.000	200,000.00	9,000.00
9.125	1,600,000.00	73,000.00
9.250	800,000.00	37,000.00
9.375	64,000.00	3,000.00
9.500	400,000.00	19,000.00
9.625	1,600,000.00	77,000.00
9.750	800,000.00	39,000.00
9.875	1,600,000.00	79,000.00
10.000	20,000.00	1,000.00
10.125	1,600,000.00	81,000.00
10.250	800,000.00	41,000.00
10.375	1,600,000.00	83,000.00
10.500	400,000.00	21,000.00
10.625	320,000.00	17,000.00
10.750	800,000.00	43,000.00
10.875	1,600,000.00	87,000.00
11.000	200,000.00	11,000.00
11.125	1,600,000.00	89,000.00
11.250	160,000,000.00	9,000.00
11.375	1,600,000.00	91,000.00
11.500	400,000.00	23,000.00
11.625	1,600,000.00	93,000.00
11.750	800,000.00	47,000.00
11.875	320,000.00	19,000.00
12.000	50,000.00	3,000.00
12.125	1,600,000.00	97,000.00
12.250	800,000.00	49,000.00
12.375	1,600,000.00	99,000.00
12.500	16,000.00	1,000.00
12.625	1,600,000.00	101,000.00
12.750	800,000.00	51,000.00
12.875	1,600,000.00	103,000.00
13.000	200,000.00	13,000.00
13.125	320,000.00	21,000.00
13.250	800,000.00	53,000.00
13.375	1,600,000.00	107,000.00
13.500	400,000.00	27,000.00
13.625	1,600,000.00	109,000.00
13.750	160,000.00	11,000.00
13.875	1,600,000.00	111,000.00
14.000	100,000.00	7,000.00
14.125	1,600,000.00	113,000.00
14.250	800,000.00	57,000.00

ATTACHMENT B—MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1,000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1,000—Continued

Coupon (percent)	Minimum face (dollars)	Interest payment (dollars)
14.375	320,000.00	23,000.00
14.500	400,000.00	29,000.00
14.625	1,600,000.00	117,000.00
14.750	800,000.00	59,000.00
14.875	1,600,000.00	119,000.00
15.000	40,000.00	3,000.00
15.125	1,600,000.00	121,000.00
15.250	800,000.00	61,000.00
15.375	1,600,000.00	123,000.00
15.500	400,000.00	31,000.00
15.625	640,000.00	5,000.00
15.750	800,000.00	63,000.00
15.875	1,600,000.00	127,000.00
16.000	250,000.00	2,000.00
16.125	1,600,000.00	129,000.00
16.250	160,000.00	13,000.00
16.375	1,600,000.00	131,000.00
16.500	400,000.00	33,000.00
16.625	1,600,000.00	133,000.00
16.750	800,000.00	67,000.00
16.875	320,000.00	27,000.00
17.000	200,000.00	17,000.00
17.125	1,600,000.00	137,000.00
17.250	800,000.00	69,000.00
17.375	1,600,000.00	139,000.00
17.500	800,000.00	7,000.00
17.625	1,600,000.00	141,000.00
17.750	800,000.00	71,000.00
17.875	1,600,000.00	143,000.00
18.000	100,000.00	9,000.00
18.125	320,000.00	29,000.00
18.250	800,000.00	73,000.00
18.375	1,600,000.00	147,000.00
18.500	400,000.00	37,000.00
18.625	1,600,000.00	149,000.00
18.750	320,000.00	3,000.00
18.875	1,600,000.00	151,000.00
19.000	200,000.00	19,000.00
19.125	1,600,000.00	153,000.00
19.250	800,000.00	77,000.00
19.375	320,000.00	31,000.00
19.500	400,000.00	39,000.00
19.625	1,600,000.00	157,000.00
19.750	800,000.00	79,000.00
19.875	1,600,000.00	159,000.00
20.000	10,000.00	1,000.00
20.125	1,600,000.00	161,000.00
20.250	800,000.00	81,000.00

[FR Doc. 89-3172 Filed 2-7-89; 8:45 am]

BILLING CODE 4810-40-M

[Department Circular—Public Debt Series—No. 4-89]

Treasury Notes of February 15, 1999, Series A-1999

Washington, February 2, 1989.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $9,500,000,000 of United States securities, designated Treasury Notes of February 15, 1999, Series A-1999 (CUSIP No. 912827 XE 7), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated February 15, 1989, and will accrue interest from that date, payable on a semiannual basis on August 15, 1989, and each subsequent 6 months on February 15 and August 15 through the date that the principal becomes payable. They will mature February 15, 1999, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. A Notes may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as fiscal agents of the United States. The provisions specifically applicable to the separation, maintenance, transfer, and reconstitution of Principal and Interest Components are set forth in Section 6 of this circular. Subsections 2.1. through 2.4. of this section are descriptive of Notes in their fully constituted form; the description of the separate Principal and Interest components is set forth in Section 6 of this circular.

2.6. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be eceived at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239-1500, prior to 1:00 p.m., Eastern Standard time, Wednesday, February 8, 1989. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, February 7, 1989, and received no later than Wednesday, February 15, 1989.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received with out deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 97.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

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4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was sumbitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Wednesday, February 15, 1989. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Monday, February 13, 1989. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Wednesday, February 15, 1989. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Notes being purchased. In any such case, the tender form used to place the Notes allotted in Treasury Direct must be completed to show all the information required thereon, or the Treasury Direct account number previously obtained.

6. Separability of Principal and Interest

6.1. Under the Treasury's STRIPS Program (Separate Trading of Registered Interest and Principal of Securities), a Note may be divided into its separate components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The separate STRIPS components are: each future semiannual interest payment (referred to as an Interest Component) and the principal payment (referred to as the Principal Component). Each Interest Component and the Principal Component shall have a identifying designation and CUSIP number, which are set forth in Attachment A to this circular.

6.2. Attachment A also provides the payable dates for the separate components. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

6.3. For a Note to be separated into the components described in Section 6.1., the par amount of the Note must be in an amount which, based on the stated interest rate of the Note, will produce a semiannual interest payment of $1,000 or a multiple of $1,000. Attachment B to this circular provides the minimum par amounts required to separate a security at various interest rates, as well as the interest payments corresponding to those minimum par amounts. Par amounts greater than the minimum amount must be in multiples of that amount. The minimum par amount for this offering will be provided in the public announcement of the amount and yield range of accepted bids.

6.4. A Note may be separated into its components at any time from the issue date until maturity. A request for separation must be made to the Federal Reserve Bank maintaining the account for the Notes. Once a Note has been separated into its components, the components may be maintained and transferred in multiples of $1,000.

6.5. Interest Components and Principal Components in multiples of $1,000 will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

6.6. Interest and Principal Components of separated securities may be reconstituted, i.e., restored to their fully constituted form, on the book-entry records of the Federal Reserve Banks. A Principal Component and all related unmatured Interest Components, in the appropriate minimum or multiple amounts previously announced, must be submitted together for reconstitution.

6.7. Detached physical interest coupons, held under the CUBES Program, or cash payments may not be substituted for missing Interest or Principal Components. Any reconstitution request which does not comprise all of the necessary STRIPS components in the appropriate amounts will not be accepted.

6.8. The book-entry transfer of each Interest Component and Principal Component included in a reconstitution transaction will be subject to the fee schedule generally applicable to transfers of book-entry Treasury securities.

6.9. Unless otherwise provided in this offering circular, the Department of the Treasury's general regulations governing United States securities apply to the Notes separated into their components.

7. General Provisions

7.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

7.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendment do not adversely affect existing rights of holders of the Notes. Public announcment of such changes will be promptly provided.

7.3. The Notes issued under this circular shall be obligations of the United States, whether held in the fully constituted form or as separate Interest and Principal Components, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

7.4. Attachments A and B are incorporated as part of this circular.

Gerald Murphy,

Fiscal Assistant Secretary.

Attachment A—CUSIP Numbers and Designations for the Principal Component and Interest Components of Treasury Notes of February 15, 1999, Series A–1999, CUSIP No. 912827 XE 7.

The Principal Component is designated (Interest Rate) Treasury Principal (TRPN) Series A–1999 due February 15, 1999, CUSIP No. 912820 AR 8.

Interest Components		Interest Components—Continued		Interest Components—Continued	
Designation	CUSIP No. 912833	Designation	CUSIP No. 912833	Designation	CUSIP No. 912833
Treasury Interest (TINT) due:		Aug. 15, 1992	BL 3	Feb. 15, 1996	BT 6
Aug. 15, 1989	BE 9	Feb. 15, 1993	BM 1	Aug. 15, 1996	BU 3
Feb. 15, 1990	BF 6	Aug. 15, 1993	BN 9	Feb. 15, 1997	BV 1
Aug. 15, 1990	BG 4	Feb. 15, 1994	BP 4	Aug. 15, 1997	BW 9
Feb. 15, 1991	BH 2	Aug. 15, 1994	BQ 2	Feb. 15, 1998	BX 7
Aug. 15, 1991	BJ 8	Feb. 15, 1995	BR 0	Aug. 15, 1998	BY 5
Feb. 15, 1992	BK 5	Aug. 15, 1995	BS 8	Feb. 15, 1999	BZ 2

Attachment B.—Minimum Face Amount Which Are Multiples of $1,000 Required in Order To Produce Interest Payments That Are Multiples of $1,000

Coupon (percent)	Minimum face (dollars)	Interest payment (dollars)	Coupon (percent)	Minimum face (dollars)	Interest payment (dollars)	Coupon (percent)	Minimum face (dollars)	Interest payment (dollars)
5.000	40,000.00	1,000.00	10.125	1,600,000.00	81,000.00	15.250	800,000.00	61,000.00
5.125	1,600,000.00	41,000.00	10.250	800,000.00	41,000.00	15.375	1,600,000.00	123,000.00
5.250	800,000.00	21,000.00	10.375	1,600,000.00	83,000.00	15.500	400,000.00	31,000.00
5.375	1,600,000.00	43,000.00	10.500	400,000.00	21,000.00	15.625	640,000.00	5,000.00
5.500	400,000.00	11,000.00	10.625	320,00.00	17,000.00	15.750	800,000.00	63,000.00
5.625	3,200,000.00	9,000.00	10.750	800,000.00	43,000.00	15.875	1,600,000.00	127,000.00
5.750	800,000.00	23,000.00	10.875	1,600,000.00	87,000.00	16.000	25,000.00	2,000.00
5.875	1,600,000.00	47,000.00	11.000	200,000.00	11,000.00	16.125	1,600,000.00	129,000.00
6.000	100,000.00	3,000.00	11.125	1,600,000.00	89,000.00	16.250	1,600,000.00	13,000.00
6.125	1,600,000.00	49,000.00	11.250	160,000.00	9,000.00	16.375	1,600,000.00	131,000.00
6.250	320,000.00	1,000.00	11.375	1,600,000.00	91,000.00	16.500	400,000.00	33,000.00
6.375	1,600,000.00	51,000.00	11.500	400,000.00	23,000.00	16.625	1,600,000.00	133,000.00
6.500	400,000.00	13,000.00	11.625	1,600,000.00	93,000.00	16.750	800,000.00	67,000.00
6.625	1,600,000.00	53,000.00	11.750	800,000.00	47,000.00	16.875	320,000.00	27,000.00
6.750	800,000.00	27,000.00	11.875	320,000.00	19,000.00	17.000	200,000.00	17,000.00
6.875	320,000.00	11,000.00	12.000	50,000.00	3,000.00	17.125	1,600,000.00	137,000.00
7.000	200,000.00	7,000.00	12.125	1,600,000.00	97,000.00	17.250	800,000.00	69,000.00
7.125	1,600,000.00	57,000.00	12.250	800,000.00	49,000.00	17.375	1,600,000.00	139,000.00
7.250	800,000.00	29,000.00	12.375	1,600,000.00	99,000.00	17.500	800,000.00	7,000.00
7.375	1,600,000.00	59,000.00	12.500	16,000.00	1,000.00	17.625	1,600,000.00	141,000.00
7.500	80,000.00	3,000.00	12.625	1,600,000.00	101,000.00	17.750	800,000.00	71,000.00
7.625	1,600,000.00	61,000.00	12.750	80,000.00	51,000.00	17.875	1,600,000.00	143,000.00
7.750	800,000.00	31,000.00	12.875	1,600,000.00	103,000.00	18.000	100,000.00	9,000.00
7.875	1,600,000.00	63,000.00	13.000	200,000.00	13,000.00	18.125	320,000.00	29,000.00
8.000	25,000.00	1,000.00	13.125	320,000.00	21,000.00	18.250	800,000.00	73,000.00
8.125	320,000.00	13,000.00	13.250	800,000.00	53,000.00	18.375	1,600,000.00	147,000.00
8.250	800,000.00	33,000.00	13.375	1,600,000.00	107,000.00	18.500	400,000.00	37,000.00
8.375	1,600,000.00	67,000.00	13.500	400,000.00	27,000.00	18.625	1,600,000.00	149,000.00
8.500	400,000.00	17,000.00	13.625	1,600,000.00	109,000.00	18.750	32,000.00	3,000.00
8.625	1,600,000.00	69,000.00	13.750	160,000.00	11,000.00	18.875	1,600,000.00	151,000.00
8.750	160,000.00	7,000.00	13.875	1,600,000.00	111,000.00	19.000	200,000.00	19,000.00
8.875	1,600,000.00	71,000.00	14.000	100,000.00	7,000.00	19.125	1,600,000.00	153,000.00
9.000	200,000.00	9,000.00	14.125	1,600,000.00	113,000.00	19.250	800,000.00	77,000.00
9.125	1,600,000.00	73,000.00	14.250	800,000.00	57,000.00	19.375	320,000.00	31,000.00
9.250	800,000.00	37,000.00	14.375	320,000.00	23,000.00	19.500	400,000.00	39,000.00
9.375	640,000.00	3,000.00	14.500	400,000.00	29,000.00	19.625	1,600,000.00	157,000.00
9.500	400,000.00	19,000.00	14.625	1,600,000.00	117,000.00	19.750	800,000.00	79,000.00
9.625	1,600,000.00	77,000.00	14.750	800,000.00	59,000.00	19.875	1,600,000.00	159,000.00
9.750	800,000.00	39,000.00	14.875	1,600,000.00	119,000.00	20.000	10,000.00	1,000.00
9.875	1,600,000.00	79,000.00	15.000	40,000.00	3,000.00	20.125	1,600,000.00	161,000.00
10.000	20,000.00	1,000.00	15.125	1,600,000.00	121,000.00	20.250	800,000.00	81,000.00

[FR Doc. 89–3173 Filed 2–7–89; 1:11 pm]
BILLING CODE 4810–40–M

[Department Circular—Public Debt Series—No. 3–89]

Treasury Notes of February 15, 1992, Series R–1992

Washington, February 2, 1989.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $9,750,000,000 of United States securities, designated Treasury Notes of February 15, 1992, Series R–1992 (CUSIP No. 912827 XD 9), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated February 15, 1989, and will accrue interest from that date, payable on a semiannual basis on August 15, 1989, and each subsequent 6 months on February 15

and August 15 through the date that the principal becomes payable. They will mature February 15, 1992, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $5,000, $10,000, $100,000 and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the *Treasury Direct* Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239–1500, prior to 1:00 p.m., Eastern Standard time, Tuesday, February 7, 1989. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, February 6, 1989, and received no later than Wednesday, February 15, 1989.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.250. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Wednesday, February 15, 1989. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Monday, February 13, 1989. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes alloted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Wednesday, February 15, 1989. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in *Treasury Direct* are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in *Treasury Direct* must be completed to show all the information required thereon, or the *Treasury Direct* account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 89–3174 Filed 2–7–89; 1:11 pm]

BILLING CODE 4810–40–M

Customs Service

Recordation of Trade Name; Tune Belt

AGENCY: Customs Service, Treasury.

ACTION: Notice of recordation.

SUMMARY: On October 19, 1988, a notice of application for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "TUNE BELT" was published in the **Federal Register** (53 FR 41012). The notice advised that before final action was taken on the application, consideration would be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation and received not later than December 19, 1988. No responses were received in opposition to the notice.

Accordingly, as provided in § 133.14, Customs Regulations (19 CFR 133.14), the name "TUNE BELT" is recorded as the trade name used by Tune Belt, Inc., a corporation organized under the laws of the State of Ohio, located at 2601 Arbor Place, Cincinnati, Ohio 45209. The trade name is used in connection with the clothing, manufactured by Kama Corporation, LTD. in Taipei, Taiwan. "TUNE BELT," is a belt with a pocket made out of nylon lined Neoprene (wet suit material) used as a radio/cassette carrier).

DATE: February 9, 1989.

FOR FURTHER INFORMATION CONTACT: Bettie Coombs, Value, Special Programs and Admissibility Branch, 1301 Constitution Avenue NW., Washington, DC 20229 (202–566–5765).

Dated: February 3, 1989.

Thomas L. Lobred,

Acting Chief, Value, Special Programs and Admissibility Branch.

[FR Doc. 89–3059 Filed 2–8–89; 8:45 am]

BILLING CODE 4820–02–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported For Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Master Drawings from the National Gallery of Canada" (see list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the National Gallery of Art in Washington, DC, beginning on or about March 5, 1989, to on or about May 21, 1989, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

R. Wallace Stuart,

Acting General Counsel.

Date: February 3, 1989.

[FR Doc. 89–3128 Filed 2–8–89; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is 202–485–7979, and the address is Room 700, U.S. Information Agency, 301 4th Street SW., Washington, DC 20547.

Grants Program for Private, Non-Profit Organizations in Support of International Educational and Cultural Activities

The Office of Private Sector Programs of the United States Information Agency (USIA) announces a program of limited grant support for non-profit U.S. institutions and organizations in the private sector which as described below promotes the long-term foreign policy objectives of the United States by promoting mutual understanding between its people and the people of other countries. The primary purpose of the program is to enhance the achievement of the United States' international public diplomacy goals and objectives by stimulating and encouraging increased private sector commitment, activity, and resources.

Projects must include an international people-to-people component, have an educational or cultural focus, and demonstrate a substantial contribution to long-term communication and understanding between the United States and other countries. Subjects must be consistent with USIA themes and priorities and USIS post requirements.

The Office of Private Sector Programs, works with U.S. not-for-profit organizations on cooperative international group projects which introduce American and foreign participants to one another's traditions, arts, social and political structures, and international interests. The Office will accord priority status to worldwide projects involving leaders or potential leaders in their fields such as parliamentarians, jurists, journalists, development officials, public policy experts, and practicing artists in projects directly involving their art (with

exceptions noted below). Proposals are welcome involving any area of the world, with special attention given to excellent projects involving regions—such as Africa, the Near East, South and Southeast Asia—and countries which have participated less frequently in exchanges. Each private sector activity must meet the highest professional standards, be non-partisan, and address substantive areas of mutual interest. Priority consideration is given to projects that involve United States Information Agency posts in the development of the program and the selection of the participants.

USIA grant assistance constitutes only a portion of total project funding. Proposals should list other anticipated sources of support—both financial and in-kind. Actual programs range from one to six weeks; the duration of the entire grant period does not normally exceed one year. Most funding assistance is limited to participant travel and per diem requirements with modest contributions to cover administrative costs. Grants are not ordinarily given to support performing arts tours, film festivals, plastic arts exhibitions, research projects or professional training, youth or youth-related activities, or to fund publications. Student exchanges or projects which are scholarly or academic in purpose should be directed to USIA's Office of Academic Programs. Youth or youth-related projects should be directed to USIA's Office of International Youth Exchange.

The Office of Private Sector Programs will accept proposals from March 1, 1989, through May 30, 1989, for projects whose activities will begin between July 1, 1989, and December 31, 1989. Project proposals must be received at least four months in advance of the activity date and will be accepted only when they are in accord with Project Proposal Information Requirements (OMB #3116–0175). For proposed projects which begin after December 31, 1989, competition details will be announced in the **Federal Register** on or about June 15, 1989. Inquiries are welcome prior to submission of applications. The Office of Private Sector Programs reserves the right under compelling circumstances to consider applications outside of the context of the above-mentioned timeframe.

For further information, organizations should contact Dr. Raymond H. Harvey, Office of Private Sector Programs, Bureau of Educational and Cultural Affairs, Untied States Information Agency, 301 4th Street, SW., Washington, DC 20547, or call (202) 485–7348.

Dated: February 1, 1989.

Robert Francis Smith,

Director, Office of Private Sector Programs.

[FR Doc. 89–3129 Filed 2–8–89; 8:45 am]

BILLING CODE 8230–01–M

A Grants Program for Private Not-For-Profit Organizations in Support of International Educational and Cultural Activities

The United States Information Agency (USIA) hereby announces a program of selective assistance and limited grant support to non-profit activities of United States' institutions and organizations in the Private Sector. The program is designed to increase mutual understanding between the people of the United States and other countries and to strengthen the ties which unite our societies. The information collection involved in this solicitation is covered by OMB Clearance Number 3116–0175 entitled "A Grants Program for Private, Non-Profit Organizations in Support of International Educational and Cultural Activities," announced in the **Federal Register** June 3, 1987.

Private Sector organizations interested in working cooperatively with USIA on the following two projects are encouraged to apply.

Workshop on Textbook Writing/Editing for Jordanian Publishers and Educators

The Office of Private Sector Programs of the United States Information Agency (USIA) announces the availability of an Initiative Grant open to U.S. not-for-profit institutions to develop and administer a 3-week workshop on textbook writing/editing for Jordanian publishers, educators and Ministry of Education Officials. Possible venues for the traveling workshop are Washington, DC, Boston, Philadelphia, Albany and New York, New York. Ten Jordanian participants are to be selected to participate in the workshop by USIS officers at the American Embassy in Amman, Jordan. This international educational project is being initiated by USIA as a result of interest expressed by the Jordanian publishing industry and Ministry of Education officials in educational textbook writing, editing and publishing in the United States.

The time of the workshop is to be established by the organization awarded the grant for a mutually convenient three-week period between April 1989 and September 30, 1989. The workshop is to be developed and executed by a U.S. not-for-profit institution with expertise in the preparation and publication of educational textbooks. A major objective of the workshop is to assist the Jordanians in applying for copyrights to adapt basic chapters or core sections of U.S. textbooks in the fields of science, mathematics, geography, economics, political science and the environment for translation into Arabic in order to meet Jordanian educational needs. The Grantee Organization should possess the knowledge and expertise required to assist in the selection of U.S. texts and their adaptation into Arabic.

USIA is most interested in working with organizations showing evidence of innovative and cost-effective programming. Primary consideration is given to organizations which have institutional administrative support and/or the potential for obtaining private sector funding in addition to USIA financial support. Organizations must have the substantive expertise, logistical capability and administrative skills needed to develop and conduct the above-mentioned project successfully so that it will have a lasting impact on the participants.

Interested organizations should submit a request for complete application materials postmarked no later than fifteen days from the date of this notice to the address listed below. The Office of Private Sector Programs of USIA will then forward a set of materials containing guidelines for the preparation of proposals.

Office of Private Sector Programs, Bureau of Educational and Cultural Affairs (Attn: Initiative Grant Programs) United States Information Agency, 301 4th Street SW., Washington, DC 20547.

Dated: January 31, 1989.

Robert Francis Smith,

Director, Office of Private Sector Programs.

[FR Doc. 89–3130 Filed 2–8–89; 8:45 am]

BILLING CODE 8230–01–M

A Grants Program for Private Not-for-Profit Organizations in Support of International Educational and Cultural Activities

The United States Information Agency (USIA) hereby announces a program of selective assistance and limited grant support to non-profit activities of United States' institutions and organizations in the Private Sector. The program is designed to increase mutual understanding between the people of the United States and other countries and to strengthen the ties which unite our societies. The information collection involved in this solicitation is covered by OMB Clearance Number 3116–0175 entitled "A Grants Program for Private, Non-Profit Organizations in Support of International Educational and Cultural Activities," announced in the **Federal Register** June 3, 1987.

Private Sector organizations interested in working cooperatively with USIA on the following two projects are encouraged to develop and submit program proposals:

U.S. Study Tours for Middle Eastern Legislators

The Office of Private Sector Programs of the United States Information Agency will assist in supporting the development of two 3-week projects to introduce up to twenty new legislators from the Middle East to the concept of representational government and its application to the Federal Government system in the United States. Each project would have up to ten participants. One project would be conducted in Arabic; the other, in English. Grants to administer both projects are to be set by the grantee organization between April 1989 and September 30, 1989. The purposes and objectives of the projects are:

—To introduce new legislators to the organization, structure and functions of the executive, legislative and judicial branches of the U.S. Government;

—To provide new legislators with insight into the decision-making process in the evolution of U.S. foreign and domestic policies;

—To create understanding for the concept and practice of representational government as applied to the Federal Government system in the United States;

—To further international understanding of the values, institutions and practices of a democratic society through first-hand experience, observation, and exchange of ideas with U.S. legislators, judges, and scholars.

USIA is most interested in working with organizations showing evidence of innovative and cost-effective programming. Primary consideration will be given to organizations which have institutional and other private sector funding in addition to USIA support. Organizations must have the substantive expertise, logistical capability and administrative skills needed to develop and conduct the projects successfully so that they will have a lasting impact on their participants.

Interested organizations should submit a request for complete application materials—postmarked no later than fifteen days from the date of this notice—to the address listed below. The Office of Private Sector Programs of USIA will forward on request a set of materials containing guidelines for the preparation of proposals.

Office of Private Sector Programs, Bureau of Educational and Cultural Affairs (Attn: Initiative Grant Programs), United States Information Agency, 301 4th Street SW., Washington, DC 20547.

Dated: January 31, 1989.

Robert Francis Smith,

Director, Office of Private Sector Programs.

[FR Doc 89–3131 Filed 2–8–89; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 26
Thursday, February 9, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, February 14, 1989, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, February 16, 1989, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor)

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Certification for Payment of 1988 Primary Matching Funds.
Legislative Recommendations.
Status of Presidential Audits.
Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Marjorie W. Emmons,
Secretary of the Commission.

[FR Doc. 89-3170 Filed 2-7-89; 12:14 pm]
BILLING CODE 6715-01-M

Corrections

Federal Register
Vol. 54, No. 26
Thursday, February 9, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

Department of Agriculture
7 CFR PART 3017
Department of Energy
10 CFR PART 1036
Federal Home Loan Bank Board
12 CFR PART 516
Small Business Administration
13 CFR PART 145
National Aeronautics and Space Administration
14 CFR PART 1266
Department of Commerce
15 CFR PART 26
Department of State
22 CFR PART 137
International Development Cooperation Agency
Agency for International Development
22 CFR PART 208
Peace Corps
22 CFR PART 310
United States Information Agency
22 CFR PART 513
Inter-American Foundation
22 CFR PART 1006
African Development Foundation
22 CFR PART 1508
Department of Housing and Urban Development
24 CFR PART 24
Department of the Treasury
Internal Revenue Service
26 CFR PART 601
Office of the Secretary
31 CFR PART 19
Department of Justice
28 CFR PART 67
Department of Labor
29 CFR PART 98
Federal Mediation and Conciliation Service
29 CFR PART 1471
Department of Defense
32 CFR PART 280
Department of Education
34 CFR PART 85
National Archives and Records Administration
36 CFR PART 1209
Veterans Administration
38 CFR PART 44
Environmental Protection Agency
40 CFR PART 32
General Services Administration
41 CFR PARTS 101-50 AND 105-68
Department of the Interior
43 CFR PART 12
Federal Emergency Management Agency
44 CFR PART 17
Department of Health and Human Services
45 CFR PART 76
National Science Foundation
45 CFR PART 620
National Foundation on the Arts and the Humanities
National Endowment for the Arts
45 CFR PART 1154
National Endowment for the Humanities
45 CFR PART 1160
Institute of Museum Services
45 CFR PART 1185
ACTION
45 CFR PART 1229
Commission on the Bicentennial of the United States Constitution
45 CFR PART 2016
Department of Transportation
49 CFR PART 29

Governmentwide Requirements for Drug-Free Workplace (Grants)

Correction

In rule document 89-2065 beginning on page 4947 in the issue of Tuesday, January 31, 1989, make the following corrections:

1. On page 4948, in the third column, beginning with the third complete paragraph, and on page 4949, in the first column, through the fourth complete paragraph, text was printed out of order. The text should have read as follows:

"Grantee" is defined as a person who applies for or receives a grant directly from a Federal agency. This definition clarifies the statutory definition of this term, which refers to "the department, division, or other unit of a person responsible for the performance under the grant." The agencies view the regulatory definition as avoiding confusion among the terms "grantee," "person" and "individual" that might otherwise occur.

At the same time, the use of "grantee" in this regulation is intended to be consistent with the statutory sense of the term. For example, in determining the level of organization at which a sanction should be imposed in case of a violation of the requirements of this subpart, the agencies intend, where appropriate, to focus on the "department, division, or other unit" of the grantee responsible for performance under the grant. For example, if several different organizational units of a State agency receive grants from a Federal agency, and one of the State organizational units violates a

requirement of the regulation, sanctions could be imposed on that organizational unit, not on the entire State agency. On the other hand, where it is appropriate, in the context of a particular Federal grant program, to view the entire grantee organization as responsible for the implementation of drug-free workplace requirements under this rule, the entire grantee organization could be subject to sanctions.

As in the definition of "grant," the use of the word "directly" emphasizes that it is only a "prime grantee," and not "subgrantees," who are covered by requirements under this subpart. This is true even when the prime grantee is only an office that passes Federal funds through to subgrantees who actually do the work of the program.

Words like "State" and "person" are already defined in § ____.105, so definitions of these terms are not repeated in this section. "Individual" is defined in this section, however, to mean "a natural person." This wording emphasizes that an individual differs both from an organization made up of more than one individual and from corporations, which can be regarded as a single "person" for some legal purposes. An individual who receives a grant directly from a Federal agency (e.g., the individual gets a Federal agency award and grant check made out in his or her name) is covered by this rule, and must make the certification provided for grantees who are individuals, even if another party (e.g., a university) has a purely administrative role in distributing the funds. The agencies intend that a "principal investigator" in a research or similar grant be viewed as an individual only if the grant is awarded directly to the investigator (as distinct from being awarded to a university or other organization).

The § ____.105 definition of "person," it should be pointed out, includes individuals. Since a "grantee" is a "person" who applies for or receives a grant, a grantee may be either an individual or an organization. When context requires, as in distinguishing between the certifications that individuals and organizations must submit, phrases like "grantees, other than individuals" and "grantees who are individuals" are used.

The definition of "Federal agency" or "agency" is taken from 5 U.S.C. 552(f) and is intended to cover a broad range of government entities. In various places in the regulation, "the agency" is used in the context of a particular grantor agency (e.g., § ____.630(a): "each grantee shall make the appropriate certification to the agency"). In such contexts, the term is not intended to mean Federal agencies in general.

2. On page 4957, in the second column, in the heading for Part 24, remove "(NONPROCUREMENT)".

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

Department of the Army

35 CFR Part 253

Regulations of the Secretary of the Army (Panama Canal Employment System); Employment Policy

Correction

In rule document 89-1883 beginning on page 4018 in the issue of Friday, January 27, 1989, make the following corrections:

1. On page 4018, in the 3rd column, under **SUPPLEMENTARY INFORMATION**, in the 10th line, "of" should read "or".

2. On the same page, in the same column, under **SUPPLEMENTARY INFORMATION**, in the 2nd paragraph, in the 22nd line, "GA-17" should read "GS-17".

3. On page 4019, in the first column, in amendatory instruction 2, "Section 153.8" should read "Section 253.8".

BILLING CODE 1505-01-D

DEPARTMENT OF EDUCATION

34 CFR Part 73

Standards of Conduct

Correction

In rule document 89-1125 beginning on page 5026 in the issue of Tuesday, January 31, 1989, make the following correction:

§ 73.50 [Corrected]

On page 5033, in the third column, in § 73.50, the section number should appear as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF EDUCATION

Office of Special Education Programs

Invitation for Applications for New Awards under Certain Direct Grant Programs for Fiscal Year 1989

Correction

In notice document 89-1663 beginning on page 3949 in the issue of Thursday, January 26, 1989, make the following corrections:

1. On page 3952, in the table, in the eighth table-column, in the fourth entry, "36 months" should read "60 months".

2. On page 3966, in the second column, in the first line, above "Signature of Authorized Certifying Official", insert a line for a signature.

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

[Docket No. CAS-RM-79-105]

Energy Conservation Program for Consumer Products; Notice of Proposed Rulemaking and Public Hearing Regarding Energy Conservation Standards for Water Heaters

Correction

In proposed rule document 89-907 beginning on page 1890 in the issue of Tuesday, January 17, 1989, make the following corrections:

1. On page 1895, in the 1st column, in the 14th line, before "water" insert "a".

2. On page 1903, in the first column, in the sixth line, "adjusted" should read "adjust".

3. On the same page, in the second column, in the second complete paragraph, in the first line, after "simulated" insert "use test are to be made at flow rates of".

4. On page 1905, in the second column, in the second complete paragraph, in the equation, in the denominator, "ηK_r" should read "η_r".

5. On the same page, in the third column, in the fifth line and sixth lines, "1bm" should read "lbm".

6. On the same page, in the same column, in the third equation, in the numerator, before "T_{max}" insert an opening parenthesis.

7. On page 1906, in the second column, in the second equation, at the end of the numerator, insert a closing parenthesis.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 86F-0375]

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

Correction

In rule document 88-26988 beginning on page 47185 in the issue of Tuesday, November 22, 1988, make the following correction:

§ 178.1005 [Corrected]

On page 47186, in the second column, in § 178.1005(e)(1), in the first column of the table, in the sixth entry, "Polyethylene" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 182

[Docket Nos. 79N-0141 and 79N-0142]

GRAS Status of Corn Sugar, Corn Syrup, Invert Sugar, and Sucrose

Correction

In rule document 88-25583 beginning on page 44862 in the issue of Monday, November 7, 1988, make the following correction:

On page 44875, in the third column, in the Authority citation, in the fourth line, "438" should read "348".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Imported Merchandise Returned to Customs' Custody; Compliance Policy Guide; Revocation

Correction

In notice document 88-29628 appearing on page 52238 in the issue of Tuesday, December 27, 1988, make the following correction:

In the first column, under **SUMMARY**, in the fourth line, "7135.06" should read "7153.06".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974; Revision of Notice of System of Records

Correction

In notice document 89-2058 beginning on page 4339 in the issue of Monday, January 30, 1989, make the following correction:

On page 4339, in the third column, the bold heading following the date line should have read "**INTERIOR OS-51**".

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 235

[INS Number: 1037-88]

Immigration User Fee, Conforming Amendments

Correction

In rule document 89-5 beginning on page 100 in the issue of Wednesday, January 4, 1989, make the following correction:

§ 235.3 [Corrected]

On page 101, in the third column, in § 235.3(f), in the 20th line, "Conference" should read "Conformance".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 5

Fee Adjustments for Testing, Evaluation and Approval of Mining Products

Correction

In rule document 88-30168 beginning on page 17 in the issue of Tuesday, January 3, 1989, make the following corrections:

1. On page 18, in the 3rd column of the table, in the 22nd entry, "399" should read "339".

2. On page 20, under **Part 33—Dust Collectors**, the application fee for "16. Certification evaluation" should be $100.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-ANE-32; Amdt. 39-6092]

Airworthiness Directives; Allison Gas Turbine Division, General Motors Corp., Allison Model 250-B17; -C20, -C20R, and -C30 Series Engines

Correction

In rule document 89-1995 beginning on page 4262 in the issue of Monday, January 30, 1989, make the following correction:

§ 39.13 [Corrected]

On page 4263, in the second column, in § 39.13(d), in the first line, "upon" should read "Upon".

BILLING CODE 1505-01-D

federal register

Thursday
February 9, 1989

Part II

Department of Health and Human Services

Family Support Administration

45 CFR Part 1080
Emergency Community Services Homeless Grant Program; Final Rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

45 CFR Part 1060

Emergency Community Services Homeless Grant Program

AGENCY: Family Support Administration (FSA), Office of Community Services (OCS), HHS.

ACTION: Final rules.

SUMMARY: OCS is issuing final regulations for the disbursement of funds for the Emergency Community Services Homeless Grant Program (EHP) established by the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100–77, as amended by Pub. L. 100–628). The regulations establish procedures that States, territories, Indian tribes, and other organizations must follow to apply for and use the funds appropriated for this program.

EFFECTIVE DATE: The effective date of these final rules is February 9, 1989.

FOR FURTHER INFORMATION CONTACT: The following individual can provide additional information on the regulations: Mary M. Evert, Director, Office of Community Services, Department of Health and Human Services, 370 L'Enfant Promenade SW., Washington, DC 20447, (202) 252–5233.

SUPPLEMENTARY INFORMATION: The Stewart B. McKinney Homeless Assistance Act (Pub. L. 100–77, signed July 22, 1987) established a number of programs to assist homeless persons, including the Emergency Community Services Homeless Grant Program (EHP) (Title VII, Subtitle D, Sections 751–754 and 762 of Pub. L. 100–77) (42 U.S.C. 11461–11464 and 11472). The McKinney Act has since been amended by Pub. L. 100–628 with respect to eligible uses of the EHP funds, among other things (Title VII, Subtitle A, Section 704 of Pub. L. 100–628, signed November 7, 1988). The EHP program is operated by the Office of Community Services (OCS) within the Family Support Administration (FSA) of HHS. The McKinney Act provides that the funds appropriated for the EHP program are to be distributed to States that receive funds under the Community Services Block Grant (CSBG) program (42 U.S.C. 9901 *et seq.*), using the allocation formula that applies to the CSBG program. In addition, the Act sets aside EHP funds to be awarded directly to certain Indian tribes.

Interim final regulations to implement the EHP program were published in the **Federal Register** on June 22, 1988 (53 FR 23568), and a 30-day comment period was provided. We have made changes to the interim final regulations based on our evaluation of the comments received, our experience resulting from the initial implementation of the fiscal year 1988 EHP grants, and statutory changes made to the McKinney Act since publication of the interim final regulations. The regulations, revised as appropriate, are now being made final. We have kept them to a minimum, consistent with the Department's policy of allowing maximum flexibility to the States and localities in providing services to their citizens. The provisions of the regulations are discussed below, together with the comments that were received.

Justification for Dispensing With Notice of Proposed Rulemaking

The Administrative Procedure Act (APA) creates an exception to general notice and comment rulemaking procedures where the agency for good cause finds that those procedures are impracticable, unnecessary, or contrary to the public interest. In addition to changes made to the interim final rule as a result of public comment, this final rule contains provisions designed to implement amendments to the EHP program contained in the Stewart B. McKinney Homeless Assistance Amendments of 1988, Pub. L. 100–628, which was enacted into law on November 7, 1988. Section 1060.3 of the regulations includes a statutory clarification setting aside 0.5% of annual appropriations for the territories of American Samoa, Guam, the Northern Mariana Islands, the Republic of Palau, and the Virgin Islands. Sections 1060.4 and 1060.5 have been changed to allow EHP funds to be used for the prevention of homelessness. Section 1060.5 has been revised to include an assurance that the State will make every effort to award funds within 60 days of receipt. We have incorporated these amendments without interpretation, and therefore believe notice of proposed rulemaking as to these new regulatory requirements is unnecessary. We have also made minor changes to the application procedures described in §§ 1060.5 and 1060.6 in order to insure that OCS is able to carry out its statutory responsibility to distribute EHP funds only on the basis of an approvable application. Finally, we have included in §§ 1060.5 and 1060.8 coordination of effort requirements designed to carry out Congress' intent that all levels of government and the private sector work together in attacking homelessness. As these changes clarify and complete the procedures set out in the interim final rule without changing the substance of the EHP program or the relationship between the Federal government and EHP grantees, we have concluded that these procedural changes are exempt from notice of proposed rulemaking requirements.

Analysis of Comments on and Changes to Interim Final Regulations

Many of the comments we received appear to be based on misconceptions that the EHP program is subject to all the statutory and regulatory provisions of the CSBG program, also administered by OCS. Although there are many similarities between the programs, the statutes setting them up are different in many respects. We have included specific language in these regulations in those cases where we intend the CSBG procedures to apply to EHP. In all other respects, the programs should be considered to be separate.

Income Eligibility Criteria

Several of the public comments received revolved around the issue of income guidelines for establishing an individual's eligibility for receiving assistance under this program. Comments suggested allowing those persons with incomes up to 125% of the official poverty line to participate in programs funded under EHP.

An income eligibility guideline was not included in the interim final regulations because we felt the definition of "homeless individual" contained in the McKinney Act was drawn tightly enough to ensure that assistance was provided only to those truly in need. We continue to believe this to be the case, and thus have not adopted this suggestion. We leave to the discretion of the States the authority to impose an income eligibility criterion, should they believe it to be necessary.

One comment also inquired as to whether benefits received under an EHP-funded program would be considered as income or resources for purposes of determining eligibility and benefit levels for other federally assisted programs such as AFDC and food stamps. The comment went on to suggest that receipt of EHP-funded benefits specifically be excluded from eligibility and benefit level calculations for other programs. We have not adopted this suggested change. We do not have statutory authority under the McKinney Act to exclude benefits provided under that Act from consideration as income or resources under any public assistance program. Determinations as to whether to exclude McKinney Act benefits must be made by the Federal and State authorities

responsible for administering each program, based on a review of the Federal statutory and regulatory provisions governing each program as well as the implementing policies of individual States.

Allocation of Funds

As a result of an amendment to the McKinney Act contained in Pub. L. 100–628, we have made a minor change to § 1060.3 of the interim final regulations to clarify that EHP funds will be allocated in accordance with the formula set forth in sections 674 (a) and (b) of the CSBG Act. Congress, intent in enacting this amendment was to set aside 0.5 percent of annual appropriations for the territories of American Samoa, Guam, Northern Mariana Islands, Republic of Palau, and Virgin Islands. These wording changes will not affect the allocation of funds, since we had already interpreted the McKinney Act in this fashion for fiscal years 1987 and 1988.

In addition, we have clarified the language of the regulations to specifically exclude implementation of subsection (c) of section 674 of the CSBG Act for the EHP program. Subsection (c), which provides for allocation of CSBG funds to certain Indian tribes, is not needed because § 1060.7 of the regulations implements a McKinney Act provision that sets aside not less than 1.5 percent of appropriations for federally recognized Indian tribes.

Homelessness Prevention Activities

Several comments suggested that the regulations allow the funding of activities to prevent homelessness, such as the payment of rent or mortgage payments to avoid eviction and foreclosure. We understand that it is often more cost-effective to prevent someone from becoming homeless, rather than waiting for them to be evicted and then trying to help them get utility deposits and pay two months' rent in advance. For Fiscal Years 1987 and 1988, however, we were limited to the McKinney Act's requirements that the funds be used only for those who were already homeless.

The McKinney Act has now been amended to allow a State to use up to 25 percent of its EHP allocation to fund homelessness prevention activities, under certain specified conditions (Pub. L. 100–628). We have amended §§ 1060.4(d) and 1060.5(b)(6) of the regulations to reflect this change in the law, which became effective for all activities funded after October 1, 1988, the beginning of fiscal year 1989 and the effective date of Pub. L. 100–628. The conference report and Senate floor debate on H.R. 4352, which later became Pub. L. 100–628, make clear that Congress intended this amendment to govern expenditures for any preventative activities funded after the beginning of fiscal year 1989. Accordingly, these regulations would allow fiscal years 1987 and 1988 funds to be used for this purpose after October 1, 1988, as well as funds appropriated for fiscal year 1989 and subsequent years. No EHP funds, whatever the year involved, may be used to cover prevention activities conducted prior to October 1, 1988.

State Application Procedures

We have revised § 1060.5 of the interim final regulations in several respects. First, we have clarified that changes to an approved State EHP application must be submitted to OCS for approval before they may be implemented. This differs from CSBG, where notice of changes is advisory, because of statutory differences. Also, we have clarified that the assurances required by § 1060.5 must be signed by the Governor or his/her designee.

Second, we have added three items to the list of assurances that must be included in a State's application. The first requires the State to make every effort to award the EHP funds to eligible organizations within 60 days of their receipt from the Federal government. Pub. L. 100–628, the McKinney Act amendments, requires the States to award these funds within 60 days of receipt, but provides that enforcement of the requirement is left solely to the discretion of the Secretary of HHS. The conference report on the amendments states that the provision is not intended to provide community action agencies with a right of action against States that do not comply with the disbursement requirement. Our experience with the EHP program over the last 2 fiscal years, as well as many years experience with the CSBG program, has shown that a strict 60-day obligation requirement is very difficult for the States to administer in many cases, and can be counterproductive if grant awards are rushed through without adequate review or controls. The regulation implements this provision of Pub. L. 100–628 by requiring States to certify that every effort will be made to meet the 60-day obligation provision.

The second new assurance implements a McKinney Act amendment to limit to 25 percent the amount of EHP funds that may be used in any fiscal year for the homelessness prevention activities authorized in § 1060.4(d).

The third new assurance requires the State to have mechanisms in place to assure coordination among the State and local agencies serving the homeless. This is to include coordination at the State level with the agency responsible for developing the Comprehensive Homeless Assistance Plan required by section 401 of the McKinney Act. This carries out the McKinney Act intent that all levels of government and the private sector work together in attacking homelessness. We have also added a provision to § 1060.8 of the regulations requiring grantees to discuss coordination efforts in their annual report.

Finally, we have clarified our interpretation of agencies and organizations that may be funded by the State. The McKinney Act uses the term "community action agencies that are eligible to receive amounts under section 675(c)(2)(A) of the Community Services Block Grant Act * * *" to describe entities that are eligible to be funded under the EHP program. We have interpreted this language to mean all agencies and organizations that meet the definition of "eligible entity" included in section 673(1) of the CSBG Act (42 U.S.C. 9902(1)). This will make the EHP program more consistent with administration of the CSBG Act, and will allow for an updating of eligible organizations to reflect changes in State needs and population. Minor language changes have been included in the regulations to reflect this interpretation.

Funding of Alternative Organizations

The McKinney Act provides that if a State does not apply for or submit an approvable EHP application, the Secretary is to award the State's allocation directly to eligible organizations within the State. We have made some changes to § 1060.6 of the regulations to clarify that the alternative organizations to be funded must apply for the funds. Should any of the eligible organizations fail to submit an approvable application, the funds that would otherwise be allocated to them will be reapportioned to the remaining eligible organizations on a pro rata basis.

Building Acquisition and Construction

One comment received suggested that the regulations be amended to allow the use of EHP funds for the purchase and/or renovation of buildings to be used as shelters. We do not believe that such a provision is necessary. Neither the regulations nor the McKinney Act restricts the use of EHP funds for the acquisition, construction, or

rehabilitation of buildings for use in connection with homeless activities. There is such a statutory restriction on the use of CSBG funds for such purposes, but that restriction does not apply to the EHP program. Each State may decide if it wants to impose any restrictions in this area.

Section-by-Section Analysis

Section 1080.1 Scope

The regulations apply to the Emergency Community Services Homeless Grant Program.

Section 1080.2 Definitions

The regulations include a definition of "homeless individual" that is taken directly from the McKinney Act, and a definition of "Indian tribe" that is limited to federally-recognized tribes, as required by the McKinney Act. This differs from the CSBG program, which allows direct grants by OCS to both federally and state-recognized tribes.

"State" is defined to include the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau. This definition is consistent with that used for the CSBG program.

Section 1080.3 Allocation of Funds

The regulations implement the McKinney Act requirement that the EHP funds be allocated to States that receive funds under the CSBG Act, using the allocation formula that applies to CSBG, as set out in subsections (a) and (b) of section 674 of Pub. L. 9735 (42 U.S.C. 9903(a)(1)). These sections provide that funds will go to the 50 States, as well as the District of Columbia and Puerto Rico. In addition, 0.5 percent of annual appropriations are set aside for the 5 territories of American Samoa, Guam, Northern Mariana Islands, Republic of Palau, and Virgin Islands. Section 1080.7 of the regulations implements a McKinney Act provision that sets aside not less than 1.5 percent of annual appropriations for federally-recognized Indian tribes. For this reason, the regulations specifically exclude implementation of subsection (c) of section 674 of the CSBG Act for the EHP program, since that subsection deals with funding for Indian tribes.

Section 1080.4 Eligible Use of Funds

As required by the McKinney Act as amended, the regulations state that grant recipients may use EHP funds only to: (a) Expand comprehensive services to homeless individuals to provide followup and long-term services to help them make the transition out of poverty; (b) provide assistance in obtaining social and maintenance services and income support services for homeless individuals; (c) promote private sector and other assistance to homeless individuals; and (d) after October 1, 1988, provide assistance under certain conditions to individuals who have received a notice of foreclosure, eviction, or termination of utility services, in order to prevent them from becoming homeless. To implement stated Congressional intent, this provision would allow fiscal year 1987 and 1988 funds to be used for this purpose after October 1, 1988, as well, in addition to funds appropriated for fiscal year 1989 and subsequent years. No EHP funds, whatever the year involved, may be used to cover prevention activities conducted prior to October 1, 1988. Section 1080.5(b)(6) has been added to the regulations to prohibit a State from using more than 25 percent of the amounts received to fund the homelessness prevention activities covered in item (d) above, as required by the McKinney Act amendments.

Section 1080.5 Application Procedures for States

Under the terms of the McKinney Act, a State must apply to OCS for the EHP funds. These regulations specify that State applications must be submitted at a time established by the Secretary. It is intended that the application deadline will be contained in a letter to each State from the Secretary. Any changes to the information required to be submitted by § 1080.5(b) after the application has been approved must be submitted to and approved by OCS before they are implemented.

Applications can be in any format, but must describe the agencies, organizations, and activities the State intends to support with the funds received. The application must also include several statutorily-required assurances, signed by the Governor or his/her designee. The State must certify that it will award all the funds to community action agencies and other entities eligible to receive funds under section 675(c)(2)(A) of the CSBG Act (42 U.S.C. 9904(c)(2)(A)), organizations serving migrant and seasonal farmworkers, and certain other organizations that received FY 1984 CSBG funds from a State under special waiver provisions included in Pub. L. 98-139. (There are about 40 "special waiver" organizations located in only 3 States—Colorado, Utah, and Wyoming). Not less than 90 percent of the amounts must go to eligible organizations that were providing services to meet the critically urgent needs of homeless individuals as of January 1, 1987. The funds may not be used to supplant or replace other homeless assistance programs administered by the State, or to defray State administrative expenses. The State must make every effort to award the funds to its subgrantees within 60 days of their receipt from the Federal government. Further, no more than 25 percent of the money received by a State may be used to fund activities to prevent homelessness under § 1080.4(d) of the regulations. Finally, the State is required to have mechanisms in place to assure coordination among the State and local agencies serving the homeless. This is to include coordination at the State level with the agency responsible for developing the Comprehensive Homeless Assistance Plan required by Section 401 of the McKinney Act.

The McKinney Act uses the term "community action agencies that are eligible to receive amounts under section 675(c)(2)(A) of the Community Services Block Grant Act * * *" to describe entities that are eligible to be funded under the EHP program. We have interpreted this language to mean all agencies and organizations that meet the definition of "eligible entity" included in section 673(1) of the CSBG Act (42 U.S.C. 9902(1)). This will make the EHP program more consistent with administration of the CSBG Act, and will allow for an updating of eligible organizations to reflect changes in State needs and population.

Section 1080.6 Funding of Alternative Organizations

Under the McKinney Act, if a State fails to apply for its share of the available funds or does not submit an approvable application, the Secretary is to award the State's allocation directly to other organizations within the State. Only those organizations eligible for funding by the State under the EHP program (e.g., community action and other eligible agencies, organizations serving migrant and seasonal farmworkers, and "special waiver" recipient organizations) may receive funding under this section. These regulations provide that the Secretary will award all of the funds to eligible organizations in the State involved, in the same proportion as the State distributed its CSBG funds to those organizations for the previous fiscal year, subject to the Act's requirement that not less than 90 percent of the funds must be awarded to such organizations that were serving the homeless as of January 1, 1987. States generally update their CSBG distribution formulas annually to account for shifts in needs and population. Using the State's most recent formula to distribute EHP funds will allow the Secretary to allocate funds to those areas the State has recently deemed most in need. An application will be required from those organizations that are funded under this section. If one or more of the organizations eligible to be funded under this section does not apply for or submit an approvable application, the amounts that would have been allocated to them will be reapportioned to the remaining eligible organizations on a pro rata basis.

Section 1080.7 Funding of Indian Tribes

Section 762 of the McKinney Act specifies that not less than 1.5 percent of any funds appropriated for EHP are to be set aside and distributed by OCS directly to Indian tribes. These regulations state that only those federally-recognized tribes that apply for and receive CSBG funds directly from the Office of Community Services in any fiscal year will be eligible to receive direct grants of EHP funds from OCS for that year. A minimum grant award amount is also established. Those tribes that would otherwise receive between $1 and $500 under the allocation formula would have that amount raised to $500. Those tribes that would receive between $501 and $999 will instead receive a $1000 award.

The regulations do not require Indian tribes to submit an EHP application because we believe that a separate application requirement would be too burdensome, given the small amount of funds involved. Eligible federally-recognized Indian tribes that apply for a CSBG direct grant under section 674(c) of the CSBG Act (42 U.S.C. 9903(c)) will be considered to have applied for an EHP grant. Acceptance of its CSBG application by OCS will constitute approval of an EHP grant for an Indian tribe.

Indian Funding Formula

The Indian set-aside funds will be allocated to eligible tribes on the basis of the size of the tribe's population living in poverty. The tribe's poverty population will be determined by multiplying its overall population by the rural poverty rate for Indians in the State in which the tribe is located. Each tribe's poverty population will then be compared to the total poverty population of all tribes funded under this section to determine its share of the funds, adjusted if necessary to reflect the minimum grant award. The regulations specify that the figures used to calculate the size of a tribe's poverty population will be those established by OCS for the purposes of making direct grant awards to Indian tribes for the CSBG program. Any changes made to those figures by OCS will also be applied to the EHP program.

As an example, if a tribe with a total population of 3,000 is located in a State where the Indian rural poverty rate is 50 percent, the tribe's poverty population will be 1500 (3,000×50%=1500). If 5 tribes with a total poverty population of 10,000 were funded, then one tribe with a poverty population of 1500 would receive 15 percent of the available funds (1500 divided by 10,000=15%). If the total EHP set-aside funds available were $20,000, this tribe would receive $3,000 ($20,000×15%=$3,000). If the allocation calculated under this formula came to less than the minimum grant amount of $500 or $1,000, the amount would be adjusted up to that amount, and the allocations for the other tribes would be adjusted down proportionately to accommodate it.

Section 1080.8 Reporting Requirements

These regulations require all EHP grant recipients to report annually to OCS on their implementation of the EHP program. The report is to indicate the types of activities funded, any efforts undertaken by the grantee and its subgrantees to coordinate homeless activities funded under the EHP program with other state and community homeless assistance activities, the number of individuals served, and any impediments to homeless individuals, use of the program or to their obtaining services or benefits under the program. The report may be in any format, but must be submitted within 6 months of the end of the period covered by the report (e.g., the report will be due by March 31 for the fiscal year which ended on September 30 of the previous year). We would strongly encourage grantees, however, to submit their reports by December 31 of each year, while the details of the program are still fresh. This information will allow HHS to fulfill its obligation under section 203(c) of the McKinney Act to report annually to Congress and the Interagency Council on the Homeless on the implementation and effectiveness of the programs funded by the Act.

Section 1080.9 Other Requirements

The McKinney Act is silent on a number of administrative details necessary to ensure that EHP funds are spent as intended by the law. We have determined that the best way to ensure that the intent of Congress is carried out is to make the EHP program subject to a few selected regulations that are currently applicable to the HHS block grant programs, including CSBG.

These regulations apply to EHP the payment regulations applicable to the HHS block grant programs (45 U.S.C. Part 96, Subpart B, § 96.12, as amended). Those block grant regulations provide that the Secretary will make payments to the grantees at such times and in such amounts as are consistent with section 203 of the Intergovernmental Cooperation Act (42 U.S.C. 4213) and Treasury Circular No. 1075 (31 CFR Part 205). Those regulations in essence are intended to limit the amount of time elapsing between a grantee's acquisition of federal funds and their expenditure, and mean that many awards may be disbursed in more than one payment, rather than in a lump sum, thus reducing federal interest costs.

The regulations make the HHS block grant regulations concerning the time period for obligation and expenditure of funds (45 U.S.C. Part 96, Subpart B, § 96.14) applicable to EHP. Those regulations provide that funds that a State has not obligated by the end of the fiscal year in which they were first allotted will remain available for obligation during the following fiscal year.

Also applying to EHP are the financial management and audit regulations applicable to the HHS block grant programs (45 U.S.C. Part 96, Subpart C, as amended). Those regulations require States to obligate and expend federal grant funds in accordance with the laws and procedures applicable to the obligation and expenditure of their own funds. Those regulations also require States and tribes that receive over $100,000 in federal grant funds from all sources to conduct a single audit of all federal financial assistance under the terms of the Single Audit Act (Pub. L. 98-502). States and Indian tribes that receive between $25,000 and $100,000 in federal grants may either conduct a single audit or an audit that meets the statutory requirements of that program. Since the McKinney Act does not prescribe audit requirements for EHP, these grantees must also conduct a single audit. States or tribes that receive less than $25,000 in federal funds from all sources are not subject to federal audit requirements. The HHS block grant audit regulations specify reporting deadlines for audits, and lay out procedures for the repayment of funds found by the audit to have been spent improperly. The block grant regulations also identify the Regional Office of Investigations of the Department's

Office of Inspector General as the agency to which States and Indian tribes should report information relating to possible fraud or other offenses against the United States.

These regulations also specify that all EHP grants are subject to the enforcement regulations applicable to the HHS block grant programs (45 CFR Part 96, Subpart E, as amended). Those regulations establish procedures for accepting and responding to complaints that a recipient has improperly spent federal funds. They include the right to a hearing on the complaint, appeal rights, and repayment of funds.

Finally, the EHP regulations state that grant recipients are subject to the hearing procedures regulations applicable to the HHS block grant programs (45 CFR Part 96, Subpart F). Those regulations specify the procedures and time requirements for a hearing.

Impact Analysis

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules, which are defined in the Order as any rule that has an annual effect on the national economy of $100 million or more or has certain other specified effects. The Department has determined that these regulations are not major rules within the meaning of the Executive Order because they will not have an effect on the economy of $100 million or more, or otherwise meet the threshold criteria.

Regulatory Flexibility Act of 1980

Consistent with the Regulatory Flexibility Act of 1980 (5 U.S.C. Ch. 6), the Department tries to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant economic impact on a substantial number of small entities", an analysis is prepared describing the rule's impact on small entities. Small entities are defined in the Act to include small businesses, small nonprofit organizations, and small governmental entities. The primary impact of these regulations is on the States, which are not "small entities" within the meaning of the Act. For this reason, the Secretary certifies that these rules will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, Pub. L. 96–511, all Departments are required to submit to the Office of Management and Budget for review and approval any reporting or recordkeeping requirements in a proposed or final rule. These regulations include two provisions that were originally published as a part of the interim final regulations published on June 22, 1988 (53 CFR Part 23566). The first of these provisions requires grant recipients to submit an annual report to OCS on their implementation of the EHP program and any impediments to homeless individuals' use of the program or to their obtaining services or benefits under the program. This information is essential so that HHS can fulfill its obligation under section 203(c) of the McKinney Act to report to Congress and the Interagency Council on the Homeless on the implementation and effectiveness of the programs funded by the Act. The second provision incorporates the McKinney Act requirement that States apply for the EHP funds on an annual basis. The Office of Community Services submitted information to the Office of Management and Budget requesting approval of the reporting and application requirements at the time the interim final regulations were published. On September 6, 1988, the Office of Management and Budget approved both these requirements for use through September 30, 1991 (OMB No. 0970–0068).

List of Subjects in 45 CFR Part 1060

Administrative practices and procedures, Community action programs, Grant programs—social, Homeless assistance.

For the reasons set forth in the preamble, Part 1060 of Title 45 of the Code of Federal Regulations is revised to read as follows:

PART 1060—EMERGENCY COMMUNITY SERVICES HOMELESS GRANT PROGRAM

Sec.

1060.1 Scope.
1060.2 Definitions.
1060.3 Allocation of funds.
1060.4 Eligible use of funds.
1060.5 Application procedures for states.
1060.6 Funding of alternative organizations.
1060.7 Funding of Indian tribes.
1060.8 Reporting requirements.
1060.9 Other requirements.

Authority: 42 U.S.C. 11302 (101 Stat. 485); 42 U.S.C. 11461–11464, 11472 (101 Stat. 532–533).

§ 1060.1 Scope.

This part applies to the Emergency Community Services Homeless Grant Program.

§ 1060.2 Definitions.

(a) "Homeless" or "homeless individual" includes:

(1) An individual who lacks a fixed, regular, and adequate nighttime residence; and

(2) An individual who has a primary nighttime residence that is:

(i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

The term "homeless" or "homeless individual" does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

(b) "Indian tribe" means any tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act), that is recognized by the Federal Government as eligible for special programs and services provided to Indians because of their status as Indians.

(c) "State" includes the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau.

§ 1060.3 Allocation of funds.

From the amounts made available under the Emergency Community Services Homeless Grant Program, the Secretary shall make grants to States that administer programs under the Community Services Block Grant Act (42 U.S.C. 9901 *et seq.*), after taking into account the amount set aside for Indian tribes in § 1060.7(a) of this chapter. Such grants shall be allocated to the States in accordance with the formula set forth in subsections (a) and (b) of section 674 of such Act (42 U.S.C. 9903 (a) and (b)). No funds shall be allocated under subsection (c) of section 674 of such Act (42 U.S.C. 9903(c)).

§ 1060.4 Eligible use of funds.

Amounts awarded under the Emergency Community Services Homeless Grant Program may be used only for the following purposes:

(a) Expansion of comprehensive services to homeless individuals to provide follow-up and long-term services to help them make the transition out of poverty;

(b) Provision of assistance in obtaining social and maintenance services and income support services for homeless individuals;

(c) Promotion of private sector and other assistance to homeless individuals; and

(d) After October 1, 1988, provision of assistance to any individual who has received a notice of foreclosure, eviction, or termination of utility services, if—

(1) The inability of the individual to make mortgage, rental, or utility payments is due to a sudden reduction in income;

(2) The assistance is necessary to avoid the foreclosure, eviction, or termination of utility services; and

(3) There is a reasonable prospect that the individual will be able to resume the payments within a reasonable period of time.

§ 1060.5 Application procedures for States.

(a) Each State requesting funds under the Emergency Community Services Homeless Grant Program shall submit to the Office of Community Services an application for funds for each fiscal year, at a time established by the Secretary. Approval must be requested of and received from the Office of Community Services before a State may implement changes to the information requested by paragraph (b) of this section after an application has been approved.

(b) The application may be in any format, but must include a description of the agencies, organizations, and activities that the State intends to support with the amounts received. In addition, the application must include the following assurances, signed by the Governor or his/her designee:

(1) The State will award all of the amounts it receives to:

(i) Community action agencies and other organizations that are eligible to receive amounts under section 675(c)(2)(A) of the Community Services Block Grant Act (42 U.S.C. 9904(c)(2)(A));

(ii) Organizations serving migrant and seasonal farmworkers; and

(iii) Any organization to which a State, that applied for and received a waiver from the Secretary under Pub. L. 98–139, made a grant under the Community Services Block Grant Act (42 U.S.C. 9901 *et seq.*) for fiscal year 1984;

(2) Not less than 90 percent of the amounts received shall be awarded to agencies and organizations meeting the requirements of paragraph (b)(1) of this section that, as of January 1, 1987, were providing services to meet the critically urgent needs of homeless individuals;

(3) No amount received will be used to supplant other programs for homeless individuals administered by the State;

(4) No amount received will be used to defray State administrative costs;

(5) Every effort will be made to award the funds within 60 days of their receipt;

(6) Not more than 25 percent of the amounts received will be used for the purpose described in § 1060.4(d) of these regulations; and

(7) The State will have mechanisms in place to assure coordination among State and local agencies serving the homeless. This will include coordination at the State level with the agency responsible for developing the Comprehensive Homeless Assistance Plan required by section 401 of such Act (42 U.S.C. 11361).

§ 1060.6 Funding of alternative organizations.

(a) If a State does not apply for or submit an approvable application for a grant under the Emergency Community Services Homeless Grant Program, the Secretary shall use the amounts that would have been allocated to that State to make grants to agencies and organizations in the State that meet the requirements of § 1060.5(b) (1) and (2) of this chapter.

(b) The amounts allocated under this section in any fiscal year shall be awarded to eligible agencies and organizations in the same proportion as funds distributed to those agencies and organizations by the State for the previous fiscal year under the Community Services Block Grant Program (42 U.S.C. 9904(c)(2)(A)).

(c) Agencies and organizations eligible to be funded under this section shall submit an application meeting the requirements of §§ 1060.5(a) and 1060.5(b) (3), (4), (6), and (7) of this chapter, at a time specified by the Secretary. If such an agency or organization does not apply for or submit an approvable application under this section, the funds that would have been allocated to them shall be reallocated by the Secretary to the remaining eligible agencies and organizations on a pro rata basis.

§ 1060.7 Funding of Indian tribes.

(a) Not less than 1.5 percent of the funds provided in each fiscal year for the Emergency Community Services Homeless Grant Program shall be allocated by the Secretary directly to Indian tribes that have applied for and received a direct grant award under section 674(c) of the Community Services Block Grant Act (41 U.S.C. 9903(c)) for that fiscal year.

(b) An Indian tribe funded under this section is not required to submit an application for Emergency Community Services Homeless Grant Program funds. A tribe's application for a direct grant award under section 674(c) of the Community Services Block Grant Act (42 U.S.C. 9903(c)) that is submitted by September 1 for the succeeding fiscal year will be considered as an application for Emergency Community Services Homeless Grant Program funds for that fiscal year. Acceptance of the Community Services Block Grant application by the Office of Community Services will constitute approval of an award of funds under this section.

(c) Funds allocated under this section shall be allotted to an Indian tribe in an amount that bears the same ratio to all the funds allocated under this section as the tribe's poverty population bears to the total poverty population of all tribes funded under this section, except that no tribe shall receive an amount of less than:

(1) $500, for those tribes whose allocation under this section would otherwise be at least $1 but no more than $500; or

(2) $1000, for those tribes whose allocation under this section would otherwise be at least $501 but less than $1000.

(d) For purposes of this section, an Indian tribe's poverty population shall be calculated by multiplying the tribe's overall population by the Indian rural poverty rate for the State in which it is located, using the population and rural poverty rate figures established for the purposes of making direct grants under section 674(c) of the Community Services Block Grant Act (42 U.S.C. 9903(c)).

§ 1060.8 Reporting requirements.

Each recipient of funds under the Emergency Community Services Homeless Grant Program shall submit an annual report to the Secretary, within 6 months of the end of the period covered by the report, on the expenditure of funds and the implementation of the program for that fiscal year. The report is to state the types of activities funded, any efforts undertaken by the grantee and its subgrantees to coordinate homeless activities funded under this program with other homeless assistance activities in the State and communities.

the number of individuals served and any impediments, including statutory and regulatory restrictions to homeless individuals' use of the program and to their obtaining services or benefits under the program.

§ 1080.9 Other requirements.

All recipients of grants under the Emergency Community Services Homeless Grant Program shall be subject to the following regulations applicable to the block grant programs in the Department of Health and Human Services:

(a) 45 CFR Part 96, Subpart B, § 96.12—Grant Payment, concerning the timing and method of disbursing grant awards;

(b) 45 CFR Part 96, Subpart B, § 96.14—Time Period for Obligation and Expenditure of Grant Funds, as amended, concerning the availability of grant funds;

(c) 45 CFR Part 96, Subpart C—Financial Management, as amended, concerning financial management and audit requirements;

(d) 45 CFR Part 96, Subpart E—Enforcement, as amended, concerning enforcement and complaint procedures; and

(e) 45 CFR Part 96, Subpart F—Hearing Procedures, concerning hearing procedures.

Date: November 22, 1988.

Wayne A. Stenton,

Administrator, Family Support Administration.

Date: January 26, 1989.

Don M. Newman,

Acting Secretary, Department of Health and Human Services.

[FR Doc. 89-3103 Filed 2-8-89; 8:45 am]

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federal register

Thursday
February 9, 1989

Part III

Environmental Protection Agency

40 CFR Part 82

Protection of Stratospheric Ozone; Final Rule

BEST COPY AVAILABLE

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL: 3516-8]

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency.

ACTION: Final Rule.

SUMMARY: Today's final action allows persons holding allowances to produce and import certain chlorofluorocarbons (CFCs) and halons to transfer those allowances subject to certain procedural requirements. EPA promulgated a rule on August 12, 1988 (53 FR 30566) that allocates these allowances as part of a regulatory system designed to protect stratospheric ozone. The purpose of this action is to promulgate the section of that regulatory system that permits transfers of allowances (40 CFR 82.12).

The regulation promulgated today requires any firm wishing to transfer allowances to submit a transfer claim to EPA and substantiate that it has the allowances it wishes to transfer. Depending on whether EPA's records confirm that the transferring firm has the allowances, the Agency will issue a notice of no objection to the transfer or a notice disallowing the transfer. In certain instances, EPA will issue a notice of no objection, but request further information from the transferor. In any event, the Agency will act within three working days of receiving a firm's complete transfer claim.

EPA is also considering whether to substitute for the transfer rule promulgated today a system based on certificates or coupons that would not require the Agency to determine whether the transferor has sufficient allowances. The Agency is requesting comments on this sytsem.

DATES: This final rule will take effect upon entry into force of the Montreal Protocol. The United States and other Parties to the Protocol will likely have 90 days prior notice of the date on which the Protocol will enter into force. When EPA learns of that date, it will publish a document in the **Federal Register** announcing the effective date of this rule. Written comments on the Coupon Tracking System must be submitted by March 15, 1989 to the location listed below.

ADDRESSES: Written comments should be sent to Docket A-88-27, Central Docket, South Conference Room 4, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket may be inspected between 8 a.m. and 3:30 p.m. on weekdays. As provided in CFR Part 2, a reasonable fee may be charged for photocopying. To expedite review, it is also requested that a duplicate copy of the written comments be sent to David F. Lee at the address listed below.

FOR FURTHER INFORMATION CONTACT: David F. Lee, Division of Global Change, Office of Atmospheric and Indoor Air Programs, Office of Air and Radiation (ANR-445), EPA, 401 M Street SW., Washington DC 20460. Telephone (202) 475-7497.

SUPPLEMENTARY INFORMATION:

I. Background Information

On August 12, 1988, EPA issued its final rule (53 FR 30566) implementing the Montreal Protocol, an international treaty designed to limit the worldwide production and consumption of chloroflourocarbons (CFCs) and halons.

The rule requires CFC producers to reduce their production of CFC-11, -12, -113, -114, -115 ("controlled substances") by as much as 50 percent of 1986 levels over the next 10 years. The schedule of the phased reductions in CFC production is presented in the August 12 final rule (§ 82.7). In addition to these production limits, the rule requires reduction in CFC consumption, defined as production plus imports minus exports, according to the same schedule (§ 82.7).

The rule also limits the production and consumption of Halon 1301, 1211, and 2402, another set of ozone-depleting chemicals. Under the rule, production and consumption of these halons will be frozen at 1986 levels beginning in approximately 1992 (§ 82.6).

The Agency's August 12 final rule implements these limits by allotting production and consumption allowances to producers and importers (§§ 82.5 and 82.6). Producers must obtain both consumption and production allowances to manufacture controlled substances while importers need only consumption allowances to import. Under the August 12 final rule seven producers received production allowances and seventeen producers and importers received consumption allowances for these chemicals based on the 1986 production and trade data they submitted to the Agency (§§ 82.5 and 82.6).

To monitor compliance by industry with these production and consumption limits, EPA requires that producers and importers maintain records of their production and import activities and report quarterly their production and import levels (§ 82.13). EPA may also conduct compliance reviews and inspections. In addition, EPA requires exporters to report their export shipments for which they may receive additional consumption allowances (§§ 82.10, 82.11 and 82.13).

As EPA stated in the preambles to its proposed and final rules, the Agency intended that consumption, production, authorizations to convert potential production allowances and potential production allowances [1] be transferable to improve the efficiency of its regulatory system. With the addition of the transfer section promulgated today, the regulations permit producers and importers either to use their allowances to produce or import controlled substances, or to trade their allowances to other companies which could, in turn, produce or import the chemicals or trade the allowances.

In either case, the company must notify EPA of its activities. If a company produces or imports the controlled substances or trades the allowances needed to produce or import that company must report quarterly to EPA. This quarterly reporting requirement is specified in § 82.13 of the final rule.

EPA did not promulgate the transfer section with the rest of the final rule pending further review of that provision. EPA has completed this review and today issues § 82.12 which details the requirements for companies that intend to trade allowances. EPA has benefitted, in developing § 82.12, from comments submitted in response to the proposed rule published on December 14, 1987. In addition to these comments, EPA has consulted with industry trade groups and other government agencies in developing this section.

The section set forth today provides for prompt processing of transfer claims that will help the U.S. avoid exceeding the production and consumption limits set by the Montreal Protocol. Notification of an intended trade through a transfer claim will allow the Agency to review the availability of allowances for trading. Review of transfer claims will also provide a check on the validity of allowances and prevent possible counterfeiting of allowances and fraudulent trades. Further, a system of EPA review will reduce uncertainty that could otherwise discourage firms from trading.

EPA believes that only through a system of transfer claims can EPA track additional firms which were not allocated allowances initially but which

[1] (Companies receive potential production allowances conditions specified in § 82.9 of the August 14 final rule and can convert potential production allowances to production allowances when EPA grants an authorization under conditions specified in § 82.11.)

may enter the trading market to obtain allowances. Without notification of such trades EPA would be unable to monitor U.S. compliance with the Protocol and could not resolve future trades between the third party firm and another firm. When EPA evaluates compliance at the end of each control period, knowledge of these third party trades becomes important if companies which received traded allowances are found in noncompliance.

Finally, submission of transfer claims to EPA may prevent companies from inadvertently trading allowances they do not have. This is most likely to occur during the last quarter of the control period during which EPA is aware, through quarterly reports and compliance inspections, of the level or likely level of unexpected allowances available for trade. A review of reported allowances, including those traded, against EPA records would prevent inadvertent exceedances of production and consumption limits. EPA believes that it is during this period that trades are most likely to occur as companies alter production plans and import activities to ensure compliance with their production and consumption allowances.

II. Response to Comments

Comments to the December 14 proposed rule expressed concern that approval by EPA of trades may interfere with the free trade of allowances. Commenters believed that § 82.12, as proposed, provided EPA with the role of approving or disapproving the trades and of acting potentially as a third party within the trade negotiations. This was not EPA's intention. In response to this concern, EPA refers to "transfer claims" instead of "transfer requests" within the final § 82.12. This change is intended to clarify that EPA's role is to keep track of trades and to verify that allowances are sufficient. EPA, acting in a fashion similar to a commercial bank, will disallow transfers if the seller's account shows insufficient balances to effect the transfer.

EPA is also aware of industry's concern that the Agency will not review the transfer claim quickly and could, through delay, disrupt the supply of the chemicals to necessary markets. It is common practice for a company which cannot produce enough chemicals to fill orders to seek to obtain the chemical from another producer. In that situation a trade of allowances would occur. Producers were concerned that EPA may not be able to process the request for transfer quickly enough, thus hindering the supply of these chemicals to consumers. EPA believes that most transactions will involve sales or purchases of the chemicals themselves and not of allowances. Nonetheless, in response to this concern, EPA will respond to transfer claims within three working days of receipt of a complete claim by the Chief, Regulations and Analysis Branch, Global Change Division, the Office of Air and Radiation. Three working days are necessary given the uncertainty as to the number of claims that will be filed, the need to review and assess multiple reports or claims, and in some cases to evaluate apparent discrepancies. The Agency intends to take action in fewer than three days whenever possible.

Electronic Reporting

To expedite processing and review, EPA encourages firms to submit their transfer claims electronically. By sending reports electronically, firms would be able to avoid delays inherent in using the mail system and possible mis-direction of the request within the Agency. A firm reporting electronically may submit the transfer request through electronic mail, spread sheet, electronic facsimile or through a computer prompt system established by EPA. Although EPA has not mandated electronic reporting, the Agency believes that such a reporting system will provide for a more immediate response by EPA to the transfer claim and reduce the need to establish an extensive filing system by EPA and the firm for hard copy claims.

Although EPA encourages firms to report electronically, firms may submit transfer claims through the U.S. mail or a commercial carrier. Ordinarily, it may take one to two days for a letter to reach the Global Change Division, once the submission is delivered to the EPA headquarters. The three working day response time begins when a completed submission is received by the Chief of the Regulation and Analysis Branch, the Global Change Division, within the Office of Air and Radiation. Completeness is to be determined by the Chief of the Regulations and Analysis Branch. The Agency will develop a system to receive both electronic and hard copy submissions and outline procedures for submission by firms in a guidance document to be available before the beginning of the first control period.

III. Penalties

Companies submitting or using fraudulent transfer claims are subject to stringent penalties. Companies producing or importing based on fraudulent allowances obtained through a trade would be subject to a penalty under section 113(b) of the Clean Air Act of up to $25,000 per kilogram of controlled substances produced or consumed in excess of the legitimate number of allowances held by that company. Transferring allowances without submission of proper claim under § 82.12 constitutes a reporting violation on the part of the transferor subject to a maximum penalty of $25,000 per violation under section 113(b) of the Clean Air Act. Any person who knowingly misrepresents any required information under § 82.12 would upon conviction be subject to a maximum fine of $10,000 and/or imprisonment of not more than 6 months under section 113(c)(2) of the Clean Air Act. Selling or trading fraudulent allowances would expose the seller or trader to liability under 18 U.S.C. 1001, which prohibits supplying false information to the United States government. Maximum penalties under this section are $10,000 or five years imprisonment or both. In addition, such companies are guilty of mail fraud under 18 U.S.C. 1341 which carries a potential penalty of $1,000 per occurrence or five years imprisonment or both. Producers and importers which trade allowances and produce or import in excess of their remaining balance of allowances may be penalized for each kilogram in excess of the allowances they still hold. The maximum penalty for excess production or consumption is $25,000 per kilogram.

IV. Changes to the Proposed Rule

Section 82.12 of the December 14, 1987 proposed rule required companies intending to trade these allowances to submit a "transfer request" to EPA for approval. The proposed rule required that the transferring company submit the following information for review by the Agency: The identities and addresses of the transferor and the transferee; the names and telephone numbers of the contact persons; the type of right or allowances (i.e. production allowances, consumption allowances, or potential production allowances) or authorization being transferred; the group of controlled substances to which the rights are being transferred; the amount of the rights or authorization being transferred; the control period for which the rights or authorization are being transferred; and the amount of unexpended rights or allowances of the type and for the control period being transferred that the transferor holds as of the date of the request. The proposed rule stated that the Agency would review the current balances of the firm requesting the transfer or trade and issue a notice of transfer if a sufficient

balance of unexpended rights or allowances existed to cover the trade.

Section 82.12 of the final rule requires similar information from the company trading the allowances. This information is important for EPA to evaluate the trade and to contact company representatives if discrepancies occur. However, as previously discussed, EPA has modified the proposed section in some areas. The final rule refers to transfer "claims" rather than transfer "requests", thus emphasizing that EPA's role is limited to reviewing and determining if sufficient balances exist for a trade rather than as a third party actively involved in the approval of transfers between the companies.

EPA has revised subsection (b) to state that the Agency will determine whether its records indicate that the transferor possesses unexpended allowances or authorizations sufficient to cover the transfer claim. That subsection also provides that within three working days of receiving a complete transfer claim, the Agency will take action to notify the transferor and transferee that its records show (1) that the transferor has either sufficient or insufficient allowances or authorizations to cover the claim or (2) that its records are inadequate to make this determination.

Where EPA's records show that the transferor has insufficient allowances or authorizations to cover the transfer, or that the transferor has failed to respond to the Agency's request for information to determine the transferor's current balance, EPA's notice will disallow the transfer. Within ten working days of receiving a notice of disallowing the transfer, the transferor or transferee may appeal the disallowance to the Director of the Office of Atmospheric and Indoor Air Programs in the Office of Air and Radiation. If no appeal is taken, the disallowance will be final on that day.

Where EPA's records indicate that the transferor has sufficient allowances or authorizations to cover the transfer or if review of EPA's records shows that available information is insufficient to make a determination, EPA will issue a notice stating that EPA does not object to the transfer. When EPA issues a no objection notice, the transferor or transferee may proceed with the transfer. Transferees may not proceed to produce or consume in accordance with the transfer claim until EPA has had three working days to review the complete transfer claim. If EPA does not issue a notice within three working days, transferors and transferees may proceed to produce or consume in accordance with the transfer at their own risk. EPA's failure to object to the transfer does not represent a final determination that the transfer is valid, however. Accordingly, a no objection notice is not final agency action reviewable in court. See, *District of Columbia* v. *Schramm*, 631 F. 2d 854, 859–862 (DC Cir., 1980); *Save the Bay Inc.* v. *EPA*, 556 F. 2d 1282, 1290–1292 (5th Cir., 1977). By the same token, the failure to object would not bar a subsequent enforcement action if, for example, EPA later finds that the transaction was improper.

EPA may ask for additional information where the EPA has not received the quarterly report due under § 82.13 of this part or where the report has been received but appears to be inadequate. In addition, discrepancies may occur within quarterly reports, compliance reports, or trading claims filed by EPA. Where EPA receives a trading claim under such circumstances, EPA will issue a no objection claim but will request that the trading firms supply the requested information expeditiously. Failure to respond to requests may lead to disallowance of future transfer claims submitted by these firms.

EPA has also added subsection (c) which provides that if the Agency fails to respond to a transfer claim within three working days of receiving it, the transferor and transferee may proceed with the transfer. However, that subsection also states that the transferor and transferee would still be liable for any violations of the regulations of this part if EPA later determined that the transferor had insufficient allowances to cover the trade. In this respect, transfers completed before the Agency responded to the transfer claim would be treated like transfers to which the Agency issues a notice of no objection.

Finally, transferors and transferees should act prudently so as not to exceed available allowances or authorizations. If EPA ultimately finds that the transferor lacked sufficient allowances to cover the claim, the transferor and transferee will be held liable for any violation of the regulations that occur as a result of the improper transfer.

V. Coupon Tracking System

The Agency today is requesting comments on an approach to streamline further the trading requirements outlined in § 82.12 of the final rule. A coupon system would eliminate the need for trading companies to notify EPA of transfer claims when the trade occurs. Under a coupon system, EPA would provide coupons representing their full allotment of allowances to producers and importers. Each coupon would entitle the holder to produce or import a certain level of controlled substances. Once a specified quantity of controlled substance was produced or imported, then coupons representing that level of production and consumption would be submitted to EPA. These submissions would either occur when the production or consumption occurred or quarterly. EPA would continue to maintain production and import records and require quarterly reporting as outlined in § 82.13 of the final rule.

As part of a trading transaction, a company would physically transfer the coupons representing the traded allowances to the recipient company. Companies would not be required to notify the Agency of the trade immediately or require approval. Once the allowances were consumed by the recipient, the coupons would be sent to EPA or maintained on site for compliance inspections.

EPA believes that a coupon system may facilitate allowance trading among firms. However, several issues and concerns must be resolved. First, the issue of counterfeiting of coupons (e.g. where a recipient firm must be certain that it receives authentic coupons) must be examined. Another issue involves whether the Agency should monitor the activities of new firms which enter the market to receive and trade allowances. Absent counterfeiting problems, such monitoring may not be necessary. EPA is requesting comments on these issues as well as the general structure of the coupon tracking system.

Paperwork Reduction Act

The information collection requirements contained in this rule as well as all reporting and recordkeeping requirements contained in the final rule promulgated on August 12, 1988, 53 FR 30566, have been approved by the Office of Management and Budget (OMB) under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2060-0170.

Reporting burden associated with the preparation and submittal of allowance transfer claims is estimated to be 2 hours per submittal (on average), including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (2060–0170), Washington, DC 20530, marked "Attention: Desk Officer for EPA."

Date: February 2, 1989.

Jack Moore,

Acting Administrator.

For the reasons set forth in the preamble, Title 40 Part 82 is amended to read as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for Part 82 continues to read as follows:

Authority: 42 U.S.C. 7157(b)

2. Part 82 is amended by adding § 82.12 to read as follows:

§ 82.12 Transfers of production and Consumption allowances.

Any person ("transferor") may transfer to any other person ("transferee") any amount of the transferor's consumption allowances, production allowances, potential production allowances, or authorization to convert potential production allowances to production allowances, as follows:

(a) The transferor must submit to the administrator's designated representative a transfer claim setting forth the following:

(1) The identities and addresses of the transferor and the transferee;

(2) The name and telephone numbers of contact persons for the transferor and for the transferee;

(3) The type of allowances (i.e., consumption allowances, production allowances, or potential production allowance) or authorization being transferred;

(4) The group of controlled substances (i.e., Group I or Group II) to which the allowances or authorization being transferred pertains;

(5) The amount of allowances or authorization being transferred;

(6) The control period(s) for which the allowances or authorization are being transferred; and

(7) The amount of unexpended allowances or authorizations of the type and for the control period being transferred that the transferor holds under authority of this part as of the date the claim is submitted to EPA.

(b) The Administrator's designated representative wil determine whether the records maintained by EPA, taking into account any previous transfers and any production, imports or exports of controlled substances reported by the transferor or revealed by an EPA inspection, indicate that the transferor possesses, as of the date the transfer claim is processed, unexpended allowances or authorizations sufficient to cover the transfer claim. Within three working days of receiving a complete transfer claim, the Administrator's designated representative will take action to notify the transferor and transferee as follows:

(1) If EPA's records show that the transferor has sufficient allowances or authorizations to cover the transfer claim or if review of available information is insufficient to make a determination, the Administrator's representative will issue a notice indicating that EPA does not object to the transfer. When EPA issues a no objection notice, the transferor and the transferee may proceed with the transfer. However, if EPA ultimately finds that the transferor did not have sufficient allowances or authorizations to cover the claim, the transferor and transferee will be held liable for any violations of the regulations of this part that occur as a result of, or in conjunction with, the improper transfer.

(2) If EPA's records show that the transferor has insufficient allowances or authorizations to cover the transfer claim, or that the transferor has failed to respond to one or more Agency requests to supply information needed to make a determination, the administrator's designated representative will issue a notice disallowing the transfer. Within 10 working days after receipt of notification, either party may file a notice of appeal, with supporting reasons, with the Director, Office of Atmospheric and Indoor Air Programs, Office of Air and Radiation. The Director may affirm or vacate the disallowance. If no appeal is taken by the tenth working day after notification, the disallowance shall be final on that day.

(c) In the event that the Administrator's designated representative does not respond to a transfer claim within the three working days specified in paragraph (b) of this section, the transferor and transferee may proceed with the transfer. However, if EPA ultimately finds that the transferor did not have sufficient allowances or authorizations to cover the claims, the transferor and transferee will be held liable for any violations of the regulations of this part that occur as a result of, or in conjunction with, the improper transfer.

[FR Doc. 89–3077 Filed 2–8–89; 8:45 am]

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4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 405

[Amdt. No. 2; Doc. No. 5950S]

Apple Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule; Correction.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) published a final rule in the **Federal Register** on Monday, November 21, 1988, at 53 FR 46845, amending the Apple Crop Insurance Regulations by revising and reissuing the Apple Fresh Fruit Option and the Pilot Sunburn Option. An error on the effective crop year was made in the **SUMMARY.** The effectiveness should have read for the 1990 and succeeding crop years. This notice is published to correct that error.

EFFECTIVE DATE: February 10, 1989.

ADDRESS: Written comments on this correction may be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: FR Document 88–26854 appearing at pages 46845 through 46847, is corrected as follows:

On page 46845, in Column 1, the **SUMMARY** is corrected to read as follows:

The Federal Crop Insurance Corporation (FCIC) amends the Apple Crop Insurance Regulations, effective for the 1990 and succeeding crop years.

* * *

On page 46846, in Column 1, the first paragraph is corrected to read as follows:

Apple Sunburn Option for the 1990 and succeeding crop years. * * *

On page 46846, Column 1, the third paragraph is corrected to read as follows:

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 et seq.), the Federal Crop Insurance Corporation hereby amends the Apple Crop Insurance Regulations (7 CFR Part 405), effective for the 1990 and succeeding crop years, as follows:

* * * * *

Done in Washington, DC, on January 31, 1989.

John Marshall,
Manager, Federal Crop Insurance Corporation.

[FR Doc. 89–2972 Filed 2–9–89; 8:45 am]
BILLING CODE 3410–08–M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 652]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 652 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 310,000 cartons during the period February 12 through February 18, 1989. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 652 (§ 910.952) is effective for the period February 12 through February 18, 1989.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriquez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2,500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

This regulation is issued under Marketing Order No. 910, as amended [7 CFR Part 910] regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601–674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1988–89. The

Committee met publicly on February 7, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that demand for lemons is good.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.952 is added to read as follows:

[Note: This section will not appear in the Code of Federal Regulations.]

§ 910.952 Lemon Regulation 652.

The quantity of lemons grown in California and Arizona which may be handled during the period February 12, 1989, through February 18, 1989, is established at 310,000 cartons.

Dated: February 8, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-3305 Filed 2-9-89; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Parts 1006, 1012, and 1013

[Docket Nos. AO-355-A26, AO-347-A29, and AO-286-A36; DA-88-102

Milk in the Upper Florida, Tampa Bay and Southeastern Florida Marketing Areas; Order Amending Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This order amends provisions of the three Florida milk orders to reflect current marketing conditions. The changes are based upon industry proposals considered at a public hearing held January 26, 1988, in Orlando, Florida.

Each of the three orders is amended to provide a two-month "lock-in" provision for pool distributing plants, seasonal diversion limits, and an increase in the charges on overdue accounts. Shrinkage on other source milk receipts is limited to bulk fluid milk products.

The Upper Florida and Tampa Bay orders are amended to permit a pool plant and a manufacturing plant under a single roof to operate as separate facilities.

The Southeastern Florida order is changed to require that a dairy farmer must deliver 10 days' production to a pool plant in order for such dairy farmer's milk to be diverted to nonpool plants as producer milk. Other miscellaneous amendments delete the $6 maximum on partial payments to producers and make other changes to conform the Southeastern Florida order to other Federal milk orders.

EFFECTIVE DATE: March 1, 1989.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-2089.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued January 12, 1988; published January 15, 1988 (53 FR 1035).

Recommended Decision: Issued September 2, 1988; published September 8, 1988 (53 FR 34766).

Final Decision: Issued January 13, 1989; published January 24, 1989 (54 FR 3462).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Upper Florida, Tampa Bay and Southeastern Florida orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings upon the basis of the hearing record. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Upper Florida, Tampa Bay and Southeastern Florida marketing areas.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing areas; and the minimum prices specified in the orders as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, marketing agreements upon which a hearing has been held.

(b) Additional findings. It is necessary in the public interest to make this order amending the order effective not later than March 1, 1989. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing areas.

The provisions of this order are known to handlers. The recommended decision of the Administrator was issued September 2, 1988 (53 FR 34766), and the decision of the Assistant Secretary containing all amendment provisions of this order was issued January 13, 1989 (54 FR 3462). The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. A further consideration in this matter is that this order increases for the month of March the percentage of producer milk under each of the 3 orders that may be shipped directly from the farm to nonpool plants

and still be priced under such orders. Such action will lessen the regulatory impact of the orders on certain milk handlers and will tend to ensure that dairy farmers will continue to have their milk priced under the respective orders and thereby receive the benefits that accrue from such pricing. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the orders effective March 1, 1989, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the **Federal Register.** (Section 553(d), Administrative Procedure Act, 5 U.S.C. 551–559).

(c) Determinations. It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing areas, to sign proposed marketing agreements, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending the orders is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the orders; and

(3) The issuance of the order amending the orders is approved or favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the respective marketing areas.

List of Subjects in 7 CFR Parts 1006, 1012 and 1013

Milk marketing orders, Milk, Dairy products.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Upper Florida, Tampa Bay and Southeastern Florida marketing areas shall be in conformity to and in compliance with the terms and conditions of the aforesaid orders, as amended, and as hereby further amended, as follows:

1. The authority citation for 7 CFR Parts 1006, 1012 and 1013 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 1006—MILK IN THE UPPER FLORIDA MARKETING AREA

2. Revise § 1006.7 to read as follows:

§ 1006.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) A distributing plant that has route distribution, except filled milk, during the month of not less than 50 percent of the total Grade A fluid milk products, except filled milk, that are physically received at such plant or diverted as producer milk to a nonpool plant pursuant to § 1006.13, and that has route disposition, except filled milk, in the marketing area during the month of not less than 10 percent of such receipts.

(b) A supply plant from which not less than 50 percent of the total quantity of Grade A fluid milk products that are physically received from dairy farmers at such plant or diverted as producer milk to a nonpool plant pursuant to § 1006.13 during the month is shipped as fluid milk products, except filled milk, to pool plants meeting the requirements of § 1006.7(a).

(c) A plant, other than a distributing plant, that is located in the marketing area and is operated by a cooperative association if pool plant status under this paragraph is requested for such plant by the cooperative association and 50 percent or more of the producer milk of members of the cooperative association is received at pool distributing plants either directly from farms or by transfer from plants of the cooperative association for which pool plant status under this paragraph has been requested, subject to the following conditions:

(1) The plant is approved by a duly constituted health authority for the disposition of Grade A milk in the marketing area; and

(2) The plant does not qualify as a pool plant under paragraph (b) of this section or under the provisions of another Federal order applicable to a supply plant.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) An exempt distributing plant;

(3) A distributing plant qualified pursuant to paragraph (a) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another order issued pursuant to the Act and from which a greater quantity of fluid milk products, except filled milk, is disposed of during the month from such plant as route disposition in the marketing area regulated by the other order than as route disposition in this marketing area: *Provided,* That such a distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of its route disposition is made in such other marketing area, unless the other order requires regulation of the plant without regard to its qualifying as a pool plant under this order; and

(4) Any building, premises, or facilities, the primary function of which is to hold or store bottled milk or milk products (including filled milk) in finished form, nor shall it include any part of a plant in which the operations are entirely separated (by wall or other partition) from the handling of producer milk.

3. In § 1006.13, paragraph (b) is revised to read as follows:

§ 1006.13 Producer milk.

* * * * *

(b) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant, subject to the following conditions:

(1) Such milk shall be deemed to have been received by the diverting handler at the plant to which diverted;

(2) Not less than 10 days' production of the producer whose milk is diverted is physically received at a pool plant: *Provided,* That any delivery during the current month from such producer to another order plant regulated by the order that regulated such pool plant in the prior month shall be counted towards meeting the 10-day production requirement;

(3) To the extent that it would result in nonpool plant status for the pool plant from which diverted, milk diverted for the account of a cooperative association from the pool plant of another handler shall not be producer milk;

(4) A cooperative association may divert for its account the milk of a producer. The total quantity of such milk so diverted by a cooperative that exceeds the following specified applicable percentage of producer milk that the cooperative association caused to be delivered to and physically received at pool plants during the month shall not be producer milk:

(i) 40 percent in March–June,

(ii) 25 percent in December–February, and

(iii) 20 percent in July–November;

(5) The operator of a pool plant other than a cooperative association may divert for its account any milk of producers that is not under the control of a cooperative association that is diverting milk during the month pursuant to paragraph (b)(4) of this section. The total quantity so diverted by the operator of the pool plant that exceeds the following specified

applicable percentage of milk physically received at such plant during the month that is eligible to be diverted by the plant operator shall not be producer milk:

(i) 40 percent in March–June,

(ii) 25 percent in December–February, and

(iii) 20 percent in July–November;

(6) The diverting handler shall designate the dairy farmers whose milk is not producer milk pursuant to paragraph (b) (4) and (5) of this section. If the handler fails to make such designation, milk diverted on the last day of the month, then the second-to-last day of the month, and so on, shall be excluded until all diversions in excess of the prescribed limit are accounted for.

4. In § 1006.40, paragraph (b)(6) is revised to read as follows and paragraph (b)(7) is removed:

§ 1006.40 Classes of utilization.

* * * * *

(b) * * *

(6) Skim milk and butterfat in shrinkage assigned pursuant to § 1006.41 (a) to the receipts specified in § 1006.41 (a)(2) and in shrinkage specified in § 1006.41 (b) and (c).

* * * * *

5. Revise § 1006.41 to read as follows:

§ 1006.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1006.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraphs (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraphs; and

(2) In other source milk not specified in paragraphs (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product.

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in § 1006.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1006.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm, the applicable percentage under this paragraph shall be two percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is diverted purchases such milk on the basis of weights determined from its measurement on the farm, the applicable percentage under this paragraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II classification is requested by the operator of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective quantities of skim milk and butterfat to which percentages are applied in paragraphs (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1006.9 (b) and (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1006.51 [Amended]

6. Amend § 1006.51 by removing the last sentence which reads "For the purpose of computing the Class I price, the resulting price shall not be less than $4.33."

7. Amend § 1006.52 by adding a new paragraph (c) to read as follows:

§ 1006.52 Plant location adjustments for handlers.

* * * * *

(c) The Class I price resulting from such adjustments specified in this section shall not result in a price less than the Class II price for the month and the Class I price applicable to other source milk shall be adjusted at the rates specified in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class II price for the month.

§ 1006.60 [Amended]

8. In § 1006.60, paragraph (h) is removed.

9. In § 1006.75, revise paragraph (b) to read as follows:

§ 1006.75 Plant location adjustments for producers and on nonpool milk.

* * * * *

(b) For purposes of computations pursuant to §§ 1006.71 and 1006.72, the uniform price shall be adjusted at the rates set forth in § 1006.52 applicable at the location of the nonpool plant from which the milk was received, except that the resulting adjusted price shall not be less than the Class II price for the month.

10. Revise § 1006.78 to read as follows:

§ 1006.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1006.71, 1006.73, 1006.76, 1006.77, 1006.85 or 1006.86 shall be increased 1 percent for each month or portion thereof that such obligation is overdue, subject to the following conditions:

(a) The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid charges previously computed pursuant to this section;

(b) For the purposes of this section, any obligation that was determined at a date later than prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due; and

(c) All monies collected pursuant to this section shall be paid to the administrative assessment fund maintained by the market administrator.

PART 1012—MILK IN THE TAMPA BAY MARKETING AREA

11. Revise § 1012.7 to read as follows:

§ 1012.7 Pool plant.

Except as provided in paragraph (c) of this section, "pool plant" means:

(a) A distributing plant that has route distribution, except filled milk, during the month of not less than 50 percent of the total Grade A fluid milk products, except filled milk, that are physically received at such plant or diverted as producer milk to a nonpool plant pursuant to § 1012.13, and that has route disposition, except filled milk, in the marketing area during the month of not less than 10 percent of such receipts.

(b) A supply plant from which not less than 50 percent of the total quantity of Grade A fluid milk products that is physically received from dairy farmers at such plant or diverted as producer milk to a nonpool plant pursuant to § 1012.13 during the month is shipped as fluid milk products, except filled milk, to pool plants meeting the requirements of § 1012.7(a).

(c) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A distributing plant qualified pursuant to paragraph (a) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another order issued pursuant to the Act and from which a greater quantity of fluid milk products, except filled milk, is disposed of during the month from such plant as route disposition in the marketing area regulated by the other order than as route disposition in this marketing area: *Provided*, That such a distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of its route disposition is made in such other marketing area, unless the other order requires regulation of the plant without regard to its qualifying as a pool plant under this order; and

(3) Any building, premises, or facilities, the primary function of which is to hold or store bottled milk or milk products (including filled milk) in finished form, nor shall it include any part of a plant in which the operations are entirely separated (by wall or other partition) from the handling of producer milk.

12. In § 1012.13, paragraph (b) is revised to read as follows:

§ 1012.13 Producer milk.

* * * * *

(b) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant, subject to the following conditions:

(1) Such milk shall be deemed to have been received by the diverting handler at the plant to which diverted;

(2) Not less than 10 days' production of the producer whose milk is diverted is physically received at a pool plant: *Provided*, That any delivery during the current month from such producer to an other order plant regulated by the order that regulated such pool plant in the prior month shall be counted towards meeting the 10-day production requirement;

(3) To the extent that it would result in nonpool plant status for the pool plant from which diverted, milk diverted for the account of a cooperative association from the pool plant of another handler shall not be producer milk;

(4) A cooperative association may divert for its account the milk of a producer. The total quantity of such milk so diverted by a cooperative that exceeds the following specified applicable percentage of producer milk that the cooperative association caused to be delivered to and physically received at pool plants during the month shall not be producer milk:

(i) 40 percent in March–June,

(ii) 25 percent in December–February, and

(iii) 20 percent in July–November;

(5) The operator of a pool plant other than a cooperative association may divert for its account any milk of producers that is not under the control of a cooperative association that is diverting milk during the month pursuant to paragraph (b)(4) of this section. The total quantity so diverted by the operator of the pool plant that exceeds the following specified applicable percentage of milk physically received at such plant during the month that is eligible to be diverted by the plant operator shall not be producer milk:

(i) 40 percent in March–June,

(ii) 25 percent in December–February, and

(iii) 20 percent in July–November;

(6) The diverting handler shall designate the dairy farmers whose milk is not producer milk pursuant to paragraph (b) (4) and (5) of this section. If the handler fails to make such designation, milk diverted on the last day of the month, then the second-to-last day of the month, and so on, shall be excluded until all diversions in excess of the prescribed limit are accounted for.

13. In § 1012.40, paragraph (b)(6) is revised to read as follows and paragraph (b)(7) is removed:

§ 1012.40 Classes of utilization.

* * * * *

(b) * * *

(6) Skim milk and butterfat in shrinkage assigned pursuant to § 1012.41(a) to the receipts specified in § 1012.41(a)(2) and in shrinkage specified in § 1012.41 (b) and (c).

* * * * *

14. Revise § 1012.41 to read as follows:

§ 1012.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1012.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraphs (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraphs; and

(2) In other source milk not specified in paragraphs (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product.

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in § 1012.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1012.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm, the applicable percentage under this paragraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is diverted purchases such milk on the basis of weights determined from its measurement on the farm, the applicable percentage under this paragraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II classification is requested by the operator of both plants:

the prior month shall be counted towards meeting the 10-day production requirement;

(3) To the extent that it would result in nonpool plant status for the pool plant from which diverted, milk diverted for the account of a cooperative association from the pool plant of another handler shall not be producer milk;

(4) A cooperative association may divert for its account the milk of a producer. The total quantity of such milk so diverted by a cooperative that exceeds the following specified applicable percentage of producer milk that the cooperative association caused to be delivered to and physically received at pool plants during the month shall not be producer milk:

(i) 40 percent in March–June,

(ii) 25 percent in December–February, and

(iii) 20 percent in July–November;

(5) The operator of a pool plant other than a cooperative association may divert for its account any milk of producers that is not under the control of a cooperative association that is diverting milk during the month pursuant to paragraph (b)(4) of this section. The total quantity so diverted by the operator of the pool plant that exceeds the following specified applicable percentage of milk physically received at such plant during the month that is eligible to be diverted by the plant operator shall not be producer milk:

(i) 40 percent in March–June,

(ii) 25 percent in December–February, and

(iii) 20 percent in July–November;

(6) The diverting handler shall designate the dairy farmers whose milk is not producer milk pursuant to paragraph (b) (4) and (5) of this section. If the handler fails to make such designation, milk diverted on the last day of the month, then the second-to-last day of the month, and so on, shall be excluded until all diversions in excess of the prescribed limit are accounted for.

23. In § 1013.40, paragraph (b)(6) is revised to read as follows and paragraph (b)(7) is removed:

§ 1013.40 Classes of utilization.

* * * * * *

(b) * * *

(6) Skim milk and butterfat in shrinkage assigned pursuant to § 1013.41(a) to the receipts specified in § 1013.41(a)(2) and in shrinkage specified in § 1013.41 (b) and (c).

* * * * * *

24. Revise § 1013.41 to read as follows:

§ 1013.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1013.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraphs (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraphs; and

(2) In other source milk not specified in paragraphs (b)(1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product.

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in § 1013.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1013.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm, the applicable percentage under this paragraph shall be two percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is diverted purchases such milk on the basis of weights determined from its measurement on the farm, the applicable percentage under this paragraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II classification is requested by the operator of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective quantities of skim milk and butterfat to which percentages are applied in paragraphs (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1013.9 (b) and (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm, the applicable percentage under this paragraph for the cooperative association shall be zero.

25. In § 1013.50, revise the introductory text and paragraph (c) as follows:

§ 1013.50 Class prices.

Subject to the provisions of § 1013.52, the Class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

* * * * * *

(c) *Class III price.* The Class III price shall be computed as follows: Multiply the butterfat differential pursuant to § 1013.74 for the month by 35 and round the result to the nearest cent.

§ 1013.51 [Amended]

26. Amend § 1013.51 by removing the last sentence which reads "For the purpose of computing the Class I price, the resulting price shall not be less than $4.33."

27. Amend § 1013.52 by adding a new paragraph (c) to read as follows:

§ 1013.52 Plant location adjustments for handlers.

* * * * * *

(c) The Class I price resulting from such adjustments specified in this section shall not result in a price less than the Class II price for the month and the Class I price applicable to other source milk shall be adjusted at the rates specified in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class II price for the month.

§ 1013.60 [Amended]

28. In § 1013.60, paragraph (h) is removed.

§ 1013.73 [Amended]

29. Amend § 1013.73(a) (1) and (2) by removing the phrase "but not to exceed $8,".

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective quantities of skim milk and butterfat to which percentages are applied in paragraphs (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1012.9 (b) and (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1012.51 [Amended]

15. Amend § 1012.51 by removing the last sentence which reads "For the purpose of computing the Class I price, the resulting price shall not be less than $4.33."

16. Amend § 1012.52 by adding a new paragraph (c) to read as follows:

§ 1012.52 Plant location adjustments for handlers.

* * * * * *

(c) The Class I price resulting from such adjustments specified in this section shall not result in a price less than the Class II price for the month and the Class I price applicable to other source milk shall be adjusted at the rates specified in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class II price for the month.

§ 1012.60 [Amended]

17. In § 1012.60, paragraph (h) is removed.

18. In § 1012.75, revise paragraph (b) to read as follows:

§ 1012.75 Plant location adjustments for producers and on nonpool milk.

* * * * * *

(b) For purposes of computations pursuant to §§ 1012.71 and 1012.72, the uniform price shall be adjusted at the rates set forth in § 1012.52 applicable at the location of the nonpool plant from which the milk was received, except that the resulting adjusted price shall not be less than the Class II price for the month.

19. Revise § 1012.78 to read as follows:

§ 1012.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1012.71, 1012.73, 1012.76, 1012.77, 1012.85, or 1012.86 shall be increased 1 percent for each month or portion thereof that such obligation is overdue, subject to the following conditions:

(a) The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid charges previously computed pursuant to this section;

(b) For the purposes of this section, any obligation that was determined at a date later than prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due; and

(c) All monies collected pursuant to this section shall be paid to the administrative assessment fund maintained by the market administrator.

PART 1013—MILK IN THE SOUTHEASTERN FLORIDA MARKETING AREA

20. Revise § 1013.7 to read as follows:

§ 1013.7 Pool plant.

Except as provided in paragraph (c) of this section, "pool plant" means:

(a) A distributing plant that has route distribution, except filled milk, during the month of not less than 50 percent of the total Grade A fluid milk products, except filled milk, that are physically received at such plant or diverted as producer milk to a nonpool plant pursuant to § 1013.13, and that has route disposition, except filled milk, in the marketing area during the month of not less than 10 percent of such receipts.

(b) A supply plant from which not less than 50 percent of the total quantity of Grade A fluid milk products that is physically received from dairy farmers at such plant or diverted as producer milk to a nonpool plant pursuant to § 1013.13 during the month is shipped as fluid milk products, except filled milk, to pool plants meeting the requirements of § 1013.7(a).

(c) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A distributing plant qualified pursuant to paragraph (a) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another order issued pursuant to the Act and from which a greater quantity of fluid milk products, except filled milk, is disposed of during the month from such plant as route disposition in the marketing area regulated by the other order than as route disposition in this marketing area: *Provided*, That such a distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of its route disposition is made in such other marketing area, unless the other order requires regulation of the plant without regard to its qualifying as a pool plant under this order; and

(3) Any building, premises, or facilities, the primary function of which is to hold or store bottled milk or milk products (including filled milk) in finished form, nor shall it include any part of a plant in which the operations are entirely separated (by wall or other partition) from the handling of producer milk.

21. Revise § 1013.12 to read as follows:

§ 1013.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the inspection requirements of a duly constituted health authority, which milk is received at a pool plant or diverted pursuant to § 1013.13 from a pool plant to a nonpool plant.

(b) The term "producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act; or

(2) Any person with respect to milk produced by such person that is reported as diverted to another order plant if any portion of such person's milk so moved is assigned to Class I milk under the provisions of such other order.

22. In § 1013.13, paragraph (b) is revised to read as follows:

§ 1013.13 Producer milk.

* * * * * *

(b) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant, subject to the following conditions:

(1) Such milk shall be deemed to have been received by the diverting handler at the plant to which diverted;

(2) Not less than 10 days' production of the producer whose milk is diverted is physically received at a pool plant: *Provided*, That any delivery during the current month from such producer to another order plant regulated by the order that regulated such pool plant in

30. In § 1013.75, revise paragraph (b) to read as follows:

§ 1013.75 Plant location adjustments for producers and on nonpool milk.

* * * * *

(b) For purposes of computations pursuant to §§ 1013.71 and 1013.72, the uniform price shall be adjusted at the rates set forth in § 1013.52 applicable at the location of the nonpool plant from which the milk was received, except that the resulting adjusted price shall not be less than the Class II price for the month.

31. Revise § 1013.78 to read as follows:

§ 1013.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1013.71, 1013.73, 1013.76, 1013.77, 1013.85, or 1013.86 shall be increased 1 percent for each month or portion thereof that such obligation is overdue, subject to the following conditions:

(a) The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid charges previously computed pursuant to this section;

(b) For the purposes of this section, any obligation that was determined at a date later than prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due; and

(c) All monies collected pursuant to this section shall be paid to the administrative assessment fund maintained by the market administrator.

Signed at Washington, DC, on: February 6, 1989.

Robert Melland,

Deputy Assistant Secretary of Agriculture, Marketing and Inspection Services.

[FR Doc. 89-3168 Filed 2-9-89; 8:45 am]

BILLING CODE 3410-02-M

Food Safety and Inspection Service

9 CFR Parts 307, 350, 351, 352, 354, 355, 362, 381, and 391

[Docket No. 88-017F]

Fee Increase for Inspection Services

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat and poultry products inspection regulations to increase the fees charged by FSIS to provide overtime and holiday inspection, voluntary inspection, identification, certification, or laboratory services to meat and poultry establishments. The fees primarily reflect the increased costs of providing these services due to the increase in salaries of Federal employees allocated by Congress under the Federal Pay Comparability Act of 1970. In addition, as a "housekeeping" measure, the dollar amounts for the services currently specified in Parts 307, 350, 351, 352, 354, 355, 362, and 381 are transferred to a new Part 391 (9 CFR Part 391).

EFFECTIVE DATE: February 12, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. William L. West, Director, Budget and Finance Division, Administrative Management, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-3367.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This rule is issued in conformance with Executive Order 12291, and has been determined not to be a "major rule." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The fee increases only reflect an increase in costs to establishments that elect to utilize certain inspection services.

Effect on Small Entities

The Administrator, Food Safety and Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601) because the fees provided for in this document merely reflect a minimal increase in the costs currently borne by those entities which elect to utilize certain inspection services.

Background

On January 13, 1989, FSIS published a proposed rule in the **Federal Register** (54 FR 1367) to increase the fees charged by FSIS to provide overtime and holiday inspection, voluntary inspection, identification, certification, or laboratory services to meat and poultry establishments.

Mandatory inspection by Federal inspectors of meat and poultry slaughtered and/or processed at official establishments is provided for under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*). Such inspection is required to ensure the safety, wholesomeness, and proper labeling of meat and poultry products and the ordinary costs of providing it are borne by the U.S. Government. However, costs for these inspection services performed on holidays or on an overtime basis may be incurred to accommodate the business needs of particular establishments. Any or all of these costs, which are not a part of the mandatory inspection service, are recoverable by the Government.

FSIS also provides a range of voluntary inspection services, the costs of which are totally recoverable by the Government. These services, provided under Subchapter B—Voluntary Inspection and Certification Service, are provided under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*), to assist in the orderly marketing of various animal products and byproducts not subject to the Federal Meat Inspection Act or the Poultry Products Inspection Act.

Each year, the fees for certain services rendered to operators of official meat and poultry establishments, importers, or exporters by FSIS are reviewed and a cost analysis is performed to determine if such fees are adequate to recover the cost of providing the services.[1] The analysis relates to fees charged in connection with overtime and holiday inspection, voluntary inspection, identification, certification, or laboratory services. The fees to be charged for these services have been determined by an analysis of data on the current cost of these services; anticipated costs associated with changes in operations of the program; increases in those costs due to an increase in the salaries of Federal employees allocated by Congress under the Federal Pay Comparability Act of 1970; and other increases affecting Federal employees, such as costs for travel and benefits.

Based on the Agency's analysis of the increased costs in providing these services, incurred as a result of a January 1989 pay raise of 4.1 percent for Federal employees, increased costs of the retirement system in 1989, and increased health insurance and travel costs, FSIS is increasing the fees relating to such services.

In addition, as a "housekeeping" measure, FSIS is transferring the dollar amounts currently specified in 9 CFR Parts 307, 350, 351, 352, 354, 355, 362, and 381 to a new Part 391 (9 CFR Part 391). However, the provisions for the fees to be charged by FSIS for the services specified herein will remain as currently codified in the Code of Federal Regulations. As the dollar amounts for the services provided herein may change at least annually, by consolidating these amounts into a separate Part 391, the Agency will only need to amend one Part instead of eight different Parts of the CFR each time the rates for such services are revised.

[1] The cost analysis is on file with the FSIS Hearing Clerk. Copies may be requested from that office.

Agency Response to Comments

The Agency received one comment in response to the proposal. The commenter indicated that he did not support an increase in fees for certain inspection services.

The ordinary day-to-day costs of providing inspection services under the requirements of the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) are borne by the Federal Government through the annual Congressional appropriations process. However, the Department is required by the FMIA (21 U.S.C. 695) and PPIA (21 U.S.C. 468) to recover the costs of overtime and holiday inspection services from those establishments which voluntarily elect to utilize such inspection services.

The rates provided for in this document are statutorily mandated and reflect only an incremental increase in the costs currently borne by those entities electing to utilize these and certain other voluntary inspection services. Therefore, the amendments, as proposed, to the Federal Meat and Poultry Products Inspection Regulations are promulgated herein.

List of Subjects

9 CFR Part 307

Meat inspection, Reimbursable services.

9 CFR Part 350

Meat inspection, Reimbursable services, Voluntary inspection, Certification service.

9 CFR Part 351

Meat inspection, Reimbursable services, Technical animal fats.

9 CFR Part 352

Meat inspection, Reimbursable services, Voluntary inspection.

9 CFR Part 354

Meat inspection, Reimbursable services, Voluntary inspection.

9 CFR Part 355

Meat inspection, Reimbursable services, Certified products.

9 CFR Part 362

Poultry products inspection, Reimbursable services, Voluntary poultry inspection.

9 CFR Part 381

Poultry products inspection, Reimbursable services.

9 CFR Part 391

Meat inspection, Poultry products inspection, Fees and charges.

Accordingly, the Federal meat and poultry products inspection regulations are amended as follows:

PART 307—[AMENDED]

1. The authority citation for part 307 continues to read as follows:

Authority: 7 U.S.C. 394, 21 U.S.C. 621, 695; 7 CFR 2.17 (g) and (i), 2.55.

2. Section 307.5(a) is revised to read as follows:

§ 307.5 Overtime and holiday inspection service.

(a) The management of an official establishment, an importer, or an exporter shall reimburse the Program, at the rate specified in § 391.3, for the cost of the inspection service furnished on any holiday as specified in paragraph (b) of this section; or for more than 8 hours on any day, or more than 40 hours in any administrative workweek Sunday through Saturday.

* * * * *

3. Section 307.6(a) is revised to read as follows:

§ 307.6 Basis of billing for overtime and holiday service.

(a) Each recipient of overtime or holiday inspection service, or both, shall be billed as provided for in § 307.5(a) and at the rates specified in § 391.3, in increments of quarter hours. For billing purposes, 8 or more minutes shall be considered a full quarter hour. Billing will be for each quarter hour of service rendered by each Program employee.

* * * * *

PART 350—[AMENDED]

4. The authority citation for Part 350 continues to read as follows:

Authority: 7 U.S.C. 1622, 1624; 7 CFR 2.17 (g) and (i), 2.55.

5. Section 350.7(c) is revised to read as follows:

§ 350.7 Fees and charges.

* * * * *

(c) The fees to be charged and collected for service under the regulations in this Part shall be at the rates specified in §§ 391.2, 391.3, and 391.4 respectively for base time; for overtime including Saturdays, Sundays, and holidays; and for certain laboratory services which are not covered under the base time, overtime, and/or holiday costs. Such fees shall cover the costs of the service and shall be charged for the time required to render such services. Where appropriate, this time will include, but will not be limited to, the time required for travel of the inspector or inspectors in connection therewith during the regularly scheduled administrative workweek.

* * * * *

PART 351—[AMENDED]

6. The authority citation for Part 351 continues to read as follows:

Authority: 7 U.S.C. 1622, 1624; 7 CFR 2.17 (g) and (i), 2.55.

7. Section 351.8 is revised to read as follows:

§ 351.8 Charges for surveys of plants.

Applicants for the certification service shall pay the Department for salary costs at the rates specified in §§ 391.2 and 391.3 respectively for base time, and for overtime, travel, and per diem allowances at rates currently allowed by the Federal Travel Regulations, and other expenses incidental to the initial survey of the rendering plants or storage facilities for which certification service is requested.

8. Section 351.9(a) is revised to read as follows:

§ 351.9 Charges or examinations.

(a) The fees to be charged and collected by the Administrator for examination shall be at the rates specified in §§ 391.2, 391.3, and 391.4 respectively for base time; for overtime including Saturdays, Sundays, and holidays, as provided for in § 351.14; and for certain laboratory services which are not covered under the base time, overtime, and/or holiday costs and which are required to determine the eligibility of any technical animal fat for certification under the regulations in this Part. Such fees shall be charged for the time required to render such service, including, but not limited to, the time

required for the travel of the inspector or inspectors in connection therewith.

* * * * *

PART 352—[AMENDED]

9. The authority citation for Part 352 continues to read as follows:

Authority: 7 U.S.C. 1622, 1624; 7 CFR 2.17 (g) and (i), 2.55.

10. Section 352.5(c) is revised to read as follows:

§ 352.5 Fees and charges.

* * * * *

(c) The fees to be charged and collected for service under the regulations in this Part shall be at the rates specified in §§ 391.2, 391.3, and 391.4 respectively for base time; for overtime including Saturdays, Sundays, and holidays; and for certain laboratory services which are not covered under the base time, overtime, and/or holiday costs. Such fees shall cover the costs of the service and shall be charged for the time required to render such service, including, but not limited to, the time required for the travel of the inspector or inspectors in connection therewith during the regularly scheduled administrative workweek.

* * * * *

PART 354—[AMENDED]

11. The authority citation for Part 354 reads as follows:

Authority: 7 U.S.C. 1622, 1624; 7 CFR 2.17 (g) and (i), 2.55.

12. Section 354.101 (b) and (c) is revised to read as follows:

§ 354.101 On a fee basis.

* * * * *

(b) The charges for inspection service will be based on the time required to perform such services. The hourly rates shall be as specified in §§ 391.2 and 391.3 respectively for base time and for overtime or holiday work.

(c) Charges for certain laboratory analysis or laboratory examination of rabbits under this Part related to inspection service shall be at the rate specified in § 391.4 for that part which is not covered under the base time, overtime, and/or holiday costs.

13. Section 354.107 is revised to read as follows:

§ 354.107 Continuous inspection performed on a resident basis.

The charges for inspection of rabbits and products thereof shall be those provided for in § 354.101(b) and specified by hourly rates in §§ 391.2 and 391.3 when the inspection service is performed on a continuous year-round resident basis and the services of an inspector or inspectors are required 4 or more hours per day. When the services of an inspector are required on an intermittent basis, the charges shall be those provided for in § 354.101(b) and specified by hourly rates in §§ 391.2 and 391.3 plus the travel expense and other charges provided for in § 354.106.

PART 355—[AMENDED]

14. The authority citation for Part 355 continues to read as follows:

Authority: 7 U.S.C. 1622, 1624; 7 CFR 2.17(g) and (i), 2.55.

15. Section 355.12 is revised to read as follows:

§ 355.12 Charge for service.

The fees to be charged and collected by the Administrator shall be at the rates specified in §§ 391.2, 391.3, and 391.4 respectively for base time; for overtime, including Saturdays, Sundays, and holidays; and for certain laboratory services which are not covered under the base time, overtime, and/or holiday costs. Such fees shall reimburse the Service for the cost of the inspection service furnished.

PART 362—[AMENDED]

16. The authority citation for Part 362 continues to read as follows:

Authority: 7 U.S.C. 1622, 1624; 7 CFR 2.17(g) and (i), 2.55.

17. Section 362.5(c) is revised to read as follows:

§ 362.5 Fees and charges.

* * * * *

(c) The fees to be charged and collected for service under the regulations in this Part shall be at the rates specified in §§ 391.2, 391.3, and 391.4 respectively for base time; for overtime including Saturdays, Sundays, and holidays; and for certain laboratory services which are not covered under the base time, overtime, and/or holiday costs. Such fees shall cover the costs of the services and shall be charged for the time required to render such service, including, but not limited to, the time required for the travel of the inspector or inspectors in connection therewith during the regularly scheduled administrative workweek.

* * * * *

PART 381—[AMENDED]

18. The authority citation for Part 381 is revised to read as follows:

Authority: 21 U.S.C. 451 *et seq.*; 7 U.S.C. 450 *et seq.*

19. Section 381.38(a) is revised to read as follows:

§ 381.38 Overtime and holiday inspection service.

(a) The management of an official establishment, an importer, or an exporter shall reimburse the Program, at the rate specified in § 391.3, for the cost of the inspection service furnished on any holiday specified in paragraph (b) of this section; or for more than 8 hours on any day, or more than 40 hours in any administrative workweek Sunday through Saturday.

* * * * *

20. Section 381.39(a) is revised to read as follows:

§ 381.39 Basis of billing for overtime and holiday service.

(a) Each recipient of overtime or holiday inspection service, or both, shall be billed as provided for in § 381.38(a) and at the rate specified in § 391.3, in increments of quarter hours. For billing purposes, 6 or more minutes shall be considered a full quarter hour. Billing will be for each quarter hour of service rendered by each Inspection Service employee.

* * * * *

21. A new Part 391 (9 CFR Part 391) is added to Subchapter D to read as follows:

PART 391—FEES AND CHARGES FOR INSPECTION SERVICES

Sec.

391.1 Scope and purpose.
391.2 Base time rate.
391.3 Overtime and holiday rate.
391.4 Laboratory services rate.

Authority: 21 U.S.C. 460 *et seq.*, 601 *et seq.*, 7 U.S.C. 394, 1622, and 1624; 7 CFR 2.17(g) and (i), 2.55.

§ 391.1 Scope and purpose.

Fees shall be charged by the Agency for certain specified inspection services provided on a holiday, on an overtime basis, and/or which are voluntary inspection services.

§ 391.2 Base time rate.

The base time rate for inspection services provided pursuant to sections 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, and 362.5 shall be $23.60 per hour, per Program employee.

§ 391.3 Overtime and holiday rate.

The overtime and holiday rate for inspection services provided pursuant to sections 307.5, 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, 362.5, and 381.38 shall be $25.88 per hour, per Program employee.

§ 391.4 Laboratory services rate.

The rate for laboratory services provided pursuant to sections 350.7, 351.9, 352.5, 354.101, 355.12, and 362.5 shall be $42.88 per hour, per Program employee.

The Administrator has determined that good cause exists to make these amendments effective less than 30 days after publication in the Federal Register.

Done at Washington, DC, on: February 3, 1989.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 89-3209 Filed 2-9-89; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-ASW-61, Amdt. 39-6139]

Airworthiness Directives; Enstrom Helicopter Model F-28, F-28A, F-28C, F-28C-2, F-28F, 280, 280C, 280F, and 280FX Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that requires repetitive inspections, specifies necessary parts replacement, and establishes a service life limit on certain main rotor transmission clutch assemblies on certain Enstrom model helicopters. This AD is prompted by several reports of clutch failures which could result in loss of power to the rotors and subsequent loss of control of the helicopter.

EFFECTIVE DATE: February 24, 1989.

Compliance: As indicated in the body of the AD.

ADDRESSES: The applicable service information, Enstrom Directive Bulletin 0068 and Enstrom Service Information Letter 0079A, may be obtained from Enstrom Helicopter Corporation, P.O. Box 277, Menominee, Michigan 49858. A copy of the service information is contained in the Rules Docket, Office of the Assistant Chief Counsel, FAA, Building 3B, Room 158, 4400 Blue Mound Road, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph H. McGarvey, ACE-115C, Chicago Aircraft Certification Office, FAA, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7136.

SUPPLEMENTARY INFORMATION: There have been several reports of clutch failures causing substantial damage to certain Enstrom Model F-28, F-28A, F-28C, F-28C-2, F-28F, 280, 280C, 280F, and 280FX series helicopters. Based on research of the clutch failure data, the FAA has determined that the Enstrom main rotor transmission clutch assembly, Part Number (P/N) 28-13401-1, Formsprag P/N CL40528-1 thru -7, can no longer be safely overhauled and returned to service.

Since this condition is likely to exist or develop in other helicopters of this same type design, an AD is being issued that requires repetitive inspections, replacement of unairworthy clutch assemblies, and retirement from service of those clutch assemblies having 1,200 or more hours' time in service on Enstrom Model F-28, F-28A, F-28C, F-28C-2, 280, and 280C helicopters. The AD also requires a one-time inspection of clutch assemblies and replacement of unapproved assemblies on Enstrom Model F-28F, 280F, and 280FX helicopters.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days from publication.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined preliminarily that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it may be obtained from the Regional Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, and Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Enstrom Helicopter Corporation: Applies to Enstrom Model F-28, F-28A, F-28C, F-28C-2, F-28F, 280, 280C, 280F, and 280FX series helicopters equipped with a P/N 28-13401-1, Formsprag CL40528-1 thru -7, main rotor transmission clutch assembly. (Docket No. 88-ASW-61)

Compliance is required as indicated, unless already accomplished.

To prevent the loss of main rotor lift and inertial energy storage capability that could result in substantial rotorcraft damage and subsequent loss of the helicopter, accomplish the following:

(a) For Model F-28, F-28A, F-28C, F-28C-2, 280, and 280C series helicopters, conduct the following checks, inspections, and replacement after the effective date of this AD:

(1) Within the next 25 hours' time in service, determine the part number of the main rotor transmission clutch assembly. Make an entry in the aircraft log book documenting the clutch assembly part number, the number of hours' time in service, and the date. For helicopters equipped with clutch assembly, P/N 28-13401-1, comply with paragraphs (a)(2) through (a)(6).

(2) Prior to each flight, follow the prescribed procedures in the applicable FAA-approved flight manual under normal operating conditions for rotor engagement, engine warmup, and ground checks. Before takeoff, gently close the throttle, splitting the tachometer needles to verify proper operation of the overrunning clutch.

(3) At the conclusion of each flight, follow the prescribed procedures in the applicable flight manual for normal engine cooldown and shutdown procedures. After engine shutdown, while the main rotor is still running down, check for any abnormal noise from the area of the upper pulley which houses the overrunning clutch.

(4) If any irregularities are noted while performing the procedures required by paragraph (a)(2) or (3) above, conduct the following check:

(i) Rotate the upper pulley to feel for any bearing roughness, noise or lock-up.

(ii) Rotate clockwise for free wheeling and counterclockwise for engagement.

(5) The checks required by paragraphs (a)(2), (a)(3), and (a)(4) may be conducted by a pilot.

(6) Within the next 25 hours' time in service, and at 100-hour intervals thereafter, inspect the clutch assembly for proper oil level in accordance with the appropriate Enstrom maintenance manual. If there is extensive loss of oil, replenish the oil and service the clutch in accordance with standard instructions.

Note.— Enstrom Service Information Letter 0079A contains clutch servicing information.

(7) If any abnormalities are detected from the checks and inspections required by paragraphs (a)(2) through (a)(6), replace the clutch, P/N 28–13401–1, with an airworthy clutch assembly, P/N 28–13401–2, prior to further flight.

(8) Replace clutch assemblies, P/N 28–13401–1, if found to have 1,200 hours or more time in service during the inspection required by paragraph (a)(1), with an airworthy clutch assembly, P/N 28–13401–2, prior to further flight. For all remaining clutch assemblies, P/N 28–13401–1, replace with serviceable assemblies on or before accumulating 1,200 hours' total time in service.

Note.— The clutch service information published in Enstrom Service Directive Bulletin No. 0027 entitled "Overrunning Clutch Assembly," Enstrom Service Information Letter 0079A entitled "Overrunning Clutch Lubrication," and Service Information Letter 0038A entitled "Special Inspections for Sudden Stoppage—Main and Tail Rotor Blade Strikes" pertain to this AD.

(b) For Model F–28F, 280F, and 280FX series helicopters, accomplish the following:

(1) Within the next 25 hours' time in service after the effective date of this AD, conduct a one-time inspection to determine the part number of the main rotor transmission clutch assembly.

(2) If clutch assembly, P/N 28–13401–1, is found, replace it with an airworthy clutch assembly, P/N 28–13401–2, before further flight.

Note.— Clutch assembly, P/N 28–13401–1, is not authorized for use on Enstrom Model F–28F, 280F, or 280FX series helicopters.

(c) An alternate method of compliance with this AD, which provides an equivalent level of safety, may be used when approved by the Manager, FAA, Chicago Aircraft Certification Office, 2300 East Devon Avenue, Room 232, Des Plaines, Illinois 60018.

(d) In accordance with §§ 21.197 and 21.199, flight is permitted to a base where the maintenance required by this AD may be accomplished.

This amendment becomes effective February 24, 1989.

Issued in Fort Worth, Texas, on January 23, 1989.

L.B. Andriesen,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 89–3034 Filed 2–9–89; 8:45 am]

BILLING CODE 4910–13–M

Coast Guard

33 CFR Part 100

[CGD 05–89–03]

Special Local Regulations for Marine Events; Norfolk/Portsmouth Harbor, Elizabeth River, VA

AGENCY: Coast Guard, DOT.

ACTION: Final rule; corrections.

SUMMARY: This document amends the special local regulations to correct a previously published document. The final rule document CGD 05–87–27, beginning on page 19726 in the issue of Wednesday, May 27, 1987, contained the following mistake: on page 19726, in the first column, under § 100.501(a)(1) REGULATED AREA, the last five lines should have read "Elizabeth River between Berkley at latitude 36°50'21.5" North, longitude 76°17'14.5" West, and Norfolk at latitude 36°50'35.0" North, longitude 76°17'10.0" West".

EFFECTIVE DATE: February 10, 1989.

FOR FURTHER INFORMATION CONTACT: Bruce Novak, (202) 267–1477.

SUPPLEMENTARY INFORMATION:

List of Subjects in 33 CFR Part 100

Marine safety.

Consequently, 33 CFR Part 100 is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

§ 100.50 [Amended]

2. At the end of § 100.501(a)(1) Regulated Area, the words following "Eastern Branch of the Elizabeth" are revised to read "River between Berkley at latitude 36°50'21.5" North, longitude 76°17'14.5" West, and Norfolk at latitude 36°50'35.0" North, longitude 76°17'10.0" West".

A.D. Breed,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 89–3030 Filed 2–9–89; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 8F3684/R1007; FRL 3518–4]

Pesticide Tolerance for Daminozide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document extends the tolerance of 20 parts per million (ppm) for residues of the plant growth regulator daminozide (butanedioic acid mono (2,2-dimethylhydrazide)) in or on the raw agricultural commodity apples until July 31, 1990. This extension will allow EPA adequate time to proceed toward cancellation of daminozide through the Special Review process. The July 31, 1990, time frame allows time for receipt and evaluation of studies being conducted by the Uniroyal Chemical Co., Inc., and completion of EPA's risk assessment of daminozide and unsymmetrical dimethylhydrazine (also known as UDMH and 1,1-dimethylhydrazine), a metabolite and breakdown product of daminozide, before the Special Review process is completed.

DATES: This rule is effective on January 31, 1989. Written objections must be filed by March 2, 1989.

ADDRESS: Written objections, identified by the document control number (PP 8F3684/R1007) may be submitted to the Hearing Clerk (A–110), Environmental Protection Agency, Room M–3708, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Office location and telephone number: Room 245, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–1800.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 16, 1986 (51 FR 12889), EPA proposed to reduce the tolerance, on an interim basis, in 40 CFR 180.246 for residues of daminozide in or on the raw agricultural commodity apples from 30 ppm to 20 ppm. An expiration date of July 31, 1987, was proposed for the reduced tolerance. Subsequently, the Agency reduced the tolerance in 40 CFR 180.246 in a **Federal Register** document of January 16, 1987 (52 FR 1909). The modified tolerance was set to expire on July 31, 1987, unless

extended. The sole registrant of products containing daminozide, Uniroyal Chemical Co., Inc., 74 Amity Rd., Bethany, CT 06525, submitted pesticide petition (PP) 7F3535 proposing an extension of the tolerance for residues of the plant growth regulator daminozide in or on the raw agricultural commodity apples at 20 ppm. EPA issued a notice, published in the **Federal Register** of June 17, 1987 (52 FR 23077), announcing receipt of this petition. The petition was submitted under section 408(d)(1) and 408(m) of the Federal Food, Drug, and Cosmetic Act (FFDCA). Following Agency review of this petition, a final rule was published in the **Federal Register** of July 29, 1987 (52 FR 28256), continuing the tolerance of 20 ppm for residues of daminozide in or on apples through January 31, 1989. The Agency imposed expiration dates for the apple tolerance because it was hoped that as data were received, a regulatory decision could be made prior to the completion of the long-term oncogenicity studies. On September 8, 1988, Uniroyal Chemical Company submitted PP 8F3684 proposing an extension of the tolerance for residues of daminozide in or on apples at 20 ppm. EPA issued a notice, published in the **Federal Register** of October 20, 1988 (53 FR 41238) announcing submission of this petition.

There were no comments received in response to the notice of filing.

The potential oncogenic risk of daminozide and UDMH has for some time been under evaluation by the Agency. As previously discussed in greater detail in **Federal Register** notices of January 16, 1987 (52 FR 1909) and July 29, 1987 (52 FR 28256), certain oncogenicity studies indicate that daminozide and its impurity and hydrolysis product, UDMH, cause an increased incidence of malignant and benign tumors in laboratory animals under test conditions. However, these studies had certain flaws in test methodology and documentation. As a result of these flaws, EPA eventually concluded that these studies could not serve as a basis for regulatory action against daminozide. (See 52 FR 28256; July 29, 1987.) Extensive data requirements were imposed on Uniroyal Chemical Company under section 3(c)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). These data requirements included: Oncogenicity studies with daminozide and unsymmetrical dimethyl hydrazine (UDMH), mutagenicity data, plant and animal metabolism studies, livestock feeding data, crop field trials, degradation in food data, storage stability information, market basket surveys, and analytical methods. The majority of these required studies have been received and have been reviewed. Results of crop field trials, analytical methods, and a market basket survey are discussed in the **Federal Register** of July 29, 1987 (52 FR 28256), along with additional background information on the regulatory interaction between the Agency and the FIFRA Scientific Advisory Panel (SAP) on daminozide.

Evaluation of residue chemistry data on UDMH and daminozide indicates that the Agency currently has sufficient data to perform an adequate dietary exposure analysis for a risk assessment. EPA currently has residue data from crop field trials for cherries, nectarines, peaches, pears, and tomatoes; market basket survey data for apples, cherry filling peanuts, peanut butter, grape juice, baby and adult apple juice, and sauce; and feeding studies for meat, milk, and eggs. However, the Agency is still seeking additional information on the degradation of daminozide into UDMH in apple juice and sauce since previously submitted degradation studies report conflicting results. An additional degradation study, along with additional information on storage stability and plant and animal metabolism, will be submitted in 1989.

Oncogenicity studies with daminozide in the rat and mouse were submitted on August 31, 1988. A preliminary review of the rat (Fischer 344) study shows it to be negative for oncogenicity. Treated animals showed no statistically significant increase in tumors by either the Cochran Armitage trend analysis a (a statistical recognition of a positive increase in tumors with increasing dose) or the Fisher's exact test (statistical comparison of two groups, also preferred to as pairwise comparison).

Preliminary review of the daminozide mouse (CD–1) study indicates that there is a statistically significant increase in hemangiosarcomas/hemangiomas (malignant and benign blood vessel tumors, respectively) with increasing dose (Cochran Armitage trend test) but not by pairwise comparison. The incidence of these tumors is summarized in the following table.

DAMINOZIDE MOUSE STUDY INCIDENCE OF BLOOD VESSEL TUMORS

	Dosage levels (ppm)				
	0	300	3,000	5,000	10,000
Males:					
Hemangiomas	[1] 2/50(4)	0/50(0)	2/50(4)	1/50(2)	2/48(4)
Hemangiosarcomas	4/50(8)	1/50(2)	1/50(2)	2/50(4)	8/48(17)
Combined incidence	6/50(12)	1/50(2)	3/50(6)	3/50(6)	10/48(21)
	p=0.01 by the Cochran Armitage Test				
Females:					
Hemangiomas	2/46(4)	0/49(0)	1/49(2)	1/47(2)	1/50(2)
Hemangiosarcomas	2/46(4)	1/49(2)	1/49(2)	0/47(0)	6/50(12)
Combined incidence	4/46(9)	1/49(2)	2/49(4)	1/47(2)	7/50(14)
	p=0.048 by the Cochran Armitage Test				

[1] The number in parentheses indicates the percentage incidence.

The increase in hemangiosarcomas/hemangiomas at the high dose in male and female mice is considered to be related to treatment with daminozide for the following reasons: (1) Tumors at the high dose are nearly twice those of the concurrent controls. (2) The incidence of hemangiosarcomas at the high dose is outside of the historical control range for this tumor type in this strain of mouse. The historical control range for hemangiosarcomas is 0 to 2.0 percent (mean 0.5 percent) for males and 0 percent for females in four feeding studies performed at the same

laboratory as the daminozide study. Hemangiosarcomas would be considered uncommon tumors (<1.0 percent) based on these ranges in the CD–1 mouse. (3) The incidence of hemangiosarcomas in the control groups is also outside the historical control range for this tumor type. An explanation for this is not readily apparent, but raises a question about the adequacy of the control groups, especially for male mice since in the two lowest dosage groups the incidence was within the historical control range. Since this is an uncommon tumor, the Agency has required Uniroyal Chemical Company to submit the pathology slides from both the daminozide and UDMH studies for further review. (4) Hemangiosarcomas/hemagiomas are the same tumor types seen in the ongoing oncogenicity studies on UDMH. Low levels of UDMH present either as a contaminant of the daminozide being tested or present as the result of metabolism or daminozide to UDMH in the test animals could be contributing to the formation of these tumors in the daminozide study.

In addition to oncogenicity studies with daminozide, 2-year drinking water oncogenicity studies in the rat (Fischer 344) and mouse (CD–1) using UDMH have been required and are in progress.

A 12-month interim sacrifice report of 20 animals per sex per dose level on the rat study has been submitted to the Agency. This study provides exposures to rats of up to 100 ppm UDMH in drinking water. A preliminary review of this report indicates that no tumors related to UDMH exposure were found after 1 year of treatment.

The CD–1 mouse is being tested in two studies at several dosage levels. In one study, the "low dose" study, UDMH is being administered at 0, 1, 5, and 10 ppm in male mice and 0, 1, 5, and 20 ppm in female mice. This study began in mid-January 1987, and the terminal sacrifice was scheduled for mid-January 1989. The 1-year "low dose" study interim sacrifice data indicate that there is no numerical increase in any tumor type in any of the treatment groups. A draft pathology report is due in April 1989, and a final report is due in July 1989.

In a second CD–1 mouse "high dose" study, UDMH is being administered at 0, 40, and 80 ppm to both male and female mice. The study began in mid-May 1987, and the terminal sacrifice is scheduled for mid-May 1989. A draft pathology report is due in September 1989, and the final study report is due January 1990. The 1-year interim sacrifice data indicate that there is a statistically significant increase in hemangiosarcomas/hemangiomas at the high dose by pair-wise comparison and by trend analysis (Cochran-Armitage test) for both males and females. The Agency notes that only one tumor was found in either sex at the 40-ppm dosage level following 1 year of exposure. Since the tumors were found early in the study, i.e., at 1 year), the Agency considers it likely that further tumors at the 40-ppm level (and possibly at lower doses) could be found at termination of the study at the end of 2 years.

The data on the incidence of hemangiosarcomas/hemangiomas are summarized in the following table along with data on lung tumors seen in this same study.

UDMH "High Dose" Mouse Study Incidence of Blood Vessel and Lung Tumors

Tumor type	Dosage level (ppm)		
	0	40	80
Males			
Blood vessel:			
Hemangioma	[a] 0/45(0)	1/45(2)	2/53(4)
Hemangiosarcoma	0/45(0)	0/45(0)	9/53(18)
Combined	[a] 0/45(0)	1/45(2)	[b] 11/53(22)
Lung:			
Alveolar/bronchiolar:			
Adenomas	6/45(13)	11/46(24)	22/53(41)
Adenocarcinoma	0/45(0)	0/45(0)	1/53(2)
Combined	[a] 6/45(13)	11/45(24)	[c] 23/53(43)
Females			
Blood vessel:			
Hemangioma	0/43(0)	1/47(2)	2/51(4)
Hemangiosarcoma	0/43(0)	0/47(0)	6/51(12)
Combined	[a] 0/43(0)	1/47(2)	[b] 8/51(16)
Lung:			
Alveolar/bronchiolar:			
Adenomas	4/44(9)	13/47(30)	19/51(37)
Adenocarcinoma	0/44(0)	1/47(2)	0/51(0)
Combined	[a] 4/44(9)	[b] 14/47(32)	[c] 19/51(37)

[a] The number in parentheses indicates the percentage incidence.
[b] $p<0.05$.
[c] $p<0.01$.
[d] $p<0.001$.
NOTE.—Significance of trend denoted at control group (Cochran Armitage Test). Significance of pairwise comparison with control is denoted at dose level.

In addition to the hemangiosarcomas/hemangiomas, benign lung tumors were seen in the mouse (see table above) following treatment with UDMH for 1 year. New mutagenicity studies using UDMH have been submitted to the Agency. These studies include an Ames Salmonella assay for point mutations, a chromosomal aberration assay using Chinese hamster ovary cells, a forward gene mutation assay in Chinese hamster ovary cells, and an unscheduled DNA synthetase assay in primary rat hepatocytes. All four of these studies were found to be acceptable assays and to be equivocal to negative for mutagenicity.

Based on the incidences of hemangiosarcomas/hemangiomas seen at 80 ppm in the UDMH mouse study at 1 year, the Agency has calculated a cancer potency factor (Q^*_1) of 0.88 milligrams/kilogram/day^{-1}. In addition, a Q^*_1 of 2.9 mg/kg/day^{-1} was calculated based on the incidence of lung tumors seen at the interim sacrifice in this same study. Since the lung tumors were of a nonmalignant nature and not yet shown to be outside the normally high incidence of lung tumors found in this strain of mouse after 2 years, the Q^*_1 for malignant vascular tumors was used for risk characterization. The model used for calculating the Q^*_1 for both data sets was the multistage model using the Crump Global 86 program. This model fits both data sets very well.

The Agency has used data from crop field trials and several market basket surveys as well as tolerance level values for milk intake to estimate an exposure and risk characterization for UDMH.

Based upon this information, the Agency has preliminarily estimated that exposure to individuals in the U.S. population is 0.000051 mg/kg/day of UDMH (mean exposure). The lifetime risk to human beings over a 70 year period has been calculated to be 4.5×10^{-6}. This results in an individual risk 9.6×10^{-7} over a 1.5-year period, the length of the tolerance extension. However, exposure to UDMH is not constant over the 70 year lifespan. Because consumption patterns vary from infancy to adulthood and because infants consume more per unit body weight than adults, nonnursing infants (children under one year of age) have a greater exposure during that year than do adults. This exposure has been estimated to be 0.00048 mg/kg/day (mean exposure). Therefore, the Agency has also estimated the risk to the nonnursing infant for 1.5 years. It is calculated to be 9×10^{-6}. The risk to nonnursing infants was calculated by first determining estimated exposure for the duration of the tolerance extension period, 1.5 years, and then multiplying the exposure value by the cancer potency factor, 0.88 mg/kg/day^{-1}. Thus, to determine risk, the Agency divided the daily exposure (0.00048 mg/kg/day) by 70 (the Agency's usual assumed life span for cancer risk assessment), multiplied by 1.5 and then multiplied the resulting exposure value for nonnursing infants by the cancer potency factor. It should be noted that the resulting risk may be overstated because the nonnursing infant daily exposure estimates are for 1 year, not 1.5 years. As children grow, their absolute consumption and consumption per unit body weight of apple products decreases thereby lowering UDMH exposure. This trend is supported by mean consumption estimates from the Agency's Tolerance Assessment System food consumption data base. The general population risk (9.6×10^{-7}) was calculated using the same procedure and an estimated exposure value of 0.000051 mg/kg/day.

These risk estimates are the best indicator of oncogenic risk available at this time. Strengths of these risk estimates are: (1) Hemangiosarcomas are uncommon malignant tumor and have a low background rate in the strain of mouse used in the UDMH and daminozide studies; (2) hemangiosarcomas are the same tumor type seen in earlier UDMH studies that had flaws in test methodology and documentation: (3) it is very likely that a dose-response relationship will result for the occurrence of hemangiosarcomas/hemangiomas after termination of the UDMH mouse study at 2 years; (4) items (1), (2), and (3) of this paragraph support using the potency factor calculated using the blood vessel tumor data instead of the lung tumor data; and (5) residue data are primarily actual residue data and not worst-case assumptions based on tolerances.

However, there are also limitations to the Agency's approach for risk estimation. These limitations are as follows: (1) Since the final results of these studies are not yet available, the actual tumor response over a lifetime is not known; (2) although biological and statistical trends were noted, tests at 10,000 ppm for two years with the parent compound were statistically negative by pairwise comparison for cancer response; (3) the cancer response in the current UDMH data is seen only in one species at 40 and 80 ppm (40 ppm, or approximately 11.5 mg/kg/day, 80 ppm, or approximately 23 mg/kg/day); (4) mutagenicity data for UDMH are equivocal to negative on most of the test animals reported on in the interim sacrifice report died "in study" rather than at sacrifice indicating an early occurrence of tumors from exposure to UDMH; (5) mice in the "high dose" study are dying early and it is only at the highest dose of this study, 80 ppm UDMH, that a statistically significant biological response has been seen. The Agency believes that the death of these mice is due to the tumors, but it may be argued that the maximum tolerated dose has been exceeded, causing excessive toxicity and thereby compromising the outcome of the study. The final results from the "low dose" study will indicate whether tumors are occurring at lower dosage levels as well, and may enable the Agency to determine if excessive toxicity is a limiting factor in the interpretations of tumor data. The Agency believes that these questions will be resolved when the final reports of the low dose and high dose studies are received, which is July 1989 and January 1990 respectively.

It is the Agency's policy to coordinate its actions regarding the revocation of tolerances for pesticide chemicals under the FFDCA with its actions regarding the cancellation of corresponding registrations of pesticides under FIFRA. A Statement of Policy was published by EPA in 1982, on this subject (47 FR 42956; Sept. 29, 1982) which reflects the joint understanding of the Food and Drug Administration, the U.S. Department of Agriculture, and EPA that EPA ordinarily will not revoke a tolerance until the corresponding registration(s) have been cancelled, nor until the end of any period provided by the final cancellation order for use of existing stocks of the pesticide (47 FR 42958; Sept. 29, 1982). That document also states that time EPA will issue a notice of proposed rulemaking to revoke a tolerance at the EPA issues a notice of intent to cancel a corresponding registration so that a final rule revoking a tolerance, if appropriate, can be issued at the time the associated registrations are cancelled (or shortly thereafter).

The underlying basis of the 1982 policy statement is that a food producer ordinarily should be able to assume correctly that using a pesticide on a crop in accordance with an EPA-approved FIFRA registration will not result in the seizure of the crop as failing to conform with a tolerance regulation issued by EPA under FFDCA. EPA continues to believe that this policy is sound.

As already noted the data available at this time have certain limitations. Review of the pathology studies from both the daminozide and UDMH studies, and of the final reports of the low and high dose UDMH studies should resolve some of the uncertainties associated with the evaluation and interpretation of the data available now.

Despite these limitations, the Agency believes that the lifetime risks to the U.S. population estimated from the available data (4.5×10^{-6}) are of sufficient concern that it should move as quickly as possible toward cancellation of daminozide through the Special Review process. Accordingly, the Agency intends to issue a Preliminary Determination proposing cancellation this spring.

The final reports from the low and high dose UDMH studies will be available and can be reflected in the Agency's Final Determination. The Final Determination, likely to be issued in the spring of 1990, will be issued before expiration of the tolerance on July 31, 1990. As part of its Special Review action, EPA also intends to propose revocation of daminozide tolerances on the remaining crops beside this apple tolerance.

Based on currently available data and the incremental individual risk estimate as a result of the tolerance extension, EPA concludes that a tolerance level of 20 ppm for residues of daminozide in or on apples, during the period ending July 31, 1990, is adequate to protect the public health.

Any person adversely affected by this regulation extending the 20-ppm tolerance for residues of daminozide on apples may, within 30 days after publication of this regulation in the Federal Register, file written objections with the Hearing Clerk, at the address given above, and may as part of such objections request a hearing on factual issues associated with such objections. Objections should specify the provisions of the regulation deemed objectionable and the ground for the objections. If a hearing is requested, the request must state the factual issues to be addressed in the hearing.

In the event that objections or requests for a hearing are filed, this tolerance rule will remain effective until issuance of any order resulting from such objections or requests. (Section 408(d)(4), FFDCA.)

Executive Order 12291

Under Executive Order 12291, the Agency must determine whether a regulatory action is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. The Agency had determined that this regulatory action is not a major regulatory action, i.e., it will not have an annual effect on the economy of at least $100 million, will not cause a major increase in prices, and will not have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

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Regulatory Flexibility Act

This rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.*), and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations.

Accordingly, it is certified that this regulatory action does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 31, 1989.

John A. Moore,

Acting Administrator, Environmental Protection Agency.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.246(b) is amended by revising the entry for apples in the table therein, to read as follows:

§ 180.246 Daminozide; tolerance for residues.

* * * * *

(b) * * *

Commodities	Parts per million	Expiration date
Apples	20.0	July 31, 1990.

[FR Doc. 89-3211 Filed 2-6-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 271

[FRL-3518-1]

Alabama; Schedule of Compliance for Modification of Hazardous Waste Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Alabama's compliance schedule to adopt program modifications.

SUMMARY: On September 22, 1988 EPA promulgated amendments to the deadlines for State program modifications, and published requirements for States to be placed on a compliance schedule to adopt the necessary program modifications. EPA is today publishing a compliance schedule for Alabama to modify its program in accordance with § 271.21(g) to adopt the Federal program modifications.

FOR FURTHER INFORMATION CONTACT: Otis Johnson Jr., Chief, Waste Planning Section, RCRA Branch, Waste Management Division, U.S. Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365, Phone: 404/347-0076.

SUPPLEMENTARY INFORMATION:

A. Background

Final authorization to implement the Federal hazardous waste program within the State is granted by EPA if the Agency finds that the State program (1) is "equivalent" to the Federal program, (2) is "consistent" with the Federal program and other State programs, and (3) provides for adequate enforcement (Section 3006(b), 42 U.S.C. 6226(b)). EPA regulations for final authorization appear at 40 CFR 271.1-271.24. In order to retain authorization, a State must revise its program to adopt new Federal requirements by the cluster deadlines and procedures specified in 40 CFR 271.21. See 51 FR 33712, September 22, 1986 for a complete discussion of these procedures and deadlines.

B. Alabama

Alabama received final authorization of its hazardous waste program on December 23, 1987. (52 FR 46466, December 8, 1987). Today EPA is publishing a compliance schedule for Alabama to obtain program revisions for the following Federal program requirements contained in non-HSWA Cluster III:

- Radioactive Mixed Waste
- Liability Coverage—Corporate Guarantee
- Hazardous Waste Tank Systems
- Correction to Listing of Commercial Chemical Products and Appendix VIII Constituents
- Hazardous Waste Tank Systems; Correction
- Listing of Spent Pickle Liquor; Correction
- Revised Manual SW-846
- Closure/Post-closure Care for Interim Status Surface Impoundments
- Definition of Solid Waste; Technical Corrections
- Amendments to Part B—Information Requirements for Land Disposal Facilities

The State has agreed to obtain the needed program revisions according to the following schedule:

1. Submit Notice & Proposed Rules (July 15, 1986 through September 1, 1988) to Legislative Reference Service and Legislative Oversight Committee—April 19, 1989
2. Publish Notice in Four Regional Newspapers—April 23, 1989
3. Publish Notice in Alabama Administrative Monthly—April 28, 1989
4. Public Hearing—June 12, 1989
5. Close Comment Period—June 21, 1989
6. Prepare Reconciliation Statement and Rule Revisions—June 30, 1989
7. Board of Health—July 19, 1989
8. Commission Adoption—August 24, 1989
9. File Certified Copy of Rules with ADEM Secretary—August 31, 1989
10. File Certified Copy of Rules with Legislative Reference Service—September 8, 1989
11. Rule Effective Date—October 23, 1989.

Alabama expects to submit a final application to EPA for authorization of the above mentioned program revisions by December 31, 1989.

Authority: This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the RCRA of 1976, 42 U.S.C. 6912(a), 6926, and 6974(B).

Date: January 24, 1989.

Lee A. DeHihns, III,

Acting Regional Administrator.

[FR Doc. 89-3189 Filed 2-9-89; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 25, 58, 147 and 184

[CGD 83-013]

RIN 2115-AB35

Carriage and Use of Liquefied and Non-liquefied Flammable Gas as Cooking Fuels on Vessels Carrying Passengers for Hire

AGENCY: Coast Guard, DOT.

ACTION: Interim final rule.

SUMMARY: Coast Guard regulations currently prohibit the carriage and use of liquefied and non-liquefied flammable gas as ships' stores on vessels carrying passengers for hire. Because a portion of the small and uninspected passenger vessel industries have expressed a desire to use these gases as cooking fuels, and the systems using these fuels have improved over the years since this prohibition was first put in place, the Coast Guard has reconsidered the prohibition. This rule removes the prohibition as it pertains to cooking appliances. Further, it promulgates standards governing the design, installation and testing of cooking appliances using these fuels on small and uninspected passenger vessels and the installation of wood and coal burning stoves.

DATES: This rulemaking is effective March 13, 1989, except for Subpart 25.45 which will be effective August 9, 1989. Comments addressing § 25.45-1(d) must be received by March 27, 1989. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 13, 1989, except for Subpart 25.45 which is approved as of August 9, 1989.

ADDRESSES: Comments should be submitted in writing to the Executive Secretary, Marine Safety Council (G-LRA-2/3600) (CGD 83-013), U.S. Coast Guard, 2100 Second Street, SW., Washington DC 20593-0001. The comments and materials referenced in this notice will be available for examination and copying between the hours of 8 a.m. and 3 p.m., Monday through Friday, except federal holidays, at the Marine Safety Council, Room 3600, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. Comments may also be delivered to this address.

FOR FURTHER INFORMATION CONTACT: LCDR Mark G. VanHaverbeke, Project Manager, (202) 267-1181.

SUPPLEMENTARY INFORMATION: In 1982 the Coast Guard received numerous requests from owners and operators of small and uninspected passenger vessels to reevaluate the prohibition of liquefied petroleum gas (LPG) and compressed natural gas (CNG) as cooking fuels on their vessels. As a result of its reevaluation, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on March 22, 1984 (49 FR 10885). This NPRM proposed to remove the prohibition of LPG and CNG as fuels for cooking appliances on vessels carrying passengers for hire, except ferries. This proposal also promulgated standards governing the design, installation, and testing of cooking appliances using LPG and CNG, incorporating by reference the American Boat and Yacht Council, Inc. (ABYC) and National Fire Protection Association (NFPA) standards for these systems.

As a result of the comments received, substantive changes were made to the original proposal. The most significant change was the acceptance of the National Fire Protection Association Standard 302, Pleasure and Commercial Motor Craft (1984 Edition), as an alternative to the ABYC standards. On February 6, 1986, a Supplemental Notice of Proposed Rulemaking (SNPRM) was published in the **Federal Register** (51 FR 4620) which reflected this change. The comment period for the SNPRM ended on May 7, 1986.

NFPA 302 also provides guidance for the installation of heating and cooking systems using wood or coal. This rulemaking provides for the use of these fuels on uninspected vessels carrying passengers, and the Coast Guard has determined that adopting the appropriate guidance in NFPA 302 will help to minimize the fire risks associated with these systems. Therefore, the Coast Guard has included a provision in § 25.45-1(d) to require that these systems, where installed after August 9, 1989, be in accordance with NFPA 302. Since this provision was not included in the SNPRM, this document is being published as an Interim Final Rule to provide for a comment period pertaining to § 25.45-1(d). Following the comment period a Final Rule will be published.

Discussion of Comments

A total of 41 comment letters were received in response to the SNPRM, and they are discussed below. Since no issues were raised which had not been previously addressed in either the initial NPRM or SNPRM, only minor changes to the proposal are being made. The final rule includes the Office of Management and Budget (OMB) control number for the information collection requirements and a few minor administrative changes in the authority citations for the affected parts.

Only one comment opposed allowing the use of LPG and CNG on vessels carrying passengers for hire. One reason cited was that these gases are not always effectively odorized, therefore a leak can go undetected. Another reason was that, although CNG is lighter than air at ambient temperature, a leak could have a cooling effect on the gas causing it to become heavier than air. This would result in the gas settling within the vessel rather than rising. The comment espoused the attributes of liquid fuels including the facts that they are visible, that combustible liquids are safer than flammable gases, that some flammable liquids can be easily diluted with water when spilled and thus become noncombustible, and that liquid fuel in a punctured tank can only leak down to the level of the hole while a compressed gas will continue to leak until the supply is exhausted.

The fact that combustible liquids are safer than flammable ones and that flammable liquids are safer than flammable gases cannot be denied. It also cannot be denied that any fuel used for cooking presents some degree of risk. What is important is that the degree of risk of any fuel be reduced to an acceptable level. The Coast Guard's position is that a flammable gas cooking installation meeting the requirements of this rulemaking will reduce the hazards of these gases to an acceptable level.

The scenario of leaking CNG cooling itself sufficiently to become heavier than air could only occur if the leak were either at the bottle or between the bottle and the regulator. This is because the pressure of the gas downstream of the regulator is too low to allow a sufficient cooling effect to occur. Since these regulations require the bottle and regulator to be contained in a locker vented to the atmosphere, it is not foreseeable that a significant amount of leaking CNG could enter the vessel, even if it cooled and was temporarily denser than air.

The only known odorization problem is with LPG. The reasons for this are the fading of the odor over time, possibly caused by oxidation of the odorant; the settling of LPG because it is heavier than air, thus removing it from nose level; and the undetectability of ethyl mercaptan, the odorant for 95% of the LPG sold for residential use, by approximately 10% of the population. Both the LPG industry and the Consumer Product Safety Commission are aware of these shortcomings and are taking steps to remedy them. However, the Coast Guard does not consider these problems sufficient to disallow the use of LPG on vessels.

One comment suggested allowing CNG and LPG only on inspected vessels carrying passengers for hire. One reason cited was the large number of uninspected vessels carrying passengers for hire which are never boarded for an examination to determine their compliance with applicable regulations. Other reasons were the technical complexity of this rulemaking and the inexperience of Coast Guard boarding officers with these systems, which would result in inadequate inspections of these installations.

The Coast Guard considers these reasons unfounded. LPG and CNG cooking systems are permitted on recreational vessels, and there is no evidence to suggest that they present an unacceptable safety problem. Casualty statistics for recreational vessels do not indicate that LPG and CNG cooking appliances account for a

disproportionate number of vessel fires and explosions Since recreational vessels and uninspected passenger vessels are boarded and examined similarly, there is no reason to believe that the uninspected passenger vessels will incur casualty losses in excess of those incurred by recreational vessels resulting from the use of flammable gases as cooking fuels. Therefore, this rulemaking does not prohibit the use of such fuels on uninspected passenger vessels.

Two comments suggested that a specially designed container for LPG bottle stowage should be allowed to be installed within enclosed spaces. As stated in both the NPRM and SNPRM, for safety reasons, LPG bottles must be stowed in a locker or housing that is not located inside the vessel. Such stowage will provide for the safe dispersal of the gas in the event of a leak from the bottle or its connections, even if the locker or housing is not properly closed or is opened while full of gas.

One comment pointed out that NFPA Standard 302 is specifically written to prevent fires and explosions and has been accepted by the American National Standards Institute (ANSI), while the ABYC standards are only intended as guides. As part of this rulemaking project, both the NFPA and ABYC standards for LPG and CNG cooking appliance installations were compared and found to be almost identical. All significant variances have been specifically addressed in this rulemaking and, where necessary, requirements in addition to the standards have been specified.

One comment stated that the requirements that were in addition to those of the NFPA standard were unnecessary. These requirements include the odorization of the flammable gas and that LPG cylinders be of the vapor withdrawal type. The comment went on to say that this latter requirement is technically covered by section 6–5.8.1 of NFPA 302. Further, the comment recommended that a flame failure switch for the range burners should be installed in addition to the one required for ovens by ABYC.

The specific requirement in this rulemaking for the odorization of LPG and CNG is considered valid. This is a significant issue, especially when one considers that LPG shipped by pipeline is not odorized because of end user requirements. Since gasses are available which are not odorized, the Coast Guard wants to ensure that any flammable gas used on a vessel carrying passengers for hire is odorized. Some means of vapor detection in the event of a leak is considered essential. Most people can smell the odorants used for natural gas. Odorized gasses are readily available and the requirement that odorized gasses be used is less expensive than requiring a mechanical or electrical vapor detector system. Therefore, this requirement has been retained.

Regarding the flame failure switch, it is interesting to note that NFPA 302 does not require one for either ovens or range burners while ABYC requires it for ovens. The Coast Guard considers a flame failure switch to be essential for ovens since flame failure in an oven is not readily detectable. The Coast Guard is not extending the requirement to include range burners because the failure of the range burner flame is more easily detectable visually and by the odor of gas.

The requirement for LPG cylinders to be of the vapor withdrawal type is considered significant because it reduces the chance of a flareup occurring at a burner due to liquid LPG entering the supply line. NFPA 302 does not specifically require that LPG cylinders be of the vapor withdrawal type, as ABYC A–1 does. Therefore this requirement has been retained.

Two comments stated that referencing two industry standards plus imposing additional requirements is too confusing to the boating public. They said it would result in improper installations on uninspected passenger vessels and recreational vessels. Further, they said obtaining copies of the regulations and either the NFPA or ABYC standards will be too bothersome and boat owners consequently would not get them. They recommended that all the requirements contained in the ABYC and NFPA standards be written into the regulations, and that the regulations include step by step instructions on installing CNG and LPG systems on any boat.

Reducing the volume of regulations by incorporating existing industry standards is consistent with the Freedom of Information Act (5 U.S.C. 552) and 1 CFR Part 51. Since both the NFPA and ABYC standards are readily available to the public and these organizations' addresses are given within the regulations, it is not considered necessary to restate these standards in the regulations. Those most likely to be involved with installing cooking systems on vessels, such as boat manufacturers and boat repair yards, already have these standards, as they are used extensively in the fabrication and repair of boats.

Because of variances in the types and arrangements of vessels and owner's personal preferences, it would be impossible to include step-by-step instructions for all of the possible installation arrangements that could be used for a cooking appliance. Therefore, none have been included with this final rule. As stated above, it is anticipated that most installations will be made by boat repair yards or manufacturers who have the technical expertise necessary to perform all work in a satisfactory manner. Neither the regulations, ABYC, nor NFPA standards are considered highly technical or confusing. However, any boat owner who wishes to personally install his own cooking appliance, but doesn't understand these requirements, should seek competent professional help.

Nineteen comments stated that CNG cooking systems have been installed on more than 15,000 boats in accordance with ABYC A–22 for over fifteen years without any accidents; therefore, the ABYC standard should be accepted without additional requirements. They said that the additional requirements impose a financial burden on these vessel owners without improving safety and result in these vessels not being in compliance with the regulations.

These regulations simply allow owners of vessels carrying passengers for hire to install CNG systems. It does not affect owners of recreational vessels who are presently the primary users of these systems. Thus, these regulations have no effect on existing installations on recreational vessels.

The Coast Guard does not have data to support or refute the degree of use or the claimed safety record of CNG cooking systems. However, the Coast Guard's position is that stowage of CNG cylinders anywhere within enclosed spaces, particularly on a vessel carrying passengers for hire, presents an unacceptable risk in the event of a leak at the cylinder, regulator, or associated fittings. Therefore, the additional requirement that the CNG cylinder and regulator be stowed in a vented housing located on the open deck or open cockpit has been retained.

Two comments stated that the NFPA committee that developed the 302 standard lacked expertise in the area of CNG. They also stated that two of the members of the committee have a conflict of interest, because they are involved with firms that deal in the commercial LPG market which competes directly with the CNG industry. The comments suggest that this bias resulted in similar requirements in NFPA 302 for both LPG and CNG. To offset this bias towards LPG, it was recommended that persons from the American Gas Association (AGA) and International Conference of Building Officials (ICBO) be on the committee.

Although the membership of the committee included representatives from the LPG but not the CNG industry, the committee's expertise in the area of CNG, whether there is a conflict of interest, and any bias towards the use of LPG is not known by the Coast Guard. This is a moot point, however, because the Coast Guard would impose the same requirements regardless of what was developed by the NFPA 302 committee. This is borne out by the fact that the Coast Guard is imposing certain requirements in addition to those established by NFPA 302. The Coast Guard regulations are based on a careful analysis of the safety issues associated with LPG and CNG cooking installations. The final rule establishes the minimum level of safety necessary for cooking installations on vessels carrying passengers for hire.

One comment questioned the Coast Guard's concern about leaking CNG finding an ignition source before exiting the vessel. The comment suggested that on a typical 55 foot boat having an interior volume of 1000 cubic feet it is impossible to reach the lower explosive limit, even if the entire contents of a standard cylinder leaked out, since the gas rapidly diffuses.

The Coast Guard disagrees. Any gas leak from a cylinder would result in the potential for ignition of the gas. Even if only a partially filled cylinder were allowed to leak into the open atmosphere the gas could be ignited. While it is true that certain locations in the compartment will be above or below the explosive limits, at some distance from the cylinder the gas concentration will be within the explosive range.

One comment stated that increasing the pressure of the CNG supply by adjusting the regulator to overcome the pressure drop through a remote controlled valve would adversely affect the performance of the thermostats of stoves and prevent the fuel line from sealing itself if exposed to a fire.

The Coast Guard disagrees. As an example, if the stove is meant to function with CNG at a pressure of five inches of water, and a valve in the supply line results in a one inch pressure drop so that the pressure at the stove is only four inches of water, then the installer may adjust the regulator so that its discharge pressure is increased by one inch of water to raise the pressure of the gas at the stove to five inches. This would make the pressure at the stove the same as if no remote control valve was installed. The problem of overpressurizing the tubing so that it would no longer be self-sealing could be eliminated by installing the remote shutdown valve next to the regulator. This would result in all gas supply tubing being subjected only to the pressure allowed by the regulator setting.

Six comments addressed the stowage of CNG in lockers. Three stated that requiring the lockers to be stowed above the waterline was subjective and arbitrary because leaking CNG will rise. Another comment said CNG should not have to be in lockers at all for this same reason. Two other comments stated that requiring CNG lockers to only open from the top and the cover to be gasketed to form a tight seal was inappropriate.

The Coast Guard agrees that the stowage of CNG raises different concerns than the stowage of LPG and has provided for different CNG stowage arrangements. Requiring CNG cylinders to be stowed in vented lockers which are vapor-tight to the hull or in lockers located on an open deck ensures that any leaking gas escapes in a controlled manner.

Three comments said that the statement in the SNPRM that the economic impact of this rulemaking was minimal and required no further economic evaluation was subjective and arbitrary. The reason cited was that CNG product manufacturers, distributors, and dealers, along with tens of thousands of CNG customers, will incur millions of dollars of expenses to bring their existing boats into compliance with these proposals without any increase in safety. An additional thirteen comments stated they had CNG cooking systems installed on their vessels in accordance with ABYC A–22, and it would cost them about $1,000 each to change their installations to comply with this rulemaking, while the safety of their boats would be decreased because any leaking CNG would not be able to escape.

The concern about the economic impact reflected in the comments is unfounded. This regulation only applies to vessels carrying passengers for hire which are not presently allowed to have LPG or CNG cooking appliances. Thus, there are no existing authorized cooking systems to be modified on vessels subject to this final rule. The only individuals affected by this rulemaking are small and uninspected passenger vessel owners or operators who currently do not have a flammable gas cooking system installed and desire to install one and recreational vessel owners who have an installed gas cooking system and now desire to carry passengers for hire. In both cases, either installing a new cooking system or modifying an existing installation is completely voluntary, and any expenses incurred are at the option of the owner. Therefore, there are no costs mandatorily imposed by this rulemaking.

The safety of the boats with CNG systems will not be diminished by modifying them to comply with this rulemaking. Since each CNG cylinder must be stowed in a vented locker, any leaking gas will escape through the vented locker to the atmosphere and not remain trapped in the vessel.

One comment said that the requirements in this rulemaking that are in addition to ABYC A–22 were hastily conceived. Two others said these requirements were biased towards the LPG industry as that industry will benefit financially from this final rule. The three comments recommended that the rulemaking be dropped until it can be reviewed by an impartial panel.

The Coast Guard's position is not biased towards the use of either fuel. It is anticipated that both the LPG and CNG industries will benefit financially by this rulemaking. Whether or not one will benefit more than the other is a matter of conjecture.

This rulemaking was not hastily conceived. During the past five years the Coast Guard has studied the problem, evaluated industry standards, developed needed safety requirements, published a Notice of Proposed Rulemaking and a Supplemental Notice of Proposed Rulemaking, and modified its proposal after analyzing 91 comment letters.

Five comments stated that it was understood that the Coast Guard was changing the regulatory requirements for CNG cylinder stowage aboard charter vessels. They felt that this would be a mistake, because it would discourage the use of CNG by increasing its installation costs. The extra cost would make it cost prohibitive for the majority of the boating public.

The requirements in addition to the current ABYC standard for CNG would be limited to requiring that the fuel tanks be stowed outside of the hull interior, segregated by a shut off valve which can be operated from a position adjacent to the cooking appliance, and prohibiting the use of pilot lights and glow plugs. These additional requirements were estimated to cost less than $100 per installation, a nominal cost far outweighed by the increase in safety. Further, these requirements are limited in application to vessels carrying passengers for hire and would not have to be met by the general boating public.

One comment objected to the ABYC A–22 standard, because it allows the

very high pressure CNG cylinder to be stowed in accommodation spaces. This comment went on to say that most fiber reinforced plastic boats have fairly "tight" cabins, which would impede the flow of any leaking CNG to the atmosphere. This would result in the gas collecting at the overhead of a space and present an explosion hazard.

The Coast Guard agrees with this hypothesis, and this is one reason why the Coast Guard is imposing CNG cylinder stowage requirements in addition to ABYC A–22.

One comment suggested "grandfathering" vessels that already have CNG installations.

This is not considered necessary or desirable, because vessels carrying passengers are not currently allowed to have these installations. Consequently, there is no one to "grandfather". For safety reasons, a vessel equipped with a CNG installation not meeting this rulemaking and desiring to carry passengers for hire must comply with the regulation.

One boat builder stated that he would have to change his construction methods to meet the requirements for CNG installations and that the additional cost was not justified by any increase in safety.

The Coast Guard recognizes that some existing designs for CNG installations on vessels built for recreational use would not meet the requirements of this final rule, largely due to tank placement. The cost of adapting these designs to vessels carrying passengers for hire would be nominal, particularly if done prior to construction. All builders who outfit for CNG will face installation costs, regardless of their current design, and the Coast Guard's position is that these costs are reasonable and justified by the increased level of safety.

One comment said that the quantity of LPG allowed aboard a vessel should be limited to an amount that would not exceed the lower explosive limit (LEL) if all the LPG were discharged within the volume of the hull.

This idea appears fine on the surface, but it is an oversimplification.As previously stated in a similar comment concerning CNG, any leaking gas would not be evenly distributed throughout the hull's volume. Rather, there would be a graduated concentration of LPG from the source of the leak to the point of furthest spread of the LPG. This graduated concentration would span the limits from above the upper explosive limit (UEL) to below the LEL. Somewhere along this gradient the concentration would be within the explosive limits and present a genuine hazard, regardless of the quantity of LPG which may have been discharged. This recommendation has not been adopted in the final rule.

Two comments said that many boat operators carry excess amounts of LPG fuel, whereas this does not occur with CNG. The reason stated is that there is a gauge on CNG cylinders so a person knows exactly how much fuel is available, but LPG cylinders are not so equipped and people consequently carry extra amounts to ensure they have an adequate supply. The comments recommended that LPG cylinders be equipped with a gauge so that the amount of LPG in the cylinder could be determined.

Although a pressure gauge on a CNG cylinder will indicate how much gas remains, it will not work with LPG which is part liquid and part gas. As LPG is used, the liquid evaporates and forms more gas to replace the lost LPG vapors. The result is that the pressure does not change until the liquid supply is exhausted. Additionally, the amount of LPG can easily be determined by weighing the bottle. Therefore there is no need to require a gauge.

Knowing the amount of LPG or CNG remaining will not tell a person how much cooking can be done with that amount. This is because the amount used over time will depend on such things as the number of burners used and whether high or low heat is used. Therefore knowing the amount of fuel left is only of marginal use, and the recommendation has not been adopted.

Three comments stated that the implementation of this rulemaking would have disastrous consequences for boat owners. The reason given was that even though the regulations are not applicable to recreational vessels, insurance companies may impose the standards on recreational vessels. Additionally, they feared that the Coast Guard may impose these regulations on recreational vessels at some future date.

Whether the requirements contained in this rulemaking are applied to recreational vessels by insurance companies is a matter of speculation and beyond the Coast Guard's control. Since the NFPA and ABYC standards have been in place for some time and are used as the industry standards for recreational vessels, it would seem logical that they would continue to be used and the additional requirements imposed by this rulemaking would not be applied to them.

The Coast Guard has no intention, at this time, of applying these requirements to recreational vessels. However, if the Coast Guard decides to expand the applicability of the regulations to include recreational vessels, the regulatory process required by the Administrative Procedure Act, 5 U.S.C. 553, must be followed. This includes giving the public the opportunity to comment on the proposal prior to it becoming a final rule.

One comment recommended that LPG stove installations be capable of containing leaking gas and venting it overboard above the waterline.

This is not concurred with, as such a requirement is not necessary or justifiable. As stated in the initial proposed rule, cooking appliances are normally attended when in use and any leak occurring at the appliance should be readily detected by the operator. The operator can activate the remote control valve that is required by this rulemaking and stop the flow of gas to the inside of the vessel. In the case of an unattended vessel, the warning placard, required by the regulation, states that the cylinder valve should be closed when the boat is unattended This would help to reduce the possibility of any gas leaking at the stove.

One comment recommended that a mechanical leak detection system be installed on vessels using LPG, as this would eliminate the need for electrical power in order for the system to operate.

The installation of a leak detection system has not been adopted because it is not necessary. The Coast Guard agrees with the standards adopted by both the ABYC and NFPA. If gas cooking systems are installed and maintained in accordance with the requirements set forth in this rulemaking, then the installation of a leak detection system would not significantly increase the level of safety so that its cost could be justified.

Drafting Information

The principal persons involved in drafting this document are Lieutenant Commander Mark G. VanHaverbeke, Project Manager, Office of Marine Safety, Security, and Environmental Protection, and Lieutenant Commander Don M. Wrye, Project Attorney, Office of the Chief Counsel.

E.O. 12291 and DOT Regulatory Policies and Procedures

This rulemaking is considered to be non-major under Executive Order 12291 and nonsignificant under the DOT Regulatory Policies and Procedurcs (44 FR 11034; February 26, 1979). A final regulatory evaluation has been prepared and placed in the rulemaking docket. It may be inspected or copied at the Marine Safety Council, Room 3600, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, from 8 a.m. to 3 p.m. Monday through Friday. Copies may also be obtained by contacting the person listed under "FOR FURTHER INFORMATION CONTACT".

As explained in the final evaluation, these rules are deregulatory with the exception of the installation standard for wood and coal burning stoves. They serve to expand the fuel choices available to vessel owners for cooking and provide simple guidance for the installation of wood or coal burning stoves.

There are relatively minor differences between the cost of electric marine stoves and those with similar features that are fueled either by alcohol, LPG or CNG. Depending upon the individual features of an electric stove, its purchase price may range from less than $100 to over $400; typically, an equivalent alcohol stove would be priced $10 to $30 more, and an LPG or CNG stove priced $15 to $60 more. There would be little, if any, difference in installation costs. The differences in operating costs would be governed by the relative costs and availability of the fuels.

This interim final rule includes installation requirements for wood and coal burning stoves. The requirements are those of a generally accepted industry standard for boat construction and will help to minimize the fire risks associated with these systems. The cost of meeting this standard will be minimal because it consists largely of requirements to locate, insulate, or shield the stove and its smoke stack from combustible materials. The standard will only apply to new installations so that there will be no burden placed on owners of vessels with existing stoves and owners or builders considering new installations will have the opportunity to consider even the minimal installation cost in their economic decision.

Because the economic impact of this proposal is so minimal, we find that no further economic evaluation is necessary.

Environmental Impact

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c and 2.B.2.1 of Commandant Instruction (COMDTINST) M16475.1B. A Categorical Exclusion Determination statement has been prepared and has been placed in the rulemaking docket.

Regulatory Flexibility Act

The Coast Guard certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This proposal principally affects small and uninspected passenger vessels. This includes both Coast Guard inspected and uninspected vessels. Many of these are operated as small businesses. While it has not been possible to quantify the economic impact of this proposal, any cost of installing LPG or CNG cooking appliances would be voluntarily assumed by the vessel owner or operator. The final rule is permissive in nature and does not require the installation of systems using these fuels.

Paperwork Reduction Act

The collection of information requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) and have been approved. The OMB Control Number assigned for §§ 25.45–2 and 184.05–1 is OMB #2115–0549.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

46 CFR Part 25

Fire prevention, Incorporation by reference, Marine safety.

46 CFR Part 58

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 147

Arms and munitions, Hazardous materials transportation, Marine safety, Packaging and containers.

46 CFR Part 184

Communications equipment, Incorporation by reference, Marine safety, Navigation (water), Passenger vessels.

In consideration of the foregoing, the Coast Guard amends Chapter I of Title 46 of the Code of Federal Regulations as set forth below:

PART 25—[AMENDED]

1. The authority citation for Part 25 continues to read as follows:

Authority: 46 U.S.C. 3306, 4104, 4302; 49 CFR 1.46.

2. Subpart 25.01 is amended by adding new §§ 25.01–3 and 25.01–5 to read as follows:

Subpart 25.01—Application

§ 25.01–3 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the **Federal Register** and the material made available to the public. All approved material is on file at the Office of the Federal Register, 1100 L. Street NW., Washington, DC, and at the U.S. Coast Guard, Merchant Vessel Inspection and Documentation Division, (G–MVI), 2100 Second Street SW., Washington, DC 20593–0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The materials approved for incorporation by reference in this part, and the sections affected are:

American Boat and Yacht Council (ABYC)

P.O. Box 747, 405 Headquarters Dr., Suite 3, Millersville, MD 21108–0747

A–1–78—Marine LPG-Liquefied Petroleum Gas Systems ..... 25.01–3; (December 15, 1978) 25.45–2

A–22–78—Marine CNG-Compressed Natural Gas Systems ..... 25.01–3; (December 15, 1978) 25.45–2

National Fire Protection Association (NFPA)

60 Batterymarch Park, Quincy, MA 02269

302–1984—Pleasure and Commercial Motor Craft ..... 25.01–3; Chapter 8. (1984) 25.45–2

§ 25.01–5 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This section collects and displays the control numbers assigned to information collection and recordkeeping requirements in this subchapter by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). The Coast Guard intends that this section comply with the requirements of 44 U.S.C. 3507(f), which requires that agencies display a current control number assigned by the Director of the OMB for each approved agency information collection requirement.

(b) *Display.*

46 CFR part or section where identified or described	Current OMB control No.
§ 25.45–2	2115-0549

3. Subpart 25.45 is revised to read as follows:

Subpart 25.45—Cooking, Heating, and Lighting Systems

Sec.
25.45–1 Heating and lighting systems on vessels carrying passengers for hire.
25.45–2 Cooking systems on vessels carrying passengers for hire.

Subpart 25.45—Cooking, Heating, and Lighting Systems

§ 25.45–1 Heating and lighting systems on vessels carrying passengers for hire.

(a) No fuel may be used in any heating or lighting system on any vessel carrying passengers for hire without the approval of Commandant (G–MTH), except—
(1) Alcohol, solid,
(2) Alcohol, liquid, combustible,
(3) Fuel oil, No. 1, No. 2, or No. 3,
(4) Kerosene,
(5) Wood or,
(6) Coal.

(b) Heating and lighting systems using alcohol must meet the following requirements:
(1) Containers of solidified alcohol must be properly secured to a fixed base.
(2) Fluid alcohol burners, where wet priming is used, must have—
(i) A catch pan of not less than ¾" depth secured inside the frame of the stove; or
(ii) The metal protection under the stove flanged up at least ¾" to form a pan.

(c) Heating and lighting systems using kerosene or fuel oil must meet the following requirements:
(1) Where wet priming is used, each system must have—
(i) A catch pan of not less than ¾" depth secured inside the frame of the stove; or
(ii) The metal protection under the stove flanged up at least ¾" to form a pan.
(2) Fuel tanks must be—
(i) Separated from the stove that they serve;
(ii) Mounted in a location open to the atmosphere or mounted inside a compartment that is vented to the atmosphere; and
(iii) Fitted with an outside fill and vent.

(d) Heating systems using wood or coal installed after August 9, 1989, shall be installed in accordance with the guidelines in Chapter 6 of NFPA 302.

§ 25.45–2 Cooking systems on vessels carrying passengers for hire.

(a) No fuel may be used in any cooking system on any vessel carrying passengers for hire without the approval of Commandant (G–MTH) except those listed in § 25.45–1, subject to the requirements stated therein, and liquefied petroleum gas (LPG), or compressed natural gas (CNG).

(b) Cooking systems using LPG or CNG must meet the following requirements:
(1) The design, installation, and testing of each LPG system must meet ABYC A–1–78 or Chapter 6 of NFPA 302.
(2) The design, installation, and testing of each CNG system must meet ABYC A–22–78 or Chapter 6 of NFPA 302.
(3) Cooking systems using Chapter 6 of NFPA 302 as the standard must meet the following additional requirements:
(i) LPG or CNG must be odorized in accordance with ABYC A–1.5.d or A–22.5.b, respectively.
(ii) Ovens must be equipped with a flame failure switch in accordance with ABYC A–1.10.b for LPG or A–22.10.b for CNG.
(iii) The marking and mounting of LPG cylinders must be in accordance with ABYC A–1.8.b.
(iv) LPG cylinders must be of the vapor withdrawal type as specified in ABYC A–1.5.b.
(4) Pilot lights or glow plugs are prohibited for an LPG or CNG installation using ABYC A–1 or A–22 as the standard.
(5) CNG installations using ABYC A–22 as the standard must meet the following additional requirements:
(i) The CNG cylinders, regulating equipment, and safety equipment must meet the installation, stowage, and testing requirements specified in paragraphs 6–5.11.1, 2, 3; 6–5.11.5; and 6–5.11.8 of NFPA 302.
(ii) The use or stowage of stoves with attached CNG cylinders is prohibited as specified in paragraph 6–5.1 of NFPA 302.
(6) If the fuel supply line of an LPG or CNG system enters an enclosed space on the vessel, a remote shut-off valve must be installed that can be operated from a position adjacent to the appliance.The valve must be located between the regulator and the point where the fuel supply line enters the enclosed portion of the vessel. A power operated valve installed to meet this requirement must be of a type that will fail closed.
(7) The following variances from NFPA 302 6–5.11.3 or ABYC A–1.11.b(1) are allowed for CNG:
(i) The storage locker or housing access opening need not be in the top.
(ii) The locker or housing need not be above the waterline.

PART 58—[AMENDED]

4. The authority citation for Part 58 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

5. Section 58.16–1 is amended by revising paragraphs (a) and (c) to read as follows:

§ 58.16–1 Scope.

(a) This subpart prescribes standards for the use of liquefied petroleum gas for heating and cooking on inspected vessels, except ferries.

* * * * *

(c) Except as provided by § 58.16–7(b), all component parts of the system, except cylinders, appliances, and low pressure tubing, shall be designed to withstand a pressure of 500 pounds per square inch without failure.

6. A new § 58.16–7 is added to read as follows:

§ 58.16–7 Use of liquefied petroleum gas.

(a) Cooking equipment using liquefied petroleum gas on vessels of 100 gross tons or more that carry passengers for hire must meet the requirements of this subpart.

(b) Cooking equipment using liquefied petroleum gas on vessels of less than 100 gross tons that carry passengers for hire must meet the requirements of 46 CFR 25.45–2 or 184.05, as applicable.

(c) Systems using liquefied petroleum gas for cooking or heating on any other vessels subject to inspection by the Coast Guard must meet the requirements of this subpart.

PART 147—[AMENDED]

7. The authority citation for Part 147 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

8. Section 147.50 is amended by revising paragraph (d) to read as follows:

§ 147.50 Fuel for cooking, heating, and lighting.

* * * * *

(d) Liquefied or non-liquefied gas is prohibited for cooking, heating, and lighting on ferry vessels, but may be used on other inspected vessels if the system in which it is used meets the applicable requirements of Subpart 58.16 or Subpart 184.05 of this chapter, as appropriate, or is approved by the Commandant (G–MTH).

* * * * *

PART 184—[AMENDED]

9. The authority citation for Part 184 continues to read as follows:

Authority: 46 U.S.C 3306; 49 CFR 1.46.

10 Subpart 184.01 is amended by adding new §§ 184.01–3 and 184.01–4 to read as follows:

Subpart 184.01—Application and Intent

§ 184.01–3 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the **Federal Register** and the material made available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Merchant Vessel Inspection and Documentation Division, (G–MVI), 2100 Second Street SW., Washington, DC 20593–0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The materials approved for incorporation by reference in this part, and the sections affected are:

American Boat and Yacht Council (ABYC)

P.O. Box 747, 405 Headquarters Dr., Suite 3, Millersville, MD 21108–0747

A–1–78—Marine LPG-Liquefied Petroleum Gas Systems..... 184.05–1 (December 15, 1978)

A–22–78—Marine CNG-Compressed Natural Gas Systems..... 184.05–1 (December 15, 1978)

National Fire Protection Association (NFPA)

60 Batterymarch Park, Quincy, MA 02280

302–1984—Pleasure and Commercial Motor Craft..... 184.05–1 (Chapter 6.) (1984).

§ 184.01–4 OMB control numbers assigned pursuant to the Paperwork Reduction Act

(a) *Purpose.* This section collects and displays the control numbers assigned to information collection and recordkeeping requirements in this subchapter by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). The Coast Guard intends that this section comply with the requirements of 44 U.S.C. 3507(f), which requires that agencies display a current control number assigned by the Director of the OMB for each approved agency information collection requirement.

(b) *Display.*

46 CFR part or section where identified or described	Current OMB control No.
§ 184.05–1	2115–0549

11. Section 184.05–1 is amended by revising paragraph (b) and adding paragraph (d) to read as follows:

§ 184.05–1 Restrictions.

* * * * *

(b) Vessels permitted to use liquefied and non-liquefied gases as cooking fuels by 46 CFR Part 147 must meet the requirements of paragraph (d) of this section. The use of these fuels for cooking, heating, and lighting on ferry vessels is prohibited by 46 CFR Part 147.

* * * * *

(d) Cooking systems using liquefied petroleum gas (LPG) and compressed natural gas (CNG) must meet the following requirements:
(1) The design, installation, and testing of each LPG system must meet ABYC A–1–78 or Chapter 6 of NFPA 302.
(2) The design, installation, and testing of each CNG system must meet ABYC A–22–78 or Chapter 6 of NFPA 302.
(3) Cooking systems using Chapter 6 of NFPA 302 as the standard must meet the following additional requirements:
(i) LPG or CNG must be odorized in accordance with ABYC A–1.5.d or A–22.5.b, respectively.
(ii) Ovens must be equipped with a flame failure switch in accordance with ABYC A–1.10. b for LPG or A–22.10.b for CNG.
(iii) The marking and mounting of LPG cylinders must be in accordance with ABYC A–1.8.b.
(iv) LPG cylinders must be of the vapor withdrawal type as specified in ABYC A–1.5.b.
(4) Pilot lights or glow plugs are prohibited for an LPG or CNG installation using ABYC A–1 or A–22 as the standard.
(5) CNG installations using ABYC A–22 as the standard must meet the following additional requirements:
(i) The CNG cylinders, regulating equipment, and safety equipment must meet the installation, stowage, and testing requirements of paragraphs 6–5.11.1, 2, 3; 6–5.11.5; and 6–5.11.8 of NFPA 302.
(ii) The use or stowage of stoves with attached CNG cylinders is prohibited as specified in paragraph 6–5.1 of NFPA 302.
(6) If the fuel supply line of an LPG or CNG system enters an enclosed space on the vessel, a remote shut-off valve must be installed which can be operated from a position adjacent to the appliance. The valve must be located between the regulator and the point where the fuel supply line enters the enclosed portion of the vessel. A power operated valve installed to meet this requirement must be of a type that will fail closed.
(7) The following variances from NFPA 302 6–5.11.3 or ABYC A–1.11.b(1) are allowed for CNG:
(i) The storage locker or housing access opening need not be in the top.
(ii) The locker or housing need not be above the waterline.

Dated: January 13, 1989.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89–3031 Filed 2–9–89; 8:45 am]
BILLING CODE 4910–14–M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1312 and 1314

[Ex Parte No. 444]

Electronic Filing of Tariffs

AGENCY: Interstate Commerce Commission.

ACTION: Notice of final rules.

SUMMARY: Pursuant to a notice of proposed rulemaking in Ex Parte No. 444 (52 FR 39549, October 22, 1987), the Commission is adopting regulations that allow electronic tariff filing as an alternative to printed tariffs. To accomplish this, the Commission is replacing its current regulations, which were drafted with only paper tariffs in mind, with regulations that are neutral with regard to the medium by which tariff information is transmitted both to the Commission and to the public. The detailed instructions of the former regulations will be replaced with brief tariff standards that require that tariffs be filed in such a way that rate and service information is described accurately and fully for use both at the time of filling and in the future.

At the same time, the Commission intends by simplifying its tariff rules to facilitate greater innovation and flexibility in the presentation by carriers of price and service options.

Accordingly, the Commission is replacing the detailed regulations at 49 CFR Part 1312 with the revised tariff standards at 49 CFR Part 1314, as set forth below.

DATE: These rules will become effective March 13, 1989.

FOR FURTHER INFORMATION CONTACT:
Charles E. Langyher, (202) 275–7730
or
Lawrence C. Herzig, (202) 275–7358.
[TDD for hearing impaired: (202) 275–1721.]

SUPPLEMENTARY INFORMATION:
Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275–1721.)

Environmental and Energy Considerations

We conclude that this action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

We conclude that this action will not have a significant adverse economic impact on a substantial number of small business entities, although it will reduce the cost of tariff filing for a number of small carriers.

List of Subjects in 49 CFR Parts 1312 and 1314

Freight forwarders, Maritime carriers, Motor carriers, Pipelines, Railroads, Tariffs.

Decided: January 30, 1989.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips. Commissioner Phillips concurred with a separate expression. Commissioner Lamboley dissented in part with a separate expression.

Noreta R. McGee,
Secretary.

Chapter X of Title 49 of the Code of Federal Regulations is amended as follows:

PART 1312—[REMOVED]

1. Part 1312 is removed.

2. Part 1314 is added to Subchapter D to read as follows:

PART 1314—REGULATIONS FOR THE PUBLICATION, POSTING AND FILING OF TARIFFS AND RELATED DOCUMENTS

Sec.
1314.1 Definitions.
1314.2 Application.
1314.3 Tariff Standards—Essential Criteria.
1314.4 Filing of Tariffs.
1314.5 Timely Filing.
1314.6 ICC Tariff Designation.
1314.7 Identification of Tariff Publication.
1314.8 Statement of Tariff Application.
1314.9 Notification of Tariff Changes and Nature of Changes.
1314.10 Special Notification.
1314.11 Posting and Public Access to Tariffs.
1314.12 [Reserved]
1314.13 Powers of Attorney and Concurrences.
1314.14 Change of Tariff Issuing Carrier or Agent.
1314.15 Export and Import Traffic and Joint Rates with Ocean Carriers.
1314.16 Substitution of Service.
1314.17 Rail Cost Recovery Increase.

Authority: 49 U.S.C. 10321, 10708, 10761 and 10762; 5 U.S.C. 553

§ 1314.1 Definitions.

For the purposes of this part:

"Act" means the Interstate Commerce Act, as amended.

"Agent" means a person, association or corporation authorized to publish and file rates and provisions on behalf of a carrier(s) in tariffs published in the agent's name.

"Agent's tariff" means a tariff filed in the name of an agent.

"Carrier" means a common carrier, motor contract carrier of passengers or household goods freight forwarder subject to the Act. It also means an ocean carrier participating in joint tariff provisions with carriers subject to the Act.

"Carrier's tariff" means a tariff issued by, and filed in the name of the carrier.

"Collectively established" tariff matter means the rate, charge, rule, or other provision of a tariff not independently established.

"Commission" means the Interstate Commerce Commission.

"Common carrier" means any common carrier or household goods freight forwarder subject to the Act.

"Independently established" carrier matter means the rate, charge, rule, or other provision as published either in a tariff filed in the carrier's own name or under independent action instructions for only the particular carrier's account in a tariff filed in an agent's name.

"Joint rate" means a rate that applies over the lines or routes of two or more carriers made by an agreement between the carriers, effected by a concurrence or power of attorney.

"Joint tariffs" are those which contain joint rates or provisions affecting those rates.

"Local rate" means a rate that applies over the lines or routes of one carrier only.

"Local tariffs" are those which contain local rates or provisions affecting those rates.

"Ocean carrier" means a common carrier (vessel operating or non-vessel operating) engaged in foreign commerce and regulated by the Federal Maritime Commission.

"Original tariff" means the tariff as originally filed excluding amendments.

"Publication"—see "Tariff."

"Rate" means a rate, fare or charge.

"Tariff" or "Tariff publication" means an issuance (in whole or in part) bearing designations required by § 1314.6 and containing rates, rules, regulations or other provisions filed with the Commission for compliance with 49 U.S.C. 10761 and 10762.

"Through rate" means the total rate from origin to destination. It may be a local rate, a joint rate, or a combination of separately established rates.

"Title page" means the initial, introductory, portion of tariff publications.

§ 1314.2 Application.

(a) These provisions govern the construction, publication, filing and maintenance of any tariff filed under the Act or which contains a through route and joint rate application over the lines of a common carrier on the one hand, and a nonvessel or vessel operating ocean carrier, on the other hand, for transportation of property between any place in the United States and a foreign country. (Tariffs may also include provisions "for information only," or for intrastate application, when such provisions are plainly identified to preclude any suggestion that they are subject to economic regulation by the Commission.) Tariffs that fail to meet the provisions of this part, or that violate any decision or order of the Commission or of a court, may be rejected or stricken by the Commission.

(b) Relief from the provisions of this part may be sought. Requests by authorized parties for such relief shall be submitted in duplicate and accompanied by appropriate fee (see 49 CFR Part 1002). Envelopes addressed to the Commission containing applications for relief shall be prominently marked "SPECIAL TARIFF AUTHORITY APPLICATION." The application shall cite all pertinent tariff matter and shall provide complete information regarding applicant's justification, purpose and manner of relief. See also 49 CFR 1118.4.

§ 1314.3 Tariff Standards—Essential criteria.

The requirements for the filing of tariffs are established at 49 U.S.C. 10761 and 10762. All tariffs must observe the following criteria:

(a) Tariffs filed with the Commission must describe accurately and fully the services offered to the public and must provide the specific rate (or the basis for calculating it for volume/time pricing) for the performance of those services, and the related classifications, rules, and practices.

(b) Tariffs must be filed and maintained in a way that allows all tariff users to determine the exact rate applicable to any given shipment (or to any given set of shipments in the case of volume/time pricing).

(c) All information necessary to determine applicable rates for a given shipment need not be contained in a single tariff, but if multiple tariffs are used to convey that information, all tariffs so linked must indicate (by ICC tariff designation) all other tariffs required to determine applicable rates.

(d) Tariff information must be presented in a way that facilitates the determination of the prices and services offered, and the related classifications, rules and practices.

(e) Tariffs of motor passenger contract carriers shall provide an explicit statement of the minimum rates maintained. Rates for rail movements of circuses and other show outfits may consist of a proper title page, containing the phrase "as per copy of contract attached," with a copy of the contract attached.

§ 1314.4 Filing of tariffs.

(a) Tariffs shall be prepared in English, with rates explicitly stated in U.S. dollars and cents. If paper is used, two submissions of the publication shall be transmitted to the Interstate Commerce Commission, Bureau of Traffic, Section of Tariffs, Washington, DC 20423, accompanied by an authorized document of transmittal identifying the matter filed, with the appropriate filing fee (see 49 CFR Part 1002). Acknowledgment of Commission receipt of tariffs can be obtained by enclosing a duplicate transmittal and a postage-paid, self-addressed return envelope.

(b) Paper tariffs shall not be larger than 8½×11 inches, except paper distance guides shall not be larger than 14½×17½ inches.

(c) Tariffs filed in other than paper form shall:

(1) Be compatible with existing Commission technology and facilities available for the receipt, storage and use of tariffs; or

(2) Carriers or their agents shall provide the necessary implementing equipment, facilities and programs to the Commission for use by its staff and the public at no cost.

(d) During the one year period following the effective date of these regulations, a carrier or agent of a carrier that files a tariff in other than paper form shall also file paper copies of that tariff in accordance with the provisions of these regulations applicable to paper tariffs.

§ 1314.5 Timely filing.

(a) Tariff matter should be announced to the public and the Commission with as much advance notice as practical, but in no case (except as we authorize) shall notice be less than shown below. "Notice" means the number of days the publication is on file with the Commission at Washington, DC prior to its effective date(s). The date the publication is received by the Commission counts as the first day of notice.

(b) The following is the number of days notice required:[1]

[1] "New" means an initial rate for a new service; "reduced" means any tariff change ultimately resulting in expanded service or lower charges to the payer of freight charges; and "increased" means any tariff change resulting in reduced service or higher charges to the payer of freight charges.

Mode and Type	New	Reduced	Increased
Rail:			
Circus or show outfits	1	1	1
Surcharge or joint rate cancellation under:			
49 U.S.C. 10705a(f)	45	45	45
49 U.S.C. 10705(e)	20	20	[1] 20
All other matter:			
Collectively established	20	10	20
Independently established	1	1	20
Motor or Freight Forwarder:			
Property:			
MC–82 general rate actions	45	45	45
Collectively established	30	30	30
Independently established	1	1	[2] 7
Passenger:			
Collectively established	30	30	30
Independently established	1	1	1
Water:			
Property	10	30	30
Passenger	1	3	30
Motor—Water:			
Single factor domestic:			
Collectively established	30	30	30
Independently established	1	1	[2] 7
Ocean/Surface International:			
(see § 1314.15):			
All Other Intermodal	30	30	30

[1] In Ex Parte No. 445 (Sub-No. 1), *Intermodal Rate Competition*, served October 31, 1985, the Commission adopted a new rule at 49 CFR 1144.1 which provides for additional notice in the case of cancellations under 49 U.S.C. 10705(e): (a) *Notification.* A rail carrier proposing to cancel a through route and/or joint rate shall comply with the requirements of 49 U.S.C. 10762(c)(3) and 10705a(f), as appropriate, and 49 CFR 1314, and shall give notice of intent to make such a cancellation 45 days prior to the effective date of the cancellation. For cancellations under 49 U.S.C. 10705(e), the 45-day period must consist of at least a 25-day notice of intent to file followed by a 20-day tariff filing in compliance with 49 U.S.C. 10762(c)(3).
[2] (Workdays).

(c) Workdays means all days except Saturdays, Sundays, and all federal holidays observed in the District of Columbia.

§ 1314.6 ICC tariff designation.

(a) Every tariff publication shall show an authorized tariff designation

consisting of: (1) The characters "ICC," immediately followed by: (2) the assigned alpha code of the carrier or agent issuing the publication; (3) the tariff number (selected by the issuing carrier or agent) to distinguish that publication from all other publications filed by the same issuing carrier or agent. Tariff numbers shall not exceed 7 characters consisting of not more than 5 digits and not more than 2 letter suffixes.

Examples:

ICC XXXX 100
ICC XXXX 2000
ICC XXX 1000–A

Also see § 1314.7.

(b) Alpha codes are assigned to carriers and tariff agents by industry organizations as follows:

Railroads: Mr. W.J. Hardin, Tariff Publishing Officer, North Pacific Coast Freight Bureau, Pacific Southcoast Freight Bureau, Trans-Continental Freight Bureau, Suite 1150, 222 South Riverside Plaza, Chicago, IL 60606.

Water Carriers: Mr. A. Carling, Waterways Freight Bureau, 11720 Briggs Court, Fairfax, VA 22030.

All Others: Messrs. N.J. Zavolta or P.G. Levine, National Motor Freight Traffic Association, Inc., 2200 Mill Road, Alexandria, VA 22314.

(c) Fees may be assessed to carriers or agents by the industry organizations assigning codes, but may not exceed the processing costs. Except in unusual circumstances, and for compelling reasons, industry organizations shall assign only one unique alpha code (not to exceed 4 characters) to carriers or agents.

§ 1314.7 Identification of tariff publication.

Every publication filed with the Commission shall include:

(a) The ICC tariff designation (see § 1314.6);

(b) The name of the issuing carrier, or its tariff agent;

(c) The date(s) on which the publication is to become effective (see § 1314.5).

§ 1314.8 Statement of tariff application.

Every new tariff of first issuance, or complete tariff reissuance, filed with the Commission shall lead with a "title page" which shall:

(a) Comply with § 1314.7; and

(b) provide a succinct statement of territorial application, mode of serving carrier(s), type of rates, and description of tariff content.

Examples:

(1) Local, all motor truckload distance rates on FREIGHT, ALL KINDS from points in Ohio to points in the United States.

(2) Joint motor/water commodity rate in containerized service between interior points in the United States and ports in Puerto Rico and Hawaii; and governing rules.

§ 1314.9 Notification of tariff changes and nature of changes.

Every publication filed with the Commission containing tariff changes shall clearly identify such changes and their nature, whether an increase or decrease in service, rates or transportation charges.

§ 1314.10 Special notification.

Every tariff publication containing matter of the nature described below shall indicate in the publication or in the accompanying letter of transmittal the relevant decision, order, regulation, proceeding, or pertinent section of the Act, as well as the number of days notice authorized or required:

(a) Filed in compliance with a Commission decision or court order (publication reference);

(b) Filed pursuant to the "zone of rate freedom" provisions of 49 U.S.C. 10708 (d)(1), (d)(3), and (d)(4) (transmittal reference);

(c) Collectively filed general increases or rate restructurings under the MC–82 procedures for motor carriers of property or for the motor transportation of household goods as defined in § 1056.1(b) (publication reference);

(d) Surcharges or joint rate or route cancellations filed pursuant to the authority of 49 U.S.C. 10705(e) and 10705a(f) (publication reference);

(e) Collectively filed rates for motor common carriers of passengers filed pursuant to 49 U.S.C. 10708(e) (transmittal reference).

§ 1314.11 Posting and public access to tariffs.

(a) Under 49 U.S.C. 10762(a)(2) of the Act, and § 1314.3(b) of this section, carriers are required to provide the means for public inspection of their tariffs. To comply with this requirement, carriers shall institute practices to satisfy tariff users' right of tariff inspection (for example, a tariff "subscription" service). Such practices shall include the right of inspection by any party during normal business hours at the carrier's principal office of a complete set of its tariffs (proposed and effective) and those tariffs to which the carrier is a party. Any equipment required for such inspection will be made available without charge.

(b) Each carrier, must, within 20 days of a written request by any person, provide all tariff matter relevant to that request; or, at its option a carrier may provide a formal quotation of the applicable tariff rate in any form that is clear and verifiable. Reasonable charges may be assessed for this service.

§ 1314.12 [Reserved]

§ 1314.13 Powers of attorney and concurrences.

(a) Rates and services of a carrier must be filed in a tariff issued in that carrier's name; or, rates and services of a carrier may be filed:

(1) In an agent's tariff when the carrier has executed a power of attorney authorizing that individual or entity to serve as its tariff agent; or

(2) In a tariff of another carrier (or its agent) through issuance of a concurrence to the latter carrier authorizing the first carrier's participation in joint rates and through routes.

If two or more carriers execute powers of attorney to the same agent, it is not necessary for those carriers to exchange concurrences. Powers of attorney and concurrences are not to be filed with the Commission but shall be provided to any party on request.

(b) Two or more agents may jointly issue a single tariff if each agent acts only on behalf of those carriers it represents through powers of attorney or concurrences. The provisions of § 1314.7 must be observed for each agent joining in the filing of the single tariff.

§ 1314.14 Change of tariff issuing carrier or agent.

(a) When a new agent is appointed to take over an agency, or when an alternate agent assumes the duties of the principal agent, each of the superseded agent's effective tariffs shall immediately be amended to reflect the change, bearing an effective date the same as the date of the transfer. In the case of a new agent, this may only occur after one or more of the participating carriers issues a power of attorney to the new agent, and revokes the previous power of attorney. At the same time, all affected tariffs will be amended to reflect the new powers of attorney, and all carriers who have not issued them must be canceled from the tariff.

(b) When a carrier's name is lawfully changed, or operating authority is transferred to another carrier, or a fiduciary assumes possession and control of a carrier's property, all affected tariffs must be amended to reflect the change. Regardless of the date the tariff is actually filed, the effective date for a name change

amendment is the date the name change occurs. The effective date in all other instances is the date of consummation, or the date set by the Commission or a court.

§ 1314.15 Export and import traffic and joint rates with ocean carriers.

(a) *Definitions.* The term "domestic carrier" as used in this section means a common carrier by rail, motor, water, or freight forwarder subject to the Act.

(b) *Through routes and joint rates.* (1) A domestic carrier may establish a through route and joint rate with a non-vessel or vessel operating ocean carrier for the transportation of property between any place in the United States and any place in a foreign country. Tariffs for such service shall be filed with the Commission in either long form or abbreviated form, as follows:

(2) An abbreviated tariff shall refer to a specific tariff(s) on file with the Federal Maritime Commission (FMC) containing the joint through rates in which the domestic carrier participates, and shall be filed in the name of the domestic carrier or its publishing agent.

(c) *Tariff Provisions.* (1) Tariffs filed with the Commission under the provision of paragraph (b)(1) of this section shall comply with all of the other requirements of this part. Rail carriers are exempt from this tariff filing requirement (see 49 CFR 1039.21). The division or rate to be received by the domestic carrier for its share of the revenue covering a through shipment or aggregate of shipments may, but need not, be shown in the tariff.

(2) Abbreviated tariffs filed under the provisions of paragraph (b)(2) of this section shall—when read in conjunction with referenced FMC tariffs—comply with all other requirements of this part.

(3) A tariff filed in the name of a conference need not show "Agent" after the name of the conference unless the conference publishes as an agent.

(d) *Changes on less than statutory notice.* (1) Abbreviated tariffs, or amendments thereto, filed under the provisions of paragraph (b)(2) of this section may be filed to become effective on a specified date on not less than one day's notice.

(2) For tariffs filed under the provisions of paragraph (b)(1) of this section that include the division of rate accruing to the domestic carrier, the following changes may be published by amendment to the tariff to become effective on a specified date not prior to the date filed with the Commission:

(i) A change in a published rate or other provision which results in reduction or in no change in charges, if there is no change in the separately stated division or rate accruing to the domestic carrier or a provision governing or affecting that division or rate. This includes a rate change that results in lessening or canceling a proposed (published but not yet effective) increase; and

(ii) The establishment of a rate on a specific commodity not previously named in a tariff resulting in a reduction or no change in charges.

(3) Changes in charges for terminal services, canal tolls, or other additional charges may be made effective upon a specified date not prior to the date filed with the Commission, provided the charges are not under the control of the carrier or conference, and the agency assessing the charges to the carrier increases the charges without notice or without adequate notice to the carrier or conference. If the tariff separately states the division, rate, or charge accruing to the domestic carrier, and if a change occurs in the division, rate, or charge, the amendment shall contain a statement explaining the change.

(e) *Through export and import billing.* When export and import shipments are forwarded under through billing, the through bills of lading shall clearly separate the liability of the domestic carriers and the ocean carriers. The name of the domestic carrier shall appear on the face of the bill of lading when that carrier originates the shipment. Tariffs that provide for the use of a specified kind of bill of lading shall reproduce all of its terms and conditions.

§ 1314.16 Substitution of service.

Paragraph (a) of this section only applies to property carriers. Paragraph (b) of this section only applies to passenger carriers. Unless otherwise noted, this section may not be used in connection with joint rates and provisions for which concurrences are in effect.

(a) *Substituted service may be provided.* If a rail, water, or motor carrier (hereafter referred to as Carrier A) desires to have the option of substituting the services of a carrier of a different transportation mode (hereafter referred to as Carrier B) for part of its movement of a shipment, it may do so if:

(1) The shipment moves on the bill of lading that would be used if Carrier A were performing the service;

(2) Carrier A assumes the responsibility for the lading while it is in the possession of Carrier B; and

(3) Movement of the lading has been made prior to, or will be made subsequent to, the service performed by Carrier B.

(b) *Passenger ticket arrangements.* Provisions may be published affirming an agreement of two or more carriers for the acceptance by one carrier of a ticket sold over the route of another carrier. The carriers' names shall be shown, with the names of the points between which the tickets will be honored, and any restrictions or exceptions stated.

§ 1314.17 Rail Cost recovery increases.

Rail carriers or their agents may publish cost recovery tariffs in master tariff format to provide increases in rail rates as authorized by the Commission under Ex Parte No. 290 (Sub-No. 2), *Railroad Cost Recovery Procedures.* The increases may apply to joint rates and single-line rates to the extent adopted by individual carriers. All publications may be filed upon 1 day's notice, with 2-year expiration dates. Annual, accumulated master tariffs may be published to expire no later than September 30 of the second calendar year following the year in which the tariff became effective, by which date all increases shall be transferred to the base tariffs. Extension of any expiration dates may, however, be requested. The master tariffs may not be amended except that new or reduced provisions may be published upon 1 day's notice.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 380

[Docket No. 70989–8154]

Antarctic Marine Living Resources Convention Act of 1984

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), United States Department of Commerce (Commerce).

ACTION: Final rule.

SUMMARY: The Secretary of Commerce (Secretary) issues this final rule to implement the Antarctic Marine Living Resources Convention Act of 1984 (Act) and the Convention on the Conservation of Antarctic Marine Living Resources (Convention) and to give effect to the conservation and management measures adopted by the Commission for the Conservation of Antarctic Marine Living Resources (Commission) established by the Convention. This rule sets forth: (1) Permit requirements, permit application

procedures, and record keeping requirements applicable to the harvesting and importing into the United States of Antarctic marine living resources by entities subject to United States jurisdiction; (2) vessel and gear identification and gear disposal requirements applicable to vessels subject to United States jurisdiction that harvest Antarctic marine living resources; (3) communication and boarding equipment required to be carried by such vessels, communication procedures, and actions required to be taken by those on board such vessels to facilitate the safe boarding and inspection of their vessel and its gear, equipment, records, and harvested resources, and requirements applicable to the on board storage of Antarctic marine living resources; and (4) prohibitions and penalties applicable to the harvesting and importing of Antarctic marine living resources.

EFFECTIVE DATE: March 13, 1989.

ADDRESS: A copy of the environmental assessment may be obtained from the Assistant Administrator for Fisheries, NOAA, Room 9334, 1335 East-West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Robin Tuttle, International Science, Development and Polar Affairs Division, Office of International Affairs, NMFS, NOAA, Room 7240, 1335 East-West Highway, Silver Spring, Maryland 20910 (301–427–2282).

SUPPLEMENTARY INFORMATION: Although implementation of the Act is a foreign affairs function exempt from the advance notice requirements of the Administrative Procedure Act, 5 U.S.C. 553, the Secretary decided to provide the public with an opportunity to comment on the subject matter of this rule. As a result, this rule was published as a proposed rule in the **Federal Register** on March 17, 1988 [53 FR 8784].

No comments were received from the general public. The Department of Interior (DOI) inquired whether Antarctic marine living resources incidentally taken in the course of exploratory drilling or dredging by the United States Geological Survey would constitute harvesting or an associated activity requiring a harvesting permit. DOI was informed that it would if during the drilling or dredging the resource is reduced to possession.

Despite the fact that no public comments were received, the text of the final rule differs somewhat from that which was proposed. Review of the proposed rule indicated that while its substance was essentially sound, further editing and reorganization of the regulatory text was warranted to make the rule easier to understand and less complex. Thus, additional definitions were added, explanations and requirements only found in the various application and permit forms were incorporated directly into the regulatory text, and the procedure for amending permits was revised to make it less complex and less burdensome. Relevant addresses were also updated.

The final rule amends the regulations implementing the Convention and the Act (50 CFR Part 380) to implement those portions of the Convention and Act not previously implemented and to give effect to the conservation and management measures adopted by the Commission by imposing gear and vessel identification, gear disposal, harvesting and importing permit, record keeping, and other requirements.

In general, the rule requires vessels subject to United States jurisdiction that harvest Antarctic marine living resources to obtain a harvesting permit from the NMFS unless the person conducting the harvesting has an individual permit (defined in 50 CFR 380.2 as National Science Foundation permit or award letter authorizing the harvest or a marine mammal or endangered species permit authorizing the harvest). Resources harvested under a United States issued permit (*i.e.*, a harvest permit or an individual permit) are allowed entry into the United States if accompanied by the permit or a copy thereof. Resources harvested by entities not subject to United States jurisdiction, and therefore not harvested pursuant to a United States issued permit, also are allowed entry into the United States if such harvesting will meet or met the requirements of the Act and did not or will not violate any conservation measure in force with respect to the United States under the Convention or the Act or violate any of the Act's implementing regulations (50 CFR Part 380) including resource management measures contained therein. A NMFS issued import permit or copy thereof is required to accompany such an import as proof that the foreign harvested resources met such requirements. In no event may a marine mammal be imported into the United States unless authorized and accompanied by an import permit issued under the Marine Mammal Protection Act and/or the Endangered Species Act of 1973.

Specifically, the final rule amends the definition subsection of the regulations, 50 CFR 380.2, by adding definitions for the terms "harvesting permit", "import permit", "harvesting vessel certificate", and "import ticket".

The final rule adds nine new subsections to Part 380. New § 380.3 sets forth the relationship of the Convention, Act, and regulations to other treaties, conventions, laws, and regulations. Basically, the Convention, Act, and regulations are in addition to and do not supplant or preempt any other applicable treaties, conventions, laws, or regulations.

New § 380.4 requires every vessel subject to the jurisdiction of the United States which attempts to reduce or reduces any Antarctic marine living resource to possession to have a harvesting permit authorizing the attempt or reduction, unless the attempt or reduction occurs during recreational fishing or is covered by an individual permit.

An application available upon request to the Assistant Administrator must be submitted for each vessel for which a harvesting permit is requested at least 90 days before the date anticipated for the beginning of harvesting.

The Assistant Administrator will issue a harvesting permit to a vessel upon determining that the harvesting described in the application will meet the requirements of the Act and will not:

(1) Decrease the size of any harvested population to levels below those which ensure its stable recruitment;

(2) Upset the ecological relationships between harvested, dependent, and related populations of Antarctic marine living resources and the restoration of depleted populations to levels that will ensure stable recruitment;

(3) Cause changes or increase the risk of changes in the marine ecosystem which are not potentially reversible over two or three decades;

(4) Violate established management measures established by the regulations; or

(5) Violate any other conservation measures in force with respect to the United States under the Convention or the Act.

Each harvesting vessel must either have on board an up-to-date copy of its harvesting permit or an up-to-date harvesting vessel certificate. A harvesting vessel certificate is a certificate available from the Assistant Administrator to be filled out by the vessel operator with the information contained in the vessel's harvesting permit. The reason for allowing a certificate filled out by the vessel owner or operator to be carried on board and displayed in lieu of the actual permit is to facilitate the remote Antarctic fishery. While the information contained in the permit and in any permit amendments can be transmitted easily via radiotelephone or radiotelegraph, physical delivery of the original issued permit or permit amendment would be often next to impossible. The information in the actual permit is what the operator of the vessel needs to know and what enforcement agents need to see.

The owner or operator of a vessel which has been issued a harvesting permit is required to report to the Assistant Administrator any change in previously submitted information other than a proposed change in the location, manner, or amount of harvesting within 15 days of the change. Based on such reported information, the Assistant Administrator may revise the permit.

Any changes in the location, manner, or amount of harvesting must be proposed to the Assistant Administrator and may not be undertaken unless authorized by the Assistant Administrator through a permit revision or issuance of a new permit. If a requested change in the location, manner, or amount of harvesting could significantly affect the status of any Antarctic marine living resource, the Assistant Administrator will treat the requested change as an application for a new permit.

The Assistant Administrator may revise any permit to impose additional conditions and restrictions on the harvesting vessel as necessary to achieve the purposes of the Convention or the Act. Further, a permit may be revised, suspended, or revoked if the harvesting vessel is involved in the commission of any violation of its permit, the Act, or the implementing regulations.

Section 380.5 allows any Antarctic marine living resource entry into the United States if its harvest is authorized by a United States issued permit (*i.e.*, an individual permit or a harvesting permit). The harvesting permit, the harvesting vessel certificate, or the individual permit, or a copy of any thereof, must accompany the import. Resources harvested by entities not subject to United States jurisdiction and thus not harvested under a United States issued permit also are allowed entry into the United States if such harvesting met or will meet the requirements of the Act and did not or will not violate any conservation measure in force with respect to the United States under the Convention or the Act or violate any of the Act's implementing regulations (50 CFR Part 380) including resource management measures contained therein. A NMFS issued import permit or copy thereof is required to accompany such an import as proof that the foreign harvested resources met such requirements. Further, the importer is required to complete and return to the Assistant Administrator, no later than 10 days after the date of the importation, an import ticket reporting the importation. In no event may a marine mammal be imported into the United States unless authorized and accompanied by an import permit issued under the Marine Mammal Protection Act and/or the Endangered Species Act of 1973.

An application available upon request to the Assistant Administrator must be submitted for each import permit requested at least 30 days before the anticipated date of importation. Blank import tickets will be attached to the permit. Additional blank import tickets are available from the Assistant Administrator.

The use of import tickets referencing a pre-issued import permit facilitates expeditious imports while allowing NMFS to monitor what is actually imported versus what is requested in the permit application.

Any entity issued an import permit must report to the Assistant Administrator any changes in previously submitted information. Any changes that would not result in a change in the importation authorized by the permit must be reported on the import ticket required to be submitted to the Assistant Administrator no later than 10 days after the date of importation. Any changes that would result in a change in the importation authorized by the permit such as country of origin, type and quantity of the resource to be imported, and Convention statistical subarea from which the resource was harvested, must be proposed to the Assistant Administrator and may not be undertaken unless authorized by the Assistant Administrator by a permit revision or new permit.

An import permit may be revised, suspended, or revoked based upon information subsequently reported or based upon a violation of the permit, the Act, or the regulations.

If Antarctic marine living resources are imported into the United States unaccompanied by a permit or copy thereof authorizing their import, the importer must either abandon the resources, waive claim to the resources, or place the resources into a bonded warehouse and while attempt to obtain a permit authorizing their import. If within 60 days of such resources being placed into a bonded warehouse the District Director of the United States Customs Service receives documentation that import of the resources into the United States is authorized by a permit, the resources will be allowed entry. If documentation of a permit is not presented within 60 days, the importer's claim to the resources will be deemed waived.

New § 380.6 establishes reporting and record keeping requirements. A logbook covering each day of fishing is required to be kept for each vessel. Information required to be kept includes vessel particulars and fishing effort (date, vessel location, weather, master trawl or set number, gear type, set and haul information, and mesh size) and catch (species, trawl or set, tonnage, any marine mammals taken, and discards). The logbook must be made available for inspection upon the request of an authorized officer and a copy of the book must, from time to time, be submitted to the Assistant Administrator. A permit may impose additional record keeping and reporting requirements.

Section 380.7 establishes vessel and gear identification requirements. Deployed fishing gear which is not physically and continuously attached to a harvesting vessel must be clearly marked at the surface with a buoy displaying the vessel identification of the harvesting vessel to which the gear belongs, a light visible for two miles at night in good visibility, and a radio buoy. Deployed longlines, strings of traps or pots, and gillnets must be marked with a buoy at each terminal end. Trawl codends passed from one vessel to another are considered continuously attached gear and do not have to be marked.

New § 380.8 sets forth what equipment must be carried on board a harvesting vessel and what owners, operators, and persons aboard a vessel must do to facilitate enforcement of the Act, its implementing regulations, and applicable permits.

Each harvesting vessel must be equipped with a VHF–FM radiotelephone station located so that it may be operated from the wheelhouse. The vessel operator is required to maintain a continuous listening watch on channel 16 (156.8 mHz). Each vessel also must be equipped with a radiotelegraph station capable of communicating via 500 kHz radiotelegraphy and at least one working frequency between 405 kHz and 535 kHz, and a radiotelephone station capable of communicating via 2182 kHz radiotelephony. The vessel operator is required to monitor and be ready to communicate via 500 kHz radiotelegraph and 2182 kHz radiotelephone each day from 0800 GMT to 0830 GMT and 2000 to 2030 GMT, and in preparation for boarding.

Upon being approached by a Coast Guard vessel or aircraft or other vessel

or aircraft with an authorized officer aboard, the operator of any harvesting vessel subject to United States jurisdiction must be alert for communications conveying enforcement instructions. The enforcement unit may communicate by channel 16 VHF–FM radiotelephone, 2182 kHz radiotelephone, 500 kHz radiotelegraph, message block from an aircraft, flashing light or flag signals from the International Code of Signals, hand signals, placard, loudhailer, or other appropriate means. If the operator of a vessel does not understand a signal from an enforcement unit and is unable to obtain clarification by radiotelephone or other means, the operator is required to consider the signal to be a command to stop the vessel instantly.

A vessel signaled for boarding must stop immediately and lay to or maneuver in such a way as to maintain the safety of the harvesting vessel and facilitate boarding by the authorized officer and the boarding party. Authorized enforcement officers and boarding parties must be provided a safe pilot ladder securely attached to the harvesting vessel.

The owner and operator of each harvesting vessel must provide authorized officers access to all spaces where work is conducted or business papers and records are prepared or stored. Authorized officers must be provided all records and documents pertaining to the fishing activities of the vessel, including but not limited to production records, fishing logs, navigation logs, transfer records, product receipts, cargo stowage plans or records, draft or displacement calculations, customs documents or records, and an accurate hold plan reflecting the current structure of the vessel's storage and factory spaces.

Non-resource items may not be stowed beneath nor covered by stored Antarctic marine living resources, unless required to maintain the stability and safety of the vessel. Non-resource items include, but are not limited to, portable conveyors, exhaust fans, ladders, nets, fuel bladders, extra bin boards, or other movable non-resource items. These non-resource items may be in a resource storage space when necessary for the safety of the vessel or crew or for the storage of the items. Lumber, bin boards, or other dunnage may be used for shoring or bracing of product to ensure the safety of crew and to prevent shifting of cargo within the space.

New § 380.9 establishes gear disposal requirements. The operator of a vessel may not dump over board; jettison or otherwise discard any article or substance which may interfere with other fishing vessels or gear, or which may catch fish or cause damage to any marine resource, including marine mammals and birds, except in cases of emergency involving the safety of the ship or crew, or as specifically authorized by communication from the appropriate Coast Guard commander or authorized officer. These articles and substances include but are not limited to fishing gear, net scraps, bale straps, plastic bags, oil drums, petroleum containers, oil, toxic chemicals or any manmade items retrieved in a harvesting vessel's gear. Further, fishing gear may not be abandoned in Convention waters.

New § 380.10 makes it unlawful for any person to:

(1) Reduce to possession or attempt to reduce to possession any Antarictic marine living resources without a permit authorizing such activity;

(2) Import into the United States any Antarctic marine living resources without a permit authorizing their importation;

(3) Engage in harvesting or other associated activities in violation of the provisions of the Convention or in violation of a conservation measure in force with respect to the United States under Article IX of the Convention;

(4) Ship, transport, offer for sale, sell, purchase, import, export or have custody, control or possession of, any Antarctic marine living resource which he knows, or reasonably should have known, was harvested in violation of a conservation measure in force with respect to the United States under article IX of the Convention or in violation of any applicable regulation, without regard to the citizenship of the person that harvested, or vessel that was used in the harvesting of, the Antarctic marine living resource;

(5) Refuse to allow any authorized officer to board a vessel of the United States or vessel subject to the jurisdiction of the United States for the purpose of conducting any search or inspection in connection with the enforcement of the Act or any regulation or permit issued under the Act;

(6) Resist a lawful arrest or detention for any act prohibited by the Act or any regulation or permit issued under the Act;

(7) Assault, resist, oppose, impede, intimidate or interfere with an authorized officer in the conduct of any boarding, inspection, or search in connection with the enforcement of the Act or any regulation or permit issued under the Act;

(8) Interfere with, delay, or prevent by any means the apprehension, arrest, or detention of another person, with the knowledge that such other person has committed any act prohibited by the Act or any regulation or permit issued under the Act;

(9) Use any vessel to engage in harvesting after the revocation, or during the period of suspension, of an applicable permit issued under the Act;

(10) Fail to identify, falsely identify, fail to properly maintain, or obscure the identification of a harvesting vessel or its gear as required by the regulations;

(11) Falsify or fail to make, keep, maintain, or submit any record or report required by the regulations;

(12) Fish in a closed area;

(13) Trawl with a mesh size in any part of the trawl net smaller than that allowed for any directed fishing for Antarctic finfishes as specified in the regulations;

(14) Use any means or device which would reduce the size or obstruct the opening of the trawl meshes specified in the regulations;

(15) Possess fish in violation of the catch limit specified in the regulations;

(16) Discard netting or other substances in the Convention Area in violation of the regulations; or

(17) Violate or attempt to violate any provision of the Act or any regulation or permit issued under the Act.

New § 380.11 warns that any person or harvesting vessel found to be in violation of the Act or any regulations or permit issued under the Act will be subject to the civil and criminal penalty provisions and forfeiture provisions prescribed in the Act, the regulations setting forth applicable civil procedures (15 CFR Part 904), and other applicable laws.

Classification

The Secretary of Commerce has determined that this rule is necessary to implement the Act and the Convention and to give effect to the conservation and management measures adopted by the Commission and agreed to by the United States.

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator) prepared an environmental assessment for this rule under Executive Order 12114 and the Administrator concluded that there will be no significant impact on the environment as a result of the rule.

This action is exempt from Executive Order 12291 and section 553 of the Administrative Procedure Act because it involves a foreign affairs function of the United States. Because notice and comment rulemaking is not required for this rule, the Regulatory Flexibility Act does not apply; therefore, a regulatory flexibility analysis was not prepared. At present there are no vessels subject to United States jurisdiction harvesting Antarctic marine living resources for commercial purposes within the area to which these regulations apply. Presently, the only Antarctic resources being harvested by vessels subject to the jurisdiction of the United States are those being taken as scientific specimens under National Science Foundation permits or by the United States Antarctic Marine Living Resources directed research program. Accordingly, these regulations should not have an incremental economic impact on United States vessels harvesting or performing associated activities in the Convention area.

Subsequent to these regulations being proposed, some Antarctic marine living resources harvested by vessels not subject to United States jurisdiction have been imported into the United States. However, the incremental economic impact on importers of the import permit and reporting requirements established by these regulations will be minor.

This rule contains a collection-of-information requirement subject to the requirements of the Paperwork Reduction Act. The collection of information has been approved by the Office of Management and Budget and assigned OMB Control Number 0648–0194. This authorization expires February, 1991.

The annual public reporting burden for this collection of information is estimated to average six hours per harvester and one and three-quarter hours per importer, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Robin Tuttle, International Science, Development and Polar Affairs Division, Office of International Affairs, NMFS, NOAA, Room 7240, 1335 East-West Highway, Silver Spring, Maryland 20910, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 380

Antarctic, Fish and Wildlife. Reporting and record keeping requirements.

Dated: Feburary 6, 1989.

James W. Brennan,

Assistant Administrator for Fisheries.

For the reasons set out in the preamble of this rule, 50 CFR Part 380 is amended as follows:

PART 380—ANTARCTIC MARINE LIVING RESOURCE CONVENTION ACT OF 1984

1. The authority citation for Part 380 continues to read as follows:

Authority: 16 U.S.C. 2431 *et seq.*

2. Section 380.2 is amended by revising the definition "Assistant Administrator" and adding the definitions "Harvesting permit", Harvesting vessel certificate", Import permit" and "import ticket" to read as follows:

§ 380.2 Definitions.

* * * * *

Assistant Administrator means the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, or a designee. *Address:* Room 9334, 1335 East-West Highway, Silver Spring, Maryland 20910.

* * * * *

Harvesting permit means a permit issued under 50 CFR 380.4 to a vessel subject to the jurisdiction of the United States authorizing the harvest of Antarctic marine living resources in accordance with the terms of, and conditions and restrictions contained in, such permit. Such a permit also authorizes the import into the United States of Antarctic marine living resources harvested in accordance with the terms of, and conditions and restrictions contained in, the permit.

* * * * *

Harvesting vessel certificate means a blank certificate furnished by the Assistant Administrator, which if completed by the owner or operator of a vessel issued a harvesting permit under 50 CFR 380.4, may serve in lieu of the actual permit for on board display and importing purposes. The information entered on the certificate must be revised appropriately by the vessel owner or operator upon notification of any modifications or revisions to the permit.

* * * * *

Import permit means a permit issued under 50 CFR 380.5 authorizing the import into the United States of Antarctic marine living resources that were harvested by vessels not subject to the jurisdiction of the United States and, thus, were not harvested under a United States permit (*i.e.*, a harvesting permit or an individual permit) authorizing the harvest of such resources.

Import ticket means a blank ticket furnished by the Assistant Administrator which the importer of any Antarctic marine living resource imported pursuant to an import permit issued under 50 CFR 380.5 must complete and return to the Assistant Administrator no later than 10 days after the date of the importation.

* * * * *

4. The text of §§ 380.3 through 380.11 is added to Subpart A to read as follows:

§ 380.3 Relationship to other treaties, conventions, laws, and regulations.

(a) Other conventions and treaties to which the United States is a party and other Federal statutes and implementing regulations may impose additional restrictions on the harvesting and importation into the United States of Antarctic marine living resources.

(b) The Antarctic Conservation Act of 1978 (16 U.S.C. 2401 *et seq.*) implements the Antarctic Treaty Agreed Measures for the Conservation of Antarctic Fauna and Flora (12 U.S.T. 794). The Antarctic Conservation Act and its implementing regulations titled "Conservation of Antarctic Animals and Plants" (45 CFR Part 670) apply to certain defined activities of United States citizens south of 60 °S. latitude.

(c) The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 *et seq.*), the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), the Migratory Bird Treaty Act (16 U.S.C. 701 *et seq.*), and their implementing regulations also apply to the harvesting and importation of Antarctic marine living resources.

§ 380.4 Harvesting permits.

(a) *General.* (1) Every vessel subject to the jurisdiction of the United States which attempts to reduce or reduces any Antarctic marine living resource to possession must have a harvesting permit authorizing the attempt or reduction, unless the attempt or reduction occurs during recreational fishing or is covered by an individual permit. Boats launched from a vessel issued a harvesting permit do not require a separate permit but are covered by the permit issued the launching vessel. Any enforcement action which results from the activities of a launched boat will be taken against the launching vessel.

(2) Permits issued under this section do not authorize vessels or persons subject to the jurisdiction of the United States to harass, capture, harm, kill, harvest, or import marine mammals. No marine mammals may be taken in the course of commercial fishing operations unless the taking is allowed under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 *et seq.*) and/or the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) pursuant to an exemption or permit granted by the appropriate agency.

(b) *Responsibility of owners and operators.* (1) The owners and operators of each harvesting vessel are jointly and severally responsible for compliance with the Act, this part, and any permit issued under the Act and this part.

(2) The owners and operators of each such vessel are responsible for the acts of their employees and agents constituting violations, regardless of whether the specific acts were authorized or forbidden by the owners or operators, and regardless of knowledge concerning their occurrence.

(3) The owner of such vessel must report any sale, change in ownership, or other disposition of the vessel to the Assistant Administrator within 15 days of the occurrence.

(c) *Application.* Application forms for harvesting permits are available from the Assistant Administrator. A separate fully completed and accurate application must be submitted for each vessel for which a harvesting permit is requested at least 90 days before the date anticipated for the beginning of harvesting.

(d) *Issuance.* The Assistant Administrator may issue a harvesting permit to a vessel if the Assistant Administrator determines that the harvesting described in the application will meet the requirements of the Act and will not:

(1) Decrease the size of any harvested population to levels below those which ensure its stable recruitment. For this purpose, the Convention recommends that its size not be allowed to fall below a level close to that which ensures the greatest net annual increment;

(2) Upset the ecological relationships between harvested, dependent, and related populations of Antarctic marine living resources and the restoration of depleted populations to levels that will ensure stable recruitment;

(3) Cause changes or increase the risk of changes in the marine ecosystem which are not potentially reversible over two or three decades, taking into account the state of available knowledge of the direct and indirect impact of harvesting, the effect of the introduction of alien species, the effects of associated activities on the marine ecosystem and of the effects of environmental changes, with the aim of making possible the sustained conservation of Antarctic marine living resources;

(4) Violate the management measures of subpart B of this part; and

(5) Violate any other conservation measures in force with respect to the United States under the Convention or the Act.

(e) *Duration.* A harvesting permit is valid from its date of issuance to its date of expiration unless it is revoked or suspended.

(f) *Transfer.* Permits are not transferable or assignable. A permit is valid only for the vessel to which it is issued.

(g) *Display.* Each harvesting vessel when engaged in harvesting must either have on board an up-to-date copy of its harvesting permit or a fully completed and up-to-date harvesting vessel certificate and the vessel operator must produce it for inspection upon the request of an authorized officer. In order for the certificate to be considered complete, the vessel owner or operator must enter on it the name and IRCS of the vessel issued the harvesting permit, the number of the harvesting permit and its date of issuance and expiration, the harvesting authorized by the permit, and all conditions and restrictions contained in the permit. Blank certificates are available from the Assistant Administrator.

(h) *Changes in information submitted by permit applicants or holders.* (1) Changes in pending applications. Applicants for a harvesting permit must report to the Assistant Administrator in writing any change in the information contained in the application. The processing period for the application will be extended as necessary to review the change.

(2) Changes occurring after permit issuance.

(i) Changes other than in the manner and amount of harvesting. The owner or operator of a vessel which has been issued a harvesting permit must report to the Assistant Administrator in writing any change in previously submitted information other than a proposed change in the location, manner, or amount of harvesting within 15 days of the change. Based on such reported information, the Assistant Administrator may revise the permit effective upon notification to the permit holder. As soon as possible, the vessel owner or operator must revise any harvesting vessel certificate evidencing the permit, accordingly.

(ii) Requested changes in the location, manner, or amount of harvesting. Any changes in the manner or amount of harvesting must be proposed in writing to the Assistant Administrator and may not be undertaken unless authorized by the Assistant Administrator through a permit revision or issuance of a new permit. If a requested change in the location, manner, or amount of harvesting could significantly affect the status of any Antarctic marine living resource, the Assistant Administrator will treat the requested change as an application for a new permit and so notify the holder.

(i) *Additional conditions and restrictions.* The Assistant Administrator may revise the harvesting permit, effective upon notification to the permit holder, to impose additional conditions and restrictions on the harvesting vessel as necessary to achieve the purposes of the Convention or the Act. The permit holder must, as soon as possible, direct the vessel operator to revise the harvesting vessel certificate, if any, accordingly.

(j) *Revision, suspension, or revocation for violations.* A harvesting permit may be revised, suspended, or revoked if the harvesting vessel is involved in the commission of any violation of its permit, the Act, or this part. Failure to report a change in the information contained in an application within 15 days of the change is a violation of this part and voids the application or permit, as applicable. If a change in vessel ownership is not reported, the violation is chargeable to the previous owner. 15 CFR Part 904 governs permit sanctions under this part.

§ 380.5 Import permits.

(a) *General.* (1) Any Antarctic marine living resource may be imported into the United States if its harvest is authorized by an individual permit or a harvesting permit. The harvesting permit, the harvesting vessel certificate, or the individual permit, or a copy of any thereof, must accompany the import. Resources harvested by entities not subject to United States jurisdiction and, thus, not harvested under a United States issued permit (*i.e.*, a harvesting permit or an individual permit), also may be imported into the United States if such harvesting will meet or met the requirements of the Act and will not or did not violate any conservation measure in force with respect to the United States under the Convention or the Act or violate any of the regulations in this part including resource management measures contained therein. A NMFS issued import permit or copy thereof must accompany such an import as proof that the foreign harvested resources met such requirements. Further, the importer is required to complete and return to the Assistant Administrator, no later than 10 days after the date of the importation, an import ticket reporting the importation. However, in no event may a marine mammal be imported into the United States unless authorized and accompanied by an import permit issued under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 *et seq.*) and/or the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

(2) A permit issued under this subsection does not authorize the harvest of any Antarctic marine living resources.

(b) *Application.* Application forms for import permits are available from the Assistant Administrator. A fully completed and accurate application must be submitted for each import permit requested at least 30 days before the anticipated date of the importation.

(c) *Issuance.* The Assistant Administrator may issue an import permit if the Assistant Administrator determines that the importation meets the requirements of the Act and that the resources were not or will not be harvested in violation of any conservation measure in force with respect to the United States or in violation of any regulation in this part. Blank import tickets will be attached to the permit. Additional blank import tickets are available from the Assistant Administrator.

(d) *Duration.* An import permit is valid from its date of issuance to its date of expiration unless it is revoked or suspended.

(e) *Transfer.* An import permit is not transferable or assignable.

(f) *Changes in information submitted by permit applicants or holders.* (1) Changes in pending applications. Applicants for an import permit must report in writing to the Assistant Administrator any change in the information submitted in their import permit application. The processing period for the application will be extended as necessary to review the change.

(2) Changes occurring after permit issuance. Any entity issued an import permit must report in writing to the Assistant Administrator any changes in previously submitted information. Any changes that would not result in a change in the importation authorized by the permit must be reported on the import ticket required to be submitted to the Assistant Administrator no later than 10 days after the date of importation. Any changes that would result in a change in the importation authorized by the permit such as country of origin, type and quantity of the resource to be imported, and Convention statistical subarea from which the resource was harvested, must be proposed in writing to the Assistant Administrator and may not be undertaken unless authorized by the Assistant Administrator by a permit revision or new permit.

(g) *Revision, suspension, or revocation.* An import permit may be revised, suspended, or revoked based upon information subsequently reported, effective upon notification to the permit holder. An import permit may be revised, suspended, or revoked, based upon a violation of the permit, the Act, or this part. Failure to report a change in the information contained in an import permit application is a violation of this part and voids the application or permit, as applicable. 15 CFR Part 904 governs permit sanctions under this part.

(h) *Disposition of resources not accompanied by required documentation.* (1) When Antarctic marine living resources are imported into the United States unaccompanied by a permit authorizing import, the importer must either

(i) Abandon the resources,

(ii) Waive claim to the resources, or

(iii) Place the resources into a bonded warehouse and attempt to obtain a permit authorizing their importation.

(2) If within 60 days of such resources being placed into a bonded warehouse the District Director of the United States Customs Service receives documentation that import of the resources into the United States is authorized by a permit, the resources will be allowed entry. If documentation of a permit is not presented within 60 days, the importer's claim to the resources will be deemed waived.

(3) When resources are abandoned or claim to them waived, the resources will be delivered to the Administrator of the National Oceanic and Atmospheric Administration, or a designee, for storage or disposal as authorized by law.

§ 380.6 Reporting and record keeping requirements.

The operator of any vessel required to have a permit under this part must:

(a) Accurately maintain on board the vessel a fishing logbook and all other reports and records required by its permit;

(b) Make such reports and records available for inspection upon the request of an authorized officer; and

(c) Within the time specified in the permit, submit a copy of such reports and records to the Assistant Administrator.

§ 380.7 Vessel and gear identification.

(a) *Vessel identification.* (1) The operator of each harvesting vessel assigned an IRCS must display that call sign amidships on both the port and starboard sides of the deckhouse or hull, so that it is visible from an enforcement vessel, and on an appropriate weather deck so that it is visible from the air.

(2) The operator of each harvesting vessel not assigned an IRCS, such as a small trawler associated with a mothership or one of a pair of trawlers, must display the IRCS of the associated vessel, followed by a numerical suffix specific for the non-assigned vessel.

(3) The vessel identification must be in a color in contrast to the background and must be permanently affixed to the harvesting vessel in block roman alphabet letters and arabic numerals at least one meter in height for harvesting vessels over 20 meters in length, and at least one-half meter in height for all other harvesting vessels.

(b) *Navigational lights and shapes.* Each harvesting vessel must display the lights and shapes prescribed by the International Regulations for Preventing Collisions at Sea, 1972 (TIAS 8587, and 1981 amendment TIAS 10672), for the activity in which the harvesting vessel is engaged (as described at 33 CFR Part 81).

(c) *Gear identification.* (1) The operator of each harvesting vessel must ensure that all deployed fishing gear which is not physically and continuously attached to a harvesting vessel is clearly marked at the surface with a buoy displaying the vessel identification of the harvesting vessel [see paragraph (a) of this section] to which the gear belongs, a light visible for two miles at night in good visibility, and a radio buoy. Trawl codends passed from one vessel to another are considered continuously attached gear and do not have to be marked.

(2) The operator of each harvesting vessel must ensure that deployed longlines, strings of traps or pots, and gillnets are marked at the surface at each terminal end with a buoy displaying the vessel identification of the harvesting vessel to which the gear belongs [see paragraph (a) of this section], a light visible for two miles at night in good visibility, and a radio buoy.

(3) Unmarked or incorrectly identified fishing gear may be considered abandoned and may be disposed of in

accordance with applicable Federal regulations by any authorized officer.

(d) *Maintenance.* The operator of each harvesting vessel must

(1) Keep the vessel and gear identification clearly legible and in good repair;

(2) Ensure that nothing on the harvesting vessel obstructs the view of the markings from an enforcement vessel or aircraft; and

(3) Ensure that the proper navigational lights and shapes are displayed for the harvesting vessel's activity and are properly functioning.

§ 380.8 Facilitation of enforcement.

(a) *General.* (1) The owner, operator, or any person aboard any harvesting vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the harvesting vessel; to move the harvesting vessel to a specified location; and to take any other action to facilitate safe boarding and inspection of the vessel, its gear, equipment, records, and harvested resources.

(2) The operator of each harvesting vessel subject to this part must provide vessel position or other information when requested by NMFS, the Coast Guard, or an authorized officer, within the time specified in the request.

(b) *Communications equipment.* (1) Each harvesting vessel must be equipped with a VHF–FM radiotelephone station located so that it may be operated from the wheelhouse. Each operator must maintain a continuous listening watch on channel 16 (156.8 mHz).

(2) Each harvesting vessel must be equipped with a radiotelegraph station capable of communicating via 500 kHz radiotelegraphy and at least one working frequency between 405 kHz and 535 kHz, and a radiotelephone station capable of communicating via 2182 kHz radiotelephony. Each operator must monitor and be ready to communicate via 500 kHz radiotelegraph and 2182 kHz radiotelephone each day from 0800 GMT to 0830 GMT and 2000 to 2030 GMT, and in preparation for boarding.

(3) Harvesting vessels that are not equipped with processing facilities and that deliver all catches to a processing vessel on the harvesting grounds are exempt from the requirements of paragraph (b)(2) of this section.

(4) Harvesting vessels with no IRCS which do not catch fish and are used as auxiliary vessels to handle codends, nets, equipment, or passengers for a processing vessel are exempt from the requirements of paragraphs (b)(1) and (b)(2) of this section.

(5) The Assistant Administrator, with the agreement of the appropriate Coast Guard commander, may, upon request by the owner or operator, accept alternatives to the communications equipment requirements of paragraphs (b)(1) and (b)(2) of this section for certain harvesting vessels or types of harvesting vessels provided they are adequate for communications needs.

(c) *Communications procedures.* (1) Upon being approached by a Coast Guard vessel or aircraft or other vessel or aircraft with an authorized officer aboard, the operator of any harvesting vessel subject to the jurisdiction of the United States must be alert for communications conveying enforcement instructions. The enforcement unit may communicate by channel 16 VHF–FM radiotelephone, 2182 kHz radiotelephone, 500 kHz radio telegraph, message block from an aircraft, flashing light or flag signals from the International Code of Signals, hand signal, placard, loudhailer, or other appropriate means. The following signals extracted from the International Code of Signals are among those which may be used.

(i) "AA, AA, AA, etc." which is the call for an unknown station. The signaled vessel should respond by identifying itself or by illuminating the vessel identification required by 380.6 of this part;

(ii) "RY–CY" meaning "You should proceed at slow speed, a boat is coming to you";

(iii) "SQ3" meaning "You should stop or heave to; I am going to board you"; and

(iv) "L" meaning "You should stop your vessel instantly."

(2) The operator of, or any person aboard, a harvesting vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by radiotelephone or other means must consider the signal to be a command to stop the vessel instantly.

(d) *Boarding equipment and procedures.* The operator of a harvesting vessel signaled for boarding must:

(1) Stop immediately and lay to or maneuver in such a way as to maintain the safety of the harvesting vessel and facilitate boarding by the authorized officer and the boarding party;

(2) Provide the authorized officer or boarding party a safe pilot ladder. The operator must ensure the pilot ladder is securely attached to the harvesting vessel and meets the construction requirements of Regulation 17, Chapter V of the International Convention for the Safety of Life at Sea, 1974 (TIAS 9700 and 1978 Protocol, TIAS 10009), or a substantially equivalent standard approved by letter from the Assistant Administrator, with agreement of the Coast Guard. A summary of safe pilot ladder standards follows:

(i) The ladder must be of a single length of not more than 9 meters (30 feet), capable of reaching the water from the point of access to the harvesting vessel, accounting for all conditions of loading and trim of the harvesting vessel and for an adverse list of 15 degrees. Whenever the distance from sea level to the point of access to the ship is more than 9 meters (30 feet), access must be by means of an accommodation ladder or other safe and convenient means.

(ii) The steps of the pilot ladder must be

(A) Of hardwood, or other material of equivalent properties, made in one piece free of knots, having an efficient non-slip surface; the four lowest steps may be made of rubber of sufficient strength and stiffness or of other suitable material of equivalent characteristics;

(B) Not less than 480 millimeters (19 inches) long, 115 millimeters (4½ inches) wide, and 25 millimeters (1 inch) in depth, excluding any non-slip device; and

(C) Equally spaced not less than 300 millimeters (12 inches) nor more than 380 millimeters (15 inches) apart and secured in such a manner that they will remain horizontal.

(iii) No pilot ladder may have more than two replacement steps which are secured in position by a method different from that used in the original construction of the ladder.

(iv) The side ropes of the ladder must consist of two uncovered manila ropes not less than 60 millimeters (2¼ inches) in circumference on each side (or synthetic ropes of equivalent size and equivalent or greater strength). Each rope must be continuous with no joints below the top step.

(v) Battens made of hardwood, or other material of equivalent properties, in one piece and not less than 1.8 meters (5 feet 10 inches) long must be provided at such intervals as will prevent the pilot ladder from twisting. The lowest batten must be on the fifth step from the bottom of the ladder and the interval between any batten and the next must not exceed nine steps.

(vi) Where passage onto or off the ship is by means of a bulwark ladder, two handhold stanchions must be fitted at the point of boarding or leaving the harvesting vessel not less than 0.7 meter (2 feet 3 inches) nor more than 0.8 meter (2 feet 7 inches) apart, not less than 40 millimeters (2⅛ inches) in diameter, and must extend not less than 1.2 meters (3 feet 11 inches) above the top of the bulwark.

(3) When necessary to facilitate the boarding or when requested by an authorized officer or observer, provide a manrope, a safety line, and illumination for the ladder; and

(4) Take such other actions as necessary to ensure the safety of the authorized officer and the boarding party and to facilitate the boarding and inspection.

(e) *Access and records.* (1) The owner and operator of each harvesting vessel must provide authorized officers access to all spaces where work is conducted or business papers and records are prepared or stored, including but not limited to personal quarters and areas within personal quarters.

(2) The owner and operator of each harvesting vessel must provide to authorized officers all records and documents pertaining to the fishing activities of the vessel, including but not limited to production records, fishing logs, navigation logs, transfer records, product receipts, cargo stowage plans or records, draft or displacement calculations, customs documents or records, and an accurate hold plan reflecting the current structure of the vessel's storage and factory spaces.

(f) *Storage of Antarctic marine living resources.* The operator of each harvesting vessel storing Antarctic marine living resources in a storage space on board the vessel must ensure that non-resource items are neither stowed beneath nor covered by resource items, unless required to maintain the stability and safety of the vessel. Non-resource items include, but are not limited to, portable conveyors, exhaust fans, ladders, nets, fuel bladders, extra bin boards, or other movable non-resource items. These non-resource items may be in a resource storage space when necessary for the safety of the vessel or crew or for the storage of the items. Lumber, bin boards, or other dunnage may be used for shoring or bracing of product to ensure the safety of crew and to prevent shifting of cargo within the space.

§ 380.9 Gear disposal.

(a) The operator of a harvesting vessel may not dump overboard, jettison or otherwise discard any article or substance which may interfere with other fishing vessels or gear, or which may catch fish or cause damage to any marine resource, including marine mammals and birds, except in cases of emergency involving the safety of the ship or crew, or as specifically authorized by communication from the appropriate Coast Guard commander or authorized officer. These articles and substances include but are not limited to fishing gear, net scraps, bale straps, plastic bags, oil drums, petroleum containers, oil, toxic chemicals or any manmade items retrieved in a harvesting vessel's gear.

(b) The operator of a harvesting vessel may not abandon fishing gear in Convention waters.

§ 380.10 Prohibitions.

It is unlawful for any person to:

(a) Reduce to possession or attempt to reduce to possession any Antarctic marine living resources without a permit for such activity as required by subsection 380.4 of this part;

(b) Import into the United States any Antarctic marine living resources without either a permit to import those resources as required by subsection 380.5 of this part or a permit to harvest those resources as required by subsection 380.4 of this part;

(c) Engage in harvesting or other associated activities in violation of the provisions of the Convention or in violation of a conservation measure in force with respect to the United States under Article IX of the Convention;

(d) Ship, transport, offer for sale, sell, purchase, import, export or have custody, control or possession of, any Antarctic marine living resource which he knows, or reasonably should have known, was harvested in violation of a conservation measure in force with respect to the United States under article IX of the Convention or in violation of any regulation promulgated under this title, without regard to the citizenship of the person that harvested, or vessel that was used in the harvesting of, the Antarctic marine living resource;

(e) Refuse to allow any authorized officer to board a vessel of the United States or vessel subject to the jurisdiction of the United States for the purpose of conducting any search or inspection in connection with the enforcement of the Act, this part, or any other regulation or permit issued under the Act;

(f) Resist a lawful arrest of detention for any act prohibited by the Act, this part, or any permit issued under this part;

(g) Assault, resist, oppose, impede, intimidate or interfere with an authorized officer in the conduct of any boarding, inspection, or search in connection with the enforcement of the Act, this part, or any other regulation or permit issued under the Act;

(h) Interfere with, delay, or prevent by any means the apprehension, arrest, or detention of another person, with the knowledge that such other person has committed any act prohibited by the Act, this part, or any permit issued under this part;

(i) Use any vessel to engage in harvesting after the revocation, or during the period of suspension, of an applicable permit issued under the Act;

(j) Fail to identify, falsely identify, fail to properly maintain, or obscure the identification of a harvesting vessel or its gear as required by this part;

(k) Falsify, or fail to make, keep, maintain, or submit any record or report required by this part;

(l) Fish in a closed area;

(m) Trawl with a mesh size in any part of the trawl net smaller than that allowed for any directed fishing for Antarctic finfishes as specified in § 380.21(a);

(n) Use any means or device which would reduce the size or obstruct the opening of the trawl meshes specified in § 380.21(a);

(o) Possess fish in violation of the catch limit specified in § 380.22;

(p) Discard netting or other substances in the Convention Area in violation of § 380.9; or

(q) Violate or attempt to violate any provision of this part, the Act, any other regulation promulgated under the Act or any permit issued under the Act.

§ 380.11 Penalties.

Any person or harvesting vessel found to be in violation of the Act, this part, or any permit issued under this part will be subject to the civil and criminal penalty provisions and forfeiture provisions prescribed in the Act, 15 CFR Part 904 (Civil Procedures), and other applicable laws.

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50 CFR Part 652

[Docket No. 81133–9030]

Atlantic Surf Clam and Ocean Quahog Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of 1989 fishing quotas.

SUMMARY: NOAA issues this notice of fishing quotas for the surf clam and ocean quahog fisheries for 1989. These quotas were selected from a range defined as optimum yield for each fishery and will be adjusted to reflect 1988 fishing activity at the conclusion of the year. The intended effect of this action is to establish allowable harvests of surf clams and ocean quahogs from the exclusive economic zone in 1989.

BEST COPY AVAILABLE

EFFECTIVE DATE: February 7, 1989.

FOR FURTHER INFORMATION CONTACT: Jack Terrill (Resource Policy Analyst) 508–281–3600, ext. 252.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries (FMP) directs the Secretary of Commerce (Secretary), in consultation with the Mid-Atlantic Fishery Management Council (Council), to specify quotas for surf clams and ocean quahogs on an annual basis from within ranges which have been identified as optimum yield for each fishery.

In specifying the quota values in this action, the Secretary considered stock assessments, catch records, and other relevant information concerning exploitable biomass and spawning biomass, fishing mortality rates, stock recruitment, projected effort and catches, areas likely to be reopened to fishing and the specific recommendations of the Council.

The proposed 1989 quotas were published on November 29, 1988 (53 FR 46002). No public comments were received on the proposed quotas during the comment period. The quarterly quotas for 1989 will be adjusted under § 652.21 (a)(3), (b)(3), and (c)(3) to reflect the amount of underharvest or overharvest in each designated surf clam fishery for 1988 when the 1988 catch records have been finalized. The Secretary will publish by notice in the **Federal Register**, the adjusted quarterly quotas for the fishery.

The quotas for the surf clam and ocean quahog fisheries for 1989 are:

1989 FINAL SURF CLAM/OCEAN QUAHOG QUOTAS

Fishery areas	1989 final quotas (in bushels)
Mid-Atlantic surf clam	2,650,000
Georges Bank surf clam	300,000
Nantucket Shoals surf clam	200,000
Ocean quahog	5,200,000

For the surf clam fisheries, the annual quotas are divided into quarterly quotas under § 652.21 (a), (b), and (c), as follows:

1989 SURF CLAM QUARTERLY QUOTAS

[In bushels]

Fishery areas	Quarter 1	Quarter 2	Quarter 3	Quarter 4
Mid-Atlantic surf clam	662,500	662,500	662,500	662,500
Georges Bank surf clam	75,000	75,000	75,000	75,000
Nantucket Shoals surf clam	40,000	60,000	60,000	40,000

Other Matters

This action is taken under authority of 50 CFR 652.21 and is taken in compliance with E.O. 12291. The action is covered by the certification for Amendment 3 to the FMP, and under the Regulatory Flexibility Act, that the authorizing regulations do not have a significant economic impact on a substantial number of small entities.

List of Subjects in 50 CFR Part 652

Fisheries, Recordkeeping and reporting requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 7, 1989.

James W. Brennan,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 89–3222 Filed 2–7–89; 5:06 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 54, No. 27
Friday, February 10, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1980

Business and Industry Loan Program

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its requirement for the Business and Industry (B&I) Loan Program regarding refinancing, variable interest rates, and National Office review of dockets. This proposed action is needed to clarify the regulations and keep them responsive to commercial banking practices. The proposed action is intended to broaden the conditions under which a loan may include refinancing, reduce limitations on variable interest rates, and clarify what kind of changes in a loan proposal necessitates additional review by the National Office.

DATE: Written comments must be received on or before March 13, 1989.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Directives and Forms Management Branch, Farmers Home Administration, USDA, Room 6348, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: Beverly Craver, Business and Industry Loan Specialist, Farmers Home Administration, USDA, Room 6327, 14th and Independence Avenue, SW., Washington, DC. 20250, Telephone (202) 475–3805.

SUPPLEMENTARY INFORMATION:

Classification

This proposed action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291 and has been determined to be non-major. The annual effect on the economy is less than $100 million and there will be no significant increase in costs or prices for consumers, individual industries, organizations, governmental agencies or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Intergovermental Review

This program is listed in the Catalog of Federal Domestic Assistance under number 10.422, Business and Industrial Loans. It is subject to the provisions of Executive Order 12372, which requires intergovermental consultation with State and local officials in accordance with FmHA Instructions 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (available in any FmHA Office) and 7 CFR 3015, Subpart V.

Environmental Impact Statement

The proposed action has been reviewed in accordance with FmHA Instruction 1940–G, "Environmental Program." FmHA has determined that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Background

The current regulations prohibit loans for refinancing unless the refinancing is necessary to prevent the loss of existing jobs. Frequently, loans that would be sound and would benefit the community are proposed where existing jobs are not in jeopardy and refinancing of existing debts is needed to obtain adequate lien priority or for other valid reasons. This proposed action would also provide for refinancing when needed to create new jobs.

The current regulations regarding variable interest rates prohibit a ceiling or floor and are unclear as to whether the rate must be adjustable at regular intervals. The prohibition on a floor does not seem to be necessary. The prohibition on a ceiling occasionally works against the interests of a borrower. It is becoming common banking practice to set the interest rate for the early part of the loan term at a relatively low rate with agreement that later the rate will vary more frequently. A typical example might be an initial rate set for 5 years and 1.5 percent over prime adjusted quarterly thereafter. This action would remove the restrictions on establishing a floor or ceiling and allow adjustment at irregular intervals.

Review and concurrence of B&I loan proposals by the National Office is often required before the guarantee may be approved by the State Director. Conditions are often placed on the concurrence. While attempting to meet the conditions in a way acceptable to them, applicants sometimes propose further changes in the project. This action would clarify that resubmission to the National Office for additional review is required if there is a major change in the scope of the project.

List of Subjects in 7 CFR Part 1980

Loan programs—Business and Industry, Rural Development Assistance and Rural Areas.

Accordingly, FmHA proposes to amend Chapter XVIII, Title 7, Code of Federal Regulations, as follows:

PART 1980—GENERAL

1. The authority citation for Part 1980 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart E—Business and Industrial Loan Program

2. Section 1980.411 is amended by revising the introductory text of paragraph (a)(11) to read as follows:

§ 1980.411 Loan purposes.

* * * * * *

(a) * * *

(11) *Debt refinancing.* Lenders and FmHA must provide as part of their loan analysis the reasons for refinancing and the file must be documented

accordingly. Refinancing debts may be allowed in connection with viable projects when it is determined by the lender and FmHA that it is necessary to create new or save existing jobs. FmHA will consider any lender's exposure as it relates to this item and may adjust the guarantee percentage accordingly. Refinancing in accordance with this paragraph may be insured or guaranteed only when:

* * * * *

3. Section 1980.423 is amended by revising paragraph (a)(1) to read as follows:

§ 1980.423 Interest rates.

(a) * * *

(1) A variable interest rate must be a rate that is tied to a base rate published periodically in a recognized national or regional financial publication specifically agreed to by the lender and borrower. The variable interest rate may be adjusted at different intervals during the term of the loan but the adjustments may not be more often than quarterly. The intervals between interest rate adjustments will be specified in the Loan Agreement. The lender must incorporate within the variable rate promissory note at loan closing, the provision for adjustment of payment installments coincident with an interest rate adjustment. This will assure that the outstanding principal balance is properly amortized within the prescribed loan maturity to eliminate the possibility of a balloon payment at the end of the loan.

* * * * *

4. Section 1980.453 is amended by revising *Administrative* paragraph A to read as follows:

§ 1980.453 Review of requirements.

* * * * *

Administrative

A. The State Director will negotiate with the lender and proposed borrower any changes made to the initially issued or proposed Form FmHA 449–14. A copy of Form FmHA 449–14 and any amendments thereto will be included when the loan file is submitted to the National Office for review. When the National Office recommends modifications or additions to Form FmHA 449–14, the State Director will further negotiate these recommendations with the lender and proposed borrower. If, as a result of these further negotiations, the lender, proposed borrower or State Director presents alternate conditions which would result in a major change or changes in the scope of the proposed project, the State Director will submit these conditions by memorandum to the National Office for consideration with a copy of the revised Form FmHA 449–14 and any amendments thereto.

* * * * *

Date: January 4, 1989.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration

[FR Doc. 89–3169 Filed 2–9–89; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 134

Proposed Customs Regulations Amendment Relating to Country of Origin Marking of Jewelry

AGENCY: U.S. Customs Service, Treasury.

ACTION: Proposed rule, solicitation of comments.

SUMMARY: This document sets forth a proposed amendment to the Customs Regulations concerning the country of origin marking of jewelry. More permanent methods of marking are proposed to avoid removal of country of origin identifications after importation, but before sale to consumers often for the purpose of deceptively representing the merchandise as made in the United States. Previous methods permitting country of origin marking for jewelry using adhesive labels or string tags would be permitted under the proposed changes only where the size of the article does not permit more permanent marking methods. For other articles, the changes will require that jewelry be indelibly marked with the country of origin by cutting, die-sinking, engraving, stamping, or some other equally permanent method, or with a similarly marked plastic or metal tag. Comments from interested parties will be considered before a final rule is issued.

DATE: Comments must be received on or before April 11, 1989.

ADDRESS: Comments (preferably in triplicate) may be submitted to and inspected at the Regulations and Disclosure Law Branch, Room 2119, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Lorrie Rodbart, Value, Special Programs & Admissibility Branch, U.S. Customs Service, (202) 566–5765.

SUPPLEMENTARY INFORMATION:

Background

Section 304 of the Tariff Act, as amended (19 U.S.C. 1304), generally requires that every article of foreign origin imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article will permit in a manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article. Part 134, Customs Regulations (19 CFR Part 134), implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304.

The Customs Service normally permits any reasonable method of marking that will remain on the article during handling until it reaches the ultimate purchaser (19 CFR 134.41 and 134.44). This includes the use of paper sticker labels and string tags. However, where it is shown that a particular method of marking is not sufficiently permanent to inform the ultimate purchaser of the country of origin of the article, the Custom Service may require another type of marking which will insure that in all foreseeable circumstances, the article will reach the ultimate purchaser with its country of origin marking intact.

Allegations by representatives of the Native American handicrafts industry that some jewelry and craft dealers and wholesalers remove country of origin labels from imported goods and sell them as authentic Native American products were confirmed by a 1985 Commerce Department study for Congress.

By notice of proposed rulemaking in the **Federal Register** on July 15, 1986 (51 FR 25574), we solicited public comments on a proposal to require by interpretive rule that all foreign-made Native American-style jewelry be indelibly marked with the country of origin by cutting, die-sinking, engraving or stamping. The notice proposed that the country of origin marking may appear on the clasp, or in some other conspicuous location. Alternately, a metal or plastic tag indelibly marked with the country of origin could be permanently attached to the imported article.

The notice further proposed that in those cases where, due to the size or nature of the article, the indelible marking is too small to be read without a magnifying glass, the country of origin should also be indicated on a string tag or adhesive label securely affixed to the article. A string tag or adhesive label would be permitted as the only means of marking in the case of those few articles which are too small to be indelibly marked and do not permit the permanent attachment of a metal or plastic tag (*e.g.*, a small earring).

On August 23, 1988, Congress enacted Pub. L. 100–418, the Omnibus Trade and Competitiveness Act of 1988, which in section 1907(c) requires the Secretary of the Treasury to prescribe and implement within 1 year of enactment regulations which require indelible and permanent country of origin marking, to the greatest extent possible, on all imported Native American-style jewelry and Native American-style arts and crafts. The manner of marking country of origin on Native American-style arts and crafts will be dealt with in a separate document.

Analysis of Comments

In response to the notice, 92 written comments were received. Thirty-five of the comments supported the proposal that all foreign-made Native American-style jewelry be permanently marked with the country of origin. The largest group of commenters (42) favored the permanent marking of all foreign-made silver jewelry, 11 commenters said that all foreign-made jewelry should be permanently marked, and one commenter favored permanent marking of all imported gold and silver jewelry. A number of the commenters who favored marking all silver jewelry suggested that pieces made of silver alloys should be marked as well as those made of sterling silver.

Those commenters who favored a requirement for permanently marking all imported jewelry and many of those who favored permanently marking all silver jewelry stated that they did so because of the difficulty in separating Native American-style jewelry from other jewelry styles. A number of commenters suggested definitions of Native American-style jewelry. One commenter defined Native American-style jewelry as jewelry that incorporates traditional Native American design motifs, materials, and construction. Several commenters would include contemporary as well as traditional designs.

The comments suggest three alternative approaches to implementation of the statutory requirement that all Native American-style imported jewelry be permanently marked with the country of origin. One approach would limit the marking of imports to jewelry that looks like Native American-style jewelry. This is the proposal on which comments were received and would include imported jewelry that incorporates traditional Native American design motifs, materials, and construction.

A second approach would require permanent marking of all imported jewelry made of silver or silver alloys and all other jewelry that is of traditional Native American-style. This approach would remove the need to classify the bulk of imported Native American-style jewelry. A third approach would require permanent marking of all imported jewelry without any reference to its relationship to Native American-style. This approach would require marking jewelry that never would be mistaken for traditional Native American-style jewelry.

We invite comments on each of the options. In this rulemaking, we have chosen to propose the third option, which avoids the difficulty of defining the Native American-style (as would the second option); however, we will base our final decision on the weight of the evidence of the public record of this rulemaking and applicable law. Since the proposal, as expanded, will have more general application, and because of the new legislation, we have also determined that new requirements would be more appropriately promulgated as an amendment to Part 134, Customs Regulations, rather than as an interpretative rule, as originally proposed.

Further Comments

Before adopting the proposal as expanded, consideration will be given to any further written comments (preferably in triplicate) that are submitted timely to the Customs Service. We are interested in comments that would help us weigh the costs and benefits of each of the broad implementation strategies described in the Analysis of Comments. We are particularly interested in receiving comments concerning ways in which the proportion of jewelry items subject to marking as proposed herein could be reduced while accomplishing the statutory objective of ensuring the permanent marking of all imported Native American style jewelry. Commenters may be able to suggest types of jewelry that would be easy for Customs and consumers to distinguish from Native American-style jewelry, for example, traditional styles of Asian jewelry. What practical ways exists for Customs to distinguish, on an operational basis, jewelry that might continue to be exempt from the proposed requirements? Are there any circumstances under which foreign patents, trademarks, or certifications would be useful in distinguishing jewelry that does not look like Native American-style jewelry and therefore might properly be exempt from the marking requirements proposed? Are there, in the context of other Federal Government programs, consumer enforcement or education options that would control potential abuses associated with the importation of jewelry not marked in the manner proposed?

We are also interested in information concerning the additional costs that may be imposed on consumers, importers, and others affected directly by the proposed marking requirements. What would be the effect, in terms of costs to consumers, of the proposed marking requirements or of limiting the proposed marking requirements to all imported jewelry made of silver? How would producers and importers be affected? Would there be any measurable cost effect on jewelry wholesalers and retailers?

Submitted comments will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4) and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, Room 2119, Customs Headquarters, 1301 Constitution Avenue NW., Washington, DC 20229.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the regulation amendment will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document was James C. Hill, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 134

Customs duties and inspection, Labeling, Packaging and containers.

Proposed Amendment

It is proposed to amend Part 134, Customs Regulations (19 CFR Part 134), as set forth below:

PART 134—COUNTRY OF ORIGIN MARKING

1. The authority citation for Part 134 would continue to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Hdnote. 11), 1304, 1624.

2. It is proposed to amend § 134.43 by adding a new paragraph (c) to read as follows:

§ 134.43 Methods of marking specific articles.

* * * * *

(c) *Jewelry.* Jewelry shall be indelibly marked with the country of origin by cutting, die-sinking, engraving, stamping, or some other equally permanent method. The marking, except as indicated further in this paragraph, must appear on the clasp or in some other conspicuous location, or alternately, on a metal or plastic tag indelibly marked with the country of origin permanently attached to the article. In those cases where due to the size or nature of the article the indelible marking is too small to read without a magnifying glass, the country of origin should also be indicated on a string tag or adhesive label securely affixed to the article. A string tag or adhesive label will be permitted as the only means of marking in the case of those few articles which are too small to be indelibly marked and do not permit the permanent attachment of a metal or plastic tag (e.g., a small earring).

Approved: February 5, 1989.

William von Raab,
Commissioner of Customs.

Salvatore R. Martoche,
Assistant Secretary of the Treasury.

[FR Doc. 89-3213 Filed 2-9-89; 8:45 am]
BILLING CODE 4820-02-M

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19 CFR Part 162

Liability of Common Carriers for Failure To Exercise the Highest Degree of Care and Diligence To Prevent Unmanifested Narcotics and Marijuana; Correction

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule; correction.

SUMMARY: On January 31, 1989, a document was published in the Federal Register [54 FR 4835] proposing amendments to the Customs Regulations relating to the liability of common carriers to penalties, seizure and forfeiture for unmanifested narcotics drugs or marijuana. In that document, the phone number of the contact person, Ms. Harriett Blank, was incorrectly stated. The correct number at which Ms. Blank can be reached is (202) 566-8317.

Kathryn C. Peterson,
Chief, Regulations and Disclosure Law Branch.

[FR Doc. 89-3214 Filed 2-9-89; 8:45 am]
BILLING CODE 4820-02-M

UNITED STATES INFORMATION AGENCY

22 CFR Part 503

Fees for Processing Freedom of Information Act Requests and Predisclosure Notification for Business Records

AGENCY: United States Information Agency.

ACTION: Proposed rule.

SUMMARY: This is a proposed rule regarding sections on fees and predisclosure notification, law enforcement records, and details on how the Agency will implement the Freedom of Information Act (FOIA) exemptions. We are soliciting comments on the fee and predisclosure notification sections only. This proposed rule is to conform to the amendments enacted by the Freedom of Information Reform Act of 1986 concerning law enforcement records and fees for processing requests and to Executive Order No. 12600 concerning predisclosure notification for business records. The Freedom of Information Reform Act of 1986 amended the FOIA by modifying the terms of Exemption 7 and by supplying new provisions relating to the charging and waiving of fees. Executive Order No. 12600 established procedures for notifying submitters of business records when the agency is considering release of those records in response to a FOIA request.

DATES: The Agency will accept comments on or before March 13, 1989.

ADDRESS: Written comments should be directed to the Freedom of Information Officer, United States Information Agency, Room M-10, 301 4th Street, SW., Washington, DC 20547, telephone (202) 485-7499.

FOR FURTHER INFORMATION CONTACT: Lola L. Secora, Freedom of Information Officer, (202) 485-7499.

SUPPLEMENTARY INFORMATION: The United States Information Agency published a proposed rule on the fee schedule and fee waiver regulations on July 10, 1987, and solicited comments. This proposed rule will supersede that rule in order to update the fee schedule and fee waiver requirements of the Freedom of Information Act, 5 U.S.C. 552(a)(4)(A)(i), et seq., to comply with the Freedom of Information Reform Act of 1986 (Pub. L. 99-570) and OMB Administrative Guidelines published in the **Federal Register**, on March 17, 1987, Volume 52, No. 59, pages 10012-10020 and in conjunction with the New Fee Waiver Policy Guidance issued by the U.S. Department of Justice, Office of Legal Policy issued on April 2, 1987. Executive Order No. 12600 concerning Predisclosure Notification Procedures for Confidential Commercial Information was published in the **Federal Register** Vol. 52, No. 122, pages 23781-23783 on June 25, 1987.

The Director has determined that this regulation is not a major rule within the meaning of E.O. 12291 because it will not have an effect on the economy of $100 million or more or otherwise meet the threshold criteria. Therefore, the preparation of a regulatory impact analysis is not required.

The Director certifies that this regulation will not have a significant economic impact on any substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96-354.

This regulation does not require use of a form, nor does it otherwise involve a collection of information subject to the Paperwork Reduction Act, 44 U.S.C. 3501-3520.

List of Subjects in 22 CFR Part 503

Freedom of information.

For the reasons set out in the preamble, 22 CFR Part 503 is amended as follows:

PART 503—[AMENDED]

1. The authority citation for Part 503 continues to read as follows:

Authority: 22 U.S.C. 2658; 31 U.S.C. 483a; 5 U.S.C. 301; 5 U.S.C. 552 as amended by Pub. L. 93-502, 88 Stat. 1561; E.O. 10477, as amended, 18 FR 4540, 3 CFR 1949-1953 Comp., page 958, at 22 U.S.C.A. 611a; E.O. 11652, 37 FR 5209, 3 CFR (1974), page 339.

2. Section 503.7 and 503.8 are revised to read as follows:

§ 503.7 Fees.

(a) *Fees to be charged—categories of requests.* The paragraphs below state, for each category of request, the type of fees that we will generally charge. However, for each of these categories, the fees may be limited, waived, or reduced for the reasons given in paragraph (e) of this section.

(1) *Commercial use request.* If your request is for a commercial use, USIA will charge you the costs of search, review and duplication.

(2) *Educational and scientific institutions and news media.* If you are an educational institution or a non-commercial scientific institution, operated primarily for scholarly or scientific research, or a representative of the news media, and your request is not for a commercial use, USIA will charge you only for the duplication of documents. Also, USIA will not charge you the copying costs for the first 100 pages of duplication.

(3) *Other requesters.* If your request is not the kind described by paragraph (a)(1) of this section or paragraph (a)(2) of this section, then USIA will charge you only for the search and the duplication. Also, we will not charge you for the first two hours of search time or for the copying costs of the first 100 pages of duplication.

(b) *Fees to be charged—general provisions.* (1) We may charge search fees even if the records we find are exempt from disclosure, or even if we do not find any records at all.

(2) We will not charge you any fee at all if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee. We have estimated that cost to be $5.00.

(3) If we determine that you are (acting alone or with others) breaking down a single request into a series of requests in order to avoid or reduce the fees charged, we may aggregate all these requests for purposes of calculating the fees charged.

(4) We will charge interest on unpaid bills beginning on the 31st day following the day the bill was sent. The accrual of interest will be stayed upon receipt of the fee, rather than upon its processing by USIA. Interest will be at the rate prescribed in section 3717 of Title 32 U.S.C.

(c) *Fee Schedule—USIA will charge the following fees.* (1) Manual searching for or reviewing of records:

(i) When performed by employees at grade GS-1 through GS-8 or FS-9 through FS-6—an hourly rate of $10.00 will be charged;

(ii) When performed by employees at grade GS-9 through GS-13 or FS-5 through FS-2—an hourly rate of $20.00 will be charged;

(iii) When performed by employees at grade GS-14 or above or FS-2 or above—an hourly rate of $36.00 will be charged.

(iv)When a search involves employees at more than one of these levels, we will charge the appropriate rate for each.

(2) Computer searching and printing. The actual cost of operating the computer plus charges for the time spent by the operator, at the rates given in paragraph (c)(1) of this section.

(3) Photocopying standard size pages—$0.15 per page.

(4) Photocopying odd-size documents (such as punchcards or blueprints) or reproducing other records (such as tapes)—the actual cost of operating the machine, plus the actual cost of the materials used, plus charges for the time spent by the operator, at the rates given in paragraph (c)(1) of this section.

(5) Certifying that records are true copies—this service is not required by the FOIA. If we agree to provide it, we will charge $10.00 per certification.

(6) Sending records by express mail, certified mail, or other special methods. This service is not required by the FOIA. If we agree to provide it, we will charge our actual cost.

(7) Performing any other special service that you request and to which we agree—actual cost of operating any machinery, plus actual cost of any materials used, plus charges for the time of our employees, at the rates given in paragraph (c)(1) of this section.

(d) *Procedures for assessing and collecting fees—*(1) *Agreement to pay.* We generally assume that when you request records you are willing to pay the fees we charge for services associated with your request. You may specify a limit on the amount you are willing to spend. We will notify you if it appears that the fees will exceed the limit and ask whether you nevertheless want us to proceed with the search.

(2) *Advance payment.* If you have failed to pay previous bills in a timely manner, or if our initial review of your request indicates that we will charge you fees exceeding $250.00, we will require you to pay your past due fees and/or the estimated fees, or a deposit, before we start searching for the records you want, or before we send them to you. In such cases, the administrative time limits as described in § 503.6(b), will begin only after we come to an agreement with you over payment of fees, or decide that fee waiver or reduction is appropriate.

(e) *Waiver or reduction of fees.* We will waive or reduce the fees we would otherwise charge if disclosure of the information meets both of the following tests ((e)(1) and (e)(2) of this section):

(1) It is in the public interest because it is likely to contribute significantly to public understanding of government operations or activities, regardless of any other public interest it may further. In making this determination, we may consider:

(i) Whether the requester is in a position to contribute to public understanding;

(ii) Whether the requester has such knowledge or expertise as may be necessary to understand the information; and,

(iii) Whether the requester's intended use of the information would be likely to disseminate the information among the public, and

(2) It is not primarily in the commercial interest of the requester. Commercial interests include interests relating to business, trade, and profit. Not only profit-making corporations have commercial interests; so do nonprofit corporations, individuals, unions, and other associations.

(3) You must make your request for a waiver or reduction at the same time you make your request for records. Only the FOI Officer may make the decision whether to waive or reduce the fees. If we do not completely grant your request for a waiver or reduction, the denial letter will designate the appeal official.

§ 503.8 Exemptions.

Section 552(b) of the Freedom of Information Act contains nine exemptions to the mandatory disclosure of records. These exemptions and their application by the Agency are described below. In some cases, more than one exemption may apply to the same document. This section does not itself authorize the giving of any pledge of confidentiality by any officer or employee of the Agency.

(a) *Exemption one—National defense and foreign policy.* We are not required to release records that are specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order. Executive Order No. 12356 (1982) provides for such classification. When the release of certain records may adversely affect U.S. relations with foreign countries, we usually consult with officials of those area offices and/or with officials of the Department of State. We may also have in our possession records classified by another agency. If we do, we may consult with that agency or may refer your request to that agency for their direct response to you, in which case we will notify you that we have made such a referral.

(b) *Exemption two—Internal personnel rules and practices.* We are not required to release records that are related solely to the internal personnel rules and practices of an agency. We may withhold routine internal agency procedures such as guard schedules and luncheon periods. We may also withhold internal records the release of

which would help some persons circumvent the law or agency regulations.

(c) *Exemption three—Records exempted by other statutes.* We are not required to release records if another statute specifically allows us to withhold them. Another statute may be used only if it absolutely prohibits disclosure or if it sets forth criteria identifying particular types of material to be withheld.

(d) *Exemption four—Trade secrets and confidential commercial or financial information.* We will withhold trade secrets and commercial or financial information that is obtained from a person and privileged or confidential.

(1) *Trade secrets.* A trade secret is a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort. A direct relationship is necessary between the trade secret and the productive process.

(2) *Commercial or financial information, obtained from a person, and is privileged or confidential.* (i) Information is "commercial or financial" if it relates to businesses, commerce, trade, employment, profits, or finances (including personal finances).

(ii) Information is obtained from someone outside the Federal Government or from someone within the Government who has a commercial or financial interest in the information. "Person" includes an individual, partnership, corporation, association, state or foreign government, or other organization. Information is not "obtained from a person" if it is generated by USIA or another Federal agency.

(iii) Information is "privileged" if it would ordinarily be protected from disclosure in civil discovery by a recognized evidentiary privilege, such as the attorney-client privilege, or the work product privilege. Information may be privileged for this purpose under a privilege belonging to a person outside the Government, unless the providing of the information to the Government rendered the information no longer protectible in civil discovery.

(iv) Information is "confidential" if it meets one of the following tests:

(A) Disclosure may impair the Government's ability to obtain necessary information in the future;

(B) Disclosure would substantially harm the competitive position of the person who submitted the information;

(C) Disclosure would impair other Government interests, such as program effectiveness and compliance; or

(D) Disclosure would impair other private interests, such as an interest in controlling availability of intrinsically valuable records, which are sold in the market by their owner.

(3) *Designation of certain confidential information.* A person who submits records to the Government may designate part or all of the information in such records as exempt from disclosure under Exemption four. The person may make this designation either at the time the records are submitted to the Government or within a reasonable time thereafter. The designation must be in writing. The legend prescribed by a request for proposal or request for quotations pursuant to any agency regulation establishing a substitute for the language is sufficient but not necessary for this purpose. Any such designation will expire ten years after the records were submitted to the Government.

(4) *Predisclosure notification.* The procedures in this paragraph apply to records that were submitted to the Government where we have substantial reason to believe that information in the records could reasonably be considered exempt under Exemption four. Certain exceptions to these procedures are stated in paragraph (d)(5) of this section.

(i) When we receive a request for such records and we determine that we may be required to disclose them, we will make reasonable efforts to notify the submitter about these facts. The notice will inform the submitter about the procedures and time limits for submission and consideration of objections to disclosure. If we must notify a large number of submitters, we may do this by posting or publishing a notice in a place where the submitters are reasonably likely to become aware of it.

(ii) The submitter has five (5) working days from receipt of the notice to object to disclosure of any part of the records and to state all bases for its objections.

(iii) We will give consideration to all bases that have been timely stated by the submitter. If we decide to disclose the records and the submitter still does not agree, we will send a written notice to the submitter stating briefly why we did not sustain its objections and will provide a copy of the records as we intend to release them. The notice will state that we will disclose the records five (5) working days after the submitter receives the notice unless we are ordered by a United States District Court not to release them.

(iv) When a requester files suit under the FOIA to obtain records covered by this paragraph, we will promptly notify the submitter.

(v) Whenever we send a notice to a submitter under paragraph (d)(4)(i) of this section, we will notify the requester that we are giving the submitter a notice and an opportunity to object.

(5) *Exceptions to predisclosure notification.* The notice requirements in paragraph (d)(4) of this section do not apply in the following situations:

(i) We decide not to disclose the records;

(ii) The information has previously been published or made generally available;

(iii) We have already notified the submitter of previous requests for the same records and have come to an understanding with that submitter about the records;

(iv) Disclosure is required by a statute other than the FOIA;

(v) Disclosure is required by a regulation, issued after notice and opportunity for public comment, that specifies narrow categories of records that are to be disclosed under the FOIA, but in this case a submitter may still designate records as described in paragraph (d)(3) of this section and in exceptional cases, at our discretion, may follow the notice procedures in paragraph (d)(4) of this section;

(vi) The designation appears to be obviously frivolous, but in this case we will still give the submitter the written notice required by paragraph (d)(4)(iii) of this section (although this notice need not explain our decision or include a copy of the records).

(e) *Exemption five—Internal memoranda.* This exemption covers internal Government communications and notes that fall within a generally recognized evidentiary privilege. Internal Government communications include an agency's communications with an outside consultant or other outside person, with a court, or with Congress, when those communications are for a purpose similar to the purpose of privileged intra-agency communications. Some of the most common applicable privileges are:

(1) *The deliberative process privilege.* This privilege protects predecisional deliberative communications. A communication is protected under this privilege if it was made before a final decision was reached on some question of policy and if it expressed recommendations or opinions on that question. The purpose of this privilege is to prevent injury to the quality of the agency decisionmaking process by encouraging open and frank internal policy discussions, by avoiding premature disclosure of policies not yet adopted, and by avoiding the public confusion that might result from disclosing reasons that were not in fact the ultimate grounds for an agency's decision. This privilege continues to protect predecisional documents even after a decision is made. We will release purely factual material in a deliberative document unless that material is otherwise exempt. However, purely factual material in a deliberative document is within this privilege if:

(i) It is inextricably intertwined with the deliberative portions so that it cannot reasonably be segregated, or

(ii) It would reveal the nature of the deliberative portions, or

(iii) Its disclosure would in some other way make possible an intrusion into the decisionmaking process.

(2) *Attorney-client privilege.* This privilege protects confidential communications between a lawyer and an employee or agent of the Government where an attorney-client relationship exists (e.g., where the lawyer is acting as attorney for the agency and the employee is communicating on behalf of the agency) and where the employee has communicated information to the attorney in confidence in order to obtain legal advice or assistance, and/or where the attorney has given advice to the client.

(3) *Attorney work product privilege.* This privilege protects documents prepared by or for an agency, or by or for its representative (usually USIA attorneys) in anticipation of litigation or for trial. It includes documents prepared for purposes of administrative adjudications as well as court litigation. It includes documents prepared by program offices as well as by attorneys. It includes factual material in such documents as well as material revealing opinions and tactics. The privilege continues to protect the documents even after the litigation is closed.

(f) *Exemption six—Clearly unwarranted invasion of personal privacy.* We may withhold personnel, medical, and similar files and personal information about individuals if disclosure would constitute a clearly unwarranted invasion of personal privacy.

(1) *Balancing test.* In deciding whether to release records that contain personal or private information about someone else to a requester, we weigh the foreseeable harm of invading that individual's privacy against the public benefit that would result from the release of the information. In our evaluation of requests for records, we attempt to guard against the release of information that might involve a violation of personal privacy by a requester being able to "piece together items" or "read between the lines" information that would normally be exempt from mandatory disclosure.

(2) *Information frequently withheld.* We frequently withhold such information as home addresses, ages, minority group status, social security numbers, individual's benefits, earning records, leave records, etc.

(g) *Exemption seven—Law enforcement.* We are not required to release information or records that the Government has compiled for law enforcement purposes. The records may apply to actual or potential violations of either criminal or civil laws or regulations. We can withhold these records only to the extent that releasing them would cause harm in at least one of the following situations:

(1) *Enforcement proceedings.* We may withhold information when release could reasonably be expected to interfere with prospective or ongoing law enforcement proceedings. Investigations of fraud and mismanagement, employee misconduct, and civil rights violations may fall into this category. In certain cases, we may refuse to confirm or deny the existence of records that relate to violations in order not to disclose that an investigation is in progress or may be conducted.

(2) *Fair trial or impartial adjudication.* We may withhold records when release would deprive a person of a fair trial or an impartial adjudication because of prejudicial publicity.

(3) *Personal privacy.* We are careful not to disclose information that could reasonably be expected to constitute an unwarranted invasion of personal privacy. When a name surfaces in an investigation, that person is likely to be vulnerable to innuendo, rumor, harassment, or retaliation.

(4) *Confidential sources and information.* We may withhold records whose release could reasonably be expected to disclose the identity of a confidential source of information. A confidential source may be an individual; a state, local, or foreign Government agency; or any private organization. The exemption applies whether the source provides information under an express promise of confidentiality or under circumstances from which such an assurance could be reasonably inferred. Also, where the record, or information in it, has been compiled by a criminal law enforcement authority conducting a criminal investigation, or by an agency conducting a lawful national security investigation, the exemption also protects all information supplied by a confidential source. Also protected from mandatory disclosure is any information which, if disclosed, could reasonably be expected to jeopardize the system of confidentiality that assures a flow of information from sources to investigatory agencies.

(5) *Techniques and procedures.* We may withhold records reflecting special techniques or procedures of investigation or prosecution not otherwise generally known to the public. In some cases, it is not possible to describe even in general terms those techniques without disclosing the very material to be withheld. We may also withhold records whose release would disclose guidelines for law enforcement investigations or prosecutions if this disclosure could reasonably be expected to create a risk that someone could circumvent requirements of law or of regulation.

(6) *Life and physical safety.* We may withhold records whose disclosure could reasonably be expected to endanger the life or physical safety of any individual. This protection extends to threats and harassment as well as to physical violence.

(h) *Exemptions eight and nine—records on financial institutions and records on wells.* (1) Exemption eight permits us to withhold records about regulation or supervision of financial institutions.

(2) Exemption nine permits the withholding of geological and geophysical information and data, including maps, concerning wells.

Date: January 26,1989.

Lorie J. Nierenberg,

Acting General Counsel.

[FR Doc. 89-3132 Filed 2-9-89; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 925

Missouri Permanent Regulatory Program; Public Comment Period and Opportunity for Public Hearing on Proposed Amendment

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing receipt of a proposed amendment to the Missouri permanent regulatory program (hereinafter, the "Missouri program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment pertains to prime farmland, hydrology, excess spoil disposal, coal processing waste disposal, fish and wildlife, regrading or stabilizing rills and gullies, revegetation, subsidence, prohibitions, areas unsuitable for mining, the alternative bonding system, and definitions. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards and to incorporate the additional flexibility afforded by the revised Federal regulations.

This notice sets forth the times and locations that the Missouri program and proposed amendments to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m., c.s.t. March 13, 1989. If requested, a public hearing on the proposed amendments will be held on March 7, 1989. Requests to present oral testimony at the hearing must be received by 4:00 p.m., c.s.t. on February 27, 1989.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. William J. Kovacic at the address listed below.

Copies of the Missouri program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSMRE's Kansas City Field Office.

Mr. William J. Kovacic, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Room 502, Kansas City, MO 64106, Telephone: (816) 374–6405

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5131, 1100 L Street NW., Washington, DC 20240, Telephone: (202) 343–5492

Missouri Department of Natural Resources, Land Reclamation Program, 205 Jefferson Street, P.O. Box 176, Jefferson City, MO 65102, Telephone: (314) 751–4041

FOR FURTHER INFORMATION CONTACT: Mr. William J. Kovacic, Director, Kansas City Field Office at the address or telephone number listed in "**ADDRESSES.**"

SUPPLEMENTARY INFORMATION:

I. Background on the Missouri Program

On November 21, 1980, the Secretary of the Interior conditionally approved the Missouri program. General background information on the Missouri program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Missouri program can be found in the November 21, 1980, **Federal Register** (45 FR 77017). Subsequent actions concerning Missouri's program and program amendments can be found at 30 CFR 925.12, 925.15, and 925.16.

II. Proposed Amendment

By letter dated January 12, 1989 (Administrative Record No. MO–410), Missouri submitted proposed revisions to its program pursuant to SMCRA. Missouri submitted the proposed revisions (1) in response to a June 11, 1986 and a January 30, 1986, letter that OSMRE sent in accordance with 30 CFR 732.17(c), (2) to satisfy a required program amendment at 30 CFR 925.16(l)(1), (3) to satisfy deficiencies noted in a July 18, 1988, letter from OSMRE, and (4) at its own initiative.

The regulations that Missouri proposes to amend are: 10 CSR 40–2.110(1)(B)3, Prime Farmland Applicability; 10 CSR 40–3.040 (1)(B), (3)(G), (4)(B)3, (6)(B), (6)(H), (6)(T), (7), (10)(A), (10)(E), (10)(G), (10)(I), (10)(J), (13)(A)1, and (13)(B)1.C, and 40–3.200 (1)(B), (3)(H), (4)(B)3, (6)(B), (6)(H), (6)(T), (7), (10)(A), (10)(E), (10)(G), (10)(I), (10)(J), (12)(A)1, and (12)(B)1.C, Surface and Underground Requirements for Protection of the Hydrologic Balance; 10 CSR 40–3.060 (1)(B), (1)(F), (1)(H), and (1)(K), and 40–3.220 (1)(B), (1)(F), (1)(H), and (1)(K), Surface and Underground Requirements for the Disposal of Excess Spoil; 10 CSR 40–3.080 (1)(C), (2)(A), (4)(A), (4)(D)3, (10)(B), and (11)(D), and 40–3.230 (1)(C), (2)(A), (4)(A), (4)(D)3, (10)(B), and (11)(D), Requirements for the Disposal of Coal Processing Waste; 10 CSR 40–3.100(2), Requirements for the Protection of Fish, Wildlife, and Related Environmental Values and Protection Against Slides and Other Related Damage; 10 CSR 403.110(6), Regrading or Stabilizing Rills and Gullies; 10 CSR 40–3.120 (6)(A), (6)(B)2, and (8)(D), and 40–3.270 (6)(A) and (6)(B)(2), Surface and Underground Revegetation Requirements; 10 CSR 40–3.280(1)(C), General Requirements for Subsidence Control; 10 CSR 40–5.010 (2)(C), (2)(E), and (3)(B)2, Prohibitions and Limitations on Mining in Certain Areas; 10 CSR 40–5.020 (4)(B)1, (4)(B)2, (4)(B)4, (4)(B)6, (4)(C)1, (4)(C)3, and (4)(C)5, State Designation of Areas Unsuitable for Mining; 10 CSR 40–8.060(4)(A)3, Prime Farmland Applicability; 10 CSR 40–7.011, Bond Requirements; 10 CSR 40–7.021, Duration and Release of Reclamation Liability; 10 CSR 40–7.031, Permit Suspension or Revocation, Bond Forfeiture, and Authorization to Expend Reclamation Fund Monies; 10 CSR 40–7.041, Form and Administration of the Coal Mine Land Reclamation Fund; and 10 CSR 40–8.010(1) (A)59 and (A)79, Definitions.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is now seeking comment on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Missouri program.

Written Comments

Written comments should be specific, pertain only to the issue proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Kansas City Field Office will not be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4:00 p.m., c.s.t. February 27, 1989. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements. in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment having been heard. Persons in the audience who have been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the OSMRE office listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "**ADDRESSES.**" A written summary of each meeting will be made a part of the administrative record.

List of Subjects in 30 CFR Part 925

Coal Mining, Intergovernmental relations, Surface mining, Underground mining.

Allen D. Klein,

Acting Assistant Director, Western Field Operations.

Date: February 1, 1989.

[FR Doc. 89–3106 Filed 2–9–89; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 222

Grazing Fees on National Forest System Lands in the Eastern States

AGENCY: Forest Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the procedures for determining annual grazing fees on National Forest System lands in the Eastern United States. The rules would not apply to grazing fees on National Forest System lands in Oklahoma or National Grasslands in Texas which are covered under other grazing fee systems. Under the proposed rule, fees for livestock grazing use and occupancy would be based on fair market value. Fair market value for noncompetitive permits would be determined by using comparable grazing lease rates for private lands or the price of hay as an alternative feed source, whichever is lower. Existing permittees under noncompetitive fee systems would have priority for noncompetitive issuance of new term permits. Competitive bidding would be used where already established and would be implemented for any permit issued for a new allotment or vacant allotment. Permittees under competitive bid fee systems would have the right of first refusal of a new term permit by matching the high bid. All grazing fees would be charged on the basis of a rate per head per month for each of the fee systems used. Grazing fee credits would be available for agency-required range improvements. The intended effect of the proposed rule is to establish both a uniform grazing fee system for National Forest lands in the Eastern United States, and a system that accurately reflects fair market value of the grazing use and occupancy. Public comment on adoption of the proposed rule is encouraged.

DATE: Comments must be received in writing by April 11, 1989.

ADDRESSES: Send written comments to F. Dale Robertson, Chief (2200), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

The public may inspect comments received on this proposed rule in the Office of the Director, Range Management Staff, Room 601, Rosslyn Plaza East, 1621 North Kent Street, Arlington, Virginia, between the hours of 8:00 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Edward R. Frandsen, Range Management Staff, Washington, DC (703) 235–8141; Levester Pendergrass, Fisheries, Wildlife, and Range Staff (Southern Region), (404) 347–3908; or Paul Edgerton, Recreation, Range, Wildlife, and Landscape Management Staff (Eastern Region), (414) 291–1371.

SUPPLEMENTARY INFORMATION:

Background

Legal Authorities. Livestock grazing on National Forest System (NFS) lands is authorized under term, temporary grazing, or livestock use permits. Fees are charged for the grazing use and occupancy. Different laws and policies guide grazing fees on NFS lands depending upon their geographic location and on whether the lands are National Forest, National Grasslands or Land Utilization Project (LUP) lands. Statutory direction for all Federal agency fees is provided in the Independent Offices Appropriation Act of 1952 (31 U.S.C. 483a). This Act states that fees shall be: self-sustaining to the fullest extent possible; uniform among all agencies; subject to Federal Executive policy; and fair and equitable to the public and the user of the public resource. Federal Executive policy on user charges is set forth in Office of Management and Budget (OMB) Circular A–25, User Charges, which states that:

> * * * user charges will be based on market prices when the Government is supplying services, property, or resources in its capacity as property owner, [and] * * * in the absence of competitive demand, market price will be determined by either competitive bidding, or prevailing prices in competitive markets for property, resources, or services that are similar to those provided by the Government, (e.g. grazing lands in the general vicinity of private ones [lands]), with adjustments as appropriate that reflect demand, level of service, and quality of the good or service.

For the Eastern and Southern Regions of the National Forest System, grazing fees are guided by the foregoing authorities, together with the Organic Act of 1897 (16 U.S.C. 551), the Bankhead-Jones Farm Tenant Act of 1937 (7 U.S.C. 1011(d)), and the Granger-Thye Act of 1950 (16 U.S.C. 572). These authorities provide for the Secretary of Agriculture to establish rules and regulations to regulate the occupancy and use of NFS lands; charge user fees based on equity criteria, including principles and concepts of fair market value, and to develop and implement grazing fee systems which are self-sustaining to the extent possible. The existing rules governing grazing use and occupancy on NFS lands in the East and South are set forth in 36 CFR part 222, Subpart A. Rules governing grazing fees are at 36 CFR 222, Subpart C.

Current Permit System and Grazing Fee Systems in the East. Grazing on National Forest lands is authorized through term and temporary grazing or livestock use permits. In the Eastern and Southern regions, term grazing permits are issued for periods of 10 years or less. A permit holder has first priority for receipt of a new permit at the end of the term period, provided the holder has fully complied with the terms and conditions of the permit. Therefore, if grazing permittees comply with the terms and conditions of the expiring permit, they are reasonably assured tenure of use and occupancy of NFS lands in absence of competition for renewal.

Currently, the Eastern and Southern Regions use different grazing fee systems for permitted livestock grazing under their respective jurisdiction. The grazing fee system for the Eastern Region was established in 1979 through rule making (44 FR 61616, October 26, 1979), and for the Southern Region through an update of the rules at 36 CFR Part 222, Subpart C—Grazing Fees (44 FR 24843, April 27, 1979.) In adopting these fee systems, each Region also gave notice that the respective fee systems would be periodically reviewed and updated.

In the Eastern Region, two different fee methods are used. In Vermont, New York, Missouri, and West Virginia, the

grazing fee system uses a base grazing value derived from comparable private grazing land lease rates. This base value is annually adjusted by 3-year average hay prices or a hay price index. The hay price index is based on the 3-year average selling price of hay, computed by the National Agricultural Statistics Service, for the following subregions: Northeast, Lake States, and Cornbelt. In 1988, grazing fees on a per head month basis range from $2.20 to $1.80. Grazing fees on all other forest units in the Eastern Region are based on competitive bidding. The base grazing value, whether established by competitive bid or private lease rates, is annually adjusted by the hay price index for each appropriate subregion during the 10-year grazing permit period. While the Eastern Region fee system has worked effectively, the base values which are used in the fee formula are nearly 10-years old. Therefore, at a minimum, it is timely to reassess how close current fees are to market values and to update base values where necessary.

For the Southern Region, grazing fees are based on a 1979 survey of private grazing land lease rates (dollar per acre converted to dollar per Animal Month) for grazable woodlands less the cost difference of grazing National Forest lands as opposed to private lands. This derived base value is annually adjusted through an index of prices received for the sale of beef cattle in the Southern States. In 1988, grazing fees per head month are: $0.54 on National Forests in Florida and $0.77 on the other National Forests in the region.

In April 1988, competitive bidding for four grazing permits was tested on the Jefferson National Forest in Virginia. Bids ranged from $2.00 to $4.50 per head month. These results indicate that a demand exists for National Forest grazing, in an open and competitive market, and, at a minimum, it is appropriate to update base grazing values to current fair market value. In addition to this test, during the period of June–September 1987, grazing permittees, State and local government officials, and Congressional representatives in each of the Eastern States were informed by Forest Supervisors in both regions that the Forest Service was considering a change in current grazing fee methods. Personal contacts also have been made by Forest Service officers with permittees and other interested and affected parties. These contacts have produced helpful information on the alternative fee systems considered, and on whether the Forest Service should establish a uniform fee system for National Forest System lands in the Eastern United States.

Need for the Rule. Review of the current grazing fee systems in the Eastern and Southern Regions indicates a wide disparity in fees paid for grazing on National Forest System lands in the East. The market approach utilized in the Eastern Region clearly results in higher fees paid to the Treasury for permitted livestock grazing use and occupancy. Tests in the Southern Region indicate that competition for grazing does exist and that fees rise as a result of competition. Current fee systems within the regions involved need to more fully comply with the standards and guidelines of OMB Circular A–25 and the Independent Offices Appropriation Act of 1952 which state that user fees should: (1) Be self sustaining to the extent possible; (2) be based on principles of fair market value; and (3) provide a fair and equitable return to the public. Adoption of a fee system based on open and free market concepts is needed to comply with these criteria. Moreover, there are no strong economic indicators that argue for retaining distinctly different fee systems. The Forest Service has concluded that it should adopt a uniform, market driven, grazing fee system for these two Regions. In addition to identifying the need for a uniform fee system, Forest Service review of fee systems in the Eastern and Southern Regions indicates there is a significant potential on Eastern National Forests to further vegetation management objectives through livestock grazing outlined in Forest Land Management Plans. Financing range improvements through grazing fee systems and permittee involvement is an established mechanism on National Grasslands and Land Utilization Project lands. This process is proposed for use on National Forest System lands in the East in the agency's recently published proposed revision of 36 CFR Part 222, Subpart A (53 FR 158; August 16, 1988; 30956). This proposed grazing fee rule allows for the use of grazing fee credits for such improvements carried out by a grazing permittee in accordance with approved vegetation management objectives established by the Forest Service.

Alternative Fee Systems Considered. In developing this proposed rule, six alternative grazing fee systems have been evaluated as follows: (1) Retain current fee method(s); (2) use comparable private grazing land lease rates; (3) charge fees based on the average costs of administering grazing permit; (4) institute competitive bidding for grazing permit with annual adjustment of the initial year's grazing price through indexing; (5) base fees on the cost of alternative livestock feed; and (6) calculate fees using the residual value of livestock forage based on net livestock income attributable to National Forest grazing. Of the alternatives considered, comparable grazing land lease rates for private range lands that are the same or similar to National Forest lands or competitive bidding best meet Federal Executive policy for user fees that are self sustaining, meet the criteria of fair market value, and are fair and equitable to all interested and affected parties. Further, these market based fee methods would assure the greatest degree of uniformity within the two regions, and would be cost effective to administer. Finally, adoption of market-based grazing fees, including comparable land lease rates and competitive bidding in both regions, would maintain continuity with the use of these fee methods since 1980 in the Eastern Region. Adoption of these proposed fee methodologies would be easily implemented through the experience that has already been gained. The proposed use of these methodologies would provide needed revenues for range and forage improvements on NFS lands in the Eastern United States which would generate benefits for soil, water, wildlife habitat and vegetation as well as livestock grazing.

Explanation of Proposed Rule

The Agency believes that it is not in the public interest to immediately convert all grazing permits to competitive bidding—that to do so could be disruptive to ongoing operations of current permittees. Therefore, under the rule, competitive bidding would continue to be used on National Forest units in the Eastern Region where it has been in use since the 1980 grazing fee year. Also, it would be implemented in both the Eastern and Southern Regions as new grazing allotments are created and as allotments are vacated or terminated by current permittees. Competitive bidding, in this limited form, will provide producers who do not now have access to National Forest grazing an opportunity to compete for grazing use on NPS lands. Noncompetitive grazing fee procedures would be set forth at 36 CFR 222.53. Procedures applicable to competitive bidding for grazing permits would be set forth at 36 CFR 222.54.

Noncompetitive Fee Approach (§ 222.53)

Under the proposed rule, grazing fees would be established under noncompetitive fair market value procedures in the following situations: (1) For existing permittees where fees are not now set by competitive bidding on National Forest System lands in the States of Vermont, New York, Missouri and West Virginia, and in the Southern Region; (2) where there is no public access to grazable National Forest System (NFS) lands; (3) where persons are eligible for a free grazing permit (36 CFR 222.3(c)(2)); (4) in Missouri and New York where there are existing grazing associations; (5) on any allotments previously advertised for competitive bidding but not bid on as specified at 36 CFR 222.54; and (6) for any livestock on-and-off permits as defined in 36 CFR 222, Subpart A.

Two grazing associations exist in the East: The Cedar Creek (Missouri) and the Hector (New York). For the Cedar Creek Association, provision for noncompetitive fees is directly provided for through Title III of the Bankhead-Jones Farm Tenant Act and the Comptroller General's decision of 1950 (Com. Gen. Dec. B–77667, November 6, 1950). Where conservation practices are required on the land covered by the grazing permit and are in connection with the uses authorized by the permit, Title III of the Bankhead-Jones Farm Tenant Act provides that the grazing fee established is not required to be competitive and shall represent the net value of the grazing privilege granted.

Noncompetitive grazing fees would also be used for the Hector Association (New York). In 1983, Congress established the Finger Lakes National Forest in north central New York. Prior to 1983, this unit was administered as the Hector Land Utilization Project area under Title III of the Bankhead-Jones Farm Tenant Act of 1937. Notwithstanding the change in land status from Land Utilization Project to National Forest, livestock grazing has continued to be a significant use of these lands. Accordingly, it is proposed that the annual grazing fee continue to take into consideration agency required conservation practices to promote grassland agriculture together with progressive principles of land conservation and multiple use. Fair market value grazing fees would be charged for the grazing use while maintaining the personal stewardship presently displayed by the current grazing permittees. Under the proposed rule, grazing fee credits for agency required range improvements would be accommodated through adjustments to the base grazing value.

Noncompetitive fee procedures would also be applied to term grazing permits with provisions for grazing on-and-off Forest Service administered lands when a logical grazing area contains both lands under agency control and lands controlled by the applicant. Generally, the nonfederal land is dominant in these situations, and grazing fees are charged for only use of the National Forest System lands. Notwithstanding these conditions, these lands would still be grazed under a permit system, using a fee method based on principles of fair market value.

Competitive Bidding (§ 222.54)

Under § 222.54 of the proposed rule, competitive bid grazing fees would continue to be used in the Eastern Region where they were initially implemented in the 1980 grazing year; for any new allotments created on National Forests in the Eastern and Southern Regions; and for any vacant allotment. Under the competitive bid fee approach, the base grazing value would be established in the initial year of the permit for grazing use and occupancy and would be derived from either: (1) The initial competitive bid, or (2) a minimum bid price derived from comparable private lease rates or equivalent costs of alternative feed such as hay prices, whichever is lower (§ 222.54(b)). In the absence of bidding competition, the minimum bid price would be used as the base value.

Grazing permittees under competitive bid fee systems would have priority for retaining an existing grazing permit and have the first right of refusal of a new term permit by matching the high bid (§ 222.54(f)(1)). Should there be more than one existing permittee in the allotment under bid, each would be offered the option of meeting the high bid. If only one current permittee opts to meet the high bid, the remaining allowable grazing use would be awarded to the initial high bidder. Although current permittees would have priority for retaining an existing permit, use of competitive bidding will provide livestock producers who do not now have access to National Forest grazing an opportunity to compete for grazing use, providing that applicants meet the provisions and requirements for grazing permits, as specified in 36 CFR 222, Subpart A—Grazing and Livestock Use on the National Forest System.

Similar to the proposed methodology for noncompetitive, fair market value grazing fees, grazing permittees falling under competitive bid grazing fees may be required to implement, develop or construct specified structural or nonstructural range improvements, where necessary, for utilization or enhancement of the range resource for satisfactory maintenance of the ecosystem. Required improvements and the schedule for completing them would be part of the grazing permit and approved allotment management plan. Credits against the annual grazing fee would be used.

Grazing Fee Formula

Under the Proposal, the annual grazing fee for both noncompetitive and competitive bid fee methods would be derived using the following formula. The proposed fee formula is:

Annual Grazing Fee=Base Grazing Value×Hay Price Index less Fee Credits.

Market value of grazing use and occupancy on NFS lands in the East would be determined for use as the base grazing value for noncompetitive grazing permits or the minimum bid price for competitive bid grazing permits for the following subregions: *Corn Belt Subregion* (Illinois, Indiana, Missouri, and Ohio); *Lake States Subregion* (Michigan, Minnesota, and Wisconsin); *Northeastern Subregion*, (Maine, New Hampshire, New York, Pennsylvania, and Vermont); *Appalachia Subregion* (Kentucky, North Carolina, Tennessee, Virginia, and West Virginia), and *Southeast/Delta Subregion* (Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, South Carolina, and Texas).

Market value, by subregion, would be revised or updated periodically, as necessary, to respond to significant changes in the agricultural economy and livestock industry in the East. Where sufficient market data exist, the base grazing value or minimum bid price for grazing allotments could be established using local, current market rates for private grazing lands rather than using subregional market values.

Annual Fee Adjustment

To maintain currency with the grazing lease market, the base grazing value would be annually adjusted through use of a hay price index. Based on USDA published "Other Hay Prices," the hay price index would be a forward-moving index of three-year average hay prices that would reflect the cost of alternative livestock feed by states and subregions of the Eastern United States. Use of three-year average hay prices would normalize year-to-year price fluctuations.

Specifically, the hay price index would equal the weighted average selling price of "other baled hay."

arrived at by dividing the current three-year average of "other baled hay" prices by the previous three-year average price. Hay prices would then be adjusted by average harvesting costs per ton including costs for cutting, raking, and baling and the value of the normal wastage of a grazed standing crop as compared to the feeding of a harvested and baled hay crop. Hay prices are converted to an equivalent forage value by multiplying the adjusted hay price by a factor of .39 (26 pounds of forage per day multiplied by 30 days divided by 2000 pounds per ton.) Differential operating costs of grazing and occupying National Forest System lands as opposed to leased private pasture or range, by subregion, are subtracted from the converted price to produce a residual, hay-equivalent forage value. This is the value that would be applied to the base grazing value to derive annual grazing fees for each subregion under the proposed rule.

Fee Credits

Except where permittee investment is included in the terms of the permit, the Forest Service is currently responsible for needed capital improvements on its ranges in the East. Such improvements include, but are not limited to, fences, water developments, seeding, fertilizing, or other range improvements which would enhance management of the vegetation for resource protection. However, in its proposed revision of 36 CFR Part 222, Subpart A (published August 16, 1988, 53 FR, 30954), the Forest Service has proposed expanding to the East the authority to require a grazing permittee to implement, develop, or construct specified structural or nonstructural range improvements, where necessary, for utilization of the range resource for satisfactory maintenance of the ecosystem. Required improvements and the schedule for completing them would be part of the grazing permit and approved allotment management plan. In determining the grazing fee, to be charged, the authorized officer could, where appropriate, enter into a cooperative agreement to credit the permittee for expenditures for specified range improvements if included as part of the grazing permit.

Except for authority to finance conservation practices through the Bankhead-Jones Farm Tenant Act for the Cedar Creek Grazing Association in Missouri, range improvements are not currently financed through grazing fee receipts for Eastern National Forests. However, range improvements may be beneficial to the grazing of livestock as well as other multiple resources. For this reason, under the proposed rule, costs of range improvements could be accommodated through credits against the annual grazing fee (§ 222.53(b)(4)); (§ 222.54(g)(2)). Accordingly, the proposed rule provides that where Forest Service required range improvements are of tangible public benefit, the annual grazing fee could be adjusted for the cost of the proposed improvements. Agency required improvements would be determined and clearly defined through allotment management plans, and/or Forest land and resource management plans, and the required improvement developed or constructed through cooperative agreement. Any agreement entered into would be incorporated as a modification of the grazing permit. The net or residual amount of the calculated grazing fee would be billed to the permittee for payment to the United States Treasury.

Implementation Schedule

Implementation of the change in the grazing fee system for National Forest's in the East would begin with the 1990 grazing fee year. To mitigate undue economic impacts on grazing permittees, fees would be phased in over a three year period. In 1990, fees would not increase more than thirty-three percent above 1989 rates for existing, noncompetitive permits.

Estimated Fair Market Value and Grazing Fees. As of the date of this proposal using secondary source data, the 1989 fair market value per head month for each sub-region is estimated to be within the values given below:

1989 ACTUAL GRAZING FEES AND ESTIMATED FAIR MARKET VALUE NATIONAL FOREST GRAZING—EASTERN UNITED STATES

Eastern states sub-regions	Rate per head month ($/Hd. Mo.)		
	1989 Actual fees	Estimated value using private grazing lease rates [2] [3]	Estimated value using hay prices [4]
Cornbelt	2.62	4.52	8.12
Lake States	3.38	4.28	7.05
Northeast	2.39	4.64	9.95
Appalachia	[5] 0.87–4.58	5.80	11.69
Southeast/Delta	0.62–0.87	4.05	7.59

[1] 1989 calculated grazing fees using current fee systems, Southern and Eastern Regions, USDA Forest Service.
[2] USDA Economics Research Service. "Average Monthly Rate per Head For Pasturing Cattle on Privately Owned Land In Selected States, March 1, 1979–1981," table 36, pg 41, August 1981; Farm Real Estate Market Developments, Outlook & Situation; indexed to 1989 values.
[3] Based on surveyed private grazing land lease rates, less difference in cost of grazing private range vs. National Forest lands.
[4] USDA-National Agricultural Statistics Service, "Agricultural Prices", Other Hay Prices (Rate per Ton) converted to Rate per Head Month.
[5] Value range includes calculated fees; Southern and Eastern Regions, and highest competitive bid, Jefferson National Forest, May 1988.

Summary

In summary, the Forest Service proposes to amend its rules governing grazing fees at 36 CFR 222.53 to establish a uniform, fair market value grazing fee system for National Forest System (NFS) lands in the Eastern United States. Except for limited use of competitive bidding on a few forest units, noncompetitive fees for grazing permits based on lease rates for private grazing lands that are the same or similar to National Forest grazing would be used. Base grazing values, adjusted over the life of the permit by annual changes in the price of other feed, will: (1) Result in an annual grazing fee based upon changes in the agriculture-beef cattle market, and (2) recognize Agency-required investments in range improvements by grazing permittees through fee system adjustments in deriving a net grazing fee rate. Fees will be charged on a per head month basis. Existing permit holders will have priority for issuance of new term permits. Use of competitive bidding, while limited, would provide producers who do not now have access to public land grazing an opportunity to compete for grazing use on NFS lands as well as use grazing fee credits for Agency-required range improvements. Interested persons are invited to submit comments and recommendations regarding these proposed regulations. All comments received will be considered in promulgation of the final rule.

Regulatory Impact

This proposed rule has been reviewed under USDA procedures and Executive Order 12291 and has been determined not to be a major rule. Thus, little or no effect on the National economy will result from this regulation. The Department of Agriculture has further determined that this proposed rulemaking will not have a negative impact on a substantial number of small entities under the Regulatory Flexibility Act, (5 U.S.C. 601 et seq). The provisions of this proposed rulemaking are applicable to all persons or entities who seek or possess a grazing permit on National Forest or Land Utilization Project (LUP) lands in the Eastern States, without regard to the size of the operation. The procedures that would apply would not be burdensome to small livestock operators nor beyond their capability to comply. Accordingly, there is no need to establish different procedures for small livestock producers or livestock entities.

It has been determined that establishing a proposed formula to calculate a Forest Service grazing fee is not a major Federal action that would significantly affect the quality of the human environment. Based on both experience and environmental analysis, this proposed rule will have no significant impact on the human environment, individually or cumulatively. Therefore, it is categorically excluded from documentation in an environmental assessment or an environmental impact statement (40 CFR 1508.4). This determination is based on the following factors:

1. Physical and biological impacts of establishing a grazing fee formula are minor because:

a. The grazing fee or pricing of permitted livestock grazing does not determine the level or quantity of permitted livestock grazing use. Rather, the Forest Service determines and establishes permitted use and livestock stocking levels through range analysis and planning processes, which involve National Environmental Policy Act (NEPA) analysis;

b. The Forest Service controls the effects of permitted grazing use through its grazing permits;

c. Actual grazing use is normally less than permitted use and is correlated with broader economic conditions rather than with grazing fee levels;

d. Grazing fee levels have no known, measurable, or predictable effect on the physical and biological environment.

2. Social and economic effects would occur proportional to any possible increase in the grazing fee. However, "economic or social effects by themselves are not intended to require preparation of an environmental impact statement." (40 CFR 1508.14).

Information Collection Requirements

This rulemaking would not establish any additional information collection requirements.

List of Subjects in 36 CFR Part 222

Grazing lands, Livestock, National forests, Range management, Wildlife.

Therefore, for the reasons set forth above, it is proposed to amend Title 36 of the Code of Federal Regulations. Part 222, Subpart C—Grazing Fees, as follows:

PART 222—[AMENDED]

1. Revise the authority citation for Part 222—RANGE MANAGEMENT to read as follows:

Authority: 7 U.S.C. 1010; 16 U.S.C. 551; 16 U.S.C. 572; 31 U.S.C. 483A; 43 U.S.C. 1901; E.O. 12548, 51 FR Comp., p. 188.

2. Revise § 222.53 and add new § 222.54 to read as follows:

§ 222.53 Grazing fees in the east—Noncompetitive procedures.

(a) *General Procedures*—(1) *Scope.* Except as provided in § 222.54 of this subpart, the fee charged for commercial livestock grazing use and occupancy on National Forest System (NFS) lands in the States of New York, Missouri, Vermont, West Virginia, and in the Southern Region shall be determined through noncompetitive, fair market value procedures. These rules do not apply to grazing fees on National Forest System lands in Oklahoma or National Grasslands in Texas. Grazing permits under the noncompetitive fee method in the East are subject to the rules governing grazing permit administration in Subpart A of this part.

(2) *Applicability.* The rules of this section apply to the establishment of grazing fees for existing permittees in the Eastern and Southern Regions on National Forest System lands, including grazing Associations in New York and Missouri as of [insert effective date of the rule]; to any livestock on-and-off permits defined in Subpart A of this part; and to any allotments advertised for competitive bidding which were not bid on (§ 222.54(h)). Noncompetitive permits vacated or terminated by an existing permittee and any new allotments created after the effective date of this rule shall be offered on a competitive bid basis as specified in § 222.54 of this subpart. As provided in Subpart A of this part, holders of term permits have first priority for receipt of a new permit.

(b) *Fee System.* The grazing fee charged under this section shall be based on lease rates for private grazing lands that are the same or similar to grazing lands offered or administered by the Forest Service in the East or on the price of hay in the subregional market as an alternative feed source, whichever is lower. Comparable private grazing land lease rates shall be adjusted for the difference between the total costs of operating on private leased grazing lands and the total costs (other than grazing fee costs) of operating on National Forest System lands.

(1) *Establishing Base Grazing Value.* (i) The Chief of the Forest Service, or an authorized officer to whom authority has been delegated, shall determine an estimated base market value of grazing use and occupancy on National Forest System lands in the Eastern States for the following designated subregions:

(A) Corn Belt (Illinois, Indiana, Missouri, and Ohio);

(B) Lake States (Michigan, Minnesota, and Wisconsin);

(C) Northeast (Maine, New Hampshire, New York, Pennsylvania, and Vermont);

(D) Appalachia (Kentucky, North Carolina, Tennessee, Virginia, and West Virginia);

(E) Southeast/Delta (Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, South Carolina, and Texas).

(ii) The Chief, or an authorized officer, shall revise or update estimated market values of grazing use and occupancy, as necessary to respond to significant changes in the agricultural economy in the East, and to ensure that fees represent fair market value.

(2) *Local Market Values.* Where sufficient market data exist, the authorized officer may establish the base grazing value for grazing allotments using current local-lease rates for private grazing lands.

(3) *Annual Adjustment of Base Grazing Value.* To maintain currency with the private grazing lease market, the respective base grazing value(s) established for grazing permits under this section shall be annually adjusted through a hay price index, by respective subregion. The hay price index means the weighted average selling price of "other baled hay," computed by the National Agricultural Statistics Service of the U.S. Department of Agriculture, by designated state and subregion. This index shall be based on 3-year average hay prices, and annually reflect the percent change in the cost of alternative livestock feed.

(4) *Computation of Annual Grazing Fee.* (i) *Annual Fee Basis.* The annual grazing fee shall equal the base grazing value, adjusted by the current period's hay price index, less the value of any agency required range improvements.

(ii) *Grazing Fee Credits for Range Improvements.* Any requirements for permittee construction or development of range improvements shall be identified through a cooperative agreement and incorporated into the grazing permit, with credits for such improvements to be allowed toward the annual grazing fee. Maintenance of range improvements specified in allotment management planning documents or the grazing permit do not qualify for grazing fee credits.

(5) *Implementation.* The grazing fee formula provided by this section shall be used to calculate fees for the 1990 grazing fee year. Where implementation would raise fees more than 33 percent above the 1989 grazing fee rates for a current permittee, the increase shall be phased in over a 3-year period.

§ 222.54 Grazing fees in the east—Competitive bidding.

(a) *General Procedures*—(1) *Applicability.* The rules of this section apply to grazing fees for any allotment established or vacated on National Forest System lands in the Eastern or Southern Regions, after [insert effective date of this rule], as well as to grazing fees for existing allotments for such lands that have already been established under competitive procedures as of [insert effective date of this rule.] Permits offered for competitive bidding in the East are subject to the rules governing grazing permit administration in Subpart A of this part. The rules of this section do not apply to negotiated livestock use permits; permits with on-and-off grazing provisions as authorized in Subpart A of this part. Holders of term permits have first priority for receipt of a new term grazing permit in accordance with Subpart A of this part. These rules also do not apply to grazing fees on National Forest System lands in Oklahoma or National Grasslands in Texas.

(2) *Allowable Bidders and Applicants.* Applications and bids for grazing permits shall be accepted from individuals, partnerships, grazing associations formed after [Insert effective date of this rule.], joint ventures, corporations, and organizations.

(b) *Establishment of Minimum Bid Price.* Authorized officers shall establish a minimum bid price for each available allotment using either subregional grazing market values or local grazing market values as described in § 222.53 of this subpart.

(c) *Prospectus.* (1) At such time as allotments are vacated, as new allotments are established, or as existing competitively bid permits expire, the authorized officer shall prepare and advertise a prospectus for the allotment.

(2) The prospectus shall include the terms and conditions of occupancy and use under the grazing permit to be issued, as well as document existing improvements and their condition. The prospectus shall also disclose the following:

(i) Estimated market value of the forage per head month of grazing use;

(ii) The minimum bid price the agency will accept;

(iii) Any required range improvements; and

(iv) The minimum qualifications that applicants must meet to be eligible for a permit.

(3) Copies of the applicable grazing permit, allotment management planning documents and allotment maintenance requirements, and the latest annual permittee instructions shall be made available to all prospective bidders upon request.

(d) *Submission of bid.* Each applicant shall submit an application for the grazing permit, along with a sealed bid for the grazing fee, and a bid deposit of 10 percent of the total amount of the bid.

(e) *Qualifications and Deposit Refunds.* Upon opening applicants bids, the authorized officer shall determine whether each bidder meets the qualifications to hold a permit as set forth in Subpart A of this part and shall refund the deposit to any applicant who is not qualified or who does not offer the high bid.

(f) *Permit Issuance.* The authorized officer shall issue the grazing permit to the qualified high bidder, except as provided in paragraphs (f)(1) and (f)(2) of this section. The winning qualified bidder receives the privilege of obtaining or renewing a grazing permit and is billed for the occupancy offered and forage sold.

(1) *Priority for Reissuance.* On allotments where a current permit is expiring and competition has been held on a new grazing permit, the current grazing permittee shall have priority for retaining the permit. Accordingly, an applicant who holds the permit on the allotment under bid, who has a satisfactory record of performance under that permit, and who is not the high bidder for the future grazing privileges in the specified allotment shall be offered the opportunity to match the high bid and thereby retain the permit. Should there be more than one existing permittee in the allotment under bid, each shall be offered the option of meeting the high bid; if only one current permittee opts to meet the high bid, the remaining allowable grazing use shall be awarded to the initial high bidder.

(2) *Identical Bids.* In cases of identical bids, the selection of the successful applicant shall be made through a drawing.

(g) *Computation of Successful Bidder's Annual Fee*—(1) *Annual Fee Basis.* The highest bid received shall establish the base grazing value in the initial year of the grazing permit for each allotment offered. The annual grazing fee shall equal the base grazing value, adjusted by the current period's hay price index for the relevant subregion as described in § 222.53 (b)(1) and (b)(3), less the value of any agency required range improvements. This hay price index shall be based on 3-year average hay prices and annually reflect the percent change in the cost of alternative livestock feed.

(2) *Grazing Fee Credits for Range Improvements.* Any requirements for permittee construction or development of range improvements shall be identified through a cooperative agreement and incorporated into the grazing permit, with credits for such improvements to be allowed toward the annual grazing fee. Maintenance of range improvements specified in allotment management planning documents or the grazing permit does not qualify for grazing fee credits.

(h) *No Bids Received.* If qualified sealed bids are not received, the authorized officer reserves the right to conduct an oral auction using the minimum bid price established under paragraph (b) of this section or to establish grazing fees through noncompetitive grazing fee procedures specified in § 222.53 of this subpart.

Date: January 9, 1989.

George M. Leonard,

Associate Chief.

[FR Doc. 89-3167 Filed 2-9-89; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3517-5]

Approval and Promulgation of Implementation Plans—Massachusetts; Non-CTG RACT Determination for Spalding Sports Worldwide Corp. in Chicopee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a proposed State Implementation Plan revision submitted by the Commonwealth of Massachusetts. The revision establishes and requires the use of reasonably available control technology (RACT) to reduce volatile organic compound (VOC) emissions from certain processes at Spalding Corporation in Chicopee. The intended effect of this action is to propose approval of a source-specific RACT determination made by the Commonwealth of Massachusetts in accordance with commitments of its approved 1982 Ozone Attainment Plan. This action is being taken under section 110 of the Clean Air Act.

DATES: Comments must be received by March 13, 1989. Public comments on this document are requested and will be considered before taking final action on these SIP revisions.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air Management Division, Room 2313, JFK Federal Bldg., Boston, MA 02203. Copies of the submittal and EPA's evaluation are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2313, JFK Federal Bldg., Boston, MA 02203 and the Department of Environmental Quality Engineering, Division of Air Quality Control, 8th Floor, One Winter Street, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Cynthia L. Greene (617) 565-3244; FTS 835-3244.

SUPPLEMENTARY INFORMATION: On February 4, 1988 the Massachusetts Department of Environmental Quality Engineering (DEQE) submitted a proposed revision to its State Implementation Plan (SIP) for Spalding Sports Worldwide Corporation (Spalding) in Chicopee. This revision includes reasonably available control technology (RACT) determinations for four processes at Spalding Corporation. The uncontrolled potential emissions of these four processes are greater than 100 tons per year (TPY) and are not covered by an EPA published Control Technique Guideline (CTG) document.

Massachusetts submitted a regulation, 310 CMR 7.18(17), requiring RACT on all such non-CTG sources as part of its approved 1982 Ozone Attainment Plan (48 FR 51480). In a November 17, 1982 letter to EPA, the DEQE committed to submit each of the 100 TPY individual RACT determinations to EPA for incorporation into the Massachusetts SIP as a source-specific SIP revision.

This revision includes a Plan Approval and a proposed Amendment to that Plan Approval proposed by the DEQE to impose RACT on four processes at Spalding that are not covered by a CTG. This is in accordance with SIP Regulation 310 CMR 7.18(17). The DEQE has calculated that the VOC emissions at Spalding will be reduced from 541.2 TPY in 1982 to 126.3 TPY in 1986 (a 76.7% reduction) as a result of imposing RACT.

The RACT control plan, as specified in the October 7, 1985 Plan Approval and the proposed Amendment dated December 9, 1987, requires that Spalding meet the following emission rates by September 30, 1988:

(1) 0.0158 pounds VOC per dozen golf balls;

(2) 0.0104 pounds VOC per golf club; and

(3) 0.0014 pounds VOC per inflatable ball.

Additionally Spalding is required to emit, on an after control basis, less than 100 TPY. Formulation data for each coating used on these three manufacturing processes is to be kept on site and may be checked by Reference Method 24. The DEQE's proposed Plan Approval states that compliance with the emission limitations will be done on a monthly averaging time basis. The proposed Plan Approval also requires Spalding to install a tamper-proof counting system for the golf ball manufacturing process.

These emission limits are not acceptable to EPA as RACT as currently drafted. Because Spalding makes different types of golf balls, golf clubs and inflatable balls, a limit on total emissions from each of these processes constitutes a bubble. Morever, as DEQE has specified that each processes' emission rate is to be met on a monthly averaged basis, these emission rates constitute a bubble control strategy involving long-term (greater than 24 hours) averaging. DEQE's SIP revision request does not meet EPA's December 4, 1986 Emission Trading Policy (51 FR 43814). In particular it does not meet Appendix D of that policy, the January 20, 1984 memorandum entitled "Averaging Times for Compliance with VOC Emission Limits—SIP Revision Policy." For these reasons, EPA is requiring that the Plan Approval and proposed Amendment be amended to specify emission rates in pounds of VOC per gallon of coating (minus water and photochemically reactive solvents) for each coating/painting operation in the manufacturing of golf balls, golf clubs, and inflatable balls, before EPA will take final action on this determination.

Additionally the DEQE's RACT determination requires the following changes in Spalding's manufacturing processes to reduce the emissions of VOCs:

Golf Balls

—Elimination of a second coat of paint
—Reduction of overspray
—Increased solids use in the urethane topcoat
—Mechanical stripping of rejected golf balls
—Cessation of chemical stripping of rejected golf balls
—Changes in the spray booth design

Golf clubs

—Elimination of the finish spray operation

Inflated balls

—Elimination of the painting of basketballs

Miscellaneous

—Employment of a cleaning tool that uses less VOC

EPA has reviewed the proposed Plan Approval and supporting documents submitted by the DEQE regarding this RACT determination. EPA generally concurs with the DEQE's determination for reducing VOCs at Spalding Corporation. However, EPA believes that this RACT determination is not enforceable as written because of the emission limits, compliance date and recordkeeping and reporting requirements. The RACT reductions, therefore, may not be achieved.

The SIP revision must be amended, as indicated below, in order for EPA to take final action to approve it.

(1) The Plan Approval must be amended to require emission limits in pounds of VOC per gallon of coating (minus water and photochemically nonreactive solvents) for each coating/painting manufacturing process; compliance with these limits must be determined through Reference Method 24.

(2) The calculation methods to be used to determine compliance must be included as part of the formal SIP submittal.

(3) The Plan Approval must be amended to require as an enforceable condition, the use of the maintenance/tool room unit that emits fewer VOCs.

(4) The December 9, 1987 proposed Amendment to the Plan Approval must be revised to specifically require as *conditions*:

a. A final compliance date no later than December 31, 1988 (DEQE has indicated a September 30, 1988 date),
b. That the formulations for all coatings be maintained on site and made available to DEQE and/or EPA upon request,
c. That the VOC content of the formulations will be determined by Reference Method 24,
d. Recordkeeping requirements sufficient to determine compliance.

(5) A copy of the recordkeeping forms to be used for reporting compliance must be included in the formal SIP submittal.

The amendments to the Plan Approval and Amendment must be incorporated into the version of those documents formally submitted as a revision for EPA's final approval and incorporation into the SIP. If DEQE's final Plan Approval and Amendment do not incorporate the requirements outlined in this notice, EPA will withdraw this proposed approval action and take action to disapprove DEQE's SIP revision request.

EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the address above.

These revisions are being proposed under a procedure called "parallel processing" (47 CFR Part 27073). If the proposed revisions are substantially changed, in areas other than those identified in this notice, EPA will evaluate those changes and may publish a revised NPR. If no substantial changes are made other than those areas cited in this notice, EPA will publish a Final Rulemaking Notice on the revisions. The final rulemaking action by EPA will occur only after the SIP revisions have been adopted by Massachusetts and submitted to EPA for incorporation into the SIP. "Parallel processing", it is estimated, will reduce the time necessary for final approval of these SIP revisions by 3 to 4 months.

Proposed Action

EPA is proposing to approve the DEQE's proposed RACT determination for the four non-CTG processes at Spalding Corporation. Final EPA approval is contingent upon the DEQE amending its Plan Approval and Amendment to that Plan Approval, as indicated in this notice, prior to their formal submittal to EPA for incorporation into the SIP. If DEQE's final Plan Approval and Amendment do not incorporate the requirements outlined in this notice, EPA will withdraw this proposed approval action and take action to disapprove DEQE's SIP revision request.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

The Administrator's decision to approve or disapprove the plan revisions will be based on whether it meets the requirements of sections 110(a)(2)(A)–(K) and 110 (a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Date: September 29, 1988.

Michael R. Deland,

Regional Administrator, Region I.

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

National Conservation Review Group; Meeting

AGENCY: Agricultural Stabilization and Conservation Service (ASCS), USDA.

ACTION: Notice of Meeting.

SUMMARY: The National Conservation Review Group will meet to consider recommendations from State and County Conservation Review Groups with respect to the operational features of the Agricultural Conservation Program, the Emergency Conservation Program, and the Forestry Incentives Program. Comments and suggestions will be received from the public concerning these conservation and environmental programs administered by the Agricultural Stabilization and Conservation Service (ASCS).

DATE: Meeting Date: February 17, 1989.

ADDRESS: Meeting Location: Room 5219 South Building, U.S. Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Chief, Conservation Programs and Automation Branch, Conservation and Environmental Protection Division, ASCS, U.S. Department of Agriculture, Room 4723, South Building, Washington, DC 20013, 202–447–7333.

SUPPLEMENTARY INFORMATION: The National Conservation Review Group meeting is scheduled to be held from 9:00 a.m. to 12:00 noon on February 17, 1989, in Room 5219 South Building, U.S. Department of Agriculture, Washington, DC. Meeting sessions will be open to the public. The agenda will include consideration of State and County Review Group recommendations for changes in the administrative procedures and policy guidelines of the ACP, ECP, and FIP. An opportunity will be provided for the public to present comments at the meeting on these conservation and environmental programs administered by ASCS. Because of time constraints and anticipated participation from interested individuals and groups, comments will be limited to not more than 5 minutes. Individuals or groups interested in making recommendations may also make them in writing and submit them to Chief, Conservation Programs and Automation Branch, Conservation and Environmental Protection Division, ASCS, U.S. Department of Agriculture, Room 4723–S, Washington, DC 20013. The meeting may also include discussion of current procedures, criteria, and guidelines relevant to the implementation of these programs.

Because of the limitations of space available, persons desiring to attend the meeting should call Mr. Vincent Grimes (202) 447–7333 to make reservations.

Signed at Washington, DC, on February 6, 1989.

Milton J. Hertz,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 89–3210 Filed 2–9–89; 8:45 am]

BILLING CODE 3410–05–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–802]

Final Determination of Sales at Less Than Fair Value: 3.5" Microdisks and Coated Media Thereof From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We have determined that 3.5" microdisks and coated media thereof from Japan are being, or are likely to be, sold in the United States at less than fair value. The U.S. International Trade Commission (ITC) will determine, within 45 days of the publication of this notice, whether these imports are materially injuring, or are threatening material injury to, a United States industry.

EFFECTIVE DATE: February 10, 1989.

FOR FURTHER INFORMATION CONTACT: Contact Loc Nguyen or Charles Wilson, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 377–3530 or 377–5288.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that 3.5" microdisks and coated media thereof from Japan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The estimated weighted-average margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

On September 23, 1988, we made an affirmative preliminary determination (53 FR 39045, September 29, 1988). The following events have occurred since the publication of that notice.

The questionnaire responses from Sony Corporation (Sony) were verified in Japan between October 3 and October 7, and in the United States from October 24 through October 26, 1988.

The questionnaire responses from Hitachi Maxell, Ltd. (Hitachi) were verified in Japan from October 6 through October 14, 1988, and in the United States on October 27 and October 28.

The questionnaire responses from Fuji Photo Film Company, Ltd. (Fuji) were verified in Japan from October 3 through October 7, and in the United States from October 19 through October 21.

On November 1, 1988, the Department postponed the date of the final determination to February 6, 1989 (53 FR 44933, November 7, 1988), at the request of one of the respondents, as provided for in section 735(a)(2)(A) of the Act.

On December 7, 1988, the Department held a public hearing. Interested parties also submitted comments for the record in their pre-hearing briefs of November 30, 1988, and in their post-hearing briefs of December 15, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the *Harmonized Tariff Schedule* (HTS), as provided for in

section 1201 et seq. of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after this date is now classified solely according to the HTS item numbers. As with the TSUSA numbers, the HTS numbers are provided for convenience and Customs purposes. The written description remains dispositive as to the scope of the product coverage.

The products covered by this investigation are 3.5" microdisks and coated media thereof from Japan and are currently provided for under subheading 8523.20.0000 of the HTS. These products were previously provided for in item 724.4570 of the TSUSA.

A 3.5" microdisk is a tested or untested magnetically coated polyester disk with a steel hub encased in a hard plastic jacket. 3.5" microdisks are used to record and store encoded digital computer information for access by 3.5" floppy disk drive. They include single-sided, double-sided or high density formats.

Coated media is the flexible recording material used in the finished microdisk. Media consists of a polyester base film to which a coating of magnetically charged particles is bonded. It is intended for use specifically in a 3.5" floppy disk drive.

Respondents have argued that the merchandise included in the scope of investigation constitutes four separate "classes of kinds" of merchandise, namely 3.5" double density (DD) media, 3.5" high density (HD) media, 3.5" DD microdisks and 3.5" HD microdisks. In our preliminary determination, the Department found that these products constitute one "class or kind" of merchandise. After carefully reviewing this issue, we have found no reason to alter this decision. In determining that 3.5" coated media (both DD and HD) and 3.5" finished microdisks (both DD and HD) are of the same "class or kind" of merchandise, we have considered the following factors: 1) The physical characteristics of the merchandise; 2) the expectations of the ultimate purchasers; 3) the ultimate use of the merchandise; 4) the channels of trade in which the merchandise moves; and 5) the manner in which the merchandise is advertised and displayed. The Court of International Trade has endorsed these criteria in determining whether a product is within the "class or kind" of merchandise described in a prior antidumping finding (See *Diversified Products Corp. v. United States*, 572 F. Supp. 883 (Court of International Trade 1983)).

The media is the physical and technological heart of the 3.5" microdisk and its format and material properties define the functional characteristics of the microdisk. The media alone receives bits of data during the recording process from direct contact with the head of the drive. In addition, the 3.5" media is dedicated exclusively for use in the 3.5" microdisk. In contrast to the media, the packaging parts added during finishing are not electromagnetically active. They are merely the housing in which the electromagnetically active component is encased. Therefore, the Department does not find that the fact that 3.5" media have, in some respectsd, different physical characteristics from 3.5" finished disks is controlling in this case. The important fact here is that the 3.5" media is the memory of the microdisk—its sole electromagnetically active component. Therefore, with respect to the first criterion, we determine that the characteristics of the 3.5" media and microdisk are the same.

Because the media is the physical and technological heart of the microdisk and because 3.5" media is dedicated for use exclusively in the 3.5" microdisk, both the ultimate use and the expectations of the ultimate purchaser of the 3.5" media are the same as for the 3.5" finished microdisk, thus satisfying both the second and the third criteria cited above (See *Mitsubishi Electronic Corp. v. United States*, Slip op. 88–152 (Court of International Trade, October 31, 1988).

In terms of the fourth criterion, 3.5" media and 3.5" finished microdisks move in the same channels of trade. Although media must be further manufactured for use as finished microdisks, there is no other use for media in the floppy disk industry. Many U.S. importers purchase both 3.5" media and 3.5" finished disks for resale to the ultimate end-user.

As for the fifth criterion, because 3.5" media are used exclusively in the production of 3.5" finished microdisks, the only manner in which they are advertised and displayed is in the form of finished microdisks. There is no separate advertising of media.

Based upon this analysis, the Department concludes that 3.5" media and 3.5" microdisks are within the same "class or kind" of merchandise.

The Department also determines that 3.5" DD media and microdisks and 3.5" HD media and microdisks are within the same "class or kind" of merchandise. 3.5" DD media and microdisks and 3.5" HD media and microdisks are practically identical with respect to format size, design technology, production processes, packaging, uses and channels of trade. The fact that HD media and microdisks have more capacity and are higher performance items than DD media and microdisks represents a refinement—rather than a major shift—in microdisk media technology. There is no difference in physical appearance or characteristics between the DD and HD microdisk. The coating formulations of the DD and HD media and microdisks are similar and the same microdisk coating equipment is used for DD and HD microdisk production. Furthermore, DD disks can be used in HD drives and, because DD disks are much cheaper, HD drive owners continue to buy and use DD disks. Most dealers and distributors have expanded their portfolios to include HD as well as DD disks. Therefore, the first and third criteria cited above are met.

DD and HD microdisks are also within the same class or kind of merchandise in terms of channels of trade, advertising, and consumer expectations. The introduction of HD drives has created demand for both HD and DD disks, because DD disks can be used in both HD and DD drives. HD drive owners use DD microdisks for software and data storage purposes, for specific data or programming needs that can be filled readily by the less expensive DD disks and for data interchange with DD drive users. There is, therefore, a very basic inter-generational continuity that links the DD and the HD formats.

As a result of its analysis, the Department concludes that DD media and microdisks and HD media and microdisks are within the same "class or kind" of merchandise.

Petitioner requested in the petition that we include within the scope of this investigation coated media produced in Japan and finished into 3.5" microdisks in third countries prior to importation into the United States. In our notice of initiation, the Department tentatively agreed to include such imports. However, based on the arguments presented by a Canadian microdisk finisher, Kao-Didak, we preliminarily determined to include from the scope of this investigation third country imports of finished microdisks containing Japanese media.

We verified the submissions of Kao-Didak and confirmed the following facts which had served as the basis of our preliminary determination: (1) In the finishing process currently used by Kao-Didak, burnishing is extremely important to the technical performance levels of the finished microdisk because burnishing affects the surface characteristics and electromagnetic properties of the media; (2) Kao-Didak's finishing process requires a substantial capital outlay and an extremely high degree of technical precision; (3) the facilities used by Kao-Didak to perform these operations represent an investment in state-of-the-art equipment and the employment of highly trained technical personnel; (4) the value of the Japanese media is only a small fraction of the value of the microdisk finished in the process used by Kao-Didak; and (5) the capital and technology intensive nature of Kao-Didak's finishing process indicates that media finishing of the kind performed by Kao-Didak is not the type of operation that can be set up and undertaken easily in any country. Given these verified facts, we have concluded that when Japanese media is finished in Canada by Kao-Didak in this manner, the finished microdisk becomes a product of Canada for country-of-origin purposes under the antidumping law, and thus is not within the scope of this investigation. (In this regard, we note that the determinations of "class or kind" and the country-of-origin involve two separate inquiries.)

The process for finishing media currently used by Kao-Didak is readily distinguishable from the relatively simple assembly process that was used by third country product assemblers in the *Erasable Programmable Read Only Memories (EPROMs) from Japan; Final Determination of Sales at Less than Fair Value*, 51 FR 39680, 39685 (October 30, 1986). In EPROMs, once the semiconductor dice left Japan, they possessed all the essential qualities to function in a commercially reliable manner, and none of the operations performed in Singapore affected the character or performance of the dice themselves. Product assemblers in Singapore merely encapsulated the Japanese-produced semiconductor dice in a relatively unsophisticated operation which required little capital investment in Singapore and which could have been accomplished relatively easily in any country. Therefore, we determined that this relatively superficial finishing of EPROM semiconductors did not transform these products into products of Singapore for country-of-origin purposes under the antidumping law.

In contrast to EPROMs, the media is first burnished at Kao-Didak prior to its integration with other components. Burnishing involves rotating the coated media through a burnishing tape to remove surface defects as well as dust and scratches. By achieving optimum surface smoothness, burnishing ensures that the microdisk will be a commercially reliable product. This processing of the media itself is not a simple assembly process which leaves the magnetic disk unchanged. Rather, it constitutes a significant manufacturing step and is critical to our determination that the country-of-origin is Canada.

Following our preliminary determination, petitioner identified certain microdisk finishers in other third countries which allegedly employ a process substantially more labor-intensive than the type of operation employed by Kao-Didak. However, no facts have yet been presented or verified that would enable us to substantiate the allegations regarding the operations in other third countries at this time. Should this investigation lead to the issuance of an antidumping duty order, and an interested party brings to our attention information on imports of 3.5" microdisks incorporating Japanese media from a finisher other than Kao-Didak, we will examine such imports to determine whether the process by which they were finished provides a basis for their inclusion in the scope of the order.

Standing

The respondents have argued that the petitioner, Verbatim Corporation (Verbatim), has no standing to file a petition against 3.5" microdisks because (1) it has not established that it has the support of the relevant industry, defined as a majority of the producers of the like product, 19 U.S.C. 1677(4)(A); and (2) Verbatim does not qualify as a manufacturer or producer of the "like product" under subparagraphs (C), (D) or (E) of 19 U.S.C. 1677(9).

With regard to the question of whether Verbatim has the support of the relevant industry, the statutory provision governing the standing of parties to bring petitions requires the commencement of an investigation "whenever an intereted party * * * files a petition * * * on behalf of an industry" (section 732(b)(1) of the Act). As we have stated in prior cases (see *e.g., Final Determination of Sales at Less than Fair Value: Certain Electrical Conductor Aluminum Redraw Rod from Venezuela*, 53 FR 24755 (June 30, 1988)), the Department relies upon the petitioner's representation that it has filed "on behalf of" the domestic industry until it is affirmatively shown that a majority of the domestic industry opposes the petition. The Department bases this position on the fact that neither the Act nor its legislative history restricts access to the unfair trade laws by requiring that parties petitioning for relief under these laws establish affirmatively that a majority of the members of the relevant domestic industry supports the petition. The only requirement is that the party filing the petition act as the representative of the domestic industry.

In this case, no member of the domestic industry has objected to the petition. Only respondents have raised the issue. Absent evidence of opposition to the petition by members of the domestic industry, the Department has no basis to conclude that a majority of the industry opposed the petition. Therefore, the Department finds that Verbatim has filed on behalf of the domestic industry.

We also find that Verbatim is an interested party with respect to 3.5" microdisks and coated media thereof, because Verbatim produces 3.5" DD media, which is within the same class or kind of merchandise as 3.5" DD microdisks and 3.5" HD media and microdisks.

Although the parties submitted various arguments on the standing issue, we have not received sufficient evidence to reach a decision contrary to that in our preliminary determination. Furthermore, we placed great importance on the ITC's finding of one like product and one industry when formulating our preliminary determination. Accordingly, should the ITC find in its final determination more than one like product, we will consider the issue of whether Verbatim has standing with respect to each of the ITC's like product categories. Such an analysis would take into account Verbatim's activities as a manufacturer, producer or wholesaler for each of those like products. If we determine at that time that Verbatim lacks standing for any of the like products, we will rescind the initiation of this investigation as it pertains to those products.

In conclusion, the Department reaffirms its preliminary determination in this case that the petitioner has standing to bring this petition. Our determination is based on the fact that (1) Verbatim produces a "like" product; (2) Verbatim filed its petition on behalf of the microdisk industry; (3) no member of the domestic industry has objected to the petition.

Period of Investigation

The period of investigation for 3.5" microdisks and coated media thereof from Japan was September 1, 1987 through February 29, 1988.

Fair Value Comparisons

To determine whether sales of 3.5" microdisks and coated media thereof from Japan in the United States were made at less than fair value, we compared the United States price (using

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both purchase price and exporter's sales price) with the foreign market value. Virtually all of the respondents' sales to the United States were used for such or similar comparisons.

United States Price

Purchase Price

As provided in section 772(b) of the Act, we used the purchase price to represent the United States price for sales of 3.5" microdisks and coated media thereof where sales were made to an unrelated purchaser prior to importation of the product into the United States. We calculated purchase price based on packed F.O.B. prices. We made deductions, where appropriate, for foreign inland freight and insurance and foreign brokerage and handling.

Exporter's Sales Price

For all exporter's sales price sales, the subject merchandise was imported into the United States by a related importer before being sold to the first unrelated party.

To calculate exporter's sales price in accordance with section 772(c) of the Act, we used the packed, delivered, duty paid prices of 3.5" microdisks and coated media thereof to unrelated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight and insurance, foreign brokerage and handling charges, ocean/air freight, marine/air insurance, U.S. duty, U.S. brokerage and handling charges, U.S. inland freight insurance, discounts and allowances, rebates and price protection.

We made deductions under § 353.10(e)(2) of our regulations for direct and indirect selling expenses incurred by or for the account of the exporter in selling 3.5" microdisks and coated media thereof in the United States. Direct selling expenses were deducted for U.S. credit, warranties, advertising, sales promotion and repacking for shipment to the customer. For Fuji and Sony, indirect selling expenses were comprised of indirect selling expenses incurred outside the United States, U.S. indirect selling expenses of the related reseller in the United States related commissions and inventory carrying costs. For Hitachi, indirect selling expenses were comprised of indirect selling expenses incurred outside the United States, U.S. indirect selling expenses of the related reseller in the United States, and inventory carrying costs. Pursuant to § 353.10(e)(1) of our regulations, we also deducted commissions paid to unrelated parties for all three respondents. The total of the indirect expenses and commissions formed the cap for the allowable home market indirect selling expenses offset under § 353.15(c) of our regulations.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on the packed, delivered or ex-works prices to related and unrelated customers in the home market. In our preliminary determination, we included sales to related customers, pursuant to 19 CFR 353.22(b), since we determined at that time that the prices paid by those customers were comparable to the prices paid by unrelated customers. However, we said at the time of the preliminary determination that "if we were unable to ascertain at verification that the prices to related and unrelated customers in the home market are comparable, we will use only the sales to unrelated customers in calculating foreign market value in our final determination." For Sony and Fuji, we verified that the net prices paid by related customers for identical microdisk items were comparable to the prices paid by unrelated customers; therefore, for purposes of the final determination, we have included Sony and Fuji's sales to related customers in calculating the foreign market value. For Hitachi, we verified that the net prices paid by related customers are not at "arms length"; therefore, we have not included Hitachi's sales to related customers in calculating the foreign market value in our final determination.

We made deductions from the home market price, where appropriate, for inland freight and insurance, handling, cash discounts, rebates, ship and debit and price protection. We deducted the home market packing cost from the foreign market value and added U.S. packing costs.

Where appropriate, we made further adjustments to the home market price to account for differences in the merchandise due to differences in consumer packaging, in accordance with section 773(a)(4)(B) of the Act.

For comparisons involving purchase price sales, we made adjustments to the home market price, where appropriate, for differences in credit expenses, advertising and promotion, pursuant to 19 CFR 353.15.

For comparisons involving exporter's sales price transactions, we made further deductions from the home market price, where appropriate, for credit expenses, advertising and promotion. We deducted indirect selling expenses incurred on home market sales up to the amount of commissions and indirect selling expenses incurred on sales in the U.S. market, in accordance with § 353.15(c) of our regulations.

Currency Conversion

For comparisons involving purchase price transactions, we used the official exchange rates in effect on the dates of sale, in accordance with § 353.56(a)(1) of the Commerce Regulations. For comparisons involving exporter's sales price transactions, we used the official exchange rates in effect on the dates of the sale, in accordance with section 773(a)(1) of the Act, as amended by section 615 of the Trade and Tariff Act of 1984. All currency conversions were made at the rates certified by the Federal Bank of New York.

Verification

As provided in section 776(b) of the Act, we verified all information used in reaching the final determination in this investigation. We used standard verification procedures, including examination of relevant accounting records and original source documents provided by the respondents.

Interested Party Comments

General Comments

Comment 1: Respondents argue that, since Verbatim Corporation did not produce microdisks in the United States at the time the petition was filed, it did not have standing as a U.S. producer of the "like product." Furthermore, respondents argue that Verbatim has not established that it has the support of the relevant industry.

Petitioner argues that it has standing to file a petition that includes microdisks because it is a domestic producer of the "like product" in this investigation.

DOC Position: We have determined that the petitioner has the requisite standing, as discussed in the "Standing" section above.

Comment 2: Petitioner argues that there is one class or kind of merchandise in this investigation, encompassing different density formats of 3.5" microdisks such as HD and DD.

Respondents argue that the merchandise included in the scope of investigation as described in the initiation and preliminary determination notices constitutes four separate classes or kinds of merchandise, DD media, DD microdisks, HD media, and HD microdisks.

DOC Position: We have determined the 3.5" coasted DD and HD media and DD and HD Microdisks constitute the same class or kind of merchandise, as discussed in the "Scope of Investigation" section of this notice.

Comment 3: Petitioner asserts that this investigation must be open-ended with respct to future generations of 3.5" microdisks. Petitioner states that in determining whether merchandise developed after the issuance of an antidumping order is included within that order, the Department's well established practice is to perform a "class or kind" analysis. Thus, petitioner argues that any scope determination with respect to a future generation of 3.5 microdisk must await the availability of the commercial and technical data necessary to such an analysis. Verbatim anticipates the development and commercialization of future generations of 3.5" disks featuring greater memory capacity than 3.5" formats now on the market. Verbatim further anticipates that these new formats and media will likely fall within the product scope of the investigation, as defined by the Department in its Notice of Initiation product descriptions, and may well belong to the same class or kind of merchandise as the imports subject to investigation. Therefore, it would be premature for the Department to exclude future generation microdisk products from the scope of the investigation before facts about their development, distribution, and use are available.

Respondents agree with petitioner that future generations of microdisk products should be left open. However, they assert that the scope of investigation language as written in the initiation and preliminary determination is too broad and would automatically include future generations of microdisks. They argue, therefore, that the Department would narrow the scope language.

DOC Position: We agree that it would be premature for the Department to exclude future generations of microdisks from the scope of this investigation. At this time, there exists no information about the development, distribution and use of future generation microdisk products on which the Department could base such a determination. As for the issue of the scope of investigation language, we determine that the description as written in the initiation and preliminary determination best describes the present product and therefore needs no revision.

Comment 4: Respondents claimed that since petitioner did not allege and the Department did not investigate less than fair value sales of media, media should be excluded from the scope of the investigation.

Petitioner argues that it framed the petition to include both finished microdisks and coated media thereof. Petitioner also states that it could not locate meaningful sales data pertaining to media and that the antidumping laws require a petitioner to include in its petition only such information as is "reasonably available" to it. Moreover, petitioner claims that the Court of International Trade recently held that where unfinished and finished goods belong to the same class or kind, the petitioner need not include in the petition "inclusive information covering all the categories and subcategories for all those goods included" in the class or kind subject to investigation. Because media and finished microdisks belong to the same class or kind, Verbatim is not required to provide data on media sales.

DOC Position: We agree with petitioner. Because the petition includes both finished microdisks and coated media thereof and because we determine that media and finished microdisks are the same class or kind of merchandise, it is not necessary for the petitioner to allege less than fair value sales on all the categories and subcategories of the same class or kind of merchandise (See *Mitsubishi Electric Corp. v. United States*, op. cit.).

Comment 5: Petitioner argues that exclusion of Japanese media finished in third countries from the scope of the investigation would be improper and would result in widespread circumvention of any order issued in this case. Petitioner also argues that any determination that finishing constitutes substantial transformation must be made on a case-by-case basis because the technological sophistication involved and value-added in the country of finishing can vary appreciably. The Department should then include, on either a definitive or presumptive basis, imports of media from Japan finished in third countries in the scope of this investigation.

Kao-Didak, Ltd., and respondents argue that the Department should continue to exclude Japanese media finished in third countries from the scope of the investigation. Kao-Didak argues that, at least, it has to be included because its manufacturing operations are extensive and technically sophisticated and account for the bulk of the value of the finished microdisks. Kao-Didak further argues that media is "remanufactured" in Canada through a "burnishing" process that is itself a critical phase of production. Accordingly, Kao-Didak's 3.5" microdisks are properly labelled "Made in Canada."

Doc Position: We have verified Kao-Didak's submission, and we agree that Kao-Didak should be excluded from the scope of investigation. As for finishers in other third countries, no facts have been presented or verified that would enable us to substantiate the allegations regarding the operations in other third countries at this time. See the "Scope of Investigation" section of this notice.

Sony Comments

Comment 1: Sony believes the Department should treat home market formatting as a direct expense or, alternatively, as a physical difference in merchandise. Sony states that formatting is done to specific disks for specific customers. The cost of formatting was deducted from the selling price of each of these disks and this cost was verified.

Petitioner claims that the cost of formatting is a manufacturing cost and is properly treated as an indirect selling expense. Or, if Sony claims that formatted disks are only "similar" to nonformatted disks, then it can claim an adjustment for differences in physical characteristics.

DOC Position: We agree that formatting should be treated as a difference in merchandise adjustment. However, because there are sufficient sales of identical merchandise in the home market to compare to the U.S. sales, we have dropped all formatted sales in the home market from our calculation of foreign market value.

Comment 2: Sony claims that the Department mistakenly treated home market technical service expenses as an indirect selling expense in its preliminary determination. Sony believes that this expense should be treated as a direct selling expense.

DOC Position: This expense was denied in the home market because it applies to sales prior to the period of investigation.

Comment 3: Sony believes that any deductions for warranty costs on U.S. sales should also be made on the home market side. Sony states that it gives the same warranty on U.S. and home market microdisk sales and since the microdisks were produced at the same facility they should experience the same failure rate. Sony states that, since its warranty covers the microdisk for a lifetime, there are obviously home market warranty expenses incurred. However, these expenses are minimal and do not justify elaborate recordkeeping. Sony America's (SONAM) U.S. experience is a reasonable proxy measure of the home market expense according to Sony.

Petitioner claims, however, that no data was obtained at verification to support Sony's claim for home market warranty expenses. According to petitioner, the information available

indicates that there were no home market warranty expenses; therefore, the Department cannot make any assumptions about Sony's home market warranty expenses based on Sony's experience in the U.S. market. Petitioner argues that the Department should continue to deny this adjustment in the final determination.

DOC Position: We agree with petitioner and have denied this expense in the home market, because Sony could not give us any data at verification to support its claim for home market warranty.

Comment 4: Sony says that in the final determination the Department should treat repackaging performed in the United States as either a packing expense or a difference in merchandise adjustment. U.S.-side packing should be treated as an adjustment to foreign market value, not as an adjustment to U.S. price. Sony claims that repackaging performed in the United States is simply another part of ESP packing.

DOC Position: We disagree. Repackaging is a direct selling expense incurred in the United States on United States sales; therefore, we have deducted the expense directly from the U.S. price.

Comment 5: Petitioner claims that it is the established practice of the Department to allow adjustments for rebates only with respect to sales made during the period of investigation. According to petitioner, the verification report confirms that the microfloppy disk (MFD) rebate paid by Sony to distributors was based on distributor resales of the product previously sold by Sony to the distributors. Petitioner believes that this rebate should be allocated to those prior sales made by Sony to which the rebate applies which occurred during the period of investigation. Petitioner argues that absent the information necessary to make this adjustment, the Department should disallow the MFD rebate to distributors.

According to Sony, its rebate programs took two basic forms, payments to purchasers who purchased directly from Sony and payments to distributors based on the distributor's resales. For the first group, Sony could directly link the payments with specific Sony sales. For the second group, Sony was unable to tie distributor resales back to Sony sales to those distributors on a one-for-one basis.

DOC Position: We have allowed the rebate program based on payments that could be linked with specific Sony sales. However, we have denied the rebate program based on distributor resales. This program ended on September 20, 1987, and was therefore only in effect for approximately three weeks during the period of investigation. Thus, distributor resales that took place during this three-week period were likely based on sales of the subject merchandise from Sony to its distributors prior to the period of investigation.

Comment 6: With respect to direct customer price protection, Sony credits customers with a rebate which is based on the customer's inventory as of a certain date. The amount of the credit is determined by reductions in Sony's price made after the customer purchases the product at a higher price and places the product in inventory. Petitioner argues that this rebate cannot be allowed as an adjustment to the price of home market sales during the period of investigation if the payment by Sony is based on sales made prior to the period of investigation.

Sony states that it took the most conservative approach and reported price protection paid during the period of investigation as opposed to expenses accrued during the period. However, Sony claims that this should be changed since the verifier apparently perferred using expenses accrued during the period of investigation.

DOC Position: We agree with Sony and have used the verified accrued expenses in our calculation, because the accrued expenses are those that are directly related to sales made during the period of investigation.

Comment 7: Petitioner believes that ocean freight expenses are considerably understated. Petitioner urges the Department to review Sony's cubic foot per microdisk figure as it claims it differs substantially from Verbatim's actual experience.

Sony claims that this expense was thoroughly verified.

DOC Position: We have verified Sony's ocean freight expenses and have used these figures in our calculation.

Comment 8: Petitioner asserts that the Department should not limit the calculation of Market Development Funds (MDFs) in the U.S. market only to payments made, but should also consider commitments of MDF made to customers. Petitioner believes that these amounts should be included in the adjustment to U.S. price.

Sony argues that calculating this expense on payments plus commitments would constitute double counting. SONAM's revised figures are based on payments from 9/1/87–8/31/88 and are divided by sales made during the same period.

DOC Position: We verified Sony's MDF payments made to customers during the period of investigation and have used these figures in our calculation.

Fuji Comments

Comment 1: Petitioner argues that Fuji incorrectly reported the shipping dates on purchase price sales as the date the product cleared Japanese Customs, rather than the date the product was shipped from the Chofu plant. The proper shipping date should be used and the time between shipment from Chofu and the clearance of the product through Japanese Customs should be added to the credit period of U.S. purchase price sales.

Fuji argues that the microdisks are sent from its Chofu plant to its Yokohama facilities for assembly or export packing and are considered its inventory assets. Only at the time the merchandise is shipped to its purchase price customers from its Yokohama facility does Fuji commence credit expenses as a measure of its financing of accounts receivables. Fuji states that it has corrected the date of shipment to the time the merchandise is shipped from its Yokohama factory rather than the time the merchandise cleared Japanese Customs.

DOC Position: We agree with the respondents that credit expenses are incurred from the time the merchandise is shipped to its purchase price customers from its Yokohama facility and not from the time it leaves the Chofu plant, since part of the finishing process, *i.e.*, assembly and packing, is done at Yolohama.

Comment 2: Petitioner asserts that Fuji's reported payment dates on home market sales were often not the actual payment dates. Petitioner argues that the actual payment dates should be used, and appropriate adjustments from payment terms and credit expense should be made.

Fuji states that most dates of payment were correct, some were not. Some showed longer dates of payment, some shorter. Others indicated partial payment on many different dates. Fuji claims that, at verification, it provided data on the actual credit expenses incurred on sales in the home market.

DOC Position: The corrected information on credit expense was verified, and we have used this information in our calculation.

Hitachi Comments

Comment 1: Petitioner states that with respect to Hitachi, the Department created separate subgroupings of microdisk sales in the home and U.S. markets based solely on the presence or absence of a printed shutter or label.

DOC Position: The Department disagrees. Hitachi's methodology for matching its home market products with its identical U.S. products was correct. Comparisons were made based not only on the presence or absence of a printed shutter or label but were based on the major relevant characteristics of 3.5" microdisks. Furthermore, product comparisons for home market and U.S. products conducted at verification verified as identical.

Comment 2: Petitioner states that, for Hitachi's purchase price sales, actual payment dates must be substituted for reported payment dates.

DOC Position: We disagree. Hitachi's purchase price sales were estimated as net 61 days from shipment date. At verification, the Department verified that 61 days was a reasonable estimate as some dates of payment were substantially less than 61 days while other dates of payment were more than 61 days. Furthermore, we verified that it was not possible to correlate particular payments with particular sales as Hitachi's payments from its customers were made on the outstanding balances rather than on each individual sale.

Comment 3: Petitioner states because Hitachi has requested that the Department disregard certain related sales in the home market, all relevant home market sales data have not been provided and should be provided so that a proper review and comment can be made.

DOC Position: We disagree. In its May 27, 1988, response, Hitachi initially reported a supplemental list of home market sales to unrelated purchasers made by its two selling subsidiaries in Japan. These supplemental sales have been used in our calculations.

Comment 4: Petitioner states that the verification of Hitachi's time in inventory of product shipped from the Tsukuba factory to Hitachi noted an understatement. Petitioner claims this understatement should be corrected and inventory carrying costs should be recalculated.

DOC Position: DOD disagrees. Pursuant to 19 CFR 353.23(a), the understatement of inventory carrying costs has been determined to be insignificant in relation to the price or value of the affected transaction and may be disregarded.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of 3.4" microdisks and coated media thereof from Japan that are entered or withdrawn from warehouse, for consumption, on or after September 29, 1988, the date of publication of the preliminary determination in the **Federal Register**. The Customs Service shall continue to require a cash deposit or posting of bond equal to the estimated amounts by which the foreign market value of the merchandise subject to this investigation exceeds the United States price, as shown below. This suspension of liquidation will remain in effect until further notice.

The weighted-average margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Sony Corporation	51.00
Hitachi Maxell, Ltd	27.79
Fuji Photo Film Company Ltd	50.52
All others	42.95

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all securities posted as a result of suspension of liquidation will be refunded. However, if the ITC determines that such an injury does exist, the Department will issue an antidumping duty order directing Customs officers to assess an antidumping duty on 3.5" microdisks and coated media thereof from Japan as defined in the "Scope of Investigation" section of this notice, entered or withdrawn from warehouse for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the U.S. price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

February 6, 1989.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 89-3203 Filed 2-9-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-549-803]

Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Malleable Iron Pipe Fittings From Thailand

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers or exporters in Thailand of malleable iron pipe fittings as described in the "Scope of Investigation" section of this notice. The estimated net bounty or grant is 2.94 percent *ad valorem* for all manufacturers, producers or exporters in Thailand of malleable iron pipe fittings.

We are directing the U.S. Customs Service to continue suspension of liquidation of all entries of malleable iron pipe fittings from Thailand that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, and to require a cash deposit on entries of these products in the amount equal to the estimated net bounty or grant.

EFFECTIVE DATE: February 10, 1989.

FOR FURTHER INFORMATION CONTACT: Kay Halpern or Barbara Tillman, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-0192 or 377-2438.

SUPPLEMENTARY INFORMATION:

Final Determination

Based on our investigation, we determine that benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers or exporters in Thailand of malleable iron pipe fittings. For purposes of this investigation, the following programs are found to confer bounties or grants:

- Export Packing Credits.
- Tax Certificates for Exports.
- Electricity Discounts for Exporters.
- Assistance to Companies Under the Investment Promotion Act (Tax and Duty Exemptions on Imports of Machinery under section 28).

We determine the estimated net bounty or grant to be 2.94 percent *ad valorem* for all manufacturers,

producers or exporters in Thailand of malleable iron pipe fittings.

Case History

Since the last Federal Register publication pertaining to this investigation [*Preliminary Affirmative Countervailing Duty Determination: Malleable Iron Pipe Fittings from Thailand* (53 FR 48281, November 30, 1988) (Preliminary Determination)], the following events have occurred. We conducted verification in Thailand from December 6–19, 1988, of the questionnaire responses of the Government of Thailand (GOT), Siam Fittings Co., Ltd. (Siam), Thai Malleable Iron and Steel Co., Ltd. (TM), and BIS Pipe Fitting Co., Ltd. (BIS). Respondents submitted a supplemental response to our deficiency questionnaire and an amended response clarifying information and correcting certain minor errors found at verification on December 23, 1988.

Petitioner and respondents requested a public hearing in this case. Petitioner and respondents filed pre-hearing briefs on January 18, 1989. A public hearing was held on January 19, 1989. Petitioner and respondents filed post-hearing briefs on January 26, 1989.

Scope of Investigation

The products covered by this investigation are malleable iron pipe fittings from Thailand, advanced in condition by operations or processes subsequent to the casting process, other than with grooves. Malleable iron pipe fittings (pipe fittings), are classified under TSUSA category 610.7400 and under Harmonized Tariff Schedule (HTS) category 7307.19.90.

Analysis of Programs

For purposes of this final determination, the period for which we are measuring bounties or grants ("the review period") is calendar year 1987, which corresponds to each of the three companies' most recently completed fiscal year.

Based upon our analysis of the petition, the responses to our questionnaire, verification, and written comments filed by petitioner and respondents, we determine the following:

I. Programs Determined To Confer Bounties or Grants

We determine that bounties or grants are being provided to manufacturers, producers and exporters in Thailand of pipe fittings under the following programs.

A. Export Packing Credits

Export packing credits (EPCs) are short-term loans used for either pre-shipment or post-shipment financing. Exporters apply to commercial banks for EPCs. The commercial banks, in turn, must submit an application for approval to the Bank of Thailand (BOT). Under the "Regulations Governing the Purchase of Promissory Notes Arising from Exports" (B.E. 2528), effective January 2, 1986, the BOT repurchases promissory notes issued by creditworthy exporters through commercial banks. To qualify for the repurchase arrangement, promissory notes must be supported by a letter of credit, sales contract, purchase order, usance bill or warehouse receipt. The notes are available for up to 180 days, and interest is paid on the due date of the loan rather than the date of receipt.

At verification we found that, on the due date of the loan, the BOT debits the commercial bank's account for the principal amount and the five percent interest charged the commercial bank. If the terms of the loan are not met, the BOT charges the commercial bank a penalty, retroactive to the first day of the loan, at an eight percent interest rate.

Similarly, on the due date of the loan, the commercial bank debits the exporter's account for the principal amount and the seven percent interest charged the exporter. If the exporter has not met the terms of the loan, the commercial bank passes on the additional eight percent penalty charge over the term of the loan.

The penalty is refunded to the commercial bank by the BOT and by the commercial bank to the exporter if the company can prove shipment of the goods took place within 60 days after the due date (in the case of pre-shipment loans), or the foreign currency was received within 60 days after the due date (in the case of post-shipment loans). Otherwise, the penalty is not refunded. The purpose of the penalty charge is to ensure that companies take out EPC loans only to finance actual export sales.

On October 1, 1988, the GOT issued new regulations that coexisted with the prior regulations until December 31, 1988. On January 1, 1989, the new regulations completely replaced the former ones. Until January 1, 1989, exporters could still receive EPC loans under the terms of the program described above. Under the new regulations, the maximum rate commercial banks can charge exporters was raised from seven to 10 percent. In addition, the BOT now ony rediscounts up to 50 percent of the loan amount, whereas under the previous program the BOT could rediscount the full value of the loan.

We verified that both TM and Siam received and paid interest on EPC loans for exports of pipe fittings to the United States during the review period and that, on the two loans on which penalty payments were charged, the penalties were refunded. Because only exporters are eligible for these loans, we determine that they are countervailable to the extent that they are provided at preferential rates.

As the benchmark for short-term loans, it is our practice to use the national average commercial interest rate on the most comparable, predominant form of short-term financing. For purposes of this determination, we are using the weighted-average interest rate charged by commercial banks on domestic loans, bills and overdrafts during 1987, and where loans were issued in 1986 but repaid in 1987, the weighted average interest rate of the same composition for 1986. This is the benchmark that we have applied in all previous Thai cases.

The data used to calculate these weighted average interest rates was verified at the BOT. Comparing the weighted average interest rates for 1986 and 1987 to the rate charged on EPCs, we find that the rate on EPCs is preferential and, therefore, confers bounties or grants on exports of pipe fittings.

The calculate the benefit from the EPC loans on which interest was paid during 1987, we followed the short-term methodology which has been applied consistently in our past determinations and is described in more detail in the *Subsidies Appendix* attached to the notice of *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determiantion and Countervailing Duty Order* (49 FR 18006, April 26, 1984).

We compared the amount of interest actually paid during the review period to the amount that would have been paid at the benchmark rate. Because we verified that EPC loans to companies in this investigation were segregable by destination and product, we inluded only those loans which financed exports of pipe fittings to the United States. We calculated the amount of interest that would have been paid at the benchmark rate and subtracted the amount of interest that was actually paid. We then divided the result by the total value of respondents' exports of pipe fittings to the United States. The estimated net bounty or grant is 0.06 percent *ad valorem*.

B. Tax Certificates for Exports

Under the "Tax and Duty Compensation of Exported Goods Produced in the Kingdom Act" (Tax and Duty Act), the GOT issues tax certificates to exporters of record to rebate indirect taxes and import duties levied on inputs into exported products. The rebate rates under the Tax and Duty Act are computed on the basis of an input/output (I/O) study initially published in 1980 based on 1975 data, and updated in 1985 using 1980 data. Using the I/O study's input structure table, the Thai Ministry of Finance computes the value of total inputs (both imports and local purchases) at ex-factory prices. The Ministry of Finance then calculates two rebate rates: the "A" and "B" rate.

The "A" rate rebates impoort duties, business and municipal taxes on both imported and domestically purchased inputs. The "B" rate rebates only the business and municipal taxes passed through on domestically purchased inputs, and is used by exporters that receive import duty exemptions or drawbacks under other programs. The "A" or "B" rate, as appropriate, is then applied to the total FOB value of exports in the I/O sector, to determine the amount of the rebate.

Under the Tax and Duty Act, the rebates are paid to companies through Tax certificates which can be used to pay other tax liabilities. These tax certificates can also be transferred to other companies which can use them to pay their tax liabilities.

The rebate rates in effect during the review period were announced on February 5, 1986, in the Notification of the Committee on Tax Rebates, No. Or. 1/2529. The calculation of these rates was based on an updated study completed in 1982. For exports of pipe fittings, under Customs Cooperative Council Nomenclature (CCCN) category 7320.01, the "A" rate is 8.11 percent and the "B" rate is 4.98 percent.

We verified that all three respondents received tax certificates at the "A" rate.

To determine whether an indirect tax rebate system which incorporates rebates of import duties confers a bounty or grant, we must apply the following analysis. First, we examine whether the system is intended to operate as a rebate of both indirect taxes and import duties. Next, we analyze whether the GOT properly ascertained the level of the rebate. This includes a review of the sample used in the study, including the documentation and the accuracy of the information gathered from the sample on input coefficients, import prices and rates of duty on imported inputs, the ratio of imported inputs to domestically produced inputs (when, for a given imported input, there is also domestic production of the input), and the exchange rates used to convert import prices denominated in a foreign currency to the local currency. Finally, we review whether the rebate schedules are revised periodically in order to determine if the rebate amount reflects the amount of duty and indirect taxes paid.

When the I/O study upon which the indirect tax and import duty rebate system is based meets these conditions, the Department will consider that the system does not confer a bounty or grant if the amount rebated for duties and indirect taxes on physically incorporated inputs does not exceed the fixed amount set in the rebate schedule for the exported product. When the system rebates duties and indirect taxes on both physically incorporated and non-physically incorporated inputs, we find that a bounty or grant exists to the extent that the fixed rebate exceeds the allowable rebate on physically incorporated inputs.

Based on these tests, we determine that the taxes and duties eligible for rebate include those on materials, equipment, spare parts, machinery, fuels and other energy used in the production of exports. Direct taxes such as income tax and taxes which are otherwise refundable or exempt are excluded from the rebate. Thus, the program operates to rebate indirect taxes and import duties.

The information obtained during verification on the methodology and sampling used in calculating the rebate rates based on the revised I/O study leads us to conclude that the GOT employed reasonable methodology for adequately establishing the rebate levels. Furthermore, after a thorough examination of the methodologies employed in revising the 1975 I/O study and in calculating new rebate rates based on the revised study, we find that the GOT has a system in place to periodically update the rebate schedules.

Although the rebate under the Tax and Duty Act meets the three conditions required for indirect tax rebate systems not to be considered a bounty or grant, the inputs itemized in the GOT's calculations include both physically incorporated items as well as non-physically incorporated items. Since the indirect tax on non-physically incorporated items is also included in the GOT's rebate rate calculation, we must determine the extent to which the rebate rates confer an excessive remission of indirect taxes. We have reviewed the documentation and printouts submitted by the GOT in its response and at verification showing a detailed calculation of the rebate rates. Under the Tax and Duty Act, these calculations itemize the inputs and list ex-factory prices, import values, import duties and taxes, and domestic indirect taxes.

Based on verified information, we calculated the indirect tax incidence on physically incorporated inputs at FOB prices according to the most recent government rebate rate calculation. We then subtracted the percentage of indirect tax incidence attributable to physically incorporated inputs from the authorized rebate rate. Using this methodology, the overrebate on the "A" rate is 1.37 percent *ad valorem*.

C. Electricity Discounts for Exporters

The three electricity generating authorities of Thailand, the Electricity Generating Authority of Thailand (EGAT), the Metropolitan Electricity Authority (MEA), and the Provincial Electricity Authority (PEA), administer discounts on electricity rates charged producers of export products. These discounts represent approximately 20 percent of total electricity costs and are available to any company eligible for and receiving tax certificates.

Once the export transaction has been completed, the exporter may apply for the discount by presenting to the electricity authority from which it receives its electricity bill the appropriate documents to verify that an export shipment has been made. The discount is calculated based on the rebate rate in effect during that year for that company and appears as a credit on a subsequent electricity bill.

We verified that all three respondents applied for and received electricity discounts during the review period based on their export shipments. Because these electricity discounts are available only to exporters, we determine that they are countervailable.

We allocated the discounts over the total value of respondents' exports sales during the review period to obtain an estimated net bounty or grant of 0.66 percent *ad valorem*.

D. Assistance to Companies Under the Investment Promotion Act (IPA): Tax and Duty Exemption on Imports of Machinery Under Section 28

The IPA of 1977 provides incentives for investment to promote development of the Thai economy. The Act is

administered by the Board of Investment (BOI) through promotion certificates. These certificates list the various "sections" of the Act under which a company is eligible to receive benefits. The certificates are applied for and granted on a case-by-case basis.

We verified that all three respondents received promotion certificates, but that only Siam and BIS received exemptions under section 28 of the IPA during the review period. Section 28 provides exemption from import duties and business taxes on machinery imported by a date specified in the "conditions" section of the certificate. We verified that the other IPA sections listed in the companies' certificates were not used. These sections are discussed below under "Programs Determined To Be Not Used."

We verified that the certificates were granted to respondents under a category created specifically for export-oriented companies and that receipt of benefits in each certificate is contingent on export performance; therefore, we determine that, for purposes of this investigation, benefits received under section 28 are countervailable. The benefit consists of the duty and tax savings realized as a result of the exemptions.

To calculate the estimated net bounty or grant, we allocated the total amount of exemptions received by BIS and Siam during the review period over the total value of export sales of all three companies. On this basis, we derived an estimated net bounty or grant of 0.85 percent *ad valorem*.

III. Programs Determined Not to Be Used

We determine, based on verified information, that manufacturers, producers and exporters in Thailand of pipe fittings did not apply for, claim or receive benefits during the review period for exports of pipe fittings to the United States under the following programs, which were listed in the *Initiation of Countervailing Duty Investigation: Malleable Iron Pipe Fittings from Thailand* (53 FR 37014, September 23, 1988):

A. Repurchase of Industrial Bills
B. Reduced Business Taxes for Producers of Intermediate Goods for Export Industries
C. Export Processing Zones
D. International Trade Promotion Fund
E. Investment Promotion Act (Sections 25, 26, 31, 33, 34, 36 and 37)

We verified that each of these IPA sections that were either listed in the respondents' certificates or alleged by petitioner were not used during the review period. For a complete description of these programs, see the Preliminary Determination.

Comments

Comment 1: Respondents argue that the Department should consider a program-wide change for the calculation of benefits under the EPC program. They state that "these companies may now receive only 50 percent of export value as EPC loans. Having verified these facts, the Department should reduce the deposit rate to account for the decrease in the amount of principal that the Bank of Thailand will rediscount from between 80 and 90 percent to 50 percent."

Petitioner argues that the Department should not consider a program-wide change for two reasons. The first is that the program-wide change was not instituted prior to the preliminary determination. The second is that the effects of the changes were not verified.

DOC Position: At verification, the Department found that, under the new regulations, commercial banks can loan up to 100 percent of shipment value, as opposed to a maximum of 90 percent under the old regulations. The BOT subsequently rediscounts the loan. Under the old regulations, the BOT rediscounted the full amount of the loan. Under the new regulations this amount has been reduced to a maximum of 50 percent of the loan. Consequently, exporters can receive up to 100 percent of the shipment value as a loan. The BOT rediscounts up to 50 percent of that loan, not the shipment value. While it is the Department's practice to take into account verified program-wide changes which occur before the preliminary determination, the effects of the new program were not verifiable, nor did the new regulations replace the old ones prior to the preliminary determination. The new program replaced the old program on January 1, 1989. Until then, banks provided existing customers with loans under the old program. Therefore, respondent's argument provides no basis for the Department to consider a program-wide change.

Comment 2: Respondents argue that the benchmark used to calculate the benefit arising from the EPC loans obtained in 1986 should be based on the second half of 1986 rather than the full year. They argue that the EPC loans obtained in 1986 were obtained during the second half of 1986, and that therefore the benchmark for the second half of 1986 would be more representative of the prevailing interest rate, as interest rates fluctuate during the year.

Petitioner argues that there is no evidence of interest rate fluctuations on record, nor is there evidence that the benchmark for the last half of 1986 is more representative than the benchmark for the full year.

DOC Position: In calculating benefits from short-term loans, the Department uses the most appropriate full year national average short-term financing rate. The Department found no evidence of significant fluctuations in interest rates (as it did in *Final Affirmative Countervailing Duty Determinations and Countervailing Duty Orders: Certain Welded Carbon Steel Pipe and Tube Products from Argentina*, 53 FR 37619, September 27, 1988) that would warrant using a half-year benchmark. Furthermore, there is no evidence that the calculated benchmark for a full year is an inaccurate measure of the interest rates on short-term loans. Therefore, we used the benchmark for the full year.

Comment 3: Respondents argue that the Department should take into account the interest foregone due to the payment of penalty interest which was subsequently refunded. They state that the foregone interest constitutes the lost use of capital which is a real cost to the company rather than an impermissible offset.

Petitioner quotes section 771(6) of the Tariff Act of 1930 (the Act) (19 U.S.C. 1677(6)) to support his argument that foregone interest is not considered a permissible offset. Moreover, petitioner argues that the lost income constitutes a secondary economic effect which the Department has consistently "refused to treat," as in *Oil Country Tubular Goods from Canada* (51 FR 15037, April 22, 1986).

DOC Position: Respondents submitted a calculation of the foregone interest on the two loans for shipments of pipe fittings to the United States on which penalties were assessed and then refunded. They have not demonstrated that their proposed calculation would have any effect on the bounty or grant rate. Even if we accept respondents' calculations, the difference between the present country-wide rate for the EPC program and the country-wide rate for this program incorporating the foregone interest would be 0.000009 percent. We therefore believe it is unnecessary to consider whether any foregone interest should be taken into account in calculating the interest rate on EPCs.

Comment 4: Petitioner argues that pipe fittings are not considered "secondary steel products," the input/output ("I/O") sector in which the National Economic and Social Development Board ("NESDB") has classified them (I/O sector 106). Rather, they should be categorized in the sector

providing for "other fabricated metal products" (I/O sector 111), the description of which specifically mentions pipe fittings. Petitioner states that this misclassification proves that the I/O study fails the linkage test.

Respondents argue that the validity of the I/O study was verified at both the NESDB and the Ministry of Finance. They state that the Department verified that the tariff category covering pipe fittings, 7320.01, was originally assigned to sector 106. Therefore, pipe fittings are "properly classified" within sector 106. Furthermore, respondents state that the Department verified that pipe fittings were not provided for under sector 111.

DOC Position: The I/O study is a macroeconomic study and has been accepted in all previous Thai cases, most recently in *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Certain Steel Wire Nails from Thailand* (*Thai Nails*) (52 FR 36967, October 2, 1987). The Department verified the classifications done by the NESDB in conjunction with the Japanese Institute for Developing Economies. The correlation between the Customs categories and the I/O sectors showed that pipe fittings are classified under sector 106. Therefore, the Department accepted the validity of the I/O study to assess the extent to which overrebates were given under the Tax Certificates for Exports program.

Comment 5: Petitioner argues that pipe fittings are not packaged for sale in the domestic market and that packing materials should therefore not be considered physically incorporated for purposes of calculating the allowable rebate under this program. Petitioner further states that the inclusion of packing materials as physically incorporated into the exported product is determined on a case-by-case basis, citing *Potassium Permanganate from Spain* (47 FR 5924, February 9, 1982).

Respondents argue that packing materials should be allowed based on the principle of tax neutrality. Furthermore, they argue that pipe fittings destined for export markets are packaged according to the methods described in the verification reports.

DOC Position: In accordance with item (h) of the Illustrative List of the Subsidies Code, the Department considers the excessive exemption, remission or deferral of indirect taxes to be a subsidy. To determine whether or not the exemption, remission or deferral of indirect taxes on inputs which are paid at a prior stage of production is excessive the Department applies the physical incorporation test. (See also Annex 1, paragraph 1 to 19 CFR Part 355). As petitioner notes, a determination of whether an input is physically incorporated must be made on a case-by-case basis. Here, as in previous cases, the packing materials become a part of the manufactured product when made ready for export, and thus are considered to be physically incorporated into the product that is imported into the United States. We have consistently considered packing materials to be physically incorporated into products under investigation for purposes of determining whether rebates of indirect taxes are countervailable. (See, for example, *Thai Nails*.) The fact that pipe fittings are not packaged for domestic sale is irrelevant to this determination.

Comment 6: Petitioner argues that aluminum chloride and zinc chloride, claimed as "basic chemicals" by respondents, are not physically incorporated in pipe fittings. Rather, the chemicals are used as "drossing agents" and do not become part of the finished pipe fitting. Furthermore, petitioner states that the I/O sector for "basic chemicals" does not provide for aluminum chloride and zinc chloride, and that the presence is solely due to the use of scrap steel as a source of iron.

Respondents argue both aluminum chloride and zinc chloride are used in the composition of flux, which is physically incorporated into the pipe fitting. Flux coats the pipe fitting and acts as a bonding agent in the galvanizing process. Therefore, repondents claim that "basic chemicals" should be considered as physically incorporated.

DOC Position: The Department has verified that aluminum chloride and zinc chloride are used in the composition of flux, which is physically incorporated into pipe fittings during the galvanizing process. Because there chemicals are classified in the "basic chemicals" I/O sector, we determine that the tax incidence on this I/O sector is allowable.

Comment 7: Petitioner argues that the subsidy conferred by electricity rebates should be tied to export sales of the pipe fittings to the United States because applications for discounts contain shipment-specific information. Petitioner also argues that the duty deposit rate should be calculated using the rebates obtained for the first half of 1988. Petitioner argues that the discounts obtained during the first half of 1988 would be more representative than the discounts received in 1987 because they would be more likely to include discounts received for 1987 shipments and would likely be more representative of the upward trend in electricity consumption and rebates.

Respondents argue that the Department acknowledged that the administration of the program precludes the tying of electricity discounts to specific shipments. They also state that, absent any program-wide change, the Department should base its calculations on the review period and should use verified information consisting of electricity discounts received in 1987.

DOC Position: We agree with respondents' arguments. Although applications contain shipment-specific information, individual discounts can be based on several shipments of various products to different destinations. In addition, the administration of the program is such that there are varying lag times between the application for the discount and the actual receipt of the discount. Since there was no program-wide change in the electricity discounts program, it would be inappropriate to use discounts received after the review period in the calculation of the duty deposit rate. Accordingly, we used the total value of electricity discounts received during the review period to calculate the benefit conferred by this program.

Comment 8: Respondents argue that the import duty and business tax exemptions on machinery under section 28 of the IPA are available to Thai companies in a broad range of industries and are not limited to exporters. Therefore, the Department should not consider exemptions received under section 28 of the IPA countervailable.

Petitioner argues that the BOI promotion certificates were awarded to respondents contingent on their export performance. The companies that received exemptions under section 28 of the IPA during the review period had specific export requirements in their certificates. Therefore, petitioner argues, section 28 of the IPA is countervailable as an export subsidy.

DOC Position: The Department verified that the two companies that received exemptions under section 28 of the IPA were granted certificates under a category created specifically for export-oriented companies. Furthermore, BOI certificates are granted on a company-by-company basis and list specific conditions for receipt of benefits. The respondents received certificates predicated on their performance. Therefore, we agree with petitioner's arguments that the exemptions received by respondents are countervailable as an export subsidy.

Comment 9: Respondents argue that if section 28 of the IPA is considered

countervailable, the benefit should be calculated using only those pieces of machinery on which the cash effect of the duty exemption was realized during the review period. This would exclude duty exemption on two pieces of equipment on which partial exemption was received. Bonds for these items were posted during the review period but duty payments were finalized in 1988.

Petitioner argues that the two pieces of equipment on which duties were finalized in 1988 should be included in the calculation of the benefit. Petitioner suggests that the deferred duty payment "must be countervailed as an interest-free loan whose principal equals the amount of the deferred duties." The duty exemption itself should be considered as a grant.

DOC Position: The Department verified that permission for partial duty exemption from the BOI for the two pieces of equipment in question was received in 1988. Even though they had applied for the exemption in 1987, the respondents did not know whether they would receive an exemption until 1988. Therefore, the benefit on these two pieces of machinery was realized in 1988, outside the review period. To calculate the benefit on the Section 28 program, we included only those imports on which duties were exempted during the review period.

Comment 10: Respondents argue that the Department should base its calculation on the benefits received by the companies under section 28 of the IPA in 1988. They claim that this value would "correspond more closely to the eventual duty liability."

DOC Position: As previously mentioned, absent any program-wide change, it is the Department's practice to calculate the duty deposit rate based on the benefits received during the review period.

Comment 11: Respondents argue that the Department must make an adjustment to the antidumping duty deposit rate for the rate of subsidization found in this investigation. Respondents further submit that the adjustment should be made retroactive to the preliminary countervailing duty determination. The reason for the retroactive adjustment is that if an antidumping duty review is not requested, the cash deposit rate applicable in the dumping case will become the assessment rate, and a violation of the GATT's prohibition against double assessment duties attributable to export subsidies will result.

Petitioner argues that the assessment should not be made retroactively because "the potential for a violation of the GATT arises only if respondents fail to pursue their rights under U.S. law" by not requesting a review.

DOC Position: We have determined that the Department does not have the authority to adjust the amount of antidumping duties paid on products under investigation within the context of this countervailing duty investigation, and that any adjustment as requested by respondents must be made within the context of the antidumping duty order.

Verification

In accordance with section 776(b) of the Act, we verified the information used in making our final determination. During verification, we followed standard verification procedures, including meeting with government and company officials, inspecting documents and ledgers, tracing information in the response to source documents, accounting ledgers, and financial statements, and collecting additional information that we deemed necessary for making our final determination.

Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation on all entries of malleable iron pipe fittings from Thailand which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register. In accordance with section 706(a) of the Act (19 U.S.C. 1671e), we are directing the U.S. Customs Service to require a cash deposit equal to 2.94 percent *ad valorem* for each entry of the subject merchandise.

This determination is published pursuant to section 705(d) of the Act [19 U.S.C. 1671d(d)].

Jan W. Mares,

Assistant Secretary for Import Administration.

February 6, 1989.

[FR Doc. 89-3202 Filed 2-9-89; 8:45 am]

BILLING CODE 3510-DS-M

Bureau of Export Administration

Materials Technical Advisory Committee; Partially Closed Meeting

A meeting of the Materials Technical Advisory Committee will be held March 2, 1989, 9:30 a.m., Herbert C. Hoover Building, Room 1617F, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to materials or technology.

Agenda

General Session

1. Opening Remarks by the Chairman & Commerce Representative.
2. Introduction of Members and Visitors.
3. Presentation of Papers or Comments by the Public.
4. Introduction of New Committee Members.
5. Presentation by Commerce Department on Technical Advisory Committees.
6. Presentation by Defense Department on MCTL Update.
7. Presentation by 3M Company on Hollow Glass Spheres.
8. Discussion by Committee on Following International List Items:

1352—Nozzles, Dies and Extruder Barrels Specially Designed for Processing of the Fluorcarbon Materials Covered by IL 1754(b)(2).
1631—Megnatic Metals.
1702—Hydraulic Fluids.
1746—Polymeric Substances.
1749—Polycarbonate Sheet.
1754—Flourinated Compounds.
1755—Silicone Fluids and Greases.
1781—Synthetic Lubricating Oils and Greases.

Executive Session

9. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call Ruth D. Fitts, 202-377-4959.

Date: February 5, 1989.

Betty A. Farrell,

Director, Technical Advisory Committee Unit, Office of Technology and Policy.

[FR Doc. 89-3184 Filed 2-9-89; 8:45 am]

BILLING CODE 3510-DT-M

National Oceanic and Atmospheric Administration

International Whaling Commission; Meetings

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of meetings.

SUMMARY: NOAA makes use of an Interagency Committee to assist in preparing for meetings of the International Whaling Commission (IWC). This notice sets forth guidelines for participating on the Committee and a tentative schedule of meetings and other important dates.

DATE: See **"SUPPLEMENTARY INFORMATION"** for dates of scheduled meetings.

ADDRESS: Recommendations to the U.S. Commissioner to the IWC and nominations to the U.S. delegation to the IWC should be sent to: The United States Commissioner to the International Whaling Commission, c/o NMFS, Room 7306, Silver Spring Metro Building 1, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Becky Rootes, Office of International Affairs, NMFS, Silver Spring, MD 20910, (301) 427-2276.

SUPPLEMENTARY INFORMATION: The Secretary of Commerce is charged with the responsibility of discharging the obligations of the United States under the International Convention for the Regulation of Whaling, 1946. This authority has been delegated to the Under Secretary of NOAA. The U.S. Commissioner to the IWC has primary responsibility with the Secretary of State for the preparation and negotiations of U.S. positions on international issues concerning whaling and for all matters involving the IWC. He is staffed by the Department of Commerce, and assisted by the Department of the Interior, the Marine Mammal Commission, and other interested agencies.

Each year NOAA conducts a series of meetings and other actions to prepare for the annual meeting of the IWC which is held in the summer. The major purpose of the preparatory meetings is to provide for participation in the development of policy by members of the public and non-governmental organizations interested in whale conservation. NOAA believes that this participation is important for the effective development and implementation of U.S. policy concerning whaling, and such participation is and shall continue to be a prerequisite to the establishment of U.S. negotiating positions for IWC meetings.

Because the meetings discuss U.S. negotiating positions, the substance of the meetings must be kept confidential. For example, proposed position papers that may be circulated at a meeting for discussion cannot be removed from the meeting site and must be collected at the close of each meeting.

Any U.S. citizen with an identifiable interest in U.S. whale conservation policy may participate, but NOAA reserves the authority to inquire about the interests of any person who appears at a meeting and to determine the appropriateness of that person's participation. Persons who represent foreign interests may not attend. These stringent measures are necessary to protect the confidentiality of U.S. negotiating positions and are a necessary basis for the relatively open process of preparing for IWC meetings that characterizes current practice.

The tentative schedule of meetings and deadlines including those of the IWC and deadlines for the preparation of positions papers during 1988 is as follows:

March 1, 1989.—Nominations for the U.S. Delegation to the June IWC meetings are due to the U.S. Commissioner, with a copy to Becky Rootes at the above address. All persons wishing to be considered pursuant to the U.S. Commissioner's recommendation to the Department of State concerning the composition of the Delegation should ensure that nominations are received by this date. Prospective Congressional advisors to the Delegation should contact the Department of State directly.

March 9, 1989—Interagency Committee meeting following receipt of the preliminary agenda for the June IWC meetings which is due to be circulated by the IWC Secretariat on or before March 4. The meeting will review the preliminary agenda and proposed additions to this agenda, all of which will be available at the meeting. Interested persons who are unable to attend are welcome to submit comments. Recommendations to the U.S. Commissioner should be sent to: The United Commissioner to the International Whaling Commission, at the above address.

March 16, 1989—Forward U.S. agenda changes to the IWC Secretariat.

April 5, 1989—Publish in the Federal Register the Agency views on (1) the current population levels and annual net recruitment rate of bowhead whales (2) the nature and extent of the aboriginal/subsistence need for bowhead whales, (3) the level of take of bowhead whales that is consistent with the provisions of the IWC aboriginal/subsistence whaling management scheme and (4) a list of documents reviewed by NOAA and used by the Administrator in formulating these views.

April 12, 1989—Due date for circulation of the provisional agenda by the IWC Secretariat. This "second draft" of the agenda reflects any additions submitted by member countries and stands until considered by the Commission at the opening session of its Annual Meeting.

April 26, 1989—Draft position papers to the U.S. Commissioner.

May 17, 1989—Final Interagency Committee Meeting to consider U.S. position papers and discuss arrangements for the Delegation's work.

May 20–June 2, 1989—Annual Meeting of the Scientific Committee, San Diego, California.

June 5–10, 1989—Technical Committee subcommittee and working group meetings (on aboriginal/subsistence need for whaling, infractions, humane killings, comprehensive assessment, and such other meetings as may be scheduled), and preliminary meetings of the Finance and Administration Committee, Auckland, New Zealand.

June 11, 1989—Meeting of the U.S. Delegation, San Diego, California.

June 12, 1989—41st Annual Meeting of the IWC, San Diego, California.

Persons who would like to be included in IWC Interagency Committee meetings may contact Becky Rootes at the address or telephone number provided above to obtain meeting times and location. (16 U.S.C. 1801 *et seq.*)

Dated: February 6, 1989.

Henry R. Beasley,

Director, Office of International Affairs.

[FR Doc. 89-3153 Filed 2-9-89; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Intent To Grant Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Becton Dickinson and Company, having a place of business in Franklin Lakes, NJ 07417 an exclusive license in the United States to practice the invention embodied in U.S. Patent Application Serial Number 6-895,942, "A Recombinant DNA Clone Containing a Genomic Fragment of PfHRP-II Gene from Plasmodium falciparum". The patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments, and other materials relating to the proposed license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

A copy of the instant patent application may be purchased from the NTIS Sales Desk by telephoning (703) 487-4650 or by writing to the Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 89-3177 Filed 2-9-89; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1989; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1989 a commodity to be produced and a service to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: March 13, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On November 18, and December 23, 1988, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (53 FR 46845 and 51872) of proposed additions to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018).

No comments were received concerning the proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified workshops to produce the commodity and provide the service at a fair market price and impact of the additions on the current or most recent contractors, the Committee has determined that the commodity and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities listed.

c. The actions will result in authorizing small entities to produce the commodities procured by the Government.

Accordingly, the following commodity and service are hereby added to Procurement List 1989:

Mirror and Bracket Assembly, 2540-00-575-6391

Janitorial/Custodial Headquarters, Building 1001, Fort Hood, Texas

Beverly L. Milkman,

Executive Director.

[FR Doc. 89-3204 Filed 2-9-89; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1989 Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1989 commodities to be produced by workshops for the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: March 13, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed addition, all entities of the Federal Government will be required to procure the commodities listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018):

Commodities

Peeler, Potato, Hand
7330-00-238-8316
Paper, Toilet Tissue
8540-00-J19-1421

Beverly L. Milkman,

Executive Director.

[FR Doc. 89-3205 Filed 2-9-89; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 27-28 February 1989.

Time: 0800-1700 hours.

Place: Walter Reed Army Hospital, Washington, DC.

Agenda: The Army Science Board Ad Hoc Subgroup for Threat of AIDS on Operational Deployments of Army Forces to a Theater will hold its final report writing session. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 89-3363 Filed 2-9-89; 9:43 am]

BILLING CODE 3710-08-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3516-4]

Ambient Air Monitoring Reference and Equivalent Methods; Receipt of Application for a Reference Method Determination

Notice is hereby given that on December 15, 1988, the Environmental Protection Agency received an application from Andersen Samplers Incorporated, 4215 Wendell Drive, Atlanta, Georgia 30336, to determine if its PM_{10} Dichotomous Samplers, Sierra-Andersen Models SA241 and SA241M and General Metal Works Models G241 and G241M should be designated by the Administrator of the EPA as reference methods under 40 CFR Part 53. If, after appropriate technical study, the Administrator determines that these methods should be so designated, notice thereof will be given in a subsequent issue of the Federal Register.

Carl J. Gerber,

Acting Assistant Administrator for Research and Development.

[FR Doc. 89-3196 Filed 2-9-89; 8:45 am]

BILLING CODE 6560-50-M

[AMS-FRL-3517-6]

California State Motor Vehicle Pollution Control Standards; Waiver of Federal Preemption; Decision

AGENCY: Environmental Protection Agency.

ACTION: Notice of waiver of Federal preemption.

SUMMARY: EPA is granting California a waiver of Federal preemption pursuant to section 209(b) of the Clean Air Act, as amended, 42 U.S.C. 7543(b), to adopt and enforce its certification procedures for 1975 and later model year used modified imported nonconcorming motor vehicles (Used Gray Market Waiver). California is adding these provisions to its already-existing certification requirements for new modified imported motor vehicles. The new amendments establish a testing procedure [1] applicable to used modified passenger cars, light-duty trucks and medium-duty vehicles (hereinafter "vehicles"), and establish licensing requirements for vehicle emission test laboratories where these cars will be tested. Such vehicles may only be modified by registered automotive repair dealers, who must provide an owner's manual for each car modified. The vehicles will then be tested and certified by licensed laboratories which are subject to extensive oversight by the California Air Resources Board (CARB). The new amendments also contain labeling provisions and provide that each vehicle will be subjected to a physical inspection and must undergo an engineering analysis prior to receipt of the certificate of conformance.

ADDRESSES: A copy of the above standards and procedures, and other amendments, the decision document containing an explanation of the Administrator's determination and the record of those documents used in arriving at this decision are available for public inspection during normal working hours (8:00 a.m. to 3:30 p.m.) at the U.S. Environmental Protection Agency, Central Docket Section (Docket EN-88-09), Room 4, South Conference Center, Waterside Mall, 401 M Street, SW., Washington, DC 20460. Copies of the decision document can be obtained from EPA's Manufacturers Operation Division by contacting Leila Holmes Cook, as noted below.

FOR FURTHER INFORMATION CONTACT: Leila Holmes Cook, Attorney/Advisor, Manufacturers Operations Division (EN-340F), U.S. Environmental Protection Agency, Washington, DC 20460. Telephone: (202) 382-2526.

SUPPLEMENTARY INFORMATION: I have decided to grant California a waiver of Federal preemption pursuant to section 209(b) of the Clean Air Act, as amended (Act), 42 U.S.C. 7543(b), for its amendments which provide for the certification of used modified imported nonconforming vehicles.

Section 209(b) of the Act provides that, if certain criteria are met, the Administrator shall waive Federal preemption for California to enforce new motor vehicle emission standards and accompanying enforcement procedures. The criteria include consideration of whether California arbitrarily and capriciously determined that its standards are, in the aggregate, at least as protective of public health and welfare as the applicable Federal standards; whether California needs the State standards to meet the compelling and extraordinary conditions; and whether California's amendments are consistent with section 202(a) of this Act.

CARB determined that these standards and accompanying enforcement procedures do not cause California's standards, in the aggregate, to be less protective of public health and welfare than the applicable Federal standards. No evidence has been presented which shows that California arbitrarily and capriciously reached this determination. Therefore, I cannot find California's determination to be arbitrary and capricious.

CARB has continually demonstrated the existence of compelling and extraordinary conditions justifying the need for its own motor vehicle pollution control program, which includes the subject standards and procedures. No information has been submitted to demonstrate that California no longer has a compelling and extraordinary need for its own program. Therefore, I agree that California continues to have compelling and extraordinary conditions which require its own program, and, thus, I cannot deny the waiver on the basis of the lack of compelling and extraordinary conditions.

CARB has submitted information that the requirements of its emissions standards and test procedures are technologically feasible. No commenter submitted data or other information to satisfy its burden of persuading EPA that the standards are not technologically feasible within the available lead time, considering costs. Additionally, these requirements do not involve the certification process. Thus, I cannot find that California's amendments will be inconsistent with section 202(a) of the Act. Accordingly, I hereby grant the waiver requested by California.

My decision will affect not only persons in California but also the manufacturers outside the State who must comply with California's requirements in order to produce motor vehicles for sale in California. For this reason, I hereby determine and find that this a final action of national applicability.

Under section 307(b)(1) of the Clean Air Act, judicial review of this final action may be sought only in the United States Court of Appeals for the District

[1] While California uses the term "certification" in describing its testing requirements for used nonconforming imported vehicles, these procedures apply to individual vehicle testing and conformity determinations and not the formal certification process provided for in section 206(a) of the Act. It is these section 206(a) certification requirements involving prototype test vehicles which are considered in section 209(b) waiver determinations.

of Columbia Circuit. Petitions for review must be filed by April 11, 1989. Under section 307(b)(2), judicial review may not be obtained in subsequent enforcement proceedings.

This action is not a rule as defined by section 1(a) of Executive Order 12291, 46 FR 13193 (February 19, 1981). Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12291. Nor is a Regulatory Impact Analysis being prepared under Executive Order 12291 for this waiver determination, since it is not a rule.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. Section 601(2). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

Finally, the Administrator has delegated the authority to grant a State a waiver of Federal preemption, under § 209(b) of the Act to the Assistant Administrator for Air and Radiation.

Dated: February 6, 1989.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 89-3187 Filed 2-9-89; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3517-8]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5076 or (202) 382-5075. Availability of Environmental Impact Statements Filed January 30, 1989 Through February 3, 1989 Pursuant to 40 CFR 1506.9.

EIS No. 890021, Final, FHW, GA, US 411 Relocation, US 411/GA-20 Interchange with US 41 to US 411 Interchange with I-75, Funding and 404 Permit, Bartow County, GA, Due: March 13, 1989, Contact: Louis M. Papet (404) 347-4751.

EIS No. 890022, Draft, FHW, CA, CA-237 Upgrading to Freeway Standards, Mathilda Avenue to I-880, Funding and 404 Permit, Santa Clara County, CA, Due: March 27, 1989, Contact: David L. Eyres (916) 551-1314.

EIS No. 890023, Final, AFS, CA, San Bernardino National Forest, Land and Resource Management Plan, Implementation, San Bernardino and Riverside Counties, CA, Due: March 13, 1989, Contact: Richard L. Stauber (714) 383-5588.

EIS No. 890024, Final, BLM, AK, Fortymile River Watershed, Multiple Placer Mining Management Plan, Approval, Implementation and 404 Permit, Upper Yukon-Canada Subregion, AK, Due: March 13, 1989, Contact: Michael J. Penfold (907) 271-3114.

EIS No. 890025, Draft, AFS, NH, Loon Mountain Ski Area, South Mountain Expansion Project, Special Use Permit, White Mountain National Forest, Grafton County, NH, Due: April 10, 1989, Contact: Dain Maddox (414) 643-4499.

EIS No. 890026, Draft, FAA, CO, New Denver Airport Development, Construction and Operation Plan for Replacement of the Stapleton International Airport, Approval and Funding, Denver County, CO, Due: March 27, 1989, Contact: Dennis G. Ossenkop (206) 431-2846.

EIS No. 890027, Draft, FHW, PR, PR-26/Baldorioty De Castro Avenue Freeway Construction, KM. 2.87 to KM. 8.2, Funding, Muncipalities of San Juan and Carolina, PR, Due: March 27, 1989, Contact: Juan O. Cruz (809) 766-4600.

EIS No. 890028, Final, BLM, CO, Northwest Colorado Coal Preference Right Lease Applications, Chapman-Riebold (C-0125366) and Jensen-Miller (C-4275), Leasing, Rio Blanco County, CO, Due: March 13, 1989, Contact: Roger Wickstrom (303) 878-3601.

EIS No. 890029, Draft, FHW, ND, MD, I-94 Corridor Improvements, Horace Road to US 75, Funding and Possible 404 Permit, Cass County, ND and Clay County, MN, Due: March 31, 1989, Contact: John Kliethernes (701) 250-4204.

Amended Notices

EIS No. 890018, Draft, COE, MI, Village of Ontonagon Flood Control Plan, Implementation, Ontonagon County, MI, Due: March 20, 1989, Contact: Les E. Weigum (313) 226-6752.

This EIS NOA should have appeared in the 2-3-89 FR. The 45-day NEPA review period is calculated from 2-3-89.

Dated: February 7, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89-3196 Filed 2-9-89; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3517-9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared January 23, 1989 through January 27, 1989 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 22, 1988 (53 FR 13318).

Draft EISs

ERP No.: DS-AFS-L65103-WA, Rating EC2, Wenatchee National Forest, Land and Resource Management Plan, Additional Information and Management Requirements Analysis, Implementation, Kittitas, Chelan and Yakima Counties, WA.

Summary: EPA is concerned about potential water quality impacts associated with implementation of the No Change Alternative. This alternative does not incorporate all the provisions of the National Forest Management Act of 1976 or include specific standards and guidelines for water quality protection.

ERP No.: DS-COE-A36390-WA, Rating EC2, Mill Creek Flood Control Project, Storage Dam Seepage Control, Implementation, Walla Walla County, WA.

Summary: EPA has concerns about the loss of riparian areas and possible impacts to ground-water levels associated with this project. The proposed mitigation is not adequate, as it does not replace the functions and values associated with the vegetation to be removed.

ERP No.: D-COE-E36164-MS, Rating EO2, Upper Yazoo Basin Fish and Wildlife Mitigation Study for Fish and Wildlife Losses in the Ascalmo Creek-Tippo Bayou Project, Big Sand Creek Projects and Panolo-Quitman Floodway East Bank Levee Project, Implementation, MS.

Summary: EPA has significant environmental objections to the subject mitigation plan since it only deals indirectly/nominally with the comprehensive water quality problems in the Yazoo Basin. Additionally, the plan uses a computational model to determine the amount of mitigation which relies on assumptions which appear incorrect. As a result of these assumptions, the amount of mitigation necessary to compensate for project(s) implementation has been underestimated.

ERP No.: D-FHW-K40166-HI, Rating EC2, Hanoapiilani Highway/FAP Route 30 Improvement, Puamana to Kaanapali, Funding, Maui County, HI.

Summary: EPA expressed environmental concerns and requested that the final EIS more fully discuss an alternative utilizing mass transit, buses and rail trolleys. EPA also requested that the final EIS contain more current information on existing water quality in the project area and commit to mitigation measures to protect water quality.

ERP No.: D-SFW-E39034-00, Rating EC2, Reelfoot Lake Water Level Management Plan, Implementation, Fulton County, KY and Lake and Obion Counties, TN.

Summary: EPA has concerns about the drawdown proposal because the water that would be immediately returned to the lake would be of approximately the same quality as the existing water. While the proposed drawdown mechanisms could provide some short-term reduction in the lake's algal production, EPA would like to see an extensive monitoring plan instituted to gauge the adverse impacts during the drawdown and the improvements to the lake's water quality and fishery after the drawdown.

Final EISs

ERP No.: F-COE-G36140-TX, Buffalo Bayou and Tributaries, Comprehensive Flood Damage Prevention Study, Implementation, Harris, Fort Bend, and Waller Counties, TX.

Summary: EPA has no objections to the proposed action as described.

ERP No.: F-DOE-L10004-00, Special Isotope Separation Production Plant Construction and Operation and the use of Atomic Vapor Laser Isotope Separation Technology, Site Selection and Implementation, Idaho National Engineering Laboratory near Idaho Falls, ID, Handford Site near Richland, WA and Savannah River Plant near Aiken, SC.

Summary: EPA's comments on the draft EIS have been satisfied with responses given in the final EIS. EPA has no objections to the project as described in this document.

ERP No.: LF-SFW-L64040-AK, Alaska National Wildlife Rufuges Native Owned Inholdings Acquisition in Exchange for Limited Oil and Gas Interest in the Coastal Plain of the Arctic National Wildlife Rufuge, AK.

Summary: EPA finds the project as described in this document acceptable due to the explicity commitment to comply with NEPA when approving each exploration and development plan.

ERP No.: F-USA-K85059-HI, Helemano Military Reservation, Family Housing Construction Project, Implementation, City and County of Honolulu, Island of Oahu, HI.

Summary: EPA requested a commitment to promptly notify the EPA should any hazardous substances be discovered on the Helemano Military Reservation, to comply with all applicable requirements of the Federal Superfund Law, and to correct all deficiencies at the Army's Schoefield Barracks Wastewater Treatment Plant before the plant receives an additional burden from the proposed housing project.

Dated: February 7, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89-3199 Filed 2-9-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is given that the following applicants have filed with the Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarder and Passenger Vessel Operations, Federal Maritime Commisison, Washington, DC 20573.

American Red Ball International, Inc., 9750 3rd Ave., NE., P.O. Box 75988, Seattle, WA 98125.
Officers: Walter E. Saubert, President; Ralph E. Davis, Vice President/Treasurer; Melvin D. Duncan, Vice President; Marjorie M. Beeler, Vice President/Sec.

Round-The-World (U.S.A.) Corporation, 53 Park Place, Suite 702, New York, NY 10007.
Officers: Ying-Shin Tseng, President; Pao Ling Wang, Chairman; Jack Tseng Hui Hsu, Vice President; Yang Mei Chen Chang, Stockholder; Chen Hui Chu Chang, Stockholder.

American Lucky Star, Inc., 401 Broadway, Suite 310, New York, NY 10013.
Officers: Waly Hakim, President; Lama Hakim, Treasurer.

Trans-Alliance International Forwarding Co., 64 Glenwood Ave., Jersey City, NJ 07306.
Officers: Enrique Vera, Sole Proprietor.

RAM Forwarding Incorporated, 16438 Air Center Boulevard, Houston, TX 77032.
Officers: Norbert A. Juergen, President; Nancy J. Jeurgen, Vice President.

Hasegawa International, Ltd., 6410 So. 196th St., Kent, WA 98032.
Officer: Masami Hasegawa, President.

Eden Air Freight, Inc., 1821 McGaw Ave., Irvine, CA 92714.
Officers: Lawrence L. Rodberg, President/Director; Larry P. Rodberg, V. Pres. Opers. & Admin. Director; William E. Dennler, V. Pres. Mkt./Sales & Director; Wayne N. Neumann, V. Pres./Sec./Treas./Director.

Kelly International, 9034 Manning, Kansas City, MO 64138.
Officer: Consuelo E. Kelly, Sole Proprietor.

A America Cargo Services Inc., 6856 NW. 77 Ct., Miami, FL 33166.
Officers: Carlos Del Corral, President; Maria Del Carmen Del Corral, Sec./Treasurer; Allan J. Leonard, Sec.-Treas./Dir.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: February 6, 1989.

[FR Doc. 89-3140 Filed 2-9-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

The Fuji Bank, Limited, et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would

not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 24, 1989.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. The Fuji Bank, Limited, Tokyo, Japan; to engage *de novo* through its subsidiary, Fuji Capital Markets Corporation, in making, acquiring and servicing loans and other extensions of credit pursuant to § 225.25(d)(1); acting as investment and financial adviser to the extent of providing investment advice to any other person and furnishing general economic information and advice, general economic statistical forecasting services and industry studies pursuant to § 225.25(d)(4); and leasing personal and real property and acting as agent, broker and adviser in leasing such property pursuant to § 225.25(d)(5) of the Board's Regulation Y.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. Banque Nationale de Paris, Paris, France; to engage *de novo* through its subsidiary, Banexi Corporation, Menlo Park, California, in providing investment or financial advice pursuant to § 225.25(b)(4) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 3, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-3149 Filed 2-9-89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Institution for Savings in Newburyport et al.

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 24, 1989.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Institution for Savings in Newburyport and Its Vicinity, Newburyport, Massachusetts; to acquire up to 24.99 percent of the voting shares of First and Ocean BanCorp, Newburyport, Massachusetts, and thereby indirectly acquire First and Ocean National Bank of Newburyport, Newburyport Massachusetts.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Gary W. Paulson, Park River, North Dakota; to acquire an additional 0.20 percent of the voting shares of First Holding Company of Park River, Park River, North Dakota, and thereby indirectly acquire First State Bank of Park River, Park River, North Dakota.

2. James A. Wick, Kevin J. Wick, Mark D. Wick, Mary K. Wick, Patrick A. Wick, and Paul D. Wick; to acquire 8.2 percent of the voting shares of Turtle Bancshares, Incorporated, Turtle Lake, Wisconsin, and thereby indirectly acquire Bank of Turtle Lake, Turtle Lake, Wisconsin. Also, as a result of a stock redemption Dorothy E. Cornwall will acquire an additional 16.3 percent of the voting shares of Turtle Bancshares, Incorporated, Turtle Lake, Wisconsin, and thereby indirectly acquire Bank of Turtle Lake, Turtle Lake, Wisconsin.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Emmett D. Paul, Jr., Pittsburg, Texas; to acquire 17 percent of the voting shares of Bank of Van Zandt, Canton, Texas.

D. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. Philip J. Rocco, Santa Ana, California, to acquire between 4.06 and 8.32 percent of the voting shares of California City Bancorp, Orange, California, and thereby indirectly acquire California City Bank, N.A., Orange, California.

Board of Governors of the Federal Reserve System, February 3, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-3150 Filed 2-9-89; 8:45 am]

BILLING CODE 6210-01-M

PBA Bancorporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 1, 1989.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. PBA Bancorporation, Centreville, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of The Peoples Bank of Alabama, formerly The Peoples Bank of Centreville, Centreville, Alabama.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Lakeside Credit Company, Inc., Minneapolis, Minnesota; to become a bank holding company by acquiring 99.84 percent of the voting shares of First Trust & Savings Bank, Cedar Rapids, Iowa.

2. Nevada National Co., Omaha, Nebraska; to acquire 99.6 percent of the voting shares of Rainwood Corporation, Omaha, Nebraska, and thereby indirectly acquire Valley State Bank, Rock Valley, Iowa.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Cameron Investment Company, Sheboygan, Wisconsin; to acquire 100 percent of the voting shares of Community Bank of Sheboygan, Sheboygan, Wisconsin, a *de novo* bank.

2. Chisholm Bancshares, Inc., Chisholm, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Chisholm, Chisholm, Minnesota.

D. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. CMJR Investments, Inc., Lyndon, Kansas; to become a bank holding company by acquiring 80 percent of the voting shares of Lyndon State Bank, Lyndon, Kansas.

E. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. W.T.B. Financial Corporation, Spokane, Washington; to acquire 100 percent of the voting shares of Norban Financial Group, Inc., Coeur d'Alene, Idaho, and thereby indirectly acquire Northern State Bank, Coeur d'Alene, Idaho, and Seaport Citizens Bank, Lewiston, Idaho.

Board of Governors of the Federal Reserve System, February 6, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-3151 Filed 2-9-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88F-0429]

Food Techniques, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Food Techniques, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of ozone for treating poultry chiller water for reuse.

FOR FURTHER INFORMATION CONTACT: Robert L. Martin, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St., SW., Washington, DC 20204, 202-426-9483.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that Food Techniques, Inc., 267-A Hayes Mille Rd., Atco, NJ 08004, has filed a petition (FAP 9A4119) proposing that the food additive regulations be amended to provide for the safe use of ozone for treating poultry chiller water for reuse.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regultion, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: February 1, 1989.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-3148 Filed 2-9-89; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

National Cancer Institute; Meeting; Cancer Biology-Immunology Contracts Review Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Cancer Biology—Immunology Contracts Review Committee, National Cancer Institutes, National Institutes of Health, March 20-21, 1989, Guest Quarters Hotel, Montgomery II Conference Room, 7335 Wisconsin Avenue, Bethesda, Maryland 20814.

This meeting will be open to the public on March 20 from 9 a.m. to 9:30 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, the meeting will be closed to the public on March 20 from 9:30 a.m. to recess and on March 21 from 9 a.m. to adjournment for the review, discussion and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commerical property such as patentable materials and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Wilna A. Woods, Executive Secretary, Cancer Biology—Immunology Contracts Review Committee, 5333 Westbard Avenue, Room 807, Bethesda, Maryland 20892 (301/496-7153) will furnish substantive program information.

Dated: January 31, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-3206 Filed 2-9-89; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, Division of Cancer Etiology on February 23-24, 1989. The meeting will be held in Building 31, C Wing, Conference Room 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public from 1 p.m. to recess on February 23 and from 9 a.m. to adjournment on February 24 for discussion and review of the Division budget and review of concepts for grants and contracts. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, the meeting will be closed to the public from 9 a.m. to approximately 12 p.m. on February 23 for the review, discussion and evaluation of individual programs and projects conducted by the Division of Cancer Etiology. These programs, projects, and discussions could reveal personal information concerning individuals associated with the programs and projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. David McB. Howell, Executive Secretary of the Board of Scientific

Counselors, Division of Cancer Etiology, National Cancer Institute, Building 31, Room 11A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-6927) will furnish substantive program information.

Dated: January 31, 1989.

Betty J. Beveridge,
Committee Management Officer, NIH.

[FR Doc. 89-3207 Filed 2-9-89; 8:45 am]
BILLING CODE 4140-01-M

National Institute of Dental Research; Meeting of NIDR Special Grants Review Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Special Grants Review Committee, National Institute of Dental Research, February 27-March 1, 1989, in the Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815. The Committee will meet in the Palladium Room East. The meeting will be open to the public from 7:30 p.m. to 8:00 p.m. on February 27 for general discussions. Attendance by the public is limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec., 10(d) of Pub. L. 92-463, the meeting will be closed to the public on February 27 from 8:00 p.m. to rrecess, on February 28 from 9:00 a.m. to recess, and on March 1 from 9:00 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Rose Marie Petrucelli, Executive Secretary, NIDR Special Grants Review Committee, NIH, Westwood Building, Room 519, Bethesda, MD 20892, (telephone 301/496-7658) will provide a summary of the meeting, roster of committee members and substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 13.121—Diseases of the Teeth and Supporting Tissues: Caries and Restorative Materials; Periodontal and Soft Tissue Diseases; 13-122—Disorders of Structure, Function, and Behavior: Craniofacial Anomalies, Pain Control, and Behavioral Studies; 13-845—Dental Research Institute; National Institutes of Health)

Dated: January 31, 1989.

Betty J. Beveridge,
Committee Management Officer, NIH.

[FR Doc. 89-3208 Filed 2-9-89; 8:45 am]
BILLING CODE 4140-01-M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Pub. L. 96-511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on January 13, 1989.

Social Security Administration

(Call Reports Clearance Officer on (301) 965-4149 for copies of package)

1. Statement of Income and Resources—0960-0123—The form SSA-8010 is used by the Social Security Administration to obtain income and resources about certain people in connection with claims or redeterminations for Supplemental Security Income (SSI). The respondents are individuals who are parents, sponsors (of an alien), or ineligible children in the household of, an SSI applicant or recipient, or essential persons.

Number of Respondents—221,000
Frequency of Response—1
Average Burden Per Response—20 minutes
Estimated Annual Burden—73,667 hours

2. Disability Hearing Officer's Decision—0960-0441—The information collected on the form SSA-1207 is used as an official document for recording disability hearing officer's decisions. The respondents are the hearing officers in the State Disability Determination Services.

Number of Respondents—84
Frequency of Response—504
Average Burden Per Response—45 minutes
Estimated Annual Burden—20,412 hours

3. Reconsideration Report For Disability Cessation—0960-0350—The information collected on the form SSA-782 is used to document an individual's request for a disability reconsideration. The respondents are individuals who were previously denied disability benefits or were removed from the disability rolls.

Number of Respondents—32,023
Frequency of Response—1
Average Burden Per Response—30 minutes
Estimated Annual Burden—16,012 hours

4. Statement Regarding Inferred Death of an Individual by Reason of Continued and Unexplained Absence—0960-0002—The information collected on the form SSA-723 is used to determine if the Social Security Administration may infer that a missing person is dead. The respondents are persons having knowledge of the facts surrounding the continued and unexplained absence of a wage earner.

Number of Respondents—3,000
Frequency of Response—1
Average Burden Per Response—30 minutes
Estimated Annual Burden—1,500 hours
OMB Desk Officer: Justin Kopca

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated: February 6, 1989.

Robert D. Marder,
Director, Office of Publications and Logistics Management.

[FR Doc. 89-3165 Filed 2-9-89; 8:45 am]
BILLING CODE 415-11-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-89-1930]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collection of information, as described below, to OMB for review, as required by the Papework Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: January 10, 1989.

John T. Murphy,
Director, Information Policy and Management Division.

Proposal: Project Application for Housing Development Grant and Estimate of Income Addendum (Forms HUD-90031 and 90031-A).
Office: Housing.
Description of The Need For The Information And Its Proposed Use: These forms are used extensively by Grantees to update project data essential for the preparation of the final HUD/Grantee Agreement. It is also a source document for collecting information to update automated information systems used for program management.
Form Number: HUD-90031 and 90031-A.
Respondents: State or Local Governments.
Frequency of Submission: On Occasion.
Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Application	200		1		4		800

Total Estimated Burden Hours: 800.
Status: Reinstatement.
Contact: Jessica Franklin, HUD, (202) 755-6142
John Allison, OMB, (202) 395-6880
Date: January 10, 1989.

Proposal: Section 8 Fair Market Rent Telephone Surveys.
Office: Policy Development and Research.
Description of the need for the information and its proposed use: HUD needs a fast and inexpensive way of re-estimating Section 8 Existing Fair Market Rents (FMRs). HUD wants to test a telephone survey method to use in areas where FMRs are believed to be inaccurate. The affected public would be those surveyed and Section 8 recipients.
Form Number: None.
Respondents: Individuals or Households.
Frequency of Submission: On Occasion.
Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Section 8 fair market rent telephone survey	4,5495		9.44		.0117		508

Total Estimated Burden Hours: 508.
Status: New.
Contact: Joseph Riley, HUD, (202) 755-5590
John Allison, OMB, (202) 395-6880
Date: January 10, 1989.

Proposal: Actions to Reduce Losses in FHA Programs.
Office: Housing.
Description of the need for the information and its proposed use: This rule would require a mortgagee, when notified by the FHA Commissioner that the mortgagee had a higher than normal rate of early serious defaults and claims in the preceding year, to submit a report to the Commissioner, and if applicable, a plan and timetable for necessary corrective action.
Form Number: None.
Respondents: Individuals of Households, Businesses of Other For-Profit, Non-Profit Institutions, and Small Business or Organizations.
Frequency of Submission: On Occasion and Annually.
Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Actions to reduce losses in FHA programs	200		1		4		800

Total Estimated Burden Hours: 800.
Status: New.
Contact: Andrew Zirnkilis, HUD, (202) 755–6824
John Allison, OMB, (202) 395–6880
Date: January 10, 1989.

[FR Doc. 89–3154 Filed 2–9–89; 8:45 am]
BILLING CODE 4210–01–M

[Docket No. N–89–1931]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: January 17, 1989.

John T. Murphy,
Director, Information Policy and Management Division.

Proposal: Quarterly Survey of Mortgage-Related Security Investments.
Office: Housing.
Description of the Need for the Information and its Proposed use: This survey will provide the only source of information on the extent of the mortgage market by monitoring how institutions respond to changes in Federal regulations. The data will be used for Federal planning.
Form Number: None.
Respondents: Businesses or Other For-Profit.
Frequency of submission: Quarterly.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Survey	566		4		.1666		391

Total estimated burden hours: 391.
Status: Revision.
Contact:
Mike D. Lasky, HUD, (202) 755–7270
John Allison, OMB, (202) 395–6880
Date: January 17, 1989.

Proposal: Monthly Report of Excess Income—Forms HUD–93104 and HUD–93104A.
Office: Housing.
Description of the Need for the Information and its Proposed use: Owners of Section 236 insured and uninsured projects will use the form to compute total rental charges collected that are in excess of basic rents approved for occupied units due HUD.
Form Number: HUD–93104 and HUD–93104A.
Respondents: Businesses or Other For-Profit, Federal Agencies or Employees, and Non-profit Institutions.
Frequency of submission: Monthly.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Reporting burden	4,523		12		.5		27,138

Total estimated burden hours: 27,138.
Status: Extension.
Contact:
Judy Lemeshewsky, HUD, (202) 426–3944.
John Allison, OMB, (202) 395–6880
Date: January 17, 1989.

FR Doc. 89–3155 Filed 2–9–89; 8:45 am]
BILLING CODE 4210–01–M

[Docket No. N–89–1932]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: January 23, 1989.

John T. Murphy,
Director, Information Policy and Management Division.

Proposal: American Housing Survey—1989 National Survey.
Office: Policy Development and Research.
Description of the need for the information and its proposed use: This survey is a longitudinal study to collect current information on the quality, availability and cost of the housing inventory. It also will provide information on the characteristics of occupants and will be used by Federal and Local government agencies to evaluate housing issues.
Form number: None.
Respondents: Individuals and Households.
Frequency of submission: Biennially.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Survey	58,500		1		.46		25,934

Total estimated burden hours: 25,934.
Status: New.
Contact:
Duane T. McGough, HUD, (202) 755–5060
Leonard J. Norris, Census, (202) 763–8550
John Allison, OMB, (202) 395–6880
Date: January 23, 1989.

[FR Doc. 89–3156 Filed 2–9–89; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Convention; Foreign Law Notification, Philippines

AGENCY: Fish and Wildlife Service.

ACTION: Notice of Information No. 18.

Subject: Philippines—Ban on wildlife imports.

This Is a Schedule I Notice

Source of Foreign Law Information

On June 29, 1988, copies of two Philippine Presidential Decrees were officially submitted to the Fish and Wildlife Service (Service) through diplomatic channels. Presidential Decree No. 1219 of October 14, 1977 instituted a ban on the export of raw precious and semi-precious coral, and the export of any other coral of the Phylum Coelenterata (stony corals).

Presidential Decree No. 1698 of May 22, 1980 amended the above decree to prohibit the export of raw or processed stony corals. This ban on coral exports was temporarily suspended on May 1, 1986, and reimposed on November 22, 1986.

On October 25, 1988, the Service received a letter from Mr. Juanito B. Malig, Director of the Bureau of Fisheries and Aquatic Resources, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (Convention) Management Authority for marine species (including corals) for the Philippines. Mr. Malig requested the Service to prohibit the entry of raw, processed, or finished stony corals from the Philippines into the United States.

On November 25, 1988, the Convention Secretariat issued Notification to the Parties No. 514, confirming the Philippine ban on the export of raw or processed stony corals.

Action by the Fish and Wildlife Service: Import into the U.S. of raw precious and semi-precious corals and of raw, processed, or finished stony corals from the Philippines or any of its territories or dependencies is prohibited.

Effective Date: This action is effective immediately upon publication.

Expiration Date: Until revoked.

For Further Information Contact: Nancy J. Roeper, Division of Law Enforcement, U.S. Fish and Wildlife Service, P.O. Box 28006, Washington, DC 20038–8006, Telephone: 202–343–9242.

Dated: January 31, 1989.

Steve Robinson,
Deputy Director.

[FR Doc. 89–3080 Filed 2–9–89; 8:45 am]
BILLING CODE 4310–55–M

Bureau of Land Management

Final Environmental Impact Statement for the James Creek Coal Preference Right Lease Application

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of availability of the Final Environmental Impact Statement (EIS) for the James Creek Coal Preference Right Lease Application and plan amendment.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, notice is hereby given that the Bureau of Land Management has prepared a Final EIS on a coal preference right lease application (PRLA) nine miles northeast of Meeker, (Rio Blanco County), Colorado. This final EIS also serves as a proposed plan amendment for the White River Resource Area Management Framework Plan.

DATES: Protests to the proposed land use planning decision amendment must be filed within 30 days of the publication of the Notice of Availability by the U.S. Environmental Protection Agency in the

BEST COPY AVAILABLE

Federal Register. Protests should be sent to Director (760), Bureau of Land Management, Premier Building, Room 909, 1725 I Street NW., Washington, DC 20240. Protests should include: The name, mailing address, telephone number, and interest of person filing the protest; a statement of the issue or issues being protested; a statement of the part or parts of the amendment being protested; a copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party, or an indication of the date the issue or issues were discussed for the record; and a concise statement explaining why the proposed decision is believed to be wrong.

Availability: Single copies of the final EIS and the draft EIS are available at the Craig District Office (address and phone number are listed below).

FOR FURTHER INFORMATION CONTACT: Greg Goodenow, Project Manager, Bureau of Land Management, Craig District Office, 455 Emerson Street, Craig, Colorado 81625–1129; telephone (303) 824–5261.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management has prepared a final EIS on a Coal Preference Right Lease Application, C–0126998 held by Consolidation Coal Company, located nine miles northeast of Meeker, (Rio Blanco County), Colorado. The final EIS also serves as the analysis for amending the White River Resource Area Management Framework Plan by applying the unsuitability criteria (43 CFR Part 3460) to the project area.

Formal section 7 Consultation has been initiated with the U.S. Fish and Wildlife Service concerning threatened and endangered fish species in the Upper Colorado River Basin.

Tom Walker,

Associate State Director.

Date: February 2, 1989.

[FR Doc. 89–3056 Filed 2–9–89; 8:45 am]

BILLING CODE 4310–JB–M

[ES–030–09–4212–20; ES–00157–005]

Realty Action; Public Lands in Michigan Determined Eligible for Transfer to the State of Michigan Pursuant to Michigan Public Lands Improvement Act of 1988

AGENCY: Bureau of Land Management, Interior.

ACTION: Public notice relative to filing claims of ownership.

SUMMARY: Notice is hereby given that certain public lands located in Michigan have been determined to be eligible for transfer to the State of Michigan. Transfer will be pursuant to the Michigan Public Lands Improvement Act of 1988 (100 Stat 2711, Pub. L. 100–537) (Act) which grants certain specified unclaimed islands and uplands and certain other public lands to the State of Michigan for the purposes of public recreation, protection of fish, wildlife, and plants, and the protection of resources and values. It also authorizes the Secretary of the Interior (Secretary) to resolve claims of ownership of non-mineral interests in certain other public lands in Michigan and to transfer such lands to claimants thereof on terms that recognize the equities of such claimants in such lands.

The purpose of this public notice is twofold: (1) To notify residents of the State of Michigan as to the location of the public lands to be granted or otherwise transferred to Michigan under the Michigan Public Lands Improvement Act of 1988 (Act), and (2) To identify any person(s) who has a claim of ownership of the non-mineral interests in the identified public lands.

A list of the public lands by county, number of parcels, and total acreage follows:

County	No. of parcels	Total acres
Alcona	1	0.30
Alger	7	4.00
Allegan	2	2.80
Alpena	18	14.50
Antrim	2	1.10
Baraga	31	20.00
Barry	8	12.80
Benzie	2	5.00
Berrien	5	3.40
Branch	12	17.90
Calhoun	8	48.30
Cass	10	11.50
Charlevoix	7	29.50
Cheboygan	5	1.40
Chippewa	20	13.94
Clare	3	1.00
Delta	10	11.00
Dickinson	6	6.80
Emmet	3	290.80
Genesee	2	0.30
Grand Traverse	8	10.73
Hillsdale	3	4.60
Huron	14	22.30
Ingham	1	0.50
Ionia	3	2.40
Iosco	1	1.30
Iron	87	67.80
Isabella	3	1.40
Jackson	4	40.80
Kalamazoo	8	6.20
Kent	5	4.70
Keweenaw	23	25.00
Lenawee	2	4.00
Livingston	1	1.00
Luce	1	0.80
Mackinac	20	21.24
Manistee	5	0.90
Marquette	58	223.20
Mecosta	4	0.80
Menominee	11	7.80
Missaukee	1	1.00
Monroe	16	163.43
Montcalm	5	9.40
Montmorency	1	0.10
Muskegon	1	1.50
Newaygo	1	0.20
Oakland	3	80.30
Ogemaw	7	5.50
Ontonagon	1	0.80
Osceola	3	4.20
Otsego	6	10.67
Presque Isle	6	1.20
Roscommon	3	1.30
Saginaw	1	0.06
Schoolcraft	4	5.90
Shiawassee	2	40.80
St. Joseph	8	2.80
Van Buren	4	3.60
Washtenaw	5	1.90

Copies of the land list and maps showing the legal descriptions, nature, and locations of the public lands by county are available for inspection only at the County Clerk's Office in each County Courthouse in Michigan. Additionally, copies of the land list and maps are available from the following offices of BLM and Michigan Department of Natural Resources:

Milwaukee District, Bureau of Land Management, Reuss Federal Plaza, Suite 225, 310 West Wisconsin Avenue, Milwaukee, WI 53203.

Regional Headquarters, Region 1, Michigan Dept. of Natural Resources, 1990 U.S. 41 South, Marquette, MI 49855.

Regional Headquarters, Region 2, Michigan Dept. of Natural Resources, P.O Box 128, 8717 North Roscommon Road, Roscommon, MI 48653.

Regional Headquarters, Region 3, Michigan Dept. of Natural Resources, P.O Box 30028, General Office Building, Third Floor, State Secondary Complex, Lansing, MI 48909.

Real Estate Division, Michigan Dept. of Natural Resources, P.O. Box 30028, Stevens T. Mason Building, Allegan and Pine Streets, Lansing, MI 48909.

Any person who believes that he/she has a claim of ownership of non-mineral interest in any of the public lands contained on the list should notify BLM at the address listed below. No special application form is required, but the claim should be in writing and the tract being claimed should be identified. The claimant's letter should also contain a statement explaining his/her claim. Supporting documents (e.g., deeds, tax receipts) should not be sent with the initial letter. The claimants will be notified by BLM as to the Secretary's authority for the resolution of their claim prior to publishing the final notice of land transferred under the Act.

DATE: Written claims of ownership will be accepted for a period of 45 days from the date of publication of this notice in the Federal Register.

ADDRESS: Written claims of ownership should be sent to Bert Rodgers, District Manager, Bureau of Land Management, P.O. Box 631, Milwaukee, WI 53201–0631.

FOR FURTHER INFORMATION CONTACT: Duane Marti, Archaeologist/Realty Specialist, Bureau of Land Management, P.O Box 631, Milwaukee, WI 53201–0631; telephone (414) 291–4429 or (FTS) 362–4429.

SUPPLEMENTARY INFORMATION: The Congressional grant will be effective on April 26, 1989 and only unclaimed public lands will be transferred subject to the terms and conditions of the Act. Pursuant to the Act, the State of Michigan will receive the public lands identified on the list described in this notice. A second public notice will be published prior to the granting of public lands to the State and will constitute the final list of public lands eligible for transfer. Under Section 4 of the Act, the United States would retain the minerals in the lands and the title of the State of Michigan would be subject to reversion of title to the United States if the State uses the lands for purposes other than those specified in the Act.

Section 3 of the Act authorizes the Secretary to resolve any claim of ownership of non-mineral interest in these identified public lands. The Secretary has a period of ten years from the date of the grant in which to resolve the claims identified during the period specified in this notice. If a claim is not resolved within the ten year period, the public land(s) subject to the claim would be transferred to the State of Michigan. After that transfer, any non-Federal claimant would be required to deal directly with the State of Michigan, rather than the United States, utilizing State courts or other facilities for resolving any remaining disputes over ownership of the non-mineral interests in the affected lands.

Leon R. Kabat,

Acting District Manager.

[FR Doc. 89–2528 Filed 2–3–89; 8:45 am]

BILLING CODE 4310–GJ–M

National Park Service

Martin Luther King Jr., National Historic Site Advisory Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of Advisory Commission Meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Martin Luther King, Jr., National Historic Site Advisory Commission will be held at 10:30 a.m. at the following location and date.

DATE: February 22, 1989.

ADDRESS: The Martin Luther King, Jr., Center for Nonviolent Social Change, Inc., Freedom Hall Complex, Room 261, 449 Auburn Avenue NE., Atlanta, Georgia 30312.

FOR FURTHER INFORMATION CONTACT: Mr. Randolph Scott, Superintendent, Martin Luther King, Jr., National Historic Site, 522 Auburn Avenue NE., Atlanta, Georgia 30312.

SUPPLEMENTARY INFORMATION: The purpose of the Martin Luther King, Jr., National Historic Site Advisory Commission is to advise the Secretary of the Interior or his designee on matters of planning and administration of the Martin Luther King, Jr., National Historic site and Preservation District. The members of the Advisory Commission are as follows:

Ms. Portia Scott, Chairperson
Mr. William W. Allison
Mr. Arthur J. Clement
Mr. John Cox
Mrs. Christine King Farris
Mrs. Valena Henderson
Mr. C. Randy Humphrey
Dr. Elizabeth A. Lyon
Mr. Daniel H. Nall
Rev. Joseph L. Roberts
Mrs. Coretta Scott King, Ex-Officio Member
Director, National Park Service, Ex-Officio Member

The matters to be discussed at this meeting will include the status of park development and interpretive activities.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Written statements may also be submitted to the Superintendent at the address above. Minutes of the meeting will be available at Park Headquarters for public inspection approximately 4 weeks after the meeting.

Date: January 30, 1989.

Robert M. Baker,

Regional Director, Southeast Region.

[FR Doc. 89–3212 Filed 2–9–89; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[No. 40205]

Arrow Line, Inc.; Exemption From Tariff Filing Requirements

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed exemption from tariff filing requirements.

SUMMARY: Arrow Line, Inc., a passenger motor contract carrier, seeks exemption from the tariff filing requirements of 49 U.S.C. 10702, 10761, and 10762. The Commission has issued a decision proposing to grant an exemption for existing and future contracts. The petition for exemption from the tariff filing requirements may be inspected at the Public Docket Room (Room 1227) of the Commission in Washington, DC. Any interested party may file a comment in this proceeding.

DATES: Comments are due by February 27, 1989. If no timely adverse comments are received, the sought relief will automatically become effective at the close of the comment period. If opposition comments are filed, the comments will be considered, and, within 20 days of the close of the comment period, the Commission will issue a final decision.

ADDRESSES: Send an original and 10 copies of comments referring to No. 40205 to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Sam Taylor, (202) 275–7161
or
Richard Felder, (202) 275–7691.
(TDD for hearing impaired: (202) 275–1721.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 275–7428. (Assistance for the hearing impaired is available through TDD services (202) 275–1721.).

Decided: February 2, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89–3175 Filed 2–9–89; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984; SEMATECH, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), SEMATECH, Inc. ("SEMATECH") has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission on January 4, 1989, disclosing an addition to its membership. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act, which limit the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On April 22, 1988, SEMATECH filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on May 19, 1988 (53 FR 17987).

The identity of the new party is LSI Logic Corporation. The identities of the parties to SEMATECH, including the additional member are:

Advanced Micro Devices, Inc.
American Telephone & Telegraph Company
Digital Equipment Corporation
Harris Corporation
Hewlett-Packard Company
INTEL Corporation
International Business Machines Corporation
LSI Logic Corporation
Micron Technology, Inc.
Motorola, Inc.
National Semiconductor Corporation
NCR Corporation
Rockwell International Corporation
Texas Instruments Incorporated

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89-3178 Filed 2-9-89 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Employment and Training Administration
JTPA Title III Financial Data
New; ETA 9024
One-time request
State or local governments
57 respondents; 684 total hours; 12 hours per respondent; 1 form

The information requested will be used to provide the basis for the reallotment of Title III funds of the Job Training Partnership Act (JTPA) as amended. Newly passed legislation (P.L. 100-418) provides for a reallotment process which requires the use of information not currently gathered. The respondents are State JTPA Offices.

New

Departmental Management
Collection by Use of Personal Charge Card
1225-0000
Individuals or households
500 respondents; 9 hours; 1 minute per response;

Information will be collected from individuals to allow the Department to process charge cards when making payment to the Department.

Extension

Employment Standards Administration
Vehicle Mechanical Inspection Report for Transportation
1215-0036; WH-514 and WH-514a
Annually
Individuals or households; farms; businesses or other for-profit; small businesses or organizations
2100 respondents; 1575 total hours; 45 min. per response; 2 forms

The Migrant and Seasonal Agricultural Worker Protection Act requires any person who intends to transport workers to submit a statement identifying the vehicle used and proof that such vehicle conforms to certain safety requirements.

Extension

Veterans' Employment and Training Administration
Annual Report from Federal Contractors
1293-0005; VETS-100
Businesses or other profit; Small businesses or organizations 158,150 respondents; 79,075 hours; 30 minutes per response;

The Veterans' annual report required by 38 U.S.C. 2012(d) from entities with contracts of $10,000 or more with Federal departments or agencies of numbers of special disabled and Vietnam-era veterans in the workforce by job category and hiring location, number of employees hired and of those, the number of special disabled and Vietnam-era veterans.

Extension

Occupational Safety and Health Administration
A survey to determine the effects of revising the regulations governing PPE usage, welding, and pulp and paper and paperboard mills
Nonrecurring
Businesses or other for-profit; Small businesses or organizations
7888 respondents; 4181 burden hours; .53 average burden hours per response; 0 forms

The data collected in this survey will provide information on the interrelationships between process-related hazards, PPE use, safety training and programs, and injury experience for use in determining the technological and economic feasibility of proposed changes to the existing standards for PPE.

Signed at Washington, DC this 7th day of February, 1989.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 89-3217 Filed 2-9-89; 8:45 am]

BILLING CODE 4510-79-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I:
None.
Volume II:
None.
Volume III:
None.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 7th day of February 1989.

Robert V. Setera,

Acting Director, Division of Wage Determinations.

[FR Doc. 89-3228 Filed 2-9-89; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

[Docket No. M-89-246-C]

Kerr-McGee Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Kerr-McGee Coal Corporation, Kerr-McGee Center, Oklahoma City, Oklahoma 73125 has filed a petition to

modify the application of 30 CFR 75.1700 (oil and gas wells) to its Galatia Mine 50–1 (I.D. No. 11–02752) located in Saline County, Illinois. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that barriers be established and maintained around oil an gas wells penetrating coal beds.

2. As an alternate method, petitioner proposes to seal wells penetrating the Springfield No. 5 coal seam or Herrin No. 6 coal seam from the surrounding strata by using specific techniques and specific procedures as outlined in the petition.

3. Prior to mining through the plugged oil and gas well an approval of the specific mining procedures would be requested of the MSHA District Manager, and appropriate officials would be allowed to observe the process and all mining would be under the direct supervision of a certified official. In addition:

(a) Drivage sites would be installed; firefighting equipment, roof support and ventilation materials would be available;

(b) The quantity of air would not be less than 9000 cubic feet per minute to ventilate the face;

(c) Equipment would be checked for permissibility and serviced prior to mining through the well. The working place would be free from accumulations of coal dust and coal spillages, and rock-dusted to within 20 feet of the face;

(d) Methane monitors would be calibrated prior to the shift and tests would be made during mining approximately every 10 minutes; and

(e) When the wellbore is intersected, all equipment would be deenergized and safety checks would be made before mining would continue inby the well a sufficient distance to permit adequate ventilation around the area of the wellbore.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 13, 1989. Copies of the petition are available for inspection at that address.

Date: February 2, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89–3218 Filed 2–9–89; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–89–3–C]

Manalapan Mining Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Manalapan Mining Company, Inc., Route 1, Box 374, Evarts, Kentucky 40828 has filed a petition to modify the application of 30 CFR 75.1103–4(a) (automatic fire sensor and warning device systems; installation; minimum requirements) to its Wallins No. 6 Mine (I.D. No. 15–16318) located in Harlan County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that automatic fire sensor and warning device systems provide identification of any fire within each belt flight.

2. In a separate petition (M–89–2–C), petitioner proposes to use air in the belt entry to ventilate active working places.

3. As an alternate method, petitioner proposes to install an early warning fire detection system utilizing a low-level carbon monoxide (CO) detection system in all belt entries used as intake aircourses with specific conditions.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petiton may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 13, 1989. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Dated: February 3, 1989.

[FR Doc. 89–3219 Filed 2–9–89; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–89–5–C]

Utah Power & Light Co., Mining Division; Petition for Modification of Application of Mandatory Safety Standard

Utah Power & Light Company, Mining Division, P.O. Box 310, Huntington, Utah 84528 has filed a petition to modify the application of 30 CFR 75.1805 (examination of electrical equipment; recording requirements; approved books) to its Cottonwood Mine (I.D. No. 42–01944), its Wilberg Mine (I.D. No. 42–00080), and its Deer Creek Mine (I.D. No. 42–00121) all located in Emery County, Utah. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the results of examinations of electrical equipment be recorded in an approved book entitled "Examination of Electrical Equipment."

2. As an alternate method, petitioner proposes to establish a computer program using a computer printout sheet which would contain all the required information.

3. In support of this request, petitioner states that—

(a) All results of electrical examinations would be input into a computer. Only authorized personnel with proper security clearance would be allowed to input data; and

(b) A printed hard copy would be generated for each weekly examination period that would be available on the surface to all interested persons.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 13, 1989. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: February 3, 1989.

[FR Doc. 89–3220 Filed 2–9–89; 8:45 am]

BILLING CODE 4510–43–M

Occupational Safety and Health Administration

Maryland State Standards; Approval

1. *Background*—Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administration for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On July 5, 1973, notice was published in the Federal Register (38 FR 17834) of the approval of the Maryland State plan and the adoption of Subpart O to Part 1952 containing the decision.

The Maryland State Plan provides for the adoption of all Federal standards as State standards after comments and public hearing. Section 1952.210 of Subpart O sets forth the State's schedule for the adoption of Federal standards. By letter dated November 30, 1988, from Commissioner Henry Koellein, Jr., Maryland Division of Labor and Industry, to Linda R. Anku, Regional Administrator, and incorporated as part of the plan, the State submitted State standards identical to: 29 CFR 1926–700–706 pertaining to amendments to the Construction Standards for Concrete and Masonry as published in the Federal Register of June 16, 1988, (53 FR 22643). These standards are contained in COMAR 09.12.31. Maryland Occupational Safety and Health Standards were promulgated after public hearings on September 23, 1988. These standards were effective on November 28, 1988.

2. *Decision*—Having reviewed the State submissions in comparison with the Federal standards, it has been determined that the State standards are identical to the Federal standards and accordingly are approved.

3. *Location of the Supplements for Inspection and Copying*—A copy of the standards supplements, along with the approved plan, may be inspected and copied at the following locations during normal business hours: Office of the Regional Administrator, 3535 Market Street, Suite 2100, Philadelphia, Pennsylvania 19104; Office of the Commissioner of Labor and Industry, 501 St. Paul Place, Baltimore, Maryland 21202; and the OSHA Office of State Programs, Room N–3700, Third Street and Constitution Avenue NW., Washington, DC 20210.

4. *Public Participation*—Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Maryland State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

a. The standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

b. The standards were adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective February 10, 1989.

(Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Philadelphia, Pennsylvania, this 28th day of December, 1988.

Linda R. Anku,

Regional Administrator.

[FR Doc. 89–3221 Filed 2–9–89; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL CAPITAL PLANNING COMMISSION

Guidelines and Submissions Requirements for Installation of Antennas on Federal Property in National Capital Region

AGENCY: National Capital Planning Commission.

ACTION: Proposed Amendments to Guidelines and Submission Requirements.

SUMMARY: On January 7, 1988, the National Capital Planning Commission (NCPC) adopted guidelines and submission requirements for the installation of microwave antennas on Federal sites in the National Capital Region. During the year in which those guidelines have been in effect, proposals for a number of large antennas of other types on Federal sites, because of their size and visual character, have raised further issues of adverse effects on the scenic character of the Nation's Capital. The amended guidelines permit Federal agencies to install certain classes of antennas "as a matter of right," without submission to the Commission. The amendment delegates to the Executive Director limited authority to approve antennas consistent with approved master plans. The amendment also makes changes in the general design criteria to clarify their applicability to both rooftop and ground-level antenna installations and to further the objective of unobtrusiveness in installations.

DATE: February 10, 1989.

FOR FURTHER INFORMATION CONTACT: Robert E. Gresham, Assistant Executive Director for Operations, National Capital Planning Commission, 1325 G Street NW., Washington, DC 20576 or by telephone at 202/724–0206.

Reginald W. Griffith,

Executive Director.

The National Capital Planning Commission (Commission) finds that certain antennas, such as microwave (terrestrial and satellite earth station) and large yagi and whip antennas, may adversely impact the aesthetics of the National Capital Region (NCR) and the health and welfare of its population. Therefore, in order to minimize the visual impacts of such antennas on the landscape, skyline, and scenic character of the Nation's Capital, and on the general appearance of Federal facilities, and to protect the public from any potential adverse radio frequency bio-effect impacts from transmitting microwave antennas, the Commission is providing the following Guidelines and Submission Requirements to be used by Federal agencies in the NCR in the preparation and submission of plans for antenna installations. (The NCR includes Montgomery and Prince George's Counties in Maryland; Arlington, Fairfax, Loudoun, and Prince William Counties, and the independent cities within the outer boundaries thereof in Virginia; and the District of Columbia.)

A. Prior to the installation of any antennas(s) on Federal property in the NCR, except as noted in section A.1, below, Federal agencies shall submit (pursuant to section 5 of the National Capital Planning Act of 1952, as amended; D.C. Code, 1981 edition, sec. 5–432, and, as appropriate, section 4 of the International Center Act of 1968, as amended) such installation proposal to the Commission for review and comment. Approval by the Commission of such installation will normally be limited to five years. This time period may be increased to 10 years at the Commission's discretion on sites outside the Monumental Core [1] and surrounding lands and designated Historic Districts.

[1] The Monumental Core is defined in the Federal Facilities element of the "Comprehensive Plan for the National Capital."

1. Exceptions

The following types of antenna installations may be made without referral to the Commission, provided that there are no existing antennas in the affected building or site:

a. Up to two ultra high frequency/very high frequency television and/or frequency modulation radio receiving antennas with the boom or any active element not exceeding eight feet in length and the mounted vertical dimension not exceeding 12 feet;

b. A super high frequency antenna with the active element not exceeding three feet in any dimension and the mounted vertical dimension not exceeding 12 feet;

c. A whip antenna not exceeding one and one half inches in diameter and a mounted dimension of 12 feet in any direction;

d. An antenna of any type, except a transmitting microwave antenna, entirely enclosed within an existing building (including the penthouse portion of a building); and

e. A temporary antenna to be located on a site or buidling for a period not to exceed 14 days, provided the temporary placement does not alter the site or building and that all necessary safety precautions are observed in the temporary placement.

2. Specific Submission Requirements

The following materials shall be submitted with each antenna installation proposal:

a. Statement of need, including justification for the size of the antenna, justification for multiple antenna installations, and other appropriate data regarding the particular installation consistent with security limitations.

b. Description of any exisiting antennas located on the affected building and/or site of a proposed antenna and their functional relationship to the proposed antenna, including a discussion of the need for any exisitng antennas that are proposed to remain.

c. Site plan and building elevations (for antennas mounted on a building) showing the form, dimensions, and location of the proposed antenna(s), any existing-to-remain antennas, and proposed screening elements.

d. Construction drawings showing the proposed method of intallation.

Description of the texture and color of antenna materials to be used.

Screening plan, including proposed materials, color and texture of screening elements for rooftop and ground-level installations and, for ground-level installations only, the number, species, and size of trees and shrubs to be used as a screen.

g. Site line studies of the proposed installation and alternatives considered illustrating the extent to which the proposed antenna(s) will be visible from the surrounding streets and public open spaces.

h. Description of alternatives considered to meet the telecommunication needs of the submitting agency.

3. General Criteria Applying to Antenna Installations

The following general criteria should guide the design, and will be applied in the Commission's review, of antenna installation proposals:

a. Rooftop antennas should be installed at the lowest possible elevation above the roofline, set back as far as possible from all edges of the roof, and screened to the extent practicable from any public views in cases in which screening designs compatible with the architectural charcter of the affected building can be developed (see section D, below). Groundlevel antennas should be sited in locations that minimize public views, installed at the lowest possible elevation above grade, and screened to the extent practicable by landscaping or other screening elements.

(b) Materials used in the construction of antennas and their mountings should not be bright, shiny, or reflective and should be of a color that blends with the surrounding building materials or landscape.

c. Any masts or towers should be non-combustible, corrosion resistant, and protected against electrolytic action.

d. All antennas should be adequately grounded to protect against a direct lightning strike.

4. Review by the Executive Director

The Commission delegates to the Executive Director the function of approving proposals for antenna installations, except microwave transmitting antennas, that are:

a. Located on a reservation or site for which the Commission has submitted its report and recommendations on a current master plan;

b. Consistent with the recommendations of the Commission on the land use and circulation plan elements of the master plan; and

c. Determined by the Executive Director to:

i. Have no adverse impact on the environment;

ii. Have no visual impact on properties beyond the boundaries of the Federal reservation or site; and

iii. Meet the general criteria of section A.3 of these Guidelines and Submission Requirements.

B. Federal agencies may request an extension of the approval prior to expiration of the original approval. The request should be accompanied by a certification that:

1. The original installation is structurally sound and continues to meet all the submission requirements;

2. Clearly establishes the continued need for the installation; and

3. Technological advances have not offered any alternatives that permit the elimination of the antenna or reduction in its size to minimize the visual impacts.

Any antenna installation that does not receive re-certification by the Commission should be dismantled and removed as soon as possible after the expiration of the Commission's approval period.

C. To the extent possible, Federal agencies should anticipate the need for antennas on all new buildings and design such buildings in such a fashion as to screen the needed antennas in a manner appropriate to the design of each building.

D. Rooftop antennas on existing Federal buildings or ground-lvel installations in the NCR should be designed and installed in a manner that minimizes or eliminates their visual impacts on adjacent properties or public rights-of-way. Where appropriate to the character of a building, retro-fitting to screen antennas not accommodated in original building designs and plans should be considered. Various architectural solutions are possible for retro-fitting buildings to screen antena installations. The architectural style, orientation, available rooftop space, and structural charcter of a building, as well as the heights of neighboring buildings, are all important considerations in the retro-fit option selected. A variety of materials, including plastic, fiberglass, and glass can be used to screen or obscure antennas. Any materials that do not block the passage of the radio frequency signals are suitable as a screen.

E. Reasonable precautions are necessary in locating and operating transmitting microwave antennas, because of potential adverse radio frequency bio-effects. In light of the numerous variables regarding power and frequency levels for each installation, electromagnetic radiation impacts will have to be evaluated on a site specific basis. All submissions to the Commission for a transmitting microwave antenna should be accompanied by an environmental assessment. The environmental assessment shall include, among other considerations, an estimate of the electromagnetic radiation levels at 10, 50, 100, 500, 1,000 and 2,000 feet from the installation in milliwatts/centimeters squared and the safeguards proposed to protect the public from any potential adverse bio-effects. A manufacturer's certification as to electromagnetic radiation at the above distances and a statement that the proposed antenna meets all American National Standards Institute (ANSI) and Environmental Protection Agency (EPA) current radio frequency emission standards should be made part of the environmental assessment. The Commission will continue to seek state-of-the-art information on health and human safety issues and shall apply that information and resulting awareness of issues in reviewing and approving antenna installations.

F. All agencies responsible for antenna installations existing at the time of the adoption of these Guidelines are required to apply for approval of all such installations within five years after the adoption of these Guidelines and Submission Requirements.

G. These Guuidelines are general in nature and convey the spirit of the concerns regarding potential adverse visual and/or bio-effect impacts to be mitigated. Each installation is a special case, and the appropriateness of the solutions selected to reduce the visual impacts will, in large measure, be determined by the particular location or locations chosen for the installation and the architectural character of the building. These Guidelines provide general creiteria to be applied on a case-by-case basis. They are intended to apply to any existing antennas that are moved or relocated to another location on the Federal facility. Federal agencies are encouraged to arrange for joint use of antennas wherever possible.

H. The Commission will, in its review of proposals for antenna installations, be particularly concerned with the submitting agency's statement of need, justification of antenna size, and measure employed to minimize the visual impacts of the proposed installation. In case in which it has previously approved site and building plans for facilities on which antennas are proposed, the Commission will review such proposals, on a case-by-case basis, as modifications to the previously approved site and building plans.

[FR Doc. 89-3186 Filed 2-9-89; 8:45am]
BILLING CODE 7530-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-443-OL-1 and 50-444-OL-1; ASLBP No. 88-564-03-OLR2]

Public Service Co. of New Hampshire, et al., Seabrook Station, Units 1 and 2; Onsite Emergency Planning and Safety Issues—Notification System; Reconstitution of Board

Pursuant to the authority contained in 10 CFR 2.721, the Atomic Safety and Licensing Board for *Public Service Company of New Hampshire, et al.* (Seabrook Station, Units 1 and 2), Docket Nos. 50-443-OL-1 and 50-444-OL-1 (Onsite Emergency Planning and Safety Issues—Notification System), is hereby reconstituted by appointing Administrative Judge Peter B. Bloch as Chairman of this Licensing Board in place of Administrative Judge Sheldon J. Wolfe who is unable to continue to serve in this proceeding.

As reconstituted, the Board is comprised of the following Administrative Judges:

Peter B. Bloch, Chairman
Dr. Emmeth A. Luebke
Dr. Jerry Harbour

All correspondence, documents and other material shall be filed with the Board in accordance with 10 CFR 2.701 (1980). The address of the new Board member is: Administrative Judge Peter B. Bloch, Chairman, Atomic Safety and Licensing Board, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Robert M. Lazo,
Acting Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

Dated at Bethesda, Maryland, this 3rd day of February, 1989.

[FR Doc. 89-3185 Filed 2-9-89; 8:45 am]
BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-26520; File No. SR-Amex-88-32]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by American Stock Exchange, Inc., Relating to Increased Supplemental Listing Fees and Annual Fees Imposed on Listed Company Equity Issues

Pursuant to section 19(b)(1) [1] of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, [2] the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission") on December 19, 1988 a proposed rule change to increase certain Exchange listing fees. The proposal would increase the annual listing fee and the supplemental listing fee imposed on Amex-listed company equity issues.

Notice of the proposed rule change was provided by the issuance of a Commission release (Securities Exchange Act Release No. 26391, December 23, 1988) and by publication in the **Federal Register** (54 FR 77, January 3, 1989). The Commission received no comments on the proposed rule change.

The Exchange is increasing two fees imposed on listed companies. The annual listing fee for stocks, with seventeen (17) separate categories in increments of one (1) million outstanding shares, is being increased under the proposed rule change. Each of these seventeen categories is being increased, with the minimum annual listing fee increasing from $3,500 to $4,500 and the maximum annual listing fee increasing from $10,000 to $12,500.

The fee for supplemental stock listings is also being increased under the proposed rule change, raising from $.015 to $.02 per share. The minimum supplemental stock listing fee is increasing from $1,000 to $2,000 and the maximum supplemental stock listing fee is increasing from $12,000 to $17,500.

The Commission believes that the proposed rule change is consistent with section 6(b) of the Act, and the rules and regulations thereunder applicable to a national securities exchange. More specifically, the Commission believes that the proposed rule change is consistent with section 6(b)(4) of the Act, which requires the equitable allocation of reasonable dues, fees, and other charges among Exchange members and other persons using its facilities. We note that the annual listing fee was last increased in 1981, [3] while the supplemental listing fee was last increased in 1980. [4] Moreover, the current increases do not appear excessive. Accordingly, the Commission believes that it is appropriate to approve the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* SR-Amex-81-22 (Rel. 34-18380, December 31, 1981; 47 FR 879, January 7, 1982) (approval of increased annual listing fees).

[4] *See* SR-Amex-80-29 (Rel. 34-17308, November 17, 1980; 45 FR 77211, November 21, 1980) (immediate effectiveness of increased supplemental listing fees).

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above mentioned rule change is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

Dated: February 3, 1989.

[FR Doc. 89-3158 Filed 2-9-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26521; File No. SR-CBOE-88-02]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Filing and Immediate Effectiveness of Proposed Rule Change Relating to Position Limits

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 13, 1989, the Chicago Board Options Exchange filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solict comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Additions are italicized; deletions are bracketed.

Rule 4.11 No change

* * * Interpretations and Policies:

.01 The following examples, *using the 3,000 option contract limit,* illustrate the operation of position limits established by Rule 4.11:

(a) Customer A, who is long [4,000] *3,000* XYZ calls, may at the same time be short [4,000] *3,000* XYZ calls, since long and short positions in the same class of options (i.e., in calls only, or in puts only) are on opposite sides of the market and are not aggregated for purposes of Rule 4.11.

(b) Customer B, who is long [4,000] *3,000* XYZ calls, may at the same time be long [4,000] *3,000* XYZ puts. Rule 4.11 does not require the aggregation of long call and long put (or short call and short put) position since they are on opposite sides of the market.

(c) Customer C, who is long [3,500] *2,500* XYZ calls may not at the same time be short more than 500 XYZ puts, since the [4,000] *3,000* contract limit applies to the aggregation of long call and short put positions in options covering the same underlying security. Similarly, if Customer C is also short [3,200] *2,200* XYZ calls, he may not at the sme time be long more than 800 *XYZ* puts, since the [4,000] *3,000* contract limit applies separately to the aggregation of short call and long put positions in options covering the same underlying security.

.02 through .04 No change.

Rule 4.12 Exercise Limits

Except with the prior written permission of the President or his designee, no member shall exercise, for any account in which it has an interest or for the account of any customer, a long position in any option contract of a class of options dealt in on the Exchange where such member or customer, acting alone or in concert with others, directly or indirectly, has or will have exercised within any five consecutive business days aggregate long positions in excess of 3,000 or 5,500 or 8,000 option contracts of that class of options or such other number of option contracts as may be fixed from time to time by the Board as the exercise limit for that class of options. Reasonable notice shall be given of each new exercise limit fixed by the Board by posting notice thereof on the bulletin board of the Exchange. Limits shall be determined in the manner described in Interpretation .02 *or in the case of a hedged position Interpretation .04* to Rule 4.11. Whether option postions should be aggregated under this rule shall be determined in the manner described in Interpretation .03 to Exchange Rule 4.11.

Rule 4.13 Reports Related to Position Limits

(a) Each member shall file with the Department of [Compliance] *Market Surveillance* on each businsee day a report, in such form as may be prescribed, giving the name, address and social security or tax identification number of any customer who, on the previous business day, held aggregate long or short positions of 200 or more option contracts of any single class of options dealt in on the Exchange. The report shall indicate for each such class of option contracts the number of option contracts comprising each such position and, in the case of short positions, whether covered or uncovered.

(b) In addition to the reports required by paragraph (a) of this Rule, each member shall report promptly to the Department of [Compliance] *Market Surveillance* any instance in which the member has reason to believe that a customer, acting alone or in concert with others, has exceeded or is attempting to exceed the position limits established pursuant to Rule 4.11.

4.13 (c) No change.

Rule 4.14 Liquidation of Positions

Whenever the President shall find, on the basis of a report of the Department of [Compliance] *Market Surveillance* or otherwise, that a person or group of persons acting in concert holds or controls, or is obligated in respect of, an aggregate position (whether long or short) in all option contracts of one or more classes or series dealt in on the Exchange in excess of the applicable position limit established pursuant to Rule 4.11, he may order all members carrying a position in option contracts of such classes or series for such person or persons to liquidate such position as expeditiously as possible consistent with the maintenance of an orderly market. Whenever such an order is given by the President, no member shall accept any order to purchase, sell or exercise any option contract for the account of the person or persons named in the order, unless and until the President expressly approves such person or persons for options transactions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The Proposed rule changes are intended to update examples based on more recent position limits and to accurately reflect existing responsibilities for position limits pursuant to Exchange Rules and Interpretations and Policies.

The Exchange believes that the proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934 and the rules and regulations thereunder, in particular, the proposed rule change is consistent with section 6(b)(5) of the Exchange Act, in that, among other things, it is intended to promote just and equitable principles of trade in general to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule changes will not impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities and Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 3, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 3, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-3159 Filed 2-9-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26522; File No. SR-PHLX-89-1]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Filing and Order Granting Temporary Accelerated Approval of Proposed Rule Change Relating to Automated Options Market System Pilot Program

On January 19, 1989, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b-4 thereunder,[2] a proposed rule change to expand and extend the Exchange's Automated Options Market ("AUTOM") system pilot program through December 31, 1989.

AUTOM is an on-line system that allows electronic delivery of options orders from member firms directly to the appropriate specialist on the PHLX options trading floor, with electronic confirmation of order executions. Because all orders received through AUTOM are exposed to the specialist's limit order book, the trading crowd, and to at least one registered options trader ("ROT"),[3] the Exchange believes best execution of AUTOM orders is assured.

All orders entered into the system are executed manually by the specialist, who, upon execution of the order, enters the relevant trade information (*e.g.*, the number of contracts executed, the price, and the identity of the contra-broker(s) into the system. An execution report then is sent automatically to the firm that placed the order.

In its rule filing seeking implementation of the AUTOM system, the PHLX noted that the AUTOM system, including hardware as well as software, is completely separate from an independent of the hardware and software for PHLX's Philadelphia Stock Exchange Automated Communication and Execution ("PACE") system for routing and executing stock orders. The Exchange stated that because the systems are independent, one system cannot have an adverse impact on the other during volume surges in terms of volume handling capabilities or queuing.[4]

In Securities Exchange Act Release No. 25540 (March 31, 1988), 53 FR 11390, the Commission approved implementation of the AUTOM system on a 90-day pilot basis. The Commission approved the Exchange's request that the pilot include up to 12 equity options, up to five order entry firms, and up to six specialist units. During the pilot phase, only market orders of five or fewer contracts in the near-term expiration month were made eligible for delivery through the system for manual execution.

In Securities Exchange Act Release No. 25868 (June 30, 1988), 53 FR 25563, the Commission approved a six-month extension of the pilot period, as well as an expansion of the pilot to include an additional 25 equity options, bringing to 37 the total number of equity options eligible for delivery through the AUTOM system.

In Securities Exchange Act Release No. 26354 (December 13, 1988), 53 FR 51185, the Commission approved a modification to the existing 37-options pilot, making all pilot options' strikes and expiration months eligible to be handled by AUTOM and increasing the eligible order size for AUTOM to 10 contracts. The Commission also approved an extenisoin of the modified AUTOM pilot until June 30, 1989.

The Exchange now proposes to expand the AUTOM pilot to include an additional 25 equity options, increasing to 62 the number of equity options that would be permitted to be traded in the AUTOM pilot. The Exchange also requests that the AUTOM pilot be extended until December 31, 1989.[5] The Exchange requested accelerated approval of this proposed rule change so that the AUTOM pilot can be expanded without disruption.

To date, executed volume through AUTOM has been minimal.[6] While

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1988).

[3] PHLX Rule 1063(a) requires an Options Floor Broker to ascertain that at least one ROT is present at the trading post prior to representing an order for execution.

[4] Letter from Michael A. Finnegan, Senior Vice President, PHLX, to Howard L. Kramer, Assistant Director, Commission, dated March 22, 1988.

[5] Letter from William W. Uchimoto, General Counsel, PHLX, to Mary N. Revell, Esquire, Division of Market Regulation ("Division"), Commission, dated January 25, 1989.

[6] In this regard, the Exchange does not foresee any significant taxing of the Exchange's computer systems if the Commission approves the expension of the pilot as proposed herein. In all other respects, the Exchange stands by its representations conveyed in letters to Howard Kramer, Assistant Director, Division, Commission, from Michael A. Finnegan, Senior Vice President, PHLX, dated March 22 and 30, 1988.

[5] *See* 17 CFR 200.30-3(a)(44).

overall transaction volume has not appreciably increased in the expanded pilot, the Exchange is approaching the pilot's 37 options limit, having placed 34 options on the pilot at this time. The Exchange assets that expanding the pilot to include an additional 25 equity options would better serve users, attract additional interest to the system, and would allow the PHLX to gain further trading experience to assess AUTOM as a permanent enhancement. In all other respects, the Exchange commits to operating the pilot as represented in prior rule filings.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 [7] and section 11A [8] and the rules and regulations thereunder. The Commission continues to believe that the development and implementation of AUTOM will provide for more efficient handling and reporting of orders in PHLX equity options through the use of new data processing and communications techniques, thereby improving order processing and turnaround time. The Commission also believes that the AUTOM system, by offering increased order routing efficiencies, should benefit public customers and PHLX member firms and customers.

Expanding the existing 37 options AUTOM pilot to permit up to 62 equity options to be handled by AUTOM and extending the pilot period for six months (*i.e.*, through December 31, 1989) should enable the Exchange to better assess the effectiveness of the AUTOM system. The PHLX believes that the AUTOM system will be able to handle the increased volume that should accompany expansion of the pilot to 62 equity options. As noted above, the AUTOM system is completely independent from the Exchange's PACE system. Therefore, neither AUTOM nor the PACE system should impact on the other during periods of high volume. Moreover, as noted in the original order approving implementation of the AUTOM pilot,[9] the PHLX asserts that the AUTOM system has significant excess order handling and disc capacity.[10]

[7] 15 U.S.C. 78f (1982).

[8] 15 U.S.C. 78k-1 (1982).

[9] 53 FR 11390-91.

[10] In particular, the PHLX informed the Commission that the AUTOM system's order handling and disc capacity was five times the estimated daily order flow for the original pilot, and that the AUTOM system capacity could be increased up to five times that capacity if needed.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day of publication of notice of filing in the **Federal Register**. The Commission previously solicited comment on the AUTOM pilot program and has not received any negative comments on its operation. Moreover, the current pilot program has operated effectively since its implementation in April, 1988. Finally, the Commission's approval is limited until December 31, 1989, or until the Commission acts on the Exchange's request for permanent approval of the pilot program.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference section, 450 Fifth Street, NW., Washington, DC. Copies of such filing also will be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 3, 1989.

It therefore is ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change is approved for a pilot period ending December 31, 1989.[12]

See letter from Michael A. Finnegan, Senior Vice President, PHLX, to Howard L. Kramer, Assistant Director, Division, Commission, dated March 30, 1988. Based on the Exchange's experience to date under the pilot program, the Commission believes that increasing the number of equity options eligible to be handled by AUTOM should not impact adversely the ability of AUTOM to handle the necessary volume levels.

[11] 15 U.S.C. 78s(b)(2) (1982).

[12] The Commission expects that at the conclusion of the additional six-month pilot period, the PHLX will be able to evaluate the pilot and submit a rule change for final approval with any appropriate modifications, or that the PHLX will submit a rule change extending the pilot beyond the six-month period. The PHLX is authorized to terminate the program prior to the end of the six-month period upon due notice and approval by the Commission.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jonathan G. Katz,

Secretary.

Dated: February 3, 1989.

[FR Doc. 89-3160 Filed 2-9-89; 8:45 am]

BILLING CODE 8010-01-M

[13] 17 CFR 200.30-3(a)(12) (1988).

[Rel. No. IC-16791; 811-5607]

Global Asset Portfolio, Inc.; Application

February 3, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 ("1940 Act").

Applicant: Global Asset Portfolio, Inc. ("Applicant").

Relevant 1940 Act Sections: Order requested under section 8(f) of the 1940 Act.

Summary of Application: Applicant has requested an order declaring that it has ceased to be an investment company.

Filing Date: The application was filed on January 30, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on March 2, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC..

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, One North State Street, 9th Floor, Suite 0123, Chicago, Illinois 60602.

FOR FURTHER INFORMATION CONTACT: Jeremy N. Rubenstein, Staff Attorney, at (202) 272-2847, or Stephanie M. Monaco, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from either the SEC's

Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant is a Maryland corporation which registered as a closed-end management investment company under the 1940 Act on Form N-8A on July 8, 1988. Applicant's registration statement under the Securities Act of 1933 on Form N-2, filed on July 8, 1988, was not declared effective. Applicant has not sold any securities of which it is the issue, has not commenced operations, and has no intention to commence operations.

2. Applicant has no assets, debts or liabilities which remain outstanding, is not a party to any litigation or administrative proceeding, and is not engaged in or proposing to engage in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-3161 Filed 2-9-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16794; 811-3891]

MML Blend Investment Co., Inc.; Application

February 3, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application on Form N-8F under the Investment Company Act of 1940 (the "1940 Act").

Applicant: MML Blend Investment Company, Inc.

Relevant 1940 Act Sections: Order requested under section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Date: January 3, 1989; amended January 19, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on February 27, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESS: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 1295 State Street, Springfield, MA 01111.

FOR FURTHER INFORMATION CONTACT: David S. Goldstein, Special Counsel (202) 272-3012 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant registered under the Act and filed a Registration Statement on Form N-1 pursuant to section 8(b) of the Act on October 27, 1983.

2. Applicant registered an indefinite number of shares of beneficial interest, $.01 par value, on Form N-1 under the Securities Act of 1933 on October 27, 1983. The Applicant filed Pre-Effective Amendment No. 1 to its Registration Statement on January 19, 1984. Such amended Registration Statement became effective, and the Applicant commenced the initial public offering of its shares on February 1, 1984.

3. Applicant was organized as a Maryland corporation on October 19, 1983. Applicant reorganized as a series of MML Series Investment Fund on April 25, 1985. Applicant was dissolved under the laws of the state of Maryland on June 24, 1985.

4. On April 30, 1985, Applicant transferred all assets and liabilities to MML Blend Fund (the "Series"), a series of MML Series Investment Fund (the "Trust") pursuant to an Agreement and Plan of Reorganization dated April 25, 1985 between Applicant and the Trust on behalf of the Series (the "Agreement") (the transactions contemplated by the Agreement herein referred to as the "Reorganization"). The Trust, a Massachusetts business trust, was created by a Declaration of Trust dated December 19, 1984, as amended. The Trust adopted the Registration Statement of MML Equity Investment Company, Inc. as its own, effective April 30, 1985.

5. On January 31, 1985, the Directors of Applicant, including a majority of directors who were not interested persons of applicant, then present unanimously approved the Agreement and the Reorganization contemplated thereby.

6. At a meeting of Shareholders of Applicant held on April 10, 1985, a majority of the shareholders present at such meeting in person or by proxy approved the Agreement and the transactions contemplated thereby.

7. A Proxy Statement dated March 8, 1985 was distributed to Applicant's shareholders of record as of February 1, 1985 in connection with, among other things, the Reorganization. The Applicant filed its preliminary proxy material with the SEC on February 8, 1985 and filed definitive copies of its proxy material on March 13, 1985.

8. Applicant has filed with the Maryland State Department of Assessments and Taxation Articles of Transfer dated April 26, 1985 and Articles of Dissolution Dated June 24, 1985.

9. To accomplish the reorganization, Applicant transferred all of its assets and liabilities to the Series in exchange for a number of shares of beneficial interest of the Series equal to the number of shares of capital stock of Applicant outstanding immediately before the effective time of the Reorganization. The Series assumed all of the obligations and liabilities of Applicant. Immediately thereafter, Applicant distributed the shares of the Series received to its shareholders in complete liquidation.

Upon completion of the Reorganization, each shareholder of Applicant owned as many full and fractional shares of the Series, with the same net asset value, as the number of shares of Applicant owned by the shareholders immediately prior to the Reorganization. Applicant received a ruling from the Internal Revenue Service in connection with the tax-free nature of the Reorganization.

The Agreement authorized Applicant, as sole shareholder of the Series prior to completion of the Reorganization, to approve an investment management agreement between the Series and Mass Mutual. The agreement also authorized Applicant as sole shareholder of the Series prior to completion of the Reorganization to approve a custodian agreement between the Series and Manufacturers Hanover Trust Company, to approve the election of the Trustees of the Trust, and to ratify the selection of the Trust's accountants. Applicant, acting as sole shareholder of the Series, took such action on April 15, 1985.

The Trust established an account for each shareholder containing the appropriate number of shares. Such accounts were identical in all respects to the accounts maintained by Applicant for each shareholder.

10. Applicant has no assets. Applicant has no debts or other liabilities. Applicant is not a party to any litigation

or administrative proceedings. Applicant has no shareholders. Applicant is not engaged in any business activities.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-3162 Filed 2-9-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16792; 811-3202]

MML Managed Bond Investment Co., Inc.; Application

February 3, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application on Form N-8F under the Investment Company Act of 1940 (the "1940 Act").

Applicant: MML Managed Bond Investment Company, Inc.

Relevant 1940 Act Sections: Order requested under section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Date: January 3, 1989; amended January 19, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on February 27, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, either personally or my mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 1295 State Street, Springfield, MA 01111.

FOR FURTHER INFORMATION CONTACT: David S. Goldstein, Special Counsel (202) 272-3012 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant registered under the Act and filed a Registration Statement on Form N-1 pursuant to Section 8(b).of the Act on June 9, 1961.

2. Applicant registered an indefinite number of shares of beneficial interest, $.01 par value, on Form N-1 under the Securities Act of 1933 on June 9, 1961. The Applicant filed Pre-Effective Amendment No. 1 to its Registration Statement on November 27, 1961. Such amended Registration Statement became effective, and the Applicant commenced the initial public offering of its shares on December 16, 1961.

3. Applicant was organized as a Maryland corporation on April 22, 1961. Applicant reorganized as a series of MML Series Investment Fund on April 25, 1985. Applicant was dissolved under the laws of the state of Maryland on June 24, 1985.

4. On April 30, 1985, Applicant transferred all assets and liabilities to MML Blend Fund (the "Series"), a series of MML series Investment Fund (the "Trust") pursuant to an Agreement and Plan of Reorganization dated April 25, 1985 between Applicant and the Trust on behalf of the Series (the "Agreement") (the transactions contemplated by the Agreement herein referred to as the "Reorganization"). The Trust, a Massachusetts business trust, was created by a Declaration of Trust dated December 19, 1984, as amended. The Trust adopted the Registration Statement of MML Equity Investment Company, Inc. as its own, effective April, 30, 1985.

5. On January 31, 1985, the Directors of Applicant, including a majority of directors who were not interested persons of Applicant, then present unanimously approved the Agreement and the Reorganization contemplated thereby.

6. At a meeting of Shareholders of Applicant held on April 10, 1985, a majority of the shareholders present at such meeting in person or by proxy approved the Agreement and the transactions contemplated thereby.

7. A Proxy Statement dated March 8, 1985 was distributed to Applicant's shareholders of record as of February 1, 1985 in connection with, among other things, the Reorganization. The Applicant filed its preliminary proxy material with the SEC on February 8, 1985 and filed definitives copies of its proxy material on March 13, 1985.

8. Applicant has filed with the Maryland State Department of Assessments and Taxation Articles of Transfer dated April 26, 1985 and Articles of Dissolution Dated June 24, 1985.

9. To accomplish the reorganization, Applicant transferred all of its assets and liabilities to the Series in exchange for a number of shares of beneficial interest of the Series equal to the number of shares of capital stock of Applicant outstanding immediately before the effective time of the Reorganization. The Series assumed all of the obligations and liabilities of Applicant. Immediately thereafter, Applicant distributed the shares of the Series received to its shareholders in complete liquidation.

Upon completion of the Reorganization, each shareholder of Applicant owned as many full and fractional shares of the Series, with the same net asset value, as the number of shares of Applicant owned by the shareholders immediately prior to the Reorganization. Applicant received a ruling from the Internal Service in connection with the tax-free nature of the Reorganization.

The Agreement authorized Applicant, as sole shareholder of the Series prior to completion of the Reorganization, to approve an investment management agreement between the Series and Mass Mutual. The agreement also authorized Applicant as sole shareholder of the Series prior to completion of the Reorganization to approve a custodian agreement between the Series and Manufacturers Hanover Trust Company to approve the election of the Trustees of the Trust, and to ratify the selection of the Trust's accountants. Applicant, acting as sole shareholder of the Series, took such action on April 15, 1985.

The Trust established an account for each shareholder containing the appropriate number of shares. Such accounts were identical in all respects to the accounts maintained by Applicant for each shareholder.

10. Applicant has no assets. Applicant has no debts or other liabilities. Applicant is not a party to any litigation or administrative proceedings. Applicant has no shareholders. Applicant is not engaged in any business activities.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-3163 Filed 2-9-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16793; 811-3201]

MML Money Market Investment Co., Inc.; Application

February 3, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application on Form N-8F under the Investment Company Act of 1940 (the "1940 Act").

Applicant: MML MONEY Market Investment Company, Inc.

Relevant 1940 Act Sections: Order requested under section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Date: January 3, 1989; amended January 19, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on February 27, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 1295 State Street, Springfield, MA 01111.

FOR FURTHER INFORMATION CONTACT: David S. Goldstein, Special Counsel (202) 272-3012 (Division of Investigation Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant registered under the Act and filed a Registration Statement on Form N-1 pursuant to section 8(b) of the Act on June 9, 1961.

2. Applicant registered an indefinite number of shares of beneficial interest, $.01 par value, on Form N-1 under the Securities Act of 1933 on June 9, 1961. The Applicant filed Pre-Effective Amendment No. 1 to its Registration Statement on November 27, 1961. Such amended Registration Statement became effective, and the Applicant commenced the initial public offering of its shares on December 16, 1961.

3. Applicant was organized as a Maryland corporation on April 22, 1961. Applicant reorganized as a series of MML Series Investment Fund on April 25, 1985. Applicant was dissolved under the laws of the state of Maryland on June 24, 1985.

4. On April 30, 1985, Applicant transferred all assets and liabilities to MML Blend Fund (the "Series"), a series of MML series Investment Fund (the "Trust") Pursuant to an Agreement and Plan of Reorganization dated April 25, 1985 between Applicant and the Trust on behalf of the Series (the "Agreement") (the transactions contemplated by the Agreement herein referred to as the "Reorganization"). The Trust, a Massachusetts business trust, was created by a Declaration of Trust dated December 19, 1984, as amended. The Trust adopted the Registration Statement of MML Equity Investment Company, Inc. as its own, effective April 30, 1985.

5. On January 31, 1985, the Directors of Applicant, including a majority of directors who were not interested persons of Applicant, then present unanimously approved the Agreement and the Reorganization contemplated thereby.

6. At a meeting of Shareholders of Applicant held on April 10, 1985, a majority of the shareholders present at such meeting in person or by proxy approved the Agreement and the transactions contemplated thereby.

7. A Proxy Statement dated March 8, 1985, was distributed to Applicant's shareholders of record as of February 1, 1985 in connection with, among other things, the Reorganization. The Applicant filed its preliminary proxy material with the SEC on February 8, 1985 and filed definitive copies of its proxy material on March 13, 1985.

8. Applicant has filed with the Maryland State Department of Assessments and Taxation Articles of Transfer dated April 26, 1985 and Articles of Dissolution Dated June 24, 1985.

9. To accomplish the reorganization, Applicant transferred all of its assets and liabilities to the Series in exchange for a number of shares of beneficial interest of the Series equal to the number of shares of capital stock of Applicant outstanding immediately before the effective time of the Reorganization. The Series assumed all of the obligations and liabilities of Applicant. Immediately thereafter, Applicant distributed the shares of the Series received to its shareholders in complete liquidation.

Upon completion of the Reorganization, each shareholder of Applicant owned as many full and fractional shares of the Series, with the same net asset value, as the number of shares of Applicant owned by the shareholders immediately prior to the Reorganization. Applicant received a ruling from the Internal Service in connection with the tax-free nature of the Reorganization.

The Agreement authorized Applicant, as sole shareholder of the Series prior to completion of the Reorganization, to approve an investment management agreement between the Series and Mass Mutual. The agreement also authorized Applicant as sole shareholder of the Series prior to completion of the Reorganization to approve a custodian agreement between the Series and Manufacturers Hanover Trust Company, to approve the election of the Trustees of the Trust, and to ratify the selection of the Trust's accountants. Applicant, acting as sole shareholder of the Series, took such action on April 15, 1985.

The Trust established an account for each shareholder containing the appropriate number of shares. Such accounts were identical in all respects to the accounts maintained by Applicant for each shareholder.

10. Applicant has no assets. Applicant has no debts or other liabilities. Applicant is not a party to any litigation or administrative proceedings. Applicant has no shareholders. Applicant is not engaged in any business activities.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-3164 Filed 2-9-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/1258]

Oceans and International Environmental and Scientific Affairs Advisory Committee; Partially Closed Meeting

The Antarctic Section of the Oceans and International Environmental and Scientific Affairs Advisory Committee will meet at 10:00 a.m., Tuesday, March 7, 1989, in Room 1207, Department of State, 22nd and C Streets, NW., Washington, DC.

At this meeting, officers responsible for Antarctic affairs in the Department of State will discuss the recently adopted Convention on the Regulation of Antarctic Mineral Resource activities. Attention will center upon issues to be addressed in legislation necessary to implement the Convention and in the separate protocol on liability called for in the Convention. There will also be consideration of preparations for the Fifteenth Antarctic Treaty Consulative

Meeting which will be held in Paris in October, 1989. Department officials will be prepared to discuss other key issues and problems involving the Antarctic in the context of current domestic and international developments. This session will be open to the public. The public will be admitted to the session to the limits of seating capacity and will be given the opportunity to participate in discussion according to the instructions of the Chairman. As access to the Department of State is controlled, persons wishing to attend the meeting should enter the Department through the Diplomatic ("C" Street) Entrance. Department officials will be at the Diplomatic Entrance to escort attendees.

The Antarctic Section of the Oceans and International Environmental and Scientific Affairs Advisory Committee will also meet on Monday, March 6, in Room 1207, Department of State, 22nd and C Streets, NW. The purpose of these discussions will be to elicit views concerning the further development of United States policy regarding Antarctic resources, particularly Antarctic mineral resources. The Fifteenth Antarctic Treaty Consulative Meeting will also be discussed. The meeting will include classified briefings and examination and discussion of classified documents pursuant to Executive Order 12356. The disclosure of classified material and revelation of considerations which go into policy development would substantially undermine and frustrate the U.S. position in future meetings and negotiations. Therefore, the meeting will not be open to the public, pursuant to section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b (c)(1) and 5 U.S.C. 552b (c)(9)(B).

Requests for further information on the meetings should be directed to R. Tucker Scully of OES/OSP, Room 5801, Department of State. He may be reached by telephone on (202) 647-3262.

Frederick M. Bernthal,

Chairman.

[FR Doc. 89-3179 Filed 2-9-89; 8:45 am]

BILLING CODE 4710-09-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended February 3, 1989

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No.: 46094

Date Filed: February 1, 1989.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 15, 1989.

Description: Conforming Application of American Airlines, Inc., pursuant to Section 401 of the Act and Subpart Q of the Regulations, with respect to Docket 46061, applies for a certificate of public convenience and necessity authorizing service between Chicago, Illinois, and Tokyo, Japan.

Docket No.: 46095

Date Filed: February 1, 1989.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: March 1, 1989.

Description: Application of Air Atlantic Ltd., pursuant to Section 402 of the Act and Subpart Q of the Regulations, applies for issuance of a foreign air carrier permit to authorize it to engage in foreign air transportation of persons, property and mail between Halifax, Nova Scotia, Bangor and Portland, Maine, and Montreal, Quebec.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 89-3186 Filed 2-9-89; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review.

Date: February 6, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New

Form Number: None

Type of Review: New Collection

Title: Focus Group Season for IRS Customer Needs Survey

Description: To survey taxpayers about improving existing services, or creating new ones that will help facilitate voluntary compliance of Income Tax filing. General taxpaying population and the traditionally noncomplaint small business/self-employed will be contacted.

Respondents: Individuals or households, Farms, Small businesses or organizations

Estimated Number of Respondents: 1,000

Estimated Burden Hours Per Response: 5 minutes

Frequency of Response: One time only survey

Estimated Total Reporting Burden: 445 hours

Clearance Officer: Garrick Shear (202) 535-4297; Internal Review Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Department Reports Management Officer.

[FR Doc. 89-3180 Filed 2-9-89; 8:45 am]

BILLING CODE 4810-35-M

Internal Revenue Service

[Delegation Order No. 208]

Delegation of Authority; Martinsburg Computing Center

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: Delegation Order 208 is revised to delegate to the Director, Martinsburg Computing Center, certain authorities with respect to A-76 activities. The text of the delegation order appears below.

EFFECTIVE DATE: February 3, 1989.

FOR FURTHER INFORMATION CONTACT: Barbara Bailey, CS:P, Room 7575 No, 1111 Constitution Avenue, NW., Washington, DC 20224, telephone 202-566-7031 (not a toll-free call).

[Order No. 208 (Rev. 3)]

Effective date: 2-3-89.

Delegation of Authority in the Performance of Commercial Activities

The authority vested in the Commissioner of Internal Revenue by TDO 150-10 and OMB Circular A-76 is hereby delegated as follows:

1. Assistant Commissioner (Planning, Finance and Research) is authorized to determine, after consultation with other Assistant Commissioners, appropriate Assistants to the Commissioner and the Chief Counsel, which IRS activities are commercial activities as defined by OMB Circular A-76, recommending for the Commissioner's decision only those activities which in the judgment of the Assistant Commissioner are of such large and servicewide significance that the Commissioner's involvement is necessary.

2. The authority to (a) certify the Most Efficient Organization (MEO), (b) sign the final result of the A-76 cost comparison review, (c) decide A-76 appeals concerning the award of contracts subsequent to formal A-76 cost comparisons, and (d) decide that a contract for a commercial activity should be awarded without going through a formal A-76 cost comparison review is hereby delegated to the following officials:

a. Assistants to the Commissioner.
b. Assistant to the Senior Deputy Commissioner.
c. Deputy Chief Counsel.
d. Assistant Commissioners.
e. Assistant Regional Commissioners.
f. Regional Inspectors.
g. Regional Counsel.
h. District Directors.
i. Service Center Directors.
j. Director, Martinsburg Computing Center.

3. The authority to decide A-76 appeals concerning a decisions to award a contract for a commercial activity without performing an A-76 cost comparison review is delegated to Regional Commissioners or, in the case of National Office activities, the Deputy Commissioner or Chief Counsel for those activities over which they have supervision or control.

4. The authorities in paragraphs 1, 2 and 3 above may not be redelegated.

5. Delegation Order No. 208, (Rev. 2) Effective October 31, 1987 is superseded.

Approved: January 24, 1989.

John L. Wedick, Jr.,

Deputy Commissioner, Planning and Resources.

[FR Doc. 89-3201 Filed 2-9-89 8:45 am]

BILLING CODE 4830-01-M

Secret Service

Privacy Act of 1974; Technical Amendment, System of Records Notice, Treasury/USSS .007

AGENCY: Secret Service, Department of the Treasury.

ACTION: Technical Amendment, Privacy Act of 1974, System of Records Notice, Treasury/USSS .007.

SUMMARY: This notice makes a technical amendment to the Department of the Treasury's Privacy Act of 1974 System of Records Notice, last published 53 FR 6252 (March 1, 1988). Specifically, this notice would amend the section of Treasury/USSS .007, entitled "Systems Exempted From Certain Provisions of the Act," and published at 53 FR 6465, by striking section "(c)(2)" from the list of sections set out under this title.

EFFECTIVE DATE: February 10, 1989.

FOR FURTHER INFORMATION CONTACT: John J. Kelleher, Chief Counsel, United States Secret Service, 1800 G Street, NW., Washington, DC 20223, telephone (202) 535-5771.

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Privacy Act of 1974 (hereinafter the Privacy Act), 5 U.S.C. 552a(e)(4), on March 1, 1988, the United States Secret Service, Department of the Treasury, published in the **Federal Register** an updated Privacy Act System of Records Notice, 53 FR 6252, at 6477-87 (March 1, 1988). As published in the **Federal Register**, Treasury/USSS .007, Protection Information System, contains an editorial error. Specifically, Treasury/USSS .007, at 53 FR 6465, inadvertently lists an exemption from section (c)(2) of the Privacy Act. This Notice would amend the portion of Treasury/USSS .007, entitled "Systems Exempted From Certain Provisions of the Act," and published at 53 FR 6465, by striking section "(c)(2)" from the sections listed.

Date: February 3, 1989.

Jill E. Kent,

Assistant Secretary of the Treasury (Management).

For the reasons set out in the preamble, the section of Treasury/USSS .007 entitled "Systems Exempted From Certain Provisions of the Act," is amended to read as follows:

* * * * *

Systems Exempted From Certain Provisions of the Act

This system is exempt from 5 U.S.C. 552a (c)(3), (c)(4), (d), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j) and (k).

[FR Doc. 89-3161 Filed 2-9-89; 8:45 am]

BILLING CODE 4810-42-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 27
Friday, February 10, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, February 14, 1989, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Application for Federal deposit insurance for a United States branch of a foreign bank.

Hang Seng Bank Limited, Hong Kong, for Federal deposit insurance of deposits received at and recorded for the accounts of its proposed United States branch to be located at 268-270 Canal Street, New York City (Manhattan), New York.

Memorandum and resolution re: Proposed amendments to the Corporation's system of records, entitled "Attorney—Legal Intern Applicant System," which amendments would update the content, use, retrievability, and retention categories of this system of records, and would clarify existing notification procedures.

Memorandum and resolution re: Contract for the FDIC Loose Leaf Reporting Service.

Memorandum regarding a professional services contract.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Memorandum regarding the Corporation's proposed budget for 1989.

The meeting will be held in the Board Room on the six floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-3813.

Dated: February 7, 1989.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 89-3292 Filed 2-8-89; 12:39 pm]
BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Tuesday, February 14, 1989, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors request that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or offices, directors, employees, agents or other persons participating in the conduct of an affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note: Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Reports of the Director, Office of Corporate Audits and Internal Investigations:

EDP Audit Report re:
Legal Case Management System (Memo dated November 1, 1988)
Audit Report re:
Bossier City Consolidated Office, Cost Center—105, (Memo dated November 18, 1988)
Audit Report re:
Oklahoma City Consolidated Office, Cost Center—401 (Memo dated November 18, 1988)
EDP Audit Report re:
Midland Consolidated Office, Cost Center—402 (Memo dated December 2, 1988)
EDP Audit Report re:
FIS/AP Audit (Memo dated December 2, 1988)
Audit Report re:
Union Bank and Trust, Bartlesville, Oklahoma (2843) (Memo dated December 14, 1988)
Audit Report re:
Houston Consolidated Office, Cost Center—105 (Memo dated January 19, 1989)

Discussion Agenda:

Applications for consent to merge and establish three branches:

New State Bank of ISBM, Minneapolis, Minnesota, a proposed new bank in organization, for the Corporation's consent to merge, under its charter and title, with Farmer's State Bank of Lyle, Lyle, Minnesota, and State Bank of Rose Creek, Rose Creek, Minnesota, and for consent to establish the one office of Farmer's State Bank of Lyle and the two offices of State Bank of Rose Creek as branches of the resultant bank.

Applications for consent to purchase assets and assume liabilities and establish branches:

Security State Bank of Albert Lea, Albert Lea, Minnesota, an insured state nonmember bank, for the Corporation's consent to purchase certain assets of and assume the liability to pay deposits made in the Austin, Minnesota, branch of New State Bank of ISBM, Minneapolis, Minnesota, and for consent to establish that branch as a branch of Security State Bank of Albert Lea.

Farmers State Bank of Adams, Minnesota, Adams, Minnesota, an insured state nonmember bank, for the Corporation's consent to purchase certain assets of and assume the liability to pay deposits made in the Rose Creek, Minnesota, branch of New State Bank of ISBM, Minneapolis, Minnesota, and for consent to establish that branch as a branch of Farmers State Bank of Adams.

Applications for Federal deposit insurance and for consent to purchase assets and assume liabilities:

Bank of Lyle, Lyle, Minnesota, a proposed new bank in organization, for Federal deposit insurance and for consent to purchase certain assets of and to assume the liability to pay deposits made in the Lyle, Minnesota, branch of New State Bank of ISBM, Minneapolis, Minnesota.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,285 (Amendment)
Plaza Consolidated Office, Kansas City, Missouri

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisons of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), and (c)(6)).

Matters relating to the possible closing of certain insured banks:

Names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-3813.

Dated: February 7, 1989.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 89-3293 Filed 2-8-89; 12:39 pm]
BILLING CODE 6714-01-M

FEDERAL ENERGY REGULATORY COMMISSION

Meeting

February 8, 1989.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-4109), 5 U.S.C. 552b:

TIME AND DATE: February 15, 1989, (Approximately 2:00 p.m. following Regular Open Meeting).
PLACE: 825 North Capitol Street NE., Room 9306, Washington, DC 20426.
STATUS: Closed.
MATTERS TO BE CONSIDERED:

(1) Docket No. E-7319, Wolvering Power Corporation.
(2) Project No. 4900-001, Trafalgar Power, Inc.
(3) Project No. 2040, Flambeau Paper Corporation.
(4) Project No. 7477, Burt Dam Associates.

CONTACT PERSON FOR FURTHER INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 357-8400.
Lois D. Cashell,
Secretary.
[FR Doc. 3307 Filed 2-8-89; 3:40 pm]
BILLING CODE 6717-01-M

FEDERAL MARITIME COMMISSION

TIME AND PLACE: 10:30 a.m.—February 15, 1989.
PLACE: Hearing Room One—1100 L Street, NW., Washington, DC 20573-0001.
STATUS: Part of the meeting will be open to the public. The rest of the meeting will be closed to the public.
MATTERS TO BE CONSIDERED:

Portion Open to the Public

1. Docket No. 88-19—Proposed Rule on Effective Date of Tariff Changes—Consideration of Comments.

Portion Closed to the Public

1. Docket No. 87-19—Atlantis Line, Ltd. v. American President Lines, Ltd.—Petition for Reconsideration.
2. Docket No. 87-6—Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Peru Trade

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523-5725.
Joseph C. Polking,
Secretary.
[FR Doc. 89-3191 Filed 2-8-89; 12:39 pm]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, February 15, 1989.
PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.
STATUS: Open.
MATTERS TO BE CONSIDERED:

1. Publication for comment of proposals regarding finality accorded automated clearing house (ACH) credit and debit transactions processed by Federal Reserve Banks. (Proposed earlier for public comment; Docket No. R-0615-C)
2. Any items carried forward from a previously announced meeting.

Note. This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Date: February 8, 1989.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 89-3251 Filed 2-8-89; 11:21 am]
BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM: Board of Governors.
TIME AND DATE: Approximately 10:30 a.m., Wednesday, February 15, 1989, following a recess at the conclusion of the open meeting.
PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.
STATUS: Closed.
MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: February 8, 1989.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 89-3252 Filed 2-8-89; 11:21 am]
BILLING CODE 6210-01-M

INTERSTATE COMMERCE COMMISSION

TIME AND DATE: 10:00 a.m., Friday, February 17, 1989.
PLACE: Hearing Room A, Interstate Commerce Commission, 12th & Constitution Avenue, NW., Washington, DC 20423.
STATUS: Open Special Conference.
PURPOSE: The purpose of the conference is for the Commission to discuss among themselves, and to vote on, the agenda item. Although the conference is open for the public observation, no public participation is permitted.
MATTERS TO BE DISCUSSED:

Finance Docket No. 27590 (Sub-No. 1)
Trailer Train Company, Et Al. — Pooling of Car Service With Respect to Flatcars

CONTACT PERSON FOR MORE INFORMATION: Alvin H. Brown, Office of Government and Public Affairs, Telephone: (202) 275–7252.

Noreta R. McGee,

Secretary.

[FR Doc. 89–3176 Filed 2–7–89; 1:36 pm]

BILLING CODE 7035-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [54 FR 5301 February 2, 1989]

STATUS: Closed meeting.

PLACE: 450 Fifth Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Friday, January 27, 1989.

CHANGES IN THE MEETING: Additional items.

The following additional items will be considered at a closed meeting scheduled for Tuesday, February 7, 1989, at 2:30 p.m.:

Settlement of injunctive action.
Formal orders of investigation.

Commissioner Fleischman, as duty officer, determined that Commission business required the above changes.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Karen Burgess at (202) 272–2000.

Jonathan G. Katz,

Secretary.

February 6, 1989.

[FR Doc. 89–3301 Filed 2–6–89; 1:14 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 54, No. 27
Friday, February 10, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 179

[Docket Nos. 81N-0004 and 84F-0230]

Irradiation in the Production, Processing, and Handling of Food

Correction

In rule document 88-29885 beginning on page 53176 in the issue of Friday, December 30, 1988, make the following correction:

On page 53208, in the second column, in the last line, "January 30, 1988" should read "January 30, 1989".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Norden Laboratories, Inc.; Withdrawal of Approval of NADA'S

Correction

In notice document 89-634 appearing on page 1241 in the issue of Thursday, January 12, 1989, make the following correction:

In the third column, in the first complete paragraph, in the fifth line, "520.480(b)(1)" should read "520.580(b)(1)".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 399

[OST Docket No. 45884; Notice 88-1]

Statement of Enforcement Policy on Rebating

Correction

In proposed rule document 89-2578 appearing on page 5497 in the issue of Friday, February 3, 1989, make the following correction:

In the second column, under **SUMMARY**, in the third line, "88-5" should read "88-15".

BILLING CODE 1505-01-D

BEST COPY AVAILABLE

federal register

Friday
February 10, 1989

Part II

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 2

Office of Hearings and Appeals

43 CFR Part 4

Appeals From Administrative Actions, and Department Hearings and Appeals Procedures; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 2

Appeals From Administrative Actions

November 29, 1988.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The final rule revises the Bureau of Indian Affairs (BIA) rules governing the appeals process used for requesting review of actions by BIA officials which adversely affect an appellant.

EFFECTIVE DATE: March 13, 1989.

FOR FURTHER INFORMATION CONTACT: Anne Bolton, Management Analyst, Division of Personnel Management, Bureau of Indian Affairs, Room 320, Interior South, 1951 Constitution, NW., Washington, DC 20245, telephone number (202) 343-4669.

SUPPLEMENTARY INFORMATION:

Authority to issue rules and regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and sections 463 and 465 of the revised Statutes (25 U.S.C. 2 and 9). This final rule is published in exercise of rulemaking authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8. The BIA published a proposed rule on November 6, 1987 (52 FR 43006), offering the public an opportunity to comment on appeals from administrative actions.

This rule does not contain collections of information which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The final rule is published as previously titled, Appeals from Administrative Actions. This revision eliminates Central Office action on many of the appeals which originate in the field. Most appeals will be sent directly to the Interior Board of Indian Appeals (IBIA) from the field.

Comments were received from sixteen sources including Indian tribes, tribal attorneys, government solicitors and Bureau officials. The following paragraphs summarize the comments and suggestions received and actions taken.

Section 2.2: One commenter suggested that the definition of "appeal" in proposed § 2.2 be amended to include the words "or the inaction" after the word "action". This change has been made to reflect the intent of the regulation that either an action or an inaction may be subject to appeal. The words "is in error" have been added to the definition of "statement of reasons" as recommended by another commenter.

Section 2.3 One commenter recommended that in § 2.3(a) the words "may be" replace "are or will be" to clarify that appellants do not have to prove that they are adversely affected, only to allege it. This comment is accepted.

One commenter noted that, under the National Environmental Policy Act, environmental matters may be appealed to the Federal courts without first going through the Bureau appeals process. Subsection 2.3(b) makes the appeal procedures in Part 2 inapplicable where another regulation or a Federal statute provides a different procedure. Therefore, no change is necessary.

Section 2.4: A new § 2.4(d) has been added providing that a Deputy to the Assistant Secretary—Indian Affairs may issue a decision in an appeal if that responsibility has been assigned to him/her by the Assistant Secretary—Indian Affairs pursuant to § 2.20(c). See the discussion under § 2.20.

Section 2.4(e) (proposed § 2.4(d)) has been revised to provide that the Interior Board of Indian Appeals will hear appeals from decisions of a Deputy to the Assistant Secretary—Indian Affairs made pursuant to an assignment of responsibility under § 2.20(c). This subsection has been further revised to delete the authority of the Board to hear appeals from decisions of the Deputy to the Assistant Secretary—Indian Affairs/Director (Indian Education Programs). Appeals from decisions of this official will be made to the Assistant Secretary—Indian Affairs for the reasons discussed under § 2.20(g).

Section 2.5: Six comments were received on this section. Three commenters were concerned that indigent appellants might not be able to post an appeal bond if required to do so. Two commenters were concerned that collateral proceedings would delay proceedings in the appeal. One suggested that an interlocutory appeal procedure be set out. After thorough consideration of these comments, it has been decided that the bond provision is necessary for the protection of Indians and should be retained. The Bureau and the Interior Board of Indian Appeals have had bond provisions in their appeal regulations since 1960 and 1975, respectively. These provisions have been implemented without undue hardship to appellants.

A new § 2.5(c) has been added to make clear that the deciding official must give notice when he/she issues a decision requiring a bond or denying a request that a bond be required. Although no specific interlocutory appeal provisions are included in § 2.5, aggrieved parties may appeal from these decisions.

Section 2.6: One commenter believed that proposed § 2.6(a), which stated that a decision of the Assistant Secretary is final for the Department and effective immediately unless the Assistant Secretary provides otherwise, did not clearly indicate how the Assistant Secretary would provide otherwise. This subsection, now § 2.6(c), has been revised to state that such a provision must appear in the decision itself.

A new provision at § 2.6(b) clarifies that a decision made by a BIA official becomes final when the time for filing a notice of appeal has expired and no notice of appeal has been filed.

Section 2.7: Two commenters noted that the term "effective notice" in proposed § 2.7(b) was not defined. Section 2.7(b) has been reworded to state that time to file an appeal does not begin to run until notice has been given in accordance with § 2.7(c), which sets out the information concerning appeal procedures which must be contained in the notice of a decision.

Two commenters objected to the wording of proposed § 2.7(c) because it did not clearly identify which decisions were appealable and which were not. Two commenters suggested that the subsection be revised to identify more specifically the information regarding appeal procedures which is required to be included in BIA decisions. The

subsection has been reworded to make clear that only decisions which are final for the Department pursuant to § 2.6(c) are not administratively appealable and to state more specifically the appeal information to be included in decisions.

Section 2.8: The comments generally favored this provision, which sets out a procedure for appealing from inaction of a BIA official. Three commenters recommended that a time limit be set for the "reasonable later date" for making a decision which § 2.8(b) requires a BIA official to establish. § 2.8(b) has been revised to provide that the date must be no later than 60 days from the date of the request for a decision.

Proposed §§ 2.8 (a)(3) and (b), 2.9(a), and 2.19(a) included new provisions for student appeals pertaining to expulsions and suspensions. These have been deleted from the final rule in order to preserve the status quo of regulations concerning Indian education, as required by § 5106 of the Indian Education Amendments of 1988, 102 Stat. 367.

Section 2.9: Four commenters recommended that the time for an appellant to file a notice of appeal should begin to be counted from the date that the appellant received the notice of administrative action rather than the date that it was mailed. Also, four comments on this section and § 2.13 recommended that appeal documents submitted by the appellant should be considered filed when they were mailed, rather than when they were received by the decisionmaker. Section 2.9(e), and corresponding provisions throughout the regulation, have been revised to incorporate each recommendation in its entirety.

One commenter objected to the omission from the proposed regulations of the present requirement that BIA officials render assistance to appellant Indians and Indian tribes not represented by counsel. This provision has been reinstated in a new § 2.9(b).

Section 2.9(c)(5), § 2.10 (a) and (b), and § 2.11(b) have been reworded and expanded to clarify the original intent as suggested by several comments received.

One commenter objected to the requirement for labeling of envelopes in § 2.9(c)(3), § 2.10(d)(2) and § 2.11(e)(2) as being superfluous. Appeal documents are not always self-evident. The purpose of identifying the contents on the envelope is to speed processing. Failure to include this on the envelope, however, is not grounds for summary dismissal.

Section 2.10: One commenter stated that failure to conform to the formal requirements for a statement of reasons described in this section should not be grounds for summary dismissal under § 2.17. The revision of § 2.17 discussed below responds to this comment.

Section 2.13: One commenter questioned whether § 2.13(c), concerning misdirected appeal documents, included notices of appeal. This subsection has been revised to make clear that a BIA official will allow late filing of a misdirected notice of appeal where the official determines that the misdirection is the fault of the government.

Other revisions to § 2.13 are discussed under § 2.9.

Section 2.17: One commenter recommended adding failure to file a timely notice of appeal to the grounds for summary dismissal. This section has been revised to incorporate the provision, also set out in § 2.9(a), which requires the dismissal of an appeal when the notice of appeal is not timely filed.

Two commenters recommended revisions concerning the provision in proposed § 2.17 that permitted summary dismissal for failure to file a statement of reasons. In response to these comments, this section has been revised to allow summary dismissal only where the reasons for the appeal cannot be determined from the appeal documents taken as a whole and only after the appellant has been given an opportunity to amend his/her appeal documents.

Section 2.19: Two commenters suggested that § 2.19(a) be revised to identify more specifically the information regarding appeals procedures, in particular the 30-day time limit for filing a notice of appeal, required to be included in decisions by BIA officials. This section has been revised to incorporate these suggestions.

One commenter recommended that a specific provision be included allowing appeal to the next level when a BIA official fails to issue a decision within the time allowed. When an appeal level is skipped, the administrative record may not be properly developed, making effective consideration of the appeal at a higher level difficult. Further, the opportunity to resolve the appeal at the lower level is foregone. For these reasons, this comment is not accepted. BIA officials are expected to issue decisions in accordance with the time deadlines in these regulations.

Section 2.20: Three commenters either objected to the inclusion of the Assistant Secretary—Indian Affairs in the appeal process or recommended that the Assistant Secretary's decisions be subject to review by the Interior Board of Indian Appeals (IBIA). One commenter recommended that appellants be allowed to choose whether to appeal to the Assistant Secretary or the IBIA. Another suggested that some appellants might seek to have the Assistant Secretary assume jurisdiction over their appeals by filing petitions with that official.

The comments recommending exclusion of the Assistant Secretary from the appeal process or making his/her decisions subject to review by the IBIA are not accepted. Certain appeals involve policy matters requiring the attention of the Assistant Secretary. Further, the IBIA does not have jurisdiction to review discretionary decisions of BIA officials. (See the discussion of 43 CFR Part 4 Subpart D, immediately following.) In order to make clear that this section is not intended to give the parties to an appeal a choice of forum, but rather is intended to vest the exclusive authority to assume jurisdiction over an appeal in the Assistant Secretary, a sentence has been added to § 2.20(c) stating, "The Assistant Secretary—Indian Affairs will not consider petitions to exercise this authority."

Section 2.20(c) has been further revised to authorize the Assistant Secretary—Indian Affairs to assign the responsibility to issue a decision in an appeal to a Deputy to the Assistant Secretary—Indian Affairs. A decision made by a Deputy to the Assistant Secretary pursuant to such an assignment may be appealed to the Board of Indian Appeals except as provided for in § 2.20(g).

One commenter recommended clarification of the extent to which the IBIA could review BIA decisions that it receives pursuant to § 2.20(e). In response to this recommendation, § 2.20(e) has been revised to make clear that IBIA jurisdiction over appeals received pursuant to this subsection are subject to 43 CFR 4.337(b), as are other appeals from BIA decisions.

A new § 2.20(g) has been added providing for decisions by the Assistant Secretary—Indian Affairs in appeals from decisions of the Deputy to the Assistant Secretary—Indian Affairs/Director (Indian Education Programs).

The proposed rule provided that appeals from this official would be made to the Interior Board of Indian Appeals. The change has been made to preserve the status quo of existing appeal procedures for education appeals, as required by § 5106 of the Indian Education Amendments of 1988, 102 Stat. 367.

Section 2.21: Three commenters recommended revision of § 2.21(b) to allow the parties to an appeal to obtain copies of documents considered by the

decisionmaker but not included in the administrative record and to provide a specific time for response by the parties. The subsection has been revised to incorporate these recommendations.

One commenter requested a 30 day period for reconsideration by the initial decisionmaker. The decisionmaker under these proposed regulations would already have an opportunity to reverse the initial decision at the time the notice of appeal is filed with him/her before forwarding the appeal information to the next highest appeal level. Consequently, it was felt that adoption of this process would only serve to lengthen the total process. The comment is therefore not accepted.

The primary author of this document is Anne Bolton, Management Analyst, Division of Personnel Management, Bureau of Indian Affairs, Room 320, Interior South, 1951 Constitution Ave., NW., Washington, DC 20245, telephone number (202) 343-4689.

This rule does not constitute a major Federal action significantly affecting the quality of the human environment and no detailed statement is required pursuant to the National Environmental Policy Act of 1969. The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and certifies this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). These regulations will affect only administrative appeals from decisions by certain BIA officials.

The final rule governing appeals to the Interior Board of Indian Appeals, 43 CFR 4.310–4.340, immediately follows this rule.

List of Subjects in 25 CFR Part 2

Administrative practice and procedure.

For the reasons set forth in the preamble, Part 2 of Title 25, Chapter 1, Subchapter A of the Code of Federal Regulations is revised as follows:

PART 2—APPEALS FROM ADMINISTRATIVE ACTIONS

Sec.

2.1 Information collection.
2.2 Definitions.
2.3 Applicability.
2.4 Officials who may decide appeals.
2.5 Appeal bond.
2.6 Finality of decisions.
2.7 Notice of administrative decision or action.
2.8 Appeal from inaction of official.
2.9 Notice of an appeal.
2.10 Statement of reasons.
2.11 Answer of interested party.
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2.21 Scope of review.

Authority: R.S. 463, 465; 5 U.S.C. 301, 25 U.S.C. 2, 9.

§ 2.1 Information collection.

In accordance with Office of Management and Budget regulations in 5 CFR 1320.3(c), approval of information collections contained in this regulation is not required.

§ 2.2 Definitions.

"Appeal" means a written request for review of an action or the inaction of an official of the Bureau of Indian Affairs that is claimed to adversely affect the interested party making the request.

"Appellant" means any interested party who files an appeal under this part.

"Interested party" means any person whose interests could be adversely affected by a decision in an appeal.

"Legal holiday" means a Federal holiday as designated by the President or the Congress of the United States.

"Notice of appeal" means the written document sent to the official designated in this part, indicating that a decision is being appealed (see § 2.9).

"Person" includes any Indian or non Indian individual, corporation, tribe or other organization.

"Statement of reasons" means a written document submitted by the appellant explaining why the decisions being appealed is in error (see § 2.10).

§ 2.3 Applicability.

(a) Except as provided in paragraph (b) of this section, this part applies to all appeals from decisions made by officials of the Bureau of Indian Affairs by persons who may be adversely affected by such decisions.

(b) This part does not apply if any other regulation or Federal statute provides a different administrative appeal procedure applicable to a specific type of decision.

§ 2.4 Officials who may decide appeals.

The following officials may decide appeals:

(a) An Area Director, if the subject of appeal is a decision by a person under the authority of that Area Director.

(b) An Area Education Programs Administrator, Agency Superintendent for Education, President of a Post-Secondary School, or the Deputy to the Assistant Secretary—Indian Affairs/Director (Indian Education Programs), if the appeal is from a decision by an Office of Indian Education Programs (OIEP) official under his/her jurisdiction.

(c) The Assistant Secretary—Indian Affairs pursuant to the provisions of § 2.20 of this part.

(d) A Deputy to the Assistant Secretary—Indian Affairs pursuant to the provisions of § 2.20(c) of this part.

(e) The Interior Board of Indian Appeals, pursuant to the provisions of 43 CFR Part 4, Subpart D, if the appeal is from a decision made by an Area Director or a Deputy to the Assistant Secretary—Indian Affairs other than the Deputy to the Assistant Secretary—Indian Affairs/Director (Indian Education Programs).

§ 2.5 Appeal bond.

(a) If a person believes that he/she may suffer a measurable and substantial financial loss as a direct result of the delay caused by an appeal, that person may request that the official before whom the appeal is pending require the posting of a reasonable bond by the appellant adequate to protect against that financial loss.

(b) A person requesting that a bond be posted bears the burden of proving the likelihood that he/she may suffer a measurable and substantial financial loss as a direct result of the delay caused by the appeal.

(c) In those cases in which the official before whom an appeal is pending determines that a bond is necessary to protect the financial interests of an Indian or Indian tribe, that official may require the posting of a bond on his/her own initiative.

(d) Where the official before whom an appeal is pending requires a bond to be posted or denies a request that a bond be posted, he/she shall give notice of his/her decision pursuant to § 2.7.

§ 2.6 Finality of decisions.

(a) No decision, which at the time of its rendition is subject to appeal to a superior authority in the Department, shall be considered final so as to constitute Departmental action subject to judicial review under 5 U.S.C. 704, unless when an appeal is filed, the official to whom the appeal is made determines that public safety, protection of trust resources, or other public exigency requires that the decision be made effective immediately.

(b) Decisions made by officials of the Bureau of Indian Affairs shall be effective when the time for filing a notice of appeal has expired and no notice of appeal has been filed.

(c) Decisions made by this Assistant Secretary—Indian Affairs shall be final for the Department and effective immediately unless the Assistant Secretary—Indian Affairs provides otherwise in the decision.

§ 2.7 Notice of administrative decision or action.

(a) The official making a decision shall give all interested parties known to the decisionmaker written notice of the decision by personal delivery or mail.

(b) Failure to give such notice shall not affect the validity of the decision or action but the time to file a notice of appeal regarding such a decision shall not begin to run until notice has been given in accordance with paragraph (c) of this section.

(c) All written decisions, except decisions which are final for the Department pursuant to § 2.6(c), shall include a statement that the decision may be appealed pursuant to this part, identify the official to whom it may be appealed and indicate the appeal procedures, including the 30-day time limit for filing a notice of appeal.

§ 2.8 Appeal from inaction of official.

(a) A person or persons whose interests are adversely affected, or whose ability to protect interests is impeded by the failure of an official to act on a request to the official, can make the official's inaction the subject of appeal, as follows:

(1) Request in writing that the official take the action originally asked of him/her;

(2) Describe the interest adversely affected by the official's inaction, including a description of the loss, impairment or impediment of such interest caused by the official's inaction;

(3) State that, unless the official involved either takes action on the merits of the written request within 10 days of receipt of such request by the official, or establishes a date by which action will be taken, an appeal shall be filed in accordance with this part.

(b) The official receiving a request as specified in paragraph (a) of this section must either make a decision on the merits of the initial request within 10 days from receipt of the request for a decision or establish a reasonable later date by which the decision shall be made, not to exceed 60 days from the date of request. If an official establishes a date by which a requested decision shall be made, this date shall be the date by which failure to make a decision shall be appealable under this part. If the official, within the 10-day period specified in paragraph (a) of this section, neither makes a decision on the merits of the initial request nor establishes a later date by which a decision shall be made, the official's inaction shall be appealable to the next official in the process established in this part.

§ 2.9 Notice of an appeal.

(a) An appellant must file a written notice of appeal in the office of the official whose decision is being appealed. The appellant must also send a copy of the notice of appeal to the official who will decide the appeal and to all known interested parties. The notice of appeal must be filed in the office of the official whose decision is being appealed within 30 days of receipt by the appellant of the notice of administrative action described in § 2.7. A notice of appeal that is filed by mail is considered filed on the date that it is postmarked. The burden of proof of timely filing is on the appellant. No extension of time shall be granted for filing a notice of appeal. Notices of appeal not filed in the specified time shall not be considered, and the decision involved shall be considered final for the Department and effective in accordance with § 2.8(b).

(b) When the appellant is an Indian or Indian tribe not represented by counsel, the official who issued the decision appealed shall, upon request of the appellant, render such assistance as is appropriate in the preparation of the appeal.

(c) The notice of appeal shall:

(1) Include name, address, and phone number of appellant.

(2) Be clearly labeled or titled with the words "NOTICE OF APPEAL."

(3) Have on the face of any envelope in which the notice is mailed or delivered, in addition to the address, the clearly visible words "NOTICE OF APPEAL."

(4) Contain a statement of the decision being appealed that is sufficient to permit identification of the decision.

(5) If possible, attach either a copy of the notice of the administrative decision recieved under § 2.7, or when an official has failed to make a decision or take any action, attach a copy of the appellant's request for a decision or action under § 2.8 with a written statement that the official failed to make a decision or take any action or to establish a date by which a decision would be made upon the request.

(6) Certify that copies of the notice of appeal have been served on interested parties, as prescribed in § 2.12(a).

§ 2.10 Statement of reasons.

(a) A statement of reasons shall be filed by the appellant in every appeal, and shall be accompanied by or otherwise incorporate all supporting documents.

(b) The statement of reasons may be included in or filed with the notice of appeal.

(c) If the statement of reasons is not filed with the notice of appeal, the appellant shall filed a separate statement of reasons in the office of the official whose decision is being appealed within 30 days after the notice of appeal was filed in that office.

(d) The statement of reasons whether filed with the notice of appeal or filed separately should:

(1) Be clearly labeled "STATEMENT OF REASONS".

(2) Have on the face of any envelope in which the statement of reasons is mailed or delivered, in addition to the address, the clearly visible words "STATEMENT OF REASONS".

§ 2.11 Answer of interested party.

(a) Any interested party wishing to participate in an appeal proceeding should file a written answer respooding to the appellant's notice of appeal and statement of reasons. An answer should describe the party's interest.

(b) An answer shall state the party's position or response to the appeal in any manner the party deems appropriate and may be accompanied by or otherwise incorporate supporting documents.

(c) An answer must be filed within 30 days after receipt of the statement of reasons by the person filing an answer.

(d) An answer and any supporting documents shall be filed in the office of the official before whom the appeal is pending as specified in § 2.13.

(e) An answer should:

(1) Be clearly labelled or titled with the words "ANSWER OF INTERESTED PARTY."

(2) Have on the face of any envelope in which the answer is mailed or delivered, in addition to the address, the clearly visible words "ANSWER OF INTERESTED PARTY," and

(3) Contain a statement of the decision being appealed that is sufficient to permit identification of the decision.

§ 2.12 Service of appeal documents.

(a) Persons filing documents in an appeal must serve copies of those documents on all other interested parties known to the person making the filing. A person serving a document either by mail or personal delivery must.

at the time of filing the document, also file a written statement certifying service on each interested party, showing the document involved, the name and address of the party served, and the date of service.

(b) If an appeal is filed with the Interior Board of Indian Appeals, a copy of the notice of appeal shall also be sent to the Assistant Secretary—Indian Affairs. The notice of appeal sent to the Interior Board of Indian Appeals shall certify that a copy has been sent to the Assistant Secretary—Indian Affairs. Affairs.

(c) If the appellant is an Indian or Indian tribe not represented by counsel, the official with whom the appeal is filed (i.e., official making the decision being appealed) shall, in the manner prescribed in this section, personally or by mail serve a copy of all appeal documents on the official who will decide the appeal and on each interested party known to the official making such service.

(d) Service of any document under this part shall be by personal delivery or by mail to the record address as specified in § 2.14. Service on a tribe shall be to the principal or designated tribal official or to the governing body.

(e) In all cases where a party is represented by an attorney in an appeal, service of any document on the attorney is service on the party represented. Where a party is represented by more than one attorney, service on any one attorney is sufficient. The certificate of service on an attorney shall include the name of the party whom the attorney represents and indicate that service was made on the attorney representing that party.

(f) When an official deciding an appeal determines that there has not been service of a document affecting a person's interest, the official shall either serve the document on the person or direct the appropriate legal counsel to serve the document on the person and allow the person an opportunity to respond.

§ 2.13 Filing documents.

(a) An appeal document is properly filed with an official of the Bureau of Indian Affairs:

(1) By personal delivery during regular business hours to the person designated to receive mail in the immediate office of the official, or

(2) By mail to the facility officially designated for receipt of mail addressed to the official; the document is considered filed by mail on the date that it is postmarked.

(b) Bureau of Indian Affairs offices receiving a misdirected appeal document shall forward the document to the proper office promptly. If a person delivers an appeal document to the wrong office or mails an appeal document to an incorrect address, no extension of time should be allowed because of the time necessary for a Bureau office to redirect the document to the correct address.

(c) Notwithstanding any other provision of this section, an official deciding an appeal shall allow late filing of a misdirected document, including a notice of appeal, where the official finds that the misdirection is the fault of the government.

§ 2.14 Record address.

(a) Every interested party who files a document in connection with an appeal shall, when he/she files the document, also indicate his/her address. Thereafter, any change of address shall be promptly reported to the official with whom the previous address was filed. The most current address on file under this subsection shall be deemed the proper address for all purposes under this part.

(b) The successors in interest of a party shall also promptly inform the official specified in paragraph (a) of this section of their interest in the appeal and their address.

(c) An appellant or interested party failing to file an address or change of address as specified in this section may not object to lack of notice or service attributable to his/her failure to indicate a new address.

§ 2.15 Computation of time.

In computing any period of time prescribed or allowed in this part, calendar days shall be used. Computation shall not include the day on which a decision being appealed was made, service or notice was received, a document was filed, or other event occurred causing time to begin to run. Computation shall include the last day of the period, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday.

§ 2.16 Extensions of time.

An official to whom an appeal is made may, upon a showing of good cause by a party and with notice to all other parties, extend the period for filing or serving any document; *provided,* however, that no extension will be granted for filing a notice of appeal under § 2.9 of this part or serve by itself to extend any period specified by law or regulation other than in this part.

§ 2.17 Summary dismissal.

(a) An appeal under this part will be dismissed if the notice of appeal is not filed within the time specified in § 2.9(a).

(b) An appeal under this part may be subject to summary dismissal for the following causes:

(1) If after the appellant is given an opportunity to amend them, the appeal documents do not state the reasons why the appellant believes the decision being appealed is in error, or the reasons for the appeal are not otherwise evident in the documents, or

(2) If the appellant has been required to post a bond and fails to do so.

§ 2.18 Consolidation of appeals.

Separate proceedings pending before one official under this part and involving common questions of law or fact may be consolidated by the official conducting such proceedings, pursuant to a motion by any party or on the initiative of the official.

§ 2.19 Action by Area Directors and Education Programs officials on appeal.

(a) Area Directors, Area Education Programs Administrators, Agency Superintendents for Education, Presidents of Post-Secondary Schools and the Deputy to the Assistant Secretary—Indian Affairs/Director (Indian Education Programs) shall render written decisions in all cases appealed to them within 60 days after all time for pleadings (including all extensions granted) has expired. The decision shall include a statement that the decision may be appealed pursuant to this part, identify the official to whom it may be appealed and indicate the appeal procedures, including the 30-day time limit for filing a notice of appeal.

(b) A copy of the decision shall be sent to the appellant and each known interested party by certified or registered mail, return receipt requested. Such receipts shall become a permanent part of the record.

§ 2.20 Action by the Assistant Secretary—Indian Affairs on appeal.

(a) When a decision is appealed to the Interior Board of Indian appeals, a copy of the notice of appeal shall be sent to the Assistant Secretary—Indian Affairs.

(b) The notice of appeal sent to the Interior Board of Indian Appeals shall certify that a copy has been sent to the Assistant Secretary—Indian Affairs.

(c) In accordance with the provisions of § 4.332(b) of Title 43 of the Code of Federal Regulations, a notice of appeal to the Board of Indian Appeals shall not be effective until 20 days after receipt by the Board, during which time the Assistant Secretary—Indian Affairs shall have authority to decide to:

(1) Issue a decision in the appeal, or

(2) Assign responsibility to issue a decision in the appeal to a Deputy to the Assistant Secretary—Indian Affairs.

The Assistant Secretary—Indian Affairs will not consider petitions to exercise this authority. If the Assistant Secretary—Indian Affairs decides to issue a decision in the appeal or to assign responsibility to issue a decision in the appeal to a Deputy to the Assistant Secretary—Indian Affairs, he/she shall notify the Board of Indian Appeals, the deciding official, the appellant, and interested parties within 15 days of his/her receipt of a copy of the notice of appeal. Upon receipt of such notification, the Board of Indian Appeals shall transfer the appeal to the Assistant Secretary—Indian Affairs. The decision shall be signed by the Assistant Secretary—Indian Affairs or a Deputy to the Assistant Secretary—Indian Affairs within 60 days after all time for pleadings (including all extensions granted) has expired. If the decision is signed by the Assistant Secretary—Indian Affairs, it shall be final for the Department and effective immediately unless the Assistant Secretary—Indian Affairs provides otherwise in the decision. Except as otherwise provided in § 2.20(g), if the decision is signed by a Deputy to the Assistant Secretary—Indian Affairs, it may be appealed to the Board of Indian Appeals pursuant to the provisions of 43 CFR Part 4, Subpart D.

(d) A copy of the decision shall be sent to the appellant and each known interested party by certified or registered mail, return receipt requested. Such receipts shall become a permanent part of the record.

(e) If the Assistant Secretary—Indian Affairs or the Deputy to the Assistant Secretary—Indian Affairs to whom the authority to issue a decision has been assigned pursuant to § 2.20(c) does not make a decision within 60 days after all time for pleadings (including all extensions granted) has expired, any party may move the Board of Indian Appeals to assume jurisdiction subject to 43 CFR 4.337(b). A motion for Board decision under this section shall invest the Board with jurisdiction as of the date the motion is received by the Board.

(f) When the Board of Indian Appeals, in accordance with 43 CFR 4.337(b), refers an appeal containing one or more discretionary issues to the Assistant Secretary—Indian Affairs for further consideration, the Assistant Secretary—Indian Affairs shall take action on the appeal consistent with the procedures in this section.

(g) The Assistant Secretary—Indian Affairs shall render a written decision in an appeal from a decision of the Deputy to the Assistant Secretary—Indian Affairs/Director (Indian Education Programs) within 60 days after all time for pleadings (including all extensions granted) has expired. A copy of the decision shall be sent to the appellant and each known interested party by certified or registered mail, return receipt requested. Such receipts shall become a permanent part of the record. The decision shall be final for the Department and effective immediately unless the Assistant Secretary—Indian Affairs provides otherwise in the decision.

§ 2.21 Scope of review.

(a) When a decision has been appealed, any information available to the reviewing official may be used in reaching a decision whether part of the record or not.

(b) When the official deciding an appeal believes it appropriate to consider documents or information not contained in the record on appeal, the official shall notify all interested parties of the information and they shall be given not less than 10 days to comment on the information before the appeal is decided. The deciding official shall include in the record copies of documents or a description of the information used in arriving at the decision. Except where disclosure of the actual documents used may be prohibited by law, copies of the information shall be made available to the parties upon request and at their expense.

Ross O. Swimmer,

Assistant Secretary—Indian Affairs.

[FR Doc. 89-3080 Filed 2-9-89; 8:45 am]

BILLING CODE 4310-02-M

Office of Hearings and Appeals

43 CFR Part 4

Department Hearings and Appeals Procedures

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Final rule.

SUMMARY: This office is amending its regulations concerning appeals to the Board of Indian Appeals in order to ensure compatibility between those regulations and regulations of the Bureau of Indian Affairs. These amendments also incorporate substantive changes to several specific regulations that were previously proposed as separate rulemakings.

EFFECTIVE DATE: March 13, 1989.

FOR FURTHER INFORMATION CONTACT: Kathryn A. Lynn, Chief Administrative Judge, Board of Indian Appeals, 703-235-3816.

SUPPLEMENTARY INFORMATION: On November 6, 1987, the Office of Hearings and Appeals published proposed regulations providing for the amendment of its regulations concerning appeals to the Board of Indian Appeals. 52 FR 43009 (Nov. 6, 1987). The amendments would ensure compatibility between the appeal provisions set forth by the Bureau of Indian Affairs in 25 CFR Part 2 and those of this office in 34 CFR Part 4.

Six public comments were received concerning the proposed changes to 43 CFR Part 4. These comments will be addressed with reference to the sections of Part 4 to which they relate.

Section 4.200: When the proposed regulations were written, a reference to the appeals provisions, located in 43 CFR 4.200, was inadvertently overlooked. This omission is being corrected in the final rules to show that procedural rules relating to appeals to the Board from decisions of officials of the Bureau of Indian Affairs are contained in 43 CFR 4.330 through 4.340.

Section 4.310(b): The service provisions are being expanded based upon an internal comment. The provision will state explicitly that service upon an attorney or other authorized representative is service upon the party and incorporates the provision of 43 CFR 4.22 noting that when a party is represented by more than one attorney, service on any one attorney is sufficient. These clarifications are intended to reduce, when possible, the number of people who must be served, and to be consistent with Bureau regulations.

Section 4.311(d): This subparagraph is being amended based upon an internal comment. The amended subparagraph will request that documents not be bound along the side.

Section 4.312: One commenter suggested inserting "BIA official" before "administrative law judge" so that the section will clearly set forth the Board's authority to adopt, modify, reverse, or set aside any finding, conclusion, or order of a Bureau official. The suggestion is accepted.

Section 4.320: One commenter objected to the proposed change

requiring an Indian tribe to first seek rehearing from the administrative law judge (Indian probate), rather than appealing directly to the Board, when the issue involved in an appeal is an escheat of an interest in Indian trust or restricted property to the tribe. The language of the section is being changed in order not to give Indian tribes different appeal rights than individuals, and to carry out the original intent of the regulation, which was obscured by inartful language. The comment is not accepted.

Section 4.320(a): Based upon an internal comment, a sentence is being added explicitly stating that a notice of appeal not timely filed will be dismissed for lack of jurisdiction. This statement is in accordance with long-standing Board practice.

Sections 4.320(c) and 4.323: The language of these regulations is being corrected to include regulatory changes that became effective on August 13, 1987, after publication in the Federal Register, 52 FR 26344 (July 14, 1987), as corrected in 52 FR 35557 (Sept. 22, 1987). The changes were inadvertently omitted from this proposed rulemaking.

Sections 4.330(b)(2) and 4.337(b): Three commenters questioned the continuation of the limitation on the Board's jurisdiction that prevents it from reviewing discretionary decisions of the Bureau. One commenter noted that review of Bureau decisions by the Board was intended to ensure objective and independent administrative review; the other two commenters noted that no other appeals board in the Office of Hearings and Appeals is prohibited from reviewing discretionary decisions. The commenters suggested that the discretion/law distinction should be dropped and the Board should be given full authority to review all Bureau decisions. One commenter urged that discretionary decisions should at least be reviewable by the Board on an arbitrary, capricious, or abuse of discretion standard.

In this same context, one commenter suggested that the provisions regarding treatment of discretionary decisions in § 4.337(b) should be dropped and the Board given full authority to review such decisions. Two other commenters believed that if the distinction was retained, standards needed to be specified in the regulation for whether the Board would dismiss an appeal from a discretionary decision, or refer it to the Assistant Secretary—Indian Affairs.

The Board is not the only appeals board within the Office of Hearings and Appeals limited in its review of discretionary decisions. Under 43 CFR 4.1(b)(4) and 4.700, appeals not falling within the jurisdiction of a standing appeals board are assigned to ad hoc boards of appeal which are prohibited from reviewing discretionary decisions. At this time, the Department believes the discretion/law distinction in review of Bureau decisions should be retained. The comments are, accordingly, not accepted.

Section 4.330(b)(3): One commenter questioned the provision requiring Bureau decisions based on recommendations or actions of officials of the Minerals Management Service to be decided by the Board of Land Appeals rather than the Board of Indian Appeals. The commenter believed that such decisions routinely involve questions of Federal Indian law and the expertise of the Board of Indian Appeals should be utilized in reviewing these decisions.

The Department continues to believe that the broader mineral law expertise of the Board of Land Appeals should be applied to decisions arising from recommendations or actions of the Minerals Management Service. Those cases involving Indian minerals, which are not based on recommendations or actions of the Minerals Management Service will, however, be decided by the Board of Indian Appeals. The comment is not accepted.

Section 4.331(b): One commenter questioned the provision restricting the Board's review authority over decisions that are approved in writing by the Assistant Secretary—Indian Affairs prior to issuance. As a Secretarial-level official, the Assistant Secretary—Indian Affairs has authority to issue or approve decisions that are final for the Department. The Board has not been delegated general review authority over such decisions. The comment is not accepted.

Section 4.332(a): Three comments were received concerning the proposed reduction of the time for filing a notice of appeal with the Board from 60 days to 30 days. The change was proposed so that the appeal periods would be the same throughout the review process for Bureau administrative decisions and so that final resolution of appeals would not be unnecessarily delayed. The commenters objected to the use of the date of mailing as the start of the appeal period, rather than the date of receipt. One commenter noted that date of receipt should be used because decisions were sent by certified mail, return receipt requested.

The comments are accepted in part. Section 4.332(a) is being revised to provide that the appeal period begins upon receipt of the decision by the appellant. However, the time for filing a notice of appeal will remain 30 days.

Section 4.332(b): Three comments were received relating to the procedures for allowing the Assistant Secretary—Indian Affairs to assume jurisdiction over appeals filed with the Board. Two commenters believed that the Assistant Secretary—Indian Affairs should not have this authority; the third commenter believed that appellants should be given an explicit right to choose whether they wanted their appeals considered by the Board or by the Assistant Secretary—Indian Affairs.

The Office of Hearings and Appeals was created as a separate office within the Office of the Secretary of the Interior in 1970 to provide independent, objective administrative review of decisions issued by the Department's various program Bureaus and Offices. In promulgating the initial regulations providing for review of administrative decisions of the Bureau of Indian Affairs, the Department stated: "Exercise of the Secretary's review authority by the Board of Indian Appeals will ensure impartial review free from organizational conflict in that the Board is part of the Office of Hearings and Appeals in the Office of the Secretary and as such is independent of the Bureau of Indian Affairs." 40 FR 20619 (May 13, 1975).

The usual appeal procedures within the Department do not include appeals to the Assistant Secretaries. If the Assistant Secretaries were to handle appeals routinely, they would have to create, in effect, an Office of Hearings and Appeals within their own offices. The Assistant Secretary—Indian Affairs has recently been a part of the Bureau appeal process because of the vacancy in the position of Commissioner of Indian Affairs, the official who previously handled administrative appeals from the Bureau. It was never contemplated that the Assistant Secretary—Indian Affairs would handle administrative appeals as a routine or frequent part of his official duties. Therefore, the comment suggesting that appellants be given a choice of forum for administrative consideration of their appeals is not accepted.

It is also recognized, however, that there are some decisions involving Indians and Indian tribes that involve policy considerations that cannot adequately be addressed through the usual appeal procedures. It is anticipated that the Assistant Secretary—Indian Affairs will infrequently exercise the authority to assume jurisdiction over an appeal. The Assistant Secretary—Indian Affairs is aware that such assumption of jurisdiction will operate to alter the legitimate expectations of the parties as to normal processing of their appeals. For this reason, the final regulations issued by the Bureau of Indian Affairs show that the authority to assume jurisdiction over an appeal lies exclusively with the Assistant Secretary—Indian Affairs and he or she will not consider petitions filed by the parties asking for such review. Because the Department continues to believe that there are some instances in which it may be appropriate for the Assistant Secretary—Indian Affairs to review an appeal, the comments suggesting that that official be entirely removed from the review process are not accepted.

Section 4.332(c): One comment was received suggesting that this provision was an improper limitation on the duty of Bureau officials to assist Indians who are not represented by counsel in preparing an appeal. The only substantive change proposed from the existing regulation was the addition of the words "not represented by counsel." The change was proposed to clarify that the duty to assist in the preparation of appeals extends to those Indians or Indian tribes who are not being represented by legal counsel. The Department does not believe the change would limit the prior duty of Bureau officials to assist Indians who are not represented by counsel and, therefore, does not accept the comment.

Section 4.332(d): One commenter suggested that an appeal bond should be required only in extraordinary circumstances. The language of the proposed regulation, which was not changed from the existing regulation, states that "an appropriate bond may be required." Because of the diversity of circumstances that may exist in which a bond is requested, it is believed that case-by-case consideration of bond requests must be allowed. The interests of the appellant in prosecuting the appeal must be weighted against the possible disadvantage to other parties should the appeal be decided against the appellant who may then be found not to have the financial resources to carry out the obligations imposed by the decision. It is not believed that changes need to be made to this regulation.

Section 4.336: One commenter suggested that a briefing schedule should not be established until all objections to the composition of the administrative record are resolved. Few cases presently before the Board involve challenges to the composition of the administrative record and it is not anticipated that the new procedures will substantially increase this type of challenge. The Board has previously been able to accommodate challenges to the composition of the administrative record on a case-by-case basis, and expects to do so in the future. No need is seen at this time to provide specific time-frames for challenges to the administrative record. Therefore, the comment is not accepted.

Another commenter suggested that the right to seek review of Board decisions by the Assistant Secretary—Indian Affairs should be made explicit. This comment was based on the erroneous belief that the Assistant Secretary—Indian Affairs presently has the right to review Board decisions. There is no authority for the Assistant Secretary—Indian Affairs to review a decision of the Board. The comment is, therefore, not accepted.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Acts

The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Department of the Interior has also determined that the rule does not constitute a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969, *as amended* (42 U.S.C. 4321–4347).

This rule was written by Kathryn Lynn, Office of Hearings and Appeals.

List of Subjects in 43 CFR Part 4

Administrative practice and procedure, Indians.

Accordingly, 43 CFR Part 4 is amended as set forth below.

Dated: December 13, 1988.

Earl E. Gjoide,

Under Secretary.

PART 4—[AMENDED]

Subpart A—General; Office of Hearings and Appeals

1. The authority citation for Part 4, Subpart A, continues to read as follows:

Authority: R.S. 2478, as amended, 43 U.S.C. sec. 1201, unless otherwise noted.

2. In § 4.1, paragraph (b)(2) is revised to read as follows:

§ 4.1 Scope of authority; applicable regulations.

* * * * * *

(b) * * *

(2) *Board of Indian Appeals.* The Board decides finally for the Department appeals to the head of the Department pertaining to:

(i) Administrative actions of officials of the Bureau of Indian Affairs, issued under 25 CFR Chapter I, except as limited in 25 CFR Chapter I or § 4.330 of this part, and

(ii) Orders and decisions of administrative law judges in Indian probate matters other than those involving estates of the Five Civilized Tribes of Indians and Osage Indian wills. The Board also decides such other matters pertaining to Indians as are referred to it by the Secretary, the Director of the Office of Hearings and Appeals, or the Assistant Secretary—Indian Affairs for exercise of review authority of the Secretary. Special regulations applicable to proceedings before the Board are contained in Subpart D of this part.

* * * * * *

Subpart D—Rules Applicable to Indian Affairs Hearings and Appeals

3. The authority citation for Part 4, Subpart D, continues to read as follows:

Authority: Secs. 1, 2, 36 Stat. 855, as amended, 856, as amended, sec. 1, 36 Stat. 586, 42 Stat. 1185, as amended, secs. 1, 2, 56 Stat. 1021, 1022; R.S. 463, 465; 5 U.S.C. 301; 25 U.S.C. secs. 2, 9, 372, 373, 374, 373a, 373b.

4. In § 4.200 the second to the last sentence is revised to read as follows:

§ 4.200 Scope of regulations.

* * * Included within §§ 4.330 through 4.340 are procedural rules applicable to appeals to the Board of Indian Appeals from administrative actions or decisions issued by the Bureau of Indian Affairs as set forth in § 4.330. * * *

General Rules Applicable to Proceedings on Appeal Before the Interior Board of Indian Appeals

5. The authority citation for Part 4, Subpart D, §§ 4.310–4.317 is removed.

6. §§ 4.310–4.317 are revised and the revised regulations, comprising §§ 4.310–4.318, read as follows:

§ 4.310 Documents.

(a) *Filing.* The effective date for filing a notice of appeal or other document with the Board during the course of an appeal is the date of mailing or the date of personal delivery, except that a motion for the Board to assume

jurisdiction over an appeal under 25 CFR 2.20(e) shall be effective the date it is received by the Board.

(b) *Service.* Notices of appeal and pleadings shall be served on all parties in interest in any proceeding before the Interior Board of Indian Appeals by the party filing the notice or pleading with the Board. Service shall be accomplished upon personal delivery or mailing. Where a party is represented in an appeal by an attorney or other representative authorized under 43 CFR 1.3, service of any document on the attorney or representative is service on the party. Where a party is represented by more than one attorney, service on any one attorney is sufficient. The certificate of service on an attorney or representative shall include the name of the party whom the attorney or representative represents and indicate that service was made on the attorney or representative.

(c) *Computation of time for filing and service.* Except as otherwise provided by law, in computing any period of time prescribed for filing and serving a document, the day upon which the decision or document to be appealed or answered was served or the day of any other event after which a designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, Federal legal holiday, or other nonbusiness day, in which event the period runs until the end of the next day which is not a Saturday, Sunday, Federal legal holiday, or other nonbusiness day. When the time prescribed or allowed is 7 days or less, intermediate Saturdays, Sundays, Federal legal holidays, and other nonbusiness days shall be excluded in the computation.

(d) *Extensions of time.* (1) The time for filing or serving any document except a notice of appeal may be extended by the Board.

(2) A request to the Board for an extension of time must be filed within the time originally allowed for filing.

(3) For good cause the Board may grant an extension of time on its own initiative.

(e) *Retention of documents.* All documents received in evidence at a hearing or submitted for the record in any proceeding before the Board will be retained with the official record of the proceeding. The Board, in its discretion, may permit the withdrawal of original documents while a case is pending or after a decision becomes final upon conditions as required by the Board.

§ 4.311 Briefs on appeal.

(a) The appellant may file an opening brief within 30 days after receipt of the notice of docketing. Appellant shall serve copies of the opening brief upon all interested parties or counsel and file a certificate with the Board showing service upon the named parties. Opposing parties or counsel shall have 30 days from receipt of appellant's brief to file answer briefs, copies of which shall be served upon the appellant or counsel and all other parties in interest. A certificate showing service of the answer brief upon all parties or counsel shall be attached to the answer filed with the Board.

(b) Appellant may reply to an answering brief within 15 days from its receipt. A certificate showing service of the reply brief upon all parties or counsel shall be attached to the reply filed with the Board. Except by special permission of the Board, no other briefs will be allowed on appeal.

(c) The Bureau of Indian Affairs shall be considered an interested party in any proceeding before the Board. The Board may request that the Bureau submit a brief in any case before the Board.

(d) An original only of each document should be filed with the Board. Documents should not be bound along the side.

(e) The Board may also specify a date on or before which a brief is due. Unless expedited briefing has been granted, such date shall not be less than the appropriate period of time established in this section.

§ 4.312 Decisions.

Decisions of the Board will be made in writing and will set forth findings of fact and conclusions of law. The decision may adopt, modify, reverse or set aside any proposed finding, conclusion or order of an official of the Bureau of Indian Affairs or an administrative law judge. Distribution of decisions shall be made by the Board to all parties concerned. Unless otherwise stated in the decision, rulings by the Board are final for the Department and shall be given immediate effect.

§ 4.313 Amicus Curiae; intervention; joinder motions.

(a) Any interested person or Indian tribe desiring to intervene or to join other parties or to appear as amicus curiae or to obtain an order in an appeal before the Board shall apply in writing to the Board stating the grounds for the action sought. Permission to intervene, to join parties, to appear, or for other relief, may be granted for purposes and subject to limitations established by the Board. This section shall be liberally construed.

(b) Motions to intervene, to appear as amicus curiae, to join additional parties, or to obtain an order in an appeal pending before the Board shall be served in the same manner as appeal briefs.

§ 4.315 Exhaustion of administrative remedies.

(a) No decision of an administrative law judge or an official of the Bureau of Indian Affairs, which at the time of its rendition is subject to appeal to the Board, shall be considered final so as to constitute agency action subject to judicial review under 5 U.S.C. 704, unless made effective pending decision on appeal by order of the Board.

(b) No further appeal will lie within the Department from a decision of the Board.

(c) The filing of a petition for reconsideration is not required to exhaust administrative remedies.

§ 4.315 Reconsideration.

(a) Reconsideration of a decision of the Board will be granted only in extraordinary circumstances. Any party to the decision may petition for reconsideration. The petition must be filed with the Board within 30 days from the date of the decision and shall contain a detailed statement of the reasons why reconsideration should be granted.

(b) A party may file only one petition for reconsideration.

(c) The filing of a petition shall not stay the effect of any decision or order and shall not affect the finality of any decision or order for purposes of judicial review, unless so ordered by the Board.

§ 4.316 Remands from courts.

Whenever any matter is remanded from any court to the Board for further proceedings, the Board will either remand the matter to an administrative law judge or to the Bureau of Indian Affairs, or to the extent the court's directive and time limitations will permit, the parties shall be allowed an opportunity to submit to the Board a report recommending procedures for it to follow to comply with the court's order. The Board will enter special orders governing matters on remand.

§ 4.317 Standards of conduct.

(a) *Inquiries about cases.* All inquiries with respect to any matter pending before the Board shall be made to the Chief Administrative Judge of the Board or the administrative judge assigned the matter.

(b) *Disqualification.* An administrative judge may withdraw from a case in accordance with standards found in the recognized canons of judicial ethics if the judge deems such action appropriate. If, prior to a decision of the Board, a party files an affidavit of personal bias or disqualification with substantiating facts, and the administrative judge concerned does not withdraw, the Director of the Office of Hearings and Appeals shall determine the matter of disqualification.

§ 4.318 Scope of review.

An appeal shall be limited to those issues which were before the administrative law judge upon the petition for rehearing, reopening, or regarding tribal purchase of interests, or before the official of the Bureau of Indian Affairs on review. However, except as specifically limited in this part or in Title 25 of the Code of Federal Regulations, the Board shall not be limited in its scope of review and may exercise the inherent authority of the Secretary to correct a manifest injustice or error where appropriate.

Appeals to the Board of Indian Appeals in Probate Matters

7. The authority citation for Part 4, Subpart D, §§ 4.320–4.323 is removed.

8. §§ 4.320–4.323 are revised to read as follows:

§ 4.320 Who may appeal.

A party in interest shall have a right of appeal to the Board of Indian Appeals from an order of an administrative law judge on a petition for rehearing, a petition for reopening, or regarding tribal purchase of interests in a deceased Indian's trust estate.

(a) *Notice of Appeal.* Within 60 days from the date of the decision, an appellant shall file a written notice of appeal signed by appellant, appellant's attorney, or other qualified representative as provided in 43 CFR 1.3, with the Board of Indian Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. A statement of the errors of fact and law upon which the appeal is based shall be included in either the notice of appeal or in any brief filed. The notice of appeal shall include the names and addresses of parties served. A notice of appeal not timely filed shall be dismissed for lack of jurisdiction.

(b) *Service of copies of notice of appeal.* The appellant shall personally deliver or mail the original notice of appeal to the Board of Indian Appeals. A copy shall be served upon the administrative law judge whose decision is appealed as well as all interested parties. The notice of appeal filed with the Board shall include a certification that service was made as required by this section.

(c) *Action by administrative law judge; record inspection.* The administrative law judge, upon receiving a copy of the notice of appeal, shall notify the Superintendent concerned to return the duplicate record filed under §§ 4.236(b) and 4.241(d), or under § 4.242(f) of this part, to the Land Titles and Records Office designated under § 4.236(b) of this part. The duplicate record shall be conformed to the original by the Land Titles and Records Office and shall thereafter be available for inspection either at the Land Titles and Records Office or at the office of the Superintendent. In those cases in which a transcript of the hearing was not prepared, the administrative law judge shall have a transcript prepared which shall be forwarded to the Board within 30 days from receipt of a copy of the notice of appeal.

§ 4.321 Notice of transmittal of record on appeal.

The original record on appeal shall be forwarded by the Land Titles and Records Office to the Board by certified mail. Any objection to the record as constituted shall be filed with the Board within 15 days of receipt of the notice of docketing issued under § 4.332 of this part.

§ 4.322 Docketing.

The appeal shall be docketed by the Board upon receipt of the administrative record from the Land Titles and Records Office. All interested parties as shown by the record on appeal shall be notified of the docketing. The docketing notice shall specify the time within which briefs may be filed and shall cite the procedural regulations governing the appeal.

§ 4.323 Disposition of the record.

Subsequent to a decision of the Board, other than remands, the record filed with the Board and all documents added during the appeal proceedings, including any transcripts prepared because of the appeal and the Board's decision, shall be forwarded by the Board to the Land Titles and Records Office designated under § 4.236(b) of this part. Upon receipt of the record by the Land Titles and Records Office, the duplicate record required by § 4.320(c) of this part shall be conformed to the original and forwarded to the Superintendent concerned.

Appeals to the Board of Indian Appeals From Administrative Actions of Officials of the Bureau of Indian Affairs: Administrative Review in Other Indian Matters Not Relating to Probate Proceedings

9. The authority citation for Part 4, Subpart D, §§ 4.330–4.340, is removed.

10. §§ 4.330–4.340 are revised to read as follows:

§ 4.330 Scope.

(a) The definitions set forth in 25 CFR 2.2 apply also to these special rules. These regulations apply to the practice and procedure for: (1) Appeals to the Board of Indian Appeals from administrative actions or decisions of officials of the Bureau of Indian Affairs issued under regulations in 25 CFR Chapter 1, and (2) administrative review by the Board of Indian Appeals of other matters pertaining to Indians which are referred to it for exercise of review authority of the Secretary or the Assistant Secretary—Indian Affairs.

(b) Except as otherwise permitted by the Secretary or the Assistant Secretary—Indian Affairs by special delegation or request, the Board shall not adjudicate:

(1) Tribal enrollment disputes;

(2) Matters decided by the Bureau of Indian Affairs through exercise of its discretionary authority; or

(3) Appeals from decisions pertaining to final recommendations or actions by officials of the Minerals Management Service, unless the decision is based on an interpretation of Federal Indian law (decisions not so based which arise from determinations of the Minerals Management Service, are appealable to the Interior Board of Land Appeals in accordance with 43 CFR 4.410).

§ 4.331 Who may appeal.

Any interested party affected by a final administrative action or decision of an official of the Bureau of Indian Affairs issued under regulations in Title 25 of the Code of Federal Regulations may appeal to the Board of Indian Appeals, except—

(a) To the extent that decisions which are subject to appeal to a higher official within the Bureau of Indian Affairs must first be appealed to that official;

(b) Where the decision has been approved in writing by the Secretary or Assistant Secretary—Indian Affairs prior to promulgation; or

(c) Where otherwise provided by law or regulation.

§ 4.332 Appeal to the Board; how taken; mandatory time for filing; preparation assistance; requirement for bond.

(a) A notice of appeal shall be in writing, signed by the appellant or by his attorney of record or other qualified representative as provided by 43 CFR 1.3, and filed with the Board of Indian Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203, within 30 days after receipt by the appellant of the decision from which the appeal is taken. A copy of the notice of appeal shall simultaneously be filed with the Assistant Secretary—Indian Affairs. As required by § 4.333 of this part, the notice of appeal sent to the Board shall certify that a copy has been sent to the Assistant Secretary—Indian Affairs. A notice of appeal not timely filed shall be dismissed for lack of jurisdiction. A notice of appeal shall include:

(1) A full identification of the case;

(2) A statement of the reasons for the appeal and of the relief sought; and

(3) The names and addresses of all additional interested parties, Indian tribes, tribal corporations, or groups having rights or privileges which may be affected by a change in the decision, whether or not they participated as interested parties in the earlier proceedings.

(b) In accordance with 25 CFR 2.20(c) a notice of appeal shall not be effective for 20 days from receipt by the Board, during which time the Assistant Secretary—Indian Affairs may decide to review the appeal. If the Assistant Secretary—Indian Affairs properly notifies the Board that he has decided to review the appeal, any documents concerning the case filed with the Board shall be transmitted to the Assistant Secretary—Indian Affairs.

(c) When the appellant is an Indian or Indian tribe not represented by counsel, the official who issued the decision appealed shall, upon request of the appellant, render such assistance as is appropriate in the preparation of the appeal.

(d) At any time during the pendency of an appeal, an appropriate bond may be required to protect the interest of any Indian, Indian tribe, or other parties involved.

§ 4.333 Service of notice of appeal.

(a) On or before the date of filing of the notice of appeal the appellant shall serve a copy of the notice upon each known interested party, upon the official of the Bureau of Indian Affairs from whose decision the appeal is taken, and upon the Assistant Secretary—Indian Affairs. The notice of appeal filed with the Board shall certify that service was made as required by this section and shall show the names and addresses of all parties served. If the appellant is an Indian or an Indian tribe not represented by counsel, the appellant may request the official of the Bureau whose decision is appealed to assist in service of copies of the notice of appeal and any supporting documents.

(b) The notice of appeal will be considered to have been served upon the date of personal service or mailing.

§ 4.334 Extensions of time.

Requests for extensions of time to file documents may be granted upon a showing of good cause, except for the time fixed for filing a notice of appeal which, as specified in § 4.332 of this part, may not be extended.

§ 4.335 Preparation and transmittal of record by official of the Bureau of Indian Affairs.

(a) Within 20 days after receipt of a notice of appeal, or upon notice from the Board, the official of the Bureau of Indian Affairs whose decision is appealed shall assemble and transmit the record to the Board. The record on appeal shall include, without limitation, copies of transcripts of testimony taken; all original documents, petitions, or applications by which the proceeding was initiated; all supplemental documents which set forth claims of interested parties; and all documents upon which all previous decisions were based.

(b) The administrative record shall include a Table of Contents noting, at a minimum, inclusion of the following:

(1) The decision appealed from;

(2) The notice of appeal or copy thereof; and

(3) Certification that the record contains all information and documents utilized by the deciding official in rendering the decision appealed.

(c) If the deciding official receives notification that the Assistant Secretary—Indian Affairs has decided to review the appeal before the administrative record is transmitted to the Board, the administrative record shall be forwarded to the Assistant Secretary—Indian Affairs rather than to the Board.

§ 4.336 Docketing.

An appeal shall be assigned a docket number by the Board 20 days after receipt of the notice of appeal unless the Board has been properly notified that the Assistant Secretary—Indian Affairs has assumed jurisdiction over the appeal. A notice of docketing shall be sent to all interested parties as shown by the record on appeal upon receipt of the administrative record. Any objection to the record as constituted shall be filed with the Board within 15 days of receipt of the notice of docketing. The docketing notice shall specify the time within which briefs shall be filed, cite the procedural regulations governing the appeal and include a copy of the Table of Contents furnished by the deciding official.

§ 4.337 Action by the Board.

(a) The Board may make a final decision, or where the record indicates a need for further inquiry to resolve a genuine issue of material fact, the Board may require a hearing. All hearings shall be conducted by an administrative law judge of the Office of Hearings and Appeals. The Board may, in its discretion, grant oral argument before the Board.

(b) Where the Board finds that one or more issues involved in an appeal or a matter referred to it were decided by the Bureau of Indian Affairs based upon the exercise of discretionary authority committed to the Bureau, and the Board has not otherwise been permitted to adjudicate the issue(s) pursuant to § 4.330(b) of this part, the Board shall dismiss the appeal as to the issue(s) or refer the issue(s) to the Assistant Secretary—Indian Affairs for further consideration.

§ 4.338 Submission by administrative law judge of proposed findings, conclusions and recommended decision.

(a) When an evidentiary hearing pursuant to § 4.337(a) of this part is concluded, the administrative law judge shall recommend findings of fact and conclusions of law, stating the reasons for such recommendations. A copy of the recommended decision shall be sent to each party to the proceeding, the Bureau official involved, and the Board. Simultaneously, the entire record of the proceedings, including the transcript of the hearing before the administrative law judge, shall be forwarded to the Board.

(b) The administrative law judge shall advise the parties at the conclusion of the recommended decision of their right to file exceptions or other comments regarding the recommended decision with the Board in accordance with § 4.339 of this part.

§ 4.339 Exceptions or comments regarding recommended decision by administrative law judge.

Within 30 days after receipt of the recommended decision of the administrative law judge, any party may file exceptions to or other comments on the decision with the Board.

§ 4.340 Disposition of the record.

Subsequent to a decision by the Board, the record filed with the Board and all documents added during the appeal proceedings, including the Board's decision, shall be forwarded to the official of the Bureau of Indian Affairs whose decision was appealed for proper disposition in accordance with rules and regulations concerning treatment of Federal records.

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Friday
February 10, 1989

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Part 125

Fair Housing Initiatives Program; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Part 125

[Docket No. R-89-1395; FR-2486]

Fair Housing Initiatives Program

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Final rule.

SUMMARY: HUD is adopting regulations to govern its new Fair Housing Initiatives Program (FHIP). Under this program, HUD will fund State and local government agencies, public and private nonprofit organizations, and other public and private entities formulating or carrying out programs to prevent or eliminate discriminatory housing practices. The regulations provide for three categories of funding under FHIP: (1) The Administrative Enforcement Initiative, (2) the Education and Outreach Initiative, and (3) the Private Enforcement Initiative.

FHIP is designed to strengthen and enhance enforcement of and compliance with the Fair Housing Act (Title VIII of the Civil Rights Act of 1968) and State and local laws recognized by the Secretary of HUD as providing substantially equivalent rights and remedies to those provided in the Fair Housing Act.

EFFECTIVE DATE: May 9, 1989.

FOR FURTHER INFORMATION CONTACT: Maxine B. Cunningham, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410 Telephone: (202) 755-0455 (V and TDD); this is not a toll-free number.

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and have been assigned OMB control number 2529-0033. The public reporting burden for each of these collections of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the preamble heading, *Other Matters*. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., Room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Background

The Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988), 42 U.S.C. 3600-3620, charges the Secretary of HUD with responsibility to accept and investigate complaints alleging discrimination based on race, color, religion, sex, handicap, familial status, or national origin in the sale, rental or financing of most housing. In addition, the Fair Housing Act directs the Secretary to coordinate with State and local agencies administering fair housing laws and to cooperate with and to render technical assistance to public or private entities carrying out programs to prevent or eliminate discriminatory housing practices.

The Fair Housing Initiatives Program (FHIP), authorized in section 561 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) authorizes the Secretary to provide funding to State and local governments or their agencies, public or private nonprofit organizations, or other public or private entities formulating or carrying out programs to prevent or eliminate discriminatory housing practices. These funds will enable the recipients to carry out activities designed to obtain enforcement of the rights granted by the Fair Housing Act or by substantially equivalent State or local fair housing laws, and education and outreach activities designed to inform the public concerning rights and obligations under such Federal, State or local laws prohibiting discrimination. Funding for enforcement of fair housing laws includes activities involving use of judicial as well as administrative enforcement procedures.

On July 7, 1988, HUD published in the **Federal Register** (53 FR 25576) a proposed rule to implement the FHIP authority by adoption of a new Part 125 in Title 24 of the Code of Federal Regulations. The proposed regulations provided for funding in three distinct areas under FHIP:

1. The Administrative Enforcement Initiative (Subpart B of the new Part 125);

2. The Education and Outreach Initiative (Subpart C of the new Part 125); and

3. The Private Enforcement Initiative (Subpart D of the new Part 125).

The proposal provided a 30-day period for submission of comments by the public, ending August 8, 1988. HUD received a total of 33 public comments on the proposed new Part 125. Nine comments were from the National Association of Realtors (NAR) and affiliated organizations, including 5 local Boards of Realtors, 2 State Associations of Realtors, and the NAR-affiliated Institute of Real Estate Management (IREM). Individual Realtors submitted 6 comments, and attorneys who represent Realtors submitted 3 comments. Six comments came from fair housing or civil rights groups, and 6 were from State or local enforcement agencies (including one comment from an organization representing such agencies in a four-State region). In addition, there was a comment from the United States League of Savings Institution, one from a Community Housing Resource Board (CHRB), and one from an attorney involved in both prosecution and defense of housing discrimination cases.

Three comments generally supported the proposed rule as written, and 24 commenters supported the proposal with comments on specific provisions. Two commenters were generally opposed to the proposal, and 4 commenters limited their comments to a suggestion that real estate brokers be compensated for time lost as a result of testing.

Statutory Requirements

The statutory authorization for FHIP contains several requirements relating to program administration:

(1) A requirement for submitting 30-day advance notification of each proposed grant, contract or cooperative agreement under FHIP to the House and Senate Banking Committees (section 561(b)(1));

(2) A requirement for providing to the House and Senate Banking Committees a quarterly report that summarizes the activities funded under FHIP and describes the geographical distribution of FHIP grants, contracts, or cooperative agreements (section 561(b)(2)); and

(3) A requirement for submitting to Congress, within 6 months after the end of the FHIP demonstration period (September 30, 1989), an evaluation of the effectiveness of the guidelines for testing activities funded under the Private Enforcement Initiative of FHIP (section 561(c)(2)).

The NAR recommended that the final regulations contain a statement of these three requirements. Four additional commenters made similar recommendations with respect to the first two requirements, and two additional commenters joined NAR with respect to the third requirement.

All three of the statutory requirements apply to HUD without regard to their inclusion in the final regulations. The thrust of the comments urging the insertion of those requirements into the regulations was to ensure public awareness of the requirements of the law. However, HUD sees no need to include these requirements in the text of the final regulations. Further, inclusion of the statutory requirement for the submission of an evaluation of the guidelines for testing contained in this regulation within 6 months after the end of the demonstration period could result in confusion regarding evaluation of further testing activities should the authorization for FHIP be extended.

The NAR and two other commenters recommended that a statement be inserted in the final regulations concerning the $3,000,000 limitation (in section 561(d)) on the amount which HUD may allocate to the Private Enforcement Initiative for fiscal year 1989. In addition, one commenter suggested that guidelines for HUD's determination as to allocation of funds be provided in the final regulations. HUD considers it unnecessary to include a statement of the statutory limitation on funding in the final program regulations, since the limitation will apply to HUD in any event. Moreover, the limitation may change if the program is extended beyond the presently scheduled termination date of September 30, 1989. HUD considers the addition of guidelines to be inappropriate because it would operate to restrict HUD's future flexibility in an area that has been left to HUD's discretion by the statute. Moreover, any notice of funding availability for the Private Enforcement Initiative, which notice would have to be published in the **Federal Register** pursuant to 24 CFR 125.104(d), will contain a statement of the statutory limitation and a discussion of HUD's allocation of funds to activities under the Private Enforcement Initiative, together with the reasons for such allocation.

Regulatory Flexibility Act Certification

Three commenters, including the NAR and IREM, stated their belief that HUD activities under FHIP will involve a substantial number of small entities. Accordingly, they recommend that HUD prepare a regulatory flexibility analysis which describes the impact of the proposed rule on small entities.

In response, HUD points out that, under 5 U.S.C. 605(b), the requirements for preparation of regulatory flexibility analyses do not apply if the Secretary certifies that the rule will not, if promulgated, have "a significant economic impact on a substantial number of small entities." Although the regulations may, as the commenters suggested, affect a substantial number of small entities, HUD does not believe that there would be "a significant economic impact" on any of them, except in a case in which testing confirms an allegation of a discriminatory housing practice. Therefore, HUD believes that a regulatory flexibility analysis is not required for this final rule.

Subpart A—General

Subpart A of Part 125 contains statements of the policy and purpose of FHIP, definitions applicable to the provisions of Part 125, and descriptions of the method by which HUD will administer the program and make awards of funding.

Comments were received with respect to only one section of Subpart A—§ 125.105, which lists the requirements for applications for FHIP funding. The NAR, IREM and a State Association of Realtors stated their support for the requirement for a description of the specific activities to be conducted with FHIP funds. The State Association also suggested that recipients should be monitored to assure that they are conducting their activities in accordance with their applications. Since procedures for monitoring program activities and funding are already provided for in § 125.104(e), under which the Assistant Secretary will establish specific accounting controls and require monitoring of records on a periodic basis by HUD Field staff, the suggested changes have not been made in § 125.105.

However, HUD has added clarification in § 125.105 to the effect that applications for FHIP funding must address each of the criteria for selection set forth in the rule and in notices of funding availability for FHIP published in the **Federal Register**.

Subpart B—Administrative Enforcement Initiative

Under the Administrative Enforcement Initiative, HUD will provide funding to substantially equivalent State and local fair housing enforcement agencies in support of initiatives designed to broaden the range of enforcement and compliance activities which they conduct.

Only one commenter was concerned with Subpart B. A local human relations commission noted that the regulations in Subpart B specifically provide for funding for conducting investigations of systemic discrimination but fail to mention the continuation of funding for individual housing discrimination case processing. Funding for individual case processing by State and local agencies will be continued by HUD under the Fair Housing Assistance Program (24 CFR Part 111).

This same commenter also recommended simplification of the application process for funding under Subpart B. Since the Administrative Enforcement Initiative will provide funding for specific projects, as opposed to contributions for processing of individual fair housing complaints on an ongoing basis, specific applications and approvals will be necessary. However, the application requirements for FHIP Subpart B funding will not affect the program administrative requirements for complaint processing contributions under the Fair Housing Assistance Program.

Subpart C—Education and Outreach Initiative

The Education and Outreach Initiative will provide funding to develop, implement, carry out, or coordinate education and outreach programs designed to inform the public of their rights and obligations under the Fair Housing Act and substantially equivalent State and local fair housing laws. Funding will be provided for educational projects which advise the general public and housing industry groups about fair housing rights and responsibilities and outreach projects which promote specialized support and coordinated methods to provide for fair housing.

The organization representing State and local agencies in a four-State region and the Nebraska Equal Opportunity Commission criticized the regulations on education and outreach for limiting the types of activities that could be undertaken by State and local agencies administering substantially equivalent fair housing laws and for extending the availability of funds to groups who may not have the same fair housing interests as the State and local enforcement agencies. These same commenters also raised the issue of conflict in strategies for fair housing efforts and recommended the establishment by HUD of an oversight group, which would include representation from State and local enforcement agencies, to coordinate strategies, make

recommendations as to funding and monitor program efforts. HUD agrees that there is a need for non-governmental applicants to coordinate activities to be funded under the Education and Outreach Initiative with any State or local enforcement agency in jurisdictions with substantially equivalent fair housing laws. However, the responsibility for oversight has to remain with HUD. A requirement to that effect has been added to the regulations in Subpart C.

Section 125.303 provides examples of the types of educational and outreach projects which may be funded under the Education and Outreach Initiative of FHIP. HUD received a number of comments concerning specific provisions of this section.

One commenter, an attorney who represents several Boards of Realtors, recommended that paragraphs (a)(1)–(3) of that section clearly provide for the development of informative material, education programs and educational seminars for real estate practitioners. HUD intends that real estate practitioners be included among the "housing industry groups" and "other groups" for whom education programs may be developed and educational seminars may be provided. Therefore, no change is necessary in those provisions.

With regard to paragraph (b)(3), the NAR, IREM and two local Boards of Realtors believe that the "outreach projects" specifically permitted under that paragraph could be construed to include "benign steering" programs designed to maintain the minority population of a community at or below a "tipping point", and one civil rights group took a position against an interpretation of the fair housing law as "promoting integration goals". In addition, the NAR, IREM and the two State Associations of Realtors recommended that HUD amend paragraph (b)(3) to clarify that the "outreach projects" eligible for funding do not include integration maintenance, "benign steering" or other programs designed to limit minority residence in a neighborhood or housing complex. It is not HUD's intention to construe paragraph (b)(3) as including "benign steering" or integration maintenance activities within the meaning of "outreach projects", and HUD does not believe that the language of paragraph (b)(3) as set forth in the proposed rule requires clarification on that point.

Paragraph (b)(4) of § 125.303 specifically permits funding of programs relating to "new or more sophisticated" discriminatory housing practices. The NAR, IREM and an attorney who represents several Boards of Realtors recommended that the modest funding available under this Initiative should be targeted exclusively at the more "traditional" forms of discrimination that are acknowledged to exist and that can most easily be identified by testing, rather than at "sophisticated" techniques of discrimination. In response, HUD notes that FHIP is intended to function as a program under which a variety of enforcement efforts can be utilized. Therefore, HUD does not believe that limiting FHIP funding to traditional forms of discrimination as recommended by these commenters is consistent with the purposes of the program.

Subpart D—Private Enforcement Initiative

The Private Enforcement Initiative will provide funding, to non-profit organizations and other private entities that are formulating or carrying out programs to prevent or eliminate discriminatory housing practices, for projects designed to enhance efforts to enforce the provisions of the Fair Housing Act and substantially equivalent State and local fair housing laws.

As an overall comment, the U.S. League of Savings Institutions suggested that the regulations for this initiative "enumerate with some specificity" the requirments for obtaining funds. HUD believes that the requirements set out in the general provisions of Subpart A concerning applications and in the more specific provisions of Subpart D already accomplish that purpose. Accordingly, no changes are needed in this regard.

Section 125.402—Eligible Applicants

Section 125.402 states that applicants eligible to receive assistance under this initiative are private non-profit organizations and other private entities that are formulating or carrying out programs to prevent or eliminate discriminatory housing practices. A fair housing group commented that the definition of eligible applicants, while appropriate for the Education and Outreach Initiative in Subpart C, is too broad for the activities described in § 125.403 (a) and (b). This group urged that the definition of "eligible applicants" be revised by adding to the first sentence of § 125.402 the following phrase: "* * * by investigating fair housing complaints and seeking resolution through administrative or judicial actions." HUD believes that this additional language would unduly restrict the operation of the program under this initiative, and the suggested change has not been made.

Section 125.403—Eligible Activities

Section 125.403 sets forth four examples of projects eligible for funding under this initiative. Paragraph (d) includes as an eligible activity "establishing effective means of meeting legal expenses in support of litigation of fair housing cases." Seven commenters, including the NAR, IREM and the two State Associations of Realtors, objected to the use of Federal enforcement funds for this purpose. Four commenters, including the NAR and IREM, recommended that paragraph (d) be revised to make it clear that the payment of attorneys' fees for fair housing plaintiffs is not an activity eligible for funding.

The Private Enforcement Initiative was designed to fund a variety of activities in support of fair housing enforcement through appropriate judicial or administrative proceedings. One such activity could be the establishment of a mechanism, such as a revolving loan fund, to assist aggrieved persons in vindicating their fair housing rights through litigation. HUD does not believe that providing assistance in support of private individuals seeking to vindicate protected rights is inconsistent with the purposes of FHIP. Therefore, HUD has not made any change in paragraph (d).

Section 125.405—Guidelines for Private Enforcement Testing

The Guidelines contained in this section will apply to testing activities funded under the Private Enforcement Initiatives. The NAR and eight other commenters specifically stated their support for the Guidelines as written. Two commenters, both civil rights organizations, opposed the Guidelines in their entirety (see discussion below). Most of the commenters had suggestions or recommendations with respect to specific provisions of § 125.405.

Three civil rights/fair housing organizations raised the issue of the negotiation of the Guidelines by HUD and members of the real estate industry, without involvement by the private fair housing and civil rights groups who have been for many years proponents of testing as the major investigative method in fair housing cases. The fair housing group merely noted that the Guidelines were developed without taking account of the extensive experience which the private groups have in developing evidence which meets the high standards of the federal courts.

The two civil rights groups went further, claiming the HUD's admitted intention, prior to the enactment of the FHIP legislation, to include the Guidelines negotiated with the NAR into the FHIP regulations arguably represented a violation of the Administrative Procedure Act. Moreover, it was argued that HUD's actions "certainly raise the appearance of impropriety," since the NAR, an entity which represents both the subject of testing (Realtors) and potential FHIP grantees (Community Housing Resource Boards), was included in private negotiations on regulations before the program was enacted. Finally, it was asserted that HUD's actions "raise serious questions about the integrity of the comment process," since those groups who recommend revision or removal of parts of the Guidelines already have been informed of HUD's intention to incorporate the Guidelines in the regulations. Accordingly, the civil rights groups recommended that the Guidelines be omitted from the regulations.

Subsection (c)(2) of section 561 of the Housing and Community Development Act of 1987, the authorizing legislation for FHIP, requires the Secretary to establish guidelines for testing activities funded under the Private Enforcement Initiative of FHIP. The stated purpose of these guidelines is to ensure that investigations in support of fair housing enforcement efforts will "develop credible and objective evidence of discriminatory housing practices." Since regulations regarding the conduct of testing in support of fair housing enforcement efforts are required by the authorizing statute, HUD determined to include testing guidelines in the program regulations.

HUD believes that the objections raised by the three civil rights/fair housing organizations are without substance. HUD has conducted several studies which involved extensive fair housing testing on a nationwide basis and had sufficient experience in the area for development of proposed guidelines which would meet the statutory standard described above. HUD has now had the benefit of public comment with respect to the guidelines contained in its proposed rule and the views of all commenters have received consideration in the preparation of the final version of the testing Guidelines. A discussion of the various issues raised by these commenters with respect to specific provisions of the Guidelines is set forth below.

Section 125.405(b)—Definitions

Paragraph (b) of § 125.405 contains definitions used in that section. Paragraph (b)(1) contains the definition of "bona fide allegation". The NAR, IREM and 8 other commenters specifically supported the requirement that funded tests may be undertaken only if there has been a "bona fide allegation" of a discriminatory housing practice. Seven commenters opposed the requirement.

Since the Private Enforcement Initiative is a demonstration program of limited duration and with limited financial resources, HUD believes that it should use a specifically structured testing program. FHIP was presented to Congress as a program to support the enforcement of the fair housing laws and not as a research effort to document whether discrimination exists. HUD therefore believes that it is reasonable to narrow the use of the limited resources available for this initiative to cases in which there is an indication of a violation of the fair housing laws. Accordingly, the bona fide allegation requirement has been retained in the final rule.

The NAR and four other commenters specifically supported the elimination of tester complaints from the definition of "bona fide allegation" in paragraph (b)(1). Seven commenters (four fair housing or civil rights groups, two State agencies, and the regional organization representing State and local agencies) opposed such elimination.

The proposed rule excluded allegations by testers and testing organizations in order to ensure the "bona fides" of bona fide allegations. There is no doubt that testers or testing organizations can be aggrieved and can file complaints. However, given the specific purpose of FHIP to provide assistance in support of individual cases and the limited resources available, HUD believes that the proposed limitation is reasonable and appropriate. The final rule retains this provision as proposed.

HUD notes that the exclusion of tester complaints does not prevent an organization participating in Private Enforcement testing from using other information which is not the result of testing as a bona fide allegation for the purpose of commencing an investigation and conducting funded testing. In addition, this exclusion does not compromise the rights of testers or the organizations participating in testing activities under the demonstration to seek relief under the Fair Housing Act and the U.S. Supreme Court decision in *Havens Realty Corp.* v. *Coleman*, 455 U.S. 363 (1982).

Two commenters proposed a revision of the definition of "bona fide allegation". One of the fair housing groups suggested that the definition be changed to read: "an assertion of a discriminatory housing practice unlawful under federal fair housing law by any individual which is attributable to a specific housing provider by an objective method." The Colorado Civil Rights Division stated that there are problems with the requirement of a statement of specific date, time and place of a prior discrimination. The fair housing group also noted that the proposed provision was unclear as to whether a test could be undertaken without knowing the address or owner before sending out the testers.

In response to the above comments, HUD has revised the definition to permit an approximation of the date, time or place of the alleged discrimination. Moreover, a sentence has been added to indicate that the definition of bona fide allegation does not impose a requirement that all such allegations be reduced to writing as a condition of the conduct of testing funded under FHIP.

With regard to paragraph (b)(2), a fair housing group suggested adding "42 U.S.C. 1982" to the definition of discriminatory housing practice. Since the statute limits programs or activities under FHIP to those designed to obtain enforcement of the rights granted by the Fair Housing Act or by substantially equivalent State or local laws, HUD cannot make the suggested addition. However, the definition has been modified to reflect the recent amendment of the Fair Housing Act which, among other things, expanded the definition of "discriminatory housing practice" to include acts made unlawful by section 818 of the amended act (prohibiting interference, coercion or intimidation with regard to the exercise or enjoyment of other rights protected by the Fair Housing Act).

Paragraph (b)(3) defines "test" and imposes several limitations on the types of tests which may be funded under the Private Enforcement Initiative. Two of these limitations—the requirement for testing the same agent and the requirement for two matched testers—were the subject of all of the comments on paragraph (b)(3). The NAR, IREM and six other commenters specifically supported either or both of these limitations. Five civil rights or fair housing groups and the Colorado Civil Rights Division opposed either or both of the limitations.

HUD has considered the arguments both for and against these two limitations and has decided to make no change in the regulations with respect to either of them. However, in the event that a participant in FHIP makes a good

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faith effort, in conducting a test, to comply with these requirements but finds it impossible to meet one or both of them, HUD can nevertheless permit the use of FHIP Funds to pay for the testing activity. Reimbursement in these circumstances may be appropriate so that participants are not discouraged from conducting FHIP testing activities in response to all bona fide allegations, and it is also consistent with HUD's position that the Guidelines in this regulation are not intended to establish the only method of obtaining credible and objective evidence through testing in fair housing cases.

HUD has made an editorial change in the introductory language of paragraph (b)(3) to make it clear that any "test" conducted under the Guidelines must be in response to a bona fide allegation.

Section 125.405(c)—Eligible Activities

Paragraph (c) provides certain procedures which must be followed in conducting eligible testing activities. Paragraph (c)(2)(i) requires the careful recordation of all relevant information, after a test, on standardized forms. An attorney suggested adding language to require the tester to fill out the tester form in his or her own words. HUD does not believe that such a requirement is necessary; it is enough to have the tester sign the form to attest to its accuracy. Accordingly, the words "signed by the respective testers" have been inserted in paragraph (c)(2)(i).

As proposed, paragraph (c)(2)(ii) would have prohibited any contact or communication between pairs of testers until all information has been recorded and the testers debriefed by the testing coordinator. Four fair housing or civil rights groups took the position that there should be no prohibition on contact between testers, only on communication of testing experiences. One of these groups asked whether the proposed language was intended to prohibit visual contacts between testers (for coordination of tests).

HUD agrees with these commenters that the restriction in the proposed rule was not intended to prohibit all communication between testers. In response, HUD has revised paragraph (c)(2)(ii) to require a prohibition on communication between pairs of testers relating to the conduct of the test or to testing experiences or results. Thus, while matters related to the conduct or coordination of the tests would have to be handled by the testing coordinator, contact or communication between the testers themselves would be permitted for other purposes, such as sharing of transportation.

A fair housing group opposed the requirement in paragraph (c)(2)(iii) that the same or substantially equivalent type of housing accommodations, financing, or service be requested in a test. HUD believes that this requirement is needed for evidentiary purposes, and no change has been made.

The same fair housing group recommended that a definition of the term "systemic", which is used in paragraph (c)(2)(iv), be included in the regulations. In response, HUD has inserted the parenthetical phrase "a pattern or practice of discriminatory housing practices by a housing provider or lender" after the phrase "systemic discrimination" in the second sentence of paragraph (c)(2)(iv).

In paragraph (c)(2)(iv)(C), a fair housing group suggested substitution of the word "initiate" for "conduct", to allow for trips away from the office to visit houses or apartments during the course of a test. HUD has made the suggested change.

A fair housing group raised several issues with respect to the "paired tester" requirements of paragraph (c)(2)(iv)(A–D). First, the group took the position that, if a duplication of the complainant's profile is not required in systemic cases, there is no basis to require such duplication in the "individual" testers' profiles for non-systemic cases. Further, it should not be necessary to duplicate the profile or housing needs of the complainant in all respects; it should be sufficient for the testers to match each other. Finally, the group noted that the proposed provision is unclear as to which particular aspects of a complainant's profile need to be duplicated.

In response, HUD notes that in the systemic testing situation a number of tests will be conducted, while in testing for discrimination against an individual, only one test will usually be needed. In the systemic multi-test situation, it would not be practical to require that all testers' profiles match the profile of the complainant, since such a requirement would unduly restrict the range of systemic testing that could be conducted. Moreover, such a requirement would make it obvious to the respondent that testing was being conducted. However, in the single-test individual complaint situation, the profile-matching requirement would not cause the same problem. Nevertheless, HUD acknowledges that even in some individual complaint situations it may be difficult or undesirable to match the testers' profiles with that of the complainant. For example, in a case where the person making the bona fide complaint has unusual housing needs or an unusual source of income, it may not be possible to have the testers represent that they have equivalent housing needs or a similar income source. Accordingly, HUD has inserted language in the first sentence of paragraph (c)(2)(iv) to indicate that the testers' profiles must match the complainant's profile only to the extent that it is practicable to do so.

With respect to the last of the fair housing group's comments, HUD believes that the proposed language concerning demographic profiles provides a degree of flexibility which would be lost if the provision were revised to specify which particular aspects of a complainant's profile must be duplicated.

In addition, the words "handicap" and "familial status" have been inserted in two places in paragraph (c)(2)(iv) to reflect amendments to the Fair Housing Act made by the Fair Housing Amendments Act of 1988.

Paragraph (c)(3)(i) prohibits testers and the testing organization from having an economic interest in the outcome of the test. A fair housing group asked whether "economic interest" includes a court-ordered requirement for management training. Also, does the provision bar fees for monitoring services?

Although a later, court-imposed provision for management training of a respondent's staff would not constitute an "economic interest" in the outcome of a test, such a provision would be barred by paragraph (d)(2), under which an applicant for funding of testing activities must agree not to "seek to provide fair housing educational services" to a respondent organization for compensation. With regard to the question of fees for monitoring services, HUD has revised paragraph (d)(2) to make it clear that educational and *other* services would be barred if compensation were involved.

There were several comments concerning paragraph (c)(3)(ii), which is designed to prevent conflicts of interest with respect to testers and testing organizations. A fair housing group asked whether that paragraph's conflict of interest provisions would operate to bar licensed housing providers from the board of directors of a fair housing agency. Instead, this commenter recommended setting a limit on the percentage of the organization's board which may be comprised of such persons. Since the members of an organization's board of directors are neither employees nor agents of the organization, the presence of licensed housing providers on the board would not prevent the organization from engaging in testing activities under FHIP. Thus, it is not necessary to adopt the commenter's recommendation in order to allow housing providers to serve on the board of a testing organization.

The same commenter found it unclear whether the conduct of housing placement services by a fair housing organization would disqualify it from testing as a "licensed competitor". This commenter also questioned whether development of affordable housing would disqualify a fair housing organization. The commenter believes that such activities should not disqualify otherwise eligible fair housing groups from FHIP testing. If the nature of the services performed by the fair housing organization requires it to obtain a license, then the organization could be a licensed competitor of a testing subject "in the listing, rental, sale or financing of real estate property," thereby disqualifying the organization from using FHIP funds to test that subject. In the interest of keeping FHIP free of conflict of interest problems, HUD has not changed the regulations in response to this commenter's suggestion.

The Colorado Civil Rights Divison recommended that there be an exception in paragraph (c)(3)(ii) for testing for Boards of Realtors and apartment associations that wish to do testing of their own members for self-policing or educational purposes. Under the authorizing statute, the primary purpose of the Private Enforcement Initiative demonstration is funding of programs or activities designed to obtain *enforcement* of the rights granted by the Fair Housing Act or substantially equivalent State or local laws. Therefore, HUD wishes to concentrate the limited resources available for testing activities on testing for enforcement purposes rather than spread the funding out to include testing of housing industry group members for self-policing or educational purposes. Accordingly, this recommended change has not been adopted.

A fair housing group commented that paragraph (c)(3)(ii) is too broad and too general. This commenter felt that while it is legitimate to bar those who might have a direct conflict of interest, there is no good reason to bar all real estate persons from testing. This group suggested two language changes. First, that the provision on prior employment or affiliation be revised by adding the words "within one year". Second, that the language on "licensed competitor" be changed to read:

"* * * is an active participant in a real estate sales, rental or financing business in the same immediate market, except that such a person exclusively engaged in rental real estate is not barred from acting as a tester of firms or agents exclusively engaged in real estate sales and such a person exclusively engage in real estate sales is not barred from acting as a tester of firms or agents exclusively engaged in real estate rentals;"

HUD has adopted this group's first suggestion, since the provison as proposed would be too far-reaching and could serve to insulate a particular housing industry firm from testing if any former employee was now participating with a fair housing group conducting a testing program.

HUD has not adopted the second suggestion, to revise the "licensed competitor" language. HUD believes that this suggestion would draw too fine a distinction as to what constituted an impermissible conflict of interest for testing purposes and would unnecessarily complicate a clear and simple rule.

Section 125.405(d)—Application Requirements

Paragraph (d) of § 125.405 contains special requirements for applications for funding of testing activities.

The NAR, IREM and a local Board of Realtors specifically supported the requirement in paragraph (d)(1) that the applicant have at least one year of fair housing enforcement experience. The Colorado Civil Rights Division recommended an amendment to provide that an applicant agency may be acceptable, even in the absence of the required experience, if the agency can demonstrate that it will hire personnel, consultants or firms with demonstrated competence in the program proposed to be funded. HUD believed that the requirement in paragraph (d)(1) for a continuing commitment to fair housing enforcement is important as a prerequisite for participation in the testing program, and the suggested change has not been made.

A fair housing group suggested limiting the language of paragraph (d)(1) by adding the following: "by investigating fair housing complaints and seeking resolution through administrative or judicial actions." HUD believes that this additional requirement would be too restrictive and has not adopted the group's suggestion. However, HUD has added a requirement that the applicant show that it has sufficient knowledge of fair housing testing to enable it to implement a testing program successfully.

Paragraph (d)(2) bans solicitation of funds or compensation for services by applicants from subjects of testing. The NAR, IREM and four other commenters specifically supported this provision. Two fair housing groups opposed it. As noted in the discussion of paragraph (c)(3)(i) above, HUD has made a clarifying change in paragraph (d)(2).

Section 125.405(e)—Performance Monitoring

A fair housing group recommended that the sanctions described in paragraph (e) not be applied to organizations acting in good faith. Since sanctions are discretionary rather than mandatory, it is contemplated that HUD will consider the "good faith" of an organization's actions in determining whether or not to impose sanctions on it.

Miscellaneous Comments

The U.S. League of Savings Institutions suggested that HUD publish, on an annual basis, an accounting of how FHIP funds were used in various program areas. Since the accounting suggested by this commenter would largely duplicate information to be contained in the quarterly report required to be submitted to the Senate and House Banking Committees (see discussion under "Statutory Requirements" above), HUD has not adopted the suggestion.

A local Board of Realtors and three individual Realtors made suggestions for compensation of real estate brokers for time lost as a result of testing. HUD points out that there is no provision in the authorizing legislation for the payment of such compensation. Accordingly, these suggestions have not been adopted.

The State of Connecticut Comprehensive Planning Division recommended that the regulations include a provision to allow for extensions of an agreement due to delay caused by circumstances beyond the grantee's control, such as loss of key personnel responsible for administration of the project. Extensions of time to perform specified activities under a contract, grant or cooperative agreement may be given by HUD on a case-by-case basis, as circumstances may warrant. There is no need to include such a provision in the FHIP regulations.

Other Matters

Under the provisions in the FHIP authorizing legislation, the Secretary, before providing any assistance under this program, is required to issue regulations governing applications for funding. Such regulations cannot be effective prior to the expiration of 90 calendar days from the date those

regulations are submitted to the House and Senate Banking Committees.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10278, 451 Seventh Street SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under 5 U.S.C 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. Although the activities to be undertaken with funding under FHIP may have some economic impact on a substantial number of smaller entities, HUD does not expect that there will be many cases in which the economic impact will be substantial. In addition, this rule would not significantly increase or decrease the administrative burden on persons conducting activities relating to the sale, rental or financing of dwellings.

HUD has determined that the policies contained in this rule do not have federalism implications within the meaning of E.O. 12612—*Federalism*, because it does not have substantial direct effects on the States (including their political subdivisions), or on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government.

HUD has determined that this rule is not likely to have a significant impact on family formation, maintenance, and general well-being with the meaning of E.O. 12606—*The Family*, because it does not affect the role or institution of the family in society.

The collection of information requirements contained in this rule have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980 and have been assigned OMB Control Number 2529-0033. Sections 125.104(e), 125.105 and 125.404(d) of this final rule have been determined by the Department to contain collection of information requirements. Information on these requirements is provided as follows:

TABULATION OF ANNUAL REPORTING BURDEN FINAL RULE—FAIR HOUSING INITIATIVES PROGRAM

Description of information collection	Section of 24 CFR affected	Number of respondents	Total annual responses	Hours per response	Total hours
Application submission (2529-0033)	§§ 125.105 and 125.404(d)	500	1	71	35,500
Cooperative agreement, narrative and voucher submission report (2529-0033)	§125.104(e)	180	2	2	720
Recordkeeping for reports (2525-0033)	§ 125.104(e)	180	2	.5	180
Total annual burden					36,400

This rule was listed as Sequence Number 1042 in the Department's Semiannual Agenda of Regulations published on October 24, 1988 (53 FR 41974, 42006) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalogue of Federal Domestic Assistance Programs title and program numbers are:

14.408 Fair Housing Initiatives Program—Administrative Enforcement Initiative.
14.409 Fair Housing Initiatives Program—Education and Outreach Initiative.
14.410 Fair Housing Initiatives Program—Private Enforcement Initiative.

List of Subjects in 24 CFR Part 125

Fair housing, Grant programs, Housing and community development.

For the reasons set forth in the preamble, Title 24 of the Code of Federal Regulations is hereby amended by adding a new Part 125, to Subchapter A to read as follows:

PART 125—FAIR HOUSING INITIATIVES PROGRAM

Subpart A—General

Sec.
125.101 Policy.
125.102 Purpose.
125.103 Definitions
125.104 Program administration.105 Applications requirements.
125.106 Selection criteria.

Subpart B—Administrative Enforcement Initiative

125.201 Purpose.
125.202 Eligible agencies.
125.203 Eligible activities.

Subpart C—Education and Outreach Initiative

125.301 Purpose.
125.302 Eligible applicants
125.303 Eligible activities.

Subpart D—Private Enforcement Initiative

125.401 Purpose.
125.402 Eligible applicants.
125.403 Eligible activities.
125.404 Use of funds for litigation.
125.405 Guidelines for Private Enforcement Testing.

Authority: Sec. 561, Housing and Community Development Act of 1987 (Pub. L. 100-242); section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General

§ 125.101 Policy.

Section 561 of the Housing and Community Development Act of 1987 established the Fair Housing Initiatives Program to strengthen the Department's effort to enforce Title VIII of the Civil Rights Act of 1968 (Title VIII) and to further fair housing. This program is intended to assist projects and activities designed to enhance compliance with Title VIII and substantially equivalent State and local fair housing laws.

§ 125.102 Purpose.

Under the Fair Housing Initiatives Program, the Department is authorized to make grants to, or enter into contracts or cooperative agreements with, State or local governments or their agencies, public or private non-profit organizations or institutions, or other public or private entities that are formulating or carrying out programs to prevent or eliminate discriminatory housing practices.

§ 125.103 Definitions.

As used in this part

(a) "Assistant Secretary" means the Assistant Secretary for Fair Housing and Equal Opportunity in the Department of Housing and Urban Development.

(b) "Department" means Department of Housing and Urban Development.

(c) "Discriminatory housing practice" means an act that is unlawful under sections 804, 805, 806 or 818 of Title VIII.

(d) "Dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families (a family includes a single individual), or any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure or portion thereof.

(e) "FHIP" means the Fair Housing Initiatives Program authorized by section 561 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988).

(f) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers and fiduciaries.

(g) "State" means any of the several states, the District of Columbia, the Commonwealth of Puerto Rico, or any of the territories and possessions of the United States.

(h) "Title VIII" means Title VIII of the Civil Rights Act of 1968, as amended (42 U.S.C. 3600-3620), commonly cited as the Fair Housing Act.

§ 125.104 Program administration.

(a) The Fair Housing Initiatives Program is administered by the Assistant Secretary.

(b) All funding in the Fair Housing Initiatives Program will be awarded on a competive basis.

(c) The Department will provide funding in three separate areas:
(1) The Administrative Enforcement Initiative (Subpart B);
(2) The Education and Outreach Initiative (Subpart C); and
(3) The Private Enforcement Initiative (Subpart D).

(d) Notices of Funding Availability under this program will be published periodically in the **Federal Register**. Such notices will announce the amount of funds available, the funding available for any initiative and the maximum amounts to be awarded to applicants and may limit funding to one or more of the initiatives. The Notice of Funding Availability will include specific factors for award in addition to the specific criteria set forth in section 125.106 which the Assistant Secretary will use in selection of recipients to be funded and will indicate the relative weight of all selection criteria. The criteria for selection announced in Notices of Funding Availability will address the specific types of activities and projects to be solicited pursuant to the varied objectives of the three separate components of the FHIP, and will be designed to foster selections which are most likely to achieve results consistent with the objectives of each component of the program.

(e) All recipients of funds under this program must conform to reporting and record maintenance requirements determined appropriate by the Assistant Secretary. Procedures for monitoring program activities and funding will be established by the Assistant Secretary. Each funding instrument will include provisions under which the Department may suspend, terminate or recapture funds if the recipient does not conform to these requirements.

(f) All recipients of funds under this program which are State or local governments or agencies of State or local governments must conduct audits in accordance with Part 44 of this Title.

§ 125.105 Applications requirements.

Each application for funding under the Fair Housing Initiatives Program must contain the items set forth below. Each application will be assessed against specific selection criteria set forth in a Notice of Funding Availability.

(a) A description of the practice (or practices) at the community, regional or national level which has affected adversely the achievement of the goal of fair housing. This description must include a discussion and analysis of the housing practice(s) identified, including available information and studies relating to discriminatory housing practices and their historical background, and relevant demographic data indicating the nature and extent of the impact of such practices on persons seeking dwellings or services related to the sale, rental and financing of dwellings in the general location where the applicant proposes to undertake activities;

(b) A description of the specific activities to be conducted with funds including the final product(s) and/or any reports to be produced; and the cost of each activity proposed and a schedule for completion of the funded activities;

(c) A description of the applicant's experience in formulating or carrying out programs to prevent or eliminate discriminatory housing practices;

(d) A statement indicating the need for Federal funding in support of the proposed project; and an estimate of such other public or private resources as may be available to assist the proposed activities;

(e) A description of the procedures to be used for monitoring conduct and assessing results of the proposed activities;

(f) A description of the benefits which successful completion of the project will produce to enhance fair housing and the concerns identified, and the indicators by which these benefits are to be measured;

(g) A description of the expected long term viability of project results;

(h) Any additional information which may be required by a Notice of Funding Availability for the Fair Housing Initiatives Program published in the **Federal Register**.

(Approved by the Office of Management and Budget under control number 2529-0033.)

§ 125.106 Selection criteria.

(a) Projects proposed in applications will be ranked based on the following criteria for selection:
(1) The anticipated impact of the project proposed on the concerns identified in the application;
(2) The extent to which the project utilizes other public or private resources that may be available;
(3) The extent to which the applicant's professional and organizational experience will further the achievement of the project goal(s);
(4) The extent to which the project provide the project will provide the maximum impact on the concerns identified in a cost effective manner;
(5) The extent to which the project will provide benefits in support of fair housing after funded activities have been completed.

(b) The relative weight to be assigned to these selection criteria as well as additional factors which will be considered in reviewing applications will be included in the Notice of Funding Availability, together with a stated rationale, justifying the additional factors selected in terms of the specific goals of each initiative for which funds are being made available.

Subpart B—Administrative Enforcement Initiative

§ 125.201 Purpose.

The Administrative Enforcement Initiative provides funding to State and local fair housing agencies administering fair housing laws recognized by the secretary as providing rights and remedies which are substantially equivalent to those provided in Title VIII.

§ 125.202 Eligible agencies.

A State or local fair housing agency, to be eligible to participate in the Administrative Enforcement Initiative, must be certified by the Assistant Secretary as substantially equivalent (or considered to be so certified) under § 115.6 of this subchapter.

§ 125.203 Eligible activities.

Funding will be available to support activities designed to strengthen and broaden the range of enforcement and compliance activities conducted by eligible State and local agencies. Such activities may include (but are not limited to) the following:

(a) Providing technical assistance to State and local government agencies administering housing and community development programs concerning applicable fair housing laws and regulations;

(b) Implementing fair housing testing programs; and

(c) Conducting investigations of systemic discrimination for further enforcement processing by State or local agencies, or for referral to HUD and the Department of Justice.

Subpart C—Education and Outreach Initiative

§ 125.301 Purpose.

The Education and Outreach Initiative of the Fair Housing Initiatives Program provides funding for the purpose of developing, implementing, carrying out, or coordinating education and outreach programs designed to inform members of the public concerning their rights and obligations under the provisions of fair housing laws. Funding is provided under this Initiative for the development of national, regional or local media campaigns (written or audio-visual materials) or other special efforts to educate the general public and housing industry groups about fair housing rights and obligations.

§ 125.302 Eligible applicants.

The following types of organizations are eligible to receive funding under the Education and Outreach Initiative:

(a) State or local governments;

(b) Public or private non-profit organizations or institutions, and other public or private entities that are formulating or carrying out programs to prevent or eliminate discriminatory housing practices.

§ 125.303 Eligible activities.

(a) *Educational projects.* Educational projects that may be funded under the Educational and Outreach Initiatives may include (but are not limited to) the following:

(1) Developing informative material on fair housing rights and responsibilities;

(2) Developing fair housing and affirmative marketing instructional material for education programs for national, regional and local housing industry groups;

(3) Providing educational seminars and working sessions for civic associations, community-based organizations, and other groups; and

(4) Developing educational material targeted at persons in need of specific or additional information on their fair housing rights.

(b) *Outreach projects.* Outreach projects that may be funded under the Educational and Outreach Initiative may include (but are not limited to) the following:

(1) Developing national, regional or local media campaigns regarding fair housing;

(2) Bringing housing industry and civic or fair housing groups together to identify illegal real estate practices and to determine how to correct them;

(3) Designing specialized outreach projects to inform all persons of the availability of housing opportunities;

(4) Developing and implementing a response to new or more sophisticated practices that result in discriminatory housing practices; and

(5) Developing mechanisms for the identification of, and quick response to, housing discrimination cases involving the threat of physical harm.

(c) *Classes or competition.* The Notice of Funding Availability for the Educational and Outreach Initiative may be divided funding into classes based on the type of projects (e.g., educational or outreach projects) and the scope of projects (e.g., local, regional or national).

(d) *Coordination of activities.* Each non-governmental applicant for funding which is located within the jurisdiction of a State or local enforcement agency or agencies administering a fair housing law which have been certified by the Department under Part 115 of this subchapter as being substantially equivalent must provide with its application evidence that it has consulted with the agency or agencies to coordinate activities to be funded under the Education and Outreach Initiative.

Subpart D—Private Enforcement Initiative

§ 125.401 Purpose.

The Private Enforcement Initiative of the Fair Housing Initiatives Program will provide funding to non-profit organizations and other private entities that are formulating or carrying out programs to prevent or eliminate discriminatory housing practices. The purpose of these awards is to assist in the developing, implementing, carrying out, or coordinating programs or activities designed to obtain enforcement of the rights granted by Title VIII or State or local laws that provide rights and remedies for alleged discriminatory housing practices that are substantially equivalent to the rights and remedies provided in Title VIII.

§ 125.402 Eligible applicants.

Organizations which are eligible to receive assistance under the Private Enforcement Initiatives are private non-profit organizations and other private entities that are formulating or carrying out programs to prevent or eliminate discriminatory housing practices. Organizations which can be eligible include, for example, private nonprofit fair housing and civil rights groups.

§ 125.403 Eligible activities.

Projects that will be funded under the Private Enforcement Initiative may include (but are not limited to) the following:

(a) Conducting investigations of systemic housing discrimination.

(b) Professionally conducting testing or other investigative support for administrative and judicial enforcement;

(c) Linking fair housing organizations regionally in enforcement activities designed to combat broader housing market discriminatory practices; and

(d) Establishing effective means of meeting legal expenses in support of litigation of fair housing cases.

§ 125.404 Use of funds for litigation.

No recipient of assistance under the Private Enforcement Initiative may use any funds provided by the Department for the payment of expenses in connection with litigation against the United States.

§ 125.405 Guidelines for private enforcement testing.

(a) The guidelines contained in this section apply to testing activities funded under the Private Enforcement Initiative. These guidelines apply only to testing activities funded under this initiative and do not limit or restrict the use of facts secured through other testing activities in any legal proceeding under Federal fair housing laws. Nothing in this section restricts individuals or entities participating in the Fair Housing Initiatives Program from pursuing any right or remedy guaranteed by Federal law, or from the conduct of other testing or other investigative activities not funded under the Private Enforcement Initiative.

(b) *Definitions.* As used in this section:

(1) The term "bona fide allegation" means an assertion of a discriminatory housing practice unlawful under Federal fair housing law. For purposes of these guidelines, an allegation by a person engaged as a tester, whether or not compensated, or by any organization, employee, or agent engaged directly in the initiation, administration, evaluation, or conduct of tests is not a bona fide allegation. The allegation must state specifically and in detail the facts and circumstances which are believed to constitute the discriminatory housing practice; these facts should include the date, time, and place (or an approximation of the date, time or place) of the alleged discrimination, and the name of each person or firm allegedly engaged in the discriminatory housing practice. However, while the allegation must be documented, it need not be reduced to writing prior to the conduct of a test.

(2) The term "discriminatory housing practice" means any action made unlawful by section 804, 805, 806 or 818 of Title VIII (42 U.S.C. 3604, 3605, 3606 or 3617).

(3) The term "test" means a method of gathering credible and objective evidence of whether a discriminatory housing practice has occurred, conducted in response to a bona fide allegation. For purposes of tests conducted under these guidelines:

(i) In the case of a test conducted in response to an allegation involving the rental or financing of a home or apartment, a test must include one or more visits by at least two individual testers to the lender, rental agent, management firm or owner alleged to have discriminated.

(ii) In the case of a test conducted in response to an allegation involving the purchase of a home, a test must include one or more visits by at least two individual testers to the individual sales agent or owner alleged to have discriminated; or if a firm is alleged to have engaged in discriminatory housing practices and if no sales agent of the firm has been identified as having discriminated, then the test must include one or more visits by at least two paired testers as defined in paragraph (c)(2)(iv) of this section to any sales agent identified by the testing program. The test requirements specified shall not excuse any employer, broker, firm, or owner from such liability as the law imposes on them for the conduct of their employees or licensees affiliated with them. Nothing here shall limit the number of test visits which can be made or funded.

(4) The term "testers" means individuals, who without an intent to rent, purchase, or finance a home or apartment, pose as renters, purchasers, or borrowers for the purpose of collecting evidence of discriminatory housing practices.

(c) *Eligible activities.* Eligible testing activities must be conducted in accordance with procedures contained in the application for assistance. These procedures shall include the following:

(1) A formal recruitment process designed to obtain a pool of credible and objective persons to serve as testers. Recruits must not have prior felony convictions or convictions of crimes involving fraud or perjury.

(2) A tester training program which will—

(i) Require the careful recordation of all relevant information on standardized forms, signed by the respective testers, following completion of the test;

(ii) Prohibit any communication between pairs of testers relating to the conduct of the test or to testing experiences or results until all information has been recorded and the testers debriefed by the testing coordinator;

(iii) Require that the same or substantially equivalent type of housing accommodations, financing, or service be requested; and

(iv) Require that, to the extent practicable, testers identify themselves as having the same or substantially equivalent housing needs and demographic profiles as the person who made the bona fide allegation, except for the person's race, color, religion, sex, handicap, familial status, nationality, or other attribute which is the basis of the alleged discrimination. In cases of testing for systemic discrimination (e.g., a pattern or practice of discriminatory housing practices by a housing provider or lender), demographic profiles may vary from that of the person who made the bona fide allegation so long as the test of each agent or owner is a "paired" test. For the purpose of these guidelines, a "paired test" means that the two testers who will conduct the "paired test" shall—

(A) Have the same or substantially similar demographic profiles, except for their race, color, religion, handicap, familial status, sex, nationality, or other attribute which is the basis of the alleged discrimination;

(B) Have the same or substantially similar housing requirements;

(C) Initiate the test at the same office or in the same or substantially similar transactional conditions and circumstances; and

(D) Conduct the test in a timely manner.

(3) A tester assignment and control system which will assure that neither the tester, nor the organization conducting the test, including its employees and agents—

(i) Has an economic interest in the outcome of the test, without prejudice to the right of any person or entity to recover damages for any cognizable injury (see, *Havens Realty Corp.* v. *Coleman*, 455 U.S. 363 (1982), 3 PHEOH ¶ 15,341); or

(ii) Has a specific bias toward either the person who made the bona fide allegation or the respondent; is a relative of one of the parties in the case; has had any employment or affiliation within one year with the person or organization to be tested; is a licensed competitor of such person or organization in the listing, rental, sale, or financing of real estate property; or has any other specific bias or conflict or interest which would prevent or limit his or her objectivity or fairness.

(d) *Application requirements.* Applications for funding of testing activities must include, in addition to the requirements set forth in § 125.105:

(1) Documentation that the applicant has at least one year of experience in carrying out a program to prevent or eliminate discriminatory housing practices and has sufficient knowledge of fair housing testing to enable the applicant to implement a testing program successfully.

(2) A certification providing that the applicant will not solicit funds from or seek to provide fair housing educational or other services or products for compensation, directly or indirectly, to any person or organization which has been the subject of testing by the applicant for a 12-month period following a test;

(3) A description of the process to be used to recruit testers;

(4) A description of the tester training program; and

(5) Copies of forms used to document allegations and to record the experience of testers.

(Approved by the Office of Management and Budget under control number 2529-0033, expires May 31, 1991.)

(e) *Performance monitoring.* An applicant failing to comply with the testing requirements or the procedures set forth in its application for funding shall be liable for such sanctions as may be authorized by law. These sanctions include repayment of improperly used funds, termination of further participation in the initiative, reduction or limitation of further funding for investigatory activities, recapture of improperly expended funds, and denial of further participation in programs of the Department or any Federal agency.

Dated: January 6, 1989.

Judith Y. Brachman,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 89-3200 Filed 2-9-89; 8:45 am]

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Rules and Regulations

Federal Register
Vol. 54, No. 28
Monday, February 13, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Reg. 667]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 667 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period February 10 through February 16, 1989. Such action is needed to balance the supply of fresh navel oranges with the demand for such oranges during the period specified due to the marketing situation confronting the orange industry.

EFFECTIVE DATE: Regulation 667 (§ 907.967) is effective for the period February 10, 1989 through February 16, 1989.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2528–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order 907 (7 CFR Part 907), as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 125 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order, and approximately 4,065 producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

This action is consistent with the marketing policy for 1988–89 adopted by the Navel Orange Administrative Committee (Committee). The Committee met publicly on February 7, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of navel oranges deemed advisable to be handled during the specified week. The Committee reports that the demand for navel oranges has improved.

Based on consideration of supply and market conditions, and the evaluation of alternatives to the implementation of prorate regulations, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. To effectuate the declared purposes of the Act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Arizona, California, Marketing agreements and orders, Navel oranges.

For the reasons set forth in the preamble, 7 CFR Part 907 is amended as follows:

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

1. The authority citation for 7 CFR Part 907 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.967 is added to read as follows. (This section will not appear in the Code of Federal Regulations.)

§ 907.967 Navel Orange Regulation 667.

The quantity of navel oranges grown in California and Arizona which may be handled during the period February 10, 1989, through February 16, 1989, are established as follows:

(a) District 1: 1,566,000 cartons;
(b) District 2: 234,000 cartons;
(c) District 3: unlimited cartons; and
(d) District 4: unlimited cartons.

Dated: February 8, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–3336 Filed 2–8–89; 4:02 pm]
BILLING CODE 3410–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 245a

[INS Number 1106-89]

Adjustment of Status for Certain Aliens; Immigration Reform and Control Act

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: Section 201 of the Immigration Reform and Control Act of 1986 (IRCA) provides for the legalization of aliens who have been residing illegally in the United States since before January 1, 1982. The Service published implementing regulations at 52 FR 16205 (May 1, 1987). The Service found it necessary to amend these regulations and published an interim rule at 52 FR 43843 [November 17, 1987). Interim rule regulations were published at 53 FR 9274 (March 21, 1988). This final rule will further amend the regulations to provide for another class of eligible aliens, specifically, certain nationals of countries for which extended voluntary departure (EVD) was made available at any time during the five year period ending on November 1, 1987.

EFFECTIVE DATE: Final rule is effective February 13,1989.

FOR FURTHER INFORMATION CONTACT: Terrance M. O'Reilly, Deputy Assistant Commissioner, Legalization, (202) 786-3458.

SUPPLEMENTARY INFORMATION: The Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99-603 was enacted on November 6, 1986. The Service published implementing regulations at 52 FR 16205, May l, 1987, and amending regulations at 52 FR 43843, November 17, 1987; 53 FR 9274, March 2l, 1988; 53 FR 9862, March 28, 1988; and, at 53 FR 23382, June 22, 1988. On December 22, 1987, the Department of State Authorization Bill, Pub. L. 100-204 was signed into law. Section 902 of the bill allows nationals of Poland, Ethiopia, Afghanistan, and Uganda to apply for temporary resident status pursuant to the provisions of section 245A of the Immigration Reform and Control Act of 1986. Most of the same benefits, conditions, and responsibilities of section 245A of the INA have been extended to qualifying nationals of these countries. The eligibility requirements and application period differ from those for aliens who are under the scope of the Immigration Reform and Control Act of 1986. Therefore, the Service is creating a new regulatory section—"245a.4" entitled "Adjustment to Lawful Resident Status of Certain Nationals of Countries for which Extended Voluntary Departure has been made Available."

At 53 FR 9274, March 21, 1988, the Service published an Interim Rule with request for comments. Twelve interested individuals and organizations submitted written comments. All comments were reviewed and given serious consideration.

Summary of the Final Rule

The provisions of the proposed rule which received comments will be discussed separately. This final rule amends 8 CFR 245a.4 created under the provisions of the March 21, 1988 interim rule published in the **Federal Register** at 53 FR 9274. This final rule includes all changes made from the interim rule which incorporates the requirements for certain nationals of countries for which extended voluntary departure was made available to become temporary resident aliens of the United States under section 245a.

Under the definition of "resided continuously," in § 245a.4(a)(3)(i), one commentor stated that placing any travel restrictions on a temporary resident was not equitable, and that temporary residents should be afforded the same travel privileges and restrictions which permanent residents now enjoy. Temporary residence is a unique status created by the Immigration Reform and Control Act of 1986 (IRCA), not afforded the same privileges and restrictions as that of the status of permanent residence. In fact, an applicant must satisfy an 18-month eligibility period as a temporary resident prior to being permitted to apply for permanent residence. Therefore, the period of time required for eligibility under this section shall not be changed and shall remain consistent with section 245a regulations.

Section 245a.4(a)(4) pertaining to the definition of "continuous residence" has been amended to reflect clarifying language as relates to adjustment from temporary to permanent resident status under § 245a.3.

A commentor suggested that restrictive dates under the definition of "continuous physical presence" of § 245a.4(a)(6) be omitted. After giving this recommendation serious consideration, the Service believes that these dates are reasonable, within the intent of the statute, and consistent with section 245a. Therefore, this definition will remain unchanged.

The same commentor desired a change of "brief, casual, and innocent," as defined in 245a.4(a)(7) to reflect any departure which does not "* * * meaningfully interrupt continuous physical presence in the United States * * *." Again, after serious consideration, the Service believes that the definition is reasonable, within the intent of the statute, and consistent with section 245a. The definition will remain unchanged.

Clarifying language pertaining to § 245a.4(a)(10), the definition of "public cash assistance," has been previously issued in relationship to section 245a. Therefore, the Service believes that no need exists to further restrict the definition. The regulation concerning "Special Rule for Determination of Public Charge," however, has been expanded.

Section 245a.4(a)(12), the definition of "through the passage of time," shall remain as stated in the Interim Rule. However, the term "in an unlawful status" has been eliminated.

A commentor suggested that § 245a.4(b) (1) and (2) be extended to nationals other than those from the four designated countries. The Service will not alter its position on this issue. The Congressional Conference Committee report was clear as to which groups would qualify under this statute.

Several comments were received concerning an applicant's "unlawful status," and that it should not be considered under § 245a.4 because the statute does not specifically address an alien's unlawful status. The statute does state, however, that in order to be considered as eligible under this section, an applicant who entered the United States as a nonimmigrant before July 21, 1984, must establish that his or her period of authorized stay as a nonimmigrant expired not later than January 20, 1985, through the passage of time; or, that the alien applied for asylum prior to July 21, 1984. Therefore, in order to be considered eligible under this section, a nonimmigrant must not have had an authorized period of stay after January 20, 1985. Accordingly, in § 245a.4(b)(2)(i) (A) through (F), all other references to "unlawful status," have been deleted.

Several commentors pointed out a discrepancy in § 245a.4(b)(2)(i) (E) and (F), concerning the dates of eligibility for nonimmigrants who possess "Duration of Status (D/S)" expirations of

authorized permission to remain in the United States and those nonimmigrants who possess date-certain expiration dates. In order to be consistent with the intent of the law and in concurrence with the comments provided, the date relating to eligibility is changed to "January 21, 1985."

Section 245a.4(b)(2)(i)(F) is also amended to clarify eligibility requirements for those students who were granted student status retroactively ("nunc pro tunc").

One commentor indicated that the exemption from the two-year foreign residency requirement of section 212(e) should be specifically stated in these regulations. The Service omitted this part from § 245a.4(b)(3) from the requirements of the Interim Rule of § 245a.4 and believes that this is a sufficient indication of non-applicability to applicants under § 245a.4.

Several commentors asked for more flexibility in the requirements for documentation concerning proof of nationality in § 235a.4(b)(4)(ii). The Service believes that proof of nationality is an integral factor in establishing eligibility under § 245a.4. It is also understood that most applicants under this statute already have established a record with INS, either through nonimmigrant status, extended voluntary departure requests, or asylum applications. Therefore, the Service has amended this part to include other credible documentation as acceptable evidence of an alien's nationality.

Section 245a.4(b)(9) is amended to include specific language concerning the serological test for the HIV virus.

Section 245a.4(b)(11)(iv) is amended to reflect policy guidance concerning the two-tiered evaluation method for determination of an applicant's likelihood to become a public charge.

Clarifying language is added to § 245a.4(b)(14)(iv) to reflect the status of an alien under the State Legalization Impact Assistance Grants (SLIAG) program upon denial of his or her temporary resident application and expiration of the appeal period.

One commentor stated that clarifying language should be added to § 245a.4(b)(16) to coincide with the policy memorandum issued in reference to § 103.5a(b) of this Act. The Service agrees and has added the clarification. Other language clarifying the appeal process, including the filing of briefs, has also been added.

Section 245a.4(b)(18) is amended to reflect clarifying language concerning certification of remanded cases to the Administrative Appeals Unit.

Numerous commentors recommended that the provisions of confidentiality under section 245a be extended to applicants under § 245a.4. Although the statute does not specifically include confidentiality as it pertains to these applicants, the confidentiality provisions will be extended to this group. The Service believes that a definite need for a statement of the confidentiality provisions exists due to the close relationship to the section 245a program and because the same reasons for confidentiality still apply (individuals will not come forward due to fear of apprehension if the guarantee of confidentiality is not extended to them; and, employers will be reluctant to issue evidence of employment if guarantees of confidentiality do not exist.) Therefore, the confidentiality provisions are stated in a new § 245a.4(b)(23).

Section 245a.4(c)(2) is amended to indicate that all provisions of § 245a.3 shall apply to aliens adjusting to permanent resident status.

One commentor indicated a necessity for some type of travel documentation to be provided to applicants under this section, especially because of an inability for members of this particular group to presently obtain passports from their respective countries of nationality. The Service believes that this recommendation has merit, and is investigating the possibility of permitting applicants under this section to obtain refugee travel documents within already existing guidelines.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the definition of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal assessment in accordance with E.O. 12612.

The information collection requirements contained in this regulation have been cleared by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. The OMB control numbers for these collections are contained in 8 CFR 299.5.

List of Subjects in 8 CFR Part 245a

Definitions, Temporary resident status, Permanent resident status.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 245a—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR LAWFUL TEMPORARY OR PERMANENT RESIDENT STATUS UNDER SECTION 245A OF THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED BY PUB. L. 99-603, THE IMMIGRATION REFORM AND CONTROL ACT OF 1986, AND PUB. L. 100-204, SECTION 902

1. The authority citation for Part 245a is revised to read as follows:

Authority: 8 U.S.C. 1103, 1255a, 1255a note, and 8 CFR 2.1.

2. Section 245a.4 is revised to read as follows:

§ 245a.4 Adjustment to lawful resident status of certain nationals of countries for which extended voluntary departure has been made available.

(a) *Definitions.* As used in this section: (1) "Act" means the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986.

(2) "Service" means the Immigration and Naturalization Service (INS).

(3) "Resided continuously" means that the alien shall be regarded as having resided continuously in the United States if, at the time of filing of the application for temporary resident status:

(i) No single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days between July 21, 1984, through the date the application for temporary resident status is filed, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed;

(ii) The alien was maintaining residence in the United States; and

(iii) The alien's departure from the United States was not based on an order of deportation.

An alien who has been absent from the United States in accordance with the Service's advance parole procedures shall not be considered as having interrupted his or her continuous residence as required at the time of filing an application. An alien who, after appearing for a scheduled interview to obtain an immigrant visa at a Consulate or Embassy in Canada or Mexico but who subsequently is not issued an immigrant visa and who is paroled back into the United States pursuant to the stateside criteria program, shall be considered as having "resided continuously."

(4) "Continous residence" means that the alien shall be regarded as having resided continously in the United States if, at the time of applying for adjustment from temporary residence to permanent resident status: No single absence from the United States has exceeded 30 days, and the aggregate of all absences has not exceeded 90 days between the date on which lawful temporary resident status was granted and the date permanent resident status was applied for, unless the alien can establish that due to emergent reasons or extenuating circumstances beyond his or her control, the return to the United States could not be accomplished within the time period(s) allowed. A single absence from the United States of more than 30 days, and aggregate absences of more than 90 days during the period for which continuous residence is required for adjustment to permanent resident status, shall break the continuity of such residence unless the temporary resident can establish to the satisfaction of the district director that he or she did not, in fact, abandon his or her residence in the United States during such period.

(5) "To make a determination" means obtaining and reviewing all information required to adjudicate an application for the benefit sought and making a decision thereon. If fraud, willful misrepresentation or concealment of a material fact, knowingly providing a false writing or document, knowingly making a false statement or representation, or any other activity prohibited by the Act is established during the process of making the determination on the application, the Service shall refer the matter to the United States Attorney for prosecution of the alien or of any person who created or supplied a false writing or document for use in an application for adjustment of status under this part.

(6) "Continuous physical presence" means actual continuous presence in the United States since December 22, 1987, until filing of any application for adjustment of status. Aliens who were outside of the United States after enactment may apply for temporary residence if they reentered prior to March 21, 1988, provided they meet the continuous residence requirements, and are otherwise eligible for legalization.

(7) "Brief, casual, and innocent" means a departure authorized by the Service (advance parole) subsequent to March 21, 1988, for not more than 30 days for legitimate emergency or humanitarian purposes unless a further period of authorized departure has been granted in the discretion of the district director or a departure was beyond the alien's control.

(8) "Brief and casual" means temporary trips abroad as long as the alien establishes a continuing intention to adjust to lawful permanent resident status. However, such absences must not exceed the specific periods of time required in order to maintain continuous residence.

(9) "Certain nationals of countries for which extended voluntary departure has been made available on the basis of a nationality group determination at any time during the 5-year period ending on November 1, 1987" is limited to nationals of Poland, Afghanistan, Ethiopia, and Uganda.

(10) "Public cash assistance" means income or need-based monetary assistance to include but not limited to supplemental security income, received by the alien or his or her immediate family members through federal, state, or local programs designed to meet subsistence levels. It does not include assistance in kind, such as food stamps, public housing, or other non-cash benefits, nor does it include work related compensation or certain types of medical assistance (Medicare, Medicaid, emergency treatment, services to pregnant women or children under 18 years of age, or treatment in the interest of public health).

(11) "Designated entity" means any state, local, church, community, farm labor organization, voluntary organization, association of agricultural employers or individual determined by the Service to be qualified to assist aliens in the preparation of applications for legalization status.

(12) "Through the passage of time" means through the expiration date of the nonimmigrant permission to remain in the United States, including any extensions and/or change of status.

(13) "Prima facie eligibility" means eligibility is established if the applicant presents a completed I-687 and specific factual information which in the absence of rebuttal will establish a claim of eligibility under this part.

(b) *Application for temporary residence*— (1) *Application for temporary residence.* (i) An alien who is a national of Poland, Uganda, Ethiopia, or Afghanistan who has resided continuously in the United States since prior to July 21, 1984, and who believes that he or she meets the eligibility requirements of section 245A of the Act must make application within the 21-month period beginning on March 21, 1988, and ending on December 22, 1989.

(ii) An alien who fails to file an application for adjustment of status to that of a temporary resident under § 245A.4 of this part during the time period, will be statutorily ineligible for such adjustment of status.

(2) *Eligibility* (i) The following categories of aliens who are not otherwise excludable under section 212(a) of the Act are eligible to apply for status to that of a person admitted for temporary residence:

(A) An alien who is a national of Poland, Uganda, Ethiopia, or Afghanistan, (other than an alien who entered as a nonimmigrant) who establishes that he or she entered the United States prior to July 21, 1984, and who has thereafter resided continuously in the United States, and who has been physically present in the United States from December 22, 1987, until the date of filing the application.

(B) An alien who is a national of Poland, Uganda, Ethiopia, or Afghanistan, and establishes that he or she entered the United States as a nonimmigrant prior to July 21, 1984, and whose period of authorized admission expired through the passage of time prior to January 21, 1985, and who has thereafter resided continuously in the United States, and who has been physically present in the United States from December 22, 1987, until the date of filing the application.

(C) An alien who is a national of Poland, Uganda, Ethiopia, or Afghanistan, and establishes that he or she entered the United States as a nonimmigrant prior to July 21, 1984, and who applied for asylum prior to July 21, 1984, and who has thereafter resided continuously in the United States, and who has been physically present in the United States from December 22, 1987, until the date of filing the application.

(D) An alien who is a national of Poland, Uganda, Ethiopia, or Afghanistan, who would otherwise be eligible for temporary resident status and who establishes that he or she resided continuously in the United States prior to July 21, 1984, and who subsequently reentered the United States as a nonimmigrant in order to return to an unrelinquished residence. An alien described in this paragraph must have received a waiver of 212(a)(19) as an alien who entered the United States by fraud.

(E) An alien who is a national of Poland, Uganda, Ethiopia, or Afghanistan, and was a nonimmigrant who entered the United States in the classification A, A-1, A-2, G, G-1, G-2, G-3, or G-4, for Duration of Status (D/S), and whose qualifying employment terminated or who ceased to be recognized by the Department of State as being entitled to such classification prior to January 21, 1985, and who thereafter continued to reside in the United States.

(F) An alien who is a national of Poland, Uganda, Ethiopia, or Afghanistan, and who was a nonimmigrant who entered the United States as an F, F-1, or F-2 for Duration of Status (D/S), and who completed a full course of studies, including practical training (if any), and whose time period to depart the United States after completion of studies expired prior to January 21, 1985, and who has thereafter continued to reside in the United States. Those students placed in a "nunc pro tunc" retroactive student status which would otherwise preclude their eligibility for legalization under this section, must present evidence that they had otherwise terminated their status during the requisite time period. A dependent F-2 alien otherwise eligible who was admitted into the United States with a specific time period, as opposed to duration of status, documented on Service Form I-94, Arrival-Departure Record that extended beyond July 21, 1984 is considered eligible if the principal F-1 alien is found eligible.

(3) *Ineligible aliens.* (i) An alien who has been convicted of a felony, or three or more misdemeanors.

(ii) An alien who has assisted in the persecution of any person or persons on account of race, religion, nationality, membership in a particular social group, or political opinion.

(iii) An alien excludable under the provisions of section 212(a) of the Act whose grounds of excludability may not be waived.

(4) *Documentation.* Evidence to support an alien's eligibility for temporary residence status shall include documents establishing proof of identity, proof of nationality, proof of residence, and proof of financial responsibility, as well as photographs, a completed fingerprint card (Form FD-258), and a completed medical report of examination (Form I-693). All documentation submitted will be subject to Service verification. Applications submitted with unverifiable documentation may be denied. Failure by an applicant to authorize release to INS of information protected by the Privacy Act and/or related laws in order for INS to adjudicate a claim may result in denial of the benefit sought. Acceptable supporting documents for the four categories of documentation are discussed as follows:

(i) *Proof of identity.* Evidence to establish identity is listed below in descending order of preference:

(A) Passport;

(B) Birth certificate;

(C) Any national identity document from the alien's country of origin bearing photo and fingerprint;

(D) Driver's license or similar document issued by a state if it contains a photo;

(E) Baptismal Record/Marriage Certificate; or

(F) Affidavits.

(ii) *Proof of nationality.* Evidence to establish nationality is listed as follows:

(A) Passport;

(B) Birth certificate;

(C) Any national identity document from the alien's country of origin bearing photo and fingerprint;

(D) Other credible documents, including those created by, or in the possession of the INS, or any other documents (excluding affidavits) that, when taken singly, or together as a whole, establish the alien's nationality.

(iii) *Assumed names*—(A) *General.* In cases where an applicant claims to have met any of the eligibility criteria under an assumed name, the applicant has the burden of proving that the applicant was in fact the person who used that name. The applicant's true identity is established pursuant to the requirements of paragraph (b)(4) (i) and (ii) of this section. The assumed name must appear in the documentation provided by the applicant to establish eligibility. To meet the requirement of this paragraph, documentation must be submitted to prove the common identity, i.e., that the assumed name was in fact used by the applicant.

(B) *Proof of common identity.* The most persuasive evidence is a document issued in the assumed name which identifies the applicant by photograph, fingerprint, or detailed physical description. Other evidence which will be considered are affidavit(s) by a person or persons other than the applicant, made under oath, which identify the affiant by name and address, state the affiant's relationship to the applicant and the basis of the affiant's knowledge of the applicant's use of the assumed name. Affidavits accompanied by a photograph which has been identified by the affiant as the individual known to the affiant under the assumed name in question will carry greater weight.

(iv) *Proof of residence.*—Evidence to establish proof of continuous residence in the United States during the requisite period of time may consist of any combination of the following:

(A) Past employment records, which may consist of pay stubs, W-2 Forms, certification of the filing of Federal income tax returns on IRS Form 6166, a state verification of the filing of state income tax returns, letters from employer(s) or, if the applicant has been in business for himself or herself, letters from banks and other firms with whom he or she has done business. In all of the above, the name of the alien and the name of the employer or other interested organizations must appear on the form or letter, as well as relevant dates. Letters from employers should be on employer letterhead stationery, if the employer has such stationery, and must include:

(*1*) Alien's address at the time of employment;

(*2*) Exact period of employment;

(*3*) Periods of layoff;

(*4*) Duties with the company;

(*5*) Whether or not the information was taken from official company records; and

(*6*) Where records are located, whether the Service may have access to the records.

If the records are unavailable, an affidavit form letter stating that the alien's employment records are unavailable and why such records are unavailable may be accepted in lieu of paragraphs (b)(4)(iv)(A) (*5*) and (*6*) of this section. This affidavit form letter shall be signed, attested to by the employer under penalty of perjury, and shall state the employer's willingness to come forward and give testimony if requested.

(B) Utility bills (gas, electric, phone, etc.) receipts, or letters from companies showing the dates during which the applicant received service are acceptable documentation.

(C) School records (letters, report cards, etc.) from the schools that the applicant or his or her children have attended in the United States must show the name of school and periods of school attendance.

(D) Hospital or medical records showing treatment or hospitalization of the applicant or his or her children must show the name of the medical facility or physician and the date(s) of the treatment or hospitalization.

(E) Attestations by churches, unions, or other organizations as to the applicant's residence by letter which:

(*1*) Identify applicant by name;

(*2*) Are signed by an official (whose title is shown);

(*3*) Show inclusive dates of membership;

(*4*) State the address where applicant resided during membership period;

(*5*) Include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery;

(6) Establish how the author knows the applicant; and

(7) Establish the origin of the information being attested to.

(F) Additional documents to support the applicant's claim may include:

(1) Money order receipts for money sent into or out of the country;

(2) Passport entries;

(3) Birth certificates of children born in the United States;

(4) Bank books with dated transactions;

(5) Letters or correspondence between applicant and other person or organization;

(6) Social Security card;

(7) Selective Service card;

(8) Automobile license receipts, title, vehicle registration, etc.;

(9) Deeds, mortgages, contracts to which applicant has been a party;

(10) Tax receipts;

(11) Insurance policies, receipts, or letters; and

(12) Any other relevant document.

(v) *Proof of financial responsibility.* An applicant for adjustment to temporary resident status under this part is subject to the provisions of section 212(a)(15) of the Act relating to excludability of aliens likely to become public charges unless the applicant demonstrates a history of employment in the United States evidencing self-support without receipt of public cash assistance. The burden of proof to demonstrate the inapplicability of section 212(a)(15) of the Act lies with the applicant who may provide:

(A) Evidence of a history of employment (i.e., employment letter, W-2 forms, income tax returns, etc.);

(B) Evidence that he/she is self-supporting (i.e., bank statements, stocks, other assets, etc.); or

(C) Form I-134. Affidavit of Support, completed by a spouse on behalf of the applicant and/or children of the applicant or a parent in behalf of children which guarantees complete or partial financial support. Acceptance of the Affidavit of Support shall be extended to other family members in unusual family circumstances.

Generally, the evidence of employment submitted under paragraph (b)(4)(iv)(A) of this section will serve to demonstrate the alien's financial responsibility during the documented period(s) of employment. If the alien's period(s) of residence in the United States include significant gaps in employment or if there is reason to believe that the alien may have received public assistance while employed, the alien may be required to provide proof that he or she has not received public cash assistance. An applicant for residence who is likely to become a public charge will be denied adjustment.

(vi) *Burden of proof.* An alien applying for adjustment of status under this part has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status under this section. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification.

(vii) *Evidence.* The sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony. In judging the probative value and credibility of the evidence submitted, greater weight will be given to the submission of original documentation.

(5) *Filing of application.* (i) The application must be filed on Form I-687 at an office of a designated entity or at a Service office within the jurisdiction of the district where the applicant resides. If the application is filed with a designated entity, the alien must have consented to having the designated entity forward the application to the Service office. In the case of applications filed at a Service office, the district director may, at his or her discretion:

(A) Require the applicant to file the application in person; or

(B) Require the applicant to file the application by mail; or

(C) Permit the filing of applications whether by mail or in person.

The applicant must appear for a personal interview at the Service office as scheduled. If the applicant is 14 years of age or older, the application must be accompanied by a completed Form FD-258 (Applicant Card).

(ii) At the time of the interview, whenever possible, original documents must be submitted except the following: Official government records; employment or employment-related records maintained by employers, union, or collective bargaining organizations; medical records; school records maintained by a school or school board; or other records maintained by a party other than the applicant. Copies of records maintained by parties other than the applicant which are submitted in evidence must be certified as true and correct by such parties and must bear their seal or signature or the signature and title of persons authorized to act in their behalf. If at the time of the interview the return of the original document is desired by the applicant, the document must be accompanied by notarized copies or copies certified true and correct by a qualified designated entity or by the alien's representative in the format prescribed in § 204.2(j) (1) or (2) of this chapter. At the discretion of the district director, original documents, even if accompanied by certified copies, may be temporarily retained for forensic examination by the Document Analysis Unit at the Regional Processing Facility having jurisdiction over the Service office to which the documents were submitted.

(iii) A separate application (I-687) must be filed by each eligible applicant. All fees required by § 103.7(b)(1) of this chapter must be submitted in the exact amount in the form of a money order, cashier's check, or certified bank check, made payable to the Immigration and Naturalization Service. No personal checks or currency will be accepted. Fees will not be waived or refunded under any circumstances.

(6) *Filing date of application.* The date the alien submits a completed application to a Service office or designated entity shall be considered the filing date of the application, provided that in the case of an application filed at a designated entity the alien has consented to having the designated entity forward the application to the Service office having jurisdiction over the location of the alien's residence. Designated entities are required to forward completed applications to the appropriate Service office within 60 days of receipt.

(7) *Selective Service registration.* At the time of filing an application under this section, male applicants over the age of 17 and under the age of 26, are required to be registered under the Military Selective Service Act. An applicant shall present evidence that he has previously registered under that Act in the form of a letter of acknowledgement from the Selective Service System, or such alien shall present a completed and signed Form SSS-1 at the time of filing Form I-687 with the Immigration and Naturalization Service or a designated entity. Form SSS-1 will be forwarded to the Selective Service System by the Service.

(8) *Continuous residence.* (i) For the purpose of this Act, an applicant for temporary residence status shall be regarded as having resided continuously in the United States if, at the time of filing of the application:

(A) No single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days between July 2l, 1984, through the date the application for temporary resident status is filed, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed;

(B) The alien was maintaining a residence in the United States; and

(C) The alien's departure from the United States was not based on an order of deportation.

(ii) An alien who has been absent from the United States in accordance with the Service's advance parole procedures shall not be considered as having interrupted his or her continuous residence as required at the time of filing an application under this section.

(9) *Medical examination.* (i) An applicant under this part shall be required to submit to an examination by a designated civil surgeon at no expense to the government. The designated civil surgeon shall report on the findings of the mental and physical condition of the applicant and the determination of the alien's immunization status on Form I-693, "Medical Examination of Aliens Seeking Adjustment of Status, (Pub. L. 99-603)". Results of the medical examination must be presented to the Service at the time of interview and shall be incorporated into the record. Any applicant certified under paragraphs (1), (2), (3), (4) or (5) of section 212(a) of the Act may appeal to a Board of Medical Officers of the U.S. Public Health Service as provided in section 234 of the Act and Part 235 of this chapter.

(ii) All applicants who file for temporary resident status are required to include the results of a serological test for the HIV virus on the I-693. All HIV-positive applicants shall be advised that a waiver is available and shall be provided with the opportunity to apply for a waiver.

(10) *Interview.* Each applicant, regardless of age, must appear at the appropriate Service office and must be fingerprinted for the purpose of issuance of Forms I-688A and I-688. Each applicant shall be interviewed by an immigration officer, except that the interview may be waived for a child under 14 years of age, or when it is impractical because of the health or advanced age of the applicant.

(11) *Applicability of exclusion grounds.* (i) *Grounds of exclusion not to be applied.* Paragraphs (14), (workers entering without labor certification); (20), (immigrants not in possession of a valid entry document); (21), (visas issued without compliance with section 203); (25), (illiterates); and (32) (graduates of non-accredited medical schools) of section 212(a) of the Act shall not apply to applicants for temporary resident status.

(ii) *Waiver of grounds of exclusion.* Except as provided in paragraph (b)(11)(iii) of this section, the Attorney General may waive any other provision of section 212(a) of the Act only in the case of individual aliens for humanitarian purposes, to assure family unity, or when the granting of such a waiver is in the public interest. If an alien is excludable on grounds which may be waived as set forth in this paragraph, he or she shall be advised of the procedures for applying for a waiver of grounds of excludability on Form I-690. When an application for waiver of grounds of excludability is filed jointly with an application for temporary residence under this section, it shall be accepted for processing at the Service office. If an application for waiver of grounds of excludability is submitted after the alien's preliminary interview at the Service office, it shall be forwarded to the appropriate Regional Processing Facility. All applications for waivers of grounds of excludability must be accompanied by the correct fee in the exact amount. All fees for applications filed in the United States must be in the form of a money order, cashier's check, or bank check. No personal checks or currency will be accepted. Fees will not be waived or refunded under any circumstances. An application for waiver of grounds of excludability under this part shall be approved or denied by the director of the Regional Processing Facility in whose jurisdiction the alien's application for adjustment of status was filed except that in cases involving clear statutory ineligibility or fraud, such application may be denied by the district director in whose jurisdiction the application is filed, and in cases returned to a Service office for re-interview, such application may be approved at the discretion of the district director. The applicant shall be notified of the decision and, if the application is denied, of the reason therefore. Appeal from an adverse decision under this part may be taken by the applicant on Form I-694 within 30 days after the service of the notice only to the Service's Administrative Appeals Unit pursuant to the provisions of section 103.3(a) of this chapter.

(iii) *Grounds of exclusion that may not be waived.* Notwithstanding any other provision of the Act, the following provisions of section 212(a) may not be waived by the Attorney General under paragraph (b)(11)(ii) of this section:

(A) Paragraphs (9) and (10) (criminals);

(B) Paragraph (23) (narcotics) except for a single offense of simple possession of thirty grams or less of marijuana;

(C) Paragraphs (27) (prejudicial to the public interest), (28) (communist), and (29) (subversive);

(D) Paragraph (33) (participated in Nazi persecution).

(iv) *Determination of "Likely to become a public charge" and the special rule.* (A) Prior to use of the special rule for determination of public charge, an alien must first be determined to be excludable under section 212(a)(15) of the Act. If the applicant is determined to be "likely to become a public charge," he or she may still be admissible under the terms of the Special Rule.

(B) In determining whether an alien is "likely to become a public charge," financial responsibility of the alien is to be established by examining the totality of the alien's circumstances at the time of his or her application for legalization. The existence or absence of a particular factor should never be the sole criterion for determining if an alien is likely to become a public charge. The determination of financial responsibility should be a prospective evaluation based on the alien's age, health, income and vocation.

(C) An alien who has a consistent employment history which shows the ability to support himself or herself and his or her family, even though his or her income may be below the poverty level, may be admissible under this section. The alien's employment history need not be continuous in that it is uninterrupted. It should be continuous in the sense that the alien shall be regularly attached to the workforce, has an income over a substantial period of the applicable time, and has demonstrated the capacity to exist on his or her income and maintain his or her family without recourse to public cash assistance. The Special Rule is prospective in that the Service shall determine, based on the alien's history, whether he or she is likely to become a public charge. Past acceptance of public cash assistance within a history of consistent employment will enter into this decision. The weight given in considering applicability of the public charge provisions will depend on many factors, but the length of time an applicant has received public cash assistance will constitute a significant factor. It is not necessary to file a waiver in order to apply the Special Rule for Determination of Public Charge.

(v) *Public assistance and criminal history verification.* Declarations by an applicant that he or she has not been the recipient of public cash assistance and/or has not had a criminal record are subject to a verification of facts by the Service. The applicant must agree to fully cooperate in the verification process. Failure to assist the Service in verifying information necessary for the adjudication of the application may result in a denial of the application.

(12) *Continuous physical presence since December 22, 1987.* (i) An alien applying for adjustment to temporary resident status must establish that he or she has been continuously physically present in the United States since December 22, 1987. Aliens who were outside of the United States on the date of enactment or departed the United States after enactment may apply for legalization if they reentered prior to March 21, 1988, and meet the continuous residence requirements and are otherwise eligible for legalization.

(ii) A brief, casual and innocent absence means a departure authorized by the Service (advance parole) subsequent to March 21, 1988, of not more than thirty (30) days for legitimate emergency or humanitarian purposes unless a further period of authorized departure has been granted in the discretion of the district director or a departure was beyond the alien's control.

(13) *Departure.* (i) During the time period from the date that an alien's application establishing prima facie eligibility for temporary resident status is reviewed at a Service office and the date status as a temporary resident is granted, the alien applicant can be readmitted to the United States provided his or her departure was authorized under the Service's advance parole provisions contained in § 212.5(e) of this chapter.

(ii) An alien whose application for temporary resident status has been approved may be admitted to the United States upon return as a returning temporary resident provided he or she:

(A) Is not under deportation proceedings, such proceedings having been instituted subsequent to the approval of temporary resident status. A temporary resident alien will not be considered deported if that alien departs the United States while under an outstanding order of deportation issued prior to the approval of temporary resident status;

(B) Has not been absent from the United States for more than 30 days on the date application for admission is made;

(C) Has not been absent from the United States for an aggregate period of more than 90 days since the date the alien was granted lawful temporary resident status;

(D) Presents Form I–688;

(E) Presents himself or herself for inspection; and

(F) Is otherwise admissible.

(iii) The periods of time in paragraphs (b)(13)(ii) (B) and (C) of this section may be waived at the discretion of the Attorney General in cases where the absence from the United States was due merely to a brief and casual trip abroad due to emergent or extenuating circumstances beyond the alien's control.

(14) *Employment and travel authorization.*—(i) *General.* Authorization for employment and travel abroad for temporary resident status applicants under this section may be granted only by a Service office. INS district directors will determine the Service location for the completion of processing travel documentation. In the case of an application which has been filed with a designated entity, employment authorization may be granted by the Service only after the application has been properly received at the Service office.

(ii) *Employment and travel authorization prior to the granting of temporary resident status.* (A) Permission to travel abroad and accept employment may be granted to the applicant after an interview has been conducted in connection with an application establishing prima facie eligibility for temporary resident status. Permission to travel abroad may be granted in emergent circumstances in accordance with the Service's advance parole provisions contained in § 212.5(e) of this chapter after an interview has been conducted in connection with an application establishing prima facie eligibility for temporary resident status.

(B) If an appointment cannot be scheduled within 30 days, authorization to accept employment will be granted, valid until the scheduled appointment date. The appointment letter will be endorsed with the temporary employment authorization. Form I–688A, Employment Authorization, will be given to the applicant after an interview has been completed by an immigration officer unless a formal denial is issued by a Service office. This temporary employment authorization will be restricted to six-months duration, pending final determination on the application for temporary resident status.

(iii) *Employment and travel authorization upon grant of temporary resident status.* Upon grant of an application for adjustment to temporary resident status by a Regional Processing Facility, the processing facility will forward a notice of approval to the alien at his or her last known address, or to his or her legal representative. The alien will be required to return to the Service office where the application was initially received, surrender the I–688A previously issued, and obtain Form I–688, Temporary Resident Card, authorizing employment and travel abroad.

(iv) *Revocation of employment authorization upon denial of temporary resident status.* Upon denial of an application for adjustment to temporary resident status, the alien will be notified that if a timely appeal is not submitted, employment authorization shall be automatically revoked on the final day of the appeal period. An applicant whose appeal period has ended is no longer considered to be an Eligible Legalized Alien for the purposes of the administration of State Legalization Impact Assistance Grants (SLIAG) funding.

(15) *Decision.* The applicant shall be notified in writing of the decision. If the application is denied, the reason(s) for the decision shall be provided to the applicant. An appeal from an adverse decision under this part may be taken by the applicant on Form I–694.

(16) *Appeal process.* An adverse decision under this part may be appealed to the Associate Commissioner, Examinations (Administrative Appeals Unit), the appellate authority designated in § 103.1(f)(2). Any appeal shall be submitted to the Regional Processing Facility (RPF) with the required fee within 30 days after service of the Notice of Denial in accordance with the procedures of § 103.3(a) of this chapter. An appeal received after the 30-day period will not be accepted. The 30-day period for submission of an appeal begins three days after the Notice of Denial is mailed as provided in § 103.5a(b) of this Act. If a review of the Record of Proceeding (ROP) is requested by the alien or his or her legal representative and an appeal has been properly filed, an additional 30 days will be allowed for this review beginning at the time the ROP is mailed. A brief may be submitted with the appeal form or submitted up to 30 calendar days from the date of receipt of the appeal form at the RPF. Briefs filed after submission of the appeal should be mailed directly to the RPF. For good cause shown, the time within which a brief supporting an appeal may be submitted may be extended by the Director of the Regional Processing Facility.

(17) *Motions.* The Regional Processing Facility director may *sua sponte* reopen and reconsider any adverse decision. When an appeal to the Associate Commissioner, Examinations (Administrative Appeals Unit) has been filed, the INS director of the Regional Processing Facility may issue a new decision granting the benefit which has been requested. The director's new decision must be served on the appealing party within 45 days of receipt of any briefs and/or new evidence, or upon expiration of the time allowed for the submission of any briefs. Motions to reopen a proceeding or reconsider a decision shall not be considered under this part.

(18) *Certifications.* The Regional Processing Facility director may, in accordance with § 103.4 of this chapter, certify a decision to the Associate Commissioner, Examinations (Administrative Appeals Unit) when the case involves an unusually complex or novel question of law or fact. The decision on an appealed case subsequently remanded to the Regional Processing Facility director will be certified to the Administrative Appeals Unit.

(19) *Date of adjustment to temporary residence.* The status of an alien whose application for temporary resident status is approved shall be adjusted to that of a lawful temporary resident as of the date indicated on the application fee receipt issued at the Service office.

(20) *Termination of temporary resident status.*—(i) *Termination of temporary resident status (General).* The status of an alien lawfully admitted for temporary residence under § 245a.4 of this part may be terminated at any time. It is not necessary that a final order of deportation be entered in order to terminate temporary resident status. The temporary resident status may be terminated upon the occurrence of any of the following:

(A) It is determined that the alien was ineligible for temporary residence under § 245a.4 of this part;

(B) The alien commits an act which renders him or her inadmissible as an immigrant unless a waiver is obtained, as provided in this part;

(C) The alien is convicted of any felony, or three or more misdemeanors;

(D) The alien fails to file for adjustment of status from temporary resident to permanent resident within 31 months of the date he or she was granted status as a temporary resident.

(ii) *Procedure.* Termination of an alien's status will be made only on notice to the alien sent by certified mail directed to his or her last known address, and, if applicable, to his or her representative. The alien must be given an opportunity to offer evidence in opposition to the grounds alleged for termination of his or her status. Evidence in opposition must be submitted within 30 days after the service of the Notice of Intent to Terminate. If the alien's status is terminated, the director of the Regional Processing Facility shall notify the alien of the decision and the reason for the termination, and further notify the alien that any Service Form issued to the alien authorizing employment and/or travel abroad, or any Form I–688, Temporary Resident Card previously issued to the alien will be declared void by the director of the Regional Processing Facility within 30 days if no appeal of the termination decision is filed within that period. The alien may appeal the decision to the Associate Commissioner, Examinations (Administrative Appeals Unit). Any appeal along with the required fee, shall be filed with the Regional Processing Facility within 30 days after the service of the notice of termination. If no appeal is filed within that period, the official Service document shall be deemed void, and must be surrendered without delay to an immigration officer or to the issuing office of the Service.

(iii) *Termination not construed as rescission under section 246.* For the purposes of this part the phrase "termination of status" of an alien granted lawful temporary residence under this section shall not be construed to necessitate a rescission of status as described in section 246 of the Act, and the proceedings required by the regulations issued thereunder shall not apply.

(iv) *Return to unlawful status after termination.* Termination of the status of any alien previously adjusted to lawful temporary residence shall act to return such alien to the status held prior to the adjustment, and render him or her amenable to exclusion or deportation proceedings under sections 236 or 242 of the Act, as appropriate.

(21) *Ineligibility for immigration benefits.* An alien whose status is adjusted to that of a lawful temporary resident under § 245a.4 of this part is not entitled to submit a petition pursuant to section 203(a)(2), nor is such alien entitled to any other benefit or consideration accorded under the Act to aliens lawfully admitted for permanent residence.

(22) *Declaration of intending citizen.* An alien who has been granted the status of temporary resident under § 245a.4 of this part may assert a claim of discrimination on the basis of citizenship status under section 274B of the Act only if he or she has previously filed Form I–772 (Declaration of Intending Citizen) after being granted such status. The Declaration of Intending Citizen is not required as a basis for filing a petition for naturalization; nor shall it be regarded as a right to United States citizenship; nor shall it be regarded as evidence of a person's status as a resident.

(23) *Limitation on access to information and confidentiality.* (i) No person other than a sworn officer or employee of the Department of Justice or bureau or agency thereof, will be permitted to examine individual applications. For purposes of this part, any individual employed under contract by the Service to work in connection with the Legalization Program shall be considered an "employee of the Department of Justice or bureau or agency thereof."

(ii) No information furnished pursuant to an application for temporary or permanent resident status under this section shall be used for any purpose except:

(A) To make a determination on the application; or,

(B) for the enforcement of the provisions encompassed in section 245A(c)(6) of the Act, except as provided in paragraph (b)(23)(iii) of this section.

(iii) If a determination is made by the Service that the alien has, in connection with his or her application, engaged in fraud or willful misrepresentation or concealment of a material fact, knowingly provided a false writing or document in making his or her application, knowingly made a false statement or representation, or engaged in any other activity prohibited by section 245A(c)(6) of the Act, the Service shall refer the matter to the United States Attorney for prosecution of the alien or of any person who created or supplied a false writing or document for use in an application for adjustment of status under this part.

(iv) Information contained in granted legalization files may be used by the Service at a later date to make a decision on an immigrant visa petition (or other status petition) filed by the applicant under section 204(a), or for naturalization applications submitted by the applicant.

(c) *Application for adjustment from temporary to permanent resident status.*—(1) *Application period for permanent residence.* An alien who has resided in the United States for a period of 18 months after the granting of temporary resident status may make

application for permanent resident status during the 12-month period beginning on the day after the requisite 18 months of temporary residence has been completed. Applications for lawful permanent residence will be accepted at Service offices beginning on September 21, 1989.

(2) *The provisions of § 245a.3 of this part.* The provisions of this part shall be applied to aliens adjusting to permanent residence under this part.

Dated: January 18, 1989.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 89-3229 Filed 2-10-89; 8:45 am]

BILLING CODE 4410-10-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 101

Delegation of Authority To Conduct Program Activities in Field Offices; Portfolio Management

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: This final rule revises 13 CFR Part 101, § 101.3-2, Part IV, Section A-2e.(4), to provide a delegation of authority to supervisory loan specialists in the commercial loan servicing center. No delegation exists because creation of the servicing center was just approved in September 1988.

EFFECTIVE DATE: February 13, 1989.

FOR FURTHER INFORMATION CONTACT: Fred Hanus, Office of Portfolio Management, Small Business Administration, 1441 L Street NW., Washington, DC 20416, telephone (202) 653-7479.

SUPPLEMENTARY INFORMATION: Part 101 consists of rules relating to the Agency's organization, management and procedures; therefore, notice of proposed rulemaking, public participation and reviews under Executive Order 12291 or the Regulatory Flexibility Act, 5 U.S.C. 501, *et seq.*, are not required and this amendment is adopted without resort to those procedures. This final rule does not contain recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 13 CFR Part 101

Authority delegations (Government agencies), Administrative practice and procedure, Organization and functions (Government agencies).

PART 101—[AMENDED]

1. The authority citations for 13 CFR Part 101 continues to read as follows:

Authority: Secs. 4 and 5, Pub. L. 85-536, 72 Stat. 384 and 385 (15 U.S.C. 633 and 634, as amended); Sec. 308, Pub. L. 85-699, 72 Stat. 694 (15 U.S.C. 687, as amended); Sec. 5(b)(11), Pub. L. 93-386 and 5 U.S.C. 552.

§ 101.3-2 [Amended]

In 13 CFR 101.3-2, Part IV, Section A-2e.(4) is revised to read as follows:

§ 101.3-2 Delegation of authority to conduct program activities in field offices.

* * * * *

Part IV—Portfolio Management (PM) Program

Section A * * *

2. * * *

e. * * *

(4) Supervisory loan specialist, disaster home loan servicing centers and commercial loan servicing centers.

* * * * *

Date: January 6, 1989.

James Abdnor,

Administrator.

[FR Doc. 89-3322 Filed 2-10-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-ASW-56; Amdt. 39-6131]

Airworthiness Directives; Sikorsky Aircraft Model S-61N and S-61NM Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires periodic inspections for cracks in the main landing gear (large sponson) truss assemblies; a one-time hardness test of the butt-welded lug of sponson truss components to determine if the hardness is within an approved range; and replacement of the components, as necessary on Sikorsky Model S-61N and S-61NM series helicopters. This AD is needed to prevent failure of certain sponson truss tubes which could result in collapse of the landing gear and possible loss of the helicopter.

DATE: *Effective Date:* February 24, 1989.

Compliance: As indicated in the body of the AD.

ADDRESSES: The applicable service bulletin may be obtained from Sikorsky Aircraft, 600 Main Street, Stratford, Connecticut 06601-1381, or may be examined in the Regional Rules Docket, Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, Bldg. 3B, Room 158, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Richard B. Noll, Boston Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7111.

SUPPLEMENTARY INFORMATION: The FAA has determined that Sikorsky Aircraft Model S-61N and S-61NM helicopters equipped with sponson truss tube assemblies need mandatory inspections for possible fatigue cracks and more frequent inspections or replacement of certain truss components which have butt-welded lugs with improper hardness. Failure of a sponson truss assembly due to a fatigue crack or improper hardness of a lug could result in collapse of the landing gear and possible loss of the helicopter.

Since this condition is likely to exist or develop on other helicopters of the same design, an AD is being issued which requires a one-time inspection for proper hardness of components with butt-welded lugs and replacement of certain of those low hardness components before further flight on Sikorsky Model S-61N and S-61NM series helicopters. Those components with hardness values within certain specified ranges must be removed from service not later than June 30, 1989. In addition, an initial and repetitive inspection is required on other truss components for fatigue cracks as prescribed in the AD. FAA approval of the inspection intervals for the truss components described in the AD is based on a fatigue analysis and safety considerations.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days from publication.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications

to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained from the Regional Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983), and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Sikorsky Aircraft: Applies to Model S-61N and S-61NM helicopters certificated in any category. (AD Docket No. 88-ASW-56).

Compliance is required as indicated, unless already accomplished.

To preclude possible fracture of the sponson truss assembly components, accomplish the following:

(a) Within the next 50 hours' time in service after the effective date of this AD, conduct a hardness test of each butt-welded lug of sponson truss tube assemblies, part numbers (P/N) S6125-51212-4, aft lower truss tube assembly—left side; S6125-51212-5, aft lower truss tube assembly—right side; S6125-51214-3, forward upper truss tube assembly—left and right side; and S6125-51214-4, aft upper truss tube assembly—left and right side, as follows:

(1) Remove paint from lugs using a clean cloth dampened with suitable paint remover such as Kelite L-46, Richardson Chemical Company, Dubois R-2633, Dubois Chemical Company, or FAA-approved equivalent.

(2) Rinse lugs with fresh water and wipe dry.

(3) Using a portable calibrated Rockwell hardness tester such as Wilson Model M-51, or FAA-approved equivalent, conduct a hardness test on any exposed area of the lug that is inboard of the edge and away from the weld, using the Rockwell C-scale. Repeat the test three times. Maintain a distance of at least three penetration diameters between tester indentations.

Note.—Removal of the truss component from the helicopter for the hardness test is not required; however, removal is recommended to improve consistency of hardness readings obtained.

(4) If the variation of hardness readings exceeds a three-point spread on the Rockwell C-scale, repeat the test until any three readings have a variation within a three-point spread.

(5) Determine the average of these three readings and mark the average value of three Rockwell C-scale hardness readings on the welded lug to indicate the test has been done. Use a vibro-peen pencil or equivalent FAA-approved marking method.

(6) Dispose of the components as follows:

(i) If the lug average hardness is less than Rockwell C34, replace the component with a serviceable part before further flight.

(ii) If the lug average hardness is in the proper range, Rockwell C39 to C43, the component is serviceable provided the component is inspected for cracks in accordance with the requirements of paragraph (b) of this AD.

(iii) If the lug average hardness is a range of Rockwell C34 to less than C39 or above C43, the part is serviceable provided the component is inspected for cracks as prescribed in paragraphs (b) (1) through (9) of this AD at intervals not to exceed 500 landings and removed from service not later than June 30, 1989.

(7) Repaint cleared areas with primer coating and paint, and reinstall jacking pad if removed for lug inspection.

Note.—Sikorsky Aircraft Alert Service Bulletin No. 61B25-15, Part IIA, pertains to the hardness test required by this AD.

(b) Within the next 50 hours' times in service after the effective date of this AD, and thereafter at intervals not to exceed those landing intervals stated in Table 1, inspect the sponson truss tube assemblies for cracks in the locations noted in the table as follows:

TABLE 1.—INSPECTION SCHEDULE AND AREAS

(Paragraph (b))

Inspection interval, Number of landings	Sponson tube truss assembly P/N	Inspection locations
500	S6125-51212-1, 61250-51233-041	Inboard & outboard tube-to-fitting welds and clevis.
		Two welded manufacturing holes.
	S6125-51212-4, -5, S6125-51214-3, -4, 61250-51233-042, -043, 61250-51235-041, -042.	Inboard & outboard tube-to-fitting welds.
		Two welded manufacturing holes.
	S6125-51213-1, -041	Inboard tube-to-fitting weld.
		Outboard clevis.
		Welded manufacturing hole.
	61250-51234-041	Inboard tube-to-fitting weld.
		Welded manufacturing hole.
2500	S6125-51212-4, -5	Lug-to-fitting weld.
	S6125-51214-3, -4	Lug hole.
	61250-51233-042, -043	Lug hole.
	61250-51235-041, -042	
	61250-51234-041	Clevis and lug hole.

(1) Raise the helicopter using jacks to unload the trusses.

Note.—Jacking is described in Sikorsky Maintenance Manual, SA 4045-80, Section 7-2-0.

(2) Remove the left and right upper and lower truss tube assemblies, and diagonal brace assemblies from the helicopter sponsons.

Note.—Sponson removal is described in Sikorsky Maintenance Manual, SA 4045-80, Section 32-10-1.

(3) Remove paint from lugs, fittings, and welded manufacturing holes indicated in

Table 1 using a clean cloth dampened with suitable paint remover (ref. paragraph (a)(1)), or FAA-approved equivalent. Rinse with fresh water and dry.

(4) Inspect the cleaned areas identified in Table 1, using a fluorescent penetrant or equivalent inspection method.

(5) If cracks are found, replace the component with a serviceable part prior to further flight.

(6) If no cracks are found, repaint cleared areas with suitable primer coating and paint.

(7) Reassemble and install the sponson.

(8) Seal pockets, joints, rivets, bolts, nuts, and inspection holes of all tube and brace assemblies with brush-type sealing compound such as PR-1440, Class A, Products Research and Chemical Corporation, or Pro-Seal 890, Class A, Essex Chemical Co., or FAA-approved equivalent, after reassembly of landing gear.

(9) Remove jacks.

Note.—Sikorsky Alert Service Bulletin No. 61B25-15, Part III A (3), (4), (6), (7), (8), and (9) pertains to the inspections required by this AD.

(c) An alternate method of compliance or adjustment of the compliance schedule which provides an equivalent level of safety may be used if approved by the Manager, Boston Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7118. Substantiating data compiled by an owner or operator must be submitted through the cognizant FAA aviation safety inspector to support and recommend the request for compliance time adjustment.

This amendment becomes effective February 24, 1989.

Issued in Fort Worth, Texas, on January 20, 1989.

L. B. Andriesen,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 89-3282 Filed 2-10-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-ANE-39; Amdt. 39-6109]

Airworthiness Directives; Facet Aerospace Products, Co. (Marvel Schebler) Carburetors

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to Facet Aerospace Products, Co. (hereinafter called "Facet") carburetor models MA-4-5, MA-5, and MA-6AA manufactured after April 1984. This AD requires replacement of the air metering stop pin, P/N 62-226, within the next 200 hours time in service, or when the carburetor is removed from the engine, whichever occurs first, in accordance with Facet Service Bulletin (SB) A1-88, dated August 1988. Also, a typographical error involving a serial number, which appeared in the NPRM, has been corrected.

This AD is needed to prevent a potential risk to the safety of flight, due to the possibility of the engine throttle becoming jammed inside the carburetor if the air metering stop pin becomes loose.

DATE: *Effective*—March 8, 1989.

Compliance—As required in the body of the AD.

Incorporation by Reference—Approved by the Director of the Federal Register as of March 8, 1989.

ADDRESSES: The applicable Facet SB may be obtained from Facet Aerospace Products, Co., 1048 Industrial Park Road, Bristol Virginia 24201.

A copy of the SB is contained in Rules Docket No. 88-ANE-39, Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Pat Perrotta, Propulsion Branch, ANE-174, New York Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-7421.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to adopt a new AD requiring replacement of the air metering stop pin, P/N 62-226, within the next 200 hours time in service, or when the carburetor is removed from the engine, whichever occurs first, in accordance with Facet Service Bulletin (SB) A1-88, dated August 1988, was published in the **Federal Register** on November 4, 1988, (53 FR 44612).

The proposal was prompted by two cases of the air metering stop pin coming loose, and in one case preventing the throttle from being advanced. A total of 189 available carburetors were inspected by Facet and twenty-three (23) units were found to be nonconforming; i.e., the retention fit of the pin to carburetor housing was below design requirements. This manufacturing deviation could be present in any of the subject model carburetors manufactured after April 1984, and these carburetors have been identified by specific serial numbers. Also, in the proposal the following typographical error was noticed and is hereby corrected: Serial Number BD-5-1000 should be BD-5-10000.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received and, consequently, except for the above correction, the proposal is adopted without change.

The FAA has determined that this condition of a loose air metering stop pin is likely to exist or develop on other Facet carburetors, Models MA-4-5, MA-5, and MA-6AA. Therefore, this AD will require replacement of the pin, P/N 62-226, with another pin, P/N 62-F1, in accordance with Facet SB A1-88, within the next 200 hours time in service, or when the carburetor is removed from the engine, whichever occurs first.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

The FAA has determined that this regulation involves approximately 2,050 carburetors that must be modified at an approximate total cost of $400,000. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

Facet Aerospace Products, Co. (Marvel Schebler):

Applies to Facet Models MA-4-5, MA-5, and MA-6AA carburetors manufactured after April 1984, having Part Numbers (P/N) and Serial Numbers (S/N) as listed herein:

Carburetors	Serial Numbers
Model: MA-4-5:	
P/N 10-3878	G-54-11129 thru G-54-11136, G-55-11500 thru G-55-12054.
P/N 10-4164-1	K-49-9001 thru K-49-9023.
P/N 10-4404	R-48 11501 thru R-48-11721.
P/N 10-4404-1	R-45-11006 and R-45-11007, AO-45-11000 thru AO-45-11101.
P/N 10-5054	BZ-16-3000 thru BZ-22-3110.
P/N 10-5193	C-5-3500 thru C-5-3967.
P/N 10-4893	BD-5-10000.
P/N 10-4893-1	CL-4-3700 thru CL-7-3776.
P/N 10-5284	DV-0-500 thru DV-0-505, DV-1-1000 thru DV-1-1392
Model: MA-5:	
P/N 10-4865	BC-33-5001 thru BC-33-5005.
Model: MA-6AA:	
P/N 10-4218-1	AK-37-3002.
P/N 10-4401-1	AC-38 3278 thru AC-38-3296, AC-40-4001 thru AC-40-4021.
P/N 10-4438-1	AH-29-6000 thru AH-29-6009.

The carburetors listed above are used on, but not limited to:

Textron Lycoming Models O-360, O-540, VO-540, and TVO-435 series engines.

Teledyne Continental Model O-470 series engines.

Pezetel (Franklin) Model 6A-350 series engines.

Compliance is required within the next 200 hours time in service, or when the carburetor is removed from the engine, whichever occurs first, unless already accomplished.

To prevent possible jamming of the carburetor throttle, accomplish the following:

(a) Check all Facet (Marvel Schebler) Model MA-4-5, MA-5, and MA-6AA carburetors manufactured after April 1984 to determine the carburetor part number and serial number. These numbers can be found on the carburetor nameplate which is located on the throttle body.

Note.—When checking the carburetor serial number for comparison to the above listing, disregard the center number, as described in the service bulletin, since this is used for Facet internal blueprint control only.

(b) If the part number and serial number are listed above, remove the carburetor, disassemble it, and replace the air metering stop pin, P/N 62-226, with the air metering stop pin, P/N 62 F1, in accordance with the instructions given in Facet Service Bulletin A1-88, dated August 1988.

(c) Stamp or etch a "F" on the lower portion of the carburetor nameplate and make an engine logbook entry to indicate compliance. **Note.**—If the serial number is not one of those listed above, corrective action is not required.

(d) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(e) Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, New York Aircraft Certification Office, ANE-170, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581.

(f) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, the Manager, New York Aircraft Certification Office, ANE-170, may adjust the compliance time specified in this AD.

Facet Service Bulletin A1-88, dated August 1988, identified and described in this document, is incorporated herein and made a part hereof pursuant to 5 U.S.C. 551(a)(1). All persons affected by this directive, who have not already received this document from the manufacturer may obtain copies upon request to Facet Aerospace Products, Co., 1048 Industrial Park Road, Bristol, Virginia 24201. This document may also be examined at the Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, Room 311, Docket No. 88-ANE-39, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

This amendment becomes effective on March 8, 1989.

Issued in Burlington, Massachusetts, on December 28, 1988.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 89-3283 Filed 2-10-89; 8:45 am]

BILLING CODE 4710-13-M

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14 CFR Part 97

[Docket No. 25792; Amdt. No. 1393]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by

BEST COPY AVAILABLE

reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC, on February 3, 1989.

Robert L. Goodrich,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 g.m.t. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97–449, January 12, 1983; and 14 CFR 11.49(b)(2)).

§ 97.23 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective April 6, 1989*

Enterprise, AL—Enterprise Muni, VOR RWY 5, Amdt. 2
Willimantic, CT—Windham, VOR–A, Amdt. 5
Columbus, GA—Columbus Metropolitan, VOR–A, Amdt. 22
Columbus, GA—Columbus Metropolitan, LOC BC RWY 23, Amdt. 13
Columbus, GA—Columbus Metropolitan, NDB RWY 5, Amdt. 27
Columbus, GA—Columbus Metropolitan, ILS RWY 5, Amdt. 22
St. Jacob, IL—Shafer Metro East, VOR–A, Amdt. 3
Abilene, KS—Abilene Muni, VOR/DME–A, Amdt. 1
Abilene, KS—Abilene Muni, RNAV RWY 35, Amdt. 1
Belleville, KS—Belleville Muni, NDB RWY 18, Amdt. 3
Belleville, KS—Belleville Muni, NDB RWY 36 Amdt. 3
Manhattan, KS—Manhattan Muni, VOR RWY 3, Amdt. 15
Manhattan, KS—Manhattan Muni, VOR–F, Amdt. 3
Manhattan, KS—Manhattan Muni, VOR–H, Amdt. 12
Manhattan, KS—Manhattan Muni, NDB–A, Amdt. 17
Manhattan, KS—Manhattan Muni, ILS RWY 3, Amdt. 4
Minneapolis, KS—Minneapolis City County, VOR/DME RWY 34, Orig
Minneapolis, KS—Minneapolis City County, VOR/DME RWY 34, Orig, CANCELLED
Salina, KS—Salina Muni, VOR RWY 17, Orig
Salina, KS—Salina Muni, VOR RWY 17, Amdt. 16, CANCELLED
Salina, KS—Salina Muni, NDB RWY 35, Amdt. 15
Salina, KS—Salina Muni, ILS RWY 35, Amdt. 18
Salina, KS—Salina Muni, RNAV RWY 17, Amdt. 9, CANCELLED
Salisbury, MD—Salisbury-Wicomico County Regional, VOR RWY 14 Amdt. 1
Reno, NV—Reno Cannon Intl, VOR–D, Amdt. 8
Syracuse, NY—Syracuse-Hancock Intl., ILS RWY 10, Amdt. 7
Maxton, NC—Laurinburg-Maxton, SDF RWY 5, Amdt. 4, CANCELLED
Maxton, NC—Laurinburg-Maxton, NDB RWY 5, Orig
Maxton, NC—Laurinburg-Maxton, NDB RWY 5, Amdt. 6, CANCELLED
Maxton, NC—Laurinburg-Maxton, ILS RWY 5, Orig
Newberry, SC—Newberry Muni, NDB RWY 22, Amdt. 3
Hondo, TX—Hondo Muni, NDB RWY 35R, Amdt. 2
Wheeler, TX—Wheeler Muni, VOR/DME–A, Orig

** * * Effective March 9, 1989*

Aspen, CO—Aspen-Pitkin Co/Sardy Field, VOR/DME–C, Amdt. 3
Denver, CO—Stapleton Intl, LDA/DME RWY 35R Amdt. 2, CANCELLED
Tallahassee, FL—Tallahassee Muni, VOR RWY 18, Amdt. 9
Tallahassee, FL—Tallahassee Muni, ILS RWY 27, Amdt. 3
Auburn/Lewiston, ME—Auburn/Lewiston Muni, NDB RWY 4, Amdt. 7
Auburn/Lewiston, ME—Auburn/Lewiston Muni, ILS RWY 4, Amdt. 6
Detroit/Grosse Ile, MI—Grosse Ile Muni, VOR–A, Amdt. 6
Detroit/Grosse Ile, MI—Grosse Ile Muni, NDB RWY 4, Amdt. 1
Great Falls, MT—Great Falls Intl, NDB RWY 34, Amdt. 16
Albany, NY—Albany County, VOR RWY 1, Amdt. 18
Albany, NY—Albany County, VOR/DME RWY 1, Amdt. 10
Albany, NY—Albany County, VOR RWY 19, Amdt. 19
Albany, NY—Albany County, VOR RWY 28, Amdt. 6

Albany, NY—Albany County, ILS RWY 1, Amdt. 7
Albany, NY—Albany County, ILS RWY 19, Amdt. 19
Albany, NY—Albany County, RADAR–1, Amdt. 15
Watertown, NY—Watertown New York Intl, ILS RWY 7, Amdt. 6
Goldsboro, NC—Goldsboro-Wayne Muni, VOR–A, Amdt. 4
Goldsboro, NC—Goldsboro-Wayne Muni, VOR–B, Amdt. 2, CANCELLED

** * * Effective February 2, 1989*

Ontario, CA—Ontario Intl, ILS RWY 8L, Amdt. 6

** * * Effective February 1, 1989*

Idaho Falls, ID—Fanning Field, LOC BC RWY 2, Amdt. 4
Idaho Falls, ID—Fanning Field, NDB RWY 20, Amdt. 9
Idaho Falls, ID—Fanning Field, ILS RWY 20, Amdt. 8

** * * Effective January 31, 1989*

St. Louis MO—Lambert/St. Louis Intl, ILS RWY 12L, Amdt. 2

** * * Effective January 19, 1989*

Enid, OK—Enid Woodring Muni, ILS RWY 35, Amdt. 1
Wilkes-Barre/Scranton, PA—Wilkes-Barre/Scranton Intl, NDB–A, Amdt. 16
Wilkes Barre/Scranton, PA—Wilkes-Barre/Scranton Intl, ILS RWY 4, Amdt. 33

** * * Effective January 13, 1989*

Jefferson City, MO—Jefferson City Meml, ILS RWY 30, Amdt. 2

[FR Doc. 89–3284 Filed 2–10–89; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rules for Using Energy Cost and Consumption Information Used in Labeling and Advertising of Consumer Appliances Under the Energy Policy and Conservation Act; Ranges of Comparability for Dishwashers

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission announces that the present ranges of comparability for dishwashers will remain in effect until new ranges are published.

Under the rule, each required label on a covered appliance must show a range, or scale, indicating the range of energy costs or efficiencies for all models of a size or capacity comparable to the labeled model. These ranges show the highest and lowest energy costs or efficiencies for the various size or capacity groupings of the appliances covered by the rule. The Commission publishes the ranges annually in the **Federal Register** if the upper or lower limits of the range change by 15% or more from the previously published range. If the Commission does not publish a revised range, it must publish a notice that the prior range will be applicable until new ranges are published. The ranges of estimated annual costs of operation for dishwashers have not changed by as much as 15% since the last publication. Therefore, the ranges published on November 17, 1983, remain in effect until new ranges are published.

EFFECTIVE DATE: February 10, 1989.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, 202–326–3035, or Ruth Sacks, Investigator, 202–326–3033, Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Section 324 of the Energy Policy and Conservation Act of 1975 (EPCA) [1] requires the Federal Trade Commission to consider labeling rules for the disclosure of estimated annual energy cost or alternative energy consumption information for at least thirteen categories of appliances. Dishwashers are included as one of the categories. Before these labeling requirements may be prescribed, the statute requires the Department of Energy ("DOE") to develop test procedures that measure how much energy the appliances use. In addition, DOE is required to determine the representative average cost a consumer pays for the different types of energy available.

On November 19, 1979, the Commission issued a final rule [2] covering seven of the thirteen appliance categories, including dishwashers. The rule requires that energy costs and related information be disclosed on labels and in retail sales catalogs for all dishwashers presently manufactured. Certain point-of-sale promotional materials must disclose the availability of energy usage information. If a dishwasher is advertised in a catalog from which it may be purchased by cash, charge account or credit terms, then on each page of the catalog that lists the product shall be included the range of estimated annual energy costs for the product. The required disclosures and all claims concerning energy consumption made in writing or in broadcast advertisements must be based on the results of the DOE test procedures.

Section 305.8(b) of the rule requires manufacturers, after filing an initial report, to report annually by specified dates for each product type.[3] Because the costs for the various types of energy change yearly, and because manufacturers regularly add new models to their lines, improve existing models and drop others, the data base from which the ranges of comparability are calculated is constantly changing. To keep the required information in line with these changes, the Commission is empowered, under § 305.10 of the rule, to publish new ranges (but not more often than annually) if an analysis of the new data indicates that the upper or lower limits of the ranges have changed by more than 15%. Otherwise, the Commission must publish a statement that the prior range or ranges remain in effect for the next year.

The annual reports for dishwashers have been received and analyzed and it has been determined that neither the upper nor lower limits of the ranges for this product category have changed by 15% or more since the last publication of the ranges on November 17, 1983.[4]

In consideration of the foregoing, the present ranges for dishwashers will remain in effect until the Commission publishes new ranges for these products.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Authority: Sec. 324 of the Energy Policy and Conservation Act (Pub. L. 94–163) (1975), as amended by the National Energy Conservation Policy Act (Pub. L. 95–619) (1978), the National Appliance Energy Conservation Act (Pub. L. 100–12) (1987), and the National Appliance Energy Conservation Amendments of 1988 (Pub. L. 100–357) (1988), 42 U.S.C. 6294; sec. 553 of the Administrative Procedure Act, 5 U.S.C. 553.

Donald S. Clark,

Secretary.

[FR Doc. 89–3227 Filed 2–10–89; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Reimportation of Drugs

AGENCY: Food and Drug Administration.

ACTION: Final rule.

[1] Pub. L. 94–163, 89 Stat. 871 (Dec. 22, 1975).
[2] 44 FR 66466, 16 CFR 305.
[3] Reports for dishwashers are due by June 1.
[4] 48 FR 52291.

SUMMARY: As a result of the enactment of the Prescription Drug Marketing Act of 1987, the Food and Drug Administration (FDA) is amending its regulations for delegations of authority by redelegating an additional authority regarding reimportation of drugs from the Commissioner of Food and Drugs to certain agency officials.

EFFECTIVE DATE: February 13, 1989.

FOR FURTHER INFORMATION CONTACT: Melissa M. Moncavage, Office of Management and Operations (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4976.

SUPPLEMENTARY INFORMATION: The Prescription Drug Marketing Act of 1987 (Pub. L. 100–293, 102 Stat. 95) (the new law) which amends the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 321 *et seq.*) was enacted on April 22, 1988. Among other provisions, the new law bans the reimportation of drugs produced in the United States, unless reimported by the manufacturer or unless there is authorization to reimport the drug for use in emergency medical care.

FDA is revising § 5.45 *Imports and Exports* (21 CFR 5.45) based on the new law. The new law redesignates subsection (d) of section 801 of the FFDCA (21 U.S.C. 381) as subsection (e). To conform § 5.45, FDA is amending paragraph (e) of § 5.45 by revising the reference from section 801(d) of the FFDCA to section 801(e).

The new law adds a new subsection (d) to section 801 of the FFDCA that prohibits reimportation of drugs manufactured in the United States that are exported, except as specified in section 801(d) of the FFDCA. FDA is adding a new paragraph (f) to § 5.45 that redelegates a new authority to certain officials in the Center for Biologics Evaluation and Research and the Center for Drug Evaluation and Research to authorize reimportation of drugs under section 801(d)(2) of the FFDCA for use in emergency medical care.

Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs, Part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR Part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552; 7 U.S.C. 2217; 15 U.S.C. 638, 1451 *et seq.*, 3701 *et seq.*; 21 U.S.C. 41 *et seq.*, 61–63, 141 *et seq.*, 301–392, 467f(b), 679(b), 801 *et seq.*, 823(f), 1031 *et seq.*; 35 U.S.C. 156; 42 U.S.C. 219, 241, 242(a), 242a, 242l, 242n, 243, 262, 263, 263b through 263m, 264, 265, 300u *et seq.*, 1395y and 1396y note, 3246b(b)(3), 4831(a), 10007, and 10008; Federal Caustic Poison Act (44 Stat. 1406); Federal Advisory Committee Act (Pub. L. 92–463); E.O. 11490, 11921, 12591.

2. Section 5.45 is amended by revising the introductory text in paragraph (e) and by adding new paragraph (f) to read as follows:

§ 5.45 Imports and exports.

* * * * *

(e) The following officials are authorized to perform all the functions of the Commissioner of Food and Drugs pertaining to exportation of medical devices under section 801(e) of the FFDCA:

* * * * *

(f) The following officials are authorized to perform the functions of the Commissioner of Food and Drugs, for drugs under their jurisdiction, pertaining to authorizing the reimportation of prescription drugs under section 801(d)(2) of the FFDCA for emergency medical care:

(1) The Director, Center for Biologics Evaluation and Research (CBER) and the Director, Office of Compliance, CBER.

(2) The Director, Center for Drug Evaluation and Research (CDER) and the Director, Office of Compliance, CDER.

Dated: February 6, 1989.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–3250 Filed 2–10–89; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Change of Sponsor

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the change of sponsor for several new animal drug applications (NADA's) for clopidol containing products from The Dow Chemical Co., to Rhone-Poulenc, Inc.

EFFECTIVE DATE: February 13, 1989.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1415.

SUPPLEMENTARY INFORMATION: Rhone-Poulenc, Inc., 125 Black Horse Lane, Monmouth, NJ 08852, has acquired several NADA's for clopidol containing products from the Dow Chemical Co.

Dow Chemical advised FDA of the sponsor change. Those NADA's affected are:

NADA	Ingredient
34–388	Clopidol.
40–254	Clopidol + Roxarsone.
41–541	Clopidol + Roxarsone + Bacitracin MD.
44–016	Clopidol + Roxarsone + Bacitracin Zinc.
46–209	Clopidol + Chlortetracycline.
49–934	Clopidol + Bacitracin Zinc.
99–150	Clopidol + Bacitracin MD.

The change of sponsor does not involve any changes in manufacturing facilities, equipment, procedures, or production personnel. The agency is amending the regulations in 21 CFR 558.175(a) to reflect the change of sponsor.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

§ 558.175 [Amended]

2. Section 558.175 *Clopidol* is amended in paragraphs (a)(1) and (a)(2) by removing the number "025700" and replacing it with "011526".

Dated: February 1, 1989.

Bob G. Griffith,

Acting Associate Director, New Animal Drug Evaluation.

[FR Doc. 89–3246 Filed 2–10–89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–89–05]

Regulations for Marine Event; Norfolk Harbor, Elizabeth River, Norfolk and Portsmouth, VA, 1989 Mardi Gras Festival

AGENCY: Coast Guard, DOT.

ACTION: Notice of Implementation of 33 CFR 100.501.

SUMMARY: This notice implements 33 CFR 100.501 for the 1989 Mardi Gras Festival. The event will be held on the Elizabeth River, adjacent to "Waterside", between the Norfolk and Portsmouth downtown areas. As part of the festival there will be a fireworks display launched from Loop 2, Town Point Park, from 7:00 p.m. to 7:30 p.m. on February 18, 1989. The regulations in 33 CFR 100.501 are needed to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and the expected congestion at the time of the event. The regulations restrict general navigation in the area for the safety of life on navigable waters during the event.

EFFECTIVE DATE: The regulations in 33 CFR 100.501 are effective from 6:30 p.m. to 8:00 p.m. on February 18, 1989.

FOR FURTHER INFORMATION CONTACT: B. J. Stephenson, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204.

SUPPLEMENTARY INFORMATION: *Drafting Information:* The drafters of this notice are Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Lieutenant Commander Robin K. Kutz, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulation: The Waterside Merchants Association submitted an application on January 24, 1989 to hold the fireworks display on February 18, 1989, in the "Waterside" area of the Elizabeth River between downtown Norfolk, and Portsmouth, Virginia. Since spectator vessels are expected to be in the area to watch the fireworks display, the regulations in 33 CFR 100.501 are being implemented for the event. The fireworks will be launched from within the regulated area The waterway will be closed during the fireworks display. Since the waterway will not be closed an extended period, commercial traffic should not be severely disrupted.

Date: February 1, 1989.

A.D. Breed,

Commander, Fifth C.G. District.

[FR Doc. 89–3338 Filed 2–10–89; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 207

Navigation Regulations; Pearl River Management Authority; Vicksburg District, MS

AGENCY: Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: This revision reflects a geographic reorganization within the Corps of Engineers, transferring management authority for the Pearl River and its tributaries, Mississippi and Louisiana, from the Mobile district to the Vicksburg district, as implemented on October 1, 1981. Navigation regulations for these waterways remain unchanged.

EFFECTIVE DATE: February 13, 1989.

FOR FURTHER INFORMATION CONTACT: Rick Kowalewski, 202–272–0281.

SUPPLEMENTARY INFORMATION: This rule relates to internal agency organization. Therefore, the provisions of E.O. 12291 do not apply and, pursuant to 5 U.S.C. 553, this rule may become effective less than 30 days after publication in the Federal Register.

List of Subjects in 33 CFR Part 207

Navigation (water), Navigable waters, Organization and functions (Government agencies), Waterways.

For the reasons set out in the preamble, Title 33, Chapter II of the Code of Federal Regulations, is amended by amending Part 207 as follows:

PART 207—NAVIGATION REGULATIONS

1. The authority citation for Part 207 continues to read as follows:

Authority: Secs. 4, 7, 28 Stat. 362, 40 Stat. 266 (33 U.S.C. 1).

2. Section 207.180 is amended by revising paragraph (b)(1), redesignating paragraphs (b)(2) and (b)(3) as paragraphs (b)(3) and (b)(4) respectively, and adding paragraph (b)(2), to read as follows:

§ 207.180 All waterways tributary to the Gulf of Mexico (except the Mississippi River, its tributaries, South and Southwest Passes and the Atchafalaya River) from St. Marks, Fla. to the Rio Grande; use, administration, and navigation.

* * * * *

(b) * * *

(1) *U.S. District Engineer, Mobile, Ala.* The St. Marks River, Fla., to the Pearl River, Mississippi and Louisiana; and the Gulf Intracoastal Waterway from Apalachee Bay, Fla., to mile 36.4 east of Harvey Lock.

(2) *U.S. District Engineer, Vicksburg, Miss.* The Pearl River and its tributaries, Mississippi and Louisiana.

* * * * *

Dated: January 13, 1989.

Robert W. Page,

Assistant Secretary of the Army (Civil Works).

[FR Doc. 89–3242 Filed 2–10–89; 8:45 am]

BILLING CODE 3710-92-M

Corps of Engineers, Department of the Army,

33 CFR Part 334

Danger Zone, San Clemente Island, Pacific Ocean, CA

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Interim final rule.

SUMMARY: This interim final rule invites comments on the Corps of Engineers proposal to establish a danger zone in the waters of the Pacific Ocean off the northwest tip of San Clemente Island. The purpose of the danger zone is to protect persons, vessels and property from hazards associated with the establishment of a Naval small arms range. Entry into the danger zone will be prohibited unless authorized by the Commander, Naval Base, San Diego, California and his/her representative.

DATES: Interim final rule effective February 13, 1989. Written comments must be received on or before March 15, 1989.

ADDRESS: HQDA, CECW–OR, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Harlacher at (213) 894–5606 or Mr. Ralph Eppard at (202) 272–1783.

SUPPLEMENTARY INFORMATION: The Commander, Naval Facilities Engineering Command (NFEC), has requested the Corps of Engineers establish a danger zone in the waters off the northwest tip of San Clemente Island, California. The U.S. Navy will be constructing a small arms range facility

at the northwest corner of the island. The water area is to protect persons, vessels and property from the possibility of an errant round which could strike the water area. It is not intended to use the area encompassed by the danger zone as a range impact area.

In March 1988, the Commander NFEC requested the U.S. Coast Guard establish a permanent safety zone in the waters off the northwest tip of San Clemente Island to protect boat traffic and mariners from dangers associated with the proposed small arms range. The Coast Guard published a Notice of Proposed Rulemaking in the **Federal Register** on 26 July 1988, (53 FR 28019–28020) soliciting comments on the proposed safety zone. The safety zone boundaries and regulations which prohibited entry into the area are similar to the interim final rules published herein. The coordinates have been modified slightly to remove land areas from the danger zone. After close of the comment period (9 September 1988), the Commander, Marine Safety Office, San Diego, notified the Commander, NFEC, that (1) no comments were received in response to the NPRM and, (2) that due to resource limitations and the potential for confusing the public with both the Coast Guard and Navy enforcing the regulations, it would be in the best interest of the public and the U.S. Navy for the area to be established as a restricted area or danger zone by the Corps of Engineers. The Corps of Engineers concurs with the recommendations of the Coast Guard.

Although the small arms range does not yet exist, the Navy urgently needs approval of the danger zone prior to soliciting bids for the construction of the range facilities and expending public funds. In view of the administrative record developed by the U.S. Coast Guard in the publication of the NPRM described above, we have determined it to be in the best interest of the public to establish this danger zone as proposed by the Navy without another NPRM and further delay. We will, however, consider any comments or objections submitted and make any changes to the regulations we determine to be appropriate.

Economic Assessment and Certification

This interim final rule is issued with respect to a military function of the Defense Department and the provisions of E.O. 12291 do not apply.

I hereby certify that this interim final regulation will have no significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 334

Navigation (water), Transportation, Danger zones.

In consideration of the above, the Corps of Engineers is amending Part 334 of Title 33 to read as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for Part 334 continues to read as follows:

Authority: 40 Stat. 266; (33 U.S.C. 1) and 40 Stat. 892; (33 U.S.C. 3).

2. Section 334.961 is added as follows:

§ 334.961 Pacific Ocean, San Clemente Island, California; naval danger zone off northwest shore.

(a) *The danger zone:* The waters of the Pacific Ocean adjacent to San Clemente Island, California, bounded by the following coordinates and San Clemente Island.

Point A—33°01'38" N	118°36'18" W
Point B—33°01'11" N	118°37'25" W
Point C—33°00'00" N	118°36'51" W
Point D—33°00'05" N	118°36'53" W
Point E—33°02'55" N	118°39'05" W
Point F—33°04'25" N	118°37'41" W
Point G—33°02'04" N	118°35'53" W

(b) *The regulations.* (1) No vessel or other craft, except vessels of the U.S. Government or vessels duly authorized by the enforcing agency shall enter this area.

(2) The regulations in this section shall be enforced by the Commander, Naval Base, San Diego, California, and such agencies as he/she shall designate.

Date: January 29,1989.

Approved:

Patrick J. Kelly,

Brigadier General, USA, Director of Civil Works.

[FR Doc. 89–3241 Filed 2–10–89; 8:45 am]

BILLING CODE 3710-92-M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 10

[Docket No. 80340–8188]

Practice Before the Patent and Trademark Office

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule; correction.

SUMMARY: October 4, 1988, final rules amending regulations regarding the representation of others before the Patent and Trademark Office were issued. (53 CFR 38948, Oct. 4, 1988.) This notice makes a technical correction to § 10.101(b) to reflect that by reason of the amended regulations, §§ 10.10(c) and 10.10(d) currently address practice of Government employees before the Patent and Trademark Office in patent cases.

EFFECTIVE DATE: February 13, 1989.

FOR FURTHER INFORMATION CONTACT: Cameron Weiffenbach by telephone at (703) 557–2012 or by mail marked to his attention and addressed to Box OED, Commissioner of Patents and Trademarks, Washington, DC 20231.

SUPPLEMENTARY INFORMATION:

List of Subjects in 37 CFR Part 10

Administrative practice and procedure.

PART 10—REPRESENTATION OF OTHERS BEFORE THE PATENT AND TRADEMARK OFFICE

1. The authority citation for 37 CFR Part 10 continues to read as follows:

Authority: 5 U.S.C. 500; 15 U.S.C. 1123; 35 U.S.C. 6, 31, 32, 41.

§ 10.101 [Amended]

2. Section 10.101(b) [Amended].

The reference in § 10.101(b) to "§ 10.6(d)" is revised to read "§§ 10.10(c) and 10.10(d)."

Date: February 2, 1989.

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 89–3215 Filed 2–10–89; 8:45 am]

BILLING CODE 3510-16-M

VETERANS ADMINISTRATION

38 CFR Part 1

Disinterments From National Cemeteries

AGENCY: Veterans Administration.

ACTION: Final rule.

SUMMARY: The Veterans Administration (VA) regulations at 38 CFR 1.621 previously provided that disinterments at national cemeteries would be permitted only if certain requirements were met including the obtaining of written authorization of the Chief Memorial Affairs Director. This document amends the regulations to delete the reference to the Chief Memorial Affairs Director and instead to provide that the prior written authorization must be obtained either from the National Cemetery Area Office Director or the Cemetery Director responsible for the cemetery involved. This will shorten the time periods for determinations concerning disinterments without lessening Agency effectiveness.

EFFECTIVE DATE: March 15, 1989.

FOR FURTHER INFORMATION CONTACT: Bertus Douma, Program Analyst, Department of Memorial Affairs, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420 (202) 275–0673.

SUPPLEMENTARY INFORMATION: The VA has determined that under 38 CFR 1.12(a) prior publication for notice and public comment is unnecessary since this final regulatory amendment is a matter relating to Agency management or personnel and is a rule of Agency organization. Accordingly, the amendment is being published as a final regulatory amendment.

This final regulatory amendment is considered non-major under the criteria of Executive Order 12291, Federal Regulation. It will not have an annual effect on the economy of $100 million or more; will result in no significant increase in costs or prices for consumers, individuals, industries, Federal, State or local government agencies, or geographic regions. It will have no adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator certifies that this final regulatory amendment will not have a significant impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601 through 612. This certification can be made because this regulation affects only the manner in which the VA authorizes disinterments.

There is no Catalog of Federal Domestic Assistance program number for this amendment.

List of Subjects in 38 CFR Part 1

Administrative practice and procedure, Cemeteries, Employment, Government employees, Government property, Freedom of Information Act, Privacy, Veterans.

Approved: February 7, 1989.

Thomas E. Harvey,

Acting Administrator.

PART 1—[AMENDED]

38 CFR Part 1, *General,* is amended by revising paragraph (a) of § 1.621 and adding a new authority citation to read as follows:

§ 1.621 Disinterment from national cemeteries.

(a) Interments of eligible decedents in national cemeteries are considered permanent and final. Disinterment will be permitted only for cogent reasons and with the prior written authorization of the National Cemetery Area Office Director or Cemetery Director responsible for the cemetery involved. Disinterment from a national cemetery will be approved only when all living immediate family members of the decedent, to include the person who initiated the interment (whether or not he or she is a member of the immediate family), give their written consent, or when a court order or State instrumentality of competent jurisdiction directs the disinterment. "Immediate family members" are defined as surviving spouse, if not remarried, all adult children of the decedent, appointed guardian(s) of minor children, the appointed guardian of the surviving unremarried spouse or of the adult child(ren) of the decedent. When the person who initiated the interment is the remarried spouse, his or her written consent will not be required. In the absence of a surviving unremarried spouse and children, the decedent's parents will be considered "immediate family members."

(Authority: 38 U.S.C. 210(c); 1004)

* * * * *

[FR Doc. 89–3360 Filed 2–10–89; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–3514–2]

Presque Isle Superfund Site; National Priorities List Deletion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of the deletion of a site from the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of a site from the National Priorities List (NPL). The NPL is Appendix B to the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).

EPA and the State of Pennsylvania have determined that all appropriate Fund-financed responses under CERCLA have been implemented and that no further cleanup by responsible parties is appropriate. Moreover, EPA and the State have determined that remedial actions conducted at the site have been protective of public health, welfare, and the environment.

EFFECTIVE DATE: February 13, 1989.

FOR FURTHER INFORMATION CONTACT: Stephen R. Wassersug, Director, Hazardous Waste Management Division (3HW00), Region III, Environmental Protection Agency, 841 Chestnut Building, Philadelphia, PA 19107, Phone: (215) 597–9800.

SUPPLEMENTARY INFORMATION: The EPA identifies sites that appear to present a significant risk to public health, welfare or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund) financed remedial actions. Any site deleted from the NPL remains eligible for Fund financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.66(c)(8) of the NCP states that fund-financed actions may be taken at sites deleted from the NPL.

The site EPA deletes from the NPL is: Presque Isle, Erie, Pennsylvania.

An explanation of the criteria for deleting sites from the NPL was presented in Section II of the July 27, 1988 Notice of Intent to Delete (50 FR 53448). A description of this site and how it met the criteria for deletion was presented in Section IV of that notice.

The closing date for comments on the Notice of Intent to Delete was August 30, 1988. No comments were received.

List of Subjects in 40 CFR Part 300

Chemicals, Hazardous substances, Hazardous waste, Superfund.

Date: December 31, 1988.

Stanley L. Laskowski,

Acting Regional Administrator.

PART 300—[AMENDED]

1. The authority citation for Part 300 continues to read as follows.

Authority: Section 105, Pub. L. 96–510, 94 Stat. 2764, 42 U.S.C. 9605 and sec. 311(c)(2), Pub. L. 92–500 as amended, 86 Stat. 865, 33 U.S.C. 1321(c)(2); E.O. 12316, 46 FR 42237; E.O. 11735, 38 FR 21243.

Appendix B—[Amended]

2. The NPL in 40 CFR Part 300, Appendix B is amended as follows. In Group 8 remove the following entry and

move up the other entries accordingly: Presque Isle, Erie, Pennsylvania.

[FR Doc. 89-2534 Filed 2-10-89; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6824]

List of Communities Eligible for the Sale of Flood Insurance; Iowa et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the fourth column of the table.

ADDRESS: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 457, Lanham, Maryland 20706, Phone: (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a signifcant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of eligible communities.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
Iowa: Minden, city of, Pottawattamie County	190781	Dec. 7, 1988, emerg.; Dec. 7, 1988, reg.	June, 1, 1982.
New York: Seward, Town of, Schoharie County	361199	Sept. 26, 1975, emerg.; Sept. 1, 1988, reg.; Sept. 1, 1988, susp.; Dec. 1, 1988, rein.	Sept. 1, 1988.
Florida: Mary Esther, city of, Okaloosa County	120337	July 1, 1975, emerg.; July 3, 1985, reg.; Oct. 16, 1988, susp., Dec. 2, 1988, rein.	July 3, 1985.
Indiana: Clinton County, unincorporated areas	180029	Feb. 13, 1976, emerg.; Sept. 1, 1988, reg.; Sept. 1, 1988, susp.; Dec. 7, 1988, rein.	Sept. 1, 1988.
Tennessee: Red Bank, city of, Hamilton County	470076	Nov. 7, 1973, emerg.; Mar. 15, 1979, reg.; Mar. 15, 1979, susp., Dec. 7, 1988, rein.	Mar. 15, 1979.
Florida: Wakulla County unincorporated areas	120315	May 21, 1973, emerg.; Jan. 16, 1981, reg.; Oct. 16, 1988, susp.; Dec. 9, 1988, rein.	Nov. 16, 1983.
Washington: Wilson Creek, town of, Grant County	530056	May 27, 1975, emerg.; July 15, 1988, reg.; July 15, 1988, susp.; Dec. 9, 1988, rein.	July 18, 1988.
Oklahoma: Keota, town of, Haskell County	400391	June 26, 1978 emerg.; July 18, 1985, reg.; Aug. 4, 1988, susp.; Dec. 9, 1988, rein.	July 18, 1985.
Arkansas: Parkin, city of, Cross County	050059	Dec. 13, 1974, emerg.; Oct. 15, 1985, reg.; Aug. 16, 1988, susp., Dec. 9, 1988, rein.	Oct. 15, 1985.
Kansas: Burrton, city of, Harvey County	200130	Sept. 3, 1976, emerg.; Apr. 22, 1977, reg.; Dec. 1, 1988, Withdrawn.	Apr. 22, 1977.
Illinois: LaSalle County, unincorporated areas	170400	Dec. 16, 1988, emerg.	Aug. 6, 1982.
Indiana:			
Arcadia, town of, Hamilton County	180496	Dec. 9, 1988, emerg.; Dec. 9, 1988, reg.	Aug. 16, 1988.
Hamilton County, unincorporated areas	180060	Dec. 16, 1988, emerg.; Dec. 16, 1988, reg.	Jan. 16, 1987
Louisiana: Pine Prairie, village of, Evangeline Parish	220068	July 8, 1975, emerg.; June 25, 1976, reg.; Aug. 16, 1988, susp.; Dec. 14, 1988, rein.	June 25, 1976.
Pennsylvania: McVeytown, borough of, Mifflin County	420688	May 20, 1975, emerg.; June 1, 1987, reg.; June 1, 1987, susp.; Dec. 15, 1988, rein.	June 1, 1987.
Texas: Baird, town of, Callahan County	480722	Oct. 29, 1980, emerg.; Apr. 1, 1987, reg.; Aug. 16, 1988, susp.; Dec. 15, 1988, rein.	Apr. 1, 1987.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
Iowa: Alta Vista, city of, Chickasaw County	190065	Mar. 3, 1976, emerg.; Aug. 1, 1986, reg.; June 3, 1988, susp.; Dec. 16, 1988, rein.	Aug. 1, 1986.
Missouri: Irondale, city of, Washington County	290446	Dec. 23, 1988, emerg.	May 13, 1977.
North Carolina: King, city of, Stokes County	370458	Dec. 26, 1988, emerg.	
Arizona:			
Sedona, town of, Coconino and Yavapai Counties [1]	040130	Dec. 30, 1988, emerg.; Dec. 30, 1988, reg.	Aug. 19, 1985 and Sept. 30, 1988
Camp Verde, town of, Yavapai County [2]	40131	Dec. 30, 1988, emerg.; Dec. 30, 1988, reg.	Aug. 19, 1985.
Kansas:			
Dickinson County, unincorporated areas	200575	July 19, 1978, emerg.; Dec. 16, 1988, reg.; Dec. 16, 1988, susp.; Dec. 26, 1988, rein.	Dec. 16, 1988.
Howard, city of, Elk County	200507	Sept. 16, 1976, emerg.; Apr. 8, 1977, reg.; Dec. 26, 1988, Withdrawn.	Apr. 8, 1977.
Michigan: Banks, township of, Antrim County	260643	Oct. 29, 1975, emerg.; Sept. 1, 1988, reg.; Sept. 1, 1988, susp.; Jan. 5, 1989, rein.	Sept 1, 1988.
Iowa: Elk Run Heights, city of, Black Hawk County	190019	June 12, 1974, emerg.; Aug. 1, 1983, reg.; June 3, 1988, susp.; Jan. 5, 1989, rein.	Aug. 1, 1983.
Delaware: Middletown, town of, New Castle County	100024	June 13, 1974, emerg.; Jan. 7, 1977, reg.; Nov. 18, 1988, susp.; Jan. 4, 1989, rein.	Jan. 7, 1977.
Michigan: Selma, township of, Wexford County	260757	Apr. 13, 1987, emerg.; Sept. 30, 1988, reg.; Sept. 30, 1988, susp.; Jan. 4, 1989, rein.	Sept. 30, 1988.
Texas: Warren City, city of, Gregg County	480640	Apr. 13, 1981, emerg.; July 3, 1985, reg.; Sept. 2, 1988, susp.; Jan. 11, 1989, rein.	July 3, 1985.
Pennsylvania: Delaware Water Gap, borough of, Monroe County	420690	Mar. 3, 1980, emerg.; Aug. 16, 1988, reg.; Aug. 16, 1988, susp.; Jan. 12, 1989, rein.	Aug. 16, 1988.
Texas: Easton, city of, Gregg and Rusk Counties	481145	Dec. 7, 1988, emerg.	July 18, 1975.
Arkansas: Pollard, city of, Clay County	050036	Apr. 11, 1975, emerg.; Aug. 31, 1982, reg.; Aug. 16, 1988, susp.; Jan. 16, 1989, rein.	Aug. 31, 1982.
Pennsylvania: Germany, township of, Adams County	422296	Aug. 29, 1975, emerg.; July 4, 1988, reg.; July 4, 1988, susp.; Jan. 17, 1989, rein.	July 4, 1988.
New York: Ballston Spa, village of, Saratoga County	360710	July 7, 1975, emerg.; June 1, 1984, reg.; Sept. 16, 1988, susp.; Jan. 18, 1989, rein.	June 1, 1984.
Pennsylvania: Rutland, township of, Tioga county	422099	Mar. 14, 1975, emerg.; Sept. 18, 1987, reg.; Sept. 18, 1987, susp.; Jan. 18, 1989, rein.	Sept. 18, 1987.
Arkansas: St. Francis County, unincorporated areas	050184	Sept. 4, 1979, emerg.; Nov. 1, 1975, reg.; Aug. 16, 1988, susp.; Jan. 18, 1989, rein.	Nov. 1, 1985.
Missouri: Howard County, unincorporated areas	290162	July 25, 1984, emerg.; Jan. 5, 1989, reg.; Jan. 5, 1989, susp.; Jan. 19, 1989, rein.	Jan. 5, 1989.
Pennsylvania: Jackson, township of, Lycoming County	422601	Jan. 19, 1989, emerg.	Mar. 26, 1975.
Florida: Union County, unincorporated areas	120422	Aug. 22, 1979, emerg.; Aug. 4, 1988, reg.; Aug. 4, 1988, susp.; Jan. 23, 1989, rein.	Aug. 4, 1988.
Pennsylvania: Shippensburg, township of, Cumberland County	421585	Jan. 31, 1981, emerg.; Nov. 4, 1988, reg.; Nov. 4, 1988, susp.; Jan. 23, 1989, rein.	Nov. 4, 1988.
Arkansas: Sherrill, town of, Jefferson County	050110	June 19, 1975, emerg.; June 30, 1976, reg.; Aug. 16, 1988, susp.; Jan. 27, 1989, rein.	June 30, 1976.
Oklahoma: Stringtown, town of, Atoka County	400329	Dec. 9, 1976, emerg.; Aug. 4, 1988, susp.; Jan. 30, 1989, rein.	Aug. 13, 1976.
North Carolina: Burke County, unincorporated areas	370034	Jan. 15, 1974, emerg.; Apr. 5, 1988, susp.; Jan. 31, 1989, rein.	Feb 17, 1978.
Louisiana: Baskin, village of, Franklin County	220072	May 15, 1973, emerg.; Sept. 1, 1988, reg.; Sept. 1, 1988, susp.; Jan. 31, 1989, rein.	Sept. 1, 1988.
Region III			
Pennsylvania: Potter, township of, Beaver County	422327	Dec. 2, 1988, suspension withdrawn	Dec. 2, 1988.
Region V			
Illinois:			
Arthur, village of, Moultrie County:	170520	....do	Do.
Wenona, city of, Marshall County	170452	....do	Do.
Region VI			
Oklahoma: Wagoner County, unincorporated areas	400215	....do	Do.
Region III			
Pennsylvania:			
Middle Smithfield, township of, Monroe County	421690	Dec. 16, 1988, suspension withdrawn	Dec. 16, 1988.
Tobyhanna, township of, Monroe County	421897	....do	Do.
Virginia:			
Essex County, unincorporated areas	510048	....do	Do.
York County, unincorporated areas	510182	....do	Do.
Region IV			
Georgia:			
Americus, city of, Sumter County	130203	....do	Do.
Lakeland, city of, Lanier County	130120	....do	Do.
Tennessee: Lawrenceburg, city of, Scotland County	475437	....do	Do.
Region V			
Michigan:			
Putnam, township of, Livingston County	260442	....do	Do.
Taymouth, township of, Saginaw County	260503	....do	Do.
Ohio: Hamilton County, unincorporated areas	390204	....do	Do.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
Region I			
Connecticut: Salisbury, town of, Litchfield County	090052	Jan. 5, 1989, suspension withdrawn	Jan. 5, 1989.
Maine:			
Rockland, city of Knox County	230076	....do	Do.
Skowhegan, town of, Somerset County	230128	....do	Do.
Region III			
Pennsylvania:			
Matamoras, borough of, Pike County	420758	....do	Do.
Pleasant, township of, Warren County	422548	....do	Do.
Virginia: Bland County, unincorporated areas	510017	....do	Do.
Region V			
Illinois: Aurora, city of, Kane and Dupage counties	170320	....do	Do.
Indiana:			
DeKalb County, unincorporated areas	180044	....do	Do.
Marshall County, unincorporated areas	180443	....do	Do.
Roseland, town of, St. Joseph County	185179	....do	Do.
Wisconsin: Gilman, village of, Taylor County	550433	....do	Do.
Region VI			
New Mexico:			
Taos County, unincorporated areas	350078	....do	Do.
Region X			
Washington: Moses Lake, city of, Grant County	530053	....do	Do.
Region III			
Virginia: Middlesex County, unincorporated areas	510096	Jan. 18, 1989, suspension withdraw	Jan. 18, 1989
Region V			
Michigan:			
Grant, township of, Cheboygan County	260610	....do	Do.
Saint Louis, city of, Gratiot County	260085	....do	Do.
Region VI			
Texas: Burleson County, unincorporated areas	481169	....do	Do.
Region VII			
Missouri:			
Charleston, city of, Mississippi County	290231	....do	Do.
Mississippi County, unincorporated areas	290781	....do	Do.

[1] The Town of Sedona, Arizona has adopted Coconino and Yuavapai Counties' FIRM for floodplain management and insurance purposes.
[2] The Town of Camp Verde, Arizona has adopted Yavapai County's FIRM for floodplain management and insurance purposes.
Code for reading fourth column: emerg.—emergency; reg.—regular; susp.—suspension; rein.—reinstatement.

Harold T. Duryee,
Administrator, Federal Insurance Administration.

Issued: February 7, 1989.

[FR Doc. 89-3281 Filed 2-10-89; 8:45 am]

BILLING CODE 6718-21-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 672

[Docket No. 81132-9033]

Foreign Fishing; Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final notice of 1989 initial groundfish specifications in the Gulf of Alaska; prohibited species catch limits for certain groundfish species and for Pacific halibut; reapportionments of reserves; inseason adjustment of the Gulf of Alaska pollock fishery; request for comments.

SUMMARY: The Secretary of Commerce (Secretary) announces certain measures that are being implemented to manage the 1989 groundfish fishery in the Gulf of Alaska. This action is necessary to inform the public of the Secretary's determinations relating to 1989 management of the groundfish fisheries in the Gulf of Alaska. The measures are intended to carry out management objectives contained in the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP).

DATES: Effective February 9, 1989. Comments are invited on the apportionments of reserves and on the inseason adjustment in the pollock fishery until February 24, 1989.

ADDRESS: Comments should be sent to Steven Pennoyer, Regional Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Management Biologist, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION:

Background

This notice announces for the 1989 fishing year: (1) Total allowable catches (TACs) for each category of groundfish in the Gulf of Alaska and apportionments thereof among domestic annual processing (DAP), joint venture processing (JVP), total allowable level of foreign fishing (TALFF), and reserves; (2) assignments of the sablefish TAC to authorized fishing gear users; (3) prohibited species catch (PSC) limits that are relevant to fully utilized groundfish species that will be imposed on JVP; (4) PSC limits of Pacific halibut on DAP; (5) apportionments of reserves to DAP; and (6) an inseason adjustment in the Gulf of Alaska pollock fishery.

TACs for groundfish species in the Gulf of Alaska are established annually through the FMP that was developed by the North Pacific Fishery Management Council (Council) under the Magnuson Act and is implemented by regulations appearing at 50 CFR 611.92 and Part 672. The sum of the TACs for all species must fall within the combined optimum yield (OY) range established for these species of 116,000–800,000 metric tons (mt).

TACs are apportioned initially among DAP, JVP, reserves, and TALFF for each species under § 611.92 and § 672.20(a)(2). DAP amounts are intended for harvest by U.S. fishermen for delivery and sale to U.S. processors. JVP amounts are intended for joint ventures in which U.S. fishermen typically deliver their catches to foreign processors at sea. TALFF amounts are intended for harvest by foreign fishermen. The reserves for the Gulf of Alaska are 20 percent of the TAC for pollock, Pacific cod, flounder, and "other species." These reserve amounts are set aside for possible reapportionment to DAP and/or to JVP if the initial apportionments prove inadequate. Reserves which are not reapportioned to DAP or JVP may be reapportioned to TALFF. Other groundfish target species, including sablefish, "other rockfish," pelagic shelf rockfish, demersal shelf rockfish, and thornyhead rockfish are fully utilized by DAP and no reserves are established.

Under § 611.92 and § 672.20(a)(2), the Secretary, after consultation with the Council, shall specify the TAC for each calendar year for each target species and the "other species" category, and shall apportion the TACs among DAP, JVP, reserves, and TALFF. The sum of the TACs must be within the OY range.

Under § 672.20(c)(1), the preliminary specifications of DAP and JVP amounts were published in the **Federal Register** (53 FR 47993, November 29, 1988) and comments were requested to be submitted to the Regional Director until December 23, 1988. No comments were received by the Regional Director.

The Council met during December 5–9, 1988 to review the best available scientific information concerning groundfish stocks, intended harvest plans for 1989, and estimates made by NMFS concerning the extent to which U.S. fishermen would need amounts of groundfish. This information was contained in the Resource Assessment Document (RAD), which was prepared and presented by the Gulf of Alaska Plan Team to the Council and to the Council's Scientific and Statistical Committee (SSC) and Advisory Panel (AP). Information contained in the RAD included results obtained from the 1984 and 1987 triennial survey of groundfish conducted in the Gulf of Alaska and the 1986 and 1988 hydroacoustic survey of pollock in Shelikof Strait, which lies between Kodiak Island and the Alaska Peninsula. Both surveys were conducted by the NMFS Northwest and Alaska Fishery Center (NWAFC). The SSC reviewed the available information and recommended to the Council acceptable biological catches (ABCs) discussed below and shown in Table 1 contained at § 672.20. The AP also considered information contained in the RAD and recommended TACs for each species.

Most of the information considered by the Council was summarized in the preliminary notice. Any new information and subsequent actions by the Council for each species and species complex are summarized below:

1. Total Allowable Catches

Pollock—Information concerning the status of pollock is based on information from Shelikof Strait hydroacoustic surveys conducted in 1986 and 1988 and the 1987 bottom trawl survey. The 1987 bottom trawl survey indicated the total pollock biomass to be 593,000 mt. The 1988 hydroacoustic survey indicated the total pollock biomass to be 330,000 mt. The SSC believes that the best estimate of the biomass is that derived from the 1987 bottom trawl survey, or 593,000 mt. The Council adopted an ABC equal to 60,000 mt. Rather than allow a catch of this magnitude to take place entirely on spawning pollock in Shelikof Strait, the Council recommended that the Secretary establish a TAC in Shelifof Strait equal to 6,250 mt and set DAP equal to TAC. The Council also recommended a TAC in the rest of the Western/Central Regulatory Area equal to 53,750 mt and recommended DAP equal TAC.

The Council recommended further that the ABC in the Eastern Regulatory Area be set equal to 3,400 mt, but recommended that the TAC be limited to 200 mt, since fishermen will take pollock as bycatch only and 200 mt will satisfy bycatch needs in this regulatory area.

Pacific cod—Although Pacific cod stocks appear to be decreasing in size, stocks are still healthy. The RAD provided a revised estimate of projected exploitable biomass based on 1984 and 1987 trawl surveys that suggested ABC should be revised downward to 71,200 mt, using a rate of fishing mortality that would result in the maximum sustainable yield being achieved. The SSC concurred with this result. The Council adopted this amount and recommended that TAC equal ABC, apportioned among the regulatory areas as follows: Western—13,500 mt; Central—52,000 mt; and Eastern—5,700 mt.

Flounders—Stocks of flounder are in good condition. Biomass estimates from the 1984 and 1987 triennial bottom trawl surveys indicate that exploitable biomass has increased about 3 percent, to 2,110,854 mt. The Plan Team used different fishing mortality rates for certain species constituting the flounder complex by selecting a rate to maximize the yield per recruit for arrowtooth flounder, rock sole, and yellowfin sole, because these species are at near virgin biomass levels. The Plan Team used an exploitation rate of 26 percent for flathead sole, since the higher rate used for the other species yielded an unrealistically high result. This procedure resulted in an ABC for the flounder complex equal to 554,700 mt. The SSC accepted the Plan Team's result. The Council adopted the ABC but set TAC equal to 36,000 mt to avoid the otherwise high bycatch of Pacific halibut. The Council recommended the TAC be apportioned among the regulatory areas as follows: Western—3,200 mt; Central—31,800 mt; and Eastern—1,000 mt.

Sablefish—Results of the 1988 Japan-U.S. cooperative longline survey indicates the sablefish biomass remains high. The Plan Team recommended an ABC equal to 30,900 mt, which is a decrease from the 1988 level of 35,000 mt, using a conservative biomass estimate. This compensates for lack of evidence of a strong 1984 year class that was expected to fully recruit to the fishery in 1989. The SSC concurred with the Plan Team's recommendation. The Council adopted the SSC's recommendation for ABC but recommended that the TAC should be 26,000 mt to compensate for unreported fishing mortality that might be occurring from gear loss on the gounds and other sources. The Council recommended that TAC be apportioned among the regulatory areas and districts, as follows:

Western—3,770 mt; Central—11,700 mt; West Yakutat—4,550 mt; and Southeast Outside/East Yakutat—5,980 mt.

Rockfish assemblages—The same three categories of rockfish in the genus *Sebastes* will be managed in 1989 as in 1988. These categories are "other rockfish", pelagic shelf rockfish, and demersal shelf rockfish. They are described as follows:

"Other rockfish"—In the Western and Central Regulatory Areas and the Eastern Regulatory Area west of 137° W. longitude, "other rockfish" means the 18 species of slope rockfish and the 10 species of demersal shelf rockfish listed in the footnote to Table 1 of this notice.

TACs are established for these combined assemblages in these management areas. In the Southeast Outside District, "other rockfish" means the 18 species of slope rockfish only. A TAC is established for this assemblage of 18 species in the Southeast Outside District.

Pelagic shelf rockfish—In the Western, Central, and Eastern Regulatory Areas, pelagic shelf rockfish means the five rockfish species listed in the footnote to Table 1 of this notice. A TAC is established for this assemblage in each of these regulatory areas.

Demersal shelf rockfish—In the Southeast Outside District, demersal shelf rockfish means the ten rockfish species listed in the footnote to Table 1 of this notice. A TAC is established in the Southeast Outside District.

The condition of, and Council action for, each of the rockfish assemblages that make up the three categories are as follows:

The condition of slope rockfish is good and stocks are believed to be increasing in abundance. Exploitable biomass is estimated to be about 702,000 mt. About 14 percent of this amount, or 99,700 mt, is composed of a subcategory called "deep slope" rockfish. The balance is composed of a subcategory called "shallow slope" rockfish. The Plan Team recommended a Gulf of Alaska-wide ABC range of 14,700–30,700 mt. The SSC believed the midpoint of the range, or 22,700 mt to be more appropriate. The Council adopted a reduced ABC of 20,000 mt to afford more protection to two deep water species of slope rockfish, which might otherwise be overharvested if the TAC were larger and fishing to achieve TAC were directed at these species. The Council recommended the TAC be set at 20,000 mt, and apportioned among the regulatory areas as follows: Western—5,774 mt; Central—8,452 mt; and Eastern—5,774 mt.

The Plan Team recommended a Gulf of Alaska-wide ABC of 3,300 for pelagic shelf rockfish. The SSC recommended an ABC of 6,600 mt. The Council adopted a preliminary ABC equal to 3,300 mt, but set TAC equal to 3,300 mt, apportioned among the management areas as follows: Western 500 mt; Central—2,400 mt; and Eastern—400 mt.

No biomass or yield estimates are available on which to base an ABC for demersal shelf rockfish. This rockfish assemblage is the target of a hook-and-line fishery in the Southeast Outside District. Information from the Alaska Department of Fish and Game on this rockfish assemblage suggests that the population is declining. The Council adopted a TAC of 420 mt, based on a State of Alaska recommendation that no more than this amount should be harvested from the Southeast Outside District.

Thornyhead rockfish—The SSC adopted the Plan Team's recommendation that the ABC should be set approximately equal to the 1988 amount, rounded up from 3,750 mt to 3,800 mt. The Council adopted this number and recommended a Gulf of Alaska-wide TAC equal to ABC.

Other species—No recommendations were made by the Plan Team for this group. Under the FMP, the TAC for this species category is to be set at 5 percent of the sum of the TACs established for the other groundfish categories.

The sum of the above TACs adopted by the Council is 231,966 mt, which falls within the OY range specified by the FMP. The Council, after adopting the TACs, then deliberated on the apportionment of the TACs for each species among DAP, JVP, reserve, and TALFF. The Council reviewed the results of the NMFS-conducted U.S. processor survey and the stated requests by joint venture companies for JVP. Prior to the Council's meeting, NMFS surveyed the U.S. processing industry about its processing capacity and the extent to which the capacity will be used for groundfish species in 1989. This survey did not include sablefish and all of the rockfish species, which are known to be fully utilized as a result of prior years' harvests. The survey did include pollock, Pacific cod, and flounder. When the Regional Director reviewed the survey results, he calculated the probability that those amounts would actually be processed, considering the amount of processing machinery that was available or which was planned for but not yet in place, both on shore and on catcher/processor and mothership processor vessels.

In doing so, the Regional Director discounted some of the survey results as overly optimistic. The Regional Director presented his analysis (see table of NMFS projections of DAP needs for pollock, Pacific cod, and flounder, below) to the Council, which in turn used it to recommend to the Secretary initial DAP specifications. As a result of the process, TALFF is set at zero, because all species are expected to be fully utilized by U.S. fishermen, either in DAP or JVP fisheries. For pollock and Pacific cod, NMFS projections of DAP needs exceed TACs for these species. For flounder, NMFS projections of DAP needs are less than TAC by 10,000 mt. This amount is available for JVP. For sablefish and all the rockfish species, including thornyhead rockfish, all TACs are expected to be needed by DAP, and none are available for JVP. Since DAH (i.e., sum of DAP and JVP) equals TACs for all species, none is available for TALFF.

The Secretary has reviewed the Council's recommendations for TAC specifications and apportionments and hereby implements these specifications under § 672.20(c)(1). The FMP stipulates that 20 percent of each TAC be set aside in a reserve for possible reapportionment at a later date. Because DAP is projected to need all reserve amounts, the Secretary, at this time, is reapportioning reserves for each species category except flounder to DAP.

DAP REQUESTS THAT WERE SUBMITTED TO NMFS, AND NMFS INITIAL PROJECTIONS OF DAP FOR POLLOCK, PACIFIC COD, AND FLOUNDER FOR 1989 FOLLOWING ITS SURVEY OF U.S. PROCESSORS

	DAP requests (mt)	NMFS initial projections of DAP needs (mt)
Pollock	85,712	85,512
Pacific Cod	88,625	76,120
Flounders	20,217	17,442

By doing so, the Secretary is anticipating that U.S. fishermen will need all of DAH amounts so specified. Only those amounts that the Secretary has determined will not be needed by DAP are apportioned to JVP at this time.

2. Assignments of the Sablefish TAC to Authorized Fishing Gear Users

Under § 672.24(b), the sablefish TACs for each of the regulatory areas and districts are further assigned to hook-and-line and trawl gear. The Secretary publishes for the information of the public the following table that shows the assignments of sablefish TACs between the gear types:

SABLEFISH TOTAL ALLOWABLE CATCH (TAC) AND AMOUNTS OF TAC, IN METRIC TONS, ASSIGNED TO AUTHORIZED GEAR IN THE REGULATORY AREAS AND DISTRICTS OF THE GULF OF ALASKA

Area/District	TAC	Hook-and-line share	Trawl share
Western	3,770	3,020	750
Central	11,700	9,360	2,340
West Yakutat	4,550	4,320	230
Southeast outside/ East Yakutat	5,980	5,680	300
Total	26,000	22,380	3,620

3. PSC Limits Relevant to Fully Utilized Species

Section 672.20(b)(1) specifies that if the Secretary determines after consultation with the Council that the TAC for any species or species group will be fully utilized in the DAP fishery, he may specify the PSC limit applicable to the JVP fisheries for that species or species group. Any PSC limit specified shall be for bycatch only and cannot be retained. Under § 672.20(c)(2)(iv), if the Regional Director determines that a PSC limit applicable to a directed JVP fishery has been or will be reached, the Secretary will publish a notice of closure in the **Federal Register** prohibiting the receipt of U.S.-harvested fish by foreign vessels in all or part of the regulatory area concerned.

Since the Council recommended only a single JVP, that being 10,000 mt of flounder, and intends to review the status of DAP needs later in the year regarding possible apportionments of DAP to JVP to support the bycatch needs of a flounder fishery, the Secretary is not making determinations concerning PSC limits for fully utilized species that would be applicable to JVP at this time. If future apportionments from DAP to JVP occur, the Secretary will also make the necessary determinations under § 672.20(c)(iv) at that time.

4. Halibut Prohibited Species Catch Limits

Section 672.20(f)(2)(i) specifies a framework procedure for setting PSC limits for Pacific halibut. This procedure requires the Secretary, after consultation with the Council, to publish a notice in the **Federal Register** to establish PSC limits for Pacific halibut.

The Secretary has consulted with the Council and is affirming the Council's intent that the total fishing mortality inflicted on Pacific halibut by the groundfish fishery should not exceed 2,000 mt. This amount has been recommended by the International Pacific Halibut Commission (IPHC), because the IPHC subtracts this amount from available harvest amounts for the directed fishery for halibut before setting fishing quotas. The purpose of this amount is to allocate non-retainable bycatch to groundfish fishermen.

Certain assumptions are made relating to different mortality rates between JVP and DAP fisheries, depending on the types and deployment of gear used in the fisheries. In DAP trawl fisheries, 50 percent of all the halibut caught are assumed to be killed. In JVP trawl fisheries, 100 percent of all halibut are assumed to be killed due to the longer trawling time before sorting of catch. In hook-and-line fisheries, 25 percent of all halibut caught are assumed to be killed regardless of whether the fisheries are DAP or JVP.

Certain assumptions are also made regarding the different proportions of target groundfish species caught by the different gear types and the distribution of midwater pollock, by area. These assumptions are summarized as follows:

BYCATCH ASSUMPTIONS

Target species	Gear shares bottom trawl (percent)	Domestic	
		Hook-and-line (percent)	Midwater trawl (percent)
Pollock	25	0	75
Cod	85	15	0
Flounders	100	0	0
Sablefish	15	80	5
Rockfish	67	33	0
Midwater Pollock Distribution: Western, (20% percent); Central (80% percent).			

Using the above assumptions, the Secretary is establishing a PSC limit applicable to JVP that is equal to 515 mt based on the JVP for flounder of 10,000 mt and 100 percent mortality rate of halibut in the JVP trawl fishery.

The Secretary is also establishing a PSC limit applicable to DAP. Rather than establish a numerical PSC limit for DAP, the Secretary is defining the PSC limit for DAP as the amount of Pacific halibut caught that would result in a mortality of 1,485 mt of Pacific halibut. This amount will be determined inseason by multiplying the groundfish catches by the assumed rates shown below and using the assumptions of mortality and assumed bycatches discussed above. The Council recognized that the current mix of groundfish TACs and apportionments thereof would arithmetically result in a catch of 7,203 mt of Pacific halibut. This amount of catch would result in a mortality of 3,544 mt, if each of the DAP and JVP groundfish specifications were caught. Rather than reduce groundfish TACs to generate a PSC limit that would result in a mortality of no more than 2,000 mt, the Council recommended that the Regional Director manage the overall harvest to accomplish the Council's objective relative to the mortality goal for halibut. This procedure will allow the Secretary to more accurately determine the appropriate Pacific halibut bycatch and mortality amounts during the season based directly upon observed and reported harvesting activity. Given that Pacific halibut bycatch and mortality rates vary with the type of gear, target species, and method of gear deployment, the Regional director will be able to calculate Pacific halibut bycatch and mortality based on actual groundfish harvests, thereby increasing the accuracy of the accounting procedures.

The Council also did not recommend JVP specifications of other groundfish species to support bycatch needs for the 10,000 mt flounder JVP. The JVP flounder fishery is not scheduled to start until September 15 to avoid excessive catches of Pacific halibut. The Council intended that the Regional Director would apportion other target groundfish species to JVP, which would support the flounder JVP fishery, if any amounts were determined to be surplus to DAP needs later in the year. If the Regional Director reapportions surplus DAP to JVP, the Secretary will also specify a PSC for JVP at that time. In the meantime, the Regional Director intends to monitor the DAP fishery and apply the assumed rates used in computing the PSC against the known groundfish catch. If the Regional Director determines that the catch of Pacific halibut by U.S. vessels fishing in DAP operations will reach a PSC limit, he will publish a notice in the **Federal Register** prohibiting fishing with trawl gear other than pelagic trawl gear for the rest of the year in the Gulf of Alaska, subject to § 672.20(f)(2)(iv).

Assumed rates that were used in computing the Pacific halibut PSC are shown in the following table:

TABLE OF HISTORICAL BYCATCH RATES (PERCENT) BY WEIGHT IN THE WESTERN (W) AND CENTRAL (C), AND EASTERN (E) REGULATORY AREAS USED TO CALCULATE THE PSC LIMITS FOR PACIFIC HALIBUT IN THE DAP 1989 GROUNDFISH FISHERIES

[Rates are from fisheries for groundfish with bottom trawls and mid-water trawls and from fisheries for Pacific cod and sablefish with hook-and-line gear]

	Bottom trawl	Mid-water trawl		Hook-and-line					
				Pacific cod			Sablefish		
	Gulf-wide	W	C	W	C	E	W	C	E
DAP	4.5	0.02	0.06	5.23	9.15	9.15	1.20	1.20	1.20
JVP	5.15	0.02	0.06	5.23	9.15	9.15	1.20	1.20	1.20

Certain of these rates are different than those published at 50 CFR 47993 (November 29, 1988). Differences are for Gulf-wide bottom trawl, midwater trawl in the Western Regulatory Area, and addition of rates to the Eastern Regulatory Area for hook-and-line gear. The 4.5 rate used for DAP Gulf-wide is updated from 2.53, using DAP data from the Alaska Department of Fish and Game observer program during January 1, 1987 through September 30, 1988. The 5.15 rate used for JVP Gulf-wide is updated from 2.53, using 1987 and 1988 NMFS-observed data on joint venture fisheries. The 0.02 rate used for DAP and JVP in the Western Regulatory Area is updated from 0.06, using 1987 NMFS-observed data on joint venture fisheries. The rates in the Eastern Regulatory Area are added and are set equal to those for the Central Regulatory Area, using the latter as the best available information.

5. Apportionments of Reserves to DAP

Under § 672.20(d)(1)(ii), the Secretary may reapportion to DAH any amounts of the reserves that he determines to be needed to supplement DAH as soon as practicable on April 1, June 1, and August 1, and on such other dates as he determines necessary. The Secretary is reapportioning all reserves except flounder to the DAP component of DAH, effective January 1, 1989, on the basis of the NMFS initial estimates of DAP needs. Under § 672.20(d)(5)(iv), when the Secretary determines that apportionment is required on dates other than those specified and he finds that apportioning additional amounts is necessary without affording a prior opportunity for public comment, he will invite such comments for a period of fifteen days after the effective date of the apportionment. Therefore, the Secretary is inviting comments on the reserve apportionment until February 24, 1989.

6. Inseason adjustment in the pollock fishery

As stated in the discussion of pollock, above, the Council has recommended that no more than 6,250 mt be harvested in Shelikof Strait, as a conservation measure, to protect pollock, which in past years has been harvested in Shelikof Strait to obtain roe from mature female pollock. The biomass of pollock in the Gulf of Alaska has declined after reaching a peak in 1981 and 1982. Depending on the various recruitment scenarios and catch levels used to forecast pollock abundance, the biomass was projected to rebuild to between 866,600 mt and 1,051,500 mt in 1988. Biomass estimates have been based on hydroacoustic surveys conducted in Shelikof Strait. These surveys have focused on aggregations of pollock while they are in spawning condition during March–April. Since few pollock were believed to be present outside Shelikof Strait during this time, the information obtained was thought to represent most of the pollock biomass occurring in the Western/Central Regulatory Area. In addition to the hydroacoustic survey, other information on pollock abundance has been obtained from bottom trawl surveys conducted elsewhere in the Gulf of Alaska every three years. The last such survey was conducted in 1987.

The 1988 hydroacoustic survey in Shelikof Strait produced a biomass estimate of only 330,000 mt, which is the lowest on record. The low biomass is attributed to poor recruitment of the 1984 year class, which would otherwise have recruited into the fishery in 1987 as 3-year old fish. In 1988, they should have been available as 4-year old fish.

Other information obtained from the 1987 triennial bottom trawl survey also shows a decline in pollock biomass. The decline appears to have occurred between 1984 and 1987. Biomass estimated from the 1987 bottom trawl survey was about 593,000 mt. Although the 1987 bottom trawl survey showed a decline in the status of pollock, the decline was not as large as the hydroacoustic survey suggests. Since the 1987 bottom trawl survey showed pollock to be in greater abundance than did the 1988 hydroacoustic survey, the premise is being questioned that hydroacoustic surveys in Shelikof Strait provide the best estimates of pollock abundance for the entire Western/Central Regulatory Area. Estimates can be made of total biomass if these surveys can be considered to only assess a portion of the total biomass. Using information from the 1986 hydroacoustic survey, the 1987 bottom trawl survey, and the 1988 hydroacoustic survey, the range of total biomass is between 330,000 mt and 593,000 mt.

The Secretary concurs with the Council's recommendation and hereby adjusts the TAC under § 672.22 such that no more than 6,250 mt of pollock may be harvested in the Shelikof Strait (Figure 1) as a conservation measure to protect pollock stocks. Coordinates defining Shelikof Strait are provided below. Since the Secretary must be able to monitor the pollock harvested from Shelikof Strait, he is establishing the 6,250 mt harvest limitation as a separate TAC, and hereby requests fishermen to use "621" as the statistical area for purposes of reporting Shelikof Strait pollock harvests, on catch reports required under § 672.5.

BILLING CODE 3510-22-M

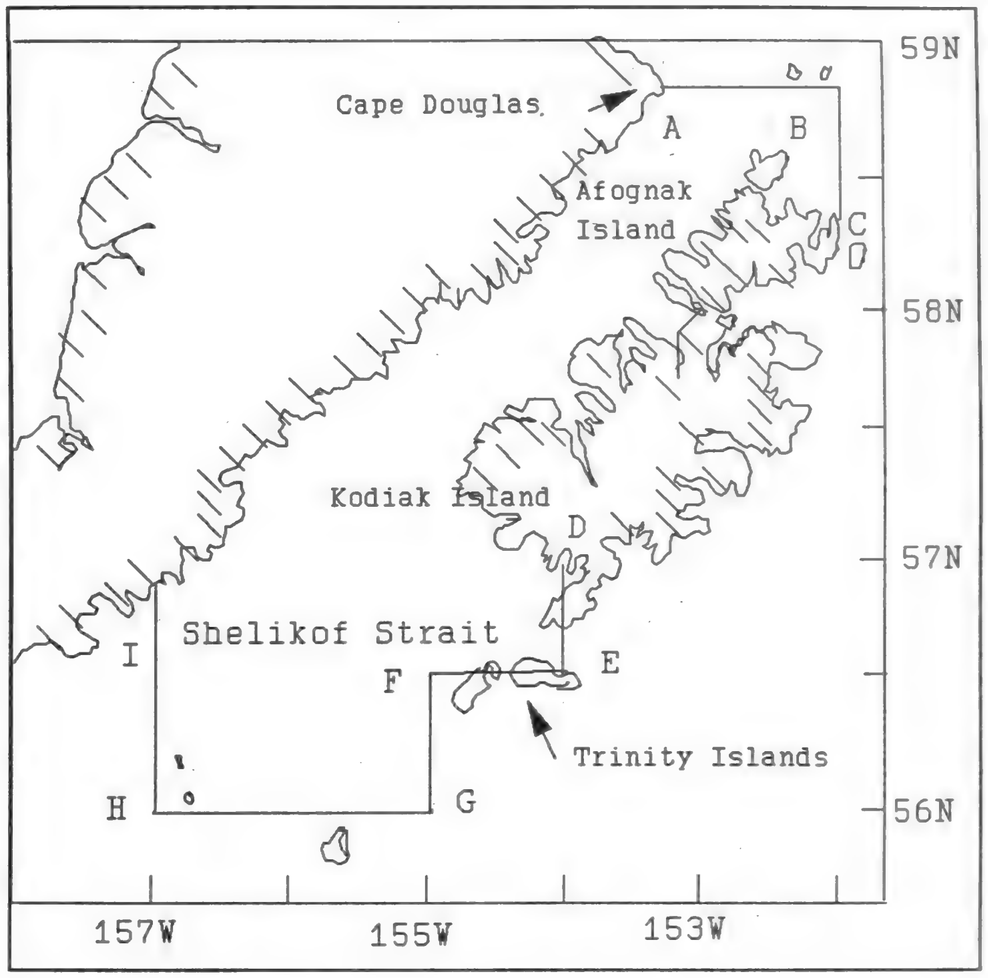


Figure 1

BILLING CODE 3510-22-C

The Shelikof Strait district means all waters of the EEZ enclosed by a line connecting the following points in the order listed:

Reference point	N. latitude	W. longitude	Description
A	56°51' N.	153°15' W.	Cape Douglas;
B	58°51' N.	152°00' W.	Then south to the intersection of 152°00' W. with Afognak Island, then counter clockwise around the western shorelines of Afognak, Kodiak, and Raspberry Islands to;
C			
D	57°00' N.	154°00' W.	Alitak Bay then south to;
E	56°30' N.	154°00' W.	Then west through Trinity Islands to;
F	56°30' N.	155°00' W.	Then south to;
G	56°00' N.	155°00' W.	Then west to;
H	56°00' N.	157°00' W.	Then north to intersection of 157°00' W. with the Alaska Peninsula.
I			

Public Comments

No comments were received by the Regional Director.

Other Matters

This action is taken under §§ 611.92, 672.20, and 672.22 and complies with Executive Order 12291. The Secretary finds it necessary to apportion the aforementioned reserves without affording a prior opportunity for public comment to prevent closures of a target DAP fishery for these species, which might otherwise occur due to the large amount of fishing effort expected. The Secretary also finds it necessary to adjust the pollock TAC limit without affording a prior opportunity for public comment to prevent overfishing pollock in the Shelikof Strait.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Dated: February 8, 1989.

James W. Brennan,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

TABLE 1.—INITIAL ABCs, TACs, DAPs, JVPs, RESERVES (N/A NOT APPLICABLE), AND TALFFs OF GROUNDFISH (METRIC TONS) FOR THE WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE SHELIKOF STRAIT (SS), WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE/EAST YAKUTAT (SEO/EYK), AND SOUTHEAST OUTSIDE (SEO) DISTRICTS OF THE GULF OF ALASKA

Species	Area [1]	ABC	TAC	Reserves	DAP	JVP	TALFF
Pollock	W/C	60,000	53,750	0	53,750	0	0
	SS	N/A	6,250	0	6,250	0	0
	E	3,400	200	0	200	0	0
	Total	63,400	60,200	0	60,200	0	0
Pacific cod	W	13,500	13,500	0	13,500	0	0
	C	52,000	52,000	0	52,000	0	0
	E	5,700	5,700	0	5,700	0	0
	Total	71,200	71,200	0	71,200	0	0
Other flounder	W	111,500	3,200	0	3,200	0	0
	C	384,300	31,800	0	21,800	10,000	0
	E	58,900	1,000	0	1,000	0	0
	Total	554,700	36,000	0	26,000	10,000	0
Sablefish	W	4,800	3,770	N/A	3,770	0	0
	C	13,900	11,700	N/A	11,700	0	0
	WYK	5,300	4,550	N/A	4,550	0	0
	SEO/EYK	6,800	5,980	N/A	5,980	0	0
	Total	30,900	26,000	N/A	26,000	0	0
Other [2] [3]	W	5,774	5,774	N/A	5,774	0	0
Rockfish	C	8,452	8,452	N/A	8,452	0	0
	E	5,774	5,774	N/A	5,774	0	0
	Total	20,000	20,000	N/A	20,000	0	0
Pelagic [4]	W	1,000	500	N/A	500	0	0
Shelf	C	4,800	2,400	N/A	2,400	0	0
Rockfish	E	800	400	N/A	400	0	0
	Total	6,600	3,300	N/A	3,300	0	0
Demersal shelf rockfish [5]	SEO	[7]	420	N/A	420	0	0
Thornyhead rockfish	GW	3,800	3,800	N/A	3,800	0	0
Other Species [6]	GW	N/A	11,046	0	11,046	0	0
Total			231,966	0	221,966	10,000	0

[1] See figure 1 of § 672.20 for description of regulatory areas/districts.
[2] The category "other rockfish" in the Western and Central Regulatory Areas and in the West Yakutat and East Yakutat Districts includes Slope rockfish and Demersal shelf rockfish. The category "other rockfish" in the Southeast Outside District includes Slope rockfish.

[3] The category slope rockfish includes *Sebastes polyspinis* (Northern rockfish), *S. aleutianus* (Rougheye), *S. zacentrus* (Sharpchin), *S. borealis* (Shortraker), *S. aurora* (Aurora), *S. melanostomus* (Blackgill), *S. goodei* (Chilipepper), *S. crameri* (Darkblotch), *S. elongatus* (Greenstriped), *S. variegatus* (Harlequin), *S. wilsoni* (Pygmy), *S. babcocki* (Red banded), *S. jordani* (Shortbelly), *S. diploproa* (Splitnose), *S. saxicola* (Stripetail), *S. miniatus* (Vermilion), and *S. reedi* (Yellowmouth).
[4] The category pelagic shelf rockfish includes *Sebastes melanops* (Black) *S. mystinus* (Blue) *S. ciliatus* (Dusky), *S. entomelas* (Widow), and *S. flavidus* (Yellowtail).
[5] The category demersal shelf rockfish includes *Sebastes paucispinis* (Bocaccio), *S. nebulosus* (China), *S. caurinus* (Copper), *S. maliger* (Quillback), *S. pronger* (Redstripe), *S. helvomaculatus* (Rosethorn), *S. brevispinis* (Silvergrey), *S. nigrocinctus* (Tiger), *S. rubemimus* (Yelloweye), *S. pinningers* (Canary).
[6] The category "other species" includes Atka mackerel, sculpins, sharks, skates, eulachon, smelts, and octopus. The TAC is equal to 5 percent of the TACs of the target species.
[7] Unknown.

[FR Doc. 89-3361 Filed 2-9-89; 9:10 am]

BILLING CODE 3510-22-M

50 CFR Part 683

[Docket No. 80483-8147]

Western Pacific Bottomfish Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule; corrections.

SUMMARY: This document corrects several errors in a final rule for Amendment 2 to the Fishery Management Plan for Western Pacific Bottomfish. The final rule was published August 9, 1988 (53 FR 29907) in FR Doc. 88-17967. This correction makes no substantive changes. It redesignates several paragraphs in § 683.6 to take into account changes to § 683.6 made in a final rule, technical amendment published on June 29, 1988 (53 FR 24644).

The final rule document 88-17967 on page 29909 in the issue of Tuesday, August 9, 1988, should have read as follows:

1. In the first column, item 4 should have read, "In § 683.6, new paragraphs (e), (f), (g), and (h) are added as follows:"

2. In the first column, under regulatory text for § 683.6 General prohibitions, "k" should have read "e", "l" should have read "f", "m" should have read "g", and "n" should have read "h".

List of Subjects in 50 CFR Part 683

Fisheries, Reporting and recordkeeping requirements.

Dated: February 7, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR Part 683 is amended as follows:

PART 683—[AMENDED]

1. The authority citation for 50 CFR Part 683 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 683.6 [Amended]

2. In § 683.6, paragraphs (k), (l), (m), and (n) are redesignated as paragraphs (e), (f), (g), and (h), respectively.

[FR Doc. 89-3255 Filed 2-10-89; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 28
Monday, February 13, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1933 and 1944

Self-Help Technical Assistance Grants

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to revise and redesignate its regulation for Self-Help Housing Technical Assistance Grants. This action is necessary to comply with OMB circulars. The intended effect is to encourage more communities to participate in the progam by permitting an organization with fewer employees to participate. It also permits the use of a predevelopment agreement to test the feasibility of the program in a community before making a major commitment of resources. It requires that organizations have a local membership base, and increases the amount of family labor in the building of homes. It incorporates, by reference or direct quote, OMB circulars that significantly affect participating grantees.

DATE: Comments must be received on or before April 14, 1989.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Directives Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250. All written comments will be available for public inspection during regular work hours at the above address. The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 180. Submit any comment to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Farmers Home Administration, Washington, DC 22053.

FOR FURTHER INFORMATION CONTACT: Cliff Herron, Senior Loan Officer, Single Family Housing Processing Division, Farmers Home Administration, USDA, Room 5346, South Agriculture Building, Washington, DC 20250, Telephone 202–382–1484.

SUPPLEMENTARY INFORMATION: This action was reviewed under USDA procedures established on Departmental Regulation 1512–1 which implements Executive Order 12291, and has been determined to be nonmajor, because the annual effect on the economy is less than $100 million. There is no major increase in cost or prices for consumers, individual industries, Federal, State, or local competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This program/activity is listed in the Catalog of Federal Domestic Assistance under number 10.420.

This program/activity is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See 7 CFR Part 3015, Subpart V (48 FR 291115, June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983).

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354), the Administrator of the Farmers Home Administration, has determined that this action will not have a significant economic impact on a substantial number of small entities because less than 100 rural communities will be affected annually.

The proposed changes to the regulation decrease the role and involvement of the National Office by placing more decision making authority at the state and district level. The proposal also requires a greater level of involvement by the communities being served than previously required. It further directs the program to assist those most in need of houses, who generally are families below 50 percent of area median income, living in substandard housing and/or otherwise lack the skills to be good homeowners. It requries a greater amount of family participation in the construction of their own homes. It is anticipated that this change will increase the amount of borrower labor by more than 30 pecent over what was previously required.

It changes the method used for accounting for borrower labor. The current regulation accounts for borrower labor by the number of hours contributed. The new method accounts for labor by the number of tasks performed. This method permits the use of modern construction techniques whereas the current regulation discourages their use because it could reduce the number of hours contributed.

It restricts the families who can participate in this program only to those who are approved for a section 502 loan. Previously, they could obtain other assistance as well; however, virtually everyone participating in this program in the past has done so by obtaining a section 502 loan. Therefore, it was decided to drop the reference to other sources of credit.

It gives the State Director more flexibility in directing the program to communities that may best benefit. The current method of determining the success of the program is based on the amount of saving as the difference between the cost of a contract built house and the cost of a self-help built house. This method has many flaws. It is difficult to establish the benchmark value, thereby, permitting generous funding of grantees in high cost areas and inadequate funding in low cost areas. As proposed, the State Director has greater flexibility in the use of the program and in determining the value to be placed on the self-help effort. The State Director can negotiate with the grantee on the method, amount of borrower contribution, and level of grant funding which will permit the program to be useful in rehabilitation and repair of dwellings.

The proposed regulation strengthens the supervision of the grantee by requiring the grantee to report quarterly on progress and for FmHA to determine whether their quarterly progress is on schedule. It requires FmHA to put delinquent grantees on notice and to offer them assistance so they will be successful. If after a 90 day period, the grantee is still unsuccessful, they will be terminated. This proposed change should assist more grantees to be successful.

List of Subjects

CFR Part 1933

Grant program—Housing and community development, Indians, Low and moderate income housing, Nonprofit organizations, Rural housing.

7 CFR Part 1944

Fair housing, Great programs—Housing and community development, Reporting and recordkeeping requirements, Rural housing.

As proposed, Subpart I of Part 1933, Chapter XVIII, Title 7, of the Code of Federal Regulations is revised and redesignated as Subpart I of Part 1944 as follows:

PART 1933—LOAN AND GRANT PROGRAM (GROUP)

1. The authority citation for Part 1933 continues to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70.

§§ 1933.401–1933.419 and Exhibits A–F [Removed and reserved]

2. Sections 1933.401 through 1933.419 and Exhibits A through F are removed and reserved (and consequently, Part 1933 is removed and reserved).

PART 1944—HOUSING

1. The authority citation for Part 1944 continues to read as follows:

Authority: 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

2. Subpart I is added to read as follows:

Subpart I—Self-Help Technical Assistance Grants

Sec.

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1944.426 Grant closeout.
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Exhibits to Subpart I

Exhibit A Self-Help Technical Assistance Grant Agreement
Exhibit B Mutual Self-Help Housing Guidelines
Exhibit C Evaluation Report of Self-Help Technical Assistance (TA) Grants
Exhibit D Amendment to Self-Help Technical Assistance Grant Agreement
Exhibit E Self-Help Technical Assistance Grant Predevelopment Agreement
Exhibit F Guidance for Recipients of Self-Help Technical Assistance Grants
Exhibit G Site Option Loan to Technical Assistance Grantees

Subpart I—Self-Help Technical Assistance Grants

§ 1944.401 Objective.

This subpart sets forth the policies and procedures and delegates authority for providing Technical Assistance (TA) funds to eligible applicants to finance programs of technical and supervisory assistance for self-help housing as authorized under section 523 of the Housing Act of 1949. This financial assistance may pay part or all of the cost of developing, administering, or coordinating programs of technical and supervisory assistance to aid needy very low- and low-income families in carrying out self-help housing efforts in rural areas. The primary purpose is to fund organizations that are willing to locate and work with families that otherwise do not qualify as homeowners. Generally these are families below 50 percent of median incomes, living in substandard housing, and/or lacking the skills to be good homeowners. Grantees will comply with the nondiscrimination regulation Subpart E of Part 1901 of this chapter which states that no person in the United States shall, on the grounds of race, color, national origin, sex, religion, or age be excluded from participating in, be denied the benefits of, or be subject to discrimination in connection with the use of grant funds.

§ 1944.402 Grant purposes.

FmHA may contract or make a grant to an organization to:

(a) Give technical and supervisory assistance to eligible very low- and low-income families as defined in Exhibit C of Subpart A of this part, in carrying out self-help housing efforts.

(b) Assist other organizations to provide technical and supervisory assistance to eligible families.

(c) Develop a final application, recruit families and related activities necessary to participate under paragraph (a) of this section.

§ 1944.403 Definitions.

(a) *Agreement.* The Self-Help Technical Assistance Agreement which is a document signed by Farmers Home Administration (FmHA) and the grantee which sets forth the terms and conditions under which TA funds will be made available. (Exhibit A of this subpart).

(b) *Agreement period (or grant period).* The period of time for which an agreement is in force.

(c) *Date of completion.* The date when all work under a grant is completed or the date in the TA grant agreement, or any supplement or amendment to it, when Federal assistance ends.

(d) *Disallowed costs.* Those charges to a grant which FmHA determines cannot be authorized.

(e) *Equivalent units.* Equivalent units represent the "theoretical number of units" arrived at by adding the equivalent percentage of completion figure for each family in the self-help program (pre-construction and actual construction) together at any given date during program operations. The sum of the percentage of completion figures for all participant families represent the total number of "theoretical units" completed at any point in time. Equivalent units are useful in measuring progress during the period of the grant and are not a measurement of actual accomplishments.

(f) *Equivalent value of modest housing.* The equivalent value of modest housing is the typical cost of recently

constructed (within the last 12 months) FmHA financed homes in the area plus the actual or projected cost of the site and site development. If no construction has taken place during the last twelve months, the value will be established by use of the Marshall and Swift cost handbook or a similar type of handbook. This value is established by FmHA.

(g) *Mutual self-help.* The construction method by which participating families organized in groups of 4 to 10 families utilize their own labor to reduce the total construction cost of their homes. Participating families complete construction work on their homes by an exchange of labor with one another. The mutual self-help method must be used for new construction unless an exception is obtained from the National Office under § 1944.427 of this subpart.

(h) *Organization.* (1) A State, political subdivision, or public nonprofit corporation (including Indian Tribes or Tribal corporations); or

(2) A private nonprofit corporation that is owned and controlled by private persons or interests and is organized and operated for purposes other than making gains or profits for the corporation and is legally precluded from distributing any gains or profits to its members.

(i) *Participating family.* Individuals and/or their families who agree to build homes by the mutual self-help method. Participants are families with low incomes who qualify for and will receive interest credits. Participating families must have the ability to furnish their share of the required labor input regardless of the age or sex of the head of household. The participating family must be approved for a Section 502 RH Loan before the start of construction, have sufficient time available to assist in building their own homes, and show a desire to work with other families. Each family in the group must contribute labor on each other's homes to accomplish the mandatory tasks plus at least 20 percent of the other tasks values listed in Exhibit C–2 of this subpart.

(j) *Self-help.* The construction method by which an individual family utilize their labor to reduce the construction cost of their home without an exchange of labor between participating families. Unless otherwise authorized by the District Director, this method is only funded for repair and rehabilitation type construction.

(k) *Sponsor.* An existing entity that is willing and able to assist an applicant, with or without charge, in applying for a grant and in carrying out responsibilities under the agreement. Examples of sponsors are local rural electric cooperatives, institutions of higher education, community action agencies and other self-help grantees. Also, when available, regional technical and management assistance contractors may qualify to serve as a sponsor at no charge.

(l) *Termination of a grant.* The cancellation of Federal assistance, in whole or in part, at any time before the date of completion.

(m) *Technical assistance.* The organizing and supervising of groups of families in the construction of their own homes including:

(1) Recruiting families who are interested in sharing labor in the construction of each other's homes and assisting such families in obtaining housing loans.

(2) Conducting meetings of the families to explain the self-help program and subjects related to home ownership, such as loan payments, taxes, insurance, maintenance, and upkeep of the property.

(3) Helping families in planning and development activities that lead to the acquisition and development of suitable building sites.

(4) Assisting families in selecting or developing house plans for homes which will meet their needs and which they can afford.

(5) Assisting families in obtaining cost estimates for construction materials and any contracting that may be reuired.

(6) Providing assistance in the preparation of loan applications.

(7) Providing construction supervision and training for families while they construct their homes.

(8) Providing financial supervision to individual families with section 502 Rural Housing (RH) loans which will minimize the time and effort required by FmHA in processing borrower expenditures for materials and contract services.

(9) Assisting families in solving other housing problems.

§ 1944.404 Eligibility.

To receive a grant, the applicant must:

(a) Be an organization as defined in § 1944.403(h) of this Subpart.

(b) Have the financial, legal, administrative, and actual capacity to assume and carry out the responsibilities imposed by the Agreement. To meet the requirement of actual capacity it must either:

(1) Have necessary background and experience with proven ability to perform responsibly in the field of mutual self-help or other business management or administrative ventures which indicate an ability to perform responsibly in the field of mutual self-help; or

(2) Be sponsored by an organization with background, experience, ability, which agrees in writing to help the applicant to carry out its responsibilities.

(c) Legally obligate itself to administer TA funds, provide adequate accounting of the expenditure of such funds, and comply with the Agreement and FmHA regulations.

(d) If the organization is a private nonprofit corporation, meet the following conditions:

(1) Be a corporation organized for the primary purpose of assisting very low- and low-income families to obtain adequate housing.

(2) Have a local membership base of at least 30 people.

(3) Adopt, if it is being newly organized, Articles of Incorporation and Bylaws, which include the purposes and powers of an eligible applicant under this subpart.

(4) Have a Board of Directors which consist of not less than five but generally not more than nine members.

(5) If currently engaged or plan to become engaged in activities other than the operation of the TA grant, provide documentation as to the percentage of salaries, cost of space, phones, etc., that will be charged to each activity.

§ 1944.405 Authorized use of grant funds.

(a) Payment of salaries of personnel as authorized in the Agreement.

(b) Payment of necessary and reasonable office expenses such as office rental, office utilities, and office equipment rental. The purchase of office equipment is permissible when the grantee determines it to be more economical than renting.

(c) Purchase of office supplies such as paper, pens, pencils, and trade magazines.

(d) Payment of necessary administrative costs including but not limited to items such as Worker's Compensation, liability insurance, audit reports, travel and training, and employer's share of social security and health benefits.

(e) Purchase, lease, or maintenance of power or specialty tools such as a power saw, electric drill, sabre saw, ladders, and scaffolds, which are needed by the participating families. The participating families, however, are expected to provide their own hand tools such as hammers and handsaws.

(f) Funding a tax deferred pension plan for permanent employees. The organization's contribution, in any year, may not exceed 5 percent of the employee's salary or $2000, whichever is less.

(g) Payment of reasonable fees for training of grantee personnel including board members. This may include the cost of travel and per diem to attend in or out-of-State training as authorized by the board of directors and, when necessary, for the employee to do the current job.

(h) Payment of services rendered by a sponsor or other organization after the grant is closed and when it is determined the sponsor can provide the necessary services which will result in an overall reduction in the cost of assistance. Typically, this will be limited to new grantees and an existing grantee for the period of time that its size or activity does not justify a full staff. A full staff is a full or part-time director, project worker, secretary-bookkeeper, and a construction supervisor.

(i) Payment of certain consulting and legal costs required in the administration of the grant if such service is not available without cost. This does not include legal expenses for claims against the Federal Government. (Legal costs that may be incurred by the organization for the benefit of the participating families may be paid with prior approval of the State Director).

(j) Payments of the cost of an accountant to set up an accounting system and perform audits that may be required.

(k) Payments of reasonable expenses of board members for attending regular or special board meetings.

§ 1944.406 Prohibited use of grant funds.

(a) Hiring personnel specifically for the purpose of performing any of the construction work for participating families in the self-help projects.

(b) Buying real estate or building materials or other property of any kind for participating families.

(c) Paying any debts, expenses, or costs which would be the responsibility of the participating families in the self-help projects.

(d) Paying for training of an employee which is beyond what is necessary for the employee to perform his or her current job or that would give him or her an advantage for future advancement.

(e) Paying costs (including salaries) that are not directly related to helping very low- and low-income families obtain housing consistent with the objectives of this program.

§ 1944.407 Limitations.

The amount of the TA grant depends on the experience and capability of the applicant and must be justified on the number of families to be assisted. As a guide, the maximum grant amounts for any grant period will be limited to:

(a) An average TA cost per unit of no more than 12 percent of the cost of equivalent value of modest homes built in the area. (Upon request, the County Supervisor will provide the grantee the average cost of modest homes for the area); or

(b) An average TA cost per unit that does not exceed the difference between the equivalent value of modest homes in the area and the average mortgage of the participating families plus $1,000; or

(c) A TA cost that not not exceed an amount established by the State Director. The State Director may authorize a greater TA cost than paragraph (a) or (b) of this section when needed to accomplish a particular objective, such as requiring the grantee to serve very low-income families, remote areas, or similar situations; or

(d) A negotiated amount for repair and rehabilitation type proposals.

§ 1944.408 [Reserved]

§ 1944.409 Executive Order 12372.

The Self-Help Program is subject to the provision of Executive Order 12372 which requires intergovernmental consultation with State and local officials. Under Subpart J of Part 1940 of this chapter, "Intergovermental Review of Farmers Home Administration Program Activities," (available in any FmHA office), new applicants for the Self-Help Program must submit their Statement Activities to the State single point of contact prior to submitting their preapplication to FmHA. The name of the point of contact is available from the FmHA State Office.

§ 1944.410 Processing preapplications, applications, and completing grant dockets.

(a) *Form SF–424, "Application for Federal Assistance."* Form SF–424 is an original and one copy must be submitted by the applicant to the District Director. It will be used to establish communication between the applicant and FmHA, determine the applicant's eligibility, determine how well the project can compete with similar applications from other organizations and eliminate any proposals which have little or no chance for Federal funding before applicants incur significant expenditures for preparing an application. The following information will be attached to and become a part of the preapplication, as Part IV, Program Narrative Statement:

(1) Complete information about the applicant's previous experience and capacity to carry out the objective of the agreement.

(2) If the applicant is already formed, a copy of or an accurate reference to the specific provisions of State law under which the applicant is organized; a certified copy of the applicant's Articles of Incorporation and Bylaws or other evidence of corporate existence; certificate of incorporation for other than public bodies; evidence of good standing from the State when the corporation has been in existence 1 year or more; the names and addresses of the applicant's members, directors, and officers; and, if another organization is a member of the applicant-organization, its name, address, and principal business. If the applicant is not already formed, attach copies of the proposed organizational documents as outlined in § 1944.404(d)(3) of this subpart.

(3) A current (less than 6 months) dated and signed financial statement showing the amounts and specific nature of assets and liabilities together with information on the repayment schedule and status of any debt owed by the applicant. If the applicant is being sponsored by another organization, the same type of financial statement also must be provided by the applicant's sponsor.

(4) A narrative statement which includes information about the amount of the grant funds being requested, area(s) to be served, need for self-help housing in the area(s), the number of self-help units proposed to be built, rehabilitated or repaired during the agreement period, housing conditions of low-income families in the area and reasons why families need self-help assistance. Evidence should be provided that the communities support the activity and that there are low-income families willing to contribute their labor in order to obtain adequate housing. The pre-application may contain information such as census materials, local planning studies, surveys, or other readily available information which indicates a need in the area for housing of the type and cost to be provided by the proposed self-help TA program.

(5) A plan of how the organization proposes to reach very low-income families living in houses that are deteriorated, dilapidated, overcrowded, and/or lack plumbing facilities.

(6) A proposed budget, staffing plan and projected cost of the dwelling to be built.

(7) A preliminary survey as to the availability of lots and projects cost of the sites.

(8) A list of other activities the applicant is engaged in and expects to continue and a statement as to other sources of funding and whether it will have sufficient funds to assure continued operation of the other

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activities for at least the period of the agreement.

(9) Whether assistance under paragraph (d) of this section is requested and a brief narrative identifying the need, amount of funds needed, and projected time period.

(b) *Preapplication review.* (1) The District Director, within 30 days of receipt of the preapplication, Form SF–424 and all other required information and material will complete a thorough review for completeness, accuracy, and conformance to program policy and regulations. Incomplete preapplications will be returned to the applicant for completion. The applicant should be given the name of the regional technical assistance contractor. The County Supervisor in the prospective county will be contacted as to the need for the program in the proposed area and if the necessary resources are available to the grantee. This will include a discussion of the number of 502 and 504 units that will need to be committed to the grantee and the potential work impact on the office during the grant period. If it is determined that the county office lacks the resources (either personnel or funds) to process all loan requests in a timely manner, the District Director must communicate this need to the State Director along with a recommended solution. (Lack of resources at the county level are not grounds to deny a request). After the District Director has determined that the preapplication is complete and accurate, the District Director will assemble the material in an applicant case file and forward it to the State Director. The case file, as a minimum, must contain the following:

(i) Form SF–424, "Application for Federal Assistance",

(ii) Original and one copy of Form FmHA 1940–20, "Request for Environmental Information," and

(iii) Eligibility recommendations.

(2) The State Director may, if needed, submit the organizational documents with any comments or questions to OGC for a preliminary opinion as to whether the applicant is or will be a legal organization of the type required by these regulations and for advice on any other aspects of the preapplication.

(3) The State Director, if unable to determine eligibility or qualifications with the advice of the OGC, may submit the preapplication to the National Office for review. The preapplication will contain all memoranda from OGC giving the results of its review. The State Director will identify in the transmittal memorandum to the National Office the specific problem and will recommend possible solutions and any information about the applicant which would be helpful to the National Office in reaching a decision.

(4) After an eligibility determination has been made—which should be completed within 30 days unless OGC is involved—the State Director will:

(i) If the applicant is eligible, contact the National Office as to the availability of funds or submit the proposal to the National Office for authorization if the requested amount exceeds the State Director's approving authority. If funds are available, the final review officer, either the State Director or the Assistant Administrator, Housing will issue a letter of conditions that the applicant must meet and direct the District Director to issue Form AD–622, "Notice of Preapplication Review Action."

(ii) If the applicant is determined not eligible, the State Director will direct the District Director to issue Form AD–622, "Notice of Preapplication Review Action."

(c) *Form AD–622, "Notice of Preapplication Review Action."* (1) If the applicant is eligible and after the State Director has returned the preapplication information and the executed original Form FmHA 1940–20 to the District Office, the District Director will, within 5 days, prepare and issue Form AD–622, "Notice of Preapplication Review Action." The original Form AD–622 will be signed and delivered to the applicant along with the letter of conditions, a copy to the applicant's case file, a copy to the County Supervisor, and a copy to the State Director.

(2) If the applicant is not eligible and after the State Director has returned the preapplication information, the District Director will within 5 days notify the applicant on Form AD–622. The notification will inform the applicant that an appeal of the decision may be made to the National Appeals Staff under Subpart B of Part 1900 of this chapter.

(3) If the applicant is eligible and no funds are available, the State Director will return the preapplication information to the District Director who will, within 5 days, notify the applicant on Form AD–622. The notification will explain the facts concerning the lack of funding and that FmHA will notify them when funding will be available. This is not an appealable decision.

(d) *Self-help technical assistance grant Predevelopment agreement.* If the grantee requested predevelopment assistance and the State Director determines that the applicant lacks the financial resources to meet the conditions of grant approval, a grant of up to $10,000 and for up to six months will be made in order for the applicant to provide what is required by paragraph (e) of this section. This is a one time grant and is available only after the letter of conditions has been issued. Denial of this assistance is an appealable decision under Subpart B of Part 1900 of this chapter.

(e) *Form SF–424, "Application for Federal Assistance."* The applicant will submit Form SF–424 in an original and one copy to the District Director. The application should provide a detailed proposal of its goals including:

(1) Names, addresses, number in household, and total annual household income of families who have been contacted by the applicant and are interested in participating in a self-help housing project. Community organizations including minority organizations may be used as a source of names of people interested in self-help housing.

(2) Proof that the first group of prospective participating self-help families have qualified for financial assistance from FmHA.

(3) Evidence that lots are optioned by the prospective participating self-help families for the first group. Evidence that lots are available for the remaining groups.

(4) Detailed cost estimates of houses to be built by the mutual self-help method. Plans and specifications should be submitted with the cost estimates.

(5) Proposed staffing need, including qualifications, experience, proposed hiring schedule, and availability of any prospective employees.

(6) Name, address, and official position of the applicant's representative or representatives authorized to act for the applicant and work with FmHA.

(7) Budget information including a detailed budget for the Agreement period based upon the needs outlined in the proposal.

(8) Indirect or direct cost policy and proposed indirect cost rate developed in accordance with OMB Circular No. A–122 (available in any FmHA District Office) and included.

(9) Personnel procedures and practices that will be established or are in existence. Forms to be used should be submitted with the application.

(10) A proposed monthly activities schedule showing the proposed dates for starting and completing the recruitment, loan processing and construction phases for each group of participant families.

§ 1944.411 Conditions for approving a grant.

A grant may be approved for an eligible applicant when the conditions in the letter of conditions are met and the following conditions are present:

(a) The applicant has or can hire, or contract directly or indirectly with, qualified people to carry out its responsibilities in administering the grant.

(b) The applicant has met all of the conditions listed in § 1944.410(e) of this subpart.

(c) The grantee furnishes a signed statement that it complies with the requirements of the appropriate OMB Circulars (available in any FmHA District Office) and the Departmental regulations found at 7 CFR Parts 3015 and 3016. The OMB Circulars include but are not necessarily limited to the following:

(1) Circular No. A–21, "Cost Principles for Educational Institutions."

(2) Circular No. A–87, "Cost Principles for State and local Governments."

(3) Circular No. A–102, "Grants and Cooperative Agreements with State and Local Governments."

(4) Circular No. A–110, "Grants and Agreements with Institutions of Higher Education, Hospitals and other Non-Profit Organizations."

(5) Circular No. A–122, "Cost Principles for Non-Profit Organizations."

(d) A resolution has been adopted by the board of directors which authorizes the appropriate officer to execute Exhibit A, "Self-Help Technical Assistance Grant Agreement," and Form FmHA 400–1, "Equal Opportunity Agreement."

(e) The grantee has a fidelity bond which provides coverage for its officers and employees who are entrusted with the receipt, custody, or disbursement of funds, and the custody of any other negotiable or readily salable personal property. The minimum amount of the bond must be at least equal to the maximum amount of liquid assets available to any one person at any one time. If not prohibited by State law, the United States of America is to be named co-obligee.

(f) The grantee has or agrees in writing to establish, within one month after closing, a record keeping system that is certified by a certified public accountant to be adequate to meet the Agreement. Failure to provide evidence of a certified accounting system is a reason for termination of the grant.

(g) The grantee has establisned an interest bearing checking account on which at least two bonded officials will sign all checks issued and understands that interest earned in excess of $100.00 annually must be submitted to FmHA quarterly. (The use of minority depository institutions is encouraged.)

(h) The grantee has developed an agreement to be executed by the grantee and the self-help participants which clearly sets forth what is expected of each and has incorporated Exhibit C–2, "Breakdown Of Construction Development," as a part of it which clearly shows what work is expected of the participating family.

§ 1944.412 Docket preparation.

When the application and all items required for the complete docket have been received, the District Director will thoroughly examine it to ensure the application has been properly and accurately prepared and that it includes the required dates and signatures. The docket items will be assembled and distributed by the District Director in the following order:

Form number	Name of form or document	Total No. of copies	Signed by applicant	Number for agreement docket	Copy for applicant
SF–424	Application for federal assistance	3	1	1–O&1C	1–C.
AD–622	Notice of Pre-application review action	2		1–C	1–C.
FmHA 1940–1	Request for obligation of funds	4	2	3–O&2C	1–C.
FmHA 400–4	Assurance agreement	2	1	1–O	1–C.
	Certified copy authorizing resolution	1	1	1–O	
	Self-Help Technical Assistance Grant Agreement (Exhibit A).	2	1	1–O	1–C.
	Any personnel forms to be used	2		1–O	1–C.

O=Original.
C=Copy.

§ 1944.413 Grant approval.

(a) *Approval of grant.* Within 30 days of the grantee meeting the conditions of § 1944.411 of this subpart, the approving official will:

(1) Execute and distribute Form FmHA 1940–1 in accordance with the Forms Manual Insert (FMI).

(2) Prepare and distribute Form FmHA 071–1, "Project Information Card," in accordance with FmHA Instruction 2015–C (available in any FmHA State Office.)

(3) After the Finance Office acknowledges that funds are obligated, request an initial advance of funds on Form FmHA 440–57, "Acknowledgement of Obligated Funds/Check Request," in accordance with the FMI. The amount of this request should cover the applicant's needs for the remainder of the month in which the grant is closed plus the next month. Subsequent advances will cover only a one month period.

(b) *Cancellation of an approved grant.* An approved grant may be canceled before closing if the applicant is no longer eligible, the proposal is no longer feasible, or the applicant requests cancellation. Cancellation will be accomplished as follows:

(1) The District Director will prepare Form FmHA 1940–10, "Cancellation of U.S. Treasury Check and/or Obligation," according to the (FMI) and send it to the State Director with the reasons for cancellation. If the State Director approves the request, Form FmHA 1940–10 will be returned to the District Office for processing in accordance with the FMI.

(2) The District Director will notify the applicant of the cancellation and the right to appeal under Subpart B of Part 1900 of this chapter. If the applicant requested the cancellation, no appeal rights are provided, but the applicant will still be notified of the cancellation.

(c) *Disapproval of grant.* If a grant is disapproved after the docket has been developed, the approving official will state the reason on the original Form FmHA 1940–1, or in a memorandum to the District Director. The District Director will notify the applicant in writing of the disapproval and the reason for disapproval. Also, the notification will inform the applicant of its appeal rights under Subpart B of Part 1900 of this chapter.

§ 1944.414 [Reserved]

§ 1944.415 Grant approval and other approving authorities.

(a) The State Director is authorized to approve or disapprove TA grants under this subpart. For a grant in excess of $300,000, or in the case of a grant

amendment when the amount of the grant plus any unexpended funds from a previous grant will exceed $400,000, prior written consent of the National Office is required. In such cases, the docket along with the State Director's recommendations must be submitted to the National Office for review.

(b) The State Director may approve a grant not to exceed $10,000 to an eligible organization under § 1944.410(d) of this subpart. The grant must be limited to 6 months and funds must be used for the development of the final application, family recruitment, and related activities.

(c) The authority to contract for services is limited to the Administrator of FmHA.

(d) Monthly expenditures of the grantee will normally be approved by the District Director unless:

(1) The grantee operates in only one country, in which case the authority may be delegated to the County Supervisor.

(2) The grantee operates in more than one FmHA District, in which case the State Director will designate the approving official.

(3) The grantee operates in more than one State Director's jurisdiction, in which case the Administrator will designate the approving official.

(4) The expenditure is under contract authority, in which case the Contracting Official Representative will approve the monthly expenditure.

§ 1944.416 Grant closing.

The grant is closed on the date funds are advanced and the Agreement as defined in § 1944.403(a) is executed by the applicant and the government. If the Agreement is executed on other than the date funds are advanced, then the closing date is the day the Agreement is executed. Funds may not be advanced prior to the signing of the Agreement. The District Director or Assistant District Director are authorized to execute the Agreement for the Farmers Home Administration. Person(s) authorized by resolution may sign for the applicant.

§ 1944.417 Servicing actions after grant closing.

FmHA has a responsibility to help the grantee be successful and help the grantee avoid cases of fraud and abuse. Servicing actions also include correlating activities between the grantee and FmHA to the benefit of the participating families. The amount of servicing actions needed will vary in accordance with the experience of the grantee, but as a minimum the following actions are required:

(a) Monthly, the grantee will provide the District Director with a request for additional funds on Form SF–270, "Request for Advance or Reimbursement." This request need only show the amount of funds used during the previous month, amount of unspent funds, projected need for the next 30 days, and written justification if the request exceeds the projected need for the next 30 days. This request must be in the District Director's office fifteen days prior to the beginning of the month. Upon receipt of the grantee's request, the District Director will:

(1) If the request appears to be in order, process Form FmHA 440–57 so that delivery of the check will be possible on the first of the next month.

(2) If the request does not appear to be in order, immediately contact the grantee to resolve the problem. After the contact:

(i) If the explanation is acceptable, process Form FmHA 440–57 so delivery may be possible by the first of the next month, or

(ii) If the explanation is not acceptable, request the amount of funds that appear reasonable for the next 30 days on Form FmHA 440–57. The unapproved funds request will be held in abeyance until further explanation is received and then either disapproved or added to the next month's request.

(b) Quarterly, the grantee will submit Exhibit C of this subpart (Evaluation Report of Self-Help Technical Assistance Grants) in an original and three copies of the County Supervisor on or before January 15, April 15, July 15 and October 15 which will verify its progress toward meeting the objectives stated in the Agreement and the application. The County Supervisor will immediately complete the County Office Review part and forward the report to the District Office. After Exhibit C is received in the District Office a meeting should be scheduled between the grantee, District Director, and the County Supervisor since this is an opportune time for both the grantee and FmHA to review progress to date and make necessary adjustments for the future. This meeting is required if the grantee was previously identified as a problem grantee or will be identified as a problem grantee at this time. Regardless of whether a meeting will be held, the following will be done:

(1) Exhibit C and other information will be evaluated to determine progress made to date. The District Director will comment on Exhibit C as to whether the grantee is ahead or behind schedule in each of the following areas:

(i) *Assisting the projected number of families.*

(ii) *Serving very low-income applicants.* Is the grantee reaching a minimum of 40 percent very low-income families with each group?

(iii) *Equivalent units (EUs).* Is the number of EUs completed representative of lapse in time of the grant? For example, if 25 percent of the grant period has elapsed, are 25 percent of the number of EUs completed?

(iv) *Labor contributions by the family.* Are the families working together and are they completing the labor tasks as established on Exhibit C–2?

(v) *Use of grant funds.* Are grant costs within the limits defined in § 1944.407 of this subpart?

(2) The District Director will submit Exhibit C to the State Director who will evaluate the quarterly report along with the District Director's comments. If the State Director determines the grantee is progressing satisfactorily, the State Director will sign and forward Exhibit C to the National Office. However, if the State Director determines the grantee is not performing as expected, the State Director will notify the grantee that they have been classified as "High Risk" grantee. The notice will specify the deficiencies and what action needs to be taken to correct the deficiencies and will give the grantee at least 90 days to take corrective action. The notice will advise the grantee that FmHA is available to assist and provide the name and address of an organization that is under contract with FmHA to assist them. Next, the State Director will forward a copy of Exhibit C, District Directors comments, and the reasons for classifying them as "High Risk" to the National Office, Single Family Housing, Special Programs Branch. When the period of time provided for corrective action has expired, an assessment will be made of the progress by the grantee toward correcting the situation. If the State Director determines:

(i) The situation has been corrected or reasonable progress has been made toward correcting the situation, the "High Risk" status will be lifted and the grantee so notified.

(ii) The situation has not been corrected but it is correctable if additional time is granted, an extension will be issued.

(iii) The situation has not been corrected and it is unlikely to be corrected if given additional time, the grant will be terminated under § 1944.426(b)(1) of this subpart.

§ 1944.418 [Reserved]

§ 1944.419 Final grantee evaluation.

Between the 18th and 24th month of the grant period, an evaluation of the grantee will be conducted by FmHA. The State Director may use FmHA employees or an organization under contract to FmHA to provide the evaluation. The evaluation is to determine how successful the grantee was in meeting goals and objectives as defined in the agreement, application, this regulation, and any amendments.

(a) This is a quantitative evaluation of the grantee to determine if it met its goals in:

(1) Assisting the projected number of families in obtaining adequate housing.

(2) Meeting the goal of assisting very low-income families.

(3) Meeting the family labor requirement in § 1944.411(h) and Exhibit C–2 of this subpart.

(4) Keeping costs within the guide set in § 1944.407, and

(5) Meeting other objectives in the Agreement.

(b) The evaluation is a narrative addressed to the State Director with a copy to the National Office, Single Family Housing Processing Division. It will be in 3 parts, namely; findings, recommendations, and an overall rating. The rating will be either unacceptable, acceptable, or outstanding, as follows:

(1) Outstanding if the grantee met or exceeded all of the goals in paragraph (a) of this section.

(2) Acceptable if the grantee met or exceeded all of the goals as defined in paragraph (a) except two, or

(3) Unacceptable if the grantee failed to obtain an acceptable rating.

(c) After the State Director has reviewed the evaluation, a copy will be mailed to the grantee. The grantee may request a review of the evaluation with the District Director. This review is for clarification of the material and to dispute the findings if they are known to be wrong. The rating is not open for discussion except to the extent it can be proven that the findings do not support the rating. If this is the case, the District Director will file an amendment to the State Director.

§ 1944.420 Extension or revision of the grant agreement.

The State Director may authorize the District Director to execute on behalf of the Government Exhibit D of this subpart, "Amendment to Self-Help Technical Assistance Grant Agreement," at any time during the grant period provided:

(a) The extension period is for no more than one year from the final date of the existing Agreement.

(b) The need for the extension is clearly justified.

(c) If additional funds are needed, a revised budget is submitted with complete justification, and

(d) The grantee is within the guidelines in § 1944.407 of this subpart or the State Director determines that the best interest of the government will be served by the extension.

§ 1944.421 Refunding of an existing grantee.

Grantees wishing to continue with self-help efforts after the end of the current grant plus any extensions should file Form SD–424, "Application for Federal Assistance," in accordance with § 1944.410(e). It is recommended that it be filed at least 6 months before the end of the current grant period. Funds from the existing grant may be used to meet the conditions of a new grant provided the area to be served is the same geographic area, as defined in the current grant. In addition to meeting the conditions of an applicant as defined in § 1944.411 of this subpart, the grantee must also have received or will receive an acceptable rating on its current grant unless an exception is granted by the State Director. The State Director may grant an exception to the rating if it is determined that the reasons causing the previous unacceptable rating have been removed or will be removed with the approval of this grant.

§ 1944.422 Audit and other report requirements.

The grantee must submit Form SF–269A, "Financial Status Report," to the appropriate FmHA District Office annually (or biannually if a State or local government with authority to do a less frequent audit requests it) and within 90 days of the end of the grant period or termination of the grant. The audit, conducted by the grantee's auditors, is to be performed in accordance with Generally Accepted Government Auditing Standards (GAGAS), using the publication, "Standards for Audit of Governmental Organizations, Programs, Activities and Functions," developed by the Comptroller General of the United States in 1981, and any subsequent revisions. In addition, the audits are also to be performed in accordance with various Office of Management and Budget (OMB) Circulars and FmHA requirements as specified in this subpart.

(a) *Nonprofit organizations and others.* These organizations are to be audited in accordance with FmHA requirements, and OMB Circular A–110, "Uniform Requirements for Grants to Universities, Hospitals, and Other Nonprofit Organizations." These requirements also apply to public hospitals, public colleges, and universities if they are excluded from the audit requirements of paragraph (b) of this section.

(1) An audit conducted by the grantee's auditor shall be supplied to the FmHA District Director as soon as possible but in no case later than ninety (90) days following the period covered by the grant agreement.

(2) Auditors shall promply notify USDA OIG Regional Inspector General and the FmHA District Office, in writing, of any, indication of fraud, abuse, or illegal acts in grantees use of grant funds or in the handling of borrowers accounts.

(3) Nonprofit organizations that receive less than $25,000 a year in Federal financial assistance need not be audited.

(b) *State and local governments and Indian tribes.* These organizations are to be audited in accordance with this subpart and OMB Circular A–128 and A–102, with copies of the audits being forwarded by the grantee to the FmHA District Director and the appropriate Federal cognizant agency. "Cognizant agency" means the federal agency assigned by OMB Circular A–128. Within the Department of Agriculture (USDA), the OIG shall fulfill cognizant agency responsibilities. Smaller grantees not assigned a cognizant agency by OMB should contact the Federal agency that provided the most funds. When USDA is designated as the cognizant agency or when it has been determined by the borrower that FmHA provided the major portion of Federal financial assistance, the State Director will contact the appropriate USDA OIG Regional Inspector General. FmHA and the borrower shall coordinate all proposed audit plans with the appropriate USDA OIG.

(1) State and local governments and Indian tribes that receive $25,000 or more a year in Federal financial assistance shall have an audit made in accordance with OMB Circular A–128.

(2) State and local and Indian tribes that receive less than $25,000 a year in Federal financial assistance shall be exempt from OMB Circular A–128.

(3) Public hospitals and public colleges and universities may be excluded by the State Director from OMB Circular A–128 audit requirements. If such entities are excluded, audits

shall be made in accordance with paragraph (a) of this section.

§ 1944.423 Loan packaging and 502 RH application submittal.

A grantee is required to assist 502 RH applicants in submitting their application for a rural housing loan. Loan packaging will be performed in accordance with Exhibit A of Subpart A of part 1944 of this chapter, therefore, it is important that the grantee be trained at an early date in the packaging of rural housing loans. Typically this training should take place before the first applications are submitted to the County Office and before the grant is closed. A grantee should become very knowledgeable of FmHA's eligibility requirements but must understand that only FmHA can approve or deny an applicant assistance. A grantee should never place itself in a position where it appears to disagree with the eligibility decision of FmHA. However, the grantee may ask for clarification that may be helpful in working with future applicants. Grant funds may not be used to pay any expense in connection with an appeal that the applicant may file or pursue.

§ 1944.424 Dwelling construction and standards.

All construction will be performed in accordance with Subpart A of Part 1924 of this chapter. The planned work must meet the building requirements of Subpart A of Part 1944 of this chapter and meet the building codes as defined Subpart A of Part 1944 of this chapter and in any local codes. Building sites must conform to the requirements of Subpart C of Part 1924 of this chapter.

§ 1944.425 Handling and accounting for borrower loan funds.

Grantees will be required to administer borrower loan funds during the construction phases. The extent of their involvement will depend on the experience of the grantee and the amount of authority delegated to them by the District Director in accordance with § 1924.6(c) of Subpart A of Part 1924 of this chapter.

§ 1944.426 Grant closeout.

(a) *Grant purposes completed.* Promptly after the date of completion, grant closeout actions will be taken to allow the orderly discontinuance of grantee activity.

(1) The grantee will immediately refund to FmHA any balance of grant funds advanced that are not committed for the payment of authorized expenses as prescribed in § 1951.58(j) of FmHA Instruction 1951–B (available in any FmHA Office).

(2) The grantee will furnish Form SF–269A (Financial Status Report) to FmHA within 90 days after the date of completion of the grant. All other financial, performance, and other reports required as a condition of the grant also will be completed.

(3) The grantee will account for any property acquired with TA grant funds or otherwise received from FmHA.

(4) After the grant closeout, FmHA retains the right to recover any disallowed costs which are discovered as a result of the final audit. Subpart M of Part 1951 of this chapter will be used by FmHA to recover any unauthorized expenditrues.

(5) The grantee will provide FmHA an audit conforming to those requirements established in this part, including audits of self-help borrower accounts.

(6) Upon request from the recipient, any allowable reimbursable cost not covered by previous payments shall be promptly paid by FmHA.

(b) *Grant purposes not completed*—(1) *Notification of termination.* The State Director will promptly notify the grantee and the National Office in writing of the termination action including the specific reasons for the decision and the effective date of the termination. The notification to the grantee will specify that if the grantee believes the reason for the proposed termination can be resolved, the grantee should, within 15 calendar days of the date of this notificaiotn, contact the State Director in writing requesting a meeting for further consideration. The meeting will be an informal proceeding at which the grantee will be given the opportunity to provide whatever additional information it believes should be considered in reaching a decision concerning the case. The grantee may have an attorney or any other person present at the meeting if desired. Within 7 calendar days of the meeting, the State Director will determine what action to take.

(i) If the State Director determines that termination is not necessary, the grantee will be informed by letter along with the District Director.

(ii) If the State Director determines that termination of the grant is appropriate, he/she will promptly inform the grantee by the use of Exhibit B–3 of Subpart B of Part 1900 of this chapter.

(2) *National Office review.* (i) Upon receipt of a request from a grantee that the decision of the State Director be reconsidered, the National Office will make a preliminary decision concerning the continued funding of the grantee during the appeal period. Written notification of the decision will be given to the State Director and grantee.

(ii) The National Office will then obtain a comprehensive report on the matter from the State Office. This information will be considered together with any additional information that may be provided by the grantee.

(c) *Grant suspension.* When the grantee has failed to comply with the terms of the agreement, the District Director will promptly report the facts to the State Director. The State Director will consider termination or suspension of the grant. When the State Director determines that the grantee has a reasonable potential to correct deficiencies the grant may be suspended. The State Director may also withhold further disbursement of grant funds and prohibit the grantee from incurring additional obligations of grant funds with written approval of the National Office. The grantee will be notified of the grant suspension in writing by the State Director. The State Director will also promptly inform the grantee of its rights to appeal the decision by use of Exhibit B–3 of Subpart B of Part 1900 of this chapter.

(d) *Grant termination.* The State Director may terminate the grant agreement whenever FmHA determines that the grantee has failed to comply with terms of the Agreement. The reasons for termination may include, but are not limited to, such problems as listed in paragraph (e)(3)(i) of the "Self-Help Technical Assistance Grant Agreement" (Exhibit A). The State Director may also withhold further disbursement of grant funds and prohibit the grantee from incurring additional obligations of grant funds with written approval of the National Office. FmHA will allow all necessary and proper costs which grantee could not reasonably avoid.

(1) *Termination for cause.* The grant agreement may be terminated in whole, or in part, at any time before date of completion, whenever FmHA determines that the grantee has failed to comply with terms of the Agreement. The State Director will notify the grantee in writing giving the reasons for the action and inform the grantee of its rights of appeal by use of Exhibit B–3 of Subpart B of Part 1900 of this chapter.

(2) *Termination for convenience.* FmHA or the grantee may terminate the grant in whole, or in part, when both parties agree that the continuation of the grant would not produce beneficial results. The two parties will agree in writing to the termination conditions including the effective date. No notice of rights of appeal will be issued by FmHA.

§ 1944.427 Grantee self-evaluation.

Annually or more often, the board of directors will evaluate their own self-help program. Exhibit F to this part is provided for that purpose. It is also recommended that they review their personnel policy, any audits that may have been conducted and other reports to determine if they need to make adjustments in order to prevent fraud and abuse and meet the goals in the current grant agreement.

§§ 1944–428—1944.450 [Reserved]

Exhibits to Subpart I

Exhibit A—Self-Help Technical Assistance Grant Agreement

THIS GRANT AGREEMENT dated _____, 19____, is between

_____

nonprofit corporation ("Grantee"), organized and operating under

_____

(authorizing State statute)

and the United States of America acting through the Farmers Home Administration, Department of Agriculture ("FmHA").

In consideration of financial assistance in the amount of $_____ (called "Grant Funds") to be made available by FmHA to Grantee under section 523(b)(1)(A) of the Housing Act of 1949 to be used in (specify area to be served) _____ for the purpose of providing a program of technical and supervisory assistance which will aid low-income families in carrying out mutual self-help housing efforts, Grantee will provide such a program in accordance with the terms of this Agreement and FmHA regulations.

Definitions:

"Date of Completion" means the date when all work under a grant is completed or the date in the TA Grant Agreement, or any supplement or amendment thereto, on which Federal assistance ends.

"Disallowed costs" are those charges to a grant which the FmHA determines cannot be authorized.

"Grant Closeout" is the process by which the grant operation is concluded at the expiration of the grant period or following a decision to terminate the grant.

"Termination" of a grant means the cancellation of Federal assistance, in whole or in part, under a grant at any time prior to the date of completion.

Terms of agreement:

(a) This Agreement shall terminate _____ years from this date unless extended or sooner terminated under paragraphs (e) and (f) of this Agreement.

(b) Grantee shall carry out the self-help housing activity described in the application docket which is attached to and made a part of this Agreement. Grantee will be bound by the conditions set forth in the docket, 7 CFR Part 1944, Subpart I, and the further conditions set forth in this Agreement. If any of the conditions in the docket are inconsistent with those in the Agreement or Subpart I of Part 1944, the latter will govern. A waiver of any condition must be in writing and must be signed by an authorized representative of FmHA.

(c) Grantee shall use grant funds only for the purposes and activities specified in FmHA regulations and in the application docket approved by FmHA including the approval budget. Any uses not provided for in the approved budget must be approved in writing by FmHA in advance.

(d) If Grantee is a private nonprofit corporation, expenses charged for travel or per diem will not exceed the rates paid FmHA employees for similar expenses. If Grantee is a public body, the rates will be those that are allowable under the customary practice in the government of which Grantee is a part; if none are customary, the FmHA rates will be the maximum allowed.

(e) Grant closeout and termination procedures will be as follows:

(1) Promptly after the date of completion or a decision to terminate a grant, grant closeout actions are to be taken to allow the orderly discontinuation of Grantee activity.

(i) Grantee shall immediately refund to FmHA any uncommitted balance of grant funds.

(ii) Grantee will furnish to FmHA within 90 days after the date of completion of the grant a "Financial Status Report," Form SF–269 A. All financial, performance, and other reports required as a condition of the grant will also be completed.

(iii) Grantee shall account for any property acquired with technical assistance (TA) grant funds, or otherwise received from FmHA.

(iv) After the grant closeout, FmHA retains the right to recover any disallowed costs which may be discovered as a result of any audit.

(2) When there is reasonable evidence that Grantee has failed to comply with the terms of this Agreement, the State Director may determine Grantee as "high risk". "High risk" Grantee will be supervised to the extent necessary to protect the government's interest and to help Grantee overcome the deficiencies.

(3) Grant termination will be based on the following:

(i) *Termination for cause.* This grant may be terminated in whole, or in part, 90 days after a Grantee has been classified as "high risk" if the State Director determines that Grantee has failed to correct previous deficiencies and is unlikely to correct such items if additional time is allowed. The reasons for termination may include, but are not limited to, such problems as:

(A) Actual TA costs significantly exceeding the amount stipulated in the proposal.

(B) The number of homes beign built is significantly less than proposed construction or is not on schedule.

(C) The cost of housing not being appropriate for the self-help program.

(D) Failure of Grantee to only use grant funds for authorized purposes.

(E) Failure of Grantee to submit adequate and timely reports of its operation.

(F) Failure of Grantee to require families to work together in groups by the mutual self-help method in the case of new construction.

(G) Serious or repetitive violation of any of the provisions of any laws administered by FmHA or any regulation issued thereunder.

(H) Violation of any nondiscrimination or equal opportunity requirement administered by FmHA in connection with any FmHA programs.

(I) Failure to establish an accounting system acceptable to FmHA.

(J) Failure to serve very low-income families.

(K) Failure to recruit families from substandard housing.

(ii) *Termination for convenience.* FmHA or Grantee may terminate the grant in whole, or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions including the effective date and, in case of partial termination, the portion to be terminated.

(4) To terminate a grant for cause, FmHA shall promptly notify Grantee in writing of the determination and the reasons for and the effective date of the whole or partial termination. Grantee will be advised of its appeal rights under 7 CFR Part 1900, Subpart B.

(f) An extension of this grant agreement may be approved by FmHA provided in its opinion, the extension is justified and there is a likelihood that the grantee can accomplish the goals set out and approved in the application docket during the period of the extension.

(g) Grant funds may not be used to pay obligations incurred before the date of this Agreement. Grantee will not obligate grant funds after the grant termination or completion date.

(h) As requested and in the manner specified by FmHA, the grantee must make quaterly reports, Exhibit C of this subpart (on 1/15, 4/15, 7/15 and 10/15 of each year,) and a financial status report at the end of the grant period, and permit on-site inspections of program progress by FmHA representatives. FmHA may require progress reports more frequently if it deems necessary. The Grantee must also comply with the audit requirements found in § 1944.422 of Subpart I of 7 CFR Part 1944, if applicable. Grantee will maintain records and accounts, including property, personnel and financial records, to assure a proper accounting of all grant funds. These records will be made available to FmHA for auditing purposes and will be retained by grantee for thee years after the termination or completion of this grant.

(i) Title to personal property acquired with grant funds shall vest in the grantee, subject to the following: Grantee shall not sell, assign, lease, encumber, or otherwise dispose of such property or any interest in the property without the written consent of FmHA during the grant period. At FmHA's option if the grant is completed, terminated, or cancelled for any reason, Grantee may keep such personal property provided the State Director determines it is still needed to enable Grantee to continue a self-help housing program. Grantee may transfer all such personal property to another grantee approved by FmHA, convey the property back to the Government, or dispose of it in

any reasonable manner approved by the State Director.

(j) Results of the program assisted by grant funds may be published by Grantee without prior review by FmHA, provided that such publications acknowledge the support provided by funds pursuant to the provisions of Title V of the Housing Act of 1949, 42 U.S.C. 1471, *et seq.*, and that five copies of each such publication are furnished to the local representative of FmHA.

(k) Grantee certifies that no person or organization has been employed or retained to solicit or secure this grant for a commission, percentage, brokerage, or contingent fee.

(l) Grantee will comply with pertinent nondiscrimination regulations of FmHA which state that no person in the United States shall, on the grounds of race, religion, color, age, sex, marital status, national origin, or mental or physical handicap, be excluded from participating in, be denied the benefit of, or be subject to discrimination in connection with the use of grant funds.

(m) In all hiring or employment made possible by or resulting from this grant, grantee: (1) Will not discriminate against any employee or applicant for employment because of race, religion, color, sex, marital status, national origin, age, or mental or physical handicap, and (2) will take affirmative action to insure that applicants, are employed, and that employees are treated during employment without regard to their race, religion, color, sex, martial status, national origin, or mental or physical handicap. This requirement shall apply to, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In the event Grantee signs a contract which would be covered by any Executive Order, law, or regulation prohibiting discrimination, Grantee shall include in the contract the "Equal Employment Clause" as specified by FmHA.

(n) Grantee shall not, without the prior written approval of FmHA, enter into any contract obligating the use of TA grant funds.

(o) It is understood and agreed by Grantee that any assistance granted under this Agreement will be administered subject to the limitations of Title V of the Housing Act of 1949 as amended, 42 U.S.C. 1471 *et seq.*, and related regulations, and that rights granted to FmHA in this Agreement or elsewhere may be exercised by it in its sole discretion to carry out the purposes of the assistance, and protect FmFA's financial interest.

(p) Grantee will maintain a code or standards of conduct which will govern the performance of its officers, employees, or agents. Grantee's offices, employees, or agents will neither solicit nor accept gratuities, favors, or anything of monetary value from suppliers, contractors, or others doing business with the grantee. To the extent permissible by State or local law, rules, or regulatons such standards will provide for penalties, sanctions, or other disciplinary actions to be taken for violations of such standards.

(q) Grantee shall not hire or permit to be hired any person in a staff position or as a participant if that person or a member of that person's immediate household is employed in an administrative capacity by the organization, unless waived by the State Director. (For the purpose of this section, the term "household" means all persons sharing the same dwelling, whether related or not).

(r) Grantee's board members or employees shall not directly or indirectly participate, for financial gain, in any transactions involving the organization or the participating families. This include activities such as selling real estate, building material, supplies, and services.

s) Grantee will retain all financial records, supporting documents, statistical records, and other records pertinent to this agreement for 3 years.

By_____

(*Signature*)

_____

(*Title*)
Grantee

By_____

(*Signature*)

_____

(*Title*)
Farmers Home Administration

Exhibit B—Mutual Self-Help Housing Guidelines

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Mutual Self-Helf Housing Guidelines

Introduction

How to give low-income rural people an opportunity to have a decent home of their own is a major challenge in rural America. To help such persons have an adequate home at a cost they can afford, the Farmers Home Administration (FmHA) makes Rural Housing (RH) loans to individual persons to enable them to participate in a mutual self-help housing project. This program is designed to help families, that otherwise do not qualify as homeowners, work together to build modest homes of their own.

Eligible applicants may obtain rural housing loans to buy materials, pay for labor and contract costs required for work on their own homes, and if necessary, buy a building site. Families helping each other will provide most of the construction labor. The exchange of labor, without a cash cost to the families, is the key to the mutual self-help housing program. The also may be a savings in the cost of materials purchased. This use of family labor for cash can reduce the cost of homes enough to bring the price of a modest home within reach of very low-income rural families.

Leadership and Supervision

The grantee will provide the leadership and supervision of the families. FmHA will determine who is eligible to participate and receive a Rural Housing loan.

Rural housing loans will be made by FmHA to those who participate in a self-help housing group and who:

1. Meet the low or very low-income requirements in Exhibit C to (available in any FmHA office) subpart A of part 1944 of this chapter.
2. Are creditworthy by FmHA standards and can comply with all other eligibility requirements for rural housing loans.
3. Desire to build a home of their own that is modest in design, structurally sound, and low in cost.

The following basic conditions are essential to the success of a self-help housing venture and must be provided by the grantee:

1. A sincere spirit of cooperation on the part of all participants.
2. Competent leadership and technical supervision.
3. A complete understanding of the responsibilties involved in Mutual Self-Help.
4. Adequate supervision of participants at times convenient for the families to do the work.
5. Development of sufficient skills among the members of the group to do the basic construction tasks as outlined in Exhibit C–2 of this subpart.
6. Four to 10 families who can and are willing to work together satisfactorily.

Organization and Agreements

An understanding must be reached on important items such as when the individuals in the group will be available to work, the amount of work to be performed, the number to be involved in the various work groups and the amount of time each will spend working on the homes. The group will develop a written agreement which is binding upon all members signing it. Exhibit B–1, Membership Agreement, is a suggested form of such an agreement. All participating members will sign the Membership Agreement and each applicant will be given a copy. If a document is used which is different than Exhibit B–1, it must be reviewed and approved by FmHA for legal adequacy and compliance with applicable State laws and FmHA regulations.

Preconstruction Meetings

The successful conduct of a mutual self-help housing program requires a series of meetings with those participating. These meetings are to discuss the planning, construction, and maintenance of a home, the responsibilities of home ownership, and the requirements for a FmHA rural housing loan. These meetings also familiarize the applicants with the self-help approach, develop mutual confidences among participants and develop the interest of community leaders in the project.

The actual number of meetings held will depend on the rate at which the group progresses toward reaching a full understanding of the responsibilities involved. Experience indicates that from 8 to 10 meetings are needed. Local people should be used to discuss appropriate subjects in the meetings. This will help in making the local community aware of the self-help program, and also help obtain local acceptance and support for the project. The following is a recommended sequence of meetings and a suggested list of subjects to be discussed.

The first meeting should be explanatory in nature. The grantee should discuss the basic principles involved in mutual self-help housing, together with a brief explanation of the purposes and limitations of and the requirements for rural housing loans including loan payments, taxes, insurance, and maintenance. The members of the group should be considering a name for the organization and the persons best suited for the various positions in order that the officers and committees can be selected at the next meeting.

At the second meeting, an association should be formed and the officers and committees selected. They might include the following:

1. President
2. Vice-President
3. Secretary-Treasurer
4. Labor Manager
5. Purchasing Committee
6. Program Committee

Additional meetings are essential, but the order in which the subjects are presented or the number of subjects included in any meeting may vary. The following topics are suggested for a series of meetings:

1. *Site planning and building codes.* An architect, code official, or a good builder could be invited to discuss factors in selecting house size, safety, and health code requirements.

2. *Plans and specifications.* The group will probably have questions and need individual help in making decisions concerning plans and specifications for their homes. The construction supervisor should help each applicant develop suitable plans that will meet the household's individual need and the requirement of § 1944.16 of Subpart A of 7 CFR Part 1944.

3. *Cost of materials.* The purchasing committee will review prices of materials and contract work. At one of the last meetings to be held before the construction starts, the purchasing committee should report on its recommendations for buying materials and awarding contracts.

4. *Taxes.* A discussion of the method of tax appraising could be given by the local tax assessor including an estimate of expected taxes on the proposed houses.

5. *Insurance.* A local insurance agent may be asked to speak on types of insurance policies available such as fire and extended coverage, household policies, and liability insurance.

6. *Mortgage requirements.* The grantee should discuss the FmHA mortgage and related requirements. A local attorney might be asked to discuss other legal aspects of the program.

7. *Maintenance costs.* The construction supervisor should discuss the importance of proper maintenance for a home. They should emphasize how money spent for maintenance improves appearance, helps maintain value and saves money in the long run.

8. *Money management.* The grantee discuss the necessity of following the basic principles of money management such as keeping records, following a budget, and not overspending on non-essentials.

9. *Labor sharing arrangement.* The group needs to reach an understanding as to how the memmbers will share labor, how records will be kept of time worked, how to make sure that labor will be exchanged on a basis that is fair to all members and how to evidence and record these decisions.

10. *Use of tools.* One or more of the meetings should include demonstrations and training by the construction supervisor of the safe and proper use of tools. Special attention should be given to the use of basic tools such as level, square, rule, saw, and any power tools that might be used in the construction.

11. *Construction and work procedures.* The authority and duties of the construction supervisor will be discussed in detail. The procedures for actual construction will be discussed including labor sharing, work teams, order of development, function of committees, time reporting for work completed and future hours available.

12. *Ground breaking plans.* The final preconstruction meeting should be more of a social get-together than a businesss meeting. This is also the logical time to plan a ground breaking ceremony for the day the loans are closed.

Construction

The basic work is performed, largely on a labor exchange basis, by the participating families under the guidance of the construction supervisor.

The group may, depending on the skills of the individuals, plan to do as much of the work as possible such as installing kitchen cabinets and equipment, excavating for basements, and dry-wall finishing. Highly skilled or specialized jobs will be contracted when such services are not available in the group.

Work should start on all houses and each stage of construction be finished on all before starting the next stage of construction on any house, to the extent with good construction practices, except as provided in paragraph 3, Labor Exchange Agreement of the Membership Agreement (Exhibit B–1).

To effect savings, materials for all the houses may be purchased from the one or several suppliers who offer the lowest prices. Also, all contracts for members of the group may be awarded to the same contractors. To illustrate, the plumbing contractor offering the lowest price ordinarily should perform the plumbing for all of the dwellings.

Each borrower will pay the material supplier for materials used, and the contractor for work done, on his/her own home. All deliveries of materials will be *itemized separately* for each home. The grantee, after considering the suggestions of the purchasing committee, will recommend the suppliers from whom materials will be purchased and the contractors to whom the contracts will be awarded.

The construction supervisor will divide the group into work teams. Work teams should be organized on the basis of skills, compatability, and availability. For example, one team could lay out and pour footings and another team could lay bricks. The third team could begin framing as soon as the foundation is ready.

A firm understanding will be reached that no changes in construction from the approved plans and specifications may be made without furnishing the Country Supervisof with full cost figures and obtaining approval in advance. If any cahnge results in a need for additional funds, they must be furnished by the borrower before approval. All homes should be finished at or about the same time and none should be occupied prior to completion of them all.

The Association should have brief meetings, at least once a week, to:

1. Report on performance and hours of work performed.
2. Settle any disagreements.
3. Plan work schedule and purchases for the coming week.

Exhibit B–1

Association _____
Membership Agreement

I/We understand that by signing this agreement I/we will become members in the _____ Association when we receive adequate credit to finance the home we intend to build. We have read the agreement or have had it read to us and agree to comply with all its provisions.

Purpose

The purpose of this association is to provide a way whereby each member can help his/herself and every other member to build his/her house.

Membership

Membership will be limited to those persons who:

1. Do not own an adequate home:
2. Are willing to work with the other members of the Association in building their homes;
3. Have a commitment to obtain financing for the cash cost of their home; and
4. Sign the Membership Agreement.

Applicants and co-applicants must both sign the Membership Agreement. As used in the agreement the term "Applicant" means both applicant or co-applicant when both sign the agreement, or the person signing when only one signs.

Voting Rights

Each household has one vote in the election of officers and all other matters involving a decision by the membership.

Officers

The officers of the Association will be a President, Vice-President and a Secretary-Treasurer. Each will be elected, at a meeting, by a majority vote and will continue to hold office unless the officer resigns, dies, is incapacitated, or is removed by vote of two-thirds of all the members at a called meeting for the purpose of considering such removal. The duties of the officers will be as follows:

The President will:

1. Call membership meetings and officers' meetings;
2. Preside over all meetings;
3. Work closely with the construction supervisor; and
4. See that committees and members carry out their responsibilities in connection with mutual self-help projects.

The Vice-President will:

1. Act for the President in the President's absence, and

2. Be chairman of the Program Committee.

The Secretary-Treasurer will:

1. Keep the minutes of each meeting.

2. Handle Correspondence of the Association.

3. Collect and handle, through a checking account in the Association's name, funds the organization may need. These may include items such as stationery, stamps, and record book.

4. Maintain other records of the Association at the direction of the President.

Appointed Committees and Positions

The Officers by majority vote will appoint the following from the membership:

1. A Labor Manager will assist the construction supervisor in keeping records of the tasks completed by each member and notify the construction supervisor as to the availability of members for work on the housing.

2. A Purchasing Committee of three members who will review prices and cost estimates obtained by the grantee for the houses to be built and recommend contractors and suppliers to be used by the members.

3. Two of the three members of the Program Committee. The third member will be the Vice-President, who will be chair-person. This committee will plan meetings and assist in obtaining outside speakers.

Meetings

Meetings of officers and meetings of members will be held as often as necessary to successfully complete the mutual self-help housing. Meetings may be called by the President when considered advisable and will be called by the President at the written request of not less than _____ member, at the request of the grantee or the Farmers Home Administration. Each officer or member will be notified at least three days before the meeting as to the time, date and place of each meeting by mail, telephone or by announcement at the preceding meeting.

Labor Exchange Agreement

Each member agrees to perform the task for the construction of houses of the other members of this Association in return for labor from other members in the actual construction of their house. The construction tasks to be performed are identified on a copy of Exhibit C–2 of this subpart and are part of this agreement.

The number of tasks performed by each member or by any person for any applicant credit will be verified by the grantee. If any member because of death, illness, or injury is unable to make its full labor contribution personally or from other sources as required, that member may be excused to that extent from performing its labor agreement, if approved by a majority of the membership, and all the other members will assist such a member in completing its house and will contribute the additional amount of labor for all the houses which otherwise the stricken member would have furnished.

We agree to exchange labor on the following basis:

1. Equal time will be allowed for labor performed by members in the actual construction of the homes regardless of the type of work involved.

2. Time allowances for labor performed by persons other than members, will be determined by the grantee with the approval of the grantee.

3. A member may not work alone on the member's own house unless the job can be done alone and the consent of the construction supervisor has been obtained. However, the grantee may authorize persons to work on their own house when only interior painting, landscaping and general cleanup remain to be done.

4. The task performed will be reported by each worker to the construction supervisor each day. The construction supervisor will verify in a worksheet and credit the percent of task completed to that member's account.

General Agreement

We agree that:

1. The Association, by majority vote, will determine the supplier of materials and contractors for any skilled work. However, each member shall pay the cost of materials and contractor in connection with its own home.

2. The Association will collect cost of operation of the Association from members, not to exceed $_____ from each member.

3. The Association will act for the group in other matters related to the project when authorized by a majority of the members.

4. Property insurance will be obtained by the members as required by the Farmers Home Administration. Members also will obtain worker's compensation insurance as required by State law and public liability insurance against claims of others.

Dissolution

After a determination is made by the officers that the last house is completed and that all obligations of the Association are paid, upon majority vote of the members and with the consent of the Farmers Home Administration the Association shall terminate.

Amendments

Amendments to this agreement may be made by a majority vote of the members, at a meeting called for the announced purpose of considering amendments, to take effect upon approval by the Farmers Home Administration District Director; but no amendments may decrease the rights or increase the liability of any member without such member's consent.

Membership Termination

We understand that this membership may be terminated under the following conditions:

1. Failure to provide the required labor to perform the identified task.

2. Failure to comply with the terms of this agreement.

3. Failure to cooperate fully with other members of the association in the mutual self-help housing program.

4. Voluntary withdrawal from association.

Cause for termination may be recommended by:

1. The majority of the association members, or

2. The grantee.

However, a final termination must be in writing from the FmHA supervising official and will provide for an appeal pursuant to 7 CFR Part 1900, Subpart B. Upon the conclusion of the termination action FmHA may take action to liquidate the account.

Date _____
Signed _____
Applicant

Date _____
Signed _____
Co-applicant

Date _____
Signed _____
Applicant

Date _____
Signed _____
Co-applicant

Date _____
Signed _____
Applicant

Date _____
Signed _____
Co-applicant

Date _____
Signed _____
Applicant

Date _____
Signed _____
Co-applicant

Date _____
Signed _____
Grantee Representative

Exhibit C—Evaluation Report of Self-Help Technical Assistance (TA) Grants

Evaluation for Quarter Ending: (1), 19____.

1. a. Name of Grantee: (2).
b. Address: (3).
c. Area the Grant serves: (4).
2. a. Date of Agreement: (5); Time Extended (6).
b. Amount of Grant: $(7).
c. Subsequent Amount: $(8).
d. Total Amount of Grant: $(9).
e. Amount of Funds Advanced to date: $(10).
f. Amount of funds on hand: $(11).
g. Amount of Grant Funds used: $(12).
h. Amount budgeted next month: $(13).
3. a. Equivalent unit increase during quarter:
(14) _____
First Month
(15) _____
Second Month
(16) _____
Third Month
(17) _____
Total to Date
b. Cumulative total number of Equivalent Units since beginning of Grant:
c. Quarterly Grant Funds Spent:
$ (18) _____
First Month
$ (19) _____
Second Month
$ (20) _____
Third Month
$ (21) _____
Quarterly Total
d. TA Cost per equivalent unit this quarter:

$ (22) _____
e. Cumulative TA Cost per equivalent unit:
$ (23) _____

4. a. Method of Construction: Stick built ____%, Manufactured ____%, Combined ____%.
b. Number of bedrooms per house built this Grant period: ____ 2BR, ____ 3BR, ____.
c. Household size this Quarter: 1 person ____, 2 persons ____, 3 persons ____, 4 persons ____, 5 persons ____.
d. Number of houses under construction this Grant period but started during previous Grant period: _____.

5. a. Number of houses proposed under this Grant: (24).
b. Number of houses completed under this Grant: (25).
c. Number of houses currently under construction: (26).
d. Number of families in preconstruction: (27).
e. Number of Construction Supervisors: (28).
f. Number of TA employees: (29).

6. a. Average time needed to construct a single house: (30).
b. Number of months between submission of Self-Help borrower's docket and approval/rejection: (31).
c. Number and percentage of loan docket rejections during reporting period: (32).

7. a. Did any of the following adversely affect the Grantee's ability to accomplish program objectives?

	Yes	No
TA staff turnover		
FmHA staff turnover		
Bad weather		
Loan processing delays		
Site acquisition and development		
Unavailable loan/grant funds		
Lack of participants		
Communication between FmHA/grantee.		

8. Attach information concerning number of families contacted, number who have indicated a willingness to be a participating family, number of mutual self-help groups organized, progress on any construction started, and any problems relating to the operation of this grant.

I certify that the statements made above are true to the best of my knowledge and belief.

(33) _____
(Date)
(34) _____
(Title) Grantee
(35) _____
(Signature)

County Office Review

I have reviewed the above information which I have found to be substantially correct. Must be completed by County Office.

Comment: Must be completed (36)

Average appraisal value of units financed this Quarter: ____.

Average amount loan per unit financed this Quarter: ____.

(37) _____
(Date)
(38) _____
County Supervisor

District Office Review

Comment: Must be completed (39).

(40) _____
Date
(41) _____
District Director

State Office Review

Comment: Must be completed (42).

(43) _____
Date
(44) _____
State Office Representative

Instructions for Preparation of Evaluation Report of Self-Help Technical Assistance Grants

Exhibit C will be used by all Technical Assistance grantees obtaining self-help technical assistance grants. This attachment provides the grantee and FmHA a uniform method of reporting the performance progress of self-help projects. The TA Grantee will prepare an original and 4 copies of the attachment. The TA Grantee will sign the original and 3 copies and forward it to the local FmHA County Office. The TA Grantee will keep the unsigned copy for its records.

The evaluation report will be completed in accordance with the following:

1. Enter the date the quarter ends either March 31, June 30, September 30, or December 31 and the year.

2. Enter the full name of the TA Grantee organization.

3. Enter the complete mailing address of the TA grantee organization.

4. Enter the area served by the Grant.

5. Enter the date of the initial self-help technical assistance grant agreement.

6. Enter the time of any extension self-help technical assistance grant agreement(s).

7. Enter the amount of the initial grant.

8. Enter the amount of each extension grant.

9. Enter the total amount of grant.

10. Enter the cumulative amount of the TA grant advanced to the end of the quarter.

11. Enter the amount of TA grant funds advanced that are on hand at the end of the quarter.

12. Subtract item (2f) from (2e) to give the cumulative amount of grant funds used to the end of the quarter.

13. Enter the amount of TA grant budgeted for the first month following the date entered in item 1.

14. Insert the number of EU's completed the first month of the quarter using steps 1, 2, and 3 of this Exhibit.

15. Insert the number of EU's completed the second month of the quarter by using steps 1, 2, and 3 of this Exhibit.

16. Insert the number of EU's completed the third month of the quarter by using steps 1, 2, and 3 of Exhibit.

17. Add items (14), (15), and (16) to the total from the previous quarterly report to obtain the cumulative total number of EU's. This total is the cumulative total number of EU's for the project.

18. Enter the grant funds spent the first month of the quarter. If the grant was closed within 30 days of the previous quarter any grant funds spent should be included in this figure.

19. Enter the grant funds spent the second month of the quarter.

20. Enter the grant funds spent the third month of the quarter.

21. Add item (18), (19), and (20) together to give the total grant funds spent during the quarter.

22. Divide item (21) by the sum totals of items (14), (15), and (16) to obtain the TA Cost per EU for the quarter.

23. Divide item (12) by item (17) to obtain the cumulative TA cost per EU.

24. Enter the number of houses planned in the TA Grantee proposal(s).

25. Enter the number of houses completed and occupied since the beginning of the grant.

26. Enter the number of houses that are under construction at the end of this quarter.

27. Enter the number of families in the preconstruction phase.

28. Enter the total number of construction supervisor(s) paid with TA grant funds.

29. Enter the number of employees paid with TA grant funds including those listed in item 28.

30. Insert the average elapsed time needed per house from excavation to final inspection by FmHA to complete construction of a house. If no self-help homes have been completed by this grantee, use other projects or your best estimate as a guide.

31. Enter the number of months it takes on average to approve or reject a borrowers docket once it's submitted.

32. Enter number and percent of dockets submitted and rejected this quarter.

33. Enter date of Exhibit submittal.

34. Insert title of the grantee or their authorized representative.

35. Signature of grantee or his/her authorized representative.

36. County Supervisor must answer questions concerning market value and loan amount and also should insert comments concerning progress of construction, success of the project and

any problems that the organization may have.

37. Insert date of County Supervisor's review.

38. Signature of County Supervisor.

39. District Director representative should insert his/her comments concerning items listed in § 1944.417(b)(1) of 1944–I.

40. Insert date of District Director review.

41. Signature of District Director or representative.

42. Insert State Office review.

43. Insert date of State Office review.

44. Signature of State Office representative.

Exhibit C–3—

BREAKDOWN OF CONSTRUCTION DEVELOPMENT FOR DETERMINING PERCENTAGE CONSTRUCTION COMPLETED

	With slab on grade (percent)	With crawl space (percent)	With basement (percent)	Selected self-help tasks X
1. Excavation	3	5	6	( )
2. Footing, Foundations, columns	8	8	11	( )
3. Floor slab or framing	6	4	4	( )
4. Subflooring	0	1	1	( )
5. Wall framing sheathing	7	7	6	(X)
6. Roof and ceiling framing, sheathing	6	6	5	(X)
7. Roofing	5	5	4	(X)
8. Siding, exterior trim, porches	7	7	5	(X)
9. Windows and exterior doors	9	9	5	( )
10. Plumbing—roughed in	3	2	3	( )
11. Sewage disposal	1	1	1	( )
12. Heating—roughed in	1	1	1	( )
13. Electrical—roughed in	2	2	2	(X) [1]
14. Insulation	2	2	2	(X)
15. Dry wall or plaster	8	8	7	( )
16. Basement or porch floor, steps	1	1	6	( )
17. Heating—finished	3	3	3	( )
18. Flooring	6	6	5	( )
19. Interior carpentry, trim, doors	6	6	5	(X)
20. Cabinets and counter tops	1	1	1	(X)
21. Interior painting	4	4	3	(X)
22. Exterior painting	1	1	1	(X)
23. Plumbing—complete fixtures	4	4	3	( )
24. Electrical—complete fixtures	1	1	1	(X)
25. Finish hardware	1	1	1	(X)
26. Gutters and downspouts	1	1	1	(X)
27. Grading, paving, landscaping	3	3	3	(X) [2]
Total	100	100	100	

[1] Unless prohibited by local ordinance.
[2] Landscaping only.

(X) Mandatory Self-Help Tasks
Name of T/A Grantee _____
Association:
Name _____
Date _____

Exhibit C–3—Pre-Construction and Construction Phase Breakdown

I. *General.* This Exhibit will be used by FmHA and the grantee in determining grantee performance as required in § 1944.417(b) of this Subpart.

II. *Determining Technical Assistance cost per unit*

A. Equivalent units are used to measure progress at any time during the period of the grant. It is necessary because self-help grantees have several groups of families in various stages of progress during the period of the grant. The following formula has been developed to provide a more accurate method of determining progress.

Formula

Phase Breakdown	Value of each phase (percent)	Cumulative (percent)
Pre-Construction:		
Phase I	10	10
Phase II	10	10
Construction:		
Phase III	80	21–100

B. Using the *Description of Phase Breakdown* as a guide, the project staff selects the total percentage pertinent to the stage the self-help group is in and multiplies that percentage by the number of families (units) in the group. The result is the *equivalent number of units completed.* No credit may be given for Phase I, if the application is rejected. When this computation has been completed for each group that falls within Phase I–III, the total number of equivalent units is divided into the total grant funds *expended* to that date. The result is the TA cost per unit at that stage of the program's progress.

C. The definition of pre-construction and construction phases described are as follows:

Pre-Construction

Phase I: Hold community meetings; conduct interviews; obtain house plans; prepare cost estimates; begin search for land; submit family applications to the Farmers Home Administration (FmHA); FmHA runs credit check; applications. FmHA either approves or rejects.

Phase II: Organize an association of section 502 RH eligible families; association conducts weekly meetings at which required FmHA forms are discussed and completed; house plans and land sites are selected; outside speakers explain and discuss taxes, insurance, how to keep a checking account, how interest is computed, home maintenance, decorating, and landscaping; etc.; completed loan dockets for each family are submitted to FmHA. Family loan dockets are reviewed and recommendations made as to the loan amounts requested; the FmHA County Supervisor reviews family loan dockets; preliminary title search of each proposed building site is begun; requests loan check from Finance Office; when check arrives, final title search is made, loan closed, checking accounts opened, and construction begun.

Construction: The grantee will utilize Exhibit C–2 which outlines 27 construction tasks to determine the percentage of completed construction activities.

D. The computation of equivalent units and TA costs will be computed as follows:

Exhibit C will be used for recording the following information and construction in this example which starts January 1.

Step 1

Both the grantee and FmHA review the FmHA loan application records to determine the percentage of completion for each family in the preconstruction phase of the program. These are Phases I—III. Total these percentages to find the number of "Equivalent Units" (EU's) completed at that date during preconstruction. For example, if there are eight families in Group #2 and all have completed the 20 percent phase of preconstruction, then there would be 1.6 EU's in the pre-construction phase of the program as of that date. Each phase must be completed before it is considered in the calculation.

Step 2

Refer to the records of construction progress for families in the construction Phase III. As of that date, the director totals the percentage of completion figures for each family as followings:

Askew:	.45
Whited:	.40
Martinez:	.40
Gonzalez:	.38
Sherry:	.34
Duran:	.33
Johnson:	.13
Harvey:	.31
EU's	2.92

Total production in the construction phase is therefore 2.92 EU's as of that date.

Step 3

Add the pre-construction and construction subtotals together:

Preconstruction	1.60
Construction	2.92
Total EU's	4.52

This provides the total EU's of production during the first two months of operation. Steps 1, 2, and 3 will be used to complete items 16, 17 and 18 of Exhibit C of this Subpart. (Evaluation Report of Self-Help Technical Assistance).

III. *Preparation*

Compile Exhibit C of this Subpart in an original and four copies. The exhibit will be signed by the TA Grantee. Submit the original and three copies of the exhibit quarterly to FmHA County Office on or before January 15, April 15, and October 15, of each year for the quarters ending March 31, June 30, September 30, and December 31 of each year. The District Manager will keep the original and forward two copies to the State Office. The State Office will forward one copy to the National Office. The State Office will prepare information concerning TA grants closed within 30 days of the end of a quarter on the next quarterly report.

Exhibit D—Amendment to Self-Help Technical Assistance Grant Agreement

This Agreement dated, _____ 19____ between

_____

a nonprofit corporation ("Grantee"), organized and operating under

_____

(authorizing State Statute) and the United States of America acting through the Farmers Home Administration, Department of Agriculture ("FmHA"), amends the "Self-Help Technical Assistance Grant Agreement" between the parties dated _____ 19 ____ ("Agreement").

The Agreement is amended by providing additional financial assistance in the amount of _____ to be made available by FmHA to Grantee pursuant to section 523 of Title V of the Housing Act of 1949 for the purpose of assisting in providing a program of technical and supervisory assistance which will aid low-income families in carrying out mutual self-help housing efforts; or

The Agreement is amended by changing the completion date specified in convenant 1 from _____ to _____ and by making the following attachments to this amendment: (List and identify proposal and any other documents pertinent to the grant.)

Agreed to this
day of _____ 19 ____.

_____
(Name of Grantee)
By _____
(Signature)

_____
(Title)
UNITED STATES OF AMERICA
By _____
(Signature)

_____
(Title)
FARMERS HOME ADMINISTRATION

Exhibit E—Self-Help Technical Assistance Grant Predevelopment Agreement

THIS GRANT PREDEVELOPMENT AGREEMENT dated, _____ 19 ____, is between

_____

a nonprofit corporation ("Grantee"), organized and operating under

_____

(authorizing State statute) and the United States of America acting through the Farmers Home Administration, Department of Agriculture ("FmHA").

In consideration of financial assistance in the amount of $_____ "Grant Funds") to be made available by FmHA to Grantee under section 523(b)(1)(A) of the Housing Act of 1949 to be used in (specify area to be served) _____ for the purpose of developing a program of technical and supervisory assistance which will aid low-income families in carrying out mutual self-help housing efforts, Grantee will provide such a program in accordance with the terms of this Agreement and FmHA regulations.

Grant funds will be used for authorized purposes as contained in § 1944.410(d) of 7 CFR Part 1944, Subpart A, as necessary, to develop a complete program for a self-help technical assistance grant. This will include recruitment, screening, loan packaging and related activities for prospective self-help participants.

Agreed to this _____ day of _____ 19____.

_____
(Name of Grantee)
By _____
(Signature)

_____
(Title)
UNITED STATES OF AMERICA
By _____
(Signature)

_____
(Title)
FARMERS HOME ADMINISTRATION

Exhibit F—Guidance For Recipients of Self-Help Technical Assistance Grants (Section 523 of Housing Act of 1949)

7 CFR Part 1944, Subpart I provides the specific details of this grant program. The following is a list of some functions of the grant recipients taken from this subpart. With the list are questions we request be answered by the recipients to reduce the potential for fraud, waste, unauthorized use or mismanagement of these grant funds. We suggest the Board of Directors answer these questions every six months by conducting *their own review.* Paid staff should not be permitted to complete this evaluation.

A. *Family Labor Contribution: and Mr.*		
1. Does your organization maintain a list of each family and a running total of hours worked (when and on what activity)?	Yes	No
2. Are there records of discussions with participating families counselling them when the family contribution is falling behind?	Yes	No
3. Are there obstacles which prevent the family from performing the required tasks?	Yes	No
B. *Use of Grant Funds:*		
1. Were grant funds used to pay salaries or other expenses of personnel not directly associated with this grant?	Yes	No
2. Were grant funds used to pay for construction work for participating families?	Yes	No
3. Were all purchases or rentals (item and cost) of office equipment authorized?	Yes	No
4. Are all office expenses authorized by Subpart I of Part 1944 of 7 CFR?	Yes	No

5. Was a log of long distance telephone calls maintained and was that log and telephone checked?	Yes	No
6. Was all travel and mileage incurred for official business and properly authorized in advance?	Yes	No
7. Were mileage and per diem rates within authorized levels?	Yes	No
8. Were participating families charged for use of these tools?	Yes	No
9. Were grant funds expended to train grant personnel?	Yes	No
10. Was training appropriate for the individual trainee?	Yes	No
11. Were any technical or consultant services obtained for participating familes?	Yes	No
12. Were the provided technical or consultant services appropriate in type and cost?	Yes	No
C. *Financial Responsibilities:*		
1. Does each invoice paid by the grant recipient match the purchase order?	Yes	No
2. Does each invoice paid by the borrower and FmHA match the purchase order?	Yes	No
3. Were purchases made from the appropriate vendors?	Yes	No
4. Are the invoices and itemized statements totalled for materials purchased for individual families?	Yes	No
5. Is there a record of deposits and withdrawals to account for all loan funds?	Yes	No
6. Are checks from grant funds signed by the Board Treasurer and executive Director?	Yes	No
7. Are grant funds deposited in an interest bearing account?	Yes	No
8. Are checks from loan funds prepared by the grant recipient for the borrower's and FmHA's signature?	Yes	No
9. Are checks from loan funds accompanied by accurate invoices?	Yes	No
10. Are any borrower loan funds including interest, deposited in grantee accounts?	Yes	No
11. Are checks from loan funds submitted to FmHA more often than once every 30 days?	Yes	No
12. Is the reconciliation of bank statements for both grant and loan funds completed on a monthly basis?	Yes	No
13. If the person who issues the checks also reconciles them, does the Executive Director review this activity?	Yes	No
14. Are materials purchased in bulk approved by the Executive Director?	Yes	No
15. Was the amount of materials determined by both the Executive Director and Construction staff?	Yes	No
16. Were any participating families consulted about the purchase of materials?	Yes	No
17. Were savings accomplished by the bulk purchase method?	Yes	No
18. Did the Executive Director review the purchase order and the ultimate use of the materials?	Yes	No
19. Are materials covered by insurance when stored by grantee?	Yes	No
D. *Reporting:*		
1. Are "Requests for Advance or Reimbursement" made once monthly to the FmHA District Office?	Yes	No
2. Has the grant recipient engaged a certified public Accountant (CPA) or CPA firm to review their operations on a regular basis: (Annually is preferable but every two years and at the end or the grant period are requirements)?	Yes	No
3. Are the quarterly evaluation reports submitted on time to the District Supervisor?	Yes	No

What, if any, problems exist that need to be corrected for effective management of the grant project?

Date

President, Board of Directors
(Period covered by report _____

Answer Key

[The following answers should help your organization in assessing its vulnerability to fraud, waste, and abuse. You should take actions to correct practices that now generate an answer different from the key]

Question	Answer
A.1	yes
A.2	yes

Answer Key—Continued

[The following answers should help your organization in assessing its vulnerability to fraud, waste, and abuse. You should take actions to correct practices that now generate an answer different from the key]

Question	Answer
A.3	yes
B.1	no
B.2	no
B.3	yes
B.4	yes
B.5	yes
B.6	yes
B.7	yes
B.8	no
B.9	yes
B.10	yes
B.11	yes
B.12	yes
C.1	yes
C.2	yes
C.3	yes
C.4	yes
C.5	yes
C.6	yes
C.7	no
C.8	yes
C.9	yes
C.10	no
C.11	no
C.12	yes
C.13	yes
C.14	yes
C.15	yes
C.16	yes
C.17	yes
C.18	yes
C.19	yes
D.1	yes
D.2	yes
D.3	yes

Exhibit G—Site Option Loan to Technical Assistance Grantees

I. *Objectives*

The objective of a Site Option (SO) loan under section 523(b)(1)(B) of Title V of the Housing Act of 1949 is to enable Technical Assistance (TA) grantees to establish revolving fund accounts to obtain options on land needed to make sites available to families that will build their own homes by the self-help method. An SO loan will be considered only when sites cannot be made available by other means including a regular Rural Housing Site (RHS) loan.

II. *Eligibility requirements*

To be eligible for an SO loan, the applicant must be a TA grantee that is currently operating in a satisfactory manner under a TA grant agreement. If the SO loan applicant has applied for TA funds but is not already a TA grantee and it appears that the TA grant will be made, the SO loan may be approved but not closed until the TA grant is closed.

III. *Loan purposes*

Loans may be made only as necessary to enable eligible applicants to establish revolving accounts with which to obtain options on land that will be needed as building sites by self-help families participating in the TA self-help housing program. Loans will not be made to pay the full purchase price of land but only for the minimum amounts necessary to obtain an option from the seller. The option should be for as long as necessary but in no case should the option be for less than 90 days.

IV. *Limitations*

(A) If the amount of an SO loan will exceed $10,000, the prior consent of the National Office shall be obtained before approval.

(B) The amount of the SO loan should not exceed 15 percent of the purchase price of the land expected to be under option at any one time, unless a higher percent is authorized by the State Director when other land is not available or the particular area requires more down payment than elsewhere or similar circumstances exist.

(C) Form FmHA 440–34, "Option to Purchase Real Property," will be used without modification in all cases for obtaining options under this subpart.

(D) The limitations of § 1822.266(b)(1) and (2) of Subpart F of Part 1822 of this chapter (FmHA Instruction 444.8, paragraphs VI B(1) and (2)) concerning land purchase will apply to options purchased under this subpart.

V. *Rates and terms*

(A) *Interest.* Loans will be made at an interest rate of 3 percent.

(B) *Repayment period.* Each SO loan will be repaid in one installment which will include the entire principal balance and accrued interest. The maximum repayment period for each SO loan will be the applicant's remaining TA grant funding period.

(1) A shorter repayment period will be established if SO funds will not be needed for the entire TA grant funding period.

(2) If a regular RHS loan is to be processed, the SO loan should be scheduled for repayment when RHS loan funds will be available to purchase the land and repay the amount of SO funds advanced on the option, unless SO loan funds will still be needed to purchase other options. Under no circumstances, however, will the repayment period exceed the applicant's remaining TA grant funding period.

IV. *Processing Application*

(A) *Form of application:* The application for assistance will be in the form of a letter to the Farmers Home Administration (FmHA) County Supervisor having jurisdiction over the area of the proposed site to be optioned. The letter will be signed by the applicant or its authorized representative and contain, as a minimum, the following information:

(1) A copy of the proposed option that shows a legal description of the land, option price, purchase price, and terms of the option. If more than one site is to be purchased, a schedule of the proposed options should be included.

(2) Information to verfiy that a regular RHS loan cannot be processed in time to secure the option.

(3) Proposed method repayment of the SO loan.

(4) Resolution from the applicant's governing body authorizing the application for an SO loan from FmHA.

(B) *Responsibility of the County Supervisor.* Upon receipt of an SO loan application, the County Supervisor will:

(1) Determine whether the applicant is eligible. If the applicant is not eligible, or the loan cannot be made for other reasons, the application may be rejected by the County Supervisor with the concurrence of the District Director. The reasons for the rejection should be clearly stated and provided, in writing to the applicant. The applicant will have the right to have the decision reviewed following the procedure established in Subpart B of Part 1900 of this chapter.

(2) Review and verify the accuracy of the information provided.

(3) Make an inspection and a memorandum appraisal of each proposed site "as it is." The appraisal will include a narrative statement as to whether the site has been recently sold, verify that the seller is the owner of the property, and indicate whether the purchase price is acceptable based on the selling price of similar properties in the area.

(4) Indicate whether or not it appears that, considering the location and cost of development, adequate building sites can be provided at reasonable costs.

(5) If the option is for a tract of land on which 5 or more sites are proposed, the County Supervisor will forward to the District Director with recommendations as defined in § 1924.119 of Subpart C of Part 1924 of this chapter.

(6) If approval is recommended, prepare and have the applicant execute Form FmHA 1940–1, "Request for Obligation of Funds," for the amount needed. Copies of the form will be distributed as provided in the FMI.

(7) Forward the SO loan application and the applicant's TA application or TA docket to the State Director. The submission will include the appraisal report and the County Supervisor's comments and recommendations.

VII. *Loan Approval Authority and State Office Actions*

The State Director is authorized to approve SO loans developed in accordance with this Exhibit. The approval or disapproval of the loan will be handled in the same manner as provided in § 1822.272 of Subpart F of Part 1822 of this chapter (FmHA Instruction 444.8 paragraph XII). "Multiple Family Housing Obligation Fund Analysis". The MIC transaction will be used to request a check for SO loans.

VIII. *Loan Closing*

(A) *General.* Loan closing instructions will be provided by the Office of the General Counsel (OGC) to assure that the Promissory Note is property completed and executed. The County Supervisor may then close the loan.

(B) *Security for the loan.* The loan will be secured by a Promissory Note properly executed by the grantee using Form FmHA 440–16, "Promissory Note." A lien on the optioned real estate will not be taken.

(1) The "kind of loan" block on the note will read "SO loan."

(2) The note will be modified to show that the only installment on the loan will be the final installment.

(C) *Loan is closed.* The loan will be considered closed when the note is executed and the loan check delivered to the grantee.

IX. *Establishment of SO Loan Revolving Account*

(A) Supervised bank accounts will not be used for SO loans.

(B) Grantee will deposit SO loan funds in a depository institution of its choice. The use of minority institutions is encouraged. Such funds will remain separate from any other account of the grantee and shall be established as an SO revolving account.

(C) Checks drawn on the revolving account will be for the sole purpose of purchasing land options and must be signed by at least two authorized officials of the grantee who have been properly bonded in accordance with § 1944.411 (e) and (g) of this subpart.

(D) Grantee will not expend funds for any options until the site and the option form have been reviewed and approved by the County Supervisor.

(1) Site option funds will not be left unused in the revolving account in excess of 60 days.

(2) If the funds are not used for the intended purpose within the 60 days specified above, the unused portion will be refunded on the account.

(E) When funds become become available for repayment of the SO loan, such funds will be deposited in the revolving account for the purchase of additional site options if needed. If such funds are not needed to purchase more options, they will be applied on the SO loan.

X. *Source of Funds*

SO loans will be funded from the self-help housing land development fund.

Date: December 9, 1988.

La Verne Ausman,

Acting Administrator Farmers Home Administration.

[FR Doc. 89–3171 Filed 2–10–89; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88–ANE–21]

Airworthiness Directives; Hamilton Standard Hydromatic (Noncounterweighted) Propeller Models 22D30, et al.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend an airworthiness directive (AD) which requires repetitive corrosion inspections on certain Hamilton Standard propeller models. The proposed amendment provides a means to increase the repetitive inspection intervals up to 48 months. The proposal is based on past AD inspection results where no corrosion was found and the repetitive inspection interval was increased on an individual basis without adversely affecting safety.

DATES: Comments must be received on or before March 23, 1989.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Office of the Assistant Chief Counsel, Attention: Rules Docket No. 82–ANE–21, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, or delivered in duplicate to Room 311 at the above address.

Comments delivered must be marked: "Docket No. 82–ANE–21".

Comments may be inspected at the New England Region, Office of the Assistant Chief Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable overhaul manual may be obtained from Hamilton Standard, One Hamilton Road, Windsor Locks, Connecticut 06096.

A copy of the overhaul manual is contained in Rules Docket No. 82–ANE–21, Federal Aviation Administration, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Frank Walsh, Boston Aircraft Certification Office, ANE–153, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273–7066.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, at the address given above, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 82–ANE–21". The postcard will be date/time stamped and returned to the commenter.

After issuing Amendment 39–4133, as amended by Amendment 39–4409, which currently requires repetitive corrosion inspections on certain Hamilton Standard propeller blades, the FAA determined that the inspection interval can be extended based on certain factors. These factors include past AD inspections, maintenance program plans, oil change intervals, aircraft operating environment, and the type of storage or hangar facilities. With the experience gained during the past several years by maintenance reviews and management of the aircraft operational factors, inspection interval extensions have been granted on an individual basis. Substantiating data submitted by each operator was confirmed by an FAA Airworthiness Inspector in support of those extensions. Based on the data presented to the FAA over the past eight years, it has been determined that the extensions to the inspection intervals may be allowed without adversely affecting safety provided no corrosion is found at inspection of propeller blades. This proposed amendment would amend Amendment 39–4133, as amended by Amendment 39–4409, by allowing the inspection interval to be increased up to 48 months when inspections show no evidence of corrosion.

The regulations proposed herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

The FAA has determined that this proposed regulation involves no cost to operators. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Propellers, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes to amend Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.85.

2. By amending Amendment 39–4133 (47 FR 27845; June 28, 1982), as amended by Amendment 39–4409 (47 FR 36217; August 19, 1982), Airworthiness Directive (AD) 81–13–06 R1. The proposed AD is restated in its entirety for clarity as follows:

Hamilton Standard: Applies to Hamilton Standard Hydromatic (noncounterweighted) propellers with aluminum blades that use engine oil for pitch control (does not apply to propellers with integral oil control or to propellers with steel blades) of the following types: 22D30, 22D40, 23D40, 23E50, 23E60, 24D50, 24E60, 33D50, 33E60, 34D50, 34D51, 34E60, 43D50, 43D51, 43E60, and 43H60, as installed on various reciprocating engine powered aircraft such as, but not limited to: Beech D17 and D18, Boeing 377 series, Canadair Model 4 and CL–215, Curtiss-Wright C–46, DeHavilland DHC–2, DHC–3, and DHC–4, General Dynamics (Convair) T–29, 240, 340, and 440 series, Gulfstream American (Grumman) G–12A, G164, F4U, S–2F, TBM, and W–2F series, Lockheed L–10, L–12, 049, 749, 1049, 1649 series, Martin 202 and 404 series, McDonnell Douglas B–26, DC–3, DC–4, DC–6, and DC–7 series, North American AT–6, B–25, P–51, SNJ–5, T–6, and T–28.

Compliance is required as indicated, unless already accomplished.

To prevent propeller blade failure due to corrosion and fatigue, accomplish the following:

(a) Inspect propeller blades within the next 90 days after July 1, 1982, or within 18 months since last inspection, whichever occurs later, for corrosion in the blade fillet and shank area, particularly under the teflon friction reduction strip and the resin corrosion barrier, in accordance with Hamilton Standard Aluminum Blade Overhaul Manual No. 130B, dated March 1, 1980. Thereafter, reinspect at intervals not to exceed 18 months since the last inspection.

Note.—Propeller blades previously inspected in accordance with earlier amendments of this AD shall be considered to have complied with the initial inspection requirements of paragraph (a) above whether or not the teflon strip and corrosion barrier were removed.

(b) For propellers with all installed blades having no corrosion at the last inspection, the reinspection interval may be increased as follows: reinspect between 24 and 36 months since the last inspection, and thereafter reinspect at intervals not to exceed 48 months provided no corrosion is found at any of the reinspections.

(c) Prior to further flight, blades with corrosion in the fillet or shank area must be replaced with an airworthy blade or repaired in accordance with Hamilton Standard Aluminum Blade Overhaul Manual No. 130B, dated March 1, 1980. Propellers with one or more installed blades which were replaced due to corrosion on inspected blades or blades which were repaired due to corrosion shall be reinspected in accordance with paragraph (a) above.

(d) Disassembled propeller blades preserved in accordance with Hamilton Standard Aluminum Blade Overhaul Manual No. 130B, dated March 1, 1980, need not include storage time when computing the time since last inspection.

(e) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, the Manager, Boston Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, may adjust the compliance times specified in this AD or approve an equivalent means of compliance with this AD.

Note.—Extensions to the compliance schedule granted to owner/operators under previous amendments of this AD are still applicable to this amendment.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the inspection required by this AD.

Should this proposed rule be adopted, the FAA will request the approval of the Federal Register to incorporate by reference the manufacturer's overhaul manual identified and described in this document.

Issued in Burlington, Massachusetts, on February 1, 1989.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 89–3285 Filed 2–10–89; 8:45 am]

BILLING CODE 4910–13–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Parts 1602 and 1627

Reports and Records

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Equal Employment Opportunity Commission is proposing to revise its regulations on Reports and Records (29 CFR Part 1602) required of persons subject to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e *et seq.* The regulations in Part 1602 require, *inter alia*, that any personnel or employment records kept by an employer or labor organization be preserved for a period of 6 months from the date of the making of the record or the personnel action involved, whichever is later. The Commission proposes to increase this records retention period to one year. The proposed increased time period would ensure that employers or labor organizations do not destroy employment records before being notified that a charge has been filed. The Commission also proposes to add a new Subpart R to Part 1602, 29 CFR 1602.56, that would clarify that the Commission has the aunthority to investigate persons to determine whether they comply with the reporting requirements of Part 1602. The addition of such a section will enable the Commission to enforce more effectively the requirements of Title VII. Consistent with the above modifications, the Commission intends to add a section to Part 1602 incorporating by reference the Commission's recordkeeping requirements under the Uniform Guidelines on Employee Selection Procedures (UGESP), 29 CFR 1607.4 and 1607.15A. The addition of this section will clarify the relation between the recordkeeping requirements of Part 1602 and UGESP. In addition, the Commission proposes several minor changes to update §§ 1602.7 and 1602.10.

The Commission also proposes to delete § 1602.14(b) of its Title VII recordkeeping regulations, which provides that the section 1602 recordkeeping requirements do not apply to temporary or seasonal positions. Similarly, the Commission proposes to delete §§ 1627.3(b)(3) and 1627.4(a)(2) of the ADEA recordkeeping regulations, which provide for a 90-day retention period for temporary positions, and to clarify the mandatory nature of such recordkeeping.

DATE: Written comments on the proposed regulations must be received on or before April 14, 1989.

Public Hearing: A public hearing concerning these matters will be separately announced in the Federal Register.

ADDRESS: Comments should be addressed to the Office of the Executive Secretariat, Room 507, Equal Employment Opportunity Commission, 2401 E Street, NW., Washington, DC 20507. Copies of comments submitted by the public will be available for review at the Commission's library, Room 242, 2401 E Street, NW., Washington, DC between the hours of 9:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Nicholas M. Inzeo, Assistant Legal Counsel, or Gary L. Janus at 202/634–6592.

SUPPLEMENTARY INFORMATION: The current regulation § 1602.14 provides that personnel or employment records made or kept by an employer shall be presreved by the employer for a period of 6 months from the date of the making of the record or the personnel action involved, whichever is later. This requirement was promulgated before the filing time for a Title VII charge was changed from 90 days to 180 days (or, in some instances, 300 days in deferral states). Thus, requiring an employer or labor organization to maintain records for 6 months if no charge was filed at that time appeared to be more than adequate to ensure that all applicable records were kept. Because of the lengthened period during which a charge may now be filed, it is no longer true that employers or labor organizations will necessarily have retained records until the Title VII filing time expires. Under the current regulation, an employer or labor organization may have lawfully already destroyed employment records by the time it receives notice of a charge. The Commission therefore proposes to amend §§ 1602.14 and 1602.28(a) to require employers and labor organizations to keep their records for one year, so that there is no possibility that an employer or labor organization will have legally destroyed its employment records before being notified that a charge has been filed. Moreover, a one-year retention period for employers and labor organizations subject to Title VII will make the records retention period the same as required by the Commission's regulations under the Age Discrimination in Employment Act (ADEA), 29 U.S.C. 621 *et seq.* 29 CFR

1627.3(b)(1) and 1627.4(a)(1). Such a uniform retention period will simplify and clarify recordkeeping for employers subject to both Title VII and the ADEA. In order to eliminate confusion regarding recordkeeping under the ADEA, the Commission also proposes to delete § 1602.14(b) of its Title VII recordkeeping regulations, which provides that the section 1602 recordkeeping requirements do not apply to temporary or seasonal positions. Similarly, the Commission proposes to delete §§ 1627.3(b)(3) and 1627.4(a)(2) of the ADEA recordkeeping regulations, which provide for a 90-day records retention period for temporary positions, and to clarify the mandatory nature of such recordkeeping. These changes would in effect extend the one-year retention requirement to temporary positions subject to Title VII and the ADEA. The Commission invites comments as to whether this requirement would unduly increase the present recordkeeping burden.

The Commission also proposes to add a section to Part 1602 incorporating by reference the Commission's recordkeeping requirements under the Uniform Guidelines on Employee Selection Procedures (UGESP), 29 CFR 1607.4 and 1607.15A. The addition of this section will clarify the relation between the recordkeeping requirements of Part 1602 and UGESP. Subsection 709(c) of Title VII, 42 U.S.C. 2000e–8(c), provides, *inter alia*, that any person who fails to maintain information as required by that subsection and Commission regulations may, upon application of the Commission or the Attorney General in a case involving a government, governmental agency or political subdivision, be ordered to comply by the appropriate United States District Court. At present, Commission regulations do not provide that the Commission may conduct an investigation when it has reason to believe an employer or other entity subject to Title VII has failed to comply with the recordkeeping requirements of Part 1602. The Commission proposes to clarify the regulations to more clearly state its authority to enforce section 709(c) of Title VII. The addition of this section is consistent with the Commission's authority to issue suitable procedural regulations to carry out the provisions of Title VII. 42 U.S.C. 2000e–12(a).

The proposed revisions to § 1602.7 would change the annual EEO–1 reporting date from March 31 to September 30, effective in 1989. It was determined that this change will result in a reporting date that is less affected by the variation in seasonal employment than the present date and will provide employment figures which reflect annual average employment more closely than at present. The proposed revisions to § 1602.7 would delete the reference to the "100-employee test." The address for obtaining necessary reporting supplies would also be changed from "Jeffersonville Indiana" to "the Commission or its delegate." The proposed revision to § 1602.10 would delete the reference to "section 4(c) of the Instructions" and substitute "section 5 of the Instructions." The reference to the 100-employee jurisdictional test of section 701(b) of Title VII is deleted since the number of employees required for an employer to be subject to Title VII is now 15 or more. This change in no way affects the present EEO–1 reporting requirement of 100 or more employees which is set out in the Instructions to the EEO–1 report.

The Commission notes that retention of the records for the proposed period of one year will only minimally increase, if at all, the employer's cost of maintaining these records. Employers are already required to maintain the records for a period of 6 months. The cost of retaining these records for an additional 6 months will be minimal. Moreover, most employers subject to Title VII are also subject to the ADEA, which presently requires that similar records be retained for a period of one year. For these reasons, the Commission believes that the above proposed changes will not have an "annual effect" on the economy of $100 million or more as those terms are used in Executive Order 12291. Accordingly, these proposed modifications do not constitute a "major rule," and a regulatory impact analysis is not required by Executive Order 12291.

The Commission estimates that the proposed changes to §§ 1602.14 and 1602.28(a) increasing the Title VII records retention period from 6 months to one year will result in an increased recordkeeping burden on employers of approximately 9,000 burden hours annually. It is estimated that the proposed changes in the Title VII and ADEA recordkeeping requirements for employers with temporary employees will result in an increased recordkeeping burden of approximately 20,800 burden hours annually. The Commission believes that this increase in burden hours is *de minimis* and that the proposed modifications will not have a significant impact on a substantial number of small employers. Further, the Commission believes that the above-cited benefits of the proposed modifications outweigh the minimal increase in recordkeeping burden hours on employers. For the above reasons, the Commission certifies under 5 U.S.C. 605(b), enacted by the Regulatory Flexibility Act (Pub. L. No. 96–354), that these proposed modifications will not result in a significant economic impact on a substantial number of small employers and that a regulatory flexibility analysis is therefore not required.

List of Subjects in 29 CFR Parts 1602 and 1627

Equal employment opportunity, Reporting and recordkeeping requirements.

For the Commission.

Clarence Thomas,

Chairman.

Accordingly, it is proposed to amend 29 CFR Parts 1602 and 1627 as follows:

PART 1602—[AMENDED]

1. The authority citation for 29 CFR Part 1602 continues to read as follows:

Authority: Secs. 709, 713, 78 Stat. 263, 265; 42 U.S.C. 2000e–8, 2000e–12; 44 U.S.C. 3501 *et seq.*

§ 1602.7 [Amended]

2. It is proposed to revise the first sentence of § 1602.7 as follows:

On or before September 30, 1989, and annually thereafter, every employer subject to Title VII of the Civil Rights Act of 1964, as amended, shall file with the Commission or its delegate executed copies of Standard Form 100 as revised (otherwise known as "Employer Information Report EEO–1") in conformity with the directions set forth in the form and accompanying instructions. * * *

3. It is proposed to revise the last sentence of § 1602.7 as follows:

* * * Appropriate copies of Standard Form 100 in blank will be supplied to every employer known to the Commission to be subject to the reporting requirements, but it is the responsibility of all such employers to obtain necessary supplies of same prior to the filing date from the Commission or its delegate.

§ 1602.10 [Amended]

4. It is proposed to amend § 1602.10 by removing the words "section 4(c)" and replacing them with the words "section 5."

§ 1602.14 [Amended]

5. It is proposed to amend § 1602.14(a) by removing the words "6 months" wherever they appear and replacing them with the words "one year."

§§ 1602.14, 1602.31, 1602.40 and 1602.49 [Amended]

6. It is proposed to remove §§ 1602.14(b), 1602.31(b), 1602.40(b), and 1602.49(c) in their entirety.

§ 1602.28 [Amended]

7. It is proposed to amend § 1602.28(a) by removing the words "6 months" and replacing them with the words "one year."

8. It is proposed to add a new Subpart R consisting of § 1602.56 to read as follows:

Subpart R—Investigation of Reporting or Recordkeeping Violations

§ 1602.56 Investigation of reporting or recordkeeping violations.

When it has received an allegation, or has reason to believe, that a person has not complied with the reporting or recordkeeping requirements of this Part or Part 1607 of this chapter, the Commission may conduct an investigation of the alleged failure to comply.

9. It is proposed to add a new Subpart S consisting of § 1602.57, which reads as follows:

Subpart S—Recordkeeping Requirements of Part 1607—Uniform Guidelines on Employee Selection Procedures (1978)

§ 1602.57 Applicability of recordkeeping requirements of Part 1607.

The recordkeeping requirements of §§ 1607.4 and 1607.15 A of this chapter are incorporated into Part 1602 of this chapter.

PART 1627—[AMENDED]

10. The authority citation for 29 CFR Part 1627 continues to read as follows:

Authority: Sec. 7, 81 Stat. 604; 29 U.S.C. 626; sec. 11, 52 Stat. 1066, as amended, 29 U.S.C. 211; sec. 2, Reorg. Plan No. 1 of 1978, 43 FR 19807.

§§ 1627.3 [Amended]

11. It is proposed to remove § 1627.3(b)(3) in its entirety and redesignate the present § 1627.3(b)(4) as § 1627.3(b)(3).

12. It is proposed to amend new § 1627.3(b)(3) by removing the word "may" and replacing it with the "shall."

§ 1627.4 [Amended]

13. It is proposed to remove § 1627.4(a)(2) in its entirety and redesignate the present § 1627.4(a)(3) as § 1627.4(a)(2).

14. It is proposed to amend new § 1627.4(a)(2) by removing the word "may" and replacing it with the word "shall."

§ 1627.5 [Amended]

15. It is proposed to amend § 1627.5(c) by removing the "may" and replacing it with the word "shall."

[FR Doc. 89–3309 Filed 2–10–89; 8:45 am]

BILLING CODE 6570–06–M

LIBRARY OF CONGRESS

36 CFR Ch. VII

National Film Preservation Board; Proposed Guidelines for Selection of Films and Proposed Procedures for Public Participation in Selection of Films

AGENCY: Library of Congress, National Film Preservation Board.

ACTION: Notice of proposed guidelines.

SUMMARY: This notice of proposed guidelines is issued to inform the public that the Librarian of Congress pursuant to section 3 of Pub. L. 100–446, The National Film Preservation Act of 1988, 2 U.S.C. 178, and pursuant to the rule-making procedures provided in subchapter II of chapter 5 of title 5, United States Code, known as the Administrative Procedures Act, publishes the following proposed guidelines for public comment to:

(A) Establish criteria for guidelines pursuant to which such films may be included in the National Film Registry, except that no film shall be eligible for inclusion in the National Film Registry until 10 years after such film's first theatrical release; and

(B) Establish a procedure whereby the general public may make recommendations to the Board regarding the inclusion of films in such National Film Registry.

DATE: Comments should be received on or before March 15, 1989.

ADDRESSES: Copies of written comments on these proposed guidelines should be addressed to:

Dr. James H. Billington, Librarian of Congress, The National Film Registry, The Library of Congress, Washington, DC 20540, Attention: Eric Schwartz, Counsel. Telephone inquiries: (202) 707–6350.

FOR FURTHER INFORMATION CONTACT: Eric Schwartz, Counsel, The National Film Preservation Board, Library of Congress, Washington, DC 20540. Telephone: (202) 707–6350.

Proposed Guidelines: The Librarian of Congress, Dr. James H. Billington, after consultation with the National Film Preservation Board, which met in an open session, on January 23, 1989 in Washington, DC, announces the following are subject to public comment for a period to end on March 15, 1989.

Proposed Guidelines for the Selection of Films for Inclusion into the National Film Registry

(1) All of the films nominated for selection into the National Film Registry should reflect the congressional findings in section 1 of the National Film Preservation Act (Pub. L. 100–446) which reads,

the Congress finds that—

(1) motion pictures are an indigenous American art form that has been emulated throughout the world;

(2) certain motion pictures represent an enduring part of our Nation's historical and cultural heritage; and

(3) it is appropriate and necessary for the Federal Government to recognize motion pictures as a significant American art form deserving of protection.

In accordance with the intent of Congress, all of the following criteria for guidelines for the selection of films into the National Film Registry are intended to be read broadly, so that as many films as possible will be eligible.

(2) For the purposes of film selection, a "film" is defined as a feature-length, theatrical motion picture at or after its first theatrical release.

(3) Films should be given a priority for selection to the National Film Registry if they are culturally, historically or aesthetically important.

(4) Films should not be considered for inclusion into the National Film Registry if no element or copy of the film exists. While the Librarian intends to promote the goals of film preservation provided for in the Act, no film should be denied inclusion into the National Film Registry because that film has already been preserved.

(5) No film is eligible for inclusion into the National Film Registry until 10 years after such film's first theatrical release.

The Librarian of Congress, Dr. James H. Billington, after consultation with the National Film Preservation Board, which met in an open session, on January 23, 1989 in Washington, DC, announces the following are subject to public comment for a period to end on March 15, 1989.

Proposed Procedures for the Public to Recommend Films for Inclusion into the National Film Registry

(1) All notices of meetings of the National Film Preservation Board will be published in the **Federal Register**.

(2) A mailing address within the Library of Congress, will be established in order to allow the public to make nominations of films to the Librarian and the National Film Preservation

Board. All nominations should include the film title only, unless additional information is necessary to prevent confusion with similarly named titles.

(3) Materials will be prepared for congressional offices to send information to constituents who wish to make nominations. Materials will also be made available for distribution to libraries, movie theaters, and through the guilds and societies representing actors, directors, screenwriters, producers, and film critics, film preservation organizations and representatives of academic institutions with film study programs, in order to encourage broad participation from the general public. The nominations, when received, will be forwarded to the Librarian of Congress and members of the Board to assist them in making selections of films into the National Film Registry.

(4) The Librarian of Congress will study the possibility in future years of broadcasting notices to the public on television and radio, after further review by the Board and after consulting with the broadcast industry.

(5) All nominations for inclusion of films into the National Film Registry, for 1989, from whatever source, must be submitted in writing, by mail, to the Librarian of Congress *no later than April 21, 1989.* All nominations should be mailed to: National Film Registry, Library of Congress, Washington, DC 20540.

Dated: February 7, 1989.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 89-3225 Filed 2-10-89; 8:45 am]

BILLING CODE 1410-07-M

Notices

Federal Register

Vol. 54, No. 28

Monday, February 13, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

1989-Crop Honey Price Support Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of Proposed Determinations.

SUMMARY: The purpose of this notice is to propose a level of price support for the honey price support program for the 1989-crop and to propose continuation of the lower loan repayment provisions now in place for the 1988-crop. These proposed determinations are made in accordance with the provisions of section 201(b) of the Agricultural Act of 1949, as amended. Written comments are invited from interested persons.

DATE: Comments must be received on or before March 15, 1989, in order to be assured of consideration.

ADDRESS: Mail comments to Bruce R. Weber, Director, Commodity Analysis Division, USDA–ASCS, Rm. 3741 South Building, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Jane K. Phillips, Agricultural Economist, Commodity Analysis Division, USDA–ASCS, Room 3754 South Building, P.O. Box 2415, Washington, DC 20013, (202) 447–7802. The Preliminary Regulatory Impact Analysis describing the options considered in developing these proposed determinations and the impact of implementing each option is available from the above-named individual.

SUPPLEMENTARY INFORMATION: These proposed determinations have been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation 1521–1 and have been classified "not major." It has been determined that these proposed determinations will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal assistance program to which these proposed determinations apply are: Commodity Loans and Purchases; 10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice of proposed determinations since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

In order to implement a price support program for the 1989 crop of honey by April 1, 1989, the beginning of the marketing season, comments must be received by March 15, 1989 to be assured of consideration.

Domestic production, imports, CCC and commercial stocks, and honey pledged as collateral for CCC price support loans are expected to result in a total supply of honey in the United States for 1989 of 440 million pounds.

Section 201(b) of the Agricultural Act of 1949 (the Act), as amended by the Food Security Act of 1985, provides that the price support level for the 1989 crop of honey shall be 95 percent of the price support rate for the previous year's crop, but not less than 75 percent of the simple average price received by producers of honey for the preceding 5 crop years, excluding the high and low years. The Omnibus Budget Reconciliation Act of 1987 amended section 201(b) of the Act by adding subparagraph D which requires that, once the support levels have been determined using the above method, the rates for the 1987 through 1990 crops must be reduced by specified amounts. Pursuant to subparagraph D, the amount specified for the 1989 crop must be reduced by 0.5 cents. The price support loan rate for the 1988 crop of honey was 59.85 cents per pound prior to being reduced in accordance with subparagraph D. This amount, when reduced by 5 percent, equals 56.86 cents per pound. Seventy-five percent of the simple average price received by producers in the 5 preceding crop years, excluding the highest and lowest years, is 50.46 cents per pound. Therefore, since the established loan rate (56.86 cents per pound) is in excess of that amount, 56.86 cents per pound is reduced by 0.5 cents per pound, resulting in a price support loan rate for 1989-crop honey of 56.36 cents per pound.

In accordance with section 403 of the Act, it is proposed that the loan rate for the 1989 crop of honey be adjusted appropriately to reflect floral source, color, class and grade, and other market differentials, such as location, which are applicable to the marketing of honey.

Under the provisions of section 201(b) of the Act the Secretary may permit producers who have obtained price support loans with respect to the 1988–1990 crops of honey to repay such loans at a level that is the lesser of:

(a) The loan level determined for such crop; or

(b) Such level that the Secretary determines will:

(1) Minimize the number of loan forfeitures;

(2) Not result in excessive total stocks of honey;

(3) Reduce the costs incurred by the Federal Government in storing honey; and

(4) Maintain the competitiveness of honey in domestic and export markets.

Accordingly, the following determinations are proposed with respect to the 1989-crop:

Proposed Determinations

The 1989 program will be a price support loan program with a loan rate of 56.36 cents per pound as required by statute.

The 1989-crop honey loan rate will be adjusted to reflect floral source, color, class and grade, and other market differentials, such as location, under which honey is marketed.

Producers with price support loans for the 1989-crop honey will be permitted to repay such loans at the lesser of the loan level for such crop or at a level which the Secretary of Agriculture, or a designee, determines will minimize the number of loan forfeitures, not result in excessive total stocks of honey, reduce

BEST COPY AVAILABLE

the costs incurred by the Federal Government in storing honey, and maintain the competitiveness of honey in domestic and export markets. At this present time, it is contemplated that a repayment level may be established in a range of 30 to 40 cents a pound. These levels roughly reflect the wide range of potential landed import prices for honey. A repayment level in this range would result in direct competition with imported honey whereby commercial sales of domestically produced honey would increase and total stocks of domestically produced honey would decrease. This increased competition would minimize the number of loan forfeitures and thus reduce the costs incurred by the Federal Government in storing honey. Repayment within this range would not only make domestically produced honey more competitive with foreign honey in domestic markets but would increase its competitiveness in foreign markets as well.

Consideration will be given to all views and recommendations that are received within the comment period relating to the above determinations.

All comments will be available for public inspection in room 3741 of USDA's South Building during business hours (8:00 a.m. to 4:30 p.m.).

Signed at Washington, DC, on February 7, 1989.

Milton J. Hertz,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 89-3340 Filed 2-10-89; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.
Title: The 1990 Census of the United States Virgin Islands.
Form Number: D-2 VI, D-20B VI, D-31 VI.
Type of Request: New.
Burden: 17,930 hours.
Number of Respondents: 39,000.
Average Hours Per Response: 27.5 minutes.
Needs and Uses: The 1990 decennial census will cover the population and housing characteristics of all residents in the Virgin Islands of the United States. The United States Constitution calls for a census to be conducted at least every 10 years. Census data will be used to allocate territorial and Federal funds and in private sector decision making.
Affected Public: Individuals or households.
Frequency: One time only.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Francine Picoult, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: February 8, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-3312 Filed 2-10-89; 8:45 am]

BILLING CODE 3510-07-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis.
Title: Defense Research, Development, Test, and Evaluation Index Data Requirements.
Form Number: Agency—NA; OMB—0608-0033.
Type of Request: Extension of the expiration date of a currently approved collection.
Burden: 100 respondents; 700 reporting hours.
Average Hours Per Response: 7 hours.
Needs and Uses: The survey collects data for use in estimating constant-dollar purchases of contractual research and development by the Department of Defense. These estimates are used in the compilation of the gross national product of the United States.
Affected Public: Businesses or other for-profit institutions.
Frequency: Quarterly.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Francine Picoult, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: February 8, 1989.

Edward Michals,

Department Clearance Officer, Office of Management and Organization.

[FR Doc. 89-3313 Filed 2-10-89; 8:45 am]

BILLING CODE 3510-CW-M

Bureau of Export Administration

Presidential Decision; Petroleum Section 232 National Security Import Investigation

AGENCY: Department of Commerce, Bureau of Export Administration, Export Administration, Office of Industrial Resource Administration.

ACTION: Announcement of Presidential Decision.

SUMMARY: On January 3, 1989, President Reagan determined that no action is necessary to adjust imports of petroleum under authority of section 232 of the Trade Expansion Act of 1962, as amended. Included herein is the Executive Summary of the Department of Commerce's December 1988 section 232 report to the President.

FOR FURTHER INFORMATION CONTACT: John A. Richards, Deputy Assistant Secretary for Industrial Resource Administration, U.S. Department of Commerce, Washington, DC 20230, (202) 377-4506.

SUPPLEMENTARY INFORMATION: On December 1, 1987, the National Energy Security Committee (NESC) petitioned the Department of Commerce (DOC) to conduct an investigation under section 232 of the Trade Expansion Act of 1962, as amended, to determine the effect of imports of petroleum on the national security. The DOC announced its initiation of an investigation and solicited public comments in the Federal Register on December 29, 1987.

On December 1, 1988, then-Secretary Verity submitted his investigation report to President Reagan. The investigation found that there had been a substantial improvement in U.S. energy security since the last section 232 petroleum finding in 1979. However, declining domestic oil production, rising oil imports and growing Free World dependence on potentially insecure sources of supply raise a number of concerns, including vulnerability to a major supply disruption. Given the importance of oil to our economic security, foreign policy flexibility, and defense preparedness, the Secretary found that imports of petroleum threaten to impair the national security.

However, taking into account the Reagan Administration's detailed program to improve energy security transmitted to Congress on May 6, 1987, the Secretary recommended that no action, such as an oil import fee, be taken to adjust imports under section 232. It was determined that such action would not be cost effective and, in the long run, would impair rather than enhance national security. On January 3, 1989, President Reagan approved Secretary Verity's finding and determined that no action to adjust oil imports under Section 232 need be taken.

The Executive Summary of Commerce's December 1, 1988 Section 232 report is reproduced below. A declassified version of the December 1 report will be available for public review and duplication in the Bureau of Export Administration's Office of Security and Management Support, Room 4886, U.S. Department of Commerce, Washington, DC 20230, (202) 377-2593.

Paul Freedenberg,

Under Secretary for Export Administration.

Executive Summary

Introduction

On December 1, 1987, the National Energy Security Committee, on behalf of a coalition of associations, companies, and individuals, submitted a petition for an investigation under section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862) for an investigation of the impact of crude oil and refined petroleum product imports on the national security.

The petition alleged that imports are weakening the domestic petroleum industry to such an extent that it will not be able to support U.S. security needs in the event of a global conventional war. The petition did not suggest a specific remedy, but requested that the Department of Commerce (DOC) "recommend appropriate remedial action to the President."

On December 23, 1987, the Department of Commerce accepted the petition, initiated an investigation and invited public comment. (Extensive comments reflecting support for and opposition to the allegations made by the petition were received from oil producers, refiners, consumers, public officials, and foreign governments.)

Under then-existing law, DOC had one year, until December 1, 1988, in which to complete its investigation and forward its report with recommendations to the President. (Since that time, Congress has amended the statute to require future reports to be completed within 270 days.) In conducting the investigation, the Department made use of the extensive data and analysis that were already available regarding the current and prospective status of the domestic petroleum industry and the world oil market as well as the extensive recent national security analyses of oil supply and demand under crisis conditions.

Methodology

The investigation used a three step process to evaluate the effect of petroleum imports on the national security. The methodology for this investigation was to: (1) Review previous energy security assessments and resulting initiatives; (2) review current world oil market and status of U.S. petroleum producing and refining industries to develop a current U.S. energy security assessment; and (3) perform a national security review.

Analysis

The investigation commenced with a review of previous analyses of the effect of oil imports on the domestic petroleum industry and on United States energy security. These included national security investigations conducted in 1975 and in 1979 under section 232 of the Trade Expansion Act of 1962, as well as the 1959 investigation under section 8(d) of the Trade Agreements Extension Act of 1958. DOC also reviewed the analyses and findings of two major studies done by the Department of Energy (DOE)—"Product Imports, Energy Security and the Domestic Refining Industry" (1986) and "Energy Security: A Report To The President of the United States," (1987) and other studies done by the Administration since 1981. This review highlighted the focus of several Administrations regarding this issue.

The investigation presented an analysis of the current and prospective status of U.S. energy security in light of recent developments in the world oil market. This analysis highlighted a number of key trends and factors which will have a significant effect on U.S. energy security in the future.

Since 1979, U.S. energy security has been strengthened and the United States is better prepared than before to deter as well as respond to an energy supply emergency. The following factors have served to enhance U.S. energy security since the late 1970's:

- U.S. petroleum imports have declined by over 2 million barrels per day (MMB/D) from 1979 to 1987 or 27 percent. The U.S. Strategic Petroleum Reserve (SPR) now contains over 555 million barrels, whereas in 1979, only 91 million barrels were stored. Other OECD countries' government-owned emergency oil stocks now amount to 400 million barrels and coordinated energy emergency sharing programs have been developed and tested regularly. In addition, many private companies have stocks in excess of commercial needs. Some of these stocks are potentially available for use in an emergency situation. Non-OPEC oil production now accounts for 60 percent of Free World oil production, approximately 9-10 MMB/D of surplus oil production capacity exists in the market. Natural gas supplies use has been expanded in non-OPEC countries. The construction of additional crude oil pipelines has diversified Middle East oil transportation patterns and thus has reduced the share of Persian Gulf production delivered to world markets through the Straits of Hormuz.
- There have also been important developments in conservation and interfuel substitution that contribute to enhancing U.S. energy security. The United States consumed only as much energy in 1987 as it did in 1973, even though the economy grew 40 percent over that period. At the same time, many large oil users such as industrial firms and utilities have developed the capability to substitute large volumes of natural gas or coal for imported oil when economic conditions or other factors dictate.
- Since the late 1970's, there has been a shift in the sources and levels of U.S. oil import dependence. Sources outside of the Middle East now account for a larger share of U.S. oil imports. During 1987, Canada, Mexico, and the United Kingdom supplied 31 percent of net petroleum imports as compared to 15 percent in 1979.
- Although many small U.S. refineries have closed between 1981 and 1986, current U.S. refining capacity (15-16 million B/D) combined with imports from reliable Free World sources is sufficient to meet demand. The principal cause for the closure of 120 U.S. refineries during this time was the elimination of both crude oil price controls and the Small Refiner Bias Provision of the Entitlements Program.

The Department's investigation also identified a number of other factors affecting future U.S. energy security:

• Various U.S. Government energy reports have concluded that by the mid-1990's and beyond, we may be importing about half or more of our oil consumption. To the extent the United States and other countries import more oil in the future, it is projected they will turn increasingly to OPEC countries—particularly those located in the Persian Gulf region which have the largest amounts of surplus oil production capacity and reserves. Dependence on a small number of suppliers located largely in a volatile region could make the United States and the OECD countries increasingly vulnerable to oil supply disruptions or cartel manipulation of production and price.

• U.S. petroleum imports are likely to increase in the years ahead because domestic reserves of economically recoverable oil are declining. Further, as world crude oil prices have declined since 1986, the relatively smaller U.S. oil fields with higher cost U.S. production became uneconomic and some wells were shut-in or abandoned.

• The level of domestic drilling activity remains low, and the low prices have had an adverse effect on the U.S. petroleum services industries.

• The most promising currently known prospects for major new oil fields in the United States are in the Outer Continental Shelf (OCS) and in the Arctic National Wildlife Refuge (ANWR). Exploration and eventual production from these areas could help offset anticipated production declines in other parts of the United States, thereby helping to limit the growth in U.S. dependence on foreign oil supplies. However, the long lead times needed from exploration to production mean that it could still be a decade before oil is extracted, even if access were granted within the next year or so.

• Though not currently a problem, in the event of a large price or volume increases, rising outlays for imported oil would increase the need for expansion of exports or decreases in other imports. However, if priced below the cost of domestic supplies, expanding oil imports would enhance domestic economic efficiency and continue contributing to the international competitiveness of U.S. firms.

• On the other hand, lower priced oil has had a beneficial effect on U.S. international competitiveness and economic growth thereby contributing to one of the longest sustained post-war economic recoveries.

In addition, national defense petroleum mobilization requirements were evaluated in light of previous national security studies and a review of the current world oil market. It was determined that the United States would be able to meet defense requirements and essential industrial and civilian needs in a major conventional war from domestic energy production, the Strategic Petroleum Reserve, and reliable petroleum imports. It was also determined that we have sufficient refining capacity to process this oil.

In the event of a three year, large scale conventional conflict coupled with a substantial decrease in oil supplies, defense needs would receive priority. Consequently, domestic dislocations resulting from decreased petroleum availability could be significant and have a significant deleterious effect upon the U.S. economy. Further, growing Free World dependence on potentially insecure sources of oil can constrain foreign policy flexibility and U.S. military power projection capabilities even in peacetime.

Finding

There have been substantial improvements in U.S. energy security since the last section 232 Petroleum finding in 1979. However, declining domestic oil production, rising oil imports, and growing Free World dependence on potentially insecure sources of supply raise a number of concerns, including vulnerability to a major supply disruption. The investigation found that the maintenance of U.S. access to sufficient supplies of petroleum is essential to our economic security, foreign policy flexibility, and defense preparedness. Given the above factors, it was found that petroleum imports threaten to impair the national security.

U.S. Government Energy Actions Which Enhanced National Security

Since 1981, the Administration has implemented policies that have substantially increased U.S. energy and national security. Major actions include: (1) Fully decontrolling oil prices in 1981 and eliminating allocation controls; and (2) filling the Strategic Petroleum Reserve to 555 million barrels and committing to a 750 million barrel reserve. Other actions to enhance energy security and maintain a strong domestic oil industry include:

• Reestablishing the five-year Outer Continental Shelf (OCS) leasing program and reducing the minimum bid for certain offshore leases.

• Increasing Federal spending for clean coal to $2.5 billion over the next five years and reestablishing a Federal coal leasing program.

• Preserving the intangible drilling costs treatment in the Tax Reform Act of 1986 and retaining the full-cost accounting provisions.

• Encouraging our allies and friends to build up their government-owned strategic stockpiles, which amount to about 400 million barrels (mostly in Germany and Japan), and to coordinate stock drawdowns during an emergency.

• Developing with our partners in the International Energy Agency policies and programs, including stock drawdown measures, for coordinated international responses to future oil supply disruption.

• Obtaining Congressional repeal of the Windfall Profits Tax which removes major disincentives for producers to develop further existing oil reserves, explore for new reserves, and reduce the paperwork burden on the industry.

• The implementation of the U.S.-Canada Free Trade Agreement which will promote increased bilateral energy trade and provide reliable supplies at competitive prices.

Recommendations

While U.S. energy security has improved since the 1970's, a threat to U.S. national security cannot be ignored and future projected trends require vigilance. Although no single program or specific action could eliminate U.S. dependence on some insecure petroleum imports, there are a number of cost-effective actions that could reduce our vulnerability and increase our flexibility.

The best means to enhance U.S. energy security is to increase opportunities for economic domestic energy production and toensure that adequate oil supplies are available in the event of a supply disruption. The Congress and the States should continue to be urged to take immediate steps to implement the President's program. Specifically:

• *Enacting Comprehensive Natural Gas Reform*—this action would help gas to reach its full potential in substituting for imported oil;

• *Permitting Environmentally Sound Oil Exploration and Development of the Arctic National Wildlife Refuge Coastal Plain in Alaska and of the Outer Continental Shelf*—these are the most promising prospects for discovering major new oil reserves in the United States. Exploration and production from these areas would serve to limit our growing dependence on foreign oil;

• *Ensuring the Viability of Nuclear Power Through Licensing Reform*—This would involve the issuance of a combined license for both construction and operation of a nuclear power plant. This action would provide a vehicle so that utility, public, State, and Federal concerns could be resolved before plant construction, thereby reducing project costs;

• *Removing Tax Disincentives To Domestic Oil Exploration and Development and Reducing Early Well Abandonment*—These consist of: (1) Increasing the net income limitation on the percentage depletion allowance from 50 to 100 percent per property; and (2) repealing the transfer rule to permit use of percentage depletion for proven properties that have changed hands;

• *Filling the SPR to 750 Million Barrels*—The Naval Petroleum Reserves at Elk Hills, California, and Teapot Dome, Wyoming, should be sold in order to finance an increased fill rate for the SPR, which is a more effective emergency reserve, and to pay for a new 10 million barrel Defense Petroleum Inventory;

An action to adjust imports by way of quotas, fees or tariffs, under the authority of section 232, is not recommended because such actions are not cost beneficial and, in the long run, impair rather than enhance national security. Section 232 states that "In the administration of this section, the Secretary and President shall further recognize the close relation of the economic welfare of the Nation to our national security * * *." An oil import fee and/or quantitative import restrictions would raise the price of oil resulting in only a small temporary increase in U.S. production, while causing substantial increased economic costs and adverse competitive impacts throughout the U.S. economy. In addition, the beneficial effect that the President's initiatives should have on U.S. energy security argues against taking formal action to adjust imports under section 232.

The DOE *Energy Security* report of 1987 examined oil import fees in detail. The report found that oil import fees have overall economic costs far in excess of their benefits. Specifically, the study concluded that a $10 per barrel fixed import fee could increase domestic production (about 400 thousand B/D) and discourage consumption, leading to a reduction of imports of about 1.5 million B/D.

However, a $10 per barrel import fee would have greater negative effects on the overall economy (*e.g.*, stimulating inflation, decreasing the competitiveness of oil consuming industries, reducing the GNP). Consumers would pay higher prices for oil and this would inflate costs throughout the economy. Thus, the economy would incur substantial adjustment costs. The Department of Energy has estimated that the economy would suffer a loss in output of $150–200 billion over the 1988–1995 period as a result of a $10 per barrel fee. This output loss would exceed the estimated benefits accruing from the fee. The DOE *Energy Security* report also analyzed the impact of a $5 per barrel fee on the economy. DOE estimates that the $5 fee would result in an additional 200,000 b/d of domestic oil production by 1995. However the $5 fee would also have the same negative effects on the economy as the $10 fee, albeit on a smaller scale. On balance, the costs of $5 fee outweigh the benefits to the petroleum sector. Additionally, other methods for affecting imports, such as volumetric quotas, would have similar economic and competitiveness impacts.

[FR Doc. 89-3311 Filed 2-10-89; 8:45am]

BILLING CODE 3510-DT-M

International Trade Administration

A-122-401

Red Raspberries From Canada; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review

SUMMARY: On July 28, 1988, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on red raspberries from Canada.

We held a public hearing on August 30, 1988. Based on our analysis of the issues raised at the hearing, the final results of review are changed from those presented in the preliminary results with respect to all four firms.

EFFECTIVE DATE: February 13, 1989.

FOR FURTHER INFORMATION CONTACT: Dolores C. Ricci or Laurie A. Lucksinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–1130/5253.

SUPPLEMENTARY INFORMATION:

Background

On July 28, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 28425) the preliminary results of its administrative review of the antidumping duty order on certain red raspberries from Canada (June 24, 1985, 50 FR 26019). We have now completed the review in accordance with Section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule ("HTS"), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by this review are shipments of fresh or frozen red raspberries packed in bulk containers and suitable for further processing from Canada. During the review period, fresh raspberries were classifiable under item numbers 146.5400 and 146.5600 of the Tariff Schedules of the United States Annotated ("TSUSA") and frozen raspberries were classifiable under TSUSA number 146.7400. Fresh raspberries are currently classifiable under HTS numbers 0810.20.90 and 0810.20.10 and frozen raspberries are classifiable under HTS number 0810.20.20. The HTS numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers four processors/exporters of fresh and frozen red raspberries to the United States, Clearbrook Packers, Inc. ("Clearbrook"), Jesse Processing Ltd. ("Jesse"), Marco Estates Ltd./Landgrow ("Marco"), and Mukhtiar & Sons Packers, Ltd. ("Mukhtiar") and the period June 1, 1986 through May 31, 1987.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. At the request of four respondents, we held a public hearing on August 30, 1988.

Comment 1: Mukhtiar states that the Department erred in basing foreign market value ("FMV") on constructed value because Mukhtiar's home market sales constituted approximately 30% of sales by volume to a third country and, according to section 353.4 of the Commerce Regulations, are appropriate for use in determination of FMV.

Department's Position: We disagree. United States antidumping law is designed to offset the effects of unfair price discrimination. In order to determine whether such price

discrimination exists, we must compare prices charged in the United States with an appropriate measure of FMV. The regulations direct us to test home market sales against third country sales for the purpose of choosing the appropriate market for determining FMV. However, the sales in the selected market must be of sufficient magnitude to provide a meaningful basis for price-to-price comparisons.

Section 353.4 of the regulations establishes a five-percent test for assessing the viability of a foreign market in normal situations. Although the home market in this case is technically viable according to the five-percent test, we are presented with the unusual situation where the volume and number of sales of the subject merchandise in both the home market and third country markets do not provide an adequate basis for price-to-price comparisons. Where home market sales are greater than five percent of third country sales but are negligible compared to both the volume and number of sales to the United States, constructed value should be used to determine FMV.

Mukhtiar made only one home market sale of the subject merchandise during the period of review. Rather than taking a single home market sale of a quantity significantly smaller than the quantity sold to the United States, as representative of sales made in the ordinary course of trade, the Department determined that FMV should be based on constructed value. We believe that the use of constructed value in this situation is consistent with section 353.4 of our regulations and the overall intent of the antidumping law of the United States.

Comment 2: Mukhtiar argues that the Department did not use the correct revenue figure in its determination of profit for constructed value. Mukhtiar suggests that the Department use the gross price per pound received from the one sale of red raspberries in the home market as the total revenue figure in the determination of profit. To support its position, Mukhtiar cites 19 U.S.C. section 1677b(e)(1)(B) and Department policy which stress use of "profit equal to that usually reflected in sales of merchandise of the same general class or kind as that merchandise under consideration which are made by producers in the country of exportation."

Department's Position: We disagree. We have used the "total revenue" figure from respondent's constructed value information in our determination of profit. We believe this figure represents corporate revenue experience and is a more accurate indication of revenue for use in the determination of profit in a constructed value analysis. The Department subtracted total costs, as listed in Mukhtiar's constructed value response, from this total revenue figure to obtain a profit figure, which was greater than the statutory minimum of 8% of the cost of manufacture and general and selling expenses.

Comment 3: Mukhtiar argues that the Department's calculation of credit does not accurately reflect Mukhtiar's interest expense. Respondent proposes that the Department use an average of current assets for 1985 and 1986 in its determination of imputed interest for the review period. In addition, Mukhtiar asserts that the Department did not deduct home market credit from the constructed value, after adding U.S. credit, when comparing constructed value to purchase price.

Department's Position: We disagree. For these final results we did not impute a credit cost. Instead, we reviewed Mukhtiar's responses and used the amount reported in the constructed value response for credit expenses during the review period. In the preliminary results and in these final results we deducted home market credit from the constructed value when comparing constructed value to purchase price and exporter's sales price ("ESP").

Comment 4: Mukhtiar alleges a currency conversion error in the Department's calculation of freight. The figures in the original response were in U.S. dollars and did not need to be converted before deduction from the United States price.

Department's Position: We disagree. In response to a supplemental questionnaire, Mukhtiar provided freight expense information in Canadian dollars, as we had requested, because it incurred this expense in Canadian dollars. We converted the Canadian freight expense to U.S. dollars before deduction from United States price.

Comment 5: Clearbrook argues that the Department has no statutory authority to disregard its home market sales in favor of constructed value in determining FMV. Clearbrook states that its home market sales were an adequate measure of FMV and there was no indication that the sales were other than arm's length transactions.

Department's Position: We disagree. In this review, Clearbrook did not make third country sales and the combined volume of their two home market sales were so small in relation to the number and volume of sales to the United States that they did not provide a reasonable basis for price-to-price comparisons. Accordingly, we used constructed value to determine FMV. See our response to comment 1.

Comment 6: Clearbrook does not understand the element "indirect expenses" listed in the "Selling" expense category of the Department's constructed value. Clearbrook claims it did not report this figure as a home market selling expense.

Department's Position: We disagree. In its home market sales list, Clearbrook reported one related party commission and one unrelated party commission. In its response to our constructed value questionnaire, Clearbrook did not report this related party commission as a selling expense. It only reported the unrelated party commission. In order to account for this incurred expense, the Department derived the related party commission expense according to the methodology used by the respondent in its February 5, 1988 submission and listed this expense as "Indir. Exp." in its constructed value.

Comment 7: Clearbrook contends that the Department did not deduct an appropriate amount for credit expense incurred on home market sales from the FMV. Clearbrook reported credit expenses in its sales list and in its constructed value response.

Department's Position: We agree. For these final results, we reviewed Clearbrook's responses and deducted the amount reported in the constructed value response as the appropriate credit expense from the FMV.

Comment 8: Clearbrook states that in calculating FMV for ESP sales, the Department deducted an amount for indirect selling expenses indicating that it was subject to the ESP offset cap. The amount deducted is actually a cold storage charge. Clearbrook asserts that this is a direct expense, not an indirect one, and should not be subject to the ESP offset cap.

Department's Position: We disagree. Cold storage is not always a direct expense. Cold storage expenses incurred by the processor after a sale, relating to that sale, would be considered a direct expense. However, the cost associated with pre-sale cold storage is an indirect selling expense because it is not directly related to sales. In its initial response of November 12, 1987 Clearbrook states that "(t)he company packs berries in bulk containers and ships them to cold storage in either the U.S. or Canada where they are frozen and kept for sale." Since the berries are frozen first and sold afterward, we treated cold storage as an indirect expense. We used the average cold storage expense for its home market sales which Clearbrook submitted in its constructed value response.

Comment 9: Jesse argues that for its three U.S. juice stock sales the Department should have used constructed value to determine FMV. The Department's use of the monthly weighted-average jam stock sales in Canada for determination of FMV is not consistent with the previous administrative review. Constructed value should be derived from Jesse's cost of production for jam, with an appropriate adjustment for differences in merchandise between the cost of acquiring unprocessed juice and jam berries.

Department's Position: We disagree In the previous administrative review, the Department stated that "(w)here possible, the Department has compared U.S. sales of juice stock raspberries with such berries in the home market" (53 FR 20150, June 2, 1988). Constructed value was used in the previous review only where Jesse's home market price fell below the cost of production and was therefore disregarded. The Department did not make an adjustment for differences in merchandise in that review. In this review, all of Jesse's home market sales were made at prices above the cost of production. We compared U.S. juice berry sales to sales of similar merchandise (jam berries) in the home market, with appropriate adjustments made for differences in merchandise.

Comment 10: Jesse argues that the Department neglected to deduct home market cold storage costs from the FMV. Cold storage costs represent a direct expense and should be deducted from home market prices or constructed value, whichever represents FMV.

Department's Position: We disagree. See our response to comment 8. Cold storage occurred before the sale so we deducted it from FMV as an indirect expense. In comparisons with ESP sales, we limited the amount of the cold storage expense by the indirect expenses on the U.S. sale. In purchase price transactions, we made no deduction for indirect expenses (such as cold storage).

Comment 11: Jesse asserts that we inappropriately added U.S. credit to the FMV. In fact, Jesse incurred no credit expense on these sales because payment occurred before shipment.

Department's Position: We agree and have not included U.S. credit in our final analysis of those U.S. sales for which Jesse incurred no credit expense.

Comment 12: Marco argues that the Department's decision to use constructed value is incorrect because there were contemporaneous home market sales upon which to base FMV. These sales, which Marco admits are of a "different type of berry", are the appropriate basis for calculating FMV. The Department should use these sales of fresh market berries and make an adjustment for the differences in container costs and the differences in the "market value" of the berries.

Department's Position: We disagree. Only sales of such or similar merchandise are used as a basis for price comparisons. Section 771(16) of the Act requires, in part, that "such or similar" merchandise be "merchandise which is the subject of an investigation and other merchandise which is identical in physical characteristics with * * * that merchandise" or merchandise like the merchandise under investigation in "the purposes for which used."

Fresh market berries were not subject to the less than fair value ("LTFV") investigation as product coverage of the petition did not cover these berries (see Petition for Antidumping Duty Relief ("Petition"), p. 10). Moreover, petitioner's exclusion of fresh market berries was based in part on the product's different purpose and use. Fresh market berries are sold for consumption or retail sale, not for further manufacturing or processing as are the berries that were subject to the LTFV investigation. These latter berries are used to make jams, jellies, preserves and fruit toppings. They are also used in the production of yogurt, baked goods, and confectionary and juice products (see Petition, p. 15; see Determination of the Commission in Investigation No. 731–TA–196 (Final), USITC Pub. 1707, June, 1985, pp. A 4, A–6).

Because fresh market berries do not satisfy the requirements of Section 771(16), the Department did not use sales of such berries as a basis for price comparisons.

Comment 13: The Department made various clerical errors in its calculations for all four companies.

Department's Position: We have corrected clerical errors where appropriate.

Final Results of Review

Based on our analysis of the comments received, we have determined that the following margins exist for the firms for the period June 1, 1986 through May 31, 1987:

Processor/Exporter	Margin (percent)
Clearbrook Packers, Inc.	2.59
Jesse Processing, Ltd.	5.21
Marco Estates, Ltd.	8.15
Mukhtiar & Sons Packers, Ltd.	3.67

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, as provided for in section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required for these firms.

For any shipments from the remaining known processors and/or exporters not covered by this review, the cash deposit will continue to be at the rate published in the antidumping duty order for each of those firms (June 24, 1985, 50 FR 26019). For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments of red raspberries occurred after May 31, 1987, and who is unrelated to any reviewed firm or any previously reviewed firm, a cash deposit of 9.15 percent shall be required.

These deposit requirements are effective for all shipments of Canadian fresh or frozen red raspberries entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Date: February 8, 1989.

Jan W. Mares,

Assistant Secretary for Import Administration

[FR Doc. 89–3344 Filed 2–10–89; 8:45 am]

BILLING CODE 3510–DS–M

[C-508-802, C-580-802, and C-559-803]

Postponement of Final Countervailing Duty Determinations: Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Israel, the Republic of Korea, and Singapore

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: Based upon the request of the petitioner in these investigations, we are postponing the due date for the final determinations in these investigations to correspond to the date of the final determinations in the antidumping duty investigations of the same products from the Federal Republic of Germany, the Republic of Korea, Israel, Italy, Japan, Singapore, and the United Kingdom pursuant to section 705(a)(1) of the Tariff Act of 1930 as amended (the Act) (19 U.S.C. 1671d(a)(1)). These final determinations are now due not later than April 11, 1989. Because the preliminary countervailing duty determinations on imports of the subject merchandise from Israel and Korea were affirmative, pursuant to section 705 of the Act and Article 5, paragraph 3 of the Subsidies Code, the Department will terminate the suspension of liquidation of entries of the subject merchandise from these countries 120 days after the date of publication of the preliminary countervailing duty determinations.

EFFECTIVE DATE: February 13, 1989.

FOR FURTHER INFORMATION CONTACT: Roy Malmrose or Barbara Tillman, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–5414 or 377–2438.

SUPPLEMENTARY INFORMATION: On November 28, 1988, we issued a preliminary negative countervailing duty determination in the investigation involving Singapore (53 FR 48677, December 2, 1988) and preliminary affirmative determinations in the investigations involving Israel (53 FR 48670, December 2, 1988) and Korea (53 FR 48672, December 2, 1988). On October 24, 1988, in accordance with section 705(a)(1) of the Act, we received a request from the petitioner, the Gates Rubber Company, to postpone the due date for the final countervailing duty determinations to correspond to the date of the final determinations in the antidumping duty investigations of the same products from the Federal Republic of Germany, the Republic of Korea, Israel, Italy, Japan, Singapore, and the United Kingdom. Accordingly, we are postponing the final determinations in these investigations from February 13, 1989, to not later than April 11, 1989.

In accordance with section 705 of the Act and Article 5, paragraph 3, of the Subsidies Code, the Department will direct the U.S. Customs Service to terminate the suspension of liquidation of entries of the subject merchandise from Israel and Korea on April 1, 1989, which is 120 days from the date of publication of the preliminary determinations in the countervailing duty investigations involving Israel and Korea. No cash deposits or bonds for potential countervailing duties will be required for merchandise which enters from Israel and Korea on or after April 1, 1989. The suspension of liquidation in either case will not be resumed unless and until the Department publishes a countervailing duty order in that case. The U.S. Customs Service, however, will continue to suspend liquidation of any entries, or withdrawals from warehouse for consumption, made during the period December 2, 1988, through March 31, 1989, until the conclusion of the countervailing duty investigations involving Israel and Korea.

Public Comment

All interested parties to the investigations have requested a hearing. Therefore, in accordance with 19 CFR 355.38, we will hold public hearings to afford interested parties an opportunity to comment on the preliminary determinations in these investigations as follows: for Korea on March 2, 1989, at 9:30 a.m. at the U.S. Department of Commerce, Room 1851; for Singapore on March 2, 1989, at 2:30 p.m. at the U.S. Department of Commerce, Room 3708; and for Israel on March 3, 1989, at 10:00 a.m. at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Ten copies of the business proprietary version and seven copies of the nonproprietary version of the pre-hearing briefs must be submitted to the Assistant Secretary by February 24, 1989. Oral presentations will be limited to issues raised in the briefs.

February 7, 1989.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 89-3345 Filed 2-10-89; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

AGENCY: International Trade Administration.

ACTION: Notice of Application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Thomas H. Stillman, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97–290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and Federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1223, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 89–00001." A summary of the application follows.

Applicant: Illinois World Trade Center Association doing business as EXILL Trading Company ("EXILL"), 321 North Clark Street, Suite 550, Chicago, Illinois 60610–4714, Telephone: (312) 793–4988.

Application #: 89–00001.

Date Deemed Submitted: January 30, 1989.

Members (in addition to applicant): None.

Summary of the Application

Export Trade Products.—All products and services.

Export Trade Facilitation Services (as they relate to the export of Products).—Consulting, international market research, advertising, marketing, sales of goods and services, insurance, product research and design, legal assistance, transportation, trade documentation and freight forwarding, communication and processing of foreign orders, warehousing, foreign exchange, financing, and taking title to goods.

Export Markets.—The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation.—EXILL may:

1. Enter into agreements with its Members to act as an Export Intermediary. These agreements may include any of the following provisions:

a. Each Member independently will provide EXILL with an estimate of what quantities of Products it will make available for export through EXILL;

b. EXILL will agree to purchase for resale in Export Markets Products from its Members and when necessary to complete product-line requests, from non-member Suppliers; and

c. EXILL will market and sell the Products, either directly or through other Export Intermediaries, to purchasers in Export Markets, at such prices and on such terms as EXILL shall determine.

2. Determine the price of Products that EXILL will pay to Members and non-member Suppliers.

3. Enter into exclusive or nonexclusive agreements with other Export Intermediaries for the sale of Products in Export Markets.

4. Participate in meetings with one or more Members to deliver and discuss, or otherwise exchange:

a. Information that is already generally available to a particular trade or the public;

b. Information about sales and marketing efforts for Export Markets; activities and opportunities for sales of Products in Export Markets; selling strategies for Export Markets; pricing in Export Markets; projected demand in Export Markets; customary terms of sale in Export Markets; the types and prices of Products available from competitors for sale in particular Export Markets; and customer specifications for Products in Export Markets;

c. Information about the export prices, quality, quantity, source, and delivery dates of Products available from Members for export;

d. Information about terms and conditions of contracts for sales in Export Markets to be considered and/or bid by EXILL and its Members;

e. Information about joint bidding, selling, or servicing arrangements for Export Markets and allocation of sales resulting from such arrangements among Members;

f. Information about expenses specific to exporting to and within Export Markets, including, without limitation, transportation, intermodal shipments, insurance, inland freight to port, port storage, commission, export sales, documentation, financing, customs, duties, and taxes;

g. Information about U.S. and foreign legislation and regulations affecting sales in Export Markets; and

h. Information about EXILL's or its Members' export operations, including without limitation sales and distribution networks established by EXILL or its Members in Export Markets, and prior export sales by Members (including export price information).

5. Enter into agreements with customers wherein EXILL may agree in each case to sell Products in Export Markets only to such customers, and/or such customers may agree not to purchase Products from any competitor of EXILL.

6. Engage with Members in joint bidding, selling, and servicing arrangements for Export Markets and in allocation of sales resulting from such arrangements among Members.

Definitions

1. "Members" means those members of the Illinois World Trade Center Association, within the meaning of the by-laws of Illinois World Trade Center Association, that elect to be members of EXILL within the meaning of 15 CFR 325.2(1).

2. "Export Intermediary" means, as to EXILL, a person who acts as a sales representative, sales or marketing agent, or general agent for its Members and/or other Suppliers in connection with promoting, arranging for, and carrying out agreements relating to the sale of Products in Export Markets.

3. "Supplier" means, as to EXILL, a person who produces, provides, or sells a Product.

Date: February 7, 1989.

Thomas H. Stillman,

Director, Office of Export Trading Company Affairs.

[FR Doc. 89-3348 Filed 2-10-89; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Salmon Technical Team (STT), will meet on February 15–21, 1989. The STT will convene at 9 a.m., on February 15 at the Council's Office (address below), to draft the 1989 stock status report for presentation to the Pacific Council in March. The meeting is open to the public. Oral statements pertaining to salmon abundance projections also will be accepted at appropriate times during the meeting.

For further information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 221–6352.

Date: February 6, 1989.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-3224 Filed 2-10-89; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Permit; The Clearwater Marine Science Center (P414A)

On September 23, 1988, notice was published in the **Federal Register** (53 FR 37019) that an application had been filed by the Clearwater Marine Science Center, 249 Windward Passage, Clearwater, Florida 34630, to take an Atlantic bottlenose dolphin (*Tursiops truncatus*) from captive stock for public display.

Notice is hereby given that on February 8, 1989, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Permit for the above taking, subject to certain conditions set forth therein.

Issuance of this permit is based on a finding that the proposed taking is consistent with the purposes and policy of the Marine Mammal Protection Act.

The Service has determined that the Clearwater Marine Science Center offers an acceptable program for education or conservation purposes. The Clearwater facilities are open to the public on a regularly scheduled basis and access to the facilities is not limited or restricted other than by the charging of an admission fee.

The Permit is available for review by interested persons in the following office(s):

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, Room 7324, Silver Spring, Maryland 20910;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida, 33702;

Director, Northeast Region, National Marine Fisheries Service, NOAA, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930;

Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731; and

Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington, 98115.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

Date: February 8, 1989.

[FR Doc. 89-3323 Filed 2-10-89; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Permit to Sea Life Park, Inc. (P10E)

On August 1, 1988, notice was published in the **Federal Register** (53 FR 28902) that an application had been filed by Sea Life Park, Inc., Makapuu Point, Waimanalo, Honolulu, Hawaii 96795 to take four (4) rough toothed dolphins (*Steno bredonensis*) for public display. Notice is hereby given that on January 31, 1989 and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this permit is based on a finding that the proposed taking is consistent with the purposes and policy of the Marine Mammal Protection Act. The Service has determined that Sea Life Park offers an acceptable program for education or conservation purposes. The Sea Life Park facilities are open to the public on a regularly scheduled basis and access to the facilities is not limited or restricted other than by the charging of an admission fee.

The Permit is available for review by interested persons in the following Offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Ave., NW, Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 301 South Ferry Str., Terminal Island, California 90731.

Date: February 7, 1989.

Nancy Foster,

Director, Office of Protected and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89-3324 Filed 2-10-89; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Japanese Scientific and Technical Resources Directory (1989)

AGENCY: National Technical Information Service, Department of Commerce.

ACTION: Request for information.

SUMMARY: As required by the Japanese Technical Literature Act of 1986, the Secretary of Commerce is directed to compile, publish and disseminate an annual directory which lists all programs and services in the United States which collect, abstract, translate and distribute Japanese scientific and technical information. The Secretary has delegated authority for this activity to the National Technical Information Service (NTIS).

NTIS plans to update the Director of Japanese Technical Resources in the United States/1988 which it publishes to meet this requirement. Organizations omitted from the 1988 version that wish to be included in the update are invited to contact Janet Geffner at the address given below to provide her with the company name and address. NTIS will then send the organization a questionnaire asking for the directory information. Organizations that appear in the 1988 version need not respond to this notice as they will be contacted directly for changes to their entries.

DATE: In order to be included in the directory for 1989, interested parties must respond to this notice no later than March 30, 1989.

ADDRESS: Organizations that wish to be included in the directory should contact Janet Geffner, Editor, Office of International Affairs, National Technical Information Service, Room 306, Springfield, VA 22161, telephone (703) 487-4819.

Joseph F. Caponio,

Director, NTIS.

[FR Doc. 89-3310 Filed 2-10-89; 8:45 am]

BILLING CODE 3510-04-M

Travel and Tourism Administration

Travel And Tourism Advisory Board; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. (App. 1976) notice is hereby given that the Travel and Tourism Advisory Board of the U.S. Department of Commerce will meet on March 3, 1989 at 9:30 a.m. at the Hotel Inter Continental Hotel-Berlin, Salon Linke (12th Floor), Budapester Strasse 2, 1000 Berlin 30, Federal Republic of Germany.

Established March 19, 1982, the Travel and Tourism Advisory Board consists of 15 members, representing the major segments of the travel and tourism industry and state tourism interests, and includes one member of a travel labor organization, a consumer advocate, an academician and a financial expert.

Members advise the Secretary of Commerce on matters pertinent to the Department's responsibilities to accomplish the purpose of the National Tourism Policy Act (Pub. L. 97-63), and provide guidance to the Assistant Secretary for Tourism Marketing in the preparation of annual marketing plans.

Agenda items are as follows:

I. Call to Order
II. Approval of the Minutes
III. 1988 in Review
- Visa Waiver
- International Marketing Conference

IV. 1989 Priorities
V. 1990 Marketing Plan and Strategic Plan
- Review of Industry Input

VI. EC 1992
VII. Establish 1989 Meeting Calendar
VIII. Adjournment

A very limited number of seats will be available to observers from the public and the press. To assure adequate seating, individuals intending to attend should notify the Committee Control Officer in advance. The public will be permitted to file written statements with the Committee before or after the meeting. To the extent time is available, the presentation of oral statements is allowed.

Karen M. Cardran, Committee Control Officer, United States Travel and Tourism Administration, Room 1865, U.S. Department of Commerce, Washington, DC 20230 (telephone: 202-377-0140) will respond to public requests for information about the meeting.

Charles E. Cobb, Jr.

Under Secretary for Travel and Tourism, U.S. Department of Commerce.

[FR Doc. 89-3362 Filed 2-10-89; 8:45 am]

BILLING CODE 3510-11-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Air Force Civic Leader Tour Questionnaire; No Form and No OMB Control Number.

Type of Request: New.

Average Burden Hours/Minutes Per Response: 10 minutes.

Frequency of Response: Before and after each tour.

Number of Respondents: 4,655.

Annual Burden Hours: 1,522.

Annual Responses: 9,310.

Needs and Uses: Base Commanders invite local community leaders (educators, clergy, businessmen, etc.) for 2-3 day orientation tours of selected bases as a means of fostering public understanding of the Air Force mission. Civil Leader Tour Questionnaires will collect data needed to tailor tours to group's level of understanding and to evaluate effectiveness of the civic leader tour program to communicate key Air Force messages.

Affected Public: Individuals or households.

Frequency: Continuing.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Dr. J. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone (202) 746-0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 7, 1989.

[FR Doc. 89-3294 Filed 2-10-89; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Production Capacity Survey; DD Form 1519 Test; and No OMB Control Number.

Type of Request: New.

Average Burden Hours/Minutes Per Response: 1 hour.

Frequency of Response: Annually.

Number of Respondents: 5,500.

Annual Burden Hours: 5,500.

Annual Responses: 5,500.

Needs and Uses: This request concerns information collection requirements that will be used by the Department of the Army officials to record production capabilities and physical properties of privately owned facilities. The data obtained will be used to plan effective utilization of the plant during mobilization. The successful completion of this test will potentially result in a restructure of the existing DD Form 1519.

Affected Public: Businesses or other for-profit.

Frequency: One year test.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Dr. J. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone (202) 746-0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 7, 1989.

[FR Doc. 89-3295 Filed 2-10-89; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44. U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: DoD FAR Supplement, Part 251, Use of Government Sources by Contractors; and OMB Control Number 0704-0252.

Type of Request: Extension.

Average Burden Hours/Minutes Per Response: .5 Hours.

Frequency of Response: On Occasion.

Number of Respondents: 3,500.

Annual Burden Hours: 5,250.

Annual Responses: 10,500.

Needs and Uses: This request concerns information collection requirements related to contractor requests for Use of Government Sources of Supply.

Affected Public: Businesses of other for-profit, Non Profit Institutions, Small Businesses.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Ms. Eyvette R. Flynn.

Written comments and recommendations on the proposed information collection should be sent to Ms. Eyvette R. Flynn at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Office: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jerferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone (202) 746-0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 7, 1989.

[FR Doc. 89-3296 Filed 2-10-89 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Defense Science Board Task Force on Technological and Operational Surprise; Closed Meeting

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Technological and Operational Surprise in the U.S.-Soviet Military Competition will meet in closed session on March 2–3, 1989 at the DIAC Building, Bolling AFB, Washington, DC.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will evaluate the potential for technological and operational surprise in the U.S.-Soviet military competition.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

February 7, 1989.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–3297 Filed 2–10–89; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on Strategic Force Modernization Program; Meeting

ACTION: Change in Date of Advisory Committee Meeting Notice.

SUMMARY: The meeting of the Defense Science Board Task Force on Strategic Force Modernization Program scheduled for March 2–3, 1989 as published in the **Federal Register** (Vol. 53, No. 248, Page 52213, Tuesday, December 27, 1988, FR Doc. 88–29659) will be held on March 28–29, 1989.

February 7, 1989.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–3298 Filed 2–10–89; 8:45 am]

BILLING CODE 3810–01–M

Special Operations Policy Advisory Group, Closed Meeting

The Special Operations Policy Advisory Group (SOPAG) will meet on 17 February 1989 in the Pentagon, Arlington, Virginia to discuss sensitive, classified topics.

The mission of the SOPAG is to advise the Office of the Secretary of Defense on key policy issues related to the developments and maintenance of effective Special Operations Forces.

In accordance with section 10(d) of P.L. 92–463, the "Federal Advisory Committee Act," and section 552b(c)(1) of Title 5, United States Code, this meeting will be closed to the public.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Department of Defense.

February 7, 1989.

[FR Doc. 89–3299 Filed 2–10–89; 8:45 am]

BILLING CODE 3810–01–M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Los Angeles County Drainage Area (LACDA) Review Study, Los Angeles County, CA

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: This study is designed to develop a system-wide approach to identifying means for improving the capabilities of the Los Angeles County Drainage Area flood control system. During the 40 years since its construction, the ability of the system to provide a very high level of protection has diminished. This has resulted from an increase in surface runoff, loss of groundwater percolation and associated increases in contributory flow from additional storm drains.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and Draft Environmental Impact Statement can be answered by Ronald F. Lockmann, CESPL–PD–RN, P.O. Box 2711, Los Angeles, California 90053–2325, (213) 894–5414.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

The tentatively selected plan for flood control in the Los Angeles County Drainage Area system, Los Angeles County, California, consists of the following: Levee armoring and raising channel walls along the Rio Hondo, the Los Angeles River (LAR) from Atlantic Boulevard to the Ocean; and Compton Creek; armoring the backside (outside) of the LAR from Atlantic Blvd. to Pacific Ocean, Rio Hondo (entire) and Compton Creek from Willowbrook to the LAR would avoid catastrophic failure of the levees if they are overtopped. The linear distance of the armoring would be about 28 miles. Accessibility to the channel would not be Impacted. Raising the channel walls would also include channel conversion to trapezoidal where necessary and extension of bridge piers where possible. environmental enhancement, habitat improvement, or mitigation will not be included in this plan.

2. Alternatives

Alternatives considered during the planning process include 2 plans with detention or spreading ground possibilities (that of deepening Tujunga and Pacoima Spreading grounds; that of using Santa Fe gravel pit as a detention basin).

3. Scoping Process

A scoping meeting will be held to obtain community input to assure that all concerns are identified and addressed in the EIS/EIR. A separate public scoping notice will be sent to the public to identify time and location of the meeting and to solicit public comment. The specific date, time and meeting location will be published in local newspapers. The Corps has initiated coordination efforts with appropriate federal, state and local agencies to resolve potential problems relating to involved biological resources communities.

4. Future Public Meetings

A public meeting will be scheduled to discuss and obtain public comment.

5. Publication of DEIS

The Draft Environmental Impact Statement is expected to be available to concerned agencies and the interested public for review and comment in mid-1989.

Date: January 19, 1989.

Tadahiko Ono,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 89–3243 Filed 2–10–89; 8:45 am]

BILLING CODE 3710–KF–M

Office of The Secretary

Per Diem, Travel And Transportation Allowance Committee

AGENCY: Department of Defense.

ACTION: Publication of changes in per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 146. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and possessions of the United States. Bulletin Number 146 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: Febraury 1, 1989.

SUPPLEMENTARY INFORMATION: This document gives notice of changes in per diem rates prescribed by the Per Diem, Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distribution of Civilian Per Diem Bulletins by mail was discontinued effective June 1, 1979. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of change in per diem rates to agencies and establishments outside the Department of Defense.

The text of the Bulletin follows:

CIVILIAN PERSONNEL PER DIEM BULLETIN NUMBER 146

TO THE HEADS OF THE EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

1. This bulletin is issued in accordance with Executive Order 12561, dated July 1, 1986, which delegates to the Secretary of Defense the authority of the President in 5 U.S. Code 5702(a) to set maximum per diem rates and actual expense reimbursement ceilings for Federal civilian personnel traveling on official business in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands, and posessions of the United States. When appropriate and in accordance with regulations issued by competent authority, lesser rates and ceilings may be prescribed.

2. The maximum per diem rates shown in the following table are continued from the preceding Bulletin Number 145 except for the cases identified by asterisks which rates are effective on the date of this Bulletin unless otherwise indicated.

3. Each Department or establishment subject to these rates shall take appropriate action to disseminate the contents of this Bulletin to the appropriate headquarters and field agencies affected thereby.

4. The maximum per diem rates referred to in this Bulletin are:

Locality	Maximum rate
*Alaska:	
Adak [3]	$25.
Anaktuvuk Pass	140.
Anchorage	125.
Atqasuk	215.
Barrow	146.
Bethel	135.
Bettles	110.
Cold Bay	125.
Coldfoot	122.
College	122.
Cordova	143.
Deadhorse	Deleted.
Dillingham	114.
Dutch Harbor-Unalaska	127.
Eielson AFB	122.
Elmendorf	125.
Fairbanks	122.
Ft. Richardson	125.
Ft. Wainwright	122.
Homer	115.
Juneau	117.
Katmai National Park	148.
Kenai	119.
Ketchikan	119.
King Salmon [4]	134.
Kodiak	118.
Kotzebue [3]	143.
Kuparuk Oilfield	127.
Murphy Dome [4]	122.
Nostak	143.
Nome	129.
Noorvik	143.
Petersburg	119.
Point Hope	160.
Point Lay	179.
Prudhoe Bay	Deleted.
St. Paul Island	115.
Sand Point	103.
Seward:	109.
Shemya AFB [3]	30.
Shungnak	143.
Sitka-Mt. Edgecombe	119.
Skagway	119.
Spruce Cape	118.
St. Mary's	100.
Tanana	129.
Tok	Deleted.
Umiat	160.
Unakakleet	105.
Valdez	147.
Wainwright	165.
Walker Lake	136.
Wrangell	119.
Yakutat	110.
All other localities [3,4]	94.
American Samoa	81.
Guam M.I.	122.
Hawaii:	
Hawaii, island of:	
Hilo	70.
Other	91.
Kauai, island of:	
12/20–3/31	127.
4/1–12/19	95.
Oahu, island of	116.
All other islands	91.
*Johnston Atoll [3]	35.
Midway Islands [1]	13.
*Northern Mariana Islands:	
Rota	76.
Saipan	115.
Tinian	58.
All other islands	20.
Puerto Rico:	
Bayamon:	
12/16–5/15	163.
5/16–12/15	133.
Caroline:	
12/16–5/15	163.
5/16–12/15	133.
Fajardo (including Luquillo):	
12/16–5/15	163.
5/16–12/15	133.
Fl. Buchanan (including GSA Service Center, Guaynabo):	
12/16–5/15	163
5/16–12/15	133.
Roosevelt Roads:	
12/16–5/15	163.
5/16–12/15	133.
Sabana Seca:	
12/16–5/15	163.
5/16–12/15	163.
San Juan (including San Juan Coast Guard units):	
12/16–5/15	163.
5/16–12/15	133.
All other localities	121.
Virgin Islands of U.S.:	
12/1–4/30	150.
5/1–11/30	144.
Wake Island [3]	20.
All other localities	20.

[1] Commerical facilities are not available. The per diem rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler. For Adak, Alaska: on any day when Government quarters are not used and quarters are obtained at a construction camp, a daily travel per diem allowance of $69 is prescribed to cover the costs of lodging, meals and incidental expenses.

[2] Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

[3] On any day when US Government or contractor quarters and US Government or contractor messing facilities are used, a per diem rate of $13 is prescribed to cover meals and incidental expenses at Shemya AFB and the following Air Force Stations: Cape Lisburne, Cape Newenham, Cape Romanzof, Clear, Cold Bay, Fort yukon, Galena, Indian Mountain, King Salmon, Kotzebue, Murphy Dome, Sparrevohn, Tatalina and Tin City. This rate will be increased by the amount paid for US Government or contractor quarters and by $4 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

[4] On any day when US Government or contractor quarters and US Government or contractor messing facilities are used, a per diem rate of $34 is prescribed to cover meals and incidental expenses at Amchitka Island, Alaska. The rate will be increased by the amount paid for US Government or contractor quarters and by $10 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 7, 1989.

[FR Doc. 89–3300 Filed 2–10–89; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB)

Date of Meeting: 6–7 March 1989
Time of Meeting: 0800–1600 hours, 6 March; 0830–1500 hours, 7 March
Place: Adelphi, Maryland
Agenda: The Army Science Board panel for the Effectiveness Review of the Harry Diamond Laboratories will visit the lab for the purpose of gathering data for the conduct of the effectiveness review of that facility. Briefings will be presented by each laboratory covering its work program. The meeting is closed to the public. The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,
Administrative Officer, Army Science Board.
[FR Doc. 89–3304 Filed 2–10–89; 8:45 am]
BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Agency Information Collection Activities Order OMB Review

AGENCY: Department of Education.
ACTION: Notice of availability of data acquisition activities approved prior to February 15, 1989.

SUMMARY: The Secretary publishes this notice to advise interested persons that they may obtain information regarding a list of approved education-related data acquisition activities that Federal agencies will use to collect data during school year 1989–90. The list includes all data acquisition activities approved before February 15, 1989.

DATE: The listing of approved data acquisition activities will be available February 15, 1989.

FOR FURTHER INFORMATION CONTACT: For information about the list or copies of the list, contact Mrs. Margaret B. Webster, U.S. Department of Education, Information Management and Compliance Division, 400 Maryland Avenue SW., Room 5624, ROB–3, Washington, DC 20202. Telephone: (202) 732–3915.

SUPPLEMENTARY INFORMATION: Under section 400A of the General Education Provisions Act, the Secretary of Education is responsible for reviewing and coordinating the collection of information and data acquisition activities of Federal agencies—

(a) Whenever the respondents are primarily educational agencies or institutions; or

(b) Whenever the purpose of the activities is to request information need for the management of, or the formulation of, policy related to Federal education programs or research or evaluation studies related to the implemented of Federal education programs.

Under section 400A the Secretary also informs the public of data acquisition activities that were approved by February 15, 1989. These data acquisition activities are considered information collection requests under the Paperwork Reduction Act of 1980. Under that Act and Office of Management and Budget (OMB) implementing regulations, proposed information collection requests must be published in the **Federal Register** on or before submission to OMB for final approval. Thus, the list announced by this notice includes each data acquisition activity for which the following requirements have been met prior to February 15, 1989: approval by the Secretary for use in the 1989–90 school year; publication in the **Federal Register** as a proposed information collection request; and approval by OMB.

Interested persons may obtain a copy of the list of approved information collection requests, or information regarding that list from Mrs. Margaret B. Webster at the address and telephone number listed at the beginning of this notice.

Dated: February 8, 1989.

Patrick Pizzella,
Deputy Under Secretary for Management.
[FR Doc. 89–3351 Filed 2–10–89; 8:45 am]
BILLING CODE 4000–01–M

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.
ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before March 15, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purposes of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: February 8, 1989.

Carlos U. Rice,
Director, Office of Information Resources Management.

Office of Postsecondary Education

Type of Review: REINSTATEMENT.
Title: Performance Report for Training Program for Special Programs Staff and Leadership Personnel.
Frequency: Annually.
Affected Public: Non-profit institutions.
Reporting Burden:
Responses: 12
Burden Hours: 36
Recordkeeping:
Recordkeepers: 12
Burden Hours: 12

Abstract: Non-profit institutions which have participated in a training program for Special Programs Staff and Leadership Personnel are to submit these reports to the Department. The Department uses the information to assess the accomplishments of project goals and objectives, and to aid in effective program management.

[FR Doc. 89–3349 Filed 2–10–89; 8:45 am]
BILLING CODE 4000–01–M

[CFDA No.: 84.073C]

Invitation for Applications for New State Facilitator Awards for the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands and Palau Under the National Diffusion Network Program for Fiscal Year 1989

ACTION: Extension of Deadline Date for Transmittal of Applications.

On December 5, 1988, the Secretary published in the **Federal Register** (53 FR 49088) a notice inviting applications for new State Facilitator awards for the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands and Palau. Detailed information was included in that notice.

The purpose of this notice is to extend the closing date for transmittal of applications so that potential applicants may have additional time to complete their applications.

The Secretary extends the deadline date for transmittal of applications from February 3, 1989 to March 15, 1989.

For Applications or Information Contact: Ms. Lois N. Weinberg, U.S. Department of Education, 555 New Jersey Avenue NW., Room 510, Washington, DC 20208–5645. Telephone: (202) 357–6147.

Program Authority: 20 U.S.C. 2982.

Dated: February 8, 1989.

Patricia Hines,
Assistant Secretary.
[FR Doc. 89–3348 Filed 2–10–89; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Financial Assistance Award Intent to Award Grant to James A. Harris

AGENCY: U.S. Department of Energy.
ACTION: Notice of Unsolicited Financial Assistance Award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.14, it is making a financial assistance award based on an unsolicited application under Grand Number DE–FG01–89CE15407 to Dr. James A. Harris to develop and test his invention, "Extended Range Tankless Water Heater."

Scope: This Grant will aid in providing funding for a comprehensive well-integrated plan as follows: (1) Fabrication of the ten production prototype tankless heaters incorporating the new features of the design, variable flame matched with variable heat transfer surface and microprocessor control system; (2) operational testing to evaluate, modify and finalize the design will be performed on an engineering prototype prior to the production prototype design; and (3) certification by the American Gas Association (AGA) which will permit sales and manufacturing to begin.

The purpose of this project will be the operation of prototypes of an Extended Range Tankless Water Heater, a new design that will provide hot water over a wide range of flow rates without the need for a storage tank. The anticipated objective is to eliminate the storage tank which reduces hot water heating energy requirements, for an average family of four, by an estimated 19 percent.

Eligibility: Based on receipt of an unsolicited application, eligibility of this award is being limited to Dr. James A. Harris, A Registered Professional Engineer and Assistant Professor of Mechanical Engineering at Wichita State University. Dr. Harris is the inventor of the Extended Range Tankless Water Heater and he has applied for a patent on the design. Dr. Harris has made arrangements for laboratory space, fabrication, testing services, and computer availability for microprocessor software development. It has been determined that this project has high technical merit, representing an innovative and novel idea which has a strong possibility of allowing for future reductions in the nations energy consumption.

The term of this grant shall be two years from the effective date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, Attn: Lisa Tillman, MA–453.2, 100 Independence Avenue SW., Washington, DC 20585.

Scott Sheffield,
Acting Director, Contract Operations Division "B", Office of Procurement Operations.
[FR Doc. 89–3358 Filed 2–10–89; 8:45 am]
BILLING CODE 6450–01–M

Financial Assistance Award; Intent To Award Grant to Massachusetts Institute of Technology (MIT)

AGENCY: U.S. Department of Energy.
ACTION: Acceptance of an unsolicited application for grant award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.14, it intends to award a grant based on an unsolicited application submitted by the Massachusetts Institute of Technology. The application is entitled "Kinetics of Sufation of Calcium Oxides".

Scope: The research activity addressed is this effort proposes to improve understanding of the role of limestones in reducing the emission of sulfur and sulfur oxide from pulverized coal combustion. The results will assist in identifying characteristics and limestone properties that are important and necessary for effective use as the sulfur capture additive in coal combustion.

In the past there have been many limitations to the work which was carried out on the reaction of SO_2 with lime. Most notable of these has been an inability to separate the competing effects of intrinsic chemical reactivity of the stone from diffusive transport effects. The subject proposal attacks this issue directly, and is therefore considered unique. In addition, the proposal addresses the transition of an initially amorphus product layer to a crystallized form having a greatly reduced ionic diffusions coefficient. The use of electrodynamic balance for TGA studies of reacting particles is also a highly unique feature of this work.

The results of this effort should encourage that section of the public which is involved in the use of coal to generate power without deleteriously impacting the environment. The term of the grant will be for an 18 month period at an estimated value of $100,000.00.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–165, Pittsburgh, PA 15236, Attn: Cynthia Y. Mitchell, Telephone (412) 892–4862.

Gregory J. Kawalkin,
Acting Director, Acquisition and Assistance Division, Pittsburgh Energy Technology Center.
[FR Doc. 89–3353 Filed 2–10–89; 8:45 am]
BILLING CODE 6450–01–M

[Grant No. DE–FG07–89ID12850]

Grant and Cooperative Agreement Awards: National Geothermal Association

AGENCY: Department of Energy.

ACTION: Intent to negotiate a grant—National Geothermal Association.

SUMMARY: The proposed assistance is to conduct Reverse Trade Missions to Acquaint International Representatives with 1) Small U.S. Geothermal Drilling and Completion Technology, and 2) Small U.S. Geothermal Power Plant Technology. The awarding Office (ID), intends to negotiate a grant on a noncompetitive basis with the National Geothermal Association (NGA)—P.O. Box 1350, Davis, CA 95617.

The support of the National Geothermal Association in these tasks will promote international sales of U.S. geothermal goods and services, continue to keep the U.S. as the focal point for the export of U.S. goods and services to the international market, and help strengthen the U.S. leadership in geothermal development. The proposed support will meet the requirements of the 1983 Renewable Energy Industry Development Act. The tasks to be accomplished are 1) developing a list of international attendees and selecting of appropriate attendees, 2) arranging transportation, tours and accommodations, 3) meeting with industry representatives and developing programs of two meeting days, two days of field tours, and a wrap-up day for each of the two trade missions, 4) conducting the trade mission, and 5) issuing a report about each of the trade missions. The anticipated amount of DOE support is $40,819.00. NGA is obtaining support from other parties also to fund the total anticipated project cost of $73,819.

A determination of Noncompetitive Financial Assistance (DNCFA) has been approved in accordance with DOE financial Assistance Rules 10 CFR Part 600.7(b)(2)(i)(B) and (D); (B) the activity(ies) is (are) being or would be conducted by the applicant using its own resources or those donated or provided by third parties; however, DOE support of the activity would enhance the public benefits to be derived and DOE knows of no other entity which is conducting or is planning to conduct such an activity(ies); (D) the applicant has exclusive domestic capability to perform the activity successfully based upon unique equipment, proprietary data, technical expertise, or other such unique qualifications.

Public response may be addressed to the contract specialist stated below.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, Idaho 83402, T. Wade Hillebrant, (208) 526-0547.

H. Brent Clark,

Director, Contracts Management Division.

[FR Doc. 89-3357 Filed 2-10-89; 8:45 am]

BILLING CODE 6450-01-M

Intent To Award Grant to the Welding Consultants, Inc.

AGENCY: U.S. Department of Energy.

ACTION: Notice of Unsolicited Financial Assistance Award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.14, it is making a financial assistance award based on an unsolicited application under Grant Number DE-FG01-89CE15412 to Welding Consultants, Inc. (WCI) to assist in the development of "the Meta-Lax Method of Stress Reduction in Welds."

Scope: This Grant will aid in providing funding for a comprehensive well-integrated plan to compare the effectiveness of the Meta-Lax method of treating welds as compared with the standard method of heat treating. To accomplish this, a suitable laboratory set up will subject these metals to the usual welding techniques, using both the Meta-Lax and heat-treating methods of stress relief. Each weld will be subjected to a series of tests to discover differences in the weld or its metallography.

The purpose of this project is to show that the Meta-Lax process has the same ability as heat treating to relieve stresses in welds in various metals. "The anticipated objective is to prove by laboratory tests that the Meta-Lax process is at least the equal of heat treating processes with the resulting savings of approximately 65% of the energy now being expended."

Eligibility: Based on receipt of an unsolicited application, eligibility of this award is being limited to WCI, "a highly qualified organization with extensive facilities for conducting the work proposed by its engineer and the inventor." The inventor, Mr. August Hebel, a graduate engineer, holds the patents on this technology. Mr. Hebel is President of a small highly specialized machine shop, operated under the name of Bonal Technologies, Inc. WCI plans to solicit the assistance of Mr. Hebel for his expertise in applying the Meta-Lax method and for the use of his company's equipment. It has been determined that this project has high technical merit, representing an innovative and novel idea which has a strong possibility of allowing for future reductions in the nations energy consumption.

The term of this grant shall be two years from the effective date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, Attn: Lisa Tillman, MA-453.2, 1000 Independence Avenue, SW., Washington, DC 20585.

Scott Sheffield,

Acting Director, Contract Operations Division "B," Office of Procurement Operations.

[FR Doc. 89-3359 Filed 2-10-89; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Proposed Consent Order With Tri-Service Drilling Co.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of proposed consent order and opportunity for public comment.

SUMMARY: The Economic Regulatory Administration (ERA) announces a proposed Consent Order between the Department of Energy (DOE) and Tri-Service Drilling Co. and M. A. Hanna Company, successor by merger of Tri-Service Drilling Co. as of December 31, 1987 (herein collectively Tri-Service). The agreement proposes to resolve matters relating to Tri-Service's compliance with the federal petroleum price regulations for the period September 1, 1973 through December 31, 1976. If this Consent Order is made final, M. A. Hanna Company shall pay to the DOE a total of $862,500 within thirty days of the effective date of the Consent Order. DOE's Office of Hearings and Appeals (OHA) will be petitioned to implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in which proceedings any persons who claim to have suffered injury from Tri-Service's alleged overcharges would have the opportunity to submit claims for payment.

Pursuant to 10 CFR 205.199J, ERA will receive written comments on the proposed Consent Order for thirty (30) days following publication of this Notice. ERA will consider all comments received from the public in determining whether to accept the settlement and issue a final Order, renegotiate the agreement and issue a modified agreement as a final Order, or reject the settlement. DOE's final decision will be published in the **Federal Register**, along with an analysis of and response to the significant written comments, as well as any other considerations that were relevant to the final decision.

FOR FURTHER INFORMATION CONTACT: Dorothy Hamid, Economic Regulatory Administration, Department of Energy, RG-32, Room 3H-017, 1000 Independence Avenue, SW., Washington, DC 20585. Copies of the proposed Consent Order may be obtained free of charge by writing or by calling this office at (202) 586-1899.

SUPPLEMENTARY INFORMATION: Tri-Service was a "producer" as defined in the federal petroleum price regulations. During the period covered by this proposed Order (September 1, 1973 through December 31, 1976), Tri-Service engaged in the production and sale of crude oil.

ERA conducted an audit of Tri-Service's compliance for the period beginning in September 1973 through December 1976. During this audit, ERA identified certain pricing in sales of crude oil in which it believed that Tri-Service had failed to comply with applicable regulatory requirements.

On September 3, 1985, ERA issued to Tri-Service an Amended Proposed Remedial Order (APRO) which alleged that during the period November 16, 1973 through December 31, 1976 (the audit period), Tri-Service violated the price regulations applicable to first sales of domestic crude oil set forth at 10 CFR 212.73 and 212.74.

On November 21, 1988, the Office of Hearings and Appeals (OHA) issued a decision which, with a modification to the APRO's remedial disposition provision, adopted the APRO as a remedial order. *Tri-Service Drilling Company*, 18 DOE ¶ 83,003 (1988). In that decision, OHA ordered Tri-Service to refund overcharges of approximately $395,000, plus interest currently amounting to approximately $980,000. Tri-Service filed a notice of appeal with OHA on December 21, 1988, indicating its intention to contest the remedial order before the Federal Energy Regulatory Commission.

ERA has preliminarily agreed to the settlement amount after assessing the litigation risks associated with the asserted legal and factual issues underlying the audit, and appropriate settlement compromises related to those issues. In evaluating the total settlement amount for Tri-Service's alleged regulatory violations, ERA took into consideration, in addition to the analysis of litigation risks, such factors as the number and complexity of the legal and factual issues, and the time and expense required for the government to litigate every issue fully in order to obtain any recovery. ERA concludes that the resolution of these matters for $862,500 is an appropriate settlement and in the public interest.

Under the terms of the proposed Consent Order, M. A. Hanna Company, successor by merger of Tri-Service Drilling Co. as of December 31, 1987, will pay to DOE $862,500 within thirty (30) days of the effective date of the Consent Order. If the Consent Order is made final, ERA will petition OHA to implement Special Refund Procedures under the provisions of Subpart V of the regulations. In the proceeding, OHA will develop procedures for the receipt and evaluation of applications for refund in order to distribute the settlement monies in accordance with DOE's Modified Statement of Restitutionary Policy as set forth at 51 FR 27899 (August 4, 1986). To ensure that OHA has sufficient information to evaluate the claims, the proposed Consent Order requires that Tri-Service provide customer identification and purchase volume information to OHA upon request.

Submission of Written Comments

The proposed Consent Order cannot be made effective until the conclusion of the public review process, of which this Notice is a part.

Interested parties are invited to submit written comments concerning this proposed Consent Order to: Tri-Service Consent Order Comments, RG-30, Economic Regulatory Administration, 1000 Independence Avenue, SW., Washington, DC 20585. Any information or data considered confidential by the person submitting it must be identified as such in accordance with the provisions of 10 CFR 205.9(f).

All comments received by the thirtieth day following publication of this Notice in the **Federal Register** will be considered before determining whether to adopt the proposed Consent Order as a final Order. Any modifications of the proposed Consent Order which significantly alter its terms or impact will be published for additional comment. If, after considering the comments it has received, ERA determines to issue the proposed Consent Order as a final Order, the proposed Order will be made final and effective by publication of a Notice in the **Federal Register**.

Issued in Washington, DC, on February 6, 1989.

Milton C. Lorenz,

Chief Counsel for Enforcement Litigation, Economic Regulatory Administration.

[FR Doc. 89-3355 Filed 2-10-89; 8:45 am]

BILLING CODE 6455-01-M

[ERA Docket No. 89-01-NG]

Tenngasco Corp.; Application to Export Natural Gas to Canada and Mexico

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for blanket authorization to export natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on January 18, 1989, of an application filed by Tenngasco Corporation (Tenngasco), requesting blanket authorization to export a total of up to 100 Bcf of natural gas from the United States to Canada and Mexico for short-term and spot market sales over a two-year period beginning on the date of first delivery.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, request for additional procedures and written comments are to be filed no later than March 15, 1989.

FOR FURTHER INFORMATION CONTACT: Frank Duchaine, Natural Gas Division, Economic Regulatory Administration, U.S. Department of Energy, Forrestal Building, Room 3H-087, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8233.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: Tenngasco is a corporation organized and existing under the laws of the state of Delaware. Tenngasco proposes to export U.S. gas, either on its own behalf or on behalf of others, for short-term and spot market sales to Canadian and Mexican purchasers, including commercial and industrial end users, distribution companies, and pipelines. Applicant may also secure transportation arrangements for the gas on behalf of others.

The terms of each arrangement would be negotiated in response to prevailing U.S.-Canadian-Mexican gas market conditions. Tenngasco intends to use existing transmission systems and thus would not require the construction of new facilities in order to export the

natural gas. Tenngasco also intends to comply with the ERA's quarterly reporting requirements.

The decision on whether this export of natural gas is in the public interest will be based upon the domestic need for the gas and other matters deemed to be appropriate. Tenngasco submits that its proposed natural gas exports raise no issue of domestic need and are therefore fully consistent with the public interest as required by section 3 of the Natural Gas Act. The applicant further asserts that this proposed export is also consistent with DOE's international gas trade policy. Parties opposing the arrangement bear the burden of overcoming this assertion.

All parties should be aware that the approval of this export may permit the export of the gas at any international border point where existing transmission facilities are located.

On August 9, 1988, the DOE published in the **Federal Register** (53 FR 29934) a notice of proposed amendments to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, effective on an interim basis upon publication. In that notice, the DOE proposes to amend the agency's NEPA guidelines to add to its list of categorical exclusions the approval or disapproval of an import-export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the ERA's action is not a major Federal action under NEPA. Unless the ERA receives comments indicating the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis of any decision on the applicant must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comment should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room 3F–056, RG–23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m. e.s.t., March 15, 1989.

A decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial questions of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

In an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Tenngasco's application is available for inspection and copying in the Natural Gas Division Docket Room, 3F–056 at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, February 3, 1989.

Constance L. Buckley,

Acting Director, Office of Fuel Programs, Economic Regulatory Administration.

[FR Doc. 89–3356 Filed 2–10–89; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. ERA CAE 89–06; Certification Notice—31]

Filing a Certification of Compliance; Coal Capability of New Electric Powerplants

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended ("FUA" or "the Act") (42 U.S.C. 8301 *et seq*), provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a), 42 U.S.C. 8311 (a), Supp. V. 1987). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d), to the Secretary of Energy prior to construction, or prior to operation as to base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. One owner and operator of a proposed new electric base load powerplant has filed a self certification in accordance with section 201(d).

Further information is provided in the SUPPLEMENTARY INFORMATION section below.

SUPPLEMENTARY INFORMATION:

The following company has filed a self certification:

Name	Date received	Type of facility	Megawatt capacity	Location
Coastal Power Production Co., Fulton Cogeneration Associates, Fairfax, VA	02–01–89	Combined Cycle Cogen.	47	Fulton, NY.

Amendments to the FUA on May 21, 1987, (Pub. L. 100–42) altered the general prohibitions to include only new electric base load powerplants and to provide for the self certification procedure.

Issued in Washington, DC on February 3, 1989.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 89–3354 Filed 2–10–89; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER89–199–000 et al.]

Tampa Electric Co. at al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

February 7, 1989.

Take notice that the following fillings have been made with the Commission:

1. Tampa Electric Company

[Docket No. ER89–199–000]

Take notice that on January 27, 1989, Tampa Electric Company (Tampa Electric) tendered for filing a Letter of Commitment providing for the sale by Tampa Electric to the City of Lakeland, Florida (Lakeland) of coal-fired energy, on an as-available basis. Tampa Electric states that the Letter of Commitment is submitted as a supplement to Service Schedule J (negotiated interchange service) under the existing agreement for interchange service between Tampa Electric and Lakeland, designated as Tampa Electric's Rate Schedule FERC No. 21.

Tampa Electric proposes in effective date of January 17, 1989, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Lakeland and the Florida Public Service Commission.

Comment date: February 21, 1989, in accordance with Standard Paragraph E at the end of this document.

2. Northern Indiana Public Service Company

[Docket No. ER89–197–000]

Take notice that on January 27, 1989, Northern Indiana Public Service Comapny (Northern Indiana) tendered for filing an initial rate schedule, a service schedule and an amendment to an interconnection agreement with the Wabash Valley Power Association, Inc. (Wabash Valley) provided for: Service Schedule K–1—Reserve Capacity and Energy Northern Indiana to Wabash Valley

The proposed effective date to the service schedule shall be January 1, 1989, if waiver of the notice requirements is granted by the Commission.

Northern Indiana respectfully requests waiver of any Commission requirements not addressed by the filling as it is being made pursuant to a mutual agreement of the parties.

Copies of this filing have been served upon Wabash Valley and the Indiana Utility Regulatory Commission.

Comment date: February 21, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Puget Sound Power & Light Company

Docket No. ER89–196–000]

Take notice that on January 25, 1989 Puget Sound Power & Light Company (Puget Sound) tendered for filing Appendix 1 to the Residential Purchase and Sale Agreement between Puget Sound and Bonneville Power Administration.

Comment date: February 21, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Appalachian Power Company

[Docket No. ER89–182–000]

Take notice that Appalachian Power Company (APCo), on January 17, 1989, tendered for filing with the Commission a Notice of Cancellation for Rate Schedule FPC No. 81 and Supplement No. 17 thereto, which became effective on January 15, 1987, ursuant to a Commission Order dated October 30, 198, in Docket No. ER87–106–000.

APCo states that Chesapeake Light and Water Company (Chesapeake), the only customer that was served by APCo under Rate Schedule FPC No. 81 and Supplement No. 17, ceased being a public utility on December 28, 1988, and APCo began providing retail electric service to customers that had previously been served by Chesapeake. According to APCo, Chesapeake simultaneously ceased purchasing power at wholesale from APCo.

Since no service is to be provided by APCo under Schedule FPC No. 81 and Supplement No. 17 thereto, APCo requests, that its Notice of Cancellation be made effective at any time after December 28, 1988.

APCo further states that copies of its filing have been served upon the Public Service Commission of West Virginia and Chesapeake Light and Water Company.

Comment date: February 21, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. Upper Peninsula Power Company

[Docket No. ER89–195–000]

Take notice that on January 24, 1989, Upper Peninsula Power Company (Upper Peninsula) trendered for filing a Letter of Assignment from Wisconsin Electric Power Company to Edison Sault Electric Company of the Contract For Wholesale Power to be supplied by Upper Peninsula.

Comment date: February 21, 1989, in accordance with Standard Paragraph E at the end of this notice.

6. Hill Petroleum Company

[Docket No. QF89–129–000]

On January 23, 1989, Hill Petroleum Company (Applicant), c/o Ronald W. Lewis, Senior Vice President, P.O. Box 5038, Houston, Texas 77262–5038 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Houston, Texas. The facility will consist of two combustion turbine generators and two heat recovery steam generators equipped with duct burners. Thermal energy recovered from the facility will be used for industrial processes in a petroleum refinery plant. The maximum net electric power production capacity of the facility will be 34,240 KW. The primary source of energy will be natural gas. Construction of the facility is scheduled to begin May 1989. Commercial operation of the facility is expected to commence June 1990.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

7. Grace Petroleum Company

[Docket No. QF89–75–001]

On January 30, 1989, Grace Petroleum Company (Applicant) of P.O. Box 536, Leland Avenue at the Mohawk River, Utica, New York 13503 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed topping-cycle cogeneration facility will be located at the Applicant's address. The facility will

consist of a lead and a standby steam generator, a back pressure steam turbine generator. The thermal energy recovered from the facility will be used to heat the content of petroleum storage tanks for the purposes of handling and transfer. The net electric power production capacity of the facility will be 28.1 MW. The primary source of energy will be #5 fuel oil. The installation of the facility is expected to commence on or before August 15, 1989.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-3325 Filed 2-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI89-251-000 et al.]

Chaparral Gas Marketing Co. et al.; Applications for Blanket Certificates with Pregranted Abandonment [1]

February 8, 1989

Take notice that each Applicant listed herein has filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate with pregranted abandonment authorization, all as more fully set forth in the applications which are on file with the Commission and open for public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before February 24, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[1] This notice does not provide for consolidation for hearing the several matters covered herein.

Docket No.	Date filed	Applicant
CI89-251-000	1-25-89	Chaparral Gas Marketing Company, 2444 Louisiana, NE., Alburquerque, New Mexico 87110.
CI89-252-000	1-26-89	Sunterra Gas Gathering Company, 2444 Louisiana, NE., Albuquerque, New Mexico, 87110.
CI89-253-000	1-26-89	Gas Company of New Mexico, a Division of Public Service Company of New Mexico, 2444 Louisiana, NE., Albuquerque, New Mexico 87110.
CI89-260-000	1-31-89	Sunnybrook Transmission, Inc., 1600 Smith Street, Suite 1500, Houston, Texas 77002

[FR Doc. 89-3263 Filed 2-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI88-168-005, et al.]

Tenngasco Corp. and Tenngasco Exchange Corp., et al. Applications For Extension of Blanket Limited-Term Certificates With Pregranted Abandonment [1]

February 8, 1989

Take notice that each Applicant listed herein has filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for amendment of its blanket limited-term certificate with pregranted abandonment previously issued by the Commission for a term expiring March 31, 1989, to extend such authorization for the term listed herein, all as more fully set forth in the applications which are on file with the Commission and open for public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before February 24, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No.	Date filed	Applicant
CI86-186-005 [2]	1-27-89	Tenngasco Corporation and Tenngasco Exchange Corporation, P.O. Box 2511, Houston, Texas 77252.
CI87-547-003 [3]	1-23-89	Enron Gas Marketing, Inc., P.O. Box 1188, Houston, Texas 77251-1188.
CI87-811-002 [3]	1-25-89	CNG Trading Company, 625 Liberty Avenue, Pittsburgh, Pennsylvania 15222-3199.
CI87-883-002 [3]	1-27-89	Meridian Oil Trading Inc. 2919 Allen Parkway P.O. Box 4239, Houston, Texas 77210.

[2] Applicant requests extension for an unlimited term.

[3] Applicant requests extension for at least one year, through March 31, 1990, or some later date.

[FR Doc. 89-3265 Filed 2-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-707-000, et al.]

United Gas Pipe Line Co. et al.; Natural Gas Certificate Filings

Taken notice that the following filings have been made with the Commission:

1. United Gas Pipe Line Company

[Docket No. CP89-707-000]

February 1, 1989.

Take notice that on January 26, 1989, United Gas Pipe Line Company (United), P.O. Box 1478 Houston, Texas, 77251-1478, filed in Docket No. CP89-707-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide interruptible transportation service on behalf of Texaco Gas Marketing (Texaco), a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Pursuant to an interruptible gas transportation agreement dated May 6, 1988, as amended December 13, 1988, United proposes to transport natural gas for Texaco from various existing points of receipt located along its system to ninety-two (92) existing points of delivery located in Louisiana and Mississippi. The average day and peak day transportation quantities are both expected to equal 360,500 MMBtu and based thereon, the annual transportation volume is estimated to be 131, 582,500 MMBtu. United advises that the transportation service commenced on December 13, 1988, as reported in Docket No. ST89-1744-000, pursuant to § 284.223(a) of the Commission's Regulations.

Comment date: March 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Champlain Pipeline Company

[Docket No. CP89-654-000]

February 1, 1989.

Take notice that on January 17, 1989 Champlain Pipeline Company (Champlain), 1223 Shelburne Road, Suite C-4, South Burlington, Vermont 05403 filed in Docket No. CP89-654-000 an application pursuant to §§ 153.10 and 153.11 of the Commission's Regulations and Executive Order No. 10485, as amended by Executive Order No. 12038, for a Presidential Permit to authorize the construction, operation and maintenance of facilities at the International Border between the United States and Canada near Highgate Springs, Vermont and Phillipsburg, Quebec, for the importation of natural gas from Canada into the United States, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Champlain states that it requires such facilities to transport natural gas for its shippers in the United States who have entered, or will enter into, gas purchase contracts with suppliers of natural gas located in Western Canada. Such natural gas, Champlain continues, will be transported in Canada through the system of TransCanada Pipelines Limited for delivery to Champlain at the International Border near Phillipsburg, Quebec and Highgate Springs, Vermont. Champlain further states that its shippers have, or will obtain, Economic Regulatory Administration authorization required to import natural gas from Canada pursuant to section 3 of the Natural Gas Act.

Concurrently with the filing of the above-described application for a Presidential Permit, Champlain has filed with the Commission an application for a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act, (Docket No. CP89-646-000), for authority to construct and operate natural gas pipeline facilities to enable Champlain to transport natural gas purchased by its shippers in Canada and to deliver to such shippers in the states of Vermont, New Hampshire, and Massachusetts.

Comment date: February 22, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. Northwest Pipeline Corporation

Docket No. CP89-736-000]

February 1, 1989.

Take notices that on January 30, 1989, Northwest Pipeline Corporation, (Northwest) 295 Chipeta Way, Salt Lake City, Utah 84108 filed in Docket No. CP89-736-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of NGC Energy Company (NGC), under its blanket authorization issued in Docket No. CP86-578-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest would perform the proposed interruptible transportation service for NGC, a producer of natural gas, pursuant to a transportation agreement dated November 8, 1988, under its Rate Schedule TI-1 (reference no. 5092D). The term of the transportation agreement is from the date of execution and shall remain in full force and effect for one day and day to day thereafter, subject to termination by either party by providing at least day's prior written notice of termination to the other party. Northwest proposes to transport on a peak day up to 20,000 MMBtu; on an average day up to 8,000 MMBtu; and on an annual basis 3,000,000 MMBtu for NGC. Northwest proposes to receive the subject gas for NGC from all River Bend unit wells currently connected to Northwest's River Bend and Love Unit gathering systems in Uintah County, Utah to the Love Unit #1 and the River Bend Units #1, #2, #3, #4 and #5 interconnections with Questar Pipeline Company in Uintah County, Utah. Northwest avers that no new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Northwest commenced such self-implementing service on January 9, 1989, as reported in Docket No. ST89-1656-000.

Comment date: March 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Florida Gas Transmission Company

[Docket No. CP89-555-000]

February 1, 1989.

Take notice that on January 13, 1989, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP89-555-000 an application pursuant to sections 7(c) and 7(b) of the Natural Gas Act and § 284.221 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of others and the pregranted abandonment of existing firm and interruptible sales entitlements for those customers electing to convert such sales entitlements to transportation services, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

BEST COPY AVAILABLE

FGT requests a blanket certificate under the Commission's Order Nos. 436 and 500 "open access" program authorizing FGT to self-implement firm, preferred interruptible and interruptible transportation services under FGT's proposed Rate Schedules FTS–1, PIT–1 and ITS–1, respectively. FGT states that Rate Schedules FTS–1 and ITS–1 would be generally available to any shipper desiring such services; however, Rate Schedule PIT–1 would be available only to existing sales customers having preferred interruptible Annual Volumetric Entitlements (AVE) under Priorities P1 to P9 as shown in section 9 of FGT's PERC Gas Tariff. FGT maintains that customers under its proposed Rate Schedule PIT–1 would have a higher priority level than customers taking service under its proposed Rate Schedule ITS–1; it is explained. FGT also requests herein that the Commission grant preganted abandonment authority for the sales entitlements that its sales customers may desire to convert to FGT's proposed transportation services.

FGT states that the rates for its proposed transportation services would be established in FGT's general rate filing in Docket No. RP89–50–000, which was filed concurrently with its request for blanket transportation certificate herein.[1] FGT also explains that it has concurrently filed an amendment in Docket No. CP68–179–013, which *inter alia.*, would proposes a detail allocation plan for capacity on its current system. Such allocation would be provided for both firm sales and transportation services which are being offered by FGT. FGT states that all of its concurrent filings are inextricably intertwined and as such its willingness to accept the requested blanket certificate in Docket No. CP89–555–000 is also predicated upon final Commission action in FGT's Docket Nos. RP89–50–000, CP68–179–013 and CP89–556–000. FGT, therefore, requests that the Commission consolidate all four applications into one proceeding.

FGT states that the proposed allocation of its current system is shown in Exhibit I of Docket No. CP68–179–013 which is on file and open to public inspection at the Commission. FGT anticipates that some of its customers would wish to alter the firm capacity proposed to be nominated for them by FGT. As such FGT states that it will conduct an "open season", commencing on January 13, 1989 and ending on March 15, 1989. During that period, FGT would consider all requests for firm service as being received concurrently. Prior to FGT's acceptance of its blanket certificate, FGT further explains that it would also conduct an "open season" for customers desiring either interruptible sales or transportation service. FGT states that it will provide public notice through its electronic bulletin board, and notices in the Wall Street Journal and other trade publications.

Exhibit P to FGT's Docket No. CP89–555–000 contains tariff sheets that would be applicable to the proposed transportation services herein; FGT requests that the Commission accept and approve such tariff sheets for filing effective upon FGT's acceptance of the proposed blanket certificate herein.

Comment date: February 22, in accordance with Standard Paragraph F at the end of the notice.

5. Florida Gas Transmission Company

[Docket No. CP89–556–000]

February 1, 1989.

Take notice that on January 13, 1989, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP89–556–000 an application pursuant to section 7(c) and 7(b) of the Natural Gas Act for a blanket certificate of public convenience and necessity authorizing the resale of natural gas to on- and off-system interstate pipelines, "Hinshaw" pipelines, local distribution companies, brokers and marketers, along with the pregranted authority to abandon such sales, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

FGT requests a blanket certificate with pregranted abandonment authorization enabling FGT to sell natural gas in accordance with the provisions of an interruptible sales service under proposed Rate Schedule ISS–1. FGT states that the gas supply to be sold would be in excess of the daily volumes requirements of its existing sales customers and that the sales under Rate Schedule ISS–1 would be treated the same as any other interruptible sales or transportation service for the purpose of scheduling of capacity and the curtailment service.

FGT would propose to charge a rate for service under Rate Schedule ISS–1 within a minimum and maximum range of rates. FGT states that the maximum rate would be its one-hundred percent load factor rate based on the currently effective Rate Schedule G sales rate; FGT's minimum rate would be equal to FGT's weighted average cost of purchased gas, plus fuel, the variable cost of delivering the volumes and other applicable charges such as Gas Research Institute and the Annual Charge Adjustment surcharges. The actual rate for each service implemented under Rate Schedule ISS–1 would be a negotiated rate; it is explained. FGT proposes to file with the Commission a monthly list of rates assessed under Rate Schedule ISS–1 and proposes to establish reporting procedures under Rate Schedule ISS–1 which would be similar to those established for transportation in § 284.106 (a) and (c) of the Commission's Regulations. Further FGT proposes to retain all revenues from the sale of gas under Rate Schedule ISS–1.

FGT states that it has concurrently filed a general rate filing in Docket No. RP89–50–000, with its request for blanket sales certificate herein and has concurrently filed a request for a blanket transportation certificate pursuant to the Commission's Order Nos. 436 and 500 "open access" program in Docket No. CP89–555–000 [1] and an amendment in Docket No. CP68–179–013, which *inter alia.*, would allocate capacity on its current system. Such allocation would be provided for both sales and transportation services which are being offered to FGT's existing customers. FGT states that all of its concurrent filings are inextricably intertwined and as such its willingness to accept the requested blanket certificate in Docket No. CP89–555–000 is also predicated upon final Commission action in FGT Docket Nos. RP89–50–000, CP68–179–013 and CP89–556–000. FGT, therefore, requests that the Commission consolidate all four applications into one proceeding. Prior to FGT's acceptance of its blanket certificates in Docket Nos. CP89–555–000 and CP89–556–000, FGT further explains that it would also conduct an "open season" for customers desiring either interruptible sales or transportation services. FGT states that it would provide public notice of the date of commencement of such "open season" in which all requests will be deemed received concurrently for the purposes of scheduling and curtailment of interruptible capacity. Such public notice would be through its electronic bulletin board, and through notices in the Wall Street Journal and other trade publications.

Comment date: February 22, 1989, in accordance with Standard Paragraph F at the end of this notice.

6. CNG Transmission Corporation

[Docket No. CP89–636–000]

February 1, 1989.

Take notice that on January 17, 1989, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP89–638–000 an application pursuant to section 7(c) of the Natural Gas Act, and the Commission's order of January 12, 1989, in Docket No. CP87–451–016, for a certificate of public convenience and necessity authorizing it to render long-term firm transportation service for two industrial cogeneration developers, Beta Development Company (Beta) and Long Lake Cogeneration Corporation (Long Lake) and to construct and operate related transmission facilities in Pennsylvania, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CNG proposes to transport up to 38,000 dekatherms (dt) of natural gas on a firm basis, 14,000 dt per day for Beta, and 24,000 dt per day for Long Lake. The Beta and Long Lake quantities would enter CNG's system at Lebanon, Ohio. The volumes transported for Beta would be delivered to Niagara Mohawk Power Corporation at CNG's West Schenectady, New York delivery point. The volumes transported for Long Lake would be delivered to Transcontinental Gas Pipe Line Corporation at CNG's Leidy delivery point. All quantities would be transported under a one-part monthly demand rate.

CNG states that it plans to construct and operate 26.18 miles of 30-inch loop pipeline on CNG's existing Line No. 50 in Pennsylvania, from gate assembly No. 174–A to gate assembly No. 86. The application states that the total cost of facilities is estimated to be $21,035,000 exclusive of Commission filing fees. The project would be financed from funds on hand or to be obtained from CNG's parent corporation, CNG Natural Gas Company.

It should be noted that the Commission's order of January 12, 1989, advises all parties who have previously intervened in Docket No. CP87–451 and in the other "open season" dockets to file new interventions if they wish to become parties in this application.

Comment date: February 22, 1989, in accordance with Standard Paragraph F at the end of this notice.

7. Columbia Gas Transmission Corporation

[Docket No. CP89–635–000]

February 1, 1989.

Take notice that on January 17, 1989, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E. Charleston, West Virginia 25314, filed an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing it to construct and operate pipeline facilities to be utilized for firm transportation service under Part 284 of the Commission's Regulations, all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, Columbia proposes to construct and operate pipeline facilities to be constructed for firm transportation service that is to commence in 1990, 1991 and 1994. The facilities for service in 1990 consist of the installation of a 3,000 HP compressor unit in Harford County, Maryland and measuring and interconnecting facilities between Columbia and Coastal Power Production Company (Coastal) in Gloucester County, New Jersey. The proposed facilities for service in 1991 include the rewheeling of eight existing 1,100 HP compressor units in Loudoun County, Virginia, a 800 HP compressor unit in Paulding County, Ohio and a regulatory station in Allen County, Ohio to reduce the line pressure to 495 psig or less. The facilities needed for service in 1994 encompass the following: A 1,300 HP compressor unit in Chester County, Pennsylvania; an increase in the maximum allowable operating pressure from 500 psig to 1,000 psig in the upstream piping of the Downingtown Compressor Station in Chester County, Pennsylvania; a 1,350 HP compressor unit in Adams County, Pennsylvania; two 3,000 HP compressor units in Harford County, Maryland; 8.3 miles of 24" pipeline looping in York County, Pennsylvania; a 1,350 HP compressor unit in Loudoun County, Virginia; a 800 HP compressor units in Paulding County, Ohio; and an increase in the maximum allowable operating pressure of 19.2 miles of pipeline, including the replacement of 0.3 mile of 20" pipeline, in Hardin and Allen Counties, Ohio, accompanied by two new regulator stations and a value setting near Harrod, Ohio. The estimated cost of these proposed facilities is $34,760,950 and is to be financed by internally generated funds.

These facilities will be utilized, according to Columbia, to transport, on a firm basis, 57,000 Dt per day for Coastal from the interconnection of the facilities of Columbia and ANR Pipeline Company in Paulding, Ohio to the terminus of Columbia pipeline near Swedesboro, New Jersey for ultimate delivery to Coastal's facilities to be arranged by Coastal. In addition, Columbia intends to transport, on a firm basis, 60,790 Dt per day for New England Power Company from the Paulding, Ohio interconnection between ANR and Columbia to a proposed interconnection between Columbia and Algonquin Gas Transmission Company (Algonquin) north of Hanover, New Jersey for ultimate delivery to NEP by Algonquin. The transportation services are for a term of 20 years from the date that service commences. Service for Coastal is scheduled to commence on November 1, 1990. Service for NEP is to commence in two steps—35,455 Dth per day is to begin flowing on November 1, 1991 and 25,335 Dth per day is to begin flowing on November 1, 1994. Columbia intends to provide this firm transportation service pursuant to Part 284 of the Commission's Regulations and, therefore, is not seeking section 7(c) authorization herein.

This application is complementary to ANR's filing in Docket No. CP89–637–000 (which was in response to the Commission's order of January 12, 1989 in Docket No. CP87–451–016) in that it is part of the downstream transportation necessary to move gas from ANR's system to the ultimate end users in the Northeast U.S. Consequently, it should be noted that the Commission's order of January 12, 1989 advises all parties who have previously intervened in Docket No. CP87–451–000, *et al.*, and in the other "open season" dockets to file new interventions if they wish to become parties in this application.

Comment date: February 22, 1989, in accordance with Standard Paragraph F at the end of this notice.

8. Tennessee Gas Pipeline Company

[Docket No. CP89–629–000]

February 1, 1989.

Take notice that on January 17, 1989, Tennessee Gas Pipeline Company (Tennessee) filed an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act and to the Commission's January 12, 1989 order in Docket No. CP87–451–016 for (1) a certificate of public convenience and necessity authorizing Tennessee (a) to provide firm natural gas transportation service to 15 shippers in Connecticut, Massachusetts, Rhode Island, New Hampshire, and New York in an aggregate daily maximum quantity of 319,742 Dt, and (b) to construct and

[1] FGT also concurrently filed an application in Docket No. CP89–556–000 requesting authorization to self-implement sales to any on- and off-system interstate pipelines, "Hinshaw" pipelines, local distribution companies, brokers and marketers. The rates for these proposed sales are also contained in FGT's Docket No. RP89–50–000.

[1] FGT states that whenever it would discount the non-gas component of Rate Schedule ISS–1 that it would also offer to similarly discount its transportation rate under the proposed Rate Schedule ITS–1 which is proposed in Docket No. CP89–555–000.

operate the facilities necessary to transport and deliver those quantities, and (2) permission and approval to abandon a portion of its existing sales obligation to National Fuel Gas Supply Corporation (National Fuel) by reducing National Fuel's annual firm sales entitlements under Tennessee's Rate Schedules CD–4 and CD–5 by 11,635,133 Dt and 7,490,643 Dt, respectively, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee has filed its application pursuant to the Principles of Settlement filed on November 30, 1988, in the Northeast U.S. Open Season proceedings (Docket Nos. CP87–451, *et al.*). The services and facilities proposed by Tennessee's application relate to the following distinct projects identified and described in the Principles of Settlement: (1) The proposals of Iroquois Gas Transmission System (Iroquois) to construct a 369.4-mile pipeline system from the U.S./Canadian border through the States of New York and Connecticut and of Tennessee to construct certain pipeline looping and compression facilities in the States of Pennsylvania, New York, New Jersey, and Massachusetts (the Iroquois-Tennessee Project), and (2) the proposal of Champlain Pipeline Company (Champlain) to construct a 339.3-mile pipeline system from the U.S./Canadian border through the States of Vemont, New Hampshire, and Massachusetts (the Champlain Project).

It is stated that the Iroquois-Tennessee Project contemplates the transportation by Iroquois of Canadian gas from a proposed interconnection between Iroquois and TransCanada PipeLines Limited (TransCanada) near Iroquois, Ontario to two proposed interconnections between Tennessee and Iroquois in New York and Connecticut, and the redelivery by Tennessee of those volumes to local distribution companies and end users in the States of Connecticut, Massachusetts, New Hampshire, Rhode Island, and New York.

It is further stated that the portion of the Champlain Project relevant to Tennessee's application calls for the transportation by Champlain of Canadian gas from a proposed interconnection between Champlain and TransCanada near Phillipsburg, Quebec to the proposed interconnection of Tennessee and Champlain in Massachusetts and the redelivery by Tennessee of those volumes to a local distribution company in Massachusetts.

The proposed interconnections of Tennessee and Iroquois are at Wright, New York and Stratford, Connecticut. The specific shippers for which Tennessee proposes to receive gas at Wright, New York (and the associated maximum daily quantities and delivery points for each of these shippers) are as follows:

Shipper	Maximum daily quantity (Dt)	Delivery point	Daily tonnage
Connecticut Light & Power Company	9,000	E. Granby, CT	4,000
		Wallingford, CT	5,000
Boston Gas Company	17,100	Beverly-Salem, MA	5,480
		Reading, MA	3,380
		Danvers, MA	6,240
Granite State Gas Transmission Inc	12,100	Agawam, MA	7,450
		Pleasant St., MA	4,550
Colonial Gas Company	2,000	Tewksbury, MA	2,000
		Mendon, MA	2,000
EnergyNorth Natural Gas, Inc	4,000	Laconia, NH	4,000
Essex County Gas Company	2,000	Haverhill, MA	2,000
Valley Gas Company	1,000	Lincoln, RI	1,000
O'Brien Cogeneration, Inc.V	14,000	South Lee, MA	14,000
Pawtucket Power Associates	12,695	Lincoln, RI	12,695
JMC Selkirk, Inc	23,000	Selkirk, NY	23,000
MassPower, Inc	25,000	Monson, MA	25,000
Lee Mass Cogeneration Company	14,400	Lee, MA	14,400

The shippers for which Tennessee proposes to receive gas at Stratford, Connecticut (and the associated maximum daily quantities and delivery points for each of these shippers) are as follows:

Shipper	Quantity (Dt)	Maximum daily delivery point	Daily tonnage
Connecticut Light & Power Company	22,000	Torrington, CT	1,000
		Winstead, CT	200
		Derby, CT	100
		Longridge, CT	100
		E. Granby, CT	9,000
		Stamford, CT	10,000
		Norwalk, CT	1,600
Connecticut Natural Gas Company	50,000	Bloomfield, CT	36,000
		N. Britain, CT	2,800
		N. Bloomfield, CT	9,200
		E. Farmington, CT	2,000
Southern Connecticut Gas Company	35,000	N. Haven, CT	35,000

In addition to the transportation of volumes received at the Iroquois-Tennessee interconnections, but as part of the Iroquois-Tennessee Project, Tennessee proposes to receive an aggregate of 74,547 Dt per day at Tennessee's Station 823 at Kinder, Louisiana and at the tailgate to the Yslocskey Gas Processing Plant in southern Louisiana for redelivery on behalf of New England Power Company at the interconnection of the facilities of

Algonquin Gas Transmission Company and Tennessee at Mendon, Massachusetts.

Tennessee states that the transportation service proposed by Tennessee in connection with the Champlain Project would consist of the receipt from Champlain at Upton, Massachusetts of a maximum daily quantity of 2,000 Dt and the transportation of that quantity from Upton to Haverhill, Massachusetts on behalf of Essex County Gas Company.

To provide the firm transportation services contemplated by the Iroquois-Tennessee Project, Tennessee proposes to construct: (1) An aggregate of 105.41 miles of 36-inch loop of its "200" and "300" mainline systems in the States of Pennsylvania, New York, and Massachusetts; (2) an aggegate of 12.23 miles of 30-inch loop of its "200" mainline system in the States of Massachusetts and New Jersey; (3) additional compression facilities at its Station 245 in Herkimer County, New York (2,100 hp), Station 254 in Columbia County, New York (3,500 hp), Station 261 in Hampden County, Massachusetts (3,300 hp), and at a new compressor station in Worcester County, Massachusetts (700 hp); (4) an aggregate of 23.51 miles of lateral pipeline facilities in the States of Massachusetts, New Hampshire, and Connecticut; (5) a new 11.44-mile 16-inch pipeline extension from Tennessee's "300" mainline system to an interconnection with Southern Connecticut Gas Company in New Haven, Connecticut; (6) a new 2.31-mile 10-inch pipeline extension in Providence County, Rhode Island; and (7) measurement facilities in Essex, Hampden, Berkshire, and Monson Counties, Massachusetts; New Haven and Lincoln Counties, Connecticut; and Albany County, New York, and at the proposed Tennessee/Iroquois interconnections in Wright (Schoharie County), New York and Stratford (Fairfield County), Connecticut. Tennessee also proposes to modify its existing measurement facilities in Fairfield, Litchfield, and Hartford Counties, Connecticut.

To provide the firm transportation service contemplated by the Champlain Project, Tennessee proposes to construct an interconnection with Champlain (with flow regulation and measurement facilities) at Upton, Massachusetts.

The total cost of Tennessee's proposed facilities for both the Iroquois-Tennessee and Champlain facilities is estimated to be $224,674,000. Tennessee states that the proposed facilities would be initially financed by Tennessee with funds on hand, funds generated internally, borrowings under revolving credit agreements or short-term financing which will be rolled into permanent financing.

It is stated that Tennessee has developed two new rate schedules under which it will perform the Iroquois-Tennessee and Champlain transportation services: Rate Schedule NET–EU (for cogeneration and electric power end users) and Rate Schedule NET–LD (for local distribution companies). Tennessee proposes to charge a single part demand rate for service under both Rate Schedule NET–Eu and Rate Schedule NET–LD.

As part of its application, and to effectuate Tennessee's proposed transportation service for New England Power Company, Tennessee has also requested authority to reduce its existing annual sales obligation under Tennessee's Rate Schedules CD–4 and CD–5 to National Fuel by 11,635,133 Dt and 7,490,643 Dt, respectively, with specific monthly limitations as set forth below:

	Current monthly D–2 entitlement		Proposed monthly D–2 entitlement	
	CD–4	CD–5	CD–4	CD–5
January	5,556,300	3,612,275	4,724,555	3,070,428
February	5,020,400	3,262,700	4,267,340	2,773,286
March	5,556,300	3,612,275	4,724,555	3,070,426
April	5,379,000	3,495,750	4,572,550	2,971,360
May	5,556,300	3,612,275	4,418,058	2,883,279
June	5,379,000	3,495,750	4,275,540	2,790,270
July	5,556,300	3,612,275	4,418,058	2,883,279
August	5,556,300	3,612,275	4,418,058	2,883,279
September	5,379,000	3,495,750	4,275,540	2,790,270
October	5,556,300	3,612,275	4,418,058	2,883,279
November	5,379,000	3,495,750	4,572,550	2,971,360
December	5,556,300	3,612,275	4,724,505	3,070,426
Total	65,444,500	42,531,625	53,909,367	35,040,962

It should be noted that the Commission's order of January 12, 1989 advises all parties who have previously intervened in Docket No. CP87–451 and in the other "open season" dockets to file new interventions if they wish to become parties in this application.

Comment date: February 22, 1989, in accordance with Standard Paragraph F at the end of this notice.

9. Champlain Pipeline Company

[Docket No. CP89–646–000]

February 1, 1989.

Take notice that on January 17, 1989, Champlain Pipeline Company (Champlain), 1233 Shelburne Road, Suite C–4, South Burlington, Vermont 05403, filed an application pursuant to section 7(c) of the Natural Gas Act and to the Commission's January 12, 1989 order in Docket No. CP87–451–016 for a certificate of public convenience and necessity authorizing Champlain (a) to provide firm natural gas transportation service to 18 shippers in Vermont, New Hampshire, and Massachusetts in an aggregate daily maximum quantity of 430,591 MMBtu and (b) to construct and operate the facilities necessary to transport and deliver those quantities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Champlain states that it is a general partnership organized under the laws of the State of Vermont, and is made up of the following partners: Noverco Corporation; Northern New England Investment Company, Inc., CV Champlain Investments, Inc.; Resource Monitors, Inc.; AGT Champlain, Inc.; and ANR Champlain, Inc.

Champlain requests authorization to render a transportation service for shippers (shippers, quantities and commencing dates shown below) to serve what it terms an urgent need for natural gas in the New England region.

Champlain states it would provide that while affording long-term benefits to the region in the form of new competition for gas transportation services. Champlain explains that its proposed pipeline, which would serve as an eastern link between the major gas transportation facilities in the U.S. and Canada, would increase supply options to customers in the New England region, including previously unserved areas, and would afford substantial transportation efficiencies for service throughout that New England region. Champlain further states that its system could be efficiently and cost effectively expanded in the future.

Champlain proposes to construct and operate pipeline facilities consisting of: (1) A 24-inch mainline pipeline extending approximately 253 miles from the U.S.-Canadian border in Vermont through New Hampshire to a point of interconnection with Algonquin Gas Transportation Company near West Medway, Massachusetts; (2) a 10-inch mainline branch, extending approximately 28 miles from a point on the mainline near Fitchburg, Massachusetts to a point of delivery near Flints Corner, Massachusetts; (3) an 8-inch branch, extending from the Pelham Mainline Branch approximately 2.7 miles to the vicinity of Nashua, New Hampshire; (4) a 10-inch mainline branch, extending approximately 56 miles from a point on the mainline south of Springfield, Vermont to a point of delivery near Greenfield, Massachusetts; (5) a 10-inch branch extending approximately 1.2 miles to Colrain, Massachusetts; (6) a 4,000 horsepower compressor station located near Middlebury (Mile Post 78.6); and (7) necessary appurtenant facilities. It is stated that the estimated cost of the project is approximately $354,100,000 with expenditures as projected in year of construction. Champlain requests authority to transport natural gas during a two-year phase-up period, commencing October 31, 1991, as follows:

Commencing October 31, 1991—250,117 MMBtu/day

Commencing October 31, 1992—430,591 MMBtu/day

According to Champlain, its proposed facilities have been designed to transport up to 430,591 MMBtu of natural gas per day, at a maximum operating pressure of approximately 1440 psig.

MAXIMUM DAILY QUANTITY

[MMBtu/Day]

Shippers	October 31	October 31, 1992
Algonquin Gas Transmission Co	50,600	50,600
Altresco Lynn, Inc	0	40,000
Berkshire Gas Company	0	5,000
Boston Gas Company	35,000	35,000
Coastal Power Production Co	0	30,000
Colonial Gas Company	12,000	12,000
Commercial Union Energy Corp.—Fall River	14,000	14,000
Dartmouth Power Associates	0	35,374
Energy North Natural Gas, Inc	5,000	5,000
Enertrac Corporation—Woonsocket	1,197	1,197
Essex County Gas Company	2,020	2,020
Granite State Gas Transmission Inc	23,000	23,000
New England Power Company	60,000	60,000
Nordic Power of Montague, Inc	0	62,000
Pepperell Power Associates Limited Partnership	9,400	9,400
Providence Gas Company	30,000	30,000
Valley Gas Company	0	1,000
Vermont Gas Systems, Inc	7,900	15,000
	250,117	430,591

Champlain states that it has identified a large new market for natural gas in New England, that its Application encompasses part of that market and that such market is supported by exclusive precedent agreements between Champlain and each shipper, as well as market data. Champlain also states that its shippers have entered into long-term supply agreements with Canadian suppliers for the export of gas at Philipsburg, Quebec.

Champlain explains that it would provide transportation service only; with the exception of purchasing initial line pack, Champlain does not propose to buy or sell the natural gas transported by the system. Champlain states it would provide both firm and interruptible transportation service on an open-access basis and will, prior to or upon commencement of service seek authorizations under Subpart F of Part 157 of the Regulations and Subpart G of Part 284 of the Regulations. Applicant proposes that firm transportation service will be sold under a two part (reservation charge, commodity charge) rate based on the Commission's modified fixed variable methodology, while interruptible transportation service is proposed under a one-part (commodity) rate, based upon the firm rate at 100 percent load factor.

Applicant proposes two rate zones. Points of delivery which are located at or north of mainline milepost 177 or Berkshire Branch milepost 30 are in rate Zone 1. Rate Zone 2 extends from the end of Rate Zone 1 south to the terminus of the mainline near West Medway, Massachusetts and the terminus of the Berkshire Branch near Greenfield, Massachusetts. According to Applicant, based upon the cost of service contained in its application, the maximum 100 percent load factor unity throughput charge for transportation commencing October 31, 1991 would be as follows:

Rate Zone 1—0.3074 cents per MMBtu

Rate Zone 2—0.5970 cents per MMBtu

Applicant states that, although precise financing for the project has not been determined, for purposes of its Application, such financing is based upon a capitalization of approximately 25 percent equity contribution by the partners and 75 percent limited or non-recourse debt. For settlement purposes, applicant proposes that the initial rate provide for a return on equity of 15 percent (on a levelized basis); this is a reduction in the claimed rate of return from 16.5 percent contained in the application filed on January 15, 1988.

Applicant explains that it has instituted a comprehensive environmental public disclosure and impact mitigation program in connection with its project and that it places a premium on careful environmental planning and consultation before filing with regulatory authorities. Applicant states that wherever possible it avoids government-held lands and wetlands and utilizes existing utility right-of-way.

Applicant states that operational functions will be performed by Champlain Pipeline Operating Company, Inc. (CPOC) and by AGT Green Mountain Pipeline Company, Inc. (AGT Green Mountain). In addition, CPOC will: Perform certain management and marketing functions for Champlain, be responsible for the design and construction of the project and administer the agreement between Champlain and AGT Green Mountain.

It should be noted that the Commission's order of January 12, 1989 advises all parties who have previously intervened in Docket No. CP87-451 and in other "open season" dockets to file new interventions if they wish to become parties in this application.

Comment date: February 22, 1989, in accordance with Standard Paragraph F at the end of this notice.

10. Iroquois Gas Transmission System

[Docket No. CP89-634-000]

February 1, 1989.

Take notice that on January 17, 1989, Iroquois Gas Transmission System (Iroquois), 2 Enterprise Drive, Shelton, Connecticut 06484, filed in Docket No. CP89-634-000 an application pursuant to section 7(c) of the Natural Gas Act and the Commission's order of January 12, 1989, in Docket No. CP87-451-016 for a certificate of public convenience and necessity authorizing it to construct and operate a new pipeline system and to transport natural gas for customers in New Jersey, New York, and New England. Iroquois also requests a blanket transportation certificate of public convenience and necessity under Subpart G of Part 284 of the Commission's Regulations and a blanket facilities certificate of public convenience and necessity under Subpart F of Part 157 of the Commission's Regulations, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Iroquois states that its application is submitted concurrently with a Joint Offer of Settlement filed by Iroquois and Tennessee Gas Pipeline Company (Tennessee) pursuant to Commission Rule 602. The Joint Offer of Settlement is filed in accordance with the Principles Of Settlement certified by the Chief Administrative Law Judge to the Commission on November 30, 1988, in Docket No. CP87-451, *et al.* The Joint Offer Of Settlement proposes, as the settlement offer, that the Commission grant the certificates sought in the Iroquois application filed herein and in a companion application filed concurrently by Tennessee in Docket No. CP89-629-000.

It is stated that Iroquois is a general partnership established under the laws of New York. The Partners in Iroquois are or will be affiliates of TransCanada PipeLines Limited (TransCanada), AEC Oil and Gas Company, The Brooklyn Union Gas Company, the Northeast Utilities System, Connecticut Natural Gas Corporation, Southern Connecticut Gas Company, New Jersey Resources Company, J. Makowski Company, Inc., Tennessee, Texas Eastern Transmission Corporation, ANR Pipeline Company, and CNG Transmission Corporation.

Iroquois states that the purpose of the proposed project is to provide markets in the Northeast U.S. access to new and diverse energy supplies. Iroquois seeks authority to construct and operate a new pipeline system which would have a capacity of 534,000 Mcf of natural gas per day and which would consist of (a) 192.3 miles of buried 30-inch diameter pipe and 141.6 miles of buried 24-inch diameter pipe from a point of interconnection with the facilities of TransCanada on the international border near Iroquois, Ontario, through eastern New York and western Connecticut to a shoreline point near Milford, Connecticut and (b) 26.7 miles of underwater 24-inch diameter pipe from the Connecticut shoreline across Long Island Sound to a point near Northport, Long Island, New York. The estimated cost of the completed project is $523.7 million in 1991 dollars. The planned in-service date is October 31, 1991 or earlier.

It is stated that the precise financing has not been determined, but that it is anticipated that twenty-five percent of the required capital will be furnished by the Partners as equity and that seventy-five percent will consist of non-recourse debt, initially raised during the construction period primarily from commercial banks and insurance companies. Iroquois proposes that its equity investment earn at the rate of 15 percent.

Iroquois proposes to provide firm and interruptible transportation service on an open access, non-discriminatory basis. Iroquois requests authorization to provide firm reserved transportation of 533,900 Mcf of natural gas per day for local distribution companies and power generators located in New York, New Jersey, and New England as shown in the following table. To the extent capacity is available, Iroquois will provide interruptible service in addition to its firm reserved service.

Iroquois also seeks conditional pre-granted authority to abandon the proposed services at the expiration of the contracts for those services. In addition, Iroquois requests blanket transportation and facilities certificates authorizing transportation of natural gas on behalf of others on a self-implementing basis and certain permissible construction and operation of facilities, respectively.

Shipper	Volume (MMcf/d)	
	First year	Full
The Brooklyn Union Gas Company	50.0	70.0
The Connecticut Light & Power Co	30.0	59.0
Connecticut Natural Gas Corporation	30.0	50.0
New Jersey Natural Gas Company	40.0	40.0
Long Island Lighting Company	35.0	35.0
Southern Connecticut Gas Company	20.0	35.0
Central Hudson Gas & Electric Corp	15.0	20.0
Consolidated Edison Company of New York, Inc	20.0	20.0
Boston Gas Company	17.1	17.1
New York State Electric & Gas Corporation	6.0	17.0
Granite State Gas Transmission, Inc	12.0	12.0
Public Service Electric & Gas Company	10.0	10.0
Elizabethtown Gas Company	5.0	5.0
EnergyNorth Natural Gas, Inc	4.0	4.0
Colonial Gas Company	2.0	2.0
Essex County Gas Company	2.0	2.0
Valley Gas Company	1.0	1.0
LDC subtotal	298.1	398.1
MassPower Project	25.0	25.0
JMC Selkirk Cogeneration	23.0	23.0
Long Lake Cogeneration Corporation	21.0	21.0
Lee Mass Cogeneration	14.4	14.4
O'Brien Cogeneration, Inc. V	14.0	14.0
First Energy Associates	13.0	13.0
Pawtucket Power Associates	12.7	12.7
L&J Energy Systems, Inc. (Lowville Project)	11.7	11.7
Power generation subtotal	134.8	134.8
Total	433.9	533.9

It should be noted that the Commission's order of January 12, 1989 advises all parties who have previously intervened in Docket No. CP87-451 and in the other "open season" dockets to file new interventions if they wish to become parties in this proceeding.

Comment date: February 22, 1989, in accordance with Standard Paragraph F at the end of this notice.

11. Algonquin Gas Transmission Company

[Docket No. CP89-661-000]

February 1, 1989.

Take notice that on January 17, 1989, Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed at Docket No. CP89-661-000, pursuant to section 7(c) of the Natural Gas Act, an application for a certificate of public convenience and necessity authorizing (1) the firm transportation of up to 381,604 dekatherms per day (Dt/d); (2) the receipt of up to 50,600 Dt/d from Champlain Pipeline Company (Champlain) for Algonquin's system supply; and (3) the construction and operation of additional pipeline and appurtenant facilities estimated to cost approximately $125 million; all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Algonquin states that the application was filed to execute its part of the Principles of Settlement attached to and part of the "Final Report of the Chief Judge and Certification of Settlement," issued on November 30, 1988, and the Commission's January 12, 1989, "Order Ruling on Discreteness of Additional Northeast Projects and Establishing Procedures," in Docket No. CP87-451-

008, *et al.* Algonquin avers that its application is necessary to provide the downstream transportation of various supplies of Canadian and domestic natural gas to customers in the Northeast United States under several of the Settlement projects. These Settlement projects are said to include the Champlain Project (See the filings at Docket No. CP89-646-000), the Iroquois/Tennessee Project (See the filing at Docket Nos. CP89-629-000, and CP89-634-000) and the ANR Project (See the filings at Docket Nos. CP89-635-000, CP89-637-000, and CP89-638-000).

According to Algonquin, the twelve customers of the Champlain Project, including Algonquin, would arrange for Algonquin to receive up to 200,800 Dt/d in 1991, increasing to a maximum daily quantity of 307,174 Dt/d in 1992, at an interconnection with the proposed Champlain pipeline project near West Medway, Massachusetts. Algonquin states that it would redeliver equivalent volumes to the eleven shippers at various points along its system (with redeliveries of up 30,000 Dt/d to one customer, Coastal Power, to be arranged later). Algonquin includes precedent agreements with each of the proposed shippers as part of its application.

Algonquin would purchase up to 57,600 Dt/d from Pan Alberta at the Canadian border, which would be delivered to Champlain for transportation to Algonquin's system. Algonquin would receive up to 50,600 Dt/d at West Medway for its own supply, or, in part, for direct assignment to Fitchburg Gas and Electric Company (Fitchburg), and Keene Gas Corp. (Keene). Algonquin states that it has executed letter agreements with Fitchburg and Keene, subject to successful negotiations between Fitchburg, Keene, and Pan Alberta, to assign its gas supply rights with Pan Alberta, and its firm transportation rights on the Champlain system directly to Fitchburg (1,000 Dt/d at the Canadian border) and Keene (1,500 Dt/d at the Canadian border). Algonquin further states that it has also executed a letter agreement with Colonial Gas Company (Colonial), subject to successful negotiations between Colonial and Pan Alberta, to directly assign to Colonial its rights to purchase up to 7,000 Dt/d from Pan Alberta.

Algonquin also proposes to provide firm transportation as part of the proposed Iroquois/Tennessee project. Algonquin states that it would receive up to 79,030 Dt/d in 1991, increasing to 90,030 Dt/d in 1992, from Tennessee at interconnection points near Brookfield and Mendon. Algonquin would redeliver equivalent volumes to the three Iroquois/Tennessee customers at points in New York, Connecticut, Rhode Island and Massachusetts.

Finally, Algonquin would provide firm transportation as part of the proposed ANR project. ANR, it is said, would effectuate delivery of natural gas to Columbia near Pauiding, Ohio for New England Power Company's (NEPC) account. Algonquin would receive from Columbia Gas Transmission Corporation (Columbia), near Hanover, New Jersey up to 35,000 Dt/d in 1991, which it would redeliver to NEPC's Manchester Street Station, in Providence, Rhode Island, or to NEPC's Brayton Point Plant, near Somerset, Massachusetts.

Algonquin proposes to provide the new firm transportation services under two new rate schedules. Firm transportation services provided for NEPC would be accomplished under Rate Schedule X-36. Firm transportation services for the other shippers would be provided under Rate Schedule AFT-2. Rate Schedules X-36 and AFT-2 provide for one-part monthly demand charges which are said to be designed to fully recoup the cost-of-service of the proposed incremental facilities. Shippers would incur monthly demand charges of $4.679 per Dt for the Champlain and Iroquois/Tennessee project volumes and $12.089 per Dt for the ANR project volumes.

To provide the proposed firm transportation services described above, Algonquin proposes to construct and operate extensive facility additions. these include: 12,600 horsepower of new compression at Mendon, Massachusetts; 41.6 miles of various diameter loops and delivery lateral pipeline to be located in Connecticut, Massachusetts, and Rhode Island; and four new meter stations and other miscellaneous modifications to existing meter stations. These facilities are estimated to cost $124.9 million. Algonquin notes in its application that it does not at the present time request authority to construct and operate the facilities needed to provide the increase in service to NEPC scheduled for 1994 under the ANR project. Algonquin asserts that it will design and request authority to construct the necessary additional facilities in time to meet the requested increase in service from 35,000 Dt/d to 60,000 Dt/d by October 31, 1994.

It should be noted that the Commission's order of January 12, 1989, advises all parties who have previously intervened in Docket No. CP87-451 and in the other "open season" dockets to file new interventions if they wish to become parties in this application.

Comment date: February 22, 1989, in accordance with Standard Paragraph F at the end of this notice.

12. ANR Pipeline Company

[Docket No. CP89-637-000]

February 1, 1989

Take notice that on January 17, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed an application in Docket No. CP89-637-000 pursuant to section 7(c) of the Natural Gas Act and to the Commission's order of January 12, 1989 in Docket No. CP87-451-016 for a certificate of public convenience and necessity authorizing it to construct and operate pipeline facilities and perform transportation services, all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, ANR proposes to transport, on a firm basis, 287,500 Mcf per day on behalf of the following customers:

Customer	Volume (MMcf/d)
Long Lake Cogeneration Corporation	40.0
Energy Marketing Exchange, Inc.	6.0
J. Makowski Associates, Inc.	50.0
ENPEX	17.0
Kamine Group	57.5
New England Power Company	60.0
Eagle Point Cogeneration	57.0

ANR also intends to transport, on an interruptible basis, 50,000 Mcf per day on behalf of one end user, Energy Marketing Exchange, Inc.

ANR proposes to construct and operate 92.4 miles of new 24" pipeline from its mainline near Muncie, Indiana to Lebanon, Ohio where it will interconnect with the facilities of CNG Transmission Company (CNG) and Texas Eastern Transmission Corporation (TETCO). Further, ANR requests authorization to construct 160.7 miles of pipeline looping, 21,000 HP of compression and appurtenant facilities. ANR asserts that these facilities are necessary to support the proposed transportation services. Volumes of gas will be delivered to CNG and TETCO at Lebanon, Ohio and to Columbia Gas Transmission Corporation at an existing interconnection at Pauiding, Ohio for ultimate delivery to the abovementioned transportation customers. The total cost of these facilities are estimated to be $168,309,000 which is to be financed from funds on hand. The states that will be affected by the proposed

construction include: Illinois, Indiana, Iowa, Kansas, Missouri, Ohio and Wisconsin.

ANR states that the proposed transportation services will be performed under its currently effective FERC Tariff Volume No. A which governs self-implementing transportation services.

This application was filed concurrently with an Offer of Settlement in Docket No. CP87-451-000, *et al.*, and Docket No. CP88-193-000 which provides for (a) the expedited processing and approval of the instant application, subject to the completion of a full environmental review, and (b) the withdrawal of the EASTCO filing in Docket No. CP88-193-000 upon acceptance of a final certificate in this proceeding. It should be noted that the Commission's order of January 12, 1989 advises all parties who have previously intervened in Docket No. CP87-451-000, *et al.*, and in the other "open season" dockets to file new interventions if they wish to become parties in this application.

Comment date: February 22, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

13. Transwestern Pipeline Company

[Docket No. CP89-730-000]

February 2, 1989

Take notice that on January 30, 1989, Transwestern Pipeline Company (Transwestern), P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-730-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of McKay Oil Corporation (McKay), a natural gas producer, under Transwestern's blanket certificate issued in Docket No. CP88-133-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transwestern requests authorization to transport, on an interruptible basis, up to a maximum of 2,500 MMBtu of natural gas per day for McKay from a receipt point located in Section 29, Township 4 South, Range 22 East, Chaves County, New Mexico, to a delivery point located in section 8, Township 6 South, Range 23 East, Chaves County, New Mexico. Transwestern anticipates transporting, on an average day 1,875 MMBtu and an annual volume of 912,500 MMBtu.

Transwestern states that the transportation of natural gas for McKay commenced December 30, 1988, as reported in Docket No. ST89-1890-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations.

Comment date: March 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

14. Florida Gas Transmission Company

[Docket No. CP88-179-013]

February 2, 1989

Take notice that on January 13, 1989, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP88-179-013 an amendment to its pending applications in Docket Nos. CP88-178-012 *et al.*, pursuant to sections 7(b) and 7(c) of the Natural Gas Act for a certificate of public convenience and necessity requesting (1) an allocation of existing capacity (Phase I capacity) and new annual volumetric entitlements (AVE) for its customers, (2) changes to the terms and conditions concerning its existing Rate Schedules G and I, (3) authorization to implement a small general resale service under a proposed Rate Schedule SGS and to implement services on behalf of any new firm sales customers requesting and receiving an allocation of capacity, (4) implementation of conversion rights for FGT's resale and direct sales customers, (5) the withdrawal of its request for separate section 7(c) certificates to implement transportation services under proposed Rate Schedules FTS-1 and PT, currently pending in Docket No. CP88-128-012 and the abandonment of firm transportation service under Rate Schedule T-3 and (6) other tariff changes reflecting FGT's desire to provide "open-access" transportation services, to alter its priorities of service, and to modify other provisions in its General Terms and Condition (GTC) Section of its FERC Gas Tariff, all as more fully set forth in the amendment on file with the Commission and open to public inspection.

FGT states that on October 30, 1987, it submitted an Offer of Settlement and an amendment in Docket Nos. CP88-128-012 *et al.*, which addressed two central issues (1) justification for FGT's proposed facilities (Phase II expansion) and (2) the restructuring of the contractual relationships with its customers in order to offer an expansion of services. Subsequently, FGT states that it has entered into further discussions with all of its customers and has submitted concurrently four interrelated filings which address the pending service issues in Docket CP88-128-012 *et al.* Aside from the instant amendment, Docket No. CP88-128-013, FGT asserts the current filings are: (1) Docket No. RP89-50-000—a proposed general cost of service rate increase and new rate design, (2) Docket No. CP89-555-0000—a request for the Commission's blanket transportation certificate under Order Nos. 436 and 500, and (3) Docket No. CP89-556-000—a request for a blanket certificate to make sales for resale to others. FGT asserts that all four filings are interrelated, and conditions its willingness to accept a blanket transportation certificate on the Commission's approval of all four applications. Therefore, FGT requests that the Commission consolidate all four applications into one proceeding.

FGT hereby requests to abandon its current system of AVE's and the interim allocation plan as set forth in section 21 of the General Terms and Condition of its FERC Gas Tariff to be effective upon its acceptance of a blanket transportation certificate under Subpart G of Part 284 of the Commission's Regulations. FGT proposals include abandonment of all certificated level of sales (including the use of its transmission facilities to effectuate direct sale arrangements) and its Rate Schedule T-3 services as well. FGT requests authorization to concurrently implement an allocation of the Phase I capacity. FGT states that an initial allocation for Phase I, capacity is set forth in Exhibit I of Docket No. CP88-129-013; however, FGT proposes to conduct an "open season" starting on January 13, 1989, and concluding on March 15, 1989. FGT proposes that customers listed in Exhibit I who wish to increase or decrease the firm levels of entitlements should submit their request within this time frame and all such requests will be considered as being filed concurrent; it is explained. After March 15, 1989, FGT states that it would accept any additional request for uncommitted Phase I capacity until on or before April 1,1989, whereupon FGT states that it would list any request for firm capacity which cannot be accommodated on a Firm Natural Gas Service Log which FGT proposes to establish in section 14 in its GTC of its FERC Gas Tariff. On May 1, 1989, FGT proposes to revise Exhibit I of the instant amendment to reflect the results of the proposed "open season" and would also file to revise the propose rates in Docket No. RP89-50-000 at that time as well. FGT further proposes to conduct an "open season" for customers desiring interruptible sales or transportation services. FGT asserts that it would provide public notice of the date of commencement of such "open

season" via its electronic bulletin board and through notices in the Wall Street Journal and other trade publications.

FGT states that in Docket No. CP88–129–012 *et al.* it proposed to restructure its tariff to enable it to provide firm sales for resale under Rate Schedule G and to provide preferred interruptible sales under Rate Schedule I to be effective on the in-service date of the proposed facilities. Due to the interrelationship of the proposals in Docket Nos. RP89–50–000, CP88–129–013, CP89–555–000 and CP89–556–000, FGT now requests that the proposed revisions to Rate Schedules G and I become effective upon its acceptance of a blanket transportation certificate, at which time the allocation of Phase I capacity would also take place. FGT explains that the revisions requested to be made are the same as proposed previously for Docket No. CP88–129–012 *et al.* with the following modifications: (1) The respective *Rate* sections reflect the proposed rate design in Docket No. RP89–50–000, (2) conversion rights which allegedly conform to the Commission's policy under Order Nos. 500, *et seq.*, (3) modification to the *Authorized Over-run* Gas section and the elimination of the *Minimum Bill* section of its FERC Gas Tariff, and (4) the implementation of an *Entitlement Charge* section under Rate Schedule I service and the removal of all end-use restrictions as currently implemented under Rate Schedule I service.

FGT also requests certificate authorization to establish a Rate Schedule SGS service for customers purchasing less than 1,100,000 dt annually at a one-part volumetric rate. FGT states that no conversion rights to firm transportation service would be proposed for Rate Schedule SGS service although those customers identified in Exhibit I as proposed Rate Schedule SGS customers would be provided the opportunity to receive service under FGT's Rate Schedule G during FGT's proposed "open season". FGT proposes to make effective the Rate Schedule SGS service upon the date it accepts it blanket transportation certificate and requests abandonment authority under Rate Schedule G for those customers which would be served under the Rate Schedule SGS. FGT proposes that rates for Rate Schedule SGS be established in Docket No. RP89–50–000.

FGT states that it requested in Docket No. CP88–129–012 *et al.*, individual certificates to implement transportation services under Rate Schedules FTS–1 and PT. FGT points out that in view of its request for a blanket transportation certificate in Docket No. CP89–555–000 that such requests for individual transportation services are no longer necessary. Therefore, FGT proposes the withdrawal of these requests for individual certificates and instead would self-implement proposed firm, preferred interruptible, and interruptible transportation services under § 284.221 of the Commission's Regulations and under the proposed Rate Schedules FTS–1, PIT–1 and ITS–1 proposed for Docket No. CP89–555–000.

FGT states that in Docket No. CP88–129–012 *et al.*, it requested abandonment authority for a firm transportation service on behalf of Florida Power and Light Company (FP&L) as described in Rates Schedule T–3 to be effective on the in-service dates the facilities proposed for Phase II expansion. However, FGT now proposes to give FP&L the option of nominating firm transportation service under proposed Rate Schedule FTS–1 or to retain entitlements under Rate Schedule T–3 service. In the event FP&L elects to receive all of its entitlements under Rate Schedule FTS–1, then FGT requests abandonment authority for Rate Schedule T–3 service to be effective on the date FGT accepts a blanket transportation certificate.

FGT proposes numerous other changes to its GTC of its FERC Gas Tariff. The following are the sections which are requested for modification or inclusion into its FERC Gas Tariff: Section 9—*Priority of Service*, Section 9A—*Priorities of Service—Pipeline Capacity*, Section 9B—*Priorities of Service—Scheduling*, Section 13—*Changes IN Contract Quantities*, Section 16—*Schedule of Effective Miniumum Annual Quantity*, Section 16A—*Conversion of Service*, Section 18—*Determination of Deliveries*, Section 24—*Order No. 497 Compliance*, and Section 25—*Transition Cost Recovery Mechanism*. FGT states that the Transition Cost Recovery (TCR) mechanism would be amounts prudently incurred and paid by FT to its producer/suppliers in settlement of take-or-pay obligations or to reform contract terms in such contracts. FGT states that any cost paid by FGT to Southern Natural Gas Company (SNG) relating to the flow-through of take-or-pay costs from SNG would not be included in the proposed TCR mechanism. FGT states that the TCR mechanism would be applied as a surcharge during the same five year period in which its existing customers may elect to convert 100 percent of their sales entitlements to transportation.

Comment date: February 23, 1989, in accordance with the first subparagraph of Standard Paragraph G at the end of this notice.

15. Texas Gas Transmission Corporation

[Docket No. CP89–720–000]

February 2, 1989

Take notice that on January 30, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89–720–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Stand Energy Corporation (Stand), under the blanket certificate issued in Docket No. CP88–686–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Gas states that pursuant to a transportation agreement dated November 4, 1988, under its currently effective T rate schedule, it proposes to transport up to 142,820 MMBtu per day equivalent of natural gas for Stand from points of receipt listed in Exhibit "B" of the agreement to delivery points listed in Exhibit "C", which transportation service involves various transporters. Texas Gas advises that the ultimate end-user of the gas is The Kroger Company.

Texas Gas advises that service under § 284.223(a) commenced on December 15, 1988, as reported in Docket No. ST89–1402. Texas Gas further advises that it would transport 10,000 MMBtu on an average day and 52,129,300 MMBtu annually.

Comment date: March 20, 1989, in accordance with Paragraph G at the end of this notice.

16. Texas Gas Transmission Corporation

[Docket No. CP89–717–000]

February 2, 1989

Take notice that on January 30, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89–717–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Total Minatome Corporation (Total), under the blanket certificate issued in Docket No. CP88–686–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Gas states that pursuant to a transportation agreement dated October 10, 1988, under its currently effective T rate schedule, it proposes to transport up to 25,000 MMBtu per day equivalent of natural gas for Total from point(s) of receipt listed in Exhibit "B" of the agreement to delivery point(s) listed in Exhibit "C", which transportation service involves various transporters. Texas Gas advises that the ultimate end-user of the gas is Louisville Gas and Electric Company.

Texas Gas advises that service under § 284.223(a) commenced on December 15, 1988, as reported in Docket No. ST89–1820. Texas Gas further advises that it would transport 1,000 MMBtu on an average day and 365,000 MMBtu annually.

Comment date: March 20, 1989, in accordance with Paragraph G at the end of this notice.

17. Tennessee Gas Pipeline Company

[Docket No. CP89–713–000]

February 2, 1989

Take notice that on January 30, 1989, Tennessee Gas Pipeline Company, (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89–713–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Superior Natural Gas Corporation (Superior), a marketer, acting on behalf of itself and as agent for Walter Oil & Gas Corporation, under the blanket certificate issued in Docket No. CP87–115–000 on June 18, 1987, puruant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated November 23, 1988, as amended, under its Rate Schedule IT, it proposes to transport up to 50,000 dekatherms (dt) per day equivalent of natural gas for Superior. Tennessee states that it would transport the gas from receipt points located offsbore Louisiana and offshore Texas, and in the states of Alabama, Kentucky, Louisiana, Mississippi, Pennsylvania and Texas, and deliver such gas to various points off Tennessee's system, points located in multiple states.

Tennessee advises that service under § 284.223(a) commenced December 8, 1988, as reported in Docket No. ST89–1711 (filed January 12, 1989). Tennessee further advises that it would transport 50,000 dt on an average day and 18,250,000 dt annually.

Comment date: March 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

18. United Gas Pipe Line Company

[Docket No. CP89–709–000]

February 2, 1989

Take notice that on January 27, 1989, United Gas Pipe Line Company (United), P. O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–709–000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to provide a transportation service for Texas Gas Marketing (Texaco), a marketer, under United's blanket certificate issued in Docket No. CP88–6–000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United states that pursuant to an interruptible transportation agreement dated June 15, 1988, as amended on December 16, 1988, it proposes to transport natural gas for Texaco from points of receipt located in the state of Texas to points of delivery located in the states of Texas, Louisiana and Mississippi.

United further states that the peak day quantities would be 41,200 MMBtu, the average daily quantities would be 41,2000 MMBtu and that the annual quantities would be 15,038,000 MMBtu. Service under § 284.223(a) commenced December 16, 1988, as reported in Docket No. ST89–1743–000, it is stated.

Comment date: March 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

19. Equitrans, Inc.

[Docket No. CP89–676–000]

February 2, 1989

Take notice that on January 23, 1989, Equitrans, Inc. (Equitrans) 4955 Steubenville Pike, Pittsburgh, Pennsylvania 15205, filed in Docket No. CP89–676–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to add two new delivery points to Equitable Gas Company, a Division of Equitable Resources, Inc. (Equitable) an existing customer, under Equitrans' blanket certificate issued in Docket No. CP86–553–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Equitrans proposes to construct and operate two taps off its 16-inch, H–152 transmission line, one in Pine Township and one in Robinson Township, Allegheny County, Pennsylvaina. Equitrans states the estimated peak day volumes to be 1,200 Mcf and 2,700 Mcf, respectively, and the estimated annual volumes to be 100,000 Mcf and 225,000 Mcf, respectively. Equitrans further states that the gas would be used to serve small commercial and residential customers.

Equitran asserts that the proposed delivery points would have an insignificant impact on its facility to meet its peak day and annual deliveries.

Comment date: March 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

20. United Gas Pipe Line Company

[Docket No. CP89–704–000]

February 3, 1989

Take notice that on January 26, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, pursuant to section 7(c) of the Natural Gas Act, filed in Docket No. CP89–704–000 an application requesting authorization to transport and deliver up to 124,100 MMBtu of natural gas per day for direct sale to Mississippi Power company (Mississippi Power), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, United requests authorization to implement three interruptible and one firm gas sales contracts with Mississippi Power at three locations in Mississippi. Certificated facilities are in place and ready for contract implementation at all of the locations.

Comment date: February 24, 1989, in accordance with Standard Paragraph F at the end of this notice.

21. Southern Natural Gas Company

[Docket No. CP89–687–000]

February 3, 1989

Take notice that on January 23, 1989, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP89–687–000 an application pursuant to section 7(b) of the Natural Gas Act, for an order permitting and approving Southern's abandonment of certain pipeline and appurtenant facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern requests authority to abandon approximately 61.194 miles of its 12-inch and 8-inch Montgomery-

Columbus Loop Line by sale to SNG Intrastate Pipeline Inc. (SNG Intrastate), a wholly-owned subsidiary. Southern states that this segment of pipeline extends from its McConnells Compressor Station in Tuscaloosa County, Alabama, to its Selma Compressor Station in Dallas County, Alabama. Southern further states that its 12-inch Montgomery-Columbus Line parallels this segment of its Loop Line and has sufficient capacity and the existing capability to serve those customers currently served by the Loop Line without any interruption in service. Southern asserts that the proposed abandonment would save future replacement costs, annual maintenance expenses and increase the operational efficiency of its system.

Southern proposes to sell the subject pipeline facilities to SNG Intrastate at their depreciated book value of $2,801,685.82. It is explained that SNG Intrastate currently owns and operates an intrastate pipeline system in Northwest Alabama and proposes to expand its system by interconnecting the 81.194 miles of pipeline described herein to its existing intrastate system. This proposed expansion is expected to benefit all of SNG Intrastate's customers by allowing them additional options and flexibility for the movement of their gas.

Comment date: February 24, 1989, in accordance with Standard Paragraph F at the end of this notice.

22. Iowa-Illinois Gas and Electric Company

[Docket No. CP89-655-000]

February 3, 1989

Take notice that on January 18, 1989, Iowa-Illinois Gas and Electric Company (Iowa-Illinois), 206 East Second Street, P.O. Box 4350, Davenport, Iowa 52808, filed in Docket No. CP89-655-000 an application, pursuant to section 7(f) of the Natural Gas Act, requesting that the Commission modify the certificated section 7(f) service area determination granted in Docket No. CP86-688-000 in two respects. Iowa-Illinois requests that its section 7(f) service area in Illinois be expanded to include the remainder of its Illinois natural gas service territory, and extended to encompass a transmission line which interconnects with the facilities of ANR Pipeline Company (ANR), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Iowa-Illinois states that it presently has a Hinshaw exemption for this service territory (Illinois Hinshaw). Iowa-Illinois is requesting that the area subject to its Illinois Hinshaw be included in its section 7(f) service area determination for the purpose of utilizing the opportunities provided by the Uniform Regulatory Jurisdiction Act of 1988 (H.R. 2684) recently passed by Congress and signed by the President. Second, Iowa-Illinois requests the section 7(f) service area determination be modified by extending the certificated service area in Illinois to a point of interconnection with the pipeline system of ANR Pipeline Company (ANR) near New Windsor, Illinois. It is stated that Iowa-Illinois and ANR are constructing interconnection facilities which will commence at ANR's New Windsor, Illinois, Compressor Station and proceed north for a distance of approximately 10.5 miles. Iowa-Illinois states that the interconnection facilities will then divide to create two laterals totaling approximately 5.05 miles in length, which will interconnect with Iowa-Illinois' existing gas facilities near Moline No. 1 and Moline No. 3 meter stations located in Rock Island County and Henry County, Illinois, respectively. It is stated that, since one of the two laterals is proposed to interconnect with Iowa-Illinois' facilities near Moline No. 3 meter station, and since those facilities were the subject of Iowa-Illinois' section 7(f) service area application, because to connect to the pipeline which crosses the Mississippi River into Iowa, Iowa-Illinois believes the interconnection with ANR requires an extension of Iowa-Illinois' section 7(f) certificate service area. It is further stated that Exhibit F of this proceeding describes Iowa-Illinois' existing section 7(f) service area in Illinois and the areas for which service area extensions are requested.

Iowa-Illinois is requesting an extension of its Illinois service area determination for the entire area marked in blue on Exhibit F, page 2 of 5, to eliminate the need for requesting future authority to expand or enlarge its facilities in this area or in the event the interconnection, as ultimately constructed, varies slightly from the route as it is presently planned. It is stated that the area noted in blue on Exhibit F is presently in the retail service territory of Illinois Power Company, although Iowa-Illinois states that, to the best of Iowa-Illinois knowledge and belief, no customers are presently being served by Illinois Power Company in this area. Iowa-Illinois states that Illinois Power Company has been served with a copy of this application. Iowa-Illinois does not propose to extend the service area determination in Iowa, it is stated.

Comment date: February 24, 1989, in accordance with Standard Paragraph F at the end of this notice.

23. Williams Natural Gas Company

[Docket No. CP89-733-000]

February 3, 1989

Take notice that on January 30, 1989, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-733-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (19 CFR 157.205) for authorization to transport natural gas for Lakeview Village (Lakeview), an end-user, under WNG's blanket certificate issued in Docket No. CP86-631-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

WNG proposes to transport on a firm basis up to 80 MBtu equivalent of natural gas on a peak day, 55 MMBtu equivalent on an average day and 29,200 MMBtu equivalent on an annual basis for Lakeview. It is stated that WNG would receive the gas for Lakeview's account at an existing point on WNG's system in Hemphill County, Texas and would deliver equivalent volumes at an existing point on WNG's system in Kansas. It is asserted that the service would be effected using existing facilities and that no construction of facilities would be required. It is explained that the transportation service commenced December 17, 1988, under the self-implementing authorization of § 284.223 of the Commission's Regulations as reported in Docket No. ST89-1807.

Comment date: March 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

24. Northwest Pipeline Corporation

[Docket No. CP89-735-000]

February 3, 1989.

Take notice that on January 30, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-735-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86-578-000 pursuant to section 7 of the Natural Gas Act for Eagle-Picher Minerals, Inc. (Eagle-Picher), all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest proposes to transport natural gas for Eagle-Picher pursuant to a transportation agreement dated February 24, 1988. Northwest explains that service commenced December 5, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-1657. Northwest further explains that the peak day quantity would be 2,700 MMBtu, the average daily quantity would be 2,000 MMBtu, and that the annual quantity would be 730,000 MMBtu. Northwest explains that it would receive natural gas for Eagle-Picher's account at various receipt points on its system in Colorado, Wyoming, Utah, and Washington and would redeliver the gas at a delivery point on its system in Owyhee County, Idaho.

Comment date: March 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

25. Northwest Pipeline Corporation

[Docket No. CP89-729-000]

February 3, 1989.

Take notice that on January 30, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-729-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86-578-000 pursuant to section 7 of the Natural Gas Act for United Engine and Machine Co. (United Engine), all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest proposes to transport natural gas for United Engine pursuant to a transportation agreement dated April 8, 1988. Northwest explains that service commenced December 3, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-1658. Northwest further explains that the peak day quantity would be 300 MMBtu, the average daily quantity would be 300 MMBtu, and that the annual quantity would be 110,000 MMBtu. Northwest explains that it would receive natural gas for United Engine's account at various existing receipt points on its system in Colorado, Wyoming, Utah, and Washington and would redeliver the gas to the Reno Lateral delivery point at Northwest's interconnect with Paiute Pipeline Company in Owyhee County, Idaho.

Comment date: March 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

26. Natural Gas Pipeline Company

[Docket No. CP89-694-000]

February 3, 1989.

Take notice that on January 25, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89-694-000 a request pursuant to §§ 157.205 and 284.223(b) of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on a firm basis for Texarkoma Transportation Company (Texarkoma), a marketer of natural gas, under its blanket certificate issued in Docket No. CP86-582-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Natural states that it proposes to transport natural gas for Texarkoma between receipt points in Oklahoma and Texas and delivery points in Illinois and Texas.

Natural further states that the maximum daily, average and annual quantities that it would transport for Texarkoma would be 6,000 MMBtu equivalent of natural gas (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule FTS), 6,000 MMBtu equivalent of natural gas and 2,190,000 MMBtu equivalent of natural gas, respectively.

Natural indicates that in a filing made with the Commission on January 25, 1989, it reported that transportation service for Texarkoma had begun on December 1, 1988 under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: March 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

27. Northwest Pipeline Corporation

[Docket No. CP89-731-000]

February 3, 1989.

Take notice that on January 30, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-731-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86-578-000 pursuant to section 7 of the Natural Gas Act for Questar Energy Company (Questar), all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest proposes to transport natural gas for Questar pursuant to a transportation agreement dated February 10, 1988. Northwest explains that service commenced December 1, 1988, under §§ 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-1568. Northwest further explains that the peak day quantity would be 80,000 MMBtu, the average daily quantity would be 10,000 MMBtu and that the annual quantity would be 3,650,000 MMBtu Northwest explains that it would receive natural gas for Questar's account at various receipt points on its system in Colorado, Oklahoma, Oregon, Wyoming, Utah, and Washington and would redeliver the gas to various delivery points on its system in Colorado, Idaho, New Mexico, Oklahoma, Oregon, Utah, and Washington.

Comment date: March 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

28. Algonquin Gas Transmission Company

[Docket No. CP88-187-001]

February 3, 1989.

Take notice that on January 17, 1989, Algonquin Gas Transmission Company ("Algonquin"), 1284 Soldiers Field Road, Boston, Massachusetts, filed pursuant to section 7(c) of the Natural Gas Act, the Rules and Regulations of the Federal Energy Regulatory Commission (Commission), and the Commission's "Order Finding Niagara Import Point Projects Discrete", issued January 12, 1989, at Docket No. CP87-451-017, *et al.*, an application for a certificate of public convenience and necessity authorizing the firm transportation by Algonquin of up to 62,000 MMBtu per day 22.6 bcf/yr for Northeast Energy Associates Limited Partnership ("Northeast") from points of receipt at Lambertville, New Jersey and Centerville, New Jersey to the site of cogeneration facility at Bellingham, Massachusetts (the "Northeast Project"), and the construction and operation of certain pipeline and appurtenant facilities needed to render this service. The initial term proposes is 25 years with the option to extend an additional 8 years, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

This amended application supersedes Algonquin's pending application at CP88-187-000 and modifies its pending application at CP88-186-000 insofar as that application involves facilities related to providing firm transportation to the Northeast Project. The amended service to Northeast will be designated as Rate Schedule X-35 and will be contained in Algonquin's FERC Gas

Tariff Original Volume No. 2. Algonquin proposers a monthly demand charge of $13.265 per MMBtu.

Algonquin states that it is seeking to amend its pending application at Docket No. CP88-187-000 to reflect a change in the anticipated service commencement date for the Northeast Project, to transfer its request for authorization(s) to construct and operate facilities related to the Northeast Project from Docket No. CP88-186-000 to this docket, and to modify the proposed facilities to reflect change in the proposed points of receipt into Algonquin's facilities following the Commission's "Order Finding Niagara Import Point Projects Discrete" issued on January 12, 1989 at CP87-451-017.

Algonquin states that the amended commencement date for the firm transportation service is January 1, 1991, rather than November 1, 1989.

Algonquin requests authorization to construct and operate certain facilities to render such service, including: 8.2 miles of 36-inch pipeline loop of Algonquin's mainline from Ramapo, New York to the Stony Point compressor station in Stony Point, New York; 2.0 miles of 36-inch pipeline loop of Algonquin's mainline from Mansfield to Chaplin, Connecticut; 5.5 miles of 24-inch pipeline loop of Algonquin's G-5 System from the G-1 System to the G-12 tap; 5.2 miles of 20-inch replacement pipeline on Algonquin's G-8 system from the G-9 tap to the G-11 tap; 4.9 miles of 12-inch pipeline loop of Algonquin's E-1 System from the E-3 tap to Salem Pike, Connecticut meter station; a new meter station at Bellingham, Massachusetts; and miscellaneous appurtenant facilities. The estimated cost of such facilities is $49,211,000. Algonquin proposes that construction costs and working capital will be financed with bank financing equal to 75 percent and equity contributions equal to 25 percent.

Comment date: February 24, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

29. Tennessee Gas Pipeline Company

[Docket No. CP88-171-001]

February 3, 1989.

Take notice that on January 17, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed an amendment to its application pursuant to section 7(c) of the Natural Gas Act requesting authority to provide firm natural gas transportation for seven shippers in an aggregate daily maximum quantity of 141,110 Dt and to construct and operate facilities to transport and deliver these and other quantities of natural gas, together with an application pursuant to Executive Order No. 10485 for an amended Presidential permit authorizing the construction, operation, maintenance, and connection of pipeline facilities at the International Boundary between the United States and Canada, all as more fully set forth in the amendment, which is on file with the Commission and open to public inspection.

Tennessee proposes to construct and operate the Niagara Spur Loop Line to accommodate the receipt and transportation by Tennessee, National Fuel Gas Supply Corporation (National), and PennEast Gas Services Company (PennEast) of proposed new imports at the Niagara import point on the U.S.-Canadian border. The Niagara Spur Loop Line, to be jointly owned by Tennessee, National, and PennEast, would consist of 49.2 miles of 30-inch pipeline extending from the Niagara import point to a point near Aurora, New York, 7,000 horsepower of compression, and metering and related facilities that would cost an estimated $65.5 million. The proposed facilities would increase capacity at the Niagara import point by 452,900 Mcf per day.

Tennessee also proposes to construct and operate the looping and compression required on its existing mainline system to transport Canadian and domestic gas supplies to seven new customers. These downstream facilities, estimated to cost $86.7 million, would consist of 54.7 miles of 30-inch pipeline, 8,100 horsepower of additional compression, and modifications and additions of measurement facilities.

The proposed facilities will be initially financed by Tennessee with funds on hand, funds generated internally, borrowings under revolving credit agreements, or short-term financing which will be rolled into permanent financing.

Tennessee proposes to utilize the increased capacity made available by the construction of the Niagara Spur Loop Line and downstream facilities to provide firm transportation services for seven shipper in an aggregate maximum daily quantity of 141,110 Dt. The shippers, quantities, receipt and delivery points are as follows:

Shipper	Maximum daily quantity (Dt/day)	Receipt point	Delivery point
1. Ocean State Power II	50,000	Niagara	Burrillville, RI.
2. Altresco Pittsfield, L.P	31,500	Niagara	North Adams, MA.
3. G.A.S. Orange Development, Inc	20,000	Niagara	Syracuse, NY.
4. Cogen Energy Technologies Inc	13,900	Niagara	Marilla, NY.
5. ANR Venture Springfield Company	7,430	Louisiana	Agawam, MA.
6. Flagg Energy Development Corp	4,140	Louisiana	New Britain/Bloomfield-CNG.
7. Capitol District Energy Center Cogeneration Associations	14,140	Ellisburg, PA, Interconnection with CNG Transmission Corp.	New Britain/Bloomfield-CNG.

Tennessee proposes to render the firm transportation services pursuant to proposed new Rate Schedule NET-EU, which provides for incremental rates to cover a portion of the incremental cost of service of the gas transportation project being proposed by Tennessee in this "Niagara Import Point Projects Settlement" and as part of the Iroquois-Tennessee Offer of Settlement.

Comment date: February 24, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

30. Texas Gas Transmission Corporation

[Docket No. CP89-721-000]

February 3, 1989.

Take notice that on January 30, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky, filed in Docket No. CP89-721-000 a request pursuant to §§ 157.205 and 284.223(2)(b) of the Commission's Regulations under the Natural Gas Act for authorization to provide transportation for System Supply for End-Users, Inc. (System Supply) under Texas Gas' blanket certificate issued in Docket No. CP86-686-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas requests authorization to transport, on an interruptible basis, up to a maximum of 30,000 MMBtu of natural gas per day for System Supply on Texas Gas' pipeline system. The receipt and delivery points are listed in Exhibits B and C of the November 7, 1988 transportation agreement which provides for this service, and on file with the Commission and open to public inspection. Texas Gas states that it anticipates transporting 20,000 MMBtu on an average day and 7,300,000 MMBtu on an annual basis. The ultimate consumer of the gas has been identified by System Supply as Lydall, Taylor Concrete, and North Country Concrete.

Texas Gas states that the transportation of natural gas for System Supply commenced on December 16, 1988, as reported in Docket No. ST89-1403-000, for a 120-day period pursuant to § 284.223(a)(1) of the Commission's Regulations and the blanket certificate issued to Texas Gas in Docket No. CP86-686-000. Texas Gas proposes to continue this service in accordance with §§ 284.221 and 284.223 of the Commission's Regulations.

Comment date: March 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

31. Natural Gas Pipeline Company of America

[Docket No. CP89-715-000]

February 3, 1989.

Take notice that on January 30, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89-715-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a firm transportation service for LTV Steel Company, Inc. (LTV), an end-user, under the blanket certificate issued in Docket No. CP86-582-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Natural states that pursuant to a transportation agreement dated December 15, 1988, under its Rate Schedule FTS, it proposes to transport for LTV up to 10,000 MMBtu per day equivalent of natural gas (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule FTS). Natural states that it would receive the gas at existing receipt points in Louisiana, and that it would transport and deliver the gas in Illinois, Texas and on the border of Indiana and Illinois.

Natural advises that service under § 284.223(a) commenced January 1, 1989, as reported in Docket No. ST89-2036. Natural further advises that it would transport 10,000 MMBtu on an average day and 3,650,000 MMBtu annually.

Comment date: March 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

32. Northwest Pipeline Corporation

[Docket No. CP89-732-000]

February 3, 1989.

Take notice that on January 30, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-732-000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide a transportation service for the account of Oregon Steel Mills, Inc. (Oregon Steel), an end user of natural gas, under Northwest's blanket certificate issued in Docket No. CP86-578-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest states that pursuant to a transportation agreement dated November 28, 1988, as amended December 5, 1988, under Rate Schedule TI-1, it proposes to transport, on an interruptible basis, up to 7,000 MMBtu equivalent per day of natural gas for Oregon Steel from any receipt point on Northwest's system to any delivery point on Northwest's system. Northwest also states that no construction of new facilities will be required to provide this transportation service. Northwest further states that the peak day, average day, and annual transportation quantities would be approximately 7,000 MMBtu equivalent of natural gas, 5,000 MMBtu equivalent of Natural gas and 1,800,000 MMBtu equivalent of Natural gas, respectively. Northwest advises that service under § 284.223(a) commenced December 7, 1988, as reported in Docket No. ST87-1618 (filed January 6, 1989).

Comment date: March 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-3258 Filed 2-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CS72-1100 et al.]

Diane J. Paich (Laina Mabel Saari and Reino R. Saari) et al.; Applications for Small Producer Certificates [1]

February 8, 1989.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Commission's Regulations thereunder for a small producer certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before February 23, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

Docket No.	Date filed	Applicant
CS72-1100	[1] 12-12-88	Diane J. Paich (Laina Mabel Saari and Reino R. Saari) 6283 Roslin Ct. Pleasanton, CA 94566.
CS73-547	[2] 12-2-88	Crouch Petroleum Company (Executive Properties, Inc.) 1715 West 58th Street, Amarillo, TX 79110-3401.
CS76-135-001	[3] [4] 1-30-89	Grand Isle Corporation and Estate of John Dabney Murchison, deceased (The Royal Gorge Company of Texas) c/o Kathleen A. Berry, Esq., 8300 Douglas, Suite 800, Dallas, TX 75225.
CS89-13-000	12-22-88	Zeit Exploration Co., Inc., 6438 Memphis Street, New Orleans, LA 70124.
CS89-14-000	[5] 1-10-89	Sammy Max Black, 2402 Fairview, Midland, TX 79705.
CS89-15-000	1-3-89	Roma Oil & Gas, 8023 Vantage Drive, Suite 1100, San Antonio, TX 78230.
CS89-16-000	1-4-89	Carl R. Pfluger Estate, *et al.*, [6] 2133 Office Park Drive, San Angelo, TX 76904.
CS89-17-000	1-9-89	Berexco Properties Inc., 970 Fourth Financial Center, Wichita, KS 67202.
CS89-18-000	1-23-89	Flash Gas & Oil Southwest, Inc., P.O. Box 231, Mandeville, LA 70470-0231.
CS89-19-000	1-23-89	Hodgden Energy Co., Inc., P.O. Box 3486, Enid, OK 73702.

[1] By letter dated December 6, 1988, Applicant states that Laina Mabel Saari and Reino R. Saari are deceased, and requests that the small producer certificate issued in Docket No. CS72-1100 be redesignated in the name of their sole heir, Diane J. Paich.

[2] By letter dated November 29, 1988, Applicant states that the company name has been changed to Crouch Petroleum Company and requests that the small producer certificate issued to Executive Properties, Inc., in Docket No. CS73-547 be redesignated under the name Crouch Petroleum Company.

[3] Application received January 24, 1989. Filing date is date of receipt of filing fee.

[4] By letter dated January 11, 1989, Applicant states that John Dabney Murchison, owner of 100% of the stock of The Royal Gorge Company of Texas (Royal Gorge), died on June 14, 1979. On May 31, 1985, in order to effectuate the orderly distribution of Mr. Murchison's estate to his family, the assets of Royal Gorge were assigned to the Estate of John Dabney Murchison, deceased, and Royal Gorge was simultaneously dissolved. Pursuant to Mr. Murchison's will, on August 30, 1985, the estate of Mr. Murchison distributed its interests in Grand Isle Block 76, Offshore Louisiana, to Mr. Murchison's widow, Lucille G. Murchison, who, in turn, on December 31, 1986, conveyed such interest to Grand Isle Corporation, her wholly owned S corporation. Applicant states that pending the completion of ancillary probate proceedings in Louisiana, the Estate of John Dabney Murchison holds the interests in West Delta Blocks 133 and 134, Offshore Louisiana, for the benefit of a testamentary trust for Mr. Murchison's daughter, Virginia Lucille Murchison. Applicant states that legal title to the jurisdictional gas properties once owned by Royal Gorge is now held by Grand Isle Corporation and the Estate of John Dabney Murchison. Applicant requests that the small producer certificate issued to Royal Gorge in Docket No. CS76-135 be redesignated in the names of Grand Isle Corporation and the Estate of John Dabney Murchison, deceased.

[5] Application received December 27, 1988. Filing date is date of receipt of filing fee.

[6] The *et al.* parties are:

William Carl Pfluger, Trustee of the William Carl Pfluger Children's Trust, under the will of Carl R. Pfluger; A. Lee Pfluger, Trustee of the A. Lee Pfluger Children's Trust, under the will of Carl R. Pfluger; William Carl Pfluger; Addison Lee Pfluger, a/k/a A. Lee Pfluger; Karen O'Brien Pfluger; Margaret Morgan Pfluger, a/k/a Meg Morgan Pfluger; Michael Carl Pfluger; William Reid Pfluger; Elizabeth Lou Pfluger; Amy Lin Pfluger; William C. Pfluger, Trustee of the Lee Pfluger Children's Trust; Addison Lee Pfluger, Trustee of the Pfluger Children Trust; William Carl Pfluger, Trustee of Elizabeth Lou Pfluger Trust; William Carl Pfluger, Trustee of the Amy Lin Pfluger Trust; Addison Lee Pfluger, Trustee of the Michael Carl Pfluger Trust; Addison Lee Pfluger, Trustee of the William Reid Pfluger Trust; Karen O'Brien Pfluger, Trustee of the Michael Carl Pfluger Trust under the will of S. D. O'Brien; Lee Pfluger, Trustee; and William Carl Pfluger, Trustee.

[FR Doc. 89-3284 Filed 2-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-1-20-001]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

February 6, 1989.

Take notice that Algonquin Gas Transmission Company (Algonquin") on January 30, 1989, tendered for filing proposed changes in its FERC Gas Tariff, Second Revised Volume No. 1 as set forth in the revised tariff sheets:

Proposed to be effective March 1, 1989

Substitute Thirtieth Revised Sheet No. 201
Alternate Substitute Thirtieth Revised Sheet No. 201

Algonquin states that pursuant to section 17 of the General Terms and Conditions of its FERC Gas Tariff and as permitted by the Commission's regulations under § 154.305(c)(4) it is filing to revise its current adjustments from those which were filed in Algonquin's Annual Purchased ("Annual PGA") on January 3, 1989 in Docket No. TA89-1-20-000.

Algonquin states that on December 29, 1988, in Docket No. TA89-1-17 *et. al.*, Algonquin's pipeline supplier, Texas Eastern Transmission Corporation ("Texas Eastern") filed to revise the current adjustments of its Annual PGA. In its filing, Texas Eastern included Primary and Alternate revised rate sheets, for reasons more fully set forth in Texas Eastern's filing. Accordingly, Algonquin is filing Primary and Alternate rate sheets entitled, Subatitute Thirtieth Revised Sheet No. 201 ("Primary") and Alternate Substitute Thirtieth Revised Sheet No. 201 ("Alternate") to reflect the changes in purchased gas costs underlying Algonquin's Rate Schedules F-1, WS-1, I-1 and E-1.

Furthermore, Algonquin states that the rate changes reflected in the Primary and Alternate sheets represent projected increases in Algonquin's purchased gas costs of approximately $7.7 and $7.2 million, respectively, for the three month period beginning March 1, 1989 for Rate Schedules F-1, WS-1 and I-1.

Algonquin notes that copies of this filing were served upon the affected parties and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 13, 1989. Protest will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-3289 Filed 2-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-45-002]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

February 8, 1989

Take notice that ANR Pipeline Company ("ANR") on February 3, 1989 tendered for filing with the Federal Energy Regulatory Commission ("Commission") as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets:

Substitute Original Sheet No. 88
Substitute Original Sheet No. 89
Substitute Original Sheet No. 90
Substitute First Revised Sheet No. 116
Substitute Original Sheet No. 117

ANR states that the above referenced tariff sheets are being filed in compliance with Ordering Paragraph (D) of the Commission's "Order Accepting for Filing and Suspending Tariff Sheets, Subject to Refund and Condition and Establishing Hearing Procedures" issued January 13, 1989 in Docket No. RP89-45-000.

ANR has requested that the Commission accept the tariff sheets to become effective on January 4, 1989.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Such protests or motions must be filed by February 16, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspeciton.

Lois D. Cashell,

Secretary.

[FR Doc. 89-3326 Filed 2-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA89-1-31-000 and RP89-62-000]

Arkla Energy Resources; Filing of Revised Tariff Sheets Reflecting Tariff Adjustment and Take-or-Pay Recovery

February 7, 1989

Take notice that on February 3, 1989, Arkla Energy Resources (AER), a division of Arkla, Inc., tendered for filing the following tariff sheets bearing a proposed effective date of April 1, 1989:

(1) *Docket No. TA89-1-31 Annual PGA effective April 1, 1989*
Rate Schedule No. X-28
Original volume No. 3
Rate Schedule G-2
First Revised Volume No. 1
(a) Tariff sheets reflecting regular PGA adjustments
3rd Revised Sheet No. 185.1
50th Revised Sheet No. 4
(b) Alternate tariff sheet—PGA adjustment
Alternate 3rd Rev. Sheet 185.1
Original Sheet No. 185.4
Alternate 50th Rev. Sheet No. 4
Original Sheet No. 4.3
(2) *Docket No. RP89-62-000 Tariff Sheets reflecting Take-or-Pay Costs*
Original Sheet No. 185.3
Original Sheet No. 4.2

AER states the primary tariff sheets filed in Docket No. TA89-1-31 reflect its regular annual PGA adjustment pursuant to the Commission's transitional rules of Order Nos. 483 and 483-a.

AER states the proposed changes would increase its sysem cost of gas by $60,641 and the cost of gas underlying AER's jurisdictional sales by $1,147 for the PGA period of April, May and June 1989 as adjusted.

AER states the alternate tariff sheets filed in Docket No. TA89-1-31 reflect a revised annual PGA adjustment designed to allocate to AER's customers accrued costs that were eliminated from AER's rates prior to June 1, 1988. These costs will be directly billed to AER's customers over a 36-month period if the alternate tariff sheets are accepted as AER advocates.

AER states the tariff sheets filed in Docket No. RP89-62 reflect the allocation to AER's jurisdictional customers of take-or-pay demand costs which were billed to AER by Texas Gas Transmission Corporation pursuant to Commission order in Docket No. RP88-177.

Any person desiring to be heard or to protest said filing should file a motion to interven or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 27, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-3289 Filed 2-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2306 Vermont]

Citizens Utilities Co.; Intent to File an Application For a New License

February 6, 1989.

Take notice that on December 27, 1988, Citizens Utilities Company, the existing licensee for the Clyde River Hydroelectric Project No. 2306, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2306 was issued effective June 1, 1956, and expires December 31, 1993.

The project is located on the Clyde River in Orleans County, Vermont. The principal works of the Clyde River Project include Seymour Dam of rock & concrete construction; Echo Dam of concrete ogee; West Charleston Dam of rock fill & masonry-concrete facing and a penstock to a powerhouse with installed capacity of 800 kW; Newport Dam of masonry-concrete facing and penstocks to a powerhouse with installed capacity of 3,600 kW; Newport Unit No. 11 Dam of concrete gravity with an open flume and penstocks to a powerhouse with installed capacity of 1,600 kW; transmission line connections; and appurtenant facilities.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 26, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at Administrative Offices, High Ridge Park, Stamford, CT 06905, Attn: Mr. Douglas C. Anderson, telephone (203) 329-5193.

Pursuant to section 15(c)(1) of the Act each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89-3271 Filed 2-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-217-009]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

February 8, 1989.

Take notice that CNG Transmission Corporation ("CNG"), on February 1, 1989, pursuant to section 4 of the Natural Gas Act, the Commission's September 30, 1988, August 12, 1988, November 4, 1988 and December 28, 1988 orders in this docket, the Commission's January 18, 1989, Notice of Extension of Time, and § 12.9 of the General Terms and Conditions of CNG's tariff, filed the following revised tariff sheets to Original Volume No. 1 of its FERC Gas Tariff:

First Revised Sheet No. 49.
Substitute Original Sheet Nos. 46, 47 and 49.
Substitute First Revised Sheet Nos. 40, 41, 42, 43, 44, 45, 46, 47 and 48.
Substitute Second Revised Sheet Nos. 40, 41, and 42.
Second Substitute Original Sheet No. 48.
Second Revised Sheet Nos. 44, 45 and 48.
Third Revised Sheet No. 40.

CNG states the effective dates of the substitute tariff sheets are August 1, 1988, September 1, 1988 and December 1, 1988. The proposed effective date of First Revised Sheet No. 49, Second Revised Sheet Nos. 44, 45 and 48, and Third Revised Sheet No. 40 is February 1, 1989. The purpose of the filing is to reflect the Commission's orders in this proceeding that require CNG to reallocate a portion of North Penn Gas Company's liability to Corning Natural Gas Corporation and to change CNG's take-or-pay passthrough provisions to reflect modifications and additions to Order No. 500 buyout and buydown costs that have been made recently by CNG's pipeline suppliers.

Copies of the filing were served upon CNG's sales customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR Sections 385.214 and 385.211. All motions or protests should be filed on or before February 15, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-3327 Filed 2-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-4-21-000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

February 7, 1989.

Take notice that Columbia Gas Transmission Corporation (Columbia) on February 3, 1989, tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1, to be effective March 1, 1989:

One hundred and thirty-third Revised Sheet No. 16
Twenty-first Revised Sheet No. 16A2
Thirty-eighth Revised Sheet No. 64A

Columbia states that the sales rates set forth on One hundrd and thirty-third Revised Sheet No. 16 reflect an overall decrease of 7.19¢ per Dth in the Commodity rate, and decreases of $.217 per Dth in the Demand-1 rate and 3.08¢ per Dth in the Demand-2 rate. In addition, the transportation rates set forth on Twenty-first Revised Sheet No. 16A2 reflect a decrease in the Fuel Charge component of .19¢ per Dth.

Columbia states that the purpose of the revised tariff sheets is to (i) implement an out of cycle Purchased Gas Coast Adjustment filing to be effective as of March 1, 1989, and (ii) eliminate on March 1, 1989, the currently effective twelve-month surcharges placed into effect on March 1, 1988, in accordance with the Federal Energy Regulatory Commission's February 26, 1988 order in Docket No. TA88-2-21-000. The rates reflected in the instant filing are proposed to be in effect until May 1, 1989, at which time Columbia's annual PGA filing is scheduled to become effective.

Copies of the filing were served upon the Company's jurisdictional customers and intrested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Enegy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 15, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-3166 Filed 2-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-3-21-001]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

February 7, 1989.

Take notice that Columbia Gas Transmission Corporation (Columbia) on February 3, 1989, tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1, to become effective on February 1, 1989:

Substitute One Hundred and thirty-second Revised Sheet No. 16
Substitute Twentieth Revised Sheet No. 16A2
Substitute Thirty-seventh Revised Sheet No. 64A

Columbia states the foregoing tariff sheets are being filed in compliance with the Commission's order issued January 31, 1989 in Docket No. TQ89-3-21-000. Such order directed Columbia to refile its PGA tariff sheets to be effective February 1, 1989 to reflect the rates set forth on Alternate Second Substitute Eleventh Revised Sheet No. 50 contained in Texas Eastern Transmission Corporation's December 30, 1988 filing.

Columbia indicates that when compared to the rates contained in Columbia's PGA filing of December 30, 1988, the revised rates set forth on Substitute One hundred and thirty-second Revised Sheet No. 16 reflect an overall increase of .89¢ per Dth in the Commodity sales rate, an overall decrease of $.036 per Dth in the Demand-1 sales rate, and an increase of .12¢ per Dth in the Demand-2 sales rates. In addition, the transportation rates set forth on Substitute Twentieth Revised Sheet No. 16A2 reflect an increase in the Fuel Charge component of .03¢ per Dth.

Copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 15, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filings are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-3287 Filed 2-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-2-24-000]

Equitrans, Inc.; Proposed Change in FERC Gas Tariff

February 6, 1989.

Take notice that Equitrans, Inc. (Equitrans) on January 31, 1989, tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to become effective March 1, 1989.

Sixth Revised Sheet No. 10
Sixth Revised Sheet No. 14

Equitrans states that the filing is made pursuant to §§ 154.308 and 154.304 of the Commission's Regulations and is in conformity to the provisions of Order 483, as amended.

Equitrans states that the change in rates results from the application of the Purchased Gas Cost Adjustment provision in Section 19 of its General Terms and Conditions of its FERC Gas Tariff, Original Volume No. 1.

Equitrans states the current purchased gas adjustment to Rate Schedule PLS is an increase of $.1667 per dekatherm (dth). This change results in a current estimated average cost of gas in this filing of $2.4918 per dth and a Total Commodity Charge of $2.9296 per dth, including GRI and ACA.

Equitrans states the current adjustment to D(1) Purchased Gas Costs for Rate Schedule PLS reflects a decrease of $.0687 per dth for an overall D(1) demand cost of $2.8672 per dth.

Equitrans states the current adjustment to D(2) Purchased Gas Costs for Rate Schedule PLS reflects an increase of $.0006 per dth for an overall D(2) demand cost of $.0727 per dth.

Equitrans states the current purchased gas adjustment to Rate Schedule GS-1 is an increase of $.3406 per dth. This change results in a current estimated average cost of gas in this filing of $2.9216 per dth and a Total Commodity Charge of $3.1245 per dth, including GRI and ACA.

Equitrans states that a copy of its filing has been served upon its purchasers, interested state commissions, and upon each party on the service list of Docket CP86-676-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 204206, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. All such motions to intervene or protests should be filed on or before February 13, 1989.

Lois D. Cashell,

Secretary.

[FR Doc. 89-3260 Filed 2-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ89-3-4-000 and TM89-4-4-000]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates and Tariff Provisions

February 8, 1989.

Take notice that on February 1, 1989, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021, tendered for filing with the Commission, the revised tariff sheets listed below in its FERC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 2 containing changes in rates and other tariff provisions for effectiveness on January 1, 1989 and February 1, 1989:

1. *Purchased Gas Cost Adjustment for Effectiveness February 1, 1989*

First Revised Volume No. 1

Twenty-Fourth Revised Sheet No. 7

2. *Tracking Adjustments*

A. For Effectiveness January 1, 1989

First Revised Volume No. 1

Second Substitute Seventeenth Revised Sheet No. 8

Original Volume No. 2

Eighth Revised Sheet No. 17
Tenth Revised Sheet No. 27

B. For Effectiveness February 1, 1989

First Revised Volume No. 1

Ninth Revised Sheet No. 7-A
Eighteenth Revised Sheet No. 8

Original Volume No. 2

First Revised Sheet No. 5
Second Revised Sheet No. 14
Ninth Revised Sheet No. 17
Second Revised Sheet No. 24
Eleventh Revised Sheet No. 27
First Revised Sheet No. 34
First Revised Sheet No. 35
Second Revised Sheet No. 36
First Revised Sheet No. 37
First Revised Sheet No. 38
Original Sheet No. 38-A

According to Granite State, the revised rates and other tariff changes are applicable to jurisdictional services rendered to its two affiliated distribution company customers: Bay State Gas Company and Northern Utilities, Inc. It is said that the revised rates and other tariff changes reflect two developments: (1) Changes in suppliers' rates for gas purchases that have occurred since Granite State's last purchased gas cost adjustment that will be applicable for the remainder of the first quarter of 1989, and changes that will be effective February 1, 1989; and

(2) changes in suppliers' storage and transportation rates, plus changes in the fuel use retention percentages in suppliers' transportation rate schedules that Granite State is authorized to track.

According to Granite State copies of its filing were served upon its customers, Bay State and Northern Utilities, and the regulatory commissions of the States of Maine, Massachusetts, and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 15, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-3332 Filed 2-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2423 New Hampshire]

James River—New Hampshire Electric Inc., Intent to Filed an Application for a New License

February 8, 1989

Take notice that on December 28, 1988, James River—New Hampshire Electric, Inc., the existing licensee for the Riverside Hydroelectric Project No. 2423, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Public Law 99-495. The original license for Project No. 2423 was issued effective July 1, 1958, and expires December 31, 1993.

The project is located on the Androscoggin River in Coos County, New Hampshire. The principal works of the Riverside Project include a rock-filled, timber-crib and concrete dam; a reservoir of 10 acres; a gatehouse and two 13-foot-diameter penstocks; a powerhouse with an installed capacity of 7,800 kW; transformer and transmission line connections; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final) Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 650 Main Street, Berlin, NH 03570-2489, Attn: Mr. David L. Dunham, telephone (603) 752-4600.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89-3272 Filed 2-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-61-000]

Kentucky West Virginia Gas Co.; Proposed Changes in FERC Gas Tariff

February 8, 1989.

Take notice that on January 31, 1989, Kentucky West Virginia Gas Company ("Kentucky West") tendered for filing proposed changes to the following tariff sheets of its FERC Gas Tariff, Second Revised Volume No. 1:

First Revised Sheet No. 4
Superseding Original Sheet No. 4
Second Revised Sheet No. 5
Superseding First Revised Sheet No. 5
First Revised Sheet No. 9
Superseding Original Sheet No. 9
First Revised Sheet No. 11
Superseding Original Sheet No. 11
First Revised Sheet No. 12
Superseding Original Sheet No. 12
First Revised Sheet No. 14
Superseding Original Sheet No. 14
First Revised Sheet No. 15
Superseding Original Sheet No. 15
Ninth Revised Sheet No. 41
Superseding Eighth Revised Sheet No. 41
First Revised Sheet No. 42
Superseding Original Sheet No. 42
First Revised Sheet No. 43
Superseding Original Sheet No. 43

Kentucky West states these tariff changes are filed pursuant to §§ 154.303(e) and 154.63 of the Commission's Regulations and establish new base tariff rates to be effective March 2, 1989, based upon actual costs for the base period ended October 31, 1989, adjusted only for changes occurring in that period.

Based on the actual volumes during such period, adjusted only for known changes occurring within that period, the new base tariff rates will result in an approximate $5 million (8%) increase in jurisdictional sales and transportation revenues. Those costs reflect increased investment and operating expenses, an overall rate of return of 12.74% and a rate of return for common equity capital of 15%.

Kentucky West states the new base tariff rates utilize the *Atlantic Seaboard* allocation and rate design methodology used on the Kentucky West system. While Kentucky West's presently filed rates, which are in effect subject to Commission decision in Docket Nos. RP88-52-000, *et al.*, reflect the modified fixed variable methodology, this matter is at issue in those proceedings. There, Kentucky West is supporting the continuation of the historical *Atlantic Seaboard* methodology which involves the development of a one-part, straight rate for Rate Schedule PLS-1 and a minimum commodity bill related to the fixed charges applicable to that rate schedule. The tariff sheets filed by Kentucky West reflect those tariff provisions. The new base rate for Rate Schedule GSS-1 also continues to be determined as a straight volumetric rate.

Kentucky West states the new base tariff rates are to be effective March 2, 1989, subject to refund pursuant to the requirements of § 154.303(e)(1)(i) of the Commission's Regulations.

Kentucky West states that by its filing, or any request or statement made therein, Kentucky West does not waive any rights to collect amounts, nor the right to collect interest or carrying charges applicable thereto, to which it is entitled pursuant to the mandate of the United States Court of Appeals for the Fifth Circuit issued on March 8, 1988, in *Kentucky West Virginia Gas Company v. FERC*, 780 F.2d 1231 (5th Cir. 1986), or to which it becomes entitled pursuant to a final order in the proceedings initiated by Commission order of January 13, 1989, in Docket Nos. TQ089-1-46, *et al.*, or to which it becomes entitled pursuant to any other judicial and/or administrative decision.

Kentucky West further states that copies of its filing have been served upon each of its customers and the Public Service Commissions of Kentucky, Pennsylvania and West Virginia.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-3261 Filed 2-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA89-2-5-000]

Midwestern Gas Transmission Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

February 8, 1989.

Taken notice that on January 31, 1989, Midwestern Gas Transmission Company (Midwestern) filed the following revised tariff sheets to Original Volume No. 1 of its FERC Gas Tariff to be effective April 1, 1989:

Forty-Seventh Revised Sheet No. 5

Midwestern states that the purpose of this revision is to institute the Annual PGA pursuant to sections 22.2 and 22.3 of the General Terms and Conditions of Midwestern's Tariff.

Midwestern states that the Current Purchased Gas Cost Rate Adjustments reflected on Revised No. 5 consist of $.0347 per dekatherm adjustment to the gas rate, $.0927 per dekatherm adjustment to Rate Schedule SR-1, $.91 per dekatherm applicable to the D1 component of the demand rates and a $.0179 per dekatherm adjustment to the D2 component.

Midwestern states that the revisions also reflect a $.0177 per dekatherm surcharge adjustment to the gas rates and $(.55) per dekatherm surcharge adjustment to the demand D1 rate and $.0186 per dekatherm surcharge to the demand D2 rate for amortizing the Unrecovered Gas Cost Account.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 28, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene; provided, however, that any person who had previously filed a motion to intervene in this proceeding is not required to file a further motion. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-3331 Filed 2-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-117-006]

Northern Natural Gas Co., Division of Enron Corp.; Compliance with Order Nos. 483 and 483-A

February 8, 1989.

Take notice that on January 31, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), tendered for filing, as part of Northern's F.E.R.C. Gas Tariff, Third Revised Volume No. 1 (Volume 1 Tariff) and Original Volume No. 2 (Volume 2 Tariff), the following tariff sheets to become effective January 1, 1989:

Third Revised Volume No. 1

Seventh Revised Sheet No. 65
Substitute Fifth Revised Sheet No. 66
Substitute Seventh Revised Sheet No. 67
Substitute Sixth Revised Sheet No. 68
Substitute Ninth Revised Sheet No. 69
Substitute First Revised Sheet No. 69a
Substitute Eighth Revised Sheet No. 70
Substitute Fourth Revised Sheet No. 70a
Third Revised Sheet No. 70b
Substitute Fifth Revised Sheet No. 70c

Original Volume No. 2

Substitute Fifth Revised Sheet No. 1d
Substitute Fifth Revised Sheet No. 1e
Substitute Sixth Revised Sheet No. 1f
Substitute Eighth Revised Sheet No. 1g
Substitute Sixth Revised Sheet No. 1h
Substitute Sixth Revised Sheet No. 1i
Substitute Second Revised Sheet No. 1i.1
Fifth Revised Sheet No. 1i.2
First Substitute Original Sheet No. 1i.2a

Northern states such tariff sheets are required in compliance with the Letter Orders dated September 29, 1988, and November 16, 1988, respectively, in order that Northern's tariff will be in conformance with Order Nos. 483 and 483-A.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 15, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-3329 Filed 2-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-227-000]

Paiute Pipeline Co.; Change in FERC Gas Tariff

February 8, 1989.

Take notice that on January 31, 1989, Paiute Pipeline Company (Paiute) tendered for filing changes to its FERC Gas Tariff to be effective February 1, 1989. Paiute states that the purpose of the filing is to move, pursuant to section 4(e) of the Natural Gas Act and § 154.67(a) of the Commission's regulations, to place rates and tariffs into effect which have been filed and accepted, or which are being modified herein, or are pending Commission acceptance, in connection with Paiute's request for general rate relief in the above captioned proceeding. Paiute has requested that the Commission grant any waivers of the Commission's regulations necessary to permit this filing to become effective as proposed.

Paiute states that in accordance with the Commission's August 31, 1988 suspension order in this proceeding, Paiute submitted compliance filings on September 30, 1988 and December 16, 1988 at Docket Nos. RP88-227-002, CP87-309-004 and RP88-227-005, which proposed revisions to Paiute's Volume Nos. 1 and 1-A tariffs. In addition, Paiute has pending before the Commission a tariff filing submitted on December 16, 1988 in Docket Nos. CP87-309-006 and RP88-208-002 and a quarterly PGA filing submitted on December 30, 1988 in Docket No. TQ89-1-41-000, all of which, assuming they

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are accepted by the Commission, necessitate changes to the Volume Nos. 1 and 1–A tariff sheets originally filed in this proceeding. The proposed tariff sheets reflect all necessary changes to Paiute's Volume Nos. 1 and 1–A tariffs from Paiute's previously approved tariff sheets.

Paiute further states that during informal conferences in this docket, certain of Paiute's firm customers expressed opposition to Paiute's proposed seasonal rate structure. As an alternative to placing into effect the rates originally filed in this proceeding, which reflect a winter/summer seasonal rate design, Paiute is also tendering certain alternate rate tariff sheets which reflect elimination of certain of the seasonal rate design. Paiute asserts that the rates reflected on its proposed alternate rate tariff sheets are based upon the identical costs that underlie the rates originally proposed in this proceeding, as revised, and which would otherwise be placed into effect, by its section 4(e) motion. Such alternate rate tariff sheets would become effective on February 1, 1989 in lieu of their counterparts if so authorized by the Commission.

Paiute states that copies of this filing have been mailed to all parties of record and interested state commission's in the above captioned proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 15, 1989. Protests will be considered by the Commisson in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Louis D. Cashell,

Secretary.

[FR Doc. 89–3328 Filed 2–10–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP86–492–003]

Morsine Pipeline Co.; Compliance Filing

February 7, 1989.

Take notice that on January 30, 1989, Morsine Pipeline Company (Morsine) tendered for filing its FERC Gas Tariff, Original Volume No. 1 to be effective August 25, 1988.

Morsine states that the tariff was submitted in compliance with the Commission's Order issued February 2, 1988 and December 19, 1988, at Docket Nos. CP86–492–000, *et al.* The tariff sheets set forth the rates, terms and conditions for Morsine to provide full open access transportation pursuant to Order Nos. 436/500 and the Commission's Regulations. The submission was without prejudice to Morsine's right to appeal orders issued in Docket Nos. CP86–492 and CP86–494 or to any position Morsine may take in further proceedings in such dockets, including Morsine's Appeal of Staff Action filed January 18, 1989 concerning the rejection of the two-part rate under Rate Schedule FTS.

Morsine states it submitted an amendment to the gas transportation agreement dated May 8, 1986 between Wisconsin Natural Gas Company and Morsine to comply with the previously mentioned orders.

Morsine requested waiver of the Commission's Regulations to the extent necessary to permit its FERC Gas Tariff, Original Volume No. 1, to become effective August 25, 1988, the date Morsine filed its acceptance of the certificate authority issued to it in Docket Nos. CP86–492 and CP86–494.

A copy of the filing is being mailed to all parties set out on the official service list at Docket Nos. CP86–492 and CP86–494 and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before February 15, 1989. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89–3269 Filed 2–10–89; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2554 New York]

Moreau Manufacturing Corp.; Intent To File an Application for a New License

February 8, 1989.

Take notice that on December 28, 1988, Moreau Manufacturing Corporation, the existing licensee for the Feeder Dam Hydroelectric Project No. 2554, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by sec. 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99–495. The original license for Project No. 2554 was issued effective April 1, 1949, and expires December 31, 1993.

The project is located on the Hudson River in Saratoga and Warren Counties, New York. The principal works of Feeder Dam Project located near the southwest end of the New York State Feeder Dam, include headgates, forebay and closed flume; a powerhouse with an installed capacity of 6,000 kW; a connection to a Niagara Mohawk Power Corporation transmission line; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM 87–7–000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street NE; Washington, DC 20426. The above information as described in the rule is now available from the licensee at HYDRA–CO Enterprises, Inc., 100 Clinton Square, Suite 400, Syracuse, NY 13202–1049, Attn: Mr. John M. Cordes.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89–3273 Filed 2–10–89; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2616 New York]

Niagara Mohawk Power Corp.; Intent To File an Application for a New License

February 8, 1989.

Take notice on December 28, 1988, Niagara Mohawk Power Corporation, the existing licensee for th Hoosic River Hydroelectric Project No. 2616, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99–495. The original license for Project No. 2616 was issued effective May 1, 1965, and expires December 31, 1993.

The project is located on the Hoosic River in Saratoga County, New York. The principal works of Hoosic River Project include the Johnsonville Unit with a concrete dam, a reservoir of 211 acres, and a powerhouse with installed capacity of 4,800 kW; the Schaghticoke Unit with a concrete dam, a reservoir of 150 acres, an open canal, steel pipeline, surge tank, three steel penstocks, and a powerhouse with installed capacity of 13,120 kW; transmission line connections; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87–7–000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 300 Erie Boulevard West, Building A–1, Syracuse, NY 13202, Attn: Barbara J. Raymond, telephone: (315) 428–6353.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89–3274 Filed 2–10–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA89–1–37–000]

Northwest Pipeline Corp.; Proposed Change in Sales Rates Pursuant To Purchase Gas Cost Adjustment

February 6, 1989.

Take notice that on January 31, 1989, Northwest Pipeline Corporation ("Northwest") submitted for filing a proposed change in rates applicable to service rendered under rate schedules affected by and subject to Article 16, Purchased Gas Cost Adjustment Provision ("PGA"), of its FERC Gas Tariff, First Revised Volume No. 1. Such change in rates is for the purpose of (1) reflecting changes in Northwest's estimated cost of purchased gas; and (2) reflecting the change in unrecovered purchased gas costs since Northwest's PGA filing dated February 16, 1988.

Northwest states that this current adjustment aggregates to a decrease of 19.01¢ per MMBtu in the commodity rate for all rate schedules affected by and subject to the PGA. The proposed change in Northwest's commodity rates for the second quarter of 1989 would decrease sales revenues by approximately $1,643,795. The instant filing also provides for an increase in the demand components of Northwest's gas sales rates to reflect changes to the estimates of Canadian demand charges and to reflect a revised Canadian exchange rate factor. Northwest proposes to collect through its surcharge $1,640,973, which is the total balance of Account No. 191 as of November 30, 1988 that is subject to the PGA surcharge. The proposed rate changes have been reflected on Forty-Ninth Revised Sheet No. 10.

A copy of this filing is being served on Northwest's jurisdictional customers and affected state commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 28, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89–3262 Filed 2–10–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA89–1–7–000]

Southern Natural Gas Co.; Proposed Changes

February 7, 1989.

Take notice that on February 1, 1989, Southern Natural Gas Company (Southern) tendered for filing the following revised sheet to its FERC Gas Tariff, Sixth Revised Volume No. 1:

Eighty-Fourth Revised Sheet No. 4A

Southern states that the proposed tariff sheet and supporting information are being filed with a proposed effective date of April 1, 1989, pursuant to the Purchased Gas Adjustment clause of its FERC Gas Tariff and Section 154.305 of the Commission's Regulations.

Southern further states that its proposed tariff sheet represents its first annual PGA filing under the revised PGA Regulations and reflects a Current Adjustment consisting of:

(1) A decrease in Southern's commodity cost of gas of approximately 9.5¢ per Mcf at 1,000 Btu;

(2) A decrease in Southern's D–1 demand cost of gas of approximately 4.9¢ per Mcf in Zone 1, 8.2¢ per Mcf in Zone 2 and 11.5¢ Mcf in Zone 3;

(3) A decrease of approximately .015¢ per Mcf in Southern's D–2 demand cost of gas; and a Surcharge Adjustment consisting of:

(1) A commodity gas cost Surcharge Adjustment of 6.656¢ per Mcf, which is a decrease of .441¢ per Mcf from the 7.097¢ per Mcf Surcharge Adjustment which Southern has been authorized to recover over a three-year period;

(2) A D–1 demand gas cost Surcharge Adjustment of (12.1¢) per Mcf; and

(3) A D–2 demand gas cost Surcharge Adjustment of .001¢ per Mcf.

Copies of Southern's filing were served upon all of Southern's jurisdictional purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedures (§§ 385.214 and 385.211). All such motions or protests should be filed on or before February 27, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–3270 Filed 2–10–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP85–806–010 and CP85–758–008]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

February 8, 1989.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on January 31, 1989 tendered

for filing as part of its FERC Gas Tariff, Original Volume No. 2, six copies of the following tariff sheet:

Rate Schedule X-135

Substitute Original Sheet No. 1312

Texas Eastern states that in compliance with Ordering Paragraph (0) of the Commission's September 12, 1986 Order Issuing Certificates and Authorizing Abandonment in Docket Nos. CP85-806 and CP85-756, Texas Eastern is filing the above listed tariff sheet to reflect a reduction in the rates charged to CNG Transmission Corporation (CNG) under Rate Schedule X-135 as a result of determining that the actual facility costs are less than those estimated costs underlying the initial rates. Rate Schedule X-135 is a firm transportation agreement dated August 31, 1988 between Texas Eastern and CNG under which Texas Eastern provides transportation of CNG's gas authorized by the September 12, 1986 order. A copy of Texas Eastern's workpapers, showing the adjustments made by Texas Eastern in the facility cost and cost parameters, is attached to this filing letter.

Texas Eastern states that upon Commission approval of this tariff sheet, Texas Eastern will refund amounts overcollected to CNG by crediting their next regular billing.

Texas Eastern states that the proposed effective date of this tariff sheet is November 1, 1988, the effective date of the original filing of Texas Eastern's Rate Schedule X-135.

A copy of this filing has been served on the affected party.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 15, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 3330 Filed 2-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-54-000]

Transcontinental Gas Pipe Line Corp.; Tariff Filing

February 6, 1989.

Take notice that on February 3, 1989, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

First Revised Sheet No. 252
Original Sheet No. 253
Original Sheet No. 254

The proposed effective date of the revised tariff sheets is Marcha 6, 1989.

Transco states that the purpose of this filing is to revise Transco's currently effective FERC Gas Tariff so as to provide a method by which Tranasco may efficiently and equitably allocate capacity which, due to fluctuations in demand for services on its system during each day, becomes available after if allocates capacity pursuant to the daily scheduling procedures set forth in its existig tariff. Transco states that the proposed tariff sheet set forth a procedure for allocating such capacity by means of a rotation list of participating shippers, which list is initially established by means of a "window period" and lottery. Transco avers that such procedure is designed, however, so that once established, no participating shippers, not even the winners of the lottery, are given any advantage over any other participating shippers in the allocation of such capacity.

Transco states that in order to expedite the implementation of the proposed allocation procedure, concurrently herewith, Transco will notify its customers (1) that effective immediately they may submit letters to Transco requesting that they be permitted to participate in the proposed allocation procedure and providing the information outlined in the proposed tariff sheets and (2) that the "window period" for such requests will close 21 days from the date this filing is noticed in the **Federal Register**. Transco avers that in this way provided the Commission accepts the proposed tariff sheets by the proposed effective date Transco could immediately begin allocating capacity pursuant to such procedure prior to the end of the 1988-89 winter season.

Transco states that copies of the filing have been served upon its customers, state commissions, and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, DC 20426, in accordance with Rule 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before February 16, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-3343 Filed 2-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP89-32-000]

Transcontinental Gas Pipe Line Corp.; Assignment of New Docket Number

February 6, 1989.

Notice is hereby given of the assignment of a new docket number to the protest filing made by Transcontinental Gas Pipe Line Corporation (Transco) on July 8, 1988, pursuant to Commission Order No. 473. Transco filed its protest in Docket No. RM86-7-000. For purposes of convenience and administrative control, Transco's filing is being assigned a new separate number as set forth above.

Lois D. Cashell,

Secretary.

[FR Doc. 89-3275 Filed 2-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. FA86-55-000]

Union Electric Co.; Order Establishing Hearing Procedures

Issued February 8, 1989

On December 7, 1988, the Chief Accountant issued a contested audit report [1] under delegated authority noting Union Electric Company's (Union) disagreement with certain items contained in the staff's audit report of Union's books and records. The report noted Union's disagreement with the staff's findings regarding Correcting Entries Nos. 1 and 2 on Schedule No. 3 and Compliance Exception No. 1 on Schedule No. 4. Union was requested to advise whether it would agree to the disposition of the issues under the shortened procedures provided for by Part 41 of the Commission's Regulations. 18 C.F.R. 41.1, *et seq.*

On January 10, 1989, Union responded that it did not consent to the shortened procedures. Section 41.7 of the Commission's Regulations provides that in case consent to the shortened procedures is not given the proceeding will be assigned for hearing. Accordingly, the Secretary, under authority delegated by the Commission, will set these matters for hearing.

Any interested person seeking to participate in this docket shall file a protest or a motion to intervene pursuant to Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.211 and 385.214) no later than 15 days after the date of publication of this order in the **Federal Register.**

It is ordered:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act, the provisions of the Federal Power Act, particularly sections 205, 206 and 301 thereof, and pursuant to the Commission's Rules of Practice and Procedure (18 C.F.R. Chapter I), a public hearing shall be held concerning the appropriateness of Union's accounting practices as discussed above.

(B) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge, shall convene a prehearing conference in this proceeding, to be held within 45 days of the date of this order, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. The Presiding Judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(C) This order shall be promptly published in the **Federal Register.**

Lois D. Cashell,

Secretary.

[FR Doc. 89-3306 Filed 2-10-89; 8:45 am]

BILLING CODE 6717-01-M

[1] The contested audit report is attached for reference pending its publication in the *FERC Reports*. The report is not being published in the **Federal Register**, but may be obtained from the Commission's Public Reference Room.

Office of Conservation and Renewable Energy

National Energy Extension Service Advisory Board; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (P.L. 92-463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: National Energy Extension Service Advisory Board.

Date and Time:
Monday, March 6, 1989, 8:00 a.m.-5:00 p.m.
Tuesday, March 7, 1989, 8:00 a.m.-12:00 noon.

Place: Georgetown Marbury Hotel, 3000 M Street NW., Washington, DC 20007.

Contact: Susan D. Heard, Department of Energy, Forrestal Building—6A081, 1000 Independence Avenue SW., Washington, DC 20585, Telephone: 202-586-8290.

Purpose of the Board: The Board was established to carry on a continuing review of the National Energy Extension Service and the plans and activities of each State in implementing Energy Extension Service programs. Additionally, the Board is responsible for reporting on an annual basis to the Congress, the Secretary of Energy, and the Director of the Energy Extension Service.

Tentative Agenda: March 6, 1989:

- Overview of EES Programs
- Review of the Board's draft Tenth Annual Report
- Public comment (10 minute rule) March 7, 1989
- Review and final approval of Tenth Annual Report
- Public comment (10 minute rule)

Public Participation: The meeting is open to the public. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Susan D. Heard at 202-586-8290. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9 a.m. and 4 p.m. Monday thru Friday, except Federal Holidays.

Issued at Washington, DC, on February 7, 1989.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 89-3352 Filed 2-10-89; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL HOME LOAN BANK BOARD

Baltimore Federal Financial, FSA, Baltimore, MD; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A)(i), of the Home Owner's Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A)(i), and 12 U.S.C. 1701c (c)(2)(1982), as amended, the Federal Home Loan Bank Board has duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Baltimore Federal Financial, FSA, Baltimore, Maryland, on February 7, 1989.

Dated: February 8, 1989.

By the Federal Home Loan Bank Board.

John M. Buckley, Jr.,

Secretary.

[FR Doc. 89-3254 Filed 2-10-89; 8:45 am]

BILLING CODE 6725-01-M

FEDERAL MARITIME COMMISSION

Inquiry Into Laws, Regulations and Policies of the Republic of Korea Affecting Shipping in the United States/Korea Trade

The Commission, by notice published August 26, 1988 (53 FR 32663), established January 30, 1989, as the date for the filing of comments in the above-captioned Inquiry.

American President Lines, Ltd. ("APL") has now submitted a request for an extension of the response date to March 17, 1989. As basis for the request, APL cites the January 26, 1989, issuance by the Korean Maritime Port Administration of a "draft" of its enforcement regulations implementing the recently enacted Maritime Transportation Business Act. APL believes that the additional time is needed to assess the impact of the new regulations and their effect on this inquiry. Sea-Land Service, Inc. subsequently submitted a similar request for an extension of time. Also, the Maritime Administration has indicated a need for additional time to further assess the new regulations.

Good cause having been shown, the Commission shall extend the time for responses to the August 23, 1988 Notice until March 17, 1989.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 89-3341 Filed 2-10-89; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200060-005.

Title: Port of New Orleans Terminal Agreement.

Parties:

Port of New Orleans

Coastal Cargo Company

Synopsis: The Agreement exercises an option in the basic lease agreement to cancel the rental of sections 61 through 70 of the Galvez Street Wharf and have the rent reduced proportionately.

Agreement No.: 224-200218.

Title: South Carolina State Ports Authority Terminal Agreement.

Parties:

South Carolina State Ports Authority (Authority)

Pharos Line, S.A. (Pharos)

Synopsis: The Agreement provides that the Authority will discount certain container service rates for Pharos' containers and chassis at the Authority's Columbus Street Terminal. It also provides for Pharos to pay wharfage at rates based on a guarantee of 50,000 tons of cargo per contract year. Pharos also agrees to provide an ocean liner service at the Port of Charleston.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: February 8, 1989.

[FR Doc. 89-3340 Filed 2-10-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Capitol Bancorp, Ltd., et al.; Notice of Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 3, 1989.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Capitol Bancorp, Ltd.*, Lansing, Michigan; to engage *de novo* through its subsidiary, CNB Mortgage Corporation, Lansing, Michigan, in making, acquiring, and servicing loans or other extensions of credit for the company's account or for the account of others such as would be made by a mortgage corporation pursuant to § 225.25(b)(1) of the Board's Regulation Y.

2. *First Independence Corporation*, Detroit, Michigan; to engage *de novo* through its subsidiary, First Independence Leasing Corporation, Detroit, Michigan, in leasing personal or real property or acting as agent, broker or adviser in leasing such property pursuant to § 225.25(b)(5) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 7, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-3237 Filed 2-10-89; 8:45 am]

BILLING CODE 6210-01-M

Indian River Banking Co. et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 3, 1989.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Indian River Banking Company*, Vero Beach, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Indian River National Bank, Vero Beach, Florida.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *FNB Bancshares, Inc.*, Iron Mountain, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Iron Mountain, Iron Mountain, Michigan.

2. *First Southeastern Banc Group, Inc.*, formerly Darman Financial of Minnesota, Inc., Harmony, Minnesota; to acquire 100 percent of the voting shares of Fillmore County Bancshares, Inc., Canton, Minnesota, and thereby indirectly acquire Canton State Bank, Canton, Minnesota.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First National Insurance Agency, Inc.*, Exeter, Nebraska; to acquire 14 percent of the voting shares of First National Bank of Exeter, Exeter, Nebraska.

Board of Governors of the Federal Reserve System, February 7, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-3238 Filed 2-10-89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 27, 1989.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoening, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Steven O'Brate*, Andrews, Texas; to acquire 45.95 percent of the voting shares of Ingalls Insurance Agency, Inc. Ingalls, Kansas, and thereby indirectly acquire Ingalls State Bank, Ingalls, Kansas.

Board of Governors of the Federal Reserve System, February 7, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-3236 Filed 2-10-89; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: JANUARY 23, 1989 AND FEBRUARY 3, 1989

Name of acquiring person, name of acquired person, name of acquired entity	FMN No.	Date Terminated
Varian Associates, Inc., Raytheon Company, The Machlett Laboratories, Incorporated	89-0144	01/23/89
Perstorp AB, Dr. Rex Spendlove, HyClone Laboratories, Inc.	89-0625	01/23/89
The Teachers' Retirement System of Alabama, The Liberty Corporation, Cosmos Broadcasting Corporation	89-0644	01/23/89
The Employees' Retirement System of Alabama, The Liberty Corporation, Cosmos Broadcasting Corporation	89-0645	01/23/89
Merv Griffin, c/o The Griffin Group, Inc., Robert Fish, Federal Communications Corporation	89-0651	01/23/89
Warburg, Pincus Capital Company, L.P., Native Plants Incorporated, Native Plants Incorporated	89-0664	01/23/89
Burlington Resources, Inc., Doyle Hartman, Doyle Hartman	89-0669	01/23/89
Mitsuo Kokufu, Alexander & Baldwin, Inc., Wailea Development Company, Inc.	89-0671	01/23/89
The Broken Hill Proprietary Company Limited, Pacific Resources, Inc., Pacific Resources, Inc.	89-0676	01/23/89
MAPCO Inc., B.W. Simpkins Trust, Simpkins & Sheriff Enterprises, Inc.	89-0680	01/23/89
MAPCO, Inc., F.A. Sheriff Trust, Simpkins & Sheriff Enterprises, Inc.	89-0689	01/23/89
The Broken Hill Proprietary Company Limited, Pacific Resources, Inc., Pacific Resources, Inc.	89-0692	01/23/89
The Broken Hill Proprietary Company Limited, Pacific Resources, Inc., Pacific Resources, Inc.	89-0693	01/23/89
Neil D. Gascon, R.A. Homes, Inc., R.A. Homes, Inc.	89-0694	01/23/89
CBS, Inc., Federal Enterprises, Inc., Federal Broadcasting Company	89-0661	01/24/89
BIA-COR Holdings, Inc., AMR Corporation, American Airlines, Inc.	89-0666	01/24/89
Japan Petroleum Exploration Co., Ltd., Veba A.G., Mark Producing, Inc.	89-0681	01/24/89
Chevron Corporation, Kaiser Steel Resources Inc., Kaiser Coal Corporation	89-0697	01/24/89
BTR plc, Schlegel Corporation, Schlegel Corporation	89-0628	01/25/89
Morris Dabah, Robert Campeau, The Children's Place Retail Stores, Inc.	89-0662	01/25/89
Intercontinental Affiliates, Itel Corporation, Equilease Corporation	89-0673	01/25/89
Consolidated Natural Gas Company, Veba AG, Mark Producing, Inc.	89-0676	01/25/89
W.R. Grace & Co., United Medical Corporation, Renal Care Centers Corporation	89-0613	01/26/89
Athlone Industries, Inc., Athlone Industries, Inc., Jessup Steel Company	89-0674	01/26/89
W.R. Grace & Co., Den norske Creditbank, Den norske Creditbank	89-0686	01/26/89
Finmeccanic Societa Finanziaria P.A., D.U. Howard and Georganna Howard, The Dee Howard Co.	89-0622	01/27/89
Saratoga Partners II, L.P., James E. Doucette, Cablevision of Texas and Cablevision of Texas II, LP	89-0636	01/27/89

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: JANUARY 23, 1989 AND FEBRUARY 3, 1989—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date Terminated
Inland Steel Industries, Inc., Robert T. Tranery, Processed Metals, Inc.	89-0682	01/27/89
Robert A. Belfer (89-0682) and Arthur B. Belfer (90-0684), Enron Corp., Enron Corp.	89-0682	01/27/89
Arthur B. Belfer, Enron Corp., Enron Corp.	89-0684	01/27/89
Trusthouse Forte PLC, Plaza of the Americas Ltd., Plaza of the Americas Ltd.	89-0902	01/27/89
RBI Acquisition Corp., RB Industries, Inc., RB Industries, Inc.	89-0903	01/27/89
McLane Company, Inc., The Circle K Corporation, The Circle K Corporation	89-0904	01/27/89
Columbia Real Estate Investments, Inc., Pacific Savings Bank, PSB Financial Corp. II	89-0906	01/27/89
Fred Wehba, JWC Associates L.P., United Concrete Pipe Corporation	89-0907	01/27/89
Royal Dutch Petroleum Company, William J. McEnery, Gas City, Ltd. et al.	89-0916	01/27/89
Giant Group, Inc., Barris Industries, Inc., Pomona Acquisition, Corp.	89-0924	01/27/89
Blue Cross and Blue Shield of New Jersey, Inc., Plan Investment Fund, Inc., Plan Investment Funds, Inc.	89-0934	01/27/89
James M. Hoak, Actmedia, Inc., Actmedia, Inc.	89-0941	01/27/89
James M. Hoak, Actmedia, Inc., Actmedia, Inc.	89-0942	01/27/89
James M. Hoak, Actmedia, Inc., Actmedia, Inc.	89-0948	01/27/89
Gesellsperkilden Keelue-Cleelie-Preddi, Richard O. Wheeler, Union Mortgage Company, Inc	89-0966	01/27/89
Wasserstein Perella Partners, L.P., Tenneco Inc., Tenneco Oil Company	89-0985	01/30/89
Unilever N.V., Estate of Walter Langer, Eryan Perfumes	89-0990	01/30/89
Expamet International PLC, Ronald B. Gottsegen, Radionics, Inc.	89-0919	01/30/89
Expamet International PLC, Ronald B. Gottsegen, Radionics, Inc.	89-0952	01/30/89
Hargro Enterprises, Inc., Bowater Industries, plc, Recham Corporation	89-0929	01/31/89
Brierley Investments Limited, Tidewater Inc., Tidewater Inc.	89-0954	01/31/89
Kenneth R. Thomson, John Wiley & Sons, Inc., Milady Publishing Corporation	89-0910	01/31/89
Odyssey Partners, Wickes Companies, Inc., certain subsidiaries of Wickes	89-0911	01/31/89
Wolseley plc, Joseph C. Addington, Jr., Addington-Beaman Lumber Company, Inc.	89-0914	01/31/89
Manville Corporation, Olympic Packaging, Inc., Olympic Packaging, Inc.	89-0943	01/31/89
Silgan Corporation, Alen Packaging, Inc., Alen Packaging, Inc.	89-0878	02/01/89
SantaFe HealthCare, Inc., Lincoln National Corporation, Lincoln National Health Care Insurance Company	89-0896	02/01/89
Hansen PLC, Cummins Engine Company, Inc., Cummins Engine Company, Inc.	89-0856	02/02/89
Evode Group p.l.c., Charles N. Giles, Jr., Gary Chemical Corp.	89-0937	02/02/89
Airgas, Inc., Cubic Corporation, G.S. Parsons, Co.	89-0957	02/03/89
Geodyne Resources, Inc., Houston Industries Incorporated, Primary Fuels, Inc. (assets)	89-0921	02/03/89
NCNB Corporation, First RepublicBank Corporation, First RepublicBank Life Insurance Company	89-0945	02/03/89
Chemical Banking Corporation, Nexar, Inc., Nexar, Inc.	89-0947	02/03/89
Exxon Corporation, a New Jersey Corporation, Oil Holding, Inc., Oil Holding, Inc.	89-0954	02/03/89
Rupert Earl Phillips, Gannett Co., Inc., Fremont Newspapers, Inc. and The Sturgis Journal, Inc.	89-0957	02/03/89
Trilex USA Associates, Cable Systems USA, Associates, Cable Systems USA, Associates	89-0987	02/03/89

FOR FURTHER INFORMATION CONTACT:
Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, DC 20580, (202) 326-3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 89-3228 Filed 2-10-89; 8:45 am]

BILLING CODE 6750-01-M

GENERAL SERVICES ADMINISTRATION

[G-89-1]

Delegation of Authority to the Secretary of State

1. Purpose. This delegation authorizes the Secretary of State to audit and retain documents other than international freight and passenger transportation documents paid by the Department of State overseas offices.

2. Effective date. This delegation is effective January 1, 1988.

3. Expiration date. This document expires on December 31, 1990.

4. Delegation. a. Pursuant to the authority vested in me by section 322 of the Transportation Act of 1940, as amended (31 U.S.C. 3726), authority is delegated to the Secretary of State to audit and retain in the Department of State overseas offices those transportation vouchers and related documents (1) paid at overseas offices for other than international services, and (2) non-English language documents for international services, subject to test verifications and reviews by the General Services Administration.

b. The Secretary of State may redelegate this authority to any officer, official, or employee of the Department of State.

c. This authority shall be exercised in accordance with the policies, procedures, and controls prescribed by the General Services Administration and shall be exercised in cooperation with the responsible officers, officials, and employees thereof.

Dated: February 1, 1989.

Richard G. Austin,

Acting Administrator of General Services.

[FR Doc. 89-3244 Filed 2-10-89; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Expansion of Grants To Support Health Resources and Services Administration Sponsored Education and Training Centers To Include Training on the Mental Health Aspects of AIDS

AGENCY: National Institute of Mental Health, HHS.

ACTION: Notice of limited eligibility.

SUMMARY: The National Institute of Mental Health announces the availability of Grants to Support Health Resources and Services Administration (HRSA) Sponsored Education and Training Centers to Include Training on the Mental Health Aspects of AIDS, under Request for Applications MH-89-19. These grants will be made under the authority of section 303, of the Public Health Service Act, (42 U.S.C. 242a), which authorized grants to State or local agencies, laboratories, and other public or nonprofit agencies and institutions and to individuals.

The goal of this program is to enhance the nation's AIDS training capability through the integration of training in mental health (e.g., neuropsychiatric and psychosocial) aspects of AIDS into the 13 HRSA Education and Training Centers. Each grantee will conduct comprehensive programs that deal with coping with HIV infection and AIDS; approaches to prevent the spread of HIV infection; and neuropsychiatric aspects of HIV infection and AIDS.

In fiscal year 1989, NIMH will fund approximately 4–5 grants, with up to $1.2 million in available funds. Each grant will be for a maximum of three years support.

NIMH is limiting potential applicants under the Request for Applications to the 13 Education and Training Centers (ETCs) currently supported by HRSA. The ETCs train primary care providers on aspects of the care of AIDS patients and HIV infected individuals. The eligibility is limited because the purpose of this program is to integrate training on the mental health aspects of HIV infection and AIDS into the ongoing health training of the ETCs.

For additional program guidance, potential applicants should contact:

Ellen Stover, Ph.D., Director, Office of AIDS Programs, National Institute of Mental Health, Room 17C-06, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (303) 443-7281, or

Melvyn R. Haas, M.D., Chief, Psychiatry Education Program, Division of Education and Service Systems Liaison, National Institute of Mental Health, Room 7C-06, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-2120.

The Catalog of Federal Domestic Assistance number for this program is 13.244.

Joseph R. Leone,

Associate Administrator for Management, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 89-3320 Filed 2-10-89; 8:45 am]

BILLING CODE 4160-20-M

Clinical Training Grants for Physician and Nursing Faculty Development in Alcohol and Other Drug Abuse

AGENCY: National Institute on Alcohol Abuse and Alcoholism; National Institute on Drug Abuse.

ACTION: Notice of limited eligibility.

SUMMARY: The National Institute of Alcohol Abuse and Alcoholism (NIAAA) and the National Institute on Drug Abuse (NIDA) announce the availability of Clinical Training Grants for Physician and Nursing Faculty Development in Alcohol and Other Drug Abuse, under Request for Applications AA-89-04. These grants will be made under the authority of section 508 (b)(11), of the Public Health Service Act, 42 U.S.C. 290aa-6(b), which authorizes grants to "schools of health professions, schools of allied health professionals, schools of nursing and schools of social work . . ." to conduct alcohol and other drug abuse clinical training and to develop appropriate curricula and training materials.

The goal of the program is to develop a cadre of academically based nurse and physician faculty who will provide leadership within their clinical departments in alcohol and other drug abuse clinical teaching. Each applicant will identify three to five faculty fellows, each representing a different clinical department, to participate in a three year training program. The training programs includes both individual and group instructional activities, which address alcohol and drug abuse expertise, knowledge of research, and pedagogical skills. Faculty fellows are required to implement alcohol and drug abuse curricula in their respective departments as part of the three year training program. Funds are also available for an additional two years to support program evaluation activities.

In fiscal year 1989, NIAAA and NIDA will fund approximately 6–10 grants, with up to $1.1 million dollars in available funds. Each grant will be for a maximum of five years support.

NIAAA and NIDA are limiting potential applicants under this Request for Applications to schools of medicine, osteopathy and nursing; only one award will be made to each school. This is because curriculum guidelines and models have already been developed for use by medical and nursing schools and the primary objective of the current program is to promote the implementation of these curricula by medical and nursing faculty. Physicians and nurses exercise a critical role in the prevention, early recognition, treatment and/or referral of patients with alcohol and other drug abuse problems.

Medical and nursing schools previously or currently supported by NIAAA and NIDA to develop and implement curriculum models in alcohol and other drug abuse are also not eligible for support under this program. These schools have already been supported to conduct faculty development and curriculum implementation programs and cannot receive a second award for these activities.

For additional program guidance, potential applicants should contact:

Frances Cotter, M.P.H., Director, Health Professions Education Program, Division of Clinical and Prevention Research, National Institute on Alcohol Abuse and Alcoholism, Room 16-C-10 Parklawn Building, 5600 Fishers Lane, Rockville, Md. 20857, (301) 443-1207

Dorynne Czechowicz, M.D., Associate Director for Medical and Professional Affairs, Office of Science, National Institute on Drug Abuse, Room 8A-54 Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-0441.

The Catalog of Federal Domestic Assistance number for this program is 13.274.

Joseph R. Leone,

Associate Administrator for Management, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 89-3240 Filed 2-10-89; 8:45 am]

BILLING CODE 4160-20-M

Clinical Training Grants for Physician and Nursing Faculty Development in Alcohol and Other Drug Abuse

AGENCY: National Institute on Alcohol Abuse and Alcoholism, National Institute on Drug Abuse.

ACTION: Notice of Request for Applications.

Introduction

Problems associated with the use of alcohol and other drugs are widespread, resulting in extremely high costs to society. Studies indicate that many physicians are ambivalent concerning their role in diagnosing and treating patients with alcohol and other drug abuse problems, and have a low rate of problem recognition. Reasons cited for physicians' reluctance to intervene with patients with alcohol and other drug abuse problems include negative attitudes, pessimism about the possibility of recovery, and lack of confidence in their clinical skills to manage patients with these problems (Kamerow, 1986; Rohman, 1987). Physicians and nurses constitute a large manpower pool that can have substantial impact on the prevention and management of alcohol and other drug abuse problems. These health professionals are in a unique position to provide routine screening for alcohol and drug abuse and to provide general health counseling concerning alcohol and drug use and abuse. There is a need to ensure that all medical and nursing

schools provide appropriate clinical training in alcohol and other drug abuse.

Alcohol and drug abuse education assessment studies conducted by six national medical specialty organizations highlight the need to incorporate alcohol and other drug abuse instruction throughout their preclinical and clinical teaching programs. One of the major impediments to effective alcohol and drug teaching cited in these reports is the lack of skilled faculty who can serve as role models for clinical teaching. A recent survey of alcohol and drug abuse education in schools of nursing indicated that these topics receive insufficient attention in the nursing curriculum (Hoffman,1987).

The National Institute on Alcohol Abuse and Alcoholism (NIAAA) and the National Institute on Drug Abuse (NIDA) recognize the critical role of medical and nursing schools in training health providers to efectively recognize, diagnose, intervene, treat and/or refer alcohol and other drug abuse problems. The Institutes seek to stimulate these schools to conduct faculty development programs to address this need. To assist schools in this objective, NIAAA and NIDA have supported the development of curriculum models, designed to demonstrate methods of integrating alcohol and drug abuse instruction into medical and nursing clinical training programs. The model curricula are based upon discipline-specific knowledge and skill objectives, and address undergraduate, graduate, and faculty training needs. Curriculum models address the following medical specialties: General Internal Medicine, Family Medicine, Psychiatry, Pediatrics, and OB/GYN. Within nursing, curriculum models are being developed for undergraduate core courses and for selected graduate nursing specialties. Information on these projects may be obtained directly from the curriculum model program directors (see attached list). A resource manual of sample curriculum models and instructional materials will be available from NIAAA in the Fall of 1989. The current issue of NIAAA's *Alcohol Health and Research World*, (Volume 13, No. 1, 1989) is devoted to alcohol and drug abuse clinical training. This issue is available from the National Clearinghouse on Alcohol and Drug Abuse Information (NCADI), P.O. Box 2345, Rockville, Maryland 20852, 301/468–2800.

In fiscal year 1989, NIAAA in consultation with NIDA, will make clinical training grant awards for Physician and Nursing Faculty Development in Alcohol and Drug Abuse. It is anticipated that up to $1.1 million will be available to support 6–10 projects. These projects will provide support to 3–5 academically based faculty fellows within a single institution to develop their expertise in alcohol and drug abuse, and to implement alcohol and drug abuse teaching as part of the ongoing clinical curriculum of their specialty. These projects will include two phases of activity: faculty training and curriculum implementation efforts (years 1–3) and assessment of impact of training and curriculum activities (years 4 and 5).

The statutory authority for anticipated awards in section 508(b)(11), of the Public Health Service Act (42 U.S.C. 290aa–6(b)).

Purpose

The purpose of this award is to develop a cadre of academically based nurse and physician faculty who will provide leadership within their clinical specialties/departments in alcohol and other drug abuse clinical training. It is expected that faculty fellows will develop expertise in the early recognition, diagnosis, treatment and/or referral of patients with alcohol and drug abuse problems; and will incorporate alcohol and drug abuse instruction as part of their ongoing clinical training responsibilities within their departments. In addition, faculty fellows at the awardee institution will work together, under the supervision of a sponsor, to assess curriculum needs and implement curricula in alcohol and drug abuse in their departments. Through this program, faculty fellows will develop expertise in the following areas:

- State-of-the-art prevention, screening, diagnosis, case management, and referral methods in alcohol and drug abuse;
- Current alcohol and drug abuse research methodologies and findings, and the application of these findings into clinical teaching and clinical practice;
- Application of state-of-the-art instructional materials and methodologies to clinical teaching;
- Implementing an alcohol and drug abuse curriculum as part of the ongoing clinical training of faculty fellows' departments.

The Faculty Development Program is not intended to support the preparation of those faculty seeking careers exclusively in research. Information regarding NIAAA and NIDA programs of support for advanced training for careers in research may be obtained by contacting individuals listed on pages 13 and 14.

Eligibility

Applications may be submitted by a school of medicine, a school of osteopathy, or a school of nursing. Schools of medicine, osteopathy and nursing must submit separate applications. Joint applications may not be submitted under this program.

Faculty fellow candidates must meet the following criteria:

- Hold an M.D., D.O., or graduate nursing degree,
- Be a U.S. citizen or permanent resident,
- Currently hold a full-time academic appointment at the assistant professor level or higher.

Individual currently or previously supported under NIAAA/NIDA faculty development programs, e.g., the Career Teacher or Curriculum Models Program, are not eligible for support as faculty fellows. Such individuals are eligible for support as program directors.

Institutions are particularly encouraged to identify women and minority faculty candidates. Only one award will be made to a school. Medical and nursing schools previously or currently supported by NIAAA and NIDA to develop and implement curriculum models in alcohol and other drug abuse are not eligible for support.

Special Application Characteristics

- Application must be complete and contain all information needed for review. No addenda will be accepted later than the closing date unless specifically requested by the executive secretary of the review committee.
- The narrative section should be written in a manner that is self-explanatory to outside reviewers who are unfamiliar with prior related activities of the applicant. It should be succinct and well organized, must not exceed 30 single-spaced pages, and must contain all information necessary for reviewers to understand the project. The 30-page limit is permitted in order to include all of the individual faculty training plans, as well as the description of the overall program. Applications exceeding the 30-page limit (on the narrative section) will not be accepted for review. Appendices may be attached for technical or specialized materials but may not be used merely to extend the narrative.

The following outline should be used to prepare a description of the training program in the narrative portion of the application. This will replace the general instructions for completing Section 2 A–D (Research Plan) of the PHS 398 grant application form.

1. Abstract

The narrative section of the application should be preceded by an abstract not to exceed two single-spaced typewritten pages. The abstract should clearly present the grant application in summary form, so that the reviewers can see how the multiple parts of the application fit together to form a coherent whole.

2. Program Plan

The applicant institution must describe the proposed faculty development program and include the following information:

- A conceptualization of the faculty development program, to include the need for the program and program goals and objectives. The applicant should provide a brief summary of the institution's existing alcohol and drug abuse curriculum and the curriculum development needs of the targeted departments.
- A review and critical assessment of two alcohol and drug abuse research areas and a discussion of how they can be incorporated as part of alcohol and drug abuse clinical teaching. The applicant should identify what alcohol and drug abuse research resources will be utilized to ensure that faculty fellows incorporate state-of-the-art research as part of their clinical teaching and practice.
- Identification of a minimum of three and a maximum of five faculty candidates, each representing different clinical departments to participate in the training program. Provide a concise description of the proposed faculty candidates, their role within their departments, and their manner of recruitment and selectiom for the program. Provide evidence that each faculty fellow will allocate a 15–20% level of effort each year throughout the training program, and is in a position to serve as a clinical role model within his/her discipline/specialty.
- A concise description of the overall program, which incorporates the proposed plan and scheduling for all major program components, including (1) group instruction and network development; (2) individual faculty training; and (3) coordinated curriculum implementation activities among the faculty fellows. Curriculum implementation activities should be sequenced as an intergral part of the faculty fellows training plan, beginning in year 2 of the program. Group instructional activities should utilize learner centered-approaches, and incorporate such methodologies as seminars, peer teaching, and collaborative projects, e.g., conducting curriculum needs assessment studies, developing curricula, and evaluating teaching technologies. The training plan should describe the local clinical teaching sites which will be utilized as an integral part of the faculty development program.

3. Faculty Fellow Candidates

Faculty fellow candidates should presently hold a full-time clinical faculty position, at least at the assistant professor level. Current clinical teaching responsibilities should be highlighted. Each faculty fellow candidate should submit a statement documenting his/her commitment to alcohol and drug abuse teaching, and demonstrating how this professional development program relates to long-range career goals.

Each faculty fellow should also submit a proposed 3-year training plan, not to exceed three pages in length, and include the following elements:

- An assessment of individual training needs with respect to (1) alcohol and drug abuse knowledge and clinical skills, (2) instructional technologies and pedagogical skills, and (3) knowledge of current alcohol and drug abuse research methodologies and findings.
- Proposed professional development activities, for each year of the 3-year award, to include on- and off-site training experiences. Faculty training may include short-term training courses and experiences at other academic institutions, but on-site and local community clinical training resources must be an integral part of the training plan. Expenses to support professional development activities (i.e., tuition, fees, travel, and per diem) and purchase of instructional materials must be detailed for each year of the training program.
- Proposed plan for implementing alcohol and drug abuse curricula within the fellow's department, including potential courses and sites for instruction and targeted level of training. An appropriate balance of alcohol and drug abuse instructional content must be evident.
- Proposed contributions to be made by the faculty fellow to the alcohol and drug abuse field, i.e., clinical applications of research, replication of existing curriculum models, evaluation approaches, and methodologies, etc.
- Statement of intent to participate in one off-site professional development meeting per year, sponsored by NIDA and NIAAA.

Faculty fellow training plans are part of the application narrative and should not be submitted as appendix material.

4. Program Director/Faculty Fellow Sponsor

The overall supervision and sponsorship of the faculty fellows will be the responsibility of the program director. The program director must ensure that faculty fellows have access to needed resources and expertise within their departments, and establish appropriate linkages with treatment facilities and other academic institutions. The applicant institution should provide a description of the role of the program director in overseeing the faculty development program including the program director's role regarding the following: (1) Directing the group instruction component of the program; (2) overseeing individual faculty fellow training activities, including curriculum implementation efforts; (3) ensuring access to and appropriate utilization of research resources; and (4) implementing program evaluation. The program director should indicate a minimum of 10% level of effort per year to the faculty development component of the project (Years 1–3). The applicant should submit a biographical sketch which demonstrates that the program director has expertise in alcohol and drug abuse clinical teaching. The applicant must demonstrate that the program director is knowledgeable in current alcohol and drug abuse research methodologies and findings, and in the application of this research to clinical teaching. The application should include a statement of intent from the program director to participate in one NIAAA/NIDA sponsored meeting each year of the grant.

5. Applicant Institution

The application should provide a concise description of the applicant institution, including its current educational, service, and research programs, emphasizing those in alcohol and drug abuse. The availability of established faculty as potential academic role models for the faculty fellows at the applicant and other institutions should be described. Additional resources such as established clinical, academic, and/or research centers or unique clinical service programs directed to alcohol and drug abuse should be included. The head or chair of each targeted department should provide evidence of commitment to the faculty fellow candidate and to the candidate's plan for implementation of an alcohol and drug abuse curriculum. This should include assurances that sufficient time will be made available to the faculty

candidate to undertake the training plan proposed. The dean of the sponsoring institution should also provide evidence of support for the faculty development program. Documentation should be provided regarding the continued commitment of the institution to the faculty fellows beyond the period of the grant award. Letters of support are to be submitted as appendices to the narrative.

6. Evaluation

Each application will include an evaluation component. The proposal should include an evaluation plan, comprising of the following: (1) An individual project process evaluation; and (2) an outcome evaluation of the impact of the training program on faculty trainees, on the clinical training programs of the targeted departments, and on the overall institution. Process evaluation should include a detailed description of the faculty trainees, targeted departments, educational settings and interventions during each phase of the project. The outcome evaluation should address changes in alcohol and drug abuse knowledge, clinical skills, and perceptions of competence of faculty candidates and students receiving training during the curriculum implementation phase. In addition, particular emphasis in the outcome evaluation should be placed on the impact of the curriculum implementation phase on clinical practice behavior, i.e., changes in practices related to patient screening, health counseling, diagnosis, intervention, case management, and referral in existing clinical settings, including ambulatory care settings. Assessment of the impact of the curriculum implementation phase on clinical practice behavior should be conducted with an experimental or quasi experimental design. The applicant will identify a local evaluation consultant to oversee evaluation activities throughout the 5-year grant period. The evaluation consultant's role should be described for each year of the project.

During years 4 and 5 of the proposed faculty development program, project activity will be limited to conduct of program evaluation. This is in order to allow the institution an adequate period of time to assess program impact following termination of faculty fellow support. The proposed budget for years 4 and 5 of the grant should reflect this change in program scope, and should not exceed $30,000 in total cost each year.

It is expected that evaluation design and methodology for both the process and outcome evaluation of the project will be completed by the end of the first year of the grant award. A national steering group comprised of evaluation experts and grantee representatives will develop a model evaluation format, which may assist grantees on conduct of their evaluation efforts. The applicant should provide assurance that the project director and evaluation consultant will participate in a meeting to develop a model evaluation format within 3 months of the grant award.

Allowable Costs, Terms, and Conditions of Support

Grants funded under this announcement are awarded directly to the institution, and *are limited to one per school.* The maximum period of support is 5 years. Plans for each year of the award, including detailed budgets, should be fully presented in the application and should reflect the change in program scope during year 4 and 5 of the project. Support beyond the first year is contingent upon the availability of funds and the receipt of an annual continuation application. Grant awards may not be renewed beyond the 5-year period of support.

During the first 3 years of the grant, a maximum of $10,000 (exclusive of fringe benefits) per year of grant funds may be used to support the salary of each faculty fellow and the program director. In addition to salary support, funds may be requested for tuition and travel expenses incurred for the training of fellows (including attendance at the NIAAA/NIDA-sponsored training meetings) and for instructional materials. Examples of other allowable direct cost expenses include limited amounts for administrative support, consultants (including evaluation consultant), equipment, supplies, and travel. All budget items must be fully justified at the level requested. All grants will be reimbursed at 8 percent of total allowable direct costs or actual indirect costs, whichever is less.

Grants described in this announcement are awarded directly to eligible schools. Funds may be used only for those expenses which are directly related and necessary to carry out the project and may be expended in conformance with DHHS cost principles, the Public Health Service Grants Policy Statement,[1] and conditions set forth in this document. Funds made available under this grant may not be used to supplant currently existing training or other support for such training.

As a condition of the award, the applicant will submit an annual continuation application which provides a summary of progress to date, plans for the next year, and an appraisal of each faculty fellow's progress. The applicant will provide information on specific areas of program activity, as requested by the Institutes in supplemental instructions to the continuation application.

Application Procedures

For questions of eligibility and for assistance in developing applications, prospective applicants should consult:

Frances Cotter, M.A., M.P.H., Director, Health Professions Training, NIAAA, Division of Clinical and Prevention Research, 5600 Fishers Lane, Room 16C10, Rockville, Maryland 20857, 301/443-1207

Dorynne Czechowicz, M.D., Associate Director for Medical and Professional Affairs, NIDA, Office of Science, 5600 Fishers Lane, Room 8A-54, Rockville, Maryland 20857, 301/443-0441

Applications (PHS 398, Rev. 9/86) must be complete and contain all information needed for initial and National Advisory Council Review. The title of the RFA Clinical Training Grant for Physician and Nursing Faculty Development in Alcohol and Other Drug Abuse should be typed in item number 2 on the face page of the applicaton form. No addenda will be accepted later, unless specifically requested by the executive secretary of the review committee. No site visits will be made.

Application kits (PHS 398) are available from: Division of Clinical and Prevention Research, NIAAA, 5600 Fishers Lane, Room 16C10, Rockville, Maryland 20857.

The original and four (4) copies of the application should be submitted by May 4, 1989 to: Division of Research Grants, National Institutes of Health, Westwood Building, Room 240, 5333 Westbard Avenue, Bethesda, Maryland 20892.

Due to the short time available for review, applicants are requested to send two (2) additional copies of the application by May 4, 1989 to: Office of Scientific Affairs, NIAAA, NIAAA Clinical Training Grants, Attn: Dr. Mark Green, 5600 Fishers Lane, Room 16C20, Rockville, Maryland 20857.

[1] Public Health Service Grants Policy Statement (rev. January 1, 1987), GPO-017-020-00092-7, available for $4.50 from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Review

Review Procedures

A dual review system will be used to ensure knowledgeable, objective review of the quality of applications. Initial peer review for scientific, educational, and/or technical merit will be by groups of non-Federal experts called Initial Review Groups (IRGs). Final review will be by the National Advisory Council on Alcohol Abuse and Alcoholism. Council review may be based upon policy considerations in addition to technical merit.

Review Criteria

Each grant application will be evaluated on its own merits. The following basic criteria will be used:

• Institutional Environment and Support. The applicant institution must show evidence of:

—Commitment of the dean and department chairs to the career development of the potential faculty fellows
—Commitment to implement curriculum in alcohol and other drug abuse
—Existence of suitable adequate clinical and academic facilities
—Assurances that faculty fellows will have sufficient release time for grant-related activities.

• Qualifications of Program Director:

—Suitability and quality of academic, clinical and/or research background and experience, and appropriateness as role model
—Ability to advise and assist fellows in effecting curriculum changes.

• Qualifications and Potential of Faculty Fellow Candidates:

—Appropriate faculty status
—Ability to provide faculty leadership upon termination of grant
—Demonstrated commitment to medical education in alcohol and other drug abuse
—Compatibility among individual career goals, grant intent, and institutional goals
—Suitability and quality of academic, clinical, and/or research background and experience as related to the grant proposal
—Background and potential as clinical role model.

• Quality of Program Plan:

—Adequately demonstrates a need for curriculum development in alcohol and other drug abuse
—Appropriately addresses all major program components, including group instructional activities, individual faculty training plans and curriculum implementation activities, and the relationship of these components to program goals
—Demonstrates an understanding of the application of alcohol and drug research to clinical teaching and identifies approprate research resources as an integral part of the proposed training program
—Appropriate balance of alcohol and drug abuse instructional content
—Reasonable potential for accomplishment of program goals.

• Quality of Individual Faculty Training Plans:

—Appropriately address candidate's individual training needs
—Reflect an appropriate balance of didactic and clinical training experiences, and incorporate alcohol and drug abuse treatment facilities as an integral component of training
—Plan for implementing alcohol and drug abuse instruction is clearly outlined and has reasonable potential for accomplishment.

• Adequacy of proposed evaluation plan and capability of proposed evaluation consultant.

• Appropriateness of proposed budget and other resources identified to carry out project activities.

This announcement is not subject to the intergovernmental review requirements of Executive Order 12372 as implemented through DHHS regulations at 45 CFR Part 100.

Receipt and Review Schedule

Receipt of application	IRG review	Advisory council review	Start date
May 4, 1989.	June/July 1989.	Sept. 1989	Sept. 1989.

Applications received after the deadline specified above will be considered ineligible and will be returned to the applicant.

Award Criteria

The responsibility for award decisions on applications recommended for approval by the National Advisory Council on Alcohol Abuse and Alcoholism lies solely with authorized program staff. NIAAA and NIDA program staff will use the following criteria in making funding decisions on applications recommended for approval:

• Technical merit of the proposed project as determined during the review process.

• Appropriate balance across medicine and nursing.

• Geographic distrubution.

• Availability of funds.

Adamha Support for Research Training

Information on ADAMHA program announcements directed exclusively to alcohol and other drug abuse research training can be obtained from the following sources:

NIAAA:

Richard Fuller, M.D., Director, Division of Clinical and Prevention Research, NIAAA, 5600 Fishers Lane, Room 16C10, Rockville, Maryland 20857, (301) 443-1208

W. Sue Badman Shafer, Ph.D., Acting Director, Division of Basic Research, NIAAA, 5600 Fishers Lane, Room 14C-10, Rockville, Maryland 20857, 301/443-2530

Mary Dufour, M.D., M.P.H., Chief, Epidemiology Branch, Division of Biometry and Epidemiology, NIAAA, 5600 Fishers Lane, Room 14C26, Rockville, Maryland 20857, 301/443-4897

NIDA:

Charles W. Sharp, Ph.D., Chair, Research Training Committee, Division of Preclinical Research, NIDA, 5600 Fishers Lane, Room 10A-31, Rockville, Maryland 20857, 301/443-6300

Robert J. Chiarello, M.D., Medical Officer, Treatment Research Branch, Division of Clinical Research, NIDA, 5600 Fishers Lane, Room 10A-30, Rockville, Maryland 20857, (301) 443-1514

Catherine S. Bolek, M.S., Program Director, Minority Research Training Center, Office of Science, NIDA, 5600 Fishers Lane, Room 8A-54, Rockville, Maryland 20857, 301/443-0441.

The Catalog of Federal Domestic Assistance number for this program is 13.274.

Joseph R. Leone,

Associate Administrator for Management, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 89-3239 Filed 2-10-89; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

[Docket No. 88N-0394]

Generic Animal Drug and Patent Term Restoration Act; List of Currently Approved Drugs; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a list of new animal drugs that have been approved for safety and effectiveness before the date of

enactment of the Generic Animal Drug and Patent Term Restoration Act (the new law). The new law requires that such a list be made available within 60 days of enactment.

DATE: Comments by March 15, 1989.

ADDRESSES: Submit written requests for single copies of the list to the Industry Information Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. (Send two self-addressed adhesive labels to assist the staff in processing your requests.) Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard B. Talbot, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4313.

SUPPLEMENTARY INFORMATION: On November 16, 1988, the President signed into effect the new law (Pub. L. 100–670, 102 Stat. 3971). The new law extends eligibility for the submission of abbreviated new animal drug applications (ANADA's) to drug products first approved after the 1962 Amendments to the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*). The new law also provides for the extension of patents covering animal drugs.

The new law requires that FDA publish and make available to the public a list in alphabetical order of the official and proprietary name of each new animal drug which has been approved for safety and effectiveness. FDA's Center for Veterinary Medicine (CVM) has completed the first such list and is making it available. This first list has two sections. The first section lists in alphabetical order the proprietary name (trade name) of each new animal drug application (NADA) that was approved for safety and effectiveness prior to January 15, 1969, and that is currently in effect. Also included in this section are the NADA number and the name of the sponsor holding the approval for that approved drug product. The second section lists in alphabetical order each active ingredient, with the trade name, the NADA number, and the sponsor's name for each approved product containing the ingredient.

Because of time limitations, CVM is unable to ensure that this first list is accurate in all respects. CVM will continue to review the list, and will make any necessary corrections in future editions of the list. For example, CVM is reviewing certain of the drugs that were approved prior to 1962 and that are included in the first list to determine whether the drugs should be taken off the list. CVM invites interested persons to identify any drugs they believe are erroneously listed or omitted from the list. Such information should be sent to the Office of New Animal Drug Evaluation (HFV–100), Center for Veterinary Medicine, 5600 Fishers Lane, Rockville, MD 20857.

As required by the new law, the list will be revised every 30 days to include any new information that has become available during the 30-day period. In addition, patent information that has been submitted under provision of the new law will be included in future revisions of the list. Notices of availability of the revised list will not be published in the **Federal Register** each month but will be published only as needed to announce the availability of significant revisions of the list. CVM is in the process of making arrangements for the publication and distribution of the list by an organization outside the FDA. In the meantime, the revised lists will be available for public examination at the Dockets Management Branch (address above).

Interested persons may, on or before March 15, 1989, submit to the Dockets Management Branch (address above) written comments regarding the list. Two copies of any comments should be submitted, except that individuals may submit one copy. Any comments and other information on this topic are available for public examination at the Dockets Management Branch and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

Written requests for single copies of the list are to be submitted to the Industry Information Staff (address above).

Dated: February 3, 1989.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–3248 Filed 2–10–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 88M–0436]

GV Medical, Inc.; Premarket Approval of the LASTAC® System

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is annoucing its approval of the application by GV Medical, Inc., Minneapolis, MN. for premarket approval, under the Medical Device Amendments of 1976, of the LASTAC® System. After reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant by letter of December 9, 1988, of the approval of the application.

DATE: Petitions for administrative review by March 15, 1989.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Tara A. Ryan, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7371.

SUPPLEMENTARY INFORMATION: On March 7, 1988, GV Medical, Inc., Minneapolis, MN 55441, submitted to CDRH an application for premarket approval of the LASTAC® System. Specifically, the LASTAC® System is comprised of a laser and catheter through which laser energy passes to ablate arterial plaque. The LASTAC® System is indicated via percutaneous or "open" (cutdown) approach using flouroscopic guidance as an adjunct to routine peripheral balloon dilatation techniques for the treatment of occlusive peripheral artery disease for the iliac, femoral, and popliteal arteries. Specifically, the use of this device is recommended principally for, but is not limited to, cases in which successful reestablishment of blood flow would not be expected using conventional angioplasty techniques.

On September 16, 1988, the Circulatory System Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On December 9, 1988, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evalution, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon writen request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Tara A. Ryan (HFZ–450), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 [21 CFR Part 12] of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before March 15, 1989, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: February 2, 1989.

Walter E. Gundaker,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 89–3247 Filed 2–10–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 88N–0030]

Public Meeting; Seafood Safety as Related to Cooked and Processed Seafood

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Northeast Region, is announcing a public meeting with the seafood industry and other interested persons to discuss a number of agency concerns relating to public health aspects of cooked and processed seafood.

DATES: The meeting will be held on Wednesday, March 8, 1989, from 4:30 p.m. to 7 p.m. Interested persons unable to attend may submit written comments on the issues outlined in this notice by April 14, 1989.

ADDRESSES: The meeting will be held in Rm. 200, Hynes Convention Center, 900 Boylston St., Boston, MA 02115. Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, referencing the docket number found in the heading of this notice.

FOR FURTHER INFORMATION CONTACT: Edward J. McDonnell, Food and Drug Administration (HFR–NE200), One Montvale Ave., Stoneham, MA 02180, 617–279–1476.

SUPPLEMENTARY INFORMATION: The meeting is being sponsored by FDA's Northeast Regional Office, in accordance with 21 CFR 10.65(b), to discuss with the seafood industry and other interested persons the agency's concerns raised by its inspectional and analytical findings relating to cooked and processed seafood.

Issues to be discussed will include:

1. Microbiological contamination of ready-to-eat or heat-and-serve seafood products;

2. Public health concerns relating to these products;

3. Improved processing practices for these products;

4. Strategies for protecting the consumer from associated health risks.

FDA is inviting all interested persons to participate in this meeting. Interested persons who will be unable to attend the meeting may submit to the Dockets Management Branch (address above) written comments that set forth their views on the issues outlined in this notice.

Dated: February 6, 1989.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–3249 Filed 2–10–89; 8:45 am]

BILLING CODE 4160–01–M

Public Health Service

National Research Service Awards for Research in Primary Medical Care; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of authority to the Administrator, Health Resources and Services Administration, by the Assistant Secretary for Health on January 17, 1989, the Administrator, Health Resources and Services Administration, has delegated to the Director, Bureau of Health Professions, with authority to redelegate, the authority under Title IV, section 487(d)(3), of the Public Health Service Act (42 U.S.C. 288d), as amended, pertaining to National Research Service Awards for research in primary medical care, excluding the one-half of one percent for payments under National Research Service Awards made for health services research by the National Center for Health Services Research and Health Care Technology Assessment under section 304(a)(3). This delegation also excluded the authority to promulgate regulations, submit reports to the President or the Congress, approve organizational changes at the division level and above, establish national advisory councils and boards, and select members of national advisory councils and boards.

Effective Date: This delegation was effective on February 2, 1989.

Date: February 2, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89–3319 Filed 2–10–89; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N–89–1929]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office

of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washigton, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). It is also requested that OMB complete its review within seven days .

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: February 1, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Survey of Tenants in Certain Properties with HUD-Held and Foreclosed Mortgages

Office: Housing

Description of the Need for the Information and Its Proposed Use: This information will help the Department to determine how many units must be made available for low- and moderate-income tenants after a mortgage is assigned by HUD. This data collection effort is required by Section 181 of the 1987 Housing and Community Development Act, as amended.

Form Number: HUD–9934, 9934A, and 9934B

Respondents: Individuals or Households, Businesses or Other For-Profit, and Small Business or Organization

Frequency of Submission: On Occasion

Reporting Burden:

One-Time Burden in 1989 for Currently HUD-Held Inventory	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Project Owners							
HUD–9934	724		1		4		2,896
HUD–9934A	724		1		.25		181
HUD–9934B	724		1		1.5		1,086
Subtotal							4,163
Tenants							
HUD–9934	86,913		1		.066		5,736
Total							9,899

Annual Burden for Mortgages Newly Assigned to HUD or Foreclosed	Number of Respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Project Owners							
HUD–9934	[1] 85		1		4		340
HUD–9934A	86		1		1.5		128
HUD–9934B	85		1		.25		21
Subtotal							489
Tenants							
HUD–9934	9,086		1		.066		597
Total							1,086

[1] Assuming 75 assignments and 10 foreclosures per year.

Total Estimated Burden Hours: 10,965

Status: New

Contact: James J. Tashash, HUD, (202) 426–3944; John Allison, OMB, (202) 395–6880.

Date: February 1, 1989.

Supporting Statement—Justification for Information Collection Associated With the Survey of Tenants in Certain Projects With HUD-Held and Foreclosed Mortgagees

1. Section 181 of the Housing and Community Development Act of 1987 (The Act), as amended, requires the Department to preserve HUD-held and HUD-owned multifamily housing projects so that they are available to and affordable by low- and moderate-income persons. The Act provides that the Department must determine how many units are occupied by low- and moderate-income persons on the date the mortgage is assigned to HUD and again on the date it is foreclosed. The Department has a commitment under the Act to preserve the greater number of units determined on these two dates. In addition to the Department's commitment to provide for low- and moderate-income persons, the Act specifically requires the Department to provide assistance under the Section 8 program for those units that are occupied by lower income families eligible for Section 8 assistance.

The Department has responsibility under the Section 8 program (Section 8 of the Housing Act of 1937) to maximize the use of subsidy funds. It also has responsibility under the act to manage and preserve housing for low- and moderate-income persons. The subject data collection effort is necessary to help the Department achieve these goals.

Specifically, the Department must determine the number of units occupied by lower income persons with incomes between 0 and 80 percent of median income. This will give the Department the number of units for which the Department must provide Section 8 assistance under the Act. In addition, the Department must also determine the number of units occupied by moderate income persons with incomes between 81 and 120 percent of median income. This will help the Department to determine the need by moderate income persons for housing in these projects.

In projects with mortgage interest subsidy and projects with rental subsidy for 100 percent of the units, the Department assumes that all units are occupied by low and moderate income tenants. The Department has adequate information available on these projects to determine the number of Section 8 units to allocate. Therefore, no additional data collection is necessary.

In projects that have a rental subsidy contract tied to only some of the units, the Department assumes that the units covered by the subsidy contract are occupied by low and moderate income tenants. However, neither the Department nor owners have any way of knowing the incomes of tenant in units that are not covered by a subsidy contract. Because of the unavailability of information on units not covered by a subsidy contract and because the Act specifically refers to the actual number of units occupied by low income persons, we have determined that this information can only be acquired through a survey of tenants by owners.

2. The Department will use this information to determine how many units to make available for low- and moderate-income persons while a mortgage is HUD-held and then after it is foreclosed. The Department is asking owners to report tenant incomes as the following percentages of median income: 0–50; 51–80; 81–95; 96–120; above 120. This breakdown of tenant income mix will assist the Department in committing the necessary budget authority to provide assistance for the units occupied by Section 8 eligible tenants and will provide the Department with the necessary information so that it can develop and apply different strategies to assure that units continue to be made available and affordable to low and moderate income persons.

Failure to collect this data would result in noncompliance with the Act and would prevent the Department from fulfilling its responsibility of effectively managing its programs.

3. We have not given consideration to the use of improved information technology to reduce the reporting burden on owners. There are no automated systems currently in use that could assist with the owners' effort. Since income data is not collected on tenants paying market rent, none of the Department's automated systems contain the required data. Further, the Act requires us to survey every tenant not known to be low or moderate income. It does not permit us to estimate the number of units to be assisted based on a sample of current tenants.

4. We are not requiring owners of subsidized properties to survey tenants, since all of the units are considered to be for low and moderate income persons. Owners of partially subsidized properties must survey only those tenants who are not receiving any assistance (tenants for whom the owner does not have a current HUD 50059 on file). Owners of unsubsidized properties must survey all tenants. With this approach we assure that owners survey only those tenants who are not known already to be low- or moderate-income.

5. Unless a tenant is receiving some type of subsidy, owners do not collect information on tenant incomes, except for purposes of initial screening for ability to pay the rent. The data required by the Act is not already available.

6. Not applicable.

7. Not applicable.

8. There are no special circumstances requiring collection of information that is inconsistent with the guidelines in 5 CFR 1320.6.

9. In addition to discussions with the National Association of HUD Management Agents, The National Corporation of Housing Partnerships and The National Housing Partnership, we have had ongoing discussions with the following individuals on this data collection effort:

Dan Grady, Monfric, Inc., 1915 Morena Blvd., San Diego, CA 92110, (619) 276–6271.

Barron Rush, CPM, Barron Builders & Management Company, 16333 Egret Bay Blvd., Suite 600, Houston, TX 77058, (713) 333–5211

Charles A. Achilles, Vice President, Institute of Real Estate Management, 430 N. Michigan Ave., Chicago, IL 60611, (312) 661–1935

10. The form letter to tenants requesting data on incomes states that the information provided by tenants is subject to the Privacy Act and may be made available only to appropriate Federal, State and local agencies. No assurances of confidentiality are provided to owners.

11. This data collection effort on tenant incomes is not discretionary. It is mandated by the 1987 Housing and Community Development Act. The sample letter from the owner to tenants states that they are required to collect this information by law. It states that the owner will send an overall summary of the income levels of the people living in the project to the Department. It further states that the owner will not be sending the Department information about individual tenants requested to do so by the Department.

12/13. It is estimated that it will cost the Federal Government and the respondents approximately $15.00 per hour including overhead, printing, equipment, supplies and support staff.

Total annual response [1]	Hours/ response	Cost/ hour	Annual cost
Respondents 85 [2]	5.75	$15.00	$7,332
Government 85 [2]	.25	15.00	319

[1] There is a one-time response in 1989 for the 724 projects in the HUD-held inventory, costing $62,445 for respondents (724 x 5.75 x 15) and $2,715 for government (724 x .25 x 15).

[2] This number is based on the assumption that there will be 75 assignments and 10 foreclosures per year.

We based our estimates on the actual number of projects currently in our HUD inventory and on the number of mortgages actually foreclosed and assigned over the last 5 years. We estimated the size of each project to be 150 units. Based on actual data, we estimated that 75% of HUD-held and foreclosed mortgages would be insured under the 221(d)(3) and 221(d)(4) programs, with 30% of those projects receiving Section 8 assistance. (This reduced the estimated number of tenants in (d)(3) and (d)(4) projects that would have to be surveyed by 30%.) We assumed that projects insured under the other programs (207, 213, 220, 223(f), 231 and 234) do not receive subsidy and that all tenants must be surveyed.

Number of respondents	×	Frequency of response	×	House per response	=	Burden hours	Total
One-Time Burden in 1989 For Currently HUD-Held Inventory							
Project Owners:							
(HUD 9934) 724	×	1		4	=	2,896	
(HUD 9934A) 724	×	1		.25	=	181	
(HUD 9934B) 724	×	1		1.5	=	1,056	
							4,133
Tenants: (HUD 9934) 86,913	×	1	×	.066	=	5,836	5,736
							9,869
Annual Burden For Mortgages Newly Assigned To HUD Or Foreclosed							
Project Owners:							
(HUD 9934) 85	×	1	×	4	=	340	
(HUD 9934A) 85	×	1	×	1.5	=	128	
(HUD 9934B) 85	×	1	×	.25	=	21	
							489
Tenants: (HUD 9934) 9,038	×	1	×	.066	=	597	597
							1,086

[1] Assuming 75 assignments and 10 foreclosures per year.

14. Not applicable.
15. Not applicable.

BILLING CODE 4210-01-M

DRAFT

TENANT SURVEY

Owner's Instructions:

1. Address and send a survey to all unassisted tenants. (These are tenants for whom you do not have a HUD 50059 on file and for whom you do not have records that show they are receiving assistance under the Section 8 Existing and Housing Voucher programs.
2. Complete Item 4. Insert the location/address to which you want tenants to return the survey and insert the deadline by which tenants should return the survey. This should be 7 to 10 days from the date the survey is sent to tenants.
3. Prepare and enclose a self addressed, stamped envelope that tenants can use to return the survey.

Unit #_____

Dear

We are required by the Congress under the Housing and Community Development Act of 1987, to collect the following information about household incomes of the tenants in this complex.

We will send an overall summary of the income levels of the people living here to the U.S. Department of Housing and Urban Development. We will not be sending them information about individual tenants unless requested to do so by HUD at a later date.

1. How many people live in your home? _____
2. What is the total annual income of all of the people who live in your home?____
3. Read and sign the following certification: I certify that the above information is true and complete to the best of my knowledge and belief.

_____
Signature of the person whose name appears on the lease

4. Please return this survey in the enclosed envelope to _____ _____ by _____. If you have any questions, please call us at _____. Information you provide is subject to the Privacy Act and may be made available only to appropriate Federal, State and local agencies.

Thank you for your help.

SUMMARY OF TENANT INCOME DATA
(Required by Section 181 of the
Housing and Community Development Act of 1987)

DRAFT

IMPORTANT. READ THE INSTRUCTIONS BEFORE COMPLETING THIS FORM. HUD Field Office must complete Items 1-7. Owners must complete items 8-11 and owner's certification.

1. FHA Number/Section 8 Contract Number _____

2. Date Mortgage Assigned _____

3. Property Name _____

4. Property Address _____

5. Total Units in Project _____

6 _____ Number of Units in Section 8 Contract. Attach listing of units by bedroom size.

7. _____ Number of units occupied by tenants receiving Section 8 assistance on the date of assignment. These are tenants for whom a current HUD 50059 is on file. Attach a listing of units, by bedroom size, that are occupied by Section 8 assisted tenants.

8. _____ Number of tenants who receive Section 8 assistance under the Section 8 Existing Program or the Housing Voucher Program. (From Step 2 of the owners' worksheet in Attachment C.) Also include this number in the total in 9a below. (Use Steps 4 and 6 of the owners' worksheet to do this.)

9. Tenant Income Data from the tenant surveys returned (Attachment A) - Add up the number of units in each income category. For income categories 9a, b, and c, attach a listing of the units by bedroom size in each category.

a. _____ Number of units occupied by unassisted tenants with incomes equal to or less than 50 percent of median income (From a in Step 6 of the owners' worksheet in Attachment C)

b. _____ Number of units occupied by unassisted tenants with incomes between 51 percent and 80 percent of median income (From b in Step 6 of the owners' worksheet in Attachment C)

c. _____ Number of units occupied by unassisted tenants with incomes between 81 percent and 95 percent of median income (From c in Step 6 of the owners' worksheet in Attachment C)

d. _____ Number of units occupied by unassisted tenants with incomes between 96 percent and 120 percent of median income (From d in Step 6 of the owners' worksheet in Attachment C)

DRAFT

e. _____ Number of units occupied by unassisted tenants with incomes over 120 percent of median income (From e in Step 6 of the owners' worksheet in Attachment C)

f. _____ Number of units occupied by tenants who failed to respond to the survey. (From f in Step 6 of the owners' worksheet in Attachment C)

g. _____ Number of units vacant on date of assignment. (From Step 3 of the owners' worksheet in Attachment C)

10. _____ Total of 7, 9a, b, c, f and g.

11. _____ Total of 7, 9a and 9b.

Owners' Certification: I certify that this information has been compiled by the instructions provided by HUD and that the information on this summary is true and complete to the best of my knowledge.

_____ _____
Owner or Owner's Representative Date Signed

BEST COPY AVAILABLE

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Optional Owner's Worksheet

Use this worksheet to complete Attachment B. It may be helpful to those owners who do not use an automated system to categorize the requested data.

Step 1
List tenants by unit number who failed to respond to survey. (Enter the total on Line 9f of Attachment B.)

Step 3
List the number of units that were vacant on the date provided by the HUD field office in paragraph 2 of their letter. (Enter the total on Line 9g of Attachment B.)

Step 4
Using the chart provided by HUD, put each household's income in the appropriate category below. When this is done, total each category and then use Step 6 to transfer the data to Attachment B.

Step 5
List on a separate page the unit numbers and bedroom sizes for all households listed in a, b and c (e.,g., 1a, b, c, 2a, b, c, 3a, b, c, etc.) This list will be attached to the Summary you send to HUD. Be sure to include all household sizes.

1	a _____	
	b _____	
	c _____	
	d _____	
	e _____	
2	a _____	a___=1b___+2b___+3b___+4b___+5b___+6b___
	b _____	b___=1c___+2c___+3c___+4c___+5c___+6c___
	c _____	c___=1d___+2d___+3d___+4d___+5d___+6d___
	d _____	d___=1e___+2e___+3e___+4e___+5e___+6e___
	e _____	
3	a _____	
	b _____	
	c _____	
	d _____	
	e _____	
4	a _____	
	b _____	
	c _____	
	d _____	
	e _____	
5	a _____	
	b _____	
	c _____	
	d _____	
	e _____	
6	a _____	
	b _____	
	c _____	
	d _____	
	e _____	

Step 6
Total the categories in the chart below and transfer them to Line 9 of Attachment B.

Step 2
List tenants who receive assistance under the Section 8 Existing or Housing Voucher Programs. Enter the total on Line 8 of Attachment B and include this number in the total in Line 9a. To do this, add the number in Line 8 to the total for Line "a" in Step 6. Include in Step 5 the unit numbers and bedroom sizes for each certificate and voucher holder. (We are assuming that these tenants have incomes of median income.)

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-89-1917; FR-2606]

Unutilized and Underutilized Federal Buildings and Real Property Determined by HUD To Be Suitable for Use for Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

DATE: February 13, 1989.

ADDRESS: For further information, contact Morris Bourne, Director, Transitional Housing Development Staff, Room 9140, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 755-9075; TDD number for the hearing- and speech-impaired (202) 426-0015. (These telephone numbers are not toll-free.).

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless v. Veterans Administration*, D.C.D.C. No. 88-2503-OG, HUD is publishing this Notice to identify Federal buildings and real property that HUD has determined are suitable for use for facilities to assist the homeless. The properties were identified from information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies.

The court order requires HUD to take certain steps to implement section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), which sets out a process by which unutilized or underutilized Federal properties may be made available to the homeless. Under section 501(a), HUD is to collect information from Federal landholding agencies about such properties and then to determine, under criteria developed in consultation with the Department of Health and Human Services (HHS) and the Administration of General Services (GSA), which of those properties are suitable for facilities to assist the homeless. The court order requires HUD to publish, on a weekly basis, a Notice in the **Federal Register** indentifying property determined suitable.

The properties identified in this Notice may ultimately be available for use by public bodies and private nonprofit organizations to assist the homeless. For detailed information on the procedure under section 501(a) that must be followed to apply for use of today's properties, the reader should consult HUD's Notice published February 7, 1988 at 54 FR 6034.

The contacts for the controlling agencies of properties listed in today's Notice are as follows: U.S. Army: for military facilities: HQ-DA, Attn: DAEN-ZCI-P—Robert Conte, Room 1E671, Pentagon, Washington, DC 20360-2600 (202) 693-4583; for civil works projects: Bob Swieconek, HQ-US Army Corps of Engineers, Attn: CERE-MM, 20 Massachusetts Avenue NW., Washington, DC 20314-1000, (202) 272-1750; GSA: James Folliard, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405, (202) 535-7067. (There are not toll-free telephone numbers.

Dated: February 6, 1989.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

Suitable Buildings

VA Outpatient Clinic, 17 Court Street, Boston, MA, Land Holding Agency: GSA

USPO & Custom House, Christiansted, Saint Croix, VI, Land Holding Agency: GSA

Suitable land

Waurika Lake (Property 1), Jefferson County, OK, Land Holding Agency: Army

Waurika Lake (Property 2), Jefferson County, OK, Land Holding Agency: Army

Waurika Lake (Property 3), Jefferson County, OK, Land Holding Agency: Army

Waurika Lake (Property 4), Jefferson County, OK, Land Holding Agency: Army

Waurika Lake (Property 5), Jefferson County, OK, Land Holding Agency: Army

Waurika Lake (Property 6), Jefferson County, OK, Land Holding Agency: Army

Waurika Lake (Property 7), Jefferson County, OK, Land Holding Agency: Army

Waurika Lake (Property 8), Jefferson County, OK, Land Holding Agency: Army

Waurika Lake (Property 10), Jefferson County, OK, Land Holding Agency: Army

Waurika Lake (Property 11), Jefferson County, OK, Land Holding Agency: Army

Waurika Lake (Property 12), Jefferson County, OK, Land Holding Agency: Army

Waurika Lake (Property 13), Jefferson County, OK, Land Holding Agency: Army

Waurika Lake (Property 14), Jefferson County, OK, Land Holding Agency: Army

Waurika Lake (Property 15), Jefferson County, OK, Land Holding Agency: Army

Sardis Lake (Property 6), Latimer County, OK, Land Holding Agency: Army

Sardis Lake (Property 7), Latimer County, OK, Land Holding Agency: Army

Sardis Lake (Property 8), Latimer County, OK, Land Holding Agency: Army

Sardis Lake (Property 19), Latimer County, OK, Land Holding Agency: Army

Sardis Lake (Property 20), Latimer County, OK, Land Holding Agency: Army

Keystone Lake (Property 1), Tulsa County, OK, Land Holding Agency: Army

Keystone Lake (Property 2), Creek County, OK, Land Holding Agency: Army

Keystone Lake (Property 3), Creek County, OK, Land Holding Agency: Army

Keystone Lake (Property 4), Pawall County, OK, Land Holding Agency: Army

Kaw Lake (Property 7), Kay County, OK, Land Holding Agency: Army

Pat Mayse Lake (Property 2), Lamar County, TX, Land Holding Agency: Army

Pat Mayse Lake (Property 3), Lamar County, TX, Land Holding Agency: Army

Pat Mayse Lake (Property 4), Lamar County, TX, Land Holding Agency: Army

Pat Mayse Lake (Property 5), Lamar County, TX, Land Holding Agency: Army

Pat Mayse Lake (Property 7), Lamar County, TX, Land Holding Agency: Army

Pat Mayse Lake (Property 11), Lamar County, TX, Land Holding Agency: Army

Lake Texoma (Property 202), Grayson County, TX, Land Holding Agency: Army.

[FR Doc. 89-3182 Filed 2-10-89; 8:45 am]

BILLING CODE 4210-27-M

Office of Housing

[Docket No. N-89-1933]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development has submitted to OMB, for emergency processing, an information collection package with respect to the Flexible Subsidy Program—Capital Improvement Loan Program.

The information collection requirements in this package are the result of reinstatement of a previously approved collection for which approval has expired (section 201 of the Housing and Community Development Amendments of 1978, Pub. L. 95-557, (Approved October 31, 1978), and the amendments to the Flexible Subsidy Program of 1983, 1987 and that contained in section 1011 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, Pub. L. 100-628 (approved November 7, 1988). The Department was attempting, under section 1011 of the 1988 McKinney Act, to implement the capital improvement loan component of the program by February 6, 1989. In order to meet this statutory deadline, the Department requested OMB to complete its paperwork review of the Flexible Subsidy Program—Capital Improvement Loan Program interim rule by February 3, 1989. Any control number issued by OMB to cover this emergency situation would be valid for no more than 90 days.

To ensure that the public has an adequate opportunity to comment on these information collection requirements, HUD also intends to submit the Flexible Subsidy Program—Capital Improvement Loan Program interim rule to OMB for regular paperwork review. The public will then have an additional 60-day period in which to comment on the paperwork requirements.

The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act 42 U.S.C. 3535(d).

Date: February 8, 1989.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Flexible Subsidy Program—Capital Improvement Loan Program (FR 2541).

Office: Housing.

Description of the Need for the Information and Its Proposed Use: This information collection is necessary to enable the Department to assist owners in restoring or maintaining the financial soundness, improving management and maintaining the low to moderate income character of the troubled projects. Without this information collection there would be a greater number of defaults on insured loans and consequently greater losses to HUD's insurance fund.

Form Numbers:

HUD-9823A, Requisition for Advance of Flexible Subsidy Funds

HUD-9823B, Request for Transfer of Funds from Project Improvement Account

HUD-9824A, Quarterly Performance Report

Management Improvement and Operating (MIO) Plan

HUD-9835, Project Improvement Program, Action Items

HUD-9835A, Project Improvement Program, Management Objectives

HUD-9835B, Project Improvement Program, Sources and Uses of Funds.

Respondents: State or local governments, businesses or other for profit, non-profit institutions, small businesses or organizations.

Frequency of Submission: Monthly, quarterly, annually.

Reporting Burden:

Form No.	No. of respondents	Frequency of responses	Hours per response	Annual burden
9823A	40	12	¼ hr	120
9823B	40	4	¼ hr	40
9824A	40	4	1 hr	160
9835	40	1	4 hrs	160
	57	1	2 hrs	114
	3	1	4 hrs	12
9835A	40	1	4 hrs	160
	3	1	4 hrs	12
9835B	40	1	1 hr	40
	60	1	1 hr	60
				[1] 878

[1] Total estimated burden hours.

Status: New collection and revision of a previously approved collection for which approval has expired.

Contact: James J. Tahash, HUD, (202) 426-3944; John Allison, OMB, (202) 395-6880.

Date: February 8, 1989.

FR Doc. 89-3347 Filed 2-10-89; 8:45 am]

BILLING CODE 4210-01-M

INTERSTATE COMMERCE COMMISSION

[Section 5a Application No. 81; Amdt. 3 [1]]

New York Movers Tariff Bureau, Inc., Agreement

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision and request for comment.

SUMMARY: New York Movers Tariff Bureau, Inc. (NYB), has filed, under section 14(e) of the Motor Carrier Act of 1980 (MCA), an application for approval of its ratemaking agreement under 49 U.S.C. 10706(b). Since some modifications are required before the agreement receives final approval, and because new and complex questions are involved in determining whether the agreement is consistent with the MCA, the Commission solicits public comment on its interpretation and application of specific rate bureau provisions. Copies of NYB's proposed amended agreement are available for public inspection and copying at the Office of the Secretary, Interstate Commerce Commission, 12th St. and Constitution Ave., NW., Washington, DC 20423, and from NYB's representative: Alvin Altman, Brodsky, Linett, Altman, Schechter, & Reicher, 888 Seventh Ave., New York, NY 10019.

DATES: Comments from interested persons are due by March 15, 1989. Replies are due by March 30, 1989.

ADDRESS: An original and 10 copies, if possible, of comments referring to Section 5a Application No. 81 should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: James L. Brown, (202) 275-7896 or Richard Felder, (202) 275-7691. (TDD for hearing impaired: (202) 275-1721.)

SUPPLEMENTARY INFORMATION: We have provisionally approved NYB's agreement as consistent with 49 U.S.C. 10706(b) and *Motor Carrier Rate Bureaus—Imp. Pub. L. 96-296*, 364 I.C.C. 464 (1980) and 364 I.C.C. 921 (1981) (Rate Bureau), subject to certain modifications in the following subject areas: identification and description of member carriers; right of independent action; rate bureau protests; open meetings; proxy voting; quorum standards; final disposition of cases; single-line rates; general tariff increases or decreases; zone of rate freedom; committee membership; changes in bylaws; profitmaking functions; shipper affiliation; and mergers. We have also offered comments and imposed requirements concerning the agreement generally. NYB has been directed to file a revised agreement conforming to the imposed conditions within 120 days after service of the decision, and to comply with the required revisions pending final approval.

In light of the complexity of interpretation involved in determining whether the agreement is consistent with the MCA and *Rate Bureau*, we request applicant and other interested parties to comment on our interpretation of the controlling statutory and administrative criteria generally, and their application to NYB's agreement.

A copy of any comments filed with the Commission must also be served on NYB, which shall have 15 days after the expiration of the comment period to reply. These comments will be considered in conjunction with our review of the modifications that NYB must submit to the Commission as a condition precedent to final approval of its agreement.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 275-7428. (Assistance for the hearing impaired is available through TDD services (202) 275-1721.)

[1] Section 5 was recodified as section 10706.

Authority: 49 U.S.C. 10321 and 10706 and 5 U.S.C. 553.

Decided: February 3, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89-3288 Filed 2-10-89; 8:45 am]

BILLING CODE 7035-01-M

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporations and address of principal office: The Penn Traffic Company, 319 Washington Street, Johnstown, Pennsylvania 15901.

2. Wholly-owned subsidiaries which will participate in the operations, and state of incorporation:

Subsidiary	State of incorporation
I. Quality Markets, Inc	New York
II. Sunrise Properties, Inc	Pennsylvania
III. Dairy Del, Inc	Do.
IV. R.M. Markets of Indiana, Inc	Do.
V. Riverside Markets Division of Penn Traffic	Do.
VI. Johnstown Sanitary Dairy Division of Penn Traffic	Do.
VII. P & C Food Markets, Inc	New York.

Noreta R. McGee,

Secretary.

[FR Doc. 89-3289 Filed 2-10-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-290 (Sub-No. 48X)]

Norfolk and Western Railway Co.; Abandonment Exemption; Between Lawrenceville and South Hill, VA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by Norfolk and Western Railway Company

of 21.8 miles of rail line between Lawrenceville and South Hill, VA, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on March 15, 1989. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by February 23, 1989, petitions to stay must be filed by February 28, 1989, and petitions for reconsideration must be filed by March 10, 1989. Requests for a public use condition must be filed by February 23, 1989.

ADDRESSES: Send pleadings, referring to Docket No. AB-290 (Sub-No. 46X), to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423 and

(2) Petitioner's representative: Roger A. Petersen, Norfolk Southern Corporation, One Commercial Place, Norfolk, VA 23510-2191.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. (TDD for hearing impaired: (202) 275-1721.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275-1721.)

Decided: February 3, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,
Secretary.

[FR Doc. 89-3287 Filed 2-10-89; 8:45 am]
BILLING CODE 7035-01-M

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440-48446).

DEPARTMENT OF JUSTICE

Information Collections Under Review

February 7, 1989.

The Office of Management and Budget (OMB) has been sent the following proposals for the collection of information for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories. Each entry contains the following information: (1) The title of the form or collection; (2) the agency form number, if any, and the applicable component of the Department sponsoring the collection; (3) how often the form must be filled out or the information is collected; (4) who will be asked or required to respond, as well as a brief abstract; (5) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond; (6) an estimate of the total public burden (in hours) associated with the collection; and (7) an indication as to whether section 3504(h) of Pub. L. 96-511 applies. Comments and/or suggestions regarding the item(s) contained in this notice, especially those regarding the estimated response time, should be directed to the OMB reviewer, Mr. Edward H. Clarke, on (202) 395-7340 and to the Department of Justice's Clearance Officer, Mr. Larry E. Miesse, on (202) 633-4312. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should so notify the OMB review and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Larry E. Miesse, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

Reinstatement of a Previously Approved Collection For Which Appeoval Has Expired

(1) VICTIMS OF CRIME ACT, CRIME VICTIM ASSISTANCE GRANT PROGRAM. PROGRAM PERFORMANCE REPORT (REVISED).

(2) Office for Victims of Crime, Office of Justice Programs.

(3) One-time, 90 days after completion of grant.

(4) State or local governments. The information requested is necessary to generate and submit a statutorily required report to the President and the Congress on the effectiveness of the Victims of Crime Act, as amended, and to ensure grantees' compliance with statutory criteria. The affected public includes up to 56 States and territories administering the crime victim assistance provisions of the Victims of Crime Act, as amended.

(5) 50 respondents at 24 hours per response, with 1 recordkeeping burden hour per respondent.

(6) 1,400 estimated annual burden hours.

(7) Not applicable under 3504(h).

Extension of the Expiration Date of a Currently Approved Collection Without Any Change in the Substance or in the Method of Collection

(1) DATA RELATING TO BENEFICIARY OF A PRIVATE BILL.

(2) G-79A, Immigration and Naturalizatioin Service.

(3) On occasion.

(4) Individuals or households. Information is needed to make report concerning private bills to the Congress when requested.

(5) 100 respondents at 1 hours per response.

(6) 100 estimated annual public burden hours.

(7) Not applicable under 3504(h).

(1) REPORT OF ALIEN PERSON INSTITUTIONALIZED.

(2) G-340, Immigration and Naturalization Service.

(3) On occasion.

(4) Individuals or households. This information is needed to determine deportability of aliens under section 241 of the Immigration and Nationality Act.

(5) 10,500 respondents at .25 hours each.

(6) 2,625 estimated annual public burden hours.

(7) Not applicable under 3504(h).

(1) ALIEN CREWMAN'S LANDING PERMIT.

(2) I-95A, Immigration and Naturalizaton Service.

(3) On occasion.

(4) Individuals or households. Vessel and air alien crewmen execute this form for permission to enter the United States as provided for in Sections 251 and 252 of the Immigration and Nationality Act.

(5) 300,000 respondents at .083 hours each.

(6) 24,900 estimated annual burden hours.

(7) Not applicable under 3504(h).

(1) REPORT OF STATUS TREATY TRADER OR INVESTOR I-126.

(2) I-126, Immigration and Naturalization Service.

(3) Annually.

(4) Individuals or households. This information is used to determine whether an alien admitted into the United States as a treaty trader or investor under Section 101(a)(15)(e) of the Immigration and Nationality Act is maintaining status.

(5) 45,000 respondents at .5 hours each.

(6) 22,500 estimated annual burden hours

(7) Not applicable under 3504(h).

(1) DEA/USMS/USSS DRUGS OF ABUSE CHAIN OF CUSTODY FORM.

(2) No form number, Drug Enforcement Administration.

(3) On occasion.

(4) Individuals or households. Information is needed to document and control the chain of custody for drug testing an individual selected for a job vacancy prior to actual employment under E.O. 12564, in order to maintain a drug-free workplace.

(5) 1,200 respondents at .083 hours each.

(6) 100 estimated annual burden hours.

(7) Not applicable under 3504(h).

(1) RECORD AND REPORTS OF REGISTRANTS: CHANGES IN RECORD REQUIREMENTS FOR INDIVIDUAL PRACTITIONERS.

(2) No form number, no form, Drug Enforcement Administration.

(3) On occasion.

(4) Individuals or households, businesses or other for-profit, non-profit institutions, small businesses or organizations. Information is neded to maintain a closed system of records by requiring the practitioner to keep records of (1) complimentary samples of controlled substances dispensed to patients, and (2) narcotic and non-narcotic controlled substances which are both administered and dispensed to patients.

(5) 500 respondents at .5 hours each, 100,000 recordkeepers at .5 hours each.

(6) 50,250 estimated annual burden hours.

(7) Not applicable under 3504(h).

Reinstatement of a Previously Approved Collection For Which Approval Has Expired

(1) ADJUSTMENT OF STATUS DATA.

(2) I-643, Immigration and Naturalization Service.

(3) On occasion.

(4) Individuals or households. This information is required by 8 USC 1522(a)(8) on situation of refugees at time of adjustment to lawful permanent residents of the United States. The data is used by the Office of Refugee Resettlement at the Department of Health and Human Services for a report to the Congress as required by 8 USC 1523.

(5) 150,000 respondents at .166 hours each.

(6) 24,900 estimated annual burden hours.

(7) Not applicable under 3504(h).

New Collections

(1) THE REUNIFICATION OF MISSING CHILDREN.

(2) No form number, Office of Juvenile Justice and delinquency Prevention. Office of Justice Program.

(3) One time.

(4) State or local governments, individuals or households. This information is needed to develop, test and disseminate information on model programs for reunifying missing children with their families.

(5) 200 respondents at .453 hours each.

(6) 92 estimated annual burden hours.

(7) Not applicable under 3504(h).

(1) CRIME VICTIM ASSISTANCE GRANT PROGRAM, SUBGRANT AWARD REPORT (Revised).

(2) OJP-7390. Office for Victims of Crime, Office of Justice Programs.

(3) Other—30 days after grant is made.

(4) State or local governments. The information requested is necessary to generate and submit a statutorily required report to the President and the Congress on the effectiveness of the Victims of Crime Act and the program guidelines. The affected public includes up to 56 states and territories administering the crime victim assistance provisions of the Victims of Crime Act victim assistance grant program.

(5) 1,512 respondents at .5 hours each, 56 recordkeepers at 13.5 hours each.

(6) 1,512 estimated annual burden hours.

(7) Not applicable under 3504(h).

Larry E. Miesse,
Department Clearance Officer, Department of Justice.

[FR Doc. 89-3290 Filed 2-10-89; 8:45 am]
BILLING CODE 4410-10-M

Lodging of Consent Decree Pursuant to the Clean Water Act; Boyd

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on February 3, 1989 a proposed Consent Decree in *United States* v. *Boyd* was lodged with the United States District Court for the District of Maryland. The proposed decree arises out of a case alleging liability for costs incurred by the Environmental Protection Agency in conducting an emergency removal action, pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq., in response to releases of hazardous substances at the Security Boulevard site located in Baltimore County, Maryland. The proposed decree resolves the alleged liability of three defendants in this proceeding who were the owners of a portion of the contaminated site, Francis and Doris Doran and Gilran Lighting Products, Inc., by providing for their payment to the United States of $15,000 in three installments.

The Department of Justice will receive for a period of thirty (30) days from the date of publication of this notice comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Boyd*, 90-11-3-284.

The proposed Consent Decree may be examined at the Office of the United States Attorney, District of Maryland, 101 Lombard Street, Baltimore, Maryland 21201, at the office of Region III of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia 19107, and at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Rm. 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.90 for reproduction costs, payable to the "Treasurer of the United States."

Donald A. Carr,
Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-3232 Filed 2-10-89; 8:45 am]
BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Air Act; Tuscan Dairy Farms, Inc., et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a consent decree in *United States* v. *Tuscan Dairy Farms, Inc., et al.*, was lodged in the United States District Court for the Eastern District of New York on January 31, 1989.

The decree concerns alleged violations of the National Emission Standard for Hazardous Air Pollutants ("NESHAP") for asbestos, codified at 40 CFR Part 61, and the Clean Air Act, 42 U.S.C. 7401, *et seq.*, in connection with a building renovation in Lindenhurst, Long Island, New York. The decree, among other things, requires the defendants to

comply with the Clean Air Act and the asbestos NESHAP regulations. The decree also requires payment of a $15,120 civil penalty for past violations.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the decree. Comments should be addressed to the Assistant Attorney General for the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to the *United States* v. *Tuscan Dairy Farms, Inc., et al.*, D.J. No. 90-5-2-1-1253.

The decree may be examined at the Office of the United States Attorney, Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York, 11201, the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278, and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-3233 Filed 2-10-89; 8:45 am]

BILLING CODE 4410-01-M

[AAG/A Order No.28-89]

Privacy Act of 1974; New System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the Department of Justice, Justice Management Division (JMD) proposes to establish a new system of records entitled "Debt Collection Management System, JUSTICE/JMD-006." This system is established to enable JMD to provide automated litigation support to and administrative management of a program which will allow the U.S. Attorneys (USAs) and contract private counsel to pursue the collection of indebtedness owed the United States. A separate system of records entitled "Debt Collection Enforcement System, JUSTICE/USA-015," is being established to cover the records maintained by the USAs and contract private counsel. Notice of the establishment of the Debt Collection Enforcement System is also published in today's Federal Register.

Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be provided a 30-day period in which to comment on the routine uses of a new system the Office of Management and Budget (OMB), which has oversight responsibilities under the Act, requires that it be given a 60-day period in which to review the system.

Therefore, please submit any comments by March 15, 1989. The public, OMB, and Congress are invited to send written comments to Robert N. Ford, Deputy Assistant Attorney General, Debt Collection Management, Justice Management Division, Department of Justice, Room 1121, Washington, DC 20530.

In accordance with Privacy Act requirements, the Department of Justice has provided a report on the proposed system to OMB and the Congress.

Date: February 3, 1989.

Harry H. Flickinger,

Assistant Attorney General for Administration.

JUSTICE/JMD-006

SYSTEM NAME:

Debt Collection Management System, JUSTICE/JMD-006

SYSTEM LOCATION:

Department of Justice, Justice Management Division (JMD), Central Intake Facility (CIF), 1110 Bonifant Street, Suite 220, Silver Spring, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons indebted to the United States who have allowed their debts to become delinquent and whose debts have been sent by client Federal agencies to the Department of Justice for settlement or enforced collection through litigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains records relating to the negotiation, compromise, settlement, and litigation of indebtedness owed the United States. Records will consist of an automated support data base and temporary custody of case files. Case files are assigned promptly to a U.S. Attorney (USA) or contract private counsel to undertake enforced debt collection action. This system describes case files during the period which they are in the possession of the JMD, CIF. Upon assignment of a case file to the USA or contract private counsel, the case is covered by the Debt Collection Enforcement System, JUSTICE/USA-015.

The client agency case file includes such documents as the Claims Collection Litigation Report; Certificate of Indebtedness; any partial payment records, status reports, correspondence; and any other documentation developed during the negotiation of the indebtedness.

The automated data base contains data extracted from the case file and any data generated or developed to support the administrative operations of the debt collection program. Information may include personal data, e.g., name, social security number, date of birth, and locator information; claim information, e.g., type of claim such as benefit overpayment, loan default, bankruptcy, etc.; payment demand information, compromise offered, etc.; account information, e.g., debtor payments including principal, penalties, interests, and balances, etc.; information regarding debtor's employment, ability to pay, property liens, etc.; value of claim, name of source agency which provided the loan or benefit; information on the status and disposition of cases at various intervals of time; and any other information related to the negotiation, compromise, settlement, or litigation of indebtedness owed the United States, or to the administrative management of the debt collection program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Federal Debt Recovery Act of 1986, 31 U.S.C. 3718(b).

PURPOSE OF THE SYSTEM:

The Federal Debt Recovery Act authorizes the Attorney General to contract with private counsel to assist the USAs in the collection of consumer and commercial debts owed the United States on a pilot project basis. Accordingly, the Department is participating in a pilot program in ten judicial districts and has established this system of records to provide automated litigation support to and administrative management of a debt collection program which allows the assignment of client Federal agency case files to USAs and contract private counsel to pursue the collection of indebtedness owed the United States. A separate system of records entitled "Debt Collection Enforcement System, JUSTICE/USA-015" has been established to cover records maintained by the USAs and contract private counsel in support of debt collection activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In the course of its collection and enforcement activities, the Department will release client Federal agency case files to the CIF to conduct the administrative operations of the debt collection program. Through the administrative operations of the CIF, the Department will release the case files and any related records or information created by the CIF to the contract private counsel to negotiate, settle, and litigate indebtedness owed the United States.

The Department may also disclose records or information from this system as follows:

(a) To client agencies who have referred debt collection cases to the Department for settlement or litigation and enforced collection to notify such agencies of the status of the case or of any decision or determination that has been made, or to make such other inquiries and reports as are necessary during the processing of the case.

(b) To a Federal agency in response to its request and in connection with hiring or retention of an employee, the issuance of the required security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information relates to the requesting agency's decision on the matter.

(c) In a proceeding before a court or adjudicative body before which the Department or contract private counsel who are authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the Department or contract private counsel to be arguably relevant to the litigation: (1) The Department, or any subdivision thereof, or contract private counsel, or (2) any employee of the Department or contract private counsel in his or her official capacity or (3) any employee of the Department or contract private counsel in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (4) the United States, where the Department or contract private counsel determines that the litigation is likely to affect the Department or any of its subdivisions.

(d) To volunteer student workers and students working under a college work-study program as is necessary to enable them to perform their function;

(e) To employees or to contract personnel to access the records for Privacy Act training purposes.

(f) To (1) a Federal agency which employs the individual to enable the employing agency to offset the individual's salary; (2) a Federal, State, local or foreign agency, an organization, including a consumer reporting agency, or individual to elicit information to assist the Department in the settlement or effective litigation and enforced collection of the overdue debt; and (3) the Internal Revenue Service (IRS) to enable that agency to offset the individual's tax refund. Records provided to the IRS may be used in a computer matching program to identify individuals who are entitled to refunds against which such offset for overdue debts would be appropriate.

(g) To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(h) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

(i) To the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISCLOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Case files are stored in locked rooms; automated data is stored on magnetic tape.

RETRIEVABILITY:

Data is retrieved by name of debtor.

SAFEGUARDS:

Access to records is restricted to those personnel who must have access to perform their duties and is limited to those cases assigned. Case files are maintained separately in locked rooms during non-duty hours. Access to automated data requires the use of the proper password and user identification code.

RETENTION AND DISPOSAL:

Paper records in this system will be returned to client Federal agencies for disposition; automated information will be erased ten years after the related case files reported in the Debt Collection Enforcement System, JUSTICE/USA-015 have been closed. (Pending approval of the National Archives and Records Administration.)

SYSTEM MANAGER AND ADDRESS:

Deputy Assistant Attorney General, Debt Collection Management, Justice Management Division, Department of Justice, Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Address inquiries to Deputy Assistant Attorney General, Debt Collection Management, Justice Management Division, Department of Justice, Washington, D.C. 20530.

RECORDS ACCESS PROCEDURES:

Address requests for access to Deputy Assistant Attorney General, Debt Collection Management, Justice Management Division, Department of Justice, Washington, D.C. 20530. Clearly mark the envelope "Privacy Access Request." Include in the request the debtor's name, date of birth, address, and any other identifying information which may be of assistance in locating the record, e.g., name of the case or Federal agency to whom the debtor is indebted. In addition, include notarized signature of the debtor as well as the name and address of the individual to receive the information if other than the debtor.

CONTESTING RECORDS PROCEDURES:

Address requests to Deputy Assistant Attorney General, Debt Collection Management, Justice Management Division, Department of Justice, Washington, D.C. 20530. State clearly and concisely the information being contested, the reasons for contesting it, and the proposed amendment to the information.

RECORDS SOURCE CATEGORIES:

The individuals covered by the system; client agencies of the Department to whom the individual is indebted; an attorney or other representative for the debtor and/or payor; any Federal, State, local, foreign, private organization or individual who may have information relating to the debt, the debtor's ability to pay or any other information relevant and necessary to assist in the settlement or effective litigation and enforced collection of the debt.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 89-3231 Filed 2-10-89; 8:45am]

BILLING CODE 4410-01-M

[AAG/A Order No. 29-89]

Privacy Act of 1974; New System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the Department of Justice, Executive Office for United States Attorneys, proposes to establish a new system of records

entitled "Debt Collection Enforcement System, JUSTICE/USA-015." This system is established to enable the United States Attorneys and contract private counsel to undertake legal enforcement proceedings to collect indebtedness owed the United States. A separate system of records entitled "Debt Collection Management System, JUSTICE/JMD-006," is being established to provide litigation support to and administrative management of the debt collection program. Notice of the establishment of the Debt Collection Management System is also published in today's **Federal Register.**

Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be provided a 30-day period in which to comment on the routine uses of a new system; the Office of Management and Budget (OMB), which has oversight responsibilities under the Act, requires that it be given a 60-day period in which to review the system.

Therefore, please submit any comments by March 15, 1989. The public, OMB, and Congress are invited to send written comments to Robert N. Ford, Deputy Assistant Attorney General, Debt Collection Management, Justice Management Division, Department of Justice, Room 1121, Washington, DC 20530.

In accordance with Privacy Act requirements, the Department of Justice has provided a report on the proposed system to OMB and the Congress.

Date: February 3, 1989.

Harry H. Flickinger,

Assistant Attorney General for Administration.

JUSTICE/USA-015

SYSTEM NAME:

Debt Collection Enforcement System, JUSTICE/USA-015.

SYSTEM LOCATIONS:

Department of Justice, United States Attorneys, Offices listed below:

—Central District of California, 312 N. Spring Street, Los Angeles, California 90012.
—Eastern District of New York, U.S. Courthouse, 225 Cadman Plaza East, Brooklyn, New York 11201.
—Southern District of Florida, 155 South Miami Avenue, Miami, Florida 33130.
—Eastern District of Michigan, 817 Federal Building, 231 Lafayette, Detroit, Michigan 48226.
—Southern District of Texas, P.O. Box 61129, Houston, Texas 77208.
—District of Columbia, Judiciary Center Building, 555 4th Street, N.W., Washington, DC 20001.
—Middle District of Florida, Robert Timberlake Building, Room 410, 500 Zack Street, Tampa, Florida 33602.
—Middle District of Georgia, P.O. Box U, Macon, Georgia 31202.
—Western District of Louisiana, Room 3B12, Federal Building, Shreveport, Louisiana 71101.
—District of New Jersey, Federal Building, 970 Broad Street, Room 502, Newark, New Jersey 07102.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons indebted to the United States who have allowed their debts to become delinquent and whose delinquent debts have been assigned by the Department's Justice Management Division (JMD) to a U.S. Attorney (USA) or contract private counsel for settlement or enforced collection through litigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains records relating to the negotiation, compromise, settlement, and litigation of indebtedness owed the United States. Records consist of a case file and automated support data.

The case file includes such documents as the Claims Collection Litigation Report; Certificate of Indebtedness; Satisfaction of Judgment or Certificate of Discharge; Court and related legal documents such as consent judgments, orders, briefs, pleadings and settlement agreements; status reports, and correspondence, and any other documentation developed during the negotiation, compromise, settlement and/or litigation of the indebtedness.

The automated data base contains data extracted from the case file and any data generated or developed to support the administrative operations of the debt collection program. Information may include personal data, e.g., name, social security number, date of birth, and locator information; claim information, e.g., type of claim such as benefit overpayment, loan default, bankruptcy, etc.; payment demand information, compromise offered, etc.; account information, e.g., debtor payments including principal, penalties, interests, and balances, etc.; information regarding debtor's employment, ability to pay, property liens, etc.; value of claim, name of source agency which provided the loan or benefit; information on the status and disposition of cases at various intervals of time; and any other information related to the negotiation, compromise, settlement, or litigation of indebtedness owed the United States, or to the administrative management of the debt collection program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Federal Debt Recovery Act of 1986, 31 U.S.C. 3718(b).

PURPOSE OF THE SYSTEM:

The Federal Debt Recovery Act authorizes the Attorney General to contract with private counsel to assist the USAs in the collection of consumer and commercial debts owed the United States on a pilot project basis. Accordingly, the Department is participating in a pilot program in ten judicial districts and has established this system of records to implement the program. This system of records is maintained under contract on behalf of the Department by selected private counsel in the ten judicial districts who, along with the Department's USAs, maintain records and furnish legal services in the negotiation, settlement, and litigation of indebtedness owed the United States. A separate system of records entitled "Debt Collection Management System, JUSTICE/JMD-006" has been established to cover records maintained by JMD to provide automated litigation support to and administrative management of the program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In the course of its collection and enforcement activities, the Department will release client Federal agency case files and any related records or information created by the Department to contract private counsel to negotiate, settle, and litigate indebtedness owed the United States.

In the course of its collection and enforcement activities, or during the course of a trial or hearing or preparation for a trial or hearing, the Department through contract private counsel in the selected judicial districts, or through its own USAs in those districts, may disclose records or information from this system as follows:

(a) In any case in which there is an indication of a violation or potential violation of law, civil or regulatory in nature—to the appropriate Federal, State, local or foreign agency charged with the responsibility of investigating, defending or pursuing such violation, civil claim or remedy, or charged with enforcing, defending or implementing such law.

(b) To a Federal, State, local, or foreign agency or to an individual or organization, if there is reason to believe that such agency, individual, or organization possesses information relating to the debt, the debtor's ability to pay, or relating to any other matter which is relevant and necessary to the settlement, effective litigation and enforced collection of the debt, or relating to the civil action trial or hearing, and the disclosure is reasonably necessary to elicit such information or to obtain the cooperation of a witness or an agency.

(c) To an actual or potential party, or to his or her attorney, for the purpose of negotiation or discussion on such matters as settlement of the case or matter, or informal discovery proceedings.

(d) To client agencies who have referred debt collection cases to the Department for settlement or litigation and enforced collection to notify such agencies of the status of the case or of any decision or determination that has been made, or to make such other inquiries and reports as are necessary during the processing of the case.

(e) To a Federal agency in response to its request and in connection with hiring or retention of an employee, the issuance of the required security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information relates to the requesting agency's decision on the matter.

(f) To volunteer student workers and students working under a college work-study program as is necessary to enable them to perform their duties.

(g) To employees or to contract personnel to access the records for Privacy Act training purposes.

(h) In a proceeding before a court or adjudicative body before which the Department or contract private counsel is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the Department or contract private counsel to be arguably relevant to the litigation: (1) The Department, or any subdivision thereof, or contract private counsel, or (2) any employee of the Department or contract private counsel in his or her official capacity or (3) any employee of the Department or contract private counsel in his or her individual capacity where the Department has agreed to represent the employee, or (4) the United States, where the Department or contract private counsel determines that the litigation is likely to affect the Department or any of its subdivisions.

(i) In a proceeding before a court or adjudicative body before which the Department or contract private counsel is authorized to appear, when the United States, or any agency or subdivision thereof, is a party to litigation or has an interest in litigation and such records are determined by the Department or contract private counsel to be arguably relevant to the litigation.

(j) To (1) a Federal agency which employs the individual to enable the employing agency to offset the individual's salary; (2) a Federal, State, local or foreign agency, an organization, including a consumer reporting agency, or individual to elicit information to assist the Department in the settlement or effective litigation and enforced collection of the overdue debt; and (3) the Internal Revenue Service (IRS) to enable that agency to offset the individual's tax refund. Records provided to the IRS may be used in a computer matching program to identify individuals who are entitled to refunds against which such offset for overdue debts would be appropriate.

(k) To the news media and the public pursuant to 28 C.F.R. 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(l) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

(m) To the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

NOTICE OF DISCLOSURE UNDER SUBSECTION (B)(12) OF THE PRIVACY ACT:

Records relating to individuals who owe a past-due debt to the United States may be disseminated to consumer reporting agencies to encourage payment of the past-due debt.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Case files are stored in locked rooms; automated data is stored on magnetic tape.

RETRIEVABILITY:

Data is retrieved by name of debtor.

SAFEGUARDS:

Access to records is restricted to those Department and contract employees who must have access to perform their settlement or litigation and enforced collection activities, and/or administrative responsibilities. Case files are maintained separately in locked rooms during non-duty hours. Access to automated data requires the use of the proper password and user identification code. Access by contract private counsel is restricted to those cases assigned.

RETENTION AND DISPOSAL:

Case files will be destroyed and automated information will be erased ten years after close of case. (Pending approval of the National Archives and Records Administration.)

SYSTEM MANAGER AND ADDRESS:

System Manager is the Administrative Officer/Assistant for the U.S. Attorney in each of the ten judicial districts named under "System Locations."

NOTIFICATION PROCEDURE:

Address inquiries to the System Manager of the judicial district in which collection efforts have been initiated. (See "System Locations.")

RECORDS ACCESS PROCEDURES:

Address requests for access to the System Manager of the judicial district in which collection efforts have been initiated. (See "System Locations.") Clearly mark the envelope "Privacy Access Request." Include in the request the debtor's name, date of birth, address, and any other identifying information which may be of assistance in locating the record, e.g., name of the case or Federal agency to whom the debtor is indebted. In addition, include notarized signature of the debtor as well as the name and address of the individual to receive the information if other than the debtor.

CONTESTING RECORD PROCEDURES:

Address requests to the System Manager of the judicial district in which collection efforts have been initiated. (See "System Locations.") State clearly and concisely the information being contested, the reasons for contesting it, and the proposed amendment to the information.

RECORDS SOURCE CATEGORIES:

The individuals covered by the system; client agencies of the Department to whom the individual is indebted; an attorney or other representative for the debtor and/or payor; any Federal, State, local, foreign, private organization or individual who may have information relating to the debt, the debtor's ability to pay or any other information relevant and necessary to assist in settlement or

effective litigation and enforced collection of the debt.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 89-2230 Filed 2-10-89; 8:45 am]

BILLING CODE 4410-01-M

[AAG/A Order No. 30-89]

Privacy Act of 1974; Removal of a System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Criminal Division is removing a system of records entitled "Records on Persons Who Have Outstanding and Uncollected Federal Criminal Fines or Federal Bond Forfeitures, JUSTICE/CRM-016." The system was originally established to assist the United States Attorneys in locating persons whose addresses were unknown and who had outstanding and uncollected Federal criminal fines or Federal bond forfeitures. Since the Criminal Division no longer provides this assistance to the United States Attorneys and the records retention period established by the National Archives and Records Administration for these records has expired, the records have been destroyed in accordance with General Records Schedule NCI-60-78-1, item 33. Accordingly, the system as published in the Federal Register on December 11, 1987, (52 FR 47195), is removed from the Department's compilation of Privacy Act systems.

Date: February 2, 1989.

Harry H. Flickinger,

Assistant Attorney General for Administration.

[FR Doc. 89-3234 Filed 2-10-89; 8:45 am]

BILLING CODE 7710-01-M

Antitrust Division

Proposed Termination of Final Judgment; A.B. Dick Co., et al.

Notice is hereby given that A.B. Dick Company, A.B. Dick Company of Canada, Ltd., and Edison Dick ("defendants") have filed with the United States District Court for the Northern District of Ohio a motion to terminate the final judgment in *United States v. A.B. Dick Company, et al.*, Civil Action No. 24186; and the Department of Justice ("Department"), in a stipulation also filed with the court, has consented to termination of the judgment, but has reserved the right to withdraw its consent pending receipt of public comments. The complaint in this case (filed on July 22, 1956) alleged that defendants and others had monopolized the market for stencil duplicating machines and stencil duplicating supplies in the United States. The judgment (entered on March 25, 1948) enjoins defendants from: (1) Allocating product or geographic markets, fixing prices, limiting exports, imports, or production, or restricting third parties' access to the stencil duplicating market or to raw materials; (2) selling stencil duplicating machines or supplies at unreasonably low prices, or engaging in price discrimination; (3) discriminating among customers in the furnishing of repair services or imposing tying arrangements on customers that require purchasers of defendants' stencil duplicating machines to use defendants' stencil duplicating supplies, or vice versa; (4) acquiring information about a competitor's products except in the normal course of business, or tampering with or defaming a competitor's products; (5) suppressing evidence as to the validity or invalidity of any patents relating to stencil duplicating products; and (6) coercing dealers or distributors into carrying A.B. Dick products exclusively. The judgment requires defendants to take the following actions: (1) To terminate, upon 30 days' written notice, the contract of any dealer or distributor who discriminates against the owners of A.B. Dick machines for using non-Dick suppliers, or influences a consumer's choice of stencil duplicating machine by any unfair means; (2) to notify the Antitrust Division of any amendments to its standard Distributor Sales and Customer Service contract 30 days before the proposed change is effective.

The Department has filed with the court a memorandum setting forth the reasons why the Department believes that termination of the judgment would serve the public interest. Copies of the complaint and final judgment, the defendants' motion papers, the stipulation containing the government's consent, the Department's memorandum and all further papers filed with the court in connection with this motion will be available for inspection at Room 3233, Antitrust Division, Department of Justice, 10th Street and Pennsylvania Avenue NW., Washington, DC 20530 (telephone 202-633-2481), and at the office of the Clerk of the United States District Court for the Northern District of Ohio, U.S. Courthouse, 201 Superior Avenue, Cleveland, Ohio 44114 (telephone 216-522-4356). Copies of any of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the Decree to the Department. Such comments must be received within the sixty day period established by court order, and will be filed with the court. Comments should be addressed to: P. Terry Lubeck, Chief, Litigation II Section, Antitrust Division, Department of Justice, Washington, DC 20530 (telephone 202-724-7966).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89-3306 Filed 2-10-89; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 88-75]

Billy's Pharmacy, Bedford, VA; Hearing

Notice is hereby given that on July 16, 1988, the Drug Enforcement Administration, Department of Justice, issued to Billy's Pharmacy, an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AB2125119, and deny any pending application for renewal.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Wednesday, March 1, 1989, commencing at 10:00 a.m. at the United States Claims Court, 717 Madison Place NW., Courtroom No. 10, Room 309, Washington, DC.

Dated: February 7, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89-3256 Filed 2-10-89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-80]

The Prescription Shoppe; Revocation of Registration and Denial of Application

On August 25, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to The Prescription Shoppe (Respondent), of 60 Lockwood Drive, Charleston, South Carolina, proposing to revoke the pharmacy's DEA Certificate of Registration, AP5316787 (previously issued to Marvin Gilbert, R.Ph., then owner of The Prescription Shoppe). The Order to Show Cause also proposed to deny the pharmacy's pending application for a new registration, executed on November 21, 1986, by Kellie Lee Kays, R.Ph., on behalf of Toni Marie Gilbert (the wife of Marvin Gilbert). The ground for the issuance of the Order to Show Cause was that the pharmacy's registration was inconsistent with the public interest. Respondent filed a timely request for hearing on the issue raised in the Order to Show Cause, and the matter was placed on the docket of Administrative Law Judge Mary Ellen Bittner.

After the issuance of the Order to Show Cause, it was discovered that DEA Certificate of Registration BT1190103 was inadvertently issued to the pharmacy following the submission of yet another application for registration executed by TMS, Inc., a corporation wholly owned by Toni Marie Gilbert. The Government subsequently amended the original Order to Show Cause to include this new registration in the revocation proceeding.

The Government timely filed its prehearing statement in accordance with the Administrative Law Judge's order for prehearing statements. In that order, the Administrative Law Judge cautioned that a failure to file a prehearing statement "may be considered a waiver of hearing and an implied revocation of a request for hearing." Respondent did not file any prehearing statement. As a result, on December 2, 1988, the Administrative Law Judge issued a Memorandum to Counsel requesting the Government to advise her office as to how it intended to proceed with respect to further prosecution in the matter. Respondent then submitted a Motion to Dismiss and Waiver of Hearing, apparently in response to the Memorandum to Counsel. In its motion, Respondent asserted that it had "filed for relief under Chapter 7 of the Bankruptcy Code" and that, therefore, "further administrative action in this matter is redundant and moot." On December 12, 1988, Government counsel filed a response to the Memorandum to Counsel and Respondent's Motion to Dismiss and Waiver of Hearing, requesting that the Administrative Law Judge terminate the proceedings before her based upon Respondent's express waiver of hearing and failure to file a prehearing statement. Government counsel also requested that the Administrative Law Judge deny Respondent's Motion to Dismiss on the ground that once an Order to Show Cause is issued, a registrant cannot unilaterally render the proceeding moot and avoid a final determination in the show cause proceeding. Citing precedent in *Park & King Pharmacy*, Docket No. 86-6, 52 FR 13136 (1987), on December 16, 1988, the Administrative Law Judge denied Respondent's Motion to Dismiss. She also determined that Respondent had waived its opportunity for a hearing in the matter and terminated the proceeding before her so that the matter could be presented to the Administrator for entry of a final order in accordance with 21 CFR 1301.54(e).

After careful consideration of the entire record in this proceeding, the Administrator makes the following findings in determining that the pharmacy's registrations should be revoked and the pending application should be denied. The Prescription Shoppe was previously owned and operated by Marvin Gilbert, R.Ph. In 1986, Special Agents from the DEA Charleston Resident Office received reliable information that Mr. Gilbert had unlawfully sold morphine sulfate tablets to individuals not pursuant to valid physicians' prescriptions. Based upon that information and the results of a subsequent investigation, Mr. Gilbert was indicted in September 1986, on charges of unlawful distribution of controlled substances and falsification of records. On February 12, 1987, in the United States District Court for the District of South Carolina, Charleston Division, Mr. Gilbert was convicted of one count of unlawful distribution of a controlled substance, to wit: morphine sulfate, in violation of 21 U.S.C. 841(a)(1), a felony offense relating to controlled substances. 21 U.S.C. 824(a)(2). Mr. Gilbert was sentenced to a five year term of imprisonment to be followed by a three year special parole term.

On June 24, 1986, DEA Special Agents and investigators served a Federal search warrant on Marvin Gilbert at The Prescription Shoppe. The pharmacy's Schedule II controlled substance prescription files and prescription log book were seized pursuant to the warrant. A review of the seized records revealed that Mr. Gilbert short-filled and and altered a number of controlled substance prescriptions to conceal his illegal activities. In addition, he had filled prescriptions for Brompton's Cocktail solution and extra-strength morphine sulfate elixir without any indication on the prescriptions of how they were compounded. There was no indication as to the quantity or strength of the drugs he used in compounding these preparations.

Following his indictment, Mr. Gilbert transferred his ownership interest in The Prescription Shoppe to his wife, Toni Marie Gilbert. Mrs. Gilbert also purchased the ownership interest previously held by Richard T. Brock, a minority shareholder. As a result of these transactions, Mrs. Gilbert gained exclusive control of the pharmacy.

On November 21, 1986, an application for a new registration for the pharmacy was executed by Kellie Lee Kays, R.Ph., on behalf of Toni Marie Gilbert. At that time, South Carolina Board of Pharmacy records indicated that Mr. Gilbert remained the owner of The Prescription Shoppe. On the same date, Mrs. Gilbert submitted a new pharmacy permit application to the South Carolina Board of Pharmacy. In that application, she listed herself and Richard T. Brock as corporate officers of The Prescription Shoppe Ltd. of South Carolina. Also on the same date, Mrs. Gilbert submitted an application for a state controlled substance registration to the South Carolina Department of Health and Environmental Control (DHEC). The state pharmacy permit was approved on December 4, 1986. The DHEC informed Mrs. Gilbert that her application for registration would not be approved for the existing corporation. Mrs. Gilbert's application for a new DEA registration is a subject of this proceeding.

On April 30, 1987, Mrs. Gilbert filed articles of incorporation for TMS, Inc. Mrs. Gilbert was the corporation's sole stockholder and she and Sonia M. Botzis, her sister, were listed as corporate directors. The listed address for the corporation was the same as that of The Prescription Shoppe. Mrs. Gilbert, acting for TMS, Inc., reapplied for and was granted a state controlled substance registration. The corporation also received a new state pharmacy permit. On November 13, 1987, using the new corporate name, Mrs. Gilbert executed another application for registration with the Drug Enforcement Administration. A new DEA registration, BT1190103, was inadvertently issued to TMS, Inc., on December 3, 1987. this registration is also a subject of this proceeding.

On October 29, 1987, Marvin Gilbert entered into a Consent Order with the South Carolina Board of Pharmacy in which Mr. Gilbert voluntarily surrendered his state license to practice pharmacy and agreed not to petition the board for reinstatement for at least one year after his release from prison. Mr. Gilbert was released from prison in 1988.

After careful consideration of the record herein the Administrator

concludes that DEA Certificates of Registration AP5316787 and BT1190103 must be revoked and Mrs. Gilbert's pending application for registration must be denied.

With respect to DEA Certificate of Registration AP5316787, previously issued to Marvin Gilbert, the Administrator finds that Mr. Gilbert's felony conviction relating to controlled substances provides a sufficient basis to revoke that registration. See *Jefferson Pharmacy, Inc.*, Docket No. 86-98, 53 FR 13300 (1988) and *Robert Hozdish, d/b/a Meyer Pharmacy*, 53 FR 13338 (1988). In addition, evidence concerning Mr. Gilbert's falsification and alteration of controlled substance prescriptions and other records, in violation of Federal and state laws and regulations, clearly demonstrate that his continued registration would be inconsistent with the public interest.

The Administrator finds that DEA Certificated of Registration BT1190103, previously issued to TMS, Inc., must also be revoked and the pending application for registration must be denied. The pharmacy's registration under the current ownership scheme is contrary to the public interest. Mr. Gilbert transferred ownership of the pharmacy to his wife only after he was criminally indicted on controlled substance charges and feared losing the business. Such transfers to close family members are highly suspect and rarely are considered valid arms-length transactions. In this case, the transfer between husband and wife can hardly constitute a valid transaction. First, evidence in the record indicates that although Mrs. Gilbert is not registered pharmacist, she assisted her husband in the day-to-day operation of The Prescription Shoppe during the times Mr. Gilbert unlawfully sold morphine sulfate tablets and altered his prescription records. As his wife, she profited from Mr. Gilbert's wrongdoing. Since Mr. Gilbert's release from prison, he has been free to influence the operation and management of the pharmacy. There are no legal constraints upon his ability to enter the pharmacy, work there, and through his wife's ownership, to exercise, the facto, all of the attributes of proprietorship. Thus, under the present ownership scheme, there is no safeguard to prevent further diversion of controlled subtances from the pharmacy. The Administrator has revoked registrations and denied applications for registration in similar situations involving the transfer of ownership between family members. See *K & B Successors, Inc.*, Docket No. 82-15, 49 FR 34588 (1984); *Darrow Drug, Inc.*, Docket No. 83-35, 49 FR 39246 (1984); *Carriage Apothecary*, 52 FR 27599 (1987); and *Cumberland Prescription Center, Inc.*, Docket No. 86-91, 52 FR 37224 (1987). In this instance, the Administrator also concludes that the registration issued to TMS, Inc., must be revoked and the pending application denied. They are contrary to the public interest.

Therefore, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100, the Administrator of the Drug Enforcement Administration orders that DEA Certificate of Registration AP5316787, previously issued to The Prescription Shoppe, be, and it hereby is, revoked. The Administrator also orders that DEA Certificate of Registration BT1190103, previously issued to TMS, Inc., d/b/a The Prescription Shoppe, be and it hereby is, revoked. It is further ordered that the pending application for registration executed on November 21, 1988, by Kellie Lee Kaya, R.Ph., on behalf of Toni Marie Gilbert, be, and it hereby is, denied.

This order is effective March 15, 1989.

John C. Lawn,
Administrator.

Dated: February 7, 1989.

[FR Doc. 89-3257 Filed 2-10-89; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (89-07)]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee.

DATE AND TIME: March 2, 1989, 8 a.m. to 4:30 p.m.

ADDRESS: National Aeronautics and Space Administration, Federal Building 10B, Room 625, 600 Independence Avenue SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Catherine L. Smith, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-9714.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee was established to provide overall guidance and direction to the aeronautics research and technology activities in the Office of Aeronautics and Space Technology. The Committee, chaired by Mr. Phil M. Condit, is comprised of 23 members. The meeting will be open to the public up to the seating capacity of the room (approximately 40 persons including the team members and other participants).

Type of Meeting: Open.

Agenda:

March 2, 1989

8 a.m.—Opening Remarks
8:45 a.m.—Aeronautics Overview
10 a.m.—Strategic Plan and Fiscal Year 91-93
Program Requirements
12:45 p.m.—NASA/Federal Aviation Administration Cooperative Program Restructuring
1:15 p.m.—Ad Hoc Team Reports
1:45 p.m.—NASA High Speed Research Program
2:15 p.m.—Discussion of November 1988 AAC/Aerospace Research and Technology Subcommittee Meeting
3:45 p.m.—New Study Topics
4:30 p.m.—Adjourn.

February 8, 1989.

Ann Bradley,
Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 89-3276 Filed 2-10-89; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-458]

Gulf States Utilities Co.; Environmental Assessment and Findings of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an amendment to Facility Operating License No. NPF-47 issued to Gulf States Utilities Company, (the licensee), for operation of the River Bend Station, Unit 1, located in West Feliciana Parish, Louisiana.

Environmental Assessment

Identification of the Proposed Action

The proposed amendment would delete the License Condition 2.C.(4), Attachment 2, Item 1 requirement to install an additional brace on the control rod drive hydraulic control units (HCUs) as used in the qualification testing. The HCUs furnish pressurized water, on signal, to a drive unit that positions its control rod as required.

The proposed action is in accordance with the licensee's application for amendment dated November 9, 1988.

The Need for the Proposed Action

The proposed change to the license is required in order to delete the current requirement to install an additional brace on the HCUs.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed deletion of the license condition. The proposed deletion of the license condition would remove the requirement to install an additional brace on each of the HCUs. The staff's reviewed the seismic and dynamic qualification of the HCUs. Based on the staff's evaluation, it is concluded that the unmodified test HCU was subject to vibration fatigue far in excess of the seismic/dynamic environment postulated to occur at River Bend Station over the 40 year life. The staff concludes that the additional brace is not required and the license condition can be deleted.

Therefore, the proposed changes do not increase the probability or consequences of any accident, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed change to the license condition involves systems located within the restricted areas as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment. The Notice of Consideration of Issuance of Amendments and Opportunity for Hearing in connection with this action was published in the Federal Register on December 2, 1988 (53 FR 48743). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Since the Commission concluded that there is no signficant adverse environmental effect that would result from the proposed action, alternatives with equal or greater environmental impact need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce the impact of plant operations on the environment and would result in implementing modifications to the facility.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement for the River Bend Station, Unit 1, dated January 1985.

Agencies and Persons Consulted

The NRC has reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon this environmental assessment, we conclude that the proposed action will not have a significant adverse effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated November 9, 1988, which are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

Dated at Rockville, Maryland, this 6th day of February 1989.

For the Nuclear Regulatory Commission.

Kenneth L. Heitner,
Acting Project Director, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-3315 Filed 2-10-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-416]

System Energy Resources, Inc., et al. Grand Gulf Nuclear Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-29 issued to the System Energy Resources, Inc., *et al.* (the licensee), for operation of Grand Gulf Nuclear Station, Unit 1, located in Claiborne County, Mississippi.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the provisions in the Technical Specifications (TS) relating to extended fuel irradiation. The proposed action was requested in the licensee's application dated December 6, 1988.

The Need for the Proposed Action

The proposed changes are needed to allow the licensee the flexibility of extending the fuel irradiation, thereby permitting operating for longer fuel cycles.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the TS. The proposed revisions would permit use of fuel which would be irradiated to levels above 33 gigawatt days per metric ton (GWD/MT) but not to exceed 39 GWT/MT.

The safety considerations associated with reactor operation with extended fuel irradiation have been evaluated by the NRC staff. The staff has concluded that such changes would not adversely affect plant safety. The proposed changes have no adverse effect on the probability of any accident. The increased burnup may slightly change the mix of fission products that might be released in the event of a serious accident, but such small changes would not significantly affect the consequences of serious accidents. No changes are being made in the types or amounts of any radiological effluents that may be released offsite. There is no significant increase in the allowable individual or cumulative occupational radiation exposure.

With regard to potential nonradiological impacts of reactor operation with extended irradiation, the proposed change to the TS involve systems located within the restricted area, as defined in 10 CFR Part 20. They do not affect nonradiological plant effluents and have no other environmental impact.

The environmental impacts of transportation resulting from the use of higher enrichment fuel and extended irradiation are discussed in the staff assessment entitled, "NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and Irradiation," which was published in the Federal Register on August 11, 1988 (53 FR 30355). This action was in connection with the

Shearon Harris Nuclear Power Plant, Unit 1. Environmental Assessment and Finding of No Significant Impact. As indicated therein, the environmental cost contribution of transportation of the increases in the fuel enrichment up to 5% and irradiation limits up to 60 GWD/MT are either unchanged or may, in fact, be reduced from those summarized in Table S-4, as set forth in 10 CFR 51.52(c). These findings are applicable to the proposed amendment for the Grand Gulf Nuclear Station, Unit 1.

Therefore, the Commission concludes that there are no significant radiological or nonradiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Since the Commission has concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement related to the operation of Grand Gulf Nuclear Station, Unites 1 and 2," dated September 1981.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further information with respect to this action, see the application for the amendment dated December 6, 1988, which is available for public inspection at the Commission Public Document Room, 2120 L Street NW., Washington, DC 20555 and at the Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Dated at Rockville, Maryland, this 6th day of February, 1989.

For the Nuclear Regulatory Commission.

Edward A. Reeves,

Acting Director, Project Directorate II-1, Division of Reactor Projects I/II Office of Nuclear Reactor Regulation.

[FR Doc. 89-3316 Filed 2-10-89; 8:45 am]

BILLING CODE 7590-01-M

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: Extension.

2. The title of the information collection: "Licensee Event Report."

3. The form number if applicable: NRC Forms: 366, 366A, and 366B

4. How often the collection is required: On Occasion.

5. Who will be required or asked to report: Holders of Operating Licenses for Commercial Nuclear Power Plants.

6. An estimate of the number of responses: 2,900

7. An estimate of the total number of hours needed annually to complete the requirement or request: Approximately 50 hours per response. The total industry burden is 145,000 hours.

8. Section 3504(h), Pub. L. 96-511 does not apply.

9. Abstract: NRC collects reports of operational events at commercial nuclear power plants in order to incorporate lessons of that experience in the licensing process and to feedback the lessons of that experience to the nuclear industry.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street NW., Washington, DC.

Comments and questions can be directed by mail to the OMB reviewer as follows: Nicolas B. Garcia, Paperwork Reduction Project (3150-0104), Office of Management and Budget, Washington, DC 20503. Comments can also be submitted by telephone at (202) 395-3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland this 2d day of February 1989.

For the Nuclear Regulatory Commission.

Joyce A. Amenta,

Designated Senior Official for Information Resources Management.

[FR Doc. 89-3317 Filed 2-10-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-320-OLA]

General Public Utilities Nuclear Corp. et al. (Three Mile Island Nuclear Station, Unit 2); Disposal of Accident-Generated Water; Assignment of Atomic Safety and Licensing Appeal Board

Notice is hereby given that, in accordance with the authority conferred by 10 CFR 2.787(a), the Chairman of the Atomic Safety and Licensing Appeal Panel has assigned the following panel members to serve as the Atomic Safety and Licensing Appeal Board for this operating license amendment proceeding:

Christine N. Kohl, *Chairman;* Thomas S. Moore, Howard A. Wilber.

Barbara A. Tompkins,

Secretary to the Appeal Board.

Dated: February 6, 1989.

[FR Doc. 89-3318 Filed 2-10-89; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-62]

Technical Amendment to Determination to Impose Increased Duties on Certain Products of the European Community

SUMMARY: The determination of the United States Trade Representative of December 29, 1988, imposing increased duties on imports of certain products of the European Community, is hereby amended by modifying the list of affected products.

EFFECTIVE DATE: January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Laura Kneale Anderson, (202) 395-3074, or Les Glad, (202) 395-3077, (for technical and policy information), or Richard Parker, (202) 395-6800 (for legal issues).

SUPPLEMENTARY INFORMATION: On December 29, 1988, pursuant to authority delegated by the President to the United States Trade Representative (USTR) in Proclamation No. 5759 of December 24, 1987, the United States Trade Representative partially terminated the suspension of the application of increased duties on imports of certain products of the European Community proclaimed in Proclamation No. 5759 and modified the list of affected products (53 FR 53115). This notice further modifies the list of affected products, to clarify that certain products classified in subheading 2101.10.20 of the Harmonized Tariff Schedule of the United States ("HTS") are not subject to the increased duties being applied pursuant to Proclamation 5759 as provided in, and the modifications to the Harmonized Tariff Schedule of the United States made by, the notice of the USTR of December 29, 1988.

On November 25, 1987, the Office of the USTR announced that public hearings would be held by the Section 301 Committee on a list of products being considered for increased duties in response to the European Community's Directive Prohibiting the Use in Livestock Farming of Certain Substances Having a Hormonal Action (52 FR 45304). That list included items classified under item 160.20 of the Tariff Schedules of the United States ("TSUS"), but did not include items classified under item 160.21 of the TSUS. Accordingly, TSUS item 160.21 was not the subject of public comment or the public hearing held on this matter on December 9, 1987; nor was TSUS item 160.21 included in Annex A to Proclamation 5759.

The Harmonized Tariff Schedule of the United States became effective January 1, 1989, and products classified under TSUS item 160.21 are now reported under HTS statistical reporting number 2101.10.2040. Subheading 9903.23.20 of the HTS, created by Proclamation 5759, includes in its article description a reference to HTS subheading 2101.10.20. Therefore, it is necessary to clarify that subheading 9903.23.20 was intended to include only those products that were formerly classified under TSUS item 160.20, and not those that were formerly classified under TSUS item 160.21.

Modifications

Pursuant to the authority delegated by the President to the USTR in Proclamation 5759 of December 24, 1987, subheading 9903.23.20 in Annex B to Proclamation 5759 is modified by deleting the words "extracts, essences and concentrates" in the article description.

The Harmonized Tariff Schedule of the United States is hereby modified accordingly. The modifications to the HTS made by this amendment are effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after January 1, 1989.

Carla A. Hills,

United States Trade Representative.

[FR Doc. 89-3270 Filed 2-10-89; 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review of Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, 450 Fifth Street NW., Washington, DC 20549.

New

Rule 17, File No. 270-319

Amended

Rule 2, File No. 270-83

Form U-3A-2, File No. 270-270-83

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 [44 U.S.C. 3501 *et seq.*], the Securities and Exchange Commission has submitted for OMB approval proposed Rule 17, proposed amended Rule 2, and proposed amended Form U-3A-2 under the Public Utility Holding Company Act of 1935 [15 U.S.C. 79a *et seq.*] ("Act").

Proposed Rule 17 under the Act would specify certain circumstances ("safe harbor provisions") in which non-utility diversification by an intrastate public-utility holding company would not be deemed detrimental to the public interest or the interest of investors or consumers, and would not cause the denial or revocation of an exemptive order of the Commission. A one-time report and then annual reports, of certain information will be required of the approximately 34 intrastate holding companies which have received exemptive orders of the Commission to enable the Commission to determine if one of the safe harbor provisions is available. The reports will be placed in the Commission file which contains the intrastate holding company's exemptive order. Each respondent should spend approximately ½ hour, annually, preparing the report, and the same amount of time preparing the one-time report.

Proposed amended Rule 2 under the Act would provide that a claim of exemption under Rule 2 by an intrastate public-utility holding company, in order to be effective, would require such company to meet one of the safe harbor provisions of proposed Rule 17. Rule 2 presently requires approximately 88 claimants to make an annual filing with the Commission on Form U-3A-2 of certain information would be required by the proposal. The one-time, special filing on Form U-3A-2 should take approximately ½ hour to prepare.

Proposed amended Form U-3A-2 under the Act would require intrastate holding companies claiming exemption under Rule 2, as proposed to be amended, to furnish in their annual filings, in addition to information they now are annually required to supply, information supporting such company's ability to rely on one of the safe harbor provisions of proposed Rule 17. The expanded Form U-3A-2, filed annually by the approximately 88 claimants previously mentioned, will take approximately one hour to fill out.

These estimated average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, 450 Fifth Street NW., Washington, DC 20549-6004 and to Gary Waxman at the address listed below.

General comments should be submitted to OMB Desk Officer: Gary Waxman, Office of Information and Regulatory Affairs, Paperwork Reduction Project (3235-0161), Room 3228 NEOB, Washington, DC 20503.

Jonathan G. Katz,

Secretary.

February 7, 1989.

[FR Doc. 89-3302 Filed 2-10-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-26523; File No. SR-NYSE-87-38]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change

On November 27, 1987, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to revise, restate and consolidate the Specialist Job Description ("Description") and the Code of

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1988).

Acceptable Business Practices for Specialists.

The proposed rule change was noticed in Securities Exchange Act Release No. 25396, 53 FR 7458 (March 8, 1988). No comments were received on the proposed rule change.

The proposal rescinds the Exchange's existing Specialist Job Description and the Code of Acceptable Business Practices and replaces them in their entirety with the Description.

As discussed in Securities Exchange Act Release No. 25396, Section I of the proposed description sets forth the primary obligation of a specialist. This section also discusses the specialist responsibility to maintain fair and orderly markets and to comply with Federal and Exchange laws and rules.[3] Section I also indicates that acts or omissions by specialists that appear to be inconsistent with the primary duties of the specialist, as described in Section II of the Description, are addressed by the Market Performance Committee of the Exchange's Board of Directors via the regulatory process under applicable Exchange rules and, in particular, under Exchange Rule 103A which provides the standards that are used to evaluate the adequacy of the performance of a specialist.[4] In addition to this reference to Exchange Rule 103A, the Exchange has added to its original proposal a statement noting that, where circumstances warrant, the Exchange may take disciplinary action against the specialist under Exchange Rule 476 (Disciplinary Proceedings Involving Charges Against Members, Member Organizations, Allied Members, Approved Persons, or Employees).[5]

The primary duties of the specialist are described in detail in Section II of the Description. The responsibilities are categorized into seven separate areas: "Agency Funcion," "Dealer Function," Maintaining the Auction Market," "Communication Function," "Administrative Function," "Competitive Responsibilities and "Other Market Responsibilities."

The "Agency Function" describes the specialist's obligation when acting as agent on behalf of orders entrusted to him. He is expected to represent each order properly in the marketplace, regardless of its size or source, to ensure the timely and best possible execution in accordance with the terms of the order and the rules and policies of the Exchange.

The "Dealer Function" responsibility describes the specialists' affirmative and negative market making obligations.[6] He is also expected to make firm and continuous two-sided quotations [7] and effect principal transactions in a manner consistent with his financial resources.[8]

Under the heading "Maintaining the Auction Market" the Description explains the specialist's responsibilities in opening and reopening trading in a listed security. A specialist is expected to effect timely openings so as to facilitate transactions in securities and to contribute to the maintenance of fair and orderly markets in accordance with the specialist's obligations under the Act.[9]

The "Communication Function" provides that the specialist should equally and impartially provide accurate and timely market information; disseminate accurate, complete and current opening price indications and pre-opening information; and indicate the depth of the current market, to the extent his agency responsibility allows, to all inquiring members in a professional and courteous manner.

The "Administrative Function" describes the specialist's responsibilities in maintaining the quality and competitiveness of the Exchange's markets by employing prompt, efficient and accurate administrative and operating practices. Among other things, the Specialist also should maintain a level of trained staff on the Exchange Floor at all times sufficient to meet periods of reasonable demand, and make arrangements for supplementary staff and financial resources that may be necessary to meet extraordinary market conditions.

Section II sets forth the specialists' responsibilities which include, among other things, making every effort to be fully competitive in all segments of the market; to establishing a positive professional relationship with Exchange listed companies; and meeting annually with appropriate on- and off-floor representatives.

Finally, Section II of the proposed Specialist Job Description lists a number of other market responsibilities the specialist is expected to discharge, which, in general, include assisting the Exchange in developing and implementing systems and procedures designed to enhance the efficiency and competitiveness of the Exchange's agency auction market; complying with all measures and standards of performance established by the Exchange; keeping records required by Federal and Exchange rules; and taking any action not prohibited by Federal or Exchange rule or policy or precluded by professional judgment to foster and maintain liquid continuous two-sided agency auction markets and to ensure that such markets are fair, orderly and efficient.

The Description concludes with Section III which requires an Exchange member to be registered as an Exchange specialist in order to be associated with an existing or newly created specialist unit approved by the Exchange; to complete an adequate training period under the supervision of an experienced specialist; to pass the Exchange administered specialist examination; to ensure that the specialist unit with which he is to be associated meets the Exchange's specialist capital requirements; and to participate in an orientation session with a panel of market professionals.[10]

The NYSE states that the purpose of the Description is to guide specialists in the performance of their duties in a manner that is consistent with the rules of the Exchange and the provisions of the Act and the rules thereunder. The Exchange believes that the new Description will add specificity to the rules of the Exchange applicable to registered specialists and that the Description augments and reinforces those rules.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6,[11] and the rules and regulations thereunder. By providing more specificity to the description of the performance expected of Exchange members who are registered as specialists with the Exchange, the proposed amendments to Specialist Job Description are consistent with the requirements of section 6(b)(5) of the Act which requires that rules of an exchange be designed "to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, * * * and, in general, to protect investors and the public interest * * *." The Specialist Job Description and the Code of Acceptable Business Practices for Specialists were adopted in 1976 and have not been updated since that time. The proposed amendments will update the Substance of the Description and the Code to reflect more accurately the changed duties and responsibilities of the specialist since the Description and the Code were adopted.

The Description is also consistent with requirements of Rule 11b-1(a)(2) (ii) under the Act which mandates that the rules of a national securities exchange include "requirements, as a condition of a specialist's registration, that a specialist engage in a course of dealings for his own account to assist in the maintenance, so far as practicable, of a fair and orderly market * * *." By explaining the course of conduct expected by the Exchange from its specialists under Exchange rules, the Act and the rules thereunder, the Description will help assure that the dealings of Exchange specialists comport with the requirements of section 11(b) and Rule 11b-1.

Finally, the updated Specialist Job Description defines in detail for NYSE specialists their obligations and responsibilities under NYSE Rule 104, section 11 of the Act and Rule 11b-1 thereunder. We believe this is beneficial particularly in light of the concerns about specialist performance and compliance with affirmative and negative market making obligations that were expressed in the October 1987 Market Break Report.[12]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Jonathan G. Katz,

Secretary.

Dated: February 7, 1989.

[FR Doc. 89-3303 Filed 2-10-89; 8:45 am]

BILLING CODE 8010-01-M

[3] In particular, the Description highlights the specialist responsibility under section 11(b) of the Act, Rule 11b-1 and NYSE Rule 104 (dealings by specialists) in addition to compliance with Intermarket Trading System rules. *See* Letter from Susan G.S. Cutler, Director Committee Support Service, NYSE, to Sharon Lawson, Branch Chief, Branch of Exchange Regulation, Division of Market Regulation, Securities and Exchange Commission, dated August 23, 1988 ("NYSE Letter"); and Amendment No. 1 to file No. SR-NYSE-87-38, August 23, 1988.

[4] *See* Securities Exchange Act Release No. 25681 (May 9, 1988), 53 FR 17287 (May 16, 1988).

[5] *See* Amendment No. 1 to File No. SR-NYSE-87-38, August 23, 1988, *supra* note 3.

[6] This describes the affirmative obligation to buy and sell as principal when necessary to minimize order disparities and to contribute to continuity and depth and the negative obligation to refrain from trading unless it is necessary for the maintenance of fair and orderly markets.

[7] In addition to describing the continuous market obligation of a specialist acting as principal, this function notes that the specialist must ensure that the election of stop orders results from fair and orderly price movement of the stock and not from poor performance by the specialist or inadequate depth.

[8] This section notes the specialist responsibility to report promptly to the Exchange any active or imminent financial problems that may affect the ability to fulfill responsibilities to the market.

[9] A specialist's duty to maintain the auction market includes his duty to serve as market coordinator for all of the securities in which he is registered and to seek the advice of Floor Officials in a timely manner when requesting delays in openings or trading halts.

[10] The Exchange intends to include references to Rule 103A and the Specialist Performance Evaluation Questionnaire in guidelines for use by Market Performance Committee members in conducting orientation sessions for Exchange members who desire to be registered as an Exchange specialist. *See* NYSE Letter, *supra* note 3.

[11] 15 U.S.C. 78f (1982).

[12] *See* the October 1987 Market Break, a Report by the Division of Market Regulation, U.S. Securities and Exchange Commission, February 1988 at 4-30—4-39.

[13] 15 U.S.C. 78s(b)(2) (1982).

[14] 17 CFR 200.30-3(9)(12) (1988).

SMALL BUSINESS ADMINISTRATION

Region IX Advisory Council; Public Meeting; California

The U.S. Small Business Administration, Region IX Advisory Council, located in the geographical area of Santa Ana will hold a public meeting scheduled at 9:30 a.m. on Tuesday, March 14, 1989, at the SBA offices at 901 W. Civic Center Drive, Suite 160, Santa Ana, California, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Steve Waddell, District Director, U.S. Small Business Administration, 901 W. Civic Center Drive, Suite 160, Santa Ana, California 92703, 714/836-2494.

Joannette M. Paull,

Acting Director, Office of Advisory Councils.

February 6, 1989.

[FR Doc. 89-3279 Filed 2-10-89; 8:45 am]

BILLING CODE 8025-01-M

Region IV Advisory Council; Public Meeting; Kentucky

The U.S. Small Business Administration, Region IV Advisory Council, located in the geographical area of Louisville will hold a public meeting scheduled at 10:00 a.m. to 3 p.m. on Tuesday, March 21, 1989, at the Executive Inn West, Drinkwater Room, Louisville, Kentucky, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call William Federhofer, District Director, U.S. Small Business Administration, P.O. Box 3527, Louisville, Kentucky 40201, 502/582-5971.

Joannette M. Paull,

Acting Director, Office of Advisory Councils.

February 6, 1989.

[FR Doc. 89-3280 Filed 2-10-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/1259]

U.S. Organization for International Telegraph & Telephone Consultative Committee (CCITT) Integrated Services Digital Network (ISDN) Joint Working Party and Study Group C; Meeting

The Department of State announces that the Integrated Service Digital Network (ISDN) Joint Working Party, and Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on March 15, 1989 at 9:30 a.m. in Room 1205, Department of State, 2201 C Street NW., Washington, DC.

The agenda for the meeting will be:

1. Approval of Minutes of December 16, 1988 meeting;

2. Consideration of Contributions in preparation for the CCITT Study Group XI meeting, March 29-April 11, Geneva, and Study Group I, May 2-12, Geneva;

3. Consideration of nominations for U.S. Delegation to CCITT Study Group XI and I meetings;

4. Other business.

Members of the general public may attend the meetings and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl S. Barbely, Department of State, Washington, DC; telephone (202) 647-5220. All attendees must use the C Street entrance to the building.

Date: January 26, 1989.

Earl S. Barbely,

Director, Office of Telecommunications and Information Standards; Chairman, U.S. CCITT National Committee.

[FR Doc. 89-3235 Filed 2-10-89; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 89-2-19]

Fitness Determination of Flight Trails d/b/a Air Resorts Airlines d/b/a Resorts

AGENCY: Department of Transportation.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 89-2-19, Order to Show Cause.

SUMMARY: The Department of Transportation is proposing to find Flight Trails d/b/a Air Resorts Airlines d/b/a Resorts fit, willing, and able to provide commuter air service under section 419(c)(2) of the Federal Aviation Act.

Responses: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P-56, Department of Transportation, 400 Seventh Street SW., Room 6401, Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than February 23, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Carol A. Woods, Air Carrier Fitness Division (P-56, Room 6401), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366-2340.

Dated: February 7, 1989.

Gregory S. Dale,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 89-3334 Filed 2-10-89; 8:45 am]

BILLING CODE 4910-62-M

Coast Guard

Second Coast Guard District Industry Day; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: On 14 March 1989, the Commander, Second Coast Guard District, will sponsor an Industry Day program to provide for an open exchange of information, ideas, and opinions on matters of mutual interest or concern to the inland marine community and the Coast Guard. The Industry Day activities will be held at the Breckenridge-Frontenac Hotel, 1335 South Lindbergh, St. Louis, MO.

The Schedule of Events for Industry Day is:

Monday 13 March

7:00-10:00 PM, "No host" social hour, and advance registration for early arrivals, in the hotel lounge.

Tuesday 14 March

8:00 AM, Registration.
9:00 AM, Industry Day Presentations.
11:30 AM, "No host" Buffet Luncheon.
1:00 PM, Industry Day Presentations continue.
4:00 PM, Industry Day concludes.

Advance registration, and payment of the $20.00 conference fee (which includes the cost of the luncheon) is required. Persons desiring registration forms or additional information on the Industry Day activities and events scheduled by other groups to coincide with Industry Day should contact the officers named below. Recommendations for discussion topics will be considered in developing the final agenda. Such recommendations must be submitted in writing to the officers named below. All registration forms and recommendations must be received by 28 February.

FOR FURTHER INFORMATION CONTACT: CDR T.B. Rodino or LT B.D. Ward, Commander (mpb), Second Coast Guard District, 1430 Olive Street, St. Louis, MO 63103-2398, Tel: Commercial (314) 425-4655, FTS 279-4655.

W.P. Leahy, Jr.,

Rear Admiral, U.S. Coast Guard, Commander, Second Coast Guard District.

[FR Doc. 89-3337 Filed 2-10-89; 8:45 am]

BILLING CODE 4910-14-M

[CDG 89-009]

Towing Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Request for Applications.

SUMMARY: The U.S. Coast Guard is seeking applicants for appointment to membership on the Towing Safety Advisory Committee (TSAC). This committee advises the Secretary of Transportation on rulemaking matters related to shallow-draft inland and coastal waterway navigation and towing safety.

Eight members will be appointed as follows: Two (2) members from the barge and towing industry, reflecting a geographical balance; two (2) members from maritime labor; two (2) members from shippers (of whom at least one shall be engaged in the shipment of oil or hazardous materials by barge); one (1) member from port districts, port authorities or terminal operators; and one (1) member from the mineral and oil supply vessel industry.

To achieve the balance of membership required by the Federal Advisory Committee Act, the Coast Guard is especially interested in receiving applications from minorities and women. The committee will meet at least once a year in Washington, D.C. or another location selected by the Coast Guard.

DATE: Requests for applications should be received no later than March 30, 1989.

ADDRESS: Persons interested in applying should write to Commandant (G-MP-3), U.S. Coast Guard Headquarters, Washington, DC 20593-0001.

FOR FURTHER INFORMATION CONTACT: Commander R.J. ASARO, Executive Director, Towing Safety Advisory Committee (G-MP-3), Room 2420, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001, (202) 267-0449.

Dated: February 3, 1989.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89-3339 Filed 2-10-89; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

[Proposed Advisory Circular 21-QCC]

Quality Control for Composite Materials and Structures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice announces the availability of proposed Advisory Circular (AC) 21-QCC, Quality Control For Composite Materials and Structures for review and comments. The proposed AC 21-QCC was originally published in **Federal Register** Volume 54, Number 9, Friday, January 13, 1989, Notices. Due to several requests from the public, the comment period has been extended. The proposed AC 21-QCC provides information and guidance concerning an acceptable means, but not the only means, of demonstrating compliance with the requirements of the Federal Aviation Regulations (FAR) Part 21, Certification Procedures for Products and Parts.

DATE: Comments submitted must identify the proposed AC 21-QCC file number, P8-220-0005, and be received by March 30, 1989.

ADDRESSES: Copies of the proposed AC 21-QCC can be obtained from and comments may be returned to the following: Federal Aviation Administration, Production Certification Branch, AIR-220, Aircraft Manufacturing Division, Aircraft Certification Service, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Frank Paskiewicz, Production Certification Branch, AIR-220, Aircraft Manufacturing Division, Room 333, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591 (202) 267-8361.

SUPPLEMENTARY INFORMATION:

Background

The proposed AC 21-QCC provides information and guidance to FAA production approval applicants or holders concerning acceptable quality control systems and related procedures used in the manufacture of composite materials and structures for aircraft and related products.

Comments Invited

Interested persons are invited to comment on the proposed AC 21-QCC listed in this notice by submitting such written data, views, or arguments as they desire to the aforementioned specified address. All communications received on or before the closing date for comments specified above will be considered by the Director, Aircraft Certification Service, before issuing the final AC.

Comments received on the proposed AC 21-QCC may be examined, before and after the comment closing date in Room 333, FAA Headquarters Building (FOB-10A), 800 Independence Avenue SW., Washington, DC 20591, between 8:30 a.m. and 4:30 p.m.

Issued in Washington, DC, on February 3, 1989.

Anthony J. Merrill,

Acting Manager, Aircraft Manufacturing Division.

[FR Doc. 89-3286 Filed 2-10-89; 8:45 am]

BILLING CODE 4910-13-M

BEST COPY AVAILABLE

Sunshine Act Meetings

Federal Register
Vol. 54, No. 28
Monday, February 13, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

AGENCY MEETING

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:16 p.m. on Sunday, February 5, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to authorize the execution of an agreement by and between the Federal Home Loan Bank Board, the Federal Savings and Loan Insurance Corporation ("FSLIC"), and the Federal Deposit Insurance Corporation ("FDIC") whereby the FDIC will conduct and manage certain conservatorships and receiverships of insolvent savings and loan associations and thrift institutions.

The Board also considered matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: February 8, 1989.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 89-3376 Filed 2-9-89; 10:47 am]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 5:06 p.m. on Tuesday, February 7, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider (1) administrative enforcement proceedings, and (2) matters relating to the possible closing of certain insured banks.

In calling the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: February 8, 1989.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 89-3377 Filed 2-9-89; 10:47 am]

BILLING CODE 6714-01-M

FEDERAL ENERGY REGULATORY COMMISSION

February 8, 1989.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409, 5 U.S.C. 552B:

TIME AND DATE: 10:00 a.m., February 15, 1989.

PLACE: 825 North Capitol Street, N.E., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevent to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

Consent Power Agenda, 889th Meeting—February 15, 1989, Regular Meeting (10:00 a.m.)

CAP-1.
Project No. 8930-005, BES Hydro, Inc.
CAP-2.
Project No. 2543-016, The Montana Power Company
CAP-3.
Docket No. EL88-37-001, Kentucky Utilities Company
CAP-4.
Project No. 2785-009, Wolverine Power Corporation
CAP-5.
Project No. 5074-009, Baker Power Company
CAP-6.
Project No. 9543-001, Rim View Trout Company
CAP-7.
Project No. 5984-002, Niagara Mohawk Power Corporation
CAP-8.
Project No. 9840-001, Appomattox River Water Authority
CAP-9.
Project No. 6032-001, Niagara Mohawk Power Corporation and Fourth Branch Associates
Project No. 9706-001, Mechanicville Corporation
CAP-10.
Project No. 619-009, Pacific Gas and Electric Company
CAP-11.
Project No. 10610-001, Trout Creek, Inc.
CAP-12.
Project No. 10611-001, Whiskey Creek, Inc.
CAP-13.
Project No. 2680-007, Consumers Power Company and the The Detroit Edison Company
CAP-14.
Docket No. UL88-24-001, City of Martinsville, Virginia
CAP-15.
Project No. 7964-004, JDJ Energy Company
CAP-16.
Project No. 3512-009, UAH-Braendly Hydro Associates
CAP-17.
Project No. 2144-007, City of Seattle, Washington
CAP-18.
Omitted
CAP-19.
Docket Nos. ER89-171-000 and ER88-619-000, Gulf States Utilities Company
CAP-20.
Docket No. ER89-133-000, Pennsylvania Power & Light Company
CAP-21.
Docket No. ER89-53-001, Green Mountain Power Corporation
CAP-22.
Docket No. EL88-27-001, North Carolina Eastern Municipal Power Agency v. Carolina Power & Light Company

CAP-23.
Omitted.
CAP-24.
Docket Nos. ER82-553-004 and ER82-554-004, Ohio Power Company
CAP-25.
Docket No. EL89-4-000, Northern California Power Agency v. Pacific Gas & Electric Company
CAP-26.
Docket No. EL88-22-000, Western Area Power Administration v. Pacific Gas & Electric Company, The Northern California Power Agency, and the Cities of Alameda, Healdsburg, Ukiah, Santa Clara Lodi, and Lompac California
CAP-27.
Docket No. EL88-14-000, James E. O'Neil Attorney General of the State of Rhode Island and the Rhode Island Division of Public Utilities and Carriers v. Montaup Electric Company
CAP-28.
Docket No. ER85-720-001, Connecticut Light and Power Company
Docket No. ER85-707-001, Western Massachusetts Electric Company
Docket No. ER85-689-001, Holyoke Water Power Company and Holyoke Power & Electric Company
CAP-29.
Docket No. ER88-83-004 (Phase I), Southern California Edison Company
CAP-30.
Docket Nos. EL88-3-001 and EL87-56-001, Commonwealth Electric Company v. Boston Edison Company
CAP-31.
Docket No. 9260-003, Adirondack Hydro Development Corporation

Consent Miscellaneous Agenda

CAM-1.
Docket Nos. RM89-6-000, Establishment of Deadlines for First Sellers to Make and Report Refunds
CAM-2.
Docket No. RM89-8-000, Removal of Contract Duration and Right of First Refusal Regulations for Certain OCS Gas
CAM-3.
Docket No. GP87-60-001, Transcontinental Gas Pipe Line Corporation v. Enstar Petroleum Company
CAM-4.
Docket No. RO87-8-001, Marathon Petroleum Company
CAM-5.
Docket No. RO88-5-000, William Valentine and Sons, Inc., Valentine Construction, Inc., Dale L. Valentine, Verna Valentine and James L. Merchant
CAM-6.
Docket No. RM89-9-00, Statement of Policy Limited Intervention by Fish and Wildlife Agencies at the Appeal Stage of a Licensing Proceeding

Consent Gas Agenda

CAG-1.
Docket No. RP88-198-007, Transwestern Pipeline Company
CAG-2.
Docket No. TM89-1-001, Alabama-Tennessee Natural Gas Company
CAG-3.
Docket Nos. CP87-309-006 and RP88-206-002, Paiute Pipeline Company
CAG-4.
Docket Nos. TA88-4-37-003 and RP89-1-004, Northwest Pipeline Corporation
CAG-5.
Omitted
CAG-6.
Docket Nos. RP88-227-004 and RP88-227-007, Pauite Pipeline Company
CAG-7.
Docket No. RP88-191-001, Tennessee Gas Pipeline Company
CAG-8.
Docket No. RP89-58-00, Bear Creek Storage Company
CAG-9.
Docket No. RP89-60-000, Southwest Gas Storage Company
CAG-10.
Docket No. GT88-5-008, Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company
CAG-11.
Docket Nos. TA88-3-25-004, RP88-146-003 and RP89-12-003, Mississippi River Transmission Corporation
CAG-12.
Docket No. TA89-1-1-991, Alabama-Tennessee Natural Gas Company
CAG-13.
Docket Nos. TA88-1-27-004, RP88-57-005 and RP88-109-002, North Penn Gas Company
CAG-14.
Docket No. TA89-1-51-003, Great Lakes Gas Transmission Company
CAG-15.
Docket No. RP89-34-001, Williston Basin Interstate Pipeline Company
CAG-16.
Docket Nos. TA86-119-010, RP89-30-001, TA84-2-9-009 and TA85-1-9-006, Tennessee Gas Pipe Line Company
CAG-17.
Docket No. RP88-68-010, Transcontinental Gas Pipe Line Corporation
CAG-18.
Docket No. RP88-239-007, Trunkline Gas Company
CAG-19.
Docket No. RP87-14-005, Algonquin Gas Transmission Company
CAG-20.
Docket No. RP88-267-005, South Georgia Natural Gas Company
CAG-21.
Docket No. RP89-45-001, ANR Pipeline Company
CAG-22.
Docket No. ST83-429-004, BP Gas Transmission Company (Formerly Lear Petroleum Corporation
CAG-23.
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II. Electric Rate Matters

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RP-1.(C)
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RP-2.
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II. Producer Matters

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III. Pipeline Certificate Matters

CP-1.
Reserved

Lois D. Cashell,

Secretary.

[FR Doc. 89-3441 Filed 2-9-89; 3:29 pm]

BILLING CODE 6717-01-M

[USITC SE-89-05]

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Thursday, February 9, 1989 at 3:30 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Inv. No. 731-TA-207 (Final—Court Remand) (Cellular Mobile Telephones and Subassemblies Thereof)—briefing and vote.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252-1000.

Kenneth R. Mason,

Secretary.

February 9, 1989.

[FR Doc. 89-3422 Filed 2-9-89; 2:39 pm]

BILLING CODE 7020-02-M

[USITC SE-89-04A]

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Thursday, February 15, 1989 at 4:30 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

Change of time. This meeting was originally scheduled to be held at 12 noon.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252-1000.

Kenneth R. Mason,

Secretary.

February 9, 1989.

[FR Doc. 89-3423 Filed 2-9-89; 2:39 pm]

BILLING CODE 7020-02-M

[7P0401]

PAROLE COMMISSION

Record of Vote of Meeting Closure (Public Law 94-409) (5 U.S.C. Sec 552b)

I, Benjamin F. Baer, Chairman of the United States Parole Commission, presided at a meeting of said Commission which started at nine o'clock am. on Tuesday, February 8, 1989 at the Commission's Central Office, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815. The meeting ended at or about 2:30 p.m. The purpose of the meeting was to decide approximately 13 appeals from National Commissioner's decisions pursuant to 28 C.F.R. Sec. 2.27. Nine Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcements further describing the subject matter of the meeting and certifications of General Counsel that this meeting may be closed by vote of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion, duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Benjamin F. Baer, Jasper Clay, Jr., Vincent Fechtel, Jr., Carol Pavilack Getty, Daniel R. Lopez, and G. MacKenzie Rast.

IN WITNESS WHEREOF, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Date: February 9, 1989.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 89-3408 Filed 2-9-89; 2:42 pm]

BILLING CODE 4410-1-M

[Meeting No. 1413]

TENNESSEE VALLEY AUTHORITY

TIME AND DATE: 1:30 p.m. (EST), Wednesday, February 15, 1989.

PLACE: TVA Chattanooga Office Complex Auditorium, 1101 Market Street, Chattanooga, Tennessee.

STATUS: Open.

AGENDA

Approval of minutes of meeting held on January 4, 1989.

Discussion Item

1. TVA staff will report on water resources management.

Action Items

New Business

A—Budget and Financing

A1. Modification of the Capital Budget Financed from Power Proceeds and Borrowings for Fiscal Year 1989—Reynolds, Alabama, 161-kV Switching Station Project.

C—Power Items

*C1. Renewal Power Contract with Chattanooga, Tennessee.

C2. Revision to Economy Surplus Power Program.

C3. Arrangement for Providing Distributors a Coincidence Factor Credit for Large Part A Loads.

C4. Alternative Wholesale Power Rate Schedules with a Revised Adjustment 4 Providing for Calculation of Credits and Quarterly Basis.

E—Real Property Transactions

E1. Abandonment of Navigation Easement Rights Affecting Approximately 5.5 Acres on Kentucky Reservoir in Humphreys County, Tennessee.

E2. Abandonment of Road Right of Way Affecting 3.6 Acres on Chickamauga Reservoir in Hamilton County, Tennessee.

F—Unclassified.

F1. Supplement No. 5 to Contract No. TV-52828A Between TVA and the Resource Authority in Sumner County, Tennessee.

F2. Supplement No. 2 to Subagreement No. 27 to Memorandum of Agreement No. TV-23928A between TVA and U.S. Department of the Army, Corps of Engineers, for Improvements to Navigation Facilities on the Tennessee River.

F3. Supplement No. 11 to Contract No. TV-60546A with U.S. Department of Agriculture, Forest Service, for Geographic Information System Assistance.

F4. Supplement No. 2 to Contract No. TV-70363A Between TVA and the Solar Energy Research Institute.

F5. Project Order form the U.S. Army Resource Management Division, Rocky Mountain Arsenal, to TVA, National Fertilizer Development Center.

F6. Proposed Supplement No. 3 to Contract No. TV-62455A with the Department of Energy, Bonneville Power Administration.

F7. Supplement No. 5 to Contract No. TV-66099A Between TVA and the Department of Energy, Western Area Power Administration.

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Manager of Public Affairs, or a member of his staff can respond to requests for information about this meeting (Call (615) 632-8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 479-4412.

Dated: February 8, 1989.

Edward S. Christenbury,

General Counsel and Secretary

[FR Doc. 89-3424 Filed 2-9-89; 2:38 pm]

BILLING CODE 8120-01-M

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* Items approved by individual Board members. This would give formal ratification to the Board's action.

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Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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Title	Price	Revision Date
1, 2 (2 Reserved)	$10.00	Jan. 1, 1988
3 (1987 Compilation and Parts 100 and 101)	11.00	[1] Jan. 1, 1988
4	14.00	Jan. 1, 1988
5 Parts:		
1–699	14.00	Jan. 1, 1988
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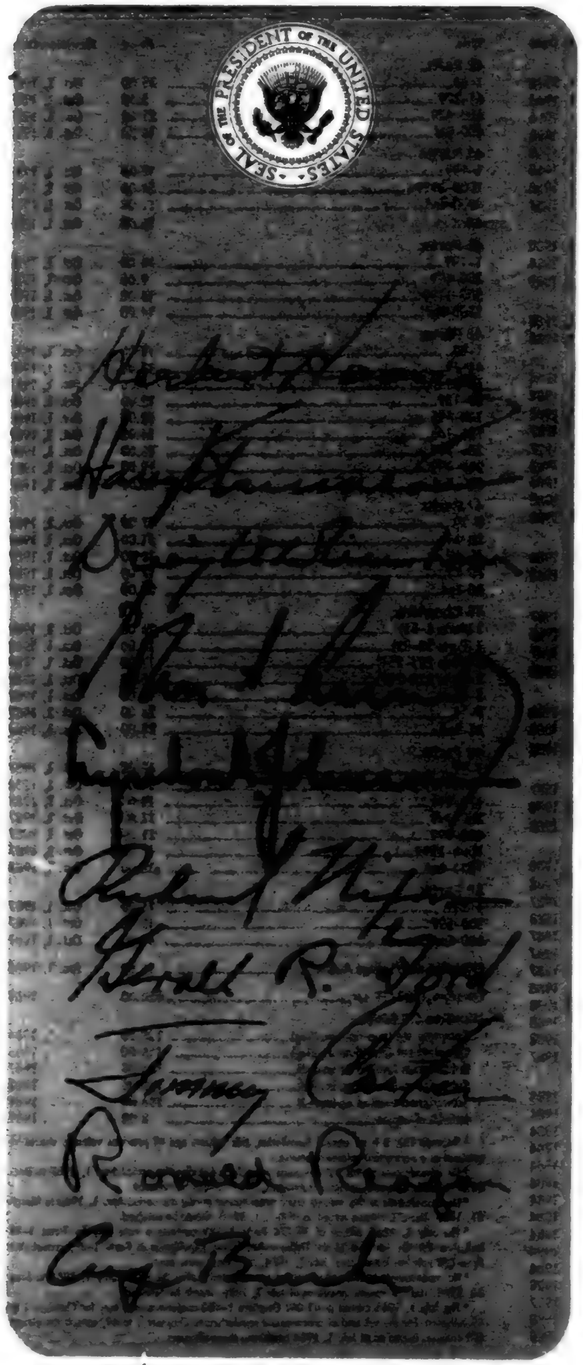
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Rules and Regulations

Federal Register
Vol. 54, No. 28
Tuesday, February 14, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-215-AD; Amdt. 39-6141]

Airworthiness Directives; Canadair Model CL-44D4 and CL-44J Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Canadair Model CL-44D4 and CL-44J series airplanes, which requires visual and non-destructive testing (NDT) inspection for corrosion on the upper wing skin between the front and rear spars, over the total wing span, and repair, if necessary. This amendment is prompted by reports of extensive exfoliation corrosion found on the wings of several airplanes during recent overhaul. This condition, if not corrected, could result in reduction of the structural integrity of the wing, and could eventually lead to failure of the wing.

EFFECTIVE DATE: March 7, 1989.

ADDRESSES: The applicable service information may be obtained from Bombardier, Inc., Canadair Aerospace Group, P.O. Box 6087, Station A, Montreal, Quebec H3C 3G9, Canada. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. Lester Lipsius, Aerospace Engineer, Airframe Branch (ANE-172), New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin Avenue, Valley Stream, New York 11581; telephone (516) 791-6220.

SUPPLEMENTARY INFORMATION: During a recent overhaul of three U.S.-registered Model CL-44D4 series airplanes, extensive corrosion damage, such as raised blistering and bulging, was found on the upper wing skin between the front and rear spars on all three planes. This condition, if not corrected, could lead to weakening of the wing structure, and could eventually lead to failure of the wing.

Canadair has issued Alert Wire 44T-1340/2431, dated October 28, 1988, which describes procedures for visual and NDT inspections for corrosion damage of the upper wing skin. Transport Canada, which is the airworthiness authority for Canada, has issued Canadian Airworthiness Directive CF-88-21, dated November 2, 1988, making compliance with the Canadair Alert Wire mandatory.

This airplane model is manufactured in Canada and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this situation is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD requires repetitive visual and NDT (ultrasonic or eddy current) inspections in accordance with the alert wire previously described, and repair, if necessary, in accordance with a method approved by the FAA.

Additionally, this action requires that operators submit a report of the results of their inspections to Canadair for evaluation and a determination of an appropriate repair scheme.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

§ 39.13 [Amended]

Canadair: Applies to Model CL-44D4 and CL-44J series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent wing failure due to exfoliation corrosion on the wing upper skin, accomplish the following:

A. Within 225 hours time-in-service or 30 days after the effective date of this AD, whichever occurs first, and thereafter at

intervals not to exceed 12 months, perform a visual inspection of the upper wing skin area between the front and rear spars over the total wing span for corrosion, including raised blistering or bulging, in accordance with Canadair Alert Wire 44T–1340/2431, dated October 28, 1988.

1. If the extent of such corrosion exceeds 20 sq.in. in any one skin panel, between chordwise joints, prior to further flight conduct a non-destructive testing (NDT) inspection, using ultrasonic or eddy current inspection techniques, to determine the skin thickness, in accordance with the Alert Wire. Repair the corrosion area prior to further flight, in accordance with a method approved by the Manager, New York Aircraft Certification Office, FAA, New England Region.

2. If the extent of such corrosion exists within an area equal to or less than 20 sq.in. in any one skin panel, between chordwise joints, repair corrosion area within 900 hours time-in-service or 6 months after the effective date of this AD, whichever occurs first. Repair must be accomplished in accordance with a method approved by the Manager, New York Aircraft Certification Office, FAA, New England Region.

B. Within 48 hours after performing the inspections required by paragraph A., above, submit a report of results to Canadair, in accordance with Canadair Alert Wire 44T–1340/2431, dated October 28, 1988. The report must include information as to the extent and location of the corrosion, and the inspection method used.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office, FAA, New England Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, New York Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Bombardier, Inc., Canadair Aerospace Group, P.O. Box 6087, Station A, Montreal, Quebec H3C 3G9, Canada. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

This amendment becomes effective March 7, 1989.

Issued in Seattle, Washington, on February 6, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-3384 Filed 2-13-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-156-AD; Amdt. 39-6143]

Airworthiness Directives; Fokker Model F-27 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F-27 series airplanes, which requires a one-time inspection of the upper brace strut in the nacelle center section, to ensure the struts are of the correct configuration, and replacement, if necessary. This amendment is prompted by reports of a broken upper brace strut due to fatigue cracking. This condition, if not corrected, could result in engine separation and subsequent structural damage to the airplane aft of the engine.

EFFECTIVE DATE: March 28, 1989.

ADDRESSES: The applicable service information may be obtained from Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 431-1978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations, to include a new airworthiness directive applicable to certain Fokker Model F-27 series airplanes, which requires a one-time inspection of the upper brace strut in the nacelle center section to ensure that the struts are of the correct configuration, and replacement of the strut, if necessary, was published in the **Federal Register** on November 17, 1988 (53 FR 46464).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 11 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $1,760.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($160). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

§ 39.13 [Amended]

Fokker: Applies to Model F-27 series airplanes, Serial Numbers 10102 through 10307, certificated in any category. Compliance is required as indicated unless previously accomplished.

To prevent engine separation and subsequent structural damage to the airplane aft of the engine, accomplish the following:

A. Within 60 days after the effective date of this AD, inspect both the right and left upper nacelle brace struts, in accordance with Fokker Service Bulletin F27/54-44, dated July 7, 1988. If any brace strut is found with a self-tapping screw, prior to the accumulation of 30,000 landings on the strut, or within the next 500 landings after the effective date of this AD, whichever occurs later, replace the brace strut in accordance with the referenced service bulletin.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the inspection required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective March 28, 1989.

Issued in Seattle, Washington, on February 8, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-3365 Filed 2-13-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 770, 771, 772, 773, 774, 775, 776, and 777

[Docket No. 90116-9016]

Export Licenses; Forms BXA-622P, BXA-622P-A, BXA-622P-B, BXA-685P, and BXA-699P

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Export Administration Regulations are being amended to reflect revisions to the forms used to apply for export licenses (BXA-622P, BXA-622P-A, BXA-622P-B, formerly ITA-622P), amendments to exports licenses (BXA-685P, formerly ITA-685P), and reexport authorizations (BXA-699P, formerly ITA-699P). This rule provides for the replacement of the current forms with Optical Character Recognition (OCR) forms. The OCR forms allow the direct recording of export license information into the Commerce Department computer data base, thus, eliminating the need for manual entry as required under the current forms. Use of the OCR forms on a voluntary basis has proved successful. The OCR forms will result in significant cost savings and in streamline processing of license applications. Furthermore, use of the OCR forms will incur no added expense for U.S. business. In addition, this rule provides that the OCR forms are revised to carry the "BXA" designation (*e.g.*, BXA-622P) in order to reflect the establishment of the Bureau of Export Administration as a separate entity from the International Trade Administration within the U.S. Department of Commerce. The current forms, which carry the "ITA" designation, will be acceptable for use until February 15, 1989. After that date, only the OCR compatible forms, which carry the "BXA" designation, will be accepted by BXA.

EFFECTIVE DATE: February 14, 1989.

FOR FURTHER INFORMATION CONTACT: Tom deButts, Office of Export Licensing, Bureau of Export Administration, Telephone: (202) 377-4811.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. This rule complies with Executive Order 12291 and Executive Order 12661.

2. Section 13(a) of the Export Administration Act of 1979 (EAA), as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, and opportunity for public comment, and a delay in effective date. This rule also is exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administration Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule contains a collection of information requirement under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694-0005, 0694-0007, and 0694-0010. The public reporting burden for BXA Form 622P is estimated to average forty-five minutes per response, BXA Form 685P is estimated to average fifteen minutes per response, and BXA Form 699P is estimated to average twenty-five minutes per response. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Administration, Bureau of Export Administration, Room 3889, Department of Commerce, Washington, DC 20230 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

5. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to: Willard Fisher, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20004.

List of Subjects in 15 CFR Parts 770–777

Exports, Reporting and recordkeeping requirements.

Accordingly, 15 CFR Parts 770, 771, 772, 773, 774, 775, 776, and 777 (15 CFR Parts 768–799) are amended as follows:

PARTS 770 THROUGH 777 [AMENDED]

1. The authority citation for Parts 770, 774, 775, and 776 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, by Pub. L. 98–64 of July 12, 1985, and Pub. L. 100–418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

2. The authority citation for Parts 771, 772, and 773 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, by Pub. L. 98–64 of July 12, 1985, and Pub. L. 100–418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

3. The authority citation for 15 CFR Part 777 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, by Pub. L. 98–64 of July 12, 1985, by Pub. L. 100–180 of December 4, 1987, by Pub. L. 100–418 of August 23, 1988, and by Pub. L. 100–449 of September 28, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); sec. 103, Pub. L. 94–163 of December 22, 1985 (42 U.S.C. 6212), as amended by Pub. L. 99–58 of July 2, 1985; sec. 101, Pub. L. 93–153 of November 16, 1973 (30 U.S.C. 185); sec. 28, Pub. L. 95–372 of September 18, 1978 (43 U.S.C. 1354); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976), as amended; secs. 201(1) and 201(11)(e), Pub. L. 94–258 of April 8, 1976 (10 U.S.C. 7420 and 7430(e)); Presidential Finding of June 14, 1985 (50 FR 25189, June 18, 1985); and sec. 125, Pub. L. 99–64 of July 12, 1985 (46 U.S.C. 466(c)).

4. The phrase "Form ITA–622P" is revised to read "Form BXA–622P" in the following places:

§ 773.7 (d)(1)(iv)(B) (2 references)
§ 773 Supplement No. 6(c)
§ 776.4 (c)(1)
§ 776.9 (b)(1)
§ 776.9 (b)(2)
§ 776.9 (b)(3)
§ 777.6 (a)

5. The phrase "Form DIB–622P" is revised to read "Form BXA–622P" in the following places:

§ 772.4 (a)(1)(ii) (2 references)
§ 772.4 (a)(1)(iii) (2 references)
§ 772.8 (b)(1)
§ 773.7 (d)(1)(ii)(B)

6. The phrase "Form DIB–699P" is revised to read "Form BXA–699P" in the following places:

§ 774.5 (b)(1) (2 references)

7. The phrase "Form ITA–685P" is revised to read "Form BXA–685P" in the following places:

§ 773.2 (e)(2)(iii)
§ 774.3 (a)(2)(ii) (2 references) and concluding text to paragraph (a)(2)
§ 774.5 (b) (2 references)
§ 774.f (2 references)

8. The phrase "Form DIB–685P is revised to read "Form BXA–685P" in the following places:

§ 774.5 (b) (4 references)
§ 775.9 (e)(3)(i)
§ 775.9 (e)(3)(ii)

9. Section 772.4(a)(1) is amended by revising the paragraph heading, adding a paragraph heading to (a)(1), and revising the first two sentences of (a)(1) to read as follows:

§ 772.4 How to apply for a validated license.

(a) *Form and manner of filing*—(1) *Application form.* An application for a validated license must be submitted on Form BXA–622P, Application for Export License, or on Form ITA–622P, Application for Export License, revised July 1981 or later. After February 15, 1989, only Form BXA–622P will be acceptable. * * *

* * * * * * *

10. In § 772.11, paragraph (i)(1) is revised to read as follows:

§ 772.11 Amending export licenses.

* * * * * * *

(i) * * *

(1) *Approved*—The Office of Export Licensing will validate the yellow copy of an approved Form BXA–685P by imprinting a facsimile of the U.S. Department of Commerce seal followed by the letter "D" and a series of numbers indicating the year, month and day of validation. The yellow copy will be forwarded to the Applicant.

* * * * * * *

§§ 772.11 and 772.13 [Amended]

11. The phrase "Return Copy of Amendment Notice To" is revised to read "Applicant" in §§ 772.11 (i)(2) and (i)(3) and 772.13(e)(1) [three references in § 772.13(e)(1)].

§§ 772.12, 772.13 and 773.3 [Amended]

12. The phrase "Amend License to Read as Follows" is revised to read "State Specifically the Way the License Should Read" in §§ 772.12(a)(3), 772.13 (c)(1)(i), and 773.3(1)(4)(i).

13. Supplement No. 1 to Part 772 is revised to read as follows:

Supplement No. 1 Part 772—Instructions for Preparing Application for a Validated License

Item 1. Enter the name and telephone number of the person who can answer questions about the commodities or other aspects of the application.

Item 2a. Place an (X) in appropriate block(s) when other form(s) are attached.

Item 2b. Identify document(s) on file by placing an (X) in the appropriate block(s). These document(s) are to be retained by the applicant, consistent with the provisions of § 787.13, for Country Groups S and V (except the People's Republic of China). All other supporting documentation must be submitted with the application.

Item 3. Enter original case number if the original case was returned without action.

Item 4. Complete only if stipulated in the Export Administration Regulations.

Item 5. Applicant as defined in the Export Administration Regulation § 772.3(b)(1).

Item 6. The ultimate consignee in the country of ultimate destination is the party who will actually receive the material for the end-use designated in Item 12. A bank, freight forwarder, forwarding agent, or other intermediary is not acceptable as an ultimate consignee, but should be listed in Item 8 as an intermediate consignee. GOVERNMENT PURCHASING ORGANIZATIONS ARE ACCEPTABLE CONSIGNEES IN THOSE INSTANCES WHEN THE COMMODITIES OR TECHNICAL DATA DESIGNATED IN ITEM 9(b) ARE TO BE TRANSFERRED TO THE ULTIMATE END-USER, PROVIDED ACTUAL END-USE(S) ARE CLEARLY IDENTIFIED IN SUPPORTING DOCUMENTATION.

Note.—If a temporary export, applicant should be shown as ultimate consignee in care of person or entity who will have control of the goods abroad. Do NOT leave this item blank.

Item 7. The purchaser is the party abroad who has entered into the export transaction with the applicant or order party. If same as ultimate consignee, place "X" in the block located after "Same as Item #6." Do NOT leave this item blank.

Item 8. An intermediate consignee is any intermediary in a foreign country who participates as an agent for the exporter or for the purchaser or ultimate consignee to effect delivery of the export to the purchaser or ultimate consignee. All known intermediate consignees must be named. If more than one, state in Item #15. If the same as purchaser, place an "X" in the block located after "Same as Item #7". In none state "None"; if unknown, state "Unknown" in the same space. Do NOT leave this space blank.

Note.—For Items 9(a) through 9(d)—Use Supplement Form BXA 622P–A if additional space is needed.

Item 9(a). Give the quantity to be shipped, as identified in the Export Control Commodity Number (ECCN) located in Supplement No. 1 to 799.1. If no specific unit of quantity is required by the entry or footnote, show the unit of quantity commonly used in the trade.

Item 9(b). PDR-Expressed in megabits per second. ONLY insert numerical value in PDR column. If not applicable insert N/A. Place model # before description, followed by a colon (:). End description with ECCN paragraph reference. Do NOT put model number in 9(b) on form if model number exceeds 30 characters. Instead type the word "various," followed by a colon (:). Put the model number(s) on a plain sheet of paper with the Application Control Number, and attach to the application.

Describe commodities or technical data. Furnish additional details as prescribed by the Export Administration Regulations when necessary to identify the specific items to be so classified. Include characteristics shown in the specific ECCN, such as basic ingredients, composition, electrical parameters, size, gauge, grade, horsepower, etc. These characteristics must be identified for the commodities or technical data proposed for export, which may be different from the characteristics described in the promotional brochure(s). Where the specific ECCN entry states "specify by name," list by name on the application all the commodities to be included in the shipment. Include the ECCN paragraph reference at the end of the description. Processing Code: Enter the two character processing codes designated in the ECCN. Only one processing code may be entered per application.

Item 9(c). Enter the Export Control Commodity Number that corresponds to the commodity adjacent to the corresponding commodity description.

Item 9(d). Enter the unit price except where a large variety of products within a single ECCN makes such a breakdown extremely difficult. In such cases show only total price. Give the fair market value in U.S. dollars. Round to the nearest dollar the amount entered in the total price column. Give the exact value if less than $0.50. Where the normal trade practice makes it impractical to establish a firm contract price, state in Item 15 the precise terms upon which the price is to be ascertained and from which the contract price may be objectively determined.

Item 10. The Office of Export Licensing will transmit the license to the party designated in this space. Leave blank if the license is to go to the applicant. Designation of another party to receive the license does not alter the responsibilities of the applicant.

Item 11. Provide manufacturer name of the total or assembled commodity(ies). Do NOT include address. If more than one name, separate names by commas. If additional space is needed, continue in Item #15.

Note.— Leave this item blank only if the ECCN is 1564.

Item 12. Provide a complete and detailed description for the end-use intended by the ultimate consignee. If additional space is needed, use Supplemental Form BXA–622P–A or B.

Item 13. Complete only if end-user is not the ultimate consignee named in Item 6. If more than one end-user, insert the word "various" in the space and use Supplemental Form BXA–622P–B.

Item 14. A Foreign Availability Submission (FAS) may be submitted with an export license application. The applicant may also provide a FAS to the Office of Foreign Availability up to 90 days after a license denial on National Security grounds. See part 791 of the Export Administration Regulations before providing submission.

Item 15. When information is a continuation of a previous item(s) first state the item number(s). Do NOT put information from item 9(a) through 9(d) in this space. Enter additional data pertinent to the transaction as required by the Export Administration Regulations. Include special certifications, names of parties in interest not disclosed elsewhere, such as foreign principal or supplier, explanation of documents attached, etc. If the application represents a transaction previously rejected, give prior case number issued by the Office of Export Licensing. Use Supplemental Form BXA–622P–A or B if additional space is needed.

Item 16. All three spaces must be completed and THE APPLICATION MUST BE MANUALLY SIGNED by the applicant or duly authorized agent of the applicant. If signed by agent of the applicant, show title and firm name or agent. (Rubber-stamped or other facsimile signatures are not acceptable.)

Item 17. Where the applicant did not receive the order directly from the foreign purchaser or ultimate consignee named in the application, or through his or her agent abroad, the party in the United States that conducted the negotiations with the foreign party and originally received the order (the order party) must complete this item and sign the application.

12. Supplement No. 1 to Part 774 is revised to read as follows:

Supplement No. 1 Part 774—Instructions for Preparing Form BXA–699P, "Request for Reexport Authorization."

Item 1. Enter the name and telephone number of the person who can answer questions about the application.

Item 2a. Place an (X) in appropriate block(s) when other form(s) are attached.

Item 2b. Identify documents on file by placing an (X) in the appropriate block(s). These documents are to be retained by the applicant, consistent with the provisions of § 787.13, for Country Groups S and V (except the People's Republic of China). All other supporting documentation must be submitted with the application.

Item 3. Enter original case number if the original case was returned without action.

Item 4. Complete only if stipulated in the Export Administration Regulations.

Item 5. Applicant as defined in the Export Administration Regulation § 772.3(b)(1).

Item 6. The ultimate consignee in the country of ultimate destination is the party who will actually receive the material for the end-use designated in Item 12. A bank, freight forwarder, forwarding agent, or other intermediary is not acceptable as an ultimate consignee, but should be listed in Item 8 as an intermediate consignee. GOVERNMENT PURCHASING ORGANIZATIONS ARE ACCEPTABLE CONSIGNEES IN THOSE INSTANCES WHEN THE COMMODITIES OR TECHNICAL DATA DESIGNATED IN ITEM 9(b) ARE TO BE TRANSFERRED TO THE ULTIMATE END-USER, PROVIDED ACTUAL END-USE(S) ARE CLEARLY IDENTIFIED IN SUPPORTING DOCUMENTATION.

Note.—If a temporary reexport, applicant should be shown as ultimate consignee in care of person or entity who will have control of the goods abroad. Do NOT leave this item blank.

Item 7. The validated license number under which the commodity(ies) or technical data were originally exported.

Item 8. The original ultimate consignee is the entity listed in the original application for export in Item 6.

Note.—For Items 9(a) through 9(d)—Use Supplement Form BXA 622P–A if additional space is needed.

Item 9(a). Give the quantity to be shipped, as identified in the Export Control Commodity Number (ECCN) located in Supplement No. 1 to § 799.1. If no specific unit of quantity is required by the entry or footnote, show the unit of quantity commonly used in the trade.

Item 9(b). PDR–Expressed in megabits per second. ONLY insert numerical value in PDR column. If not applicable insert N/A. Place model # before description, followed by a colon (:). Put the model number(s) on a plain sheet of paper with the Application Control Number, and attach to the application.

Describe commodities or technical data. Furnish additional details as prescribed by the Export Administration Regulations when necessary to identify the specific items to be so classified. Include characteristics shown in the specific ECCN, such as basic ingredients, composition, electrical parameters, size, gauge, grade, horsepower, etc. These characteristics must be identified for the commodities or technical data proposed for reexport, which may be different from the characteristics described in the promotional brochure(s).

Where the specific ECCN entry states "specify by name," list by name on the application all the commodities or technical data to be included in the shipment. Include the ECCN paragraph reference at the end of the description. Processing Code: Enter the two character processing codes designated in the ECCN. Only one processing code may be entered per application.

Item 9(c). Enter the Export Control Commodity Number that corresponds to the commodity adjacent to the corresponding commodity description.

Item 9(d). Enter the unit price except where a large variety of products within a single ECCN makes such a breakdown extremely difficult. In such cases show only total price. Give the fair market value in U.S. dollars. Round to the nearest dollar the amount entered in the total price column. Give the exact value if less than $0.50. Where the normal trade practice makes it impractical to establish a firm contract price, state in item 15 the precise terms upon which the price is to be ascertained and from which the contract price may be objectively determined.

Item 10. The Office of Export Licensing will transmit the reexport authorization to the party designated in this space. Leave blank if the license is to go to the applicant. Designation of another party to receive the

license does not alter the responsibilities of the applicant.

Item 11. Provide a complete and detailed description for the end-use intended by the new ultimate consignee listed in Item 6. For guidance on completion of the item, refer to Supplement 1, Part 772 of the Export Administration Regulations. If additional space is needed, use Supplement Form BXA–622P–A or B.

Item 12. Complete only if end-user is not the ultimate consignee named in Item 6. If more than one end-user, insert the word "various" in the space and use Supplemental Form BXA–622P–B.

Item 13. Mark appropriate block with an (X) to identify if the commodity(ies) or technical data are to be reexported, sold or other. If "other" indicate disposition.

Item 14. When information is a continuation of a previous item(s) first state the item number(s). Do NOT put information from Item 9(a) through 9(d) in this space. Enter additional data pertinent to the transaction as required by the Export Administration Regulations. Include special certifications, names of parties in interest not disclosed elsewhere, such as foreign principal or supplier, explanation of documents attached, etc. If the application represents a transaction previously rejected, give prior case number issued by the Office of Export Licensing. Use Supplemental Form BXA–622P–A or B if additional space is needed.

Item 15. All three spaces must be completed and THE APPLICATION MUST BE MANUALLY SIGNED by the applicant or duly authorized agent of the applicant. If signed by agent of the applicant, show title and firm name or agent. (Rubber-stamped or other facsimile signatures are not acceptable.)

§ 773.2 [Amended]

13. In § 773.2, paragraph (c)(2)(ii)(B) is amended by revising the phrase "Item 7, Consignee in Country of Ultimate Destination" to read "Item 6, Ultimate Consignee" and paragraph (c)(2)(ii)(C) is amended by revising the phrase "Description of Commodity or Technical Data" to read "Commodity Manufacturer's Description of Commodity".

§ 773.7 [Amended]

14. In § 773.7, paragraph (d)(1)(iv)(B)(*2*) is amended by revising the phrase "Consignee in Country of Ultimate Destination" to read "Country of Ultimate Destination".

Supplement No. 5—[Amended]

15. Supplement No. 5 to Part 773 is amended as follows:

A. Paragraphs (b) and (c) are removed;

B. Paragraph (a) is redesignated as paragraph (b). Newly redesignated paragraph (b) is amended by revising the references to "Item 1(a)" to read "Item 3";

C. New paragraph (a) is added to read "(a) Items 1 and 2 are self explanatory.";

D. Paragraphs (d), (e), (f), (g) and (h) are redesignated as paragraphs (c), (d), (e), (f), and (g);

E. Newly redesignated paragraph (d) is amended by revising the reference to "Item 6, 8, 13, 14, 17" to read "Items 7, 8, 14, 17";

F. Newly redesignated paragraph (e) is amended by revising the reference to "Item 7" to read "Item 6" and the reference to "Attachment Item 7" to read "Attachment Item 6";

G. The phrase "Form ITA–622P" is revised to read "Form BXA–622P in the heading to Supplement No. 5 and in the newly redesignated paragraph (f), introductory text.

H. Newly redesignated paragraph (f)(1) is amended by revising the words "an attachment to the Form ITA–622P (labeled Attachment Item 9(b) product description")" to read "Form BXA–622P–A, "Commodity Description Supplement";

H. Newly redesignated paragraph (f)(2) is amended by revising the reference to "the attachment" to read "Form BXA–622P–A";

I. Newly redesignated paragraph (g) is amended by revising the words "at the bottom of the attachment to Item 9(b)" to read "in Item 15 of Form BXA–622P–A".

Dated: February 9, 1989.

Michael E. Zacharia,

Assistant Secretary for Export Administration.

[FR Doc. 89–3152 Filed 2–13–89; 8:45 am]

BILLING CODE 3510–DT–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1031 and 1032

Commission Participation and Commission Employee Involvement in Voluntary Standards

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Consumer Product Safety Commission is revising its regulations governing the Commission's participation in voluntary standards activities. The revised regulations reflect the policies set forth by Congress in the Consumer Product Safety Amendments of 1981, Pub. L. 97–35, and make several changes in the agency's policies on employee participation in voluntary standards development activities. Also, the revised regulations combine former Part 1031, Employee Membership and Participation in Voluntary Standards Organizations, and Part 1032, Commission Involvement in Voluntary Standards Activities, into a new Part 1031, Commission Participation and Commission Employee Involvement in Voluntary Standards Activities.

EFFECTIVE DATE: March 16, 1989.

FOR FURTHER INFORMATION CONTACT: Colin Church, Voluntary Standards Coordinator, Consumer Product Safety Commission, Washington, DC 20207, telephone: (301) 492–6550.

SUPPLEMENTARY INFORMATION:

Background

Congress enacted the Consumer Product Safety Act in 1972, codified at 15 U.S.C. 2051, et. seq., to protect consumers against unreasonable risks of injury associated with consumer products. In furtherance of that goal, Congress established the Consumer Product Safety Commission as an independent regulatory agency, and granted it broad authority to promulgate mandatory safety standards for consumer products as a necessary alternative to industry self-regulation. 15 U.S.C. 2056(a)(1)(A). The Commission was also given the authority to require manufacturers to provide consumer label warnings or instructions about their products, 15 U.S.C. 2056(a)(2), and to promulgate standards for products falling under the purview of the Refrigerator Safety Act, 15 U.S.C. 1211–1214, the Poison Prevention Packaging Act of 1970, 15 U.S.C. 1471–1476, the Flammable Fabrics Act, 15 U.S.C. 1191–1204, and the Federal Hazardous Substances Act, 15 U.S.C. 1261–1276. As originally enacted, neither the Consumer Product Safety Act nor the other statutes administered by the Commission contained any language referring to voluntary standards.

In 1978, the Commission issued regulations describing the extent and form of Commission involvement in the development of voluntary standards, 43 FR 19216, 16 CFR Part 1032—Commission Involvement in Voluntary Standards Activities. In the Background section, the Commission acknowledged the contribution which voluntary standards had made to reducing hazards associated with consumer products, and stated that it supported an effective voluntary standards program. Nonetheless, the Commission asserted that "While there might be circumstances in which a particular voluntary standard can substitute for a mandatory standard, the Commission generally views voluntary standards as complementary to and not a substitute for mandatory standards". It stated, also, its belief that a proper combination of voluntary and mandatory standards can have a higher "payoff" in increased product safety than either mandatory or voluntary activities alone could have.

In 1981, Congress amended the Consumer Product Safety Act, the Federal Hazardous Substances Act, and the Flammable Fabrics Act, to mandate that the Commission give preference to voluntary standards over promulgating mandatory standards, if it determines that a voluntary standard will eliminate or adequately reduce an injury risk, and that there will be a likelihood of substantial compliance with the standard. 15 U.S.C. 2056(b), 15 U.S.C. 1262(g)(2), 15 U.S.C. 1193(h)(2). The amendments also require the Commission to provide administrative and technical assistance to organizations engaged in voluntary standards development. 15 U.S.C. 2054(a) (3) and (4).

Thereafter, the Commission conducted its activities in accordance with the policies of the 1981 Amendments by deferring to voluntary standards in those cases where a voluntary standard would adequately reduce an unreasonable risk of injury and there was a reasonable likelihood of substantial compliance with the standard. However, the Commission's policy statement in 16 CFR Part 1032 is inconsistent with the policy stated in the 1981 Amendments.

The Commission proposed, at 53 FR 44892, November 7, 1988, a new part 1031 to conform the Commission's policy with the 1981 Amendments. The proposed new Part 1031 also incorporated, with changes, the provisions of current 16 CFR Part 1031, the Commission's regulations governing employee membership and participation in voluntary standards organizations, which were initially promulgated on June 20, 1975, 40 FR 26023. The part specified which Commission officers and employees can be members of voluntary standards bodies or can participate in voluntary standards development activities. The comments received, and the Commission's responses, are discussed later. The substantive changes made by this final regulation are discussed below.

Explanation of Changes and Additions in Part 1031

Subpart A, General Policies, is a revision of current 16 CFR Part 1032, Commission Involvement in Voluntary Standards Activities. Subpart A is substantially the same as existing Part 1032, except as described below.

Section 1031.1(b) has been added to define "voluntary standards bodies" and "voluntary standards development bodies". The definitions are similar to those in OMB Circular A–119 and reflect the language Congress employed in section 5(a) (3) and (4) of the Consumer Product Safety Act as to which organizations the Commission should assist in voluntary standards activities, i.e., "public and private organizations or groups of manufacturers." The definitions are stated in broad terms so as to encompass any organization that has the capability of developing a voluntary standard.

Section 1031.2, Background, a complete revision of current § 1032.1, explains the policy of the Commission regarding voluntary standards. Section 1031.2(b) explains the statutory requirements of the 1981 Amendments regarding voluntary standards. Section 1031.2(c) describes the policies set forth in office of Management and Budget Circular No. A–119 pertaining to federal participation in the development and use of voluntary standards. The Circular encourages government participation in the standards-related activities of voluntary standards bodies and standards-developing groups when such participation is in the public interest and is compatible with the agencies, missions, authorities, priorities, and budget resources.

Section 1031.3, Consumer Product Safety Act Amendments, incorporates the text of several sections from the Act, as amended in 1981, which pertain to the Commission's participation in the development and use of voluntary standards. The provisions are provided in the text of the regulation for the reader's convenience.

Section 1031.4(a)(2) modifies current § 1032.6(a)(2), so that one of the criteria for the Commission's determination that a voluntary standard is adequate to eliminate or reduce a risk of injury associated with a consumer product is changed from the language that "there is a sufficiently high degree of conformance to the voluntary standard" to language "it is likely that there will be substantial and timely compliance with the voluntary standard." The new language reflects provisions in the 1981 Amendments that allows the Commission to defer to proposed voluntary standards under appropriate circumstances.

Section 1032.6(b) in the current regulations is deleted since it is inconsistent with the 1981 Amendments.

Section 1031.4(b) is a new provision that provides for the Commission to initiate a proceeding for the development of a mandatory standard in the event it determines there is no voluntary standard that will eliminate or adequately reduce a risk of injury.

Section 1031.4(c) revises the language in current 16 CFR 1032.6(d), which requires the Commission to consider the provisions of a voluntary standard when it initiates a development proceeding under "section 7 of the Consumer Product Safety Act." As originally enacted, section 7, referred to as the "offeror process", provided that the Commission could solicit "offers" from private sector organizations to develop a mandatory standard. However, section 7 was revised by the 1981 Amendments to abolish the "offeror process"; thus, reference to that section is inappropriate. The proposed § 1031.4(c) references, instead, the provisions of the Consumer Product Safety Act, the Federal Hazardous Substances Act, and the Flammable Fabrics Act which prescribe the process for issuing a mandatory consumer product safety rule.

Section 1031.5 sets forth the criteria for Commission participation in voluntary standards activities. They are substantially the same criteria set forth in the former 16 CFR 1032.5, except that two new criteria (subsections (a) and (b)) have been added to conform to criteria prescribed by the 1981 Amendments and their legislative history.

Section 1031.5(f) provides criteria superseding the criterion set forth in former 16 CFR 1032.5(e) for Commission consideration to determine whether to participate in the development of a voluntary standard. The former provision merely required that the Commission consider the degree and ascertainability of industry conformance with a voluntary standard once it is issued. The new section requires the Commission to consider any reasonable industry arrangements for achieving substantial industry compliance with a voluntary standard once it is issued and the means of ascertaining such compliance based on overall market share of product production. The latter requirement reflects the Congressional direction that, in most instances, compliance should be measured in terms of complying consumer products rather than in terms of the number of complying industry members. See the Conference Report to accompany H.R. 3962, H. R. Rep. NO. 97–208, 97th Cong., 1st Sess., 871 (1981).

Section 1031.5(i) revises former 16 CFR 1032.5(a) to state that participants in a voluntary standard development have "knowledge or expertise in the

area under consideration," rather than "technical expertise," so as to encourage broader participation by those affected by the standard. See the discussion of this section in "Comments received and Commission responses" below.

Section 1031.6(c)(2) replaces and revises former 16 CFR 1032.2(b)(2), which described examples of Commission participation in voluntary standards activities, by adding language allowing the Commission to provide administrative assistance (e.g., travel costs, hosting meetings, and performing secretarial functions) in support of the development and implementation of voluntary standards. This provision is derived from section 5 of the Consumer Product Safety Act, as amended in 1981.

Section 1031.6(d) is added to conform to the policy set forth in OMB Circular A–119, that, normally, agencies should not provide greater support to a voluntary standards activity than that of all the non-federal participants.

Section 1031.7(a)(7) replaces and revises 16 CFR 1032.4(b)(7) by adding a clause that indicates that the Commission's support of voluntary standards activities may include encouraging states and local governments to participate in government or industrial model code development activities so as to develop uniformity and to minimize conflicting state and local regulations, as provided by section 2(b)(3) of the Consumer Product Safety Act.

Section 1031.7(a)(8) provides a new example of the type of support the Commission may use in assisting voluntary standards development, i.e., monitoring the number and market share of products conforming to a voluntary safety standard. This will enable the Commission to ascertain industry compliance with a voluntary standard by market share.

16 CFR 1032.4(b)(9) has been deleted.

Section 1031.7(a)(9) is a new provision. It acknowledges that one form of Commission support for voluntary standards development is providing for the involvement of agency personnel in voluntary standards activities as described in Subpart B of this part.

Sections 1031.7(a) (10) and (11) are new provisions. They indicate that the Commission may provide administrative and financial support to a voluntary standards development activity, as authorized by the 1981 Amendments.

Section 1031.8 is a new provision. It describes the functions of the Voluntary Standards Coordinator, a Commission employee responsible for coordinating agency participation in voluntary standards activities and managing the voluntary standards program.

Subpart B, Employee Involvement in Voluntary Standards Activities, supersedes the former 16 CFR Part 1031. The subpart has the same general effect as the former Part 1031 except for the changes noted below.

Section 1031.9(c)(1) revises former § 1031.1(a) to state that the Commission's participation in voluntary standards programs is consistent with the federal policy set forth in OMB Circular No. A–119, as well as the Consumer Product Safety Act and other statutes administered by the Commission.

Section 1031.9(c)(4) is a new provision. It states that Commission employee participation in voluntary standards activities should take into account Commission resources and priorities. This provision conforms to language in the legislative history of the 1981 Amendments directing the Commission to consider its resources and priorities when determining what assistance it will provide to voluntary standards development. Conference Report to H.R. 3982, p. 884.

Section 1031.10 is a new section. It defines, for the purpose of Subpart B on employee involvement in voluntary standards activities, the terms membership, participation, monitoring, observation, and communication.

Section 1031.11(b) is a new provision which requires employees, who participate in the development of a voluntary standard and then later advise the Commission regarding that standard, to advise the Commission on the extent of their involvement. Also, the provision requires that evaluations and recommendations by such employees should strive to be as objective as possible and should be reviewed by higher level Commission officials prior to submission to the Commission.

Section 1031.12(a) lists those Commission officials who may not become members of a voluntary standards group because they have the responsibility for making final decisions, or objectively advising those who make final decisions, on whether to rely on a voluntary standard, promulgate a consumer product safety standard, or to take other action to prevent or reduce an unreasonable risk of injury associated with a product. The list is the same as that in former § 1031.4, except that Program Managers in the Office of Program Management and Budget have been deleted because their work and recommendations are reviewed by supervisory officials before being given to the Commission. It has also been revised to reflect the Commission's functions regarding voluntary standards which emanate from the 1981 Amendments, i.e., to determine whether a voluntary standard will adequately address a problem involving an unreasonable risk. The predecessor provision referred to the Commission's functions relating to the "offeror process" which, as noted above, was abolished by the 1981 Amendments.

Section 1031.12(c) is a new provision. It requires employees who have obtained approval from the Executive Director to accept membership in a voluntary standards organization to so inform the General Counsel and the Voluntary Standards Coordinator prior to their acceptance. This will allow the General Counsel and the Voluntary Standards Coordinator to be aware of the membership and an opportunity for them to provide any necessary guidance to the employee.

Section 1031.12(d) is a new provision that requires employees who seek membership in a voluntary standards organization in their individual capacity to seek approval from the Commission's Ethics Official in accordance with the Commission's Employee Standards of Conduct, 16 CFR Part 1030.

Section 1031.13(a), like its predecessor provision § 1031.5(d), provides that Commission employees, except for those who are specifically listed, may participate in or monitor voluntary standards development. The proposed provision differs from its predecessor in that it requires approval for employee participation or monitoring by the employee's supervisor and any other person required to do so by internal agency management procedures, whereas approval under the former regulations is required to be given by the Executive Director alone.

Section 1031.14, Observation criteria, supersedes the last sentence in former § 1031.5(d). The new provision requires employees who wish to attend voluntary standards meetings for the sole purpose of observation to obtain approval from their supervisor and any other person required to approve pursuant to internal agency management procedures. Under the former provision, approval had to be provided by the Executive Director. The new provision also requires the employee to notify the Voluntary Standards Coordinator prior to observing a voluntary standard meeting.

Section 1031.15, Communication criteria, is a new provision providing the conditions for officials and employees to communicate with voluntary standards groups and representatives.

Commission officials and employees, who are authorized to be members of a voluntary standards group in their official capacity under section 1031.12(b), may communicate with a voluntary standard group or representative incidental to their membership. Likewise, those officials or employees, who are approved to participate in or monitor a voluntary standard development under § 1031.13 (a) and (b), may communicate with the voluntary standard body or its representatives as part of their approved participation in, or monitoring of, a standard under development.

Agency employees and officials who do not fall within either of the above categories, and are not prohibited from membership in a voluntary standards organization by virtue of § 1031.12(a), may be authorized to communicate with a voluntary standards group, representative, or other committee member on substantive matters, as defined in § 1031.15(a)(1). Approval must be given by the person to whom an employee would apply to obtain approval for participation or monitoring pursuant to § 1031.13. Those same employees and officials may communicate with a voluntary standards group, representative, or other committee member on non-substantive matters within the scope of their duties without specific authorization.

Substantive matters are defined in § 1031.15(a)(1) as those matters that pertain to the formulation of the technical aspects of a specific voluntary standard or the course of conduct for developing a voluntary standard. Nonsubstantive matters would include those relating to scheduling meetings, obtaining status reports, and other administrative matters.

Section 1031.15(b) is a new provision. It requires that employees communicate with voluntary standards organizations in accordance with any internal agency procedures.

Section 1031.15(c) is a new provision. It provides that the Commissioners can engage in written communications with voluntary standards bodies or representatives on voluntary standards matters providing they state that any substantive views expressed are only their individual views, and not necessarily those of the Commission acting in its collegial capacity. This provision changes the former regulation in § 1031.5—self-imposed by the Commission in 1978—that precluded the Commissioners from personally communicating with voluntary standards organizations concerning the development of voluntary standards. The new provision permits the Commissioners to actively encourage and support the development and use of voluntary standards to alleviate product hazards. The disclaimer is intended to preclude any misunderstanding on the part of a recipient of a letter as to whether the views expressed therein are those of the individual Commissioner or those of the Commission. Of course, the Commission may always communicate with parties on voluntary standards matters upon which they agree in their official collegial capacity.

Section 1031.15(d) is a new provision. It requires that Commission officials and employees furnish a copy of each written communication of a substantive nature, and a report of each substantive oral conversation with voluntary standards groups or individuals, to the Voluntary Standards Coordinator. This requirement will enable the Coordinator to monitor all the voluntary standards activities the Commission and its employees are engaged in.

Comments Received and Commission Responses

In response to the notice at 53 FR 44892, November 7, 1988, the Commission received comments from the Alliance of American Insurers, the American Gas Association Laboratories, the American Petroleum Institute, the American Society for Testing and Materials, the Consumer Federation of America, the Department of Defense, the Council of American Building Officials, the National Institute of Standards and Technology, the Whirlpool Corporation, the Underwriters Laboratories, and the ANSI Z21 Accredited Standards Committee. Several Commission staff members also made additional comments. The issues raised by these comments and the Commission's resolution of those issues are discussed below.

Section 1031.1(b)

The Consumer Federation of America recommended that § 1031.1(b) be amended to indicate the Commission's preference and support for standards development organizations that utilize a consensus process and other due process considerations. CFA cites the Conference Report on the 1981 Amendments that states that voluntary standards that the Commission rely on should have been adopted in accordance with reasonable procedures such as those utilized by groups that develop national consensus standards.

The Commission agrees with CFA's comment that preference be given to those voluntary standards that have been developed by a consensus process. This preference is expressed in § 1031.5(f) as a factor the Commission will consider in deciding whether to participate in the the development of a voluntary standard. That section requires standards development groups to establish procedures that "provide for meaningful participation" by the participants, including consumers and small business. However, there may be situations where an existing voluntary standard that was not developed by consensus procedures will, nevertheless, eliminate or adequately reduce the risk of injury presented by a hazard. Thus, the Commission has decided not to impose a consensus procedure as a mandatory requirement for Commission deferral to a standard but, instead, continue to encourage the use of consensus procedures by standards bodies.

The Alliance of American Insurers (AAI) recommends that the sentence in § 1031.1(b) that defines voluntary standards development bodies be revised to require that subgroups within the definition be "accredited subgroups" to encompass those committees whose procedures are accredited in the ANSI system of standards development.

The Commission decided not to accept this recommendation for the reason that it may be unnecessarily restrictive. The Conference Report for the 1981 Amendments indicated that Congress contemplated that voluntary standards should be developed and adopted "in accordance with reasonable procedures, such as those utilized by groups that develop national consensus standards". As stated above, the procedures that a voluntary development group will employ will be a factor in the Commission's determination whether to participate in a standard development. However, the Commission chooses not to mandate the development procedures. Likewise, it does not believe that accreditation should be a prerequisite to Commission participation in a development effort or reliance on a voluntary standard developed by a non-accredited group.

Section 1031.4(a)(2)

CFA recommends that § 1031.4(a)(2) be amended to allow deferral to a voluntary standard only where there will be compliance with the standard in a timely fashion, as was stated in the Conference Report to the 1981 Amendments.

The Commission agrees with this comment and, accordingly, has revised the subsection to require that industry compliance with a voluntary standard be "timely" as well as "substantial". As CFA noted, the Conference Report to the

1981 Amendments stated "In evaluating whether there will be substantial compliance with a voluntary standard, the Commission should determine whether or not there will be sufficient compliance to eliminate or adequately reduce an unreasonable risk of injury in a timely fashion." Conference Report, H.R. Rep. No. 97-208, July 29, 1981, at 871, 874. The timeliness language was also added to § 1031.5(f), the criterion concerning industry arrangements for achieving substantial industry compliance once a voluntary standard is issued.

Section 1031.4(a)(3)

Whirlpool Corporation commented on the language in this section that indicated the allocation of Commission staff involvement in evaluating voluntary standards as it would a mandatory standard. Whirlpool questions whether Commission involvement in voluntary standards setting is necessary or appropriate and whether Commission resources could be utilized in a better manner.

The Commission is, of course, concerned with the allocation of staff time and resources. However, the criteria for the Commission relying on a voluntary standard instead of a mandatory standard is set forth in sections 7 and 9 of the Consumer Product Safety Act, i.e., the voluntary standard must eliminate or adequately reduce the risk of injury addressed, and it is likely that there will be substantial compliance with such voluntary standard. Thus, the Commission is obligated to expend adequate staff time and resources to be able to determine whether the criteria in sections 7 and 9 is met.

Section 1031.4(a)(4)

AAI suggests that the language in the first sentence be revised to substitute the word "few" instead of "one or two" areas where a voluntary standard is considered by the Commission to be inadequate. The comment is that the words "one or two" are unnecessarily restrictive and forces the Commission to make a judgment based on numbers rather than a broader consideration of issues involved in deciding to defer to a voluntary standard modification.

The Commission agrees with the commentor and has revised the language as suggested.

In the same first sentence AAI suggests that the words "or its accredited subgroup operator" appear immediately after the words "voluntary standards groups".

The Commission does not accept this suggestion for the reason that the definitions of voluntary standards bodies or voluntary standards development bodies encompass their subgroups. Also, as stated above, the Commission chooses not to mandate that organizations or subgroups be accredited as a prerequisite to their developing or modifying a voluntary standard.

CFA stated its belief that § 1031.4(a)(4), a provision which allows the Commission to extend the deferral period, contradicts the requirement that a voluntary standard be promulgated in a timely fashion. It recommends that the section be revised to say that if a voluntary standard is not developed or modified in an expeditious manner, then the Commission will immediately commence to develop a mandatory standard.

The Commission agrees that the development or modification of a voluntary standard to address a product hazard should always be done as expeditiously as possible and that is a consideration in its decision whether to defer to the voluntary standard development or to commence a mandatory rulemaking immediately. However, the Commission does not believe that the language of this section has to be changed since it is implicit in the Commission's decision whether to defer mandatory standards development or to commence it immediately. The Commission will consider whether the initial deferral period was adequate or whether additional time is reasonable under the circumstances.

Section 1031.5(f)

As CFA commented on § 1031.4(a)(2), discussed above, it suggests the language in this section be revised to require that substantial compliance be reached in a "timely" fashion.

The Commission agrees with the commentor and has revised the language to revise the criteria for Commission participation to require Commission consideration of "timely," as well as "substantial" compliance.

Section 1031.5(g)

AAI suggests that this section be made more specific as to what types of marking requirements should be included in a voluntary standard to permit Commission investigation of such products at a later time. The commentor suggested several examples.

Although the examples given by the commentor would be appropriate, the Commission does not cite specific examples since they may not be appropriate to every voluntary standard. Accordingly, the Commission prefers to state the marking requirement in broad terms.

Section 1031.5(i)

CFA expressed its concern that the last sentence in § 1031.5(i) could be interpreted to mean that representatives of consumers and small business in a voluntary standard development have technical expertise in the areas under consideration.

The Commission agrees that the sentence could be misread and thus has revised it to make it clear that technical expertise, as that term is commonly used, should not be a prerequisite for consumer and small business participation in a voluntary standard development process. There may be situations where the voluntary standard development group would want non-technical input from consumer and small business representatives, e.g., on frequency of use of a product, consumer awareness of the meaning of proposed labels, etc. Likewise, as CFA suggests, these representatives can play an important role in questioning the rationale for a standard without having technical expertise. Accordingly, the Commission has replaced the expression "technical expertise" with the expression "knowledge or expertise."

Whirlpool inquired whether the listing of the representatives in this section means that, unless all the groups are included in each voluntary standards proceeding, the Commission will expand its involvement. The commentor suggests that participation by so many groups could be counterproductive and could impede the voluntary standards setting process.

The purpose of this provision is to encourage voluntary standards groups to conduct their activities openly and to include in their development activities those parties who will be affected by the voluntary standard under development. The Commission does not expect that each and every entity listed in this provision be represented on every voluntary standard development group; the composition of each development group will necessarily depend on the nature of the subject matter.

Whirlpool also suggested that some groups may not have the technical expertise to participate in voluntary standards development.

The Commission does not believe that participation is appropriate only for persons or groups with purely technical expertise. In accordance with its discussion of CFA's comments on § 1031.5(i), it has broadened the definition of "openness" by calling for participation of parties having "knowledge or expertise."

Section 1031.7(a)(4)

AAI recommended that the term "technical support" be broadened by including the words "engineering support such as innovative product design", and the words "safety and" immediately before the words "health science data."

The Commission believes that the section, as written, adequately describes the type of assistance the Commission may provide to support a voluntary standard development activity. Also, the Commission's use of the term "health science data" includes safety data. Thus, it prefers to leave the section unchanged.

Section 1031.7(a)(8)

AAI suggests that the phrase "including labels/markings" be added at the end of the sentence to permit the Commission staff to not only evaluate the technical adequacy of a standard in reducing injuries, but also to evaluate the labels and markings that must be included in the standard as part of the safety strategy.

The Commission believes that this addition is unnecessary because it is understood that the staff will evaluate all relevant aspects of a standard, including labels and markings. Thus, the Commission decided to leave this section unchanged.

Section 1031.7(a)(9)

Representatives of the Commission staff recommended that this section (formerly 16 CFR 1032.4(b)(9)) be deleted since the Commission will not approve the preparation of a listing of voluntary standards that adequately address specific hazards in view of a previous Commission decision regarding the recognition of voluntary standards. See Minutes of Commission Action dated January 16, 1985. The Commission agrees with the staff's recommendation and, therefore, has deleted this section. Accordingly, proposed §§ 1031.7(a)(10) through 1031.7(a)(13) have been renumbered as §§ 1031.7(a)(9) through 1031.7(a)(12).

Section 1031.10(a)

AAI suggests that the language in the last sentence, stating that membership includes all oral and written communications "which are incidental to such membership" may not be sufficiently clear, and recommends that the last sentence in subparagraph (b) be substituted in (a).

The Commission believes the language in this section is sufficiently clear that the definition of "membership" encompasses communications relating to a membership. Also, the suggested substitute language from subparagraph (b) would be inappropriate since it pertains to communications relating to active participation in a voluntary standard activity. Membership, as used in this section, could be passive membership. Thus, the Commission has decided to leave this section unchanged.

Section 1031.11(d)

Several commentors criticized the Commission policy in this section which prohibits Commission employees from voting or otherwise formally indicating approval or disapproval of a voluntary standard during its development and adoption. They suggested that the no-voting policy is inconsistent with active participation of Commission employees in standards development activities. Also, several commentors pointed out that the OMB Circular A-119 encourages agencies to actively participate in the development of voluntary standards, including voting on issues in the course of the development process. On the other hand, several other commentors applauded the Commission policy.

The Commission's no-voting policy is premised on the Commission's status as a regulatory agency and on the role of the Commission staff in ultimately recommending whether the Commission should defer setting a mandatory standard because a voluntary standard addresses the hazard in question. Additionally, the Commission is able to provide technical and administrative assistance to those organizations and groups developing standards. The Commission, through its employees, have been able to provide that assistance to many voluntary standard development activities over the course of years without formally voting. Also, the no-voting policy is intended to preclude any appearance that the Commission, through its representative, is endorsing a particular standard or is committing it to supporting that standard to the exclusion of alternative regulatory actions. Although the OMB Circular encourages active participation and voting by agency repreaentatives, it recognizes that agencies may prohibit such voting. See Circular, section 7.b.(5). For the reasons stated, the Commission continues to believe the no-voting policy is a prudent and well-considered one. Thus, the Commission has decided to leave this section unchanged.

Section 1032.12(b)

The Associate Director for Industry and Standards, National Institute of Standards and Technology, commented that the no-voting policy should apply to employees serving on voluntary standards development groups or committees, but not to employees serving on standards advisory groups that are not responsible for the development and approval of standards. The Associate Director suggested several such groups.

Although the advisory groups referred to in this section may not directly engage in the development of voluntary standards, they frequently establish policies that could impact on voluntary standard activities of the particular organization. As with voluntary standards development groups, the Commission does not want its employees formally participating in the policy decisions of a voluntary standards board or advisory group for the reason that an employee's formal vote may give the appearance of Commission action or the Commission's position on the matter. The policy also precludes a possible conflict of interest situation where an employee who voted on a matter is later required to address the same matter in his or her capacity as a Commission employee. Further, the Commission believes it can provide information and assistance to these policy committees without having to vote on particular issues or policy matters. In this regard, the Commissioners and Commission staff may freely communicate with voluntary standards groups or representative in accordance with § 1032.15. For these reasons, the Commission has decided not to change this section.

Sections 1031.13(a) and 1031.15(b)

A staff member commented that the last sentence in these two paragraphs could be understood that an employee who is participating in or monitoring a voluntary standard development would have to obtain consensus review and approval of Commission officials at every stage of the development process, and that voluntary standards groups would be reluctant to have a Commission employee as a member on that basis.

The Commission did not intend to imply that staff review and consensus of an employee's participation or monitoring is required at each and every stage of a voluntary standard development process. Instead, the statement was intended to state an employee's participation or monitoring shall be in accordance with any internal Commission procedures that the Commission or Commission management may have established. However, to avoid any

misunderstanding, the last sentence in both these paragraphs have been revised to delete the phrase "designed to assure staff review and consensus".

Section 1031.13(c)

CFA commented that § 1031.13(c), which allows Commission employees to participate in closed meetings of voluntary standards development groups under extraordinary circumstances, be amended to require that meeting logs from such closed meeting be made available to the public upon request.

In fact, the Commission's regulations setting forth its meetings policy (16 CFR Part 1012) already requires employees to prepare and submit a meeting summary to the Office of the Secretary within twenty calendar days after a meeting for which a summary is required to be made. These summaries are available to the public as permitted by law. The Commission agrees that the section should be revised to reference the meeting summary requirement.

CFA recommends that the last sentence in § 1031.13(c), requiring Commission employees to provide notice of their attendance at a voluntary standard development meeting in the public calendar, also be included in § 1031.11, the section setting forth the procedural safeguards to assure employee objectivity and for avoiding conflict of interest situations.

The Commission agrees that the meetings policy requirements are procedural safeguards that permit public monitoring of Commission involvement of voluntary standards activities. Thus, a new subsection, similar to the last sentence in § 1031.13(c), has been added as § 1031.11(f) to reference the Commission's meetings policy requirement.

Section 1031.15(a)

AAI commented that this section may be unclear as to whether the term "representative" is restricted to an official of the voluntary standard organization or whether it could pertain to another member of a voluntary standard development group who is not an official of the sponsoring voluntary standard organization.

The Commission agrees that the paragraph, as written, could be read as restricting communications to representatives of the sponsoring voluntary standard organization. The Commission did not intend to restrict communications between its employees and other members who may both be serving together on a voluntary standard committee. Thus, the language in this section is revised to add "or other committee member" immediately after the phrase "voluntary standard group or representative".

Section 1031.15(a)(2)

AAI states that it cannot understand the need for communication which is nonsubstantive in nature and requests a clarification.

The Commission distinguishes between substantive and nonsubstantive communications because substantive communications require supervisory approval whereas nonsubstantive communications do not. Nonsubstantive communications would cover administrative matters such as the date and place of the next meeting of the voluntary standard group, travel arrangements, etc. With these examples, and the definition of substantive matters in § 1032.15(a)(1) as "matters that pertain to the formulation of the technical aspects of a voluntary standard or the course of conduct for developing a standard", the meaning of anything else, i.e., "non-substantive" matters, is sufficiently clear. Thus, the Commission decided not to revise the section.

Certification of No Significant Economic Impact on Small Entities

The Regulatory Flexibility Act (5 U.S.C. 601, et seq.) requires that whenever a federal agency publishes a proposal under the Administrative Procedure Act (5 U.S.C. 553), it must give particular consideration to small businesses, small non-profit organizations, and small local governments (collectively called "small entities"). The proposed regulations are only for the information of the public and industry. They will not have the force of law, and will not impose any substantive obligation or duty on any person or firm, including any small firm. Therefore, in accordance with section 605(b) of the Regulatory Flexibility Act, the Commission certifies that the proposed regulations will not have a significant economic impact on a substantial number of small entities.

Environmental Considerations

The proposal published below will have little or no potential for affecting the human environment. For this reason, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

16 CFR Part 1031

Business and industry, Conflict of interest, Consumer protection, Voluntary standards.

16 CFR Part 1032

Business and industry, Consumer protection, Voluntary standards.

For the reasons set out in the preamble, Title 16, Chapter II of the Code of Federal Regulations is amended as follows:

PART 1032—[REMOVED]

1. Part 1032 is removed.

2. Part 1031 is revised to read as follows:

PART 1031—COMMISSION PARTICIPATION AND COMMISSION EMPLOYEE INVOLVEMENT IN VOLUNTARY STANDARDS ACTIVITIES

Subpart A—General Policies

Sec.

1031.1 Purpose and scope.
1031.2 Background.
1031.3 Consumer Product Safety Act Amendments.
1031.4 Effect of voluntary standards activities on Commission activities.
1031.5 Criteria for Commission participation in voluntary standards activities.
1031.6 Extent and form of Commission involvement in the development of voluntary standards.
1031.7 Commission support of voluntary standards activities.
1031.8 Voluntary Standards Coordinator.

Subpart B—Employee Involvement

1031.9 Purpose and scope.
1031.10 Definitions.
1031.11 Procedural safeguards.
1031.12 Membership criteria.
1031.13 Participation and monitoring criteria.
1031.14 Observation criteria.
1031.15 Communication criteria.

Authority: 15 U.S.C. 2051–2083, 15 U.S.C. 1261–1276, 15 U.S.C. 1191–1204.

Subpart A—General Policies

§ 1031.1 Purpose and scope.

(a) This Part 1031 sets forth the Consumer Product Safety Commission's guidelines and requirements on participating in the activities of voluntary standards bodies. Subpart A sets forth general policies on Commission participation, and Subpart B sets forth policies and guidelines on employee involvement in voluntary standards activities.

(b) For purposes of both Subpart A and Subpart B of this Part 1031, voluntary standards bodies are private sector domestic or multinational organizations or groups, or combinations thereof, such as, but not limited to, all non-profit organizations, industry associations, professional and technical societies, institutes, and test laboratories, that are involved in the planning, development, establishment, revision, review or coordination of voluntary standards. Voluntary standards development bodies are voluntary standards bodies, or their subgroups, that are devoted to developing or establishing voluntary standards.

§ 1031.2 Background.

(a) Congress enacted the Consumer Product Safety Act in 1972 to protect consumers against unreasonable risks of injury associated with consumer products. In order to achieve that goal, Congress established the Consumer Product Safety Commission as an independent regulatory agency and granted it broad authority to promulgate mandatory safety standards for consumer products as a necessary alternative to industry self regulation.

(b) In 1981, the Congress amended the Consumer Product Safety Act, The Federal Hazardous Substances Act, and the Flammable Fabrics Act, to require the Commission to rely on voluntary standards rather than promulgate a mandatory standard when voluntary standards would eliminate or adequately reduce the risk of injury addressed and it is likely that there will be substantial compliance with the voluntary standards. (15 U.S.C. 2056(b), 15 U.S.C. 1262(g)(2), 15 U.S.C. 1193(h)(2)). The 1981 Amendments also require the Commission, after any notice or advance notice of proposed rulemaking, to provide technical and administrative assistance to persons or groups who propose to develop or modify an appropriate voluntary standard. (15 U.S.C. 2054(a)(3)). Additionally, the amendments encourage the Commission to provide technical and administrative assistance to groups developing product safety standards and test methods, taking into account Commission resources and priorities (15 U.S.C. 2054(a)(4)). Although the Commission is required to provide assistance to such groups, it may determine the level of assistance in accordance with the level of its own administrative and technical resources and in accordance with its assessment of the likelihood that the groups being assisted will successfully develop a voluntary standard that will preclude the need for a mandatory standard.

(c) In 1982, the Office of Management and Budget revised Circular No. A–119, Federal Participation in the Development and Use of Voluntary Standards. The Circular establishes the policy to be followed by executive agencies, including the Commission, in working with voluntary standards bodies and in adopting and using voluntary standards. The Circular encourages government participation in the standards-related activities of voluntary standards bodies and standards-developing groups when such participation is in the public interest and is compatible with the agencies, missions, authorities, priorities, and budget resources. The Circular recognizes, however, that voluntary standards activities, if improperly conducted, can suppress free and fair competition, impede innovation and technical progress, exclude safer and less expensive products, or otherwise adversely affect trade, commerce, health, or safety. Thus, agencies are urged to take full account of the impact on the economy, applicable Federal laws, policies and national objectives, including, for example, laws and regulations relating to antitrust, national security, small business, product safety, environment, technological development, and conflicts of interest.

§ 1031.3 Consumer Product Safety Act Amendments.

The Consumer Product Safety Act, as amended, contains several sections pertaining to the Commission's participation in the development and use of voluntary standards.

(a) Section 7(b) provides that the Commission shall rely on voluntary consumer product safety standards prescribing requirements described in subsection (a) whenever compliance with such voluntary standards would eliminate or adequately reduce the risk of injury addressed and it is likely that there will be substantial compliance with such voluntary standards. (15 U.S.C. 2056(b)).

(b) Section 5(a)(3) provides that the Commission shall, following publication of an advance notice of proposed rulemaking or a notice of proposed rulemaking for a product safety rule under any rulemaking authority administered by the Commission, assist public and private organizations or groups of manufacturers, administratively and technically, in the development of safety standards addressing the risk of injury identified in such notice. (15 U.S.C. 2054(a)(3)).

(c) Section 5(a)(4) provides that the Commission shall, to the extent practicable and appropriate (taking into account the resources and priorities of the Commission), assist public and private organizations or groups of manufacturers, administratively and technically, in the development of product safety standards and test methods. (15 U.S.C. 2054(a)(4)).

§ 1031.4 Effect of voluntary standards activities on Commission activities.

(a)(1) The Commission, in determining whether to begin proceedings to develop mandatory standards under the acts it administers, considers whether mandatory regulation is necessary or whether there is an existing voluntary standard that adequately addresses the problem and the extent to which that voluntary standard is complied with by the affected industry.

(2) The Commission acknowledges that there are situations in which adequate voluntary standards, in combination with appropriate certification programs, may be appropriate to support a conclusion that a mandatory standard is not necessary. The Commission may find that a mandatory standard is not necessary where compliance with an existing voluntary standard would eliminate or adequately reduce the risk of injury associated with the product, contains requirements and test methods that have been evaluated and found acceptable by the Commission, and it is likely that there will be substantial and timely compliance with the voluntary standard. Under such circumstances, the Commission may agree to encourage industry compliance with the voluntary standard and subsequently evaluate the effectiveness of the standard in terms of accident and injury reduction for products produced in compliance with the standard.

(3) In evaluating voluntary standards, the Commission will relate the requirements of the standard to the identified risks of injury and evaluate the requirements in terms of their effectiveness in eliminating or reducing the risks of injury. The evaluation of voluntary standards will be conducted by Commission staff members, including representatives of legal, economics, engineering, epidemiological, health sciences, human factors, other appropriate interests, and the Voluntary Standards Coordinator. The staff evaluation will be conducted in a manner similar to evaluations of standards being considered for promulgation as mandatory standards.

(4) In the event that the Commission has evaluated an existing voluntary standard and found it to be adequate in all but a few areas, the Commission may defer the initiation of a mandatory rulemaking proceeding and request the voluntary standards organization to revise the standard to address the identified inadequacies expeditiously. In such cases, the Commission may monitor or participate in the development of these revisions.

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(b) In the event the Commission determines that there is no existing voluntary standard that will eliminate or adequately reduce a risk of injury the Commission may commence a proceeding for the development of a consumer product safety rule or a regulation in accordance with section 9 of the Consumer Product Safety Act, 15 U.S.C. 2058, section 3(f) of the Federal Hazardous Substances Act, 15 U.S.C. 1262(f), or section 4(a) of the Flammable Fabrics Act, 15 U.S.C. 1193(g), as may be applicable. In commencing such a proceeding, the Commission will publish an advance notice of proposed rulemaking which shall, among other things, invite any person to submit to the Commission an existing standard or portion of an existing standard, or to submit a statement of intention to modify or develop, within a reasonable period of time, a voluntary standard to address the risk of injury.

(c) The Commission will consider those provisions of a voluntary standard that have been reviewed, evaluated, and deemed to be adequate in addressing the specified risks of injury when initiating a mandatory consumer product safety rule or regulation under the Consumer Product Safety Act, the Federal Hazardous Substances Act, or the Flammable Fabrics Act, as may be applicable. Comments will be requested in the advance notice of proposed rulemaking on the adequacy of such voluntary standard provisions.

§ 1031.5 Criteria for Commission participation in voluntary standards activities.

The Commission will consider the extent to which the following criteria are met in considering Commission participation in the development of voluntary safety standards for consumer products:

(a) The likelihood the voluntary standard will eliminate or adequately reduce the risk of injury addressed and that there will be substantial and timely compliance with the voluntary standard.

(b) The likelihood that the voluntary standard will be developed within a reasonable period of time.

(c) Exclusion, to the maximum extent possible, from the voluntary standard being developed, of requirements which will create anticompetitive effects or promote restraint of trade.

(d) Provisions for periodic and timely review of the standard, including review for anticompetitive effects, and revision or amendment as the need arises.

(e) Performance-oriented and not design-restrictive requirements, to the maximum practical extent, in any standard developed.

(f) Industry arrangements for achieving substantial and timely industry compliance with the voluntary standard once it is issued, and the means of ascertaining such compliance based on overall market share of product production.

(g) Provisions in the standard for marking products conforming to the standard so that future Commission investigation can indicate the involvement of such products in accidents and patterns of injury.

(h) Provisions for insuring that products identified as conforming to such standards will be subjected to a testing and certification (including self-certification) procedure, which will provide assurance that the products comply with the standard.

(i) The openness to all interested parties, and the establishment of procedures which will provide for meaningful participation in the development of such standards by representatives of producers, suppliers, distributors, retailers, consumers, small business, public interests and other individuals having knowledge or expertise in the areas under consideration, and procedures for affording other due process considerations.

§ 1031.6 Extent and form of Commission involvement in the development of voluntary standards.

(a) The Commission shall approve agency "participation", as defined below, in the development and support of voluntary safety standards for consumer products. The Executive Director shall approve Commission activities that are defined below as "monitoring." The extent of Commission involvement will be dependent upon the Commission's interest in the particular standards development activity and the commission's priorities and resources.

(b) The Commission's interest in a specific voluntary standards activity will be based in part on the frequency and severity of injuries associated with the product, the involvement of the product in accidents, the susceptibility of the hazard to correction through standards, and the overall resources and priorities of the Commission. Commission involvement in voluntary standards activities generally will also be guided by the Commission's operating plan and budget.

(c) There are two levels of Commission involvement in voluntary standards activities, each of which reflects a different level of Commission involvement as set forth below:

(1) *Monitoring.* Monitoring involves maintaining an awareness of the voluntary standards development process through oral or written inquiries, receiving and reviewing minutes of meetings and copies of draft standards, or attending meetings for the purpose of observing and commenting during the standards development process in accordance with Subpart B of this part. For example, monitoring may involve responding to requests from voluntary standards organizations, standards development committees, trade associations and consumer organizations; by providing information concerning the risks of injury associated with particular products, NEISS data, summaries and analyses of in-depth investigation reports; discussing Commission goals and objectives with regard to voluntary standards and improved consumer product safety; responding to requests for information concerning Commission programs; and initiating contacts with voluntary standards organizations to discuss cooperative voluntary standards activities.

(2) *Participating.* Participating involves regularly attending meetings of a standard development committee or group and taking an active part in the discussions of the committee and in developing the standard, in accordance with Subpart B of this part. Under certain conditions, the Commission will contribute to the deliberations of the committee by expending resources to provide technical assistance (e.g., research, engineering support, and information and education programs) and administrative assistance (e.g., travel costs, hosting meetings, and secretarial functions) which would support the development and implementation of voluntary standards. Participating may also include Commission support of voluntary standards activities as described in § 1031.7.

(d) Normally, the total amount of Commission support given to a voluntary standards activity shall be no greater than that of all non-Federal participants in that activity, except where it is in the public interest to do so.

(e) In the event of duplication of effort by two or more groups (either inside or outside the Commission) in developing a voluntary standard for the same product or class of products, the Commission shall encourage the several groups to cooperate in the development of a single voluntary standard.

§ 1031.7 Commission support of voluntary standards activities.

(a) The Commission's support of voluntary safety standards development activities may include any one or a combination of the following actions:

(1) Providing epidemiological and health science information and explanations of hazards for consumer products.

(2) Encouraging the initiation of the development of voluntary standards for specific consumer products.

(3) Identifying specific risks of injury to be addressed in a voluntary standard.

(4) Performing or subsidizing technical assistance, including research, health science data, and engineering support, in the development of a voluntary standard activity in which the Commission is participating.

(5) Providing assistance on methods of disseminating information and education about the voluntary standard or its use.

(6) Performing a staff evaluation of a voluntary standard to determine its adequacy and efficacy in reducing the risks of injury that have been identified by the Commission as being associated with the use of the product.

(7) Encouraging state and local governments to reference or incorporate the provisions of a voluntary standard in their regulations or ordinances and to participate in government or industrial model code development activities, so as to develop uniformity and minimize conflicting State and local regulations.

(8) Monitoring the number and market share of products conforming to a voluntary safety standard.

(9) Providing for the involvement of agency personnel in voluntary standards activities as described in Subpart B of this Part.

(10) Providing administrative assistance, such as hosting meetings and secretarial assistance.

(11) Providing funding support for voluntary standards development, as permitted by the agency budget.

(12) Taking other actions that the Commission believes appropriate in a particular situation.

(b) [Reserved.]

§ 1031.8 Voluntary Standards Coordinator.

(a) The Executive Director shall appoint a Voluntary Standards Coordinator to coordinate agency participation in voluntary standards bodies so that:

(1) The most effective use is made of agency personnel and resources, and

(2) The views expressed by such personnel are in the public interest and, at a minimum, do not conflict with the interests and established views of the agency.

(b) The Voluntary Standards Coordinator is responsible for managing the Commission's voluntary standards program, as well as preparing and submitting to the Commission a semiannual summary of its voluntary standards activities. The summary shall set forth, among other things, the goals of each voluntary standard under development, the extent of CPSC activity (monitoring or participation; the current status of standards development and implementation) and, if any, recommendations for additional Commission action. The Voluntary Standards Coordinator shall also compile information on the Commission's voluntary standards activities for the Commission's annual report.

Subpart B—Employee Involvement

§ 1031.9 Purpose and scope.

(a) This subpart sets forth the Consumer Product Safety Commission's criteria and requirements governing membership and involvement by Commission officials and employees in the activities of voluntary standards development bodies.

(b) The Commission realizes there are advantages and benefits afforded by greater involvement of Commission personnel in the standards activities of domestic and international voluntary standards organizations. However, such involvement might present an appearance or possibility of the Commission giving preferential treatment to an organization or group or of the Commission losing its independence or impartiality. Also, such participation may present real or apparent conflict of interest situations.

(c) The purpose of this subpart is to further the objectives and programs of the Commission and to do so in a manner that ensures that such membership and participation:

(1) Is consistent with the intent of the Consumer Product Safety Act and the other acts administered by the Commission, as well as with federal policy as set forth in the current version of OMB Circular No. A–119, Federal Participation in the Development and Use of Voluntary Standards;

(2) Is not contrary to the public interest;

(3) Presents no real or apparent conflict of interest, and does not result in or create the appearance of the Commission giving preferential treatment to an organization or group or the Commission compromising its independence or impartiality; and

(4) Takes into account Commission resources and priorities.

(d) In general, Commission employees must obtain approval from their supervisor and appropriate agency management to be involved in voluntary standards activities. They should also strive to apprise the Voluntary Standards Coordinator, where practicable, as to their involvement in voluntary standards activities.

(e) All Commission employees involved in voluntary standards activities are subject to any restrictions for avoiding conflicts of interest and for avoiding situations that would present an appearance of bias.

§ 1031.10 Definitions.

For purposes of describing the level of involvement in voluntary standards activities for which Commission employees may be authorized, the following definitions apply:

(a) *Membership.* Membership is the status of an employee who joins a voluntary standards development or advisory organization or subgroup and is listed as a member. It includes all oral and written communications which are incidental to such membership.

(b) *Participation.* Participation is the active, ongoing involvement of an official or employee in the development of a new or revised voluntary standard pertaining to a particular consumer product or to a group of products that is the subject of a Commission hazard project. These projects should be one of those that are approved by the Commission, either by virtue of the agency's annual budget or operating plan, or by other specific agency authorization or decision, and are in accord with Subpart A. Participation includes regularly attending meetings of a standards development committee or group, taking an active part in discussions and technical debates, registering opinions and expending other resources in support of a voluntary standard development activity. It includes all oral and written communications which are part of the participation process.

(c) *Monitoring.* Monitoring is involvement by an official or employee in maintaining an awareness of the voluntary standards development process by attendance at meetings, receiving and reviewing minutes of standards development meetings and copies of draft standards, and commenting during the standards development process. It involves all oral and written communications which are part of the monitoring process. These monitoring activities must be related to general voluntary standards projects set forth in the agency's annual budget or operating plan or otherwise approved by the agency.

(d) *Observation.* Observation is the attendance by an official or employee at a meeting of a voluntary standards development group for the purpose of observing and gathering information.

(e) *Communication.* Communication is the oral or written contact by an official or employee with a representative or committee of a voluntary standards organization or advisory group.

§ 1031.11 Procedural safeguards.

(a) Subject to the provisions of this subpart and budgetary and time constraints, Commission employees may be involved in voluntary standards activities that will further the objectives and programs of the Commission, are consistent with ongoing and anticipated Commission regulatory programs as set forth in the agency's operating plan, and are in accord with the Commission's policy statement on participation in voluntary standards activities set forth in Subpart A of this part.

(b) Commission employees who are involved in the development of a voluntary standard and who later participate in an official evaluation of that standard for the Commission shall describe in any information, oral or written, presented to the Commission, the extent of their involvement in the development of the standard. Any evaluation or recommendation for Commission actions by such employee shall strive to be as objective as possible and be reviewed by higher-level Commission officials or employees prior to submission to the Commission.

(c) Involvement of a Commission official or employee in a voluntary standards committee shall be predicated on an understanding by the voluntary standards group that participation by Commission officials and employees is on a non-voting basis.

(d) In no case shall Commission employees or officials vote or otherwise formally indicate approval or disapproval of a voluntary standard during the course of a voluntary standard development process.

(e) Commission employees and officials who are involved in the development of voluntary standards may not accept voluntary standards committee leadership positions, e.g., committee chairman or secretary. Subject to prior approval by the Executive Director, a Commission employee or official may accept other committee positions only if it appears to be clearly in the public interest for the employee to carry out the functions of that specific position.

(f) Attendance of Commission personnel at voluntary standards meetings shall be noted in the public calendar and meeting summaries shall be submitted to the Office of the Secretary as required by the Commission's meetings policy, 16 CFR Part 1012.

§ 1031.12 Membership criteria.

(a) The Commissioners, their special assistants, and Commission officials and employees holding the positions listed below, may not become members of a voluntary standards group because they either have the responsibility for making final decisions, or advise those who make final decisions, on whether to rely on a voluntary standard, promulgate a consumer product safety standard, or to take other action to prevent or reduce an unreasonable risk of injury associated with a product.

(1) The Commissioners;

(2) The Commissioners' Special Assistants;

(3) The General Counsel and General Counsel Staff;

(4) The Executive Director, the Deputy Executive Director, and special assistants to the Executive Director;

(5) The Associate Executive Directors and Office Directors;

(6) The Director of the Office of Program Management and Budget and any Special Assistants to the Director.

(b) All other officials and employees not covered under § 1031.12(a) may be advisory, non-voting members of voluntary standards development and advisory groups with the advance approval of the Executive Director. In particular, the Commission's Voluntary Standards Coordinator may accept such membership.

(c) Commission employees or officials who have the approval of the Executive Director to accept membership in a voluntary standards organization or group pursuant to paragraph (b) of this section shall apprise the General Counsel and the Voluntary Standards Coordinator prior to their acceptance.

(d) Commission officials or employees who desire to become a member of a voluntary standards body or group in their individual capacity must obtain prior approval of the Commission's Ethics Counselor for an outside activity pursuant to the Commission's Employee Standards of Conduct, 16 CFR Part 1030.

§ 1031.13 Participation and monitoring criteria.

(a) Commission officials, other than those positions listed in § 1031.12(a), may participate in or monitor the development of voluntary safety standards for consumer products, but only in their official capacity as employees of the Commission and if permitted to do so by their supervisor and any other person designated by agency management procedures. Such participation or monitoring shall be in accordance with Commission procedures.

(b) Employees in positions listed in § 1031.12(a) (4), (5), and (6) may, on a case-by-case basis, participate in or monitor the development of a voluntary standard provided that they have the specific advance approval of the Commission.

(c) Except in extraordinary circumstances and when approved in advance by the Executive Director in accordance with the provisions of the Commission's meetings policy, 16 CFR Part 1012, Commission personnel shall not become involved in meetings concerning the development of voluntary standards that are not open to the public for attendance and observation. Attendance of Commission personnel at a voluntary standard meeting shall be noted in the public calendar and meeting logs filed with the Office of the Secretary in accordance with the Commission's meetings policy.

(d) Generally, Commission employees may become involved in the development of voluntary standards only if they are made available for comment by all interested parties prior to their use or adoption.

(e) Involvement by Commission officials and employees in voluntary standards bodies or standards-developing groups does not, of itself, connote Commission agreement with, or endorsement of, decisions reached, approved or published by such bodies or groups.

§ 1031.14 Observation criteria.

A Commission official or employee may, on occasion, attend voluntary standards meetings for the sole purpose of observation, with the advance approval of his or her supervisor and any other person designated by agency management procedures. Commission officials and employees shall notify the Voluntary Standard Coordinator, for information purposes, prior to observing a voluntary standards meeting.

§ 1031.15 Communication criteria.

(a) Commission officials and employees, who are not in the positions listed in § 1031.12(a), or who are not already authorized to communicate with a voluntary standards group or representative incidental to their approved membership in a voluntary standard organization or group or as part of their participation or monitoring of a voluntary standard, may:

(1) Communicate, within the scope of their duties, with a voluntary standard group, representative, or other committee member, on voluntary standards matters which are substantive in nature, i.e., matters that pertain to the formulation of the technical aspects of a specific voluntary standard or the course of conduct for developing the standard, only with the specific advance approval from the person or persons to whom they apply to obtain approval for participation or monitoring pursuant to § 1031.13. The approval may indicate the duration of the approval and any other conditions.

(2) Communicate, within the scope of their duties, with a voluntary standard group, representative, or other committee member, concerning voluntary standards activities which are not substantive in nature.

(b) Commission employees may communicate with voluntary standards organizations only in accordance with Commission procedures.

(c) Commissioners can engage in substantive and non-substantive written communications with voluntary standards bodies or representatives, provided a disclaimer in such communications indicates that any substantive views expressed are only their individual views and are not necessarily those of the Commission. Where a previous official Commission vote has taken place, that vote should also be noted in any such communication. Copies of such communications shall thereafter be provided to the other Commissioners, the Office of the Secretary, and the Voluntary Standards Coordinator.

(d) The Voluntary Standards Coordinator shall be furnished a copy of each written communication of a substantive nature and a report of each oral communication of a substantive nature between a Commission official or employee and a voluntary standards organization or representative which pertains to a voluntary standards activity. The information shall be provided to the Voluntary Standards Coordinator as soon as practicable after the communication has taken place.

Dated: February 8, 1989.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 89-3342 Filed 2-13-89; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 87F-0309]

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of a mixture of dodecyltin S,S',S''-tris (isooctylmercaptoacetate) and di(*n*-dodecyl)tin S,S'-di(isooctylmercaptoacetate) as a thermal stabilizer for vinyl chloride homopolymers and copolymers intended for use in contact with food. This action responds to a petition filed by Sherex Chemical Co., Inc.

DATES: Effective February 14, 1989; written objections and requests for a hearing by March 16, 1989.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5090.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of October 7, 1987 (52 FR 37525), FDA announced that a petition (FAP 5B3873) had been filed by Sherex Chemical Co., Inc., P.O. Box 646, Dublin, OH 43017, proposing that § 178.2650 *Organotin stabilizers in vinyl chloride plastics* (21 CFR 178.2650) be amended to provide for the safe use of a mixture of dodecyltin tri(isooctylmercaptoacetate) and di(dodecyl)tin di(isooctylmercaptoacetate) as a stabilizer in polyvinyl cloride and vinyl chloride copolymers intended for use in contact with food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed use of the additive is safe, and that the regulations should be amended in 21 CFR 178.2650 by revising the introductory paragraph, by adding new paragraph (a)(7), and by adding new paragraph (b)(1)(iii). The agency is also modifying the nomenclature for the two organotin chemicals in this additive. The agency is listing them as "dodecyltin S,S',S''-tris(isooctylmercaptoacetate)" and "di(*n*-dodecyl)tin S,S'-di(isooctylmercaptoacetate)." The agency concludes that this nomenclature is more descriptive than that set out in the filing notice and is also more consistent with the nomenclature used for other chemicals appearing in 21 CFR 178.2650.

Additionally, the agency is making editorial changes in the introductory text and in the introductory text of paragraph (a) of § 178.2650. It is changing the term "octyltin," used to describe tin compounds in these paragraphs, to read "organotin." This term more accurately describes the tin compounds in the referenced paragraphs. It is also changing the reference to "polyvinyl chloride and vinyl chloride copolymers" to read "vinyl chloride homopolymers and copolymers" to reflect the terminology used in the agency's proposal on these substances. See 51 FR 4177, February 3, 1986.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact, including a determination that this action will have no effect on the market for vinyl chloride, and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before March 16, 1989 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made

and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 178.2650 is amended by revising the introductory text and the introductory text of paragraph (a), by adding new paragraph (a)(7), and by adding new paragraph (b)(1)(iii), to read as follows:

§ 178.2650 Organotin stabilizers in vinyl chloride plastics.

The organotin chemicals identified in paragraph (a) of this section may be safety used alone or in combination, at levels not to exceed a total of 3 parts per hundred of resin, as stabilizers in vinyl chloride homopolymers and copolymers complying with the provisions of § 177.1950 or § 177.1980 of this chapter and that are identified for use in contact with food of types I, II, III, IV (except liquid milk), V, VI (except malt beverages and carbonated nonalcoholic beverages), VII, VIII, and IX described in table 1 of § 176.170(c) of this chapter, except for the organotin chemical identified in paragraph (a)(3) of this section, which may be used in contact with food of types I through IX at temperatures not exceeding 75 °C (167 °F), and further that the organotin chemicals identified in paragraphs (a)(5) and (6) of this section may be used in contact with food of types I through IX at temperatures not exceeding 66 °C (150 °F), conditions of use D through G described in table 2 of § 176.170(c) of this chapter, and further that dodecyltin chemicals identified in paragraph (a)(7) of this section which may be used in contact with food of types I, II, III, IV (except liquid milk), V, VI (except malt beverages and carbonated nonalcoholic beverages), VII, VIII, and IX described in table 1 of § 176.170(c) of this chapter at temperatures not exceeding 71 °C (160 °F), in accordance with the following prescribed conditions:

(a) For the purpose of this section, the organotin chemicals are those listed in paragraphs (a) (1), (2), (3), (4), (5), (6), and (7) of this section.

* * * * *

(7) The dodecyltin stabilizer is a mixture of 50 to 60 percent by weight of *n*-dodecyltin S,S',S''-tris(isooctylmercaptoacetate) (CAS Reg. No. 67649–65–4) and 40 to 50 percent by weight of di(*n*-dodecyl)tin S,S'-di(isooctylmercaptoacetate) (CAS Reg. No. 84030–61–5) having 13 to 14 percent by weight of tin (Sn) and having 8 to 9 percent by weight of mercapto sulfur. It is made from a mixture of dodecyltin trichloride and di(dodecyl)tin dichloride which has not more than 0.2 percent by weight of dodecyltin trichloride, not more than 2 percent by weight of dodecylbutyltin dichloride and not more than 3 percent by weight of tri(dodecyl) tin chloride. The isooctyl radical in the mercaptoacetate is derived from oxo process primary octyl alcohols.

(b) * * *

(1) * * *

(iii) Subsequent determinations for the dodecyltin mixture described in paragraph (a)(7) of this section shall be at a minimum of 24-hour intervals for aqueous solvents and 2-hour intervals for heptane. These tests shall yield di(*n*-octyl)tin S,S'-bis(isooctylmercaptoacetate), or di(*n*-octyl)tin maleate polymer, or (C_{16}-C_{18})-alkylmercaptoacetate reaction products with dichlorodioctylstannane and trichlorooctylstannane, or *n*-octyltin S,S',S''-tris(isooctylmercaptoacetate), tris(isooctylmercaptoacetate) and di(*n*-dodecyl)tin bis(isooctylmercaptoacetate) or any combination thereof, not to exceed 0.5 parts per million as determined by an analytical method entitled "Atomic Absorption Spectrophotometric Determination of Sub-part-per-Million Quantities of Tin in Extracts and Biological Materials with Graphite Furnace," *Analytical Chemistry*, Vol. 49, pp. 1090-1093 (1977), which is incorporated by reference in accordance with 5 U.S.C. 552(a). The availability of this incorporation by reference is given in paragraph (b)(1)(ii) of this section.

* * * * *

Dated: February 1, 1989.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89–3383 Filed 2–13–89; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Parts 510 and 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Dichlorophene and Toluene Capsules

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Elite Chemical Corp., Inc., providing for safe and effective use of dichlorophene/toluene capsules in treating dogs and cats for certain helminth infections.

EFFECTIVE DATE: February 14, 1989.

FOR FURTHER INFORMATION CONTACT: Marcia K. Larkins, Center for Veterinary Medicine (HFV–112), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3430.

SUPPLEMENTARY INFORMATION: Elite Chemical Corp., Inc., P.O. Box 1947, Norcross, GA 30091, filed NADA 140–850, providing for the use of a capsule containing dichlorophene and toluene for single dose administration to dogs and cats for removal of certain ascarids and hookworms and as an aid in the removal of certain tapeworms. The NADA is approved and 21 CFR 250.580(b)(1) is amended to reflect the approval. The basis of approval is discussed in the freedom of information summary. The regulations are further amended in 21 CFR 510.600(c) (1) and (2) to add the firm to the list of sponsors of approved NADA's.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen

in the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessement nor an environmental impact statement is required.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts 510 and 520 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 512, 701(a) (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

2. Section 510.600 is amended in paragraph (c)(1) by alphabetically adding the new entry "Elite Chemical Corp., Inc." and in paragraph (c)(2) by numerically adding the new entry "055025" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Elite Chemical Corp., Inc., P.O. Box 1947, Norcross, GA 30091	055025
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
055025	Elite Chemical Corp., Inc., P.O. Box 1947, Norcross, GA 30091
* * * * *	

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

3. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

4. Section 520.580 is amended by revising paragraph (b)(1) to read as follows:

§ 520.580 Dichlorophene and toluene capsules.

* * * * *

(b) *Sponsor.* (1) For single dose only, see 000010, 000115, 000642, 000856, 010888, 011536, 011614, 015563, 017135, 023851, 049968, 050606, and 055025 in § 510.600(c) of this chapter.

* * * * *

Dated: February 7, 1989.

Richard H. Teske,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 89–3382 Filed 2–13–89; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 10

[Docket No. 80656–9013]

Requests for Reconsideration in Patent and Trademark Office Disciplinary Proceedings

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: This final rule sets forth an amendment to 37 CFR 10.156. The purpose of the amendment is to prescribe a date on which the decision of the Commissioner of Patents and Trademarks in a Patent and Trademark (PTO) disciplinary proceeding becomes final agency action for purposes of judicial review, and to provide for one request for reconsideration or modification of such decision by a party.

EFFECTIVE DATE: April 1, 1989.

FOR FURTHER INFORMATION CONTACT: Harris A. Pitlick by telephone at (703) 557–4035 or by mail marked to his attention and addressed to Box 8, Commissioner of Patents and Trademarks, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: Present rules do not explicitly provide for requests for reconsideration or modification of Commissioner's decisions in appeals from initial decisions of administrative law judges in PTO disciplinary proceedings. 37 CFR 10.156 presently provides that such a Commissioner's decision is a final agency action.

In a recent case, *Klein v. Peterson*, 6 USPQ 2d 1556 (D.D.C. 1988), a first decision of the Commissioner was withdrawn and ultimately replaced with a second decision. The respondent sought judicial review of the first decision under 35 U.S.C. 32 after its finality had already been withdrawn and then sought judicial review of the second decision. The authority of the Commissioner to, in effect, reconsider his decision in a disciplinary proceeding was challenged in the cited case. The district court held that since there was no express statutory authority proscribing the Commissioner from reconsidering the first decision, there was implicit authority to do so consistent with long-standing precedent in the area of federal administrative law.

While *Klein* confirmed that the Commissioner has inherent authority to reconsider a decision, at least before an appeal has been noted, the PTO believes that a rule explicitly providing for a time in which requests for reconsideration may be made by a party and a date certain for when Commissioner's decisions in disciplinary proceedings become final will both promote greater certainty in this area of disciplinary proceeding practice and eliminate the possibility of multiple appeals. The final rule is not intended to preclude the Commissioner from *sua sponte* reconsidering or modifying a decision in a disciplinary proceeding at any time where conditions warrant and a respondent's due process rights are not violated, consistent with long-standing federal administrative law precedent.

A notice of proposed rulemaking was published in the **Federal Register** on October 3, 1988 (53 FR 38740) and the *Official Gazette* on October 25, 1988 (1095 O.G. 44). Interested parties were requested to submit written comments on or before December 1, 1988. No comments were received.

Other Considerations

The rule change is in conformity with the requirements of the Regulatory Flexibility Act (Pub. L. 96–354), Executive Orders 12291 and 12612 and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

The General Counsel has certified to the Chief Counsel for Advocacy, Small Business Administration that the rule change is not expected to have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, Pub. L. 96–354) because in merely codifying the inherent right of the PTO to reconsider its decisions *sua sponte*, the rule extends the right to each party in a PTO disciplinary proceeding to seek reconsideration.

The Patent and Trademark Office has determined that this rule change is not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. There will be no major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. There will be no adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Patent and Trademark Office has also determined that this notice has no Federalism implications affecting the relationship between the National government and the States as outlined in Executive Order 12612.

This rule change does not contain a collection of information subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 37 CFR Part 10

Administrative practice and procedure, Courts, Inventions and patents, Lawyers, Trademarks.

For the reasons set out in the preamble and under the authority granted to the Commissioner of Patents and Trademarks by 35 U.S.C. 6, the Patent and Trademark Office amends 37 CFR Part 10 as follows:

PART 10—REPRESENTATION OF OTHERS BEFORE THE PATENT AND TRADEMARK OFFICE

1. The authority citation for 37 CFR Part 10 would continue to read as follows:

Authority: 5 U.S.C. 500; 15 U.S.C. 1123; 35 U.S.C. 6, 31, 32, 41.

2. Section 10.156 is amended by revising paragraph (a) and adding new paragraph (c) to read as follows:

§ 10.156 Decision of the Commissioner.

(a) An appeal from an initial decision of the administrative law judge shall be decided by the Commissioner. The Commissioner may affirm, reverse or modify the initial decision or remand the matter to the administrative law judge for such further proceedings as the Commissioner may deem appropriate. Subject to paragraph (c) of this section, a decision by the Commissioner does not become a final agency action in a disciplinary proceeding until 20 days after it is entered. In making a final decision, the Commissioner shall review the record or those portions of the record as may be cited by the parties in order to limit the issues. The Commissioner shall transmit a copy of the final decision to the Director and to the respondent.

* * * * *

(c) A single request for reconsideration or modification of the Commissioner's decision may be made by the respondent or the Director if filed within 20 days from the date of entry of the decision. Such a request shall have the effect of staying the effective date of the decision. The decision by the Commissioner on the request is a final agency action in a disciplinary proceeding and is effective on its date of entry.

Dated: January 11, 1989.

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 89–3465 Filed 2–13–89; 8:45 am]

BILLING CODE 3510–16–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD–FRL–3468–4]

Standards of Performance for New Stationary Sources; Amendments to Test Methods and Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On February 19, 1988 (53 FR 5082), EPA proposed amendments to the test methods and procedures sections of the subparts in 40 CFR Part 60 to consolidate all test methods and procedures necessary to determine compliance with the applicable standards or related monitoring requirements and to clarify certain procedures. Today's action promulgates these amendments.

EFFECTIVE DATE: February 14, 1989.

Under section 307(b)(1) of the Clean Air Act, judicial review of the actions taken by this notice is available *only* by the filing of a petition for review in the U.S. Courts of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: Docket No. A–87–15, containing information considered by EPA in developing the promulgated rule, is available for public inspection and copying between 8:00 a.m. and 3:30 p.m., Monday through Friday, at EPA's Central Docket Section, South Conference Center, Room 4, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Roger T. Shigehara, Emission Measurement Branch (MD–19), Technical Support Division, U.S. EPA, Research Triangle Park, NC 27711, telephone (919) 541–1056.

SUPPLEMENTARY INFORMATION:

I. The Rulemaking

The test methods and procedures section of each subpart has been revised primarily to clarify the section by consolidating all procedures that pertain to one measurement (e.g., particulate matter concentrations) under one paragraph, to delete repetitions of methods already referenced within a cited method (e.g., Methods 1, 2, and 3 are referenced by Method 5 and, therefore, have not been listed again), and to separate alternative methods from reference methods. In addition, other changes have been made for consistency from one subpart or one section to another, procedures that were overlooked in the promulgation for requirements already in the subparts have been included, and technical errors have been corrected. Major amendments besides clarifications are listed below:

1. *Section 60.2:* Since the standards are based on reference methods, the applicable subpart rather than Appendix A is being used to define the reference methods. The title of Appendix A is being revised from "Reference Methods" to "Test Methods" in another rulemaking action to allow the inclusion of alternative methods in Appendix A.

2. *Section 60.8 (b) and (e):* Certain phrases or requirements are repeated in each subpart or in a number of subparts. Since they are generally applicable to all subparts, these phrases and requirements have been incorporated into the General Provisions.

3. *Section 60.44a:* Lignite fuel subject to the 340 ng/J standard is being added to the equation and a clarifying footnote is being added to the table.

4. *Sections 60.46 and 60.48a:* The use of F_c factors has been incorporated into the procedures. This change was the result of comments received during proposal.

5. *Section 60.54:* A procedure for Method 3 for a facility without a wet scrubber is being added. The grab-sampling technique of Method 3 is also being added.

6. *Sections 60.93, 60.123, and 60.133:* Sampling rate is being changed to sample volume.

7. *Sections 60.165, 60.175, 60.185:* The requirement for compressing the recorder scale during the performance evaluation test is being deleted.

8. *Sections 60.166, 60.176 and 60.186:* The specification for monitoring system drift not to exceed 2 percent of span value which is in Subpart P and overlooked in Subparts Q and R is being added. In addition, dry basis measurements of the SO_2 concentration are being specified.

Subparts Db, J, EE, MM, QQ, RR, SS, TT, WW, and FFF are not being amended at this time. It has been determined that Subparts K, Ka, HHH, JJJ, and KKK require no amendments.

This rulemaking does not impose emission measurement requirements beyond those specified in the current regulations, nor does it change any emission standard. Rather, the rulemaking would simply clarify and in some instances add a procedure associated with emission measurement or process monitoring requirements that would apply irrespective of this rulemaking.

II. Public Participation

The amendments were proposed in the **Federal Register** on February 19, 1988 (53 FR 5082). To provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed amendments, a public hearing was scheduled for April 4, 1988, at the Research Triangle Park, North Carolina, but was not held because no one wished to make an oral presentation. The public comment period was from February 19, 1988, to May 4, 1988. Three comment letters were received.

III. Significant Comments and Changes to the Proposed Amendments

The three comment letters on the proposed amendments were from industry and a utility *ad hoc* group, and all comments concerned only § 60.8, Subpart D (Fossil-Fuel Fired Steam Generators), and Subpart Da (Electric Utility Steam Generating Units). There were no comments on the amendments made to the other 39 subparts.

All three commenters objected to the withdrawal of Methods 6A and 6B primarily because no clear justification was given. The primary reason for the proposed withdrawal of Methods 6A and 6B for emission performance tests and continuous monitoring relative accuracy tests is due to the slightly greater variability of the F_c factor than the F_d factor (6 percent vs. 3 percent). Both Methods 6A and 6B are based on the F_c factor.

The first commenter suggested that if the difference between the F_c and F_d factors was of concern, ultimate analysis of coal samples could be used to prove the appropriateness of the F_c factor. After considering the commenter's suggestion, EPA has decided to allow the use of Methods 6A and 6B as alternative methods with one restriction. If the average F_c factor in Method 19 is used and when the emission rate is from 0.97 to 1.00 of the emission standard or the relative accuracy is from 17 and 20 percent, then a check of the acceptability of the F_c factor is made.

This same commenter suggested that Method 8 and Method 7D be designated as alternatives to Method 6. In section 2.1 of Method 6, Method 8 is designated as an acceptable alternative to Method 6 provided that a heated filter is placed between the probe and isopropanol impinger. Since this applies to wherever Method 6 is used, it is unnecessary to repeat its acceptability as an alternative in § 60.46(d)(3). Method 7D cannot be added without going through the rulemaking process. The Agency plans to consider this action in the near future.

The second commenter stated that the proposed amendment to § 60.8(e)(1) could be made clearer by referencing appropriate sections of Method 1. The Agency feels that paragraph (e)(1)(i), which states "constructing the air pollution control system such that volumetric flow rates and pollutant emission rates can be accurately determined by applicable test methods and procedures," is sufficiently clear to give the necessary intent. In the case of particulate matter, Methods 1, 2, and 5 are the applicable procedures, which contain criteria and procedures for ensuring that measurements of flow and emission rates are accurate. The Agency agrees that paragraph (e)(1)(ii) could be made clearer. It has been revised as follows: "providing a stack or duct free of cyclonic flow during performance tests, as demonstrated by applicable test methods and procedures."

This same commenter suggested that § 60.45(f) can be shortened by referencing section 3 of Method 19. The Agency agrees and plans to revise this paragraph under a separate action.

This commenter also asked whether the expressions "The owner or operator may use" and "at the sole discretion of the owner and operator" have the same impact to EPA. Both expressions mean the same thing. Only the source owner or operator may choose to use the alternative methods for determining compliance. However, it does not mean that only the owner or operator may use the alternative methods. Alternative methods are those that have been shown to produce results adequate for determining compliance and may have no bias, a positive bias, or a slightly negative bias. The intent of such expression was to indicate that control agencies should not mandate the use of alternative methods if the owner or operator chooses not to use them. However, the alternative status does not preclude the control agency from using the method for compliance purposes; it only means that an agency must consider positive biases, if any (some alternative methods have been shown not to exhibit any bias), when using alternative methods.

The second commenter suggested that reference to § 60.46 in §§ 60.a (c)(4) and (d)(1) be deleted. The reference was made to § 60.46 to indicate that only F_d factors should be used. However, with the changes allowing the use of the F_c factors, the reference has been deleted.

This same commenter stated that the first equation in § 60.43a(h)(2) has no meaning and therefore is unnecessary. The EPA realizes that the first equation would not be applicable. The equation was included to satisfy the requirements of section 111(a) of the Clean Air Act, as amended.

Two of the commenters pointed out several typesetting errors. These have been noted.

As a result of an EPA internal review, the proposed addition of a minimum sampling time of 120 minutes to §§ 60.386(b)(3) and 60.675(b)(3) has been rescinded because an averaging time was not considered essential for determining compliance in these subparts.

IV. Administrative

A. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered EPA in the development of this rulemaking. The docket is a dynamic

file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to identify readily and locate documents so they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated rule, and EPA responses to significant comments, the contents of the docket, except for interagency review materials, will serve as the record in case of judicial review (Clean Air Act, section 307(d)(7)(A)).

B. Office of Management and Budget Reviews

Under Executive Order 12291, EPA is required to judge whether a regulation is a "major rule" and, therefore, subject to the requirements of a regulatory impact analysis. The Agency has determined that this regulation would result in none of the adverse economic effects set forth in section 1 of the Order as grounds for finding a regulation to be a "major rule." The rulemaking does not impose emission measurement requirements beyond those specified in the current regulations, but instead, provides simplification and clarification in the test methods and procedures sections of the regulation that would apply irrespective of this rulemaking. The Agency has, therefore, concluded that this regulation is not a "major rule" under Executive Order 12291.

As required by Executive Order 12291, this Final Rule has been reviewed by the Office of Management and Budget (OMB). Any written OMB comments to EPA and EPA's response to these comments will be available for inspection in the public docket for this rulemaking.

C. Regulatory Flexibility Act Compliance

The Regulatory Flexibility Act (RFA) of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of an RFA in those instances where small business impacts are possible. Because this rulemaking imposes no adverse economic impacts, an RFA has not been conducted.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this promulgated rule will not have any economic impact on small entities because no changes are being made to testing requirements.

List of Subjects in 40 CFR Part 60

Air pollution, Electric utility steam generating units, Gas turbines, Incinerators, Incorporation by reference, Intergovernmental relations, Phosphate fertilizer, Portland cement plants, Primary copper smelters, Primary lead smelters, Primary zinc smelters, Reporting and recordkeeping requirements, and Wool fiberglass insulation.

Date: February 2, 1989.

Jack Moore,

Acting Administrator.

40 CFR Part 60 is amended as follows:

PART 60—[AMENDED]

1. The authority citation for Part 60 continues to read as follows:

Authority: Sections 101, 111, 114, 116, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7411, 7414, 7416, and 7601).

§ 60.2 [Amended]

2. Section 60.2 (Subpart A) is amended by revising the definition of "Reference method" to read, " 'Reference method' means any method of sampling and analyzing for an air pollutant as specified in the applicable subpart."

§ 60.8 [Amended]

3. In § 60.8(b), the first sentence is amended by removing the word "on" before the number "(4)", revising the period at the end of the sentence to a comma, and by adding the following phrase, to read as follows:

(b) * * * or (5) approves shorter sampling times and smaller sample volumes when necessitated by process variables or other factors.

4. Section 60.8 is amended by adding the following sentence to the end of paragraph (e)(1) to read as follows:

(e) * * *

(1) * * * This includes (i) constructing the air pollution control system such that volumetric flow rates and pollutant emission rates can be accurately determined by applicable test methods and procedures and (ii) providing a stack or duct free of cyclonic flow during performance tests, as demonstrated by applicable test methods and procedures.

§ 60.45 [Amended]

5. Section 60.45(c)(1) is revised to read as follows:

(c) * * *

(1) Methods 6, 7, and 3, as applicable, shall be used for the performance evaluations of sulfur dioxide and nitrogen oxides continuous monitoring systems. Acceptable alternative methods for Methods 6, 7, and 3 are given in § 60.46(d).

6. In § 60.45(f)(3), the words "paragraph (d)" are revised to read "paragraph (a)".

7. Section 60.46 is revised to read as follows:

§ 60.46 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b). Acceptable alternative methods and procedures are given in paragraph (d) of this section.

(b) The owner or operator shall determine compliance with the particulate matter, SO_2, and NO_x standards in §§ 60.42, 60.43, and 60.44 as follows:

(1) The emission rate (E) of particulate matter, SO_2, or NO_x shall be computed for each run using the following equation:

$E = CF_d (20.9)/(20.9 - \%O_2)$

E = emission rate of pollutant, ng/J (lb/million Btu).

C = concentration of pollutant, ng/dscm (lb/dscf).

$\%O_2$ = oxygen concentration, percent dry basis.

F_d = factor as determined from Method 19.

(2) Method 5 shall be used to determine the particular matter concentration (C) at affected facilities without wet flue-gas-desulfurization (FGD) systems and Method 5B shall be used to determine the particulate matter concentration (C) after FGD systems.

(i) The sampling time and sample volume for each run shall be at least 60 minutes and 0.85 dscm (30 dscf). The probe and filter holder heating systems in the sampling train may be set to provide a gas temperature no greater than 160±14 °C (320±25 °F).

(ii) The emission rate correction factor, integrated or grab sampling and analysis procedure of Method 3 shall be used to determine the O_2 concentration ($\%O_2$). The O_2 sample shall be obtained simultaneously with, and at the same traverse points as, the particulate sample. If the grab sampling procedure is used, the O_2 concentration for the run shall be the arithmetic mean of all the individual O_2 sample concentrations at each traverse point.

(iii) If the particulate run has more than 12 traverse points, the O_2 traverse points may be reduced to 12 provided that Method 1 is used to locate the 12 O_2 traverse points.

(3) Method 9 and the procedures in § 60.11 shall be used to determine opacity.

(4) Method 6 shall be used to determine the SO_2 concentration.

(i) The sampling site shall be the same as that selected for the particulate sample. The sampling location in the duct shall be at the centroid of the cross section or at a point no closer to the walls than 1 m (3.28 ft). The sampling time and sample volume for each sample run shall be at least 20 minutes and 0.020 dscm (0.71 dscf). Two samples shall be taken during a 1-hour period, with each sample taken within a 30-minute interval.

(ii) The emission rate correction factor, integrated sampling and analysis procedure of Method 3 shall be used to determine the O_2 concentration ($\%O_2$). The O_2 sample shall be taken simultaneously with, and at the same point as, the SO_2 sample. The SO_2 emission rate shall be computed for each pair of SO_2 and O_2 samples. The SO_2 emission rate (E) for each run shall be the arithmetic mean of the results of the two pairs of samples.

(5) Method 7 shall be used to determine the NO_x concentration.

(i) The sampling site and location shall be the same as for the SO_2 sample. Each run shall consist of four grab samples, with each sample taken at about 15-minute intervals.

(ii) For each NO_x sample, the emission rate correction factor, grab sampling and analysis procedure of Method 3 shall be used to determine the O_2 concentration ($\%O_2$). The sample shall be taken simultaneously with, and at the same point as, the NO_x sample.

(iii) The NO_x emission rate shall be computed for each pair of NO_x and O_2 samples. The NO_x emission rate (E) for each run shall be the arithmetic mean of the results of the four pairs of samples.

(c) When combinations of fossil fuels or fossil fuel and wood residue are fired, the owner or operator (in order to compute the prorated standard as shown in §§ 60.43(b) and 60.44(b)) shall determine the percentage (w, x, y, or z) of the total heat input derived from each type of fuel as follows:

(1) The heat input rate of each fuel shall be determined by multiplying the gross calorific value of each fuel fired by the rate of each fuel burned.

(2) ASTM Methods D 2015–77 (solid fuels), D 240–76 (liquid fuels), or D 1826–77 (gaseous fuels) (incorporated by reference—see § 60.17) shall be used to determine the gross calorific values of the fuels. The method used to determine the calorific value of wood residue must be approved by the Administrator.

(3) Suitable methods shall be used to determine the rate of each fuel burned during each test period, and a material balance over the steam generating system shall be used to confirm the rate.

(d) The owner or operator may use the following as alternatives to the reference methods and procedures in this section or in other sections as specified:

(1) The emission rate (E) of particulate matter, SO_2 and NO_x may be determined by using the F_c factor, provided that the following procedure is used:

(i) The emission rate (E) shall be computed using the following equation:

$E = C F_c (100/\%CO_2)$

where:

E = emission rate of pollutant, ng/J (lb/million Btu).

C = concentration of pollutant, ng/dscm (lb/dscf).

$\%CO_2$ = carbon dioxide concentration, percent dry basis.

F_c = factor as determined in appropriate sections of Method 19.

(ii) If and only if the average F_c factor in Method 19 is used to calculate E and either E is from 0.97 to 1.00 of the emission standard or the relative accuracy of a continuous emission monitoring system is from 17 to 20 percent, then three runs of Method 3 shall be used to determine the O_2 and CO_2 concentration according to the procedures in paragraph (b) (2)(ii), (4)(ii), or (5)(ii) of this section. Then if F_o (average of three runs), as calculated from the equation in Method 3, is more than ±3 percent than the average F_o value, as determined from the average values of F_d and F_c in Method 19, i.e., $F_{oa} = 0.209 (F_{da}/F_{ca})$, then the following procedure shall be followed:

(A) When F_o is less than 0.97 F_{oa}, then E shall be increased by that proportion under 0.97 F_{oa}, e.g., if F_o is 0.95 F_{oa}, E shall be increased by 2 percent. This recalculated value shall be used to determine compliance with the emission standard.

(B) When F_o is less than 0.97 F_{oa} and when the average difference (d) between the continuous monitor minus the reference methods is negative, then E shall be increased by that proportion under 0.97 F_{oa}, e.g., if F_o is 0.95 F_{oa}, E shall be increased by 2 percent. This recalculated value shall be used to determine compliance with the relative accuracy specification.

(C) When F_o is greater than 1.03 F_{oa} and when the average difference d is positive, then E shall be decreased by that proportion over 1.03 F_{oa}, e.g., if F_o is 1.05 F_{oa}, E shall be decreased by 2 percent. This recalculated value shall be used to determine compliance with the relative accuracy specification.

(2) For Method 5 or 5B, Method 17 may be used at facilities with or without wet FGD systems if the stack gas temperature at the sampling location does not exceed an average temperature of 160 °C (320 °F). The procedures of sections 2.1 and 2.3 of Method 5B may be used with Method 17 only if it is used after wet FGD systems. Method 17 shall not be used after wet FGD systems if the effluent gas is saturated or laden with water droplets.

(3) Particulate matter and SO_2 may be determined simultaneously with the Method 5 train provided that the following changes are made:

(i) The filter and impinger apparatus in sections 2.1.5 and 2.1.6 of Method 8 is used in place of the condenser (section 2.1.7) of Method 5.

(ii) All applicable procedures in Method 8 for the determination of SO_2 (including moisture) are used:

(4) For Method 6, Method 6C may be used. Method 6A may also be used whenever Methods 6 and 3 data are specified to determine the SO_2 emission rate, under the conditions in paragraph (d)(1) of this section.

(5) For Method 7, Method 7A, 7C, 7D, or 7E may be used. If Method 7C, 7D, or 7E is used, the sampling time for each run shall be at least 1 hour and the integrated sampling approach shall be used to determine the O_2 concentration ($\%O_2$) for the emission rate correction factor.

(6) For Method 3, Method 3A may be used.

§ 60.43a [Amended]

8. Section 60.43a(h)(1) is amended by revising both equations to read as follows:

$E_s = (340 \times + 520\ y)/100$ and

$\%P_s = 10$

9. Section 60.43a(h)(2) is amended by:

a. Revising both equations to read as follows:

$E_s = (340 \times + 520\ y)/100$ and

$\%P_s = (10 \times + 30\ y)/100$

b. Revising the first term in the nomenclature list to read "E_s".

c. Revising the second term in the nomenclature list to read as follows:

$\%P_s$ is the percentage of potential sulfur dioxide emission allowed.

§ 60.44a [Amended]

10. Section 60.44a(a)(1). No_x emission limits table, is amended by:

a. Adding a footnote "2" to the end of the fifth item under "Fuel type"immediately after the word "furnace" to read "furnace[2]".

b. Revising the sixth item under "Fuel type" to read as follows:

Any fuel containing more than 25%, by weight, lignite not subject to the 340 ng/J heat input emission limit[2].

c. Adding a footnote "2" at the end of the table to read as follows:

[2] Any fuel containing less than 25%, by weight, lignite is not prorated but its percentage is added to the percentage of the predominant fuel.

11. Section 60.44a(c) is amended by:

a. Revising the equation to read as follows:

$$E_s = [86\ w + 130 x + 210\ y + 260\ z + 340\ v]/100$$

b. Revising the first term in the nomenclature list to read "E_s,".

c. Moving the word "and" at the end of the term "y" to the end of the term "z"and adding the definition of the term "v" to the end of the nomenclature list to read as follows:

v is the percentage of total heat input delivered from the combustion of fuels subject to the 340 ng/J heat input standard.

§ 60.46a [Amended]

12. In § 60.46a(d)(3), the paragraph reference "(i)" is revised to read "(b)".

13. In § 60.46a(h), the phrase "sections 5.0 and 7.0 of Reference Method 19 (Appendix A)" is revised to read: "section 7 of Method 19."

14. Section 60.47a is amended by revising paragraphs (f), (h), (i) introductory text, and (i)(1), and (i)(2), and by adding a new paragraph (j) to read as follows:

§ 60.47a Emission monitoring.

* * * * *

(f) The owner or operator shall obtain emission data for at least 18 hours in at least 22 out of 30 successive boiler operating days. If this minimum data requirement cannot be met with a continuous monitoring system, the owner or operator shall supplement emission data with other monitoring systems approved by the Administrator or the reference methods and procedures as described in paragraph (h) of this section.

* * * * *

(h) When it becomes necessary to supplement continuous monitoring system data to meet the minimum data requirements in paragraph (f) of this section, the owner or operator shall use the reference methods and procedures as specified in this paragraph. Acceptable alternative methods and procedures are given in pargraph (j) of this section.

(1) Method 6 shall be used to determine the SO_2 concentration at the same location as the SO_2 monitor. Samples shall be taken at 60-minute intervals. The sampling time and sample volume for each sample shall be at least 20 minutes and 0.020 dscm (0.71 dscf). Each sample represents a 1-hour average.

(2) Method 7 shall be used to determine the NO_x concentration at the same location as the NO_x monitor. Samples shall be taken at 30-minute intervals. The arithmetic average of two consecutive samples represents a 1-hour average.

(3) The emission rate correction factor, integrated bag sampling and analysis procedure of Method 3 shall be used to determine the O_2 or CO_2 concentration at the same location as the O_2 or CO_2 monitor. Samples shall be taken for at least 30 minutes in each hour. Each sample represents a 1-hour average.

(4) The procedures in Method 19 shall be used to compute each 1-hour average concentration in ng/J (lb/million Btu) heat input.

(i) The owner or operator shall use methods and procedures in this paragraph to conduct monitoring system performance evaluations under § 60.13(c) and calibration checks under § 60.13(d). Acceptable alternative methods and procedures are given in paragraph (j) of this section.

(1) Methods 6, 7, and 3, as applicable, shall be used to determine O_2, SO_2, and NO_x concentrations.

(2) SO_2 or NO_x (NO), as applicable, shall be used for preparing the calibration gas mixtures (in N_2, as applicable) under Performance Specification 2 of Appendix B of this part.

* * * * *

(j) The owner or operator may use the following as alternatives to the reference methods and procedures specified in this section:

(1) For Method 6, Method 6A or 6B (whenever Methods 6 and 3 data are used) or 6C may be used. Each Method 6B sample obtained over 24 hours represents 24 1-hour averages. If Method 6A or 6B is used under paragraph (i) of this section, the conditions under § 60.46(d)(1) apply; these conditions do not apply under paragraph (h) of this section.

(2) For Method 7, Method 7A, 7C, 7D, or 7E may be used. If Method 7C, 7D, or 7E is used, the sampling time for each run shall be 1 hour.

(3) For Method 3, Method 3A may be used if the sampling time is 1 hour.

15. Section 60.48a is amended by redesignating paragraph (d) as paragraph (f), by adding a new paragrah (d), and by revising paragraphs (a), (b), (c), and (e) to read as follows:

§ 60.48a Compliance determination test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the methods in Appendix A of this part or the methods and procedures as specified in this section, except as provided in § 60.8(b). Section 60.8(f) does not apply to this section for SO_2 and NO_x. Acceptable alternative methods are given in paragraph (e) of this section.

(b) The owner or operator shall determine compliance with the particulate matter standards in § 60.42a as follows:

(1) The dry basis F factor (O_2) procedures in Method 19 shall be used to compute the emission rate of particulate matter.

(2) For the particular matter concentration, Method 5 shall be used at affected facilities without wet FGD systems and Method 5B shall be used after wet FGD systems.

(i) The sampling time and sample volume for each run shall be at least 120 minutes and 1.70 dscm (60 dscf). The probe and filter holder heating system in the sampling train may be set to provide an average gas temperature of no greater than 160±14 °C (320±25 °F).

(ii) For each particulate run, the emission rate correction factor, integrated or grab sampling and analysis procedures of Method 3 shall be used to determine the O_2 concentration. The O_2 sample shall be obtained simultaneously with, and at the same traverse points as, the particulate run. If the particulate run has more than 12 traverse points, the O_2 traverse points may be reduced to 12 provided that Method 1 is used to locate the 12 O_2 traverse points. If the grab sampling procedure is used, the O_2 concentration for the run shall be the arithmetic mean of all the individual O_2 concentrations at each traverse point.

(3) Method 9 and the procedures in § 60.11 shall be used to determine opacity.

(c) The owner or operator shall determine compliance with the SO_2 standards in § 60.43a as follows:

(1) The percent of potential SO_2 emissions ($\%P_s$) to the atmosphere shall be computed using the following equation:

$$\%P_s = [(100 - \%R_g)(100 - \%R_k)]/100$$

where:

$\%P_s$ = percent of potential SO_2 emissions, percent.

$\%R_g$ = percent reduction from fuel pretreatment, percent.

$\%R_k$ = percent reduction by SO_2 control system, percent.

(2) The procedures in Method 19 may be used to determine percent reduction ($\%R_g$) of sulfur by such processes as fuel pretreatment (physical coal cleaning, hydrodesulfurization of fuel oil, etc.), coal pulverizers, and bottom and flyash interactions. This determination is optional.

(3) The procedures in Method 19 shall be used to determine the percent SO_2 reduction ($\%R_k$ of any SO_2 control system. Alternatively, a combination of an "as fired" fuel monitor and emission rates measured after the control system, following the procedures in Method 19, may be used if the percent reduction is calculated using the average emission rate from the SO_2 control device and the average SO_2 input rate from the "as fired" fuel analysis for 30 successive boiler operating days.

(4) The appropriate procedures in Method 19 shall be used to determine the emission rate.

(5) The continuous monitoring system in § 60.47a (b) and (d) shall be used to determine the concentrations of SO_2 and CO_2 or O_2.

(d) The owner or operator shall determine compliance with the NO_x standard in § 60.44a as follows:

(1) The appropriate procedures in Method 19 shall be used to determine the emission rate of NO_x.

(2) The continous monitoring system in § 60.47a (c) and (d) shall be used to determine the concentrations of NO_x and CO_2 or O_2.

(e) The owner or operator may use the following as alternatives to the reference methods and procedures specified in this section:

(1) For Method 5 or 5B, Method 17 may be used at facilities with or without wet FGD systems if the stack temperature at the sampling location does not exceed an average temperature of 160 °C (320 °F). The procedures of §§ 2.1 and 2.3 of Method 5B may be used in Method 17 only if it is used after wet FGD systems. Method 17 shall not be used after wet FGD systems if the effluent is saturated or laden with water droplets.

(2) The F_c factor (CO_2) procedures in Method 19 may be used to compute the emission rate of particulate matter under the stipulations of § 60.46(d)(1). The CO_2 shall be determined in the same manner as the O_2 concentration.

* * * * *

16. Section 60.54 is revised to read as follows:

§ 60.54 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(b) The owner or operator shall determine compliance with the particulate matter standard in § 60.52 as follows:

(1) The emission rate (c_{12}) of particulate matter, corrected to 12 percent CO_2, shall be computed for each run using the following equation:

$$c_{12} = c_s\,(12/\%CO_2)$$

where:

c_{12} = concentration of particulate matter, corrected to 12 percent CO_2, g/dscm (gr/dscf).

c_s = concentration of particulate matter, g/dscm (gr/dscf).

$\%CO_2$ = CO_2 concentration, percent dry basis.

(2) Method 5 shall be used to determine the particulate matter concentration (c_s). The sampling time and sample volume for each run shall be at least 60 minutes and 0.85 dscm (30 dscf).

(3) The emission rate correction factor, integrated or grab sampling and analysis procedure of Method 3 shall be used to determine CO_2 concentration ($\%CO_2$).

(i) The CO_2 sample shall be obtained simultaneously with, and at the same traverse points as, the particulate run. If the particulate run has more than 12 traverse points, the CO_2 traverse points may be reduced to 12 if Method 1 is used to locate the 12 CO_2 traverse points. If individual CO_2 samples are taken at each traverse point, the CO_2 concentration ($\%CO_2$) used in the correction equation shall be the arithmetic mean of all the individual CO_2 sample concentrations at each traverse point.

(ii) If sampling is conducted after a wet scrubber, an "adjusted" CO_2 concentration [$(\%CO_2)_{adj}$], which accounts for the effects of CO_2 absorption and dilution air, may be used instead of the CO_2 concentration determined in this paragraph. The adjusted CO_2 concentration shall be determined by either of the procedures in paragraph (c) of this section.

(c) The owner or operator may use either of the following procedures to determine the adjusted CO_2 concentration.

(1) The volumetric flow rates at the inlet and outlet of the wet scrubber and the inlet CO_2 concentration may be used to determine the adjusted CO_2 concentration [$(\%CO_2)_{adj}$] using the following equation:

$$(\%CO_2)_{adj} = (\%CO_2)_{in}\,(Q_{in}/Q_{out})$$

where:

$(\%CO_2)_{adj}$ = adjusted outlet CO_2 concentration, percent dry basis.

$(\%CO_2)_{in}$ = CO_2 concentration measured before the scrubber, percent dry basis.

Q_{in} = volumetric flow rate of effluent gas before the wet scrubber, dscm/min (dscf/min).

Q_{out} = volumetric flow rate of effluent gas after the wet scrubber, dscm/min (dscf/min).

(i) At the outlet, Method 5 is used to determine the volumetric flow rate (Q_{out}) of the effluent gas.

(ii) At the inlet, Method 2 is used to determine the volumetric flow rate (Q_{in}) of the effluent gas as follows: Two full velocity traverses are conducted, one immediately before and one immediately after each particulate run conducted at the outlet, and the results are averaged.

(iii) At the inlet, the emission rate correction factor, integrated sampling and analysis procedure of Method 3 is used to determine the CO_2 concentration [$(\%CO_2)_{in}$] as follows: At least nine sampling points are selected randomly from the velocity traverse points and are divided randomly into three sets, equal in number of points; the first set of three or more points is used for the first run, the second set for the second run, and the third set for the third run. The CO_2 sample is taken simultaneously with each particulate run being conducted at the outlet, by traversing the three sampling points (or more) and sampling at each point for equal increments of time.

(2) Excess air measurements may be used to determine the adjusted CO_2 concentration [$(\%CO_2)_{adj}$] using the following equation:

$$(\%CO_2)_{adj} = (\%CO_2)_{in}\,[(100 + \%EA_1)/(100 + \%EA_2)]$$

where:

$(\%CO_2)_{adj}$ = adjusted outlet CO_2 concentration, percent dry basis.

$(\%CO_2)_{in}$ = CO_2 concentration at the inlet of the wet scrubber, percent dry basis.

$\%EA_1$ = excess air at the inlet of the scrubber, percent.

$\%EA_2$ = excess air at the outlet of the scrubber, percent.

(i) A gas sample is collected as in paragraph (c)(1)(iii) of this section and the gas samples at both the inlet and outlet locations are analyzed for CO_2, O_2, and N_2.

(ii) Equation 3–1 of Method 3 is used to compute the percentages of excess air at the inlet and outlet of the wet scrubber.

17. Section 60.64 is revised to read as follows:

§ 60.64 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(b) The owner or operator shall determine compliance with the particulate matter standard in § 60.62 as follows:

(1) The emission rate (E) of particulate matter shall be computed for each run using the following equation:

$$E = (c_s Q_{sd})/(P K)$$

where:

E = emission rate of particulate matter, kg/metric ton (lb/ton) of kiln feed.
c_s = concentration of particulate matter, g/dscm (g/dscf).
Q_{sd} = volumetric flow rate of effluent gas, dscm/hr (dscf/hr).
P = total kiln feed (dry basis) rate, metric ton/hr (ton/hr).
K = conversion factor, 1000 g/kg (453.6 g/lb).

(2) Method 5 shall be used to determine the particulate matter concentration (c_s) and the volumetric flow rate (Q_{sd}) of the effluent gas. The sampling time and sample volume for each run shall be at least 60 minutes and 0.85 dscm (30.0 dscf) for the kiln and at least 60 minutes and 1.15 dscm (40.6 dscf) for the clinker cooler.

(3) Suitable methods shall be used to determine the kiln feed rate (P), except fuels, for each run. Material balance over the production system shall be used to confirm the feed rate.

(4) Method 9 and the procedures in § 60.11 shall be used to determine opacity.

(18) Section 60.73(a) is revised to read as follows:

§ 60.73 Emission monitoring.

(a) The source owner or operator shall install, calibrate, maintain, and operate a continuous monitoring system for measuring nitrogen oxides (NO_x). The pollutant gas mixtures under Performance Specification 2 and for calibration checks under § 60.13(d) of this part shall be nitrogen dioxide (NO_2). The span value shall be 500 ppm of NO_2. Method 7 shall be used for the performance evaluations under § 60.13(c). Acceptable alternative methods to Method 7 are given in § 60.74(c).

* * * * *

19. Section 60.73(b) is amended by removing the word "short" wherever it occurs in the first and third sentences.

20. Section 60.74 is revised to read as follows:

§ 60.74 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b). Acceptable alternative methods and procedures are given in paragraph (c) of this section.

(b) The owner or operator shall determine compliance with the NO_x standard in § 60.72 as follows:

(1) The emission rate (E) of NO_x shall be computed for each run using the following equation:

$$E = (C_s Q_{sd})/(P K)$$

where:

E = emission rate of NO_x as NO_2, kg/metric ton (lb/ton) of 100 percent nitric acid.
C_s = concentration of NO_x as NO_2, g/dscm (lb/dscf).
Q_{sd} = volumetric flow rate of effluent gas, dscm/hr (dscf/hr).
P = acid production rate, metric ton/hr (ton/hr) or 100 percent nitric acid.
K = conversion factor, 1000 g/kg (1.0 lb/lb).

(2) Method 7 shall be used to determine the NO_x concentration of each grab sample. Method 1 shall be used to select the sampling site, and the sampling point shall be the centroid of the stack or duct or at a point no closer to the walls than 1 m (3.28 ft). Four grab samples shall be taken at approximately 15-minute intervals. The arithmetic mean of the four sample concentrations shall constitute the run value (C_s).

(3) Method 2 shall be used to determine the volumetric flow rate (Q_{sd}) of the effluent gas. The measurement site shall be the same as for the NO_x sample. A velocity traverse shall be made once per run within the hour that the NO_x samples are taken.

(4) The methods of § 60.73(c) shall be used to determine the production rate (P) of 100 percent nitric acid for each run. Material balance over the production system shall be used to confirm the production rate.

(c) The owner or operator may use the following as alternatives to the reference methods and procedures specified in this section:

(1) For Method 7, Method 7A, 7B, 7C, or 7D may be used. If Method 7C or 7D is used, the sampling time shall be at least 1 hour.

(d) The owner or operator shall use the procedure in § 60.73(b) to determine the conversion factor for converting the monitoring data to the units of the standard.

§ 60.84 [Amended]

21. In § 60.84(a), the third sentence is amended by removing the word "Reference" before the words "Methods 6"; and the fourth sentence is amended by adding the word "value" after the word "span".

22. In § 60.84(b), the first sentence and definition of CF in nomenclature list are amended by removing the word "short" before the word "ton" in the two places it occurs.

23. Section 60.84(d) is amended by revising the equation and nomenclature list to read as follows:

(d) * * *

$$E_s = (C_s S)/[0.285 - (0.126\ \%O_2) - (A\ \%CO_2)]$$

where:

E_s = emission rate of SO_2, kg/metric ton (lb/ton) of 100 percent of H_2SO_4 produced.
C_s = concentration of SO_2, kg/dscm (lb/dscf).
S = acid production rate factor, 368 dscm/metric ton (11,800 dscf/ton) of 100 percent H_2SO_4 produced.
$\%O_2$ = oxygen concentration, percent dry basis.
A = auxiliary fuel factor,
= 0.00 for no fuel.
= 0.0226 for methane.
= 0.0217 for natural gas.
= 0.0196 for propane.
= 0.0172 for No 2 oil.
= 0.0161 for No 6 oil.
= 0.0148 for coal.
= 0.0126 for coke.
$\%CO_2$ = carbon dioxide concentration, percent dry basis.

* * * * *

24. Section 60.85 is revised to read as follows:

§ 60.85 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b). Acceptable alternative methods and procedures are given in paragraph (c) of this section.

(b) The owner or operator shall determine compliance with the SO_2 acid mist, and visible emission standards in §§ 60.82 and 60.83 as follows:

(1) The emission rate (E) of acid mist or SO_2 shall be computed for each run using the following equation:

$$E = (CQ_{sd})/(PK)$$

where:

E = emission rate of acid mist or SO_2 kg/metric ton (lb/ton) of 100 percent H_2SO_4 produced.
C = concentration of acid mist or SO_2, g/dscm (lb/dscf).
Q_{sd} = volumetric flow rate of the effluent gas, dscm/hr (dscf/hr).
P = production rate of 100 percent H_2SO_4, metric ton/hr (ton/hr).
K = conversion factor, 1000 g/kg (1.0 lb/lb).

(2) Method 8 shall be used to determine the acid mist and SO_2 concentrations (C's) and the volumetric flow rate (Q_{sd}) of the effluent gas. The moisture content may be considered to be zero. The sampling time and sample volume for each run shall be at least 60 minutes and 1.15 dscm (40.6 dscf).

(3) Suitable methods shall be used to determine the production rate (P) of 100 percent H_2SO_4 for each run. Material balance over the production system shall be used to confirm the production rate.

(4) Method 9 and the procedures in § 60.11 shall be used to determine opacity.

(c) The owner or operator may use the following as alternatives to the reference methods and procedures specified in this section:

(1) If a source processes elemental sulfur or an ore that contains elemental sulfur and uses air to supply oxygen, the following procedure may be used instead of determining the volumetric flow rate and production rate:

(i) The integrated technique of Method 3 is used to determine the O_2 concentration and, if required, CO_2 concentration.

(ii) The SO_2 or acid mist emission rate is calculated as described in § 60.84(d), substituting the acid mist concentration for C_s as appropriate.

25. Section 60.93 is revised to read as follows:

§ 60.93 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(b) The owner or operator shall determine compliance with the particulate matter standards in § 60.92 as follows:

(1) Method 5 shall be used to determine the particulate matter concentration. The sampling time and sample volume for each run shall be at least 60 minutes and 0.90 dscm (31.8 dscf).

(2) Method 9 and the procedures in § 60.11 shall be used to determine opacity.

26. Section 60.123 is revised to read as follows:

§ 60.123 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(b) The owner or operator shall determine compliance with the particulate matter standards in § 60.122 as follows:

(1) Method 5 shall be used to determine the particulate matter concentration during representative periods of furnace operation, including charging and tapping. The sampling time and sample volume for each run shall be at least 60 minutes and 0.90 dscm (31.8 dscf).

(2) Method 9 and the procedures in § 60.11 shall be used to determine opacity.

27. Section 60.133 is revised to read as follows:

§ 60.133 Test methods and procedures.

(a) In conducting performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(b) The owner or operator shall determine compliance with the particulate matter standards in § 60.132 as follows:

(1) Method 5 shall be used to determine the particulate matter concentration during representative periods of charging and refining, but not during pouring of the heat. The sampling time and sample volume for each run shall be at least 120 minutes and 1.80 dscm (63.6 dscf).

(2) Method 9 and the procedures in § 60.11 shall be used to determine opacity.

§ 60.143 [Amended]

28. In § 60.143(b)(5), the reference "§ 60.13(b)(3)" is revised to read "§ 60.13(b)".

29. In § 60.143(c), the references "(b)(1)(A) or (b)(2)(A)" are revised to read "(b)(1)(i) or (b)(2)(i)".

30. Section 60.144 is revised to read as follows:

§ 60.144 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(b) The owner or operator shall determine compliance with the particulate matter standards in § 60.142 as follows:

(1) The time-measuring instrument of § 60.143 shall be used to document the time and duration of each steel production cycle and each diversion period during each run.

(2) Method 5 shall be used to determine the particulate matter concentration. The sampling time and sample volume for each run shall be at least 60 minutes and 1.50 dscm (53 dscf). Sampling shall be discontinued during periods of diversions.

(i) For affected facilities that commenced construction, modification, or reconstruction on or before January 20, 1983, the sampling for each run shall continue for an integral number of steel production cycles. A cycle shall start at the beginning of either the scrap preheat or the oxygen blow and shall terminate immediately before tapping.

(ii) For affected facilities that commenced construction, modification, or reconstruction after January 20, 1983, the sampling for each run shall continue for an integral number of primary oxygen blows.

(3) Method 9 and the procedures in § 60.11 shall be used to determine opacity. Observations taken during a diversion period shall not be used in determining compliance with the opacity standard. Opacity observations taken at 15-second intervals immediately before and after a diversion of exhaust gases from the stack may be considered to be consecutive for the purpose of computing an average opacity for a 6-minute period.

(c) To comply with § 60.143(c), the owner or operator shall use the monitoring devices of § 60.143(b) (1) and (2) during the particulate runs to determine the 3-hour averages of the required measurements.

31. Section 60.144a is amended by redesignating paragraphs (d)(1) and (2) as (c) (1) and (2) and by revising paragraphs (a), (b), (c) introductory text, and (d) to read as follows:

§ 60.144a Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(b) The owner or operator shall determine compliance with the particulate matter standards in § 60.142a as follows:

(1) Start and end times of each steel production cycle during each run shall be recorded (see § 60.145a(c) and (d) for the definitions of start and end times of a cycle).

(2) Method 5 shall be used to determine the particulate matter

concentration. Sampling shall be conducted only during the steel production cycle and for a sufficient number of steel production cycles to obtain a total sample volume of at least 5.67 dscm (200 dscf) for each run.

(3) Method 9 and the procedures of § 60.11 shall be used to determine opacity, except sections 2.4 and 2.5 of Method 9 shall be replaced with the following instructions for recording observations and reducing data:

(i) *Section 2.4.* Opacity observations shall be recorded to the nearest 5 percent at 15-second intervals. During the initial performance test conducted pursuant to § 60.8, observations shall be made and recorded in this manner for a minimum of three steel production cycles. During any subsequent compliance test, observations may be made for any number of steel production cycles, although, where conditions permit, observations will generally be made for a minimum of three steel production cycles.

(ii) *Section 2.5.* Opacity shall be determined as an average of 12 consecutive observations recorded at 15-second intervals. For each steel production cycle, divide the observations recorded into sets of 12 consecutive observations. Sets need not be consecutive in time, and in no case shall two sets overlap. For each set of 12 observations, calculate the average by summing the opacity of 12 consecutive observations and dividing this sum by 12.

(c) In complying with the requirements of § 60.143a(c), the owner or operator shall conduct an initial test as follows:

* * * * *

(d) To comply with § 60.143a (d) or (e), the owner or operator shall use the monitoring device of § 60.143a(a) to determine the exhaust ventilation rates or levels during the particulate matter runs and to determine a 3-hour average.

32. Section 60.154 is revised to read as follows:

§ 60.154 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided for in § 60.8(b).

(b) The owner or operator shall determine compliance with the particulate matter emission standards in § 60.152 as follows:

(1) The emission rate (E) of particulate matter for each run shall be computed using the following equation:

$$E = K(c_s Q_{sd})/S$$

where:

E = emission rate of particulate matter, g/kg (lb/ton) of dry sludge input.

c_s = concentration of particulate matter, g/dscm (g/dscf).

Q_{sd} = volumetric flow rate of effluent gas, dscm/hr (dscf/hr).

S = charging rate of dry sludge during the run, kg/hr (lb/hr).

K = conversion factor, 1.0 g/g [4.409 lb^3/(g-ton)].

(2) Method 5 shall be used to determine the particulate matter concentration (c_s) and the volumetric flow rate (Q_{sd}) of the effluent gas. The sampling time and sample volume for each run shall be at least 60 minutes and 0.90 dscm (31.8 dscf).

(3) The dry sludge charging rate (S) for each run shall be computed using either of the following equations:

$$S = K_m S_m R_{dm} / \theta$$

$$S = K_v S_v R_{dv} / \theta$$

where:

S = charging rate of dry sludge, kg/hr (lb/hr).

S_m = total mass of sludge charged, kg (lb).

R_{dm} = average mass of dry sludge per unit mass of sludge charged, mg/mg (lb/lb).

θ = duration of run, min.

K_m = conversion factor, 60 min/hr.

S_v = total volume of sludge charged, m^3 (gal).

R_{dv} = average mass of dry sludge per unit volume of sludge charged, mg/liter (lb/ft^3).

K_v = conversion factor, 60×10^{-3} (liter-kg-min)/(m^3-mg-hr) [8.021 (ft^3-min)/(gal-hr)].

(4) The flow measuring device of § 60.153(a)(1) shall be used to determine the total mass (S_m) or volume (S_v) of sludge charged to the incinerator during each run. If the flow measuring device is on a time rate basis, readings shall be taken and recorded at 5-minute intervals during the run and the total charge of sludge shall be computed using the following equations, as applicable:

$$S_m = \sum_{i=1}^{n} Q_{mi} \theta_i$$

$$S_v = \sum_{i=1}^{n} Q_{vi} \theta_i$$

where:

Q_{mi} = average mass flow rate calculated by averaging the flow rates at the beginning and end of each interval "i", kg/min (lb/min).

Q_{vi} = average volume flow rate calculated by averaging the flow rates at the beginning and end of each interval "i", m^3/min (gal/min).

θ_i = duration of interval "i", min.

(5) Samples of the sludge charged to the incinerator shall be collected in nonporous jars at the beginning of each run and at approximately 1-hour intervals thereafter until the test ends, and "209 F. Method for Solid and Semisolid Samples" (incorporated by reference—see § 60.17) shall be used to determine dry sludge content of each sample (total solids residue), except that:

(i) Evaporating dishes shall be ignited to at least 103 °C rather than the 550 °C specified in step 3(a)(1).

(ii) Determination of volatile residue, step 3(b) may be deleted.

(iii) The quantity of dry sludge per unit sludge charged shall be determined in terms of mg/liter (lb/ft^3) or mg/mg (lb/lb).

(iv) The average dry sludge content shall be the arithmetic average of all the samples taken during the run.

(6) Method 9 and the procedures in § 60.11 shall be used to determine opacity.

§§ 60.165, 60.175, and 60.185 [Amended]

33. Sections 60.165(b)(2)(i), 60.175(a)(2)(i), and 60.185(a)(2)(i) are amended by removing the second and third sentences.

34. In §§ 60.165(b)(2)(ii), 60.175(a)(2)(ii), and 60.185(a)(2)(ii), the words "Field Test for Accuracy (Relative)" are revised to read "Relative Accuracy Test Procedure", and the word "Reference" just before "Method 6" is removed.

35. Section 60.166 is revised to read as follows:

§ 60.166 Test methods and procedures.

(a) In conducting performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(b) The owner or operator shall determine compliance with the particulate matter, sulfur dioxide (SO_2) and visible emission standards in §§ 60.162, 60.163, and 60.164 as follows:

(1) Method 5 shall be used to determine the particulate matter concentration. The sampling time and sample volume for each run shall be at least 60 minutes and 0.85 dscm (30 dscf).

(2) The continuous monitoring system of § 60.165(b)(2) shall be used to determine the SO_2 concentrations on a dry basis. The sampling time for each run shall be 6 hours, and the average SO_2 concentration shall be computed for the 6-hour period as in § 60.165(c). The monitoring system drift during the run may not exceed 2 percent of the span value.

(3) Method 9 and the procedures in § 60.11 shall be used to determine opacity.

36. Section 60.176 is revised to read as follows:

§ 60.176 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(b) The owner or operator shall determine compliance with the particulate matter, sulfur dioxide (SO_2), and visible emission standards in §§ 60.172, 60.173, and 60.174 as follows:

(1) Method 5 shall be used to determine the particulate matter concentration. The sampling time and sample volume for each run shall be at least 60 minutes and 0.85 dscm (30 dscf).

(2) The continuous monitoring system of § 60.175(a)(2) shall be used to determine the SO_2 concentrations on a dry basis. The sampling time for each run shall be 2 hours, and the average SO_2 concentration for the 2-hour period shall be computed as in § 60.175(b). The monitoring system drift during the run may not exceed 2 percent of the span value.

(3) Method 9 and the procedures in § 60.11 shall be used to determine opacity.

37. Section 60.186 is revised to read as follows:

§ 60.186 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(b) The owner or operator shall determine compliance with the particulate matter, sulfur dioxide (SO_2), and visible emission standards in §§ 60.182, 60.183, and 60.184 as follows:

(1) Method 5 shall be used to determine the particulate matter concentration. The sampling time and sample volume for each run shall be at least 60 minutes and 0.85 dscm (30 dscf).

(2) The continuous monitoring system of § 60.185(a)(2) shall be used to determine the SO_2 concentrations on a dry basis. The sampling time for each run shall be 2 hours, and the average SO_2 concentration for the 2-hour period shall be computed as in § 60.185(b). The monitoring system drift during the run may not exceed 2 percent of the span value.

(3) Method 9 and the procedures in § 60.11 shall be used to determine opacity.

§§ 60.194 and 60.195 [Amended]

38. Section 60.195 is amended by redesignating § 60.195(a) as § 60.194(c) and § 60.195(b) as § 60.194(d).

39. Section 60.195 is revised to read as follows:

§ 60.195 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(b) The owner or operator shall determine compliance with the total fluorides and visible emission standards in §§ 60.192 and 60.193 as follows:

(1) The emission rate (E_p) of total fluorides from potroom groups shall be computed for each run using the following equation:

$$E_p = [(C_s Q_{sd})_1 + (C_s Q_{sd})_2]/(P K)$$

where:

E_p = emission rate of total fluorides from a potroom group, kg/Mg (lb/ton).

C_s = concentration of total fluorides, mg/dscm (mg/dscf).

Q_{sd} = volumetric flow rate of effluent gas, dscm/hr (dscf/hr).

P = aluminum production rate, Mg/hr (ton/hr).

K = conversion factor, 10^6 mg/kg (453,600 mg/lb).

1 = subscript for primary control system effluent gas.

2 = subscript for secondary control system or roof monitor effluent gas.

(2) The emission rate (E_a) of total fluorides from anode bake plants shall be computed for each run using the following equation:

$$E_a = (C_s Q_{sd})/(P_e K)$$

where:

E_a = emission rate of total fluorides, kg/Mg (lb/ton) of aluminum equivalent.

C_s = concentration of total fluorides, mg/dscm (mg/dscf).

Q_{sd} = volumetric flow rate of effluent gas, dscm/hr (dscf/hr).

P_e = aluminum equivalent for anode production rate, Mg/hr (ton/hr).

K = conversion factor, 10^6 mg/kg (453,600 mg/lb).

(3) Methods 13A or 13B shall be used for ducts or stacks, and Method 14 for roof monitors not employing stacks or pollutant collection systems, to determine the total fluorides concentration (C_s) and volumetric flow rate (Q_{sd}) of the effluent gas. The sampling time and sample volume for each run shall be at least 8 hours and 6.80 dscm (240 dscf) for potroom groups and at least 4 hours and 3.40 dscm (120 dscf) for anode bake plants.

(4) The monitoring devices of § 60.194(a) shall be used to determine the daily weight of aluminum and anode produced.

(i) The aluminum production rate (P) shall be determined by dividing 720 hours into the weight of aluminum tapped from the affected facility during a period of 30 days before and including the final run of a performance test.

(ii) The aluminum equivalent production rate (P_e) for anodes shall be determined as 2 times the average weight of anode produced during a representative oven cycle divided by the cycle time. An owner or operator may establish a multiplication factor other than 2 by submitting production records of the amount of aluminum produced and the concurrent weight of anodes consumed by the potrooms.

(5) Method 9 and the procedures in § 60.11 shall be used to determine opacity.

§ 60.203 [Amended]

40. In § 60.203(b), the reference "§ 60.204(d)(2) is revised to read "§ 60.204(b)(3)".

41. Section 60.204 is revised to read as follows:

§ 60.204 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(b) The owner or operator shall determine compliance with the total fluorides standard in § 60.202 as follows:

(1) The emission rate (E) of total fluorides shall be computed for each run using the following equation:

$$E = \left(\sum_{i=1}^{N} C_{si} Q_{sdi}\right)/(P K)$$

where:

E = emission rate of total fluorides, g/metric ton (lb/ton) of equivalent P_2O_5 feed.

C_{si} = concentration of total fluorides from emission point "i," mg/dscm (mg/dscf).

Q_{sdi} = volumetric flow rate of effluent gas from emission point "i," dscm/hr (dscf/hr).
N = number of emission points associated with the affected facility.
P = equivalent P_2O_5 feed rate, metric ton/hr (ton/hr).
K = conversion factor, 1000 mg/g (453,600 mg/lb).

(2) Method 13A or 13B shall be used to determine the total fluorides concentration (C_{si}) and volumetric flow rate (Q_{sdi}) of the effluent gas from each of the emission points. The sampling time and sample volume for each run shall be at least 60 minutes and 0.85 dscm (30 dscf).

(3) The equivalent P_2O_5 feed rate (P) shall be computed for each run using the following equation:

$P = M_p R_p$
where:
M_p = total mass flow rate of phosphorus-bearing feed, metric ton/hr (ton/hr).
R_p = P_2O_5 content, decimal fraction.

(i) The accountability system of § 60.203(a) shall be used to determine the mass flow rate (M_p) of the phosphorus-bearing feed.

(ii) The Association of Official Analytical Chemists (AOAC) Method 9 (incorporated by reference—see § 60.17) shall be used to determine the P_2O_5 content (R_p) of the feed.

§ 60.213 [Amended]

42. In § 60.213(b), the reference "§ 60.214(d)(2)" is revised to read "§ 60.214(b)(3)".

43. Section 60.214 is revised to read as follows:

§ 60.214 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(b) The owner or operator shall determine compliance with the total fluorides standard in § 60.212 as follows:

(1) The emmission rate (E) of total fluorides shall be computed for each run using the following equation:

$$E = (\sum_{i=1}^{N} C_{si} Q_{sdi})/(P K)$$

where:
E = emission rate of total fluorides, g/metric ton (lb/ton) of equivalent P_2O_5 feed.
C_{si} = concentration of total fluorides from emission point "i," mg/dscm (mg/dscf).
Q_{sdi} = volumetric flow rate of effluent gas from emission point "i," dscm/hr (dscf/hr).
N = number of emission points associated with the affected facility.
P = equivalent P_2O_5 feed rate, metric ton/hr (ton/hr).
K = conversion factor, 1000 mg/g (453,600 mg/lb).

(2) Method 13A or 13B shall be used to determine the total fluorides concentration (C_{si}) and volumetric flow rate (Q_{sdi}) of the effluent gas from each of the emission points. The sampling time and sample volume for each run shall be at least 60 minutes and 0.85 dscm (30 dscf).

(3) The equivalent P_2O_5 feed rate (P) shall be computed for each run using the following equation:

$P = M_p R_p$
where:
M_p = total mass flow rate of phosphorus-bearing feed, metric ton/hr (ton/hr).
R_p = P_2O_5 content, decimal fraction.

(i) The accountability system of § 60.213(a) shall be used to determine the mass flow rate (M_p) of the phosphorus-bearing feed.

(ii) The Association of Official Analytical Chemists (AOAC) Method 9 (incorporated by reference—see § 60.17) shall be used to determine the P_2O_5 content (R_p) of the feed.

§ 60.223 [Amended]

44. In § 60.223(b), the reference "§ 60.224(d)(2)" is revised to read "§ 60.224(b)(3)".

45. Section 60.224 is revised to read as follows:

§ 60.224 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(b) The owner or operator shall determine compliance with the total fluorides standard in § 60.222 as follows:

(1) The emission rate (E) of total fluorides shall be computed for each run using the following equation:

$$E = (\sum_{i=1}^{N} C_{si} Q_{sdi})/(P K)$$

where:
E = emission rate of total fluorides, g/metric ton (lb/ton) of equivalent P_2O_5 feed.
C_{si} = concentration of total fluorides from emission point "i," mg/dscm (mg/dscf).
Q_{sdi} = volumetric flow rate of effluent gas from emission point "i," dscm/hr (dscf/hr).
N = number of emission points associated with the affected facility.
P = equivalent P_2O_5 feed rate, metric ton/hr (ton/hr).
K = conversion factor, 1000 mg/g (453,600 mg/lb).

(2) Method 13A or 13B shall be used to determine the total fluorides concentration (C_{si}) and volumetric flow rate (Q_{sdi}) of the effluent gas from each of the emission points. The sampling time and sample volume for each run shall be at least 60 minutes and 0.85 dscm (30 dscf).

(3) The equivalent P_2O_5 feed rate (P) shall be computed for each run using the following equation:

$P = M_p R_p$
where:
M_p = total mass flow rate of phosphorus-bearing feed, metric ton/hr (ton/hr).
R_p = P_2O_5 content, decimal fraction.

(i) The accountability system of § 60.223(a) shall be used to determine the mass flow rate (M_p) of the phosphorus-bearing feed.

(ii) The Association of Official Analytical Chemists (AOAC) Method 9 (incorporated by reference—see § 60.17) shall be used to determine the P_2O_5 content (R_p) of the feed.

§ 60.233 [Amended]

46. In § 60.233(b), the reference "§ 60.234(d)(2)" is revised to read "§ 60.234(b)(3)".

47. Section 60.234 is revised to read as follows:

§ 60.234 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(b) The owner or operator shall determine compliance with the total fluorides standards in § 60.232 as follows:

(1) The emission rate (E) of total fluorides shall be computed for each run using the following equation:

$$E = (\sum_{i=1}^{N} C_{si} Q_{sdi})/(P K)$$

where:
E = emission rate of total fluorides, g/metric ton (lb/ton) of equivalent P_2O_5 feed.
C_{si} = concentration of total fluorides from emission point "i," mg/dscm (mg/dscf).
Q_{sdi} = volumetric flow rate of effluent gas from emission point "i," dscm/hr (dscf/hr).
N = number of emission points in the affected facility.
P = equivalent P_2O_5 feed rate, metric ton/hr (ton/hr).
K = conversion factor, 1000 mg/g (453,600 mg/lb).

(2) Method 13A or 13b shall be used to determine the total fluorides concentration (C_{si}) and volumetric flow rate (Q_{sdi}) of the effluent gas from each of the emission points. The sampling time and sample volume for each run shall be at least 60 minutes and 0.85 dscm (30 dscf).

(3) The equivalent P_2O_5 feed rate (P) shall be computed for each run using the following equation:

$P = M_p R_p$
where:
M_p total mass flow rate of phosphorus-bearing feed, metric ton/hr (ton/hr).
R_p = P_2O_5 content, decimal fraction.

(i) The accountability system of § 60.233(a) shall be used to determine the mass flow rate (M_p) of the phosphorus-bearing feed.

(ii) The Association of Official Analytical Chemists (AOAC) Method 9 (incorporated by reference—see § 60.17) shall be used to determine the P_2O_5 content (R_p) of the feed.

§ 60.243 [Amended]

48. In § 60.243(b), the reference "60.244(f)(2)" is revised to read "60.244(c)(3)".

49. Section 60.244 is revised to read as follows:

§ 60.244 Test methods and procedures.

(a) The owner or operator shall conduct performance tests required in § 60.8 only when the following quantities of product are being cured or stored in the facility.

(1) Total granular triple superphosphate is at least 10 percent of the building capacity and

(2) Fresh granular triple superphosphate is at least 20 percent of the total amount of triple superphosphate or,

(3) If the provision in paragraph (a)(2) of this section exceeds production capabilities for fresh granular triple superphosphate, fresh granular triple superphosphate is equal to at least 5 days maximum production.

(b) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(c) The owner or operator shall determine compliance with the total fluorides standard in § 60.242 as follows:

(1) The emission rate (E) of total fluorides shall be computed for each run using the following equation:

$$E = (\sum_{i=1}^{N} C_{si} Q_{sdi})/(P K)$$

where:
E = emission rate of total fluorides, g/hr/metric ton (lb/hr/ton) of equivalent P_2O_5 stored.
C_{si} = concentration of total fluorides from emission point "i," mg/dscm (mg/dscf).
Q_{sdi} = volumetric flow rate of effluent gas from emission point "i," dscm/hr (dscf/hr).
N = number of emission points in the affected facility.
P = equivalent P_2O_5 stored, metric tons (tons).
K = conversion factor, 1000 mg/g (453,600 mg/lb).

(2) Method 13A or 13B shall be used to determine the total fluorides concentration (C_{si}) and volumetric flow rate (Q_{sdi}) of the effluent gas from each of the emission points. The sampling time and sample volume for each run shall be at least 60 minutes and 0.85 dscm (30 dscf).

(3) The equivalent P_2O_5 feed rate (P) shall be computed for each run using the following equation:

$P = M_p R_p$
where:
M_p = amount of product in storage, metric ton (ton).
R_p = P_2O_5 content of product in storage, weight fraction.

(i) The accountability system of § 60.243(a) shall be used to determine the amount of product (M_p) in storage.

(ii) The Association of Official Analytical Chemists (AOAC) Method 9 (incorporated by reference—see § 60.17) shall be used to determine the P_2O_5 content (R_p) of the product in storage.

§ 60.253 [Amended]

50. In § 60.253(b), the last line is amended by revising the reference "§ 60.13(b)(3)" to read "§ 60.13(b)".

51. Section 60.254 is revised to read as follows:

§ 60.254 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(b) The owner or operator shall determine compliance with the particular matter standards in § 60.252 as follows:

(1) Method 5 shall be used to determine the particulate matter concentration. The sampling time and sample volume for each run shall be at least 60 minutes and 0.85 dscm (30 dscf). Sampling shall begin no less than 30 minutes after startup and shall terminate before shutdown procedures begin.

(2) Method 9 and the procedures in § 60.11 shall be used to determine opacity.

52. Section 60.266 is revised to read as follows:

§ 60.266 Test methods and procedures.

(a) During any performance test required in § 60.8, the owner or operator shall not allow gaseous diluents to be added to the effluent gas stream after the fabric in an open pressurized fabric filter collector unless the total gas volume flow from the collector is accurately determined and considered in the determination of emissions.

(b) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(c) The owner or operator shall determine compliance with the particulate matter standards in § 60.262 as follows:

(1) The emission rate (E) of particulate matter shall be computed for each run using the following equation:

$$E = (\sum_{i=1}^{N} C_{si} Q_{sdi})/(P K)$$

where:

E = emission rate of particulate matter, kg/MW-hr (lb/MW-hr).
n = total number of exhaust streams at which emissions is quantified.
c_{si} = concentration of particulate matter from exhaust stream "i", g/dscm (g/dscf).
Q_{sdi} = volumetric flow rate of effluent gas from exhaust stream "i", dscm/hr (dscf/hr).
P = average furnace power input, MW.
K = conversion factor, 1000 g/kg (453.6 g/lb).

(2) Method 5 shall be used to determine the particulate matter concentration (c_{sd}) and volumetric flow rate (Q_{sdi}) of the effluent gas, except that the heating systems specified in sections 2.1.2 and 2.1.6 are not to be used when the carbon monoxide content of the gas stream exceeds 10 percent by volume, dry basis. If a flare is used to comply with § 60.263, the sampling site shall be upstream of the flare. The sampling time shall include an integral number of furnace cycles.

(i) When sampling emissions from open electric submerged arc furnaces with wet scrubber control devices, sealed electric submerged arc furnaces, or semienclosed electric arc furnaces, the sampling time and sample volume for each run shall be at least 60 minutes and 1.80 dscm (63.6 dscf).

(ii) When sampling emissions from other types of installations, the sampling time and sample volume for each run shall be at least 200 minutes and 5.70 dscm (200 dscf).

(3) The measurement device of § 60.265(b) shall be used to determine the average furnace power input (P) during each run.

(4) Method 9 and the procedures in § 60.11 shall be used to determine opacity.

(5) The emission rate correction factor, integrated sampling procedure of Method 3 shall be used to determine the CO concentration. The sample shall be taken simultaneously with each particulate matter sample.

(d) During the particulate matter run, the maximum open hood area (in hoods with segmented or otherwise moveable sides) under which the process is expected to be operated and remain in compliance with all standards shall be recorded. Any future operation of the hooding system with open areas in excess of the maximum is not permitted.

(e) To comply with § 60.265 (d) or (f), the owner or operator shall use the monitoring devices in § 60.265 (c) or (e) to make the required measurements as determined during the performance test.

§ 60.273 [Amended]

53. Section 60.273(c) is revised to read as follows:

(c) A continuous monitoring system is not required on any modular, multiple-stack, negative-pressure or positive-pressure fabric filter if observations of the opacity of the visible emissions from the control device are performed by a certified visible emission observer as follows: Visible emission observations shall be conducted at least once per day when the furnace is operating in the melting and refining period. These observations shall be taken in accordance with Method 9, and, for at least three 6-minute periods, the opacity shall be recorded for any point(s) where visible emissions are observed. Where it is possible to determine that a number of visible emission sites relate to only one incident of the visible emission, only one set of three 6-minute observations will be required. In this case, Method 9 observations must be made for the site of highest opacity that directly relates to the cause (or location) of visible emissions observed during a single incident. Records shall be maintained of any 6-minute average that is in excess of the emission limit specified in § 60.272(a) of this subpart.

54. Section 60.275 is amended by redesignating paragraph (c) as § 60.276(c), by revising paragraphs (a), (b), (d), (e), and (f), and by adding a new paragraph (c) to read as follows:

§ 60.275 Test methods and procedures.

(a) During performance tests required in § 60.8, the owner or operator shall not add gaseous diluent to the effluent gas after the fabric in any pressurized fabric collector, unless the amount of dilution is separately determined and considered in the determination of emissions.

(d) When emissions from any EAF(s) are combined with emissions from facilities not subject to the provisions of this subpart but controlled by a common capture system and control device, the owner or operator shall use either or both of the following procedures during a performance test (see also § 60.276(b)):

(1) Determine compliance using the combined emissions.

(2) Use a method that is acceptable to the Administrator and that compensates for the emissions from the facilities not subject to the provisions of this subpart.

(c) When emissions from any EAF(s) are combined with emissions from facilities not subject to the provisions of this subpart, the owner or operator shall use either or both of the following procedures to demonstrate compliance with § 60.272(a)(3):

(1) Determine compliance using the combined emissions.

(2) Shut down operation of facilities not subject to the provisions of this subpart during the performance test.

(d) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(e) The owner or operator shall determine compliance with the particulate matter standards in § 60.272 as follows:

(1) Method 5 shall be used for negative-pressure fabric filters and other types of control devices and Method 5D shall be used for positive-pressure fabric filters to determine the particular matter concentration and, if applicable, the volumetric flow rate of the effluent gas. The sampling time and sample volume for each run shall be at least 4 hours and 4.5 dscm (160 dscf) and, when a single EAF is sampled, the sampling time shall include an integral number of heats.

(2) When more then one control device serves the EAF(s) being tested, the concentration of particulate matter shall be determined using the following equation:

$$C_{sd} = [\sum_{i=1}^{n} C_{si} Q_{sdi}] / \sum_{i=1}^{n} Q_{sdi}$$

where:
C_{sd} = average concentration of particulate matter, mg/dscm (gr/dscf).
C_{si} = concentration of particulate matter from control device "i", mg/dscm (gr/dscf).
n = total number of control devices tested.
Q_{sdi} = volumetric flow rate of stack gas from control device "i", dscm/hr (dscf/hr).

(3) Method 9 and the procedures of § 60.11 shall be used to determine opacity.

(4) To demonstrate compliance with § 60.272(a) (1), (2), and (3), the test runs shall be conducted concurrently, unless inclement weather interferes.

(f) To comply with § 60.274 (c), (f), (g), and (i), the owner or operator shall obtain the information in these paragraphs during the particulate matter runs.

* * * * *

§ 60.276 [Amended]

55. In § 60.276(b), the reference "§ 60.275(g)(2) or (g)(3)" is revised to read "§ 60.275(b)(2) or a combination of (b)(1) and (b)(2)".

§ 60.273a [Amended]

56. Section 60.273a(c) is revised to read as follows:

(c) A continuous monitoring system for the measurement of opacity is not required on modular, multiple-stack, negative-pressure or positive-pressure fabric filters if observations of the opacity of the visible emissions from the control device are performed by a certified visible emission observer as follows: Visible emission observations are conducted at least once per day when the furnace is operating in the melting and refining period. These observations shall be taken in accordance with Method 9, and, for at least three 6-minute periods, the opacity shall be recorded for any point(s) where visible emissions are observed. Where it is possible to determine that a number of visible emission sites relate to only one incident of the visible emissions, only one set of three 6-minute observations will be required. In this case, Method 9 observations must be made for the site of highest opacity that directly relates to the cause (or location) of visible emissions observed during a single incident. Records shall be maintained of any 6-minute average that is in excess of the emission limit specified in § 60.272a(a) of this subpart.

57. Section 60.275a is amended by redesignating paragraph (d) as § 60.276a(f), by revising paragraphs (a), (b), (c), (e), and (f), and by adding new paragraph (d) to read as follows:

§ 60.275a Test methods and procedures.

(a) During performance tests required in § 60.8, the owner or operator shall not add gaseous diluents to the effluent gas stream after the fabric in any pressurized fabric filter collector, unless the amount of dilution is separately determined and considered in the determination of emissions.

(b) When emissions from any EAF(s) or AOD vessel(s) are combined with emissions from facilities not subject to the provisions of this subpart but controlled by a common capture system and control device, the owner or operator shall use either or both of the following procedures during a performance test (see also § 60.276a(e)):

(1) Determine compliance using the combined emissions.

(2) Use a method that is acceptable to the Administrator and that compensates for the emissions from the facilities not subject to the provisions of this subpart.

(c) When emission from any EAF(s) or AOD vessel(s) are combined with emissions from facilities not subject to the provisions of this subpart, the owner or operator shall demonstrate compliance with § 60.272(a)(3) based on emissions from only the affected facility(ies).

(d) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(e) The owner or operator shall determine compliance with the particulate matter standards in § 60.272a as follows:

(1) Method 5 shall be used for negative-pressure fabric filters and other types of control devices and Method 5D shall be used for positive-pressure fabric filters to determine the particulate matter concentration and volumetric flow rate of the effluent gas. The sampling time and sample volume for each run shall be at least 4 hours and 4.50 dscm (160 dscf) and, when a single EAF or AOD vessel is sampled, the sampling time shall include an integral number of heats.

(2) When more than one control device serves the EAF(s) being tested, the concentration of particulate matter shall be determined using the following equation:

$$C_{sd} = [\sum_{i=1}^{n} C_{si} Q_{sdi}] / \sum_{i=1}^{n} Q_{sdi}$$

where:
C_{sd} = average concentration of particulate matter, mg/dscm (gr/dscf).
C_{si} = concentration of particulate matter from control device "i", mg/dscm (gr/dscf).
n = total number of control devices tested.
Q_{sdi} = volumetric flow rate of stack gas from control device "i", dscm/hr (dscf/hr).

(3) Method 9 and the procedures of § 60.11 shall be used to determine opacity.

(4) To demonstrate compliance with § 60.272a(a) (1), (2), and (3), the test runs shall be conducted concurrently, unless inclement weather interferes.

(f) To comply with § 60.274a (c), (f), (g), and (h), the owner or operator shall obtain the information required in these paragraphs during the particulate matter runs.

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§ 60.276a [Amended]

58. In 60.276a(e), the reference "§ 60.275a(h)(2) or (h)(3)" is revised to read "§ 60.275(b)(2) or a combination of (b)(1) and (b)(2)".

59. Section 60.285 is revised to read as follows:

§ 60.285 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures in this section, except as provided in § 60.8(b). Acceptable alternative methods and procedures are given in paragraph (f) of this section.

(b) The owner or operator shall determine compliance with the particulate matter standards in § 60.282(a) (1) and (3) as follows:

(1) Method 5 shall be used to determine the particulate matter concentration. The sampling time and sample volume for each run shall be at least 60 minutes and 0.90 dscm (31.8 dscf). Water shall be used as the cleanup solvent instead of acetone in the sample recovery procedure. The particulate concentration shall be corrected to the appropriate oxygen concentration according to § 60.284(c)(3).

(2) The emission rate correction factor, integrated sampling and analysis procedure of Method 3 shall be used to determine the oxygen concentration. The gas sample shall be taken at the same time and at the same traverse points as the particulate sample.

(3) Method 9 and the procedures in § 60.11 shall be used to determine opacity.

(c) The owner or operator shall determine compliance with the particular matter standard in § 60.282(a)(2) as follows:

(1) The emission rate (E) of particulate matter shall be computed for each run using the following equation:

$E = c_s Q_{sd} / BLS$

where:
E = emission rate of particulate matter, g/kg (lb/ton) of BLS.
C_s = concentration of particulate matter, g/dam (lb/dscf).
Q_{sd} = volumetric flow rate of effluent gas, dscm/hr (dscf/hr).
BLS = black liquor solids (dry weight) feed rate, kg/hr (ton/hr).

(2) Method 5 shall be used to determine the particulate matter concentration (C_s) and the volumetric flow rate (Q_{sd}) of the effluent gas. The sampling time and sample volume shall be at least 60 minutes and 0.90 dscm (31.8 dscf). Water shall be used instead of acetone in the sample recovery.

(3) Process data shall be used to determine the black liquor solids (BLS) feed rate on a dry weight basis.

(d) The owner or operator shall determine compliance with the TRS standards in § 60.283, except § 60.283(a)(1)(vi) and (4), as follows:

(1) Method 16 shall be used to determine the TRS concentration. The TRS concentration shall be corrected to the appropriate oxygen concentration using the procedure in § 60.284(c)(3). The

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sampling time shall be at least 3 hours, but no longer than 6 hours.

(2) The emission rate correction factor, integrated sampling and analysis procedure of Method 3 shall be used to determine the oxygen concentration. The sample shall be taken over the same time period as the TRS samples.

(3) When determining whether a furnace is a straight kraft recovery furnace or a cross recovery furnace, TAPPI Method T.624 (incorporated by reference—see § 60.17) shall be used to determine sodium sulfide, sodium hydroxide, and sodium carbonate. These determinations shall be made 3 times daily from the green liquor, and the daily average values shall be converted to sodium oxide (Na_2O) and substituted into the following equation to determine the green liquor sulfidity:

$$GLS = 100\,CNa_2S/(C_{Na_2S} + C_{NaOH} + C_{Na_2CO_3})$$

Where:

GLS = green liquor sulfidity, percent.

C_{Na_2S} = concentration of Na_2S as Na_2O, mg/liter (gr/gal).

C_{NaOH} = concentration of NaOH as Na_2O, mg/liter (gr/gal).

$C_{Na_2CO_3}$ = concentration of Na_2CO_3 as Na_2O, mg/liter (gr/gal).

(e) The owner or operator shall determine compliance with the TRS standards in § 60.283(a)(1)(vi) and (4) as follows:

(1) The emission rate (E) of TRS shall be computed for each run using the following equation:

$$E = C_{TRS}\,F\,Q_{sd}/P$$

where:

E = emission rate of TRS, g/kg (lb/ton) of BLS or ADP.

C_{TRS} = average combined concentration of TRS, ppm.

F = conversion factor, 0.001417 g H_2S/m^3 ppm (0.0844 × 10^{-6} lb H_2S/ft^3 ppm).

Q_{sd} = volumetric flow rate of stack gas, dscm/hr (dscf/hr).

P = black liquor solids feed or pulp production rate, kg/hr (ton/hr).

(2) Method 16 shall be used to determine the TRS concentration (C_{TRS}).

(3) Method 2 shall be used to determine the volumetric flow rate (Q_{sd}) of the effluent gas.

(4) Process data shall be used to determine the black liquor feed rate or the pulp production rate (P).

(f) The owner or operator may use the following as alternatives to the reference methods and procedures specified in this section:

(1) For Method 5, Method 17 may be used if a constant value of 0.009 g/dscm (0.004 gr/dscf) is added to the results of Method 17 and the stack temperature is no greater than 205 °C (400 °F).

(2) For Method 16, Method 16A or 16B may be used if the sampling time is 60 minutes.

§ 60.292 [Amended]

60. In § 60.292(a)(2), the definition of "Y" is amended by revising the words "Decimal percent" to read "Decimal fraction" and revising the reference "§ 60.296(f)" to read "§ 60.296(b)".

61. Section 60.296 is revised to read as follows:

§ 60.296 Test methods and procedures.

(a) If a glass melting furnace with modified processes is changed to one without modified processes or if a glass melting furnace without modified processes is changed to one with modified processes, the owner or operator shall notify the Administrator at least 60 days before the change is scheduled to occur.

(b) When gaseous and liquid fuels are fired simultaneously in a glass melting furnace, the owner or operator shall determine the applicable standard under § 60.292(a)(2) as follows:

(1) The ratio (Y) of liquid fuel heating value to total (gaseous and liquid) fuel heating value fired in the glass melting furnaces shall be computed for each run using the following equation:

$$Y = (H_l\,L)/H_l\,L + H_g\,G)$$

where:

Y = decimal fraction of liquid fuel heating value to total fuel heating value.

H_l = gross calorific value of liquid fuel, J/kg.

H_g = gross calorific value of gaseous fuel, J/kg.

L = liquid flow rate, kg/hr.

G = gaseous flow rate, kg/hr.

(2) Suitable methods shall be used to determine the rates (L and G) of fuels burned during each test period and a material balance over the glass melting furnace shall be used to confirm the rates.

(3) American Society of Testing and Materials (ASTM) Method D 240–76 (liquid fuels) and D 1826–77 (gaseous fuels) (incorporated by reference—see § 60.17), as applicable, shall be used to determine the gross calorific values.

(c) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(d) The owner or operator shall determine compliance with the particulate matter standards in §§ 60.292 and 60.293 as follows:

(1) The emission rate (E) of particulate matter shall be computed for each run using the following equation:

$$E = (c_s\,W_{sd} - A)/P$$

where:

E = emission rate of particulate matter, g/kg.

c_s = concentration of particulate matter, g/dsm.

Q_{sd} = volumetric flow rate, dscm/hr.

A = zero production rate correction
= 227 g/hr for container glass, pressed and blown (soda-lime and lead) glass, and pressed and blown (other than borosilicate, soda-lime, and lead) glass.
= 454 g/hr for pressed and blown (borosilicate) glass, wool fiberglass, and flat glass.

P = glass production rate, kg/hr.

(2) Method 5 shall be used to determine the particulate matter concentration (c_s) and volumetric flow rate (Q_{sd}) of the effluent gas. The sampling time and sample volume for each run shall be at least 60 minutes and 0.90 dscm (31.8 dscf). The probe and filter holder heating system may be set to provide a gas temperature no greater than 177±14 °C (350±25 °F), except under the conditions specified in § 60.293(e).

(3) Direct measurement or material balance using good engineering practice shall be used to determine the amount of glass pulled during the performance test. The rate of glass produced is defined as the weight of glass pulled from the affected facility during the performance test divided by the number of hours taken to perform the performance test.

(4) Method 9 and the procedures in § 60.11 shall be used to determine opacity.

62. Section 60.303 is revised to read as follows:

§ 60.303 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b). Acceptable alternative methods and procedures are given in paragraph (c) of this section.

(b) The owner or operator shall determine compliance with the particulate matter standards in § 60.302 as follows:

(1) Method 5 shall be used to determine the particulate matter concentration and the volumetric flow rate of the effluent gas. The sampling time and sample volume for each run shall be at least 60 minutes and 1.70 dscm (60 dscf). The probe and filter holder shall be operated without heaters.

(2) Method 2 shall be used to determine the ventilation volumetric flow rate.

(3) Method 9 and the procedures in § 60.11 shall be used to determine opacity.

(c) The owner or operator may use the following as alternatives to the

reference methods and procedures specified in this section:

(1) For Method 5, Method 17 may be used.

63. Section 60.335 is revised to read as follows:

§ 60.335 Test methods and procedures.

(a) To compute the nitrogen oxides emissions, the owner or operator shall use analytical methods and procedures that are accurate to within 5 percent and are approved by the Administrator to determine the nitrogen content of the fuel being fired.

(b) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided for in § 60.8(b). Acceptable alternative methods and procedures are given in paragraph (f) of this section.

(c) The owner or operator shall determine compliance with the nitrogen oxides and sulfur dioxide standards in §§ 60.332 and 60.333(a) as follows:

(1) The nitrogen oxides emission rate (NO_x) shall be computed for each run using the following equation:

$$NO_x = (NO_{x_o})\,(P_r/P_o)^{0.5}\,e^{19(H_o - 0.00633)}\,(288°K/T_a)^{1.53}$$

where:

NO_x = emission rate of NO_x at 15 percent O_2 and ISO standard ambient conditions, volume percent.

NO_{x_o} = observed NO_x concentration, ppm by volume.

P_r = reference combustor inlet absolute pressure at 101.3 kilopascals ambient pressure, mm Hg.

P_o = observed combustor inlet absolute pressure at test, mm Hg.

H_o = observed humidity of ambient air, g H_2O/g air.

e = transcendental constant, 2.718.

T_a = ambient temperature, °K.

(2) The monitoring device of § 60.334(a) shall be used to determine the fuel consumption and the water-to-fuel ratio necessary to comply with § 60.332 at 30, 50, 75, and 100 percent of peak load or at four points in the normal operating range of the gas turbine, including the minimum point in the range and peak load. All loads shall be corrected to ISO conditions using the appropriate equations supplied by the manufacturer.

(3) Method 20 shall be used to determine the nitrogen oxides, sulfur dioxide, and oxygen concentrations. The span values shall be 300 ppm of nitrogen oxide and 21 percent oxygen. The NO_x emissions shall be determined at each of the load conditions specified in paragraph (c)(2) of this section.

(d) The owner or operator shall determine compliance with the sulfur content standard in § 60.333(b) as follows: ASTM D 2880–71 shall be used to determine the sulfur content of liquid fuels and ASTM D 1072–80, D 3031–81, D 4084–82, or D 3246–81 shall be used for the sulfur content of gaseous fuels (incorporated by reference—see § 60.17). The applicable ranges of some ASTM methods mentioned above are not adequate to measure the levels of sulfur in some fuel gases. Dilution of samples before analysis (with verification of the dilution ratio) may be used, subject to the approval of the Administrator.

(e) To meet the requirements of § 60.334(b), the owner or operator shall use the methods specified in paragraphs (a) and (d) of this section to determine the nitrogen and sulfur contents of the fuel being burned. The analysis may be performed by the owner or operator, a service contractor retained by the owner or operator, the fuel vendor, or any other qualified agency.

(f) The owner or operator may use the following as alternatives to the reference methods and procedures specified in this section:

(1) Instead of using the equation in paragraph (b)(1) of this section, manufacturers may develop ambient condition correction factors to adjust the nitrogen oxides emission level measured by the performance test as provided in § 60.8 to ISO standard day conditions. These factors are developed for each gas turbine model they manufacture in terms of combustion inlet pressure, ambient air pressure, ambient air humidity, and ambient air temperature. They shall be substantiated with data and must be approved for use by the Administrator before the initial performance test required by § 60.8. Notices of approval of custom ambient condition correction factors will be published in the Federal Register.

§ 60.343 [Amended]

64. In § 60.343(c), the last sentence is revised to read as follows: "If visible emission observations are made according to paragraph (b) of this section, reports of excess emissions shall be submitted semiannually."

65. Section 60.344 is revised to read as follows:

§ 60.344 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(b) The owner or operator shall determine compliance with the particulate matter standards in § 60.342(a) as follows:

(1) The emission rate (E) of particulate matter shall be computed for each run using the following equation:

$$E = (c_s\,Q_{sd})/PK$$

where:

E = emission rate of particulate matter, kg/Mg (lb/ton) of stone feed.

c_s = concentration of particulate matter, g/dscm (g/dscf).

Q_{sd} = volumetric flow rate of effluent gas, dscm/hr (dscf/hr).

P = stone feed rate, Mg/hr (ton/hr).

K = conversion factor, 1000 g/kg (453.6 g/lb).

(2) Method 5 shall be used at negative-pressure fabric filters and other types of control devices and Method 5D shall be used as positive-pressure fabric filters to determine the particulate matter concentration (c_s) and the volumetric flow rate (Q_{sd}) of the effluent gas. The sampling time and sample volume for each run shall be at least 60 minutes and 0.90 dscm (31.8 dscf).

(3) The monitoring device of § 60.343(d) shall be used to determine the stone feed rate (P) for each run.

(4) Method 9 and the procedures in § 60.11 shall be used to determine opacity.

(c) During the particulate matter run, the owner or operator shall use the monitoring devices in § 60.343(c) (1) and (2) to determine the average pressure loss of the gas stream through the scrubber and the average scrubbing liquid supply pressure.

66. Section 60.374 is revised to read as follows:

§ 60.374 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(b) The owner or operator shall determine compliance with the lead standards in § 60.372, except § 60.372(a)(4), as follows:

(1) Method 12 shall be used to determine the lead concentration and, if applicable, the volumetric flow rate (Q_{sda}) of the effluent gas. The sampling time and sample volume for each run shall be at least 60 minutes and 0.85 dscm (30 dscf).

(2) When different operations in a three-process operation facility are ducted to separate control devices, the lead emission concentration (C) from the facility shall be determined as follows:

$$C = \left[\sum_{a=1}^{N} (C_a Q_{sda})\right] / \sum_{a=1}^{N} Q_{sda}$$

where:
C = concentration of lead emissions for the entire facility, mg/dscm (gr/dscf).
C_a = concentration of lead emissions from facility "a", mg/dscm (gr/dscf).
Q_{sda} = volumetric flow rate of effluent gas from facility "a", dscm/hr (dscf/hr).
N = total number of control devices to which separate operations in the facility are ducted.

(3) Method 9 and the procedures in § 60.11 shall be used to determine opacity. The opacity numbers shall be rounded off to the nearest whole percentage.

(c) The owner or operator shall determine compliance with the lead standard in § 60.372(a)(4) as follows:

(1) The emission rate (E) from lead oxide manufacturing facility shall be computed for each run using the following equation:

$$E = \left(\sum_{i=1}^{M} C_{Pei} Q_{sdi}\right) / (P K)$$

where:
E = emission rate of lead, mg/kg (lb/ton) of lead charged.
C_{Pei} = concentration of lead from emission point "i," mg/dscm.
Q_{sdi} = volumetric flow rate of effluent gas from emission point "i," dscm/hr (sdcf/hr).
M = number of emission points in the affected facility.
P = lead feed rate to the facility, kg/hr (ton/hr).
K = conversion factor, 1.0 mg/mg (453,600 mg/lb).

(2) Method 12 shall be used to determine the lead concentration (C_{Pe}) and the volumetric flow rate (Q_{sd}) of the effluent gas. The sampling time and sample volume for each run shall be at least 60 minutes and 0.85 dscm (30 dscf).

(3) The average lead feed rate (P) shall be determined for each run using the following equation:

$P_i = N\ W/\Theta$

where:
N = number of lead pigs (ingots) charged.
W = average mass of a pig, kg (ton).
Θ = duration of run, hr.

§ 60.385 [Amended]

67. In § 60.385(c), the words "those measurements recorded" are revised to read "the average obtained".

68. Section 60.388 is revised to read as follows:

§ 60.388 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(b) The owner or operator shall determine compliance with the particulate matter standards in § 60.382 as follows:

(1) Method 5 or 17 shall be used to determine the particulate matter concentration. The sample volume for each run shall be at least 1.70 dscm (60 dscf). The sampling probe and filter holder of Method 5 may be operated without heaters if the gas stream being sampled is at ambient temperature. For gas streams above ambient temperature, the Method 5 sampling train shall be operated with a probe and filter temperature slightly above the effluent temperature (up to a maximum filter temperature of 121°C (250°F)) in order to prevent water condensation on the filter.

(2) Method 9 and the procedures in § 60.11 shall be used to determine opacity from stack emissions and process fugitive emissions. The observer shall read opacity only when emissions are clearly identified as emanating solely from the affected facility being observed.

(c) To comply with § 60.385(c), the owner or operator shall use the monitoring devices in § 60.3284(a) and (b) to determine the pressure loss of the gas stream through the scrubber and scrubbing liquid flow rate at any time during each particulate matter run, and the average of the three determinations shall be computed.

69. Section 60.404 is revised to read as follows:

§ 60.404 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided for in § 60.8(b).

(b) The owner or operator shall determine compliance with the particulate matter standards in § 60.402 as follows:

(1) The emission rate (E) of particulate matter shall be computed for each run using the following equation:

$E = (c_s Q_{sd})/(P K)$

where:
E = emission rate of particulate matter, kb/Mg (lb/ton) of phosphate rock feed.
c_s = concentration of particulate matter, g/dscm (g/dscf).
Q_{sd} = volumetric flow rate of effluent gas, dscm/hr (dscf/hr).
P = phosphate rock feed rate, Mg/hr (ton/hr).
K = conversion factor, 1000 g/kg (453.6 g/lb).

(2) Method 5 shall be used to determine the particulate matter concentration (c_s) and volumetric flow rate (Q_{sd}) of the effluent gas. The sampling time and sample volume for each run shall be at least 60 minutes and 0.85 dscm (30 dscf).

(3) The device of § 60.403(d) shall be used to determine the phosphate rock feed rate (P) for each run.

(4) Method 9 and the procedures in § 60.11 shall be used to determine opacity.

(c) To comply with § 60.403(f), if applicable, the owner or operator shall use the monitoring devices in § 60.403(c) (1) and (2) to determine the average pressure loss of the gas stream through the scrubber and the average scrubbing supply pressure during the particulate matter runs.

70. Section 60.424 is revised to read as follows:

§ 60.424 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall conduct performance tests as follows:

(1) The emission rate (E) of particulate matter shall be computed for each run using the following equation:

$E = (c_s Q_{sd})/(PK)$

where:
E = emission rate of particulate matter, kg/Mg (lb/ton) of ammonium sulfate produced.
c_s = concentration of particulate matter, g/dscm (g/dscf).
Q_{sd} = volumetric flow rate of effluent gas, dscm/hr (dscf/hr).
P = production rate of ammonium sulfate, Mg/hr (ton/hr).
K = conversion factor, 1000 g/kg (453.6 g/lb).

(2) Method 5 shall be used to determine the particulate matter concentration (c_s) and volumetric flow rate (Q_{sd}) of the effluent gas. The sampling time and sample volume for each run shall be at least 60 minutes and 1.50 dscm (53 dscf).

(3) Direct measurement using product weigh scales or computed from material balance shall be used to determine the rate (P) of the ammonium sulfate production. If production rate is determined by material balance, the following equations shall be used:

(i) For synthetic and coke oven by-product ammonium sulfate plants:

$P = ABCK'$

where:
A = sulfuric aid flow rate to the reactor/crystallizer averaged over the time period taken to conduct the run, liter/min.
B = acid density (a function of acid strength and temperature), g/cc.
C = acid strength, decimal fraction.
K' = conversion factor, 0.0808 (Mg-min-cc)/(g-hr-liter) [0.0891 (ton-min-cc)/(g-hr-liter)].

(ii) For caprolactam by-product ammonium sulfate plants:

$P = DEFK''$

where:
D = total combined feed stream flow rate to the ammonium crystallizer before the point where any recycle streams enter the stream averaged over the time period taken to conduct the test run, liter/min.
E = density of the process stream solution, g/liter.
F = percent mass of ammonium sulfate in the process solution, decimal fraction.
K'' = conversion factor, 6.0×10^{-5} (Mg-min)/(g-hr) [6.614×10^{-5} (ton-min)/(g-hr)].

(3) Method 9 and the procedures in § 60.11 shall be used to determine the opacity.

71. Section 60.474 is revised to read as follows:

§ 60.474 Test methods and procedures.

(a) For saturators, the owner or operator shall conduct performance tests required in § 60.8 as follows:

(1) If the final product is shingle or mineral-surfaced roll roofing, the tests shall be conducted while 106.6-kg (235-lb) shingle is being produced.

(2) If the final product is saturated felt or smooth-surfaced roll roofing, the tests shall be conducted while 6.8-kg (15-lb) felt is being produced.

(3) If the final product is fiberglass shingle, the test shall be conducted while a nominal 100-kg (220-lb) shingle is being produced.

(b) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(c) The owner or operator shall determine compliance with the particulate matter standards in § 60.472 as follows:

(1) The emission rate (E) of particulate matter shall be computed for each run using the following equation:

$E = (c_s Q_{sd})/(PK)$

where:
E = emission rate of particulate matter, kg/Mg.
c_s = concentration of particulate matter, g/dscm (g/dscf).
Q_{sd} = volumetric flow rate of effluent gas, dscm/hr (dscf/hr).
P = production rate or asphalt charging rate, Mg/hr (ton/hr).
K = conversion factor, 1000 g/kg [907.2/(g-Mg)/(kg-ton)].

(2) Method 5A shall be used to determine the particulate matter concentration (c_s) and volumetric flow rate (Q_{sd}) of the effluent gas. For a saturator, the sampling time and sample volume for each run shall be at least 120 minutes and 3.00 dscm (106 dscf), and for the blowing still, at least 90 minutes or the duration of the coating blow or non-coating blow, whichever is greater, and 2.25 dscm (79.4 dscf).

(3) For the saturator, the asphalt roofing production rate (P) for each run shall be determined as follows: The amount of asphalt roofing produced on the shingle or saturated felt process lines shall be obtained by direct measurement. The asphalt roofing production rate is the amount produced divided by the time taken for the run.

(4) For the blowing still, the asphalt charging rate (P) shall be computed for each run using the following equation:

$P = (Vd)/(K'\theta)$

where:
P = asphalt charging rate to blowing still, Mg/hr (ton/hr).
V = volume of asphalt charged, m^3 (ft^3).
d = density of asphalt, kg/m^3 (lb/ft^3).
K' = conversion factor, 1000 kg/Mg (200 lb/ton).
θ = duration of test run, hr.

(i) The volume (V) of asphalt charged shall be measured by any means accurate to within 10 percent.

(ii) The density (d) of the asphalt shall be computed using the following equation:

$d = K''\ (1056.1 - 0.6176\ °C)$

where:
°C = temperature at the start of the blow, °C.
K'' = 1.0 [0.06243 (lb−m^3)/(ft^3−kg).

(5) Method 9 and the procedures in § 60.11 shall be used to determine opacity.

(d) The Administrator will determine compliance with the standards in § 60.472(a)(3) by using Method 22, modified so that readings are recorded every 15 seconds for a period of consecutive observations during representative conditions (in accordance with § 60.8(c)) totaling 60 minutes. A performance test shall consist of one run.

(e) The owner or operator shall use the monitoring device in § 60.473 (a) or (b) to monitor and record continuously the temperature during the particulate matter run and shall report the results to the Administrator with the performance test results.

(f) If at a later date the owner or operator believes the emission limits in § 60.472 (a) and (b) are being met even though the temperature measured in accordance with § 60.473 (a) and (b) is exceeding that measured during the performance test, he may submit a written request to the Administrator to repeat the performance test and procedure outlined in paragraph (c) of this section.

(g) If fuel oil is to be used to fire an afterburner used to control emissions from a blowing still, the owner or operator may petition the Administrator in accordance with § 60.11(e) of the General Provisions to establish an opacity standard for the blowing still that will be the opacity standard when fuel oil is used to fire the afterburner. To obtain this opacity standard, the owner or operator must request the Administrator to determine opacity during an initial, or subsequent, performance test when fuel oil is used to fire the afterburner. Upon receipt of the results of the performance test, the Administrator will make a finding concerning compliance with the mass standard for the blowing still. If the Administrator finds that the facility was

in compliance with the mass standard during the performance test but failed to meet the zero opacity standard, the Administrator will establish and promulgate in the **Federal Register** an opacity standard for the blowing still that will be the opacity standard when fuel oil is used to fire the afterburner. When the afterburner is fired with natural gas, the zero percent opacity remains the applicable opacity standard.

72. Section 60.485 is revised to read as follows:

§ 60.485 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(b) The owner or operator shall determine compliance with the standards in §§ 60.482, 60.483, and 60.484 as follows:

(1) Method 21 shall be used to determine the presence of leaking sources. The instrument shall be calibrated before use each day of its use by the procedures specified in Method 21. The following calibration gases shall be used:

(i) Zero air (less than 10 ppm of hydrocarbon in air); and

(ii) A mixture of methane or n-hexane and air at a concentration of about, but less than, 10,000 ppm methane or n-hexane.

(c) The owner or operator shall determine compliance with the no detectable emission standards in §§ 60.482–2(e), 60.482–3(i), 60.482–4, 60.482–7(f), and 60.482–10(e) as follows:

(1) The requirements of paragraph (b) shall apply.

(2) Method 21 shall be used to determine the background level. All potential leak interfaces shall be traversed as close to the interface as possible. The arithmetic difference between the maximum concentration indicates by the instrument and the background level is compared with 500 ppm for determining compliance.

(d) The owner or operator shall test each piece of equipment unless he demonstrates that a process unit is not in VOC series, i.e., that the VOC content would never be reasonably expected to exceed 10 percent by weight. For purposes of this demonstration, the following methods and procedures shall be used:

(1) Procedures that conform to the general methods in ASTM E–260, E–168, E–169 (incorporated by reference—see § 60.17) shall be used to determine the percent VOC content in the process fluid that is contained in or contacts a piece of equipment.

(2) Organic compounds that are considered by the Administrator to have negligible photochemical reactivity may be excluded from the total quantity of organic compounds in determining the VOC content of the process fluid.

(3) Engineering judgment may be used to estimate the VOC content, if a piece of equipment had not been shown previously to be in service. If the Administrator disagrees with the judgment, paragraphs (d) (1) and (2) of this section shall be used to resolve the disagreement.

(e) The owner or operator shall demonstrate that an equipment is in light liquid service by showing that all the following conditions apply:

(1) The vapor pressure of one or more of the components is greater than 0.3 kPa at 20 °C. Standard reference texts or ASTM D–2879 (incorporated by reference—see § 60.17) shall be used to determine the vapor pressures.

(2) The total concentration of the pure components having a vapor pressure greater than 0.3 kPa at 20 °C is equal to or greater than 20 percent by weight.

(3) The fluid is a liquid at operating conditions.

(f) Samples used in conjunction with paragraphs (d), (e), and (g) shall be representative of the process fluid that is contained in or contacts the equipment or the gas being combusted in the flare.

(g) The owner or operator shall determine compliance with the standards of flares as follows:

(1) Method 22 shall be used to determine visible emissions.

(2) A thermocouple or any other equivalent device shall be used to monitor the presence of a pilot flame in the flare.

(3) The maximum permitted velocity (V_{max}) for air-assisted flares shall be computed using the following equation:

$$V_{max} = 8.706 + 0.7084\ H_T$$

where:

V_{max} = maximum permitted velocity, m/sec.

H_T = net heating value of the gas being combusted, MJ/scm.

(4) The net heating value (H_T) of the gas being combusted in a flare shall be computed as follows:

$$H_T = K \sum_{i=1}^{n} C_i H_i$$

where:

K = conversion constant, 1.740×10^{-7} [(g-mole)(M)]/[(ppm)(scm)(kcal)].

C_i = concentration of sample component "i", ppm.

H_i = net heat of combustion of sample component "i" at 25 °C and 760 mm Hg, kcal/g-mole.

(5) Method 18 and ASTM D 2504–67 (incorporated by reference—see § 60.17) shall be used to determine the concentration of sample component "i."

(6) ASTM D 2382–76 (incorporated by reference—see § 60.17) shall be used to determine the net heat of combustion of component "i" if published values are not available or cannot be calculated.

(7) Method 2, 2A, 2C, or 2D, as appropriate, shall be used to determine the actual exit velocity of a flare. If needed, the unobstructed (free) cross-sectional area of the flare tip shall be used.

§ 60.502 [Amended]

73. In § 60.502(h), the reference "§ 60.503(b)" is revised to read "§ 60.503(d)".

74. Section 60.503 is revised to read as follows:

§ 60.503 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b). The three-run requirement of § 60.8(f) does not apply to this subpart.

(b) Immediately before the performance test required to determine compliance with § 60.502 (b), (c), and (h), the owner or operator shall use Method 21 to monitor for leakage of vapor all potential sources in the terminal's vapor collection system equipment while a gasoline tank truck is being loaded. The owner or operator shall repair all leaks with readings of 10,000 ppm (as methane) or greater before conducting the performance test.

(c) The owner or operator shall determine compliance with the standards in § 60.502 (b) and (c) as follows:

(1) The performance test shall be 6 hours long during which at least 300,000 liters of gasoline is loaded. If this is not possible, the test may be continued the same day until 300,000 liters of gasoline is loaded or the test may be resumed the next day with another complete 6-hour period. In the latter case, the 300,000-liter criterion need not be met. However, as much as possible, testing should be conducted during the 6-hour period in which the highest throughput normally occurs.

(2) If the vapor processing system is intermittent in operation, the performance test shall begin at a reference vapor holder level and shall end at the same reference point. The test shall include at least two startups and shutdowns of the vapor processor. If this does not occur under automatically controlled operations, the system shall be manually controlled.

(3) The emission rate (E) of total organic compounds shall be computed using the following equation:

$$E = K \sum_{i=1}^{n} (V_{sai}\ C_{sai}) / (L\ 10e)$$

where:

E = emission rate of total organic compounds, mg/liter of gasoline loaded.

V_{sai} = volume of air-vapor mixture exhausted at each interval "i", scm.

C_{sai} = concentration of total organic compounds at each interval "i", ppm.

L = total volume of gasoline loaded, liters.

n = number of testing intervals.

i = emission testing interval of 5 minutes.

K = density of calibration gas, 1.83×10^6 for propane and 2.41×10^6 for butane, mg/scm.

(4) The performance test shall be conducted in intervals of 5 minutes. For each interval "i", readings from each measurement shall be recorded, and the volume exhausted (V_{sai}) and the corresponding average total organic compounds concentration (C_{sai}) shall be determined. The sampling system response time shall be considered in determining the average total organic compounds concentration corresponding to the volume exhausted.

(5) The following methods shall be used to determine the volume (V_{sai}) air-vapor mixture exhausted at each interval:

(i) Method 2B shall be used for combustion vapor processing systems.

(ii) Method 2A shall be used for all other vapor processing systems.

(6) Method 25A or 25B shall be used for determining the total organic compounds concentration (C_{sai}) at each interval. The calibration gas shall be either propane or butane. The owner or operator may exclude the methane and ethane content in the exhaust vent by any method (e.g., Method 18) approved by the Administrator.

(7) To determine the volume (L) of gasoline dispensed during the performance test period at all loading racks whose vapor emissions are controlled by the processing system being tested, terminal records or readings from gasoline dispensing meters at each loading rack shall be used.

(d) The owner or operator shall determine compliance with the standard in § 60.502(h) as follows:

(1) A pressure measurement device (liquid manometer, magnehelic gauge, or equivalent instrument), capable of measuring up to 500 mm of water gauge pressure with ±2.5 mm of water precision, shall be calibrated and installed on the terminal's vapor collection system at a pressure tap located as close as possible to the connection with the gasoline tank truck.

(2) During the performance test, the pressure shall be recorded every 5 minutes while a gasoline truck is being loaded; the highest instantaneous pressure that occurs during each loading shall also be recorded. Every loading position must be tested at least once during the performance test.

§ 60.643 [Amended]

75. Section 60.643(b) is revised as follows:

(b) The emission reduction efficiency (R) achieved by the sulfur reduction technology shall be determined using the procedures in § 60.644(c)(1).

§ 60.645 [Removed and Reserved]

76. Section 60.645 is removed and reserved, and § 60.644 is revised to read as follows:

§ 60.644 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in paragraph § 60.8(b).

(b) During a performance test required by § 60.8, the owner or operator shall determine the minimum required reduction efficiencies (Z) of SO_2 emissions as required in § 60.642 (a) and (b) as follows:

(1) The average sulfur feed rate (X) shall be computed as follows:

$$X = K\ Q_a\ Y$$

where:

X = average sulfur feed rate, long ton/day.

Q_a = average volumetric flow rate of acid gas from sweetening unit, dscf/day.

Y = average H_2S concentration in acid gas feed from sweetening unit, percent by volume.

K = (32 lb S/lb-mole)/[(100%)(385.36 dscf/lb-mole)(2240 lb/long ton)] = 3.707×10^{-7}

(2) The continuous readings from the process flowmeter shall be used to determine the average volumetric flow rate (Q_a) in dscf/day of the acid gas from the sweetening unit for each run.

(3) The Tutwiler procedure in § 60.648 or a chromatographic procedure following ASTM E–260 (incorporated by reference—see § 60.17) shall be used to determine the H_2S concentration in the acid gas feed from the sweetening unit. At least one sample per hour (at equally spaced intervals) shall be taken during each 4-hour run. The arithmetic mean of all samples shall be the average H_2S concentration (Y) on a dry basis for the run. By multiplying the result from the Tutwiler procedure by 1.62×10^{-3}, the units gr/100 scf are converted to volume percent.

(4) Using the information from paragraphs (b) (1) and (3), Tables 1 and 2 shall be used to determine the required initial (Z_i) and continuous (Z_c) reduction efficiencies of SO_2 emissions.

(c) The owner or operator shall determine compliance with the SO_2 standards in § 60.642 (a) or (b) as follows:

(1) The emission reduction efficiency (R) achieved by the sulfur recovery technology shall be computed for each run using the following equation:

$$R = (100\ S)/(S+E)$$

(2) The level indicators or manual soundings shall be used to measure the liquid sulfur accumulation rate in the product storage tanks. Readings taken at the beginning and end of each run, the tank geometry, sulfur density at the storage temperature, and sample duration shall be used to determine the sulfur production rate (S) in kg/hr for each run.

(3) The emission rate (E) of sulfur shall be computed for each run as follows:

$$E = C_s\ Q_{sd}/K$$

where:

C_s = concentration of sulfur equivalent (SO_2 + TRS), g/dscm.

Q_{sd} = volumetric flow rate of effluent gas, dscm/hr.

K = conversion factor, 1000 g/kg.

(4) The concentration (C_s) of sulfur equivalent shall be the sum of the SO_2 and TRS concentrations, after being converted to sulfur equivalents. For each run and each of the test methods specified in this paragraph (c) of this section, the sampling time shall be at least 4 hours. Method 1 shall be used to select the sampling site. The sampling point in the duct shall be at the centroid

of the cross-section if the area is less than 5 m^2 (54 ft^2) or at a point no closer to the walls than 1 m (39 in.) if the cross-sectional area is 5 m^2 or more, and the centroid is more than 1 m (39 in.) from the wall.

(i) Method 6 shall be used to determine the SO_2 concentration. Eight samples of 20 minutes each shall be taken at 30-minute intervals. The arithmetic average in mg/dscm shall be the concentration for the run. The concentration in mg/dscm shall be multiplied by 0.5 to convert the results to sulfur equivalent.

(ii) Method 15 shall be used to determine the TRS concentration from reduction-type devices or where the oxygen content of the effluent gas is less than 1.0 percent by volume. The sampling rate shall be at least 3 liters/min (0.1 ft^3/min) to insure minimum residence time in the sample line. Sixteen samples shall be taken at 15-minute intervals. The arithmetic average of all the samples shall be the concentration for the run. The concentration in ppm TRS as H_2S shall be multiplied by 1.352×10^{-6} to convert the results to sulfur equivalent.

(iii) Method 16A shall be used to determine the TRS concentration from oxidation-type devices or where the oxygen content of the effluent gas is greater than 1.0 percent by volume. Eight samples of 20 minutes each shall be taken at 30-minute intervals. The arithmetic average shall be the concentration for the run. The concentration in ppm TRS as H_2S shall be multiplied by 1.352×10^{-6} to convert the results to sulfur equivalent.

(iv) Method 2 shall be used to determine the volumetric flow rate of the effluent gas. A velocity traverse shall be conducted at the beginning and end of each run. The arithmetic average of the two measurements shall be used to calculate the volumetric flow rate (Q_{sd}) for the run. For the determination of the effluent gas molecular weight, a single integrated sample over the 4-hour period may be taken and analyzed or grab samples at 1-hour intervals may be taken, analyzed, and averaged. For the moisture content, two samples of at least 0.10 dscm (0.35 dscf) and 10 minutes shall be taken at the beginning of the 4-hour run and near the end of the time period. The arithmetic average of the two runs shall be the moisture content for the run.

(d) To comply with § 60.646(d), the owner or operator shall obtain the information required by using the monitoring devices in paragraph (b) of (c) of this section.

§ 60.646 [Amended]

77. In § 60.646(a)(2), the reference "§ 60.645(a)(8)" is revised to read "§ 60.644(b)(1)".

78. In § 60.646(a)(4), the reference "§ 60.644(a)(4)" is revised to read "§ 60.644(b)(3)".

79. In § 60.646(d), the reference "§ 60.643(b)" is revised to read "§ 60.644(c)(1)".

80. Section 60.675 is revised to read as follows:

§ 60.675 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b). Acceptable alternative methods and procedures are given in paragraph (e) of this section.

(b) The owner or operator shall determine compliance with the particulate matter standards in § 60.272(a) as follows:

(1) Method 5 or Method 17 shall be used to determine the particulate matter concentration. The sample volume shall be at least 1.70 dscm (60 dscf). For Method 5, if the gas stream being sampled is at ambient temperature, the sampling probe and filter may be operated without heaters. If the gas stream is above ambient temperature, the sampling probe and filter may be operated at a temperature high enough, but no higher than 121 °C (250 °F), to prevent water condensation on the filter.

(2) Method 9 and the procedures in § 60.11 shall be used to determine opacity.

(c) In determining compliance with the particulate matter standards in § 60.672 (b) and (c), the owner or operator shall use Method 9 and the procedures in § 60.11, with the following additions:

(1) The minimum distance between the observer and the emission source shall be 4.57 meters (15 feet).

(2) The observer shall, when possible, select a position that minimizes interference from other fugitive emission sources (e.g., road dust). The required observer position relative to the sun (Method 9, Section 2.1) must be followed.

(3) For affected facilities using wet dust suppression for particulate matter control, a visible mist is sometimes generated by the spray. The water mist must not be confused with particulate matter emissions and is not to be considered a visible emission. When a water mist of this nature is present, the observation of emissions is to be made at a point in the plume where the mist is no longer visible.

(d) In determining compliance with § 60.672(e), the owner or operator shall use Method 22 to determine fugitive emissions. The performance test shall be conducted while all affected facilities inside the building are operating. The performance test for each building shall be at least 75 minutes in duration, with each side of the building and the roof being observed for at least 15 minutes.

(e) The owner or operator may use the following as alternatives to the reference methods and procedures specified in this section:

(1) For the method and procedure of paragraph (c) of this section, if emissions from two or more facilities continuously interfere so that the opacity of fugitive emissions from an individual affected facility cannot be read, either of the following procedures may be used:

(i) Use for the combined emission stream the highest fugitive opacity standard applicable to any of the individual affected facilities contributing to the emissions stream.

(ii) Separate the emissions so that the opacity of emissions from each affected facility can be read.

(f) To comply with § 60.676(d), the owner or operator shall record the measurements as required § 60.676(c) using the monitoring devices in § 60.674 (a) and (b) during each particulate matter run and shall determine the averages.

§ 60.676 [Amended]

81. In § 60.676(d), the words "those measurements recorded" are revised to read "the averaged determined".

82. Section 60.685 is revised to read as follows:

§ 60.685 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(b) The owner or operator shall conduct performance tests while the product with the highest loss on ignition (LOI) expected to be produced by the affected facility is being manufactured.

(c) The owner or operator shall determine compliance with the particulate matter standard in § 60.682 as follows:

(1) The emission rate (E) of particulate matter shall be computed for each run using the following equation:

$$E = (C_s Q_{sd})/(P_{avg} K)$$

where:

E = emission rate of particulate matter, kg/Mg (lb/ton).

C_s = concentration of particulate matter, g/dscm (g/dscf).

Q_{sd} = volumetric flow rate of effluent gas, dscm/hr (dscf/hr).

P_{avg} = average glass pull rate, Mg/hr (ton/hr).

K = conversion factor, 1000 g/kg (453.6 g/lb).

(2) Method 5E shall be used to determine the particulate matter concentration (C_s) and the volumetric flow rate (Q_{sd}) of the effluent gas. The sampling time and sample volume shall be at least 120 minutes and 2.55 dscm (90 dscf).

(3) The average glass pull rate (P_{avg}) for the manufacturing line shall be the arithmetic average of three glass pull rate (P_i) determinations taken at intervals of at least 30 minutes during each run.

The individual glass pull rates (P_i) shall be computed using the following equation:

$$P_i = K' L_s W_m M [1.0 - (LOI/100)]$$

where:

P_i = glass pull rate at interval "i", Mg/hr (ton/hr).

L_s = line speed, m/min (ft/min).

W_m = trimmed mat width, m (ft).

M = mat gram weight, g/m^2 (lb/ft^2).

LOI = loss on ignition, weight percent.

K' = conversion factor, 6×10^{-3} (min-Mg)/(hr-g) [3×10^{-3} (min-ton)/(hr-lb)].

(i) ASTM Standard Test Method D2584-68 (Reapproved 1979) (incorporated by reference—see § 60.17), shall be used to determine the LOI for each run.

(ii) Line speed (L_s), trimmed mat width (W_m), and mat gram weight (M) shall be determined for each run from the process information or from direct measurements.

(d) To comply with § 60.684(d), the owner or operator shall record measurements as required in § 60.684 (a) and (b) using the monitoring devices in § 60.683 (a) and (b) during the particulate matter runs.

[FR Doc. 89-3064 Filed 2-13-89; 8:45 am]

BILLING CODE 6560-50-M

Proposed Rules

Federal Register
Vol. 54, No. 29
Tuesday, February 14, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 58

[DA-89-006]

Grading and Inspection, General Specifications for Approved Plants and Standards for Grades of Dairy Products; Proposed Increase in Fees and Other Administrative Changes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service proposes to increase the fees charged for services provided under the dairy inspection and grading program. The program is a voluntary, user-fee program conducted under the authority of the Agricultural Marketing Act of 1946, as amended.

This action would increase the hourly rate for all services and eliminate the separate hourly rate for "continuous" nonresident services. The major proposed fees are $32.00 per hour for resident services and $36.00 per hour for nonresident services.

The fee changes are needed to offset an increase in operating expenses, including a 4.1 percent increase in Federal salaries, a 28.3 percent increase in the Agency's Federal Employees Health Benefits Program contributions, and a 10 percent increase in travel costs (mileage and per diem). An increase is also needed to offset declining revenues resulting from a major reduction in grading activities for Government purchases of surplus dairy products.

DATE: Comments must be received on or before March 16, 1989.

ADDRESS: Comments should be sent to: Office of the Director, USDA/AMS/Dairy Division, Room 2968–S, P.O. Box 96456, Washington, DC 20090–6465.

FOR FURTHER INFORMATION CONTACT: Lynn G. Boerger, USDA/AMS/Dairy Division, Dairy Grading Section, Room 2750–S., P.O. Box 96456, Washington, DC 20090–6456, (202) 382–9381.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Departmental Regulation 1512–1 and has been classified a "non-major" rule under the criteria contained therein.

The proposed rule also has been reviewed in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and the Administrator, Agricultural Marketing Service, has determined that if promulgated it would not have a significant economic impact on a substantial number of small entities. The proposed changes will not significantly affect the cost per unit for grading and inspection services. The Agricultural Marketing Service estimates that overall this rule will yield an additional $400,000 during fiscal year 1989. The Agency does not believe the increases will affect competition. Furthermore, the dairy grading program is a voluntary program.

The Agricultural Marketing Act of 1946, as amended, authorizes the Secretary of Agriculture to provide Federal dairy grading and inspection services that facilitate marketing and help consumers obtain the quality of dairy products they desire. The Act provides that reasonable fees be collected from the users of the services to cover as nearly as practicable the cost of maintaining the program.

Although the hourly fee rates under the program were increased on June 19, 1988, the changes were based on workload levels experienced during FY 1987 and did not take into account the significant and unforeseen drop in workload during the last half of 1988. Also, the changes did not include the recent increase in operating costs caused by the recent 4.1 percent increase in Federal employee salaries, the 28.3 percent increase in the Agency's contribution to the Federal Employee Health Benefits Program, and a travel cost increase of 10 percent. Because of inadequate grading revenues during FY 1988, the operating reserve of over $2 million was depleted. In fact, drastic program adjustments to reduce costs were taken to prevent the program from realizing a negative reserve balance of approximately $600,000 in FY 1988. During FY 1989, further decreases in workload are expected for the nonresident program as a result of a projected additional 40 percent reduction in purchases of surplus products under the dairy price support program.

Since the last fee increase, a major restructuring of the grading and inspection program was initiated to bring staffing and operational activities in line with the reduced workload. The adjustments included a 39 percent reduction in staff, closure of one of four regional offices, reductions in travel, deferred computer purchases, and a reduction in management overhead costs.

In spite of these extensive cost-cutting measures, the higher costs for salaries, health benefits, and travel and the continuing decline in revenues because of a lower workload are causing the program further financial problems. Without the proposed fee increases a negative reserve balance of over $400,000 is projected by the end of FY 1989. Without fee increases, revenues and costs for FY 1989 are projected to be $6 million and $6.4 million respectively. The fee increases would reverse this situation and would lead to the desired 4-month operating reserve of $2.3 million by the end of FY 1991. With the proposed fee increases both revenues and costs for FY 1989 are estimated to be $6.4 million.

This document proposes the following changes in the regulations implementing the dairy inspection and grading program:

1. Increase the hourly fees for resident services from $24.00 to $32.00 and increase the fees for nonresident services from $33.00 to $36.00.

The resident hourly rate is charged to those who are using grading and inspection services performed by an inspector or grader assigned to a plant on a continuous year-round, resident basis. The nonresident hourly rate is charged to users who request an inspector or grader for particular dates and amounts of time to perform specific grading or inspection activities. These users of nonresident services are charged for the amount of time required to perform the task and undertake related travel, plus travel costs.

2. Eliminate the fee for continuous nonresident service.

The continuous nonresident rate, which is higher than the nonresident rate, applies to users who have contracts with the Agricultural Stabilization and Conservation Service and who request service in 40-hour week increments. This rate was intended to include not only the cost for inplant inspection and grading services but the related travel costs as well. This rate is being discontinued because the Agency cannot accurately establish a rate for all users since the Agency has no control over where the contracts are awarded and thus cannot project under the current workload and staffing level the average travel costs that must be built into the fee rate. Under the change, the user would be charged the nonresident rate plus travel costs. This change will enable the agency to recover the cost of providing service by making charges for travel only when the cost is incurred and charging only those users who required the travel.

3. Increase the fees for laboratory services.

Effective January 15, 1989, the Agency's Commodity Scientific Support Division (CSSD) assumed administrative control of all dairy laboratory services supporting the grading program except those performed in conjunction with the resident services. The resident services laboratory functions will receive oversight and audit of their technical procedures by CSSD. The Dairy Division will continue to bill applicants for laboratory services.

To reflect the additional costs of providing laboratory services that stem from increased salaries and other related employee costs, the hourly rate for laboratory services is being increased from $24.00 to $28.00. The charges for specifically listed tests are being increased to reflect the change in the hourly rate. Tests that are no longer performed by the laboratory are being deleted from the list of charges.

4. Miscellaneous nonsubstantive changes are proposed for clarity in several of the provisions. These changes include the deletion of the definition of "Continuous nonresident service."

Timing of Proposed Fee Increases

It is contemplated that the proposed fees will be implemented on an expedited basis. The seriousness of the revenue shortfall warrants putting the higher fees into effect as quickly as possible. Accordingly, it is anticipated that the fee increases, if adopted, would become effective upon publication or very soon after publication of the final rule in the **Federal Register** and that postponing the effective date of the final rule until 30 days after publication in the **Federal Register** would not occur. An approximate effective date would be April 9, 1989.

All written submissions made pursuant to this notice will be available for public inspection at the Dairy Division, Agricultural Marketing Service, USDA, Washington, DC, during regular business hours.

List of Subjects in 7 CFR Part 58

Food grades and standards, Dairy products.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 58, Subpart A, be amended as follows:

PART 58—[AMENDED]

Subpart A—Regulations Governing the Inspection and Grading Services of Manufactured or Processed Dairy Products

1. The authority citation for Part 58 continues to read as follows:

Authority: Secs. 202–206, 60 Stat. 1087, as amended; 7 U.S.C. 1621–1627, unless otherwise noted.

§ 58.1 [Amended]

2. Section 58.1 is amended to remove the definition of the term "Continuous nonresident service."

3. Section 58.41 is revised to read as follows:

§ 58.41 Fees for additional copies of certificates.

Additional copies of any inspection or grading certificates (including takeoff certificates), other than those provided for in § 58.20 may be supplied to any interested party upon payment of a fee based on time required to prepare such copies at the hourly rate specified in § 58.43.

4. Section 58.43 is revised to read as follows:

§ 58.43 Fees for inspection, grading, and sampling.

Except as otherwise provided in this section and §§ 58.38 through 58.46, charges shall be made for inspection, grading, and sampling service at the hourly rate of $36.00 for service performed between 6 a.m. and 6 p.m., and $39.60 for service performed between 6 p.m. and 6 a.m., for the time required to perform the service calculated to the nearest 15-minute period, including the time required for preparation of certificates and reports and the travel time of the inspector or grader in connection with the performance of the service. A minimum charge of one-half hour shall be made for service pursuant to each request or certificate issued.

5. Section 58.44 is revised to read as follows:

§ 58.44 Fees for laboratory analysis.

Except as otherwise provided in this section, charges shall be made for laboratory analysis at the hourly rate of $28.00 for the time required to perform the service. A minimum charge of one-half hour shall be made for service pursuant to each request or certificate issued. The following minimum rates per test, which are based on the average time required to perform the test specified, shall apply unless the actual time required to perform the test is greater than the minimum set forth:

(a) Dry milk and related products:	
Total fat (ether extraction)	$5.07
Moisture	3.91
Titratable acidity	1.92
Solubility index	1.63
Scorched particles	2.63
Bacterial plate count	5.07
Bacterial direct microscopic count	7.58
Whey protein nitrogen	12.77
Vitamin A	25.32
Alkalinity of ash	28.00
Dispersibility	12.77
Coliform (solid media)	5.07
Salmonella	28.00
Phosphatase	28.00
Oxygen	15.17
Density	1.92
Antibiotic	9.39
(b) Condensed milk and related products:	
Fat (fat extraction)	7.58
Total solids	5.07
Sugar (sucrose)	28.00
Net weight (per can)	3.09
(c) Cheese and related products:	
Moisture	5.07
Moisture in duplicate	7.58
Total fat (ether extraction)	8.93
Moisture and fat (dry basis) complete	14.00
Meltability (Process cheese)	5.07
(d) Butter and related products:	
Moisture	5.07
Fat	10.09
Salt	5.07
Complete Kohman analysis	15.17
Fat and moisture (same sample)	12.77
Peroxide value	28.00
Free fatty acid	12.77
Yeast and mold	6.42
Proteolytic count	6.42
(e) Meat and related products: Fat (hamburger)	13.13

6. Section 58.45 is revised to read as follows:

§ 58.45 Fees for continuous resident service.

Irrespective of the fees and charges provided in §§ 58.39 and 58.43, charges for the inspector(s) and grader(s) assigned to a continuous resident program shall be made at the rate of $32.00 per hour for services performed

during the assigned tour of duty. Charges for service performed in excess of the assigned tour of duty shall be made at a rate of 1½ times the rate stated in this section.

§ 58.47 [Removed]

7. Section 58.47 is removed.

Signed at Washington, DC on February 10, 1989.

J. Patrick Boyle,

Administrator, Agricultural Marketing Service.

[FR Doc. 89-3688 Filed 2-13-89; 8:45 am]

BILLING CODE 3410-02-M

Food Safety and Inspection Service

9 CFR Parts 307 and 310

[Docket No. 83-006R]

Streamlined Inspection System; Cattle and Staffing Standards

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: On November 30, 1988, the Food Safety and Inspection Service (FSIS) published a proposed rule to amend the Federal meat inspection regulations to establish a new system of post-mortem inspection for cattle. This method would be known as the "Streamlined Inspection System-Cattle" (SIS-Cattle) when the system is operated without a slaughter partial quality control (PQC) program or as the "Streamlined Inspection System/Partial Quality Control-Cattle" (SIS/PQC-Cattle) when the system is operated in conjunction with a slaughter PQC program.

The comment period closed on January 30, 1989. FSIS has received requests to reopen the comment period so that additional information may be provided to FSIS. FSIS is granting these requests and reopening the comment period for an additional 90 days.

DATE: Comments must be received on or before May 15, 1989.

ADDRESS: Written comment to: Policy Office, ATTN: Linda Carey, FSIS Hearing Clerk, Room 3171 South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Dr. Jill Hollingsworth, Director, Slaughter Inspection Standards and Procedures Division, Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-3219.

SUPPLEMENTARY INFORMATION: On November 30, 1988, FSIS published a proposed rule (53 FR 48252) to amend the Federal meat inspection regulations to establish a new system of post-mortem inspection for cattle. This method would be known as the "Streamlined Inspection System-Cattle" (SIS-Cattle) when the system is operated without a slaughter partial quality control (PQC) program or as the "Streamlined Inspection System/Partial Quality Control-Cattle" (SIS/PQC-Cattle) when the system is operated in conjunction with a slaughter PQC program. An approved slaughter PQC program would be required for establishments operating at slaughter rates greater than 275 head per hour. The PQC program would be optional for establishments that operate at slaughter rates of 275 head per hour or less. This SIS inspection system would be implemented in all establishments that slaughter cattle (steers and heifers only) and have an on-line staffing requirement of three inspectors or more.

SIS-Cattle would incorporate modifications of the present cattle post-mortem inspection procedure and combine viscera and carcass inspection stations so that inspection is completed at the viscera table. The proposed rule would also establish Finished Product Standards (FPS) for carcasses, heads and tongues and standards for other edible byproducts. The FPS program uses the cumulative sum (CUSUM) which is a statistical concept used by the establishment and monitored by the inspector. Compliance is determined based on sample results collected over a period of time. These standards would be used to evaluate the wholesomeness and acceptability of products.

This proposed rule would also establish staffing standards for the inspection of steers and heifers based on work measurement data and faculity requirements.

All establishments under the SIS system would be responsible for proper head, tongue, viscera, and carcass presentation. The operation of a PQC program for the presentation standards would be an option for SIS-Cattle establishments. Establishments operating under SIS/PQC-Cattle would include presentation standards in their PQC program.

The SIS-Cattle system would also require establishment employees to palpate and present the tongue, incise the cheek muscles, and open the heart for inspection personnel.

Additionally, the establishment would be responsible for the removal from carcasses of defects that are the result of the handling, slaughtering, or dressing operations and the removal of designated trimmable defects as listed in the beef carcass finished product standards program.

This system would provide an increase in slaughter method and personnel efficiency, as well as provide an increase in product yield, while still providing consumers with wholesome and otherwise unadulterated products. These gains have been demonstrated and documented in four pilot cattle establishments.

FSIS has received requests to reopen the comment period so that additional information can be gathered and submitted to FSIS. FSIS is interested in receiving additional information and is, therefore, reopening the comment period for an additional 90 days.

Done at Washington, DC on February 9, 1989.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 89-3448 Filed 2-13-89; 8:45 am]

BILLING CODE 3410-DM-M

FEDERAL ELECTION COMMISSION

11 CFR Parts 110, 113, 114 and 116

[Notice 1989-3]

Debts Owed by Candidates and Political Committees

AGENCY: Federal Election Commission.

ACTION: Additional public hearing date.

SUMMARY: On December 6, 1988, the Commission published proposed rules on debts owed by candidates and political committees. *See* 53 FR 49193. That notice announced that a public hearing would be held on February 15, 1989 at 10:00 a.m. The Commission has decided to schedule an additional date, February 16, 1989 for further testimony on the issues presented in the rulemaking.

DATES: The Commission will hold a hearing on February 15, 1989 at 10:00 a.m. and on February 16, 1989 at 2:00 p.m.

ADDRESSES: The hearing will be held at the Federal Election Commission, Ninth Floor Hearing Room, 999 E Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, DC 20463, (202) 376-5690 or (800) 424-9530.

Dated: February 6, 1989.

Danny L. McDonald,

Chairman, Federal Election Commission.

[FR Doc. 89-3425 Filed 2-13-89; 8:45 am]

BILLING CODE 6715-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 545, 546, 561, 563, 563b, 563c, 570, and 571

[No. 89-104]

Conforming and Technical Amendments To the Classification Of Assets System

Date: February 2, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as the operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), is proposing to amend tis regulations by removing references to scheduled items and specified assets to ensure its regulations conform with the classification of assets system mandated by the Competitive Equality Banking Act of 1987 ("CEBA").

DATE: Comments must be received on or before March 16, 1989.

ADDRESS: Please send comment letters to the Director Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552. Comment letters will be available for inspection at 801 17th Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Jeffrey R. Williams, Attorney-Adviser, (202) 377-6559, Regulations and Legislation Divison, Office of General Counsel, 1700 G Street NW., Washington, DC 20552; or Francis E. Raue, Policy Analyst, (202) 331-4586, Office of Regulatory Activities, Federal Home Loan Bank System, 801 17th Street NW., Washington, DC 20006; for technical amendments to §§ 545.112, 563.17-2 and 571.1a, W. Barefoot Bankhead, Professional Accounting Fellow, (202) 331-4585.

SUPPLEMENTARY INFORMATION: Section 403(b) of the National Housing Act ("NHA") authorizes the Board, as operating head of the FSLIC, to examine and evaluate the assets of institutions the accounts of which are insured by the FSLIC ("insured institutions") and their affiliates, to require reporting, and to prescribe the treatment of such assets for regulatory evaluation purposes. 12 U.S.C. 1726(b); *see also* 12 U.S.C. 1730(m); 12 CFR 563.17-1.

On August 10, 1987, CEBA was signed into law. Pub. L. No. 100-86, 101 Stat. 552. Section 402 of CEBA required the Board to establish an asset classification scheme consistent with the classification practices of the Federal banking agencies. In particular, section 407 of CEBA instructed the Board to remove the scheduled items system.

Pursuant to this Congressional mandate, the Board proposed for public comment a rule amending the classification of assets system that, among other things, removed the scheduled items provision of the Board's regulations, 12 CFR 561.15 (1987). 52 FR 39067 (October 20, 1987). After considering all comments received, the Board adopted a final rule on December 21, 1987 that removed the § 561.15 scheduled items regulation, and established a classification of assets system consistent with the asset classification practices of the Federal banking agencies. 53 FR 336 (January 6, 1988) ("final rule"). Under this final rule, assets that would have been deemed schedule items under the old classification scheme became subject to the classification system established by § 501.16(c). *See* 12 CFR 561.16(c) (1988); 53 FR 338, 341. In promulgating the final rule, the Board reiterated its desire that required capital levels reflect asset quality and emphasized the final rule's consistency with the Board's broader and more comprehensive attempts to revise and promulgate capital-related regulations and generally raise the industry's capital levels. 53 FR 338, 344. *See also* 12 CFR 563.14(b)(7) (1988) (Higher levels of capital may be appropriate under the individual minimum capital requirement for an insured institution "with a portfolio reflecting weak credit quality or a significant likelihood of financial loss, or that has loans in nonperforming status or on which borrowers fail to comply with payment terms.")

In addition to § 561.15, eighteen regulations contain the term "scheduled items" or refer to § 561.15. These regulations were not removed or revised by the final rule and continue to contain the term "scheduled items" or refer to former § 561.15. The Board proposed to remove references to scheduled items and to revise these provisions to ensure they are consistent with both the new asset classification scheme and the Board's expressed belief that the overall capital strength of insured institutions is an effective and reliable means of evaluating the health of insured institutions and their affiliates.

Before the adoption of the final rule, the Board used a measure of an insured institution's ratio of schedule items to specified assets to determine whether to approve such institution's application to engage in certain activities. Since the Board removed the scheduled items system, the continued use of a measure including scheduled items and "specified assets" is problematic. The Board no longer uses an institution's "specified assets" in determining whether a thrift may engage in certain activities. Therefore, the Board proposes to remove § 561.17 and to revise those regulations that refer to a specifed assets ratio, consistent with CEBA and the final rule.

Accordingly, the Board proposes to amend existing regulations that require a prescribed ratio of scheduled items to specified assets as a litmus test for authority of insured institutions to engage in expanded activities. The Board proposes to replace that measurement with a requirement that insured institutions demonstrate compliance with the minimum capital requirements of § 563.13 and with the individual minimum capital requirements of §§ 563.14 and 563.14-1. The inclusion of compliance with minimum capital requirements provides supervisory personnel with the flexibility to restrict an institution's activities on the basis of overall capital strength, as determined on a case-by-case basis, rather than on the scheduled items formula that only measured problem assets. The Board's objective to provide supervisory personnel with increased flexibility is consistent with the stated goal of the final rule of "fostering the exercise of greater flexibility and discretion by examiners and supervisory personnel in classifying assets and in establishing valuation allowances." 53 FR 338, 340.

An exception to the proposal's removal of references to scheduled items is the use of that term (and the use of the term "scheduled item factor") contained in § 563.13(b)(4)(i)(F). 12 CFR 563.13(b)(4)(i)(F) (1988). The scheduled item factor is used to calculate the contingency component of an institution's regulatory capital requirement. *Id.* In the final rule, the Board adopted the use of the scheduled item factor as an interim, transitional measure to lessen the harmful effects that would result from the deletion of scheduled items from the contingency component. As discussed in the final rule, this deletion, coupled with other revisions to the asset classification regulation, would have significantly altered both the minimum regulatory

capital requirements and the capital levels of many insured institutions. 53 FR 338, 345. In light of the considerable amount of industry capital that institutions maintained due to scheduled items, the Board decided in the final rule to require institutions to include a factor of their reported scheduled items as of September 30, 1987, in calculating their minimum regulatory capital requirement under § 563.13. The contingency component *will continue* to include the scheduled item factor as an interim device until the Board completes its review, analysis, and consideration of appropriate revisions of the minimum regulatory capital regulation. *See* 53 FR 338, 345.

The Board is also proposing technical amendments to existing §§ 563.17–2 and 571.1a in an effort to ensure that this regulatory provision and Statement of Policy are consistent with the asset classification system outlined in the final rule. These amendments merely reflect the Board's conclusions, as stated in the final rule and the Supplementary Information accompanying the final rule, that a properly conducted appraisal may be an important factor in an examiner's evaluation of an asset, but that the risk of nonpayment is dependent upon several factors, as discussed in this Supplementary Information. *See* 53 FR 349, 350 (January 6, 1988). These amendments clarify existing language, overlooked in the drafting of the final rule, that incorrectly suggests that an appraisal is required in the evaluation of real estate or real estate collateral for the purpose of establishing valuation allowances. (Consistent with the final rule, § 563.17–2(a) will continue to require that an appraisal be conducted with respect to real estate owned at the earlier of foreclosure or in-substance foreclosure.) These amendments to § 563.17–2(b) provide that the availability of private mortgage insurance compensation may be a re-evaluation factor rather than a classification of assets factor as currently provided by § 571.1a.

Finally, the Board is also proposing a technical amendment to § 545.112 to ensure that this section is consistent with the asset classification system outlined in the final rule. Specifically, this section's discussion of real estate owned ("REO") and uncollected interest is being amended to ensure that a Federal association carries REO at fair market value, which may include uncollected interest to the extent such interest is supported by the fair market value of the property. As stated in the Supplementary Information accompanying the final rule, "[t]he fair market value of the REO at the date of acquisition * * * becomes the carrying value of the property on the books of the institution, * * * [and] the institution or the examiner must recognize additional losses if, subsequent to the date of acquisition, the NRV is less than the fair market value at acquisition." *See* 53 FR 338, 343. The Board solicits particular comment on this amendment, including views addressing whether it may be more appropriate simply to remove § 545.112 entirely.

Initial Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 604, the Board is providing the following regulatory flexibility analysis:

1. *Reasons, objectives, and legal basis underlying the proposed rule.* These elements are incorporated above in the "SUPPLEMENTARY INFORMATION" section.

2. *Small entities to which the proposed rule would apply.* The proposed rule would apply to all insured institutions without regard to size.

3. *Impact of the proposed rule on small entities.* The proposed rule would not have a disproportionate impact on small insured institutions.

4. *Overlapping or conflicting federal rules.* There are no known federal rules that duplicate, overlap, or conflict with this proposal.

5. *Alternatives to the proposed rule.* The Board has not found any alternatives to date that would be less burdensome and adequately address its concerns.

List of Subjects

12 CFR Part 545

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings and loan associations.

12 CFR Parts 546 and 561

Savings and loan associations.

12 CFR Part 563

Bank deposit insurance, Currency, Investments, Reporting and recordkeeping requirements, Savings and loan associations.

12 CFR Part 563b

Reporting and recordkeeping requirements, Savings and loan associations, Securities.

12 CFR Part 563c

Accounting, Reporting and recordkeeping requirements, Savings and loan associations, Securities.

12 CFR Part 570

Bank deposit insurance, Savings and loan associations.

12 CFR Part 571

Accounting, Bank deposit insurance, Savings and loan associations.

Accordingly, the Federal Home Loan Bank Board hereby proposes to amend Parts 545 and 546, Subchapter C, and Parts 561, 563, 563c, 570, and 571, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

PART 545—OPERATIONS

1. The authority citation for Part 545 continues to read as follows:

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 66 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402–403, 407, 48 Stat. 1256–1257, 1260, as amended (12 U.S.C. 1725–1726, and 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

§ 545.45 [Amended]

2. Paragraph (e)(2) of § 545.45 is removed.

3. Amend § 545.73 by revising paragraph (a) to read as follows:

§ 545.73 Inter-American Savings and Loan Bank.

* * * * *

(a) The association's regulatory capital meets the requirements of § 563.13 of this chapter, including any individual minimum capital requirement established under § 563.14 of this chapter or by a capital directive issued pursuant to § 563.14–1 of this chapter, and all losses have been offset by specific loss allowances to the extent required by § 563.17–2 of this chapter.

* * * * * * *

4. Amend § 545.74 by removing paragraph (a)(4); by redesignating existing paragraph (a)(5) as paragraph (a)(4); by revising paragraph (d)(2) to read as follows; and by removing paragraph (d)(4):

§ 545.74 Service corporations.

* * * * * * *

(d) *Amount of investment.* * * *

(2) In addition to amounts that it may invest under paragraph (d)(1) of this section, an association that meets the minimum regulatory capital requirements of § 563.13 of this chapter, including any individual minimum capital requirements established under § 563.14 of this chapter or by a capital directive issued under the authority of § 563.14–1 of this chapter, may lend additional amounts as follows:

* * * * * *

5. Revise § 545.112 to read as follows:

§ 545.112 Real estate owned.

A federal association may not carry real estate on its books for a sum in excess of the total amount invested by the association on account of such real estate, including advances, costs, improvements, and uncollected interest to the extent such carrying value is supported by the fair market value of the property at the date of the earlier of foreclosure or in-substance foreclosure.

PART 546—MERGER, DISSOLUTION, REORGANIZATION, AND CONVERSION

6. The authority citation for Part 546 continues to read as follows:

Authority: Secs. 2, 5, 48 Stat. 128, 132, as amended (12 U.S.C. 1462, 1464); secs. 401–403, 405–407, 48 Stat. 1255–1257, 1259–1260, as amended (12 U.S.C. 1724–1726, 1728–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

7. Amend § 546.2 by revising the last two sentences of paragraph (h)(1)(xii) to read as follows:

§ 546.2 Procedure; effective date.

* * * * *

(h)(1) * * *

(xii) * * * For purposes of this provision, in calculating whether the regulatory capital of the resulting association will at least equal the amount required under § 563.13 of this chapter, the Principal Supervisory Agent may exclude the scheduled item factor that will be acquired in the merger and the amount of either the regulatory capital deficiency or the liabilities of the acquired association at the date of the merger;

* * * * * *

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 561—DEFINITIONS

8. The authority citation for Part 561 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 1, 48 Stat. 128, as amended (12 U.S.C. 1461 *et seq.*); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

§ 561.17 [Removed and Reserved]

9. Section 561.17 is removed and reserved.

PART 563—OPERATIONS

10. The authority citation for Part 563 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); sec. 1204, 101 Stat. 662 (12 U.S.C. 3806); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

§ 563.7–5 [Amended]

11. Amend § 563.7–5 by removing paragraph (b)(2)(ii); and by redesignating paragraphs (b)(2)(iii) and (b)(2)(iv) as paragraphs (b)(2)(ii) and (b)(2)(iii), respectively.

12. Amend § 563.8 by revising the introductory text of paragraph (e)(1) to read as follows:

§ 563.8 Borrowing limitations.

* * * * * *

(e) *Filing requirements for outside borrowings with maturities in excess of one year.* (1) Unless the insured institution meets the regulatory capital requirement of § 563.13 of this chapter or any applicable individual minimum capital requirement of § 563.14 of this chapter or capital directive issued pursuant to § 563.14–1 of this chapter, it shall, at least ten business days prior to issuance, file with the Supervisory Agent a notice of intent to issue securities evidencing such borrowings. Such notice shall contain a summary of the terms of the security, including:

* * * * * *

§ 563.8–1 [Amended]

13. Amend § 563.8–1 by removing paragraph (b)(2)(ii); and by redesignating paragraphs (b)(2)(iii), (iv) and (v) as paragraphs (b)(2)(ii), (iii) and (iv), respectively.

14. Amend § 563.8–4 by revising the second sentence of paragraph (b)(7) to read as follows:

§ 563.8–4 Transfer and repurchase of government securities.

* * * * * *

(b) * * *

(7) *Eligibility requirements.* * * * *An institution which does not have regulatory capital equal to the sum of one percent of all liabilities (i.e.*, total assets minus regulatory capital) of the institution, plus an amount equal to 20 percent of the institution's assets classified under § 561.16c of this chapter, shall not issue or renew repurchase agreements under paragraph (b) of this section unless it meets the following additional requirements.

* * * * * *

15. Amend § 563.9–7 by revising paragraph (b) to read as follows:

§ 563.9–7 Loans in excess of 90 percent of value.

* * * * * *

(b) This section does not apply to loans to facilitate the sale of real estate owned as a result of foreclosure, or acquired by deed in lieu of foreclosure, or where a contract purchaser has defaulted and the contract canceled, nor to investments in Farmers Home Administration Rural Housing Program guaranteed loans complying with § 545.38 of this chapter.

16. Amend § 563.9–8 by revising paragraph (g)(3)(ii)(A)(*1*)(*iii*) to read as follows:

§ 563.9–8 Regulation of equity risk investment in equity securities, real estate, service corporations, operating subsidiaries, certain land loans, and nonresidential construction loans.

* * * * * *

(g) *Exceptions.* * * *

(3) * * *

(ii) * * *

(A) * * *

(*1*) * * *

(*iii*) The level of assets classified under § 561.16c of this chapter.

* * * * * *

17. Amend § 563.17–2 by revising paragraphs (a), (b), and (d) to read as follows:

§ 563.17–2 Re-evaluation of assets; adjustment of book value; adjustment charges.

(a) *Real estate owned.* An insured institution shall appraise each parcel of real estate owned at the earlier of in substance foreclosure or at the time of the institution's acquisition of such property, and at such times thereafter as dictated by prudent management policy. The Principal Supervisory Agent or his designee may require subsequent appraisals if, in his discretion, such subsequent appraisal is necessary under the particular circumstances. The foregoing requirement shall not apply to any parcel of real estate that is sold and reacquired less than 12 months subsequent to the most recent appraisal made pursuant to this paragraph. A dated, signed copy of each report of appraisal made pursuant to any provisions of this paragraph shall be

retained in the institution's records. Re-evaluation of parcels of real estate that are similar in all essential respects may be based on an appraisal of one or more of such parcels. When an appraisal is required under this provision, it shall conform with § 563.17–1a of this part.

(b) *Re-evaluation of loans and other assets.* In connection with each examination of an insured institution or service corporation, the Board's examiner shall make such re-evaluation of such institution's or service corporation's assets (exclusive of insured or guaranteed loans) as deemed advisable or necessary. Any such re-evaluation of real estate or real estate collateral shall be based on net realizable value. If real estate collateral has been in substance foreclosed, the re-evaluation shall be based on fair value. The re-evaluation should take into consideration the availability of compensation by private mortgage insurance when the probability of full insurance payment is substantial.

* * * * *

(d) *Adjustment charges.* Adjustment of the book value of an asset by an insured institution or service corporation pursuant to any provision of this section shall be made by a charge against such institution's or service corporation's previously established allowances, if any, and then against earnings for the period in which such charge is made. Any recovery of any portion of any amount previously charged against allowances established for the sole purpose of absorbing losses shall be credited to such allowances; such credit shall be in addition to all other required credits to such allowances. Any recovery of any portion of any amount previously charged against earnings shall be credited to earnings for the period in which such recovery is affected. For the purposes of this paragraph (d), any charge against a specific allowance established pursuant to any provision of this section shall be deemed to be a recovery on an asset, the book value of which was previously adjusted unless such charge is made for the purpose of concurrently writing down the book value of such asset.

18. Amend § 563.22 by changing the semicolon at the end of paragraph (e)(1)(xii) to a period and adding a new sentence to read as follows:

§ 563.22 Merger, consolidation, purchase or sale of assets, or assumption of liabilities.

* * * * *

(e) * * *

(1) * * *

(xii) * * * For purposes of this provision, in calculating whether the regulatory capital of the resulting association will at least equal the amount required under § 563.13 of this part, the Principal Supervisory Agent may exclude the scheduled item factor which will be acquired in the merger and the amount of either the regulatory capital deficiency or the liabilities, including averaged liabilities, of the acquired association at the date of the merger;

* * * * *

PART 563b—CONVERSIONS FROM MUTUAL TO STOCK FORM

19. The authority citation for Part 563b continues to read as follows:

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); secs. 2, 5, 48 Stat. 128, 132, as amended (12 U.S.C. 1462, 1464); secs. 401–403, 405–407, 48 Stat. 1256–1257, 1259–1260, as amended (12 U.S.C. 1724–1726, 1273–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); secs. 3, 12–14, 23, 48 Stat. 882, 894–895, 901, as amended (15 U.S.C. 78c, 1–n, w); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

20. Amend § 563b.101 by adding a new sentence at the end of Item 7(c)(1)(C)(v) and revising Item 7(d)(7) to read as follows:

§ 563b.101 Form PS—Proxy Statement.

* * * * *

(7) * * *

(c) * * *

(1) * * *

(C) *Results of operations.* * * *

(v) * * * This would include real estate development, significant amounts of commercial real estate as loan collateral, and any other significant risk factors inherent in the applicant's lending or investment portfolios, including significant increases in amounts of nonaccural, past due, restructured, and potential problem loans (*see* Securities Exchange Commission's Securities Act Industry Guide 3, section III C).

* * * * *

(d) * * *

(7) Describe briefly the risk elements within the loan and investment portfolios including the applicant's customary procedures regarding delinquent loans. As of the end of each of the periods covered by the statements of operation required by Item 14(b)(1) and as of the date of the latest statement of financial condition required by Item 14(a), set forth in tabular form the amounts and categories of nonaccrual, past due, restructured, and potential problem loans (*see* Securities Exchange Commission's Securities Act Industry Guide 3, section III C) and the ratio of such loans to total assets. Where the amount of real estate that has been in substance foreclosed, acquired by foreclosure, or by deed in lieu thereof is significant, include a brief description of the major properties and a statement as to the applicant's probable loss, if any, upon disposition of such properties.

* * * * *

PART 563c—ACCOUNTING REQUIREMENTS

21. The authority citation of Part 563c continues to read as follows:

Authority: Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402–403, 407, 48 Stat. 1256–1257, 1260, as amended (12 U.S.C. 1725–1726, 1730); secs. 3(b), 12–14, 23, 48 Stat. 882, 892, 894–895, 901, as amended (15 U.S.C. 78c(b), m, n, w); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

22. Amend § 563c.14 by revising the first sentence of paragraph (a) to read as follows:

§ 563c.14 Accounting for gains and losses on the sale or other disposition of mortgage loans, redeemable ground-rent leases, and certain securities; matching the amortization of discounts and losses.

(a) *General.* An insured institution, by resolution of its board of directors, may elect to defer and amortize all gains and losses net of related income taxes computed in accordance with generally accepted accounting principles, on any sale or other disposition, occurring in the fiscal year that the action to defer and amortize is taken, of mortgage loans, redeemable ground-rent leases, mortgage-related securities (as defined in § 563.17(a)(4) of this subchapter), preferred stock that at the time of issuance provides for redemption on a fixed date in a fixed dollar amount or for redemption pursuant to a fixed schedule of periodic payments and has a remaining term to maturity of at least five years, and debt securities that do not quality as liquid assets under § 523.10(g) (except those qualifying under § 523.10(g)(11)) of this chapter because of their maturities or that have remaining terms to maturity of at least five years. * * *

23. Amend § 563c.102 by revising Item I (7)(j)(ii) to read as follows:

§ 563c.102 Financial statement presentation.

* * * * *

Item I * * *

(7) * * *

(j) * * *

(ii) If a significant portion of the aggregate amount of loans outstanding at the end of the fiscal year disclosed pursuant to subparagraph (i)(A) of this paragraph (j) above relates to nonaccrual, past due, restructured and potential problem loans (*see* Securities Exchange Commission's Securities Act Industry Guide 3, section III C), so state and disclose the aggregate amount of such loans with such other information necessary

to an understanding of the effects of the transactions on the statements.

* * * * *

PART 570—BOARD RULINGS

24. The authority citation for Part 570 continues to read as follows:

Authority: Secs. 552, 559, 80 Stat. 383, 388, as amended (5 U.S.C. 552, 559); sec. 11, 47 Stat. 733, as amended (12 U.S.C. 1431(e)(2)(c)); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–403, 405, 407, 48 Stat. 1255–1257, 1259–1260, as amended (12 U.S.C. 1724–1726, 1728, 1730); sec. 414, as added by sec. 522, 94 Stat. 165, as amended (12 U.S.C. 1730g); Reorg. Plan No. 3 of 1947, 3 CFR, 1943–48 Comp., p. 1071.

§ 570.8 [Removed and Reserved]

25. Section 570.8 is removed and reserved.

PART 571—STATEMENTS OF POLICY

26. The authority citation for Part 571 continues to read as follows:

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402, 403, 406, 407, 48 Stat. 1256, 1257, 1259, 1260, as amended (12 U.S.C. 1725, 1726, 1729, 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

27. Amend § 571.1 by revising paragraph (d) to read as follows:

§ 571.1 Appraisal of real estate securing assets of insured institutions.

* * * * *

(d) *Authority to obtain appraisals, after consultation.* When the trend of the ratio of assets classified under § 561.16c of this chapter to total assets is such that it raises a serious question as to financial condition, when the trend of the ratio of scheduled items to total assets is such that it raises serious question as to financial condition, when it is apparent that assets secured by real property are worth substantially less than the book value thereof, or when there are other indications of the need to evaluate appraisal practices and policies, the Chief Examiner, after consultation with the Supervisory Agent, is authorized to obtain, as a part of and in connection with an examination, appraisals of the real estate securing the insured institution's loans and contracts.

* * * * *

28. Amend § 571.1a by revising the introductory text preceding paragraph (a) to read as follows:

§ 571.1a Classification of certain assets.

This statement of policy provides guidance in the classification of assets pursuant to § 561.16c of this subchapter. Assets subject to this classification requirement may fall within more than one category, and a portion of an asset may remain unclassified.

* * * * *

29. Amend § 571.13 by revising paragraph (a)(3) to read as follows:

§ 571.13 Participation interests in pools of loans.

(a) * * *

(3) The originator/servicer has agreed to provide each insured institution investing in the pool a monthly report of loan delinquencies separately indicating the number and aggregate principal amount of loans delinquent one month and two or more months, the book value of any collateral acquired by the pool through foreclosure, deed in lieu of foreclosure or other exercise of its security interest in the collateral, and the aggregate dollar amount or loans made by the pool, if any, on the security of the collateral if such loans are as described in § 561.15(d) of this subchapter and the aggregate dollar amount or loans made by the pool, if any, on the security of the acquired collateral if such loans have remaining expiration periods in excess of maximum regulatory limitations, or 30 years, or have unpaid principal balances in excess of maximum regulatory limitations, or 90 percent of the security value.

* * * * *

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–3253 Filed 2–13–89; 8:45 am]

BILLING CODE 6725–01–M

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12 CFR Part 584

[No. 89–132]

Extension of Time Period for Board Action on Outstanding Proposal

Date: February 7, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule; extension of time period for Board action.

SUMMARY: Pursuant to its regulatory review procedures, *see* Board Res. No. 88–269, 53 FR 13156 (April 21, 1988), the Federal Home Loan Bank Board ("Board") hereby gives notice that it is extending the time period for possible Board action on the following outstanding proposed regulation as outlined in **SUPPLEMENTARY INFORMATION.** The Board is taking this action in order to allow adequate time for consideration of a number of complex issues raised by this proposal. It is not soliciting additional comments on this proposal.

DATE: The time period for Board consideration is extended until August 8, 1989.

FOR FURTHER INFORMATION CONTACT: Mary Hoyle, Regulatory Paralegal, (202) 377–7135, Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552 or the appropriate contact persons listed in the referenced **Federal Register** document.

SUPPLEMENTARY INFORMATION: Although the comment period on the following proposal has been closed for more than six months, the Board still has the proposal under active consideration for possible further action. The Board is hereby extending the time for possible final Board action on this proposal to the date indicated below:

August 8, 1989

Transactions with Affiliates, adopted by the Board on June 2, 1988; 53 FR 21838 (June 10, 1988).

The Board notes that this action does not constitute a representation that the Board will take final action with respect to this proposal, only that it may do so within this extension of time. Moreover, this action carries no implication whatsoever with respect to the Board's view of the merits of the proposal.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–3461 Filed 2–13–89; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88–NM–205–AD]

Airworthiness Directives; Boeing Models 727–100C and 727C Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to Boeing Models 727–100C and 727C series airplanes, which would require inspection of the main cargo door lower sill latch support fittings for cracks, and

replacement of the fittings, if necessary. This proposal is prompted by reports of cracks in latch support fittings. Cracking in multiple fittings, if allowed to grow, could result in rapid decompression during flight and in-flight loss of the main cargo door.

DATES: Comments must be received no later than April 19, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-205-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT:
Ms. Kathi N. Ishimaru, Airframe, Branch, ANM-120S; telephone (206) 431-1525. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such writtten data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-205-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

Outward movement of a fully closed main cargo door is prevented by the engagement of eight doorway lower sill latch pin fittings with door-mounted rotary latches. Structural support for each latch pin fitting is provided by a latch support fitting. The latch support fitting attaches to the fuselage structure in the door sill area.

The FAA has received a report of cracked latch support fittings found on three Model 727-100C and 727C series airplanes. The cause of the cracking is attributed to stress corrosion in the 7079-T6 material of which the fittings are made. Undetected cracking could result in the latch pin fitting separating from the latch support fitting. Separation of multiple fittings could result in rapid decompression during flight and in-flight loss of the main cargo door.

The FAA has reviewed and approve Boeing Alert Service Bulletin 727-53A0177, Revision 1, dated August 27, 1987, which describes procedures for inspection for cracked fittings, and replacement of the fittings with ones made of 7075-T73 material, which are more resistant to stress corrosion cracking.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require inspection of the latch support fittings, and replacement, if necessary, in accordance with the service bulletin previously mentioned.

There are approximately 129 Model 727-100C and 727C (cargo) series airplanes of the affected design in the worldwide fleet. It is estimated that 83 airplanes of U.S. registry would be affected by this AD, that it would take approximately 28 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD On U.S. operators is estimated to be $92,960.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model 727-100C and 727C airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983) and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Boeing.—Applies to Models 727-100C and 727C (cargo) series airplanes, as listed in Boeing Alert Service Bulletin 727-53A0177, Revision 1, dated August 27, 1987, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent in-flight loss of the main cargo door, accomplish the following:

A. Prior to the accumulation of 25,000 flight cyles or within the next 3,000 flight cycles after the effective date of this AD, whichever occurs later, conduct a close visual or an eddy current inspection of the eight main cargo door latch suport fittings, in accordance with Figure 1 of the Boeing Alert Service Bulletin 727-53A0177, Revision 1, dated August 27, 1987.

B. If a cracked latch support fitting is found, prior to further flight, replace the fitting with a fitting made of 7075-T73 material, in accordance with figure 2 or 3 of Boeing Alert Service Bulletin 727-53A0177, Revision 1, dated August 27, 1987.

C. Repeat the inspection required in paragraph A., above, at intervals not to exceed 3,000 flight cycles.

D. Replacement of a latch support fitting with the 7075-T73 fitting specified in Figure 2 or 3 of Boeing Alert Service Bulletin 727-53A0177, Revision 1, dated August 27, 1987, constitutes terminating action for the repetitive inspections required for that fitting.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington, 98124.

These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on February 6, 1989.

Leroy A. Keith,
Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-3367 Filed 2-13-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-216-AD]

Airworthiness Directives; Boeing Model 737-300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to Boeing Model 737-300 series airplanes equipped with CFM International CFM56-3 and -3B engines, that would require the deletion of the paragraph from the FAA-approved Airplane Flight Manual (AFM) which permits operations over a route that contains a point farther than one hour flying time at the normal one-engine inoperative cruise speed (in still air) from an adequate airport in deviation from § 121.161 of the Federal Aviation Regulations (FAR), referred to as "extended range," "EROP," or "ETOP" operations. This proposal is prompted by reports that partial and total loss of thrust has occurred during operations in moderate to heavy precipitation. Total loss of thrust could prevent the continued safe flight and landing of the airplane.

DATES: Comments must be received no later than March 13, 1989.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-216-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT:
Mr. Richard Simonson, Propulsion Branch, ANM-140S; telephone (206) 431-1965. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-216-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The FAA has recently issued several airworthiness directives in response to dual engine flameout incidents involving Boeing Model 737-300 airplanes. The requirements of those AD's have included the addition of a cautionary note, in the AFM, against airplane operation within 5 miles of thunderstorm activity, and a limitation that requires at least 45% N_1 be maintained when operating in or near moderate to heavy rain, hail, or sleet. Although it has been determined that those requirements are acceptable for assuring adequate safety for the existing Model 737-300 fleet, those actions have been accomplished with the knowledge that the majority of the affected airplanes operate in an environment which allows for avoiding severe weather by diverting to suitable alternate airports (as defined in Advisory Circular 120.42A).

In the context of extended range operations, however, it is substantially more likely that there would be only one adequate airport available in the event of an engine-out diversion. In that event, if thunderstorm activity existed at that location, exposure to that activity would be unavoidable, and the risk of loss of the second engine would be unacceptably high.

Since this condition is likely to exist or develop on other airplanes of this same type design, a revision to the Model 737-300 AFM is proposed which would delete any reference to the approvability of that airplane for extended range operation.

There is, at present, an engine modification under development that addresses this operational deficiency of the CFM56-3 series engines. The FAA has been advised by the engine manufacturer that these improved engines are expected to be available in mid to late 1989. Upon completion of the evaluation of this modification, the extended range Configuration, Maintenance, and Procedures (CMP) Document for the Model 737-300 airplane would be reassessed by the FAA.

There are approximately 600 Model 737-300 series airplanes in the worldwide fleet, some of which have authorization for extended range operation. There are approximately 257 Model 737-300 series airplanes on the U.S. register; however, no U.S. operator currently has authorization for extended range operations. There would be no cost impact of this AD on those aircraft which have no reference to extended range operations in their AFM. However, for those aircraft with AFM

authorization for extended range operation, approximately 1 manhour would be necessary to accomplish the actions required by this AD, and the average labor cost would be $40 per manhour. Based on these figures, the cost impact of the AD on an affected operator is estimated to be $40 per airplane.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model 737-300 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing.—Applies to all Model 737-300 series airplanes, certificated in any category. Compliance required within 30 days of the effective date of this AD, unless previously accomplished.

To prevent the risk of total engine thrust loss due to unavoidable severe weather penetration during a single engine diversion on an extended range flight, accomplish the following:

A. Delete, from the FAA-approved Airplane Flight Manual (AFM), any reference to approval or suitability of the Model 737-300 airplane for use in extended range operation. This may be accomplished by deleting the existing AFM statement containing the Extended Range Operations suitability and adding a copy of this AD to the AFM. If the existing AFM does not contain such a statement, no action is necessary.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspection (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on February 3, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-3366 Filed 2-13-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-201-AD]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes equipped with Pratt and Whitney JT9D series engines or General Electric CF6-80A series engines, which would require modifications to the electromagnetic protection shielding of the wires to the respective engine electronic engine controls (EEC). This proposal is prompted by a review of the wiring installation between the engine fan case and the strut, which has shown that not all engine and EEC wires requiring electromagnetic protection shielding have been shielded. This condition, if not corrected, could lead to an electrical transient from a lightning strike to one engine, which could cause damage or malfunction to the unstruck engine's EEC; this may affect the thrust of the unstruck engine, as well as that of the struck engine. A lightning strike during takeoff, causing EEC shutdown on both engines, could result in a thrust loss greater than the loss of one engine.

DATES: Comments must be received no later than April 19, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-201-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Bernie Gonzalez, Propulsion Branch, ANM-140S; telephone (206) 431-1964. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98165.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-201-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

In a review of the wiring installation between the engine fan case and the strut on Boeing Model 767 airplanes equipped with Pratt and Whitney JT9D series engines and General Electric CF6-80A series engines, the FAA determined that not all engine electrical and electronic engine control wires requiring lightning protection were properly shielded. A lightning strike to one engine may result in an electrical transient, which may cause damage or malfunction to the unstruck engine as well as the struck engine. A lightning strike during takeoff, causing EEC shutdown on both engines, could result in a thrust loss greater than the loss of one engine.

The FAA has reviewed and approved Boeing Service Bulletin 767-71-0041, dated September 22, 1988, which provides instructions for modifications to certain electrical wiring to provide electromagnetic shielding for the electronic engine control.

Since this condition is likely to exist on other airplanes of this same type design, an AD is proposed which would require modification of certain engine control wiring in accordance with the service bulletin previously mentioned.

There are approximately 188 Model 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 93 airplanes of U.S. registry would be affected by this AD, that it would take approximately 35½ manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The average parts cost per airplane would be $7,554. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $833,185.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model 767 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing.—Applies to Model 767 series airplanes, equipped with Pratt and Whitney JT9D series engines or General Electric CF6-80A series engines, specified in Boeing Service Bulletin 767-71-0041 dated September 22, 1988, certificated in any category. Compliance required within one year after the effective date of this AD, unless previously accomplished.

To minimize the potential for total loss in both engines due to a lightning strike, accomplish the following:

A. Modify the engine electrical and electronic engine control wiring in accordance with Boeing Service Bulletin 767-71-0041, dated September 22, 1988.

B. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on February 6, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-3386 Filed 2-13-89; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-26529; File No. S7-3-89]

Suitability Requirements for Transactions in Certain Securities

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Securities and Exchange Commission is publishing for comment proposed Rule 15c2-6, which would require written customer agreement to, and a documented suitability determination for, certain recommended transactions in equity securities that are not registered on a national securities exchange or authorized for inclusion in the NASDAQ system, and whose issuers do not meet certain minimum financial standards. The Commission is taking these actions in response to the widespread incidence of misconduct by some broker-dealers in connection with transactions in such securities.

DATE: Comments should be received on or before April 17, 1989.

ADDRESS: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and

BEST COPY AVAILABLE

Exchange Commission, 450 Fifth Street, NW., Mail Stop 6-9, Washington, DC 20549. Comment letters should refer to File No. S7-3-89. All comment letters received will be made available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Robert L.D. Colby, Chief Counsel, (202) 272-2344; or Daniel M. Gray, Attorney, (202) 272-2848, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 5-1, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Securities and Exchange Commission ("Commission") is proposing for comment Rule 15c2-6 under the Securities Exchange Act of 1934 ("Exchange Act").[1] The rule is designed to prevent fraudulent, deceptive, or manipulative acts or practices in connection with certain recommended transactions in equity securities ("Designated Securities") that are not registered on a national securities exchange or authorized for quotation in the National Association of Securities Dealers' Automated Quotation ("NASDAQ") system, and whose issuers do not meet minimum net income, capital and surplus, or asset standards. These securities are quoted primarily in daily listings of dealers published by the National Quotation Bureau ("pink sheets"),[2] and often are traded at less than one dollar per share.

Proposed Rule 15c2-6 would provide that a broker-dealer who recommends to a person the purchase of a Designated Security may not sell that security to such person unless (1) the person was a regular customer or an accredited investor, (2) the broker/dealer's transactions in the security did not exceed an aggregate volume of $5000 or 10,000 shares during any period of five consecutive business days that ended within the preceding 90 days, or (3) prior to the sale, the broker-dealer had received written agreement to the sale from such person and had approved the person's account for transactions in Designated Securities. In approving an account, the broker-dealer would be required to obtain information concerning the customer's objectives and financial situation reasonably determine that transactions in Designated Securities were suitable for the customer, and maintain in its files a written statement setting forth the basis for such determination.

The Commission's decision to propose Rule 15c2-6 at this time reflects the Commission's growing concern with the widespread incidence of broker-dealer fraud and other misconduct in the market for small pink sheet stocks.[3] In recent years, the Commission has initiated a number of injunctive and administrative proceedings against individual broker-dealers involved in a wide array of misconduct in connection with transactions in pink sheet stocks.[4] Despite the expenditure of considerable Commission resources in investigating and prosecuting these illegal activities, the Commission's ongoing broker-dealer examination program indicates that broker-dealer misconduct in connection with transactions in pink sheet stocks has continued. Therefore, the Commission believes that additional regulatory action is necessary to deal more effectively with the problem.

The Commission is proposing Rule 15c2-6 in particular to address the indiscriminate use by some broker-dealers of high pressure telephone sales campaigns to sell pink sheet stocks issued by small, little known companies to unsophisticated investors. Many of these stocks are speculative securities that require purchasers to possess a significant degree of expertise, as well as access to information, before an informed investment decision can be made. The issuers of these securities are rarely followed by professional securities analysts or covered by the financial press. In addition, these small pink sheet issuers often are not subject to Exchange Act periodic reporting requirements, and therefore may not be making publicly available on a regular basis complete information about their operations and financial condition. As a result, investors may have few reliable sources of information on these companies. Moreover, many of these issuers often have few assets and limited operating histories, but nevertheless intend to expand rapidly.[5] Such issuers necessarily have a high risk of failure and corresponding loss of investment for their shareholders. A decision to invest in pink sheet stocks therefore requires diligent investigation and careful analysis of the issuer and its management to determine whether it is a viable operating entity with realizable potential for growth.

The sales practices of some broker-dealers active in this area, however, apparently are designed to preclude careful analysis by investors of the fundamental investment merits of small pink sheet companies. A common means or solicitation is the "cold call"—a telephone call to a person whose name has been drawn from the telephone directory or a membership list, or who has responded to advertisements promoting purchases of small growth companies. Although broker-dealers making cold calls at times may provide prospective buyers with sufficient information and time to make an informed investment decision, more frequently cold calls regarding the stocks of small pink sheet issuers provide investors with little information on the company and little time for reflection before deciding whether to buy.

High pressure cold calls are the predominant means to locate customers used by "boiler room" operations active in the pink sheet market in recent years. These operations involve a concerted, high-intensity effort to sell over the telephone large quantities of little known, speculative stocks to any and all buyers. Salespersons are expected to make hundreds of cold calls per day, and are trained in high-pressure sales tactics frequently involving use of prepared scripts designed to elicit an immediate buy decision from the person called. These tacts usually focus on pink sheet stocks, often where the broker-dealer is the sole or dominant market maker and little information is available about the issuer.

Because these cold call sales campaigns normally are directed at individuals drawn from a telephone directory or list of names, inevitably many of the persons contacted will have little investment experience and limited financial resources. These individuals may be particularly vulnerable to high pressure sales tactics from salespersons willing to disregard the unsuitability of the recommended security for the purchaser. The potential for mistreatment of investors in cold calls is magnified when the securities being sold are not traded through organized markets and are issued by little known companies, where the risk of loss and the importance of the investment analysis require a careful and unhurried investment decision.

For these reasons, the Commission believes that a serious potential for fraud against investors exists in the unbridled sale of the securities of small pink sheet issuers through the use of cold calls. The Commission is proposing Rule 15c2-6 to help address these problems.

II. Previous Commission Action

High pressure sales campaigns are not a new phenomenon in the securities industry. These campaigns were a particular problem in the 1950's when a large number of boiler room operations sprang up around the country to take advantage of the many inexperienced investors who were entering the securities markets at that time.[6] The Commission responded with a vigorous enforcement campaign against these operations that included criminal prosecutions, as well as civil injunctions and administrative proceedings.[7] From 1960 to mid-1962 the Commission revoked the registration of over thirty broker-dealers who were engaged in fraud in telephone solicitations of unsophisticated investors regarding speculative securities.[8] The Commission's enforcement efforts were hindered, however, by the difficulty of establishing evidence of misrepresenations in telephone solicitations. To do so, the Commission was required not only to ascertain what was communicated, which was difficult to do when the purchasers reached by telephone were scattered around the country, but also to "tie back those representations made by voice over the long-distance telephone to the boiler room, and to assemble some evidence concerning the issuer in order to make a showing as to the false or misleading character of the representations."[9]

In an attempt to deal more effectively with the problem, the Commission originally proposed a version of Rule 15c2-6 in 1962.[10] The rule would have made it unlawful for a broker-dealer to offer or sell an equity security at a price of less than ten dollars per share by telephone to any person other than a broker-dealer, institutional investor, or regular customer, unless the broker-dealer established that one of several exemptions in the rule was available.[11] The rule also would have required broker-dealers to maintain extensive records of their telephone solicitations. Thus, Rule 15c2-6 as originally proposed in effect would have prohibited cold-calling entirely with respect to a wide range of securities.[12]

In 1963, the problem of improper broker-dealer sales practices was referred to Congress as part of the Special Study of the Securities Markets ("Special Study"),[13] and proposed Rule 15c2-6 ultimately was never adopted.[14] In discussing ways to prevent abusive sales practices, the Special Study recommended that the Commission and the self regulatory organizations ("SROs") give greater emphasis to the concept of suitability of particular securities for particular customers. It specifically suggested the adoption of statements of policy covering guidelines as to categories or amounts of securities deemed clearly unsuitable in specified circumstances, and practices deemed incompatible with standards of suitability, such as indiscriminate recommending or selling of specific securities to persons other than known customers.[15]

The SROs have had general suitability rules for many years. For instance, New York Stock Exchange Rule 405 requires its members to use due diligence to learn the essential facts relative to every customer.[16] This rule has been interpreted as requiring an evaluation of the financial condition and investment objectives of the customer and the suitability of particular transactions.[17] The National Association of Securities Dealers, Inc. ("NASD"), of which all broker-dealers who effect transactions in pink sheet stocks must be members, has long recognized that suitability is an important part of its members' general obligation to deal fairly with the public. One of its Rules of Fair Practice provides that:

> In recommending to a customer the purchase, sale, or exchange of any security, a member shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs.[18]

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[1] 15 U.S.C. 78o-78jj.

[2] The NASD currently is developing an electronic system for displaying bid and offer quotations in pink sheet securities. *See* Securities Exchange Act Release No. 25849 (July 25, 1988), 53 FR 29288.

[3] *See* SEC News Release, Remarks of David S. Ruder, Chairman, U.S. Securities and Exchange Commission, Before the Twenty-First Annual Rocky Mountain-State-Federal-Provincial Securities Conference, Denver, Colorado (October 21, 1988). *See also* SEC Information for Investors, *Beware of Penny Stock Fraud!* (November 1988).

[4] In 1988, the Commission initiated more than 25 enforcement actions involving fraud or abuse in this market, and since 1986, the Denver Regional Office of the Commission alone has initiated more than thirty cases involving pink sheet stock abuses. *See, e.g., SEC v. Hughes Capital Corp.*, SEC Litigation Release No. 11930, 42 SEC Doc. 742 (December 13, 1988); *SEC v. Goldcor, Inc.*, SEC Litigation Release No. 11847, 41 SEC Doc. 1178 (August 24, 1988); *SEC v. Zetex, Ltd.*, SEC Litigation Release No. 11780, 41 SEC Doc. 539 (July 6, 1988); *In re CDM Securities, Inc.* Securities Exchange Act Release No. 26142, 41 SEC Doc. 1670 (September 30, 1988); *In re Bradley E. Bohling*, Securities Exchange Act Release No. 25340, 40 SEC Doc. 298 (February 11, 1988). In addition, the Commission suspended over-the-counter trading in the securities of well over 100 companies in 1988. *See, e.g.*, Securities Exchange Act Release No. 25813, 41 SEC Doc. 311 (June 23, 1988); Securities Exchange Act Release No. 25550, 40 SEC Doc. 1085 (April 8, 1988).

[5] An extreme example of this type of company is found in blank check offerings—an initial public offering of a company with no operating history, practically no assets, and formed solely for the purpose of raising capital to take advantage of unspecified business opportunities. A recent study by the Commission's Office of Economic Analysis found that 435 blank check offerings were registered with the Commission in 1985 and 1986.

[6] A Commission decision in 1960 described the sales practices of these operations in terms that continue to be applicable to the operations of some broker-dealers today: It is apparent that registrant engaged in an intensive campaign of selling North Caroline stock in volume by the use of whatever representations it thought would produce the greatest number of sales in the shortest time. Its wholesale solicitation of distant customers by telephone was by its very nature not conductive [sic] to an unhurried and careful presentation and disclosure of the facts and investment factors applicable to the security recommended and to a determination of its suitability for purchase by the customer in light of his particular financial situation and investment objectives. Rather, the sales method was of a type customarily used to place a customer in a position where he is asked to make a hasty decision to buy securities of a speculative nature on the basis of oral and undocumented representations promising quick profits by an unseen and unknown person skilled in high-pressure selling techniques and inaccessible to complaints. This type of treatment of customers is neither fair nor in accordance with the standards of the profession. *Best Securities, Inc.*, 30 S.E.C. 931, 933-34 (1950).

[7] 25 S.E.C. Annual Report 2-4 (1959).

[8] Securities Exchange Act Release No. 6885 (August 16, 1962), at 2 n.2.

[9] Loomis, *Enforcement Problems Under the Federal Securities Laws*, 14 Bus. Law. 665, 673 (1959). *See also Mac Robbins & Co., Inc.*, 41 S.E.C. 116, 119-20 (1962), *aff'd sub nom. Berko v. SEC*, 316 F.2d 137 (2d Cir. 1963).

[10] *See* Release No. 6885, *supra* note 8.

[11] The proposed rule would have exempted (1) securities issued by companies that had net income in their last preceding fiscal year, and who made current financial information publicly available, (2) isolated transactions not part of any concentrated sales efforts by the broker-dealer, (3) transactions not solicited by the broker-dealer, and (4) registered securities that were sold during a distribution by means of a prospectus. *Id.* at 3-4.

[12] The United Kingdom's approach to regulating cold calls is similar to the originally proposed version of Rule 15c2-6. The unsolicited calls section of the Financial Services Act of 1986 provides that no person in the course of, or as a consequence of, an unsolicited call shall enter into, or attempt to enter into, an investment agreement with the person to whom the call is made. Financial Services Act, 1986, ch. 60, section 56. Investment agreements entered into in violation of the Financial Services Act's prohibition do not constitute an offense, but are voidable, subject to certain exceptions, by the person called. The regulations of the Securities and Investments Board contain several exceptions to the general prohibition of unsolicited calls. The exceptions include calls made to securities professionals, institutional investors, and regular customers. *See* The Financial Services (Unsolicited Calls) Regulation 1987, section 4.

[13] Report of Special Study of Securities Markets of the SEC (1963), *reprinted in* H.R. Doc. No. 95, 88th Cong., 1st Sess. (1963).

[14] *See* Securities Exchange Act Release No. 7517 (January 22, 1965) (withdrawing proposed Rule 15c2-6).

[15] Special Study, *supra* note 13, pt. 1 at 329.

[16] NYSE Rule 405(1), *NYSE Guide* (CCH) ¶ 2405.

[17] *See, e.g.*, Securities Exchange Act Release No. 14143, 13 S.E.C. Doc. 639, 641 (November 7, 1977); Special Study, *supra* note 13, pt. 1 at 316.

[18] NASD Rules of Fair Practice, Art. III, section 2, *NASD Manual* (CCH) ¶ 2152. *See also* NASD Notice to Members No. 88-91 (November 1988), in which the NASD proposed to amend its books and records

A broker-dealer who makes unsuitable recommendations also can be liable to its customers under the antifraud provisions of the Federal securities laws.[19]

In response to the recommendations of the Special Study, the NASD adopted in 1964 an interpretation of its suitability rule dealing with recommendations of speculative, low-priced securities. It stated that the following practice clearly would violate a broker-dealer's responsibility for fair dealing:

> Recommending speculative low-priced securities without knowledge of or attempt to obtain information concerning the customers' other securities holdings, their financial situation and other necessary data. The principle here is that this practice, by its very nature, involves a high probability that the recommendation will not be suitable for at least some of the persons solicited. This has particular application to high pressure telephonic sales campaigns.[20]

Unfortunately, the sales practices of many broker-dealers active in the market for pink sheet stocks do not appear to be effectively controlled by this interpretation of the NASD's general suitability rule. The Commission believes that the NASD rule and interpretation should be supplemented by a Commission rule designed to establish specific obligations of broker-dealers in transactions especially susceptible to fraudulent broker-dealer sales practices, and clearer standards regarding the suitability determination required of broker-dealers in this market.[21]

rule to require a member, prior to making a recommendation pursuant to its suitability rule, to make reasonable efforts to obtain information concerning a customer's financial background, tax status, and investment objectives, and such other information used or considered to be reasonable and necessary by the member. Unlike currently proposed Rule 15c2-6, the proposed amendment would not require a written customer statement setting forth such information, nor would it require the member to maintain a written statement setting forth the basis on which the member makes its suitability determination.

[19] *See Clark v. John Lamula Investors, Inc.*, 583 F.2d 594, 600 (2d Cir. 1978); *Cruse v. Equitable Securities of New York, Inc.*, 678 F. Supp. 1023, 1031–32 (S.D.N.Y. 1987); *Clark v. Kidder, Peabody & Co.*, 638 F. Supp. 195, 199 (S.D.N.Y. 1986); *Levin v. Shearson Lehman/American Express Inc.*, [1984–85 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶92,080 at 91407 (S.D.N.Y. 1985).

[20] NASD, Special Report to Members (October 9, 1964), *reprinted in* NASD Rules of Fair Practice, Art. III, section 2, Policy of the Board of Governors re Fair Dealing With Customers, *NASD Manual* (CCH) ¶2152 at 3051–52.

[21] The Commission and the SROs have adopted rules on several occasions containing specially tailored suitability requirements applicable to types of securities transactions that presented problems that were not effectively addressed by general suitability requirements. These rules have addressed certain types of credit transactions, 17 CFR 240.15c2–8; self-underwritings by broker-dealers, NASD Schedules to the By-Laws, Schedule E, section 11, *NASD Manual* (CCH) ¶1758; direct participation programs, NASD Rules of Fair Practice, Appendix F, section 3, *NASD Manual* (CCH) ¶2182; and options, NYSE Rule 723, *NYSE Guide* (CCH) ¶2723; NASD Rules of Fair Practice, Appendix E, sections 10 and 18, *NASD Manual* (CCH) ¶2184. *See also* Securities Exchange Act Release No. 9671 (July 28, 1972), at 14–16 (Commission requested SROs to develop suitability standards for initial public offerings that became "hot issues").

[22] 17 CFR 230.501(a).

[23] 15 U.S.C. 77a–77aa.

III. Description of Rule

Proposed Rule 15c2–6 is designed to prevent fraud by addressing two of the most objectionable aspects of cold call oriented operations: High pressure sales tactics and indiscriminate recommendations of highly speculative securities. Paragraph (b)(3)(i) of the rule would require that the broker-dealer obtain written agreement from the customer to each purchase of a Designated Security covered by the rule. This requirement is intended to provide the customer an opportunity to evaluate the purchase without the necessity for an immediate final decision that is characteristic of high pressure telephone sales tactics. Paragraph (b)(3)(ii) would impose specific procedures that a broker-dealer must follow in making its suitability determination regarding Designated Securities. These procedures are intended to increase the likelihood that the broker-dealer actually will make this determination and to facilitate subsequent review of the determination by regulatory authorities. The rule imposes specific requirements for the transactions it covers, but the rule would be narrowly drawn to cover only those securities that are of the type providing the greatest opportunity for fraudulent high pressure sales activity.

A. Scope of Rule

The scope of the rule would be limited in four ways. The rule would apply only to (1) purchases of Designated Securities (2) by persons who are neither accredited investors, as defined by Regulation D [22] under the Securities Act of 1933 ("Securities Act"),[23] nor regular customers of the broker-dealer, (3) that the broker-dealer recommended, (4) if the broker-dealer's transactions in the recommended security exceed certain minimum levels.

1. Purchases of Designated Securities

A Designated Security is defined in the rule as any equity security other than a security that is registered on a national securities exchange or authorized for quotation in the NASDAQ system, that is issued by an investment company registered under the Investment Company Act of 1940,[24] or whose issuer meets at least one of the following financial standards: (1) Annual net income in excess of $300,000 in the most recently completed fiscal year or in two of the last three most recently completed fiscal years;[25] (2) capital and surplus in excess of $8,000,000 at the end of the most recently completed fiscal year; or (3) total assets in excess of $10,000,000 at the end of the most recently completed fiscal year. The rule would require satisfaction of these financial standards to be demonstrated by financial statements that the broker-dealer has reviewed and has no reasonable basis to believe are not true and complete, and, for U.S. issuers, that are certified by an independent public accountant.[26]

The rule therefore would not apply to securities transactions that are subject to the protections of trading in a market that has real time quotation reporting and extensive surveillance systems in place,[27] nor would it apply to securities

[24] 15 U.S.C. 80a–1—80a–52.

[25] For issuers who have not yet completed an entire fiscal year, the financial standards could be met as of the date of the issuer's most recent financial statements meeting the requirements of paragraph (a)(2)(ii) of the rule.

The net income and the capital and surplus standards are derived from the former requirements for designation as a NASDAQ National Market System ("NMS") security. The NMS net income requirement recently was raised to $400,000, and the capital and surplus requirement was raised to $12,000,000 in tangible net assets. *See* Securities Exchange Act Release No. 25433 (January 9, 1989). The financial standards of proposed Rule 15c2–6 are higher than the minimum requirements for authorization as a NASDAQ security. The market for pink sheet stocks, however, lacks the ready market information provided by NASDAQ and the accompanying automated surveillance systems, and the Commission believes the protections of the rule should apply to the securities of somewhat larger pink sheet issuers.

[26] Many securities quoted in the pink sheets are issued by substantial foreign companies whose financial statements are prepared and audited in accordance with the requirements of their home jurisdiction. The rule would allow foreign financial statements to be used to show that the issuer exceeds the net income, capital and surplus, or assets standards if such financial statements were (1) filed with the Commission, (2) furnished to the Commission pursuant to Rule 12g3–2(b) under the Exchange Act, 17 CFR 240.12g3–2(b), or (3) prepared in accordance with generally accepted accounting principles in the country of incorporation, audited in compliance with the requirements of that jurisdiction, and reported on by an accountant duly registered and in good standing in accordance with the regulations of that jurisdiction.

[27] The NASD has recently adopted Schedule H to its By-Laws which requires members to report to the NASD the highest price at which the member sold and the lowest price at which it purchased a non-NASDAQ security, and the total volume of purchases and sales executed by it, on any day that its principal transactions in that security exceeded an aggregate daily volume of sales or purchases of either 50,000 shares or $10,000. This information is

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issued by companies that have financial strengths likely to reduce the speculative risks to their shareholders. Instead, the rule would apply to transactions in which the investor is assuming the risks of purchasing a security issued by a smaller company without a history of profitability, and traded by few market makers in a market characterized by little market information.

The Commission wishes to emphasize that the target of its proposal is sales practice abuse and manipulation, not small issues or speculative investment decisions *per se*. It is, however, in securities of the type described here as "Designated Securities" that we have found a disproportionate number of such abuses to occur, and it is for this reason that we propose application of a prophylactic rule for recommended sales of such securities.

The Commission requests comment on whether the definition of a Designated Security is appropriately tailored to include those securities that present the problems to which the rule is addressed without unnecessarily including securities that are not generally the vehicles used for fraudulent high pressure sales activity. In particular, should the rule apply to all securities whose issuers do not meet the minimum financial standards, regardless of the market in which they are traded? Should the minimum financial standards be raised or lowered, or should they be eliminated altogether so that the rule would apply to all pink sheet stocks? Should the definition be expanded beyond equity securities to include debt securities? In particular, do the abusive sales practices to which the rule is addressed occur in connection with transactions in debt securities?

The Commission also requests comment on the requirement that the financial statements of U.S. issuers be certified by an independent public accountant. In particular, the Commission seeks the views of commentators concerning the effect of this certified financial statement requirement on small issuers whose securities are traded over-the-counter, including whether the market for these issuers' securities or their ability to raise capital effectively will be affected by the requirement that domestic issuers have certified financial statements to qualify for exclusion from the rule. In this connection, comment is requested on other alternative standards that would provide a reliable basis for determining whether an issuer's financial condition satisfies the criteria for exclusion from the rule. Finally, the Commission requests comment in general on the burdens imposed on broker-dealers by the rule, and whether these burdens are appropriate given the nature of the problems to which the rule is addressed.

2. Type of Customer

The rule would not apply to purchases by accredited investors or by regular customers of the broker-dealer. The definition of accredited investor is the same as the definition in Regulation D [28] under the Securities Act. This definition excludes from the scope of the rule purchases by institutional investors, persons associated with the issuer, and other natural persons who have financial qualifications suggesting that they are less in need of the special suitability protections of the rule.

A regular customer is defined in the rule as any person for whom the broker-dealer, or a clearing broker on behalf of such broker-dealer, maintains a margin account or a cash account as provided for in Regulation T [29] of the Federal Reserve Board, and who has purchased in either or both such accounts the securities of three or more different issuers on three separate occasions within the preceding two years. This definition excludes from the scope of the rule persons with whom the broker-dealer previously has established a business relationship, and for whom the broker-dealer has executed a base level number of trades. These persons presumably are acquainted with the nature and business conduct of the broker-dealer. The rule primarily is directed at cold calling situations where the broker-dealer is recommending purchases to persons who have little familiarity with the broker-dealer and its business practices.

3. Broker-Dealer Recommendations

As proposed, the rule would apply only to purchases of Designated Securities recommended by a broker-dealer. The rule's requirements would not apply to situations where a broker-dealer functions solely as an order taker and executes transactions for persons who on their own initiative decide to purchase a Designated Security absent a recommendation from the broker-dealer. The rule would apply, however, to situations where the broker-dealer recommends to an investor the purchase a specific Designated Security, whether through direct telephone communication with the customer or through sending promotional material to the customer through the mail.[30] The rule would not apply to general advertisements not involving a direct recommendation to the individual.

The proposed rule would apply to recommended purchases of all Designated Securities, including purchases that were part of an offering for which a registration statement had been filed under the Securities Act or an offering pursuant to Regulation A [31] under the Securities Act. With respect to registered offerings by issuers who previously have not been Exchange Act reporting companies, Rule 15c2–8(b) [32] under the Exchange Act requires broker-dealers to deliver a preliminary prospectus to purchasers at least 48 hours prior to the mailing of the confirmation. Regulation A imposes a similar delivery requirement for offering circulars.[33] Paragraph (b)(3)(i) of the proposed Rule 15c2–6 is intended to provide purchasers with an unpressured opportunity to evaluate the merits of their investment decision, and the prospectus delivery requirement of Rule 15c2–8(b) and the offering circular delivery requirement of Regulation A also address this concern. Notwithstanding these protections, the Commission preliminarily believes that concerns over abusive high pressure sales tactics are also applicable to the initial offering of Designated Securities. The Commission requests comment, however, on whether Rule 15c2–6 should exempt from the requirements of paragraph (b)(3)(i) those transactions to which the delivery requirements of Rule 15c2–8(b) or Regulation A apply.[34] In particular, the Commission seeks comment on the extent to which such an exemption would reduce the burden of the rule on the capital-raising of small issuers without significantly reducing the protections provided by the rule.

required to be reported through an electronic price and volume reporting system operated by the NASD for pink sheet securities. NASD Schedules to the By-Laws, Schedule H, section 2 (CCH) *NASD Manual* ¶¶ 1932–33. While Schedule H represents a beneficial step in improving surveillance of the pink sheet market, it will not provide the protections of real-time NASDAQ quotations, nor are issuers whose stocks are encompassed in the NASD's new system subject to the reporting standards applicable to NASDAQ issuers.

[28] 17 CFR 230.501(a).

[29] 12 CFR 220.4; 12 CFR 220.8.

[30] The proposed rule would not prohibit "introductory" or other cold calls *per se*. Rather, the rule focuses on transactions that result from such contacts.

[31] 17 CFR 230.251—230.262.

[32] 17 CFR 240.15c2–8(b).

[33] 17 CFR 230.256(a)(2).

[34] The provisions of paragraph (b)(3)(ii) of proposed Rule 15c2–6 would continue to apply to transactions in Designated Securities exempted from paragraph (b)(3)(i) of the rule.

4. Volume of Broker-Dealer Transactions

The rule would not apply to broker-dealers whose principal and agency transactions in a Designated Security have not exceeded an aggregate volume of $5000 or 10,000 shares during any period of five consecutive business days that ended within the preceding 90 days. The rule is directed primarily at broker-dealers engaging in concentrated selling efforts for a particular security, and whose transactions generally will far exceed the limits in the rule. Broker-dealers who are not engaging in concentrated selling efforts may be less likely to engage in the abusive selling practices to which the rule is addressed. Moreover, the benefits of imposing the rule's requirements on broker-dealers who are executing only minimal transactions in a security may not exceed the costs of compliance. Consequently, such broker-dealers are excluded from the requirements of the rule.[35]

The exclusion is structured so that a broker-dealer would not be covered by the rule until its transactions in a Designated Security during the immediately preceding five business days exceeded the rule's limits.[36] Beginning with the time the broker-dealer's transactions exceeded the rule's limits, the rule would apply to the broker-dealer's transactions in that security and would continue to apply for at least 90 days. If the broker-dealer's transactions subsequently exceeded the rule's limits, a new 90-day period would be initiated.

The Commission requests comment on the proposed volume standards. In particular, the Commission requests comment on whether the levels of these standards are appropriately drawn to achieve the purposes of the rule without impeding capital formation by small issuers or imposing unnecessary costs on broker-dealers. Comment is requested on whether higher volume levels should be used in the rule to focus its provisions on situations where abusive selling practices are most prevalent while avoiding situations where these abusive sales practices are uncommon.

The Commission also requests comment on whether the rule should exempt sales of Designated Securities by broker-dealers with ten or fewer associated persons as long as the broker-dealer's transactions in any Designated Security do not exceed $50,000 during any period of five consecutive business days that ended within the preceding 90 days. Comment is solicited on whether this exemption would be appropriate in view of the sales practice abuses to which the rule is addressed, and, if so, whether the number of associated persons should be higher or lower. Comment also is solicited on whether the $50,000 level is an appropriate level, or whether it should be raised or lowered.

B. Written Customer Agreement to Purchase

Paragraph (b)(3)(i) of the rule would make it unlawful for a broker-dealer to sell a Designated Security in a transaction covered by the rule unless the broker-dealer had received from the purchaser written agreement to each sale setting forth the identity and number of shares or units of the Designated Security to be purchased. To ensure that the customer is aware of this written agreement requirement, paragraph (c)(1)(ii) of the rule requires that the broker-dealer, as part of the procedures for approving an account for transactions in Designated Securities, provide to the customer a statement of the written agreement requirement, and that the customer acknowledge the statement and return it to the broker-dealer. Consequently, the broker-dealer must explain clearly to the customer that the customer will not be obligated to make any purchase until the broker-dealer receives the customer's written agreement to the purchase. This requirement is intended to provide the purchaser with an opportunity to evaluate the transaction outside of a pressured telephone conversation with the salesperson. Any unconditional oral agreement to sell, as well as any attempt by the broker-dealer to hold the customer to such an agreement, would constitute a violation of the rule.

Because of the purpose of paragraph (b)(3)(i) is to provide the customer with an opportunity for unpressured consideration of a specific purchase, a blanket pre-authorization of purchases obtained from the customer would not satisfy the requirements of the rule. The requirement that each particular purchase be agreed to in writing necessarily means that the essential terms of the purchase must be reflected in the customer's written agreement. These terms would include at a minimum the name and quantity of the security to be purchased. Because the written agreement may, in some cases, be mailed to the customer, the rule would not require price to be specified. Instead, the broker-dealer and the customer could agree orally to the price after the broker-dealer had received the customer's agreement.[37] Any other modification of the terms contained in the written agreement would require a new written agreement.

C. Approval of Customer Accounts

Paragraph (b)(3)(ii) of the rule would require that a broker-dealer approve a person's account for transactions in Designated Securities before selling to such person. This provision is intended to document the broker-dealer's satisfaction of its suitability obligations, thereby increasing the likelihood that an appropriate suitability determination will be made, as well as facilitating review of such determination at a later date by regulatory authorities. Under paragraph (c) of the rule, approving an account is a three-step process. The broker-dealer must obtain information about the customer, make a suitability determination, and document such determination in its files.

1. Customer Information

Paragraph (c)(1) of the rule would require the broker-dealer to obtain from the customer a manually executed and dated statement containing information concerning the customer's financial situation, investment experience and knowledge, and investment objectives. The requirement that a statement be manually executed and dated by the customer is designed to help ensure that the information about the customer is accurate and that it is obtained prior to any sales to the customer. Because most investors will not divulge personal financial information without reflection, this requirement also may have the effect of encouraging prospective buyers to consider their actions carefully before committing to trades with an unfamiliar broker-dealer in obscure, pink sheet stocks.

The rule specifies items of information that the broker-dealer must obtain from the customer,[38] including investment objectives, income, net worth, and the size, frequency, and types of prior investments. While the broker-dealer cannot force the customer to provide this information, the customer's failure to do so means that the broker-dealer will be unable to approve the account as required by the rule.[39] Consequently, any sale made without the information specified in the rule would constitute a violation of the rule.

2. Suitability Determination

In order to approve an account for purchases of Designated Securities,[40] paragraph (c)(2) of the rule would require the broker-dealer reasonably to determine, based on the information required by paragraph (c)(1)(i) any any other information known by the broker-dealer: (1) That transactions in Designated Securities are suitable for the customer, and (2) that the customer has sufficient knowledge and experience in financial matters so that the customer reasonably may be expected to be capable of evaluating the risks of transactions in Designated Securities. In determining whether transactions in Designated Securities are suitable for a customer, a broker-dealer should consider whether, in light of the customer's financial circumstances, purchases of speculative and high risk securities are consistent with the customer's financial needs and objectives.[41] In particular, the broker-dealer should consider the extent and nature of the customer's other investments, and whether the customer would be financially able to bear a loss of its investment in Designated Securities.

The rule also requires the broker-dealer to determine whether the customer reasonably can be expected to be capable of evaluating the risks of transactions in Designated Securities. The customer's ability to evaluate the risks of a transaction is an integral part of any suitability determination. The Commission previously has expressed its view that broker-dealers should not recommend complex and high risk securities transactions to investors who do not understand them.[42] The Commission believes that the special problems to which the rule is addressed require a specific investigation of the customer's capability to evaluate the risks of transactions in Designated Securities.[43]

The rule only applies to persons who have not purchased the securities of three different issuers on three separate occasions within the preceding two years in their account with the broker-dealer. Because of the complexity of the investment decision and risks involved in purchases of Designated Securities, persons with minimal investment experience are unlikely to have the experience with which to evaluate such transactions properly. The rule's requirement that the broker-dealer evaluate and document such capability is intended to deter broker-dealers from inappropriately inducing inexperienced customers to purchase Designated Securities that are unsuitable for their investment needs and experience.

3. Documentation of Suitability Determination

Paragraph (c)(3) of the rule would require a broker-dealer to retain in its files a written statement setting forth the basis on which the broker-dealer made its suitability determination. This requirement imposes a formal procedure for evidencing suitability determinations, with a view to encouraging broker-dealers to comply with the requirement to make an explicit suitability determination, and facilitating a subsequent review of the broker-dealer's actions by the Commission and the SROs. The rule also would require the broker-dealer to provide a copy of the statement setting forth the basis of its suitability determination to the purchaser together with the written notification required by Rule 10b-10[44] under the Exchange Act so that the purchaser may review the determination for accuracy. The written statements required by paragraphs (c)(1) and (c)(3), as well as the written customer agreement to trades required by paragraph (b)(3)(i), must be preserved in accordance with the provisions of Rule 17a-4 under the Exchange Act.[45]

D. Exemptions

Paragraph (d) of the rule would empower the Commission to exempt conditionally or unconditionally from the provisions of the rule any transaction or class of transactions that, upon prior written request or upon its own motion, the Commission determines are not encompassed within the purposes of the rule.

IV. Requests for Comments

The Commission solicits comments on the design of Rule 15c2-6, and whether it is likely to address the concerns identified previously without imposing undue burdens on broker-dealers and the issuer community. In light of the important longstanding role of small businesses in the nation's economy, the Commission in particular seeks the views of commentators on the impact of the rule on the capital raising requirements of small businesses. The Commission invites comment on whether the rule's requirements will, in practice, limit the ability of small over-the-counter issuers to attract new investors, impede the offering of new securities, or reduce liquidity in the market for small issuers' securities. Finally, comment is sought on whether the rule will have the intended effect of providing greater protections for investors in these securities, thus increasing investor confidence and, potentially, investor involvement in these markets.

V. Effects on Competition and Regulatory Flexibility Act Considerations

Section 23(a) of the Exchange Act[46] requires that the Commission, in adopting rules under the Exchange Act, consider the anticompetitive effects of such rules, if any, and balance any anticompetitive impact against the

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[35] Of course, other broker-dealer sales practice standards, including in particular existing suitability requirements, would continue to apply to all recommended transactions in Designated Securities.

[36] Broker-dealers depending on the exception would be required to carefully monitor transactions in Designated Securities to ensure that the rule's requirements were complied with for each transaction after the volume limits were exceeded.

[37] The proposed rule would not preclude a written agreement from including the price agreed upon by the broker-dealer and the customer. If, however, the market price of the security at the time the broker-dealer receives the written agreement is not reasonably related to the price specified therein, the broker-dealer's "best execution" obligations would preclude the broker-dealer from executing the transaction at that price. *See* NASD Rules of Fair Practice, Art. III, sections 1 & 4, Interpretation of the Board of Governors re NASD Mark-Up Policy, *NASD Manual*, (CCH) ¶2154 at 2056.

[38] The information required by the rule is comparable to the information that broker-dealers must obtain in approving accounts for options transactions. *See* NYSE Rule 721, Supplementary Material, *NYSE Guide* (CCH) ¶2721 at 4554-55; NASD Rules of Fair Practice, Appendix E, section 16, Interpretation of the Board of Governors, *NASD Manual* (CCH) ¶2184 at 2152-53.

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[39] *Cf. Eugene J. Erdos*, Securities Exchange Act Release No. 20376, 29 S.E.C. Doc. 228, 230 (November 16, 1983), *aff'd sub nom. Erdos v. SEC*, 742 F.2d 507 (9th Cir. 1984) (customer's refusal to provide financial information did not excuse salesperson's unsuitable recommendations).

[40] The rule's requirement that a broker-dealer make a special suitability determination in approving a customer's account for transactions in Designated Securities is in addition to, and in no way replaces, a broker-dealer's general obligation under SRO rules to make a suitability determination for all recommended transactions. Thus, a broker-dealer would remain obligated to make a suitability determination for each recommended purchase of a Designated Security by a customer even after such customer's account had been approved for transactions in Designated Securities, as well as for recommended purchases by customers that are not covered by the proposed rule, such as accredited investors and regular customers.

[41] Paragraph (c)(1)(i)(C) of the rule would require the broker-dealer to obtain information concerning the customer's investment objectives, such as safety of principal, income, growth, or speculation.

[42] *See Erdos, supra* note 39; Report of the Special Study of the Options Markets to the SEC, H.R. Comm. Print IFC3, 96th Cong., 1st Sess., at 47-50 (1978). *See also* NYSE Rule 723, *NYSE Guide* (CCH) ¶2723; NASD Rules of Fair Practice, Appendix E, section 19, *NASD Manual* (CCH) ¶2184.

[43] The Commission solicits comment on whether the rule should be provided that the customer's capability of evaluating the risks of transactions in Designated Securities is established when the customer consults with a personal adviser who is capable of evaluating such risks.

[44] 17 CFR 240.10b-10.

[45] 17 CFR 240.17a-4(b) and (c).

[46] 15 U.S.C. 78w(a)(2).

regulatory benefits gained in terms of furthering the purposes of the Exchange Act. The Commission is preliminarily of the view that proposed Rule 15c2–6 would not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Commission requests comment, however, on any competitive burdens that might result from adoption of the rule.

In addition, the Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA"), pursuant to the requirements of the Regulatory Flexibility Act,[47] regarding the proposed rule. The IRFA indicates the proposed Rule 15c2–6 could impose some additional costs on small broker-dealers and small issuers. The Commission believes, however, that the rule minimizes these costs to the greatest extent possible while still fulfilling its purpose under the Exchange Act to prevent fraud. A copy of the IRFA may be obtained from Daniel M. Gray, Attorney, Office of Legal Policy, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 5–1, Washington, DC 20549, (202) 272–2848.

List of Subjects in 17 CFR Part 240

Securities.

VI. Statutory Basis and Text of Amendments

The Commission proposes to adopt § 240.15c2–6 in Chapter II of Title 17 of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 is amended by adding the following citation:

Authority: Sec. 23, 48 Stat. 901, as amended; 15 U.S.C. 78w. * * * § 240.15c2–6 also issued under 78c, 78j, and 78o.

2. By adding § 240.15c2–6 as follows:

§ 240.15c2–6 Suitability requirements for transactions in certain securities.

(a) For the purposes of this section—

(1) The term "accredited investor" shall have the same meaning as in 17 CFR 230.501(a).

(2) The term "designated security" shall mean any equity security other than a security that is registered on a national securities exchange or authorized for quotation in the National Association of Securities Dealers' Automated Quotation system, that is issued by an investment company registered under the Investment Company Act of 1940, or whose issuer meets at least one of the financial standards set forth in paragraph (a)(2)(i) of this section, as demonstrated by financial statements that meet the requirements set forth in paragraph (a)(2)(ii) of this section.

(i) Issuer financial standards:

(A) Annual net income in excess of $300,000 in the most recently completed fiscal year or in two of the last three most recently completed fiscal years;

(B) Capital and surplus in excess of $8,000,000 at the end of the most recently completed fiscal year; or

(C) Total assets in excess of $10,000,000 at the end of the most recently completed fiscal year.

(ii) Issuer financial statements must be reviewed by the broker or dealer, and the broker or dealer must have no reasonable basis to believe they are not true and complete, and

(A) In the event the issuer is a foreign private issuer, the financial statements must be filed with the Commission; furnished to the Commission pursuant to 17 CFR 240.12g3–2(b); or prepared in accordance with generally accepted accounting principles in the country of incorporation, audited in compliance with the requirements of that jurisdiction, and reported on by an accountant duly registered and in good standing in accordance with the regulations of that jurisdiction; or

(B) In the event the issuer is other than a foreign private issuer, the financial statements must be certified by an independent public accountant.

(3) The term "regular customer" shall mean any person for whom the broker or dealer, or a clearing broker on behalf of such broker or dealer, maintains a margin account as provided for in 12 CFR 220.4 or a cash account as provided for in 12 CFR 220.8, and who has purchased in either or both such accounts the securities of three or more different issuers on three separate occasions within the preceding two years.

(b) As a means reasonably designed to prevent fraudulent, deceptive, or manipulative acts or practices, it shall be unlawful for a broker or dealer to recommend to a person the purchase of a designated security, and subsequently to sell that designated security to such person unless:

(1) Such person is a regular customer or an accredited investor;

(2) The broker or dealer's principal and agency transactions in the designated security have not exceeded an aggregate volume of $5000 or 10,000 shares during any period of five consecutive business days that ended within the preceding 90 days; or

(3) Prior to the sale:

(i) The broker or dealer has received from such person a written agreement to each such sale setting forth the identity and number of shares or units of the designated security to be purchased; and

(ii) The broker or dealer has approved such person's account for transactions in designated securities in accordance with the procedures set forth in paragraph (c) of this section.

(c) In order to approve an account for the purchase of designated securities, the broker or dealer must:

(1) Obtain a statement, manually executed and dated by such person, which contains:

(i) Information concerning the person's:

(A) Financial situation, including age, marital status, number of dependents, employment status, estimated annual income and the sources of that income, estimated net worth (exclusive of family residence), and estimated liquid net worth (cash, securities, other);

(B) Investment experience and knowledge, including the number of years of experience, and the size, frequency, and types of transactions in stocks, bonds, options, commodities, and other investments; and

(C) Investment objectives, such as safety of principal, income, growth, or speculation;

(ii) A statement by the broker or dealer, acknowledged by the person's signature, that it is unlawful for the broker or dealer to sell a designated security to the person in a transaction covered by this section unless the broker or dealer has received, prior to the sale, a written agreement to the sale from the person.

(2) Reasonably determine, based on the information required by paragraph (c)(1)(i) of this section and any other information known by the broker-dealer, that transactions in designated securities are suitable for the person, and that the person has sufficient knowledge and experience in financial matters that the person reasonably may be expected to be capable of evaluating the risks of transactions in designated securities; and

(3) Retain in its files a written statement setting forth the basis on which the broker or dealer made such determination, and provide a copy of such statement to the person together with the written notification required by 17 CFR 240.10b–10.

(d) The provisions of this section shall not apply to any transaction or transactions that, upon prior written request or upon its own motion, the Commission conditionally or unconditionally exempts as not encompassed within the purposes of this section.

By the Commission.

Dated: February 8, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–3402 Filed 2–13–89; 8:45 am]

BILLING CODE 8010–01–M

[47] 5 U.S.C. 603.

17 CFR Parts 250 and 259

[Release No. 35–24815; File No. S7–2–89]

Non-Utility Diversification by Intrastate Public-Utility Holding Companies

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule, rule amendment and form amendment.

SUMMARY: The Commission is publishing for comment a rule that would specify certain circumstances in which non-utility diversification by an intrastate public-utility holding company would not be deemed detrimental to the public interest or the interest of investors or consumers. By creating a safe harbor, the proposed rule is intended to provide intrastate public-utility holding companies with greater certainty in determining the circumstances under which, because of diversified activities, exemption orders would be entered or, having been granted, continued. The Commission is also publishing for comment a rule amendment and a related form amendment to provide that a claim of exemption pursuant to rule by an intrastate public-utility holding company, in order to be effective, would require such holding company to meet one of the safe harbor provisions of the new rule.

DATE: Comments must be received on or before May 15, 1989.

ADDRESS: Send comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. (Reference to File No. S7–2–89). All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: William C. Weeden, Assistant Director (202) 272–7683 or Sidney L. Cimmet, Senior Special Counsel (202) 272–7340, Office of Public Utility Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is asking for public comment on:

(1) Proposed rule 17 under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a *et seq.*) ("Act"). The proposed rule would provide that after three years from its adoption, in determining whether to grant, modify, or revoke any order of exemption under section 3(a)(1) (15 U.S.C. 79c(a)(1)) of the Act, the Commission shall not deem interests of any intrastate public-utility holding company in non-utility businesses to be detrimental to the public interest or the interest of investors or consumers within the meaning of the "unless and except" clause of section 3(a) (15 U.S.C. 79c(a)) of the Act [1] if either (a)(i) the interests in businesses which are not functionally related ("unrelated") to the operations of public-utility affiliates of the holding company are of limited size, as specified in the rule, to assure that the public-utility business remains the primary business of the holding-company system and that the extent of the risks to utility operations from possible financial reversals of unrelated activities and the possible effect of those activities on the filling of capital needs for utility purposes are limited; and (ii) certain other conditions are satisfied which are intended to insulate the utility business to the extent possible from legal liabilities stemming from non-utility operations and to prevent the diversion of utility resources for non-utility purposes; or (b)(i) the state has enacted a statute governing the formation and/or operations of intrastate public-utility holding companies and their affiliates; (ii) the state has considered, or authorized the appropriate state commission to consider, the issue of diversification of intrastate public-utility holding companies into non-utility businesses in light of the public policy goals of the Act, and the state and/or state commission has written policies with regard to such diversification; and (iii) the holding company is in compliance with any state statute and any state commission rules, regulations and orders pertaining to diversification activities. Holding companies exempt under section 3(a)(1) of the Act by order of the Commission when rule 17 and the related proposals become effective would have a one-time, and then an annual, filing requirement of certain information required of companies claiming exemption under rule 2(a)(1) of the Act.

(2) An amendment of rule 2 under the Act that would provide that after three years from its adoption, any intrastate public-utility holding company, and every subsidiary company thereof as such, upon the filing of an exemption statement on form U–3A–2 under the Act initially and as required each year thereafter, shall be exempt from all the provisions of the Act and the rules thereunder, except section 9(a)(2) (15 U.S.C. 79i(a)(2)) of the Act, if, in addition to satisfying present paragraph (a)(1) of rule 2, such holding company meets one of the safe harbor provisions of rule 17. A special, one-time filing of form U–3A–2 will be required following the effective date of amended rule 2 for entities which can claim exempt status under rule 2(a)(1) on such effective date.

(3) An amendment of form U–3A–2 to require intrastate holding companies claiming exemption under rule 2 to furnish information supporting the company's ability to rely on one of the safe harbor provisions of rule 17.

Background

1. Purpose of the Section 3(a)(1) Exemption

In adopting the Act, Congress determined to exempt from any provision or provisions of the Act a public-utility holding company that although engaged in interstate commerce, has an essentially intrastate

[1] Section 3(a)(1), in essence, provides that the Commission, by rules and regulations, or by order upon application, shall exempt any predominantly intrastate holding company (and its subsidiaries) from any provision or provisions of the Act "*unless and except* insofar as *it finds the exemption detrimental to the public interest or the interest of investors or consumers.*" 15 U.S.C. 79c(a)(1) (emphasis added). Holding companies not exempted by section 3(a)(1) are not the subject of this proposed rulemaking because their diversification activities, if any, are already subject to appropriate review, or because diversification is not relevant to their operations. Section 3(a)(2) exempts a holding company that is predominantly a public-utility company. Such a company's diversified activities, whether conducted directly as a division of the holding company, or through a subsidiary, make it possible for state regulatory authorities to monitor and delimit such activities in the context of ratemaking or the approval of security issuances. Section 3(a)(3) exempts a holding company that is primarily engaged in an industrial or other non-utility business where the utility subsidiary is functionally related to the (primary) non-utility business. Section 3(a)(4) exempts a holding company that is temporarily a holding company by reason of the acquisition of securities for purposes of liquidation or distribution in connection with a bona fide debt previously contracted, or in connection with a bona fide arrangement for the underwriting or distribution of securities. Section 3(a)(5) affords an exemption only when the utility operations conducted by a holding company are such that the holding company's utility interests are essentially foreign and include at most a small or minor domestic utility.

character.[2] Congress' decision is consistent with indications in the Act's legislative history that a major purpose of the Act was to create a system to control public-utility holding companies that escaped effective state regulation because of their interstate activities.[3] While Congress' purpose in adopting the section 3(a)(1) exemption is not entirely explicit, it appears that Congress believed that a company that is "predominantly intrastate" could be effectively controlled by the state in which it is primarily located.[4] This assessment is supported by the Senate and House Reports, which state that a predominantly intrastate company is "essentially not the kind of public-utility holding compan[y] at which the purposes of the legislation are directed * * *."[5]

2. Operation of Sections 3(a)(1) and 3(c)

Section 3(a)(1) of the Act provides that the Commission "shall" grant an exemption from "any provision or provisions" of the Act and the rules thereunder to a predominantly intrastate holding company and its subsidiaries "unless and except" the Commission finds the exemption "detrimental to the public interest or the interest of investors or consumers" (hereinafter referred to as "protected interests").[6]

The terms "provision or provisions" allow for a partial exemption; that is, the Commission can condition or qualify an exemption, or limit an exemption to particular provisions of the Act.[7]

The Commission also has the power to revoke a company's exemption[8] and has exercised that power in two cases. In each case, it found both changed circumstances (as set forth in section 3(c)) and detriment to protected interests (as set forth in section 3(a)).[9]

3. Relationship of Detriment to Diversification

To determine the meaning of "detrimental" in the context of the "unless and except" clause of section 3(a), and the extent to which "diversification" is to be considered in the analysis, it is necessary to consider the language of the statute and its purpose, as well as the Act's legislative history.

A. Section 1: Abuses Sought To Be Eliminated by the Act

Non-utility diversification and investment in speculative ventures by public utility holding companies was of concern to Congress in the passage of the Act. To eliminate the abuses identified in section 1(b)(4)[10] and other abuses and to further the Act's policies, Congress adopted section 11(b) (15 U.S.C. 79k(b)) which by its terms applies only to registered holding companies.[11]

Congress did not make strict compliance with section 11(b)(1) a prerequisite to obtaining an intrastate exemption under section 3(a)(1).[12] Thus, it appears that Congress did not intend that diversification *per se* should make an exemption under section 3(a)(1) unavailable.

Since intrastate holding companies meeting the provisions of section 3(a) are not prohibited from non-utility diversification *per se*, it is the Commission's obligation under section 3(a)(1) to determine the circumstances in which such diversification is or could be detrimental to protected interests and, therefore, provide a basis for denying an exemption.

B. Section 11(b): Exempt Company Diversification.

In the early years of the administration of the Act, the Commission in some cases granted exemptions under section 3(a), which permitted retention of non-utility properties that were not functionally related to the operations of public-utility companies. The Commission did not press for full compliance with the standards of section 11(b)(1) only as a matter of discretion, not for lack of authority under the Act.[13]

More recently, the Commission, on a few occasions, has considered the availability of a section 3(a)(1) exemption and the extent to which section 11(b)(1) should be applied to intrastate public utility holding companies that diversify into, especially, unrelated non-utility areas.[14] The most extensive, albeit inconclusive, consideration of the subject is found in *Pacific Lighting Corp.*, 45 S.E.C. 152 (1973), where four Commissioners considered for the first time whether a predominantly intrastate holding company's diversification into non-utility businesses made its continued exemption detrimental to protected interests within the meaning of the "unless and except" clause. Because a majority of the Commission considering the issue were unable to agree on whether Pacific Lighting met the appropriate standards, the company retained its exemption.[15]

Discussion

Recently, substantial diversification activities by some exempt intrastate holding companies have raised questions concerning whether these companies continue to be entitled to their exemptions from the Act.[16] Moreover, utilities whose major construction projects are completed or nearing completion or have been deferred because the increased demand for utility services, at least temporarily, has slowed or halted may be expected, because of surplus retained earnings, to increase unrelated non-utility business investment.[17]

When an exempt public-utility holding company engages in non-utility activities, there is a potential for detriment to protected interests.[18] Should non-utility investments prove unsuccessful, the investment caliber of the exempt holding company's securities may decline, the costs of raising additional capital for contribution to utility affiliates may rise, and the rates charged to consumers, which support the securities, may become higher than might otherwise be necessary. Other potential detriments that could result from non-utility diversification include the transfer of expertise and management acumen created within a utility to non-utility ventures, cost-shifting to the utility, utility purchases from non-utility affiliates at above market prices, and the potential for decreased reliability of utility service.[19]

On the other hand, diversification by holding companies into areas unrelated to their core business could translate into improved earnings prospects for investors and could be potentially beneficial to consumers by reducing the utility's cost of capital and improving its access to the capital markets. To clarify the appropriate standards for permitting diversification activities of exempt intrastate holding companies, the Commission, pursuant to its authority under the Act, is publishing for comment this proposed rule.

We believe that the issues are most appropriately addressed through rulemaking. That process does not call into doubt the exempt status of any company that has substantially diversified into unrelated non-utility businesses. Rather, as a safe harbor 15 rule, rule 17 does not express the only circumstances in which diversification activities may be conducted without constituting detriment to protected interests. Moreover, our proposals afford a period of three years from their adoption for (1) an exempt intrastate public-utility holding company to adjust its degree of diversification in businesses unrelated to its utility operations and satisfy certain other conditions or (2) the holding company's state of organization to provide a regulatory structure meeting the requirements of the "state" safe harbor set forth in paragraph (a)(2) of rule 17.

At the end of the three-year period, any company exempt by order would continue to be exempt until, under section 3(c) of the Act, the Commission by order revoked its order. Claimants under rule 2 with investments in unrelated non-utility businesses at the end of such three-year period and not able to meet one of the safe harbor provisions of rule 17 would lose their exemptions at that time and would either have to register or file good faith applications for exemptions which would afford temporary exemptions pending Commission action on the applications.

1. The Proposed New Rule

The Commission believes Congress intended that the Act, among other things, regulate holding companies that escaped effective state regulation because of their interstate activities.[20]

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[2] H.R. Rep. No. 1318, 74th Cong., 1st Sess. 10 (1935) ("House Report"); *see also* S. Rep. No. 621, 74th Cong., 1st Sess. 24 (1935) ("Senate Report").

[3] *See, e.g.*, Senate Report, *supra* note 2, at 12; House Report, *supra* note 2, at 3. Other parts of the legislative history discuss particular difficulties faced by states in regulating interstate holding company systems. For example, the House Report describes a holding-company's keeping of its books in a state other than the one in which it is located, in order to escape effective state regulation, as "* * * [o]ne of the most obstructive features of the holding-company device from the point of view of State regulation of local operating companies." House Report, *supra* note 2, at 30. *See also* 79 Cong. Rec. 8386–87 (1935) (Wheeler)

[4] *See, e.g.*, Report of National Power Policy Committee, H. Doc. No. 137, 74th Cong., 1st Sess. 8 (1935) ("Power Policy Committee Report"); Senate Report at 11–12; House Report at 12. *See also* the statement by Senator Wheeler: This bill, * * * seeks not for further concentration of power in the hands of the Government * * *; on the contrary, the tendency of the bill is to make those power-holding companies decentralize, so that they can be controlled in a small number of States where they carry on their operating facilities. 79 Cong. Rec. 8384.

[5] Senate Report, *supra* note 2, at 24; House Report, *supra* note 2, at 10.

[6] The original draft of S. 2796 provided that the Commission "may exempt" a holding company. This was amended to "shall exempt" in order to remove the Commission's discretion whether to grant an exemption. 79 Cong. Rec. 8391, 8394, 8395 (Wheeler). Nevertheless, Congress made it clear that the Commission retained the ability to make certain that the exemptions conformed to the Act's purposes: By thus imposing a mandatory duty upon the Commission to exempt companies falling within defined categories except where such exemption is definitely detrimental to the basic purposes of the statute, the Committee has felt free to broaden the exemptions beyond what would be justified if the exemptions had been made unqualified and self-operative and beyond the power of the Commission to correct when abused or used to circumvent the purposes of the title. Senate Report, *supra* note 2, at 24. *See also* 79 Cong. Rec. 8396.

[7] *See, e.g., Long Island Lighting Co.*, 18 S.E.C. 717 (1945), where the Commission revoked an exemption from all provisions of the Act which it had granted nine years previously and granted instead a modified exemption from certain provisions of the Act, while requiring registration and compliance with others; *North American Co. v. S.E.C.*, 327 U.S. 686, 698–99 (1946), where the Supreme Court notes that the Commission could exempt a predominantly intrastate holding company from section 11 or any provision of the Act; *United Utilities*, 20 S.E.C. 496 (1945), where the Commission granted an exemption subject to the condition that the holding company sell its out-of-state assets. In the case of a partial exemption, the holding company would be required to register with respect to those provisions from which it is not exempt. *Lykes Bros., Inc.*, 46 S.E.C. 1198, 1199 (1978), citing *The Peoples Gas Light and Coke Co.*, 43 S.E.C. 624, 631 (1967); *Washington Gas Light Co.*, 44 S.E.C. 515, 518 (1971); *American & Foreign Power Co.*, 6 S.E.C. 266, 402 (1939).

[8] Section 3(c) provides, in pertinent part, that: [w]henever the Commission, on its own motion, or upon application by the holding company or any subsidiary company thereof exempted by any order issued under subsection (a), or by the subsidiary company exempt by any order issued under subsection (b), finds that the circumstances which gave rise to the issuance of such order no longer exist, the Commission shall by order revoke such order.

[9] In *Long Island Lighting Co.*, 18 S.E.C. 717 (1945), changed circumstances in the company's structure resulted in non-compliance with section 11(b)(2) (governing corporate structure and voting distribution), which the Commission determined was detrimental to the public interest. 18 S.E.C. at 772. The Commission also found detriment to the public in *Colonial Gas Energy Sys.*, HCAR No. 22144 (July 30, 1981), where changes in the financial structure of Colonial impaired its ability to raise needed capital and adversely affected its operating subsidiaries.

[10] Section 1(b)(4) provides that a detriment to protected interests exists when the growth and extension of holding companies bears no relation to economy of management and operation or the integration and coordination of related operating properties.

[11] Section 11(b)(1) (15 U.S.C. 79k(b)(1)) requires a registered holding company to limit its utility operations essentially to "a single integrated public-utility system." Section 11(b)(1) also forbids a registered holding company from diversifying into any non-utility business unless that business is "reasonably incidental or economically necessary or appropriate" to its utility operations. With respect to section 11(b)(1), it has been the Commission's consistent interpretation, subject to certain limited exceptions, that a registered holding company may not engage in a non-utility business unless it is functionally related to the operations of the public-utility system of the holding company. *See Michican Consolidated Gas Co. v. S.E.C.* 444 F.2d 913 (D.C. Cir. 1971).

[12] *See North American Co. v. S.E.C.*, 327 U.S. at 698–99: Not all companies that are engaged in interstate activities, however, must necessarily comply with section 11(b)(1). By the terms of section 3(a)(1), if a holding company and all of its subsidiaries are predominantly intrastate in character * * * the Commission may grant an exemption from any provision of the Act unless and except insofar as it finds the exemption detrimental to the public interest * * * There also are indications in the legislative history that "the exemptions granted to such companies (pursuant to section 3(a)) would, of course, free them from the provisions of Section 11." 79 Coog. Rec. at 10359 (statement of Congressman Eicher).

[13] This basis for Commission action was made explicit by the Commission in *Public Service Corp. of New Jersey*, 27 S.E.C. 602, 708–08 (1948).

[14] The Commission, in construing section 11(b)(1)in relation to *registered* holding companies, has adopted what has been referred to as the "functional relationship" test. *Michigan Consolidated Gas Co. v. S.E.C.*, 444 F.2d 913, 916–17 (D.C. Cir. 1971), *citing North American Co.* v. *S.E.C.*, 327 U.S. at 607 (dicta approving functional relationship test). To retain (or acquire pursuant to sections 9 and 10) a particular non-utility business, a registered holding company or its subsidiary must show that its "other business" is reasonably incidental or economically necessary or appropriate to the operations of such integrated public-utility system, and that the retention of the other business is necessary or appropriate in the public interest. *Id.* at 916.

[15] A similar result was reached in *Notional Utilities & Industries Corp.*, 45 S.E.C. 167 (1973).

[16] As of October 31, 1988, there were 86 companies that claimed exemption under rule 2 as intrastate holding companies. About one-half of such claimants had only non-utility interests that were functionally related to the utility operations of the holding-company system. The others divide roughly equally into two groups: One group consisted of claimants with 10% or more of consolidated assets attributable to non-utility, non-functionally related interests; the other group comprised claimants that were less diversified. Of the 34 companies exempted by order of the Commission under section 3(a)(1), about one-fifth appeared to be significantly diversified at that date.

[17] Other possibilities for surplus earnings are: (1) Pay higher dividends to shareholders; (2) repurchase common stock; (3) retire debt and preferred stock; (4) diversify into functionally related non-utility projects; (5) expand current plant beyond anticipated needs; (6) hold liquid capital for potential increase in plant capacity; and (7) decrease consumer rates.

[18] Actual harm to investors, consumers, or the public interest is not required to invoke the "unless and except" clause. The Commission has recognized that potential harm to protected interests is itself a detriment even though no actual harm has yet occurred. *Standard Oil Co.*, 10 S.E.C. 1122, 1129 (1942), *citing Detroit Edison Co. v. S.E.C.*, 119 F.2d 730, 739 (1941). ("The statute contemplates action prospectively. It is a preventive measure intended to regulate action before the interests of those concerned are adversely affected.")

[19] The Federal Energy Regulatory Commission ("FERC") has also recognized the potential detriments of an unfettered diversification program. Twice recently, first in *Central Vermont Public Service Corp.*, 39 FERC Para. 61,295 (1987), and then in *Central Illinois Public Service Co.*, Docket No. EL 87–60–000 (January 20, 1988), FERC invoked the provisions of section 203 of the Federal Power Act to assert jurisdiction over the formation of a new holding company. In *Central Vermont*, FERC stated its reasons for asserting jurisdiction as follows: Reorganizations wherein a jurisdictional public utility becomes the wholly-owned subsidiary of a parent holding company may present potential for abuses adverse to the public interest. *To the extent that utility revenues are used to finance non-utility operations, the cost of utility services may be increased. If the parent makes unwise investment decisions the reliability of service of jurisdictional facilities could be impaired.* This aspect of the holding company/operating utility relationship was a concern to those who enacted Title II of the Public Utility Act. (Footnote omitted.) We are asserting jurisdiction over this type of transaction so that in cases where (FERC) finds sufficient potential for abuse, (FERC) may disapprove the transaction, or place appropriate conditions on the use of operating utility funds, pursuant to its authority under section 203(b) of the statute (emphasis added).

[20] Section 1(a)(5) (15 U.S.C. 79a(a)(5)) states that public-utility holding companies and their

Continued

Congress also intended that the Commission have jurisdiction over companies exempt from the Act under section 3(a)(1) as predominantly intrastate. In addition, Congress did not intend that exempt intrastate companies be subject to section 11(b)(1) prohibitions against non-utility diversification to the same extent as registered companies. The nature, extent, and structure of such diversification and the regulatory environment in which it occurs would be relevant in the Commission's determination whether there is a detriment to protected interests that would limit the availability of an exemption under section 3(a)(1).[21] Where the relevant state has made a judgment that diversification would not conflict with its ability to exercise regulatory control and that control is manifested in a state public-utility holding company statute, an exemption from the Act under section 3(a)(1) for a predominantly intrastate company which has, or intends to have, diversification activities would be consistent with the purposes of the Act.

Accordingly, and assuming no other basis existed for denying an exemption under section 3(a)(1), the proposed rule would provide a "state" safe harbor under the following circumstances:

—The state has enacted a statute governing the formation and/or operations of intrastate public-utility holding companies and their affiliates;

—The state has considered, or authorized the appropriate state commission to consider, the issue of diversification of intrastate public-utility holding companies into non-utility businesses in light of the public policy goals of the Act, and the state and/or state commission has written policies with regard to such diversification; and

—The holding company is in compliance with any state statute and any state commission rules, regulations and orders pertaining to diversification activities.

The Commission recognizes that this formulation may be perceived as not reflecting the degree of state involvement appropriate under the Act. Specific comment is invited concerning alternative standards for the state safe harbor that would provide greater assurance to the Commission that the purposes and policies of the Act were being followed.

Not all states, however, have enacted or may enact a statutory structure addressing diversification. In the absence of a state judgment as to what is necessary for it to exercise regulatory control over diversification by intrastate holding companies, the rule would provide a "regulatory" safe harbor for companies seeking to diversify. In addition, should state regulation of diversification prove to be ineffective in safeguarding protected interests, the Commission could amend its rules to provide only for a "regulatory" safe harbor.

Paragraph (a) of the proposed rule sets forth the general proposition of the safe harbors that, on and after three years from the adoption of the rule, for purposes of the "unless and except" clause in section 3(a), interests in non-utility businesses would not be deemed detrimental to the protected interests specified in that clause in either of two situations.

Paragraph (a)(1) states the conditions of the "regulatory" safe harbor provision. The first three conditions are intended to insulate the utility business of an intrastate holding company to the extent possible from being adversely affected by losses in non-utility operations and to prevent the diversion of utility resources for non-utility purposes. The fourth condition would require that each unrelated non-utility interest, and the totality of such interests, be limited in size, relative too the consolidated assets of the holding company, and therefore that all other non-utility interests be attributable to functionally related businesses, that is, businesses a registered holding company could retain.

Paragraph (a)(2) is the "state" safe harbor provision, which provides that the Commission would not withhold exemption on the basis of diversification if (i) the state of organization of the holding company has enacted a statute governing the formation and/or operations of intrastate public-utility holding companies and their affiliates; (ii) the state has considered, or authorized the appropriate state commission to consider, the issue of diversification of intrastate public-utility holding companies into non-utility businesses in light of the public policy goals of the Act, and the state and/or state commission has written policies with regard to such diversification; and (iii) the holding company is in compliance with any state statute and any state commission rules, regulations and orders pertaining to diversification activities.

Holding companies exempt under section 3(a)(1) by order of the Commission when rule 17 and the related proposals become effective would have a one-time, and then an annual, filing requirement of certain information required of companies claiming exemption under rule 2(a)(1) under the Act to enable the Commission to determine if a safe harbor is available. Where none is available, the Commission would determine whether to initiate a proceeding to revoke the exempt company's order because of changed circumstances and potential detriment to protected interests.

The rule would have no force or effect for a period of three years after its adoption to allow affected companies to make any necessary adjustments, or to allow states to enact the appropriate public-utility holding company legislation to achieve regulatory control over intrastate holding companies.

2. The Proposed Amendment to Rule 2

There are two ways an intrastate holding company can obtain an exemption: by order upon application under section 3 or under rule 2. Rule 2(a)(1) allows a company to obtain the exemption afforded by section 3(a)(1) by filing a claim of exemption on form U–3A–2. Such a claim exempts the holding company from all provisions of the Act (except section 9(a)(2)). No notice is published and no order is issued, but the

subsidiary companies are affected with a national public interest in that, among other things, "their activities extending over many States are not susceptible of effective control by any State and make difficult, if not impossible, effective State regulation of public-utility companies."

[21] Consistent with the legislative history supporting the view that a major purpose of the Act is to control public-utility holding companies that escape effective state regulation, the Commission's decisions have at times given weight to the determinations of local authorities when analyzing the issue of detriment. In late 1988, in approving a restructuring transaction by Wisconsin Energy Corporation ("WEC") that essentially changed the basis for the company's exemption from section 3(a)(2) (15 U.S.C. 79c(a)(2)) to section 3(a)(1), the Commission reiterated its position that the "unless and except" clause does not subject unregistered holding companies to the diversification limits of section 11(b)(1) to the same extent as registered holding companies. *Wisconsin Energy Corp.*, HCAR No. 24267, 37 SEC Docket 367 (December 16, 1986). The Commission noted that there was a comprehensive Wisconsin law governing the formation and operation of utility holding companies and an order of the Public Service Commission of Wisconsin ("PSCW") limiting WEC's investment in non-utility assets to approximately 25% of holding-company assets, ensuring that the holding company would maintain its predominantly utility orientation. The Commission found that WEC's diversification activities, as specifically limited by the Wisconsin statute and PSCW order, would not be detrimental to carrying out the provisions of section 11(b)(1), as they might be applied to intrastate exempt holding companies under the "unless and except" clause of section 3(a). *Id.* at 395.

More recently, the Commission took the same position regarding diversification it had taken in WEC in a very similar restructuring by another Wisconsin intrastate holding company. *WPL Holding, Inc.*, HCAR No. 24390, 40 SEC Docket 834 (February 28, 1988).

claim must be renewed by annual filings on or before March 1 of each year.[22]

The Commission is proposing an amendment to rule 2 to provide that, on and after three years from the adoption of the amendment, claims of exemption by an intrastate public-utility holding company would, *in order to be effective*, require that, in addition to satisfying paragraph (a)(1) of rule 2, such holding company meet one of the safe harbor provisions of rule 17. Companies relying on rule 2 on its effective date would have 60 days in which to file an updated form U–3A–2, as proposed to be amended. Claimants who could no longer rely on amended rule 2, when effective, because they did not come within one of the safe harbor provisions of rule 17, may be able to file a good faith application for an order of the Commission under section 3(a)(1). In any proceeding on such an application, unrelated non-utility investments would not be presumed to be detrimental to protected interests.

3. The Proposed Amendment to Form U–3A–2

Form U–3A–2, the statement by a holding company claiming exemption under rule 2(a)(1) from all provisions of the Act except section 9(a)(2), would be amended to solicit information that would enable a determination that a rule 2 claim by an intrastate holding company was meritorious in view of the requirement added to rule 2.

Request for Comments

The Commission requests public comment on proposed rule 17, proposed amended rule 2, and proposed amended form U–3A–2. Specific comment is invited on: (1) The available empirical evidence with respect to the benefits and/or detriments of diversification into unrelated non-utility businesses by public-utility holding companies; (2) whether the conditions of the safe harbors in proposed rule 17 are appropriate, whether more restrictive conditions are needed, or whether less restrictive conditions would be adequate. In particular, the Commission invites comment on whether the consolidated asset test and the percentage limitations, in paragraph (a)(1)(iv), which derive from the Commission's opinions in *Pacific Lighting Corp.*, are appropriate, or whether some other test, for example the approximately 25% of holding-company-assets test in Wisconsin's holding company statute, which makes no distinction between diversification which is related and unrelated to utility operations, would be an appropriate standard; and (3) whether other measures (e.g., gross assets, total revenues, net income, shareholder equity, etc.) would be more appropriate. If you suggest other measures, please include related percentage figures that you recommend, and the basis therefor.

Pacific Enterprises (formerly Pacific Lighting Corporation) ("Pacific") and a subcommittee of the American Bar Association ("ABA") have submitted proposals, dated July 11 and July 14, 1988, respectively, concerning diversification by exempt holding companies.

Pacific suggests that the Commission issue a statement of administrative policy regarding exempt holding company diversification ("Policy Statement"). Under the Policy Statement:

—Diversification would not, in and of itself, be deemed detrimental to protected interests.

—Diversification would be first and foremost a matter for state regulation.

—A comprehensive state holding company statute should not be the only means by which states can adequately protect the interests the Act is intended to protect.

—Five non-exclusive factors (concerning operational and functional dealings between utility subsidiaries and the holding company and non-utility subsidiaries) would be listed for diversifying exempted holding companies to consider, these being factors the Commission would consider important in determining whether diversification is conducted in a manner that may be detrimental to protected interests.

The ABA's proposed Interpretive Release would create presumptions as to situations, on account of diversification, when the Commission would not challenge exemptions, and when it might do so, in its discretion. Under the Interpretive Release:

—Diversification would not affect an exemption if a state regulator with jurisdiction over utility rates and services has (1) approved or sanctioned diversification by formal decision or statement of general policy; (2) informed the Commission that the holding company diversification program is consistent with local laws and no substantial detriment to protected interests is perceived; or (3) in a proceeding involving a utility subsidiary of the holding company, in which any material question involving or arising out of diversification was specifically in issue, made no finding that diversification in and of itself is detrimental to protected interests.

—Diversification could cause the initiation of formal proceedings by the Commission in exceptional circumstances, such as when (1) a state regulator has determined that the diversification has a continuing material adverse effect on rates and services; (2) the state regulator, or others, have for good cause petitioned the Commission to initiate a proceeding under the "unless and except" clause to determine if the exemption is detrimental to protected interests; or (3) the Commission's staff has determined that there is imminent danger of substantial harm to a utility subsidiary of the exempt holding company by reason of diversification.

These submissions, which differ in form and substance from the Commission's rulemaking proposal, have been placed in the public comment file on the Commission's proposal and are available for inspection. While these submissions are not proposed as alternatives to the proposed Commission rule set forth below, the Commission invites comment on whether some or all of the provisions of these proposals should supplement or supplant the proposed rule.

Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis ("Analysis") in accordance with 5 U.S.C. 603 regarding the proposal of rule 17 and the proposed amendments to rule 2 and form U–3A–2. The Analysis explains that proposed rule 17 would specify certain circumstances, on and after three years from adoption, in which non-utility diversification by an intrastate public-utility holding company would not be deemed detrimental to the public interest or the interest of investors or consumers. By creating safe harbors, the proposed rule is intended to provide intrastate public-utility holding companies with greater certainty in determining the circumstances under which, because of diversified activities, exemptive orders would be entered or, having been granted, continued. The proposed amendment to rule 2, on and after three years from its adoption, would require that a claim of exemption under that rule by an intrastate holding

[22] Under rule 6, the exemption may be terminated by a registered letter from the Commission stating that a question exists about the holding company's entitlement to the exemption. A company receiving a termination letter has 30 days to either register under the Act or file a formal application for an exemption which, if filed in good faith, exempts the company from the Act until the Commission issues a final order.

company, in order to be effective, would require such holding company to meet one of the safe harbor provisions of rule 17. The proposed amendment to form U–3A–2 would require intrastate holding companies claiming exemption under rule 2 to furnish information supporting the company's ability to rely on one of the safe harbor provisions of rule 17. In passing the Act, Congress included in section 3(a)(1) a broad exemption for intrastate public-utility holding companies. The exemption apparently stemmed from Congress' belief that for such companies state regulation would provide sufficient public protection to obviate the need for additional federal regulation. Congress did not, however, shield such companies entirely from federal regulatory oversight; section 3(a)(1) requires the Commission to grant exemptions to intrastate holding companies "unless and except" as the Commission finds the exemption detrimental to protected interests. The Analysis states that substantial diversification activities by some intrastate holding companies have brought to the fore the need for the Commission to clarify the standards for determining when such activities jeopardize exemptions from the Act. The Analysis notes that presently only one exempt intrastate public-utility holding company, out of a total of 122, is a small entity as defined by the Commission's rules. The Analysis also states that the Commission believes that additional reporting or recordkeeping requirements imposed by the proposals call for information that is readily available and can be assembled with no significant increase in cost to any intrastate holding company. The proposals could significantly impact a small entity that intended to diversify and rely on one of the safe harbors by possibly causing such a holding company to limit its acquisition of unrelated non-utility interests as might be required by the "regulatory" safe harbor, or as might be required by a "state" safe harbor, depending on its requirements. The Analysis notes that the Commission has considered certain significant alternatives, including requiring fewer or less burdensome conditions to be satisfied for a safe harbor to be available to a small entity. The Analysis states, however, that the Commission believes that such an alternative would be inconsistent with the legislative intent of section 3(a). With respect to the reporting provisions the proposals would add, the Analysis states that the Commission believes that an exemption from all or part of those provisions for small entities is not appropriate in view of the minimal compliance costs involved and the need by the Commission of the information to evaluate entitlement to a safe harbor. A copy of this Analysis may be obtained by contacting Sidney L. Cimmet, Esq., Mail Stop 7–1, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Cost Benefit of Proposal

The proposed rule, rule amendment, and form amendment ("the proposals") could significantly increase regulatory compliance costs for those intrastate public-utility holding companies that have substantially diversified, or intend to substantially diversify into non-utility businesses unrelated to their utility operations. The proposals could require an intrastate holding company that seeks an exemption, or that seeks to preserve an existing exemption, to (1) forgo an acquisition of an unrelated non-utility interest or to divest itself of such interests previously acquired; or alternatively, (2) seek enactment by the legislature in its state of organization of a regulatory structure meeting the requirements of the "state" safe harbor set forth in paragraph (a)(2) of rule 17. However, the consequence of an intrastate holding company having to tailor diversification activities to come within a "regulatory" safe harbor, or a "state" safe harbor where one exists, to ensure the availability or continuation of exempt status, carries out the Commission's mandate to delimit detriment to protected interests that could result from diversification by intrastate holding companies into businesses bearing no relationship to the economy and management of utility operations.

Where the states do not act, the federal standard embodied in the "regulatory" safe harbor is intended to delimit detriment that could stem from diversification. However, where the relevant state has made a judgment that holding company system diversification would not conflict with its ability to exercise regulatory control over utility services, and that control flows from a state public-utility holding company statute, the Commission would permit effectuation of Congress' apparent view that an intrastate holding company could be effectively controlled by its state of organization.

The Commission invites specific comments as to its assessments of the costs and benefits associated with the proposals, in addition to estimates of any costs and benefits perceived by commenters.

Statutory Basis and Text of Amendments

Rule 17 and the amendments to rule 2(a)(1) and form U–3A–2 are being proposed pursuant to the authority set forth in sections 3(a)(1) and 20(a) of the Public Utility Holding Company Act of 1935.

List of Subjects in 17 CFR Parts 250 and 259

Accounting, Reporting and recordkeeping requirements, Securities, Utilities.

Text of Proposed Rule, Rule Amendment, and Form Amendment

Chapter II of Title 17 of the Code of Federal Regulations is proposed to be amended as follows:

PART 250—RULES AND REGULATIONS, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

1. The authority citation for Part 250 is amended by adding the following citation:

Authority: Secs. 3, 20, 49 Stat. 810, 833; 15 U.S.C. 79c, 79t, unless otherwise noted. * * * Section 250.17 also issued under 15 U.S.C. 79c(a)(1) and 79t(a).

2. By adding § 250.17 to read as follows:

§ 250.17 Diversification by intrastate holding companies.

(a) On and after three years from (insert date three years after date of publication of the adopted Rule in the **Federal Register**) the Commission, in determining whether to grant, modify, or revoke any order upon application under paragraph (1) of section 3(a) of the Act shall not deem holding-company direct or indirect interests in non-utility businesses to be detrimental to the public interest or the interest of investors or consumers, within the meaning of section 3(a) of the Act, if—

(1)(i) All such holding-company interests are segregated from its public-utility business through separate corporate subsidiaries;

(ii) There are no service, materials or other contracts between affiliated public-utility companies of the holding company and either the holding company or its non-utility affiliates except to the extent such contracts are subject to the supervision of a State commission;

(iii) Except for dividend payments to the holding company from its affiliated public-utility companies, which dividend payments have not been objected to by the State commission, there is no use of funds, or credit, or of operating management of affiliated public-utility companies of the holding company for non-utility purposes; and

(iv) Holding-company interests in non-utility businesses not having a functional relationship, within the meaning of section 11(b)(1) of the Act, to its affiliated public-utility companies together with guarantees by the holding company of any obligations of such non-utility businesses constitute not more than 10% of the consolidated assets of the holding company; and holding-company interests in, and guarantees of obligations of, any one such business constitute not more than 2% of such assets; or

(2)(i) The State of organization of the holding company has enacted a statute governing the formation and/or operations of intrastate public-utility holding companies and their affiliates;

(ii) The State has considered, or authorized the appropriate State commission to consider, the issue of diversification of intrastate public-utility holding companies into non-utility businesses in light of the public policy goals of the Act, and the State and/or State commission has written policies with regard to such diversification; and

(iii) The holding company is in compliance with any State statute and any State commission rules, regulations and orders pertaining to diversification activities.

(b) For purposes of paragraph (a)(1)(iv) of this section, holding-company direct or indirect interests in securities which could be acquired by a registered holding company under section 9(c) of the Act, or by rules, regulations, or order of the Commission also under section 9(c), shall be excluded for purposes of computation from the numerator, but not the denominator, of the fraction in that calculation.

(c) Any holding company exempt under section 3(a)(1) of the Act by order of the Commission on (insert date three years after date of publication of the adopted Rule in the **Federal Register**) shall file with the Commission within 60 days after such date, and on or before March 1 of each year thereafter, a report, bearing the file number that had been assigned to the exemptive order by the Commission, containing the information, as of the close of the last calendar year, required by paragraph (4) and Exhibit A, or by Exhibits A and B, as appropriate, of amended Form U–3A–2.

3. Section 250.2 is amended by revising paragraph (a)(1) and adding paragraph (c) as follows:

§ 250.2 Exemption of holding companies which are intrastate or predominantly operating companies.

(a) * * *

(1)(i) Such holding company, and every subsidiary company thereof which is a public-utility company from which such holding company derives, directly or indirectly, any material part of its income are predominantly intrastate in character and carry on their business substantially in a single State in which such holding company and every such subsidiary company thereof are organized; and

(ii) On or after (insert date three years after date of publication of the adopted Rule in the **Federal Register**) such holding company meets one of the safe harbor provisions of § 250.17.

* * * * * *

(c) Any holding company which has filed an exemption statement in reliance on paragraph (a)(1) of this section prior to (insert date three years after date of publication of the adopted Rule in the **Federal Register**) shall file with the Commission within 60 days after such date a special one-time filing of Form U–3A–2, as amended, containing only the information, as of the close of the last calendar year, required by paragraph (4) and Exhibit A, or by Exhibits A and B, as appropriate, of amended Form U–3A–2.

PART 259—FORMS PRESCRIBED UNDER THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

4. The authority citation for Part 259 is amended by adding the following citation:

Authority: Secs. 5, 6, 7, 10, 12, 13, 14, 17(a), 20, 49 Stat. 812, 814, 815, 818, 823, 825, 827, 830, 833; 15 U.S.C. 79e, 79f, 79g, 79j, 79l, 79m, 79n, 79q, 79t. * * * Section 259.402 also issued under sections 3(a)(1) (15 U.S.C. 79c(a)(1)) and 20(a) (15 U.S.C. 79t(a)).

Form U–3A–2 [Amended]

5. By amending Form U–3A–2 (referenced in § 259.402) for annual reports pursuant to Rule 2 (§ 250.2 of this chapter) for exempt holding companies which are intrastate or predominantly operating companies by adding item 4 and revising Exhibit A and adding Exhibit B as follows:

* * * * * *

Statement by Holding Company Claiming Exemption Under Rule 2 from the Provisions of the Public Utility Holding Company Act of 1935

* * * * * *

4. If the claimant relies on § 250.2(a)(1) and § 250.17(a)(1) of this chapter, the following information as of the close of the last calendar year:

(a) Consolidated assets of claimant.

(b) A statement (1) identifying and describing with specificity each direct or indirect non-utility interest of claimant and (2) categorizing each such interest as functionally related, or unrelated, within the meaning of section 11(b)(1) of the Act.

(c) The percentage, showing its calculation, of consolidated assets represented by each such interest.

* * * * * *

Exhibit A

A consolidating statement of income and surplus of the claimant and its direct or indirect affiliated companies for the last calendar year, together with a consolidating balance sheet of claimant and such affiliated companies as of the close of such calendar year.

Exhibit B

If the claimant relies on § 250.2(a)(1) and § 250.17(a)(2) of this chapter, a statement by the claimant that its State of organization has enacted a statute governing the formation and/or operations of intrastate public-utility holding companies and their affiliates; the State has considered, or authorized the appropriate State commission to consider, the issue of diversification of intrastate public-utility holding companies into non-utility businesses in light of the public policy goals of the Act, and the State and/or State commission has written policies with regard to such diversification; and that the holding company is in compliance with any State statute and any State commission rules, regulations and orders pertaining to diversification activities.

* * * * * *

By the Commission.
February 7, 1989.

Jonathan G. Katz,
Secretary.

[FR Doc. 89–3401 Filed 2–13–89; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 422

Social Security Numbers for Newborn Children

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rule.

SUMMARY: In these proposed regulations, we are amending our rules on applying for a social security number. Under the proposed regulations, when a parent gives information to hospital personnel for the birth registration process of a State, including for this purpose, the District of Columbia, Puerto Rico, Guam, and New York City, the

parent will also be able to request a social security number for his or her newborn child. When a parent has requested a social security number for the child, the State vital statistics office will receive the request with the birth registration data from the hospital and then forward this information electronically to the Social Security Administration (SSA) where a social security number will be assigned and a card will be issued for the child. The vital statistics data that the State office receives from the hospital and forwards to SSA will serve as evidence of the age, identity, and U.S. citizenship of the newborn child for purposes of assigning a social security number to that child. Under these procedures, the parent will not be required to file a separate application for a social security number for the child.

DATES: Your comments will be considered if we receive them no later than March 16, 1989.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD 21235, or delivered to the Office of Regulations, Social Security Administration, 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Jack Schanberger, Room 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965–8471.

SUPPLEMENTARY INFORMATION: At the request of parents or guardians, the Secretary of Health and Human Services (the Secretary) is authorized under section 205(c)(2)(B)(i) of the Social Security Act (the Act) to take affirmative measures to assure that social security account numbers are assigned to or on behalf of children who are below school age. This section of the Act also provides that the Secretary shall require applicants for social security numbers to furnish the evidence necessary to establish their age, U.S. citizenship or alien status, and true identity.

Our current regulations at 20 CFR 422.103 provide that an individual may apply for a social security number by filing a signed Form SS–5 "Application for Social Security Number Card", and by submitting evidence of age, identity, and U.S. citizenship or alien status as described in § 422.107. Under these current rules, a U.S. birth certificate is generally accepted as evidence of age, as evidence of identity for a child under 7 years of age, and as evidence of U.S. citizenship.

In 1986, we assigned approximately 5.7 million social security numbers, including almost 2 million to children under age 3. We expect to be assigning many more social security numbers to young children, primarily because of the Tax Reform Act of 1986 (Pub. L. 99–514, section 1524) and the Family Support Act of 1988 (Pub. L. 100–485). The Tax Reform Act requires that a taxpayer who claims an exemption for a dependent must provide the taxpayer identification number of the dependent, which is usually a social security number, on tax returns due after December 31, 1967, if the dependent is age 5 or older. Under the Family Support Act, a taxpayer must provide a taxpayer identification number for dependents age 2 or older on tax returns due after December 31, 1989.

In 1987, we began a pilot project in three States (New Mexico, Iowa, and Indiana) to test the feasibility of assigning a social security number to a newborn child, based on a parent's request, as part of the State's birth registration process. At the request of these States, the procedures established for the pilot have continued. Under these pilot procedures, a parent's participation on behalf of his or her newborn child is voluntary, and we do not assign a number unless the parent requests it.

Because of the growing need for persons to obtain social security number cards at an early age, we initiated the pilot projects as an alternative to the existing process which is provided for by our current regulations. The process of issuing a social security number card based on a parent's request soon after the child's birth was well received by the new parents, the pilot States, and the participating hospitals. Our experience shows that on a monthly basis, more than 75 percent of parents requested social security number cards for their newborn children. Further, participation rates have increased because more parents have become aware of the service and the convenience of requesting a card in the hospital as part of the birth registration process rather than filing a Form SS–5 at a later time.

Because of the success of the pilot projects, we are asking the other States, including, for the purpose of this service, the District of Columbia, Puerto Rico, Guam, and New York City, to enter into agreements with us to make this service available nationally. We do not plan to extend this service to any other U.S. territories or possessions because of the relatively small number of births and requests for social security numbers in those places. We are proposing to amend our regulations to include this procedure as another means of applying for a social security number.

After reviewing the results of the pilot projects and discussing the pilot procedures with other State authorities, we are confident that the birth registration process provides reliable information for assigning social security numbers to newborn children. Further, the analysis we conducted in one of the pilot States shows that there is very little potential for fraud and error in the birth registration process.

Under these proposed rules, the birth registration processes of participating State vital statistics offices may be used to obtain a social security number card. A question will be added to the birth registration form, asking the parent whether he or she wants to have a social security number card issued to the newborn child. If a number is requested by the child's parent, the appropriate State vital statistics office will electronically forward the request and the child's name, date and place of birth, sex, mother's maiden name, father's name, address of mother, and birth certificate number to SSA. We will then assign a social security number to the child and send the card to the child at the mother's address.

In this process of assigning a social security number to a newborn child, we will consider a checked box or other affirmative response by a parent as indicated on the birth registration form as a request for a social security number for the child. We will consider the information transmitted to us from the birth registration form by these State offices to be acceptable evidence of the child's age, identity, and U.S. citizenship because it contains the information we need to establish these factors.

As noted above, section 205(c)(2)(B)(i) of the Act provides that the Secretary is authorized to assign social security numbers to or on behalf of children who are below school age at the request of their parents or guardians. Although our regulations governing the issuance of a social security number state that every individual needing a number may apply by filing a signed Form SS–5, we are not requiring a signed SS–5 for a number in the case of parents who request a number for their newborn child as part of the State birth registration process. We are modifying our procedures for several reasons. First, most States require a parent's signature on the birth registration document. Additionally, when preparing the registration document, most hospitals will use a worksheet which includes the question on requesting a social security number and requires a parent's signature. We will work with States which do not require a signature on their registration document to prepare operating procedures and guidelines for all hospitals within their jurisdictions, including a facsimile of a worksheet which contains both the social security number question and a parent's signature, to assure that a parent who requested a number for a newborn child did so affirmatively. We, therefore, believe that the procedures we are proposing for assigning social security numbers to newborn children will minimize the possibility that we will assign numbers in error.

To emphasize the voluntary nature of the process, we will attempt to inform parents about the social security number process before the birth of their child so that they can make a knowledgeable choice about requesting a number. To do this, we plan to use, for each State that decides to participate in this enumeration process, the public information materials we have developed. The materials will include TV and radio promotions, articles in the print media, and, most important, public information materials distributed in hospitals, doctors' offices, prenatal clinics, etc.

Because of our desire to implement this procedure nationally in 1989, we are providing a 30-day comment period instead of the usual 60 days. We believe this is reasonable in view of the public interest considerations that have prompted the proposed rules and the favorable reactions we have received on the pilot projects.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because the regulations do not meet any of the threshold criteria for a major rule. These changes are expected to save the Federal Government $11.4 million annually when fully implemented. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that these regulations, which affect the issuance of social security number cards to newborn children, will not, if promulgated, have a substantial number of small entities, because they affect only the voluntary participation of parents, hospitals, and State vital statistics offices. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not needed.

Paperwork Reduction Act

These regulations impose no new reporting/recordkeeping requirements requiring the Office of Management and Budget clearance.

(Catalog of Federal Domestic Assistance Programs Nos. 13.802 Social Security—Disability Insurance; 13.803 Social Security—Retirement Insurance; 13.805 Social Security—Survivors Insurance)

List of Subjects in 20 CFR Part 422

Administrative practice and procedure, Freedom of Information, Organization and Functions (Government agencies), Social Security.

Dated: September 16, 1988.

Dorcas R. Hardy,

Commissioner of Social Security.

Approved: December 30, 1988.

Otis R. Bowen,

Secretary of Health and Human Services.

For the reasons set out in the preamble, Subpart B of Part 422 of 20 CFR Chapter III is proposed to be amended as follows:

PART 422—ORGANIZATIONS AND PROCEDURES

The authority citation for Subpart B continues to read as follows:

Authority: Secs. 205 and 1102, Social Security Act (42 U.S.C. 405 and 1302).

2. Section 422.103 is amended by revising paragraphs (b) and (c), to read as follows:

§ 422.103 Social security numbers.

* * * * *

(b) *Applying for a number—(1) Form SS–5.* An individual needing a social security number may apply for one by filing a signed Form SS–5, "Application for A Social Security Number Card," at any social security office and submitting the required evidence. Upon request, the social security office may distribute a quantity of application Form SS–5 to labor unions, employers, or other representative organizations. An individual outside the United States may apply for a social security number card at the Veterans Administration regional office, Manila, Philippines, at any U.S. foreign service post, or at a U.S. military post outside the United States. See § 422.106 for special procedures for filing applications with other government agencies. Form SS–5 may be obtained at:

(i) Any local social security office;

(ii) The Social Security Administration, 300 N. Greene Street, Baltimore, Md. 21201;

(iii) Offices of District Directors of Internal Revenue;

(iv) U.S. Postal Service offices (except the main office in cities having a social security office);

(v) U.S. Employment Service offices in cities which do not have a social security office;

(vi) The Veterans, Administration Regional Office, Manila, Philippines;

(vii) Any U.S. foreign service post; and

(viii) U.S military posts outside the United States.

(2) *Birth registration document.* The Social Security Administration may enter into an agreement with officials of a State, including, for this purpose, the District of Columbia, Puerto Rico, Guam, and New York City, to establish, as part of the official birth registration process, a procedure to assist SSA in assigning social security numbers to newborn children. Where an agreement is in effect, a parent, as part of the official birth registration process, need not complete a Form SS–5 and may request that SSA assign a social security number to the newborn child.

(c) *How numbers are assigned—(1) Request on Form SS–5.* If the applicant has completed a Form SS–5, the social security office, the Veterans' Administration regional office, Manila, Philippines, the U.S. foreign service post, or the U.S. military post outside the United States that receives the completed Form SS–5 will require the applicant to furnish documentary evidence, as necessary, to assist SSA in establishing the age, U.S. citizenship or alien status, true identity, and previously assigned social security number(s), if any, of the applicant. A personal interview may be required of the applicant. See § 422.107 for evidence requirements. After review of the documentary evidence, the completed Form SS–5 is forwarded, or data from the SS–5 is transmitted, to SSA's central office in Baltimore, Md. where the data are electronically screened against SSA's files. If the applicant requests evidence to show that he or she has filed an application for a social security number card, a receipt or equivalent document may be furnished. If the electronic screening or other investigation does not disclose a previously assigned number, SSA's central office assigns a number and issues a social security number card. If investigation discloses a previously

assigned number for the applicant, a duplicate social security number card is issued.

(2) *Request on birth registration document.* Where a parent has requested a social security number for a newborn child as part of an official birth registration process described in paragraph (b)(2) of this section, the State vital statistics office will electronically transmit the request to SSA's central office in Baltimore, Md. along with the child's name, date and place of birth, sex, mother's maiden name, father's name (if shown on the birth registration), address of the mother, and birth certificate number. This birth registration information received by SSA from the State vital statistics office will be used to establish the age, identity, and U.S. citizenship of the newborn child. Using this information, SSA will assign a number to the child, and send the social security number card to the child at the mother's address.

* * * * *

[FR Doc. 89-3413 Filed 2-13-89; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE-44-87]

Income Taxes; Minimum Participation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to minimum participation standards under section 401(a)(26) of the Internal Revenue Code of 1986. They reflect changes made by section 1112(b) and (e) of the Tax Reform Act of 1986. These regulations will provide the public with guidance on the minimum participation standards and will affect sponsors of, and participants in, qualified pension, profit-sharing and stock bonus plans.

DATES: Written comments and requests for a public hearing must be delivered or mailed by April 17, 1989. The proposed amendments generally apply to plan years beginning after December 31, 1988, except as otherwise specified in the Tax Reform Act of 1986.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (EE-44-87), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Nancy J. Marks of the Office of the Assistant Chief Counsel (Employee Benefits and Exempt Organizations), Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, (Attention: CC:LR:T) (202) 343-6954 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 401(a)(26) of the Internal Revenue Code of 1986 (Code). These amendments are proposed to conform the regulations to section 1112(b) and (e) of the Tax Reform Act of 1986. (TRA '86) (100 Stat. 2444).

Amendments to Qualified Plans

Generally, section 401(a)(26) imposes new minimum participation requirements that plans must meet in order to be qualified under section 401(a). These rules are, in general, operational. To the extent that a plan does not meet the requirements of section 401(a)(26), the plan must be amended as of the date provided herein in order to retain qualification, such amendment to be effective as of the first day of the first plan year to which section 401(a)(26) applies.

Analysis

In General

Section 401(a)(26) requires that a qualified plan benefit at least the lesser of 50 employees or 40 percent of all employees of the employer. Section 401(a)(26) applies separately to an employer's active employees and the employer's former employees. In addition, to the extent determined by the Secretary, section 401(a)(26) applies separately to certain separate benefit structures, trusts, and other arrangements. The minimum participation requirement may not be satisfied by aggregating separate plans, even if such plans are identical in all respects or are treated as a single plan for coverage and nondiscrimination purposes and, as such, are treated as providing nondiscriminatory employer contributions or benefits.

Pursuant to the grant of regulatory authority to provide that certain separate benefit structures may be treated as separate plans subject to section 401(a)(26), the proposed regulation provides that a plan satisfies section 401(a)(26) only if each current benefit structure under the plan satisfies section 401(a)(26) and, in the case of a defined benefit plan (but not a defined contribution plan), the plan's prior benefit structure satisfies section 401(a)(26). Under the regulation, a single current benefit structure exists with respect to each portion of a uniform benefit formula (either a formula for allocating contributions and forfeitures under a defined contribution plan or a formula for determining an employee's benefit attributable to the current year under a defined contribution plan) to the extent that subsidies, optional forms of benefit, rights and features are provided on a uniform basis to employees eligible to participate under such formula. Finally, each defined benefit plan (but not a defined contribution plan) includes a single prior benefit structure that includes all benefits accrued under the plan as of the end of the prior year.

Section 401(a)(26) generally is effective with respect to plan years beginning after December 31, 1988. A deferred effective date applies with respect to certain collectively bargained plans.

Significant Special and Transitional Rules

The proposed regulation includes a variety of permanent special rules designed to facilitate the application of and compliance with section 401(a)(26), and includes several transition rules for plan years beginning in 1989. The most significant of the special permanent rules are as follows:

1. A current benefit structure satisfies section 401(a)(26) even though the structure benefits less than 50 employees and less than 40 percent of the employer's employees as long as the structure benefits at least 20 employees who primarily are nonhighly compensated employees and the structure is included in a plan that currently provides meaningful benefit accruals to at least 50 total employees. If such a current benefit structure benefits only employees who become employed by the employer in connection with a corporate acquisition or similar transaction, the structure is treated as satisfying section 401(a)(26) for 5 plan years after the transaction even though the structure benefiting such employees may benefit fewer than 20 employees.

2. A current benefit structure satisfies section 401(a)(26) without regard to the number of employees that it benefits as long as such structure benefits only employees who are not, and have never been, highly compensated employees of the employer, and such structure (and the benefits thereunder) are not relied upon by any other plan or current benefit structure to satisfy sections 410(b) or 401(a)(4).

3. A defined contribution plan's prior benefit structure is deemed to satisfy section 401(a)(26). Thus, a frozen defined contribution plan satisfies section 401(a)(26) without regard to the number of employees who have benefits under the plan.

4. A defined benefit plan's prior benefit structure satisfies section 401(a)(26) if at least 100 active and former employees have more than de minimis benefits under the plan and no three highly compensated employees have more than 25 percent of the total accrued benefits under the plan.

5. A defined benefit plan's prior benefit structure satisfies section 401(a)(26) if the plan provides additional, meaningful benefit accruals under one or more current benefit structures for at least 50 employees or 40 percent of the employer's employees.

6. Most defined benefit plans that satisfy section 401(a)(26) with respect to prior benefit structures because the plans provide additional meaningful current benefit accruals will satisfy section 401(a)(26) in subsequent years with respect to the plan's prior structure without any requirement for retesting as long as the current benefit formula (including the rate of accrual) relied on remains in effect and continues to provide benefit accruals to a group of employees that satisfies the requirements of section 401(a)(26).

The most significant of the transition rules included in the proposed regulation for plan years beginning in 1989 are as follows:

1. A simplified definition of current benefit structure applies for the 1989 plan year so that only major plan benefit features need to be taken into account.

2. A reasonable compliance standard applies for the 1989 plan year for determining whether a defined benefit plan's prior benefit structure satisfies section 401(a)(26).

3. Certain plans may be terminated on or before May 31, 1989, without being amended to comply with section 401(a)(26).

4. Employer reversions with respect to certain defined benefit plans may qualify for the waiver of the excise tax under section 4980 even though the date of plan termination occurs after section 401(a)(26) becomes effective with respect to the plan as long the date of plan termination occurs on or before May 31, 1989, and plan assets are distributed to participants within a reasonable time after such termination.

Separate Benefit Structures

The proposed regulation provides that each single plan within the meaning of section 414(l) is a separate plan for purposes of section 401(a)(26) that must satisfy section 401(a)(26). In addition, the regulation provides that each separate benefit structure under a plan must satisfy section 401(a)(26).

The rules in the proposed regulation that govern the identification and testing of separate benefit structures are designed to reflect these basic policy objectives of section 401(a)(26):

1. Promote the integrity of the distinctions in the deduction limits and the contribution and benefit limits as they apply to defined benefit plans and defined contribution plans by limiting the extent to which a defined benefit plan generally may operate as an individual account for one or a small group of employees.

2. Promote the nondiscriminatory provision of benefits by limiting the extent to which an employer is able to design different benefit formulas for different employees in order to maximize benefit disparities in favor of highly compensated employees.

3. Limit the extent to which an employer maintaining a defined benefit plan that is not providing active employees with meaningful, additional benefits (e.g., a frozen or substantially frozen defined benefit plan) is able to delay plan termination in order to (i) increase the amount of its reversion upon plan termination, (ii) delay its receipt of the reversion to maximize its own benefit, or (iii) delay a benefit increase to favor a small group of highly compensated employees who remain with benefits under the plan.

The proposed regulation thus exercises the grant of regulatory authority to provide that certain separate benefit structures are to be treated as separate plans subject to section 401(a)(26). Instead of providing that such separate benefit structures are to be treated as separate plans, the proposed regulation directly applies section 401(a)(26) to such separate benefit structures. Thus, the proposed regulation provides that each current benefit structure that is included in a single plan (within section 414(l) is a separate benefit structure that must satisfy section 401(a)(26). In addition, each defined benefit plan (within section 414(l) includes a single prior benefit structure that must satisfy section 401(a)(26).

Pursuant to the proposed regulation, a single current benefit structure under a defined contribution plan comprises a uniform formula under which contributions and forfeitures are allocated among employees for the current year and uniform subsidies, optional forms of benefits, rights and features are provided. In the case of a defined benefit plan, a single current benefit structure comprises a uniform benefit formula under which an employee's benefit attributable to the current year of service is determined and uniform subsidies, optional forms of benefits, rights and features are provided to the participants benefiting under such structure. Thus, for example, a defined benefit plan that currently provides three different benefit formulas for determining the benefits of three different groups of employees is treated as having three separate current benefit structures each of which must separately satisfy section 401(a)(26). Similarly, a defined benefit plan which provides for a single benefit formula but makes a single sum distribution available to division A employees and not to division B employees is treated as having two separate current benefit structures each of which must separately satisfy section 401(a)(26). A current structure exists whenever there is an increase in accruals whether as a result of additional years of service, changes in compensation, or other factors. Such increases are treated as benefit attributable to the year of service in which they accrue.

Multiple employer plans must satisfy the requirements of section 401(a)(26) on an employer-by-employer basis rather than on the basis of participating employers in the aggregate. Failure to satisfy the requirements of section 401(a)(26) with respect to any component of this testing process may result in disqualification of the plan for all participating employers. The proposed regulation does not provide an exception to this rule. However, in a proper case, the Commissioner could retain the plan's qualified status for innocent employers by requiring corrective and remedial action with respect to the plan such as allowing the withdrawal of an offending employer, allowing a disqualifying defect to be cured within a reasonable period of time after the plan administrator has or should have had knowledge of such disqualifying event or was otherwise notified by the Internal Revenue Service of the disqualifying defects, or requiring plan amendments to prevent future disqualifying events. To the extent that coverage under a multiemployer plan is treated as being provided, in whole or in part, under a multiple employer plan, this relief is applicable to the multiemployer plan.

Finally, the proposed regulation provides that a separate current benefit structure exists if any person has any priority, either under the terms of the plan or under any arrangement outside of the plan, with respect to any assets of a defined benefit plan, such as the right

to some or all of a possible reversion. Essentially, the proposed regulations provide that if, under all the facts and circumstances, an arrangement (either under or outside the plan) has the effect of modifying any feature under the plan taken into account in determining an employee's benefit, providing any employee with any priority or greater interest in a portion of the assets in the plan, or linking any financial matter involving an employee to all or a portion of the assets in the plan in a way that has the effect of creating separate accounts, such arrangement will be treated as creating a separate current benefit structure within the plan.

Current Benefit Structure Requirements

The proposed regulation provides that, in order for a plan to satisfy section 401(a)(26), each current benefit structure that benefits any active employee in the plan must benefit at least the lesser of 50 active employees or 40 percent of an employer's active employees. Similarly, a current benefit structure that benefits any former employee must benefit at least the lesser of 50 former employees or 40 percent of the employer's former employees. This approach to separate benefit structures is equivalent to providing that each current benefit structure is a separate plan that, as such, must satisfy section 401(a)(26).

The proposed regulation includes a special restructuring rule under which an employer may, solely for purposes of testing under section 401(a)(26), treat a benefit formula under a plan that would be a single current benefit structure but for differences in the rate of benefit accrual or contribution allocation into restructured separate benefit structures, one consisting of the lesser included portion of the formulas common to each of the benefit structures and one or more consisting of the portion(s) of the formula(s) that is not common to each of the benefit formulas. An employer may apply the rules of section 401(a)(26) to a plan's current benefit structures on the basis of this restructuring rule without amending the plan in any respect to reflect such restructuring. Thus, for example, a defined contribution plan that has a 10 percent of compensation allocation formula for one group of employees and a 15 percent of compensation allocation formula for another group of employees may be treated, under the restructuring rule, as having a 10 percent of compensation formula applicable to both groups of employees and a 5 percent of compensation formula applicable only to the group of employees subject to the explicit, 15 percent plan formula. Even though the plan explicitly includes the 10 percent and 15 percent formulas, the plan may be tested under section 401(a)(26) on the basis of the restructured 10 percent and 5 percent formulas.

The proposed regulation provides a special rule permitting a current benefit structure to satisfy section 401(a)(26) if such structure benefits at least the lesser of 20 active employees (rather than 50 active employees) or 40 percent of the employer's active employees. This special rule is available only if certain coverage and nondiscrimination requirements are satisfied and, in addition, the plan that includes the current benefit structure provides meaningful benefits (determined under the minimum current benefit structure test applicable with respect to prior benefit structures) to at least the lesser of 50 active employees or 40 percent of the employer's active employees.

The proposed regulation also includes special rules for certain current benefit structures that benefit only nonhighly compensated employees and for certain current benefit structures that benefit only employees "acquired" in connection with a merger or acquisition.

Prior Benefit Structure Requirements

Under the proposed regulation, a defined benefit plan (but not a defined contribution plan) is required to satisfy section 401(a)(26) with respect to the plan's prior benefit structure. As it does with current benefit structures, the proposed regulation does not provide that a prior benefit structure is a separate plan that, as such, must satisfy section 401(a)(26). Rather, the proposed regulation provides that each defined benefit plan has a single prior benefit structure that is treated as satisfying section 401(a)(26) only if at least one of several alternative tests is satisfied. This approach to separate benefit structures does not result in the application of any requirement that could not also have been applied by providing a narrower definition of separate prior benefit structures and then providing that such structures are separate plans subject to section 401(a)(26).

For example, in lieu of providing that a defined benefit plan's prior benefit structure satisfies section 401(a)(26) if the plan provides meaningful, additional benefit accruals to active employees, the proposed regulation could have been drafted to accomplish the same result by providing that a defined benefit plan does not have a prior benefit structure if the plan provides additional, meaningful benefits to active employees. Similarly, in lieu of providing that a frozen plan's prior benefit structure satisfies section 401(a)(26) if there are at least 50 active and former employees or 40 percent of the employer's active and former employees with meaningful benefits under the plan, the proposed regulation could have been drafted to provide that the portion of the frozen plan that includes employees with meaningful benefits is a separate benefit structure and that such separate structure is a separate plan which must benefit at least the lesser of 50 employees or 40 percent of the employer's employees.

The regulation includes six alternative tests under which a defined benefit plan's prior benefit structure may satisfy section 401(a)(26). These tests are designed to reflect the policy objectives of section 401(a)(26) without also requiring employers to track the many different benefit structures that may have been in effect at various times under their plans or to determine whether employees continue to have benefits under such different benefit structures.

A defined benefit plan need only satisfy one of the six alternative tests set forth in the proposed regulation. Thus, for example, in accordance with one of the alternative tests, if at least 100 active and former employees have at least de minimis benefits under a defined benefit plan and no three highly compensated employees have benefits in excess of 25 percent of the total benefits under the plan, the defined benefit plan's prior benefit structure satisfies section 401(a)(26). The employer need not satisfy any of the other alternative tests with respect to such plan's prior benefit structure.

The prior benefit structure tests fall into two general categories. The first category reflects the view that a defined benefit plan that is providing additional, meaningful, benefit accruals to active employees should not be forced either to improve benefits or to terminate simply because there is only a small number of employees with prior accrued benefits under the plan. The tests in this category thus provide that if a plan includes one or more current benefit structures for active employees that provide current benefit accruals that are meaningful relative to the benefits that have otherwise accrued under the plan, the plan's prior benefit structure is deemed to satisfy section 401(a)(26). (This is equivalent to providing that such plan does not include a prior benefit structure that must be treated as a separate plan subject to section 401(a)(26).)

The prior benefit structure tests in the second category are designed to determine whether a plan that does not include a meaningful current benefit

structure (e.g., a frozen or substantially frozen defined benefit plan) nevertheless includes meaningful or more than de minimis accrued benefits for sufficient numbers of active and former employees. (These tests are equivalent to defining a plan's prior benefit structure to include only those employees with prior accrued benefits equal to or above a meaningful or de minimis level of benefits and then treating only such portion of the plan as a separate benefit structure that must separately satisfy section 401(a)(26).)

The first category of prior benefit structure tests includes four alternative tests. Under the minimum current accrual rate test, a defined benefit plan's prior benefit structure satisfies section 401(a)(26) if at least 50 active employees or 40 percent of the employer's active employees have current accrual rates for the current year of service that are at least equal to 0.75 percent of final average compensation or 1.1 percent of career average compensation. Under the nondecreasing current benefit structure test, a defined benefit plan's prior benefit structure satisfies section 401(a)(26) if at least 50 active employees or 40 percent of the employer's active employees (including the top three highly compensated employees of the employer) have hypothetical accrued benefits (determined by assuming that current benefit structures under the plan have always been in effect) equal to or greater than their actual accrued benefits under the plan. Under the minimum current benefit structure test, a defined benefit plan's prior benefit structure satisfies section 401(a)(26) if the plan includes at least one current benefit structure that provides active employees with at least a minimum benefit accrued, which is determined by reference to the largest benefits under the plan for the highly compensated employees. Finally, under the benefit ratio test, a defined benefit plan's prior benefit structure satisfies section 401(a)(26) if the sum of the accrued benefits of all active employees under the plan is less than 60 percent of the sum of the projected accrued benefits of all active employees under the plan and if the plan satisfies the concentration test (described below).

The second category of prior benefit structure tests includes two alternative tests, which are designed for plans that do not satisfy at least one of the four preceding tests. Under the minimum accrued benefit test, a defined benefit plan's prior benefit structure satisfies section 401(a)(26) if there are at least 50 active and former employees or 40 percent of the employer's active and former employees with at least a minimum benefit, which is determined by reference to the largest benefits under the plan for the highly compensated employees. Under the minimum employee coverage test, a defined benefit plan's prior benefit structure satisfies section 401(a)(26) if at least 100 active and former employees of the employer have more than de minimis benefits under such plan and the plan satisfies the concentration test.

The concentration test, which applies under both the benefit ratio and the minimum employee coverage tests, is satisfied by a plan only if the sum of the benefits of the three highly compensated active and former employees of the employer with the largest benefits under the plan does not constitute more than 25 percent of the sum of the total benefits of all active and former employees under the plan.

In making these prior benefit structure determinations, an employee's accrued benefit under the plan being tested is the employee's actual accrued benefit under such plan. Thus, benefits provided under social security or similar Federal or state law, the permitted disparity under section 401(l), and benefits provided under any other plan generally are disregarded. However, the method for determining whether an employee's benefit is at least a minimum benefit relative to either the largest or other benefits under a plan is designed to take into account the permitted disparity under section 401(l) without regard to whether the plan being tested actually uses such permitted disparity.

Finally, the proposed regulation contains a delegation of authority to the Commissioner to prescribe additional tests under which a plan's prior benefit structure will satisfy section 401(a)(26). This delegation of authority, and similar delegations of authority in other sections of the proposed regulation, states that the delegation may be exercised only in the form of revenue rulings, notices or other documents of general applicability. No inferences should be drawn with respect to the manner in which the Commissioner may exercise other delegations of authority provided for in this or other regulations.

Exceptions

The proposed regulation includes three exceptions under which a plan is deemed to satisfy section 401(a)(26). First, the proposed regulation includes the statutory rule under which the portion of a multiemployer plan that benefits employees who are covered pursuant to a collective bargaining agreement is deemed to satisfy section 401(a)(26). However, this exception does not apply with respect to any collective bargaining agreement if more than two percent of the employees covered pursuant to such agreement are professional employees (e.g., doctors, lawyers, architects, and investment bankers).

In addition, the proposed regulation adopts a special rule described in the legislative history under which a plan is deemed to satisfy section 401(a)(26) if such plan does not benefit, either for the current year or for any of the five immediately preceding plan years, any employee who is or ever has been a highly compensated employee. This special rule is available only if the plan is not aggregated with any other plan for purposes of applying the minimum coverage or nondiscrimination rules to any such plan (including the average benefit test in section 410(b)(2)(A)(ii)).

Finally, the proposed regulation includes a limited exception for certain underfunded defined benefit plans. As set forth previously, if a defined benefit plan is frozen and does not include meaningful benefits for sufficient numbers of employees, section 401(a)(26) generally should operate to force the employer to wind up the plan when the number of employees with meaningful benefits under the plan is less than 50 employees or 40 percent of the employees of the employer. However, the proposed regulation provides that, in general, a defined benefit plan is deemed to satisfy section 401(a)(26) if such plan is subject to Title IV of ERISA or primarily benefits nonhighly compensated employees; the plan does not contain sufficient assets to satisfy all liabilities under the plan; all benefit accruals under the plan have ceased; and the plan does not rely on this rule for more than three years. In addition, a plan covered by Title IV of ERISA that would have failed section 401(a)(26) for the plan year containing August 16, 1986, if such section had been in effect for such year, can rely on this rule for plan years commencing before January 1, 1994.

Reliance on These Proposed Regulations

Taxpayers may rely on these proposed regulations for guidance pending the issuance of final regulations. Because these regulations are generally effective for plan years beginning after 1988, the Service will apply these proposed regulations in issuing rulings and in examining returns with respect to taxpayers and plans. If future regulations are more restrictive, such guidance will be applied without retroactive effect.

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Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis is therefore not required. Although this document is a notice of proposed rulemaking which solicits public comments, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, the proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Comments and Requests for Public Hearing

Before adopting there proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Drafting Information

The principal author of the proposed regulations is Nancy J. Marks of the Office of the Assistant Chief Counsel (Employee Benefits and Exempt Organizations). However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the proposed regulations on matters of both substance and style.

List of Subjects in 26 CFR 1.401–0—1.425–1

Employee benefit plan, Employee stock ownership plans, Income taxes, Individual retirement accounts, Pensions, Stock options.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Part 1 are as follows:

PART 1—[AMENDED]

Paragraph 1. The authority citation for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * *. Section 1.401(a)(26)–1 through 8 also issued under 26 U.S.C. 401(a)(26).* * *

Par. 2. The following new §§ 1.401(a)(26)–0 through 1.401(a)(26)–8 are added immediately after § 1.401(a)–19 to read as follows:

§ 1.401(a)(26)–0 Table of contents.

The following sections provide rules under section 401(a)(26):

§ 1.401(a)(26)–1 Minimum participation rule.
§ 1.401(a)(26)–2 Definitions of plan, current benefit structure, and prior benefit structure.
§ 1.401(a)(26)–3 Employees who benefit under a plan and current benefit structure.
§ 1.401(a)(26)–4 Excludable employees.
§ 1.401(a)(26)–5 Testing methods.
§ 1.401(a)(26)–6 Testing prior benefit structures.
§ 1.401(a)(26)–7—Definitions.
§ 1.401(a)(26)–8—Effective dates and transition rules.
§ 1.401(a)(26)–1 Minimum participation rule.

(a) *General rules.* A plan is a qualified plan (and a trust related to a plan is a qualified trust) for a plan year only if such plan satisfies section 401(a)(26) for such year. Generally, a plan will satisfy section 401(a)(26) only if the plan satisfies paragraph (b)(1) of this section with respect to each current benefit structure for active employees. Paragraph (c) of this section contains special rules regarding the application of paragraph (b) of this section to current benefit structures. If a plan includes a current benefit structure for former employees, the plan also must satisfy paragraph (b)(2) of this section with respect to such current benefit structure. Also, a defined benefit plan (but not a defined contribution plan) must satisfy the requirements of § 1.401(a)(26)–6 with respect to its prior benefit structure. Finally, paragraph (d) of this section provides exceptions to section 401(a)(26) for plans that do not benefit any highly compensated employees, multiemployer plans, and underfunded defined benefit plans.

(b) *Current benefit structures*—(1) *Active employees*—(i) *General rule.* A plan satisfies this paragraph (b) for a plan year only if each current benefit structure included in the plan and benefiting active employees benefits at least the lesser of—

(A) 50 active employees of the employer, or

(B) 40 percent of the active employees of the employer. See paragraph (c) of this section for additional rules regarding the application of this paragraph (b)(1).

(ii) *Example.* The rule in this paragraph (b) is illustrated by the following example:

Example. Assume that employer A employees 100 active employees and maintains one defined contribution plan (plan X) and one defined benefit plan (plan Y). All 100 employees benefit under plan X's current benefit structure, which provides all employees under the plan with a contribution allocation of 5 percent of compensation. This current benefit structure satisfies this paragraph (b) and plan X thus satisfies section 401(a)(26). Plan Y includes two current benefit structures, one of which (Y1) provides for a benefit of 1 percent per year of service times final average compensation, and the other of which (Y2) provides for a benefit of 2 percent per year of service times career average compensation. Current benefit structure Y1 benefits 75 active employees and thus satisfies this paragraph (b). Current structure Y2, however, benefits only 25 active employees and thus fails to satisfy this paragraph (b). Accordingly, defined benefit plan Y fails to satisfy section 401(a)(26) for the year.

(2) *Former employees.* A plan satisfies this paragraph (b)(2) for a plan year only if each current benefit structure included in the plan and benefiting former employees benefits at least the lesser of—

(i) 50 former employees of the employer, or

(ii) 40 percent of the former employees of the employer. See paragraph (c) of this section for additional rules regarding the application of this paragraph (b)(2).

(c) *Special rules for testing current benefit structures*—(1) *Restructured current benefit formulas*—(i) *In general.* In testing current benefit structures under paragraphs (b)(1) and (b)(2) of this section, an employer may, in certain circumstances, restructure two or more current benefit formulas under a plan that would constitute a single structure but for differences in the rate of benefit accural or contribution allocation into restructured separate benefit structures, one consisting of the portion of the formulas that is common to each of the benefit structures and one or more consisting of the portion(s) of the formula that is not common to each of the benefit formulas. Each of the resulting restructured benefit structures must satisfy paragraph (b)(1) or (b)(2) of this section, whichever is applicable. See § 1.401(a)(26)–2(e)(1) for rules governing the restructuring of current benefit formulas.

(ii) *Example.* The rule in paragraph (c)(1)(i) of this section may be illustrated by the following example.

Example. Defined benefit plan A includes two current benefit structures—one of which benefits the 200 active employees of division X and provides a benefit of 1½ percent times years of service times final average compensation, and the other of which benefits the 30 active employees of division Y and provides a benefit of 1 percent times years of service times final average compensation. In all other respects,

employees have identical rights under the plan. Division X's current benefit structure satisfies paragraph (b)(1) of this section, but division Y's current benefit structure fails to satisfy such paragraph. However, the two current benefit structures may be retested on the basis of two restructured current benefit structures. (Under § 1.401(a)(26)–2(e)(1), an employer is not required to amend a plan to reflect the restructured current benefit structures in order to be able to use the restructuring method of testing under section 401(a)(26)). One restructured current benefit structure, which provides a benefit of 1 percent times years of service times final average compensation, benefits all 230 active employees of divisions X and Y. The other restructured current benefit structure, which provides a benefit of ½ percent times years of service times final average compensation, benefits division X's 200 active employees. Both of the restructured current benefit structures thus satisfy paragraph (b)(1) of this section.

(2) *Current benefit structures that benefit at least 20 active employees*—(i) *In general.* A plan may apply paragraph (b)(1)(i) of this section for a plan year by substituting "20 active employees" for "50 active employees" if the tests in paragraphs (c)(4)(ii) and (c)(4)(iii) of this section are satisfied for such plan year.

(ii) *Minimum nonhighly compensated employee test.* This test is satisfied for a plan year only if at least 70 percent of the active employees who benefit under the current benefit structure being tested are nonhighly compensated employees.

(iii) *Minimum participation test*—(A) *Defined benefit plans.* This test is satisfied with respect to a defined benefit plan for a plan year only if, as of the close of such year, at least the lesser of 50 active employees or 40 percent of the employer's active employees have future service benefit rates (or current accrual rates) under the plan that includes the current benefit structure being tested that are at least the minimum benefit rate (or the minimum current accrual rate) for such plan. See § 1.401(a)(26)–6(b)(2)(iv)(B) and (c)(2) for the defintions of future service benefit rate and minimum benefit rate. See § 1.401(a)(26)–6(b) (2) (ii)(C) and (D) for the definition of current accrual rate and minimum current accural rate. This test is deemed to be satisfied for a plan year if, as of the close of such year, at least 100 active employees of the employer are currently accruing greater than de minimis benefits under an ongoing benefit formula under the plan that includes the current benefit structure being tested and the plan satisfies the concentration test set forth in paragraph (b)(4) of § 1.401(a)(26)–6.

(B) *Defined contribution plans.* This test is satisfied with respect to a defined contribution plan for a plan year only if, for such plan year, at least the lesser of 50 active employees or 40 percent of the employer's active employees receive contribution allocations or, in the case of a plan subject to section 401(k) or 401(m), are eligible to receive contribution allocations, under the plan that includes the current benefit structure being tested, that are greater than de minimis allocations.

(3) *Current benefit structures that do not benefit any highly compensated employees.* A current benefit structure is deemed to satisfy paragraph (b)(1) of this section for a plan year if such current benefit structure does not benefit any active employee who is or ever has been a highly compensated employee of the employer. This paragraph (c)(5) is available to a current benefit structure only if such structure is included in a plan that benefits at least the lesser of 50 employees or 40 percent of the employer's employees, and all plans of the employer (including the plan that includes the current benefit structure being tested) would satisfy sections 401(a)(4) and 410(b) (including the average benefit test of section 410(b)(2)(A)(ii)) if the employees benefitting under the current benefit structure being tested were treated as accruing no benefits under such structure. For purposes of this paragraph (c)(5), employees who were highly compensated employees only for plan years ending before January 1, 1984, are treated as not having been highly compensated employees.

(4) *Qualified cash or deferred arrangements maintained by employers that include certain governmental or tax-exempt entities*—(i) *General rule.* In the case of a plan including a qualified cash or deferred arrangement under section 401(k) that is maintained by an employer which employs employees precluded from being eligible employees under the arrangement by reason of section 401(k)(4)(B), the current benefit structure consisting of elective contributions under the arrangement is deemed to satisfy paragraph (b)(1) of this section if more than 95 percent of all active employees of the employer benefit under such current benefit structure. Solely for purposes of this determination, employees precluded from being eligible employees under the qualified cash or deferred arrangement by reason of section 401(k)(4)(B) are to be treated as excludable employees. This paragraph (c)(6) applies also to employer matching contributions that are subject to section 401(m) and are geared to elective contributions under a qualified cash or deferred arrangement that satisfies this paragraph (c)(6).

(ii) *Example.* The rule of this paragraph (c)(6) can be illustrated by the following example:

Example: Assume that an employer (determined after application of sections 414 (b), (c), (m), (o), and (r)) consists of one taxable entity that has 30 active employees and several tax-exempt entities that have, in the aggregate, 500 active employees. Assume further that the employer maintains a plan including a qualified cash or deferred arrangement for the 30 active employees of the taxable entity, and that section 401(k)(4)(B) precludes all of the 500 active employees of the tax-exempt entities from eligibility under the arrangement. Because 30 active employees is less than the lesser of 50 active employees or 40 percent of the employer's 530 active employees (i.e., 212 employees), the current benefit structure consisting of the cash or deferred arrangement fails to satisfy paragraph (b)(1) of this section. However, under this paragraph (c)(6), this current benefit structure is deemed to satisfy paragraph (b)(1) of this section because the current benefit structure benefits 100 percent of the employer's active employees, determined by disregarding all of the 500 active employees of the tax-exempt entities who are precluded from eligibility by reason of section 401(k)(4)(B).

(5) *Current benefit structures for former employees.* In the case of a plan that includes a current benefit structure for former employees (e.g., a plan that is amended to provide an ad hoc cost-of-living adjustment to the benefit provided former employees under the plan), such current benefit structure is deemed to satisfy paragraph (b)(2) of this section if at least five former employees benefit under such current benefit structure and either more than 95 percent of all former employees with benefits under the plan benefit under such current benefit structure or at least 60 percent of the former employees who benefit under such current benefit structure are not highly compensated former employees. Solely for purposes of this determination, a former employee who has a vested accrued benefit under the plan and is an excludable former employee under § 1.401(a)(26)–4(c)(3) solely because such employee's vested accrued benefit is not in excess of $3,500 is not treated as an excludable former employee.

(6) *Certain acquisitions or dispositions*—(i) *In general.* Under section 401(a)(26), rules similar to rules prescribed under section 410(b)(6)(C)(i) shall apply.

(ii) *Transition rule.* Where there has been a transaction described in section 401(b)(6)(C) in the year prior to the first year in which section 401(a)(26) becomes effective with respect to a plan, affected by such transaction, which plan includes a current benefit structure, the

current benefit structure will satisfy section 401(a)(26) for the transition period commencing on the date of the transaction and ending on the last day of the first plan year beginning after the date of the transaction if either of the following two requirements is met:

(A) The current benefit structure satisfies section 401(a)(26) immediately before the transaction on the basis of only the applicable statutory provisions, without regard to the regulations under section 401(a)(26), in the manner provided in § 1.401(a)(26)–8(c)(3). Thus, a current benefit structure satisfies the requirements of section 401(a)(26), immediately prior to the transaction, if such structure was part of a plan that benefited 50 employees or 40 percent of the employees of the employer without regard to current or prior benefit structures existing under the plan.

(B) The current benefit structure affected by the transaction satisfies the rule in paragraph (c)(7) of this section.

(7) *Acquisition current benefit structures.* A current benefit structure under a defined benefit plan that benefits only employees (acquisition employees) who become employed by the employer in connection with a corporate acquisition, merger or similar transaction (transaction) is deemed to satisfy paragraph (b)(1) of this section for a plan year if all of the following requirements are satisfied for the plan year:

(i) The current benefit structure includes the same benefit formula that existed in the benefit structure under which such acquisition employees were benefiting immediately prior to the transaction or, if different, any difference reflects changes necessitated by changes in the applicable qualification requirements;

(ii) Immediately after the transaction, the current benefit structure satisfies the test of paragraph (c)(4)(ii) of this section;

(iii) The current benefit structure is included in a defined benefit plan that, as of the current plan year, satisfies the test of paragraph (c)(4)(iii) of this section; and

(iv) The transaction occurred either in the current plan year or any of the immediately preceding five plan years.

In the case of a transaction occurring prior to the effective date of section 401(a)(26) with respect to the plan, the requirements of paragraph (c)(3)(ii) of this section may be applied either immediately after the transaction or as of the first day of the first plan year for which section 401(a)(26) is effective, and the requirements of paragraph (c)(3)(iv) of this section may be applied as if the transaction occurred on December 31, 1985.

(d) *Exceptions*—(1) *Plans that do not benefit any highly compensated employees*—(i) *General rule.* A plan is deemed to satisfy section 401(a)(26) for a plan year if such plan is not a top-heavy plan under section 416 and such plan (and any predecessor plan) does not benefit, for such plan year and for any of the immediately preceding five plan years, any active or former employee who is or ever has been a highly compensated employee of the employer (either as an active employee, former employee, or both). This paragraph (d)(1) is available to a plan being tested under section 401(a)(26) only if all other plans of the employer would satisfy sections 401(a)(4) and 410(b) (including section 410(b)(2)(A)(ii)) if the employees under the plan being tested are treated as though they have no benefits under such plan. For purposes of applying this rule, employees who were highly compensated employees only for plan years ending before January 1, 1984, are not treated as highly compensated employees.

(ii) *Example.* This paragraph (d)(1) can be illustrated by the following example:

Example: Assume that an employer has 100 employees, only 5 of whom are highly compensated employees. The employer maintains two defined benefit plans during a particular year: plan X has a uniform, unit benefit formula and benefits the employer's 5 highly compensated employees and 70 of the nonhighly compensated employees, and plan Y benefits the remaining 25 nonhighly-compensated employees. Plan X satisfies the ratio coverage test of section 410(b)(1)(B) and section 401(a)(4) without regard to plan Y. Also, plan X is not top-heavy. If none of the nonhighly compensated employees benefit under plan Y have ever been highly compensated employees of the employer, plan Y is deemed to satisfy section 401(a)(26) for the year even though only 25 employees benefit under such plan.

(2) *Multiemployer plan exception*—(i) *In general.* The portion of a multiemployer plan that, for a plan year, benefits only employees included in a unit of employees covered by a collective bargaining agreement is deemed to be a separate plan that satisfies section 401(a)(26) for such plan year. If a multiemployer plan also benefits employees who are not included in any collective bargaining unit, the portion of the plan benefiting such employees must separately satisfy section 401(a)(26).

(ii) *Covered by a collective bargaining agreement.* An employee is covered by a collective bargaining agreement only if such employee is represented by a bona fide employee representative that is a party to the collective bargaining agreement or agreements under which the multiemployer plan is maintained. Thus, for example, an employee of either the multiemployer plan or the employee representative is not included in a unit of employees covered pursuant to the collective bargaining agreement under which the plan is maintained merely because the employee is covered under the plan pursuant to an agreement entered into by the multiemployer plan or employee representative on behalf of the employee (other than in the capacity of an employee representative with respect to such employee). This is the case even if all such employees covered under the plan constitute only a de minimis percentage of the total employees benefiting under the plan.

(iii) *Multiemployer plans covering professional employes.* This paragraph (d)(2) does not apply for a plan year with respect to a collective bargaining agreement if, for such year, more than 2 percent of the employees who are covered pursuant to such agreement are professionals as defined in §1.401(a)(26)–7(g). This paragraph (d)(2)(iii) is applied separately with respect to each collective baragaining agreement. Thus, for example, if a multiemployer plan benefits a group of employees covered by collective bargaining agreement X and a group of employees covered by collective bargaining agreement Y and if more than 2 percent of the employees covered pursuant to agreement X are professionals (but not agreement Y), this paragraph (d)(2) applies with respect to employees covered pursuant to agreement Y, but not with respect to employees covered pursuant to agreement X.

(3) *Certain underfunded defined benefit plans*—(i) *In general.* A defined benefit plan is deemed to satisfy section 401(a)(26) for a plan year if all of the conditions of pargraphs (d)(3)(ii) through (d)(3)(v) of this section are satisfied with respect to such plan for such year.

(ii) *Eligible plans.* This condition is satisfied for a plan year only if the defined benefit plan is subject to Title IV of ERISA for such year or if, as of the close of such year, the sum of the accrued benefits of the nonhighly compensated employees under the plan is at least 50 percent of the sum of the accrued benefits for all employees under the plan. See paragraph (c)(1) of §1.401(a)(26)–6 for the definition of accrued benefit.

(iii) *Actuarial certification.* This condition is satisfied for a plan year only if an enrolled actuary provides the employer with an actuarial certification that, as of the last day of the immediately preceding plan year, the defined benefit plan does not have sufficient assets to satisfy all liabilities under the plan (determined in accordance with section 401(a)(2)). Such certification must be included with a timely filed actuarial report as required under section 6059.

(iv) *Cessation of all benefit accruals.* This condition is satisfied for a plan only if, for such year, no employees accrue any additional benefits under the plan (including benefits attributable to increases in compensation or in the section 415 or section 401(a)(17) limits), except for the minium benefits for non-key employees required by section 416.

(v) *Plan year limitation.* This condition is satisfied for a plan year only if the defined benefit plan does not rely on this paragraph (d)(3) to satisfy section 401(a)(26) for more than three plan years (including the current plan year). For plan years commencing before January 1, 1994, this condition may be applied by substituting "five plan years" for "three plan years" in the preceding sentence if the plan being tested was in existence on August 16, 1986; the plan would have failed to satisfy section 401(a)(26) for the plan year including August 16, 1986, if such section had applied with respect to such year; the plan fails to satisfy section 401(a)(26) for the first plan year for which section 401(a)(26) applies with respect to such plan; and the plan has not been involved in a plan merger, spinoff, asset or liability transfer or any similar transaction since August 16, 1986. The determination of whether a plan would have failed to satisfy section 401(a)(26) for the plan year including August 16, 1986 is to be made under the rules in §1.401(a)(26)–8(c)(3).

§ 1.401(a)(26)–2 Definitions of plan, current benefit structure, and prior benefit structure.

(a) *Plan.* In general, the term "plan" refers to a plan described in section 401(a) that includes one or more trusts intended to be exempt from tax under section 501(a), and an annuity plan described in section 403(a). As described in paragraph (b) of this section, each single plan under section 414(l) is treated as a plan for purposes of section 401(a)(26). Under paragraph (c) of this section, in certain cases (including certain outside arrangements), a plan that is a single plan under paragraph (b) may be treated as comprising separate plans for purposes of section 401(a)(26). Furthermore, in accordance with section 401(a)(26)(I), section 401(a)(26) also must be satisfied with respect to current benefit structures and, in the case of defined benefit plans, prior benefit structures. Paragraphs (d) and (e) of this section set forth rules for identifying a plan's current benefit structures and prior benefit structure.

(b) *Separate asset pools are separate plans.* Each single plan within the meaning of section 414(l) is a separate plan for purposes of section 401(a)(26). See § 1.414(l)–1(b). For example, if only a portion of the assets under a defined benefit plan is available, on an ongoing basis, to provide the benefits of certain employees and the remaining assets are available only in certain limited cases to provide such benefits (but are available, in all cases, for the benefits of other employees), there are two separate plans. A single plan under section 414(l) is a plan for purposes of section 401(a)(26) notwithstanding that such plan comprises separate, written plan documents and separate trusts, each of which have received separate determination letters from the Internal Revenue Service. A defined contribution plan does not comprise separate plans merely because it includes more than one trust or it provides for separate accounts and permits employees to direct the investment of the amounts allocated to their accounts. Further, a plan does not comprise separate plans merely because assets are invested in individual insurance or annuity contracts for employees.

(c) *Disaggregation of certain plans*—(1) *Plans that include individual account and defined benefit components.* The portion of a plan that provides benefits that are based solely on the contributions and other amounts allocated to employees' individual accounts (determined in accordance with section 414(i)) and the portion of the plan that provides benefits that are not based solely on the contributions and other amounts allocated to employees' individual accounts are to be treated as separate plans for purposes of section 401(a)(26). Thus, for example, a plan that provides benefits partly on the basis of defined benefits and partly on the basis of employees' individual accounts is to be treated as including both an individual account plan (with respect to those benefits based solely on employees' individual accounts) and a defined benefit plan (with respect to those benefits that are not based solely on employees' individual accounts), each of which must separately satisfy section 401(a)(26).

(2) *Plans benefiting collective bargaining employees.* An employer may treat the portion of a plan that benefits employees who are included in a unit of employees covered by a collective bargaining agreement and the portion of a plan that benefits employees who are not included in such a collective bargaining unit as separate plans for purposes of section 401(a)(26). Thus, for example, if a plan benefits employees who are included in collective bargaining unit A and employees who are not included in any collective bargaining unit, the employer may treat such plan as two separate plans for purposes of section 401(a)(26), even if all of such employees benefit under identical current benefit structures. This paragraph (c)(2) applies separately with respect to each collective bargaining agreement. Thus, for example, the portion of a plan that benefits employees included in a unit of employees covered by one collective bargaining agreement may be treated as a plan that is separate from the portion of the plan that benefits employees included in a unit of employees covered by another collective bargaining agreement.

(3) *ESOPS.* The portion of a plan that is an employee stock ownership plan described in section 4975(e)(7) (an ESOP) and the portion of such plan that is not an ESOP are to be treated as separate plans for purposes of section 401(a)(26). An employer may treat the rule in this paragraph (c)(3) as effective for plan years commencing on or after January 1, 1990.

(4) *Plans benefiting otherwise excludable employees.* If, in accordance with § 1.401(a)(26)–4(b)(1)(ii), an employer elects to apply section 401(a)(26) separately to the portion of a plan that benefits only employees who have failed to satisfy the highest minimum age and/or service conditions permissible under section 410(a)(1), such portion is to be treated as a separate plan for purposes of section 401(a)(26).

(5) *Plans maintained by more than one employer*—(i) *Multiple employer plans.* If a plan benefits employees of more than one employer and such employees are not included in a unit of employees covered by one or more collective bargaining agreements (a multiple employer plan), the plan is to be treated as comprising separate plans each of which is maintained by a separate employer and must separately satisfy section 401(a)(26) by reference only to such employer's employees.

(ii) *Multiemployer plans.* The portion of a multiemployer plan that benefits employees who are included in one or more units of employees covered by one or more collective bargaining agreements and the portion of such plan

that benefits employees who are not included in a unit of employees covered pursuant to any collective bargaining agreement are to be treated as separate plans for purposes of section 401(a)(26). See § 1.401(a)(26)–1(d)(2) for a multiemployer plan exception. The portion of a multiemployer plan that benefits employees who are not included in a unit of employees covered by a collective bargaining agreement is to be treated as plan maintained by one or more employers, depending on whether such employees are employed by one or more employers. See § 1.401(a)(26)–1(d)(2)(ii) for purposes of determining whether an employee is included in a unit of employees covered pursuant to a collective bargaining agreement.

(d) *Current benefit structures*—(1) *In general.* One or more current benefit structures exist whenever there is an allocation or benefit accrual whether as a result of additional years of service, changes in compensation, or other factors. Any such increases are treated as benefits attributable to the year of service in which they accrue. A single current benefit structure exists with respect to each portion of a uniform benefit formula (under which contributions and forfeitures are allocated with respect to a plan year in a defined contribution plan or under which an employee's benefit attributable to the current year of service is determined in a defined benefit plan) to the extent that subsidies, optional forms of benefits, rights and features (e.g. social security supplements, ancillary benefits, loans and investment options) are provided on a uniform basis to employees eligible to participate under such formula. To the extent that subsidies, optional forms of benefits, rights and features are not provided on a uniform basis, two or more single current structures exist. An otherwise single current benefit structure comprises separate current benefit structures to the extent it is included in separate plans (as determined under paragraphs (b) and (c) of this section). See § 1.401(a)(26)–8(b)(1) for a transition rule with respect to the provisions taken into account in identifying a plan's current benefit structures for plan years beginning before January 1, 1990.

(2) *Uniform formula*—(i) *In general.* In determining whether a benefit formula is uniform all features in the plan affecting the availability of the benefit and the amount of benefits or contributions accrued must be taken into account. Factors taken into account in making this determination include the rate of accrual in a defined benefit plan and the basis of and conditions to contributions or benefits (e.g. hour-of-service minimums, year-of-service requirements and limits, compensation definitions, benefit limits, employment conditions, vesting schedules, levels of mandatory employee contributions, eligibility requirements for participation).

(ii) *Difference in rates of allocation or benefit accrual.* In general, differences in rates of allocations or benefit accruals for differences in participants under plan will result in separate benefit structures under the plan. However, a formula does not fail to be a uniform formula merely because the rate of contribution allocations or benefit accruals (expressed as percentages of compensation or flat dollar amounts) varies, on a uniform basis for all employees, with years of service or participation (as, for example, in a formula that is backloaded to the extent permitted under section 411(b)(1)(B)) or varies with entry age (as, for example, with a formula under which benefits accrue under the fractional rule of section 411(b)(1)(C)). Similarly, a formula does not fail to be uniform merely because the rate at which benefits accrue above a stated compensation level differs from the rate at which benefits accrue below such level, without regard to whether such formula satisfies the requirements of section 401(l). A formula does not fail to be a uniform formula merely because it provides that an employee will receive the greatest contribution allocation or benefit accrual produced under one of several formulas that are reasonably available to all employees covered by the formula. In addition, a formula does not fail to be uniform merely because it provides for an allocation on the basis of account balances.

(iii) *Permitted disparity.* A benefit formula under a plan does not fail to be uniform merely because of differences under the formula that are permissible under section 401(l) and, under such rules, are treated as uniform. Thus, for example, if the rates under a defined benefit excess plan's benefit formulas differ based solely on employees' social security retirement ages such that the disparities under such formulas are treated as uniform under section 401(l), such differences are disregarded in determining whether the benfit formulas constitute one or more current benefit structures.

(3) *Uniform subsidies, optional forms of benefits, rights and features*—(i) *In general.* Subsidies, optional forms of benefit, right and feature is provided on a uniform basis to all participants eligible to benefit under such benefit formula. A subsidy, optional form of benefit, right and feature is provided on a uniform basis only if it is identical with respect to its terms (i.e. frequency of use, dollar limitations, actuarial assumptions). In addition, in the case of a subsidy, optional form of benefit, right or feature, the availability of which is conditioned, the subsidy, optional form of benefit, right or feature is provided on a uniform basis only with respect to those participants with respect to whom the conditions are identical and who satisfy the conditions.

(ii) *Conditions on availability*—(A) *In general.* Whether a participant satisfies conditions on availability of a subsidy, optional form of benefit, right or feature is determined on the basis of the current facts and circumstances with respect to the employee (e.g. the employee's current job classification, division of employment or net worth). Thus, for example, the fact that an employee may, in the future satisfy a condition on availability generally does not cause the conditioned benefit, right or feature to be treated as currently available to such employee. However, to the extent provided in paragraphs (d)(3)(ii) (B) and (C) and subject to the limitations in paragraph (d)(12) with respect to individualized formulas, certain conditions on availability are treated as currently satisfied for purposes of determining whether a subsidy, optional form of benefit, right or feature is provided on a uniform basis.

(B) *Age and service conditions.* In general, for purposes of the rules in this paragrpah (d)(3), age conditions and service conditions are treated as satisfied. This exception is not applicable to age or service conditions with respect to optional forms of benefit, rights and features that must be satisfied within a specified period of time, other than termination of employment. However, availability of an optional form of benefit, right or feature subject to such a limited age or service condition may be determined by projecting the age and service of employees to the last date on which such formula, right or feature is available under the plan. An employer's ability to project age and service to the last date on which the formula, right or feature is available under the plan is not cut off by a plan termination occurring prior to that date. Those employees who are not eligible for a benefit because they do not satisfy any applicable conditions during a specified time period are not treated as benefiting under a separate benefit structure.

(C) *Certain other conditions.* Conditions on the availability of benefit formulas, optional forms of benefits, rights or features requiring termination of employment, death, satisfaction of a specified health condition (or failure to meet such condition), disability, hardship, marital status, default on a plan loan secured by a participant's account balance, or execution of a covenant not to compete are treated as satisfied in determining the group of employees benefiting under the current benefit structure containing such formula, right or feature.

(4) *Sections 401(k) and 401(m)*—(i) *In general.* A plan (or portion thereof) that is subject to section 401(k) or 401(m) includes separate current benefit structures to the extent that there are differences in the availability and/or maximum rates of elective contributions subject to section 401(k), after-tax employee contributions subject to section 401(m), or matching contributions subject to section 401(m). Similarly, a plan (or portion thereof) that includes matching contributions subject to section 401(m) includes separate current benefit structures to the extent that the matching contributions are not allocated under a uniform formula with respect to employees' elective contributions or after-tax employee contributions.

(ii) *Elective contributions, employee contributions and matching contributions.* The portion of a plan to which elective contributions under a qualified cash or deferred arrangement (defined under section 401(k)) may be made is a separate benefit structure for purposes of section 401(a)(26). Similarly, the portion of a plan to which employee contributions subject to section 401(m) may be made is a separate benefit structure for purposes of section 401(a)(26). Finally, the portion of a plan to which matching contributions subject to section 401(m) may be made is a separate benefit structure for purposes of section 401(a)(26).

(iii) *Exceptions.* A plan (or portion thereof) that is subject to section 401(k) or 401(m) does not include separate current benefit structures merely because of differences in the allocation of elective contributions or after-tax employee contributions and matching contributions that are solely the result of employees' elections. Similarly, a plan (or portion thereof) that is subject to section 401(k) or 401(m) does not comprise separate current benefit structures merely because the plan imposes uniform limits on the elective contributions or employee contributions that may be made by highly compensated employees to facilitate compliance with the applicable nondiscrimination rules or imposes uniform limits on the elective contributions that any employee can make to assure compliance with the limits under section 402(g) and section 415. Also, separate current benefit structure do not arise merely because of the allocation of qualified nonelective contributions to some or all nonhighly compensated employees eligible under the plan (or portion thereof) subject to section 401(k) or 401(m) if such nonelective contributions both are taken into account for purposes of determining whether elective contributions, employee contributions, or matching contributions satisfy the requirements of section 401(k) or 401(m), as applicable, and are not taken into account in determining whether any other employer contributions satisfy sections 401(a)(4) and 410(b) (other than section 410(b)(2)(A)(ii)). The preceding sentence applies with respect to allocations of qualified nonelective contributions to nonhighly compensated employees without regard to whether such allocations are under a uniform formula.

(5) *Top-heavy contributions and benefits*—(i) *General rule.* A plan does not fail to provide a single current benefit structure merely because the plan includes a formula that provides non-key employees with contributions or benefits required under section 416.

(ii) *Examples.* This paragraph (d)(5) can be illustrated by the following examples:

Example 1. Assume that a defined benefit plan provides that all employees will receive a normal retirement benefit of 1 percent times years of service times final average compensation. However, the plan also provides that non-key employees who perform at least 1000 hours of service will receive a benefit of at least 2 percent times top-heavy years of service (not in excess of 10 years of service) times top-heavy compensation. In determining this plan's current benefit structures, the portion of the benefit formula that is required to comply with section 416 may be disregarded. Thus, this plan has one current benefit structure.

Example 2. Assume the same facts set forth in *Example 1*, except that the plan provides that, whether or not the plan is top-heavy, all employees (rather than only non-key employees) who perform at least 1000 hours of service will receive a benefit of at least 2 percent times years of service (Not in excess of 10 years) times compensation. The portion of the formula that reflects the top-heavy requirements must be taken into account in determining this plan's current benefit structure. In this case, the plan is treated as including only one current benefit structure under which each employee earns the greater benefit under the two parts of the formula.

(6) *Contributions for participants who are permanently and totally disabled.* A plan does not fail to provide a single current benefit structure merely because the plan includes a formula that uniformly provides nonhighly compensated employees with contributions pursuant to the provisions of section 415(c)(3)(C).

(7) *Grandfathered benefits*—(i) *General rule.* A defined benefit plan's benefit formula does not fail to be a single current benefit structure merely because such formula provides that an employee will not accrue additional benefits under the current portion of the benefit formula until such employee has accrued under such portion a benefit in excess of such employee's benefit under one or more formulas in effect for prior years that are based wholly on prior years. Such prior benefit may have accrued under the same or a separate plan and may relate to service with the same or prior employers. Benefits fail to be treated as based wholly on prior years if they are based, directly or indirectly, on compensation earned after such prior years (including compensation earned in in the current year). Benefits do not fail to be treated as based wholly on prior years merely because such benefits (e.g., early retirement benefits) are subject to an age or years-of-service condition and, in applying such condition or conditions, the current and prior years are taken into account. In addition, if a plan eliminates a right or feature (e.g., single sum distribution option or loan) with respect to future benefits, and provides that such right or feature remains available with respect to benefits accrued as of the date of elimination, the plan's grandfather of such right or feature with respect to prior accrued benefits does not create separate current benefit structures.

(ii) This paragraph (d)(7) can be illustrated by the following examples:

Example 1. Assume that an employer maintains a defined benefit plan under which an employee receives a benefit equal to 2 percent times years of service times final average compensation. Effective January 1, 1990, the plan is amended to provide that an employee receives the greater of (A) 2 percent times years of service up to January 1, 1990, times final average compensation as of December 31, 1989, and (ii) 1½ percent times all years of service times final average compensation as of separation from service. Even though the employees with service prior to 1990, are a closed group and may not accrue additional benefits under this two-part formula for one or more years after 1989 and the other employees will benefit immediately and in full under the latter part of the

formula, this is a uniform formula that is a single current benefit structure.

Example 2. Assume the same facts set forth in *Example 1*, except that final average compensation under the former part of the two-part formula is determined based on compensation as of separation from service (i.e., final average compensation is determined by reference to compensation after 1989). Because employees with service prior to 1990, may accrue additional benefits under the former part of the formula, this formula comprises two current benefit structures, one for employees with pre-1990 service and one for employees without any pre-1990 service.

(8) *Benefit offset arrangements*—(i) *General rule.* A plan's contribution or benefit formula that provides for a benefit under the positive portion of the formula that is offset or reduced by contributions or benefits under another plan maintained by the same employer does not fail to comprise a single current benefit structure to the extent that all of the conditions of paragraph (d)(8)(i)(A) through (d)(8)(i)(C) of this section are satisfied. To the extent that these conditions are not satisfied, the contribution or benefit formula will not be treated as uniform and will comprise two or more current benefit structures. See § 1.401(a)(26)–3(b)(6) for the determination of who is benefiting under a current benefit structure that includes an offset or reduction.

(A) *Offset condition.* This condition is satisfied only if the formula being treated provides that contributions or benefits under its positive portion are offset or reduced by contributions or benefits accrued under another plan maintained by the same employer, and the contributions or benefits used to offset or reduce the contributions or benefits under the positive portion of the formula being tested were originally accrued under such other plan (or a predecessor plan). Thus, contributions or benefits transferred or rolled over to the other plan generally may not be used to offset the benefit under the positive portion of the formula being tested.

(B) *Benefiting condition.* This condition is satisfied only if the employees who benefit under the formula being tested also benefit, with respect to those contributions or benefits that are used to offset or reduce contributions or benefits under the formula being tested, under the other plan on a reasonable and uniform basis. If, with respect to employees who benefit under the formula being tested, some employees benefit and some employees do not benefit under the other plan, the formula being tested fails to be a single current benefit structure. Similarly, employees under the formula being tested do not benefit under the other plan on a reasonable and uniform basis if, for any year, the contributions or benefits used to offset or reduce contributions or benefits under the formula being tested are attributable to a benefit structure that is not uniform with respect to all such employees. Finally, employees do not benefit on a reasonable or uniform basis under the other plan if the method and assumptions for calculating the extent to which contributions or benefits under the other plan offset or reduce contributions or benefits under the formula being tested are not uniform with respect to such employees.

(C) *Anti-multiple use condition.* This condition is satisfied only if the contributions or benefits under the plan that are used to offset or reduce the contributions or benefits under the formula being tested are not used to offset or reduce contributions or benefits under any other plan or any other formula.

(D) *Examples.* This paragraph (d)(8) can be illustrated by the following examples.

Example 1. Assume that all 100 active employees in defined benefit plan A benefit under a benefit formula that provides a benefit equal to 1½ percent times years of service times final average compensation. However, with respect to 30 active employees, the benefit under this positive benefit of the formula is offset by the benefit under a single formula in plan B of the employer. With respect to another 25 active employees, the positive plan A benefit is offset by the benefit under a separate formula in plan C, and with respect to the remaining 45 participants, the positive plan A benefit is not offset by any other benefit. The benefit formula in plan A comprises three separate current benefit structures for purposes of section 401(a)(26).

Example 2. Employer X, a partnership with two partners and seven common law employees, maintains two defined benefit plans (X and Y) and one defined contribution plan (Z). Partner X and the seven employees participate in defined benefit plan X, which has a single benefit formula that provides for an offset by any benefit provided under defined contribution plan Z. Partner Y and the seven employees participate in defined benefit plan Y, which has a single benefit formula (different from plan X's formula) that also provides for an offset by any benefit provided under plan Z. The seven employees (but not the partners) also participate in plan Z, which provides a uniform contribution allocation formula for all participants. Plans X and Y violate both the benefiting condition and the anti-multiple use condition. For both reasons, plans X and Y each provide two separate benefit structures, one for the participating partner and another for the seven employees.

(9) *Exception for certain section 414(n) recipient employers.* For purposes of the benefit-offset rule in paragraph (d)(8)(i) of this section, an employer-recipient within the meaning of section 414 (n) and (o) that maintains a defined contribution plan covering leased employees (which employees are treated as employees of such employer-recipient within the meaning of section 414(n)92) and 414(o)(2)) that is offset or reduced by contributions to defined contribution plan maintained by the leasing organization may treat such contributions as contributions to a plan maintained by the recipient organization for purposes of this paragraph (d)(8)(i)(A) and may treat employees of the recipient organization as benefiting under the plan of the leasing organization for purposes of this paragraph (d)(8)(i)(B) only if the following requirements are satisfied: The contribution relate to service with the recipient organization; the contributions are made to a money purchase plan that would be a safe-harbor plan within the meaning of section 414(n)(5) without regard to the 20-percent requirement applicable to such determination; and, the requirements in paragraph (d)(8)(i)(A) through (d)(8)(i)(C) of this section are otherwise satisfied with respect to such benefit offset arrangement. In applying the requirements of paragraph (d)(8)(i)(B) of this section, employees of the recipient who are not leased from the leasing organizations are not required to benefit under the plan of the leasing organization.

(10) *Inactive benefit formulas—(i) General rule.* If a plan includes a benefit formula but no employee is currently eligible to accrue any additional benefits under the formula, such formula is not a current benefit structure under the plan. Similarly, if a plan includes a benefit formula with respect to which one or more employees are eligible, but the benefit formula does not provide any additional benefit to such employees, such formula is not a current benefit structure.

(ii) *Certain profit-sharing plans.* A profit-sharing plan or stock bonus plan does not fail to have a current benefit structure merely because there is no allocation in the current year because the employer maintaining the plan fails to make a contribution. Any employee covered by such a profit-sharing or stock bonus plan is treated as benefiting under a current benefit structure in the profit-sharing plan for a plan year if such employee both satisfies all of the applicable conditions to receiving a maximum contribution allocation under such current benefit structure for such year and fails to receive such allocation merely because the employer fails to make a contribution to the plan for such year and there are no forfeited amounts for reallocation for such year.

(11) *Other arrangements that create separate current benefit structures*—(i) *In general.* If, under all the facts and circumstances, an arrangement (either under or outside the plan) has the effect of modifying any feature under the plan taken into account in determining an employee's benefit, providing any employee with any priority or greater interest in a portion of the assets in the plan, or linking any financial matter involving an employee to all or a portion of the assets in the plan in a way that has the effect of creating separate accounts, such arrangement will be treated as creating a separate current benefit structure within the plan. However, separate current benefit structures do not arise merely because a partnership agreement provides for allocation of the cost of funding a defined benefit plan or the allocation of surplus assets upon termination of such plan among partners in proportion to their partnership interest.

(ii) *Examples.* The following examples illustrate certain situations in which other arrangements will or will not be treated as creating separeate benefit structures:

Example 1. Employer A maintains a defined benefit plan under which each highly compensated employee has the discretion and authority to direct the investment of a portion of the plan's assets that represent the accumulated contributions with respect to that employee's plan benefits. In addition, by agreement outside the plan, if the product of the employee's investment direction exceeds the value needed to fund that employee's benefits, Employer A agrees to make a special payment to the participant. In this case, each separate portion of the pool of assets over which an employee has investment authority is considered a separate current benefit structure for such employee.

Example 2. Employer B is a partnership that maintains a defined benefit plan. Under the partnership agreement, the cost of providing the current benefit accrual for each partner is allocated to such partner in determining such partner's distributive share of profit or loss. This plan does not include separate plans merely because of this arrangement.

Example 3. Employer C is a partnership that maintains a defined benefit plan. The partnership agreement provides that, upon termination of the plan, a special allocation is to be made to a partner representing the amount of the excess plan assets in proportion to such partner's accrued benefit under the plan. This arrangement results in the defined benefit plan being treated as including a separate current benefit structure for each partner. The same agreement modified to allocate excess plan assets after reversion to the partnership on the basis of partnership share does not create a separate benefit structure with respect to the partner.

(12) *Examples*—(i) *Defined contribution plans.* The following examples illustrate the meaning of current benefit structure with respect to defined contribution plans. Assume that the plans in the following examples provide identical benefits with respect to all participants except to the extent specifically described in the example. Also, assume that, based on all of the facts and circumstances, none of the formulas described in these examples comprise individualized formulas.

Example 1. Plan A allocates contributions and forfeitures uniformly on the basis of the ratio of each participant's compensation to the total compensation of a participant under the plan using the same definition of compensation for all participants. Plan A has one current benefit structure.

Example 2. Plan B benefits two categories of plan participants, category 1 and 2. Category 1 participants are allocated contributions equal to 4 percent of compensation, while category 2 participants are allocated contributions equal to 10 percent of compensation. Plan B has two current benefit structures.

Example 3. All participants in Plan C receive contribution allocations equal to 5 percent of current compensation. However, forfeitures are allocated among category 1 participants on the basis of compensation and among category 2 participants on the basis of account balances. Plan C has two current benefit structures. The result would be the same if the allocation of forfeitures in plan C for category 1 participants was on the basis of the ratio of the participant's current compensation to the current compensation of all category 1 participants and among category 2 participants on the basis of the ratio of the participant's current compensation of all category 2 participants.

Example 4. Under Plan D, the employer contributions for category 1 particpants and category 2 participants are determined separately—the contribution for category 1 participants is based on the profits in divison A, while the contribution for category 2 participants is based on the profits in division B. The employer contributions for each category of participants are allocated among participants on a uniform basis. Plan D has two current benefit structures.

Example 5. Plan E allocates contributions among all participants under a uniform a uniform allocation formula which is based, in part, on a participant's years of service with the employer. Participants with 10 or fewer years of service receive allocations equal to 5 percent of compensation, and participants with additional years of service receive an additional allocation of 1 percent of compensation for every 2 additional years of service (in excess of 10 years) with the employer. Plan E has one current benefit structure.

Example 6. Plan F allocates contributons among all participants on the basis of units. Participants are credited with one unit for each $2500 of compensation and one unit for each year of service with the employer. Also, plan F allocates forfeitures among all participants on the basis of the ratio of a participant's compensation to the total compensation of all participants. Plan F has one current benefit structure.

Example 7. Plan G allocates contributions among all participants equal to 5 percent of compensation, but in no event less than $300. Plan G has one current benefit structure even through the actual allocation for particular participants may vary as a percentage of compensation due to the minimum allocation provisions.

Example 8. Plan H is a target benefit plan that allocates contributions among all participants based on a uniform unit benefit formula providing a retirement benefit of 1 percent of compensation per year of service. A uniform method is used to derive the contribution allocation for each employee. Plan H has one current benefit structure, even though the contribution allocations for participants are not a uniform percentage of compensation.

(ii) *Defined benefit plans.* The following examples illustrate the meaning of current benefit structure with repect to defined benefit plans. Assume that the plan in the following examples provide indentical benefits with respect to all partcipants except to the extent specifically described in the example. Also, assume that, based on all of the facts and circumstances, none of the formulas described in these examples comprise individualized formulas.

Example 1. Plan A has a uniform, unit benefit formula that provides an annual benefit commencing at normal retirement age of 1 percent of final average pay per year of service. Plan A has one current benefit structure.

Example 2. Plan B's benefit formula provides a benefit of $10 per month for each of a participant's first 10 years of service, $11 per month for each of the second 10 years of service, $12 per month for each of the next 10 years of service, and no additional benefit for any additional years of service. Because plan B's benefit formula provides for a uniform schedule of benefit accurals for all particpants, plan B has one current benefit structure.

Example 3. Plan C's formual provides each employees with a benefit equal to 22 percent per year of service times final average pay for the first 15 years of service and 1 percent per year of service times final average pay for each additional year of service beyond 15 years. Plan C has one current benefit structure even though, under the formula for a year, different employees have different accrual rates.

Example 4. Plan D's benefit formula provides an annual pension amount for life for every participant equal to the greatest of (A) $500 for each year of service; (B) 2 percent of each year's compensation times years of service; or (C) $3,000. Plan D has one current benefit structure even though

participants may benefit under different parts of the formula.

Example 5. Plan E's benefit formula provides all participants with a benefit of 35 percent of final average pay, which is accrued ratably under the fractional rule over years of plan participation until normal retirement age. Plan E has one current benefit structure even though the rates of annual accrual for participants differ.

Example 6. Plan F's benefit formula provides all participants with an annual benefit for life of 2 percent of average annual pay times years of service. Plan F also provides an unreduced joint and survivor annuity for married participants. Plan F has one current benefit structure, even though some participants are married and some participants are not married, because all participants are accruing benefits under a single benefit structure.

Example 7. Plan G's benefit formula provides all participants with an annual benefit for life equal to 2½ percent of compensation per year of service for compensation above covered compensation and 2 percent of compensation per year of service for compensation below covered compensation. Plan G has one current benefit structure even though the actual benefit rates for participants will differ based on the amounts of a participant's compensation above covered compensation.

Example 8. Plan H's benefit formula provides all participants an annual benefit for life of 45 percent of final average pay. Such benefit is accrued under the fractional rule for category 1 participants, with a 15 year minimum accrual period. For category 2 participants, the benefit is accrued under a unit benefit formula that provides an annual accrual of 3 percent times years of service (not in excess of 15 years) times final average pay. Plan H has two current benefit structures.

Example 9. Plan I's benefit formula provides for all participants an annual retirement benefit for life of 50 percent of final average pay. The retirement benefit is payable to category 1 participants at normal retirement age, with an actuarial reduction for early commencement. For category 2 participants, there is no actuarial reduction for early commencement if a participant has 30 years of service and has attained age 55. Plan I has two current benefit structures.

Example 10. Plan J's benefit formula provides for all participants an annual benefit for life of 2 percent of the participant's compensation times years of service. For category 1 participants, the compensation taken into account is career average compensation, while for category 2 participants the compensation is the annual average of the participant's final 5 years of service. Plan J has two current benefit.

Example 11. Plan K is a contributory defined benefit plan with a benefit formula that provides an annual benefit of 1 percent of final average compensation for each year of service for which the participant makes an employee contribution of one percent of compensation, and an additional ½ percent of final average compensation for each year of service for which the participant makes an additional employee contribution of 1 percent of compensation. Participants may make employee contributions of 0 percent, 1 percent, 2 percent, or 3 percent of compensation. Plan K does not separately account for the employee contributions. Because the special rule for plans subject to section 401(m) does not apply with respect to the employee contributions under plan K, such plan has three current benefit structures (i.e., employee contributions of 1 percent, 2 percent, and 3 percent). (In accordance with § 1.401(a)(26)–1(c)(1), these three current benefit structures may be restructured as three current benefit structures, each one providing for an employee contribution of 1 percent.)

Example 12. Plan L is a defined benefit plan under which all participants earn an annual benefit for life, commencing at age 65, equal to 1 percent times years of service times final average compensation. In January 1990, the employer amends the plan to provide that any employee who is at least 55 years of age, has at least 25 years of service, and separates from service between July 1 and October 1 of 1990, may receive an unreduced annual benefit commencing upon separation from service. Plan L has two current benefit structures for 1990.

(13) *Retroactive benefits.* A benefit increase provided with respect to active employees in the current year is one or more current benefit structures even if the benefit increase is based on prior years of service. Similarly, a benefit increase provided to former employees (including, for example, ad hoc cost-of-living increases) is one or more current benefit structures for the year in which the increase is provided. Also, a provision that provides for the allocation, among employees under a terminating defined benefit plan, of assets in excess of the amount necessary to satisfy all of the plan's liabilities is one or more current benefit structures in the year of allocation, depending on the uniformity and characteristics of the allocation formula. A formula providing a retroactive benefit increase that differs with respect to years prior to a specified date (e.g., December 31, 1989, or plan years beginning before the first plan year beginning after December 31, 1989) and years after a specified date comprises two current benefit structures because all portions of the formula are not reasonably available to all employees.

(14) *Individualized formulas*—(i) *General rule.* Notwithstanding the rules provided in this section, an otherwise uniform formula, subsidy, optional form of benefit, right or feature may be treated as comprising separate current benefit structures if, under the facts and circumstances, the formula, subsidy, optional form of benefit, right or feature is based on significantly individualized factors or the effect of such formula, right or feature with respect to employees' allocation or benefit rates, or other rights under the plan is similar to the effect of separate formulas, rights or features.

(ii) *Examples.* This paragraph (d)(14) may be illustrated by the following examples:

Example 1. Assume that an employer with 500 active employees maintains a defined contribution plan under which contributions are allocated among all of the employer's active employees based on their years of service with the employer. Under the allocation formula, each employee receives a contribution allocation for a plan year equal to 5 percent of compensation, plus an additional 1 percent of compensation for each year of service with the employer. The maximum allocation for any year is 20 percent of compensation. Because, in this case, the number of employees under the plan substantially exceeds the number of different allocation rates under the plan's allocation formula and all allocation rates are reasonably available to all employees, the facts and circumstances indicate that the plan's formula does not comprise separate, individualized formulas.

Example 2. Assume that an employer with 5 active employees maintains a defined contribution plan under which contributions are allocated among all of the active employees based on their years of service with the employer. Under the allocation formula, each employee with fewer than 10 years of service receives an allocation of 7 percent of compensation and each employee with 10 or more years of service receives an allocation of 10 percent of compensation. One employee, who is the sole highly compensated employee of the employer, has over 10 years of service; the other four employees each have fewer than 5 years of service. In addition, no employees have separated from service with more than 10 years of service and, based on the facts and circumstances, it is not reasonable to expect that the four employees will remain with the employer for a full 10 years of service. Thus, these facts and circumstances indicate that this allocation formula comprises two individualized formulas and accordingly is treated as two separate current benefit structures.

(e) *Restructuring current benefit formulas*—(1) *General rule.* If two or more current benefit structures under a plan would constitute a single structure but for differences in the benefit formulas, and the formulas are identical in all respects except that the rates of accrual or contribution allocation are different (thus, for example, the formulas use the same compensation base, credit service in the same manner and have the same vesting schedule), an employer may restructure the benefit structures as two or more separate benefit structures, one including the portion of the formulas that is common to each of the benefit structures, and one or more benefit structures including the portion of the formula that is not common to each of the original benefit structures. For purposes of this paragraph (e), the common or lesser included benefit formula within a plan must be treated as a single current benefit structure with respect to such plan and each restructured benefit structure must be uniform with respect to the benefit formula. Thus, if a plan that is otherwise uniform with respect to all benefits, rights and features, provides a benefit of 50% final average pay for division A, 55% final average pay for division B, and 60% final average pay for division C, restructuring under this rule would result in a benefit structure of 50% of final average pay for employees of divisions A, B and C, 5% of final average pay for employees of division B and C, and 5% of final average pay for employees of division C. Restructuring under this paragraph (e) does not require that the employer actually amend a plan's provisions to reflect the restructuring. Rather, restructuring is merely one method of testing current benefit structures under section 401(a)(26). See § 1.401(a)(26)–1(c)(1) for rules about testing two or more restructured current benefit formulas.

(2) *Examples.* The rule in this paragraph (e) may be illustrated by the following examples:

Example 1. Assume that a defined benefit plan includes two current benefit formulas—one of which benefits the 300 active employees of division A and provides a benefit of 1¼ percent times years of service times final average compensation, and the other of which benefits the 30 active employees of division B and provides a benefit of 1 percent times years of service times final average compensation. Solely for purposes of testing these current benefit structures under section 401(a)(26), such formulas may be restructured as one restructured current benefit formula providing a benefit of 1 percent times years of service times final average compensation (and benefits all 330 active employees of divisions A and B), and one restructured current benefit formula providing a benefit of ¼ percent times years of service times final average compensation (and benefits division A's 300 active employees).

Example 2. Employer B maintains a defined contribution plan that provides a 5 percent contribution for 100 Division A employees, and a 4 percent contribution for 30 Division B employees. All other rights and features under the plan are identical with respect to all employees. Solely for purposes of testing these current benefit formulas under section 401(a)(26), such formulas may be restructured the following two benefit formulas: A separate formula providing a 4 percent contribution to the 100 Division A employees and the 30 Division B employees, and a separate formula providing an additional 1 percent contribution to the 100 Division A employees.

Example 3. Employer C maintains a plan including a qualified cash or deferred arrangement in which both 70 division A employees and 30 division B employees are eligible to participate. Under the plan, the employer makes a matching contribution with respect to the first six percent of elective contributions: In the case of Division A employees the employer matching contribution is 50 percent of an employee's elective contributions, in the case of Division B employees, the employer matching contribution is 30 percent of an employee's elective contributions. In all other respects, all employees have identical rights under the plan. The plan includes three separate benefit structures: a cash or deferred arrangement benefiting 100 employees, a 50 percent matching arrangement benefiting 70 Division A employees, and a 30 percent matching arrangement benefiting 30 Division B employees. The 30 percent matching benefit structure fails to satisfy section 401(a)(26) because it benefits only 30 employees. The plan may be restructured and treated as if it contained the following three separate benefit formulas: a cash or deferred arrangement benefiting 100 employees, a 30 percent matching feature benefiting 100 employees (including the 30 division B employees, and the 70 Division A employees), and an additional 20 percent matching feature benefiting the 70 Division A employees. As restructured, all three separate structures benefit at least 50 employees, and thus satisfy section 401(a)(26).

Example 4. Employer D maintains a defined benefit plan under which 100 employees benefit. The plan provides a normal retirement benefit of 2 percent of pay times final average compensation times years of service. All employees under the plan have identical rights except that the plan provides for an unreduced early retirement benefit for employees with at least 20 years of service and such early retirement benefit is available only to a group of 80 employees. The plan contains two separate benefit structures: one structure benefits 80 employees and includes the early retirement benefit, the second structure has no early retirement benefit and benefits 20 employees. The plan cannot be restructured and treated as if it contained two separate benefit structures, one benefit structure including all rights and features under the plan that benefits all 100 employees, and the other benefit structure including only the early retirement benefit that benefits 80 employees because rights and features cannot be restructured.

Example 5. Employer E maintains a defined contribution plan providing a 6 percent contribution for 30 division A employees, and a 3 percent contribution for 50 division B employees. The plan contains two separate benefit formulas, a 6 percent benefit formula, benefiting 30 employees, and a 3 percent benefit formula benefiting 50 employees. The 6 percent benefit formula fails to satisfy section 401(a)(26). Assume that the 6 percent formula does not satisfy the requirements of § 1.401(a)(26)–1(c)(4). The plan cannot be restructured into benefit structures that satisfy 401(a)(26). The plan can be restructured into a 3 percent benefit formula that benefits all 80 Division A and B employees, and a 3 percent benefit formula that benefits 30 Division A employees. Under this restructuring, the latter 3 percent benefit formula would fail to satisfy section 401(a)(26).

Example 6. Employer F maintains a defined benefit plan covering 100 employees that provides a benefit equal to 1 percent of final average compensation times years of service to 50 category 1 employees, and a benefit equal to 2 percent times career average compensation times years of service to 50 category 2 employees. A lump sum distribution option is available to 50 employees, including 25 category 1 employees and 25 category 2 employees. The plan includes four separate benefit structures: one benefiting 25 employees under the final average compensation formula who cannot receive a lump sum; one benefiting 25 employees under the final average compensation formula who may receive a lump sum; one benefiting 25 employees under the career average compensation formula who cannot receive a lump sum; and one benefiting 25 employees under the career average compensation formula who may receive a lump sum. The plan cannot be restructured in a manner that establishes that the plan satisfies section 401(a)(26) even though 50 employees benefit under the final average compensation formula and so under the career average compensation formula, and 50 employees may receive a lump sum.

(f) *Prior benefit structure.* The prior benefit structure under a defined benefit plan includes all benefit structures that, for prior years, were (or, prior to the first day for which section 401(a)(26) applies to such plan, would have been) current benefit structures under the plan (or under any other plan) and are or were taken into account at any time in determining any employee's benefit under the plan (including benefits originally accrued under another plan). This is the case even if the plan's prior benefit structure is identical to the plan's current benefit structure. Each defined benefit plan has only one prior benefit structure and all accrued benefits under the plan as of the beginning of a plan year (including benefits rolled over or transferred to such plan) are included in such prior benefit structure for such year.

(g) *Additional rules.* The Commissioner may, only in revenue rulings, notices or other documents of general applicability, prescribe such additional guidance as may be necessary or appropriate with respect to the application of this section.

§ 1.401(a)(26)–3 Employees who benefit under a plan and current benefit structure

(a) *In general.* An employee is treated as benefiting under a current benefit structure under a plan only in accordance with the rules of paragraph (b) of this section. Also, in certain situations, it is necessary to determine whether an employee is benefiting under a plan (rather than under the plan's current benefit structure). Such determination may be made only in accordance with the rules of paragraph (c) of this section.

(b) *Benefiting under a current benefit structure*—(1) *Maximum benefit accrual rule*—(i) *General rule.* Except as otherwise provided in this paragraph (b), an employee is treated as benefiting under a current benefit structure for a plan year only if the employee actually accrues the maximum benefit that is available to such employee under the current benefit structure for such year. In the case of a defined contribution plan, an employee is treated as accruing the maximum benefit under a current benefit structure only if such employee actually receives the maximum contribution allocation that is available to such employee under the current benefit structure for such year. The maximum benefit or allocation under a current benefit structure for an employee for a plan year is to be determined under the structure by assuming that the employee satisfied all of the applicable accrual or allocation conditions relating to the current year (e.g., hour-of-service or employment conditions, and mandatory employee contributions). Failure to receive a maximum contribution or benefit allocation that arises solely because of a uniform and otherwise permissible entry date provision under a plan will not result in an employee being treated as failing to benefit under a current benefit structure.

(ii) *Examples.* The following are examples of benefiting within the meaning of paragraph (b)(1) of this section:

Example 1. An employer maintains a defined benefit plan under which all active employees accrue a benefit equal to 2 percent times years of service times final average compensation by making a mandatory employee contribution equal to 1 percent of compensation. Employees who fail to make the mandatory employee contribution, and thus do not accrue the benefit under the current benefit structure, are not treated as benefiting under the current benefit structure for the year.

Example 2. An employer maintains a defined benefit plan under which all employees who perform at least 1000 hours of service during the plan year accrue a benefit of 2 percent times years of service times final average compensation for the year. Only those employees who perform at least 1000 hours of service during the plan year are treated as benefiting under the current benefit structure for the year.

Example 3. An employer maintains a defined contribution plan under which all employees who are employed by the employer on the last day of the plan year receive a 10 percent of compensation allocation under a current benefit structure. Only employees who are employed by the employer on the last day of the plan year, and who thus receive an allocation, are treated as benefiting under the current benefit structure for the year.

Example 4. Plan M is a defined benefit plan under which all employees earn an annual benefit for life, commencing at age 65, equal to 1 percent times years of service times final average compensation. In January 1990, the employer amends the plan to provide that any employee who is at least 55 years of age, has at least 25 years of service, and separates from service between July 1 and October 1 of 1990, may receive an unreduced annual benefit commencing upon separation from service. Plan M has two current benefit structures for 1990. An employee who satisfies the applicable age and service eligibility conditions and thus who would receive the unreduced early retirement benefit if such employee separated from service during the applicable window period is treated as benefiting under the current benefit structure providing the unreduced early retirment benefit, without regard to whether the employee actually separates from service and receives the unreduced early retirement benefit.

(2) *Partial benefit accruals*—(i) *In general.* An employee is treated as benefiting under a current benefit structure under a defined benefit plan even though such employee fails to accrue the maximum benefit under the plan for the current year of service, if such failure was merely because the employee performed fewer than the required minimum number of hours of service for the maximum benefit for the year and, instead, the employee accrued a pro rata portion of the maximum benefit for such year. For purposes of this rule, in determining the pro rata portion of the maximum benefit for an employee for a year, the maximum benefit for the year is the maximum benefit available under the formula determined by assuming that all hour-of-service requirements are satisfied. Also, the pro rata portion of this maximum benefit must be determined as if such maximum benefit were available for the lesser of the actual number of hours of service required under the plan or 2080 hours of service.

(ii) *Examples.* The following are examples of the partial benefit accrual rules of this paragraph (b)(2):

Example 1. Defined benefit plan X's benefit formula provides that a participant who performs fewer than 1000 hours of service for a year does not accrue any benefit for such year, a participant who performs at least 2000 hours of service for a year accrues the maximum benefit for such year (i.e., 1 percent times final pay times years of service), and a participant who performs between 1000 and 2000 hours of service for a plan year accrues a partial benefit in such year based on a fraction, the numerator of which is the number of hours performed by the participant and denominator of which is 200 hours. (An employee's pay is annualized under the plan formula.) Plan X has one current benefit structure. Participant A performs 900 hours of service for the year and thus does not accrue any benefit under the plan for such year. Participant B performs 1000 hours of service and, thus, accrues 50 percent of the maximum benefit. Participant C performs 1500 hours and thus accrues 75 percent of the maximum benefit for the year. Participant D performs over 2000 hours and thus accrues the maximum benefit for the year. Participant A is treated as not benefiting under the current benefit structure for such year, while participants B, C, and D are treated as having accrued the maximum benefit for the current year and thus as having benefited under the current benefit structure.

Example 2. Assume the same facts as in *Example 1*, except that the defined benefit plan's formula also provides that each participant accrues a minimum benefit of ¼ percent times career average compensation times years of service regardless of the participant's number of hours of service for any year. Such formula continues to be a single current benefit structure because each participant will accrue the greater of the benefit based on the participant's hours of service (in excess of 1,000 hours) or the minimum ¼ percent benefit. Nevertheless, even if participant A accrues an additional benefit for the current year, such participant did not accrue the maximum benefit and thus is not treated as benefiting for the year.

Example 3. Assume the same facts as in *Example 1*, except that the plan provides that a participant who performs at least 100 hours of service for a year will accrue a pro rata portion of the maximum benefit available under the formula, which is a full 1 percent for participants with at least 2000 hours. Participant A performed 900 hours of service and thus receives a benefit equal to 0.45 percent times final average pay for the current year. Participant A thus may be treated as benefiting under the plan's current benefit structure.

(3) *Section 401(k) and section 401(m).* (i) An employee is treated as benefiting under a current benefit structure that is subject to either section 401(k) or section 401(m) for a plan year only if such employee is an eligible employee with respect to such current benefit structure for such year. For example, an employee is treated as benefiting under a current benefit structure that is a qualified cash or deferred arrangement only if the employee is an eligible employee with respect to such arrangement for the year. This is the case without regard to whether the employee has a benefit under the plan and without regard to whether the employee makes elective contributions under the arrangement for such year. Similarly, an employee is treated as benefiting under a current benefit structure of a plan that accepts after-tax employee contributions subject to section 401(m) only if such employee is an eligible employee with respect to such current benefit structure for such year.

(ii) *Example.* Defined contribution plan Z permits eligible employees to make after-tax employee contributions and provides for employer matching contributions equal to employee contributions up to 6 percent of compensation. This plan has two current benefit structures. For the current year, employee A is eligible to make employee contributions but declines to do so and, thus, is not credited with any employer matching contributions. Employee A may be treated as benefiting under both current benefit structures for the year.

(4) *Section 415 limits.* An employee may be treated as benefiting under a current benefit structure for a plan year if such employee both satisfies all of the applicable conditions for accruing the maximum benefit under the current benefit structure for such year and fails to accrue the maximum benefit merely because of the section 415 limits on annual contributions and benefits.

(5) *Certain plan limits.* (i) An employee may be treated as benefiting under a current benefit structure for a plan year if such employee both satisfies all of the applicable conditions to accruing the maximum benefit under such current benefit structure for such year and fails to accrue such maximum benefit merely because of a uniformly applicable benefit limit under the plan's current benefit structure.

(ii) The following example illustrates the rule of this paragraph (b)(5):

Example. Defined benefit plan Y has one current benefit structure that provides for a an annual benefit for life equal to 1 percent times final average compensation times years of service. However, only an employee's first 30 years for service are taken into account under this formula. For the current year, employee Z is age 60 and has performed over 30 years of service. Employee Z may be treated as benefiting under the current benefit structure for the year even though Z is not credited with an additional year under the plan's current benefit structure because of the 30-year limit on years of service taken into account under plan.

(6) *Benefit offset arrangements.* In the case of a current benefit structure under a plan that provides that the benefit determined under the positive portion of the formula is offset or reduced by contributions or benefits under another plan, an employee is treated as accruing the maximum benefit under such structure for a plan year only if the current benefit structure that includes an offset or reduction for other benefits satisfies § 1.401(a)(26)–2(d)(6), and the employee would have accrued the maximum benefit if the offset or reduction portion of the benefit formula were disregarded.

(7) *Certain grandfathered benefits.* An employee is treated as accruing the maximum benefit under a current benefit structure under a defined benefit plan that includes an offset or reduction for grandfathered benefits and satisfies § 1.401(a)(26)–2(d)(7)(i) only if such employee accrues the maximum benefit under such current benefit structure for such year, or if such employee would have accrued the maximum benefit if the offset or reduction portion of the benefit formula were disregarded.

(c) *Benefiting under a plan.* An employee is treated as benefiting under a plan for a plan year only if the employee has a benefit under the plan at some time during the year. An employee who does not have a benefit under a plan at any time during the year is not treated as benefiting under the plan for such year. This is the case even if the employee is eligible to (but does not) accrue a benefit for the plan year and without regard to the reason for the failure of an employee to accrue a benefit. Thus, for example, an employee who, at the beginning of a plan year, does not have an accrued benefit will be treated as benefiting under the plan only if, during such year, the employee actually accrues a benefit under the plan. Similarly, an employee who, as of the beginning of a plan year, has an accrued benefit under a plan is treated as benefiting under the plan for the plan year even though such employee does not accrue, or is not eligible to accrue, an additional benefit under the plan for such year. An employee who receives a total distribution of his benefit during a plan year is treated as benefiting under the plan for such year.

(d) *Additional rules.* The Commissioner may, only in revenue rulings, notices or other documents of general applicability, prescribe such additional guidance as may be necessary or appropriate with respect to the application of this section.

§ 1.401(a)(26)–4 Excludable employees.

(a) *Employees*—(1) *In general.* Except as specifically provided otherwise in this section, in applying section 401(a)(26) with respect to either active employees, former employees, or both active and former employees, as applicable, all active employees (other than excludable active employees described in paragraph (b) of this section), all former employees (other than excludable former employees described in paragraph (c) of this section), or both, as the case may be, are to be taken into account.

(2) *Rules of application.* Except as specifically provided otherwise in this section, the rules of this section are to be applied by reference only to the plan, or current benefit structures, or prior benefit structure being tested. See § 1.401(a)(26)–2 for rules governing the identification of the plan, current benefit structures, and prior benefit structure for purposes of section 401(a)(26).

(b) *Excludable active employees.* An active employee is an excludable active employee if such employee is covered by one or more of the following exclusions:

(1) *Minimum age and service exclusions*—(i) *In general.* An employee who is excluded from consideration under section 410(b)(4)(A) (relating to employees not satisfying certain minimum age and service requirements) for purposes of determining whether a plan satisfies section 410(b) may be treated as an excludable employee with respect to such plan and the current and prior benefit structures included therein.

(ii) *Coverage extended to otherwise excludable employees.* An active employee who would be excludable under paragraph (b)(1)(i) of this section but for the fact that the employee (or another employee with the same age and service) is not excluded from coverage under the plan (i.e., an otherwise excludable employee) may nevertheless be treated as an excludable employee with respect to such plan and the current benefit structures and prior benefit structure included therein if each of the following conditions is satisfied:

(A) The plan under which the otherwise excludable employee benefits also benefits active employees who are not otherwise excludable.

(B) The plan and current benefit structure under which the otherwise excludable employee benefits satisfy § 1.401(a)(26)–1(b), both by reference only to otherwise excludable employees and by reference only to active employees who are not otherwise excludable.

(C) The contributions or benefits provided to the otherwise excludable employees (expressed as percentages of compensation) are not greater than the contributions or benefits provided to the employees who are not otherwise excludable under the plan.

(D) No highly compensated employee is included in the group of otherwise excludable employees for more than one plan year.

(iii) *Examples.* The following examples illustrate certain of the minimum age and service exclusion requirements:

Example 1. Employer Y maintains Plan Y under which employees who have not completed 1 year of service are not eligible to participate. Employer Y has six employees, two of whom participate in Plan Y and four of whom have not completed 1 year of service and are, therefore, not eligible to participate in Plan Y. The four employees who have not completed 1 year of service are excludable employees and may be disregarded for purposes of applying the minimum participation test. Therefore, Plan Y meets the minimum participation requirements because both of the two employees who must be considered are participants in Plan Y.

Example 2. Employer X has 100 employees and maintains two plans, Plan 1 and Plan 2. Plan 1 has a minimum age and service requirement and Plan 2 does not. Twenty of X's employees do not meet the minimum age and service requirement under Plan 1. Each plan satisfies the 70-percent ration test under section 410(b)(1)(B). In testing Plan 1 to determine whether it satisfies the minimum participation requirements, the 20 employees not meeting the minimum age and service requirement under Plan 1 are treated as excludable employees to the same extent that they are treated as excludable employees under section 410(b)(1). In testing Plan 2 to determine whether it satisfies the minimum participation requirements, no employees are treated as excludable employees because they are not treated as excludable employees in testing Plan 2 under section 410(b)(1).

Example 3. Employer Z has 10 employees and maintains a defined benefit plan that has no minimum age and service requirement. However, the plan provides for a lesser accrual for Z's 7 employees who have not met the minimum age and service requirements described in section 410(a)(1)(A). The plan is treated as consisting of two separate benefit structures. In general, none of Z's employees would be treated as excludable in determining whether each separate benefit structure satisfies the minimum participation requirements. However, Z may elect, under paragraph (b)(1) of this section, to exclude the 7 employees not meeting the minimum age and service requirements of the greater benefit structure, provided that the requirements of that section are met.

(2) *Certain air pilots.* An employee who is to be excluded from consideration under section 410(b)(3)(B) (relating to certain air pilots) with respect to a plan may be treated as an excludable employee with respect to such plan and the current and prior benefit structures included therein.

(3) *Certain nonresident aliens.* An employee who is to be excluded from consideration under section 410(b)(3)(C) (relating to certain nonresident aliens) with respect to a plan may be treated as an excludable employee with respect to such plan and the current and prior benefit structures included therein.

(4) *Certain employees covered pursuant to a collective bargaining agreement*—(i) *In general.* An employee who may be excluded from consideration under section 410(b)(3)(A) with respect to a plan (or with respect to any portion of a plan that is treated as a separate plan under paragraph (c) of § 1.401(a)(26)–2) may be treated as an excludable employee with respect to such plan (or portion thereof) and the current and prior benefit structures included therein. This rule may be applied separately with respect to each collective bargaining agreement. See § 1.401(a)(26)–1(d)(2)(ii) with respect to whether employees are covered pursuant to a collective bargaining agreement.

(ii) *Exception for professionals.* Paragraph (b)(4)(i) of this section does not apply to a collective bargaining agreement if more than 2 percent of the employees of the employer who are covered pursuant to such agreement are professionals (as defined in § 1.401(a)(26)–7(g)).

(5) *Certain employees not covered pursuant to a collective bargaining agreement.* An employee who is not included in any group of employees who are covered under any plan pursuant to any collective bargaining agreement may be treated as an excludable employee with respect to any plan (including any portion of a plan that is treated as a separate plan under § 1.401(a)(26)–2) that covers only employees who are included in a group of employees who are covered pursuant to one or more collective bargining agreements.

(6) *Examples.* The following examples illustrate the excludable employee rules that relate to employees covered pursuant to collective bargaining agreements:

Example 1. Employer Z has 70 collectively bargained employees and 30 non-collectively bargained employees. Under Plan Z, only non-collectively bargained employees are eligible to participate. The 70 collectively bargained employees are treated as excludable employees and thus may be disregarded in applying section 401(a)(26) to Plan Z.

Example 2. Assume the same facts as *Example 1*, except that the Commissioner has determined that the employee representative is not a bona fide employee representative under section 7701(a)(46) and thus there are no "collectively bargained employees." In this case, all employees of Z must be considered in determining whether section 401(a)(26) is met.

Example 3. Employer X has 30 collectively bargained employees and 70 non-collectively bargained employees and maintains Plan X, which benefits only the 30 collectively bargained employees. Employer X may elect to treat the non-collectively bargained employees as excludable employees and disregard such excludable employees in applying section 401(a)(26) to the collectively bargained plan.

Example 4. Assume the same facts as *Example 3*, except that the Commissioner has determined that the employee representative is not a bona fide employee representative under section 7701(a)(46) and thus there is no recognized collective bargaining agreement. In this case, the employer may not elect to treat the non-collectively bargained employees of X as excludable employees.

Example 5. Assume the same facts as *Example 3*, except that 3 percent of the 30 collectivey bargained employees are professionals. In this case, the employer may not elect to treat the non-collectively bargained employees of X as excludable employees.

Example 6. Employer W has 100 collectively bargained employees. Thirty of W's employees are represented by Collective Bargaining Unit 1 and covered under Plan 1. Seventy of W's employees are represented by Collective Bargaining Unit 2 and covered under Plan 2. In this case, the employees of each collective bargaining unit are tested seperately. Thus, in testing Plan 1, only the 30 employees represented by Collective Bargaining Unit 1 are considered. In testing Plan 2, only the 70 employees represented by Collective Bargaining 2 are considered.

(c) *Excludable former employees.* A former employee is an excludable former employee with respect to a plan if such employee is within one or more of the following exclusions. Excludable former employees may be disregarded in determining the number of former employees that is equal to 40 percent of the former employees of the employer for purposes of applying § 1.401(a)(26)–1(b)(2) and § 1.401(a)(26)–6(b).

(1) *Minimum age and service and collective bargaining rules.* A former employee is an excludable former employee if the employee was excluded (or, if section 401(a)(26) was in effect, would have been excluded) from consideration under paragraph (b)(1)(i) of this section (relating to employees not satisfying certain minimum age and service requirements) at all times as an active employee or under paragraph (b)(4) of this section (relating to certain employees covered pursuant to collective bargaining agreements) at substantially all times as an active employee.

(2) *Rules analogous to excludable active employee rules.* A former employee is an excludable former employee if the former employee would qualify as an excludable active employee under rules of paragraphs (b)(1)(ii), (b)(2), (b)(3), or (b)(5) of this section if such former employee were an active employee. Thus, for example, a former employee who was a nonresident alien and received no earned income (under section 911(d)(2)) from the employer which constituted income from sources within the United States (within section 861(a)(3)) qualifies as an excludable former employee under this test.

(3) *Vested accrued benefits eligible for mandatory distribution.* A former employee is an excludable former employee if the present value of the former employee's vested accrued benefit is not in excess of $3,500. This determination is to be made in accordance with the rules of sections 411(a)(11) and 417(e).

(d) *Special rule for governmental plans—(1) Grandfathered participants.* In the case of a governmental plan (within the meaning of section 414(d)) for plan years beginning before January 1, 1993, an employee who became a plan participant before July 15, 1988, may be treated as an excludable employee with respect to such plan and the current and prior benefit structures included therein. Consequently, a governmental plan will be deemed to satisfy section 401(a)(26) with respect to such participants for such years, and such participants need not be taken into account in determining whether or not any plan satisfies section 401(a)(26) with respect to other plan participants.

(2) *Special rule for certain police or firefighters.* An employer may apply section 401(a)(26) separately with respect to any classification of qualified public safety employees for whom a separate plan is maintained. Consequently, all employees other than those in that classification of qualified public safety employees are treated as excludable employees. Also, such employees need not be taken into account in determining whether or not any plan satisfies section 401(a)(26) with respect to other plan participants. For purposes of this paragraph (d)(2) the term "qualified public safety employee" means any employee of any police department or fire department organized and operated by a State or political subdivision if the employee provides police protection, firefighting services, or emergency medical services for any are a within the jurisdiction of such State or political subdivision.

(e) *Additional rules.* The Commissioner may, only in revenue rulings, notices or other documents of general applicability, prescribe such additional guidance as may be necessary or appropriate with respect to the application of this section.

§ 1.401(a)(26)–5 Testing methods.

(a) *Testing period*—(1) *Each day of the plan year.* A plan will satisfy section 401(a)(26) for a plan year only if such plan satisfies section 401(a)(26) on each day on the plan year. An employee benefits on a day if the employee is an active participant for such day and benefits under the plan for the year under the rules in § 1.401(a)(26)–3(b).

(2) *Retroactive correction.* (i) if a plan fails to satisfy section 401(a)(26) for one or more days during a plan year, such plan may be amended by the last day of such plan year to retroactively satisfy section 401(a)(26), based on the facts as they existed on the day or days of failure, by expanding coverage or by improving benefits or contributions or by modifying eligibility conditions under the plan or a current benefit structure. Plans that are merged will not be treated as failing to satisfy section 401(a)(26) soley because the plans failed to satisfy § 1.401(a)(26)–2(b) prior to the merger. The need to retroactively amend to satisfy section 401(a)(26) does not constitute a basis for eliminating or reducing a benefit in violation of section 411(d)(6).

(ii) *Example.*

Assume that an employer with 500 active employees maintains two defined benefit plans that each include one current benefit structure. During a plan year, only 45 active employees benefit under the current benefit structure under Plan A. Immediately before the end of the year, however, the employer expands the coverage of Plan A to include 20 additional active employees under the current benefit structure for the year. Thus, Plan A's current benefit structure satisfies paragraph (b)(1) of this section for the plan year. Alternatively, before the end of the year, the employer could merge Plan A with the other defined benefit plan and then, under the merged plan, either expand the coverage of active employees under Plan's current benefit structure or, if Plan A's current benefit structure provides for a lower benefit than the current benefit structure of the other defined benefit plan, provide that the active employees who had been benefiting under Plan A will benefit for the year under the such more valuable current benefit structure.

(b) *Additional rules.* The Commissioner may, only in revenue rulings, notices or other documents of general applicability, prescribe such additional guidance as may be necessary or appropriate with respect to the application of this section, including additional guidance for testing compliance with section 401(a)(26) for a plan year.

§1.401(a)(26)–6 Testing of prior benefit structures in defined benefit plans.

(a) *General rule.* A defined benefit plan (but not a defined contribution plan) that does not satisfy section 401(a)(26) by means of satisfying the rules in §1.401(a)(26)–1(d) must satisfy the requirements of paragraph (b) of this section with respect to its prior benefit structure. Paragraph (c) of this section contains definitions and special rules regarding the application of paragraph (b) of this section with respect to prior benefit structures.

(b) *Prior benefit structure under a defined benefit plan—(1) General rules*—(i) *In general.* If the benefits currently accruing under a defined benefit plan for active employees for a plan year are meaningful relative to the benefits accrued under the plan, the defined benefit plan's prior benefit structure satisfies this paragraph (b) for the plan year. Whether the benefits currently accruing are meaningful relative to the benefits accrued under the plan is to be determined in accordance with paragraph (b)(2) of this section. If the benefits currently accruing under a defined benefit plan for active employees are not meaningful relative to the benefits accrued under the plan, the plan's prior benefit structure satisfies paragraph (b) for a plan year only if the group of active and former employees with meaningful benefits under the plan satisfies section 401(a)(26). Whether the group of active and former employees with meaningful benefits under the plan satisfies section 401(a)(26) is to be determined in accordance with paragraph (b)(3) of this section. See paragraph (c) of this section for definitions of accrued benefit, minimum benefit rate, and compensation. Also, see §1.401(a)(26)–8(b)(2) for a transition rule with respect to the prior benefit structure determination for plan years beginning before January 1, 1990.

(ii) *Application of prior benefit structure requirements.* If a defined benefit plan satisfies any one of the six alternative tests set forth in paragraph (b)(2) (ii), (iii), (iv) and (v) of this section and paragraph (b)(3) (ii) and (iii) of this section for a plan year, the defined benefit plan satisfies this paragraph (b) with respect to its prior benefit structure for such plan year. For example, if, in accordance with the minimum employee coverage test of paragraph (b)(3)(iii) of this section, at least 100 employees have greater than de minimis accrued benefits under a defined benefit plan and the three highly compensated employees with the largest benefits under the plan do not have more than 25 percent of the

total benefits under the plan, the defined benefit plan's prior benefit structure satisfies this paragraph (b). This is the case without regard to whether the defined benefit plan satisfies any of the other tests relating to prior benefit structures under this paragraph (b).

(2) *Meaningful current benefit accruals*—(i) *In general.* A defined benefit plan is treated as providing current benefit accruals for active employees that are meaningful relatives to the benefits accrued under the plan only if the plan satisfies at least one of the tests set forth in paragraphs (b)(2)(ii),(b)(2)(iii), (b)(2)(iv), and (b)(2)(v) of this section.

(ii) *Minimum current accrual rate test*—(A) *In general.* A plan satisfies this test for a plan year only if, as of the close of such year, at least the lesser of 50 active employees or 40 percent of the employer's active employees have current accrual rates that are equal to or greater than the minimum current accrual rate. Employees who do not have either greater than de minimus accrued benefits or greater than de minimus accrued benefit rates under the plan are treated as not having current accruals under the plan.

(B) *Deemed satisfaction of minimum current accrual rate test.* A plan that satisfies the minimum current accrual rate test in this paragraph (b)(2)(iii) for a plan year will be deemed to continue to satisfy such test with respect to its prior benefit structure on an ongoing basis without any requirement for retesting as long as both the current benefit formula and the rate of accrual relied on remain in effect and continue to provide benefit accruals to a group of employees that satisfies the requirements of section 401(a)(26).

(C) *Current accrual rates.* The current accrual rate for an active employee is the additional accrued benefit (expressed either as a percentage of final average compensation or as a percentage of career average compensation consistent with the plan's method of computing benefits) attributable to the employee's current year of service under a current benefit structure under the plan.

(D) *Minimum current accrual rate.* (*1*) If the plan determines benefits based on final average compensation, the minimum current accrual rate for a plan year is 0.75 percent times final average compensation. If the plan determines benefits based on career average compensation, the minimum current accrual rate for a plan year is 1.1 percent times career average compensation.

(*2*) In the case of a current benefit structure that provides employees with a flat accrued benefit (expressed as a percentage of compensation) that employees accrue over their years of participation, the minimum current accrual rate for a plan year is the annual rate resulting for such employee under a formula that provides a flat accrued benefit at normal retirement age of either 30 percent of final average compensation or 45 percent of career average compensation, depending on the compensation base on which the plan benefits are determined, accrued on a level basis over all years of plan participation.

(E) *Compensation.* (*1*) A plan that determines benefits based on the highest average annual compensation averaged over a specified period not exceeding 5 consecutive years (or a participant's entire period of service for the employer if shorter than such specified period) shall be considered to base benefits on final average compensation and a plan that determines benefits based on average annual compensation averaged over a specified period exceeding 5 consecutive years (or a participant's entire period of service for the employer, if shorter than such specified period) shall be considered to base benefits on career average compensation.

(*2*) Compensation shall be compensation as defined under the plan, provided that such definition is reasonable and is nondiscriminatory under section 414(s). A definition of compensation that is significantly less inclusive than the maximum amount of compensation that may be taken into account under section 414(s) and the regulations thereunder is not reasonable. In addition, a definition of compensation is not reasonable if it provides that compensation is a uniform percentage of a basic definition of compensation under section 414(s) and the regulations thereunder (e.g., 95 percent of W–2 compensation). For purposes of determining final average compensation under this rule, compensation for years commencing prior to January 1, 1989, may be defined as compensation taken into account under the plan in such year.

(iii) *Nondecreasing benefit structure test*—(A) *In general.* A plan satisifies this test for a plan year only if, as of the close of such year, the hypothetical accrued benefits of at least the lesser of 50 active employees or 40 percent of the employer's active employees benefiting under one or more current benefit structures included in the plan are equal to or greater than the employees' actual accrued benefits under the plan. This test is satisfied only if the group of active employees with hypothetical accrued benefits equal to or greater than actual accrued benefits includes the three highly compensated active employees of the employer with the largest amounts of accrued benefits under the plan. If there are fewer than three highly compensated active employees with accrued benefits under the plan, all highly compensated active employees with accrued benefits under the plan must be among the employees with hypothetical accrued benefits equal to or greater than actual accrued benefits.

(B) *Deemed satisfaction of nondecreasing benefit structure test.* A plan that satisfies the nondecreasing benefit structure test in this paragraph (b)(2)(iii) for a plan year will be deemed to continue to satisfy such test with respect to its prior benefit structure on an ongoing basis without any requirement for retesting as long as both the current benefit formula and the rate of accrual relied on remain in effect and continue to provide benefit accruals to a group of employees that satisfies the requirements of section 401(a)(26).

(C) *Hypothetical accrued benefit.* An employee's hypothetical accrued benefit as of the close of a plan year is computed by using only the current benefit structure applicable to such employee for such plan year and by assuming that such current benefit structure has been in effect for all years through the close of such year. In making this determination of an employee's hypothetical accrued benefit, an employee's actual accrued benefit under the plan is disregarded. In addition, employees who do not have either greater than de minimus accrued benefits or greater that de minimis accrued benefit rates under a plan are treated as not having any hypothetical accrued benefit under the plan.

(D) *Examples.* The following examples illustrate the rules of this paragraph (b)(2)(iii):

Example 1. Assume that an employer with 1,000 active employees has maintained a defined benefit plan for 20 years and that over 100 active employees currently benefit under the plan. During this entire period, the plan has had only one benefit structure—½ percent times years of service (not in excess of 30 years) times final average compensation. In this case, the hypothetical accrued benefit of each active employee benefiting under the plan equals such employee's actual accrued benefit. Thus, this defined benefit plan provides current benefits to active employees that are meaningful relative to the benefits accrued under the plan. If the employer were to amend the plan to improve the current benefit structure by increasing the rate from ½ to .6 percent, the plan would continue to provide benefits that are meaningful relative to the benefits

accrued under the plan. This would be the case without regard to whether the increased rate applied to prior years of service under the plan.

Example 2. Assume the same facts as in *Example 1*, except that the employer amends the plan's formula for future years of service by increasing the rate from ½ to .6 percent, applying such higher rate to career average compensation (rather than final average compensation), and eliminating the 30 years of service limit. Whether this new current benefit structure provides benefits that are meaningful relative to the benefits accrued under the plan under the nondecreasing benefit structure test depends on whether there are at least 50 active employees with hypothetical accrued benefits (determined by applying the new current benefit structure using career average compensation to the current and all prior years) equal to or greater than actual accrued benefits under the plan.

(iv) *Minimum current benefit structure test*—(A) *In general.* A plan satisfies this test for a plan year only if, as of the close of such year, at least the lesser of 50 active employees or 40 percent of the employer's active employees benefiting under one or more current benefit structures under the plan have future service benefit rates that are equal to or greater than the plan's minimum benefit rate (as defined in paragraph (c)(2) of this section).

(B) *Future service benefit rate.* The future service benefit rate for an active employee is the hypothetical, projected accrued benefit (expressed as a percentage of compensation) that would be accrued under the current benefit structure over the employee's future years of service, divided by such employee's future years of service under the plan. This determination is to be made on a basis consistent with the rules of paragraph (b)(2)(v)(B) of this section and by assuming that the employee commenced employment and plan participation at the beginning of the current plan year, assuming no change in the employee's annual compensation and annual hours of service and projecting the employee's age and service from the beginning of the current year to normal retirement age under the plan. This determination is to be made without projecting any increase in the annual limit on contributions and benefits under section 415. Also, in making this determination, the current year is to be taken into account as a future year of service. Finally, employees who do not have either greater than de minimis accrued benefits or greater than de minimis accrued benefit rates under a plan are treated as not having any future service benefit rate under the plan.

(C) *Examples.* The following examples illustrate the rules of this paragraph (b)(2)(iv):

Example 1. Assume that an employer maintains a defined benefit plan that currently benefits 100 active employees. During its 20 prior years of existence, the plan has had many different benefit structures. The plan's current benefit structure provides a benefit of 1 percent times years of service times career average compensation. The plan's minimum benefit rate for the plan is 66/100 percent times years of service times career average compensation. Accordingly, the benefits under the plan's current benefit structure are meaningful relative to the benefits accrued under the plan.

Example 2. Assume that an employer maintains a defined benefit plan that currently benefits 100 active employees. During its 20 prior years of existence, the plan has had many different benefit structures. The plan's current benefit structure provides a benefit of 35 percent times final average compensation and is accrued over employees' years of participation under the plan. The plan's minimum benefit rate for the plan is 1 1/10 percent times years of service times final average compensation. Based on the ages of the active employees currently benefiting under the plan, 60 of such employees have future service benefit rates of at least 1 1/10 percent times years of service times final average compensation. Thus, the benefits under the plan's current benefit structure are meaningful relative to the benefits accrued under the plan.

(v) *Benefit ratio test*—(A) *In general.* A plan satisfies this test for a plan year only if, as of the close of such year, the sum of the accrued benefits of all active employees under the plan is less than 60 percent of the sum of the projected accrued benefits of all active employees benefiting under the plan, and the plan satisfies the concentration test set forth in paragraph (b)(4) of this section.

(B) *Projected accrued benefit.* An employee's projected accrued benefit is determined by projecting the employee's accrued benefit to which the employee would be entitled at the plan's normal retirement age under the current benefit structure applicable to such employee under the plan, expressed in the form of an annuity for the life of the employee and assuming no change in the employee's annual compensation or in the annual hours of service. In determining an employee's projected accrued benefit under a current benefit structure, any change in such current benefit structure (e.g., a change in the accrual rate or in the definition of compensation) that does not currently apply to any individual who is or could be an employee under the current benefit structure is disregarded. This determination is to be made without projecting any increase in the annual limit on contributions and benefits under section 415. Also, in making this determination, the current year is to be taken into account. Thus, for example, in the case of an employee whose current age is equal to or greater than normal retirement age, the employee's projected accrued benefit includes the accrued benefit attributable to the current year of service. Finally, employees who do not have either greater than de minimis accrued benefits or greater than de minimis accrued benefit rates under a plan are treated as not having any projected accrued benefit under the plan.

(C) *Example.* The following example illustrates the rules of this paragraph (b)(2)(v):

Example. Assume that an employer maintains a defined benefit plan that currently benefits 100 active employees. During its 20 prior years of existence, the plan has had many different benefit structures. In general, the benefit structures for prior years were richer than the current benefit structure, which provides a benefit of 1 percent times years of service times career average compensation. Also, for nearly all prior years, only about 10 active employees benefited under the plan for any year. In the current year, the plan benefits many more, generally younger employees. Because of the significant increase in the number of younger employees benefiting under the plan and in spite of the reduction in the plan's benefit structure, the sum of the accrued benefits of all active employees under the plan is less than 60 percent of the sum of the projected accrued benefits for all active employees under the plan. Thus, assuming that the plan also satisfies the concentration test set forth in paragraph (b)(4) of this section, this plan's current benefit structure is meaningful relative to the benefits under the plan.

(3) *Prior benefit structure requirement*—(i) *In general.* The group of active and former employees with meaningful benefits under a defined benefit plan satisfies section 401(a)(26) only if the plan satisfies at least one of tests set forth in paragraph (b)(3)(ii) and (b)(3)(iii) of this section. These tests are applied by taking into account active and former employees with benefits under the plan.

(ii) *Minimum accrued benefit test*—(A) *In general.* A plan satisfies this test for a plan year only if, as of the close of such year, at least the lesser of 50 employees or 40 percent of the employer's employees benefiting under the plan have accrued benefit rates that are at least the plan's minimum benefit rate (determined in accordance with paragraph (c)(2) of this section).

(B) *Accrued benefit rate.* The accrued benefit rate for an employee for a plan year is the employee's accrued benefit under the plan (expressed as a percentage of compensation) as of the close of the plan year, divided by the years of service with the employer as of

the close of such year. In making this determination, all of an employee's years of service with the employer may be taken into account (including years of service before and after the employee accrued benefits under the plan), other than years of service that both are not taken into account under the plan and may be disregarded under section 401(a)(1).

(C) *Example.* The following example illustrates the rules of this paragraph (b)(3)(ii):

Example. Assume that an employer maintains a defined benefit plan that provides for no additional benefit accruals. Before becoming a frozen plan, the plan had many different benefit structures. Currently, 100 active and former employees have accrued benefits under the plan, and the plan is not top-heavy. The plan's minimum benefit rate is 1.1 percent times years of service times final average compensation. Based on the accrued benefits and years of service of the active and former employees with accrued benefits under the plan, 58 of the 100 employees have accrued benefit rates that are greater than the minimum benefit rate. Thus, the plan satisfies the minimum accrued benefit test of this paragraph (b)(3)(ii) and the plan's prior benefit structure satisfies this paragraph (b) for the plan year.

(iii) *Minimum employee coverage test*—(A) *General rule.* A plan satisfies this test for a plan year only if, as of the close of such year, at least 100 employees of the employer have accrued benefits or accrued benefit rates (or both) under the plan that are greater than de minimis and the plan satisfies the concentration test set forth in paragraph (b)(4) of this section.

(B) *Example.* The minimum employee coverage test can be illustrated by the following example:

Example: Assume that an employer maintains a defined benefit plan that benefits 500 active and former employees. The plan does not include a current benefit structure and thus the plan is a frozen plan. Also, the plan is not top-heavy. This plan has had many different benefit structures over its 25 years of existence. Assuming that at least 100 employees have either accrued benefits or accrued benefit rates that are greater than de minimis and the plan satisfies the concentration test of paragraph (b)(4) of this section, this plan satisfies the minimum employee coverage test of this paragraph (b)(3)(iii) and thus the plan's prior benefit structure satisfies this paragraph (b) for the plan year.

(4) *Concentration test.* (i) A plan satisfies this test for a plan year only if, as of the close of such year, the sum of the accrued benefits under the plan of the three employees who are or ever have been highly compensated employees (either as active employees, former employees or both) and who have the largest accrued benefits under the plan does not constitute more than 25 percent of the sum of the accrued benefits of all employees under the plan. If there are fewer than three employees with accrued benefits under the plan who are or ever have been highly compensated employees, this determination is to be made by reference to all employees with accrued benefits under the plan who are or ever have been highly compensated employees. This test is applied by taking into account all active and former employees with benefits under the plan.

(ii) *Example.*

Assume that an employer maintains a frozen defined benefit plan under which 125 active and former employees have accrued benefits that are more than de minimis accured benefits. However, because for its first 15 years of existence this plan benefited only three highly compensated employees and coverage under the plan was expanded under a significantly reduced benefit structure to 122 nonhighly compensated employees for only a year before the plan was frozen, the sum of the accrued benefits of the three highly compensated employees under the plan with the largest accrued benefits constitute over 25 percent of the total accrued benefits under the plan. This plan fails to satisfy the concentration test of this paragraph (b)(4).

(c) *Definitions for prior benefit structure tests*—(1) *Accrued benefit*—(i) *In general.* Solely for purposes of applying paragraph (b) of this section, an employee's accrued benefit under a defined benefit plan is the accrued benefit to which the employee is entitled commencing at the plan's normal retirement age, expressed as an annuity for such employees life. Thus, the accrued benefit, for purposes of this paragraph (c)(1), is not adjusted to reflect benefit subsidies such as subsidized early retirement benefits or subsidized joint and survivor annuity provisions, whether or not the employee has satisfied the conditions for such benefit subsidy.

(ii) *Social security benefits and permitted disparity.* An employees accrued benefit is to be determined based only on the employee's benefit under the plan being tested, without regard to benefits provided under social security or similar Federal or state law and without regard to the permitted disparity under section 401(l).

(iii) *Benefits under other plans.* An employee's accrued benefit is based only on the employee's benefit under the plan being tested. Thus, for example, if benefits under the plan being tested are reduced by benefits under another plan maintained by the employer maintaining the plan being tested (e.g., in a floor-offset arrangement) an employee's benefit under the plan being tested is determined after the reduction by benefits provided under such other plan. An employer may elect to disregard benefits under the plan being tested if such benefits were rolled over (rather than transferred) to such plan and such benefits are treated as voluntary employee contributions under such plan. A plan may not disregard benefits that were transferred to the plan being tested from any other plan, including a plan of an unrelated employer; or benefits that were originally accrued under another plan that was merged with the plan being tested.

(2) *Minimum benefit rate*—(i) *General rule.* The minimum benefit rate for a plan for a plan year is determined in the following manner. If the highly compensated benefit rate for such year is equal to or greater than 1⅓ percent, the minimum benefit rate is equal to 60 percent of the excess of the highly compensated benefit rate over ¾ percent. If the highly compensated benefit rate is less than 1⅓ percent, the minimum benefit rate is equal to 30 percent of the highly compensated benefit rate. If the minimum current accrual rate (determined under paragraph (b)(2)(ii) of this section) is less than the minimum benefit rate determined under the preceding two sentences, then the minimum benefit rate is such minimum current accrual rate.

(ii) *Highly compensated benefit rate.* (A) The highly compensated benefit rate for a plan year is the highest of the accrued benefit rates for the three active employees or former employees who are or ever were highly compensated employees of the employer (either as active employees, former employees, or both) with the largest accrued benefits under the plan as of the close of the plan year. For purposes of this rule, an employer may limit consideration of highly compensated former employees to those employees who had an hour of service with the employer during the plan year or any of the immediately preceding five plan years. In addition, the employer may disregard highly compensated former employees who became former employees prior to January 1, 1988. If more than three employees have the largest amounts of accrued benefits under the plan, all of such employees are taken into account in determining the highest accrued benefit rate. If there are fewer than three employees with accrued benefits under the plan who are or ever were highly compensated employees, this determination is to be made by reference to all employees with accrued benefits under the plan who are or ever were highly compensated employees.

For purposes of applying this rule, employees who were highly compensated employees only for plan years ending before January 1, 1984, are not treated as highly compensated employees.

(B) *Example.*

Assume that an employer maintains a defined benefit plan that benefits five active employees and five former employees who are or ever were highly compensated employees of the employer. To determine the plan's highly compensated benefit rate, the employer first must identify the 3 of these 10 employees who have the largest accrued benefits under the plan. Thus, if $90,000 is the largest accrued benefit for any employee under the plan and if 3 of the 10 employees each have a $80,000 accrued benefit, these 3 employees are taken into account in determining the plan's highly compensated benefit rate. If 4 of the 10 employees have $90,000 accrued benefits, all 4 are taken into account. Similarly, if 2 of the 10 employees have $90,000 accrued benefits and 2 of the 10 employees have $89,000 accrued benefits (the second largest amount under the plan), all 4 of these employees are taken into account in determining the plan's highly compensated benefit rate. Then, the employer must determine which of these employees who are taken into account has the highest accrued benefit rate, and such rate is the highly compensated benefit rate for the year.

(3) *Compensation.* An employee's compensation is compensation as defined by the plan for purposes of determining employees' benefits. Such definition must satisfy section 414(s) and the regulations thereunder. In applying the rules of paragraph (b) of this section, a plan must use a uniform definition of compensation and a uniform applicable period for determining compensation. Thus, for example, in applying the minimum current benefit structure test of paragraph (b)(2)(iv) of this section, a uniform definition of compensation must be used in determining the future service benefit rates and the minimum benefit rate. Similarly, in applying the minimum accrued benefit test of paragraph (b)(3)(ii) of this section, a uniform definition of compensation must be used in determining the accrued benefit rates and the minimum benefit rate. Also, a plan may not take into account, for any plan year, compensation in excess of the amount that may be taken into account for such year under section 401(a)(17), and a plan may not project any increase in such amount.

(d) *Additional rules.* The Commissioner may, only in revenue rulings, notices or other documents of general applicability, prescribe such additional guidance as may be necessary or appropriate with respect to the application of this section.

§ 1.401(a)(26)–7 Definitions.

The following definitions are applicable for purposes of section 401(a)(26) and the regulations thereunder:

(a) *Collective bargaining agreement.* The term "collective bargaining agreement" refers to an agreement that the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and the employer, which agreement satisfies § 301.7701–17T. Employees described in section 413(b)(8) who are employees of the union or the plan and are treated as employees of an employer are not considered to be employees covered pursuant to a collective bargaining agreement for purposes of section 401(a)(26) unless such employees are actually covered pursuant to such an agreement.

(b) *Employee*—(1) *In general.* The term "employee" means an individual who performs services for the employer who is either a common-law employee of the employer or a self-employed individual treated as an employee pursuant to section 401(c)(1). The term "employee" includes a leased employee who is treated as an employee of the employer-recipient pursuant to the provisions of section 414(n)(2) or section 414(o)(2), other than individuals who are excluded by reason of section 414(n)(5). Individuals that an employer treats as leased employees under section 414(n), pursuant to the requirements of section 414(o), are considered to be leased employees for purposes of this paragraph (b).

(2) *Active and former employees.* An active employee is an individual currently performing services as an employee for the employer. An individual ceases to be an active employee and is treated as a former employee commencing with the day after the day on which the employee terminates from service for the employer. Thus, an employee who terminates from service for an employer during a plan year is both an active employee and a former employee for such plan year.

(3) *Highly compensated employee.* The term "highly compensated employee" means a highly compensated employee within the meaning of section 414(q).

(4) *Nonhighly compensated employee.* The term "nonhighly compensated employee" means an employee who is not a highly compensated employee.

(c) *Employer.* For purposes of section 401(a)(26), except as specifically provided otherwise in the regulations under section 401(a)(26), the term "employer" means the employer maintaining the plan and those employers required to be aggregated with such employer under sections 414 (b), (c), (m), or (o). An individual who owns the entire interest of an unincorporated trade or business is treated as an employer. Also, a partnership is treated as the employer of each partner and each employee of the partnership.

(d) *Defined contribution plan.* The term "defined contribution plan" means a defined contribution plan within the meaning of section 414(i).

(e) *Defined benefit plan.* The term "defined benefit plan" means a defined benefit plan within the meaning of section 414(j).

(f) *Multiemployer plan.* A multiemployer plan is a multiemployer plan within the meaning of section 414(f).

(g) *Professional.* The term "professional" means any individual who, on any day of the plan year, performs professional services for the employer as a certified or other public accountant, actuary, architect, attorney, chiropodist, chiropractor, executive, investment banker, medical doctor, dentist, optometrist, osteopath, podiatrist, engineer, psychologist, stockbroker, veterinarian or in such other professional capacity determined by the Commissioner in a notice or other document of general applicability to constitute the performance of services as a professional.

§ 1.401(a)(26)–8 Effective dates and transition rules.

(a) *In general.* Except as provided in paragraphs (b), (c), and (d) of this section, section 401(a)(26) and the regulations thereunder shall apply to plan years beginning after December 31, 1988.

(b) *Transition rules*—(1) *Current benefit structures.* Notwithstanding paragraph (a) of this section, for plan years beginning after December 31, 1988, and before January 1, 1990, the only rights and features to be taken into account in identifying current benefit structures under § 1.401(a)(26)–2(d)(3) are the bases and conditions applicable to the determination of an employee's contribution allocation under a defined contribution plan and the bases and

conditions applicable to the determination of an employee's normal retirement benefit, any early retirement benefit that is reduced by less than 3 percent for each year of early commencement, the employee's qualified joint and survivor annuity benefit and any accrual, availability and eligibility conditions related to these normal retirement, early retirement or joint and survivor annuity benefits. Thus, for example, except to the extent included in the preceding sentence, optional forms of benefit, loans, self-directed investment options and ancillary benefits are to be disregarded for purposes of identifying a plan's current benefit structures for plan years beginning in 1989. However, the rules relating to other arrangements that, in accordance with § 1.401(a)(26)–2(d)(11), may cause a defined benefit plan to be treated as comprising separate current benefit structures are effective for all plan years that are subject to section 401(a)(26) under paragraph (a) of this section, including those that begin before January 1, 1990.

(2) *Prior benefit structures.* Notwithstanding paragraph (a) of this section, for plan years beginning after December 31, 1988, and before January 1, 1990, if a defined benefit plan reasonably complies with the rules in § 1.401(a)(26)–6(b)(2) applicable in determining whether the plan has a current benefit structure that is meaningful relative to the benefits accrued under the plan and whether a plan's prior benefit structure satisfies section 401(a)(26), such plan will be treated as satisfying such standards. Whether compliance is reasonable is to be determined on the basis of all facts and circumstances; precise application and satisfaction of the rules in § 1.401(a)(26)–6(b)(2) is not required. In making this determination, special emphasis will be placed on whether a defined benefit plan that fails to satisfy the rules set forth in § 1.401(a)(26)–6(b)(2) is an ongoing plan providing meaningful, additional benefits to employees or whether such plan is substantially inactive and whether the plan's design or operation is consistent with an attempt to avoid or has the effect of avoiding the requirements, objectives, or effective dates of section 401(a)(26).

(3) *Certain plan terminations*—(i) *In general.* Except as provided in paragraph (b)(3)(ii) of this section, if a plan terminates after section 401(a)(26) becomes effective with respect to the plan (as determined under paragraph (a) of this section), the plan will not be treated as a qualified plan upon termination unless it complies with section 401(a)(26) and the regulations thereunder (to the extent they are applicable) for all periods for which section 401(a)(26) is effective with respect to the plan.

(ii) *Exception.* Notwithstanding paragraphs (a) and (b)(3)(i) of this section, a plan will not fail to be treated as a qualified plan upon termination merely because such plan fails to satisfy the requirements of section 401(a)(26) and the regulations thereunder if all of the following applicable conditions are satisfied:

(A) In the case of a defined benefit plan, no highly compensated employee has an accrued benefit under the plan in addition to the lesser of either the benefit such employee had accrued as of the close of the last plan year beginning before January 1, 1989, or the benefit such employee would have accrued as of the close of such last plan year under the terms of the plan in effect and applicable with respect to such employee on December 13, 1988.

(B) In the case of a defined contribution plan, no highly compensated employee receives a contribution allocation for any plan year beginning after December 31, 1988. For this reason, a contribution allocation with respect to an employee for a plan year beginning before January 1, 1989, may be treated as a contribution allocation for a plan year beginning after December 31, 1988 if the allocation for the prior year is in excess of the allocation that the employee would have received for such year under the terms of the plan in effect and applicable with respect to such employee on December 13, 1988. An allocation of forfeitures to highly compensated employees with respect to contributions made for plan years beginning before January 1, 1989, will not cause a defined contribution plan to fail to satisfy the requirements in this paragraph (b)(2)(ii)(B).

(C) The plan is terminated with a termination date on or before May 31, 1989.

(c) *Waiver of excise tax on reversions*—(1) *In general.* Pursuant to section 1112(e)(3) of the Tax Reform Act of 1986 (TRA '86), if certain conditions are satisfied, a waiver of the excise tax under section 4980 applies with respect to any employer reversion that occurs by reason of the termination or merger of a plan before the first year to which section 401(a)(26) applies to such plan. In general, the applicable conditions are that the plan must have been in existence on August 16, 1986; the plan would have failed to satisfy the requirements of section 401(a)(26) if such section were in effect for the plan year including August 16, 1986, and such plan continued to fail such requirements at all times thereafter; the plan satisfies the applicable conditions in paragraph (b)(3)(ii)(A) or (B) of this section; and certain requirements regarding asset or liability transfers and mergers and spinoffs involving such plan after August 16, 1986, are satisfied.

(2) *Termination date.* An employer reversion with respect to a plan will be eligible for the section 4980 excise tax waiver only if such employer reversion occurs by reason of the termination of the plan with a termination date, prior to the first plan year for which section 401(a)(26) applies to such plan. Solely for purposes of this waiver, the employer reversion will be treated as satisfying this paragraph (c)(2) even though the plan's termination date is during the first plan year for which section 401(a)(26) applies to such plan if the plan's termination date is on or before May 31, 1989. If the termination date occurs in the first plan year for which section 401(a)(26) applied to the plan and the employer receives a reversion that is eligible for the waiver of the section 4980 tax, the plan is subject to the interest rate restriction set forth in section 1112(e)(3)(B) of TRA '86.

(3) *Failure to satisfy section 401(a)(26).* An employer reversion with respect to a plan will be eligible for the excise tax waiver only if such plan was in existence on August 16, 1986 and, if section 401(a)(26) had applied to the plan for the plan year including such date, the plan would have failed to satisfy section 401(a)(26) for such plan year and continuously thereafter until such plan's termination or merger. For purposes of this paragraph (c), a plan will be treated as though it would have failed to satisfy section 401(a)(26) before such section actually applied with respect to the plan only if the plan (as defined under section 414(l)) failed to benefit at least the lesser of 50 active employees or 40 percent of the employer's active employees. In general, this determination is to be made on the basis of only the applicable statutory provisions, without regard to the regulations under section 401(a)(26). Thus, for example, the current and prior benefit structure rules in the regulations under section 401(a)(26) are not applicable in determining whether a plan would have failed to satisfy section 401(a)(26) for plan years prior to the effective date of section 401(a)(26) with respect to such plan. Similarly, the failure to benefit at least the lesser of 50 former employees or 40 percent of the employer's former employees does not cause the plan to be treated as failing to satisfy section 401(a)(26) for plan years prior to the effective date of section 401(a)(26) with respect to the plan.

(d) *Special rule for collective bargaining agreements.* In the case of a plan maintained pursuant to one or more collective bargaining agreements (as defined in § 1.401(a)(26)–7(a)) that were ratified before March 1, 1986, section 401(a)(26) and the regulations thereunder shall not apply to plan years beginning before the earlier of—

(1) The later of—

(i) January 1, 1989, or

(ii) The date on which the last of such collective bargaining agreements terminates, or

(2) January 1, 1991. For purposes of this paragraph (b) of this section, any extension or renegotiation of any collective bargaining agreement that is ratified after February 28, 1986 shall be disregarded in determining the date on which such collective bargaining agreement terminates.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 89-3321 Filed 2-13-89; 8:45 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[FRL-3519-6]

Designation of Areas for Air Quality Planning Purposes; Attainment Status Designations; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: USEPA is proposing to disapprove a request from the State of Ohio to revise the attainment status designations, at 40 Code of Federal Regulations (CFR) 81.336, for Mahoning and Trumbull Counties in Ohio from nonattainment to attainment relative to the ozone National Ambient Air Quality Standard (NAAQS). USEPA is proposing to disapprove the request because of recent violations of the ozone NAAQS.

The intent of this proposed notice is to discuss the results of USEPA's review of the State redesignation request and to provide an opportunity for the public to comment. Under the Clean Air Act (CAA), designations can be changed if sufficient data are available to warrant such a change.

DATE: Comments on this redesignation request and on the proposed USEPA action must be received by March 16, 1989.

ADDRESSES: Copies on the redesignation request, technical support documents and the supporting air quality data are available at the following addresses:

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604.

Ohio Environmental Protection Agency, Office of Air Polution Control, 1800 Water Mark, P.O. Box 1049, Columbus, Ohio 43266-0149.

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.) Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Chicago, Illinois 60604, (312) 886-6031.

SUPPLEMENTARY INFORMATION: Under section 107(d) of the CAA, the Administrator of USEPA has promulgated the NAAQS attainment status for all areas within each State. For Ohio, see 43 FR 8962 (March 3, 1978), 43 FR 45993 (October 5, 1978), and 40 CFR 81.336. These area designations are subject to revision whenever sufficient data become available to warrant a redesignation. Mahoning and Trumbull Counties, Ohio were designated as not attaining the ozone standard on the basis of a measured violation of the ozone NAAQS.[1] For areas designated nonattainment for ozone, a revised ozone SIP was required which satisfies the requirements of Section 110(a) and Part D of the CAA and which provides for attainment and maintenance of the ozone NAAQS.

Redesignation Criteria for Ozone

Specific criteria for ozone redesignation reviews are given in the following USEPA memoranda:

1. December 7, 1979, from Richard G. Rhoads to the Directors of Air and Hazardous Materials Division, Region I–X. Subject: Criteria for Ozone Redesignation Under Section 107.

2. April 21, 1983, from Sheldon Meyers to Director of Air Management Divisions, Subject: Section 107 Designations Policy Summary.

3. December 23, 1983, from G.T. Helms to Chiefs of Air Programs Branches, Region I–X, Subject: Section 107 Questions and Answers.

4. April 6, 1987, from Gerald A. Emison, Director, Office of Air to the Air Division Directors, Quality Planning and Standards, Subject: Ozone Redesignation Policy.

The general USEPA policy relevant to this ozone redesignation request is summarized as follows:

1. Generally, the most recent 3 years of quality assured ozone monitoring data are to be considered. The ozone standard can not be violated at any of the monitoring sites. If 3 years of data are not available, the most recent 8 quarters may be considered provided no exceedances have occurred.

2. The designation given for an area generally applies to whole counties.

3. Urban areas should have a single designation, with the designated area including the entire urbanized area and fringe areas of development. The designation should be based on data from the worst case downwind monitor.

4. The nonattainment area should be of sufficient size to include all significant impacting volatile organic compound emission sources.

5. For an area to be redesignated to attainment, the area must have an implemented SIP which USEPA has fully approved.

For a more detailed discussion of USEPA's redesignation policy and on ozone formation and transport see 53 FR 52727 (December 29, 1988) (proposing to disapprove the Kane and Dupage Counties to attainment for ozone.)

Redesignation Request

On March 1, 1985, pursuant to Section 107(d)(5) of the CAA, the Ohio Enviromental Protection Agency (OEPA) requested that Mahoning and Trumbull Counties be redesignated to attainment of the ozone NAAQS. The OEPA submitted air quality data and several Reasonable Further Progress (RFP) reports as evidence that the implemented VOC emission reductions are responsible for the observed air quality improvement in Mahoning and Trumbull Counties.

Mahoning and Trumbull Counties both contain a significant portion of the Youngstown-Warren urbanized area. Therefore, both Counties were designated nonattainment based on

[1] The NAAQS for ozone is defined at 40 CFR Part 50 to be violated when the annual average expected number of daily exceedances of the standard (0.12 parts per million (ppm), 1-hour average) is greater than one (1.0). A daily exceedance occurs when the maximum hourly ozone concentration monitored during a given day exceeds 0.124 ppm (See "Guideline for the Interpretation of Ozone Air Quality Standard", EPA-450/4-79-003, which has been included in the record for this rulemaking action). The expected number of daily exceedances is calculated from the observed number of exceedances by making the assumption that non-monitored days (invalid or incomplete data) have the same fraction of daily exceedances as observed on monitored days (EPA-450/4-79-003).

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measured air quality violations which occurred at the Youngstown monitor. Although USEPA approved Ohio's 1979 ozone SIP control strategy for the Youngstown area on October 31, 1980 (45 FR 921222), and June 29, 1982 (47 FR 28097), review of the available ozone data show that seven exceedances (five in 1988, one in 1987, and one in 1986) of the ozone NAAQS have been monitored in Farrell, Pennsylvania, which is ten miles northeast of Youngstown.[2] Since the prevailing summertime warm weather (ozone conductive) winds in the upper Midwest are from the quadrant bounded by the directions south and west, the Farrell site is expected to be downwind of the Youngstown-Warren area on most high ozone days. Lacking data to the contrary, it is assumed that the ozone standard exceedances observed in Farrell were primarily due to ozone precursor emissions from Mahoning and Trumbull Counties. Therefore, current violations of the NAAQS exist in the Youngstown area and its downwind environs, and the area cannot be redesignated to attainment.

Conclusion

USEPA has determined that violations of the ozone NAAQS have been monitored at a site adversely impacted by emissions from Mahoning and Trumbull Counties. Therefore, USEPA is proposing to disapprove OEPA's request to redesignate Mahoning and Trumbull Counties to attainment for ozone because it does not meet all the requirements for redesignation.

The Office Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

All interested persons are invited to submit written comments on the proposed redesignation. Written comments received by the date specified above will be considered in determining whether USEPA will approve the redesignation. After review of all comments submitted, the Administrator of USEPA will publish in the **Federal Register** the Agency's final action on the redesignation request.

Under 5 U.S.C. section 605(b), I certify that these disapprovals of proposed redesignation requests will not have a significant economic impact on a substantial number of small entities because it applies only to Mahoning and Trumbull Counties and imposes no new requirements on anyone.

[2] Additionally, preliminary 1988 data show an exceedance of the standard was monitored at the 9 West Front monitor in Youngstown.

List of Subject in 40 CFR Part 81

Air pollution control, National Parks, Wilderness areas.

Authority: 41 U.S.C 7401–7642

Dated: September 17, 1988.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 89–3389 Filed 2–13–89; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 81132–9033]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure; request for comments.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the shares of the total allowable catch (TAC) for sablefish that will be allocated to trawl gear in part of the Gulf of Alaska for the 1989 fishing year are needed as bycatch amounts to support directed trawl fisheries for other groundfish species in the Gulf of Alaska during the 1989 fishing year. The Secretary of Commerce is prohibiting directed fishing for sablefish in part of the Gulf of Alaska by persons using trawl gear during the 1989 fishing year. This action is necessary to prevent wastage of sablefish that would otherwise occur if sablefish quotas were reached prematurely. This action is intended to carry out objectives contained in the fishery management plan used for managing groundfish resources in the Gulf of Alaska.

EFFECTIVE DATE: February 9, 1989. Comments are invited until February 24, 1989.

ADDRESS: Comments should be addressed to Steven Pennoyer, Director, Alaska Region (Regional Director), National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802–1668.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Management Biologist, NMFS), 907–586–7230.

SUPPLEMENTARY INFORMATION: This notice addresses the need to close the directed sablefish fishery by vessels using trawl gear in the Central and Western Regulatory Areas in the Gulf of Alaska. Regulations pertaining to management of the Central and Western Regulatory Areas are at 50 CFR Part 672. These regulations implement the Fishery Management Plan for the Groundfish of the Gulf of Alaska.

Sablefish are caught in directed fisheries, and are also caught incidentally while fishing for other groundfish species. Amounts of incidental catches of sablefish must be considered when managing total allowable catches (TACs) available in 1989. The Secretary is establishing TACs for each of the target groundfish species, including sablefish, after having consulted with the North Pacific Fishery Management Council (Council). The Council met during December 5–9, 1988, and adopted TACs for each of the target species, and is recommending that the Secretary implement these for the 1989 fishing year, which begins January 1. For sablefish, the Council recommended a Gulf of Alaska-wide TAC of 26,000 mt for the 1989 fishing year, with 11,700 mt and 3,770 mt distributed between the Central and Western Regulatory Areas, respectively. Under § 672.22(b)(2), 20 percent of the sablefish TAC in each of the two regulatory areas is allocated to trawl gear. In the Central and Western Regulatory Areas, 2,340 mt and 750 mt, respectively, are allocated to trawl gear.

All the amounts currently allocated to trawl gear in the Central and Western Regulatory Areas are expected to be caught as bycatch while fishing for other groundfish species. The Secretary of Commerce is closing the Central and Western Regulatory Areas to directed fishing for sablefish by vessels using trawl gear, effective February 9, 1989.

Under § 672.24(b)(3)(i) of regulations governing the Gulf of Alaska groundfish fishery, if the Regional Director determines that the share of the sablefish TAC assigned to any type of gear and in any area or district may be taken before the end of the year, the Secretary will prohibit directed fishing for sablefish by persons using that gear type for the remainder of the year by publishing a notice in the **Federal Register**. Since sablefish bycatches would be retainable, wastage is reduced.

Trawl vessels conducted directed fisheries for sablefish in the Gulf of Alaska in 1987. The Secretary closed the Central and Western Regulatory Areas to further retention on May 5, 1987 (52 FR 17404, May 8, 1987). Further catches were required to be discarded at sea for the remaining seven and three-quarter months of the fishing year. In 1988, the Secretary closed the Central and Western Regulatory Areas to directed fishing by vessels using trawl gear at the beginning of the fishing year. This slowed the achievement of the sablefish

trawl share in the Central Regulatory Area until September 15, 1988 (53 FR 36462, September 20, 1988), which shortened the amount of time fishermen were required to discard sablefish, thereby lessening the amount of waste.

The Regional Director finds that directed fishing on sablefish by trawl vessels in the Central and Western Regulatory Areas of the Gulf of Alaska would likely occur early in the 1989 fishing year. The Regional Director's findings are based on two facts. First, the price paid to fishermen for sablefish in 1988 averaged about $1.70 per pound, and will likely be this much in 1989, which will continue to attract significant effort early in the year. Second, the Council adopted a management policy at its December 1988 meeting which rejects the current access system in the sablefish fishery. The Council intends to develop an alternative management system which would rationalize future participation in the sablefish fishery. Additional numbers of fishermen are likely to participate in the 1989 sablefish fishery to gain possible future rights.

Absent this closure, available amounts of sablefish would be caught early, and force the Secretary to declare sablefish a prohibited species. Additional catches could not be retained, resulting in their being discarded at sea which would be a waste of a commercially valuable resource. Therefore, under § 672.24(b)(3)(i), the Secretary, in order to provide adequate bycatch amounts to promote continued groundfish fishing by trawl vessels on other species, is prohibiting directed fishing for sablefish, defined at § 672.2, in the Central and Western Regulatory Areas of the Gulf of Alaska by operators of trawl vessels during the 1989 fishing year.

Public comments on this notice of closure may be submitted to the Regional Director at the address above until February 24, 1989.

Classification

This action is taken under § 672.24 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Dated: February 9, 1989.

Alan Dean Parsons,

Acting Director of Office Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–3462 Filed 2–9–89; 5:01 pm]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 54, No. 29
Tuesday, February 14, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

FEDERAL CROP INSURANCE CORPORATION

[Doc. No. 8617S]

Address for the Federal Crop Insurance Commission

This notice serves to advise all interested parties of the establishment of an office address for the Commission on the Improvement of the Federal Crop Insurance Program. The 25 member commission, popularly known as the Federal Crop Insurance Commission, was authorized by the Federal Crop Insurance Commission Act (Pub. L. 100–546, October 28, 1988), and is composed of 20 representatives of the agricultural and crop insurance industries, the Manager of FCIC, and 4 ex officio non-voting members from the House and Senate. Members of the commission serve without compensation.

Commission members representing the agricultural industry include three from the largest general farm organizations and seven growers. Insurance industry members include representatives from large and small insurance companies reinsured by FCIC, sales and service contractors selling federally underwritten crop insurance, and agent trade associations.

This notice serves to advise all interested parties that all communications to be brought to the attention of the Commission should be sent to the following address: Mr. M.J. Felt and Mr. Ray Davis, Co-Chairs, Commission on the Improvement of the Federal Crop Insurance Program, 1255 23rd Street, NW., Suite 880, Washington, DC 20037. Telephone: (202) 887–6700.

David W. Gabriel,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 89–3374 Filed 2–13–89; 8:45 am]

BILLING CODE 3410–08–M

DEPARTMENT OF AGRICULTURE

Forest Service

Allegheny National Forest; Allegheny Wild and Scenic River Study; Armstrong, Butler, Clarion, Forest, Venango and Warren Counties, Pennsylvania; Extension of Public Involvement Period on Draft Environmental Impact Statement

The USDA, Forest Service is extending the 90-day pubilc involvement period for the Allegheny Wild and Scenic River Study to May 15, 1989. The origianl Notice of Intent was published in the November 10, 1988 **Federal Register** (53 FR 45546). Written comments postmarekd on or before May 15, 1989 will be accepted and addressed in a Final Environmental Impact Statement.

Written comments on the analysis should be sent to: *River Study,* Allegheny National Forest, P.O. Box 847, Warren, PA 16365.

The Allegheny River Study Corridor is 128 miles long and located in northwestern Pennsylvania between Kinzua Dam and East Brady. The Study was authorized by Congress in Pub. L. 95–625, the National Parks and Recreation Act of 1978.

Information on the proposed action and draft environmental impact statement may be obtained by either writing the Allegheny National Forest at the above listed address or calling (814) 723–5150.

Date: February 6, 1989.

David J. Wright,

Forest Supervisor.

[FR Doc. 89–3412 Filed 2–13–89; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–779–802]

Standard Carnations From Kenya; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by the petitioner, the Department of Commerce has conducted an administrative review of the antidumping duty order on standard carnations from Kenya. The review covers three producers and one third-country reseller of this merchandise to the United States and the period November 3, 1986 through March 31, 1988. The review indicates the existence of dumping margins during this period.

As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the calculated differences between United States price and foreign market value.

We used best information available for two firms which failed to respond or provided an inadequate response to our request for information.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: February 14, 1989.

FOR FURTHER INFORMATION CONTACT: Linda L. Pasden or Robert J. Marenick, Office of Compliance, International Trade Administation, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5255.

SUPPLEMENTARY INFORMATION:

Background

On April 23, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 13490) an antidumping duty order on standard carnations from Kenya. The petitioner requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct the administrative review. We published a notice of initiation of the antidumping duty administrative review on May 23, 1988 (53 FR 18324). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule ("HTS"), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by this review are shipments of standard carnations. During the review period, such merchandise was classifiable under item 192.2100 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under HTS item 0603.10.90. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers three manufacturers/exporters and one third-country reseller of standard carnations from Kenya and the period November 3, 1986 through March 31, 1988. Kenya Flowers, the third-country reseller with shipments during the period, provided an inadequate response to our request for information. After the Department notified Kenya Flowers of the deficiencies in its response, the respondent failed to provide a list of prices to unrelated purchasers. In addition, the respondent did not provide a non-proprietary summary of its response. Sulmac, the producer, did not respond to our questionnaire. Therefore, the Department used the best information available for these two firms, which was the rate published in the antidumping duty order (52 FR 13490, April 23, 1987).

We did not cover Flaco because we were unable to locate them. It is reported by the counsel for the Government of the Republic of Kenya that they may be out of business. The petitioner requested that the Department conduct a review of Bobs Harries Limited, Guy Robin, Brooke Bond Kenya and Oserian. We did not cover these four firms because they had no shipments during the period and we have no evidence that these firms are producers or exporters of the subject merchandise. If these firms should begin to export the subject merchandise, we will treat them as new shippers.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margins exist for the period November 3, 1986 through March 31, 1988:

Producer/exporter/3rd country reseller	Margin (percent)
Sulmac/Kenya Flowers	2.34
Updown	[1] 2.34
Plantana Limited	[1] 2.34
ADC Agriculture	[1] 2.34

[1] No shipments during the period; margins represent each company's most recent rate.

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 8 days of publication. Any hearing, if requested, will be held 35 days after the date of publication, or the first workday thereafter. Prehearing briefs and/or written comments from interested parties may be submitted not later than 25 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 32 days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shal be required. For any future entries of this merchandise from a new exporter, not covered in this administrative review, whose first shipments occurred after March 31, 1988, and who is unrelated to any reviewed firm, a cash deposit of 2.34 percent shall be required.

These deposit requirements are effective for all shipments of Kenyan standard carnations entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a(a) of the Commerce Regulations (19 CFR 353.53a).

Date: February 8, 1989.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 89–3443 Filed 2–13–89; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–045]

Steel Wire Rope From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On November 1, 1988, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on steel wire rope from Japan. The review covers 30 manufacturers and/or exporters of this merchandise to the United States, and various periods from March 1, 1975 through September 30, 1984.

We gave interested parties an opportunity to comment on the preliminary results. We received comments from one respondent, Kanematsu-Gosho Ltd. Based on our analysis of the comments received, the final results are unchanged from those presented in the preliminary results.

EFFECTIVE DATE: February 14, 1989.

FOR FURTHER INFORMATION CONTACT: Linda L. Pasden or Robert J. Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5255.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 44055) the preliminary results of its administrative review of the antidumping finding on steel wire rope from Japan (38 FR 28571, October 15, 1973). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule ("HTS"), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by this review are shipments of steel wire rope, except brass electroplated steel truck tire cord of cable construction specially packaged for protection against moisture and atmosphere. During the review period, such merchandise was classifiable under item 642.1200, 642.1400, 642.1500, 642.1600, and 642.1700 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under HTS items 7312.1060, 7312.1080, 7312.1090, and 7312.1050. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers 30 manufacturers and/or exporters of Japanese steel wire rope and various periods for which reviews were requested, from March 1, 1975 through September 30, 1984.

Ataka, Chrysanthemum, Kent-Moore, Far East, Vanguard, Kanematsu-Gosho, C. Itoh, Higashishiba, Kohshin (Koshin), Kokoku, Okura, Shinyo, Taisei Int'l., Teikoku, and Yutoku did not respond or provided an inadequate or untimely response to the Department's antidumping questionnaire for certain periods. (Ataka and Taisei Int'l. are reported by our office in Tokyo to be out of business.) For these periods and firms, the Department used the best information available for assessment and cash deposit purposes.

Best information available for time periods through December 31, 1979, was the bonding rate at time of entry. Beginning January 1, 1980, we used the highest rate for each firm previously reviewed because those rates were higher than any rates found during this review. For non-shipping firms we used their most recent rate.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from one respondent, Kanematsu-Gosho Ltd., concerning its shipments produced by Kokoku.

Comment 1: The respondent contends that the rate published in the preliminary results is incorrect for kokoku/Kanematsu-Gosho because it is not the most recent rate. The most recent rate is the rate that was published on July 31, 1987, and that rate was 0.35 percent. Because the 0.35 percent rate is *de minimis*, the cash deposit of estimated antidumping duties should be waived.

Department's Position: In the results of our review, published on July 31, 1987, covering the period January 1, 1977 through March 31, 1978, was stated that "* * * these margins shall not change the current rates for cash deposits of estimated antidumping duties * * *." The most recent rate for the most recent period for Kokoku/Kanematsu-Gosho was published on March 29, 1984, for the period October 1, 1981 though September 30, 1982, and that rate is 7.29 percent.

Comment 2: The respondent contends that the period covered in the preliminary results of review is incorrect. The period should cover October 1, 1983 through September 30, 1984. As a result, Kanematsu-Gosho requests revocation based on the fact that it had no shipments for 3 years.

Department's Position: The original review request was for the period October 1, 1983 through September 30, 1984; it was amended by the petitioner in their letter dated September 1, 1987. The period covered in this review for Kokoku/Kanematsu-Gosho reflects the amended period. Therefore, Kanematsu-Gosho is not eligible for revocation.

Final Results of the Review

As a result of our review of the comments received, the final results are unchanged from those presented in the preliminary results of review. We determine that the following margins exist:

Manufacturer/exporter	Margin (percent)
Chrysanthemum (a.k.a. Kiku)/Ataka	
10/01/82—09/30/84	[2] 11.88
Chrysanthemum/C. Itoh	
10/01/82—09/30/83	[1] 0
10/01/83—09/30/84	[2] 11.88
Chrysanthemum/Kent-Moore Japan	
10/01/82—09/30/83	[2] 7.29
10/01/83—09/30/84	[1] 7.29
Chrysanthemum/Watanabe Trading	
10/01/82—09/30/84	[1] 1.06
Daiyu Kogyo (a.k.a. Dia Steel Wire and Dia Kogyo)	
02/01/83—02/28/83	[1] 7.29
Hannan Rope	
02/01/82—09/30/84	[1] 7.29
Hannan Rope/Far East	
10/01/82—09/30/83	[2] 7.29
10/01/83—09/30/84	[1] 7.29
Hannan Rope/Higashishiba	
03/01/75—03/31/76	[2] 16.32
10/01/82—09/30/84	[2] 7.29
Higashishiba	
02/01/82—09/30/84	[2] 11.88
Kawatetsu Wire/Taisei Int'l	
06/01/75—03/31/78	[2] 29.80
10/01/80—09/30/83	[2] 29.80
Kokoku/Kanematsu-Gosho	
10/01/83—03/31/84	[1] 7.29
Kokoku/Kohshin (Koshin)	
10/01/82—03/31/84	[2] 7.29
Kokoku/Nissho-Iwai	
10/01/82—03/31/84	[2] 7.29
Kokoku/Shinsho (a.k.a. Shinkyo Shoji, Shinko Shoji and Shinko Wire Corp.)	
10/01/82—03/31/84	[1] 7.29
Shinko Wire Rope/Kanematsu-Gosho	
10/01/83—09/30/84	[1] 0
Shinko Wire Rope/Nissho-Iwai	
10/01/82—09/30/84	[1] 0
Shinyo Ropes/Higashishiba	
03/01/83—09/30/84	[2] 7.29
Shinyo Ropes/Vanguard	
10/01/83—03/31/84	[1] 7.29
Shinyo Ropes/Yutoku (a.k.a. S.M. Industries)	
10/01/82—09/30/83	[2] 4.62
10/01/83—09/30/84	0
Teikoku/C. Itoh	
04/01/78—01/31/82	[2] 11.88
Teikoku/Kanematsu-Gosho	
12/01/76—01/31/82	[1] 20.57
Teikoku/Okura Trading	
12/01/76—09/30/81	[2] 20.57
10/01/81—01/31/82	[1] 20.57
Teikoku/Sakai	
12/01/76—03/31/78	[1] 20.57
10/01/80—01/31/82	[1] 20.57
Teikoku/Shinko Shoji	
04/02/78—01/31/82	[1] 20.57
Teikoku/Showa Boeki	
10/01/80—01/31/82	[1] 0
Teikoku/Taisei Int'l	
12/01/76—03/31/78	[2] 20.57
04/01/79—01/31/82	[2] 20.57
Tokyo Rope/Alaska Boeki	
01/01/77—09/30/81	[1] 17.18
Tokyo Rope/Ataka	
04/01/76—09/30/84	[2] 17.18
Tokyo Rope/Mitsubishi Corp.	
04/01/78—02/28/83	[1] 0
Union Wire Rope/Sanyo Bussan (a.k.a. Sanyu)	
10/01/82—09/30/84	0

[1] No shipments during the period; margins are their most recent rate.
[2] Used best information available.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins for the most recent period for each firm shall be required. For any shipments from the remaining known manufacturers and exporters not covered by this review, the cash deposit will continue to be at the latest rate applicable for each of those firms (47 FR 3395, January 25, 1982; 48 FR 8524, March 1, 1983; and 49 FR 12295, March 29, 1984). For any future entries of this merchandise manufactured or exported by a new manufacturer and/or exporter, whose first shipments occurred after September 30, 1984, and who is unrelated to any reviewed firm or previously reviewed firm, a cash deposit of zero percent shall be required. These deposit requirements are effective for all shipments of Japanese steel wire rope entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.53a.

Jan W. Mares,
Assistant Secretary for Import Administration.

Date: February 8, 1989.

[FR Doc. 89-3444 Filed 2-13-89; 8:45 am]
BILLING CODE 3510-DS-M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Thomas H. Stillman, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1223, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 89-00002." A summary of the application follows.

Applicant: Custom Business Solutions, Limited (CBSL); 120 Corporate Woods, Suite 180; Rochester, New York 14623; Contact: Marcy Mallory, Office Manager; Telephone: (716) 272-1220.

Application No.: 89-00002

Date Deemed Submitted: January 30, 1989

Members (in addition to applicant): Jerry McSpadden.

Summary of the Application

Export Trade Products and Services

All products and services.

Export Trade Facilitation Services (as They Relate to the Export of Products and Services)

Acting as distributor or broker; conducting market research; and conducting studies to determine the ability of suppliers to provide Products and Services to certain foreign buyers.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

CBSL may enter into exclusive arrangements with U.S. suppliers of Products and Services to furnish those suppliers' Products and Services to foreign buyers.

Date: February 9, 1989.

Thomas H. Stillman,
Director, Office of Export Trading Company Affairs.

[FR Doc. 89-3442 Filed 2-13-89; 8:45 am]
BILLING CODE 3510-DR-M

Minority Business Development Agency

Business Development Center Applications

Date: February 8, 1989.

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first 12 months is estimated at $541,765 for the project performance of 7/1/89 to 6/30/90. The MBDC will operate in the Miami Fort Lauderdale, Florida, Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $460,500 in Federal Funds and a minimum of $81,265 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

DATES: Closing Date: The closing date for applications March 17, 1989. Applications must be postmarked on or before March 17, 1989.

ADDRESS: Atlanta Regional Office, Minority Business Development Agency, U.S. Department of Commerce, Suite 505, Atlanta, Georgia 30309, 404/347–4091.

FOR FURTHER INFORMATION CONTACT: Carlton L. Eccles, Regional Director of the Atlanta Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(11.800 Minority Business Development Catalog of Federal Domestic Assistance)

Date: February 8, 1989.

Carlton L. Eccles,

Regional Director, Atlanta Regional Office.

Note.—A pre-application conference to assist all interested applicants will be held at the U.S. Department of Commerce, Minority Business Development Agency, 1371 Peachtree Street, NE., Suite 505, Atlanta, Georgia, Wednesday, March 1, 1989, at 10:00 a.m.

[FR Doc. 89–3410 Filed 2–13–89; 8:45 am]

BILLING CODE 3510-21-M

Business Development Center Applications

Date: February 8, 1989.

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first 12 months is estimated at $194,118 for the project performance of 7/1/89 to 6/30/90. The MBDC will operate in the Jacksonville, Florida, Metropolitan Statitical Area (MSA). The first year cost for the MBDC will consist of $165,000 in Federal Funds and a minimum of $29,118 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

DATES: Closing Date: The closing date for applications March 17, 1989. Applications must be postmarked on or before March 17, 1989.

ADDRESS: Atlanta Regional Office, Minority Business Development Agency, U.S. Department of Commerce, Suite 505, Atlanta, Georgia 30309, 404/347–4091.

FOR FURTHER INFORMATION CONTACT: Carlton L. Eccles, Regional Director of the Atlanta Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Date: February 8, 1989.

Carlton L. Eccles,

Regional Director, Atlanta Regional Office.

Note.—A pre-application conference to assist all interested applicants will be held at the U.S. Department of Commerce, Minority Business Development Agency, 1371 Peachtree Street, NE., Suite 505, Atlanta, Georgia, Wednesday, March 1, 1989, at 10:00 a.m.

[FR Doc. 89–3411 Filed 2–13–89; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The salmon management advisory bodies of the Pacific Fishery Management Council will hold an initial ocean salmon fishing season assessment meeting. The meeting will convene at 10 a.m., on February 27, 1989, at the Red Lion Inn-Portland Center, 310 SW. Lincoln Street, Portland, OR. The meeting is open to the public. The advisory bodies includes the Salmon Advisory Subpanel (SAS), Salmon Technical Team (STT), selected Scientific and Statistical Committee (SSC) members, and policy representatives from the state, tribal, and federal fishery management entities.

The meeting is intended to provide SAS members with an initial assessment of salmon stock abundance and management concerns and recommendations for the 1989 ocean salmon fishing season. This information will assist SAS members in drafting proposed fishing season options for presentation to the Council on March 7.

Written and oral statements pertaining to planning for the 1989 ocean salmon seasons will be accepted at appropriate times during the meeting. For further information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 221–6352.

Date: February 9, 1989.

Alan Dean Parsons,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–3463 Filed 2–13–89; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Groundfish Fishery Management Plan (FMP) Rewrite Oversight Group (Group) will meet to review progress on FMP Amendment #4, and to continue preparation of the public review document scheduled to be released in April 1989. The Group will convene at 8 a.m., on February 22, 1989, and will adjourn on February 23 at 5 p.m. The meeting is open to the public.

For further information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW., First Avenue, Portland, OR 97201; telephone: (503) 221–6352.

Date: February 9, 1989.

Alan Dean Parsons,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–3464 Filed 2–13–89; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Department of The Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcements is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB)

Date of Meeting: 8 March 1989

Time of Meeting: 1300–1700 hours

Place: Army Space Programs Office, Fairfax, VA

Agenda: The Army Science Board Ad Hoc Subgroup for Space Systems will meet to receive briefing and discussions on space issues and programs. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 89–3372 Filed 2–13–89; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

[CFDA No. 84.029H1]

Invitation of Applications for New State Grant Awards for Fiscal Year 1989

Title of Program: Training Personnel for the Education of the Handicapped—Grants to State Education Agencies or Institutions of Higher Education.

Purpose of Program: Grants made under this program are for the purpose of assisting States in establishing and maintaining preservice and inservice programs to prepare personnel to meet the needs of handicapped infants, toddlers, children, and youth or supervisors of such persons, consistent with the personnel needs identified in the State's comprehensive system of personnel development.

Deadline For Transmittal of Applications: March 31, 1989.

Deadline For Intergovernmental Review: June 1, 1989.

Applications Available: February 15, 1989.

Total Available Funds: $5,584,500.

Estimated Range of Awards: $75,000—$250,000.

Estimated Number of Awards: 45.

Note.—The Department is not bound by any estimates in this notice.

Average Project Period: 12 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 79 (Intergovernmental Review of Department of Education Programs and Activities), Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), and Part 85 (Governmentwide Debarment and Suspension (Nonprocurement)); and (b) the regulations for this program in 34 CFR Part 319.

Note.—Part 319 applies only to applications from State educational agencies (SEAs).

Eligible Applicants: Applications for State grants may be submitted by SEAs and, in any State in which the SEA does not apply for such a grant, any institution of higher education (IHE) within such State for those purposes may apply. SEAs that apply for a continuation grant are not eligible for a new State grant in fiscal year 1989. If an SEA chooses not to apply for any State grant award in fiscal year 1989, it must notify all IHEs within the State of this intention by March 3, 1989. Applications by IHEs will be considered only if no new or continuation proposal is received from the SEA.

Description of Program: If applications are submitted by more than one IHE within a State, the Secretary will use the selection criteria in EDGAR (34 CFR 75.210) to evaluate the applications. These regulations authorize the Secretary to distribute an additional 15 points among the selection criteria in 34 CFR 75.210 to bring the total possible points to a maximum of 100 points. For the purpose of this competition, the Secretary will distribute the additional points as follows:

Quality of key personnel, 34 CFR 75.210(b)(4): Three (3) additional points will be added for a possible total of 10 points for this criterion.

Evaluation plan, 34 CFR 75.210(b)(6): Ten (10) additional points will be added for a possible total of 15 points for this criterion.

Adequacy of resources, 34 CFR 75.210(b)(7): Two (2) additional points will be added for a possible total of 5 points for this criterion.

A grant of at least $75,000 will be awarded to meet the needs of each State from which an eligible application is submitted. To determine the amount of a grant the Secretary considers the State's need for assistance and the quality of the application using the criteria published in 34 CFR Part 319. In addition, as required by the Handicapped Programs Technical Amendments Act of 1988, Pub. L. 100–630, the Secretary will ensure that each grant awarded is of sufficient size and scope to assist States in meeting the requirements of section 632(c) of the Education of the Handicapped Act, as amended.

Funds available for new awards under this program exceed those available for new awards in fiscal year 1988. Therefore, it is anticipated that no State will receive a smaller award than during fiscal year 1988.

For Applications or Information Contact: Frank S. King, U.S. Department of Education, Office of Special Education Programs, Divison of Personnel Preparation, 400 Maryland Avenue SW., [Switzer Building, Room 3094—M/S 2651), Washington, DC 20202. Telephone: (202) 732–1086.

Program Authority: 20 U.S.C. 1432.

Dated: February 9, 1989.

(Catalog of Federal Domestic Assistance No. 84.029: Training Personnel for the Education of the Handicapped)

Madeleine Will,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 89–3467 Filed 2–13–89; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No.: 84.120—A & B]

Minority Science Improvement Program (MSIP); Invitation of Applications for New Awards for Special Projects, and for Institutional, Design and Cooperative Projects for Fiscal Year 1989

Purpose: Provides grants to support projects designed to effect long-range improvement in science and engineering education at predominantly minority institutions and to increase the participation of underrepresented ethnic minorities in scientific and technological careers.

Deadline for Transmittal of Applications: April 7, 1989

Applications Available: February 14, 1989

Available Funds: $5,307,000. Approximately $3,980,000 will be available for Institutional, Design, and Cooperative Projects. The remaining $1,327,000 will be available for Special Projects.

Maximum Size of Awards: $300,000 for Institutional, $20,000 for Design, $500,000 for Cooperative Projects, and $150,000 for Special Projects.

Estimated Average Size of Awards: $230,000 for Institutional and Cooperative Projects, $19,000 for Design Projects, and $45,000 for Special Projects.

Estimated Number of Awards: Institutional, Design and Cooperative Projects—20. Special Projects—20.

Note.—The Department is not bound by any estimates in this notice.

Project Period: 12 to 36 Months

Applicable Regulations: (a) The regulations governing the Minority Science Improvement Program, 34 CFR Part 637, and (b) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 75 and 77.

For Applications or Information Contact: Dr. Argelia Velez-Rodriguez on (202) 732–4396 or Dr. John Bonas on (202) 732–4397, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3022, ROB–3, Washington, DC 20202–5251.

Program Authority: 20 U.S.C. 1135b–1135b–3 and 1135d–1135d–6

Dated: February 7, 1989.

Kenneth D. Whitehead,

Assistant Secretary for Postsecondary Education.

[FR Doc. 89–3460 Filed 2–13–89; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement; Australia

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Australia concerning Civil Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following sale:

Contract Number S–AU–133, for the sale of 84.8 grams of natural uranium and 153.8 grams of thorium to Queenland Mines Ltd., Australia, for use as standard reference material.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: February 9, 1989.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 89–3455 filed 2–13–89; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not include information collection requirements contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) collection number(s); (3) current OMB docket number (if applicable); (4) collection title; (5) type of request, e.g., new, revision, or extension; (6) frequency of collection; (7) response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) affected public; (9) an estimate of the number of respondents per report period; (10) an estimate of the number of responses annually; (11) an estimate of the average hours per response; (12) the estimated total annual respondent burden, and (13) a brief abstract describing the proposed collection and the respondents.

DATES: March 16, 1989.

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards, at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Carole Patton, Office of Statistical Standards (EI–70) Energy Information Administration, M.S. 1H–023, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–2222.

SUPPLEMENTARY INFORMATION: If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the OMB DOE Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the DOE contact listed above.)

The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC–516
3. 1902–0096
4. Electric Rate Schedule Filings
5. Extension
6. On occasion
7. Mandatory
8. Businesses or other for profit
9. 234 respondents
10. 630 responses
11. 976 hours per reponse
12. 614,775 hours (total)
13. The Federal Power Act requires each public utility, certain hydroelectric project licensees and qualifying small power producers, to file for approval, rate schedules together with related contracts and service condition. Supporting data is required to determine the reasonableness of the rates.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, February 8, 1989.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 89–3457 Filed 2–13–89; 8:45 am]

BILLING CODE 6450–01–M

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not include information collection requirements contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) collection number(s); (3) current OMB docket number (if applicable); (4) collection title; (5) type of request, e.g., new, revision, or extension; (6) frequency of collection; (7) response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) affected public; (9) an estimate of the number of respondents per report period; (10) an estimate of the number of responses annually; (11) an estimate of the average hours per response; (12) the estimated total annual respondent burden, and (13) a brief abstract describing the proposed collection and the respondents.

DATE: March 16, 1989.

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards, at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Carole Patton, Office of Statistical Standards (EI–70), Energy Information Administration, M.S. 1H–023, Forrestal Building, 1000 Indpendence Avenue SW., Washington, DC 20585, (202) 586–2222.

SUPPLEMENTARY INFORMATION: If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the OMB DOE Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the DOE contact listed above.)

The energy information collection submitted to OMB for review was:

1. Energy Information Administration.
2. EIA–800–804, 806, 810–814, 816–818, 820, and 825.
3. 1905–0165.
4. Petroleum Supply Reporting System.
5. Extension.
6. Weekly; Monthly; Annual; Triennial.
7. Mandatory.
8. Businesses or other for profit and Federal agencies or employees.
9. 3264 respondents.
10. 48000 responses.
11. 1.16 hours per response.
12. 55594 hours (total).
13. The Petroleum Supply Reporting System collects information needed for determining the supply and disposition of crude petroleum, petroleum products, and natural gas liquids. These data are published by the EIA. Respondents are operators of petroleum refining facilities, blending plants, bulk terminals, crude oil and product pipelines, natural gas plant facilities, tankers and barges, and oil importers.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, February 8, 1989.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 89–3458 Filed 2–13–89; 8:45 am]

BILLING CODE 6450–01–M

Changes to DOE Energy Information Reporting and Record-Keeping Requirements

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of changes to the inventory of energy information reporting and record-keeping requirements.

SUMMARY: The Energy Information Administration (EIA) of the Department of Energy (DOE) hereby gives notice to respondents and other interested parties of changes to the inventory of current information collections as defined in the Paperwork Reduction Act of 1980 (Pub. L. 96–511), for which EIA is responsible. DOE management and procurement assistance collections, which are the responsibility of the Office of Management and Administration, are not included in these notices. During the first quarter of fiscal year 1989 (October 1, 1988 through December 31, 1988), changes were made to the October 1, 1988 inventory of DOE information collections, which was published in the **Federal Register**, 53 FR 48287 (November 30, 1988).

The first quarter changes are listed below, and include new information collections approved by the Office of Management and Budget (OMB), collections extended, reinstated, discontinued or allowed to expire, and changes to continuing information collections. For each new requirement, requirement extension, or requirement reinstatement, the current DOE control or form number, the title, the OMB control number, and the OMB approval expiration date are listed by the DOE sponsoring office. For the list of discontinued requirements, the discontinued date is shown instead of the expiration date. If applicable, the appropriate Code of Federal Regulations citation is also listed. For revised information collections, a brief summary of the type of revision is noted. Information collections not utilizing structured forms are designated by an asterisk (*) placed to the right of the control or form number.

FOR FURTHER INFORMATION CONTACT: Etta Harris, EI–73, Energy Information Administration, Mail Stop 1H–023, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–2165.

Information on the availability of single, blank information copies of those collections utilizing structured forms may be obtained by contacting the National Energy Information Center, EI–231, Forrestal Building, U.S. Department

of Energy, Washington, DC 20585, (202) 586–8800.

Statutory Authority: Sec. 3506, Pub. L. No. 96–511, Paperwork Reduction Act of 1980, as amended, 44 U.S.C. 3506.

Issued in Washington, DC, February 8, 1989.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

NEW DOE ENERGY INFORMATION COLLECTIONS APPROVED BY OMB

DOE Number and Title	OMB Control Number	Expiration Date	CFR Citation
Energy Information Administration:			
None			

DOE ENERGY INFORMATION COLLECTIONS EXTENDED

DOE Number and Title	OMB Control Number	Expiration Date	CFR Citation
Economic Regulatory Administration:			
ERA-32IR*—Regulatory Reporting and Recordkeeping Requirements Pursuant to 10 CFR 500, 501, 503, and 504.	19030075	01/31/89	10 CFR 500, 501, 503, 504, 505, 508, 515.
Energy Information Administration:			
EIA-23—Annual Survey of Domestic Oil and Gas Reserves	19050057	12/31/91	
EIA-23P—Oil and Gas Well Operator List Update Report	19050057	12/31/91	
EIA-64A—Annual Report of the Origin of Natural Gas Liquids Production	19050057	12/31/91	
Federal Energy Regulatory Commission:			
FERC-18—Report of Gas Supply and Requirements	19020025	03/31/90	18 CFR 260.12.
FERC-510*—Application for Surrender of Electric License	19020068	11/30/91	18 CFR 6.1, 6.4.
FERC-511*—Application for Transfer of Electric License	19020069	10/31/91	18 CFR 9.1, 9.2, 9.10.
FERC-516*—Electric Rate Schedule Filings	19020096	02/28/89	18 CFR 35 Subpart A, 35.12–.16, 35.28, 35.30, 35.31, 292.301.
FERC-520*—Application for Authority to Hold Interlocking Directorate Positions	19020083	02/28/89	18 CFR 45.
FERC-546*—Staff Adjustment Under Natural Gas Policy Act Section 502(c)	19020085	10/31/91	18 CFR 270–277, 281, 282, 284, 385, Subpart K.
FERC-570*—Recordkeeping Requirements for Certain Sales of Natural Gas	19020124	10/31/91	18 CFR 271.503, 271.803, 271.903.
FPC-14—Annual Report for Importers and Exporters of Natural Gas	19020027	03/31/89	18 CFR 260.4.

*Does not utilize structured forms.

REINSTATED DOE ENERGY INFORMATION COLLECTIONS

DOE Number and Title	OMB Control Number	Expiration Date	CFR Citation
Energy Information Administration:			
NONE			

DOE ENERGY INFORMATION COLLECTIONS DISCONTINUED OR ALLOWED TO EXPIRE

DOE Number and Title	OMB Control Number	Discontinued Date	CFR Citation
Energy Information Administration:			
NONE			

DOE ENERGY INFORMATION COLLECTIONS REVISED

Form Number	Revision
EIA-782A-C	Added midgrade unleaded gasoline.
EIA-800-804, 806, 810-814, 816-818, 820, 825.	Minor revisions to forms and approved through 11/30/89.
FERC-1	Change to Regulations.
FERC-1F	Do.
FERC-2	Do.
FERC-2A	Do.
FERC-6	Do.

DOE ENERGY INFORMATION COLLECTIONS REVISED—Continued

Form Number	Revision
FERC-121	Do.
FERC-500*	Do.
FERC-505*	Do.
FERC-556*	Do.
FERC-566*	Do.

*Does not utilize a structured form.

[FR Doc. 89-3459 Filed 2-13-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER89-211-000, et al.]

Duke Power Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

February 8, 1989.

Take notice that the following filings have been made with the Commission:

1. Duke Power Company

[Docket No. ER89-211-000]

Take notice that Duke Power Company (Duke or Company) on February 1, 1989 tendered for filing a revision to its Contract with the United States of America, Department of Energy, acting by and through the Southeastern Power Administration (SEPA). The revision is in the form of a Letter Agreement dated February 23, 1989, and designated as "Supplemental Agreement No. 3 to Contract No. 89-000-1501-770." It provides for an extension of the term of Supplemental Agreement No. 2 to the Contract, which expired January 1, 1989, unless otherwise agreed to by both parties, whereby Duke sells replacement energy, if available, to provide to SEPA a source of energy to replace energy not currently available from SEPA Projects. SEPA notified Duke that, because of the possibility of present drought conditions extending into calendar year 1989, SEPA desired to extend the term of Supplemental Agreement No. 2 for one year. The amended term of the Agreement is from January 1, 1989 until such time as SEPA no longer requires such energy but, in any event, no later than January 1, 1990.

Because of the emergency nature of this service, Duke requests an effective date of January 1, 1989.

Copies of this filing were served on SEPA, the North Carolina Utilities Commission, and the South Carolina Public Services Commission.

Comment date: February 23, 1989, in accordance with Standard Paragraph E at the end of this notice.

Pacific Power & Light Company, an assumed business name of PacifiCorp.

[Docket No. ER89-210-000]

Take notice that Pacific Power & Light Company (Pacific), an assumed business name of PacifiCorp, on January 31, 1989 tendered for filing, Pacific's Revised Appendix 1 for the state of Idaho and Bonneville Power Administration's (Bonneville) Determination of Average System Cost (ASC) for the State of Idaho (Bonneville's Docket No. 5-A3-8801). The Revised Appendix 1 calculates the ASC for the state of Idaho applicable to the exchange of power between Bonneville and Pacific.

Pacific requests waiver of the Commission's notice requirements to permit this rate schedule to become effective March 1, 1988, which it claims is the date of commencement of service.

Copies of the filing were supplied to Bonneville, the Idaho Public Utilities Commission, and Bonneville's Direct Service Industrial Customers.

Comment date: February 23, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Ohio Power Company

[Docket No. ER89-209-000]

Take notice that on Ohio Power Company (OPCo), on January 31, 1989, tendered for filing with the Commission an electric service agreement that was executed by OPCo and the City of Clyde, Ohio (City of Clyde) on May 27, 1988. OPCo states that the City of Clyde recently established a municipal electric utility system and is not currently served at wholesale by any supplier.

To match the effective date requested by the City of Clyde, OPCo proposes an effective date of on or about April 17, 1989, for the tendered agreement.

OPCo states that copies of its filing were served upon the City of Clyde, Ohio, The Toledo Edison Company, and the Public Utilities Commission of Ohio.

Comment date: February 23, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Canal Electric Company

[Docket No. ER89-208-000]

Take notice that Canal Electric Company on January 31, 1989, tendered for filing a proposed amendment to Appendix A of its previously filed Power Contract FERC Rate Schedule No. 23.

Subsequent to the filing of the original Power Contract, Canal received from its suppliers more accurate data concerning the entitlements that were the subject matter of the Power Contract and proposes a revised Appendix A to reflect that data. This proposed revision reflects changes in the minimum number of MWs acquired, dates of commencement and the termination of the Gas Turbine Additional Units Package. However, Canal's rates will not be affected by the proposed revision.

Copies of this filing were served upon the Cambridge Electric Light Company and Commonwealth Electric Company, the utility's jurisdictional customers.

Comment date: February 23, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. Indiana Michigan Power Company

[Docket Nos. EL89-1-000, ER89-30-000, ER89-33-000 and ER89-34-000]

Take notice that on January 17, 1989, Indiana Michigan Power Company tendered for filing its refund report in compliance with the Commission's order issued on December 1, 1988.

Comment date: February 23, 1989, in accordance with Standard Paragraph E at the end of this notice.

6. Delmarva Power & Light Company

[Docket No. ER87-556-000]

Take notice that on December 21, 1988, Delmarva Power & Light Company (Delmarva) filed revised pages and worksheets to its Refund Compliance Report originally filed on November 17, 1988, which corrected certain mathematical errors found in the Compliance Report.

Delmarva states that on December 16, 1988 it refunded to the Old Dominion Electric Cooperative an additional $66,829.74 reflect the difference between the amount refunded on October 18, 1988 and the amount due after correction of the discovered mathematical errors. Such refund included interest through December 16, 1988. With this additional refund, Delmarva submits that it has refunded to the affected wholesale customers the difference between the amounts collected under "interim" rates and the rates contained in the Settlement Agreement in Docket No. ER87-556-000.

Copies of the filing were served upon each of the affected wholesale customers, the parties of record and the state regulatory agencies in Delaware, Maryland and Virginia.

Comment date: February 23, 1989, in accordance with Standard Paragraph E at the end of this notice.

7. Consolidated Edison Company of New York, Inc.

[Docket No. ER89-200-000]

Take notice that on Consolidated Edison Company of New York, Inc. (Con Edison), on January 30, 1989, tendered for filing proposed changes in its rate schedule for transmission and distribution service to the Power Authority of the State of New York (PASNY), under Con Edison Rate Schedule No. 42. The proposed supplement No. 14 to Schedule No. 42 would increase Con Edison's revenues by about $0.8 million in the historical 1986 period. Con Edison has requested an effective date of January 13, 1989, for

the rate change and accordingly seeks waiver of the notice requirement of the Commission's rules.

The proposed changes are the result of a proposal to expand the number of PASNY customers subject to mandatory time-of-day billing. This proposal has been reviewed and approved by the New York State Public Service Commission (NYPSC), the state agency that makes rate determinations for these services subject to Commission review. PASNY has received actual notice of the proposal.

A copy of the filing has been served upon PASNY and NYPSC.

Comment date: February 23, 1989, in accordance with Standard Paragraph E at the end of this document.

8. Westinghouse Electric Corporation

[Docket No. QF89-134-000]

On January 26, 1989, Westinghouse Electric Corporation (Applicant), of 2400 Ardmore Boulevard, Pittsburgh, Pennsylvania 15221 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in San Juan, Puerto Rico. The facility will consist of three (3) waterwall rotary boilers and one condensing turbine generator. The net electric power production capacity will be 22 megawatts. The primary energy source will be biomass in the form of municipal solid waste. The use of natural gas, oil or coal will be used for ignition, start-up, testing, flame stabilization, temperature control and other uses permitted under section 3(17)(B) of the Federal Power Act, however, such fossil fuel usage will not exceed 25% of the total energy input during any calendar year period. Construction of the facility is expected to begin in May 1989.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-3440 Filed 2-13-89; 8:45 am]

BILLING CODE 6717-01-M

List of First Sellers Who Have Asserted Contractual Authority To Collect Delivery Allowances; Compression Allowances and Protest Procedures Under NGPA Section 110

[Docket No. GP89-33-000]

February 9, 1989.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Publication of Arkla Energy Resources's, (Arkla) lists of first sellers who have asserted contractual authority to collect delivery allowances pursuant to § 271.1104(h) of the Commission's regulations.

SUMMARY: In Order No. 473, 52 FR 21,660 (June 9, 1987), the Federal Energy Regulatory Commission amended its regulations to provide parties an opportunity to protest allowances for the delivery of natural gas which were heretofore presumed authorized by "area rate" clauses in gas sales contracts. Order No. 473 amended 18 CFR 271.1104(h) to require all interstate pipelines to provide a listing of those producers that have claimed an entitlement to delivery allowances pursuant to an "area rate" clause. The interstate pipelines were required to indicate whether they concurred in the producers' claim for delivery allowances.

Arkla's listing of its contracts was submitted on December 28, 1988. List I sets forth those first sellers with contracts which Arkla contends do not contain contractual authority to collect production-related costs. List II sets forth those first sellers with contracts which Arkla agrees do contain contractual authority for producers to collect production-related costs.

DATE: As provided in 18 CFR 271.1104(h)(4)(i) (1987), any protest must be filed by May 15, 1989.

ADDRESS: An original and 14 copies of each protest must be filed with the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Edward G. Gingold, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this notice during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357-8997. A copy of Arkla's filing may be contained from CIPS up to 10 days following the date of issuance of this notice by the Commission. The complete text of this notice on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

List I

ARKLA ENERGY RESOURCES, A DIVISION OF ARKLA, INC. LIST OF FIRST SELLERS WITHOUT CONTRACTUAL AUTHORITY TO COLLECT PRODUCTION-RELATED COSTS

Producer	Arkla contract	
	Number	Date
1. Flynn Energy Corporation	GP-4491	11/21/79
2. National Oil Company	GP-4554	03/17/80
3. Pennzoil Producing Company	GP-4304	01/06/79
4. Pennzoil Producing Company	GP-4550	03/18/80
5. Pennzoil Producing Company	GP-2710	09/30/49
6. Pennzoil Producing Company	GP-3614	12/21/71
7. Samson Resources Company	GP-4130	02/26/77
8. Samson Resources Inc	GP-4389	05/10/79
9. Samson Resources Inc	GP-4601	04/28/80
10. Samson Resources Inc	GP-4804	06/15/81
11. Samson Resources Inc	GP-4911	11/17/81
12. Samson Resources Inc	GP-4974	04/01/82
13. Sun Exploration & Production	GP-3454	10/05/59
14. Tenneco Oil Company	GP-4115	01/03/77

ARKLA ENERGY RESOURCES, A DIVISION OF ARKLA, INC. LIST OF FIRST SELLERS WITHOUT CONTRACTUAL AUTHORITY TO COLLECT PRODUCTION-RELATED COSTS—Continued

Producer	Arkla contract	
	Number	Date
15. Tenneco Oil Company	GP-4060	01/14/76
16. Tenneco Oil Company	GP-3970	02/14/75
17. Tenneco Oil Company	GP-4265	10/17/78
18. Texaco, Inc.	GP-3717	10/11/55

List II

ARKLA ENERGY RESOURCES A DIVISION OF ARKLA, INC. LIST OF FIRST SELLERS WITH CONTRACTRUAL AUTHORITY TO COLLECT PRODUCTION-RELATED COSTS

Producer	Arkla contract	
	Number	Date
1. Alice Sydney Oil Company	GP-2499	11/14/51
2. Amoco Production Company	GP-3946	09/16/74
3. Amoco Production Company	GP-3944	09/16/74
4. Amoco Production Company	GP-4109	10/01/75
5. Amoco Production Company	GP-4465	10/12/79
6. Amoco Production Company	GP-3844	04/18/72
7. Andover Oil Company	GP-4863	09/06/81
8. Arco Oil and Gas Company	GP-3978	03/01/75
9. Arco Oil and Gas Company	GP-4969	04/06/82
10. Arco Oil and Gas Company	OK-224	03/25/53
11. Arco Oil and Gas Company	GP-4496	01/25/80
12. Arco Oil and Gas Company	GP-4040	10/01/81
13. Arco Oil and Gas Company	GP-4494	12/26/79
14. Canergy Exploration Company	GP-4481	11/16/79
15. Cities Service Oil & Gas Corporation	GP-5000	04/22/82
16. Cities Service Oil & Gas Corporation	GP-3753	07/09/64
17. Conoco, Inc.	GP-4119	12/17/76
18. Crystal Oil Company	GP-4744	03/18/81
19. Damson Oil Company	GP-4233	03/27/78
20. Diamond Shamrock Corporation	GP-4334	02/01/79
21. Farmland Industries, Inc.	GP-5166	09/27/82
22. Farmland Industries, Inc.	OK-1041	05/07/62
23. Farmland Industries, Inc.	GP-4830	07/10/80
24. Getty Oil Company	GP-5185	09/30/82
25. Getty Oil Company	GP-2765	05/27/73
26. Getty Oil Company	GP-3840	05/03/72
27. Hassie Hunt Exploration Company	GP-3929	09/16/74
28. Hunt Oil Company	GP-4429	07/26/79
29. Hunt Oil Company	GP-4412	06/20/79
30. Lamar Hunt	GP-3930	09/13/74

ARKLA ENERGY RESOURCES A DIVISION OF ARKLA, INC. LIST OF FIRST SELLERS WITH CONTRACTRUAL AUTHORITY TO COLLECT PRODUCTION-RELATED COSTS—Continued

Producer	Arkla contract	
	Number	Date
31. Marathon Oil Company	GP-4185	09/12/77
32. Marshall Exploration, Inc.	GP-4893	12/01/81
33. Marshall Exploration, Inc.	GP-5056	07/13/82
34. Marshall Exploration, Inc.	GP-5024	06/03/82
35. Marshall Exploration, Inc.	GP-5033	04/07/82
36. Mobil Producing Texas & New Mexico	GP-3892	09/01/73
37. Petro-Lewis Corporation	GP-4621	11/12/79
38. Richard B. Nelson	GP-4744	03/18/81
39. Sun Exploration and Production	GP-3840	05/03/72
40. Sun Exploration and Production	GP-3969	02/14/75
41. Sun Exploration and Production	GP-3817	12/22/71
42. Sun Exploration and Production	GP-4104	09/20/76
43. Sun Exploration and Production	OK-1057	10/15/62
44. Tenneco Oil Company	GP-3913	03/11/74
45. Tenneco Oil Company	GP-3914	03/11/74
46. Tenneco Oil Company	GP-3893	10/25/73
47. Tenneco Oil Company	GP-4026	09/17/75
48. Tenneco Oil Company	GP-3915	03/11/83
49. Texaco, Inc	GP-4420	08/31/79
50. Texaco, Inc	GP-4831	08/05/81
51. Texaco, Inc	GP-5020	06/02/82
52. Texaco, Inc	GP-3836	09/24/72
53. Triton Oil and Gas Corporation	GP-4971	07/01/86
54. Union Texas Petroleum Corporation	GP-5166	09/27/82

[FR Doc. 89-3439 Filed 2-13-89; 8:45 am]

BILLING CODE 6717-01-M

Southeastern Power Administration

Proposed Rate Adjustment, Public Forum, and Opportunities for Public Review and Comment; Cumberland Basin Projects

AGENCY: Southeastern Power Administration (Southeastern), DOE.

ACTION: Notice of proposed rate adjustment for Cumberland Basin projects, notice of public forum and opportunity for review and comment.

SUMMARY: Southeastern proposes to replace Rate Schedules CC-1-B, CK-1-A, CM-1-A, CBR-1-A, CEK-1-A, CSI-1-A, and CTV-1-A currently applicable to Cumberland Basin projects power and seeks approval of new Rate Schedules CC-1-C, CK-1-B, CM-1-B, CBR-1-B, CEK-1-B, CSI-1-B, and CTV-1-B, for a five-year period July 1, 1989, through June 30, 1994.

Opportunities will be available for interested persons to review the present rates, to review the proposed rates and supporting studies, to participate in a public forum and to submit written comments. Southeastern will evaluate all comments received in this process.

DATES: Written comments are due on or before May 3, 1989. A public information and comment forum will be held in Nashville, Tennessee, on March 21, 1989. Persons desiring to speak at the forum should notify Southeastern at least 4 days before the forum is scheduled, so that a list of forum participants can be prepared. Others may speak if time permits.

ADDRESSES: Five copies of written comments should be submitted to: Administrator, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Georgia 30635. The public information and comment forum for the Cumberland Basin projects will begin at 10 a.m. on March 21, 1989, in Conference Room A761, U.S. Courthouse—Annex, 801 Broadway, Nashville, Tennessee 37203.

FOR FURTHER INFORMATION CONTACT: Leon Jourolmon, Jr., Director, Power Marketing Division, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Georgia 30635, (404) 283-9911.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission (FERC) by order issued December 27, 1984, in Docket No. EF84-3021, confirmed and approved Wholesale Power Rate Schedules CBR-1-A, CSI-1-A, CM-1-A, CC-1-A, CK-1-A and CTV-1-A applicable to Cumberland Basin projects' power for the period ending July 1, 1984, through June 30, 1989. The Commission by order issued January 20, 1987, in Docket EF86-3021, confirmed and approved Wholesale Power Rate Schedule CC-1-B applicable to Cumberland Basin projects' power for a period September 1, 1986, through June 30, 1989.

Discussion

Existing rate schedules for the present Cumberland System are predicated upon a March 1984 repayment study and other supporting data all of which is contained in FERC Docket No. EF84-3021.

The current repayment study prepared in January of 1989 for the combined Cumberland System shows that existing

rates are not adequate to recover all costs required by present repayment criteria.

A revised repayment study with a net $5,218,000 revenue increase in each future year over the current repayment study demonstrates that all costs are paid within their repayment life.

The net additional requirement amounts to a net 17 percent increase in revenues and is primarily due to escalated costs at the generating projects. It is proposed that revised rate schedules applicable to TVA (for the benefit of preference customers served from the TVA System) and Other Preference Customers of Southeastern contain the following unit rates:

TVA RATE SCHEDULE

Capacity at the generator/kw/year	$13.56
Energy at the generator/kw (mills)	5.32
Other Customers Rate Schedules (Excluding Carolina Power & Light Area):	
Capacity delivered at interconnections with adjacent utilities/kw/year	20.26
Energy delivered at interconnections with adjacent utilities/kwh (mills)	5.45
Customers served through the facilities of Carolina Power & Light, Western Division (Rate Schedule CC-1-C):	
Capacity delivered kw/year	23.04
Energy delivered kwh (mills)	6.86

The referenced January 1989 current repayment study along with a revised repayment study dated January 1989 and previous system repayment studies are available for examination at the Samuel Elbert Building, Elberton, Georgia 30635. Proposed Rate Schedules CC-1-C, CK-1-B, CM-1-B, CBR-1-B, CSI-1-B, CEK-1-B, and CTV-1-B are also available.

Issued at Elberton, Georgia, February 1, 1989.

Harry C. Geisinger,

Administrator.

[FR Doc. 89-3456 Filed 2-13-89; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3520-2]

Designation of a New Ocean Dredged Material Disposal Site (ODMDS) Offshore Pascagoula, Mississippi; Intent To Prepare an Environmental Impact Statement

AGENCY: U.S. Environmental Protection Agency (EPA), Region IV.

ACTION: Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) on the EPA permanent designation of a new ODMDS offshore Pascagoula, Mississippi, in the Gulf of Mexico. This NOI supersdes the NOI published by the U.S. Army Corps of Engineers (COE), Mobile District, on the same action (52 FR 43382, November 12, 1987). The COE is a cooperating agency for the proposed EIS.

In addition to the primary EPA site designation function, the COE will provide information in the ODMDS EIS to allow the COE to determine that the EIS meets the standards for an adequate EIS in compliance with the National Environmental Policy Act (NEPA). Therefore, pursuant to relevant regulations, the COE proposes to adopt the EIS for its purposes relative to the *disposal* of new work and maintenance dredged material from the existing Pascagoula Harbor Federal Navigation Project and the authorized improvements for that Project. The COE proposes to limit its adoption of the ODMDS EIS to these projects. The COE's existing NEPA project documentation for these projects will be incorporated by reference into the ODMDS designation EIS.

Purpose

EPA, Region IV, in accordance with section 102(2)(C) of NEPA will prepare a Draft EIS on the designation of a new ODMDS offshore Pascagoula, Mississippi. An EIS is needed to provide the information necessary to designate the ODMDS. This is issued pursuant to section 102 of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972, as amended, and 40 CFR Part 228 (Criteria for the Management of Disposal Sites for Ocean Dumping). Also, as indicated above, the COE proposes to adopt the EIS for its purposes. Therefore, communication regarding site designation should be addressed to EPA while communication regarding the Federal navigation project should be addressed to the COE (Mobile District).

For Further Information and To Be Placed on the Project Mailing List Contact: Reginald Rogers; U.S. EPA, Region IV; 345 Courtland Street NE; Atlanta, Georgia 30365; (404) 347-2126 or FTS 257-2126. Susan Ivester Rees; U.S. Army Engineer District, Mobile; P.O. Box 2288; Mobile, Alabama 36628-0001; (205) 690-2724.

Summary: EPA proposes to permanently designate a new ODMDS offshore Pascagoula, Mississippi for the disposal of dredged material that meets the criteria for ocean disposal contained in 40 CFR Part 227. The proposed ODMDS would be an enlargement of local discontinued disposal sites. It is to encompass two previously-used disposal sites south of Horn Island to the maximum extent possible, including a portion of the EPA interim-designated ODMDS located outside (eastern side) of the Horn Island Pass safety fairway. That designation expired on December 31, 1988.

The Final EIS for the designation of the Pensacola (FL), Mobile (AL), and Gulfport (MS) ODMDSs was supplemented to include the final designation of the interim Pascagoula ODMDS and was circulated to review agencies and the public. However, the proposed EIS for the new ODMDS is being prepared in lieu of a Final Supplement to the Final EIS for the interim ODMDS, since it is too small for the anticipated local dredged material volumes.

Need For Action: EPA's proposal is made at this time because of the expiration of the interim ODMDS at Pascagoula, the anticipation of local disposal needs, and the volume of anticipated dredged material. In particular, approximately 1 million cubic yards of maintenance dredged material every 18 months from the existing Federally-authorized project at Pascagoula and 11 million cubic yards of new work dredged material from the authorized activities are candidates for ocean disposal. Designation of the ODMDS would serve to make available an ocean alternative for receiving suitable dredged material from the general eastern Mississippi Sound area. Designation of the ODMDS would not by itself, however, authorize any dredging project or dredged material disposal at the ODMDS. The COE proposal covered in this action is limited to *disposal* of dredged material from the existing Pascagoula Harbor Navigation Federal Project and the authorized improvements for that Project. The COE's existing NEPA project documentation for these projects will be incorporated by reference into the ODMDS designation EIS.

Alternatives

1. No action (The No-Action Alternative is defined as no permanent designation of any ODMDS).

2. An expanded ODMDS offshore Pascagoula, Mississippi.

3. Other Gulf of Mexico ocean sites.

Scoping: A scoping meeting will not be held. However, EPA encourages Federal, State and local agencies as well as interested parties to identify significant issues to be addressed in the EIS at this time. Comments and concerns should be sent to the above address.

Estimated Date of Release: The Draft EIS is scheduled to be published and available in February of 1989.

Responsible Official: Greer C. Tidwell, Regional Administrator; EPA, Region IV.

Dated: February 9, 1989.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 89-3460 Filed 2-13-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-62072; FRL-3519-7]

Asbestos-Containing Materials in Schools; Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA will hold a meeting of a panel of expert electron microscopists to discuss possible revisions to the existing Interim Transmission Electron Microscopy Methodology contained in EPA's final asbestos in schools regulation of October 30, 1987 (52 FR 41826).

DATES: The meeting will be held on Wednesday, Thursday, and Friday February 22, 23, and 24, 1989.

ADDRESS: the meeting will be held at the National Institute of Standards and Technology (formerly the National Bureau of Standards) in Gaithersburg, Maryland, Physics Building, Room B165.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room EB-44, 401 M Street SW., Washington, DC 20460 (202-554-1404) (TDD): (202-554-0551).

SUPPLEMENTARY INFORMATION: On October 30, 1987, EPA promulgated its final regulation for Asbestos-Containing Materials in Schools. The regulation contained a transmission electron microscopy (TEM) methodology for the analysis of air samples taken for clearance of asbestos abatement projects. The methodology was prepared by a group of experienced electron microscopists. Since the rule's promulgation, the method has been utilized by TEM laboratories throughout the United States. Based on the panel of electron microscopists' experience in using this method, EPA will discuss possible revisions to the analytical procedure. Proposed amendments to the method will then be published for public consideration and comment.

Dated: February 2, 1989.

Michael Shapiro,

Acting Deputy Director, Office of Toxic Substances.

[FR Doc. 89-3418 Filed 2-13-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3519-5]

Science Advisory Board, Global Climate Research Subcommittee; Open Meeting

SUMMARY: Under the Federal Advisory Committee Act, Pub. L. 92-463, notice is hereby given that a two-day meeting of the Global Climate Research Subcommittee of the Executive Committee of the Science Advisory Board (SAB) will be held on February 23 and 24, 1989. The meeting will begin at 9:00 a.m. and will be held in the Capitol Hill Room of The Capitol Hill, at 200 "C" Street SE., Washington, DC 20003. The meeting will adjourn no later than 5:00 p.m. on Friday.

The Subcommittee has been charged with evaluating the scientific and technical foundations of a proposed research plan for a Global Climate Change Program at EPA. The goals of the plan; namely to establish a rationale for EPA's program, to develop a strategy, to define and discuss goals and objective, to outline project areas, and to establish a basis for coordination and cooperation with national and international research communities, will be examined as they relate to the described program.

Purpose: The specific purpose of this meeting is to review the research plan that EPA's Office of Research and Development (ORD) has developed for a Global Climate Change Program. The technical aspects of the plan will be presented by ORD staff for evaluation by the Subcommittee. Conclusions will be reached on the appropriateness of the research plan, and consensus will be achieved on recommendations for strengthening the scientific approach that underlies the program.

For further information: This meeting will be open to the public. Any member of the public who wishes to present information, or receive further details should contact Ms. Janis C. Kurtz, Executive Secretary or Mrs. Lutithia Barbee, Staff Secretary (A-101 F) Science Advisory Board, U.S. EPA, 401 M Street, SW., Washington, DC. Telephone: (202) 382-2552 or FTS-8-382-2552. Written comments will be accepted and fifteen copies can be sent to Ms. Kurtz at the address above. Persons interested in making brief oral statements before the Subcommittee must contact Ms. Kurtz no later than February 17, 1989 to be assured of space on the agenda. Oral presentations should be supplemented by a written statement for the record, which may be submitted (15 copies) to Ms. Kurtz at the time of the meeting for distribution to members of the Subcommittee.

Date: February 8, 1989.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 89-3380 Filed 2-9-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3517-7]

Water Pollution Control; Final Determination Concerning the Proposed Lake Alma Recreational Lake Project on Hurricane Creek, Alma, Bacon County, GA.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of decision to restrict the designation of wetlands in Hurricane Creek and unnamed tributaries in Alma, Georgia, as discharge sites for the placement of fill material.

SUMMARY: This is notice of EPA's final determination pursuant to section 404(c) of the Clean Water Act to restrict the designation of approximately 1155 acres of wetlands in and near Alma, Georgia. EPA's determination is based upon a finding that the placement of fill material associated with implementation of the proposed Lake Alma impoundment would result in unacceptable adverse impacts to wildlife.

EFFECTIVE DATE: The effective date of the final determination is December 16, 1988.

FOR FURTHER INFORMATION CONTACT: William Garvey, Office of Wetlands Protection, US Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 245-3900.

Copies of EPA's Final Determination are available for inspection in the EPA Headquarters Public Information Reference Unit, EPA Library, Room M2904, 401 M Street, SW., Washington DC and the EPA Region IV Marine and Estuarine Branch, 345 Courtland Street, NE., Atlanta, Georgia.

Section 404(c) of the Clean Water Act (33 U.S.C. § 1251 *et seq.*) provides that, if the Administrator of the U.S. Environmental Protection Agency (EPA) determines, after notice and opportunity for public comment, that unacceptable adverse effects on municipal water supplies, shellfish beds, fishery areas (including spawning and breeding

areas), wildlife, or recreational areas would result from the discharge of dredged or fill material, he may exercise his authority to withdraw or prohibit the specification, or deny, restrict or withdraw the use for specification, of any defined area as a disposal site for dredged or fill material. Before making such a determination, the Administrator must consult with the Chief of the Army Corps of Engineers (Corps), the property owner(s), and the applicant where there has been an application for a section 404 permit. The procedures for implementation of section 404(c) are set forth in the Code of Federal Regulations, 40 CFR Part 231.

EPA's regulations for implementing section 404(c) establish procedures to be followed in exercising the Administrator's authority pursuant to that section. Three major milestones in the process are: (1) The Regional Administrator's proposed decision to withdraw, deny, restrict or prohibit the use of a site (Proposed Determination); (2) the Regional Administrator's recommendation to the Administrator to withdraw, deny, restrict or prohibit the use of a site (Recommended Determination); and (3) the Administrator's final decision to affirm, modify, or rescind the Regional recommendation (Final Determination). The Administrator has delegated the authority to make final decisions under section 404(c) to the Assistant Administrator for Water, who is EPA's national Clean Water Act section 404 program manager.

EPA's Final Determination concerns the proposed placement of dredged or fill material for the purpose of creating a recreational impoundment and mitigation reservoirs on Hurricane Creek and unnamed tributaries in the City of Alma and in Bacon County, Georgia.

EPA Region IV's Regional Administrator recommended withdrawal of specification of the disposal site necessary for construction of the proposed impoundment described in Permit No. 074 OYN 003752. The Recommended Determination further recommended that EPA also restrict specification or use of described waters of the United States, including wetlands, as a disposal site for dredged or fill material in connection with the construction of any lake and reservoirs in mitigation thereof. Region IV's Regional Administrator based the recommendations upon his finding that the discharge of materials in connection with the above described activities would have an unacceptable adverse effect on wildlife.

The Final Determination is based on consideration of the record developed by EPA and by the Corps in this case, including public comment submitted in response to the Regional Proposed Determination, comment received at the public hearing and comments from other Federal and State agencies. This Final Determination also reflects comment and information received during EPA Headquarters' consultation pursuant to § 231.5 of the Clean Water Act section 404(c) regulations.

As described in the Final Determination, it is the finding of EPA that the proposed Lake Alma project, including activities proposed to mitigate adverse impacts, would result in the destruction and loss of vegetated wetland habitat that is of vital importance to wildlife in the Hurricane Creek bottomland hardwood wetlands system and associated areas and would adversely limit the present ability of the Hurricane Creek forested wetland floodplain to function as a corridor for the movement, dispersal and migration of wildlife species. These findings lead to the conclusion that the discharge of dredged or fill material in connection with the proposed Lake Alma recreational impoundment and associated mitigation impoundments would result in unacceptable adverse impacts to wildlife. This Final Determination therefore affirms the Regional Recommended Determination and restricts the designation of the subject waters of the United States as discharge sites for dredged or fill material. EPA's section 404(c) action is based on adverse impacts of activities associated with creation of any reservoir, lake or impoundment on described waters, including wetlands, of Hurricane Creek and unnamed tributaries to Hurricane Creek, and as such prohibits the placement of fill for that purpose. This Final Determination does not pertain to other types of filling activities. Other proposals involving the discharge of dredged or fill material on the wetland sites at issue will be evaluated on their merits within the Corps of Engineers' section 404 regulatory program.

Date: February 1, 1989.

Rebecca W. Hanmer,

Acting Assistant Administrator for Water.

[FR Doc. 89-3262 Filed 2-13-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-OW-3519-4]

Availability of Water Quality Standards Program Documents

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that numerous public information documents relating to the water quality standards program, including water quality criteria information, are available to the public. There is no new policy or guidance contained in these documents. Previously published and still applicable policy and guidance documents are available and are included in the listing below, as is updated information on State-adopted standards in summary form. Also, general information on the standards program is included.

Copies of documents identified in this Notice may be obtained by making written request to the U.S. Environmental Protection Agency (EPA), the National Technical Information Service (NTIS), and/or the U.S. Government Printing Office (GPO) at the addresses provided below. The EPA is not able to process orders for the documents available from NTIS or GPO.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, Office of Water Regulations and Standards, Criteria and Standards Division (WH-585), 401 M Street, SW., Washington, DC 20460, (202) 475-7315; National Technical Information Service, 5285 Front Royal Road, Springfield, Va 22161, (703) 487-4650; U.S. Government Printing Office, Superintendent of Documents, North Capitol & H Sts, NW., Washington, DC 20401, (202) 783-3238.

SUPPLEMENTARY INFORMATION: Each document being made available to the public is identified below along with a brief description. The following documents may be obtained only from the EPA. Documents available from the EPA are free of charge.

1. Water Quality Standards Regulation, 48 FR 51400, November 8, 1983 (40 CFR Part 131).

This regulation sets forth the provisions for development, review and revision and approval of water quality standards pursuant to section 303 of the Clean Water Act.

2. Water Quality Standards Handbook, U.S. Environmental Protection Agency. December 1983.

This handbook contains guidance prepared by EPA to assist States in implementing the water quality standards regulation (48 FR 51400, November 8, 1983). The handbook provides a description of the overall standards setting process, information on general program administrative policies and procedures and a description of analyses which may be used in the water quality standards setting process.

3. Summary of Federally Promulgated State Water Quality Standards Actions. U.S. Environmental Protection Agency. November 1986.

This document contains the date, type of action and Federal Register citation for State water quality standards promulgated by EPA. The publication also contains information on Federally promulgated water quality standards which have been withdrawn and replaced with State approved standards.

4. Technical Support Manual: Waterbody Surveys and Assessments for Conducting Use Attainability Analysis. U.S. Environmental Protection Agency. November 1983.

This technical support manual provides guidance for conducting use attainability analyses. The manual supplements Chapter 3 of the Water Quality Standards Handbook published by the U.S. Environmental Protection Agency on December 1983.

5. Technical Support Manual: Waterbody Surveys and Assessments for Conducting Use Attainability Analyses—Volume II: Estuarine Systems. U.S. Environmental Protection Agency. November 1983.

This volume of the Technical Support Manual addresses the unique characteristics of estuarine systems and supplements item 4 above.

6. Technical Support Manual: Waterbody Surveys and Assessments for Conducting Use Attainability Analyses—Volume III: Lake Systems. U.S. Environmental Protection Agency. November 1984.

This volume of the Technical Support Manual addresses the unique characteristics of lake systems and supplements items 4 and 5 above.

7. Introduction to Water Quality Standards. U.S. Environmental Protection Agency. September 1988. EPA Order Number 440/5 88-089.

This publication contains general information on the water quality standards program. The document, written in question and answer format, is designed to give the general public a basic understanding of the water quality standards program.

8. State Adoption/Proposal of Numeric Criteria for Priority Pollutants. U.S. Environmental Protection Agency. August 1988. EPA Order Number 440/5 89-001.

This report contains information on efforts by the States to address section 303(c)(2)(B) of the Clean Water Act which requires States to include priority pollutant numeric criteria, where appropriate, in State water quality standards.

The following documents may be obtained only from the NTIS. A fee of $3.00 is charged for each individual order.

9. Water Quality Standards Criteria Summaries: A Compilation of State/Federal Criteria. U.S. Environmental Protection Agency. September 1988.

Twenty-six summaries have been compiled which contain information extracted from State water quality standards.

Acidity-Alkalinity (ph), NTIS Order No. PB89-141527
Paper Copy, #A03, Price $13.95
Microfiche, #A01, Price $6.95

Antidegradation, NTIS Order No. PB89-141600
Paper Copy, #A05, Price $15.95
Microfiche, #A01, Price $6.95

Arsenic, NTIS Order No. PB89-141501
Paper Copy, #A04. Price $15.95
Microfiche, #A01, Price $6.95

Bacteria, NTIS Order No. PB89-141394
Paper Copy, #A04, Price $15.95
Microfiche, #A01, Price $6.95

Cadmium, NTIS Order No. PB89-141469
Paper Copy, #A04, Price $15.95
Microfiche, #A01, Price $6.95

Chromium, NTIS Order No. PB89-141584
Paper Copy, #A04, Price $15.95
Microfiche, #A01, Price $6.95

Copper, NTIS Order No. PB89-141592
Paper Copy, #A04, Price $15.95
Microfiche, #A01, Price $6.95

Cyanide, NTIS Order No. PB89-141485
Paper Copy, #A04, Price $15.95
Microfiche, #A01, Price $6.95

Definitions, NTIS Order No. PB89-141493
Paper Copy, #A06, Price $21.95
Microfiche, #A01, Price $6.95

Designated Uses, NTIS Order No. PB89-141402
Paper Copy, #A04, Price $15.95
Microfiche, #A01, Price $6.95

Dissolved Oxygen, NTIS Order No. PB89-141568
Paper Copy, #A03, Price $13.95
Microfiche, #A01, Price $6.95

Dissolved Solids, NTIS Order No. PB89-141576
Paper Copy, #A03, Price $13.95
Microfiche, #A01, Price $6.95

General Provisions, NTIS Order No. PB89-141428
Paper Copy, #A03, Price $13.95
Microfiche, #A01, Price $6.95

Intermittent Streams, NTIS Order No. PB89-141410
Paper Copy, #A03, Price $13.95
Microfiche, #A01, Price $6.95

Iron, NTIS Order No. PB89-141543
Paper Copy, #A04, Price $15.95
Microfiche, #A01, Price $6.95

Lead, NTIS Order No. PB89-141626
Paper Copy, #A04, Price $15.95
Microfiche, #A01, Price $6.95

Mercury, NTIS Order No. PB89-141378
Paper Copy, #A04, Price $15.95
Microfiche, #A01, Price $6.95

Mixing Zones, NTIS Order No. PB89-141477
Paper Copy, #A05, Price $15.95
Microfiche, #A01, Price $6.95

Nitrogen/Ammonia/Nitrate/Nitrate, NTIS Order No. PB89-141618
Paper Copy, #A03, Price $13.95
Microfiche, #A01, Price $6.95

Organics, NTIS Order No. PB89-141386
Paper Copy, #A04, Price $15.95
Microfiche, #A01, Price $6.95

Other Elements, NTIS Order No. P89-141436
Paper Copy, #A03, Price $13.95
Microfiche, #A01, Price $6.95

Pesticides, NTIS Order No. PB89-141535
Paper Copy, #A04, Price $15.95
Microfiche, #A01, Price $6.95

Phosphorus, NTIS Order No. PB89-141444
Paper Copy, #A03, Price $13.95
Microfiche, #A01, Price $6.95

Temperature, NTIS Order No. PB89-141550
Paper Copy, #A05, Price $21.95
Microfiche, #A01, Price $6.95

Turbidity, NTIS Order No. PB89-141451
Paper Copy, #A03, Price $13.95
Microfiche, #A01, Price $6.95

Zinc, NTIS Order No. PB89-141519
Paper Copy, #A04, Price $15.95
Microfiche, #A01, Price $6.95

10. State Water Quality Standards Summaries. U.S. Environmental Protection Agency. September 1988.

NTIS Order No. PB89-141634
Paper Copy, #A18, Price $42.95
Microfiche, #A01, Price $6.95

This document contains a complete summary of the water quality standards of 56 States and U.S. Territories (District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands). A summary is not provided for California. (A source for obtaining information about the water quality standards for the State of California is however, provided.)

Included in each State summary is the name of a contact person, use classification and waterbodies and other pertinent information about the States and U.S. Territories. The above document contains the water quality standards of all 56 States and Territories, except for California. (In contrast, the documents listed immediately below are individual State summaries.)

11. State Water Quality Standards Summaries (one for each of the 56 States and Territories). U.S. Environmental Protection Agency. September 1988.

Fifty-six individual summaries of State water quality standards are available. The individual summaries

contain information on use classification of waterbodies, mixing zones, antidegradation and other pertinent information.

Alaska, NTIS Order No. PB89-141642
Paper Copy, #A03, Price $13.95
Microfiche, #A01, Price $6.95
Alabama, NTIS Order No. PB89-141659
Paper Copy, #A02, Price $10.95
Microfiche, #A01, Price $6.95
Arkansas, NTIS Order No. PB89-141667
Paper Copy, #A02, Price $10.95
Microfiche, #A01, Price $6.95
American Samoa, NTIS Order No. PB89-141675
Paper Copy, #A02, Price $10.95
Microfiche, #A01, Price $6.95
Arizona, NTIS Order No. PB89-141683
Paper Copy, #A06, Price $13.95
Microfiche, #A01, Price $6.95
California, (A summary is not provided for California. A source for obtaining information about water quality standards for California is however, available).
NTIS Order No. PB89-141691
Paper Copy, #A02, Price $10.95
Microfiche, #A01, Price $6.95
Northern Mariana Islands, NTIS Order No. PB89-141717
Paper Copy, #A03, Price $13.95
Microfiche, #A01, Price $6.95
Colorado, NTIS Order No. PB89-141709
Paper Copy, #A03, Price $13.95
Microfiche, #A01, Price $6.95
Connecticut, NTIS Order No. PB89-141725
Paper Copy, #A03, Price $13.95
Microfiche, #A01, Price $6.95
District of Columbia, NTIS Order No. PB89-141733
Paper Copy, #A03, Price $13.95
Microfiche, #A01, Price $6.95
Delaware, NTIS Order No. PB89-141741
Paper Copy, #A02, Price $10.95
Microfiche, #A01, Price $6.95
Florida, NTIS Order No. PB89-141758
Paper Copy, #A02, Price $10.95
Microfiche, #A01, Price $6.95
Georgia, NTIS Order No. PB89-141766
Paper Copy, #A02, Price $10.95
Microfiche, #A01, Price $6.95
Guam, NTIS Order No. PB89-141774
Paper Copy, #A02, Price $10.95
Microfiche, #A01, Price $6.95
Hawaii, NTIS Order No. PB89-141782
Paper Copy, #A02, Price $10.95
Microfiche, #A01, Price $6.95
Iowa, NTIS Order No. PB89-141790
Paper Copy, #A02, Price $10.95
Microfiche, #A01, Price $6.95
Idaho, NTIS Order No. PB89-141808
Paper Copy, #A03, Price $13.95
Microfiche, #A01, Price $6.95
Illinois, NTIS Order No. PB89-141816
Paper Copy, #A03, Price $13.95
Microfiche, #A01, Price $6.95
Indiana, NTIS Order No. PB89-141824
Paper Copy, #A02, Price $10.95
Microfiche, #A01, Price $6.95
Kansas, NTIS Order No. PB89-141832
Paper Copy, #A03, Price $13.95
Microfiche, #A01, Price $6.95
Kentucky, NTIS Order No. PB89-141840
Paper Copy, #A02, Price $10.95
Microfiche, #A01, Price $6.95
Louisiana, NTIS Order No. PB89-141857
Paper Copy, #A03, Price $10.95
Microfiche, #A01, Price $6.95
Massachusetts, NTIS Order No. PB89-141865
Paper Copy, #A02, Price $10.95
Microfiche, #A01, Price $6.95
Maryland, NTIS Order No. PB89-141873
Paper Copy, #A02, Price $10.95
Microfiche, #A01, Price $6.95
Maine, NTIS Order No. PB89-141881
Paper Copy, #A02, Price $10.95
Microfiche, #A01, Price $6.95
Michigan, NTIS Order No. PB89-141899
Paper Copy, #A02, Price $10.95
Microfiche, #A01, Price $6.95
Minnesota, NTIS Order No. PB89-141907
Paper Copy, #A02, Price $10.95
Microfiche, #A01, Price $6.95
Missouri, NTIS Order No. PB89-141915
Paper Copy, #A03, Price $13.95
Microfiche, #A01, Price $6.95
Mississippi, NTIS Order No. PB89-141923
Paper Copy, #A02, Price $10.95
Microfiche, #A01, Price $6.95
Montana, NTIS Order No. PB89-141931
Paper Copy, #A02, Price $10.95
Microfiche, #A01, Price $6.95
North Carolina, NTIS Order No. PB89-141949
Paper Copy, #A03, Price $13.95
Microfiche, #A01, Price $6.95
North Dakota, NTIS Order No. PB89-141956
Paper Copy, #A02, Price $10.95
Microfiche, #A01, Price $6.95
Nebraska, NTIS Order No. PB89-141964
Paper Copy, #A03, Price $13.95
Microfiche, #A01, Price $6.95
New Hampshire, NTIS Order No. PB89-141972
Paper Copy, #A02, Price $10.95
Microfiche, #A01, Price $6.95
New Jersey, NTIS Order No. PB89-141980
Paper Copy, #A02, Price $10.95
Microfiche, #A01, Price $6.95
New Mexico, NTIS Order No. PB89-141998
Paper Copy, #A03, Price $13.95
Microfiche, #A01, Price $6.95
Nevada, NTIS Order No. PB89-142004
Paper Copy, #A03, Price $13.95
Microfiche, #A01, Price $6.95
New York, NTIS Order No. PB89-142012
Paper Copy, #A03, Price $13.95
Microfiche, #A01, Price $6.95
Ohio, NTIS Order No. PB89-142020
Paper Copy, #A03, Price $13.95
Microfiche, #A01, Price $6.95
Oklahoma, NTIS Order No. PB89-142038
Paper Copy, #A03, Price $13.95
Microfiche, #A01, Price $6.95
Oregon, NTIS Order No. PB89-142046
Paper Copy, #A02, Price $10.95
Microfiche, #A01, Price $6.95
Pennsylvania, NTIS Order No. PB89-142053
Paper Copy, #A03, Price $13.95
Microfiche, #A01, Price $6.95
Puerto Rico, NTIS Order No. PB89-142061
Paper Copy, #A03, Price $13.95
Microfiche, #A01, Price $6.95
Rhode Island, NTIS Order No. PB89-142079
Paper Copy, #A03, Price $13.95
Microfiche, #A01, Price $6.95
South Carolina, NTIS Order No. PB89-142087
Paper Copy, #A03, Price $13.95
Microfiche, #A01, Price $6.95
South Dakota, NTIS Order No. PB89-142095
Paper Copy, #A03, Price $13.95
Microfiche, #A01, Price $6.95
Tennessee, NTIS Order No. PB89-142103
Paper Copy, #A02, Price $10.95
Microfiche, #A01, Price $6.95
Trust Territories, NTIS Order No. PB89-142111
Paper Copy, #A02, Price $10.95
Microfiche, #A01, Price $6.95
Texas, NTIS Order No. PB89-142129
Paper Copy, #A02, Price $10.95
Microfiche, #A01, Price $6.95
Utah, NTIS Order No. PB89-142137
Paper Copy, #A03, Price $13.95
Microfiche, #A01, Price $6.95
Virginia, NTIS Order No. PB89-142145
Paper Copy, #A02, Price $10.95
Microfiche, #A01, Price $6.95
Virgin Islands, NTIS Order No. PB89-142152
Paper Copy, #A02, Price $10.95
Microfiche, #A01, Price $6.95
Vermont, NTIS Order No. PB89-142160
Paper Copy, #A02, Price $10.95
Microfiche, #A01, Price $6.95
Washington, NTIS Order No. PB89-142178
Paper Copy, #A02, Price $10.95
Microfiche, #A01, Price $6.95
Wisconsin, NTIS Order No. PB89-142186
Paper Copy, #A02, Price $10.95
Microfiche, #A01, Price $6.95
West Virginia, NTIS Order No. PB89-142194
Paper Copy, #A02, Price $10.95
Microfiche, #A01, Price $6.95
Wyoming, NTIS Order No. PB89-142202
Paper Copy, #A02, Price $10.95
Microfiche, #A01, Price $6.95

This following document may be obtained only from the GPO:

12. Quality Criteria for Water, 1986. (Gold Book, includes updates 1 & 2). U.S. Environmental Protection Agency. May 1987.

This document contains summaries of all contaminants for which EPA has developed criteria recommendations through 1987. Copies of this publication may be obtained from the U.S. Government Printing Office (GPO) at the address listed above. A fee of $23.00 is charged for the document. The GPO Order Number 955-002-00000-8.

Each document listed in this Notice may be obtained by written request from the specific addresses indicated above. When requesting publications, identify the documents by title along with the specific reference citation and order numbers and include the quantities desired. There may be a 4–6 week delay in filling some requests. Publications contained in this Notice are updated periodically. If updated versions are available at the time of the written request those documents will be provided.

Date: December 29, 1988.

William A. Whittington,

Acting Assistant Administrator for Water.

[FR Doc. 89-3391 Filed 2-13-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

February 1, 1989.

The Federal Communications Commission has submitted the following information collection requirements to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act, as amended (44 U.S.C. 3501 *et seq.*).

Copies of the submissions may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. Persons wishing to comment on these information collections should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-3785. Copies of these comments should also be sent to the Commission. For further information contact Jerry Cowden, Federal Communications Commission, (202) 632-7513.

OMB Number: 3060-0291.

Title: Section 90.477, Interconnected systems.

Action: Extension.

Respondents: State or local governments, businesses (including small businesses), and non-profit institutions.

Frequency of Response: Recordkeeping requirement.

Estimated Annual Burden: 1,000 recordkeepers; 1,000 hours; 1 hour each.

Needs and Uses: Cost sharing records are required to ensure that interconnection by land mobile radio licensees to the public switched telephone network is on a non-profit cost sharing basis.

OMB Number: 3060-0281.

Title: Section 90.651, Supplemental reports required of licensees authorized under this subpart.

Action: Extension.

Respondents: State or local governments, businesses (including small businesses), and non-profit institutions.

Frequency of Response: Annually.

Estimated Annual Burden: 16,408 responses; 2,740 hours; 10 minutes each.

Needs and Uses: Licensees are required to report the actual number of mobile units served by each base station. This information is used by the Commission to prevent frequency hoarding.

OMB Number: 3060-0284.

Title: Section 94.25 (f), (g), & (i)—Filing of applications.

Action: Extension.

Respondents: State or local governments, businesses (including small businesses), and non-profit institutions.

Frequency of Response: On occasion.

Estimated Annual Burden: 25 responses; 13 hours; 30 minutes each.

Needs and Uses: Rule requires applicants proposing to locate transmitters near certain sensitive federal radio receiving sites to notify these facilities to protect them from interference.

OMB Number: 3060-0300.

Title: Section 94.107, Posting of station authorization and transmitter identification cards, plates, or signs.

Action: Extension.

Respondents: State or local governments, businesses (including small businesses), and non-profit institutions.

Frequency of Response: Recordkeeping requirement.

Estimated Annual Burden: 12,140 recordkeepers; 17 hours; 5 seconds each.

Needs and Uses: Rule requires transmitter authorization to be posted or available at station location. It is used by field personnel to determine if the transmitter is operating in accordance with authorization.

OMB Number: 3060-0272.

Title: Section 94.31, Supplemental information to be submitted with application.

Action: Revision.

Respondents: State or local governments, businesses (including small businesses), and non-profit institutions.

Frequency of Response: On occasion.

Estimated Annual Burden: 4,300 responses; 8,600 hours; 2 hours each.

Needs and Uses: This rule stipulates supplemental information required by the Commission before it can grant a microwave authorization. Information is required to ensure specified operations on designated frequencies.

OMB Number: 3060-0206.

Title: Part 21, Domestic Public Fixed Radio Services (§§ 21.201, 21.307, 21.406, 21.708, 21.808).

Action: Revision.

Respondents: Businesses (including small businesses).

Frequency of Response: Recordkeeping and on occasion reporting.

Estimated Annual Burden: 2,272 responses; 100 recordkeepers; 1,200 hours; 30 minutes each (average).

Needs and Uses: This information is used by the Commission, other licensees of the spectrum, and the public to ensure that Part 21 licensees are operating within the parameters of their authorizations and Commission rules. The information is also used by the Commission to ensure that the stations are properly maintained.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-3381 Filed 2-13-89; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Northern New York Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for

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processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 8, 1989.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Northern New York Bancorp, Inc.*, Alexandria Bay, New York; to become a bank holding company by acquiring 100 percent of the voting shares of The Redwood National Bank, Alexandria Bay, New York.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Community Financial Bancorp, Inc.*, Maysville, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Farmers State Bank, Warsaw, Kentucky.

Board of Governors of the Federal Reserve System, February 8, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-3378 Filed 2-13-89; 8:45 am]

BILLING CODE 6210-01-M

Philip L. Pankonin; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 28, 1989.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Philip L. Pankonin*, Louisville, Nebraska; to acquire an additional 10.67 percent of the voting shares of Louisville Company, Louisville, Nebraska, and thereby indirectly acquire Home State Bank, Louisville, Nebraska.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Windsor Association, Inc.*, Dallas, Texas; to acquire 10.18 percent of the voting shares of Fidelity Resources Company, Dallas, Texas, and thereby indirectly acquire Fidelity National Bank.

2. *Joe M. Bennatte*, Hempstead, Texas; to acquire 50 percent; David Swalm, Houston, Texas, to acquire 20 percent; David Swalm, Jr., Houston, Texas, to acquire 10 percent; John Shelton, Houston, Texas, to acquire 10 percent; and Ronald Woliver, Houston, Texas, to acquire 10 percent of the voting shares of Community Bank, Katy, Texas.

Board of Governors of the Federal Reserve System, February 8, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-3379 Filed 2-13-89; 8:45 am]

BILLING CODE 6210-01-M

Societe Generale, et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 3, 1989.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Societe Generale*, Paris, France; to engage *de novo* through its subsidiary Fimat Futures USA, Inc., Chicago, Illinois, in the execution of futures contracts and options on futures contracts for non-affiliated companies on or subject to the rules of any contract market pursuant to § 225.25(b)(18) of the Board's Regulation Y. Comments on this application must be received by February 28, 1989.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Citizens Banking Corporation*, Flint, Michigan; to engage *de novo* through its subsidiary, Citizens Commercial Leasing Corporation, Flint, Michigan, in leasing personal property or acting as an agent or broker with respect to leasing personal property pursuant to § 225.25(b)(5) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 8, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-3380 Filed 2-13-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Meeting; Advisory Committee: March

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration.

NOTICE: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming meetings of the agency's initial review committees in the month of March 1989. these committees will be performing initial review of applications for Federal assistance. Therefore, portions of the meetings will be closed to the public as determined by the Administrator, ADAMHA in accordance with 5 U.S.C. 552(b)(6) and 5 U.S.C. app. 2 10(d). Notice of this meeting is required under the Federal Advisory Committee Act, Pub. L. 92-463.

Committee Name: Biological and Neurosciences Subcommittee of the Mental Health Small Grant Review Committee, NIMH.

Date and Time: March 2-3: 9:00 a.m.

Place: The Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC 20008.

Status of Meeting: Open—March 2: 9:00-10:00 a.m.; Closed—Otherwise.

Contact: Monica Woodfork, Room 9C-05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-4843.

Purpose: The Committee is charged with the initial review of applications for research in all disciplines pertaining to alcohol, drug abuse, and mental health for support of research in the areas of psychology, psychiatry, and the behavioral and biological sciences.

Committee Name: Clinical and Behavioral Sciences Subcommittee of the Mental Health Small Grant Review Committee, NIMH.

Date and Time: March 2-3: 9:30 a.m.

Place: The Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC 20008.

Status of Meeting: Open—March 2-3: 9:00-10:00 a.m.; Closed—Otherwise.

Contact: Kimberly Crown, Room 9C-05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-4843.

Purpose:. The Committee is charged with the initial review of applications for research in all disciplines pertaining to alcohol, drug abuse, and mental health for support of research in the areas of psychology, psychiatry, and the behavioral and biological sciences.

Committee Name: Services Subcommittee of the Epidemiologic and Services Research Review Committee, NIMH.

Date and Time: March 8-10: 9:00 a.m.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Status of Meeting: Open—March 8: 9:00-10:00 a.m.; Closed—Otherwise.

Contact: Gloria Yockelson, Room 9C-14, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301 443-1367.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities as they relate to mental health epidemiology, mental health service systems research, and evaluation of clinical mental health services, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Biobehavioral/Clinical Subcommittee of the Drug Abuse AIDS Research Review Committee, NIDA.

Date and Time: March 14-16: 9:00 a.m.

Place: Georgetown I & II, Congressional Park-Days Inn, 1750 Rockville Pike, Rockville, MD 20852.

Status of Meeting: Open—March 14: 9:00-9:30 a.m; Closed—Otherwise.

Contact: Iris O'Brien, Room 10-42, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-2620.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities, and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Committee Name: Sociobehavioral Research Subcommittee of the Drug Abuse AIDS Research Review Committee, NIDA.

Date and Time: March 14-16: 9:00 a.m.

Place: Montrose I & II, Days Inn, Congressional Park 1775 Rockville Pike, Rockville, MD 20852.

Status of Meeting: Open—March 14: 9:00-9:30 a.m.; Closed—Otherwise.

Contact: H. Noble Jones, Room 10-42, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-2620.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities, and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Committee Name: Mental Health Acquired Immunodeficiency Syndrome Research Review Committee, NIMH.

Date and Time: March 30-April 2: 8:30 a.m.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Status of Meeting: Open—March 30: 8:30-9:30 a.m.; Closed—Otherwise.

Contact: Irma Fisher, Room 9C-15, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-6470.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of activities in the fields of research and research training activities in the areas of psychoneuroimmunological, psychosocial, behavioral, and psychological aspects of AIDS as they relate to mental health, with recommendations to the National Advisory Mental Health Council for final review.

Substantive information, summaries of meetings, and rosters of committee members may be obtained as follows: Ms. Camilla Holland, NIDA Committee Management Officer, Room 10-42, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-2620; Ms. Joanna Kieffer, NIMH Committee Management Officer, Room 9-105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-4333.

Date: February 9, 1989.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 89-3431 Filed 2-13-89; 8:45 am]

BILLING CODE 4160-20-M

Centers for Disease Control

[Announcement No. 914]

Centers for Disease Control; Immunization Demonstration Projects

Introduction

The Centers for Disease Control (CDC) announces the availability of funds for Fiscal Year 1989 for cooperative agreements for: (1) Assessment Projects to develop methods/strategies to effectively assess immunization protection in the general preschool-age population (birth up to entry into school) at the State or county level; and (2) Intervention Projects to develop innovative ways to successfully identify and vaccinate preschool-age (birth up to entry into school) children living in inner-city, high disease morbidity areas.

Authority

This program is authorized under section 317(k)(1) of the Public Health Service Act (42 U.S.C. 247b(k)(3)), as amended.

Eligible Applicants

Eligible applicants for this program are the official public health agencies of State and local governments, including

the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Federated States of Micronesia, Guam, the Marshall Islands, the Northern Mariana Islands, Palau, and the Virgin Islands, and other public and nonprofit private entities. Applicants for both *Assessment Projects* and *Intervention Projects* must have access to public and private provider immunization records for the pre-school age population from which a statistically valid sample (95% confidence level with plus or minus 5% reliability) can be obtained so that results are transferable to other areas. In addition, in order to be eligible for the *Intervention Projects*, applicants must meet the above criteria and have existing immunization clinics that serve the inner-city population in order to be responsive to the needs of this project.

Availability of Funds

Approximately $1,000,000 will be available in Fiscal Year 1989 to fund up to 9 cooperative agreements. Depending on the number and quality of applications received and approved, approximately 5 *Assessment Projects* and 4 *Intervention Projects* will be supported. Average awards are expected to be $110,000 with individual cooperative agreements ranging from $50,000 to $250,000. It is expected that the cooperative agreement will begin on or about July 1, 1989 for a 12-month budget period within a 1–3 year project period. Funding estimates outlined above are subject to change.

There are no matching or cost participation requirements. However, the applicant's contribution to the overall program costs, if any, should be provided in the application.

Purpose

The purposes of this program are to investigate new means of assessing vaccine coverage among preschool-age children at the State or county level and to deliver vaccines to the preschool-age population in inner-city, high diseases morbidity areas.

Demonstrations should focus on new and innovative ways to improve the core capacity of State, local, and private health agencies to assess vaccination protection levels and to deliver vaccinations to the target populations in the most cost-efficient manner.

Measuring patient knowledge and attitudes about the risks/benefits of immunization and reasons their children are not immunized is not the primary focus of these demonstration projects.

Progam Requirements

Recipient Activities

1. Assessment Project

A. Develop cost-effective methods/strategies for accurately assessing, at the State or county level, the percent of the preschool-age population, vaccinated against diphtheria, tetanus, pertussis, polio, measles, mumps, rubella, and haemophilus influenza b. Children receiving vaccinations from both the public and private sectors should be included in the assessment. The assessment strategies developed should include and describe survey type (prospective versus retrospective), frequency (annual versus bi-annual), source of information (e.g., day care center records, school enterer records, clinic records, or questionnaires), standards for assessment (dose and antigen specific), minimum number of records to be assessed for statistical validity, and sampling procedures.

B. Demonstrate that the measured immunization levels are valid. Validation could include verifying existing parent or school records with the providers of the vaccinations or by selected serosurvey. Proposals to conduct serosurveys other than to verify accuracy of record assessment data will not be considered for funding.

C. Develop methods and strategies which are financially feasible, cost effective, and universally applicable for any State or local health department use.

Projects funded through a cooperative agreement that involve collection of information from 10 or more individuals will be subject to review under the Paperwork Reduction Act.

2. Intervention Projects

Develop methods/strategies to successfully identify and vaccinate preschool-age children in inner-city high disease morbidity areas. The strategies should be applicable to the preschool-age inner-city populations anywhere in the country. Strategies should include, but are not limited to:

A. Intensifying educational in-service training for public health immunization clinic staff and other health professionals in the private sector responsible for delivery of vaccinations. Educational efforts should focus on ways to minimize missed opportunities for vaccinating because of failure to follow the United States Public Health Service Immunization Practices Advisory Committee (ACIP) recommendations. Examples of failure to follow these recommendations include: not administering diphtheria/tetanus/pertussis (DTP), oral polio (OPV), and measles/mumps/rubella (MMR) vaccines simultaneously when appropriate; deferring immunizations for reasons that are not medical contraindications, i.e., afebrile upper respiratory illness, or recent use of antibiotics, or excessively restrictive intervals between doses, or pregnant household members.

B. Increasing opportunities for immunization by (1) integrating immunization services with other health department services, such as Women, Infants and Children (WIC) or family planning clinics, and (2) screening immunization records and offering vaccinations during any health department or physician encounter should contribute to higher vaccination protection. Traditionally, vaccinations are not offered except at well-baby or scheduled immunization clinics. Plans to implement policy and procedural changes necessary to integrate immunization services with other public health programs and make any other changes needed in the immunization clinic delivery system to effectively identify and vaccinate the preschool-age population are encouraged.

C. Removing unnecessary barriers to immunization, such as inflexible, inconvenient, infrequent, inadequate clinic hours, pre-vaccination temperature screening, or requiring a physician examination prior to vaccination.

D. Developing special educational efforts for the parent(s) of the preschool child during the first visit to the health care provider. These efforts should stress the need for the parent(s) to return at the appropriate intervals so their child can receive all recommended vaccine doses by age two.

E. Conducting special outreach efforts to identify inadequately vaccinated children and motivate parents to return to the health provider to complete their child's vaccinations. Such efforts might include reminder telephone calls or postcards and calls or postcards to families missing appointments.

F. Evaluating the impact and cost of the various intervention strategies for increasing the percent of preschool-age children receiving the recommended vaccines and required doses appropriate for their age. Evaluation of interventions will require the assessment of the percent of preschool-age children age-appropriately vaccinated prior to the interventions and the resulting percent of preschool-age children age-appropriately vaccinated as a result of the interventions. Evaluation should include, but is not restricted to, measuring the corresponding changes when:

(1) ACIP recommendations are followed;

(2) Missed opportunities are eliminated by better integration of health department services;

(3) Unnecessary barriers are removed;

(4) Parents are given special educational motivational information during their first visit; and,

(5) Special outreach efforts are carried out.

Centers for Disease Control Activities

1. Provide consultation and technical assistance in planning, operating, and evaluating activities designed to reach the target populations.

2. Provide current scientific information regarding known strategies for improving immunization levels and measuring impact among the inner-city preschool-age population.

3. Provide assistance in data management/analysis.

4. Transfer intervention and assessment methods and techniques developed in this program to other States and communities when appropriate.

Evaluation Criteria

Applications will be evaluated on an individual basis according to the criteria below:

1. New Applications

A. Assessment Projects

(1) The applicant's understanding of the purpose of the program and the appropriateness and feasibility of the project and the potential for positive impact of the project on meeting the stated goals of the program. (10 points)

(2) The extent to which background information and other data demonstrate that the applicant has the appropriate organizational structure, administrative support, accessibility to an adequate number of immunization records of the target population to produce statistically valid results, and the ability to accomplish project goals. (10 points)

(3) The degree to which long- and short-term objectives are consistent with the purpose of the demonstration project and are realistic, specific, measurable, and time-phased. (10 points)

(4) The quality of the plan of operation for conducting and monitoring proposed activities and the degree to which the plan covers each proposed assessment activity oulined under "Recipient Activities" and specifies the what, who, where, how, and the timing for start and completion of each. (25 points)

(5) The quality of the immunization record validation strategies to verify that data obtained are accurate. (10 points)

(6) The degree to which the evaluation plan will be able to measure achievement of each objective and the quality of the methods and instruments to be used. (10 points)

(7) The extent to which methods and strategies proposed are financially feasible and transferable to other States or counties. (15 points)

(8) The extent to which qualified and experienced personnel are available to carry out the proposed activities of the project. (10 points)

B. Intervention Projects

(1) The applicant's understanding of the purpose of the program and the appropriateness and feasibility of the project and the potential for positive impact of the project on meeting the stated goals of the program. (10 points)

(2) The extent to which background information and other data demonstrate that the applicant has the appropriate organizational structure, administrative support, accessibility to an adequate number of immunization clinics and clinic records of the target population in both the demonstration site(s) and comparison site(s) to produce statistically valid results, and the ability to accomplish project goals. (10 points)

(3) The degree to which long- and short-term objectives are consistent with the purpose of the demonstration project and are realistic, specific, measurable, and time-phased. (10 points)

(4) The quality of the plan of operation for conducting and monitoring proposed activities and the degree to which the plan covers each proposed intervention activity outlined under "Recipient Activities" and specifies the what, who, where, how, and the timing for start and completion of each. (25 points)

(5) The quality of the immunization record validation strategies to verify that data obtained are accurate. (5 points)

(6) The degree to which the evaluation plan will be able to measure success and costs of the various intervention strategies to increase the percent of preschool-age children receiving the recommended vaccines and required doses appropriate for their age, and specifies the methods and instruments to be used. (10 points)

(7) The extent to which methods and strategies proposed are financially feasible and transferable to other inner-city preschool-age populations. (10 points)

(8) The extent to which qualified and experienced personnel are available to carry out the proposed activities of the project. (10 points)

(9) The ability of the applicant to make policy and procedural changes necessary to integrate immunization services with other public health programs and make other changes needed in the immunization clinic delivery system to effectively identify and vaccinate the inner-city preschool-age population. (10 points)

In addition, consideration will be given to the extent to which the budget request and proposed use of project funds are appropriate and reasonable.

2. Continuation Awards

Continuation awards within an approved project period will be made on the basis of availability of funds and documented progress toward the achievement of established short- and long-range objectives; the extent to which objectives for the new budget period are consistent with the purposes for which the cooperative agreement was originally approved; are realistic, specific, measurable, and time-phased; and the extent to which proposed changes in the need for support, long-term objectives, methods of operation, evaluation plans or personnel are likely to enhance the success of the project. In addition, consideration will be given to the extent to which the budget request and proposed use of project funds are appropriate and reasonable.

E.O. 12372 Review

Applications are subject to review as governed by Executive order 12372, Intergovernmental Review of Federal Programs.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 13.283.

Application Submission and Deadline

Applicants may submit more than one application under this announcement. Each application, however, must be complete as it will be evaluated separately without reference to any other application.

The original and two copies of the application (PHS Form 5161–1) must be submitted to Nancy C. Bridger, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Atlanta, GA 30305, on or before *April 14, 1989.*

1. Deadline: Applications shall be considered as meeting the deadline if they are either: A. Received on or before the deadline date; or, B. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be accepted as proof of timely mailing.)

2. Late Applications: Applications which do not meet the criteria in 1.A. or B. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

A complete program description, information on application procedures and application package may be obtained from Anne Fogiesong, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, 255 East Paces Ferry Road, NE., Room 300, Atlanta, GA 30305 (404) 842-6640 or FTS 236-6640.

Please refer to Announcement Number 914 when requesting information and submitting any application on the RFA.

Technical assistance may be obtained from Roger Bernier, Ph.D., Division of Immunization, Center for Prevention Services, Centers for Disease Control, Atlanta, GA 30333, (404) 639-1864 or FTS 236-1864.

Dated: February 8, 1989.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 89-3409 Filed 2-13-89; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

Fenbendazole for Use in Rocky Mountain Bighorn Sheep; Availability of Data

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of target animal safety and effectiveness and environmental data to be used in support of a new animal drug application (NADA) or supplemental NADA for use of fenbendazole in Type C feed for Rocky Mountain bighorn sheep. The data, contained in Public Master File (PMF) 5071, were compiled under Interregional Research Project No. 4 (IR-4), a national agriculture program for obtaining clearances for use of agricultural products for minor or special uses.

ADDRESS: Submit NADA's to the Document Control Section (HFV-16), Center for Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.

SUPPLEMENTARY INFORMATION: Fenbendazole, when used in sheep feed, is a new animal drug under section 201(w) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(w)). As a new animal drug, fenbendazole is subject to section 512 of the act (21 U.S.C. 360b). Therefore, its uses in sheep must be covered by an approved NADA or supplemental NADA. IR-4, Rutgers University, Cook College, New Brunswick, NJ 08903, has provided data and information to demonstrate effectiveness and safety to the target animal for use of fenbendazole in Type C feed for treatment and control of lungworms (*Protostrongylus* spp.) in Rocky Mountain bighorn sheep (*Ovis canadensis canadensis*).

IR-4 also provided an environmental assessment of possible impacts at the site of use of the animal drug product.

The data and information submitted by IR-4 are contained in PMF 5071. Sponsors of NADA's or supplemental NADA's may, without further authorization, reference the PMF to support approval. An NADA or supplemental NADA should include, in addition to a reference to the PMF (and any necessary, authorized reference to data in previously approved NADA's), drug labeling, and other information needed for approval, such as data concerning manufacturing methods, facilities and controls, and information addressing the potential environmental impacts of the manufacturing process. More information concerning the PMF or requirements for approval of an NADA may be obtained from the contact person (address above).

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

Dated: February 7, 1989.

Richard H. Teske,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 89-3385 Filed 2-13-89; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Acquired Immune Deficiency Syndrome; Service Demonstration Program Grants

AGENCY: Health Resources and Services Administration, PHS, DHHS.

ACTION: Notice of availability of funds.

SUMMARY: The Bureau of Material and Child Health and Resources Development (BMCHRD), Health Resources and Services Administration (HRSA), announces that Fiscal Year (FY) 1989 funds are available for Service Demonstration Program grants to develop projects demonstrating a comprehensive, cost effective, ambulatory and community-based health care and support system for persons with Acquired Immune Deficiency Syndrome (AIDS) and other Human Immunodeficiency Virus (HIV) related conditions. Applicants will be expected to demonstrate a thorough understanding of the AIDS/HIV epidemic as it affects their community, the need and demand for services, and a realistic and comprehensive plan for a service delivery system which builds upon existing community health resources. The planned service delivery system should be structured on a continuum of care model such that appropriate services are available to an HIV-infected individual as these are required.

Applicants from the Standard Metropolitan Statistical Areas (SMSAs) with a cumulative total of 400 or more AIDs cases as reported by the Centers for Disease Control as of September 12, 1988 are eligible to compete for new and renewal grants (see Appendix A).

Funds were appropriated by Pub. L. 100-436 for this purpose under the authority of section 301 of the Public Health Service (PHS) Act (42 U.S.C. 241).

DATE: To receive consideration, grant application must be received by the Grants Management Officer by April 17, 1989. Applications shall be considered as meeting the deadline if they are either (1) received on or before the deadline date; or (2) postmarked on or before the deadline date and received in time for submission to the review committee. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be accepted as proof of timely mailing. Applicants which do not meet the deadline will be considered late applications and will be returned to the applicant.

FOR FURTHER INFORMATION CONTACT: Requests for technical or programmatic information should be directed to Mr. George Ersek, Project Office, AIDs Services Branch, BMCHRD, Parklawn Building, Room 9A-05, 5600 Fishers Lane, Rockville, Maryland 20857 (301 443-0652). Grant applicants (Form PHS 5161-1 with revised face sheet HHS Form 424 approved under OMB Number 0348-0006), accompanying guidance materials, and additional information regarding business administration or fiscal issues related to the awarding of grants under this notice may be requeted from Ms. Glenna Wilcom, Grants Management Specialist, BMCHRD, Parklawn Building, Room 11A-18, 5600 Fishers Lane, Rockville, Maryland 20857 (301 443-1440). The original and two copies of the application must be submitted to Ms. Wilcom.

SUPPLEMENTARY INFORMATION:

Program Objectives.

The AIDS Service Demonstration Program is intended to support the development and demonstration of community-based systems of care which provide the spectrum of needed services for people with HIV infection and its complications, and provide appropriate alternatives to inpatient hospital care. Such systems must be developed in response to a careful assessment of the community's needs and must assure the coordination of the community's health care resources. Applicants should propose innovative, cost effective means of providing services, and should develop specific strategies to reduce the need for inpatient hospital care and to link together community health resources. For purposes of the grant, consideration must be given to the needs and resources of the entire community, defined as the SMSA for which the application is submitted.

Since a disproportionately high number of persons with AIDs and HIV infection are from minority populations, particular attention should be placed on developing appropriate outreach and culturally-sensitive case management strategies, as well as arranging for services so that cultural and language differences are adequately addressed. Additionally, specific AIDs education outreach and counseling programs must be directed toward intravenous drug users and their sexual partners, and accessible services for infected women and their children need to be identified and linked to other community services.

Because of the demonstration nature of the program, emphasis should be placed on how the program can operate when Federal funding is no longer available and on how the proposed project might serve as a model for other communities with significant numbers of persons with AIDs and other HIV-related conditions.

Technical Assistance

The Division of AIDs Programs will conduct a Technical Assistance workshop to provide assistance in developing and/or competing a grant application for submission. The one-day workshop will be held March 21, 1989 in the Parklawn Building, 5600 Fishers Lane, Rockville, Maryland, starting at approximately 9:00 a.m. Please contact Ms. Janice Edmonds on 301 443-0652 for further details.

Availability of Funds

Approximately $14.0 million is available in FY 1989 for the AIDs Service Demonstration Program grants.

Both new and renewal grants will be competitively awarded. Renewal applicants are defined as those organizations which have previously been awarded HRSA AIDs Service Demonstration grants and whose original budget and project periods expire on September 30, 1989. It should be noted that not only will the renewal applications be awarded on a competitive basis but that new applicant organizations from the same SMSAs are permitted to submit competing applications. These new applicants must demonstrate the ability to work within established coalitions that have been working successfully with previously HRSA-funded projects.

The budget and project periods for new and renewal grants will begin October 1, 1989. The budget and project period for all applicants will be for 2 to 3 years, i.e., funds awarded in FY 1989 may be expanded over the 2 to 3 year project period. This requires all applicants to submit a budget for each of the 2 to 3 years as well as a summary budget for the entire period. Not more than one grant award will be made in any one SMSA.

Pending the availability of funds, an announcement may appear in the Federal Register at a future date for current grantees in the following cities:

Phoenix, Arizona
San Diego, California
Santa Ana-Anaheim, California
Washington, DC
Palm Beach, Florida
Ft. Lauderdale, Florida
Atlanta, Georgia
Chicago, Illinois
New Orelans, Louisiana
Boston, Massachusetts
Newark, New Jersey
Nassau-Suffolk, New York
Philadelphia, Pennsylvania and Camden, New Jersey
San Juan, Puerto Rico
Dallas, Texas
Seattle, Washington

Eligible Applicants

Public and private entities, non-profit and for-profit, located in and providing services to the SMSAs listed in Appendix A are eligible to apply. Eligible entities may include, but not limited to State or local health departments; public or private hospitals; and consortia of health care and community organizations which can develop a comprehensive ambulatory community- and home-based AIDS support program offering appropriate and compassionate care at reduced costs.

Collaboration/Coordination with Other AIDS Programs

To the maximum extent possible, the grantees will be expected to work closely and coordinate their activities with the Robert Wood Johnson Foundation AIDS Health Services Program grantees; the Pediatric AIDS Health Care Demonstration Projects funded by HRSA; the AIDS Community Outreach Demonstration Projects supported by the National Institute of Drug Abuse; information, public education/prevention and testing programs supported by the Centers for Disease Control; the drug clinical trial studies and other research programs conducted by the National Institutes of Health; the Community Health Centers, funded under section 330, Migrant Health Centers funded under section 329, and Health Care for the Homeless Projects funded under section 340 of the PHS Act supported by HRSA; State Health Departments or other appropriate State-level representatives; and community-based AIDS service organizations.

Review and Evaluation Criteria for Applications

Applications for the new FY 1989 grants will be reviewed and rated by an objective review committee based on the applicant's demonstrating: The ability to coalesce broad-based

community support among appropriate agencies and programs and involve such agencies and programs from all of the cities and counties of the SMSAs listed on Appendix A. This application should indicate that the applicant has a thorough understanding of AIDS and the HIV epidemic; the need and demand for ambulatory and mental health, and community- and home-based services, including education and prevention services for individuals with high risk behaviors; and an indentification of gaps in the continuum of care. The applicant should further demonstrate the availability and accessibility of advocacy services for persons with HIV infection such that these individuals may avail themselves of existing Federal, State and local laws providing nondiscrimination protection and the experience and potential to provide treatment and support to the largest number of patients with AIDS and other HIV-related conditions within eligible SMSAs at the least cost. Current grantees applying to have their grant renewed must demonstrate and document their progress in achieving the above noted criteria. In addition, renewal applicants must provide a budgetary status report indicating the applicant's progress in obtaining other sources of funding for those activities and services previously suppported by HRSA funding under the Service Demonstration grant. Renewal applicants are expected to provide an evaluation of the effectiveness of each component of their current Service Demonstration project and indicate on a priority basis those components that require continued HRSA grant support. A renewal application must present an adequate needs assessment documenting continuing gap(s) in services in order to be considered acceptable.

All applicants must develop an implementation plan that includes a milestone chart or time schedule that shows the phase-in of each component of the delivery system and the expected completion dates of various project objectives over the course of the grant period. All sources of funding to support the organizations that will work with the grantee must be accurately reflected in the applicant's budget. Specific attention must be given to assuring comprehensiveness and appropriateness of services, and access to all segments of the affected population. Where appropriate, applicants from contiguous communities should undertake cooperative regional systems of care in order that duplication of services can be avoided. More detailed information on the review and evaluation criteria and how to prepare the application may be found in the grant application kit and technical assistance manual that will be mailed upon request.

Allowable Costs

The basis for determining the allowability and allocability of costs charged to PHS grants is set forth in 45 CFR Part 74, Subpart Q and 45 CFR Part 92 for State and local governments. These regulations implement the five separate sets of cost principles prescribed for grant recipients, which are: OMB Circular A–87 for State and local governments; OMB Circular A–21 for institutions of higher education; 45 CFR Part 74, Appendix E for hospitals; OMB Circular A–122 for nonprofit organizations; and 48 CFR Chapter 1, Subpart 31.2 for for-profit (commercial) organizations.

Other Award Information

A successful applicant under this notice will submit reports in accordance with the provisions of the general regulations which apply under 45 CFR Part 74, Subpart J, Monitoring and Reporting of Program Performance and Part 92.40 which applies to State and local governments.

Executive Order 12372

The AIDS Service Demonstration Program has been determined to be a program which is subject to the provisions of Executive Order 12372 concerning intragovernmental review of Federal programs, as implemented by 45 CFR Part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application package under this notice will contain a listing of States which have chosen to set up such a review and will provide a point of contact in the States for the review. Applicants should promptly contact their State single point of contact (SPOC) and follow their instructions prior to the submission of an application. The SPOC has 60 days after the application deadline date to submit its review comments.

The OMB Catalog of Federal Domestic Assistance number for the AIDS Service Demonstration Program is 13.133.

Date. December 28, 1988.

John H. Kelso,

Acting Administrator.

Appendix A

CITIES ELIGIBLE FOR NEW AND RENEWAL GRANTS: CUMULATIVE CASES OF AIDS REPORTED TO THE CENTERS FOR DISEASE CONTROL AS OF SEPTEMBER 12, 1988, FOR SMSAS WITH MORE THAN 400 CASES OF AIDS

Standard metropolitan statistical area	Cities and counties included in the SMSA	Cumulative cases
1. New York, NY–NJ (R).	NY; New York City—Bronx County, Kings County, New York County, Putnam County, Queens County, Richmond County, Rockland County, Westchester County. NJ; Bergen County...	16,151
2. San Francisco-Oakland, CA (R).	San Francisco City, Oakland City—Alameda County, Contra Costa County, Marin County, San Francisco County, San Mateo County.	6,062
3. Los Angeles-Long Beach, CA (R).	Los Angeles City, Long Beach City—Los Angeles County..	5,481
4. Houston, TX (N)...	Houston City—Brazoria County, Fort Bend County, Harris County, Liberty County, Montgomery County, Waller County.	2,299
5. Miami, FL (R).....	Miami City—Dade County.	1,822
6. Jersey City, NJ (N).	Jersey City City—Hudson County.	933
7. Baltimore, MD (R).	Baltimore City—Anne Arundel County, Baltimore County, Carroll County, Harford County, Howard County.	648
8. Denver-Boulder, CO (N).	Boulder City; Denver City—Adams County.	634
9. Tampa-St. Petersburg (N).	St. Petersburg City—Hillsborough County, Pasco County, Pinellas County.	605

CITIES ELIGIBLE FOR NEW AND RENEWAL GRANTS: CUMULATIVE CASES OF AIDS REPORTED TO THE CENTERS FOR DISEASE CONTROL AS OF SEPTEMBER 12, 1988, FOR SMSAS WITH MORE THAN 400 CASES OF AIDS—Continued

Standard metropolitan statistical area	Cities and counties included in the SMSA	Cumulative cases
10. Detroit, MI (N)	Detroit City—Lapeer County, Livingston County, Macomb County, Oakland County, St. Clair County, Wayne County.	557
11. Riverside-San Bernardino-Ontario (N).	Ontario City; Riverside City; San Bernardino City—Riverside County, San Bernardino County.	429
12. Paterson-Clifton-Passaic, NJ (N).	Passaic City; Paterson City—Passaic County.	424

R = Renewal.
N = New.

[FR Doc. 89–3433 Filed 2–13–89; 8:45 am]

BILLING CODE 4160–16–M

Program Announcement, Proposed Review Criteria and Funding Priority for Grants for Two-Year Programs of Schools of Medicine or Osteopathy

The Health Resources and Services Administration announces that applications for Fiscal Year 1989 Grants for Two-Year Programs of Schools of Medicine or Osteopathy are now being accepted under the authority of section 788(a), Public Health Service Act and section 631 of Pub. L. 100–607. Comments are invited on the proposed review criteria and proposed funding priority listed below.

Section 788(a) authorizes the award of grants to maintain and improve schools which provide the first or last two years of education leading to the degree of doctor of medicine or osteopathy. Grants provided under this authority to schools that were in existence on September 30, 1965, may also request support for construction and purchase of equipment.

To be eligible for a grant under this authority, the applicant must be a public or nonprofit private school providing the first or last two years of education leading to the degree of doctor of medicine or osteopathy and be accredited or be operated jointly with a school that is accredited by a recognized body or bodies approved for such purpose by the Secretary of Education.

Approximately $460,000 is being made available for new awards for Fiscal Year 1989. It is estimated that 2–3 projects averaging $153,000 will be supported.

Proposed Review Criteria

Approval of all applications will be based on an analysis of the following factors:

(1) The extent to which the project meets the intent of section 788(a) legislation;

(2) The administrative and management ability of the applicant to carry out grant supported objectives in a cost effective manner;

(3) The adequacy of the qualifications and experience of the staff and faculty;

(4) The relative effectiveness of the proposed project in improving the quality of and/or access to medical education; and

(5) The extent to which the project is effective in its recruitment and retention of minority and disadvantaged students.

In addition, the following mechanisms may be applied in determining the funding of approved applications:

1. Funding preferences—funding of a specific category or group of approved applications ahead of other categories or groups of applications, such as competing continuations ahead of new projects.

2. Funding priorities—favorable adjustment of review scores when applications meet specified objective criteria.

3. Special consideration—enhancement of priority scores by merit reviewers based on the extent to which applications address special areas of concern.

Proposed Funding Priority

For FY 1989 in determining the order of funding of approved applications, it is proposed to give priority to: Projects which satisfactorily demonstrate a net increase in enrollment of underrepresented minorities in proportion or more to their numbers in the general population or can document extent to which applicant attracts, retains, and assures program completion of underrepresented minorities (i.e., Black, Hispanic, and American Indian, Alaskan Native minority trainees). These population groups continue to be underrepresented in the medical profession and have insufficient access to primary medical care. Their representation should be increased to ensure equitable opportunities to a career in medicine and equal access to health care services. Studies show that minority physicians provide a greater proportion of health care for medically underserved populations than other United States physicians. Therefore, this funding priority is designed to increase the number of underrepresented minority physicians.

Interested persons are invited to comment on the proposed review criteria and funding priority. Normally, the comment period would be 60 days. However, due to the need to implement any changes for the Fiscal Year 1989 award cycle, this comment period has been reduced to 30 days. All comments received on or before March 16, 1989 will be considered before the final review criteria and funding priority are established. No funds will be allocated or final selections made until a final notice is published stating whether the final review criteria and funding priority will be applied.

Written comments should be addressed to:

Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 4C–25, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6190.

All comments received will be available for public inspection and copying at the Division of Medicine, Bureau of Health Professions, at the above address weekdays (Federal holidays excepted) between the hours 8:30 a.m. and 5:00 p.m.

The application deadline is March 31, 1989. Applications shall be considered as meeting the deadline if they are either:

1. *Received on* or before the deadline date, or

2. *Postmarked on* or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications received after the deadline will be returned to the applicant. Requests for application materials, questions regarding grants policy and completed applications should be directed to:

Grants Management Officer (D–31), Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C–22, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6960.

Should additional programmatic information be required, please contact:

Primary Care Medical Education Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 4C-18, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-3614.

The standard application form PHS 6025-1, HRSA Competing Traning Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915-0060.

This program is listed at 13.149 in the Catalog of Federal Domestic Assistance. Applications submitted in response to this announcement that request construction assistance are subject to the intergovernmental review under provisions of Executive Order 12372, as supplemented by 42 CFR Part 100, Intergovernmental Review of Federal Programs. Applications submitted for program support only are not subject to intergovernmental review under these provisions.

Dated: January 19, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89-3432 Filed 2-13-89; 8:45 am]

BILLING CODE 4160-15-M

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Meeting

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of Meeting.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation will meet on Tuesday, February 28, 1989. The meeting will be held in the Renaissance Room at the Le Pavillon Hotel, 833 Poydras Street, New Orleans, Louisiana, beginning at 8:30 a.m.

The Council was established by the National Historic Preservation Act of 1966 (16 U.S.C. 470) to advise the President and the Congress on matters relating to historic preservation and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The Council's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Housing and Urban Development, Treasury, and Transportation; the Director, Office of Administration; the Chairman of the National Trust for Historic Preservation; the Chairman of the National Conference of State Historic Preservation Officers; a Governor; a Mayor; and eight non-Federal members appointed by the President.

The agenda for the meeting includes the following:

I. Chairman's Welcome
II. Council Business
III. Executive Director's Report
IV. Section 106 Cases
V. Adjourn

Note.—The meetings of the Council are open to the public. If you need special accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., Room 809, Washington, DC, 202-786-0503, at least seven (7) days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., No. 809, Washington, DC 20004.

Robert D. Bush,

Executive Director.

Date: February 8, 1989.

[FR Doc. 89-3435 Filed 2-13-89; 8:45 am]

BILLING CODE 4310-10-M

Programmatic Agreement Regarding the Ground Wave Emergency Network Final Operational Capability

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of Proposed Programmatic Agreement.

SUMMARY: The Advisory Council on Historic Preservation proposes to execute a Programmatic Agreement (PA) pursuant to section 106 of the National Historic Preservation Act (16 U.S.C. 470f) and § 800.13 of its regulations (36 CFR Part 800) with the U.S. Air Force and the National Conference of State Historic Preservation Officers, providing for the identification and treatment of historic properties subject to effect by the proposed Ground Wave Emergency Network Final Operational Capability (GWEN FOC). Public comments are invited on the likely effects of GWEN FOC on historic properties (properties included in or eligible for inclusion in the National Register of Historic Places), and on effective ways to identify and avoid or mitigate such effects. The Council has been provided with the Environmental Impact Statement (EIS) on GWEN FOC, in which a PA is proposed; the Council has also been provided with copies of public comments obtained by the Air Force during development of the EIS. While all comments will be considered, it is requested that responses to this notice not duplicate comments provided in the EIS, and they be limited to the content of the proposed PA, that is, to the identification and treatment of effects on historic properties.

DATES: *Comments Due:* March 16, 1989.

ADDRESS: Executive Director, Advisory Council on Historic Preservation, Attn. OPRE. 1100 Pennsylvania Avenue NW., Room 803, Washington, DC 20004.

Robert D. Bush,

Executive Director.

Dated February 8, 1989.

[FR Doc. 89-3434 Filed 2-13-89; 8:45 am]

BILLING CODE 4310-10-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-89-1936]

Submission of Proposed Information Collection to the Office of Management and Budget

AGENCY: Office of Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). It is also requested that OMB complete its review within seven days.

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: February 7, 1989.

James E. Schoenberger,

General Deputy Assistant, Secretary for Housing—Federal Housing Commissioner.

Proposal: Quarterly Survey of Mortgage-Related Security Investments.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: This information is necessary for measuring progress toward the Congressionally declared goal, expressed in section 301, Title III of the National Housing Act, of establishing a secondary mortgage market, and increasing the liquidity of mortgage investments. It is vital in evaluating the growth of private mortgage conduits, and formulating policies on affordable housing. Such data helps identify the sources of funds to finance the nation's housing needs.

Form number: None.

Respondents: Businesses or other for-profit.

Frequency of Submission: Quarterly.

Reporting Burden:

	Number of respondents	X	Frequency of response	X	Hours per response	=	Burden hours
Financial Institutions	586		4		1/6, or 10 min.		391

Total estimated burden hours: 391.

Status: Revision.

Contact: Mike Lasky, HUD, (202) 755-7270; John Allison, OMB (202) 395-6880.

Date: February 7, 1989.

A. Justification for the Proposed Survey

1. *Reason Information is Needed*

Under a cooperative arrangement organized by the Office of Management and Budget (OMB) and as authorized in section 502 g Title V of the Housing and Urban Development Act of 1970,[1] the Department of Housing and Urban Development (HUD) has coordinated periodic surveys of the mortgage lending and commitment activity of the principal groups of financial institutions actively involved in the mortgage market. In addition to providing the Secretary, in his role as the President's principal housing advisor, information on the current status of the mortage lending activity, the data collected is used by: The Federal Reserve (flow of funds), Treasury (state ceilings for mortgage revenue bonds), BEA (national income accounts), Congress, FHLBB, FNMA, and OMB itself.

Congress declared an intention, in section 301, Title III of the National Housing Act to establish a secondary market for home mortgages. In order "to provide a degree of liquidity for mortgage investments, thereby improving the distribution of investment capital available for home mortgage financing" Congress, in section 302 of the above title created two corporations, the GNMA and the FNMA. Both of these corporations, subject to various restrictions and overseen by the Secretary of HUD, were authorized to engage in the purchase and sale of home mortgages. They were joined by the FHLMC, (established by FHLMC Act) in 1978.

Since 1980 the extent and complexity of the secondary mortgage market has increased dramatically. The number and kind of securities have increased from basic government-issued pass through mortgage pools to include private pools, CMO's, REMICs and Stripped securities. Between 1980 and 1987 the annual volume of activity in this market has grown from $78 billion to $428 billion; an increase of 449 percent. Sales on the secondary market accounted for 64 percent of mortgage loans closed on all types of properties in 1987.

With the integration of the mortgage market into the capital market, accurate information pertaining to the ultimate source of funds for Housing cannot be obtained from examination of the traditional mortgage lenders. In recognition of this HUD has initiated quarterly surveys (already approved by OMB) of the mortgage backed security and mortgage-oriented agency coupons of public and private pension funds and life insurance companies. However two major holders of mortgage backed securities are not being surveyed. Commercial and Savings Banks and Savings and Loans Associations.[2]

[1] "The Secretary is authorized to request and receive such information or data as he deems appropriate from private individuals and organizations, and from public agencies. Any such information or data shall be used only for the purposes for which it is supplied, and no publication shall be made by the Secretary whereby the information or data furnished by any particular person or establishment can be identified, except with the consent of such person or establishment."

[2] Currently no plans exist to conduct a survey of Savings and Loan institutions. Initially it was our understanding that the FHLBB was going to undertake to gather such information. At present we have submitted several suggestions for additions to FHLBB 'Thrift Financial Report of Condition' Schedule SC which is currently under being modified. If our suggestions are taken, the information obtained by the Bank Board will be barely sufficient to compare with the date that we hope to have for all other institutions.

Commercial and Savings Banks are major holders of mortgage backed securities. As of the March 1987 Call report, commercial bank holdings of mortgage pools had a book value of $83.8 billion and savings bank holdings of mortgage pools had a book value of $4.3 billion. The mortgage backed security holdings of the banking industry are expected to increase over the next few years as the risk based capital holding requirements mandated by the three federal bank regulatory authorities [5] are phased in.

Currently banks have flat capital holding requirements. For each dollar of assets they must have a certain amount of capital. In general the bank's risk of failure is thought to be inversely related to the capital/asset ratio. Unfortunately, identical capital holding requirement on all assets provides banks with an incentive to hold more risky assets. Under the new risk based requirements, each dollar of assets held is weighted according to which of five risk categories the asset is a member of. For every dollar of risk weighted dollar a set amount of capital must then be held. The weighing is believed to be positively related with the level of risk. .

Mortgage related instruments are accorded very favorable treatment under these new guidelines. GNMA securities, and all derivative instuments collateralized by GNMA securities require no capital holdings whatsoever. FNMA and FHLMC securities, and all derivative instruments collateralized by them are assigned a 20% risk weight. Each dollar of such securities counts as only $.20 in the determination of the capital holding requirements. Whole mortgages, and all privately issued mortgage conduit securities are assigned a 50% risk weight. Each dollar of such securities counts as only $.50 in the determination of the capital holding requirements. This favorable treatment is expected to induce banks to increase their holdings of mortgage backed securities.[6] By increasing the portion of such assets in its portfolio a bank moves toward meeting its capital requirements without additional capital.

2. *Use of Information by the Federal Government*

Section 501 Title V of the Housing and Urban Development Act of 1970 authorize the Secretary to undertake programs of research relating to the mission and programs of the Department that he deems necessary and appropriate. In section 301, Title III of the National Housing Act Congress declares that the "purpose of the title is to establish a secondary market for home mortgages." This market is thought to increase liquidity of home mortgages and therefore improve the distribution of investment capital available for home mortgage financing. In order to evaluate the degree of liquidity and evaluate the distribution of said capital, accurate information on the mortgage security holding's of the major holders of these securities is necessary. In recognition of this, the Secretary requested that information on the mortgage security holdings of banks, which are already large and are likely to become the largest, be obtained.

As the principal Housing advisor to the President this information is important in the evaluation of the state of the housing industry. Given this industry's sensitivity to credit policies, and this industry's important role in overall economic performance such information will be useful in an economic macroeconomic policy perspective. Also the affordability of home-ownership and the problem of homelessness are currently emotionally charged issues. The likelihood that policy will be formulated to address these concerns is very high. Information that factually describes the availability and flow of funds to housing industry will prove to be extremely valuable in crafting these policies.

This information will also be useful to the Secretary in his role as the Administrator of GNMA and regulator of FNMA. Information regarding the banking industry's demand for these securities is crucial in the determination of the appropriate ceiling quantities of GNMA securities and the fees charged on GNMA and FNMA securities. As FNMA needs the approval of the Secretary of HUD and the Secretary of the Treasury for each REMIC issued, the information provided in the survey will be useful in the regulation of these securities.

As bank demand for mortgage backed securities increase, it is likely that GNMA, FNMA and FHLMC will aspire to craft securities that have attributes particularly attractive to banks. The information acquired in this survey will be useful in the construction of such financial instruments. In addition this information will also aid the Secretary in his determination of whether such securities are congruent with the purposes and programs of the Department.

Finally the information will prove useful to the Secretary in his evaluation of the growth of private mortgage conduits. Knowledge of the extent of such issues and the identity of who holds such securities is crucial in the determination of whether the federally sponsored mortgage conduit facilities are hindering the development of private mortgage conduit facilities.

4. & 5. *Duplication and Use of Existing Information*

The information that is being sought in this survey does not currently exist in another location. The Call Reports filed with the FDIC contains some of this information, but in too aggregate a form. All government mortgage pool securities (GNMA, FNMA, FHLMC) are aggregated together. Derivative issues based on these pools are lumped with other government debt in general (Along with say Treasury securities). Similarly, private derivative instruments are aggregated with all private debt. Other securities issued by the three federally sponsored secondary market facilities are distributed in about five other possible categories throughout the call report.

Neither FNMA, GNMA, nor FHLMC know who hold their securities, neither do they know who hold the derivative securities based on their primary securities. However FHLMC has expressed great interest in knowing what the bank holdings of their securities are.

7. *Reporting Frequency*

The quarterly frequency of this survey is chosen to coincide with the bank's preparation of the call report. The coincidence of the collected data with the call report will allow industry wide figures to be inferred on the basis of the actual data contained in the call reports. Decreasing the frequency of collected data would make it difficult to disentangle seasonal or other periodic cyclical fluctuation in the date.

9. *Consultation With Persons Outside of the Agency*

Outside views were sought in the development of the survey with respect to the information to be collected and the clarity of instructions and definition of terms. A few potential respondents were consulted in order to estimate the time it would require to complete the survey.

The names of the individuals contacted were:

Jack Goodman, Federal Reserve—452–2871.

Frank Nothaft, FHLMC—759–8019.

Richard Pickering, FHLBB—272–4957.

Norma Marshall, First Fidelity Bank—(201) 790–2280.

Jim Pratt, Hills Bank and Trust—(319) 679–2291.

J.G. Evans, Equitable Bank—(301) 547–4000.

10. *Assurance of Confidentiality*

HUD promises respondents that the individual responses will be held in strictest confidence, will not be released to anyone, and will be made public only in aggregate form to show total mortgage security holdings of the banking industry. Statutory authorization for confidentiality is contained in section 502 g Title V of the Housing and Urban Development Act of 1970.[8]

12. & 13. *Burden and Costs*

In the survey sample there are 23 Savings Banks and 146 Commercial Banks. On the basis of consultation with a few respondents the average time to complete this survey is estimated at 10 minutes. It is assumed that the average compensation of the individual who will complete this survey is ten dollars an hour. As there are four surveys a year the cost to each firm $6.60 per year. This amounts to a cost of $1102.20 per year to the banking industry.

Estimated quarterly cost to the government.

I. Staff time (hours):		
Label, collate and prepare survey forms for mailing	6	
Answer inquiries, tracking responses and phoning late respondents	20	
Editing and preparing forms for keypunch	24	
Analysis of data and preparation of press release	8	
Total	58	
II. Cost of staff time		$1,184.00
Mailing, printing, and supply costs		47.50
Keypunch services		127.50
Data processing		58.50
Total costs to Government		1,410.50

14. *Change in Burden*

On April 13, 1988, OMB approved the continued use of Survey of Pension Funds, OMB No. 2052–0244, through August 31, 1989. This approval covered an increase from 186 to 278 reporting burden hours so that the survey could be extended to cover state and local retirement systems. In our previous submission dated January 27, 1988, it was noted: "In addition, the Secretary of HUD has asked that a similar survey be conducted of commercial and mutual savings banks." Plans for this additional effort have been finalized, including the sampling methodology, and drawing the actual sample. The total number of responses has been increased to 586 for inclusion of commercial and mutual savings bank component, therefore the reporting burden has been increased by 113 hours. No change in the information collection is involved other than the increase of the sample size.

The data for block 17 for the additional respondent/hours is detailed below:

1. Number of respondents:	
Commercial banks	146
Mutual savings banks	23
Total (169+417=586)	169
2. Number of responses per year per respondent	4
3. Total annual responses (676+1,668=2,344)	676
4. Hours per response	⅙
5. Total hours (113+278=391 hours)	113

15. *Reporting*

Responses are expected to be received during the second month following the survey date (the survey date is the date forms are mailed on which will be the end of the quarter). The responses are edited, results tabulated, expanded to universe estimates during the third month, and the report written. The data is published four months following the survey date.

B. Collection of Information Employing Statistical Methods

1. Statistical Universe

The source of respondents for this survey is a data tape of the December 1987 "consolidated Reports of Condition and Income" (hereafter referred to as the call report or "the call"). This tape was obtained form the Federal Deposit Insurance Corporation. This tape contains condition and income records for 13,753 distinct commercial banks and 463 savings banks, i.e. the "universe."

2. Sampling Methodology

Examination of the condition reports reveal four variables which represent mortgage backed security holdings of a bank. They are the book and market value of holdings of government issues or guaranteed certificates of participation in pools of residential mortgages [9] and the book and market values of holdings of certificates of participation in pools of residential mortgages that are not government issued or guaranteed. These holdings will be referred to as public pools and private pools, respectively.

The securities denoted by these holdings represent an actual ownership interest in the mortgages that comprise these pools. While these types of securities represent a substantial portion of mortgage related securities they are not inclusive. Lumped in with other U.S. debt and other private debt are the majority of the other mortgage related securities. These are securities that do not confer an ownership interest. Rather they are debt issues of another party who holds either the whole mortgage or a public or private pool security. Such issues are represented by collateralized mortgage obligations, (CMOs) and mortgage backed bonds. It is the non-explicit extent of these holdings in the call report which makes this survey necessary to obtain precise information on the mortgage backed security holdings of the banking system.

It is assumed that a bank's propensity to hold mortgage pool holdings is a good indication of their propensity to hold other mortgage backed securities.[7] Examination of the pool holdings across banks led to the rejection of private pools as a possible guide in the sampling plan. Essentially most banks, 92% of commercial banks and 89% of savings banks, do not hold any private pools. Of the 1,035 commercial banks that hold some quantity of private pools 53% (555) hold under a million dollars worth and 44% (453) hold between one and fifty million dollars. Of the 51 savings banks that hold private pools 20% (10) hold under a million and 63% (31) hold between one and fifty million.

The distribution of public pools, while skewed has considerably more banks with positive holdings. Among commercial banks 48% (6,568) hold none, 20% (2,787) hold under a million dollars worth, 30% (4,243) hold between one and fifty million, and 1% (155) hold over fifty million. Among savings banks 37% (173) do not hold any, 15% (71) hold under a million, 37% (175) hold between one and fifty million and 10% (46) hold over fifty million.

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[5] The risk based capital holding requirements have been jointly drafted and imposed by the Federal Reserve, the Comptroller of the Currency, and the F.D.I.C.

[6] This statement is derived from a model in which banks maximize their portfolio return (in which the costs of deposits enters negatively), subject to the constraint imposed by capital holding requirements. Provided that mortgage backed assets are "normal" with respect to other assets, than as the constraint cost of these assets declines relative to other assets, bank holdings of these assets will increase.

[8] See Footnote 1 for the next of statute.

[9] Despite its current status as an independent corporation FNMA pools are considered government issued or guaranteed in the call report.

[7] As information will be gathered on the basis of book value, to avoid changes in portfolio value due to market swings, and to avoid differences in the calculation of market value it was decided to focus on book value rather than market value throughout this sampling exercise.

Strata No.	Definition	Number of cases	Percent of total pools
Strata for commercial banks:			
0	No public pools	6,588	0
1	1,000,000 to 10,000,000	4,786	19
2	10,000,000 to 100,000,000	852	22
3	100,000,000 to 500,000,000	73	24
4	G.T. 500,000,000	20	35
Strata for savings banks:			
0	No public pools	1,736	0
1	1,000,000 to 200,000,000	218	22
2	200,000,000 to 1,000,000,000	13	24
3	G.T. 1,000,000,000	4	54

As the distribution was so highly skewed it was decided to stratify the data on the book value of public pools.[8] Five strata were defined for commercial banks and four for savings banks. Shown in the tables below are the stratum numbers, the stratum definitions, the number of cases in each stratum and the percentage of total pool holdings held by commercial banks and savings banks in that stratum.

The goal of the sample selection process was to select a sample that will produce estimates of the total magnitude of the banking system's holdings of mortgage related securities with a 5% margin of error with 99% confidence. Following Cochran [9] (1964, p. 97,105) a Neymen allocation (minimum variance) requires a sample size of 123 commercial banks and 17 savings banks to produce this degree of precision.

The Neymen allocation scheme for commercial banks suggests that 37% of the sample (45 cases) should be allocated to stratum 4, 18% (22 cases) to stratum 3, 23% (29 cases) to stratum 2, and 22% (27 cases) to stratum 1. The Neymen allocation for savings banks suggests 40% of the sample (6 cases) be allocated to stratum 3, 22% (4 cases) to stratum 2, and 32% (5 cases) to stratum 1. As there are only 20 cases in stratum four of commercial banks and four in stratum three for savings banks the differences (45 minus 20 and 8 minus 4) are proportionally allocated to the stratum 1 through 3 for commercial banks and 1 and 2 for savings banks.

When the actual survey sample is recruited it is unlikely that 100% of those whose recruitment is attempted will agree to participate. To acquire the desired number in each stratum, rates of acceptance were assumed and the attempt was made to recruit the reciprocal of these acceptance rates.

The acceptance rate for the largest stratum (4 for commercial banks, 3 for savings banks), the one where all members are selected is assumed to be 100%. All of these institutions are large, with over a billion dollars in total assets. Such banks are known (from the office's past experience in the performance of bank surveys) to be very cooperative with government data collection exercises.

The next largest stratum consists of commercial banks with total assets between $100 million and $1 billion with 92% of them having assets over one billion dollars and savings banks with total assets over $500 million. While a larger portion will probably respond an acceptance rate of 50% is chosen here for safety. For the remaining stratum an acceptance rate of 25% is assumed. Finally, for completeness, the mean value of the allocation of stratum 1 through 4 and one through three are allocated to stratum zero of commercial banks and savings banks respectively.

These acceptance rates dictate a sample draw of 466 commercial banks and 66 savings banks to acquire the desired sample of 146 commercial banks and 23 savings banks. The allocation of banks to their respective stratum for this recruitment effort is as follows:

RECRUITMENT DRAW

Stratum No.	No. cases commercial	No. cases saving
0	93	16
1	142	32
2	152	11
3	59	4
4	20	—

This allocation should produce the following sample.[10]

EXPECTED RESPONSE

Stratum No.	No. cases commercial	No. cases saving
0	23	4
1	36	8
2	38	5
3	29	4
4	20	—

Such a sample of commercial banks was actually drawn using the pseudo-random number generator in SPSS–X. This sample produced an estimated total of public pools of $73,341.9 million (true value is $71,802 million). This represents an error of 2%, well within the desired 5%. The 95% confidence band about this estimate is $67,541.08 million to $79,142.71 million.

As a further test of the sample the private pool holdings of the banking system were estimated from this sample. The estimated total was $8,085.34 million (true value $10,094 million). Though the percentage error of 19% is considerably larger, the 95% confidence interval of this estimate, $4,216.64 million to $11,953.84 million, includes the true value. As the variability of private pool holdings is known to be considerably greater than the variability of public pool holdings the larger percentage error in this case is not viewed as a problem.

3. Method to Maximize Response

In order to maximize the response rate every bank in the sample is recruited prior to any actual collection of data. This recruitment effort is made most effective by personalizing each recruitment package. The name of the chief executive officer of every potential respondent bank was determined. Then a letter, signed by The Secretary, was sent to this named individual. The letter requests the bank's participation in the survey. In addition a sample survey form was sent so the extent of effort involved in participation could be clearly evaluated.

[8] The extent of all holdings are rounded to the nearest million dollars.

[9] Cochran, William. *Sampling Techniques*, John Wiley and Sons Inc. New York, 1964

[10] When the actual recruitment was undertaken it was decided to systematically sample every other bank in the selected sample of stratum 0, 1 and 2 for commercial banks and 0 and 1 for savings banks. This amounts to a practical assumption that the response for recruitment in these strata will be 50%. The actual recruitment process vindicated this assumption, producing a margin of approximately 10% in each strata.

Those banks agreeing to participate are asked to return a response form in a provided envelope. The response form indicated who at the bank would be responsible for completing this survey. All future correspondence regarding the survey will then be sent directly to that specific person.

5. Responsibility for Sample Design

The sample exercise was designed and conducted by Dr. Michael Lasky of the Office of Financial Policy, at HUD. His phone number is 755–7270. Dr. Lasky will also be responsible for the collection and analysis of the data. In the process of designing the sample consultations were made with Dr. Tom Holloway at the Mortgage Bankers Association (861–3133) and Dr. Robert Gillette at the Office of Tax Analysis (566–6075).

BILLING CODE 4210-27-M

Bank Name _____

Person Completing _____

Address _____

Telephone Number ( ) _____

COPY

U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SURVEY OF MORTGAGE RELATED INVESTMENTS*

Please report data as of the end of the quarter. Total assets and Fixed income assets, and securities should be reported at book value. Please read instructions before completing this form.

Data for Quarter Ending _____ 19__

($ THOUSANDS)

A. **Total Assets of the Bank** _____

Fixed Income Assets (Treasuries, Government Agency Securities, mortgage-backed securities, corporate and foreign bonds, and mortgages.) _____

B. **Selected U. S. Government Agency Securities**
(Exclude Farm Credit Banks, Sallie Mae and other Government sponsored agencies not listed below.)

1. Fannie Mae - (Federal National Mortgage Association) Short-term notes and debentures, including strip securities, zero coupon bonds, subordinate obligations _____
2. FHLB - (Federal Home Loan Banks) -- Short-term notes and bonds _____
3. FICO (Financing Corporation) -- Bonds issued _____
4. a. Freddie Mac - (Federal Home Loan Mortgage Corp.) Debentures, zero coupon bonds, short-term notes and subordinate obligations _____
   b. Freddie Mac - Collaterized Mortgage Obligations (CMOs) _____
5. FHA Multifamily Project Debentures _____

C. **Mortgage-Backed Securities**

1. Ginnie Mae - Government National Mortgage Association: Guaranteed Mortgage-Backed Pass-Through Securities _____
2. Freddie Mac - Federal Home Loan Mortgage Corporation
   (a) Guaranteed Participation Certificates, Guaranteed Mortgage Certificates. _____
   (b) Real Estate Mortgage Investment Conduits (REMICs) _____
3. Fannie Mae - Federal National Mortgage Association Guaranteed Conventional Mortgage-Backed Pass-Through Securities _____
   Real Estate Mortgage Investment Conduits (REMICs) _____
4.
   a. Private Conduit Securities -- Home Mortgages - public issues and private placements, including pass-through securities, participation certificates, CMO's, and bonds backed by whole mortgages. _____
   b. Private Conduit Securities - Multifamily and Commercial Mortgages _____
5. Mortgage-Backed Bonds (One class or tranche) collateralized by securities guaranteed by Ginnie Mae, Fannie Mae, or Freddie Mac) _____
6. Collateralized Mortgage Obligations (CMOs) (Two or more classes or tranches) Collateralized by securities guaranteed by Ginnie Mae, Fannie Mae, or Freddie Mac (exclude Fannie Mae and Freddie Mac securities which CMO issuers elect to be treated as a REMIC). _____

D. **Direct Mortgage Holdings** (Book Value)
All directly held mortgage loans, including residential properties, commercial and other non-residential properties, farm dwellings, land and land development loans. _____

* Includes mortgage loans plus mortgage-related securities.

Definitions and Reporting Instructions for the Survey of Mortgage-Related Investments

A. *Total Assets.* Total assets at the end of the reporting period are the book value of properties owned, gross of any valuation reserves.

B. *Selected U.S. Government Sponsored Agency Securities.* The securities issued by the Federal sponsored agencies identified below are deemed to have a direct link to the provision of funds for real estate finance. Except for FHA debentures, the securities are not guaranteed by the U.S. Government, but are partially backed by lines of credit with the U.S. Treasury.

1. *Federal National Mortgage Association (Fannie Mae).* Securities issued by Fannie Mae evidencing corporate debt obligations, including stirp securities (both principal only and interest only). Obligations include debentures, short-term notes, and subordinated obligations, including those convertible into shares of common stock.

2. *Federal Home Loan Banks (FHLB).* These securities are consolidated obligations consisting of bonds and discount notes issued as joint and several debt of all Federal Home Loan Banks.

3. *Financing Corporation (FICO).* Issues bonds and then lends funds to the Federal Savings and Loan Insurance Corporation (FSLIC).

4. *Federal Home Loan Mortgage Corporation (Freddie Mac).* Securities issued by Freddie Mac in its own name evidencing corporate debt. Obligations include collateralized mortgage obligations, debentures, zero coupon bonds, short-term notes, and subordinate obligations. Collateralized mortgage obligations consist of two or more classes or tranches of bonds with stated maturities.

5. *FHA Multifamily Project Debentures.* Bonds issued by the Federal Housing Administration (FHA) of the U.S. Department of Housing and Urban Development. These are not mortgages, but instead are liabilities of the FHA insurance funds under which they are issued. Interest is paid semi-annually and the maturity is usually 20 years. The debentures are registered and transferrable. They are available in denominations of $50, $100, $500, $1,000, $5,000, and $10,000. They are fully and unconditionally guaranteed as to principal and interest by the United States.

C. *Mortgage-Backed Securities (MBS)*—1. *General Definition.* A mortgage-backed security is issued to finance a pool of mortgages. These securities are pass-through certificates. A pass-through certificate represents a pro rata undivided fractional interest in the equitable ownership of a pool of mortgage loans. Payments of principal and interest are used to make monthly disbursements to security holders. Pass-through certificates represent a sale of assets (mortgages) by the sponsor to an entity.

2. *Government National Mortgage Association (Ginnie Mae).* Mortgage-backed pass-through securities guaranteed by Ginnie Mae as to the timely payment of principal and interest. The securities are issued by Ginnie Mae approved financial institutions and backed by a pool of FHA-insured and/or VA-guaranteed mortgages. Ginnie Mae guaranteed securities bear the full faith and credit of the U.S. Government.

3. *Federal Home Loan Mortgage Corporation (Freddie Mac).* Freddie Mac issues two types of pass-through instruments to finance its mortgage loan acquisitions: (1) Guaranteed mortgage certificates (GMCs) and (2) mortgage participation certificates (PCs) and also collateralized mortgage obligations. GMCs and PCs represent undivided interests in pools of conventional residential mortgages set aside by Freddie Mac. GMCs return principal once a year in guaranteed minimum amounts regardless of the status of the underlying mortgages. Interest is paid semi-annually. For PCs, each certificate holder receives every month a prorata share of the principal payments collected on the mortgages in the underlying pool, plus prepayments and interest on the outstanding balance. Freddie Mac guarantees the timely payment of interest at the certificate rate and the full return of principal regardless of the status of the underlying loans.

4. *Federal National Mortgage Association.* (Fannie Mae): Fannie Mae is the issuer and guarantor of MBS or trust securities, providing 100 percent guaranty of full and timely payment of interest and principal. The securities represent interests in pools of residential mortgage loans set aside by Fannie Mae.

5. *Private Pass-Through Securities.* These securities are issued by private financial entities (sometimes called "private conduits") with no guarantees by any government or government-sponsored agency. The securities are credit enhanced by mortgage pool insurance (provided by a private mortgage insurance company), guaranty by the sponsor, issuance of subordinate lien securities, or by over collateralization of underlying mortgages. Some securities are issued via public offering (registered through SEC), and others are marketed through private placement.

6. *Private Mortgage-Backed Bonds.* Mortgage-backed bonds have been sold principally by affiliates of home builders (builder bonds) and savings and loan associations to raise funds without having to realize sizable losses thorugh an outright sale of an asset. They have a single maturity date and are of smaller size than pass-through issues. The bonds are general obligations of the issuer, additionally secured by mortgage collateral.

7. *Collateralized Mortgage Obligations and Real Estate Mortgage Investment Conduit Securities (REMICs).* Collateralized mortgage obligations, or CMOs, are debt obligations of an entity established by a financial institution or other sponsor. They are collateralized by whole mortgage loans or by mortgage-backed pass-through securities guaranteed by Ginnie Mae, Fannie Mae, or Freddie Mac.

CMOs are sold in multi-maturity classes, that is they mature over a wide range of years versus a mortgage-backed bond with a single maturity. Many CMO issuers elect to be treated as a REMIC (real estate mortgage investment conduit). A REMIC can be structured as a entity that issues pass-through securities, or as a CMO-issuing entity.

D. *Direct Mortgage Holdings.* These are the principal balances remaining on all mortgage loans which were either originated by your organization or purchased from another financial institution at some point in the past.

Instructions

A. General Instructions

Please complete and return the form with the least possible delay, preferably within two weeks after the end of the reporting period.

All entries should be reported in dollars, rounded to the nearest thousand dollars. Do not report number of transactions.

This form is designated to provide information on the amount of funds provided for mortgages through investments in securities (the proceeds of which are used to finance such mortgages), and through investments in direct mortgage loans. Item D on the form requests the amount of mortgage loan holdings (outstanding) as of the end of the report period.

B. Specific Instructions

The form consists of four parts (identified on the left-hand stub). Part A—Total Assets and Fixed Income Assets, Part B—U.S. Government-Sponsored Agency Securities, Part C—Mortgage-Backed Securities, and Part D—Direct Mortgage Holdings. All data in Parts A, B, and C should be reported on a market valuation basis unless stated by respondent and should be as of the last day of the reporting month. Data in Part D should be reported on a book valuation basis.

Part A—Total Assets should include miscellaneous assets represented by participation in commingled trust funds. Total assets are used to estimate total assets of all such institutions and to expand the holdings of mortgages and mortgage-related securities to obtain industry-wide universe estimates.

Fixed income assets include holdings of U.S. Treasury obligations, U.S. Government Agency Securities, mortgage-backed securities, corporate and foreign bonds and mortgages loans. Fixed income assets are used to track changes in the proportion of total assets allocated to fixed income investments, as compared to holdings of corporate stocks, real estate, and other assets.

Part B—Selected U.S. Government-sponsored Agency Securities include the holdings of notes, bonds, and debentures issued directly by: (1) The Federal National Mortgage Association (Fannie Mae); (2) Federal Home Loan Banks (FHLB); (3) The Financing Corporation (FICO); (4) the Federal Home Loan Mortgage Corporation (Freddie Mac); and (5) FHA multifamily project debentures (securities issued by Sallie Mae and the Farm Credit Banks are excluded).

Part C—Mortgage-Backed Securities are broken down into two categories: (1) Guaranteed mortgage-backed securities, including those guaranteed by Ginnie Mae, Freddie Mac, and Fannie Mae. (2) non-guaranteed issues by private conduits, including participation certificates, pass-through certificates, and mortgage-backed bonds.

Part D—Direct mortgage holdings reflect mortgage loans held as of the end of the report period. These should be reported on a gross basis, that is, gross of any valuation reserves.

All mortgage holdings should be included. Such holdings are comprised of residential (1–4 family and multifamily) properties, commercial and other non-residential structures, farm dwellings, land and land development loans.

To avoid double counting of the same mortgage loan among the different lenders in the comprehensive data system, entries should relate only to those mortgage loans your organization owns. That is, include only those loans acquired in the organization's own name and counted as holdings on its balance sheet. Exclude any loans acquired in the name of, or for the account of, any other lender.

Entries should relate to all mortgage loans secured by liens on real properties located in the United States and such outlying areas as Puerto Rico, Virgin Islands, and Guam. Exclude any mortgage loans for properties located in Canada or other foreign countries.

Public Reporting Burden for this collection of information is estimated to average ⅙th or 10 min. per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Information Policies and Systems, AII, U.S. Department of Housing and Urban Development, Washington, DC 20410–3600; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

[FR Doc. 89–3393 Filed 2–13–89; 8:45 am]
BILLING CODE 4210–27–M

Office of Administration

[Docket No. N–89–1937]

Submission of Proposed Information Collection to the Office of Management and Budget

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following informaiton: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: February 8, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Real Estate Settlement Procedures Act of 1974 (RESPA)

Office: Housing

Description of the Need for the Information and Its Proposed Use: Section 5 of the Real Estate Settlement Procedures Act (RESPA) requires lenders to provide a Special Information Booklet and Good Faith Estimate of settlement costs. Section 4 of RESPA requires settlement agents to provide borrowers and sellers the Form HUD–1 which sets forth all settlement costs. Section 8(c)(4) requires the Disclosure and Estimate on controlled business arrangements.

Form Number: HUD–1

Respondents: Businesses or Other For-Profit

Frequency of Submission: On Occasion

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Good Faith Estimate	20,000		200		.25		1,000,000
HUD–1 Settlement Statement	20,000		150		1		1
Disclosure and Estimate	10,000		100		.1		100,000

Total Estimated Burden Hours: 1,100,001

Status: Revision

Contact: Richard E. Harrington, HUD, (202) 755–5678; John Allison, OMB, (202) 395–6880.

Date: February 8, 1989.

[FR Doc. 89–3451 Filed 2–13–89; 8:45 am]
BILLING CODE 4210–01–M

[Docket No. N–89–1938]

Submission of Proposed Information Collection to the Office of Management and Budget

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: February 9, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Transmittal of Closing Information

Office: Housing

Description of the Need for the Information and Its Proposed Use: This information collection will enable HUD to verify the accuracy of data and eliminate errors commonly found in the closing packages. It will also ensure that the FHA insurance fund is properly credited and that HUD receives the correct information to maintain Departmental financial records properly.

Form Number: HUD–9589

Respondents: Individuals or Households and Businesses or Other For-Profit

Frequency of Submission: Other

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Information Collection	70,000		1		.17		11,900

Total Estimated Burden Hours: 11,900

Status: Revision

Contact: David H. Patton, HUD, (202) 755–5832; John Allison, OMB, (202) 395–6880.

Date: February 9, 1989.

[FR Doc. 89–3452 Filed 2–13–89; 8:45 am]
BILLING CODE 4210–01–M

Office of Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N–89–1935; FR–2574]

Adjustable Rate Mortgage Disclosures

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Statement of policy.

SUMMARY: The Federal Reserve Board recently revised its disclosure requirements in Regulation Z (12 CFR Part 226) for a closed end adjustable rate mortgage (ARM). HUD has issued Mortgagee Letter 88–26 to permit mortgagees, by complying with Regulation Z, to satisfy HUD's requirements governing the disclosure statement that mortgagees must provide to prospective mortgagors when application is submitted for an FHA-insured ARM. HUD's policy is to accommodate both homebuyers and the lending industry by permitting the use of a unified format in lieu of the somewhast duplicative disclosure requirements that HUD and other Federal agencies have imposed heretofore.

FOR FURTHER INFORMATION CONTACT: Morris Carter, Director, Single Family Development Division, Room 9272, Department of Housing and Urban

Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755–6700. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Since the adoption of rules to govern an ARM insurance program under section 251 of the National Housing Act (NHA), HUD procedures and format for the initial or pre-loan disclosure statement that a lender must give a prospective borrower have been described in 24 CFR 203.49(f) [1] and in Mortgagee Letter 84–16 (July 18, 1984). Over the past several years, at the recommendation of the Federal Financial Institutions Examination Council, those Federal agencies requiring various classes of lending institutions under their jurisdiction to provide prospective borrowers with cautionary information about ARM transactions have sought to standardize their requirements. HUD has been involved in this effort and has expressed its support for a unified disclosure format, even though section 251(b) of the NHA mandates that HUD impose disclosure procedures that are more rigorous than those that had been set by some of the other agencies. HUD and the Federal Reserve Board have worked to resolve problems raised by this statutory obligation, which requires, among other things, "a written explanation of the features of the adjustable rate mortgage, including a hypothetical payment schedule that displays the maximum potential increases in monthly payments to the mortgagor over the first 5 years of the mortgage term."

On December 24, 1987, after extensive rulemaking, the Board published changes to the disclosure provisions of Regulation Z (52 FR 48670). The provision relevant for this Notice is 12 CFR 226.19(b)(2). Subsequently, the Office of the Comptroller of the Currency and the Federal Home Loan Bank Board undertook revision of their respective requirements to reflect the Regulation Z disclosure provisions. On July 21, 1988, HUD issued Mortgagee Letter 88–26, which recognizes that compliance with 12 CFR 226.19(b)(2) now satisfies the requirements of section 251(b) of the NHA, and that the Regulation Z format may be used in lieu of the disclosure prescribed in 24 CFR 203.49(f) and in Mortgagee Letter 84–16.

Footnote 45a of the Board's rule explains, however, that "[i]nformation provided in accordance with variable-rate regulations of other federal agencies may be substituted for the disclosures required by paragraph (b) of this section."

Mortgagee Letter 88–26, therefore, points out that lenders may continue to use the disclosure statement in Appendix II of Mortgage Letter 84–16 if it "better suits the lender's needs and operations."

Dated: January 27, 1989.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 89–3394 Filed 2–13–89; 8:45 am]

BILLING CODE 4210–27–M

[1] Parallel requirements for ARMs disclosures are also contained in 24 CFR 234.70(f) with respect to condominium properties.

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–89–1934; FR–2611]

Public Housing Program; Demolition or Disposition of Public Housing Projects; Application Submission Deadline

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: This Notice informs public housing agencies and Indian housing authorities (both referred to as PHAs) that HUD is establishing a March 31, 1989 deadline date for the submission of demolition or disposition applications that involve the loss of public housing units and call for assisted housing units to satisfy requirements for a replacement housing plan.

DATES: Effective Date: February 14, 1989. Application Submission Deadline: April 14, 1989.

FOR FURTHER INFORMATION CONTACT: Janice Rattley, Director, Project Management Division, Office of Public Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 755–1800. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: HUD has a limited number of public housing units and Section 8, 15-year project-based assistance units available for use as replacement housing units this Federal Fiscal Year (FFY). In approving a PHA's demolition or disposition application which calls for HUD assisted units in its Replacement Housing Plan, the Secretary is also promising (subject to the availability of funding) to provide those replacement units. Therefore, in order to accommodate the replacement units planned by PHAs in applications for unit demolitions or dispositions this FFY and to accomodate the public housing development application process, the Department has decided to impose a deadline of April 14, 1989, for submission by PHAs of complete public housing demolition or disposition applications. This deadline is only for applications involving the loss of dwelling units, *i.e.*, those required to meet the one-for-one replacement requirement imposed by the recent amendment to Section 18 of the U.S. Housing Act of 1937 (42 U.S.C. 1437p) and covered by the revised regulation published in the **Federal Register** on August 17, 1988, at 53 FR 30984. For those requests for demolition or diposition not involving replacement units, the deadline is not applicable.

Regional Offices shall review all of the demolition and diposition applications and submit the Regional Administrator's recommendations to Headquarters, not later than May 26, 1989. Only those Indian housing applications approved by Headquarters by July 28, 1989 will be considered eligible to receive replacement housing units in this FFY, and only those public housing applications approved by July 28, 1989 will be considered eligible to receive a priority rating of outstanding for replacement housing units in this FFY.

To assist them in meeting these deadlines, PHAs are reminded of the new statutory and regulatory requirement that any replacement housing plan must be approved by the governing body of the unit of general local government. For Indian housing, approval by the Tribal governing body is required.

Authority: Sec. 18, U.S. Housing Act of 1937 (42 U.S.C. 1437p); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Date: February 1, 1989.

Jacqueline Aamot,

Associate General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 89–3395 Filed 2–13–89; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–920–09–4111–14; NDM 71447]

Proposed Reinstatement of Terminated Oil and Gas Lease; North Dakota

Under the provisions of Pub. L. 97–451, a petition for reinstatement of oil and gas lease NDM 71447, Bowman County, North Dakota, was timely filed and accompanied by the required rental accruing from the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $10 per acre and 16⅔% respectively. Payment of a $500 administration fee has been made.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective as of the date of termination, subject to the original terms and conditions of the lease, the increased rental and royalty rates cited above, and reimbursement for cost of publication of this notice.

Dated: February 1, 1989.

June A. Bailey,

Chief, Leasing Unit.

[FR Doc. 89–3375 Filed 2–13–89; 8:45 am]

BILLING CODE 4310–DN–M

Fish and Wildlife Service

Receipt of Applications for Permits; University of California et al.

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–734408

Applicant: University of California, San Diego, La Jolla, CA

The applicant requests a permit to import samples of naturally shed hair of chimpanzees (*Pan troglodytes*) from Tanzania and the Congo for genetic research.

PRT–720141

Applicant: Tommy Hanneford, Sarasota, FL

The applicant requests a permit to export and reimport one male leopard (*Panthera pardus*) for circus performances, during which the applicant will present information to the public on the Leopard's ecological role and conservation needs.

PRT–734045

Applicant: Riverbanks Zoological Park, Columbia, SC

The applicant requests a permit to import six captive born Amazon River turtles or Tartaruga (*Podocnemis expansa*) from the Emperor Valley Zoo, Port of Spain, Trinidad, for purposes of display and breeding to enhance the propagation and survival of the species.

PRT–734030

Applicant: Taxidermy International for Arnold Alward, Clayton, NC

The applicant requests a permit to reexport the trophy of one bontebok (*Damaliscus dorcas dorcas*) taken from the captive-herd of J.H. Cloete, Beford, Republic of South Africa previously imported under PRT–715117; and to export one wild yak (*Bos grunniens*) taken from a captive-herd in the United States.

PRT–734436

Applicant: Nancy Nicolai, Bakersfield, CA

The applicant requests a permit to take (live-trap and release) Tipton's kangaroo rats (*Dipodomys nitratoides* ssp. *nitratoides*) from the wild in the Southern San Joaquin Valley, California for the purpose of enhancement of propagation and survival of the species.

PRT–734492

Applicant: Zoological Society of San Diego, San Diego

The applicant requests a permit to import one captive-born female dhole (=Asian wild dog), (*Cuon alpinus*), from the Assiniboine Park Zoo, Manitoba, Canada, for the purpose of enhancement of propagation.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 403, 1375 K. Street NW., Washington, DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Central Station, Washington, DC 20038–7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Date: February 3, 1989.

R.K. Robinson,

Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 89–3471 Filed 2–13–89; 8:45 am]

BILLING CODE 4310–AN–M

Receipt of Applications for Permits; Zoological Society of San Diego

February 9, 1989.

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–734042

Applicant: Zoological Society of San Diego, San Diego, CA

The applicant requests a permit to export one captive-born male great Indian rhinoceros (*Rhinoceros unicornis*) to the Singapore Zoological Gardens, Republic of Singapore, for the purpose of enhancement of propagation.

PRT–734609

Applicant: Joan V. Gordon, Lake George, CO

The applicant requests a permit to import a sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) to be culled from the captive herd maintained by Mr. F. Bowker, Jr., Grahamstown, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT–734822

Applicant: Lowry Park Zoological Garden, Tampa, FL

The applicant requests a permit to import one captive born male Sumatran tiger (*Panthera tigris sumatrae*) from the Rotterdam Zoo, Holland, for captive breeding and zoological display.

PRT–734870

Applicant: San Diego Zoo, San Diego, CA

The applicant requests a permit to import one male and two female Northern white rhinoceroses (*Ceratotheium simum cottoni*) from the Zoological Garden Dvur Kralove, Czechoslovakia, for the purpose of enhancement of propagation. These rhinoceroses were wild-caught in Sudan in 1972.

PRT–734312

Applicant: Dr. Michael Boden Thompson, Gainesville, FL

The applicant requests a permit to import 20 leatherback sea turtle (*Dermochelys coriacea*) eggs to be collected by the Caribbean Conservation Corporation in Costa Rica between March and April 1989. These eggs will be used for scientific research to determine patterns of ontogenetic oxygen consumption for assistance in long term sea turtle management. All twenty eggs may ultimately be sacrificed.

PRT–734838

Applicant: Hexagon Farm, San Juan Bautista, CA

The applicant requests a permit to import one pair of captive born black-footed cats (*Felis nigripes*) from the Zoologischer Garten Wuppertal, Germany, for captive breeding purposes.

PRT–734918

Applicant: Arleone Dibben-Young, Kula, HI

The applicant requests a permit to purchase two pairs of captive-hatched Hawaiian (=nene) geese (*Nesochen*

BEST COPY AVAILABLE

(=*Branta*) *sandvicensis*) from Sylvan Heights Waterfowl, Sylva, North Carolina, for captive breeding purposes.

PRT-734307

Applicant: California Department of Fish and Game

The applicant requests a permit to collect (by use of nets, traps, and electroshockers) and release an undetermined number of Owens tui chubs (*Gila bicolor snyderi*) in the Owens River gorge, CA, for the purpose of population studies. Of those collected, a maximum of 150 will be sacrificed for electrophoresis, age and growth studies.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm), Room 403, 1375 K Street NW., Washington DC 20005 or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Central Station, Washington, DC 20038–7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Date: February 9, 1989.

R.K. Robinson,

Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 89–3466 Filed 2–13–89; 8:45 am]

BILLING CODE 4310-AM-M

Fish Health Policy and Implementation Guidelines

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of adoption of revised policy and implementation guidelines; notice of availability of revised guidelines.

SUMMARY: This Notice is to inform interested parties that the U.S. Fish and Wildlife Service has adopted a revised fish health policy and implementation guidelines. The policy and guidelines provide direction for controlling the impact and spread of serious fish pathogens in Service facilities. Comments on the revised policy and guidelines will be considered in preparing future revisions.

DATE: February 14, 1989.

ADDRESS: Copies of the guidelines may be obtained from and comments forwarded to: Chief, Division of National Fish Hatcheries, U.S. Fish and Wildlife Service, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dr. John G. Nickum, address above, telephone (202) 653–8746.

SUPPLEMENTARY INFORMATION: The U.S. Fish and Wildlife Service has revised the Fish Health Protection Policy and Salmonid Fish Health Protection Program, dated May 30, 1984, to consider new information and procedures developed since that date. Newly adopted procedures for amending the revised Policy will enable the Service to respond more rapidly to future developments and to incorporate appropriate suggestions and comments received as a result of this Notice.

National Policy Directive: Fish Health.

Effective: November 29, 1988.

Expires: This Policy remains in effect until superseded by a new National Policy Directive. Implementation guidelines (Appendix) may be modified by signed, numbered memorandum from the Director.

Subject: Fish Health Policy And Implementation Guidelines.

Policy: In accordance with its mission, objectives, and stated responsibilities and role, the Fish and Wildlife Service (Service) will:

- Conduct Service fishery activities in such manner as to prevent the spread of fish pathogens into areas where they are not known to exist; eradicate, where possible, certain serious fish pathogens; and use the best available procedures for detecting, controlling, and minimizing the impact of fish pathogens that cannot be eradicated;
- Provide leadership, direction, and training to enable international agencies, foreign governments, Indian tribes, States, and the private sector to organize and carry out programs to maintain and manage fish health;
- Develop programs in cooperation with other Federal and State agencies, Indian tribes, and the private sector to address fish health issues and prevent the spread of serious fish pathogens;
- Rear or use the healthiest fish to meet Service fishery responsibilities; and
- Undertake research and development studies on fish diseases to improve pathogen detection and disease diagnostic techniques; develop procedures for hygiene, therapy, and pathogen eradication; and improve the disease resistance of cultured fish.

Scope: This Policy provides national guidance concerning fish health. All Service fishery activities must be conducted in compliance with this Policy. Each Regional Director of the Service is delegated authority to apply more rigorous standards and to require implementation procedures with more extensive sampling and diagnosis. In addition, alternative procedures may be authorized by the Regional Director to protect scarce stocks. Regional implementation of this Policy must also be in accord with applicable interjurisdictional (e.g., interstate compacts), State, and foreign fish health regulations. This Policy pertains to all Service facilities and activities involving fish. Only Service personnel are responsible for its implementation. It is intended, however, that this Policy will provide a model and a basis for cooperative efforts with other Federal agencies, the private sector, States, Indian tribes, foreign governments, and international agencies through which the spread and impact of fish pathogens and diseases can be controlled.

Purpose: This Policy sets forth the position of the Service relative to matters of fish health. It will serve as the basis for Service efforts to contain, control, and minimize the impacts of fish pathogens and diseases. The Service has maintained a Fish Health Policy since 1968. Service efforts to understand and control fish health problems started over 60 years ago. These efforts are based on recognition that serious diseases are more likely to occur under high density hatchery rearing conditions than in low density "wild" populations and that certain serious diseases can negate the fishery resource benefits derived from the National Fish Hatchery System.

Definitions: Terms with special meanings, as used in the context of this National Policy Directives are defined in the Appendix to this National Policy Directive.

Implementation: To implement this Policy, the Service will develop and maintain National Guidelines that: Describe managerial and technical responsibilities; provide systems to monitor the range and distribution of selected fish pathogens among stocks and facilities for purposes of preventing the spread of these pathogens; establish minimum standards for inspection and monitoring activities; and delineate required fish health management and reporting activities. Regional Implementation Plans that establish procedures and schedules for inspection and monitoring activities to serve the particular needs of each Region will be developed within the limits of the National Guidelines. National Implementation Guidelines are included in the Appendix to this National Policy Directive.

Supersession: This National Policy Directive supersedes and replaces the "Fish Health Protection Policy and Salmonid Fish Health Protection Program" dated May 30, 1984.

Date: February 1, 1989.

Steve Robinson,

Deputy Director, United States Fish and Wildlife Service.

[FR Doc. 89–3414 Filed 2–13–89; 8:45 am]

BILLING CODE 4310-55-M

Migratory Bird Hunting and Conservation Stamp (Duck Stamp) Contest

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: On Friday, May 6, 1988 (53 FR 16344) the Service published the regulations governing the conduct of the annual Migratory Bird Hunting and Conservation Stamp (Duck Stamp) Contest. The dates and location of this year's contest are announced, and the public is invited to attend.

DATES: 1. This action is effective July 1, 1989, the beginning of the 1989–1990 contest.

2. This year's contest will be held on November 6 and 7, 1989, beginning at 11 a.m. on Monday and 9 a.m. on Tuesday.

3. Persons wishing to enter this year's contest may submit entries anytime after July 1, but all must be postmarked to later than midnight September 15.

ADDRESSES: Requests for complete copies of the regulations, reproduction rights and display agreements should be addressed to: Federal Duck Stamp Contest, U.S. Fish and Wildlife Service, Department of the Interior, 1800 C Street NW., Washington, DC 20240.

Location of contest: Department of the Interior Building Auditorium (C Street Entrance), 1800 C Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Norma Opgrand, Chief, Federal Duck Stamp Program, U.S. Fish and Wildlife Service, Washington, DC 20240, Telephone: (202) 343–4354.

SUPPLEMENTARY INFORMATION: The following five eligible species for the 1989–1990 duck stamp contest are listed below:

(1) Black-bellied Whistling Duck
(2) Spectacled Eider
(3) Barrow's Goldeneye
(4) Red-breasted Merganser
(5) Black Scoter.

The primary author of this document is Norma E. Opgrand, U.S. Fish and Wildlife Service.

Date: February 7, 1989.

Steve Robinson,

Deputy Director.

[FR Doc. 89–3371 Filed 2–13–89; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before February 4, 1989, pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by March 1, 1989.

Beth L. Savage,

Acting Chief of Registration, National Register.

GEORGIA

Cowets County

Senoia Historic District, Roughly bounded by Couch St., Seaboard Coast Line Railroad tracks, GA 16, and Pylant St., Senoia, 89000149

Douglas County

Roberts, Col. William T., House, 8652 Campbellton St., Douglasville, 89000153

Effingham County

Reiser—Zoller Farm, GA 119, 4 mi. N of Springfield, Springfield vicinity, 89000152

Fulton County

Stewart Avenue Methodist Episcopal Church South, 867 Stewart Ave., SW, Atlanta, 89000154

IDAHO

Bingham County

US Post Office—Blackfoot Main (US Post Offices in Idaho 1900—1941 MPS), 165 W. Pacific, Blackfoot, 89000123

Boundary County

US Post Office—Bonners Ferry Main (US Post Offices in Idaho 1900—1941 MPS), 215 First, Bonners Ferry, 89000129

Canyon County

US Post Office—Caldwell Main (US Post Offices in Idaho 1900—1941 MPS), 623 Arthur St., Caldwell, 89000131

US Post Office—Nampa Main (US Post Offices in Idaho 1900—1941 MPS), 123 11th Ave. South, Nampa, 89000132

Clearwater County

US Post Office—Orofino Main (US Post Offices in Idaho 1900—1941 MPS), 320 Michigan Ave., Orofino, 89000133

Franklin County

US Post Office—Preston Main (US Post Offices in Idaho 1900—1941 MPS), 55 E. Oneida St., Preston, 89000135

Fremont County

US Post Office—St. Anthony Main (US Post Offices in Idaho 1900—1941 MPS), 48 W. First North, St. Anthony, 89000136

Payette County

US Post Office—Payette Main (US Post Offices in Idaho 1900—1941 MPS), 915 Center Ave., Payette, 89000134

Shoshone County

US Post Office—Wallace Main (US Post Offices in Idaho 1900—1941 MPS), 403 Cedar St., Wallace, 89000137

Twin Falls County

US Post Office—Buhl Main (US Post Offices in Idaho 1900—1941 MPS), 830 Main, Buhl 89000130

MASSACHUSETTS

Hampden County

Chester Factory Village Historic District, Roughly bounded by Middlefield Rd., River, Main, and Maple Sts., US 20, and Williams St., Chester, 89000145

Middlesex County

Union Station, 20 Commonwealth Ave., Concord, 89000143

Suffolk County

Roxbury Highlands Historic District, Roughly bounded by Dudley St., Washington St., and Columbus Ave., Boston, 89000147

Worcester County

Ayer Main Street Historic District, Main St., Ayer, 89000150

MINNESOTA

Becker County

Edgewater Beach Cottages, 321 Park Lake Blvd., Detroit Lakes, 89000138

Jackson County

Church of the Sacred Heart (Catholic), 9th St. and 4th Ave., Heron Lake, 89000157

Kandiyohi County

Larson, A., & Co. Building, 539 W. Pacific Ave., Willmar, 89000156

St. Louis County

Civilian Conservation Corps Camp S–52, Off US 53, Orr vicinity, 89000158

Flint Creek Farm Historic District, MM 1, Cook vicinity, 89000139

LeMoine Building, Off Co. Hwy. 74, Orr vicinity, 89000140

Stearns County

St. Benedict's Convent and College Historic District, College Ave. and Minnesota St., St. Joseph, 89000160

MONTANA

Carbon County

Lockhart, Caroline, Ranch, Davis Creek, 70 mi. S of Hardin, Dead Hill, 89000155

NEW JERSEY

Bergen County

LeHigh Valley Railroad Barge No. 72, 1288 River Rd., Edgewater, 89000151

RHODE ISLAND

Providence County

Lippitt Hill Historic District, Hope Rd., Burlingame Rd., and Lippett Ave., Cranston, 89000142

TENNESSEE

Giles County

Sam Davis Avenue Historic District, Sam Davis Ave. and E. Madison St., Pulaski, 89000148

Hickman County

Walker, James Buchanan, House, West End and S. Barnwell Aves., Centerville, 89000146

Loudon County

Griffitts, William H. House, Jackson Ferry—Greenback Rd., Greenback vicinity, 89000141

Williamson County

Old Town Archeological Site (40WM2) (Mississippian Cultural Resources of the Central Basin (AD 900—AD 1450) MPS), Address Restricted, Franklin vicinity, 89000150.

The following property is also being considered for listing in the National Register:

NEW YORK

Monroe County

Brown's Race Historic District, Brown's Race St. from Platt St. to Conrail railroad tracks Rochester, 88000067

The commenting period for the following property has been shortened to seven days in order to assist in its preservation:

MASSACHUSETTS

Suffolk County

Roxbury Highlands Historic District, Roughly bounded by Dudley St., Washington St., and Columbus Ave., Boston, 89000147.

[FR Doc. 89-3400 Filed 2-13-89; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31239]

Chesapeake Western Railway; Lease and Operation Exemption; Southern Railway Co.

Southern Railway Company (Southern) has agreed to lease approximately 28 miles of its line of railroad between milepost B-312.0 at Harrisonburg, VA and milepost B-84.0 at Mount Jackson, VA, to Chesapeake Western Railway (CW). CW's lease and operation of the line segment will take effect simultaneously with the discontinuance of operations by Southern on or about March 15, 1989.[1]

Southern is a Class I railroad controlled through stock ownership by Norfolk Southern Corporation (NSC), a holding company. NSC also controls Norfolk and Western Railway Company, which is the parent of CW. Thus, Southern and CW are, respectively, direct and indirect subsidiaries of NSC.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). It is a transaction that will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

This notice is filed under 49 CFR 1180.2(d)(3). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: N.S. Fleischman, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

As a condition to the use of this exemption, any employees affected by the lease will be protected pursuant to *Mendocino Coast Ry., Inc.—Lease and Operate*, 354 I.C.C. 732 (1978) and 360 I.C.C. 653 (1980).

Dated: February 8, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-3419 Filed 2-13-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-290 (Sub-No. 81X)]

Southern Railway Co.; Discontinuance Exemption; Operations Between Mount Jackson and Edinburg, VA

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to discontinue service over its 5.1-mile line of railroad between milepost B-84.0 at Mount Jackson, VA and milepost B-78.9 at Edinburg, VA.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on March 16, 1989 (unless stayed pending reconsideration). Petitions to stay regarding matters that do not involve environmental issues,[1] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] must be filed by February 24, 1989. Petitions for reconsideration must be filed by March 7, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: N.S. Fleischman, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this discontinuance.

[1] A notice of exemption relating to the discontinuance of operations by Southern is the subject of Docket No. AB-290 (Sub-No. 81X), *Southern Railway Company—Discontinuance Exemption—Operations Between Mount Jackson and Edinburg, VA* published and served concurrently with this decision.

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C.2d 400 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the Federal Register on December 22, 1987 (52 FR 48440-48446).

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by February 17, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7316. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, conditions will be imposed, where appropriate, in a subsequent decision.

Decided: February 8, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-3420 Filed 2-13-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Daryl L. Kingsolver, D.D.S.; Revocation of Registration

On August 23, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Daryl L. Kingsolver, D.D.S. of 8407 Bryant Street, Westminster, Colorado (Respondent), proposing to revoke DEA Certificate of Registration, AK 5562586, and to deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent's registration would be inconsistent with the public interest.

Respondent, through counsel, filed a timely request for a hearing on the issues raised in the Order to Show Cause and the matter was placed on the docket of Administrative Law Judge Francis L. Young. On September 26, 1988, Judge Young issued an order directing the Government to file a prehearing statement on or before October 24, 1988, and Respondent to file a prehearing statement on or before November 28, 1988. In the Order for Prehearing Statements, Judge Young stated that, "Respondent is cautioned that failure to timely file a prehearing statement as directed above may be considered a waiver of hearing and an implied revocation of a request for hearing." After requesting an extension of one week in which to file, Government counsel filed its prehearing statement on October 31, 1988. Respondent, however, never submitted such a filing.

On November 21, 1988, Government counsel conferred with Respondent's counsel regarding a possible surrender of registration by Respondent. On November 25, 1988, Government counsel advised Respondent's counsel, in writing, of procedures necessary for such surrender. The Government has received no response from Respondent's counsel, but did receive a two page handwritten letter from Respondent dated November 15, 1988, indicating that, "my mother is forwarding to you my drug license renewal application with the remarks that I will be letting it lapse come December 31, 1988." Despite this notification to DEA that Respondent intended to surrender his registration, he never surrendered his renewal application or his Certificate of Registration.

In light of Respondent's failure to file a prehearing statement in the matter, or to surrender his current registration, Judge Young terminated the proceedings before him on December 29, 1988. The Administrator finds that Respondent has waived his right to a hearing by failing to file his prehearing statement and now enters his final order in this matter without a hearing and based on the record before him. 21 CFR 1301.57.

The Administrator finds that Respondent is a dentist licensed to practice in the State of Colorado. On January 22, 1982, Respondent was arrested by the Westminster Colorado Police Department and charged with possession and sale of controlled substances. Controlled buys of psilocybin and marijuana, both Schedule I controlled substances, were made from Respondent through an informant in cooperation with the Westminster Police Department. Quantities of psilocybin and marijuana were seized at Respondent's residence.

Respondent was arraigned on April 14, 1982, and charged with distribution of more than one ounce of marijuana, and distribution of a Schedule I controlled substance, both felonies relating to controlled substances. Just prior to his trial date, Respondent pleaded guilty to possession of more than one ounce of marijuana. His guilty plea was accepted in Adams County District Court and sentencing was scheduled for May 4, 1983. However, between the time that Respondent pleaded guilty and his sentencing, the Colorado law changed the violation from a felony to a misdemeanor. Pursuant to an agreement, Respondent was sentenced as though charged with a misdemeanor. On May 4, 1983, Respondent was sentenced to eighteen months probation; 100 hours of community service; a fine of $750.00; plus other costs of $150.00.

On December 4, 1987, Respondent was arrested and charged with first degree sexual assault on a child. This arrest was initiated when the Adams County Sheriff's Department received information that Respondent had sexually assaulted three male juveniles. Following receipt of this information, three male juveniles were interviewed regarding their relationship with Respondent. The juveniles advised Adams County authorities that Respondent had supplied the juveniles with various controlled substances such as marijuana, LSD, cocaine, mescaline and hexobarbital, a Schedule III depressant controlled substance. On numerous occasions Respondent provided these drugs to the teenagers until they were in a semi-conscious state, at which point Respondent sexually abused the juveniles. After a trial at which two of the three juveniles testified about obtaining controlled substances from Respondent, Respondent was convicted of first and third degree sexual assault. On October 7, 1988, Respondent was sentenced to a total of thirty-two years in prison and is currently incarcerated.

The investigative file reveals that with respect to his arrest on December 4, 1987, Respondent was not charged with distribution of controlled substances because no controlled substances were found at his office at the time a search warrant was served. However, the statements of the three juveniles, documented in the Adams County Sheriff's Department reports, established Respondent as the source of supply for controlled substances for at least those three individuals.

The information obtained from the three juveniles reveals that Respondent frequently, over a protracted period of time, distributed dangerous controlled substances to minors for other than a legitimate medical purpose and outside the course of his professional practice. One juvenile advised Adams County authorities that he had "partied" with Respondent approximately 250 times. Respondent's general practice was to supply the juveniles with alcohol and dangerous controlled substances, to wit: marijuana, LSD, mescaline, cocaine and hexobarbital. This juvenile told authorities that on the least one occasion, Repondent provided the hexobarbital to the juvenile from a locked cabinet in Respondent's dental office. This juvenile also reported having been supplied with nitrous oxide and controlled substances in Respondent's

dental office approximately eight times. The juvenile was never a patient of Respondent, but on two occasions he obtained Percodan, a Schedule II controlled substance, via prescriptions written by Respondent by feigning a toothache.

The Administrator finds that through intentional design, Respondent provided a steady flow of dangerous controlled substances to young men. Respondent's singular goal was to sexually abuse these young men; his method was to provide them with dangerous controlled substance until they were so intoxicated that they could not resist his advances. The victims' statements reveal that many controlled substances were, in fact, provided to the juveniles in Respondent's dental office. A medical professional, because of his training and experience, must be aware of the awful devastation and health consequences associated with drug abuse. By possessing, abusing and aiding in the distribution of controlled substances, Respondent has abandoned the trust placed in him as a dentist as well as his responsibility as a registrant, to safeguard the public from the unlawful use and abuse of controlled substances.

The Administrator may revoke an application for registration if he determines that such registration would be inconsistent with the public interest. The factors which are considered in determining whether the registration would be in the public interest are enumerated in 21 U.S.C. 823(f). Two of the factors to be considered include the registrant's conviction record under Federal or state laws relating to controlled substances, and the registrant's compliance with Federal, state or local laws relating to controlled substances. All factors need not be present for the Administrator to deny an application for registration. Instead, the Administrator may accord each factor the weight he deems appropriate in determining the public interest. See *Paul Stepak, M.D.*, 51 FR 17556 (1986).

The Administrator has considered the factors listed in 21 U.S.C. 823(f) and concludes that Respondent's continued registration is inconsistent with the public interest. In this instance, there is no question that Respondent's felony conviction resulted from illegal activities involving controlled substances. He was the steady source of controlled substances for at least three juveniles. Although most of the illegal activities which resulted in Respondent's conviction fell outside the scope of his professional practice, he did utilize his DEA registration on a few occasions to provide juveniles with controlled substances.

In light of the foregoing facts, Respondent's conviction of misdemeanor possession of marijuana, the seizure of psilocybin and marijuana from his residence, and Respondent's illegal possession and distribution of controlled substances to minors as part of a pattern of sexual abuse, Respondent's DEA Certificate of Registration must be revoked. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b), orders tht DEA Certificate of Registration AK5562586, previously issued to Daryl L. Kingsolver, D.D.S., be, and it hereby is revoked. The Administrator further orders that any pending applications for renewal of Respondent's registration be, and they hereby are, denied.

This order is effective March 16, 1989.

Dated: February 8, 1989.

John C. Lawn,

Administrator.

[FR Doc. 89-3445 Filed 2-13-89; 8:45 am]

BILLING CODE 4410-09-M

Penick Corp.; Importation of Control Substances; Registration

By Notice dated October 3, 1988, and published in the **Federal Register** on October 12, 1988 (53 FR 39814), Penick Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114, made application to the Drug Enforcement Administration to be registered as an importer of coca leaves (9040), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, § 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: February 6, 1989.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89-3446 Filed 2-13-89; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket No. M-88-251-C]

Helvetia Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Helvetia Coal Company, Box 729, Indiana, Pennsylvania 15701, has filed a petition to modify the application of 30 CFR 75.11002(b) (quantity and location of firefighting equipment) to its Lucerne No. 6 Mine (I.D. No. 36-04597) located in Indiana County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that waterlines be installed parallel to the entire length of belt conveyors and be equipped with firehose outlets with valves at 300-feet intervals along each belt conveyor and at tailpieces. At least 500 feet of firehose with fittings suitable for connection with each belt conveyor waterline is required to be stored at strategic locations along the belt conveyor. Waterlines may be installed in entries adjacent to the conveyor entry belt as long as the outlets project into the belt conveyor entry.

2. During cold weather periods, the waterline used for fire protection along the slope belt freezes and becomes inoperative.

3. As an alternate method, petitioner proposes to use a dry waterline system from October 1 through May 1. The waterline would be kept charged during the remaining months.

4. In support of this request, petitioner states that—

(a) The dry waterline system would be pressurized with water by manually activating a water valve either at the top of the slope (surface) or at the bottom of the slope (underground);

(b) All persons in the vicinity of the slope would be instructed as to the operation of the dry waterline system;

(c) Sufficient water would be available for the dry waterline system at all times;

(d) A pressure gauge would be installed on the surface to indicate that a supply of water under pressure is available to the dry waterline system;

(e) The water supply system on the surface would be protected from freezing and would be easily accessible for manual operation;

(f) A visual means would be provided to indicate that a supply of water, under pressure, is available to the automatic actuating valve and the manual bypass valve located underground;

(g) The automatic actuating valve and manual bypass valve would be tested weekly during the time the dry-pipe system is in operation, and the results would be recorded;

(h) The dry-pipe system would be purged of any water left in the system as a result of testing or actuation of the system to prevent ice from accumulating in the waterlines and valves;

(i) The valves would be protected from freezing and would be easily accessible for inspection or manual operation; and

(j) In the event the fire warning system is activated on the slope belt, all miners would immediately be withdrawn from underground at the mine in accordance with the provisions of the approved firefighting and evacuation plan.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 16, 1989. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: February 7, 1989.

[FR Doc. 89-3449 Filed 2-13-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-2-C]

Manalapan Mining Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Manalapan Mining Company, Inc., Route 1, Box 374, Evarts, Kentucky 40828 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Wallins No. 6 Mine (I.D. No. 15-16318) located in Harlan County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that intake and return aircourses be separated from belt haulage entries, and that belt haulage entries not be used to ventilate active working places.

2. As an alternate method, petitioner proposes to use the intake air which is coursed through the belt haulage and/or track entries to ventilate active working places.

3. In support of this request, petitioner proposes to install an early warning fire detection system utilizing a low-level carbon monoxide (CO) detection system in all belt entries used as intake aircourses and at each belt drive and tailpiece located in intake aircourses. The monitoring devices would be capable of giving warning of a fire for four hours should the power fail; a visual alert signal would be activated when the CO level is 10 parts per million (ppm) above ambient air and an audible signal would sound at 15 ppm above ambient air. All persons would be withdrawn to a safe area at 10 ppm and evacuated at 15 ppm. The fire alarm signal would be activated at an attended surface location where there is two-way communication. The CO system would be capable of identifying any activated sensor, monitoring electrical continuity and detecting electrical malfunctions.

4. The CO system would be visually examined at least once each coal-producing shift and tested weekly to ensure the monitoring system is functioning properly. The monitoring system would be calibrated with known concentrations of CO and air mixtures at least monthly.

5. If the CO monitoring system is deenergized for routine maintenance or for failure of a sensor unit, the belt conveyor would continue to operate and qualified persons would patrol and monitor the belt conveyor using hand-held CO detecting devices.

6. The details for the fire detection system would be included as part of the ventilation system methane and dust control plan.

7. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 16, 1989. Copies of the petition are available for inspection at that address.

Date: February 7, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-3450 Filed 2-13-89; 8:45 am]

BILLING CODE 4510-43-M

Pension and Welfare Benefits Administration

[Application No. D-7387 et al.]

Proposed Exemptions; The Equity Real Estate Account of John Hancock Mutual Life Insurance Company et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N-5671, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-5507, 200 Constitution Avenue NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by

the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

The Equity Real Estate Account (Account) of John Hancock Mutual Life Insurance Company, located in Boston, Massachusetts

(Application No. D–7367)

Proposed Exemption

The Department is considering granting an exemption under the authority of section 406(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(b)(2) of the Act shall not apply, effective December 30, 1988 through December 31, 1990, to the sale and transfer of certain real estate investments by the Account to John Hancock Property Fund, a separate account of John Hancock Mutual Life Insurance Company (the Company), a party in interest with respect to the plans participating in the Account, provided that the terms of sale are not less favorable to the Account than those terms obtainable in an arm's length transaction with an unrelated party at the time of execution of the transaction.

EFFECTIVE DATE: If granted, this exemption will be effective from December 30, 1988 through December 31, 1990.

Summary of Facts and Representations

1. The Account was established by a June 9, 1975, vote of the Committee of Finance of the Company. The Account is maintained as a pooled separate account in accordance with the insurance laws of the State of Massachusetts. There are sixty-three pension plans participating in the Account at this time. As of December 31, 1987, the assets of the Account were valued at approximately $545,350,000. Most of the plans (the Plans) participating in the Account are subject to the general fiduciary provisions of the Act (the remainder of the participating plans are governmental plans which are exempt from Title I of the Act). The Account is composed primarily of equity real estate investments, both commercial and residential. Some of the investments are structured as joint ventures with an unrelated developer or property manager.

2. The group annuity contracts issued with respect to the Account provide the contract holder with the right to request the withdrawal of part or all of its interest in the Account upon 90 days written notice to the Company, subject to sufficient liquidity in the Account to honor the request. In the event that two or more contract holders have withdrawal requests outstanding at the same time, all such contract holders share in the cash flow of the Account available for distribution. Each contract holder's share is based on the total dollar amount of its request relative to the total dollar amount attributable to other contract holder requests.

3. Unfavorable economic conditions exist in several geographical areas represented in the Account portfolio, and real estate located in these areas has not performed well in recent years. The Account owns several properties in these areas and, as a result, recent Account returns have not compared favorably with other investment alternatives. Certain of the participating Plans representing substantial interests in the Account provided the Company with written requests for withdrawal. However, in the normal course of managing the Account, property sales will not raise enough cash to satisfy the pending withdrawal requests for a number of years. In addition, the Company represents that it is unlikely that new investors would invest in the Account in the near future. Therefore, the Company has been faced with a decision how to act in the best interests of the Plans desiring to withdraw completely as well as the Plans that want to continue to participate in certain Account investments.

4. In response to the above situation, the Company has obtained withdrawal requests from the remaining Account contract holders and has proposed to sell by December 31, 1990, all of the Account properties to either unrelated parties or to a new fund established by the Company. The proceeds from such sales will then be distributed to the contract holders on a pro rata basis.

5. The new fund, John Hancock Properties Fund (the Property Fund), was established effective January 1, 1988 by the Company to acquire certain of the Account properties (the Core Portfolio). Existing Account contract holders desiring to continue participation may choose to reinvest their share of distributions from the Account in the Property Fund. The Core Portfolio would provide the Property Fund with properties with a proven track record, which should be attractive to new investors. The goal of the Property Fund is to outperform the Frank Russell Company Real Estate Index by at least 10% annually. John Hancock Properties, Inc. (Properties, Inc.), a subsidiary of the company, will be charged with managing the Property Fund.

6. Plans participating in the Account were informed in writing of the proposed transfer of Core Portfolio investments and were provided the opportunity to participate in the process of selecting a firm to represent their interests. Representatives of a number of Plans responded affirmatively to the Company's invitation and served on a committee which interviewed several firms and selected Cushman & Wakefield (Cushman) to act as an Independent Fiduciary on behalf of the Plans. Cushman is a nationally-known real estate appraisal and advisory firm. The Company represents that Cushman is not related to or affiliated with the Company. In addition, Cushman has represented in writing that it did not receive more than one percent of its annual gross receipts during the past three years from business with the Company.

7. Properties, Inc. developed a proposal regarding each asset to be transferred from the Core Portfolio. Each transaction would be carried out based on the current market value of the property. This value will be determined each quarter using well established procedures for the appraisal of real estate. Each property is appraised twice annually, once by Properties, Inc. and once by an independent firm.

8. The proposal will then be presented to Cushman to review on behalf of all Plans affected by the transaction.

Cushman will be responsible for reviewing all aspects of the procedures used to determine the value to be paid for such assets by the Property Fund. If deemed necessary, Cushman would be authorized to obtain new outside appraisals of the value of the property in question. In addition, Cushman will review the suitability of each property as an investment for the Property Fund, based on the Statement of Investment Objectives and Constraints (Guidelines) for the Property Fund. The Guidelines require, inter alia, that all properties acquired have at least 3 years of operating history, be located in economically stable markets and have reasonable anticipation of near term appreciation and yield growth. A copy of the Guidelines will be provided to each prospective customer prior to participation in the Property Fund.

9. After reviewing the proposed transaction, Cushman will submit a written report with respect to whether the price to be paid to the Account by the Property Fund for each property being purchased is equal to its fair market value. This investigation will include an analysis of the valuation procedures used and the findings of the appraisers. The report will also state whether in Cushman's opinion the property in question is suitable for the Property Fund, based on the criteria provided in the Guidelines. The ultimate purpose of Cushman's review is to assure that all sales from the Account to the Property Fund are in the best interests of all Plans affected by the transaction.

10. On December 30, 1988, two of the Account's investments were transferred to the Property Fund. These properties were the Gulf Gate Apartments located in Sarasota, Florida and El Mercado Plaza located in Union City, California (the Properties). The sales price for the Properties was $8,725,000 for the Gulf Gate Apartments and $8,500,000 for El Mercado Plaza. Cushman reviewed the proposal to sell the Properties to the Property Fund and in a written report determined that the Properties were appropriately suited for the Property Fund and that the prices to be paid for the Properties was not more than their fair market values.

11. In summary, the applicant represents that the subject transactions satisfy the statutory criteria of section 408(a) of the Act because:

a. The transfer would permit Account investments to be sold to the Property Fund, whose management is already familiar with the history and structure of each investment;

b. Each investment proposed for transfer to the Property Fund will be reviewed by Cushman, an Independent Fiduciary acting on behalf of the Plans affected by the transaction;

c. Each transfer would only be executed if Cushman determines that the price paid for the property is its fair market value and that the property in question is suitable for the Property Fund;

d. The transfer would provide the Account with additional liquidity and help the Company to satisfy the outstanding withdrawal requests; and

e. There is no sales commission or similar consideration accruing to the Company or other related parties from the transfer of investments from the Account.

FOR FURTHER INFORMATION CONTACT: Alan H. Levitas of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

ServiceMaster Profit Sharing, Savings and Retirement Plan (the Plan) Located in Downers Grove, IL

(Application No. D–7416)

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406 (a), (b)(1) and (b)(2) and 407 of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to: (1) The Plan's proposed one-time acquisition from ServiceMaster Limited Partnership (Employer), the sponsor of the Plan, and, as such, a party in interest with respect to the Plan, and holding of the Employer's limited partnership units (the Units) at a price per Unit which is the lower of: (a) $22.50; or (b) the closing price of the Units as publicly traded on the New York Stock Exchange (NYSE) on the date of the purchase; provided that the Plan hold no greater than 25% of its assets in such Units after acquisition thereof from the Employer; (2) the contribution to the Plan by the Employer of an irrevocable put option (the Put Option) which permits the Plan to sell the Units to the Employer at a price per Unit of $22.50; and (3) the holding of said Put Option by the Plan.

Temporary Nature of the Exemption: The exemption will expire ten years from the date the exemption is granted.

Summary of Facts and Representations

1. The Plan is a defined contribution plan which, as of December 31, 1987, held assets of approximately $37,500,000. As of December 31, 1988, the Plan had 3,388 participants. The Plan's trustee is currently the Gary-Wheaton Bank. The Plan is administered by a committee of three (3) or more persons (the Committee) appointed by ServiceMaster Management Corporation (the Corporate General Partner), which may remove any Committee member at any time. Each member of the Committee must be an employee or partner of the Employer or its subsidiaries and may be a Plan participant.

2. The Employer is a partnership which provides management support to customers in the health care, industrial, commercial, residential and educational fields. The Employer succeeds ServiceMaster Industries, Inc. (the Corporation), which was reorganized under the laws of Delaware into partnership form, effective December 30, 1988 (the Reorganization). Under the terms of the Reorganization, one share of the Corporation's common stock (the Common Shares) was exchanged for one Unit.

Prior to the Reorganization, the Plan provided that all amounts contributed therein by the Corporation were to be invested in the Common Shares. Until the Reorganization, the Plan was almost fully invested (i.e. 99.3%) in the Common Shares. Effective December 29, 1988, the Plan was amended to preclude investment in employer securities and, on December 29, 1988, the Plan sold its 1,603,489 Common Shares to the Corporation at $22.50 per share.

3. The Employer now proposes to sell to the Plan the number of Units which would comprise, immediately after acquisition, 25% of the Plan's assets at a Unit price the lower of $22.50 (the Reorganization sales price) or the closing price of the Units as publicly traded on the NYSE on the date of sale. The applicant represents that it has considered the proposed transaction in terms of section 415 of the Code and has stated that it does not see any problems with respect to that Code section. The applicant further represents that voting rights will attach to each Unit and that Plan participants will be entitled to vote their pro rata number of Units.

4. The Units are equity securities entitled to participate pro rata in distributions of Employer funds determined in the sole discretion of the Corporate General Partner. The applicant represents that investment in the Units is very similar to and, in some instances, more advantageous than investment in the Common Shares. The Units, like the Common Shares, have

met the prerequisites to be listed on the NYSE and are publicly traded thereon. As with publicly traded corporations, the Employer is subject to the reporting and disclosure requirements of the Securities Exchange Act of 1934.

The applicant further represents that favorable income tax treatment of the Units enables the Employer to make substantially larger cash contributions to Unit-holders than the Corporation would have been able to pay in dividends on its Common Shares. Moreover, the applicant represents that recent changes in Delaware limited partnership law result in limited partner liability that is essentially the equivalent of a corporate shareholder's liability.

5. The Employer also proposes to contribute to the Plan a Put Option exercisable by an independent fiduciary representing the Plan which would permit the Plan to sell to the Employer the Units acquired from the Employer at a strike price per Unit of $22.50. The applicant represents that the Put Option will be irrevocable for the term of the exemption.

6. The applicant further represents that Continental Capital Management Corporation, a subsidiary of Continental Illinois Bank and Trust Company of Chicago (Continental), has been appointed the independent fiduciary for the Plan concerning the proposed transaction. Continental represents that the Employer's deposits constitute no more than 1% of its loan business and that it and the Employer do not share any common directors. Continental further represents that it is an experienced employee benefits trust fiduciary with approximately $1.6 billion assets under management and a large professional staff.

7. Continental has reviewed the proposed transactions and has determined the following:

(a) The Units have been less volatile than the average equity security and have produced higher than average returns;

(b) The investment of 25% of Plan assets in the Units does not create undue risk to the Plan's portfolio and may, in fact, improve the total portfolio risk/reward balance;

(c) The Units outperformed the average stock during the declining market of October, 1987, and have demonstrated positive investment characteristics;

(d) The Employer's business is varied among several customer segments, which provide for significant diversification and reduce the risk of a large loss in the Plan's proposed acquisition and holding of the Units;

(e) The voting rights characteristic of the Units and Unit-holder liability neither diminish the value of the Units nor do they render them less attractive from an investment standpoint than shares of common stock;

(f) Unit-holder after-tax income has hitherto been greater than the dividends paid to the Common Shareholders prior to the Reorganization; and

(g) The Put Option, with its strike price of $22.50 per Unit, improves greatly the risk/reward ratio associated with the Plan's investment in the Units and is highly beneficial to the Plan.

Continental summarizes its analysis by concluding that an investment up to 25% to the Plan's assets in the Units would be prudent under the Act.

As independent fiduciary, Continental will continue to review and analyze the Plan's holding of the Units and will monitor the Units' performance and the Employer's business outlook. Continental will assume full responsibility for determining whether to exercise the Put Option during the term of the proposed exemption.

8. In summary, the applicant represents that the proposed transactions meet the criteria of section 408(a) of the Act because: (a) The Plan's purchase of the Units will be a one-time transaction; (b) The Plan will hold no greater than 25% of its assets in the Units immediately after acquisition thereof from the Employer; (c) The Plan will pay no greater than fair market value for the Units; (d) The fair market value of the Units at the time of the purchase will be determined by the objective standard of the closing price of the Units on the NYSE; (e) The Plan will receive an additional safeguard in the form of an irrevocable Put Option which will enable the Plan, upon the independent fiduciary's decision, to sell the Units back to the Employer at a price of $22.50; (f) Continental has agreed to serve as the Plan's independent fiduciary in connection with the transactions and has reviewed them and determined that they are in the best interests of the Plan and its participants; and (g) Continental will monitor the performance of the Units after the Plan's acquisition thereof to determine, *inter alia*, whether to exercise the Put Option.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Internal Revenue Code, including sections 401(a)(4), 404 and 415.

For Further Information Contact: Mrs. B.S. Scott of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Plessey Dynamics Employees Retirement Plan (the Plan) Located in Hillside, New Jersey

[Application No. D-7473]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedures 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale of certain real property (the Property) from the Plan to Plessey Incorporated (Plessey), a party in interest with respect to the Plan, for the greater of $675,000 or the fair market value for the Property at the time of sale.

Summary of Facts and Representations

1. Plessey Dynamics Corporation (the Employer) is a manufacturer of parts for the aerospace and defense industries. The Employer is a wholly-owned subsidiary of Plessey. The plan is a defined benefit pension plan. As of December 31, 1987, the Plan had approximately 162 participants and total assets (excluding the Property) of around $3.8 million. The Plan is administered by a retirement committee, the members of which are appointed by the board of directors of the Employer.

2. On October 1, 1965, the Plan purchased an approximate one-half acre of improved real property located at 1420 Chestnut Avenue, Hillside, New Jersey (the 1420 Property) from unrelated parties for cash in the amount of $138,000. The improvements to the 1420 Property consisted of a single-story industrial building, about 40 percent of which is finished as office space and the remainder of which was used as a fabrication and laboratory area. On October 2, 1987, the Plan purchased another approximately one-half acre of improved real property adjacent to the 1420 Property (the 1416 Property), also from unrelated parties for cash, in the amount of $116,000. The improvements to the 1416 Property consisted of a single-story industrial building with a small second-story addition. The area to the rear of the building is paved and used for parking. The 1420 Property and the 1416 Property together are referred to as the Property.

3. The Property has been leased to the Employer pursuant to the terms described in a previous exemption, Prohibited Transaction Exemption (PTE) 86-2 (51 FR 2594, January 17, 1986). PTE 86-2 granted retroactive relief as of December 5, 1984, the effective date of the lease agreement. The lease requires combined rental payments of $6,692 per month. The applicant represents that all terms of the lease under PTE 86-2 have been met and that all related lease payments have been received by the Plan timely and in full. The exempt lease terminated in October 1986. The Employer did not exercise its renewal option on the lease and moved in May 1986 to new rented facilities in Whippany, New Jersey.[1]

4. The Plan obtained an appraisal on the Property from Jon P. Brody (Brody), a real estate appraiser located in Livingston, New Jersey. The applicant represents that Brody is independent of the Plan and the Employer. Utilizing the anticipated rental income and comparable sales approaches to value, Brody estimated that as of May 16, 1988, the fair market value of the 1416 Property was $420,000 and that of the 1420 Property was $250,000, giving a total fair market value for the Property of $670,000.

5. Plessey owns three buildings on Chestnut Avenue and on Montgomery Street in Hillside, New Jersey (the Corporate Premises), which are contiguous to the Property. The Property and the Corporate Premises together comprise the entire Plessey Plant. Integrated Properties, Inc. (IPI), an unrelated third party, wishes to purchase the entire Plessey Plant. The Plan had negotiated with IPI concerning a sale of the Property to IPI. However, the Employer has been required to design and implement an approved cleanup plan for the entire Plessey Plant under the New Jersey Environmental Cleanup Responsibility Act (ECRA) and the Plan has requested that the Employer take responsibility for the cleanup plan. Accordingly, the Plan has determined that it would be preferable to sell the Property to Plessey, who in turn proposes to sell the Property to IPI.

[1] The Department expresses no opinion as to whether Plan fiduciaries violated any of the fiduciary responsibility provisions of Part 4 of Title I of the Act in allowing the Property to remain unused (and producing no income) since the time of lease expiration in October 1986.

Plessey has agreed to purchase the Property from the Plan on terms and conditions that assure that the Plan will not be involved in the cleanup plan or bear any risk or costs associated with the ECRA claims. The Plan has negotiated a contract with the assistance of Leonard D. Furman (Furman), independent fiduciary for the Plan under PTE 86-2, which was entered into on January 9, 1987, for the sale of the Property. The sale will be a one-time transaction for cash at a price of $675,000. The Plan will pay no transaction costs in connection with the sale.

6. In regard to the exemption granted for the lease of the Property under PTE 86-2, Furman was appointed as an independent fiduciary for the Plan. PTE 86-2 noted that Furman is independent of the Employer and is an attorney and certified public accountant practicing mainly in the fields of income taxation, pensions and estate planning. Furman stated that he understands his duties and liabilities as an independent fiduciary under the Act. His duties under PTE 86-2 included reviewing and monitoring the lease of the Property entered into under that exemption between the Plan and the Employer. Furman states that the Property was listed for sale with various brokers but could not be sold because of the costly ECRA problems. Furman says that he has reviewed the contract for the proposed sale of the Property to Plessey and that Plessey will bear any costs resulting from ECRA. Because the Property otherwise has produced no income since lease expiration, the Employer has agreed to make lease payments since October 1986 at the amount then in effect ($6,692 per month) plus interest at the rate of 10 percent per annum for all rent attributable to the retroactive period through the time when the Plan no longer owns the Property. Furman has reviewed the independent appraisal of the Property and believes that the proposed sale to Plessey should be approved. Furman agrees to see that the terms of the sales contract are met on behalf of the Plan. Also, Furman believes that the proposed transaction is in the interests of the Plan and is protective of its participants and beneficiaries.

7. In summary, the applicant represents that the proposed transactions will satisfy the statutory criteria of section 408(a) of the Act because: (1) The sale of the Property will be entirely for cash and the Plan will pay no transaction costs in regard to the sale; (2) the fair market value of the Property will be established by an appraiser who is independent of the Plan and the Employer; (3) all the lease payments due under PTE 86-2 have been received by the Plan timely and in full; (4) according to the terms of the sale, the Plan will not bear any of the costs associated with the ECRA claims; and (5) an independent fiduciary of the Plan believes that the sale would be in the interests of the Plan and agrees to see that the terms of the sales contract are met on behalf of the Plan.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, Telephone (202) 523-8883. (This is not a toll-free number.)

United Artists Communications, Inc. (Rowley United Division) Retirement Plan (the Plan) Located in Dallas, Texas

[Application No. D-7491]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale of certain real property (the Property) from the Plan to United Artists Communications, Inc. (the Employer), a party in interest with respect to the Plan, provided the Plan receives no less than fair market value for the Property at the time of sale.

Summary of Facts and Representations

1. The Employer is a national motion picture exhibitor which operates theatres in numerous locations throughout the country. The Rowley Division of the Employer operates theatres throughout the Southern part of the United States. The Plan is a profit sharing plan having approximately 419 participants. The assets of the Plan totaled $3,271,450 as of December 31, 1986. The Plan has been frozen as to further contributions since September 30, 1987, pending liquidation, distribution of assets and termination.

2. The Property consists of approximately 11.1 acres of land located in the City of Killeen, Bell County, Texas. The Property adjoins a theatre which is currently owned and operated by a wholly-owned subsidiary of the Employer. Of the total land, 2.8 acres are subject to a superior parking easement held by the Employer and benefitting the

adjacent theatre property. This 2.8 acre parcel is currently used as a parking lot. The remaining 8.3 acres of the Property are undeveloped and unencumbered by the parking easement.

3. The Property is part of an 11.7 acre tract that was purchased by the Plan from an unrelated party in 1969 (prior to passage of the Act) for $90,000 in cash. The Property was purchased as a site for the Plan to build a motion picture theatre. Prior to 1969, the Plan owned a number of motion picture theatres in Killeen which were leased to and operated by the Employer. The Cinema I and II Theatres and a 2.8 acre parking lot adjoining the theatre were constructed by the Plan and included in the lease to the Employer. In June 1971 the Plan sold all eight of its Killeen motion picture properties, including the Cinema I and II Theatres, to Magna Pictures Corporation (Magna) which was then a 30 percent owned subsidiary of the Employer (60 percent after 1981). The eight properties together were sold for a total of $2,560,000. The Property was not included in that sale, except for the 0.5 acre tract containing the theatre building, and the Plan retained title to the Property. As further terms of the transaction, Magna was given a perpetual parking easement, to accommodate the parking needs of the theatre, over a 2.8 acre parking lot which was part of the Property and Magna obligated itself to pay all maintenance expenses and taxes on the parking area.[3] The consideration paid to the Plan for the parking easement was an unspecified portion of the $2,560,000 purchase price paid for the Killeen theatre properties.

4. The Plan obtained an appraisal on the Property from Clemo L. Ray, Jr. (Ray) of the Central Texas Appraisal Company in Temple, Texas. The applicant represents that Ray is independent of the Plan and of the Employer. In Ray's opinion, the existence of the easement on 2.8 acres has somewhat of a detrimental effect on the remaining 8.3 acres of the Property which could be developed. Ray believes that the highest and best use of the Property at the present time would be that of a holding investment but that eventually the Property should be developed for commercial purposes. Ray did not give a premium to the Property due to the existence of the adjacent theatre. Placing emphasis on the comparable sales approach to value and taking into account the easement on the Property, Ray estimated that the fair market value of the Property as of November 16, 1987, was $340,000.[3]

5. In order to further the liquidation of the assets of the Plan, Plan fiduciaries propose to sell the Property to the Employer. The Employer will pay no less than fair market value for the Property at the time of sale, based on an updated independent appraisal. Also, the Employer will reimburse the Plan at the closing for the appraisal fee of $2,100 which was previously paid by the Plan. The transaction will be entirely for cash and the Plan will pay no fees or commissions in regard to the sale.

6. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because: (1) The sale of the Property will be entirely for cash and the Plan will pay no fees or commissions in connection with the sale; (2) the Employer will pay no less than fair market value for the Property at the time of sale; (3) the fair market value will be based on an independent appraisal of the Property; and (4) the transaction will enable Plan fiduciaries to further the liquidation of the assets of the Plan.

For Further Information Contact: Paul Kelty of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Mid State Machine Products, Inc. Defined Benefit Plan (the Plan) Located in Winslow, Maine

[Application No. D–7675]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 184712, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed sale by the Plan of certain real estate limited partnerships and real estate investment trusts (together, the Interests) to Mid State Machine Products, Inc. (the Employer), the sponsor of the Plan, provided that the price paid is the higher of either the Plan's original purchase price for each of the Interests or the fair market value of each of the Interests on the date of sale.

Summary of Facts and Representations

1. The Plan is a defined benefit pension plan which, as of June 15, 1988, had 92 participants and total assets of approximately $80,720. The trustees of the Plan (the Trustees), and the decision-makers with respect to Plan investments, are Douglas Sukeforth (Mr. Sukeforth) and his wife, Rita Sukeforth (Ms. Sukeforth), and Barry Stewart (Mr. Stewart). The Plan was established in 1979 to provide retirement benefits to employees in addition to those benefits provided under the Employer's profit sharing plan. However, benefit accruals under the Plan were "frozen" as of July 7, 1987. The Plan is in the process of being terminated. By letter dated July 5, 1988, the Internal Revenue Service determined that the Plan was qualified upon termination.

2. The Employer is a Maine corporation which operates a precision machine shop in Winslow, Maine. Mr. Sukeforth is the President and Treasurer of the Employer and owns approximately 60 percent of the stock of the Employer. Ms. Sukeforth is the Corporate Secretary and owns approximately 40 percent of the stock of the Employer. Mr. Steward is an accountant employed by the Employer.

3. The Plan acquired the Interests beginning in 1979 when the Plan was established. The Plan has paid a total of $74,000 for the Interests. The Interests consist of a variety of shares or units in a total of seven real estate limited partnerships (the Partnerships) and real estate investment trusts (the Trusts), which are dispersed as to geographic region and industry investment. The Interests represent over half of the assets of the Plan.[4] The Interests were acquired from unrelated parties either on the open market or as part of the initial offering of the particular Interests by the issuer. Neither the Employer, Mr. Sukeforth nor any of the other Trustees hold any interests in the Partnerships or Trusts.

[2] The applicant represents that, under Texas law, the grant of such an easement is a common practice when conveying a portion of a larger tract. The applicant represents further that Texas law provides that the grant of an easement in circumstances like those described in the application constitutes a sale of an interest in real estate. The grant of the easement was complete and unconditional in 1971 and no rent payments or renewals of contracts are involved in the grant of the easement. The Department is expressing no view herein with respect to the granting of the subject easement and is proposing no exemptive relief in regard to any prohibited transactions which may have arisen as a result thereof.

[3] By letter dated September 6, 1988, Ray estimated that the dollar amount of the effect on the Property due to the easement was $46,000 as of the date of the appraisal.

[4] The Department is expressing no opinion as to whether the acquisition and holding of the Interests violated any of the provisions of Part 4 of Title I of the Act.

The applicant asserts that since each of the Partnerships and Trusts offered the Interests for sale pursuant to a public offering, with the appropriate registrations under the Securities Acts of 1933 and 1934, and since the Interests are freely transferable and widely-held, none of the Partnerships or Trusts are considered to hold "plan assets" as a result of the investment by the Plan, or any other employee benefit plan, in the Partnerships or Trusts. Thus, the applicant represents that the assets of the Plan are considered to consist solely of the Interests held by the Plan and are not considered to extend to any interest in the underlying properties or mortgages held by the Partnerships or the Trusts.

4. The applicant states that in order to complete the termination of the Plan, the Plan must have sufficient cash to pay the accrued benefit balances to the participants and beneficiaries. Since the bulk of the Plan's assets are invested in the Interests, these balances cannot be paid without liquidating the Interests.

In addition, based on the current fair market value of the Plan's assets, the Plan has accrued liabilities which are in excess of its assets. The Employer will be required to make a contribution to the Plan prior to its termination sufficient to fund all accrued benefits. The amount of the Employer's required contribution will be determined, among other things, by the price that the Plan receives on the sale of the Interests.

Most of the Interests are several years away from maturity. The applicant states that the Plan could remain in a "frozen" status until each of the Interests reaches maturity. However, the Trustees believe that termination of the Plan and the distribution of benefits to the participants and beneficiaries now is preferable to waiting until all the Interests reach maturity because termination of the Plan will eliminate the annual costs attendant upon the maintenance of the Plan which are borne, in part, by the Plan. The Trustees state that the intervening costs to the Plan over the next ten to fifteen years of maintaining the Plan in a "frozen" status would likely outweigh any benefit in investment gains on the Interests which may be experienced during that time.

5. The applicant states that while the Interests are publicly-traded securities which are freely transferable and widely-held, almost all of the Interests are traded very thinly and are fairly illiquid investments. The market value of the Interests has declined since the time of the Plan's acquisition of the Interests. The Trustees believe that the Plan could incur substantial losses, as well as commissions and other related expenses, if the Plan attempted to sell the Interests on the open market to unrelated parties. Therefore, the Employer proposes to purchase the Interests from the Plan at a price which will be the higher of either the Plan's original purchase price for each of the Interests or the fair market value of each of the Interests, as established by an independent, qualified appraiser. The Plan would not pay any commissions or other expenses with respect to the sale.

6. A.G. Edwards & Sons, Inc. (Edwards) of Portland, Maine, has provided an independent assessment of the fair market value of the Interests (the Appraisal). Edwards is an investment firm experienced in securities analysis and market research. Edwards states that it has no prior relationship with either the Plan or the Employer. In addition, none of the Interests held by the Plan were purchased through Edwards.

The Appraisal provides a valuation of the Interests according to the most current prices available as of May 12, 1988. Based on the Appraisal, the total fair market value of the Interests was $43,205, as of that date.

By letter dated June 1, 1988, Peter M. Shaw (Mr. Shaw), an investment broker with Edwards, provided a further analysis of the Interests. Mr. Shaw states that the Interests in the Trusts are all traded on the national securities exchanges and that obtaining a current market value for these Interests is not a problem. In addition, the Interests in the Partnerships are limited partnership units which are traded on the National Partnership Exchange (NAPEX). NAPEX is an exchange which provides a secondary market for the trading of publicly-registered limited partnership interests. The Appraisal of the Interests in the Partnerships is based on information obtained from NAPEX.

7. In the proposed transaction, the Plan will receive the higher of either the current fair market value of the particular interest, as determined by Edwards in accordance with the latest prices on the appropriate securities exchanges of NAPEX, or the Plan's original purchase price for the particular Interest. The applicant states that the Appraisal will be updated by Edwards, as of the date of sale, to obtain the most current market values for the Interests.

8. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because: (a) The sale will be a one-time transaction for cash; (b) the Plan will receive a price which will be the higher of either the fair market value of each of the Interests, as established by an independent appraiser, or the Plan's original purchase price for each of the Interests; (c) the Plan will not pay any commissions or other expenses with respect to the sale; and (d) the transaction will allow a prompt termination of the Plan and a distribution of the Plan's assets to the participants and beneficiaries.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Barber and Lundberg Profit Sharing Plan and Trust (the Plan) Located in Oklahoma City, Oklahoma

[Application No. D–7788]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to a proposed loan not to exceed $300,000 by the Plan to Barber and Lundberg, Inc. (the Employer), the sponsor of the Plan; provided that all terms of such loan are at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party.

Summary of Facts and Representations

1. The Plan is a defined contribution pension plan with fourteen participants and total assets of $1,206,733 as of December 31, 1987. The Employer is a closely-held Oklahoma corporation engaged in wholesale marketing of veterinary and animal health supplies in Oklahoma City, Oklahoma. The trustee of the Plan is Van Barber, a shareholder, officer and employee of the Employer.

2. The Employer recently arranged for the construction of a new office and warehouse facility (the Building) on Employer-owned property (the Land) to serve as a new and larger principal place of business. Interim, short-term construction financing was secured by the Employer to enable the construction of the Building. The Employer seeks to retire the short-term construction financing in part by security a loan (the Loan) from the Plan and is requesting an exemption to permit the Loan under the terms and conditions described herein.

3. The Employer proposes to borrow from the Plan the lesser of (1) $300,000 or (2) twenty-five percent of the Plan's assets at the time of the Loan transaction. As security for the Loan, the Employer will grant to the Plan a duly filed and perfected first mortgage on the Building and the Land. The Land is a commercially-zoned 1.5 acre parcel of real property located at 212 Ann Arbor Drive in Oklahoma City and the Building is a concrete panel commercial building with approximately 14,438 square feet of office and warehouse space. As of September 7, 1988 the Land and Building had a fair market value of $450,000, according to Patrick O. Glenn, MAI, an independent professional real estate appraiser in Oklahoma City.

The Loan will be evidenced by a promisory note (the Note) in favor of the Plan which provides for repayment of the Loan over twenty years in equal monthly installments of principal plus interest at an annually-adjusted rate of one percent above the prime commercial rate as announced and charged by Citibank, N.A. of New York City. The Note provides that the entire outstanding principal amount of the Loan, plus accrued interest, shall become due and payable at the Note holder's option in the event any monthly installment due thereunder is not paid when due. The Note further provides that the entire indebtedness due thereunder will be immediately due and payable upon any sale or transfer of the Land or Building by the Employer, unless the Note holder has consented to such sale or transfer in writing. The Note requires the Employer to bear all costs and expenses, including but not limited to reasonable attorney's fees, which are incurred in the event of a lawsuit to collect from the Employer under the Note.

4. The interests of the Plan with respect to the proposed Loan are represented by the Doxier Company (the Fiduciary), an Oklahoma City-based pension services corporation which represents that it has substantial fiduciary experience under the Act. The Fiduciary represents that it is independent of and unrelated to the Employer except as consultant to certain of the Employer's qualified employee benefit plans and that fees received from the Employer for such consultative services represent less than one percent of the total fees received by the Fiduciary. The Fiduciary has agreed to act in a fiduciary capacity on behalf of the Plan with respect to all aspects of the proposed Loan for its duration, to monitor and enforce the Employer's performance of all Loan terms and to initiate remedies, if necessary, on behalf of the Plan in case of any default by the Employer on any Loan obligation. The Fiduciary represents that the proposed Loan will constitute an enhancement of the Plan's investment returns by providing the highest rate of return which can be realized. The Fiduciary states that the proposed Loan's interest rate is no less than the prevailing market rates charges by local commercial lenders for equivalent loans. The Fiduciary states that it will require the Employer to provide proof of insurance and payment of taxes on the Land and Building and that it will ensure that the Employer keeps the Land and Building in adequate condition for the duration of the Loan.

5. David Shaefer (Shaefer), vice president of The Oklahoma Bank (the Bank) in Oklahoma City, offers a statement establishing that the Employer is in good credit standing as a preferred customer of the Bank and that the Employer has a record of successful performance under numerous loan arrangements with the Bank since 1973. Shaefer states that the proposed terms of the Loan constitute terms under which the Bank, subject to committee approval, could extend credit to the Employer under the same circumstances as those of the proposed Loan.

6. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (1) The Loan will be secured by a first mortgage on real property collateral, the Land and Building, having an appraised value of 150 percent of the principal of the Loan; (2) The Loan principal will not exceed twenty-five percent of the Plan's assets at the time of the Loan; (3) The Plan's interests under the proposed Loan are represented by the Fiduciary, which will monitor and enforce the Employer's performance of Loan obligations and will ensure the Employer's adequate maintenance of the Land and Building as collateral; (4) The Plan will earn interest at a rate of one percentage point above the prime rate charged by Citibank, N.A. of New York, a rate of return which the Fiduciary represents to be no less than the applicable market rates charged by local lenders for equivalent loans; and (5) The Note which evidences the Loan enables acceleration of the Loan in the event of any default or any transfer of the Land or Building by the Employer and requires the Employer to bear all expenses incurred in any suit for enforcement of Loan terms.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 9th day of February, 1989.

Robert J. Doyle,

Director of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 89-3430 Filed 2-13-89; 8:45 am]

BILLING CODE 4510-29-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-155]

Consumers Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an extension of exemption from the schedular requirement of 10 CFR 50.71(e)(3)(ii) to the Consumers Power Company (the licensee) for the Big Rock Point Plant located in Charlevoix County, Michigan.

Environmental Assessment

Identification of the Proposed Action

The proposed action would grant an extension of exemption from the requirements of 10 CFR 50.71(e)(3)(ii) to submit an updated Final Hazards Summary Report (FHSR) for the Big Rock Point Plant within 24 months of receipt of a letter notifying the licensee that the Systematic Evaluation Program (SEP) has been completed. Big Rock Point Plant, as one of the plants chosen to be evaluated in the SEP was, therefore, subject to the provisions of 10 CFR 50.71(e)(3)(ii).

The licensee was notified by letter dated August 27, 1984, that the SEP had been completed for the Big Rock Point Plant. The licensee, by application dated August 27, 1988, as supplemented December 3, 1988, requested an exemption from the schedular requirements of 10 CFR 50.71(e)(3)(ii) in order to allow time for the licensee to complete a newly agreed upon dated FHSR. By letter dated March 2, 1987, the Commission issued an exemption to the schedular requirements of 10 CFR 50.71(e)(3)(ii) until December 31, 1988. The further deferral of the submittal of the updated FHSR is the proposed action being considered by the Commission's staff.

The Need for the Proposed Action

The licensee, by letter dated March 13, 1983, requested that the updating of the Big Rock Point FHSR be included in an expanded assessment of outstanding regulatory requirements as part of the SEP. The primary purpose of this request was to allow better management of licensee resources which were to be applied to regulatory and nonregulatory tasks.

The licensee proposed that a method of indexing pertinent documents, which could provide a chronology and identification of design changes to the Big Rock Point Plant, might serve as a workable substitute to an updated FHSR. In NUREG-0828, dated May 1984, transmitted to the licensee by Commission letter dated August 27, 1984, the Commission's staff concluded that this proposal was acceptable, provided the index of documents identified specific SEP topic safety evaluation references.

Although the above referenced evaluations were incorporated into the indexing system, subsequent review by the Commission's staff resulted in the identification of additional concerns such that the proposed substitute did not constitute a completely adequate alternative to an updated FHSR. After telephone discussions with the licensee, an agreement was reached for the licensee to provide an updated FHSR to the Commission by December 31, 1988. However, the originally proposed length of time to accomplish the updating of the 27-year-old FHSR has not been adequate at the agreed upon level of effort of one dedicated professional, plus secretarial and supervisory support. Therefore, an extension of the schedular exemption is required in order to allow time for the licensee to complete an updated FHSR.

Environmental Impact of the Proposed Action

The proposed extension of exemption involves only the required date for submittal of a document describing the as-built condition of the Big Rock Point Plant and does not increase the risk of facility accidents. Thus, the proposed extension of exemption does not involve any increase in the likelihood of the release of radioactive or nonradioactive effluents from those already determined, nor does the proposed action have other environmental impact. Therefore, the Commission concludes that there are no measurable radiological or nonradiological environmental impacts associated with the proposed extension of exemption.

Alternative to the Proposed Action

Since the Commission has concluded there are no measurable environmental impacts associated with the proposed extension of exemption, any alternative with equal or greater environmental impacts need not be evaluated. The principal alternative to the extension of the exemption would be to require an earlier date for the submittal of the updated FHSR. Such an action would not enhance the protection of the environment and would result in unnecessary diversion of licensee engineering resources from other work of higher safety significance.

Alternative Use of Resources

This action does not involve the use of resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Contacted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed extension of exemption. Based upon the foregoing assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see (1) the licensee's letter dated August 27, 1986, as supplemented December 3, 1986, and November 22, 1988, and (2) the Exemption granted March 2, 1987. These documents are available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street NW., Washington, DC, and at North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Dated at Rockville, Maryland, this 31st day of January 1989.

For the Nuclear Regulatory Commission.

Theodore R. Quay,

Acting Director, Project Directorate III-1, Division of Reactor Projects—III, IV, V & Special Projects.

[FR Doc. 89-3428 Filed 2-13-89; 8:45 am]

BILLING CODE 7590-01-M

Commonwealth Edison Co.; Consideration of Issuance of Amendment to Facility Operating Licensse and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-72 and NPF-77 issued to Commonwealth Edison Company (the licensee), for operation of Braidwood Station, Units 1 and 2, respectively, located in Will County, Illinois.

The licensee requested the amendment including associated changes in the combined Technical Specifications for Units 1 and 2 in a letter dated January 3, 1989.

The amendment would authorize the licensee to increase the spent fuel pool storage capacity from 1060 to 2870 storage locations in the common pool

shared by both units at Braidwood Station.

The high density spent fuel racks consist of individual cells with 8.85-inch by 8.85-inch (nominal) square cross-section, each of which accommodates a single Westinghouse PWR fuel assembly or equivalent. A total of 2870 cells are arranged in 23 distinct modules of varying sizes in two regions. Region I is designed for storage of new fuel assemblies with enrichments up to 4.2 weight percent U–235. Region I is also designed to store fuel assemblies with enrichments up to 4.2 weight percent U–235 that have not achieved adequate burnup for Region II. The Region II cells are capable of accommodating fuel assemblies with various initial enrichments which have accumulated minimum burnups with an acceptable bound.

The amendment would change Technical Specification Section 5.6 to reflect the decrease in distance between fuel assemblies, and the increase in storage capacity, and incorporate a curve entitled "Minimum Burnup versus Initial Enrichment for Region II Storage."

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By March 16, 1989, the licensee may file a request for hearing with respect to issuance to the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petition for leave to intervene shall be filed in accordance with the Commission's Rules of Practice for Domestic Licensing Proceedings in 10 CFR part 2. If a request for a hearing or petition of leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary of the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner is required to file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity, pursuant to 10 CFR 2.714(b). Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party. Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800–342–6700)). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Daniel R. Muller: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of the **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

Nontimely findings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

The Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, must use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties." The hybrid procedures in Section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules, and the designation, following argument, of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing Section 134 of the NWPA are found in 10 CFR Part 2, Subpart K, "Hybrid Hearing Procedures for Expansion of Spent Nuclear Fuel Storage Capacity at Civilian Nuclear Power Reactors" (published at 50 FR 41662, October 15, 1985) 10 CFR 2.1101 *et seq.* Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within ten (10) days of an order granting a request for hearing or petition to intervene. [As outlined above, the Commission's rules in 10 CFR Part 2, Subpart G, and § 2.714 in particular, continue to govern the filing of requests for a hearing or petitions to intervene, as well as the admission of contentions). The presiding officer shall grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application shall be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding requests oral argument, or if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR Part 2, Subpart G apply.

For further details with respect to this action, see the application for amendment dated January 3, 1989, that is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Dated at Rockville, Maryland, this 9th day of February 1989.

For the Nuclear Regulatory Commission.

Stephen P. Sands,

Project Manager, Project Directorate III–2, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 89–3427 Filed 2–13–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–498]

Houston Lighting & Power Co.; Consideration of Issuance of Amendment to Facility Operating Licence and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–76, issued to Houston Lighting & Power Company (the licensee), for operation of the South Texas Project, Unit 1, located in Matagorda County, Texas.

The proposed amendment would modifiy the Technical Specifications (TS) by modifying the Fuel Handling Building Exhaust Air subsystem electric heaters to operate at 38 kW instead of the current 50 kW; modifying the Source Range Neutron Monitor calibration requirements to ensure that a new model of preamplifier can be installed for use; and clarifying action statements for the Chemical Detection System and the Control Room Ventilation System.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The three modifications are discussed below.

The Fuel Handling Building (FHB) Exhaust Air Heating Ventilation and Air Conditioning (HVAC) System exhausts air from inside the FHB to the plant main vent stack. The system consists of two 100% capacity exhaust filter trains, three 50% capacity exhaust booster fans, three 50% capacity main exhaust fans, dampers and instrumentation. Each exhaust filter train consists of three 33⅓% capacity filter units which has an electric heating element, prefilters, HEPA filters, and carbon filter. The electric heating element decreases humidity which affects the efficiency of the removal of iodine. A flowswitch turns off the electric heaters if airflow drops below a minimum flowrate. When all three trains are actuated, the flow through the filter units is less than the setpoint, thus deenergizing the heater.

Currently, procedures require operators to shut down one filter train following an Engineering Safety Feature Actuation System (ESFAS) actuation in order to maintain sufficient flow through the other train such that the heaters will operate. The proposed change would reduce the size of the heaters thus allowing the heaters to operate at a lower flowrate while maintaining the 70% or below relative humidity criteria.

The determination of significant hazards is discussed below.

(1) The proposed change to the heaters reflects design requirements to mitigate the consequences of an accident. The air flow is maintained at the present value. Additionally, dose analysis assumptions are maintained using the lower rated heaters. Therefore, there is no increase in the probability or consequences of an accident previously evaluated.

(2) The proposed heaters fulfill design basis requirements as part of an accident mitigating system described in the FSAR. A change in the heater capacity does not create the possibility of a new different kind of accident.

(3) The proposed change reflects a design change which maintains the relative humidity at a level consistent with iodine removal requirements. There is no reduction in the margin of safety.

Prior to issuance of the Unit 2 license, the licensee had to replace the preamplifier for one of the Source Range Neutron Detectors. A new model, "low noise", preamplifier was used as the replacement in Unit 2 because the previous model is no longer manufactured. As a result of the use of the new model of preamplifier, the channel calibration surveillance for the source range detector had to be modified for the Unit 2 TS to address the use of the new model of preamplifier. The proposed change would allow the use of the new model preamplifier in Unit 1.

The determination of significant hazards is discussed below.

(1) The proposed change involves calibration techniques on the new preamplifier which will ensure the source range detector will function as required. There is no increase in the probability or consequences of an accident previously evaluated.

(2) The proposed changes to the calibration requirements will ensure the preamplifer will function as well as the current preamplifier if used in Unit 1. No conditions have been created that could cause a new or different kind of accident.

(3) The proposed changes will ensure the source range detector operates as required which is at least equal to the performance with the old model preamplifier.

The Control Room HVAC System has two emergency modes of operation: (1) toxic gas release, (2) radiological release. The Chemical Detection System has an action statement in the TS which requires the Control Room HVAC System be in the recirculation mode if one or both of the detectors are inoperable. The Control Room HVAC System has action statements in modes 5 and 6 (cold shutdown and refueling) which require the system be placed in the filtered recirculation and make-up modes if any of the three trains are inoperable. Additionally, the ESFAS action statements for modes 5 and 6 would eventually require the Control

Room HVAC System be placed in the filtered recirculation and make-up modes.

The action statement that applies to the Control Room HVAC System for modes 5 and 6 requires that if one train is inoperable, the remaining train be placed in the filtered recirculation and make-up modes. Thus, if the Control Room HVAC System is in the recirculation and make-up status, failure of one of the toxic gas dectectors would require an action which conflicts with one that is already in effect.

The proposed change would add a note to TS 3.3.3.7 (Control Room Ventilation System) that if there is a conflict between the operable mode required by several action statements, then the system is to be placed in filtered recirculation only. This would be considered the safe default condition.

The determination of significant hazards is discussed below.

(1) The proposed changes maintain the plant in the safest possible condition given the postulated situation. The proposed change will not increase the probability or consequences of an accident previously evaluated.

(2) The proposed change only affects actions to be taken as a result of plant conditions in order to maintain control room habitability. It will not create the possibility of a new or different kind of accident.

(3) The proposed change maintains the margin of safety for a toxic gas release by placing the Control Room HVAC System in the filtered recirculation mode.

During a radiological release, the positive pressure of the control room and short period of time of in-leakage would not result in a significant dose to the operators. Further, the make-up mode could be actuated if needed. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, the staff has determined that the proposed changes involve a no siginficant hazards consideration. The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resource Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 8:15 am to 4:00 pm. Copies of written comments may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC 20555. The filings of requests for hearing and petitions for leave to intervene is discussed below.

By March 16, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene must be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board Panel will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene must set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceedings; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which the petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, the petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and state comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Jose A. Calvo: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-Rockville, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street NW., Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated January 25, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the Wharton Junior College Library, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488 and the Austin Public Library, 810 Guadalupe Street, Austin, Texas 78701.

Dated at Rockville, Maryland, this 6th day of February 1989.

For the Nuclear Regulatory Commission.

Jose A. Calvo,

Director, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-3428 Filed 2-13-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-361 and 50-362]

Southern California Edison Co. et al.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-10 and NPF-15 issued to Southern California Edison Company (SCE), San Diego Gas and Electric Company, the City of Riverside, California and City of Anaheim, California (the licensees), for operation of San Onofre Nuclear Generating Station, Units 2 and 3 located in San Diego County, California. The request for amendments was submitted by letter dated December 29, 1988 and identified as Proposed Change PCN-253.

The proposed change would revise the Technical Specifications (TS) 3/4.8.2.1, "DC Sources." This Specification requires operability of the four 125 VDC battery banks and their associated battery chargers, defines periodic surveillance tests and inspections to verify operability and action to initiate should a battery bank or its associated charger be found to be inoperable. The operability of the DC power sources during operation ensures that sufficient power is available to supply and safety-related equipment required for safe shutdown of the facility and for the mitigation and control of accident conditions within the facility.

The proposed amendments would change the 18 month surveillance requirements to a refueling cycle frequency. Currently, Surveillance Requirements (SR) 4.8.2.1.c and 4.8.2.1.d require visual inspections, resistance measurements, battery charger capacity checks, and battery capacity tests at 18-month intervals; and TS 4.8.2.1.d requires that, once every 18 months during a unit shutdown, the battery capacity be verified to be adequate to supply and maintain, in operable status, all of the actual or simulated emergency loads for the design duty cycle when the battery is subjected to a battery service test. These requirements would change from once per 18 months to once per refueling interval.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By March 16, 1989, the licensees may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing or petition for leave to intervene. Requests for hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceedings, and how that interest may be affected by the results of the proceeding. The petition shall specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street NW.,

Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative of the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George W. Knighton: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770 and Orrick, Herrington and Sutcliffe, Attention: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 94111, attorneys for licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendments which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the General Library, University of California at Irvine, Irvine California 92713.

Dated at Rockville, Maryland this 6th day of February, 1989.

For the Nuclear Regulatory Commission.

Terence L. Chan,

Acting Director, Project Directorate V, Division of Reactor Projects III, IV, V and Special Projects.

[FR Doc. 89-3429 Filed 2-13-89; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, 450 Fifth Street NW., Washington, DC 20549

New, Rule 15c2-6, File No. 270-325

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for clearance proposed Rule 15c2-6, which would require a written customer agreement to, and a documented suitability determination for, certain recommended transactions in equity securities that are not registered on a national securities exchange or authorized for inclusion in the NASDAQ system, and whose issuers do not meet certain minimum financial standards. Nine thousand forty-seven respondents incur an estimated average burden of five minutes to comply with the Rule.

The estimated average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even representative summary or study of the cost of SEC rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burdens hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, 450 Fifth Street NW., Washington, DC 20549-6004, and Gary Waxman, Clearance Officer, Office of Management and Budget, Paperwork Reduction Project (3235-03zz), Room 3208, New Executive Office Building, Washington, DC 20543.

Jonathan G. Katz,

Secretary.

February 8, 1989.

[FR Doc. 89-3408 Filed 2-13-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-26524 ; File No. SR-MSRB-88-4]

Self-Regulatory Organizations, Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change Relating to Books and Records

On November 9, 1988, the Municipal Securities Rulemaking Board ("MSRB") submitted a proposed rule change (File No. SR-MSRB-88-4) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") to amend MSRB rule G-8 to require the recordkeeping of suitability information for institutional accounts.

Notice of the proposed rule change was given in Securities Exchange Act Release No. 26370 (December 19, 1988), 53 FR 52285. The Commission received no comments on the proposal. This order approves the proposal.

Rule G-19(b) provides that, before making a recommendation to a customer, a securities professional must determine that the securities are a suitable investment for that customer. The rule specifies that a suitability determination shall be based upon, among other things, information furnished by the customer relating to its "financial background, tax status and investment objectives and any other similar information." In 1987, the Board adopted and the SEC approved an amendment to rule G-8(a)(xi) to require the recordkeeping of suitability information for customer accounts required to be obtained by rule G-19.

The MSRB stated, however, that because of a cross-referencing problem in the rule, rule G-8(a) did not require dealers to keep suitability records for institutional accounts, yet dealers are required to comply with rule G-19 when making recommendations to institutional customers. Therefore, the Board proposed the amendment to rule G-8(a)(xi) to require the recordkeeping of suitability information for institutional accounts.

The Commission agrees with the Board that the amendment would provide additional protection by facilitating a dealer's discharge of its suitability responsibilities and would assist municipal securities principals and regulatory examiners in reviewing transactions for compliance with rule G-19. Thus, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB. In particular, the Commission believes that the proposal is consistent with section 15B(b)(2)(C), which requires MSRB rules to, among other things, be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that File No. SR-MSRB-88-4, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3 (12).

Jonathan G. Katz,

Secretary.

Dated: February 7, 1989.

[FR Doc. 89-3406 Filed 2-13-89; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Incorporated

February 8, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Genesco, Inc.
Common Stock, $1.00 Par Value (File No. 7-4184)
Shawmut National Corporation
Common Stock, $.01 Par Value (File No. 7-4185)
Service Merchandise Co., Inc.
Common Stock, $.50 Par Value (File No. 7-4188)
Fleming Companies, Inc.
Common Stock, $2.50 Par Value (File No. 7-4187)
Grow Group, Inc.
Common Stock, $.10 Par Value (File No. 7-4188)
Hong Kong Telecommunications, Ltd.
American Depositary Shares (File No. 7-4189)
L.A. Gear, Inc.
Common Stock, No Par Value (File No. 7-4190)
Environmental Treatment & Technologies Corporation
Common Stock, $.10 Par Value (File No. 7-4191)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 2, 1989, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Divison of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-3404 Filed 2-13-89; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

February 8, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Katema, Inc.
Common Stock, $1.00 Par Value (File No. 7-4192)
Cyprus Minerals Company
Common Stock, No Par Value (File No. 7-4193)
InterTan Inc.
Common Stock, $1 Par Value (File No. 7-4194)
Southwest Gas Corporation
Common Stock, $1 Par Value (File No. 7-4195)
Lyondell Petrochemical Company
Common Stock, $1 Par Value (File No. 7-4196)
Telecom USA, Inc.
Common Stock, $0.01 Par Value (File No. 7-4197)
Premier Industrial Corporation
Common Stock, Without Par Value (File No. 7-4198)
The Shell Transport & Trading Co. PLC
Depositary Receipts (File No. 7-4199)
Illinois Central Transportation Co.
Common Stock, $0.01 Par Value (File No. 7-4200)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 2, 1989, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-3405 Filed 2-13-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16799; 812-7151]

Aegon, N.V.; Application

February 7, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Aegon, N.V.

Relevant 1940 Act Sections: Applicant seeks an order under section 6(c) from all provisions of the 1940 Act.

Summary of Application: Applicant seeks an order granting exemption from all provisions of the 1940 Act in connection with the offer and sale of its equity and debt securities in the United States.

Filing Date: The application was filed on October 18, 1988 and amended on February 3, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on March 6, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, c/o Troland S. Link, Esq., Davis Polk & Wardwell, 1 Chase Manhattan Plaza, New York, New York 10005.

BEST COPY AVAILABLE

FOR FURTHER INFORMATION CONTACT: Barbara Chretien-Dar, Staff Attorney, at (202) 272–3022 or Stephanie Monaco, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the Application; the complete Application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representation

1. The Applicant is an insurance holding company engaged through its operating subsidiaries and affiliates in the life, accident and health and general insurance businesses. Applicant is the second largest insurance company in The Netherlands and one of the ten largest insurance companies in the European Economic Community. Applicant engages in insurance operations in the United States through its wholly-owned insurance company subsidiaries. Applicant also engages in life insurance activities in the United Kingdom, Belgium, Spain, the Netherlands Antilles, Aruba and Suriname through insurance brokers. Applicant is also involved in certain related businesses, including mortgage financing, property management and development, and equipment leasing. These non-insurance businesses accounted for approximately ten percent of Applicant's total revenues in 1987.

2. In 1987, total revenues for Applicant were Dfl. 9,162,310,000 (approximately U.S. $4,531,311,000 at the exchange rate in effect on December 31, 1987), of which 60% was earned by its Netherlands operations and 32% by its United States operations.

3. Applicant's shares are listed on the Amsterdam, London, Tokyo, Geneva, Basel and Zurich Stock Exchanges and, since June 27, 1985, have been listed on NASDAQ. As of September 30, 1988, Applicant had 36,547,647 common shares outstanding, of which 251,728 were registered shares on NASDAQ.

4. Applicant, directly or through its subsidiaries, is subject to regulation by The Netherlands' Insurance Control Board which imposes licensing, audits, financial and reporting requirements under the Insurance Supervision Act. The Central Bank of The Netherlands supervises Applicant's mortgage banking activities. Applicant's United States insurance subsidiaries are subject to regulation and supervision in the states in which they transact business. In each of these subsidiaries' domiciliary states, statutes and regulations governing insurance holding companies require periodic disclosure of controlling persons. In addition, Applicant's United States insurance subsidiaries are subject to insurance company regulation and supervision and in all states (except New York) and the District of Columbia.

5. Applicant wishes to offer and sell its debt and equity securities in the United States. Applicant presently contemplates issuing unsecured, prime quality commercial paper notes ("Notes"). The aggregate principal amount currently contemplated is $300,000,000.00. The proceeds from the Notes, which will have a maturity of not more than 270 days from date of issuance, will be used to finance Applicant's current transactions or will be lent to its wholly-owned subsidiaries for the purpose of funding their current transactions. They will be issued and sold in minimum denominations of $100,000 through major United States commercial paper dealers. Applicant will secure an undertaking from each such dealer that the Notes will be sold to institutional investors and other entities and individuals who normally purchase commercial paper notes and that the Notes will not be offered for sale to the general public. The debt obligations will be direct liabilities of Applicant and will rank *pari passu* among themselves and equally with all other unsecured and unsubordinated indebtedness of Applicant and will be superior to rights of shareholders.

6. Applicant will provide any dealer of such Notes with sufficient information to prepare, and undertakes to insure that the dealers will provide each offeree of the Notes with, a memorandum (the "offering memorandum") which describes the respective business of Applicant and contains the most recently available prepared financial statements of the Applicant, audited in accordance with generally accepted accounting principles of The Netherlands. In addition, the offering memorandum will contain a description of any material differences between Dutch accounting standards applicable to Dutch insurance companies and generally accepted accounting principles employed by United States insurance companies. The offering memorandum will be at least as comprehensive as those customarily used in commercial paper offerings in the United States and will be updated periodically to reflect material changes in Applicant's business or financial status.

7. The Applicant will not issue or sell any such Notes until it has received an opinion by its United States counsel that the Notes will qualify for exemption from registration under section 3(a)(3) of the Securities Act of 1933 (the "1933 Act"), as amended.

Applicant's Legal Analysis

Exempting Applicant from all provisions of the 1940 Act in connection with the issuance and sale in the United States of equity or debt securities is necessary or appropriate in the public interest; is consistent with the protection of investors; and is consistent with the purposes fairly intended by the 1940 Act. Absent an exemption, Applicant would be effectively precluded from selling securities in the United States because of the costs and burdens involved in registering as an investment company. Applicant's major competitors are domestic insurance companies which are exempt from the provisions of the 1940 Act. Furthermore, Applicant is subject to significant Dutch and other regulations as an insurance holding company and investors would receive the benefits afforded by such regulation in addition to United States laws relating to investor protection.

Applicant's Conditions

1. Applicant undertakes that any future offering of debt or equity securities, other than the Notes, will only be made if (a) the securities are registered under the 1933 Act, (b) in the opinion of United States counsel for Applicant an exemption from registration is available with respect to such offer and sale, or (c) the staff of the Commission states that it would not recommend that the Commission take any action under the 1933 Act if such securities are not registered. Applicant undertakes to provide to any person to whom it offers the Notes or other such securities in the United States (and undertakes to insure that any underwriter or dealer through whom it offers such securities will provide to any offerees) disclosure documents which are at least as comprehensive in their description of such Applicant and its business as those customarily used in United States offerings of such securities and which will contain the most recently available audited financial statements of the Applicant, including a description of any material differences between the accounting principles applied in the preparation of such financial statements and generally accepted accounting principles utilized in the United States. Such disclosure documents will be updated promptly to reflect any material changes in the financial condition of Applicant.

2. The proposed issue of the Notes and any future issues of any debt securities shall have received, prior to issuance, one of the three highest investment grade ratings from at least one of the nationally recognized United States investment rating organizations; provided, however, that no such rating shall be required when, in the opinion of Applicant's United States counsel (after taking into account the doctrine of "integration" as referred to in various releases by the Commission), an exemption from registration is available under section 4(2) of the 1933 Act. The United States counsel for the Applicant shall certify the receipt of such investment grade rating.

3. In the event of an offering in the United States of debt securities denominated in a currency other than United States dollars, Applicant undertakes to set forth in the prospectus or memorandum relating to such offering (i) the rate of exchange between currency in which the securities are denominated and United States dollars as of a recent date and (ii) appropriate disclosure of the risks to investors regarding the potential for exchange rate fluctuations.

4. In connection with the Notes or any future offering of securities in the United States by Applicant, Applicant will appoint an agent to accept service of process in any suit, action or proceeding brought on the securities or with respect to any disclosure documents prepared in connection therewith and instituted in any state or Federal court by the holder of any securities. The applicant will expressly submit to the jurisdiction of the New York State and United States Federal courts sitting in The City of New York with respect to any such suit, action or proceeding. Such appointments of an agent to accept service of process and such consents to jurisdiction shall be irrevocable until all amounts due and to become due in respect thereof have been paid. No such submission to jurisdiction or appointment of agent for service of process will affect the right of a holder of any such security to bring suit in any court which shall have jurisdiction over Applicant by virtue of the offer and sale of such securities or otherwise.

5. Applicant, through its subsidiaries, has a significant presence in the United States and presently has no intention either to curtail its insurance operations in the United States or to reduce or otherwise dispose of its ownership interests in its United States insurance company subsidiaries. In the event that Applicant is no longer (directly or through its subsidiaries) regulated as an insurance company in the United States, it will continue to comply with the undertakings set forth in paragraph 4 above concerning its submission to jurisdiction and appointment of an agent for service of process, until such time as there will be no holder in the United States of its debt or equity securities or commercial paper issued in reliance upon any order made pursuant to this Application. Applicant will issue debt or equity securities or commerical paper in the United States only so long as it is supervised and regulated as an insurance company by the Netherlands Insurance Board, and with respect to its United States operations, is regulated (directly or through its subsidiaries) by state insurance authorities having the power of supervision over insurance companies in the United States. Applicant represents that it has no present intention of curtailing its insurance operations in The Netherlands.

6. Applicant will maintain, in one place, all the documents and records relating to this Application and required under the conditions set forth herein.

7. Applicant consents to any Commission order being expressly conditioned on its compliance with the undertakings contained in the preceding paragraphs.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–3407 Filed 2–13–89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC–16800; 811–1484]

Northeastern Capital Corp.; Application

February 8, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Northeastern Capital Corporation.

Relevant 1940 Act Sections: Order requested under section 8(f) of the 1940 Act.

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Date: The application was filed on October 25, 1988, and amended on January 19, 1989. Applicant filed a supplemental letter to the application on February 6, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on March 6, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 209 Church Street, New Haven, Connecticut 06509.

FOR FURTHER INFORMATION CONTACT: Barbara Chretien-Dar, Staff Attorney, at (202) 272–3022 or Stephanie Monaco, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the Application; the complete Application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representation

1. Applicant was incorporated under the laws of the State of Connecticut on January 9, 1961, and was licensed as a small business investment company ("SBIC") on March 8, 1961 by the Small Business Administration ("SBA"). Applicant registered as a closed-end, non-diversified management company under the 1940 Act on March 24, 1967.

2. On October 15, 1986, Applicant's Board of Directors approved an Agreement and Plan of Merger (the "Merger Agreement") between Applicant and a wholly-owned subsidiary of BNH Bancshares, Inc. ("BNH"), a Connecticut corporation and bank holding company, under which Applicant would be the surviving corporation and a wholly-owned subsidiary of BNH. The Merger Agreement was amended on June 16, 1987, and submitted to Applicant's shareholders for approval at a special meeting of shareholders on August 21, 1987. The Merger Agreement was approved by 83 percent of the outstanding shares of Applicant. None of Applicant's shareholders exercised statutory rights of dissenters under Connecticut law.

3. As a registered bank holding company under the Bank Holding Company Act of 1956, BNH is subject to

regulation by the Board of Governors of the Federal Reserve System. Regulations under this law permit the acquisition of all the voting stock of an SBIC; provided, however, that the amount of investment by a bank holding company in an SBIC does not exceed five percent of the capital and surplus of its subsidiary banks.

4. Applicable federal regulations also required the SBA's approval of the transfer of Applicant's SBIC license as a result of the change of control resulting from the merger. By letter dated September 10, 1987, the SBA approved the transfer of Applicant's license on condition that (i) BNH increase Applicant's capital by $175,000 immediately, (ii) thereafter, BNH increase Applicant's capital to $1,000,000 as soon as practicable, and (iii) Applicant not pay any cash dividends until its capital reaches $1,000,000.

5. The Banking Commissioner of the State of Connecticut also approved the Merger pursuant to Connecticut law.

6. Pursuant to the terms of the Merge Agreement, on September 28, 1987, each shareholder of Applicant received .85 shares of BNH Common Stock in exchange for each share of Applicant owned at the time of the merger. An aggregate of 40.015 shares of BNH Common Stock was issued along with cash payments for fractional shares in exchange for all the 61,595 outstanding shares of Applicant. Immediately preceding the merger, the aggregate net asset value of Applicant's shares was $312,163.00, representing a per share net asset value of $5.07, and the agreed-upon market value of BNH Common Stock was $16.32 per share. The terms of the Merger Agreement, including the exchange ratio, were the result of arm's length negotiations between Applicant and BNH. In addition to Applicant's net asset value, factors used to determine the price received for Applicant's shares included existing assets, financial condition and resources, operations, management and earnings over a period of years for each company, as well as judgments regarding earnings potential and future values of Applicant and BNH (separately and as a combined enterprise). Both companies contemplated that BNH's additional capital investment of $175,000 would enable Applicant to qualify for additional SBA loans, which would allow Applicant to expand its investment activity and compete more effectively in the marketplace for small business loans.

7. Expenses incurred in connection with the merger, including legal fees, accounting fees, federal and state filing fees, printing and mailing costs, totalled $148,912.00 and were allocated between Applicant and BNH, with Applicant paying $70,620 of those expenses.

8. Applicant is not a party to any litigation or administrative proceeding.

9. Applicant has made filings required under the act, including all N-SAR filings for each semi-annual period for which such filing was required.

10. Applicant intends to continue its business operations as an SBIC through long-term loans from the SBA and short-term bank debt. Applicant presently has only two securityholders (BNH and SBA) and is not making and does not propose to make a public offering of its securities. Applicant states that under the provisions of section 3(c)(1) of the 1940 Act and Rule 3c-2 thereunder, Applicant no longer is an investment company as defined under the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-3453 Filed 2-13-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC — 16801; 812-7078]

Prudential-Bache Global Fund, Inc., et al.; Application

February 8, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order amending a prior order under the Investment Company Act of 1940 ("1940 Act")

Applicants: Prudential-Bache Global Fund, Inc. ("Global Fund"), Prudential-Bache Government Plus Fund, Inc. ("Government Plus Fund"), Prudential-Bache Securities Inc. ("Prudential-Bache"), Prudential Mutual Fund Management, Inc. ("PMF"), and Prudential Mutual Fund Distributors, Inc. ("PMFD").

Relevant 1940 Act Section: Amendment requested to an existing order which granted an exemption under section 6(c) from the provisions of sections 2(a) (32), 2(a) (35), 22(c), and 22(d) and Rule 22c-1 thereunder.

Summary of Application: Applicants seek an order amending an existing order of the SEC dated July 1, 1985 (Investment Company Act Rel. No. 14615), as amended on September 12, 1985 (Investment Company Act Release No. 14718) and on January 11, 1988 (Investment Company Act Rel. No. 16217), which exempted Applicants from the provisions of section 2(a) (32), 2(a) (35), 22(c), and 22(d) of the 1940 Act and Rule 22c-1 thereunder in connection with the imposition and waiver of a contingent deferred sales charge ("CDSC"). The proposed amendment would amend the existing order to the extent necessary to permit the Global Fund, the Government Plus Fund, and any other existing or future registered open-end investment company for which Prudential-Bache or PMF serves as manager or administrator, and for which Prudential-Bache or PMFD serves as distributor and which is sold on substantially the same basis as the Global Fund and the Government Plus Funds (collectively, the "Exempted Funds"), to waive their CDSC under certain circumstances in addition to those allowed by the existing order.

Filing Date: The application was filed on July 21, 1988, and was amended and restated on November 24, 1988 and on January 30, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m., on March 6, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESS: Secretary, SEC, 450 5th Street NW., Washington DC 20549. Applicants, One Seaport Plaza, New York, New York 10292.

FOR FURTHER INFORMATION CONTACT: Jeremy N. Rubenstein, Staff Attorney, at (202) 272-2847, or H.R. Hallock, Jr., Special Counsel, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier, who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. The existing order, as amended, exempts the Exempted Funds from the provisions of section 2(a) (32), 2(a) (35), 22(c), and 22(d) of the 1940 Act and Rule 22c-1 thereunder to the extent necessary to permit the assessment (and waiver and reduction in certain cases) of a CDSC on certain redemptions of their shares. Currently, the manager for both the Global Fund and the Government Plus Fund (together, "Funds") is PMF, an affiliate of Prudential-Bache. The distributor of the Funds' shares is Prudential-Bache.

2. As amended to date, the existing order permits an Exempted Fund to waive a CDSC with respect to (i) certain redemptions following the death or disability (as defined in Section 72(m) (7) of the Internal Revenue Code ("Code")) of a stockholder; (ii) redemptions made in connection with certain distributions, transfers and rollovers from Individual Retirement Accounts and other types of retirement plans; (iii) redemptions made in connection with certain profit-sharing or stock bonus plans upon "hardship" of the employee, as determined by the plan, subject to review by the Exempted Fund's administrator or manager; (iv) redemptions of shares purchased through reinvestment of dividends or distributions of other specified Exempted Funds; (v) redemptions following a qualified domestic affairs order, as defined in section 414(p) of the Code; and (vi) redemptions effected by a stockholder of an Exempted Fund who is a client of a Prudential-Bache Account Executive and who purchased shares of the Exempted Fund with the redemption proceeds of shares of a registered investment company sponsored by the Account Executive's previous employer within ninety days of commencement of the Account Executive's employment with Prudential-Bache. The existing order, as amended to date, also permits an Exempted Fund to reduce the CDSC in the case of a redemption by a shareholder who, alone or together with certain other affiliated stockholders, has purchased a specified minimum amount of shares in one or more of the Exempted Funds.

3. Applicants propose that the CDSC be waived, in addition to those waivers permitted by the existing order, with respect to (a) redemptions effected by a stockholder of an Exempted Fund who is an employee of the Prudential Insurance Company of America or one of its affiliates, or a director or trustee of an Exempted Fund at the time of the purchase of shares of an Exempted Fund; and (b) redemptions effected by a stockholder of an Exempted Fund who is a participant in a retirement plan account qualifying under section 401(k) of the Code (a "401(k) Account") who acquired shares of an Exempted Fund with amounts used to repay a loan from the 401(k) Account, and who, in order to make the loan, redeemed shares of an Exempted Fund.

4. Applicants submit that the proposed waivers of the CDSC are consistent with the policies underlying section 22(d), which prohibits a registered investment company from selling its redeemable securities other than at a current public offering price described in the company's prospectus. Applicants also believe that the proposed waivers of the CDSC will not harm Applicants or their shareholders or unfairly discriminate among shareholders or purchasers.

Applicants' Conditions

In addition to the representations and conditions already applicable to the existing order, as amended, Applicants agree that the following conditions may be imposed on any order of the SEC granting the requested relief:

1. The Exempted Funds will comply with the provisions of Rule 12b-1 under the 1940 Act as they are now in effect and as they may be revised in the future.

2. The Exempted Funds will comply with the provisions of Rule 22d-1 under the 1940 Act.

3. The total amount of the CDSC imposed on the redemption of shares of an Exempted Fund, plus the amount of any sales load paid on those shares at the time of purchase, will not exceed, in the aggregate, the maximum sales charge that could have been imposed at the time the shares were purchased under Article III, section 26(d) (or any other applicable section) of the NASD Rules of Fair Practice, as they may be amended from time to time.

4. No person who holds an Exempted Fund out to the public as being "no-load" or who, directly or indirectly, causes an Exempted Fund to be held out to the public as being "no-load" or who uses or directly or indirectly causes the use of terminology that, given the context and presentation, is likely to convey to investors the impression that no charges for sales or promotional expenses are imposed on shares issued by an Exempted Fund, shall be entitled to the exemptions provided by the order requested hereby.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-3454 Filed 2-13-89; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Application No. 02/02-5516]

Flushing Capital Corp.; Application for a Small Business Investment Company License

An application for a license to operate a small business investment company under provisions of section 301(d) of the Small Business Investment Act of 1958, as amended, (the Act), (15 U.S.C. 661. et. seq.) has been filed by Flushing Capital Corporation, 137-80 Northern Boulevard, Flushing, New York 11354 (Applicant), with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1988).

The officers, directors and sole shareholder of the Applicant are as follows:

Name	Title or relationship	% of ownership
Frank J. Mitchell, 17 Griffith Road, Riverside, CT 06878.	President, CEO, Director.	
Tetsuro Takada, 95-40 112th Street, Richmond Hill, NY 11419.	Secretary, Treasurer, Director.	
Makoto Oyama, 83-112 Queens Boulevard, Apt. B-1, Woodside, NY 11377.	Director	
Nippan Daido U.S.A., Inc., 137-80 Northern Boulevard, Flushing, NY 11354.	Sole Shareholer, Manager.	100
Jentai Tsai, 200 Winston Drive, Apt. 2619, Cliffside Park, NJ 07010.	50% shareholder of Nippan Daido, U.S.A., Inc.	
Nippan Shuppan, 1123 Dominquez St., Carson, CA 90746.	50% shareholder of Nippan Daido, U.S.A., Inc.	

The Applicant, a New York Corporation, will begin operations with $1,000,000 paid-in capital and paid-in surplus. The Applicant will conduct its activities primarily in the State of New York, but will consider investments in businesses other areas in the United States.

As an SBIC licensed to operate under section 301(d) of the Act, Applicant will provide financial and managerial assistance solely to small business concerns which will contribute to a well balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the Application include the general business reputation and character of the proposed owner and mangement, and the probability of successful operations of the company under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" St., NW., Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in Flushing, New York.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated. February 2, 1989.

[FR Doc. 89-3437 Filed 2-13-89; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 09/09-5381]

Western General Capital Corp.; Application for License To Operate as Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1988)) by Western General Capital Corporation, 13701 Riverside Drive, Suite 310, Sherman Oaks, California 91423 for a license to operate as a small business investment company (SBIC) under the provisions of section 301(d) of the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 *et seq.*).

The proposed officers, directors, and shareholders of the Applicant are as follows:

Name	Title or relationship	Percentage of shares owned
Yee Phong Thian, 2314 Flintridge Drive, Glendale, CA 91206	President, Director, Shareholder	20
Yee Chin Thian, 2309 Flintridge Drive, Glendale, CA 91206	Director, Shareholder	20
Ting Liu, 19839 Hiawatha Street, Chatsworth, CA 91311	Shareholder [1]	20
Esther Liu, 19839 Hiawatha Street, Chatsworth, CA 91311	Shareholder [1]	
Ping Chih Wu, 567 Peralta Hills Drive, Anaheim, CA 92807	Shareholder	20
Ko Yen Lin, 4231 Balcony Drive, Woodland Hills, CA 91364	Secretary, Treasurer, Director, Shareholder	10
Yukiyo Matsumura, 4215 Balcony Drive, Woodland Hills, CA 91364	Shareholder	10

[1] Shares held jointly as husband and wife.

The Applicant, a California corporation, will begin operations with $1,000,000 of paid-in capital and paid-in surplus. The Applicant will conduct its activities principally in Southern California.

As an SBIC under section 301(d) of the Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Small Business Investment Act of 1958, as amended, from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the Applicant include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the Applicant under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than 15 days from the publication of this notice, submit to SBA written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, DC 20416.

A copy of the Notice shall be published in a newspaper of general circulation in the Sherman Oaks, California area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: Feburary 2, 1989.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 89-3438 Filed 2-13-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 1085]

State Department Performance Review Board Members

In accordance with section 4314(c)(4) of the Civil Service Reform Act of 1978 (Pub. L. 95-454), the Executive Resources Board of the Department of State has appointed the following members to the State Department Performance Review Board register.

Joseph H. Linneman, Associate Comptroller, Office of the Comptroller

John P. Boright, Director, Office of Nuclear Technology and Safeguards

Alan J. Kreczko, Deputy Legal Adviser, Office of the Legal Adviser

Mark M. Lowenthal, Office Director, Office of Strategic Forces Analysis, Bureau of Intelligence and Research

Gloria Gaston-Shapiro, Public Member.

Date: February 6, 1989.

George S. Vest,

Director General, Foreign Service and Director of Personnel.

[FR Doc. 89-3415 Filed 2-13-89; 8:45 am]

BILLING CODE 4710-15-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular—Airplane Flight Manual

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed advisory circular and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular (AC) concerning the form and content of the approved and unapproved portions of the FAA-approved Airplane Flight Manual (AFM).

DATES: Comments must be received on or before May 15, 1989.

ADDRESS: Send all comments on the proposed AC to the Federal Aviation Administration, Attention: Transport Standards Staff, ANM-110, Transport Airplane Directorate, Aircraft Certification Service, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. Comments may be inspected at the above address between 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Patricia Siegrist, Regulations Branch, ANM-114, at the above address, telephone (206) 431-2126.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the subject AC may be obtained by contacting the person named above under **"FOR FURTHER INFORMATION CONTACT"**. Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters must identify the subject of the AC and submit comments in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Transport Standards Staff before issuing the final AC.

Discussion

The primary purpose of the FAA-approved Airplane Flight Manual is to provide an authoritative source of information considered to be necessary for or likely to promote safe operation of an airplane. The AFM provides a variety of information necessary for safe operation of an airplane under normal and emergency conditions. Operating limitations and procedures, and performance and loading information constitute the normal makeup of the AFM. Historically, the AFM was directed to the needs and convenience of the flightcrew. The language and presentations in the manual were in consideration of the user. As the commercial transport aircraft industry continued to develop, becoming more technologically sophisticated and complex, so did the AFM. Because of this complexity, a number of manufacturers have modified the presentation of data available in the AFM to enhance its utility for the flightcrew. In this case, the AFM, rather than being a document directly used by the flightcrew, has developed into a reference document whose presentation is substantially modified to improve utilization in the format of the flightcrew operations manual.

The purpose of the proposed AC is to define the information required in the AFM by the applicable airworthiness regulations and to provide further guidance as to the form and content of both the approved and unapproved portions of the AFM.

Issued in Seattle, Washington, on January 12, 1989.

Darrell M. Pederson,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-3389 Filed 2-13-89; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-89-5]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before March 6, 1989.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on February 7, 1989.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 25089
Petitioner: Hawkins & Powers Aviation, Inc.
Regulations Affected: 14 CFR 137.53(c)(2)
Description of Relief Sought: To allow petitioner to conduct aerial applications of insecticide materials from C-118A (DC-6) aircraft, without the aircraft being equipped with a device capable of jettisoning at least one-half of the aircraft's maximum authorized load of agricultural materials within 45 seconds when operated over congested areas.

Docket No.: 25120
Petitioner: Singapore Airlines Limited
Sections of the FAR Affected: 14 CFR 21.197(c)
Description of Relief Sought: To extend Exemption No. 4792 that allows petitioner a special flight permit with a continuing authorization for aircraft that may not meet applicable airworthiness requirements but are capable of safe flight for the purpose of flying such aircraft to a base where maintenance or repairs are to be performed. Exemption No. 4792 will expire on May 31, 1989.

Docket No.: 25750
Petitioner: Troy Air
Sections of the FAR Affected: 14 CFR 43.3(g)
Description of Relief Sought: To allow trained and qualified pilots employed by petitioner to remove and install passenger seats and seat belts of aircraft used in petitioner's Part 135 operations.

Docket No.: 23178
Petitioner: Tenneco Inc.
Sections of the FAR Affected: 14 CFR 91.169(a)

Description of Relief Sought/ Disposition: To extend Exemption No. 3691B that allows the inspection of helicopters owned or operated by petitioner and all its subsidiaries to take place under the provisions of § 91.169(e) and (4).
Grant, January 28, 1989, Exemption No. 3691C

Docket No.: 25080
Petitioner: Aeroservice Aviation Center, Inc.
Regulations Affected: 14 CFR 61.63(d) (2) and (3); 61.157(d) (1) and (2) and (e) (1) and (2); Part 61, Appendix A; and Part 121, Appendix H
Description of Relief Sought/ Disposition: To amend and extend Exemption No. 4745 that allows petitioner and persons who contract for services from petitioner to use the FAA-approved simulators to meet certain training and testing requirements.
Grant, January 31, 1989, Exemption No. 4745A

Docket No.: 25782
Petitioner: Air L.A.
Sections of the FAR Affected: 14 CFR 135.337(a)(2) and 135.339(c)(1)
Description of Relief Sought/ Disposition: To allow petitioner to use certain instructor pilots of British Aerospace Corporation to train petitioner's initial cadre of pilots in the British Aerospace Jetstream 31 (BA–3201) type airplane without holding U.S. certificates and ratings and without meeting all of the applicable training requirements of Subpart H of Part 135.
Grant, January 31, 1989, Exemption No. 5014

[FR Doc. 89–3370 Filed 2–13–89; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: February 8, 1989.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0721
Form Number: None
Type of Review: Extension
Title: Special Limitation Period for Federally Registered Partnerships
Description: The information required under the regulation is needed by the IRS to determine the period of limitation for assessing a deficiency with respect to partners whose names or addresses do not appear on the partnership return and to determine the validity of any agreement to extend this period
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 120
Estimated Burden Hours Per Response: 30 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 60 hours
Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,
Departmental Reports Management Officer.
[FR Doc. 89–3397 Filed 2–13–89; 8:45 am]
BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: February 8, 1989.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Bureau of the Public Debt

OMB Number: New
Form Number: PD 5291
Type of Review: New collection
Title: Subscription for Purchase and Issue of U.S. Treasury Special Zero Interest Securities—State and Local Government Series (plus Schedule 1 for Certificates of Deposit and Schedule 2 for Notes)
Description: The information is necessary to establish the accounts for owners of Special Zero Interest Time Deposit Securities of State and Local Government Series
Respondents: State and local governments
Estimated Number of Respondents: 500
Estimated Burden Hours Per Response: 1 hour
Frequency of Response: On occasion
Estimated Total Reporting Burden: 500 hours

OMB Number: New
Form Number: PD 4144, 4144–1, 4144–2, and 4144–3
Type of Review: New collection
Title: Subscription for Purchase and Issue of U.S. Treasury Time Deposit Securities—State and Local Government Series (Plus Schedule 1 for Certificates of Indebtedness, Schedule 2 for Notes and Schedule 3 for Bonds)
Description: The information collected is necessary to establish the accounts for owners of Time Deposit Securities of State and Local Government Series
Respondents: State and local governments
Estimated Number of Respondents: 5,000
Estimated Burden Hours Per Response: 1
Frequency of Response: On occasion
Estimated Total Reporting Burden: 5,000 hours

OMB Number: 1535–0005
Form Number: PD 3253
Type of Review: Reinstatement
Title: Exchange Subscription for United States Savings Bonds of Series HH
Description: Form used by owners of bonds of Series EE/E or Notes to request exchange for Series HH Savings Bonds
Respondents: Individuals or households
Estimated Number of Respondents: 68,000
Estimated Burden Hours Per Response: 45 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 51,000 hours

OMB Number: 1535–0014
Form Number: PD 1025
Type of Review: Reinstatement
Title: Application for Relief on Account of Loss, Theft or Destruction of United States Registered Securities
Description: The form is needed and required by the Bureau in order to obtain compensation. It is generally used by parties that have purchased securities or the owner of registered securities when such securities are no longer in their possession legally
Respondents: Individuals or households
Estimated Number of Respondents: 325
Estimated Burden Hours Per Response: 55 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 300 hours

OMB Number: 1535–0023
Form Number: PD 4000
Type of Review: Extension
Title: Request by Owner for Reissue of U.S. Savings Bonds/Notes to Add Beneficiary or Coowner, Eliminate Beneficiary or Decedent, Show Changes of Name, and/or Correct Error in Registration
Description: This form is used by owners to identify securities for which reissue is requested and to indicate the new registration required
Respondents: Individuals or households
Estimated Number of Respondents: 600,000
Estimated Burden Hours Per Response: 30 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 300,000 hours

OMB Number: 1535–0051
Form Number: PD 1001
Type of Review. Reinstatement
Title: Power of Attorney for Individuals Authorizing Disposition of Registered Transferable Securities
Description: Form PD 1001 is used as a request by the owner of a Treasury security. He/she uses the form to lessen the paperwork legally necessary to appoint an attorney-in-fact to handle any transaction involving the registered owner's or co-owner's Treasury securities
Respondents: Individuals or households
Estimated Number of Respondents: 360
Estimated Burden Hours Per Response: 30 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 180 hours

OMB Number: 1535–0067
Form Number: PD 974
Type of Review: Reinstatement
Title: Certificate by Owner of United States Registered Securities Concerning Forged Requests for Payment or Assignments
Description: This form may be used by the owner, coowner or joint owner to certify that the signature was forged to request a payment or an assignment of registered United States securities or registered securities for which the Department of the Treasury acts as transfer agency
Respondents: Individuals or households
Estimated Number of Respondents: 3,000
Estimated Burden Hours Per Response: 15 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 750 hours

OMB Number: 1535–0064
Form Number: PD 5283
Type of Review: Reinstatement
Title: Order for Series EE, U.S. Savings Bonds
Description: Form PD 5283 is needed to indicate registration, number and denomination of Series EE, U.S. Savings Bonds to be purchased. This form is also used to document the request for issuance
Respondents: Individuals of households, State or local governments, Farms, Businesses or other for-profit
Estimated Number of Respondents: 1,000,000
Estimated Burden Hours Per Response: 4 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 74,615 hours
Clearance Officer: Nancy Veret, (202) 376–3902, Bureau of the Public Debt, Room 445, 999 E Street NW., Washington, DC 20226
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503

Dale A. Morgan
Departmental Reports Management Officer.
[FR Doc. 89–3398 Filed 2–13–89; 8:45 am]
BILLING CODE 4810-25-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit "Seventeenth Century Netherlandish Paintings from Switzerland: Work of the Briner Foundation and the Kuntsmuseum, Winterthur and the Musee D'Art et D'Histoire, Geneva" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. I also determine that the temporary exhibition or display of the listed exhibit objects at the Allen Memorial Art Museum, Oberlin College, Oberlin, Ohio, beginning on or about February 28, 1989 to on or about April 23, 1989, the Allentown Art Museum, Allentown, Pennsylvania, beginning on or about May 28, 1989 to on or about August 6, 1989, the Bass Museum of Art, Miami Beach, Florida, beginning on or about September 1, 1989 to on or about October 29, 1989, the Crocker Art Museum, Sacramento, California, beginning on or about November 18, 1989 to on or about January 7, 1990, the Douglas F. Cooley Memorial Gallery, Reed College, Portland, Oregon, beginning on or about January 26, 1990 to on or about March 25, 1990, and the Meadows Museum, Southern Methodist University, Dallas, Texas, from on or about April 22, 1990 to on or about August 1, 1990, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**.

Date: February 7, 1989.

R. Wallace Stuart,
Acting General Counsel.
[FR Doc. 89–3396 Filed 2–13–89; 8:45 am]
BILLING CODE 8230-01-M

[1] A copy of this list may be obtained by contacting Ms. Lorie Nierenberg of the Office of the General Counsel, USIA. The telephone number is (202) 485–8627, and the address is Room 700, U.S. Information Agency, 301–4th Street, SW., Washington, DC 20547.

Sunshine Act Meetings

Federal Register
Vol. 54, No. 29
Tuesday, February 14, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 1:00 a.m., Tuesday, February 21, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: February 10, 1989.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 89-3560 Filed 2-10-89; 4:07 pm]
BILLING CODE 6210-01-M

COMMISSION ON MERCHANT MARINE AND DEFENSE

SUMMARY: The Commission on Merchant Marine and Defense was established by Pub. L. 98-525 (as amended), and the Commission was constituted in December 1986. The Commission's mandate is to study and report on problems relating to transportation of cargo and personnel for national defense purposes in time of war or national emergency, the capability of the Merchant Marine to meet the need for such transportation, and the adequacy of the shipbuilding mobilization base to support naval and merchant ship construction. In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the Commission announces the following meeting:

DATES AND TIMES: Thursday, February 16, 1989, Beginning 9:00 a.m.

PLACE: Suite 520, 4401 Ford Avenue, Alexandria, Virginia, 22302-0268.

TYPE OF MEETING: Closed.

CONTACT PERSON: Allan W. Cameron, Executive Director, Commission on Merchant Marine and Defense, Suite 520, 4401 Ford Avenue, Alexandria, Virginia 22302-0268, Telephone (202) 756-0411.

PURPOSE OF MEETING: To discuss the work of the Commission and to deliberate facts and opinions obtained from briefings and public hearings.

SUPPLEMENTARY INFORMATION: The executive meetings of the Commission will be closed to the public pursuant to 5 U.S.C. 552b(c)(1) and 552b(c)(4) in the interests of national security and to protect proprietary information provided to the Commission in confidence.

Allan W. Cameron,
Executive Director, Commission on Merchant Marine and Defense.

[FR Doc. 89-3550 Filed 2-10-89; 4:06 pm]
BILLING CODE 3820-01-M

NATIONAL MEDIATION BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 54 FR 1470.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 2:00 p.m., Wednesday, February 8, 1989.

CHANGES IN THE MEETING: Meeting date changed to 2:00 p.m., Wednesday, February 15, 1989.

SUPPLEMENTARY INFORMATION: Chairman Walter C. Wallace and Board Member Joshua M. Javits have determined by recorded vote that Agency business required this change and that no earlier announcement of such change was possible.

CONTACT PERSON FOR MORE INFORMATION: Mr. Charles R. Barnes, Executive Director, Tel: (202) 523-5920.

Date of notice: February 7, 1989.

Charles R. Barnes,
Executive Director, National Mediation Board.

[FR Doc. 89-3496 Filed 2-10-89; 11:16 am]
BILLING CODE 7550-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of February, 13, 20, 27, and March 6, 1989.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of February 13

Friday, February 17

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of February 20—Tentative

Tuesday, February 21

2:00 p.m.
Oral Argument on Sanction Issued in Shoreham Proceedings (Public Meeting) (postponed from February 10)

Wednesday, February 22

10:00 a.m.
Briefing on Final Rule on Early Site Permits; Standard Design Certification; and Combined Licenses for Nuclear Power Reactors (Public Meeting)

Thursday, February 23

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of February 27—Tentative

Monday, February 27

10:00 a.m.
Briefing on the Status of NUREG-1150 (Public Meeting)
2:00 p.m.
Briefing on Final Report on BWR Mark I Containment Issues (Public Meeting)

Wednesday, March 1

9:30 a.m.
Briefing on Status of Performance Indicator Development (Public Meeting)

Thursday, March 2

10:00 a.m.
Briefing on Importing and Exporting of Radioactive Waste (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) if needed

Week of March 6—Tentative

Monday, March 6

2:30 p.m.
Briefing on Status of Generic Issues (Public Meeting)

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (301) 492-0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492-1661.

William M. Hill, Jr.,
Office of the Secretary.
February 9, 1989.

[FR Doc. 89-3539 Filed 2-10-89; 2:34 pm]
BILLING CODE 7590-01-M

UNITED STATES POSTAL SERVICE

Board of Governors

Notice of Vote To Close Meeting

At its meeting on February 6, 1989, the Board of Governors of the United States Postal Service unanimously voted to close to public observation a portion of the meeting. The portion to be closed was to involve discussion concerning the lease of a postal facility in Westchester County, New York.

The Board determined that pursuant to 5 U.S.C. 552b(c)(9)(B), discussion of that portion of the meeting to be closed was exempt from the open meeting requirement of the Government in the Sunshine Act, (5 U.S.C. 552b(b)), on the grounds that the public interest did not require otherwise and that portion to be closed was likely to disclose information whose premature disclosure was likely to significantly frustrate the negotiation of the proposed lease.

Prior to the February 6 meeting, the Board of Governors gave due notice of its intention to hold the meeting, the notice and the proposed agenda for the meeting having been published in the **Federal Register** on January 27, 1989 (54 FR 4108). On February 6, the Board determined by a unanimous vote that an addition to the agenda was required and that no earlier announcement of the new item was possible.

In accordance with 5 U.S.C. 552b(f)(1), the General Counsel of the United States Postal Service certified that in his opinion the portion of the meeting to be closed might properly be closed to public observation pursuant to 5 U.S.C. 552b(c)(9)(B).

The persons who attended this portion of the meeting were Board members; Alvarado, del Junco, Griesemer, Hall, Mackie, Nevin, Ryan and Setrakian; Postmaster General Frank; Deputy Postmaster General Coughlin; Secretary to the Board Harris; and General Counsel Cox.

David F. Harris,
Secretary.

[FR Doc. 89-3562 Filed 2-10-89; 4:07 pm]
BILLING CODE 7715-12-M

Corrections

Federal Register
Vol. 54, No. 29
Tuesday, February 14, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

[WH-FLR-3509-8]

State and Local Assistance; Grants for Construction of Treatment Works (Title II) and State Water Pollution Control Revolving Funds (Title VI) Under the Clean Water Act

Correction

In notice document 89-1793 beginning on page 3843 in the issue of Thursday, January 26, 1989, make the following correction:

On page 3845, in the table, in the entry for Virgin Islands, FY 89 State allotment, Title VI, "4967,500" should read "496,500".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 107

[Docket No. 87N-0082]

Infant Formula Recall Requirements

Correction

In rule document 89-1719 beginning on page 4006 in the issue of Friday, January 27, 1989, make the following correction:

On page 4007, in the third column, under **Environmental Impact**, in the fourth line, "52 FR 3017" should read "52 FR 30171".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Diethylcarbamazine Citrate, Oxibendazole Chewable Tablets

Correction

In rule document 89-1720 beginning on page 3775 in the issue of Thursday, January 26, 1989, make the following correction:

§ 520.623 [Corrected]

On page 3776, in the first column, in § 520.623(c)(2), in the second line, "*Driofilaria*" should read "*Dirofilaria*".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 880

[Docket No. 88N-0044]

Medical Devices; Patient Examination Glove; Revocation of Exemptions From the Premarket Notification Procedures and the Current Good Manufacturing Practice Regulations

Correction

In rule document 89-626 beginning on page 1602 in the issue of Friday, January 13, 1989, make the following corrections:

1. On page 1603, in the first column, in the third complete paragraph, in the fourth line, "as the an in" should read "as an aid in".

2. On the same page, in the same column, in the fourth complete paragraph, in the second line, "an" should read "and".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 892

[Docket Nos. 87P-0214/CP Through 87P-0214/CP0013]

Magnetic Resonance Diagnostic Device; Panel Recommendations and Report on Petitions for Magnetic Resonance Reclassification and Codification of Reclassification

Correction

In rule document 89-2311 beginning on page 5077 in the issue of Wednesday, February 1, 1989, make the following correction:

On page 5078, in the second column, under **PART 892—RADIOLOGY DEVICES**, in the authority citation, in the third line, "522-559" should read "552-559".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 106

[Docket No. 87N-0402]

Infant Formula Microbiological Testing, Consumer Complaints, and Record Retention Requirements

Correction

In proposed rule document 89-1721 beginning on page 3783 in the issue of Thursday, January 26, 1989, make the following corrections:

1. On page 3783, in the second column, under **FOR FURTHER INFORMATION CONTACT**, in the fourth line, "202-245-3177" should read "202-245-3117".

2. On page 3786, in the 2nd column, in the 1st complete paragraph, in the 35th line, "casual" should read "causal".

§ 106.100 [Corrected]

3. On page 3788, in the third column, in § 106.100(j), in the fourth line, "compliants" should read "complaints".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Countrymark, Inc.; Withdrawal of Approval of NADA's

Correction

In notice document 89-1820 appearing on page 3851 in the issue of Thursday, January 26, 1989, make the following correction:

In the third column, above **SUPPLEMENTARY INFORMATION**, insert the following:

EFFECTIVE DATE: February 6, 1989.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88P-0424]

Liquid Eggs Deviating From the Standard of Identity; Temporary Permit for Market Testing

Correction

In notice document 89-979 beginning on page 1794 in the issue of Tuesday, January 17, 1989, make the following correction:

On page 1794, in the 3rd column, under **SUPPLEMENTARY INFORMATION**, in the 2nd complete paragraph, in the 12th line, "*Literia Monocytogenes*" should read "*Listeria monocytogenes*".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for Representatives of Consumer and Industry Interests on Public Advisory Committees or Panels

Correction

In notice document 89-1696 beginning on page 4080 in the issue of Friday, January 27, 1989, make the following correction:

On page 4081, under "*Device Good Manufacturing Practice Advisory Committee and Technical Electronic Product Radiation Safety Standards Committee*", in the third line, "interest" should read "interests".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for Voting Members on Public Advisory Committees or Panels

Correction

In notice document 89-1899 beginning on page 4032 in the issue of Friday, January 27, 1989, make the following corrections:

1. On page 4083, in the 1st column, under "*Medical Devices Panels*", in the 2nd paragraph, in the 16th line, "change" should read "changed".

2. On the same page, in the 3rd column, under **Nomination Procedures**, in the 14th line, after "candidates", remove the period.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 82M-0072]

Shiley Infusaid, Inc.; Premarket Approval of the Infusaid 100, 200, 400, and 500 Duel Catheter 400 Implantable Pump, and Intraspinal Catheter Kit

Correction

In notice document 89-2312 beginning on page 5140 in the issue of Wednesday, February 1, 1989, make the following correction:

On page 5141, in the first column, under **Opportunity for Administrative Review**, in the third paragraph, the fourth line should read "U.S.C. 360e(d), 360j(h))) and under".

BILLING CODE 1505-01-D

federal register

Tuesday
February 14, 1989

Part II

Department of Education

Office of Special Education and Rehabilitative Services

34 CFR Part 379

Projects With Industry; Notice of Proposed Rulemaking

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

34 CFR Part 379

Projects With Industry

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations in Part 379 governing the Projects With Industry (PWI) program by amending existing regulations, and by adding regulations in a new Subpart F to implement requirements in sections 621(f) and 621(h) of the Rehabilitation Act (Act) as added by Pub. L. 99-506, the Rehabilitation Act Amendments of 1986. The amendments require: that indicators of minimum compliance with program evaluation standards approved by the National Council on the Handicapped be published in the Federal Register; that, beginning with fiscal year 1989, each PWI grantee report to the Secretary at the end of each project year the extent to which it meets the compliance indicators; that continuation funding be provided only to grantees who are carrying out the provisions of their approved grant application and who meet the compliance indicators; and that the Secretary consider geographical distribution of projects and, beginning in fiscal year 1991, past performance of projects in making new grant awards.

DATE: Comments must be received on or before March 31, 1989.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Ann Weinheimer, Acting Director, Policy and Planning Staff, Rehabilitation Services Administration, Mary E. Switzer Building, Room 3220, 330 C Street SW., Washington, DC 20202-2550.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Suzanne Choisser, Rehabilitation Services Administration, Mary E. Switzer Building, Room 3216, 330 C Street SW., Washington, DC 20202-2550. Telephone (202) 732-1337.

SUPPLEMENTARY INFORMATION:

Development of Evaluation Standards and Proposed Compliance Indicators

In accordance with section 621(d) (1), (3) and (4) of the Act, PWI evaluation standards, based on statutory provisions and successful project practices, were developed by the Rehabilitation Services Administration (RSA) and approved by the National Council on the Handicapped. The evaluation standards are published for information purposes only as an appendix to the proposed regulations. As required by section 621(d)(2) of the Act, an evaluation of the PWI program, using the approved evaluation standards, was conducted in 1985. A report on the evaluation was forwarded to Congress in February 1988.

In the Rehabilitation Act Amendments of 1986, Congress added the requirement that the Secretary develop indicators of what constitutes minimum compliance with the evaluation standards. Proposed indicators have been developed based on the PWI evaluation standards and the results of the national PWI program evaluation. Compliance indicators were developed only for those standards that were determined to be measurable: standard 2—individuals served; standard 4—provision of services at minimum cost to the Federal government; and standard 7—project results. The remaining standards (standard 1—project objectives and activities, standard 3—provision of appropriate services, standard 5—advisory council, and standard 6—project relationships) are already implemented in program regulations as application requirements and were determined not to be susceptible to quantifiable measurement.

The National Association of PWI Grantees (I–NABIR) conducted an unofficial mailing of draft PWI indicators to all current program grantees in January 1988. As a result of this mailing RSA received 35 comments on the draft indicators and made some modifications to the indicators based on the comments. RSA then field tested the draft indicators on a sample of PWI projects in March 1988 and made additional changes based on the test results.

Following development of the proposed compliance indicators, a Notice of Information Collection Request was published in the Federal Register on July 1, 1988 (53 FR 25105). The purpose of the notice was to collect data from the current PWI grantees that would enable RSA to develop a proposed minimum performance level for each compliance indicator. Data, varying in completeness, was received from all 108 PWI grantees. Sixty-two grantees submitted complete data.

A proposed performance level was developed for each compliance indicator based upon analysis of the grantee data, consideration of the data collected in the program evaluation in 1985, and the Department's views as to satisfactory grantee performance. A proposed weight was developed for each compliance indicator based on the Department's assessment of the relative importance of each indicator.

Proposed Compliance Indicators, Performance Levels, and Weights

The purpose of these proposed regulations is to propose compliance indicators, and a weight and minimum level of performance for each indicator, to measure the effectiveness of individual projects in critical performance areas. The proposed indicators would be used to evaluate performance to determine whether a grantee's application for continuation funding should be approved. As a measure of past performance, compliance with the indicators would also be a factor in making new awards beginning in fiscal year 1991.

The principles used by the Department in developing the proposed weights and performance levels for the compliance indicators are:

Principles for Weighting (Assigning Points)

- The most important indicators of a PWI project's success are the placement of individuals in competitive jobs at a reasonable cost to the Federal Government. The proposed regulations therefore allocate the greatest number of points to the four indicators measuring placement and cost.
- The proposed regulations put slightly more emphasis on the placement of persons with severe disabilities than on the placement of recipients of Social Security Insurance or Social Security Disability Insurance (SSI or SSDI) and unemployed persons. While it is recognized that some persons who are receiving SSI or SSDI or who are unemployed for at least six months at the time of project entry will also be counted as persons with severe disabilities, the Secretary believes special and separate emphasis needs to be placed on serving persons from all three of these groups because these individuals are the most difficult to place into competitive employment.
- The actual placement rate and the actual cost per placement achieved by a PWI project are more important than a project meeting the placement and cost projections stated in its grant application; however, sufficient weight is placed on projected performance to discourage applicants from proposing overly meager or ambitious project goals.
- The proposed regulations place less emphasis on compliance indicators involving the number and types of persons with disabilities who are served since the results of the services rendered are considered more important and are measured by the project performance (results) indicators.

Principles for Scoring (Minimum Performance Levels)

- A composite scoring system is proposed. This approach would allow projects with different strengths, the principle upon which the PWI program is based, to continue to receive funding. The maximum possible composite score would be 100 points. A minimum composite score of 80 is proposed. This minimum total passing score would allow projects who perform poorly on a few indicators to be eligible for continuation funding or a new award based on past performance if they have met most of the indicators.
- A minimum performance level would be established for each indicator (for example, serve 60 percent of persons who have severe disabilities). If a project meets the minimum performance level for an indicator, it would receive a specified number of points. If it fails to meet the minimum performance level for an indicator, it would receive no points. Thus, grantees would know exactly what minimum level of performance is expected for each compliance indicator, as well as the relative emphasis placed by the Secretary on each indicator.
- A project's performance would be determined by the data it submits from the most recent complete project year. For those PWI projects that do not meet the minimum passing score on the basis of the previous year's performance, the proposed regulations at §379.46(b) provide an additional opportunity for grantees to meet the compliance indicators, and thus qualify for continuation funding, by submitting data from the first six months of the current project year to demonstrate improved performance.

Application of the Compliance Indicators

- Since grant awards under this program are made near the end of the fiscal year with project periods that run concurrent with the following fiscal year, grantees would receive two years of funding before their performance is measured against the compliance indicators. This is because at the time a grantee receives its second year of funding, or its first continuation award, it will not have available a full project year of data. When a grantee submits its application for its third year of funding, or its second continuation award, it must submit project data from the first year of funding.
- The proposed indicators and minimum performance levels would be first applied to continuation grants funded from fiscal year 1990 appropriations, which will be made by September 30, 1990 and will cover the project year that begins October 1, 1990 and ends September 30, 1991. The awards will be based, in part, on grantee compliance with the indicators. The data used to measure performance will be the twelve months of data from the project year running from October 1, 1988 to September 30, 1989 or, if necessary six months of data from October 1, 1989 through March 31, 1990. Grantees were advised in the July 1, 1988 notice that collection of this data was necessary.

Consideration of Prior Performance and Geographical Location

In making new awards, the proposed regulations provide for giving priority to geographic areas among the States that are currently not served or are underserved by PWI projects and for consideration of past performance, if appropriate. This is consistent with statutory language in sections 621 (h)(3) and (i) of the Act.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by these proposed regulations are nonprofit organizations providing services to or conducting activities for persons with disabilities. However, the regulations would not have a significant economic impact on the organizations affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1980

Section 379.46 contains information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of this section to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: James D. Houser.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3220, Switzer Building, 330 C Street SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

List of Subjects in 34 CFR Part 379

Education, Grant programs—education, Grant programs—social programs, Reporting and recordkeeping requirements, Vocational rehabilitation.

Dated: December 27, 1988.

(Catalog of Federal Domestic Assistance Number: 84.128 Projects With Industry)

Lauro F. Cavazos,

Secretary of Education.

The Secretary proposes to amend Part 379 of Title 34 of the Code of Federal Regulations as follows:

PART 379—PROJECTS WITH INDUSTRY

1. The authority citation for Part 379 continues to read as follows:

Authority: 29 U.S.C. 711(c) and 795g, unless otherwise noted.

§ 379.32 [Redesignated from § 379.31]

2. Section 379.31 is redesignated as § 379.32 and a new § 379.31 is added to read as follows:

§ 379.31 What other factors does the Secretary consider in reviewing an application?

In addition to the selection criteria in § 379.30, the Secretary, in making awards under this program, considers—

(a) The geographical distribution of projects among the States and gives priority to geographic areas which are currently not served or are underserved by the Projects With Industry program; and

(b) Beginning with fiscal year 1991, the past performance of the applicant in carrying out a similar Project With Industry under previously awarded grants, as indicated by such factors as compliance with grant conditions, soundness of programmatic and financial management practices, and meeting the requirements of Subpart F of this part.

(Authority: Secs. 621(h)(3) and 621(i) of the Act; 29 U.S.C. 795g(h)(3) and 795g(i))

3. Section § 379.46 is revised to read as follows:

§ 379.46 What are the reporting requirements?

(a) Beginning with fiscal year 1990, each application for continuation funding for the third or any subsequent year of a PWI grant must include data for the most recent complete project year in order for the Secretary to determine if the grantee has met the program compliance indicators established in Subpart F of this part.

(b) If the data for the most recent complete project year provided under paragraph (a) shows that any grantee has failed to achieve the minimum composite score required in § 379.52(e) to meet the program compliance indicators, a grantee may, at its option, submit data from the first six months of the current project year to demonstrate that its project performance has improved sufficiently to meet the minimum composite score.

(Authority: Section 621(f)(2) of the Act; 29 U.S.C. 795g(f)(2))

4. Part 379 is amended by adding a new Subpart F, consisting of §§ 379.50 through 379.53, to read as follows:

Subpart F—What Requirements Must a Grantee Meet to Receive Continuation Funding?

Sec.

379.50 What are the requirements for continuation funding?
379.51 What are the program compliance indicators?
379.52 Are the compliance indicators weighted?
379.53 What are the weights and minimum performance levels for each compliance indicator?

Subpart F—What Requirements Must a Grantee Meet to Receive Continuation Funding?

§ 379.50 What are the requirements for continuation funding?

Beginning with fiscal year 1990, in order to receive a continuation award for the third or any subsequent year of a PWI grant a grantee shall adhere to the provisions of its approved application and shall receive a minimum composite score of at least 60 points on the program compliance indicators contained in § 379.53.

(Authority: Section 621(h)(4)(B) of the Act; 29 U.S.C. 795g(h)(4)(B))

§ 379.51 What are the program compliance indicators?

The program compliance indicators implement program evaluation standards, which are contained in an appendix to this part, by establishing minimum performance levels in essential project areas to measure the effectiveness of individual grantees.

(Authority: Secs. 621(d)(1) and 621(f)(1) of the Act; 29 U.S.C. 795g(d)(1) and 795g(f)(1))

§ 379.52 Are the compliance indicators weighted?

(a) Each compliance indicator is assigned a certain number of points.

(b) If a grantee meets the minimum performance level for a compliance indicator, it will receive the assigned number of points.

(c) If a grantee does not meet the minimum performance level for a compliance indicator, it will receive no points.

(d) The maximum possible score for meeting the minimum performance level in every compliance indicator is 100 points.

(e) A grantee must receive a composite score of at least 60 points to qualify for continuation funding.

(Authority: 621(h)(4)(B) of the Act; 29 U.S.C. 795g(h)(4)(B))

§ 379.53 What are the weights and minimum performance levels for each compliance indicator?

(a) *Percent of persons served whose disabilities are severe.* (4 points) A minimum of 60 percent of persons served by the project are persons who have severe disabilities.

(b) *Percent of persons served who have been unemployed for at least six months at time of project entry.* (3 points) A minimum of 60 percent of persons served by the project have been unemployed for at least six months at time of project entry.

(c) *Percent of persons served who received Social Security Insurance (SSI) or Social Security Disability Insurance (SSDI) benefits in the month prior to project entry.* (3 points) A minimum of 25 percent of persons served by the project have received SSI or SSDI benefits in the month prior to project entry.

(d) *Cost per placement.* (20 points) The average cost of placement of individuals served by the project does not exceed $1350.00.

(e) *Projected cost per placement.* (10 points) The actual average cost per placement of persons served by the project does not exceed 125 percent of the projected average cost per placement in the grantee's application.

(f) *Placement rate.* (20 points) A minimum of 60 percent of persons served by the project are placed in competitive employment.

(g) *Projected placement rate.* (10 points) The actual number of persons served by the project that are placed into competitive employment is at least 75 percent of the number of persons that the grantee, in the grant application, projected would be placed.

(h) *Change in earnings.* (10 points) The earnings of persons served by the project who are placed into competitive employment have increased by an average of at least $125.00 a week over earnings at project entry.

(i) *Percent placed who have severe disabilities.* (10 points) At least 60 percent of persons served by the project who are placed into competitive employment are persons who have severe disabilities.

(j) *Percent unemployed placed.* (5 points) At least 60 percent of persons served by the project who are placed into competitive employment are persons who were unemployed for at least six months at time of project entry.

(k) *Percent SSI or SSDI placed.* (5 points) At least 25 percent of persons served by the project who are placed into competitive employment are persons who received SSI or SSDI benefits in the month prior to project entry.

(l) *Composite chart of weights and minimum performance levels.* The weights and performance levels for each compliance indicator are shown on the following composite chart.

Minimum Scores and Performance Levels for Indicators

Indicator	Weight (points)	Performance level
Persons with severe disabilities served	4	60%
Unemployed served	3	60%
SSI or SSDI served	3	25%

Indicator	Weight (points)	Performance level
Cost per placement (maximum average)	20	$1350.00
Projected cost per placement (maximum)	10	125%
Placement rate	20	60%
Projected placement rate	10	75%
Change in earnings	10	$125
Percent with severe disabilities placed	10	60%
Percent unemployed placed	5	60%
Percent SSI or SSDI placed	5	25%

Minimum passing composite score is 60 points.

(Authority: Section 621(f)(1) of the Act; 29 U.S.C. 795g(f)(1))

5. An appendix is added to Part 379 to read as follows:

Appendix to Part 379—Evaluation Standards

Standard 1: The primary objective of the project shall be to assist individuals with disabilities to obtain competitive employment. The activities carried out by the project shall support the accomplishment of this objective.

Standard 2: The project shall serve individuals with disabilities that impair their capacity to obtain competitive employment. In selecting persons to receive services, priority shall be given to individuals with severe disabilities.

Standard 3: The project shall ensure the provision of services that will assist in the placement of persons with disabilities.

Standard 4: Funds shall be used to achieve the project's primary objective at minimum cost to the federal government.

Standard 5: The project's advisory council shall provide policy guidance and assistance in the conduct of the project.

Standard 6: Working relationships, including partnerships, shall be established with agencies and organizations in order to expand the project's capacity to meet its objectives.

Standard 7: The project shall obtain positive results in assisting individuals with disabilities to obtain competitive employment.

[FR Doc. 89-3350 Filed 2-13-89; 8:45 am]

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federal register

Tuesday
February 14, 1989

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 338

Nighttime Sleep-Aid Drug Products for Over-the-Counter Human Use; Final Monograph; Final Rule

BEST COPY AVAILABLE

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 338

[Docket No. 75N-0244]

Nighttime Sleep-Aid Drug Products for Over-the-Counter Human Use; Final Monograph

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule in the form of a final monograph establishing conditions under which over-the-counter (OTC) nighttime sleep-aid drug products are generally recognized as safe and effective and not misbranded. FDA is issuing this final rule after considering public comments on the agency's proposed regulation, which was issued in the form of a tentative final monograph, and all new data and information on nighttime sleep-aid drug products that have come to the agency's attention. This final monograph deals only with single ingredient nighttime sleep-aid drug products and is part of the ongoing review of OTC drug products conducted by FDA.

EFFECTIVE DATE: February 14, 1990.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 8, 1975 (40 FR 57292), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC nighttime sleep-aid drug products, together with the recommendations of the Advisory Review panel on OTC Sedative, Tranquilizer, and Sleep-aid Drug Products (Sleep-aid Panel), which was the advisory review Panel responsible for evaluating data on the active ingredients in this drug class. Interested persons were invited to submit comments by March 8, 1976. Reply comments in response to comments filed in the initial comment period could be submitted by April 8, 1976.

In accordance with § 330.10(a)(10), the data and information considered by the Panel were put on public display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, after deletion of a small amount of trade secret information.

The agency's proposed regulation, in the form of a tentative final monograph, for OTC nighttime sleep-aid drug products was published in the **Federal Register** of June 13, 1978 (43 FR 25544). Interested persons were invited to file by August 14, 1978 written objections and requests for an oral hearing before the Commissioner of Food and Drugs regarding the proposal. Final agency action occurs with the publication of this final monograph, which is a final rule establishing a monograph for OTC nighttime sleep-aid drug products.

In the **Federal Register** of October 26, 1979 (44 FR 61610), the agency published a notice reopening the administrative record for OTC nighttime sleep-aid drug products from October 26, 1979, to March 26, 1980, to permit manufacturers to submit, prior to the establishment of a final monograph, new data demonstrating the safety and effectiveness of those conditions not classified in Category I. Interested persons were invited to submit comments on the new data on or before May 27, 1980. Data and information received after the administrative record was reopened are on display in the Dockets Management Branch.

In a notice published in the **Federal Register** of March 21, 1980 (45 FR 18399), the agency advised that it had also reopened the administrative record for OTC nighttime sleep-aid drug products to allow for consideration of data and information that had been filed in the Dockets Management Branch during the period from August 14, 1978, to October 26, 1979. The agency concluded that any new data and information filed prior to March 21, 1980 should be available to the agency in developing a final monograph.

In the **Federal Register** of April 23, 1982 (47 FR 17740), the agency published a notice announcing an enforcement policy to permit the OTC marketing of diphenhydramine as an ingredient in OTC nighttime sleep-aid drug products pending the establishment of a final monograph on OTC nighttime sleep-aid drug products. In that notice, the Commissioner concluded that there were no unresolved safety or effectiveness issues relating to the use of diphenhydramine as an OTC nighttime sleep-aid and that it would be inappropriate, and not in the public interest, to continue to bar the interim marketing of such products.

The OTC drug procedural regulations (21 CFR 330.10) now provide that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification, and submission to FDA of the results of that testing or any other data, must be done during the OTC drug rulemaking process before the establishment of a final monograph. Accordingly, FDA is no longer using the terms "Category I" (generally recognized as safe and effective and not misbranded), "Category II" (not generally recognized as safe and effective or misbranded), and "Category III" (available data are insufficient to classify as safe and effective, and further testing is required) at the final monograph stage, but is using instead the terms "monograph conditions" (old Category I) and "nonmonograph conditions" (old Categories II and III).

The agency advises that the conditions under which the drug products that are subject to this monograph will be generally recognized as safe and effective and not misbranded (monograph conditions) will be effective 12 months after the date of publication in the **Federal Register**. Therefore, on or after February 14, 1990, no OTC drug product that is subject to the monograph and that contains a nonmonograph condition, i.e., a condition that would cause the drug to be not generally recognized as safe and effective or to be misbranded, may be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. Further, any OTC drug product subject to this monograph that is repackaged or relabeled after the effective date of the monograph must be in compliance with the monograph regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the monograph at the earliest possible date.

In the tentative final monograph for OTC nighttime sleep-aid drug products, the agency suggested that the conditions included in the monograph (Category I) be effective 30 days after the date of publication of the final monograph in the **Federal Register** and that the conditions excluded from the monograph (Category II) be eliminated from OTC drug products effective 6 months after the date of publication of the final monograph, regardless of whether further testing was undertaken to justify their future use. Experience has shown that relabeling of products covered by the monograph is necessary in order for manufacturers to comply with the monograph. New labels containing the monograph labeling have to be written, ordered, received, and incorporated into the manufacturing process. The agency has determined that it is impractical to expect new labeling to be in effect 30 days after the date of publication of the final monograph. Experience has shown also that if the deadline for relabeling is too short, the agency is burdened with extension requests and related paperwork.

In addition, some products may have to be reformulated to comply with the monograph. Reformulation often involves the need to do stability testing on the new product. An accelerated aging process may be used to test a new formulation; however, if the stability testing is not successful, and further reformulation is required, there could be a further delay in having a new product available for manufacture.

The agency wishes to establish a reasonable period of time for relabeling and reformulation in order to avoid an unnecessary disruption of the marketplace, that could not only result in economic loss but also interfere with consumers' access to safe and effective drug products. Therefore, the agency is providing an effective date of 12 months after the date of publication of the final monograph in the **Federal Register**.

In response to the proposed rule on OTC nighttime sleep-aid drug products, four consumers, two consumer groups, six drug manufacturers, one drug manufacturer association, and one consultant representing four different drug manufacturers submitted comments. Requests for oral hearing before the Commissioner were also received on 12 different issues. Copies of the comments and the hearing requests received are on public display in the Dockets Management Branch. Any additional information that has come to the agency's attention since publication of the proposed rule is also on public display in the Dockets Management Branch.

In proceeding with this final monograph, the agency has considered all objections, requests for oral hearings, and the changes in the procedural regulations. In light of the changes in the OTC drug review procedural regulations and the withdrawal of methapyrilene from the marketplace (see below), many of the objections filed in response to the agency's proposed regulation on OTC nighttime sleep-aid drug products are no longer applicable, e.g., comments on testing guidelines and on methapyrilene. In those cases where the agency has agreed with submitted objections and has revised the final monograph accordingly, the Commissioner concludes that any requests for hearing are moot. Therefore, such hearing requests are not discussed in the following responses to comments.

One comment requested hearings on several aspects of the rule if the Commissioner, in making his decisions, relied upon evidence that was not in the public domain. The Commissioner advises that the agency's decisions in this rulemaking have been based entirely on the administrative record, which is publicly available in the Dockets Management Branch. Therefore, the Commissioner concludes that the comment is no longer requesting hearings on those issues. All other requests for hearing are discussed below.

All "OTC Volumes" cited throughout this document refer to the submissions made by interested persons pursuant to the call-for-data notice published in the **Federal Register** of August 9, 1972 (37 FR 16029), or to additional information that has come to the agency's attention since publication of the notice of proposed rulemaking. The volumes are on public display in the Dockets Management Branch.

I. The Agency's Conclusions on the Comments

A. General Comments on OTC Nighttime Sleep-Aid Drug Products

1. One comment requested that the agency not remove nighttime sleep-aid drug products from the OTC market.

The tentative final monograph on nighttime sleep-aid drug products (43 FR 25544) did not propose to remove this entire class of drug products from the OTC market. The agency recognized the usefulness of this class of drugs, but concluded that the data available at that time were not sufficient for FDA to determine that any specific ingredients in this class of drugs were generally recognized as safe and effective. Since that time, additional data have been submitted to the OTC drug review to support the safety and effectiveness of diphenhydramine hydrochloride and diphenhydramine monocitrate (now named diphenhydramine citrate), and these ingredients are included in the final monograph for OTC nighttime sleep-aid drug products. In addition, products containing doxylamine succinate are marketed OTC as a nighttime sleep-aid under approved new drug applications (NDA's).

2. One comment argued that the Commissioner had failed to follow the prescribed procedures in issuing the tentative final monograph on OTC nighttime sleep-aids and that it is without legal authority. The comment also contended that the tentative final monograph is arbitrary, capricious, and not supported by substantial evidence and requested a hearing on this issue.

At the time of publication of the panel's report and recommended monograph in the **Federal Register** of December 8, 1975 (40 FR 57292), § 330.10(a)(6) provided for a comment period of 60 days after publication of a panel's report and recommended monograph, and a period of 30 days from the last day of the comment period for reply comments to be filed. In the report, the agency allowed for a comment period of 90 days, which conforms with current 330.10(a)(6). Section 330.10(a)(7) provided that after reviewing all comments and reply comments, a tentative final monograph would be published in the **Federal Register**. The agency received comments and reviewed them. In the **Federal Register** of June 13, 1978 (40 FR 57292), the agency responded to the comments in the tentative final monograph. Section 330.10(a)(7) has been subsequently expanded to require review of new data prior to publication of a tentative final monograph.

The comment does not specify what procedures it alleges that the Commissioner failed to follow and the agency is not aware of any. Therefore, the agency concludes that it followed the prescribed procedures set forth in 21 CFR 330.10(a)(6) and (7) for publishing a tentative final monograph on OTC nighttime sleep-aid drug products. The agency rejects the comment's contention that the tentative final monograph is without legal authority. The legal authority for this rulemaking process is provided by the Federal Food, Drug, and Cosmetic Act (the act), as cited in the "Authority" paragraph which immediately precedes the monograph. The agency's conclusions reached in the tentative final monograph are supported and well documented with references publicly available in the administrative record for this rulemaking. Therefore, the agency concludes the comment's contention is not valid. The Commissioner also concludes that a hearing on this issue is not warranted.

3. One comment objected to the statement in the tentative final monograph "that OTC drugs should contain only such inactive ingredients as are known to be safe and are necessary for pharmaceutical formulation" (43 FR 25544 at 25590). The comment contended that this statement is without sanction of law and is inconsistent with other FDA regulations. The comment requested revocation of the statement.

The statement in question was part of the preamble and not part of the tentative final monograph; thus, it need

not be "revoked" as the comment requested. The act and the regulations implementing the OTC drug review provide clear authority for requiring that inactive ingredients be safe. The act requires all drugs to be both safe and effective for their intended use. Thus, inactive ingredients that are included in drug products also need to be safe in order for the product to conform to the requirements of the act. The OTC drug review regulations in § 330.1(e) further state that OTC drug products should contain "only suitable inactive ingredients which are safe in the amounts administered and do not interfere with the effectiveness of the preparation * * *." The food ingredient GRAS (generally recognized as safe) list in 21 CFR Part 182 includes most of the common inactive ingredients, including flavors. Color additives are already regulated under section 706 of the act (21 U.S.C. 376) and the implementing regulations in 21 CFR Parts 70 through 82. An ingredient, whether active or inactive, should be included in a drug product only if it provides a benefit and is therefore "necessary." Typically, inactive ingredients are necessary for a drug product's pharmaceutical formulation during the manufacturing process and for making the product acceptable to the user in terms of taste, appearance, and aroma. Such ingredients may be used provided they do not interfere with the product's effectiveness.

4. One comment urged the agency to require long-term carcinogenicity studies on all the ingredients placed in Category III as nighttime sleep-aids before they are given general recognition of safety.

FDA is aware that all of the antihistamine ingredients placed in Category III in the tentative final monograph on OTC nighttime sleep-aid drug products (43 FR 25544 at 25579), except for phenyltoloxamine dihydrogen citrate, have been selected for bioassay testing as part of the National Toxicology Program—Carcinogenicity Testing Program (Ref. 1). The selection of a chemical for bioassay does not necessarily imply that it is a carcinogen. Chemicals are selected on the basis of human exposure, production levels, and chemical structure. Selection of a chemical for carcinogenicity testing is not a sufficient basis for withholding conclusions on its effectiveness and on other aspects of safety in an OTC drug final monograph. The inclusion of an ingredient in a final monograph means that the agency has concluded that it is generally recognized as safe and effective based on the evidence available at that time; it does not preclude the possibility that future evidence may demonstrate an ingredient to be unsafe for OTC use. If future evidence, e.g., results of bioassay testing, demonstrates that an ingredient is unsafe for OTC use, the agency will take immediate steps to remove products containing this ingredient from the marketplace.

The Panel had placed the antihistamine methapyrilene in Category III in its report (40 FR 57292 at 57309). In its proposed regulation for OTC nighttime sleep-aid drug products, the agency proposed to place methapyrilene in Category II because of preliminary studies implicating this drug as a carcinogen, or a carcinogen synergist with nitrates, in rats. However, at that time, the studies were too preliminary to support a definitive finding that methapyrilene was itself a carcinogen and had to be removed immediately from all products in the OTC drug market.

Subsequent to the agency's proposed regulation, a National Cancer Institute (NCI) study, not available to the Panel, provided data from which the agency concluded that methapyrilene is a potent carcinogen in animals and must be considered a potential human carcinogen. These data are on file in the Dockets Management Branch (address above) under Docket No. 75N-0244 and have since been published (Ref. 2).

In 1979, in response to an agency-requested recall, all oral and topical products containing methapyrilene were removed from the market. Products containing methapyrilene are now considered to be misbranded under section 502 of the act (21 U.S.C. 352) and "new drugs" under section 201(p) of the act (21 U.S.C. 321(p)). In this document the agency concludes that methapyrilene fumarate and methapyrilene hydrochloride are nonmonograph ingredients.

References

(1) Copy of a computer printout from the National Toxicology Program—Carcinogenicity Testing Program, OTC Volume 050FM, Docket No. 75N-0244, Dockets Management Branch.

(2) Lijinsky, W., M.D. Reuber, and B.N. Blackwell, "Liver Tumors Induced in Rats by Chronic Oral Administration of the Common Antihistamine Methapyrilene Hydrochloride," *Science*, 209:817–819, 1980.

5. One comment requested that FDA require long-term anticholinergic toxicity studies on the Category III nighttime sleep-aid ingredients that are now restricted to prescription use before allowing them on the OTC market. In addition, the comment requested that pyrilamine be removed from the OTC market until such studies are done. The comment was concerned that even though anticholinergic (drying) side effects have been considered negligible in the past, they may be rooted in irreversible tissue damage and neuropharmacologic damage.

Diphenhydramine is the only ingredient currently included in this monograph, and the anticholinergic effects of this drug are well known (Ref. 1). Because diphenhydramine has been safely used for many years and FDA is not aware of any data that indicate that long-term use of this drug can cause irreversible tissue damage and neuropharmacologic damage, the agency finds no need for long-term anticholinergic toxicity studies as requested by the comment. The agency will assess the need for such studies for other ingredients should any other prescription drugs be considered for inclusion in the monograph.

Pyrilamine maleate, presently marketed OTC in a few products as a nighttime sleep-aid, is not included in this final monograph because of a lack of general recognition of effectiveness. (See comment 21 below.) Upon the effective date of the monograph, OTC drug products containing pyrilamine maleate intended for use as a nighttime sleep-aid may not be initially introduced or initially delivered for introduction into interstate commerce unless they are the subject of an approved NDA or have been included in the final monograph by that date. The agency does not believe that there is a health hazard associated with this drug so as to require its immediate removal from the market. The agency is aware that a number of OTC nighttime sleep-aid drug products that previously contained pyrilamine maleate have been reformulated to contain diphenhydramine and further expects that the remaining drug products containing pyrilamine maleate will be reformulated with diphenhydramine in advance of the effective date of this final monograph.

Reference

(1) Copy of FDA-approved labeling from NDA 5-845, OTC Volume 050FM, Docket No. 75N-0244, Dockets Management Branch.

6. One comment urged FDA to undertake studies on l-tryptophan, a naturally occurring food substance, as a nighttime sleep-aid. The comment stated that, considering that there is no sleep-aid ingredient that is safe and effective and because drug companies will not spend money for testing substances that cannot be patented, FDA should undertake such studies for the public good.

The agency appreciates the comment's concerns. However, FDA's primary charge is to ensure that drugs in the marketplace are both safe and effective for their intended use, not to conduct original research in the development of new drugs. In addition, this final monograph contains ingredients that are considered safe and effective for use as OTC nighttime sleep-aids.

7. One comment urged the agency to recognize the legal status of the monographs issued under the OTC drug review as being interpretative rather than substantive regulations.

The agency addressed this issue in paragraphs 85 through 91 of the preamble to the procedures for classification of OTC drugs published in the Federal Register of May 11, 1972 (37 FR 9464), and in paragraph 3 of the preamble to the tentative final monograph for OTC antacid drug products published in the Federal Register of November 12, 1973 (38 FR 31260). FDA reaffirms the conclusions stated there. Subsequent court decisions have confirmed the agency's authority to issue substantive regulations by rulemaking. (See, e.g., *National Nutritional Foods Association* v. *Weinberger*, 512 F.2d 688, 695–96 (2d Cir. 1975) and *National Association of Pharmaceutical Manufacturers* v. *FDA*, 487 F. Supp. 412 (S.D.N.Y. 1980), *aff'd*, 637 F.2d 887 (2d Cir. 1981).)

8. One comment disagreed with the agency's statement in the tentative final monograph that the Panel had gone beyond its charter in making statements on advertising (43 FR 25544 at 25545). The comment believed that the agency's statement was in contradiction to a later statement that the OTC advisory review panels "are free to comment, on any scientific or policy issue that they have considered in the course of their review" (43 FR 25558). The comment urged the agency to adopt a formal statement of policy with respect to advertising and include it in the monograph.

The agency disagrees with the comment that the two statements are in contradiction. The OTC advisory review panels were charged to advise the agency on the safety, effectiveness, and labeling of OTC drug products. They were not charged with making recommendations on advertising because the Federal Trade Commission (FTC), not FDA, is the agency that has the primary responsibility for regulating OTC drug advertising. FDA has the authority to regulate OTC drug advertising that constitutes labeling under the Federal Food, Drug, and Cosmetic Act. See, e.g., *United States* v. *Article of Drug * * * B-Complex Cholinos Capsules*, 362 F.2d 923 (3d Cir. 1966); *V.E. Irons, Inc.* v. *United States*, 244 F.2d 34 (10th Cir.); *cert. denied*, 354 U.S. 923 (1957). In addition, for an OTC drug to be generally recognized as safe and effective and not misbranded, the advertising for the drug must, satisfy the FDA regulations in § 330.1(d) (21 CFR 330.1(d)), which state that the advertising may prescribe, recommend, or suggest the drug's use only under the conditions stated in the labeling. If advertising for an OTC nighttime sleep-aid drug product offers the product for conditions not included in the final monograph labeling, the drug product may be subject to regulatory action by FDA. Therefore, as stated in the tentative final monograph, advisory review panels are free to comment on any aspect of OTC drug regulation notwithstanding FDA's limited authority to implement their recommendations. Because the agency's jurisdiction over OTC drug advertising is already stated in the act and in existing agency regulations that are applicable to all OTC drug monographs, the comment's request for inclusion of a policy statement on advertising in this particular monograph is not necessary.

9. One comment disagreed with the agency's statements in the tentative final monograph that the Consumer Product Safety Commission (CPSC) and not FDA has the authority to place limitations on package size (43 FR 25544 at 25546). The comment stated that CPSC has authority to require child-resistant closures, but does not have the authority to regulate the quantity available in a product container. The comment expressed the belief that, under the act, FDA has authority to limit the conditions under which a drug is used including the quantity of drug in a container. Because of the Panel's concern for potential harm to children if large quantities of any nighttime sleep-aid are ingested, the comment requested that the agency restrict the quantity of a nighttime sleep-aid packaged per container to a safe level or include a warning that ingestion of large quantities could be lethal. The comment also requested a hearing on this issue.

The agency agrees with the comment that FDA does have authority to place limitations on package size when deemed necessary, e.g., the recommended limitations in the quantity of 1¼ grain (pediatric) aspirin tablets to 36 tablets per container (21 CFR 201.314(c)). Concerning the comment's request that the agency restrict the amount of drug in a nighttime sleep-aid container, however, no evidence has been presented to warrant such a restriction.

CPSC has the authority to require child-resistant closures. FDA is aware that CPSC has reviewed the available data on antihistamines and has determined that child-resistant closures are warranted for OTC drug products, including nighttime sleep-aids, containing more than 66 milligrams (mg) diphenhydramine base in any oral dosage form. (See 16 CFR 1700.14(a)(17).) The comment did not submit any data that indicate a need to limit the package size of OTC nighttime sleep-aid drug products containing diphenhydramine nor did it submit any data that indicate a need to include a warning that ingestion of large quantities could be lethal. Therefore, FDA does not believe that limiting the package size for OTC diphenhydramine-containing nighttime sleep-aids or a warning is necessary at this time. If the agency proposed limiting the package size of such drug products to 66 mg diphenhydramine or less, each package would contain only one adult dose of 50 mg. Limiting the package size to a single dose would be impractical. In view of CPSC's final rule on child-resistant packaging, the impracticality of limiting a package size to a single dose, and the comment's failure to submit data supporting the need for further action, the Commissioner concludes that a hearing by FDA on this issue is not warranted at this time.

10. One comment requested FDA to join with FTC in conducting hearings on the possibilities of deception in labeling and advertising caused by "look-alike/sound-alike" drugs. The comment noted that the agency's response to this issue was that if "look-alike/sound-alike" drugs presented an opportunity for abuse, appropriate action would be initiated under section 502(a) of the act (see comment 19, 43 FR 25544 at 25547). The comment maintained "that enough evidence is present to warrant affirmative action on this issue."

The agency recognizes the potential for deception in the marketing of OTC "look-alike/sound-alike" drugs, including certain OTC nighttime sleep-aids that bear a strong physical resemblance to certain controlled prescription drugs, or have trade names that sound like those of controlled drugs. Since publication of the tentative final monograph, the agency has become aware that there is widespread manufacturing, promotion, and marketing of these OTC "look-alikes." The agency has initiated seizure actions under the counterfeit drug sections of the act (sections 201(g)(2) and 304(a)(2)), separate from the OTC drug review, in

order to remove these products from the market. Moreover, there have been several Congressional hearings on this subject in recent years, and the agency has also discussed this issue in other **Federal Register** documents. (See New Drug Status of OTC Combination Drug Products Containing Caffeine, Phenylpropanolamine, and Ephedrine, published in the **Federal Register** of August 13, 1982 (47 FR 35344); Enforcement Action for Certain OTC Drug Products, published in the **Federal Register** of November 18, 1983 (48 FR 52513); and Enforcement Action Under the New Drug Provisions of the Federal Food, Drug, and Cosmetic Act; Certain OTC Drug Products; Advisory Opinion; Amendment, published in the **Federal Register** of June 29, 1984 (49 FR 26814).) This issue is also discussed with respect to diphenhydramine in comment 22 below. Based on previous agency actions and the Congressional hearings that have already been held, the agency concludes that an additional joint hearing with the FTC to discuss labeling and advertising for such products is not needed.

B. Comments on Labeling of OTC Nighttime Sleep-Aid Drug Products

11. Several comments contended that FDA does not have the authority to legislate the exact wording of OTC labeling claims. The comments contended that such a policy is overly restrictive, lacks supporting evidence, and constitutes a prior restraint on First Amendment rights. The comments concluded that to ban alternative truthful language is unjustified. Two comments also requested a hearing on this issue.

In the **Federal Register** of May 1, 1986 (51 FR 16258), the agency published a final rule changing its labeling policy for stating the indications for use of OTC drug products. Under 21 CFR 330.1(c)(2), the label and labeling of OTC drug products are required to contain in a prominent and conspicuous location, either (1) the specific wording on indications for use established under an OTC drug monograph, which may appear within a boxed area designated "APPROVED USES"; (2) other wording describing such indications for use that meets the statutory prohibitions against false or misleading labeling, which shall neither appear within a boxed area nor be designated "APPROVED USES"; or (3) the approved monograph language on indications, which may appear within a boxed area designated "APPROVED USES," plus alternative language describing indications for use that is not false or misleading, which shall appear elsewhere in the labeling. All other OTC drug labeling required by a monograph or other regulation (e.g., statement of identity, warnings, and directions) must appear in the specific wording established under the OTC drug monograph or other regulation where exact language has been established and identified by quotation marks, e.g., 21 CFR 201.63 or 330.1(g). The final rule in this document is subject to the labeling provisions in § 330.1(c)(2).

12. One comment objected to the agency's conclusion in comment 45 of the tentative final monograph (43 FR 25544 at 25553) that the claim "reduced time to fall asleep" is not synonymous with the Category I claim "helps fall asleep" and contended that the only reason for denying the reduced time claim was that such a phrase would suggest that someone without a sleep disturbance could use a sleep-aid. The comment requested a hearing on this issue.

In the tentative final monograph, the agency determined that the claim "reduced time to fall asleep" was not fully synonymous with the requirements for Category I nighttime sleep-aid ingredients. The agency stated that the use of a nighttime sleep-aid should reduce the time required for a person to get to sleep by providing the means for such sleep in the case of an individual who might otherwise remain awake. The agency concluded that the unqualified claim "reduced time to fall asleep" required further study because it implies that persons without sleep disturbances may benefit from the use of OTC nighttime sleep-aids, and no such data had been presented. However, in patients with insomnia (difficulty falling asleep), such a claim would be reasonable. At the time that the tentative final monograph was proposed (1978), there were no Category I nighttime sleep-aid ingredients. Based on the panel's recommendations (40 FR 57292 at 57328), the agency proposed as one of the suggested phrases the claim "helps fall asleep," but stated that additional studies would be necessary to support such a claim. Subsequently, studies were submitted to upgrade Category III ingredients to monograph status. The studies that were found acceptable (see comment 22 below) were conducted in persons with sleep difficulties. In those studies, sleep latency (time to fall asleep) was a major parameter studied, and those ingredients found to be effective as OTC nighttime sleep-aids were able to reduce the time to fall asleep. Accordingly, the claim "reduced time to fall asleep" has been substantiated, but only in individuals with occasional sleeplessness or who have difficulty falling asleep. Therefore, the agency is adding the claim ("Helps you" or "Reduces time to") "fall asleep if you have difficulty falling asleep" to the indications section of the monograph.

Based upon these studies, the unqualified claims "reduces time to fall asleep" and the previously proposed "helps fall asleep" without the descriptive language relating these claims to the intended target population are not appropriate as specific indications for OTC nighttime sleep-aid drug products. However, because the phrases "helps fall asleep" and "reduces time to fall asleep" are part of the monograph indications for nighttime sleep-aid drug products, the agency would not object to these shortened phrases appearing elsewhere in the labeling (i.e., outside the boxed area), provided that the complete indication statement(s) appears in the appropriate place in the labeling.

Based upon the discussion above, the agency has revised the definition of a nighttime sleep-aid that appears in this final monograph to read as follows: "A drug that is useful for the relief of occasional sleeplessness by individuals who have difficulty falling asleep." Likewise, the indications have been revised to (1) ("Helps you" or "Reduces time to") "fall asleep if you have difficulty falling asleep," (2) "For relief of occasional sleeplessness," and (3) "Helps to reduce difficulty falling asleep." The agency concludes that these changes make it clear that OTC nighttime sleep-aids are intended only for those individuals who have occasional sleeplessness or who have difficulty falling asleep. Based on these changes, the Commissioner concludes that a hearing on this issue is not warranted.

13. One comment objected to the Category II classification of the terms "refreshing sleep" and "sound sleep." The comment argued that the person who uses an OTC nighttime sleep-aid wants to avoid occasional sleeplessness and desires sleep that is refreshing. For this reason, the comment requested that the term "refreshing sleep" as well as the terms "restful sleep" and "good night's sleep" be moved to Category I. Regarding the term "sound sleep," the comment claimed that a person who experiences "sound sleep" experiences a sleep with fewer awakenings. The comment argued that for this reason the "sound sleep" claim and the "fewer awakenings" claim should be placed in the same category. The comment noted that the "fewer awakenings" claim was placed in Category III in the tentative final monograph, but urged that this claim and the "sound sleep" claim both be included in the monograph. The comment also requested a hearing on this issue.

Another comment objected to the agency's Category II placement of the claim "helps you relax so you can fall asleep." Arguing that the agency conceded that nighttime sleep-aids provide a relaxant action, the comment referred to the agency's statement at 43 FR 25553 that such a "product will make one drowsy, not just relaxed * * *." The comment requested that this claim be moved from Category II to Category I.

The above classifications were made in the tentative final monograph before the agency received the results of any clinical studies that supported monograph status for any OTC nighttime sleep-aid drug. Since that time, the agency has evaluated the results of clinical studies that support the safety and effectiveness of diphenhydramine hydrochloride and diphenhydramine citrate for nighttime sleep-aid use. (See comment 22 below.)

In those studies, a number of efficacy variables related to the claims and terms requested by the comments were evaluated. These included the following: (1) How much did the medication help?, (2) wake time, (3) how rested when awoke?, (4) how sleepy during day?, (5) how energetic during day?, (6) sleep latency, (7) number of awakenings, (8) sleep duration, (9) depth of sleep, and (10) how good was the sleep?

As discussed in comment 22 below, in one study, diphenhydramine hydrochloride was significantly better ($p=.05$) than placebo for sleep latency, degree to which medication helped, depth of sleep, and quality (goodness) of sleep. At the less conservative .10 level of significance, diphenhydramine was better than placebo for the amount of time spent awake in bed. In another study, diphenhydramine was significantly better ($p=.05$) than placebo for sleep latency, degree to which medication helped, depth of sleep, quality (goodness) of sleep, feeling rested upon awakening, and degree of energy during previous day. At the less conservative .10 level of significance, diphenhydramine was better than placebo for the amount of time spent awake in bed. All other variables evaluated in the studies were not significant.

The claim relating to fewer awakenings, which was placed in Category III in the tentative final monograph, reads as follows: "Reduces the number of awakenings in persons who wake frequently during the night" (43 FR 25544 at 25588). The agency concluded that this would be a valid claim for OTC nighttime sleep-aids if supported by evidence in well-controlled studies. However, none of the studies submitted to support the effectiveness of diphenhydramine as an OTC nighttime sleep-aid supports that claim. Therefore, the scientific data are inadequate to allow inclusion of the "fewer awakenings" claim in the monograph.

Based on the results of the diphenhydramine studies, which showed that the nighttime sleep-aid drug improved depth of sleep, quality (goodness) of sleep, feeling rested upon awakening, and degree of energy during previous day, the agency concludes that the data support the terms "sound sleep," "restful sleep," "good night's sleep," and "refreshing sleep" for nighttime sleep-aid drug products. Further, the agency notes that the concept of rest is included in at least two dictionary definitions for "relax" (Refs. 1 and 2); therefore, the term "relaxing" sleep is also acceptable. However, the agency considers these terms to be descriptive statements that do not relate in a significant way to the safe and effective use of nighttime sleep-aid drug products and, therefore, does not consider such information to be necessary as part of the required indications for these products. Because these terms are examples of truthful and nonmisleading language, the agency would allow the terms to be included in labeling provided they are not intermixed with labeling established by the monograph. Based on the above discussion, the Commissioner concludes that a hearing on this issue is not warranted.

Regarding the statement (made by the agency in the tentative final monograph at 43 FR 25544 at 25553) referred to by the comment, the agency was not conceding that OTC nighttime sleep-aids act by relaxing, but rather intended to emphasize that these drugs act by making one drowsy. Regarding the claim "helps you relax so you can fall asleep," the agency considers such a claim as relating to the mechanism of action of the drug. This efficacy variable was not evaluated as part of the diphenhydramine studies. Therefore, because the data are inadequate to support such a claim, it is not being included in the monograph.

References

(1) "Webster's Collegiate Dictionary," G. and C. Merriam Co., Springfield, MA, 1976, s.v. "relaxing."

(2) "The American Heritage Dictionary of the English Language," Houghton Mifflin Co., Boston, 1976, s.v. "relaxing."

14. One comment objected to the warning in proposed § 338.50(c)(2): "If condition persists continuously for more than 2 weeks, consult your physician. Insomnia may be a symptom of serious underlying medical illness." The comment referred to reasoning provided in its earlier comment to the Panel's report that there is insufficient evidence of abuse of OTC nighttime sleep-aid drug products to warrant such a warning.

In addressing this issue in comment 51 of the tentative final monograph (43 FR 25544 at 25554), the agency tentatively concluded that the warning was necessary because it would help the user to determine when the limits of self-treatment have been reached. The present comment offers no basis to alter the agency's conclusions; therefore, the warning is included in the final monograph.

15. Several comments objected to the glaucoma warning proposed in § 338.50(c)(3)(i). One comment stated that incorporation of this warning, based on a recommendation of the Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products, fails to recognize the difference between the dosage and pattern of use of antihistamines in OTC nighttime sleep-aid products and antihistamines in cough/cold products. The comment also cited testimony that a particular sleep-aid drug product containing methapyrilene and scopolamine is safe when administered to patients with glaucoma (Ref. 1).

The agency recognizes that antihistamines used as OTC nighttime sleep-aids are taken only once a day, whereas they may be taken up to six times a day for cough/cold symptoms. However, the nighttime sleep-aid dosage is often higher than the cough/cold dosage. In addition, there is variation between the different antihistamine drugs with respect to the degree of expected side effects, and also marked individual variation in response to antihistamine drugs (Ref. 2). Thus, the agency believes it best to advise consumers with glaucoma to seek the advice of a physician before using antihistamine-containing OTC drug products. The warning, therefore, has been retained in the OTC nighttime sleep-aid final monograph. The comment's cited testimony does not support deleting this warning because neither methapyrilene nor scopolamine

are included in the OTC nighttime sleep-aid final monograph.

References

(1) Comment No. HER003, Docket No. 75N–0244, Dockets Management Branch.

(2) Douglas, W.W., "Histamine and 5-Hydroxytryptamine (Serotonin) and their Antagonists," *in* "The Pharmacological Basis of Therapeutics," 7th Ed., edited by A.G. Gilman, et al., MacMillan Publishing Co., New York, p. 621, 1985.

16. Several comments objected to the proposed alcohol-antihistamine drug interaction warning in § 338.50(c)(3)(ii), which reads "Take this product with caution if alcohol is being consumed." One comment stated that the agency did not provide documentation for a potential hazard, and without such documentation it is inappropriate to require such a warning.

The agency disagrees with the comments. In the tentative final monograph, the agency noted that the Sleep-aid Panel had documentation at 40 FR 57308 of an alcohol-antihistamine interaction in which deepened and prolonged sleep was reported. (See 43 FR 25544 at 25554.) The agency concluded that the depressant effects of antihistamines and alcohol are additive and could create a greater soporific effect than is desirable (43 FR 25566). In addition to the reference cited by the Panel at 40 FR 57308, the agency points out that the additive central nervous system depression occurring from simultaneous ingestion of antihistamines and alcohol is well-documented in the literature (Refs. 1 through 5).

In the tentative final monograph for OTC nighttime sleep-aid drug products, the agency also noted that the Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products had recommended an antihistamine-alcohol drug interaction warning (43 FR 25544 at 25554). In an amendment to the tentative final monograph for OTC antihistamine drug products, published in the **Federal Register** of August 24, 1987 (52 FR 31892), the agency noted that, in addition to alcohol, sedative and tranquilizer drugs are known to have additive effects to the drowsiness effect of antihistamine drug products (52 FR 31911). The agency stated that it felt that consumers should be warned about these additive effects and proposed a revision to the warnings for OTC antihistamine drug products, which read as follows: "May cause marked drowsiness; alcohol, sedatives, and tranquilizers may increase the drowsiness effect. Avoid alcoholic beverages while taking this product. Do not take this product if you are taking sedatives or tranquilizers, without first consulting your doctor. Use caution when driving a motor vehicle or operating machinery." The agency has reviewed the comments received in response to the publication of that proposed warning. No comments in opposition to that revised warning were received.

Besides alcohol, the Sleep-aid Panel also stated that the depressant actions of antihistamines are additive with the effects of other central nervous system depressants and the concomitant use of * * * drugs known to depress the central nervous system should be avoided because such combinations produce deepened and prolonged sleep (40 FR 57292 at 57308) and excessive sedation and confusion (40 FR 57297).

The agency concludes that this important information should appear in the labeling of OTC nighttime sleep-aid drug products to provide for the safe consumer use of these products. However, because of the intended use of a nighttime sleep-aid drug product, the information should be different from that appearing on antihistamine drug products for daytime cold or anti-allergy use. For those products, the drowsiness or marked drowsiness caused by the antihistamine is a side effect that consumers need to be alerted to, and consumers should be informed to use caution when driving a motor vehicle or operating machinery. Because the "Directions" for a nighttime sleep-aid drug product are for use at bedtime, or as directed by a doctor, it is not necessary to include a warning against use while driving a motor vehicle or operating machinery. However, the potential of excessive sedation or confusion (as noted above) exists if the sleep-aid product is taken concomitantly with alcohol, sedatives, or tranquilizers. Therefore, the agency is including the following warning in this final monograph: "Avoid alcoholic beverages while taking this product. Do not take this product if you are taking sedatives or tranquilizers, without first consulting your doctor."

References

(1) Noble, E.P., "Third Special Report to the U.S. Congress on Alcohol and Health," Department of Health, Education, and Welfare, National Institute on Alcohol Abuse and Alcoholism, Rockville, MD, p. 50, June 1978.

(2) "British Pharmaceutical Codex 1963," Council of the Pharmaceutical Society of Great Britain, The Pharmaceutical Press, London, p. 20, 1963.

(3) McIver, A.K., "Drug Incompatibilities," *The Pharmaceutical Journal*, 195:609–612, 1965.

(4) "Interactions of Alcohol with Drugs," *The Medical Letter*, 19:48, 1977.

(5) Coleman, J.H., and W.E. Evans, "Drug Interactions with Alcohol," *Alcohol Health and Research World*, Department of Health, Education, and Welfare, National Institute on Alcohol Abuse and Alcoholism, Rockville, MD, pp. 16–19, 1975.

17. Several comments urged the agency to reconsider the need for inclusion of a warning on the label of OTC nighttime sleep-aid drug products regarding the use of these drugs by pregnant or nursing women. The comments contended that even though there are no data to suggest a potential hazard, there have been no studies to show that these drugs are safe when taken by pregnant or nursing women and that a warning regarding the use of these drugs by pregnant and nursing women should be included in the monograph.

In the **Federal Register** of December 3, 1982 (47 FR 54750), the agency published a final rule requiring that the labeling for all OTC drugs that are intended for systemic absorption, unless specifically exempted, contain a general warning concerning the use of these drugs by pregnant or nursing women. This warning states: "As with any drug, if you are pregnant or nursing a baby, seek the advice of a health professional before using this product." The regulation provides that if a specific warning relating to use during pregnancy or while nursing has been established for a particular drug product in an NDA or for a product covered by an OTC drug final monograph in Part 330, the specific warning shall be used in place of the general pregnancy-nursing warning unless otherwise stated in the NDA or in the final OTC drug monograph. The agency is not aware of any data at this time that would necessitate a special warning for the active ingredients included in the OTC nighttime sleep-aid final monograph. Therefore, these drug products will be required to bear the general pregnancy-nursing warning in § 201.63, as stated above.

18. One comment objected to the monograph limitation of a single dose of a nighttime sleep-aid at bedtime because there is no factual evidence that would indicate that a repeat dose in 4 hours is not safe and effective. The comment requested that the monograph be amended to include the provision for a repeat dose in 4 hours if necessary.

The agency recognizes that an antihistamine that is marketed OTC for relief of cough/cold symptoms bears directions for use that recommend a repeat dose every 4 hours as needed. Although the comment is correct that there is no evidence to show that repeating the OTC nighttime sleep-aid dose would not be safe and effective, data on a repeat dose in 4 hours were not submitted to the agency and the comment presented none. In addition, the data that were submitted demonstrated that the antihistamines are an effective sleep-aid after only one dose has been taken. Therefore, the directions for use in this final rule have not been revised to include a repeat dose.

19. One comment recommended that the agency adopt a "Labeling General Statement" in the final monograph to explain FDA's position on the following aspects of OTC drug labeling: Confusing claims, unsupported or misleading claims, claims implying a unique action, statement of quantity of active ingredients, declaration of inactive ingredients, and general warning statements.

The agency believes that the OTC drug regulations in Part 330 explain the agency's policy regarding many of the items outlined by the comment. For example, § 330.1(e) explains the position regarding inactive ingredients in OTC drug products; § 330.1(g) contains general warning statements that should be included on all OTC drug products (see also discussion of the general pregnancy-nursing warning in comment 17 above); § 330.1(j) recommends that the labeling contain the quantitative amounts of active ingredient per dosage unit; and § 330.10(a)(4)(v) states that "labeling shall be clear and truthful in all respects and may not be false or misleading in any particular." Specific labeling claims or problems are adequately discussed in the respective rulemakings. In light of the discussion above, the agency does not believe it is necessary to adopt a general labeling statement as recommended by the comment.

C. Comments on Combination Drug Products

20. One comment disagreed with the agency's conclusions regarding combinations of OTC nighttime sleep-aids with analgesic ingredients. Specifically, the comment objected to the agency's insistence on factorially designed studies to demonstrate a target population that would benefit from such combinations. The comment contended that there is compelling logic for the existence of a target population of individuals with sleeplessness due to pain and that the tension component of pain produces a degree of sleeplessness beyond that produced by the pain itself. Although an analgesic may relieve the pain and indirectly relieve the tension and allow for sleep, the nighttime sleep-aid ingredient will enhance this effect by directly relieving the tension and its resultant sleeplessness. The comment referred to a published article to support this theory (Ref. 1).

The comment further argued that the OTC drug regulations in § 330.10(a)(4)(iv) do not require a showing that each ingredient in a combination product is needed. The comment pointed out that the regulations for prescription drug combination products (21 CFR 300.50) make it mandatory not only that each ingredient make a contribution, "but also that there be a significant patient population requiring such concurrent therapy." The comment stated that the absence of such specific language in the OTC drug regulations makes it clear that, for OTC drug combinations, each ingredient does not have to be shown to be needed.

Several comments submitted results of a number of studies in which nighttime sleep-aid/analgesic combination drug products were evaluated to determine whether such combinations should be generally recognized as safe and effective in the final monograph (Ref. 2). One comment also requested a hearing on this issue.

The article cited by the comment (Ref. 1) does not support the claimed theory that the addition of an antihistamine to an analgesic, for use in individuals with sleeplessness due to pain, provides for relief of the tension component of pain and its resultant sleeplessness. In this randomized, double-blind, crossover study, 206 patients were treated for "simple nervous tension accompanied by headache" using phenyltoloxamine citrate alone, acetaminophen alone, the combination of these two drugs, or placebo. The subjects rated each treatment with respect to degree of relief and time interval until maximum relief was obtained for each of the symptoms of tension, anxiety, irritability, and headache. Sleep was not a measured parameter in this study and, therefore, the study is of little value in assessing the effectiveness of the antihistamine in providing or enhancing a sleep effect.

The agency has also reviewed the clinical studies and information submitted in the other comments (Ref. 2). These studies contain new data on the safety and effectiveness of a combination of two analgesics with diphenhydramine for use as a nighttime pain reliever. These studies, however, "do not provide comparisons between the combinations and their individual antihistamine and analgesic components" (Ref. 3). The agency concludes that the available data remain insufficient to demonstrate whether the addition of a nighttime sleep-aid enhances the effectiveness of the analgesic to allow labeling the product as a "nighttime pain reliever."

Regarding the need to identify a target population that could benefit from an OTC nighttime pain reliever, the agency recognizes the fact that the study design proposed in the OTC nighttime sleep-aid tentative final monograph separated the test population into two groups, i.e., individuals with sleeplessness related to pain and those who suffer from sleeplessness not related to pain. In proposing this latter group, the agency recognized the existence of a suitable target population for the combination of an OTC nighttime sleep-aid and internal analgesic(s). In this patient population are individuals who might on a given night have both sleep problems and mild to moderate pain. In cases where only one symptom occurs, it is more appropriate to select drugs separately for specific symptomatic relief.

Since publication of the Panel's findings and the tentative final monograph, the agency announced on November 28, 1978, the availability of a guideline that states in detail its policy for combining two or more safe and effective OTC active drug ingredients (43 FR 55466). The agency uses this guideline in addition to the existing regulatory requirements for OTC combination drugs in § 330.10(a)(4)(iv). The guideline is currently available for public examination at FDA's Dockets Management Branch (Docket No. 78D–0322). Item (1) of the guidelines states, "Category I active ingredients from different therapeutic categories may be combined to treat different symptoms concurrently only if each ingredient is present within its established safe and effective dosage range and the combination meets the OTC combination policy in all other respects."

In reviewing the information available several years ago, the agency tentatively concluded that the combination of an OTC nighttime sleep-aid and OTC internal analgesic(s) was reasonable, provided the combination was properly labeled for use only when concurrent symptoms exist, e.g., for occasional minor aches, pains, and headache with accompanying sleeplessness. Accordingly, at that time, the agency planned to reclassify the combination of a nighttime sleep-aid and internal analgesic(s) from Category III to Category I.

The agency's detailed comments and evaluation of the data are on file in the Dockets Management Branch (Ref. 4).

Subsequently, the agency reevaluated the existing information and has tentatively concluded that the combination of an OTC nighttime sleep-aid and OTC internal analgesic(s) should not be included in the final monograph at this time. Even though the agency had earlier indicated that one can reasonably conclude that an appropriate patient population exists, i.e., patients with pain with concurrent sleeplessness unrelated to the pain, the agency now believes that a more scientific basis is needed to support this conclusion. The agency believes that it must be shown with valid data that there is a population needing a product identified as an "analgesic/nighttime sleep-aid." The agency also believes that data are needed to show that the sleeplessness is not relieved by the analgesic alone but that both ingredients in the combination product contribute to its claimed effects. A study is needed in which the contribution of both components has been shown to relieve the sleeplessness. The agency believes that the best study population for this purpose would be one in which patients complain of sleeplessness that is not perceived as resulting from the pain they have. If a target population with concomitant pain and sleeplessness that clearly requires both an analgesic and a nighttime sleep-aid can be established, then labeling for such a combination would have to state clearly that it is for use only when both symptoms occur together, not when only one occurs and/or the other is anticipated.

The agency's detailed comments and reevaluation of the data are on file in the Dockets Management Branch (Ref. 5). In response to the agency's letter, additional data containing the results of two factorial design clinical studies were submitted to the agency on December 22, 1988 (Ref. 6). The data are presently under review.

In view of the change in the agency's tentative conclusions on the data (Refs. 4 and 5) and the submission of additional data, and because a hearing was requested on this combination issue, the agency is not issuing a final decision on the appropriateness of a combination of an OTC nighttime sleep-aid and an OTC internal analgesic(s) at this time. A final decision on this issue will be published in a future issue of the **Federal Register**. Prior to any final agency action, an opportunity for a hearing on this issue will be provided unless the comment advises the agency otherwise. An appropriate notice will be published in the **Federal Register**.

The agency has determined that because all issues relating to single-ingredient nighttime sleep-aid drug products have been resolved, a final monograph covering only these products should be issued before the status of the combination is resolved. Accordingly, combinations of a monograph nighttime sleep-aid and an internal analgesic(s) are exempt from the requirements of the final rule until a final decision on such a combination is issued in a future issue of the **Federal Register**.

References

(1) Gilbert, M. M., N. De Sola Pool, and C. Schecter, "Analgesic/Calmative Effects of Acetaminophen and Phenyltoloxamine in Treatment of Simple Nervous Tension Accompanied By Headache," *Current Therapeutic Research*, 20:53–58, 1976.

(2) Comment Nos. OB0018, C00031, and C00032, Docket No. 75N–0244, Dockets Management Branch.

(3) Letter from W. E. Gilbertson, FDA, to B. M. Lanman, Bristol Myers Products, coded LET003, Docket No. 75N–0244, Dockets Management Branch.

(4) Letter from W. E. Gilbertson, FDA, to W. B. Elvers, Bristol Myers Products, coded LET009, Docket No. 75N–0244, Dockets Management Branch.

(5) Letter from W. E. Gilbertson, FDA, to W. B. Elvers, Bristol Myers Products coded LET012, Docket No. 75N–0244, Dockets Management Branch.

(6) Comment No. C00038, Docket No. 75N–0244, Dockets Management Branch.

D. Comments on Pyrilamine

21. Results of several studies were submitted to support general recognition of the safety and effectiveness of pyrilamine maleate as an OTC nighttime sleep-aid ingredient (Refs. 1 through 4). One comment recommended removing pyrilamine from the OTC market as a nighttime sleep-aid ingredient because long-term carcinogenicity studies have not been performed and because anorexia, nausea, and vomiting are commonly encountered when doses of 25 to 50 mg are ingested (43 FR 25544 at 25588).

The data submitted by the comments included a clinical study by Fabre (Ref. 2); a clinical study by Hartmann, Marsh, and Soderland (Ref. 3); and a sleep laboratory study by Vogel (Ref. 4). The agency has reviewed these studies and concludes that they do not support the reclassification of pyrilamine maleate from Category III to Category I as an OTC nighttime sleep-aid.

Fabre study (Ref. 2). This study was a randomized, double-blind, two-treatment, two-period crossover study conducted at two different sites (Houston and Austin) comparing 50 mg pyrilamine maleate to placebo in 100 patients with mild, nonchronic insomnia. Each treatment period lasted 1 week and there was no washout between periods.

Considering the data as analyzed, the accuracy of the signed-rank tests are difficult to verify because the analyses are poorly documented. Instead of presenting the sum of the ranks, the mean of the ranks was used. The test procedure is based on the sum, and the mean is irrelevant and uninformative. Even ignoring the problems with the data analyses, the results are very unusual. Every comparison was highly significant ($p=0.005$) in favor of pyrilamine in the Houston clinic. Only one variable, sleep duration, was significant ($p=0.02$) in favor of pyrilamine in the Austin clinic. For the remaining variables, the smallest significance level was $p=0.12$. There are no apparent reasons for the disparity between the two clinics.

Hartmann, Marsh, and Soderland study (Ref. 3). This study had the same basic design as the Fabre study except that the treatment periods were 6 days long and there was a 2-day washout period between treatments. One-hundred-eight subjects satisfied the selection criteria; one patient was excluded from the analysis. For inclusion into the study, subjects were to have mild, nonchronic difficulties in falling asleep for at least 30 minutes. However, over 50 percent of the subjects reported they usually fell asleep within 15 minutes, thus making efficacy difficult to demonstrate.

Analyses were presented for both the daily sleep questionnaires and the post-treatment questionnaires. However, as with the Fabre study, some analyses were not appropriate for a crossover study, and those that were appropriate were poorly documented. In addition, the roles of the three investigators were not defined. Therefore, the agency is unable to assess whether investigator bias was introduced into the treatment comparisons.

Vogel study (Ref. 4). This was a 10-day, double-blind, sleep laboratory study comparing pyrilamine 50 mg to placebo in 14 subjects with subjective and objective sleep onset insomnia. FDA's nonparametric analyses showed significantly fewer awakenings ($p=0.01$) and significantly shorter wake time after first persistent sleep onset ($p=0.02$) with pyrilamine as compared to baseline. However, there were no significant improvements for total sleep time ($p=0.22$), sleep latency to first sleep ($p=0.13$), and sleep latency to first persistent sleep ($p=0.70$). In fact, the mean sleep latency to first persistent sleep, the objective variable used as a criterion for entrance into the study, increased with pyrilamine by 18 minutes. Thus, the persistent sleep latency actually worsened with pyrilamine as compared to the placebo baseline nights. For the subjective variables, there were no comparisons that were significant at $p=0.05$.

On April 16, 1982, additional information was submitted to the agency (Ref. 5), including letters from Drs. Fabre, Hartmann, and Vogel addressing the agency's comments and evaluation (Ref. 6) on their studies. In a letter dated April 4, 1983, the agency discussed its review of these letters and concluded that the data provide insufficient evidence of effectiveness for pyrilamine as an OTC nighttime sleep-aid (Ref. 7). In its letter, FDA discussed the following:

(1) There were no analyses of the first period data of the Fabre study (Ref. 2) despite the fact that the lack of such analyses was addressed earlier in the agency's comments and evaluation of June 17, 1981 (Ref. 6). The data submitted are still based on analyses which are not appropriate for crossover studies, and there was no satisfactory explanation for the large disparity between the results of the Austin and Houston clinics. It is difficult to conclude that these differences could be attributed to the demographic differences between the two clinics as suggested by Dr. Fabre.

(2) Of the five efficacy variables (sleep latency, number of awakenings, total time spent awake, sleep duration, and sleep quality) suggested for testing in the Hartmann, Marsh, and Soderland study (Ref. 3), none favor pyrilamine at the 0.05 level of significance. Only two variables (sleep latency and quality of sleep) favor pyrilamine and only at the 0.10 significance level (Ref. 8). The agency has reviewed the new analysis by Dr. Hartmann, which reportedly demonstrates the superiority of pyrilamine compared to placebo at greater statistical significance if subjects with a sleep latency in excess of 15 minutes are analyzed separately. It was necessary to exclude slightly more than half of the patients who could be evaluated in order to show a difference in sleep latency that favored pyrilamine at the 0.05 level of significance. Little weight can be attached to results that were obtained by excluding more than half of the patients on the basis of an apparently arbitrary criterion.

Dr. Hartmann has stated that his patients had mild sleep latency problems, but generally were not suffering from other forms of insomnia. The fact that less than half the patients' usual sleep latency exceeded 15 minutes, and only for 13 percent did it exceed 30 minutes, leads to the conclusion that these patients' sleep latency problems were so mild that the inconclusive results may be attributed to poor patient selection.

(3) The results of the Vogel study (Ref. 4) do not show that pyrilamine reduces sleep latency. Based on the fact that sleep laboratory studies have been able to show an effect on sleep latency for two other OTC nighttime sleep-aids (diphenhydramine and doxylamine), the agency concludes that the results of this study do not support pyrilamine's claim of effectiveness as a nighttime sleep-aid.

Based on the additional information submitted, the agency concludes that the data are still inadequate to include pyrilamine in the monograph (Category I) for use as an OTC nighttime sleep-aid. The agency's detailed comments and evaluation of the additional information are on file in the Dockets Management Branch (Refs. 6, 7, and 8).

References

(1) Comment No. C00031, Docket No. 75N–0244, Dockets Management Branch.

(2) Fabre, L.F., "Double-Blind Controlled Evaluation of Pyrilamine Maleate and Placebo in Insomniac Patients Suffering Primarily From Difficulties Falling Asleep," unpublished study No. I, Comment Nos. C00033 and SUP006, Docket No. 75N–0244, Dockets Management Branch.

(3) Hartmann, E.L., E.B. Marsh, and C.A. Soderland, "The Clinical Evaluation of Pyrilamine Maleate vs. Placebo as a Nighttime Sleep-aid for Patients With Occasional Non-chronic Insomnia," unpublished study No. II, Comment Nos. C00033 and SUP006, Docket No. 75N–0244, Dockets Management Branch.

(4) Vogel, G.W., "The Effects of Pyrilamine Maleate 50 mg on the Sleep Cycle of Healthy Adults with Insomnia," unpublished study No. III, Comment Nos. C00033 and SUP006, Docket No. 75N–0244, Dockets Management Branch.

(5) Letter from A.G. Eckian to W.E. Gilbertson, FDA, coded LET008, Docket No. 75N–0244, Dockets Management Branch.

(6) Letter from W. E. Gilbertson, FDA, to A. G. Eckian, coded LET005, Docket No. 75N–0244, Dockets Management Branch.

(7) Letter from W. E. Gilbertson, FDA, to A. G. Eckian, coded LET011, Docket No. 75N–0244, Dockets Management Branch.

(8) Letter from W. E. Gilbertson, FDA, to A. G. Eckian, coded CR0003, Docket No. 75N–0244, Dockets Management Branch.

E. Comments on Diphenhydramine

22. The results of several studies were submitted to support general recognition of the safety and effectiveness of diphenhydramine hydrochloride and diphenhydramine citrate as OTC nighttime sleep-aid ingredients (Refs. 1 through 12). Diphenhydramine hydrochloride was evaluated in eight studies (Refs. 1 through 8) and diphenhydramine citrate in the other four studies (Refs. 9 through 12).

The agency finds that many of the clinical studies conducted with diphenhydramine hydrochloride (Refs. 1 through 8) were conducted on hospitalized patients and not on the target population, e.g., mild insomniacs, or lacked proper sample size or protocol design and therefore are supportive of effectiveness, but do not alone establish general recognition of OTC safety and effectiveness. For example, one double-blind placebo-controlled study (Ref. 5) compared the effects of 50 mg and 100 mg diphenhydramine hydrochloride in 584 post-ophthalmic surgery patients at the Massachusetts Eye and Ear Infirmary who anticipated having trouble sleeping. The duration of therapy was one night. Side effects were also measured and grouped into eight categories. Both the 50 mg and 100 mg doses of diphenhydramine hydrochloride were significantly superior to placebo. The differences in efficacy between the 50 mg and 100 mg doses were not statistically significant although the incidence of anticholinergic side effects was significantly higher in the 100-mg group. The incidence of other side effects was low with no significant differences between the two drug groups and the placebo group. This study is acceptable as evidence of the hypnotic efficacy and safety of diphenhydramine hydrochloride. The study establishes the optimal dose of diphenhydramine hydrochloride as 50 mg because the 100-mg dose was associated with a significant increase in anticholinergic side effects with no added increase in effectiveness.

The studies by Rickels (Ref. 6) and Finnerty and Goldberg (Ref. 7), conducted in Philadelphia and Boston, support the effectiveness of diphenhydramine as a nighttime sleep-aid. These studies were randomized, double-blind, two-treatment, two-period crossover studies with each period lasting 1 week. Both studies compared 50 mg diphenhydramine hydrochloride to placebo in healthy adults who had mild nonchronic insomnia.

In the Philadelphia study, diphenhydramine hydrochloride was significantly better ($p=0.05$) than placebo for sleep latency, degree to which medication helped, depth of sleep, and quality of sleep. At the less conservative 0.10 level of significance, diphenhydramine was better than placebo for the amount of time spent awake in bed.

In the Boston study, diphenhydramine was significantly better ($p=0.05$) than placebo for sleep latency, degree to which medication helped, depth of sleep, quality, of sleep, feeling rested upon awakening, and degree of energy during previous day. At the less conservative 0.10 level of significance, diphenhydramine was better than placebo for the amount of time spent awake in bed.

Side effects in both studies were low with expected side effects of drowsiness, dizziness, and grogginess occurring more frequently in the diphenhydramine group. The differences in other side effects between the treatment and placebo groups were not significant. The agency concludes that these studies demonstrate that diphenhydramine hydrochloride in a dose of 50 mg is safe and effective as an OTC nighttime sleep-aid.

The agency's detailed comments and evaluation of the data are on file in the Dockets Management Branch (Refs. 13 and 14).

In a notice published in the **Federal Register** on April 23, 1982 (47 FR 17740), the FDA's former Bureau of Drugs concluded that the studies described above (Refs. 1 through 12) resolved safety and effectiveness issues that had been raised when the advance notice of proposed rulemaking and notice of proposed rulemaking were published in the **Federal Register**. The Bureau determined, after reviewing all of the submitted data, that 50 mg diphenhydramine hydrochloride and 76 mg diphenhydramine citrate were appropriate dosage levels in drug products intended for use as OTC nighttime sleep-aids. The Bureau concluded that the citrate salt could be considered identical to the hydrochloride salt because the citrate salt is rapidly converted in the stomach to the hydrochloride salt. However, a dose of 76 mg diphenhydramine citrate is necessary to supply a diphenhydramine content equivalent to 50 mg diphenhydramine hydrochloride.

The notice also announced an enforcement policy to permit the OTC marketing of diphenhydramine as an ingredient in nighttime sleep-aid drug products. The enforcement policy permits the OTC marketing of such drug products pending establishment under the OTC drug review of a final monograph under which drug products containing diphenhydramine that are intended for use as OTC nighttime sleep-aids will be generally recognized as safe and effective and not misbranded.

The notice provided interested persons an opportunity to submit written comments for determining whether further amendments to, or revisions of, this policy are warranted. In response to the notice, the Drug Enforcement Administration, U.S. Department of Justice and one individual submitted comments. The comment from the Drug Enforcement Administration was concerned with the drug abuse potential of diphenhydramine and is addressed in comment 23 below.

The other comment requested clarification as to which of the 12 unpublished studies was the basis for the conclusion that safety and effectiveness issues previously raised were resolved. The comment further stated that such information is needed because information obtained by the commentor under the Freedom of Information Act reveals that at least two of the 12 studies (Refs. 6 and 7) were found to be grossly deficient and unacceptable during establishment inspections by the FDA.

In 1980, FDA investigators did visit the researchers of the unpublished studies (Refs. 6 and 7) to evaluate the clinical trials with diphenhydramine hydrochloride as an OTC nighttime sleep-aid. The agency agrees that some violations in the protocol were found. However, the agency has determined that these violations, for the most part, were minor, and the agency feels that it is unlikely that they could have had a significant impact on the results.

In summary, the agency concludes that the submitted data provide sufficient evidence to demonstrate general recognition of the safety and effectiveness of diphenhydramine hydrochloride in a dose of 50 mg and diphenhydramine citrate in a dose of 76 mg for use as an OTC nighttime sleep-aid, and these ingredients are included in the final monograph.

References

(1) Sunshine, A., and E. Laska, "A Comparative Study of Diphenhydramine 50 mg and Placebo," unpublished study No. S-2162A, Comment Nos. 0B0018, SUP002, and C00035, Docket No. 75N-0244, Dockets Management Branch.

(2) Sunshine, A., and E. Laska, "A Comparative Study of Diphenhydramine 50 mg and Placebo," unpublished study No. S-2162B, Comment Nos. 0B0018, SUP002, and C00035, Docket No. 75N-0244, Dockets Management Branch.

(3) Sunshine, A., I. Zighelboim, and E. Laska, "Hypnotic Activity of Diphenhydramine, Methapyrilene, and Placebo," unpublished study No. W-2080, Comment Nos. 0B0018, SUP002, and C00035, Docket No. 75N-0244, Dockets Management Branch.

(4) Glassman, S., and E.W. Packman, "Subjective Evaluation of the Incidence of Side Effects Produced by 50 mg and 100 mg Doses of Diphenhydramine HCl Versus Placebo," unpublished study No. S-2519, Comment No. SUP002, Docket No. 75N-0244, Dockets Management Branch.

(5) Smith, P. H., "Pain/Sedative Study," unpublished study No. S-2512, Comment Nos. SUP003 and C00035, Docket No. 75N-0244, Dockets Management Branch.

(6) Rickels, K., "Double-Blind, Controlled Evaluation of Diphenhydramine and Placebo in Insomniac General Practice Patients," unpublished study, Comment Nos. C00030, SUP004, and SUP005, Docket No. 75N-0244, Dockets Management Branch.

(7) Finnerty, R., and H. Goldberg, "Double-Blind, Controlled Evaluation of Diphenhydramine and Placebo in Insomniac General Practice Patients," unpublished study, Comment Nos. C00030, SUP004, and SUP005, Docket No. 75N-0244, Dockets Management Branch.

(8) Holder, A., and K.J. Kohlhof, "Assessment of the Sleep Prolongation Properties of Two Analgesic/Sedative Tablets Versus Placebo in Healthy Adults," unpublished study No. S-2593, Comment Nos. C00032 and C00035, Docket No. 75N-0244, Dockets Management Branch.

(9) Sunshine, A., and E. Laska, unpublished study No. S-2127, Comment Nos. 0B0018, SUP002, and C00035, Docket No. 75N-0244, Dockets Management Branch.

(10) Sunshine, A., and I. Zighelboim, "Subjective Clinical Evaluation of the Relative Analgesic/Sedative Effects of an Analgesic/Sedative Tablet vs. Placebo," unpublished study No. S-2469, Comment Nos. C00032 and C00035, Docket No. 75N-0244, Dockets Management Branch.

(11) Sunshine, A., and C. Roure, "Subjective Clinical Evaluation of the Analgesic/Sedative Effects of an Analgesic/Sedative Tablet vs. Placebo," unpublished study No. S-2591, Comment Nos. C00032 and C00035, Docket No. 75N-0244, Dockets Management Branch.

(12) Furst, D., and L. Winter, "Subjective Clinical Evaluation of the Sedative Effects of Two Analgesic/Sedative Tablets vs. Placebo," unpublished study No. S-2605, Comment Nos. C00032 and C00035, Docket No. 75N-0244, Dockets Management Branch.

(13) Letter from W. E. Gilbertson, FDA, to B. M. Lanman, Bristol Myers Products, coded LET004, Docket No. 75N-0244, Dockets Management Branch.

(14) Letter from W. E. Gilbertson,. FDA, to R. A. Schultz, The J. B. Williams Company, Inc., coded LET008, Docket No. 75N-0244, Dockets Management Branch.

23. One comment was concerned with the drug abuse potential of diphenhydramine. The comment submitted data from the Drug Enforcement Administration's (DEA) System to Retrieve Information from Drug Evidence (STRIDE) and argued that the data show significant current problems relating to abuse and trafficking of diphenhydramine that may pose a serious risk to the public health (Ref. 1). The comment added that diphenhydramine was involved in 36 criminal investigations between 1975 and 1982, but because diphenhydramine is not scheduled in the Controlled Substances Act, it is not a primary object of those criminal investigations in which it is encountered.

The comment noted that data from the Drug Abuse Warning Network (DAWN) compiled by the National Institute on Drug Abuse (NIDA) have ranked diphenhydramine in the "Top 50" list of drugs mentioned in overdose cases seen in hospital emergency rooms and that for the period from January to July of 1981, diphenhydramine ranked 27th on the list, higher than many controlled substances, including methadone, LSD, barbiturates, ethchlorvynol, codeine, meprobamate, meperidine, amphetamine, oxazepam, and hydromorphone (Ref. 2). The comment added that, in 1981, 29 percent (306) of the overdose victims included in the DAWN data used diphenhydramine alone, and the remaining 71 percent (961) used diphenhydramine in various combinations. The comment stated that the motivation for taking diphenhydramine was attributed to psychic effects or dependence in 25 percent, or 333 cases, and suicide attempts in 58 percent, or 781 cases. The comment pointed out that the main source of diphenhydramine for an overdose victim was through legal prescription, but that between 1979 and 1981, a significant and increasing source of the drug was from illicit sources—thefts and "street buys."

The comment urged FDA to consider the STRIDE and DAWN data prior to issuing rules that would make diphenhydramine more available to the drug abuse community, i.e., through OTC marketing. The comment argued that, in addition to STRIDE and DAWN data, the diphenhydramine abuse portrait includes diversion from foreign drug manufacturers, transportation to clandestine laboratories in South America, illicit formulation into methaqualone "look-alikes," smuggling into the United States, and domestic pharmacy theft.

The agency has reviewed the data submitted by the comment and concludes that these data do not present a clear picture of deliberate misuse and abuse of diphenhydramine, nor do they show that diphenhydramine marketed OTC as a nighttime sleep-aid at a recommended dose of 50 mg of diphenhydramine hydrochloride or 76 mg of diphenhydramine monocitrate is likely to become a serious risk to public health through abuse.

The STRIDE data illustrate that diphenhydramine had been used to produce counterfeit methaqualone tablet's, but do not show that diphenhydramine was in demand for itself. An illicit international trade in both the commercially manufactured and the clandestinely manufactured counterfeit methaqualone tablets used to exist with a wide geographic distribution. However, FDA has removed methaqualone from the United States market. (See the **Federal Register** of September 17, 1984; 49 FR 36441.) Therefore, the agency does not believe that the counterfeiting program that previously existed is a sufficient basis to keep diphenhydramine off the OTC market.

An overdose per se does not necessarily mean that the drug in question is a drug of abuse. Certainly, so far as the trafficking and diversion data are concerned, it appears that diphenhydramine was primarily a drug of deceit and only secondarily a drug of abuse. With reference to the listing of diphenhydramine in the DAWN "Top 50" list, the agency questions whether the overdose victims were knowingly taking diphenhydramine or whether they were taking diphenhydramine manufactured to resemble a prescription drug product containing methaqualone and represented to them as methaqualone. A number of OTC drugs have been involved in the illicit look-alike drug market, and the agency is convinced of the seriousness of the situation. However, misuse of a drug such as diphenhydramine that occurs because the drug is represented as a more potent substance does not necessarily mean that the drug itself is a drug of abuse. (See also comment 10 above.)

The agency is concerned about the possibility of any adverse effects resulting from the use of OTC drug products, but it also recognizes that a number of substances in the marketplace have the potential for misuse by some individuals. However, this is not sufficient reason for withholding such drugs from legitimate OTC uses for which they are safe and effective. The reports of diphenhydramine abuse cited by the comment do not indicate a widespread problem, nor do they show any correlation between this abuse and OTC marketing of the drug. Therefore, at this time the agency finds no reason why diphenhydramine should not be available OTC as a nighttime sleep-aid. Nevertheless, the agency will continue to monitor this situation carefully and will take appropriate action if additional information should become available concerning diphenhydramine abuse as a result of OTC marketing.

References

(1) Trafficking Information on Diphenhydramine Retrieved from STRIDE, January 1975 to April 1982, OTC Volume 050FM, Docket No. 75N-0244, Dockets Management Branch.

(2) Top Fifty Estimates of Specific Drug Mentions, OTC Volume 050FM, Docket No. 75N-0244, Dockets Management Branch.

F. Comments on Scopolamine

24. One comment requested the agency to reconsider the Category II classification of scopolamine compounds and reclassify these ingredients in Category III for use in combination with other OTC nighttime sleep-aid ingredients.

The agency's conclusions on scopolamine compounds as nighttime sleep-aid ingredients were previously set forth in the tentative final monograph on OTC nighttime sleep-aid drug products (43 FR 25544 at 25548 and 25575–25578). The comment has provided no reason to alter these conclusions, nor have any new data been submitted to the agency since publication of the tentative final monograph. Therefore, scopolamine compounds will not be included in the OTC nighttime sleep-aid final monograph.

II. Summary of Significant Changes to the Proposed Rule

1. The agency has redesignated proposed Subpart D as Subpart C and has placed the labeling sections of the monograph in Subpart C.

2. The claim "reduces time to fall asleep if you have difficulty falling asleep" has been added to the indications section of the monograph. The indication "helps fall asleep" has been revised to read "helps you fall asleep if you have difficulty falling asleep." (See comment 12 above.)

3. The definition of a nighttime sleep-aid has been revised slightly. (See comment 12 above.)

4. The warning in § 338.50(c)(3) has been expanded to be consistent with the warning proposed in the tentative final monograph for OTC antihistamine drug products to read "Do not take this product if you have asthma, glaucoma, emphysema, chronic pulmonary disease, shortness of breath, difficulty in breathing, or difficulty in urination due to enlargement of the prostate gland unless directed by a doctor." (For discussion of the need to expand the warning, see the **Federal Register** of January 15, 1985; 50 FR 2200 at 2215.) The previously proposed requirement that this warning be in type at least twice the size as other warnings is not

being included in the final monograph because the agency believes that all warnings for OTC nighttime sleep-aids are important and should be displayed with equal prominence on the label.

5. The warning in § 338.50(c)(4) has been expanded and revised to read "Avoid alcoholic beverages while taking this product. Do not take this product if you are taking sedatives or tranquilizers, without first consulting your doctor." (See comment 16 above.)

6. The directions for nighttime sleep-aids in the proposed and tentative final monographs stated "* * * once daily at bedtime * * *." The agency believes that the phrase "once daily" implies that these products are to be taken every day, when in fact they should be taken only if the user has difficulty in falling asleep. Therefore, the directions in the final monograph have been revised to state that the dose is to be taken "* * * at bedtime if needed * * *" instead of "* * * once daily at bedtime * * *."

7. In an effort to simplify OTC drug labeling, the agency proposed in a number of tentative final monographs to substitute the word "doctor" for "physician" in OTC drug monographs on the basis that the word "doctor" is more commonly used and better understood by consumers. Based on comments received to these proposals, the agency has determined that final monographs and other applicable OTC drug regulations will give manufacturers the option of using either the word "physician" or the word "doctor." This final monograph includes that option. (See § 338.50(e).)

8. The agency's final decision on the appropriateness of a combination of a nighttime sleep-aid and an internal analgesic(s) is not being addressed at this time, but will be addressed in a future issue of the **Federal Register**. (See comment 20 above.)

9. The ingredients doxylamine succinate, phenyltoloxamine dihydrogen citrate, and pyrilamine maleate were listed in the tentative final monograph as Category III ingredients (43 FR 25579). Because no additional data were submitted that establish the general recognition of safety and effectiveness of these ingredients as OTC nighttime sleep aids, they are not included in the final monograph. (See also comment 21 above.) However, OTC nighttime sleep-aid drug products containing doxylamine succinate are presently being marketed under approved NDA's. The agency advises that the marketing status of those products is unaffected by this final monograph.

10. Diphenhydramine hydrochloride and diphenhydramine citrate are included in the monograph for use as OTC nighttime sleep-aids. (See comment 22 above.)

III. The Agency's Final Conclusions on OTC Nighttime Sleep-Aid Drug Products

Based on the available evidence, the agency is issuing a final monograph establishing conditions under which OTC nighttime sleep-aid drug products are generally recognized as safe and effective and not misbranded. Specifically, the agency has determined that the only ingredients that have been determined to be monograph conditions are diphenhydramine hydrochloride and diphenhydramine citrate. All other ingredients considered in this rulemaking have been determined to be nonmonograph conditions for use as a nighttime sleep-aid: doxylamine succinate, methapyrilene fumarate, methapyrilene hydrochloride, phenyltoloxamine dihydrogen citrate, pyrilamine maleate, ammonium bromide, potassium bromide, sodium bromide, scopolamine aminoxide hydrobromide, scopolamine hydrobromide, acetaminophen, aspirin, salicylamide, thiamine hydrochloride, and passion flower extract. Any drug product marketed for use as an OTC nighttime sleep-aid that is not in conformance with the monograph (21 CFR Part 338) may be considered a new drug within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(P)) and misbranded under section 502 of the act (21 U.S.C. 352) and may not be marketed for this use unless it is the subject of an approved NDA. There are several nighttime sleep-aid drug products containing doxylamine succinate that are presently being marketed OTC under approved NDA's. The agency advises that the marketing status of those products is unaffected by this final monograph. If any drug manufacturer believes that there are adequate data establishing general recognition of the safety and effectiveness of doxylamine succinate as an OTC nighttime sleep-aid, such data may be submitted in an appropriate citizen petition to amend the monograph. (See 21 CFR 10.30.)

The agency has examined the economic consequences of this final rule in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this final rule for OTC nighttime sleep-aid drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96-354). That assessment included a discretionary Regulatory Flexibility Analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, the requirement for a Regulatory Flexibility Analysis under the Regulatory Flexibility Act does not apply to this final rule for OTC nighttime sleep-aid drug products because the proposed rule was issued prior to January 1, 1981, and is therefore exempt.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 338

Labeling, Nighttime sleep-aid drug products, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and the Administrative Procedure Act, Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations is amended by adding new Part 338, to read as follows:

PART 338—NIGHTTIME SLEEP-AID DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

Subpart A—General Provisions

Sec.
338.1 Scope.
338.3 Definition.

Subpart B—Active Ingredients

338.10 Nighttime sleep-aid active ingredients.

Subpart C—Labeling

338.50 Labeling of nighttime sleep-aid drug products.

Authority: Secs. 201(p), 502, 505, 701, 52 Stat. 1041–1042 as amended, 1050–1063 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371); 5 U.S.C. 553; 21 CFR 5.10 and 5.11.

Subpart A—General Provisions

§ 338.1 Scope.

(a) An over-the-counter nighttime sleep-aid drug product in a form suitable for oral administration is generally recognized as safe and effective and is not misbranded if it meets each condition in this part and each general condition established in § 330.1 of this chapter.

(b) References in this part to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21 unless otherwise noted.

§ 338.3 Definition.

As used in this part:

Nighttime sleep-aid. A drug that is useful for the relief of occasional sleeplessness by individuals who have difficulty falling asleep.

Subpart B—Active Ingredients

§ 338.10 Nighttime sleep-aid active ingredients.

The active ingredient of the product consists of any of the following when used within the dosage limits established for each ingredient in § 338.50(d):

(a) Diphenhydramine hydrochloride.

(b) Diphenhydramine citrate.

Subpart C—Labeling

§ 338.50 Labeling of nighttime sleep-aid drug products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as a "nighttime sleep-aid."

(b) *Indications.* The labeling of the product states, under the heading "Indications," one or more of the phrases listed in this paragraph. Other truthful and nonmisleading statements, describing only the indications for use that have been established and listed in this paragraph (b), may also be used, as provided in § 330.1(c)(2) of this chapter, subject to the provisions of section 502 of the act relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act.

(1) ("Helps you" or "Reduces time to") "fall asleep if you have difficulty falling asleep."

(2) "For relief of occasional sleeplessness."

(3) "Helps to reduce difficulty falling asleep."

(c) *Warnings.* The labeling of the product contains the following warnings under the heading "Warnings":

(1) "Do not give to children under 12 years of age."

(2) "If sleeplessness persists continuously for more than 2 weeks, consult your doctor. Insomnia may be a symptom of serious underlying medical illness."

(3) "Do not take this product if you have asthma, glaucoma, emphysema, chronic pulmonary disease, shortness of breath, difficulty in breathing, or difficulty in urination due to enlargement of the prostate gland unless directed by a doctor."

(4) "Avoid alcoholic beverages while taking this product. Do not take this product if you are taking sedatives or tranquilizers, without first consulting your doctor."

(d) *Directions.* The labeling of the product contains the following information under the heading "Directions":

(1) *For products containing diphenhydramine hydrochloride identified in § 338.10(a).* Adults and children 12 years of age and over: Oral dosage is 50 milligrams at bedtime if needed, or as directed by a doctor.

(2) *For products containing diphenhydramine citrate identified in § 338.10(b).* Adults and children 12 years of age and over: Oral dosage is 76 milligrams at bedtime if needed, or as directed by a doctor.

(e) The word "physician" may be substituted for the word "doctor" in any of the labeling statements in this section.

Dated: January 17, 1989.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 89-3384 Filed 2-13-89; 8:45 am]

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federal register

Tuesday
February 14, 1989

Part IV

Department of Health and Human Services

Public Health Service

Availability of Grants for Adolescent Family Life Demonstration Projects; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Availability of Grants for Adolescent Family Life Demonstration Projects

AGENCY: Office of Adolescent Pregnancy Programs, Office of Population Affairs, PHS, HHS.

ACTION: Notice.

SUMMARY: The Office of Adolescent Pregnancy Programs (OAPP) requests applications for grants under the Adolescent Family Life (AFL) Demonstration Grants Program. These grants are for community-based and community-supported demonstration projects to find effective means of encouraging abstinence from adolescent premarital sexual activity, promoting adoption as an alternative to adolescent parenting, and establishing innovative, comprehensive and integrated approaches to the delivery of services to pregnant adolescents, adolescent parents and their children. Funds are available for approximately 16 projects, which may be located in any State, the territories of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Commonwealth of the Northern Mariana Islands, Republic of Palau, Republic of the Marshall Islands and the Federated States of Micronesia.

ADDRESS: Application kits may be obtained from and applications must be submitted to: Grants Management Office, Office of Adolescent Pregnancy Programs, OPA, Room 736E, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

DATE: To receive consideration grant applications must be received by the Grants Management Officer by April 17, 1989. Applications shall be considered as meeting the deadline if they are either (1) received on or before the deadline date, or (2) postmarked on or before the deadline date and received in time for submission to the review committee. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be accepted as proof of timely mailing. Applications which do not meet the deadline will be considered late applications and will be returned to the applicant.

FOR FURTHER INFORMATION CONTACT: Grants Management Office at 202–245–0146 or Program Office at 202–245–7473. Staff are available to answer questions and provide limited technical assistance in the preparation of grant applications.

SUPPLEMENTARY INFORMATION: Title XX of the Public Health Service Act, 42 U.S.C. 300z, *et seq.*, authorizes the Secretary of Health and Human Services to award grants for demonstration projects to provide services to pregnant and nonpregnant adolescents, adolescent parents and their families. (Catalog of Federal Domestic Assistance Number 13.995) Title XX authorizes grants for two types of demonstration projects: (1) Projects which provide "care services" only (*i.e.*, services for the provision of care to pregnant adolescents, adolescent parents and their families); and (2) projects which provide "prevention services" only (*i.e.*, services to prevent adolescent premarital sexual relations).

The Office of Adolescent Pregnancy Programs intends to make available approximately $2 million to be expended by grantees to support an estimated 16 AFL demonstration projects. Two categories of projects will be supported: (1) Traditional demonstration projects with evaluation components as described and limited by the statute; and (2) evaluation-intensive projects specifically designed to produce research quality information bearing on the effectiveness of the demonstration intervention. An applicant may submit a proposal for a local care or local prevention project or a national multi-site prevention project with at least two sites in different States. The average award for a local prevention project will be $80,000, with a range between $40,000 and $150,000, and between $100,000 and $250,000 for a national multi-site prevention project. The average award for a local care project will be $150,000, with a range between $50,000 and $200,000. In the case of evaluation-intensive proposals, awards may range up to 20 percent higher than the levels indicated above. The award levels for evaluation-intensive projects will include both intervention and evaluation funding, and evaluation activities may account for up to 30 percent of the total award.

Grants may be approved for project periods of up to 3 years. Grantees who receive 3 years of funding may then apply for an additional 2 years of funding through a competitive process. Competing grant renewal applications will be accepted from current AFL grantees whose grants will end on August 31, 1989 or September 30, 1989 and who will have received fewer than 5 years of funding.

Grants are funded in annual increments (budget periods). Funding for all approved budget periods beyond the first year of a grant is contingent upon the availability of funds, satisfactory progress of the project and adequate stewardship of Federal funds. A grant award may not exceed 70 percent of the total cost of the project for the first and second years, and 60 percent for the third year. For those grantees who are then funded for an additional 2 years, the grant award may not exceed 50 percent for the fourth year and 40 percent for the fifth and final year. The non-Federal share of the project costs may be provided in cash expenditures or fairly evaluated in-kind contributions, including plant, equipment and services.

The specific services which may be funded under Title XX are listed below under care programs and prevention programs.

Eligible Applicants

Any public or private nonprofit organization or agency is eligible to apply for a grant. Grants are awarded only to those organizations or agencies which demonstrate the capability of providing the proposed services and which meet the statutory requirements.

Care Programs

Under this announcement, funds are available for local care demonstrations only and not for multi-site national projects. The project site must be identified in the application rather than selected after the grant is awarded.

Under the statute the purpose of care programs is to establish innovative, comprehensive, and integrated approaches to the delivery of care services for pregnant adolescents and adolescent parents under 19 years of age at program entry, with primary emphasis on unmarried adolescents who are 17 years old or younger and for their families. This includes young fathers and their families. The Office encourages the submission of care applications which propose innovative ways of involving families, of promoting adoption as a positive option, and of stressing self-sufficiency skills such as school completion (in mainstream or alternative schools and GED programs) and/or job training and preparation that will assist pregnant adolescents and adolescent parents to become productive independent contributors to family and community life. Applicants should propose sound approaches to strengthening family commitment and addressing the underlying problems that lead adolescents into out-of-wedlock pregnancy as well as offering innovative approaches to presenting adoption as an option for adolescent parents. Applicants should base their approaches upon an assessment of existing programs and, where appropriate, upon efforts to establish better coordination, integration and linkages among such existing programs.

Applicants for care programs are required to provide, either directly or by referral, the following 10 core services:

(1) Pregnancy testing and maternity counseling;

(2) Adoption counseling and referral services which present adoption as an option for pregnant adolescents, including referral to licensed adoption agencies in the community if the eligible grant recipient is not a licensed adoption agency;

(3) Primary and preventive health services, including prenatal and postnatal care;

(4) Nutrition information and counseling;

(5) Referral for screening and treatment of venereal disease;

(6) Referral to appropriate pediatric care;

(7) Educational services relating to family life and problems associated with adolescent premarital sexual relations including:

(a) Information about adoption,

(b) Education on the responsibilities of sexuality and parenting,

(c) The development of material to support the role of parents as the providers of sex education, and

(d) Assistance to parents, schools, youth agencies and health providers to educate adolescents and preadolescents concerning self-discipline and responsibility in human sexuality;

(8) Appropriate educational and vocational services;

(9) Mental health services and referral to mental health services and to other appropriate physical health services;

(10) Counseling and referral for family planning services.

Note.—No funds provided under Title XX may be used for the provision of family planning services other than counseling and referral services unless appropriate family planning services are not otherwise available in the community.

In addition to the 10 required core services listed above, applicants for care projects may provide any of the following supplemental services:

(1) Referral to licensed residential care or maternity home services;

(2) Child care sufficient to enable the adolescent parent to continue education or to enter into employment;

(3) Consumer education and homemaking;

(4) Counseling for the immediate and extended family members of the eligible person;

(5) Transportation; and

(6) Outreach services to families of adolescents to discourage sexual relations among unemancipated minors.

Within the context of providing the required core plus any supplemental services and developing evaluation strategies, applicants should pay particular attention to the following aspects of Title XX:

- Enablement of pregnant adolescents to obtain proper care and to assist pregnant adolescents and adolescent parents to become productive contributors to family and community life. This usually entails follow-up for 2 years post-partum.
- Involvement of the families of pregnant adolescents and adolescent parents, including the father of the baby, and assisting families and adolescents to understand and resolve the societal causes which are associated with adolescent pregnancy.
- The promotion of adoption as an alternative for adolescent parents.
- Provision of services after the delivery of the baby. This is the continuation of services to clients until adolescent parents have become or are well on their way to becoming "productive independent contributors to family and community life" and their children are developing normally physically, intellectually and emotionally. This is usually about 2 years after delivery.
- Provision of support by family members, voluntary associations, religious and charitable organizations and other groups in the private sector in order to help adolescents and their families deal with the complex issues surrounding adolescent pregnancy.

Prevention Programs

Under this announcement, funds are available for both local and multi-site national projects. A multi-site national project must have at least two sites in different States.

The purpose of prevention programs is to find effective means within the context of the family of reaching adolescents, both male and female, before they become sexually active in order to maximize the guidance and support available to adolescents from parents and other family members in promoting abstinence from adolescent premarital sexual relations. OAPP is soliciting applications for grants to provide innovative approaches to family life educational services that clearly and unequivocally promote abstinence unmarried adolescents. Applicants for prevention programs are not required to provide any specific number of services; a proposal may include any one or more of the following services as appropriate:

(1) Educational services relating to family life and problems associated with adolescent premarital sexual relations including:

(a) Information about adoption,

(b) Education on the responsibilities of sexuality and parenting,

(c) The development of material to support the role of parents as the providers of sex education, and

(d) Assistance to parents, schools, youth agencies and health providers to educate adolescents and preadolescents concerning self-discipline and responsibility in human sexuality;

(2) Appropriate educational and vocational services;

(3) Counseling for the immediate and extended family members of the eligible person;

(4) Transportation;

(5) Outreach services to families of adolescents to discourage sexual relations among unemancipated minors;

(6) Pregnancy testing and maternity counseling;

(7) Nutrition information and counseling; and

(8) Referral for screening and treatment of venereal disease.

The following application requirements contain information collections subject to OMB approval under the Paperwork Reduction Act of 1980 (Pub. L. 96–511). These information collections have been approved by OMB under control number 0937–0189.

Applications requesting support for prevention projects should propose innovative, value-based, family-centered approaches to promoting adolescent abstinence, affirming sexual relations in the context of marriage. Applicants should promote parents as primary sex educators of their children and emphasize the provision of support by other family members, voluntary associations, religious and charitable organizations and other groups in the private sector in order to help adolescents and their families deal with complex issues of adolescent premarital sexual relations. Prevention applicants are encouraged to propose innovative, value-based approaches which will improve our understanding of effective strategies, as opposed to duplicating approaches which focus merely on improving knowledge, communication and assertiveness skills.

Evaluation

Section 2006(b)(1) of Title XX requires each grantee to expend at least one percent but not more than five percent of the funds received under Title XX on evaluation of the project. In some cases, waivers of the five percent limit on

evaluation (see section 2006(b)(1)) may be granted.

As this is a demonstration program, all applications are required to have an evaluation component of high quality consistent with the scope of the proposed project and the funding. In this round of competition, the Office will consider waiving the five percent limit up to a maximum of 30 percent for applications which propose to compete as *Evaluation-Intensive* projects. Applicants who wish to compete under this category must propose a project with a strong evaluation design which focuses on outcome variables consistent with the key purposes of Title XX, including but not limited to family involvement, adoption and adolescent abstinence. All project evaluations should monitor program processes to determine whether the program has been carried out as planned. In addition, these evaluations should address questions pertaining to program impact, *i.e.*, is the program effective, for whom is it effective and under what conditions is it effective? The evaluation design may measure any of the following: (1) What effect variations in service delivery have on client outcomes; (2) how service delivery and corresponding client outcomes are influenced by variations in client population characteristics; or (3) the extent to which particular institutional settings, linkages with other provider agencies or other organizational characteristics affect the capacity of a project to provide the services in an effective manner. Emphasis must be placed on measuring variables which are integral to the project's proposed intervention and which are central to the purposes of the AFL program. Proposals must show serious attention to problems of data collection and verification, must demonstrate sample size sufficiency (emphasizing techniques for controlling for attrition) and must utilize a strong research design, using randomized control or matched-comparison groups for measurement where possible. Applications for Evaluation-Intensive awards will be reviewed with like applications.

Section 2006(b)(2) requires that an organization or an entity independent of the grantee providing services assist the grantee in evaluating the project. Particularly in the case of Evaluation-Intensive proposals, the OAPP strongly recommends extensive collaboration between the applicant organization and the proposed evaluator in the development of the intervention, development of the research hypothesis(es), identification of the variables to be measured and timetable for initiation of the intervention, baseline measurement, and ongoing evaluation data collection and analysis. Failure to integrate the intervention and evaluation components to the satisfaction of reviewers will result in rejection of the proposal.

Application Requirements

Applications must be submitted on the forms supplied and in the manner prescribed in the application kits provided by the OAPP. Applicants are required to submit an application signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award.

It should be noted that grantees may not teach or promote religion in their AFL project. Each grant project must be accessible to the public generally, not just to those of a particular religious affiliation.

Under sec. 2011(a) of the Act, grantees may not provide abortions or abortion counseling or referral and may not advocate, promote or encourage abortion. Only if both the adolescent and her parents request abortion counseling may a grantee provide referral for abortion counseling to a pregnant adolescent.

Additional Requirements

Applicants for grants must also meet the following requirements:

(1) *Requirements for Review of an Application by the Governor.* Section 2006(e) of Title XX requires that each applicant shall provide the Governor of the State in which the applicant is located a copy of each application submitted to OAPP for a grant for a demonstration project for services under this Title. The Governor has 60 days from the receipt date in which to provide comments to the applicant.

An applicant may comply with this requirement by submitting a copy of the application to the Governor of the State in which the applicant is located at the same time the application is submitted to OAPP. To inform the Governor's office of the reason for the submission, a copy of this notice should be attached to the application.

(2) *Review Under Executive Order 12372.* Applications under this announcement are subject to the review requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) as implemented by 45 CFR Part 100 (Intergovernmental Review of DHHS Programs and Activities) which established a process for consulting with State and local elected officials on proposed Federal financial assistance.

The application kit contains information to guide applicants in fulfilling the above requirements.

Application Consideration and Assessment

Applications which are judged to be late or which do not conform to the requirements of this program announcement will not be accepted for review. Applicants will be so notified, and the applications will be returned. All other applications will be reviewed and assessed according to the following criteria:

(1) The capacity of the proposed applicant organization to provide the rapid and effective use of resources needed to conduct the project, collect data and evaluate it. This includes personnel, time and facilities. (15 points)

(2) The applicant's presentation of an appropriate project methodology, including a clear statement of goals and objectives consistent with Title XX, reasonable methods for achieving the objectives, a reasonable workplan and timetable and a clear statement of results or benefits expected. (20 points)

(3) The applicant's provision for complying with the legislation's requirements to involve families in the delivery of services; in the case of care programs to promote adoption as a positive alternative; and in the case of prevention programs to clearly and unequivocally promote abstinence from adolescent premarital sexual activity, affirming sexuality in the context of marriage. (20 points)

(4) The applicant s documentation of the innovativeness of the program approach and its worth for testing and replication. (15 points)

(5) The applicant s presentation of a detailed evaluation plan, indicating an understanding of program evaluation methods and reflecting a practical, technically sound approach to assessing the project's achievement of program objectives. (20 points).

Note.—Applications will be reviewed in two separate categories according to whether they are standard demonstration proposals with limited evaluations or Evaluation-Intensive proposals.

(6) The applicant's provision for the requirements set forth in Section 2006(a) of Title XX of the Public Health Service Act. (10 points)

In making grant award decisions, the Deputy Assistant Secretary for Population Affairs will take into account the extent to which grants approved for funding will provide an appropriate distribution of resources throughout the country, the priorities in section 2005(a) and the factors in section 2005(b) of Title XX of the Public Health Service Act and other factors, focusing on:

(1) The reasonableness of the estimated cost to the government considering the anticipated results;

(2) The incidence of adolescent pregnancy and the availability of services in the geographic area to be served;

(3) The community commitment to and involvement in planning and implementation of the demonstration project;

(4) The nature of the organization applying;

(5) The population to be served;

(6) The organizational model(s) for delivery of service;

(7) The usefulness for policymakers and service providers of the proposed project and its potential for complementing existing AFL demonstration models;

(8) The applicant s proposed plans to access continued community funding as Federal funds decrease and end; and

(9) The applicant s capacity to administer funds responsibly.

OAPP does not release information about individual applications during the review process until final funding decisions have been made. When these decisions have been made, applicants will be notified by letter of the outcome of their applications. The official document notifying an applicant that an application has been approved for funding is the Notice of Grant Award, which specifies to the grantee the amount of money awarded, the purpose of the grant, the terms and conditions of the grant award, and the amount of funding to be contributed by the grantee to project costs.

Dated: January 4, 1989.

Nabers Cabaniss,

Deputy Assistant Secretary for Population Affairs.

[FR Doc. 89-3389 Filed 2-13-89; 8:45 a.m]

BILLING CODE 4150-17-M

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federal register

Tuesday
February 14, 1989

Part V

Environmental Protection Agency

40 CFR Part 149

Criteria for Identifying Critical Aquifer Protection Areas; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 149

[FRL-3373-2]

Criteria for Identifying Critical Aquifer Protection Areas

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is issuing a final rule which revises the Agency's existing regulations for identifying a Critical Aquifer Protection Area (CAPA). In general, a CAPA is an area which is particularly vulnerable to contamination, in which contamination is reasonably foreseeable unless a control program is implemented, in which contamination would cause significant economic, environmental or social costs, and which is all or part of a Sole Source Aquifer. CAPA designation is a requirement for an area to be eligible to receive grants under section 1427 of the Safe Drinking Water Act (SDWA) pertaining to the Sole Source Aquifer Demonstration Program.

DATE: The rule is effective on March 16, 1989. In accordance with 40 CFR 23.7, this regulation shall be considered final Agency action for purposes of judicial review at 1:00 p.m., Eastern Standard Time on February 28, 1989.

ADDRESS: The docket for this rule is available for public inspection at: Public Reference Unit, U.S. Environmental Protection Agency, Room M2404, 401 M Street, SW., Washington, DC 20460, and all ten of the EPA Regional Office Libraries during operating hours.

FOR FURTHER INFORMATION CONTACT: Charles Job, Office of Ground-Water Protection, (WH-550G), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-7077.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 1427 of the Safe Drinking Water Act (SDWA), 42 U.S.C. 300h-6, establishes a program to demonstrate techniques for protecting Critical Aquifer Protection Areas (CAPA) within sole or principal source aquifers (SSA) and authorizes grant funds through a grant application procedure for this purpose.

SDWA section 1427 also requires that demonstration projects must meet certain criteria to be eligible for funding. EPA promulgated regulations in 1987 establishing such criteria pursuant to section 1427(d). Today's rulemaking action amends those regulations based on public comments received in response to the publication of the rules in 1987.

A. Legal Background

To be eligible for a grant under SDWA section 1427, the statute requires that a demonstration program must be located in a CAPA of a sole or principal source aquifer. The term, sole or principal source aquifer, means an aquifer which the Agency has determined under SDWA section 1424(e) "is the sole or principal drinking water source for [an] area and which, if contaminated, would create a significant hazard to public health." In February 1987, the Agency issued a document entitled the "Sole Source Aquifer Designation Petitioners Guidance" which describes the procedures and criteria that EPA will use in determining whether to designate an aquifer as a sole or principal source aquifer.

Section 1427(b) of the SDWA defines the term Critical Aquifer Protection Area to mean either of the following:

(1) All or part of an area located within an area for which an application or designation as a sole or principal source aquifer pursuant to section 1424(e), has been submitted and approved by the Administrator not later than 24 months after June 19, 1986, and which satisfies the criteria established by the Administrator under subsection (d) of this section.

(2) All or part of an area which is within an aquifer designated as a sole source aquifer as of June 19, 1986, and for which an areawide ground-water quality protection plan has been approved under section 208 of the Clean Water Act prior to June 19, 1988.

Section 1427(d) states that not later than June 19, 1987, the Administrator shall, by rule, establish criteria for identifying CAPAs. Such criteria would be used in identifying CAPAs under section 1427(b)(1). Section 1427(d) further provides that in establishing such criteria, the Administrator shall consider each of the following:

(1) The vulnerability of the aquifer to contamination due to hydrogeologic characteristics.

(2) The number of persons or the proportion of population using the ground water as a drinking water source.

(3) The economic, social and environmental benefits that would result to the area from maintenance of ground water of high quality.

(4) The economic, social and environmental costs that would result from degradation of the quality of the ground water.

The Agency has determined that this regulation is not subject to the notice and comment rulemaking requirements of section 553 of the Administrative Procedure Act (APA). In enacting SDWA section 1427 Congress did not intend to establish a Federal regulatory program. Rather, the legislative history demonstrates that Congress intended to authorize EPA to provide grant funding for demonstration programs to protect CAPAs. As stated by Senator Durenberger in consideration of the Conference Report of the 1986 Safe Drinking Water Act amendments, the Sole Source Aquifer Demonstration Program is "[a] grant program. It authorizes assistance to State and local governments to plan and implement programs that will protect sole source aquifers." 132 CONG. REC. S6289 (Daily ed. May 21, 1986) Accordingly, since the purpose for determining whether an area is a critical aquifer protection area is to establish eligibility for the awarding of sole source aquifer demonstration grants, this regulation falls within the scope of APA section 553(a)(2). That provision exempts rules from notice and comment requirements "to the extent there is involved * * * a matter relating to * * * public property, loans, grants, benefits or contracts." Further, there are no independent procedural requirements contained in SDWA section 1427 which would supersede the section 553(a)(2) grants exemption and require the Agency to go through notice and comment rulemaking. Finally, the Agency notes that it has, in effect, conducted notice and comment rulemaking by issuing this final regulation after taking public comment on the June 26, 1987, interim final rule.

B. Procedural Background

On June 26, 1987, EPA issued an interim final rule which established criteria for determining whether to designate an area as a CAPA under SDWA section 1427. 52 FR 23982 (Codified at 40 CFR 149.1-.3 and referred to hereafter as the 1987 CAPA rule.) Although the Agency's 1987 CAPA rule was final and became effective immediately upon publication, the Agency solicited public comments. During the 90-day comment period, the Agency received comments from 11 groups, including four environmental organizations, two professional societies, and two companies.

In addition, on August 10, 1987, the Natural Resources Defense Council, Inc., the Environmental Defense Fund, and the Environmental Policy Institute filed a petition for review of the 1987 CAPA rule in the U.S. Court of Appeals for the Second Circuit, *Natural Resources Defense Council, Inc., et.al.* v. *EPA*, No. 87-4100. The petitioners identified three issues for judicial review: (1) Whether issuance of the CAPA rule as an "interim final" rule violated the procedural requirements of the APA and SDWA; (2) whether consideration of the cost of replacement of a drinking water supply was appropriate under the SDWA in making CAPA determinations; and (3) whether EPA established an appropriate formula of assessing the percentage of a population dependent on the CAPA as a source of drinking water. These issues were identical to concerns expressed by the petitioners in their comments on the rule. By stipulation dated September 9, 1987, the parties agreed to withdrawal of the petition for review.

The Agency has re-examined the positions taken in the 1987 CAPA rule in light of the public comments. For reasons explained in section II of this preamble, EPA has decided to make certain changes in the criteria for determining whether to designate an area as a CAPA and is amending its regulations accordingly. The Agency, however, does not agree with all of the comments it received and has declined to make certain suggested modifications. The reasons for the Agency's positions are discussed more fully in section III of the preamble. Section IV of the preamble discusses EPA's plans for implementing the grant program when funds are made available for demonstration projects.

II. Summary of the 1987 CAPA Rule and Explanation of Modifications made in the 1989 Rule

A. Summary of the 1987 CAPA Rule

The 1987 CAPA rule describes a CAPA to be, in general, a major vulnerable recharge area to a sole or principal source aquifer (SSA) of particularly high value. The 1987 rule also established a set of minimum criteria for identifying a CAPA which required that the proposed aquifer or segment of an aquifer be more valuable and more vulnerable to contamination than is required for SSA designation. The 1987 rule established the following requirements for CAPA designation:

(1) The sole source aquifer is particularly vulnerable to contamination due to the hydrogeologic characteristics of the unsaturated or saturated zone;

(2) The sole source aquifer is the source of drinking water for at least 75% of the persons in the aquifer service area; and

(3) The cost of replacing the water supply from the sole source aquifer would cause water supply cost to exceed 0.7 percent of mean annual household income.

See 40 CFR 149.3(a) (1)-(3) (1987).

In addition, the 1987 CAPA rule provided for consideration of "evidence that ground water in the suggested CAPA discharges into an area containing valuable ecological systems, ecological areas protected by Federal or State laws, which are dependent on ground water, or that there would be significant environmental or social costs, or health risks, if the area were contaminated * * *." This evidence, however, would not be sufficient to support a CAPA determination by itself. See *id.*

The preamble to the 1987 rule contained descriptions of areas which EPA would generally consider to be vulnerable to contamination. See 52 FR 23984 (June 26, 1987). The preamble also described the kinds of information such as maps and hydrogeologic data [See id. at 23985), that would be useful for assisting EPA in the evaluation of the application. This preamble discussion continues to be valid for the purposes of the 1989 rule.

Finally, the 1987 CAPA rule codified the provision of SDWA section 1427(b)(2). Under this provision of the statute, EPA must automatically determine that an area is a CAPA if the applicant can show that the proposed area is all or part of an area designated as a sole or principal source aquifer pursuant to section 1424(e) by June 19, 1986, and that an areawide ground-water quality protection plan was approved for the area under section 208 of the Clean Water Act by that date.

B. Modifications to the 1987 CAPA Rule

EPA has made four significant changes in the CAPA rule being promulgated today:

(1) EPA deleted the requirement that 75% of the persons in the aquifer service area be supplied with drinking water from the sole source aquifer.

(2) EPA deleted the requirement that the cost of replacing the water supply from the sole source aquifer would cause water supply costs to exceed 0.7 percent of mean annual household income.

(3) EPA revised the rule to allow for the consideration of social and environmental costs, as well as economic costs, in the assessment of the cost of contamination of an SSA. The Agency's major emphasis, however, will remain on the protection of drinking water sources; and

(4) EPA incorporated into the rule a consideration of the likelihood of contamination of the proposed CAPA.

The reasons for these changes are set forth below.

1. Population Requirement

The purpose of the 75% criterion was to limit CAPAs only to those aquifers for which a substantial portion of the population was dependent upon ground water. It also was another tool in deciding which CAPAs are potentially more valuable. The Agency has subsequently analyzed data on populations served by SSAs and has found that most of the SSAs serve 100% of the population in the aquifer service area. In fact, this 75% criterion would have excluded only three of the current SSAs from eligibility for CAPA designation. The Agency therefore believes, for the purposes of this rule, this criterion need not be more stringent than that required for sole source aquifer designation (i.e., the aquifer must serve at least 50% of the population). Although the practical result of this change is to enlarge the number of areas potentially eligible for CAPA grants, we note that a proposed CAPA must still constitute part of or all of an SSA. Since the SSA criteria require that an aquifer serve at least 50% of the population in the aquifer service area, the change does not eliminate entirely the consideration of the extent of dependence on the aquifer as a source of drinking water.

2. Economic Replaceability

The purpose of the specific income test, which required that the cost of replacing the water supplies from the sole source aquifer exceed 0.7 percent of mean annual household income, was to exclude areas from being CAPAs if the local population had the ability easily to pay for an alternative source of drinking water in the event the aquifer should become contaminated. The greater the expense of replacing the drinking water provided by the aquifer, the higher the value for a demonstration project. The 0.7 threshold was chosen to represent a slightly higher figure than what might be considered to be representative of the average (i.e., 0.4 to 0.6 percent of mean annual household income) paid for water in the U.S. The Agency intended to use this slightly more restrictive figure as another means of identifying potential CAPAs as a special subset of SSAs.

The Agency studied more recent data compiled on household costs and future replacement costs compiled as a part of Regulatory Impact Analyses being performed for ongoing rulemaking activities related to the Safe Drinking Water Act Amendments of 1986. These data indicate that water supply costs will increase in the future as the result of additional regulatory requirements and that the future costs of water supply are likely to exceed 0.7 percent of mean annual household income in many public water systems. Because the 0.7

percent threshold may not identify areas that are particularly valuable under such new criteria, the Agency is dropping the specific 0.7 percent threshold in the revised final rule. In its place, EPA is including a criterion that the costs resulting from foreseeable contamination would be "significant." By using the term "significant," EPA intends to allow itself some discretion in deciding which areas should be designated as CAPAs. EPA expects to consider a variety of ways of evaluating the significance of replacement costs, such as the increase in the absolute cost of supplying drinking water if water were obtained from a replacement source, the cost of replacement water relative to the cost of supplying water elsewhere in the region, and the increased cost expressed as a percentage of mean annual household income.

3. Consideration of Economic, Social and Environmental Costs

The Agency has also revised the way in which it considers economic, social, and environmental costs. Rather than treat environmental and social costs as a factor that is considered only when the replaceability cost criterion is inconclusive, EPA has decided to review all potential types of costs resulting from contamination of a proposed CAPA. This analysis may include consideration of health risks and social costs related to contamination incidents. This change is being made to recognize the multiple uses of ground water and thus the possibility that contamination may have important impacts without affecting a drinking water supply significantly. Moreover, the statute implies in SDWA section 1427(d) that EPA should consider each of the different kinds of costs that may result from contamination.

Thus, EPA will determine whether, taken together, the economic, environmental, and social costs resulting from foreseeable contamination are significant. In making this judgment, EPA will continue to place its primary emphasis on the protection of valuable drinking water supplies. Consistent with this emphasis, the Agency anticipates that only in very unusual situations will the environmental or social costs of contamination be sufficiently great, by themselves, to support determination that an area is a CAPA.

4. Likelihood of Contamination

Finally, EPA has clarified in the revised CAPA rule that only those costs that are reasonably foreseeable will be considered in determining whether an area is a CAPA. This rule was revised to make clear the Agency's intention to limit eligibility for CAPA designation and eventual grants to areas which face some realistic threat of contamination. In addition to being responsive to a public comment, this revision is a logical outgrowth of using the CAPA determination as an eligibility criterion for a demonstration grant. Obviously, a demonstration program is most useful when it addresses a real, immediate contamination threat; conversely, the effectiveness of a ground-water protection project which is designed to prevent contamination by a source that does not exist will be open to question, since the adequacy of the control measures in the protection program will not have been tested.

Therefore, the Agency wishes to stress that extremely improbable threats will not be sufficient to justify CAPA designation. For example, if the area were located in a rural setting tens of miles from the nearest population centers, the Agency might agree that contamination of relatively clean ground water by urban hazardous waste might cause significant economic, social or environmental costs. Nevertheless, the likelihood of such contamination would be quite low, and probably would not be considered as a reasonable ground for determining that the area is a CAPA.

III. Public Comments on the 1987 CAPA Rule and EPA's Responses

A. Introduction

This section of the preamble will describe in detail the public comments that the Agency received on the 1987 CAPA rule during the comment period from June 28, 1987, through September 24, 1987. Also included in this section are EPA's responses to the comments.

EPA received 12 sets of comments. Although most comments suggested changes and deletions to the 1987 CAPA rule, several comments supported the rule. Commenters particularly expressed support for the 75% population threshold and the discussion contained in the preamble of different hydrogeological conditions which are vulnerable and therefore conducive to leaching.

B. Criteria for CAPA Designation

Comment: One commenter recommended that EPA establish an additional criterion for CAPA designation which considered whether the water sources that would be used for replacing an existing ground-water supply are affected by droughts.

EPA Response: The Agency believes that the criteria in both the 1987 CAPA rule and this rule are adequate to address this concern. The preamble to the 1987 rule explains the criteria that the Agency considers for evaluating the adequacy of alternative water sources. See 52 FR 23985. As implied in the preamble, EPA expects that alternative sources must be at least as reliable as the original source. Therefore an applicant for a grant under the Safe Drinking Water Act section 1427 may exclude from consideration as a possible source of replacement water any source which is known to be significantly less reliable than the original source of supply.

Comment: A commenter said that coordination of "controls" over CAPA areas may be difficult because of overlapping jurisdictions.

EPA Response: EPA agrees that a particular CAPA may be geographically defined in a way that crosses political boundaries (e.g., city limits, county lines) and that there may be greater difficulty in coordinating a program to protect ground water than if the CAPA lay entirely within a single jurisdiction.

The statute, however, indicates that an application for a CAPA demonstration grant must be submitted by a governmental entity or group of entities which have the legal authority to implement a proposed protection plan in a CAPA. See SDWA sections 1427 (c) and (f)(1)(E). Thus, before EPA approves any grants for CAPA demonstration programs, the Agency will require the applicant or applicants to have the necessary legal authority and jurisdiction for coordinating activities to make the program effective. In some cases, it may be necessary that two or more governmental entities join in one application.

Comment: One commenter, who apparently believed that EPA had (or would establish) a fixed limit on the size of a CAPA, objected to such a position because it failed to recognize the impact of hydrogeologic factors on the extent of ground-water contamination.

EPA Response: EPA does not have a policy on the maximum size of a CAPA. EPA agrees that establishing a fixed limit on the size of a CAPA would be inappropriate because of the variability of hydrogeologic conditions that can affect the nature of ground-water contamination. EPA expects that some CAPAs could be small and others could be quite large, perhaps as big as the SSA itself. Under both the 1987 and 1989 rules, the size of the CAPA will be determined by hydrogeologic characteristics relating to the recharge characteristics of the particular area. Therefore, EPA will not specify any particular type or amount of data necessary to demonstrate that an area is hydrogeologically vulnerable or to define the boundaries of a recharge area. Once EPA establishes its grants application procedures, EPA will judge these matters on a case-by-case basis in the review of applications.

Comment: One commenter questioned the definition of an aquifer and particularly the minimum yield criteria.

EPA Response: Section 149.2 of the 1987 CAPA rule defined an aquifer as a geologic formation, group of formations or part of a formation that is capable of yielding a significant amount of water to a well or spring. The SSA Designation Guidance used the same terminology to define an aquifer and offered guidance on how EPA would interpret the phrase "yielding a significant amount of water." Specifically, the SSA Designation Guidance indicated that EPA would consider a yield of 150 gal/day as enough to satisfy the yield criterion for SSA designation. This commenter also suggested that the Agency should set a minimum production level for water-bearing zones to qualify as an aquifer and recommended a sustainable yield of a gallon per minute over a year.

The SDWA requires that an area proposed for a CAPA designation must be all or part of an SSA. In other words, before the Agency is ever called upon to determine whether an area satisfies the criteria for a designation, EPA will have decided that the geological formation involved has sufficient yield to be an SSA. Therefore, the CAPA grant program does not raise the issue of how sufficient yield is evaluated, and the comment is, strictly speaking, irrelevant to the 1987 CAPA rule. Nonetheless, EPA has considered the commenter's suggestion to replace the 150 gal/day with sustainable yield of a gal/min over a year guideline and concludes that it would be inappropriate. A yield of 1 gal/min is equivalent to a yield of 1,440 gal/day, almost ten times the value in EPA's SSA Designation Guidance. EPA believes that an aquifer which yields 150 gal/day—enough to satisfy the average daily needs of a family of three, would satisfy the yield requirements, and be eligible for designation under the SSA program, if other criteria are met. There is no compelling reason to exclude such low yield aquifers from grants under SDWA section 1427.

Comment: A commenter questioned EPA's explanation of the relationship between an SSA and CAPA designation. Specifically, the commenter referred to EPA's explanation in the preamble that "the CAPA criteria would generally require that the sole source aquifer in question be more valuable and vulnerable that is minimally required for SSA designation." See 52 FR 23983.

EPA Response: EPA meant that to be designated as a CAPA an area must meet stricter criteria than those needed to receive SSA status. As a result, CAPAs would consist of areas that are a subset of SSAs.

In the 1989 CAPA rule, the Agency has made the criteria for CAPA determination more flexible; EPA believes, nonetheless, that CAPAs should still constitute a special subset of SSAs, and emphasizes that CAPAs will be the areas that are most vulnerable and most susceptible to contamination as well as being most "useful" for a demonstration.

C. Vulnerability To Contamination

Comment: Two commenters requested clarification of some terminology in the preamble to the 1987 CAPA rule referring to the vulnerability of aquifers. Specifically, the commenters asked EPA to explain the phrases—"particularly valuable," "particularly vulnerable to contamination," and "highly permeable unsaturated soils." See 52 FR 23984. The commenters suggested using standard geologic definitions with acceptable/unacceptable ranges of permeability.

EPA Response: These comments are directed to the preamble of the rule and not the rule itself. EPA intended that the wording of the rule and the preamble allow the Agency flexibility in determining whether an area is vulnerable, without giving specific numbers to adhere to. This approach is based on the suggestions of a technical workgroup which was established during the interim final rulemaking process. The group, which also provided suggestions on the wellhead protection program, consisted of representatives from EPA's Headquarters and Regional offices, the U.S. Geological Survey, and five State geological and environmental protection organizations. Members of the group had expertise in both technical and programmatic aspects of hydrogeology and ground-water protection. The group was asked to evaluate whether specific values should be placed on vulnerability. The group suggested that for the purposes of this rule, specific numbers need not be placed on parameters, in recognition of both the wide range in hydrogeologic factors affecting the vulnerability of sole source aquifers, as well as the wide range in possible contamination threats to be addressed by a Comprehensive Management Plan. The Agency accepted these suggestions.

Comment: One commenter said that consideration of vulnerability should also include discussion of land use factors and development pressure. As an example, the commenter pointed out that an industrial park would be more likely to cause contamination of an aquifer than a national or State park.

EPA Response: EPA generally agrees with the commenter. As explained in Section II of this preamble, the Agency has revised the 1987 CAPA rule to require consideration of the likelihood of contamination of a proposed CAPA. Thus, an applicant will be expected to demonstrate that contamination of an aquifer is a foreseeable possibility and to explain how such contamination would result in economic, environmental and social costs.

Comment: One commenter expressed concern about how the presence of a limited area, characterized by soil of high permeability, within a larger, generally less vulnerable area might affect EPA's decision to designate the larger area as a CAPA.

EPA Response: The commenter was apparently concerned that EPA would base its evaluation of vulnerability of a proposed CAPA on the permeability of the most vulnerable part of the proposed CAPA. EPA recognized that there are wide variations in hydrogeological characteristics within a small geographical area. As a result, some portions of a proposed CAPA may be significantly more vulnerable to contamination than other parts. Although the Agency is interested in the degree of variability, it does not see the benefit from specifying exact relative ratios of "more vulnerable" to "less vulnerable" areas, because the Agency is interested in the overall vulnerability of the proposed CAPA. If a proposed CAPA includes some areas that are not highly vulnerable, the Agency may decide to exclude those areas from a CAPA designation.

D. Population Served

Comment: Three commenters found the terminology that was used in referring to population served, specifically, the words "population," "persons," and "aquifer service area," to be confusing. See 52 FR 23986. These commenters requested clarification of these terms because of their concern that a particular recharge area, which would otherwise qualify for CAPA designation, might not qualify because that area failed to meet the population criterion.

EPA Response: As a point of clarification, it should be noted that the population dependence criterion (50% in this rule or 75% in the 1987 rule) refers to the population dependency of the SSA itself rather than to population

dependence within a CAPA or subset of CAPA. The terms "persons" and "aquifer service area" are defined and explained in the SSA Designation Guidance. The "population criterion" in the 1987 rule referred to the proportion of "persons" dependent on ground water within both the "aquifer service area" and the area above the SSA itself. The term "person" is defined in the SSA Designation Guidance as: individual, corporation, company, association, partnership, State, municipality or Federal Agency (and includes officers, employees, and agents of any corporation, company, association, State, municipality, or Federal Agency). The term "aquifer service area" is also defined in the SSA Designation Guidance as the area above the aquifer and including the area where the entire population served by the aquifer lives. The population criterion is not applied within the CAPA or a component of the CAPA such as a part of the recharge area, but rather to the entire aquifer service area and area above the SSA. Further information on performing these calculations appears in the SSA Designation Guidance. It should be noted, however, that the 75% population criterion has been deleted from this rule.

Comment: Two commenters said that there is no statutory basis for requiring that a CAPA serve 75% of the population.

EPA Response: As explained earlier, EPA has deleted the 75% criterion in the final rule. EPA, however, disagrees with the contention that it does not have statutory authority to establish such a criterion, since section 1427(d) of the SDWA specifically directs the Administrator to consider "the proportion of population using the ground water (aquifer) as a drinking water source."

Comment: Two commenters said that the determination of "population served" needs to incorporate projected population growth.

EPA Response: Since EPA has eliminated the 75% population criterion in the final rule, future population growth would become relevant under the CAPA rule only in the following ways: (a) Whether future population growth would increase the threat of contamination to the SSA and (b) whether existing threats to the SSA would possibly affect future growth. In either case, the applicant for a demonstration grant has the responsibility of providing information which is sufficient to support predicted changes in future population levels and to show how such changes are related to the threat of contamination. A variety of types of information could satisfy the applicable criteria. For example, an applicant could show that a public rail system is scheduled to open a new station and that new housing development plans have been filed and will likely be approved. If the aquifer were to become contaminated due to proposed septic tank fields, the resulting impacts could cause significant economic and social costs to the existing and future residents.

E. Economic Replaceability

Comment: Four commenters objected strongly to the economic replaceability criterion in the 1987 CAPA rule, arguing both that there was not statutory basis for the criterion and that it was inconsistent with the statutory purpose. Specifically, one commenter argued that SDWA section 1427(d) listed the only criteria which EPA could consider in deciding whether an area was a CAPA and that the cost of replacing a drinking water supply could not be used as a criterion because it was not listed in the statute. Other commenters made similar arguments and also claimed that the use of the replacement cost criterion conflicted with the basic purpose of SDWA section 1427, which they described as "protecting vulnerable ground water against contamination" and "prevent[ing] degradation" of "high quality ground water."

EPA Response: EPA is deleting the requirement in the 1987 CAPA rule that replacement costs must exceed 0.7% of mean annual household income. EPA will consider whether the cost of replacing a contaminated drinking water supply, together with other economic, environmental, and social costs, would be significant. See 40 CFR 149.3(a)(3). EPA believes that both the replacement cost criterion in the 1987 CAPA rule and the revised criterion are consistent with the statute. The statute provides that, in establishing criteria for identifying CAPAs, the Administrator shall consider "the economic costs * * * that would result from degradation of the quality of the drinking water." See SDWA section 1427(d)(4). The cost of supplying alternate water is clearly a possible economic cost that could result from contamination of an SSA. Obviously, there would be little or no point in considering various costs unless the Agency distinguished between areas proposed as CAPAs based on the magnitude of such costs. Thus, it is consistent with the statute for the Agency to establish a criterion which identifies an area as a CAPA only if contamination would cause "significant" costs. EPA thinks that the replacement cost criterion in the 1987 CAPA rule was similarly consistent with the statutory scheme.

EPA disagrees with the commenter who argued that the replacement cost criterion was illegal because it was not listed in SDWA section 1427(d). Even if it were not, the Agency is not limited to the four factors listed in SDWA section 1427(d) in establishing criteria for identifying CAPAs. SDWA section 1427(d) provides in part that "[i]n establishing * * * criteria (for identifying CAPAs), the Administrator shall consider each of the following" factors. The statute does not restrict the Administrator to consideration of these factors alone, nor does it prohibit consideration of other factors. Moreover, the statute only requires the Administrator to "consider" these factors, but it does not mandate their use in establishing the CAPA criteria. Thus, the Agency believes that SDWA section 1427(d) gives EPA authority to establish and use any additional reasonable criteria in determining which areas are CAPAs.

Finally, EPA disagrees with the commenter's characterization of the purpose of SDWA section 1427, and rejects the view that the criteria are inappropriate in light of the statutory purpose. As noted in section IIB, the only purpose of determining that an area is a CAPA is to establish eligibility for a grant program. The grant program is for the purpose of demonstrating how to protect human health, the environment, and ground-water resources. See SDWA section 1427 (a) and (f)(1). As demonstration projects, the activities funded under SDWA section 1427 are merely examples of programs that could be implemented elsewhere in the country. Indeed, by setting a ceiling on the funds that may be spent annually on an aquifer or under the entire program, the statute makes clear that the grants program is limited in scope. See SDWA section 1427 (j) and (k). In short, it is clear from the statute that Congress did not intend to create a comprehensive grant program to fund protection projects at each SSA. Rather, Congress' goal was more modest—to encourage the development of measures that effectively protect vulnerable SSAs and to promote their application in other areas. See SDWA section 1427(l).

The criteria in today's rule, like the criteria in the 1987 CAPA rule, are fully consistent with the statutory purpose. The criteria aid EPA in identifying the areas which should be CAPAs and should, therefore, be eligible for one of a limited number of demonstration grants. It is entirely appropriate therefore that the criteria operate selectively, leading to the identification of a special subset of SSAs as CAPAs in which demonstration programs will be carried out most productively.

Comment: One commenter suggested that, in some cases, the distance to alternative water sources is so great that economic infeasibility is obvious without further analysis. The commenter requested that the Agency should specify a maximum distance beyond which consideration of alternatives would not be required.

EPA Response: EPA is changing the economic cost criterion in the rule so that the applicants are free to provide any evidence that shows "significant" economic damages that would result from contamination of the aquifer. Unusually long distance to alternative sources of water supply (i.e., via pipelines) could be used as evidence of irreplaceability. EPA does not want to restrict the allowable analysis by specifying particular maximum distances on a national level because a fixed distance number would not apply uniformly nationwide (e.g., a pipeline distance of ten miles in certain Eastern States might be considered unreasonable, whereas the same distance might be considered reasonable for pipelines in certain Western States.)

Comment: One commenter objected that the 1987 CAPA rule failed to specify any level for the quality of the water used to replace drinking water from a contaminated SSA.

EPA Response: EPA has decided not to revise the rule to specify a certain quality for the replacement of the water. EPA intends, at a minimum, that replacement water be potable at the time of delivery to the consumer and that this water meet all applicable water quality requirements under the Safe Drinking Water Act.

EPA recognizes that contamination of an SSA could force users to rely on a potable replacement source which may be of lower quality than water from the SSA. In such a situation, the loss of quality would represent environmental, social or economic cost resulting from the contamination. Such a potential loss would be considered by EPA in deciding whether costs of contamination are sufficiently "significant" that the area should be determined to be a CAPA.

Comment: One commenter objected to the economic replaceability test because it could fail to adequately recognize economic impacts on populations supplied by regional ground-water systems. In such systems, the costs of replacing water are distributed among a large number of users and thus replacement costs would be less likely to exceed the 0.7% threshold than in smaller supply systems.

EPA Response: The commenter's concern is addressed in the 1989 rule with the deletion of the 0.7% criterion. The new language in the final rule requires that replacement costs be "significant." Evaluation of whether the cost would be considered significant would take such local factors into account. In such situations EPA would be willing to consider other ways of evaluating the cost, such as the absolute cost of replacing the water supply.

Comment: One commenter said the economic replaceability criterion may not always be an appropriate test of value, particularly if the CAPA comprises the entire SSA. Provisions should be made for a more flexible cost test in this regard.

EPA Response: EPA agrees that, for the purpose of the CAPA rule, the test should be made more flexible and as mentioned in earlier responses to comments, the Agency will be deleting the 0.7% criterion and will be allowing for a more flexible test in the language in this final rule.

F. Ecological and Social Value

Comment: One commenter recommended that the rule be revised so that ecological and social values should be weighed on an equal basis with economic costs.

EPA Response: As explained earlier, EPA has revised the 1987 CAPA rule to provide greater flexibility by consideration of not only economic replacement costs but also other economic costs and environmental and social costs of reasonably foreseeable contamination in every application for a demonstration grant (see Section II of this preamble). EPA intends to be most concerned with the protection of aquifers as sources of drinking water, the primary goal of the Safe Drinking Water Act.

Comment: One commenter said an SSA of unusual ecological or social value should be eligible for designation as a CAPA, even if other criteria are not met.

EPA Response: In light of the revisions made to the 1987 CAPA rule, EPA will consider all potential types of costs that could result from contamination: economic, environmental and social costs. EPA agrees that, in the absence of any economic impacts, if contamination would cause an unusual or particularly severe social or environmental cost CAPA designation may be justified. For instance, a CAPA could be designated based in part on a showing that (1) ground water recharged in the CAPA discharges to a national park or wetland, or the habitat of an endangered species, (2) there are demonstrable contamination threats, and (3) if such contamination were to result, a vital natural resource or species could be destroyed.

Comment: One commenter recommended that the criteria for determining that an area is a CAPA should include consideration of impacts that the CAPA determination may have on farmers.

EPA Response: EPA does not accept the recommendation. The commenter apparently is concerned that a CAPA designation might impede farming activities or affect property owners engaged in productive enterprise on land designated as a CAPA.

EPA believes that a CAPA determination, by itself, would have no impact on farmers. A protection program carried out under a CAPA grant might affect farmers either by limiting allowable land use or by providing increased protection of their ground water or both. Until EPA receives applications for such grants, it is impossible to predict whether any protection programs would affect farmers adversely. At this time it does not seem appropriate to consider possible future effects of a program on farmers in deciding whether an area is a CAPA.

G. Information Requests

Comment: One commenter said hydrogeologic assessment information in addition to that suggested may benefit the CAPA review process.

EPA Response: EPA agrees with this comment, and an applicant may choose to submit any additional hydrogeologic data that will enhance the understanding of the vulnerability and recharge characteristics of the proposed CAPA.

Comment: A commenter said clarification is needed regarding the identification of potential pollution sources; specifically, with respect to the ability of the soils and the unsaturated zone to moderate contamination from potential pollution sources and whether landowners, competent agricultural specialists and soil scientists would have input into such analysis.

EPA Response: EPA does not expect submission of data regarding potential pollution sources, except as necessary for assessing the likelihood of contamination. Regarding the hydrogeologic criteria, an applicant is free to submit any data that could enhance the Agency's understanding of the vulnerability and recharge characteristics of the proposed CAPA.

EPA encourages competent scientific data to be made a part of an application and that this information come from appropriate specialists.

H. Procedural Requirements

Comment: Three commenters said that EPA's view that the CAPA criteria are interim final rules and exempted from the requirements of the APA because they are "grant related" is wrong.

EPA Response: EPA disagrees with commenters who argued that EPA should have gone through the APA notice and comment rulemaking when it issued its June 28, 1987 interim final rule. As explained earlier, Congress enacted SDWA section 1427 to establish a Sole Source Aquifer Demonstration Grant Program. Therefore, the purpose of determining whether an area is a critical aquifer protection area is to establish eligibility for awarding demonstration grants. Accordingly, EPA believes that the June 28, 1987 interim final rule falls within the scope of the grants exception to APA notice and comment rulemaking found in APA section 553(a)(2). Additionally, although SDWA section 1427(d) directs the Agency to establish criteria for identifying CAPAs by rule, it contains no independent requirement for notice and comment rulemaking in establishing such criteria.

I. Definition of "Major Recharge Area"

Comment: A commenter suggested a revision to the definition of "recharge area" in 40 CFR 149.2; specifically, to change the second "the" to "a" in the sentence explaining what constitutes a major recharge area.

EPA Response: The definition presented in the 1987 CAPA rule describes a major recharge area as "the area where the major part of the recharge to an aquifer occurs through infiltration of precipitation or surface water." EPA agrees that the change recommended by the commenter is technically valid and has made the suggested correction in the 1989 final rule. The reason for this change is to recognize that an SSA may contain more than one distinct area through which a significant share of the recharge moves into the sole source aquifer.

J. Background

Comment: One commenter said that in order to encourage local government participation, the CAPA program needs to have minimal red tape and informational requirements.

EPA Response: EPA agrees that unnecessary information requirements should be avoided. If and when funding becomes available, EPA plans to issue guidance on how to prepare applications. The Agency will attempt to provide clear and simple instructions, concentrating on the items necessary for a complete application.

Comment: One commenter said to stimulate CAPA program effectiveness and to benefit as many jurisdictions as possible, grants should be provided to fund a wide variety of aquifer protection management techniques.

EPA Response: EPA believes this comment has merit and will address this issue when the Agency issues grants guidance. The comment, however, does not require any revision in the 1987 CAPA rule.

Comment: One commenter asked to equate the CAPA criteria to such concepts as ground-water classification, zones of contribution and sensitive areas.

EPA Response: EPA believes that they are related but different. EPA believes that the statute is clear in the definition and purpose of a CAPA. Such definition and purpose do not necessarily replace, equate, or overlap with definitions and purposes of the other ground-water protection terms mentioned by the commenter. Some wellhead protection programs of the States, including those developed pursuant to section 1428 of the SDWA, do include portions of "zones of contribution." The designation of specific classes of ground water by the States often considers hydrogeologic and water use concepts quite different than those of either CAPAs or wellhead protection areas. State classification systems may consider different ground-water quality and other beneficial use characteristics. EPA emphasizes however, that an applicant is free to submit information on such relationships between these ground-water protection concepts and demonstrate how these concepts would support the technical information in a demonstration application.

Comment: One commenter said that the role of the State in the CAPA petition process needs to be included in the criteria.

EPA Response: The statute is clear about the role of States in the process of applying for demonstration grants. SDWA section 1427(c) indicates that if a jurisdiction other than a State applies for a grant, the applicant must have the Governor as a co-applicant when applying for SSA demonstration grant funds. In view of the clear statutory provisions, EPA does not believe any additional guidance in the CAPA rule is needed.

IV. Implementation

The SSA Demonstration Program is a limited one, which may entitle successful applicants to receive matching grants. The total amount of the grant cannot exceed $4 million per aquifer per year. As part of the demonstration program, any State, municipal or local government, or political subdivision thereof or any planning entity (including any interstate regional planning entity) that identified a CAPA over which it has authority or jurisdiction within an already designated SSA, may apply for the demonstration program. For fiscal years 1988 and 1989, Congress has not appropriated funds for demonstration program grants. Detailed information on applying for demonstration grant funds including procedures, application materials, and review criteria will be released by EPA if funds are appropriated for demonstration program grants in the future. A notice of availability of these application materials would be published in the Federal Register.

The Sole Source Aquifer Demonstration Program will not affect or inhibit Agency regulatory programs. The Agency does not intend to establish an administrative program strictly to define and delineate CAPAs, but only as one "screening" step in the context of the demonstration program. The actual selection process will be addressed by the Agency when it issues CAPA grants guidance.

V. Regulatory Impact Analysis

Under Executive Order 12291 (46 FR 13193, February 9, 1981), EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis.

A major rule is defined as a regulation which is likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers; individual industries; Federal, State, and local government agencies; or geographic regions; or

(3) Significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule to define critical aquifer protection areas is not major since it has no effect on the overall cost and economic impact of EPA's sole source aquifer regulations. Therefore, the Agency has not conducted a regulatory impact analysis. The draft of this rule was cleared by the Office of Management and Budget (OMB) pursuant to Executive Order 12291. A summary of comments from OMB to EPA and EPA's response to these comments will be available for viewing at the Environmental Protection Agency, Room 801 East Tower, 401 M Street, SW., Washington, DC 20460.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 through 612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities. This regulation will impose no significant costs on any small entities. The overall economic impact, therefore, on small entities is small. Accordingly, I hereby certify that this regulation will not have a significant impact on a substantial number of small entities. The regulation, therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

The Information Collection Requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* These requirements are not effective until OMB approves them and a technical amendment to that effect is published in the **Federal Register.**

This rule in and of itself does not create any public reporting burden. Should funds be appropriated for the SSA Demonstration Program, EPA will issue Grants Guidance. As part of their application package pursuant to such Grant Guidance, it is anticipated that applicants will need to assert that all CAPA criteria established in this rule are met. The public burden associated with asserting CAPA criteria are believed to represent perhaps 10 to 25 percent of the 1040 hours of total burden associated with completing an SSA Demonstration Program application. These estimates are considered preliminary in nature (pending Grant Guidance issuance), and include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

An Information Collection Request document (ICR No. 1431) has been prepared by EPA and a copy may be obtained from: Carla Levesque, Information Policy Branch, EPA, 401 M Street, SW. (PM–223), Washington, DC 20460 or by calling (202) 382–2740.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, "Attention: Timothy Hunt."

List of Subjects in 40 CFR Part 149

Critical aquifer protection areas, Reservoirs, Water pollution control.

Date: February 7, 1989.

Jack Moore,

Acting Administrator.

Accordingly, Part 149 is amended as follows:

PART 149—SOLE SOURCE AQUIFERS

1. The authority citation for Part 149 continues to read:

Authority: Sec. 1424(e), Safe Drinking Water Act (42 U.S.C. 300h–3(e); sec. 1427 of the Safe Drinking Water Act (42 U.S.C. 300h–6)).

2. Section 149.2 is revised to read as follows:

§ 149.2 Definitions.

(a) *Aquifer* means a geological formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

(b) *Recharge* means a process, natural or artificial, by which water is added to the saturated zone of an aquifer.

(c) *Recharge Area* means an area in which water reaches the zone of saturation (ground water) by surface infiltration; in addition, a "*major recharge area*" is an area where a major part of the recharge to an aquifer occurs.

(d) *Sole or Principal Source Aquifer* (SSA) means an aquifer which is designated as an SSA under section 1424(e) of the SDWA.

3. Section 149.3 is revised to read as follows:

§ 149.3 Critical Aquifer Protection Areas.

A Critical Aquifer Protection Area is either:

(a) All or part of an area which was designated as a sole or principal source aquifer prior to June 19, 1986, and for which an areawide ground-water quality protection plan was approved, under section 208 of the Clean Water Act, prior to that date; or

(b) All or part of a major recharge area of a sole or principal source aquifer, designated before June 19, 1988, for which:

(1) The sole or principal source aquifer is particularly vulnerable to contamination due to the hydrogeologic characteristics of the unsaturated or saturated zone within the suggested critical aquifer protection area; and

(2) Contamination of the sole or principal source aquifer is reasonably likely to occur, unless a program to reduce or prevent such contamination is implemented; and

(3) In the absence of any program to reduce or prevent contamination, reasonably foreseeable contamination would result in significant cost, taking into account:

(i) The cost of replacing the drinking water supply from the sole or principal source aquifer, and

(ii) Other economic costs and environmental and social costs resulting from such contamination.

[FR Doc. 89–3386 Filed 2–13–89; 8:45 am]
BILLING CODE 6560–50–M

federal register

Tuesday
February 14, 1989

Part VI

Department of Education

Office of Vocational and Adult Education

Cooperative Demonstration Program; Notice of Proposed Priority, Required Activities, and Selection Criteria for Fiscal Year 1989; Notice

DEPARTMENT OF EDUCATION

Office of Vocational and Adult Education

Cooperative Demonstration Program

AGENCY: Department of Education.

ACTION: Notice of proposed priority, required activities, and selection criteria for fiscal year 1989.

SUMMARY: The Secretary of Education proposes to establish an absolute priority for a fiscal year 1989 grant competition under the Cooperative Demonstration Program. Under the priority, funds would be reserved for applications proposing to conduct high technology training projects in vocational education that involve cooperation between the private sector and public agencies in vocational education. The Secretary also proposes to require applicants to submit certain written assurances, as described under the Activities section of this priority, as part of their applications for this program and to prohibit the use of Federal funds to cover the costs of equipment used for project activities. Lastly, the Secretary proposes to use new selection criteria in evaluating applications submitted for this competition only.

DATE: Comments must be received on or before March 16, 1989.

ADDRESS: Comments should be addressed to Richard F. DiCola or Robert L. Miller, Program Improvement Branch, Division of National Programs, Office of Vocational and Adult Education (Room 4512, Switzer Building), 400 Maryland Avenue SW., Washington, DC 20202-7242. Telephone (202) 732-2362 or 732-2428.

SUPPLEMENTARY INFORMATION:

Program Information

Recent data compiled by the Bureau of Labor Statistics indicate faster than average growth in the demand for skilled technicians in high technology fields through the year 2000. The data also indicate that these emerging technologies will have a significant impact on the efficiency and flexibility of a well-trained work force.

High technology training can be conducted most effectively with the active involvement and cooperation of the private sector. Effective partnerships between the private sector and public agencies in vocational education are an important aspect of the Cooperative Demonstration Program which is designed, in part, to demonstrate ways in which public agencies in vocational education and the private sector can work together to assist students to attain the advanced level of skills needed to make the transition from school to work.

Priority

In accordance with Department of Education General Administrative Regulations at 34 CFR 75.105(c)(3), the Secretary proposes to establish an absolute priority for the fiscal year 1989 grant competition under the Cooperative Demonstration Program for projects that focus on high technology training efforts that are also models of cooperation between the private sector and public agencies in vocational education. In order to maximize the use of Federal funds for the direct training of students, the Secretary proposes that no Federal funds be used to purchase or lease equipment to conduct project activities. Any necessary equipment costs may be counted toward the cost-sharing requirement for this program.

Specifically, the Secretary proposes to support projects that—

(1) Train persons to become skilled workers or technicians in high technology occupations (including providing related instruction to individuals undergoing apprenticeship training) or to become skilled workers or technicians involved in the production, installation, operation, and maintenance of high technology equipment, systems, and processes;

(2) Are examples of successful cooperation between the private sector (including employers, consortia of employers, labor organizations, building trade councils, and other private agencies, organizations, and institutions) and public agencies in vocational education (including State and local educational agencies, postsecondary educational institutions, institutions of higher education, and other public agencies, organizations, and institutions). For the purpose of this competition the military and publicly funded laboratories are considered employers that could be used as private sector partners in a proposed project; *and*

(3) Expend no Federal funds for equipment, as defined in 34 CFR 74.132.

Activities

In support of this priority, an applicant would be required to submit, as part of its application, a written assurance that it will cooperate, if selected, with a planned national evaluation study of projects funded under this competition.

An applicant would also be required to submit, as part of its application, written assurances from each public agency in vocational education and each private sector entity that they will participate in the planning and operation of the proposed project as described in the application.

Criteria for Evaluating Applications

For the Fiscal Year 1989 grant competition under the Cooperative Demonstration Program, the Secretary proposes to use the following selection criteria and to assign points to the selection criteria as indicated:

(a) *Need.* (15 points)

(1) The Secretary reviews each application for information that shows the need for and the soundness of the rationale for the project.

(2) The Secretary looks for information that shows—

(i) A clear description of the need for the proposed project;

(ii) Specific evidence of the need for the project;

(iii) A description of any ongoing and planned activities in the community relative to the need, including, if appropriate, the relationship of any local, regional or State economic development plan;

(iv) Evidence that demonstrates the vocational training to be provided is designed to meet current and projected occupational needs;

(v) A clear statement of what the project seeks to demonstrate; and

(vi) Evidence that the project is likely to serve as a model in the future.

(b) *Plan of Operation.* (25 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(c) *Quality of Key Personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (c)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the project, as well as other information that the applicant provides.

(d) *Budget and Cost Effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(e) *Evaluation Plan.* (10 points)

The Secretary reviews each application to determine the quality of the project's evaluation plan for the project, including the extent to which—

(1) The plan includes activities during the formative stages of the project to help to guide and improve the project, as well as a final evaluation that includes summary data and recommendations; and

(2) The plan includes, at a minimum, a description of the participant data to be collected based on the project objectives; tracking and follow-up of progress by all project participants throughout the project period; and outcome measures to be used for each objective.

(f) *Adequacy of Resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies the applicant plans to use are adequate.

(g) *Private Sector Involvment.* (10 points)

(1) The Secretary reviews each application for information that shows the involvement of the private sector.

(2) The Secretary looks for information that shows—

(i) Private sector involvement in the planning of the project; and

(ii) Private sector involvement in the operation of the project.

(h) *Employment Opportunities.* (5 points)

The Secretary looks for information and documentation to the extent to which trainees, upon completion of their training, will be either employed in jobs related to their training or enrolled in postsecondary vocational education programs related to the training received during the project. Acceptable documentation includes letters of commitment from employers to hire training completers or descriptions of postsecondary vocational education programs that would be appropriate for subsequent training.

(i) *Dissemination.* (10 points)

(1) The Secretary reviews each application for information that shows that the applicant has an effective and efficient plan for disseminating information about the demonstration project, including the results of the project and any specialized materials developed by the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(ii) A description of the types of materials the applicant plans to make available and the methods for making the materials available;

(iii) Provisions for demonstrating the methods and techniques used by the project;

(iv) Provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project; and

(v) Provisions for publicizing the findings of the project at the local, State or national level.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding (a) the proposed priority for high technology projects that involve cooperation with the private sector and prohibit the expenditure of Federal funds for equipment and related requirements; and (b) the proposed selection criteria.

All comments submitted in response to this notice will be available for public inspection during and after the comment period in Room 4512 Switzer Building, 330 C Street SW., Washington, DC, between the hours of 9:30 a.m. and 3:00 p.m., Monday through Friday of each week except Federal holidays.

Authority: 20 U.S.C. 2411

Dated: February 2, 1989.

Lauro F. Cavazos,

Secretary of Education.

[FR Doc. 89-3470 Filed 2-13-89; 8:45 am]

BILLING CODE 4000-01-M

federal register

Tuesday
February 14, 1989

Part VII

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for New Stationary Sources; Revisions to Rubber Tire Manufacturing Industry; Proposed Rule and Public Hearing; Petition for Reconsideration

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-3437-2]

Standards of Performance for New Stationary Sources; Revisions to Rubber Tire Manufacturing Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and public hearing; petition for reconsideration.

SUMMARY: On September 15, 1987 (52 FR 34868), EPA promulgated standards of performance for the rubber tire manufacturing industry. Subsequently, the Rubber Manufacturers Association (RMA) filed a petition for reconsideration with EPA, both RMA and Firestone Tire and Rubber Company filed petitions for review of the Administration's decision with the D.C. Circuit, and Michelin Tire Corporation filed a motion for leave to intervene in the review of the promulgated standards. The petitioners requested review of: (1) Changes in cutoffs between proposal and promulgation; (2) potential expansion in the coverage of the regulation; (3) requirements for determining capture efficiency using a temporary enclosure; and (4) requirements for monthly tests for green tire sprays containing low quantities of volatile organic compounds (VOC). The EPA has evaluated the petition, and the Administrator grants the petitioners' requests for revision of the existing new source performance standard (NSPS) for the rubber tire manufacturing industry with regard to items (1), (3), and (4), but denies petitioners' requests for revision of the NSPS relating to coverage of the NSPS, item (2). This action provides EPA's responses to petitioners' requests, and the resulting minor proposed revisions to the NSPS are set forth in this notice.

A public hearing will be held to provide interested parties an opportunity for oral presentations of data, views, or arguments concerning the proposed revisions.

DATES: *Comments.* Comments must be received on or before April 21, 1989.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by March 14, 1989, a public hearing will be held on March 21, 1989, beginning at 10:00 a.m. Persons interested in attending the hearing should call Ann Eleanor at (919) 541-5578 to verify that a hearing will be held.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by March 14, 1989.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (LE-131), Attention: Docket No. A-80-9, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Public Hearing. If anyone contacts EPA requesting a public hearing, it will be held at EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Ann Eleanor, Standards Development Branch (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-5578.

Docket. A docket, number A-80-9, containing information considered by EPA in the development of the promulgated standards and the Petition for Reconsideration to which this notice is responding, is available for public inspection between 8:00 a.m. and 3:30 p.m., Monday through Friday, at EPA's Central Docket Section, South Conference Center, Room 4, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For further information and interpretations of applicability, compliance requirements, and reporting aspects of the revised standards, contact the appropriate Regional, State, or local office contact as listed in 40 CFR 60.4. For further information on the background for the proposed revised standards, contact Ms. Dianne Byrne, Standards Development Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-5266.

SUPPLEMENTARY INFORMATION:

I. Background

Standards of performance for the rubber tire manufacturing industry were promulgated in the **Federal Register** on September 15, 1987 (52 FR 34868). The promulgated standards limit VOC emissions from new, modified, or reconstructed facilities. The VOC emissions from the rubber tire industry are caused primarily by application of materials which contain VOC to different components of a tire during the manufacturing process. The affected facilities are each undertread cementing operation, each sidewall cementing operation, each tread end cementing operation, each bead cementing operation, each green tire spraying operation, each Michelin-A operation, each Michelin-B operation, and each Michelin-C automatic operation.

Facilities affected by these standards are those where components for agricultural, airplane, industrial, mobile home, light-duty truck, or passenger vehicle tires have a bead diameter up to and including 0.325 m (12.8 in) and are mass produced in assembly-line fashion.

The control technology for these facilities consists of low solvent usage or an emission reduction system.

II. Summary of RMA Petition for Reconsideration and EPA's Response

On November 12, 1987, the RMA (an association representing several tire manufacturers) filed with EPA a petition for reconsideration of the Standards of Performance for New Stationary Sources in the Rubber Tire Manufacturing Industry. On November 12 and 13, 1987, the RMA and the Firestone Tire and Rubber Company, respectively, filed with the U.S. Court of Appeals for the District of Columbia Circuit petitions for review of the Standards of Performance for New Stationary Sources in the Rubber Tire Manufacturing Industry under section 307(b) of the Clean Air Act. Additionally, on December 10, 1987, Michelin Tire Corporation filed a Motion for Leave to Intervene in the review of the final standards. Michelin filed the motion pursuant to Rule 15(d) of the Federal Rules of Appellate Procedure. Although Michelin is a member of the RMA, which also filed a petition for review of the standards, the corporation did not feel that its interest would be adequately represented or protected by RMA because Michelin utilizes processes and facilities that are unique in the industry.

The issues presented in the petitions for review are virtually identical to those raised in the petition for reconsideration.

The following discussion summarizes and represents the arguments made by all the petitioners with regard to the final standards. Likewise, EPA's response to each issue is made with regard to the arguments of all of the petitioners.

A. The petitioners stated that the VOC use cutoffs established in the final standard are inappropriate and unlawful, having been changed after proposal to incorporate arbitrary assumptions. They claim the final cutoffs also retroactively expanded coverage without the opportunity to comment and should be revised. At

proposal, the VOC cutoff was expressed in terms of grams per tire (grams/tire) and included only VOC applied to "tire" components, as that term was defined in the regulation. (Outsized tires (larger truck, implement, or industrial tires) and nonassembly-line tires were excluded from the definition of "tire" used to establish the 25 grams/tire cutoff at proposal). At promulgation, the cutoff was changed to a kilograms per month format and included all VOC used at the facility, including VOC used for tire types other than those defined in the regulation. Thus, the petitioners argued that this change resulted in retroactively expanding the NSPS coverage to include tire types not included in the proposed standards because the final standard applies to facilities constructed or modified between January 20, 1983, and September 15, 1987, that produced outsized tires. The petitioners maintained that it was not proper for EPA to include in the monthly VOC use cutoff calculations the VOC used for tire types and sizes other than those defined in the standard.

The petitioners also maintained that the assumptions regarding days of operation and production rates included in the monthly VOC cutoffs reflect limited data which did not represent typical operations either on the applicability date (January 20, 1983) or on the effective date (September 15, 1987). Specifically, the use of an inappropriate number for the days of operation and the production rate per facility resulted in an arbitrarily low cutoff value. The petitioners believed that the rulemaking record should have been reopened to enable interested parties to comment on these assumptions. According to the petitioners, owners or operators of facilities constructed or modified after the applicability date will be adversely affected by the change in the format of the final cutoff to kilograms VOC per month, including VOC used for tire types other than those defined in the regulation.

The Administrator believes that the form of the final cutoff and associated definitions are appropriate and should not be revised. The basis for these is fully consistent with the proposed standard. The final format and definitions, which were revised in response to public comment, merely make the standard more equitable and eliminate potential ambiguities in the proposed definitions and format. At proposal, the gram per tire VOC use cutoffs were provided to exempt from the emission reduction requirements facilities that would incur control costs which the Administrator judged to be too high for the emission reduction achieved. The EPA selected the 25 g/tire format for undertread cementing or sidewall cementing operations based on the belief that, although the amount of VOC may vary from tire-to-tire, all tires received an application of cement. After proposal, one industry commenter presented a situation where a large portion of the tire production did not receive undertread cement, but VOC use was greater than 25 g/tire for the portion of production receiving cement, the only tires that would be counted under the proposed format. In this case, it was argued that the cost of control would be unreasonable. With this situation in mind, EPA revised the format of the VOC cutoff for undertread cementing and sidewall cementing operations from 25 g/tire to total (uncontrolled) monthly VOC usage at each facility. The total (uncontrolled) monthly VOC use cutoff is equivalent to the proposed 25 g/tire cutoff, since it was developed using the same basis (production rate and days of operation, etc.) that was used to determine the proposed 25 g/tire cutoff. This format eliminates the requirement of having to reduce emissions by 75 percent where total VOC use could be relatively small, but the amount of VOC applied per tire could exceed the proposed 25 g/tire cutoff. In addition, total VOC use data, which are independent of tire size and use, were used to develop the percent emission reduction requirements and monthly VOC use cutoffs. Therefore, for these reasons, EPA denies the petitioners' requests to revise completely the form of the final cutoff and associated definitions.

Nevertheless, the Agency acknowledges that because of the long time period between proposal and promulgation (more than 4 years), in this instance it may not be reasonable to impose the final form of the cutoff on facilities that commenced construction, modification, or reconstruction prior to promulgation and that are using (or will use) low solvent technology to comply with the proposed gram per tire form of the standard. Therefore, EPA is granting the petitioners' requests with respect to affected facilities that commenced construction, modification, or reconstruction between proposal and promulgation. Specifically, EPA has revised the standard to allow affected facilities (each undertread cementing operation and each sidewall cementing operation) that commenced construction, modification, or reconstruction prior to the promulgation date (September 15, 1987) the option of complying with either the proposed or final cutoff. Owners or operators of affected facilities eligible for this option will be allowed 2 months following promulgation of this revision to elect to comply with the proposed or the final form of the cutoff. Provisions for notifying the Administrator of the election to be subject to the alternate standard are contained in §60.546(i) of the regulation. Otherwise, no notification is necessary. Once the decision is made, it cannot be reversed.

Except as previously discussed, the form of the final cutoff and associated definitions have not been revised. Undertread and sidewall cementing operations that commenced construction, modification, or reconstruction after the date of promulgation (September 15, 1987) may only use the final form of the cutoff (i.e., total kilograms of VOC per month, regardless of the type of tire processed at the affected facility).

B. Section 60.543(f)(2)(i) of the regulation requires an owner or operator of an affected facility that uses an incinerator as the control device to use a temporary total enclosure around the application and drying areas of the facility to determine the overall capture efficiency of the enclosure during performance tests. The temporary enclosure must be maintained at a negative pressure to ensure that all evaporated VOC are measurable. The petitioners assert that the requirement for a temporary enclosure maintained at a negative pressure is impractical because: (1) Significant openings would have to be provided to allow the entrance and exit of the tire components being processed; (2) operation at negative pressure would change the air flow at the unit and produce unrepresentative conditions; and (3) access must be provided for the operator of the equipment to carry out the normal functions associated with the operation.

The Agency does not necessarily agree with RMA's position. However, the regulation has been revised to provide an alternative procedure for demonstration of capture efficiency through the use of a liquid-to-gas materials balance in cases when only a single VOC (solvent) is used (see §60.543(f)(2)(iv)).

The liquid-to-gas materials balance involves the measurement of mass of liquid VOC that is used and the mass of gaseous VOC that is captured and routed to the incinerator. Capture efficiency is determined by dividing VOC captured by the VOC used. This is theoretically a sound procedure.

However, the results of the liquid-to-gas materials balance depend more heavily upon the accuracy and precision of the measurement methods than do the results of a gas-to-gas materials balance. Achieving high accuracy and precision of VOC measurements in systems that contain mixtures of VOC is particularly demanding. The alternative procedure is therefore applicable only to single solvent systems.

Either Method 25 or Method 25A may be used for the gas phase measurement in the liquid-to-gas materials balance. If Method 25A (flame ionization detector (FID)) is used, the FID must be calibrated with the solvent that is used in the system. A different calibration gas may be used if the results are corrected using an experimentally determined response factor comparing the alternative calibration gas to the single VOC used in the process. The gas phase testing with Method 25A is simpler than with Method 25 and the results are more immediately available. In cases where incinerator destruction efficiency is also being tested, however, the owner or operator may prefer to use the same Method 25 inlet data collected to demonstrate destruction efficiency for the gas phase portion of the liquid-to-gas materials balance.

C. The petitioners stated that the owner or operator of an affected water-based green tire spraying operation that uses a water-based spray containing minimal or no organic solvent should not be subject to the monthly performance test requirements of the regulation. They contend that if the owner or operator of the affected facility can show by way of spray formulation data or through analysis using Method 24 that the spray contains no organic solvent, then he should not be required to conduct a monthly performance test on a continuous basis.

The Administrator agrees that owners or operators of green tire spraying operations, using little or no organic solvent, should not be required to conduct monthly performance tests. Therefore, EPA is granting the petitioners' requests and has revised the regulation to allow the owner or operator of each green tire spraying operation using only water-based sprays (inside and/or outside) containing less than 1.0 percent by weight of VOC to submit annually formulation data or the results of Method 24 analysis to verify the VOC content of the spray in lieu of conducting monthly performance tests. After the initial results of the VOC content are reported, the owner or operator of the affected facility must continue to verify the VOC content of the spray on an annual basis unless the spray formulation changes, in which case the VOC content of the revised spray formulation must be analyzed and reported within 1 month of the formulation change.

III. Administrative Requirements

A. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties to identify readily and locate documents so that they can effectively participate in the rulemaking process; and (2) to serve as the record in case of judicial review, except for interagency review materials (section 307(d)(7)(A)).

B. Public Hearing

A public hearing will be held, if requested, to discuss the proposed rulemaking in accordance with section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentations should contact EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement with EPA before, during, or within 30 days after the hearing. Written statements should be addressed to the Central Docket Section address given in the **ADDRESSES** section of this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Central Docket Section in Washington, DC (see **ADDRESSES** section of this preamble).

C. Office of Management and Budget Reviews

Paperwork Reduction Act

Changes to the information requirements as proposed in today's notice have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA (ICR No. 1158) and a copy may be obtained by writing Carla Levesque, Information Policy Branch; EPA; 401 M Street SW. (PM-223); Washington, DC 20460 or by calling (202) 382-2468.

Public reporting burden for this collection of information is estimated to decrease 15 to 30 hours annually for manufacturers employing green tire spray operations using water-based sprays containing less than 1.0 percent by weight of VOC.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Paperwork Reduction Project (2060-0156), Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

This rulemaking was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA and any EPA response to those comments are included in Docket No. A-80-9. This docket is available for public inspection at EPA's Central Docket Section that is listed under the **ADDRESSES** section of this notice.

D. Regulatory Flexibility Act Compliance

The Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)) requires that adverse effects of all Federal regulations upon small businesses be identified. As stated in the preamble to the final NSPS (52 FR 34874), it is unlikely that any new plant would be considered a small entity. Therefore, it is unlikely that this rulemaking, which proposes minor revisions to the NSPS, would adversely affect any small businesses.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that these proposed revisions to the NSPS will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 60

Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping, Rubber tire manufacturing.

Date: February 7, 1989.

Jack Moore,

Acting Administrator.

For reasons set out in the preamble, it is proposed to amend 40 CFR Part 60, Subpart BBB, as follows:

PART 60—[AMENDED]

1. The authority citation for Part 60 continues to read as follows:

Authority: Sec. 101, 111, 114, 116, 301 of the Clean Air Act as amended (42 U.S.C. 7401, 7411, 7414, 7416, and 7601).

2. Section 60.540 is amended by revising paragraphs (a) and (b) to read as follows:

§ 60.540 Applicability and designation of affected facilities.

(a) The provisions of this subpart, except as provided in paragraph (b) of this section, apply to each of the following affected facilities in rubber tire manufacturing plants that commence construction, modification, or reconstruction after January 20, 1983: each undertread cementing operation, each sidewall cementing operation, each tread and cementing operation, each bead cementing operation, each green tire spraying operation, each Michelin-A operation, each Michelin-B operation, and each Michelin-C automatic operation.

(b) The owner or operator of each undertread cementing operation, and sidewall cementing operation in rubber tire manufacturing plants that commenced construction, modification, or reconstruction after January 20, 1983, and before September 15, 1987, shall have the option of complying with the alternate provisions in § 60.542a. This election shall be irreversible. The alternate provisions in § 60.542a do not apply to any undertread cementing operation or sidewall cementing operation that is modified or reconstructed after September 15, 1987. The affected facilities in this paragraph are subject to all applicable provisions of this subpart.

* * * * *

3. Section 60.542a is added to read as follow:

§ 60.542a Alternative standard for volatile organic compounds.

(a) On and after the date on which the initial performance test, required by § 60.8, is completed, but no later than 180 days after (promulgation of this revision), each owner or operator subject to the provisions in § 60.540(b) shall not cause to be discharged into the atmosphere more than: 25 grams of VOC per tire processed for each month if the operation uses 25 grams or less of VOC per tire processed and does not employ a VOC emission reduction system.

(b) [Reserved]

4. In § 60.543, the second sentences of paragraphs (b)(1) and (b)(2) are revised; paragraphs (b)(4), (f)(2)(iv), and (n) are added; and paragraphs (d) and (f)(2) introductory text are revised to read as follows:

§ 60.543 Performance test and compliance provisions.

* * * * *

(b) * * *

(1) * * * The owner or operator of an affected facility shall thereafter conduct a performance test each month, except as described under paragraphs (b)(4), (g)(1), and (j) of this section. * * *

(2) * * * The performance test shall be conducted in accordance with the procedures described under paragraphs (f)(2) (i) through (iv) of this section.

* * * * *

(4) The owner or operator of each green tire spraying operation using only water-based sprays (inside and/or outside) containing less than 1.0 percent, by weight, of VOC is not required to conduct a monthly performance test as described in paragraph (d) of this section. In lieu of conducting a monthly performance test, the owner or operator of each green tire spraying operation shall submit formulation data or the results of Method 24 analysis annually to verify the VOC content of each green tire spray material, provided the spraying formulation has not changed during the previous 12 months. If the green tire spray material formulation changes, formulation data or Method 24 analysis of the new spray shall be conducted to determine the VOC content of the spray and reported within 30 days as required under § 60.546(j).

* * * * *

(d) For each tread end cementing operation and each green tire spraying operation where water-based sprays containing 1.0 percent, by weight, of VOC or more are used (inside and/or outside) that do not use a VOC emission reduction system, the owner or operator shall use the following procedure to determine compliance with the g/tire limit specified under § 60.542(a)(3), (5)(i), 5(ii), 7(i), and (7)(ii).

* * * * *

(f) * * *

(2) Calculate the mass of VOC emitted per tire cemented at the affected facility for the month (N) or mass of VOC emitted per bead cemented for the affected facility for the month (N_b):

$N = G\ (1-R)$

$N_b = G_b\ (1-R)$

For the initial performace test, the overall reduction efficiency (R) shall be determined as prescribed under paragraphs (f)(2) (i) through (iv) of this section. After the initial performance test, the owner or operator may use the most recently determined overall reduction efficiency (R) for the performance test. No monthly performance tests are required. The performance test shall be repeated during conditions described under paragraph (b)(2) of this section.

* * * * *

(iv) The owner or operator of an affected facility shall have the option of substituting the following procedure as an acceptable alternative to the requirements prescribed under paragraph (f)(2)(i) of this section. This alternative procedure is acceptable only in cases where a single VOC is used and is present in the capture system. The average capture efficiency value derived from a minimum of three runs shall constitute a test.

(A) For each run, "i," measure the mass of the material containing a single VOC used. This measurement shall be made using a scale that has both a calibration and a readability to within 1 percent of the mass used during the run. This measurement may be made by filling the direct supply reservoir (e.g., trough, tray, or drum that is integral to the operation) and related application equipment (e.g., rollers, pumps, hoses) to a marked level at the start of the run and then refilling to the same mark from a more easily weighed container (e.g., separate supply drum) at the end of the run. The change in mass of the supply drum would equal the mass of material used from the direct supply reservoir. Alternatively, this measurement may be made by weighing the direct supply reservoir that the start and end of the run or by weighing the direct supply reservoir and related application equipment at the start and end of the run. The change in mass would equal the mass of the material used in the run. If only the direct supply reservoir is weighed, the amount of material in or on the related application equipment must be the same at the start and end of the run.

(B) For each run, "i," measure the mass of the material containing a single VOC which is present in the direct supply reservoir and related application equipment at the start of the run, unless the ending weight fraction VOC in the material is greater than or equal to 98.5 percent of the starting weight fraction VOC in the material, in which case this measurement is not required. This measurement may be made directly by emptying the direct supply reservoir and related application equipment and then filling them to a marked level from an easily weighed container (e.g., separate supply drum). The change in mass of the supply drum would equal the mass of material in the filled direct supply reservoir and related application equipment. Alternatively, this measurement may be made by weighing

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the direct supply reservoir and related application equipment at the start of the run and subtracting the mass of the empty direct supply reservoir and related application equipment (tare weight).

(C) For each run, "i," the starting weight fraction VOC in the material shall be determined by Method 24 analysis of a sample taken from the direct supply reservoir at the beginning of the run.

(D) For each run, "i," the ending weight fraction VOC in the material shall be determined by Method 24 analysis of a sample taken from the direct supply reservoir at the end of the run.

(E) For each run, "i," in which the ending weight fraction VOC in the material is greater than or equal to 98.5 percent of the starting weight fraction VOC in the material, calculate the mass of the single VOC used (M_i) by multiplying the mass of the material used in the run by the starting weight fraction VOC of the material used in the run.

(F) For each run, "i," in which the ending weight fraction VOC in the material is less than 98.5 percent of the starting weight fraction VOC in the material, calculate the mass of the single VOC used (M_i) as follows:

(*1*) Calculate the mass of VOC present in the direct supply reservoir and related application equipment at the start of the run by multiplying the mass of material in the direct supply reservoir and related application equipment at the start of the run by the starting weight fraction VOC in the material for that run.

(*2*) Calculate the mass of VOC present in the direct supply reservoir and related application equipment at the end of the run by multiplying the mass of material in the direct supply reservoir and related application equipment at the end of the run by the ending weight fraction VOC in the material for that run. The mass of material in the direct supply reservoir and related application equipment at the end of the run shall be calculated by subtracting the mass of material used in the run from the mass of material in the direct supply reservoir and related application equipment at the start of the run.

(*3*) The mass of the single VOC used (M_i) equals the mass of VOC present in the direct supply reservoir and related application equipment at the start of the run minus the mass of VOC present in the direct supply reservoir and related application equipment at the end of the run.

(G) If Method 25A is used to determine the concentration of the single VOC in the capture system, then calculate the capture efficiency (FC_i) for each run, "i," as follows:

$$FC_i = \frac{C_i - Q_i \frac{W}{V}}{(M_i)\ (10^6)}$$

where:

C_i = Average concentration of the single VOC in the capture system during run "i" (parts per million by volume) corrected for background VOC (see § 60.547(a)(5)).

W = Molecular weight of the single VOC, expressed as mg per mg-mole.

$V = 2.405 \times 10^{-5}$ m^3/mg-mole. This is the volume occupied by one mg-mole of ideal gas at standard conditions (20°C, 1 atmosphere) on a wet basis.

Q_i = Volumetric flow in m^3 in the capture system during run "i" adjusted to standard conditions (20°C, 1 atmosphere) on a wet basis (see § 60.547(a)(3)).

10^6 = ppm per unity.

M_i = Mass in mg of the single VOC used during run "i."

(H) If Method 25 is used to determine the concentration of the single VOC in the capture system, then calculate the capture efficiency (FC_i) for each run, "i," as follows:

$$FC_i = \frac{\frac{C_i}{(NC)(10^6)}\ \frac{(W)(Q_i)}{(V)}}{M_i}$$

Where:

C_i = Average concentration of the single VOC in the capture system during run "i" (parts per million, as carbon, by volume) corrected for background VOC (see § 60.547(a)(5)).

W = Molecular weight of the single VOC, expressed as mg per mg-mole.

$V = 2.405 \times 10^{-5}$ m^3/mg-mole. This is the volume occupied by one mg-mole of ideal gas at standard conditions (20°C, 1 atmosphere) on a wet basis.

Q_i = Volumetric flow in m^3 in the capture system during run "i," adjusted to standard conditions (20°C, 1 atmosphere) on a dry basis (see § 60.547(a)(5)).

10^6 = ppm per unity.

M_i = Mass in mg of the single VOC used during run "i."

NC = Number of carbon atoms in one molecule of the single VOC.

(I) Calculate the average capture efficiency value, F_c as follows:

$$F_c = \frac{\sum_{i=1}^{n} FC_i}{n}$$

Where: "n" equals the number of runs made in the test ($n \geq 3$). In cases where an alternative procedure in this paragraph is used, the requirements in (f)(2)(ii) and (iii) remain unchanged.

* * * * *

(n) For each undertread cementing operation and each sidewall cementing operation that does not use a VOC emission reduction system, the owner or operator shall use the following procedure to determine compliance with the 25 g/tire limit specified in § 60.542a:

(1) Calculate the total mass of VOC (M_o) used at the affected facility for the month by the following procedure.

(i) For each affected facility for which cement is delivered in batch or via a distribution system which serves only that affected facility:

$$M_o = \sum_{i=1}^{n} L_o D_o W_o$$

where: "n" equals the number of different cements or sprays used during the month.

(ii) For each affected facility for which cement is delivered via a common distribution system which also serves other affected or existing facilities.

(A) Calculate the total mass (M) of VOC used for all of the facilities served by the common distribution system for the month:

$$M = \sum_{i=1}^{n} L_o D_o W_o$$

Where: "n" equals the number of different cements or sprays used during the month.

(B) Determine the fraction (F_o) of "M" used by the affected facility by comparing the production records and process specifications for the material cemented at the affected facility for the month to the production records and process specifications for the material cemented at all other facilities served by the common distribution system for the month or by another procedure acceptable to the Administrator.

(C) Calculate the total monthly mass of VOC(M_o) used at the affected facility:

$$M_o = MF_o$$

(2) Determine the total number of tires (T_o) processed at the affected facility for the month by the following procedure.

(i) For undertread cementing, T_o equals the number of tread or combined tread/sidewall components which receive an application of undertread cement.

(ii) For sidewall cementing, T_o equals the number of sidewall components which receive an application of sidewall cement, divided by 2.

(3) Calculate the mass of VOC used per tire processed (G) by the affected facility for the month:

$$G = \frac{M_o}{T_o}$$

(4) Calculate the mass of VOC emitted per tire processed (N) for the affected facility for the month:

$$N = G$$

(5) Where the value of the mass of VOC emitted per tire processed (N) is less than or equal to the 25 g/tire limit specified under § 60.542a, the affected facility is in compliance.

* * * * *

5. Section 60.545 is amended by adding paragraph (f) to read as follows:

§ 60.545 Recordkeeping requirements.

* * * * *

(f) Each owner or operator of a green tire spraying operation using waterbased sprays containing less than 1.0 percent by weight of VOC, as specified under § 60.543(b)(4), shall maintain records of formulation data or the results of Method 24 analysis conducted to verify the VOC content of the spray.

6. Section 60.546 is amended by adding paragraphs (c)(7), (i), and (j) to read as follows:

§ 60.546 Reporting requirements.

* * * * *

(c) * * *

(7) For each affected facility that elects to comply with the alternate limit specified under § 60.542a: the mass of VOC used (M_o), the number of tires processed (T_o), and the mass of VOC emitted per tire processed (N).

* * * * *

(i) The owner or operator of each undertread cementing operation and each sidewall cementing operation who qualifies for the alternate provisions as described in § 60.540(b) and elects to be subject to the alternate provisions for VOC under § 60.542a, shall furnish the Administrator written notification of the election no less than 60 days after (promulgation of this revision).

(j) The owner or operator of each green tire spraying (inside and/or outside) operation using water-based sprays containing less than 1.0 percent, by weight, of VOC as described in § 60.543(b)(1) shall furnish the Administrator, within 60 days initially and annually thereafter, formulation data or Method 24 results to verify the VOC content of the water-based sprays in use. If the spray formulation changes before the end of the 12-month period, formulation data or Method 24 results to verify the VOC content of the spray shall be reported within 30 days.

* * * * *

7. Section 60.547 is amended by adding paragraph (a)(5) to read as follows:

§ 60.547 Test methods and procedures.

(a) * * *

(5) Method 25 or Method 25A for determination of the VOC concentration in a capture system prior to a control device when only a single VOC is present (see § 60.543(f)(2)(iv)(G) and (f)(2)(iv)(H)). The owner or operator shall notify the Administrator 30 days in advance of any test by either Method 25 or Method 25A. Method 1 shall be used to select the sampling site and the sampling point shall be the centroid of the duct or at a point no closer to the walls than 1 meter. Method 2, 2A, 2C, or 2D, as appropriate, shall be used as the test method for the concurrent determination of gas flow rate in the capture system.

(i) For Method 25, the sampling time for each run shall be at least 1 hour. For each run, a concurrent sample shall be taken immediately upwind of the application area to determine the background VOC concentration of air drawn into the capture system. Subtract this reading from the reading obtained in the capture system for that run. The minimum sample volume shall be 0.003 dry standard cubic meter (dscm) except that shorter sampling times or smaller volumes, when necessitated by process variables or other factors, may be approved by the Administrator. Use Method 3 to determine the moisture content of the stack gas.

(ii) For Method 25A, the sampling time for each run shall be at least 1 hour. Instrument calibration shall be performed by the procedure given in Method 25A using the single VOC present in the capture system. A different calibration gas may be used if the results are corrected using an experimentally determined response factor comparing the alternative calibration gas to the single VOC used in the process. After the instrument has been calibrated, determine the background VOC concentration of the air drawn into the capture system immediately upwind of the application area for each run. The instrument does not need to be recalibrated for the background measurement. Subtract this reading from the reading obtained in the capture system for that run. The Method 25A results shall only be used in the alternative procedure for determination of capture efficiency described under § 60.543(f)(2)(iv)(G).

* * * * *

[FR Doc. 89-3388 Filed 2-13-89; 8:45 am]

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federal register

Tuesday
February 14, 1989

Part VIII

Department of Education

Office of Elementary and Secondary Education

34 CFR Part 222

Assistance for Local Educational Agencies in Areas Affected by Federal Activities and Arrangements for Education of Children Where Local Educational Agencies Cannot Provide Suitable Free Public Education; Final Rule

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

34 CFR Part 222

Assistance for Local Educational Agencies in Areas Affected by Federal Activities and Arrangements for Education of Children Where Local Educational Agencies Cannot Provide Suitable Free Public Education

AGENCY: Department of Education.

ACTION: Final Regulations.

SUMMARY: The Secretary removes a regulatory provision, 34 CFR 222.95(d)(2) (53 FR 5556, February 24, 1988), promulgated under the Impact Aid law, Pub. L. 81–874 (the Act). That regulatory provision denies eligibility for funds under section 2 of the Act to a local educational agency (LEA) in a State with an equalized program of State aid meeting the requirements of section 5(d)(2) of the Act if that State, in allocating State aid, takes into consideration payments received by the LEA under section 2 of the Act. The Secretary removes this provision because of changes to the Impact Aid law made by the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (the Hawkins-Stafford Amendments), enacted April 28, 1988. The removal is effective beginning with payments to be made from fiscal year (FY) 1988 Impact Aid funds.

EFFECTIVE DATE: This regulatory change takes place either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these final regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Hansen, Director, Impact Aid Program, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2079, Washington, DC 20202–6272. Telephone: (202) 732–3637.

SUPPLEMENTARY INFORMATION:

Background

Final Regulations governing eligibility and entitlement determinations under section 2 of the Impact Aid program (Pub. L. 81–874) were published in the **Federal Register** on February 24, 1988 (53 FR 5552). Section 222.95(d)(2) of the regulations provides, in effect, that an LEA in a State that has an equalized program of State aid qualifying under section 5(d)(2) of the Act is not eligible for section 2 assistance if the State takes into consideration the LEA's section 2 payments in determining that LEA's eligibility for or amount of State aid. (53 FR 5556). Prior to the publication of those regulations, a State certified under section 5(d)(2) could take into consideration any Impact Aid funds (except the additional funds paid for certain handicapped children, heavily-impacted school districts, or school districts with unusual geographical factors) with no penalty to either the State or its LEAs.

The Secretary now removes § 222.95(d)(2) of the regulations, because the Secretary interprets provisions in the Hawkins-Stafford Amendments as effectively nullifying the policy underlying that regulatory provision. First, in the Hawkins-Stafford Amendments, Congress overturned a policy embodied in a regulatory provision to which § 222.95(d)(2) was tied. Under the related provision, 34 CFR 222.100 (53 FR 5552, 5557–58) (February 24, 1988), the computation of the maximum section 2 payment was to be changed so that, beginning with FY 1988 payments, it would be based upon only the "unequalized" portion of an LEA's local real property tax rate.

Many states "equalize" part or all of the local real property tax rate, so that an LEA receives from the State the difference between a guaranteed State aid amount and its local real property tax revenues generated from a mandated tax levy. To the extent such equalization exists, when the Department uses the LEA's full tax rate to compute the section 2 maximum entitlement, the LEA arguably does not experience a revenue loss attributable to the Federal property because State aid compensates for any lack of property tax revenues. In that situation, a State's deduction of section 2 revenues under section 5(d)(2) of the Act justifiably would further the State's equalization efforts.

In order not to pay section 2 funds where State aid already compensates for a lack of property tax revenues, beginning with FY 1988 under the Department's regulations the section 2 maximum payment was to be based only on the unequalized portion of the LEA's tax rate, *i.e.*, the portion producing revenues not deducted from the State guarantee because they are raised voluntarily in addition to the required amount. The State's consideration of the section 2 funds, when thus calculated, would prevent those funds from compensating a true loss. The Department therefore provided in § 222.95(d)(2) of the regulations that if a State did consider the section 2 revenues in allocating State aid, the LEAs in that State would not be eligible for further section 2 payments. See 53 FR 552, 5562 (February 24, 1988).

In the Hawkins-Stafford Amendments, however, Congress specifically overturned the policy in § 222.100 regarding the calculation of the maximum section 2 payments, effective beginning with FY 1989 Impact Aid payments (Pub. L. 100–297, section 2013). Section 222.100 was effective beginning with FY 1988 funds and would therefore have been effective for only one fiscal year. As a result of the anticipated burden on States and LEAs of a one-year implementation, the Department suspended the use of the unequalized tax rate methodology for FY 1988. 53 FR 26772 (July 15, 1988). With the suspension of § 222.100, which provided the major rationale for § 222.95(d)(2), the basis for § 222.95(d)(2) is effectively eliminated.

Further, in the Hawkins-Stafford Amendments, Congress prohibited States certified under section 5(d)(2) of the Act from taking into consideration certain *other* Impact Aid payments. (Pub. L. 100–297, section 2015(f), amending section 5(d)(2) of Pub. L. 81–874). The omission of "section 2 payments" from the list of prohibited State deductions in the Hawkins-Stafford Amendments can be seen as evidence that Congress intended that "section 5(d)(2)" States be permitted to continue their consideration of section 2 funds.

Because the Hawkins-Stafford Amendments are effective for FY 1989 payments (see Pub. L. 100–351 (June 27, 1988)), while the regulations published on February 24, 1988, were effective for FY 1988, § 222.95(d)(2) could be implemented for FY 1988 payments. However, the Secretary is removing § 222.95(d)(2) of the regulations effective for payments from FY 1988 appropriations that have not been made as of the effective date of these final regulations. The application of this provision for only one year would cause fiscal disruption to LEAs and their States, as well as an administrative burden to States should they seek to avoid the penalty to their LEAs by readjusting their FY 1988 State aid payments so as not to consider section 2 funds. If, however, a State has already taken that action, the removal of the regulatory provision does not penalize the State or LEAs, but preserves for the State the choice of whether to consider section 2 funds in allocating State aid in any fiscal year.

The Department has not yet made any FY 1988 section 2 payments to LEAs in States certified under section 5(d)(2) of the Act that would be affected by the provision. The removal of the provision for FY 1988 will therefore preserve the pre-existing status quo, under which "section 5(d)(2)" States are able to consider section 2 funds in allocating State aid.

Waiver of Notice of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)), and the Administrative Procedure Act, 5 U.S.C. 553, it is the Secretary's practice to offer interested parties the opportunity to comment on proposed regulations. In this case, however, the Secretary interprets recent legislation (the Hawkins-Stafford Amendments) as overturning the policy in 34 CFR 222.95(d)(2), effective beginning with FY 1989 funding. The Secretary has determined that it would be administratively burdensome and fiscally disruptive to applicants and States to apply that regulatory provision for only one year, *i.e.*, to FY 1988 payments. It is important that the removal of the regulatory provision take effect immediately to enable the Secretary to make FY 1988 section 2 payments to the LEAs in affected States.

Removing the regulatory provision effective for FY 1988 payments would have the effect of allowing "section 5(d)(2)" States to continue deducting section 2 payments in allocating State aid and permitting eligible LEAs in those States to continue receiving their section 2 payments. The Secretary therefore anticipates that the removal of the provision will have no adverse impact on States or LEAs. Because this action is in accordance with the public comment received when this provision was published as a proposed regulation in 1987 (52 FR 16144, 16152 (May 1, 1987)), and is beneficial to applicants, the Secretary does not anticipate that any further comment period would provide the Department with additional information or new comments.

Therefore, the Secretary has determined that publication of a proposed rule is impracticable, unnecessary, and contrary to the public interest under 5 U.S.C. 553(b)(B).

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary has determined that these regulations will not have the type of impact on a sufficient number of small entities that would require analysis under the Regulatory Flexibility Act. The small entities that would be affected by these final regulations are small LEAs receiving Federal funds under this program. However, only those LEAs entitled to section 2 funds would be affected, and of those, LEAs in no more than three States would be affected, and only for FY 1988 payments.

Paperwork Reduction Act of 1980

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

List of Subjects in 34 CFR Part 222

Education, Elementary and secondary education, Federally affected areas, Grant programs—education.

Dated: February 6, 1989.

Lauro F. Cavazos,

Secretary of Education.

(Catalog of Federal Domestic Assistance No. 84.041, School Assistance in Federally Affected Areas—Maintenance and Operations.)

The Secretary amends Part 222 of Title 34 of the Code of Federal Regulations as follows:

PART 222—ASSISTANCE FOR LOCAL EDUCATIONAL AGENCIES IN AREAS AFFECTED BY FEDERAL ACTIVITIES AND ARRANGEMENTS FOR EDUCATION OF CHILDREN WHERE LOCAL EDUCATIONAL AGENCIES CANNOT PROVIDE SUITABLE FREE PUBLIC EDUCATION

1. The authority citation for Part 222 continues to read as follows:

Authority: 20 U.S.C. 236–241–1 and 242–244, unless otherwise noted.

2. Section 222.95 is amended by revising paragraph (d) and the authority citation to read as follows:

§ 222.95 What constitutes a substantial and continuing financial burden?

* * * * *

(d) The Secretary determines that a substantial and continuing burden does not exist if the amount obtained in paragraph (b) of this section is zero or less.

(Authority: 20 U.S.C. 237(a)(2).)

[FR Doc. 89–3458 Filed 2–13–89; 8:45 am]

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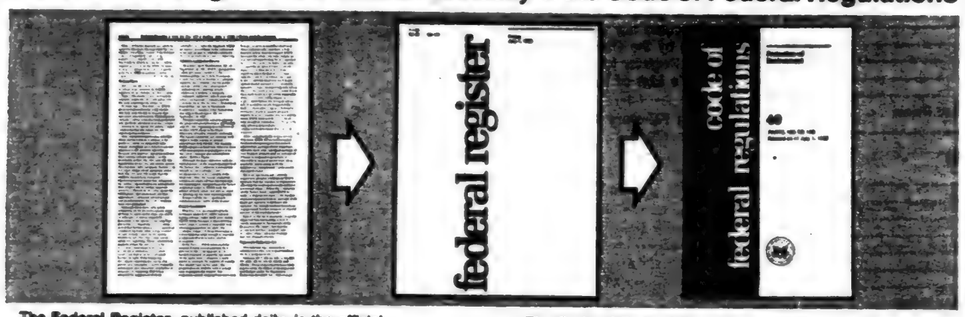
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Wednesday, February 15, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Parts 305 and 310

Recommendations and Statements of the Administrative Conference Regarding Administrative Practice and Procedure

AGENCY: Administrative Conference of the United States.

ACTION: Amendments to 1 CFR Parts 305 and 310.

SUMMARY: This action removes the texts of certain recommendations and statements of the Administrative Conference of the United States from the Code of Federal Regulations.

DATES: These amendments are to be effective February 15, 1989.

FOR FURTHER INFORMATION CONTACT: Michael W. Bowers, Deputy Research Director, Office of the Chairman, 2120 L Street NW., Suite 500, Washington, DC 20037; (202) 254-7065.

SUPPLEMENTARY INFORMATION: While all recommendations and statements of the Administrative Conference of the United States are published in the Federal Register upon adoption, the texts of recommendations and statements are published in the Code of Federal Regulations on a selective basis and their continued publication is subject to periodic review by the Office of the Chairman (*see* 1 CFR 304.2 (a)). By this action, the Administrative Conference removes the texts of specified recommendations and statements from the Code of Federal Regulations to minimize the cost of annual reprinting. Explanatory notes are included for some recommendations, mainly those that called for legislative change that was later enacted or other action or inaction that has been effected or mooted by specific executive and judicial decisions. The titles of all recommendations and statements will continue to be listed in the Code of Federal Regulations and copies of recommendations and statements whose texts have been omitted or removed may be obtained from the Office of the Chairman.

PART 305—RECOMMENDATIONS OF THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1. The authority citation for Part 305 continues to read as follows:

Authority: 5 U.S.C. 571–576.

2. Part 305 is amended by removing the texts (but not the titles or Federal Register citations) of the following sections and, in some cases, inserting explanatory notes:

§ 305.68–1 Adequate Hearing Facilities (Recommendation No. 68–1).

§ 305.69–9 Recruitment and Selection of Hearing Examiners; Continuing Training for Government Attorneys and Hearing Examiners; Creation of a Center for Continuing Legal Education in Government (Recommendation No. 69–9).

§ 305.70–4 Discovery in Agency Adjudication (Recommendation No. 70–4).

§ 305.71–4 Minimum Procedures for Agencies Administering Discretionary Grant Programs (Recommendation No. 71–4).

§ 305.71–9 Enforcement of Standards in Federal Grant-in-Aid Programs (Recommendation No. 71–9).

§ 305.73–3 Quality Assurance Systems in the Adjudication of Claims of Entitlement to Benefits or Compensation (Recommendation No. 73–3).

§ 305.73–6 Procedures for Resolution of Environmental Issues in Licensing Proceedings (Recommendation No. 73–6).

§ 305.74–3 Procedures of the Department of the Interior with Respect to Mining Claims on Public Lands (Recommendation No. 74–3).

§ 305.75–1 Licensing Decisions of the Federal Banking Agencies (Recommendation No. 75–1).

§ 305.75–2 Affirmative Action for Equal Opportunity in Nonconstruction Employment (Recommendation No. 75–2).

§ 305.76–4 Judicial Review Under the Clean Air Act and Federal Water Pollution Control Act (Recommendation No. 76–4).

§ 305.77–1 Legislative Veto of Administrative Regulations (Recommendation No. 77–1).

Note: This recommendation has become moot as a result of the United States Supreme Court decision, *Immigration and Naturalization Service* v. *Chadha*, 462 U.S. 919.

§ 305.78–1 Reduction of Delay in Ratemaking Cases (Recommendation No. 78–1).

§ 305.79–1 Hybrid Rulemaking Procedures of the Federal Trade Commission (Recommendation No. 79–1).

§ 305.79–5 Hybrid Rulemaking Procedures of the Federal Trade Commission—Administration of the Program to Reimburse Participants' Expenses (Recommendation No. 79–5).

§ 305.79–6 Elimination of the Presumption of Validity of Agency Rules and Regulations in Judicial Review, as Exemplified by the Bumpers Amendment (Recommendation No. 79–6).

Note: Legislation opposed by the Conference in this recommendation was not enacted by the Congress.

§ 305.80–1 Trade Regulation Rulemaking Under the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act (Recommendation No. 80–1).

§ 305.80–5 Eliminating or Simplifying the "Race to the Courthouse" in Appeals from Agency Action (Recommendation No. 80–5).

Note: This recommendation has been implemented by Pub. L. 100–236.

§ 305.81–1 Procedures for Assessing and Collecting Freedom of Information Act Fees (Recommendation No. 81–1).

Note: This recommendation has been largely implemented by Pub. L. 99–570.

§ 305.81–2 Current Versions of the Bumpers Amendment (Recommendation No. 81–2).

Note: Legislation opposed by the Conference in this recommendation was not enacted by the Congress.

§ 305.82-1 Exemption (b)(4) of the Freedom of Information Act (Recommendation No. 82-1).

Note: The President in 1987 issued Executive Order 12600, which requires agencies to follow procedures similar to those recommended by the Administrative Conference.

§ 305.82-3 Federal Venue Provisions Applicable to Suits Against the Government (Recommendation No. 82-3).

Note: Legislation opposed by the Conference in this recommendation was not enacted by the Congress.

PART 310—MISCELLANEOUS STATEMENTS

1. The authority citation for Part 310 continues to read as follows:

Authority: 5 U.S.C. 571–576

2. Part 310 is amended by removing the texts (but not the titles or Federal Register citations) of the following sections:

§ 310.4 Strengthening Regulatory Agency Management Through Seminars for Agency Officials.

§ 310-10 Statement on Agency Use of an Exceptions Process to Formulate Policy.

Michael W. Bowers,

Deputy Research Director.

Dated: February 7, 1989.

[FR Doc. 89-3373 Filed 2-14-89; 8:45 am]

BILLING CODE 6116-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

South Texas Onions; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule regarding South Texas onions authorizes expenses and establishes an assessment rate under Marketing Order 959 for the 1988–89 fiscal period. Authorization of this budget allows the South Texas Onion Committee to incur expenses reasonable and necessary to administer the program. Funds for this program are derived from assessments on handlers.

EFFECTIVE DATE: August 1, 1988, through July 31, 1989.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–447–2431.

SUPPLEMENTARY INFORMATION: This rule is effective under Marketing Order No. 959 (7 CFR Part 959), regulating the handling of onions grown in South Texas. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 35 handlers of Texas onions under this marketing order, and approximately 75 producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

An annual budget of expenses is prepared by the committee and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of onions. They are familiar with the committee's needs and with the costs for goods, services and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by expected regulated shipments of onions. Because that rate is applied to actual regulated shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. A recommended budget and rate of assessment is usually acted upon by the committee before the season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approval must be expedited so that the committee will have funds to pay its expenses.

The South Texas Onion Committee met on October 19, 1988, and unanimously recommended a 1988–89 budget of $379,675 and an assessment rate of 5½ cents per 50-pound container. Regulated shipments during the 1989 season are projected to be 5.76 million 50-pound bags and to yield $316,800 in assessment income. This amount when added to $9,500 from interest and $53,375 from the reserve will be adequate to cover budgeted expenses. Last year's budget totaled $312,380, and the assessment rate was initially established at 5½ cents per container. However, the assessment rate was increased in May to 7 cents per container due to an expected shortfall in production caused by unfavorable weather conditions. The higher assessment rate was deemed necessary to prevent a depletion of the committee's reserve fund.

While this action may impose some additional costs on handlers, and some of the additional costs may be passed on to producers, these costs will be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

Findings

A proposed rule was published in the Federal Register (54 FR 2137, January 19, 1989). That document contained a proposal to add § 959.229 to establish expenses and an assessment rate for the South Texas Onion Committee. The proposed rule provided that interested persons could file comments through January 30, 1989. None were filed.

It is hereby found that the specified expenses are reasonable and likely to be incurred and that such expenses and the specified assessment rate to cover them will tend to effectuate the declared policy of the Act.

This action should be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. In addition, handlers are aware of this action which was recommended by the committee at a public meeting. Therefore, the Secretary also finds that good cause exists for not postponing the effective date of this section until 30 days after publication in the Federal Register (5 U.S.C. 553).

List of Subjects in 7 CFR Part 959

Marketing agreements and orders, Onions (Texas).

For the reasons set forth in the preamble, 7 CFR Part 959 is hereby amended as follows:

PART 959—ONIONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR Part 959 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 959.229 is added to read as follows:

Note.—This section will not appear in the Code of Federal Regulations.

§ 959.229 Expenses and assessment rate.

Expenses of $379,675 by the South Texas Onion Committee are authorized and an assessment rate of $0.055 per 50-pound container or equivalent quantity of regulated onions is established for the fiscal period ending July 31, 1989. Unexpended funds may be carried over as a reserve.

Dated: February 10, 1989.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-3555 Filed 2-14-89; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 981

[AMS-FV-88-050FR]

Almonds Grown in California; Administrative Rules and Regulations Concerning Crediting for Marketing Promotion and Paid Advertising Expenditures

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule changes administrative rules and regulations established under the Federal marketing order for California almonds to: (1) Allow handlers credit against their assessments for payments for instore supermarket advertising using fixed position (i.e., stationary) display advertisements, or video media; and (2) remove restrictions on a provision which allows handlers to receive 150 percent credit for handler payments to the Almond Board of California (Board) for the Board's use for generic promotion and paid advertising. These changes were recommended by the Board, the agency responsible for local administration of the order, and will give handlers additional flexibility in obtaining credit against their advertising assessments under the order.

EFFECTIVE DATE: March 17, 1989.

FOR FURTHER INFORMATION CONTACT: Allen Belden, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under marketing agreement and Order No. 981 (7 CFR Part 981), both as amended, hereinafter referred to as the order, regulating the handling of almonds grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 115 handlers of almonds who are subject to regulation under the almond marketing order and approximately 7,500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California almonds may be classified as small entities.

This action allows handlers of California almonds to receive credit against their assessments under the order for payments for certain types of in-store supermarket advertising. This action also relaxes restrictions on a provision which allows handlers to receive 150 percent credit against their assessments for direct payments to the Board by removing volume limitations on the use of the provision and by allowing handlers to make payments on an installment basis over a longer time period. This action relieves restrictions on handlers by providing additional opportunities to handlers to receive credit against their advertising assessments, while not imposing any additional costs on handlers.

This action revises § 981.441 of Subpart—Administrative Rules and Regulations and is based on recommendations of the Board and upon other available information.

Section 981.41(c) of the order provides that the Board, with the approval of the Secretary, may allow handlers to receive credit for their direct marketing promotion expenditures, including paid advertising, against those portions of such handlers' assessment obligations which are designated for marketing promotion, including paid advertising. That paragraph also provides that handlers shall not receive credit for allowable expenditures that would exceed the amount of such creditable assessments. Section 981.41(e) provides that before crediting is undertaken, and once a recommendation is received from the Board, the Secretary shall prescribe appropriate rules and regulations as are necessary to effectively administer provisions for creditable advertising expenditures.

Section 981.441 currently prescribes rules and regulations to regulate crediting for marketing promotion which includes paid advertising. This final rule amends § 981.441(c) concerning crediting for paid advertising and § 981.441(e) which allows handlers to receive a 150 percent credit against their advertising assessments for payments to the Board for the Board's generic promotion and paid advertising program.

Section 981.441(c) describes requirements which specifically apply to crediting for paid advertising. This final rule amends § 981.441(c) by adding a new provision to § 981.441(c)(3)(i) to allow handlers credit against their creditable assessments for 100 percent of such handlers' payments for in-store supermarket generic or brand advertising using fixed position or video media. Such in-store supermarket advertising will have to be conducted through an advertising firm. The advertising firm will pay the supermarket for displaying the advertisements. Therefore, the payment to the supermarket would not come directly from the handler who owned

the brand or the product. Provision for advertising directly between a handler and a supermarket would not allow the Board to separate the costs for advertising and shelf space as these are usually consolidated under the general heading "advertising" on the invoice from the retailer. Therefore, the rule requires documentation from an advertising firm which would allow the Board to ascertain amounts spent on advertising as distinct from amounts spent for shelf space. Fixed position advertisements, which are stationary display advertisements, must include at least two of the following: (1) Processed color displays enclosed in frames and mounted on supermarket shopping carts; (2) overhead directories enclosed in frames placed at the end or middle of supermarket aisles; or (3) processed color advertisements enclosed in frames and mounted on a supermarket shelf. Two of the three methods are required in each store or supermarket as the Board believes this to be the most effective method of utilizing fixed position advertisements. Video advertisements must be shown on video monitors running television commercials, or "infomercials" (informative commercials), for specific products on a rotating basis. Handlers must submit to the Board a copy of the agency invoice to the supermarket, a copy of the actual advertisement or video tape, a published rate card from an advertising firm, and a copy of the agency invoice to the handler. This action could give handlers using a brand name an increased opportunity to receive credit against their creditable assessments, allow more handlers to take advantage of crediting under current rules and regulations, and increase almond sales through additional promotions.

Section 981.441(e) currently allows a handler to receive credit for 150 percent of payments made to the Board against the creditable assessment obligation incurred on the first 4,000,000 redetermined kernelweight pounds received by such a handler during a crop year. In addition, the poundage limit is reduced by any poundage on which a handler incurs an obligation and receives 150 percent credit pursuant to the provisions for credit on distribution of sample packages. This action removes these weight limitations and allows handlers to receive 150 percent credit for an unlimited tonnage of almonds, subject to the conditions provided for in § 981.41(c), concerning creditable expenditures. These changes could give some handlers additional opportunities to obtain credit against their advertising assessments.

This action also permits handlers to make payments for 150 percent credit to the Board in installments between January 31 and June 30 of each crop year. Payments will have to be made on a quarterly basis with payments made on or before January 31, March 31, May 31, and June 30, respectively. If the entire amount of the claim is not paid by June 30, or if a handler fails to meet any payment deadline, credit for payment will revert to the 100 percent basis. Currently, the full amount must be paid by January 31. In order to provide handlers with ample time during this crop year to file claims based upon the provisions in this final rule, handlers will be permitted to file new or supplementary claims with the Board on or before March 31, 1989. Payments for these claims must be made as follows: One-third on or before March 31, 1989; one-third on or before May 31, 1989; and one-third on or before June 30, 1989. In addition, this action allows handlers to utilize the 150 percent provision in conjunction with a deferment provision contained in paragraph (b) of § 981.441. Paragraph (b) provides that handlers may receive 100 percent credit against their creditable assessment obligations for their own advertisements published, broadcast, or displayed and other marketing promotion activities conducted during the crop year for which credit is requested (July 1–June 30) except that handlers may receive 100 percent credit up to a maximum of 40 percent of their creditable assessment obligations for such advertising and promotion activities deferred until no later than December 31 of the subsequent crop year. This action will allow handlers to receive 100 percent credit for up to 40 percent of their creditable assessment obligations for their own advertising and promotion activities deferred until no later than December 31, while also receiving 150 percent credit for direct payments made to the Board in installments between January 31 and June 30 of each crop year.

These changes will give handlers additional flexibility in meeting their assessment obligations and should be particularly beneficial to small handlers. The action will also benefit handlers who, because they have no brand name or because they do not market their almonds in retail outlets, find the rules concerning crediting for marketing promotion and paid advertising less advantageous to their marketing strategies than handlers who do have a brand name or market their almonds in retail outlets.

Since the inception of the creditable advertising and promotion program in 1972, new activities for which credit may be received have frequently been added to the rules. The Board has attempted to add new activities which benefit a wide range of handlers who market their almonds in different types of outlets. It is the AMS's view that this action will reduce the costs to handlers of meeting their creditable assessment obligations by making more creditable activities available to more handlers.

The information collection requirements contained in the provisions of the administrative rules and regulations to be revised by the final rule have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB No. 0581–0071.

Based on the above, the Administrator of the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

Notice of this action was published in the **Federal Register** on August 29, 1988, (53 FR 32909). Written comments were invited from interested persons until September 28, 1988. Three comments were received from Frank S. Swain, Chief Counsel for Advocacy for the U.S. Small Business Administration; Brian C. Leighton, an attorney representing independent almond handler Cal-Almond, Inc.; and Steven W. Easter, Vice President for Member and Government Relations for Blue Diamond Growers, a cooperative handler.

Frank S. Swain of the U.S. Small Business Administration, requested that the Department of Agriculture (Department) perform a regulatory flexibility analysis before issuing a final rule on this matter. Mr. Swain made several points in support of this position, as discussed below.

Mr. Swain's comment outlined the structure of the almond industry, almond supplies and dispositions, major provisions of the almond order, and rules and regulations established under the order concerning crediting for marketing promotion and paid advertising. While some of the statistics concerning the almond industry quoted by Mr. Swain do not reflect the statistics and information available to and used by the AMS, this does not affect the substance of Mr. Swain's comments relative to this action. Specifically, Mr. Swain stated that paragraph (a) of § 981.41 of the order provides that the Board may use monies collected from a handler's assessments to fund the brand advertising of another handler. There is no such authority in either the order or the administrative rules and regulations established under the order. Paragraph (a) of § 981.41 provides that the Board, with the approval of the Secretary of Agriculture, may establish or provide for the establishment of projects involving production research, marketing research and development, and marketing promotion, including paid advertising. That paragraph also provides that the Board may credit the pro rata expense assessment obligations of a handler with such portion of that handler's direct expenditures for marketing promotion and paid advertising as may be authorized. In other words, a handler's own advertising assessments may be credited if the handler conducts authorized advertising for its own brand name or generic advertising. There is no provision in the order to permit the advertising assessments of other handlers to be used to support brand name advertising of another handler.

Mr. Swain disagreed with a statement in the proposed rule that "marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf." He noted that the changes made by this action were recommended by the Board, and that a majority of the Board's members are affiliated with Blue Diamond, which is not a small entity. The order, which includes provisions for establishing the Board, apportioning representation on the Board among various segments of the industry, and empowering the Board to make rules and regulations to effectuate the terms and provisions of the order, was, after a lengthy process involving public hearings and a referendum of all California almond producers, voted into effect by a two-thirds majority of almond producers, the vast majority of which may be classified as small entities. Therefore, the marketing order is brought about by the action of essentially small entities.

Mr. Swain objected to the removal of weight limitations on the use of a provision which allows handlers to receive 150 percent credit against their assessments for payments to the Board. He stated that this action will be of no benefit to the majority of independent handlers because the tonnage of almonds upon which those handlers pay assessments is less than the weight limitations currently in effect. It is true that only handlers receiving more than 4,000,000 kernel weight pounds of almonds may avail themselves of the increased ability to receive 150 percent credit. However, this action has no adverse impact on small handlers, and to the extent that increased funds are paid to the Board and utilized in its promotional activities which increase the market for almonds, this action would benefit all handlers of almonds.

Mr. Swain stated that the proposed rule did not explain how the changes would benefit handlers who do not have a brand name. Many small handlers who do not have a brand name utilize the order provision which allows 150 percent credit for payments to the Board, and these handlers will benefit by more flexible payment terms. Mr. Swain stated that payments made to the Board do not benefit handlers without a brand name because such handlers do not sell their almonds to consumers. However, a significant portion of the assessments paid to the Board under the 150 percent provision are used by the Board to increase sales of almonds to industrial users (i.e., food manufactures). Moreover, the AMS believes that the Board's generic program benefits all handlers by increasing demand for all almonds.

Mr. Swain concluded his comment by requesting that the AMS perform a regualtory flexibility analysis which examines the true costs and benefits of the assessments for advertising and develops alternatives which will provide options for handlers who do not sell almonds at retail. Mr. Swain disagreed with the AMS's certification that this action "will not have a significant economic impact on a substantial number of small entities" and stated that the AMS has not followed the provisions of the RFA.

Section 605(b) of the RFA provides that a regulatory flexibility analysis is not necessary if the head of an agency has certified that a rule will not have a "significant economic impact on a substantial number of small entities." That section further requires the agency to provide a succinct statement explaining the reasons for such certification. The AMS has considered the economic impact of this rule on small entities. The majority of handlers and producers in the California almond industry may be classified as small businesses. This action does not impose any additional costs on those small businesses and, therefore, is not expected to have a significant economic impact on them. For these reasons, the Administrator of the AMS has certified that this action will not have a significant economic impact on a substantial number of small entities. This certification meets the requirements of the RFA.

For the reasons stated above, Mr. Swain's objections are denied.

Brian C. Leighton, representing Cal-Almond, Inc., objected to the proposed rule for several reasons as discussed below.

Mr. Leighton opposed the proposed rule because he believes that the Act and the order preclude the Board from imposing creditable assessments on almonds which are ultimately disposed of in reserve outlets. Mr. Leighton cited a portion of section 610(b)(2)(ii) of the Act and stated that this section precludes the Department from imposing assessments on almonds held for the account of the Board.

Mr. Leighton cited § 981.52 of the order, which states that handlers must hold at all times a quantity of almonds necessary to meet their reserve obligations "in proper storage for the account of the Board" and § 981.81 of the order, which states that "each handler shall pay to the Board on demand by the Board, from time to time, such sum less any amounts credited pursuant to § 981.41, based on such rate per pound of almonds, kernel weight basis, received by him for his own account * * *." Mr. Leighton stated that almonds cannot be held for both a handler's own account and for the account of the Board, and that since assessments can only be imposed on almonds held for a handler's own account, reserve almonds are not assessable. A handler receives almonds and, subsequently, if a reserve percentage is in effect, the handler's reserve obligations is determined based on the kernel weight of almonds received by the handler. Section 981.81 provides that assessments shall be based on all almonds received by a handler for such handler's own account, regardless of whether or not a handler may subsequently be required to hold a percentage of those almonds as a reserve for the account of the Board.

Mr. Leighton further opposed the proposed rule because he believes that those provisions of the order and the rules and regulations established under the order which authorize promotion and paid advertising and permit handlers to receive credit against a portion of their assessments for specified promotion and paid advertising activities are unconstitutional. Mr. Leighton believes that those provisions violate the First Amendment right to free speech because they force handlers to speak (i.e., advertise almonds). The research and promotion provisions of the almond

marketing order are promulgated pursuant to authority in the Act. Neither the order issued pursuant to that authority nor the regulations issued pursuant thereto require regulated parties to advertise to take advantage of the credit provisions contained in this rule. Any generic advertising or promotion into which the Board enters with the payment of assessments is clearly contemplated by the enabling statute and supported by an administrative rulemaking record and works to the benefit of all handlers by increasing market opportunities for all almonds. For these reasons, the assessments are constitutional.

Mr. Leighton stated that the cut-off date by which handlers must make payments to the Board to receive 150 percent credit against the creditable portion of their assessments should be changed from January 31 of each crop year to the December 31 following the end of each crop year rather than to the installment method in the proposed rule.

Mr. Leighton stated that the December 31 date should be used because handlers have until December 31 to publish, broadcast, or display advertising for which credit may be received, and he believes that it would be equitable for the same date to apply to payments made to the Board. The administrative rules and regulations established under the order provide that handlers may defer advertising for which they wish to receive credit from June 30 (the last day of the crop year) to the succeeding December 31 for a maximum of only 40 percent of their creditable assessment obligations. This final rule would allow handlers to use the 40 percent deferment in conjunction with the 150 percent credit provision. Deadlines for payments to the Board are earlier than deadlines for creditable advertising because handlers making payments to the Board are turning over the responsibility for advertising and promotion to the Board. The earlier cut-off date for direct payments to the Board provides time for the Board to ascertain the amounts available for generic advertising and to plan and conduct advertising and promotion based upon known revenue.

Mr. Leighton also objected to the in-store advertising provisions in the proposed rule. Mr. Leighton stated that § 981.441 currently is devoid of provisions providing opportunities to receive credit which will benefit those handlers who do not have a brand label or who do not sell their almonds in the retail market. Mr. Leighton believes that the proposed in-store advertising provisions also will only benefit those handlers who have a brand to advertise. Section 981.441, however, has been amended thirteen times since its inception in 1972, and many of those amendments have added provisions designed to provide opportunities for handlers who do not have a brand name to receive credit. Moreover, it is the AMS's view that all almond advertising and promotion activities benefit all handlers by increasing demand for all almonds.

Mr. Leighton also stated that permitting credit for in-store advertising would conflict with § 981.441(c)(5)(iii) of the rules and regulations established under the order unless such advertising is restricted to stores where only the advertising handler's brand is available. Section 981.441(c)(5)(iii) provides that advertisements which direct consumers to one or more named retail outlets, other than handler operated, shall not be eligible for credit. There is no conflict between § 981.441(c)(5)(iii) and the in-store advertising provision; handlers whose in-store advertising directed consumers to specific retail outlets, other than handler operated, would not be eligible for credit.

For the reasons stated above, Mr. Leighton's objections are denied.

In his comment, Steven W. Easter of Blue Diamond supported the amendments proposed by the August 29, 1988, rule. Mr. Easter believes that in-store advertising is an important new method for reaching the consumer and retail trade and should be encouraged. The commenter stated that there are only two or three companies that provide the type of in-store advertising envisioned by the Board. The commenter pointed out that the advertising offered by these companies is similar to national network television advertising in that they both have published rate cards, reach and frequency data, and are national in scope. Mr. Easter also stated that in-store advertising may be purchased through those companies for specific retail stores within a region.

After consideration of all relevant matter presented, including the Board's recommendation, the comments received, and other available information, it is found that the changes hereinafter set forth will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 981

Almonds, California, and Marketing agreements and orders.

For the reasons set forth in the preamble, 7 CFR Part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 981 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Subpart—Administrative Rules and Regulations

2. Section 981.441 is amended by revising paragraph (c)(3)(i) and redesignating the current (c)(6)(v) as (c)(6)(vi); adding a new paragraph (c)(6)(v); and revising paragraph (e) to read as follows:

Note: The following sections will be published in the annual Code of Federal Regulations.

§ 981.441 Crediting for marketing promotion including paid advertising.

* * * * *

(c) * * *

(3) * * *

(i) For 100 percent of a handler's payment to an advertising medium: (A) For a generic advertisement of California almonds; (B) for an advertisement of the handler's brand of almonds; (C) when either of these advertisements includes reference to a complementary commodity or product; (D) for a trade media advertisement that displays branded food products containing almonds, or announces a handler's future promotion activities, including joint promotions, and the entire expenditure is borne by the handler; or (E) for in-store supermarket advertisements using fixed position or video media, when such payments are made through an advertising firm: (*1*) Fixed position advertisements must include at least two of the following: (*i*) Processed color displays enclosed in plastic frames and mounted on supermarket shopping carts; (*ii*) overhead directories enclosed in frames placed at the end or middle of supermarket aisles; or (*iii*) processed color advertisements enclosed in frames and mounted on a supermarket shelf; (*2*) Video advertisements must be shown on a fixed video monitor running television commercials, or infomercials for specific products on a rotating basis.

* * * * *

(6) * * *

(v) For in-store supermarket advertising, submit a copy of the company invoice, a copy of the actual advertisement or video tape, a published rate card from a nationally recognized company, and a copy of the agency invoice, if any.

* * * * *

(e) Credit shall be granted for payments made to the Board for use by the Board for generic marketing promotion including paid advertising subject to the following conditions:

(1) A handler may receive credit for 150 percent of a payment made to the Board against the creditable assessment obligation.

(2) When a handler elects to use this method of crediting for all or a portion of such handler's assessment obligation, the handler may use the extension provided for pursuant to paragraph (b) of this section for the handler's deferred advertising and promotion obligation.

(3) Handlers must file claims with the Board on ABC Form 31 in order to receive credit for payments made to the Board. No credit shall be granted unless a claim is filed on or before January 31 of the then current crop year: *Provided,* That for the 1988–89 crop year for claims not previously filed on or before January 31, 1989, a claim or supplementary claim must be filed with the Board on ABC Form 31 on or before March 31, 1989. Payments must be made as follows: One-fourth of total claim on or before January 31; one-fourth on or before March 31; one-fourth on or before May 31; and one-fourth on or before June 30 of the then current crop year: *Provided,* That for the 1988–89 crop year, payments not previously made on or before January 31, 1989, must be made as follows: One-third on or before March 31, 1989; one-third on or before May 31, 1989; and one-third on or before June 30, 1989. If the entire amount of the claim is not paid by June 30, or if a handler fails to meet any payment deadline of this paragraph, credit for payment shall revert to the 100 percent basis.

Dated: February 10, 1989.

Robert C. Keener,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–3554 Filed 2–14–89; 8:45 am]

BILLING CODE 3410-02-M

Rural Electrification Administration

7 CFR Part 1700

Procedures

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) amends 7 CFR Chapter XVII by adding a new subsection 1700.3d to 7 CFR Part 1700. The publication of 7 CFR Part 1709 elsewhere in this issue implements a program for rural development mandated by a 1987 amendment to the Rural Electrification Act (RE Act). The amendment to 7 CFR Part 1700 reflects the addition of this new program in the Agency's rule on its procedures.

EFFECTIVE DATE: February 15, 1989.

FOR FURTHER INFORMATION CONTACT: Blaine Stockton, Jr., Assistant Administrator—Management, Rural Electrification Administration, Room 4063-South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone number (202) 382–9552.

SUPPLEMENTARY INFORMATION: 7 CFR Part 1709, published elsewhere in this issue, implements the provisions of section 313, Cushion of Credit Payments Program, added to the RE Act on December 21, 1987. Section 313 establishes a Rural Economic Development Subaccount and authorizes the Administrator of REA to utilize funds in this subaccount to provide zero interest loans or grants to RE Act borrowers for the purpose of promoting rural economic development and job creation projects.

Two periods for public comment were provided before 7 CFR Part 1709 became effective. The advance notice of proposed rulemaking published on April 7, 1988, at 53 FR 11511 and the proposed rule published on October 27, 1988, at 53 FR 43442 both noted periods for public comment. This new rule 7 CFR 1700.3d is simply a technical amendment reflecting the addition of 7 CFR Part 1709 and, therefore, requries no public comment period of its own.

List of Subjects in 7 CFR Part 1700

Community development, Grand programs, Loan programs, Rural areas.

For the reasons set forth in the preamble, Part 1700 of Title 7 Code of Federal Regulations is amended to read as follows:

PART 1700—[AMENDED]

1. The authority citation for Part 1700 is revised to read:

Authority: 7 U.S.C. 901–950(b); Title I, Subtitle D, Section 1403, Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203; Delegation of Authority by the Secretary of Agriculture, 7 CFR 2.23; Delegation of Authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.72; 7 U.S.C. 1921 et seq., and 44 FR 30313, May 25, 1979.

2. The following new section is added after § 1700.3c:

§ 1700.3d Loans and grants pursuant to section 313 of the Rural Electrification Act as amended December 21, 1987.

General. These zero interest loans and grants are made to borrowers under the Rural Electrification Act for the purpose of promoting rural economic development and rural job creation projects. Selection and approval of applications for zero interest loans and grants rests solely within the discretion of the Administrator, and preference shall be given to providing borrowers with zero interest loans rather than grants under this program.

Dated: February 9, 1989.

Jack Van Mark,

Acting Administrator.

[FR Doc. 89–3447 Filed 2–14–89; 8:45 am]

BILLING CODE 3410-15-M

7 CFR Part 1709

Rural Development

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) hereby amends 7 CFR Chapter XVII by adding a new Part 1709, Rural Development, and adding Subpart B, Rural Economic Development Loan and Grant Program. The new part contains REA's policies, requirements and procedures covering rural development programs. The new subpart establishes policies, requirements and procedures that implement a rural economic development loan and grant program established by section 313 of the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*) (the "RE Act"). The program provides zero interest loans and grants to RE Act borrowers for the purpose of promoting rural economic development and job creation projects.

EFFECTIVE DATE: February 15, 1989.

FOR FURTHER INFORMATION CONTACT: Mark Wyatt, Assistant to the Assistant Administrator—Management, Rural Electrification Administration, Room 4063-South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone number (202) 382–9552. The Final Regulatory Impact Analysis describing the options considered in developing this rule and the impact of implementing the rule is available on request from the above office.

SUPPLEMENTARY INFORMATION: This rule is issued in conformity with Executive Order 12291, Federal Regulations. This action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or (3) result in significant

adverse effects on competition, employment, investment or productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, this rule has been determined to be "not major."

This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq. (1976)) and, therefore, does not require an environmental impact statement or an environmental assessment.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.853, Rural Economic Development Loan and Grant Program.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the Act. The OMB approval number for these requirements is 0572–0066.

Public reporting burden for this collection of information is estimated to average 1.7 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRA, Room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0572–0066), Washington, DC 20503.

Background

On December 21, 1987, section 313, Cushion of Credit Payments Program, was added to the RE Act. Section 313 establishes a Rural Economic Development Subaccount and authorizes the Administrator of REA to utilize funds in this subaccount to provide zero interest loans or grants to RE Act borrowers for the purpose of promoting rural economic development and job creation projects.

On April 7, 1988, REA published an advance notice of proposed rulemaking in an effort to obtain public comments on all aspects of this new program. REA received a total of 54 written comments. These comments were taken into account in preparing the proposed rule.

On October 27, 1988, REA published a proposed rule at 53 FR 43442 to amend 7 CFR Chapter XVII by adding a new Part 1709, Rural Development, and adding Subpart B, Rural Economic Development Loan and Grant Program. REA invited interested parties to file comments on or before December 26, 1988.

Comments

REA received 39 written comments from the following:

(1) Pennsylvania Rural Electric Association
(2) North Central Electric Cooperative, Inc.
(3) Grundy Electric Cooperative, Inc.
(4) East River Electric Power Cooperative
(5) Sunflower Electric Cooperative, Inc.
(6) Mountrail Electric Cooperative, Inc.
(7) North Dakota Association of Rural Electric Cooperatives
(8) James Valley Electric Cooperative, Inc.
(9) McLean Electric Cooperative, Inc.
(10) Sheyenne Valley Electric Cooperative, Inc.
(11) Plains Electric Generation and Transmission Cooperative, Inc.
(12) Wolverine Power Supply Cooperative, Inc.
(13) Choctaw Electric Cooperative, Inc.
(14) Claiborne Electric Cooperative, Inc.
(15) South Louisiana Electric Cooperative Association
(16) Georgia Electric Membership Corporation (Legislative Director)
(17) Georgia Electric Membership Corporation (Exec. Vice President)
(18) James Valley Cooperative Telephone Company
(19) Terril Telephone Company
(20) National Rural Utilities Cooperative Finance Corporation
(21) National Cooperative Bank
(22) First Security National Bank
(23) West Central Wisconsin Community Action Agency, Inc.
(24) Green River Area Development District
(25) Georgia Department of Community Affairs
(26) Makah Tribe
(27) Drakestown Gas, Inc.
(28) Georgia Power
(29) Dixie Electric Membership Corporation
(30) Edison Electric Institute
(31) National Telephone Cooperative Association
(32) National Rural Electric Cooperative Association
(33) Greater Minnesota Corporation
(34) Cajun Electric Power Cooperative, Inc.
(35) Lake Region Co-op Electrical Association
(36) Utilicorp United, Inc.
(37) South Carolina Electric and Gas Company
(38) Central Power Electric Cooperative, Inc.
(39) Teche Electric Cooperative, Inc.

Overall, REA received widespread support for the proposed rule. Thirty-four organizations comprised of REA borrowers, electric and telephone utility trade organizations, cooperative banks, economic development organizations and state governments supported the new program. One gas company and one electric and gas investor-owned utility expressed adamant opposition to the new program. An additional three investor-owned electric utilities suggested modifications in the program.

Most of the organizations made specific comments on the proposed rule. These comments will be addressed in the following paragraphs by first discussing REA's modifications to the proposed rule and then discussing the remaining suggested modifications. REA considered all comments in preparing the final rule.

REA received numerous comments on the section of the proposed rule which discussed the eligibility of a borrower that is not current on its RE Act financing or is in bankruptcy proceedings. There were comments both supporting and opposing the eligibility section. The organizations opposed to this section felt that areas served by borrowers that would not be eligible under this section of the proposed rule could benefit from rural economic development under this program. They suggested that REA consider whether the borrower is working in good faith with REA on repayment matters. Current federal policy, as set forth in OMB Circular A–129, Managing Federal Credit Programs, dated November 25, 1988, restricts further financial assistance to applicants who are delinquent on a Federal debt. Therefore, REA is retaining the section in the rule on the eligibility of borrowers with some modifications. REA would like to point out that if one distribution borrower of a generating and transmission system is ineligible for funds under this program that does not mean the generating and transmission system itself or the other distribution members are ineligible. In addition to the eligibility section, REA has also added under paragraph (m) of § 1709.17, Selection of recipients of zero interest loans and grants, a consideration of the Borrower's management and financial situation which will be important to the success of the program.

Two organizations suggested that the rule should contain the statutory requirement that REA use the full amount of funds in the Subaccount each year to make zero interest loans or grants. REA has added § 1709.15, Disposition of funds in the Subaccount, which addresses the annual disposition of funds. For administrative purposes, REA must make a determination of the amount held in the Subaccount as of some date prior to the end of the fiscal year. REA would not be able to use funds repaid into or credited to the Subaccount a few days before the end of the fiscal year in that same fiscal year.

Many organizations commented on the selection factors listed in the proposed rule. REA has made additions to several of the factors based on these comments. Several organizations suggested that REA take into account the outmigration of people and also the underemployment of people in part-time jobs or jobs below their skill level. REA will take these into account when looking at employment levels to the extent the borrower provides satisfactory data on a local basis in the preapplication. There was also a suggestion that REA look at other personal income measurements. As with underemployment and outmigration, REA will also consider other personal income measurements to the extent the borrower provides satisfactory data on a local basis in the preapplication. Several organizations recommended that REA consider the size and nature of the community while considering the number of jobs created to the amount of funds requested. REA has modified this factor to take into account the impact of the number of jobs created on the rural community. One organization suggested that REA consider whether a project will assist a rural community to diversify its economic base. REA has agreed to include this in the list of factors.

Several organizations discussed the size of zero interest loans and grants. One organization suggested that a maximum size should be established due to the limited amount of funds available under this program. REA agrees that given the limited amount of funds available to borrowers under this program and in order to provide funds to more projects it will modify the rule to establish the maximum size of a zero interest loan or grant at $100,000.

Several organizations discussed the preapplication periods REA established and suggested that REA increase the number per year. REA has modified the rule to provide for six preapplication periods during the year. This should provide a faster turnaround time on requests for funds while retaining a mechanism to provide equitable consideration of all preapplications.

Many organizations discussed whether REA should take into consideration, along with other factors, the borrower's commitment to generating funds for this program through cushion of credit payments. Some organizations were in favor of this consideration; one organization even suggested that REA establish a strong preference for those borrowers making cushion of credit payments. Other organizations believed that this consideration should be deleted since borrowers serving rural areas that could benefit from economic development might not have the same level of funds available to make cushion of credit payments as other borrowers in more prosperous areas. After considering both arguments, REA has decided that the language in the proposed rule which provides for the Administrator to take into consideration borrowers' cushion of credit payments is appropriate.

One organization believed that the rule should provide for case-by-case discretion to handle a few projects that might require a longer loan repayment period than ten years. The first sentence of the section of the proposed rule outlining the terms of zero interest loans establishes REA's discretion on determining the repayment terms. The Administrator may determine under the language of the proposed rule that in certain situations a longer repayment term is necessary for the success of the project.

REA mentioned in the notice of proposed rulemaking that it had considered including an objective ranking procedure based on assigning a given number of points for each of the selection factors. Four organizations recommended that REA establish a ranking procedure in the rule. After further consideration of this issue, REA has decided to leave the proposed language unchanged. The selection of projects will rest within the discretion of the Administrator. REA needs the latitude to develop its method of evaluating rural economic development projects as it gains experience. The rule as written provides REA the needed latitude while providing a list of selection factors the Administrator will consider to guide borrowers applying for loan or grant funds.

Several investor-owned electric utilities that compete with REA electric borrowers for business in the same service area were concerned about REA borrowers using the funds under this program to offer rate incentives or only submitting preapplications for projects that agreed to take their service. REA deliberately did not set forth language dealing with whether the project was in the REA borrower's service territory or whether it would take service from the REA borrower. The rule was written to encourage economic development in rural areas without regard to service territory. The Administrator will use his discretion to select projects that meet this objective and REA does not believe written requirements are necessary. Additionally, REA cannot, as some investor-owned electric utilities have suggested, provide funds directly to the economic development project and bypass the REA borrower. The law provides for funds to go to the REA borrowers who in turn will promote rural economic development.

Finally, REA received two comments, one from a gas company and another from an investor-owned electric and gas utility, that expressed adamant opposition to the law establishing the zero interest loan and grant program. The gas company did not believe that the REA program should be expanded while the nation has a budget deficit. It believes private industry could do the job of providing financing for utilities. The gas company does not believe its competitors, the REA electric borrowers, should receive subsidized Government funds. It also believes many REA borrowers are wealthy enough to go to the private markets.

The investor-owned electric and gas utility believes that utilizing the REA borrowers to disburse rural economic development funds will potentially result in an unfair, inequitable and ineffective distribution of funds. It suggests that the state governments disburse the funds. The utility also believes that the REA borrowers receive preferential tax and loan interest rate treatment. It suggested that the rule restrict funds to REA borrowers serving rural areas. REA believes the proposed rule was very clear that the program is to promote economic development in rural areas.

Despite the two organizations' objections, REA must implement this program since it was established by law.

On August 11, 1988, REA published a proposed rule in the Federal Register (51 FR 28722) with the number 7 CFR Part 1709 entitled Primary Support Documents. In accordance with REA's newly developed plan to number parts 7 CFR Part 1700, that proposed rule remains a proposed rule that will be redesignated 7 CFR Part 1716, Subpart A—Power Requirements Studies. The text of that proposed rule remains unaltered by this change in number.

List of Subjects in 7 CFR Part 1709

Rural development.

In view of the above, REA hereby amends 7 CFR Chapter XVII by adding the following new Part 1709 to read as follows:

PART 1709—RURAL DEVELOPMENT

Subpart A—[Reserved]

Sec.

1709.1–1709.9 [Reserved]

Subpart B—Rural Economic Development Loan and Grant Program

1709.10 Purpose.
1709.11 Policy.
1709.12 Definitions.
1709.13 Source of funds.
1709.14 Eligibility
1709.15 Disposition of funds in the Subaccount.
1709.16 Purposes of zero interest loans and grants.
1709.17 Selection of recipients of zero interest loans and grants.
1709.18 Preference for zero interest loans over grants.
1709.19 Limitation on use of zero interest loan and grant funds.
1709.20 Size of zero interest loans and grants.
1709.21 Terms of zero interest loan repayment.
1709.22 Agreements and security for funds.
1709.23 Transfer of employment or business.
1709.24 Environmental requirements.
1709.25 Other considerations.
1709.26 Preapplications and applications.
1709.27 Application processing.
1709.28 Zero interest loan and grant approval.
1709.29 Disbursement of zero interest loan and grant funds.
1709.30 Review and other requirements.

Authority: 7 U.S.C. 901 *et seq.*; Title I, Subtitle D, Section 1403, Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203; Delegation of Authority by the Secretary of Agriculture, 7 CFR 2.23; Delegation of Authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.72.

Subpart A—[Reserved]

§§ 1709.1–1709.9 [Reserved]

Subpart B—Rural Economic Development Loan and Grant Program

§ 1709.10 Purpose.

(a) This subpart sets forth the Rural Electrification Administration's (REA's) policies and procedures for making zero interest loans and grants to Borrowers in accordance with the Cushion of Credit Payments Program authorized in section 313 of the Act.

(b) The zero interest loans and grants are to be provided for the purpose of promoting rural economic development and rural job creation projects.

§ 1709.11 Policy.

(a) It is REA's policy to encourage borrowers to make deposits voluntarily into cushion of credit accounts of the Rural Electrification and Telephone Revolving Fund. Borrowers are also encouraged to use the Rural Economic Development Loan and Grant Program to promote rural economic development and rural job creation projects that are based on sound economic and financial analysis.

(b) REA will maintain liaison with officials of other federal, state, regional and local rural development agencies to coordinate rural economic development programs.

§ 1709.12 Definitions.

(a) "Act"—the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*).

(b) "Administrator"—the Administrator of the Rural Electrification Administration.

(c) "Associated Utility Organization"—state or regional utility organizations, utility trade organizations or other professional utility organizations of which the Borrower proposing the Project is a member.

(d) "Borrower"—a borrower of funds under the Act.

(e) "Demonstration Project"—a Project for which the owner agrees to provide REA with detailed information on the steps it takes in organizing and operating the Project, will permit REA and REA's guests to make reasonable visits to the Project, and honor any other reasonable REA request to disseminate information on the Project

(f) "Employee Ownership"—owned by the employees of the organization.

(g) "Project"—a rural economic development project or rural job creation project which a Borrower proposes and the Administrator approves to receive benefits of the Rural Economic Development Loan and Grant Program.

(h) "REA"—the Rural Electrification Administration.

(i) "Rural Area"—a rural area as defined in section 13 of the Act.

(j) "Technical Assistance"—Market research, product and/or service improvement, feasibility studies, environmental studies, and similar activities that benefit rural economic development or rural job creation projects.

§ 1709.13 Source of funds.

All funds for zero interest loans and grants provided under this program shall come from interest differential credits to the Rural Economic Development Subaccount (Subaccount), any other funds made available to the Subaccount and from the repayment of zero interest loans into the Subaccount.

§ 1709.14 Eligibility

Zero interest loans and grants may be made to any borrower that is not delinquent on any Federal debt or in bankruptcy proceedings, both as determined by the Administrator.

§ 1709.15 Disposition of funds in Subaccount.

Zero interest loans and grants shall be made during each fiscal year to the full extent of the amounts held in the Subaccount subject only to limitations imposed by law. For administrative purposes, REA will make a determination of the fiscal year-end amount held in the Subaccount as of a date prior to, but as near as practicable to, the end of fiscal year.

§ 1709.16 Purposes of zero interest loans and grants.

Zero interest loans and grants shall be provided to promote rural economic development and/or job creation projects, including, but not limited to, project feasibility studies, start-up costs, incubator projects, and other reasonable expenses for the purpose of fostering rural economic development.

§ 1709.17 Selection of recipients of zero interest loans and grants.

The selection and approval of applications for zero interest loans and/or grants rests solely within the discretion of the Administrator. In making this determination, the Administrator will consider, among other factors, the following:

(a) The amount of supplemental grant or loan funds provided or to be provided to the Project from private sources, state and local government sources, federal government sources, the Borrower(s) or other sources of funds.

(b) A comparison of the unemployment rate in the rural area where the Project will be located to the state and National unemployment rates taking into account outmigration and underemployment.

(c) A comparison of the Per Capita Personal Income or other income measurements in the rural area where the Project will be located to state and National income levels.

(d) A comparison of the number of jobs and employment hours per week that the Project will create in rural areas to the amount of grant and zero interest loan funds requested taking into account the impact on the rural community.

(e) Projects that lead directly to improving marketable skills of people in rural areas or will diversify the rural economic base.

(f) Commitment from the owner(s) of the Project that the Project will be a Demonstration Project.

(g) Projects that will be located in Rural Areas or will provide greater benefit to Rural Areas than other areas.

(h) Projects that have received the endorsement or sponsorship of businesses, local business and community leaders, Associated Utility Organizations, or local, state or federal governmental organizations.

(i) Projects that have received the endorsement of Certified Development Companies approved by the U.S. Small Business Administration.

(j) Projects that will be organized or reorganized on a not-for-profit basis or to provide full or majority Employee Ownership.

(k) Projects that in REA's best judgment have the greatest probability of success as measured by long-term job creation or retention and rural economic development.

(l) Applications submitted by Borrowers that have made cushion of credit payments as set forth in section 313 of the Act.

(m) The management and financial situation of the Borrower applying for the zero interest loan or grant.

§ 1709.18 Preference for zero interest loans over grants.

Selection of applications shall be based on a preference for providing Borrowers zero interest loans rather than grants under this program since the repaid principal of zero interest loans will provide additional funds for new Projects.

§ 1709.19 Limitation on use of zero interest loan and grant funds.

(a) Zero interest loans and grants shall not be used:

(1) To fund or assist projects of which any director, officer, or owner of the Borrower, or close relative thereof, is an owner, or which would create a conflict of interest or would create the appearance of a conflict of interest; provided, however, cooperative members are not to be considered owners of the Borrower in this determination;

(2) For any costs incurred on the Project prior to approval of the Project by REA, except for any costs approved by REA as necessary for the initiation of the Project;

(3) For payment to any owner, partner or beneficiary of any property, building, equipment acquired for the Project when such person will retain any interest in the Project or is an owner, director or officer of the Borrower; provided, however, cooperative members are not to be considered owners of the Borrower in this determination; or

(4) For any purpose not reasonably related to the Project as determined by the Administrator.

(b) A Borrower may not charge the Project interest for the use of the proceeds of the zero interest loan provided under this program; however, it may charge the Project reasonable loan servicing charges, as determined by the Administrator.

(c) A Borrower must calculate any costs to charge the Project for the use of or in connection with the grant proceeds provided under this program based on 7 CFR Part 3015 and 7 CFR Part 3016.

(d) A Borrower may not make a profit from any zero interest loan or grant provided from the Subaccount.

(e) The Borrower may temporarily deposit the zero interest loan funds into a separate Federally insured account. However, all interest earned on temporarily deposited funds in excess of $250 per year must be passed on to the Project or returned to the Rural Economic Development Subaccount.

(f) The Borrower may temporarily deposit the grant funds in accordance with 7 CFR Part 3015 and 7 CFR Part 3016.

§ 1709.20 Size of zero interest loans and grants.

The minimum size of a zero interest loan or grant shall be $10,000 and the maximum size of a zero interest loan or grant shall be $100,000.

§ 1709.21 Terms of zero interest loan repayment.

(a) REA shall determine the terms and repayment schedule of the zero interest loan to the Borrower based on the nature of the Project. In general, the repayment terms the Borrower sets on zero interest loan proceeds provided to the Project must be at least as generous as the zero interest loan provided to the Borrower but, with the Administrator's approval, may be more generous.

(b) Ordinarily, the terms of the zero interest loan shall not exceed 10 years. The first principal repayment installment on the zero interest loan may be deferred two years or until the project generates sufficient cash to begin repaying its loan to the Borrower, whichever comes first as determined by the Administrator, provided an equivalent deferred repayment schedule is provided on the loan to the Project. The terms of the zero interest loan to the Borrower may provide for either equal periodic principal payments or, if the Administrator determines that it is necessary, a graduated repayment schedule where the first principal repayment will be equal to some fraction of the last principal repayment. If the Borrower receives a graduated principal repayment schedule it shall provide a comparable graduated repayment schedule to the Project. Ordinarily, monthly principal payments will be established on the note to the Borrower.

§ 1709.22 Agreements and security for funds.

(a) The Borrower and REA shall execute agreements, including any necessary security agreements, covering the repayment of funds from this program.

(b) REA must approve all agreements between the Borrower and the Project, including all:

(1) Grant, loan and security agreements,

(2) Loan notes, and

(3) All subsequent revisions or amendments thereof. (OMB approval number 0572–0086).

§ 1709.23 Transfer of employment or business.

The Project must not result primarily in the transfer of any existing employment or business activity from one area to another, as determined by the Administrator.

§ 1709.24 Environmental requirements.

(a) Prospective recipients of zero interest loans or grants must consider the potential environmental impacts of their applications at the earliest planning stages and develop plans and Projects that minimize the potential to adversely affect the quality of the environment.

(b) *Application for Technical Assistance zero interest loans or grants.* The application for a Technical Assistance zero interest loan or grant is generally covered by 7 CFR 1794.31(b) (13) and (14). Consequently, normally no Borrower's Environmental Report or other environmental documentation is required to support such an application. No zero interest loan or grant funds will be available for Technical Assistance for any Project, any portion of which, lies within an area designated for protection under the Coastal Barrier Resources Act.

(2) *Application for zero interest loans or grants other than Technical Assistance.* REA will review supporting materials in the application and initiate its environmental review process pursuant to 7 CFR Part 1794. This process will focus on any environmental concerns or problems that are associated with the Project. The level and scope of environmental review required will be determined in accordance with the National Environmental Policy Act of 1969

(NEPA), as amended, (42 U.S.C. 4321 *et seq.*), the Council on Environmental Policy for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500—1508), 7 CFR Part 1794 and other relevant Federal environmental laws, regulations and Executive Orders. No activity related to the Project that would have an adverse affect on the environment shall be undertaken prior to completion of REA's environmental review process.

§ 1709.25 Other considerations.

(a) *Equal opportunity and nondiscrimination requirements.* All zero interest loans and grants made under this Subpart are subject to certain provisions in REA Bulletin 320–19(20–19), Nondiscrimination Among Beneficiaries of the REA Program and REA Bulletin 320–15(20–15), Equal Employment Opportunity in Construction Financed with REA Loans depending on the dollar amount involved and other characteristics (to be codified in 7 CFR Part 1790).

(b) *Architectural Barriers Act of 1968.* All facilities financed with REA zero interest loans or grants which are accessible to the public or in which physically handicapped persons may be employed or reside must be developed in compliance with this law.

(c) *Flood hazard area precautions.* In accordance with 7 CFR Part 1788, if the Project is in an area subject to flooding, flood insurance must be provided to the extent available and required under the National Flood Insurance Act of 1968, as amended by the Flood Disaster Protection Act of 1973 (Pub. L. 93–231). The insurance shall cover, in addition to the buildings, any machinery, equipment, fixtures and furnishings contained in the buildings. REA shall comply with Executive Order 11988, Floodplain Management, in considering the application for the Project.

(d) *Real property acquisition.* Any acquisition of real property in connection with this program is subject to 7 CFR Part 21, Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs. These regulations require that owners of real property to be acquired for Federal or federally-assisted programs and persons displaced from their dwellings, businesses, or farms as a result of such acquisition be provided fair, consistent, and equitable treatment.

§ 1709.26 Preapplications and applications.

(a) Borrowers may file a preapplication during any of six preapplication periods each year. The preapplication periods will cover the official working days from February 1 through February 14, from April 1 through April 14, from June 1 through June 14, from August 1 through August 14, from October 1, through October 14, and from December 1 through December 14 of each year. The Administrator may establish other special preapplication periods.

(b) Preapplications shall consist of:

(1) An application form, "Application for Federal Assistance," Standard Form 424;

(2) A board resolution requesting a zero interest loan and/or grant, specifying any commitment from the Borrower to the owner of the proposed Project and stating that the proposed Project will not violate the limitations in § 1709.19, Limitation on use of zero interest loan and grant funds; and

(3) A brief written narrative containing, but not limited to, the following:

(i) Proposed rural economic development and job creation Project including location, primary beneficiaries, number and type of jobs to be created, and, if available, various employment and personal income measurements for the rural area in which the Project will be located;

(ii) Amount of zero interest loan and/or grant requested;

(iii) General description of conditions and terms to be placed on ultimate recipient of funds, including collateral;

(iv) Source and amount of any supplemental grant or loan funds to be provided to the Project from private sources, governments, the Borrower or any other source. The conditions, terms, interest rate, etc. of the supplemental funds shall be detailed;

(v) Any commitment from the owner of the Project that the Project will be a Demonstration Project;

(vi) Any endorsements of Associated Utility Organizations, businesses, local leaders, local or state governments, a SBA-approved Certified Development Company and any specific commitments, either financial or otherwise, from these parties;

(vii) Depending on the stage of development of the Project, any budgets, pro forma operating reports and balance sheets, market research, etc.;

(viii) Description of the entity which will own, construct or operate the Project, including but not limited to: (A) The form of organization (i.e., corporation, nonprofit corporation, cooperatives, partnership, sole proprietor), (B) the owners and officers and (C) any Employee Ownership; and

(ix) Any other information that the Borrower believes is relevant. (OMB approval number 0572–0066).

(c) REA may request additional information from the Borrower deemed relevant.

(d) During the preapplication review process, the Borrower may change the amount of the zero interest loan or grant funds requested, if approved by the Administrator.

(e) REA will prepare a written notification for each preapplication indicating whether or not it has been selected. Selected applicants will be provided with environmental information, requirements and guidelines for filing a complete application. A Borrower that submitted a preapplication that was not selected will be asked whether it desires to be considered during the next period. The Borrower may modify its preapplication after it has been considered without resubmitting all material required in a preapplication. If the Borrower so desires, REA will consider a preapplication that has not been substantially modified or updated, as determined by the Administrator, for up to one year. A Borrower may submit new or updated preapplications as often as it desires. (The information collection requirements contained in paragraph (b)(1) were approved by the Office of Management and Budget under control number 0348–0043.)

§ 1709.27 Application processing.

Upon selection of a Project to receive a zero interest loan and/or grant, REA will prepare a Letter of Agreement setting forth conditions under which the zero interest loan or grant will be made and send it to the Borrower. The Borrower will sign the Letter of Agreement and return it to REA. The Letter of Agreement will include, among other things, the maximum amount of zero interest loan or grant, Project description and approved use of zero interest loan and/or grant funds, supplemental funds to be provided, any agreements or conditions the Borrower proposed in the preapplication, any special conditions REA establishes, and any loan/grant agreement, other legal documents or certifications the Borrower will be required to sign.

§ 1709.28 Zero interest loan and grant approval.

All zero interest loans and grants made under this subpart will be approved by the Administrator, or designee.

§ 1709.29 Disbursement of zero interest loan and grant funds.

REA shall disburse grant funds to the Borrower and the Borrower shall disburse grant proceeds to the Project in accordance with the provisions of 7 CFR Part 3015 and 7 CFR Part 3016. REA shall disburse zero interest loan funds to the Borrower and the Borrower shall disburse zero interest loan proceeds to the Project in accordance with REA regulations.

§ 1709.30 Review and other requirements.

(a) REA will review Borrowers receiving zero interest loans or grants, as necessary, to ensure that funds are expended for approved purposes. Borrowers receiving zero interest loans or grants shall monitor the Project to the extent necessary to ensure the Project is in compliance with all applicable regulations, including ensuring that funds are expended for approved purposes.

(b) Borrowers receiving zero interest loans shall have prepared a financial report and general accounting of all zero interest loan funds in accordance with the provisions of 7 CFR Part 1789.

(c) Grants provided under this program will be administered under and are subject to 7 CFR Part 3015 and 7 CFR Part 3016, as appropriate. The Borrower that receives a grant shall be subject to requirements under these regulations which cover, among other things, financial reporting, accounting records, budget controls, record retention and audits. (The information collection and the recordkeeping and recording requirements contained in paragraph (c) were approved by OMB under the following control numbers: Budget Information—Nonconstruction, Standard Form 424A (OMB control number 0348–0044), Budget Information—Construction, Standard Form 424C (OMB control number 0348–0041), Assurances—Nonconstruction, Standard Form 424B (OMB control number 0348–0040), Assurances—Construction, Standard Form 424D (OMB control number 0348–0042), Financial Status Report—Long Form, Standard Form 269 (OMB control number 0348–0039), Financial Status Report—Short Form, Standard Form 269A (OMB control number 0348–0039), Request for Advance and Reimbursement, Standard Form 270 (OMB control number 80–R0163), Outlay Report and Request for Reimbursement for Construction Programs, Standard Form 271 (OMB control number 80–R0161), Federal Cash Transactions Report, Standard Form 272 (OMB control number 80–R0182).)

Dated: January 24, 1989.

Jack Van Mark,

Acting Administrator.

[FR Doc. 89–3416 Filed 2–14–89; 8:45 am]

BILLING CODE 3410–15–M

Farmers Home Administration

7 CFR Part 1822

Section 502 Rural Housing Weatherization Loans

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations by removing section 502 Rural Housing Weatherization Loan program. This action is necessary due to unappropriated funds by Congress since 1983, and, there are no allocation of funds for this program in the 1989 fiscal year budget. The intended effect of this action is to remove this regulation from the CFR.

EFFECTIVE DATE: February 15, 1989.

FOR FURTHER INFORMATION CONTACT: Reginald J. Rountree, Loan Officer, Single Family Housing Processing Division, Farmers Home Administration, USDA, room 5346, South Agricultural Building, 14th and Independence Avenue SW., Washington, DC 20250, Telephone (202)475–4209.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be exempt from those requirements because it involves only internal agency management. It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts, notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking since it involves only internal agency management, making publication for comment unnecessary.

Program Affected

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.410 Low Income Housing Loans, No. 10.411 Rural Housing Site Loans and No. 10.417 Very Low-Income Housing Repair Loans and Grants. For the reasons set forth in the Final Rule related Notice(s) to 7 CFR Part 3015, Subpart V, this program is excluded from Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–90, an Environmental Impact Statement is not required.

Background

Current FmHA Regulations (7 CFR Part 1822, Subpart B) provides policies and procedures and delegates the authority for processing and approving section 502 Rural Housing Weatherization (RHW) loans made under title V, of the Housing Act of 1949, as amended. However, Public Utilities companies in many areas of the nation have programs to provide low interest loans, often times lower than the FmHA rate, to consumers to weatherize their homes. State and local governments also have agencies that provide assistance to residents for weatherization of their homes.

Since this program has not been funded and there are agencies available to provide individuals assistance in weatherizing their homes often at lower rates and shorter terms, FmHA eliminates this program.

List of Subjects in 7 CFR Part 1822

Energy conservation, Home improvement, Loan program—Housing and community development, Low- and moderate-income housing.

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1822—RURAL HOUSING LOANS AND GRANTS

1. The authority citation for Part 1822 continues to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70 unless otherwise noted.

Subpart B—[Removed and Reserved]

2. Subpart B of Part 1822, consisting of §§ 1822.21 through 1822.26 and Exhibit A are removed and reserved.

Date: December 29, 1988.

La Verne Ausman,

Acting Administrator, Farmers Home Administration.

[FR Doc. 89–3514 Filed 2–14–89; 8:45 am]

BILLING CODE 3410–07–M

BEST COPY AVAILABLE

7 CFR Part 1924

Construction and Repair

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) is amending its regulations to give State Directors authority to accept manufactured housing thermal designs proposed under the "overall structure performance" method described in the regulations. The intended effect of this Action is to expedite FmHA's process of accepting manufactured housing designs.

EFFECTIVE DATE: February 15, 1989.

FOR FURTHER INFORMATION CONTACT: Rich Davis, Energy Systems Engineer, Farmers Home Administration, U.S. Department of Agriculture, Room 6309, South Agriculture Building, Washington, DC 20250, Telephone (202) 382–9640.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and, since this action has no impact on FmHA borrowers or other members of the public, it has been determined to be exempt from those requirements because it involves only internal agency management. It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking since it involves internal agency management and publication for comment is unnecessary.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, Environmental Program. It is the determination of FmHA that this action does not constitute a major Federal Action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

For reasons set forth in the Final Rule related to Notice 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983), and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), this activity is related to the following programs that are subject to intergovernmental consultant with State and local officials:

10.405 Farm Labor Housing Loans and Grants.
10.411 Rural Housing Site Loans (Section 523 and 524 Site Loans).
10.415 Rural Rental Housing Loans.
10.420 Rural Self-Help Housing Technical Assistance (Section 523 Technical Assistance).
10.427 Rural Rental Assistance Payment (Rental Assistance).

This activity is also related to the following programs which are not subject to Executive Order 12372:

10.410 Low-Income Housing Loans (Section 502 Rural Housing Loans).
10.417 Very Low-Income Housing Repair Loans and Grants (Section 504 Rural Housing Loans and Grants).

List of Subjects in 7 CFR Part 1924

Agriculture, Construction management, Construction and repair, Energy conservation, Housing, Loan programs—Agriculture, Loan programs—Housing and Community development, Low and moderate income housing.

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1924—CONSTRUCTION AND REPAIR

1. The authority citation for Part 1924 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart A—Planning and Performing Construction and Other Development

2. Exhibit D is amended by revising the introductory text of paragraph IV. C. to read as follows:

Exhibit D—Thermal Performance Construction Standards

* * * * *

IV. * * *

C. *Optional Standards*

Housing design not in compliance with the requirements of paragraphs IV A or B of this Exhibit may be approved in accordance with the provisions of this paragraph. Requests for acceptance proposed under paragraph C 1 below, must be approved by the State Director. Requests for acceptance of site-built housing proposed under paragraph C 2 must be approved by the Administrator. Requests for acceptance of manufactured housing proposed under paragraph C 2 may be approved by the State Director. All submissions of proposed options to the State Director or Administrator shall contain complete descriptions of materials, engineering data, test data (when U values claimed are lower than the ASHRAE Handbook of Fundamentals), and calculations to document the validity of the proposal. All data and calculations will be based upon the current edition of the ASHRAE Handbook of Fundamentals or other universally accepted data sources.

* * * * *

Dated: December 21, 1988.

LaVerne Ausman,

Acting Administrator, Farmers Home Administration.

[FR Doc. 89–3513 Filed 2–14–89; 8:45 am]

BILLING CODE 3410–07–M

7 CFR Parts 1955 and 1965

Property Management and Security Servicing; Correction

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule; correction.

SUMMARY: The Farmers Home Administration (FmHA) corrects a final rule published July 25, 1988 (53 FR 27819). In the subject rulemaking action, a few minor errors and omissions were inadvertently made which could affect the interpretation of these regulations. This action is taken to correct those errors and omissions. The intended effect is to make these regulations read as intended.

EFFECTIVE DATE: February 15, 1989.

FOR FURTHER INFORMATION CONTACT: David J. Villano, Senior Realty Specialist, Single Family Housing Servicing and Property Management Division, Farmers Home Administration, USDA, Room 5309, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC, telephone (202) 382–1452.

SUPPLEMENTARY INFORMATION: The following is a list of minor errors and omissions being corrected by this document:

1. In § 1955.4(b) regarding redelegation of authority, the words "delegated to the State Director" were inadvertently omitted. This may cause a reader to incorrectly interpret that the State Director could delegate any authority contained in this subpart.

2. In § 1955.113(a)(1) regarding administrative price reductions on single family housing (SFH) inventory property, the words "at least" were inappropriately included which could cause a reader to believe the time between administrative price reductions could be longer than authorized.

3. In § 1955.118(h)(2) regarding closing costs on nonprogram (NP) inventory property sales, a sentence was added that clarified that any closing costs legally or customarily paid by the seller (FmHA) will be paid by FmHA. A similar sentence should have been added to § 1955.117(f) regarding program property sales and that omission is corrected.

4. In § 1955.143 (a)(1) and (a)(2) regarding reporting unsold SFH properties to the National Office, the time-frame mentioned for reporting is inconsistent with other sections of the subpart.

5. In § 1955.147 regarding sealed bid sales, FmHA inadvertently omitted a minor revision to paragraph (f). The revision was issued to our field offices making the information in the Federal Register conflict with published FmHA Instructions. We would like to correct this conflict. The proposed revision to Subpart C of Part 1955 published in the Federal Register (52 FR 10577) on April 2, 1988, did not specifically propose to change § 1955.147(f). However, as a result of changes to other sections of Subpart C of Part 1955, it was necessary to change this subparagraph. Paragraph (f) deals with cases where no acceptable bids are received. The section ends by stating that if no acceptable bids are received, sale by negotiation may commence however, the sale price cannot be lower than the minimum established price for the sealed bid sale. If no acceptable sealed bid was received, there would be no purpose to trying to sell the property through negotiation for the same price. Therefore, we intend to remove from the Federal Register, as we did in our Agency Instructions on August 24, the portion of paragraph (f) which stated that the sale price in a negotiated sale cannot be lower than the minimum established price for the sealed bid sale. In addition, due to revisions to this subpart published on September 14, 1988 (See 53 FR 35638), a reference change is also needed in paragraph (f).

6. In § 1965.125(a)(2)(ii)(B) regarding a sale of property for less than the debt, the section inadvertently addresses expenses of the transferee. This section should reference expenses of the "transferor" (seller), not transferee (purchaser) of the property

7. In § 1965.126(e)(4)(iii) regarding flood insurance, the section states that the County Supervisor must make a determination that the property is "made." The correct word should be "safe."

8. In § 1965.129 regarding cosigners, the section states that an FmHA loan may be assumed "or program of NP terms". The first "or" should be "on"

Accordingly, the Farmers Home Administration is correcting 7 CFR Parts 1955 and 1965, as published on July 25, 1988 (53 FR 27819), as follows:

PART 1955—[CORRECTED]

1. The authority citation for Part 1955 continues to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

Subpart A—Liquidation of Loans Secured By Real Estate and Acquisition of Real and Chattel Property

2. On page 27826, in the first column, § 1955.4(b) is corrected to read as follows:

§ 1955.4 Redelegation of authority.

* * * * *

(b) Except as provided in paragraph (a) of this section, the State Director is authorized to redelegate, in writing, any authority delegated to the State Director in this subpart to a Program Chief, Program Specialist or Property Management Specialist on the State Office staff; except the authority to approve or disapprove foreclosure as outlined in § 1955.115(a)(2) of this subpart may not be redelegated. However, a duly-designated Acting State Director may approve or disapprove foreclosure.

* * * * *

Subpart C—Disposal of Inventory Property

§ 1955.113 [Corrected]

3. On page 27831, in the third column, § 1955.113, the first sentence of paragraph (a)(1) is corrected by removing the words "at least."

4. On page 27835, in the first column, § 1955.117, paragraph (f) is corrected by adding the following sentence to the end of the paragraph to read as follows:

§ 1955.117 Processing credit sales on program terms (housing).

* * * * *

(f) * * * Any closing costs which are legally or customarily paid by the seller will be paid by FmHA and charged to the inventory account as a nonrecoverable cost items.

* * * * *

§ 1955.143 [Corrected]

5. On Page 27838, column three, § 1955.143, the first sentence of paragraphs (a)(1) and (a)(2) are corrected by replacing the words "in inventory" with the words "actively marketed."

6. On page 27839, column three, § 1955.147, paragraph (f) should have been included and then revised as follows:

§ 1955.147 Sealed bid sales.

* * * * *

(f) *No acceptable bid.* Where no acceptable bid is received although adequate competition is evident, the State Director may authorize a negotiated sale in accordance with § 1955.108(d) of this subpart

PART 1965—[CORRECTED]

7. The authority citation for Part 1965 continues to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

Subpart C—Security Servicing for Single Family Rural Housing Loans

§ 1965.125 [Corrected]

8. On page 27841, in the first column, § 1965.125, the, third sentence of paragraph (a)(2)(ii)(B) is corrected by replacing the word "transferee" with the word "transferor."

§ 1965.126 Corrected]

10. On page 27842, in the third column, § 1965.126, the second sentence of paragraph (e)(4)(ii) is corrected by replacing the word "made" with the word "safe."

§ 1965.129 [Corrected]

11. On page 27843, in the second column, § 1965.129, the second sentence of the introductory text is corrected by replacing the word "or" first mentioned in the sentence with the word "on."

Dated: January 9, 1989.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 89–3512 Filed 2–14–89; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 103

[INS Number 1200–89]

Powers and Duties of Service Officers; Availability of Service Records

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule adds the job title "investigative assistant" to 8 CFR 103.1(q) to reflect inclusion of this position within the definition of "Immigration Officer".

EFFECTIVE DATE: February 15, 1989.

FOR FURTHER INFORMATION CONTACT: Ronald W. Dodson, Investigations Division, Immigration and Naturalization Service, 425 "I" Street NW., Washington, DC 20536, (202) 633-3050.

SUPPLEMENTARY INFORMATION: The Investigations Division of the Immigration and Naturalization Service has implemented an investigative support position "investigative assistant" (GS-1802). This rule allows the performance of duties included within the "investigative assistant" position description.

Compliance with 5 U.S.C. 553 as of notice of proposed rulemaking and delayed effective date is unnecessary because this rule relates to agency management.

In accordance with 5 U.S.C. 605(b) the Commissioner of the Immigration and Naturalization Service certifies that this final rule will not have a significant economic impact on substantial numbers of small entities. This order is not a rule within the definition of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

List of Subjects in 8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Fees, Reporting and record keeping requirements.

Accordingly, Part 103 Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for Part 103 continues to read as follows:

Authority: 5 U.S.C. 522(a); 8 U.S.C. 1101, 1103, 1201, 1301-1305, 1351, 1443, 1454, 1455; 28 U.S.C. 1746; 7 U.S.C. 2243, 31 U.S.C. 9701; E.O. 12356; 3 CFR 1982 Comp., p. 166.

§ 103.1 (Amended)

2. Section 103.1(q) is amended by inserting the term "investigative assistant," immediately after the term "special agent,".

Dated: February 9, 1989.

Clarence M. Coster,
Associate Commissioner, Enforcement.

[FR Doc. 89-3485 Filed 2-14-89; 8:45 am]
BILLING CODE 4410-10-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 70 and 74

Centralization of Material Control and Accounting Licensing and Inspection Activities for Non-Reactor Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to reflect a management action to centralize material control and accounting (MC&A) licensing and inspection activities in NRC Headquarters, Rockville, Maryland, for non-reactor facilities. Effective February 15, 1989 for affected facilities located in Regions I, III, and V, MC&A licensing reviews required by 10 CFR 70.32(c) and inspections will be performed by the Domestic Safeguards and Regional Oversight Branch, Division of Safeguards and Transportation, Office of Nuclear Material Safety and Safeguards. The performance of these activities for facilities located in Region II will remain in Region II until further notice by the Commission. This action is necessary because the small number of affected facilities in each region cannot support the full spectrum of knowledge, skills, and disciplines needed to conduct MC&A inspections.

EFFECTIVE DATE: February 15, 1989.

FOR FURTHER INFORMATION CONTACT: Dr. Stanley L. Dolins, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555 Telephone (301) 492-3745 or Priscilla A. Dwyer, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555 Telephone (301) 492-0478.

SUPPLEMENTARY INFORMATION:

Background

On December 22, 1988, the Executive Director for Operations approved, with the concurrence of the Chairman, a phased centralization in NRC Headquarters, Rockville, Maryland, of MC&A activities for non-reactor facilities. Affected are those non-reactor facilities required to maintain an MC&A program. Nationwide, there are, at the present time, sixteen non-reactor facilities required to maintain MC&A programs and which are subject to MC&A inspections (10 fuel cycle and 6 others). Transfer of these licensing and inspection activities from Regions I, III, and V to the Domestic Safeguards and Regional Oversight Branch, Division of Safeguards and Transportation, Office of Nuclear Material Safety and Safeguards is effective February 15, 1989 while the Region II MC&A inspection program and 10 CFR 70.32(c) licensing reviews will be phased into Headquarters through Region II staff attrition or over a two-year period, whichever occurs first. Region IV has not affected facilities.

This centralization for these functions is needed because the relatively small annual workload requirements for the NRC in the majority of Regions foreclose the possibility of maintaining within each Region a full spectrum of the knowledge, skills, and disciplines needed to perform MC&A inspections. Centralization in NRC Headquarters will assure the maintenance of a viable and adequate nationwide MC&A inspection program for non-reactor facilities.

These revisions, necessitated by the centralization, are administrative in nature. They change the NRC recipient office point of contact for licensee reports, and conform the regulation to track the responsibilities now assigned to the Director, Office of Nuclear Material Safety and Safeguards.

Because these are amendments dealing with minor matters of agency management and personnel, the notice and comment provisions of the Administrative Procedure Act do not apply pursuant to 5 U.S.C. 553(b)(A). These amendments are effective upon publication in the Federal Register. Good cause exists to dispense with the usual 30-day delay in the effective date because the amendments are of a minor and administrative nature dealing with the centralization to Headquarters of licensing and inspection activities formerly conducted in the NRC Regional Offices.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget approval numbers 3150-0009 and 3150-0123.

Backfit Analysis

The backfit rule, 10 CFR 50.109, does not apply to the facilities subject to this final rulemaking. Therefore, no backfit analysis has been prepared.

List of Subjects

10 CFR Part 70

Hazardous materials—transportation, Nuclear materials, Packaging and containers, Penalty, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 74

Accounting, Hazardous materials—transportation, Material control and accounting, Nuclear materials, Packaging and containers, Penalty, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Parts 70 and 74.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

1. The authority citation for Part 70 continues to read in part as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

2. In § 70.5, paragraph (b)(1)(vi) is added to read as follows:

§ 70.5 Communications.

* * * * *

(b) * * *
(1) * * *
(vi) Reviews pursuant to § 70.32(c).

* * * * * *

3. In § 70.32, the introductory text of paragraph (c)(2) and paragraph (c)(3) are revised to read as follows:

§ 70.32 Conditions of licenses.

* * * * * *

(c) * * *

(2) The licensee shall maintain records of changes to the material control and accounting program made without prior Commission approval for a period of five years from the date of the change. Licensees located in Regions I, III, IV, and V as indicated in Appendix A of Part 73 of this chapter, shall furnish to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, a report containing a description of each change within:

* * * * * *

(3) Licensees located within Region II, as indicated in Appendix A of Part 73 of this chapter, shall meet the provisions of paragraph (c)(2) of this section except that, until further notice by the Commission, these licensees shall furnish the required report to the Regional Administrator, U.S. Nuclear Regulatory Commission, 101 Marietta Street, NW., Suite 2900, Atlanta, Georgia 30323 with a copy to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

* * * * * *

4. In § 70.55, paragraph (c)(3) is revised to read as follows:

§ 70.55 Inspections.

* * * * * *

(c) * * *

(3) The licensee shall afford any NRC resident inspector assigned to that site or other NRC inspectors identified by the Regional Administrator or the Director, Office of Nuclear Material Safety and Safeguards, as likely to inspect the facility, immediate unfettered access, equivalent to access provided regular plant employees, following proper identification and compliance with applicable access control measures for security, radiological protection, and personal safety.

PART 74—MATERIAL CONTROL AND ACCOUNTING OF SPECIAL NUCLEAR MATERIAL

5. The authority citation for Part 74 continues to read in part as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

6. In § 74.13, the introductory text of paragraph (b) is revised to read as follows:

§ 74.13 Material status reports.

* * * * * *

(b) Each licensee subject to the requirements of § 70.51(e) of this chapter shall submit a report, in accordance with paragraph (b)(1) or (b)(2) of this section, to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, except licensees located in Region II, as indicated in Appendix A of Part 73 of this chapter, shall submit their report to the Region II Regional Office until further notice by the Commission, within 30 calendar days after the start of each ending physical inventory required by § 70.51(e)(3).

* * * * * *

7. In § 74.17, paragraphs (a) and (b) are revised to read as follows:

§ 74.17 Special nuclear material physical inventory summary report.

(a) Each licensee subject to the requirements of § 74.31 shall submit a completed Special Nuclear Material Physical Inventory Summary Report on NRC Form 327 not later than 60 calendar days from the start of the physical inventory required by § 74.31(c)(5) of this chapter. The licensee shall report the inventory results by plant and total facility to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, except licensees located in Region II as indicated in Appendix A to Part 73 of this chapter shall submit their report to the Region II Regional Office until further notice by the Commission.

(b) Each licensee subject to the requirements of § 70.51(e) of this chapter shall submit a completed Special Nuclear Material Physical Inventory Summary Report on NRC Form 327 not later than 30 calendar days from the start of the physical inventory required by § 70.51(e)(3) of this chapter. The licensee shall report the inventory results by plant and total facility to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, except licensees located in Region II as indicated in Appendix A to Part 73 of this chapter shall submit their report to the Region II Regional Office until further notice by the Commission.

* * * * * *

8. In § 74.57, the introductory text of paragraph (c) and paragraph (f)(2) are revised to read as follows:

§ 74.57 Alarm resolution.

* * * * * *

(c) Each licensee shall notify the Domestic Safeguards and Regional Oversight Branch of the Division of Safeguards and Transportation, Office of Nuclear Material Safety and Safeguards by telephone on (301) 492-0352, except licensees located in Region II as indicated in Appendix A to Part 73 of this chapter shall notify the Region II Regional Office until further notice by the Commission, of any MC&A alarm that remains unresolved beyond the time period specified for its resolution in the licensee's fundamental nuclear material control plan. Notification must occur within 24 hours except when a holiday or weekend intervenes in which

case the notification must occur on the next scheduled workday. The licensee may consider an alarm to be resolved if:

* * * * *

(f) * * *

(2) Within 24 hours, the licensee shall notify the Domestic Safeguards and Regional Oversight Branch of the Division of Safeguards and Transportation, Office of Nuclear Material Safety and Safeguards, except licensees located in Region II, as indicated in Appendix A to Part 73 of this chapter shall, until further notice by the Commission, notify the Region II Regional Office by telephone that an MC&A alarm resolution procedure has been initiated.

9. In § 74.59, paragraph (f)(1)(iii) is revised to read as follows:

§ 74.59 Quality assurance and accounting requirements.

* * * * *

(f) * * *

(1) * * *

(iii) Investigate and report to the Domestic Safeguards and Regional Oversight Branch of the Division of Safeguards and Transportation, Office of Nuclear Material Safety and Safeguards, except licensees located in Region II, as indicated in Appendix A to Part 73 of this chapter, shall notify the Region II Regional Office until further notice by the Commission, of any difference that exceeds three times the standard deviation determined from the sequential analysis:

* * * * *

10. In §74.81, paragraph (c)(3) is revised to read as follows:

§ 74.81 Inspections.

* * * * *

(c) * * *

(3) The licensee shall afford any NRC resident inspector assigned to their site, or other NRC inspectors identified by the Regional Administrator or Director of the Office of Nuclear Material Safety and Safeguards as likely to inspect the facility, immediate unfettered access, equivalent to access provided regular plant employees, following proper identification and compliance with applicable access control measures for security, radiological protection, and personal safety.

Dated at Rockville, Maryland this 3rd day of February 1989.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 89-3546 Filed 2-14-89; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-154-AD; Amdt. 39-6142]

Airworthiness Directives; British Aerospace Model BAe 146 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe 146 series airplanes, which requires a one-time inspection of the aileron and elevator trim screwjack assemblies to determine the presence of a circlip, and installation of the circlip if it is missing. This amendment is prompted by reports that some of the aileron and elevator trim screwjacks have been assembled without a circlip during production. This condition, if not corrected, could lead to a hazardous trim system configuration in the event of a single failure in the trim tab system.

EFFECTIVE DATE: March 28, 1989.

ADDRESSES: The applicable service information may be obtained from British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 431-1565. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to British Aerospace Model BAe 146 series airplanes, which requires a one-time inspection of the aileron and elevator trim screwjack assemblies to determine the presence of a circlip, and installation of the circlip if it is missing, was published in the **Federal Register** on November 17, 1988 (53 FR 46470).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supported the proposal.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 45 airplanes of U.S. registry will be affected by this AD, that it will take approximately 5 man-hours per airplane to accomplish the required actions, and that the average labor cost will be $40 per man-hour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $9,000.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model BAe 146 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

British Aerospace.—Applies to all British Aerospace Model BAe 146 100A series airplanes, serial numbers up to and including E1101; and 200A series airplanes, serial numbers up to and including E2100; certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent a hazardous trim system configuration, accomplish the following:

A. Within 60 days or 600 landings after the effective date of this AD, whichever occurs first, inspect the right and left aileron and elevator trim screwjack assemblies for the presence of a circlip, in accordance with BAe Inspection Service Bulletin 27-74, dated April 8, 1988. If the circlip is missing, prior to further flight, install a circlip in accordance with the service bulletin.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspection and/or modification required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective March 28, 1989.

Issued in Seattle, Washington, on February 8, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-3408 Filed 2-14-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 73

[Airspace Docket No. 88-AEA-9]

Amend Time of Designation of Restricted Areas R-4005, R-4006, R-4007A and R-4008; Patuxent River, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment changes the time of designation for R-4005, R-4006, R-4007A and R-4008 in the vicinity of Patuxent River, MD. A "continuous" time of designation for these restricted areas is no longer required by the using agency. The time changes will more accurately reflect actual use, release time periods during which the areas are available for public access, and provide for the more efficient utilization of airspace.

EFFECTIVE DATE: 0901 u.t.c., April 6, 1989.

FOR FURTHER INFORMATION CONTACT: Jesse B. Bogan, Jr., Airspace Branch (ATO-240), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9255.

The Rule

This amendment to Part 73 of the Federal Aviation Regulations (14 CFR Part 73) reduces the time of use for Restricted Areas R-4005, R-4006, R-4007A and R-4008, Patuxent River, MD, from "continuous" to "0700-2300 local time, daily; other times as specified by NOTAM issued 48 hours in advance." The Department of the Navy indicated that continuous use of R-4005, R-4006, R-4007A and R-4008 is no longer required. This action amends the time of designation to reflect actual times of use and reduces the times that the restricted areas are in effect. For this reason, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public would not be particularly interested. Section 73.40 of Part 73 of the Federal Aviation Regulations (14 CFR Part 73) was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is amended, as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 73.40 [Amended]

2. Section 73.40 is amended as follows:

R-4005 Patuxent River, MD [Amended]

By removing the word "Continuous" and substituting the words "0700-2300 local time, daily; other times as specified by NOTAM issued 48 hours in advance."

R-4006 Patuxent River, MD [Amended]

By removing the word "Continuous" and substituting the words "0700-2300 local time, daily; other times as specified by NOTAM issued 48 hours in advance."

R-4007A Patuxent River, MD [Amended]

By removing the word "Continuous" and substituting the words "0700-2300 local time, daily; other times as specified by NOTAM issued 48 hours in advance."

R-4008 Patuxent River, MD [Amended]

By removing the word "Continuous" and substituting the words "0700-2300 local time, daily; other times as specified by NOTAM issued 48 hours in advance."

Issued in Washington, DC, on February 7, 1989.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 89-3499 Filed 2-14-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 75

[Airspace Docket No. 88-ASW-11]

Alteration of Jet Route J-17; Texas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the description of J-65 located in the vicinity of Abilene, TX. The NPRM stated that J-17 would be realigned by adding a west dogleg between Abilene and San Antonio, TX. After further study, the FAA has decided to leave the description of J-17 unchanged and extend J-65 over the west dogleg

between Abilene and San Antonio, leaving J–17 as currently charted. This will provide air traffic control with an alternate route if required.

EFFECTIVE DATE: 0901 u.t.c., April 6, 1989.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

On June 2, 1988, the FAA proposed to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to realign Jet Route J–17 via a west dogleg between Abilene and San Antonio (53 FR 20128). The Fort Worth Air Route Traffic Control Center requested the alteration to provide improved course guidance in that area, thereby increasing safety in the vicinity of the Brownwood MOA. This action enhances safety by adding a dogleg in an area where military activity is concentrated. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. One comment objecting to the proposal was received from the Air Transport Association of America (ATA) because of the following:

1. The proposed change would increase the mileage between Abilene and San Antonio.

2. The proposed change would permanently realign the jet route around airspace occasionally used for military operations.

The FAA concurs with the objections offered by the ATA. FAA has determined that the realignment of J–17 would be a burden on the public, therefore, J–17 will not be changed from its current alignment. Except for the extension of J–65 over the proposed dogleg for J–17 and editorial changes, this amendment is the same as that proposed in the notice. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 75 of the Federal Aviation Regulations alters only the description of J–65 located in the vicinity of Abilene, TX. The FAA has realigned J–65 by adding a west dogleg between Abilene and San Antonio, TX. After a review of the proposed action to realign J–17, the FAA leaves J–17 unchanged and extends J–65 over the dogleg route we had originally proposed for J–17 in the NPRM. This action provides increased safety by providing improved course guidance in the vicinity of Brownwood, TX, Military Operations Area (MOA).

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 75 of the Federal Aviation Regulations (14 CFR Part 75) is amended, as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J–65 [Amended]

By removing the words "From Abilene, TX, via;" and substituting the words "From San Antonio, TX, INT San Antonio 323° and Abilene, TX, 180° radials; Abilene;"

Issued in Washington, DC, on February 6, 1989.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 89–3500 Filed 2–14–89; 8:45 am]

BILLING CODE 4910–13–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1203

Information Security Program

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA is amending 14 CFR Part 1203 by revising Subpart I, NASA Information Security Program Committee." This revision makes organizational title changes in § 1203.900; adds the Associate Administrator for Safety, Reliability, Maintainability and Quality Assurance to the list of nominating officials set forth in § 1203.902; and designates the Director, NASA Security Office, as the Chairperson and the Senior Security Specialist as the Executive Secretary in § 1203.900.

EFFECTIVE DATE: February 15, 1989.

ADDRESS: NASA Security Office, Code NIS, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Erwin V. Minter, 202–453–2953.

SUPPLEMENTARY INFORMATION: Since this action is internal and administrative in nature and does not affect the existing regulations, notice and public comments are not required.

The National Aeronautics and Space Administration has determined that:

1. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, since it will not exert a significant economic impact on a substantial number of small entities.

2. This rule is not a major rule as defined in Executive Order 12291.

List of Subjects in 14 CFR Part 1203

Classified information, Foreign relations.

For reasons set out in the preamble, 14 CFR Part 1203 is amended as follows:

PART 1203—INFORMATION SECURITY PROGRAM

The authority citation for Part 1203 continues to read as follows:

Authority: 42 U.S.C. 2451 et seq., and E.O. 12356.

2. Subpart I, consisting of §§ 1203.900 through 1203.904, is revised to read as follows:

Subpart I—NASA Information Security Program Committee

Sec.
1203.900 Establishment.
1203.901 Responsibilities.
1203.902 Membership.
1203.903 Ad hoc committees.
1203.904 Meetings.

Subpart I—NASA Information Security Program Committee

§ 1203.900 Establishment.

Pursuant to Executive Order 12356, "National Security Information," and the National Aeronautics and Space Act of 1958, as amended, there is established a NASA Information Security Program Committee (hereinafter referred to as the Committee) as part of the permanent administrative structure of NASA. The Director, NASA Security Office, is designated to act as the Chairperson of the Committee. The Senior Security Specialist, Classification Management and Physical Security Section, NASA Security Office, is designated to act as the Committee Executive Secretary.

§ 1203.901 Responsibilities.

(a) The Chairperson reports to the Administrator concerning the management and direction of the NASA Information Security Program as provided for in Subpart B of this part. In this connection, the Chairperson is supported and advised by the Committee.

(b) The Committee shall act on all appeals from denials of declassification requests and on all suggestions and complaints with respect to administration of the NASA Information Security Program as provided for in Subpart B of this part.

(c) The Executive Secretary of the Committee shall maintain all records produced by the Committee, its subcommittees, and its ad hoc panels.

(d) The NASA Security Office, NASA Headquarters, will provide staff assistance, and investigative and support services for the Committee.

§ 1203.902 Membership.

The Committee will consist of the Chairperson and Executive Secretary. In addition, each of the following NASA officials will nominate one person to Committee membership:

(a) Associate Administrators for:

(1) Aeronautics and Space Technology.

(2) Space Science and Applications.

(3) Space Flight.

(4) Space Station.

(5) Space Operations.

(6) Management.

(7) External Relations.

(8) Safety, Reliability, Maintainability and Quality Assurance.

(b) Associate Deputy Administrator.

(c) General Counsel.

Other members may be designated upon specific request of the Chairperson.

§ 1203.903 Ad hoc committees.

The Chairperson is authorized to establish such ad hoc panels or subcommittees as may be necessary in the conduct of the Committee's work.

§ 1203.904 Meetings.

(a) Meetings will be held at the call of the Chairperson.

(b) Records produced by the Committee and the minutes of each meeting will be maintained by the Executive Secretary.

February 8, 1989.

James C. Fletcher,

Administrator.

[FR Doc. 89–3521 Filed 2–14–89; 8:45 am]

BILLING CODE 7510–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Ch. I

[T.D. 89–26]

Customs Regulations Amendments To Conform With Harmonized System of Tariff Classification; Correction

AGENCY: U.S. Customs Service, Treasury.

ACTION: Correction to interim regulations.

SUMMARY: This notice and Interim Regulation sets out technical corrections to the Interim Regulations published December 21, 1988, 53 FR 51244, that amend the Custom Regulations to conform with the Harmonized System of Tariff Classification. The corrections eliminate the impression, erroneously given by restating or revising the authority portion of some parts being amended, that individual section authority was being removed. Additionally, some authority citations were misstated and are corrected herein.

EFFECTIVE DATE: February 15, 1989.

FOR FURTHER INFORMATION CONTACT: Kathryn C. Peterson, Regulations and Disclosure Law Branch, (202) 566–8237.

SUPPLEMENTARY INFORMATION:

Purpose of Document

The interim regulations, published December 21, 1988, 53 FR 51244, follow the **Federal Register** requirements by restating or revising in full the general statutory authority applicable to each part being amended. In several instances the language of the restatement or revision failed to use the word "general" to indicate that only the general authority was being restated or amended, as distinguished from the individual section authority which was not being amended. As a result, the document conveyed the erroneous impression to the public and the office publishing the Code of Federal Regulations that the separately stated statutory authority for individual sections was intended to be removed. In most instances, the specific statutory authority for individual sections was intended to be left unaffected. This document corrects that impression.

In addition, some authority citations were misstated and are being corrected in this document. In particular, references to the General Notes of the Harmonized Tariff Schedules of the United States are being corrected, owing to a renumbering of the notes after the July 1987 version of the HTSUS, on which most of the interim rule was based.

The authority citations that follow are corrections to those published at 53 FR 51244:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for Part 4 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624; 46 U.S.C. App. 3.

PART 10—ARTICLES CONDITIONALLY FREE SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for Part 10 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202, 1481, 1484, 1498, 1508, 1623, 1624.

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The authority citation for Part 12 is revised in part to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

• • • • • •

Section 12.34 also issued under 19 U.S.C. 1202 (additional U.S. Note to Chapter 36, HTSUS);

• • • • • •

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

1. The general authority citation for Part 18 is revised to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1551, 1552, 1553, 1624.

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS AND CONTROL OF MERCHANDISE

1. The general authority citation for Part 19 is revised to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1624.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The general authority citation for Part 24 is revised to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 58a–58c, 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1624, 31 U.S.C. 9701; Pub. L. 99–662.

PART 54—CERTAIN IMPORTATIONS TEMPORARILY FREE OF DUTY

1. The authority citation for Part 54 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 8, Section XV, Note 5, Harmonized Tariff Schedule of the United States), 1624, unless otherwise noted.

PART 101—GENERAL PROVISIONS

1. The authority citation for Part 101 is revised to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 2, 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1623, 1624.

PART 103—AVAILABILITY OF INFORMATION

1. The authority citation for Part 103 is revised to read as follows:

Authority: 5 U.S.C. 301, 552; 19 U.S.C. 66, 1624; 31 U.S.C. 9701.

PART 111—CUSTOMS BROKERS

1. The authority citation for Part 111 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1624, 1641; Section 111.3 also issued under 19 U.S.C. 1484; Section 111.96 also issued under 31 U.S.C. 9701.

PART 113—CUSTOMS BONDS

1. The authority citation for Part 113 is revised to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624. Subpart E also issued under 19 U.S.C. 1484, 1551, 1565.

PART 114—CARNETS

1. The authority citation for Part 114 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1623, 1624.

PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for Part 122 is revised to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 58b, 66, 1433, 1436, 1459, 1590, 1624, 1644, 49 U.S.C. App. 1509.

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. The general authority citation for Part 123 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1624.

PART 127—GENERAL ORDER, UNCLAIMED, AND ABANDONED MERCHANDISE

1. The general authority citation for Part 127 is revised to read as follows:

Authority: 19 U.S.C. 66, 1311, 1312, 1484, 1485, 1490, 1491, 1492, 1506, 1559, 1563, 1623, 1624, 1646a; 26 U.S.C. 7553.

PART 132—QUOTAS

1. The authority citation for Part 132 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1623, 1624.

PART 134—COUNTRY OF ORIGIN MARKING

1. The authority citation for Part 134 is revised to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1304, 1624.

PART 144—WAREHOUSE AND REWAREHOUSE ENTRIES AND WITHDRAWALS

1. The general authority citation for Part 144 continues to read as follows:

Authority: 19 U.S.C. 66, 1484, 1557, 1559, 1624.

PART 145—MAIL IMPORTATIONS

1. The general authority citation for Part 145 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1624.

PART 146—FOREIGN TRADE ZONES

1. The general authority citation for Part 146 is revised to read as follows:

Authority: 19 U.S.C. 66, 81a–81u, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1623, 1624. Section 146.5 also issued under 31 U.S.C. 9701.

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

1. The general authority citation for Part 148 is revised to read as follows:

Authority: 19 U.S.C. 66, 1466, 1624. The provisions of this part, except for Subpart C, are also issued under General Note 8, Harmonized Tariff Schedule of the United States, 19 U.S.C. 1202.

PART 151—EXAMINATION, SAMPLING, AND TESTING OF MERCHANDISE

1. The authority citation for Part 151 is revised in part to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Notes 8 and 9, Harmonized Tariff Schedule of the United States (HTSUS)), 1624. Subpart A also issued under 19 U.S.C. 1499. Subpart D also issued under Additional U.S. Notes to Chapter 28, HTSUS. Subpart E also issued under Additional U.S. Note 2(f) to Chapter 51, HTSUS. Subpart F also issued under Additional U.S. Notes to Chapter 82, HTSUS.

Section 151.21 also issued under the provisions of Chapters 17 and 18, HTSUS;

* * * * *

Section 151.91 also issued under the Additional U.S. Notes to Chapter 20, HTSUS.

PART 152—CLASSIFICATION AND APPRAISEMENT OF MERCHANDISE

1. The authority citation for Part 152 is revised to read as follows:

Authority: 19 U.S.C. 66, 1401a, 1500, 1502, 1624; Subpart B also issued under 19 U.S.C. 1315; Subpart C also issued under 19 U.S.C. 1503; Subpart D also issued under 19 U.S.C. 1202 (General Note 9, Harmonized Tariff Schedule of the United States (HTSUS)); Section 152.3 also issued under 19 U.S.C. 1490; Section 152.13 and 152.24 also issued under 19 U.S.C. 1202 (General Note 5, HTSUS); Section 152.31—152.32 also issued under 19 U.S.C. 1401a.

PART 171—FINES, PENALTIES AND FORFEITURES

1. The general authority citation for Part 171 continues to read as follows:

Authority: 19 U.S.C. 66, 1592, 1618, 1624.

PART 177—ADMINISTRATIVE RULINGS

1. The authority citation for Part 177 is revised to read as follows:

Authority: 5 U.S.C. 301, 19, U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule

of the United States), 1624, unless otherwise noted.

PART 191—DRAWBACK

1. The general authority citation for Part 191 is revised to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1313, 1624.

February 10, 1989.

Kathryn C. Peterson,

Chief, Regulations and Disclosure Law Branch.

[FR Doc. 89-3516 Filed 2-14-89; 8:45 am]

BILLING CODE 4820-02

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19 CFR Part 4

[T.D. 89-25]

Adding Ecuador, Antigua and Barbuda, and the Hungarian People's Republic, to the List of Nations Entitled to Special Tonnage Tax Exemption

AGENCY: U.S. Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This rule amends the Customs Regulations by adding Ecuador, Antigua and Barbuda, and Hungary to the list of nations whose vessels are exempted from the payment of any higher tonnage duties than are applicable to vessels of the U.S. and from the payment of light money. The Department of State informed Customs that there is satisfactory evidence that no discriminatory duties of tonnage or impost are being imposed in the ports of Ecuador, Antigua and Barbuda, and the Hungarian People's Republic, upon vessels belonging to citizens of the United States or on their cargoes. This asmendment provides reciprocal privileges for vessels registered in these countries.

DATES: The exemptions for Ecuador, Antigua and Barbuda, and Hungary, became effective February 4, April 25, and August 22, 1988, respectively. This document is effective February 15, 1989.

FOR FURTHER INFORMATION CONTACT: Paul Hegland, Carrier Rulings Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202–566–5706).

SUPPLEMENTARY INFORMATION:

Background

Generally, the United States imposes regular and special tonnage taxes, and a duty of a specified amount per ton, known as "light money", on all foreign vessels which enter United States ports (46 U.S.C. App. 121, 128). However, vessels of a foreign nation may be exempted from the payment of special tonnage taxes and light money upon presentation of proof satisfactory to the President that no discriminatory duties of tonnage or impost are imposed by that foreign nation on U.S. vessels or their cargoes (46 U.S.C. App. 141). Section 4.22, Customs Regulations (19 CFR 4.22), lists those nations whose vessels have been exempted from the payment of any higher tonnage duties than are applicable to vessels of the U.S. and from the payment of light money.

Ecuadorian ships were exempted as a result of a finding, based on reciprocity, issued in 1944. By letter dated January 12, 1988, the Department of State informed the U.S. Customs Service that the U.S. Embassy in Ecuador had reported it had been advised that U.S. vessels had been paying lighthouse fees in Ecuadorian ports since 1983. Accordingly, T.D. 88–15, published in the **Federal Register** on March 22, 1988, (53 FR 9315), amended § 4.22 by removing Ecuador from the list of nations whose vessels are exempted from the payment of the special tonnage tax and light money, effective February 4, 1988. A communication from the Department of State, dated September 7, 1988, requesting the addition of Ecuador to the list of nations in § 4.22, indicates an effective date of January 1, 1988, has been agreed to. However, in order to maintain consistency of sequence for the removal and reinstatement of Ecuador from and to the list of nations in § 4.22, both the removal and reinstatement will be deemed to have coincided on the same effective date, February 4, 1988. It is noted that vessels of Ecuador would not have been liable for payment of special tonnage tax or light money during the period from January 1 to February 4, 1988, in any event.

By letters dated April 22, and August 18, 1988, the Department of State informed the Customs Service that the Governments of Antigua and Barbuda, and Hungary, respectively, do not impose or levy any discriminatory duties of tonnage or impost in the ports of those countries upon vessels wholly belonging to citizens of the United States, or upon the produce, manufactures, or merchandise imported into those countries on United States vessels.

The authority to amend this section of the Customs Regulations has been delegated to the Chief, Regulations and Disclosure Law Branch.

Finding

On the basis of the information received from the Department of State regarding the absence of discriminatory duties of tonnage or impost imposed on U.S. vessels in the ports of Ecuador, Antigua and Barbuda, and the Hungarian People's Republic, it has been determined that these countries should be added to the list of nations whose vessels are exempted from the payment of the special tonnage tax and payment of light money.

Inapplicability of Public Notice and Delayed Effective Date Requirements

Because these amendments merely implement a statutory requirement and involve a matter in which the public is not particularly interested, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure thereon are unnecessary. Further, for the same reasons, good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553(d)(1).

Inapplicability of the Regulatory Flexibility Act

This document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). That Act does not apply to any regulation such as this for which a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) or any other statute.

Executive Order 12291

This amendment does not meet the criteria for a major regulation as defined in E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Drafting Information

The principal author of this document was Earl Martin, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices of the Customs Service participated in its development.

List of Subjects in 19 CFR Part 4

Cargo vessels, Coastal zone, Customs duties and inspection, Fishing vessels, Freight, Harbors, Imports, Maritime carriers, Reporting and recordkeeping requirements, Seamen, Vessels and yachts.

Amendment to the Regulations

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority for Part 4 and the specific authority for § 4.22 are revised to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1624, and 46 U.S.C. App. 3.

Section 4.22 also issued under 46 U.S.C. App. 121, 122, 141.

§ 4.22 [Amended]

2. Section 4.22 is amended by inserting Ecuador, Antigua and Barbuda, and the Hungarian People's Republic, in appropriate alphabetical order, in the list of nations whose vessels are exempted from the payment of any higher tonnage duties than are applicable to vessels of the United States and from the payment of light money.

Dated: February 6, 1989.

Kathryn C. Peterson,

Chief, Regulations and Disclosure Law Branch.

[FR Doc. 89-3517 Filed 2-14-89; 8:45 am]

BILLING CODE 4820-02-M

19 CFR Part 122

[T.D. 89-24]

Customs Regulations Amendments Concerning Overflight Exemptions for Private Aircraft; Correction

AGENCY: U.S. Customs Service, Treasury.

ACTION: Final rule; correction.

SUMMARY: A document was published in the **Federal Register** (54 FR 5427) on February 3, 1989, setting forth amendments to the Customs Regulations that modify the overflight exemption program for private aircraft. This document corrects an error that appears in that document.

EFFECTIVE DATE: March 6, 1989.

FOR FURTHER INFORMATION CONTACT: Glenn Ross or Sam McLinn, Office of Passenger Enforcement and Facilitation, (202) 566-5607.

SUPPLEMENTARY INFORMATION:

Background

A document was published in the **Federal Register** (54 FR 5427) on February 3, 1989, that set forth amendments to the Customs Regulations that modify the overflight exemption progam for private aircraft. The regulations provide for more stringent controls of the overflight program. Customs states in the document that any company, regardless of where it is based, may apply for an overflight exemption. However, the inadvertent inclusion of certain words in the regulatory language of § 122.25(a), Customs Regulations on page 5429 of the document may possibly lead one to another conclusion. Accordingly, this document corrects the possibly misleading language in the first sentence of § 122.25 by deleting the words "in the U.S."

Correction

As corrected, the first sentence of § 122.25(a), Customs Regulations (19 CFR 122.25(a)) should read as follows:

§ 122.25 Exemption for special landing requirements.

(a) *Request.* Any company or individual that has operational control over an aircraft required to give advance notice of arrival under § 122.23 may request an exemption from the landing requirements in § 122.24. * * *

* * * * *

Dated: February 9, 1989.

Kathryn C. Peterson,

Chief, Regulations and Disclosure Law Branch.

[FR Doc. 89-3520 Filed 2-14-89; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Center for Veterinary Medicine

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority relating to responses to citizen petitions under 21 CFR Part 10, seeking a determination of the suitability of an abbreviated new animal drug application (ANADA) for an animal drug product.

EFFECTIVE DATE: February 15, 1989.

FOR FURTHER INFORMATION CONTACT: Melissa M. Moncavage, Office of Management and Operations (HFA-340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4976.

SUPPLEMENTARY INFORMATION: On November 16, 1988, the Generic Animal Drug and Patent Term Restoration Act (the Act) was enacted. The Act amended the Federal Food, Drug, and Cosmetic Act by extending the generic approval system to copies of new animal drugs that were approved after October 1962 and amended Title 35, United States Code, to authorize patent extension for certain animal drugs. FDA is amending § 5.31 *Petitions under Part 10* (21 CFR 5.31) in paragraph (e)(2) by adding "(CVM)" after "Center for Veterinary Medicine" and by adding a new paragraph (f)(7) that will authorize the Director and Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine, to issue responses to citizen petitions seeking a determination of the suitability of an ANADA for an animal drug product.

Further delegation of authority is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR Part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552; 7 U.S.C. 2217; 15 U.S.C. 638, 1451 *et seq.*, 3701 *et seq.*; 21 U.S.C. 41 *et seq.*, 61-63, 141 *et seq.*, 301-392, 467f(b), 679(b), 801 *et seq.*, 823(f), 1031 *et seq.*; 35 U.S.C. 156; 42 U.S.C. 219, 241, 242(a), 242a, 2421, 242o, 243, 262, 263, 263b through 263m, 264, 265, 300u *et seq.*, 1395y and 1396y note, 3246b(b)(3), 4831(a), 10007, and 10008; Federal Caustic Poison Act (44 Stat. 1406); Federal Advisory Committee Act (Pub. L. 92-463); E.O. 11490, 11921, 12591.

2. Section 5.31 is amended in paragraph (e)(2) by adding "(CVM)" after "Center for Veterinary Medicine", by reserving paragraph (f)(6), and by adding a new paragraph (f)(7) to read as follows:

§ 5.31 Petitions under Part 10.

* * * * *

(f) * * *

(6) [Reserved]

(7) The Director and Deputy Director, Office of New Animal Drug Evaluation, CVM, are authorized to issue responses to citizen petitions submitted under § 10.30 of this chapter, seeking a determination of the suitability of an abbreviated new animal drug application for an animal drug product.

Dated: February 9, 1989.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-3402 Filed 2-14-89; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 10

[Docket No. 88N-0374]

Designation of Office To Receive Petitions for Review of Agency Action

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: Under a recent amendment to Title 28 of the United States Code, each Federal agency must designate an office and officer to receive copies of petitions for review challenging agency action in the U.S. Court of Appeals. The designated officer is then required to notify the Judicial Panel on Multidistrict Litigation of any petitions received in the first 10 days after the effective date of the agency action. If those petitions had been filed in different circuits of the U.S. Court of Appeals, then the panel will, by random process, choose one of those circuits to hear all appeals of that agency action. The Food and Drug Administration (FDA) is designating the Chief Counsel as the officer to receive copies of the petitions for review.

EFFECTIVE DATE: February 15, 1989.

FOR FURTHER INFORMATION CONTACT: Robert L. Spencer, Division of Regulations Policy (HFC-220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3480.

SUPPLEMENTARY INFORMATION: Former President Reagan recently signed into law Pub. L. 100-236, 101 Stat. 1731, which amends 28 U.S.C. 2112. This amendment, intended to eliminate races to the different circuits of the U.S. Court of Appeals, sets forth a procedure for determining which court shall hear challenges to a final agency action when the action is challenged in different circuits by different petitioners. In brief, the statute requires each petitioner to send time-stamped copies of its petition for review to an office and officer to be designated by each Federal agency to ensure that the agency's choice of forum is considered in the random selection process established by Pub. L. 100-236. When the designated officer receives copies of two or more petitions filed in two or more courts challenging final agency action within 10 days of the effective date of the action, the officer will notify the U.S. Judicial Panel on Multidistrict Litigation (Multidistrict Panel) of the petitions received. The Multidistrict Panel will then select, at random, one of the circuits in which a petition was filed to hear the challenges, and all appeals will be consolidated in that circuit.

To implement this new procedure, Pub. L. 100-236 provides that all Federal agencies must designate, by rule, an office and officer to receive copies of the petitions for review. This rule establishes the Chief Counsel of FDA as that officer for FDA.

Often actions taken by Federal agencies are, by statute, subject to direct review in the U.S. Court of Appeals. While some Federal statutes prescribe a particular circuit court where venue shall lie for challenges to final agency action taken under that statute, other statutes permit a challenge to the action to be filed in one of several circuits or do not prescribe any circuit for such challenge. For example, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*), most FDA actions reviewable in the first instance in the U.S. Court of Appeals can be brought in one of three circuits: the circuit in which the petitioner resides, the circuit in which the petitioner's principal place of business is located, or the District of Columbia Circuit. (See, e.g., 21 U.S.C. 348(g)(1).)

Under the previous 28 U.S.C. 2112(a), if petitions were filed in more than one circuit, the circuit in which the actions would be heard was chosen using the "first-to-file" rule. While FDA has not had problems with multiple petitioners challenging FDA's actions in more than one circuit of the U.S. Court of Appeals, other agencies such as the Federal Energy Regulatory Commission and the Environmental Protection Agency have been plagued by courthouse races resulting from the use of this "first-to-file" rule. Public Law 100-236 is intended to redress the situation created by the "first-to-file" rule, do away with races to the courthouse, and reintroduce a measure of fairness into the circuit selection process.

Amended 28 U.S.C. 2112 establishes a scheme for determining which circuit shall have venue when petitioners challenge the same agency action in different circuits. When an agency receives date-stamped copies of petitions for review within 10 days of the effective date of the challenged action, it is required to notify the Multidistrict Panel of those petitions. However, only circuits in which petitions were filed are eligible for consideration in the random selection process. If only one petition for review is received, or more than one petition is received but all received were filed in the same circuit (within 10 days of the effective date), the case will be heard in that circuit in which they were filed. Any petitions that are filed after the 10-day period has run will be consolidated in the circuit selected by the Multidistrict Panel. If no petition is received by the agency within the first 10 days, the case will be heard in the circuit where the first petition is filed (28 U.S.C. 2112(a)).

FDA has determined that this rule is a rule of agency management or personnel, and one of agency organization, procedure, and practice. Accordingly, its promulgation does not require notice and comment under the Administrative Procedure Act (5 U.S.C. 553(a)(2) and (b)(A)). Further, this rule is a nondiscretionary action in response to a statutory directive to designate an officer to receive copies of petitions for review of agency action and does not affect any substantive rights or duties of the public. Consequently, FDA believes that good cause exists for making this rule effective immediately (5 U.S.C. 553(d)).

This rule is not subject to Executive Order 12291 because that Order exempts rules, such as this, that are related to agency organization, management, and personnel, from its requirements. The Regulatory Flexibility Act is inapplicable to rules such as this that are not preceded by a notice of proposed rulemaking. In any event, the requirements of this rule are extremely minor. Any entity, whether large or small, which is already challenging an agency action in the Court of Appeals will be burdened only with the cost of a single certified letter. Thus, this rule will not have a significant impact on a substantial number of small entities.

List of Subjects in 21 CFR Part 10

Administrative practice and procedure, News media.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 10 is amended as follows:

PART 10—ADMINISTRATIVE PRACTICES AND PROCEDURES

1. The authority citation for 21 CFR Part 10 is revised to read as follows:

Authority: Sec. 201 *et seq.*, Pub. L. 717, 52 Stat. 1040 as amended (21 U.S.C. 321 *et seq.*); sec. 1 *et seq.*, Pub. L. 410, 58 Stat. 682 as amended (42 U.S.C. 201 *et seq.*); sec. 4, Pub. L. 91-513, 84 Stat. 1241 (42 U.S.C. 257a); sec. 301 *et seq.*, Pub. L. 91-513, 84 Stat. 1253 (21 U.S.C. 821 *et seq.*); sec. 409(b), Pub. L. 242, 81 Stat. 600 (21 U.S.C. 679(b)); sec. 24(b), Pub. L. 85-172, 82 Stat. 807 (21 U.S.C. 467f(b)); sec. 2 *et seq.*, Pub. L. 91-597, 84 Stat. 1620 (21 U.S.C. 1031 *et seq.*); secs. 1-9, Pub. L. 625, 44 Stat. 1101-1103 as amended (21 U.S.C. 141-149); secs. 1-10, Ch. 358, 29 Stat. 604-607 as amended (21 U.S.C. 41-50); sec. 2 *et seq.*, Pub. L. 783, 44 Stat. 1406 as amended (15 U.S.C. 401 *et seq.*); sec. 1 *et seq.*, Pub. L. 89-755, 80 Stat. 1296 as amended (15 U.S.C. 1451 *et seq.*); Pub. L. 100-236, 101 Stat. 1731 (28 U.S.C. 2112).

2. Section 10.3 is amended in paragraph (a) by alphabetically adding the definition to "Chief Counsel" to read as follows:

§ 10.3 Definitions.

(a) * * * "Chief Counsel" means the Chief Counsel of the Food and Drug Administration. * * *

* * * * *

3. Section 10.45 is amended by redesignating paragraph (h) as paragraph (i), by revising the cite "(h)(1)(i)" in redesignated paragraph (i)(2)(i) to read "(i)(1)(i)," and by adding new paragraph (h) to read as follows:

§ 10.45 Court review of final administrative action; exhaustion of administrative remedies.

* * * * *

(h)(1) For the purpose of 28 U.S.C. 2112(a), a copy of any petition filed in any U.S. Court of Appeals challenging a final action of the Commissioner shall be sent by certified mail, return receipt requested, or by personal delivery to the Chief Counsel of FDA. The petition copy shall be time-stamped by the clerk of the court when the original is filed with the court. The petition copy should be addressed to: Office of the Chief Counsel (GCF-1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. The Chief Counsel requests that the purpose of all petitions mailed or delivered to the Office of Chief Counsel to satisfy 28 U.S.C. 2112(a) be clearly identified in a cover letter.

(2) If the Chief Counsel receives two or more petitions filed in two or more U.S. Courts of Appeals for review of any agency action within 10 days of the effective date of that action for the purpose of judicial review, the Chief Counsel will notify the U.S. Judicial Panel on Multidistrict Litigation of any petitions that were received within the 10-day period, in accordance with the applicable rule of the panel.

(3) For the purpose of determining whether a petition for review has been received within the 10-day period under paragraph (h)(2) of this section, the petition shall be considered to be received on the date of delivery, if personally delivered. If the delivery is accomplished by mail, the date of receipt shall be the date noted on the return receipt card.

* * * * *

Dated: February 9, 1989.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-3491 Filed 2-14-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 904, 905, 913, 960 and 966

[Docket No. R-88-1020; FR-1164]

Tenancy and Administrative Grievance Procedure for Public Housing; Preliminary Injunction; Withdrawal of Final Rule

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of preliminary injunction against implementation of final rule revising Tenancy and Administrative Grievance Procedure for Public Housing; withdrawal of final rule.

SUMMARY: A final rule to amend lease and grievance procedures for the public housing program was published on August 30, 1988 (53 FR 33216, Docket No. R-88-1020; FR 1164). On October 14, 1988, HUD published a notice announcing that the final rule would become effective on November 7, 1988 (53 FR 40220, 40221). This rule has never become effective.

On November 7, 1988 (53 FR 44878), the date on which the rule was to take effect, HUD published a notice announcing that the notice of effective date was being withdrawn pursuant to a Temporary Restraining Order in *National Tenants Organization, et al. v. Samuel R. Pierce* (United States District Court for the District of Columbia, Civil Action No. 88-3134).

Public housing agencies and others are hereby notified that the United States District Court for the District of Columbia has issued a Preliminary Injunction in this case. The Preliminary Injunction provides that the Secretary of HUD, his officers, agents, servants, employees, and those persons in active concert or participation with him are enjoined from implementing the HUD lease and grievance regulation published on August 30, 1988 pending further order of court.

For the following reasons, the August 30, 1988 regulation is withdrawn as a final rule:

—To avoid publication of the regulation in the Code of Federal Regulations, which could create public confusion as to whether the final rule is currently effective.

—Because the Department intends to solicit additional public comment on public housing lease and grievance requirements, as contemplated by section 1013 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100-628, November 7, 1988) before issuing a new final rule.

The existing lease and grievance regulations (24 CFR Part 966) continue to remain in effect.

Accordingly, the Tenancy and Administrative Grievance Procedure for Public Housing published August 30, 1988 (53 FR 33216) is withdrawn as a final rule.

Date: February 10, 1989.

Thomas Sherman,

Acting General, Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 89-3574 Filed 2-14-89; 8:45 am]

BILLING CODE 4210-33-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, 1917, 1918, 1926, and 1928

Hazard Communication

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule; technical amendments; notice regarding enforcement.

SUMMARY: On August 24, 1987 (52 FR 31852), OSHA revised its Hazard Communication Standard (HCS) to expand the scope of the industries covered by the rule from the manufacturing sector to all industries where employees are exposed to hazardous chemicals. Due to subsequent court and administrative actions, OSHA has not enforced the rule in the construction industry, and has not enforced in any industry certain requirements dealing with maintenance of material safety data sheets on multi-employer worksites, coverage of consumer products, and coverage of drugs in the non-manufacturing sector.

This notice is to advise the public that, as a result of further court actions, all provisions of the rule are now in effect in all segments of industry.

This document also makes technical amendments to the HCS by deleting all notations that certain provisions lack Office of Management and Budget approval under the Paperwork Reduction Act.

EFFECTIVE DATES: The revised HCS, codified at 29 CFR 1910.1200, 1915.99, 1917.28, and 1918.90, has been in effect for all manufacturing establishments and for all non-manufacturing establishments other than construction since June 24, 1988. The HCS for the construction industry, codified at 29 CFR 1926.59, has been in effect since January 30, 1989. Compliance with the rule will not be checked during programmed inspections in construction establishments until March 17, 1989. The technical amendments to 29 CFR 1910.1200, 1915.99, 1917.28, 1918.90, and 1926.59 deleting notations that certain provisions lack OMB approval under the Paperwork Reduction Act are effective February 15, 1989. Compliance with the three provisions of the HCS that were not previously enforced in any industry will not be checked during programmed inspections until March 17, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Room N3647, Washington, DC 20210; (202) 523-8151.

To aid employers' efforts to comply with the HCS, a single copy of the following documents may be obtained without charge from OSHA's Publications Office, Room N3101 at the above address, (202) 523-9667: the Hazard Communication Standard; OSHA 3084, Chemical Hazard Communication, a booklet describing the requirements of the rule; and OSHA 3111, Hazard Communication Guidelines for Compliance, a booklet which helps employers comply with the rule.

OSHA 3104, Hazard Communication—A Compliance Kit (a step-by-step guide to compliance with the standard) is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238, GPO Order No. 929-022-00000-9; $16—domestic; $22.50—foreign.

SUPPLEMENTARY INFORMATION:

1. *Coverage of the construction industry.* The HCS requires employers to establish hazard communication programs to transmit information on the hazards of chemicals to their employees by means of labels on containers, material safety data sheets, and training programs. The original rule, which was promulgated on November 25, 1983, covered employees exposed to hazardous chemicals in the manufacturing sector of industry (48 FR 53280). The August 24, 1987 modified rule expanded coverage to all employees exposed to hazardous chemicals, thus providing protection for those in non-manufacturing employments as well as manufacturing (52 FR 31852)(codified at 29 CFR 1910.1200, 1915.99, 1917.28, 1918.90, and 1926.59).

The August 1987 rule was scheduled to become fully effective on May 23, 1988. On May 20, 1988, the U.S. Court of Appeals for the District of Columbia Circuit transferred several consolidated cases challenging the standard to the U.S. Court of Appeals for the Third Circuit, and in the interim, ordered an administrative stay of the revised standard "until the Third Circuit ruled on the emergency motion for stay" which had been filed by petitioners representing the construction industry.

On June 24, 1988, the Third Circuit issued an order granting the stay requested by construction industry representatives. On July 8, 1988, the Third Circuit clarified its earlier order stating: "The order entered on June 24, 1988, is clarified to make clear that the stay applies only with respect to construction employers in the non-manufacturing sector."

OSHA published a notice in the Federal Register on July 22, 1988 (53 FR 27679) to alert the public that the stay only applied to the construction industry. The Agency also announced that programmed inspections in the other non-manufacturing industries would begin on August 1, 1988.

After considering the merits of the challenges to the standard which were filed by employer representatives, the U.S. Court of Appeals for the Third Circuit issued a decision on November 25, 1988 that denied the petitions for review. The Court stated: "None of the substantive or procedural challenges to the application of the hazard communication standard to the construction or grain processing and storage industries have merit. The petitions for review of ABC (Associated Builders and Contractors, Inc.), AGC (The Associated General Contractors), NGFA (The National Grain and Feed Association, Inc.) and UTC (United Technologies Corporation) will therefore be denied. The stay of those standards granted by a panel of this court on June 24, 1988, shall be vacated." *Associated Builders and Contractors, Inc. v. Brock*, 862 F.2d 63, 69 (3d Cir. 1988). Further requests from the AGC and the ABC for a continuation of the stay were denied by both the Third Circuit and U.S. Supreme Court Justice William Brennan (Nos. 88-1070, 88-1075). The Third Circuit's ruling became fully effective on January 30, 1989.

OSHA recognizes that some employers in the construction industry may be unfamiliar with these legal actions, and may be unsure whether they must comply with the revised HCS at this time. This document provides additional notice to employers and employees in the construction sector that the HCS is in effect in their industry. As a matter of enforcement policy, OSHA will not check for compliance with the HCS during programmed inspections in the construction industry until March 17, 1989.

2. *Provisions disapproved with regard to information collection requirements.* On October 28, 1987, the Office of Management and Budget (OMB), citing authority of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), disapproved certain information collection requirements in the expanded scope rule, as of the rule's effective date. On December 4, 1987 (52 FR 46075), OSHA published OMB's letter describing its determination in a notice in the Federal Register, (*see also* 53 FR 15633 (Apr. 27, 1988) (OMB letter to Department of Labor dated April 13, 1988)).

The provisions that OMB disapproved were: (1) The requirement that material safety data sheets be provided on multi-employer worksites; (2) coverage of any consumer product that falls within the "consumer products" exemption included in section 311(e)(3) of the Superfund Amendments and Reauthorization Act of 1986; and (3) coverage of any drugs regulated by the Food and Drug Administration in the non-manufacturing sector. In accordance with OMB's decision, OSHA has not enforced these three disapproved requirements.

OMB's disapproval of the HCS provisions was challenged in the U.S. Court of Appeals for the Third Circuit. On August 19, 1988, the Court of Appeals invalidated OMB's disapproval and ordered that: "The Secretary [of Labor] shall publish in the Federal Register a notice that those parts of the August 24, 1987 hazard communication standard which were disapproved by OMB are now effective." *United Steelworkers of America* v. *Pendergrass*, 855 F.2d 108, 114 (3d Cir. 1988).

On September 2, 1988, the U.S. Department of Justice filed a petition with the Third Circuit requesting a rehearing and suggesting a rehearing *en banc*, which automatically stayed the effect of the Court's order. The Court has now denied the petition for rehearing (November 29, 1988), as well as requests for stay of the decision. In addition, a further motion by industry representatives for a stay of the decision was denied by U.S. Supreme Court Justice Brennan (January 24, 1989). The Solicitor General has authorized the filing of a petition for a writ of certiorari on behalf of the government in the

United Steelworkers case. Also, on January 27, 1989, industry resubmitted its stay request with Chief Justice Rehnquist in both United Steelworkers and Associated Builders and Contractors. That request is pending. If certiorari is granted, the Supreme Court will ultimately decide the enforceability of these provisions. The Third Circuit's decision became effective January 30, 1989.

As ordered by the Third Circuit, OSHA is publishing this document to provide notice to affected employers and employees that all provisions of the HCS are now in effect in all industries. As a matter of enforcement policy, OSHA will not check for compliance with the three provisions in programmed inspections until March 17, 1989.

To implement the court order, technical amendments are being made to the HCS to delete from notes following the headings of the standard, and from the parentheticals following the text of the standard, statements that any provisions of the HCS are disapproved by OMB. The OMB-assigned control number for the approved collection of information requirements of the HCS remain following the text of the standard. The Paperwork Reduction Act requires display of OMB control numbers with all information collection provisions.

Status in State Plan States. The twenty-five (25) states with OSHA-approved State plans and their own hazard communication rules have not been bound by either the court actions or OMB's administrative actions. Those State plan states that have voluntarily honored the court stay or suspended enforcement of the disapproved provisions are expected to similarly begin enforcement of all requirements of the standard.

Authority and Signature

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, under authority of section 41 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941), section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333), sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 9–83 (48 FR 35736), 29 CFR Part 1911, and 5 U.S.C. 553.

List of Subjects in 29 CFR Parts 1910, 1915, 1917, 1918, 1926, and 1928

Hazard communication, Occupational safety and health, Right-to-know, Labeling, Material safety data sheets, Employee training, Construction.

Signed at Washington, DC, this 9th day of February 1989.

John A. Pendergrass,

Assistant Secretary for Occupational Safety and Health.

OSHA is amending Parts 1910, 1915, 1917, 1918, and 1926 of Title 29 of the Code of Federal Regulations as follows:

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

PART 1915—OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR SHIPYARD EMPLOYMENT

PART 1917—MARINE TERMINALS

PART 1918—SAFETY AND HEALTH REGULATIONS FOR LONGSHORING

PART 1926—SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION

1. The authority citation for Subpart Z of Part 1910 continues to read as follows:

Authority: Secs. 6, 8, Occupational Safety and Health Act (29 U.S.C. 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754); 8–76 (41 FR 25059); or 9–83 (48 FR 35736) as applicable; and 29 CFR Part 1911.

Section 1910.1000 Tables Z–1, Z–2, Z–3 also issued under 5 U.S.C. 553.

Section 1910.1000 not issued under 29 CFR Part 1911, except for "Arsenic" and "Cotton Dust" listings in Table Z–1.

Section 1910.1001 also issued under sec. 107 of Contract Work Hours and Safety Standards Act, 40 U.S.C. 333.

Section 1910.1002 not issued under 29 U.S.C. 655 or 29 CFR Part 1911; also issued under 5 U.S.C. 553.

Section 1910.1003 through 1910.1018 also issued under 29 U.S.C. 653.

Section 1910.1025 also issued under 29 U.S.C. 653 and 5 U.S.C. 553.

Section 1910.1043 also issued under 5 U.S.C. 551 *et seq.*

Section 1910.1045 and 1910.1047 also issued under 29 U.S.C. 653.

Section 1910.1200, 1910.1499 and 1910.1500 also issued under 5 U.S.C. 553.

2. The authority citation for Part 1915 continues to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable; 29 CFR Part 1911.

Section 1915.99 also issued under 5 U.S.C. 553.

3. The authority citation for Part 1917 continues to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers's Compensation Act (33 U.S.C. 941); secs. 4, 6, 8, Occupational Safety and Health act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable; 29 CFR Part 1911.

Section 1917.28 also issued under 5 U.S.C. 553.

4. The authority citation for Part 1918 continues to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable.

Section 1918.90 also issued under 5 U.S.C. 553 and 29 CFR Part 1911.

5. The authority citation for Subpart D of Part 1926 continues to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable.

Section 1926.59 also issued under 5 U.S.C. 553 and 29 CFR Part 1911.

§§ 1910.1200, 1915.99, 1917.28, 1918.90, and 1926.59 [Amended]

6. The notes following the headings of §§ 1910.1200, 1915.99, 1917.28, 1918.90, and 1926.59 of Title 29 of the Code of Federal Regulations are removed.

7. The OMB control number statements following the text of §§ 1910.1200, 1915.99, 1917.28, 1918.90, and 1926.59 are revised to read:

(Approved by the Office of Management and Budget under Control No. 1218–0072)

[FR Doc. 89–3525 Filed 2–14–89; 8:45 am]

BILLING CODE 4510-26-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2610

Payment of Premiums; Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Interim rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's interim regulation on Payment of Premiums, which was published on June 30, 1988 (53 FR 24906). Appendix B to the interim regulation contains a table setting forth the interest rates that are required by statute to be used in valuing a plan's vested benefits for purposes of determining the amount of the premium due to the PBGC. This amendment adds to that table the interest rate applicable to plan years beginning in February 1989.

EFFECTIVE DATE: February 15, 1989.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Senior Counsel, Office of the General Counsel (Code 22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; telephone 202–778–8823 (202–778–8859 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Section 9331 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, amended section 4006 of the Employee Retirement Income Security Act of 1974 ("ERISA") to establish a two-part premium structure for single-employer plans, *i.e.*, a flat rate per capita assessment and a variable rate assessment based on a plan's unfunded vested benefits, effective for plan years beginning on or after January 1, 1988. Under amended ERISA section 4006(a)(3)(E)(iii)(II), the interest rate used in valuing a plan's vested benefits for purposes of determining the amount of the plan's unfunded vested benefits must equal 80% of the annual yield on 30-year Treasury securities for the month preceding the month in which the plan year begins.

The Pension Benefit Guaranty Corporation's (the "PBGC's") interim regulation on Payment of Premiums (53 FR 24906 (June 30, 1988)) implements these new premium rules. Under § 2610.23(b)(1) of the regulation, the interest rate for valuing vested benefits is determined by reference to the annual yield for 30-year Treasury constant maturities as reported in Federal Reserve Statistical Release G.13 and H.15. The required interest rate for a given "premium payment year" (the plan year for which the premium is being paid) is 80% of this rate for the calendar month preceding the calendar month in which the premium payment year begins. As a convenience, the PBGC established an Appendix B to the interim regulation containing a table setting forth the required interest rates for premium payment years beginning in January 1988 and thereafter.

The PBGC is amending Appendix B to add the required interest rate for premium payment years beginning in February 1989. Appendix B to the interim regulation does not prescribe the required interest rates for valuing vested benefits. These rates are prescribed by section 4006(a)(3)(E)(iii)(II) of ERISA and § 2610.23(b)(1) of the regulation. The purpose of Appendix B is merely to collect and to republish these rates in a convenient place. Thus, the interest rates in Appendix B are informational only. Accordingly, the PBGC finds that notice of and public comment on this amendment would be unnecessary and contrary to the public interest. See 5 U.S.C. 553(b). For these same reasons, the PBGC also finds that good cause exists for making these amendments effective immediately. See 5 U.S.C. 553(d)(3).

The PBGC has determined that this amendment is not a "major rule" within the meaning of Executive Order 12291, because it will not have an annual effect on the economy of $100 million or more; nor create a major increase in costs or prices for consumers, individual industries, or geographic regions, nor have significant adverse effects on competition, employment, investment, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 2610

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, Appendix B to Part 2610 of Chapter XXVI of Title 29, Code of Federal Regulations, is hereby amended as follows:

PART 2610—PAYMENT OF PREMIUMS

1. The authority citation for Part 2610 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1306, 1307, as amended by sec. 9331, Pub. L. 100–203, 101 Stat. 1330.

2. Appendix B to Part 2610 is amended by adding to the table of interest rates therein a new entry to read as follows. The explanatory text is republished for the convenience of the reader and remains unchanged.

Appendix B—Interest Rates for Valuing Vested Benefits

The following table lists the required interest rates to be used in valuing a plan's vested benefits under § 2610.23(b) and in calculating a plan's adjusted vested benefits under § 2610.23(c)(1):

For premium payment years beginning in—	Required interest rate[1]
• • • • •	
February 1989	7.14

[1] The required interest rate listed above is equal to 80% of the annual yield for 30-year Treasury constant maturities, as reported in Federal Reserve Statistical Release G.13 and H.15, for the calendar month preceding the calendar month in which the premium payment year begins.

Issued in Washington, DC, on this 6th day of February 1989.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 89–3472 Filed 2–14–89; 8:45 am]

BILLING CODE 7708-01-M

29 CFR Part 2676

Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal; Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR Part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of March 1989.

EFFECTIVE DATE: March 1, 1989.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006; 202–778–8820 (202–778–8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The PBGC finds that notice of and public comments on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in

this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (*See* 5 U.S.C. 533 (b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676

Employee benefit plans, Pensions.

In consideration of the foregoing, Part 2676 of Subchapter H of Chapter XXVI of Title 29, Code of Federal Regulations, is amended as follows:

PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation for Part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates therein the following new entry:

§ 2676.15 Interest

* * * * *

(c) *Interest rates.*

For valuation dates occurring in the month—	The values of i_t are—															
	i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}	i_{15}	i_n
*																
March 1989	.09625	.0925	.0875	.0825	.0775	.07125	.07125	.07125	.07125	.07125	.065	.065	.065	.065	.065	.06

Issued at Washington, DC, on this 6th day of February 1989.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 89-3473 Filed 2-14-89; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 367

[DoD Directive 5136.1]

Delegation of Authority, et al.; Assistant Secretary of Defense (Health Affairs)

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This document updates the responsibilities, functions, relationships, and authorities of the ASD(Health Affairs) as follows:.

(a) Reference to a repealed statutory provision that established the ASD(Health Affairs) as an office required by law has been deleted, consistent with changes to Title 10, United States Code made by the Goldwater-Nichols DoD Reorganization Act (Pub. L. 99-433).

(b) Medical research (except AIDS research), which has been transferred to the Director of Defense Research and Engineering, has been deleted from the list of functions assigned to the ASD(Health Affairs).

(c) The DoD Human Immunodeficiency Virus (HIV) Program has been added as a function of the ASD(Health Affairs).

(d) Supervision of the Defense Medical Support Activity has been identified as a responsibility of the ASD(Health Affairs).

EFFECTIVE DATE: January 27, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. H. Becker, Office of the Director for Administration and Management, Washington, DC 20301-1155, telephone 202-697-0709.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 367

Organization and management.

Accordingly, 32 CFR Part 367 is revised to read as follows:

PART 367—ASSISTANT SECRETARY OF DEFENSE (HEALTH AFFAIRS)

Sec.

367.1 Reissuance and purpose.
367.2 Definition.
367.3 Responsibilities.
367.4 Functions.
367.5 Relationships.
367.6 Authorities.

Authority: 10 U.S.C. 136.

§ 367.1 Reissuance and purpose.

This Part revises 32 CFR Part 367 and pursuant to the authority vested in the Secretary of Defense under 10 U.S.C.

(a) Designates one of the positions of Assistant Secretary of Defense as the Assistant Secretary of Defense (Health Affairs) (ASD(HA)).

(b) Assigns responsibilities, functions, relationships, and authorities, as prescribed herein, to the ASD(HA).

§ 367.2 Definition.

DoD Components. The Office of the Secretary of Defense (OSD); the Military Departments; the Joint Chiefs of Staff (JCS); the Joint Staff; the Unified and Specified Commands; the Office of the Inspector General, Department of Defense (OIG, DoD); the Defense Agencies; and the DoD Field Activities.

§ 367.3 Responsibilities.

The *Assistant Secretary of Defense (Health Affairs)* (ASD(HA)) is the principal staff assistant and advisor to the Secretary of Defense for all DoD health policies, programs, and activities. Subject to the direction of the Secretary of Defense, the ASD(HA) is responsible for overall supervision of the health affairs of the Department of Defense and exercises oversight of all DoD health resources. The ASD(HA) shall:

(a) Develop policies, conduct analyses, issue guidance on DoD plans and programs, and advise the Secretary of Defense, as appropriate.

(b) Develop systems, standards, and procedures for the administration and management of approved DoD plans and programs.

(c) Develop plans, programs, actions, and taskings to ensure adherence to DoD health policies and national security objectives and to ensure that programs and systems are designed to accommodate operational requirements.

(d) Establish requirements and standards for medical facility and material acquisition programs.

(e) Establish requirements for DoD research and development programs in medical fields. Keep abreast of technical developments to provide for their orderly transition to operational status. Make recommendations on funding levels for DoD research and development programs in medical fields and the Human Immunodeficiency Virus (HIV) Program.

(f) Serve as program manager for all DoD health and medical resources. Develop the medical portion of the Defense Guidance. In coordination with the Comptroller of the Department of Defense (C, DoD) and the Assistant Secretary of Defense (Program Analysis and Evaluation) (ASD(PA&E)), review all Program Objective Memoranda and budget submissions, and make determinations regarding priorities and resources for health and medical programs. Provide input to Program Decision Memoranda and Program Budget Decisions to the C, DoD, and the ASD(PA&E) for incorporation into the Planning, Programming, and Budgeting System (PPBS) process. Monitor the execution of approved health and medical programs by the DoD Components and, subject to the direction of the Secretary of Defense, make such determinations regarding priorities and resources as may be required to achieve DoD-wide program objectives. Serve as a member of the Defense Resources Board.

(g) Review, evaluate, and make recommendations to the Secretary of Defense on health requirements and priorities.

(h) Review and evaluate plans and programs to ensure adherence to approved policies, standards, and resource guidance and decisions.

(i) Promote coordination, cooperation, and mutual understanding within the Department of Defense and between the Department of Defense and other Federal Agencies and the civilian community.

(j) Serve on boards, committees, and other groups pertaining to ASD(HA) functional areas.

(k) Exercise direction, authority, and control over:

(1) The Office of Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS).

(2) The Defense Medical Support Activity (DMSA), which includes the Defense Medical Systems Support Center (DMSSC) and the Defense Medical Facilities Office (DMFO).

(c) Obtain reports, information, advice, and assistance, consistent with DoD Directive 7750.5, as necessary.

(d) Communicate directly with heads of DoD Components. Communications to the Commanders of the Unified and Specified Commands shall be coordinated through the CJCS.

(e) Make determinations on the uniform implementation of laws relating to separation from the Military Departments due to physical disability as prescribed in DoD Directive 1332.18.

(f) Develop, issue, and maintain regulations, with the coordination of the Military Departments, as necessary and appropriate to fulfill the Secretary of Defense's responsibility to administer Chapter 55 of 10 U.S.C.

(g) Establish arrangements for DoD participation in nondefense governmental programs for which the ASD(HA) has been assigned primary cognizance.

(h) Communicate with other Government Agencies, representatives of the legislative branch, and members of the public, as appropriate, in carrying out assigned functions.

§ 367.4 Functions.

The ASD(HA) shall:

(a) Carry out the responsibilities described in § 367.3 for the following functional areas:

(1) Medical readiness.
(2) Preventive medicine.
(3) Health promotion.
(4) Health benefits programs.
(5) Drug and alcohol abuse.
(6) Cost containment.
(7) Quality assurance.
(8) Medical information systems.
(9) DoD HIV Program and research on acquired immune deficiency syndrome (AIDS).
(10) Procurement, professional development and retention of medical and dental personnel, and related health care specialist and technicians.

(b) Perform such other functions as may be assigned.

§ 367.5 Relationships.

(a) In the performance of assigned duties, the ASD(HA) shall:

(1) Coordinate and exchange information with other OSD Officials and heads of DoD Components having collateral or related functions.

(2) Consult, as appropriate, with the C, DoD, and the ASD(PA&E) to ensure that medical planning, programming, and budget activities are integrated with the DoD PPBS.

(3) Use existing facilities and services of the Department of Defense or other Federal Agencies, whenever practicable, to achieve maximum efficiency and economy.

(4) Represent the Secretary of Defense, as an ex officio member, on the Board of Regents of the Uniformed Services University of the Health Sciences (USUHS).

(b) Other OSD officials and heads of DoD Components shall coordinate with the ASD(HA) on all matters concerning the functions in § 367.4.

§ 367.6 Authorities.

The ASD(HA) is hereby delegated authority to:

(a) Carry out the responsibilities and functions described in §§ 367.3 and 367.4.

(b) Issue orders, DoD Instructions, publications, and one-time directive-type memoranda, consistent with DoD 5025.1-M regarding the accomplishment of functions and responsibilities delegated by the Secretary of Defense in this part. Orders and Instructions to the Military Departments shall be issued through the Secretaries of those Departments, or their designees. Orders and Instructions to Unified or Specified Commands shall be issued through the Chairman, Joint Chiefs of Staff (CJCS).

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer.

February 9, 1989.

[FR Doc. 89-3522 Filed 2-14-89; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 211, 217, and 251

Appeal of Decisions Concerning the National Forest System

AGENCY: Forest Service, USDA.

ACTION: Final rule; technical amendment.

SUMMARY: This rule makes a technical change in the Forest Service administrative appeal procedures to make explicit that the new procedures set forth in the recently adopted rules at 36 CFR Parts 217 and 251, Subpart C apply to decisions made on or after February 22, 1989. The administrative appeal procedures at 36 CFR 211.18 will remain in effect for any decision signed before February 22. This action is necessary to avoid inconsistent interpretations by Forest Service officials and the public as well as to prevent one decision being appealed by multiple parties under two separate rules.

EFFECTIVE DATE: This rule is effective February 22, 1989.

FOR FURTHER INFORMATION CONTACT: Kathryn C. Hauser, Program Analyst, National Forest System, Forest Service, U.S. Department of Agriculture, (202) 382-9346.

SUPPLEMENTARY INFORMATION: On January 23, 1989, at 54 FR 3342, Part VI, the Secretary of Agriculture gave notice of adoption of two new rules to provide a process for appeal of decisions of Forest Service officials related to management of the National Forest System. The new rules at 36 CFR Part 251, Subpart C, provide appeal procedures applicable to holders of or applicants for special use authorizations. The new rules at 36 CFR Part 217 provide a new process for appeal of National Forest System plan and project decisions. The new rules replace the current administrative appeal procedures at 36 CFR 211.18.

In order to provide an orderly transition between the use of the current rule and implementation of the new rules, the final rulemaking amended 36 CFR 211.18 to provide that those rules would not apply "to any *request to appeal* (emphasis added) filed after February 22, 1989." By linking applicability of the rules to a request to appeal, rather than to the date of a decision, the final rulemaking inadvertently created the potential for the same decision being appealed by different parties under both the current rule and the new rules. The language also inadvertently extended the application of the current rules one day beyond the effective date of the new rules. Neither of these effects was intended. Thus, a technical amendment is necessary to prevent the possibility of one decision being appealed under two separate rules and to avoid administrative and public confusion and uncertainty as to when the new rules apply.

Accordingly, the rules at 36 CFR 211.18, Part 217, and Part 251, Subpart C are being amended to tie the determination of which rule is applicable to the date a decision is rendered, rather than to the date someone appeals a decision. The amendment makes clear that appealable decisions signed on or after February 22, 1989, are subject to 36 CFR Part 217 and Part 251, Subpart C. Appealable decisions made prior to February 22 will remain subject to the appeal procedures of the current rule at 36 CFR 211.18.

This action is a technical correction of the rules, is necessary to provide an orderly transition to the new rules and to ensure all potential appellants equal treatment and access to the rules, and does not represent a change in Agency policy or intended procedures. Because of its technical nature, this final rule will not have a significant effect on the human environment, individually or cumulatively.

Controlling Paperwork Burdens on the Public

This rules does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR Part 1320 and therefore imposes no paperwork burden on the public.

List of Subjects

36 CFR Part 211

Administrative practice and procedure, National forests.

36 CFR Part 217

Administrative practice and procedure, National forests.

36 CFR Part 251

Administrative practice and procedure, Electric power, National forests, Public lands—rights-of-way, Reporting and recordkeeping requirements, Water resources.

Therefore, for the reasons set forth in the preamble, Chapter II of Title 36 of the Code of Federal Regulations is amended as follows:

PART 211—ADMINISTRATION

1. The authority citation for Part 211 continues to read as follows:

Authority: 30 Stat. 35, as amended, sec. 1, 33 Stat 628 (16 U.S.C. 551, 472).

Subpart B—Appeal of Decisions Concerning the National Forest System

2. Revise the last sentence of paragraph(s) of § 211.18 to read as follows:

§ 211.18 Appeal of decisions of forest officers.

* * * * *

(s) * * * The procedures of this section shall not apply to any decision of a forest officer made after February 21, 1989.

PART 217—REQUESTING REVIEW OF NATIONAL FOREST PLANS AND PROJECT DECISIONS

3. The authority citation for Part 217 continues to read as follows:

Authority: 16 U.S.C. 551, 472.

4. Revise § 217.19(a) to read as follows:

§ 217.19 Applicability and effective date.

(a) The appeal procedures established in this part apply to all appealable decision documents signed on or after February 22, 1989.

* * * * *

PART 251—LAND USES

Subpart C—Appeal of Decisions Relating to Occupancy and Use of National Forest System Lands

5. The authority citation for Subpart C continues to read as follows:

Authority: 16 U.S.C. 472, 551.

6. Revise § 251.102 to read as follows:

§ 251.102 Applicability and effective date.

(a) Except where applicants or holders elect the decision review procedures of Part 217 of this chapter, appealable decisions arising from the issuance, approval, and administration of written instruments authorizing occupancy and use of National Forest System lands made on or after February 22, 1989, shall be subject to the procedures of this part.

(b) Decisions made before February 22, 1989, arising from the issuance, approval, and administration of written instruments authorizing occupancy and use of National Forest System lands shall be subject to appeal under the provisions of 36 CFR 211.18.

Date: Feburary 10, 1989.

George M. Leonard,

Associate Chief.

[FR Doc. 89-3573 Filed 2-14-89; 8:45 am]

BILLING CODE 3410-11-M

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36 CFR Parts 228 and 251

Minerals and Land Uses

AGENCY: Forest Service, USDA.

ACTION: Final rule; technical amendment.

SUMMARY: The Forest Service is amending its rules on Locatable Minerals at 36 CFR Part 228, Subpart A, and on Special Uses at 36 CFR Part 251, Subpart B, to display the OMB control numbers for information collection requirements in these rules. This action is necessary to comply with the rules at 5 CFR Part 1320 governing control of paperwork burdens on the public.

EFFECTIVE DATE: February 15, 1989.

FOR FURTHER INFORMATION CONTACT: Marian P. Connolly, Regulatory Officer, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090, (202) 235-1488.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) rules at 5 CFR Part 1320 implement the Paperwork Reduction Act and require Federal agencies to obtain OMB review of information requirements imposed on the public in their rules. Upon clearance of an information requirement, OMB assigns a control number. The rules at 5 CFR 1320.4(a) requires the agency to display the currently valid OMB control number and expiration date.

The Forest Service has discovered that through administrative oversight it has failed to amend its rules to display the required control numbers after it obtained OMB approval of the information requirements in its rules on Locatable Minerals and Special Uses. This rulemaking corrects that oversight.

List of Subjects

36 CFR Part 228

Administrative practice and procedure, Environmental protection, Mineral resources, National forests, Surety bonds.

36 CFR Part 251

Electric power, Mineral resources, National forests, Rights-of-way, Water resources.

Therefore, for the reasons set forth in the preamble, Chapter II of Title 36 of the Code of Federal Regulations is hereby amended as follows:

PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read:

Authority: 30 Stat. 35 and 36, as amended (16 U.S.C. 478, 551), and 94 Stat. 2400.

Subpart A—[Amended]

2. Revise § 228.4 by adding a new paragraph (g) to read as follows:

§ 228.4 Plan of operations—notice of intent—requirements.

* * * * *

(g) The information required to be included in a notice of intent or a plan of operations, or supplement or modification thereto, has been assigned Office of Management and Budget Control #0596-0022. The public reporting burden for this collection of information is estimated to vary from a few minutes for an activity involving little or no surface disturbance to several months for activities involving heavy capital investments and significant surface disturbance, with an average of 2 hours per individual response. This includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief (2800), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

PART 251—[AMENDED]

Subpart B—[Amended]

3. The authority citation for Subpart B continues to read:

Authority: 16 U.S.C. 472, 551, 1134, 3210; 30 U.S.C. 185; 43 U.S.C. 1740, 1761-1771.

4. Subpart B is amended by adding a new § 251.65 to read as follows:

§ 251.65 Information collection requirements.

(a) The rules of this subpart governing special use applications (§ 251.54) and modifications of special use authorizations (§ 251.61) specify the information that applicants for special use authorizations or holders of existing authorizations must provide in order for a Forest officer to act on a request. As such, these rules contain information requirements as defined in 5 CFR Part 1320. These information requirements are assigned control number 0596-0062.

(b) Public reporting burdens for this collection of information is estimated to vary from a 30 minutes in very simple cases to several months for extremely complex requests for authorizations, with an average of 4 hours per response. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief (2700) Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Date: February 9, 1989.

George M. Leonard,

Associate Chief.

[FR Doc. 89-3511 Filed 2-14-89; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 2

[Docket No. 81024-9018]

Revision of Patent and Trademark Fees

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The Patent and Trademark Office (PTO) is amending the rules of practice in patent and trademark cases, Parts 1 and 2 of Title 37, Code of Federal Regulations, to adjust patent fee amounts and to reduce certain trademark fee amounts. The Office will be extending the comment period on the proposed amendments of the rules of practice in patent cases, which would clarify requirements in the filing of applications and provide for procedures for applicants to cure certain defects in the filing of applications. After comments are received, the PTO will issue a notice of final rulemaking addressing these proposals.

Establishment and adjustment of patent fees is provided for by section 6 and section 41 of Title 35, United States Code, and section 103(b) of Pub. L. 100-703. Establishment and adjustment of trademark fees is provided for by section 31 of the Trademark (Lanham) Act of 1946, as amended (15 U.S.C. 1113) and section 103(a) of Pub. L. 100-703.

EFFECTIVE DATE: April 17, 1989.

FOR FURTHER INFORMATION CONTACT: Frances Michalkewicz by telephone at (703) 557-1610 or by mail marked to her attention and addressed to the Commissioner of Patents and Trademarks, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: Patent fees were set on October 1, 1982, in accordance with the provisions of Title 35, United States Code (Pub. L. 97-247). Patent fees were adjusted effective October 5, 1985, in accordance with the provisions of Title 35, United States Code. Trademark fees were set on October 1, 1982, in accordance with the provisions of section 31 of the Trademark (Lanham) Act of 1946, as amended (15 U.S.C. 1113) and adjusted on October 1, 1986, in accordance with the provisions of that Act and Title 35. On November 6, 1986, legislation modifying the way fee adjustments could be made was enacted as Pub. L. 99-607. The fee adjustment provisions of Pub. L. 99-607, section 3(a) and section 3(b) expired on September 30, 1988. On November 19, 1988, legislation extending

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section 3(a) and section 3(b) of Pub. L. 99–607 was enacted as Pub. L. 100–703. Therefore, patent and trademark fee adjustments were guided by the provisions of Title 35, United States Code, and the Trademark (Lanham) Act of 1946, as amended (15 U.S.C. 1113), and by Pub. L. 100–703.

The Patent and Trademark Office is amending 37 CFR 2.6 to reduce the fee for filing an application for trademark registration from $200 to $175 per class. The Office also is reducing the fee for recording trademark assignments and agreements or other papers relating to the property in a registration or application from $100 to $8 for each mark in the same document.

Effective October 1, 1982, trademark operations within the Office became 100 percent user-fee funded. Experience to date has demonstrated that the fees first established in October 1982, and as later adjusted in October 1986, are more than adequate to meet total trademark function costs. At the end of fiscal year 1988, total trademark function fees exceeded total trademark function costs by approximately $10 million. Left undisturbed, it is projected that the current trademark fee structure will result in an additional $12.7 million in excess fees over the course of the next three-year fee cycle. Thus, by the end of fiscal year 1991, total trademark fees are projected to exceed total trademark costs by almost $23 million if the current fee structure remains in place.

In this light, the Office is reducing both the trademark application and assignment fees. Reducing the application fee to $175 would be consistent with the legislative history surrounding passage of Pub. L. 97–247. In its report (H. Rep. No. 97–542, May 17, 1982), the House Committee on the Judiciary stated that, "It is expected that the Commissioner will set the [trademark] fees in a way that the filing fee will be kept as low as possible to foster use of the Federal registration system." The application filing fee from October 1982 to October 1986 was $175. The filing fee was increased in 1986 to $200 in an effort to recover a greater percentage of the actual costs incurred in the processing of trademark applications. While the reduction will increase the discrepancy between the application filing fee and our projected unit cost, the size of the current "surplus," as well as the objective of encouraging filings, supports the action.

Reducing the fee for recording trademark assignments to $8 for each mark makes such fees consistent with those for the recording of patent assignments.

While the fee reductions still will leave a healthy "surplus," prudence suggests that further reductions be held in abeyance pending implementation of "The Trademark Law Revision Act of 1988" (Pub. L. 100–667). The Act, among other things, permits applicants to file applications for Federal trademark registrations based upon a bona fide "intent-to-use" the mark in commerce. Implementation of "intent-to-use" legislation will require the Office to incur additional expenditures, such as increased personnel costs and improved computer capabilities. The Office will review its trademark fee structure approximately 18 months from implementation and propose further fee adjustments if warranted, but will not propose to adjust the application and assignment fees.

Even absent "intent-to-use," the Office will probably be required to upgrade its computer capabilities within the near future. Moreover, implementation of an automated trademark assignment system, now scheduled for fiscal year 1990, and other improvements in automated searching, will result in increased demands on trademark resources.

Background

Provisions of Title 35 and Title 15, United States Code, and Pub. L. 100–703 Which Affect This Notice of Final Rulemaking

Patent and Trademark Office fees are authorized by 35 U.S.C. 41 and 35 U.S.C. 376. Section 41(a) of Title 35, United States Code, establishes a number of statutory fees. Among the more significant of these are fees for filing a patent application and issuing a patent. Certain other fees, such as appeal fees, the fee for filing a disclaimer, fees for filing petitions seeking to revive an abandoned application and for extensions of time also are set in 35 U.S.C. 41(a). Section 41(b) of Title 35, United States Code, sets forth the statutory fees for maintaining a patent in force if the application was filed on or after August 27, 1982.

The provisions of Pub. L. 96–517 also establish maintenance fees for patents other than design and plant patents issued on applications filed on or after December 12, 1980 and before August 27, 1982. These maintenance fees are to recover 25 percent of the estimated cost to the Office of processing patent applications.

Section 1 of Pub. L. 97–247 authorized the reduction by 50 percent in the fees paid under 35 U.S.C. 41(a) and 35 U.S.C. 41(b) by independent inventors, small business concerns, and nonprofit organizations, who meet the definitions established. Section 1(a)(2) of Pub. L. 99–607 makes this provision permanent in 35 U.S.C. 41(h).

Section 41(f) of Title 35, United States Code, provides that fees established in 35 U.S.C. 41(a) and 35 U.S.C. 41(b), "may be adjusted by the Commissioner on October 1, 1985, and every third year thereafter, to reflect any fluctuations occurring during the previous three years in the Consumer Price Index, as determined by the Secretary of Labor." Section 41(f) also provides that changes of less than one percent may be ignored. Public Law 100–703 makes no modifications to 35 U.S.C. 41(f).

Section 41(d) of Title 35, United States Code, provides that the "Commissioner will establish fees for all other processing, services, or materials related to patents" which are not covered in 35 U.S.C. 41(a) and 35 U.S.C. 41(b), "to recover the estimated average cost to the Office of such processing, services or materials."

Section 103(b) of Pub. L. 100–703 changes the way fees established under 35 U.S.C. 41(d) can be adjusted. For fiscal years 1989, 1990, and 1991, the Commissioner cannot increase fees established under 35 U.S.C. 41(d) except for the purposes of making adjustments which in the aggregate do not exceed fluctuations during the previous three years in the Consumer Price Index.

Section 103(b) of Pub. L. 100–703 provides that the Commissioner cannot establish additional fees under 35 U.S.C. 41(d) during fiscal years 1989, 1990, and 1991.

Section 376 of Title 35, United States Code, authorizes the Commissioner to set fees for patent applications filed under the Patent Cooperation Treaty. The fees under the Patent Cooperation Treaty are keyed to full cost recovery of the processing costs under the Treaty. Public Law 100–703 makes no modifications to 35 U.S.C. 376.

Section 31 of the Trademark (Lanham) Act of 1946, as amended (15 U.S.C. 1113) authorizes the Commissioner to establish fees for the filing and processing of an application for the registration of a trademark or other mark, and for all other services and materials relating to trademarks and other marks. No fee for the filing or processing of an application for the registration of a trademark or other mark or for the renewal or assignment of a trademark or other mark will be adjusted more than once every three years. The House Committee on the Judiciary, in a report that accompanied H.R. 6260, which ultimately was enacted as Pub. L. 97–247, recommended a

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trademark fee schedule to the Commissioner which was established by a rule published in the Federal Register on July 30, 1982, at 47 FR 33080, effective October 1, 1982. A final rule to increase the trademark application filing fee per class and the fee for copies of trademarks was published in the Federal Register on August 4, 1986, at 51 FR 28052. The increased fees became effective on October 1, 1986.

Section 103(a) of Pub. L. 100–703 changes the way fees established under the Trademark (Lanham) Act of 1946, as amended (15 U.S.C. 1113) can be adjusted. For fiscal years 1989, 1990, and 1991, the Commissioner cannot increase fees established under the Act except for the purposes of making adjustments which in the aggregate do not exceed fluctuations during the previous three years in the Consumer Price Index.

Section 103(a) of Pub. L. 100–703 provides that the Commissioner cannot establish additional fees under the Trademark (Lanham) Act of 1946, as amended (15 U.S.C. 1113) during fiscal years 1989, 1990, and 1991.

However, as described above, the Office is only reducing the fee for filing an application, per class, and the fee for recording trademark assignments and agreements or other papers relating to the property in a registration or application.

Final Rule Changes

General Procedures

Cost Calculations

The Office calculated unit costs for all fees based on OMB Circular A–25, "User Fees," and OMB Circular A–130, "Management of Federal Information Resources." Costs were determined from the best available records (for example, the 1987 end of fiscal year financial statements for the Office) and included direct and indirect costs to the Office of carrying out the activity, as directed by OMB Circular A–25. To estimate costs for the three-year fee cycle, April 1989–March 1992, the 1987 actual costs were adjusted by the inflation rates from October 1988 through March 1989, and then by a mid-cycle inflation rate for the period April 1989–March 1992. The total inflation rate was 12.644 percent derived from the Administration's inflation projection.

Workload Projections

Determination of future year workloads varies by fee code. Principal workload projection techniques are as follows:

Patent and trademark application workloads were projected from statistical regression models using recent application trends. Associated application workloads, for example, patent claims and extensions of time, grow relative to patent applications. Patent issues are projected from an in-house patent productivity model and reflect examiner production achievements and goals. Patent maintenance fee workloads utilize patents issued 3.5, 7.5 and 11.5 years prior to payment and assume payment rates of 80 percent, 50 percent and 25 percent, respectively. Trademark affidavits and renewals are based on prior year registrations and renewal trends. Service fee workloads follow linear trends from prior year activities. All workload estimates are approved by the manager responsible for the fee program.

Policy for Applying the Consumer Price Index

The Office of Management and Budget has determined that the Patent and Trademark Office should use Consumer Price Index-U (CPI) to adjust patent fees. The Department of Labor's Consumer Price Index is made public approximately twenty-one days after the end of the month being calculated. The time lag between the initiation and the completion of the rulemaking process dictates that the December 1988 through March 1989 inflation rate be projected. The Administration's projected cumulative CPI for the three-year period, April 1986–March 1989, is 10.311 percent.

The fee amounts being adopted by this rule package were adjusted by the CPI that was projected in 1988, i.e., 10.303 percent. Since this is less than the amount the Office has determined to be the actual projected rate and that applying the updated projection of 10.311 percent would have a negligible effect on the fee amounts, no changes have been made.

Rounding Procedures

After application of the 10.303 percent projected fluctuation in the CPI to fees, amounts were rounded by applying standard arithmetical rules so that the amounts rounded would be de minimis and convenient to the user. Fees of $100 or more were rounded to the nearest $10. Fees between $10 and $99 were rounded to the nearest even number so that the comparable small entity fee would be a whole number. Fees under $2 were rounded for convenience.

Since the amounts of the patent fees that went into effect on October 5, 1985 were rounded after application of the Consumer Price Index, a first step in calculating new fee amounts was to eliminate any effects of rounding prior years' fee adjustments. For example, 35 U.S.C. 41(a), sets the patent application filing fee at $300.00. Applying the 11.8 percent CPI for the period 1983–1985 resulted in an allowable increase to $335.40. This amount was rounded to $340.00. For purposes of this fee adjustment process, the base used to adjust fees for the next fee cycle was the "unrounded" fee amount, i.e., the $335.40 for patent application filing fees. Similarly, the cost for certifying Office records was $2.70. This amount was rounded to $3.00. For purposes of this fee adjustment process, the base was the unrounded amount of $2.70.

It should be noted that following routine rounding off practices can result in some fee items being adjusted by more or less than CPI. This divergence from the CPI ceiling will only exist in the short term because of the policy of applying the CPI adjustment factor to the unrounded amount from the previous fee cycle.

Rule Changes Under Title 35 and Title 15, United States Code and Pub. L. 100–703

Statutory patent fees established under 35 U.S.C. 41(a) and 35 U.S.C. 41(b) are adjusted in accordance with 35 U.S.C. 41(f) to reflect any fluctuations occurring during the previous three years in the CPI.

Non-statutory patent fees established under 35 U.S.C. 41(d) are adjusted in accordance with section 103(b) of Pub. L. 100–703 to reflect, in the aggregate, any fluctuations occurring during the previous three years (April 1986–March 1989) in the Consumer Price Index, as determined by the Secretary of Labor.

Fees established under 35 U.S.C. 376 are adjusted to recover the full cost of processing under the Patent Cooperation Treaty. International patent fees under 37 CFR 1.492 are related to patent fees established under 35 U.S.C. 41(a) and are adjusted to reflect fluctuations in the CPI.

For fees established under section 31 of the Trademark (Lanham) Act of 1946, as amended (15 U.S.C. 1113), the Office is reducing the fee for filing an application, per class, and the fee for recording trademark assignments and agreements or other papers relating to the property in a registration or application as fully decribed above.

Fee Adjustment Methodology

1. Projected Actual Costs

The projected actual costs for all fee items were calculated by applying the principles of OMB Circulars A–25 and A–130.

a. Statutory patent fees were derived by: (1) Identifying those operational units of the Office involved in, or contributing to, the processing of a patent application through all phases of examination; (2) identifying and certifying actual fiscal year 1987 obligations incurred by the operational units in processing an application; (3) projecting those obligations to the period of April 1989 through March 1992 in accordance with approved budgets and future year budget targets; and (4) increasing the obligations projected for the period of April 1989 through March 1992 by the Administration's estimates for Federal pay raise adjustments and projected inflation. Projected actual costs for April 1989–March 1992, $729,810,051 less projected budget authority of $285,834,000, are $463,976,051.

b. For non-statutory patent fees, projected costs for each fee item were established by (1) identifying actual costs for 1987; and (2) projecting actual costs for fiscal years 1988 through March 1992 by applying the Administration's inflation projection of 12.644 percent.

This projected actual cost was then multiplied by the projected workload for each fee item. The sum of the projected costs for all fee items is the projected actual cost of operation during the three-year fee cycle. Projected actual costs for April 1989–March 1992 are $64,661,341.

c. The same methodologies as described in paragraphs (a) and (b) above were applied to Patent Cooperation Treaty fees. Projected actual costs for April 1989–March 1992 are $16,531,990.

d. The same methodology as described in paragraph (b) above was applied to Trademark fees. Projected actual costs for April 1989–March 1992 are calculated to be $74,329,783.

2. Income Projections

a. The maximum amount of statutory fee income that the Office is authorized to recover under 35 U.S.C. 41(f) was calculated as follows:

For each statutory patent fee, the unrounded base (i.e., the 1988 adjusted fee before rounding) was multiplied by the projected CPI fluctuation of 10.303 percent for the three-year period April 1986–March 1989. This amount was then multiplied by the projected workload for April 1989–March 1992 to project the income from that fee item during the April 1989–March 1992 fee cycle. The sum of the projected incomes from all statutory patent fees is the maximum amount that the Office is authorized by 35 U.S.C. 41(f) to recover during the fee cycle and is equal to $464,676,178.

b. The maximum amount of non-statutory fee income that the Office is authorized to recover under section 103(b) of Pub. L. 100–703 was calculated as follows:

For each non-statutory patent fee, the unrounded base (i.e., the 1988 adjusted fee before rounding) was multiplied by the projected CPI fluctuation of 10.303 percent for the three-year period April 1986–March 1989. This amount was then multiplied by the projected workload for April 1989–March 1992 to project the income from that fee item during April 1989–March 1992 fee cycle. The sum of the projected incomes from all non-statutory patent fees is the maximum amount that the Office is authorized by section 103(b) of Pub. L. 100–703 to recover during the fee cycle and is equal to $62,101,874.

c. For Patent Cooperation Treaty (PCT) fees, the Office is authorized by 35 U.S.C. 376 to recover the full cost of processing under the Treaty. Thus, the projected costs identified in paragraph 1(c) for Patent Cooperation Treaty fees of $16,531,990 would be the maximum level of recovery.

d. The maximum amount of trademark fee income that the Office is authorized to recover under section 103(a) of Pub. L. 100–703 was calculated as follows.

For each trademark fee, the unrounded base (i.e., the 1988 adjusted fee before rounding) was multiplied by the projected CPI fluctuation of 10.303 percent for the three-year period April 1986–March 1989. This amount was then multiplied by the projected workload for April 1989–March 1992 to project the income from that fee item during the April 1989–March 1992 fee cycle. The sum of the projected incomes from all trademark fees is the maximum amount that the Office is authorized by section 103(a) of Pub. L. 100–703 to recover during the fee cycle and is equal to $107,704,135.

e. Each statutory patent fee amount identified in paragraph 2(a), and each PCT amount identified in paragraph 2(c) above was rounded according to the de minimis rounding rules described above.

Sections 103(a) and 103(b) of Pub. L. 100–703 allow the Office to set fees "in the aggregate." The fee amounts for non-statutory patent fees and trademark fees will recover the maximum amount of income determined in paragraphs (b) and (d) above.

Each of these fee amounts was multiplied by the projected workload during the fee cycle to project the income from that fee item. The sum of the projected income from all patent fees is $542,281,082, which is the sum of the projected incomes from statutory patent fees, $463,626,421, non-statutory patent fees, $62,047,763, and Patent Cooperation Treaty fees, $16,606,898.

f. The Office reduced two trademark fees, as described above. Each trademark fee amount was mulitplied by the projected workload during the fee cycle to project the income from that fee item. The sum of the projected income from all trademark fees is projected to be $72,972,690.

Summary:

Fee category	Projected cost: April 1989–March 1992	Maximum allowable recovery	Projected income: April 1989–March 1992
Statutory patent	$463,976,051	$464,676,178	$463,626,421
Non-statutory patent	64,661,341	62,101,874	62,047,763
PCT	16,531,990	16,531,990	16,606,898
Total—patent	545,169,382	543,310,042	542,281,082
Total—trademark	74,329,783	107,704,135	72,972,690
Total—all fees	619,499,165	651,014,177	615,253,772

The unit costs by fee item are summarized in Appendix A. The Office has detailed cost calculation worksheets for each fee item, which are available for public inspection in Suite 904 of Building 2, Crystal Park at 2121 Crystal Drive, Arlington, Virginia.

It is intended that the amount of any fee due and payable on or after April 17, 1989, is the amount set in this rulemaking. For purposes of determining the amount of the fee to be paid, the date of mailing indicated on a proper Certificate of Mailing, where authorized under 37 CFR 1.8, will be considered to be the date of receipt in the Office. A "Certificate of Mailing under Section 1.8" is not "proper" for items which are specifically excluded from the provisions of § 1.8. Section 1.8 should be consulted for those items for which a Certificate of Mailing is not "proper." Such items include, inter alia, the filing of national and international applications for patents and the filing of trademark applications. The provisions of 37 CFR 1.10, relating to filing of papers and fees by "Express Mail" with certificate, however, do apply to any paper or fee (including patent and trademark applications) to be filed in the Office. If an application or fee is filed by "Express Mail" with a certificate of express mailing dated on and after the effective date of the rules, the amount of the fee to be paid is the fee established herein if a change is being made in the fee. In order to ensure clarity in the implementation of the fee proposals, a discussion of specific sections is set forth below.

Discussion of Specific Rules

Section 1.12 Assignment records open to public inspection.

Section 1.12, paragraph (a) is amended to refer to the renumbered § 1.19(b)(4). Paragraph (c), is amended to refer to the renumbered § 1.17(i)(1).

Section 1.14 Patent applications preserved in secrecy.

Section 1.14, paragraph (e) is amended to refer to the renumbered § 1.17(i)(1).

Section 1.16 National application filing fee.

Section 1.16 is amended to adjust patent application filing fees established in 35 U.S.C. 41(a) and set forth in 37 CFR 1.16 (a)–(b), (d) and (f)–(i) to reflect fluctuations in the CPI.

Section 1.16, paragraph (e) is amended to adjust the patent application surcharge fee authorized by 35 U.S.C. 111 to reflect fluctuations in the CPI.

Section 1.17 Patent application processing fees.

Section 1.17 is amended to adjust patent application processing fees established in 35 U.S.C. 41(a) and set forth in 37 CFR 1.17 (a)–(g) and (l)–(m) to reflect fluctuations in the CPI.

Section 1.17 is amended to adjust the patent application processing fees authorized by 35 U.S.C. 41(d) and set forth in 37 CFR 1.17 (h)–(k) to reflect fluctuations in the CPI.

Section 1.17 is amended to establish one fee amount for filing a petition to the Commissioner under 37 CFR 1.12, 1.14, 1.47, 1.48, 1.55, 1.103, 1.177, 1.182, 1.183, 1.295, 1.312, 1.313, 1.314, 1.334, 1.377, 1.378(e), 1.644(e), 1.644(f), 1.666(b), 1.666(c), 5.12, 5.13, 5.14, 5.15, and 5.25. The fee will recover the estimated average cost to the Office of processing all petitions to the Commissioner mentioned above. In addition, the single fee for all petitions is expected to facilitate pre-processing of petition requests.

Section 1.17 is amended to provide in new paragraph (i)(2) an $80 fee for filing a petition to the Commissioner under 37 CFR 1.102 to make an application special.

Section 1.18 Patent issue fees.

Section 1.18 is amended to adjust patent issue fees established in 35 U.S.C. 41(a) and set forth in 37 CFR 1.18 (a)–(c) to reflect fluctuations in the CPI.

Section 1.19 Document supply fees.

Section 1.19 is revised to adjust the fees authorized by 35 U.S.C. 41(d) for services and materials as set forth in 37 CFR 1.19 to reflect fluctuations in the CPI.

Section 1.19(a)(2) is revised to adjust the fees for copies of plant patents and statutory invention registrations to reflect fluctuations in the CPI.

Section 1.19 is revised to renumber paragraph (a)(5) as (a)(3) and provide for a flat fee for a certified copy of an Office document, for each 30 pages or fraction thereof.

Section 1.19 revises paragraphs (a)(4)–(a)(6) and (b)(4) to set the fees for the purchase of color copies of color drawings identified in utility patents and for expedited service for fulfillment of orders for patent copies and orders for copies of patent applications as filed. The provision for color drawings in utility patent applications is in § 1.84(p). Although color drawings may be permitted in a utility patent application by petition, copies of printed patents will only be provided in black and white. If a copy of the printed patent with copies of the drawings in color is desired, it must be separately ordered and accompanied by the fee set forth in paragraph (a)(4). The fees set forth in paragraphs (a)(5), (a)(6) and (b)(4) are for expedited processing of copy orders.

The Public Service Window (PSW) in the Patent Public Search Room referred to in proposed new paragraph 37 CFR 1.19(a)(5) is located on the lobby level of Crystal Plaza Building 3. The Office rents numbered lock boxes (delivery boxes) to members of the public for copy order delivery purposes. Members of the public may place coupon orders at the PSW and request that the copies be delivered to their boxes at the PSW. PSW staff members receive and process the coupon orders and forward them to the copy fulfillment contractor. Upon receipt of the copies, PSW staff members place them in the appropriate delivery box for pickup by the box holder.

Section 1.19, paragraph (a) is revised to remove the charge for a microfiche copy of a microfiche.

Section 1.19 is revised to renumber paragraph (a)(3) as (b)(1) and provide for one fee for a certified copy of a patent application as filed.

Section 1.19 is revised to renumber paragraph (a)(4) as (b)(2) and provide for a flat fee for a certified copy of a patent file wrapper, and contents, with no limitation on the number of pages.

Section 1.19 is revised to renumber paragraph (a)(7) as (b)(3) and provide for one fee for a certified copy of a patent assignment record.

Section 1.19 is revised to renumber paragraph (b)(1) as (b)(5).

Section 1.19 is revised to renumber paragraph (b)(2) as (b)(6) and adjust the fee for a search of assignment records, abstract of title and certification, per patent to reflect fluctuations in CPI.

Section 1.19 is revised to remove paragraph (c) as the requirement for a special fee for providing subscription services has been eliminated. The Office will provide subscription services at no cost to the subscriber.

Section 1.19 is revised to renumber paragraph (d) as paragraph (c).

Section 1.19 is revised to renumber paragraph (e) to paragraph (d) and provide for a list of all United States patents and statutory invention registrations in a subclass, with no limit to the number at the proposed flat fee.

Section 1.19 is revised to remove paragraph (f).

Section 1.19 is revised to renumber paragraphs (g)–(j) as paragraphs (e)–(h) and adjust the fees to reflect fluctuations in the CPI.

Section 1.20 Post-issuance fees.

Section 1.20, paragraphs (a)–(c) are amended to adjust patent post-issuance fees authorized by 35 U.S.C. 41(d) to reflect fluctuations in the CPI.

Section 1.20 is amended to clarify the language in paragraph (a) that the fee charged is for a correction of an applicant's mistake.

Section 1.20, paragraphs (d) and (h)–(j) are amended to adjust patent post-issuance fees established in 35 U.S.C. 41(a) and 35 U.S.C. 41(b) to reflect fluctuations in the CPI.

Section 1.20, paragraphs (e)–(g) are amended to adjust post-issuance fees authorized by section 2 of Pub. L. 96–517, as modified by section 404 of Pub. L. 98–622. These fees must be set at a level to eventually recover 25 percent of the estimated cost to the Office of processing patent applications. In order to achieve this level of recovery, these maintenance fees are proposed to be adjusted to reflect fluctuations in the CPI.

Section 1.20, paragraph (k) is amended to adjust the patent application surcharge fee authorized by section 2 of Pub. L. 96–517.

Section 1.20, paragraph (l) is amended to adjust the post-issuance fee authorized by 35 U.S.C. 41(b).

Section 1.20, paragraph (m) is amended to adjust the post-issuance fee authorized by 35 U.S.C. 41(c)(1).

Section 1.20, paragraph (n) is amended to adjust the post-issuance fee authorized by Pub. L. 96–417 and 35 U.S.C. 156.

Section 1.21 Miscellaneous fees and charges.

Section 1.21 is amended to adjust the miscellaneous fees and charges authorized by 35 U.S.C. 41(d) and set forth in 37 CFR 1.21(a)–(b), (d)–(j) and (l)–(m) to reflect fluctuations in the CPI.

Section 1.21(f) is further amended to establish a flat fee for conducting an inventor search of Office records for a ten-year period.

The CopiShare Card referred to in 37 CFR 1.21(g) relates to the photocopiers and reader/printers for use by members of the public in the Office's search facilities. Each photocopier and reader/printer is connected to an access device which affords access to the equipment through the use of a magnetic card which has been encoded with an amount pre-paid by the customer. The access devices, encoding equipment, and magnetic cards comprise an equipment access system called the CopiShare system. The magnetic CopiShare Cards are purchased by the public and encoded with an amount of funds paid to the Office. The customer places the encoded card in the device connected to the photocopier or reader/printer, and a pre-set amount is deducted for each copy produced.

The Office is planning to authorize the public to use credit cards for the purchase of CopiShare Cards. This will be a pilot program for accepting credit cards for fees, and if feasible, may be extended to other operations of the Office.

Section 1.21(h) is further amended to establish one fee for recording each property in an assignment, agreement or other paper relating to the property in a patent or application. The fee reflects increased costs to enhance the processing of assignments.

Section 1.26 Refunds.

Section 1.26 is amended to change paragraph (c) to provide for a refund of $1,500 if the Commissioner decides not to institute reexamination proceedings. The $1,500 refund would apply to those instances where the proposed reexamination fee of $1,990 under 37 CFR 1.20(c) was paid. The current $1,300 refund will be made in those cases where the current $1,770 reexamination fee was paid.

Section 1.55 Claim for foreign priority.

Section 1.55, paragraph (a) is amended to refer to the renumbered § 1.17(i)(1).

Section 1.102 Advancement of examination.

Section 1.102, paragraph (d) is amended to refer to the petition fee set forth in new paragraph 1.17(i)(2).

Section 1.103 Suspension of action

Section 1.103, paragraph (a) is amended to refer to the renumbered § 1.17(i)(1).

Section 1.171 Application for reissue

Section 1.171 is amended to refer to the renumbered § 1.17(i)(1).

Section 1.177 Reissue in divisions

Section 1.177 is amended to refer to the renumbered § 1.17(i)(1).

Section 1.296 Withdrawal of request for publication of statutory invention registration.

Section 1.296 is amended to adjust the handling fee for withdrawal of a statutory invention registration to reflect fluctuations in the CPI.

Section 1.313 Withdrawal from issue.

Section 1.313, paragraph (a) is amended to refer to the renumbered § 1.17(i)(1).

Section 1.314 Issuance of patent.

Section 1.314 is amended to refer to the renumbered § 1.17(i)(1).

Section 1.334 Issue of patent to assignee.

Section 1.334, paragraph (c) is amended to refer to the renumbered § 1.17(i)(1).

Section 1.445 International application filing and processing fees.

Section 1.445 is amended to adjust the fees authorized by 35 U.S.C. 376 for international application processing as set forth in 37 CFR 1.445(a)(2) and (a)(3) to recover the cost to the Office of such processing, as determined by fluctuations in CPI.

Section 1.451 The priority claim and priority document in an international application.

Section 1.451, paragraph (b) is amended to refer to the renumbered §§ 1.19(b)(1) and 1.19(b)(8).

Section 1.482 International preliminary examination fees.

Section 1.482 is amended to adjust the fees authorized by 35 U.S.C. 376 for international application processing as set forth in 37 CFR 1.482(a) to recover the estimated average cost to the Office of such processing.

Section 1.492 National stage fees.

Section 1.492 is amended to adjust the fees authorized by 35 U.S.C. 376 for international application processing as set forth in 37 CFR 1.492(a)–(b) and (d)–(f) to recover the estimated average cost to the Office of such processing as determined by fluctuations in the CPI.

Section 1.666 Filing of interference settlement agreements.

Section 1.666, paragraph (b) is amended to refer to the renumbered § 1.17(i)(1).

Section 2.6 Trademark fees.

Section 2.6 (a) and (q) are amended to adjust trademark fees established pursuant to the Trademark (Lanham) Act of 1946, as amended (15 U.S.C. 1113).

Response to Comments on The Rules

A notice of proposed rulemaking to adjust patent and trademark fees was published in the **Federal Register** on November 30, 1988, at 53 FR 48402. Corrections of typographical errors were published in the **Federal Register** on December 8, 1988, at 53 FR 49837. A notice also was published on December 13, 1988 at volume 1097 of the *Official Gazette* of the United States Patent and Trademark Office, pages 16 through 29. A public hearing was conducted on January 4, 1989. Six letters submitting written comments were received and oral testimony was presented by one person at the public hearing. All of the written and oral comments were considered in adopting the changes set forth herein. The comments submitted, along with responses, appear below.

Comment: A major patent law association requested an additional sixty (60) days to comment on proposed changes to the following rules that go beyond fees. Several other respondents also commented on the proposed changes to these rules.

37 CFR 1.53 Serial number, filing date, and completion of application.

37 CFR 1.55 Claim for foreign priority.

37 CFR 1.60 Continuation or divisional application for invention disclosed in a prior application.

37 CFR 1.62 File wrapper continuing procedure.

37 CFR 1.96 Submission of computer program listings.

Response: The Office is not amending 37 CFR 1.53, 1.60, 1.62 and 1.96 and is extending the comment period until March 3, 1989. The Office also is not adding new rule 37 CFR 1.21(n) which refers to 37 CFR 1.53, 1.60 and 1.62. The Office is amending only that portion of 37 CFR 1.55 which clarifies that the already established fee refers to the amount in the new 37 CFR 1.17(i)(1) and not the old § 1.71(i). After the extended comment period closes the Office will issue a new notice of final rulemaking addressing these proposals.

Comment: Two respondents requested that the Office provide for a comment period longer than the 30 days accorded in this rule package.

Response: Office policy is to provide a 60 day comment period whenever possible. For fee-related rules, the comment period generally is limited to 30 days because the final rule must be in place 60 days before the fees are effective. This gives the public at least 90 days notice of a fee change.

In addition, the Office alerts, as far in advance as possible, major patent and trademark associations and organizations, and its advisory committees, that it will be proposing a fee adjustment. Finally, copies of the November 30, 1988, **Federal Register** notice were mailed to 140 organizations, associations and the advisory committees only days after their publication in the **Federal Register**.

Comment: One respondent asked whether maintenance fees that are paid after the effective date of the fee increase are payable in the increased amount or the amount that was payable when due.

Response: The amount of any fee payment made on or after the effective date of this rule package is the amount set in the rulemaking.

Comment: Two respondents, representing major trademark organizations, opposed the proposed reductions to the trademark application and assignment fees. The following major points were made: (1) No reductions should be made until November 1989, when Pub. L. 100–667 (The Trademark Law Revision Act of 1988) is implemented; (2) leading accounting firms recommend that a one year's operating reserve would be prudent; (3) it was Congressional intent that revenue generated from a $100 assignment fee be used to subsidize the trademark operation.

The respondents also questioned whether the PTO could make more than one adjustment every three years under the present authorization statute, even when such adjustments would result in a reduction of certain fee amounts.

Response: After careful consideration of the comments received, the PTO has decided to implement the two fee reductions for the following reasons: (1) Careful analysis has confirmed that projected revenues will be sufficient to implement the Intent-to-Use legislation (Pub. L. 100–667) and still maintain an operating reserve within PTO's two percent fee policy. We believe it will take about 18 months' experience with intent-to-use to be able to propose other changes to trademark fee amounts, and thus a delay in implementation of the proposed fee reductions to November 1989 would not accomplish any useful purpose. (2) a one-year operating reserve for trademark programs is far too large an amount to address unforeseen expenses, would unfairly penalize users, is politically imprudent, especially given the current Federal deficit, and could be construed to constitute an unfair tax on the general user. (3) in the past, PTO has been criticized for charging $100 for a trademark assignment and $7.00 for a patent assignment. For example, refer to public comments on the 1986 trademark fee adjustments published in the **Federal Register** on August 4, 1986 at 51 FR 28055. While it is true that the trademark assignment fee was originally designed to help subsidize the trademark application fee, which is set at a level that does not recover actual costs, the PTO believes that the proposed reduction in the assignment fee will not result in subsequent increases in the application fee or jeopardize the financial health of trademark operations. Further, the Office wants to assure respondents that in proposing a reduction in the assignment fee, the costs of cleaning up the trademark assignment data base have been taken into account.

As noted above, the planning of fee adjustments has been such that we do not anticipate two adjustments within a fee cycle. The legislative history to Pub. L. 99–607 indicates that Congress intended the PTO to reduce fees whenever appropriate.

Comment: One respondent, a representative of a major patent organization, raised the following points: (1) The PTO should conduct an analysis of the impact of patent fees on independent inventors and small businesses; (2) the reduction of fees for individual inventors and small business should continue to be subsidized by taxpayer revenues; (3) the PTO should make every effort to increase its efficiency as a way of holding down the level of fees; (4) the PTO and the Administration should attempt to amend the Gramm-Rudman-Hollings Act as it relates to user fees; and (5) the Office should allow 90 days for the public to comment on proposed rules.

Response: (1) The PTO continually has monitored the level of filings by small businesses and individual inventors, which has averaged 34 percent for the years 1986–1988. The Office will conduct a study to assess the impact of patent fees on individual inventors and small businesses.

(2) For the 1989–91 fee cycle, the reduction of patent fees for individual inventors and small businesses will continue to be subsidized by taxpayer revenues. As the PTO continues to progress to total financing by user fees, two options will be explored: (a) To continue to seek general taxpayer revenue for the subsidy to domestic and foreign users alike; or (b) to establish a two tier fee system for patent statutory fees. While the first option could mean lower overall patent fees, a taxpayer subsidy would be dependent upon Congressional action. If Congress were not to appropriate the necessary funds, the subsidy would not be available, in whole or in part. Full reliance on user fees could provide the PTO with additional flexibilities to meet user needs, especially in responding to growing workloads as the workloads occur.

(3) The PTO continues to scrutinize its operating budgets to identify ways to increase efficiency, to constrain costs, and to continue to provide better services to its users. The current fee package permits patent and patent service fees to be raised only with inflation. Trademark fees are held steady or are reduced. Despite these limited adjustments, user fees in 1989–1991 will allow the PTO to continue to pursue its major goals to improve the quality and timeliness of its goods and services.

(4) The Gramm-Rudman-Hollings sequestration of 1988 did affect PTO user fees. However, the Administration's budgets for 1987, 1988 and 1989 met all deficit reduction targets and did not require automatic sequestrations. We are confident that the Administration will continue to meet all deficit reduction targets prescribed by law and thus will continue to avoid the automatic sequestrations. The PTO is supportive of all efforts to reduce the Federal deficit.

(5) This issue was addressed above.

Other Considerations

The rule change is in conformity with the requirements of the Regulatory Flexibility Act (Pub. L. 96-354), Executive Orders 12291 and 12612, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* There are no information collection requirements relating to patent fee rules.

The Office has determined that this notice has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that the rule change will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, Pub. L. 96-354). The principal impact of the major patent fees has already been taken into account in Pub. L. 99-607, which provided small entities with a 50 percent reduction in the major patent fees. The rule change adjusts fees to reflect the change in the CPI and cost of processing services as provided by statute (35 U.S.C. 41(d) and 41(f)).

The Office has determined that this rule change is not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. There will be no major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, individual industries, Federal, state, or local government agencies, or geographic regions, because most major fees are being adjusted to reflect changes in the CPI over the past three years. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

37 CFR Part 2

Administrative practice and procedure, Courts, Lawyers, Trademarks.

For the reasons set forth in the preamble, the Office is amending Title 37 of the Code of Federal Regulations, Chapter I, as set forth below.

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 continues to read as follows:

Authority: 35 U.S.C. 6 unless otherwise noted.

2. Section 1.12 is amended by revising paragraphs (a) and (c) to read as follows:

§ 1.12 Assignment records open to public inspection.

(a) The assignment records, relating to original or reissue patents, including digests and indexes, and assignment records relating to pending or abandoned trademark applications and to trademark registrations, are open to public inspection, and copies of any instrument recorded may be obtained upon request and payment of the fee set forth in § 1.19(a)(3).

* * * * *

(c) Any request by a member of the public seeking copies of any assignment records of any pending or abandoned patent application preserved in secrecy under § 1.14, or any information with respect thereto, must

(1) Be in the form of a petition accompanied by the petition fee set forth in § 1.17(i)(1), or

(2) Include written authority granting access to the member of the public to the particular assignment records from the applicant or applicant's assignee or attorney or agent of record.

* * * * *

3. Section 1.14 is amended by revising paragraph (e) to read as follows:

§ 1.14 Patent applications preserved in secrecy.

* * * * *

(e) Any request by a member of the public seeking access to, or copies of, any pending or abandoned application preserved in secrecy pursuant to paragraphs (a) and (b) of this section, or any papers relating thereto, must

(1) Be in the form of a petition and be accompanied by the petition fee set forth in § 1.17(i)(1), or

(2) Include written authority granting access to the member of the public in that particular application from the applicant or the applicant's assignee or attorney or agent of record.

Note: See § 1.612(a) for access by an interference party to a pending or abandoned application.

4. Section 1.16 is amended by revising paragraphs (a), (b), (d)–(i) and the note at the end of the section to read as follows:

§ 1.16 National application filing fees.

(a) Basic fee for filing each application for an original patent, except design or plant cases:

By a small entity (§ 1.9(f)).....$185.00
By other than a small entity.....$370.00

(b) In addition to the basic filing fee in an original application, for filing or later presentation of each independent claim in excess of 3:

By a small entity (§ 1.9(f)).....$18.00
By other than a small entity.....$36.00

* * * * *

(d) In addition to the basic filing fee in an original application, if the application contains, or is amended to contain, a multiple dependent claim(s) per application:

By a small entity (§ 1.9(f)).....$60.00
By other than a small entity.....$120.00

(If the additional fees required by paragraphs (b), (c), and (d) are not paid on filing or on later presentation of the claims for which the additional fees are due, they must be paid or the claims canceled by amendment, prior to the expiration of the time period set for response by the Office in any notice of fee deficiency.)

(e) Surcharge for filing the basic filing fee or oath or declaration on a date later than the filing date of the application:

By a small entity (§ 1.9(f)).....$60.00
By other than a small entity.....$120.00

(f) For filing each design application:

By a small entity (§ 1.9(f)).....$75.00
By other than a small entity.....$150.00

(g) Basic fee for filing each plant application:

By a small entity (§ 1.9(f)).....$125.00
By other than a small entity.....$250.00

(h) Basic fee for filing each reissue application:

By a small entity (§ 1.9(f)).....$185.00
By other than a small entity.....$370.00

(i) In addition to the basic filing fee in a reissue application, for filing or later presentation of each independent claim which is in excess of the number of independent claims in the original patent:

By a small entity (§ 1.9(f)).....$18.00
By other than a small entity.....$36.00

* * * * *

Note: See § 1.445 for international application filing and processing fees.

5. Section 1.17 is amended by revising paragraphs (a)–(h), (j)–(m), by designating existing paragraph (i) as (i)(1) and revising it, and by adding a new paragraph (i)(2), to read as follows:

§ 1.17 Patent application processing fees.

(a) Extension fee for response within first month pursuant to § 1.136(a):

By a small entity (§ 1.9(f)).....$31.00
By other than a small entity.....$62.00

(b) Extension fee for response within second month pursuant to § 1.136(a):

By a small entity (§ 1.9(f)).....$90.00
By other than a small entity.....$180.00

(c) Extension fee for response within third month pursuant to § 1.136(a):

By a small entity (§ 1.9(f)).....$215.00
By other than a small entity.....$430.00

(d) Extension fee for response within fourth month pursuant to § 1.136(a):

By a small entity (§ 1.9(f)).....$340.00
By other than a small entity.....$680.00

(e) For filing a notice of appeal from the examiner to the Board of Patent Appeals and Interferences:

By a small entity (§ 1.9(f)).....$70.00
By other than a small entity.....$140.00

(f) In addition to the fee for filing a notice of appeal, for filing a brief in support of an appeal:

By a small entity (§ 1.9(f)).....$70.00
By other than a small entity.....$140.00

(g) For filing a request for an oral hearing before the Board of Patent Appeals and Interferences in appeal under 35 U.S.C. 134:

By a small entity (§ 1.9(f)).....$60.00
By other than a small entity.....$120.00

(h) For filing a petition to the Commissioner under a section of this part listed below:

Which refers to this paragraph.....$120.00

§ 1.47—for filing by other than all the inventors or a person not the inventor.
§ 1.48—for correction of inventorship.
§ 1.182—for decision on questions not specifically provided for.
§ 1.183—to suspend the rules.
§ 1.295—for review of refusal to publish a statutory invention registration.
§ 1.377—for review of decision refusing to accept and record payment of a maintenance fee filed prior to expiration of patent.
§ 1.378(e)—for reconsideration of decision on petition refusing to accept delayed payment of maintenance fee in expired patent.
§ 1.644(e)—for petition in an interference.
§ 1.644(f)—for request for reconsideration of a decision on petition in an interference.
§ 1.666(c)—for late filing of interference settlement agreement.
§§ 5.12, 5.13, & 5.14—for expedited handling of foreign filing license.
§ 5.15—for changing the scope of a license.
§ 5.25—for retroactive license.

(i)(1) For filing a petition to the Commissioner under a section of this part listed below which refers to this paragraph.....$120.00

§ 1.12—for access to an assignment record.
§ 1.14—for access to an application.
§ 1.55—for entry of late priority papers.
§ 1.103—to suspend action in application.
§ 1.177—for divisional reissues to issue separately.
§ 1.312—for amendment after payment of issue fee.
§ 1.313—to withdraw an application from issue.
§ 1.314—to defer issuance of a patent.
§ 1.334—for patent to issue to assignee, assignment recorded late.
§ 1.666(b)—for access to interference settlement agreement.

(2) For filing a petition to the Commissioner under § 1.102 of this part to make application special.....$80.00

(j) For filing a petition to institute a public use proceeding under § 1.292.....$1,200.00

(k) For processing an application filed with a specification in a non-English language (§ 1.52(d)).....$30.00

(l) For filing a petition
(1) For the revival of an abandoned application under 35 U.S.C. sections 133, or 371 or
(2) For delayed payment of the issue fee under 35 U.S.C. 151:

By a small entity (§ 1.9(f)).....$31.00
By other than a small entity.....$62.00

(m) For filing a petition
(1) For revival of an unintentionally abandoned application, or
(2) For the unintentionally delayed payment of the fee for issuing a patent:

By a small entity (§ 1.19(f)).....$310.00
By other than a small entity.....$620.00

* * * * *

6. Section 1.18 is revised to read as follows:

§ 1.18 Patent issue fees.

(a) Issue fee for issuing each original or reissue patent, except a design or plant patent:

By a small entity (§ 1.9(f)).....$310.00
By other than a small entity.....$620.00

(b) Issue fee for issuing a design patent:

By a small entity (§ 1.9(f)).....$110.00
By other than a small entity.....$220.00

(c) Issue fee for issuing a plant patent:

By a small entity (§ 1.9(f)).....$155.00
By other than a small entity.....$310.00

7. Section 1.19 is revised to read as follows:

§ 1.19 Document supply fees.

The Patent and Trademark Office will supply copies of the following documents upon payment of the fees indicated:

(a) Uncertified copies of Office documents:

(1) Printed copy of a patent, including a design patent, statutory invention registration, or defensive publication document, except color plant or color statutory invention registration.....$1.50
(2) Printed copy of a plant patent or statutory invention registration in color.....$10.00
(3) Copy of Office documents, except as otherwise provided in this section, for each 30 pages or a fraction thereof.....$10.00
(4) Copy of a utility patent with drawings in color (see § 1.84(p)).....$20.00
(5) Expedited local service for copy of a patent as in paragraph (a)(1) of this section, fulfilled within one work day for orders delivered to the Public Service Window in the Patent Public Search Room.....$3.00
(6) Expedited service for copy of a patent as in paragraph (a)(1) of this section, ordered by electronic ordering service and delivered to the customer within two work days.....$25.00

(b) Certified copies of Office documents:

(1) Certified copy of patent application as filed.....$10.00
(2) Certified copy of patent file wrapper and contents.....$170.00
(3) Certified copy of patent assignment record.....$5.00
(4) Expedited service for certified copy of patent application as filed in paragraph (a)(3) of this section, fulfilled within 5 work days, excluding mailing time.....$20.00
(5) For certifying Office records, per certificate.....$3.00
(6) For a search of assignment records, abstract of title and certification, per patent.....$15.00

(c) Library service (35 U.S.C. 13): For

providing to libraries copies of all patents issued annually, per annum.....$50.00
(d) For list of all United States patents and statutory invention registrations in a subclass.....$2.00
(e) Uncertified statement as to status of the payment of maintenance fees due on a patent or expiration of a patent.....$5.00
(f) Uncertified copy of a non-United States patent document, per document.....$10.00
(g) To compare and certify copies made from Patent and Trademark Office records but not prepared by the Patent and Trademark Office, per copy of document.....$10.00
(h) Additional filing receipts; duplicate; or corrected due to applicant error.....$15.00

8. Section 1.20 is revised to read as follows:

§ 1.20 Post issuance fees.

(a) For providing a certificate of correction for applicant's mistake (§ 1.323).....$60.00
(b) Petition for correction of inventorship in patent (§ 1.324).....$120.00
(c) For filing a request for reexamination (§ 1.510(a)).....$2,000.00

(d) For filing each statutory disclaimer (§ 1.321):

By a small entity (§ 1.9(f)).....$31.00
By other than a small entity.....$62.00

(e) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980 and before August 27, 1982, in force beyond four years; the fee is due by three years and six months after the original grant.....$245.00
(f) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980 and before August 27, 1982, in force beyond eight years; the fee is due by seven years and six months after the original grant.....$495.00
(g) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980 and before August 27, 1982, in force beyond twelve years; the fee is due by eleven years and six months after the original grant.....$740.00

(h) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after August 27, 1982, in force beyond four years; the fee is due by three years and six months after the original grant:

By a small entity (§ 1.9(f)).....$245.00
By other than a small entity.....$490.00

(i) For maintaining an original or reissue patent, except a design or plant patent, based on an application, filed on or after August 27, 1982, in force beyond eight years; the fee is due to seven years and six months after the original grant:

By a small entity (§ 1.9(f)).....$495.00
By other than a small entity.....$995.00

(j) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after August 27, 1982, in force beyond twelve years; the fee is due by eleven years and six months after the original grant:

By a small entity (§ 1.9(f)).....$740.00
By other than a small entity.....$1,480.000

(k) Surcharge for paying a maintenance fee during the six-month grace period following the expiration of three years and six months, seven years and six months, and eleven years and six months after the date of the original grant of a patent based on an application:

Filed on or after December 12, 1980, and before August 27, 1982.....$120.00

(l) Surcharge for paying a maintenance fee during the six-month grace period following the expiration of three years and six months, seven years and six months, and eleven years and six months after the date of the original grant of a patent based on an application filed on or after August 27, 1982:

By a small entity (§ 1.9(f)).....$60.00
By other than a small entity.....$120.00
(m) Surcharge for accepting a maintenance fee after expiration of a patent for non-timely payment of a maintenance fee where the delay in payment is shown to the satisfaction of the Commissioner to have been unavoidable.....$550.00
(n) For filing an application for extension of the term of a patent (§ 1.740).....$600.00

(35 U.S.C. 6; 15 U.S.C. 1113, 1123)

9. Section 1.21 is amended by revising paragraphs (a), (b)(1), (d)–(j), (l), (m), and the introductory text of the section and paragraph (b) are republished, to read as follows:

§ 1.21 Miscellaneous fees and charges.

The Patent and Trademark Office has established the following fees for the services indicated:

(a) Registration of attorneys and agents:

(1) For admission to examination for registration to practice, fee payable upon application.....$270.00
(2) On registration to practice.....$90.00
(3) For reinstatement to practice.....$10.00
(4) For certificate of good standing as an attorney or agent.....$10.00
Suitable for framing.....$100.00
(5) For review of a decision of the Director of Enrollment and Discipline under § 10.2(c).....$100.00
(6) For requesting regrading of an examination under § 10.7(c).....$100.00

(b) Deposit accounts:

(1) For establishing or reinstating a deposit account.....$10.00

* * * * *

(d) Delivery box: Local delivery box rental, per annum.....00
(e) International type search reports: For preparing an international type search report of an international type search made at the time of the first action on the merits in an national patent application.....$90.00
(f) Search of Office records: For conducting an inventor search of Office records for a ten-year period.....$10.00
(g) CopiShare card: Cost per copy.....$15.00
(h) For recording each assignment, agreement or other paper relating to the property in a patent or application per property.....$8.00
(i) Publication in Official Gazette: For publication in the Official Gazette of a notice of the availability of an application or a patent for licensing or sale, each application or patent.....$20.00
(j) For a duplicate or replacement of a permanent Office user pass (There is no charge for the first permanent user pass).....$10.00

* * * * *

(l) For processing and retaining any application abandoned pursuant to section 1.53(d) unless the required basic filing fee has been paid.....$120.00
(m) For processing each check returned "unpaid" by a bank.....$50.00

10. Section 1.26 is amended by revising paragraph (c) to read as follows:

§ 1.26 Refunds.

* * * * *

(c) If the Commissioner decides not to institute a reexamination proceeding, a refund of $1,500 will be made to the requester of the proceeding. Reexamination requesters should indicate whether any refund should be made by check or by credit to a deposit account.

11. Section 1.55 is amended by revising paragraph (a) to read as follows:

§ 1.55 Claim for foreign priority.

(a) An applicant may claim the benefit of the filing date of a prior foreign application under the conditions specified in 35 U.S.C. 119 and section 172. The claim to priority need be in no special form and may be made by the attorney or agent if the foreign application is referred to in the oath or declaration as required by § 1.63. The claim for priority and the certified copy of the foreign application specified in the second paragraph of 35 U.S.C. 119 must be filed in the case of interference (§ 1.630); when necessary to overcome the date of a reference relied upon by the examiner; or when specifically required by the examiner; and in all other cases they must be filed not later than the date the issue fee is paid. If the papers filed are not in the English language, a translation need not be filed except in the three particular instances specified in the proceding sentence, in which even a sworn translation or a translation certified as accurate by a sworn or official translator must be filed. If the priority papers are submitted after the date the issue fee is paid, they must be accompanied by a petition requesting their entry and the fee set forth in § 1.17(i)(1).

* * * * *

12. Section 1.102 is amended by revising paragraph (d) to read as follows:

§ 1.102 Advancement of examination.

* * * * *

(d) A petition to make an application special on grounds other than those referred to in paragraph (c) of this section must be accompanied by the petition fee set forth in § 1.17(i)(2).

13. Section 1.103 is amended by revising paragraph (a) to read as follows:

§ 1.103 Suspension of action.

(a) Suspension of action by the Office will be granted for good and sufficient cause and for a reasonable time specified upon petition by the applicant and, if such cause is not the fault of the Office, the payment of the fee set forth in § 1.17(i)(1). Action will not be suspended when a response by the applicant to an Office action is required.

* * * * *

14. Section 1.171 is revised to read as follows:

§ 1.171 Application for reissue.

An application for reissue must contain the same parts required for an application for an original patent, complying with all the rules relating thereto except as otherwise provided, and, in addition, must comply with the requirements of the rules relating to reissue applications. The application must be accompanied by a certified copy of an abstract of title or an order for a title report accompanied by the fee set further in § 1.19(b)(6), to be placed in the file, and by an offer to surrender the original patent (§ 1.178).

15. Section 1.177 is revised to read as follows:

§ 1.177 Reissue in divisions.

The Commissioner may , in his or her discretion, cause several patents to be issued for distinct and separate parts of the thing patented, upon demand of the applicant, and upon payment of the required fee for each division. Each division of a reissue constitutes the subject of a separate specification descriptive of the part or parts of the invention claimed in such division; and the drawing may represent only such part of parts, subject to the provisions of §§ 1.83 and 1.84. On filing divisional reissue applications, they shall be referred to the Commissioner. Unless otherwise ordered by the Commissioner upon petition and payment of the fee set forth in § 1.17(i)(1), all the divisions of a reissue will issue simultaneously; if there be any controversy as to one division, the other will be withheld from issue until the controversy is ended, unless the Commissioner shall otherwise order.

16. Section 1.296 is revised to read as follows:

§ 1.296 Withdrawal of request for publication of statutory invention registration.

A request for a statutory invention registration, which has been filed, may be withdrawn prior to the date of the notice of the intent to publish a statutory invention registration issued pursuant to § 1.294(c) by filing a request to withdraw the request for publication of a statutory invention registration. The request to withdraw may also include a request for a refund of any amount paid in excess of the application filing fee and a handling fee of $120.00 which will be retained. Any request to withdraw the request for publication of a statutory invention registration filed on or after the date of the notice of intent to publish issued pursuant to §1.294(c) must be in the form of a petition pursuant to § 1.183 accompanied by the fee set forth in § 1.17(h).

17. Section 1.313 is amended by revising paragraph (a) to read as follows:

§ 1.313 Withdrawal from issue.

(a) Applications may be withdrawn from issue for further action at the initiative of the Office or upon petition by the applicant. Any such petition by the applicant must include a showing of good and sufficient reasons why withdrawal of the application is necessary and, if the reason for the withdrawal is not the fault of the Office, must be accompanied by the fee set further in § 1.17(i)(1). If the application is withdrawn from issue, a new notice of allowance will be sent if the application is again allowed. Any amendment accompanying a petition to withdraw an application from issue must comply with the requirements of § 1.312.

* * * * *

18. Section 1.314 is revised to read as follows:

§ 1.314 Issuance of patent.

If payment of the issue fee is timely made, the patent will issue in regular course unless—

(a) The application is withdrawn from issue (§ 1.313), or

(b) Issuance of the patent is deferred.

Any petition by the applicant requesting deferral of the issuance of a patent must be accompanied by the fee set forth in § 1.17(i)(1) and must include a showing of good and sufficient reasons why it is necessary to defer issuance of the patent.

19. Section 1.334 is amended by revising paragraph (c) to read as follows:

§ 1.334 Issue of patent to assignee.

* * * * *

(c) If the assignment is recorded after the date of payment of the issue fee, the assignee may petition that the patent issue to the assignee as recorded. Any such petition must be accompanied by the fee set forth in § 1.17(i)(1).

20. Section 1.445 is amended by revising paragraphs (a) (2), (3) and the introductory text of paragraph (a) is republished, to read as follows:

§ 1.445 International application filing and processing fees.

(a) The following fees and charges are established by the Commissioner under the authority of 35 U.S.C. 376:

* * * * *

(2) A search fee (see 35 U.S.C. 361(d) and PCT Rule 16) where:

(i) No corresponding prior United States national application with basic filing fee has been filed.....$550.00
(ii) A corresponding prior United States national application with basic filing fee has been filed.....$380.00
(iii) A supplemental search fee when required per additional invention.....$150.00

* * * * *

21. Section 1.451 is amended by revising paragraph (b) to read as follows:

§ 1.451 The priority claim and priority document in an international application.

* * * * *

(b) Whenever the priority of an earlier United States national application is claimed in an international application, the applicant may request in a letter of transmittal accompanying the international application upon filing

with the United States Receiving Office or in a separate letter filed in the Receiving Office not later than 16 months after the priority date, that the Patent and Trademark Office prepare a certified copy of the national application for transmittal to the International Bureau (PCT Article 8 and PCT Rule 17). The fee for preparing a certified copy is stated in § 1.19 (b)(1).

* * * * *

22. Section 1.482 is amended by revising paragraph (a) to read as follows:

§ 1.482 International preliminary examination fees.

(a) The following fees and charges for international preliminary examination are established by the Commissioner unde the authority of 35 U.S.C. 376:

(1) A preliminary examination fee is due on filing the Demand:

(i) Where an international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority, a preliminary examination fee of....$400.00

(ii) Where the International Searching Authority for the international application was an authority other than the United States Patent and Trademark Office, a preliminary examination fee of....$600.00

(2) An additional preliminary examination fee when required, per additional invention:

(i) Where a supplemental search fee as set forth in § 1.445(a)(3) has been paid on the international application to the United States Patent and Trademark Office as an international Searching Authority $150.00

(ii) Where the International Searching Authority for the international application was an authority other than the United States Patent and Trademark Office....$200.00

* * * * *

23. Section 1.492 is amended by revising paragraphs (a) (1)–(3), (b), (d)–(f), and the introductory text of the section and paragraph (a) are republished to read as follows:

§ 1.492 National stage fees.

The following fees and charges for international applications entering the national stage under 35 U.S.C. 371 are established by the Commissioner under 35 U.S.C. 376:

(a) The basic national fee:

(1) Where an international preliminary examination fee as set forth in § 1.482 has been paid on the international application to the United States Patent and Trademark Office:

By a small entity (§ 1.9(f))....$165.00
By other than a small entity....$330.00

(2) Where no international preliminary examination fee as set forth in § 1.482 has been paid to the United States Patent and Trademark Office, but an international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority:

By a small entity (§ 1.9(f))....$185.00
By other than a small entity....$370.00

(3) Where no international preliminary examination fee as set forth in § 1.482 has been paid and no international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office:

By a small entity (§ 1.9(f))....$250.00
By other than a small entity....$500.00

* * * * *

(b) In addition to the basic national fee, for filing or later presentation of each independent claim in excess of 3:

By a small entity (§ 1.9(f))....$18.00
By other than a small entity....$36.00

* * * * *

(d) In addition to the basic national fee, if the application contains, or is amended to contain, a multiple dependent claim(s), per application:

By a small entity (§ 1.9(f))....$60.00
By other than a small entity....$120.00

(If the additional fees required by paragraphs (b), (c), and (d) are not paid on presentation of the claims for which the additional fees are due, they must be paid or the claims cancelled by amendment, prior to the expiration of the time period set for response by the Office in any notice of fee deficiency.)

(e) Surcharge for filing the basic national fee or oath or declaration later than 20 months from the priority date pursuant to § 1.494(c) or later than 30 months from the priority date pursuant to § 1.495(c):

By a small entity (§ 1.9(f))....$60.00
By other than a small entity....$120.00

(f) For filing an English translation of an international application later than 20 months after the priority date (§ 1.494(c)) or filing an English translation of the international application or of any annexes to the international preliminary examination report later than 30 months after the priority date (§ 1.495 (c) and (e))....$30.00

24. Section 1.666 is amended by revising paragraph (b) to read as follows:

§ 1.666 Filing of interference settlement agreements.

* * * * *

(b) If any party filing the agreement or understanding under paragraph (a) of this section so requests, the copy will be kept separate from the file of the interference, and made available only to Government agencies on written request, or to any person upon petition accompanied by the fee set forth in § 1.17(i)(1) and on a showing of good cause.

* * * * *

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

1. The authority citation for Part 2 continues to read as follows:

Authority: 15 U.S.C. 1123; 35 U.S.C. 6, unless otherwise noted.

2. Section 2.6 is amended by revising paragraphs (a), (q), and the introductory text of the section is republished to read as follows:

§ 2.6 Trademark fees.

The following fees and charges are established by the Patent and Trademark Office for trademark cases:

(a) For filing an application, per class $175.00

* * * * *

(q) For recording trademark assignments and agreements or other papers relating to the property in a registration or application, per mark....$8.00

* * * * *

Editorial Note: The following appendix will not appear in the Code of Federal Regulations.

Date: January 18, 1989.

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

BILLING CODE 3510-16-M

APPENDIX A
Page 1

STATUTORY PATENT FEES - LARGE ENTITY

CFR	PTO FEE CODE	DESCRIPTION	PRESENT FEE	PROJECTED COST	PRESENT FEE ADJ. BY C.P.I. *	PROPOSED FEE
1.16(a)	101	BASIC FILING FEE	340.00	**	369.96	370.00
1.16(b)	102	INDEPENDENT CLAIMS	34.00	**	37.00	36.00
1.16(c)	103	CLAIMS IN EXCESS OF 20	12.00	**	12.33	12.00
1.16(d)	104	MULTIPLE DEPENDENT CLAIMS	110.00	**	123.32	120.00
1.16(f)	106	DESIGN FILING FEE	140.00	**	154.15	150.00
1.16(g)	107	PLANT FILING FEE	220.00	**	246.64	250.00
1.16(h)	108	REISSUE FILING FEE	340.00	**	369.96	370.00
1.16(i)	109	REISSUE INDEPENDENT CLAIMS	34.00	**	37.00	36.00
1.16(j)	110	REISSUE CLAIMS IN EXCESS OF 20	12.00	**	12.33	12.00
1.17(a)	115	EXTENSION - FIRST MONTH	56.00	**	61.66	62.00
1.17(b)	116	EXTENSION - SECOND MONTH	170.00	**	184.98	180.00
1.17(c)	117	EXTENSION - THIRD MONTH	390.00	**	431.62	430.00
1.17(d)	118	EXTENSION - FOURTH MONTH	610.00	**	678.25	680.00
1.17(e)	119	NOTICE OF APPEAL	130.00	**	141.82	140.00
1.17(f)	120	FILING A BRIEF	130.00	**	141.82	140.00
1.17(g)	121	REQUEST FOR ORAL HEARING	110.00	**	123.32	120.00
1.17(l)	140	PETITION-REVIVE ABANDONED APPL	56.00	**	61.66	62.00
1.17(m)	141	PETITION-REVIVE UNINTEN ABAND APP	560.00	**	616.59	620.00
1.18(a)	142	ISSUE FEE	560.00	**	616.59	620.00
1.18(b)	143	DESIGN ISSUE FEE	200.00	**	215.81	220.00
1.18(c)	144	PLANT ISSUE FEE	280.00	**	308.30	310.00
1.20(d)	148	STATUTORY DISCLAIMER	56.00	**	61.66	62.00
1.20(h)	173	MAINTENANCE FEE - 3.5 - 97-247	450.00	**	493.28	490.00
1.20(i)	174	MAINTENANCE FEE - 7.5 - 97-247	990.00	**	986.55	990.00
1.20(j)	175	MAINTENANCE FEE - 11.5 - 97-247	1,340.00	**	1,479.83	1,480.00

* *The 1986 unrounded base fee increased by projected C.P.I. - see explanation under Background, Fee Adjustment Methodology, paragraph 2(a).*

** *See Background, Fee Adjustment Methodology, paragraph 1(a) for an explanation of cost calculations for statutory patent fees.*

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STATUTORY PATENT FEES - SMALL ENTITY

CFR	PTO FEE CODE	DESCRIPTION	PRESENT FEE	PROJECTED COST	PRESENT FEE ADJ. BY C.P.I. *	PROPOSED FEE
1.16(a)	201	BASIC FILING FEE	170.00	**	188.06	185.00
1.16(b)	202	INDEPENDENT CLAIMS	17.00	**	18.56	18.00
1.16(c)	203	CLAIMS IN EXCESS OF 20	5.00	**	5.17	5.00
1.16(d)	204	MULTIPLE DEPENDENT CLAIMS	55.00	**	61.85	60.00
1.16(f)	206	DESIGN FILING FEE	70.00	**	77.06	75.00
1.16(g)	207	PLANT FILING FEE	110.00	**	123.32	125.00
1.16(h)	208	REISSUE FILING FEE	170.00	**	184.98	185.00
1.16(i)	209	REISSUE INDEPENDENT CLAIMS	17.00	**	18.56	18.00
1.16(j)	210	REISSUE CLAIMS IN EXCESS OF 20	5.00	**	5.17	5.00
1.17(a)	215	EXTENSION - FIRST MONTH	25.00	**	30.86	31.00
1.17(b)	216	EXTENSION - SECOND MONTH	85.00	**	92.48	90.00
1.17(c)	217	EXTENSION - THIRD MONTH	195.00	**	215.84	215.00
1.17(d)	218	EXTENSION - FOURTH MONTH	305.00	**	339.13	340.00
1.17(e)	219	NOTICE OF APPEAL	65.00	**	70.94	70.00
1.17(f)	220	FILING A BRIEF	65.00	**	70.94	70.00
1.17(g)	221	REQUEST FOR ORAL HEARING	55.00	**	61.65	60.00
1.17(l)	246	PETITION-REVIVE ABANDONED APPL	25.00	**	30.86	31.00
1.17(m)	241	PETITION-REVIVE UNINTEN ABAND APP	280.00	**	308.30	310.00
1.18(a)	242	ISSUE FEE	280.00	**	308.30	310.00
1.18(b)	243	DESIGN ISSUE FEE	100.00	**	107.94	110.00
1.18(c)	244	PLANT ISSUE FEE	140.00	**	154.15	155.00
1.20(d)	246	STATUTORY DISCLAIMER	28.00	**	30.80	31.00
1.20(h)	273	MAINTENANCE FEE - 3.5 - 97-247	225.00	**	246.64	245.00
1.20(i)	274	MAINTENANCE FEE - 7.5 - 97-247	445.00	**	488.29	495.00
1.20(j)	275	MAINTENANCE FEE - 11.5 - 97-247	670.00	**	739.91	740.00

* The 1986 unrounded base fee increased by projected C.P.I.
- see explanation under Background, Fee Adjustment Methodology, paragraph 2[a].

** See Background, Fee Adjustment Methodology, paragraph 1(a)
for an explanation of cost calculations for statutory patent fees.

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NON-STATUTORY PATENT FEES

CFR	PTO FEE CODE	DESCRIPTION	PRESENT FEE	PROJECTED COST	PRESENT FEE ADJ. BY C.P.I.	PROPOSED FEE
1.16(e)	105	SURCHARGE - LATE FILING FEE	110.00	120.00	121.33	120.00
1.16(e)	205	SURCHARGE - LATE FILING FEE	55.00	60.00	60.67	60.00
1.17(h)	122	PETITION - NOT ALL INVENTORS	140.00	119.11	151.08	120.00
1.17(h)	123	PETITION - CORRECTION OF INVENTORSHIP	140.00	119.11	151.08	120.00
1.17(h)	124	PETITION - DECISION ON QUESTIONS	140.00	119.11	151.08	120.00
1.17(h)	125	PETITION - SUSPEND RULES	140.00	119.11	151.08	120.00
1.17(h)	160	PETITION - EXPEDITED LICENSE	140.00	119.11	151.08	120.00
1.17(h)	161	PETITION - SCOPE OF LICENSE	140.00	119.11	151.08	120.00
1.17(h)	162	PETITION - RETROACTIVE LICENSE	140.00	119.11	151.08	120.00
1.17(h)	163	PETITION - REFUSING MAINT. FEE	140.00	119.11	151.08	120.00
1.17(h)	164	PETITION - REFUSING MAINT. FEE - EXPIRED PATENT	140.00	119.11	151.08	120.00
1.17(h)	165	PETITION - INTERFERENCE	140.00	119.11	151.08	120.00
1.17(h)	166	PETITION - RECONSIDER INTERFERENCE	140.00	119.11	151.08	120.00
1.17(h)	167	PETITION - LATE FILING OF INTERF.	140.00	119.11	151.08	120.00
1.17(h)	168	PETITION - REFUSAL TO PUB SIR	140.00	119.11	151.08	120.00
1.17(i)	127	PETITION - FOR ASSIGNMENT RECORD	72.00	119.11	78.91	120.00
1.17(i)	128	PETITION - FOR APPLICATION	72.00	119.11	78.91	120.00
1.17(i)	129	PETITION - LATE PRIORITY PAPERS	72.00	119.11	78.91	120.00
1.17(i)	130	PETITION - MAKE APPL SPECIAL	72.00	78.72	78.91	80.00
1.17(i)	131	PETITION - SUSPEND ACTION	72.00	119.11	78.91	120.00
1.17(i)	132	PETITION - DIVISIONAL REISSUES	72.00	119.11	78.91	120.00
1.17(i)	133	PETITION - FOR INTERFERENCE AGREE.	72.00	119.11	78.91	120.00
1.17(i)	134	PETITION - AMENDMENT AFTER ISSUE	72.00	119.11	78.91	120.00
1.17(i)	135	PETITION - WITHDRAWAL FROM ISSUE	72.00	119.11	78.91	120.00
1.17(i)	136	PETITION - DEFER ISSUE	72.00	119.11	78.91	120.00
1.17(i)	137	PETITION - ISSUE TO ASSIGNEE	72.00	119.11	78.91	120.00
1.17(j)	138	PETITION - PUBLIC USE PROCEEDING	860.00	1,224.44	941.91	1,200.00
1.17(k)	139	NON-ENGLISH SPECIFICATION	25.00	26.16	28.45	30.00
1.17(n)	112	SIR - PRIOR TO EXAMINER'S ACTION *	400.00	400.00	446.23	400.00
1.17(n)	113	SIR - AFTER EXAMINER'S ACTION *	800.00	800.00	931.89	800.00
1.20(a)	145	CERTIFICATE OF CORRECTION	29.00	51.42	31.78	50.00
1.20(b)	146	PETITION - CORRECTION OF INVENTORSHIP	140.00	119.11	151.08	120.00
1.20(c)	147	REEXAMINATION	1,770.00	1,967.73	1,950.01	2,000.00
1.20(e)	170	MAINTENANCE FEE - 3.5 - 96-517	225.00	245.00	246.18	245.00
1.20(f)	171	MAINTENANCE FEE - 7.5 - 96-517	445.00	495.00	490.85	495.00
1.20(g)	172	MAINTENANCE FEE - 11.5 - 96-517	670.00	740.00	739.03	740.00
1.20(k)	176	SURCHARGE - 6 MONTHS - 96-517	110.00	120.00	121.33	120.00
1.20(l)	177	SURCHARGE - 6 MONTHS - 97-247	110.00	120.00	121.33	120.00
1.20(l)	277	SURCHARGE - 6 MONTHS - 97-247	55.00	60.00	60.67	60.00
1.20(m)	178	SURCHARGE AFTER EXPIRATION	500.00	550.00	551.52	550.00
1.20(n)	111	EXTENSION OF TERM OF PATENT	550.00	610.33	605.67	600.00

* Reduced by filing fee.

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NON-STATUTORY PATENT FEES - SERVICES

CFR	PTO FEE CODE	DESCRIPTION	PRESENT FEE	PROJECTED COST	PRESENT FEE ADJ. BY C.P.I.	PROPOSED FEE
1.19(a-1)	561	COPY OF PATENT	1.50	2.03	1.59	1.50
1.19(a-2)	563	COPY OF PLANT PATENT	6.00	11.17	6.21	10.00
1.19(a-3)	566	COPY OF OFFICE RECS, (20 PGS/DOC)	0.50	9.30	5.82	10.00
1.19(a-4)	NFC*	COPY OF UTILITY PATENT IN COLOR	0.00	20.00	20.00	20.00
1.19(a-5)	NFC	PATENT COPY - EXPEDITED SERVICE	0.00	3.00	3.00	3.00
1.19(a-6)	NFC	PATENT COPY EXPEDITED SERVICE W/ SOS	0.00	25.00	25.00	25.00
1.19(b-1)	564	COPY OF APPLICATION AS FILED, CERT.	9.00	9.71	9.75	10.00
1.19(b-2)	565	COPY OF FILE WRAPPER, CERT.	75.00	174.17	94.89	170.00
1.19(b-3)	533	COPY OF PATENT ASSIGNMENT, CERT	1.50	4.56	1.52	5.00
1.19(b-4)	NFC	CERT. COPY OF PATENT APPL. EXPIDITED	0.00	20.00	20.00	20.00
1.19(b-5)	568	CERTIFYING OFFICE RECORDS	3.00	2.61	2.98	3.00
1.19(b-6)	569	SEARCH OF RECORDS	12.00	12.99	13.59	15.00
1.19(c)	513	LIBRARY SERVICE	50.00	4,470.00	55.15	50.00
1.19(d)	514	LIST OF PATENTS IN SUBCLASS	1.00	2.13	1.47	2.00
1.19(e)	539	UNCERTIFIED STATEMENT	3.00	2.87	3.47	5.00
1.19(f)	532	COPY OF NON-US DOCUMENT	10.00	5.84	11.48	10.00
1.19(g)	516	COMPARING COPIES PER DOC	5.00	5.95	5.96	10.00
1.19(n)	534	DUPLICATE OR CORRECTED FILING RECEIPT	14.00	12.95	15.08	15.00
1.21(a-1)	509	ADMISSION TO EXAMINATION	250.00	273.23	273.86	270.00
1.21(a-2)	510	REGISTRATION TO PRACTICE	81.00	86.32	89.64	90.00
1.21(a-3)	511	REINSTATEMENT TO PRACTICE	9.00	9.87	9.92	10.00
1.21(a-4)	512	COPY OF CERTIFICATE OF GOOD STANDING	10.00	9.86	10.09	10.00
1.21(a-4)	513	CERTIFICATE OF GOOD STAND - FRAMING	85.00	99.89	96.65	100.00
1.21(a-5)	515	REVIEW OF DECISION OF DIRECTOR, OED	92.00	99.89	104.59	100.00
1.21(a-6)	516	REGRADING OF EXAMINATION	92.00	99.32	104.59	100.00
1.21(b-1)	507	ESTABLISH DEPOSIT ACCOUNT	8.00	9.00	8.98	10.00
1.21(b-2/3)	508	SERVICE CHARGE FOR BELOW MIN. BALANCE	20.00	22.00	22.86	20.00
1.21(c)	518	FILING A DISCLOSURE DOC	6.00	6.00	6.09	6.00
1.21(e)	526	INTERNATIONAL TYPE SEARCH REPORT	28.00	13.89	30.86	30.00
1.21(f)	517	SEARCHING, 10 YEARS	14.00	10.03	15.82	10.00
1.21(g)	524	COPIES/ARE CARD PER PAGE	0.20	0.11	0.17	0.15
1.21(h)	519	RECORDING PATENT PROPERTY	7.00	7.55	7.50	8.00
1.21(i)	520	PUBLICATION IN OG	7.00	16.55	7.67	20.00
1.21(j)	521	DUPLICATE USER PASS	5.00	9.02	5.53	10.00
1.21(k)	522	BOX RENTAL	43.00	49.44	47.07	50.00
1.21(k)	523	LOCKER RENTALS	0.25	0.25	0.28	0.25
1.21(l)	529	RETAINING ABANDONED APPL.	100.00	112.64	110.30	120.00
1.21(m)	517	PROCESSING RETURNED CHECKS	20.00	22.00	22.06	50.00
1.21(n)	530	HANDLING FEE	15.00	15.90	16.88	20.00
1.296	531	HANDLING FEE FOR WITHDRAWAL	100.00	112.64	110.30	120.00

* NFC - New fee code to be established.

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PATENT COOPERATION TREATY FEES

CFR	PTO FEE CODE	DESCRIPTION	PRESENT FEE	PROJECTED COST	PRESENT FEE ADJ. BY C.P.I.	PROPOSED FEE
1.445(a-1)	150	TRANSMITTAL FEE	170.00	166.36	*	170.00
1.445(a-2)	151	PCT SEARCH FEE - NO U.S. APPL.	520.00	554.33	*	550.00
1.445(a-2)	153	PCT SEARCH - PRIOR U.S. APPL.	350.00	378.04	*	380.00
1.445(a-3)	152	SUPPLEMENTAL SEARCH	140.00	149.85	*	150.00
1.482(a-1)	190	PRELIMINARY EXAM FEE	370.00	400.85	*	400.00
1.482(a-1)	191	PRELIMINARY EXAM FEE	570.00	600.90	*	600.00
1.482(a-2)	192	ADDL INVENTION	125.00	129.61	*	130.00
1.482(a-2)	193	ADDL INVENTION	190.00	190.75	*	200.00
1.492(a-1)	956	IPEA	300.00	* *	330.99	330.00
1.492(a-1)	957	IPEA	150.00	* *	165.58	165.00
1.492(a-2)	958	SEARCHING AUTHORITY	340.00	* *	370.05	370.00
1.492(a-2)	959	SEARCHING AUTHORITY	170.00	* *	185.02	185.00
1.492(a-3)	960	PTO/NOT SA OR IPEA	450.00	* *	496.48	500.00
1.492(a-3)	961	PTO/NOT SA OR IPEA	225.00	* *	248.24	250.00
1.492(a-4)	962	CLAIMS - IPEA	50.00	* *	55.17	50.00
1.492(a-4)	963	CLAIMS - IPEA	25.00	* *	27.58	25.00
1.492(b)	964	CLAIMS - EXTRA INDIVIDUAL (OVER 3)	34.00	* *	37.00	36.00
1.492(b)	965	CLAIMS - EXTRA INDIVIDUAL (OVER 3)	17.00	* *	18.50	18.00
1.492(c)	966	CLAIMS - EXTRA TOTAL (OVER 20)	12.00	* *	12.33	12.00
1.492(c)	967	CLAIMS - EXTRA TOTAL (OVER 20)	6.00	* *	6.17	6.00
1.492(d)	968	CLAIMS - MULTIPLE DEPENDENTS	110.00	* *	123.35	120.00
1.492(d)	969	CLAIMS - MULTIPLE DEPENDENTS	55.00	* *	61.67	60.00
1.492(e)	154	SURCHARGE	110.00	120.00	121.36	120.00
1.492(e)	254	SURCHARGE	55.00	60.00	60.00	60.00
1.492(f)	156	ENGLISH TRANSLATION - AFTER 20 MOS.	28.00	28.08	28.08	30.00

* Adjustment by C.P.I. is not applicable to these fees.

** These fees are set to recover the cost of processing under the Treaty. The cost calculation methodology for statutory patent fees, under Background, Fee Adjustment Methodology, paragraph 1(a), applies to these fees.

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TRADEMARK FEES

CFR	PTO FEE CODE	DESCRIPTION	PRESENT FEE	PROJECTED COST	PRESENT FEE ADJ. BY C.P.I.	PROPOSED FEE
TRADEMARK PROCESS FEES						
2.6(a)	301	APPLICATION FOR REGISTRATION	200.00	242.87	220.66	175.00
2.6(b)	302	APPLICATION FOR RENEWAL	300.00	42.94	330.99	300.00
2.6(e)	303	SURCHARGE FOR LATE RENEWAL	100.00	100.00	110.33	100.00
2.6(c)	304	PUBLICATION OF MARK UNDER SEC 12c	100.00	131.93	110.33	100.00
2.6(d)	305	ISSUING NEW CERTIFICATE OF REGISTRATION	100.00	81.32	110.33	100.00
2.6(e)	306	CERT OF CORRECTION OF APPLICANT ERROR	100.00	106.21	110.33	100.00
2.6(f)	307	FILING DISCLAIMER TO REGISTRATION	100.00	133.39	110.33	100.00
2.6(g)	308	FILING AMENDMENT TO REGISTRATION	100.00	67.64	110.33	100.00
2.6(h)	309	FILING AFFIDAVIT UNDER SECTION 8	100.00	19.70	110.33	100.00
2.6(i)	310	FILING AFFIDAVIT UNDER SECTION 15	100.00	19.77	110.33	100.00
2.6(j)	311	FILING AFFIDAVIT UNDER SECTION 8 & 15	200.00	19.77	220.66	200.00
2.6(k)	312	PETITIONS TO THE COMMISSIONER	100.00	114.06	110.33	100.00
2.6(l)	313	PETITION TO CANCEL	200.00	393.96	220.66	200.00
2.6(l)	314	NOTICE OF OPPOSITION	200.00	498.49	220.66	200.00
2.6(m)	315	EX PARTE APPEAL TO THE TTAB	100.00	478.62	110.33	100.00
TRADEMARK SERVICE FEES						
2.6(n)	401	PRINTED COPY OF EACH REGISTERED MARK	1.50	1.84	1.65	1.50
2.6(o)	403	CERTIFY TM RECORDS, PER CERTIFICATE	3.50	4.06	3.86	3.50
2.6(p)	404	PHOTOCOPIES OF TM RECORDS, PER PAGE	0.30	0.39	0.33	0.30
2.6(q)	405	RECORDING TM ASSIGNMENT DOCUMENTS	100.00	7.51	110.33	0.00
2.6(r)	407	ABSTRACTS OF TITLE, PER REGISTRATION	12.00	8.19	13.24	12.00
2.6(n)	408	COPY OF REG MARK WITH TITLE OR STATUS	6.50	5.97	7.17	6.50
2.6(o)	410	MAKE CERTIFICATION SPECIAL	25.00	5.00	27.58	25.00
1.21(g)	424	FARECARDS FOR COPY MACHINES	0.20	0.11	0.22	0.15

[FR Doc. 89-3486 Filed 2-10-89; 11:50 am]
BILLING CODE 3510-16-C

POSTAL SERVICE

39 CFR Part 111

Business Reply Mail

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule amends existing postal regulations on paper stock requirements for business reply cards processed under the automated Business Reply Mail Accounting System. The rule establishes a minimum paper basis weight for such cards, permits the inclusion of unbleached pulp in the paper, and also permits the inclusion of groundwood if the paper is coated.

EFFECTIVE DATE: June 18, 1989.

FOR FURTHER INFORMATION CONTACT: Nicholas S. Stankosky, (202) 268-5311.

SUPPLEMENTARY INFORMATION: On September 23, 1986, the Postal Service published for comment in the **Federal Register** proposed amendments to Part 917 of the Domestic Mail Manual (DMM) to amend paper stock specifications for business reply mail (BRM) cards prepared under the Business Reply Mail Accounting System (BRMAS), 53 FR 37003-05. The Postal Service proposed a five percent tolerance to the minimum basis weight specifications in the existing regulations. A full explanation of the background and reasons for the changes was published at that time and is not repeated here. Interested persons were invited to submit written comments concerning the proposed regulation changes by October 24, 1986.

The Postal Service received twenty-five comments from paper companies, paper suppliers and mailers regarding these requirements. Twenty-three of the comments received were in general agreement with the proposal, with minor suggested changes or modifications. The other two commenters objected to the proposal on the grounds that the requirements were too restrictive and costly.

The following is a summary of the comments received.

Eight comments addressed the proposed five percent tolerance to the minimum 75 pound standard industry basis weight. All agreed with this change, but four commenters stated that the proposed wording was confusing because it could also be read as establishing a maximum basis weight of 75 pounds plus five percent. To avoid any confusion, the Postal Service has changed the language of DMM 917.622 to state the five percent tolerance in terms of actual weight and apply it only as minimum weight.

Six commenters addressed the proposed prohibition on the inclusion of groundwood and unbleached pulp in BRMAS card paper. Three of the six opposed the prohibition on groundwood, and all six disagreed with the prohibition on unbleached pulp. One commenter indicated that neither groundwood nor unbleached pulp pose a problem when the paper stock is also coated. Another stated that a prohibition on groundwood and unbleached pulp would considerably limit the opportunity for paper mills to use recycled fiber. One commenter urged the Postal Service to define paper stock characteristics in terms of stiffness and caliper and not to restrict the method of manufacture, or the raw materials and chemical formulations used. Three commenters expressed the opinion that unbleached fibers are stronger and stiffer than bleached fibers. The Postal Service has re-evaluated both prohibitions based upon the helpful comments of these paper manufacturers, and has determined not to adopt the prohibition against unbleached pulp. The Postal Service has also decided to permit the use of groundwood when the paper stock is coated with a substance that increases its ability to resist deformation under stress.

One commenter suggested that the Postal Service adopt minimum reflectance, or brightness, and stiffness requirements as a way to prevent false data readings on automated scanning equipment. Current specifications for all business reply mail already require a 30-percent reflectance difference throughout the red spectral range of 550 to 775 nanometers(nm) between the paper and the ink. The stiffness proposal will not be adopted because it is not practical for the Postal Service to measure and enforce stiffness specifications on a national basis.

The Postal Service believes that these requirements, as amended, will ensure that BRMAS cards can be processed on automated equipment while providing flexibility in the manufacture of the paper stock. After full consideration of all comments, effective June 18, 1989 the Postal Service will adopt the following changes to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1. BRMAS mailers will be permitted to use existing paper stock which meets the minimum and maximum thickness requirements, but does not meet the minimum basis weight requirements until June 18, 1989.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a): 39 U.S.C. 101, 401, 403, 404, 3001-3011, 3201-3219, 3403-3406, 3621, 5001.

In Part 917, amend 917.622 to read as follows:

PART 917—BUSINESS REPLY MAIL (BRM)

* * * * *

917.6 BRMAS Automation Requirements

* * * * *

917.62 Additional Physical Requirements

* * * * *

917.622 Business reply cards prepared under the BRMAS system must (1) be printed on paper stock meeting a standard industry basis weight of 75 pounds, with none less than 71.25 pounds, for 500 sheets measuring 25 inches by 38 inches, and (2) have a thickness of at least 0.007 inch and not more than 0.0095 inch. The paper must be free from groundwood except when coated with a substance which adds to the paper's ability to resist an applied bending force.

Note: BRMAS cards exceeding 4¼ inches in height, 6 inches in length, or 0.0095 inch in thickness, are subject to postage at the regular single-piece First-Class Mail rate for matter other than cards in Exhibit 310 (see 322.2 and 322.4), and must comply with 917.611.

* * * * *

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided by 39 CFR 111.3.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 89-3495 Filed 2-14-89; 8:45 am]
BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3516-6]

Approval and Promulgation of State Implementation Plans; Visibility Protection; Wyoming

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: In this action, EPA is approving the general plan requirements monitoring strategy, and long-term strategy (LTS) for visibility protection in mandatory Class I Federal areas and in State-designated Class I areas in a revision to the Wyoming State Implementation Plan (SIP). This action is a result of rulemakings on May 12, 1986 (51 FR 17334), and on November 24, 1987 (52 FR 45132), at which EPA disapproved Wyoming's SIP for failing to comply with the provisions of 40 CFR 51.302 (visibility general plan requirements), 51.305 (visibility monitoring) and 51.306 (visibility LTS). EPA also incorporated these federal plans and regulations into Wyoming's SIP.

The Administrator of the Wyoming Air Quality Division submitted a SIP revision for visibility protection on September 6, 1988. Review of the submittal indicates that Wyoming has met the criteria of 40 CFR 51.302, 51.305, and 51.306, and that these revisions will replace the federal visibility plans and regulations in the Wyoming SIP.

DATES: This action will be effective on April 17, 1989 unless notice is received by March 17, 1989 that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of the State submittal are available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at the following locations:

Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, Suite 500 Denver, Colorado 80202-2405

Environmental Protection Agency, Public Information Reference Unit, Waterside Mall, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Michael Silverstein, Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202-2405 (303) 293-1769 (FTS) 564-1769.

SUPPLEMENTARY INFORMATION:

Background

Section 169A of the Clean Air Act, 42 U.S.C. 7491, requires visibility protection for mandatory Class I Federal areas where EPA has determined that visibility is an important value. ("Mandatory Class I Federal areas" are certain national parks, wilderness areas, and international parks, as described in section 162(a) of the Act, 42 U.S.C. 7472(a), 40 CFR 81.400—81.437.) Section 169A specifically requires EPA to promulgate regulations requiring certain states to amend their State Implementation Plans (SIPs) to provide for visibility protection.

On December 2, 1980, EPA promulgated the required visibility regulations in 45 FR 80084, codified at 40 CFR 51.300 *et seq.* It required the states to submit their revised SIPs to satisfy those provisions by September 2, 1981. (See 45 FR 80091, codified in 40 CFR 51.302(a)(1).) That rulemaking resulted in numerous parties seeking judicial review of the visibility regulations. In March 1981, the court stayed the litigation, pending EPA action on related administrative petitions for reconsideration of the visibility regulations filed with the Agency.

In December 1982, the Environmental Defense Fund (EDF) filed suit in the U.S. District Court for the Northern District of California alleging that EPA failed to perform a nondiscretionary duty under section 110(c) of the Act to promulgate Visibility SIPs. A negotiated Settlement Agreement between EPA and EDF required EPA to propose to incorporate Federal regulations in states where SIPs were deficient with respect to visibility monitoring regulations (40 CFR 51.305). However, the Settlement Agreement allowed each State an opportunity to avoid Federal promulgation if it submitted a SIP by May 6, 1985. Wyoming submitted a SIP revision on April 12, 1985, that included provisions for visibility monitoring. EPA disapproved the State's visibility monitoring strategy on May 12, 1986 (51 FR 17334), and incorporated the federal visibility monitoring regulations into Wyoming's SIP.

The Settlement Agreement between EPA and EDF also required EPA to determine the adequacy of State Visibility SIPs to meet the general plan requirements including implementation control strategies (40 CFR 51.302), integral vista protection (40 CFR 51.302-307), and long-term strategies (LTS) (40 CFR 51.306). The Settlement Agreement required EPA to propose and promulgate Federal Visibility SIPs (hereinafter Federal Implementation Plans (FIPs)) to remedy any deficiencies on a specified schedule. On January 23, 1986 (51 FR 3046), EPA preliminarily determined that the SIPs of 32 states (including Wyoming) were deficient with respect to the above mentioned visibility provisions.

The EPA and the plaintiffs negotiated revisions to the Settlement Agreement which extended the deadlines for proposing FIPs to remedy the deficiencies. Under this revised Agreement, EPA must propose and promulgate FIPs to address the deficiencies relating to the general plan requirements and LTS, and can defer proposing and promulgating FIPs to remedy deficiencies related to impairment which the Federal Land Managers (FLMs) have certified to EPA.

In March 12, 1987 (52 FR 7802), EPA proposed to disapprove the SIPs of 32 states (including Wyoming) for failing to meet the general plan and LTS requirements of 40 CFR 51.302 and 51.306, and to incorporate these Federal regulations into each state's SIP. The states were given the opportunity to avoid promulgation if they submitted SIP revisions to EPA by August 31, 1987.

On November 24, 1987, EPA disapproved SIPs for states (including Wyoming) which failed to meet the requirements of 40 CFR 51.302 and 51.306. EPA also incorporated these federal regulations into the SIPs of these states.

On September 6, 1988, Wyoming submitted a SIP revision that includes a new "Section 28 *Visibility*" of the Wyoming Air Quality Standards and Regulations (WAQSR), and the "Wyoming State Implementation Plan for Class I Visibility Protection" to comply with the federal provisions for visibility general plan requirements (40 CFR 51.302), monitoring (40 CFR 51.305), and LTS (40 CFR 51.306).

Wyoming has chosen not to protect integral vistas from visibility impairment at this time. Wyoming's submittal meets the requirements of 40 CFR 51.304.

Affected Areas

The following areas in Wyoming are mandatory Class I Federal areas where visibility is an important value:
Bridger Wilderness,
Fitzpatrick Wilderness,
Grand Teton National Park,
North Absaroka Wilderness,
Teton Wilderness,
Washakie Wilderness, and
Yellowstone National Park.

The areas in Wyoming listed below are also provided visibility protection by the State under the Visibility SIP. These are areas the State has redesignated to "Class I" and that do not appear in 40 CFR 81.436 as "mandatory Class I Federal areas." (Hereinafter, these State-designated Class I areas and the above mandatory Class I Federal areas will be referred to as "Class I areas".)
Savage Run Wilderness
Any area redesignated to Class I in accordance with applicable Wyoming State regulations

General Plan Requirements

A. Requirements

The visibility regulations provide general plan requirements for Visibility SIPs. The general plan requirements of 40 CFR 51.302(c) require that the SIPs include: (1) An assessment of visibility impairment and a discussion of how each element of the plan relates to the national goal; (2) emission limitations, or other control measures, representing best available retrofit technology (BART) for certain sources; (3) provisions to protect integral vistas; (4) provisions to address any existing impairment certified by the FLM; and (5) an LTS (10 to 15 years) for making reasonable progress toward the national goal.

The Wyoming Visibility SIP reiterates these general plan requirements throughout the Wyoming SIP for Class I Visibility Protection and section 28 of the WAQSR, with the exception of "(3) provisions to protect integral vistas." Since the State nor the FLM has identified integral vistas in Wyoming, the State need not address the mechanisms necessary to protect integral vistas from impairment.

B. Control Strategies

The regulations establish the following process for developing control strategies to remedy existing impairment. First, the State or the FLM identifies the Class I areas where visibility impairment exists. The regulations require the States to address in the SIP any impairment which has been certified at least six months prior to submittal. (See 40 CFR 51.302(c)(4).)

In identifying existing facilities which cause or contribute to the visibility impairment, the regulations require the State to adopt control strategies only to remedy impairment which has been reasonably attributed to a specific source or group of sources. Although the FLMs may provide the State with a list of sources suspected of causing any existing impairment in the certification, the responsibility of identifying sources is the State's. (See 45 FR 80086, col. 3 and 40 CFR 51.302(c)(4)(i).)

The State is required to perform a BART analysis for any existing stationary facility which has been identified as causing impairment in a Class I area. The State determines BART on a case-by-case basis taking into account the technology available, the costs of compliance, the energy and non-air quality environmental impacts of compliance, the remaining useful life of the source, and the degree of improvement that can be anticipated to result from the use of the controls. The State must adopt emission limitations representing BART which must be installed as expeditiously as practical, but no later than five years from SIP approval. (See 40 CFR 51.302(c)(4).)

The State is not required to adopt emission limitations representing BART if, for example, retrofit controls do not exist or are not anticipated to result in improvements in visibility. (See 45 FR 80087, col. 1.) However, if a source has not been subject to BART because control technologies do not exist, and, if the Administrator determines that new technologies are available which would more effectively control that pollutant, the State must re-analyze for BART at that time. (See 40 CFR 51.302(c)(4)(v).)

The regulations do not specify methods other than visual observation for characterizing visibility impairment. However, if a State is to adequately and timely address existing visibility impairment, a thorough characterization may be necessary. The EPA is aware that it, or the State, may find that the impairment cannot be attributed to specific sources and therefore cannot be addressed under the existing visibility regulations. (See 52 FR 7804, col. 1.) A thorough characterization is important when a BART analysis is conducted so that the anticipated improvements in visibility may be estimated. The State or EPA may find that the impairment is attributable to minor stationary sources or to emissions from prescription fires. In these cases, the need for a control strategy to remedy the impairment is assessed as part of the LTS rather than BART. (See 52 FR 7804, col. 1.)

The Wyoming Visibility SIP contains provisions which address the above control strategies in section 28 of the WAQSR. (A significant amount of detail on the development of Federal control strategies is contained in 52 FR 7802 (March 12, 1987).)

Wyoming's Visibility SIP does not provide sources the opportunity to apply for exemptions from BART, as discussed in 40 CFR 51.303. Wyoming's SIP, in this respect, is more stringent than the federal requirements.

C. Assessment of Visibility Impairment

The EPA reviewed the information provided by the Department of Interior (DOI) to determine if impairment (1) appeared to occur in Wyoming's Class I areas, and (2) if impairment was a type which may be traceable to specific sources. The information provided by the FLMs indicated that no Class I area in Wyoming is experiencing visibility impairment which may be traceable to specific sources.

The EPA is aware that the FLMs may in the future provide additional information on this impairment which would allow EPAs or a state to attribute it to a specific source. In such cases, the SIP commits the State to review the information under the procedures described above and in the periodic review of the LTS discussed below.

Monitoring Strategy

Under 40 CFR 51.305, all states with visibility protection areas are required to have a monitoring strategy for evaluating visibility in any Class I area by visual observation or other appropriate monitoring techniques. The purposes of this requirement are to generate data for evaluating visibility impairment trends, determine potential impacts of new sources, assess the effectiveness of the visibility protection program, and identify major contributing sources. These purposes can be adequately addressed by determining the background visibility protection areas and documenting the extent of any visibility impairment that can be attributed by a source or small group of sources.

Visibility impairment is the human perception of the effects of natural or man-made conditions which reduce visual range or contrast, or coloration change. Thus, a visibility monitoring program should identify these effects, as well as differentiate man-made effects from natural conditions. The program could generate various types of data such as reports from human observers, photographs, and/or automated instruments. The minimum data collection technique that 40 CFR 51.305 requires is visual observation. However, other more objective techniques, are available. (See "Interim Guidance for Visibility Monitoring", Office of Air Quality Planning and Standards, November 1980 (EPA 450/2-80-082).)

The goal of the monitoring strategy in Wyoming's SIP for Class I visibility protection is "* * * to assemble an adequate visibility data base to determine existing impairment * * * that is occurring in Wyoming and, in particular, Class I areas, and to maintain an ongoing monitoring program to evaluate the impacts of new or modified sources from within and outside the

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State." Wyoming will assemble any visibility data supplied by the FLMs and collected by the State through the New Source Review program in order to (1) establish baseline conditions, (2) develop visibility trends, and (3) identify visibility impairment attributable to a source or small group of sources. Wyoming's visibility monitoring strategy meets EPA criteria as outlined in 40 CFR 51.305.

Long-term Strategy

A. Requirements

The regulations require that the LTS be a 10 to 15 year plan for making reasonable progress toward the national goal. The LTS must cover an existing impairment that the FLM certified at least six months before plan submission. A LTS must be developed which covers each Class I area within the State and each Class I area in another state that may be affected by sources within the State. The strategy must be coordinated with existing plans and goals for a Class I area including those of the FLMs. The strategy must state with reasonable specificity why it is adequate for making reasonable progress toward the national goal. The LTS and SIP must provide for the review of the impact of new sources as required by 40 CFR 51.307. The State must consider at a minimum the following six factors in the LTS:

1. Emission reductions due to ongoing air pollution control programs;
2. Additional emission limitations and schedules for compliance;
3. Measures to mitigate the impacts of construction activities;
4. Source retirement and replacement schedules;
5. Smoke management (techniques for agricultural and forestry management purposes including such plans as currently exist within the State for these purposes); and
6. Enforcement of emission limitations and control measures.

The State must commit to periodic review of the SIP on a schedule not less frequent than every three years. A periodic report must be developed in consultation with the FLMs and must contain the following:

1. Progress achieved in remedying existing impairment;
2. The ability of the LTS to achieve reasonable progress toward the national goal;
3. Any change in visibility conditions since the last report or since plan approval;
4. Additional measures, including the need for SIP revisions, that may be necessary to achieve progress toward the national goal;
5. The progress achieved in implementing BART and meeting other schedules laid out in the LTS; and
6. The impact of any exemption granted.

The Wyoming Visibility SIP includes provisions which address federal LTS requirements in "*Long Term Strategy*" of the Wyoming State Implementation Plan for Class I Visibility Protection, and "(f) Long Term Strategy" in Section 28 of the WAQSR. Additional information concerning the federal LTS requirements is contained in 52 FR 7802 (March 12, 1987).

B. Remedies

The existing visibility regulations are designed to address impairment which can be traced to specific sources. Although visibility impairment which is reasonable attributable to a source or small group of sources has not been identified by the EPA, State, or FLMs in Wyoming, the federal LTS establishes a mechanism to address any additional impairment which may be certified in the future. Although EPA intends for these discussions to be the federal remedy, each of the states must develop their own LTS when developing their Visibility SIPs.

1. Ongoing Air Pollution Control Programs

The regulations require that each LTS provide for the review of the potential impact on visibility of new major stationary sources or major modifications in accordance with 40 CFR 51.307. The regulations further require that each SIP contain a discussion of the effect of ongoing air pollution control programs on remedying existing and preventing future impairment of visibility.

The Wyoming Visibility SIP has met these requirements. EPA approved the Wyoming NSR program for visibility protection on May 12, 1988 (51 FR 17334), and Wyoming discusses its ongoing programs in "*Long Term Strategy*" of the Visibility SIP.

2. Smoke Management Practices

The FLMs have not specifically identified smoke from prescribed fires as a cause of visibility impairment in the Class I areas. Wyoming currently requires that a permit be obtained from the Air Quality Division for controlled burning. Wyoming will coordinate with the FLMs to ensure that the best smoke management techniques and practices are employed, and Wyoming will continue to work with the FLMs and State agencies to develop state-of-the-art smoke management plans. These plans will be reviewed during the periodic LTS review process to ensure that the impacts due to smoke from prescribed burning on visibility in Class I areas are minimized.

3. Future Certifications of Impairment

Under the revised Settlement Agreement, EPA must address existing deficiencies in Visibility SIPs. Thus, EPA has only addressed the certifications of impairment in Class I areas made by the FLMs prior to June 1, 1988. The EPA is aware, however, that information may become available which indicates the existence of additional visibility impairment within the Class I areas or which may allow EPA or the State to attribute impairment to a specific source which could not be addressed at this time. A discussion of how any future impairment will be addressed may be found in 40 CFR 51.302(c). Wyoming has committed in the Visibility SIP to adequately address any future visibility impairment certified by a FLM or the State.

4. Existing Visibility Impairment

Because the FLMs have not identified existing visibility impairment in any of Wyoming's Class I areas, discussions related to source impact (such as additional emission limitations, source retirement and replacement, construction activities, and enforceability of emission limitations) are not required in the SIP at this time. Wyoming has, however, chosen to establish the mechanism for addressing existing visibility impairment and implementing BART one an existing source(s) has been identified as causing visibility impairment in a Class I area.

5. Periodic Review

EPA regulations require that the LTS be reviewed, and revised if necessary every three years. During this review, the results of any monitoring program will be considered, the FLMs will be consulted, and a report will be prepared which discusses the progress toward the national goal. Wyoming has committed to this periodic review of the LTS.

Final Action

The September 6, 1988, submittal by the Administrator of the Wyoming Air Quality Division includes a visibility plan to meet the general plan requirements, monitoring strategy, and LTS of 40 CFR 51.302, 51.305, and 51.306 and the criteria discussed in 50 FR 28544 and 52 FR 45132. (See October 23, 1984 (49 FR 42670), and March 12, 1987 (52 FR 7802), for additional information.) The State commits to a review of the Visibility SIP every three years, making any changes deemed necessary. The SIP, therefore, has established the commitment to review the visibility requirements listed in 40 CFR Part 51 Subpart P—Protection of Visibility. The approval will replace the federal plans and regulations of 40 CFR 52.26 (visibility monitoring strategy), 52.27 (protection of visibility from sources in attainment areas), and 52.29 (visibility long-term strategies) in the Wyoming SIP.

EPA hereby approves the revisions to the Wyoming Visibility SIP for general plan requirements, monitoring strategy, and LTS.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of the Federal Register notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective April 17, 1989.

EPA finds good cause exists for making the action taken in this notice immediately effective because the implementation plan revisions are already in effect under State law or regulation, and EPA's approval poses no additional regulatory burden.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the U.S. Court of Appeals for the appropriate circuit by April 17, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of EO 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Particulate matter, Incorporation by reference.

Note: Incorporation by reference of the State Implementation Plan for the State of Wyoming was approved by the Director of the Federal Register on July 1, 1982.

Date: February 1, 1989.

Jack Moore,

Acting Administrator.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart ZZ—Wyoming

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.2620 is amended by adding paragraph (c)(17) to read as follows:

§ 52.2620 Identification of plan.

* * * * *

(c) * * *

(17) A revision to the SIP was submitted by the Administrator of the Wyoming Air Quality Division on September 6, 1988, for visibility general plan requirements, monitoring, and long-term strategies.

(i) Incorporation by reference

(A) Letter dated September 6, 1988, Charles A. Collins, Administrator of the Wyoming Air Quality Division, submitting a SIP revision for visibility protection.

(B) The SIP revision for visibility protection, "Section 28 *Visibility*" of the Wyoming Air Quality Standards and Regulations, and "Wyoming State Implementation Plan for Class I Visibility Protection" was adopted by the Wyoming Environmental Quality Council on March 23, 1988, and became effective on May 10, 1988.

§ 52.2632 [Amended]

3. Section 52.2632 (a), (b), and (c) are removed.

[FR Doc. 89–3070 Filed 2–14–89; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 180

[PP 8E3644/R1002; FRL–3518–5]

Pesticide Tolerance for Fluorine Compounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for the combined residues of the insecticidal fluorine compounds cryolite and synthetic cryolite (sodium aluminum fluoride) in or on the raw agricultural commodity kiwifruit. This regulation to establish a maximum permissible level for residues of the insecticide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR–4).

EFFECTIVE DATE: February 15, 1989.

ADDRESS: Written objections, identified by the document control number, [PP 8E3644/R1002], may be submitted to: Hearing Clerk (A–110), Environmental Protection Agency, Room 3708, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail:

Hoyt Jamerson, Emergency Response and Minor Use Section (TS–767C), Registration Division (TS–767C), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Office location and telephone number: Room 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–2310

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the Federal Register of December 14, 1988 (53 FR 50258), in which it was announced that the Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition 8E3644 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project, and the Agricultural Experiment Station of California.

The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the residues of the insecticidal fluorine compounds cryolite and synthetic cryolite (sodium aluminum fluoride) in or on the raw agricultural commodity kiwifruit at 11.0 parts per million (ppm). The petition was revised to propose 15.0 ppm. The petitioner proposed that this use of cryolite on kiwifruit be limited to California based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and all other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public

health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 27, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.145 is revised to read as follows:

§ 180.145 Fluorine compounds; tolerances for residues.

(a) Tolerances are established for combined residues of the insecticidal fluorine compounds cryolite and synthetic cryolite (sodium aluminum fluoride) in or on the following agricultural commodities:

Commodities	Parts per million
Apples	7
Apricots	7
Beans	7
Beets, roots	7
Beets, tops	7
Blackberries	7
Blueberries (huckleberries)	7
Boysenberries	7
Broccoli	7
Brussels sprouts	7
Cabbage	7
Carrots	7
Cauliflower	7
Citrus fruits	7
Collards	7
Corn	7
Cranberries	7
Cucumbers	7
Dewberries	7
Eggplant	7
Grapes	7
Kale	7
Kohlrabi	7
Lettuce	7
Loganberries	7
Melons	7
Mustard greens	7
Nectarines	7
Okra	7
Peaches	7
Peanuts	7
Pears	7
Peas	7
Peppers	7
Plums (fresh prunes)	7
Pumpkins	7
Quinces	7
Radish, roots	7
Radish, tops	7
Raspberries	7
Rutabaga, roots	7
Rutabaga, tops	7
Squash (winter)	7
Squash (summer)	7
Strawberries	7
Tomatoes	7
Turnip, roots	7
Turnip, tops	7
Youngberries	7

(b) Tolerances with regional registration, as defined by § 180.1(n), are established for the combined residues of the insecticidal fluorine compounds, cryolite and synthetic cryolite (sodium aluminum fluoride), in or on the following raw agricultural commodities:

Commodities	Parts per million
Kiwifruit	15

[FR Doc. 89-3190 Filed 2-14-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 8E3648/R1003; FRL-3518-6]

Pesticide Tolerance for Glyphosate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for the combined residues of the herbicide glyphosate and its metabolite in or on the raw agricultural commodity asparagus. This regulation to establish a maximum permissible level for residues of the herbicide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: February 15, 1989.

ADDRESS: Written objections, identified by the document control number [PP 8E3648/R1003], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Room 3708, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail:

Hoyt Jamerson, Emergency Response and Minor Use Section (TS-767C), Registration Division (TS-767C), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Office location and telephone number: Room 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2310

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the Federal Register of December 14, 1988 (53 FR 50259), in which it was announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition 8E3648 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project, and the Agricultural Experiment Stations of California, Florida, Michigan, and New York.

The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the residues of the herbicide glyphosate (*N*-(phosphonomethyl)glycine), and its metabolite aminomethylphosphonic acid (AMPA) in or on the raw agricultural commodity asparagus at 0.5 part per million (ppm). This would require raising the already established tolerance for residues on asparagus from 0.2 ppm to 0.5 ppm.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and all other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 27, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. In § 180.364(a), in the entry for asparagus by revising the residue level of 0.2 ppm to 0.5 ppm, as follows:

§ 180.364 Glyphosate; tolerances for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Asparagus	0.5
* * * * *	

[FR Doc. 89-3191 Filed 2-14-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 8E3637/R1004; FRL-3518-6]

Pesticide Tolerance for Metolachlor

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the herbicide metolachlor in or on the raw agricultural commodity cabbage. The Interregional Research Project No. 4 (IR-4) petitioned for this tolerance.

EFFECTIVE DATE: February 15, 1989.

ADDRESS: Written objections, identified by the document control number [PP 8E3637/R1004], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail:

Hoyt Jamerson, Emergency Response and Minor Use Section (TS-767C), Registration Division (TS-767C), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2310.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the Federal Register of December 14, 1988 (53 FR 50261), in which it was announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition 8E3637 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project, and the Agricultural Experiment Stations of Florida, Hawaii, Massachusetts, New York, North Carolina, Oklahoma, Oregon, Virginia, and Wisconsin. The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the residues of the herbicide metolachlor (2-chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylethyl)acetamide) and its metabolites, determined as the derivatives, 2-[(2-ethyl-6-methylphenyl)aminol-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as the parent compound in or on the raw agricultural commodity cabbage at 1.0 part per million (ppm).

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and all other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 27, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.368(a) is amended by adding and alphabetically inserting in the listing the raw agricultural commodity cabbage, to read as follows:

§ 180.368 Metolachlor; tolerances for residues.

* * * * * *

(a) * * *

Commodities	Parts per million
• • • • • •	
Cabbage	1.0
• • • • • •	

[FR Doc. 89-3182 Filed 2-14-89; 8:45 am]
BILLING CODE 6560-50-M

40 CFR PART 180

[PP 7E3464/R1005; FRL-3519-7]

Pesticide Tolerance for Prometryn

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the herbicide prometryn in or on the raw agricultural commodity dill. The Interregional Research Project No. 4 (IR-4) petitioned for this tolerance.

EFFECTIVE DATE: February 15, 1989.

ADDRESS: Written objections, identified by the document control number, [PP 7E3464/R1005], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail:

Hoyt Jamerson, Emergency Response and Minor Use Section (TS-767C), Registration Division (TS-767C), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2310.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of December 12, 1988 (53 FR 50262), in which it was announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition 7E3464 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project, and the Agricultural Experiment Station of California.

The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the residues of the herbicide prometryn (2,4-bis(isopropylamino)-6-methylthio-*s*-triazine) in or on the raw agricultural commodity dill at 0.25 part per million (ppm). The petition was later amended to propose a tolerance of 0.3 ppm.

The petitioner proposed that this use of prometryn on dill be limited to use in California base on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and all other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 27, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.222 is amended by designating the current paragraph and list of tolerances as paragraph (a) and by adding new paragraph (b), to read as follows:

§ 180.222 Prometryn; tolerances for residues.

• • • • •

(b) Tolerances with regional registration, as defined in § 180.1(n), are established for residues of the herbicide prometryn (2,4-bis(isopropylamino-6-methylthio-*s*-triazine) in or on the following raw agricultural commodity:

Commodity	Parts per million
Dill	0.3

[FR Doc. 89-3193 Filed 2-14-89; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 704

[OPTS-82013D; FRL-3520-5]

Comprehensive Assessment Information Rule; Extension of Notification and Reporting Deadlines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; extension of notification and reporting deadlines.

SUMMARY: EPA has received two requests for a 60-day extension of either the effective date of the Comprehensive Assessment Information Rule (CAIR), or, in the alternative, an extension of all notification and reporting deadlines for the CAIR. EPA has evaluated these requests, and has decided to grant a 30-day extension for all CAIR notification and reporting deadlines for the 19 substances to the CAIR.

DATES: The notification and reporting deadlines are extended to the following dates:

1. Submission of a CAIR reporting form by manufacturers, importers, and processors under § 704.223(a) is extended to June 7, 1989.

2. Submission of a CAIR reporting form by persons who process a CAIR listed substance under a tradename under § 704.223(b) is extended to July 6, 1989.

3. Notification of customers who process a CAIR listed substance under a tradename under § 704.208(a)(3) is extended to April 7, 1989.

4. Submission to EPA of a list of tradenames under which a person distributes a CAIR listed substance under § 704.208(a)(1) is extended to March 20, 1989.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M Street SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: EPA issued the CAIR (40 CFR Part 704) in the **Federal Register** of December 22, 1988 (53 FR 51698), under section 8(a) of the Toxic Substances Control Act (TSCA). EPA received two requests for a 60-day extension of either the effective date of the CAIR, or, in the alternative, an extension of all notification and reporting deadlines for the CAIR. These requests were received from the National Paint and Coatings Association (NPCA) and The Society of the Plastics Industry (SPI). EPA has evaluated these requests, and has decided to grant a 30-day extension for all CAIR notification and reporting deadlines for the 19 substances subject to the CAIR to the above dates.

EPA realizes that the extension granted for the submission of tradenames under which a person distributes a CAIR listed substance under § 704.208(a)(1) is extended to a date that is more than 30 days after the original notification deadline of February 7, 1989. This was necessary because the extension requests submitted by NPCA and SPI were granted on February 7, 1989, and the publication of the **Federal Register** document announcing these extensions was not possible until after February 7. Therefore, EPA extended this deadline to 30 days after EPA's expected publication date of this **Federal Register** document. Note that the new notification deadline will be March 20, 1989, even if this date is more than 30 days after the publication date of this **Federal Register** document.

Individual companies may request a reasonable extension beyond these new deadlines on a substance-by-substance basis through the mechanisms set forth in the CAIR. Failure to comply with the new extension deadlines, or any further extension deadlines granted by EPA to individual companies, will constitute a violation of TSCA section 15(3), and may subject the violator to the penalties described in TSCA section 16.

List of Subjects in 40 CFR Part 704

Chemicals, Environmental protection, Hazardous materials, Reporting and recordkeeping requirements.

Dated: February 8, 1989.

Joseph J. Merenda,

Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 89-3530 Filed 2-14-89; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6708

[OR-943-09-4214-10; GP9-064; OR-19673(WASH), OR-19854(WASH)]

Partial Revocation of Powersite Classifications No. 349 and No. 400; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes one Secretarial order and one U.S. Geological Survey order insofar as they affect 153.40 acres of lands withdrawn for Bureau of Land Management's powersite purposes. This action will remove restrictions or open the lands to surface entry on 145 acres. Of the balance which is within Power Project No. 2145, 3.40 acres remain open subject to section 24 of the Federal Power Act and 5 acres remain closed to surface entry and mining. All the lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: March 10, 1989.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-231-6905.

By virtue of the authority vested in the Secretary of the Interior it is ordered as follows:

1. The Secretarial Order dated June 22, 1944, which established Powersite Classification No. 349, is hereby revoked insofar as it affects the following described lands:

Willamette Meridian

T. 28 N., R. 23 E.;
Sec. 26, lots 7 and 8, and NW¼SE¼.

The areas described aggregate 113.40 acres in Chelan and Douglas Counties.

2. The U.S. Geological Survey Order dated February 15, 1949, which established Powersite Classification No. 400, is hereby revoked insofar as it affects the following described land:

Willamette Meridian

T. 28 N., R. 23 E.;
Sec. 26, SW¼NE¼.

The area described contains 40 acres in Douglas County.

3. The State of Washington has waived its preference right for public highway rights-of-way or material sites as provided by the Federal Power Act of June 10, 1920, as amended, 16 U.S.C. 818.

4. That portion of lot 7 inside the boundary of Power Project No. 2145 remains closed to operation of the public land laws, including the mining laws.

5. That portion of lot 8 inside the boundary of Power Project No. 2145 has been and continues to be open to operation of the public land laws, including the mining laws, subject to the provisions of section 24 of the Federal Power Act of June 10, 1920.

6. That portion of Lot 8 outside the boundary of Power Project No. 2145 has been open to operation of the public land laws, including the mining laws, subject to the provisions of section 24 of the Federal Power Act of June 10, 1920, and will be relieved of the section 24 restriction at 8:30 a.m., on March 10, 1989.

7. At 8:30 a.m., on March 10, 1989, the land described in paragraphs 1 and 2, except as provided in paragraphs 4, 5, and 6, will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals and reservations, and to requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on March 10, 1989, shall be considered as simultaneously filed at that time. The land has been and continues to be open to the mining and mineral leasing laws.

Rick Ventura,

Assistant Secretary of the Interior.

February 3, 1989.

[FR Doc. 89-3488 Filed 2-24-89; 8:45 am]
BILLING CODE 4310-33-M

43 CFR Public Land Order 6709

[AK-932-09-4214-10; F-025943]

Modification of Public Land Order No. 3708; Transfer of Administrative Jurisdiction From the National Aeronautics and Space Administration to the National Oceanic and Atmospheric Administration; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order modifies Public Land Order No. 3708 to transfer jurisdiction of 8,500 acres of land withdrawn for a tracking station near Fairbanks, Alaska, from the National Aeronautics and Space Administration to the National Oceanic and

Atmospheric Administration and establishes a 20-year term. The land remains closed to the operation of mining laws, but has been and remains open to mineral leasing.

EFFECTIVE DATE: February 15, 1989.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, 907–271–3342.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 3706 is hereby modified to transfer administrative jurisdiction of the land to the National Oceanic and Atmospheric Administration and to expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended. The land is described as follows:

Fairbanks Meridian

T. 2 N., R. 1 E.,
Sec. 13, S½NE¼, SE¼NW¼, and S½;
Sec. 14, E½SE¼ and SW¼SE¼;
Sec. 17, SE¼NE¼, SE¼SW¼, and SE¼;
Sec. 20, E½, E½W½, and SW¼SW¼;
Sec. 21, SW¼NE¼, W½, NW¼SE¼, and S½SE¼;
Secs. 22 to 27, inclusive;
Sec. 28, N½N½ and SW¼NW¼;
Sec. 29, N½ and N½SW¼;
Sec. 30, SE¼NE¼ and NE¼SE¼;
Sec. 34, N½;
Sec. 35, E½NE¼ and W½NW¼.
T. 2 N., R. 2 E.,
Sec. 7, SE¼SE¼;
Sec. 8, SW¼SW¼;
Sec. 17, W½;
Secs. 18 and 19;
Sec. 20, W½E½ and W½.

The area described contains approximately 8,500 acres.

2. The land described above continues to be withdrawn from all forms of appropriation under the public land laws, including the mining laws (30 U.S.C., Ch. 2), but not from leasing under the mineral leasing laws and is subject to all other terms and conditions of Public Land Order No. 3706.

Rick Ventura,

Assistant Secretary of the Interior.

February 3, 1989.

[FR Doc. 89–3487 Filed 2–14–89; 8:45 am]

BILLING CODE 4310–JA–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations; Colorado et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are determined for the communities listed below.

The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base (100-year) flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for floodplain management in flood-prone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been prepared. It does not involve any collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

PART 67—[AMENDED]

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. No appeal was made during the ninety-day period and the proposed base flood elevations have not been changed.

Source of flooding and location	# Depth in feet above ground. Elevation in feet (NGVD)
COLORADO	
Georgetown (town), Clear Creek County (FEMA Docket No. 6902)	
Clear Creek:	
Entire shoreline of Georgetown Lake	*8,445
At 15th Street	*8,462
Approximately 70 feet downstream of footbridge	*8,480
Approximately 90 feet upstream of 7th Street	*8,508
Approximately 600 feet upstream of 6th Street	*8,539
Approximately 730 feet upstream of 3rd Street extended	*8,597
South Clear Creek:	
At confluence with Clear Creek	*8,490
Approximately 150 feet upstream of Main Street	*8,526
Approximately 300 feet upstream of Main Street	*8,536
Approximately 80 feet upstream of 3rd Street	*8,662
Maps are available for review at Town Hall, 404 Sixth Street, Georgetown, Colorado.	
Montezuma County (unincorporated areas) (FEMA Docket No. 6902)	
Dolores River:	
Approximately 1,200 feet upstream of State Highway 145	*6,984
Approximately 12,400 feet upstream of State Highway 145	*6,985
Approximately 7,900 feet downstream of confluence of Carver Canyon Creek	*7,044
Approximately 3,000 feet upstream of confluence of Carver Canyon Creek	*7,107
Approximately 4,300 feet upstream of County Road 36	*7,166
Approximately 8,550 feet upstream of confluence of Spruce Water Canyon Creek	*7,232
Approximately 2,700 feet downstream of Four Corners Bridge	*7,295
Approximately 7,180 feet upstream of Four Corners Bridge	*7,350
Approximately 1,980 feet upstream of Private Road	*7,405
West Dolores River:	
Approximately 550 feet downstream of State Highway 145	*7,361
Approximately 715 feet upstream of State Highway 145	*7,372
Approximately 2,950 feet upstream of State Highway 145	*7,391
Mancos River:	
Approximately 3,350 feet downstream of Spruce Street	*6,911
Approximately 140 feet downstream of Spruce Street	*6,966
Approximately 1,225 feet upstream of Town of Mancos eastern corporate limits	*7,066
Lost Canyon Creek:	
Approximately 1,400 feet downstream of County Road 30	*6,925
Approximately 75 feet upstream of County Road 30	*6,932
Approximately 2,250 feet upstream of County Road 30	*6,943
Chicken Creek:	
Approximately 6,650 feet downstream of Driveway Bridge	*6,926
Approximately 2,610 feet downstream of Driveway Bridge	*6,970
Approximately 1,250 feet upstream of Driveway Bridge	*7,004
Maps are available for review at the Montezuma County Courthouse, County Administrator's Office, 109 West Main Street, Cortez, Colorado.	
FLORIDA	
Indian River County (unincorporated areas) (FEMA Docket No. 6902)	
Main Relief Canal:	
About 300 feet downstream of Country Club Drive	*8
Just downstream of spillway	*10
Just upstream of spillway	*17
About 1.9 miles upstream of King's Highway	*24
North Relief Canal:	
About 0.8 mile downstream of U.S. Route 1	*7
About 1 mile upstream of 66th Avenue	*23
Lateral G:	
At mouth	*15
About 2,100 feet upstream of King's Highway	*23
Lateral H:	
At mouth	*15
Just downstream of 41st Street	*21
South Relief Canal:	
At mouth	*5
Just downstream of 43rd Avenue	*21
Sebastian Creek/South Prong Creek:	
At mouth	*6
About 100 feet downstream of Wabasso Road	*17
Atlantic Ocean:	
Just west of A1A about 6,000 feet south of North County Boundary	*7
About 300 feet east of the intersection of Live Oak Road and 46th Place	*17
Lateral J:	
At mouth	*15
About 3,000 feet upstream of Highland Drive	*21
Indian River:	
About 1,800 feet west of A1A, about 2,000 feet south of North County Boundary	*5
On Wabasso Island	*10
Vero Lakes Channel A:	
About 100 feet upstream of mouth	*11
At confluence of Vero Lakes Channel D	*23
Vero Lakes Channel B:	
At mouth	*20
About .9 mile upstream of 101st Avenue	*24
Vero Lakes Channel C:	
At mouth	*22
About .5 mile upstream of 106th Avenue	*24
Vero Lakes Channel D:	
At mouth	*23
About 2,700 feet upstream of 102nd Avenue	*25
St. John's Marsh:	
At the intersection of State Road 60 and County Road 512	*22
Just downstream of State Road 60	*29
Maps available for inspection at the County Administration Building, 1840 25th Street, Vero Beach, Florida.	
Indian River Shores (town), Indian River County (FEMA Docket No. 6902)	
Atlantic Ocean: Along shoreline	*17
Indian River:	
At the intersection of Hidden Oak Lane and Barker Island	*7
	*9
Maps available for inspection at the Town Hall, 6001 North A1A, Vero Beach, Florida.	
Orchid (town), Indian River County (FEMA Docket No. 6902)	
Indian River:	
On Horseshoe Island	*8
At mouth of East Channel	*10
Maps available for inspection at the Mayor's Home, 1 Deerfield Drive, Vero Beach, Florida.	
Sebastian (city), Indian River County (FEMA Docket No. 6902)	
Indian River:	
At intersection of Indian River Drive and Davis Street	*6
About 100 feet east of intersection of Indian River Drive and Harrison Street	*9
South Prong Creek/Sebastian Creek:	
About 600 feet west of intersection of Robin Lane and Roseland Road	*6
About 400 feet upstream of confluence of Elkcam Waterway	*13
Collier Creek:	
About 200 feet downstream of Roseland Road	*6
Just downstream of spillway	*10
Just upstream of spillway	*16
About 250 feet downstream of Fellsmere Road	*18
Collier Waterway/Elkcam Waterway:	
About 200 feet upstream of mouth	*12
Just downstream of dam	*13
Just upstream of dam	*18
About 200 feet downstream of Fellsmere Road	*19
Maps available for inspection at the City Hall, 1225 Main Street, Sebastian, Florida.	
Vero Beach (city), Indian River County (FEMA Docket No. 6902)	
Main Relief Canal:	
About 700 feet downstream of U.S. Route 1	*8
Just downstream of spillway	*10
Just upstream of spillway	*17
Just upstream of control structure	*20
Indian River:	
At the intersection of Beachland Boulevard and Mockingbird Drive	*6
Parely Island	*6
Atlantic Ocean:	
About 300 feet east of the intersection of Easter Lilly Lane and Ocean Drive	*17
About 1,000 feet east of intersection of Tulip Lane and Ocean Drive	*19
Maps available for inspection at the Planning Department, City Hall, Vero Beach, Florida.	
GEORGIA	
Dade County (unincorporated areas) (FEMA Docket No. 6936)	
Lookout Creek:	
Just downstream of the confluence of Tributary No. 1	*696
Just downstream of State Route 143	*713
Tributary No. 1:	
At mouth	*696
About 0.4 mile downstream of Norfolk Southern Railway	*699
Pope Creek:	
About 300 feet downstream of Pope Creek Road	*670
At state boundary	*915
Nickajack Lake: Within community	*635
Maps available for inspection at the Dade County Property and Record's Office, County Courthouse, Trenton, Georgia.	
Estonton (city), Putnam County (FEMA Docket No. 6936)	
Rocky Creek:	
Just upstream of Concorde Avenue	*629
About 2,000 feet upstream of Sumter Street	*678
Maps available for inspection at the City Clerk's Office, City Hall, Estonton, Georgia.	
Sylvester (city), Worth County (FEMA Docket No. 6936)	
Town Creek:	
Just upstream of Town Creek Drive	*342
Just downstream of Franklin Street	*360
Just upstream of Franklin Street	*365
About 600 feet upstream of Wallace Street	*374
Town Creek Tributary No. 1:	
At mouth	*346
At Franklin Street	*372
Town Creek Tributary No. 2:	
At mouth	*354
About 1,400 feet upstream of Franklin Street	*389
Town Creek Tributary No. 3:	
At mouth	*356
At North Street	*383
Maps available for inspection at the City Clerk's Office, City Hall, Sylvester, Georgia.	
Thomaston (city), Upson County (FEMA Docket No. 6936)	
Drake Branch:	
At mouth	*652
Just upstream of North Bethel Street	*670
Town Branch:	
About 3,200 feet upstream of Davis Lake Road	*634
Just upstream of State Route 36	*660
Bell Creek:	
About 1,600 feet downstream of U.S. Route 19	*624
Just upstream of U.S. Route 19	*642
Potato Creek:	
About 3,800 feet upstream of Hannahs Mill Road	*649
About 1,400 feet upstream of U.S. Route 19	*652
Smokey Hollow Lake: Entire shoreline	*685
City Reservoir: Entire shoreline	*726
Maps available for inspection at the City Manager's Office, City Hall, Thomaston, Georgia.	
Trenton (city), Dade County (FEMA Docket No. 6936)	
Town Creek:	
At mouth	*702
About 900 feet upstream of Pace Drive	*745
Lookout Creek:	
About 0.5 mile upstream of confluence of Tributary No. 1	*698
Just downstream of State Route 143	*713
Tributary No. 1:	
About 0.4 mile downstream of Norfolk Southern Railway	*699
About 900 feet upstream of Barton Avenue	*758
Maps available for inspection at the City Clerk's Office, City Hall, Trenton, Georgia.	
Upson County (unincorporated areas) (FEMA Docket No. 6936)	
Drake Branch:	
At mouth	*652
About 1,000 feet downstream of North Bethel Street	*654
Norris Creek:	
At mouth	*662
Just upstream of Atwater Road	*723
Potato Creek:	
Just upstream of State Route 36	*527
About 3,500 feet downstream of State Route 74	*650
About 600 feet upstream of State Route 74	*619
About 300 feet upstream of Delray Road	*671
Potato Creek Tributary:	
At mouth	*644
Just downstream of Moore Crossing Road	*659
Just upstream of Moore Crossing Road	*665
Just upstream of Jeff Davis Road	*713

Source of flooding and location	# Depth in feet above ground. ^ Elevation in feet (NGVD)
Tennile Creek:	
At mouth	*637
Just downstream of Jeff Davis Road	*670
About 350 feet upstream of Jeff Davis Road	*676
Just upstream of Willingham Road	*737
Town Branch:	
At mouth	*568
Just downstream of Davis Lake Road	*621
Just upstream of Davis Lake Road	*626
Just downstream of State Route 36	*639
Bell Creek:	
Just upstream of the confluence of Town Branch	*588
Just downstream of Old Talbotton Road	*591
Just upstream of Old Talbotton Road	*596
About 1,300 feet downstream of U.S. Route 19	*627
Raines Branch:	
About 4,100 feet upstream of mouth	*392
Just downstream of U.S. Route 80	*410
Just upstream of U.S. Route 80	*415
About 2,300 feet upstream of U.S. Route 80	*439
Maps available for inspection at the County Clerk's Office, County Courthouse, Thomaston, Georgia.	
IDAHO	
Elmore County (unincorporated areas) (FEMA Docket No. 6836)	
Little Canyon Creek:	
Approximately 480 feet above confluence with Snake River	*2,488
Approximately 2,980 feet downstream of Boise Street	*2,533
Approximately 1,200 feet upstream of Highway 30	*2,592
Approximately 3,400 feet downstream of County Road located between sections 18 and 19	*2,672
At upstream side of County Road located between sections 18 and 19 in Township 8S Range 10E	*2,689
Rattlesnake Creek:	
Just upstream of 16th South Street	*3,115
Approximately 1,300 feet upstream of 12th South Street	*3,125
Approximately 3,800 feet upstream of 6th South Street	*3,144
Approximately 1,100 feet downstream of Interstate Highway 84	*3,171
Approximately 2,900 feet upstream of Interstate Highway 84	*3,217
South Fork Boise River:	
Just upstream of Pine Bridge	*4,209
Approximately 1,050 feet downstream of confluence of Dare Gulch	*4,264
Approximately 100 feet downstream of confluence of Green Creek	*4,342
Approximately 3,800 feet downstream of confluence of Fairview Creek	*4,430
Approximately 100 feet upstream of Featherville Bridge	*4,487
Summerwind Drainage:	
Approximately 1,190 feet downstream of Summerwind Drive	*3,232
Approximately 80 feet downstream of Summerwind Drive	*3,237
Approximately 80 feet downstream of Beaman Road	*3,340
Just upstream of Beaman Road	*3,341
Maps are available for review at the Elmore County Planning and Zoning Department, 190 South Fourth East Street, Mountain Home, Idaho.	
ILLINOIS	
Hanover (village), Jo Daviess County (FEMA Docket No. 6836)	
Apple River:	
About 1.5 miles downstream of Hanover Dam	*816
About 0.8 mile upstream of Hanover Dam	*822
Maps available for inspection at the Clerk's Office, Village Hall, Hanover, Illinois.	

Source of flooding and location	# Depth in feet above ground. ^ Elevation in feet (NGVD)
IOWA	
Elliott (city), Montgomery County (FEMA Docket No. 6837)	
East Nishnabotna River:	
Just upstream of State Highway 48	*1,070
About 2,900 feet upstream from State Highway 48	*1,071
Cox Creek:	
About 0.35 mile upstream of mouth	*1,070
About 0.27 mile upstream of Burlington Northern railroad	*1,084
Tributary A:	
Just upstream of mouth	*1,070
Just upstream of Burlington Northern railroad	*1,075
Cox Creek Divergence:	
At convergence	*1,073
At divergence	*1,082
Maps available for inspection at the City Hall, 210 Main Street, Elliott, Iowa.	
KANSAS	
Ellsworth (city), Ellsworth County (FEMA Docket No. 6832)	
Smoky Hill River:	
About 250 feet upstream of U.S. Highway 156	*1,533
Just downstream of Burlington Northern railroad	*1,539
K-14 Tributary:	
Just upstream of 8th Street	*1,546
Just downstream of Douglas Avenue (upstream crossing)	*1,562
Shallow Flooding (overflow from K-14 Tributary): Within community	#2
Maps available for inspection at the City Offices, Ellsworth, Kansas.	
KENTUCKY	
Butler County (unincorporated areas) (FEMA Docket No. 6838)	
Green River:	
At confluence of Mud River	*403
About 0.2 mile upstream of Lock No. 5	*437
Maps available for inspection at the County Fiscal Courtroom, County Courthouse, Morgantown, Kentucky.	
Knox County (unincorporated areas) (FEMA Docket No. 6827)	
East Fork Lynn Camp Creek:	
At mouth	*1,071
Just downstream of Private Road (About 2,100 feet upstream of Indian Creek Road)	*1,100
Lynn Camp Creek:	
At county boundary	*1,066
About 0.5 mile upstream of Back Street	*1,089
Cumberland River:	
About 2 miles downstream of confluence of Swampond	*976
About 2 miles upstream of confluence of Ledger Branch	*995
Cumberland River High Flow Diversion Channel:	
At confluence with Cumberland River	*960
At divergence with Cumberland River	*983
Richland Creek:	
Just downstream of School Street	*986
About 2,100 feet upstream of Old Railroad Grade Road	*996
Maps available for inspection at the County Courthouse, Barbourville, Kentucky.	
MAINE	
Bristol (town), Lincoln County (FEMA Docket No. 6836)	
Muscongus Bay:	
At Beck Shore Road extended	*19
Approximately 2,000 feet north of Pumpkin Cove	*43
Eastern Branch Johns River: Entire shoreline	*10
Pemaquid River: Entire shoreline	*10
Johns Bay:	
Approximately .6 mile west along shoreline from Pemaquid Harbor Road extended	*13

Source of flooding and location	# Depth in feet above ground. ^ Elevation in feet (NGVD)
Approximately .6 mile north of Pemaquid Point along shoreline	*25
Maps available for inspection at the Town Assessor's Office, Bristol, Maine.	
China (town), Kennebec County (FEMA Docket No. 6832)	
West Branch Sheepscot River:	
Approximately .6 mile upstream of corporate limits	*209
Approximately 540 feet upstream of Weeks Mills Road	*217
Meadow Brook:	
Approximately 1,000 feet downstream of Tobey Road	*300
Approximately 100 feet upstream of Dirigo Road	*320
Maps available for inspection at the Town Manager's Vault, South China, Maine.	
Eliot (town), York County (FEMA Docket No. 6836)	
Spinney Creek:	
At confluence with Piscataqua River	*9
Approximately 340 feet upstream of State Road	*30
Piscataqua River: Entire length within community	*9
Maps available for inspection at the Town Hall, Eliot, Maine.	
Kingfield (town), Franklin County (FEMA Docket No. 6802)	
Carrabassett River:	
At downstream corporate limits	*536
Approximately 1.8 miles upstream of confluence of West Branch Carrabassett River	*601
West Branch Carrabassett River:	
At confluence with the Carrabassett River	*569
Approximately 2 miles upstream of confluence with Carrabassett River	*574
Maps available for inspection at the Town Clerk's Safe, Kingfield, Maine.	
Owls Head (town), Knox County (FEMA Docket No. 6833)	
Rockland Harbor:	
At Broad Cove	*13
At Coopers Beach	*15
At Ocean Avenue	*16
At Battery Point	*16
Owls Head Bay:	
At Main Street	*13
At Glins Point	*12
Shoreline at Lighthouse Road extended	*19
Muscle Ridge Channel:	
At Ash Point Drive extended	*14
At Otter Point	*14
At Ash Point	*17
Ballyhac Cove: At Dublin Road	*10
Maps available for inspection at the Municipal Building, Star Route 32, Owls Head, Maine.	
Rockport (town), Knox County (FEMA Docket No. 6836)	
Atlantic Ocean:	
Shoreline of West Penobscot Bay at Beauchamp Point	*15
At Goose Rock	*19
Shoreline of West Penobscot Bay approximately 1,700 feet east of intersection of Russell Avenue and Calderwood Lane	*23
Shoreline approximately 6,500 feet north of Babsocks Point	*37
Goose River:	
At Pascal Avenue	*10
Downstream side of Commercial Street	*45
Downstream side of Main Street (downstream crossing)	*55
Approximately 30 feet upstream of Park Street	*90
Maps available for inspection at the Planning Office, Rockport, Maine.	

Source of flooding and location	# Depth in feet above ground. ^ Elevation in feet (NGVD)
South Thomaston (town), Knox County (FEMA Docket No. 6832)	
Atlantic Ocean:	
Shoreline along Seal Harbor	*11
Shoreline along Waterman Point	*13
Southeastern shoreline of Burnt Island	*28
Weskeag River: Entire length within corporate limits	*10
St. George River: Entire length within corporate limits	*11
Maps available for inspection at the Town Office, South Thomaston, Maine.	
MARYLAND	
Brookeville (town), Montgomery County (FEMA Docket No. 6836)	
Reddy Branch:	
Approximately 550 feet downstream of downstream corporate limits	*351
At confluence of Tributary No. 209 (Spring Branch)	*362
Tributary No. 209 (Spring Branch):	
At confluence with Reddy Branch	*362
At upstream corporate limits	*366
Maps available for inspection at 205 Market Street, Brookeville, Maryland.	
Send comments to The Honorable Richard S. Allen, Chairman of the Town of Brookeville Board of Supervisors, Montgomery County, 205 Market Street, Brookeville, Maryland 20833.	
MASSACHUSETTS	
Andover (town), Essex County (FEMA Docket No. 6832)	
Merrimack River:	
Approximately 7,800 feet downstream of Interstate Route 93	*50
At upstream corporate limits	*59
Shawsheen River:	
Upstream side of Boston and Maine Railroad	*55
Downstream side of Interstate Route 93	*75
Fish Brook:	
At confluence with Merrimack River	*55
Approximately 30 feet upstream of Greenwood Road	*123
Hussey Brook:	
At confluence with Shawsheen River	*37
Approximately 0.7 mile upstream of Beacon Street	*137
Hussey Brook Tributary:	
At confluence with Hussey Brook	*61
Approximately 250 feet upstream of Beacon Street	*64
Maps available for inspection at the Engineering Department, Town Offices, Andover, Massachusetts.	
Dracut (town), Middlesex County (FEMA Docket No. 6832)	
Merrimack River:	
At downstream corporate limits	*57
At upstream corporate limits	*63
Beaver Brook:	
At downstream corporate limits	*76
Approximately 700 feet upstream of Parker Avenue	*87
Approximately 1,400 feet upstream of Parker Avenue	*87
Approximately 1,000 feet upstream of Phineas Street	*91
At confluence of Gumpas Pond Brook	*123
Richardson Brook:	
At confluence with Merrimack River	*60
Upstream side of Methuen Street	*95
Upstream side of Cranberry Road	*107
Upstream side of State Route 113 (Broadway Street)	*166
Trout Brook:	
At confluence with Richardson Brook	*96
Upstream side of Parker Road	*143
Tributary to Beaver Brook:	
At confluence with Beaver Brook	*91

Source of flooding and location	# Depth in feet above ground. ^ Elevation in feet (NGVD)
Approximately 660 feet upstream of Lakeview Avenue	*106
Peppermint Brook:	
At confluence with Beaver Brook	*76
Approximately 100 feet downstream of Hildreth Street	*81
Gumpas Pond: At upstream corporate limits (State Boundary)	*123
Maps available for inspection at the Town Hall, Town Clerk's Vault, Dracut, Massachusetts.	
Needham (town), Norfolk County (FEMA Docket No. 6832)	
Charles River:	
At downstream corporate limits	*75
At upstream corporate limits	*109
Fuller Brook:	
Entire reach from corporate limits upstream to a point approximately 630 feet downstream of S.R. 135	*134
Maps available for inspection at the Planning Department, Town Hall, Needham, Massachusetts 02192.	
Wenham (town), Essex County (FEMA Docket No. 6836)	
Miles River:	
At downstream corporate limits	*32
Just upstream of Dodge Row	*44
Maps available for inspection at the Town Clerk's Vault, Town Hall, 138 Main Street, Wenham, Massachusetts.	
Weymouth (town), Norfolk County (FEMA Docket No. 6827)	
Hingham Bay:	
At Lower Neck Cove	*13
At Parrell Street and Fort Point Road	*13
At west side of Slate Island	*15
At southwest side of Slate Island	*15
At north side of Slate Island	*17
At Rose Cliff	*17
At north side of Grape Island	*18
At Lower Neck	*18
At Upper Neck	*18
Weymouth Fore River:	
At approximately 300 feet south of Pearnet Road and Weseagusett Road intersection	*14
At approximately 120 feet inland of shoreline by the intersection of Shore Drive and Ocean Avenue	*15
Entire shoreline along Regatta Road from approximately 100 feet east of Bradmere Way extended to approximately 100 feet northeast of North Street extended	*17
Weymouth Back River: At approximately 1,050 feet downstream of the end of Broad Reach Road	*15
Maps available for inspection at the Planning Department, Town Hall, 75 Middle Street, Weymouth, Massachusetts.	
Worthington (town), Hampshire County (FEMA Docket No. 6836)	
Middle Branch Westfield River:	
At downstream corporate limits	*775
Approximately 200 feet downstream of second crossing of Parish Road	*1,008
Bronson Brook:	
At downstream corporate limits	*1,014
Approximately 20 feet upstream of second crossing of Dingle Road	*1,385
Maps available for inspection at the Town Clerk's Vault, Town Hall, Huntington Road, Worthington, Massachusetts.	
MICHIGAN	
Allegan (city), Allegan County (FEMA Docket No. 6836)	
Kalamazoo River:	
About 2.0 miles downstream of abandoned railroad	*817

Source of flooding and location	# Depth in feet above ground. ^ Elevation in feet (NGVD)
Just downstream of Allegan city dam	*827
Just upstream of Allegan city dam	*833
About 1.5 miles upstream of State Highway 89	*836
Maps available for inspection at the City Hall, 112 Locust Street, Allegan, Michigan.	
Ashland (township), Newaygo County (FEMA Docket No. 6836)	
Muskegon River:	
At downstream corporate limit	*822
At upstream corporate limit	*829
Maps available for inspection at the Township Hall, 2019 West 120th Street, Grant, Michigan.	
Au Gres (city), Arenac County (FEMA Docket No. 6836)	
Au Gres River:	
About 3,000 feet downstream of confluence of Sager Creek	*584
About 4,200 feet upstream of U.S. Highway 23	*587
Sager Creek:	
At mouth	*584
About 1,300 feet upstream of Court Street	*586
Saginaw Bay: Within community	*584
Maps available for inspection at the City Hall, 124 West Huron, Au Gres, Michigan.	
Au Gres (township), Arenac County (FEMA Docket No. 6836)	
Au Gres River:	
About 4,600 feet downstream of confluence of Chief Creek Drain	*587
About 1,200 feet upstream of confluence of Burnt Drain	*585
Sager Creek:	
About 1,800 feet downstream of Santiago Road	*586
About 500 feet downstream of Santiago Road	*586
Saginaw Bay: Along shoreline	*584
Maps available for inspection at the Supervisor's Home, 2300 Manor Road, Au Gres, Michigan.	
Bangor (city), Van Buren County (FEMA Docket No. 6836)	
South Branch Black River:	
About 0.90 mile downstream of Hamilton Road	*636
About 0.80 mile upstream of Center Street	*640
Maple Creek:	
At mouth	*631
Just downstream of 34th Avenue	*650
Boyer Drain:	
At mouth	*645
About 0.55 mile upstream of Center Street	*658
Maps available for inspection at the City Hall, 257 West Monroe, Bangor, Michigan.	
Garfield (township), Newaygo County (FEMA Docket No. 6832)	
Muskegon River:	
At downstream corporate limit	*627
About 800 feet downstream of Bridge Street	*642
Maps available for inspection at the Township Hall, 6333 Bingham Avenue, Newaygo, Michigan.	
MINNESOTA	
Sebeka (city), Wadena County (FEMA Docket No. 6836)	
Redeye River:	
About 1.4 miles downstream of Jefferson Avenue	*1372
About 1425 feet upstream of Minnesota Street	*1390

Source of flooding and location	# Depth in feet above ground. Elevation in feet (NGVD)
Maps available for inspection at the City Hall, 207 Jefferson Avenue, South, Batavia, Minnesota.	
MISSISSIPPI	
Iuka (city), Tishomingo County (FEMA Docket No. 6836)	
Tributary A:	
At mouth	*834
About 1,080 feet upstream of Graham Road	*838
Indian Creek:	
Just upstream of corporate limits	*814
Just downstream of Lee Highway	*869
Maps available for inspection at the City Clerk's Office, City Hall, 118 South Pearl, Iuka, Mississippi.	
Lowndes County (unincorporated areas) (FEMA Docket No. 6832)	
Black Creek:	
At confluence with Luxapallila Creek	*185
Just downstream of Gilmer Road	*219
Ellis Creek:	
At confluence with Tombigbee River	*162
About 2.6 miles upstream of State Highway 69	*236
Greens Creek:	
At confluence with Ellis Creek	*168
Just downstream of Lake Lowndes Road	*273
Luxapallila Creek:	
At mouth	*188
At state boundary	*214
Luxapallila Creek Tributary:	
At confluence with Luxapallila Creek	*196
About 2,000 feet upstream of State Highway 50	*228
McCrary Creek:	
Just downstream of Sewage Treatment Plant Access Road	*172
At state boundary	*275
Oak Stush Creek:	
At confluence with Tombigbee River	*173
Just upstream of Younger Road	*207
Oak Stush Tributary:	
At confluence with Oak Stush Creek	*175
About 2,500 feet upstream of West Point Road	*188
Ellis Creek Tributary:	
At confluence with Ellis Creek	*179
About 3,900 feet upstream of Hildreth Road	*286
Tombigbee River:	
At state boundary	*153
At confluence of Buttahatchie River	*188
Tombigbee River Tributary No. 1:	
At confluence with Tombigbee River	*186
About 3,600 feet upstream of Burlington Northern railroad	*186
Tombigbee River Tributary No. 2:	
At mouth	*178
About 1,100 feet upstream of New Bell Road	*186
Walker Creek:	
At confluence with Luxapallila Creek	*186
About 2.3 miles upstream of Caledonia-Steens Road	*204
Tibbee Creek:	
At mouth	*176
At confluence of Catalpa Creek	*181
Mogby Creek:	
Just upstream of Lehmberg Road	*188
Just downstream of Lee Stokes Road	*280
Just upstream of Lee Stokes Road	*295
At state boundary	*236
Maps available for inspection at the County Courthouse, Columbus, Mississippi.	
Oktibbeha County (unincorporated areas) (FEMA Docket No. 6836)	
Talking Warrior Creek:	
About 1,400 feet downstream of State Highway 25	*254
About 1,600 feet upstream of State Highway 25	*257
Tobacco Juice Creek:	
About 0.62 mile downstream of Southgate Drive	*239
About 2,800 feet upstream of State Highway 25	*261
Hollis Creek:	
About 2,900 feet upstream of Poor-house Road	*295
About 2.2 miles upstream of Poor-house Road	*315
Sand Creek:	
About 3,000 feet downstream of County Road	*221
About 2,300 feet upstream of County Road	*313
Sand Creek Tributary 1: At Patrick Road	*283
Maps available for inspection at the Chancery Clerk's Office, County Courthouse, Starkville, Mississippi.	
NEW HAMPSHIRE	
Colebrook (town), Coos County (FEMA Docket No. 6835)	
Connecticut River:	
At downstream corporate limits	*1,008
Confluence of Mohawk River	*1,010
Upstream corporate limits	*1,019
Maps available for inspection at the Town Clerk's Vault, Colebrook, New Hampshire.	
Gilford (town), Belknap County (FEMA Docket No. 6841)	
Gunstock Brook:	
At upstream side of State Route 11B	*806
Approximately 2,060 feet upstream of Alvah Wilson Road	*748
Gunstock Brook Tributary:	
At confluence with Gunstock Brook	*516
Approximately 175 feet upstream of State Route 11B	*587
Lake Winnipesaukee: Entire shoreline within community	*806
Maps available for inspection at the Town Office, 66 Belknap Mountain Road, Gilford, New Hampshire.	
Greenland (town), Rockingham County (FEMA Docket No. 6835)	
Pickering Brook:	
Approximately 1,260 feet downstream of State Route 151	*7
At upstream corporate limits	*27
Great Bay: Entire shoreline within community including Winnicut River up to dam near State Route 101	*7
Maps available for inspection at the Town Office, 575 Portsmouth Avenue, Greenland, New Hampshire.	
Littleton (town), Grafton County (FEMA Docket No. 6835)	
Ammonoosuc River:	
Downstream corporate limits	*689
Downstream side of Northbound Interstate 93 Bridge	*725
Upstream side of Bridge Street Bridge	*756
Downstream side of Cottage Street Bridge	*789
Downstream side of Chiswick Avenue Bridge	*822
Upstream corporate limits	*879
Baker Brook:	
Confluence with Ammonoosuc River	*694
Upstream corporate limits	*853
Dells Brook:	
Confluence with Ammonoosuc River	*712
Upstream side of Northbound Interstate Route 93 Bridge	*766
Upstream side of State Route 18 Bridge	*805
Approximately 0.6 mile upstream of State Route 18 Bridge	*861
Farr Brook:	
Confluence with Dells Brook	*787
Upstream side of State Route 18 Bridge	*836
Palmer Brook:	
Confluence with Ammonoosuc River	*826
At State Route 116 Bridge	*847
Upstream side of Pleasant Street Bridge	*900
Approximately 1,155 feet upstream of Gary Drive Bridge	*965
Maps available for inspection at the Town Clerk's Vault, Littleton, New Hampshire.	
Newfields (town), Rockingham County (FEMA Docket No. 6836)	
Great Bay: Entire shoreline of Squamscott River within Newfields	*8
Piscassic River:	
At Ice Pond dam	*92
Approximately 1,060 feet upstream of upstream corporate limits	*106
Maps available for inspection at Town Hall, Newfields, New Hampshire.	
Stratham (town), Rockingham County (FEMA Docket No. 6832)	
Squamscott River: Entire reach of stream within corporate limits	*8
Maps available for inspection at the Stratham Town Office, Route 101, Stratham, New Hampshire.	
Tuftonboro (town), Carroll County (FEMA Docket No. 6836)	
Lake Winnipesaukee: Entire shoreline within community	*806
Maps available for inspection at the Town Clerk's Vault, Tuftonboro, New Hampshire.	
Wolfeboro (town), Carroll County (FEMA Docket No. 6832)	
Lake Wentworth: Entire shoreline within corporate limits	*836
Rust Pond: Entire shoreline within corporate limits	*580
Lake Winnipesaukee: Entire shoreline within corporate limits	*806
Crescent Lake: Entire shoreline within corporate limits	*836
Maps available for inspection at the Town Office, Mains Street, Wolfeboro, New Hampshire.	
NEW YORK	
Verona (town), Oneida County (FEMA Docket No. 6832)	
Fish Creek (flooding affecting Wood Creek):	
At Cove Road along Wood Creek	*375
At County Road 50A along Wood Creek	*378
At Kitts Road along Wood Creek	*380
Approximately 0.9 mile north of the intersection of Wood Creek Road and Lock Road (extended)	*387
Oneida Creek:	
Confluence with Oneida Lake	*373
Approximately 1.07 miles upstream of State Route 13	*377
Approximately .80 mile downstream of State Route 31	*379
At State Route 31	*381
Approximately 350 feet upstream of State Route 31	*382
Approximately .50 mile upstream of State Route 31	*384
Downstream side of Swallow Road	*385
Upstream side of Swallow Road	*387
Approximately 1.4 miles upstream of Swallow Road	*399
Approximately 1.7 miles upstream of Swallow Road	*402
Approximately 2.2 miles upstream of Swallow Road	*408
Approximately 1.9 miles downstream of New York State Barge Canal	*409
Downstream side of New York State Barge Canal	*415
Upstream side of New York State Barge Canal	*418
Upstream side of County Road 69 (Oneida Street)	*419
Approximately 0.2 mile upstream of Oneida Street	*419
Approximately .80 mile downstream of Interstate Route 90	*420
At downstream side of CONRAIL track	*422
Approximately 460 feet upstream of CONRAIL track	*423
Approximately 0.3 mile downstream of Sconondoa Street	*425
At downstream side of Sconondoa Street	*426
Approximately 900 feet upstream of Sconondoa Street	*426

Source of flooding and location	# Depth in feet above ground. Elevation in feet (NGVD)
Sconondoa Creek:	
Approximately 580 feet upstream of confluence with Oneida Creek	*426
Approximately 1,100 feet downstream of upstream corporate limits	*428
At upstream corporate limits	*433
Maps available for inspection at the Town Office Building, Durhamville, New York.	
NEW YORK	
Western (town), Oneida County (FEMA Docket No. 6832)	
Mohawk River:	
At confluence of Delta Reservoir	*555
Approximately 1,440 feet upstream of Hillside Road	*562
Lansing Kill:	
At confluence with the Mohawk River	*649
At upstream corporate limits	*750
Wells Creek:	
At confluence with the Mohawk River	*579
At confluence of Gifford Creek	*615
Big Brook:	
At confluence of Gifford Creek	*615
At upstream corporate limits	*747
Beaver Meadow Brook:	
At confluence with Big Brook	*685
Approximately 660 feet downstream of Gilbert Road	*702
Dunn Brook:	
At confluence with Lansing Kill	*714
Approximately 1,225 feet upstream of State Route 46	*767
Maps available for inspection at the Town Supervisor's residence, 9201 Mullen Hill Road, Ava, New York.	
NORTH CAROLINA	
Eastern Band of Cherokee Indians, Swain, Jackson, Graham, Cherokee and Haywood Counties (FEMA Docket No. 6836)	
Raven Fork:	
About 1.6 miles upstream of mouth	*2,058
About 2,100 feet downstream of upstream crossing of Big Cove Road	*2,554
About 2,000 feet downstream of upstream crossing of Big Cove Road	*2,562
About 1,800 feet upstream of upstream crossing of Big Cove Road	*2,636
Soco Creek:	
At mouth	*1,914
Just downstream of downstream crossing of U.S. Route 19	*1,964
Just upstream of downstream crossing of U.S. Route 19	*1,969
Just downstream of upstream crossing of U.S. Route 19	*2,319
Oconaluftee River:	
About 2.0 miles downstream of Birdtown Bridge	*1,840
About 0.9 mile upstream from Acquoni Road	*2,005
Maps available for inspection at the Tribal Council Chambers, Cherokee, North Carolina.	
Jackson County (unincorporated areas) (FEMA Docket No. 6836)	
Tuckasegee River:	
About 1.9 miles downstream from State Road 116	*2,006
Just upstream from the confluence of Caney Fork	*2,123
Cullowhee Creek:	
At mouth	*2,078
About 1,050 feet upstream from confluence of Long Branch	*2,096
Long Branch:	
At mouth	*2,093
Just downstream from SR 1367	*2,166
Just upstream from SR 1367	*2,206
About 900 feet upstream from SR 1367	*2,236
Oconaluftee River:	
About 2,850 feet downstream of U.S. Route 441	*1,906
About 2,070 feet downstream of U.S. Route 441	*1,906
Soco Creek:	
About 1,000 feet downstream of Old U.S. Route 441	*1,926
About 1,100 feet upstream of U.S. Route 441-19 connector	*1,978
Scott Creek:	
Just downstream of SR 1391	*1,964
Just upstream of Lee Saingardner Road	*2,104
Maps available for inspection at the County Administration Building, 6 Ridgeway Street, Sylva, North Carolina.	
OHIO	
Apple Creek (village), Wayne County (FEMA Docket No. 6836)	
Apple Creek:	
Just downstream of U.S. Route 250	*1,000
Just upstream of U.S. Route 250	*1,001
About 300 feet downstream of Apple Creek Road	*1,006
At confluence of Little Apple Creek 2	*1,018
Little Apple Creek 2: Within community	*1,019
Maps available for inspection at the Village Hall, Apple Creek, Ohio.	
Burbank (village) Wayne County (FEMA Docket No. 6836)	
Killbuck Creek:	
About 1,800 feet downstream of West Salem Road	*931
About 1,650 feet upstream of Burbank Road	*945
Maps available for inspection at the Village Hall, 22 South Front Street, Burbank, Ohio.	
Creston (village) Wayne County (FEMA Docket No. 6836)	
Killbuck Creek:	
Just upstream of West Salem Road	*972
About 1,400 feet downstream of Britton Road	*974
Maps available for inspection at the Village Hall, Creston, Ohio.	
Scioto County (unincorporated areas) (FEMA Docket No. 6836)	
Ohio River:	
At western county boundary	*529
About 0.7 mile upstream of eastern county boundary	*549
Scioto River:	
At mouth	*535
At northern county boundary	*548
Harden Creek: Within community	*616
Maps available for inspection at the Planning Department, County Courthouse, 602 Seventh Street, Portsmouth, Ohio.	
Wayne County (unincorporated areas) (FEMA Docket No. 6836)	
Chippewa Creek:	
About 2,100 feet downstream of State Route 57	*957
About 1,700 feet upstream of confluence of Tommy Run	*958
Cedar Run:	
At mouth	*574
About 2,300 feet upstream of Cedar Valley Road	*985
Little Apple Creek 1:	
About 2,800 feet downstream of Milltown Road	*980
Just downstream of Schellin Road	*1,088
Just upstream of Schellin Road	*1,105
About 3,700 feet upstream of Schellin Road	*1,115
Little Killbuck Creek:	
At mouth	*969
Just upstream of Overton Road	*972
Just upstream of Township Road 36	*1,058
Clear Creek:	
At mouth	*982
Just downstream of Mechanicsburg Road	*991
Just downstream of Smithville Western Road	*1,006
Rathburn Run:	
At mouth	*987
Just upstream of Township Road 36	*992
About 3,800 feet upstream of Township Road 36	*929
Killbuck Creek:	
Just upstream of Valley Road	*947
Just downstream of upstream crossing of Sterling Road	*1,002
Apple Creek:	
At mouth	*909
Just downstream of Pittsburgh Avenue	*980
Just upstream of Pittsburgh Avenue	*987
At confluence of Little Apple Creek	*1,019
Little Apple Creek 2:	
At confluence with Apple Creek	*1,019
About 850 feet downstream of Hackett Road	*1,056
Maps available for inspection at the Planning Department, County Administration Building, 428 West Liberty Street, Wooster, Ohio.	
Wooster (city), Wayne County (FEMA Docket No. 6836)	
Little Apple Creek 1:	
About 0.8 mile downstream of Milltown Road	*974
About 2,000 feet downstream of Milltown Road	*996
Apple Creek:	
At mouth	*956
Just downstream of Pittsburgh Avenue	*980
Just upstream of Pittsburgh Avenue	*987
About 600 feet downstream of State Route 83	*998
Killbuck Creek:	
About 3,500 feet downstream of Old Columbus Road	*954
Just downstream of Old Mansfield Road	*992
Snyders Ditch:	
At mouth	*961
About 300 feet upstream of Beasteller Road	*972
Christmas Run:	
At mouth	*967
About 780 feet upstream of Seybolt Avenue	*992
Clear Creek:	
About 1,100 feet upstream of Township Road 192	*970
About 1,500 feet downstream of Township Road 4	*992
Maps available for inspection at the City Hall, 538 North Market Street, Wooster, Ohio.	
OKLAHOMA	
Wright City (town), McCurtain County (FEMA Docket No. 6836)	
Choctaw Creek:	
Approximately 360 feet downstream of the downstream corporate limits	*367
Approximately 160 feet upstream of the corporate limits	*382
Cypress Creek: For the entire distance within the community	*367
Maps available for inspection at the Town Hall, West 10th Street, Wright City, Oklahoma.	
OREGON	
Powell (city), Wheeler County (FEMA Docket No. 6832)	
Butte Creek:	
Approximately 650 feet downstream of West 1st Street	*2,619
At confluence with Cottonwood Creek	*2,635
Approximately 75 feet downstream of the west side crossing	*2,669
At John Day Highway (State Highway 19)	*2,672
Approximately 2,250 feet upstream of John Day Highway (State Highway 19)	*2,693
Along John Day Highway (State Highway 19) between Main Street and Jay Street; and just east of Main Street	#1
Cottonwood Creek:	
At confluence with Butte Creek	*2,635
At John Day Highway (State Highway 19)	*2,664
Approximately 1,300 feet upstream of West 7th Street (at south corporate limits)	*2,687
Along Adams Street, between West 6th and West 3rd Streets, westerly toward confluence between Butte and Cottonwood Creeks	#1

Source of flooding and location	# Depth in feet above ground. Elevation in feet (NGVD)
Maps are available for review at City Hall, 175 North Main Street, Fossil, Oregon.	
PENNSYLVANIA	
Albion (borough), Erie County (FEMA Docket No. 6939)	
East Branch Conneaut Creek:	
At downstream corporate limits	*842
At upstream corporate limits	*855
South Branch Conneaut Creek:	
At confluence with East Branch Conneaut Creek	*847
At upstream corporate limits	*860
Maps available for inspection at the Albion Borough Office, 15 Franklin Street, Albion, Pennsylvania.	
Auburn (borough), Schuylkill County (FEMA Docket No. 6932)	
Bear Creek:	
At confluence with the Schuylkill River	*449
At upstream corporate limits	*472
Maps available for inspection at Ms. Brenda Feeder's residence, 112 Orchard Street, Auburn, Pennsylvania.	
Benner (township), Centre County (FEMA Docket No. 6936)	
Spring Creek:	
At downstream corporate limits	*757
Approximately 1,300 feet upstream of Fish Hatchery Road	*832
Maps available for inspection at the Township Building, R.D. 4, Box 128–B, Bellefonte, Pennsylvania 16823.	
Brier Creek (township), Columbia County (FEMA Docket No. 6939)	
East Branch Brier Creek:	
Approximately 540 feet downstream of the downstream corporate limits	*510
Approximately 180 feet upstream of the confluence of Glen Brook	*544
Glen Brook:	
At confluence with East Branch Brier Creek	*543
Approximately 340 feet upstream of T–746	*665
Maps available for inspection at Kapner & Kapner, Third and Pine Street, Berwick, Pennsylvania.	
Carbon (township), Huntingdon County (FEMA Docket No. 6939)	
Shoup Run:	
Approximately 0.4 mile downstream of confluence of Sugarcamp Run	*906
Approximately 0.4 mile upstream of confluence of Sugarcamp Run	*1,026
At downstream corporate limits of Borough of Coalmont	*1,066
At upstream corporate limits of Borough of Coalmont	*1,076
Sugarcamp Run:	
At confluence with Shoup Run	*990
Approximately 580 feet upstream of State Route 913	*1,041
Maps available for inspection at Penny Brode's residence, R.D. #1, Box 222–C, Saxton, Pennsylvania.	
Case (township), Schuylkill County (FEMA Docket No. 6932)	
West Branch Schuylkill River:	
At downstream corporate limits	*702
Approximately 1,200 feet upstream side of T–806	*986
Maps available for inspection at the Case Township Office, Minersville, Pennsylvania.	
Center (township), Butler County (FEMA Docket No. 6939)	
Connoquenessing Creek:	
At most downstream corporate limits	*614
At upstream corporate limits	*633
Maps available for inspection at the Municipal Building, 419 Sunset Drive, Butler, Pennsylvania.	
Send comments to The Honorable L. Gary Faust, Chairman of the Township of Center Board of Supervisors, Butler County, 419 Sunset Drive, Butler, Pennsylvania 16001.	
Cranesville (borough), Erie County (FEMA Docket No. 6939)	
Temple Creek:	
At downstream corporate limits	*889
At upstream corporate limits	*891
Crane Creek:	
At downstream corporate limits	*878
At upstream corporate limits	*1,013
Maps available for inspection at the Cranesville Borough Office, Cranesville, Pennsylvania, Monday, Tuesday, and Thursday.	
Curtin (township), Centre County (FEMA Docket No. 6936)	
Beech Creek:	
Approximately 1,900 feet downstream of T–489	*844
Approximately 1,900 feet upstream of T–489	*862
Marsh Creek:	
At corporate limits	*719
At L.R. 14012	*756
Maps available for inspection at the Township Secretary's residence, Box 221, R.D. 1, Howard, Pennsylvania.	
Dean (township), Cambria County (FEMA Docket No. 6939)	
Clearfield Creek:	
Approximately 300 feet downstream of L.R. 11066	*1,503
Approximately 1,000 feet upstream of L.R. 11066	*1,507
Laurel Run:	
Approximately 360 feet downstream of T–719	*1,567
Approximately 300 feet upstream of State Route 53	*1,590
Maps available for inspection at the Dean Township Building, Dean, Pennsylvania.	
East Providence (township), Bedford County (FEMA Docket No. 6939)	
Raystown Branch Juniata River:	
Approximately 0.7 mile upstream of downstream corporate limits	*956
At upstream corporate limits	*980
Brush Creek:	
Approximately 6.1 miles upstream of confluence with Shaffer Creek	*1,132
At upstream corporate limits	*1,146
Maps available for inspection at the Breezewood Fire Hall, Breezewood, Pennsylvania.	
East St. Clair (township), Bedford County (FEMA Docket No. 6936)	
Dunning Creek:	
At downstream corporate limits	*1,079
Approximately 250 feet upstream of the upstream corporate limits	*1,137
Adams Run:	
At confluence with Dunning Creek	*1,094
Approximately 600 feet upstream of State Route 56	*1,096
Bobs Creek:	
At confluence with Dunning Creek	*1,103
Approximately 0.7 mile upstream of L.R. 05080	*1,126
Maps available for inspection at the Township Building, in c/o Herbert Graham, Permit Officer, New Paris, Pennsylvania.	
Elder (township), Cambria County (FEMA Docket No. 6936)	
Chest Creek:	
Downstream corporate limits	*1,732
Upstream corporate limits	*1,734
Brubaker Run:	
Approximately 1,000 feet downstream of L.R. 11069 crossing	*1,680
Approximately 150 feet above upstream corporate limits	*1,706
Maps available for inspection at the Township Building, Elder, Pennsylvania, in c/o Ms. Robin Quist.	
Elk Creek (township), Erie County (FEMA Docket No. 6936)	
Temple Creek:	
At downstream corporate limits	*891
Approximately 1.6 miles upstream of corporate limits	*957
Maps available for inspection at the Township Municipal Building, 10405 High Street, Wellington, Pennsylvania.	
Evans City (borough), Butler County (FEMA Docket No. 6932)	
Breakneck Creek:	
Approximately 180 feet downstream of the downstream corporate limits	*927
Approximately 0.5 mile upstream of the upstream corporate limits	*948
Maps available for inspection at the Borough Building, 220 Wahl Avenue, Evans City, Pennsylvania.	
Forward (township), Butler County (FEMA Docket No. 6936)	
Connoquenessing Creek:	
At downstream corporate limits	*921
At upstream corporate limits	*969
Breakneck Creek:	
At downstream corporate limits	*946
At upstream corporate limits	*959
Maps available for inspection at the Township Municipal Building, R.D. #2, Box 242 A, Ash Stop Road, Evans City, Pennsylvania.	
Franklin (township), Susquehanna County (FEMA Docket No. 6932)	
Snake Creek:	
At downstream corporate limits	*1,088
Approximately 0.4 mile upstream of T–883	*1,118
Maps available for inspection at the Township Building, Franklin, Pennsylvania.	
Harmony (borough), Butler County (FEMA Docket No. 6932)	
Connoquenessing Creek:	
Approximately .6 mile downstream of downstream corporate limits	*906
Approximately .12 mile upstream of upstream corporate limits	*909
Maps available for inspection at 217 Mercer Street, Harmony, Pennsylvania.	
Harris (township), Centre County (FEMA Docket No. 6936)	
Spring Creek:	
At downstream corporate limits	*1,054
Approximately 1,820 feet upstream of confluence of Galbraith Gap Run	*1,156
Galbraith Gap Run:	
At confluence with Spring Creek	*1,145
Approximately 1,850 feet upstream of U.S. Route 322	*1,192

Source of flooding and location	# Depth in feet above ground. Elevation in feet (NGVD)
Maps available for inspection at the Hanis Township Municipal Building, 224 E. Main Street, Boalsburg, Pennsylvania.	
Hop Bottom (borough), Susquehanna County (FEMA Docket No. 6932)	
Martins Creek:	
At downstream corporate limits	*640
At upstream corporate limits	*670
Maps available for inspection at the Hop Bottom Borough Building, Fernest Street, Hop Bottom, Pennsylvania 18824.	
Huston (township), Centre County (FEMA Docket No. 6936)	
Bald Eagle Creek:	
Approximately 0.5 mile downstream of Township Route 568	*634
Approximately 2,400 feet upstream of Township Route 568	*647
Laurel Run:	
At confluence with Bald Eagle Creek	*640
Approximately 575 feet upstream of U.S. Route 220	*661
Maps available for inspection at the residence of Carol E. Alexander, along Route 220 in Julian, across from Post Office.	
Jessup (township), Susquehanna County (FEMA Docket No. 6932)	
East Branch Wyalusing Creek:	
Approximately 1.6 miles downstream of T–316	*1,005
Downstream side of State Route 706	*1,080
Approximately 1.2 miles upstream of LR 57008	*1,150
Approximately 0.7 mile upstream of T–694	*1,186
Send comments to the home of the Township Secretary, Ralph Bunnell, R.D. 5, Box 294, Montrose, Pennsylvania.	
Lehman (township), Pike County (FEMA Docket No. 6932)	
Saw Creek:	
Approximately 160 feet downstream of Winona Falls Road (T–301)	*436
At upstream side of dam	*475
Approximately 720 feet upstream of Stoney Hollow Drive	*482
Maps available for inspection at the Township Municipal Building, Lehman, Pennsylvania.	
Liberty (township), Susquehanna County (FEMA Docket No. 6932)	
Snake Creek:	
Approximately .35 mile downstream from T–786	*989
Upstream corporate limits	*1,058
Maps available for inspection at the Chairman of the Board of Supervisors' home, Box 149, R.D. 1, Hallstead, Pennsylvania.	
Liberty (township), Centre County (FEMA Docket No. 6936)	
Beech Creek:	
Approximately 150 feet downstream side of S.R. 150	*505
Approximately 1.7 miles upstream side of State Route 364	*591
Marsh Creek:	
Approximately 40 feet downstream side of State Route 150	*505
At upstream corporate limits	*719
Maps available for inspection at the Township Building, P.O. Box 192, Route 80, Blanchard, Pennsylvania.	
Marianna (borough), Washington County (FEMA Docket No. 6936)	
Tenmile Creek:	
Upstream side of Jefferson Avenue	*877
Approximately .04 mile upstream of Shielder Road	*886
Maps available for inspection at the Borough Building, Marianna, Pennsylvania.	
Mars (borough), Butler County (FEMA Docket No. 6932)	
Breakneck Creek:	
Approximately 40 feet downstream of the downstream corporate limits	*1,007
At the upstream corporate limits	*1,021
Maps available for inspection at the Borough Building, Spring Street, Mars, Pennsylvania.	
Millheim (borough), Centre County (FEMA Docket No. 6936)	
Elk Creek:	
At L.R. 873	*1,076
Approximately .3 mile upstream of Park Street	*1,140
Maps available for inspection at 214 East Main Street, Millheim, Pennsylvania.	
Millville (borough), Columbia County (FEMA Docket No. 6937)	
Little Fishing Creek:	
At downstream corporate limits	*612
At upstream corporate limits	*645
Maps available for inspection at the Borough Building, State Street, Millville, Pennsylvania.	
Snow Shoe (township), Centre County (FEMA Docket No. 6939)	
North Fork Beech Creek:	
Approximately .5 mile downstream of L.R. 14009	*1,381
Approximately 1,000 feet upstream of confluence of Cherry Run	*1,403
Piney Run:	
At confluence with North Fork Beech Creek	*1,392
Approximately 2,075 feet upstream of No. Ten Road	*1,426
Little Sandy Run:	
At confluence with North Fork Beech Creek	*1,392
Approximately 975 feet upstream of L.R. 14003	*1,398
Maps available for inspection at Box 85, Clarence, Pennsylvania.	
South Manheim (township), Schuylkill County (FEMA Docket No. 6927)	
Bear Creek:	
At downstream corporate limits	*479
At upstream corporate limits	*526
Maps available for inspection with Ms. Dawn Hoffman, Township Secretary, R.D. 1, Box 207 A, Auburn, Pennsylvania.	
Valencia (borough), Butler County (FEMA Docket No. 6932)	
Breakneck Creek:	
At downstream corporate limits	*1,057
Approximately 250 feet upstream of the upstream corporate limits	*1,069
Maps available for inspection at the Borough Building, Almira Street, Valencia, Pennsylvania.	
York (township), York County (FEMA Docket No. 6932)	
South Branch Codorus Creek:	
At downstream corporate limits	*390
At confluence of East Branch Codorus Creek (Lower Reach)	*417
East Branch Codorus Creek (Lower Reach):	
At confluence with South Branch Codorus Creek	*417
Approximately 0.93 mile upstream of the confluence with South Branch Codorus Creek	*420
East Branch Codorus Creek (Upper Reach):	
At confluence with Lake Redman	*495
At the confluence of Barshinger Creek	*516
Barshinger Creek:	
At the confluence of East Branch Codorus Creek (Upper Reach)	*518
Approximately 70 feet upstream of Arbor Drive	*680
Inners Creek:	
Approximately 250 feet upstream of the confluence with East Branch Codorus Creek	*486
Approximately .34 mile upstream of Inners Creek Road	*632
Tributary #1:	
At the confluence with Bershinger Creek	*567
Approximately 130 feet upstream of Stine Hill Road	*911
Tyler Run:	
At corporate limits	*478
Approximately 0.23 mile upstream of Kirsh Road	*808
Mill Creek:	
At downstream corporate limits	*467
Approximately 0.27 mile upstream of Locust Street	*754
Tributary #2:	
At confluence with Mill Creek	*475
Approximately 75 feet upstream of Oak Road	*823
Tributary #3:	
At confluence with Tributary #2	*486
Approximately .50 mile upstream of Springwood Road	*589
Maps available for inspection at the Township Building, 76 Revere Road, York, Pennsylvania.	
TEXAS	
Angleton (city), Brazoria County (FEMA Docket No. 6939)	
Oyster Creek: Old State Route 35 at west corporate limits	*29
Maps available for inspection at the City Hall, 121 South Velasco, Angleton, Texas.	
Bailey's Prairie (village), Brazoria County (FEMA Docket No. 6939)	
Oyster Creek:	
At downstream corporate limits	*29
At upstream corporate limits	*31
Maps available for inspection at the Village Hall, State Highway 35 and 521, Angleton, Texas.	
Bonney (village), Brazoria County (FEMA Docket No. 6939)	
Oyster Creek:	
FM 655 at west corporate limits	*43
Approximately 0.5 mile south along corporate limits from FM 655 at west corporate limits	*42
Maps available for inspection at the Village Hall, Roseharon, Texas.	
Brazoria (city), Brazoria County (FEMA Docket No. 6939)	
Brazos River:	
Intersection of Bernard Street and Magnolia Street	*26
Intersection of Pearl Street and Cedar Street	*25
Approximately 1,300 feet east of intersection of Mulberry Lane and I Avenue (at extreme southeast corporate limits)	#1
Maps available for inspection at 114 E. Texas Street, Brazoria, Texas.	
Brazoria County (unincorporated areas) (FEMA Docket No. 6939)	
Brazos River:	
Upstream side of State Route 36	*8
At Route 523 (extended)	*11
Approximately 1,000 feet downstream of River Mile 13.0	*16
Approximately 2.0 miles east of intersection of FM 521 & County Route 508	*24
Approximately 3.9 miles upstream of FM 1462	*56
Oyster Creek:	
Upstream side of County Route 226	*10
Approximately 500 feet north of Missouri-Pacific Railroad, east of the City of Clute	*10
Approximately 1,500 feet east of River Mile 14	*12
Upstream side of County Route 280	*27
200 feet north of County Route 280 crossing of Oyster Creek	*27

Source of flooding and location	# Depth in feet above ground. Elevation in feet (NGVD)
Intersection of County Routes 28 & 6936	*30
300 feet west of intersection FM 521 and County Route 30	*35
Upstream county boundary	*54
Bhasty Bayou:	
Approximately 0.6 mile downstream of King Road	*9
Downstream side of County Route 212	*13
Cocklebur Slough: Approximately 0.8 mile upstream of County Route 306	*11
San Bernard River:	
At the City of Freeport most western corporate limit	*5
Approximately 2.0 miles downstream of FM 521	*18
Downstream side of State Route 35	*26
Upstream side of FM 1301	*43
Approximately 1.9 miles downstream of county boundary	*58
Mound Creek:	
Confluence with San Bernard River	*31
Approximately 2.0 miles upstream of County Route 892	*31
Varner Creek:	
Confluence with Brazos River	*26
Approximately 2.5 miles upstream of confluence with Brazos River	*31
Bell Creek:	
Confluence with San Bernard River	*26
Approximately 0.75 mile upstream of State Route 35	*28
Mustang Bayou:	
North side of intersection of County Route 98 and County Route 46	*94
Old Mustang Bayou channel 400 feet west of the terminus of County Route 95	*52
Cow Creek:	
Approximately 1,200 feet upstream of County Route 25	*36
Approximately 200 feet upstream of County Route 17	*52
Sheet Flow:	
Intersection of Davis Bend Road and Bennett Road	#2
Parker Road 2,000 feet northeast of Briscoe Canal	#3
Parker Road 5,000 feet northeast of Briscoe Canal	#1
At Topeka and Santa Fe Railway south of American Canal	#1
At the intersection of FM 839 and Friendswood Road	#2
Approximately 4,100 feet northwest along County Route 135, 400 feet from intersection of County Route 400 and State Route 36	#1
Approximately 1 mile north of Darrington State Prison Farm on Brazoria County boundary	#2
Approximately 4,000 feet north of Darrington State Prison Farm, west of Oyster Creek River Mile 82.0	#2
Approximately 2,000 feet north of terminus of County Route 570	#2
Approximately 1 mile west of the intersection of County Routes 42 and 570	#2
Approximately 1,000 feet south of Brazos River Mile 92	#1
At County Route 42 approximately 1.2 miles north of intersection of County Route 42 and FM 1462	#1
Approximately 2,700 feet southeast of Brazos River River Mile 93.0	#1
Approximately 3,000 feet southeast of Brazos River River Mile 93.0	#2
Approximately 4,800 feet east-southeast of Brazos River River Mile 92.0	#2
Approximately 2,200 feet east-southeast of Brazos River River Mile 92.0	#1
Approximately 1.1 miles west of the terminus of County Route 94	#1
Approximately 2,000 feet north of Sanna Bean Lake	#1
Approximately 1,800 feet south of Sanna Bean Lake	#1
Approximately 1.7 miles southeast along County Route 400 from the intersection of County Route 400 and County Route 912	#1
Approximately 1.2 miles southeast of Brazos River River Mile *9.0	#1
Approximately 800 feet south of Brazos River River Mile 18.0	#2
Approximately 1.6 miles south of Brazos River River Mile 18.0	#2
Approximately 2,600 feet southeast of Brazos River River Mile 18.0	#1
Approximately 1.6 miles south of Brazos River River Mile 18.0	#1
Approximately 2,000 feet southeast of Brazos River River Mile 15.0	#2
Approximately 1.5 miles south of Brazos River River Mile 15.0	#2
Approximately 1.7 miles northwest along County Route 400 from intersection of County Route 400 and Perry Landing Lane	#1
Approximately 1,500 feet northwest along County Route 400 from intersection of County Route 400 and Perry Landing Lane	#1
Approximately 3,800 feet southeast along County Route 400 from intersection of County Route 400 and Perry Landing Lane	#1
Approximately 2.4 miles southeast along County Route 400 from intersection of County Route 400 and Perry Landing Lane	#1
Approximately 100 feet west of the intersection of County Route 306 and FM 2918	#1
Maps available for inspection at the County Courthouse, Angleton, Texas.	
Freeport (city), Brazoria County (FEMA Docket No. 6936)	
Brazos River:	
Upstream side of State Route 36 (Second Street)	*8
Upstream corporate limits	*11
San Bernard River: Approximately 1.4 miles northwest of Jones Creek and approximately 1.8 miles south of State Route 36	*8
Maps available for inspection at 128 East Fourth, Freeport, Texas.	
Holiday Lakes (town), Brazoria County (FEMA Docket No. 6936)	
Oyster Creek:	
At downstream corporate limits	*35
At upstream corporate limits	*35
Intersection of Trail Drive and Penguin Avenue	*35
Maps available for inspection at the City Hall, Holiday Lakes, Texas, Monday through Friday 8:00 am – 11:00 am and Tuesday 4:00 pm – 8:00 pm.	
Lake Jackson (city), Brazoria County (FEMA Docket No. 6936)	
Brazos River:	
At downstream side of corporate limits	*10
Approximately 1 mile southeast of intersection of County Routes 304 and 400	*15
At crossing of County Route 400 through corporate limits	#2
Oyster Creek:	
At most downstream corporate limits	*14
At most upstream side of corporate limits	*18
Gulf of Mexico: At State Route 288 Bridge over Dow Barge Canal	*12
Maps available for inspection at 25 Oak Drive, Lake Jackson, Texas.	
Oyster Creek (village), Brazoria County (FEMA Docket No. 6936)	
Oyster Creek:	
FM 523 bridge	*10
At downstream corporate limits	*11
Maps available for inspection at Route 3, 3216 F.M. 523, Oyster Creek, Texas.	
Sweeny (city), Brazoria County (FEMA Docket No. 6936)	
San Bernard River: Sweeny Sanitary Landfill southeast of FM 1459 (eastern portion of Sweeny)	*23
Maps available for inspection at the City Hall, 1111 W. 3rd Street, Sweeny, Texas.	
West Columbia (city), Brazoria County (FEMA Docket No. 6936)	
Bell Creek: From downstream corporate limits to Sinclair Street	*26
Brazos River: Approximately 100 feet southeast of the intersection of Greenfield Drive and Marion Lane	*28
Maps available for inspection at 300 E. Clay Street, West Columbia, Texas.	
VERMONT	
Brighton (town), Essex County (FEMA Docket No. 6927)	
Island Pond Brook:	
At confluence with Pherrins River	*1,173
Downstream side of Island Pond Road	*1,179
Island Pond: For its entire shoreline	*1,175
Pherrins River:	
At confluence with Island Pond Brook	*1,173
Upstream side of second crossing of State Route 114	*1,181
Maps available for inspection at the Town Manager's Office Vault, Town Hall, Island Pond, Vermont.	
Newfane (town), Windham County (FEMA Docket No. 6936)	
West River:	
Approximately 1.2 miles downstream from confluence of Smith Brook	*356
U.S. Geological Survey gage 01156000	*395
Smith Brook:	
At River Road	*406
Approximately 120 feet upstream from South Wardsboro Road	*608
Rock River:	
At Sunset Lake Road	*496
At confluence of Marlboro Branch	*534
Approximately 230 feet upstream from Dover Road	*822
Maps available for inspection at the Town Clerk's Vault, Newfane, Vermont.	
Plymouth (town), Windsor County (FEMA Docket No. 6936)	
Black River:	
At downstream corporate limits	*1,065
Approximately 425 feet upstream of Black Pond Dam	*1,334
Maps available for inspection at the Town Hall, Plymouth, Vermont.	
Reading (town), Windsor County (FEMA Docket No. 6936)	
Knapp Brook:	
At confluence with North Branch Black River	
At upstream corporate limits	
North Branch Black River:	
At downstream corporate limits	*676
Approximately 350 feet upstream of State Route 106	*735
Approximately 0.3 mile upstream of State Route 106	*804
Maps available for inspection at the Town Clerk's Vault, Reading, Vermont.	
Royalton (town), Windsor County (FEMA Docket No. 6932)	
White River:	
At downstream corporate limits	*457
At upstream corporate limits	*532
First Branch White River:	
At confluence with White River	*475
At corporate limits	*511
Second Branch White River:	
At confluence with White River	*506
At upstream corporate limits	*526

Source of flooding and location	# Depth in feet above ground. Elevation in feet (NGVD)
Maps available for inspection at the Town Clerk's Office, South Royalton, Vermont.	
Wilmington (town), Bennington County (FEMA Docket No. 6936)	
Wilmington River:	
At downstream corporate limits	*1,250
Approximately 100 feet upstream of Dirt Road	*1,358
Maps available for inspection at Town Clerk's Office and Zoning Administrator's Office, Wilmington, Vermont.	
WASHINGTON	
Chelan County (unincorporated areas) (FEMA Docket No. 6936)	
Wenatchee River:	
Approximately 20,430 feet downstream of the Burlington Northern Railroad	*1,700
Approximately 9,550 feet downstream of the Burlington Northern Railroad	*1,734
Approximately 730 feet upstream of the Burlington Northern Railroad	*1,785
Nason Creek:	
Approximately 500 feet downstream of Logging Road	*1,958
Just upstream of Old U.S. Highway 2	*2,139
Just upstream of the Burlington Northern Railroad	*2,230
Dry Gulch:	
Approximately 650 feet upstream from High Line Canal	None
At the intersection of South Miller Street and Circle Street	#1
Approximately 800 feet upstream from Circle Street	None
Approximately 1,700 feet upstream from Circle Street	None
Maps are available for review at the Chelan County Planning Department, 411 Washington Street, Wenatchee, Washington.	
WEST VIRGINIA	
Ceredo (town), Wayne County (FEMA Docket No. 6932)	
Ohio River:	
Downstream corporate limits	*551
At confluence of Twelvepole Creek	*552
Twelvepole Creek: Entire length within community	*552
Jordan's Branch: Entire length within community	*542
Maps available for inspection at the Town Hall, Ceredo, West Virginia.	
Kenova (city), Wayne County, West Virginia (FEMA Docket No. 6932)	
Ohio River:	
Approximately 550 feet downstream of confluence of Big Sandy River	*550
Approximately 526 feet upstream of Norfolk and Western Railway Bridge	*551
Big Sandy River:	
At confluence with Ohio River	*550
Approximately 1,500 feet upstream of CSX Transportation Bridge	*550
Maps available for inspection at the City Building, 15th and Pine Street, Kenova, West Virginia.	
WISCONSIN	
Augusta (city), Eau Claire County (FEMA Docket No. 6932)	
Bridge Creek:	
About 150 feet downstream of State Road 27	*948
About 1 mile upstream of Stone Street	*993
Maps available for inspection at the City Clerk's Office, City Hall, 106 East Lincoln, Augusta, Wisconsin.	
Ellsworth (village), Pierce County (FEMA Docket No. 6932)	
Isabella Creek:	
About 850 feet downstream of Main Street	*1,029
About 950 feet upstream of Railroad Street	*1,082
Isabella Creek Tributary:	
At mouth	*1,044
Just upstream of Pleasant Avenue	*1,092
Maps available for inspection at the Village Hall, West Main Street, Ellsworth, Wisconsin.	
Knapp (village), Dunn County (FEMA Docket No. 6932)	
Hilson Creek: Within community	*907
Maps available for inspection at the Village Hall, Knapp, Wisconsin.	
Sussex (village), Waukesha County (FEMA Docket No. 6936)	
Pewaukee River:	
About 500 feet downstream of Sussex Dam	*880
About 1,500 feet upstream of Sussex Dam	*884
Sussex Creek:	
About 1,400 feet downstream of Clover Drive	*888
Just downstream of Old Mill Lane	*923
Just upstream of Old Mill Lane	*931
Just downstream of Chicago and North Western Railroad	*939
East Branch Sussex Creek:	
At mouth	*897
About 100 feet downstream of Chicago and Northwestern Railroad	*907
Just upstream of Chicago and North Western Railroad	*912
Just downstream of Waukesha County Trail	*915
South Branch Sussex Creek:	
At mouth	*936
Just downstream of Main Street	*939
Willow Springs Creek:	
About 1,300 feet downstream of Good Hope Road	*913
About 700 feet upstream of Soo Line Railroad	*940
Maps available for inspection at the Village Hall, N63W23626 Silver Spring Drive, Sussex, Wisconsin.	
Woodville (village), St. Croix County (FEMA Docket No. 6932)	
Carr Creek:	
Just upstream of South Side Drive	*1,123
Just downstream of Chicago and North Western railroad	*1,141
Maps available for inspection at the Village Hall, 102 South Main Street, Woodville, Wisconsin.	

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
NEW HAMPSHIRE	
Northumberland (town), Coos County (FEMA Docket No. 6923)	
Connecticut River:	
Approximately 150 feet downstream of downstream corporate limits	*954
At confluence of Upper Ammonoosuc River	*963
At upstream corporate limits	*966
Maps available for inspection at the Town Manager's Safe, Northumberland, New Hampshire.	
WYOMING	
Jackson (town), Teton County (FEMA Docket No. 6917)	
Flat Creek:	
Upstream face of U.S. Routes 26, 89, 187, and 189 (southern corporate limits)	*6,122
Approximately 20 feet upstream of the end of Virginian Lane	*6,162
Downstream face of U.S. Routes 26, 84, and 187 (northern corporate limits)	*6,214
Cache Creek:	
Upstream face of Norwood Avenue	*6,322
Approximately 2,400 feet downstream of confluence with Woods Canyon Creek (at corporate limits)	*6,365
Maps are available for review at the Town Planner's Office, 155 Pearl Street, Jackson, Wyoming.	
Teton County (unincorporated areas) (FEMA Docket No. 6914)	
Snake River:	
Upstream face of U.S. Routes 26, 89, 187, and 189	*5,949
At confluence with Mosquito Creek	*6,088
Approximately 100 feet upstream from State Highway 22	*6,759
Approximately 900 feet upstream of confluence with Gros Ventre River	*6,242
Approximately 3.3 miles upstream of confluence with Gros Ventre River	*6,310
Approximately 1,800 feet upstream of confluence with Stewart Draw	*6,400
Flat Creek:	
Upstream face of U.S. Routes 26, 89, 187, and 189	*5,949
Downstream face of Big Trail Drive	*6,071
Downstream face of U.S. Routes 26, 89, 187, and 189 (southern corporate limits of town of Jackson)	*6,121
Spring Creek:	
At confluence with Snake River	*5,968
Approximately 3.6 miles downstream of U.S. Highway 22	*6,077
Approximately 400 feet upstream of U.S. Highway 22	*6,136
Gros Ventre River:	
Confluence with Snake River	*6,240
At Golf Course Bridge	*6,310
Approximately 3,100 feet downstream of U.S. Routes 26, 89, and 187	*6,357
Fish Creek:	
Approximately 1,700 feet downstream of Pine Meadow Road	*6,109
At Main Street Bridge	*6,146
At upstream face of Fish Creek Road (upstream crossing)	*6,175
At confluence with Jenson Canyon Creek	*6,220
At confluence with Rock Springs Canyon Creek	*6,267
Approximately 12,200 feet upstream of confluence with Rock Springs Canyon Creek	*6,320
Lake Creek:	
At confluence with Fish Creek	*6,191
Approximately 130 feet upstream of Moose Wilson Road	*6,233
At confluence with Granite Creek	*6,267
Approximately 10,500 feet upstream of confluence with Granite Creek	*6,318
Cache Creek:	
Approximately 2,400 feet downstream of confluence with Woods Canyon Creek (at town of Jackson corporate limits)	*6,363
Approximately 2,100 feet downstream of confluence with Woods Canyon Creek (approximately 250 feet upstream of town of Jackson corporate limits)	*6,366
Teton Creek:	
At County Line Road	*5373
Approximately 1.8 miles upstream of County Line Road	*6,480
Approximately 900 feet upstream of confluence with Mill Creek	*6,603
Buffalo Fork:	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 600 feet downstream of U.S. Routes 26, 89, and 187	*6,720
Approximately 600 feet downstream of U.S. Routes 26 and 287	*6,781
Approximately 3,500 feet downstream of confluence with Blackrock Creek	*6,913

Maps are available for review at the Teton County Planner's Office, County Courthouse, 181 South King Street, Jackson, Wyoming.

Issued: February 7, 1989.

Harold T. Duryee,
Administrator, Federal Insurance Administration.

[FR Doc 89-3277 Filed 2-14-89; 8:45 am]
BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-414; RM-6231]

Radio Broadcasting Services; Helen, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 286A to Helen, Georgia, as that community's first local FM service, at the request of Helen Broadcasters. Channel 286A can be allotted to Helen in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.5 kilometers (1 mile) east to avoid a short spacing to Station WQSB–FM, Channel 286C, Albertville, Alabama. The coordinates for this allotment are North Latitude 34–42–00 and West Longitude 83–42–54. With this action, this proceeding is terminated.

DATES: Effective March 27, 1989; The window period for filing applications will open on March 28, 1989, and close on April 27, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–414, adopted January 19, 1989, and released February 8, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended by adding Helen, Georgia, Channel 286A.

Steve Kaminer,
Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-3506 Filed 2-14-89; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-223; RM-5916]

Radio Broadcasting Services; Waynesboro, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 296A to Waynesboro, Georgia, as that community's second local FM service, at the request of Clifford Jones ("petitioner"). The channel can be allotted in compliance with the Commission's minimum distance separation requirement with a site restriction. The restricted site coordinates are 33–06–41 and 82–01–04. With this action, this proceeding is terminated.

DATES: Effective March 27, 1989; The window period for filing applications will open on March 28, 1989, and close on April 27, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–223, adopted January 19, 1989, and released February 8, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended by adding Waynesboro, Georgia, Channel 296A.

Steve Kaminer,
Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-3507 Filed 2-14-89; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-333; RM-6325]

Radio Broadcasting Services; Sartell, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 244C2 for Channel 241A at Sartell, Minnesota, and modifies the construction permit for Channel 241A to specify Channel 244C2, in response to a petition filed by Sartell FM, Inc. Canadian concurrence has been obtained for this allotment. The coordinates for Channel 244C2 at Sartell are 45–44–47 and 94–03–49. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 27, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–333, adopted January 19, 1989 and released February 8, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Minnesota is amended by deleting Channel 241A and adding Channel 244C2 at Sartell.

Federal Communications Commission.

Steve Kaminer,
Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-3505 Filed 2-14-89; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[Federal Acquisition Circular 84-43]

Federal Acquisition Regulation (FAR); Drug-Free Workplace Act of 1988; Correction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments; correction.

SUMMARY: This document corrects a clause and a provision in an interim rule in Federal Acquisition Circular (FAC) 84–43 published in the **Federal Register** on Tuesday, January 31, 1989 (54 FR 4967).

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523–4755.

SUPPLEMENTARY INFORMATION: In FR Doc. 2086 beginning on page 4967, make the following correction:

52.223-5 [Corrected]

1. On page 4970, in the second column, in 52.223–5, in paragraph (b)(8) of the clause, remove the reference "subparagraph (a)(4)" and insert in its place "subdivision (b)(4)(ii)".

52.223-6 [Corrected]

2. On page 4971, in the first column, in 52.223–6, in the clause, in paragraph (b)(5) remove the reference "subdivision (a)(4)(ii)" and in the second column, in paragraph (b)(6) remove the reference "subparagraph (a)(4)" and insert in each place "subdivision (b)(4)(ii)".

Dated: February 9, 1989.

Harry S. Rosinski,
Acting Director, Office of Federal Acquisition and Regulatory Policy.

[FR Doc. 89-3510 Filed 2-14-89; 8:45 am]
BILLING CODE 6820-61-M

GENERAL SERVICES ADMINISTRATION

48 CFR Part 552

[APD 2800.12 CHGE 61]

General Services Administration Acquisition Regulation; Economic Price Adjustment Clause for Multiple Award Schedule Contracts

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR), Chapter 5 (APD 2800.12), is revised to amend Alternate I of the clause entitled "Economic Price Adjustment-FSS Multiple Award Schedule Contracts" at section 552.216–71 to provide for price adjustments in multiyear contracts that are for periods of more than 3 years. This change is made as a result of the recent policy decision by the Federal Supply Service permitting the award of Multiple Award Schedule (MAS) contracts for periods of up to 5 years.

EFFECTIVE DATE: February 23, 1989.

FOR FURTHER INFORMATION CONTACT: Ida M. Ustad, Office of GSA Acquisition Policy and Regulations, (202) 566–1224.

SUPPLEMENTARY INFORMATION: a. *Public comments.* A notice of proposed rulemaking was published in the **Federal Register** on November 9, 1988. Comments were received from the Association for Information and Image Management and the Computer and Business Equipment Manufacturers Association. Both commenters were concerned that the words "may request increases after the first 12 months" could be construed to mean that the application for an increase could not be made until after 12 months and requested the language be revised to indicate that contractors may request price increases to be effective on or after the first 12 months. The suggestion was adopted. Both commenters also recommended that the term "contract period" be clarified. The commenters indicated that the present wording could be interpreted to mean either the initial date covered by the solicitation or the award date. No change was made in response to this comment. Other contract clauses, which are used in MAS contracts, define the contract period. The Economic Price Adjustment clause will be read in conjunction with the period of performance clause in the contract.

The Association for Information and Image Management suggested the footnote to the clause which instructs contracting officers on how to establish the percent to be inserted in the clause as a ceiling on price increases, be deleted because the Producers Price Index frequently lags behind actual price trends.

The Association contends that the present wording could force contractors to absorb severe losses, especially in times of economic uncertainty. No change was made in response to this comment. Deleting the instructions to the contracting officer would not eliminate the problem of establishing a ceiling which may not turn out to be adequate in times of economic uncertainty. The clause reserves for the Government, the right to raise the ceiling when market conditions during the contract support such a change. This provision is included in the clause to deal with such situations. (See also section 516.203–7(b)).

The Computer and Business Equipment Manufacturers Association also recommended the Alternate clause be stated in its entirety rather than referring to the basic clause and that the basic and Alternate clauses be retitled "Economic Price Adjustment clause Applicable to Single Year Contracts" and "Alternate Economic Price Adjustment clause Applicable to Multiyear Contracts" to assist contracting officers in selecting the proper clause. These recommendations were not accepted because to do so would violate the regulatory conventions used in the Federal Acquisition Regulation and the GSAR. Additionally, there is no indication that contracting officers are including the wrong clauses in solicitations.

b. *Executive Order 12291.* The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule.

c. *Regulatory Flexibility.* The GSA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. The rule would simply modify the existing Economic Price Adjustment clause used in multiyear multiple award schedule contracts to make the language more general so that it will apply to multiyear

contracts of varying terms. The existing clause is written in contemplation of a 3-year contract period.

d. *Paperwork Reduction Act.* The Economic Price Adjustment Clause at section 552.216–71 contains an information collection requirement which has been approved by OMB under section 3504(h) of the Paperwork Reduction Act and assigned OMB Control No. 3090–0243. The title of the collection is "48 CFR 552.216–71 Economic Price Adjustment Clause." The clause requires MAS contractors to submit certain pricing information when requesting a price adjustment under a MAS contract. The contracting officer uses the information to determine whether the requested price adjustment is reasonable. The respondents are MAS contractors requesting price adjustments under MAS contracts that contain the Economic Price Adjustment clause. The estimated total annual burden for this collection is 2,166 hours. This is based on estimated average burden hours per response of .5, a proposed frequency of 1.5 responses per respondent, and an estimated number of likely respondents of 2,914.

Any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden may be directed to the Director, Office of GSA Acquisition Policy and Regulations (VP), 18th and F Streets NW., Room 4026, Washington, DC 20405 and to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Washington, DC 20503.

List of Subjects in 48 CFR Part 552

Government procurement.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR Part 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. Section 552.216–71 is amended by revising Alternate I to read as follows:

552.216–71 Economic Price Adjustment—FSS Multiple Award Schedule Contracts.

* * * * *

Alternate I (Jan 1989)

The following is substituted for paragraph (b) and (c) of the basic clause:

"(b) Contractors may request price increases to be effective on or after the first 12 months of the contract period providing all of the following conditions are met:

(1) Increases result from a reissue or other modification of the contractor's commercial catalog price list that was used as the basis for the contract award.

(2) No more than three increases will be considered during each succeeding 12-month period of the contract. (For succeeding contract periods of less than 12 months, up to three increases will be considered subject to the other conditions of this subparagraph (b)).

(3) Increases are requested before the last 60 days of the contract period.

(4) At least 30 days elapse between requested increases.

(c) In any contract period during which price increases will be considered, the aggregate of the increases during any 12-month period shall not exceed [1] percent of the contract unit price in effect at the end of the preceding 12-month period. The Government reserves the right to raise the ceiling when market conditions during the contract period support such a change.

(End of Clause)

Dated: February 2, 1989.

Richard H. Hopf III,

Associate Administrator for Acquisition Policy.

[FR Doc. 89–3506 Filed 2–14–89; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

[Docket No. 81008–9008]

Foreign Fishing; Foreign Fee Schedule

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NOAA implements the fee schedule for foreign vessels fishing in the Exclusive Economic Zone. Under this schedule, owners and operators of foreign vessels will pay fees, at 44.4 percent of the exvessel value, for fish they directly harvest from the Exclusive Economic Zone, and $354 per vessel permit application. The fee schedule is designed to recover $6.420 million in poundage fees for government costs incurred under the Magnuson Fishery Conservation and Management Act (Magnuson Act). This rule is needed to comply with section 204(b)(10) of the Magnuson Act.

EFFECTIVE DATE: January 1, 1989.

ADDRESS: Copies of the regulatory impact review (RIR) may be obtained from the Fees and Permits Program, F/CM, at the telephone number below.

[1] Insert the percentage appropriate at the time the solicitation is issued. This percentage should be determined based on the trend established by an appropriate index such as the Producer Prices and Price Index. A ceiling of more than 10 percent must be approved by the contracting director.

FOR FURTHER INFORMATION CONTACT: Alfred J. Bilik, (301) 427–2339, or telex 467856 US COMM FISH CI.

SUPPLEMENTARY INFORMATION: NOAA implements the schedule of fees for fishing by foreign vessels in the Exclusive Economic Zone in 1989. The schedule sets a target for an annual fee collection of $6.420 million in poundage fees, and permit application fees of $354 per vessel. The schedule also requires that vessels of any nation falling under "higher fee" criteria would pay an additional incremental amount of 67.42 percent of their poundage fees. No nation will be required to pay the additional incremental amount.

Background

On November 1, 1988, NOAA published a Notice of Proposed Rulemaking (NPR) for a 30-day public comment period at 53 FR 44047. NOAA proposed a foreign fee schedule at the level of fees charged in 1988. This schedule was found to be in accord with provisions of section 204(b)(10) of the Magnuson Act (16 U.S.C. 1801 *et seq.*)

Section 204(b)(10) states, in part, "The fees * * * shall be at least in an amount sufficient to return to the United States an amount which bears to the total cost of carrying out the provisions of this Act * * * during (FY 1988) the same ratio as the aggregate quantity of fish harvested by foreign fishing vessels within the Exclusive Economic Zone during (1987) bears to the aggregate quantity of fish harvested by both foreign and domestic fishing vessels within such zone and the territorial waters of the United States during (1987)." (16 U.S.C. 1824(b)(10)(B)). The fiscal and calendar years applied for determining compliance of this fee schedule are shown above (see 53 FR 44047).

Section 204(b)(10) also states that if the Secretary of Commerce, in consultation with the Secretary of State, finds a fishing nation to be "harvesting anadromous species of United States origin at a level that is unacceptable to the Secretary", or "failing to take sufficient action to benefit the conservation and development of United States fisheries", in other words, meeting a "higher fee" criterion, subparagraph 204(b)(10)(C) applies. Subparagraph 204(b)(10)(C) requires the Secretary to impose fees for that nation which are based on the ratio of the fish harvested by foreign vessels in the Exclusive Economic Zone to the aggregate quantity of fish harvested by both foreign and domestic vessels in the Exclusive Economic Zone only. Removing the quantity of U.S. harvested fish caught in the territorial waters from the formula increases the ratio and thereby the fees that the nation must pay.

The NPR reviewed the procedures, assumptions and estimates used by NOAA to conclude that a foreign fee target based on the fees charged for catches of each species in 1988 and on estimates of 1989 allocations would exceed the amount calculated by assuming $200 million costs for activities to carry out the purposes of the Magnuson Act in FY 1988 and a 1987 foreign catch of 2.6 percent of the total catch in the Exclusive Economic Zone and the U.S. territorial waters. A poundage fee target for the foreign catches of $6.420 million was proposed and an additional amount of $354 per vessel was proposed for processing 1989 fishing permit applications. The surcharge for the Fishing Vessel and Gear Damage Compensation Fund (FVGDCF) was proposed to be waived since the fund contains sufficient capital for paying claims for the duration of foreign fishing in the Exclusive Economic Zone.

Only one timely comment was received and the comment addressed the species fee for Atlantic Mackerel. Several late comments addressed the same issue. The comments advocated a reduction in the fee on the poundage for Atlantic mackerel harvested directly by foreign vessels. Allegedly, reducing this fee would allow foreign processing vessels to pay higher prices to U.S. fishermen who sell Atlantic mackerel catch to them. The purpose would be to attract more U.S. fishermen into that fishery. The commenters said that the prescribed ratios of domestic production, joint venture production and directed fishing which bear on approval of foreign fishing applications for the Northwest Atlantic Ocean fishery affect the profitability of Atlantic mackerel operations. NOAA considered similar comments when it adopted the final fee schedule for 1988. Changes were made prior to implementation of the final 1988 fee schedule to address trade and development implications. The adjustments made in the 1988 schedule specifically took into account the concerns in the Atlantic mackerel fishery. A change in the mackerel fee could shift a disproportionate fee burden to the Pacific whiting fishery if allocations for foreign fishing are made in 1989. NOAA believes it has exercised as much flexibility as possible under the Magnuson Act with respect to the Atlantic mackerel fishery. No change is made in response to this comment. NOAA adopts the species fees assessed in 1988 for the final 1989 fee schedule.

The poundage fee target for 1989 is $6.420 million. Permit application fees of $354 will be charged for each foreign fishing application. No nation will be charged the higher incremental fees of 67.4 percent of its poundage fees. The surcharge for the FVGDCF is waived for 1989. The Department of State concurs in this fee schedule.

Classification

NOAA prepared an RIR for the 1988 fee schedule that discussed the economic consequences and impacts of the fee schedule and alternatives. Since NOAA proposed no changes for 1989, conclusions of the RIR for the 1988 fees schedule were also not significantly changed. Copies of the final RIR are available at the above address. Based on the RIR, the Administrator, NOAA, determined that the proposed schedule does not constitute a major rule under Executive Order 12291 (E.O. 12291). The RIR demonstrates that the fee schedule complies with the requirements of section 2 of E.O. 12291.

The General Counsel for the Department of Commerce certified that the proposed fee schedule will not have a significant economic impact upon a substantial number of small entities for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This certification was forwarded to the Chief Counsel for Advocacy of the Small Business Administration. Because the fee schedule will not have a significant economic impact upon a substantial number of small entities, a regulatory flexibility analysis was not prepared.

The proposed fee schedule has no direct impact on the fishery resources in the Exclusive Economic Zone. At the most, a fee schedule might affect the harvesting strategy of foreign fishing vessels; however, the schedule as set out in the final rule meets the criterion that fees should minimize disruption of traditional fishing patterns because the 1989 fees are directly related to exvessel values and are designed to minimize effects on U.S. fishery development and trade. Since this fee schedule will not prevent the harvesting of the available total allowable level of foreign fishing (TALFF), and the environmental impact of harvesting the TALFF is described for each fishery management plan, no further environmental assessment is necessary.

The 30-day delay in implementation required by the Administrative Procedure Act is waived so that the fee schedule can be implemented near the beginning of the fishing season. This action does not require changes in plans or strategies by foreign fishing companies since it makes no change from the fee which applied in 1988.

The final rule has no information collection provisions for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

This rule would not directly affect the Coastal zone of any state with an approved Coastal Zone Management program. Neither does the rule contain policies with federalism implications sufficient to warrant a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 611

Fish, Fisheries, Foreign relations, Reporting requirements.

Dated: February 10, 1989.

James W. Brennan,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons above, 50 CFR Part 611 is amended as follows:

PART 611—[AMENDED]

1. The authority citation for Part 611 is amended as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 971 *et seq.*, 22 U.S.C. 1971 *et seq.*, and 16 U.S.C. 1361 *et seq.*

2. Section 611.22(b)(1), (c) and (d) are revised as follows:

§ 611.22 Fee schedule for foreign fishing.

* * * * *

(b) *Poundage fees*—(1) *Rates.* If a nation chooses to accept an allocation, poundage fees must be paid at the rate specified in Table 1, plus the surcharge required by paragraph (d) of this section.

TABLE 1. SPECIES AND POUNDAGE FEES

(Dollars per metric ton, unless otherwise noted)

Species	Poundage fees
Northwest Atlantic Ocean fisheries:	
1. Butterfish	274.61
2. Hake, red	183.97
3. Hake, silver	174.83
4. Herring, river	61.76
5. Mackerel, Atlantic	68.43
6. Other groundfish	119.09
7. Squid, *Illex*	103.96
8. Squid, *Loligo*	245.73
Atlantic and Gulf fisheries:	
9. Shark, Atlantic	187.96
10. Shrimp, royal red	[1]
Alaska fisheries:	
11. Pollock, Alaska	95.09
12. Cod, Pacific	143.97
13. Pacific ocean perch	195.96
14. Rockfish, other	326.15
15. Mackerel, Atka	116.64
16. Squid, Pacific	75.10
17. Flounders	83.09
18. Sablefish (Gulf of Alaska)	399.03
19. Sablefish (Bering Sea and Aleutian Islands)	210.16

BEST COPY AVAILABLE

TABLE 1. SPECIES AND POUNDAGE FEES—Continued

[Dollars per metric ton, unless otherwise noted]

Species	Poundage fees
20. Groundfish, other	108.84
21. Snails	126.42
Pacific fisheries:	
22. Whiting, Pacific	76.21
23. Sablefish	415.47
24. Pacific Ocean Perch	320.38
25. Rockfish, other	335.93
26. Flounders	316.82
27. Mackerel, jack	254.61
28. Groundfish, other	408.58
Western Pacific fisheries:	
29. Coral *	91.54
30. Dolphin fish	2,450.59
31. Wahoo	980.24
32. Sharks	490.12
33. Marlin, striped	829.62
34. Billfish	862.03
35. Swordfish	1,038.45

(1) Reserved.
(*) Dollars per kilogram.

* * * * *

(c) *Incremental amount.* An additional incremental amount will be added to the poundage fee Bill for Collection for fish harvested by a nation during the first quarter of the next fiscal year following notification under paragraph (10)(c) of section 204(b) of the Magnuson Act (16 U.S.C. 1824(b)(10)(C)). This incremental amount will be added to all subsequent quarterly bills until the quarter specified when the Assistant Administrator notifies that nation that it has taken appropriate corrective action. The incremental amount in 1989 will be 67.4 percent of the total poundage fee in each quarter during which this provision applies.

(d) *Surcharges.* The owner or operator of each foreign vessel who accepts and plays permit application or poundage fees under paragraph (a) or (b) of this section must also pay a surcharge. The Assistant Administrator may reduce or waive the surcharge if it is determined that the Fishing Vessel and Gear Damage Compensation Fund is capitalized sufficiently. The Assistant Administrator also may increase the surcharge during the year to a maximum level of 20 percent, if needed, to maintain capitalization of the fund. The Assistant Administrator has effectively waived the surcharge on 1989 fees.

* * * * *

[FR Doc. 89-3556 Filed 2-14-89; 8:45 am]
BILLING CODE 3510-22-M

50 CFR Part 675

[Docket No. 81131-9019]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of prohibition of receipt of groundfish.

SUMMARY: NOAA announces prohibition of receipt by foreign processors in the exclusive economic zone (EEZ) of Pacific cod taken in directed fisheries for Pacific cod in the Bering Sea and Aleutian Islands Management Area (BSAI). This action, taken under provisions of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP), limits joint venture processing (JVP) to the amount of Pacific cod specified for JVP, assures optimum use of groundfish, and promotes orderly conduct of the groundfish fisheries.

DATES: Effective 2359 GMT, February 11, 1989 (1459 Alaska Standard Time, February 11, 1989) through the remainder of 1989. Comments will be accepted through February 27, 1989.

ADDRESS: Comments should be mailed to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK. 99802, or be delivered to Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Pat Peacock, Fishery Management Specialist, NMFS, 907-586-7854.

SUPPLEMENTARY INFORMATION: The FMP, which governs the groundfish fishery in the EEZ of the BSAI under the Magnuson Fishery Conservation and Management Act, is implemented by rules appearing at 50 CFR 611.93 and Part 675. For other actions in 1989 concerning JVP Pacific cod in the Bering Sea and Aleutian Islands Management Area, see 54 FR 3605, January 25, 1989.

Notice of Closure to Directed Fishing

Under § 675.20(a)(7), the Regional Director has determined that 7,000 mt of the total 37,466 mt of Pacific cod allocated to JVP will be needed after the closure of the directed fishery for bycatch in other JVP fisheries for yellowfin sole, rock sole, and "other flatfish." To preserve this bycatch amount, foreign processors must cease receiving Pacific cod caught by U.S. fishermen in directed fisheries for Pacific cod, effective 2359 g.m.t. February 11, 1989. Directed fishing is defined at § 675.2.

Classification

This action is taken under the authority of 50 CFR 675.20(b) and complies with Executive Order 12291.

The Assistant Administrator for Fisheries finds for good cause that it is impractical and contrary to the public interest to provide prior notice and opportunity for comment. Immediate effectiveness of this notice is necessary to prevent the harvest of Pacific cod from exceeding the JVP amount.

Interested persons are invited to submit comments in writing to the address above for 15 days after the effective date of this notice.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 10, 1989.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-3557 Filed 2-10-89; 4:05 pm]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 30
Wednesday, February 15, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Maintenance of Nuclear Power Plants; Availability of Information

AGENCY: Nuclear Regulatory Commission.

ACTION: Availability of Information.

SUMMARY: In response to a request from Nuclear Utility Management and Resources Council (NUMARC), an open meeting was held on December 14, 1988 between representatives of (NUMARC) and the NRC staff to discuss questions relative to the proposed maintenance rule (November 28, 1988, 53 FR 47822). A summary report of that meeting is in the Public Document Room.

NUMARC has subsequently submitted questions relating to the regulatory analysis which accompanied the proposed rule. NRC has responded to those questions in a letter dated February 3, 1989. Copies of both the questions and answers are available in the NRC Public Document Room at the address and times below.

DATE: Comment period expiration date for this proposed rulemaking is still February 27, 1989.

ADDRESS: Mail written comments to Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attn: Docketing and Service Branch. Deliver comments to One White Flint North, 11555 Rockville Pike, Rockville, MD between 7:30 a.m. and 4:15 p.m. Federal workdays, or to the NRC Public Document Room, 2120 L. Street NW., Washington, DC, between 7:30 a.m. and 4:15 p.m.

FOR FURTHER INFORMATION CONTACT: Moni Day, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492-3730.

Dated in Rockville, Maryland this 9th day of February, 1989.

For the Nuclear Regulatory Commission.

Moni Dey,

Manager, Advanced Reactors and Generic Issues Branch, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 89-3541 Filed 2-14-89; 8:45 am]
BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-ASO-3]

Proposed Designation of Transition Area; Fulton, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to designate the Fulton, Mississippi, transition area to accommodate Instrument Flight Rules (IFR) operations at the Fulton-Itawamba County Airport. This action will lower the base of controlled Airspace from 1,200 feet to 700 feet above the surface in the vicinity of the airport. A Standard Instrument Approach Procedure (SIAP) is being developed to serve the airport and the controlled airspace is required for protection of IFR aeronautical operations. Concurrent with publication of the SIAP, the airport status will change from Visual Flight Rules (VFR) to IFR.

DATES: Comments must be received on or before March 24, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO-530, Manager, Airspace and Procedures Branch, Docket No. 89-ASO-3, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-ASO-3." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the

Federal Aviation Regulations (14 CFR Part 71) to designate the Fulton, · Mississippi transition area. This action will provide controlled airspace for aircraft executing a new Standard Instrument Approach Procedure to the Fulton-Itawamba County Airport. If the proposed designation of the transition area is found acceptable, the flight status of the airport will be changed to IFR. Section 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) was republished in FAA Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal.

Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, Transition area.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Fulton, Mississippi [New]

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Fulton-Itawamba County Airport (Lat. 34°21'07" N, Long. 88°22'38" W).

Issued in East Point, Georgia, on February 2, 1989.

William D. Wood,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 89-3501 Filed 2-14-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 81024-9018]

Revision of Patent Practices

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of extension of comment period for proposed rule making.

SUMMARY: The Patent and Trademark Office is extending the comment period for receiving comments on the proposed amendments to the rules of practice in patent cases, Part 1 of Title 37, Code of Federal Regulations. The Office is extending the Comment period on the proposed amendments to 37 CFR 1.53, 1.55, 1.60, 1.62 and 1.96 and on the proposed addition of 1.21(n), as published on November 30, 1988 at 53 FR. 48402. These amendments would clarify requirements in the filing of applications and provide for procedures for applicants to cure certain defects in the filing of applications. After comments are received, the Patent and Trademark Office will issue a notice of final rule making addressing these proposals.

DATE: Written comments on proposed amendments to 37 CFR 1.53, 1.55, 1.60, 1.62 and 1.96, and proposed new rule 1.21(n) must be submitted by March 3, 1989.

ADDRESS: Address written comments to the Commissioner of Patents and Trademarks, Washington, DC, 20231, Attention: Frances Michalkewicz, Suite 904, Crystal Park 2.

FOR FURTHER INFORMATION CONTACT: Frances Michalkewicz by telephone at (703) 557-1610 or by mail marked to her attention and addressed to the Commissioner of Patents and Trademarks, Washington, DC 20231.

Date: February 10, 1989.

Bradford R. Huther,

Assistant Commissioner for Finance and Planning.

[FR Doc. 89-3540 Filed 2-10-89; 2:44 pm]

BILLING CODE 3510-16-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[GA-012; FRL-3520-1]

Approval and Promulgation of Implementation Plans; Georgia Stack Height Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this action, EPA is proposing to approve revisions to the Georgia state implementation plan (SIP) submitted to EPA on December 15, 1988. Georgia has revised its SIP to include regulations for good engineering practice stack height. Georgia has not yet adopted the definitions of "stack" and "stack in existence" found at 40 CFR 51.100 (ff) and (gg) or incorporated grandfathering provisions into their rules. This proposal is made on the assumption that the State will adopt the definition of "stack" and "stack in existence" and incorporate into their rules the grandfathering provisions before final rulemaking. Georgia's regulations will then meet the requirements of Part 51, Chapter I, Title 40 of the Code of Federal Regulations. EPA also provides notice that this action may be subject to modification when EPA completes rulemaking to respond to the decision in *NRDC* vs. *Thomas* 838 F.2d 1224 (D.C. Cir. 1988). If EPA's response in the NRDC remand modifies the July 8, 1985, stack height regulations, EPA will notify Georgia that its rules must be changed to comport with EPA's modified requirements. This may result in revised emission limitations or may affect other actions taken by Georgia and source owners or operators.

DATES: To be considered, comments must be submitted on or before March 17, 1989.

ADDRESSES: Written comments should be addressed to Beverly T. Hudson of EPA Region IV's Air Programs Branch (See EPA Region IV address below). Copies of the materials submitted by Georgia may be examined during normal business hours at the following locations:

Air Programs Branch, Environmental Protection Agency, Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365.

Georgia Department of Natural Resources, Floyd Towers East, Room 1162, 205 Butler Street, Atlanta, Georgia 30334.

FOR FURTHER INFORMATION CONTACT: Beverly T. Hudson, EPA Region IV, Air Programs Branch at above listed address, telephone (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 8, 1985 (50 FR 27892), EPA published final regulations to implement section 123 of the Clean Air Act (CAA), which regulates the manner in which dispersion of pollutants from a source may be considered in setting emission limitations. These regulations are codified at 40 CFR 51.100(z)-(kk), 51.118 and 51.164. Pursuant to these regulations and the Clean Air Act Amendments of 1977, all states were required to (1) review and revise, as necessary, their state implementation plans (SIPs) to include provisions that limit stack height credit and dispersion techniques in accordance with the revised regulations, and (2) review all existing emission limitations to determine whether these limitations have been affected by stack height credits above Good Engineering Practice (GEP) or any other dispersion techniques.

For any limitations so affected, states were to prepare revised limitations consistent with their revised SIPs. All SIP revisions and revised emission limits were to be submitted to EPA within nine months of promulgation.

Subsequently, EPA issued detailed guidance on carrying out the necessary reviews. For the review of emission limitations, states were to prepare inventories of stacks greater than 65 meters in height and sources with emissions of sulfur dioxide (SO_2) in excess of 5,000 tons per year. These limits correspond to the *de minimis* GEP stack height and the *de minimis* SO_2 emission exemption from prohibited dispersion techniques. These sources were then to be subjected to detailed review for conformance with the revised regulations. State submissions were to contain an evaluation of each stack and source in the inventory.

EPA's stack height regulations were challenged in *NRDC* vs. *Thomas*, 838 F.2d 1224 (DC Cir. 1988). On January 22, 1988, the U.S. Appeals Court for the DC Circuit issued a decision affirming the regulations in large part, but remanding three provisions to EPA for reconsideration:

1. Grandfathering pre-October 11, 1983, within-formula stack height increases from demonstration requirements (40 CFR 51.100(kk)(2)).

2. Dispersion credit for sources originally designed and constructed with merged or multi-flue stacks (40 CFR 51.100(hh)(2)(ii)(A)).

3. Grandfathering pre-1979 use of the refined H+1.5L formula (40 CFR 51.100(ii)(2)).

If EPA's response to the NRDC remand modifies the July 8, 1985, stack height regulations, EPA will notify the State of Georgia that its rules must be changed to comport with EPA's modified requirements. This may result in revised emission limitations or may affect other actions taken by Georgia and source owners or operators.

State Submission

On December 15, 1988, the Georgia Department of Natural Resources submitted revised regulations which limit stack height credit and dispersion techniques in accordance with EPA's requirements. A public hearing on the revised stack height rules was held on October 9, 1988.

These rules apply to all new sources and modifications as required in 40 CFR 51.164 as well as existing sources specified in 40 CFR 51.118.

This means that these rules apply to all sources that were or are constructed, reconstructed or modified subsequent to December 1, 1970. EPA has reviewed the revisions to these regulations and has determined that they are consistent with EPA's requirements for GEP stack height and dispersion techniques as revised on July 8, 1985.

The State formally adopted EPA's stack height regulations by reference. Georgia has not yet adopted the definitions of "stack" and "stack in existence" found at 40 CFR 51.100(ff) and (gg) or incorporated into their rules the grandfathering provision. Before EPA takes final rulemaking action to approve the Georgia regulations, the State must adopt EPA's definition of "stack" and "stack in existence" and incorporate EPA's grandfathering provision into their rules.

Proposed Action

Since Georgia's revision brings their existing regulations into conformance with the federal stack height rule, EPA is proposing to approve the State's stack height regulations. This proposal is made on the assumption that the State will adopt EPA's definition of "stack" and "stack in existence" and incorporate into their rules EPA's grandfathering provisions.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations.

Authority: 42 U.S.C. 7401-7642.

Dated: December 8, 1988.

Lee A. DeHihns, III,

Acting Regional Administrator.

[FR Doc. 89-3531 Filed 2-14-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 8E3650/P479; FRL-3518-5]

Pesticide Tolerance for Ethyl 3-Methyl-4-(Methylthio) Phenyl (1-Methylethyl) Phosphoramidate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for the combined residues of the nematicide ethyl 3-methyl-4-(methylthio)phenyl (1-methylethyl) phosphormaidate (also referred to in this document as fenamiphos) and its cholinesterase-inhibiting metabolites in or on the raw agricultural commodity eggplant. The proposed regulation to establish a maximum permissible level for residues of the pesticide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATE: Comments, identified by the document control number, [PP 8E3650/P479], must be received on or before March 17, 1989.

ADDRESS: By mail, submit written comments to: Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Room 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m.,

Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Office location and telephone number: Room 716C, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2310.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petiton (PP) 8E3650 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project, and the Agricultural Experiment Station(s) of Alabama, Florida, New Jersey, North Carolina, Oklahoma, and the U.S. Department of Agriculture.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the combined residues of the nematicide fenamiphos and its cholinesterase-inhibiting metabolites ethyl 3-methyl-4-(methylsulfinyl)phenyl (1-methylethyl) phosphoramidate and ethyl 3-methyl-4-(methyl-sulfonyl)phenyl (l-methylethyl) phosphoramidate in or on the raw agricultural commodity eggplant at 0.1 part per million (ppm).

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include:

1. A 2-year dog feeding study with a no-observed-effect level (NOEL) for cholinesterase inhibition (ChE) at 1 ppm (equivalent to 0.025 milligram (mg)/kilogram (kg)/day) and no systemic effects at 10 ppm (the highest dose tested).

2. A 2-year feeding/oncogenicity study in rats with a NOEL for cholinesterase inhibition at less than 2.0 ppm (equivalent to 0.1 mg/kg/day) and no systemic effect at 10 ppm (equivalent to 0.5 mg/kg/day). The study was negative for oncogenic effects under the conditions of the study at all feeding levels.

3. An 18-month oncogenicity study in mice with feeding levels of 2, 10, and 50 ppm (equivalent to 0.3, 1.5, and 7.5 mg/kg/day), which was negative for oncogenic effects under the conditions of the study at all levels tested.

4. A three-generation reproduction study with no reproductive effects at 30 ppm (highest dose tested).

5. A teratology study in rabbits with developmental and maternal NOEL's at 0.5 mg/kg.

6. A neurotoxicity study in hens with no neurotoxicity damage at 12.5 mg/kg (highest dose tested).

7. In a metabolism study in rats, fenamiphos was metabolized to its sulfoxide and sulfone analogs with 50 percent excreted in the urine within 12 to 15 hours.

8. Genotoxicity studies including an Ames test (negative), a dominant-lethal test in mice (negative), an *in vitro* assay in Chinese hamster ovary cells (negative for nonactivation assay at concentrations up to 130 micrograms/milliliter and for activation assay up to 230 micrograms/milliliter), and gene mutation using *Bacillus subtilis* (negative).

Data currently lacking include a teratology study in a second species. Data requirements for registration of fenamiphos are identified in a Registration Standard for the chemical, which was issued in June 1987.

The acceptable daily intake (ADI), based on the 2-year feeding study in dogs with a NOEL for cholinesterase inhibition at 1.0 ppm (0.025 mg/kg/day) and using a 100-fold safety factor, is calculated to be 0.00025 mg/kg of body weight (bw)/day. The anticipated residue contribution (ARC) from existing tolerances is calculated to be 0.000094 mg/day, which is equivalent to 37.8 percent of the ADI. The current action will contribute an additional 0.0000001 mg/kg/day of residues to the human diet.

The nature of the residues is adequately understood and an adequate analytical method, gas chromatography using a thermionic detector, is available in the *Pesticide Analytical Manual*, Vol. II (PAM II), for enforcement purposes. There are currently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency, the tolerance established by amending 40 CFR 180.349 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 8E3650/P479]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: January 30, 1989.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. In § 180.349(a), by adding and alphabetically inserting the raw agricultural commodity eggplant, to read as follows:

§ 180.349 Ethyl 3-methyl-4-(methylthio)phenyl (1-methylethyl) phosphoramidate; tolerances for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Eggplant	0.1
* * * * *	

[FR Doc. 89-3195 Filed 2-14-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-12, RM-6545]

Radio Broadcasting Services; Oakes, ND

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by CERM Broadcasting Corporation proposing the substitution of Channel 223C1 for Channel 222C2 at Oakes, North Dakota, and the modification of its license for Station KDDR-FM to specify operation on the higher powered channel. Channel 223C1 can be allotted to Oakes in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 46-08-12 and West Longitude 98-05-36. Canadian concurrence in the allotment is required since Oakes is located within 320 kilometers of the U.S.-Canadian border. In accordance with § 1.420(g), competing expression of interest in use of the channel at Oakes will not be accepted.

DATES: Comments must be filed on or before April 3, 1989, and reply comments on or before April 18, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Frank R. Jazzo, Esq., Fletcher, Heald & Hildreth, 1225 Connecticut Avenue NW., Suite 400, Washington, DC 20036-2679 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-12, adopted January 17, 1989, and released February 8, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-3509 Filed 2-14-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-13, RM-6547]

Radio Broadcasting Services; Gleneden Beach, Sweet Home and Toledo, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Galaxy Broadcast Partners proposing the substitution of Channel 296C2 for Channel 296A at Sweet Home, Oregon, and the modification of its license for Station KNKN to specify the higher powered channel. In order to comply with the Commission's minimum distance separation requirements, Galaxy also proposes the substitution of Channel 264A for Channel 296A at Toledo, Oregon, the modification of Station KTDO-FM's license accordingly, and the substitution of Channel 236C2 for unused Channel 264C2 at Gleneden Beach, Oregon. Channel 296C2 can be allotted to Sweet Home and Channel 264A can be allotted to Toledo in compliance with the Commission's minimum distance separation requirements and can be used at the present transmitter sites of Station KNKN and Station KTDO-FM, respectively. Channel 236C2 can be allotted to Gleneden Beach in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 296C2 at Sweet Home are North Latitude 44-26-05 and West Longitude 122-42-23. The coordinates for Channel 264A at Toledo are North Latitude 44-38-40 and West Longitude 124-00-52. The coordinates for Channel 236C2 at Gleneden Beach are North Latitude 44-52-53 and West Longitude 124-01-59. In accordance with the Commission's Rules, competing expressions of interest in Channel 296C2 at Sweet Home will not be accepted..

DATES: Comments must be filed on or before April 3, 1989, and reply comments on or before April 18, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Heather McDaniel, Galaxy Broadcast Partners, 33692 Santiam Hwy., Lebanon, Oregon 97355 (Petitioner)..

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-13, adopted January 17, 1989, and released February 8, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-3508 Filed 2-14-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

Marine Mammals; Native Exemptions; Extension of Comment Period

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Extension of comment period.

SUMMARY: In the November 14, 1988, Federal Register (53 FR 45788) the Fish and Wildlife Service (Service) proposed to amend the regulations in 50 CFR Part 18 implementing the Marine Mammal Protection Act of 1972 (the Act), 16 U.S.C. 1361–1407. The proposed rule would prohibit the taking of sea otters by Alaska Natives for use in creating and selling authentic native articles of handicrafts and clothing under the Native Exemptions section of the Act, 16 U.S.C. 1371(b). The Service gives notice that the comment period will be extended. This extension was requested by the State of Alaska and by several individuals and organizations in Alaska in order to allow interested persons and groups in remote Alaskan villages sufficient time to comment on the proposal. This extension of the comment period will allow comments on the proposal to be submitted from all interested parties.

DATES: Written comments will be accepted through April 13, 1989.

ADDRESSES: Comments and materials concerning this notice should be sent to the Director, U.S. Fish and Wildlife Service, P.O. Box 28006, Washington, DC 20038–6006. Comments and materials may be delivered to the U.S. Fish and Wildlife Service, Division of Law Enforcement, Room 300, Hamilton Building, 1375 K Street NW., Washington, DC, between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Special Agent in Charge Thomas L. Striegler at the above address ((202) 343–9242 or FTS 343–9242).

Date: February 9, 1989.

Becky Norton Dunlop,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89-3515 Filed 2-14-89; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register

Vol. 54, No. 30

Wednesday, February 15, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Adjudication; Public Meeting

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Committee on Adjudication of the Administrative Conference of the United States. The committee will meet to discuss a study of consular visa denials and a study of the use of regional processing facilities in the alien legalization program.

DATE: Monday, March 13, 1989 at 1:00 p.m.

Location: Administrative Conference of the United States Library, 2120 L Street NW., Suite 500, Washington, DC.

Public Participation: Attendance at the committee meeting is open to the public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days in advance of the meeting. The committee chairman may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with a committee before, during, or after a meeting. Minutes of the meeting will be available upon request.

FOR FURTHER INFORMATION CONTACT: Nancy G. Miller, 202–254–7020.

Jeffrey S. Lubbers,

Research Director.

February 9, 1989.

[FR Doc. 89-3480 Filed 2-14-89; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

February 10, 1989.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) title of the information collection; (3) form number(s), if applicable; (4) how often the information is requested; (5) who will be required or asked to report; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to provide the information; (8) an indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- Packers and Stockyards Administration

"Clear Title" Regulation to implement section 1324 of the Food Security Act of 1985.

None

Other; One time

State or local governments; 10 responses; 120 hours; not applicable under section 3504(h)

Calvin W. Watkins, (202) 447–7063

- Agricultural Marketing Service

Fresh Bartlett Pears Grown in Oregon and Washington—Marketing Order No. 931

None

Recordkeeping; Weekly; Semi-monthly

Businesses or other for-profit; 1,698 responses; 983 hours; not applicable under section 3504(h)

Virginia M. Olson, (202) 475–3930.

New Collection

- Agricultural Marketing Service

Marketing Agreement for Proposed Marketing Order Vidalia Onions Grown in Georgia

None

Recordkeeping; Weekly; Biannually

Farms; Businesses or other for-profit; Small businesses or organizations; 808 responses; 100 hours; not applicable under section 3504(h)

Virginia M. Olson, (202) 475–3930.

Donald E. Hulcher,

Departmental Clearance Officer.

[FR Doc. 89-3551 Filed 2-14-89; 8:45 am]

BILLING CODE 3410-01-M

DEPARTMENT OF COMMERCE

National Medal of Technology Nomination Evaluation Committee; Closed Meeting

AGENCY: Office of Technology Policy, Technology Administration, Department of Commerce.

ACTION: Notice of closed meeting.

SUMMARY: This notice announces the forthcoming closed meeting of the National Medal of Technology Nomination Evaluation Committee. The Committee was rechartered on February 4, 1988. The Committee shall make recommendations to the Secretary of Commerce, through a Steering Committee, concerning award of the National Medal of Technology.

The Committee will meet only in executive session to discuss matters dealing with the relative merits of all persons and companies nominated for the Medal as a result of a public solicitation.

Time and Place: The meeting will begin at 10:00 a.m. and end at 3:30 p.m. on April 3, 1989. The meeting will be held in Room 150 at the National Academy of Engineering, 2101 Constitution Avenue, NW., Washington, DC 20418.

FOR FURTHER INFORMATION CONTACT: Dr. Paul Braden, Executive Director, National Medal of Technology Nomination Evaluation Committee, U.S. Department of Commerce, 14th and

Constitution Avenue, NW., Herbert C. Hoover Building, Room 4814–B, Washington, DC 20230 (202) 377–5572.

SUPPLEMENTARY INFORMATION: A Notice of Determination to close the meetings of the Committee to the public on the basis of 5 U.S.C. 552(c) (4) and (6) was approved by the Assistant Secretary of Commerce for Administration, with the concurrence of the General Counsel on January 31, 1989 in accordance with the Federal Advisory Committee Act, since the discussions are likely to disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy and may also disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential. A copy of the Notice of Determination is available for public inspection and copying in the Central Reference and Records Inspection Facility, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Herbert C. Hoover Building, Room 6628, Washington, DC 20230, (202) 377–4210.

Date: February 10, 1989.

Ernest Ambler,

Acting Under Secretary for Technology Administration.

[FR Doc. 89–3538 Filed 2–14–89; 8:45 am]

BILLING CODE 3510–15–M

DEPARTMENT OF DEFENSE

Office of the Secretary

DoD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0800, Wednesday, 15 March 1989.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, Suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: David Slater, AGED Secretariat, 201 Varick Street, New York 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 9, 1989.

[FR Doc. 89–3523 Filed 2–14–89; 8:45 am]

BILLING CODE 3810–01–M

The Joint Staff; Joint Strategic Target Planning Staff (JSTPS), Scientific Advisory Group; Closed Meeting

AGENCY: Joint Strategic Target Planning Staff, Department of Defense.

ACTION: Notice of closed meeting.

SUMMARY: The Director, Joint Strategic Target Planning Staff has scheduled a closed meeting of the Scientific Advisory Group.

DATE: The meeting will be held on 4 and 5 April 1989.

ADDRESS: The meeting will be held at Offutt AFB, Nebraska.

FOR FURTHER INFORMATION CONTACT: The Joint Strategic Target Planning Staff, Scientific Advisory Group, Offutt AFB, Nebraska 68113.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to discuss strategic issues which relate to the development of the Single Integrated Operational Plan (SIOP). Full development of the topics will require discussion of information classified TOP SECRET in accordance with Executive Order 12356, 2 April 1982. Access to this information must be strictly limited to personnel having requisite security clearance and specific need-to-know. Unauthorized disclosure of the information to be discussed at the SAG meeting could have exceptionally grave impact upon national defense. Accordingly, the meeting will be closed in accordance with 5 U.S.C. 552b(c)(1).

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 9, 1989.

[FR Doc. 89–3524 Filed 2–14–89; 8:45 am]

BILLING CODE 3810–01–M

DELAWARE RIVER BASIN COMMISSION

Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, February 22, 1989 beginning at 1:30 p.m. at the Ramada Hotel, Route 1 and Ridge Road, Princeton, New Jersey. The hearing will be part of the Commission's regular business meeting which is open to the public.

An informal pre-meeting conference among the Commissioners and staff will be open for public observation at about 11:00 a.m. at the same location. Topics scheduled for discussion at the conference session include status reports on the Upper Delaware Ice Jam Project, Payments to the Corps of Engineers for Beltzville and Blue Marsh Reservoirs, and Hydrologic Conditions and Drought Warning Measures in the Delaware River Basin.

The subjects of the hearing will be as follows:

Proposed Amendment to the Comprehensive Plan and Water Code of the Delaware River Basin Relating to Temporary Revision of Commission Resolution No. 83–13. The proposed amendment, drafted in response to declining storage levels in upper basin reservoirs, would temporarily revise streamflow objectives at the Montague, New Jersey, USGS gaging station and release and diversion requirements from the New York City Delaware Basin Reservoirs.

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact:

1. *Philadelphia Electric Company (PECO) D–69–210 CP (Final) Revisions Nos. 8 & 9.* An application for extensions and amendments through December 31, 1989, of temporary approvals granted in Docket Revision Nos. 5 and 6. Requested extensions refer to previous revisions authorizing substitution of DO limitations in place of temperature restrictions, transfer of consumptive water use allocations from Cromby Unit 2 and Metropolitan Edison's Titus Station to Limerick Unit 1, and consumptive water use at Limerick whenever that consumptive use has been replaced in equal volume by water released from the Still Creek and Owl Creek Reservoirs. Requested amendments include adding Limerick Unit 2, so that both project approvals refer to Limerick Units Nos. 1 and 2, and increasing the maximum permitted release rate (into Still and Owl Creeks for use at Limerick) from 28 cfs to 56 cfs.

2. *Lehigh County Authority D–85–51 CP (Revised).* An application to revise the docket approved September 24, 1985, because the applicant's requested allocation based upon the projected water demand of the Western Lehigh Service Area during the five-year approval period has already been exceeded. The applicant requests that the decision condition "d" be revised to increase the withdrawal limit of all wells from 154 to 168 million gallons (mg)/30 days. The project is located in Lower and Upper Macungie Townships, Lehigh County, Pennsylvania.

3. *Robesonia-Wernersville Municipal Authority D–88–23 CP.* An application to upgrade and expand a 0.6 million gallons per day (mgd) sewage treatment plant to provide tertiary treatment of 1.3 mgd through the year 2000. The plant is located in Heidelberg Township, Berks County, Pennsylvania, and also serves portions of Lower and South Heidelberg Townships, plus Robesonia and Wernersville Boroughs. Treatment plant effluent will continue to be discharged through the existing outfall to Spring Creek, a tributary of Tulpehocken Creek.

4. *Limerick Township Municipal Authority D–88–58 CP.* An application to expand a 0.5 mgd sewage treatment plant to process a design average flow of 1.0 mgd. The plant is located off King Road in Limerick Township, Montgomery County, Pennsylvania. The project is designed to continue to provide secondary treatment and serve an equivalent population of 10,000 persons in Limerick Township through the year 1998. Treatment plant effluent will continue to be discharged to an unnamed tributary of the Schuylkill River via the existing outfall.

5. *Upper Uwchlan Township D–88–72 CP.* An application to construct a 0.062 mgd sewage treatment plant and spray irrigation system to serve a proposed development, known as Marsh Harbour, in Upper Uwchlan Township, Chester County, Pennsylvania. The plant is designed to provide high quality secondary treatment via the sequential batch reactor process, and the spray irrigation will further remove organics, solids, and nutrients. The 14-acre spray site is located less than half a mile from the Marsh Creek Reservoir, but no surface water discharges are proposed as effluent storage capacity is provided. The project is designed to serve 950 residents in 314 dwelling units.

6. *Municipal Authority of the Township of Spring D–88–77 CP.* An application to expand a 0.8 mgd sewage treatment plant to process 1.25 mgd through the year 2010. The plant is designed to serve an equivalent population of 12,500 persons residing in Spring and Sinking Spring Townships, Berks County, Pennsylvania. The project involves the construction of a 0.45 mgd plant adjacent to the existing facility located off State Hill Road in Spring Township. The expanded plant is designed to remove more than 90 percent of the suspended solids and BOD_5, plus provide nitrification. Treatment plant effluent will continue to be discharged to Cacoosing Creek, a tributary of Tulpehocken Creek.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George E. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Susan M. Weisman,

Secretary.

February 7, 1989.

[FR Doc. 89–3564 Filed 2–14–89; 8:45 am]

BILLING CODE 6360–01–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before March 17, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster, (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) title; (3) frequency of collection; (4) the affected public; (5) reporting burden; and/or (6) recordkeeping burden; and (7) abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: February 10, 1989.

Carlos U. Rice,

Director for Office of Information Resources Management.

Office of Postsecondary Education

Type of Review: Reinstatement.
Title: Application for Foreign Language and Area Studies.
Frequency: Annually.
Affected Public: State or local governments; Non-Profit institutions.
Reporting Burden:
Responses: 717.
Burden Hours: 22447.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form will be used by state and local agencies and non-profit institutions to apply for funding under the Foreign Language and Area Studies Programs. The Department uses the information to make grant awards.

[FR Doc. 89–3562 Filed 2–14–89; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No. 84.029K]

Notice Extending the Closing Date for Transmittal of Applications for New Awards Under the Special Projects—Training Personnel for the Education of the Handicapped Program for Fiscal Year 1989

Summary: On November 10, 1988, a notice was published in the **Federal Register** (53 FR 45739–45740), establishing closing dates for transmittal of applications for new awards for the fiscal year 1989 competitions under the Training Personnel for the Education of the Handicapped Program. The closing date for applications for the Special Projects competition is extended from February 20, 1989 to February 21, 1989. February 20, 1989 is a Federal holiday. Detailed information concerning this competition is included in that notice. The purpose of this notice is to extend the closing date for transmittal of applications.

For Applications or for Further Information Contact: William Peterson, U.S. Department of Education, Office of Special Education Programs, Division of Personnel Preparation, 400 Maryland Avenue SW., (Switzer Building, Room 3094–2651), Washington, DC 20202. Telephone: (202) 732–1083.

(Program Authority: 20 U.S.C. 1431.)

Dated: February 10, 1989.

Madeleine Will,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 89–3584 Filed 2–14–89; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No. 84.180P]

Notice Correcting the Project Period for Applications for New Awards Under the Technology, Educational Media, and Materials for the Handicapped Program for Fiscal Year 1989

Project Period in Months: On January 26, 1989, a notice was published in the **Federal Register** that established a project period of up to 12 months for applications for the fiscal year 1989 Compensatory Technology Applications competition under the Technology, Educational Media, and Materials for the Handicapped Program (54 FR 3955). Detailed information concerning this competition was included in that notice. The purpose of this notice is to alert applicants that the project period for applications submitted under this competition may be for a period of up to 18 months. The project period for "Compensatory Technology Applications (CFDA 84.180P)" should read "Up to 18."

FOR FURTHER INFORMATION CONTACT: Linda Glidew[illegible], U.S. Department of Education, Office of Special Education Programs, Division of Innovation and Development, 400 Maryland Avenue SW. (Switzer Building, Room 3094–2641). Washington, DC 20202. Telephone: (202) 732–1099.

(Program authority: 20 U.S.C. 1461)

Dated: February 10, 1989.

Madeleine Will,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 89–3583 Filed 2–14–89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER89–203–000, et al.]

Carolina Power & Light Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

February 9, 1989.

Take notice that the following filings have been made with the Commission:

1. Carolina Power and Light Company

[Docket No. ER89–203–000]

Take notice that Carolina Power & Light Company (CP&L) on January 30, 1989, tendered for filing three charges in service affecting CP&L's wholesale customers which include updates and changes to CP&L's monthly charge for wheeling service for the delivery of power from the John H. Kerr Dam and Reservoir (Kerr Project) to recipients in CP&L's eastern area, the delivery of power from the Cumberland Projects to recipients in CP&L's western area, and a change in the Exhibit A for French Broad Electric Membership Corporation (FBEMC) Alta Pass point of delivery.

The monthly charge for wheeling service for the delivery of power from the Kerr Project is based on the formula in Appendix A of the Contract, CP&L Rate Schedule FERC No. 127 dated January 23, 1967, between the United States of America, Department of Energy, acting by and through the Southeastern Power Administration (Administrator) and CP&L. The monthly charge for wheeling service for the delivery of power from the Cumberland projects is based on the formula contained in Appendix A of the Contract, CP&L Rate Schedule FERC No. 126 dated August 21, 1966, between the United States of America, Department of Energy, acting by and through the Southeastern Power Administration and Company. CP&L's monthly wheeling charges filed herewith increased from the 1988 charges and are each applicable for the time period April 1, 1989, through March 31, 1990. These rates are filed with the Commission as a result of a change in return on common equity pursuant to the exhibits to Appendices A of Rate Schedule FERC No. 126 and Rate Schedule FERC No. 127.

The change in Exhibit A for FBEMC Alta Pass point of delivery is the result of a request by FBEMC that the maximum capacity at this point of delivery be increased to 5,000 KVA. The Exhibit A has been executed by both FBEMC and CP&L. It is proposed that this Exhibit A become effective April 1, 1989.

Comment date: February 24, 1989, in accordance with Standard Paragraph E at the end of this document.

2. Southwestern Electric Power Company

[Docket No. ER89–205–000]

Take notice that on January 30, 1989, Southwestern Electric Power Company (SWEPCO) submitted for filing a Restated and Amended Interconnection Agreement, dated December 29, 1988, between SWEPCO and Gulf States Utilities Company (GSU). The Restated Agreement reflects changes agreed to by the parties with respect to facility charges and losses.

Copies of the filing were served on GSU, the Arkansas Public Service Commission, the Louisiana Public Service Commission, and the Public Utility Commission of Texas. Copies of the filing are also available for inspection at SWEPCO's offices in Shreveport, Louisiana.

Comment date: February 24, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Central Hudson Gas & Electric Corporation

[Docket No. ER89–206–000]

Take notice that Central Hudson Gas and Electric Corporation (Central Hudson), on January 30, 1989, tendered for filing, as a rate schedule an executed Agreement dated December 1, 1988 between Central Hudson and Public Service of New Hampshire. The proposed rate schedule provides for the sale and purchase of 25 MW of capacity and related energy for the period December 1, 1988 to April 30, 1989.

Public Service of New Hampshire shall pay Central Hudson monthly $60/MW day for the capacity made available which charge includes the use of Central Hudson's transmission facilities required to deliver and transmit energy. Energy and supplemental capacity charges are based on a number of factors described in Section 6a and 6b of the Agreement.

Central Hudson states that copies of the subject filing were served upon Public Service of New Hampshire.

Comment date: February 24, 1989, in accordance with Standard Paragrpah E at the end of this notice.

4. Montana Power Company

[Docket No. ER89–204–000]

Take notice that on January 30, 1989, Montana Power Company (Montana), tenderd for filing a revised Appendix I as required by Exhibit C for retail sales in accordance with the provisions of the Residential Purchase and Sale Agreement (Agreement) between Montana and the Bonneville Power Administration (BPA).

The Agreement was entered into pursuant to the Pacific Northwest Electric Power Planning and Conservation Act, Pub. L. 96–501. The Agreement provides for exchange of electric power between Montana and BPA for the benefit of Montana's residential and farm customers.

Montana requests that the rate, subject to possible modification by the FERC, has an effective date of January 1, 1988, and therefore requests waiver for the Commission's notice requirements.

A copy of the filing was served upon BPA.

Comment date: February 24, 1989, in accordance with Standard Paragrpah E at the end of this notice.

5. Northeast Utilities Service Company

[Docket No. ER89–201–000]

Take notice that on January 30, 1989, Northeast Utilities Company (NUSCO) tendered for filing proposed rate schedules pertaining to: (1) Purchase Agreement with Respect to Various Gas Turbine Units (Gas Turbine Agreement) between NUSCO, as Agent for The Connecticut Light and Power Company (CP&L) and Western Massachusetts Electric Company (WMECO), and Montaup Electric Company (Montaup), dated November 1, 1987; and (2) Sales Agreement with Respect to Montville and Middletown Units (Fossil Unit Agreement) between NUSCO, as Agent for CL&P, and Montaup, dated November 1, 1987.

NUSCO states that the Gas Turbine Agreement provides for a sale to Montaup of a specified percentage of capacity and energy from various gas turbine units during the period November 1, 1987 through October 31, 1988. NUSCO states that the Fossil Unit Agreement provides for a sale to Montaup of a specified percentage of capacity and energy from Montville Unit 6 and Middletown Unit 4 during the period November 1, 1987 through October 31, 1988.

NUSCO states that the capacity charge rate for the proposed service under the Gas Turbine Agreement is a negotiated rate, based on the market price for this capacity, and less than the cost-of-service rate (determined in accordance with schedule I and Exhibits I and II thereto of Appendix A to the transmittal letter). The transmission charge is determined by the product of (i) the appropriate transmission charge rate (determined in accordance with Schedule II and Exhibits I, II, and III thereto of Appendix A to the transmittal letter and expressed in $/kW-yr) and (ii) the number of kilowatts of winter capability which Montaup is entitled to receive. The energy charge is based on Montaup's portion of the applicable fuel expenses and no special cost-of-service studies were made to derive these charges.

NUSCO states that the capacity charge rate for the proposes service under the Fossil Unit Agreement is a negotiated rate, based on the market price for this capacity, and less than the cost-of-service rate (determined in accordance with Schedule III and Exhibits I and II thereto of Appendix A of the transmittal letter). The energy charge and the station service energy charges are based on Montaup's portion of the applicable fuel expenses and no special cost-of-service studies were made to derive these charges.

NUSCO states that the services to be provided under the Gas Turbine Agreement are similar to services provided by CL&P and WMECO pursuant to a purchase agreement with City of Chicopee Municipal Lighting Plant (FERC Rate Schedule Nos. CL&P 331, WMECO 267).

NUSCO states that the services to be provided under the Fossil Agreement are similar to services provided by CL&P pursuant to a sales agreement with Fitchburg Gas and Electric Light Company (FERC Rate Schedule No. CL&P 359).

NUSCO states that a copy of the rate schedules have been mailed or delivered to CL&P and WMECO, and to Montaup.

NUSCO requests that the Commission waiver its notice periods and permit the rate schedule to commence effective November 1, 1987, and to terminate effective October 31, 1988.

Comment date: February 24, 1989, in accordance with Standard Paragrpah E at the end of this notice.

6. Wisconsin Public Service Corporation

[Docket No. ER89–202–000]

Take notice that Wisconsin Public Service Corporation on January 30, 1989, tendered for filing a supplement to the following service agreement:

Service Agreement No. 1

October 29, 1987, "Partial Requirements Load Pattern Service Agreement," between the Consolidated Water Power Company and Wisconsin Public Service Corporation.

These supplements will revise the contract demand quantities in accordance with Exhibit 1 of the service agreement, Paragraph 6, *Requirements*.

A copy of this filing was served upon the Consolidated Water Power Company.

The supplement is to be effective on or after January 1, 1989.

Comment date: February 24, 1989, in accordance with standard Paragrpah E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considerd by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–3526 Filed 2–14–89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89–727–000, et al.]

Trunkline Gas Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Trunkline Gas Company

[Docket No. CP89–727–000]

February 6, 1989.

Take notice that on January 30, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–727–000, a request pursuant to § 157.205 of the

Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for American Central Gas Marketing Company (American Central), a shipper and marketer, under its blanket certificate issued in Docket No. CP86–586–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Trunkline states that pursuant to a Transportation Agreement dated October 6, 1988, between Trunkline and American Central, it would receive the natural gas at various existing points of receipt on its system. Trunkline further states that it would then transport and redeliver the natural gas, less fuel and unaccounted for line loss, to Transcontinental Gas Pipe Line Corporation (Ragley) in Beauregard Parish, Louisiana. Trunkline indicates that the estimated daily and estimated annual quantities that would be transported for American Central would be 20,000 Dt. and 7,300,000 Dt., respectively.

Trunkline states that it commenced the transportation of natural gas for American Central on November 11, 1988, as reported in Docket No. ST89–1908–000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations (18 CFR 284.223(a)).

Comment date: March 23, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Natural Gas Pipeline Company of America

[Docket No. CP89–718–000]

February 6, 1989.

Take notice that on January 30, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, filed in Docket No. CP89–718–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of PSI, Inc. (PSI), under Natural's blanket certificate issued in Docket No. CP86–582–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural requests authorization to transport, on an interruptible basis, up to a maximum of 100,000 MMBtu of natural gas per day for (PSI), a marketer of natural gas, from receipt points located in Louisiana, Offshore Louisiana, Texas, Offshore Texas, Illinois, Oklahoma and Kansas, to delivery points located in Iowa. Natural anticipates transporting, on an average day 30,000 MMBtu and an annual volume of 10,950,000 MMBtu.

Natural states that the transportation of natural gas for PSI commenced December 4, 1988, as reported in Docket No. ST89–2038–000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Natural in Docket No. CP86–582–000.

Comment date: March 23, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Texas Gas Transmission Corporation

[Docket No. CP89–716–000]

February 6, 1989.

Take notice that on January 30, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89–716–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Stand Energy Corporation (Stand), for the ultimate end use by The Kroger Co., under Texas Gas' blanket certificate issued in Docket No. CP88–686–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Gas requests authorization to transport, on an interruptible basis, up to a maximum of 6,000 MMBtu of natural gas per day for Stand from receipt points located in Arkansas, Illinois, Indiana, Kentucky, Ohio, Louisiana, offshore Louisiana, Tennessee and Texas to delivery points located in Tennessee. Texas Gas anticipates transporting, on an average day 800 MMBtu and an annual volume of 2,190,000 MMBtu.

Texas Gas states that the transportation of natural gas for Stand commenced December 15, 1988, as reported in ST89–1401–000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Texas Gas in Docket No. CP88–686–000.

Comment date: March 23, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. United Gas Pipe Line Company

[Docket No. CP89–708–000]

February 6, 1989.

Take notice that on January 27, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–708–000 and application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Sonat Marketing Company (Sonat), a marketer of natural gas, under United's blanket certificate issued in Docket No. 88–6–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to transport up to 30,900 MMBtu per day for Sonat. United states that construction of facilities would not be required to provide the proposed service.

United further states that the maximum day, average day, and annual transportation volumes would be approximately 30,900 MMBtu, 30,900 MMBtu and 11,278,500 MMBtu respectively.

United advises that service under § 284.223(a) commenced January 1, 1989, as reported in Docket No. ST89–1739.

Comment date: March 23, 1989, in accordance with Standard Paragraph G at the end of this Notice.

5. Williams Natural Gas Company

[Docket No. CP89–734–000]

February 6, 1989.

Take notice that on January 30, 1989, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89–734–000, a request pursuant to § 157.205 (18 CFR 157.205) of the Commission's Regulations under the Natural Gas Act for authorization to provide firm transportation service for Mountain Iron and Supply Company (Mountain Iron) a marketer under Williams blanket transportation certificate issued May 10, 1988, in Docket No. CP88–631–000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Williams states it will receive the gas at various supply sources in Kansas and Wyoming and transport the gas to various delivery points on Williams system in Kansas.

Williams proposes to transport up to 325 MMBtu of gas on a peak day or approximately 54,020 MMBtu of gas annually. Williams states that the transportation service commenced under the 120-day automatic authorization of § 284.223(a)(i) of the Commission's Regulations on December 14, 1988, pursuant to a transportation agreement dated December 14, 1988. Williams notified the Commission of the commencement of the transportation service in Docket No. ST89–1734–000 on January 13, 1989.

Comment date: March 23, 1989, in accordance with Standard Paragraph G at the end of this Notice.

6. Natural Gas Pipeline Company of America

[Docket No. CP89–695–000]

February 6, 1989.

Take notice that on January 25, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP89–695–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Shell Gas Trading Company (Shell) under the certificate issued in Docket No. CP86–582–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Natural indicates that it proposes to transport up to 400,000 MMBtu per day, on a peak day 300,000 MMBtu and 109,500,000 MMBtu on an annual basis. Natural also states that pursuant to a transportation agreement dated November 14, 1988 between Natural and Shell, it proposes to transport natural gas for Shell from points in Texas, offshore Texas, Oklahoma, New Mexico and offshore Louisiana. The points of delivery and ultimate points of delivery are located in Louisiana, Oklahoma, Illinois, New Mexico, Iowa, Arkansas and Texas.

Natural further indicates that it commenced this service on December 1, 1988, as reported in Docket No. ST89–1920–000.

Comment date: March 23, 1989, in accordance with Standard Paragraph G at the end of this Notice.

7. Trunkline Gas Company

[Docket No. CP89–714–000]

February 7, 1989.

Take notice that on January 30, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–714–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to transport natural gas for Tejas Power Corporation (Tejas), a shipper and marketer of natural gas, pursuant to Trunkline's blanket certificate issued in Docket No. CP86–586–000 and section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Trunkline requests authority to transport up to 50,000 dt equivalent of natural gas per day on an interruptible basis for Tejas pursuant to a transportation agreement dated November 1, 1988, between Trunkline and Tejas. Trunkline states that the transportation agreement provides for Trunkline to receive gas from various receipt points on its system in Texas, Louisiana and Illinois and redeliver the gas, less fuel and unaccounted-for line loss, into the facilities of Columbia Gulf Transmission Company in St. Mary Parish, Louisiana.

Trunkline indicates it would provide the service for a primary term of one month from the date of initial transportation and continue to provide the service on a month-to-month basis until terminated by either party upon at least 30 days prior notice to the other. Trunkline states that it would charge the rates and abide by the terms and conditions of its Rate Schedule PT.

It is indicated that the estimated maximum daily volume, average volume, and annual volume would be 50,000 dt equivalent of natural gas, 40,000 dt equivalent of natural gas, and 14,600,000 dt equivalent of natural gas, respectively. Trunkline states it commenced a 120-day transportation service for Tejas on November 1, 1988, as reported in Docket No. CP89–1909.

Comment date: March 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. Northern Natural Gas Company

[Docket No. CP89–724–000]

February 7, 1989.

Take notice that on January 30, 1989, Northern Natural Gas Company (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP89–724–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on an interruptible basis on behalf of Sonat Marketing Company (Sonat), a marketer of natural gas, under its blanket certificate issued in Docket No. CP88–435–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern states that it proposes to transport natural gas on behalf of Sonat between a receipt and delivery point in offshore Texas.

Northern further states that the maximum daily, average and annual quantities that it would transport on behalf of Sonat would be 20,000 MMBtu equivalent of natural gas and 7,300,000 MMBtu equivalent of natural gas, respectively.

Northern indicates that in Docket No. ST89–1859, filed with the Commission on January 23, 1989, it reported that transportation service on behalf of Sonat had begun under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: March 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. Tennessee Gas Pipeline Company

[Docket No. CP89–747–000]

February 7, 1989.

Take notice that on February 2, 1989, Tennessee Gas Pipeline Company, (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89–747–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Alcan Aluminum Corporation (Alcan), an end-user, under the blanket certificate issued in Docket No. CP87–115–000 on June 18, 1987, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated December 9, 1988, under its Rate Schedule IT, it proposes to transport up to 28,000 dekatherms (dt) per day equivalent of natural gas for Alcan. Tennessee states that it would transport the gas from receipt points located offshore Louisiana and in the state of West Virginia, Ohio, Pennsylvania, and New York. It is further stated that the ultimate delivery point is located in the State of New York.

Tennessee advises that service under § 284.223(a) commenced January 5, 1989, as reported in Docket No. ST89–2004 (filed January 27, 1989). Tennessee further advises that it would transport 28,000 dt on an average day and 10,220,000 dt annually.

Comment date: March 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Northern Natural Gas Company

February 7, 1989.

Take notice that on January 30, 1989, Northern Natural Gas Company (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP89–722–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the

Natural Gas Act for authorization to transport natural gas on an interruptible basis on behalf of Sonat Marketing Company (Sonat), a marketer of natural gas, under its blanket certificate issued in Docket No. CP86-436-00 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern states that it proposes to transport natural gas on behalf of Sonat between numerous points of receipt and delivery in Texas, Louisiana, Mississippi, Kansas and Oklahoma.

Northern further states that the maximum daily, average and annual quantities that it would transport on behalf of Sonat would be 60,000 MMBtu equivalent of natural gas, 60,000 MMBtu equivalent of natural gas and 29,200,000 MMBtu equivalent of natural gas, respectively.

Northern indicates that in Docket No. ST89-1852, filed with the Commission on January 23, 1989, it reported that transportation service on behalf of Sonat had begun under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: March 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. Tennessee Gas Pipeline Company

[Docket No. CP89-743-000]

February 7, 1989.

Take notice that on Febraury 1, 1989, Tennessee Gas Pipeline Company, (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-743-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Tenngasco Corporation (Tenngasco), a marketer, as agent for Endevco Oil & Gas Company, U.S. Oil & Gas Company, Western Gas Marketing, Mississippi Fuel Company, and Tenngasco Exchange Corporation, under the blanket certificate issued in Docket No. CP87-115-000 on June 18, 1987, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated November 29, 1988, under its Rate Schedule IT, it proposes to transport up to 1,000,000 dekatherms (dt) per day equivalent of natural gas for Tenngasco. Tennessee states that it would transport the gas from receipt points located offshore Louisiana and offshore Texas, and in multiple states proximate to Tennessee's system, and deliver such gas to interconnections with (1) Southern Natural Gas Company at Bay St. Elaine, Terrebonne Parish, Louisiana, (2) Mississippi Fuel Company at Stafford Springs, Jasper County, Mississippi, and (3) TransCanada Pipelines Limited at Niagara River, Niagara County, New York.

Tennessee advises that service under § 284.223(a) commenced December 9, 1988, as reported in Docket No. ST89-1602 (filed January 5, 1989). Tennessee further advises that it would transport 1,000,000 dt on an average day and 365,000,000 dt annually.

Comment date: March 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89-751-000]

February 7, 1989.

Take notice that on February 2, 1989, Transcontinental Gas Pipe Line Corporation (Transco) P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP89-751-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Kerr-McGee Corporation (Kerr-McGee), under the blanket certificate issued in Docket No. CP88-328-000 on April 29, 1988, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Transco states that pursuant to a transportation agreement dated June 9, 1988, under its Rate Schedule IT, it proposes to transport up to 50,747 dekatherms (dt) per day equivalent of natural gas for Kerr-McGee. Transco states that it would transport the gas from Ship Shoal Block 233B, offshore Louisiana, and deliver the gas at an existing point of interconnection between Transco and Texas Gas Transmission Corporation in Evangeline Parish, Louisiana.

Transco advises that service under § 284.223(a) commenced December 8, 1988, as reported in Docket No. ST89-1578. Transco further advises that it would transport 6,000 dt on an average day and 2,190,000 dt annually.

Comment date: March 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. Williams Natural Gas Company

[Docket No. CP89-742-000]

February 7, 1989.

Take notice that on January 31, 1989, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-742-000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to provide firm transportation service for Northeast Oklahoma Public Facilities Authority (NOPFA), an end user, under Williams' blanket certificate issued in Docket No. CP86-631-000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Williams states that pursuant to a firm transportation agreement dated December 19, 1988, it proposes to transport natural gas for NOPFA from various supply sources in Kansas to various delivery points on Williams' system in Oklahoma.

Williams propoees to transport up to 4,227 MMBtu of gas on a peak day, 1,329 MMBtu of gas on an average day and 485,085 MMBtu of gas annually. Service under § 284.223(a) commenced on December 22, 1988, as reported in Docket No. ST89-1866-000, it is stated.

Comment date: March 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

14. United Gas Pipe Line Company

[Docket No. CP89-728-000]

February 7, 1989.

Take notice that on January 30, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP88-728-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas for the City of Gulf Breeze, Florida (Gulf Breeze), a local distribution company, under United's blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to transport up to 2,266 million Btu equivalent of natural gas per day on a firm basis for Gulf Breeze. United states it would receive the gas at an existing point of receipt offshore Louisiana, and redeliver the gas for the account of Gulf Breeze at existing interconnections in Escambia County, Florida, and St. Mary Parish, Louisiana. United states it commenced service for Gulf Breeze under § 284.223(a) on January 1, 1989, as reported in Docket No. ST89-1761.

Comment date: March 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

15. ANR Pipeline Company

[Docket No. CP89-746-000]

February 7, 1989.

Take notice that on February 1, 1989, Renaissance Center, Detroit, Michigan 48243 (ANR), filed in Docket No. CP89-746-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Exxon Corporation (Exxon) under ANR's blanket certificate issued in Docket No. CP88-532-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR requests authorization to transport, on an interruptible basis, up to a maximum of 6,000 dt of natural gas per day for Exxon from receipt points located in offshore Louisiana to delivery points located in Louisiana. ANR anticipates transporting, on an average day 6,000 dt and an annual volume of 2,190,000 dt.

ANR states that the transportation of natural gas for commenced December 1, 1988, as reported in Docket No. ST89-1915-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to ANR in Docket No. CP88-532-000.

Comment date: March 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

16. ANR Pipeline Company

[Docket No. CP89-745-000]

February 7, 1989.

Take notice that on February 1, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center Detroit, Michigan 48243, filed in Docket No. CP89-650-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88-532-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

ANR proposes to transport natural gas on an interruptible basis for Texaco Gas Marketing, Inc. (Texaco). ANR explains that service commenced January 1, 1989 under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-1914. ANR further explains that the peak day quantity would be 100,000 dekatherms, the average daily quantity would be 100,000 dekatherms, and that the annual quantity would be 36,500,000 dekatherms. ANR explains that it would receive natural gas at an existing point of receipt in Galveston Area Block A-131, Offshore Texas. ANR states that it would deliver the gas to Texas Gas Transmission Corporation in High Island Area Block A-555, offshore Texas.

Comment date: March 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

17. Interstate Power Company

[Docket No. CP89-738-000]

February 7, 1989.

Take notice that on January 31, 1989, Interstate Power Company (IPW), 1000 Main Street, Dubuque, Iowa 52001, filed in Docket No. CP89-738-000 an application pursuant to Part 157 of the Commission's Regulations and sections 7(f)(1) and 7(b) of the Natural Gas Act for a determination of service area and the abandonment of its section 7(c) transportation certificates, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

IPW states taht the section 7(f)(1) service area determination encompasses IPW's service area in the Iowa communities of Clinton, Camanche and Low Moor in Clinton County, Iowa; IPW's service area in and around the communities of Albany, Fulton, Fenton, Erie and Garden Plain in Whiteside County, Illinois; and IPW's service area in and around the communities of Thomson, Argo Fay and Savanna, Illinois in Carroll County, Illinois. IPW states that it intends to offer only retail gas distribution service and no sale for resale service in the requested service areas subject to the regulatory authority of the respective states' commissions.

IPW further requests the abandonment under section 7(b) of the Natural Gas Act of its section 7(c) transportation certificates which were granted in Docket No. CP86-679. It is requested that the abandonment of these certificates become effective with the granting of its section 7(f)(1) service area when IPW's transportation service would be subject to the exclusive jurisdiction of the state commissions pursuant to the Uniform Regulatory Jurisdiction Act of 1988.

IPW states that a section 7(f)(1) service area determination would enhance its gas supply options, permit it to operate more effectively, expand its distribution system across state boundaries and afford its customers the attendant gas cost benefits that results from a reduction of state constraints and Federal jurisdiction.

Comment date: February 28, 1989, in accordance with Standard Paragraph F at the end of this notice.

18. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP89-723-000]

February 7, 1989.

Take notice that on January 30, 1989, Northern Natural Gas Company, Division of Enron Corp., (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-723-000, an application pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authority to transport natural gas on behalf of Centran Corporation, a marketer of natural gas, all as more fully set forth in the application on file with the Commission and open to public inspection.

Northern proposes to transport up to 3,000 MMBtu per day for Centran Corporation through existing facilities. Construction of facilities will not be required to provide the proposed service. Service under § 284.223(a) commenced December 16, 1988, as reported in Docket No. ST89-1529 (filed December 30, 1988).

Comment date: March 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

19. Panhandle Eastern Pipe Line Company

[Docket No. CP89-754-000]

February 7, 1989.

Take notice that on February 3, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-754-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Amgas, Inc. (Amgas), a marketer, under the blanket certificate issued in Docket No. CP86-585-000 on November 20, 1987, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Panhandle states that pursuant to a transportation agreement dated November 23, 1988, under its Rate Schedule PT, it proposes to transport up to 1,600 dekatherms (dt) per day equivalent of natural gas for Amgas

from points of receipt listed in Exhibit "A" of the agreement to delivery points also listed in Exhibit "A", which transportation service may involve interconnections between Panhandle and various transporters. Panhandle states that it would receive the gas at various existing points on its system in Texas, Oklahoma, Kansas, Colorado, Wyoming, and Illinois, and that it would transport and redeliver the gas, less fuel used and unaccounted for line loss, for Amgas' account to Central Illinois Light Company in Tazewell, Edgar, Moultrie, Douglas, Vermillion, Logan, Champaign, Sangamon, Peoria, and Knox Counties, Illinois.

Panhandle advises that service under § 284.223(a) commenced on January 1, 1989, as reported in Docket No. ST89–1896. Panhandle further advises that it would transport 165 dt on an average day and 60,225 dt annually.

Comment date: March 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

20. Panhandle Eastern Pipe Line Company

[Docket No. CP89–755–000]

February 7, 1989.

Take notice that on February 3, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–755–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a firm transportation service for O. I. Brockway Glass, Inc. (Brockway), an end-user, under the blanket certificate issued in Docket No. CP86–585–000 on November 20, 1987, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Panhandle states that pursuant to a transportation agreement dated January 1, 1989, under its Rate Schedule PT, it proposes to transport up to 4,000 dekatherms (dt) per day equivalent of natural gas for Brockway from points of receipt listed in Exhibit "A" of the agreement to delivery points also listed in Exhibit "A", which transportation service may involve interconnections between Panhandle and various transporters. Panhandle states that it would receive the gas at various existing points on its system in Texas, Oklahoma, Kansas, Colorado, Wyoming, and Illinois, and that it would transport and redeliver the gas, less fuel used and unaccounted for line loss, to Brockway in Madison County, Indiana.

Panhandle advises that service under § 284.223(a) commenced on January 1, 1989, as reported in Docket No. ST89–1832. Panhandle further advises that it would transport 4,000 dt on an average day and 1,460,000 dt annually.

Comment date: March 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

21. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89–7–001]

February 7, 1989.

Take notice that on January 27, 1989, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houton, Texas 77251, pursuant to the "Order Finding Niagara Import Point Projects Discrete" issued January 12, 1989 in *Northeast U.S. Pipeline Projects, et al.*, Docket Nos. CP87–451–017, *et al.*, 46 FERC ¶ 61,013 (1989) and in accordance with the Offer of Settlement Regarding Niagara Import Point Projects (Niagara Settlement), filed in Docket No. CP89–7–001 an amendment to its pending application for a certificate of public convenience and necessity filed with the Federal Energy Regulatory Commission (Commission) in Docket No. CP89–7–000 (formerly Docket No. CP88–177–000). Applicant states that the purposes of its amendment is to modify the proposed expansion project to reflect changes, additions, and deletions of facilities and services pursuant to the terms of the Niagara Settlement, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco proposes to offer the services in three phases and to construct the related facilities over a three year period.

Transco states that it would provide storage service for potential customers of up to 11 Bcf storage capacity with a maximum daily delivery capability of 100 MMcf at the facilities of Penn-York Energy Corporation in Wharton County, Pennsylvania. Transco further states that although the proposed storage and transportation services are being offered as a joint project Transco would offer the storage and/or transportation service in an unbundled fashion. Transco would offer its storage service and related transportation commencing November 1, 1989. Transco states that this storage and related transportation service would be phase one of its service proposed in this application.

Transco would offer its potential customers the storage service under a proposed Rate Schedule SS–2 the revised initial rates of which would be a demand rate of $12.76 per dekatherm (dt) of contract demand, a monthly capacity rate of $.0396 per dt of annual capacity, and injection and withdrawal charges of $.0378 per dt. Transco states that the derivation of the SS–2 rates for such service entail (1) an accumulation and direct assignment of the charges for the underlying storage and upstream transmission costs, and (2) an allocation to the storage service of a portion of the cost of Transco's proposed facilities which will be used to deliver the additional storage quantities through Transco's system.

Transco states that, on behalf of potential customers, it would provide firm transportation of up to the dekatherm equivalent of 125 MMcf of natural gas per day (MMcf/d) from the United States/Canadian border to a point of delivery for injection into storage or to points of delivery for transportation on Transco's system. Transco states that 48.4 MMcf/d of the 125 MMcf/d of available transportation remains unsubscribed but that it anticipates firm commitment for this capacity in February 1989. Transco further states that it would offer the 125 MMcf/d of Canadian gas in phases two and three to accommodate customer demand, gas availability, and Transco's construction schedule. First Transco would offer 85 MMcf/d to be available in 1990, and next offer 40 MMcf/d to be available in 1991. Transco states that it would use the modified fixed variable rate design for determining the D–1, D–2 reservation rate and commodity rates below.

Delivery Point	D–1 reservation rate ($/dt)	D–2 reservation rate ($/dt)	Commodity rate ($/dt)
1990			
Ellisburg	4.3416	0.0559	0.0694
City Gate	4.3416	0.0559	0.2217
1991			
Ellisburg	4.2216	0.0507	0.0694
City Gate	4.2216	0.0507	0.2089

Transco further states that in phase one (storage service and related transportation) it would construct 27.44 miles of pipeline loop in Lycoming and Monroe Counties, PA. and in Middlesex and Gloucester Counties NJ. Transco would also add a new metering and regulating station at the proposed new interconnection with National Fuel in Clinton County, PA. Transco states that in phase two (transportation of 85 MMcf/d Canadian gas) it would install 12,600 horsepower of new compression at an existing compressor station in Lycoming County, PA and 12,000 horsepower at a new compressor station in Mercer County, NJ. Transco states that in phase three (transportation of 40 MMcf/d Canadian gas) it would install 1.61 miles of pipeline looping in Northampton County, PA. The total estimated construction costs of the proposed project is $73,474,000.00. Transco states that the proposed facilities will be financed initially through short-term loans and funds on hand, and that permanent financing will be undertaken as part of Transco's overall long-term financing program at a later date.

Comment date: February 24, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

22. United Gas Pipeline Company

[Docket No. CP89–740–000]

February 8, 1989.

Take notice that on January 31, 1989, United Gas Pipeline Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP88–653–000, a request for authorization pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Texas Gas Marketing (TGM), a marketer of natural gas, under the Natural Gas Act, under United's blanket certificate issued in Docket No. CP88–6–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposed to transport on an interruptible basis up to 103,000 MMBtu equivalent of natural gas on a peak day for TGM's account, 103,000 MMBtu equivalent on an average day and 37,959,000 MMBtu equivalent on an annual basis. It is stated that United would receive the gas for TGM's account at an existing interconnection between United and Sea Robin Pipeline Company near Erath, Vermilion Parish, Louisiana, and would deliver equivalent volumes at existing points on United's line in Louisiana and Texas. It is stated that the transportation service would be effected using existing facilities and would not require the construction of additional facilities. It is explained that the service commenced January 1, 1989, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89–1740.

Comment date: March 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

23. Transwestern Pipeline Company

[Docket No. CP89–749–000]

February 8, 1989.

Take notice that on February 2, 1989, Transwestern Pipeline Company (Transwestern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP89–749–000 an application pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Yates Petroleum Corporation (Yates), a producer of natural gas, under Transwestern's blanket certificate issued in Docket No. CP88–133–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transwestern proposes to transport on an interruptible basis up to 100,000 MMBtu equivalent of natural gas on a peak day for Yates' account, 75,000 MMBtu equivalent on an average day and 36,500,000 MMBtu equivalent on an annual basis. It is stated that Transwestern would receive the gas for Yates' account at existing points on Transwestern's system in Texas and New Mexico and would deliver equivalent volumes at existing points on Transwestern's system in Texas, New Mexico and California. It is explained that the transportation service would be effected using existing facilities and without requiring the construction of additional facilities. It is further explained that the transportation service commenced December 1, 1988, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89–1468.

Comment date: March 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

24. National Fuel Gas Supply Corporation and Penn-York Energy Corporation

[Docket No. CP88–194–001]

February 8, 1989

Take notice that on January 27, 1989, National Fuel Gas Supply Corporation (National) 10 Lafayette Square Buffalo, New York 14203 and Penn-York Energy Corporation (Penn-York) 10 Lafayette Square Buffalo, New York 14203 filed in Docket No. CP88–194–001 an amendment to their abbreviated joint application pursuant to sections 7(b) and 7(c) of the Natural Gas Act, filed on January 19, 1988 requesting the issuance of a certificate of public convenience and necessity and related abandonment authorization, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

This amended application is filed pursuant to the Order Approving the Niagara Settlement, issued on January 12, 1989 in *Northeast U.S. Pipeline Projects*, Docket No. CP87–451–000, and the offer of Settlement Regarding Niagara Import Point Projects, filed with the Commission on November 21, 1988. This amended application is part of the Transco System Expansion Project, as modified in the approved Niagara Settlement.

As explained in more detail in the body of this amended application, National is making a number of changes to the certificate application first filed in Docket No. CP88–194–000 on January 15, 1988, and subsequently consolidated, as part of the Transco System Expansion Project, by the Commission in the context of the Northeast Open Season. According to National these changes are necessitated by, and consistent with, the approved Niagara Settlement.

Unless specified in this amended application, the proposed facilities and services, and supporting exhibits, set forth in the original application in Docket No. CP88–194–000, remain in force and are incorporated by reference. The changes to National's original application being made in this amendment are outlined ad follows:

(1) *Facilities:*

(a) Supercede the originally proposed 8,400 horsepower compressor at National's existing Gunnville, New York station;

(b) Move the location of, and slightly increase (by 500 horsepower) the size of, and phase-in the 6,100 horsepower compressor and station from East Eden, New York, 9 miles downstream on National's existing line X to Concord, New York;

(c) Replace National's proposed 20 miles of 24" line and appurtenant facilities from an interconnection with Tennessee at Lewiston, New York to National's Nash Road Station (proposed by National in Docket No. CP86–94–000 as part of the TEMCO Project) with National's joint onwership and usage of the Niagara Spur Loop Line (49.2 miles of 30" loop of Tennessee's existing Niagara Spur, detailed in Tennessee's companion amended application in Docket No. CP88–171–000); and

(d) Modify the 41 miles of 24" pipeline from National's existing Ellisburg, Pennsylvania compressor station to Transco's pipeline at Leidy, Pennsylvania in the following respects:

(i) The modified line will be jointly and equally owned and utilized by National and PennEast Gas Services

Company (PennEast), with specific procedures to reconcile the joint owners' equal financial responsibility with different throughput levels, receipt points, and in-service dates;

(ii) Approximately 2.5 miles of 24" line will be added to connect the existing Ellisburg compressor stations of National and CNG Transmission Corporation (CNG) to permit this joint usage;

(iii) 2,600 horsepower of compression will be added at National's Ellisburg station, also to permit this joint usage: and

(iv) With these joint changes, the originally proposed capacity of 225,000 Mcf/d which will be available by November 1989 only from National's Ellisburg station receipt point, will be increased to 326,00 Mcf/d upon the November 1990 in-service date from CNG's Ellisburg station receipt point, that is, when the aforementioned connecting facilities are in place.

(2) *Capitol Costs:*

(a) Provide new capitol cost estimates to reflect the aforementioned changed project facilities; and

(b) update capitol costs to reflect the passage of time, delayed in-service dates associated with the open season consolidation process, and design improvements and refinements.

(3) *Phase-in Schedule for Facilities and Volumes:*

As amended, the Transco System Expansion Project will be phased in over three years, from 1989 and 1991.

(a) In *1989* the storage component is proposed to commence. Penn-York would start receiving gas for injection by April 1989, with withdrawals to start by November 1989.

(b) In *1990* the first increment of Canadian gas transportation service from the Niagara import point is proposed to commence. Specifically, National proposes to transport up to 65,000 Mcf/d to Leidy, along with 34,000 Mcf/d to delivery points on the Niagara Spur Loop Line. National states that it must have 6,300 horse power at its new concord compressor station in service, as well as the pipe and compression facilities at the Ellisburg connecting the National and CNG stations with the 41 mile Ellisburg to Leidy Line. The Niagara Spur Loop Line is proposed to be in service by November 1990.

(c) In *1991* the remaining 40,000 Mcf/d of the Canadian gas transportation service from the Niagara import point is proposed to commence. National states that it requires the remaining 2,300 horsepower at the Concord compressor station to be in service at that time.

(4) *Revised Rates:*

(a) Adjust transportation rates to reflect changed facilities, joint ownership and usage of the Niagara Spur Loop Line and the Ellisburg to Leidy Line, changed volumes, and current precedent for setting National's rates; and

(b) levelize transportation rates to account for phase in of facilities construction, in-service dates, and volumes.

(5) *Markets:*

(a) According to National, the market for the Transco System Expansion Project has been refined over the last year. The Niagara Settlement noted that original nominations exceeded the proposed levels of service, that Transcontinental Pipeline Company (Transco) had requested further data to ascertain *bona fide* markets, and that the results of this review would appear in Transco's amended application. In its companion amended application, Transco is submitting final exclusive contractual arrangements for both the transportation and storage services, and is seeking to demonstrate that the full 11 Bcf of storage and 100,000 Mcf/d of related transportation service is subscribed, as is the Canadian gas transportation service of 125,000 Mcf/d.

(b) As noted in the Niagara Settlement, National is also amending its application to reflect the transportation and purchase of an additional 34,000 Mcf/d through its capacity on the Niagara Spur Loop Line; specifically the purchase of 10,000 Mcf/d for National's own system supply and transportation of 24,000 Mcf/d for a cogeneration shipper for two facilities in New York State.

(6) *Environment:*

According to National, the unchanged portions of the application are ripe for environmental review. In addition National has submitted with the amended application, as exhibit Z–3, a separate document containing the twelve revised resource reports on the changed facilities proposed herein: (1) shift of the East Eden compressor station to Concord, New York; (2) 2.5 miles of 24" line from National's to CNG's compressor station at Ellisburg Pennsylvania; and (3) 2,600 horsepower of compression at National's Ellisburg station. National has also submitted topographical maps and aerials of these facilities.

(7) *Storage Abandonment:*

National is amending the application to delete Penn Fuel Gas, at its request, from Penn-York's abandonment application (by which a portion of Penn-York's storage capacity was to be made available for the project), and to increase by the same amount capacity that it will provide to Penn-York to serve Transco and its customers with the originally requested 11 Bcf of annual storage service.

(8) *Phased Procedural Schedule:*

National is requesting that the Commission *phase* review this, and related applications along with the issuance of the requested certificates to

(i) Assure expedited authorization of those facilities needed for 1989 service (Phase 1),

(ii) Permit sufficient time for Commission review of the Niagara Spur Loop Line and other facilities proposed in this, and other facilities proposed in this, and related, amended applications needed for 1990 and 1991 services (Phase 2), and

(iii) Provide for prompt Phase 2 certification as soon after Phae 1 as possible to meet the timing requirements of the several sponsors of the Niagara import point projects.

Comment date: February 27, 1989, in accordance with Standard Paragraph F at the end of this notice.

25. Southern Natural Gas Company

[Docket No. CP89–739–000]

February 9, 1989.

Take notice that on January 31, 1989, Southern Natural Gas Company, (Southern) filed in Docket No. CP89–739–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authority to transport gas on an interruptible basis for Tejas Power Corporation (Tejas), a marketer of natural gas, under Southern's blanket certificate issued in Docket No. CP88–316–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southern seeks authority to perform the proposed transportation under its Rate Schedule IT, pursuant to a Transportation Service Agreement dated October 4, 1988 (Agreement). Southern states that the Agreement is for a primary term of one month with successive terms of one month thereafter unless cancelled by either party. Southern further states that Agreement provides for a maximum transportation quantity of 50,000 MMBtu of natural gas and that Tejas expects to transport the full 50,000 MMBtu on an average day, and according thereto, 18,250,000 MMBtu is expected to be transported on an annual basis. Southern proposes to receive the gas at various receipt points located offshore Texas and transport the gas to three (3) points of delivery in Refugio County, Texas. Southern advises that the transportation service commenced on October 12, 1988, as reported in Docket No. ST89–1553, pursuant to § 284.223(a) of the Commission's Regulations.

Comment date: March 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

26. Trunkline Gas Company

[Docket No. CP89–757–000]

February 9, 1989.

Take notice that on February 3, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston Texas, 77251–1642, filed in Docket No. CP89–757–000 a request pursuant to §157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Anadarko Trading Company (Anadarko), a shipper and marketer of natural gas, under its blanket certificate issued in Docket No. CP86–586–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline requests authorization to transport, on an interruptible basis, up to a maximum of 75,000 dt of natural gas per day for Anadarko from receipt points located in the states of Illinois, Louisiana, Tennessee and Texas. Trunkline will then transport and redeliver the gas to Columbia Gulf Company in St. Mary Parish, Louisiana. The transportation agreement dated December 30, 1988 (Contract No. T–PLT–1335), has a primary term of one month and shall continue in effect month-to-month thereafter until terminated by either party upon at least 30 days written notice. Trunkline anticipates transporting, on an average day 75,000 dt and an annual volume of 27,375,000 dt.

Trunkline states that the transportation of natural gas for Anadarko commenced January 1, 1989, as reported in Docket No. ST89–1905–000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations.

Comment date: March 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

27. El Paso Natural Gas Company

[Docket No. CP89–737–000]

February 9, 1989.

Take notice that on January 31, 1989, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas, 79978, filed a request for authorization in Docket No. CP89–737–000 pursuant to §§157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act, to provide interruptible transportation service for Petrus Oil Company, L.P., under its blanket certificate issued at Docket CP88–433–000, all as more fully set forth in the request for authorization on file with the Commission and open to public inspection.

It is stated that El Paso would transport up to 527,000 MMBtu of natural gas per day for Shipper from various receipt points to various delivery points on El Paso's system located in New Mexico, Oklahoma and Texas. El Paso states that the estimated daily and annual quantities would be 26,375 MMBtu and 9,626,875 MMBtu, respectively. El Paso further states that transportation service under § 284.223(a) commenced on December 18, 1988, as reported in Docket No. ST89–1754–000.

Comment date: March 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

28. Northwest Pipeline Corporation

[Docket No. CP89–764–000]

February 9, 1989.

Take notice that on February 6, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89–764–000 a request pursuant to §157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for The Boeing Company (Boeing), an end-user, under its blanket certificate issued in Docket CP86–578–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest states that pursuant to a transportation agreement dated September 7, 1988, as amended December 5, 1988, under its Rate Schedule TI–1, it proposes to transport up to 6,000 MMBtu per day equivalent of natural gas for Boeing. Northwest states that it would transport the gas from any of the receipt points on Northwest's system and deliver the gas to any of the delivery points on Northwest's system.

Northwest advises that service under § 284.223(a) commenced December 15, 1988, as reported in Docket No. ST89–2011 (filed January 27, 1989). Northwest further advises that it would transport 50 MMBtu on an average day and 20,000 MMBtu annually.

Comment date: March 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

29. National Fuel Gas Supply Corporation

[Docket No. CP88–94–001]

February 9, 1989

Take notice that on February 3, 1989,[1] National Fuel Gas Supply Corporation (Applicant) 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP88–94–001 an amended application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities and firm transportation of natural gas, all as more fully set forth in the amended application which is on file with the Commission and open to public inspection.

Applicant filed this amended application pursuant to the January 12, 1989, order issued in Docket No. CP87–451–000. Specifically Applicant states that it proposes to eliminate the construction of 20 miles of 24" line and appurtenant facilities from an interconnection with a Tennessee Gas Pipeline Company (Tennessee) at Lewiston, New York to Applicant's Nash Road Station, with Applicant's joint ownership (with Tennessee and PennEast Gas Services Company) and usage of the Niagara Spur Loop Line (49.2 miles of 30" loop of Tennessee's existing Niagara Spur (a detailed description is contained in Tennessee's amended application in Docket No. CP88–171–001)). Since the Niagara Spur Loop Line will not be placed in service until November 1990, Applicant states that beginning in November 1989, it would be able to transport gas by using 75,000 Mcf/day of firm transportation capacity provided by Tennessee (in the Niagara Settlement) from the Niagara input point to Applicant at Clarence, New York. In November 1990, Applicant would be able to transport this gas from the Niagara import point to its existing line X at East Aurora, New York through its capacity on the Niagara Spur Loop Line.

Because of the change in proposed facilities, Applicant states that for 1989, the proposed monthly demand charge would be $1.2986 per Mcf of the contract demand and the community charge would be $0.0484 per Mcf plus Tennessee's charges for transporting gas to Clarence, New York. The 1990 and 1991 transportation rates are contained

[1] The amendment was tendered for filing on January 27, 1989, however, the fee required by § 381.207 of the Commission's Rules (18 CFR 381.207) was not paid until February 3, 1989. Section 381.103 of the Commission's Rules provides that the filing date is the date on which the fee is paid.

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in Applicant's amended application in Docket No. CP88–194–001.

This amended application is part of the TEMCO Project, as modified in the approved Niagara Settlement. The other two initial proposals (9,000 horsepower of compression at Applicant's Ellisburg station and 1,000 horsepower of compression at Applicant's East Fork station) shall remain in force.

Comment date: March 2, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

30. Tennessee Gas Pipeline Company

[Docket No. CP89–652–000]

February 10, 1989.

Take notice that on January 18, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, pursuant to section 7(b) of the Natural Gas Act filed in Docket No. CP89–652–000 an application requesting permission and approval to abandon a transportation service for Brooklyn Union Gas Company (Brooklyn Union), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Tennessee states:

1. By Commission order issued December 15, 1978 in Docket No. CP78–490 (5 FERC ¶61,234), Tennessee was authorized, inter alia, to transport and deliver up to 20,000 Mcf of gas per day to Brooklyn, Union. Tennessee delivers the gas to Brooklyn Union at Tennessee's White Plains sales meter station, Westchester County, New York, and/or, to Transcontinental Gas Pipe Line Corporation (Transco) when mutually agreed upon by the parties at Tennessee's Rivervale, Bergen County, New Jersey sales meter station for redelivery by Transco to Brooklyn Union.

2. The authorized transportation service enabled Brooklyn Union to receive volumes of natural gas equivalent to liquefied natural gas (LNG) purchased by Brooklyn Union from Distrigas of Massachusetts Corporation (DOMAC). In order to effect receipt by Brooklyn Union of equivalent volumes of natural gas, Boston Gas Company (Boston Gas) a customer of Tennessee, receives daily volumes of LNG from DOMAC and releases equivalent volumes of natural gas to Tennessee for Brooklyn Union's account at Tennessee's Arlington sales meter station delivery point to Boston Gas in Middlesex County, Massachusetts. Volumes also made available by Boston Gas to Tennessee at the receipt point are volumes designated by Boston Gas from its contracted demand purchases to Tennessee under Tennessee's Rate Schedule CD–6.

3. The authorized transportation service is presently rendered under the terms of an Interruptible Transportation Contract (the Contract) made as of April 10, 1985 by and among Tennessee, Transco, Boston Gas and Brooklyn Union. The Contract has been filed by Tennessee as its FERC Rate Schedule T–82.

4. Article XI of Tennessee's Rate Schedule T–82 provides that the Contract shall extend for a primary term ending March 31, 1985 and year to year thereafter unless terminated by any party upon twelve months prior written notice to the other parties.

In addition, Tennessee states that by this application it seeks authorization to abandon the transportation service for Brooklyn Union authorized in Docket No. CP78–490 effective as of January 31, 1989, since by letter of November 7, 1988, Brooklyn Union has requested such termination to be effective January 31, 1989.

Tennessee further states that it has a rate case before the Commission at Docket No. RP88–228. It will be Tennessee's position that the abandonment of the transportation service as proposed herein should be considered by the Commission and reflected in the decision of RP88–228.

Comment date: March 3, 1989, in accordance with Standard Paragraph F at the end of this notice.

31. Natural Gas Pipeline Company of America

[Docket No. CP89–748–000]

February 10, 1989.

Take notice that on February 2, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89–748–000 a request pursuant to §§ 157.205 and 284.223(2)(b) of the Commission's Regulations under the Natural Gas Act for authorization to transport gas for Texarkoma Transportation Company (Texarkoma), a marketer of natural gas, under Natural's blanket certificate issued in Docket No. CP89–748–000 under section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open for public inspection.

Natural states that it would transport, on a firm basis, up to a maximum of 20,000 MMBtu (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule FTS), Texarkoma. Natural states that the receipt points would be located in Oklahoma and Kansas and the delivery points would be located in Illinois and Texas. Natural indicates that the total volume of gas to be transported for Texarkoma on a peak day would be 20,000 MMBtu; on an average day would be 20,000 MMBtu; and an annual basis would be 7,300,000 MMBtu. Natural indicates it would perform the proposed transportation service for Texarkoma pursuant to a service agreement dated January 1, 1989, between Natural and Texarkoma.

Natural states that it commenced the transportation of natural gas for Texarkoma on January 1, 1989, at Docket No. ST89–2112–000 for a 120-day period ending May 1, 1989, pursuant to § 284.223(a)(1) of the Commission's Regulations. Natural states that it proposes to continue this service in accordance with §§ 284.221 and 282.223(b). Natural further states that no new facilities are to be constructed in order to provide this transportation service.

Comment date: March 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

32. Panhandle Eastern Pipe Line Company

[Docket No. CP89–756–000]

February 10, 1989.

Take notice that on February 3, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–756–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Teepak, Inc. (Teepak), a shipper and end-user of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86–585–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle proposes to transport on a firm basis up to 1,900 dt equivalent of natural gas on a peak day for Teepak, 1,900 dt equivalent on an average day and 693,500 dt equivalent on an annual basis. It is stated that the transportation service would be effected using existing facilities and would not require any construction of additional facilities. It is explained that Panhandle would receive the gas for Teepak's account at existing points on Panhandle's system in Kansas, Texas, Oklahoma, Colorado, Wyoming and Illinois, and would deliver equivalent volumes of gas less fuel used and unaccounted for line loss to Illinois Power Company in Vermilion County, Illinois. It is explained that the service

commenced January 1, 1989, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89–1834.

Comment date: March 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

33. CNG Transmission Corporation

[Docket No. CP89–769–000]

February 10, 1989.

Take notice that on February 6, 1989, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26302, filed in Docket No. CP89–769–000 a prior notice request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for various shippers under the certificate issued in Docket No. CP86–311–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CNG proposes to transport gas for the shippers on an interruptible basis from various receipt points on its system to various interconnections between CNG and certain local distribution companies and pipelines. CNG lists for each shipper the receipt and delivery points, the maximum daily, average daily, and annual volumes, as well as the docket number related to the 120-day transportation service initiated by CNG (see attached appendix).

Comment date: March 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

APPENDIX

Docket No.	Shipper or customer	Commence date	Max. daily, Avg. daily, Est. annual	Receipt point	Delivery point or LDC
ST89–1944	Gulf Ohio Corp	12/15/88	900 48 17,520	B	MFG.
ST89–1952	Access Energy Corp	12/01/88	1,000 600 219,000	C	RGE.
ST89–1950	Phoenix Diversified Ventures, Inc	12/01/88	5,000 100 36,500	B	RGE.
ST89–1949	Pentex Petroleum, Inc	12/29/88	2,000 100 36,500	B	Tenn.
ST89–1946	End Users Supply System	12/30/88	30,000 1,197 436,905	C	Texas Eastern.
ST89–1947	Texas-Ohio Gas, Inc	12/02/88	3,000 823 300,395	A	Texas Eastern.
ST89–1951	Heath Petra Resources, Inc	12/10/88	30,000 1,903 694,595	A	Transco.
ST89–1945	Pentex Petroleum, Inc	12/29/88	2,000 100 36,500	B	North Penn.

Legend of LDC's or Delivery Points: RGE—Rochester Gas & Electric Corp.; NFG—National Fuel Gas Supply Corp.; Transco—Transcontinental Gas Pipeline Corporation; North Penn—North Penn Gas Company; Tenn.—Tennessee Gas Pipeline Company; Texas Eastern—Texas Eastern Transmission Corporation.
Legend of Receipt Points: A—Various interconnects between Tennessee Gas Pipeline Company and CNG; B—Various receipt points in WV/PA/NY; C—Various interconnects between Texas Gas Transmission Corp. and CNG.

34. Northwest Pipeline Corporation

[Docket No. CP89–763–000]

February 10, 1989.

Take notice that on February 6, 1989, Northwest Pipeline Corporation (Northwest), P.O. Box 8900, Salt Lake City, Utah 84108–0900, filed in Docket No. CP89–763–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for Murphy Plywood Company (Murphy), an end user of natural gas, under its blanket certificate issued in Docket No. CP86–578–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest states that it proposes to transport natural gas for Murphy from various receipt points on its system to delivery points located on Northwest Natural Gas Company's and CP National Corporation's distribution systems.

Northwest further states that the maximum daily average and annual quantities that it would transport for Murphy would be 1,500 MMBtu equivalent of natural gas, 30 MMBtu equivalent of natural gas and 1,000 and 11,000 MMBtu equivalent of natural gas, respectively.

Northwest indicates that in a filing made with the Commission on January 27, 1989, it reported in Docket No. ST89–2017–000 that transportation service for Murphy had begun on December 23, 1988 under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: March 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

35. Northwest Pipeline Corporation

[Docket No. CP89–776–000]

February 10, 1989.

Take notice that on February 7, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89–776–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for

Jermone P. McHugh (McHugh), a producer, under the blanket certificate issued in Docket No. CP86-578-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest states that pursuant to a transportation agreement dated January 1, 1987, as amended, under its Rate Schedule TI-1, it proposes to transport up to 10,000 MMBtu per day equivalent of natural gas for McHugh. Northwest states that it would transport the gas from wells in the San Juan Basin area of Rio Arriba County, New Mexico, to the Ignacio Plant delivery point and the Ignacio interconnect with El Paso Natural Gas Company (El Paso) in LaPlata County, Colorado, and to the existing LaJara and Tapacito interconnects with El Paso in Rio Arriba County, New Mexico.

Northwest advises that service under § 284.223(a) commenced December 22, 1988, as reported in Docket No. ST89-1786 (filed January 17, 1989). Northwest further advises that it would transport 5,800 MMBtu on an average day and 2,100,000 MMBtu annually.

Comment date: March 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

36. Trunkline Gas Company

[Docket No. CP89-758-000]

February 10, 1989.

Take notice that on February 3, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas, 77251-1642, filed in Docket No. CP89-758-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to transport natural gas for Exxon Corporation (Exxon or Shipper), a shipper and producer of natural gas, under Trunkline's blanket certificate issued in Docket No. CP86-586-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Trunkline proposes to transport, on an interruptible basis, up to 100,000 dt equivalent of natural gas per day on behalf of Exxon pursuant to a transportation agreement dated December 22, 1988, between Trunkline and Exxon. Trunkline states that the transportation agreement provides for Trunkline to receive gas from various existing points of receipt on its system. It is stated that Trunkline will then transport and redeliver subject gas, less fuel and unaccounted for line loss, to Transcontinental Pipe Line Corporation (Transco) in Beauregard Parish, Louisiana. Trunkline states that no new facilities nor expansion of existing facilities are required to provide the service. Trunkline further states that the estimated daily and estimated annual quantities would be 100,000 dt equivalent of natural gas and 36,500,000 dt equivalent of natural gas, respectively, based upon Shipper's estimates. It is stated that service under § 284.223(a) commenced on December 31, 1988, as reported in Docket No. ST89-1907.

Comment date: March 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

37. Natural Gas Pipeline Company of America

[Docket No. CP89-750-000]

February 10, 1989.

Take notice that on February 2, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89-750-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Coastal Gas Marketing Company (Coastal), under Natural's blanket certificate issued in Docket No. CP86-582-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural requests authorization to transport, on an interruptible basis, up to a maximum of 300,000 MMBtu of natural gas per day for Coastal, a marketer of natural gas, from receipt points located in Louisiana, Offshore Louisiana, Illinois, Oklahoma, Texas, Offshore Texas, Kansas, and Iowa to delivery points located in Louisiana, Missouri, Texas, Iowa and Illinois. Natural anticipates transporting, on an average day 100,000 MMBtu and an annual volume of 36,500,000 MMBtu.

Natural states that the transportation of natural gas for Coastal commenced December 1, 1988, as reported in Docket No. ST89-2113-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Natural in Docket No. CP86-582-000.

Comment date: March 27, 1989 in accordance with Standard Paragraph G at the end of the notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-3527 Filed 2-14-89; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 9518-002, *et al.*]

Calaveras County Water District, et al.; Surrender of Preliminary Permits and Exemptions

February 8, 1989.

Take notice that the following preliminary permits/exemptions have been surrendered effective as described in Standard Paragraph I at the end of this notice.

1. Calaveras County Water District

[Project No. 7589-002]

Take notice that the Calaveras County Water District, Permittee for the Upper Mokelumne River Multipurpose Water Development Project No. 9518, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 9518 was issued January 16, 1987, and would have expired December 31, 1989. The project would have been located on the Middle Fork Mokelumne River, the South Fork Mokelumne River and the Mokelumne River in Calaveras County, California.

The Permittee filed the request on January 13, 1989.

2. Baker Mountain Hydro Electric Company

[Project No. 10224-001, Washington]

Take notice that Baker Mountain Hydro Electric Company, Permittee for the Cascade Creek Project No. 10224, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 10224 was issued July 28, 1987, and would have expired June 30, 1990. The project would have been located on Cascade Creek in Whatcom County, Washington.

The Permittee filed the request on January 23, 1989.

3. Cascade River Hydro

[Project No. 10278-002, Washington]

Take notice that Cascade River Hydro, Permittee for the Kindy Creek Project No. 10278, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 10278 was issued July 28, 1987, and would have expired June 30, 1990. The project would have been located on Kindy Creek in Skagit County, Washington.

The Permittee filed the request on January 23, 1989.

Standard Paragraph

I. The preliminary permit/exemption shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007 in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 89-3528 Filed 2-14-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-180803; FRL-3515-8]

Receipt of an Application For a Specific Exemption To Use Avermectin B_1; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the California Department of Food and Agriculture (hereafter referred to as the "Applicant") for use of avermectin B_1 (AVID 0.15 EC™) to control two-spotted spider mites (*Tetranychus urticae*) on 11,000 acres of strawberries in California. Avermectin B_1 (CAS 63AB) contains a mixture of avermectins containing > 80% avermectin B_{1a} (5-0-demethyl avermectin A_{1a}) and □ 20% avermectin B_{1b} (5-0-demethyl-25-de(1-methylpropyl-25-(1-methylethyl)avermectin A_{1a}). In accordance with 40 CFR 166.24, EPA is soliciting comment before making the decision whether or not to grant this specific exemption request.

DATE: Comments must be received on or before March 2, 1989.

ADDRESS: Three copies of written comments, bearing the identification notation "OPP-180803" should be submitted by mail to: Public Docket and Freedom of Information Section, Field Operations Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. In person, bring comments to: Room 246, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information (CBI)." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for inspection in Room 246 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding all legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Office location and telephone number: Rm. 716, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1806).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any provisions of FIFRA if he determines that emergency conditions exist which requires such exemption.

The Applicant has requested the Administrator to issue a specific exemption for the use of avermectin B_1, manufactured as AVID 0.15 EC™, by Merck & Co., Inc., on strawberries in California. No tolerances have been established for avermectin B_1 on any raw agricultural commodities.

Information in accordance with 40 CFR Part 166 was submitted as part of this request. The Applicant proposes ground applications applied at a rate of 16 ounces of product per acre per application. A maximum of four applications will be made per acre per crop season. Treatment would not be allowed 3 days prior to harvest.

The Applicant indicates that warm dry weather and use of pesticides necessary to control insects lead to a build up of the population of spider mites. This has been the case in the affected area for a number of seasons. An additional factor in allowing the increase of this pest in 1988 was the loss of Plictran, which was the primary miticide used on strawberries. Additionally, resistance to other miticides (e.g., Kelthane, Vendex, and Carzol) have reduced their effectiveness, while the recent change in the reentry interval for Omite, essentially eliminates its use during the fruiting season, according to the Applicant.

The Applicant indicates that without adequate control of the spider mites a potential loss of $4 to $9 million could occur from this pest.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice in the Federal Register and solicit public comment on an application

involving the first food use of a pesticide. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period.

Dated: January 31, 1989.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 89-3417 Filed 2-14-89; 8:45 am]

BILLING CODE 6560-50-M

[PF-510; FRL-3520-4]

Nor-Am Chemical Co.; Filing of Pesticide Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the filing of pesticide petition (PP) 7F3511 for the pesticide clofentezine in or on various commodities by the Nor-Am Chemical Co.

ADDRESS:

By mail, submit written comments to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

In person, bring comments to: Room 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Dennis H. Edwards, Product Manager (PM) 12, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Room 202, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-557-2386.

SUPPLEMENTARY INFORMATION: EPA has received from the Nor-Am Chemical Co., P.O. Box 7495, 3509 Silverside Rd., Wilmington, DE 19803, a pesticide petition, PP 7F 3511, proposing to establish tolerances for residues of the pesticide chemical clofentezine ([3,6-bis(2-chlorophenyl)-2,2,4,5-tetrazine]) in or on pears at 0.5 part per million (ppm); apples at 0.5 ppm; milk, meat, and meat byproducts of cattle at 0.05 ppm; and liver of cattle at 0.5 ppm.

Authority: 21 U.S.C. 346a.

Dated: January 20, 1989.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 89-3533 Filed 2-14-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59268; FRL-3520-7]

Toxic and Hazardous Substances; Test Market Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substance Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt are discused in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of one application(s) for exemption, provides a summary, and requests comments on the appropriateness of granting this exemption.

DATES: Written comments by: T 89-7, February 16, 1989.

ADDRESS: Written comments, identified by the document control number "[OPTS-59268]" and the specific TMD number should be sent to: TSCA Document Control Office (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M Street SW., Room 201 East Tower, Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room EB-44, 401 M Street SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer of the TME received by EPA. The complet nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

T 89-7

Close of Review Period. March 4, 1989.

Manufacturer. Confidential.

Chemical. (S) Melamine amyl phosphate.

Use/Production. (S) Flame retardant. Prod. range: 50,000-5,000,000 kg/yr.

Date: February 2, 1989.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 89-3534 Filed 2-14-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59861; FRL-3520-6]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of five such PMN(s) and provides a summary of each.

DATES: Close of Review Periods:

Y 89-49—January 30, 1989
Y 89-50—February 1, 1989
Y 89-51—January 30, 1989
Y 89-53, 89-54—February 6, 1989

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room EB-44, 401 M Street SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 89-49

Manufacturer. Sicpa Securink Corporation.

Chemical. (G) Alkyd resin.

Use/Production. (S) Manufacture of printing inks. Prod. range: Confidential.

Y 89-50

Manufacturer. Sicpa Securink Corporation.

Chemical. (G) Intaglio varnish.

Use/Production. (S) Manufacture of printing inks. Prod. range: Confidential.

Y 89-51

Manufacturer. Sicpa Securink Corporation.

Chemical. (G) Intaglio varnish.

Use/Production. (S) Manufacture of printing inks. Prod. range: Confidential.

Y 89-53

Manufacturer. Confidential.

Chemical. (G) Acrylic polymer.

Use/Production. (S) Spray applied coatings. Prod. range: Confidential.

Y 89-54

Manufacturer. Confidential.

Chemical. (G) Acrylic polymer.

Use/Production. (S) Spray applied coatings. Prod. range: Confidential.

Date: February 1, 1989.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 89-3535 Filed 2-14-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59862; FRL-3520-9]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices of such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of three such PMN(s) and provides a summary of each.

DATES: Close of Review Periods:

Y 89-55, 89-56, 89-57—February 20, 1989.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M Street SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004, at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 89-55

Manufacturer. Scipa Ink Systems Corporation.

Chemical. (G) Amine polymer.

Use/Production. (S) Offset printing ink. Prod. range: 40,000-280,000 kg/yr.

Y 89-56

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Styrene terpene hydrocarbon terpolymer.

Use/Production. (S) Tackifier component used in the production of various adhesive systems. Prod. range: Confidential.

Y 89-57

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Unsaturated polyester resin.

Use/Production. (S) Flexible bending resin. Prod. range: Confidential.

Date: February 9, 1989.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 89-3536 Filed 2-14-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51727; FRL-3520B]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of sixty-four such PMNs and provides a summary of each.

DATES: Close of Review Periods:

P 89-269, 89-270, 89-271—April 16, 1989.
P 89-272—April 8, 1989.
P 89-273—April 12, 1989.
P 89-274, 89-275, 89-276, 89-277, 89-278—April 17, 1989.
P 89-279—April 18, 1989.
P 89-280, 89-281, 89-282, 89-283, 89-284, 89-285—April 22, 1989.
P 89-286, 89-287, 89-288, 89-289, 89-290, 89-291, 89-292, 89-293, 89-294, 89-295—April 23, 1989.
P 89-296—April 24, 1989.
P 89-297, 89-298, 89-299, 89-300, 89-301—April 25, 1989.
P 89-302, 89-303, 89-304—April 26, 1989.
P 89-305, 89-306, 89-307, 89-308, 89-309, 89-310, 89-311, 89-312, 89-313, 89-314—April 29, 1989.
P 89-315, 89-316, 89-317, 89-318, 89-319, 89-320, 89-321, 89-322, 89-324, 89-325, 89-326, 89-327—April 30, 1989.
P 89-328, 89-329, 89-330, 89-331, 89-332, 89-333—May 1, 1989.

Written comments by:

P 89-269, 89-270, 89-271—March 17, 1989.
P 89-272—March 9, 1989.
P 89-273—March 13, 1989.
P 89-274, 89-275, 89-276, 89-277, 89-278—March 18, 1989.
P 89-279—March 19, 1989.
P 89-280, 89-281, 89-282, 89-283, 89-284, 89-285—March 23, 1989.

P 89-286, 89-287, 89-288, 89-289, 89-290, 89-291, 89-292, 89-293, 89-294, 89-295—March 24, 1989.
P 89-296—March 25, 1989.
P 89-297, 89-298, 89-299, 89-300, 89-301—March 26, 1989.
P 89-302, 89-303, 89-304—March 27, 1989.
P 89-305, 89-306, 89-307, 89-308, 89-309, 89-310, 89-311, 89-312, 89-313, 89-314—March 30, 1989.
P 89-315, 89-316, 89-317, 89-318, 89-319, 89-320, 89-321, 89-322, 89-324, 89-325, 89-326, 89-327—March 31, 1989.
P 89-328, 89-329, 89-330, 89-331, 89-332, 89-333—April 1, 1989.

ADDRESS: Written comments, identified by the document control number "[OPTS-51727]" and the specific PMN number should be sent to: Document Control Office (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M Street, SW., Room 201 East Tower, Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M Street, SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 89-269

Manufacturer. Confidential.
Chemical. (G) Modified hydrocarbon polymer.
Use/Production. (G) Additive for the binder used in publication gravure printing inks. Prod. range: Confidential.

P 89-270

Manufacturer. Confidential.
Chemical. (G) Acrylic polymer.
Use/Production. (S) Spray applied coatings. Prod. range: Confidential.

P 89-271

Manufacturer. Confidential.
Chemical. (G) Acrylic polymer.
Use/Production. (S) Spray applied coatings. Prod. range: Confidential.

P 89-272

Manufacturer. Confidential.
Chemical. (G) Isocyanate terminated urethane prepolymer.
Use/Production. (S) Hot melt adhesive. Prod. range: Confidential.

P 89-273

Manufacturer. Confidential.
Chemical. (G) Substituted aromatic ketone.
Use/Production. (G) Destructive use. Prod. range: Confidential.

P 89-274

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Unsaturated polyester resin.
Use/Production. (S) Polyester laminating resin. Prod. range: Confidential.

P 89-275

Importer. Confidential.
Chemical. (G) Polyphenylene precursor.
Use/Import. (G) Prepolymer. Import range: Confident.
Toxicity Data. Acute oral toxicity LD50>2,000 mg/kg species (Rat). Eye irritation: moderate species (Rabbit). Skin irritation: slight species (Rabbit). Skin sensitization: negative species (Guinea pig).

P 89-276

Manufacturer. Confidential.
Chemical. (G) Saturated polyester resin.
Use/Production. (G) Resin. Prod. range: Confidential.

P 89-277

Manufacturer. DSM Resins U.S., Inc.
Chemical. (G) Dibasic/acid glycol ester.
Use/Production. (G) Use in the formulation of organic coatings. Prod. range: Confidential.

P 89-278

Manufacturer. Confidential.
Chemical. (G) Organophosphine.
Use/Production. (G) Petrochemical catalyst. Prod. range: Confidential.

P 89-279

Manufacturer. Hoechst Celanese.
Chemical. (G) Modified phenol formaldehyde resin.
Use/Production. (S) Resin preproduct. Prod. range: 25,000-135,000 kg/yr.

P 89-280

Manufacturer: BioTechnica Agriculture, Inc.
Microorganism: (G) *Rhizobium meliloti* strain SU47 from the Rothamsted Experiment Station collection was modified, using recombinant DNA techniques, to contain an antibiotic resistance marker and other genes to enhance nitrogen-fixing ability.

Genes were introduced from the following genera: streptomycin and spectinomycin resistance genes from *Shigella flexneri,* transcriptional terminator sequences from *Escherichia coli,* and additional intergeneric genes to enhance the nitrogen-fixing ability.
Use/Production: (G) a small-scale field trial to test the competitive ability of the engineered strain and to determine whether alfalfa yield can be increased in the field. Production range: 1×10^{13} cells per year.
Test Data: The dry weight of alfalfa plants infected with the PMN strain was increased 3% compared to plants infected with the parent strain after 3 weeks of growth in a greenhouse.
Exposure: Human: Production and field application, maximum of 6 people. *Environmental:* The log cell number per gram of soil decreased from 7.2 to approximately 6, over 4 weeks in laboratory studies using soil from the field test site.
Environmental Release/Disposal: In the small scale field trial, release to air, soil, and water are possible. Cells will be applied in an aqueous suspension to the soil in a single application immediately after planting the alfalfa seeds. The treated area of the field plot is 0.07 acres over a total test site area of 0.75 acres. The field test experiment will be conducted within a 14-acre parcel of land leased by BTA in Bristol Township, Dane County, Wisconsin. Laboratory cultures are sterilized before disposal and entered into Publicly Owned Treatment Works (POTW).

P 89-281

Manufacturer. Confidential.
Chemical. (G) Deep dye nylon 6.
Use/Production. (S) Nylon fiber carpet component. Prod. range: Confidential.

P 89-282

Manufacturer. Amoco Corporation.
Chemical. (G) Epoxy/amine adduct.
Use/Production. (S) Component in epoxy prepreg resin system. Prod. range: 225-450 kg/yr.

P 89-283

Manufacturer. Amoco Corporation.
Chemical. (G) Epoxy/amine resin.
Use/Production. (S) Component in epoxy prepreg resin system. Prod. range: 4-10 kg/yr.

P 89-284

Manufacturer. Amoco Corporation.
Chemical. (G) Epoxy/amine resin.

Use/Production. (S) Component in epoxy resin formulation in fiber reinforced prepreg (carbon fiber, glassfiber, aramid fiber). Prod. range: 1,800 kg/yr.

P 89-285

Manufacturer. Amoco Corporation.
Chemical. (G) Oil ether.
Use/Production. (G) Resin component. Prod. range: 800 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 1.55 mg/kg species (Rat). Acute dermal toxicity: LD50 8.6 ml/kg species (Rabbit). Eye irritation: slight species (Rabbit). Skin irritation: slight species (Rabbit).

P 89-286

Manufacturer. Confidential.
Chemical. (G) Modified alkyl alkoxy silane.
Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 89-287

Manufacturer. R.T. Vanberbilt Company, Inc.
Chemical. (G) Methyl acid phosphate alkylamine.
Use/Production. (S) Antiwear and extreme pressure agent for lubricants. Prod. range: Confidential.

P 89-288

Manufacturer. Confidential.
Chemical. (G) Acrylourethane.
Use/Production. (G) Coatings for open nondispersive use. Prod. range: Confidential.

P 89-289

Manufacturer. Confidential.
Chemical. (G) Acrylourether.
Use/Production. (G) Coatings for open nondispersive use. Prod. range: Confidential.

P 89-290

Manufacturer. E.I Du Pont De Nemours & Co., Inc.
Chemical. (S) Pyridine 2,3,4,5-tetrahydro-5-methyl.
Use/Production. (S) Manufacture of beta-picoline. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 1690 mg/kg species (rat).

P 89-291

Manufacturer. Confidential.
Chemical. (G) Alkyl aryl modified alkoxy polyol polymer.
Use/Production. (S) Additive for polyurethane foam. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 20.7 mg/kg species (Rat). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit).

P 89-292

Manufacturer. Confidential.
Chemical. (G) Carboxy alkyl silyl salt.
Use/Production. (G) Additive for engine coolant formulations. Prod. range: Confidential.

P 89-293

Manufacturer. Confidential.
Chemical. (G) Modified polyester of carbomoncyclic acids and anhydride with neogentyl glycol.
Use/Production. (S) Coil coatings to be applied to steel substrate. Prod. range: 32,000-160,000 kg/yr.

P 89-294

Manufacturer. Confidential.
Chemical. (G) Aromatic aliphate polyester.
Use/Production. (G) Industrially used coating with an open use. Prod. range: 200,000-60,000 kg/yr.

P 89-295

Manufacturer. Confidential.
Chemical. (G) Polyester with neopentyl glycol.
Use/Production. (G) Coating with an open use. Prod. range: 30,000-78,000 kg/yr.

P 89-296

Manufacturer. Confidential.
Chemical. (G) Phosphonic acid salt.
Use/Production. (G) Dispersive use scale inhibitor additive. Prod. range: Confidential.

P 89-297

Importer. Organic Dyestuffs Corporate.
Chemical. (G) Reactive red rb.
Use/Import. (S) Resale as is and physical mixtures other shading colors. Import range: Confidential.

P 89-298

Importer. Organic Dyestuffs Corporation.
Chemical. (G) Reactive yellow 1.
Use/Import. (S) Resale as is and physical mixtures other shading colors. Import range: 1,000-10,000 kg/yr.

P 89-299

Manufacturer. Confidential.
Chemical. (G) Amine functional epoxy salted with an organic acid.
Use/Production. (S) Coatings. Prod. range: Confidential.

P 89-300

Importer. Confidential.
Chemical. (G) Brominated aromatic ether oligomer.
Use/Import. (S) Flame retardants for plastics. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 25,000 mg/kg species (Mouse). Acute dermal toxicity: LD50 > 10,000 mg/kg species (Mouse). Mutagenicity: negative.

P 89-301

Manufacturer. Eastman Kodak Company.
Chemical. (G) Disubstituted glycine potassium complex.
Use/Production. (G) Open, nondispersive use. Prod. range: 10,000-500,000 kg/yr.

P 89-302

Manufacturer. E.I. Du Pont De Nemours & Co., Inc.
Chemical. (G) Urethane modified acrylic polymer.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 89-303

Importer. Marubeni America Corporation.
Chemical. (S) 2-Oxo-4-methyl-6-gureido pryridine.
Use/Import. (S) Fertilizer for consumer use. Import range: 40-500,000 kg/yr.

P 89-304

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Phenolic modified alkyd.
Use/Production. (S) Industrial coating vehicle. Prod. range: Confidential.

P 89-305

Importer. Shin-Estu Silicones of America, Inc.
Chemical. (G) Organopolysiloxane.
Use/Import. (S) Adhesive for plastic compounds and rubber compounds. Import range: 1,000-6,000 kg/yr.

P 89-306

Importer. Shin-Estu Silicones of America, Inc.
Chemical. (G) Organopolysiloxane.
Use/Production. (S) Adhesive for epoxy resin compounds. Import range: 10-40 kg/yr.

P 89-307

Importer. Shin-Estu Silicones of America, Inc.
Chemical. (G) Organopolysiloxane.
Use/Import. (S) Ingredient for silicone, rubber compounds and for coating. Import range: 1,000-2,000 kg/yr.

P 89-308

Importer. Shin-Estu Silicones of America, Inc.
Chemical. (G) Polyorganosilazane.
Use/Import. (S) Coating. Import range: 30-100 kg/yr.

P 89-309

Manufacturer. Air Products and Chemicals, Inc.
Chemical. (G) Alkylated aromatic diamine.
Use/Production. (S) Process recycle intermediate. Prod. range: Confidential.

P 89-310

Manufacturer. Air Products and Chemicals, Inc.
Chemical. (G) Alkylated aromatic diamine.
Use/Production. (S) Process recycle intermediate. Prod. range: Confidential.

P 89-311

Manufacturer. Air Products and Chemicals, Inc.
Chemical. (G) Alkylated aromatic diamine.
Use/Production. (S) Process recycle intermediate. Prod. range: Confidential.

P 89-312

Manufacturer. Air Products and Chemicals, Inc.
Chemical. (G) Alkylated aromatic diamine.
Use/Production. (S) Process recycle intermediate. Prod. range: Confidential.

P 89-313

Manufacturer. Air Products and Chemicals, Inc.
Chemical. (G) Alkylated aromatic diamine.
Use/Production. (S) Process recycle intermediate. Prod. range: Confidential.

P 89-314

Manufacturer. Air Products and Chemicals, Inc.
Chemical. (G) Alkylated aromatic diamine.
Use/Production. (S) Process recycle intermediate. Prod. range: Confidential.

P 89-315

Importer. Confidential.
Chemical. (G) Subetituted-substituted-benzoxazine.
Use/Import. (G) Paper coating. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50>2,500 mg/kg specied (Rat). Acute dermal toxicity: LD50>2,000 mg/kg species (Rabbit). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit. Mutagenicity: negative.

P 89-316

Manufacturer. E.I. Du Pont De Nemours & Co., Inc.
Chemical. (G) Peroxy initiated acrylic ester/ether polymer.
Use/Production. (G) Destructive use. Prod. range: Confidential.

P 89-317

Manufacturer. GE Plastics.
Chemical. (G) Arylalkyl polycyclicdoil.
Use/Production. (S) Monomer for manufacture of polycarbonate resins, and polyester carbonate resins. Prod. range: Confidential.

P 89-318

Manufacturer. GE Plastics.
Chemical. Arylalkyl copolycarbonate resin.
Use/Production. (S) Molded thermoplastic resin products. Prod. range: Confidential.

P 89-319

Manufacturer. Confidential.
Chemical. (G) Polyalkylene glycol ester with alkanoic acids.
Use/Production. (G) Plasticizer and lubricant for polymeric materials. Prod. range: Confidential.

P 89-320

Importer. Huils America Inc.
Chemical. (G) Saturated polyester resin from dibasic acids and polyol.
Use/Import. (S) Coatings and adhesives. Import range: 50,000-300,000 kg/yr.

P 89-321

Manufacturer. Confidential.
Chemical. (G) Substituted dithiocarbamate.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 89-322

Manufacturer. GTE Products Corporation.
Chemical. (G) Ytrium tantalate.
Use/Production. (S) Phosphor for use in X-ray intensifying screens for medical radiography. Prod. range: Confidential.

P 89-324

Manufacturer. Goldschmidt Chemical Corproation.
Chemical. (G) Carboxymodified polyether.
Use/Production. (G) Epoxy resin additive. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 5,005 mg/kg species (Rat). Eye irritation: none species(Rabbit). Skin irritation: negligible species(Rabbit).

P 89-325

Importer. Goldschmidt Chemical Corporation.
Chemical. (G) Tetraalkyl-tin-trialkoxysilane.
Use/Import. (G) Open, nondispersive use. Import range: Confidential.

P 89-326

Importer. Shin-Estu Silicones of America, Inc.
Chemical. (G) Organopolysiloxane.
Use/Import. (S) Textile finishing agent and additive for plastics. Import range: 10,000-15,000 kg/yr.

P 89-327

Importer. Shin-Estu Silicones of America, Inc.
Chemical. (S) Methymethacrylate-2-hydroxy ethyl methacrylate; copolymer; methylmethacrylate-3-(trimethoxysilyl)propol; methacrylate copolymer; trichloromethylsilanepolymer with dichloro; dimethylsilane, trichlorophyenylsilane and diphenyldichlorosilane.
Use/Import. (S) Paints and coating materials for metals. Import range: 1,000-5,000 kg/yr.

P 89-328

Importer. Confidential.
Chemical. (G) Alkyl ketone.
Use/Import. (G) Site limited intermediate. Import range: 884,250-1,985,000 kg/yr.

P 89-329

Manufacturer. Confidential.
Chemical. (S) Trisubstituted sulfonium salt.
Use/Production. (G) Site limited intermediate. Prod. range: Confidential.

P 89-330

Manufacturer. Confidential.
Chemical. (G) Epoxide.
Use/Production. (G) Site limited intermediate. Prod. range: Confidential.

P 89-331

Manufacturer. Confidential.
Chemical. (G) Styrenated acrylic polymer.
Use/Production. (S) Intermediate. Prod. range: Confidential.

P 89-332

Manufacturer. Confidential.
Chemical. (G) Styrenated acrylic polymer oxirane adduct.
Use/Production. (G) Paint. Prod. range: Confidential.

P 89-333

Manufacturer. American Cyanmid Company.
Chemical. (G) Substituted thiophosphate.
Use/Production. (G) Site-limited intermediate. Prod. range: Confidential.

Date: February 9, 1989.
Steven Newburg-Rinn,
Acting Director, Information Management Division, Office of Toxic Substances.
[FR Doc. 89-3518 Filed 2-14-89; 8:45 am]
BILLING CODE 6560-50-M

[OPTS-51725; FRL-3521-1]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of thirty-three such PMNs and provides a summary of each.

DATES: Close of Review Periods:
P 89-202, 89-203—March 22, 1989
P 89-226—March 26, 1989
P 89-239, 89-240—April 5, 1989
P 89-241, 89-242, 89-243, 89-244, 89-245, 89-246, 89-247, 89-248, 89-249, 89-250, 89-251, 89-252—April 8, 1989
P 89-253—April 10, 1989
P 89-254—April 8, 1989
P 89-255, 89-256, 89-257, 89-258, 89-259, 89-260, 89-261—April 9, 1989
P 89-262, 89-263, 89-264, 89-265, 89-266, 89-267, 89-268—April 11, 1989
Written comments by:
P 89-202, 89-203—February 20, 1989
P 89-226—February 24, 1989
P 89-239, 89-240—March 6, 1989
P 89-241, 89-242, 89-243, 89-244, 89-245, 89-246, 89-247, 89-248, 89-249, 89-250, 89-251, 89-252—March 9, 1989
P 89-253—March 11, 1989
P 89-254—March 9, 1989
P 89-255, 89-256, 89-257, 89-258, 89-259, 89-260, 89-261—March 10, 1989
P 89-262, 89-263, 89-264, 89-265, 89-266, 89-267, 89-268—March 12, 1989

ADDRESS: Written comments, identified by the document control number "(OPTS-51726)" and the specific PMN number should be sent to: Document Control Office (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M Street, SW., Room 201 East Tower, Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room EB-44, 401 M Street, SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 89-202

Importer. Confidential.
Chemical. (G) Polyester acrylate.
Use/Import. (G) Polymer component for coating. Import range: Confidential.

P 89-203

Importer. Confidential.
Chemical. (G) Polyester acrylate.
Use/Import. (G) Polymer component for coating. Import range: Confidential.

P 89-226

Importer. Kuraray International Corporation.
Chemical. (S) 3-methyl-1, 3-butanediol.
Use/Import. (S) Cosmetics. Import range: 10-20 kg/yr.

P 89-239

Manufacturer. E.I. Du Pont De Nemours & Co., Inc.
Chemical. (G) Neutralized aryl- alky organic acid.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 89-240

Manufacturer. E.I. Du Pont De Nemours & Co., Inc.
Chemical. (G) Acrylic copolymer ammonium salt.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 89-241

Manufacturer. The Dow Chemical Company.
Chemical. (G) Blocked aromatic isocyanate.
Use/Production. (G) Coating. Prod. range: Confidential.

P 89-242

Manufacturer. The Dow Chemical Company.
Chemical. (G) Blocked aromatic isocyante.
Use/Production. (G) Coating. Prod. range: Confidential.

P 89-243

Manufacturer. The Dow Chemcial Company.
Chemical. (G) Blocked aromatic isocyanate.
Use/Production. (G) Coating. Prod. range: Confidential.

P 89-244

Manufacturer. The Dow Chemical Company.
Chemical. (G) Blocked aromatic isocyanate.
Use/Production. (G) Coating. Prod. range: Confidential.

P 89-245

Manufacturer. The Dow Chemical Company.
Chemical. (G) Block aromatic isocyanate.
Use/Production. (G) Coating. Prod. range: Confidential.

P 89-246

Manufacturer. The Dow Chemical Company.
Chemical. (G) Block aromatic isocyanate.
Use/Production. (G) Coating. Prod. range: Confidential.

P 89-247

Manufacturer. The Dow Chemical Company.
Chemical. (G) Block aromatic isocyanate.
Use/Production. (G) Coating. Prod. range: Confidential.

P 89-248

Manufacturer. The Dow Chemical Company.
Chemical. (G) Block aromatic isocyanate.
Use/Production. (G) Coating. Prod. range: Confidential.

P 89-249

Manufacturer. Confidential.
Chemical. (G) Acrylic solution polymer.
Use/Production. (G) Open, dispersive use. Prod. range: Confidential.

P 89-250

Importer. Shin-Estu Silicones of America, Inc.
Chemical. (G) Organotin compound.
Use/Import. (S) Curing catalyst. Import range: 400-600 kg/yr.

P 89-251

Importer. Shin-Estu Silicones of America, Inc.
Chemical. (G) Organopolysiloxane.

Use/Import. (S) Ingredient for silicone rubber compounds. Import range: 1,000–3,000 kg/yr.

P 89–252

Importer. Shin-Estu Silicones of America, Inc.
Chemical. (G) Organopolysiloxane.
Use/Import. (S) Ingredient for coating. Import range: 3,000–5,000 kg/yr.

P 89–253

Manufacturer. Reilly Tar & Chemical Corporation.
Chemical. (G) Organometallic heterocycle.
Use/Production. (G) Intermediate. Prod. range: Confidential.

P 89–254

Manufacturer. K.C. Coatings, Inc.
Chemical. (G) Unsaturated polyamide ether.
Use/Production. (S) Base resin for printing inks. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species (Rat). Eye irritation: slight species (Rabbit). Skin irritation: moderate species (Rabbit). Mutagenicity: negative.

P 89–255

Importer. Confidential.
Chemical. (G) Polyacrylate resin.
Use/Import. (S) Intermediate. Import range: Confidential.

P 89–256

Manufacturer. Confidential.
Chemical. (G) Styrene acrylate methacrylate.
Use/Production. (G) Intermediate. Prod. range: Confidential.

P 89–257

Importer. Confidential.
Chemical. (G) Polyamine adduct of epon 1001.
Use/Import. (S) Hardener for epoxy. Import range: Confidential.

P 89–258

Manufacturer. Confidential.
Chemical. (G) Polyacrylate resin.
Use/Production. (G) Paint. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (Rat). Skin irritation: moderate species (Rabbit). Mutagenicity: negative.

P 89–259

Manufacturer. Ferro Corporation—Bedford Chem. Div.
Chemical. (G) Plastic additive.
Use/Production. (S) Plastic additive. Prod. Range: Confidential.

P 89–260

Manufacturer. Huls America Inc.
Chemical. (G) C12–C14 tert-alkyl amides.
Use/Production. (S) Organic intermediate. Prod. range: Confidential.

P 89–261

Manufacturer. Confidential.
Chemical. (S) Monisopropanol amine; isophthalic acid; cyclohexane dimethanol; phosphorus acid.
Use/Production. (G) Pigment. Prod. range: 150,000–400,000 kg/yr.

P 89–262

Manufacturer. Confidential.
Chemical. (G) Vinyl acetate-acrylate copolymer.
Use/Production. (G) Pressure sensitive adhesive emulsion. Prod. range: Confidential.

P 89–263

Manufacturer. E.I. Du Pont De Nemours & Co., Inc.
Chemical. (G) Ethylene copolymer.
Use/Production. (G) Intermediate. Prod. range: Confidential.

P 89–264

Manufacturer. E.I. Du Pont De Nemours & Co., Inc.
Chemical. (G) Ethylene copolymer.
Use/Production. (G) Intermediate. Prod. range: Confidential.

P 89–265

Manufacturer. E.I. Du Pont De Nemours & Co., Inc.
Chemical. (G) Ethylene copolymer.
Use/Production. (S) Polymer scrap. Prod. range: Confidential.

P 89–266

Manufacturer. E.I. Du Pont De Nemours & Co., Inc.
Chemical. (G) Ethylene copolymer.
Use/Production. (S) Polymer scrap. Prod. range: Confidential.

P 89–267

Manufacturer. E.I. Du Pont De Nemours & Co., Inc.
Chemical. (G) Ethylene polymer.
Use/Production. (S) Polymer scrap. Prod. range: Confidential.

P 89–268

Manufacturer. Confidential.
Chemical. (G) Alkyl amine.
Use/Production. (G) Dispersive. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50> 5 g/kg species (Rat). Eye irritation: moderate species (Rabbit). Skin irritation: neglible species (Rabbit). Mutagenicity: negative.

Date: February 3, 1989.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 3519 Filed 2–14–89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing; Michael P. Stephens et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

	City/State	File No.	MM Docket No.
I. Applicant			
A. Michael P. Stephens	Locust Grove, OK	BPH–871124MK	89–6
B. David C. Simpson	Locust Grove, OK	BPH–871215MD	
C. Murry Broadcasting, Inc.	Locust Grove, OK	BPH–871216MF	
Issue Heading and Applicants			
1. Comparative, A,B,C			
2. Ultimate A,B,C			
II. Applicants			
A. William A. Brownlee d/b/a Rudolph Radio Company	Rudolph, WI	BPH–880107NC	89–8
B. M&M Broadcasting	Rudolph, WI	BPH–880107NE	
Issue Heading and Applicants			
1. Financial, B			
2. Air Hazard, A			
3. Comparative, A,B			
4. Ultimate, A,B			
III. Applicants			
A. Joseph J. Mallis, Jr.	Ocean Acres, NJ	BPH–870417MA	89–10
B. Pasquale C. Tomnaro et al. d/b/a Seaira Associates	Ocean Acres, NJ	BPH–870430NM	
C. Fredrick and Naomi C. Gerken d/b/a Barnegat Broadcasting Company	Ocean Acres, NJ	BPH–870430NN	
D. Bay Communications, L.P.	Ocean Acres, NJ	BPH–870430NO	
E. Word Alive Ministries	Ocean Acres, NJ	BPH–870430NR	
F. Frank Canale	Ocean Acres, NJ	BPH–870430NS	
G. Howard Burbensky and Louis Gotas Associates	Ocean Acres, NJ	BPH–870430OC	
H. Richard Lee Harvey	Ocean Acres, NJ	BPH–870430OM	
I. Press Broadcasting Company	Ocean Acres, NJ	BPH–870430NP (Previously Dismissed).	
Issue Heading and Applicants			
1. Air Hazard, E			
2. Comparative, A,B,C,D,E,F,G,H			
3. Ultimate, A,B,C,D,E,F,G,H			

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 89–3504 Filed 2–14–89; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and may request a copy of each agreement and the supporting statement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 20 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.7 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 202–008054–032.
Title: South and East Africa/U.S.A. Agreement.
Parties:
The Bank Line.
Empresa de Navegacao Internacional (Navinter)
Lykes Bros. Steamship Co., Inc.
P&O Containers, Ltd.
Safbank Line, Ltd. (Safbank).

Synopsis: The proposed modification would prohibit members lines from entering into loyalty contracts or exercising independent action on any loyalty contract offered by the Conference.

Agreement No.: 202–009502–025.
Title: United States/South and East Africa Agreement.
Parties:
The Bank Line.
Empresa de Navegacao Internacional (Navinter)
Lykes Bros. Steamship Co., Inc.
P&O Containers, Ltd.
Safbank Line, Ltd. (Safbank).

Synopsis: The proposed modification would prohibit members lines from entering into loyalty contracts or exercising independent action on any loyalty contract offered by the Conference.

Agreement No.: 203–010999–003.
Title: Ecuador Discussion Agreement.
Parties:
United States Atlantic and Gulf/Ecuador Freight Association.
Transportes Navieros Equatorianos.
Gran Golfo Express.

Synopsis: The proposed modification would add Compania Chilean de Navigacion as an Independent Carrier Party to the Agreement. The parties have requested a shortened review period.

Agreement No.: 232–011230.

Title: V.A.G. Transport/Tecomar Reciprocal Space Charter and Sailing Agreement.

Parties:

V.A.G Transport GmbH.
Tecomar S.A.

Synopsis: The proposed Agreement would authorize the parties to discuss, and agree upon terms and conditions of service. It would also permit the parties to charter space and slots from one another and to rationalize sailings in the trade from ports in Mexico to ports on the United States Atlantic and Gulf Coast.

By Order of the Federal Maritime Commission.

Dated: February 10, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89–3548 Filed 2–14–89; 8:45 am]

BILLING CODE 6730–01–M

[Petition No. P6–89]

American Trucking Associations; Further Notice of Filing of Petition

On September 2, 1988, the Federal Maritime Commission ("Commission") served a "Notice of Filing of Petition" in connection with a filing by the American Trucking Associations ("ATA"). That Petition requested that the Commission issue an order to show cause why carriers serving Pacific Coast ports should not be ordered to cease and desist from implementing the 50-mile Container Rules at those particular ports.

The basis for the Petition was the August 9, 1988, decision of the U.S. Court of Appeals for the District of Columbia Circuit in *New York Shipping Association v. FMC*, 854 F.2d 1338 (1988), affirming the Commission's final decision in Docket No. 81–11, *"50-Mile Container Rules" Implementation By Ocean Common Carriers Serving the U.S. Atlantic and Gulf Coast Ports—Possible Violations of the Shipping Act, 1916*, 24 S.R.R. 411 (1987). In Docket No. 81–11, the Commission determined that rules applicable at East Coast ports, and which the ATA alleges are similar to those at Pacific Coast ports, were violative of the Shipping Act, 1916, the Shipping Act of 1984, and the Intercoastal Shipping Act, 1933.

Because of the possibility of a further rehearing before the Court of Appeals or review on writ of certiorari by the United States Supreme Court, the Commission's September 2, 1988, Notice indicated that ATA's Petition would be held in abeyance.

On January 23, 1989, the United States Supreme Court denied certiorari of the lower court's decision affirming the Commission's rulings (see, *ILA v. FMC* 57 LW 3486). In view of the Supreme Court's denial of certiorari, the Commission, by this notice, is not seeking comments on ATA's Petition.

Therefore, in order for the Commission to make a thorough evaluation of the Petition, interested persons are requested to submit views, arguments or data on the Petition no later than March 17, 1989. Responses shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573–0001 in an original and 15 copies. Responses shall also be served on ATA's counsel, Kenneth E. Siegel, Esq., ATA Litigation Center, 2200 Mill Road, Alexandria, Virginia 22314 and shall include an indication that service has been made. Copies of the Petition are available at the Washington, DC office of the Commission, 1100 L Street NW., Room 11101.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 89–3553 Filed 2–14–89; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies; Thomas W. Colbert, et al.

The notifications listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 1, 1989.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Thomas W. Colbert,* Forest, Mississippi; to acquire 31.61 percent of the voting shares of Metropolitan Corporation, Biloxi, Mississippi, and thereby indirectly acquire Metropolitan National Bank, Biloxi, Mississippi.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *L.T. Womack,* Lincoln, Nebraska; Joseph Polack, Omaha, Nebraska; and M. Victor Monson, Omaha, Nebraska; to each acquire 8.87 percent of the voting shares of Corn Belt Bancorporation, Lincoln, Nebraska, and thereby indirectly acquire Corn Belt State Bank, Correctionville, Iowa, and Union National Bank, Massena, Iowa.

Board of Governors of the Federal Reserve System, February 10, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–3561 Filed 2–14–89; 8:45 am]

BILLING CODE 6210–01–M

GENERAL SERVICES ADMINISTRATION

Federal Telecommunications System Meeting/Hearing-Impaired and Speech-Impaired Needs

Time and Date: 10:00, Thursday, February 23, 1989.

Place: 18th and F Street NW., Washington, DC, Room 3210.

Status: Open.

Matters to be Considered: GSA will consider issues related to the Federal telecommunications system and the accessibility needs of hearing-impared and speech-impaired individuals.

Contact Person for Reservations: Leah Urcia, 566–0291.

Dated: February 7, 1989.

Francis A. McDonough,

Deputy Commissioner, Federal Information Resources Management Service.

[FR Doc. 89–3565 Filed 2–14–89; 8:45 am]

BILLING CODE 6820–25–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Twenty-Third National Immunization Conference; Meeting

Action: Notice of Meeting—23rd National Immunization Conference.

Federal, State, and local public health officials, as well as representatives from the private sector who are involved in the organization and implementation of immunization activity, will participate.

Time and Date: Registration—Monday, June 5, 1989.

The Program is scheduled for 8:30 a.m.–5 p.m., Tuesday, June 6, through Thursday, June 8, and from 8:30 a.m.–11:30 a.m. on Friday, June 9.

Place: Holiday Inn—Embarcadero, San Diego, California, (619) 232–3861.

Status: Open to public, limited only by available space.

Matters to be Discussed: Current status of the epidemiology, prevention, and control of vaccine-preventable diseases.

Contact Person for More Information: Mr. Conrad P. Ferrara, Program Support Section, Division of Immunization, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia 30333, Telephone: FTS 236–1836; Commercial: (404) 639–1836.

Dated: January 27, 1989.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 89–3482 Filed 2–14–89; 8:45 am]

BILLING CODE 4160–18–M

Public Health Conference on Records and Statistics; Meeting

ACTION: Notice of meeting.

The Centers for Disease Control announces the dates and other information for the following conference scheduled to assemble during the month of July 1989.

Name: 22nd National Meeting of the Public Health Conference on Records and Statistics.

Time and Date: 9:00 am–5:00 pm, July 17 and 18, and 9:00 am–3:00 pm, July 19, 1989.

Place: Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC 20036.

Status: Open (registration required, however, there is no registration fee).

Purpose: The theme "Challenges for Public Health Statistics in the 1990's" will focus on the demands on health statistics for use in planning and evaluating health program strategies. Public health issues covered will be Promotion and Prevention, Surveillance and Epidemiology, and Targeting Services. A broad spectrum of topics pertinent to current and future public health concerns will be covered.

Contact Person for More Information: Substantive program and registration information of the meeting may be obtained from Nancy G. Hamilton, Public Health Conference on Records and Statistics, Office of Planning and Extramural Programs, National Center for Health Statistics, Room 2–12, Center Building, 3700 East West Highway, Hyattsville, Maryland 20782, telephone (301) 436–7122.

Dated: February 9, 1989.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 89–3484 Filed 2–14–89; 8:45 am]

BILLING CODE 4160–18–M

Vessel Sanitation Program; Meeting

ACTION: Notice of public meeting between the Centers for Disease Control (CDC) and the cruise ship industry, private sanitation consultants, and other interested parties.

Time and Date: 9:00 a.m.—Wednesday, March 8, 1989.

Place: Miami Port Authority, Passenger Terminal No. 10, 1007 North American Way, Miami, Florida.

Status: Open to the public for participation, comment, and observation, limited only by space available.

SUPPLEMENTARY INFORMATION: As part of the Vessel Sanitation Program, CDC conducts pubic meetings with members of the cruise ship industry, private sanitation consultants, and other interested parties. This meeting is a continuation of a series of public meetings.

Matters to be Considered: Experience to date with the operation of the Vessel Sanitation Program including a review of the results of vessel sanitation inspections; changes in the method of reporting the results of sanitation inspections; and proposed revisions to the *Vessel Sanitation Program Operations Manual.*

For a period of 15 days following the meeting, through March 23, 1989, the official record of the meeting will remain open so that additional material or comments may be submitted to be made part of the record of the meeting.

Contact Person for More Information: Woodrow Garrett, Special Programs Group, Center for Environmental Health and Injury Control, CDC, Atlanta, Georgia 30333. Telephone: FTS: 236–4595; Commercial: (404) 488–4595.

Dated: February 9, 1989.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 89–3483 Filed 2–14–89; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 89M–0003]

Collagen Corp.; Premarket Approval of Alveoform™ Biograft

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Collagen Corp., Palo Alto, CA, for premarket approval, under the Medical Device Amendments of 1976, of Alveoform™ Biograft. After reviewing the recommendation of the General and Plastic Surgery Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of October 28, 1988, of the approval of the application.

DATE: Petitions for administrative review by March 17, 1989.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Thomas J. Callahan, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, MD 20910, 301–427–7156.

SUPPLEMENTARY INFORMATION: On December 11, 1986, Collagen Corp., Palo Alto, CA 94303–3334, submitted to CDRH an application for premarket approval of Alveoform™ Biograft. The device is composed of hydroxyapatite particles which are bound together with fibrillar collagen, and is indicated for the augmentation or reconstruction of the atrophic mandible and/or maxilla.

On May 29, 1987, the General and Plastic Surgery Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On October 28, 1988, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at

CDRH—contact Thomas J. Callahan, address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee on experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before March 17, 1989, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: February 8, 1989.

Walter E. Gundaker,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 89–3493 Filed 2–14–89; 8:45 am]

BILLING CODE 4160–01–M

Public Health Service

Delegation of Authority; Administrator, Health Resources and Services Administration

Notice is hereby given that in furtherance of the delegation of authority to the Assistant Secretary for Health on January 14, 1981, by the Secretary of Health and Human Services, the Assistant Secretary for Health has delegated to the Administrator, Health Resources and Services Administration, all of the authorities under Title III, Part H, of the Public Health Service Act, as amended, pertaining to Organ Transplants, excluding the authorities to issue regulations, to submit reports to Congress or a congressional committee, to establish advisory committees or councils, or to appoint members to advisory committees or councils. Also excluded was the authority under section 373(b) (42 U.S.C. 274b) pertaining to the Bone Marrow Registry.

Redelegation

This authority may be redelegated.

Effective Date

This delegation was effective on February 2, 1989.

Date: February 2, 1989.

Robert E. Windom,

Assistant Secretary for Health.

[FR Doc. 89–3547 Filed 2–14–89; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–010–GP9–0109]

Extension of Public Comment Period for the Molycorp Guadalupe Mountain Tailings Disposal Facility Draft Environmental Impact Statement (EIS)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of extension of public comment period.

SUMMARY: The Bureau of Land Management, Albuquerque District, announces the extension of the public review and comment period for the Molycorp Guadalupe Mountain Tailings Disposal Facility DEIS.

DATE: Written comments on the Draft EIS will be accepted if they are submitted or post-marked no later than March 9, 1989.

ADDRESS: Comments should be sent to Robert Dale, District Manager, Bureau of Land Management, Albuquerque District Office, 435 Montano NE., Albuquerque, New Mexico 87107.

FOR FURTHER INFORMATION CONTACT: Kent Hamilton, Bureau of Land Management, Albuquerque District Office, 435 Montano NE., Albuquerque, New Mexico 87107, telephone commercial (505) 761–4546, FTS 474–4546.

Date: February 9, 1989.

Patricia E. McLean,

Associate District Manager.

[FR Doc. 89–3503 Filed 2–14–89; 8:45 am]

BILLING CODE 4310–FB–M

Final—Western Oregon Program Management of Competing Vegetation; Environmental Impact Statement; Availability

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the final environmental impact statement for Western Oregon Management of Competing Vegetation and request for comments to be used in development of the proposed decision.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a Final Environmental Impact Statement for Management of Competing Vegetation on lands in western Oregon. The proposal involves implementing a vegetation management program on approximately 1.8 million acres of public lands administered by the Bureau of Land Management.

SUPPLEMENTARY INFORMATION: The EIS examines the proposed action to use a selection of vegetation management methods, including mechanical, chemical, biological and thermal, to control competing vegetation on public forest lands in western Oregon. The EIS also examines seven alternatives which emphasize or eliminate use of particular methods.

Seventy-nine comment letters on the draft EIS and supplement to the draft EIS were received and have been included in the Final EIS along with BLM's responses to those comments. Text changes in response to public and peer review comments have been incorporated into the Final EIS.

DATES: A 60-day public review and comment period on the Final EIS will end on April 18, 1989. The public is encouraged to use this extended review period to prepare and submit comments to be used by the BLM in developing a proposed decision. The resulting proposed decision will be made available to the public for review and comment prior to preparation and issuance of a final decision document.

LOCATIONS: Reading copies and a limited number of individual copies of the Final EIS are available in Oregon BLM Offices in Portland, Salem, Tillamook, Eugene, Roseburg, Coos Bay, Medford, Klamath Falls, and Lakeview.

FOR FURTHER INFORMATION CONTACT: Tom Aufenthie, Branch of Forestry, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, Telephone (503) 231–6834.

Dated: February 1, 1989.

Charles W. Luscher,

State Director, Oregon/Washington.

[FR Doc. 89–3550 Filed 2–14–89; 8:45 am]

BILLING CODE 4320–09–M

[OR–942–09–4730–12; GP9–119]

Filing of Plats of Survey; Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 6 S., R. 2 E., approved December 2, 1988
T. 20 S., R. 4 W., approved December 2, 1988
T. 22 S., R. 7 W., approved December 23, 1988
T. 17 S., R. 2 E., approved December 23, 1988
T. 14 S., R. 8 W., approved January 6, 1989
T. 6 S., R. 44 E., approved January 20, 1989

Washington

T. 38 N., R. 20 E., approved September 30, 1988
T. 7 N., R. 18 E., approved January 20, 1989

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 825 NE Multnomah, Portland, Oregon 97208, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 825 N.E. Multnomah Street, P.O. Box 2965, Portland, Oregon 97208.

Dated: February 6, 1989.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 89–3488 Filed 2–14–89; 8:45 am]

BILLING CODE 4310–33–M

National Park Service

Concession Contract Negotiation; International Leisure Hosts, Ltd.

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to negotiate a concession contract with International Leisure Hosts, Ltd. authorizing it to continue to provide camping, food, retail merchandising, and gasoline facilities and services for the public at John D. Rockefeller Memorial Parkway, Wyoming for a period of up to twenty years from January 1, 1990 through December 31, 2009.

EFFECTIVE DATE: May 16, 1989.

ADDRESS: Interested parties should contact the Regional Director, Rocky Mountain Region, P.O. Box 25287, Denver, Colorado 80225–0287, for information as to the requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: This proposed contract requires a construction and improvement program. The construction and improvement program required was previously addressed in the Environmental Review of Assessment of Alternatives, approved November 6, 1979, that was prepared in conjunction with the Development Concept Plan for John D. Rockefeller, Jr. Memorial Parkway.

International Leisure Hosts, has been conducting certain operations under the immediate supervision of the Superintendent, Grand Teton National Park, (307) 733–2880, pursuant to a U.S. Forest Service Special Use Permit which expires by limitation of time on December 31, 1989. The permittee is being administratively granted a preference in the nature of that granted to satisfactory concessioners under 16 U.S.C. 20, provided that the permittee submits a responsive proposal.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of International Leisure Hosts, must be postmarked or hand delivered on or before the ninetieth (90th) day following publication of this notice to be considered and evaluated.

Date: February 8, 1989.

Lorraine Mintzmyer,

Regional Director, Rocky Mountain Region.

[FR Doc. 89–3552 Filed 2–14–89; 8:45 am]

BILLING CODE 4310–70–M

Upper Delaware Citizens Advisory Council; Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Upper Delaware Citizens Advisory Council. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: February 24, 1989, 7:P.M.[1]

Inclement Weather Reschedule Date: March 10, 1989.

ADDRESS: Town of Tusten Hall, Narrowsburg, New York.

FOR FURTHER INFORMATION CONTACT: John T. Hutzky, Superintendent; Upper Delaware Scenic and Recreational River P.O. Box C, Narrowsburg, NY 12765–0159; 717–729–8251.

SUPPLEMENTARY INFORMATION: The Advisory Council was established under section 704(f) of the National Parks and Recreation Act of 1978, Pub. L. 95–625, 16 U.S.C. 1724 note, to encourage maximum public involvement in the development and implementation of the plans and programs authorized by the Act. The Council is to meet and report to the Delaware River Basin Commission, the Secretary of the Interior, and the Governors of New York and Pennsylvania in the preparation and implementation of the management plan, and on programs which relate to land and water use in the Upper Delaware region. The agenda for the meeting will cover a summary report of

[1] Announcements of cancellation due to inclement weather will be made by radio stations WDNH, WDLC, WSUL, and WVOS.

the 1988 recreational season and administrative business, including membership and charter renewal.

The meeting will be open to the public. Any member of the public may file with the Council a written statement concerning agenda items. The statement should be addressed to the Upper Delaware Citizens Advisory Council, P.O. Box 84, Narrowsburg, NY 12764. Minutes of the meeting will be available for inspection four weeks after the meeting, at the permanent headquarters of the Upper Delaware Scenic and Recreational River: River Road, 1¾ miles north of Narrowsburg, New York; Damascus Township, Pennsylvania.

Dated: February 7, 1989.

Alec Gould,

Deputy Regional Director, Mid-Atlantic Region.

[FR Doc. 89-3549 Filed 2-14-89; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332-269]

Likely Impact of EC Government Procurement Initiatives Affecting Excluded Sectors

AGENCY: United States International Trade Commission.

ACTION: Likely impact of EC Government procurement initiatives affecting excluded sectors.

SUMMARY: Following receipt on November 28, 1988, of a request from U.S. Trade Representative at the direction of the President, the Commission instituted investigation No. 332-269 under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) for the purpose of providing a report on EC government procurement initiatives affecting sectors that have previously been effectively closed to all international (including intra-EC) competition—namely, the telecommunications, water, transportation, and energy sectors, frequently referred to as the "excluded sectors."

More specifically, USTR requested that the Commission provide a report containing the following information:

1. A review of studies on the likely impact of excluded sector procurement initiatives being considered in the 1992 process, in particular, any independent European research on these matters;

2. An analysis of each excluded sector coverage;

3. A review of current procurement laws, policies and practices in each EC member state;

4. A reporting of sales levels by country of origin for excluded sector products in major non-producing markets outside the United States and EC;

5. A reporting of sales levels of domestic suppliers and major foreign suppliers in each EC country under current arrangements;

6. Analysis of industry attributes affecting the competitive environment in the excluded sectors; and

7. Estimates of trade creation and trade diversion under alternative scenarios (to be supplied by USTR) for 1992 excluded sector procurement rules.

USTR has modified its original request to ask that the Commission submit its report not later than June 15, 1989.

EFFECTIVE DATE: December 30, 1988.

FOR FURTHER INFORMATION CONTACT: Joseph Francois (202) 252-1229 or Donald Rousslang (202) 252-1223, Research Division, Office of Economics, U.S. International Trade Commission, Washington, DC 20436.

PUBLIC HEARING: The Commission will hold a public hearing on this investigation at the United States International Trade Commission Building, 500 E Street, SW, Washington, DC, beginning at 9:30 a.m. on March 23, 1989. All persons shall have the right to appear in person or to be represented by counsel, to present information, and to be heard. Persons wishing to appear at the public hearing should file requests to appear and should file prehearing briefs (original and 14 copies) with the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, no later than noon, March 3, 1989. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 252-1000.

WRITTEN SUBMISSION: Interested persons are invited to submit written statements concerning the matters to be addressed in the report. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked as "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons in the Office of the Secretary to the Commission. To be assured of consideration by the Commission, written statements relating to the Commission's report and post-hearing briefs should be submitted at the earliest practical date and should be received no later than April 7, 1989. All submissions should be addressed to the Secretary to the Commission at the Commission's office in Washington, DC.

Hearing impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 252-1810.

By order of the Commission.

Issued: February 9, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-3577 Filed 2-14-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-293 and 295 (Final), and Investigations Nos. 731-TA-412 through 419 (Final)]

Industrial Belts From Israel, et al.

AGENCY: United States International Trade Commission.

ACTION: Institution of final antidumping investigations and scheduling of a hearing to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731-TA-412 (Final) (Israel), 731-TA-413 (Final) (Italy), 731-TA-414 (Final) (Japan), 731-TA-415 (Final) (Singapore), 731-TA-416 (Final) (South Korea), 731-TA-417 (Final) (Taiwan), 731-TA-418 (Final) (United Kingdom), and 731-TA-419 (Final) (West Germany) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Israel, Italy, Japan, Singapore, South Korea, Taiwan, the United Kingdom, and West Germany of industrial belts,[1] provided for in subheadings 4010.10.10, 4010.10.50, 5910.00.10, and 5910.00.90 of the Harmonized Tariff Schedule of the United States (items 358.02, 358.06, 358.08, 3258.09, 358.11, 358.14, 358.16, 657.25, and 773.35 of the Tariff Schedules of the United States), that have been found by the Department of Commerce, in preliminary determinations, to be sold in the United States at less than fair value (LTFV). Unless the investigations are extended, Commerce will make its final LTFV determinations on or before April 11, 1989, and the Commission will its make final injury determinations by May 31, 1989 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b)).

In addition, the Commission hereby gives notice of its intention to conduct its final countervailing duty investigations Nos. 710-TA-293 (Final) (Israel) and 701-TA-295 (Final) (South Korea), which were instituted effective December 2, 1988 (53 FR 52517, December 28, 1988), concurrently with its antidumping investigations.

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's rules of Practice and Procedure, part 207, subparts A and C (19 CFR part 207 as amended, 53 FR 33041 *et seq.* (August 29, 1988)), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: February 1, 1989.

FOR FURTHER INFORMATION CONTACT: Tedford Briggs (202-252-1181), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background.—These antidumping investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that imports of industrial belts from Israel, Italy, Japan Singapore, South Korea, Taiwan, the United Kingdom, and West Germany are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigations were requested in a petition filed on June 30, 1988, by The Gates Rubber Co., Denver, CO. In response to that petition the Commission conducted preliminary antidumping investigations and, on the basis of information developed during the course of those investigations determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (53 FR 32478, August 25, 1988).

Participation in the investigations.—Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR § 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3, as amended (53 FR 33041 *et seq.* (August 29, 1988)), of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited disclosure of business proprietary information under a protective order.—Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a) as amended, 53 FR 33041 *et seq.* (August 29, 1988)), the Secretary will make available business proprietary information gathered in these final investigations to authorized applicants under a protective order, provided that the application be made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Staff report.—The prehearing staff report in these investigations will be placed in the nonpublic record on April 14, 1989, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing.—The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on April 27, 1989, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on April 14, 1989. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on April 21, 1989, at the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is April 24, 1989. The hearing will be a consolidated proceeding for the countervailing and antidumping investigations.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonbusiness proprietary summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any business proprietary materials must be submitted at least three (3) working days prior to the hearing (see § 207.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2)).

Written submissions.—All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on May 3, 1989. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before May 3, 1989.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for business

[1] The merchandise covered by these investigations includes certain industrial belts for power transmission. These include V-belts, synchronous belts, round belts, and flat belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (i.e., closed loop) belts, or in belting in lengths or links. These investigations exclude conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and left trucks.

Continued

proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a) as amended, 53 FR 33041 *et seq.* (August 29, 1988)) may comment on such information in their prehearing and posthearing briefs, and may also file additional written comments on such information no later than May 8, 1989. Such additional comments must be limited to comments on business proprietary information received in or after the posthearing briefs.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: February 10, 1989.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-3576 Filed 2-14-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-409 (Final)]

Certain Light-Walled Rectangular Pipes and Tubes from Argentina

AGENCY: United States International Trade Commission.

ACTION: REVISED SCHEDULE FOR THE SUBJECT INVESTIGATION.

EFFECTIVE DATE: January 12, 1989.

FOR FURTHER INFORMATION CONTACT: Olympia DeRosa Hand (202-252-1182), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION: Effective November 21, 1988, the Commission instituted the subject investigation and established a schedule for its conduct (53 FR 50903, December 4, 1988). Subsequently, the Department of Commerce extended the date for its final determination in the investigation from January 30, 1989 to March 31, 1989 (54 FR 1189, January 12, 1989). The Commission, therefore, is revising its schedule in the investigation to conform with Commerce's new schedule.

The Commission's schedule for the investigation is revised as follows: the deadline for filing posthearing briefs is April 7, 1989, and the deadline for Parties to file additional written comments on business proprietary information is April 14, 1989. The schedule through the date of the hearing for this investigation remains the same, and the schedule for the investigation concerning imports of light-walled rectangular pipes and tubes from Taiwan (731-TA-410 (Final)) has not been altered.

For further information concerning this investigation see the Commission's notice of investigation cited above and the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: February 7, 1989.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-3579 Filed 2-14-89 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 701-TA-296 (Final)]

Certain Steel Wheels From Brazil

AGENCY: United States International Trade Commission.

ACTION: Scheduling of a hearing to be held in connection with a final countervailing duty investigation.

SUMMARY: The Commission hereby gives notice of the scheduling of a hearing to be held in connection with a final countervailing duty investigation No. 701-TA-296 (Final) conducted under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil of steel wheels,[1] provided for in subheading 8708.70.60 of the Harmonized Tariff Schedule of the United States (item 692.32 of the Tariff Schedules of the United States), that have been found by the Department of Commerce, in a preliminary determination, to be subsidized by the Government of Brazil. Commerce will make its final subsidy determination in this investigation on or before April 7, 1989 and the Commission will make its final injury determination by May 24, 1989 (see sections 705(a) and 705(b) of the act (19 U.S.C. 1671d(a) and 1671d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207, as amended, 53 FR 33041 *et seq.* (August 29, 1988)), and Part 201, subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: February 1, 1989.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202-252-1180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background.—Effective October 28, 1988, the Commission instituted a final countervailing duty investigation on certain steel wheels from Brazil (53 FR 48320, November 30, 1988). It planned to establish a schedule for the conduct of the investigation when the Department of Commerce made a preliminary determination in the currently ongoing antidumping investigation on steel wheels from Brazil. The date of that determination was originally scheduled to be January 5, 1989. On December 20, 1988, Commerce, at the request of the petitioner Kelsey Hayes Company, extended its preliminary antidumping duty determination to not later than February 24, 1989. To date, the petitioner has not requested that Commerce's final subsidy determination be delayed to conform with the final antidumping determination. The Commission is therefore establishing a schedule for the conduct of the countervailing duty investigation on certain steel wheels.

[1] The products covered by this investigation are steel wheels currently classifiable in *Harmonized Tariff Schedule (HTS)* subheading 8708.70.60 and provided for in item 692.3230 of the *Tariff Schedules of the United States Annotated (TSUSA)*. The merchandise includes steel wheels, assembled or unassembled, consisting of a disc and a rim, designed to be mounted with both tube type and tubeless pneumatic tires, in wheel diameter sizes ranging from 13.0 inches to 16.5 inches, inclusive, and generally for use on passenger automobiles, light trucks and other vehicles.

Staff report.—The prehearing staff report in this investigation will be placed in the nonpublic record on April 7, 1989, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on April 20, 1989 at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on April 11, 1989. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on April 14, 1989 at the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is April 17, 1989.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonbusiness proprietary summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any business proprietary materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions.—All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22).

Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on April 17, 1989. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before April 27, 1989.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a), as amended, 53 FR 33041 *et seq.* (August 29, 1988)) may comment on such information in their prehearing and posthearing briefs, and may also file additional written comments on such information no later than May 2, 1989. Such additional comments must be limited to comments on business proprietary information received in or after the posthearing briefs.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: February 7, 1989.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-3578 Filed 2-14-89; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-55 (Sub-No. 274X)]

CSX Transportation, Inc.; Abandonment Exemption; In Sumter County, FL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by CSX Transportation, Inc., of 3.9 miles of rail line in Sumter County, FL, subject to standard labor protective conditions and a 180-day public use condition.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on March 17, 1989. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by February 27, 1989, petitions to stay must be filed by March 2, 1989, and petitions for reconsideration must be filed by March 13, 1989.

ADDRESSES: Send pleadings referring to Docket No. AB-55 (Sub-No. 274X), to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Charles M. Rosenberger—J150, Senior Counsel, 500 Water Street, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. TDD for hearing impaired: (202) 275-1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275-1721.)

Decided: February 7, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89-3421 Filed 2-14-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; Quemetco Inc., et al.

Notice is hereby given that a proposed Consent Decree in *United States* v. *Quemetco Inc., et al.*, Civil Action No. IP87-684C (S.D. Ind.) between the United States, on behalf of the Environmental Protection Agency ("EPA"), and Quemetco, Inc., RSR Corporation, and Quemetco Realty has been lodged on February 6, 1989 with the United States District Court for the Southern District of Indiana. The Consent Decree resolves claims of the United States against Quemetco, Inc., RSR Corporation, and Quemetco Realty under the Solid Waste Dispostal Act, *as*

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

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amended, 42 U.S.C. 6901 *et seq.* (also referred to as the Resource Conservation and Recovery Act "RCRA"). The United States' claims relate to RCRA violations and the release of hazardous lead-contaminated waste into the environment at a smelting facility located at 90 Quemetco Drive, Indianapolis, Indiana. Under the settlement reflected in the Consent Decree, Quemetco, Inc., RSR Corporation, and Quemetco Realty will pay a civil penalty of $54,000 to the United States and will undertake various actions to ensure compliance with RCRA regulations and to investigate and correct contamination attributable to the Indianapolis facility.

The Department of Justice will receive comments relating to the proposed Consent Decree for 30 days following the publication of this Notice. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Quemetco Inc.*, D.J. Ref. No. 90-7-1-368. The proposed Consent Decree may be examined at the Office of the United States Attorney for the Southern District of Indiana, U.S. Courthouse, 46 East Ohio Street, 5th Floor, Indianapolis, Indiana 46204, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 6317, Tenth and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.70 (10 cents per page for reproduction costs), payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-3567 Filed 2-14-89; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL ADVISORY COMMISSION ON LAW ENFORCEMENT

Meeting

AGENCY: National Advisory Commission on Law Enforcement.

ACTION: Notice of Commission meeting.

SUMMARY: Notice of Commission Meeting on the Methods and Rates of Compensation of Federal Law Enforcement Officers as well as Comparisons with Their Nonfederal Counterparts.

DATES: The first Commission meeting is scheduled for Wednesday, February 22, 1989, from 2:00 to 4:00 p.m.

ADDRESSES: The meeting will be held in room 7313, at GAO Headquarters, 441 G Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Drew Valentine, Staff Director, or Patrick Mullen, Deputy Staff Director, at (202) 275-1777.

SUPPLEMENTARY INFORMATION: The National Advisory Commission on Law Enforcement (ACLE) was created by the Anti-drug Abuse Act of 1988 (Pub. L. 100-690, Sec. 6160). The Commission was created to study "the methods and rates of compensation, including salary, overtime pay, retirement policies, and other benefits of law enforcement officers in all Federal agencies, as well as the methods and rates of compensation of State and local law enforcement officers in a representative number of areas where Federal law enforcement officers are assigned."

Among the items to be discussed are: (1) the number and type of law enforcement personnel to be surveyed, (2) the need for and the number of public hearings to be held, (3) the basic approach to the study, (4) the use of outside consultants to supplement the Commission staff, and (5) issues to be addressed in the study. Members of the public wishing to attend the Commission meeting should notify the Commission staff on 275-1777 by close of business on February 20, 1989.

Charles A. Bowsher,

Chairman, National Advisory Commission on Law Enforcement.

[FR Doc. 89-3671 Filed 2-14-89; 8:45 am]

BILLING CODE 1610-01-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on Preservation; Meeting

Notice is hereby given that the National Archives Advisory Committee on Preservation will meet on March 30-31, 1989. The meeting will be held from 10 a.m. to 4 p.m. on Thursday, March 30, 1989 and 9 a.m. to 1 p.m. on March 31, 1989, in Room 105 of the National Archives Building, 7th and Pennsylvania Avenue NW., Washington, DC 20408.

The agenda for the meeting will be:

1. Plans for a new Archives building.
2. Review of technology developments for storage of permanently valuable records.
3. Discussion of options for Archives facilities.

This meeting is open to the public. For further information, contact Alan Calmes on (202) 523-1546.

Notice of the meeting is made in accordance with the Federal Advisory Committee Act.

Dated: February 10, 1989.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 89-3566 Filed 2-14-89; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL SCIENCE FOUNDATION

Applications for Advanced Technologies Panel; Meeting

The National Science Foundation announces the following meeting:

Name: Applications for Advanced Technologies Panel meeting.

Date and Time: Friday, March 17, 1989 from 6-9 p.m. Saturday, March 18, 1989.

Place: National Science Foundation, Room 1242, 1800 G Street NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Andrew R. Molnar, Applications for Advanced Technologies, Room 635A, Phone: (202) 357-7064.

Summary Minutes: May be obtained from the Contact Person at the above address.

Purpose of Meeting: To provide advice and recommendations concerning support for research.

Agenda: To review and evaluate research proposal as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are within exceptions (4) and (6) of 5 U.S.C. 552b(c). Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

February 10, 1989.

[FR Doc. 89-3477 Filed 2-14-89; 8:45 am]

BILLING CODE 7555-01-M

Earth Sciences Proposal Review Panel; Meeting

The National Science Foundation announces the following meeeting

Name: Earth Sciences Proposal Review Panel

Date: March 8, 9 and 10, 1989

Time: 6:00 a.m. to 6:00 p.m. each day

Place: The National Science Foundation, Room 543, 1800 G Street, NW., Washington, DC 20550

Type of Meeting: Closed

Contact Person: Dr. Alan Gaines, Section Head, Division of Earth Sciences, Room 602, National Science Foundation, Washington, DC 20550; Telephone: (202) 357-9591.

Summary Minutes: May be obtained from the Contact Person at the above address.

Purpose of Meeting: To provide advice and recommendations concerning support for research in Earth Sciences.

Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

February 10, 1989.

[FR Doc. 89-3479 Filed 2-14-89; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Polar Programs; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Committee for Polar Programs.

Date and Time: March 13, 1989, 8:30 a.m.-5:00 p.m.; March 14, 1989, 8:30 a.m.-5:00 p.m.; March 15, 1989, 8:30 a.m.-3:00 p.m.

Place: National Science Foundation, Rooms 643 and 540, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed—March 13, 1989, 8:30 a.m.-5:00 p.m., Room 540. Open—March 13, 1989, 8:30 a.m.-5:00 p.m.; Room 643; March 14, 1989, 8:30 a.m.-5:00 p.m.; March 15, 1989, 8:30 a.m.-3:00 p.m.

Contact Person: Dr. Peter E. Wilkniss, Division Director, Division of Polar Programs, Room 620, National Science Foundation, Washington, DC 20550. Telephone: 202/357-7766.

Purpose of Committee: Serves to provide expert advice to the U.S. Antarctic Program and the Arctic Program, including advice on science programs, polar operations support, budgetary planning, and polar coordination and information.

Agenda: March 13, 1989

—8:30 am-5:00 pm, Room 540, Subcommittee for the External Peer Oversight Review of the Polar Glaciology Program.

—8:30 am-5:00 pm, Room 643, Subcommittee for Polar Science Long Range Plans.

—8:30 am-5:00 pm, Room 540, Subcommittee for External Peer Review of Polar Operations Section.

March 14, 1989

—8:30 a.m. Welcome, Introductions, Announcements.

—8:45 a.m. Minutes of July 1988 (Eleventh) meeting—review DAC report and DPP response.

—9:00 a.m. Subcommittee report—review of Polar Glaciology.

—9:30 a.m. Discussion.

—10:00 a.m. Coffee Break.

—10:15 a.m. Briefing on fiscal year 1990 Budget Review.

—10:30 a.m. Oversight review of Polar Operations.

—11:30 a.m. Lunch Break.

—1:00 p.m. Subcommittee report—Polar Science Long Range Plan and Discussion.

—2:00 p.m. Recent developments in Polar Science.

—3:30 p.m. DAC Tasking and Plans.

—5:00 p.m. Adjourn.

March 15, 1989

—8:30 a.m. Briefing on USAP Safety and Environment Budget and Implementation Plans.

—9:30 a.m. Discussion on Recent Development in Arctic Sciences, ARCSS (GISP, Oceans).

—10:30 a.m. Discussions on Recent Developments in Antarctic Sciences.

—11:30 a.m. Lunch Break.

—1:00 p.m. Curatorial Facilities.

—1:30 p.m. DAC Tasking and Plans.

—3:00 p.m. Adjourn.

Reason for Closing: The meeting will deal with a review of grants and declinations in which the Committee will review materials containing the names of applicant institutions and principal investigators and privileged information contained in declined proposals. This meeting will also include a review of peer review documentation pertaining to applicants. Any non-exempt materials that may be discussed at this meeting (proposals that have been awarded) will be inextricably intertwined with the discussion of exempt materials and no further separation is practical.

M. Rebecca Winkler,

Committee Management Officer.

February 10, 1989.

[FR Doc. 89-3480 Filed 2-14-89; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee to the Directorate for Science and Engineering Education; Meeting

Name: Advisory Committee to the Directorate for Science and Engineering Education.

Date and time: Monday, March 6, 1989, 8:30 a.m.-5:00 p.m.

Place: National Science Foundation, Room 540, Washington, DC.

Type of Meeting: Open.

Contact Person: Mr. James G. Cook, Executive Secretary, Directorate for Science and Engineering Education, National Science Foundation, Washington, DC 20550, (202) 357-7926.

Summary Minutes: May be obtained from contact person listed above.

Purpose of Committee: To provide advice and recommendations concerning NSF support for science and engineering education.

Agenda: Review of FY 1989 Programs and Initiatives Review of FY 1990 Programs and Initiatives Strategic Planning for FY 1991 and Beyond.

February 10, 1989.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89-3478 Filed 2-14-89; 8:45 am]

BILLING CODE 7555-01-M

Task Force on Women, Minorities and the Handicapped in Science and Technology; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Task Force on March 14, 1989.

Name: Task Force on Women, Minorities and the Handicapped in Science and Technology.

Date: March 14, 1989.

Time: 9:00 a.m. to 1:00 p.m.

Place: U.S. Department of Education, 400 Maryland Avenue, SW., Room 3000, Washington, DC 20202.

Type of Meeting: Open.

Purpose: Discussion (1) dissemination of the task force interim report; (2) progress on data collection by agencies; and (3) status of each agency's plans for

implementation of the task force interim report.

Sue Kamnitzer,
Executive Director.
February 3, 1989.
[FR Doc. 89-3481 Filed 2-14-89; 8:45 am]
BILLING CODE 7590-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-316]

Indiana Michigan Power Co.; Donald C. Cook Nuclear Plant, Unit No. 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-74 issued to Indiana Michigan Power Company (the licensee) for operation of the Donald C. Cook Nuclear Plant, Unit 2, located at the licensee's site in Berrien County, Michigan.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the provisions in the Technical Specifications (TSs) relating to moderator temperature coefficient, shutdown margin and engineered safeguards actuation requirements to reflect the steamline break analysis performed by Advanced Nuclear Fuels Corporation for D.C. Cook Unit 2.

The proposed action is in accordance with the licensee's application dated August 15, 1988.

The Need for the Proposed Action

The proposed amendment would revise the moderator temperature coefficient, shutdown margin and engineered safeguards actuation requirements to reflect the steamline break analysis performed by Advance Nuclear Fuels Corporation the D.C. Cook Unit 2. The analysis was performed for the Cycle 6 reload and is bounding for the current Cycle 7 reload. The proposed amendment is needed to change the Technical Specifications to reflect the characteristics of the new fuel for Cycle 7.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed amendment. The safety considerations associated with the steamline break analysis and the proposed amendment have been evaluated by the Commission's staff. The staff has concluded that such changes would not adversely affect plant safety. The proposed changes have no adverse effect on the probability or consequences of any accident. No changes are being made in the types or amounts of any radiological effluents that may be released offsite. There is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological impact.

With regard to potential nonradiological impacts, the proposed amendment involves systems located within the restricted area, as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on November 25, 1988 (53 FR 47782). No request for hearing or petition for leave to intervene was filed following this notice.

Alternatives to the Proposed Action

Since the Commission has concluded that there are no significant environmental effects that would result from the proposed action, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement related to the operation of the Donald C. Cook Nuclear Plant, Units 1 and 2, dated August 1973.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated August 15, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Dated at Rockville, Maryland this 10th day of February 1989.

For the Nuclear Regulatory Commission.
Theodore R. Quay,
Acting Director, Project Directorate III-1, Division of Reactor Projects—III, IV, V and Special Projects.
[FR Doc. 89-3637 Filed 2-14-89; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-425]

Georgia Power Co. et al, Vogtle Electric Generating Plant, Unit 2; Issuance of Facility Operating License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has issued Facility Operating License No. NPF-79 to Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and City of Dalton, Georgia, (the licensees) which authorizes operation of the Vogtle Electric Generating Plant, Unit 2, at reactor core power levels not in excess of 3411 megawatts thermal in accordance with the provisions of the license, the Technical Specifications, and the Environmental Protection Plan with a condition limiting operation to five percent of full power (170 megawatts thermal).

The Vogtle Electric Generating Plant, Unit 2, is a pressurized water reactor located in Burke County, Georgia, approximately 25 miles south of Augusta, Georgia.

The application for the license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the license. Prior public notice of the overall action involving the proposed issuance of an operating license was published in the **Federal Register** on December 28, 1983 (48 FR 57183). The power level authorized by this license and the conditions contained therein are encompassed by that prior notice.

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of exemptions included in this license will have no significant impact on the environment (53 FR 49363, 53 FR 52879, 54 FR 5562).

For further details with respect to this action, see (1) Facility Operating License No. NPF-79; (2) the Commission's Safety Evaluation Report, dated June 1985 (NUREG-1137), and Supplements 1 through 8; (3) the Final Safety Analysis Report and Amendments thereto; (4) the Environmental Report and supplements thereto; (5) the Final Environmental Statement, dated March 1985 (NUREG-1087); (6) the Partial Initial Decision of the Atomic Safety and Licensing Board, dated August 27, 1986; and (7) the Concluding Partial Initial Decision dated December 23, 1986.

These items are available at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830. A copy of Facility Operating License NPF-79 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II. Copies of the Safety Evaluation Report and its supplements (NUREG-1137) and the Final Environmental Statement (NUREG-1087) may be purchased through the U.S. Government Printing Office by calling (202) 275-2060 or by writing to the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082. Copies may also be purchased from the National Technical Information Service, U.S. Department of Commerce, 5282 Port Royal Road, Springfield, Virginia 22161.

Dated at Rockville, Maryland, this 9th day of February 1989.

For the Nuclear Regulatory Commission.
Jon B. Hopkins,
Project Manager, Project Directorate II-3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.
[FR Doc. 89-3542 Filed 2-14-89; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-336]

Northeast Nuclear Energy Co., et al. Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards; Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-65, issued to Northeast Nuclear Energy Company (the licensee), for operation of the Millstone Nuclear Power Station, Unit 2, located in New London County, Connecticut.

The proposed amendment would allow operation of Millstone Unit 2 for Cycle 10. The changes to the Technical Specifications (TS) are required to reflect a revised safety analysis that includes the use of fuel designed and fabricated by Advanced Nuclear Fuels Corporation (ANF). Fuel designed and fabricated by ANF has not been previously utilized for Millstone Unit 2. The proposed changes to the TS also reflect the effects of reduced reactor coolant system flow, from 340,000 to 325,000 gpm for Cycle 10.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

As part of the licensee's submittal dated February 1, 1989, the licensee/ (or NNECO) has addressed the various technical issues related to the "No Significant Hazards Consideration" criteria of 10 CFR 50.92. The licensee has stated that the proposed changes to the TS would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

ANF reviewed all SRP Chapter 15 postulated accidents and transients to determine which events needed to be reanalyzed for Cycle 10, assuming the proposed minimum RCS flow [associated] compensating Technical Specification changes. As a result, ANF identified and reanalyzed the three non-LOCA events in which DNBR could be impacted by a decrease in RCS flow rate or the reduction in F_r^T. ANF also reanalyzed small break LOCA and large break LOCA scenarios. On the basis of this review and reanalysis, NNECO concludes that there is no significant increase in the probability or consequences of any of these events.

With respect to calculated consequences, the proposed changes were determined to have no significant impact on protective boundaries. Therefore, there will be no significant change in any dose consequences related to the [Standard Review Plan] SRP Chapter 15 anticipated operations occurrences and postulated accidents. However, with respect to consequences, ANF also specifically reanalyzed the impact of the events on the relevant key parameters associated with the plant response to the event.

The analysis showed that there are some instances in which there is a small increase in the limiting value of the relevant plant parameter. In all cases, however, the values of the parameters remain within acceptable acceptance criteria and there are no impacts on protective boundaries. NNECO therefore concludes that the proposed amendment does not involve a significant increase in the consequences of any event previously analyzed.

More specifically, the relevant non-LOCA event critieria that could be impacted by a decrease in RCS flow rate are RCS pressurization, fuel centerline melt, and DNBR. However, ANF determined that, of these, only DNBR consequences could be significantly impacted by decrease in RCS flow rate and/or reduction in F_r^T. The three limiting DNB events considered are the loss of flow, the locked rotor, and the rod ejection events.

The loss of flow event is the limiting DNB event and a determination of margin to the DNB limit for this event demonstrates sufficient margin for the other events. For this event, the reduced flow analysis demonstrated a decrease in deterministic MDNBR from 0.98 to 0.93. However, a statistical evaluation showed that this analysis remains within applicable acceptance criteria and the small change does not represent a significant increase in consequences of the event.

The locked rotor event was reanalyzed because the original analysis showed no fuel failures, based on the DNB margin available in the original loss of flow analysis. Deterministic MDNBR was calculated to change from 0.96 to 0.91. As for the previous event, this MDNBR change does not represent a significant increase in consequences. Nevertheless, the previous locked rotor analysis for Millstone Unit No. 2 showed that there would be no DNB in the core. The corresponding reduced flow analysis performed by ANF to support this amendment application does not show the potential for some DNB occurring. However, the locked rotor event is a limiting fault and the DNB limits are not applicable. The predicted fuel failures are instead bounded

by the consequence of the rod ejection accident. This bounding of consequences of a locked rotor event by the consequences of the rod injection accident is acceptable because the rod ejection consequences meet the more restrictive infrequent event criteria.

With respect to control rod ejection, this event is the limiting event with regard to predicted fuel failures. As a result of the proposed changes to Technical Specifications, the predicted number of cladding failures for the rod ejection accident increased from 11.5% to 11.7%. This small increase is not considered to involve a significant increase in consequences of the previously analyzed event.

The LOCA analyses for reduced flow conditions show a reduction in both of the key plant parameters: calculated peak clad temperatures and calculated amount of clad oxidation. This results because the effects of the reduced flow are more than compensated for by the reduction in LHR limits. Therefore, the proposed amendment does not result in an increase in consequences of any LOCA event previously analyzed.

The peak postaccident containment temperature is also potentially increased by this change. However, the values remain below the 289 °F containment design temperature. The 0.7 °F increase is not considered significant relative to the 287.9 °F peak temperature previously calculated.

With respect to the probability of occurrence of an accident previously analyzed, there will be no change in the probability of any design basis accident. There are no hardware modifications associated with the proposed Technical Specification changes and there is no significant impact on the performance of any safety system. As a result, there is no change to the probability of any of the initiating events for design basis accidents. There are also no changes or new failure modes associated with the changes that will increase the probability of an accident or transient to the point where it should be considered to be within the design basis. In this respect, therefore, NNECO concludes that no significant hazards consideration is involved.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

As a result of the proposed Technical Specification changes, there will be no changes to plant hardware or response. The plant will respond for all events in a manner similar to that assumed for the previous analyses. The only changes identified in the reanalysis of the SRP Chapter 15 events relate to the impact of certain transients on parameters related to boundary performance. There are no changes to the basic trends the transients follow.

There are no failure modes associated with the proposed amendment that could represent a new unanalyzed accident. Therefore, NNECO concludes that the proposed amendment does not create any new or different kind of accident from those previously analyzed.

3. Involve a significant reduction in any margin of safety.

As discussed under the first criterion above, ANF specifically reviewed all SRP Chapter 15 postulated accidents and anticipated operational occurrences to determine any potential impact as a result of the proposed amendment. ANF specifically reanalyzed the three non-LOCA events in which DNBR could be impacted by a decrease in RCS flow rate or a reduction in FTR. ANF also reanalyzed small break and large break LOCA scenarios for impact on calculated peak clad temperature and on the calculated amount of clad oxidation. On the basis of this review and reanalysis, NNECO concludes that the proposed amendment does not involve a significant reduction in any margin of safety.

As discussed above, the proposed Technical Specification changes do involve some nonsignificant changes in plant parameters related to boundary performance. However, in all cases, the limiting value of the parameter remains within applicable acceptance criteria and therefore the changes will have no impact on the ability of the boundary to perform its function. Moreover, in all cases where margin to the acceptance criterion is reduced, the reduction is not significant.

The changes in limiting values of relevant parameters calculated in the reanalysis of SRP Chapter 15 events, assuming lowered RCS flow rate, are discussed in detail above. The three cases in which there will be a small reduction in margin are the three non-LOCA events involving DNBR. These may be summarized as follows:

- The loss of flow event in the limiting DNB event. For this event the reduced flow analysis demonstrated a decrease in deterministic MDNBR from 0.96 to 0.93. This change of only 0.05, is not considered to represent a significant reduction in the margin of safety.
- For the locked rotor event, DNB margin was also reduced by 0.05, as calculated deterministic MDNBR changed from 0.96 to 0.91. This change also is not considered to represent a significant reduction in the margin of safety. Fuel failures in this scenario are bounded by fuel failures for the rod ejection event.
- For the rod ejection event, the number of rods potentially experiencing cladding failures was increased from 11.5% to 11.7%. This is not considered to represent a significant reduction in the margin of safety.

For the LOCA scenarios reanalyzed, margins with respect to limits for peak clad temperature and clad oxidation actually increased.

The reduction in RCS flow will result in an increase in the hot leg temperatures by up to 2.5 °F, with a new maximum temperature of 606.5 °F. However, this remains well below the RCS design temperature of 650 °F. In summary, the proposed amendent does not involve any significant reduction in a margin of safety and, therefore, does not involve a significant hazards consideration.

In summary, the proposed amendment does not involve any significant reduction in a margin of safety and, therefore, does not involve a significant hazard consideration.

The NRC staff has reviewed and concurs in the licensees "No Significant Hazard Consideration" findings; therefore, based on the above considerations, the Commission has made a proposed determination that the amendment request involves no significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene are discussed below.

By March 17, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspects(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participated as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards considerations. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards considerations, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If a final determination is that the amendment involves significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW. Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram identification Number 3737 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and Gerald Garfield, Esquire, Day, Berry and Howard, One Constitution Plaza, Hartford, Connecticut 06103.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer of the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 1, 1989, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room.

Dated at Rockville, Maryland, this 10th day of February, 1989.

For the Nuclear Regulatory Commission.

David H. Jaffe,

Project Manager, Project Directorate I-4, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-3543 Filed 2-14-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-282 and 50-306]

Northern States Power Co.; Issuance of Amendments to Facility Operating Licenses

The United States Nuclear Regulatory Commission (the Commission) has issued Amendments Nos. 86 and 79 to Facility Operating Licenses Nos. DPR-42 and DPR-60, issued to the Northern States Power Company (the licensee), which revised the Technical Specifications (TSs) for operation of the Prairie Island Nuclear Generating Plant, Units Nos. 1 and 2, located in Goodhue County, Minnesota. The amendments are effective as of the date of issuance.

The amendments change the Technical Specifications by revising the surveillance test frequency of the turbine stop valves, the governor valves and the intercept valves associated with the turbine overspeed protection.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings, as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing in connection with this action was published in the **Federal Register** on April 13, 1988 (53 FR 12209). No request for hearing or petition to intervene was filed following this notice.

Also in connnection with this action, the Commission prepared an Environmental Assessment and Finding of No Significant Impact which was published in the **Federal Register** on February 6, 1989 at 54 FR 5706.

For further details with respect to this action, see (1) the application for amendments dated September 28, 1987, as supplemented by letters dated October 15, 1987, and June 24, 1988, (2) Amendments Nos. 86 and 79 to Licenses Nos. DPR-42 and DPR-60, and (3) the

Commission's related Safety Evaluation and Supplemental Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 7th day of February 1989.

For the Nuclear Regulatory Commission.

Dominic C. DiIanni,

Project Manager, Project Directorate III–1, Division of Reactor Projects—III, IV, V & Special Projects.

[FR Doc. 89–3544 Filed 2–14–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 8909004 (General License Authority of 10 CFR 40.22) ASLBP No. 89–582–01–SC]

Wrangler Laboratories, et al.; Prehearing Conference

Before Administrative Judges: Charles Bechhoefer, Chairman Dr. Jerry R. Kline Frederick J. Shon.

In the Matter of Wrangler Laboratories, Larsen Laboratories, Orion Chemical Company, and John P. Larsen.

February 9, 1989.

Notice is hereby given that a prehearing conference in this proceeding involving the Order Revoking Licenses issued by the NRC Staff on August 15, 1988 (53 FR 32125, August 23, 1988) will commence on Wednesday, February 22, 1989, at 9:00 a.m., at Brigham Young University, J. Reuben Clark Law School, Room 306, Provo, Utah 84602. Among matters to be considered at the conference will be the delineation of the key issues and subissues in the proceeding, discovery, possibilities of stipulating various facts or settlement of various issues, further schedules for the proceeding, and such other matters as may aid in the orderly disposition of the proceeding.

Members of the public are invited to attend the conference. Limited appearance statements, as authorized by 10 CFR 2.715(a), will not be taken at this session of the proceeding. Documents relating to this proceeding are on file at the Commission's Public Document Room, 2120 L St. NW., Washington, DC 20555, and at the Commission's Region IV Office, Parkway Central Plaza Building, 611 Ryan Plaza Drive, Suite 1000, Arlington, Texas 76011.

For the Atomic Safety and Licensing Board. Dated at Bethesda, Maryland this 9th day of February 1989.

Charles Bechhoefer,

Chairman, Administrative Judge.

[FR Doc. 89–3545 Filed 2–14–89; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34–26532; File No. SR–DTC–89–2]

Self-Regulatory Organizations; Depository Trust Co.; Filing and Immediate Effectiveness of Proposed Rule Change; Fee Schedule

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on January 26, 1989, the Depository Trust Company ("DTC") filed with the Securities and Exchange Commission a proposed rule change. The proposal alters DTC's fee schedule to include a surcharge for the deposit of certain custodial receipts. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

Under the proposal, DTC participants depositing custodial receipts identified by the same CUSIP number [1] will be assessed a $3.25 per deposit surcharge if those receipts: (1) Are backed by different issues of U.S. Treasury securities; or (2) have different issue dates. According to DTC, these custodial receipts are not treated as fungible for transfer purposes by transfer agents. To ensure that requests for the transfer of these custodial receipts will be honored by transfer agents, DTC represents that it must implement special examination and handling procedures. DTC believes that the proposed surcharge is necessary to cover the cost of those procedures and therefore is consistent with section 17A(b)(3)(D) of the Act, which requires a clearing agency to provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.

The foregoing change has become effective, pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views, and arguments concerning the submission within 21 days after the date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Reference should be made to File No. SR–DTC–89–2.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC. Copies of the filing (SR–DTC–89–2) and of any subsequent amendments also will be available for inspection and copying at DTC's principal office.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 9, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–3571 Filed 2–14–89; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

February 9, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Shawmut National Corp.
Common Stock, $.01 Par Value (File No. 7–4201)
Century Communications
Common Stock, $.01 Par Value (File No. 7–4202)
Dixon Ticonderoga
Common Stock, $1.00 Par Value (File No. 7–4203)
Galaxy Carpet Mills, Inc.
Common Stock, $.10 Par Value (File No. 7–4204)
Reynolds & Reynolds Co.
Common Stock, $.625 Par Value (File No. 7–4205)
Sterling Electronics Corporations
Common Stock, $.50 Par Value (File No. 7–4206)
Worthen Banking Corporation
Common Stock, $1.00 Par Value (File No. 7–4207)
American Government Term Trust
Common Stock, $.01 Par Value (File No. 7–4208)
Franklin Principal Maturity Trust
Shares of Beneficial Interest, $.01 Par Value (File No. 7–4209)
Kemper Multimarket Income Trust
Common Shares of Beneficial Interest $.01 Par Value (File No. 7–4210)
Lyondell Petrochemical Co.
Common Stock, $1.00 Par Value (File No. 7–4211)
Medchem Products, Inc.
Common Stock, $.01 Par Value (File No. 7–4212)
Magma Cooper Co.
Warrants expiring 11/30/95 No Par Value (File No. 7–4213)
Van Kampen Merritt Intermediate Term High Income Trust
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–4214)
Royal Dutch Petroleum Co.
5 Netherland Guilders Par Value (File No. 7–4215)
Allstate Municipal Premium Income Trust
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–4216)
California Energy
Common Stock, $.0675 Par Value (File No. 7–4217)
Gaylord Container Corp.
Common Stock, $.01 Par Value (File No. 7–4218)
Halsey Drug
Common Stock, $.01 Par Value (File No. 7–4219)
Halsey Drug
Warrants expiring 3/6/91, No Par Value (File No. 7–4220)
OMI Corporation
Common Stock, $.50 Par Value (File No. 7–4221)

These securities are listed and registered on one or more other national securities exchange and reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 3, 1989, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–3569 Filed 2–14–89; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

February 9, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Donaldson Company, Inc., Common Stock, $5 Par Value (File No. 7–4222).
MNC Financial Inc., Common Stock, $2.50 Par Value (File No. 7–4223).
Reynolds & Reynolds Company, Class A Common Stock, $.625 Par Value (File No. 7–4224).
Manville Corporation, Common Stock, $.01 Par Value (File No. 7–4225).

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before Mach 3, 1989, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–3570 Filed 2–14–89; 8:45 am]

BILLING CODE 8010–01–M

[File No. 22–18552]

Application and Opportunity for Hearing; Federated Department Stores, Inc

February 9, 1989.

Notice is hereby given that Federated Department Stores, Inc. (the "Company") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Securities and Exchange Commission that the trusteeship of Manufacturers Hanover Trust Company under three indentures, all heretofore qualified under the Act, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Manufacturers Hanover Trust Company from acting as trustee under any of such indentures.

Section 310(b) of the Act provides, *inter alia*, that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall within ninety days after ascertaining that it has conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of section 310(b) provides, with certain exceptions, that a trustee is deemed to have a conflicting interest if it is acting as trustee under another indenture of the same obligor.

Federated alleges as follows:

1. Federated has entered into, among others, the following indentures (the "Federated Indentures"):

(a) An indenture, dated as of September 15, 1970 (the "First Indenture"), between Federated and First National City Bank ("First National") as trustee, pursuant to which Federated issued its 8⅝% Sinking Fund Debentures Due September 15, 1995 (the "First Debentures") of which $19,959,000 aggregate principal amount is presently outstanding. The First Indenture was an exhibit to Registration Statement No. 2–38373 filed in connection with the registration of $50,000,000 aggregate principal amount of the First Debentures;

(b) An indenture, dated as of March 15, 1972 (the "Second Indenture"), between Federated and First National, as trustee, pursuant to which Federated

[1] Custodial receipts having the same maturity date are identified by the same CUSIP number.

issued its 7¼% Sinking Fund Debentures Due March 15, 2002 (the "Second Debentures") of which $35,000,000 aggregate principal amount is presently outstanding. The Second Indenture was an exhibit to Registration Statement No. 2-43209 filed in connection with the registration of $50,000,000 aggregate principal amount of the Second Debenture; and

(c) An indenture, dated as of January 15, 1987 (the "Third Indenture"), between Federated and Manufacturers Hanover Trust Company ("Manufacturers") as Trustee, which provides for the issuance of an unlimited amount of unsecured Debt Securities and pursuant to which Federated has, to date, issued its 9⅝% Notes due to 1992 (the "Notes") of which $200,000,000 aggregate principal amount is presently outstanding. The Third Indenture was an exhibit to Registration Statement No. 2-11346 filed in connection with the registration of $200,000,000 aggregate principal amount of the Notes.

2. Subsequent to its execution of the First Indenture and the Second Indenture, First National changes its name to Citibank, N.A. ("Citibank"). Citibank gave written notice of its intention to resign as trustee under the First Indenture and the Second Indenture on April 28, 1988. Federated has requested that Manufacturers accept appointment as successor trustee under both the First Indenture and the Second Indenture.

3. Federated is not in default under any of the Federated Indentures. The Company's obligations under the Federated Indentures are wholly unsecured and rank *pari passu*.

4. The Federated Indentures contain the provisions required by section 310(b) of the Trust Indenture Act. The appointment of Manufacturers as successor trustee under the First Indenture and the Second Indenture, is "not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Trustee from acting" as trustee under the Federated Indentures.

Federated has waived notice of hearing, hearing and any and all rights to specify procedures under the Rules of Practice of the Commission in connection with the matter referred to herein.

For a more detailed account of the matters of fact and law asserted, all persons are referred to said application, which is a public document on file in the offices of the Commission at the Public Reference Room, File No. 22-18552, Judiciary Plaza, 450 Fifth Street, NW., Washington, DC 20549.

Notice is further given that any interested person may, not later than March 6, 1989, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of law or fact raised by such application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-3572 Filed 2-14-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16803; 812-6996]

The Thai Fund, Inc.; Application

February 8, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: The Thai Fund, Inc.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from the provisions of section 12(d)(3) of the 1940 Act.

Summary of Application: Applicant seeks an order permitting it to purchase securities issued by Thai companies listed on the Securities Exchange of Thailand ("SET") that are engaged in securities-related businesses ("SET-Listed Securities Companies").

Filing Dates: The application was filed on February 26, 1988, and amended on June 17, 1988. A notice of application was issued on June 24, 1988 (Investment Company Act Release No. 16453), but an order was not issued. The application was further amended on January 27, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on March 6, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. The Thai Fund, Inc., c/o John E. Baumgardner, Jr., Esq., Sullivan & Cromwell, 125 Broad Street, New York, NY 10004.

FOR FURTHER INFORMATION CONTACT: James E. Banks, Staff Attorney, (202) 272-2190, or Brion R. Thompson, Branch Chief, (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application as amended; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier, which may be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant, a corporation organized under the laws of the State of Maryland, is a non-diversified, closed-end management investment company registered under the 1940 Act. Applicant filed a registration statement under the Securities Act of 1933 and the 1940 Act on October 1, 1987 and filed amendments thereto on December 8, 1987, January 22, 1988, February 5, 1988 and February 15, 1988. The SEC declared the amended registration statement effective on February 17, 1988.

2. Applicant's investment objective is long-term capital appreciation through investment primarily in equity securities of Thai companies. It is the policy of Applicant to invest under normal circumstances, at the conclusion of the initial investment period, at least 80% of its net assets in equity securities of Thai companies. During defensive periods, Applicant may reduce its holdings in equity securities of Thai companies and increase its holdings in bonds, short-term debt obligations, money market instruments or cash, all denominated in Baht,[1] which could bring the amount of net assets invested in Thai equity securities below 80%.

[1] As of February 12, 1988, the Noon Buying Rate of the Federal Reserve Bank was 25.33 Baht to $1.00.

3. In order to meet or anticipate its operating expenses and distribution requirements and during defensive periods when the value of the Baht is expected to depreciate against the dollar or when there are either negative developments in the markets for Thai securities or in Thailand, Applicant may invest in non-Baht denominated investments, including obligations issued or guaranteed by the United States Government and other dollar-denominated securities, non-Baht denominated prime grade finance company or corporate commercial paper, and certificates of deposit or banker's acceptances of United States commercial banks. After the Applicant's initial investment period, however, such non-Baht denominated investments are limited by the Bank of Thailand to 20% of the Fund's net assets invested through the investment plan (the "Investment Plan").

4. Applicant's investment advisers are Morgan Stanley Asset Management Inc. ("MSAM" or "U.S. Adviser"), a Delaware corporation, and The Mutual Fund Company Limited ("Thai Adviser"), a Thai limited company (together, "Advisers"). Applicant's administrators are MSAM and The Vanguard Group, Inc., a Pennsylvania corporation, ("Vanguard", together with MSAM, "Administrators"). Each Adviser is a registered investment adviser under the Investment Advisers Act of 1940. Their advisory activities are governed by an investment contract ("Investment Contract") establishing the Investment Plan and a related Technical Assistance and Seconding Agreement ("Seconding Agreement") which, during the time the Investment Plan is in existence, together serve as investment advisory agreements between Applicant, MSAM and the Thai Adviser. Under these two agreements MSAM provides staff to the Thai Adviser to make investment decisions for Applicant ("Seconded Staff") and the Thai Adviser, through such Seconded Staff, makes investment decisions for the Investment Plan. During the existence of the Investment Plan, MSAM, pursuant to the MSAM Administration Agreement, has agreed to provide administrative services to Applicant, directly or through third parties such as Vanguard. Vanguard has agreed to provide administrative services to the Fund pursuant to the Vanguard Administration Agreement between MSAM and Vanguard.

5. Thai laws permit SET-Listed Securities Companies to act as securities brokers, securities dealers, underwriters or investment advisers. Most SET-Listed Securities Companies are members of the SET, and all engage in securities-related businesses. Currently, there are twenty SET-Listed Securities Companies, seventeen of which are also members of the SET.

6. As of December 31, 1987, market capitalization of corporate equity securities (excluding unit trusts) ("Corporate Equity Securities") for the SET was 135.37 billion Baht, compared to 74.46 billion Baht as of December 31, 1986. In 1987, SET-Listed Securities Companies represented 22.95% of the SET's Corporate Equity Securities market, which includes major industrial, transport, service, insurance, financial and utility stocks. In addition, as of December 31, 1987, finance and securities companies comprised the SET's single largest sectoral group in terms of number of companies quoted.

7. Applicant submits that the securities of SET-Listed Securities Companies that it intends to purchase have at least the degree of investor interest and depth and breadth of market as certain securities traded in the U.S. over-the-counter market which have been designated as "OTC margin stock." Applicant further submits that its investment in securities of SET-Listed Securities Companies would have no adverse effect on, but rather would enhance, the liquidity of its portfolio.

8. Applicant further represents that the public information available in Thailand about SET-Listed Securities Companies is at least as extensive as information available in Thailand about Thai issuers in other industries in which Applicant intends regularly to invest. Applicant submits that the disclosure required by Thai laws and regulations, while not in all respects as comprehensive as U.S. securities laws, provides significant disclosure in connection with the issuance of securities which is the "substantial equivalent" of the disclosure required by the Securities Act of 1933.

Applicant's Legal Conclusions

1. Applicant's proposed investment in SET-Listed Securities Companies would be subject to the prohibitions of section 12(d)(3) of the 1940 Act against registered investment companies purchasing securities of issuers engaged in securities-related businesses. With respect to the exemptive relief from section 12(d)(3) of the 1940 Act provided by Rule 12d3-1, Applicant recognizes that SET-Listed Securities Companies derive more than 15% of their gross revenues from securities-related activities for any given period, and Applicant has assumed for the purposes of this application that investment in SET-Listed Securities Companies would be subject to the conditions of Rule 12d3-1(b).

2. Applicant has reviewed all the conditions set forth in Rule 12d3-1(b) under the 1940 Act and represents or undertakes that it will be able to satisfy all but one of the conditions. Applicant cannot satisfy the condition that any equity security acquired must be a "margin security" as defined in Regulation T promulgated by the Board of Governors of the Federal Reserve System. Because the equity securities of SET-Listed Securities Companies are not listed on a United States securities exchange or traded in the United States in the over-the-counter market, they cannot be "margin securities." Because Applicant is unable to satisfy all of the conditions of Rule 12d3-1 and thus cannot avail itself of the exemption provided by such rule, it is unable to take advantage of good investment opportunities and to increase the diversification of its portfolio, particularly its diversification within the financial sector of the Thai economy.

3. Applicant asserts that the granting of the requested exemptive order is appropriate, in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. The SEC's concern about the entrepreneurial risk of investing in securities related businesses is not relevant to the Applicant because the Applicant intends to purchase interests in Thai limited companies, which are analogous to shares of corporate stock and are unlike partnership interests. Further, the SEC's concern about possible conflicts of interest arising out an investment company purchasing shares in a broker-dealer as a reward for selling the investment company's shares also is not relevant to the Applicant, a closed-out investment company.

4. Finally, the SEC's concern that an investment company might direct brokerage business to a broker-dealer in which the investment company has invested in order to enhance such broker-dealer's profitability or to assist it during financial difficulty is not relevant to the Applicant. The Thai entities in which Applicant would invest are institutions of substantial size while the Applicant possesses total assets which are unlikely, in light of investment management policies, to be able to effect such a result.

5. Based on the foregoing, Applicant respectfully requests an exemption from the provisions of section 12(d)(3) of the 1940 Act to the extent necessary to

permit it to invest in securities of SET-Listed Securities Companies, which are listed on the SET.

Applicant's Conditions

Applicant agrees that if the requested order is granted it will be expressly conditioned on the following conditions:

11. Applicant undertakes to invest in only SET-Listed Securities Companies' securities that would meet the criteria concerning total market value, earning power and share distribution and would, based on these grounds, be eligible for listing on one or more of the following: The New York Stock Exchange, The American Stock Exchange or The NASDAQ National System.

2. The investments in SET-Listed Securities Companies will comply with all the requirements of Rule 12d3–1 under the 1940 Act, except the requirement that such equity securities be "margin securities."

3. Applicant undertakes that, prior to the acquisition of the equity securities of a SET-Listed Securities Company, the Advisers will determine that such SET-Listed Securities Company satisfies each of the following standards:

(a) Daily quotations are available for both bid and asked prices;

(b) The company's stock has been publicly traded for at least six months;

(c) The company or a predecessor in interest has been in existence for at least three years;

(d) The company has at least $10 million of capital, surplus, and undivided profits;

(e) The company is required by exchange or governmental regulation publicly to file (i) reports of any important financial or structural corporate changes, (ii) semi-annual profit and loss statements and (iii) annual reports of independently audited assets and liabilities, profits and losses and changes in financial position;

(f) The company has a minimum market capitalization of $20 million; and

(g) The Company's equity securities have (i) an average daily trading volume of at least 500 shares and (ii) an average daily trading volume equal in value to at least $25,000.

4. Applicant will not invest more than 2% of its assets, determined as of the time of purchase, in the securities of any SET-Listed Securities Company.

5. Applicant will maintain in one place all of the necessary documentation relating to its investment decisions regarding securities issued by the SET-Listed Securities Companies and to employ an independent third party to review periodically Applicant's compliance with the terms of the Order issued.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–3497 Filed 2–14–89; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA) Special Committee 159—Minimum Aviation System Performance Standard for GPS; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given for the eleventh meeting of RTCA Special Committee 159 on Minimum Aviation System Performance Standard for GPS to be held March 7–8, 1989, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's remarks; (2) approval of minutes of the Tenth Meeting, RTCA Paper No. 404–88/SC159–194; (3) review of the revised terms of references; (4) review of the Minimum Aviation System Performance Standards for Global Positioning System, (RTCA/DO–202); (5) review of EUROCAE and other comments; (6) development of committee work program and schedule; (7) establishing working groups and define tasks on integrity implementation WG, operations WG, and test requirements WG; (8) assignment of tasks; (9) other business; (10) date and place of next meeting; and (11) working group organizational meetings.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 8, 1989.

Geoffrey R. McIntyre,

Acting Designated Officer.

FR Doc. 89–3502 Filed 2–14–89; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: February 10, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.

Form Number: None.

Type of Review: New Collection.

Title: Customer Service/Quality Initiative Baseline Survey for Returns Processing and Accounting Division.

Description: The date collection will be used to establish baseline estimates of taxpayer satisfaction with RP&A Division's Underreporter Branch and Adjustments Function. This information will be used by the areas to determine if current programs are meeting taxpayers' needs. This information will indicate where the areas should focus any quality initiatives that RP&A may wish to institute.

Respondents: Individuals or households.

Estimated Number of Respondents: 4,000.

Estimated Burden Hours Per Response: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1,000 hours.

Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 89–3558 Filed 2–14–89; 8:45 am]

BILLING CODE 4810–25–M

Income Tax Treaty; U.S. and Portugal

The Treasury Department today announced that negotiations of a proposed income tax treaty between the United States and Portugal are scheduled to take place in Washington during the week of April 3–7, 1989.

There is not now an income tax treaty in effect between the United States and Portugal. The negotiations will take as their starting point the model draft texts published by the United States and the Organization for Economic Cooperation and Development. They will also take into account the U.S. Tax Reform Act of 1986 and recent treaties concluded by each country. The issues to be discussed include the taxation of income from business, investment, and employment derived in one coutnry by residents of the other, provisions to ensure nondiscrimination and the avoidance of double taxation, and provisions for administrative cooperation between the tax authorities of the two countries.

Interested persons are invited to send written comments concerning the forthcoming negotiations to Leonard Terr, International Tax Counsel, U.S. Treasury, Room 3064, Washington, DC 20220.

Dennis E. Ross,

(Acting) Assistant Secretary (Tax Policy).

[FR Doc. 89–3494 Filed 2–14–89; 8:45 am]

BILLING CODE 4810–25–M

VETERANS ADMINISTRATION

Voluntary Service National Advisory Committee; Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Voluntary Service National Advisory Committee has been renewed for a two year period beginning January 24, 1989 through January 24, 1991.

Dated: January 30, 1989.

By direction of the Acting Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 89–3476 Filed 2–14–89; 8:45 am]

BILLING CODE 8320–01–M

Advisory Committee on Cemeteries and Memorials; Meeting

The Veterans Administration gives notice that a meeting of the Advisory Committee on Cemeteries and Memorials, authorized by 38 U.S.C. 1001, will be held at the Scottsdale Hilton Hotel, 6333 N. Scottsdale Road, Scottsdale, Arizona 85253, on April 14, 1989.

The session will begin at 1:30 p.m. to conduct routine business. The meeting will be open to the public up to the seating capacity which is about twenty persons. Those wishing to attend should contact Mrs. Ann Stone, Staff Assistant, National Cemetery System, (phone 202–233–2398) not later than 12 noon, EST March 24, 1989.

Any interested person may attend, appear before, or file a statement with the Committee. Individuals wishing to appear before the Committee should indicate this in a letter to the Director, National Cemetery System (40) at 810 Vermont Avenue, NW., Washington, DC 20420. In any such letters, the writers must fully indentify themselves and state the organization or association or person they represent. Also, to the extent practicable, letters should indicate the subject matter they want to discuss. Oral presentations should be limited to 10 minutes in duration. Those wishing to file written statements to be submitted to the Committee must also mail, or otherwise deliver, them to the Director, National Cemetery System.

Letters and written statements as discussed above must be mailed or delivered in time to reach the Director, National Cemetery System by 12 noon EST March 24, 1989. Oral statements will be heard only between 1:30 p.m. and 2:00 p.m.

Dated: February 7, 1989.

By direction of the Acting Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 89–3474 Filed 2–14–89; 8:45 am]

BILLING CODE 8320–01–M

VETERANS ADMINISTRATION

Veterans' Advisory Committee on Environmental Hazards; Meeting

The Veterans Administration gives notice under Pub. L. 92–463, section 10(a)(2), that a meeting of the Veterans Advisory Committee on Environmental Hazards will be held at the Veterans' Administration Central Office, 810 Vermont Avenue NW., Washington, DC 20420 on April 25 and 26, 1989. The purposes of the Committee are to review the scientific and medical literature relating to the possible health effects resulting from exposure to dioxin and ionizing radiation and to assist in the development of Agency policy with respect to veterans' claims for compensation based upon exposure.

The meeting will convene at 9:00 a.m. both days in the Omar Bradley Conference Room. This meeting will be open to the public up to the seating capacity of the room. Because this capacity is limited, it will be necessary for those wishing to attend to contact Ms. Sylvia Arrington, Veterans Administration Central Office (phone 202/233–2115) prior to April 17, 1989.

Members of the public may direct questions or submit prepared statements for review by the Committee in advance of the meeting, in writing only, to Mr. Frederic L. Conway, Special Assistant to the General Counsel, Room 1034, Veterans Administration Central Office. Submitted material must be received at least five days prior to the meeting. Such members of the public may be asked to clarify submitted material prior to consideration by the Committee.

Dated: February 7, 1989.

By direction of the Acting Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 89–3475 Filed 2–14–89; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 30
Wednesday, February 15, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

UNITED STATES INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Wednesday, February 22, 1989 at 12:00 noon.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints:
   a. Certain wire electrical discharge machining apparatus and components thereof (Docket No. 1484).
   b. Certain insulated security chests (Docket No. 1485).
   c. Certain novelty teleidoscopes (Docket No. 1486).
5. Inv. No. 731-TA-429 (P) (Mechanical transfer presses from Japan)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252-1000.

Kenneth Romaine,
Secretary.
February 9, 1989.
[FR Doc. 89-3561 Filed 2-10-89; 4:54 pm]
BILLING CODE 7020-02-M

NEIGHBORHOOD REINVESTMENT CORPORATION

Regular Meeting of the Board of Directors

TIME AND DATE: 4:00 p.m.—Tuesday, February 21, 1989.

PLACE: Neighborhood Reinvestment Corporation, 1325 G Street NW., Eighth Floor—Large Conference Room, Washington, DC 20005.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Martha A. Diaz-Ortiz, Assistant Secretary 376-2400.

AGENDA:

I. Call to Order and Remarks of Chairman
II. Approval of Minutes, November 22, 1988
III. Executive Director's Activity Report—General Update
IV. Budget Committee Report—Approval of FY 1989 Budget Allocations
V. Audit Committee Report
   a. Acceptance of Outside Audit Report
   b. Review of Investment and Banking Policies
VI. Treasurer's Report

Carol J. McCabe,
Secretary.
[FR Doc. 89-3630 Filed 2-13-89; 1:29 pm]
BILLING CODE 7570-02-M

RAILROAD RETIREMENT BOARD

Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on February 22, 1989, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

Portion Open to the Public

(1) Proposed Changes in the RUIA Regulations (Status Report)
(2) Appeal of the Employer Status of the Trustees of Galveston Wharves

Portion Closed to the Public

(A) Appeal from Referee's Denial of Disability Annuity, Harold J. Blevins.

The person to contact for more information is Beatrice Ezerski, Secretary to the Board, COM No. 312-751-4920, FTS No. 386-4920.

Dated: February 10, 1989.

Beatrice Ezerski,
Secretary to the Board.
[FR Doc. 89-3615 Filed 2-13-89; 1:28 pm]
BILLING CODE 7905-01-M

Corrections

Federal Register
Vol. 54, No. 30
Wednesday, February 15, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30000/41C] (FRL-3510-3)

Linuron; Conclusion of the Special Review

Correction

In notice document 89-1935 appearing on page 4072 in the issue of Friday, January 27, 1989, make the following correction:

In the first column, under **SUPPLEMENTARY INFORMATION,** in the third line, "dichlorophenyl" was misspelled.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30000/48A; FRL-3509-3]

Preliminary Determination To Cancel Registrations of Carbofuran Products, Availability of Technical Support Document and Draft Notice of Intent To Cancel

Correction

In notice document 89-1584 beginning on page 3744 in the issue of Wednesday, January 25, 1989, make the following correction:

On page 3748, in the third column, in the first column of the table, in the second entry, "10G" should read "15G".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 163

[Docket No. 86P-0297/CP]

Cacao Products; Proposal To Amend the Standards of Identity

Correction

In proposed rule document 89-1561 beginning on page 3615 in the issue of Wednesday, January 25, 1989, make the following corrections:

1. On page 3616, in the third column, in item C, in the first paragraph, in the eighth line, "present" should read "percent".

§ 163.111 [Corrected]

2. On page 3619, in the 3rd column, in § 163.111(c)(1), in the 10th line, "filed" should read "filled".

§ 163.112 [Corrected]

3. On page 3620, in the second column, in § 163.112(d), in the fourth line, "label" was misspelled.

§ 163.117 [Corrected]

4. On the same page, in the third column, in § 163.117(a), in the second line, "manufacturing" was misspelled.

§ 163.123 [Corrected]

5. On the same page, in the third column, in § 163.123(a), in the fifth line, "sweeteners" was misspelled.

§ 163.140 [Corrected]

6. On page 3621, in the third column, in § 163.140(b), in the fourth line, "or" was misspelled.

§ 163.153 [Corrected]

7. On page 3622, in the second column, in § 163.153(a), in the second line, remove "and".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

[Project Announcement No. SSA-OP-89-1]

Federal Old-Age, Survivors, and Disability Insurance

Correction

In notice document 89-2684 beginning on page 5682 in the issue of Monday, February 6, 1989, make the following corrections:

1. On page 5684, in the second column, in the last paragraph, in the second line, after "the" insert "limits of".

2. On the same page, in the 3rd column, in the 20th line from the bottom, "date" should read "data".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-932-09-4214-10; A-061696]

Conformance to Survey; Alaska

Correction

In notice document 89-1312 beginning on page 3151 in the issue of Monday, January 23, 1989, make the following correction:

On page 3152, in the first column, under **Seward Meridian, Alaska,** in the third line, "50°14'" should read "55°14'".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 122

[T.D. 89-24]

Customs Regulations Amendments Concerning Overflight Exemptions for Private Aircraft

Correction

In rule document 89-2576 beginning on page 5427 in the issue of Friday, February 3, 1989, make the following corrections:

PART 122—[CORRECTED]

1. On page 5429, in the third column, in the **Authority** citation, in the second line "1456" should read "1459".

§ 122.25 [Corrected]

2. On the same page, in the same column, in § 122.25(b), in the third line, after "which", insert "the".

3. On page 5430, in the second column, in § 122.25(c)(6), in the second line, "application" was misspelled.

NOTE: For a Department of the Treasury correction to this document see the Rules section of this issue.

BILLING CODE 1505-01-D

federal register

Wednesday
February 15, 1989

Part II

Department of Agriculture

Food and Nutrition Service

7 CFR Part 271 et al.

Food Stamp Program; Food Stamp Issuance and Issuance Liability; Final Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271, 272, 273, 274, 275 and 276

[Amdt. No. 271]

Food Stamp Program; Food Stamp Issuance and Issuance Liability Rule

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This Food Stamp Program rule makes final a proposed rule which constitutes the first comprehensive review of the Food Stamp Program's issuance and State agency issuance liability rules since they were first published in 1978 following enactment of the Food Stamp Act of 1977. The rule implements a reorganization of some sections of the current regulations, changes some current policies, and edits current language. Areas in which major policy changes are found include: current regulatory requirements for replacement of benefits, issuance reconciliation requirements, liabilities related to direct mail issuance of benefits and liabilities related to the use of authorization-to-participate (ATP) cards. This rule also implements provisions of the Food Security Act of 1985 (Pub. L. 99–198) regarding staggered issuance of benefits, photographic identification, and alternative issuance systems for State agencies. The effect of these changes will be to make specific provisions easier to locate, agency policies and statutory provisions more clearly stated, issuance liabilities more fully outlined and the regulatory language, in general, easier to understand.

EFFECTIVE DATE: This rule becomes effective April 1, 1989. For information on implementation dates see "Implementation" in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Marilyn Carpenter, Chief, State Administration Branch, Program Accountability Division, Food Stamp Program, Food and Nutrition Service (FNS), USDA, 3101 Park Center Drive, Room 904, Alexandria, Virginia 22302, telephone: (703) 756–3383.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order No. 12291

This action has been reviewed in relation to the requirements of Executive Order No. 12291 and Secretary's Memorandum No. 1512–1, and it has been determined that the action will not result in an annual effect on the economy of $100 million or more or a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Additionally, this action will not result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, this action has been classified as "not major."

Executive Order No. 12372

This Program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final rule related Notice(s) to 7 CFR 3015, Subpart V (cite 48 FR 29115, June 24, 1983; or 48 FR 54317, December 1, 1983, as appropriate, and any subsequent notices that may apply), this Program/activity is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act.

This action has also been reviewed in relation to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 94 Stat. 1164, September 19, 1980). Anna Kondratas, Administrator of the Food and Nutrition Service (FNS), has certified that this action will not have a significant economic impact on a substantial number of small entities. This final rule streamlines and simplifies coupon issuance and State agency liability rules. No new requirements are being placed on small businesses or organizations. Some new requirements are being placed on State agencies. However, the requirements will not have a significant economic impact on local governments.

Reporting and Recordkeeping

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping burden required by a revision to the Form *FNS–46*, Issuance Reconciliation Report, and contained in § 274.4 of this rule has been approved by the Office of Management and Budget (OMB) under OMB No. 0584–0080. The other reporting and recordkeeping requirements (as shown below) contained in the rule are also approved by OMB. The requirements are simply being redesignated and remain unchanged by this rule.

7 CFR section where requirements are described	Current OMB control number
274.1(c)	0584–0009
274.3(d)	0584–0009, 0584–0069, 0584–0080
274.4(a)	0584–0090
274.4(b)	0584–0009, 0584–0015, 0584–0080, 0584–0081
274.4(f)	0584–0009, 0584–0053
274.6(a), (b) and (e)	0584–0080, 0584–0081
274.7(e)	0584–0009
274.7(c)	0584–0022
274.8 (a)–(c)	0584–0009
274.8(e)	0584–0053
274.9 (a)–(d)	0584–0009
274.11	0584–0009
276.2(b)	0584–0015

Reorganization of Part 274—Issuance and Use of Coupons

Part 274 of the food stamp regulations has been extensively revised and restructured. In order to help the reader relate previous provisions of this Part to the same provisions in this final rule, the following table of redesignations has been compiled:

TABLE OF REDESIGNATIONS (PART 274)

Previous section	New section
274.1(a)	274.1(a) and 274.2(a).
274.1(b)	274.1(b).
274.1(b)(3)	274.1(b)(3).
274.1(b)(4)	274.1(b)(3) (i), (ii) (A) and (B).
274.1(b)(5)	274.1(b)(4).
274.1(b)(6)	274.1(b)(5).
274.1(c)(1)	274.1(c).
274.1(c)(2)	274.1 (c)(1) and (c)(2)
274.1(d)	272.4(f).
274.2(a)	274.3(a).
274.2(b)	274.1(e).
274.2(c)	274.3(d)(1)(i).
274.2(d)(1)	274.3(d)(1).
274.2(d)(2)	274.3(d)(1)(i).
274.2(d)(3)	274.3(d)(1)(iii).
274.2(e)(1)	274.3(a)(1).
274.2(e)(2)	274.2 (c), (c)(1) and (c)(3).
274.2(e)(3)	274.3(e)(1).
274.2(e)(4)	274.7(e)(2).
274.2(e)(5)	274.3(d)(5).
274.2(e)(6)	274.7(g).
274.2(e)(7)	274.5(b) and 274.10(c)(1), (2).
274.2(e)(8)	Unnecessary.
274.2(e)(9)	274.3(d)(4).
274.2(e)(10)	274.4(a)(1)(i).
274.2(e)(11)	274.6(a)(1) and 274.6(f)(4)(i).
274.2(f) (1), (2), (3), (4)	274.3(d)(2).
274.2(f)(5)	Redundant.
274.2(f)(6)	274.2(c)(1).
274.2(f)(7)	274.3(e)(1) and 274.6(f)(4)(i).
274.2(g)(1)	Redundant.
274.2(g)(1)(i)	274.3(d)(2).
274.2(g)(2)	274.3 (d)(1)(ii) and (d)(3).
274.2(g)(3)	Redundant.
274.2(h)(1)	274.6 (c), (d), and (e).
274.2(h)(2)	274.6(i)(1).
274.2(h)(3)	274.6(g).
274.2(i)	274.2(e).

TABLE OF REDESIGNATIONS (PART 274)—Continued

Previous section	New section
274.2(j)	Deleted; provision expired.
274.3(a)	274.3(a)(3).
274.3(b)	274.3(d).
274.3(c)(1)	274.6 (a), (b) and (e).
274.3(c) (2) and (3)	Redundant.
274.3(c)(4)	276.2(b)(4).
274.3(d)	274.4(b)(1)(iv).
274.4	274.7.
274.5	274.8.
274.6	274.4(a).
274.7	274.11.
274.8(a)	274.4(b).
274.8(b)	274.4(f).
274.9	274.9.
274.10(a)	274.10(a).
274.10(b)	274.10(a)(4)(i).
274.10(c)	274.10(a)(4)(iii).
274.10(d)	Redundant.
274.10(e)	Redundant.
274.10(f)	274.10(a)(4)(iii).
274.10(g)	274.10(a).
274.10(h)	Redundant.
274.10(i)	Redundant.
274.11 (a), (b), (c) and (d).	Deleted; provision expired.
274.11(e)	274.7(h).

Amendments and Analysis

On April 9, 1986, the Department published in the **Federal Register** at 51 FR 12288 a proposed rule comprising a comprehensive revision of the Food Stamp Program's current issuance and State agency issuance liability rules. The publication proposed a reorganization of the current rules, changes in some policies, a clarification of current language to make the rules easier to understand and proposed to implement some provisions of the Food Security Act of 1985 (Pub. L. 99–198). The reader is referred to the April 9, 1986 publication for review and consultation in order to ensure a complete background and understanding of this document. All comments received on the proposed rule have been considered in the formulation of this final rule.

1. Definitions

The Department proposed adding definitions for "Authorization document" and "Claims collection point." Those proposed definitions have been adopted in this final rule without comment. One commenter suggested that the term "authorization to participate (ATP) card" be removed from the definitions list. Even though the Department is working to eliminate distinctions for separate types of issuance systems, in favor of "generic" descriptions and documents which would apply to many different issuance systems, the suggestion has not been accepted. Since the term "ATP" is still used throughout the regulations, the definition must remain in § 271.2. Another commenter proposed that the terms "Master issuance file", "Record-for-issuance", "Direct access system" and "Authorization document system" be added to the definitions list, since the terms were newly defined in the proposed rule, and are crucial to the description and understanding of current and yet-to-be-developed issuance systems. We think the suggestion will make the terms easier to locate and understand, and have, therefore, included the terms, with the exception of "authorization document *system*" in § 271.2 The definition for "authorization document" was included in the proposed rule and has not changed. One State agency suggested that a definition for household disaster be included. A disaster is a declared emergency for natural events such as tornadoes and floods, affecting a large number of households. An individual household may experience a misfortune such as a power outage or water damage from a storm, in which case benefits may be replaced under the replacement provisions. The above examples are merely guidelines, and since declared disasters and individual household misfortunes are treated separately, one definition for both would not be appropriate. The regulations which would be applicable in any particular situation would best be determined by the State agency. (§ 271.2)

2. Plan of Operation

The proposed timetable required State agencies to submit their unit level of reporting mail issuance losses by the 15th of August following publication of this final rule and by that date in succeeding years if the unit level of reporting is to change for their following fiscal year. Two State agencies commented that the August 15 date was impractical because their fiscal years started on July 1. However, the Department believes that the logical time for state agencies to submit changes would be with Budget Projection Statements, when costs and liabilities in other areas are being reviewed. Therefore, the Department has set May 15, 1989 as the deadline for an initial report (if a State agency is changing its level of reporting), and subsequent changes to be reported by August 15 in years thereafter. (§ 272.2(d)(1)(vi))

3. State Monitoring of Duplicate Participation

In reference to the Department's proposal for a reorganizational change by moving the provisions requiring State agencies to check for duplicate participation from § 274.1 to § 272.4, two comments favoring the move were received. The reorganizational change is adopted as final. (§ 272.4)

4. Issuance Agents

The proposal to exclude issuance agents from retail and wholesale food firms drew responses from 14 commenters. Four respondents agreed with the proposal, one was noncommittal, and nine were opposed, stating that there would be great inconvenience to disabled and elderly recipients, that the provision may eliminate Saturday issuance, that we have insufficient reason for discontinuing issuance in stores, and that recipients in some areas would be disadvantaged because of a lack of public transportation to "downtown" issuance offices. The Department has reviewed the situation and has decided to retain the current policy, but with some modifications to control its use. Coupon issuance will be permitted in retail food firms by two exceptions to the generally–proscriptive rule. First, coupons may be issued in a retail food firm if the issuance functions are performed by a bank, credit union, or other financial institution unrelated to the food firm; second, a retail food firm may issue coupons on its premises if the State agency presents adequate documentation that without the availability of on-site store issuance at a particular location there would be not merely an inconvenience, but a hardship, to recipients in obtaining coupons. In such a case, the State agency shall contract directly with the retail food firm and shall strictly supervise such entity for security, reporting and accountability. Without the hardship documentation, a retail food firm may perform the issuance functions itself, but only as a subcontractor to a bank, credit union or other financial institution, and with strict oversight by the financial institution. Retail food firms do not have to be authorized to accept and redeem food coupons from recipients in order to perform issuance. In addition banks and credit unions do not have to be chartered under Federal or State law. (§ 274.1(b))

5. State Agency Issuance Responsibility

In reference to the Department's proposal to require State agencies to

report changes of location or activity of food stamp offices, three commenters voiced concern about what changes should be reported and the time frame in which the reports should be made. Two commenters stated that whenever a mail issuance or replacement point, issuance point and bulk storage point, as well as a project area, reconciliation point or coupon shipment receiving point, is added, changed or terminated, the action should be reported. The comment is accepted.

The third commenter voiced concern that State agencies were being required to report the change to FNS no later than 30 days prior to the effective date of the action, and thinks that State agencies "should" report the actions within that period. The Department feels that for efficient administration of the Program in the many areas involved, it is mandatory that the Department have at least a 30-day period in which to make necessary adjustments, such as changing mailing lists, delivery routes and possible leasing of new space. It will be incumbent on all State agencies which have local administration of the Program to make sure the aforementioned actions are reported to the State agencies on a timely basis. Therefore, the suggestion is not accepted, and the proposed amendment is retained. (§ 274.1(d))

6. Receipt of Benefits

A provision from the Food Security Act of 1985 requires that, for households applying for and receiving benefits in the last fifteen days of a month, benefits for the first full month of participation must be issued no later than the eighth day of the month following the month of application. (The current provision for expedited service requires benefits for the first full month to be issued by the first calendar day of the month after the month of application.) Six comments were received concerning this provision; two commenters thought that "the eighth day" should be changed to "the tenth day" to be consistent with other Federal and State Programs. Two other commenters expressed concern that if the State agency were allowed the option of issuing (prorated) benefits to a household which applied after the 15th day, within the month in which the application was made, State agencies would not issue benefits in the month of application, but would simply make one issuance by the eighth day of the following month. That issuance would be one full month and a partial allotment representing a period in the month of application. This is an option Congress made available to the State agencies. Another commenter was concerned that an automated issuance system could not handle a manual issuance in the second month (by the eighth day). The last commenter thought that a recipient may think he is to get issuance twice a month if, for example, he receives a prorated allotment on the 29th and a full allotment on the 6th. Since the eighth day is mandated by legislation, it remains in this final rule. (§ 274.2(b))

One commenter requested clarification of "* * * the eighth calendar day * * *" as it applies to Saturdays, Sundays and holidays. For households entitled to receive benefits for the first full month of participation by the eighth of the month after the month of application, the coupons or an ATP must be available to the households on that date. Regardless of the system used to meet this delivery standard, the State agency shall provide a reasonable opportunity for the negotiation of an ATP no later than the eighth calendar day. There are no exceptions to this requirement for weekends or holidays. This rule does not include the issuance provision from section 203 of the Hunger Prevention Act of 1988 (Pub. L. 100-435), which will be addressed in a separate rulemaking.

7. Staggered Issuance

Twenty-nine commenters addressed this provision from the Food Security Act of 1985, which permits the staggering of coupon issuance throughout an entire month and limits the interval between regular or supplemental issuances to 40 days. Eighteen comments were supportive of the provision as proposed. Six commenters expressed opposition to the 40-day maximum period between issuances, with all but one stating that the maximum should be no more than 35 days. Another commenter thinks that the State agencies' use of supplemental issuances would be confusing to recipients, who may assume they are to receive benefits twice a month. Three comments concerned the fact that if the proposed option for State agencies to use a supplemental issuance for applicants certified after the 15th of the month were retained, the State agencies would avoid issuing any benefits in the month of application, and would instead make one issuance between the first and eighth of the following month. Even though this is an option allowed by the legislation, it is hoped that State agencies will use it to get benefits to recipients on a timely basis, and not to unduly delay benefits. Six State agencies voiced concern about the impact of the change on current computer operations, especially since the systems cannot now handle a supplemental issuance made manually in the second month. Several commenters thought that those recipients receiving ATPs after the 15th should have as much time to redeem them as do those receiving ATPs prior to the 15th. A State agency opposed the staggered issuance change because it did not correspond to the direct-mail schedule for households not reporting monthly.

A commenter questioned whether or not the issuance of benefits under expedited service takes precedence over retrospective budgeting requirements. In a one-month retrospective system, the issuance of benefits under expedited service takes precedence over the monthly reporting requirement; that is, the second month's issuance must be made on the first calendar day of the month and not held pending receipt of the monthly report. The State agency must make an eligibility and allotment determination based on the best available information.

Another comment concerned the fact that at least one State agency has a "cyclical" issuance system based on the date of application, and that the "eighth calendar day" is not relevant to that system. In every issuance system there has to be an "issuance month", although it may not start on the first day of the calendar month; therefore, there has to be an eighth day (of the issuance month). Since the aforementioned changes are mandated by legislation, they are retained in this final rule. (§ 273.2)

All currently-approved waivers pertaining to increased or decreased staggered issuance will automatically be cancelled April 1, 1989. Any State agency which wants to continue a current waiver after that date must reapply to FNS.

8. Providing Benefits to Recipients

The Department proposed to move the provisions pertaining to delivery standards for issuing benefits to newly-certified households from Part 273 to Part 274, because the provisions are not certification related but are standards for the actual issuance of benefits. One commenter stated concern about the provision, since that part of the provision dealing with households which have not provided complete verification is a certification concern, not an issuance concern. The Department believes that the provision has more applicability and importance for the distribution of benefits than with the certification of the households to receive benefits. These provisions of the proposed rule are retained in the final rule. (§ 274.2)

Another commenter objected to the Department's proposed revision which stated that issuance authorization documents should be valid only in the geographic area that is encompassed by the reconciliation system through which the document will be processed. The commenter stated that the provision would present a hardship to recipients in rural areas. The Department has reviewed the provision and has decided to encourage its use so as to keep the reconciliation process from becoming needlessly complicated, but at the same time make it a State agency option in order to eliminate hardship for recipients who may be located nearer issuance offices outside their county or project area. ATPs may not, however, be negotiated across State lines. (§ 274.2(d))

9. Issuance Systems

The current regulations which define three types of issuance systems (ATP, HIR card, and mail) were developed in 1978 and, since that time, new systems have been developed which do not fit the definitions of the three basic systems. Also, the reporting and accountability requirements were based on the unique features of these systems. Therefore, the Department proposed to establish new generic classifications for issuance systems so that newly-developed systems can be accommodated by the rules.

Six comments were received on the first new classification, authorization document systems; three supported the classification as proposed and three wanted changes or clarifications. One commenter suggested that authorization documents show a project area identifying code, plus the number of each denomination book of coupons to be issued. The Department has no objection to either item being shown, but thinks they should be State agency options rather than regulatory requirements. A State agency commented that a description of the ATP system should not be in the regulations since the system is fast becoming a minor or secondary system nationwide. As of January 1986, 30 States used an ATP issuance system to some degree, with 10 States using ATPs for one hundred percent of issuance. Therefore, the Department does not consider it a minor issuance system at this time, although it may be replaced in the future. The description of an ATP system is being retained, but is being included as an example of the more general authorization document systems.

Another commenter suggested that rather than showing the "expiration date" on an authorization document, the "benefit month" should be shown. The Department believes that the "expiration date" would be more useful to recipients, since a date represents a definite end to the validity of the document. Such a date would also be less confusing for issuance cashiers. The same commenter stated that there should be four classifications of issuance systems, adding the classification "authorization issuance list." The Department considers the "authorization issuance list" and the "authorization document" systems to be the same since both require the signature of the recipient in order for the recipient to receive benefits. Three commenters thought it would be helpful if there were an explanation of exactly what constitutes an authorization document system. Such a system is one in which the recipient must sign a document (form, printout, register) in order to receive the issuance. A direct access system (manual household issuance record (HIR) or access to master file directly or through a computer terminal) does not usually require a signature on a document. The last comment concerned whether or not multiple files (physically separate) may constitute the master issuance file; multiple files may be used as long as the files are clearly identified as part of the master issuance file and contain all the required data.

There were no separate comments on the second new classification, direct access, or the third classification, mail issuance, as classifications *per se*. Comments regarding liability in mail issuance are reviewed later in this section.

Two commenters expressed concern that we were eliminating the permissibility of one-person mail issuance functions. This provision was mistakenly omitted from the proposed rule. If these functions are performed by one person, a second-party review shall be made to verify coupon inventory, the reconciliation of the mail issuance log, and the number of mailings prepared. This provision in the current rules has been retained in § 274.3(d)(2) of this final rule. A commenter wondered why the master issuance file must have data on disqualified households. The data on disqualified households does not need to be retained on the master issuance file, and may be kept in a separate file, automated or manual. The data is required on the revised Form *FNS-366B*, Program and Budget Summary Statement—Program Activity Statement.

10. Alternative Issuance System for a State Agency

The proposed rule, based upon section 1519 of the Food Security Act of 1985 (Pub. L. 99-198), states that the Secretary, in consultation with the Office of the Inspector General, shall require State agencies to change their systems of issuance if those systems are resulting in a loss of Program integrity (significant dollar losses). Sixteen comments were received and all were against the legislative change. If a change in a State agency's issuance system becomes necessary because of continuing issuance losses, the mandate to actually change the system will be made after discussions involving the Department's Office of the Inspector General, FNS and the State agency. Such discussions will be concerned with the type(s) of losses being experienced by the State agency, prior corrective action, local concerns and needs, resources available to the State agency, and the cost of a system change. Under this final rule, the cost of making such a change will be shared by the State agency and the Department.

Several comments wanted guidelines or a definition for "Program integrity", and an explanation of how the loss of Program integrity would require a system change. The loss of integrity could result from a large and continuing issuance loss. An exact percentage or dollar-amount threshhold which would trigger the requirement to change systems cannot be made across the board. Each situation regarding a large and continuing loss would need to be evaluated separately, and as such, there is not an "exact" threshhold which could be applied to all cases.

Other commenters expressed belief that in each case of a required change, the State agency should not be liable for losses from the new system, that there should be a definite time frame for when a new system has to be implemented and that there should be limits on conversion costs to protect State agencies' funds. The Department is unable to exempt a State agency from liability since the law specifically states that State agencies will be held liable for specific losses. A definite timetable for implementation of a new system cannot be set in advance; again, each situation will have to be reviewed independently. The Department does not want to set limits on conversion costs, but is willing to share the costs.

There were two comments centering on the belief that State agencies should have appeal rights when confronted with an order to change issuance

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systems. The appeal process exists only for actions in which the Department has billed State agencies; there is no statutory provision allowing appeal of an order to change an issuance system. However, an order to a State agency to change its issuance system may be negotiated if the State agency is able to provide information showing that it's losses are decreasing or are not as great as first indicated. (§ 274.3(c))

11. Validity Period for ATPs

In this area, the Department proposed to amend the regulations to clarify that a household would lose its right to a particular month's benefits if the benefits were not obtained during the validity period of the benefits for that month. This is a clarification and not a change in policy. Second, the proposed rule expanded the current requirements on validity periods to issuances made from Direct Access Systems, in that the protection afforded to recipients and State agencies using other systems would be applied to all recipients who do not have coupons delivered directly to them. Third, State agencies would be permitted to apply the 20-day addition or subsequent-month provision, at their option, to issuances made after the 20th day of the issuance month. Finally, if a State agency is experiencing excessive losses, it may institute a system which reduces or limits the validity period provided in this rule.

Eleven comments were received concerning the validity period for issuances; all supported the proposed amendment. The proposed changes are made final. The current provision allowing State agencies to add an additional 20 days to the validity period for authorization documents issued after the 20th day of the issuance month, as described in the proposed rule's preamble, was inadvertently omitted from the regulatory language, and has been inserted into this final rule. (§ 274.3(d)(7))

12. Reconciliation and Reporting

The Department proposed several revisions to the current reconciliation and reporting requirements which would tighten those requirements and ensure that they fit the proposed issuance system classification described above. The major change is the requirement that all issuance systems reconcile their issuance activity against their master issuance files and report the results to FNS monthly. Only State agencies operating ATP systems had been required to do this. This required report would be a revised version of the Form *FNS–46*, Issuance Reconciliation Report, currently submitted monthly for authorization document systems. In mail issuance systems, a record-for-issuance is created from the master issuance file; however, there is no accounting for problems that may occur in the creation of the record-for-issuance. In direct access systems there is no required report on issuance activity other than the Form *FNS–250*, Food Coupon Accountability Report. While the nature of such a system is that there is virtually no reason for additional reconciliation, there are other problems, such as replacements, for which accounting is necessary. The new Form *FNS–46* is being redesigned to be adaptable to the different types of systems, and will have new items as well as some of the current ones.

In addition to the above requirements, all systems would also continue to be required to reconcile inventory levels against issuances each month on the Form *FNS–250*. The remaining reconciliation requirements are directly related to the nature of the individual issuance systems. Direct access systems will have no other requirements, and the current requirement in § 274.6(d) that for HIR card systems, State agencies do a semiannual comparison of 20 percent of their case files against the master issuance file, would be eliminated. In authorization document systems, State agencies would need to take additional steps to reconcile the authorization documents against the record-for-issuance, in order to check for problems in issuance that occur in, or after, the generation of authorization documents from the record-for-issuance. The additional steps are the same as those required under current rules; the additional data would be reported on the revised Form *FNS–46*. In mail issuance systems, the steps required to report mail loss data on the Form *FNS–259* would still have to be taken. There were no proposed changes other than the new loss reporting levels and tolerance levels described in § 276.2, State Agency Liabilities. (§ 274.4(a))

Nineteen comments were received concerning the new reconciliation and reporting provisions for issuance systems; eleven commenters were opposed. Several of those opposed thought that a new "layer" of reconciliation was being created to add a new liability for which State agencies could be billed for errors. The primary purpose of the change was to emphasize the necessity for those State agencies which already have a record-for-issuance file to use the file in the reconciliation process; the proposal was not intended to require State agencies which did not already have a record-for-issuance file, to create one. In an authorization document system, the authorization document is reconciled against the master issuance file. In those systems in which there is no authorization document, but for which there is a record-for-issuance, the record-for-issuance file would be reconciled against the master issuance file.

Four commenters expressed the opinion that reconciliation of a record-for-issuance file with the master issuance file is duplicative. To some extent that is correct. However, since a record-for-issuance file contains only those households which are to be issued benefits, rather than all households which are (eligible) on the master issuance file, there is less data subjected to possible errors because not all households receive benefits each month and, therefore, would not be on the record-for-issuance file. To reconcile each issuance with the master issuance file increases the chance of an unintentional altering of the data on individual household records due to computer error. Another commenter wanted to know if batch reconciliation could be done, since it was thought that the proposed regulation implied that each individual issuance document had to be reconciled against an individual household record in the master issuance file. Regardless of whether or not a particular issuance system has a record-for-issuance file, batch reconciliation may still be used.

Another commenter wanted a clarification of the term "original allotment" as it pertains to replacements in § 274.6(b)(1)(iv). In reference to replacements, the term means the first benefits issued for a particular month to an on-going household, as opposed to "initial allotment" which refers to the first benefits issued a newly-certified household. The term "current month", also used in § 274.4(b)(1)(iv), refers to original allotments which are recovered in the same month they are issued. The same commenter asked what should be done with original allotments that are recovered after the current month of issuance. The allotments should be returned to inventory and the replacement allotment reported on the Form *FNS–46*, unlike the situation in which an original allotment is issued, returned and replaced, all in the same month. The same commenter also requested that the wording in § 274.4(b)(4)(i) be modified to cover methods other than telephoning for transmitting the data for the Form *FNS–388*, State Coupon Issuance and Participation Estimates. The comment is accepted and the wording has been changed to indicate that the data may be telephoned or electronically transmitted to FNS. (§ 274.4(b)(4)(i))

One comment received suggested that the reconciliation requirements be made more generic so that they could apply to any issuance system, and that there should be a more detailed relationship between files and records. The Department believes that it has done this to the extent that the requirements have not lost meaning by becoming too generic or general. As new issuance systems are developed, it may become necessary to redefine terms or requirements to make them applicable to all existing systems. However, the Department feels that the requirements which will become applicable with this rule are general enough for the foreseeable future. Concerning the relationship between files and records, we believe that the distinction has been made since State agencies are being urged to use a record-for-issuance, rather than a master issuance file for reconciliation. By so doing, there is less chance for creating errors in individual household records, and there are fewer records involved in reconciliation.

The Office of the Inspector General requested that the submission of the Form *FNS–46*, Issuance Reconciliation Report, by State agencies be limited to the initial report each month, and that revised reports be permitted only under unusual circumstances and with prior approval from FNS. The Department feels that State agencies should be given the opportunity to correct posting and transcription errors which may have been made on initial reports. Allowing revised reports could result in more accurate reconciliation and, therefore, reduced liabilities for State agencies.

A commenter stated that issuance systems using direct access should also report on issuance activity, since such a system is subject to undetected software errors. Direct access systems will have to report on replacements. With an audit trail prepared within the computer itself, and the Form *FNS–250*, Food Coupon Accountability Report, accounting for discrepancies in inventory, no additional reconciliation is needed.

One of several suggestions by a commenter was that, in the reconciliation of issuance in authorization document systems, discrepancies should be resolved by reviewing case files, if necessary, as well as by a review conducted with the coupon issuer. Since all methods of resolving any discrepancies should be used, the suggestion is accepted and the wording "* * * and/or a review of the case file" is added to § 274.4(a)(4)(ii).

The same commenter asked that the regulations define "participating household". For the purpose of State agency reporting on the Form *FNS–388*, State Coupon Issuance and Participation Estimates, a participating household is one that is certified and has been, or will be, issued benefits (whether or not the benefits are used), and on that has met the eligibility requirements, but will receive zero benefits. The definition will be added to § 274.4(b)(4)(iv).

Another question concerned how there could be a replacement in a Direct Access System. There would be no replacements for unreceived benefits, but there may be a replacement for coupons which are improperly manufactured or which are destroyed in a household disaster, or a replacement of an "access" card in an electronic issuance system.

Another commenter stated that a review of benefits indicated on the master issuance file should not be included in quality control. As stated previously, the master issuance file must contain the amount issued. This amount may be posted directly back to the master issuance file, as should be done in a direct access system, or indirectly, using a record-for-issuance file, as is usually done with mail issuance. If a record-for-issuance file is used, the actual issuance (posted to the record-for-issuance file) would then be posted to, and compared with, the master issuance file. Only by having the actual issuance amounts posted to the master issuance file can issuance errors be detected. If the posting of actual issuance stopped at the record-for-issuance, an issuance which was greater than that authorized on the master issuance file may be detected only in inventory reconciliation. If a mistake had been made during the creation of the record-for-issuance file from the master issuance file, and the record-for-issuance had been discarded, the only fact that would remain is that there was an overissuance; however, the overissuance could not be assigned to a specific household. If a record-for-issuance file is used, reconciliation must not stop with that file, but must be carried back to the master issuance file. Quality control reviews would then be concerned with the matching of benefits authorized to benefits issued, through a review of the record-for-issuance (as defined by this rule). With the use of a record-for-issuance, errors resulting in incorrect issuance could be correctly assigned to certification or issuance activity.

The same commenter suggested that, for HIR systems, the issued amounts shown on the cashiers' daily reports and receptionists' daily tally sheets must be reconciled against the household issuance records. The Department believes that this is a logical and needed part of the reconciliation process, especially since HIR systems do not have master issuance or record-for-issuance files, per se. The commenter also expressed the opinion that all types of issuances should be identified in the accountability system. Since all issuances, including manual issuances involving prorated and restored benefits, are to be posted to the master issuance files, these issuances will be included in reconciliation and accountability. Wording has been added to the regulatory text to indicate this fact more clearly. (§ 274.4(a)(1))

13. Authorized Representatives

As part of the effort to organize the rules so that all the rules pertaining to the issuance of coupons are grouped together, the Department proposed to move some of the provisions related to authorized representatives to Part 274. The provisions moved are those relating to the use of authorized representatives to obtain benefits on behalf of recipients, as well as those relating to the use of benefits to purchase food for Program recipients. By moving these provisions, currently found in § 273.1(f), a certain degree of redundancy is introduced into the regulations, since some provisions, such as those pertaining to the participation of disqualified individuals as authorized representatives, are found in both §§ 273.1 and 274.2. However, the Department believes that the advantage of having all rules regarding issuance grouped together outweighs the disadvantage of repetition. In order to reduce the overall volume of rules so that the rules would be more concise and easier to use, the Department proposed to eliminate the redundant provisions. Further, the provisions currently in the section that are not redundant have been moved to other places in the body of rules. No comments were received on this reorganizational change. Therefore, the proposal is adopted without change. (§ 274.5)

14. When a Replacement Issuance will be Provided

In the area of replacement issuances, the Department proposed to consolidate the rules pertaining to replacements and to simplify the provisions for easier understanding and application. Concerning policy changes, the Department proposed to establish a two-in-six months replacement policy for all

categories (benefits destroyed, stolen or not received) of allowable replacements. State agencies would no longer have to track separate limits for different types of losses. In addition, it was proposed to use the concept of "countable replacement", meaning that a replacement would be applied toward the limit only if there existed a possibility of Program loss.

Twenty-one comments were received on this provision of the replacement rules. Ten approved of the provision as proposed, while five commenters expressed concern about the tracking required to distinguish "countable" from "noncountable" replacements. Under current rules, State agencies are keeping track of two limits for three categories of replacements; now there is one limit for two categories, with confirmed disasters having no limit. The Department thinks that the addition of a code to denote a "non-countable" replacement could be made in any system, and that the burden of making the change does not outweigh the advantage which the code would provide, especially considering the fact that all replacements should be considered "countable" unless proven and noted otherwise.

Five commenters thought that our proposal not to count replacements which resulted from State agencies' errors was not justified and/or warranted a definition of State agency error. State agency error, in this context, refers to incorrect data in the case file which affects the issuance and/or receipt of benefits (as opposed to eligibility and certification) by that household. An example may be a situation in which a recipient's address is incorrect, or in which a replacement issuance is made even though information in the case file indicates it should not have been. It is believed that any late or non-receipt of benefits which may have been caused by an inadvertent State agency error, should not result in a liability for the recipient. Therefore, the proposal is adopted without change. (§ 274.6(b)(2)(iv))

Another commenter thinks that the proposed rule presumes that if benefits are received by a particular household, it is that household that uses the benefits. The commenter suggests that the wording be changed to state that in order for a replacement to be countable, there must not only be the probability of a Program loss, but also an additional gain for the particular household. It is true that the Department does make the underlying assumption that the household which receives benefits uses those benefits. A State agency would be unable to prove whether or not any particular household, or someone else, redeemed certain coupons, unless food firms which accept coupons were required to match the identity of coupons presented to documents which noted the specific identity of the coupons issued to any particular household. Such a requirement is not feasible and would be impossible to monitor. Therefore, only the probability of Program loss is being retained as the reason for making a replacement countable, and the proposal is adopted without change. (§ 274.6(a))

Two comments received concerned the fact that State agencies should be able to deny replacements when certified, as well as registered, issuance is signed for by someone living with, or visiting, the household. Since the majority, if not all, of mail issuance which requires a signed receipt by the household is sent by certified mail, the suggestion is accepted and the wording in § 274.6(a)(2) has been changed to indicate either type of signature-required mailing. The Postal Service generally will not accept coupons for registered mail, since that type of mail service permits a declared value for insurance against losses. However, coupons sent by certified mail may be able to be designated for restricted delivery, meaning that only those individuals designated by the State agencies may receive and sign for the coupons. The reference to registered mail has been retained for those issuance offices which are able to use that type of mail delivery. (§ 274.6(a)(2))

There was also a request for a definition of what is meant by the phrase "* * * or otherwise recouped by the State agency * * *" in reference to replacement issuances which should not be considered countable (§ 274.6(b)(2)(iv)(A)). The phrase refers to a replacement being made in a situation in which the household later notifies the State agency that the household has received the original allotment. If the original allotment is not returned, the State agency may recoup the replacement by a voluntary cash or coupon reimbursement from the household, or through the reduction of subsequent allotments under terms worked out with the household. Until the State agency receives full reimbursement for the original allotment, the replacement should be deemed countable. (§ 274.6(b)(2)(iv)).

One respondent believes that the one-limit replacement policy for authorization documents stolen after receipt should remain, since in most jurisdictions a stolen property report can be filed based solely on the complainant's word. Since the State agency can later check to see who redeemed the original ATP and can compare signatures and/or reconciliation numbers appearing on the replacement ATP, the State agency would have recourse in filing a claim against the household, if necessary. While we continue to encourage the State agencies to reconcile ATPs and to aggressively pursue claims, we want to ease the State agencies' burdens by having them track only one limit. Therefore, we have not accepted the comment and have made no change in the proposal. (§ 274.6(b)(2)(i))

Another commenter on the same provision requested that the words "* * * or a serialized ID area" be added to the third sentence of § 274.6(f)(1) to cover all situations in which numbered IDs are used. However, there are areas which use "serialized" IDs voluntarily, and the annotation of the ID number on the reverse of the ATP is not required. Therefore, the suggested wording was not accepted.

Two commenters requested that State agencies not be held liable for replacement issuances made beyond the six-month or two-replacement limits if the State agencies have been unable to determine the countability of previous replacements within the same period. The intent of the provision is that all replacements are to be considered countable unless verified otherwise. Beyond that, the Department thinks that the six-month period is sufficient time for State agencies to determine the countability of a replacement through the reconciliation of the original authorization document or the receipt of a signed proof-of-receipt card for certified or registered mail delivery. In a situation of a third request for a replacement before all previous replacements had been reconciled, action on the third replacement shall be held until the State agency can determine that the limit on countable replacements has not been reached even if such a determination requires an administrative hearing or judicial proceeding. There may be a delay past the 10-day limit on providing replacements until that verification can be made. If a previous replacement is verified as non-countable, replacement benefits shall be issued to the household. (§ 274.6(d)(1)(ii))

Commenting on mail losses, another individual expressed the point that losses of certified mail should not be considered countable when there is no record of receipt and the coupons are not returned to the State agency. If such a situation happens, the State agency shall request from the Postal Service either the proof of delivery or the return of the coupons. In the meantime, the replacement shall be determined countable, since the household could possibly have received the coupons without the required signature, or the signed receipt could have been lost prior to being returned to the State agency. (§ 274.6(b)(2)(iv))

In response to the proposed § 274.6(h)(2), a commenter expressed concern that the Department was requiring State agencies to maintain Statewide listings of replacements. It is the commenter's opinion that tracking could best be done at the local level. There is no requirement for Statewide listings; the term "State agency" is used only to denote responsibility for compliance with the provisions. Even in those States that have mail issuance from one control point, there need not be one centralized replacement listing since the regulations permit a notation about replacements in case files. The requirement is for an accessible list or notation for each replacement.

A commenter questioned what the correct action would be in a situation in which a replacement was issued after the completion of the Form *FNS–259* for the quarter in which the original issuance was made. The replacement should be shown for the month the replacement is actually made, as stated in the instructions on the form, rather than the month in which the request is received by the State agency, since there is not an actual decrease in coupon inventory until the replacement is issued. Another commenter questioned whether or not a replacement issued later than the 10- or 15-day allowable period due to the inability of the State agency to determine the countability of a previous replacement should be considered restored benefits. A justified delay in making a replacement is not grounds for having the issuance considered restored benefits. However, if a State agency denies a third replacement request because it would be countable and the household had obtained the limit of two in six months and the State agency later determines a previous replacement to be noncountable, the benefits issued as a result would be restored benefits. (§ 274.6(a))

15. Time Frames for Requesting Replacements

The Department proposed to amend the regulations which required that the replacement of a non-received issuance must be requested during the period of intended use of the original issuance. Since there had been many questions raised about the policy of "period of intended use", the rules were re-examined and it was proposed that all requests for replacements be made within 10 days of the normal receipt date (ATPs or coupons not received in the mail) or 10 days from the occurrence of a particular incident (theft of ATP, receipt of partial allotment, or destruction of ATP, coupons or food in a household disaster).

Eighteen commenters responded to this portion of the replacement rules. Only two comments supported the 10-day limit for requesting replacements. The majority felt that the change from "period of intended use" to 10 days was far too restrictive, especially in mail issuance where there can be so much variation in the delivery date of benefits, particularly in the first few months of certification. Also, it seems reasonable that by allowing households more time to request a replacment, the State agency is allowing more time for the household to receive the original allotment, whether it was lost in the mail, or lost, but not destroyed, in a household disaster. In addition, there may be instances in which a household may not be physically able to make the request for replacement for the non-receipt of benefits within a 10-day limit, such as those households which have elderly or disabled members.

The Department has reconsidered the proposal in light of these comments and has decided to retain the two-part standard. For authorization documents and coupons lost in, or stolen from, the mail, the request for replacements must be made during the period of intended use, which means the month for which the benefits were not received. If the original issuance was made after the 20th of the month, the recipient would have until the end of the following month to obtain a replacement. In instances of theft of an authorization document from a household, or the accidental destruction of an authorization document in the possession of a household or the loss of coupons or food purchased with food stamps in a household misfortune, the report and request for replacement must be made within 10 days of the specific incident. (§ 274.6(b))

16. The Amount of the Replacement

Previous regulations did not address setting any specific limit on the amount that could be replaced for stolen, nonreceived or destroyed authorization documents, or nonreceived coupons. The rules did set a maximum of one month's allotment on the replacement of coupons and food (or a combination thereof) destroyed in a household misfortune. Subsequent interpretation, however, extended the limit of one month's benefits to authorization document replacements also. This limit was applied regardless of whether the issuance included restored benefits.

The Department proposed, with one change, to place the interpretation noted above into the rules. Thus, State agencies would issue replacements, within the required time frame, in the maximum of one month's benefits. The exception arises if the replacement is for restored benefits. In such a case, a replacement shall be made for the full value of the restored benefits not received by a household. To minimize loases, State agencies are encouraged to provide alternative forms of issuance, such as certified or registered mail or direct delivery, when substantial restored benefits are involved. There was one positive comment. The proposed wording is retained in the final rule. (§ 274.6(b)(3))

17. Time Limits for Issuing Replacements

Seven commenters responded to this portion of the rule which proposed to modify the requirement that State agencies issue replacements within 10 days of the requests in all situations. The proposed rule modified the rule to permit State agencies to delay the issuance of a third replacement beyond the 10-day limit, if need be, in order to determine whether or not the previous two replacements were countable. The Department also proposed to specify that the issuance of a replacement would not be made until the household submitted a signed statement of non-receipt. If the statement were not submitted to the State agency within 10 days of the request, no replacement would be issued. Finally, the proposed rule would have allowed State agencies which use certified/registered mail, a maximum of 15 days from the date of the request for a replacement to issue the replacement. This was seen as necessary since the Postal Service, on some occasions, is unable to provide the State agencies with signed receipts in time for the State agencies to verify receipt of benefits prior to issuing replacements. Requiring State agencies to issue replacements before verification would negate the added protection afforded by certified/registered mail. (§ 274.6(d)(1))

Of the seven comments received, six supported the proposed changes. One commenter stated that a third replacement within a six-month period should be made automatically, within the 10-day period, if the household

requesting the replacement had requested an alternative issuance delivery method after the second replacement, but the State agency had not yet made the change. The Department thinks that this would unnecessarily complicate the replacement provision, especially if the second and third replacements were in successive months. For example, if a second replacement were requested on the 20th of the month and a third requested on the 10th of the following month, the time period between the two replacements may be too short to allow the State agency to implement an alternative issuance method, considering that replacements may be requested anytime during the month. If the second replacement had not yet been determined to be non-countable, the third request would also have to be delayed until the State agency could make that determination. Therefore, the proposed rule is implemented in this final rule. (§ 274.6(d))

18. Replacement of Mutilated Coupons and ATPs

Four comments were received, all but one of which supported the proposal which added authority for the replacement of improperly manufactured or mutilated authorization documents. The adverse commenter objected to the use of the "three-fifths" requirement for the replacement of mutilated coupons. This is a security requirement from the Department of the Treasury and, therefore, cannot be changed or eliminated. It is applicable to currency as well as food stamps, and is designed to prevent coupons from being torn approximately in half, with each half subsequently being redeemed or replaced at face value. The final rule has been clarified to state that households cannot receive a replacement for stolen coupons, and that improperly manufactured or mutilated authorization documents must be surrendered to the State agency. (§ 274.6(f)(4))

19. Alternate Issuance System for a Household

That portion of the proposed rule which required a State agency to offer a household an alternate issuance system after the first report of non-receipt, to automatically place the household in an alternate system after a second report of non-receipt, and to retain the household in that system for a minimum of six months, prompted five comments. Two commenters were opposed to the six-month period, stating that State agencies should be able to determine the length of time for the alternate system. Another commenter thought that in those areas that have only one form of issuance, the provision for an alternate system should be waived. In any issuance system, there are always options which are available, even though they may have to be accomplished manually. The Department has reviewed the comments and has decided to retain the current policy which permits State agencies to retain a household in an alternative issuance system for a length of time the State agency determines to be necessary, since that policy affords flexibility for individual situations. (§ 274.6(g))

20. Documentation and Reconciliation of Replacement Issuances

All four of the comments received were opposed to the part of the proposed rule requiring that replacements be reconciled to the month they are issued for, as well as the month in which they are actually issued. Commenters felt that "double posting" creates additional complications for the reconciliation process. Since in the majority of replacement situations there is already some notation and reconciliation for the initial issuance when the replacement is requested, making an additional notation and reconciliation for the same benefits when issued later does seem to be duplicative. Therefore, the requirement for posting the replacement to the month issued for, as well as for the month actually issued, has been finalized as an option for those State agencies which find it useful. All other proposed provisions are retained in this final rule. (§ 274.6(h))

21. Coupon Management

The Department proposed four changes in this area of the current rules. First, it was proposed to consolidate within Part 274 the destruction requirement at § 273.18(i) for coupons used to pay State agency claims against households, and the requirement at § 274.8(b) regarding coupons that are mutilated or improperly manufactured. A second proposal pertaining to the destruction of coupons eliminated the limit of $500 which was placed on the amount of coupons a State agency could destroy without prior approval from FNS. The one exception to this revision was whole boxes of improperly manufactured coupons. Third, the Department proposed to add the requirement that unusable coupons be disposed of within 30 days from the close of the month in which they were received from a household or identified as being mutilated or improperly manufactured. Finally, it was proposed to clarify and revise destruction reporting procedures by allowing State agencies, at their option, to consolidate destruction reporting for unusable coupons acquired through claims collections.

The Department received eight comments on this proposed change. A majority agreed with the provision, yet offered specific comment. There were no comments related to the consolidation of the destruction requirements currently found in two separate sections in the rules. There also were no comments regarding the elimination of the dollar limit on the value of coupons that could be destroyed without prior approval from FNS.

Another commenter was concerned with the provision that requires replacements for improperly manufactured and mutilated coupons to be made at issuance points. Rather than replacing the coupons, the commenter suggests that the coupons be examined by the State agency prior to issuance, and then reported on the *FNS–471*, Coupon Account and Destruction Report. The State agency (coupon issuer) should try to eliminate improperly manufactured and mutilated coupons from issuance. However, in those situations where it is not feasible to do so, such as mail issuance or direct delivery of benefits by an entity other than the State agency, the replacements must be made and the improperly manufactured or mutilated coupons returned to the State agency and destroyed. (§ 274.6(a)(1)(i))

Another commenter thought there should be guidelines for the retention of the information of coupon shipments within a State (routes to be taken, shipment departure time and estimated arrival time), as required in § 274.7(c)(iii). Since the information is "before the fact" with respect to the actual shipping, once the coupons have arrived at the designated point, the State agency may dispose of the information. Wording is added to the final version of § 274.7(c)(iii) to clarify the option.

One comment was received regarding the use and destruction of specimen coupons, in which the commenter thought there should be more specific instructions as to who may use specimen coupons. Specimen coupons may be provided upon written request, to any State or local agency concerned with the administration of the Program or enforcement of its rules, and to authorized food firms for the education and training of employees on Program operations. Specimen coupons may not be provided to individuals for purposes of display or collection. This specific instruction concerning who may use specimen coupons is not new with this rule. However, clarifying wording has been added. (§ 274.7(d))

The same commenter expressed the opinion that the destruction of specimen coupons should be done at the FNS regional offices for purposes of accountability. There is no accountability, as such, for specimen coupons. A perpetual record is maintained for the distribution of specimen coupons, for the purpose of determining to whom any particular specimen coupons were issued, in case it is determined that specimen coupons have been presented for redemption. The wording in the proposed rule is retained as final. (§ 274.7(d)(2))

Two comments were received regarding the time limit for destruction of unusable coupons. One commenter suggested that State agencies be allowed 30 days after FNS approval, rather than 30 days from the end of the month, in which to destroy boxes of improperly manufactured coupons. The Department is concerned about the security aspects of storing boxes of unusable coupons for an extended period. Therefore, the proposal places an explicit time limit on required actions by the State agency and an implicit time limit on FNS. In any situation dealing with boxes of improperly manufactured coupons, the State agency must destroy the box of coupons if the 30-day period is reached without the State agency receiving destruction approval from FNS, and document the manufacturing irregularity and the book numbers, and retain a copy of the State agency's request to FNS for permission to destroy. Another commenter thought that the time limit for destruction should correspond to the time limit for the submission of the *FNS–250* and *FNS–209* reports, and should not be more stringent. Again, the Department is concerned about the storage of unusable coupons for any extended period; therefore, the requirement of 30 days after the end of the month is retained as final. (§ 274.7(f))

There was one comment received concerning the use of coupons returned to State agencies as payment of claims, and coupons returned as undeliverable to the intended households. The commenter stated that returning such coupons to inventory creates accountability problems. The Department believes that the automatic destruction of returned coupons is wasteful if the coupons are in book form, complete, with original and unsigned covers. Therefore, the provisions of the proposed rule are retained in the final rule. (§ 274.7(g))

A final comment in this area questioned the type and extent of the documentation required for reports sent to the State agency concerning improperly manufactured and mutilated coupons. The documentation is not required if the State agency inspects the coupons at the issuance or storage points. If a report is prepared for submission to the State agency, it should contain enough information to enable the State agency to identify the coupons to FNS and the manufacturer. Dependent upon the extent of the damage, the beginning and ending numbers of the books involved should be noted. In addition, the specific problem should be noted in detail, such as a specific denomination coupon omitted from a book and staples not penetrating the entire book. The comprehensiveness of the content of the documentation is determined by the State agencies. No changes in the proposed rule resulted from this comment. (§ 274.8(e))

22. Return and Exchange of Coupons

The Food Stamp Act of 1977 eliminated the requirement that Program recipients pay cash for a portion of their benefits. Because there was a phase-in period for this provision, the rules that were issued to implement the provision contained provisions explaining how certain qualified households could obtain refunds for the cash requirement they had paid. The provisions for refunds were contained in § 274.11. Since the time for obtaining refunds has ended, the Department proposed to eliminate the rules governing them. Thus, the provisions of § 274.11 (a) through (d) have been eliminated by this rule. The provision pertaining to the exchange of old-series coupons has been relocated to § 274.7(h) and has been revised to eliminate sole reference to the previously-issued 50-cent coupon, and made applicable to any coupon denomination no longer used, now and in the future. No comments were received on this editorial change.

The Department is also making a technical amendment concerning the return and exchange of coupons by recipients and non-recipients. In the proposed rule, paragraphs (a), (b), (c) and (d) of § 274.11 of the current rules were removed, since the paragraphs concerned requests for refunds of the purchase requirement. In paragraph (c), there is reference to Form *FNS–287*, Request for Reimbursement or Notification of Return of Unused Food Coupons for Refund. When the purchase requirement was eliminated, the Form *FNS–287* was discontinued, and the new Form *FNS–135*, Affidavit of Return or Exchange of Food Coupons, was put into use. The new form covers not only the return of unused coupons but also the exchange of old-series coupons, coupons received in payment of a recipient claim, and the exchange of mutilated or improperly manufactured coupons. However, reference to the Form *FNS–135* was unintentionally omitted from the current rules and the April 9, 1986 proposed rule. This rule reinstates the provision in the rules. The Form *FNS–135* was designed to be a receipt for, as well as verification of, the person returning or exchanging coupons, and is to accompany the Form *FNS–471*, Coupon Account and Destruction Report, as proof of receipt of the coupons by the State agency. The two forms together serve as documentation by the State agency for coupons destroyed upon receipt, and coupons which are returned to inventory. Therefore, reference to the Form *FNS–135* has been added to the sections of this rule which concern the return or exchange of coupons. The amendment does not change the principle nor the policy intent of the provisions affected. (§§ 274.6(f)(4) and 274.7(f))

23. Identification Cards

One commenter misunderstood the wording in § 274.10(a)(1) which states in part that "all persons listed on the identification (ID) card shall sign the card prior to its use." The commenter thought that the provision meant that all persons listed on the card had to sign the card before the card could be used by any of those listed. The wording has been clarified to indicate that, before a person listed on the ID card may use the ID card, the person must sign the card. (§ 274.10(a)(1))

24. Photo IDs

The comment received on the use of photo IDs concerned their use by authorized representatives for elderly/homebound/disabled recipients. The commenter felt that because the authorized representatives for these recipients are usually home-health aides who change frequently as authorized representatives, they should not have to use the photo IDs. In those areas in which the photo ID is mandated, it is done so because of the risk of theft and fraud involved in a populous area and not because of who may be authorized to use an ID. Therefore, in those areas where photo IDs are required, the photo ID (of the authorized representative) must be used, regardless of the fact that the authorized representative may change frequently. (§ 274.10(b))

25. Identification Card Requirements and Substitution

Proposed § 274.10 contained only a minor change in the current ID card rules, specifically concerning photo IDs. The change is mandated by section 1528 of the Food Security Act of 1985, Pub. L. 99-198. Also, the proposed rulemaking consolidated and restructured current ID card requirements contained in § 273.10 (f) and (g), § 274.2 (e) and (f), and § 274.7(c). Therefore, these sections were removed from their current locations in the rules, combined, and inserted as § 274.10 of the proposed rules. In the change regarding photo IDs, Congress allowed State agencies to permit a member of a household to comply with the FNS photo ID card requirement by presenting a photo ID used to receive benefits under a public welfare or public assistance Program. Congress also wanted FNS to consider the cost effectiveness in determining where photo IDs must be used. Since the agency currently does this, no regulatory change is required. No comments were received on this change.
(§ 274.10(b)(3)(iii))

26. Issuance Record Retention

A suggestion was made to add "rosters and lists" to those issuance and reconciliation documents which should be retained by the State agencies for three years. Since rosters and lists are commonly produced in issuance systems, the wording is accepted and added to § 274.11(a)(1).

27. Quality Control

The Department proposed to revise the provision pertaining to active-case reviews to specify that such reviews must not only determine if the household was entitled to receive benefits, but also whether or not the household was issued the correct allotment, by comparing the eligibility data and the amount authorized on the master issuance file with the amount shown on the record-for-issuance file. By making this comparison, the reason for any incorrect issuance which may have occurred could be determined, and the liability correctly assigned to either certification or issuance activities.

All four comments received on this provision were opposed. One comment stated that there was no convincing evidence that error rates would not increase as a result of this provision, and that there are methods other than quality control to check for issuance errors. With the new definition for issuance and the creation of the record-for-issuance, a clear demarcation has been made between certification and issuance. The only way to determine if there has been an issuance error in any particular situation is to compare the record-for-issuance against a file on the other side of the "line", which would be the master issuance file. What was proposed was a check of the amount on the master issuance file, which is accomplished by matching the eligibility data against the master issuance file. If the amount authorized by the eligibility data does not match the amount on the master issuance file in any specific case, there is a certification error covered by quality control. If a record-for-issuance amount does not match the corresponding amount of the master issuance file, there is an error covered by issuance liability. The Department believes that error rates will not be affected significantly with the additional check of the individual case records against the master issuance file, especially considering that most automated issuance systems are currently employing this check.
(§ 275.10)

Another commenter was concerned about the fact that data entry errors resulting in subsequent replacement issuance errors would be counted as issuance errors and would not be covered by quality control or negligence billings. If such replacement errors were the result of data entry errors from information on eligibility, the resultant error, causing the issuance of an incorrect replacement amount, would still be classified as a certification error since it was during the certification process that an error was first made. Again, an issuance error is not concerned with the correctness of the amount of benefits authorized as determined by eligibility standards. Issuance liability is concerned with whether or not the amount issued matches the amount authorized for a particular household. (§ 275.10)

We have discovered that the language in the proposed rule did not fully conform with our intentions for the rule as correctly stated in the preamble. In order to clarify that quality control (QC) reviews will continue to determine whether a given household received the correct issuance, given its circumstances as of the review date, we have modified the proposed language. Therefore, the Department is revising the provision concerning active cases to specify that such reviews must still determine if the household was entitled to receive, and did receive, the correct allotment by comparing the eligibility data against the amount authorized on the master issuance file.

28. State Agency Liabilities

Another commenter expressed belief that the proposed rule which held State agencies liable for transacted ATPs which had been altered or which were counterfeit was too strict, stating that this was too great a responsibility to be placed on issuance cashiers. The Department did not mean to imply that cashiers would be personally liable. However, the State agency must be held responsible, since ATPs are procured, transacted and reconciled by the State agency. State agency personnel, and contract personnel, must be familiar with negotiable forms involving food stamps. Therefore, the provisions of the proposed rule are retained in the final rule. (§ 276.2(b)(1)(iii))

A second commenter stated that the Department should review the court's decision in *Perales v. Block*, 751 F.2d 95 (2nd Cir. 1984), concerning the question of a State agency's liability in the negotiation of expired ATPs. The court decision cited by the commenter applied to eight-day ATPs previously issued in New York City. This short-term ATP was used to decrease the number of invalid replacements. However, the court indicated that if an original of an eight-day ATP were presented for redemption after eight days, the ATP had to be honored, or the recipient issued another ATP valid for a total of 30 days. The court did not invalidate the Department's policy of holding State agencies liable as the policy applies to a regular, or 30-day, ATP. Therefore, the Department is finalizing the proposed liability provision. (§ 276.2(b)(2)(iii))

The Department's current policy on issuance documentation has been clarified to state that all coupon issuance has to be documented, and that the documentation has to be available to the Department. If a situation arises in which the primary documentation is unavailable, such as the loss of transacted ATPs in transit from an issuance agent to the State agency, the State agency should try to immediately reconstruct the documentation from other sources, if possible. (§ 276.2(a))

Wording has also been added to clarify the policy that State agencies are liable for losses of coupon issuance which occur during Federal, State and local investigations unless the investigations have been reported *directly* to FNS prior to the losses and FNS agrees to accept any losses which may occur. (§ 276.2(b)(2))

In issuance systems which utilize a record-for-issuance file, it is the responsibility of the issuance unit to obtain from the master issuance file

only those households which are certified to receive benefits for the current month. We have clarified this policy by stating specifically that State agencies will assume an issuance liability for benefits issued to households not currently certified.
(§ 276.2(b)(2)(vi))

29. Mail Issuance Liability

The Department proposed permitting State agencies to choose from a three-level reporting and liability assessment system. State agencies could report mail losses at the project-area level, with a loss tolerance of one-half (.5) percent; at an administrative-unit level, with a loss tolerance of thirty-five hundreths (.35) percent; or, at a Statewide level, with a tolerance of three-tenths (.3) percent. Each State agency would be allowed to choose (or change) its reporting level once a year.

Concerning the proposed three-level system for reporting and assessing liabilities, thirteen comments were received; six commenters agreed with the proposed change, and seven opposed it. Of those opposing the change, five commenters felt the tolerance levels (percentages) were too low, and that they were unrealistic and punitive. One commenter stated that the tolerance levels should be forty-five hundreths (.45) percent for administrative units and forty hundreths (.40) percent for project areas (lower than the proposed tolerance). Another commenter thought that the tolerance level for administrative units should be forty-five hundreths (.45) percent, since many administrative units are smaller than project areas. Another commenter stated that the tolerance level of thirty-five hundreths (.35) percent is too high for densely-populated areas. The last commenter who suggested different tolerance levels thought that the level for State reporting should be forty-five hundreths (.45) percent, and for administrative and project area levels, fifty hundreths (.50) percent. The tolerance percentage proposed for the project area level was the same as that which had been in effect since 1983. The percentages proposed for the administrative unit and State levels were commensurate with the larger issuance bases they represent. The project area reporting level was established to enable FNS to identify areas experiencing high losses of coupons in the mail. Responding to State agencies that wanted flexibility in their reporting, since some had Statewide mail issuance from one point and others were administered on an administrative unit basis, the Department proposed the other two levels for reporting. However, it was still a concern of the Department that areas experiencing high losses might be "hidden" when combined with larger reporting units. The Department feels that the proposed tolerance levels represent a fair balance between mail losses, regardless of fault, and the Department's obligation to seek reimbursement for those losses. Therefore, so as not to conceal and compensate for high loss areas, the tolerance level was decreased with each increase in reporting unit size. The Department feels that the tolerance levels selected are reasonable, and the proposed tolerance levels are retained as final. (§ 276.2(b)(3))

Another commenter thinks that State agencies should not be limited to the use of current administrative units for reporting losses, but should be allowed to change the units when needed, such as grouping postal jurisdictions for easier investigations of mail losses. Again, the Department is concerned that allowing changes in administrative units, for the purpose of reporting losses, may lead to the absorbing of higher losses by the Department. If a State agency chooses to report losses by project area or Statewide level the first year of the new tolerance levels, the State agency may, during that time, form administrative units for the purpose of Program administration. If the State agency decides to report by administrative-unit level for the second year, it may do so, but it may not create any new or changed administrative units during that year, for the sole purpose of reporting mail losses, without prior approval. By keeping administrative units stable, FNS will be able to more accurately track losses in particular areas over a period of time. If administrative units were to change during a reporting year, continued losses in a particular area might go unnoticed.
(§ 276.2(b)(3))

The focus of another comment was that State agencies should be able to choose their reporting and assessment levels semi-annually, rather than annually, for more flexibility. The Department feels that permitting changes more frequently than annually would result in confusion in reporting. Further, State agencies should do everything to resolve and reduce the losses while in a current plan before simply changing to a lower tolerance and a larger geographic area. The Department thinks that six months is too short a period to review the problems, decide on solutions and implement the necessary actions.

A comment from another source was a request for definitions of "project area level" and "administrative unit level". Project-area level is reporting mail issuance losses for individual project areas which most commonly are counties or independent cities. An administrative unit is usually larger than a project area but smaller than Statewide. The unit may have been created for governmental purposes and adopted by the State agency for Program administration purposes. Such a unit might be a welfare district, a Postal Service zone, or an area which has been created specifically for administration of the Food Stamp Program.

The same commenter asked how State agencies would handle two project areas which are currently being reported singly, with the rest of the State reported as one separate unit. In such a situation, the State agency may continue to report the two project areas singly, and combine the remaining project areas into an administrative unit. Administrative units may not be created by the State agencies for the sole purpose of reporting mail issuance losses.

Concerning that portion of the proposed rule which dealt with the State agencies' liabilities for losses incurred by the Postal Service, seven comments were received, with only one in agreement. Those opposed unanimously stated that the Postal Service must be held accountable for its own losses, especially if State agencies have paid for premium service (certified or registered mail).

While the Postal Service will be requested to account for all food stamps it handles, the Department realizes that not all food stamp mail losses are the fault of the Postal Service, since there are thefts from mail boxes involving coupons sent by regular mail. When there is a loss of coupons from regular mail service, it is not always possible to determine whether it involves theft after delivery, or loss before delivery. Therefore, rather than automatically assigning each loss to a particular party, the Department has decided to absorb losses below specific tolerance levels, regardless of where liability is assigned. Even though State agencies are being relieved of some losses, the Department expects State agencies to make sure that benefits are received on time, that more secure delivery methods are employed when losses occur, and that the Postal Service is requested to account for benefits which are sent by premium service, but not received by households.
(§ 276.2(b)(3))

30. Rescission of Proposed Provision

On April 2, 1982, the Department published a proposed rule at 47 FR 14160 (Administrative Flexibility Rule) which contained a provision allowing State agencies increased flexibility in the staggered issuance of ATPs and coupons. The provision was later determined to be more involved with issuance provisions than with certification and administration provisions, and the proposed regulatory change was omitted from the final rule published at 47 FR 53309 on November 26, 1982. The same regulatory change was later incorporated into the Food Stamp Issuance and Issuance Liability Rules published April 9, 1986, as a result of the same provision in the Food Security Act of 1985. The provision from the April 2, 1982 rule should have been rescinded with publication of the April 9, 1986 rule, but was inadvertantly omitted. The April 2, 1982 provision is rescinded with this final rule, and the staggererd issuance provision from the April 9, 1986 rule becomes final with this rule.

31. FNS Shipment of Coupons

The Department's proposal to have State agency coupon receiving points approved by FNS received no comments. Therefore, the amendment is adopted without change. (§ 274.7(c)(3))

32. Miscellaneous

In § 273.2, the proposed amendment to paragraph (g)(1) consisted only of the addition of the reference to § 274.2(b) in the first sentence. Since that was the only change, the paragraph has been replaced with simply the reference to that addition.

Implementation

All provisions shall be implemented April 1, 1989, with the following exceptions:

a. October 1, 1989—The new provisions on replacement issuances shall be implemented *by* this date. (§ 274.6)

b. October 1, 1989—The new liabilities for State agencies using authorizations document issuance systems shall be implemented on this date. The liabilities specifically include authorization documents lost in transit (§ 276.2(b)(1)(ii)); single unmatched issuances, replacements not made in accordance with § 274.6, and altered and counterfeit authorizations negotiated (§ 276.2(b)(1)(iii)); undocumented issuances (§ 276.2(b)(2)(v)); issuances made to non-certified households (§ 276.2(b)(2)(vi)); and, issuance loss during an investigation if the investigation was not reported directly to FNS prior to the loss (§ 276.2(b)(2)(vii)).

c. October 1, 1989—The new mail issuance reporting and liability assessments shall be implemented *on* this date. (§ 276.2(b)(4)) A State agency which wants to change from its current unit-level of reporting to either an administrative unit or Statewide basis shall submit a Mail Issuance Loss Reporting Plan, indicating its initial choice of reporting, *by* May 15, 1989, and by August 15 in years thereafter.

d. The new provision which requires reviews to be conducted on active cases to determine if households are eligible and are receiving the benefit amount authorized on the master issuance file shall be implemented for federal Fiscal Year 1990. (§ 275.10(a))

e. October 1, 1989—State agencies shall begin to use the revised Form *FNS–46*, Issuance Reconciliation Report, to report figures for that month.

f. Provisions pertaining to staggered issuance contained in any currently-approved waivers will automatically be cancelled April 1, 1989.

List of Subjects

7 CFR Part 271

Administrative practice and procedure, Food stamps, Grant programs-social programs.

7 CFR Part 272

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

7 CFR Part 273

Alaska, Civil rights, Food stamps, Grant programs, Social programs, Reporting and recordkeeping requirements.

7 CFR Part 274

Administrative practice and procedure, Food stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

7 CFR Part 275

Administrative practice and procedure, Food stamps, Reporting and recordkeeping requirements.

7 CFR Part 276

Administrative practice and procedure, Food stamps, Fraud, Grant programs-social programs, Penalties.

Therefore, 7 CFR Parts 271, 272, 273, 274, 275 and 276 are amended as follows:

1. The authority citation for Parts 271, 272, 273, 274, 275 and 276 continues to read:

Authority: 7 U.S.C. 2011–2029.

PART 271—GENERAL INFORMATION AND DEFINITIONS

2. Section 271.2, Definitions is amended by adding the new definitions of "Authorization document", "Claims collection point", "Direct access system", "Master issuance file", and "Record-for-issuance file" in alphabetical order, to read as follows:

§ 271.2 Definitions.

* * * * *

"Authorization document" means an intermediary document issued by the State agency and used in an issuance system to authorize a specific benefit amount for a household.

* * * * *

"Claims collection point" means any office of the State agency or any person, partnership, corporation, organization, political subdivision or other entity with which a State agency has contracted, or to which it has assigned responsibility for the collection of claims.

* * * * *

"Direct access system" means an issuance system in which benefits are issued directly to the household, without the use of an intermediary document, based on the issuance agent's direct access to information in the household's individual record on the master issuance file, which may be a card document or an on-line computer system.

* * * * *

"Master issuance file" means a cumulative file containing the individual records and status of households, and the amount of benefits, if any, each household is authorized to receive.

* * * * *

"Record-for-issuance file" means a file which is created monthly from the master issuance file, which shows the amount of benefits each eligible household is to receive for the issuance month, and the amount actually issued to the household.

* * * * *

2a. In § 271.8:

a. The paragraph designations and corresponding OMB Control Numbers for PART 274 are revised; and

b. A paragraph designation and corresponding OMB Control Number for § 276.2, paragraph (b), is added in numerical order.

The revisions and addition read as follows:

§ 271.8 Information collection/recordkeeping—OMB assigned control numbers.

7 CFR section where requirements are described	Current OMB control No.
* * * * *	
274.1(c)	0584–0009.
274.3(d)	0584–0009, 0584–0069, 0584–0080.
274.4(a)	0584–0080.
274.4(b)	0584–0009, 0584–0015, 0584–0080, 0584–0081.
274.4(f)	0584–0009, 0584–0053.
274.6 (a), (b) and (e)	0584–0080, 0584–0081.
274.7(a)	0584–0009.
274.7(c)	0584–0022.
274.8(a)–(c)	0584–0009.
274.8(e)	0584–0053.
274.9(a)–(d)	0584–0009.
274.11	0584–0009.
* * * * *	
276.2(b)	0584–0015.
* * * * *	

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

3. In § 272.1, a new paragraph (g)(105) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) Implementation * * *

(105) Amendment No. 271. This rule becomes effective April 1, 1989, and the State agencies shall implement all provisions on that date, with the exception of the following provisions: the new provisions on replacement issuances shall be implemented *by* October 1, 1989; the new liabilities for State agencies using authorization document issuance systems shall be implemented *on* October 1, 1989; the new mail issuance reporting and liability assessments shall be implemented *on* October 1, 1989; State agencies wanting to change their current unit-level of mail issuance loss reporting must submit their initial plans *by* May 15, 1989; the new provision on quality control case reviews shall be implemented for federal Fiscal Year 1990; State agencies shall begin to use the revised Form *FNS–46*, Issuance Reconciliation Report, to report figures for the month of October 1989; and, provisions pertaining to staggered issuance contained in any currently-approved waivers will automatically be cancelled April 1, 1989.

4. In § 272.2, paragraph (a)(2) is amended by adding a sentence at the end of the paragraph, and a new paragraph (d)(1)(viii) is added.

The amendment and addition read as follows:

§ 272.2 Plan of operation.

(a) *General purpose and content:* * * *

(2) *Content.* * * * The Plan's attachments shall also include the Mail Issuance Loss Reporting Level Plan.

* * * * *

(d) *Planning documents.*

(1) * * *

(viii) Mail Issuance Loss Reporting Level Plan required by § 276.2(b)(3), for the State agency using mail issuance, shall contain the unit level of reporting mail issuance losses for the upcoming fiscal year as elected by the State agency. If a State agency does not revise its Plan by August 15 in any given year, FNS shall continue to require reporting and to assess liabilities for the next fiscal year at the level last indicated by the State agency. If the agency has selected the unit provided for in § 276.2(b)(3)(ii), a listing of the issuance sites or counties comprising each administrative unit within the State agency shall also be included in the Plan.

* * * * *

5. In § 272.4, a new paragraph (f) is added to read as follows:

§ 272.4 Program administration and personnel requirements.

* * * * *

(f) *State monitoring of duplicate participation.* (1) Each State agency shall establish a system to assure that no individual participates more than once in a month, in more than one jurisdiction, or in more than one household within the State in the Food Stamp Program. To identify such individuals, the system shall use names and social security numbers at a minimum, and other identifiers such as birth dates or addresses as appropriate.

(i) If the State agency detects a large number of duplicates, it shall implement other measures, such as more frequent checks or increased emphasis on prevention.

(ii) If the State agency provides cash assistance in lieu of coupons for SSI recipients or for households participating in cash-out demonstration projects, the State agency shall check to assure that no individual receives both coupons and other benefits provided in lieu of coupons. Checks to detect individuals receiving both food coupons and cash-out benefits, or any other form of duplicate benefits, shall be made at the time of certification, recertification, and whenever a new member is added to an existing household. However, if the State agency can show that these time frames are incompatible with its system, the State agency shall check for duplicate benefits when necessary, but no less often than annually.

(2) Processing standards for duplicate participation checks at certification and recertification shall not delay the issuance of benefits.

(i) If the State agency chooses to check at the time of certification and recertification, the check for duplicates shall not delay processing of the application and provision of benefits beyond the normal processing standards in § 273.2(g).

(ii) If a duplicate is found in making such a check, the duplication needs to be resolved in accordance with § 273.2(f)(4)(iv) before the application can be processed and benefits provided. Delays in processing caused by this resolution shall be handled in accordance with § 273.2(h).

(3) State agencies shall develop follow-up procedures and corrective action requirements, including time frames within which action must be taken, to be applied to data obtained from matching for duplicate participation. Follow-up actic n shall include, but not be limited to, the adjustment of benefits and eligibility, filing of claims, disqualification hearings, and referrals for prosecution, as appropriate.

(4) FNS reserves the right to review State agencies' use of data obtained from matching for duplicate participation and may require State agencies to take additional specific action to ensure that such data is being used to protect Program integrity.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

6. In § 273.1, paragraph (f) is amended as follows:

a. Introductory text is added after the heading *"Authorized representatives"*.

b. Introductory paragraph (f)(1), the last sentence of paragraph (f) (1)(i) and paragraphs (f)(1)(i)(A) and (f)(1)(i)(B) are removed, and paragraphs (f)(1)(i), (f)(1)(ii) and (f)(1)(iii) are redesignated as introductory paragraph (f)(1) and paragraphs (f)(1)(i) and (f)(1)(ii), respectively.

c. The last sentence of paragraph (f)(2)(i) is removed.

d. The sixth sentence of paragraph (f)(2)(ii), beginning with: "If the resident applies", is removed.

The addition reads as follows:

§ 273.1 Household concept.

* * * * *

(f) *Authorized representatives.* The head of household, spouse, or any other responsible member of the household may designate an authorized

representative to act on behalf of the household in making application for the Program, in obtaining benefits, and/or in using benefits at authorized retail food firms and meal services. Rules pertaining to the use of authorized representatives to obtain household benefits or to use household benefits are in § 274.5. Rules pertaining to designating authorized representatives to apply for the Program are specified in this section.

* * * * *

§ 273.2 [Amended]

7. In § 273.2, paragraph (g) is amended as follows:

a. In the first sentence of paragraph (g)(1), the words "(as defined in § 274.2(b))", are added after the word "participate".

b. Paragraph (g)(2) is removed.

c. Paragraph (g)(3) is redesignated paragraph (g)(2).

§ 273.10 [Amended]

8. In § 273.10, paragraph (g)(3) is removed.

§ 273.11 [Amended]

9. In § 273.11, paragraph (k) is removed, and paragraph (l) is redesignated as paragraph (k).

10. In § 273.18, paragraphs (i) (1) and (2) are removed and the last sentence in paragraph (i) is revised to read as follows:

§ 273.18 Claims against households.

* * * * *

(i) * * * The State agency shall destroy any coupons or coupon books which are not returned to inventory in accordance with the procedures outlined in § 274.7(f).

* * * * *

PART 274—ISSUANCE AND USE OF COUPONS

11. Part 274 is revised in its entirety and reads as follows:

Sec.

274.1 State agency issuance responsibility.
274.2 Providing benefits to participants.
274.3 Issuance systems.
274.4 Reconciliation and reporting.
274.5 Authorized representatives.
274.6 Replacement issuances to households.
274.7 Coupon management.
274.8 Responsibilities of coupon issuers, and bulk storage and claims collection points.
274.9 Closeout of a coupon issuer.
274.10 Identification cards.
274.11 Issuance record retention and forms security.

Authority: 7 U.S.C. 2011–2029.

§ 274.1 State agency issuance responsibility.

(a) *Basic issuance requirements.* State agencies shall establish issuance and accountability systems which ensure that only certified eligible households receive benefits; that coupons are accepted, stored, and protected after delivery to receiving points within the State; that Program benefits are timely distributed in the correct amounts; and that coupon issuance and reconciliation activities are properly conducted and accurately reported to FNS.

(b) *Contracting or delegating issuance responsibilities.* State agencies may assign to others such as banks, savings and loan associations, the Postal Service, community action and migrant service agencies, and other commercial businesses, the responsibility for the issuance and storage of food coupons. State agencies may permit contractors to subcontract assigned issuance responsibilities.

(1) Any assignment of issuance functions shall clearly delineate the responsibilities of both parties. The State agency remains responsible, regardless of any agreements to the contrary, for ensuring that assigned duties are carried out in accordance with these regulations. In addition, the State agency is strictly liable to FNS for all losses of coupons, even if those losses are the result of the performance of issuance, security, or accountability duties by another party.

(2) All issuance contracts shall follow procurement standards set forth in Part 277.

(3) The State agency shall not assign the issuance of coupons to any retail food firm unless the State agency provides evidence that such an arrangement is needed to maintain or increase the efficient and effective operation of the Program, as described below.

(i) Coupons may be issued inside or within a retail food store, if the issuance is performed by a bank, credit union or other financial organization independent of the retail food store.

(ii) Coupons may be issued on-site by a retail food store under the following conditions:

(A) The State agency adequately documents that unless the retail food store is permitted to issue coupons on-site there will be a hardship, not just an inconvenience, to recipients. The State agency shall contract directly with the retail food firm and shall provide oversight to such entity; or

(B) In the absence of the hardship documentation, a retail food firm itself may perform issuance as a subcontractor to a bank, credit union or other independent financial organization, with strict oversight by the financial organization.

(4) The State agency may contract with the U.S. Postal Service for the issuance of benefits. The Department and the Postal Service have signed an agreement which governs benefit issuance by the Postal Service. A State agency's contract with the Postal Service does not exempt the State agency from the requirement that it comply with these regulations. However, State agencies may negotiate contracts with the Postal Service on all terms and conditions as long as such provisions do not conflict with these regulations.

(5) In project areas or parts of project areas where FNS has required a Photographic Identification (Photo ID) system to be used, the State agency shall include in any contract or agreement with an issuing agent a provision establishing the agent's liability to the State agency for the face value of coupons issued in any authorization document transaction where the authorization document is found to have been stolen or otherwise not received by the household certified as eligible, if the cashier has not fulfilled the requirements contained in § 274.10. This same provision shall apply to issuance contracts in project areas or parts of project areas where FNS has granted a waiver or waivers of any provision(s) of the Photo ID requirements based on a determination that State agency alternatives will not compromise the security of the ID system.

(c) *State monitoring of coupon issuers.* The State agency's accountability system shall include procedures for monitoring coupon issuers to assure that the day-to-day operations of all coupon issuers comply with these regulations, to identify and correct deficiencies, and to report violations of the Act or regulations to FNS.

(1) The State agency shall conduct an onsite review of each coupon issuer and bulk storage point at least once every three years. All offices or units of a coupon issuer are subject to this review requirement. The State agency shall base each review on the specific activities performed by each coupon issuer or bulk storage point. A physical inventory of coupons shall be taken at each location and that count compared with perpetual inventory records and the monthly reports of the coupon issuer or bulk storage point. This review may be conducted at branch sites as well as the main offices of each issuer and bulk storage point that operates in more than one office. Except in unusual circumstances, the Postal Inspection Service will conduct onsite reviews of Postal Service issuance operations.

(2) This review requirement may be fulfilled in part or in total by the performance reporting review system, Part 275. The State agency may delegate this review responsibility to another unit of the State government or contract with an outside firm with expertise in auditing and accounting. State agencies may use the results of reviews of coupon issuers by independent audit or accounting firms as long as the food coupon issuance operations of the coupon issuer are included in the review.

(d) *Changes.* The State agency shall inform FNS whenever a project area, issuance point, reconciliation point, replacement point, bulk storage reporting point or coupon shipment receiving point is created, relocated, or terminated. The State agency shall report the change at least 30 days prior to the effective date of the change. Initial notification may be made by telephone but the State agency shall confirm the information in writing as soon as possible.

(e) *Advance planning documentation.* State agencies must comply with the procurement requirements of Part 277 for the acquisition, design, development, or installation of automated data processing (ADP) equipment. With certain exceptions detailed in Part 277, State agencies must receive prior approval for the design and acquisition of ADP systems through submission of advance planning documents (APD's).

§ 274.2 Providing benefits to participants.

(a) *General.* Each State agency is responsible for the timely and accurate issuance of benefits to certified eligible households in accordance with these regulations. Those households comprised of elderly or disabled members which have difficulty reaching issuance offices, and households which do not reside in a permanent dwelling or of a fixed mailing address shall be given assistance in obtaining their regular monthly benefits. State agencies shall assist these households by arranging for the mail issuance of coupons to them, by assisting them in finding authorized representatives who can act on their behalf, or by using other appropriate means.

(b) *Newly-certified households.*

(1) All newly-certified households, except those that are given expedited service, shall be given an opportunity to participate no later than 30 calendar days following the date the application was filed. An opportunity to participate consists of providing households with coupons or authorization documents and having issuance facilities open and available for the households to obtain their benefits. State agencies must mail authorization documents or coupons in time to assure that the documents can be transacted, or the coupons spent after they are received but before the 30-day standard expires. A household has not been provided an opportunity to participate within the 30-day standard if the authorization document or benefits are mailed on the 29th or 30th day. Neither has an opportunity to participate been provided if the authorization document is mailed on the 28th day but no issuance facility is open on the 30th day.

(2) Households which apply for benefits during the last 15 days of the month, which fulfill *all* eligibility requirements, and which are issued benefits during this period, must be issued benefits for their first full month of participation no later than the close of business on the eighth calendar day of that month. The full month's benefits may be issued in a lump sum or may be divided, with an initial and supplemental issuance; the supplemental issuance shall not provide the households more benefits than the household is entitled to receive.

(3) Newly-certified households that are given expedited service shall have benefits provided as explained in § 273.2(i). Households for which verification has been postponed shall *not* be given the first full month's benefits by the eighth calendar day of that month unless the postponed verification is provided prior to the eighth day, and shall be handled under the provisions contained in § 273.2(i).

(c) *Ongoing households.* All households shall be placed on an issuance schedule so that they receive their benefits on or about the same date each month. The date upon which a household receives its initial allotment after certification need not be the date that the household must receive its subsequent allotments.

(1) State agencies may stagger the issuance of benefits to households throughout the entire month. In doing so, however, State agencies shall not allow more than 40 days to elapse between any two issuances provided to a household. State agencies that use direct mail issuance shall stagger issuances over at least ten days of the issuance month and may stagger issuances over the entire issuance month. No matter what issuance schedule a State agency adopts, it shall adhere to the reporting requirements specified in § 274.4.

(2) When a participating household is transferred from one issuance procedure to another, which would result in more than 40 days elapsing between issuances of benefits, the State agency may divide the first issuance under the new procedure into two parts, with one part issued within the 40-day limit, and the second part, or supplemental issuance, issued on the established issuance date of the new procedure; the supplemental issuance cannot provide the household more benefits than the household is entitled to receive.

(3) Notwithstanding the above provisions, in months in which benefits have been suspended under the provisions of § 271.7, State agencies may stagger issuance to certified households following the end of the suspension. In such situations, State agencies may, at their option, stagger issuance from the date issuance resumes through the end of the month or over a five-day period following the resumption of issuance, even if this results in benefits being issued after the end of the month in which the suspension occurred.

(d) *Issuance services.* State agencies are responsible for determining the location and hours of operation of issuance services. In doing so, State agencies shall ensure that the issuance schedules set forth in paragraphs (b) and (c) of this section are met. In addition, issuance authorization documents, such as ATP cards, should be valid only in the geographic area within the State that is encompassed by the reconciliation system through which the issuance will be processed; however, the validity area may be extended within the State at the State agency's option. State agencies may also restrict the validity of these documents to smaller areas or particular issuance sites with minimal practicable inconvenience to affected households.

(e) *Issuance of coupons to households.* The State agency shall issue coupon books in accordance with a table for coupon-book issuance provided by FNS, except as provided in paragraphs (e)(1), (e)(2), and (e)(3) of this section. The State agency shall issue the coupon books in consecutive serial number order whenever possible, starting with the lowest serial number in each coupon book denomination. The household member whose name appears on the ID card shall sign the coupon books; if more than one name appears, any named member may sign the books.

(1) The State agency may deviate from the table if the specified coupon books are unavailable.

(2) Exceptions from the table are authorized for blind and visually-handicapped participants who request that all coupons be of one denomination.

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Recipients who have no fixed address (homeless), and residents of shelters for battered women and children, as defined in § 271.2, and which are not authorized by FNS to redeem through wholesalers, may request that all or part of their coupons be of the $1 denomination. State agencies are authorized to grant this request when feasible.

(3) If a household is eligible for an allotment of $1, $3, or $5, the State agency shall adjust those allotments to $2, $4, or $6, respectively.

§ 274.3 Issuance systems.

(a) *System classification.* State agencies may issue benefits to households through any of the following three systems:

(1) An authorization document system that uses a document produced for each month's issuance. The intermediary document, such as an ATP, may be distributed on a monthly basis to each household and surrendered by the household to the coupon issuer, or provided monthly to issuers with either single household authorizations or multiple household authorizations on each (such as a computer-generated listing). For reconciliation and identification purposes, the authorization document shall contain the following:

(i) Serial number;
(ii) Case name and address;
(iii) Case number;
(iv) Allotment amount;
(v) Benefit month or expiration date;
(vi) Name of issuing project area; and,
(vii) Space for signature of household member. An additional space for an authorized representative may be included.

(2) A direct access system that directly accesses a master issuance file at the time that benefits are issued to households. This system shall use manual card access or an automated access to the master issuance file. Systems of this type include the manual Household Issuance Record (HIR) card system and on-line issuance terminals.

(3) A mail issuance system that directly delivers coupons through the mail to households.

(b) *Other systems.* A State agency may develop an issuance system which cannot be readily categorized into one of the three systems described in paragraph (a) of this section. FNS shall prescribe the reporting and reconciliation requirements which apply to that system.

(c) *Alternative benefit issuance system.* (1) If the Secretary, in consultation with the Office of the Inspector General, determines that Program integrity would be improved by changing the issuance system of a State, the Secretary shall require the State agency to issue or deliver coupons using another method. The alternative method may be one of the methods described in paragraph (a) of this section, or the Secretary may require a State agency to issue, in lieu of coupons, reusable documents to be used as part of an automated data processing and information retrieval system and to be presented by, and returned to, recipients at retail food firms for the purpose of purchasing food. The determination of which alternative to use will be made by FNS after consultation with the State agency. The cost of conversion will be shared by the Department and the State agency in accordance with the cost accounting provision of Part 277.

(2) The cost of documents or systems which may be required as a result of a permanent alternative issuance system pursuant to this section shall not be imposed upon retail food firms participating in the Program.

(d) *System requirements.* (1) The State agency shall establish a master issuance file which is a composite of the issuance records of all certified food stamp households. The State agency shall establish the master issuance file in a manner compatible with its system used for maintaining case record information and shall separate the information on the master issuance file into active and inactive case file categories. The master issuance file shall contain all the information needed to identify certified households, issue household benefits, record the participation activity for each household and supply all information necessary to fulfill the reporting requirements prescribed in § 274.4.

(i) The master issuance file shall be kept current and accurate. It shall be updated and maintained through the use of documents such as notices of change and controls for expired certification periods.

(ii) Before entering a household's data on the master issuance file, the State agency shall review the master issuance file to ensure that the household is not currently participating in, or disqualified from, the Program. If an authorization document is issued under the expedited service requirements of §§ 273.2(i) and 274.2(b), the State agency shall complete as much of the master issuance file review as possible prior to issuing the authorization document. Any uncompleted reviews shall be completed after issuance and appropriate corrective action shall be taken to recover overissuance.

(2) State agencies should divide issuance responsibilities between at least two persons to prevent any single individual from having complete control over the authorization of issuances and the issuances themselves. Responsibilities to be divided include maintenance of inventory records, assembly of benefits and preparation of envelopes for mailing. If issuance functions in an office are handled by one person, a second-party review shall be made to verify coupon inventory, the reconciliation of the mail log, and the number of mailings prepared.

(3) State agencies shall establish controls to prevent a household from concurrently receiving benefits through more than one issuance system.

(4) State agencies shall clearly identify issuances in their accountability systems as initial, original, supplemental, replacement, or restored benefits.

(5) State agencies shall establish a Statewide record of replacement issuances granted to households to prevent a household from receiving more than two countable replacement issuances as defined in § 274.6(b) in a six-month period.

(6) State agencies which issue benefits by mail shall, at a minimum, use first class mail and sturdy nonforwarding envelopes or packages to send benefits to households.

(e) *Validity periods.* (1) State agencies shall establish validity periods for issuances made in authorization document and direct access issuance systems. A validity period is the time frame during which a household may obtain benefits by transacting an authorization document or receiving the benefits directly at an issuance point. The validity period begins the day a household is issued its authorization document or the day a household is authorized to pick up its issuance at an issuance point. If such day is before the 20th day of the issuance month, the validity period shall last until the end of the issuance month. If the validity period begins on or after the 20th day of the issuance month, the State agency has the option of extending the validity period at least 30 days or until the end of the next issuance month. A household which does not transact its authorization document or pick up its authorized issuance during the issuance's validity period shall lose its entitlement to the benefits and the State agency shall not issue benefits to such a household for such a period.

(2) State agencies experiencing excessive issuance losses may develop systems that have authorization documents that expire in shorter time frames than those set forth in paragraph

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(e) of this section. However, such systems shall include methods that allow households the opportunity to obtain their benefits for the full validity period of a month's issuance.

§ 274.4 Reconciliation and reporting.

(a) *Reconciliation.* State agencies shall account for all issuance through a reconciliation process. The manner in which this is done varies depending on the type of issuance system being used.

(1) Described below are the required reconciliation procedures for each type of system.

(i) In all issuance systems coupon issuers shall reconcile their issuances daily using daily tally sheets, cashiers' daily reports, tapes or printouts.

(ii) In systems where a record-for-issuance is used, all issuances authorized for the month shall be merged into one record-for-issuance at the end of each month. All issuances made during the month shall then be posted to the record-for-issuance. The record-for-issuance shall then be compared with the master issuance file. Findings from this comparison shall be reported on the Form *FNS–46* as prescribed in paragraph (b)(2) of this section.

(iii) In systems where no record-for-issuance is used, issuances made during each month shall be reconciled to the master issuance file. Findings from this reconciliation shall be reported on the Form *FNS–46* as prescribed in paragraph (b)(2) of this section.

(iv) In addition to the reconciliation activity prescribed in the paragraphs (a)(1)(i), (a)(1)(ii) and (a)(1)(iii) of this section, the following steps shall be followed in authorization document systems:

(A) The State agency shall determine and verify the transacted value of authorized coupon issuances.

(B) Any batches of transacted authorization documents that do not reconcile shall be maintained intact by the State agency until the discrepancy is resolved with the coupon issuer and/or a review of the case files.

(C) The State agency shall compare all transacted authorization documents with the record-for-issuance or master issuance file as appropriate. Any documents that do not match with the record-for-issuance or master issuance file shall be identified and reported as required in paragraph (b)(2) of this section.

(b) *Required reports.* The State agency shall review and submit the following reports to FNS on a monthly basis:

(1) Form *FNS–250*, Food Coupon Accountability Report.

(i) This report, executed monthly by coupon issuers and bulk storage points, shall be signed by the coupon issuer or appropriate official, certifying that the information is true and correct to the best of that person's knowledge and belief.

(ii) Coupon issuers and bulk storage points shall submit supporting documentation to the State agency which will allow verification of the monthly report. At a minimum, such documentation shall include documents supporting coupon shipments, transfers, issuances, and destruction.

(iii) For those State agencies which use an authorization document issuance system, coupon issuers shall submit transacted authorization documents batched according to each day's activity in accordance with a schedule prescribed by the State agency, but not less often than monthly.

(iv) All mail issuance activity, including the value of mail issuance replacements, shall be reported. Original allotments (first benefits issued for a particular month to an ongoing household) subsequently recovered by the issuance office during the current month shall be returned to inventory and noted on the mail issuance log. When the original allotment is returned to inventory and the replacement issuance is issued during the current month (month in which original benefits were issued), the "replacement" shall not be reported.

(v) The Form *FNS–250* shall be reviewed by the State agency for accuracy, completeness and reasonableness. The State agency shall attest to the accuracy of these reports and shall submit the reports so they will be received by FNS by the 45th day after the report month. Any revisions to the Form *FNS–250* for a given month shall be submitted to FNS within 105 days after the end of the report month.

(vi) FNS shall review each form, submitted through the State agency, for completeness, accuracy and reasonableness and shall reconcile inventory with shipping records, and shall review State agency verification of coupon issuer and bulk storage point monthly reports. FNS may supplement the above reviews by unannounced spot checks of inventory levels and coupon security arrangements at coupon issuers and at bulk storage points.

(2) Form *FNS–46*, Issuance Reconciliation Report, shall be submitted by each State agency operating an issuance system. The report shall be prepared at the level of the State agency where the actual reconciliation of the record-for-issuance and master issuance file occurs.

(i) The State agency shall identify and report the number and value of all issuances which do not reconcile with the record-for-issuance and/or master issuance file. All unreconciled issuances shall be identified as specified on this reporting document.

(ii) The final report shall be received by FNS no later than 90 days following the end of the report month.

(3) Form *FNS–259*, Food Stamp Mail Issuance Report.

(i) Form *FNS–259* reports shall be submitted by State agencies for each unit using a mail issuance system as specified in the Mail Issuance Loss Reporting Plan required in § 272.2(d)(1)(iv). The State agency shall submit the Form *FNS–259* reports so that they are received in FNS by the 45th day following the end of each quarter.

(ii) The State agency shall verify the issuance by a comparison with issuance on the appropriate coupon issuer's Form *FNS–250*.

(4) Form *FNS–388*, State Coupon Issuance and Participation Estimates.

(i) State agencies shall telephone or transmit by computer the Form *FNS–388* data and mail the reports to the FNS regional office no later than the 19th day of each month. When the 19th falls on a weekend or holiday, the Form *FNS–388* data shall be reported by telephone or transmitted by computer and mailed on the first work day after the 19th. The Form *FNS–388* report shall be signed by the person responsible for completing the report or a designated State agency official.

(ii) The Form *FNS–388* report shall provide Statewide estimated or actual totals of issuance and participation for the current and previous month, and actual or final participation totals for the second preceding month. In addition to the participation totals for the second preceding months of January and July, provided on the March and September reports, non-assistance (NA) and public assistance (PA) household and person participation breakdowns shall be provided. As an attachment to the March and September Form *FNS–388* reports, State agencies shall provide project area breakdowns of the coupon issuance and NA/PA household and person participation data for the second preceding months of January and July.

(iii) State agencies shall submit any proposed changes in their estimation procedures to be used in determining the Form *FNS–388* data to the FNS regional office for review and comment. FNS shall monitor the accuracy of the estimated dollar value of coupons issued as reported on the Form *FNS–388* against the Statewide total dollar value

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of coupons as reported by the issuance agents on the Form *FNS–250*, Food Stamp Accountability Report, for the corresponding month. FNS shall monitor the accuracy of the Statewide estimated number of households and persons participating as reported on the Form *FNS–388* report against the Statewide actual total participation as reported on succeeding Form *FNS–388* reports and against the semiannual project area participation totals attached to the March and September Form *FNS–388* reports. The FNS accuracy standards for the issuance and participation estimates are that estimates for the current month be within (+) or (−) four (4) percent of actual levels, and the estimates for the previous month be within (+) or (−) two (2) percent of actual levels. State agencies shall explain any unusual circumstances that cause coupon issuance and/or participation data to not meet these accuracy standards. If a State agency fails to meet these accuracy standards, FNS shall notify the State agency and assist the State agency in revising its estimating procedures to improve its reporting.

(iv) A participating household is one that is certified and has been, or will be, issued benefits (whether or not the benefits are used), and households that have met the eligibility requirements, but will receive zero benefits.

§ 274.5 Authorized representatives.

(a) *Household representation.* The head of household, spouse or any other responsible member of the household may designate an authorized representative to act on behalf of the household in making application for the Program, in obtaining benefits and/or in using benefits at authorized firms. Rules pertaining to designating authorized representatives to apply for the Program on behalf of a household are in § 273.1(f). Specified below are the rules pertaining to the use of authorized representatives to obtain household benefits or to use household benefits:

(1) An authorized representative may be designated to obtain coupons. The designation shall be made at the time the application is completed and any authorized representative shall be named on the ID card. The authorized representative for coupon issuance may be the same individual designated to make application for the household or may be another individual. Even if a household member is able to make application and obtain benefits, the household should be encouraged to name an authorized representative for obtaining coupons in case of illness or other circumstances which might result in an inability to obtain benefits.

(2) The State agency shall ensure that authorized representatives are properly designated. The name of the authorized representative shall be contained in the household's case file. Limits shall not be placed on the number of households an authorized representative may represent. In the event employers, such as those that employ migrant or seasonal farmworkers, are designated as authorized representatives or that a single authorized representative has access to a large number of authorization documents or coupons, the State agency should exercise caution to assure that each household has freely requested the assistance of the authorized representative, the household's circumstances are correctly represented, the household is receiving the correct amount of benefits and that the authorized representative is properly using the benefits.

(3) State agency employees who are involved in the eligibility determination and/or issuance processes and employees of authorized food firms and meal services that are authorized to accept food coupons shall not be authorized representatives unless the State agency determines that no other representative is available.

(4) An individual disqualified for fraud shall not be an authorized representative during the period of disqualification unless the individual is the only adult in the household and the State agency is unable to arrange for another authorized representative. State agencies shall separately determine whether these individuals are needed to apply on behalf of the household, to obtain coupons for the household, and to use the household's coupons to purchase food.

(5) In the event the only adult living with a household is classified as a nonhousehold member as defined in § 273.1(b), that individual may be the authorized representative for the minor household members.

(6) Drug or alcohol treatment centers shall receive and spend the food stamp benefits for food prepared by and/or served to the residents of the center who are participating in the Food Stamp Program.

(7) The head of a group living arrangement which acts as the authorized representative for the residents, may either receive and spend the residents' benefits for food prepared by and/or served to each eligible resident or allow each resident to spend all or any portion of the benefits on his/her own behalf. Meal providers for the homeless may not be authorized representatives, as specified in § 273.1(f)(4)(iv).

(b) *Emergency representative for obtaining benefits.* The State agency shall develop a system by which a household may designate an emergency authorized representative to obtain the household's benefits for a particular month. At a minimum, the method developed by the State agency shall require that a household member whose signature is on the household's ID card sign a designation authorizing the particular emergency representative to receive the household's benefits and attesting to the validity of the emergency representative's signature which must also be on the designation. Households shall not be required to travel to a food stamp office to execute the designation. Additional provisions pertaining to the use of identification cards by emergency authorized representatives are contained in § 274.10(c).

(c) *Authorized representatives for using benefits.* A household may enlist any household member or a nonmember to use its ID card and benefits to purchase food or meals for the household. However, individuals disqualified from the Program because of their commission of an intentional Program violation may only act as authorized representatives for households if no other representative can be found.

(d) *Disqualification.* An authorized or emergency representative may be disqualified from representing a household in the Program for up to one year if the State agency has obtained evidence that the representative has misrepresented a household's circumstances and has knowingly provided false information pertaining to the household, or has made improper use of coupons. The State agency shall send written notification to the affected household and to the representative 30 days prior to the date of disqualification. The notification shall include the proposed action, the reason for the proposed action, the household's right to request a fair hearing, the telephone number of the office, and, if possible, the name of the person to contact for additional information. This provision is not applicable in the case of drug and alcohol treatment centers and to the heads of group living arrangements which act as authorized representatives for their residents. However, drug and alcohol treatment centers and the heads of group living arrangements that act as authorized representatives for their residents, and which intentionally misrepresent households' circumstances, may be prosecuted under applicable State fraud statutes for their acts.

§ 274.6 Replacement issuances to households.

(a) *Providing replacement issuance.* (1) Subject to the restrictions in paragraph (b) of this section, State agencies shall provide replacement issuances to a household when the household reports that:

(i) Its authorization document was not received in the mail or was stolen from the mail, was stolen after receipt, was destroyed in a household misfortune, or was improperly manufactured or mutilated;

(ii) Its coupons were not received in the mail, were stolen from the mail, were destroyed in a household misfortune, or were improperly manufactured or mutilated;

(iii) Food purchased with food stamps was destroyed in a household misfortune; or

(iv) It received a partial coupon allotment.

(2) State agencies shall not provide replacement issuances to households when coupons are lost, stolen or misplaced after receipt, authorization documents are lost or misplaced after receipt, when authorization documents or coupons are totally destroyed after receipt in other than a disaster or misfortune, or when coupons sent by registered or certified mail are signed for by anyone residing with or visiting the household. In addition, replacement issuances shall not be made if the household or its authorized representative has not signed and returned the household statement required in paragraph (c) of this section, where applicable.

(3) Where FNS has issued a disaster declaration and the household is eligible for disaster food stamp benefits under the provisions of Part 280, the household shall not receive both the disaster allotment and a replacement allotment for a misfortune.

(4) In order for a replacement to be considered non-countable, the replacement must not result in a loss to the Program.

(b) *Replacement restrictions.* (1) Replacement issuances shall be provided only if a household timely reports a loss orally or in writing, and provides a statement of nonreceipt if the original authorization document or allotment has not been returned to the State agency at the time of the request for replacement. The report will be considered timely if it is made to the State agency within 10 days of the date an authorization document is stolen from the household, or an authorization document, coupons, or food purchased with food stamps is destroyed in a household misfortune. In mail issuance (ATPs or coupons), the report must be made within the period of intended use, unless the original issuance was made after the 25th of the month, in which case the period of intended use is 20 days from original issuance, or the last day of the next month (State agency option).

(2) The number of replacement issuances which a household may receive shall be limited as follows:

(i) State agencies shall limit replacement issuances to a total of two countable replacements in six months for authorization documents or coupons not received in, or stolen from, the mail; authorization documents stolen after receipt; and partial coupon allotments. However, no limit shall be put on the number of replacements of partial allotments if the partial allotments were due to State agency error. Separate limits shall not apply for each of these types of loss.

(ii) State agencies shall limit replacement issuances per household to two countable replacements in six months for authorization documents or coupons reported as destroyed in a household misfortune. This limit is in addition to the limit in paragraph (b)(2)(i) of this section.

(iii) No limit on the number of replacements shall be placed on the replacement of authorization documents or coupons which were improperly manufactured or mutilated or food purchased with food stamp benefits which was destroyed in a household misfortune.

(iv) The replacement issuance shall *not* be considered a countable replacement if:

(A) The original or replacement issuance is returned or otherwise recouped by the State agency;

(B) The original authorization document is not transacted;

(C) The replacement authorization document is not transacted; or

(D) The replacement is being issued due to a State agency issuance error.

(3) Replacement issuances shall be provided in the amount of the loss to the household, up to a maximum of one month's allotment, unless the issuance includes restored benefits which shall be replaced up to their full value.

(c) *Household statement of nonreceipt.* (1) Prior to issuing a replacement, the State agency shall obtain from a member of the household a signed statement attesting to the household's loss. This statement shall not be required if the reason for the replacement is that the original authorization document or coupons were improperly manufactured or mutilated, or if the original issuance has already been returned. The required statement may be mailed to the State agency if the household member is unable to come into the office because of age, handicap or distance from the office and is unable to appoint an authorized representative.

(2) If the signed statement or affidavit is not received by the State agency within 10 days of the date of report, no replacement shall be made. If the 10th day falls on a weekend or holiday, and the statement is received the day after the weekend or holiday, the State agency shall consider the statement timely received.

(3) The statement shall be retained in the case record. It shall attest to the nonreceipt, theft, loss or destruction of the original issuance and specify the reason for the replacement. It shall also state that the original or replacement issuance will be returned to the State agency if the original issuance is recovered by the household and that the household is aware of the penalties for intentional misrepresentation of the facts, including but not limited to, a charge of perjury for a false claim. In addition, the statement shall advise the household that:

(i) The household may request to be placed on an alternate issuance system after one report of nonreceipt;

(ii) After two reports in a six-month period of loss or theft prior to receipt, the household shall be placed on an alternate delivery system;

(iii) After two reports in a six-month period of loss or theft prior to receipt and/or theft of an authorization document after receipt the State agency may delay or deny further replacements for such causes; and

(iv) If the statement of nonreceipt is not signed and returned within ten (10) days of the date the loss was reported, the State agency shall not replace the coupons or authorization document.

(d) *Time limits for making replacements.* (1) Replacement issuances shall be provided to households within 10 days after report of nondelivery or loss (15 days if issuance was by certified or registered mail) or within two (2) working days of receiving the signed household statement required in paragraph (c) of this section, whichever date is later.

(i) Replacement of mutilated coupons shall be delayed until a determination of the value of the coupons can be made in accordance with paragraph (f)(3) of this section.

(ii) If the household has already been issued the maximum allowable number of countable replacements, subsequent replacements shall be delayed until the agency has verified that the original issuance was returned or the original authorization document was not transacted. In a system using authorization documents, due to the time it takes to post and reconcile all authorization documents, it may not be known at the time of the replacement request whether prior replacements are countable replacements and, therefore, whether the household has reached its limit. In such cases, the allotment shall be restored when the State agency verifies that the limit on countable replacements has not been reached.

(iii) The State agency shall deny or delay replacement issuances in cases in which available documentation indicates that the household's request for replacement appears to be fraudulent.

(2) The household shall be informed of its right to a fair hearing to contest the denial or delay of a replacement issuance. Replacements shall not be made while the denial or delay is being appealed.

(e) *Replacing issuances lost in the mail or stolen prior to receipt by the household.* State agencies shall comply with the following procedures in replacing issuances reported lost in the mail or stolen prior to receipt by the household:

(1) Determine if the authorization documents or benefits were validly issued, if they were actually mailed, if sufficient time has elapsed for delivery or if they were returned in the mail. If a delivery of a partial allotment is reported, the State agency shall determine the value of the coupons not delivered and determine whether the report of receipt of a partial allotment is corroborated by evidence that the coupon loss was due to damage in the mail before delivery or by a discrepancy in the issuance unit's inventory;

(2) Determine, to the extent possible, the validity of the request for a replacement. This includes determining whether the original issuance has been returned to the State agency and, in a system utilizing authorization documents, whether the original authorization document has been transacted and, if so, whether the recipient's signature on the authorization document matches the signature on the ID card. In a Photo ID area, the State agency shall determine if the ID serial number annotated on the authorization document matches the serial number on the recipient's ID card;

(3) Issue a replacement in accordance with paragraphs (b), (c) and (d) of this section if the household is eligible;

(4) Place the household on an alternate delivery system, if warranted, in accordance with paragraph (g) of this section; and

(5) Take other action, such as correcting the address on the master issuance file, warranted by the reported nondelivery.

(f) *Replacing issuances after receipt by the household.* Upon receiving a request for replacement of an issuance reported as stolen or destroyed after receipt by the household, the State agency shall determine if the issuance was validly issued. The State agency shall also comply with all applicable provisions in paragraphs (b), (c) and (d) of this section, as well as the following procedures for each type of replacement:

(1) Prior to replacing an authorization document which was reported stolen after receipt by the household, the State agency shall determine, to the extent possible, the validity of the request for replacement. For example, the State agency may determine whether the original authorization document has been transacted and, if so, whether the signature on the original authorization document matches that on the household statement. In a Photo ID or serialized area, the State agency shall determine if the ID serial number annotated on the authorization document matches the serial number on the recipient's ID card. Any replacement which results in duplicate participation shall be considered a household error, and the replacement countable, when the ID serial number shown on the authorization document matches the serial number on the recipient's card, unless the ID card was reported lost or stolen prior to the replacement. The State agency may require households, on a case-by-case basis, to report the theft to a law enforcement agency and to provide verification of such report.

(2) Prior to replacing destroyed coupons or authorization documents, or destroyed food that was purchased with food stamp benefits, the State agency shall determine that the destruction occurred in a household misfortune or disaster, such as, but not limited to, a fire or flood. This shall be verified through a collateral contact, documentation from a community agency including, but not limited to, the fire department or the Red Cross, or a home visit. The State agency shall provide replacements of coupons, authorization documents, and/or food in the actual amount of the loss, but not exceeding one month's allotment, unless the exception in paragraph (b)(3) of this section, applies.

(3) Households cannot receive a replacement for coupons lost or stolen after receipt.

(4) The State agency shall provide replacements for improperly manufactured or mutilated coupons or authorization documents as follows:

(i) Coupons received by a household, and subsequently mutilated or found to be improperly manufactured shall be replaced in the amount of the loss to the household. State agencies shall replace mutilated coupons when three-fifths of a coupon is presented by the household. The State agency shall examine the improperly manufactured or mutilated coupons to determine the validity of the claim and the amount of coupons to be replaced. If the State agency can determine the value of the improperly manufactured or mutilated coupons, the State agency shall replace the unusable coupons in a dollar-for-dollar exchange. After exchanging the coupons and completing a Form *FNS–135*, Affidavit of Return or Exchange of Food Coupons, the State agency shall destroy the coupons in accordance with the procedures contained in § 274.7(f). If the State agency cannot determine the value of the improperly manufactured or mutilated coupons, the State agency shall cancel the coupons by writing or stamping "canceled" across the face of the coupons and forward the coupons to FNS for a determination of the value by the U.S. Bureau of Engraving and Printing.

(ii) Authorization documents received by a household and subsequently mutilated or found to be improperly manufactured shall be replaced only if they are identifiable. "Identifiable" means that the State agency is able to determine the amount of the issuance and that the authorization document was validly issued to the household within the last 30 days. For example, if the authorization document serial number is legible, the State agency can determine from the record-for-issuance or manual authorization document log to which household the authorization document was issued, the date of issuance, and the amount. Similarly, if the case number and validity period are legible, the State agency may be able to determine to whom the authorization document was issued and the amount. If more than one authorization document was issued to the household and the State agency cannot determine which authorization document was mutilated, the replacement shall be issued in the lesser amount. Improperly manufactured or mutilated authorization documents shall be surrendered to the State agency.

(g) *Alternate issuance system for a household.* The State agency shall offer to place a household in an alternate issuance system after the first report of nonreceipt, or when circumstances exist that indicate that the household may not receive its benefits through the normal issuance system, such as when a household has a history of reported nonreceipt of ATP's. After two requests for replacement of original or replacement ATP's reported as nondelivered in a six-month period, the State agency shall issue benefits to that household under an alternate issuance system. The two requests may be for either an original or a replacement ATP. The State agency shall keep the household on the alternate issuance system for the length of time the State agency determines to be necessary. The State agency may return the household to the regular issuance system if the State agency finds that the circumstances leading to the loss have changed and the risk of loss has lessened. The placement of a household on an alternate issuance system and the length of time the household is on this system is not subject to the fair hearing process.

(h) *Documentation and reconciliation of replacement issuances.* (1) The State agency shall document in the household's case file each request for replacement, the date, the reason, and whether or not the replacement was provided. This information may be recorded exclusively on the household statement required in paragraph (c) of this section.

(2) The State agency shall maintain, in readily-identifiable form, a record of the replacements granted to the household, the reason, the month, and whether the replacement was countable as defined in paragraph (b)(2)(iv) of this section. The record may be a case action sheet maintained in the case file, notations on the master issuance file, if readily accessible, or a document maintained solely for this purpose. At a minimum, the system shall be able to identify and differentiate among:

(i) Authorization documents or coupons not received in, or stolen from, the mail, and authorization documents stolen after receipt; and

(ii) Replacement issuances which are not subject to a replacement limit.

(3) Upon completion of reconciliation in a system utilizing authorization documents, the State agency shall update the record required in paragraph (h)(2) of this section to indicate whether both the original and replacement authorization documents were transacted. If both were not transacted, the record shall clearly indicate that the replacement authorization document was not a countable replacement.

(4) When a request for replacement is made late in an issuance month, the replacement will be issued in a month subsequent to the month in which the original authorization document was issued. All replacements shall be posted and reconciled to the month of issuance of the replacement and may be posted to the month of issuance of the original authorization document, so that all duplicate transactions may be identified.

(i) *Further action on replacement issuances.* The State agency shall take the following further actions on replacements:

(1) On at least a monthly basis, the State agency shall report to the appropriate office of the Postal Inspection Service all authorization documents reported as stolen or lost in the mail. The State agency shall assist the Postal Service during any investigation thereof and shall, upon request, supply the Postal Service with facsimiles of the original authorization document, if transacted, and the replacement authorization document and a copy of the nonreceipt statement.

The State agency shall advise the Postal Service if the original authorization document is not transacted.

(2) When a duplicate replacement authorization document is transacted, the State agency shall, at a minimum:

(i) Compare the handwriting on the authorization documents to documents contained in the household's case file, including the nonreceipt statement;

(ii) Establish a claim in accordance with § 273.18, where it appears that the household has transacted, or caused both authorization documents to be transacted; and

(iii) Refer the matter to the State agency's investigation unit, where indicated.

§ 274.7 Coupon management.

(a) *Coupon inventory management.* State agencies shall establish coupon inventory management systems which ensure that coupons are requisitioned and inventories are maintained in accordance with the requirements of these regulations.

(1) State agencies shall monitor the coupon inventories of coupon issuers and bulk storage points to ensure that inventories are neither excessive nor insufficient to meet the issuance needs and requirements. In determining reasonable inventory needs, State agencies shall consider, among other things, the ease and feasibility of resupplying such inventories from bulk storage points within the State. The inventory levels at coupon issuers and bulk storage points should not exceed a six-month supply, taking into account coupons on hand and on order.

(2) State agencies shall establish accounting systems for monitoring the inventory activities of coupon issuers. State agencies shall review the Form *FNS–250*, from coupon issuers and bulk storage points, to determine the propriety and reasonableness of the inventories. Forms *FNS–261*, Advice of Shipment, Forms *FNS–300*, Advice of Transfer (or an approved State agency form), and reports of returned mail-issued coupons, reports of replacements of mail-issued coupons, reports of improperly manufactured or mutilated coupons, reports of shortage or overage of food coupon books and physical inventory controls shall be used by State agencies to assure the accuracy of monthly reports, issuers' compliance with required inventory levels, and the accuracy and reasonableness of coupon orders.

(b) *Coupon controls.* State agencies shall establish control and security procedures to safeguard coupons that are similar to those used to protect currency. The exact nature of security arrangements will depend on State agency evaluation of local coupon issuance and storage facilities. These arrangements must permit the timely issuance of coupons while affording a reasonable degree of coupon security. The State agencies, as well as all persons or organizations acting on their behalf, shall:

(1) Safeguard coupons from theft, embezzlement, loss, damage, or destruction;

(2) Avoid unauthorized transfer, negotiation, or use of coupons;

(3) Avoid issuance and transfer of altered or counterfeit coupons; and

(4) Promptly report in writing to FNS any loss, theft, or embezzlement of coupons.

(c) *Coupon requisitioning, shipping and transferring.* (1) State agencies shall arrange for the ordering of coupons on the Form *FNS–260*, Requisition for Food Coupon Books, and the prompt verification and written acceptance of each coupon shipment. FNS shall be furnished with appropriate delivery hours and the names of the persons authorized to sign delivery acknowledgements.

(2) FNS shall assess the reasonableness and propriety of food stamp requisitions submitted by State agencies based on prior inventory

changes and shall notify the State agency of any adjustments made to requisitions.

(3) FNS shall ship coupons, in such denominations as it may determine necessary, directly to State agency receiving points approved by FNS. FNS shall promptly advise the State agency in writing when coupons are shipped to receiving points using Form *FNS–361*, Advice of Shipment. Coupons shall be considered delivered to the State agency when FNS or its carrier has a signed receipt.

(4) Once coupons have been accepted by receiving points within the State, any further movement of the coupons between coupon issuers and bulk storage points within the State is at the risk of the State agency. To minimize the risk of loss, coupons should be shipped by armored vehicle or some other method of transportation that affords the State agency the maximum security available.

(5) In every instance when coupons are transported within a State, the person(s) transporting coupons shall:

(i) Acknowledge in writing the receipt of the coupons;

(ii) Provide as much protection for the coupons as is reasonable;

(iii) Advise issuance supervisors of the routes to be taken, the shipment departure time and the estimated arrival time. This information, if in written form, may be destroyed after the coupons have been received.

(d) *Specimen coupons.* FNS may provide upon written request, non-negotiable specimen coupons to State agencies for the administration of the Program and enforcement of the rules, and to authorized food firms for the purpose of educating and training employees on Program operations.

(1) The State agency or firm shall store specimen coupons in secure storage with access limited to authorized personnel. The State agency or firm should maintain a record of specimen coupons received.

(2) Specimen coupons that are mutilated, improperly manufactured, or otherwise unusable, shall not be distributed by the State agency. Such coupons shall be destroyed by the State agency and the destruction shall be witnessed by two persons and noted on the perpetual inventory records maintained by the FNS regional offices for specimen coupons.

(3) Specimen coupons shall not be issued to private individuals or firms for the purpose of collection or display.

(e) *Replacement and destruction of coupons and authorization documents by issuance points.* (1) The State agency shall provide for the replacement to issuers of improperly manufactured or mutilated coupons as provided below. Replacement provisions pertaining to households are contained in § 274.6.

(i) The State agency shall examine the improperly manufactured or mutilated coupons to determine the validity of the claim and the amount of coupons to be replaced.

(ii) If the State agency can determine the value of an improperly manufactured or mutilated coupon, the State agency shall replace the unusable coupon, dollar for dollar, when at least three-fifths of the coupon is presented by the issuer. After the exchange, the State agency shall destroy the unusable coupon in accordance with the procedures contained in paragraph (f) of this section.

(iii) If the State agency cannot determine the value of the improperly manufactured or mutilated coupons, the State agency shall cancel the coupons by writing or stamping "canceled" across the face of the coupons and forward the coupons to FNS for a determination of the value by the U.S. Bureau of Engraving and Printing. The dollar amount shall be shown on the Form *FNS–250* report.

(2) The State agency shall void all authorization documents mutilated or otherwise rejected during the preparation process. The voided authorization documents shall either be filed for audit purposes or destroyed, provided destruction is witnessed by at least two persons and the State agency maintains a list of all destroyed authorization documents. Provisions pertaining to the replacement of authorized documents mutilated subsequent to receipt by a household are provided in § 274.6.

(f) *Destruction of unusable coupons found in inventory or received as claim payments.* (1) The State agency shall require coupon issuers, bulk storage points and claims collection points to dispose of unusable coupons received from the manufacturer or received as payment for claims within 30 days from the close of the month in which the coupons were received. There is no dollar limit on the amount of coupons which may be disposed of by the State agency. Disposal shall be by one of the following two methods:

(i) Sending unusable coupons to the State agency for destruction; or

(ii) Holding the unusable coupons in secure storage pending examination and destruction by the State agency at the coupon issuance, bulk storage, or claims collection point.

(2) Prior to the destruction of improperly manufactured or mutilated coupons or coupon books that were exchanged, or collected from households for claims, the State agency shall:

(i) Verify that the coupons were improperly manufactured or mutilated.

If one or more boxes of coupons were improperly manufactured, the State agency shall contact FNS prior to disposition for instructions on the disposition of the coupons. If FNS has not responded within the 30-day time limit, the State agency shall destroy the box of coupons and document the manufacturing irregularity and the book numbers, and retain a copy of the State agency's request to FNS for permission to destroy.

(ii) If either the coupon issuer or bulk storage point, or the State agency cannot determine whether coupons or coupon books were in fact improperly manufactured or cannot establish the value of the coupons involved, the State agency shall promptly forward a written statement of findings and the canceled coupon(s) or coupon book(s) to FNS for determination.

(3) The State agency shall destroy the coupons and coupon books by burning, shredding, tearing, or cutting so they are not negotiable. Two State agency officials shall witness and certify the destruction and report the destruction information as follows:

(i) The destruction of improperly manufactured, mutilated or exchanged coupons from coupon issuers and bulk storage points shall be reported on the Form *FNS–471*, Coupon Account and Destruction Report, and submitted with the Form *FNS–250* for the appropriate month. For coupons received from recipients, a Form *FNS–135* shall be completed and attached to the Form *FNS–471*.

(ii) The destruction of coupons received from claims collection points that are the result of the payment of household claims shall be reported on the Form *FNS–471* (with Form *FNS–135* documentation) and submitted with the Form *FNS–209*, Status of Claims Against Households, for the appropriate months. A State agency may consolidate its monthly Form *FNS–471* for claims collection destruction reporting by providing one completed Form *FNS–471* that reflects the total claims destruction figure for each month. However, the State agency must attach a breakdown which reports the required Form *FNS–471* information for each reporting point. If a State agency chooses to submit a consolidated Form *FNS–471*, all individual Forms *FNS–471* must be retained by the State agency for future review and audit purposes. The Form *FNS–135* may not be consolidated, and all originals of that form must accompany a consolidated Form *FNS–471*.

(g) *Undeliverable or returned benefits.* The State agency shall exercise the following security and controls for authorization documents and coupons that are undeliverable or returned during the valid issuance period. Forms *FNS–471* and *FNS–135* shall be completed by the State agencies, as appropriate.

(1) Coupons which are in book form, complete, and with original and unsigned covers shall be returned to inventory and noted as such on the issuance log, and the Form *FNS–250*.

(2) Authorization documents shall be recorded in the control log noting the serial number, household name and case number. The documents shall be kept in secure storage with limited access. The documents may be voided as long as households which report nondelivery are provided an immediate replacement.

(h) *Old series coupon exchange.* Households which have old-series (no longer issued) coupons shall be entitled to a dollar-for-dollar exchange of old-series coupons for current series coupons. Households in possession of old-series coupons shall submit the coupons and a request for exchange to the State agency. State agencies may make direct exchange to claimants or request FNS to make the exchange. Forms *FNS–471* and *FNS–135* shall be completed by the State agencies, as appropriate.

§ 274.8 Responsibilities of coupon issuers, and bulk storage and claims collection points.

(a) *Receipt of coupons.* Coupon issuers, and bulk storage and claims collection points shall promptly verify and acknowledge, in writing, the content of each coupon shipment or coupon transfer delivered to them and shall be responsible for the custody, care, control, and storage of coupons.

(b) *Inventory levels.* Coupon issuers and bulk storage points shall maintain a proper level of coupon inventory not in excess of reasonable needs, taking into consideration the ease and feasibility of resupplying such coupon inventories. Such inventory levels should not exceed the six-month supply provided for in § 274.7(a).

(c) *Monthly reporting.* Coupon issuers, and bulk storage and claims collection points shall report monthly to FNS, through the State agency, using Form *FNS–250*, as provided in § 274.4.

(d) *Supporting documentation.* Coupon issuers and bulk storage points shall submit to the State agency supporting documentation which will allow verification of the monthly report as provided in § 274.4. At a minimum, such documentation shall include documents supporting coupon shipments, transfers, and issuances. In those States using issuance systems with authorization documents, coupon issuers shall submit transacted authorization documents batched according to each day's activity, in accordance with the schedule prescribed by the State agency but, in any case, not less often than monthly.

(e) *Handling of improperly manufactured or mutilated coupons.* Coupon issuers, and bulk storage and claims collection points shall cancel improperly manufactured or mutilated coupons or coupon books by writing or stamping "canceled" across the face of the coupon(s) and coupon book(s). Depending upon State agency policy, the coupon issuer or bulk storage point shall forward the coupons with the appropriate documentation (determined by the State agency) to the State agency, or hold the coupons in secure storage, pending examination and destruction by the State agency at the coupon issuer, bulk storage point or claims collection location. The documentation is not required if the State agency inspects the coupons at the issuance, storage or collection point. Additional requirements pertaining to the handling of these types of coupons by the State agency are provided in § 274.7(e).

§ 274.9 Closeout of a coupon issuer.

(a) *Definition of responsibilities.* Whenever the services of a coupon issuer or bulk storage point are terminated, the State agency shall perform the responsibilities described below. If a coupon issuer or bulk storage point has more than one functioning unit and one of these facilities is terminated, the coupon issuer or bulk storage point shall fulfill the responsibilities described in paragraphs (b) and (c) of this section. The coupon issuer or bulk storage point shall notify the State agency of the pending termination of any of its services prior to the actual termination. The State agency shall promptly notify FNS as provided in § 274.1(d).

(b) *Closeout accountability.* The State agency shall perform a closeout audit of a coupon issuer or bulk storage point within 30 days of termination of the issuance or storage point. The State agency shall report the findings of the audit to FNS immediately upon its completion. If the audit determines that the final Form *FNS–250* is incorrect, the State agency shall promptly provide a corrected report to FNS.

(c) *Transfer of coupon inventory.* (1) Prior to the transfer of coupon inventory to another coupon issuer or bulk storage point, the State agency shall perform an actual physical count of coupons on hand.

(2) The State agency shall transfer the inventory to another coupon issuer or bulk storage point, preferably within the same project area. The transfer of coupons shall be properly reported and documented by both the point being terminated and the point receiving the inventory.

(d) *Maintenance of participant service.* (1) At least 30 days before actual termination of a coupon issuer, the State agency shall notify project area participants of the impending closure. Notification shall include identification of alternative issuance locations and available public transportation. The State agency shall post notices at the offices of the coupon issuer of the impending closure and may use mass media or notices with allotments to advise participants about the expected closure of the issuance office.

(2) If closure of the issuer will affect a substantial portion of the caseload or a specific geographic area, the State agency shall take whatever action is necessary to maintain participant service without interruption.

(3) If a coupon issuer or bulk storage point is to be closed for noncompliance with contractual requirements and alternative issuance facilities or systems are not readily available, the State agency may continue to use the coupon issuer or bulk storage point for a limited time. In this situation, the State agency shall perform weekly onsite reconciliations of coupon issuance. The State agency shall continue to actively seek other issuance or storage alternatives.

§ 274.10 Identification cards.

(a) *General provisions.* State agencies shall issue an ID card to each certified household as proof of Program eligibility. Upon request, the household or the authorized representative, shall present the household's ID card at issuance points, retail food stores or meal services in order to transact the allotment authorization or when exchanging benefits for eligible food. The household member or members whose name(s) appear on the ID card shall sign the coupon books issued to the household.

(1) All ID cards shall be issued in the name of the household member who is authorized to receive the household's issuance. In areas not designated by FNS as requiring Photo ID cards, the ID card shall contain space for the name and signature of the household member

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to whom the coupon allotment is to be issued and for any authorized representatives designated by the household. Section 274.5(b) provides further requirements pertaining to emergency authorized representatives. Any person listed on the ID card shall sign the ID card before that person can use it to obtain benefits. If the household does not name an authorized representative, the State agency shall void that area of the ID card to prevent names and signatures being entered at a later date. The ID card may be serially numbered.

(2) The State agency shall limit issuance of ID cards to the time of initial certification, with replacements made only in instances of loss, mutilation, destruction, changes in the person authorized to obtain coupons, or when the State agency determines that new ID cards are needed to keep the photographs up-to-date or if the State agency changes its ID card format or system. Whenever possible, the State agency shall collect the ID card that it is replacing.

(3) The State agency shall place an expiration date on those ID cards issued to households certified for delivered meals for a temporary period and to households eligible for expedited service.

(4) Specially-marked ID cards shall be issued in the following circumstances:

(i) Eligible household members 60 years of age or over or members who are housebound, physically handicapped, or otherwise disabled to the extent that they are unable to adequately prepare all their meals, and their spouses, may use coupons to purchase meals prepared for and delivered to them by a nonprofit meal delivery service authorized by FNS. Any household eligible for and interested in using delivered meal services shall have its ID card marked with the letter "M".

(ii) Eligible household members 60 years of age or over and their spouses, or those receiving SSI and their spouses, may use coupons issued to them to purchase meals prepared especially for them at communal dining facilities authorized by FNS for that purpose. Any household eligible for and interested in using communal dining facilities in those States or project areas where restaurants are authorized to accept food stamps, shall have its ID card marked with the letters "CD". In areas where restaurants are not authorized to accept food stamps, the State or project area may mark such ID's with the letters "CD".

(iii) Eligible households residing in areas of Alaska determined by FNS as areas where access to retail food stores is difficult and which rely substantially on hunting and fishing for subsistence may use all or any part of the coupons issued to purchase hunting and fishing equipment such as nets, hooks, rods, harpoons and knives, but may not use coupons to purchase firearms, ammunition, and other explosives. Any household residing in a remote section of Alaska which has been determined by FNS to be an area in which food coupons may be used to purchase hunting and fishing equipment shall have its ID card marked with the letters "HF".

(5) ID cards delivered to households by mail shall not be mailed in the same envelope with authorization documents or coupons.

(b) *Photo ID cards.* (1) Photo ID cards shall be issued in those project areas or portions thereof with 100,000 or more food stamp participants, except for those project areas serviced entirely by mail issuance, or where FNS, in consultation with the Office of the Inspector General, approves a State agency's request for an exemption. FNS shall respond to a State agency's request for exemption within 30 days of its receipt of the request.

(i) FNS shall evaluate the January participation data reported as an attachment to the March Form *FNS–388* report. Based on the evaluation, FNS shall notify State agencies at the beginning of each fiscal year of any areas that either require or no longer require the use of Photo ID cards. In cases where an entire State is a single project area, FNS shall consult with the State agency to determine whether Photo IDs should be required in any specific parts of the project area. At the conclusion of this consultation, FNS shall inform the State agency whether the use of Photo IDs will be mandated in any parts of the State agency, based on the need to protect Program integrity, and the cost-effectiveness of Photo ID cards.

(ii) In cases where a project area serves between 100,000 and 110,000 participants, FNS shall inform the State agency in which the project area is located that it is prepared to mandate the use of Photo IDs in the project area. FNS shall also inform the State agency that it will not mandate use of Photo ID's if, within 30 days of being notified by FNS that Photo ID's must be used, the State agency demonstrates to FNS that participation in the project areas has fallen below the 100,000 participant level in the recent past, or justifies to FNS why participation is likely to fall below that level during the next year.

(2) FNS may, at any time, in consultation with the Office of the Inspector General, designate project areas or portions thereof with less than 100,000 participants as requiring the use of Photo ID cards if, in reviewing such factors as the level of duplicate issuances and results of management evaluation reviews, the Department determines that the issuance of Photo ID cards in such areas would be justified.

(3) A State agency may request that FNS require that Photo IDs be mandated throughout either the entire State or specified project areas. FNS shall respond to such requests within 30 days of the request and, if the request is not approved, FNS shall justify its reasons for the disapproval to the State agency.

(4) In project areas where issuance of Photo ID cards is mandatory, the State agency shall issue a Photo ID card at the time of certification to each eligible household except those listed in § 274.10(b)(4). Households exempt from mandated Photo ID cards shall be issued ID cards which meet the specifications in paragraph (d) of this section except that in lieu of a photograph, the State agency shall annotate the cards to show an exception was granted to the household and that the ID card is valid. The following households are exempt from the Photo ID requirement:

(i) Households certified by out-of-office interviews as specified in § 273.2(e)(2). However, the State agency shall replace the non-Photo ID card issued to such households with a Photo ID card when the appropriate household member or authorized representative visits the certification office. The State agency shall not require any member of such a household to visit the office exclusively for the purpose of issuing a Photo ID card;

(ii) Household members whose religion does not allow them to be photographed. The State agency shall require such a household to provide a signed statement to the effect that the members' religious beliefs do not allow them to be photographed;

(iii) Households entitled to expedited service if the State agency's Photo ID card system is incapable of producing a Photo ID card in time for the household to participate as required by § 273.2(i). A Photo ID card shall be issued to the household prior to issuance of the household's next allotment;

(iv) Households certified under the SSA-food stamp joint processing rules in § 273.2(k). State agencies shall not require such households to obtain Photo IDs as long as they continue to be certified for food stamps at SSA offices. However, a household shall obtain a Photo ID if a household member or authorized representative reports to a food stamp office for recertification; and,

(v) Residents of drug/alcohol treatment and rehabilitation programs.

(5) In addition to the general provisions in paragraph (a) of this section, Photo ID cards shall include the photograph of the person who will receive the household's issuance; i.e., who will either transact the household's authorization document or pick up the household's allotment. A Photo ID card shall be signed by only the person pictured on the card, who may be the household member or authorized representative. Only the person photographed may obtain the household's coupons. All Photo ID card formats are subject to FNS approval.

(6) Photo ID cards shall be serially numbered and laminated after they are signed by the person whose photograph appears on the card. ID cards shall also include a color photograph of the person designated by the household to obtain coupons and the household's case number or other identifying information.

(7) A Photo ID card used to receive benefits under a welfare or public assistance program may be adapted for food stamp purposes if it meets the specifications contained in this section and can be annotated to indicate food stamp eligibility.

(8) The State agency shall provide a household with a reasonable opportunity to obtain a food stamp Photo ID card in any project area where its use is mandated.

(i) A household required to have a Photo ID card shall not participate until such time as a household member or a designated authorized representative obtains such a card. If a designated authorized representative does not obtain the required Photo ID, the household may designate a household member or another authorized representative to be photographed.

(ii) If the person whose photograph appears on the ID is unable to travel to the issuance point to obtain a particular allotment, the household may use the emergency authorized representative procedures provided in § 274.5 and in paragraph (c) of this section.

(9) State agencies which have the capability may develop systems to issue more than one household member a Photo ID card. These systems shall ensure that the safeguards provided by Photo ID cards, as specified in this section, are maintained.

(10) If a mutilated or altered Photo ID card is presented at the issuance point, the household shall obtain a replacement Photo ID card prior to issuance.

(11) A household shall be entitled to unobtained benefits, lost as a result of being unable to obtain a particular allotment, if the issuance month elapses between the time the household requested a replacement Photo ID card and the delivery of that card to the household.

(12) FNS may waive one or more of the requirements in this section if a State agency can demonstrate to FNS that its alternate ID card or system will provide adequate safeguards against fraudulent and/or duplicate issuances.

(c) *Emergency authorized representative and recipient identification.* State agencies shall develop a method by which a household may designate an emergency authorized representative to obtain the household's allotment when none of the persons specified on the ID is available.

(1) At a minimum, the method developed by the State agency shall require a document with the signature of the emergency authorized representative as well as a place for the household member named on the ID card to sign designating the emergency authorized representative and attesting to the signature of the emergency authorized representative. The designation may be on the ID card or authorization document or a separate form. The household shall not be required to travel to a food stamp office to execute an emergency designation. The emergency authorized representative may present a separately written and signed statement from the head of the household or his or her spouse, authorizing the issuance of the certified household's food stamps to the authorized representative. The emergency representative shall sign the written statement from the household and present the statement and the household ID card to obtain the allotment. A separate written designation is required each time an emergency representative is authorized.

(2) In any issuance system, the cashier shall compare the signatures on the issuance document and on the ID card. If they do not match, issuance shall not be made.

(i) If the household is required by these regulations to present a Photo ID card, coupons shall be issued only when the person presenting the authorization document or requesting the coupons is pictured on the ID card. The cashier shall write the serial number of the Photo ID card on the authorization or issuance document.

(ii) If the Photo ID card appears to be mutilated or altered, the issuing agent shall not issue the coupons, but shall require the household to obtain a replacement ID card from the State agency.

§ 274.11 Issuance record retention and forms security.

(a) *Availability of issuance records.* The State agency shall maintain issuance and reconciliation records for a period of three years from the month of origination. This period may be extended at the written request of FNS.

(1) Issuance and reconciliation records shall include, at a minimum, notices of change, HIR cards, inventory records, transacted authorizing documents, Forms *FNS–250* and substantiating documents, cashiers' daily reports, receptionists' daily tally sheets, master issuance files, the records-for-issuance for each month and any rosters or lists produced by issuance systems.

(2) In lieu of the records themselves, easily retrievable microfilm, microfiche, or computer tapes which contain the required information may be maintained.

(b) *Control of issuance documents.* The State agency shall control all issuance documents which establish household eligibility while the documents are transferred and processed within the State agency. The State agency shall use numbers, batching, inventory control logs, or similar controls from the point of initial receipt through the issuance and reconciliation process. The State agency shall also ensure the security and control of authorization documents in transit from the manufacturer to the State agency.

(c) *Accountable documents.* (1) HIR cards, authorization documents, and mandated Photo ID cards shall be considered accountable documents. The State agency shall provide the following minimum security and control procedures for these documents:

(i) Preprinted serial numbers;

(ii) Secure storage;

(iii) Access limited to authorized personnel;

(iv) Bulk inventory control records;

(v) Subsequent control records maintained through the point of issuance or use, and

(vi) Periodic review and validation of inventory controls and records by parties not otherwise involved in maintaining control records.

(2) For notices of change which initiate, update or terminate the master issuance file, and blank ID cards, the State agency shall, at a minimum, provide secure storage and shall limit access to authorized personnel.

PART 275—PERFORMANCE REPORTING SYSTEM

Subpart C—Quality Control (QC) Reviews

12. In § 275.10, paragraph (a) is amended by adding a new sentence after the third sentence, to read as follows:

§ 275.10 Scope and purpose.

(a) * * * The determination of whether the household received the correct allotment will be made by comparing the eligibility data gathered during the review against the amount authorized on the master issuance file. * * *

* * * * *

PART 276—STATE AGENCY LIABILITIES AND FEDERAL SANCTIONS

13. Sections 276.1 and 276.2 are revised in their entirety to read as follows:

§ 276.1 Responsibilities and rights.

(a) *Responsibilities.* (1) State agencies shall be responsible for establishing and maintaining secure control over coupons and cash for which the regulations designate them accountable. Except as otherwise provided in these regulations, any shortages or losses of coupons and cash shall strictly be a State agency liability and the State agency shall pay to FNS, upon demand, the amount of the lost or stolen coupons or cash, regardless of the circumstances.

(2) State agencies shall be responsible for preventing losses or shortages of Federal funds in the issuance of benefits to households participating in the Program. FNS shall strictly hold State agencies liable for all losses, thefts and unaccounted shortages that occur during issuance, unless otherwise specified. Issuance functions begin with the State agency's creation of a record-for-issuance to generate each month's issuances from the master issuance file. Shortages or losses which result from any functions that occur prior to the creation of the record-for-issuance are subject to either paragraph (a)(3) of this section or Subpart C—Quality Control (QC) Reviews, of Part 275—Performance Reporting System.

(3) State agencies shall be responsible for preventing losses of Federal funds in the certification of households for participation in the Program. If FNS makes a determination that there has been negligence or fraud on the part of a State agency in the certification of households for participation in the Program, FNS is authorized to bill the State agency for an amount equal to the amount of coupons issued as a result of the negligence or fraud.

(4) State agencies shall be responsible for efficiently and effectively administering the Program by complying with the provisions of the Act, the regulations issued pursuant to the Act, and the FNS-approved State Plan of Operation. A determination by FNS that a State agency has failed to comply with any of these provisions may result in FNS seeking injunctive relief to compel compliance and/or a suspension or disallowance of the Federal share of the State agency's administrative funds. FNS has the discretion to determine in each instance of noncompliance, whether to seek injunctive relief or to suspend or disallow administrative funds. FNS may seek injunctive relief *and* suspend or disallow funds simultaneously or in sequence.

(b) *Rights.* State agencies may appeal all claims brought against them by FNS and shall be afforded an administrative review by a designee of the Secretary as provided in § 276.7. State agencies may seek judicial review of any final administrative determination made by the Secretary's designee, as provided in § 276.7(j).

§ 276.2 State agency liabilities.

(a) *General provisions.* Notwithstanding any other provision of this subchapter, State agencies shall be responsible to FNS for any financial losses involved in the acceptance, storage and issuance of coupons. All coupon issuance shall be documented, and the State agency shall make available to the Department all primary documentation (or secondary, if the primary has been inadvertently destroyed) when required to do so. State agencies shall pay to FNS, upon demand, the amount of any such losses. State agencies shall be responsible for the monthly increased Federal benefit costs involved in granting households an income exclusion for child support payments as described in § 273.9(c)(12). State agencies shall reimburse FNS the amount of such increased cost in accordance with paragraph (e) of this section.

(b) *Coupon shortages, losses, unauthorized issuances, overissuances and undocumented issuances.* (1) State agencies shall be strictly liable for:

(i) Coupon shortages and losses that occur any time after coupons have been accepted by receiving points within the State and that occur during storage or the movement of coupons between bulk storage point issuers and claims collection points within the State;

(ii) Losses resulting from authorization documents lost in transit from a manufacturer to the State agency and untransacted authorization documents lost in transit from an issuer to the State agency; and

(iii) The value of coupons overissued and coupons issued without authorization, except for those duplicate issuances in the correct amount that are the result of replacement issuances made in accordance with § 274.6. Overissuances and unauthorized issuances for which State agencies are liable include, but are not limited to: Single unmatched issuances, duplicates made that are not in accordance with § 274.6, and transacted authorization documents that are altered, counterfeit, from out-of-State or expired (including those unsigned by the designated household member and/or not date stamped by the issuer).

(2) Coupon shortages and/or losses for which State agencies shall be held strictly liable include, but are not limited to, the following:

(i) Thefts;

(ii) Embezzlements;

(iii) Cashier errors (e.g., errors by the personnel of issuance offices in the counting of coupon books);

(iv) Coupons lost in natural disasters if a State agency cannot provide reasonable evidence that the coupons were destroyed and not redeemed;

(v) Issuances which cannot be supported by the required documentation;

(vi) Issuances made to households not currently certified;

(vii) Issuance loss during an official investigation, unless the investigation was reported *directly* to FNS prior to the loss; and

(viii) Unexplained causes.

(3) State agencies shall submit written reports on significant losses unless those losses were investigated by the Office of the Inspector General, USDA.

(4) A State agency shall be held strictly liable for mail issuance losses that are in excess of the tolerance level that corresponds to the preselected reporting unit. Each State agency shall select one of the three following units annually and report the selection as provided in §§ 272.2(a)(2) and 272.2(d)(1)(iii). Where reporting units issue less than $300,000 in mail issuance in a quarter, the State agency shall be liable for all losses in excess of $1,500 for the quarter.

(i) If a State agency elects to report and have liabilities based on an existing county or project area level of mail issuance, then the State agency shall be strictly liable to FNS for the value of all mail issuance losses in excess of five-tenths (.5) percent of the dollar value of each reporting unit's quarterly mail issuance. This level shall be used if the State agency does not designate one of the three levels herein by May 15, 1989, and by August 15 in years thereafter.

(ii) If a State agency elects to report and have liabilities based on an existing administrative level higher than the county or project area provided in paragraph (b)(3)(i) of this section, but lower than the Statewide level of mail issuance provided in paragraph (b)(3)(iii) of this section, then the State agency shall be strictly liable to FNS for the value of all mail issuance losses in excess of thirty-five hundreths (.35) percent per quarter of the dollar value of each reporting unit's quarterly mail issuance. State agencies shall not create new administrative units for the sole purpose of reporting mail issuance losses.

(iii) If a State agency elects to report and have liabilities based on a State level of mail issuance, then the State agency shall be strictly liable to FNS for the value of all mail issuance losses in excess of thirty hundreths (.30) percent per quarter of the dollar value of each State agency's total quarterly mail issuance.

(iv) FNS reserves the right to make all determinations on reporting requirements and on administrative divisions within the State for the purpose of determining and assessing liability for mail issuance losses. FNS also reserves the right to revise such determinations as necessary. Revisions will be communicated to State agencies by FNS. The liability assessment will be based on the revised reporting requirement for the next full fiscal quarter.

(v) For the purpose of this section, "mail issuance" means all original coupon issuances distributed through the mail. "Mail loss" means all replacements of mail issuances except for replacements of returned mail issuances.

(vi) The State agency's liability shall be computed using data from Form FNS–259, Food Stamp Mail Issuance Report, or alternative reporting document accepted in advance by FNS and the State agency, which is submitted for the quarter for the particular reporting unit agreed to by FNS and the State agency, as provided in §§ 272.2(a)(2) and 272.2(d)(1)(iii).

(5) State agencies shall be held strictly liable for the following overissuances:

(i) The value of overissued coupons issued as a result of a State agency's failure to comply with a directive issued by FNS in accordance with the provisions of § 271.7, to reduce, suspend or cancel allotments;

(ii) The value of coupons overissued by the State agency as a result of a court order or settlement agreement of a court suit which was not reported to FNS in accordance with the provisions of § 272.4(e); and

(iii) The value of coupons overissued as a result of a State agency entering into an out-of-court settlement of a court suit, the terms of which violate Federal laws or regulations.

(6) Coupon shortages and losses shall be determined from the Form FNS–250, Food Coupon Accountability Report and its supporting documents and from the Form FNS–46, Issuance System Reconciliation Report. Losses of Federal moneys resulting from overissuances shall be determined from sources such as audits, Performance Reporting System Reviews, Federal reviews, investigations and explanatory reports prepared by the State agency.

(c) Cash Losses. State agencies are liable to FNS for cash losses when money collected by State agencies from recipient claims has been lost, stolen or otherwise not remitted to FNS in accordance with the provision of § 273.18(h). The amount of such losses shall be determined from the sources outlined in paragraph (6) of this section.

(d) State agency payment to FNS. State agencies shall be billed for the exact amount of losses specified in this section. If a State agency fails to pay the billing, FNS shall offset the amount of loss from the State agency's Letter of Credit in accordance with § 277.16(c).

(e) Title IV reimbursements. (1) State agencies shall be liable to FNS for the increased dollar value of coupon allotments resulting from providing households with an income exclusion for child support payments as described in § 273.9(c)(12) based on one of the following methods:

(i) For each month the State agency grants the income exclusion to a household, the State agency shall reimburse FNS for the monthly difference between the household's benefit level which includes the exclusion and the benefit level the household would have received without the exclusion.

(ii) On a monthly basis, State agencies shall total the actual amount of income exclusion granted to affected households and shall reimburse FNS 30 percent of such total.

(2) The State agency shall utilize only one reimbursement method and that method shall be applied for determining a reimbursement amount for all affected cases in the caseload. State agencies may switch from one method to the other on an annual basis, but not on a case-by-case basis.

(3) The State agency shall reimburse FNS through an adjustment to the Letter of Credit (LOC). The reimbursement amount shall be reported quarterly on the Form FNS–209, Status of Claims Against Households, to be offset against LOC credit adjustments reported on that form. The State agency shall maintain monthly records which detail the computation of reimbursement amounts reported on the Form FNS–209 for audit purposes.

Date: February 6, 1989.

Anna Kondratas,

Administrator, Food and Nutrition Service.

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federal register

Wednesday
February 15, 1989

Part III

Environmental Protection Agency

Premanufacture Notices; Monthly Status Report for November 1988

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-53112; FRL-3507-4]

Premanufacture Notices Monthly Status Report for November 1988

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substances Control Act (TSCA) requires EPA to issue a list in the **Federal Register** each month reporting the premanufacture notices (PMNs) and exemption requests pending before the Agency and the PMNs and exemption requests for which the review period has expired since publication of the last monthly summary. This is the report for NOVEMBER 1988.

Nonconfidential portions of the PMNs and exemption request may be seen in the TSCA Public Reading Room NE-G004 at the address below between 8:00 a.m. and 4:00 p.m., Monday thru Friday, excluding legal holidays.

ADDRESS: Written comments, identified with the document control number "[OPTS-53112]" and the specific PMN and exemption request number should be sent to: TSCA Document Control Office (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Rm. 201 East Tower, Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Lawrence Culleen, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St., SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The monthly status report published in the **Federal Register** as required under section 5(d)(3) of TSCA (90 Stat. 2012 (15 U.S.C. 2504)), will identify: (a) PMNs received during NOVEMBER; (b) PMNs received previously and still under review at the end of NOVEMBER; (c) PMNs for which the notice review period has ended during NOVEMBER; (d) chemical substances for which EPA has received a notice of commencement to manufacture during NOVEMBER; and (e) PMNs for which the review period has been suspended. Therefore, the NOVEMBER 1988 PMN Status Report is being published.

Date: January 10, 1989.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

Premanufacture Notice Monthly Status Report November 1988

I. 67 PREMANUFACTURE NOTICES AND EXEMPTION REQUESTS RECEIVED DURING THE MONTH

PMN No.

P 89-0081 P 89-0082 P 89-0083 P 89-0085
P 89-0086 P 89-0087 P 89-0088 P 89-0089
P 89-0090 P 89-0091 P 89-0092 P 89-0093
P 89-0094 P 89-0095 P 89-0096 P 89-0097
P 89-0098 P 89-0099 P 89-0100 P 89-0101
P 89-0103 P 89-0105 P 89-0106 P 89-0107
P 89-0106 P 89-0109 P 89-0112 P 89-0113
P 89-0114 P 89-0115 P 89-0118 P 89-0117
P 89-0118 P 89-0119 P 89-0120 P 89-0121
P 89-0122 P 89-0123 P 89-0124 P 89-0125
P 89-0126 P 89-0127 P 89-0129 P 89-0130
P 89-0131 P 89-0132 P 89-0133 P 89-0134
P 89-0135 Y 89-0019 Y 89-0020 Y 89-0021
Y 89-0022 Y 89-0023 Y 89-0024 Y 89-0025
Y 89-0026 Y 89-0027 Y 89-0028 Y 89-0029
Y 89-0030 Y 89-0031 Y 89-0032 Y 89-0033
Y 89-0034 Y 89-0035 Y 89-0036

II. 571 PREMANUFACTURE NOTICES RECEIVED PREVIOUSLY AND STILL UNDER REVIEW AT THE END OF THE MONTH

PMN No.

P 83-0869 P 85-0216 P 85-0535 P 85-0636
P 85-0619 P 85-0718 P 85-0941 P 86-0065
P 86-0066 P 86-0067 P 86-0294 P 86-0295
P 86-0592 P 86-1078 P 86-1189 P 87-1235
P 86-1602 P 86-1603 P 86-1604 P 86-1607
P 87-0957 P 87-0958 P 87-0959 P 87-0966
P 87-0175 P 87-0197 P 87-0198 P 87-0199
P 87-0200 P 87-0201 P 87-0323 P 87-0326
P 87-0770 P 87-0794 P 87-0930 P 87-0931
P 87-0963 P 87-1028 P 87-1066 P 87-1104
P 87-1192 P 87-1226 P 87-1227 P 87-1273
P 87-1337 P 87-1379 P 87-1417 P 87-1436
P 87-1437 P 87-1542 P 87-1546 P 87-1547
P 87-1546 P 87-1549 P 87-1555 P 87-1573
P 87-1576 P 87-1577 P 87-1579 P 87-1580
P 87-1694 P 87-1759 P 87-1769 P 87-1770
P 87-1872 P 87-1881 P 87-1882 P 87-0049
P 88-0063 P 88-0156 P 88-0157 P 88-0195
P 88-0325 P 88-0275 P 88-0319 P 88-0320
P 88-0353 P 88-0387 P 88-0386 P 88-0393
P 88-0436 P 88-0468 P 88-0515 P 88-0522
P 88-0588 P 88-0576 P 88-0598 P 88-0602
P 88-0606 P 88-0622 P 88-0658 P 88-0671
P 88-0701 P 88-0715 P 88-0726 P 88-0782
P 88-0831 P 88-0836 P 88-0837 P 88-0862
P 88-0864 P 88-0875 P 88-0884 P 88-0886
P 88-0889 P 88-0890 P 88-0894 P 88-0899
P 88-0900 P 88-0918 P 88-0972 P 88-0981
P 88-0985 P 88-0997 P 88-0998 P 88-0999
P 88-1005 P 88-1020 P 88-1021 P 88-1025
P 88-1063 P 88-1069 P 88-1070 P 88-1071
P 88-1109 P 88-1115 P 88-1116 P 88-1117
P 88-1118 P 88-1120 P 88-1136 P 88-1154
P 88-1168 P 88-1169 P 88-1170 P 88-1189
P 88-1205 P 88-1208 P 88-1211 P 88-1212
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P 88-1236 P 88-1240 P 88-1243 P 88-1244
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P 88-1403 P 88-1425 P 88-1426 P 88-1439
P 88-1440 P 88-1443 P 88-1446 P 88-1460
P 88-1473 P 88-1514 P 88-1529 P 88-1543
P 88-1559 P 88-1564 P 88-1567 P 88-1568
P 88-1590 P 88-1611 P 88-1616 P 88-1617
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P 88-1632 P 88-1647 P 88-1648 P 88-1653
P 88-1657 P 88-1658 P 88-1677 P 88-1682
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P 88-1922 P 88-1924 P 88-1937 P 88-1938
P 88-1940 P 88-1945 P 88-1956 P 88-1958
P 88-1900 P 88-1952 P 88-1963 P 88-1971
P 88-1980 P 88-1982 P 88-1984 P 88-1985
P 88-1995 P 88-1996 P 88-1999 P 88-2000
P 88-2001 P 88-2002 P 88-2003 P 88-2004
P 88-2007 P 88-2008 P 88-2009 P 88-2010
P 88-2013 P 88-2022 P 88-2043 P 88-2069
P 88-2077 P 88-2079 P 88-2092 P 88-2093
P 88-2094 P 88-2100 P 88-2107 P 88-2108
P 88-2110 P 88-2112 P 88-2116 P 88-2128
P 88-2132 P 88-2133 P 88-2139 P 88-2145
P 88-2148 P 88-2159 P 88-2160 P 88-2168
P 88-2174 P 88-2175 P 88-2177 P 88-2179
P 88-2180 P 88-2181 P 88-2188 P 88-2191
P 88-2195 P 88-2196 P 88-2204 P 88-2210
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P 88-2644 P 88-2645 P 89-0002 P 89-0006
P 89-0007 P 89-0008 P 89-0009 P 89-0010
P 89-0011 P 89-0016 P 89-0017 P 89-0018
P 89-0019 P 89-0020 P 89-0021 P 89-0024
P 89-0028 P 89-0027 P 89-0028 P 89-0029
P 89-0030 P 89-0031 P 89-0032 P 89-0033
P 89-0034 P 89-0035 P 89-0036 P 89-0037
P 89-0038 P 89-0039 P 89-0044 P 89-0045
P 89-0046 P 89-0048 P 89-0049 P 89-0050
P 89-0051 P 89-0052 P 89-0053 P 89-0054
P 89-0055 P 89-0056 P 89-0058 P 89-0059
P 89-0060 P 89-0061 P 89-0062 P 89-0065
P 89-0066 P 89-0067 P 89-0068 P 89-0069
P 89-0070 P 89-0071 P 89-0072 P 89-0073
P 89-0076 P 89-0077 P 89-0078 P 89-0079
P 89-0084 P 89-0129 Y 88-0286 Y 88-0287
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Y 88-0315 Y 88-0316 Y 88-0319 Y 88-0320
Y 88-0321 Y 88-0322 Y 88-0323 Y 88-0324
Y 88-0325 Y 88-0326 Y 88-0352 Y 88-0353
Y 88-0354 Y 89-0004 Y 89-0011 Y 89-0012
Y 89-0016 Y 89-0017 Y 89-0018

III. 193 PREMANUFACTURE NOTICES AND EXEMPTION REQUEST FOR WHICH THE NOTICE REVIEW PERIOD HAS ENDED DURING THE MONTH. (EXPIRATION OF THE NOTICE REVIEW PERIOD DOES NOT SIGNIFY THAT THE CHEMICAL HAS BEEN ADDED TO THE INVENTORY).

PMN No.

P 85-0619 P 86-0092 P 87-0963 P 87-1028
P 87-1436 P 87-1879 P 88-0134 P 88-0138
P 88-0567 P 88-0568 P 88-0894 P 88-1037
P 88-1223 P 88-1224 P 88-1500 P 88-1540
P 88-1650 P 88-1667 P 88-1727 P 88-1729
P 88-1704 P 88-1705 P 88-1766 P 88-1767
P 88-1768 P 88-1769 P 88-1770 P 88-1771
P 88-1772 P 88-1773 P 88-1775 P 88-1776
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P 88-1792 P 88-1793 P 88-1794 P 88-1795
P 88-1796 P 88-1797 P 88-1798 P 88-1799
P 88-1800 P 88-1803 P 88-1804 P 88-1805
P 88-1806 P 88-1808 P 88-1810 P 88-1812
P 88-1813 P 88-1814 P 88-1815 P 88-1816
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P 88-1913 P 88-1914 P 88-1915 P 88-1916
P 88-1917 P 88-1918 P 88-1919 P 88-1920
P 88-1921 P 88-1923 P 88-1924 P 88-1925
P 88-1926 P 88-1927 P 88-1931 Y 88-0277
Y 88-0278 Y 88-0339 Y 88-0340 Y 89-0001
Y 89-0004 Y 89-0012 Y 89-0013 Y 89-0014
Y 89-0015 Y 89-0016 Y 89-0017 Y 89-0018
Y 89-0019 Y 89-0020 Y 89-0021 Y 89-0022
Y 89-0023 Y 89-0024 Y 89-0025 Y 89-0026
Y 89-0027 Y 89-0028 Y 89-0029 Y 89-0031
Y 89-0032

IV. 126 CHEMICAL SUBSTANCES FOR WHICH EPA HAS RECEIVED NOTICES OF COMMENCEMENT TO MANUFACTURE

PMN No.	Identity/generic name	Date of commencement
P 82-0559	G Disubstituted benzene	Oct. 7, 1988.
P 83-0129	Syncrude (full range, dewaxed dearsinited shale oil)	Dec. 16, 1986.
P 83-0130	Light straight run naphtha	Feb. 1, 1987.
P 83-0131	Heavy straight run naphtha	Do.
P 83-0132	Straight run middle distillate	Do.
P 83-0133	Straight run gas oil	Do.
P 83-0134	Atmospheric tower residuum	Do.
P 83-0135	Vacuum tower condensate	Do.
P 83-0136	Light vacuum gas oil	Do.
P 83-0137	Heavy vacuum gas oil	Do.
P 83-0138	Vacuum residuum	Do.
P 83-0139	Full range catalytic cracked naphtha	Do.
P 83-0140	Light catalytic cracked distillate	Do.
P 83-0141	Catalytic cracked clarified oil	Do.
P 83-0142	Catalytic cracked light olefins	Do.
P 83-0143	Full range catalytic reformed naphtha	Do.
P 83-0144	Full range alkylate naphtha	Do.
P 83-0145	Light hydrocracked naphtha	Do.
P 83-0146	Heavy hydrocracked naphtha	Do.
P 83-0148	Light thermal cracked naphtha	Do.
P 83-0149	Heavy thermal cracked naphtha	Do.
P 83-0150	Light thermal cracked distillate	Do.
P 83-0151	Heavy thermal cracked distillate	Do.
P 83-0152	Coke	Do.
P 83-0153	Sweetened naphtha	Do.
P 83-0154	Hydrodesulfurized heavy naphtha	Do.
P 83-0155	Hydrodesulfurized middle distillate	Do.
P 83-0156	Full range straight run naphtha	Do.
P 83-0157	Straight run kerosine	Do.
P 83-0158	Light paraffinic distillate	Do.
P 83-0159	Heavy paraffinic distillate	Do.
P 83-0219	Catalytic dewaxed naphtha	Do.
P 83-0225	Hydrodesulfurized gas oil	Do.

IV. 126 Chemical Substances for Which EPA Has Received Notices of Commencement To Manufacture—Continued

PMN No.	Identity/generic name	Date of commencement
P 83-0235	Calcined coke	Do.
P 83-0510	G Reaction product of an aromatic dianhydride with a substituted C8-14 alcohol and epichlorohydrin	Nov. 13, 1983.
P 84-0127	G Polyurethane prepolymer resin	Aug. 29, 1988.
P 84-0129	G Fluorocarbon ionoc polymer	Do.
P 85-1050	G Modified tall oil fatty acids amidoamine	Sept. 16, 1985.
P 85-1450	Ethylene glycol benzoate trialkylacetate with carbon numbers C16-C19	Nov. 7, 1988.
P 86-0152	2-hydroxyethyl trialkylacetate with carbon numbers of C10-C12	Nov. 25, 1988.
P 86-0568	Methoxyacetyl chloride	July 7, 1988.
P 86-0666	N-methyl-N-chlorothio-benzenesulfonamide	July 1, 1988.
P 86-0701	G Acrylic resin	June 18, 1986.
P 86-0913	G High solids oxirane/hydride polyester resin	Sept. 29, 1988.
P 86-0921	G (Substituted aromatic heterocyclic) substituted-3-sulfoalkyl benzothiazole,salt	Sept. 6, 1988.
P 86-1328	G Substituted polyhydroxy aromatic compound	Jan. 25, 1988.
P 86-1497	1,3-phenylenebis (methyl phenyl) methanone	Oct. 17, 1988.
P 86-1506	G Carboxymethylated nonionic surfactant	Sept. 28, 1988.
P 86-1552	G Alpha,alpha-bis(methylphenyl)-1,3-benzendiethanol	Oct 17, 1988.
P 86-1646	1,3-bis(1-(methylphenyl) ethenyl) benzene	Do.
P 86-1732	G Substituted heterocycle azo naphthalenesulfonic acid, salt	Nov. 16, 1988.
P 86-1745	1,3-phenylene-bis(3-methyl phenyl) pentylidene)-bis-lithium	Nov. 2, 1988.
P 87-0349	G Partially crosslinked saturated polyester with medium number-average molecular weight	July 10, 1988.
P 87-0468	Toluene sulfonamide caprolactan formaldehyde resin	Sept. 25, 1987.
P 87-0711	High solids oxirane/anhydride polyester resin	Sept. 30, 1988.
P 87-0723	G Metalated alkylphenol copolymer	Nov. 9, 1988.
P 87-0848	G Substituted thioxotetrazole salt	Aug. 15, 1988.
P 87-0949	G Ethyldimethylpropylamine	Aug. 24, 1988.
P 87-0955	G Functional acrylate	Oct. 18, 1988.
P 87-0980	G Substituted thioxotetrazole	Aug. 15, 1988.
P 87-1213	G 2-Pyrazoline, 3-(substituted)-1-P-((2-(2-(substituted amino) ethoxy) ethyl) sulfony) Phenyl)-	Sept. 19, 1988.
P 87-1359	G Polyarylether sulfone	Sept. 29, 1988.
P 87-1449	G Phosphorous acid, diphenyl tetradecyl ester	Aug. 29, 1988.
P 87-1560	G Poly(propylene carbonate)	Apr. 14, 1988.
P 87-1586	G N'-alkyl-N,N,N'-tetra alkyl-trialkyl-dipropylene-quarternary ammonium trialkyl-sulfate	Oct. 6, 1988.
P 87-1660	G Halogenated alkene	Mar. 25, 1988.
P 87-1696	Amine salt of phosphoric acid	May 4, 1988.
P 87-1702	G Carboxyl modified hydrocarbon resin	Nov. 1, 1988.
P 87-1839	G Acrylic lactone copolymer	Apr. 29, 1988.
P 87-1848	Organopolysiloxane	May 7, 1988.
P 88-0060	G Fiber reactive dye	Jan. 29, 1988.
P 88-0068	G Substituted heteromonocyclic azo carbopolycyclic acid	Oct. 19, 1988.
P 88-0159	Propionic acid, lithium salt (1:1)	Apr. 21, 1988.
P 88-0256	2-Mercapto nicotine	Sept. 28, 1988.
P 88-0390	G Copolyester	July 4, 1988.
P 88-0410	G Reaction product of alkanolamine and dicarboxylic acid	Nov. 14, 1988.
P 88-0446	1-Alkyloxy-2-hydroxy-propoxy-agarose	Oct. 22, 1988.
P 88-0547	G Water-reducible styrenated alkyd	Oct. 26, 1988.
P 88-0618	Trimethoxysilylpropyl-N-methyldialkyl ammonium chloride	Oct. 5, 1988.
P 88-0703	G Substituted carboxylic acid heterocycle	Sept. 29, 1988.
P 88-0704	G Substituted carboxylic acid heterocycle	Oct. 12, 1988.
P 88-0855	G Cyclodiene	Sept. 26, 1988.
P 88-0857	G Cyclodiene	Do.
P 88-0951	G Diphenol	Nov. 16, 1988.
P 88-1039	G Substituted p-cresidine sulfonic acid salt	July 13, 1988.
P 88-1157	G Polyarylenesulfide	Sept. 14, 1988.
P 88-1163	G Aliphatic glycol	July 29, 1988.
P 88-1187	Mixed monobasic fatty acid esters with monohydric alcohols and polyols, oxidized, polymerized	Oct. 24, 1988.
P 88-1254	G Substituted alkylsilylurea	July 26, 1988.
P 88-1259	3,4-Methylenedioxyphenyl-2-propanone	Oct. 21, 1988.
P 88-1323	G 1-((2-Nitro)phenylazo amino carbonyl methylene) benzimidazole	Nov. 14, 1988.
P 88-1361	G Partially fluorinated polyamide	Sept. 14, 1988.
P 88-1369	G Fatty acid ester	Nov. 4, 1988.
P 88-1373	G Polymer of an acrylic acid ester, a vinyl monomer, an acid monomer, and methacrylic acid esters	Sept. 27, 1988.
P 88-1418	G Terephthalate diol esters	Oct. 6, 1988.
P 88-1419	5(4H)-Oxazolone,4,4'-(1,4-phenylenedimethylidyne)bis 2-phenyl	Do.
P 88-1437	G Polymer of substituted aromatic amine and epoxy resin	Oct. 13, 1988.
P 88-1438	Polymer of: benzene, 1,3 diisocyanatomethyl-ethanol, 2,2'-thiobis-polymer of 2-propanol, 1-((2-hydroxyethyl)thio)- and 2,2'-thiobis (ethanol), polymer of 2,2'-thiobis (ethanol), 1,3-propanediol, 2-ethyl-2-hydroxymethyl)-, and 1-(2-hydroxyethyl) thiol-2-propanol.	Oct. 11, 1988.
P 88-1516	Bis-2-propanamine, N-(1-methylethyl), magnesium salt (diisopropylamide magnesium)	Oct. 21, 1988.
P 88-1519	Dimethylmagnesium	Sept. 6, 1988.
P 88-1546	Xylene-formaldehyde polymer, reaction with rosin	Sept. 10, 1988.

IV. 126 Chemical Substances for Which EPA Has Received Notices of Commencement To Manufacture—Continued

PMN No.	Identity/generic name	Date of commencement
P 88-1557	G Blocked isocyanate	Sept. 7, 1900.
P 88-1599	G Modified polyester resin	Oct. 13, 1988.
P 88-1600	G Modified polyester resin	Do.
P 88-1613	G Polyester-polyurea	Do.
P 88-1627	G Composition of lithium diisopropylamide and magnesium bis-diisopropylamide	Oct. 21, 1988.
P 88-1634	G Substituted malononitrile	May 4, 1988.
P 88-1656	G Polymer of: aliphatic diisocyanate and a poly oxyalkylene polyol	Nov. 15, 1988.
P 88-1674	G Water-soluble phenol-formaldehyde resin	Oct. 17, 1988.
P 88-1675	G Water-soluble phenol-formaldehyde resin	Do.
P 88-1685	G Perchlorate compound	Nov. 7, 1988.
P 88-1694	G 2-Bromomethy 1-1,3-dioxolane	Nov. 1, 1988.
P 88-1714	2,2,2-trifluoro-4'-chloro-acetophenone	Nov. 7, 1988.
P 88-1741	G Platinum alkene complex	Nov. 3, 1988.
Y 86-0219	G Modified polyester of carbonmonocyclic acids and hydride with neopentyl glycol	Nov. 7, 1988.
Y 88-0179	G Aliphatic polyurethane	Aug. 23, 1988.
Y 88-0212	G Polyvinyl alcohol poly(alkyleneoxy)acrylate copolymer	Aug. 22, 1988.
Y 88-0253	G Polyester	Sept. 30, 1988.
Y 88-0256	G Water-reducible alkyd resin	Sept. 27, 1988.
Y 88-0257	G 2-Propenoic acid, 2-methyl-; butyl-2-propenoate; 1-methylethenyl benzene; methyl-2-methyl-propenoate; 1-propanol, 2-amino-2-methyl-.	Do.
Y 88-0284	G Poly(arylalkylimide ester) resin	Oct. 20, 1988.
Y 88-0295	G Unsaturated polyester diol	Oct. 25, 1988.
Y 88-0318	G Styrenated acrylic modified polyester	Nov. 8, 1988.
Y 88-0319	G Polyester resin	Oct. 19, 1988.
Y 88-0320	G Saturated polyester resin	Do.
Y 88-0355	G Polyester polyol	Nov. 4, 1988.

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[FR Doc. 89-1364 Filed 2-14-89; 8:45 am]

BILLING CODE 6560-50-M

federal register

Wednesday
February 15, 1989

Part IV

Environmental Protection Agency

Microbial Pesticides and Biotechnology Products; Request for Comments on Regulatory Approach; Notices

ENVIRONMENTAL PROTECTION AGENCY

[OPP-50668; FRL-3522-3]

Microbial Pesticides; Request for Comment on Regulatory Approach

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is soliciting comments on issues that have arisen in the development of an amendment to its Experimental Use Permit (EUP) regulations under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The amendment would require notification before initiation of small-scale testing of certain genetically modified microbial pesticides. Each notification will be reviewed by EPA and a determination made as to whether an EUP will be required. This notification scheme is intended to provide sufficient oversight of the early testing of these microbial pesticides to mitigate any adverse human health or environmental effects. During the development of a draft proposed regulation, comments have been received from EPA science advisory committees and other Federal agencies. Comments are now being solicited from all interested persons on issues arising during the course of development of the proposed regulation.

DATE: Comments identified by the docket control number [OPP-50668] must be received on or before May 16, 1989.

ADDRESS:

Written comments by mail to: Public Information Branch, Field Operations Division (TS-787C), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

In person, bring comments to: Room 246, CM #2, 1921 Jefferson Davis Highway Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT:

Frederick Betz, Science Integration and Policy Staff, Environmental Fate and Effects Division (TS-769C), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. (703-557-9307).

A public docket has been established and will be available for public inspection at the Virginia address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. Comments received in response to this Notice, except those containing confidential business information, will be included in the public docket.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 5 of FIFRA, 7 U.S.C. 136 *et seq.*, and 40 CFR 172.2 provide for issuance by EPA of EUPs for the testing of new pesticides or new uses of existing pesticides. Such permits are generally issued for large-scale testing of pesticides involving terrestrial application to more than ten acres of aquatic application to more than one acre. It has been generally presumed that smaller experiments would not require EUPs. However, EPA recognizes that small-scale studies with some microbial pesticides that have been genetically modified may raise many of the same concerns as more extensive uses of conventional pesticides. Accordingly, EPA is in the process of modifying its existing regulatory program to address these concerns.

II. Background

Based on the conclusion that there is a need to evaluate small-scale tests of certain microbial pesticides prior to their release in the environment, EPA issued its "Interim Policy on Small-Scale Field Testing of Genetically Altered and Nonindigenous Microbial Pesticides" (49 FR 40659, October 17, 1984). This policy stated that the 40 CFR Part 172 presumption would not automatically apply for certain microbial pesticide products and that EPA should be notified before initiation of any such small-scale testing in order to determine whether an EUP would be required. The Interim Policy was subsequently republished for review and comment in December 1984 in conjunction with the "Proposal for a Coordinated Framework for Regulation of Biotechnology" (49 FR 50880, December 31, 1984) issued by the Office of Science and Technology Policy.

After reviewing the public comments on the 1984 Proposal, in June 1986, EPA published a final policy statement entitled "Applicability of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) to Microbial Products" as part of the Office of Science and Technology Policy's Coordinated Framework for Regulation of Biotechnology (51 FR 23313, June 26, 1986). The 1986 Policy stated EPA's concern about the potential risks associated with small-scale testing of certain microbial pesticides. To address these potential risks, the Policy specified that EPA be notified prior to initiation of small-scale testing of all nonindigenous and genetically modified microbial pesticides. The notification allows EPA to make a determination as to whether the test should be carried out under an EUP. In addition, the 1986 Policy set forth EPA's plan for future rulemaking to codify the interpretation set out in the Policy Statement.

EPA received public comment on the 1986 Policy and began to revise the existing Part 172 EUP rule to incorporate the major elements of the Policy. In the summer of 1988, the Agency provided a draft of the proposed rule to Congress, the U.S. Department of Agriculture (USDA) and the U.S. Food and Drug Administration. In November 1988, a revised draft was reviewed and commented on at a public meeting of a Subpanel of the FIFRA Scientific Advisory Panel (SAP Subpanel). The SAP Subpanel and Federal agencies provided written comments.

A number of issues have arisen during the course of the development of this regulation which EPA has concluded need to be addressed before a rule is proposed, including: (1) Scope of genetically modified microbial pesticides subject to notification; (2) Review of nonindigenous microbial pesticides at small-scale; (3) Establishment of independent expert review groups (Environmental Biosafety Committees) patterned after the National Institutes of Health's Institutional Biosafety Committees. To aid EPA in addressing these issues, this Notice requests comment on them from all interested parties to help facilitate development of the rule.

For commenters who wish additional information concerning the background for these issues, materials in the public docket are available on the request, including the recommendations of the SAP Subpanel following their November 22, 1988 meeting, the draft regulation discussed at that meeting, comments received from the public and other Federal agencies on the draft proposed regulation, the transcript from the EPA Biotechnology Scientific Advisory Committee's January 12, 1989 meeting where a recommendation regarding the FIFRA proposal was adopted, and EPA's most recent draft which includes responses to the SAP Subpanel recommendations and many of the comments received to date.

Elsewhere in this **Federal Register**, a notice appears soliciting comments on regulatory approaches being considered for products of biotechnology under the Toxic Substances Control Act.

Dated: February 3, 1989.

John A. Moore,

Acting Administrator.

[FR Doc. 89-3619 Filed 2-14-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-00049D; FRL-3522-2]

Biotechnology; Request for Comment on Regulatory Approach

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is soliciting comments on the direction of its program under the Toxic Substances Control Act (TSCA) to ensure that products of biotechnology are tested, manufactured, processed, and used in a manner that does not present an unreasonable risk of injury to human health and the environment. This notice does not change the Policy which was published in the June 26, 1986 **Federal Register** (51 FR 23313). EPA has been developing a proposed rule to address matters discussed in that policy statement of the regulations of certain products of biotechnology under TSCA. During this process comments have been received from our own science advisory committees and other Federal agencies. A number of issues have arisen and EPA is requesting comment on several issues. Commenters are requested to review the issues in this notice and provide their comments.

DATES: Written comments should be submitted by May 16, 1989.

ADDRESS: Comments on issues raised in this notice must bear the docket control number OPTS-00049C, and must be submitted to the following address: TSCA Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Room L-100, 401 M Street SW., Washington, DC, 20460.

A docket will be available for public inspection in the TSCA Public Docket Office, Room NE-G004, at EPA Headquarters, 401 M Street SW., Washington, DC, from 8:00 a.m. to 4 p.m., Monday through Friday, except legal holidays. The docket includes all documents relevant to the issues raised in this Notice and will contain all public comments that are received. These documents containing confidential business information will be placed in a separate, confidential file.

FOR FURTHER INFORMATION CONTACT:

Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room EB-44, 401 M Street SW., Washington, DC., 20460. In the USA: (202) 554-1404. TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION:

I. Background

On December 31, 1984, the White House Office of Science and Technology Policy issued in the **Federal Register** a "Proposal for a Coordinated Framework for Regulation of Biotechnology" (49 FR 50880, December 31, 1984). In that proposal, EPA stated that the definition of "chemical substance" under section 3(2) of TSCA includes all microorganisms except those excluded from TSCA jurisdiction (i.e., those microorganisms manufactured, processed or distributed in commerce for use as pesticides, foods, food additives, drugs, cosmetics, or other related items are excluded).

After reviewing comments on the 1984 Proposal, EPA issued in 1986, as part of the "Coordinated Framework for Regulation of Biotechnology" (51 FR 23313, June 26, 1986), a "Statement of Policy" describing how EPA was addressing certain microbial products of biotechnology under TSCA. In the 1986 Policy, EPA interpreted the new chemical substance premanufacture notification (PMN) provisions of TSCA section 5 to cover new (inter-generic) microorganisms used for commercial purposes. This interpretation became effective immediately. EPA also requested voluntary submission of other information until final rules were in place, and described its intentions to develop, under TSCA, a significant new use rule for pathogenic microorganisms; a rule modifying the PMN research and development exemption so that small scale field testing of microorganisms for TSCA purposes is subject to PMN; a section 8(a) reporting rule for other microorganisms prior to release in the environment; and section 5(h)(4) exemptions as appropriate.

In developing a regulatory framework to implement the 1986 policy statement, EPA received advice and a "concept paper" from other federal agencies, as well as unsolicited suggestions from some nongovernmental organizations. EPA discussed proposals with the interagency biotechnology Science Coordinating Committee (BSCC) and received its comments. On December 21, 1988, EPA convened a public meeting of the Subcommittee on the Proposed Biotechnology Rule under TSCA of the EPA Biotechnology Science Advisory Committee (BSAC), EPA's independent science advisory group. A draft proposed rule was provided to the Subcommittee. This group was asked to examine scientific issues associated with EPA's approach, as well as the utility of using groups of independent experts to determine whether research and development (R&D) proposals should be exempt from the premanufacture notification requirements of section 5 of TSCA. Several members of the public requested and received permission to address the Subcommittee. Included among the commenters was the Chairperson of the BSCC who described inter-agency discussions over the proposed TSCA rulemaking.

A number of basic issues have arisen during the course of the development of a proposed rule which EPA has concluded need to be addressed before a specific rule is developed and proposed.

These include:

1. What should be the scope of the microorganisms subject to EPA's review?

2. What should be the scope of EPA's review of R&D activities involving release of microorganisms to the environment?

3. Since TSCA only allows EPA to review those microorganisms developed for "commercial purposes", how broadly or narrowly should EPA define "commercial purposes" in the context of research conducted at educational and research facilities?

4. If the definitions of "release to the environment" and "contained facility" are to be used to determine whether there is EPA review of specific uses of microorganisms, how should these terms be defined? To what extent should EPA rely on the definition of "contained facility" found in the guidelines of the National Institutes of Health (NIH)?

5. To what extent should EPA establish independent expert review groups (i.e., Environmental Biosafety Committees (EBCs)), similar to the NIH Institutional Biosafety Committees (IBCs), to assist in the review of potential environmental releases of microorganisms? What should be the scope of review by those groups?

To aid EPA in addressing these issues, this notice requests comment on them from all interested persons. For commenters who wish additional information concerning the background for these issues, materials in the public docket are available on request from the address in **FOR FURTHER INFORMATION CONTACT.** These include: letters from other Federal agencies commenting on the draft approach, the recommendations of the BSAC Subcommittee on the Proposed Biotechnology Rule under TSCA following their December 21, 1988 meeting, the draft proposed rule they discussed at that meeting, and the comments of the members of the public and the BSCC chairperson at the BSAC

Subcommittee meeting. All other information in the docket is available in the TSCA public docket Office at the address in **ADDRESSES.**

Elsewhere in this **Federal Register** a similar notice appears soliciting comments on a proposed regulatory approach for the products of biotechnology under the Federal Insecticide, Fungicide, and Rodenticide Act.

Dated: February 3, 1989.

John A. Moore,

Acting Administrator.

[FR Doc. 89-3620 Filed 2-14-89; 8:45 am]

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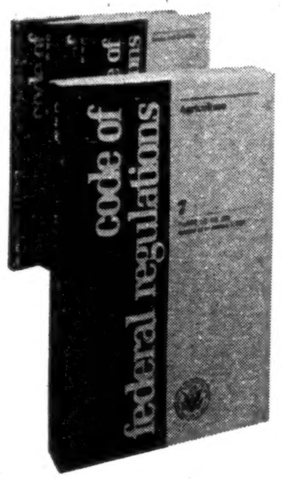
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